PUBLICATION NO: 2575

REEL NO: 97

TITLE: FEDERAL REGISTER

VOLUME: 25 DATE:December 1, 1960-December 31, 1960

Note: December contains Part I and Part II.

University Microfilms, A Xerox Company, Ann Arbor, Michigan

VOL 25 DEC.

Pages 12279–12334

FEDERAL REGISTER

VOLUME 25 NUMBER 233

Washington, Thursday, December 1, 1960

THE UNIVERSITY OF MICHIGAN
READING ROOM

Contents

THE PRESIDENT

Executive Order

Amendment of Executive Order No. 6260 of August 28, 1933 ---- 12281

EXECUTIVE AGENCIES

Agricultural Marketing Service

PROPOSED RULE MAKING:
Florida fruit, U.S. Standards; Bronze grade:
Grapefruit ---- 12298
Oranges and tangelos ---- 12299

Agriculture Department

See Agricultural Marketing Service; Commodity Credit Corporation; Commodity Stabilization Service.

Air Force Department

RULES AND REGULATIONS:
Safeguarding military information ---- 12291

Attorney General's Office

RULES AND REGULATIONS:
Witness fees and allowances in Alaska ---- 12290

Civil Aeronautics Board

NOTICES:
Galesburg, Ill., et al.; hearing ---- 12331
Kansas-Oklahoma local service case ---- 12331

Civil Service Commission

RULES AND REGULATIONS:
Filling competitive positions; appointments ---- 12285

Commerce Department

See Maritime Administration.

Commodity Credit Corporation

RULES AND REGULATIONS:
Grains; 1960-crop loan and purchase agreement programs; basic county support rates:
Barley ---- 12282
Rye ---- 12282
Wheat ---- 12282
Grains and related commodities; warehouse approval standards and instructions ---- 12283

Commodity Stabilization Service

RULES AND REGULATIONS:
Mainland cane sugar area; 1959 and subsequent crops ---- 12285

Defense Department

See Air Force Department.

Federal Aviation Agency

PROPOSED RULE MAKING:
Control zone; designation ---- 12329
Federal airways, associated control areas and control area extension; modification; and revocation of control area extension ---- 12328
Scheduled air carrier operations outside continental limits of U.S.; certification and operation rules ---- 12299

RULES AND REGULATIONS:
Coded jet route; modification and revocation ---- 12288
Control area extension; modification ---- 12287
Federal airways; designations; change of effective dates (6 documents) ---- 12285, 12286
Federal airways, continental control areas, control areas, control zones, reporting points, positive control route segments, and positive control areas; change of effective dates (3 documents) ---- 12287

Food and Drug Administration

PROPOSED RULE MAKING:
Food additives; filing of petition ---- 12299

RULES AND REGULATIONS:
Color additives; correction ---- 12288
Pesticide chemicals in or on raw agricultural commodities; tolerances ---- 12288
Tetracycline magnesium syrup; correction ---- 12289

Foreign Assets Control

NOTICES:
Importation of certain merchandise directly from Hong Kong; available certifications ---- 12330

General Services Administration

NOTICES:
Secretary of the Interior; delegation of authority to dispose of property ---- 12334

Health, Education, and Welfare Department

See Food and Drug Administration; Public Health Service.

Immigration and Naturalization Service

RULES AND REGULATIONS:
Documentary requirements; immigrants; waivers; returning residents ---- 12290

Indian Affairs Bureau

PROPOSED RULE MAKING:
Lead and zinc mining operations and leases, Quapaw Agency ---- 12299

Interior Department

See Indian Affairs Bureau; Land Management Bureau.

Internal Revenue Service

PROPOSED RULE MAKING:
Income tax; taxable years beginning after Dec. 31, 1953; "dollar value" LIFO method ---- 12293

(*Continued on next page*)

Interstate Commerce Commission
NOTICES:
Detention of motor vehicles; Middle Atlantic and New England Territory 12330

Justice Department
See Attorney General's Office; Immigration and Naturalization Service.

Land Management Bureau
NOTICES:
Arizona:
Filing of protraction diagrams; correction 12330
Proposed withdrawal and reservation of lands 12330
California; small tract classification 12330

Maritime Administration
NOTICES:
Moore-McCormack Lines, Inc.; hearing, etc 12334

National Labor Relations Board
NOTICES:
Address 12331

Public Health Service
RULES AND REGULATIONS:
Availability of records and information; limitation of release of records 12292

Securities and Exchange Commission
NOTICES:
Hearings, etc.:
Ben Hur Gold, Inc 12332
Columbia Gas System, Inc 12333
Edsco Manufacturing Co., Inc 12333
Mississippi Power & Light Co 12333
Saber Boats, Inc 12332
Utahcan, Inc 12334

Selective Service System
RULES AND REGULATIONS:
Cancellation of registration by local board 12291

State Department
RULES AND REGULATIONS:
Control of aliens departing from U.S.; aliens whose departure is deemed prejudicial to interests of U.S 12289

Treasury Department
See Internal Revenue Service.

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR
EXECUTIVE ORDERS:
6260 (amended by EO 10896) 12281
10896 12281

5 CFR
2 12285

6 CFR
421 (4 documents) 12282, 12283

7 CFR
845 12285
PROPOSED RULES:
51 (2 documents) 12298, 12299

8 CFR
211 12290

14 CFR
600 (9 documents) 12285–12287
601 (4 documents) 12287
602 12288
PROPOSED RULES:
41 12299
600 12328
601 (2 documents) 12328, 12329

21 CFR
8 12288
120 12288
146c 12289
PROPOSED RULES:
121 12299

22 CFR
46 12289

25 CFR
PROPOSED RULES:
176 12299

26 (1954) CFR
PROPOSED RULES:
1 12293

28 CFR
21 12290

32 CFR
805 12291
1619 12291

42 CFR
1 12292

Now Available

UNITED STATES GOVERNMENT ORGANIZATION MANUAL

1960–61 Edition

(Revised through June 1)

Published by the Office of the Federal Register, the National Archives and Records Service, General Services Administration

817 pages—$1.50 a copy

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Presidential Documents

Title 3—THE PRESIDENT

Executive Order 10896

AMENDMENT OF EXECUTIVE ORDER NO. 6260 OF AUGUST 28, 1933

By virtue of the authority vested in me by section 5(b) of the act of October 6, 1917, as amended, 12 U.S.C. 95a, and in view of the continued existence of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby confirm Executive Order No. 6260 of August 28, 1933, as amended, and do hereby further amend Executive Order No. 6260 as follows:

1. Section 3 is revoked.

2. The first paragraph of section 5 is amended by deleting the proviso at the end thereof, and by inserting a period in place of the colon after the phrase "this Executive Order" where it appears in such paragraph.

3. Section 7 is revoked.

This amendment of Executive Order No. 6260, as amended, shall not affect any act done, or any right accruing or accrued or any suit or proceeding had or commenced in any civil or criminal cause prior to the effective date of this amendment, and all penalties, forfeitures, and liabilities under Executive Order No. 6260, as heretofore amended, shall continue and may be enforced as if this amendment had not been made. All licenses, orders, rules, or regulations heretofore issued under Executive Order No. 6260, as amended, and now in effect, including the Gold Regulations constituting Part 54 of Title 31 of the Code of Federal Regulations, are hereby approved, ratified, and confirmed and shall continue in full force and effect until amended, modified, or revoked by the Secretary of the Treasury.

This amendment shall become effective upon filing for publication with the Office of the Federal Register.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
November 29, 1960.

[F.R. Doc. 60-11217; Filed, Nov. 29, 1960; 1:32 p.m.]

Rules and Regulations

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Amdt. 4, Wheat]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Wheat Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in (25 F.R. 3915, 4631, 7479 and 9196), containing the specific requirements of the 1960-crop wheat price support program are hereby amended as follows:

Section 421.5047(b) is amended by increasing the following basic county support rates:

County	Rate per bushel From—	To—
IDAHO		
Benewah	$1.69	$1.75
Bonner	1.61	1.64
Boundary	1.58	1.66
Clearwater	1.69	1.74
Idaho	1.67	1.72
Kootenai	1.70	1.76
Latah	1.70	1.76
Lewis	1.68	1.73
Nez Perce	1.70	1.76
MONTANA		
Deer Lodge	$1.53	$1.55
Flathead	1.50	1.56
Granite	1.50	1.58
Jefferson	1.54	1.55
Lake	1.50	1.60
Lincoln	1.52	1.56
Mineral	1.51	1.62
Missoula	1.50	1.62
Powell	1.53	1.57
Ravalli	1.47	1.59
Sanders	1.51	1.62
Silver Bow	1.54	1.55
OREGON		
Baker	$1.70	$1.76
Crook	1.81	1.82
Deschutes	1.81	1.82
Gilliam	1.83	1.84
Grant	1.81	1.82
Jefferson	1.83	1.85
Morrow	1.82	1.83
Sherman	1.83	1.85
Umatilla	1.78	1.82
Union	1.73	1.77
Wallowa	1.71	1.74
Wasco	1.86	1.88
Wheeler	1.81	1.82
WASHINGTON		
Adams	$1.75	$1.80
Asotin	1.70	1.76
Benton	1.81	1.82
Chelan	1.79	1.82
Columbia	1.76	1.81
Douglas	1.76	1.80
Franklin	1.78	1.82
Garfield	1.75	1.79
Grant	1.77	1.81
Grays Harbor	1.77	1.78
King	1.85	1.86
Kittitas	1.84	1.86
Klickitat	1.84	1.85
Lincoln	1.74	1.79
Okanogan	1.75	1.78
Spokane	1.71	1.76
Stevens	1.64	1.70
Thurston	1.79	1.80
Walla Walla	1.77	1.82
Whitman	1.72	1.77
Yakima	1.80	1.82

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 401, 63 Stat. 1051, 1054; Title II, 73 Stat. 178, 15 U.S.C. 1441, 1421)

Issued this 25th day of November 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-11158; Filed, Nov. 30, 1960; 8:48 a.m.]

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Amdt. 3, Barley]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Barley Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 25 F.R. 3570, 4445, 4894, 5263, 8179, and 9197, and containing the specific requirements for the 1960-crop barley price support program are hereby amended as follows:

Section 421.5087(b) is amended by increasing the following basic county support rates:

County	Rate per bushel From—	To—
IDAHO		
Benewah	$0.79	$0.83
Bonner	.72	.75
Boundary	.70	.76
Clearwater	.79	.82
Idaho	.77	.81
Kootenai	.79	.84
Latah	.80	.84
Lewis	.78	.82
Nez Perce	.80	.84
MONTANA		
Broadwater	$0.59	$0.66
Deer Lodge	.59	.68
Flathead	.63	.68
Gallatin	.59	.65
Granite	.60	.69
Jefferson	.59	.68
Lake	.63	.71
Lincoln	.65	.68
Madison	.59	.66
Mineral	.64	.73
Missoula	.63	.73
Powell	.59	.69
Ravalli	.60	.71
Sanders	.64	.73
Silver Bow	.59	.68
OREGON		
Baker	$0.80	$0.84
Crook	.88	.89
Deschutes	.88	.89
Gilliam	.90	.91
Grant	.88	.89
Jefferson	.90	.91
Morrow	.89	.90
Sherman	.90	.91
Umatilla	.88	.89
Union	.81	.85
Wallowa	.80	.82
Wasco	.92	.94
Wheeler	.88	.89
WASHINGTON		
Adams	$0.84	$0.88
Asotin	.80	.84
Chelan	.86	.89
Columbia	.84	.88
Douglas	.84	.87
Franklin	.86	.89
Garfield	.83	.86
Grant	.85	.88
Grays Harbor	.85	.86
Kittitas	.91	.92
Klickitat	.90	.91
Lincoln	.82	.86
Okanogan	.84	.86
Spokane	.80	.85
Stevens	.75	.79
Walla Walla	.85	.89
Whatcom	.87	.88
Whitman	.81	.85
Yakima	.87	.89

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended, Title II, 73 Stat. 178, 15 U.S.C. 714, 7 U.S.C. 1421, 1441)

Issued this 25th day of November 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-11156; Filed, Nov. 30, 1960; 8:47 a.m.]

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Amdt. 2, Rye]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Rye Loan and Purchase Agreement Program

BASIC COUNTY SUPPORT RATES

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in (25 F.R. 3781, 4895, 6497 and 9196), containing the specific requirements of the 1960-crop rye price support program are hereby amended as follows:

Section 421.5387(b) is amended by increasing the following basic county support rates:

County	Rate per bushel From—	To—
IDAHO		
Benewah	$0.96	$1.01
Bonner	.88	.91
Boundary	.86	.92
Clearwater	.96	1.00
Idaho	.94	.99
Kootenai	.96	1.02
Latah	.97	1.02
Lewis	.95	1.00
Nez Perce	.97	1.02
MONTANA		
Broadwater	$0.73	$0.81
Deer Lodge	.73	.83
Flathead	.78	.84
Gallatin	.73	.79
Granite	.74	.85
Jefferson	.73	.83
Lake	.78	.87
Lincoln	.80	.84
Madison	.73	.81
Mineral	.78	.89
Missoula	.77	.89
Powell	.73	.85
Ravalli	.74	.87
Sanders	.79	.89
Silver Bow	.73	.83
OREGON		
Baker	$0.97	$1.02
Crook	1.06	1.08
Deschutes	1.07	1.08
Gilliam	1.09	1.10
Grant	1.07	1.08
Jefferson	1.09	1.10
Morrow	1.08	1.09
Sherman	1.09	1.11
Umatilla	1.04	1.08
Union	.99	1.03
Wallowa	.97	1.00
Wasco	1.12	1.13
Wheeler	1.07	1.08
WASHINGTON		
Adams	$1.02	$1.06
Asotin	.97	1.02
Chelan	1.05	1.07
Columbia	1.02	1.07
Douglas	1.02	1.06
Franklin	1.04	1.08
Garfield	1.01	1.05
Grant	1.03	1.07
Grays Harbor	1.03	1.04
King	1.11	1.12
Kittitas	1.10	1.11
Klickitat	1.09	1.10
Lincoln	1.00	1.05
Okanogan	1.03	1.04
Pacific	1.01	1.04
Spokane	.98	1.03
Stevens	.91	.96
Thurston	1.05	1.06
Walla Walla	1.03	1.08
Whitman	.98	1.03
Yakima	1.06	1.08

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended; Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441)

Issued this 25th day of November 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-11157; Filed, Nov. 30, 1960; 8:48 a.m.]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—Warehouse Approval Standards and Instructions

A new subpart, Warehouse Approval Standards and Instructions, is added to Part 421 to read as follows:

Sec.
421.5551 General statement and administration.
421.5552 Exceptions.
421.5553 Application requirements.
421.5554 Warehouse and operational standards.
421.5555 Inspection of warehouses.
421.5556 Basis for approval or disapproval.
421.5557 Other conditions for disapproval.
421.5558 Bonding requirements.
421.5559 Approval of warehouse and duration of approval.
421.5560 Waiver of requirements.

AUTHORITY: §§ 421.5551 to 421.5560 issued under sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 105, 301, 401, 63 Stat. 1051, as amended; 15 U.S.C. 714c, 7 U.S.C. 1441, 1447, 1421.

§ 421.5551 General statement and administration.

This subpart outlines the procedure to be followed by warehousemen who desire approval of their facilities by Commodity Credit Corporation (hereinafter referred to as "CCC") for the storage and handling of grain, rice, seed, and dry edible beans (hereinafter referred to as "grain") owned by CCC or held by CCC as security for loans and sets out the requirements of CCC for approval of such warehouses. Warehousemen desiring approval of their facilities should communicate with the CSS Commodity Office (hereinafter referred to as "commodity office"), serving the State in which the storage facilities are located. These commodity offices and the States which they serve are:

(a) Dallas CSS Commodity Office, United States Department of Agriculture, 500 South Ervay Street, Dallas 1, Tex.—

Alabama.	New Mexico.
Arkansas.	North Carolina.
Florida.	Oklahoma.
Georgia.	South Carolina.
Louisiana.	Tennessee.
Mississippi.	Texas.

(b) Evanston CSS Commodity Office, United States Department of Agriculture, 2201 Howard Street, Evanston, Ill.—

Connecticut.	New Hampshire.
Delaware.	New Jersey.
Illinois.	New York.
Indiana.	Ohio.
Iowa.	Pennsylvania.
Kentucky.	Rhode Island.
Maine.	Vermont.
Maryland.	Virginia.
Massachusetts.	West Virginia.
Michigan.	

(c) Kansas City CSS Commodity Office, United States Department of Agriculture, P.O. Box 205, Kansas City 41, Mo.—

Colorado.	Nebraska.
Kansas.	Wyoming.
Missouri.	

(d) Minneapolis CSS Commodity Office, United States Department of Agriculture, 6400 France Avenue South, Minneapolis 10, Minn.—

Minnesota.	South Dakota.
Montana.	Wisconsin.
North Dakota.	

(e) Portland CSS Commodity Office, United States Department of Agriculture, 1218 SW. Washington Street, Portland 5, Oreg.—

Alaska.	Nevada.
Arizona.	Oregon.
California.	Utah.
Hawaii.	Washington.
Idaho.	

A warehouse must be approved by a commodity office before such warehouse will be utilized for the storage and handling of grain. The commodity offices will furnish warehousemen with full information as to securing approval of their facilities together with the necessary CCC forms. No commitment or guarantee of occupancy shall be made on behalf of the U.S. Department of Agriculture or CCC regarding the use of any storage facilities before or after a warehouse has been approved for storage and an agreement has been entered into with CCC.

§ 421.5552 Exceptions.

Notwithstanding any other provision hereof:

(a) The provisions of this subpart are not applicable to storage outside of the continental limits of the United States, to the purchase of grain in storage for prompt shipment, or to handling of a temporary nature.

(b) Warehousemen licensed under the United States Warehouse Act will not be required to furnish to CCC performance bonds, financial statements, or credit reports in order to be approved hereunder, and CCC will not inspect their warehouses.

(c) In any case in which a Certificate of Competency is issued by the Small Business Administration with respect to a warehouseman, the certificate will be accepted as establishing conformance by the warehouseman with the standards set out in § 421.5554 (b), (c) (2), (f), (g), and (i), and the warehouseman will not be required to furnish bond coverage for deficiency in net worth or working capital.

§ 421.5553 Application requirements.

In applying for approval of a warehouse for storage and handling of grain, the warehouseman must submit a completed Form CCC-24, Application for Approval of Warehouse (Grain, Rice, Seed, and Dry Edible Beans), a completed Form CCC-24-1, Supplement to Application for Approval of Warehouse (Grain, Rice, Seed, and Dry Edible Beans), a current financial statement (CCC Form 68, Statement Showing Assets and Liabilities, or an acceptable substitute form) and any other documents or information required by the commodity office. When the warehouseman employs the service of a public accountant, the financial statement shall be certified by the public accountant. In connection with an application for a new storage agreement, the financial statement shall cover a period ending not more than sixty days prior to the date of the application. In connection with an application for additional storage under an existing storage agreement, a current financial statement may be required if the commodity office deems it necessary to protect the interests of CCC.

§ 421.5554 Warehouse and operational standards.

CCC will consider applications for approval of warehouses upon the basis of the applicant's conformance with the following standards as determined by the appropriate commodity offices:

(a) The warehouseman must be an individual or an existing legal entity organized in good faith to operate a warehousing business and, if organized in the corporate form must have authority to do a public warehousing business.

(b) The physical plant and equipment must be adequate for the proper handling and safe storage of the commodities.

(c) (1) The warehouse must be under the control of the contracting warehouseman at all times.

(2) The warehouseman or his supervisory employees must have sufficient experience and knowledge of the warehousing business to enable them to give adequate protection and services for the proper storage and handling of the commodity.

(d) Where the State or local law requires licensing to act as a public warehouseman, the license must be made available or posted in the warehouse or a notice that the warehouseman is licensed must have been received by the commodity office from the licensing authority.

(e) The warehouseman and all responsible officers or employees of the warehouseman must have satisfactorily complied with CCC's instructions and with the provisions of all agreements with CCC.

(f) The warehouse must not be subject to undue fire, flood or other hazards.

(g) The warehouse must have adequate equipment for fighting flash fires.

(h) The warehouseman must maintain adequate inventory and operating records.

(i) The warehouseman must have sufficient net worth to assure his financial responsibilities.

(j) The warehouseman must carry surety bonds as specified in § 421.5558.

(k) The warehouseman must apply for approval upon prescribed forms as specified in § 421.5553.

§ 421.5555 Inspection of warehouses.

Each warehouse (except warehouses licensed under the U.S. Warehouse Act) will be inspected by a warehouse examiner prior to the time the warehouse is approved to determine whether the warehouse conforms with the various standards and requirements for approval set out in this subpart. The warehouse examiner will make recommendations to the commodity office regarding the approval or disapproval of the warehouse.

§ 421.5556 Basis for approval or disapproval.

The commodity office will review and analyze the information disclosed by the warehouseman's application, warehouse examiner's report, financial statement, credit reports, recommendations of the warehouse examiner, and other pertinent information available from other sources. If, on the basis of this review and analysis, the commodity office determines that the warehouseman and the warehouse conform with the standards and other requirements set out in this subpart, and if the warehouseman furnishes a performance bond or substitute security in accordance with § 421.5558, the warehouse will be approved. If the commodity office determines that one or more of the standards of § 421.5554 are not met, the applicant may be disapproved or he may be approved if it is determined by the commodity office that the conditions for storage and handling within the facility provide satisfactory protection for grain, that the services of the warehouseman are required by CCC in fulfilling its responsibilities under the grain price support program, and a bond (or substitute security) is furnished in an amount determined by the commodity office to be necessary to protect the interests of CCC, such bond being in an amount at least equal to twice the amount of the bond coverage requirement (other than for deficiency in net worth or working capital) under § 421.5558. In addition, all other requirements of § 421.5558 must be met. The warehouseman shall also furnish any additional bond coverage required under § 421.5558 for deficiency in net worth and working capital.

§ 421.5557 Other conditions for disapproval.

Applications will not be approved in the event that:

(a) A licensed warehouseman is in violation of the regulations of the licensing authority or if any condition which may have resulted in the refusal, suspension or revocation of any warehouse license has not been corrected by the warehouseman to the satisfaction of CCC.

(b) There is substantial evidence of fraudulent or dishonest acts on the part of the warehouseman or any responsible officer or employee of the warehouse.

§ 421.5558 Bonding requirements.

(a) Except as otherwise provided in this subpart, the performance bond to be furnished to CCC by each warehouseman shall be on CCC Form 33, Warehouseman's Bond-Storage Agreement, copies of which may be obtained from the commodity office and shall be executed by surety companies which have been approved by the United States Treasury Department and which maintain an officer or representative authorized to accept service of legal process in the State where the warehouse is located.

(b) The amount of bond coverage to be provided by a warehouseman shall be determined as follows:

(1) Bond coverage for a warehouseman applying for approval of a facility for the storage of grain, who fully conforms with all of the standards and requirements specified in § 421.5554 and who has available sufficient working capital to operate his business, shall be in the amount of 6 percent of the value, as determined annually by the Executive Vice President, CCC, of the commodity usually stored in the greatest quantity in his storage facility, multiplied by the total capacity of such facility: *Provided*, That such bond coverage shall not be less than $5,000 and need not be more than $200,000. In addition, if the commodity office determines that the net worth of the warehouseman is not equal to at least 4 percent of the value, as determined annually by the Executive Vice President, CCC, of the commodity usually stored in greatest quantity in his facility, multiplied by the total capacity of such facility, or if it appears that the warehouseman will not have available sufficient working capital to operate his business, any such deficiency in net worth or in working capital must be compensated by additional bond coverage equal to the amount of such deficiency. The value per bushel to be used in computations under this paragraph may be obtained from the commodity office.

(2) Bond coverage for a warehouseman applying for approval of a facility solely for handling only operations and fully conforming to all applicable standards in § 421.5554, shall be $5,000.

(3) Nothwithstanding the foregoing provisions of this paragraph, if in the light of all the circumstances regarding operation of the warehouse, the commodity office determines that the amount of bond coverage required under this subpart is not sufficient properly to protect the interests of CCC, it may require such additional bond coverage as it deems necessary for such purpose.

(c) In the case of a warehouseman applying for approval of more than one facility in the same State, all such facilities in that State shall be considered as one facility for the purpose of determining bond requirement.

(d) State warehouse bond, cash, negotiable securities, and legal liability insurance policies may be substituted for bonds on CCC Form 33 on the following conditions:

(1) A State warehouse bond furnished by a warehouseman licensed under State laws and State supervision or under the regulations of nongovernmental supervisory agencies will be accepted by CCC in lieu of the equivalent amount of bond coverage required under this subpart if CCC determines that it affords sufficient protection to depositors to warrant such substitution. Such bond must be executed by satisfactory corporate sureties and must either be noncancelable for a definite period or include a rider providing for 90 days' notice to CCC prior to cancellation. In case the warehouseman has more than one facility in the same State and has State warehouse bonds covering such facilities which are determined to be acceptable to CCC, the excess coverage on one facility may not be applied against insufficient bond coverage on another facility.

(2) Cash or negotiable securities will be accepted in lieu of the equivalent amount of required bond coverage. The commodity office will determine the acceptability of and valuation to be placed on any such securities in substitution for bond coverage. When the period for which the bond was required has ended and the commodity office determines that all liability under the agreement has terminated, the cash or securities will be returned to the warehouseman.

(3) Warehouseman's legal liability insurance policies will be accepted in lieu of the equivalent amount of required bond coverage if it is determined by CCC that such policies provide protection at least equivalent to that provided by the performance bond for which substitution is being made.

§ 421.5559 Approval of warehouse and duration of approval.

(a) When a warehouse has been approved, it shall be eligible for an agreement with CCC and a notice of approval will be forwarded to the warehouseman. Upon approval of a warehouse and execution of an agreement with CCC, the warehouse will be eligible to store and handle CCC-owned grain and grain under CCC's loan and purchase agreement programs.

(b) Approval of the warehouse will remain in effect until suspended or terminated. The financial condition of and the amount of bond, or substitute security furnished by approved warehousemen, will be reviewed from time to time to determine that the requirements of CCC are being met and the warehouseman shall furnish any additional bond coverage or substitute security which CCC may determine to be required under the provisions of this subpart. The warehouse will be re-examined from time to time to determine its continued acceptability. If CCC at any time determines that a warehouseman or his warehouse facility do not conform with the standards and other requirements set out in this subpart, CCC shall suspend or terminate approval of the warehouse for price support purposes and take such other appropriate action as may be necessary to protect the interests of CCC and producers.

§ 421.5560 Waiver of requirements.

In the event warehousing services required in fulfilling responsibilities under CCC programs cannot be secured under the provisions of this subpart and no reasonable and economical alternative is available, CCC may exempt the applicant from one or more of the provisions of this subpart and may establish other requirements in lieu thereof as determined necessary to safeguard the interests of CCC.

Issued this 25th day of November 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-11184; Filed, Nov. 30, 1960; 8:51 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 2—FILLING COMPETITIVE POSITIONS

Appointments

1. Paragraph (d) of § 2.308 is amended as set out below:

§ 2.308 Overseas limited appointment.

* * * * *

(d) *Duration of appointment.* Appointments under this section shall be of indefinite duration except that under the conditions and circumstances prescribed by the Commission in the Federal Personnel Manual appointments may be limited to periods not in excess of one year to meet administrative needs for temporary employment. Appointments, when made for periods of one year or less, may be extended under conditions specified by the Commission in the Federal Personnel Manual.

2. Paragraph (d) of § 2.309 is amended as follows:

§ 2.309 Noncompetitive appointment of former employees of Canal Zone Merit System.

* * * * *

(d) *Tenure of appointment.* (1) Persons appointed under this section without time limitation shall be given career appointments if they completed the service requirement for career appointment under the Canal Zone Merit System; otherwise, they shall be given career-conditional appointments, which are automatically converted to career appointments upon completion of three (3) years of creditable service in accordance with the provisions of § 2.301(a)(2).

(2) Persons given temporary limited appointment under this section have tenure only as temporary employees.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to
the Commissioners.

[F.R. Doc. 60-11138; Filed, Nov. 30, 1960; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER F—DETERMINATION OF NORMAL YIELDS AND ELIGIBILITY FOR ABANDONMENT AND CROP DEFICIENCY PAYMENTS

[Sugar Determination 845.2, Amdt. 3]

PART 845—MAINLAND CANE SUGAR AREA

1959 and Subsequent Crops

Pursuant to the provisions of section 303 of the Sugar Act of 1948, as amended, paragraph (c) of § 845.2 (23 F.R. 9255, 24 F.R. 5363, 9706) is hereby amended in two particulars, as follows:

1. The last sentence of subparagraph (2) is amended to read as follows: "In Florida, the ASC Glades County Committee shall make this determination of yields on the basis of the local producing area."

2. Under subparagraph (4) *Local producing areas*, a new subdivision (iv) is added at the end thereof to read as follows:

(iv) *1959 crop.* For purposes of considering eligibility of farms for abandonment and crop deficiency payments on 1959-crop sugarcane, the local ASC parish committees in Louisiana and the ASC Glades County Committee in Florida have determined that the extent of crop damage as specified and provided in subparagraph (1) (iii) of this paragraph has occurred in the following parishes and local producing areas:

LOUISIANA

Parishes approved in their entirety

Ascension.	St. James.
Assumption.	St. John.
Avoyelles.	St. Martin.
Iberia.	St. Mary.
Iberville.	Terrebonne.
Lafayette.	Vermilion.
Lafourche.	West Baton Rouge.
Pointe Coupee.	

FLORIDA

None.

STATEMENT OF BASES AND CONSIDERATIONS

In considering eligibility of sugarcane farms in Florida for acreage abandonment and crop deficiency payments, consideration must be given to the yields of crops during a stated base period in the local producing area, comprising the entire State. This amendment specifies that such consideration shall be given by the ASC Glades County Committee.

The amendment also provides public notice of the parishes and local producing areas in Louisiana and Florida where due to drought, flood, storm, freeze, disease or insects, the 1959 sugarcane crop has been damaged to the extent that farms located in whole or in part therein will be considered (as to location) for abandonment or deficiency payments. Producers on these farms who have not filed applications for Sugar Act payments with respect to acreage abandonment or crop deficiencies for which they may otherwise be eligible should apply for such payments before June 30, 1961, as provided in 7 CFR 855.5 (22 F.R. 8112).

Accordingly, I hereby find and conclude that the aforestated amendment will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies secs. 301, 302, 61 Stat. 929, 930, as amended; 7 U.S.C. 1131, 1132)

Issued this 28th day of November 1960.

MARVIN L. MCLAIN,
Acting Secretary of Agriculture.

[F.R. Doc. 60-11185; Filed, Nov. 30, 1960; 8:51 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59-WA-359]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification; Change of Effective Date

On July 8, 1960, there was published in the FEDERAL REGISTER (25 F.R. 6417) an amendment to § 600.6252 of the regulations of the Administrator. This amendment to be effective January 12, 1961, modified VOR Federal airway No. 252 between Huguenot, N.Y., and Bingham-

ton, New York, concurrently with the commissioning of a VOR near Hancock, N.Y.

The commissioning date of the Hancock VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendment until April 6, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–359 is hereby modified as follows: "effective 0001 e.s.t. January 12, 1961." is deleted and "effective 0001 e.s.t. April 6, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11175; Filed, Nov. 30, 1960; 8:50 a.m.]

[Airspace Docket No. 59–WA–354]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification; Change of Effective Date

On July 8, 1960, there was published in the FEDERAL REGISTER (25 F.R. 6416) an amendment to § 600.6153 of the regulations of the Administrator. This amendment, to be effective January 12, 1961, modified VOR Federal airway No. 153 between Wilkes-Barre, Pa., and Syracuse, N.Y., concurrently with the commissioning of a VOR near Georgetown, N.Y.

The commissioning date of the Georgetown VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendment until April 6, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–354 is hereby modified as follows: "effective 0001 e.s.t January 12, 1961." is deleted and "effective 0001 e.s.t. April 6, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C. on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11176; Filed Nov. 30, 1960; 8:50 a.m.]

[Airspace Docket No. 59–WA–357]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification; Change of Effective Date

On July 8, 1960, there was published in the FEDERAL REGISTER (25 F.R. 6416) an amendment to § 600.6149 of the regulations of the Administrator. This amendment, to be effective January 12, 1961, modified VOR Federal airway No. 149 between Binghamton, N.Y., and Utica, N.Y., concurrently with the commissioning of a VOR near Georgetown, N.Y. Subsequently, a correction to this amendment was published in the FEDERAL REGISTER (25 F.R. 8051) on August 20, 1960.

The commissioning date of the Georgetown VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendment until April 6, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–357 is hereby modified as follows: "effective 0001 e.s.t. January 12, 1961." is deleted and "effective 0001 e.s.t. April 6, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11177; Filed, Nov. 30, 1960; 8:50 a.m.]

[Airspace Docket No. 59–WA–75]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification; Change of Effective Date

On March 19, 1960, there was published in the FEDERAL REGISTER (25 F.R. 2360) an amendment to § 600.6139 of the regulations of the Administrator. This amendment to be effective January 12, 1961, modified VOR Federal Airway No. 139 from Providence, R.I., to Boston, Mass., concurrently with the commissioning of a VOR near Whitman, Mass.

The commissioning date of the Whitman VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendment until September 21, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–75 is hereby modified as follows: "effective 0001 e.s.t. January 12, 1961." is deleted and "effective 0001 e.s.t. September 21, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11180; Filed, Nov. 30, 1960; 8:51 a.m.]

[Airspace Docket No. 59–WA–358]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification; Change of Effective Date

On July 8, 1960, there was published in the FEDERAL REGISTER (25 F.R. 6416) an amendment to § 600.6034 of the regulations of the Administrator. This amendment, to be effective January 12, 1961, modified VOR Federal airway No. 34 between Ithaca, N.Y., and Wilton, Conn., concurrently with the commissioning of a VOR near Hancock, N.Y.

The commissioning date of the Hancock VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendment until April 6, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–358 is hereby modified as follows: "effective 0001 e.s.t. January 12, 1961." is deleted and "effective 0001 e.s.t. April 6, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11181; Filed, Nov. 30, 1960; 8:51 a.m.]

[Airspace Docket No. 59–WA–353]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification; Change of Effective Date

On July 28, 1960, there were published in the FEDERAL REGISTER (25 F.R. 7147) amendments to §§ 600.6002, 600.6014, 600.6031, and 600.6084 of the regulations of the Administrator. These amendments, to be effective January 12, 1961, modified VOR Federal airways Nos. 14, 31, and 84 between Buffalo, N.Y., and Albany, N.Y.; between Elmira, N.Y., and Rochester, N.Y. and between Geneseo, N.Y., and Syracuse, N.Y., respectively,

and revoked Victor 2 south alternate between Syracuse and Albany concurrently with the commissioning of a VOR near Georgetown, N.Y.

The commissioning date of the Georgetown VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendments until April 6, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–353 is hereby modified as follows: "effective 0001 e.s.t. January 12, 1961." is deleted and "effective 0001 e.s.t. April 6, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11183; Filed, Nov. 30, 1960; 8:51 a.m.]

[Airspace Docket No, 59–WA–355]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification; Change of Effective Date

On July 8, 1960, there were published in the FEDERAL REGISTER (25 F.R. 6418) amendments to §§ 600.6273 and 601.6273 of the regulations of the Administrator. These amendments, to be effective January 12, 1961, modified and extended VOR Federal airway No. 273 and its associated control areas by designating it from the Huguenot, N.Y., VOR via a VOR to be commissioned near Hancock, N.Y., and a VOR to be commissioned near Georgetown, N.Y., to the Syracuse, N.Y., VOR concurrently with the commissioning of these two new VORs.

The commissioning date of the Hancock and Georgetown VORs has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendments until April 6, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–355 is hereby modified as follows: "effective 0001 e.s.t. January 12, 1961." is deleted and "effective 0001 e.s.t. April 6, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11178; Filed, Nov. 30, 1960; 8:50 a.m.]

[Airspace Docket No. 59–NY–58]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification; Change of Effective Date

On July 8, 1960, there were published in the FEDERAL REGISTER (25 F.R. 6417) amendments to §§ 600.6016, 600.6044, 600.6238, 601.6044, 601.6238 and 601.7001 of the regulations of the Administrator. These amendments, to be effective March 9, 1961, modified the following VOR Federal airways: Victor 16 between Kenton, Del., and Coyle, N.J.; Victor 44 between Price, Md., and Barnegat, N.J.; Victor 238 between Woodstown, N.J., and Pomona, N.J. In addition, the Millville, N.Y., and Barnegat, N.J., VOR's and the Leesburg, N.J., Intersection were designated as Domestic VOR reporting points. These actions were to be effective concurrently with the commissioning of a VOR near Barnegat, N.J.

The commissioning date of the Barnegat VOR has been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendments until June 1, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–NY–58 is hereby modified as follows: "effective 0001 e.s.t. March 9, 1961." is deleted and "effective 0001 e.s.t. June 1, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11179; Filed, Nov. 30, 1960; 8:51 a.m.]

[Airspace Docket No. 59–KC–2]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification; Change of Effective Date

On February 2, 1960, there were published in the FEDERAL REGISTER (25 F.R. 857) amendments to §§ 600.6300 and 601.6300 of the regulations of the Administrator. These amendments, originally scheduled to be effective June 30, 1960, extended VOR Federal airway No. 300 and its associated control areas from Sault Ste. Marie, Mich., to Lakehead, Ont., concurrently with the commissioning of a VOR near Whitefish, Mich. The commissioning date of the Whitefish VOR was subsequently rescheduled to January 12, 1961 and Victor 300 was extended from Sherbrooke, Que., to Millinocket, Me. These changes were published in the FEDERAL REGISTER on June 7, 1960 (25 F.R. 4985).

The commissioning date of the Whitefish VOR has again been rescheduled. Therefore, it is necessary to postpone the effective date of the above-mentioned amendments until March 9, 1961.

Since thirty days will elapse from the time of publication of the rule as initially adopted to this new effective date, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–KC–2 is hereby modified as follows: "effective 0001 e.s.t. January 12, 1961." is deleted and "effective 0001 e.s.t. March 9, 1961." is substituted therefor.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11182; Filed, Nov. 30, 1960; 8:51 a.m.]

[Airspace Docket No. 60–WA–131]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Area Extension

On August 20, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8055) stating that the Federal Aviation Agency was

considering an amendment to § 601.1070 of the regulations of the Administrator which would enlarge the Charlottesville, Va., control area extension.

As stated in the notice, the Charlottesville control area extension is designated as the airspace bounded on the northwest by VOR Federal airway No. 140, on the northeast by VOR Federal airway No. 156, and on the south by VOR Federal airway No. 16. The Federal Aviation Agency is enlarging this extension to include the airspace northeast of the Charlottesville-Albemarle Airport bounded on the northwest by VOR Federal airway No. 140, on the east by VOR Federal airway No. 39, and on the southwest by VOR Federal airway No. 156. This modification would provide protection to aircraft, operating under IFR conditions, arriving and departing the Charlottesville-Albemarle Airport.

The Aircraft Owners and Pilots Association submitted an objection to the establishment of a control area extension at Charlottesville for the stated purpose to "provide protection to aircraft operating under IFR conditions when arriving and departing the Charlottesville-Albemarle Airport". The AOPA stated that it found no approved instrument approach for this airfield and no indication that weather service or communication facilities are available.

Piedmont Airlines is authorized to conduct instrument operations into and out of the Charlottesville-Albermarle Airport. Although communications and weather reporting facilities are not prerequisites for the establishment of control area extensions, communication capabilities do exist and weather reporting is available by airline personnel. Therefore, the AOPA objections are not considered valid.

No other adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.1070 (14 CFR 601.1070) is amended to read:

§ 601.1070 Control area extension (Charlottesville, Va.).

The airspace bounded on the NW by VOR Federal airway No. 140, on the E by VOR Federal airway No. 39, and on the S by VOR Federal airway No. 16 N alternate.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11174; Filed, Nov. 30, 1960; 8:50 a.m.]

[Airspace Docket No. 60-WA-193]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification and Revocation of Coded Jet Routes

On September 2, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8493) stating that the Federal Aviation Agency proposed to modify VOR/VORTAC jet routes J-22-V, J-29-V and J-25-V and revoke the segment of J-23-V between Brownsville, Tex., and San Antonio, Tex.

Subsequent to publication of the notice it has been determined that a minor correction in the alignment of these routes is necessary so that the routes will intersect at a common point near Alice, Texas. Therefore, the following changes are incorporated herein, as follows:

1. J-22-V, the Laredo, Tex., radial is changed from 084° True to 086° True.

2. J-29-V, the Brownsville, Tex., radial is changed from 338° True to 337° True.

3. J-25-V, the Brownsville radial is changed from 338° True to 337° True.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated herein and in the notice, the following actions are taken:

1. In the text of § 602.522 (14 CFR 602.522) "From the Laredo, Tex., VOR via the Alice, Tex., VOR; Palacios, Tex., VOR;" is deleted and "From the Laredo, Tex., VORTAC via the INT of the Laredo VORTAC 086° True and the Palacios VOR 234° True radials; Palacios, Tex., VOR;" is substituted therefor.

2. Section 602.529 (14 CFR 602.529) is amended as follows:

(a) In the caption "*(Alice, Tex., to Presque Isle, Maine)*" is deleted and "*(Brownsville, Tex., to Presque Isle, Maine)*" is substituted therefor.

(b) In the text "From the Alice, Tex., VOR via the Palacios, Tex., VOR;" is deleted and "From the Brownsville, Tex., VORTAC via the INT of the Brownsville VORTAC 337° True and the Palacios VOR 234° True radials; Palacios, Tex., VOR;" is substituted therefor.

3. Section 602.525 (25 F.R. 7098) is amended as follows:

(a) In the caption "*(San Antonio, Tex., to Minneapolis, Minn.)*" is deleted and "*(Brownsville, Tex., to Minneapolis, Minn.)*" is substituted therefor.

(b) In the text "From the San Antonio, Tex., VORTAC via the Austin, Tex., VORTAC;" is deleted and "From the Brownsville, Tex., VORTAC via the INT of the Brownsville VORTAC 337° True and the San Antonio VORTAC 172° True radials; San Antonio, Tex., VORTAC; Austin, Tex., VORTAC;" is substituted therefor.

4. Section 602.523 (14 CFR 602.523, 25 F.R. 1094) is amended as follows:

(a) In the caption "*(Brownsville, Tex., to Cheyenne, Wyo.)*" is deleted and "*(San Antonio, Tex., to Cheyenne, Wyo.)*" is substituted therefor.

(b) In the text "From the Brownsville, Tex., VOR via the Alice, Tex., VOR; San Antonio, Tex., VOR;" is deleted and "From the San Antonio, Tex., VORTAC via the" is substituted therefor.

These amendments shall become effective 0001 e.s.t. January 12, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 25, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11173; Filed, Nov. 30, 1960; 8:50 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

FD&C Red No. 1

Correction

In F.R. Doc. 60-11062, appearing at page 11214 of the issue for Saturday, November 26, 1960, the word "thereby" in the last paragraph of item No. 1 should read "hereby".

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Tolerances for Residues of DDT In or On Sweet Corn and Statement of Policy and Interpretation Regarding Residues In or On Corn Forage, Corn Fodder, Corn Silage, Corn Stover, or Sweet Corn Cannery Waste

A proposal was published in the FEDERAL REGISTER of April 18, 1958 (23 F.R. 2574) to change the tolerance for DDT on sweet corn from 7 parts per million, based on the whole ear as marketed, to 3½ parts per million in or on sweet corn (kernels plus cob with husks removed). This change was based on a showing that in some sweet-corn growing areas only early season application of DDT is required to control corn-borer infestation. In other areas many additional applications are required later in the growing season to control ear worm infestations. High residues result on the husks and forage from sweet corn from late-season application of DDT, but in all cases residues of DDT on the kernels plus cob should be within 3.5 parts per million.

No objection was received following the publication of the proposal concerning the change in the tolerances for DDT on the fresh vegetable sweet corn to 3½ parts per million, with the specification that residues would be determined on kernels plus cob after removing any husk present on the corn as marketed.

It was also proposed that a tolerance of zero be established for residues of DDT in or on husks and forage from sweet corn. Objections were received to the proposed zero tolerance on sweet corn husks and forage. In these objections it was pointed out that sweet corn cannery waste bearing low residues of DDT from only early season applications was suitable for feed for meat animals.

The National Canners Association in their objections proposed a tolerance of 5 parts per million for DDT in or on sweet corn cannery husks and cob ensilage to be used for feed for meat animals up to 60 days prior to slaughter. They stated that if such restrictions were observed the tolerance of 7 parts per million for DDT in the fat of meat of cattle, hogs, and sheep would not be exceeded at the time of slaughter. The association submitted data in support of these statements and included data intended to show that DDT residues on sweet corn cannery waste from sweet corn receiving only early season DDT application will be unlikely to exceed 5 parts per million.

Review of the data submitted by the National Canners Association and other available data indicates that much sweet corn cannery waste and other sweet corn forage bearing DDT residues not exceeding 5 parts per million are available. However, the data also show that husks and forage from sweet corn that received more than two early applications for first generation corn borer control will usually exceed 5 parts per million.

It is generally recognized that forage from DDT-treated sweet corn cannot be fed to dairy animals under any circumstances without transmission of DDT from feed to the milk. A statement regarding the limitations on the use of corn forage and sweet corn cannery waste from corn treated with DDT for livestock feed is being concurrently published in this order under § 120.147a.

The Commissioner of Food and Drugs, on the basis of the facts outlined above and other available data, has concluded that a change in the tolerance for DDT in or on the fresh vegetable sweet corn should be made as proposed, but that no tolerance should be established for DDT in sweet corn husks, forage, or sweet corn cannery waste. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (b), (e), 68 Stat. 511, 514; 21 U.S.C. 346a (b), (e)) and under the authority delegated to him by the Secretary of Health, Education, and Welfare: *It is ordered*, That the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR 1958 Supp., 120.101, 120.147) be amended as set forth below:

§ 120.1 [Amendment]

1. In § 120.101 *Specific tolerances for pesticide residues in or on fresh fruits and vegetables, paragraph* (e)(43) is amended by deleting the line "DDT------ 7 p.p.m."

2. Section 120.147 is changed to read as follows:

§ 120.147 Tolerances for residues of DDT.

Tolerances for residues of DDT (a mixture of 1,1,1-trichloro-2,2-bis(*p*-chlorophenyl) ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)-2-(*p*-chlorophenyl) ethane) are established in or on raw agricultural commodities, as follows:

(a) 7 parts per million in the fat of meat from cattle, hogs, and sheep and in or on sweetpotatoes (from postharvest use).

(b) 3.5 parts per million in or on the fresh vegetable sweet corn (determined on kernels plus cob after removing any husk present when marketed).

3. Part 120 is amended by adding thereto the following new section:

§ 120.147a DDT residues in corn forage, corn fodder, corn silage, corn stover, and sweet corn cannery waste; statement of policy and interpretation.

(a) Section 121.101(b)(43) of this chapter, promulgated on March 11, 1955, permitted a tolerance of 7 parts per million for residues of DDT in or on the fresh vegetable sweet corn. Because of a showing of the unsuitability of the tolerance level based on sweet corn as marketed, § 120.147(b) of this chapter now provides a tolerance of 3.5 parts per million of DDT in or on the fresh vegetable sweet corn (determined on kernels plus cob after removing any husk present when marketed). Residue studies have indicated that the application of DDT in any manner to the feed of dairy cows or to the dairy cows themselves results in residues of DDT in milk. No tolerance has been established to permit any residues of DDT in milk. Corn forage, corn fodder, corn silage, corn stover, or sweet corn cannery waste containing any amount of DDT is unsuitable as a feed for dairy cows and should not be represented, sold, or used for that purpose.

(b) A tolerance of 7 parts per million for residues of DDT in the fat of meat from cattle, hogs, and sheep has been established in § 120.147(a). Animals that consume corn forage, corn fodder, corn silage, corn stover, or sweet corn cannery waste containing DDT may accumulate considerably more of the chemical in their fat than is present in the feed itself, and a long time may be required on a diet free of DDT to reduce excessive levels of DDT to the tolerance level. Unless the person who raises meat animals is in a position to determine the magnitude of DDT residues in these corn feed products and to insure that the conditions of feeding are such that the residues in meat from such animals will be within the established tolerance, these products from DDT-treated corn should not be used in the feeding of meat animals.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective for interstate shipments made from corn harvested after January 1, 1961.

(Sec. 408 (b), (e), 68 Stat. 511, 514; 21 U.S.C. 346a (b), (e))

Dated: November 23, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11167; Filed, Nov. 30, 1960; 8:49 a.m.]

SUBCHAPTER C—DRUGS

PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

Tetracycline Magnesium Syrup

Correction

In F.R. Doc. 60-10990, appearing at page 11215 of the issue for Saturday, November 26, 1960, in § 146c.217(a), the word "sulfanomaides" in the first sentence should read "sulfonamides", and the citation "§ 146.220" in the fifth sentence should read "§ 146c.220".

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.451]

PART 46—CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

Aliens Whose Departure is Deemed Prejudicial to Interests of the United States

Part 46, Chapter I, Title 22 of the Code of Federal Regulations is hereby amended in the following respects:

Section 46.3 is amended by the addition of the following paragraphs (k) and (l):

§ 46.3 Aliens whose departure is deemed prejudicial to the interests of the United States.

• • • • •

(k) Any alien lawfully admitted for permanent residence who seeks to depart from the United States for travel to, in, or through Albania, Communist-controlled China ("Chinese People's Republic"), North Korea ("Democratic People's

Republic of Korea") or North Viet-Nam ("Democratic Republic of Viet-Nam").

(l) Any alien lawfully admitted for permanent residence who seeks to depart from the United States for travel to, in, or through Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, the Soviet Zone of Germany ("German Democratic Republic"), the Union of Soviet Socialist Republics, or Yugoslavia, unless such alien shall possess a valid, unexpired reentry permit issued by the Attorney General pursuant to section 223 of the Immigration and Nationality Act subsequent to the effective date of this paragraph.

Effective date. The regulations contained in this order shall become effective upon publication in the FEDERAL REGISTER.

The provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) relative to notice of proposed rule making are inapplicable to this order because the regulations contained therein involve foreign affairs functions of the United States.

Dated: November 22, 1960.

CHRISTIAN A. HERTER,
Secretary of State.

Concurred in: November 25, 1960.

WILLIAM P. ROGERS,
Attorney General.

[F.R. Doc. 60-11215; Filed, Nov. 30, 1960; 8:53 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

Returning Residents

The following amendment to Chapter I of Title 8 of the Code of Federal Regulations is hereby prescribed:

Section 211.1 *Visas* is amended by adding the following sentence at the end thereof: "Form I-151 alien registration receipt card shall be invalid under this section when presented by an alien who during his temporary absence abroad travelled to, in, or through Bulgaria, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Rumania, the Soviet Zone of Germany ('German Democratic Republic'), the Union of Soviet Socialist Republics, or Yugoslavia."

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) as to notice of proposed rule making and delayed effective date is contrary to the public interest in this instance because the amendment prescribed by the order affects the internal security of the United States.

Dated: November 17, 1960.

J. M. SWING,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 60-11214; Filed, Nov. 30, 1960; 8:53 a.m.]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order 214-60]

PART 21—WITNESS FEES

Fees and Allowances of Witnesses in Alaska

Pursuant to the authority vested in me by section 30 of the act of June 6, 1900, 31 Stat. 332 (48 U.S.C. 25), and section 23(c) of the Alaska Omnibus Act (73 Stat. 147), I hereby amend § 21.3, Chapter I, Title 28 of the Code of Federal Regulations to read as follows:

§ 21.3 Fees and allowances of witnesses in the District of Alaska.

The fees and allowances of witnesses in the District of Alaska shall be as follows:

(a) For attendance at the District Court or before any officer pursuant to law, including a commissioner acting in any capacity authorized by law, and for the time necessarily occupied in traveling from their place of residence to the place of trial or hearing and in returning therefrom, witnesses shall be entitled to $4 a day.

(b) In addition to the fee fixed by paragraph (a) of this section, witnesses (other than salaried employees of the Government and detained witnesses) who attend court or attend before a commissioner at points so far removed from their place of residence that they are unable to return thereto each day shall be entitled to a subsistence allowance of $15 a day for each day of such attendance and for each day necessarily occupied in traveling to the place of such attendance and in returning to their place of residence.

(c) Witnesses shall be entitled to travel expenses on the basis of the means of travel actually employed and the distance actually and necessarily traveled, and in accordance with the following:

(1) If the travel is by common carrier, witnesses shall be entitled to the cost of the cheapest available first-class accommodations for travel in Alaska and outside Alaska in proceeding to or from Alaska. Receipts or other evidence of actual payment shall be furnished whenever practicable.

(2) If the travel is by privately-owned automobile or other private carrier, witnesses shall be entitled to twelve cents a mile for travel in Alaska; provided that whenever the use of a private airplane, dog-team, or boat is approved by the court, a commissioner, the United States Attorney, or an Assistant United States Attorney, witnesses may be paid the actual rental cost or reasonable estimate of necessary expense.

(3) If the travel is by privately-owned automobile or other private carrier, witnesses shall be entitled to eight cents a mile for travel outside Alaska in proceeding to or from Alaska: *Provided*, That the total entitlement, including attendance fees and subsistence allowances, shall not exceed that which would have been payable had the cheapest first-class accommodations via common carrier been used.

(4) In addition to the allowances to which they are entitled under subparagraphs (1), (2), and (3) of this paragraph, witnesses shall be entitled to incidental travel expenses, such as taxicab fares between the place of lodging and the carrier terminal, and bridge, road, and tunnel tolls, and ferry fares.

(d) Witnesses detained in prison for want of security for their appearance shall not be entitled to attendance fees and subsistence allowances as prescribed in paragraphs (a) and (b) of this section, but shall be entitled to one dollar a day, in addition to the actual subsistence furnished by the Government, while thus detained.

(e) Officers and employees of the United States summoned as witnesses for the Government in matters before the District Court of Alaska or commissioners shall be entitled to expenses and subsistence allowances as provided by § 21.1.

(f) Payment of witness fees, subsistence allowances, and travel expenses by the United States under this section shall be made upon the basis of a certificate signed by the United States Attorney, an Assistant United States Attorney, the attorney in charge of the case, or a commissioner. With respect to any witness who is allowed subsistence, the certificate shall state that the witness attended court, or attended before a commissioner, as the case may be, at a point so far removed from his place of residence that he was unable to return thereto each day.

(Sec. 30, 31 Stat. 332; 48 U.S.C. 25, sec. 23(c), 73 Stat. 147)

Order No. 132-56 of September 27, 1956, amending § 21.3, Chapter I, Title 28, of the Code of Federal Regulations, is hereby superseded.

This order shall become effective on December 1, 1960. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) as to notice of proposed rule making and delayed effective date is impractical and unnecessary in this instance for the reason that the amendments made by the order are, so far as material, clearly advantageous to the persons affected thereby.

Dated: November 26, 1960.

WILLIAM P. ROGERS,
Attorney General.

[F.R. Doc. 60-11186; Filed, Nov. 30, 1960; 8:51 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER A—AID TO CIVIL AUTHORITIES AND PUBLIC RELATIONS

PART 805—SAFEGUARDING MILITARY INFORMATION

In Part 805, §§ 805.1 to 805.8 supersede §§ 805.1 to 805.17 (32 CFR 805.1).

Sec.
805.1 Visitors.
805.2 Definitions.
805.3 Requests for permission to visit.
805.4 Visits to Air Force installations.
805.5 Control of visitors.
805.6 Controlled areas.
805.7 Protection of property or places.
805.8 Procedure in case of violations.

AUTHORITY: §§ 805.1 to 805.8 issued under sec. 8012, 70A Stat. 488, 10 U.S.C. 8012.
SOURCE: AFR 205-1, June 10, 1960.

§ 805.1 Visitors.

Sections 805.1 to 805.8 tell who is a "visitor" and who may admit visitors at Air Force installations.

§ 805.2 Definitions.

(a) *Visits at Air Force activities.* For the purpose of §§ 805.1 to 805.5, a visitor is any person admitted to any Air Force installation, except those who are directly and officially concerned with its activities. Persons traveling under official orders requiring performance of duty at an installation, and those on duty or employed at the installation are not visitors for the purpose of §§ 805.1 to 805.5.

§ 805.3 Requests for permission to visit.

Requests to visit an installation should be referred to the installation commander for approval or disapproval. All requests for permission to visit Air Force installations or activities which will involve access to classified information will:

(a) Be in writing, and be made early enough to permit appropriate action by the commander.

(b) Include the following information, as applicable:

(1) Name in full, grade, title, position.
(2) Nationality of visitor (immigrant aliens will furnish alien registration number), date and place of birth.
(3) Current residence or military assignment.
(4) Employer or sponsor.
(5) Name and location of installation or activity to be visited.
(6) Date, time, and duration of visit.
(7) Purpose of visit, in detail.
(8) Security clearance status of visitor and name of clearing agency (if clearance has previously been granted).

§ 805.4 Visits to Air Force installations.

(a) *Visits involving access to classified information*—(1) *Approval.* Individuals may be permitted to visit Air Force installations or activities to receive or to have access to classified information only if its disclosure or dissemination is properly approved.

(b) *Visits not involving access to classified information.* United States citizens and foreign nationals who will not have access to classified information may be admitted to an Air Force installation by authority of the commander.

§ 805.5 Control of visitors.

(a) *Responsibility.* The commander is the local representative of the Department of the Air Force regarding the admission of visitors to his installation.

(b) *Restrictions on movements of visitors.* To protect classified information, the commander must restrict the movement of visitors entering his installation. Visitors authorized to have access to classified matter will be accompanied by the commander, or his representative who has been informed of the restrictions placed upon the visitor.

(c) *Limitation concerning documents.* Authority to permit visits does not constitute authority to release documents to visitors.

§ 805.6 Controlled areas.

The areas referred to in §§ 805.6 to 805.8 are established under authority of law. Their primary purpose, from a security standpoint, is to control the passage of persons not subject to military law.

§ 805.7 Protection of property or places.

(a) *Designation of controlled areas*—(1) *Restricted areas.* The commander of an Air Force installation will designate as a "restricted area" an area under his jurisdiction, which he considers necessary to protect, by the promulgation of regulations pursuant to section 21 of the Internal Security Act of 1950. If local conditions dictate, he will mark all ordinary entrances or approaches to such areas with a sign reading as follows:

> WARNING
> RESTRICTED AREA
> It is unlawful to enter within this (area, building, etc.) without written permission of (authority).

(2) *Reserved areas.* Areas reserved for military or national defense purposes, admittance to which is either restricted or prohibited, are set apart by Executive Order of the President of the United States, or by order of the Secretary of the Interior.

(3) *Air space reservations.* An "air space reservation" is the air space above an area on the land or water, designated and set apart by Executive Order of the President of the United States, or by a State, Commonwealth or Territory, over which the flight of aircraft is prohibited or restricted for the purpose of national defense, or for other governmental purposes. The commander of an installation over which an air space reservation has been established is responsible for its surveillance. He must make prompt report of any illegal flights in the air space to the Chief of Staff, USAF, through channels.

§ 805.8 Procedure in case of violations.

Persons not subject to military law who violate the regulations issued by the commander will be delivered to the appropriate civil authority, subject to the following provisions:

(a) The installation commander will cause any such person to be detained, warned of his rights, and interrogated as soon as possible by proper authority. If there is no evidence of intent to violate the regulations, the person may be warned against repetition and released. Otherwise, the commander will promptly notify the nearest office of the Office of Special Investigations by the fastest means available. That office will immediately request the nearest office of the Federal Bureau of Investigation to take custody of the individual at the installation. The commander will furnish the representative of the Federal Bureau of Investigation with a written statement of the facts, the names and addresses of the witnesses, and pertinent exhibits.

(b) When an investigation reveals that such a person has entered a closed area or building, and was not apprehended, the commander will promptly notify the nearest district office of the Office of Special Investigations of all the facts, including the names and addresses of the witnesses. The district office will immediately notify the nearest office of the Federal Bureau of Investigation.

R. J. PUGH,
Colonel, U.S. Air Force, Deputy Director of Administrative Services.

[F.R. Doc. 60-11139; Filed, Nov. 30, 1960; 8:45 a.m.]

Chapter XVI—Selective Service System

[Amdt. 87]

PART 1619—CANCELLATION OF REGISTRATION

Cancellation by Local Board

The Selective Service Regulations are hereby amended as follows:

§ 1619.1 [Revocation]

1. § 1619.1 is revoked.

2. § 1619.2 is amended to read as follows:

§ 1619.2 Cancellation of registration by local board.

(a) Except as otherwise provided in this section, a local board may cancel the registration of a person who is not required by the selective service law to be registered. In determining whether the registration of any person should be canceled, the local board shall apply the pertinent provisions of Part 1611 of this chapter. Ordinarily, the issues involved will be whether the registrant is within an age group required to be registered or whether he is a person who is exempt from registration under the selective service law.

(b) Section 1611.2 of this chapter provides that certain persons are not required to be registered so long as they have a certain status. If such a person has improperly registered at a time when he was exempt from registration, and there has been no subsequent change in his status which would render him liable for registration, the local board may cancel his registration. However, if a person has registered at a time when he

was required by the selective service law to present himself for and submit to registration and thereafter has acquired a status within one of the groups of persons exempt from registration, the local board shall not cancel his registration unless authorized to do so by the Director of Selective Service.

(c) If a person not required to register because of his being under 18 years of age has registered, the local board may cancel his registration at any time before he becomes 18 years of age except that the local board shall not cancel the registration of any registrant who is 17 years of age and has volunteered for induction with the written consent of his parents or guardian. If such a registrant has been inducted into and remains in the Armed Forces as the result of his premature registration, the local board shall not cancel his registration while he remains in the Armed Forces.

(d) In cancelling the registration of a registrant under this section, the local board shall (1) write across the face of his Registration Card (SSS Form No. 1) "Canceled—Sec. 1619.2 SS Reg. Date ----------"; (2) take up and cancel the Registration Certificate (SSS Form No. 2) if issued and available; (3) report the cancellation on Local Board Actions and Minutes (SSS Form No. 112) and on Local Board Action Report (SSS Form No. 112–A); and (4) retain the entire file of the registrant.

(Sec. 10, 62 Stat. 618, as amended; 50 U.S.C. App. 460; E.O. 9979, July 20, 1948, 13 F.R. 4177; 3 CFR, 1943–1948 Comp.)

The foregoing amendments to the Selective Service Regulations shall become effective upon filing with the Office of the Federal Register.

[SEAL] LEWIS B. HERSHEY,
Director of Selective Service.

NOVEMBER 25, 1960.

[F.R. Doc. 11160; Filed, Nov. 30, 1960; 8:48 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

PART 1—AVAILABILITY OF RECORDS AND INFORMATION

Limitation on Release of Records

Notice of proposed rule making having been published and no public comments having been received, the proposed amendments to the regulations, governing the use of official records and limiting their release from the custody of the Service, published with said notice of proposed rule making on April 6, 1960 in 25 F.R. 2905 are adopted as herein set forth.

Effective date. These amendments shall be effective 90 days after the date of publication.

1. Sections 1.108, 1.106 and 1.107 are renumbered §§ 1.106, 1.107 and 1.108, respectively.

2. Section 1.107 as so renumbered (formerly § 1.106) is amended by designating the present text of that section as paragraph (a) and by adding additional material. This section as amended reads as follows:

§ 1.107 Limitations on release of records.

(a) Records of the Service containing information described or referred to in § 1.102 or § 1.103 shall not be released to or deposited with anyone not an authorized officer or employee of the Service except: (1) As may be temporarily necessary for purposes of examination or copying; (2) for purposes of storage at General Services Administration Federal Records Centers under conditions assuring the continuation of the limitations on disclosure set forth in this part: *Provided*, That release or disclosure of records so stored shall be made by the Federal Records Centers only to authorized officers or employees of the Public Health Service.

(b) Where official records of the Service other than X-rays are produced in accordance with subpoena or other compulsory process, their release to or deposit with anyone not an officer or employee of the Service is prohibited except as may be temporarily necessary for the purpose of examination during sessions of the court, body, agency, or other authority before which such records are produced or unless release or deposit is otherwise authorized by the Surgeon General.

(c) When the production of official records of the Service in response to a subpoena or other compulsory process is authorized by § 1.106, arrangements shall be made for the procurement of certified copies if so requested by a party litigant. Except when the United States is the requesting party, such copies shall be made at the expense of the requesting party. The records may be released for copying for this purpose in accordance with paragraph (a) of this section.

(d) The Chief, Medical Records Library Service at any hospital or station, or any other officer or employee of the Service designated as local custodian of the records by the Medical Officer in Charge of a hospital or station is authorized to certify copies of records. No fee shall be charged for such certification.

(Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216. Interpret or apply 65 Stat. 290; 5 U.S.C. 140)

Dated: November 18, 1960.

[SEAL] JOHN D. PORTERFIELD,
Acting Surgeon General.

Approved: November 25, 1960.

ARTHUR S. FLEMMING,
Secretary.

[F.R. Doc. 60–11153; Filed, Nov. 30, 1960; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

"Dollar Value" LIFO Method

Amendment of the income tax regulations under section 472 of the Internal Revenue Code of 1954 to prescribe rules under the so-called "dollar-value" LIFO method.

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to prescribe rules under the so-called "dollar-value" LIFO method, such regulations are amended as follows:

PARAGRAPH 1. Paragraph (1) of § 1.472–1 is amended to read as follows:

§ 1.472–1 Last-in, first-out inventories.

* * * * *

(1) If a taxpayer uses consistently the so-called "dollar-value" method of pricing inventories, or any other method of computation established to the satisfaction of the Commissioner as reasonably adaptable to the purpose and intent of section 472 and this section, and if such taxpayer elects under section 472 to use the LIFO inventory method authorized by such section, the taxpayer's opening and closing inventories shall be determined under section 472 by the use of the appropriate adaptation. See § 1.472–8 for rules relating to the use of the dollar-value method.

PAR. 2. The introductory paragraph of § 1.472–2 is amended to read as follows:

§ 1.472–2 Requirements incident to adoption and use of LIFO inventory method.

Except as otherwise provided in § 1.472–1 with respect to raw material computations, with respect to retail inventory computations, and with respect to other methods of computation established to the satisfaction of the Commissioner as reasonably adapted to the purpose and intent of section 472, and in § 1.472–8 with respect to the "dollar-value" method, the adoption and use of the LIFO inventory method is subject to the following requirements:

PAR. 3. The following new § 1.472–8 is inserted immediately after § 1.472–7.

§ 1.472–8 Dollar-value method of pricing LIFO inventories.

(a) *Election to use dollar-value method.* Any taxpayer may elect to determine the cost of his LIFO inventories under the so-called "dollar-value" LIFO method, provided such method is used consistently and clearly reflects the income of the taxpayer in accordance with the rules of this section. The dollar-value method of valuing LIFO inventories is a method of determining cost by using "base-year" cost expressed in terms of total dollars rather than the quantity and price of specific goods as the unit of measurement. Under such method the goods contained in the inventory are grouped into a pool or pools as described in paragraphs (b) and (c) of this section. The term "base-year cost" is the aggregate of the cost (determined as of the beginning of the taxable year for which the LIFO method is first adopted, i.e., the base date) of all items in a pool. The taxable year for which the LIFO method is first adopted with respect to any item in the pool is the "base year" for that pool, except as provided in paragraph (g)(3) of this section. Liquidations and increments of items contained in the pool shall be reflected only in terms of a net liquidation or increment for the pool as a whole. Fluctuations may occur in quantities of various items within the pool, new items which properly fall within the pool may be added, and old items may disappear from the pool, all without necessarily effecting a change in the dollar value of the pool as a whole. An increment in the LIFO inventory occurs when the end of the year inventory for any pool expressed in terms of base-year cost is in excess of the beginning of the year inventory for that pool expressed in terms of base-year cost. In determining the inventory value for a pool, the increment, if any, is adjusted for changing unit costs or values by reference to a percentage, relative to base-year cost, determined for the pool as a whole. See paragraph (e) of this section. See also paragraph (f) of this section for rules relating to the change to the dollar-value LIFO method from another LIFO method.

(b) *Principles for establishing pools of manufacturers and processors*—(1) *Natural business unit pools.* A pool shall ordinarily consist of all items entering into the entire inventory investment for each natural business unit of a business enterprise, unless the taxpayer has adopted the LIFO inventory method as to raw materials content in accordance with § 1.472–1 or unless the taxpayer elects to use the multiple pooling method provided in subparagraph (3) of this paragraph. Thus, if a business enterprise is composed of only one natural business unit, one pool should be used for all of its LIFO inventories, including raw materials, goods in process, and finished goods. If, however, a business enterprise is actually composed of more than one natural business unit, more than one pool is required.

(2) *Definition of natural business unit.* (i) Whether an enterprise is composed of more than one natural business unit is a matter of fact to be determined from all the circumstances. The natural business divisions adopted by the taxpayer for internal management purposes, the existence of separate and distinct production facilities and processes, and the maintenance of separate profit and loss records with respect to separate operations are important considerations in determining what is a business unit, unless such divisions, facilities, or accounting records are set up merely because of differences in geographical location. In the case of a manufacturer or processor, a natural business unit ordinarily consists of the entire productive activity of the enterprise within one product line or within two or more related product lines including (to the extent engaged in by the enterprise) the obtaining of materials, the processing of materials, and the selling of manufactured or processed goods. Thus, in the case of a manufacturer or processor, the maintenance and operation of a raw material warehouse does not generally constitute, of itself, a natural business unit. If the taxpayer maintains and operates a supplier unit the production of which is both sold to others and transferred to a different unit of the taxpayer to be used as a component part of another product, the supplier unit will ordinarily constitute a separate and distinct natural business unit. Ordinarily, a processing plant would not in itself be considered a natural business unit if the production of the plant, although saleable at this stage, is not sold to others, but is transferred to another plant of the enterprise, not operated as a separate division, for further processing or incorporation into another product. On the other hand, if the production of a manufacturing or processing

plant is transferred to a separate and distinct division of the taxpayer, which constitutes a natural business unit, the supplier unit itself will ordinarily be considered a natural business unit. However, the mere fact that a portion of the production of a manufacturing or processing plant may be sold to others at a certain stage of processing with the remainder of the production being further processed or incorporated into another product will not of itself be determinative that the activities devoted to the production of the portion sold constitute a separate business unit. Where a manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, the pooling of such purchased goods for the wholesaling or retailing operations shall be determined in accordance with the rules of paragraph (c) of this section.

(ii) The rules of this subparagraph may be illustrated by the following examples:

Example (1). A corporation manufactures, in one division, automatic clothes washers and driers of both commercial and domestic grade as well as electric ranges, mangles, and dishwashers. The corporation manufactures, in another division, radios and television sets. The manufacturing facilities and processes used in manufacturing the radios and television sets are distinct from those used in manufacturing the automatic clothes washers, etc. Under these circumstances, the enterprise would consist of two business units and two pools would be appropriate, one consisting of all of the LIFO inventories entering into the manufacture of clothes washers and driers, electric ranges, mangles, and dishwashers and the other consisting of all of the LIFO inventories entering into the production of radio and television sets.

Example (2). A taxpayer produces plastics in one of its plants. Substantial amounts of the production are sold as plastics. The remainder of the production is shipped to a second plant of the taxpayer for the production of plastic toys which are sold to customers. The taxpayer operates his plastics plant and toy plant as separate divisions. Because of the different product lines and the separate divisions the taxpayer has two natural business units.

Example (3). A taxpayer is engaged in the manufacture of paper. At one stage of processing, uncoated paper is produced. Substantial amounts of uncoated paper are sold at this stage of processing. The remainder of the uncoated paper is transferred to the taxpayer's finishing mill where coated paper is produced and sold. This taxpayer has only one natural business unit since coated and uncoated paper are within the same product line.

(3) *Multiple pools*—(i) *Principles for establishing multiple pools.* (a) A taxpayer may elect to establish more than one pool within a natural business unit unless he pools on a natural business unit method as provided in subparagraph (1) of this paragraph. Each such pool shall ordinarily consists of a group of inventory items which are substantially similar. In determining whether such similarity exists, consideration shall be given to all the facts and circumstances. The formulation of detailed rules for selection of pools applicable to all taxpayers is not feasible. Important considerations to be taken into account include, for example, whether there is substantial similarity in the types of raw materials used or in the processing operations applied; whether the raw materials used are readily interchangeable; whether there is similarity in the use of the products; whether the groupings are consistently followed for purposes of internal accounting and management; and whether the groupings follow customary business practice in the taxpayer's industry. The selection of pools in each case must also take into consideration such factors as the nature of the inventory items subject to the dollar-value LIFO method and the significance of such items to the taxpayer's business operations.

(b) Raw materials which are substantially similar shall be pooled together in accordance with the principles of this subparagraph. However, inventories of raw or unprocessed materials of an unlike nature may not be placed into one pool, even though such materials become part of otherwise identical finished products.

(c) Finished goods and goods-in-process in the inventory shall be placed into pools classified by major classes or types of goods. Where the material content of a class of finished products included in a pool has been changed, for example, to conform with current trends in an industry, a separate pool of finished products and goods-in-process will not ordinarily be required unless the change in material content results in a substantial change in the finished product.

(d) The requirement that pools be established by major types of materials or major classes of goods is not to be construed so as to preclude the establishment of a miscellaneous pool. Since a taxpayer may elect the dollar-value LIFO method with respect to all or any designated goods in his inventory, there may be a number of such inventory items covered in the election. A miscellaneous pool shall consist only of items which are relatively insignificant in dollar value by comparison with other inventory items in the particular trade or business and which are not properly includible as part of another pool.

(ii) *Raw materials content pools.* The dollar-value method of pricing LIFO inventories may be used in conjunction with the raw materials content method authorized in § 1.472–1. Raw materials which are substantially similar shall be pooled together in accordance with the principles of subdivision (i) of this subparagraph. However, inventories of raw or unprocessed materials of an unlike nature may not be placed into one pool, even though such materials become part of otherwise identical finished products.

(c) *Principles for establishing pools for wholesalers, retailers, etc.* Items of inventory in the hands of wholesalers, retailers, jobbers, and distributors shall be placed into pools by major lines, types, or classes of goods. In determining such groupings, customary business classifications of the particular trade in which the taxpayer is engaged is an important consideration. An example of such customary business classification is the department in the department store. In such case, practices are relatively uniform throughout the trade, and departmental grouping is peculiarly adapted to the customs and needs of the business. However, in appropriate cases, the principles set forth in paragraphs (b) (1) and (2) of this section, relating to pooling by natural business units, may be used, with permission of the Commissioner, by wholesalers, retailers, jobbers, or distributors. Where a wholesaler or retailer is also engaged in the manufacturing or processing of goods, the pooling of the LIFO inventory for the manufacturing or processing operations shall be determined in accordance with the rules of paragraph (b) of this section.

(d) *Determination of appropriateness of pools.* Whether the number and the composition of the pools used by the taxpayer is appropriate, as well as the propriety of all computations incidental to the use of such pools, will be determined in connection with the examination of the taxpayer's income tax returns. Adequate records must be maintained to support the base-year unit cost as well as the current-year unit cost for all items priced on the dollar-value LIFO inventory method. The pool or pools selected must be used for the year of adoption and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless permission to change is granted by the Commissioner as provided in paragraph (e) of § 1.446–1. However, see paragraph (h) of this section for authorization to change the method of pooling in certain specified cases.

(e) *Methods of computation of the LIFO value of a dollar-value pool*—(1) *Methods authorized.* A taxpayer may ordinarily use only the so-called "double-extension" method for computing the base-year and current-year cost of a dollar-value inventory pool. However, a taxpayer entitled to use the retail method of pricing LIFO inventories authorized by section 1.472–1(k) may use retail price indexes prepared by the United States Bureau of Labor Statistics, and a taxpayer may use privately computed indexes if the method of computing such indexes is approved in advance by the Commissioner. The application for prior approval of such indexes shall be filed by letter with the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C. The accuracy and reliability of such indexes will be determined in connection with the examination of the taxpayer's income tax returns. For taxable years beginning after December 31, 1960, the use of the so-called "link-chain" method will not be approved as an acceptable method for computing the base-year and current-year cost of a dollar-value inventory pool.

(2) *Double extension method.* (i) Under the double-extension method the quantity of each item in the inventory pool at the close of the taxable year is extended at both base-year unit cost and current-year unit cost. The respective extensions at the two costs are then each totaled. The first total gives the amount of the current inventory in terms of base-year cost and the second total gives the amount of such inventory in terms of current-year cost.

(ii) The total current-year cost of items making up a pool may be determined—

(a) By reference to the actual cost of the goods most recently purchased or produced;

(b) By reference to the actual cost of the goods purchased or produced during the taxable year in the order of acquisition;

(c) By application of an average unit cost equal to the aggregate cost of all of the goods purchased or produced throughout the taxable year divided by the total number of units so purchased or produced; or

(d) Pursuant to any other proper method which, in the opinion of the Commissioner, clearly reflects income.

(iii) Under the double-extension method a base-year unit cost must be ascertained for each item entering a pool for the first time subsequent to the beginning of the base year. In such a case, the base-year unit cost of the entering item shall be the current-year cost of that item unless the taxpayer is able to reconstruct or otherwise establish a different cost. If the entering item is a product or raw material not in existence on the base date, its cost may be reconstructed, that is, the taxpayer using reasonable means may determine what the cost of the item would have been had it been in existence in the base year. If the item was in existence on the base date but not stocked by the taxpayer, he may establish, by using available data or records, what the cost of the item would have been to the taxpayer had he stocked the item. If the base-year unit cost of the entering item is either reconstructed or otherwise established to the satisfaction of the Commissioner, such cost may be used as the base-year unit cost in applying the double-extension method. If the taxpayer does not reconstruct or establish to the satisfaction of the Commissioner a base-year unit cost, but does reconstruct or establish to the satisfaction of the Commissioner the cost of the item at some year subsequent to the base year, he may use the earliest cost which he does reconstruct or establish as the base-year unit cost.

(iv) To determine whether there is an increment or liquidation in a pool for a particular taxable year, the end of the year inventory of the pool expressed in terms of base-year cost is compared with the beginning of the year inventory of the pool expressed in terms of base-year cost. When the end of the year inventory of the pool is in excess of the beginning of the year inventory of the pool, an increment occurs in the pool for that year. If there is an increment for the taxable year, the ratio of the total current-year cost of the pool to the total base-year cost of the pool must be computed. This ratio when multiplied by the amount of the increment measured in terms of base-year cost gives the LIFO value of such increment. The LIFO value of each such increment is hereinafter referred to in this section as the "layer of increment" and must be separately accounted for and a record thereof maintained as a separate layer of the pool, and may not be combined with a layer of increment occurring in a different year. On the other hand, when the end of the year inventory of the pool is less than the beginning of the year inventory of the pool, a liquidation occurs in the pool for that year. Such liquidation is to be reflected by reducing the most recent layer of increment by the excess of the beginning of the year inventory over the end of the year inventory of the pool. However, if the amount of the liquidation exceeds the amount of the most recent layer of increment, the preceding layers of increment in reverse chronological order are to be successively reduced by the amount of such excess until all the excess is absorbed. The base-year inventory is to be reduced by liquidation only to the extent that the aggregate of all liquidation exceeds the aggregate of all layers of increment.

(v) The following examples illustrate the computation of the LIFO value of inventories under the double-extension method.

Example (1). (a) A taxpayer elects, beginning with the calendar year 1961, to compute his inventories by use of the LIFO inventory method under section 472 and further elects to use the dollar-value method in pricing such inventories as provided in paragraph (a) of this section. He creates Pool No. 1 for items A, B, and C. The composition of the inventory for Pool No. 1 at the base date, January 1, 1961, is as follows:

Items	Units	Unit cost	Total cost
A	1,000	$5	$5,000
B	2,000	4	8,000
C	500	2	1,000
Total base-year cost at Jan. 1, 1961			14,000

(b) The closing inventory of Pool No. 1 at December 31, 1961, contains 3,000 units of A, 1,000 units of B, and 500 units of C. The taxpayer computes the current-year cost of the items making up the pool by reference to the actual cost of goods most recently purchased. The most recent purchases of items A, B, and C are as follows:

Item	Purchase date	Quantity purchased	Unit cost
A	Dec. 15, 1961	3,500	$6.00
B	Dec. 10, 1961	2,000	5.00
C	Nov. 1, 1961	500	2.50

(c) The inventory of Pool No. 1 at December 31, 1961, shown at base-year and current-year cost is as follows:

Item	Quantity	Dec. 31, 1961, inventory at Jan. 1, 1961, base-year cost		Dec. 31, 1961, inventory at current-year cost	
		Unit cost	Amount	Unit cost	Amount
A	3,000	$5.00	$15,000	$6.00	$18,000
B	1,000	4.00	4,000	5.00	5,000
C	500	2.00	1,000	2.50	1,250
Total			$20,000		$24,250

(d) If the amount of the December 31, 1961, inventory at base-year cost were equal to, or less than, the base-year cost of $14,000 at January 1, 1961, such amount would be the closing LIFO inventory at December 31, 1961. However, since the base-year cost of the closing LIFO inventory at December 31, 1961, amounts to $20,000, and is in excess of the $14,000 base-year cost of the opening inventory for that year, there is a $6,000 increment in Pool No. 1 during the year. This increment must be valued at current-year cost, i.e., the ratio of $24,250/20,000, or 121.25 percent. The LIFO value of the inventory at December 31, 1961, is $21,275, computed as follows:

Pool No. 1

	Dec. 31, 1961, inventory at Jan. 1, 1961, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1961, inventory at LIFO value
		Percent	
Jan. 1, 1961, base cost	$14,000	100.00	$14,000
Dec. 31, 1961, increment	6,000	121.25	7,275
Total	20,000		21,275

Example (2). (a) Assume the taxpayer in example (1) during the year 1962 completely disposes of item C and purchases item D. Assume further that item D is properly includible in Pool No. 1 under the provisions of this section. The closing inventory on December 31, 1962, consists of quantities at current-year unit cost, as follows:

Items	Units	Current-year unit cost Dec. 31, 1962
A	2,000	$6.50
B	1,500	6.00
D	1,000	5.00

(b) The taxpayer establishes that the cost of item D, had he acquired it on January 1, 1961, would have been $3.64 per unit. Such cost shall be used as the base-year unit cost for item D, and the LIFO computations at December 31, 1962, are made as follows:

Item	Quantity	Dec. 31, 1962, inventory at Jan. 1, 1961, base-year cost		Dec. 31, 1962, inventory at current-year cost	
		Unit cost	Amount	Unit cost	Amount
A	2,000	$5.00	$10,000	$6.50	$13,000
B	1,500	4.00	6,000	6.00	9,000
D	1,000	3.64	3,640	5.00	5,000
Total			19,640		27,000

(c) Since the closing inventory at base-year cost, $19,640, is less than the 1962 opening inventory at base-year cost, $20,000, a liquidation of $360 has occurred during 1962. This liquidation is to be reflected by reducing the most recent layer of increment. The LIFO value of the inventory at December 31, 1962, is $20,839, and is summarized as follows:

Pool No. 1

	Dec. 31, 1962 inventory at Jan. 1, 1961 base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1962 inventory at LIFO value
		Percent	
Jan. 1, 1961, base cost	$14,000	100.00	$14,000
Dec. 31, 1961, increment	5,640	121.25	6,839
Total	19,640		20,839

(f) *Change to dollar-value method from another method of pricing LIFO inventories*—(1) *Consent required.* Except as provided in § 1.472–3, in the case of a taxpayer electing to use a LIFO inventory method for the first time, a taxpayer using another LIFO method of pricing inventories may not change to the dollar-value method of pricing such inventories unless he first secures the consent of the Commissioner in accordance with paragraph (e) of § 1.446–1.

(2) *Method of converting inventory.* Where the taxpayer changes from one method of pricing LIFO inventories to the dollar-value method, the ending LIFO inventory for the taxable year immediately preceding the year of change shall be converted to the dollar-value LIFO method. This is done to establish the base-year cost for subsequent calculations. Thus, if the taxpayer was previously valuing LIFO inventories on the specific goods method, these separate values shall be combined into appropriate pools. For this purpose, the base year for the pool shall be the earliest taxable year for which the LIFO inventory method had been adopted for any item in that pool. No change will be made in the overall LIFO value of the opening inventory for the year of change as a result of the conversion, and that inventory will merely be restated in the manner used under the dollar-value method. All layers of increment for such inventory must be retained, except that all layers of increment which occurred in the same taxable year must be combined. The following examples illustrate the provisions of this subparagraph:

Example (1). (i) Assume that the taxpayer has used another LIFO method for finished goods since 1954 and has complied with all the requirements prerequisite for a change to the dollar-value method. Items A, B, and C, which have previously been inventoried under the specific goods LIFO method, may properly be included in a single dollar-value LIFO pool. The LIFO inventory value of items A, B, and C at December 31, 1960, is $12,200, computed as follows:

Year	Base quantity and yearly increments	Unit cost	Dec. 31, 1960, inventory at LIFO value
Item A			
1954 (base year)	100	$1	$100
1955	200	2	400
1956	100	4	400
1960	100	6	600
Total	500		1,500
Item B			
1954 (base year)	300	6	1,800
1955	100	8	800
1960	50	10	500
Total	450		3,100
Item C			
1954 (base year)	1,000	4	4,000
1955	200	6	1,200
1956	300	8	2,400
Total	1,500		7,600
LIFO value of items A, B, and C at Dec. 31, 1960			12,200

There were no increments in the years 1957, 1958, or 1959.

(ii) The computation of the ratio of the total current-year cost to the total base-year cost for the base year and each layer of increment in pool No. 1 is shown as follows:

Item	1954 base-year unit cost	Year 1954	Increments 1955	1956	1960
A					
Base-year cost	$1.00	$100	$200	$100	$100
LIFO value		100	400	400	600
B					
Base-year cost	6.00	1,800	600		300
LIFO value		1,800	800		500
C					
Base-year cost	4.00	4,000	800	1,200	
LIFO value		4,000	1,200	2,400	
Total—Base-year cost		5,900	1,600	1,300	400
Total—LIFO value		5,900	2,400	2,800	1,100
Ratio of total current-year cost to total base-year cost (percent)		100.00	150.00	215.38	275.00

(iii) On the basis of the foregoing computations, the LIFO inventory of pool No. 1, at December 31, 1960, is restated as follows:

	Dec. 31, 1960, inventory at base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
1954 base cost	$5,900	100.00	$5,900
1955 increment	1,600	150.00	2,400
1956 increment	1,300	215.38	2,800
1960 increment	400	275.00	1,100
Total	9,200		12,200

Example (2). Assume the same facts as in example (1) and assume further that the base-year cost of pool No. 1 at December 31, 1961, is $8,350. Since the closing inventory for the taxable year 1961 at base-year cost is less than the opening inventory for that year at base-year cost, a liquidation has occurred during 1961. This liquidation absorbs all of the 1960 layer of increment and part of the 1956 layer of increment. The December 31, 1961, inventory is $10,131, computed as follows:

	Dec. 31, 1961 inventory at base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1961 inventory at LIFO value
		Percent	
1954 base cost	$5,900	100.00	$5,900
1955 increment	1,600	150.00	2,400
1956 increment	850	215.38	1,831
Total	8,350		10,131

(g) *Transitional rules*—(1) *Change in method of pooling.* Any method of pooling authorized by this section and used by the taxpayer in computing his LIFO inventories under the dollar-value method shall be treated as a method of accounting. Any method of pooling which is authorized by this section shall be used for the year of adoption and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless permission to change is granted by the Commissioner as provided in paragraph (e) of § 1.446–1. Where the taxpayer changes from one method of pooling to another method of pooling permitted by this section, the ending LIFO inventory for the taxable year preceding the year of change shall be restated under the new method of pooling.

(2) *Manner of combining or separating dollar-value pools.* (i) A taxpayer who has been using the dollar-value LIFO method and who is permitted or required to change his method of pooling, shall combine or separate the LIFO value of his inventory for the base year and each yearly layer of increment in order to conform to the new pool or pools. Each yearly layer of increment in the new pool or pools must be separately accounted for and a record thereof maintained, and any liquidation occurring in the new pool or pools subsequent to the formation thereof shall be treated in the same manner as if the new pool or pools had existed from the date the taxpayer first adopted the LIFO inventory method. The combination or separation of the LIFO value of his inventory for the base year and each yearly layer of increment shall be made in accordance with the appropriate method set forth in this subparagraph, unless the use of a different method is approved by the Commissioner.

(ii) Where the taxpayer is permitted or required to separate a pool into more than one pool, the separation shall be made in the following manner: First, each item in the former pool shall be placed in an appropriate new pool. Every item in each new pool is then extended at its base-year unit cost and the extensions are totaled. Each total is the amount of inventory for each new pool expressed in terms of base-year cost. Then a ratio of the total base-year cost of each new pool to the base-year cost of the former pool is computed. The resulting ratio is applied to the amount of inventory for the base year and each yearly layer of increment of the former pool to obtain an allocation to each new pool of the base-year inventory of the former pool and subsequent layers of increment thereof. The foregoing may be illustrated by the following of a change for the taxable year 1961:

Example. (a) Assume that items A, B, C, and D are all grouped together in one pool prior to December 31, 1960. The LIFO inventory value at December 31, 1960, is computed as follows:

	Pool ABCD		
	Dec. 31, 1960, inventory at Jan. 1, 1956 base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
Jan. 1, 1956, base cost	$10,000	100	$10,000
Dec. 31, 1956, increment	1,000	110	1,100
Dec. 31, 1958, increment	5,000	120	6,000
Dec. 31, 1960, increment	4,000	125	5,000
Total	20,000		22,100

(b) The extension of the quantity items A, B, C, and D at respective base-year unit costs is as follows:

Item	Quantity	Base-year unit cost	Amount
A	2,000	$2	$4,000
B	1,000	3	3,000
C	1,000	5	5,000
D	4,000	2	8,000
Total			20,000

(c) Under the provisions of this section the taxpayer separates former pool ABCD into two pools, pool AB and pool CD. The computation of the ratio of total base-year cost for each of the new pools to the base-year cost of the former pool is as follows:

Item	Total base-year cost	Ratio
Pool AB:		
A	$4,000	
B	3,000	
	7,000	7,000/20,000
Pool CD:		
C	5,000	
D	8,000	
	13,000	13,000/20,000
Total for pool ABCD	20,000	

(d) The ratio of the base-year cost of new pools AB and CD to the base-year cost of former pool ABCD is 7,000/20,000 and 13,000/20,000, respectively. The allocation of the January 1, 1956 base cost and subsequent yearly layers of increment of former pool ABCD to new pools AB and CD is as follows:

	Base-year cost to be allocated	Pool AB	Pool CD
Jan. 1, 1956, base cost	$10,000	$3,500	$6,500
Dec. 31, 1956, increment	1,000	350	650
Dec. 31, 1958, increment	5,000	1,750	3,250
Dec. 31, 1960, increment	4,000	1,400	2,600
Total	20,000	7,000	13,000

(e) The LIFO value of new pools AB and CD at December 31, 1960, as allocated, is as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1956, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
Pool AB		*Percent*	
Jan. 1, 1956, base cost	$3,500	100	$3,500
Dec. 31, 1956, increment	350	110	385
Dec. 31, 1958, increment	1,750	120	2,100
Dec. 31, 1960, increment	1,400	125	1,750
Total	7,000		7,735
Pool CD			
Jan. 1, 1956, base cost	6,500	100	6,500
Dec. 31, 1956, increment	650	110	715
Dec. 31, 1958, increment	3,250	120	3,900
Dec. 31, 1960, increment	2,600	125	3,250
Total	13,000		14,365

(iii) Where the taxpayer is permitted or required to combine two or more pools having the same base year, they shall be combined into one pool in the following manner: The LIFO value of the base-year inventory of each of the former pools is combined to obtain a LIFO value of the base-year inventory for the new pool. Then, any layers of increment in the various pools which occurred in the same taxable year are combined into one total layer of increment for that taxable year. However, layers of increment which occurred in different taxable years may not be combined. In combining the layers of increment a new ratio of current-year cost to base-year cost is computed for each of the combined layers of increment. The foregoing may be illustrated by the following example:

Example. (a) Assume the taxpayer has two pools at December 31, 1960. Under the provisions of this section the taxpayer combines these pools into a single pool as of January 1, 1961. The LIFO inventory value of each pool at December 31, 1960, is shown as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1957, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
Pool No. 1		*Percent*	
Jan. 1, 1957, base cost	$10,000	100	$10,000
Dec. 31, 1957, increment	2,000	110	2,200
Dec. 31, 1960, increment	1,000	120	1,200
Total	13,000		13,400
Pool No. 2			
Jan. 1, 1957, base cost	5,000	100	5,000
Dec. 31, 1960, increment	3,000	140	4,200
Total	8,000		9,200

(b) The computation of the ratio of the total current-year cost to the total base-year cost for the base year and each yearly layer of increment in the new pool is as follows:

Pool	Base year 1957	Increments Dec. 31, 1957	Dec. 31, 1960
No. 1:			
Base-year cost	$10,000	$2,000	$1,000
LIFO value	10,000	2,200	1,200
No. 2:			
Base-year cost	5,000		3,000
LIFO value	5,000		4,200
Total, base-year cost	15,000	2,000	4,000
Total, LIFO value	15,000	2,200	5,400
Ratio of total current-year cost to total base-year cost (percent)	100	110	135

(c) On the basis of the foregoing computations, the LIFO inventory of the new pool at December 31, 1960, is restated as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1957, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
Jan. 1, 1957, base cost	$15,000	100	$15,000
Dec. 31, 1957, increment	2,000	110	2,200
Dec. 31, 1960, increment	4,000	135	5,400
Total	21,000		22,600

(iv) In combining pools having different base years, the principles set forth in subdivision (iii) of this subparagraph are to be applied, except that all base years subsequent to the earliest base year shall be treated as increments, and the base-year costs for all pools having a base year subsequent to the earliest base year of any pool shall be redetermined in terms of the base cost for the earliest base year. The foregoing may be illustrated by the following example:

Example. (a) Assume that the taxpayer has two pools at December 31, 1960. Under the provisions of this section the taxpayer combines these pools into a single pool as of January 1, 1961. The LIFO inventory value of each pool at December 31, 1960, is shown as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1956, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
Pool No. 1		*Percent*	
Jan. 1, 1956, base cost	$7,000	100	$7,000
Dec. 31, 1956, increment	1,000	105	1,050
Dec. 31, 1957, increment	500	110	550
Dec. 31, 1958, increment	500	110	550
Dec. 31, 1960, increment	1,000	120	1,200
Total	10,000		10,350
	Dec. 31, 1960, inventory at Jan. 1, 1958, base-year cost		
Pool No. 2			
Jan. 1, 1958, base cost	$3,500	100	$3,500
Dec. 31, 1958, increment	1,000	110	1,100
Dec. 31, 1959, increment	500	115	575
Total	5,000		5,175

(b) The next step is to redetermine the 1958 base-year cost for Pool No. 2 in terms of 1956 base-year cost. January 1, 1956 base-year unit cost must be reconstructed or established in accordance with paragraph (e) (2) of this section for each item in Pool No. 2. Such costs are assumed to be $9.00 for item A, $20.00 for item B, and $1.80 for item C. A ratio of the 1958 total base-year cost to the 1956 total base-year cost for Pool No. 2 is computed as follows:

Item	Quantity	Jan. 1, 1956, base-year unit cost	Jan. 1, 1956, base-year cost
A	250	$9.00	$2,250
B	75	20.00	1,500
C	500	1.80	900
Total			4,650

Item	Quantity	Jan. 1, 1958, base-year unit cost	Jan. 1, 1958, base-year cost
A	250	$10.00	$2,500
B	75	20.00	1,500
C	500	2.00	1,000
Total			5,000

(c) The ratio of the 1956 total base-year cost to the 1958 total base-year cost for Pool No. 2 is 4,650/5,000 or 93 percent. The January 1, 1958 base cost and each yearly layer of increment at 1958 base-year cost is multi-

plied by this ratio. Such computation is as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1958, base-year cost	Ratio	Dec. 31, 1960, inventory restated at Jan. 1, 1956, base-year cost
		Percent	
Jan. 1, 1958, base cost	$3,500	93	$3,255
Dec. 31, 1958, increment	1,000	93	930
Dec. 31, 1959, increment	500	93	465
Total			4,650

(*d*) The computation of the ratio of the total current-year cost to the total base-year cost for the base year (1956) and each yearly layer of increment in the new pool is as follows:

Pool	Base year 1956	Increments				
		Dec. 31, 1956	Dec. 31, 1957	Dec. 31, 1958	Dec. 31, 1959	Dec. 31, 1960
No. 1:						
Base-year cost	$7,000	$1,000	$500	$500		$1,000
LIFO value	7,000	1,050	550	550		1,200
No. 2:						
Base-year cost as restated			3,255	930	$465	
LIFO value			3,500	1,100	575	
Total, base-year cost	7,000	1,000	3,755	1,430	465	1,000
Total, LIFO value	7,000	1,050	4,050	1,650	575	1,200
Ratio of total current-year cost to total base-year cost (percent)	100.00	105.00	107.86	115.38	123.66	120.00

(*e*) On the basis of the foregoing computation, the LIFO inventory of the new pool at December 31, 1960, is restated as follows:

	Dec. 31, 1960, inventory at Jan. 1, 1956, base-year cost	Ratio of total current-year cost to total base-year cost	Dec. 31, 1960, inventory at LIFO value
		Percent	
Jan. 1, 1956, base cost	$7,000	100.00	$7,000
Dec. 31, 1956, increment	1,000	105.00	1,050
Dec. 31, 1957, increment	3,755	107.86	4,050
Dec. 31, 1958, increment	1,430	115.38	1,650
Dec. 31, 1959, increment	465	123.66	575
Dec. 31, 1960, increment	1,000	120.00	1,200
Total	14,650		15,525

(3) *Change in methods of computation of the LIFO value of a dollar-value pool.* For the first taxable year beginning after December 31, 1960, the taxpayer must use a method authorized by paragraph (e)(1) of this section in computing the base-year cost and current-year cost of a dollar-value inventory pool for the end of such year. If the taxpayer had previously used any methods other than one authorized by paragraph (e)(1) of this section, he shall not be required to recompute his LIFO inventories for taxable years beginning on or before December 31, 1960, under a method authorized by such paragraph. The base cost and layers of increment previously computed by such other method shall be retained and treated as if such base cost and layers of increment had been computed under a method authorized by paragraph (e)(1) of this section. The taxpayer shall use the year of change as the base year in applying the double-extension method or other method approved by the Commissioner, instead of the earliest year for which he adopted the LIFO method for any items in the pool.

(h) *Change without consent in method of pooling*—(1) *Authorization.* Notwithstanding the provisions of paragraph (g) of this section, a taxpayer, for his first taxable year ending more than 90 days after the date of publication of these regulations in the FEDERAL REGISTER as a Treasury decision, may change from one method of pooling authorized by this section to any other method of pooling authorized by this section provided the requirements of subparagraph (2) of this paragraph are met. The method of pooling adopted shall be used for the year of change and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless permission to change is granted by the Commissioner as provided in paragraph (e) of § 1.446–1.

(2) *Requirements.* A statement shall be attached to the income tax return for the year of change referred to in subparagraph (1) of this paragraph setting forth, in summary form, the following information:

(i) A description of the new pool or pools,

(ii) The basis for selection of the new pool or pools,

(iii) A schedule showing the computation of the LIFO value of the former pool or pools, and,

(iv) A schedule showing the transition from the former pool or pools to the new pool or pools.

In addition, a copy of the statement shall be filed with the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C. The taxpayer shall submit such other information with respect to the change in method of pooling as may be requested.

[F.R. Doc. 60–11068; Filed, Nov. 30, 1960; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 51]

UNITED STATES STANDARDS FOR FLORIDA GRAPEFRUIT [1]

Bronze Grade

Notice is hereby given that the United State Department of Agriculture is considering the amendment of § 51.754 of United States Standards for Grades of Florida Grapefruit (7 CFR 51.750 to 51.783) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627).

Statement of considerations leading to the proposed amended U.S. No. 1 Bronze grade in the United States standards for grades of Florida grapefruit. It is proposed to amend the U.S. No. 1 Bronze grade pertaining to the amount of rust mite type discoloration required.

The existing Bronze grade which became effective September 15, 1960 requires that the predominating discoloration on each fruit must be of rust mite type. The proposed amended grade would require that more than 30 percent of the fruits shall have more than one-third of the surface, in the aggregate, affected by discoloration, which must consist predominantly of rust mite type.

The present Bronze grade has been found to be unrealistic from the grading and sorting standpoint. The wording in the present grade requires the careful evaluation of the area and types of discoloration on each individual fruit to assure that rust mite type predominates. On fruit showing a small amount of discoloration this is unimportant from the standpoint of the general appearance of the lot.

In the proposed amended grade rust mite type discoloration must predominate only on fruits showing more than ⅓ of the surface discolored. This will accomplish the elimination of a large amount of other more objectionable types of discolorations. The proposed wording change will facilitate the sorting procedure, eliminating prohibitively tedious and expensive evaluation of the discoloration on each individual fruit. The proposed amendment should assist in providing a more uniform flow of Bronze grade fruit to market.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed amendment should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D.C., not later than December 15, 1960.

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

Section 51.754 as amended, follows:

§ 51.754 **U.S. No. 1 Bronze.**

The requirements of this grade are the same as for U.S. No. 1 except that all fruits must show some discoloration. More than 30 percent, by count, of the fruits shall have more than one-third of the surface, in the aggregate, affected by discoloration; the predominating discoloration on these fruits shall be of rust mite type.

Dated: November 25, 1960.

ROY W. LENNARTSON,
Deputy Administrator, Marketing Services.

[F.R. Doc. 60–11154; Filed, Nov. 30, 1960; 8:47 a.m.]

[7 CFR Part 51]

UNITED STATES STANDARDS FOR FLORIDA ORANGES AND TANGELOS [1]

Bronze Grade

Notice is hereby given that the United States Department of Agriculture is considering the amendment of § 51.1145 of United States Standards for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 to 51.1178) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627).

Statement of considerations leading to the proposed amended U.S. No. 1 Bronze grade in the United States standards for grades of Florida oranges and tangelos. It is proposed to amend the U.S. No. 1 Bronze grade pertaining to the amount of rust mite type discoloration required.

The existing Bronze grade which became effective September 15, 1960 requires that the predominating discoloration on each fruit must be of rust mite type. The proposed amended grade would require that more than 30 percent of the fruits shall have more than one-third of the surface, in the aggregate, affected by discoloration, which must consist predominately of rust mite type.

The present Bronze grade has been found to be unrealistic from the grading and sorting standpoint. The wording in the present grade requires the careful evaluation of the area and types of discoloration on each individual fruit to assure that rust mite type predominates. On fruit showing a small amount of discoloration this is unimportant from the standpoint of the general appearance of the lot.

In the proposed amended grade rust mite type discoloration must predominate only on fruits showing more than one-third of the surface discolored. This will accomplish the elimination of a large amount of other more objectionable types of discolorations. The proposed wording change will facilitate the sorting procedure, eliminating prohibitively tedious and expensive evaluation of the discoloration on each individual fruit. The proposed amendment should assist in providing a more uniform flow of Bronze grade fruit to market.

All persons who desire to submit written data, views or arguments for consideration in connection with the proposed amendment should file the same with the Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, South Building, Washington 25, D.C., not later than December 15, 1960.

Section 51.1145 as amended, follows:

§ 51.1145 **U.S. No. 1 Bronze.**

The requirements of this grade are the same as for U.S. No. 1 except that all fruits must show some discoloration. More than 30 percent, by count, of the fruits shall have more than one-third of the surface, in the aggregate, affected by discoloration; the predominating discoloration on these fruits shall be of rust mite type.

Dated: November 25, 1960.

ROY W. LENNARTSON,
Deputy Administrator, Marketing Services.

[F.R. Doc. 60–11155; Filed, Nov. 30, 1960; 8:47 a.m.]

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 176]

LEAD AND ZINC MINING OPERATIONS AND LEASES, QUAPAW AGENCY

Other Minerals and Deep-Lying Lead and Zinc Minerals

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by section 26 of the Act of March 3, 1921 (41 Stat. 1248) and the Act of March 3, 1909 (35 Stat. 783), it is proposed to amend 25 CFR Part 176 as set forth below. The purpose of the amendment is to refer to 25 CFR Part 172 for regulations for leasing Quapaw Indian lands for mining minerals other than lead and zinc and for lead and zinc and associate minerals which may be found at depths below the horizon of the rock stratum known as the Reed Springs Formation.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Commissioner of Indian Affairs, Department of the Interior, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

Section 176.25 is amended to change the heading and present text and to read as follows:

§ 176.25 **Other minerals and deep-lying lead and zinc minerals.**

Except as provided in § 176.6(b), leases on Quapaw Indian lands, for mining minerals other than lead and zinc and for lead and zinc and associated minerals below the horizon of the rock stratum known as the Reed Springs Formation, shall be made pursuant to the provisions of Part 172 of this subchapter.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

NOVEMBER 25, 1960.

[F.R. Doc. 60–11143; Filed, Nov. 30, 1960; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Japan Chemical Research and Industries, Ltd., No. 5, 1-Chome, Kyobashi, Chou-Ku, Tokyo, Japan, proposing the issuance of a regulation to provide for the use of certain resins in can enamels.

Dated: November 23, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60–11166; Filed, Nov. 30, 1960; 8:49 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 41]

[Regulatory Docket No. 582; Draft Release No. 60–19]

CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

Notice of Proposed Rule Making

Pursuant to the authority delegated to me by the Administrator (14 CFR 405.27), notice is hereby given that the Federal Aviation Agency (FAA) has under consideration a proposal to revise Part 41 of the Civil Air Regulations as hereinafter set forth:

Interested persons may participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. prior to March 1, 1961. Thereafter, such comments will be available in the Docket Section to all interested persons. After examination of the original comments received, interested persons may submit such additional comments in response thereto as they may desire. Such additional comments must be submitted prior to April 1, 1961. (Photostatic copies of comments on file in the Docket Section may be obtained upon payment of the cost of such copies). All original comments and additional comments in response thereto received by the dates specified for receipt thereof will be considered by the Administrator before taking action on the proposed rules. The proposals contained in this notice may be changed in the light of the comments received.

A revision of Part 41 of the Civil Air Regulations has been under consideration for some time, the last proposed revision having been circulated by the Civil Aeronautics Board in Draft Release 58-24, dated December 24, 1958 (24 F.R. 145).

While this proposal takes cognizance of those areas wherein scheduled international air carrier operations differ from those of scheduled domestic air carriers, it also recognizes the many areas in which such operations are similar, and attempts to achieve as much uniformity as is practicable between the regulations of Parts 40 and 41 in such areas.

All of the operations specifications currently issued to Part 41 air carriers contain certain rules which are substantively the same. Since these rules are standard in nature, it is appropriate to remove them from the individual operations specifications of the air carriers and incorporate them, without substantive change, in revised Part 41 as rules of general applicability. This has been done in this proposal with respect to some of the standard provisions presently contained in the operations specifications of the individual Part 41 air carriers. The Agency proposes to incorporate other such standard provisions, without substantive change, into revised Part 41 as finally adopted.

This proposal incorporates into revised Part 41 certain rules and interpretive material related to the basic regulation which heretofore have been published separately in a Civil Aeronautics Manual. In addition, it will be noted that an Appendix A has been added in this proposal which sets forth in detail the required first-aid and survival equipment approved by FAA.

Many of the provisions appearing in Draft Release 58-24 have been changed in this proposal. A number of these changes reflect pertinent amendments to the Civil Air Regulations which have been adopted since the circulation of Draft Release 58-24. Other changes are the result of evaluation of comments received in response to that draft release and reflect the current views of the Federal Aviation Agency with regard to the rules governing air carrier operations in overseas and foreign air transportation.

The differences between the provisions of this proposal and those in current Part 41 and previous Draft Release 58-24 are too numerous to be listed in their entirety. However, some significant differences reflected in this current proposal are as follows:

1. Section 41.1 *Applicability:* A provision has been added to the applicability section to make it clear that certain of the rules prescribed in the part apply to individual persons other than the air carrier itself.

2. Sections 41.19 and 41.20 *Contents and utilization of operations specifications:* Provisions have been added to § 41.19 to require basic information regarding airplanes operated by an air carrier to be included in its operations specifications. A requirement has been added to § 41.20 to insure that provisions of the operations specifications inserted in the air carrier's manual can be readily identified as such.

3. Section 41.30 *General route requirements:* This section has been clarified with respect to the showing required to obtain approval of routes.

4. Section 41.32 *Width of routes:* This section has been revised to specify, with greater particularity, widths for various approved routes.

5. Section 41.36 *En route navigational facilities:* A provision has been added to make it clear that navigational facilities on approved routes outside of controlled airspace will be specified in the air carrier operations specifications.

6. Section 41.53 *Airplane Flight Manual:* A provision has been added which will insure that when required sections of the Airplane Flight Manual are incorporated into the Air Carrier Manual they will not lose their identity.

7. Sections 41.70 and 41.90 *Transport and nontransport category airplane operating limitations:* The Agency believes that large cargo-carrying airplanes should be required by regulation to meet the same performance operating limitations standards as passenger-carrying airplanes. Such a requirement is considered necessary for the protection of the public in the vicinity of airports and also to insure the safety of the airplane and flight crew during en route flight over high terrain. Accordingly, §§ 41.70 and 41.90 have been revised by deleting those terms which limit the applicability of the current sections to passenger-carrying airplanes only.

8. Section 41.111 *Fire prevention—cargo airplanes:* This section has been added to make provisions for fire prevention applicable to cargo-only airplanes.

9. Section 41.115 *Fire precautions:* Paragraph (e) of this section brings the regulation into conformity with Part 4b of the Civil Air Regulations with respect to Class "E" compartments in cargo-only airplanes.

10. Section 41.153 *Carriage of cargo in passenger compartments:* This section has been revised to include provisions for approved bins to be located in the passenger compartment.

11. Section 41.173 *Emergency equipment for all operations:* This section reflects requirements for approval of emergency equipment. It would require first-aid kits to be approved in accordance with the applicable provisions of Appendix A.

12. Section 41.174 *Seats and safety belts for all occupants:* The provisions of this section have been revised to specify more clearly seat and safety belt requirements for occupants of air carrier airplanes. As revised, the rule would require each person on board the airplane to occupy a seat or berth with a safety belt fastened during takeoff and landing.

13. Section 41.179 *Shoulder harness:* A new provision has been added to require all airplanes to be equipped with shoulder harnesses at the pilot and flight engineer stations.

14. Sections 41.206 and 41.208 *Equipment for operations over water and uninhabited terrain:* These sections would require survival equipment for operations over water and uninhabited terrain to be approved in accordance with the applicable provisions of Appendix A.

15. Section 41.209 *Equipment for operations on which specialized means of navigation are required:* This section would require the air carrier to show that sufficient and adequate navigation equipment is provided in the aircraft to accomplish the specialized navigation required on each route.

16. Section 41.243 *Maintenance and inspection personnel duty time limitations:* This section would provide duty time limitations for maintenance and inspection personnel located within the United States, its Territories and possessions.

17. Section 41.262 *Flight navigator:* This section elaborates on the requirements for inclusion of a flight navigator in the flight crew and specifies in detail the criteria which will be used in determining when a navigator is required.

18. Section 41.265 *Flight attendant:* Considering the problems associated with evacuation, decompression, and other possible emergency situations, it is provided in this section that when more than 100 passengers are carried, the air carrier shall assign at least 3 flight attendants to serve on the aircraft.

19. Section 41.267 *Assignment of emergency evacuation functions for each crewmember:* In order to insure crew coordination and familiarity of all crewmembers with emergency functions, this section has been revised to require the air carrier to show that such functions are realistic and capable of accomplishment, and to require all such functions to be executed by all crewmembers in the course of their participation in the approved training program.

20. Sections 41.303 and 41.304 *Pilot route and airport qualification requirements:* The airport qualification requirements have been revised to provide that a pilot may be dispatched to an airport without prior entry provided initial entry is made at higher than normally authorized minimums. In addition, a pilot would be required to accomplish more stringent ground qualification procedures in order to become route and airport qualified.

21. Section 41.310 *Aircraft dispatcher qualification for duty:* The provisions of this section are similar to those currently in Part 40. In order to dispatch aircraft in his area of jurisdiction, a dispatcher would be required to make at least one round trip each 12 months over a representative route in his area.

22. Section 41.320 *Flight time limitations:* Due to the complexity of the issues inherent in flight time limitations for flight crewmembers, the Bureau is making a separate study of the current limitations and will present proposals to amend them in a separate rule making proceeding. Accordingly, the currently effective flight time limitations for flight crewmembers are retained in this proposal with the understanding that they will be the subject of a separate and subsequent proposal.

23. Section 41.356 *Admission to flight deck:* For purposes of clarification, the provisions of this section have been revised to include a definition of the term "flight deck."

24. Section 41.359 *Operations over approved routes required:* This section, the substance of which presently appears in individual operations specifications of the air carriers, has general application and is, therefore, being incorporated into Part 41, so that it may be deleted from the individual operations specifications of the air carriers.

25. Section 41.387 *Dispatching under IFR, over-the-top, or over water:* This provision eliminates the long- and short-range requirements contained in current Part 41 and provides for dispatch to destination, requiring that both destination and alternates be forecast to be above minimums at time of arrival. This provision applies the same standards as are currently applicable to Part 40 air carriers. Redispatch in flight is provided for in § 41.393.

26. Section 41.396 *Fuel supply for all operations:* The provisions of this section proposed for reciprocating and turbo-propeller-powered airplanes are considered adequate for safe operations and more realistic than present requirements in view of the related dispatch rules proposed in this revision. The fuel requirements proposed for turbo jet airplanes are the same as those currently contained in Special Civil Air Regulation No. SR-427B.

27. Section 41.397 *Factors involved in computing fuel required:* In order to clarify the issues involved in fuel planning, a provision has been added requiring consideration to be given to the possibility of having to conduct an instrument approach and climb back to altitude for flight to an alternate airport, when planning fuel requirements for operations.

This revision is proposed under the authority of Titles III and VI, and section 1102 of the Federal Aviation Act of 1958.

(72 Stat. 744-754, 775-780, and 797; 49 U.S.C. 1341-1355, 1421-1430, and 1502)

Issued in Washington, D.C., on November 25, 1960.

OSCAR BAKKE,
Director,
Bureau of Flight Standards.

Proposed revision of Part 41 of the Civil Air Regulations:

APPLICABILITY AND DEFINITIONS

Sec.
41.1 Applicability of this part.
41.2 Additional rules applicable to operations subject to this part.
41.5 Definitions.

CERTIFICATION RULES AND OPERATIONS SPECIFICATIONS REQUIREMENTS

41.10 Certificate required.
41.13 Issuance of certificate.
41.15 Display of certificate and operations specifications.
41.16 Duration of certificate.
41.18 Operations specifications required.
41.19 Contents of operations specifications.
41.20 Utilization of operations specifications.
41.21 Amendment of operations specifications.
41.22 Inspection authority.
41.23 Operations and maintenance base and office.

REQUIREMENTS FOR APPROVAL OF ROUTES

41.30 General route requirements.
41.32 Width of routes.
41.33 Airports.
41.34 Communications facilities.
41.35 Weather reporting facilities.
41.36 En route navigational facilities.
41.37 Servicing and maintenance facilities.
41.38 Location of dispatch centers.

MANUAL REQUIREMENTS

41.50 Preparation of Air Carrier Manual.
41.51 Contents of Air Carrier Manual.
41.52 Distribution of Air Carrier Manual.
41.53 Airplane Flight Manual.

AIRPLANE REQUIREMENTS

41.60 General.
41.61 Airplane certification requirements.
41.62 Airplane limitation for type of route.
41.63 Proving tests.

AIRPLANE PERFORMANCE OPERATING LIMITATIONS; TRANSPORT CATEGORY

41.70 Transport category airplane operating limitations.
41.71 Weight limitations.
41.72 Takeoff limitations to provide for engine failure.
41.73 En route limitations; all engines operating.
41.74 En route limitations; one engine inoperative.
41.75 En route limitations; two engines inoperative.
41.76 Special en route limitations.
41.77 Landing distance limitations; airport of destination.
41.78 Landing distance limitations; alternate airports.

AIRPLANE PERFORMANCE OPERATING LIMITATIONS; NONTRANSPORT CATEGORY

41.90 Nontransport category airplane operating limitations.
41.91 Takeoff limitations.
41.92 En route limitations; one engine inoperative.
41.93 Landing distance limitations; airport of intended destination.
41.94 Landing distance limitations; alternate airports.

SPECIAL AIRWORTHINESS REQUIREMENTS

41.110 Fire prevention; passenger airplanes.
41.111 Fire prevention; cargo airplanes.
41.112 Cabin interiors.
41.113 Internal doors.
41.114 Ventilation.
41.115 Fire precautions.
41.116 Proof of compliance.
41.117 Propeller de-icing fluid.
41.118 Pressure cross-feed arrangements.
41.119 Location of fuel tanks.
41.120 Fuel system lines and fittings.
41.121 Fuel lines and fittings in designated fire zones.
41.122 Fuel valves.
41.123 Oil lines and fittings in designated fire zones.
41.124 Oil valves.
41.125 Oil system drains.
41.126 Engine breather line.
41.127 Fire walls.
41.128 Fire-wall construction.
41.129 Cowling.
41.130 Engine accessory section diaphragm.
41.131 Powerplant fire protection.
41.132 Flammable fluids.
41.133 Shutoff means.
41.134 Lines and fittings.
41.135 Vent and drain lines.
41.136 Fire-extinguishing systems.
41.137 Fire-extinguishing agents.
41.138 Extinguishing agent container pressure relief.
41.139 Extinguishing agent container compartment temperature.
41.140 Fire-extinguishing system materials.
41.141 Fire-detector systems.
41.142 Fire detectors.
41.143 Protection of other airplane components against fire.
41.150 Control of engine rotation.
41.151 Fuel system independence.
41.152 Induction system ice prevention.
41.153 Carriage of cargo in passenger compartments.
41.154 Carriage of cargo in cargo compartments.

INSTRUMENTS AND EQUIPMENT FOR ALL OPERATIONS

41.170 Airplane instruments and equipment for all operations.
41.171 Flight and navigational equipment for all operations.
41.172 Engine instruments for all operations.
41.173 Emergency equipment for all operations.
41.174 Seats and safety belts for all occupants.
41.175 Miscellaneous equipment for all operations.
41.176 Cockpit check procedure.
41.177 Passenger information for all operations.
41.178 Exterior exit and evacuation markings for all operations.
41.179 Shoulder harness.

INSTRUMENTS AND EQUIPMENT FOR SPECIAL OPERATIONS

41.200 Instruments and equipment for operations at night.
41.201 Instruments and equipment for operations under IFR or over-the-top.
41.202 Supplemental oxygen; reciprocating-engine-powered airplanes.
41.202-T Supplemental oxygen for sustenance; turbine-powered airplanes.
41.203 Supplemental oxygen requirements for pressurized cabin airplanes; reciprocating-engine-powered airplanes.
41.203-T Supplemental oxygen for emergency descent and for first aid; turbine-powered airplanes with pressurized cabins.
41.204 Equipment standards.
41.205 Protective breathing equipment for the flight crew.
41.206 Equipment for extended overwater operations.
41.207 Equipment for operations in icing conditions.
41.208 Equipment for operations over frigid and tropical land areas.
41.209 Equipment for operations on which specialized means of navigation are required.
41.210 Flight recorders.

RADIO EQUIPMENT

Sec.
41.230 Radio equipment.
41.231 Radio equipment for operations under VFR over routes navigated by pilotage.
41.232 Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top.
41.233 Radio equipment for extended overwater operations and for certain other operations.

MAINTENANCE AND INSPECTION REQUIREMENTS

41.240 Responsibility for maintenance.
41.241 Maintenance and inspection requirements.
41.242 Maintenance and inspection training program.
41.243 Maintenance and inspection personnel duty time limitations.

AIRMEN AND CREWMEMBER REQUIREMENTS

41.260 Utilization of airman.
41.261 Composition of flight crew.
41.262 Flight navigator.
41.263 Flight engineer.
41.265 Flight attendant.
41.266 Aircraft dispatcher.
41.267 Assignment of emergency evacuation functions for each crewmember.

TRAINING PROGRAM

41.280 Establishment of approved program.
41.281 Pilot ground training.
41.282 Pilot flight training.
41.283 Flight navigator training.
41.284 Flight engineer training.
41.285 Crewmember emergency training.
41.286 Aircraft dispatcher training.

FLIGHT CREWMEMBER AND DISPATCHER QUALIFICATION

41.300 Qualification requirements.
41.301 Pilot recent experience.
41.302 Pilot checks.
41.303 Pilot route and airport qualification requirements.
41.304 Maintenance and reestablishment of pilot route and airport qualifications for particular trips.
41.305 Proficiency checks; second in command.
41.306 Flight navigator qualification for duty.
41.307 Flight engineer qualification for duty.
41.310 Aircraft dispatcher qualification for duty.

FLIGHT TIME LIMITATIONS

41.320 Flight time limitations for aircraft having a crew of one or two pilots.
41.321 Flight time limitations for aircraft having two pilots and one additional flight crewmember.
41.322 Flight time limitations for aircraft having three or more pilots and an additional flight crewmember.
41.323 Flight time limitations for pilots not regularly assigned.
41.324 Deadhead transportation.
41.325 Other commercial flying.
41.326 Flight time limitations; flight engineer.
41.327 Flight time limitations; flight navigator.

DUTY TIME LIMITATIONS: AIRCRAFT DISPATCHER

41.340 Aircraft dispatcher daily duty time limitations.

FLIGHT OPERATIONS

41.351 Operational control.
41.352 Operations notices.
41.353 Operations schedules.
41.354 Flight crewmembers at controls.
41.355 Manipulation of controls.
41.356 Admission to flight deck.
41.357 Flying equipment.

Sec.
41.358 Restriction or suspension of operation.
41.359 Operations over approved routes rerequired.
41.360 Emergency decisions; pilot in command aircraft dispatcher.
41.361 Reporting potentially hazardous meteorological conditions and irregularities of ground and navigational facilities.
41.362 Reporting mechanical irregularities.
41.363 Engine failure or precautionary stoppage.
41.364 Instrument approach and IFR landing procedures.
41.365 Requirements for air carrier equipment interchange.
41.370 Briefing of passengers.
41.371 Drinking and serving of alcoholic beverages.

DISPATCHING RULES

41.381 Necessity for dispatching authority.
41.382 Familiarity with weather conditions.
41.383 Facilities and services.
41.384 Airplane equipment required for dispatch.
41.385 Communications and navigational facilities required for dispatch.
41.386 Dispatching under VFR.
41.387 Dispatching under IFR, over-the-top, or over water.
41.388 Alternate airport for departure.
41.389 Alternate airport for destination; IFR or over-the-top.
41.390 Alternate airport weather minimums.
41.391 Continuance of flight; flight hazards.
41.392 Operation in icing conditions.
41.393 Original dispatch, redispatch, and continuance of flight.
41.394 Dispatch to and from refueling and provisional airports.
41.395 Takeoffs and landings at alternate airports and at airports not listed in the operations specifications.
41.396 Fuel supply for all operations.
41.397 Factors involved in computing fuel required.
41.405 Takeoff and landing weather minimums: VFR.
41.406 Takeoff and landing weather minimums: IFR.
41.407 Applicability of reported weather minimums.
41.408 Flight altitude rules.
41.409 Altitude maintenance on initial approach.
41.410 Preparation of dispatch release.
41.411 Preparation of load manifest.

REQUIRED RECORDS AND REPORTS

41.501 Crewmember and dispatcher records.
41.502 Dispatch release form.
41.503 Load manifest.
41.504 Disposition of load manifest, dispatch release form, and flight plans.
41.505 Maintenance records.
41.506 Maintenance log.
41.507 Daily mechanical reports.
41.508 Mechanical interruption summary report.
41.509 Alteration and repair reports.
41.510 Maintenance release.
41.511 Communication records.

APPENDIX A—Requirements for approval of first-aid and survival equipment.

APPLICABILITY AND DEFINITIONS

§ 41.1 Applicability of this part.

The provisions of this part are applicable to the following persons:

(a) An air carrier holding a certificate of public convenience and necessity issued by the Board, when it engages in scheduled air transportation between a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between any place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; or between places in a Territory or possession of the United States; or between any place in the United States and any place outside thereof; or between any two places outside the United States; or between a place in the State of Alaska and any other state of the United States; or between the State of Hawaii and any other state of the United States;

(b) An Alaskan air carrier and any other air carrier holding a certificate of public convenience and necessity issued by the Board, when it engages in scheduled air carrier operations between points within the State of Alaska or the State of Hawaii; and

(c) Any airman, air agency, or other person employed or used by an air carrier in the conduct of operations subject to this part (including the operation, inspection, maintenance, and overhaul of aircraft), and any person while on board an airplane operated by an air carrier under the provisions of this part.

§ 41.2 Additional rules applicable to operations subject to this part.

Unless otherwise specified in this part or the operations specifications of the air carrier, operations subject to the provisions of this part shall be conducted in compliance with the following additional rules:

(a) *Within the United States.* Parts 43 and 60 of this chapter (Civil Air Regulations).

(b) *Over the high seas.* Part 43 of this chapter (Civil Air Regulations) and Annex 2 (Rules of the Air) to the Convention on International Civil Aviation, except where any rule of this part is more restrictive and may be followed without violating the rules of Annex 2.

(c) *Within a foreign country.* Part 43 of this chapter (Civil Air Regulations) and the air traffic rules of the foreign government and local airport rules, except where any rule of this part is more restrictive and may be followed without violating the rules of such foreign country.

§ 41.5 Definitions.

As used in this part, terms are defined as follows:

Accelerate-stop distance. Accelerate-stop distance is the distance required to accelerate an airplane to a specified speed and, assuming failure of the critical engine at the instant that speed is attained, to bring the airplane to a stop. (See the pertinent airworthiness requirements for the manner in which such distance is determined).

Administrator. The Administrator is the Administrator of the Federal Aviation Agency.

Air carrier. An air carrier is any citizen of the United States who undertakes directly, or by lease or by other arrangement, to engage in air transportation as defined in the Federal Aviation Act of 1958.

Aircraft dispatcher. An aircraft dispatcher is an individual holding a valid aircraft dispatcher certificate issued by the Administrator who exercises responsibility with the pilot in command in the operational control of each flight.

Airframe. Airframe means any and all kinds of fuselages, booms, nacelles, cowlings, fairings, empennages, airfoil surfaces, and landing gear, and all parts, accessories, or controls, of whatever description, appertaining thereto, but not including engines and propellers.

Airplane. An airplane is a power-driven fixed-wing aircraft, heavier than air, which is supported by the dynamic reaction of the air against its wings.

Airport. An airport is an area of land or water which is used, or intended for use, for the landing and takeoff of airplanes.

Alternate airport. An alternate airport is an approved airport to which a flight may proceed if a landing at the airport to which the flight was dispatched becomes inadvisable.

Appliances. Appliances are instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of airplanes in flight (including communication equipment, electronic devices, and any other mechanism or mechanisms installed in or attached to airplanes during flight, but excluding parachutes), and which are not a part or parts of airframes, engines, or propellers.

Approved. Approved, when used alone or as modifying terms such as means, method, action, equipment, etc., means approved by the Administrator, or his authorized representative.

Authorized representative of the Administrator. An authorized representative of the Administrator is any employee of the Federal Aviation Agency authorized by the Administrator to perform particular duties of the Administrator under the provisions of this part.

Board. Board means the Civil Aeronautics Board.

Check airman. A check airman is an airman designated by the air carrier and approved by the Administrator to examine other airmen to determine their proficiency with respect to procedures and technique and their competence to perform their respective airman duties.

Crewmember. A crewmember is any individual assigned by an air carrier for the performance of duty on an airplane in flight.

Critical engine. The critical engine is that engine the failure of which gives the most adverse effect on the airplane flight characteristics relative to the case under consideration.

Critical-engine-failure speed, V_1 (transport category airplanes). The critical-engine-failure speed is the airplane speed used in the determination of the takeoff distance required at which the critical engine is assumed to fail. (See the pertinent airworthiness requirements for the manner in which such speed is determined.)

Director. Director means Director, Bureau of Flight Standards, Federal Aviation Agency, or his authorized representative.

Dispatch release. A dispatch release is an authorization issued by an air carrier specifying the conditions for the origination or continuance of a particular flight.

Effective length of runway—(1) *Takeoff.* The effective length of runway for takeoff as used in the takeoff operating limitations for nontransport category airplanes is the distance from the end of the runway at which the take off is started to the point at which the obstruction clearance plane associated with the other end of the runway intersects the centerline of the runway.

(2) *Landing.* The effective length of runway for landing as used in the landing operating limitations for both transport and nontransport category airplanes is the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway to the far end thereof.

En route. En route means the entire flight from the point of origination to the point of termination, including intermediate stops.

Extended overwater operation. An extended overwater operation is an operation over water conducted at a distance in excess of 50 miles from the nearest shore line.

FAA. FAA means the Federal Aviation Agency.

Fireproof. Fireproof material means a material which will withstand heat equally well or better than steel in dimensions appropriate for the purpose for which it is to be used. When applied to material and parts used to confine fires in designated fire zones, fireproof means that the material or part will perform this function under the most severe conditions of fire and duration likely to occur in such zones.

Fire-resistant. When applied to sheet or structural members, fire-resistant material means a material which will withstand heat equally well or better than aluminum alloy in dimensions appropriate for the purpose for which it is to be used. When applied to fluid-carrying lines, this term refers to a line and fitting assembly which will perform its intended protective functions under the heat and other conditions likely to occur at the particular location.

Flame-resistant. Flame-resistant material means a material which will not support combustion to the point of propagating, beyond safe limits, a flame after the removal of the ignition source.

Flammable. Flammable fluids or gases mean those which will ignite readily or explode.

Flash-resistant. Flash-resistant material means material which will not burn violently when ignited.

Flight crewmember. A flight crewmember is a crewmember assigned to duty on an airplane as a pilot, flight navigator, or flight engineer.

Flight engineer. A flight engineer is an individual holding a valid flight engineer certificate issued by the Administrator and whose primary assigned duty during flight is to assist the pilots in the mechanical operation of an airplane.

Flight navigator. A flight navigator is an individual holding a valid flight navigator certificate issued by the Administrator and who is responsible to the pilot in command for the safe and efficient navigation of the airplane.

Flight time. Flight time is the time from the moment the airplane first moves under its own power for the purpose of flight until it comes to rest at the next point of landing (block-to-block time).

IFR. IFR is the symbol used to designate instrument flight rules.

ILS. ILS is the symbol used to designate instrument landing system.

Maximum certificated takeoff weight. Maximum certificated takeoff weight is the maximum takeoff weight prescribed by the terms of the airplane airworthiness certificate or the Airplane Flight Manual.

Minimum control speed. The minimum control speed is the minimum speed at which an airplane can be safely controlled in flight after an engine suddenly becomes inoperative. (See pertinent airworthiness requirements for the manner in which such speed is determined.)

Month. A month is that period of time extending from the first day of any month as delineated by the calendar through the last day thereof.

Night. Night is the time between the ending of evening civil twilight and the beginning of morning civil twilight as published in the American Air Almanac converted to local time for the locality concerned.

NOTE: The American Air Almanac containing the ending of evening twilight and the beginning of morning twilight tables may be obtained from the Superintendent of Documents, Government Printing Office, Washington 25, D.C. Information is also available concerning such tables in the Offices of the Federal Aviation Agency or the United States Weather Bureau.

Obstruction clearance area—(1) *Takeoff.* A takeoff obstruction clearance area as used in the takeoff operating limitations for nontransport category airplanes is an area on the earth's surface defined as follows: The centerline of the obstruction clearance area in plan view shall coincide with and prolong the centerline of the runway, beginning at the point where the obstruction clearance plane intersects the centerline of the runway and proceeding to a point not less than 1,500 feet from the beginning point. Thereafter the centerline shall proceed in a path consistent with the takeoff procedure for the runway or, where such a procedure has not been established, consistent with turns of at least 4,000-foot radius until a point is reached beyond which the obstruction clearance plane clears all obstructions. The obstruction clearance area shall extend laterally for a distance of 200 feet on each side of the centerline at the point where the obstruction clearance plane intersects the runway and shall continue at this width until the end of the runway; thence it shall increase uniformly to 500 feet on each side of the centerline at a point 1,500 feet from the intersection of the

obstruction clearance plane with the runway; thereafter it shall extend laterally for a distance of 500 feet on each side of the centerline.

(2) *Landing.* A landing obstruction clearance area as used in the landing operating limitations for both transport and nontransport category airplanes is an area on the earth's surface defined as follows: The centerline of the obstruction clearance area in plan view shall coincide with and prolong the centerline of the runway, beginning at the point where the obstruction clearance plane intersects the centerline of the runway and proceeding to a point not less than 1,500 feet from the beginning point. Thereafter the centerline shall proceed in a path consistent with the instrument approach procedure for the runway or, where such a procedure has not been established, consistent with turns of at least 4,000-foot radius until a point is reached beyond which the obstruction clearance plane clears all obstructions. The obstruction clearance area shall extend laterally for a distance of 200 feet on each side of the centerline at the point where the obstruction clearance plane intersects the runway and shall continue at this width until the end of the runway; thence it shall increase uniformly to 500 feet on each side of the centerline at a point 1,500 feet from the intersection of the obstruction clearance plane with the runway; thereafter it shall extend laterally for a distance of 500 feet on each side of the centerline.

Obstruction clearance plane. An obstruction clearance plane is a plane which is tangent to or clears all obstructions within the obstruction clearance area and which slopes upward from the runway at a slope of 1:20 to the horizontal as shown in a profile view of the obstruction clearance area.

Operational control. Operational control is the exercise of authority over initiation, continuation, diversion, or termination of a flight.

Operations specifications. Operations specifications are rules of particular applicability issued by the Director to an air carrier pursuant to the provisions of this part.

Over-the-top. Over-the-top means the operation of an airplane above a layer of clouds or obscuring phenomena that is reported as "broken," "overcast," or "obscuration" and not classified as "thin" or "partial."

PAR. PAR is the symbol used to designate precision approach radar.

Pilot in command. The pilot in command is the pilot designated by the air carrier as the pilot responsible for the operation and safety of the airplane during the time defined as flight time.

Pilotage. Pilotage is navigation by means of visual reference to landmarks.

Point-of-no-return. Point-of-no-return means that point at which the airplane no longer has sufficient fuel under existing conditions to return to the point of departure or any alternate for that point.

Propeller. A propeller is an external device for propelling an airplane through the air, having blades mounted on a power-driven shaft, which when rotated produces by its action on the air a thrust approximately parallel to the longitudinal axis of the airplane.

Provisional airport. A provisional airport is an airport approved for use by an air carrier for the purpose of providing service to a community when the regular airport serving that community is not available.

Rating. A rating is an authorization issued with an airman certificate, and forming a part thereof, delineating special conditions, privileges, or limitations pertaining to such certificate.

Refueling airport. A refueling airport is an airport approved as an airport to which flights may be dispatched only for refueling.

Regular airport. A regular airport is an airport approved as a regular terminal or intermediate stop on an authorized route.

Route. A route is the airspace on either side of a course or courses joining those points on the surface of the earth between which an air carrier is authorized to conduct scheduled operations.

Route segment. A route segment is a portion of a route each terminus of which is identified by: (1) A continental or insular geographic location, or (2) a point at which a definite radio fix can be established.

Runway. A runway is a clearly defined area of an airport suitable for the safe landing or take-off of airplanes.

Second in command. Second in command means a pilot other than the pilot in command who is designated by the air carrier to act as second in command of an airplane.

Show. Show (or shows) means to demonstrate or prove to the satisfaction of the Administrator or his authorized representative prior to the issuance of the air carrier operating certificate and at any time thereafter upon request.

Synthetic trainer. A synthetic trainer is a device, the use of which is approved to simulate certain operating conditions.

Takeoff safety speed, V_2. The takeoff safety speed is the airplane speed used in the determination of the takeoff flight path at which the climb-out following takeoff can be safely executed with one engine inoperative and with the airplane in the takeoff configuration. (See the pertinent airworthiness requirements for the manner in which such speed is determined.)

Time in service. Time in service, as used in computing maintenance time records, is the time from the moment an airplane leaves the ground until it touches the ground at the end of a flight.

Transport category airplane. A transport category airplane is an airplane which has been type certificated in accordance with the requirements of Part 4b of this subchapter or the transport category requirements of Part 4a of this subchapter.

Type. With regard to airman qualifications, type means all airplanes of the same basic design, including all modifications thereto except those modifications which the Administrator has found result in a substantial change in characteristics pertinent to the airman concerned.

VFR. VFR is the symbol used to designate visual flight rules.

V_{s_0}. *V_{s_0}* is the symbol used to designate the true indicated stalling speed or the minimum steady flight speed in the landing configuration.

Week. A week is that period of time extending from the first day of any week as delineated by the calendar through the last day thereof.

Year. A year is that period of time extending from the first day of any year as delineated by the calendar through the last day thereof.

CERTIFICATION RULES AND OPERATIONS SPECIFICATIONS REQUIREMENTS

§ 41.10 Certificate required.

No person subject to this part shall conduct operations without, or in violation of the terms of, an air carrier operating certificate issued by the Director.

NOTE: Applications, and instructions for the preparation thereof, for the issuance or amendment of air carrier operating certificates may be obtained from any FAA Air Carrier Safety District Office.

§ 41.13 Issuance of certificate.

(a) An air carrier operating certificate will be issued to an applicant having a certificate of public convenience and necessity or other appropriate economic authority issued by the Board when after investigation it is found that such applicant is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of this part and with the operations specifications provided for in this part.

NOTE: Certificates currently in force on the effective date of this part will be deemed to be certificates issued under this part.

(b) Whenever, upon investigation, the Director finds that the general standards of safety required for air carrier operations within Alaska, or for air carrier operations conducted pursuant to a temporary authorization issued under Title IV of the Federal Aviation Act of 1958, require or permit a deviation from any specific requirement of this part for a particular operation or class of operations for which an application for an air carrier operating certificate has been made, he may issue operations specifications prescribing requirements which deviate from the requirements of this part.

(c) An air carrier holding economic authority to engage in scheduled cargo-only operations between any of the places specified in § 41.1 (a) or (b) may, upon application, be authorized by the Director to conduct such operations in accordance with the air carrier certification and operation rules prescribed in Part 42 of this chapter (Civil Air Regulations).

§ 41.15 Display of certificate and operations specifications.

The air carrier operating certificate and operations specifications shall be available at the principal operations office of an air carrier for inspection by an authorized representative of the Administrator.

§ 41.16 Duration of certificate.

An air carrier operating certificate shall remain in effect until termination of the certificate of public convenience and necessity or other economic authorization issued by the Board to the air carrier, or until such operating certificate is surrendered, suspended, revoked, or otherwise terminated by the Administrator. After suspension or revocation it shall be returned to the Director.

§ 41.18 Operations specifications required.

(a) On and after the effective date of this part, all air carrier operations specications currently in force relating to operations subject to the provisions of this part shall cease to be a part of any air carrier operating certificate and shall be deemed to be operations specifications issued under this part. Thereafter new or amended specifications may be issued by the Director for operations subject to this part. Applications for amendments of operations specifications shall be submitted to the local FAA Air Carrier Safety District Office charged with the overall inspection of the air carrier's operations at least 15 days prior to the proposed effective dates of such amendments, unless an authorized representative of such office approves a shorter filing period.

(b) No person shall engage in or conduct any operations to which this part is applicable without, or in violation of, currently effective operations specifications issued under this part.

NOTE: Forms for initial applications for operations specifications will be furnished upon request by any FAA Air Carrier Safety District Office.

§ 41.19 Contents of operations specifications.

The operations specifications will contain the following:

(a) Types of operations authorized;

(b) Types of airplanes authorized for use;

(c) En route authorizations and limitations;

(d) Airport authorizations and limitations;

(e) Time limitation for overhauls, inspections, and checks of airframes, engines, propellers, and appliances, or standards by which such time limitations shall be determined;

(f) Procedures used to maintain control of weight and balance of airplanes;

(g) Interline equipment interchange requirements, if pertinent;

(h) A current list of all airplanes being operated by the air carrier in accordance with its operating certificate, showing the registration number, manufacturer's model, serial number, configuration including the maximum number of authorized passenger and crew seats, and whether the airplane is used in passenger or cargo operations or both, and, if the airplane is not owned by the air carrier, the name of the lessor: *Provided,* That airplanes owned by or under lease to another air carrier and being operated under an interchange agreement need not be listed if the operations specifications incorporate a reference to the agreement and to the operations specifications of such other air carrier in which the airplanes are listed; and

(i) Such additional items as the Director determines, under the enabling provisions of this part, are necessary to cover a particular situation.

§ 41.20 Utilization of operations specifications.

The air carrier shall keep its personnel informed with respect to the contents of the operations specifications and all amendments thereto applicable to the individual's duties and responsibilities. A set of specifications shall be maintained by the air carrier as a separate and complete document. Pertinent excerpts from the specifications or references thereto shall be inserted in the manual issued by the air carrier in such a manner that they do not lose their identity in any respect.

§ 41.21 Amendment of operations specifications.

Any operations specifications may be amended by the Director if he finds that safety in air transportation so requires or permits. Except in the case of an emergency requiring immediate action in respect to safety in air transportation or upon consent of the air carrier concerned, no amendment will become effective prior to thirty days after the date the air carrier has been notified of such amendment.

§ 41.22 Inspection authority.

An authorized representative of the Administrator shall be permitted at any time and place to make inspections or examinations to determine an air carrier's compliance with the requirements of the Federal Aviation Act of 1958, the Civil Air Regulations, the provisions of the air carrier's operating certificate, and the operations specifications.

§ 41.23 Operations and maintenance base and office.

Each air carrier shall, 30 days in advance of a change in the address of its principal business office, its principal operations base, or its principal maintenance base, give written notice thereof to the FAA Air Carrier Safety District Office charged with overall inspection of the air carrier's operations.

REQUIREMENTS FOR APPROVAL OF ROUTES

§ 41.30 General route requirements.

The air carrier shall show for route approvals that it is competent to conduct scheduled operations over any route or route segment to be used between any regular, provisional, or refueling airport, that the facilities and services required by §§ 41.33 through 41.38 are available and adequate for the type of operation proposed, and, for routes outside of controlled airspace, that traffic density does not constitute a hazard. Actual flight over a route or route segment will be required, unless the air carrier shows that such flight is not essential to safety, considering the availability and adequacy of airports, lighting, maintenance, communication, navigation, fueling, ground and aircraft radio facilities, and the competence of personnel to be used in the proposed operation.

§ 41.32 Width of routes.

Routes approved for operations over U.S. Federal airways or foreign airways or advisory routes (ADR's) shall have a width equal to the designated width of such airways or advisory routes. All other approved routes shall have widths specified in the air carrier's operations specifications which the carrier shows will permit a safe operation, considering terrain clearance and minimum en route altitudes, available ground and airborne navigational aids, procedures, systems and equipment, air traffic density, and air traffic control procedures.

§ 41.33 Airports.

The air carrier shall show that each regular, provisional, refueling, and alternate airport on each route is properly equipped and adequate for the type of operations to be conducted. Consideration shall be given to items such as size, surface, obstructions, facilities, public protection, lighting, navigational and communications aids, and traffic control.

NOTE: Criteria to be used are contained in appropriate Technical Standard Orders published by the FAA.

§ 41.34 Communications facilities.

The air carrier shall show that a two-way air/ground radio communication system is available at such points as will insure reliable and rapid communications under normal operating conditions over the entire route, either direct or via approved point-to-point circuits, between airplanes and the appropriate dispatch office, and between airplanes and the appropriate air traffic control unit: *Provided,* That for operations within the continental limits of the United States (excluding Alaska) such communication systems between airplanes and the appropriate dispatch office shall be independent of systems operated by the Federal Government.

§ 41.35 Weather reporting facilities.

The air carrier shall show that sufficient weather reporting services are available along the route to insure weather reports and forecasts necessary for the operation. Weather reports used to control flight movements shall be those prepared and released by the U.S. Weather Bureau, or by a source approved by the Weather Bureau, or, in foreign operations when such observations are not available, by a source found by the Director to be satisfactory. Forecasts used to control flight movements shall be prepared from such weather reports.

§ 41.36 En route navigational facilities.

The air carrier shall show that nonvisual ground aids to air navigation are available along each route, that they are so located as to permit navigation to any regular, provisional, refueling, or alternate airport within the degree of accuracy necessary for the operation involved, and that they are available for the navigation of airplanes within the degree of accuracy required for air traffic control: *Provided,* That nonvisual ground aids to navigation are not required: (a)

obstruction clearance plane with the runway; thereafter it shall extend laterally for a distance of 500 feet on each side of the centerline.

(2) *Landing.* A landing obstruction clearance area as used in the landing operating limitations for both transport and nontransport category airplanes is an area on the earth's surface defined as follows: The centerline of the obstruction clearance area in plan view shall coincide with and prolong the centerline of the runway, beginning at the point where the obstruction clearance plane intersects the centerline of the runway and proceeding to a point not less than 1,500 feet from the beginning point. Thereafter the centerline shall proceed in a path consistent with the instrument approach procedure for the runway or, where such a procedure has not been established, consistent with turns of at least 4,000-foot radius until a point is reached beyond which the obstruction clearance plane clears all obstructions. The obstruction clearance area shall extend laterally for a distance of 200 feet on each side of the centerline at the point where the obstruction clearance plane intersects the runway and shall continue at this width until the end of the runway; thence it shall increase uniformly to 500 feet on each side of the centerline at a point 1,500 feet from the intersection of the obstruction clearance plane with the runway; thereafter it shall extend laterally for a distance of 500 feet on each side of the centerline.

Obstruction clearance plane. An obstruction clearance plane is a plane which is tangent to or clears all obstructions within the obstruction clearance area and which slopes upward from the runway at a slope of 1:20 to the horizontal as shown in a profile view of the obstruction clearance area.

Operational control. Operational control is the exercise of authority over initiation, continuation, diversion, or termination of a flight.

Operations specifications. Operations specifications are rules of particular applicability issued by the Director to an air carrier pursuant to the provisions of this part.

Over-the-top. Over-the-top means the operation of an airplane above a layer of clouds or obscuring phenomena that is reported as "broken," "overcast," or "obscuration" and not classified as "thin" or "partial."

PAR. PAR is the symbol used to designate precision approach radar.

Pilot in command. The pilot in command is the pilot designated by the air carrier as the pilot responsible for the operation and safety of the airplane during the time defined as flight time.

Pilotage. Pilotage is navigation by means of visual reference to landmarks.

Point-of-no-return. Point-of-no-return means that point at which the airplane no longer has sufficient fuel under existing conditions to return to the point of departure or any alternate for that point.

Propeller. A propeller is an external device for propelling an airplane through the air, having blades mounted on a power-driven shaft, which when rotated produces by its action on the air a thrust approximately parallel to the longitudinal axis of the airplane.

Provisional airport. A provisional airport is an airport approved for use by an air carrier for the purpose of providing service to a community when the regular airport serving that community is not available.

Rating. A rating is an authorization issued with an airman certificate, and forming a part thereof, delineating special conditions, privileges, or limitations pertaining to such certificate.

Refueling airport. A refueling airport is an airport approved as an airport to which flights may be dispatched only for refueling.

Regular airport. A regular airport is an airport approved as a regular terminal or intermediate stop on an authorized route.

Route. A route is the airspace, on either side of a course or courses joining those points on the surface of the earth between which an air carrier is authorized to conduct scheduled operations.

Route segment. A route segment is a portion of a route each terminus of which is identified by: (1) A continental or insular geographic location, or (2) a point at which a definite radio fix can be established.

Runway. A runway is a clearly defined area of an airport suitable for the safe landing or take-off of airplanes.

Second in command. Second in command means a pilot other than the pilot in command who is designated by the air carrier to act as second in command of an airplane.

Show. Show (or shows) means to demonstrate or prove to the satisfaction of the Administrator or his authorized representative prior to the issuance of the air carrier operating certificate and at any time thereafter upon request.

Synthetic trainer. A synthetic trainer is a device, the use of which is approved to simulate certain operating conditions.

Takeoff safety speed, V_2. The takeoff safety speed is the airplane speed used in the determination of the takeoff flight path at which the climb-out following takeoff can be safely executed with one engine inoperative and with the airplane in the takeoff configuration. (See the pertinent airworthiness requirements for the manner in which such speed is determined.)

Time in service. Time in service, as used in computing maintenance time records, is the time from the moment an airplane leaves the ground until it touches the ground at the end of a flight.

Transport category airplane. A transport category airplane is an airplane which has been type certificated in accordance with the requirements of Part 4b of this subchapter or the transport category requirements of Part 4a of this subchapter.

Type. With regard to airman qualifications, type means all airplanes of the same basic design, including all modifications thereto except those modifications which the Administrator has found result in a substantial change in characteristics pertinent to the airman concerned.

VFR. VFR is the symbol used to designate visual flight rules.

V_{s_0}. V_{s_0} is the symbol used to designate the true indicated stalling speed or the minimum steady flight speed in the landing configuration.

Week. A week is that period of time extending from the first day of any week as delineated by the calendar through the last day thereof.

Year. A year is that period of time extending from the first day of any year as delineated by the calendar through the last day thereof.

CERTIFICATION RULES AND OPERATIONS SPECIFICATIONS REQUIREMENTS

§ 41.10 Certificate required.

No person subject to this part shall conduct operations without, or in violation of the terms of, an air carrier operating certificate issued by the Director.

NOTE: Applications, and instructions for the preparation thereof, for the issuance or amendment of air carrier operating certificates may be obtained from any FAA Air Carrier Safety District Office.

§ 41.13 Issuance of certificate.

(a) An air carrier operating certificate will be issued to an applicant having a certificate of public convenience and necessity or other appropriate economic authority issued by the Board when after investigation it is found that such applicant is properly and adequately equipped and able to conduct a safe operation in accordance with the requirements of this part and with the operations specifications provided for in this part.

NOTE: Certificates currently in force on the effective date of this part will be deemed to be certificates issued under this part.

(b) Whenever, upon investigation, the Director finds that the general standards of safety required for air carrier operations within Alaska, or for air carrier operations conducted pursuant to a temporary authorization issued under Title IV of the Federal Aviation Act of 1958, require or permit a deviation from any specific requirement of this part for a particular operation or class of operations for which an application for an air carrier operating certificate has been made, he may issue operations specifications prescribing requirements which deviate from the requirements of this part.

(c) An air carrier holding economic authority to engage in scheduled cargo-only operations between any of the places specified in § 41.1 (a) or (b) may, upon application, be authorized by the Director to conduct such operations in accordance with the air carrier certification and operation rules prescribed in Part 42 of this chapter (Civil Air Regulations).

§ 41.15 Display of certificate and operations specifications.

The air carrier operating certificate and operations specifications shall be available at the principal operations office of an air carrier for inspection by an authorized representative of the Administrator.

§ 41.16 Duration of certificate.

An air carrier operating certificate shall remain in effect until termination of the certificate of public convenience and necessity or other economic authorization issued by the Board to the air carrier, or until such operating certificate is surrendered, suspended, revoked, or otherwise terminated by the Administrator. After suspension or revocation it shall be returned to the Director.

§ 41.18 Operations specifications required.

(a) On and after the effective date of this part, all air carrier operations specifications currently in force relating to operations subject to the provisions of this part shall cease to be a part of any air carrier operating certificate and shall be deemed to be operations specifications issued under this part. Thereafter new or amended specifications may be issued by the Director for operations subject to this part. Applications for amendments of operations specifications shall be submitted to the local FAA Air Carrier Safety District Office charged with the overall inspection of the air carrier's operations at least 15 days prior to the proposed effective dates of such amendments, unless an authorized representative of such office approves a shorter filing period.

(b) No person shall engage in or conduct any operations to which this part is applicable without, or in violation of, currently effective operations specifications issued under this part.

NOTE: Forms for initial applications for operations specifications will be furnished upon request by any FAA Air Carrier Safety District Office.

§ 41.19 Contents of operations specifications.

The operations specifications will contain the following:

(a) Types of operations authorized;

(b) Types of airplanes authorized for use;

(c) En route authorizations and limitations;

(d) Airport authorizations and limitations;

(e) Time limitation for overhauls, inspections, and checks of airframes, engines, propellers, and appliances, or standards by which such time limitations shall be determined;

(f) Procedures used to maintain control of weight and balance of airplanes;

(g) Interline equipment interchange requirements, if pertinent;

(h) A current list of all airplanes being operated by the air carrier in accordance with its operating certificate, showing the registration number, manufacturer's model, serial number, configuration including the maximum number of authorized passenger and crew seats, and whether the airplane is used in passenger or cargo operations or both, and, if the airplane is not owned by the air carrier, the name of the lessor: *Provided,* That airplanes owned by or under lease to another air carrier and being operated under an interchange agreement need not be listed if the operations specifications incorporate a reference to the agreement and to the operations specifications of such other air carrier in which the airplanes are listed; and

(i) Such additional items as the Director determines, under the enabling provisions of this part, are necessary to cover a particular situation.

§ 41.20 Utilization of operations specifications.

The air carrier shall keep its personnel informed with respect to the contents of the operations specifications and all amendments thereto applicable to the individual's duties and responsibilities. A set of specifications shall be maintained by the air carrier as a separate and complete document. Pertinent excerpts from the specifications or references thereto shall be inserted in the manual issued by the air carrier in such a manner that they do not lose their identity in any respect.

§ 41.21 Amendment of operations specifications.

Any operations specifications may be amended by the Director if he finds that safety in air transportation so requires or permits. Except in the case of an emergency requiring immediate action in respect to safety in air transportation or upon consent of the air carrier concerned, no amendment will become effective prior to thirty days after the date the air carrier has been notified of such amendment.

§ 41.22 Inspection authority.

An authorized representative of the Administrator shall be permitted at any time and place to make inspections or examinations to determine an air carrier's compliance with the requirements of the Federal Aviation Act of 1958, the Civil Air Regulations, the provisions of the air carrier's operating certificate, and the operations specifications.

§ 41.23 Operations and maintenance base and office.

Each air carrier shall, 30 days in advance of a change in the address of its principal business office, its principal operations base, or its principal maintenance base, give written notice thereof to the FAA Air Carrier Safety District Office charged with overall inspection of the air carrier's operations.

REQUIREMENTS FOR APPROVAL OF ROUTES

§ 41.30 General route requirements.

The air carrier shall show for route approvals that it is competent to conduct scheduled operations over any route or route segment to be used between any regular, provisional, or refueling airport, that the facilities and services required by §§ 41.33 through 41.38 are available and adequate for the type of operation proposed, and, for routes outside of controlled airspace, that traffic density does not constitute a hazard. Actual flight over a route or route segment will be required, unless the air carrier shows that such flight is not essential to safety, considering the availability and adequacy of airports, lighting, maintenance, communication, navigation, fueling, ground and aircraft radio facilities, and the competence of personnel to be used in the proposed operation.

§ 41.32 Width of routes.

Routes approved for operations over U.S. Federal airways or foreign airways or advisory routes (ADR's) shall have a width equal to the designated width of such airways or advisory routes. All other approved routes shall have widths specified in the air carrier's operations specifications which the carrier shows will permit a safe operation, considering terrain clearance and minimum en route altitudes, available ground and airborne navigational aids, procedures, systems and equipment, air traffic density, and air traffic control procedures.

§ 41.33 Airports.

The air carrier shall show that each regular, provisional, refueling, and alternate airport on each route is properly equipped and adequate for the type of operations to be conducted. Consideration shall be given to items such as size, surface, obstructions, facilities, public protection, lighting, navigational and communications aids, and traffic control.

NOTE: Criteria to be used are contained in appropriate Technical Standard Orders published by the FAA.

§ 41.34 Communications facilities.

The air carrier shall show that a two-way air/ground radio communication system is available at such points as will insure reliable and rapid communications under normal operating conditions over the entire route, either direct or via approved point-to-point circuits, between airplanes and the appropriate dispatch office, and between airplanes and the appropriate air traffic control unit: *Provided,* That for operations within the continental limits of the United States (excluding Alaska) such communication systems between airplanes and the appropriate dispatch office shall be independent of systems operated by the Federal Government.

§ 41.35 Weather reporting facilities.

The air carrier shall show that sufficient weather reporting services are available along the route to insure weather reports and forecasts necessary for the operation. Weather reports used to control flight movements shall be those prepared and released by the U.S. Weather Bureau, or by a source approved by the Weather Bureau, or, in foreign operations when such observations are not available, by a source found by the Director to be satisfactory. Forecasts used to control flight movements shall be prepared from such weather reports.

§ 41.36 En route navigational facilities.

The air carrier shall show that nonvisual ground aids to air navigation are available along each route, that they are so located as to permit navigation to any regular, provisional, refueling, or alternate airport within the degree of accuracy necessary for the operation involved, and that they are available for the navigation of airplanes within the degree of accuracy required for air traffic control: *Provided,* That nonvisual ground aids to navigation are not required: (a)

For day VFR operations which the air carrier shows can be conducted safely by pilotage because of the characteristics of the terrain, or for night VFR operations on routes which the air carrier shows have reliably lighted landmarks which are adequate for safe operations; or (b) on segments of routes where the use of celestial or other specialized means of navigation is approved.

NOTE: Nonvisual ground navigational aids required for approval of routes outside of controlled airspace will be specified in the air carrier operations specifications.

§ 41.37 Servicing and maintenance facilities.

The air carrier shall show that competent personnel and adequate facilities and equipment, including spare parts, supplies, and materials, are available at such points along the air carrier's routes as are necessary for the proper servicing, maintenance, repair, and inspection of airplanes and auxiliary equipment.

§ 41.38 Location of dispatch centers.

The air carrier shall show that it has a sufficient number of dispatch centers adequate for the operations to be conducted and located at such points as are necessary to insure the proper operational control of each flight.

MANUAL REQUIREMENTS

§ 41.50 Preparation of Air Carrier Manual.

The air carrier shall prepare and keep current a manual for the use and guidance of flight and ground operations personnel in the conduct of its operations.

§ 41.51 Contents of Air Carrier Manual.

(a) The manual shall contain instructions, information, and data necessary for the personnel concerned to carry out their duties and responsibilities with a high degree of safety. It shall be in a form to facilitate easy revision, and each page shall bear the date of the last revision thereof. The contents of such manual shall not be contrary to the provisions of any Federal regulations, foreign regulations where applicable, operations specifications, or the operating certificate. The manual may be in two or more separate parts, encompassing together all of the information listed below (e.g., flight operations, ground operations, maintenance, communications, etc.) to facilitate use by the personnel concerned, but each part shall contain that portion of the information listed below as is appropriate for each group of personnel:

(1) General policies;

(2) Duties and responsibilities of each crewmember and appropriate members of the ground organization;

(3) Reference to appropriate regulations prescribed by the Federal Aviation Agency;

(4) Flight dispatching and control, including procedures for coordinated dispatch;

(5) En route flight, navigational, and communication procedures, including procedures for the dispatch or continuance of flight, if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route;

(6) Appropriate information from the en route operations specifications, including for each approved route the types of airplanes authorized, their crew complement, the type of operation (i.e., VFR, IFR, day, night) and other pertinent information;

(7) Appropriate information from the airport operations specifications, including for each airport its location, its designation (i.e., regular, alternate, provisional, etc.), types of airplanes authorized, instrument approach procedures, landing and takeoff minimums, and other pertinent information;

(8) Takeoff, en route, and landing weight limitations;

(9) Procedures for familiarizing passengers with the use of emergency equipment during flight;

(10) Emergency procedures and equipment;

(11) The method of designating succession of command of flight crewmembers;

(12) Procedures for determining the usability of landing and takeoff areas and for dissemination of pertinent information to operations personnel;

(13) Procedures for operation during periods of icing, hail, thunderstorms, turbulence, or any potentially hazardous meteorological conditions;

(14) Airman training programs, including appropriate ground, flight, and emergency phases;

(15) Instructions and procedures for maintenance, repair, overhaul, and servicing;

(16) Time limitations for overhaul, inspection, and checks, of airframes, engines, propellers and appliances, or standards by which such time limitations shall be determined;

(17) Procedures for refueling airplanes, elimination of fuel contamination, protection from fire including electrostatic protection, and the supervision and protection of passengers during refueling;

(18) Inspections for airworthiness, including instructions covering procedures, standards, responsibilities, and authority of the inspection personnel;

(19) Methods and procedures for maintaining the airplane weight and center of gravity within approved limits;

(20) Pilot and dispatcher route and airport qualification procedures;

(21) Accident notification procedures; and

(22) Other data or instructions related to safety.

(b) At least one complete master copy of the manual containing all parts thereof shall be retained at the appropriate operations base of the air carrier.

§ 41.52 Distribution of Air Carrier Manual.

(a) Copies of the entire manual, or appropriate portions thereof, together with revisions thereto, shall be furnished by the Air Carrier to the following:

(1) Appropriate ground operations and maintenance personnel of the air carrier;

(2) Crewmembers; and

(3) Authorized representatives of the Administrator assigned to the air carrier.

(b) All copies of the manual shall be kept up to date.

§ 41.53 Airplane Flight Manual.

(a) The air carrier shall keep current an approved Airplane Flight Manual for each type of transport category airplane which it operates.

(b) An approved Airplane Flight Manual or a manual complying with § 41.50 and containing information required for the Airplane Flight Manual shall be carried in each transport category airplane. When sections of the required information from the Airplane Flight Manual are incorporated in the Air Carrier Manual, they shall be clearly identified as Airplane Flight Manual requirement.

AIRPLANE REQUIREMENTS

§ 41.60 General.

Airplanes shall be identified, certificated, and equipped in accordance with the applicable airworthiness requirements of the Civil Air Regulations. No air carrier shall operate any airplane in scheduled, charter, or special service operations unless such airplane meets the requirements of this part, is in an airworthy condition, is registered as a civil aircraft of the United States and carries an appropriate and currently effective certificate of airworthiness issued by the Administrator. In determining compliance with the applicable airworthiness requirements and operating limitations, an approved weight and balance control system based upon average, assumed, or estimated weights may be utilized.

§ 41.61 Airplane certification requirements.

(a) *Airplanes certificated on or before June 30, 1942.* Airplanes certificated as a basic type on or before June 30, 1942, shall either:

(1) Retain their present airworthiness certification status and meet the requirements of § 41.90, or

(2) Comply with either the performance requirements of §§ 4a.737–T through 4a.750–T of this chapter (Civil Air Regulations) or the performance requirements of §§ 4b.110 through 4b.125 of this chapter (Civil Air Regulations) and in addition shall meet the requirements of § 41.70: *Provided*, That should any type be so qualified, all airplanes of any one operator of the same or related types shall be similarly qualified and operated.

(b) *Airplanes certificated after June 30, 1942.* Airplanes certificated as a basic type after June 30, 1942, and used in passenger-carrying operations shall be certificated as transport category airplanes and shall meet the requirements of § 41.70.

§ 41.62 Airplane limitation for type of route.

All airplanes used in passenger-carrying operations shall be multiengine airplanes and shall comply with the following requirements:

(a) *Two- or three-engine airplanes.* Two- or three-engine airplanes shall not be used in passenger-carrying operations unless adequate airports are so located along the route that the airplanes will at no time be at a greater distance therefrom than one hour of flying time in still air at normal cruising speed with one engine inoperative: *Provided*, That the Director may specify distances greater or less than those set forth herein when the character of the terrain, the type of operation, or the performance of the airplanes to be used so permit or require.

(b) *Land airplanes on extended overwater routes.* Land airplanes operated on flights involving extended overwater operations shall be certificated or approved as adequate for ditching in accordance with the ditching provisions of Part 4b of this chapter (Civil Air Regulations): *Provided*, That the DC-3 and C-46 type airplanes need not be so certificated or approved.

§ 41.63 Proving tests.

(a) A type of airplane not previously proved for use in scheduled operation shall have at least 100 hours of proving tests, in addition to the airplane certification tests, accomplished under the supervision of an authorized representative of the Director. As part of the 100-hour total at least 50 hours shall be flown over authorized routes and at least 10 hours shall be flown at night.

(b) A type of airplane which has been previously proved shall be tested for at least 50 hours, of which at least 25 hours shall be flown over authorized routes, unless deviations are specifically authorized by the Director on the ground that the special circumstances of a particular case make a literal observance of the requirements of this paragraph unnecessary for safety, when the airplane:

(1) Is materially altered in design,[1] or

(2) Is to be used by an air carrier who has not previously proved such a type.

(c) During proving tests only those persons required to make the tests and those designated by the Board or the Administrator shall be carried. Mail, express, and other cargo may be carried when approved.

AIRPLANE PERFORMANCE OPERATING LIMITATIONS: TRANSPORT CATEGORY

§ 41.70 Transport category airplane operating limitations.

(a) In operating any transport category airplane not subject to (b) of this section, the provisions of this paragraph and §§ 41.71 through 41.78 shall be complied with: *Provided*, That the Director may, upon application, authorize deviations from such provisions when special circumstances of a particular case make a literal observance of the requirements unnecessary for safety. Deviations authorized will be specified in operations specifications of the air carrier.

[1] A type of airplane will be considered to be materially altered in design when the alterations include, but are not necessarily limited to: (a) Installation of powerplants other than the powerplants of a type similar to those with which the aircraft is certificated; (b) major alteration to the aircraft or its components which materially affects the flight characteristics.

(1) The performance data contained in the Airplane Flight Manual shall be applied in determining compliance with these provisions. Where conditions differ from those for which specific tests were made, compliance shall be determined by interpolation or by computation of the effects of changes in the specific variables where such interpolations or computations will give results substantially equaling in accuracy the results of a direct test.

(2) The airplane shall not be taken off at a weight which exceeds the allowable weight for the runway being used as determined in accordance with the takeoff runway limitation of the transport category operating rules of this part, after taking into account the temperature operating correction factors required by §§ 4a.749a–T or 4b.117 of this subchapter, and set forth in the Airplane Flight Manual for the airplane.

(b) In operating any turbine-powered transport category airplane certificated in accordance with the performance requirements of Special Civil Air Regulations Nos. SR–422, SR–422A, or SR–422B, the operating rules specified in the applicable Special Civil Air Regulation shall be complied with in lieu of §§ 41.71 through 41.78.

§ 41.71 Weight limitations.

(a) No airplane shall be taken off from any airport located at an elevation outside of the altitude range from which maximum takeoff weights have been determined, and no airplane shall depart for an airport of intended destination or have any airport specified as an alternate which is located at an elevation outside of the altitude range for which maximum landing weights have been determined.

(b) The weight of the airplane at takeoff shall not exceed the authorized maximum takeoff weight for the elevation of the airport from which the takeoff is to be made.

(c) The weight at takeoff shall be such that, allowing for normal consumption of fuel and oil in flight to the airport of intended destination, the weight on arrival will not exceed the authorized maximum landing weight for the elevation of such airport.

§ 41.72 Takeoff limitations to provide for engine failure.

No takeoff shall be made except under conditions which will permit compliance with the following requirements:

(a) It shall be possible, from any point in the takeoff up to the time of attaining the critical-engine-failure speed, to bring the airplane to a safe stop on the runway as shown by the accelerate-stop distance data.

(b) It shall be possible, if the critical engine should fail at any instant after the airplane attains the critical-engine-failure speed, to proceed with the takeoff and attain a height of 50 feet, as indicated by the takeoff path data, before passing over the end of the runway. Thereafter it shall be possible to clear all obstacles, either by at least 50 feet vertically, as shown by the takeoff path data, or by at least 200 feet horizontally within the airport boundaries and by at least 300 feet horizontally after passing beyond such boundaries. In determining the allowable deviation of the flight path in order to avoid obstacles by at least the distances above set forth, it shall be assumed that the airplane is not banked before reaching a height of 50 feet, as shown by the takeoff path data, and that a maximum bank thereafter does not exceed 15°.

(c) In applying the requirements of paragraphs (a) and (b) of this section, corrections shall be made for any gradient of the takeoff surface. To allow for wind effect, takeoff data based on still air may be corrected by not more than 50 percent of the reported wind component along the takeoff path if opposite to the direction of takeoff, and shall be corrected by not less than 150 percent of the reported wind component if in the direction of takeoff.

§ 41.73 En route limitations; all engines operating.

No airplane shall be taken off at a weight in excess of that which would permit a rate of climb (expressed in feet per minute), with all engines operating, of at least 6 V_{s_0} (when V_{s_0} is expressed in miles per hour) at an altitude of at least 1,000 feet above the elevation of the highest ground or obstruction within 10 miles on either side of the intended track. Transport category airplanes certificated under Part 4a of this subchapter are not required to comply with this section. For the purpose of this section it shall be assumed that the weight of the airplane as it proceeds along its intended track is progressively reduced by normal consumption of fuel and oil.

§ 41.74 En route limitations; one engine inoperative.

(a) No airplane shall be taken off at a weight in excess of that which would permit a rate of climb (expressed in feet per minute), with one engine inoperative, of at least $\left(0.06 - \frac{0.08}{N}\right) V_{s_0}^2$ (when N is the number of engines installed and V_{s_0} is expressed in miles per hour) at an altitude of at least 1,000 feet above the elevation of the highest ground or obstruction within 10 miles on either side of the intended track, except that for transport category airplanes certificated under Part 4a of the Civil Air Regulations, the rate of climb shall be $0.02\ V_{s_0}^2$.

(b) As an alternative to the provisions of paragraph (a) of this section, an air carrier may utilize an approved procedure whereby its airplanes are operated at an all-engines-operating altitude such that in the event of an engine failure the airplane can continue flight to an alternate airport where a landing can be made in accordance with the provisions of § 41.78, the flight path clearing all terrain and obstructions along the route within 5 miles on either side of the intended track by at least 2,000 feet. In addition, if such a procedure is utilized, subparagraphs (1) through (6) of this paragraph shall be complied with:

(1) The rate of climb (as presented in the Airplane Flight Manual for the appropriate weight and altitude) used in calculating the airplane's flight path shall be diminished by an amount, in feet per minute, equal to $\left(0.06-\frac{0.08}{N}\right)V_{s_0}^2$ (when N is the number of engines installed and V_{s_0} is expressed in miles per hour) for airplanes certificated under Part 4b of this chapter (Civil Air Regulations) and by $0.02\ V_{s_0}^2$ for airplanes certificated under Part 4a of this chapter (Civil Air Regulations).

(2) The all-engines-operating altitude shall be such that, in the event the critical engine becomes inoperative at any point along the route, the flight will be capable of proceeding to a predetermined alternate airport by use of this procedure. For the purpose of determining the takeoff weight, the airplane shall be assumed to pass over the critical obstruction following engine failure at a point no closer to the critical obstruction than the nearest approved radio navigational fix: *Provided,* That a procedure established on a different basis will be approved if the air carrier shows that adequate operational safeguards exist.

(3) The airplane shall meet the provisions of paragraph (a) of this section at 1,000 feet above the airport used as an alternate in this procedure.

(4) The procedure shall include an approved method of accounting for winds and temperatures which would otherwise adversely affect the flight path.

(5) In complying with this procedure fuel jettisoning will be approved if the air carrier shows that it has an adequate training program, proper instructions are given to the flight crew, and all other precautions are taken to insure a safe procedure.

(6) The alternate airport shall be specified in the dispatch release and shall meet the provisions of § 41.390.

(c) For the purposes of this section it shall be assumed that the weight of the airplane as it proceeds along its intended track is progressively reduced by normal consumption of fuel and oil.

§ 41.75 En route limitations; two engines inoperative.

The provisions of this section shall apply only to airplanes certificated in accordance with the performance requirements of Part 4b of this chapter (Civil Air Regulations). No airplane having four or more engines shall be flown along an intended track except under the conditions of either paragraph (a) or (b) of this section.

(a) No place along the intended track shall be more than 90 minutes away from an available landing area at which a landing can be made in accordance with the requirements of § 41.78, assuming all engines to be operating at cruising power.

(b) The takeoff weight shall not be greater than that which would permit the airplane, with the two critical engines inoperative, to have a rate of climb in feet per minute equal to $0.01\ V_{s_0}^2$ (V_{s_0} being expressed in miles per hour) along all points of the route, from the point where the two engines are assumed to fail simultaneously to the landing area, either at an altitude of 1,000 feet above the elevation of the highest ground or obstruction within 10 miles on either side of the intended track or at an altitude of 5,000 feet, whichever is higher. The point where the two engines are assumed to fail shall be that point along the route which is most critical with respect to the takeoff weight. In showing compliance with this prescribed rate of climb, the following shall apply:

(1) It shall be permissible to consider that the weight of the airplane as it proceeds along its intended track is progressively reduced by normal consumption of fuel and oil with all engines operating up to the point where the two engines are assumed to fail and with two engines operating beyond that point.

(2) Where the engines are assumed to fail at an altitude above the prescribed minimum altitude, compliance with the prescribed rate of climb at the prescribed minimum altitude need not be shown during the descent from the cruising altitude to the prescribed minimum altitude if, at the end of the descent and during the subsequent portion of the flight, the prescribed rate of climb is met at the prescribed minimum altitudes. The descent shall be assumed to be along a net flight path and the rate of descent for the appropriate weight and altitude shall be assumed to be $0.01\ V_{s_0}^2$ greater than indicated by the performance information approved by the Administrator.

(3) If fuel jettisoning is provided, the airplane's weight at the point where the two engines are assumed to fail shall be considered to be not less than that which would include sufficient fuel to proceed to an available landing area at which a landing can be made in accordance with the requirements of § 41.78 and to arrive there at an altitude of at least 1,000 feet directly over the landing area.

§ 41.76 Special en route limitations.

The 10-mile lateral distance specified in §§ 41.73 through 41.75 may, for a distance of no more than 20 miles, be reduced to 5 miles, if operating VFR, or if air navigational facilities are so located as to provide a reliable and accurate identification of any high ground or obstruction located outside of such 5-mile lateral distance but within the 10-mile distance.

§ 41.77 Landing distance limitations; airport of destination.

No airplane shall be taken off at a weight in excess of that which, under the conditions stated in this part, would permit the airplane to be brought to rest at the field of intended destination within 60 percent of the effective length of the runway from a point 50 feet directly above the intersection of the obstruction clearance plane and the runway. For the purpose of this section it shall be assumed that the takeoff weight of the airplane is reduced by the weight of the fuel and oil expected to be consumed in flights to the field of intended destination.

(a) It shall be assumed that the airplane is landed on the most favorable runway and direction in still air.

(b) It shall be assumed, considering the probable wind velocity and direction, that the airplane is landed on the most suitable runway, taking due account of the ground handling characteristics of the airplane type involved and other conditions (e.g., landing aids, terrain, etc.) and allowing for the effect on the landing path and roll of not more than 50 percent of the wind component along the landing path if opposite to the direction of landing, or not less than 150 percent of the wind component if in the direction of landing.

(c) If the airport of intended destination will not permit full compliance with paragraph (b) of this section, the airplane may be taken off if an alternate airport is designated which permits compliance with § 41.78.

§ 41.78 Landing distance limitations; alternate airports.

No airport shall be designated as an alternate airport in a dispatch release unless the airplane at the weight anticipated at the time of arrival at such airport can comply with the requirements of § 41.77: *Provided,* That the airplane can be brought to rest within 70 percent of the effective length of the runway.

AIRPLANE PERFORMANCE OPERATING LIMITATIONS; NONTRANSPORT CATEGORY

§ 41.90 Nontransport category airplane operating limitations.

In operating any large, nontransport category airplane, the provisions of §§ 41.91 through 41.94 shall be complied with: *Provided,* That the Director may, upon application, authorize deviations from such provisions when the special circumstances of a particular case make a literal observance of the requirements unnecessary for safety. Deviations authorized will be specified in operations specifications of the air carrier. Approved performance data only shall be used in determining compliance with the provisions of §§ 41.91 through 41.94.

§ 41.91 Takeoff limitations.

No takeoff shall be made at a weight in excess of that which will permit the airplane to be brought to a safe stop within the effective length of the runway from any point during the takeoff up to the time of attaining 105 percent of minimum control speed or 115 percent of the power-off stalling speed in the takeoff configuration, whichever is the greater. In applying the requirements of this section:

(a) It may be assumed that takeoff power is used on all engines during the acceleration;

(b) Account may be taken of not more than 50 percent of the reported wind component along the takeoff path if opposite to the direction of takeoff, and account shall be taken of not less than 150 percent of the reported wind component if in the direction of the takeoff;

(c) Account shall be taken of the average runway gradient when the average gradient is greater than ½ percent. The average runway gradient is the difference between the elevations of the end points of the runway divided by the total length.

(d) It shall be assumed that the airplane is operating in the standard atmosphere.

§ 41.92 En route limitations; one engine inoperative.

(a) No takeoff shall be made at a weight in excess of that which will permit the airplane to climb at a rate of at least 50 feet per minute with the critical engine inoperative at an altitude of at least 1,000 feet above the elevation of the highest obstacle within 5 miles on either side of the intended track or at an altitude of 5,000 feet, whichever is the higher: *Provided,* That in the alternative an air carrier may utilize a procedure whereby the airplane is operated at an altitude such that, in event of an engine failure, the airplane can clear the obstacles within 5 miles on either side of the intended track by 1,000 feet, if the air carrier shows that such a procedure can be used without impairing the safety of operation. If such a procedure is utilized, the rate of descent for the appropriate weight and altitude shall be assumed to be 50 feet per minute greater than indicated by the approved performance data. Before approving such a procedure, there will be taken into account, for the particular route, route segment, or areas concerned, the reliability of wind and weather forecasting, the location and types of aids to navigation, the prevailing weather conditions, particularly the frequency and amount of turbulence normally encountered, terrain features, air traffic control problems, and all other operational factors which affect the safety of an operation utilizing such a procedure.

(b) In applying the requirements of paragraph (a) of this section, it shall be assumed that:

(1) The critical engine is inoperative;

(2) The propeller of the inoperative engine is in the minimum drag position;

(3) The wing flaps and landing gear are in the most favorable positions;

(4) The operative engine or engines are operating at the maximum continuous power available;

(5) The airplane is operating in the standard atmosphere; and

(6) The weight of the airplane is progressively reduced by the weight of the anticipated consumption of fuel and oil.

§ 41.93 Landing distance limitations; airport of intended destination.

No takeoff shall be made at a weight in excess of that which, allowing for the anticipated weight reduction due to consumption of fuel and oil, will permit the airplane to be brought to a stop within 60 percent of the effective length of the most suitable runway at the airport of intended destination.

(a) This weight shall in no instance be greater than that permissible if the landing were to be made:

(1) On the runway with the greatest effective length in still air, and

(2) On the runway required by the probable wind, taking into account not more than 50 percent of the probable headwind component and not less than 150 percent of the probable tailwind component.

(d) In applying the requirements of this section it shall be assumed that:

(1) The airplane passes directly over the intersection of the obstruction clearance plane and the runway at a height of 50 feet in a steady gliding approach at a true indicated air speed of at least $1.3\ V_{s_0}$;

(2) The landing is made in such a manner that it does not require any exceptional degree of skill on the part of the pilot; and

(3) The airplane is operating in the standard atmosphere.

§ 41.94 Landing distance limitations; alternate airports.

No airport shall be designated as an alternate airport in a dispatch release unless the airplane at the weight anticipated at the time of arrival at such airport can comply with the requirements of § 41.93: *Provided,* That the airplane can be brought to rest within 70 percent of the effective length of the runway.

SPECIAL AIRWORTHINESS REQUIREMENTS

§ 41.110 Fire prevention; passenger airplanes.

All airplanes used in passenger service, powered by engines rated at more than 600 horsepower each for maximum continuous operation and which have not been certificated in accordance with the provisions of Part 4b of this subchapter in effect on or after November 1, 1946, shall comply with the requirements contained in §§ 41.112 through 41.143: *Provided,* That if the Director finds that in particular models of existing airplanes literal compliance with specific items of these requirements might be extremely difficult of accomplishment and that such compliance would not contribute materially to the objective sought, he may accept such measures of compliance as he finds will effectively accomplish the basic objectives of the regulations in this part.

§ 41.111 Fire prevention; cargo airplanes.

All airplanes used in cargo-only service shall comply with the requirements contained in §§ 41.112, 41.113, 41.114, 41.115 (a), (b), (c), (d) or (e), and 41.116.

§ 41.112 Cabin interiors.

All compartments occupied or used by the crew or passengers shall comply with the following provisions:

(a) Materials shall in no case be less than flash-resistant.

(b) The wall and ceiling linings, the covering of all upholstering, floors, and furnishings shall be flame-resistant.

(c) Compartments where smoking is to be permitted shall be equipped with ash trays of the self-contained type which are completely removable. All other compartments shall be placarded against smoking.

(d) All receptacles for used towels, papers, and wastes shall be of fire-resistant material and shall incorporate covers or other provisions for containing possible fires started in the receptacles.

§ 41.113 Internal doors.

Where internal doors are equipped with louvres or other ventilating means, provision convenient to the crew shall be made for closing the flow of air through the door when such action is found necessary.

§ 41.114 Ventilation.

All passenger and crew compartments shall be suitably ventilated. Carbon monoxide concentration shall not exceed one part in 20,000 parts of air, and fuel fumes shall not be present. Where partitions between compartments are equipped with louvres or other means allowing air to flow between such compartments, provision convenient to the crew shall be made for closing the flow of air through the louvres or other means when such action is found necessary.

§ 41.115 Fire precautions.

Each compartment shall be designed so that, when used for the purpose of storing cargo or baggage, it shall comply with all of the requirements prescribed for cargo or baggage compartments. It shall include no controls, wiring, lines, equipment, or accessories the damage or failure of which would affect the safe operation of the airplane, unless such item is adequately shielded, isolated, or otherwise protected so that it cannot be damaged by movement of cargo in the compartment, and so that any breakage or failure of such item would not create a fire hazard in the compartment. Provision shall be made to prevent cargo or baggage from interfering with the functioning of the fire-protective features of the compartment. All materials used in the construction of cargo or baggage compartments, including tie-down equipment, shall be flame-resistant or better. In addition, all cargo and baggage compartments shall include provisions for safeguarding against fires according to the following classifications:

(a) *Class A.* Cargo and baggage compartments shall be classified in the "A" category if presence of a possible fire therein can be readily discernible to a member of the crew while at his station, and if all parts of the compartment are easily accessible in flight. A hand fire extinguisher shall be available for such compartment.

(b) *Class B.* Cargo and baggage compartments shall be classified in the "B" category if sufficient access is provided while in flight to enable a member of the crew to reach effectively all parts of the compartment and its contents with a hand fire extinguisher. Furthermore, the design of the compartment shall be such that, when the access provisions are being used, no hazardous quantity of smoke, flames, or extinguishing agent will enter any compartment occupied by the crew or passengers. Each compartment in this category shall be equipped with a separate system of an approved type of smoke detector or fire detector to give warning at the pilot or flight engineer station. Hand fire extinguishers shall be readily available for use in all compartments of this category. Compartments in this category shall be completely lined with fire-resistant material,

except that additional service lining of flame-resistant material may be employed.

(c) *Class C.* Cargo and baggage compartments shall be classified in the "C" category if they do not conform with the requirements for the "A" or "B" categories. Each compartment of the "C" category shall be equipped with: (1) A separate system of an approved type smoke detector or fire detector to give warning at the pilot or flight engineer station, and (2) an approved built-in fire-extinguishing system controlled from the pilot or flight engineer station. Means shall be provided to exclude hazardous quantities of smoke, flames, or extinguishing agent from entering into any compartment occupied by the crew or passengers. Ventilation and drafts shall be further controlled within each such cargo or baggage compartment to the extent that the extinguishing agent provided can control any fire which may start within the compartment. All cargo and baggage compartments of this category shall be completely lined with fire-resistant material, except that additional service lining of flame-resistant material may be employed.

(d) *Class D.* Cargo and baggage compartments shall be classified in the "D" category if they are so designed and constructed that a fire occurring therein will be completely confined without endangering the safety of the airplane or the occupants. Compliance shall be shown with the following:

(1) Means shall be provided to exclude hazardous quantities of smoke, flames, or other noxious gases from entering into any compartment occupied by the crew or passengers.

(2) Ventilation and drafts shall be controlled within each compartment so that any fire likely to occur in the compartment will not progress beyond safe limits.

NOTE: For compartments having a volume not in excess of 500 cubic feet, an airflow of not more than 1,500 cubic feet per hour is considered acceptable. For larger compartments lesser airflow may be applicable.

(3) The compartment shall be completely lined with fire-resistant material.

(4) Consideration shall be given to the effect of heat within the compartment on adjacent critical parts of the airplane.

(e) *Class E.* On airplanes used for the carriage of cargo only it shall be acceptable to classify the cabin area as a Class "E" compartment. Compliance shall be shown with the following:

(1) The compartment shall be completely lined with fire-resistant material.

(2) The compartment shall be equipped with a separate system of an approved type smoke or fire detector to give warning at the pilot or flight engineer station.

(3) Means shall be provided to shut off the ventilating airflow to or within the compartment. Controls for such means shall be accessible to the flight crew in the crew compartment.

(4) Means shall be provided to exclude hazardous quantities of smoke, flames, or noxious gases from entering the flight crew compartment.

(5) Required crew emergency exits shall remain accessible under all cargo loading conditions.

§ 41.116 Proof of compliance.

Compliance with those provisions of § 41.115 which refer to compartment accessibility, the entry of hazardous quantities of smoke or extinguishing agent into compartments occupied by the crew or passengers, and the dissipation of the extinguishing agent in category "C" compartments shall be demonstrated by tests in flight. It shall also be demonstrated during these tests that no inadvertent operation of smoke or fire detectors in adjacent or other compartments within the airplane would occur as a result of fire contained in any one compartment, either during or after extinguishment, unless the extinguishing system floods such compartments simultaneously.

§ 41.117 Propeller de-icing fluid.

If combustible fluid is used for propeller de-icing, the provisions of § 41.131 shall be complied with.

§ 41.118 Pressure cross-feed arrangements.

Pressure cross-feed lines shall not pass through portions of the airplane devoted to carrying personnel or cargo unless means are provided to permit the flight personnel to shut off the supply of fuel to these lines, or unless the lines are enclosed in a fuel- and fume-proof enclosure that is ventilated and drained to the exterior of the airplane. Such enclosures need not be used if these lines incorporate no fittings on or within the personnel or cargo areas and are suitably routed or protected to safeguard against accidental damage. Lines which can be isolated from the remainder of the fuel system by means of valves at each end shall incorporate provisions for the relief of excessive pressures that may result from exposure of the isolated line to high ambient temperatures.

§ 41.119 Location of fuel tanks.

Location of fuel tanks shall comply with the provisions of § 41.132. In addition, no portion of engine nacelle skin which lies immediately behind a major air egress opening from the engine compartment shall act as the wall of an integral tank. Fuel tanks shall be isolated from personnel compartments by means of fume- and fuel-proof enclosures.

§ 41.120 Fuel system lines and fittings.

Fuel lines shall be installed and supported in a manner that will prevent excessive vibration and will be adequate to withstand loads due to fuel pressure and accelerated flight conditions. Lines which are connected to components of the airplane between which relative motion may exist shall incorporate provisions for flexibility. Flexible connections in lines which may be under pressure and subjected to axial loading shall employ flexible hose assemblies rather than hose clamp connections. Flexible hose shall be of an acceptable type or proven suitable for the particular application.

§ 41.121 Fuel lines and fittings in designated fire zones.

Fuel lines and fittings in all designated fire zones (see § 41.131) shall comply with the provisions of § 41.134.

§ 41.122 Fuel valves.

In addition to the requirements contained in § 41.133 for shutoff means, all fuel valves shall be provided with positive stops or suitable index provisions in the "on" and "off" positions and shall be supported in such a manner that loads resulting from their operation or from accelerated flight conditions are not transmitted to the lines connected to the valve.

§ 41.123 Oil lines and fittings in designated fire zones.

Oil lines and fittings in all designated fire zones (see § 41.131) shall comply with the provisions of § 41.134.

§ 41.124 Oil valves.

Requirements of § 41.133 for shutoff means shall be complied with. Closing of oil shutoff means shall not prevent feathering the propeller, unless equivalent safety provisions are incorporated. All oil valves shall be provided with positive stops or suitable index provisions in the "on" and "off" positions, and shall be supported in such a manner that loads resulting from their operation or from accelerated flight conditions are not transmitted to the lines attached to the valve.

§ 41.125 Oil system drains.

Accessible drains shall be provided to permit safe drainage of the entire oil system and shall incorporate either a manual or automatic means for positive locking in the closed position. (See also § 41.135.)

§ 41.126 Engine breather line.

Engine breather lines shall be so arranged that condensed water vapor which may freeze and obstruct the line cannot accumulate at any point. Breathers shall discharge in a location which will not constitute a fire hazard in case foaming occurs and so that oil emitted from the line will not impinge upon the pilots' windshield. The breather shall not discharge into the engine air induction system. (See also § 41.135.)

§ 41.127 Fire walls.

All engines, auxiliary power units, fuelburning heaters, and other combustion equipment which are intended for operation in flight shall be isolated from the remainder of the airplane by means of fire walls or shrouds, or other equivalent means.

§ 41.128 Fire-wall construction.

Fire walls and shrouds shall be constructed in such a manner that no hazardous quantity of air, fluids, or flame can pass from the engine compartment to other portions of the airplane. All openings in the fire wall or shroud shall be sealed with close-fitting fireproof grommets, bushings, or fire-wall fittings. Fire walls and shrouds shall be constructed of fireproof material and

shall be protected against corrosion. The following materials have been found to comply with this requirement:

(a) Heat and corrosion resistant steel 0.015 inch thick;

(b) Low carbon steel, suitably protected against corrosion, 0.018 inch thick.

§ 41.129 Cowling.

Cowling shall be constructed and supported in such a manner as to be capable of resisting all vibration, inertia, and air loads to which it may normally be subjected. Provision shall be made to permit rapid and complete drainage of all portions of the cowling in all normal ground and flight attitudes. Drains shall not discharge in locations constituting a fire hazard. Cowling, unless otherwise specified by these regulations, shall be constructed of fire-resistant material. Those portions of the cowling which are subjected to high temperatures due to their proximity to exhaust system parts or exhaust gas impingement shall be constructed of fireproof material.

§ 41.130 Engine accessory section diaphragm.

Unless equivalent protection can be demonstrated by other means, a diaphragm shall be provided on air-cooled engines to isolate the engine power section and all portions of the exhaust system from the engine accessory compartment. This diaphragm shall comply with the provisions of § 41.128.

§ 41.131 Powerplant fire protection.

Engine accessory sections, installations where no isolation is provided between the engine and accessory compartment, also regions wherein lie auxiliary power units, fuel-burning heaters, and other combustion equipment shall be referred to as designated fire zones. Such zones shall be protected from fire by compliance with §§ 41.132 through 41.135.

§ 41.132 Flammable fluids.

No tanks or reservoirs which are a part of a system containing flammable fluids or gases shall be located in designated fire zones, except where the fluid contained, the design of the system, the materials used in the tank, the shutoff means, and all connections, lines, and controls are such as to provide equivalent safety. Not less than ½ inch of clear air space shall be provided between any tank or reservoir and a fire wall or shroud isolating a designated fire zone.

§ 41.133 Shutoff means.

Means for each individual engine shall be provided for shutting off or otherwise preventing hazardous quantities of fuel, oil, de-icer, and other flammable fluids from flowing into, within, or through any designated fire zone, except that means need not be provided to shut off flow in lines forming an integral part of an engine. In order to facilitate rapid and effective control of fires, such shutoff means shall permit an emergency operating sequence which is compatible with the emergency operation of other equipment, such as feathering the propeller. Shutoff means shall be located outside of designated fire zones, unless equivalent safety is provided (see § 41.132), and it shall be shown that no hazardous quantity of such flammable fluid will drain into any designated fire zone after shutting off has been accomplished. Adequate provisions shall be made to guard against inadvertent operation of the shutoff means and to make it possible for the crew to reopen the shutoff means after it has once been closed.

§ 41.134 Lines and fittings.

(a) All lines and fittings carrying flammable fluids in designated fire zones shall be fire resistant, except as otherwise provided in this section. If flexible hose is used, the assembly of hose and end fittings shall be of an approved type. The provisions of this paragraph need not apply to those lines and fittings which form an integral part of the engine.

(b) Vent and drain lines and their fittings shall be subject to the provisions of paragraph (a) of this section unless a failure of such line or fitting will not result in, or add to, a fire hazard.

§ 41.135 Vent and drain lines.

All vent and drain lines and fittings for same located in designated fire zones and which carry flammable fluids or gases shall comply with the provisions of § 41.134, if the Director finds that rupture or breakage of a particular drain or vent line may result in a fire hazard.

§ 41.136 Fire-extinguishing systems.

(a) Unless the air carrier shows that equivalent protection against destruction of the airplane in case of fire is provided by the use of fireproof materials in the nacelle and other components which would be subjected to flame, fire-extinguishing systems shall be provided to serve all designated fire zones.

(b) Materials in the fire-extinguishing system shall not react chemically with the extinguishing agent so as to constitute a hazard.

§ 41.137 Fire-extinguishing agents.

Extinguishing agents employed shall be methyl bromide, carbon dioxide, or any other agent which has been demonstrated to provide equivalent extinguishing action. If methyl bromide or any other toxic extinguishing agent is employed, provisions shall be made to prevent the entrance of harmful concentrations of fluid or fluid vapors into any personnel compartment either due to leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or in flight when a defect exists in the extinguishing system. If a methyl bromide system is provided, the containers shall be charged with dry agent and shall be sealed by the fire-extinguisher manufacturer or any other party employing saisfactory recharging equipment. If carbon dioxide is used, it shall not be possible to discharge sufficient gas into personnel compartments to constitute a hazard from the standpoint of suffocation of the occupants.

§ 41.138 Extinguishing agent container pressure relief.

Extinguishing agent containers shall be provided with a pressure relief to prevent bursting of the container due to excessive internal pressures. The discharge line from the relief connection shall terminate outside the airplane in a location convenient for inspection on the ground. An indicator shall be provided at the discharge end of the line to provide a visual indication when the container has discharged.

§ 41.139 Extinguishing agent container compartment temperature.

Precautions shall be taken to insure that the extinguishing agent containers are installed in locations where reasonable temperatures can be maintained for effective use of the extinguishing system.

§ 41.140 Fire-extinguishing system materials.

All components of fire-extinguishing systems located in designated fire zones shall be constructed of fireproof materials, except for connections which are subject to relative motion between components of the airplane, in which case they shall be of flexible fire-resistant construction so located as to minimize the possibility of failure.

§ 41.141 Fire-detector systems.

Quick-acting fire detectors shall be provided in all designated fire zones and shall be sufficient in number and location to insure the detection of fire which may occur in such zones.

§ 41.142 Fire detectors.

Fire detectors shall be constructed and installed in such a manner as to insure their ability to resist without failure, all vibration, inertia, and other loads to which they may normally be subjected. Detectors shall be unaffected by exposure to oil, water, or other fluids or fumes which may be present.

§ 41.143 Protection of other airplane components against fire.

All airplane surfaces aft of the nacelles in the region of one nacelle diameter on both sides of the nacelle centerline shall be constructed of fire-resistant material. This provision need not be applied to tail surfaces lying behind nacelles unless the dimensional configuration of the airplane is such that the tail surfaces could be affected readily by heat, flames, or sparks emanating from a designated fire zone or engine compartment of any nacelle.

§ 41.150 Control of engine rotation.

All airplanes shall be provided with means for individually stopping and restarting the rotation of any engine in flight, except that for turbine engine installations means for completely stopping the rotation need be provided only if the Director finds that rotation could jeopardize the safety of the airplane.

§ 41.151 Fuel system independence.

Airplane fuel systems shall be arranged in such manner that the failure of any one component will not result in the irrecoverable loss of power of more than one engine. A separate fuel tank need not be provided for each engine if the carrier shows that the fuel system incorporates features which provide equivalent safety.

§ 41.152 Induction system ice prevention.

Means for preventing the malfunctioning of each engine due to ice accumulation in the engine air induction system shall be provided for all airplanes.

§ 41.153 Carriage of cargo in passenger compartments.

When operating conditions require the carriage of cargo which cannot be loaded in approved cargo racks, bins, or compartments which are separate from passenger compartments, such cargo may be carried in the passenger compartment in accordance with the requirements of paragraph (a) or (b) of this section.

(a) Such cargo may be carried in approved cargo bins in the passenger compartment if such bins meet the strength and other safety provisions applicable to cargo and passenger compartments prescribed in Part 4b or other airworthiness part under which the airplane is type certificated. The combined weight of the cargo and the approved bin or compartments shall not exceed 85 percent of the load used in determining the design conditions for the structure (bin) involved.

(b) If the cargo is not carried in approved bins, it shall be carried in accordance with the following requirements:

(1) It shall be packaged or covered in a manner to avoid possible injury to passengers;

(2) It shall be properly secured in the airplane by means of safety belts or other tie-downs possessing sufficient strength to eliminate possibility of shifting under all normally anticipated flight, ground, and emergency landing conditions;

(3) It shall not be carried directly above seated passengers;

(5) It shall not be carried aft of seated passengers;

(5) It shall not impose any loads on seats or the floor structure which exceed the designed loads for those compartments; and

(6) It shall not be placed in any position which restricts the access to or use of any required emergency or regular exit or the aisle between the crew and the passenger compartments.

§ 41.154 Carriage of cargo in cargo compartments.

When cargo is carried in compartments which are so designed as to require the physical entry of a crewmember to extinguish any fire which may occur during flight, the cargo shall be so loaded as to permit ready access in flight to any part of the compartment.

INSTRUMENTS AND EQUIPMENT FOR ALL OPERATIONS

§ 41.170 Airplane instruments and equipment for all operations.

(a) Instruments and equipment required by §§ 41.171 through 41.233 shall be approved and shall be installed in accordance with the provisions of the airworthiness requirements applicable to the instruments or equipment concerned.

(b) All airspeed indicators shall be calibrated in knots, and all airspeed limitations and related information contained in the Airplane Flight Manual and pertinent placards shall be expressed in knots.

(c) The following instruments and equipment shall be in operable condition prior to takeoff, except as provided in § 41.391(b) for continuance of flight with equipment inoperative:

(1) Instruments and equipment required to comply with airworthiness requirements under which the airplane is type certificated and as required by the provisions of § 41.110 and §§ 41.150 through 41.154; and

(2) Instruments and equipment specified in §§ 41.171 through 41.179 for all operations, and the instruments and equipment specified in §§ 41.200 through 41.233 for the type of operations indicated, wherever these items are not already provided in accordance with subparagraph (1) of this paragraph.

NOTE: Instruments and equipment specified in §§ 41.171, 41.172, and 41.230 through 41.233 will be approved in accordance with one or more of the following methods:

(A) Instruments and equipment which are included as a part of the original aircraft type design.

(B) Instruments and equipment approved in accordance with applicable Technical Standard Orders and installed under original aircraft type certification, or subsequent installation in accordance with airworthiness and alteration requirements (Parts 1 and 18 of this chapter (Civil Air Regulations)).

(C) Instruments and equipment manufactured in accordance with an FAA type certificate and installed on original aircraft certification, or subsequent installation in accordance with airworthiness and alteration requirements (Parts 1 and 18 of this chapter (Civil Air Regulations)).

§ 41.171 Flight and navigational equipment for all operations.

The following flight and navigational instruments and equipment are required for all operations:

(a) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing;

(b) Sensitive altimeter;

(c) Clock (sweep-second);

(d) Free-air temperature indicator;

(e) Gyroscopic bank and pitch indicator (artificial horizon);

(f) Gyroscopic rate-of-turn indicator combined with a slip-skid indicator (turn and bank indicator);

(g) Gyroscopic direction indicator (directional gyro or equivalent);

(h) Magnetic compass; and

(i) Vertical speed indicator (rate-of-climb indicator).

§ 41.172 Engine instruments for all operations.

The following engine instruments are required for all operations, except that the Director may permit or require different instrumentation for turbine-powered airplanes to provide equivalent safety:

(a) Carburetor air temperature indicator for each engine;

(b) Cylinder head temperature indicator for each air-cooled engine;

(c) Fuel pressure indicator for each engine;

(d) Fuel flowmeter or fuel mixture indicator for each engine;

(e) Means for indicating fuel quantity in each fuel tank to be used;

(f) Manifold pressure indicator for each engine;

(g) Oil pressure indicator for each engine;

(h) Oil quantity indicator for each oil tank when a transfer or separate oil reserve supply is used;

(i) Oil-in temperature indicator for each engine;

(j) Tachometer for each engine;

(k) An independent fuel pressure warning device for each engine or a master warning device for all engines with means for isolating the individual warning circuits from the master warning device; and

(l) A means shall be provided for each reversible propeller on airplanes equipped with reversible propellers which will indicate to the pilots when the propeller is in reverse pitch. Such means may be actuated at any point in the reversing cycle between the normal low pitch stop position and full reverse pitch. No indication shall be given at or above the normal low pitch stop position. The source of indication shall be actuated by the propeller blade angle or be directly responsive to the propeller blade angle.

§ 41.173 Emergency equipment for all operations.

(a) *General.* The emergency equipment specified in this section is required for all operations. Emergency equipment required by paragraphs (b), (c), and (e) of this section shall be inspected by the air carrier at least every 90 days to insure that the condition and quantity thereof continues to meet the standards of original approval. All required equipment shall be readily accessible to the crew, and the method of operation shall be plainly indicated. When such equipment is carried in compartments or containers, the compartments or containers shall be marked as to contents and date of last inspection.

(b) *Hand fire extinguishers for crew, passenger, and cargo compartments.* Hand fire extinguishers of an approved type shall be provided for use in crew, passenger, and cargo compartments in accordance with the following requirements:

(1) The type and quantity of extinguishing agent shall be suitable for the type of fires likely to occur in the compartment where the extinguisher is intended to be used.

(2) At least one hand fire extinguisher shall be provided and conveniently located on the flight deck for use by the flight crew.

(3) At least one hand fire extinguisher shall be conveniently located in the passenger compartment of airplanes accommodating more than 6 but less than 31 passengers. On airplanes accommodating more than 30 but less than 61 passengers, at least 2 fire extinguishers shall be provided. On airplanes accommodating more than 60 passengers, at least 3 fire extinguishers shall be provided. None need be provided in passenger compartments of airplanes accommodating 6 or less persons.

NOTE: An approved type fire extinguisher is an extinguisher approved by the Underwriters' Laboratories, Inc., Factory Mutual Laboratories, Underwriters' Laboratories of Canada or any other person whose approval is acceptable to the FAA, or an extinguisher which is otherwise approved in accordance with the provisions of § 4b.18 of this chapter (Civil Air Regulations).

(c) *First-aid kits.* First-aid kits approved in accordance with the applicable provisions of Appendix A of this part shall be provided in a quantity appropriate to the number of passengers and crew accommodated in the airplane.

(d) *Crash ax.* All airplanes shall be equipped with at least one crash ax.

(e) *Means for emergency evacuation.* On all passenger-carrying airplanes, at all emergency exits which are more than 6 feet from the ground with the airplane on the ground and with the landing gear extended, means shall be provided to assist the occupants in descending from the airplane. At floor level exits approved as emergency exits, such means shall be a chute or equivalent device suitable for the rapid evacuation of passengers. During flight time this means shall be in a position for ready use: *Provided,* That the requirements of this paragraph do not apply to emergency exits over the wing where the greatest distance from the lower sill of the exit to the wing surface does not exceed 36 inches.

(f) *Interior emergency exit markings.* (1) In all passenger-carrying airplanes, all passenger emergency exits, their means of access, and their means of opening shall be marked conspicuously. The identity and location of emergency exits shall be recognizable from a distance equal to the width of the cabin. The location of the emergency exit operating handle and the instructions for opening shall be marked on or adjacent to the emergency exit and shall be readable from a distance of 30 inches by a person with normal eyesight.

(2) In all passenger-carrying airplanes for night operations, a source or sources of light, with an energy supply independent of the main lighting system, shall be installed to illuminate all passenger emergency exit markings. Such lights shall be designed to function automatically in a crash landing and to continue to function thereafter and shall also be operable manually, or shall be designed only for manual operation and also to continue to function following a crash landing. Such lights shall be turned on prior to each night takeoff and landing.

§ 41.174 Seats and safety belts for all occupants.

(a) The air carrier shall provide and make available at all times during the takeoff, en route flight, and landing of an airplane which it is operating:

(1) Either an approved seat or berth for each person aboard the airplane, except for those persons who are 2 years of age or less; and

(2) An approved safety belt attached to each seat and berth for separate use by each such person aboard the airplane, except that two persons occupying a berth may be provided with one approved safety belt to be shared by both such persons, and two persons occupying a multiple lounge or divan seat may be provided with one approved safety belt to be shared by both such persons during flight between takeoff and landing.

(b) During the takeoff and landing of an air carrier airplane, each person on board shall occupy an approved seat or berth and secure themselves with the approved safety belt attached thereto, except that a person 2 years of age or less may be held by an adult person occupying a seat or berth. A safety belt attached to a seat shall not be used by more than one person during takeoff and landing.

(c) In no event shall any required safety belt be used by more persons than the number for which it is approved.

§ 41.175 Miscellaneous equipment for all operations.

All airplanes shall have installed the following equipment:

(a) If protective fuses are used, spare fuses of a number approved for the particular airplane and appropriately described in the air carrier manual.

(b) Windshield wiper or equivalent for each pilot station.

(c) A power supply and distribution system capable of producing and distributing the load for all required instruments and equipment using an external power supply in the event of failure of any one power source or component of the power distribution system: *Provided,* That the use of common elements in the power distribution system will be approved if the air carrier shows that such elements are so designed as to be reasonably protected against malfunctioning. Engine-driven sources of energy, when used, shall be on separate engines.

NOTE: Any aircraft power and distribution systems which meet the requirements of §§ 4b.606 (a), (b), and (c); 4b.612(e); 4b.622 (a) and (b); 4b.623(c); 4b.625; and 4b.650 (b) of this chapter (Civil Air Regulations) complies with the requirements of paragraph (c) of § 41.175.

(d) Means for indicating the adequacy of the power being supplied to required flight instruments.

(e) Two independent static pressure systems, so vented to the outside atmospheric pressure that they will be least affected by air flow variation, moisture, or other foreign matter, and so installed as to be airtight except for the vent. When a means is provided for transferring an instrument from its primary operating system to an alternate system, such means shall include a positive positioning control and shall be marked to indicate clearly which system is being used.

(f) Means for locking all companionway doors which separate passenger compartments from flight crew compartments. Keys for all doors which separate passenger compartments from other compartments having emergency exit provisions shall be readily available to all crewmembers. Any door which is the means of access to a required passenger emergency exit shall be placarded to indicate that it must be open during takeoff and landing. All doors which lead to compartments normally accessible to passengers and which are capable of being locked by passengers shall be provided with means for unlocking by the crew in the event of an emergency.

(g) For seaplanes only, anchor light or lights, a warning bell for signaling when not under way during fog conditions, and an anchor adequate for the size of the seaplane.

§ 41.176 Cockpit check procedure.

The air carrier shall provide for each type of airplane an approved cockpit check procedure. The approved procedures shall include all items necessary for flight crewmembers to check for safety prior to starting engines, prior to taking off, prior to landing, and in engine and systems emergencies, and shall be so designed as to obviate the necessity for a flight crewmember to rely upon his memory for items to be checked. The approved procedures shall be readily usable in the cockpit of each airplane and shall be followed by the flight crew when operating the airplane.

§ 41.177 Passenger information for all operations.

All airplanes shall be equipped with signs visible to passengers and cabin attendants to notify such persons when smoking is prohibited and when safety belts should be fastened. These signs shall be capable of on-off operation by the crew and shall be placed in the "on position" for all takeoffs and landings and when otherwise deemed necessary by the pilot in command.

§ 41.178 Exterior exit and evacuation markings for all operations.

Exterior surfaces of the airplane shall be marked to identify clearly all required emergency exits. When such exits are operable from the outside, markings shall consist of or include information indicating the method of opening.

§ 41.179 Shoulder harness.

All airplanes shall be equipped with shoulder harnesses at the pilot in command, the second in command, and flight engineer stations.

INSTRUMENTS AND EQUIPMENT FOR SPECIAL OPERATIONS

§ 41.200 Instruments and equipment for operations at night.

Each airplane operated at night shall be equipped with the following instruments and equipment in addition to those required by §§ 41.171 through 41.179:

(a) Position lights;

(b) An anti-collision light for airplanes having a maximum certificated weight of more than 12,500 pounds;

(c) Two landing lights;

(d) Two class 1 or class 1A landing flares for extended over-water operations;

(e) Instrument lights providing sufficient illumination to make all required instruments, switches, etc., easily readable, so installed that their direct rays are shielded from the flight crewmem-

bers' eyes and that no objectionable reflections are visible to them. A means of controlling the intensity of illumination shall be provided unless it is shown that nondimming instrument lights are satisfactory;

(f) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing; and

(g) A sensitive altimeter.

§ 41.201 Instruments and equipment for operations under IFR or over-the-top.

Each airplane operated under IFR or over-the-top shall be equipped with the following instruments and equipment in addition to those required by §§ 41.171 through 41.179:

(a) An airspeed indicating system with heated pitot tube or equivalent means for preventing malfunctioning due to icing;

(b) A sensitive altimeter; and

(c) Instrument lights providing sufficient illumination to make all required instruments, switches, etc., easily readable, so installed that their direct rays are shielded from the flight crewmembers' eyes and that no objectionable reflections are visible to them. A means of controlling the intensity of illumination shall be provided unless it is shown that nondimming instrument lights are satisfactory.

§ 41.202 Supplemental oxygen; reciprocating-engine-powered airplanes.

(a) *General.* Except where supplemental oxygen is provided in accordance with the requirements of § 41.203, supplemental oxygen shall be furnished and used as set forth in paragraphs (b) and (c) of this section. The amount of supplemental oxygen required for a particular operation to comply with the rules in this part shall be determined on the basis of flight altitudes and flight duration consistent with the operating procedures established for each such operation and route. As used in the oxygen requirements hereinafter set forth, "cabin pressure altitude" shall mean the pressure altitude corresponding with the pressure in the cabin of the airplane, and "flight altitude" shall mean the altitude above sea level at which the airplane is operated; for airplanes not equipped with pressurized cabins, "cabin pressure altitude" and "flight altitude" shall be considered identical.

(b) *Crewmembers.* (1) At cabin pressure altitudes above 10,000 feet to and including 12,000 feet, oxygen shall be provided for, and used by, each member of the flight crew on flight deck duty, and provided for all other crewmembers, during the portion of the flight in excess of 30 minutes within this range of altitudes.

(2) At cabin pressure altitudes above 12,000 feet, oxygen shall be provided for, and used by, each member of the flight crew on flight deck duty, and provided for all other crewmembers, during the entire flight time at such altitudes.

(3) When oxygen must be used by a flight crewmember, it shall be used continuously by such crewmember during the required periods, except when it is necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty prior to the completion of the flight shall be provided with the same amount of supplemental oxygen as is provided for crewmembers on duty other than on flight deck duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, such crewmember shall be considered as a passenger with regard to supplemental oxygen requirements.

(c) *Passengers.* Each air carrier shall provide a supply of oxygen approved for passenger safety in accordance with the following standards:

(1) For flights of over 30 minutes duration at cabin pressure altitudes above 8,000 feet to and including 14,000 feet, a supply of oxygen sufficient to furnish oxygen for 30 minutes to 10 percent the number of passengers carried shall be required.

(2) For flights at cabin pressure altitudes above 14,000 feet to and including 15,000 feet, a supply of oxygen sufficient to provide oxygen for the duration of the flight at such altitudes for 30 percent of the number of passengers carried shall generally be considered adequate.

(3) For flights at cabin pressure altitudes above 15,000 feet, a supply of oxygen sufficient to provide oxygen for each passenger carried during the entire flight at such altitudes shall be required.

§ 41.202–T Supplemental oxygen for sustenance; turbine-powered airplanes.

(a) *General.* When operating turbine-powered airplanes sustaining oxygen and dispensing equipment shall be furnished by the air carrier for use as set forth in this section. The amount of oxygen provided shall be at least that quantity which will be necessary to comply with paragraphs (b) and (c) of this section. The amount of sustaining and first-aid oxygen required for a particular operation to comply with the rules in this part shall be determined on the basis of cabin pressure altitudes and flight duration consistent with the operating procedures established for each such operation and route. The requirements for airplanes with pressurized cabins shall be determined on the basis of cabin pressure altitude and the assumption that a cabin pressurization failure will occur at that altitude or point of flight which is most critical from the standpoint of oxygen need, and that after such failure the airplane will descend in accordance with the emergency procedures specified in the Airplane Flight Manual without exceeding its operating limitations to a flight altitude that will permit successful termination of the flight. Following such a failure the cabin pressure altitude shall be considered to be the same as the flight altitude unless it can be shown that no probable failure of the cabin or pressurization equipment will result in a cabin pressure altitude equal to the flight altitude, under which circumstances the maximum cabin pressure altitude attained may be used as a basis for certification and/or determination of oxygen supply.

(b) *Crewmembers.* A supply of oxygen for crewmembers shall be provided in accordance with the following requirements:

(1) At cabin pressure altitudes above 10,000 feet to and including 12,000 feet, oxygen shall be provided for and used by each member of the flight crew on flight deck duty and provided for all other crewmembers during the portion of the flight in excess of 30 minutes within this range of altitudes.

(2) At cabin pressure altitudes above 12,000 feet, oxygen shall be provided for and used by each member of the flight crew on flight deck duty and provided for all other crewmembers during the entire flight at such altitudes.

(3) When oxygen must be used by a flight crewmember, it shall be used continuously by such crewmember during the required periods, except when it is necessary to remove the oxygen mask or other dispenser in connection with his regular duties. Standby crewmembers who are on call or are definitely going to have flight deck duty prior to the completion of the flight shall be provided with the same amount of supplemental oxygen as is provided for crewmembers on duty other than on flight deck duty. If a standby crewmember is not on call and will not be on flight deck duty during the remainder of the flight, such crewmember shall be considered as a passenger with regard to supplemental oxygen requirements.

(c) *Passengers.* A supply of oxygen for passengers shall be provided in accordance with the following requirements:

(1) For flights at cabin pressure altitudes above 10,000 feet to and including 14,000 feet, oxygen shall be provided for the duration of flight in excess of 30 minutes for 10 percent of the number of passengers carried.

(2) For flights at cabin pressure altitudes above 14,000 feet to and including 15,000 feet, oxygen shall be provided for the duration of flight at such altitude for 30 percent of the number of passengers carried.

(3) For flights at cabin pressure altitudes above 15,000 feet, oxygen shall be provided for each occupant carried for the duration of flight at such altitude.

§ 41.203 Supplemental oxygen requirements for pressurized cabin airplanes; reciprocating-engine-powered airplanes.

When operating pressurized cabin airplanes, the air carrier shall so equip such airplanes as to permit compliance with the following requirements in the event of cabin pressurization failure:

(a) *For crewmembers.* When operating such airplanes at flight altitudes above 10,000 feet, the air carrier shall provide sufficient oxygen for all crewmembers for the duration of the flight at such altitudes: *Provided,* That not less than a 2-hour supply of oxygen shall be provided for the flight crewmembers on flight deck duty. The oxygen supply required by § 41.205 may be considered in determining the supplemental breathing supply required for flight crewmembers on flight deck duty in the event of cabin pressurization failure.

(b) *For passengers.* When operating such airplanes at flight altitudes above 8,000 feet, the air carrier shall provide the following amounts of oxygen:

(1) When an airplane is not flown at a flight altitude of over 25,000 feet, a supply of oxygen sufficient to furnish oxygen for 30 minutes to 10 percent of the number of passengers carried shall be considered adequate, if at any point along the route to be flown the airplane can safely descend to a flight altitude of 14,000 feet or less within 4 minutes.

(2) In the event that such airplane cannot descend to a flight altitude of 14,000 feet or less within 4 minutes, the following supply of oxygen shall be provided:

(i) For the duration of the flight in excess of 4 minutes at flight altitudes above 15,000 feet, a supply sufficient to comply with § 41.202(c)(3);

(ii) For the duration of the flight at flight altitudes above 14,000 feet to and including 15,000 feet, a supply sufficient to comply with § 41.202(c)(2); and

(iii) For flight at flight altitudes above 8,000 feet to and including 14,000 feet, a supply sufficient to furnish oxygen for 30 minutes to 10 percent of the number of passengers carried.

(3) When an airplane is flown at a flight altitude above 25,000 feet, sufficient oxygen shall be furnished in accordance with the following requirements to permit the airplane to descend to an appropriate flight altitude at which the flight can be safely conducted. Sufficient oxygen shall be furnished to provide oxygen for 30 minutes to 10 percent of the number of passengers carried for the duration of the flight above 8,000 feet to and including 14,000 feet and to permit compliance with § 41.202(c) (2) and (3) for flight above 14,000 feet.

(c) For purposes of this section it shall be assumed that the cabin pressurization failure will occur at a time during flight which is critical from the standpoint of oxygen need and that after such failure the airplane will descend, without exceeding its normal operating limitations, to flight altitudes permitting safe flight with respect to terrain clearance.

§ 41.203–T Supplemental oxygen for emergency descent and for first aid; turbine-powered airplanes with pressurized cabins.

(a) *General.* When operating turbine-powered airplanes with pressurized cabins, the air carrier shall furnish oxygen and dispensing equipment necessary to permit compliance with the requirements set forth in this section in the event of cabin pressurization failure.

(b) *Crewmembers.* When operating at flight altitudes above 10,000 feet, oxygen shall be provided to permit compliance with § 41.202–T except that not less than a 2-hour supply shall be provided for the flight crewmembers on flight deck duty. The oxygen required by § 41.205 may be included in determining the supply required for flight crewmembers on flight deck duty in the event of cabin pressurization failure.

(c) *Use of oxygen masks by flight crewmembers.*[1] (1) When operating at flight altitudes above 25,000 feet, one pilot at the controls of the airplane shall wear and use an oxygen mask at all times and all other flight crewmembers on flight deck duty shall be provided with oxygen masks, connected to appropriate supply terminals, which shall be worn in a manner that will permit rapid placing of the masks on their faces for use, properly secured and sealed: *Provided,* That the one pilot need not use a mask at or below 35,000 feet if all flight crewmembers on flight deck duty are provided with and are wearing in a ready position for use, a type of oxygen mask connected to appropriate supply terminals, which has been demonstrated to the satisfaction of a representative of the Administrator to be capable of being immediately placed on their faces for use, properly secured and sealed, with either hand. In demonstrating the oxygen mask, the air carrier shall show that this action can be accomplished without disturbing glasses, headphones, or other equipment worn, and without distracting or delaying the flight crewmember from proceeding with his assigned emergency procedures.

(2) Notwithstanding the provisions in subparagraph (1) of this paragraph, when operating at flight altitudes above 25,000 feet, if at any time it is necessary for one pilot to leave his station at the controls of the airplane for any reason, the remaining pilot at the controls shall don and use his oxygen mask until the other pilot has returned to his duty station.

(3) Prior to take off of a flight, each flight crewmember shall preflight his oxygen equipment to insure that the oxygen mask is functioning and fitted properly and connected to appropriate supply terminals, and that the oxygen supply is ready for use.

(d) *Use of portable oxygen equipment by cabin attendants.* Portable oxygen equipment of not less than a 15-minute oxygen supply shall be carried by each attendant during the entire time flight is conducted above 25,000 feet flight altitude, unless it is shown that sufficient portable oxygen units equipped with masks or spare outlets and masks are distributed throughout the cabin to insure immediate availability of oxygen to the cabin attendants regardless of their location at the time of cabin depressurization.

(e) *Passenger cabin occupants.* When operating at flight altitudes above 10,000 feet, the following supply of oxygen shall be provided for the use of passenger cabin occupants:

(1) When an airplane is certificated to operate at flight altitudes to and including 25,000 feet, and if at any point along the route to be flown the airplane can descend safely to a flight altitude of 14,000 feet or less within 4 minutes, oxygen shall be available at the rate prescribed by this part for a 30-minute period for not less than 10 percent of the number of passenger cabin occupants carried.

(2) When an airplane is operated at flight altitudes to and including 25,000 feet and cannot descend safely to a flight altitude of 14,000 feet within 4 minutes, or when an airplane is operated at flight altitudes above 25,000 feet, oxygen shall be available at the rate prescribed by this part for not less than 10 percent of the number of passenger cabin occupants carried for the duration of flight following cabin depressurization at cabin pressure altitudes above 10,000 feet to and including 14,000 feet and, as applicable, to permit compliance with § 41.202–T(c)(2) and (3), except that not less than a 10-minute supply for all passenger cabin occupants shall be provided.

(3) For first-aid treatment of occupants who for physiological reasons might require undiluted oxygen following descent from cabin pressure altitudes above 25,000 feet, a supply of oxygen in accordance with the requirements of § 4b.651(b)(4) of this chapter (Civil Air Regulations) (see § 41.204) shall be provided for 2 percent of the occupants for the duration of flight following cabin depressurization at cabin pressure altitudes above 8,000 feet, but in no case to less than one person. An appropriate number of acceptable dispensing units, but in no case less than 2, shall be provided. Means shall be provided to enable the cabin attendants to use this supply.

(f) *Passenger briefing.* Before flight is conducted above 25,000 feet, a crewmember shall give instructions and demonstrations to the passengers sufficient to insure that all passengers are adequately informed regarding the location and operation of the oxygen-dispensing equipment and the necessity of using oxygen in the event of cabin depressurization.

§ 41.204 Equipment standards.

(a) *Reciprocating-engine-powered airplanes.* The oxygen apparatus, the minimum rates of oxygen flow, and the supply of oxygen necessary to comply with the requirements of § 41.202 shall meet the standards established in § 4b.651 of this chapter (Civil Air Regulations) effective July 20, 1950: *Provided,* That if the air carrier shows full compliance with such standards to be impracticable, the Director may authorize such changes in these standards as he finds will provide an equivalent level of safety.

(b) *Turbine-powered airplanes.* The oxygen apparatus, the minimum rate of oxygen flow, and the supply of oxygen to comply with the requirements of §§ 41.202–T and 41.203–T shall meet the standards established in § 4b.651 of this chapter (Civil Air Regulations) effective September 1, 1958: *Provided,* That if the air carrier shows full compliance with such standards to be im-

[1] This paragraph is included in a notice of proposed rule making which is being circulated as Civil Air Regulations Draft Release No. 60–15. Whatever action is taken on DR 60–15 will be reflected in Part 41 at the time it is adopted.

practicable, the Director may authorize such changes in these standards as he finds will provide an equivalent level of safety.

§ 41.205 Protective breathing equipment for the flight crew.

(a) *Pressurized cabin airplanes.* Each required flight crewmember on flight deck duty shall have easily available at his station protective breathing equipment covering the eyes, nose, and mouth, or the nose and mouth where accessory equipment is provided to protect the eyes, to protect him from the effects of smoke, carbon dioxide, and other harmful gases. Not less than a 300-liter STPD supply of oxygen for each required flight crewmember on flight deck duty shall be provided for this purpose.

(b) *Nonpressurized cabin airplanes.* The requirement stated in paragraph (a) of this section shall apply to nonpressurized cabin airplanes if the Director finds that it is possible to obtain a dangerous concentration of smoke, carbon dioxide or other harmful gases in the flight crew compartments in any attitude of flight which might occur when the airplane is flown in accordance with either normal or emergency procedures.

§ 41.206 Equipment for extended overwater operations.

(a) The following equipment shall be required for all extended overwater operations: *Provided,* That the Director may require the carriage of all of the prescribed equipment, or any item thereof, for any operation over water, or upon application of an air carrier, permit deviation from these requirements for a particular extended overwater operation:

(1) Life vest meeting the specifications of Technical Standard Order C13 for each occupant of the airplane over 6 years of age and Technical Standard Order C13 NAS 801 for each occupant of the airplane 6 years of age and under, or other approved flotation device;

(2) Liferafts sufficient in number and of such rated capacity and buoyancy as to accommodate all occupants of the airplane;

(3) Suitable pyrotechnic signaling devices; and

(4) One portable emergency radio signaling device, capable of transmission on the appropriate emergency frequency or frequencies, which is not dependent upon the airplane power supply and which is self-buoyant and water-resistant.

(b) All required liferafts, life vests, and signaling devices shall be easily accessible in the event of a ditching without appreciable time for preparatory procedures. Life vests in pouches or containers shall be located adjacent to each seat so that each passenger may obtain and don the vest without having to leave the seat.

(c) Survival equipment approved in accordance with the applicable provisions of Appendix A of this part shall be attached to each required liferaft.

§ 41.207 Equipment for operations in icing conditions.

(a) For all operations in icing conditions each airplane shall be equipped with means for the prevention or removal of ice on windshields, wings, empennage, propellers, and other parts of the airplane where ice formation will adversely affect the safety of the airplane.

(b) For operations in icing conditions at night means shall be provided for illuminating or otherwise determining the formation of ice on the portions of the wings which are critical from the standpoint of ice accumulation. When illuminating means are used, such means shall be of a type which will not cause glare or reflection which would handicap crewmembers in the performance of their normal functions.

§ 41.208 Equipment for operations over frigid and tropical land areas.

Each airplane shall be equipped with the following equipment on flights for long distances over frigid or tropical land areas for which the Director finds such equipment to be necessary for search and rescue operations because of the character of the terrain to be flown over:

(a) Suitable pyrotechnic signaling devices;

(b) One approved portable emergency radio signaling device, capable of transmission on the appropriate emergency frequency or frequencies, which is not dependent upon the airplane power supply and which is self-buoyant and water-resistant; and

(c) Survival equipment approved in accordance with the applicable provisions of Appendix A of this part and adequate for the number of occupants of the airplane.

§ 41.209 Equipment for operations on which specialized means of navigation are required.

The air carrier shall show that sufficient and adequate airborne equipment is provided to permit navigation to be accomplished by the specialized method authorized for the particular route to be operated.

§ 41.210 Flight recorders.

(a) An approved flight recorder which records at least time, altitude, airspeed, vertical acceleration, and heading shall be installed in accordance with the following requirements:

(1) On all airplanes of more than 12,500 pounds maximum certificated takeoff weight which are certificated for operations above 25,000 feet altitude; and

(2) On all turbine-powered airplanes of more than 12,500 pounds maximum certificated takeoff weight.

(b) When an approved flight recorder is installed it shall be operated continuously from the instant the airplane commences the takeoff roll until it has completed the landing roll at an airport.

(c) Recorded information shall be retained by the air carrier for a period of at least 60 days. For a particular flight or series of flights, the information shall be retained for a longer period if requested by an authorized representative of the Administrator or the Civil Aeronautics Board.

RADIO EQUIPMENT

§ 41.230 Radio equipment.

Each airplane used in operations subject to this part shall be equipped with radio equipment specified for the type of operation in which it is engaged. Where two independent (separate and complete) radio systems are required by §§ 41.231 and 41.232, each system shall have an independent antenna installation: *Provided,* That where rigidly supported nonwire antennas or other antenna installations of equivalent reliability are used, only one such antenna need be provided.

§ 41.231 Radio equipment for operations under VFR over routes navigated by pilotage.

(a) For operations conducted under VFR over routes on which navigation can be accomplished by pilotage, each airplane shall be equipped with such radio equipment as is necessary under normal operating conditions to fulfill the following functions:

(1) Communicate with at least one appropriate ground station (as specified in § 41.34) from any point on the route and with other airplanes operated by the air carrier on the route;

(2) Communicate with appropriate traffic control facilities from any point in the control zone within which flights are intended; and

(3) Receive meteorological information from any point en route by either of two independent systems. One of the means provided for compliance with this subparagraph may be employed for compliance with subparagraphs (1) and (2) of this paragraph.

(b) For all operations at night conducted under VFR over routes on which navigation can be acomplished by pilotage, each airplane shall be equipped with such radio equipment as is necessary under normal operating conditions to fulfill the functions specified in paragraph (a) of this section and to receive radio navigational signals applicable to the route flown except that no marker beacon receiver or ILS receiver need be provided.

§ 41.232 Radio equipment for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top.

(a) For operations conducted under VFR over routes on which navigation cannot be accomplished by pilotage or for operations conducted under IFR or over-the-top, each airplane shall be equipped with such radio equipment as is necessary under normal operating conditions to fulfill the functions specified in § 41.231(a) and to receive satisfactorily by either of two independent systems, radio navigational signals from all primary en route and approach navigational facilities intended to be used, except that only one marker beacon receiver which provides visual and aural signals and one ILS receiver need be provided. Equipment provided to receive signals en route may be used to receive signals on approach, if it is capable of receiving both signals.

(b) In the case of operation on routes using procedures based on automatic direction finding, only one automatic direction finding system need be installed: *Provided,* That ground facilities are so located and the airplane is so fueled that, in case of failure of the automatic direction finding equipment, the flight may proceed safely to a suitable airport which has ground radio navigational facilities whose signals may be received by the use of the remaining airplane radio systems.

(c) In those areas where transition from low frequency to very high frequency radio navigational systems is in progress, one means of satisfactorily receiving signals over each of these systems shall be considered as complying with the requirement that two independent systems be provided to receive en route or approach navigational facility signals: *Provided,* That ground facilities are so located and the airplane is so fueled that, in case of failure of either system, the flight may proceed safely to a suitable airport which has ground radio navigational facilities whose signals may be received by use of the remaining airplane radio system.

§ 41.233 Radio equipment for extended overwater operations and for certain other operations.

Each airplane shall be equipped with such radio equipment as is necessary to fulfill the functions specified in § 41.232 and, by an independent system, the functions specified in § 41.231(a)(1) for the following operations:

(a) Extended overwater operations; and

(b) Operations for which the Director finds such equipment to be necessary for search and rescue operations because of the character of the terrain to be flown over.

MAINTENANCE AND INSPECTION REQUIREMENTS

§ 41.240 Responsibility for maintenance.

Irrespective of whether the air carrier has made arrangements with any other person for the performance of maintenance and inspection functions, each air carrier shall have the primary responsibility for the airworthiness of its airplanes and required equipment.

§ 41.241 Maintenance and inspection requirements.

(a) The air carrier, or the person with whom arrangements have been made for the performance of maintenance and inspection functions, shall establish an adequate inspection organization responsible for determining that workmanship, methods employed, and material used are in conformity with the requirements of the regulations of this subchapter, with accepted standards and good practices, and that any airframe, engine, propeller, or appliance released for flight is airworthy. All maintenance, repairs, and alterations shall be accomplished in accordance with the provisions of Part 18 of this chapter (Civil Air Regulations), and the Manual and operations specifications of the air carrier.

(b) Any individual who is directly in charge of inspection, maintenance, overhaul, or repair of any airframe, engine, propeller, or appliance shall hold an appropriate airman certificate; as for example, any individual who is assigned, by the air carrier or other person performing maintenance, responsibility for the work of a shop or station which performs inspections, maintenance, repairs, alterations, or other functions affecting aircraft airworthiness, and is available for consultation and decision on matters requiring instruction or decision from higher authority than that of the individuals performing the work.

§ 41.242 Maintenance and inspection training program.

The air carrier, or the person with whom arrangements have been made for the performance of maintenance and inspection functions, shall establish and maintain a training program to insure that all maintenance and inspection personnel charged with determining the adequacy of work performed are fully informed with respect to all procedures and techniques and with new equipment introduced into service, and are competent to perform their duties.

§ 41.243 Maintenance and inspection personnel duty time limitations.

Within the United States, its Territories and possessions, all maintenance and inspection personnel shall be relieved of all duty for a period of at least 24 consecutive hours during any 7 consecutive days or equivalent thereof within any one month.

AIRMAN AND CREWMEMBER REQUIREMENTS

§ 41.260 Utilization of airman.

(a) No air carrier shall utilize an individual as an airman unless he holds an appropriate and currently effective airman certificate issued by the Administrator and is otherwise qualified for the particular operation in which he is to be utilized. An airman shall have the appropriate certificate in his personal possession while engaged in operations under this part and shall present the same for examination to any authorized representative of the Administrator upon request.

(b) No individual who has reached his 60th birthday shall be utilized or serve as a pilot on any airplane while engaged in air carrier operations.

§ 41.261 Composition of flight crew.

(a) No air carrier shall operate an airplane with less than the minimum flight crew specified in the airworthiness certificate for the type of airplane and required in this part for the type of operation.

(b) Where the provisions of this part require the performance of two or more functions for which an airman certificate is necessary, such requirement shall not be satisfied by the performance of multiple functions at the same time by any airman.

(c) Where the air carrier is authorized to operate under instrument conditions or operates airplanes of more than 12,500 pounds maximum certificated takeoff weight, the minimum pilot crew shall be 2 pilots.

(d) On flights requiring a flight navigator or flight engineer, at least one other flight crewmember shall be sufficiently qualified, so that in the event of illness or other incapacity, emergency coverage can be provided for those functions for the safe completion of the flight. An airman need not be additionally certificated to function in another airman's capacity for such emergency coverage. Qualification procedures shall be included in the training program curriculum.

§ 41.262 Flight navigator.

An airman holding a valid flight navigator certificate shall be required for flight over any area, route, or route segment outside the continental limits of the United States:

(a) When celestial navigation is necessary, or

(b) When conditions are such that other specialized means of navigation necessary for the safe conduct of the flight cannot be adequately accomplished from the pilot station. Such conditions shall be deemed to exist when reliable fixes cannot be obtained from the pilot station for any period in excess of one hour, or for any lesser period when so determined by a representative of the Administrator upon consideration of the following factors: the speed of the aircraft used by the air carrier, the normal weather conditions to be encountered, the extent of air traffic control, the amount of traffic congestion, the area of the land at destination, fuel requirements, whether sufficient fuel is carried for return to the point of departure or alternates, and whether flight is predicated upon operation beyond the point-of-no-return.

§ 41.263 Flight engineer.

An airman holding a valid flight engineer certificate shall be required on all airplanes certificated for more than 80,000 pounds maximum certificated takeoff weight. Such airman shall also be required on all 4-engine airplanes certificated for more than 30,000 pounds maximum certificated takeoff weight where the Director finds that the design of the airplane used or the type of operation is such as to require engineer personnel for the safe operation of the airplane.

§ 41.265 Flight attendant.

At least one flight attendant shall be provided by the air carrier on airplanes carrying 10 or more passengers. At least 2 flight attendants shall be provided on airplanes carrying 45 or more passengers. At least 3 flight attendants shall be provided on airplanes carrying more than 100 passengers.

§ 41.266 Aircraft dispatcher.

Each air carrier shall provide an adequate number of qualified dispatchers at each dispatch center to insure the proper operational control of each flight.

§ 41.267 Assignment of emergency evacuation functions for each crewmember.

Each air carrier shall assign to each crewmember all necessary emergency

functions each such crewmember is to perform under circumstances requiring emergency evacuation. Emergency functions shall be assigned for each type of airplane used by the air carrier and the air carrier shall show that functions so assigned are realistic and capable of accomplishment. These functions shall be described in the air carrier manual and executed by each crewmember in the course of the emergency training program conducted by the air carrier.

TRAINING PROGRAM

§ 41.280 Establishment of approved program.

(a) Each air carrier shall establish a training program sufficient to insure that each crewmember and dispatcher used by the air carrier is adequately trained to perform the duties to which he is to be assigned. The initial training phases shall be satisfactorily completed prior to serving in scheduled operations. The training program shall meet with the approval of an authorized representative of the Administrator.

(b) Each air carrier shall provide adequate ground and flight training facilities and properly qualified instructors. There also shall be provided a sufficient number of check airmen to conduct the flight checks required by this part. Such check airmen shall hold the same airmen certificates and ratings as are required for the airman being checked.

(c) The training program for each flight crewmember shall consist of appropriate ground and flight training including proper flight crew coordination and training in emergency procedures. Procedures for each flight crew function shall be standardized to the extent that each flight crewmember will know the functions for which he is responsible and the relation of those functions to those of other flight crewmembers. The initial program shall include at least the appropriate requirements specified in §§ 41.281 through 41.285.

(d) The crewmember emergency procedures training program shall include at least the requirements specified in § 41.285.

(e) The appropriate instructor, supervisor, or check airman responsible for the particular training check or flight check shall certify to the proficiency of each crewmember and dispatcher upon completion of his initial and recurrent training, and such certification shall become a part of the individual's record.

§ 41.281 Pilot ground training.

(a) Ground training for each pilot prior to serving as a flight crewmember shall include instruction in at least the following:

(1) The appropriate provisions of the air carrier operations specifications and appropriate provisions of the Civil Air Regulations with particular emphasis on the operation and dispatching rules and airplane operating limitations;

(2) Dispatch procedures and appropriate contents of the manuals;

(3) The duties and responsibilities of crewmembers;

(4) The type of airplane to be flown, including a study of the airplane, engines, all major components and systems, performance limitations, standard and emergency operating procedures, and appropriate contents of the approved Airplane Flight Manual;

(5) The principles and methods of determining weight and balance limitations for takeoff and landing;

(6) Navigation and use of appropriate aids to navigation, including the instrument approach facilities and procedures which the air carrier is authorized to use;

(7) Airport and airways traffic control systems and procedures, and ground control letdown procedures if pertinent to the operation;

(8) Meteorology sufficient to insure a practical knowledge of the principles of icing, fog, thunderstorms, and frontal systems;

(9) Procedures for operation in turbulent air and during periods of ice, hail, thunderstorms, and other potentially hazardous meteorological conditions; and

(10) Communications procedures including procedures to be used in the event any of the communications equipment required by this part becomes inoperative.

(b) The air carrier shall give each pilot such additional ground training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, recurrent ground training and checks shall be provided to insure the continued proficiency of each pilot with respect to procedures, techniques, and information essential to the satisfactory performance of his duties.

§ 41.282 Pilot flight training.

(a) Flight training for each pilot prior to serving as a flight crewmember shall include at least takeoffs and landings, during day and night, and normal and emergency flight maneuvers in each type of airplane to be flown by him in scheduled operations, and flight under simulated instrument flight conditions. A pilot qualifying to serve as other than pilot in command or second in command shall demonstrate to a representative of the Administrator or to a check pilot his ability to take off and land each type of airplane in which he is to serve.

(b) Flight training for a pilot qualifying to serve as pilot in command or as second in command in a crew requiring 3 or more pilots shall include flight instruction and practice in at least the following maneuvers and procedures:

(1) In each type of airplane to be flown by him in scheduled operations:

(i) At the authorized maximum takeoff weight, takeoff using maximum takeoff power with simulated failure of the critical engine. For transport category airplanes the simulated engine failure shall be accomplished as closely as possible to the critical engine failure speed (V_1), and climb-out shall be accomplished at a speed as close as possible to the takeoff safety speed (V_2). Each pilot shall ascertain the proper values for speeds V_1 and V_2;

(ii) At the authorized maximum landing weight, flight in a 4-engine airplane, where appropriate, with the most critical combinations of 2 engines inoperative, or operating at zero thrust, utilizing appropriate climb speeds as set forth in the Airplane Flight Manual;

(iii) At the authorized maximum landing weight, simulated pull-out from the landing and approach configurations accomplished at a safe altitude with the critical engine inoperative or operating at zero thrust;

(iv) Suitable combinations of airplane weight and power less than those specified in subdivisions (i), (ii), and (iii) of this subparagraph may be employed if the performance capabilities of the airplane under the above conditions are simulated.

(2) Conduct of flight under simulated instrument conditions, utilizing all types of navigational facilities and the letdown procedures used in normal operations. If a particular type of facility is not available in the training area, such training may be accomplished in a synthetic trainer.

(c) Flight training for a pilot qualifying to serve as second in command in a crew requiring 2 pilots shall include flight instruction and practice in at least the following maneuvers and procedures:

(1) In each type of airplane to be flown by him in scheduled operation:

(i) Assigned flight duties as second in command including flight emergencies;

(ii) Taxiing;

(iii) Takeoffs and landings;

(iv) Climbs and climbing turns;

(v) Slow flight;

(vi) Approach to stall;

(vii) Engine shutdown and restart;

(viii) Takeoff and landing with simulated engine failure;

(ix) Conduct of flight under simulated instrument conditions including instrument approach at least down to circling approach minimums and missed approach procedures.

(2) Conduct of flight under simulated instrument conditions, utilizing all types of navigational facilities and the letdown procedures used in normal operations. Except for those approach procedures for which the lowest minimums are approved, all other letdown procedures may be given in a synthetic trainer which contains the radio equipment and instruments necessary to simulate other navigational and letdown procedures approved for use by the air carrier.

(d) The air carrier shall give each pilot such additional flight training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, recurrent flight training and checks shall be provided to insure the continued proficiency of each pilot with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Where the check of the pilot in command or second in command requires actual flight, satisfactory completion of the checks required by § 41.302 or 41.305 will meet the requirements of this section.

§ 41.283 Flight navigator training.

(a) The training for flight navigators shall include the applicable portions of at least subparagraphs (1) through (4) and (6) through (8) of § 41.281(a).

(b) Prior to serving as a flight crewmember, each flight navigator shall be given sufficient ground and flight training to become proficient in those duties assigned him by the air carrier. The flight training may be accomplished during scheduled flight under the supervision of a qualified flight navigator.

(c) The air carrier shall give each flight navigator such additional ground and flight training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least each 12 months, as a part of the training program, recurrent ground training and a flight check shall be provided to insure the continued proficiency of each flight navigator with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Such flight check may be accomplished during scheduled flight in air transportation or in a synthetic trainer in lieu of a check in flight.

§ 41.284 Flight engineer training.

(a) The training for flight engineers shall include at least the instruction specified in § 41.281(a)(1) through (5).

(b) Prior to serving as a flight crewmember each flight engineer shall be given sufficient training in flight to become proficient in those duties assigned him by the air carrier. Except for emergency procedures, the flight training may be accomplished during scheduled flight in air transportation under the supervision of a qualified flight engineer.

(c) The air carrier shall give each flight engineer such additional ground and flight training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, recurrent ground training and a flight check shall be provided to insure the continued proficiency of each flight engineer with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Such flight check shall not be accomplished during scheduled flight in air transportation, but may be accomplished in a synthetic trainer in lieu of a check in flight.

§ 41.285 Crewmember emergency training.

(a) The training in emergency procedures shall be designed to give each crewmember appropriate individual instruction in all emergency procedures, including assignments in the event of an emergency, and proper coordination between crewmembers. At least the following subjects as appropriate to the individual crewmember shall be taught: The procedures to be followed in the event of the failure of an engine, or engines, or other airplane components or systems, emergency decompression, fire in the air or on the ground, ditching, evacuation, the location and operation of all emergency equipment, and power setting for maximum endurance and maximum range.

(b) Recurrent training in the emergency procedures required in paragraph (a) of this section shall be accomplished at intervals not to exceed 12 months. Accomplishment of such training shall be made a part of the individual's record.

(c) Synthetic trainers may be used for training of crewmembers in emergency procedures where the trainers sufficiently simulate flight operating emergency conditions for the equipment to be used.

(d)[1] All crewmembers performing duties on pressurized airplanes operated above 25,000 feet shall, as a part of their initial emergency decompression procedure training, receive instruction by means of lectures and films (or other types of demonstration) covering: respiration, hypoxia, duration of consciousness at altitude when supplemental oxygen is not supplied, gas expansion, gas bubble formation, oxygen equipment, forces and other physical phenomena of decompressions, and incidents of decompression. In addition, all flight crewmembers shall experience hypoxia of slow and rapid onset through reduction of pressure in a low pressure chamber. For hypoxia of slow onset, a pressure altitude equivalent of 20,000 plus or minus 1,000 feet shall be employed. For hypoxia of rapid onset, a pressure altitude equivalent to 29,000 plus or minus 1,000 feet shall be employed. Reduction in pressure from 8,000 to 29,000 feet shall be accomplished within not less than 10 nor more than 20 seconds, and the duration of exposure above 20,000 feet shall not exceed 3 minutes. Oxygen shall be immediately available in the chamber but shall not ordinarily be used until symptoms of hypoxia become evident. Flight crewmembers who have completed their initial emergency training at the time of adoption of this rule will be afforded a 6-month grace period following the effective date thereof to accomplish the low pressure chamber indoctrination program.

§ 41.286 Aircraft dispatcher training.

(a) The training program for aircraft dispatchers shall provide for training in their duties and responsibilities and shall include a study of the flight operation procedures, air traffic control procedures, the performance of the airplanes used by the air carrier, navigational aids and facilities, and meteorology. Particular emphasis shall be placed upon the procedures to be followed in the event of emergencies, including the alerting of proper Governmental, company, and private agencies to render maximum assistance to an airplane in distress.

(b) Each aircraft dispatcher shall, prior to initially performing the duty of an aircraft dispatcher, satisfactorily demonstrate to the supervisor or ground instructor authorized to certify to his proficiency, his knowledge of the following subjects:

(1) Contents of the air carrier operating certificate;

(2) Appropriate provisions of the air carrier operations specifications, manual, and Civil Air Regulations;

(3) Characteristics of the airplanes operated by the air carrier;

(4) Cruise control data and cruising speeds for such airplanes;

(5) Maximum authorized loads for the airplanes for the routes and airports to be used;

(6) Air carrier radio facilities;

(7) Characteristics and limitations of each type of radio and navigational facility to be used;

(8) Effect of weather conditions on airplane radio reception;

(9) Airports to be used and the general terrain over which the airplanes are to be flown;

(10) Prevailing weather phenomena;

(11) Sources of weather information available;

(12) Pertinent air traffic control procedures; and

(13) Emergency procedures.

(c) The training program shall provide such additional training as is necessary to insure that each dispatcher is qualified with respect to new equipment procedures or techniques. At least once each 12 months, as a part of the training program, recurrent training and checks shall be provided to insure the continued competence of each dispatcher with respect to the procedures, techniques, and information essential to his duties.

FLIGHT CREWMEMBER AND DISPATCHER QUALIFICATION

§ 41.300 Qualification requirements.

(a) No air carrier shall utilize any flight crewmember or dispatcher, nor shall any such airman perform the duties authorized by his airman certificate, unless he satisfactorily meets the appropriate requirements of §§ 41.280 through 41.286 and 41.301. Each pilot serving as pilot in command and each pilot serving as second in command in operations requiring 3 or more pilots shall hold appropriate airline transport pilot certificates and appropriate type ratings for the aircraft in which they serve. All other pilots shall hold at least commercial pilot certificates and instrument ratings.

(b) Check airmen shall certify as to the proficiency of each pilot being examined, as required by §§ 41.302, 41.303, and 41.305 and such certification shall become a part of the airman's record.

§ 41.301 Pilot recent experience.

No air carrier shall schedule a pilot to serve as pilot in command or second in command in scheduled air transportation unless within the preceding 90 days he has made at least 3 takeoffs and 3 landings in the airplane of the particular type on which he is to serve.

§ 41.302 Pilot checks.

(a) *Line check.* Prior to serving as pilot in command and at least once each 12 months thereafter, a pilot shall satisfactorily pass a line check in one of the types of airplanes normally to be flown

[1] This paragraph is included in a notice of proposed rule making which is being circulated as Civil Air Regulations Draft Release No. 60-15. Whatever action is taken on DR 60-15 will be reflected in Part 41 at the time it is adopted.

by him. The line check may be given at any time during the month preceding or following the month in which it becomes due. The effective date of the check, if given within the preceding or following month, shall be the same as if given within the month in which it became due. This check shall be given by a check pilot who is both qualified on the aircraft and on the route. It shall consist of at least a scheduled flight over a typical portion of the air carrier's routes to which the pilot is normally assigned and shall be of sufficient duration for the check pilot to determine whether the individual being checked satisfactorily exercises the duties and responsibilities of a pilot in command.

(b) *Proficiency check.* (1) An air carrier shall not utilize a pilot as pilot in command until he has satisfactorily demonstrated to a check pilot or a representative of the Administrator his ability to pilot and navigate airplanes to be flown by him. Thereafter, he shall not serve as pilot in command unless each 6 months he successfully completes a similar pilot proficiency check. The proficiency check may be given at any time during the month preceding or following the month in which it becomes due. The effective date of the check, if given within the preceding or following month, shall be the same as if given within the month in which it became due. Where such pilots serve in more than one airplane type, at least every other successive proficiency check shall be given in flight in the larger airplane type.

(2) The pilot proficiency check shall include at least the following:

(i) Equipment examination (oral or written), taxiing, runup, takeoff, climb, climbing turns, steep turns, maneuvers at minimum speeds, approach to stalls, precautionary [illegible] ers with one

cable airplane are accurately simulated in the aircraft simulator through all ranges of normal and emergency operations in accordance with subdivisions (i) through (vii) of this subparagraph:

(i) The simulator shall represent a full-scale mockup of the cockpit interior, including normal flight crew stations and accommodations for the instructor or check airman.

(ii) The effect of changes on the basic forces and moments shall be introduced for all combinations of drag and thrust normally encountered in flight. The effect of changes in airplane attitude, power, drag, altitude, temperature, gross weight, center of gravity location, and configuration shall be included.

(iii) In response to control movement by a flight crewmember, all instrument indications involved in the simulation of the applicable airplane shall be entirely automatic in character unless otherwise specified. The rate of change of simulator instrument readings and of control forces shall correspond to the rate of change which would occur on the applicable airplane under actual flight conditions, for any given change in the applied load on the controls, in the applied power or in airplane configuration. Control forces and degree of actuating control travel shall correspond to that which would occur in the airplane under actual flight conditions.

(iv) Through the medium of instrument indication, it shall be possible to use the simulator for the training and checking of a pilot in the operational use of controls and instruments on the applicable airplane model during the simulated execution of ground operation, takeoff, landing, normal flight, unusual attitudes, navigation problems, and instrument approach procedures. In addition, the simulator shall be designed

(1) Weather characteristics, all seasons;

(2) Navigational facilities;

(3) Communication procedures;

(4) Type of en route terrain and obstruction hazards;

(5) Minimum safe flight levels;

(6) Position reporting points;

(7) Pertinent air traffic control procedures, including terminal area, arrival, departure, holding, and all types of instrument approach procedures; and

(8) Congested areas, obstructions, physical layout, and all instrument approach procedures for each regular, provisional, and refueling airport approved for the routes.

(c) A pilot in command who has not made an entry as a member of a flight crew within the preceding 12-month period at each regular, provisional, and refueling airport into which he is scheduled to fly may approach and land at such airports only if the reported weather indicates at least a ceiling 200 feet and a visibility ½ mile higher than the prescribed landing minimums at those airports. The ceiling and visibility minimums need not be increased above those applicable to the airport when used as an alternate airport. Sliding scales included in the air carrier operations specifications may not be applied to landing minimums by pilots not currently qualified at such airports.

(d) Such pilot shall not be required to meet the entry requirements of paragraph (c) of this section when:

(1) The air carrier shows that the pilot airport qualification can be accomplished by an approved pictorial means, or

(2) The air carrier notifies the Director that it intends to conduct operations of an airport in case [illegible] to an airport into which the pilot [illegible]

the provisions of § 41.303(e), if applicable: *Provided*, That such entry shall not be required if the air carrier shows that maintenance of pilot airport qualification can be accomplished in accordance with § 41.303(d).

(b) In order to reestablish pilot route and airport qualifications after absence from a route for a period in excess of 12 months, a pilot shall comply with the appropriate provisions of § 41.303.

§ 41.305 Proficiency checks; second in command.

(a) An air carrier shall not utilize a pilot as second in command until he has satisfactorily demonstrated to a check pilot or a representative of the Administrator his ability to pilot and navigate airplanes to be flown by him and to perform his assigned duties. Thereafter he shall not serve as second in command unless each 12 months he successfully completes a similar pilot proficiency check. The proficiency check may be given at any time during the month preceding or following the month in which it becomes due. The effective date of the check, if given within the preceding or following month, shall be the same as if given within the month in which it becomes due. Where such pilots serve in more than one airplane type, at least every other successive proficiency check shall be given in flight in the larger airplane type. The proficiency check shall include at least an oral or written equipment examination and the procedures and flight maneuvers specified in § 41.303(b). The pilot proficiency check may be demonstrated from either the right or left pilot seat.

(b) The proficiency check for second in command of a crew requiring a or [illegible] been previously qualified as such, the check may be accomplished in a synthetic trainer in lieu of a check in flight.

§ 41.307 Flight engineer qualification for duty.

A flight engineer shall not be assigned to nor perform duties for which he is required to be certificated as a flight engineer unless, within the preceding 6-month period, he has had at least 50 hours of experience as a flight engineer on the type of airplane on which he is to serve, or until the air carrier or an authorized representative of the Administrator has checked such flight engineer and determined that he is familiar with all essential current information and operating procedures relating to the type of airplane to which he is to be assigned and is competent with respect to such airplane. This check shall include a check in flight: *Provided*, That in the case of a flight engineer who has been previously qualified in the type airplane, the check may be accomplished in a synthetic trainer in lieu of a check in flight.

§ 41.310 Aircraft dispatcher qualification for duty.

(a) Prior to dispatching airplanes over any route or route segment, an aircraft dispatcher shall be familiar, and the air carrier shall determine that he is familiar, with all essential operating procedures for the entire route and with the airplanes to be used. *Provided*, That where he is qualified only on a portion of such route, he may dispatch airplanes, but only after coordinating with dispatchers who are qualified for the other portions of the route between the points to be served.

(b) An aircraft dispatcher shall not

(c) A pilot shall not fly in excess of 32 hours during any 7 consecutive days. Relief from all duty for not less than 24 consecutive hours must be provided for and given to a pilot at least once during any 7 consecutive days.

(d) A pilot shall not fly as a member of the crew more than 100 hours during any one month.

(e) A pilot shall not fly as a member of the crew more than 1,000 hours in any 12-month period.

§ 41.321 Flight time limitations for aircraft having two pilots and one additional flight crewmember.

(a) A pilot may not be scheduled to fly a total of more than 12 hours during any 24 consecutive hours.

(b) When a pilot has flown 20 hours or more during any 48 consecutive hours, or 24 hours or more during any 72 consecutive hours, he must receive at least 18 hours of rest before being assigned to any duty with the air carrier. In any case each pilot shall be relieved from all duty for not less than 24 consecutive hours during any 7 consecutive days.

(c) A pilot shall not fly as a member of the flight crew more than 120 hours in any 30 consecutive days or 300 hours in any 90 consecutive days.

(d) A pilot shall not fly as a member of the flight crew more than 1,000 hours in any 12-month period.

§ 41.322 Flight time limitations for aircraft having three or more pilots and an additional flight crewmember.

(a) Flight hours shall be scheduled in such a manner as to provide adequate rest periods on the ground while the pilot is away from his base. Adequate sleeping quarters on the [illegible]

functions each such crewmember is to perform under circumstances requiring emergency evacuation. Emergency functions shall be assigned for each type of airplane used by the air carrier and the air carrier shall show that functions so assigned are realistic and capable of accomplishment. These functions shall be described in the air carrier manual and executed by each crewmember in the course of the emergency training program conducted by the air carrier.

TRAINING PROGRAM

§ 41.280 Establishment of approved program.

(a) Each air carrier shall establish a training program sufficient to insure that each crewmember and dispatcher used by the air carrier is adequately trained to perform the duties to which he is to be assigned. The initial training phases shall be satisfactorily completed prior to serving in scheduled operations. The training program shall meet with the approval of an authorized representative of the Administrator.

(b) Each air carrier shall provide adequate ground and flight training facilities and properly qualified instructors. There also shall be provided a sufficient number of check airmen to conduct the flight checks required by this part. Such check airmen shall hold the same airmen certificates and ratings as are required for the airman being checked.

(c) The training program for each flight crewmember shall consist of appropriate ground and flight training including proper flight crew coordination and training in emergency procedures. Procedures for each flight crew function shall be standardized to the extent that each flight crewmember will know the functions for which he is responsible and the relation of those functions to those of other flight crewmembers. The initial program shall include at least the appropriate requirements specified in §§ 41.281 through 41.285.

(d) The crewmember emergency procedures training program shall include at least the requirements specified in § 41.285.

(e) The appropriate instructor, supervisor, or check airman responsible for the particular training check or flight check shall certify to the proficiency of each crewmember and dispatcher upon completion of his initial and recurrent training, and such certification shall become a part of the individual's record.

§ 41.281 Pilot ground training.

(a) Ground training for each pilot prior to serving as a flight crewmember shall include instruction in at least the following:

(1) The appropriate provisions of the air carrier operations specifications and appropriate provisions of the Civil Air Regulations with particular emphasis on the operation and dispatching rules and airplane operating limitations;

(2) Dispatch procedures and appropriate contents of the manuals;

(3) The duties and responsibilities of crewmembers;

(4) The type of airplane to be flown, including a study of the airplane, engines, all major components and systems, performance limitations, standard and emergency operating procedures, and appropriate contents of the approved Airplane Flight Manual;

(5) The principles and methods of determining weight and balance limitations for takeoff and landing;

(6) Navigation and use of appropriate aids to navigation, including the instrument approach facilities and procedures which the air carrier is authorized to use;

(7) Airport and airways traffic control systems and procedures, and ground control letdown procedures if pertinent to the operation.

(8) Meteorology sufficient to insure a practical knowledge of the principles of icing, fog, thunderstorms, and frontal systems;

(9) Procedures for operation in turbulent air and during periods of ice, hail, thunderstorms, and other potentially hazardous meteorological conditions; and

(10) Communications procedures including procedures to be used in the event any of the communications equipment required by this part becomes inoperative.

(b) The air carrier shall give each pilot such additional ground training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, recurrent ground training and checks shall be provided to insure the continued proficiency of each pilot with respect to procedures, techniques, and information essential to the satisfactory performance of his duties.

§ 41.282 Pilot flight training.

(a) Flight training for each pilot prior to serving as a flight crewmember shall include at least takeoffs and landings, during day and night, and normal and emergency flight maneuvers in each type of airplane to be flown by him in scheduled operations, and flight under simulated instrument flight conditions. A pilot qualifying to serve as other than pilot in command or second in command shall demonstrate to a representative of the Administrator or to a check pilot his ability to take off and land each type of airplane in which he is to serve.

(b) Flight training for a pilot qualifying to serve as pilot in command or as second in command in a crew requiring 3 or more pilots shall include flight instruction and practice in at least the following maneuvers and procedures:

(1) In each type of airplane to be flown by him in scheduled operations:

(i) At the authorized maximum takeoff weight, takeoff using maximum takeoff power with simulated failure of the critical engine. For transport category airplanes the simulated engine failure shall be accomplished as closely as possible to the critical engine failure speed (V_1), and climb-out shall be accomplished at a speed as close as possible to the takeoff safety speed (V_2). Each pilot shall ascertain the proper values for speeds V_1 and V_2;

(ii) At the authorized maximum landing weight, flight in a 4-engine airplane, where appropriate, with the most critical combinations of 2 engines inoperative, or operating at zero thrust, utilizing appropriate climb speeds as set forth in the Airplane Flight Manual;

(iii) At the authorized maximum landing weight, simulated pull-out from the landing and approach configurations accomplished at a safe altitude with the critical engine inoperative or operating at zero thrust;

(iv) Suitable combinations of airplane weight and power less than those specified in subdivisions (i), (ii), and (iii) of this subparagraph may be employed if the performance capabilities of the airplane under the above conditions are simulated.

(2) Conduct of flight under simulated instrument conditions, utilizing all types of navigational facilities and the letdown procedures used in normal operation. If a particular type of facility is not available in the training area, such training may be accomplished in a synthetic trainer.

(c) Flight training for a pilot qualifying to serve as second in command in a crew requiring 2 pilots shall include flight instruction and practice in at least the following maneuvers and procedures:

(1) In each type of airplane to be flown by him in scheduled operation:

(i) Assigned flight duties as second in command including flight emergencies;

(ii) Taxiing;

(iii) Takeoffs and landings;

(iv) Climbs and climbing turns;

(v) Slow flight;

(vi) Approach to stall;

(vii) Engine shutdown and restart;

(viii) Takeoff and landing with simulated engine failure;

(ix) Conduct of flight under simulated instrument conditions including instrument approach at least down to circling approach minimums and missed approach procedures.

(2) Conduct of flight under simulated instrument conditions, utilizing all types of navigational facilities and the letdown procedures used in normal operations. Except for those approach procedures for which the lowest minimums are approved, all other letdown procedures may be given in a synthetic trainer which contains the radio equipment and instruments necessary to simulate other navigational and letdown procedures approved for use by the air carrier.

(d) The air carrier shall give each pilot such additional flight training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, recurrent flight training and checks shall be provided to insure the continued proficiency of each pilot with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Where the check of the pilot in command or second in command requires actual flight, satisfactory completion of the checks required by § 41.302 or 41.305 will meet the requirements of this section.

§ 41.283 Flight navigator training.

(a) The training for flight navigators shall include the applicable portions of at least subparagraphs (1) through (4) and (6) through (8) of § 41.281(a).

(b) Prior to serving as a flight crewmember, each flight navigator shall be given sufficient ground and flight training to become proficient in those duties assigned him by the air carrier. The flight training may be accomplished during scheduled flight under the supervision of a qualified flight navigator.

(c) The air carrier shall give each flight navigator such additional ground and flight training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, recurrent ground training and a flight check shall be provided to insure the continued proficiency of each flight navigator with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Such flight check may be accomplished during scheduled flight in air transportation or in a synthetic trainer in lieu of a check in flight.

§ 41.284 Flight engineer training.

(a) The training for flight engineers shall include at least the instruction specified in § 41.281(a)(1) through (5).

(b) Prior to serving as a flight crewmember each flight engineer shall be given sufficient training in flight to become proficient in those duties assigned him by the air carrier. Except for emergency procedures, the flight training may be accomplished during scheduled flight in air transportation under the supervision of a qualified flight engineer.

(c) The air carrier shall give each flight engineer such additional ground and flight training as is necessary to insure qualification with respect to any new equipment, procedures, or techniques. At least once each 12 months, as a part of the training program, recurrent ground training and a flight check shall be provided to insure the continued proficiency of each flight engineer with respect to procedures, techniques, and information essential to the satisfactory performance of his duties. Such flight check shall not be accomplished during scheduled flight in air transportation, but may be accomplished in a synthetic trainer in lieu of a check in flight.

§ 41.285 Crewmember emergency training.

(a) The training in emergency procedures shall be designed to give each crewmember appropriate individual instruction in all emergency procedures, including assignments in the event of an emergency, and proper coordination between crewmembers. At least the following subjects as appropriate to the individual crewmember shall be taught: The procedures to be followed in the event of the failure of an engine, or engines, or other airplane components or systems, emergency decompression, fire in the air or on the ground, ditching, evacuation, the location and operation of all emergency equipment, and power setting for maximum endurance and maximum range.

(b) Recurrent training in the emergency procedures required in paragraph (a) of this section shall be accomplished at intervals not to exceed 12 months. Accomplishment of such training shall be made a part of the individual's record.

(c) Synthetic trainers may be used for training of crewmembers in emergency procedures where the trainers sufficiently simulate flight operating emergency conditions for the equipment to be used.

(d)[1] All crewmembers performing duties on pressurized airplanes operated above 25,000 feet shall, as a part of their initial emergency decompression procedure training, receive instruction by means of lectures and films (or other types of demonstration) covering: respiration, hypoxia, duration of consciousness at altitude when supplemental oxygen is not supplied, gas expansion, gas bubble formation, oxygen equipment, forces and other physical phenomena of decompressions, and incidents of decompression. In addition, all flight crewmembers shall experience hypoxia of slow and rapid onset through reduction of pressure in a low pressure chamber. For hypoxia of slow onset, a pressure altitude equivalent of 20,000 plus or minus 1,000 feet shall be employed. For hypoxia of rapid onset, a pressure altitude equivalent to 29,000 plus or minus 1,000 feet shall be employed. Reduction in pressure from 8,000 to 29,000 feet shall be accomplished within not less than 10 nor more than 20 seconds, and the duration of exposure above 20,000 feet shall not exceed 3 minutes. Oxygen shall be immediately available in the chamber but shall not ordinarily be used until symptoms of hypoxia become evident. Flight crewmembers who have completed their initial emergency training at the time of adoption of this rule will be afforded a 6-month grace period following the effective date thereof to accomplish the low pressure chamber indoctrination program.

§ 41.286 Aircraft dispatcher training.

(a) The training program for aircraft dispatchers shall provide for training in their duties and responsibilities and shall include a study of the flight operation procedures, air traffic control procedures, the performance of the airplanes used by the air carrier, navigational aids and facilities, and meteorology. Particular emphasis shall be placed upon the procedures to be followed in the event of emergencies, including the alerting of proper Governmental, company, and private agencies to render maximum assistance to an airplane in distress.

(b) Each aircraft dispatcher shall, prior to initially performing the duty of an aircraft dispatcher, satisfactorily demonstrate to the supervisor or ground instructor authorized to certify to his proficiency, his knowledge of the following subjects:

[1] This paragraph is included in a notice of proposed rule making which is being circulated as Civil Air Regulations Draft Release No. 60-15. Whatever action is taken on DR 60-15 will be reflected in Part 41 at the time it is adopted.

(1) Contents of the air carrier operating certificate;

(2) Appropriate provisions of the air carrier operations specifications, manual, and Civil Air Regulations;

(3) Characteristics of the airplanes operated by the air carrier;

(4) Cruise control data and cruising speeds for such airplanes;

(5) Maximum authorized loads for the airplanes for the routes and airports to be used;

(6) Air carrier radio facilities;

(7) Characteristics and limitations of each type of radio and navigational facility to be used;

(8) Effect of weather conditions on airplane radio reception;

(9) Airports to be used and the general terrain over which the airplanes are to be flown;

(10) Prevailing weather phenomena;

(11) Sources of weather information available;

(12) Pertinent air traffic control procedures; and

(13) Emergency procedures.

(c) The training program shall provide such additional training as is necessary to insure that each dispatcher is qualified with respect to new equipment procedures or techniques. At least once each 12 months, as a part of the training program, recurrent training and checks shall be provided to insure the continued competence of each dispatcher with respect to the procedures, techniques, and information essential to his duties.

FLIGHT CREWMEMBER AND DISPATCHER QUALIFICATION

§ 41.300 Qualification requirements.

(a) No air carrier shall utilize any flight crewmember or dispatcher, nor shall any such airman perform the duties authorized by his airman certificate, unless he satisfactorily meets the appropriate requirements of §§ 41.280 through 41.286 and 41.301. Each pilot serving as pilot in command and each pilot serving as second in command in operations requiring 3 or more pilots shall hold appropriate airline transport pilot certificates and appropriate type ratings for the aircraft in which they serve. All other pilots shall hold at least commercial pilot certificates and instrument ratings.

(b) Check airmen shall certify as to the proficiency of each pilot being examined, as required by §§ 41.302, 41.303, and 41.305 and such certification shall become a part of the airman's record.

§ 41.301 Pilot recent experience.

No air carrier shall schedule a pilot to serve as pilot in command or second in command in scheduled air transportation unless within the preceding 90 days he has made at least 3 takeoffs and 3 landings in the airplane of the particular type on which he is to serve.

§ 41.302 Pilot checks.

(a) *Line check.* Prior to serving as pilot in command and at least once each 12 months thereafter, a pilot shall satisfactorily pass a line check in one of the types of airplanes normally to be flown

by him. The line check may be given at any time during the month preceding or following the month in which it becomes due. The effective date of the check, if given within the preceding or following month, shall be the same as if given within the month in which it became due. This check shall be given by a check pilot who is both qualified on the aircraft and on the route. It shall consist of at least a scheduled flight over a typical portion of the air carrier's routes to which the pilot is normally assigned and shall be of sufficient duration for the check pilot to determine whether the individual being checked satisfactorily exercises the duties and responsibilities of a pilot in command.

(b) *Proficiency check.* (1) An air carrier shall not utilize a pilot as pilot in command until he has satisfactorily demonstrated to a check pilot or a representative of the Administrator his ability to pilot and navigate airplanes to be flown by him. Thereafter, he shall not serve as pilot in command unless each 6 months he successfully completes a similar pilot proficiency check. The proficiency check may be given at any time during the month preceding or following the month in which it becomes due. The effective date of the check, if given within the preceding or following month, shall be the same as if given within the month in which it became due. Where such pilots serve in more than one airplane type, at least every other successive proficiency check shall be given in flight in the larger airplane type.

(2) The pilot proficiency check shall include at least the following:

(i) Equipment examination (oral or written), taxiing, runup, takeoff, climb, climbing turns, steep turns, maneuvers at minimum speeds, approach to stalls, propeller feathering, maneuvers with one or more engine(s) out, rapid descent and pullout, ability to tune radio, orientation, approach procedures, and emergency procedures.

(ii) The flight maneuvers specified in § 41.282(b)(1), except that the simulated engine failure during takeoff need not be accomplished at speed V_1, nor at actual or simulated maximum authorized weight.

(iii) Flight maneuvers approved by the Administrator accomplished under simulated instrument conditions utilizing the navigational facilities and letdown procedures normally used by the pilot: *Provided*, That maneuvers other than those associated with approach procedures for which the lowest minimums are approved may be given in a synthetic trainer which contains the radio equipment and instruments necessary to simulate other navigational and letdown procedures approved for use by the air carrier.

(3) Subsequent to the initial pilot proficiency check, an approved course of training in an aircraft simulator, if satisfactorily completed, may be substituted at alternate 6-month intervals for the proficiency check required by subparagraph (1) of this paragraph. The air carrier shall show that the flight characteristics, performance, instrument reaction, and control loading of the applicable airplane are accurately simulated in the aircraft simulator through all ranges of normal and emergency operations in accordance with subdivisions (i) through (vii) of this subparagraph:

(i) The simulator shall represent a full-scale mockup of the cockpit interior, including normal flight crew stations and accommodations for the instructor or check airman.

(ii) The effect of changes on the basic forces and moments shall be introduced for all combinations of drag and thrust normally encountered in flight. The effect of changes in airplane attitude, power, drag, altitude, temperature, gross weight, center of gravity location, and configuration shall be included.

(iii) In response to control movement by a flight crewmember, all instrument indications involved in the simulation of the applicable airplane shall be entirely automatic in character unless otherwise specified. The rate of change of simulator instrument readings and of control forces shall correspond to the rate of change which would occur on the applicable airplane under actual flight conditions, for any given change in the applied load on the controls, in the applied power or in airplane configuration. Control forces and degree of actuating control travel shall correspond to that which would occur in the airplane under actual flight conditions.

(iv) Through the medium of instrument indication, it shall be possible to use the simulator for the training and checking of a pilot in the operational use of controls and instruments on the applicable airplane model during the simulated execution of ground operation, takeoff, landing, normal flight, unusual attitudes, navigation problems, and instrument approach procedures. In addition, the simulator shall be designed so that malfunctions of airplane engines, propellers, and primary systems may be presented and corrective action taken by the crew to cope with such emergencies.

(v) Suitable course and altitude recorders shall be included.

(vi) Communication and navigational aids of the applicable airplane shall be simulated for on-the-ground and in-flight operations.

(vii) Other airplane systems and components shall be simulated to the extent found necessary by the Administrator.

(c) Prior to serving as pilot in command in a particular type of airplane, a pilot shall have accomplished during the preceding 12 months either a proficiency check or a line check in that type of airplane.

§ 41.303 Pilot route and airport qualification requirements.

(a) An air carrier shall not utilize a pilot in command until he has been qualified for the route on which he is to serve in accordance with the provisions of this section and the appropriate instructor or check pilot has so certified.

(b) Each such pilot shall by written means demonstrate adequate knowledge concerning the subjects listed below with respect to each route to be flown and each regular provisional and refueling airport to be used.

(1) Weather characteristics, all seasons;

(2) Navigational facilities;

(3) Communication procedures;

(4) Type of en route terrain and obstruction hazards;

(5) Minimum safe flight levels;

(6) Position reporting points;

(7) Pertinent air traffic control procedures, including terminal area, arrival, departure, holding, and all types of instrument approach procedures; and

(8) Congested areas, obstructions, physical layout, and all instrument approach procedures for each regular, provisional, and refueling airport approved for the routes.

(c) A pilot in command who has not made an entry as a member of a flight crew within the preceding 12-month period at each regular, provisional, and refueling airport into which he is scheduled to fly may approach and land at such airports only if the reported weather indicates at least a ceiling 200 feet and a visibility ½ mile higher than the prescribed landing minimums at those airports. The ceiling and visibility minimums need not be increased above those applicable to the airport when used as an alternate airport. Sliding scales included in the air carrier operations specifications may not be applied to landing minimums by pilots not currently qualified at such airports.

(d) Such pilot shall not be required to meet the entry requirements of paragraph (c) of this section when:

(1) The air carrier shows that the pilot airport qualification can be accomplished by an approved pictorial means; or

(2) The air carrier notifies the Director that it intends to conduct operations at an airport in close proximity to an airport into which the pilot involved is presently qualified by entry, and the Director finds that such pilot is adequately qualified at the new airport. The Director, in making such finding, shall take into consideration at least the familiarity of the pilot with the layout, surrounding terrain, location of obstacles, and instrument approach and traffic control procedures at the new airport.

(e) On routes or route segments on which navigation must be accomplished by pilotage and on which flight is to be conducted at or below the level of the adjacent terrain which is within a horizontal distance of 25 miles on either side of the centerline of the route to be flown, the pilot shall be familiarized with such route or route segments by not less than 2 one-way trips on the flight deck over the route or route segments under VFR weather conditions to permit the qualifying pilot to observe terrain along the route.

§ 41.304 Maintenance and reestablishment of pilot route and airport qualifications for particular trips.

(a) To maintain pilot route and airport qualifications, each pilot being utilized as pilot in command, within the preceding 12-month period, shall have made at least one trip on the flight deck into each airport into which he is scheduled to fly and shall have complied with the provisions of § 41.303(e), if applicable: *Provided*, That such entry shall not be required if the air carrier shows that maintenance of pilot airport qualification can be accomplished in accordance with § 41.303(d).

(b) In order to reestablish pilot route and airport qualifications after absence from a route for a period in excess of 12 months, a pilot shall comply with the appropriate provisions of § 41.303.

§ 41.305 Proficiency checks; second in command.

(a) An air carrier shall not utilize a pilot as second in command until he has satisfactorily demonstrated to a check pilot or a representative of the Administrator his ability to pilot and navigate airplanes to be flown by him and to perform his assigned duties. Thereafter he shall not serve as second in command unless each 12 months he successfully completes a similar pilot proficiency check. The proficiency check may be given at any time during the month preceding or following the month in which it becomes due. The effective date of the check, if given within the preceding or following month, shall be the same as if given within the month in which it becomes due. Where such pilots serve in more than one airplane type, at least every other successive proficiency check shall be given in flight in the larger airplane type. The proficiency check shall include at least an oral or written equipment examination, and the procedures and flight maneuvers specified in § 41.282(c). The pilot proficiency check may be demonstrated from either the right or left pilot seat.

(b) The proficiency check for second in command of a crew requiring 3 or more pilots shall be the same as required under § 41.302(b).

(c) Subsequent to the initial pilot proficiency check, an approved course of training in an aircraft simulator which meets the requirements of § 41.302(b)(3), if satisfactorily completed, may be substituted at alternate 12-month intervals for the proficiency checks required by paragraphs (a) and (b) of this section.

(d) Satisfactory completion of the proficiency check in accordance with § 40.302(b) will also meet the requirements of this section.

§ 41.306 Flight navigator qualification for duty.

A flight navigator shall not be assigned to nor perform duties for which he is required to be certificated as a flight navigator unless, within the preceding 12-month period, he has had at least 50 hours of experience as a flight navigator, or until the air carrier or an authorized representative of the Administrator has checked such flight navigator and determined that he is familiar with all essential current navigational information pertaining to the routes to be flown and is competent with respect to the operating procedures and navigational equipment to be used. This check shall include a check in flight: *Provided*, That in the case of a flight navigator who has been previously qualified as such, the check may be accomplished in a synthetic trainer in lieu of a check in flight.

§ 41.307 Flight engineer qualification for duty.

A flight engineer shall not be assigned to nor perform duties for which he is required to be certificated as a flight engineer unless, within the preceding 6-month period, he has had at least 50 hours of experience as a flight engineer on the type of airplane on which he is to serve, or until the air carrier or an authorized representative of the Administrator has checked such flight engineer and determined that he is familiar with all essential current information and operating procedures relating to the type of airplane to which he is to be assigned and is competent with respect to such airplane. This check shall include a check in flight: *Provided*, That in the case of a flight engineer who has been previously qualified in the type airplane, the check may be accomplished in a synthetic trainer in lieu of a check in flight.

§ 41.310 Aircraft dispatcher qualification for duty.

(a) Prior to dispatching airplanes over any route or route segment, an aircraft dispatcher shall be familiar, and the air carrier shall determine that he is familiar, with all essential operating procedures for the entire route and with the airplanes to be used: *Provided*, That where he is qualified only on a portion of such route, he may dispatch airplanes, but only after coordinating with dispatchers who are qualified for the other portions of the route between the points to be served.

(b) An aircraft dispatcher shall not dispatch airplanes in the area over which he is authorized to exercise dispatch jurisdiction unless within the preceding 12 months he has made at least one round trip over the particular area on the flight deck of an airplane. The trip selected for qualification purposes shall be one which includes entry into as many points as practicable but it shall not be necessary for the dispatcher to make a flight over each route in the area.

FLIGHT TIME LIMITATIONS

§ 41.320 Flight time limitations for aircraft having a crew of one or two pilots.

(a) A pilot may be scheduled to fly 8 hours or less during any 24 consecutive hours without a rest period during such 8 hours. If a pilot is scheduled to fly in excess of 8 hours during any 24 consecutive hours, he shall be given an intervening rest period at or before the termination of 8 scheduled hours of flight duty. Such rest period must equal at least twice the number of hours flown since the last preceding rest period and in no case will such rest period be less than 8 hours. During such rest period the pilot must be relieved of all duty with the air carrier.

(b) When a pilot has flown in excess of 8 hours during any 24 consecutive hours he must receive at least 18 hours of rest before being assigned any duty with the air carrier.

(c) A pilot shall not fly in excess of 32 hours during any 7 consecutive days. Relief from all duty for not less than 24 consecutive hours must be provided for and given to a pilot at least once during any 7 consecutive days.

(d) A pilot shall not fly as a member of the crew more than 100 hours during any one month.

(e) A pilot shall not fly as a member of the crew more than 1,000 hours in any 12-month period.

§ 41.321 Flight time limitations for aircraft having two pilots and one additional flight crewmember.

(a) A pilot may not be scheduled to fly a total of more than 12 hours during any 24 consecutive hours.

(b) When a pilot has flown 20 hours or more during any 48 consecutive hours, or 24 hours or more during any 72 consecutive hours, he must receive at least 18 hours of rest before being assigned to any duty with the air carrier. In any case each pilot shall be relieved from all duty for not less than 24 consecutive hours during any 7 consecutive days.

(c) A pilot shall not fly as a member of the flight crew more than 120 hours in any 30 consecutive days or 300 hours in any 90 consecutive days.

(d) A pilot shall not fly as a member of the flight crew more than 1,000 hours in any 12-month period.

§ 41.322 Flight time limitations for aircraft having three or more pilots and an additional flight crewmember.

(a) Flight hours shall be scheduled in such a manner as to provide for adequate rest periods on the ground while the pilot is away from his base. Adequate sleeping quarters on the aircraft must be provided in all cases, where a pilot is scheduled to fly more than 12 hours during any 24 consecutive hours.

(b) A pilot, upon return to his base from any flight or series of flights, shall receive a rest period of not less than twice the total number of hours flown since the last rest period at his base and during such period will not be required to perform any duty for the company. When the required rest period exceeds 7 days, that portion of the rest period in excess of 7 days may be given at any time before the pilot is again scheduled for flight duty on any route.

(c) A pilot shall not fly as a member of the flight crew more than 350 hours in any 90 consecutive days.

(d) A pilot shall not fly as a member of the flight crew more than 1,000 hours in any 12-month period.

§ 41.323 Flight time limitations for pilots not regularly assigned.

A pilot not regularly assigned as a flight crewmember for an entire month under the provisions of § 41.321 or § 41.322 must not fly in excess of 100 hours in any 30 consecutive days.

§ 41.324 Deadhead transportation.

The time spent in deadhead transportation to or from duty assignment will not be considered a part of any rest period.

§ 41.325 **Other commercial flying.**

A pilot shall not do other commercial flying while employed by an air carrier when such flying, in addition to that in scheduled air transportation service will exceed any flight time limitations specified herein.

§ 41.326 **Flight time limitations; flight engineer.**

When one flight engineer is required, the flight time limitations prescribed in § 41.321 apply. When two or more flight engineers are required, the flight time limitations prescribed in § 41.322 apply.

§ 41.327 **Flight time limitations; flight navigator.**

The flight time limitations prescribed in § 41.322 apply.

DUTY TIME LIMITATIONS; AIRCRAFT DISPATCHER

§ 41.340 **Aircraft dispatcher daily duty time limitations.**

(a) The daily duty period for an aircraft dispatcher shall commence at such time as will permit him to become thoroughly familiar with existing and anticipated weather conditions along the route prior to the dispatch of any airplane. He shall remain on duty until all airplanes dispatched by him have completed their flights, or have proceeded beyond his jurisdiction, or until he is relieved by another qualified aircraft dispatcher.

(b) Except as provided in paragraph (c) of this section, the following rules will govern the hours of duty for an aircraft dispatcher, except when circumstances or emergency conditions beyond the control of the air carrier require otherwise:

(1) *Maximum consecutive hours of duty.* No dispatcher shall be scheduled for duty as such for a period of more than 10 consecutive hours.

(2) *Maximum scheduled hours of duty in 24 consecutive hours.* If a dispatcher is scheduled for duty as such for more than 10 hours in a period of 24 hours, he shall be given a rest period of not less than 8 hours at or before the termination of 10 hours of dispatcher duty.

(3) *Dispatcher's time off.* Each aircraft dispatcher shall be relieved from all duty with the air carrier for a period of at least 24 consecutive hours during any 7 consecutive days or the equivalent thereof within any one month.

(c) At duty stations outside the continental limits of the United States designated by the Administrator, a dispatcher may be scheduled for duty for a period of more than 10 consecutive hours in a 24-hour period: *Provided*, That a dispatcher so scheduled shall be relieved from all duty with the air carrier for a period of at least 8 hours during each 24-hour period: *And provided further*, That a dispatcher so scheduled shall not be scheduled for duty for more than 40 hours in any 7 consecutive days.

FLIGHT OPERATIONS

§ 41.351 **Operational control.**

The air carrier shall be responsible for operational control.

(a) *Joint responsibility of aircraft dispatcher and pilot in command.* The aircraft dispatcher and the pilot in command shall be jointly responsible for the preflight planning, delay, and dispatch release of the flight in compliance with the applicable Civil Air Regulations and operations specifications.

(b) *Responsibility of dispatcher.* The aircraft dispatcher shall be responsible:

(1) For monitoring the progress of each flight and the issuance of instructions and information necessary for the continued safety of the flight.

(2) For the cancellation or redispatch of a flight if, in his opinion or in the opinion of the pilot in command, the flight cannot operate or continue to operate safely as planned or released.

(c) *Responsibility of pilot in command.* (1) The pilot in command shall during flight time be in command of the airplane and crew and shall be responsible for the safety of the passengers, crewmembers, cargo, and airplane.

(2) No pilot shall operate an airplane in a careless and reckless manner so as to endanger life or property.

NOTE: Section 41.351(c) confers on the pilot in command, with respect to matters concerning the operation of the airplane, full control and authority without limitation over all other crewmembers and their duties during flight time, whether or not he holds a valid certificate authorizing him to perform the duties and functions of such other crewmember.

§ 41.352 **Operations notices.**

Each air carrier shall notify the appropriate operations personnel promptly of all changes in equipment and operating procedures, including known changes in the use of navigational aids, airports, air traffic control procedures and regulations, local airport traffic control rules, and of all known hazards to flight, including icing and other potentially hazardous meteorological conditions and irregularities of ground and navigational facilities.

§ 41.353 **Operations schedules.**

In establishing flight operations schedules, each air carrier shall allow sufficient time for the proper servicing of airplanes at intermediate stops, and it shall consider the prevailing winds along the particular route and the cruising speed of the type of airplane to be flown which shall not exceed the specified cruising output of the airplane engines.

§ 41.354 **Flight crewmembers at controls.**

All required flight crewmembers when on flight deck duty shall remain at their respective stations while the airplane is taking off or landing, and while en route except when the absence of one such flight crewmember is necessary for the performance of his duties in connection with the operation of the airplane. All flight crewmembers shall keep their seat belts fastened when at their respective stations.

§ 41.355 **Manipulation of controls.**

No person other than a qualified pilot of the air carrier shall manipulate the flight controls during flight, except that authorized pilot safety representatives of the Administrator who are qualified on the airplane and are engaged in checking flight operations may, with the permission of the pilot in command, manipulate such controls.

§ 41.356 **Admission to flight deck.**

No person, other than a crewmember, may be admitted to the flight deck of an airplane except those authorized in paragraphs (a) and (b) of this section. (For the purpose of this section, the term "flight deck" means all of the area forward of the door or window required by Parts 4a and 4b of this chapter (Civil Air Regulations) to be located between the pilot compartment and the passenger compartment.)

(a) FAA air carrier inspectors while in the performance of official duties shall be admitted to the flight deck.

NOTE: Nothing contained in this paragraph shall be construed as limiting the emergency authority of the pilot in command to exclude any person from the flight deck in the interest of safety.

(b) The persons listed below may be admitted to the flight deck when authorized by the pilot in command:

(1) An employee of the Federal Government or of an air carrier or other aeronautical enterprise whose duties are such that his presence on the flight deck is necessary or advantageous to the conduct of safe air carrier operations; or

NOTE: Federal employees who deal responsibly with matters relating to air carrier safety and such air carrier employees as pilots, dispatchers, meteorologists, communication operators, and mechanics whose efficiency would be increased by familiarity with flight conditions may be considered eligible under this requirement. Employees of traffic, sales, and other air carrier departments not directly related to flight operations cannot be considered eligible unless authorized under subparagraph (2) of this paragraph.

(2) Any other person specifically authorized by the air carrier management and an authorized representative of the Administrator.

(c) All persons admitted to the flight deck shall have seats available for their use in the passenger compartment except:

(1) FAA air carrier inspectors or other authorized representatives of the Administrator engaged in checking flight operations;

(2) Air traffic controllers who have been authorized by an authorized representative of the Administrator to observe ATC procedures;

(3) Certificated airmen of the air carrier whose duties with the carrier require an airman certificate;

(4) Certificated airmen of another air carrier whose duties with such carrier require an airman certificate and who have been authorized by the air carrier concerned to make specific trips over the route;

(5) Employees of the air carrier, whose functions are directly related to the conduct or planning of flight operations or the in-flight monitoring of aircraft equipment or operating procedures, but only when their presence in the cockpit is required in the furtherance of such functions and only when specifically authorized in writing by a responsible supervisor in the operations department of the air carrier, who is listed in the Operations Manual as having such authority; and

(6) Technical representatives of the manufacturer of the airplane or its components whose functions are directly related to the in-flight monitoring of aircraft equipment or operating procedures, but only when their presence in the cockpit is required in the furtherance of such functions and only when specifically authorized in writing by an authorized representative of the Administrator and by a responsible supervisor in the operations department of the air carrier, who is listed in the Operations Manual as having such authority.

§ 41.357 **Flying equipment.**

(a) *Charts.* The pilot in command shall insure that appropriate aeronautical charts containing adequate information concerning navigational aids and instrument approach procedures are aboard the airplane for each flight.

(b) *Flashlights.* Each required crewmember shall have in his possession on each flight a flashlight in good working order.

§ 41.358 **Restriction or suspension of operation.**

When conditions known to the air carrier exist which constitute a hazard to the conduct of safe air carrier operations, including airport and runway conditions, the air carrier shall restrict or suspend operations until such hazardous conditions are corrected.

§ 41.359 **Operations over approved routes required.**

Except when a deviation is necessary in accordance with § 41.360, a pilot shall not operate an air carrier airplane in scheduled air transportation over any route or route segment other than as specified in the operations specifications of the air carrier, nor operate other than in accordance with the limitations prescribed therein.

§ 41.360 **Emergency decisions; pilot in command and aircraft dispatcher.**

(a) In emergency situations which require immediate decision and action, the pilot in command may follow any course of action which he considers necessary under the circumstances. In such instance the pilot in command, to the extent required in the interest of safety, may deviate from prescribed operations procedures and methods, weather minimums, and the Civil Air Regulations.

(b) If an emergency situation arises during the course of a flight which requires immediate decision and action on the part of the aircraft dispatcher, and which is known to him, he shall advise the pilot in command of such situation. The aircraft dispatcher shall ascertain the decision of the pilot in command and shall cause the same to be made a matter of record. If unable to communicate with the pilot, the dispatcher shall declare an emergency and follow any course of action which he considers necessary under the circumstances.

(c) When emergency authority is exercised by the pilot in command or by the dispatcher, the appropriate air traffic control and dispatch centers shall be kept fully informed regarding the progress of the flight. A written report of any deviation shall be submitted by the individual declaring the emergency to the authorized representative of the Administrator assigned to the air carrier. Such report shall be submitted by a dispatcher within 10 days from the date of the emergency and by a pilot in command within 10 days after his return to his home base.

§ 41.361 **Reporting potentially hazardous meteorological conditions and irregularities of ground and navigational facilities.**

When any meteorological condition or irregularity of ground or navigational facilities is encountered in flight, the knowledge of which the pilot in command considers essential to the safety of other flights, he shall notify an appropriate ground radio station as soon as practicable. Any such information pertaining to irregularities of ground and navigational facilities shall be reported by the air carrier to the authority immediately responsible therefor.

§ 41.362 **Reporting mechanical irregularities.**

The pilot in command shall enter or cause to be entered in the maintenance log of the airplane all mechanical irregularities encountered during flight time. He shall, prior to each flight, ascertain the status of any irregularities entered in the log at the end of the last preceding flight.

§ 41.363 **Engine failure or precautionary stoppage.**

(a) Except as provided in paragraph (b) of this section, when one engine of an airplane fails or where the rotation of an engine of an airplane is stopped in flight as a precautionary measure to prevent possible damage, a landing shall be made at the nearest suitable airport in point of time where a safe landing can be effected.

(b) The pilot in command of an airplane having 4 or more engines may, if not more than one engine fails or the rotation thereof is stopped, proceed to an airport of his selection if, upon consideration of the following factors, he determines such action to be as safe a course of action as landing at the nearest suitable airport:

(1) The nature of the malfunctioning and the possible mechanical difficulties which may be encountered if flight is continued;

(2) The altitude, airplane weight, and usable fuel at the time of engine stoppage;

(3) The weather conditions en route and at possible landing points;

(4) The air traffic congestion;

(5) The type of terrain; and

(6) The familiarity of the pilot with the airport to be used.

(c) When engine rotation is stopped in flight, the pilot in command shall notify the proper ground radio station as soon as practicable and shall keep such station fully informed regarding the progress of the flight.

(d) In cases where the pilot in command selects an airport other than the nearest suitable airport in point of time, he shall, upon completion of the trip, submit a written report, in duplicate, to his operations manager setting forth his reasons for determining that the selection of an airport other than the nearest was as safe a course of action as landing at the nearest suitable airport. The operations manager shall, within 10 days after the pilot's return to his home base, furnish a copy of this report with his own comments thereon to the authorized representative of the Administrator assigned to the air carrier.

§ 41.364 **Instrument approach and IFR landing procedures.**

No instrument approach or IFR landing shall be conducted at an airport except in accordance with the IFR weather minimums and instrument approach procedures specified in the air carrier's operations specifications.

§ 41.365 **Requirements for air carrier equipment interchange.**

(a) Prior to conducting any operations pursuant to an interchange agreement authorized by the Civil Aeronautics Board, the air carrier shall show that:

(1) The procedures proposed for the conduct of such operations by the carriers involved conform with the provisions of this subchapter, and with safe operating practices;

(2) All operations personnel involved are familiar with the airplanes and equipment utilized in the interchange and with the communications and dispatching procedures to be used;

(3) All maintenance personnel involved are familiar with the airplanes and equipment, and the maintenance procedures applicable to the interchange;

(4) The flight crew and the dispatchers involved meet the appropriate route and airport qualifications; and

(5) All airplanes operated are essentially similar to those airplanes of the carrier with whom interchange is to be effected with respect to flight instruments and their arrangement and with respect to the arrangement and motion of controls critical to safety, unless the Administrator determines that adequate training programs have been established to insure that any dissimilarities which might be a potential hazard will be safely overcome by flight crew familiarization.

(b) The pertinent provisions and procedures affecting the carriers involved shall be included in their manuals.

§ 41.370 **Briefing of passengers.**

Each air carrier engaged in extended overwater operations shall insure that all passengers are briefed orally concerning the location and method of operation of life vests and emergency exits and the location of liferafts. The procedure to be followed in presenting this briefing shall be described in the air carrier manual. Such a briefing shall include a demonstration of the method of donning and inflating a life vest.

Where the airplane proceeds directly over water after takeoff, the briefing on location of the life vests and emergency exits shall be accomplished prior to takeoff, and the remainder of the briefing shall be accomplished as soon thereafter as practicable. Where the airplane does not proceed directly over water after takeoff, no part of the briefing need be accomplished prior to takeoff but the entire briefing shall be accomplished prior to reaching the overwater portion of the flight.

§ 41.371 Drinking and serving of alcoholic beverages.

(a) No person shall drink any alcoholic beverage aboard an air carrier airplane unless such beverage has been served to him by the air carrier operating the airplane.

(b) No air carrier shall serve any alcoholic beverage to any person aboard an air carrier airplane if such person appears to be intoxicated.

DISPATCHING RULES

§ 41.381 Necessity for dispatching authority.

No flight shall be started without specific authority from an aircraft dispatcher. Unless redispatched no flight shall be continued from an intermediate airport when weather conditions are less than those upon which the original dispatch release was based. No flight may be continued from an intermediate airport without redispatch if it has remained on the ground in excess of 6 hours.

§ 41.382 Familiarity with weather conditions.

No dispatcher shall release a flight unless he is thoroughly familiar with existing and anticipated weather conditions along the route to be flown.

§ 41.383 Facilities and services.

The dispatcher shall furnish to the pilot in command all available current reports or information pertaining to irregularities of navigational facilities and airport conditions which may affect the safety of the flight. He shall also furnish such pilot, while en route, any additional available information concerning meteorological conditions and irregularities of facilities and services which may affect the safety of the flight.

§ 41.384 Airplane equipment required for dispatch.

No airplane shall be dispatched unless it is airworthy and equipped in accordance with the provisions of § 41.170.

§ 41.385 Communications and navigational facilities required for dispatch.

No airplane shall be dispatched over any approved route or route segment unless the communications and navigational facilities required by §§ 41.34 and 41.36 for approval of such route or route segment are in satisfactory operating condition.

§ 41.386 Dispatching under VFR.

No airplane shall be dispatched for operation under VFR unless the appropriate weather reports and forecasts, or a combination thereof, indicate that the ceilings and visibilities along the route to be flown are, and will remain, at or above the minimums required for flight under VFR until the flight arrives at the airport or airports of intended landing specified in the dispatch release.

§ 41.387 Dispatching under IFR, over-the-top, or over water.

(a) An airplane shall not be dispatched for operations under IFR or over-the-top unless the appropriate weather reports and forecasts, or a combination thereof, pertaining to the airport or airports to which dispatched indicate that the ceilings and visibilities at such airports will be at or above the minimums specified in the air carrier's operations specifications at the estimated time of arrival thereat.

(b) Extended overwater operations shall be conducted at all times in accordance with the IFR requirements of this part except where the air carrier shows that such requirements are not necessary from a safety standpoint. Other overwater operations shall be conducted at all times in compliance with the IFR requirements of this part whenever the Director determines such compliance to be necessary in the interest of safety.

NOTE: Whenever extended overwater operations are authorized under VFR, or other overwater operations are required to be conducted under IFR, such authorization or requirement will be specified in the operations specifications of the air carrier.

§ 41.388 Alternate airport for departure.

(a) If the weather conditions at the airport of takeoff are below the landing minimums specified in the air carrier's operations specifications for that airport, no airplane shall be dispatched from that airport unless an alternate airport located with respect to the airport of takeoff as follows is specified in the dispatch release: *Provided*, That such alternate need not be selected if the ceiling and visibility, respectively, at the takeoff airport are at least 300 feet and one mile, 400 feet and three-quarters mile, or 500 feet and one-half mile:

(1) *Airplanes having 2 or 3 engines.* Alternate airport located at a distance no greater than one hour of flying time in still air at normal cruising speed with one engine inoperative.

(2) *Airplanes having 4 or more engines.* Alternate airport located at a distance no greater than 2 hours of flying time in still air at normal cruising speed with one engine inoperative.

(b) The alternate airport weather requirements shall be those specified in the air carrier's operations specifications.

(c) All required alternate airports shall be listed in the dispatch release.

§ 41.389 Alternate airport for destination; IFR or over-the-top.

(a) For all IFR or over-the-top operations there shall be at least one alternate airport designated for each airport of destination: *Provided*, That for flights scheduled for no more than 6 hours no alternate need be designated when, for the period 2 hours before to 2 hours after the estimated time of arrival, the ceiling at the airport to which the flight is dispatched is forecast to be at least 1,000 feet above the minimum initial approach altitude applicable to such airport and the visibility at such airport is forecast to be at least 3 miles: *Provided further*, That no alternate airport need be designated for a particular airport if the airplane carries sufficient fuel to meet the requirements of § 41.396(a)(2) or § 41.396(b)(2), as appropriate.

(b) The alternate airport weather requirements shall be those specified in the air carrier's operations specifications.

(c) All required alternate airports shall be listed in the dispatch release.

§ 41.390 Alternate airport weather minimums.

An airport shall not be specified in the dispatch release as an alternate airport unless the appropriate weather reports and forecasts, or a combination thereof, indicate that the ceilings and visibilities will be at or above the alternate minimums specified in the air carrier's operations specifications for such airport when the flight shall arrive thereat.

§ 41.391 Continuance of flight; flight hazards.

(a) No airplane shall be continued in flight toward any airport to which it has been dispatched when, in the opinion of the pilot in command or the aircraft dispatcher, the flight cannot be completed with safety, unless in the opinion of the pilot in command there is no safer procedure. In the latter event, continuation shall constitute an emergency situation as set forth in § 41.360.

(b) If any instrument or item of equipment required pursuant to the Civil Air Regulations for the particular operation being conducted becomes unserviceable en route, the pilot in command shall comply with the procedures specified in the air carrier manual for such occurrence: *Provided*, That the Director may authorize an air carrier to incorporate in its air carrier manual approved procedures for the continued operation of an airplane beyond a scheduled terminal point if the carrier shows that, in the particular circumstances of the case, literal compliance with the requirements of § 41.170(c) is not necessary in the interest of safety.

§ 41.392 Operation in icing conditions.

(a) An airplane shall not be dispatched, en route operations continued, or landing made when, in the opinion of the pilot in command or aircraft dispatcher, icing conditions are expected or encountered which might adversely affect the safety of the flight.

(b) No airplane shall take off when frost, snow, or ice is adhering to the wings, control surfaces, or propellers of the airplane.

§ 41.393 Original dispatch, redispatch, and continuance of flight.

(a) Any regular, provisional, or refueling airport, the use of which is authorized for the type of airplane to be operated, may be specified as a destination for the purpose of original dispatch.

(b) An airport specified as a destination or alternate for the purpose of original dispatch may be changed en route

to another airport which is authorized for the type of airplane to be operated if the appropriate requirements of §§ 41.381 through 41.409 and § 41.70 or § 41.90 are met at the time of redispatch.

(c) No flight shall be continued to any airport to which it has been dispatched unless the weather conditions at an alternate airport specified in the dispatch release are forecast to be at or above the alternate minimums specified in the air carrier's operations specifications for such airport when the flight shall arrive thereat: *Provided*, That the dispatch release may be amended en route to include any approved alternate airport lying within the fuel range of the airplane as specified in §§ 41.396 and 41.397.

(d) When the dispatch release is amended while the airplane is en route, such amendments shall be made a matter of record.

§ 41.394 Dispatch to and from refueling and provisional airport.

(a) No aircraft dispatcher shall dispatch an airplane to a refueling or provisional airport unless such airport complies with all of the requirements of this part pertinent to regular airports.

(b) Dispatch from a refueling or provisional airport shall be accomplished in accordance with the same regulations governing dispatch from a regular airport.

§ 41.395 Takeoffs and landings at alternate airports and at airports not listed in the operations specifications.

A pilot shall not takeoff or land an airplane at an alternate airport or an airport not listed in the air carrier's operations specifications other than in accordance with the takeoff and landing minimums and conditions prescribed in the air carrier's operations specifications for such airports.

§ 41.396 Fuel supply for all operations.

(a) *Reciprocating-engine- and turbo-propeller-powered airplanes.* (1) No airplane shall be dispatched to an airport for which there is an available alternate unless it carries sufficient fuel:

(i) To fly to and land at the airport to which dispatched, and thereafter;

(ii) To fly to and land at the most distant alternate designated in the dispatch release, and thereafter;

(iii) To fly for a period of at least 30 minutes plus 15 percent of the total time required to fly at normal cruising consumption to the airports specified in subdivisions (i) and (ii) of this subparagraph or to fly for 90 minutes at normal cruising consumption, whichever is lesser.

(2) No airplane shall be dispatched to an airport for which an alternate has not been designated unless it carries sufficient fuel, considering wind and other weather conditions expected, to fly to that airport and thereafter to fly for at least 3 hours at normal cruising consumption.

(b) *Turbine-powered airplanes.* (1) A turbine-powered airplane (exclusive of turbo-propeller-powered airplanes) may be dispatched or take off only if it carries sufficient fuel, considering the wind and other weather conditions expected:

(i) To fly to and land at the next point of landing specified in the clearance, and thereafter;

(ii) To fly for a period equal to 10 percent of the total time required to fly from the point of dispatch to the next point of landing specified in the clearance, and land at such airport; and thereafter

(iii) To fly to and land at the most distant alternate airport designated for that point in the clearance, and thereafter;

(iv) To fly for a period of 30 minutes at holding speed at 1,500 feet above the alternate airport elevation under standard temperature conditions.

(2) No airplane shall be dispatched to an airport for which an alternate has not been designated unless it carries sufficient fuel, considering wind and other weather conditions expected, to fly to that point and thereafter to fly for at least 2 hours at normal cruising consumption.

(3) The Director will amend the operations specifications of an air carrier to require fuel in excess of any of the minimums specified in this paragraph if he finds that additional fuel is necessary on a particular route in the interest of safety.

§ 41.397 Factors involved in computing fuel required.

In computing the fuel required, consideration shall be given to the wind and other weather conditions forecast, traffic delays anticipated, an instrument approach and possible missed approach at destination, and any other conditions which might delay the landing of the airplane. Required fuel shall be additional to unusable fuel.

§ 41.405 Takeoff and landing weather minimums: VFR.

Irrespective of any clearance which may be obtained from air traffic control, no pilot shall take off or land an airplane under VFR when the reported ceiling or ground visibility is less than specified below: *Provided*, That where a local surface restriction to visibility exists, such as smoke, dust, or blowing snow or sand, the visibility for night operations may be reduced to one mile, if all turns after takeoff and prior to landing and all flight beyond a mile from the airport boundary can be accomplished above or outside the area so restricted.

(a) For day operations: 1,000-foot ceiling and one-mile visibility;

(b) For night operations: 1,000-foot ceiling and two-mile visibility.

§ 41.406 Takeoff and landing weather minimums: IFR.

(a) Irrespective of any clearance which may be obtained from air traffic control, no pilot shall:

(1) Take off an airplane under IFR when the reported ceiling or ground visibility is less than that specified in Part 609 of the Regulations of the Administrator or the air carrier's operations specifications for the particular airport, or

(2) Except as provided in paragraphs (c) and (d) of this section, land an airplane under IFR when the reported ceiling or ground visibility is less than that specified in Part 609 of the Regulations of the Administrator or the air carrier's operations specifications for the particular airport.

(b) Except as provided in paragraphs (c) and (d) of this section, no instrument approach procedure shall be executed when the latest reported ceiling or visibility is less than the landing minimum specified in Part 609 of this title (Regulations of the Administrator) or the air carrier's operations specifications for the particular airport.

(c) An instrument approach procedure may be executed when the latest reported ceiling or visibility, or both, is less than that specified in Part 609 of this title (Regulations of the Administrator) or the air carrier's operations specifications for landing at the particular airport, if the airport is served by ILS and GCA (PAR) in operative condition and the pilot uses one facility as the primary aid, and the other as a monitoring aid; and thereafter a landing may be made, provided the pilot in command upon reaching the authorized landing minimum altitude finds that actual weather conditions are equal to or better than the specified minimums for the primary aid.

(1) The instrument approach shall be conducted in accordance with the information provided the pilot in command from the primary aid and the applicable landing minimums shall be those prescribed in the operations specifications based on the operative components of the primary aid. When GCA (PAR) is used as a secondary aid, the procedures specified in the Radar Procedures for Air Traffic Control Towers for monitored approaches shall apply.

(2) The ILS and PAR must be aligned with the same runway and both the elevation and azimuth (or localizer and glide slope) elements of the secondary aid must be operating.

(3) The use of operational military radar (other than training units) as a secondary aid is permissible without individual authorizations.

(d) If an instrument approach procedure is initiated when the latest weather report indicates that the specified ceiling and visibility minimums exist and a later weather report indicating below minimum conditions is received after the airplane (1) is on an ILS final approach and has passed the outer marker, or (2) is on a final approach using a radio range station or comparable facility and has passed the appropriate facility and has reached the authorized landing minimum altitude, or (3) is on PAR final approach and has been turned over to the final approach controller, such ILS, Range, or PAR approach may be continued and a landing may be made, provided the pilot in command upon reaching the authorized landing minimum altitude finds that actual weather conditions are equal to or better than the minimum specified for the particular airport in Part 609 of this title (Regulations of the Administrator) or the air carrier's operations specifications.

§ 41.407 Applicability of reported weather minimums.

In the conduct of operations subject to §§ 41.405 and 41.406, the ceiling and visibility values contained in the main body of the latest weather report furnished by the U.S. Weather Bureau or a source approved by the Weather Bureau shall be the controlling criteria for VFR and IFR takeoffs and landings and for instrument approach procedures on all runways of an airport; except that when the latest report furnished by the U.S. Weather Bureau or a source approved by it, including an oral report from the control tower, contains a visibility value specified as runway visibility for a particular runway of an airport, such specified value shall be controlling for VFR and IFR landings and takeoffs and straight-in instrument approaches.

NOTE: Information reflecting the official runway visibility observations reported by the control tower operator may be obtained from the office of the U.S. Weather Bureau for the airport concerned. Such office maintains a continuous graph recording of the runway visibility shown on the visibility meter in the control tower.

§ 41.408 Flight altitude rules.

Notwithstanding the provisions of § 60.17 of the Civil Air Regulations or other rules applicable outside of the United States, no air carrier airplane shall be operated anywhere in air carrier operations below the minimums prescribed in paragraphs (a) and (b) of this section: *Provided*, That the Director may prescribe other minimum en route altitudes for any route or portion thereof where he finds, after considering the character of the terrain being traversed, the quality and quantity of meteorological service, the navigational facilities available, and other flight conditions, that the safe conduct of flight requires such other altitudes.

NOTE: Minimum en route altitudes (MEA's) prescribed by the Director for particular routes within the United States are set forth in Part 610 of this title (Regulations of the Administrator). That part also contains the mountainous terrain designated by the Administrator. Outside of the United States the minimums prescribed in paragraphs (a) and (b) of this section will govern unless higher minimums are prescribed in the air carrier's operations specifications or by the foreign country over which the airplane is being operated.

(a) *Day VFR passenger operations.* No airplane engaged in passenger operations shall be flown at an altitude less than 1,000 feet above the surface or less than 1,000 feet from any mountain, hill, or other obstruction to flight.

(b) *Night VFR or IFR operations including over-the-top.* No airplane shall be flown at an altitude less than 1,000 feet above the highest obstacle located within a horizontal distance of 5 miles from the center of the course intended to be flown or, in mountainous terrain designated by the Administrator, 2,000 feet above the highest obstacle located within a horizontal distance of 5 miles from the center of the course intended to be flown: *Provided*, That in VFR operations at night in such mountainous areas airplanes may be flown over an approved lighted airway at a minimum altitude of 1,000 feet above such obstacles.

§ 41.409 Altitude maintenance on initial approach.

When making an initial approach to a radio navigational facility under IFR, a pilot shall not descend below the pertinent minimum altitude for initial approach specified in the instrument approach procedure for such facility until arrival over the radio facility has been definitely established.

§ 41.410 Preparation of dispatch release.

A dispatch release shall be prepared for each flight between specified points from information furnished by the authorized aircraft dispatcher. This release shall be signed by the pilot in command and by the authorized aircraft dispatcher only when both believe the flight can be made with safety. The aircraft dispatcher may delegate authority to sign such release for a particular flight, but he shall not delegate the authority to dispatch.

§ 41.411 Preparation of load manifest.

The air carrier shall be responsible for the preparation and accuracy of a load manifest form prior to each takeoff. This form shall be prepared by personnel of the air carrier charged with the duty of supervising the loading of airplanes and the preparation of load manifest forms or by other qualified persons authorized by the air carrier.

REQUIRED RECORDS AND REPORTS

§ 41.501 Crewmember and dispatcher records.

Each air carrier shall maintain current records of every crewmember and aircraft dispatcher. These records shall contain such information concerning the qualifications of each such crewmember and dispatcher as is necessary to show compliance with the appropriate requirements of the regulations of this subchapter, e.g., proficiency and route checks, airplane and route qualifications, training, physical examinations, and flight time records. The disposition of any flight crewmember or aircraft dispatcher released from the employ of the air carrier, or who becomes physically or professionally disqualified, shall be indicated in these records which shall be retained by the air carrier for at least 6 months.

§ 41.502 Dispatch release form.

(a) The dispatch release may be in any form but shall contain at least the following information with respect to each flight:

(1) Identification number of the airplane to be used, and the trip number;

(2) Airport of departure, intermediate stops, destination, and alternates therefor;

(3) Minimum fuel supply; and

(4) Type of operation, e.g., IFR, VFR.

(b) The dispatch release shall contain, or have attached thereto, weather reports, available weather forecasts, or a combination thereof, for the destination, intermediate stops, and alternates specified therein which shall be the latest available at the time the dispatch release is signed. It shall include such additional weather reports and forecasts, as available, considered necessary or desirable by the pilot in command or aircraft dispatcher.

§ 41.503 Load manifest.

(a) The load manifest shall contain at least the following information with respect to the loading of an airplane at the time of takeoff:

(1) The weight of:

(i) Airplane,

(ii) Fuel and oil,

(iii) Cargo, including mail and baggage, and

(iv) Passengers;

(2) The maximum allowable weight applicable for the particular flight;

(3) The total weight computed in accordance with approved procedures; and

(4) Evidence that the airplane is loaded in accordance with an approved schedule which insures that the center of gravity is within approved limits.

(b) The load manifest shall be prepared and signed for each flight by qualified personnel of the air carrier charged with the duty of supervising the loading of the airplane and the preparation of load manifest forms, or by other qualified personnel authorized by the air carrier.

§ 41.504 Disposition of load manifest, dispatch release form, and flight plans.

Copies of the completed load manifest, or information therefrom except with respect to cargo and passenger distribution, the dispatch release form, and the flight plan shall be in the possession of the pilot in command and shall be carried in the airplane to its destination. Copies also shall be kept for at least 3 months.

§ 41.505 Maintenance records.

(a) Each air carrier shall keep at its principal maintenance base current records of the total time in service, the time since last overhaul, and the time since last inspection of all major components of the airframe, engines, propellers, and appliances.

(b) Records of total time in service may be discontinued when it has been shown that the service life of component parts is safely controlled by other means, such as inspection, overhaul, or parts retirement procedures. The Director may require the keeping of total time records for specific parts when it is found that other procedures will not safely limit the service life of such parts.

(c) An airplane component, engine, propeller, or appliance for which complete records are not available may be placed in service, provided that:

(1) It is of a type for which total time-in-service records are not required under the provisions of paragraph (b) of this section;

(2) Parts which are limited by the Director or manufacturer to a specific service time are retired and replaced by new parts; and

(3) It has been properly overhauled or rebuilt, and a record of such overhaul or rebuilding is included in the maintenance records.

§ 41.506 Maintenance log.

A legible record shall be made in the airplane's maintenance log of the action taken in each case of reported or observed failures or malfunctions of airframes, engines, propellers, and appliances. The air carrier shall establish an approved procedure for retaining an adequate number of such records in the airplane in a place readily accessible to the flight crew and shall incorporate such procedure in the air carrier manual. The maintenance log shall contain information from which the flight crew may readily determine the time since last overhaul of the airframe and engines.

§ 41.507 Daily mechanical reports.

(a) Whenever a failure, malfunctioning, or other defect is detected in flight or on the ground in an airplane or airplane component which may reasonably be expected by the air carrier to cause a serious hazard in the operation of any airplane, a report shall be made of such failure, malfunctioning, or other defect to the authorized representative of the Administrator assigned to the air carrier. This report shall cover a 24-hour period beginning and ending at midnight, shall be submitted by 12 o'clock midnight of the following working day, or sooner if the seriousness of the malfunction or difficulty so warrants, and shall include as much of the following information as is available on the first daily report following such incidents:

(1) Type and FAA identification number of the airplane, name of air carrier, and date;

(2) Emergency procedure effected: unscheduled landing, dumping fuel, etc.;

(3) Nature of condition: fire, structural failure, etc.;

(4) Identification of part and system involved, including the type designation of the major component;

(5) Apparent cause of trouble: wear, cracks, design deficiency, personnel error, etc.;

(6) Disposition: repaired, replaced, airplane grounded, etc.; and

(7) Brief narrative summary to supply any other pertinent data required for more complete identification, determination of seriousness, corrective action, etc.

(b) These reports shall not be withheld pending accumulation of all of the information specified in paragraph (a) of this section. When additional information is obtained relative to the incident, it shall be expeditiously submitted as a supplement to the original report, reference being made to the date and place of submission of the first report.

§ 41.508 Mechanical interruption summary report.

Each air carrier shall submit regularly and promptly to the Administrator a summary report containing information on the following occurences:

(a) All interruptions to a scheduled flight, unscheduled changes of airplanes en route, and unscheduled stops and diversions from route which result from known or suspected mechanical difficulties or malfunctions.

(b) The number of engines removed prematurely because of mechanical trouble, listed by make and model of engine and the airplane type in which the engine was installed.

(c) The number of propeller featherings in flight, listed by type of propeller and type of engine and the airplane on which the propeller is installed. Propeller featherings accomplished for training, demonstration, or flight check purposes need not be reported.

§ 41.509 Alteration and repair reports.

Reports of major alterations or repairs of airframes, engines, propellers, and appliances shall be submitted to the authorized representative of the Administrator assigned to the air carrier promptly upon completion of such alterations or repairs.

§ 41.510 Maintenance release.

When an airplane is released by the maintenance organization to flight operations, a maintenance release or appropriate entry into the maintenance log certifying that the airplane is in an airworthy condition shall be prepared and signed by a maintenance inspector or a person authorized by the inspection organization prior to release of such airplane. If a maintenance release form is prepared, a copy shall be given to the pilot in command. An appropriate record shall be kept for at least 2 months.

§ 41.511 Communication records.

Each air carrier shall maintain, and retain for a period of 30 days, records of radio contacts between the air carrier and its pilots en route.

APPENDIX A—REQUIREMENTS FOR APPROVAL OF FIRST-AID AND SURVIVAL EQUIPMENT

First-aid and survival equipment which meet the following specifications and requirements are approved:

1. *First-aid kits required by § 41.173.* Each first-aid kit shall be dust and moisture proof, contain only materials which meet Federal Specifications GG–K–391a, as revised. First-aid kits shall be provided in accordance with the following requirements:

(a) No. 1 kit for airplanes of 1 to 5 persons capacity.

Adhesive bandage compresses, 1-inch (16 per unit)	1
Antiseptic swabs, 10 mm. (10 per unit)	1
Ammonia inhalants, 6 mm. (10 per unit)	1
2-inch bandage compresses (4 per unit)	1
4-inch bandage compresses (1 per unit)	1
Triangular bandage compressed, 40-inch (1 per unit)	2
Burn compound, ⅛ oz. (5 per unit) or equivalent amount of other burn remedy	1
Ophthalmic ointment, ⅛ oz. (6 per unit)	1

(b) No. 2 kit for airplanes of 6 to 25 persons capacity.[1]

Adhesive bandage compresses, 1-inch (16 per unit)	2
Antiseptic swabs, 10 mm. (10 per unit)	2
Ammonia inhalants, 6 mm. (10 per unit)	1
2-inch bandage compresses (4 per unit)	3
4-inch bandage compresses (1 per unit)	2
Triangular bandage compressed, 40-inch (1 per unit)	3
Burn compound, ⅛ oz. (6 per unit) or equivalent amount of other burn remedy	2
Ophthalmic ointment, ⅛ oz. (6 per unit)	1

(c) No. 3 kit for airplanes of 26 to 90 persons capacity.

Adhesive bandage compresses, 1-inch (16 per unit)	4
Antiseptic swabs, 10 mm. (10 per unit)	4
Ammonia inhalants, 6 mm. (10 per unit)	2
2-inch bandage compresses (4 per unit)	3
4-inch bandage compresses (1 per unit)	3
Triangular bandage compressed, 40-inch (1 per unit)	5
Burn compound, ⅛ oz. (6 per unit) or an equivalent amount of other burn remedy	2
Ophthalmic ointment, ⅛ oz. (6 per unit)	1

(d) For airplanes of more than 90 persons capacity, two No. 3 kits shall be required.

2. *Survival equipment required by § 41.206 for extended overwater operations.* The following survival equipment shall be provided on extended overwater operations for each liferaft:

1 No. 2 first-aid kit (from airplane)
1 flashlight (from airplane).
100 doses of a motion sickness remedy.
Sunburn protective sufficient to cover the faces of 75 percent of the occupants.
3 shark repellent,
3 containers of sea marker dye,
1 canopy (for protection from the elements),
1 liferaft repair kit,
Radar reflectors (or similar device),
1 bailing bucket,
1 sea anchor,
1 signaling mirror,
1 police whistle,
1 raft knife,
Such CO_2 bottle(s) as required for initial inflation of the liferaft,
1 inflation pump,
2 oars (for other than large oval-shaped rafts),
1 magnetic compass,
1 pyrotechnic pistol and 6 cartridges or 6 day/night type flares,
5 water storage bags,
1 fishing kit,
1 book on survival appropriate for area,
1 75-foot line (250 lbs. tension strength) fitted with a floatable device at one end,
2,000 calories supply emergency food ration per occupant (Food and water supplies may be stored in a separate floatable container, and
1 sea water desalting kit for each 2 persons the liferaft is authorized to carry, or 2 pints of water per occupant.

3. *Survival equipment required by § 41.208.* When the type of operation requires more than one class of equipment it will not be necessary to carry more than one supply of items duplicated in another list. The equipment specified herein shall be carried in one or more containers and in such a location as to make it readily available in the event of forced landing and subsequent evacuation from the airplane.

(a) *Tropical land areas.* The following equipment shall be provided for operations over tropical land areas;

1 first-aid kit (from airplane),
1 flashlight (from airplane),
1 machete,
1 axe (from airplane),
Sufficient insect repellant to cover the hands and faces of all occupants,
2 pints of drinking water for each occupant,
Sufficient water purification tablets to treat 5 quarts of water per occupant,
1 waterproof box of matches,
1 magnetic compass,
1 signaling mirror,

[1] Kit No. 2 in canvas may also be used on liferafts.

1 pyrotechnic pistol and 6 cartridges or 6 day/night type flares,
1 mosquito headnet for each occupant,
1 hunting knife,
1 small-bore rifle and cartridges; or revolver and cartridges,
1 fishing kit,
1 snake-bite kit,
1 book on jungle survival,
200 feet nylon rope with strength of 250 pounds, and
500 calories supply emergency food ration per occupant.

(b) *Frigid land areas.* The following equipment shall be provided for operations over frigid land areas:

1 first-aid kit (from airplane),
1 flashlight (from airplane),
1 machete,
1 axe (from airplane),
1 mosquito headnet for each occupant,
Sufficient insect repellent to cover the hands and faces of all occupants,
1 blanket for each occupant,
2 pairs of snowshoes,
2 pairs of Arctic shoes,
2 pairs of gloves,
6 pairs of sunglasses,
1 book on Arctic survival,
1 waterproof box of matches,
1 magnetic compass,
Sufficient water purification tablets to treat 5 quarts of water per occupant,
1 signaling mirror,
1 pyrotechnic pistol and 6 cartridges; or 6 day night type flares,
1 small bore rifle and cartridges; or revolver and cartridges,
1 hunting knife,
2,000 calories supply emergency food ration per occupant,
1 fishing kit,
200 feet nylon rope with strength of 250 pounds, and
A supply of ½ pint of drinking water per person.

[F.R. Doc. 60-11115; Filed, Nov. 30, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-LA-88]

FEDERAL AIRWAYS AND CONTROL AREAS

Modification of Federal Airways, Associated Control Areas and Control Area Extension; Revocation of Control Area Extension

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 and §§ 600.6105, 600.6202, 601.6202 and 601.1441 of the regulations of the Administrator, the substance of which is stated below.

The Tucson, Ariz., control area extension (§ 601.1186) is designated as the airspace within 5 miles either side of the west course of the Tucson radio range extending from the radio range station to a point 25 miles west and the airspace south of Tucson bounded on the north by Green Federal airway No. 5, on the northeast by VOR Federal airway No. 66, on the west and south by VOR Federal airway No. 202, and the airspace in the southwest quadrant of the Tucson radio range lying within a 30-mile radius of the radio range station. The portion of this control area extension which lies within the geographic limits of and between the designated altitudes of the Sahuarita Restricted Area (R-310) shall be used only after obtaining prior approval from the Federal Aviation Agency Air Traffic Control during this restricted area's time of designation.

The Tucson, Ariz., control area extension (§ 601.1441) is designated as the airspace northeast of Tucson bounded on the north by VOR Federal airway No. 94, on the southeast by VOR Federal airway No. 202, and on the south and southwest by VOR Federal airway No. 16.

VOR Federal airway No. 105 extends in part from the Tucson, Ariz., VORTAC via the intersection of the Tucson VORTAC 273° and the Casa Grande, Ariz., VOR 153° True radials to the Casa Grande VOR.

VOR Federal airway No. 202 extends from the Tucson, Ariz., radio range station via the point of intersection of a straight line bearing 157° True from the Tucson radio range station with the Cochise, Ariz., VOR 257° True radial; the Cochise VOR; the San Simon, Ariz., VOR; to the Truth or Consequences, N. Mex., VOR.

The Federal Aviation Agency has under consideration the modification of the Tucson control area extensions by combining them into one control area extension (§ 601.1441), and including additional area to the south and west. It is also proposed to realign Victor 105 from the Tucson VORTAC via the intersection of the Tucson VORTAC 273° and the Casa Grande VOR 146° True radials; to the Casa Grande VOR; and to revoke the segment of Victor 202, and its associated control areas between Tucson and Cochise.

The portion of the Tucson control area extension to the south and west of Tucson would provide protection to aircraft executing revised departure procedures from Davis-Monthan Air Force Base. The portion northeast of Tucson is used by Davis-Monthan RAPCON for radar vectoring aircraft arriving and departing the Tucson terminal area. The realignment of Victor 105 as proposed would reduce the airway mileage between Phoenix and Tucson, facilitate approaches to Tucson from the west and departures from Davis-Monthan AFB to the west, and permit radar surveillance of the entire holding pattern airspace west of Tucson at the intersection of the Tucson VORTAC 273° and the Casa Grande VOR 146° True radials. The control areas associated with Victor 105 are so designated that they would automatically conform to the modified airway. Accordingly, no amendment relating to control areas associated with Victor 105 would be necessary.

A Federal Aviation Agency IFR peakday airway traffic survey for the period July 1, 1959, through June 30, 1960, shows that there were no aircraft movements on the segment of Victor 202 between Tucson and Cochise. In addition, the exceptionally high minimum reception altitude on the segment of Victor 202 between Tucson and the Mescal, Ariz., Intersection makes use of this segment of the airway impractical. It appears, therefore, that retention of the segment of Victor 202 between Tucson and Cochise is unjustified as an assignment of airspace.

If these actions are taken:

1. The Tucson, Ariz., control area extension (§ 601.1441), would be redesignated as the area southwest of Tucson bounded on the northeast by VOR Federal airway No. 66, on the south and west by a line connecting points at latitude 31°47'00" N., longitude 110°20'00" W., latitude 31°38'00" N., longitude 111°02'00" W., latitude 31°52'00" N., longitude 112°06'00" W., and latitude 32°37'00" N., longitude 112°06'00" W.; and the area northeast of Tucson bounded on the north by VOR Federal airway No. 94, on the southeast by VOR Federal airway No. 202, and on the south and southwest by VOR Federal airway No. 16. The portion of this control area extension which would coincide with the Sahuarita, Ariz., Restricted Area (R-310) would be used only after obtaining prior approval from the Federal Aviation Agency Air Route Traffic Control Center.

2. VOR Federal airway No. 105 would be redesignated from the Tucson, Ariz., VORTAC via the intersection of the Tucson VORTAC 273° and the Casa Grande, Ariz., VOR 146° True radials; to the Casa Grande VOR.

3. The segment of VOR Federal airway No. 202 and its associated control areas from Tucson, Ariz., to Cochise, Ariz., would be revoked.

4. The Tucson, Ariz., control area extension (§ 601.1186) would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on November 23, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11142; Filed, Nov. 30, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-NY-109]

CONTROL ZONES

Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a control zone at Ithaca, N.Y. It is proposed to designate a control zone from 0500 to 2400 hours daily local time, within a 5-mile radius of the Tompkins County Airport (latitude 42°29'25" N., longitude 76°27'30" W.), and within 2 miles either side of the 305° True radial of the Ithaca VOR extending from the 5-mile radius zone to 12 miles northwest of the VOR. This proposed control zone would provide protection for aircraft conducting prescribed instrument approach and departure procedures at the Tompkins County Airport during the period when weather observations are taken. Communications within the proposed control zone would be handled by the Elmira, N.Y., approach control facility.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on November 23, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11141; Filed, Nov. 30, 1960; 8:45 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Foreign Assets Control

IMPORTATION OF CERTAIN MERCHANDISE DIRECTLY FROM HONG KONG

Available Certifications by the Government of Hong Kong

Notice is hereby given that certificates of origin issued by the Department of Commerce and Industry of the Government of Hong Kong under procedures agreed upon between that Government and the Foreign Assets Control are available with respect to the importation into the United States directly, or on a through bill of lading, from Honk Kong of the following additional commodities:

Cloisonneware.
Feather manufactures.
Linen manufactures.
Po Chun Balm.
Rickshaws.
White Flower Oil (Pak Fah Yeow).

Notice is also given that certificates of origin are now available for white ceramics only. This notice supersedes the previous notice of the availability of certificates of origin for the item "ceramics," which was published in the FEDERAL REGISTER on June 1, 1955.

[SEAL] MARGARET W. SCHWARTZ,
Acting Director,
Foreign Assets Control.

[F.R. Doc. 60-11218; Filed, Nov. 30, 1960; 8:53 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Document No. 231]

ARIZONA

Notice of Proposed Withdrawal and Reservation of Lands

The Corps of Engineers, U.S. Department of the Army, on behalf of the Department of the Air Force, has filed an application, Serial No. AR-027964, for the withdrawal of the lands described below from all forms of appropriation under the public land laws, including the mining laws, the mineral leasing laws and the grazing regulations, subject to valid existing rights.

The applicant desires the lands in connection with the construction of a missile site and appurtenances thereto for national defense purposes.

For a period of thirty (30) days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned official of the Bureau of Land Management, Department of the Interior, P.O. Box 148, Phoenix, Arizona. All submittals should be in triplicate.

If circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced. The determination of the Secretary of the Interior on the allowance of the application will be published in the FEDERAL REGISTER. A separate notice will be sent to any interested parties of record.

GILA AND SALT RIVER MERIDIAN

T. 12 S., R. 9 E.,
Sec. 19: SE¼;
Sec. 20: NW¼SW¼.

The area described totals approximately 200 acres.

Dated: November 22, 1960.

E. I. ROWLAND,
State Supervisor.

[F.R. Doc. 60-11144; Filed, Nov. 30, 1960; 8:45 a.m.]

[Document No. 232]

ARIZONA

Notice of Filing of Arizona Protraction Diagrams; Correction

In Federal Register Document 60-10693, appearing on page 10955 of the issue for Thursday, November 17, 1960, the description for Protraction Diagram No. 61 should read as follows:

No. 61

T. 1 S., R. 11 E.
T. 1 N., Rs. 11 and 12 E.
Ts. 2, 3 and 4 N., Rs. 9 through 12 E.
T. 5 N., Rs. 9 and 10 E.
T. 6 N., R. 10 E.

Dated: November 23, 1960.

E. I. ROWLAND,
State Supervisor.

[F.R. Doc. 60-11145; Filed, Nov. 30, 1960; 8:45 a.m.]

[No. 506]

CALIFORNIA

Small Tract Classification; Partial Revocation and Order Providing for Opening of Public Lands

NOVEMBER 17, 1960.

1. Effective immediately, the following described lands listed under paragraph 1 of Federal Register Document 57-218, appearing on pages 245 and 246 of the issue for January 11, 1957, are hereby revoked from the classification order.

MOUNT DIABLO MERIDIAN

T. 33 N., R. 9 W.,
Section 7: NE¼NE¼SE¼;
Section 8: E½NW¼, SW¼NE¼, SE¼NE¼;
Section 27: S½SE¼NE¼, NW¼SE¼NE¼;
Section 34: NE¼NE¼.
T. 33 N., R. 10 W.,
Section 13: Lot 3 (formerly N½NE¼NE¼NE¼).
Containing 245 acres.

2. The lands are located generally in the vicinity of Weaverville, California, the county seat of Trinity County. The topography is gently undulating to very steep. Soils consist of reddish brown gravelly clay with a vegetative cover of scrub oak, digger pine and manzanita and ponderosa pine.

3. No application for these lands will be allowed under the Small Tract Act, Homestead, Desert Land, or any other nonmineral public land law unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified under consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. Subject to any valid existing rights and the requirements of applicable laws, the lands described herein are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on December 22, 1960 will be considered as simultaneously filed at that hour. Any rights under such applications filed will be governed by the time of filing.

(1) All applications shall be subject to those from persons having prior existing valid settlement rights, preference rights conferred by existing law, or equitable claims subject to allowance and confirmation.

(2) Persons claiming preference rights must submit evidence of their entitlement.

5. The lands have been open to applications and offers under the mineral leasing laws. They will be open to location under the U.S. Mining laws beginning at 10:00 a.m. on May 17, 1961. Locations made prior thereto shall be invalid.

6. Inquiries shall be addressed to the Manager, Land Office, Room 1000, California Fruit Building, Fourth and J Streets, Sacramento 14, California.

R. G. SPORLEDER,
Officer-in-Charge, Northern Field Group, Sacramento, California.

[F.R. Doc. 60-11146; Filed, Nov. 30, 1960; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

[No. 33434]

MIDDLE ATLANTIC AND NEW ENGLAND TERRITORY

Detention of Motor Vehicles

It appearing, that Middle Atlantic Conference petitioned the Commission to prescribe a rule proposed by it to govern charges for, and practices in connection with, the detention of vehicles incident to the loading or unloading of truckload shipments, to apply to all common carriers by motor vehicle operating in Middle Atlantic Territory and between that Territory and New England; that notice of said petition, together with the text of the rule proposed by said petitioner, was published in the FEDERAL REGISTER on August 11, 1960, at 25 F.R. 7664 permitting the filing of representations in support of or in objection to said rule; and that such representations have been filed;

It further appearing, that on October 25, 1960, the Commission instituted an investigation naming all common carriers of property by motor vehicle operating in the territories referred to in the next preceding paragraph, respondents, and providing for a hearing to afford said respondents and any other interested persons an opportunity to present evidence to determine whether the Commission should prescribe a rule which would be applicable for determining the charges for the detention of motor vehicles by consignors or consignees in said territories; and that said order was published in the FEDERAL REGISTER on November 4, 1960, at 25 F.R. 10585;

And it further appearing, that this proceeding is one peculiarly susceptible to handling under special rules of procedure and that such rules will result in a more efficient and expeditious presentation of the evidence herein; and that such rules governing matters of practice and procedure need not be the subject of notice and hearing under section 5A of the Administrative Procedure Act;

It is ordered: That all persons, including respondents, desiring to participate in this proceeding shall notify the Secretary of the Commission at Washington, D.C. on or before December 12, 1960 by a writing which shall identify this proceeding by its docket number and title, specifically state an intention to participate therein, and set forth the name and address of the person to whom communications respecting this proceeding shall be made and upon whom service of pleadings evidence, notices, orders and other documents filed in this proceeding shall be made;

It is further ordered: That on or before December 27, 1960 the Secretary of the Commission shall cause to be mailed to each person who has given notice as provided in the first ordering paragraph hereof a list (hereinafter called Service List) of all persons who have given notice as so provided, together with the text of the rule proposed by Middle Atlantic Conference;

It is further ordered: That any person who has given notice as provided in the first ordering paragraph hereof who desires to submit evidence in support of the said rule shall do so by filing three (3) copies thereof in the form of verified statements with the Secretary of the Commission and serve copies of the same upon persons named on the Service List on or before January 30, 1961;

It is further ordered: That any person who has given notice as provided in the first ordering paragraph hereof who desires to submit evidence in opposition to the said rule shall do so by filing three (3) copies thereof in the form of verified statements with the Secretary of the Commission and serve copies of the same upon all persons named on the Service List on or before February 27, 1961;

It is further ordered: That any person who has filed and served direct evidence as provided in the third ordering paragraph hereof who desires to submit rebuttal evidence may do so in the form of verified statement by filing three (3) copies thereof with the Secretary of the Commission and serve copies of the same upon all persons named in the Service List on or before March 20, 1961;

It is further ordered: That any person who has given notice as provided in the first ordering paragraph hereof who desires to cross-examine an adversary witness whose written verified statement of fact has been filed pursuant to the provisions hereof shall notify the Secretary of the Commission and all persons named in the Service List within 10 days after the particular verified statement upon which he desires to cross-examine has been filed with the Secretary; that said notice shall identify the verified statement and the person desired to be cross-examined, and describe with particularity the matters in said verified statement upon which cross-examination is desired, and that failure to comply with the requirements of this order may result in denial of the request for cross-examination.

It is further ordered: That this proceeding will be assigned for oral hearing for the purpose of cross-examination at a time and place to be hereafter fixed.

It is further ordered: That all statements filed pursuant to the procedure herein set forth shall comply with Rules 1.49, 1.50 and 1.52 of the Commission's general rules of practice.

And it is further ordered: That notice of this proceeding be given to the general public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, Washington, D.C.

Dated at Washington, D.C., this 23d day of November A.D. 1960.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11161; Filed, Nov. 30, 1960; 8:48 a.m.]

NATIONAL LABOR RELATIONS BOARD

NOTICE OF NEW LOCATION AND ADDRESS

Pursuant to the provisions of section 3(a)(1) of the Administrative Procedure Act, 5 U.S.C. 1001, the National Labor Relations Board hereby separately states and concurrently publishes in the Notices section of the FEDERAL REGISTER the new address of the National Labor Relations Board at which the public may secure information or make submittals or requests.

The Board's new location and address is 1717 Pennsylvania Avenue, N.W., Washington 25, D.C., effective November 14, 1960.

(Sec. 6, 49 Stat. 452, as amended; 29 U.S.C. 156)

Dated, Washington, D.C., November 25, 1960.

By direction of the Board.

[SEAL] OGDEN W. FIELDS,
Executive Secretary.

[F.R. Doc. 60-11168; Filed, Nov. 30, 1960; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 9403 etc.]

CITY OF GALESBURG, ILL., ET AL.

Notice of Postponement of Prehearing Conference

City of Galesburg, Illinois, Docket 9403; Whiteside County Airport Board, Illinois, Docket 11280; City of Mt. Vernon, Illinois, Docket 11913; the Williamson County Airport Authority *et al.*, Docket 11917.

Notice is hereby given that the prehearing conferences on the above-entitled applications now assigned to be held on November 30, 1960 are postponed to December 8, 1960, at 2:00 p.m., e.s.t., Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Raymond J. Lynch.

Dated at Washington, D.C., November 28, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11171; Filed, Nov. 30, 1960; 8:50 a.m.]

[Docket No. 5482 etc.; Order E-16073]

KANSAS-OKLAHOMA LOCAL SERVICE CASE

Order for Oral Argument

On October 31, 1960, the Board adopted its decision and order (Order E-15975) in this proceeding. Thereafter on November 22, 1960, petitions for reconsideration, rehearing and reargument were filed by the parties pursuant to Rule 37 of the rules of practice, and answers with respect to such petitions may be filed within 10 days thereafter. In view of the issues raised by such petitions, the Board has concluded that oral argument should be held upon such petitions before the full Board. The times allotted and the issues upon which argument will be heard with respect to such petitions will be announced shortly.

It is ordered: That oral argument before the full Board upon the petitions for reconsideration, rehearing and reargument in this proceeding be held on December 6, 1960, at 10:00 a.m., Room

1027, Universal Building, Washington, D.C.

By the Civil Aeronautics Board:

[SEAL] ROBERT C. LESTER, *Secretary.*

[F.R. Doc. 60-11172; Filed, Nov. 30, 1960; 8:50 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24S-1664]

BEN HUR GOLD, INC.

Notice and Order for Hearing

NOVEMBER 25, 1960.

I. Ben Hur Gold, Inc. (issuer), an Idaho corporation, P.O. Box 2853, Boise, Idaho, filed with the Commission on March 12, 1959, a notification on Form 1-A and an offering circular relating to an offering of 200,000 shares of its 10¢ par value stock at 10¢ per share for an aggregate offering of $20,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) and Regulation A promulgated thereunder.

II. The Commission on April 16, 1959 issued an order pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, temporarily suspending the exemption under Regulation A and affording to any person having an interest therein an opportunity to request a hearing pursuant to Rule 261. A written request for hearing was received by the Commission.

The Commission deeming it necessary and appropriate to determine whether to vacate the temporary suspension order or to enter an order permanently suspending the exemption,

It is hereby ordered: That a hearing under the applicable provisions under the Securities Act of 1933, as amended, and the rules of the Commission be heard at the United States Attorney's Office, Federal Building, Boise, Idaho at 10:00 a.m., on December 1, 1960 with respect to the following matters and questions, without prejudice, however, to the specification of additional issues which may be presented in these proceedings:

A. Whether an exemption under Regulation A is not available pursuant to Rule 252(d)(2) in that the president of the issuer has been enjoined by courts of competent jurisdiction.

B. Whether the terms and conditions of Regulation A have not been complied with, in that:

1. The notification on Form 1-A fails to disclose the names and addresses of the issuer's predecessors, as required by Item 2(a);

2. The notification on Form 1-A fails to set forth fully the information required by Items 5 and 9 as to the issuer's predecessors;

3. The issuer has failed to file copies of the governing instruments defining the rights of the 10¢ par value stock proposed to be offered, as required by Item 11(a) of Form 1-A.

C. Whether the offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The statements on page 5 concerning Earl Cedric Heffner, a director, a promoter, and the president of the issuer, and the failure to disclose fully and adequately his background and experience;

2. The statements on page 5 concerning William Alexander Hutton, a director of the issuer and its mining engineer, and the failure to disclose fully and adequately his background and experience;

3. The failure to disclose the insolvent condition of Good Hope Investors, Inc., an affiliate and predecessor of the issuer;

4. The failure to disclose the condition and value of the issuer's mining machinery;

5. The failure to disclose the material terms of the issuer's mining equipment contracts and liens, if any, on such equipment;

6. The failure to disclose adequately the contract terms for, the nature of the title to, and the royalties payable on The Windfall Property, The Millsite and Parker Placer, The Ben Hur Quartz Property, The Buffalo Quartz Property, and The Coy-Dowing Humdinger #1 Quartz Claim;

7. The failure to disclose adequately the results of work upon the issuer's mining properties;

8. The statement on page 8 that "This property contains from 1,000 to 1,500 feet of Creek Bed Placer that we believe to be workable";

9. The statement on page 11 that "Values are in Lode Gold with quite a lot of Silver in places; our preliminary assays indicate a fairly good grade of rock and widths are also quite good; what lies underneath and beyond is a something we would all like to know";

10. The adequacy of the information given in the first paragraph on page 13, concerning assay results;

11. The failure to disclose adequately (a) Information about the type, condition, and capacity of the issuer's mill, and (b) the justification for the proposed expenditures on the issuer's mill in light of the amount of known ore;

12. The failure to set forth adequate financial statements properly reflecting the issuer's financial condition;

13. The failure to set forth appropriate financial statements for the issuer's predecessor;

14. The failure to disclose that there is no established market for the issuer's stock and that the offering price of the stock is an arbitrary figure.

D. Whether the offering would be made in violation of section 17 of the Securities Act of 1933, as amended, in that in addition to the foregoing, among other things, statements are made implying the existence of commercial quantities of ore and successful mining operations.

III. *It is further ordered,* That Sidney Gross or any officer or officers of the Commission designated by it for that purpose shall preside at the hearing; that any officer or officers so designated to preside at any such hearing are hereby authorized to exercise all the power granted to the Commission under section 19(b), 21 and 22(c) of the Securities Act of 1933, as amended, and to hearing officers under the Commission's rules of practice.

It is further ordered, That the Secretary of the Commission shall serve a copy of this order by registered mail to Ben Hur Gold, Inc.; that notice of the entering of this order shall be given to all persons by general release of the Commission and by publication in the FEDERAL REGISTER. Any person who desires to be heard or otherwise wishes to participate in the hearing shall file with the Commission on or before November 29, 1960, a request relative thereto as provided in Rule IX of the Commission's rules of practice.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11147; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 24W-2344]

SABER BOATS, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

NOVEMBER 25, 1960.

I. Saber Boats, Inc. (formerly Light House, Inc.), incorporated under the laws of the State of Maryland and formerly located at Accokeek, Maryland, filed with the Commission on January 27, 1960, a notification and offering circular relating to an offering of 106,875 shares of its 10 cent par value Class B non-voting stock, at $2 per share and 2,500 shares of its 10 cent par value Class A voting common stock at $2 per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to section 3(b) thereof and Regulation A promulgated thereunder. Batten and Company, with offices at 1835 K Street NW., Washington, D.C., was named as underwriter for this offering.

II. The Commission has reasonable cause to believe that:

A. The offering circular and other material used in connection with the offering contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, particularly with respect to:

1. The statement in the offering circular that the public offering price was $2 per share when in fact the stock was offered to some members of the public at $2 per share and to other members of the public at varying higher prices;

2. The statement in the offering circular that the issuer was owner of the "property and plant facilities" therein described, when in fact legal title thereto was incomplete and was not completed until July 18, 1960;

3. The financial statements were not prepared in accordance with generally accepted accounting principles and practices in that the issuer represents ownership in the balance sheet of the land and building, when in fact the issuer did not have legal ownership of the assets represented therein.

B. The terms and conditions of Regulation A have not been complied with in that:

1. Sales were made to the public without the use of an offering circular as required by Rule 256; and

2. The issuer and the selling stockholder failed to file a complete and accurate report of sales on Form 2-A as required by Rule 260, in that the report, filed May 12, 1960, incorrectly states that the offering was completed May 2, 1960, at $2 per share by the broker-dealer firm named therein, and fails to disclose the actual commissions paid and received.

C. The offering has been made in violation of section 17(a) of the Securities Act of 1933, as amended.

III. *It is ordered,* Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within 30 days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11151; Filed, Nov. 30, 1960; 8:47 a.m.]

[File No. 70-3913]

MISSISSIPPI POWER & LIGHT CO.

Notice of Proposed Issuance and Sale Of Short-Term Notes to Banks

NOVEMBER 23, 1960.

Notice is hereby given that Mississippi Power & Light Company ("Mississippi"), a public-utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act as applicable to the proposed transactions. All interested persons are referred to said declaration for a statement of the proposed transactions which are summarized below.

By order dated January 12, 1959 (Holding Company Act Release No. 13910), the Commission authorized Mississippi, pursuant to a Credit Agreement with nine banks, to issue and sell, from time to time, during the period from January 15, 1959, to January 15, 1961, its promissory notes not to exceed at any one time outstanding an aggregate face amount of $5,000,000. Under said Credit Agreement, Mississippi may, at its option, extend the term of the agreement and the due date of its loans to January 15, 1962. In the present filing, Mississippi is seeking Commission approval to issue notes pursuant to such an extension.

Under the Credit Agreement, the company's notes bear interest at the rate of 4 percent per annum and are prepayable, in whole or in part, without premium, unless paid from the proceeds of other bank borrowings at a lower interest rate. The Credit Agreement also provides for the payment of a commitment fee computed at the rate of one quarter of one percent per annum on the daily average unused amount of commitments during the term of the Credit Agreement after June 15, 1959, subject, however, to the right of the company, upon 10 days notice, to terminate or reduce such obligation without penalty. As of August 7, 1960, in accordance with the terms of the Credit Agreement, Mississippi reduced the credit commitment of the nine banks to a total of $3,000,000, allocated as follows:

	Amount of commitment
The Hanover Bank	$1,500,000
Deposit Guaranty Bank & Trust Company	690,000
First National Bank of Jackson	450,000
Grenada Bank	120,000
The First National Bank & Trust Company of Vicksburg	66,000
Greenville Bank & Trust Company	60,000
The Merchants National Bank and Trust Company of Vicksburg	54,000
The Commercial National Bank of Greenville	36,000
The First National Bank of Greenville	24,000
	$3,000,000

The declaration shows that no such notes are currently outstanding, the last $1,000,000 having been repaid on November 3, 1960. Declarant states that to meet temporary cash needs during 1961, it is expected that $2,000,000 of loans will be required in January 1961 and that an additional $1,000,000 will be borrowed in March 1961. The company presently anticipates that the entire amount will be repaid prior to December 1961.

The only expenses to be incurred in connection with the proposed transactions are miscellaneous expenses which are estimated at $50.00. The declaration states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 12, 1960, at 5:30 p.m., request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11150; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 24S-1773]

EDSCO MANUFACTURING CO., INC.

Order Changing Place of Hearing

NOVEMBER 25, 1960.

The Commission, by order dated November 7, 1960, having ordered a hearing in the above entitled matter pursuant to section 3(b) and the Securities Act of 1933, as amended, and Rule 261 thereunder and said hearing being now scheduled to commence on December 5, 1960 at 10:00 a.m., P.s.t., at the Clark County Courthouse, Vancouver, Washington; and

Counsel for the Division of Corporation Finance having requested that the place of hearing be changed and counsel for the issuer not objecting thereto;

It is ordered, That the hearing scheduled to commence on December 5, 1960 be held at 10:00 a.m., P.s.t., in the United States Attorney's Office, United States Post Office and Federal Building, Portland, Oregon, and to continue thereafter at such time and place as the hearing officer may determine.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11149; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 70-3917]

COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Execution of Surety Bond by Holding Company for Public-Utility Subsidiary

NOVEMBER 23, 1960.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 12(b) of the

Act and Rule 45 promulgated thereunder as applicable to the proposed transaction, which is summarized as follows:

United Fuel Gas Company ("United"), a wholly-owned gas utility subsidiary company of Columbia, has filed with the Public Service Commission of West Virginia ("West Virginia Commission"), an application for increased gas rates estimated to produce increased annual revenues of approximately $4,682,000. Under applicable West Virginia law, United is collecting the higher rates provided for in the rate filing subject to the obligation to refund with interest, any portion of the higher rates which may ultimately be determined to be excessive. This refund obligation is now guaranteed by two bonds in the amounts of $1,600,000 and $100,000 executed by United with Columbia acting as surety. On November 2, 1960, the West Virginia Commission issued an order requiring the posting of an additional bond of $1,000,000 as security for the obligation to refund and it has indicated its willingness to accept Columbia as surety. Columbia, therefore, proposes to act as surety on said bond without fee or other charges to United in order to relieve United of paying the customary fee of an insurance company. In the event any portion of the increased rates should ultimately be determined to be excessive, United, as required, will make refunds in the ordinary course of business out of its general corporate funds.

It is estimated that the fees and expenses to be incurred in connection with the proposed transaction will be limited to $100 for services of the Columbia Gas System Service Corporation rendered primarily in connection with the present filing.

The declaration states that, other than for the acceptance of the proposed surety bond by the West Virginia Commission, no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 5, 1960, at 12:30 p.m., request this Commission in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11148; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 24S-1761]

UTAHCAN, INC.

Order Changing Place of Hearing

NOVEMBER 25, 1960.

The Commission, by order dated November 7, 1960, having ordered a hearing in the above entitled matter pursuant to section 3(b) and the Securities Act of 1933, as amended, and Rule 261 thereunder and said hearing being now scheduled to commence on November 29, 1960 at 10:00 a.m., P.s.t., at the Federal Building, Spokane, Washington; and

Counsel for the Division of Corporation Finance having requested that the place of hearing be changed and counsel for the issuer not objecting thereto;

It is ordered, That the hearing scheduled to commence on November 29, 1960 be held at 10:00 a.m., P.s.t., in the United States Attorney's Office, United States Post Office and Courthouse, Spokane, Wash., and to continue thereafter at such time and place as the hearing officer may determine.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11152; Filed, Nov. 30, 1960; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-119]

MOORE-McCORMACK LINES, INC.

Notice of Application and of Hearing

Notice is hereby given of the application of Moore-McCormack Lines, Inc., for written permission of the Maritime Administrator, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, for its owned vessel, the "Mormacguide", which is under time charter to States Marine Lines to engage in one intercoastal voyage commencing at United States North Pacific ports on or about December 9, 1960, to load a cargo of lumber and/or lumber products for discharge at United States Atlantic ports. This application may be inspected by interested parties in the Office of Hearing Examiners, Maritime Administration, Washington, D.C.

A hearing on the application has been set before the Maritime Administrator for December 8, 1960, at 9:30 a.m., e.s.t., in Room 4519, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on December 7, 1960, notify the Secretary, Maritime Administration in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Administration, petitions for leave to intervene received after the close of business on December 7, 1960, will not be granted in this proceeding.

Dated: November 29, 1960.

THOMAS LISI, *Secretary.*

[F.R. Doc. 60-11200; Filed, Nov. 30, 1960; 8:52 a.m.]

GENERAL SERVICES ADMINISTRATION

[Delegation of Authority 391]

SECRETARY OF THE INTERIOR

Disposal of Certain Government Owned Real Property Comprising a Portion of Wheelock Academy

1. Pursuant to authority vested in me by the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (hereinafter referred to as "the Act"), authority is hereby delegated to the Secretary of the Interior to dispose of 30 acres of vacant land consisting of the East ½ of the Northeast ¼ of the Northeast ¼; the Northeast ¼ of the Southeast ¼ of the Northeast ¼ of Section 34, Township 6 South, Range 22 East, comprising a portion of the former Wheelock Academy, Millerton, Oklahoma, by sale upon such terms as may be deemed advantageous to the United States. Provided, that in the case of a negotiated disposal not less than the appraised value shall be obtained.

2. The authority conferred herein shall be exercised in accordance with the Act and regulations of the General Services Administration issued pursuant thereto, including the screening required by GSA Reg. 2-V-405.02, .03 and .04; except, however, that no screening of the property as required by GSA Reg. 2-IV-202.05 need be conducted since the property has been screened among Federal agencies and a determination made that no Federal need exists therefor.

3. In the event of a negotiated sale, the Secretary of the Interior shall submit to the appropriate Committees of Congress an explanatory statement of the type required by section 203(e) of the Act. A copy of each such statement shall be furnished to the General Services Administration.

4. The authority delegated herein may be redelegated to any officer or employee of the Department of the Interior.

5. This delegation of authority shall be effective as of the date hereof.

Dated: November 25, 1960.

FRANKLIN FLOETE, *Administrator.*

[F.R. Doc. 60-11159; Filed, Nov. 30, 1960; 8:48 a.m.]

1027, Universal Building, Washington, D.C.

By the Civil Aeronautics Board:

[SEAL] ROBERT C. LESTER, *Secretary.*

[F.R. Doc. 60-11172; Filed, Nov. 30, 1960; 8:50 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24S-1664]

BEN HUR GOLD, INC.

Notice and Order for Hearing

NOVEMBER 25, 1960.

I. Ben Hur Gold, Inc. (issuer), an Idaho corporation, P.O. Box 2853, Boise, Idaho, filed with the Commission on March 12, 1959, a notification on Form 1-A and an offering circular relating to an offering of 200,000 shares of its 10¢ par value stock at 10¢ per share for an aggregate offering of $20,000, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) and Regulation A promulgated thereunder.

II. The Commission on April 16, 1959 issued an order pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, temporarily suspending the exemption under Regulation A and affording to any person having an interest therein an opportunity to request a hearing pursuant to Rule 261. A written request for hearing was received by the Commission.

The Commission deeming it necessary and appropriate to determine whether to vacate the temporary suspension order or to enter an order permanently suspending the exemption,

It is hereby ordered: That a hearing under the applicable provisions under the Securities Act of 1933, as amended, and the rules of the Commission be heard at the United States Attorney's Office, Federal Building, Boise, Idaho at 10:00 a.m., on December 1, 1960 with respect to the following matters and questions, without prejudice, however, to the specification of additional issues which may be presented in these proceedings:

A. Whether an exemption under Regulation A is not available pursuant to Rule 252(d)(2) in that the president of the issuer has been enjoined by courts of competent jurisdiction.

B. Whether the terms and conditions of Regulation A have not been complied with, in that:

1. The notification on Form 1-A fails to disclose the names and addresses of the issuer's predecessors, as required by Item 2(a);

2. The notification on Form 1-A fails to set forth fully the information required by Items 5 and 9 as to the issuer's predecessors;

3. The issuer has failed to file copies of the governing instruments defining the rights of the 10¢ par value stock proposed to be offered, as required by Item 11(a) of Form 1-A.

C. Whether the offering circular contains untrue statements of material facts and omits to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The statements on page 5 concerning Earl Cedric Heffner, a director, a promoter, and the president of the issuer, and the failure to disclose fully and adequately his background and experience;

2. The statements on page 5 concerning William Alexander Hutton, a director of the issuer and its mining engineer, and the failure to disclose fully and adequately his background and experience;

3. The failure to disclose the insolvent condition of Good Hope Investors, Inc., an affiliate and predecessor of the issuer;

4. The failure to disclose the condition and value of the issuer's mining machinery;

5. The failure to disclose the material terms of the issuer's mining equipment contracts and liens, if any, on such equipment;

6. The failure to disclose adequately the contract terms for, the nature of the title to, and the royalties payable on The Windfall Property, The Millsite and Parker Placer, The Ben Hur Quartz Property, The Buffalo Quartz Property, and The Coy-Dowing Humdinger #1 Quartz Claim;

7. The failure to disclose adequately the results of work upon the issuer's mining properties;

8. The statement on page 8 that "This property contains from 1,000 to 1,500 feet of Creek Bed Placer that we believe to be workable";

9. The statement on page 11 that "Values are in Lode Gold with quite a lot of Silver in places; our preliminary assays indicate a fairly good grade of rock and widths are also quite good; what lies underneath and beyond is a something we would all like to know";

10. The adequacy of the information given in the first paragraph on page 13, concerning assay results;

11. The failure to disclose adequately (a) Information about the type, condition, and capacity of the issuer's mill, and (b) the justification for the proposed expenditures on the issuer's mill in light of the amount of known ore;

12. The failure to set forth adequate financial statements properly reflecting the issuer's financial condition;

13. The failure to set forth appropriate financial statements for the issuer's predecessor;

14. The failure to disclose that there is no established market for the issuer's stock and that the offering price of the stock is an arbitrary figure.

D. Whether the offering would be made in violation of section 17 of the Securities Act of 1933, as amended, in that in addition to the foregoing, among other things, statements are made implying the existence of commercial quantities of ore and successful mining operations.

III. *It is further ordered,* That Sidney Gross or any officer or officers of the Commission designated by it for that purpose shall preside at the hearing; that any officer or officers so designated to preside at any such hearing are hereby authorized to exercise all the power granted to the Commission under section 19(b), 21 and 22(c) of the Securities Act of 1933, as amended, and to hearing officers under the Commission's rules of practice.

It is further ordered, That the Secretary of the Commission shall serve a copy of this order by registered mail to Ben Hur Gold, Inc.; that notice of the entering of this order shall be given to all persons by general release of the Commission and by publication in the FEDERAL REGISTER. Any person who desires to be heard or otherwise wishes to participate in the hearing shall file with the Commission on or before November 29, 1960, a request relative thereto as provided in Rule IX of the Commission's rules of practice.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11147; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 24W-2344]

SABER BOATS, INC.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

NOVEMBER 25, 1960.

I. Saber Boats, Inc. (formerly Light House, Inc.), incorporated under the laws of the State of Maryland and formerly located at Accokeek, Maryland, filed with the Commission on January 27, 1960, a notification and offering circular relating to an offering of 106,875 shares of its 10 cent par value Class B non-voting stock, at $2 per share and 2,500 shares of its 10 cent par value Class A voting common stock at $2 per share, for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to section 3(b) thereof and Regulation A promulgated thereunder. Batten and Company, with offices at 1835 K Street NW., Washington, D.C., was named as underwriter for this offering.

II. The Commission has reasonable cause to believe that:

A. The offering circular and other material used in connection with the offering contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, particularly with respect to:

1. The statement in the offering circular that the public offering price was $2 per share when in fact the stock was offered to some members of the public at $2 per share and to other members of the public at varying higher prices;

2. The statement in the offering circular that the issuer was owner of the "property and plant facilities" therein described, when in fact legal title thereto was incomplete and was not completed until July 18, 1960;

3. The financial statements were not prepared in accordance with generally accepted accounting principles and practices in that the issuer represents ownership in the balance sheet of the land and building, when in fact the issuer did not have legal ownership of the assets represented therein.

B. The terms and conditions of Regulation A have not been complied with in that:

1. Sales were made to the public without the use of an offering circular as required by Rule 256; and

2. The issuer and the selling stockholder failed to file a complete and accurate report of sales on Form 2-A as required by Rule 260, in that the report, filed May 12, 1960, incorrectly states that the offering was completed May 2, 1960, at $2 per share by the broker-dealer firm named therein, and fails to disclose the actual commissions paid and received.

C. The offering has been made in violation of section 17(a) of the Securities Act of 1933, as amended.

III. *It is ordered,* Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within 30 days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall become permanent on the thirtieth day after its entry and shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11151; Filed, Nov. 30, 1960; 8:47 a.m.]

[File No. 70-3913]

MISSISSIPPI POWER & LIGHT CO.

Notice of Proposed Issuance and Sale Of Short-Term Notes to Banks

NOVEMBER 23, 1960.

Notice is hereby given that Mississippi Power & Light Company ("Mississippi"), a public-utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 7 of the Act as applicable to the proposed transactions. All interested persons are referred to said declaration for a statement of the proposed transactions which are summarized below.

By order dated January 12, 1959 (Holding Company Act Release No. 13910), the Commission authorized Mississippi, pursuant to a Credit Agreement with nine banks, to issue and sell, from time to time, during the period from January 15, 1959, to January 15, 1961, its promissory notes not to exceed at any one time outstanding an aggregate face amount of $5,000,000. Under said Credit Agreement, Mississippi may, at its option, extend the term of the agreement and the due date of its loans to January 15, 1962. In the present filing, Mississippi is seeking Commission approval to issue notes pursuant to such an extension.

Under the Credit Agreement, the company's notes bear interest at the rate of 4 percent per annum and are prepayable, in whole or in part, without premium, unless paid from the proceeds of other bank borrowings at a lower interest rate. The Credit Agreement also provides for the payment of a commitment fee computed at the rate of one quarter of one percent per annum on the daily average unused amount of commitments during the term of the Credit Agreement after June 15, 1959, subject, however, to the right of the company, upon 10 days notice, to terminate or reduce such obligation without penalty. As of August 7, 1960, in accordance with the terms of the Credit Agreement, Mississippi reduced the credit commitment of the nine banks to a total of $3,000,000, allocated as follows:

	Amount of commitment
The Hanover Bank	$1,500,000
Deposit Guaranty Bank & Trust Company	690,000
First National Bank of Jackson	450,000
Grenada Bank	120,000
The First National Bank & Trust Company of Vicksburg	66,000
Greenville Bank & Trust Company	60,000
The Merchants National Bank and Trust Company of Vicksburg	54,000
The Commercial National Bank of Greenville	36,000
The First National Bank of Greenville	24,000
	$3,000,000

The declaration shows that no such notes are currently outstanding, the last $1,000,000 having been repaid on November 3, 1960. Declarant states that to meet temporary cash needs during 1961, it is expected that $2,000,000 of loans will be required in January 1961 and that an additional $1,000,000 will be borrowed in March 1961. The company presently anticipates that the entire amount will be repaid prior to December 1961.

The only expenses to be incurred in connection with the proposed transactions are miscellaneous expenses which are estimated at $50.00. The declaration states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 12, 1960, at 5:30 p.m., request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11150; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 24S-1773]

EDSCO MANUFACTURING CO., INC.

Order Changing Place of Hearing

NOVEMBER 25, 1960.

The Commission, by order dated November 7, 1960, having ordered a hearing in the above entitled matter pursuant to section 3(b) and the Securities Act of 1933, as amended, and Rule 261 thereunder and said hearing being now scheduled to commence on December 5, 1960 at 10:00 a.m., P.s.t., at the Clark County Courthouse, Vancouver, Washington; and

Counsel for the Division of Corporation Finance having requested that the place of hearing be changed and counsel for the issuer not objecting thereto;

It is ordered, That the hearing scheduled to commence on December 5, 1960 be held at 10:00 a.m., P.s.t., in the United States Attorney's Office, United States Post Office and Federal Building, Portland, Oregon, and to continue thereafter at such time and place as the hearing officer may determine.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11149; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 70-3917]

COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Execution of Surety Bond by Holding Company for Public-Utility Subsidiary

NOVEMBER 23, 1960.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 12(b) of the

Act and Rule 45 promulgated thereunder as applicable to the proposed transaction, which is summarized as follows:

United Fuel Gas Company ("United"), a wholly-owned gas utility subsidiary company of Columbia, has filed with the Public Service Commission of West Virginia ("West Virginia Commission"), an application for increased gas rates estimated to produce increased annual revenues of approximately $4,682,000. Under applicable West Virginia law, United is collecting the higher rates provided for in the rate filing subject to the obligation to refund with interest, any portion of the higher rates which may ultimately be determined to be excessive. This refund obligation is now guaranteed by two bonds in the amounts of $1,600,000 and $100,000 executed by United with Columbia acting as surety. On November 2, 1960, the West Virginia Commission issued an order requiring the posting of an additional bond of $1,000,000 as security for the obligation to refund and it has indicated its willingness to accept Columbia as surety. Columbia, therefore, proposes to act as surety on said bond without fee or other charges to United in order to relieve United of paying the customary fee of an insurance company. In the event any portion of the increased rates should ultimately be determined to be excessive, United, as required, will make refunds in the ordinary course of business out of its general corporate funds.

It is estimated that the fees and expenses to be incurred in connection with the proposed transaction will be limited to $100 for services of the Columbia Gas System Service Corporation rendered primarily in connection with the present filing.

The declaration states that, other than for the acceptance of the proposed surety bond by the West Virginia Commission, no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 5, 1960, at 12:30 p.m., request this Commission in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11148; Filed, Nov. 30, 1960; 8:46 a.m.]

[File No. 24S-1761]

UTAHCAN, INC.

Order Changing Place of Hearing

NOVEMBER 25, 1960.

The Commission, by order dated November 7, 1960, having ordered a hearing in the above entitled matter pursuant to section 3(b) and the Securities Act of 1933, as amended, and Rule 261 thereunder and said hearing being now scheduled to commence on November 29, 1960 at 10:00 a.m., P.s.t., at the Federal Building, Spokane, Washington; and

Counsel for the Division of Corporation Finance having requested that the place of hearing be changed and counsel for the issuer not objecting thereto;

It is ordered, That the hearing scheduled to commence on November 29, 1960 be held at 10:00 a.m., P.s.t., in the United States Attorney's Office, United States Post Office and Courthouse, Spokane, Wash., and to continue thereafter at such time and place as the hearing officer may determine.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11152; Filed, Nov. 30, 1960; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-119]

MOORE-McCORMACK LINES, INC.

Notice of Application and of Hearing

Notice is hereby given of the application of Moore-McCormack Lines, Inc., for written permission of the Maritime Administrator, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, for its owned vessel, the "Mormacguide", which is under time charter to States Marine Lines to engage in one intercoastal voyage commencing at United States North Pacific ports on or about December 9, 1960, to load a cargo of lumber and/or lumber products for discharge at United States Atlantic ports. This application may be inspected by interested parties in the Office of Hearing Examiners, Maritime Administration, Washington, D.C.

A hearing on the application has been set before the Maritime Administrator for December 8, 1960, at 9:30 a.m., e.s.t., in Room 4519, General Accounting Office Building, 441 G Street NW., Washington 25, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such application and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on December 7, 1960, notify the Secretary, Maritime Administration in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Maritime Administration, petitions for leave to intervene received after the close of business on December 7, 1960, will not be granted in this proceeding.

Dated: November 29, 1960.

THOMAS LISI, *Secretary.*

[F.R. Doc. 60-11200; Filed, Nov. 30, 1960; 8:52 a.m.]

GENERAL SERVICES ADMINISTRATION

[Delegation of Authority 391]

SECRETARY OF THE INTERIOR

Disposal of Certain Government Owned Real Property Comprising a Portion of Wheelock Academy

1. Pursuant to authority vested in me by the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (hereinafter referred to as "the Act"), authority is hereby delegated to the Secretary of the Interior to dispose of 30 acres of vacant land consisting of the East ½ of the Northeast ¼ of the Northeast ¼; the Northeast ¼ of the Southeast ¼ of the Northeast ¼ of Section 34, Township 6 South, Range 22 East, comprising a portion of the former Wheelock Academy, Millerton, Oklahoma, by sale upon such terms as may be deemed advantageous to the United States. Provided, that in the case of a negotiated disposal not less than the appraised value shall be obtained.

2. The authority conferred herein shall be exercised in accordance with the Act and regulations of the General Services Administration issued pursuant thereto, including the screening required by GSA Reg. 2-V-405.02, .03 and .04; except, however, that no screening of the property as required by GSA Reg. 2-IV-202.05 need be conducted since the property has been screened among Federal agencies and a determination made that no Federal need exists therefor.

3. In the event of a negotiated sale, the Secretary of the Interior shall submit to the appropriate Committees of Congress an explanatory statement of the type required by section 203(e) of the Act. A copy of each such statement shall be furnished to the General Services Administration.

4. The authority delegated herein may be redelegated to any officer or employee of the Department of the Interior.

5. This delegation of authority shall be effective as of the date hereof.

Dated: November 25, 1960.

FRANKLIN FLOETE, *Administrator.*

[F.R. Doc. 60-11159; Filed, Nov. 30, 1960; 8:48 a.m.]

Pages 12335-12390

FEDERAL REGISTER

VOLUME 25 NUMBER 234

Washington, Friday, December 2, 1960

THE UNIVERSITY OF MICHIGAN DEC · 1960 MAIN READING ROOM

Contents

Agricultural Marketing Service

NOTICES:
Birmingham Livestock Commission Co.; notice of location and changes in names of posted stockyards 12382
Harrison Sales Co.; deposting of stockyards 12384

Agriculture Department

See Agricultural Marketing Service.

Atomic Energy Commission

NOTICES:
Babcock and Wilcox Co.; notice of issuance of facility license amendment 12389
PROPOSED RULE MAKING:
Procedures for review of certain nuclear reactors exempted from licensing requirements 12367

Civil Aeronautics Board

NOTICES:
Reopened Erie-Detroit investigation; notice of hearing 12375

Commerce Department

See Federal Maritime Board; Foreign Commerce Bureau; Maritime Administration.

Federal Aviation Agency

RULES AND REGULATIONS:
Lockheed 188 series aircraft; airworthiness directive 12352
Standard instrument approach procedures; miscellaneous amendments 12353
Transportation of explosives and other dangerous articles; authority to deviate from certain provisions of the Civil Air Regulations within the State of Alaska; correction 12352

Federal Communications Commission

NOTICES:
Hearings, etc.:
Carter Mountain Transmission Corp 12375
Michigan Broadcasting Co. (WBCK) et al 12375
Oregon Television, Inc., and Willamette-Land Television, Inc 12375
Silkwood, Ralph J 12375
PROPOSED RULE MAKING:
Television broadcast stations; requirements for frequency monitors 12371
RULES AND REGULATIONS:
Amateur radio service; new amateur application forms 12358
Type acceptance of transmitters, bandwidth and spurious emissions 12359

Federal Maritime Board

RULES AND REGULATIONS:
War risk insurance; change in expiration dates 12348

Federal Power Commission

NOTICES:
Chiflo Pumped Diversion Project; notice of land withdrawal, Mexico 12377
Hearings, etc.:
Atlantic Refining Co. et al 12376
California-Pacific Utilities Co 12378
Cities Service Production Co. et al 12378
Duke Power Co 12378
Fields, Bert, et al 12376
Lario Oil and Gas Co. et al 12377
Nemours Corp. et al 12379
Placid Oil Co. et al 12381
Sun Oil Co. et al.; correction 12381
Union Oil Company of California 12381

Federal Reserve System

NOTICES:
Firstamerica Corp.; notice of receipt of application 12382

Federal Trade Commission

RULES AND REGULATIONS:
Prohibited trade practices:
Baxter Woolen Co., Inc., and Baxter, Charles B 12337
Dean Studios et al 12337
Discount Motor Sales, Inc., et al 12337
Eversharp Lawn Mower Corp. et al 12338
L. L. Berger, Inc 12338

Food and Drug Administration

PROPOSED RULE MAKING:
Orange juice and orange juice products; notice of hearing regarding establishment of definitions and standards of identity 12372
Tolerances and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities; notice of amendment of petition for establishment of tolerances 12374

Foreign Commerce Bureau

NOTICES:
American Potash and Chemical Corp.; probation and export denial order 12386
R. Hausler and Co., K. G. and Samprod Ges. m.b.H.-Ltd.; order temporarily denying export privileges 12388

Health, Education, and Welfare Department

See Food and Drug Administration.

Interior Department

See Land Management Bureau.

Internal Revenue Service

PROPOSED RULE MAKING:
Drawback on distilled spirits used in manufacturing nonbeverage products 12362
Manufacturers and retailers excise taxes; laminated tires 12362

(Continued on next page)

CONTENTS

RULES AND REGULATIONS:
Excess profits tax; taxable years ending after June 30, 1950; excess profits credit of regulated public utilities entitled to benefits 12340
Income tax; taxable years beginning after December 31, 1941, and after December 31, 1951; definitions of certain minerals 12339
Income tax; taxable years beginning after December 31, 1953: Additional first-year depreciation allowance 12340
Stock; gross receipts 12345

Interstate Commerce Commission

NOTICES:
Motor carrier transfer proceedings 12384

Labor Department

PROPOSED RULE MAKING:
Minimum wage determinations; tentative decision in redetermination of prevailing minimum wages for the metal business furniture and storage equipment industry 12363

Land Management Bureau

RULES AND REGULATIONS:
Oil and gas leases; leasing of certain lands 12352

Maritime Administration

RULES AND REGULATIONS:
War risk insurance; change in expiration dates (*see* Federal Maritime Board) 12345

Post Office Department

NOTICES:
Relocation of regional headquarters from Portland, Oregon, to Seattle, Washington 12375
RULES AND REGULATIONS:
Official mail 12348

Securities and Exchange Commission

NOTICES:
Mississippi Power and Light Co.; notice of proposed acquisition of common stock of Business Development Corporation 12385

Treasury Department

See also Internal Revenue Service.
RULES AND REGULATIONS:
Gold regulations; application to gold situated in Hawaii, possessions of the United States, and the Canal Zone 12345

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

10 CFR

PROPOSED RULES:
115 12367

14 CFR

49 12352
507 12352
609 12353

16 CFR

13 (5 documents) 12337, 12338

21 CFR

PROPOSED RULES:
27 12372
120 12374

26 (1939) CFR

29 12339
39 12339
40 12340

26 (1954) CFR

1 (2 documents) 12340, 12345
18 12340
PROPOSED RULES:
48 12362
197 12362

31 CFR

54 12345

39 CFR

27 12348

41 CFR

PROPOSED RULES:
50–202 12363

43 CFR

192 12352

46 CFR

308 12348

47 CFR

1 12358
5 12359
9 12359
10 12359
11 12359
12 12358
16 12359
19 12359
21 12359
PROPOSED RULES:
3 12371

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7375 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Baxter Woolen Co., Inc., and Charles B. Baxter

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* § 13.1185–90 *Wool Products Labeling Act.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.852 *Formal regulatory and statutory requirements:* § 13.1852–80 *Wool Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2–5, 54 Stat. 1128–1130; 15 U.S.C. 45, 68) [Cease and desist order, Baxter Woolen Company, Inc., et al., East Rochester, N.H., Docket 7375, September 29, 1960]

Consent order requiring a manufacturer in East Rochester, N.H., to cease violating the Wool Products Labeling Act by labeling as "85 percent wool—15 percent nylon", "70 percent wool—20 percent nylon—10 percent rayon decoration", etc., woolen fabrics which contained substantially less woolen fibers than thus set forth, and by failing to label other wool products as required.

The order to cease and desist is as follows:

It is ordered, That Respondents, Baxter Woolen Company, Inc., a corporation, and its officers, and Charles E. Baxter (erroneously in the complaint as Charles B. Baxter), individually and as an officer of said corporation, and Respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of fabrics or other "wool products" as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing to affix labels to such products showing each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That Respondents, Baxter Woolen Company, Inc., a corporation, and its officers, and Charles E. Baxter, individually and as an officer of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of fabrics or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed, or the percentages or amounts thereof, on invoices, shipping memoranda or in any other manner.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That Respondents Baxter Woolen Company, Inc., a corporation and Charles E. Baxter, individually and as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 29, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60–11193; Filed, Dec. 1, 1960; 8:46 a.m.]

[Docket 8024 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Dean Studios et al.

Subpart—Advertising falsely or misleadingly: § 13.157 *Prize contests.* Subpart—Using contest schemes unfairly: § 13.2270 *Using contest schemes unfairly:* § 13.2270–50 *Puzzle prize contests.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Clark H. Geppert et al. trading as Dean Studios, Des Moines, Iowa, Docket 8024, September 29, 1960]

In the Matter of Clark H. Geppert, Byron Geppert and Fidelis Geppert, Individually and as Partners Trading as Dean Studios

Consent order requiring a partnership in Des Moines, Iowa, engaged in developing film and enlarging, tinting, and framing photographs, to cease using deceptive promotional schemes to sell its photographic services and products, specifically, purported puzzle contests—so easy to solve that anyone could "qualify" and "win" but then was required to sell respondents' products to 20 others before receiving the "real, live Miniature" dog or monkey offered as prize—which were thus used as "bait" to get names of persons who might sell respondents' services and products.

The order to cease and desist is as follows:

It is ordered, That respondents Clark H. Geppert, Byron Geppert and Fidelis Geppert, individually and as partners trading as Dean Studios, or trading under any other name or names, and their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of photographic services, including the developing of film, and the sale of enlargements, frames for photographs, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that respondents are conducting a puzzle contest in which prizes will be awarded for correctly solving the puzzle, unless such is the fact.

2. Failing to clearly and conspicuously disclose that participants in "puzzle contests" will not receive prizes until their efforts have resulted in the sale to others of respondents' products.

3. Misrepresenting in any manner, directly or by implication, the nature of any contest or the prizes which will be awarded in connection therewith.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 29, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60–11194; Filed, Dec. 1, 1960; 8:46 a.m.]

[Docket 7912 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Discount Motor Sales, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections:* § 13.15–80 *Government connection;* § 13.70 *Fictitious or misleading guarantees;* § 13.85 *Government approval, action, connection or standards;* § 13.260 *Terms and conditions.* Subpart—Using misleading name—VENDOR: § 13.2380 *Government connection.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Discount Motor Sales, Inc., et al., Washington, D.C., Docket 7912, September 29, 1960]

In the Matter of Discount Motor Sales, Inc., a Corporation, and John E. Kymingham, Leon N. Pappas and Pearl S. Kymingham, Individually and as Officers of Said Corporation

Consent order requiring Washington, D.C., used car dealers to cease misrepresenting down payments, financing rates, and guarantees on their used cars, as in the order below specified, and representing falsely, by use of the name "Military Discount Motor Sales, Inc." in advertising in publications circulating among Armed Forces personnel, or otherwise, that their business had some connection with the military forces.

Said order to cease and desist is as follows:

It is ordered, That respondents Discount Motor Sales, Inc., a corporation, and its officers, and John E. Kymingham and Leon N. Pappas, individually and as officers of said corporation, and Pearl S. Kymingham, as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That used cars can be purchased with a minimum down payment of one dollar or any other amount not in accord with the facts;

2. That they offer or make available 4 percent bank rate financing, or misrepresenting the financing rates under which their used cars are sold;

3. That no small loans are necessary to make a purchase of a used car; or only one monthly payment in one place is required on their credit accounts unless such is the fact;

4. That no down payment for the purchase of a used car is required of officers and enlisted men of the first three grades of the Armed Forces; and that no down payment is required of any other person, unless such is the fact;

5. That used cars are sold with a new car warranty;

6. That their used cars are guaranteed 100 percent; or are guaranteed to any other extent, that is not in accord with the facts, or have a 90 days no cost parts or labor warranty, unless such is the fact, or have a warranty for any other period of time or for any other coverage, that is not in accord with the facts;

7. That they are connected with or endorsed by the military services.

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Pearl S. Kymingham, individually.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Discount Motor Sales, Inc., a corporation; John E. Kymingham and Leon N. Pappas, individually and as officers of said corporation; and Pearl S. Kymingham, as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 29, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60-11195; Filed, Dec. 1, 1960; 8:46 a.m.]

[Docket 7656 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Eversharp Lawn Mower Corp. et al.

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices:* § 13.155–40 *Exaggerated as regular and customary.* Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception.* Subpart — Misrepresenting oneself and goods—PRICES: § 13.1805 *Exaggerated as regular and customary.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Eversharp Lawn Mower Corporation et al., St. Louis, Mo., Docket 7656, September 30, 1960]

In the Matter of Eversharp Lawn Mower Corporation, a Corporation, and Oscar S. Rudman and Michael L. Rudman, Individually and as Officers of the Said Corporation

Consent order requiring a St. Louis distributor to cease giving retailers the means to deceive the public as to the usual price of its lawn mowers through furnishing them with price lists containing purported retail prices that were fictitiously high and through participating with them in advertising in newspapers which used the fictitious list prices.

The order to cease and desist is as follows:

It is ordered, That respondents, Eversharp Lawn Mower Corporation, a corporation, and its officers, and Oscar S. Rudman, individually and as an officer of said corporation, and Michael L. Rudman, as an officer of the said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of lawn mowers or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, by furnishing price lists to their customers setting out suggested retail prices of their lawn mowers or any other product, or otherwise, that certain amounts are the usual and regular retail prices of their products, when such amounts are in excess of the prices at which such products are usually and regularly sold at retail in the trade area or areas where the representations are made;

2. Putting any plan into operation through the use of which retailers or others may misrepresent the usual and regular retail prices of such products.

It is further ordered, That the complaint, insofar as it relates to the respondent, Michael L. Rudman, in his individual capacity be, and the same hereby is, dismissed.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Eversharp Lawn Mower Corporation, and Oscar S. Rudman, individually and as officer of said corporation, and Michael L. Rudman, as an officer of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 30, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60-11196; Filed, Dec. 1, 1960; 8:46 a.m.]

[Docket 7965 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

L. L. Berger, Inc.

Subpart—Advertising falsely or misleadingly: § 13.30 *Composition of goods:* § 13.30–30 *Fur Products Labeling Act;* § 13.155 *Prices:* §13.155–15 *Comparative;* §13.155–40 *Exaggerated as regular and customary;* §13.155–70 *Percentage savings.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* § 13.1852–35 *Fur Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, L. L. Berger, Inc., Buffalo, N.Y., Docket 7965, September 29, 1960]

Consent order requiring a Buffalo, N.Y., furrier to cease violating the Fur Products Labeling Act by false advertising in newspapers which represented prices of fur products as reduced from fictitious "regular" prices; which represented, by use of such statements as "½ off original prices", that usual retail prices were reduced by such percentage; which represented prices as reduced without giving the time of compared higher prices; and which contained names of animals other than those producing certain furs; and by failing to maintain adequate records as a basis for price and value claims.

The order to cease and desist is as follows:

It is ordered, That L. L. Berger, Inc., a corporation, and its officers, and respondent's representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Falsely or deceptively advertising fur products through the use of any advertisement, public announcement or notice, which is intended to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of fur products and which:

A. Represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondent has usually and customarily sold such products in the recent regular course of business.

B. Represents directly or by implication through percentage savings claims that the regular or usual retail prices charged by respondent for fur products in the recent regular course of business were reduced in direct proportion to the amount of savings stated, when contrary to the fact.

C. Bases comparative prices on former or original prices that are not the prevailing prices at the time of the advertisement without stating the times or dates of the compared prices.

D. Misrepresents in any manner the savings available to purchasers of respondent's fur products.

E. Sets forth the name or names of any animal or animals other than the name or names provided in section 5(a)(1) of the Fur Products Labeling Act.

2. Making price claims and representations respecting prices and values of fur products unless there is maintained by respondent full and adequate records disclosing the facts upon which such claims and representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: September 29, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60-11197; Filed, Dec. 1, 1960; 8:46 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME AND EXCESS-PROFITS TAXES

[T.D. 6510]

[Reg. 111]

PART 29—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1941

[Reg. 118]

PART 39—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1951

Definitions of Certain Minerals

On February 10, 1959, notice of proposed rule making regarding amendments to Regulations 118 (26 CFR (1939) Part 39) and Regulations 111 (26 CFR (1939) Part 29) with respect to definitions of certain minerals was published in the FEDERAL REGISTER (24 F.R. 975). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following amendments are hereby adopted:

PARAGRAPH 1. Paragraph (b) of § 39.23 (m)–5 is amended:

(A) By striking that part of the first sentence which precedes the colon and inserting in lieu thereof the following:

(b) For the purpose of identifying the minerals listed in paragraph (a), such minerals shall be given their commonly understood commercial meanings. If a mineral of a taxpayer is within both a specific and a general mineral classification listed in paragraph (a), such mineral shall be considered to fall within the more specific classification. If the name of a mineral listed in paragraph (a) has no commonly understood commercial meaning but the name implies a particular use or uses, such mineral is to be defined in terms of such use or uses. Certain of the minerals listed in paragraph (a) are defined below in accordance with the foregoing criteria set forth in this paragraph:

(B) By striking the term "Calcium carbonates" and the definition of such term and inserting in lieu thereof the following:

Calcium carbonates. Miscellaneous limestones and other calcium carbonate rocks (not specifically provided for at a 5 percent or 15 percent rate of percentage allowance) which are used or sold for use for purposes for which the calcium carbonate content is a major requirement. For example, the term "calcium carbonates" includes limestone which is not of chemical or metallurgical grade and which is used or sold for use for cement manufacture or soil treatment. However, the term "calcium carbonates" does not include any carbonate mineral which is identifiable as dolomite, marble, stone, oyster shells, or clam shells within the commonly understood commercial meaning of those terms.

(C) By inserting immediately after the term "Clay, brick and tile" and the definition of such term the following:

Clay, refractory and fire. Clay which has a pyrometric cone equivalent of 19 or higher.

(D) By striking the terms "Limestone, chemical grade" and "Limestone, metallurgical grade" and the definitions of such terms and inserting in lieu thereof the following:

Dolomite. Any carbonate rock which contains substantial amounts of the mineral dolomite and which is considered to be dolomite within the commonly understood commercial meaning of the term.

Limestone, chemical and metallurgical grade. Limestone which contains a calcium carbonate and magnesium carbonate content totaling 95 percent or higher by weight. For this purpose, the term "limestone" does not include any carbonate mineral which is identifiable as a mineral falling within a more specific classification such as dolomite, marble, oyster shells, or clam shells.

(E) By inserting immediately after the term "Pumice" and the definition of such term the following:

Quartzite. Metamorphosed or silica-cemented sandstone which is so firmly cemented that it has the characteristic of breaking across rather than around the original sand grains. The term "quartzite" is not applicable to any mineral which constitutes sand or gravel within the commonly understood commercial meaning of those terms.

(F) By striking the term "Stone" and the definition of such term and inserting in lieu thereof the following:

Stone. Common dimension, crushed or broken stone within the ordinary meaning of these terms. However, the term "stone" does not include any mineral which is identifiable as a mineral falling within a more specific classification such as dolomite, quartzite, or chemical or metallurgical grade limestone.

PAR. 2. The second undesignated paragraph of § 29.23(m)–5 as amended by Treasury Decision 6031, approved July 14, 1953, is further amended:

(A) By striking that part of the first sentence which precedes the colon and inserting in lieu thereof the following: "For the purpose of identifying the minerals listed in the preceding paragraph, such minerals shall be given their commonly understood commercial meanings. If a mineral of a taxpayer is within both a specific and a general mineral classification listed in the preceding paragraph, such mineral shall be considered to fall within the more specific classification. If the name of a mineral listed in the preceding paragraph has no commonly understood commercial meaning but the name implies a particular use or uses, such mineral is to be defined in terms of such use or uses. Certain of the minerals listed in the preceding paragraph are defined below in accordance with the foregoing criteria set forth in this paragraph:"

(B) By striking the term "Calcium carbonates" and the definition of such term and inserting in lieu thereof the following:

Calcium carbonates. Miscellaneous limestones and other calcium carbonate rocks (not specifically provided for at a 5 percent or 15 percent rate of percentage allowance) which are used or sold for use for purposes for which the calcium carbonate content is a major requirement. For example, the term "calcium carbonates" includes lime-

stone which is not of chemical or metallurgical grade and which is used or sold for use for cement manufacture or soil treatment. However, the term "calcium carbonates" does not include any carbonate mineral which is identifiable as dolomite, marble, stone, oyster shells, or clam shells within the commonly understood commercial meaning of those terms.

(C) By inserting immediately after the term "Clay, brick and tile" and the definition of such term the following:

Clay, refractory and fire. Clay which has a pyrometric cone equivalent of 19 or higher.

(D) By striking the terms "Limestone, chemical grade" and "Limestone, metallurgical grade" and the definitions of such terms and inserting in lieu thereof the following:

Dolomite. Any carbonate rock which contains substantial amounts of the mineral dolomite and which is considered to be dolomite within the commonly understood commercial meaning of the term.

Limestone, chemical and metallurgical grade. Limestone which contains a calcium carbonate and magnesium carbonate content totaling 95 percent or higher by weight. For this purpose, the term "limestone" does not include any carbonate mineral which is identifiable as a mineral falling within a more specific classification such as dolomite, marble, oyster shells, or clam shells.

(E) By inserting immediately after the term "Pumice" and the definition of such term the following:

Quartzite. Metamorphosed or silica-cemented sandstone which is so firmly cemented that it has the characteristic of breaking across rather than around the original sand grains. The term "quartzite" is not applicable to any mineral which constitutes sand or gravel within the commonly understood commercial meaning of those terms.

(F) By striking the term "Stone" and the definition of such term and inserting in lieu thereof the following:

Stone. Common dimension, crushed or broken stone within the ordinary meaning of these terms. However, the term "stone" does not include any mineral which is identifiable as a mineral falling within a more specific classification such as dolomite, quartzite, or chemical or metallurgical grade limestone.

(53 Stat. 32, 467; 26 U.S.C. 62, 3791)

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: November 29, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11219; Filed, Dec. 1, 1960; 8:48 a.m.]

[T.D. 6509, Regs. 130]

PART 40—EXCESS PROFITS TAX; TAXABLE YEARS ENDING AFTER JUNE 30, 1950

Excess Profits Credit of Regulated Public Utilities Entitled to Benefits

On September 24, 1960, a notice of proposed rule making conforming § 40.448–2 of Regulations 130 (26 CFR (1939) Part 40) to the decision in Louisville Gas and Electric Company v. United States (1960) Ct. Cl. No. 65–59, was published in the FEDERAL REGISTER (25 F.R. 9180). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so published are hereby adopted.

(53 Stat. 467; 26 U.S.C. (1952 ed.) 3791)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: November 29, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

In order to conform Regulations 130 (26 CFR (1939) Part 40) to the principle involved in the decision in Louisville Gas and Electric Company v. United States (1960) Ct. Cl. No. 65–59, and to make certain clarifying changes, paragraph (e)(2) of § 40.448–2 of such regulations, as amended by Treasury Decision 5983, approved February 10, 1953, is further amended to read as follows:

§ 40.448–2 Definitions.

* * * * * * *

(e) *Adjusted invested capital.* * * *

(2) In the case of a corporation described in paragraph (a)(1)(i) or (ii), (2), or (4) of this section, if the corporate books of account are maintained in accordance with systems of accounts prescribed by an appropriate regulatory body (or, if not so prescribed, are maintained in accordance with the uniform systems of accounts prescribed by the Federal Power Commission or the National Association of Railway and Utility Commissioners), the adjusted invested capital for such taxable year shall be the sum of the average outstanding common and preferred capital stock accounts for the taxable year and the average capital surplus and earned surplus accounts for such taxable year, as properly recorded on the corporate books of account. The following rules shall apply for the purpose of this paragraph:

(i) The determination of the capital surplus and earned surplus accounts shall be based upon the amounts properly recorded on the corporate books of account and made in accordance with the system of accounts so maintained.

(ii) The term "an appropriate regulatory body" as used in this section means a regulatory body described in section 448(c)(1) and in paragraph (a)(1) of this section, under whose jurisdiction the corporation operates.

(iii) The average of any account (such as the common stock account or the capital surplus account) shall be the sum, divided by the number of days in the taxable year, of the amount of such account as of the beginning of each day of the taxable year.

(iv) If the adjusted invested capital for any taxable year is computed by the method prescribed by this paragraph, the taxpayer must attach a statement to its return for such taxable year setting forth all the facts which require the use of such method.

[F.R. Doc. 60-11225; Filed, Dec. 1, 1960; 8:49 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6507]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PART 18—CERTAIN INCOME TAX MATTERS UNDER THE TECHNICAL AMENDMENTS ACT OF 1958

Additional First-Year Depreciation Allowance

On September 3, 1960, a notice of proposed rule making regarding the regulations under section 179 of the Internal Revenue Code of 1954, relating to additional first-year depreciation allowance, effective for taxable years ending after June 30, 1958, and certain amendments to the Income Tax Regulations (26 CFR Part 1) to conform to the rules relating to additional first-year depreciation allowance was published in the FEDERAL REGISTER (25 F.R. 8554). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published, are hereby adopted, subject to the changes set forth below. Such regulations supersede § 18.1–3 of Treasury Decision 6335 (26 CFR Part 18), approved November 13, 1958 (23 F.R. 8981).

PARAGRAPH 1. Paragraph (a) of § 1.179–1 is revised.

PAR. 2. Paragraph (d)(1) of § 1.179–2 is revised.

PAR. 3. Paragraphs (a) and (c)(2) of § 1.179–3 are revised.

PAR. 4. Paragraphs (a) and (d)(2) of § 1.179–4 are revised.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: November 29, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

The regulations under section 179 of the Internal Revenue Code of 1954, relating to additional first-year depreciation allowance, set forth in paragraph 1 are hereby prescribed, effective for taxable years ending after June 30, 1958.

The Income Tax Regulations (26 CFR Part 1) are amended as set forth in paragraph 2 to conform to the rules relating to additional first-year depreciation allowance prescribed under section 179.

PARAGRAPH 1. The following regulations are hereby prescribed under section 179 of the Internal Revenue Code of 1954:

Sec.
1.179 Statutory provisions; additional first-year depreciation allowance.
1.179–1 Additional first-year depreciation allowance.

Sec.
1.179–2 Dollar limitation.
1.179–3 Definitions and special rules.
1.179–4 Time and manner of making election.

§ 1.179 Statutory provisions; additional first-year depreciation allowance.

SEC. 179. *Additional first-year depreciation allowance for small business*—(a) *General rule.* In the case of section 179 property, the term "reasonable allowance" as used in section 167(a) may, at the election of the taxpayer, include an allowance, for the first taxable year for which a deduction is allowable under section 167 to the taxpayer with respect to such property, of 20 percent of the cost of such property.

(b) *Dollar limitation.* If in any one taxable year the cost of section 179 property with respect to which the taxpayer may elect an allowance under subsection (a) for such taxable year exceeds $10,000, then subsection (a) shall apply with respect to those items selected by the taxpayer, but only to the extent of an aggregate cost of $10,000. In the case of a husband and wife who file a joint return under section 6013 for the taxable year, the limitation under the preceding sentence shall be $20,000 in lieu of $10,000.

(c) *Election*—(1) *In general.* The election under this section for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The election shall be made in such manner as the Secretary or his delegate may by regulations prescribe.

(2) *Election irrevocable.* Any election made under this section may not be revoked except with the consent of the Secretary or his delegate.

(d) *Definitions and special rules*—(1) *Section 179 property.* For purposes of this section, the term "section 179 property" means tangible personal property—

(A) Of a character subject to the allowance for depreciation under section 167,

(B) Acquired by purchase after December 31, 1957, for use in a trade or business or for holding for production of income, and

(C) With a useful life (determined at the time of such acquisition) of 6 years or more.

(2) *Purchase defined.* For purposes of paragraph (1), the term "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants),

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group, and

(C) The basis of the property in the hands of the person acquiring it is not determined—

(i) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) Under section 1014(a) (relating to property acquired from a decedent).

(3) *Cost.* For purposes of this section, the cost of property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the person acquiring such property.

(4) *Section not to apply to trusts.* This section shall not apply to trusts.

(5) *Estates.* In the case of an estate, any amount apportioned to an heir, legatee, or devisee under section 167(g) shall not be taken into account in applying subsection (b) of this section to section 179 property of such heir, legatee, or devisee not held by such estate.

(6) *Dollar limitation of affiliated group.* For purposes of subsection (b) of this section—

(A) All members of an affiliated group shall be treated as one taxpayer, and

(B) The Secretary or his delegate shall apportion the dollar limitation contained in such subsection (b) among the members of such affiliated group in such manner as he shall by regulations prescribe.

(7) *Affiliated group defined.* For purposes of paragraphs (2) and (6), the term "affiliated group" has the meaning assigned to it by section 1504, except that, for such purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1504(a).

(8) *Adjustment to basis; when made.* In applying section 167(f), the adjustment under section 1016(a)(2) resulting by reason of an election made under this section with respect to any section 179 property shall be made before any other deduction allowed by section 167(a) is computed.

(e) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this section.

[Sec. 179 as added by sec. 204, Small Business Tax Revision Act of 1958 (72 Stat. 1679)]

§ 1.179–1 Additional first-year depreciation allowance.

(a) *In general.* For taxable years ending after June 30, 1958, in the case of "section 179 property" acquired by purchase after December 31, 1957, a taxpayer (other than a trust) may elect for the first taxable year for which a deduction with respect to such property is allowable under section 167 to the taxpayer to include as part of the "reasonable allowance" allowable under section 167(a) an additional allowance of 20 percent of the cost or of a portion of the cost of such property. A trust is not eligible for the additional depreciation allowance under section 179. The allowance under section 179 is in addition to the depreciation allowable under section 167 computed on the balance of the unrecovered cost of the property after adjustment for the allowance under this section. For application of the dollar limitations of section 179(b), see § 1.179–2. For a definition of the term "section 179 property" and for special rules, see § 1.179–3. For the time and manner of making the election under this section, see § 1.179–4.

(b) *Proration not required.* The allowance under section 179 is determined without any proration based on the period of time the section 179 property has been in service during the taxable year. For example, taxpayer A, who makes his income tax returns on the calendar year basis, purchased and placed in service on August 7, 1958, section 179 property costing $8,000. A elects to claim the additional first-year depreciation on the total cost of $8,000. A is entitled to a deduction of $1,600 (20 percent of $8,000) under this section for 1958, without proration for the number of days in 1958 during which the property was in service.

(c) *Amount subject to allowance.* The allowance under section 179 is equal to 20 percent of the cost, or portion of the cost, of section 179 property selected by the taxpayer. Thus, all or a part of the cost of one item of property, or all or parts of the cost of several items of property, may be selected, subject to the dollar limitations of section 179(b) and § 1.179–2. For example, B, who makes his income tax returns on the basis of the calendar year, purchased section 179 property costing $9,000 in March 1959. B elects to claim the additional first-year depreciation allowance, but only with respect to $3,000 of the cost of the property. B's allowance under section 179 for 1959 is $600 (20 percent of $3,000).

(d) *Salvage.* The allowance under section 179 is computed without regard to any salvage value which is estimated will be realizable upon the sale or other disposition of the section 179 property when it is no longer useful in the taxpayer's trade or business or in the production of his income and is to be retired from service by the taxpayer. But see paragraphs (a) and (c) of § 1.167(a)–1 for rules relating to salvage in computing the depreciation allowance under section 167 on the unrecovered cost of the section 179 property after the allowance of the deduction under section 179.

(e) *When allowance is available.* (1) (i) The term "the first taxable year for which a deduction is allowable under section 167 to the taxpayer with respect to such property" means the first taxable year for which depreciation is allowable under section 167 on such property. See paragraph (b) of § 1.167(a)–10. The provisions of this subdivision may be illustrated by the following examples:

Example (1). M Corporation, which makes its income tax returns on the calendar year basis, purchases section 179 property costing $10,000 on December 27, 1960, places it in service on the same date, and does not use an averaging convention in determining the depreciation allowance. Since depreciation is allowable for the December 27–31, 1960, period, M Corporation may elect to claim the additional first-year depreciation allowance of $2,000 (20 percent of $10,000) for 1960.

Example (2). N Corporation, which files its income tax returns on the calendar year basis, purchases section 179 property costing $10,000 on August 10, 1960, and places it in service on the same date. N Corporation places the section 179 property in a multiple asset account under which it is assumed, for purposes of computing depreciation, that all additions and retirements during the first half of the taxable year were made on the first day of that year, and that all additions and retirements during the second half of the taxable year were made on the first day of the following year. Under these circumstances, N Corporation is entitled to elect the additional first-year depreciation allowance under section 179 on such property only for 1961, since that is the first year for which a deduction is allowable under section 167 on such property.

(ii) In the case of an emergency facility which the taxpayer elects to amortize under the provisions of section 168, and which facility also qualifies as section 179 property, the additional first-year depreciation allowance is not available (except as hereafter provided) unless the taxpayer elects under § 1.168–2 to begin the amortization deductions under section 168 with the succeeding

taxable year. If the taxpayer elects under § 1.168–2 to begin the amortization deductions under section 168 with the month following the month in which the facility was completed or acquired, and the facility qualifies as section 179 property, the additional first-year allowance is available only with respect to the portion of the facility which is not certified in accordance with section 168(e). If 100 percent of the facility is certified in accordance with section 168(e) and the taxpayer elects under § 1.168–2 to begin the amortization deductions under section 168 with such following month, no additional first-year allowance is available with respect to any portion of the facility.

(2) The additional first-year depreciation allowance on section 179 property is not available if the cost of such property is to be recovered through amortization deductions under section 162 and the regulations thereunder instead of through depreciation allowances under section 167(a).

§ 1.179–2 Dollar limitation.

(a) *Maximum amount subject to election.* (1) In any one taxable year the maximum amount of the cost of section 179 property with respect to which the taxpayer may elect to take an allowance under section 179 is $10,000, except that in the case of a husband and wife who file a joint income tax return under section 6013(a) for the taxable year the limitation is $20,000. But see paragraph (e) of this section. If the section 179 property purchased by the taxpayer exceeds the $10,000 or $20,000 limitation, as the case may be, the taxpayer may select the cost or portion of the cost of section 179 property to which his election is to apply. For example, X Corporation purchased five new delivery trucks in February 1959 at a cost of $5,000 each. The trucks qualify as section 179 property. X may select $2,000 of the cost of each truck to be subject to the allowance under § 1.179–1, or the total cost of $5,000 for each of any two trucks, or X may allocate the $10,000 maximum cost among some or all of the trucks in any other manner it chooses. The selection of property made by X is irrevocable unless X obtains consent of the Commissioner to change. See paragraph (b) of § 1.179–4.

(2) The dollar limitations of section 179 apply to each taxpayer, and not to each trade or business in which the taxpayer has an interest. For example, G is a single individual who makes his income tax returns on the calendar year basis. G operates two separate businesses on his own account and is a member of a partnership engaged in business. During 1960, G purchased section 179 property costing $8,000 for one of his businesses and section 179 property costing $6,000 for the other. In addition, G's distributive share of the partnership's section 179 allowance for 1959 is $300. The maximum allowance available to G under section 179 for 1960, including his $300 distributive share from the partnership is $2,000 (20 percent of $10,000). See, however, paragraph (b) of this section.

(b) *Amount apportioned by an estate.* The maximum amount of the cost of section 179 property with respect to which an estate may elect to take an allowance under section 179 is $10,000. The maximum allowance available to an estate under section 179 is $2,000 reduced, however, by any such section 179 allowance apportioned to an heir, legatee, or devisee. The amount of the allowance under section 179 apportioned from an estate to an heir, legatee, or devisee shall not be taken into account by such heir, legatee, or devisee in determining his $10,000 or $20,000 limitation (as provided in paragraph (a) of this section). See section 179(d)(5). For example, D, a single individual who makes his income tax return on the basis of the calendar year, purchases section 179 property costing $12,000 in December 1960 for use in his business. D elects to claim the additional first-year depreciation allowance on the maximum allowable cost, $10,000, and claims a deduction under section 179 for $2,000 (20 percent of $10,000). D is also a legatee of the XYZ estate, and in 1960 is allocated income of $1,500 from the estate, $500 as his share of the estate's additional first-year depreciation allowance, and $200 as his share of the estate's depreciation allowance under section 167. The net income of $800 ($1,500 minus $700) received by D from the estate will be included in D's income tax return for 1960. The $500 additional first-year depreciation allowance allocated to him by the estate will not affect his right to the allowance of $2,000 under section 179.

(c) *Affiliated group.* Taxpayers which constitute an affiliated group, as defined in paragraph (e) of § 1.179–3, shall be treated as one taxpayer in applying the $10,000 limitation of this section. The allowance may be taken by any one such member or allocated among the several members in any manner, pursuant to allocation by the common parent corporation if a consolidated return is filed, or in accordance with an agreement entered into by the members of the group if separate returns are filed. The amount of the allowance allocated to any member, however, shall not exceed 20 percent of the cost of section 179 property actually purchased by the member in the taxable year. If a consolidated return is filed, the common parent corporation shall file a statement in accordance with § 1.179–4. If separate returns are filed, the statement shall be filed by each member of an affiliated group to which is allocated any part of the deduction under section 179. Such statement shall include, in addition to the information required by § 1.179–4, the names of all the members of the affiliated group, the taxable year of the common parent corporation, and a description of the manner in which the deduction under section 179 has been divided among them. An allocation among the members of an affiliated group of the allowance under section 179 shall not, if a consolidated return is filed, be revoked after the due date of the return (including extensions of time) of the common parent corporation for a taxable year for which an election to take the allowance is made. If the members of an affiliated group do not file a consolidated return for a taxable year for which an election to take the allowance is made, the allocation as to all members of the group shall not be revoked after the due date of the return (including extensions of time) of the common parent corporation. For the purpose of the preceding sentence, the taxable years of the other members of the affiliated group ending with or within the taxable year of the common parent shall be considered as corresponding to the taxable year of the common parent. Thus, where a common parent's taxable year ends November 30, 1960, the allowance will apply with respect to section 179 property purchased in August 1959 by an affiliated corporation whose taxable year ends June 30, 1960 (a taxable year ending within the taxable year of the parent).

(d) *Partnership.* (1) In the case of a partnership, the election under section 179 with respect to section 179 property of the partnership shall be made by the partnership. See section 703(b). However, the amount of the section 179 allowance shall be determined separately as to each partner. The amount of the section 179 allowance available to a partner with respect to the cost of the section 179 property selected by the partnership is 20 percent of the maximum amount of the cost of such property allocable to the partner for the purpose of computing such allowance. This maximum is the individual partner's share of the total cost of the section 179 property (but not in excess of $10,000 or $20,000, whichever is applicable) computed by applying to the total cost of such property the percentage or fraction used in determining each partner's distributive share of the partnership's depreciation allowance under section 167 for the taxable year on such property. The partner's distributive share of the partnership's depreciation allowance under section 167 shall be determined in accordance with the provisions of section 704 and the regulations thereunder. The maximum amount of the allowance permitted under section 179 to the partnership shall be the aggregate of the maximum amounts allowable to the separate partners. The basis of the partnership's section 179 property must be adjusted to reflect the amount of the section 179 allowance to the partnership. See paragraph (f) of § 1.179–3. A trust's share of partnership property shall not be taken into account in determining the amount of the section 179 allowance of a partnership. In no event is a partner entitled to a section 179 allowance of more than $2,000 or $4,000, as the case may be, whether the allowance is in respect of section 179 property of the partnership or in respect of section 179 property which he acquired separately, or both. See, however, paragraph (b) of this section. Any allocation among the partners of the section 179 allowance shall not be modified after the due date of the partnership return (without regard to extensions of time) for the year for which the election under section 179 is made.

(2) The principles of this paragraph may be illustrated by the following examples:

Example (1). Partnership ABCD is composed of partner A who is married and files a joint income tax return, and partners B, C, and D who are single. Under the terms of the partnership agreement, the allocation of each partner's distributive share of depreciation under section 167 is 30 percent to A, 20 percent to B, 45 percent to C, and 5 percent to D. In 1960, the partnership purchases $100,000 of section 179 property. The partnership elects to claim the additional first-year depreciation allowance under § 1.179–1 with respect to the maximum allowable amount of the cost of section 179 property. The partnership is entitled in 1960 to an additional first-year depreciation allowance of $9,000 computed as follows:

	1	2	3	4
	Distributive share of depreciation under sec. 167	Allocable share of total cost of sec. 179 property ($100,000 x column 1)	Maximum amount subject to election (lesser of column 2 or ($10,000 or $20,000, as the case may be))	Sec. 179 allowance (20 percent x column 3)
	Percent			
Partner A	30	$30,000	$20,000	$4,000
Partner B	20	20,000	10,000	2,000
Partner C	45	45,000	10,000	2,000
Partner D	5	5,000	5,000	1,000
Total partnership allowance				9,000

In the foregoing example, the portion of the cost of the property selected by the partnership is $45,000, the total of column 3. The basis of the section 179 property of the partnership must be adjusted to reflect the $9,000 section 179 allowance. Such adjustment to the partnership's basis is required even though a partner may not be entitled to deduct the amount or a portion of the amount of the section 179 allowance available to him from such partnership for the reason that the aggregate of the section 179 allowances available to him from such partnership and from other partnerships or sole proprietorships exceed the appropriate limitation provided by section 179(b). If the partnership desired to elect only with respect to one-half of the maximum allowable amount, the entries in columns 3 and 4 with respect to each partner would be reduced by one-half. In such case, the portion of the cost of the property selected would be $22,500, the total section 179 allowance would be $4,500, and the basis would be adjusted accordingly.

Example (2). Partnership EFT is composed of partners E and F who are married and file joint income tax returns, and partner T which is a trust. Under the terms of the partnership agreement, the allocation of each partner's distributive share of depreciation under section 167 is 40 percent to E, 40 percent to F, and 20 percent to T. In 1960 the partnership purchases $50,000 of section 179 property. The partnership may not select a cost of section 179 property in excess of $40,000, which is the total of column 3 in the following computation:

	1	2	3	4
	Distributive share of depreciation under sec. 167	Allocable share of total cost of sec. 179 property ($50,000 x column 1)	Maximum amount subject to election (lesser of column 2 or ($10,000 or $20,000, as the case may be))	Sec. 179 allowance (20 percent x column 3)
	Percent			
Partner E	40	$20,000	$20,000	$4,000
Partner F	40	20,000	20,000	4,000
Partner T	20	0	0	0
Total partnership allowance				8,000

Since partner T is a trust, its share of partnership property may not be taken into account in determining the section 179 allowance of the partnership. Also, partner T is not entitled to any portion of the additional first-year depreciation allowance under section 179. The partnership is entitled in 1960 to an additional first-year depreciation allowance of $8,000.

(e) *Joint returns.* In the case of a husband and wife who file a joint income tax return under section 6013(a), the maximum amount of the cost of section 179 property with respect to which the taxpayer may elect an allowance under section 179 is $20,000, regardless of which spouse purchased the property. However, in the case of a husband and wife who elect under section 6013(b) to file a joint income tax return for a taxable year after the time prescribed by law for filing the return for such taxable year has expired, the dollar limitation under section 179 shall be the aggregate allowable dollar amount of section 179 property for which the election was made on their separate income tax returns. For example, H, who purchased section 179 property costing $18,000 in November 1960, filed a separate income tax return for 1960 on April 1, 1961, in which he elected to claim the additional first-year depreciation allowance on $10,000 of the cost of such property used in his separate business. W, who purchased section 179 property costing $7,000 in October 1960 for use in her separate business, filed a separate income tax return in March 1961 in which she elected to claim the additional first-year depreciation allowance on only $5,000 of the cost of such property. After the due date of the return, H and W elect under section 6013(b) to file a joint income tax return for 1960. Although H and W purchased section 179 property costing $25,000 in 1960, the maximum amount with respect to which the additional first-year depreciation allowance may be claimed in their joint income tax return is $15,000, the aggregate of the amounts elected on their separate income tax returns.

§ 1.179–3 Definitions and special rules.

The following definitions and special rules apply for purposes of section 179, §§ 1.179–1, 1.179–2, 1.179–4, and this section.

(a) *Section 179 property.* The term "section 179 property" means any tangible personal property, new or used, of a character subject to the allowance for depreciation under section 167, acquired by purchase after December 31, 1957, for use in the taxpayer's trade or business or in the production of his income, and which has an estimated useful life (determined at the time of acquisition) of 6 years or more. For purposes of determining the estimated useful life of section 179 property, the provisions of paragraph (b) of § 1.167(a)–1 shall be applied. For definition of the term "purchase", see paragraph (c) of this section.

(b) *Tangible personal property.* Local law definitions will not be controlling for purposes of determining the meaning of the term "tangible personal property" as it is used in section 179 and the regulations thereunder. For purposes of section 179, the term "tangible personal property" includes any tangible property except land, and improvements thereto, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). Assets accessory to the operation of a business, such as machinery, printing presses, transportation or office equipment, refrigerators, individual air conditioning units, grocery counters, etc., generally constitute tangible personal property for purposes of section 179, even though such assets may be termed fixtures under local law. The term does not include, for example, the wiring in a building, plumbing systems, nor central heating or central air conditioning machinery, pipes, or ducts or other items, which are structural components of a building or other permanent structure, nor does the term include trademarks, goodwill, or other intangibles.

(c) *Purchase.* (1) The term "purchase" means any acquisition of property after December 31, 1957, but only if all the requirements of subdivisions (i), (ii), and (iii) of this subparagraph are satisfied.

(i) The property is not acquired by purchase if it is acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b). In applying the rules of section 267 (b) and (c), section 267(c)(4) shall be treated as providing that the family of an individual shall include only his

spouse, ancestors, and lineal descendants. For example, a purchase of property from a corporation by a taxpayer who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of such corporation does not qualify as a "purchase" under section 179(d)(2), nor does the purchase of property by a husband from his wife. However, the purchase of section 179 property by a taxpayer from his brother or sister does qualify as a purchase for purposes of section 179(d)(2).

(ii) The property is not acquired by purchase if acquired from any one member of an affiliated group (as defined in paragraph (e) of this section) by another member of the same affiliated group.

(iii) The property is not acquired by purchase if the basis of the property in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or under section 1014 (a), relating to property acquired from a decedent. For example, property acquired by gift or bequest does not qualify as property acquired by purchase, for purposes of section 179(d)(2), nor does property received in a corporate distribution the basis of which is determined under section 301(d)(2)(B), property acquired by a corporation in a transaction to which section 351 applies, property acquired by a partnership through contribution (section 723), nor property received in a partnership distribution which has a carryover basis under section 732(a)(1).

(2) If property is in the process of construction, reconstruction, or erection on December 31, 1957, the term "purchase" will apply only to that part of the cost of such property which is attributable to such construction, reconstruction, or erection after December 31, 1957. The portion of the cost of such property attributable to construction, reconstruction, or erection after December 31, 1957, consists of all costs of the property allocable to the period after that date, including the cost or other basis of materials entering into such property. It is not necessary that such materials be acquired after December 31, 1957, or that their estimated useful lives independently determined be 6 years or more provided, however, that the property constructed, reconstructed, or erected has an estimated useful life of 6 years or more.

(d) *Cost.* The cost of section 179 property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the taxpayer. For example, N Corporation purchases a new drill press costing $9,000 in November 1960 which qualifies as section 179 property, and is granted a trade-in allowance of $2,000 on its old drill press. The old drill press had a basis of $1,200. Under the provisions of sections 1012 and 1031(d), the basis of the new drill press is $8,200 ($1,200 basis of old drill press plus cash expended of $7,000). However, only $7,000 of the basis of the new drill press qualifies as cost for purposes of the allowance under § 1.179–1; the remaining $1,200 is not part of the cost because it is determined by reference to the basis of the old drill press.

(e) *Affiliated group.* For purposes of section 179, the term "affiliated group" has the meaning assigned to it by section 1504 and paragraph (b) of § 1.1502–2, except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in those sections.

(f) *Adjustment to basis.* A taxpayer who elects the additional first-year depreciation allowance under section 179 must make the necessary adjustment to basis of the section 179 property, as required by section 179(d)(8), in the records he is required to keep under paragraph (c) of § 1.167(a)–7, before any other deduction allowable by section 167(a) is computed. For example, M Corporation which makes its return on the basis of the calendar year and uses the straight-line method of depreciation, purchases a $15,000 machine on July 1, 1960, which qualifies as section 179 property, and elects to claim the additional first-year depreciation allowance. The machine has an estimated 10-year life and an estimated salvage value of $1,000. For 1960, M Corporation is entitled to an allowance of $2,000 (20 percent of $10,000) under section 179. The cost basis of $15,000 must be adjusted by the $2,000 allowance before any other deduction under section 167 is computed. The adjusted basis of $13,000, less $1,000 salvage, or $12,000 may then be depreciated over the 10-year useful life of the machine in accordance with the provisions of section 167 and the regulations thereunder. Since M Corporation uses the straight-line method of depreciation for the machine, it will be entitled to a total deduction of $2,600 in 1960; that is $2,000 for additional first-year depreciation plus $600 ($12,000 x 10 percent x 6 mos.) depreciation on the balance of $12,000.

§ 1.179–4 Time and manner of making election.

(a) *Election.* A separate election must be made for each taxable year in which an additional first-year depreciation allowance is claimed with respect to section 179 property. The election under section 179 and § 1.179–1 to claim an additional first-year depreciation allowance on section 179 property shall be made in a statement attached to the taxpayer's income tax return for the taxable year to which the election applies. The return and statement must be filed not later than the time prescribed by law (including extensions thereof) for filing the return for such taxable year. The statement shall indicate that the taxpayer elects under section 179 to claim an additional first-year depreciation allowance for section 179 property, and shall set forth the following information with respect to the property selected:

(1) Description of property (truck, printing press, etc.).

(2) Date property acquired (after December 31, 1957).

(3) Total cost of each item of property with respect to which the election is made.

(4) Portion of cost of property selected.

(5) Estimated useful life at date of acquisition (at least 6 years).

(6) Additional first-year depreciation.

The taxpayer shall maintain records which permit specific identification of section 179 property and reflect how and from whom such property was acquired. Except as provided in paragraph (d)(1) of this section, an election will not be valid unless the statement is submitted at the time and in the manner prescribed herein. The election to claim an additional first-year depreciation allowance under this section with respect to any property is irrevocable and shall be binding on the taxpayer with respect to such property for the taxable year for which the election is made and for all subsequent taxable years, unless the Commissioner gives his consent to revoke the election. Similarly, the selection of section 179 property by the taxpayer to be subject to the additional first-year depreciation allowance must be adhered to in computing the taxpayer's taxable income for the taxable year for which the selection is made and for all subsequent taxable years, unless consent to change the selection of property is given by the Commissioner.

(b) *Revocation.* A request to revoke an election under section 179 and § 1.179–1 or to change the property selected for the additional first-year depreciation allowance shall be in writing and shall be addressed to the Commissioner of Internal Revenue, Washington 25, D.C. The request shall include the name and address of the taxpayer and shall be signed by the taxpayer or his duly authorized representative. It must be filed no later than 6 months after the date prescribed by law (without regard to extensions of time) for filing the income tax return for the year in which the allowance under § 1.179–1 was claimed, shall be accompanied by a statement showing the year and property involved, and shall set forth in detail the reasons for the request to revoke the election or to change the selection of property. Ordinarily, a request for consent to revoke the election or to change the selection of property will not be granted if it appears from all the facts and circumstances that the only reason for the desired change is to obtain a tax advantage.

(c) *Effective date.* The provisions of this section apply only to income tax returns and statements filed after the date of publication of these regulations in the FEDERAL REGISTER as a Treasury decision. Elections made under the provisions of Treasury Decision 6335 (26 CFR 18.1–3), approved November 13, 1958 (23 F.R. 8979) continue in effect.

(d) *Special rules.* (1) If the taxpayer has exercised the election by claiming the additional allowance on his income tax return for any taxable year, but failed to attach the statement required by paragraph (a) of this section or by § 18.1–3(b) of Treasury Decision 6335 and the last day prescribed by law (including extensions of time) for filing the return falls on or before the ninetieth day after the date the regulations under section 179 are published in the FEDERAL REGISTER as a Treasury decision, the election will not be invalid, provided that on or before such ninetieth day the required statement is submitted to the district director for the district in which his income tax return for such year was filed.

(2) If the last day prescribed by law (including extensions of time) for filing an income tax return for any taxable year ending after June 30, 1958, falls on or before the ninetieth day after the date the regulations under section 179 are published in the FEDERAL REGISTER as a Treasury decision, consent is hereby given to the taxpayer to revoke his election under section 179 and Treasury Decision 6335 for such taxable year or to change his previous selection of property subject to the additional first-year depreciation allowance, provided that on or before such ninetieth day he submits to the district director for the district in which his income tax return for such year was filed a statement showing the new selection of property or that the election for such taxable year is being revoked. Amended income tax returns for the year of revocation or change and for any other taxable year affected, or treated as affected, by the revocation or by the change in the selection of property must accompany such statement.

PAR. 2. Paragraphs (a) and (c) of § 1.167(a)–1 are amended to read as follows:

§ 1.167(a)–1 Depreciation in general.

(a) *Reasonable allowance.* Section 167(a) provides that a reasonable allowance for the exhaustion, wear and tear, and obsolescence of property used in the trade or business or of property held by the taxpayer for the production of income shall be allowed as a depreciation deduction. The allowance is that amount which should be set aside for the taxable year in accordance with a reasonably consistent plan (not necessarily at a uniform rate), so that the aggregate of the amounts set aside, plus the salvage value, will, at the end of the estimated useful life of the depreciable property, equal the cost or other basis of the property as provided in section 167(f) and § 1.167(f)–1. An asset shall not be depreciated below a reasonable salvage value under any method of computing depreciation. See paragraph (c) below for definition of salvage. The allowance shall not reflect amounts representing a mere reduction in market value. See section 179 and § 1.179–1 for a further description of the term "reasonable allowance."

* * * * *

(c) *Salvage.* Salvage value is the amount (determined at the time of acquisition) which is estimated will be realizable upon sale or other disposition of an asset when it is no longer useful in the taxpayer's trade or business or in the production of his income and is to be retired from service by the taxpayer. Salvage value shall not be changed at any time after the determination made at the time of acquisition merely because of changes in price levels. However, if there is a redetermination of useful life under the rules of paragraph (b) of this section, salvage value may be redetermined based upon facts known at the time of such redetermination of useful life. Salvage, when reduced by the cost of removal, is referred to as net salvage. The time at which an asset is retired from service may vary according to the policy of the taxpayer. If the taxpayer's policy is to dispose of assets which are still in good operating condition, the salvage value may represent a relatively large proportion of the original basis of the asset. However, if the taxpayer customarily uses an asset until its inherent useful life has been substantially exhausted, salvage value may represent no more than junk value. Salvage value must be taken into account in determining the depreciation deduction either by a reduction of the amount subject to depreciation or by a reduction in the rate of depreciation, but in no event shall an asset (or an account) be depreciated below a reasonable salvage value. See, however, paragraph (a) of § 1.167(b)–2 for the treatment of salvage under the declining balance method, and § 1.179–1 for the treatment of salvage in computing the additional first-year depreciation allowance. The taxpayer may use either salvage or net salvage in determining depreciation allowances but such practice must be consistently followed and the treatment of the costs of removal must be consistent with the practice adopted. For specific treatment of salvage value see §§ 1.167(b)–1, 2, and 3. When an asset is retired or disposed of, appropriate adjustments shall be made in the asset and depreciation reserve accounts. For example, the amount of the salvage adjusted for the costs of removal may be credited to the depreciation reserve.

[F.R. Doc. 60–11223; Filed, Dec. 1, 1960; 8:49 a.m.]

[T.D. 6508]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Stock; Gross Receipts

On October 8, 1960, a notice of proposed rule making regarding regulations under section 1244 (relating to losses on small business stock) of the Internal Revenue Code of 1954, as added by section 202(b) of the Small Business Tax Revision Act of 1958 (72 Stat. 1676), was published in the FEDERAL REGISTER (25 F.R. 9682). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so published are hereby adopted.

(72 Stat. 1678; 26 U.S.C. 1244(e); 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: November 29, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

The following regulations, effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954, are hereby prescribed under the Internal Revenue Code of 1954:

§ 1.1244(c)–1 Section 1244 stock defined.

* * * * *

(g) *Gross receipts.* * * *

(2) The requirement of subparagraph (1) of this paragraph need not be satisfied if for the applicable period the aggregate amount of deductions allowed to the corporation exceeds the aggregate amount of its gross income. But for this purpose the deductions allowed by section 172, relating to the net operating loss deduction, and by sections 242, 243, 244, and 245, relating to certain special deductions for corporations, shall not be taken into account. Notwithstanding the provisions of this subparagraph and of subparagraph (1) of this paragraph, pursuant to the specific delegation of authority granted in section 1244(e) to prescribe such regulations as may be necessary to carry out the purposes of section 1244, ordinary loss treatment will not be available with respect to stock of a corporation which is not largely an operating company within the five most recent taxable years (or such lesser period as the corporation is in existence) ending before the date of the loss. Thus, for example, assume that a person who is not a dealer in real estate forms a corporation which issues stock to him which meets all the formal requirements of section 1244 stock. The corporation then acquires a piece of unimproved real estate which it holds as an investment. The property declines in value and the stockholder sells his stock at a loss. The loss does not qualify for ordinary loss treatment under section 1244 but must be treated as a capital loss.

[F.R. Doc. 60–11224; Filed, Dec. 1, 1960; 8:49 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter I—Monetary Offices, Department of the Treasury

PART 54—GOLD REGULATIONS

Application to Gold Situated in Hawaii, the Possessions of the United States, and the Canal Zone

The purpose of these Amendments to the Gold Regulations is to make such regulations applicable to the acquisition, holding, etc., of gold in Hawaii, the Possessions of the United States, and the Canal Zone. The texts of §§ 54.4(a), 54.6(e), 54.7, 54.15, 54.25, 54.40 and 54.41 of the Gold Regulations, as hereby amended, are set forth below. These amendments will become effective 90 days after their publication in the FEDERAL REGISTER.

During a period of 90 days following publication of these regulations in the FEDERAL REGISTER, the acquisition, holding, etc., of gold in Hawaii, the Possessions of the United States, and the Canal

Zone, including the issuance of licenses and the disposition of any gold, the possession of which is not licensed or authorized by the Gold Regulations, will be governed by the provisions of a new section of the Gold Regulations, § 54.80. In summary, the following provisions are made for the transition.

1. Every person who owns or is in possession of gold bullion or foreign gold coin (other than rare gold coin) situated in Hawaii, the Possessions of the United States, or the Canal Zone must file with the Director of the Mint within 30 days from the date of publication of these regulations in the FEDERAL REGISTER, a report concerning such gold. In addition, every person who owns or is in possession of gold bullion situated in Hawaii, a Possession of the United States, or the Canal Zone in an aggregate amount exceeding 50 fine troy ounces, and who requires such gold for legitimate and customary use in the industry, profession or art in which he is regularly engaged, must file an application for a license to hold such gold.

2. For a period of 90 days from the date of publication of these regulations in the FEDERAL REGISTER, persons who own or have in their possession gold situated in Hawaii, any possession of the United States, or the Canal Zone are authorized to hold such gold within Hawaii, such Possession, or the Canal Zone, respectively. In addition, any person regularly engaged in an industry, profession or art who requires gold for legitimate, customary and ordinary use therein, may melt and treat gold and may replenish his supplies of gold provided that the aggregate amount of gold acquired, held, transported, melted or treated at any one time does not exceed 50 fine troy ounces of gold content. The acquisition and holding for the foregoing purpose of gold in amounts exceeding 50 fine troy ounces of fine gold content is authorized only to the extent permitted by licenses issued in accordance with the provisions of § 54.25. Further, the exportation and transportation of gold from Hawaii, a Possession of the United States, or the Canal Zone is permitted only to the extent authorized in § 54.25(b) or a license issued pursuant to such section.

3. During the 90 day period referred to in paragraph 2, above, the United States Mints are authorized to purchase any gold bullion and foreign gold coin situated in Hawaii, the Possessions of the United States, and the Canal Zone which has not at any time been held, transported, exported, etc., in non-compliance with the Gold Reserve Act, the Act of October 6, 1917, as amended, section 3 of the Act of March 9, 1933, or any orders, regulations, rulings, or instructions issued thereunder. The price paid for all gold purchased by the Mint shall be the price specified in § 54.44 of the Regulations, i.e., $35 less ¼ of 1 percent per troy ounce of fine gold and mint charges. Gold which the mints are authorized to purchase under this section may be received through the offices designated, and in accordance with the procedures outlined, in § 54.80 set forth below.

4. The Director of the Mint will, in accordance with the provisions of § 54.25 of the Gold Regulations, issue Treasury gold licenses on the approved form for the holding, melting, treating, etc., of gold in Hawaii, the Possessions of the United States, and the Canal Zone which is necessary for the legitimate and customary requirements of industry, profession or art.

5. On and after 90 days from the date of publication of these regulations in the FEDERAL REGISTER, the acquisition, possession, melting, treating, etc., of gold in Hawaii, the Possessions of the United States, and the Canal Zone will be prohibited except as permitted by the Gold Regulations or licenses issued thereunder.

These regulations are issued without notice and public procedure thereon because such procedures are deemed to be impracticable and contrary to the public interest. The amendments to §§ 54.4 to 54.41 are effective 90 days from the date of their publication in the FEDERAL REGISTER. Section 54.80 is effective on the date of publication in the FEDERAL REGISTER.

(Sec. 5(b), 40 Stat. 415, as amended, sections 3, 8, 9, 11, 48 Stat. 340, 341, 342; 12 U.S.C. 95a, 31 U.S.C. 442, 733, 734, 822b, E.O. 6260, Aug. 28, 1933, as amended by E.O. 10896, Nov. 29, 1960, F.R. issue of Dec. 1, 1960; E.O. 6359, Oct. 25, 1933; E.O. 9193, as amended, 7 F.R. 5205; 3 CFR 1943 Cum. Supp; E.O. 10289, 16 F.R. 9499; 3 CFR 1951 Supp.)

§ 54.4 [Amendment]

Section 54.4(a) (3) and (4) are amended to read as follows:

(3) "United States" means the Government of the United States or where used to denote a geographical area, means the States of the United States, the District of Columbia, and all other places subject to the jurisdiction of the United States.

(4) "States of the United States" means the States of the United States and the District of Columbia.

§ 54.6 [Amendment]

Section 54.6(e) is amended to read as follows:

(e) No license issued hereunder shall exempt the licensee from the duty of complying with the legal requirements of any State or local authority.

Section 54.7 is amended to read as follows:

§ 54.7 General provisions affecting export licenses.[2]

At the time any license to export gold is issued, the Bureau of the Mint, or Federal Reserve bank issuing the same, shall transmit a copy thereof to the collector of customs at the port of export designated in the license or, if the port of export is not within the customs territory of the United States, to the government officer at such port charged with the enforcement of laws relating to the exportation of merchandise from the United States. No collector of customs or other government officer charged with the enforcement of laws relating to the exportation of merchandise from the United States shall permit the export or transportation from the States of the United States to the Possessions of the United States, to the Canal Zone, or to places not subject to the jurisdiction of the United States or the export or transportation from the Possessions of the United States or from the Canal Zone to places not subject to the jurisdiction of the United States of gold in any form except upon surrender of a license to export, a copy of which has been received by him from the agency issuing the same (except that licenses on Form TGL–15 (general) covering multiple shipments during a six-months' period are retained by the licensees until the expiration of such period when they are returned to the Director of the Mint): *Provided, however,* That the export or transportation from the States of the United States, the Possessions of the United States and the Canal Zone of fabricated gold may be permitted pursuant to § 54.25(b)(2) and the export or transportation from the States of the United States, the Possessions of the United States and the Canal Zone of gold imported for reexport may be permitted pursuant to §§ 54.32 and 54.33: *And provided further,* That gold held by the Federal Reserve banks under §§ 54.28 to 54.30, may be exported or transported for the purposes of such sections without a license. The collector of customs or other government officer to whom a license to export is surrendered shall cancel such license and return it to the Director of the Mint or the Federal Reserve bank which issued the same. In the event that the shipment is to be made by mail, a copy of the export license shall be sent by the agency issuing the same to the postmaster of the post office designated in the application, who will act under the instructions of the Postmaster General in regard thereto.

Section 54.15 is amended to read as follows:

§ 54.15 Transportation of gold to the Possessions of the United States.

Gold may be transported from the States of the United States to the Possessions of the United States and to the Canal Zone only as authorized by §§ 54.25, 54.32, 54.33 or § 54.34 or licenses issued pursuant thereto.

Section 54.25 is amended to read as follows:

§ 54.25 Licenses.

(a) *Licenses for the acquisition and holding, transportation, melting and treating, importing and disposition of gold.* (1) Upon receipt of the application and after obtaining such additional information as may be deemed advisable, the Director of the Mint, shall, if satisfied that gold is necessary for the legitimate and customary requirements of the applicant's industry, profession, art, or business, and that the applicant is qualified in all respects to conduct gold operations in full compliance with the provisions of this part and the provisions of a Treasury gold license, issue or cause to be issued to the applicant a Treasury gold license on the approved form for the kind of industry, profession, art, or business, in which the applicant is engaged.

(2) Licenses issued under this section may authorize the licensee to acquire and hold not to exceed a maximum amount specified therein; to transport such gold, melt or treat it to the extent necessary to meet the requirements of the industry, profession, art or business for which it was acquired and held or otherwise to carry out the purposes for which it is held under license; and to import gold so long as the aggregate amount of all gold held after such importation does not exceed the maximum amount authorized by the license to be held.

(3) Licenses issued under this paragraph do not permit the exportation or transportation of gold in any form from the States of the United States to the Possessions of the United States, to the Canal Zone or to places not subject to the jurisdiction of the United States, or the exportation or transportation from the Possessions of the United States or from the Canal Zone to places not subject to the jurisdiction of the United States. Such exportation or transportation is permitted only to the extent authorized in paragraph (b) of this section or in a separate license issued pursuant to such paragraph.

(b) *Licenses and authorizations for the exporting of gold.*—(1) *Semi-processed gold.* Semi-processed gold as defined in § 54.4 may be exported or transported from the States of the United States to the Possessions of the United States, to the Canal Zone, or to places not subject to the jurisdiction of the United States, and from the Possessions of the United States or from the Canal Zone to places not subject to the jurisdiction of the United States, only pursuant to a separate export license. Such licenses shall be issued by the Director of the Mint upon application made on Form TG–15 establishing to the satisfaction of the Director that the gold to be exported is semi-processed gold and that the export or transport is for a specific and customary industrial, professional, or artistic use and not for the purpose of using or holding or disposing of such semi-processed gold outside the States of the United States, as or in lieu of money, or for the value of its gold content.

(2) *Fabricated gold.* Fabricated gold as defined in § 54.4 may be exported or transported from the States of the United States, from the Possessions of the United States and from the Canal Zone without the necessity of obtaining a Treasury gold license: *Provided, however,* That the Bureau of the Census Schedule B statistical classification number of each specific commodity to be exported shall be plainly marked on the outside of the package or container, the shipper's export declaration shall contain a statement that such gold is fabricated gold as defined in § 54.4 and is being exported pursuant to the authorization contained in this subparagraph, and such additional documentation shall be furnished as may be required by the Bureau of Customs or any other government agency charged with the enforcement of laws relating to the exportation of merchandise from the United States.

(3) *Rare coin.* (i) Rare gold coin, as defined in § 54.20, made prior to April 5, 1933, may be exported or transported from the States of the United States, from the Possessions of the United States and the Canal Zone without the necessity of obtaining a Treasury gold license: *Provided, however,* That the shipper's export declaration shall contain a statement that such coin is rare gold coin and is being exported pursuant to the authorization contained in this subparagraph and such additional documentation shall be furnished as may be requested by the Bureau of Customs or any other government agency charged with the enforcement of laws relating to the exportation of merchandise from the United States.

(ii) Gold coin made subsequent to April 5, 1933, may be exported or transported from the States of the United States, from the Possessions of the United States and from the Canal Zone only under license on Form TGL–11 issued by the Director of the Mint. Application for such a license shall be executed on Form TG–11 and filed with the Director of the Mint, Treasury Department, Washington 25, D.C.

(4) *Other exports of gold.* Export licenses may also be issued upon application made on Form TG–15B in the same manner as prescribed in subparagraph (1) of this paragraph, authorizing the exportation of gold in any form for refining or processing subject to the condition that the refined or processed gold (or the equivalent in refined or processed gold) be returned to the United States, or subject to such other conditions as the Director may prescribe.

Section 54.40 is amended to read as follows:

§ 54.40 Imported gold.

Except for gold which may be purchased in accordance with the provisions of § 54.41, the mints are authorized to purchase only such gold imported into the United States as has been in customs custody throughout the period in which it shall have been situated within the customs limits of the United States, and then only subject to the following provisions:

(a) *Notation upon entry.* Upon formal entry of any gold intended for sale to a mint under this subpart, the importer shall declare to the collector of customs at the port of entry where the gold is formally entered that the gold is entered for such sale. The collector shall make a notation of this declaration upon the entry and forward a copy to the mint designated by the importer.

(b) *Statement by importer.* Upon the deposit of the gold with the mint designated by the importer, the importer shall file a statement executed in duplicate on Form TG–23.

Section 54.41 is amended to read as follows:

§ 54.41 Gold refined from imported gold-bearing material.

The mints are authorized to purchase gold refined (or the equivalent to gold refined) from gold-bearing material which has been either imported into the United States pursuant to a license issued under paragraph (a) of § 54.25 for sale of the gold derived therefrom to a designated mint, or imported into the United States under § 54.32 (notwithstanding the declaration made by the importer upon the entry into the United States of such gold-bearing material as required by § 54.32(b)), whether or not such gold or gold-bearing material has been in customs custody throughout the period it has been in the customs limits of the United States, subject to the following provisions:

(a) In the case of gold-bearing material imported pursuant to license issued under paragraph (a) of § 54.25, the importer shall declare to the collector of customs at the port of entry that the gold-bearing material is being imported for sale of the gold refined therefrom to a designated mint; the collector shall make on the entry a notation to this effect and forward a copy thereof to the mint designated by the importer.

(b) In the case of gold-bearing material imported under § 54.32, if the gold refined therefrom is offered to a mint other than the mint at San Francisco or the assay office at New York, the importer shall have caused the copy of the entry described in § 54.32(b) to be forwarded to the mint to which he is offering the gold for sale.

(c) Before any gold may be purchased under this section, the requirements of § 54.32(b) (2) and (3) must be shown to have been complied with: *Provided, however,* That any person importing gold-bearing materials for sale of the gold refined therefrom to a mint other than the mint at San Francisco or the assay office at New York shall have caused the true copy of the record described in § 54.32(b)(3) to be forwarded to the mint to which he is offering the gold for sale.

(d) Upon presentation of the gold to a mint or assay office for purchase, the importer shall file a statement executed in duplicate on Form TG–26, together with two true copies of the settlement sheet covering the gold-bearing material imported.

(e) No gold shall be accepted for purchase under authority of this paragraph unless it is delivered to the mint and all of the terms hereof complied with within seven months from the date of the formal entry into the United States of the gold-bearing material from which it was extracted.

[2] The regulations in this part shall not be construed as relieving any person from the obligation of compliance with the regulations of the Bureau of Foreign Commerce (formerly the Office of International Trade), (15 CFR Parts 360 to 399), the Bureau of Customs (19 CFR Ch. I) or other laws or regulations relating to the importation or exportation of merchandise, where applicable to imports or exports of gold, or articles containing gold.

Section 54.80 is set forth as follows:

§ 54.80 Temporary provisions applicable to gold situated in Hawaii, the Possessions of the United States and the Canal Zone.[1]

(a) *Conditions under which gold may be acquired, held, etc., in Hawaii, the Possessions of the United States and the Canal Zone during the period of 90 days after publication of this section.* For a period of 90 days from the date of publication in the FEDERAL REGISTER of the regulations in this section, gold bullion and foreign gold coin situated in Hawaii, a Possession of the United States or the Canal Zone may be acquired, held, transported, melted or treated, imported, exported, or earmarked, only to the extent permitted by and subject to the conditions prescribed in the regulations in this section.

(b) *Reports and applications for licenses.* Within 30 days from the date of publication in the FEDERAL REGISTER of the regulations in this section, every person in possession of, and every person owning, gold bullion and/or foreign gold coin (other than rare coin) situated in Hawaii, a Possession of the United States or the Canal Zone shall file a report in duplicate with the Director of the Mint. The report shall state the name and address of the person making the report, and furnish true and complete information relative to such coin and bullion, including the kind and amount of such coin and bullion, and, if held for another, the capacity in which held and the person for whom held. A report relating to gold coins shall also set forth a complete description of the coins, including the country of issue, date, denomination, and mint marks, if any. In addition to the report required to be filed under this section, every person who requires gold for legitimate and customary use in the industry, profession or art in which he is regularly engaged, and who owns or is in possession of gold bullion situated in Hawaii, a Possession of the United States or the Canal Zone, in an aggregate amount which exceeds 50 fine troy ounces of fine gold, shall, within the 30 day period specified for the filing of the report, file an application with the Director of the Mint on Form TG–12 for a license to hold such bullion.

(c) *Temporary authorization for holdings of gold during the period of issuance of licenses.* (1) Every person who is resident or domiciled in Hawaii, one of the Possessions of the United States or the Canal Zone, and who owns or has in his possession gold bullion and/or foreign gold coin concerning which a report has been filed under paragraph (b) of this section, is authorized to hold such gold within Hawaii, such Possession of the United States or the Canal Zone, respectively, for the 90 day period specified in paragraph (a) of this section.

(2) The exportation or transportation from Hawaii, the Possessions of the United States or the Canal Zone of gold bullion and gold coin is permitted only to the extent authorized in § 54.25(b), or a separate license issued pursuant to such section.

(d) *Disposition of gold holdings not authorized by the Gold Regulations or a license issued thereunder.* The mints, subject to the conditions specified in the general provisions governing the mints, are authorized during the 90-day period specified in paragraph (a) of this section, to purchase any gold bullion and foreign gold coin situated in Hawaii, the Possessions of the United States or the Canal Zone, which has not been held at any time in non-compliance with the Acts, orders, regulations, rulings, instructions or licenses issued thereunder, including the regulations in §§ 54.1 to 54.70. The price paid for all gold purchased by the mints under this paragraph shall be the price specified in § 54.44, $35 (less one-fourth of 1 percent per fine troy ounce of fine gold and less the applicable mint charges. Detailed instructions concerning the delivery of gold will be furnished to persons reporting, pursuant to paragraph (b) of this section, holdings of gold which are not required for legitimate and customary use in the industry, profession or art in which they are engaged.

(e) *Designation of offices for receipt of reports, applications, and deliveries of gold.* The offices designated below are authorized to receive for transmission to the mints, gold bullion and foreign gold coin delivered under paragraph (d) of this section for sale to the United States. Payment for gold so delivered, however, will be made only after actual receipt of the gold by the mints, and determination by the mints of the actual fine gold content thereof.

Place and Designated Office

Hawaii: Office of the Collector of Customs, Honolulu.
Puerto Rico: Office of the Collector of Customs, San Juan.
Virgin Islands: Office of the Collector of Customs, Charlotte Amalie.
Guam: Office of the Governor of Guam.
American Samoa: Office of the Governor of American Samoa.
Midway Islands: Office of the Commanding Officer, Naval Air Station.
Wake Island: Office of the Federal Aviation Agency Administrator.
Other Island Possessions: Nearest United States Naval Command Activity.
Canal Zone: Governor of the Canal Zone, Balboa Heights, Canal Zone.

NOTE: The reporting requirements of these regulations have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[SEAL] LAWRENCE B. ROBBINS,
Acting Secretary of the Treasury.

[F.R. Doc. 60–11222; Filed, Dec. 1, 1960; 8:49 a.m.]

[1] As used in this part, the term "Possessions of the United States" means Puerto Rico, Guam, the Virgin Islands, American Samoa, Midway Islands, Wake Island, Johnston Island, and Sand Island, Swan Island and the other Island Possessions of the United States.

Title 46—SHIPPING

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

SUBCHAPTER G—EMERGENCY OPERATIONS

[General Order 75, Rev., Amdt. 7]

PART 308—WAR RISK INSURANCE

Change in Expiration Dates

Section 308.6 *Period of interim binders if insurance thereunder does not attach*, § 308.106 *Standard form of war risk hull insurance interim binder*, § 308.206 *Standard form of war risk protection and indemnity insurance interim binder*, and § 308.305 *Standard form of Second Seamen's war risk interim binder* are hereby amended by changing the expiration dates appearing therein from "midnight, December 7, 1960, G.m.t." to "midnight, March 7, 1961, G.m.t."

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

Dated: November 23, 1960.

By order of the Maritime Administrator.

THOMAS LISI,
Secretary.

[F.R. Doc. 60–11201; Filed, Dec. 1, 1960; 8:46 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 27—OFFICIAL MAIL

Official Mail Regulations

The regulations of the Post Office Department in Part 27—Federal Government Mail and Free Mail, as amended by Federal Register Document 60–3353, 25 F.R. 3171, are further amended by (1) changing the title caption of the part to read: "Part 27—Official Mail"; (2) revising and rearranging the regulations under new section headings for the purpose of clarification; and (3) by including additional departments and agencies authorized to mail under the "Postage and Fee Paid" endorsement. As so amended, Part 27 reads as follows:

Sec.
27.1 Members of Congress.
27.2 Executive and judicial officers.
27.3 Mail sent to government departments.
27.4 State employment security mailings.
27.5 Diplomatic and consular mail.
27.6 Absentee balloting materials.
27.7 Former Presidents and widows of former Presidents.
27.8 Pan America Union and Pan American Sanitary Bureau.

AUTHORITY: §§ 27.1 to 27.8 issued under R.S. 161, as amended, sec. 1303(d), 40 Stat. 1141, as amended; secs. 501, 2303, 4151–4156, 4158–4168, Pub. Law 86–682 (74 Stat. 580, 599, 600, 660–663); 2 U.S.C. 277, 5 U.S.C. 22, 39 U.S.C. 501, 2303, 4151–4156, 4158–4168.

§ 27.1 Members of Congress.

(a) *Collection of postage.* Postage on mail sent under the franking privilege by the Vice President, Members and Members-elect of Congress, the Resident Commissioner from Puerto Rico, the Secretary of The Senate, Sergeant at Arms of the Senate, and the Clerk of the House of Representatives is paid annually by a lump sum to the Post Office Department.

(b) *Description.* Official mail of Members of Congress is sent without prepayment of postage bearing written signature or a printed facsimile signature instead of a postage stamp. Mail accepted under frank, and the officials authorized to use franked mail, are shown in paragraph (c) of this section.

(c) *Authorized users.*

Persons authorized to use the frank	Matter that may be franked	Marking required	Period during which the frank may be used
Vice President of the United States, Members of Congress, Resident Commissioners, Secretary of the Senate, Sergeant at Arms of the Senate, and Clerk of the House.	Public documents printed by order of Congress.	The words *Public Document—Free* and the signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	Until the 30th day of June following expiration of their respective terms of office.
Members of Congress and Resident Commissioners.	Congressional Record or any part of it, or speeches or reports contained in it.	The words *Congressional Record or Part of Congressional Record—Free* and the signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	During term of office only.
Members of Congress.....	Seeds and agricultural reports from the Department of Agriculture.	The signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	Until the 30th day of June following the expiration of their terms of office.
Vice President of the United States, Members and Members-elect of Congress, Resident Commissioners, Secretary to the Senate, and Sergeant at Arms of the Senate.	Official correspondence not exceeding 4 ounces in weight. Official correspondence when addressed to a Government official by title may exceed 4 ounces in weight, but must not exceed 4 pounds.	The signature and title, either written or printed facsimile, of the person entitled to frank it, must appear on the address side.	Until the 30th day of June following expiration of their respective terms of office. When the position of Secretary of the Senate or Sergeant at Arms of the Senate is vacant, privilege may be exercised in officer's name by authorized persons.

(d) *Restrictions.* The following restrictions apply to franked mail:

(1) Official correspondence transmitted under frank of the Vice President, Members and Members-elect of Congress, Secretary of the Senate, Sergeant at Arms of the Senate, and Resident Commissioners, must be on official or departmental business.

(2) No franked mail will be admitted to the mail unless admissible as ordinary mail.

(3) A person entitled to use franked mail may not loan his frank or permit its use by any committee, organization, or association; or permit its use by any person for the benefit or use of any committee, organization, or association. This restriction does not apply to any committee composed of Members of Congress.

(4) Franked mail is forwarded like any other mail, but when once delivered to the addressee it may not be remailed. A package of franked pieces may be sent by a person entitled to the franking privilege, to one addressee, who, on receiving and opening the package, may on behalf of such person, place addresses on the franked articles and mail them.

(5) Franked mail is handled as ordinary mail. Fees for special services must be paid at the time of mailing.

(e) *Weight and size limits*—(1) *Weight.* Official correspondence is limited to 4 ounces, except that when addressed to a Government official by title the limit is 4 pounds.

(2) *Size.* No limit.

§ 27.2 Executive and judicial officers.

(a) *Collection of postage.* Departments, agencies, and establishments of the U.S. Government must reimburse the Post Office Department in amounts equivalent to the amount of postage and fees due on their mail for which the Post Office Department does not otherwise receive compensation. Instructions governing the manner of reimbursement for mailings made without postage or fees prepaid are issued by the Bureau of Finance which negotiates reimbursement agreements with the departments and agencies concerned.

(b) *Description.* The following kinds of mail may be sent as Federal Government mail by those authorized to use this privilege:

(1) Official mail relating exclusively to the business of the Government of the United States mailed by officers of the executive and judicial branches of the Government; official mail of legislative counsel for the House of Representatives and the Senate; official mail of the Superintendent of Documents; and official correspondence concerning the Congressional Directory under direction of the Joint Committee on Printing.

(2) All correspondence, bulletins, and reports relating to agricultural extension work and home economics carried on in cooperation with the United States Department of Agriculture, when mailed by the college officer or other person connected with the extension department of the college who has been designated by the Secretary of Agriculture. Mailings may be deposited by the designated officer only at the authorized post office. Correspondence must be conducted under the name of the designated officer. Correspondence with autograph signature may be sealed but all other matter must be left unsealed.

(3) Bulletins, reports, periodicals, reprints of articles, and other publications necessary for the dissemination of results or researches and experiments, including lists of publications available for distribution, when mailed by agricultural experiment stations designated by the act of March 2, 1887, as amended by the act of August 11, 1955, as follows:

The officer in charge of a station that claims the privilege of sending materials without prepayment of postage through the mail must file an application with the Bureau of Operations, Postal Services Division, through the post office where the station is located, stating the date of establishment of the station, its name or designation, its official organization, the names of its officers, the name of the college, school or institution to which it is attached, if any, the legislation of the State or Territory providing for its establishment, and any other legislation granting it the benefits of the act of Congress referred to in this section.

(4) Annual reports of Government-aided colleges established under the act of July 2, 1862, when addressed to the Secretary of the Interior, the Secretary of Agriculture, and to any other Government-aided college. The postmaster receiving the annual reports from an officer of the college will use a post office penalty envelope or label to send it through the mail.

(5) Copyright material sent to the Register of Copyrights with claim for registration, as follows:

(i) Postmasters receiving the claim for registration and any articles that are required to accompany the claim will use a post office penalty envelope or label to send the matter to the Register of Copyrights, Washington 25, D.C.

(ii) If requested to do so, the postmaster will give a receipt for articles delivered to him to accompany a claim for registration.

(iii) When desired, the person submitting copyright matter to the postmaster may also present the fee for copyright registration enclosed in a sealed envelope addressed to Register of Copyrights, Washington 25, D.C., which must have postage prepaid at the letter rate. The postmaster, after canceling the postage stamps, will enclose the envelope containing the fee together with the copyright material in the post office penalty envelope sent to the Register of Copyrights.

(iv) Matter for copyright enclosed in post office penalty envelopes will not be sent by registered mail unless the registry fee is prepaid.

(c) *Methods of preparing official mail*—(1) *Postage and fees paid.* (i) All official mail of authorized departments or agencies, subject to the weight and size limits, if any, for matter of its class, shall be given the postal service indicated on its cover when the mail is marked in the upper right corner of the

address side "Postage and Fees Paid". This marking may not be handwritten or typewritten.

(ii) Authorized departments and agencies are:

Agriculture, Department of.
Air Force, Department of.
Alaska International Rail and Highway Commission.
Army, Department of.
Atomic Energy Commission.
Bureau of the Budget.
Bureau of Prisons (or FBP).
Civil Service Commission.
Civil Aeronautics Board.
Coast Guard.
Commerce, Department of.
Council of Economic Advisers.
Development Loan Fund.
Employment Security Mail.
Federal Aviation Agency.
Federal Bureau of Investigation.
Federal Home Loan Bank Board.
Federal Housing Administration.
Federal Mediation and Conciliation Service.
Federal National Mortgage Association.
Federal Power Commission.
Federal Reserve System, Board of Governors of the.
Federal Trade Commission.
General Services Administration.
Health, Education, and Welfare, Department of.
Housing and Home Finance Agency.
Immigration and Naturalization Service.
Interior, Department of.
Internal Revenue Service.
International Cooperation Administration.
Interstate Commerce Commission.
Justice, Department of.
Labor, Department of.
Library of Congress.
Marine Corps.
National Aeronautics and Space Agency.
National Capital Housing Authority.
National Gallery of Art.
National Institutes of Health.
National Labor Relations Board.
National Science Foundation.
Navy, Department of.
Panama Canal Company.
President's Committee on Employment of the Physically Handicapped.
President's Council on Youth Fitness.
Public Housing Administration.
Railroad Retirement Board.
Saint Lawrence Seaway Development Corporation.
Secretary of Defense, Office of.
Securities and Exchange Commission.
Selective Service System.
Small Business Administration.
Smithsonian Institution.
State, Department of.
State Employment Security Offices (See § 27.4).
Tax Court of United States.
Tennessee Valley Authority.
Treasury, Department of.
U.S. Court of Claims.
U.S. Court of Customs and Patent Appeals.
U.S. Court of Military Appeals.
U.S. Courts.
U.S. Information Agency.
U.S. Supreme Court.
Veterans Administration.
Virgin Islands Corporation.

(iii) Mail sent as "Postage and Fees Paid" must show over the words "Official Business" in the upper left corner of the address side the name and address of the department, bureau, office, or officer.

(iv) Printed reply envelopes or labels marked "Postage and Fees Paid" and preaddressed to a Federal Government office or officer may be furnished to persons or concerns for convenience in submitting information for official purposes, or for delivery of official matter, subject to the following conditions:

(a) Reply envelopes or labels furnished to contractors must in every case bear printed return address of one of the agencies listed in subdivision (ii) of this subparagraph over the words "Official Business". No return name and address of a private person or firm may be shown.

(b) When a special service is required, the reply envelope or label must be preprinted with the type of special service desired. Users of reply labels may not add their own markings for these services.

(2) *Penalty.* Penalty mail, subject to the restrictions of paragraph (d) of this section, is sent without prepayment of postage. Envelopes, cards, labels, tags, and wrappers used in transmitting official mail under the penalty privilege must bear in the upper right corner of the address side the printed statement of the penalty of misuse: "Penalty for Private Use to Avoid Payment of Postage, $300." The printed statement of the penalty for misuse may not be handwritten or typewritten. They must also show, over the words "Official Business" in the upper left corner of the address side, the name and address of the department, bureau, office, or officer. The following markings are required, when applicable:

(i) Official mail of designated State extension directors must bear in the upper left corner the name of the agricultural college and the name of the post office at which the mail is to be accepted without prepayment of postage, followed by the name and title of the designated officer and the words "Cooperative Agricultural Extension Work—Acts of May 8 and June 30, 1914."

(ii) Official mailings by agricultural experiment stations must bear in the upper left corner of the address side the name of the station, the name of the post office at which the matter is to be accepted, and the name and title of the officer in charge of the station, followed by the word "Publication". The title of the bulletin or report may be used.

(3) *Prepaid postage.* Official mail which is not sent as penalty mail or as postage and fees paid mail must have postage prepaid. The regular rates and conditions apply except that postage on official mail weighing over 4 pounds may be paid at the fourth-class rates. See paragraph (e) (1) of this section.

(d) *Use.* (1) The markings authorized on official mail in paragraph (c) of this section may not be placed on other mail to avoid payment of postage or special service fees.

(2) Any department or office authorized to use the Official mail privilege may furnish self-addressed envelopes or labels to persons or concerns for their convenience in submitting official information desired by any U.S. Government department or agency. Reply envelopes may not be furnished to bidders or contractors, or to enable private persons or concerns to send without prepayment of postage reports or other information which they are required by law to make.

(3) The right of an officer to use the Official mail privilege ceases immediately on his going out of office.

(4) Official matter of those departments and agencies listed in paragraph (c) (1) (ii) of this section that is marked "Postage and Fees Paid" shall be given any special service, including airmail, when it is so marked by the sender without requiring prepayment of postage or fees. See § 111.2(d) (2) (ii) of this chapter regarding international mail.

(5) Airmail and the special services may not be given official mail in penalty envelopes without prepayment of air postage or prepayment of the appropriate fee for the special service requested. Exception: Penalty envelopes containing urgent official communications of the Postal Service may be sent airmail, or as registered, certified or special delivery mail without prepayment of the postage or fees.

(e) *Weight and size limits.*—(1) *Weight*—(i) *Penalty mail.* No article or package of official matter, or number of articles or packages of official matter constituting in fact a single shipment exceeding 4 pounds may be admitted to the mail under the "penalty" privilege except stamped paper and supplies sold or used by the Postal Service, and books or documents published or circulated by order of Congress when mailed by the Superintendent of Documents. Official matter in packages exceeding 4 pounds, if otherwise mailable, will be accepted on payment of postage at the fourth-class rates within the limits of weight prescribed for such matter. (See § 25.3 (a) of this chapter.) Such parcels may be sealed or unsealed, and may include written matter when mailed at those rates. Official matter of the Postal Service, and books and documents circulated by order of Congress when mailed by the Superintendent of Documents may weigh up to 70 pounds.

(ii) *Postage and fees paid mail.* Maximum weight same as § 25.3(a) of this chapter, except airmail. See § 26.3 of this chapter.

(iii) *Prepaid Government mail.* Maximum weight same as § 25.3(a) of this chapter, except airmail. See § 26.3 of this chapter.

(2) *Size.* There is no size limit prescribed for penalty mail. Other matter is subject to the size limits prescribed in § 25.3(b) of this chapter.

§ 27.3 Mail sent to Government Departments.

(a) *Census mail.* All mail, of whatever class, relating to the census and addressed to the Census Office, or to any official thereof, and endorsed "Official Business, Census Office", will be sent without prepayment of postage. Such mail may not exceed 4 pounds. (See § 27.2(a) regarding postage reimbursement.) Mail sent by the Census Bureau of the Department of Commerce or one of its officers in envelopes of that Bureau is subject to the conditions in § 27.2(c) (1).

(b) *Immigration and Naturalization Service mail.* All mail of whatever class, relating to naturalization, including duplicate papers required by law or regulation to be sent to the Service by clerks of courts addressed to the Department of Justice or the Immigration and Naturalization Service, or any official of either, and endorsed "Official Business", will be transmitted without prepayment of postage and marked "Naturalization Papers". Mail relating to naturalization may not exceed 4 pounds. (See § 27.2(a) regarding postage reimbursement.)

§ 27.4 State employment security mailings.

All mail of State employment security offices cooperating with the Department of Labor, that bears in the upper left corner of the address side the words "Official Business" printed immediately below the name and address of the State employment agency, and in the upper right corner the words "Postage and Fees Paid", will be accepted without prepayment of postage or fees. Postage and fees chargeable are collected periodically under a special arrangement with the Post Office Department. Such matter will be given the service indicated on the cover.

§ 27.5 Diplomatic and consular mail.

(a) *Diplomatic mail.* All correspondence (written or printed) of members of the Diplomatic Corps of the countries of the Postal Union of the Americas and Spain stationed in the United States may be reciprocally transmitted in the domestic mail without prepayment of postage. This correspondence may not exceed 4 pounds in weight. The envelopes, cards, tags, wrappers, and labels must show in the upper left corner of the address side the name of the ambassador or the minister, or the name of the embassy or legation, together with the post office address; and in the upper right corner the inscription "Diplomatic Mail" over the word "Free". These inscriptions may be handwritten, handstamped, or printed.

(b) *Consular mail.* The official correspondence (written or printed) exchanged between consulates (consuls and vice consuls) of the countries of the Postal Union of the Americas and Spain stationed in the United States and correspondence directed by those consulates to the Government of the United States or their respective embassies or legations or to officials of State or local governments may be transmitted in the domestic mail without prepayment of postage. This correspondence may not exceed 4 pounds in weight. The envelopes, labels, etc., covering correspondence of consulates must show over the words "Official Correspondence", in the upper left corner of the address side, the name and address of the consul or consulate, and the name of the country represented; and, in the upper right corner, the inscription "Consular Mail" over the word "Free". These inscriptions may be handwritten, handstamped, or printed.

§ 27.6 Absentee balloting materials.

(a) *Purpose.* Balloting materials consisting of post card applications, ballots, voting instructions, and envelopes, are sent through the mail without prepayment of postage, including airmail postage, for the purpose of enabling every person in any of the following categories to vote by absentee ballot when he is absent from the place of his voting residence and is otherwise eligible to vote:

(1) Members of the Armed Forces while in active service and their spouses and dependents.

(2) Members of the merchant marine of the United States and their spouses and dependents.

(3) Civilian employees of the United States in all categories serving outside the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil-service laws and the Classification Act of 1949, as amended, and whether or not paid from funds appropriated by the Congress.

(4) Members of religious groups or welfare agencies assisting members of the Armed Forces, who are officially attached to and serving with the Armed Forces, and their spouses and dependents.

(b) *Elections affected.* The materials may be sent for any general election of electors for President and Vice President or of Senators and Representatives in Congress and for other general, primary, and special elections.

(c) *Markings required on ballot envelopes and post card applications.* (1) Envelopes used to send balloting material and envelopes supplied for return of the ballot must have printed across the face two parallel horizontal red bars, each ¼ inch wide, extending from one side of the envelope to the other side, with an intervening space of ¼ inch, the top bar to be 1¼ inches from the top of the envelope, and the words "Official Election Balloting Material—Airmail", or similar language as prescribed by State law, between the bars. There must be printed in the upper right corner of each envelope in a rectangular box the words "Free of U.S. Postage, Including Airmail". All printing on the face must be in red with an appropriate inscription or blanks for return address of sender in the upper left corner.

Name and complete military, naval, or merchant marine address

_____

_____

_____

_____

Free of U. S. postage including air mail

OFFICIAL ELECTION BALLOTING MATERIAL— VIA AIR MAIL

Secretary of State of _____ (Home State)

_____ (Capital city of home State)

_____ (Home State)

(2) The Federal post card application shall be approximately 9½ x 4⅛ inches in size. On the address side of the card shall be printed in red ink the following:

FILL OUT BOTH SIDES OF THE CARD

_____ (Name)

_____ (Unit, Gov. Agency, or Office)

_____ (Mil. Base, Station, Ship or Office)

_____ (Street No., APO, or FPO No.)

_____ (City, Postal Zone, State)

FREE OF U.S. Postage Including Air Mail

OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL

To: _____ (Title of Election Official)

_____ (County or Township)

_____ (City or Town, State)

§ 27.7 Former Presidents and widows of former Presidents.

All mail of former United States Presidents Herbert Hoover and Harry S. Truman; and all mail of Anna Eleanor Roosevelt, widow of former President Franklin Delano Roosevelt, and Edith Bolling Wilson, widow of former President Woodrow Wilson, shall be accepted without prepayment of postage if it bears the written signature of sender, or facsimile signature, in the upper right corner of the address side.

§ 27.8 Pan American Union and Pan American Sanitary Bureau.

The Pan American Union and Pan American Sanitary Bureau are authorized by law to transmit official matter without prepayment. The mail must bear the printed clause citing the penalty for private use instead of postage stamps. It must be prepared like Federal Government penalty mail and is subject to the same restrictions. See § 27.2 (c)(2), (d), and (e).

NOTE: The corresponding Postal Manual part is 137.

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 60-11170; Filed, Dec. 1, 1960; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER L—MINERAL LANDS

[Circular No. 2053]

PART 192—OIL AND GAS LEASES

Leasing of Certain Lands

Pursuant to the authority vested in the Secretary by the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181, et seq.), as amended, and the Act of August 7, 1947 (30 U.S.C. 359, 61 Stat. 915), Part 192 of 43 CFR is hereby amended. The purpose of this amendment is to provide that no drilling or prospecting under any lease on wildlife refuge lands be conducted except with prior consent of the Secretary.

Subparagraph (1) of paragraph (b) of § 192.9 is amended to read as follows:

§ 192.9 Leasing of wildlife refuge lands, game range lands and coordination lands.

* * * * *

(b) *Leasing policy and procedure.* (1) No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in subparagraph (2) of this paragraph. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations in the Bureau of Land Management stipulation form 4-1383, issued pursuant to this section.

Since the purpose of this amendment is further to protect wildlife refuge lands under the leasing policy prescribed in subparagraph (1) of paragraph (b) of § 192.9, published in 24 F.R. 227, January 11, 1958, it is deemed that notice of proposed rule-making would be impracticable, contrary to the public interest and unnecessary. This amendment shall become effective December 1, 1960.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 1, 1960.

[F.R. Doc. 60-11292; Filed, Dec. 1, 1960; 11:27 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Reg. Docket No. 570; Reg. SR-443]

PART 49—TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Authority To Deviate From Certain Provisions of the Civil Air Regulations Within the State of Alaska

Correction

In F.R. Doc. 60-10951, appearing at page 11146 of the issue for Thursday, November 24, 1960, in the third column, the first paragraph should read: "In consideration of the foregoing, the following Special Civil Air Regulation is hereby adopted to become effective November 14, 1960:".

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 585; Amdt. 229]

PART 507—AIRWORTHINESS DIRECTIVES

Lockheed 188 Series Aircraft

Amendment 163 (25 F.R. 4677) imposed a 300-hour repetitive inspection on Lockheed 188 Series aircraft due to failures of the aileron balance-weight attaching angles, pending development of a reinforcement modification. These FAA approved modifications are now provided in a new directive superseding Amendment 163. When incorporated in the aircraft the need for special inspections will be eliminated.

Since this amendment affords operators a means for relief from special inspections and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it may be made effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

LOCKHEED. Applies to all Model 188 Series aircraft.

Compliance required as indicated.

As a result of reported cracked aileron counterweight attaching angles, the following is required:

(a) At intervals not to exceed 300 hours' time in service, inspect for cracks in the angles which attach the aileron balance-weight brackets to the aileron spar at aileron stations 13.85, 30.95, 48.01, 82.16, 116.31, 150.46 and 184.61. Cracked angles must be replaced before further flight.

(b) The replacement of angles found to be cracked must be made in accordance with either (1) or (2) below:

(1) Original angles may be replaced with parts having the same dimensions as the original parts but fabricated from 0.090-inch thickness AISI 8630 or AISI 4130 steel heat-treated to 150,000-170,000 p.s.i. ultimate tensile strength, cadmium plated and baked. Lockheed Process Specifications Nos. 522, 491, and 170 or FAA approved equivalent must be used for the respective processes indicated.

(2) Original angles may be replaced in accordance with the instructions in the kits outlined in Lockheed Service Bulletin 88/SB-451 or FAA approved equivalent. This service bulletin also contains detailed instructions for accomplishing this modification.

(c) After replacement of the original parts in accordance with the instructions in (b), subsequent inspections of replaced parts may then be made at normal inspection periods.

This supersedes Amendment 163, 25 F.R. 4677.

This amendment shall become effective December 2, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on November 28, 1960.

OSCAR BAKKE,
Director, Bureau of Flight Standards.

[F.R. Doc. 60-11189; Filed, Dec. 1, 1960; 8:45 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Reg. Docket No. 564; Amdt. 194]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

The amendments to standard instrument approach procedures contained herein are being adopted to become effective when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures.

As a situation exists which demands immediate action in the interests of safety in air commerce, I find that compliance with the notice, procedure and effective date provisions of section 4 of the Administrative Procedure Act would be contrary to the public interest and is therefore not required.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 609 is amended as follows:

1. The low or medium frequency range procedures prescribed in § 609.100(a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Int N crs BA-LFR and NW crs BG-LFR	BG-LFR	Direct	1900	T-dn	300-1	300-1	300-1
BWG-VOR	BG-LFR	Direct	1900	C-d	500-1	500-1	500-1½
				C-n	500-1½	500-1½	500-1½
				S-d	400-1	400-1	400-1
				S-n-29	400-1½	400-1½	400-1½
				A-dn	800-2	800-2	800-2

Procedure turn N side SE crs, 116° Outbnd, 296° Inbnd, 1900' within 10 miles.
Minimum altitude over facility on final approach crs, 1100'.
Crs and distance, facility to airport, 296°—3.3.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.3 miles, climb to 2000' on NW crs within 20 miles.
AIR CARRIER NOTES: 1. Sliding scale N.A. 2. No reduction in landing visibility minimum auth for local cond. 3. No reduction in take-off minimum authorized.

City, Bowling Green; State, Ky.; Airport Name, Bowling Green-Warren County; Elev., 540'; Fac. Class, SBRMAZ; Ident., BG; Procedure No. 1, Amdt. 6; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 5; Dated, 1 Apr. 54

Loveland FM (Final)	LUK-LFR	Direct	1600	T-d	400-1	400-1	400-1
Mt Orab FM	LUK-LFR	Direct	2200	T-n	600-1	600-1	600-1
				C-d	800-1	900-1½	900-1½
				C-n	800-1½	900-1½	900-1½
				S-24-d	800-1	800-1	800-1
				S-24-n	800-1½	800-1½	800-1½
				A-dn	1000-2	1000-2	1000-2

Procedure turn W side NE crs, 044° Outbnd, 224° Inbnd, 2500' within 10 mi.
Minimum altitude over facility on final approach crs, 1600'.
Crs and distance, facility to airport, 227°—4.3.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.3 mi after passing the Cincinnati LFR or if landing not accomplished, make a left climbing turn, climb to 2300' on the SE crs within 10 mi.
AIR CARRIER NOTE: Air carrier hours of operations—7:00 a.m. through 11:00 p.m. (7 days a week).

City, Cincinnati; State, Ohio; Airport Name, Mun/Lunken Field; Elev., 488'; Fac. Class., SBRAZ; Ident., LUK; Procedure No. 1, Amdt. 5; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 4; Dated, 26 Oct. 57

Midland VOR	MF-LFR	Direct	4200	T-dn	300-1	300-1	*200-½
				C-dn	400-1	500-1	500-1½
				S-dn-4	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

*AIR CARRIER NOTE: 300-1 required on runways 16L and 34R.
Procedure turn S side of SW crs, 229° Outbnd, 049° Inbnd, 4400' within 10 miles. Beyond 10 mi NA.
Minimum altitude over facility on final approach crs, 3900'.
Crs and distance, facility to airport, 049°—3.3.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.3 miles, climb to 4000' on SE crs of LFR within 20 miles.
NOTE: This procedure not approved for ADF approach.

City, Midland; State, Tex.; Airport Name, Midland Air Terminal; Elev., 2867'; Fac. Class., BMRLZ; Ident., MF; Procedure No. 1, Amdt. 9; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 8; Dated, 14 Dec. 57

2. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
Holland Int	LOM	Direct	1800	T-dn	300-1	300-1	*200-½
Princeton Int	LOM	Direct	2000	C-d	600-1	600-1	600-1½
EVV-VOR	LOM	Direct	2000	C-n	600-2	600-2	600-2
				S-d-21	500-1	500-1	500-1
				S-n-21	500-1½	500-1½	500-1½
				A-dn	800-2	800-2	800-2

Procedure turn North side NE crs, 035° Outbnd, 215° Inbnd, 1800′ within 10 mi.
Minimum altitude over facility on final approach crs, 1800′.
Crs and distance, facility to airport, 215°—3.9 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.9 miles after passing LOM, make left climbing turn, climb to 2000′ on 180° crs from LMM to R-080, proceed to EVV-VOR on R-080. If further instructions not received, hold SW of VOR at 2000′ or, when directed by ATC, (1) Make climbing right turn, climb to 2000′ on 300° crs from LMM until intercepting R-355 of the EVV-VOR, then proceed north on R-355 for two minutes. If no further instructions given, return to EVV-VOR on R-355 at 2000′ and hold.
AIR CARRIER NOTE: Sliding scale authorized only on Runwy 3-21 and 18-36.
CAUTION: Radio tower 993′ MSL 3.6 miles SW of airport.
*300-1 on Rnwy 9-27.

City, Evansville; State, Ind.; Airport Name, Dress Memorial; Elev., 389′; Fac. Class., LOM; Ident., EV; Procedure No. 1, Amdt. Orig.; Eff. Date, 10 Dec. 60

Honolulu LFR	LOM	Direct	3600	T-dn	300-1	300-1	200-½
Honolulu VOR	LOM	Direct	3600	C-dn*	500-1	500-1	500-1½
Southgate Int (via 10 mi DME clockwise arc).	Int 079° brng to LOM and 10 mi DME fix.		2000	S-dn-8	500-1	500-1	*500-1
Int W crs HL-LFR and 10 mi DME fix or 018° brng to PFI.	Int 079° brng to LOM and 018° brg to PFI or 6.8 mi DME fix.	Direct	3000	A-dn	800-2	800-2	800-2
Breakers VHF Int.	Int 079° brng to LOM and 10 mi DME fix or 021° brng to PFI.	Direct	2000				
Int 079° brng to LOM and 10 mi DME fix 021° brng to PFI.	LOM (Final)	Direct	2000				
Int 079° brng to LOM and 6.8 mi DME fix or 018° brng to PFI.	LOM (Final)	Direct	2000				

Procedure turn South side of crs, 259° Outbnd, 079° Inbnd, 3600′ within 10 miles. Procedure turn not required with radar transition from Southgate Int. Radar transition authorized at 2000′.
Minimum altitude over facility on final approach crs, 2000′.
Crs and distance, facility to airport, 079°—5.9 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 5.9 mi of LOM, make right turn, climbing to 2000′ and proceed via S crs HL-LFR to Southgate LF Int.
CAUTION: (1) Rwy 8 at HNL airport equipped with hi-intensity lights. Do not confuse with closed Rwy 7 at Hickam. (2) Terrain rises sharply on N side final approach crs; within 2.2 mi 1000′, 4.1 mi 2566′, 5.4 mi 3098′.
*Circling north of airport not authorized because of terrain 385′, 1.5 mi north and 524′ 2 mi NE.

City, Honolulu; State, Hawaii; Airport Name, International; Elev., 13′; Fac. Class., LOM; Ident., HN; Procedure No. 1, Amdt. 1; Eff. Date, 10 Dec. 60; Sup. Amdt No. Orig.; Dated, 11 June 60

Glen Cove MHW	LOM (Final)	Direct	1500	T-dn	300-1	300-1	200-½
Mitchel LFR	LOM	Direct	1500	C-dn	500-1	500-1	500-1½
Idlewild VOR	LOM	Direct	1500	S-dn-22L	500-1	500-1	500-1
				A-dn	800-2	800-2	800-2

Radar transitions: All directions 2500′ within 25 miles East of NE/SW crs LGA-LFR; 1500′ within 15 miles.
Procedure turn East side NE crs, 043° Outbnd, 223° Inbnd, 1500′ within 10 mi of LOM. (Nonstandard to avoid LaGuardia traffic.)
Minimum altitude over facility on final approach crs, 1500′.
Crs and distance, facility to airport, 223°—5.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, climb to 1000′ direct to Scotland MHW/Int. After Scotland, climb to 1500′, hold SW on Scotland MHW/Int one minute, right turns, contact IDL approach control for further instructions.
CAUTION: Circling minimums do not provide clearance over 278′ stack 1.1 mi SE of Rnwy 4R and 183′ control tower on airport.

City, New York; State, N.Y.; Airport Name, International; Elev., 12′; Fac. Class., IW; Ident., LOM; Procedure No. 1, Amdt. Orig.; Eff. Date, 10 Dec. 60

3. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
				T-dn	1500-3	1500-3	1500-3
				C-dn	2000-3	2000-3	2000-3
				A-dn	2500-3	2500-3	2500-3

Procedure turn S side of crs, 260° Outbnd, 080° Inbnd, 11,000′ within 10 mi.
Minimum altitude over facility on final approach crs, 10,000′.
Crs and distance, facility to airport, 067°—8.2 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 8.2 mi, left climbing turn, return to VOR and climb to 11,000′ on R-260 within 10 mi.

City, Bryce Canyon; State, Utah; Airport Name, FAA Site No. 45; Elev, 7586′; Fac. Class., BVOR; Ident., BCE; Procedure No. 1, Amdt. 2; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 1; Dated, 5 Jan. 57

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
				T-dn*	400-1		
				C-d	700-1		
				C-n	700-2		
				S-d-22	1000-1		
				S-n-22	1000-2		

Procedure turn North side of crs, 044° Outbnd, 224° Inbnd, 2500′ within 10 miles.
Minimum altitude over facility on final approach crs, 2000′.
Crs and distance, facility to airport, 224°—9.2 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 9.2 miles, reverse course, right turn climb to 2500′ on crs of 044° and return to VOR. Hold NE on R-045 one minute, right turns.
*Based on Mansfield VOR straight-in landing minimums.

City, Galion; State, Ohio; Airport Name, Galion-Crestline; Elev., 1220′; Fac. Class., VOR; Ident., MFD; Procedure No. 1, Amdt. Orig.; Eff. Date, 10 Dec. 60

Barbers Point FM	HNL-VOR (Final)	Direct	*2000	T-dn	300-1	300-1	200-½
Breakers VHF Int	R-258 and 10 mi DME fix (or 021° brng to PFI RBn).	Direct	2000	C-dn**	500-1	500-1	500-1½
R-258 and 10 mi DME fix (or 021° brng to PFI RBn).	HNL VOR (Final)	Direct	*2000	S-dn-8	500-1	500-1	500-1
Southgate Int	R-258 and 10 mi DME fix (via 10 mi clockwise arc).		2000	A-dn	800-2	800-2	800-2

Procedure turn South side of crs, 258° Outbnd, 078° Inbnd, 3600′ within 10 mi. Procedure turn not required with radar transitions to final approach crs from Southgate Int Vectors from Southgate Int authorized at 2000′.
Minimum altitude over facility on final approach crs, 2000′*.
Crs and distance, facility to airport, 078°—4.8.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.8 miles, make right turn, climb to 2000′ and proceed to Southgate Int via R-168 HNL-VOR.
CAUTION: (1) Rnwy 8 at Honolulu Airport equipped with hi-intensity lights. Do not confuse with closed Rnwy 7 at Hickam. (2) Terrain rises sharply on N side final approach crs; within 2.2 mi, 1000′; 4.1 mi, 2566′; 5.4 mi, 3098′.
Major change: Transition from Pineapple VHF Int deleted.
*1000′ authorized after passing LOM or 1.1 mi DME Fix on final.
**Circling North of airport not authorized because of terrain 385′, 1.5 mi North and 524′, 2 mi NE.

City, Honolulu; State, Hawaii; Airport Name, International; Elev., 13′; Fac. Class., VORTAC; Ident., HNL; Procedure No. 1, Amdt. 12; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 11; Dated, 21 May 60

Midland LFR	MAF-VOR	Direct	4200	T-dn	300-1	300-1	*200-½
				C-dn	400-1	500-1	500-1½
				S-dn-16R	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn E side of crs, 360° Outbnd, 180° Inbnd, 4000′ within 10 miles. Beyond 10 mi NA.
Minimum altitude over facility on final approach crs, 3900′.
Crs and distance, facility to airport, 180°—3.6.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.6 miles, climb to 4000 on R 180 within 20 miles.
*300-1 required on Runway 16L and 34R.

City, Midland; State, Tex.; Airport Name, Midland Air Terminal; Elev., 2867′; Fac. Class., BVOR; Ident., MAF; Procedure No. 1, Amdt. 6; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 5; Dated, 23 Feb. 57

4. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots

PROCEDURE CANCELLED, EFFECTIVE 10 DECEMBER 1960.

City, Battle Creek; State, Mich.; Airport Name, Kellogg Field; Elev., 941′; Fac. Class., BVOR; Ident., BTL; Procedure No. TerVOR-9, Amdt. 1; Eff. Date, 10 Oct. 59; Sup. Amdt. No. Orig.; Dated, 3 July 58

BQ-LFR	BTL-VOR	Direct	2200	T-dn	300-1	300-1	200-½
AZO-VOR	BTL-VOR	Direct	2200	C-dn	1000-1	1000-1	1000-1½
LFD-VOR	BTL-VOR	Direct	2200	S-dn-13	1000-1	1000-1	1000-1
LeRoy Int	BTL-VOR	Direct	2200	A-dn	1000-2	1000-2	1000-2
AZO-VOR	Wintergreen Int*	Direct	3000	The following minimums apply for aircraft equipped with dual VOR and Augusta Int identified:			
Wintergreen Int*	Augusta Int** (Final)	Direct	2100	C-dn	600-1	600-1	600-1½
				S-dn-13	600-1	600-1	600-1
				A-dn	800-2	800-2	800-2

Procedure turn North side of crs, 318° Outbnd, 138° Inbnd, 3000′ within 10 mi. NA beyond 10 mi.
Minimum altitude over Augusta Int* on final approach crs, 2100′.
Crs and distance, Augusta Int* to BTL-VOR, 138°—4.4 mi.
Crs and distance, breakoff point to Rnwy 13, 127°—0.58 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished over BTL VOR, climb on R-128 to 2200′, then reverse course, proceed to BTL VOR.
CAUTION: 1954′ tower, 294°—13 mi. from airport.
*Wintergreen Int: Int AZO-VOR R-030 and BTL-VOR R-318.
**Augusta Int: Int AZO-VOR R-055 and BTL-VOR R-318.

City, Battle Creek; State, Mich.; Airport Name, Kellogg Field; Elev., 941′; Fac. Class., BVORTAC; Ident., BTL; Procedure No. TerVOR-13, Amdt. 3; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 2; Dated, 5 Dec. 59

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots

PROCEDURE CANCELLED, EFFECTIVE 10 DECEMBER 1960.

City, Battle Creek; State, Mich.; Airport Name, Kellogg Field; Elev., 941'; Fac. Class., BVOR; Ident., BTL; Procedure No. TerVOR-18, Amdt. 1; Eff. Date, 10 Oct. 59; Sup. Amdt. No. Orig.; Dated, 3 July 58

PROCEDURE CANCELLED, EFFECTIVE 10 DECEMBER 1960.

City, Battle Creek; State, Mich.; Airport Name, Kellogg Field; Elev., 941'; Fac. Class., BVOR; Ident., BTL; Procedure No. TerVOR-27, Amdt. 1; Eff. Date, 10 Oct. 59; Sup. Amdt. No. Orig.; Dated, 3 July 58

PROCEDURE CANCELLED, EFFECTIVE 10 DECEMBER 1960.

City, Battle Creek; State, Mich.; Airport Name, Kellogg Field; Elev., 941'; Fac. Class., BVOR; Ident., BTL; Procedure No. TerVOR-36, Amdt. 1; Eff. Date, 10 Oct. 59; Sup. Amdt. No. Orig.; Dated, 3 July 58

Bethel LFR	Bethel VOR	Direct	1600	T-dn	300–1	300–1	200–½
				C-dn	500–1	500–1	500–1½
				S-dn-18	500–1	500–1	500–1
				A-dn	800–2	800–2	800–2

Procedure turn W side of crs, 348° Outbnd, 168° Inbnd, 1600' within 10 mi.
Minimum altitude over facility on final approach crs, 600'.
Crs and distance, breakoff point to Runway 18, 183°—0.7 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile, climb to 1600' on R-168 BET-VOR within 20 mi.

City, Bethel; State, Alaska; Airport Name, Bethel Municipal; Elev., 135'; Fac. Class., BVOR; Ident., BET; Procedure No. TerVOR-18, Amdt. Orig.; Eff. Date, 10 Dec. 60

Bethel LFR	Bethel VOR	Direct	1600	T-dn	300–1	300–1	200–½
				C-dn	500–1	500–1	500–1½
				S-dn-36	500–1	500–1	500–1
				A-dn	800–2	800–2	800–2

Procedure turn W side of crs, 195° Outbnd, 015° Inbnd, 1600' within 10 mi.
Minimum altitude over facility on final approach crs, 600'.
Crs and distance, breakoff point to Rnwy 36, 003°—0.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile, climb to 1600' on R-015 BET-VOR within 20 miles.

City, Bethel; State, Alaska; Airport Name, Bethel Municipal; Elev., 135'; Fac. Class., BVOR; Ident., BET; Procedure No. TerVOR-36, Amdt. Orig.; Eff. Date, 10 Dec. 60

				T-dn	300–1	300–1	200–½
				C-dn	500–1	500–1	500–1½
				S-dn-9	500–1	500–1	500–1
				A-dn*	800–2	800–2	800–2

Procedure turn South side of crs, 260° Outbnd, 080° Inbnd, 2100' within 10 mi. Beyond 10 mi NA.
Minimum altitude over facility on final approach crs, 1200'.
Crs and distance, breakoff point to end Rny-9, 090°—0.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile of VOR, climb to 1600' on R-100 within 15 miles.
CAUTION: 1050' MSL tower 2.5 miles South of VOR.
*Alternate minima authorized for air carriers only; provided such air carriers have approval of their arrangement for weather service at this airport. Weather service not available to the general public. Lighting available only on Runway 9–27.

City, Greenwood; State, S.C.; Airport Name, Greenwood County; Elev., 629'; Fac. Class., M-BVOR; Ident., GRD; Procedure No. TerVOR-9, Amdt. Orig.; Eff. Date, 10 Dec. 60.

				T-dn	300–1	300–1	200–½
				C-dn	500–1	500–1	500–1½
				S-dn-27	500–1	500–1	500–1
				A-dn*	800–2	800–2	800–2

Procedure turn North side of crs, 108° Outbnd, 280° Inbnd, 2100' within 10 mi. Beyond 10 mi NA.
Minimum altitude over facility on final approach crs, 1200'.
Crs and distance, breakoff point to end Rnwy 27, 270°—0.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile of VOR, climb to 1800' on R-260 within 15 miles.
CAUTION: 1050' MSL tower 2.5 miles South of VOR.
*Alternate minima authorized for air carriers only; provided such air carriers have approval of their arrangement for weather service at this airport. Weather service not available to the general public. Lighting available only on Runway 9–27.

City, Greenwood; State, S.C.; Airport Name, Greenwood County; Elev., 629'; Fac. Class, M-BVOR; Ident., GRD; Procedure No. TerVOR-27, Amdt. Orig.; Eff. Date, 10 Dec. 60

Sargo Int	ILS OM (Final)	092°—7.0	1000	T-dn#	300–1	300–1	200–½
La Jolla FM/Mt Dad Int	SAN-VOR R-272 at 5 mi from SAN-VOR.	190°—5.0	1500	C-dn**	800–2	800–2	800–2
				S-dn-9**	600–1	600–1	600–1
Lemon Grove Int	SAN-VOR	Direct	2600	A-dn	800–2	800–2	800–2

Procedure turn S side crs, 272° Outbnd, 092° Inbnd, 1500' within 10 miles.
Minimum altitude until abeam ILS OM**, 1000'; over VOR, 600'.
CAUTION: 281' trees and terrain between ILS OM and MM.
Crs and distance, breakoff point to approach end Rnwy 9, 092°—1.4 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0 mile, turn right, climb to 2000' on SAN-VOR R-137 to Coronado RBn/FM or, when directed by ATC, if visual contact not established at ILS MM**, make left climbing turn, climb to 2500' on SAN-VOR R-325 to Mt Dad Int or La Jolla FM.
CAUTION: Buildings and terrain 472' MSL 0.5 mi East of airport. Missed approach must be initiated at MM if landing is not assured.
Major changes: Deletes transitions from Coronado and Jamul RBn. Deletes reference to Loma Portal RBn.
#500–1 required for takeoff on Runway 9.
*On La Jolla transition recommended that aircraft cross final approach radial on 190° heading, then execute approximately 270° clockwise turn to Inbnd crs of 092°.
**If ADF or FM receiver not used, landing ceiling minimums of 1000' are applicable.

City, San Diego; State, Calif.; Airport Name, Lindbergh; Elev., 15'; Fac. Class., L-VOR; Ident., SAN; Procedure No. TerVOR-9, Amdt. 5; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 4; Dated, 20 Aug. 60

5. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
ABI VOR	University VHF Int*	Direct	3100	T-dn	300–1	300–1	200–½
ABI LFR	University VHF Int*	Direct	3100	C-dn	400–1	500–1	500–1½
				S-dn-17	400–1	400–1	400–1
				A-dn	800–2	800–2	800–2

Procedure turn East** side of crs, 350° Outbnd, 170° Inbnd, 3100' within 10 mi. Beyond 10 mi NA.
Minimum altitude over University Int* on final approach crs, 3100'.
Crs and distance, University Int* to airport, 170°—4.9 mi.
No glide slope.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.9 miles, climb to 3800' on S crs ILS or, when directed by ATC, turn left and climb to 3300' on R-110 ABI-VOR within 20 miles.
CAUTION: Towers: 2032' MSL 2.6 mi WNW; 2115' MSL 5.2 mi NW; 2067' MSL 6.8 mi NW; 2685' MSL 8.2 mi SSE; 2775' MSL 7.9 mi SSW.
*University Int: Int N crs ILS and ABI-VOR R-070.
**Procedure turn nonstandard due ATC requirements.

City, Abilene; State, Tex.; Airport Name, Municipal; Elev., 1778'; Fac. Class., ILS; Ident., I-ABI; Procedure No. ILS-17, Amdt. Orig.; Eff. Date, 10 Dec. 60

Fairbanks LFR	LOM	Direct	4000	T-dn	300–1	300–1	200–½
Wood River Int	LOM	Direct	4000	C-dn***	400–1	500–1	500–1½
Chena Int	LOM	Direct	4000	S-dn-19***	200–½	200–½	200–½
Alder RBn	LOM	Direct	4000	A-dn	600–2	600–2	600–2
Fox RBn	LOM	Direct	3000				
Fairbanks LFR	Fox RBn	Direct	4000				
Wood River Int	Fox RBn	Direct	4000				
Chena Int	Fox RBn	Direct	4000				
Alder RBn	Fox RBn	Direct	4000				
Fairbanks VOR	LOM	Direct	4000				
Fairbanks VOR	Fox RBn	Direct	4000				

Radar terminal transitional altitudes: 000–360°, 4000' within 10 mi; 098°–250°, 4000' within 10–25 mi; 250°–098°, 5000' within 10–20 miles.
Procedure turn West side of N crs, 009° Outbnd, 189° Inbnd, 3000' within 5 miles of LOM; **4000' within 15 mi of Fox RBn.
Minimum altitude at G.S. int inbnd, 3000'.
Altitude of G.S. and distance to approach end of Rnwy at OM, 2265'—5.6 mi; at MM, 660'—0.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished turn left, climb to 2400', proceeding direct to FI-LFR, then on E crs (060°) to Chena Int or, when directed by ATC, climb to 4000' on S crs ILS within 20 mi.
*All maneuvering East of airport: 800' terrain within 1½ mi West of airport rising to 1000' within 2 mi.
**CAUTION: Do not descend below 4000' until past Fox RBn inbound on final approach.
***With glide slope inoperative, straight-in minimums for Rnwy 19 are 400–1. Fairbanks Radar must provide airplane position over 796' MSL radio tower 3.3 mi North of Rnwy 19. Descent below 1200' NA until past tower. Without positive Radar position over tower, 700–1 minimums apply.

City, Fairbanks; State, Alaska; Airport Name, International; Elev., 434'; Fac. Class., ILS; Ident., I-FAI; Procedure No. ILS-19, Amdt. 6; Eff. Date, 10 Dec. 60; Sup. Amdt. No. 5; Dated, 30 Apr. 60

Honolulu LFR	LOM	Direct	3600	T-dn	300–1	300–1	200–½
Honolulu VOR	LOM	Direct	3600	C-dn	500–1	500–1	500–1½
Breakers VHF Int (via W crs ILS)	W crs ILS and 10 mi DME fix (or 021° brng to PFI RBn).	Direct	3600	S-dn-8	200–½	200–½	200–½
				A-dn	600–2	600–2	600–2
W crs ILS and 10 mi DME fix (or 021° brng to PFI RBn).	LOM (Final)	Direct	2000				
Southgate Int	W crs ILS and 10 mi DME fix (via 10 mi clockwise arc).	Direct	2000				
Barbers Point FM and W crs ILS	LOM (Final)	Direct	2000				

Procedure turn South side crs, 259° Outbnd, 079° Inbnd, 3000' within 10 mi. Procedure turn not required with Radar transitions to final approach crs from Southgate Int. Vectors from Southgate Int authorized at 2000'.
Minimum altitude at glide slope interception inbnd, 2000'.
Altitude at glide slope and distance to appr end of Rny at OM, 1961'—5.9 mi; at MM, 247'—0.5 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished make right turn, climb to 2000' and proceed to Southgate VHF Int via HNL VOR R-168.
CAUTION: (1) Rnwy 8 at HNL airport equipped with hi-intensity lights. Do not confuse with closed Rnwy 7 at Hickam. (2) Terrain rises sharply on N side final approach course; within 2.2 mi 1000', 4.1 mi 2566', 5.4 mi 3098'.
AIR CARRIER NOTE: 400' ceiling minimums required, straight-in to Rnwy 8 with inoperative glide slope.
Major changes: Deletes transitions from Pineapple VHF Int, Int W crs ILS and 031° brng to PFI, Int W crs ILS and LIH VOR R-115.
*Circling north of airport not authorized because of terrain 385', 1.5 mi north and 524', 2 mi NE.

City, Honolulu; State, Hawaii; Airport Name, International; Elev., 13'; Fac. Class., ILS; Ident., I-HNL; Procedure No. ILS-8, Amdt. 1; Eff. Date, 10 Dec. 60; Sup. Amdt. No. Orig.; Dated, 11 June 60

SPS VOR	Elliott VHF Int*	Direct	3200	T-dn	300–1	300–1	200–½
SPS BRn	Elliott VHF Int*	Direct	3200	C-dn	500–1	500–1½	500–1½
Elliott Int*	McCabe Int (Final)#	Direct	1900	S-dn-15	400–1	400–1	400–1
				A-dn	800–2	800–2	800–2

Procedure turn **East side of crs, 328° Outbnd, 148° Inbnd, 3200' within 10 mi of Elliott Int. Beyond 10 mi NA.
No Glide Slope.
Minimum altitude over *Elliott Int on final approach crs, 2300'.
Minimum altitude over #McCabe Int on final approach crs, 1900'.
Crs and distance, #McCabe Int to airport, 148°—3.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.6 miles of #McCabe Int, climb to 2300' on SE crs SPS ILS within 20 miles.
*Elliott Int: Int SPS-VOR R-006 and ILS NW crs.
**Procedure turn nonstandard due ATC requirements.
#McCabe Int: Int SPS-VOR R-030 and ILS NW Crs.

City, Wichita Falls; State, Tex.; Airport Name, Sheppard AFB/Mun.; Elev., 1014'; Fac. Class., ILS; Ident., I-SPS; Procedure No. ILS-15, Amdt. Orig.; Eff. Date, 10 Dec. 60

These procedures shall become effective on the dates specified therein.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on November 8, 1960.

GEORGE C. PRILL,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-10626; Filed, Dec. 1, 1960; 8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 60-1401]

PART 1—PRACTICE AND PROCEDURE

PART 12—AMATEUR RADIO SERVICE

New Amateur Application Forms

In the matter of amendment of Parts 1 and 12 of the Commission's rules to provide for new amateur application forms.

1. The Commission has reviewed the application forms currently used by applicants seeking authorizations for amateur operator and/or stations in the Amateur Radio Service, and has determined that by appropriate alteration thereof this Service can be administered more efficiently. It is anticipated that adoption of the changes described below will result in the receipt of fewer defective applications and will enable the Commission's staff to process and issue licenses more expeditiously.

2. At the present time, FCC Form 405–A (renewal), FCC Form 602 (Amateur Station at a Military Post), and FCC Form 610 (new or modified operator and/or station license, club station license, or additional station license) are the application forms in use. After the dates specified in this Order, the first two forms will no longer be used; the format and scope of FCC Form 610 will be altered, and a new Form 610–A will be initiated.

3. The new form 610–A will be used by applicants for an additional amateur station, an amateur club station, and for an "amateur station for recreation under Military auspices." This latter title will supersede the one used to describe the present "602 station": Amateur Station at a Military Post. This will more clearly identify these stations as amateur rather than Military in character. Any request for renewals and/or modification of any of the above classes of station shall also be submitted on this Form 610–A. An application submitted on this form particularly for renewal or modification will then contain on its face sufficient information to enable the Commission's staff to process the request without the necessity of time-consuming research of the Commission's records. Since all applicants using this form will be seeking stations of a somewhat similar nature, it has been possible to design many questions which are uniquely applicable to their operation. After completing this common information, the applicant need only supply a few additional details relevant to the type of station for which authorization is requested.

4. All requests, whether for new, modified, or renewal authorizations, other then those described in paragraph 3, supra, shall be made on FCC Form 610. This form will then cover applications for an amateur operator's license, a combination operator and station license, and a station license in cases where the applicant already holds an operator's license only. As is the case with the Form 610–A, the same advantage of time saved in processing will accrue to the Commission's staff and, hence, to the applicants by using this amended form.

5. The use of FCC Form 405–A for renewal has been misunderstood by many licensees resulting in the submission of an excessive number of defective applications. The form has been erroneously used by amateurs who really are requesting modifications; it has been mistaken for the amateur authorization itself, and it contains such limited information that it is inadequate as an aid to the Commission to determine whether a renewal of a license would be in the public interest. The new procedure will standardize amateur applications, thus, reducing the number of defective ones, and enabling the staff to process all applications more rapidly.

6. Presently, an application for renewal of an amateur license may be submitted within 120 days of the expiration date of the license. Applications for renewal in the other Safety and Special Radio Services must be filed within 60 days of the expiration date. The additional time permitted in the Amateur Service was to aid the Commission's staff in processing a tremendous influx of renewal applications filed immediately subsequent to World War II. Since this situation no longer exists, it appears desirable from the point of view of administrative consistency to restore the 60-day time limit to the Amateur Service. However, it is recognized that it would be unfair to require that renewal applicants use the new forms as soon as they are generally available and to comply with the 60-day period immediately. Many of the old forms are currently in circulation, and it would be difficult to recall all of them before the appearance of the new forms. Similarly, many renewal applications submitted within the 120-day period are currently pending and would be patently unfair to return them as being prematurely filed. Therefore, the Commission will accept amateur renewal applications filed on FCC Form 405–A, and under existing time limits, until June 30, 1961.

7. Use of the new Forms 610 and 610–A will be encouraged as soon as they are ready for distribution. Part 1 and Part 12 of the Commission's rules will be amended as set forth in the attached Appendix to reflect procedures to be followed when using the new forms. However, all forms currently in use may continue to be filed until June 30, 1961.

8. Since these changes are editorial in nature and are to promote administrative efficiency, it appears that they can be effected without the notice of proposed rule making and public procedures contemplated by section 4 of the Administrative Procedure Act. Authority for these amendments are contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

9. *Therefore, it is ordered,* This 22d day of November 1960, that Parts 1 and 12 of the Commission's rules are amended as set forth below, effective January 3, 1961.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: November 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

A. Part 1 of the Commission's rules is amended as follows:

1. Section 1.502(a) is amended to read:

§ 1.502 Where the applications are to be filed.

(a) Applications for any class of amateur operator license requiring examination under Part 12 of this Chapter shall be filed in the nearest FCC Field Office, listed in § 0.49 of the Commission's Statement of Organization, Delegations of Authority, and Other information.

2. Section 1.522 is amended by deleting "602, Application for Amateur Station License at a Military Post" and "610, Application for Amateur Operator and/or Station License" and by adding the following:

§ 1.522 Forms to be used.

* * * * *

610 Application for Amateur Operator License or for Combination of Station License with Operator License.

610–A Application for Additional Amateur Station, Amateur Club Station License, and Amateur Station for Recreation under Military Auspices.

3. Section 1.526 is revised by amending paragraphs (a) and (b), and by adding a new paragraph (c). As revised, § 1.526 reads as follows:

§ 1.526 Application for renewal of license.

(a) Application for renewal of station license shall be submitted on FCC Form 405–A (except as noted in paragraph (b) of this section).

(b) Application for renewal of a station license for an additional amateur station, an amateur club station, or an amateur station for recreation under Military auspices shall be filed on FCC Form 610–A; applications for renewal of an amateur operator's license or of a combined operator-station license shall be submitted on FCC Form 610: *Provided,* That, until June 30, 1961, all such applications for renewal may be also submitted on FCC Form 405–A. Application for renewal of authorization to operate an amateur station in the Radio Amateur Civil Emergency Service (RACES) shall be filed on FCC Form 481–1 and shall be submitted concurrently with the application for renewal of the basic amateur radio station license. Application for renewal of Civil Air Patrol radio station authorizations shall be submitted on FCC Form 480. Application for renewal of aircraft radio station licenses, other than Civil Air Patrol, shall be submitted on FCC Form 404. Application for renewal of ground station authorizations in the Aviation Services, other than Civil Air Patrol, shall be submitted on FCC Form 406. Application for renewal of Citizens Radio Station License shall be submitted on FCC Form 505.

(c) All applications for renewal of license shall be filed during the last 60 days of the license term. In any case in which the licensee has, in accordance with the provisions of this Chapter made timely and sufficient application for renewal of license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined.

B. Part 12 of the Commission's rules is amended as follows:

1. In § 12.27 paragraph (d) is amended to read as follows and paragraphs (e) and (f) are deleted.

§ 12.27 Renewal or modification of amateur operator license.

* * * * *

(d) Application for renewal and/or modification (change of address, etc.) of an amateur operator license shall be submitted on FCC Form 610 and shall be accompanied by the applicant's license. Unless otherwise directed by the Commission, each application for renewal of license shall be filed only during the last 60 days of the license term or within a period of grace of one year after the expiration date of such license. During this one year period of grace an expired license is not valid. A renewed license issued upon the basis of an application filed during the grace period will be dated currently and will not be backdated to the date of expiration of the license being renewed. In any case in which the licensee has, in accordance with the Commission's rules made timely and sufficient application for renewal of license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined. In accordance with § 12.29, a license for modification only will be dated to expire on the same date as the license being modified.

2. Section 12.61 is amended to read as follows:

§ 12.61 Eligibility for amateur station license.

A license for an amateur station will be issued in response to proper application therefor to a licensed amateur operator who has made a satisfactory showing of control of the transmitting station for which license is desired and of control of the specific premises upon which all of the station apparatus is to be located, at a designated fixed location. An amateur station license may also be issued to an individual, not a licensed amateur operator (other than an alien or a representative of an alien or of a foreign government), who is in charge of a proposed amateur station for recreation under Military auspices (only of the Armed Forces of the United States) which is to be located in approved public quarters but not operated by the United States Government.

3. Section 12.63 is amended to read as follows:

§ 12.63 Application for amateur station license.

(a) Each application for an additional station, a club station, or a station for recreation under Military auspices shall be made in writing, subscribed and verified on FCC Form 610–A. An application for a station license, where the amateur already holds an operator license only or, where the applicant is concurrently applying for an operator license, shall be made in writing, subscribed and verified on FCC Form 610.

(b) One application and all papers incorporated therein and made a part thereof shall be submitted for each amateur station license. If the application is for station license only, it shall be filed directly with the Commission at its Washington 25, D.C., office. If the application also contains application for any class of amateur operator license, it shall be filed in accordance with the provisions of § 12.22.

4. In § 12.64, the introductory text of paragraph (b) and subparagraph (6) of paragraph (b) are amended to read as follows:

§ 12.64 Location of station.

* * * * *

(b) Authority for operation of an amateur station with the licensed operator on duty at a specific remote control point in lieu of the remote transmitter location may be granted upon filing an application for a modified station license on FCC Form 610, or FCC Form 610–A, as appropriate, and provided that the following conditions are met:

* * * * *

(6) In the event that operation of an amateur transmitter from a remote control point by radio is desired, an application for a modified station license on FCC Form 610 or FCC Form 610–A, as appropriate, should be submitted with a letter requesting authority to operate in such a manner stating that the controlling transmitter at the remote control location will operate within amateur frequency bands 220 megocycles or higher and that there will be full compliance with subparagraphs (1) through (5) of this paragraph. Supplemental statements and diagrams should accompany the application and show how radio remote control will be accomplished and what means will be employed to prevent unauthorized operation of the transmitter by signals other than those from the controlling unit. There should be included complete data on control channels, relays and functions of each, directional antenna design for the transmitter and receiver in the control circuit and means employed for turning the main transmitter on and off from the remote control location.

5. Section 12.67 is amended to read as follows:

§ 12.67 Renewal and/or modification of amateur station license.

Application for renewal and/or modification (change of address, etc.) of an additional station license, a club station license, a station for recreation under Military auspices shall be submitted on FCC Form 610–A. Application for renewal and/or modification (change of address, etc.) of any other station license shall be submitted on FCC Form 610. In every case the application should be accompanied by the applicant's license. Unless otherwise directed by the Commission, each application for renewal of license shall be filed during the last 60 days of the license term or within a period of grace of one year after the expiration date of such license. During this one-year period of grace, an expired license is not valid. A renewed license issued upon the basis of an application filed during the grace period will be dated currently and will not be backdated to the date of expiration of the license being renewed. In any case in which the licensee has, in accordance with the provisions of this Chapter, made timely and sufficient application for renewal of license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined. In accordance with § 12.65, a modified license will be dated to expire on the same date as the license being modified.

[F.R. Doc. 60-11226; Filed, Dec. 1, 1960; 8:50 a.m.]

[Docket No. 11654; FCC 60-1400]

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

PART 9—AVIATION SERVICES

PART 10—PUBLIC SAFETY RADIO SERVICES

PART 11—INDUSTRIAL RADIO SERVICES

PART 16—LAND TRANSPORTATION RADIO SERVICES

PART 19—CITIZENS RADIO SERVICE

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Type Acceptance of Transmitters, Bandwidth, and Spurious Emissions

In the matter of amendment of Parts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 19 and 21 of the Commission's Rules concerning type acceptance of transmitters, bandwidth and spurious emissions, Docket No. 11654.

1. On March 21, 1956, the Commission adopted a notice of proposed rule making in the above-entitled matter, which notice was published in the FEDERAL REGISTER on March 28, 1956 (21 F.R. 1903). Comments were to be filed by

June 1, 1956, and replies within ten days thereafter. The First Report and Order in this matter, adopted August 1, 1957 (22 F.R. 6346) amended § 8.136 of the Commission's rules. The Second Report and Order in this proceeding, adopted November 5, 1958 (23 F.R. 8797) amended § 7.137 of the rules.

2. Since the notice of proposed rule making was issued, the domestic public radio services, then regulated under Part 6, have been made the subject of a new Part 21; accordingly, the title of this proceeding is hereby amended to include Part 21.

3. This Report and Order is directed to amendment of Parts 5, 9, 10, 11, 16, 19 and 21 by revising the specifications for attenuation of unwanted emissions in the vicinity of the assigned frequency. At the same time, the tables of spurious emission specifications contained in Parts 5, 10, 11 and 16 are being revised to provide a formula in place of the tables, the formula being approximately equivalent to the previous tabular specifications.

4. The pertinent comments received in this proceeding have been discussed in the First Report and Order and that discussion need not be repeated here. Specifically, the instant action provides a uniform specification of 35 decibels attenuation for unwanted emissions on frequencies which are removed from the assigned frequency by more than 100 per cent up to and including 250 per cent of the authorized bandwidth, in lieu of the more stringent requirements previously applicable.

5. The spurious emission specifications in §§ 5.103, 10.104, 11.104 and 16.104 are in tabular form and provide discrete values of attenuation requirements which changed in steps of 10 or 20 decibels at certain values of transmitter power input. In other rule Parts 3, 8, 9 and 21, the corresponding specifications are expressed in terms of a formula which provides a continuous range of attenuation values based on transmitter input or output power, resulting in a fixed level of spurious emission power specification at 50 microwatts, subject to an attenuation limit of 80 decibels. This formula, 43 plus 10Log_{10} (output power in watts) decibels, or 40 plus 10Log_{10} (input power in watts) decibels, assuming 50 per cent efficiency, is approximately equivalent to or less stringent than the values given in the corresponding tables heretofore used in Parts 5, 10, 11 and 16. It is desirable that, where feasible, the corresponding technical specifications in the respective Rule Parts be equivalent, particularly since many types of transmitters may be designed for use in several different services. In this case, it appears that this equivalence should be achieved by amending §§ 5.103, 10.104, 11.104 and 16.104 to specify spurious emission attenuation in terms of the formula 43 plus 10Log_{10} (mean output power in watts). For clarification, the use of mean power is specified both for spurious emissions and for the output power in order to encompass all of the varied kinds of emission, some of which do not employ a carrier, which are coming into general use.

6. The record in this proceeding includes comments filed pursuant to a further notice of proposed rule making in Dockets 11513, 11678 and 11654, adopted October 16, 1957, which relates to the use of single sideband transmission in the aviation radio services (Part 9). Since no decision has been reached as yet in Dockets 11513 and 11678 regarding single sideband, and since the comments filed pursuant to the further notice of proposed rule making are also on file in Dockets 11513 and 11678, it is unnecessary to keep the instant proceeding (Docket 11654) open pending disposition of the other two dockets (11513 and 11678). When technical standards for single sideband transmission are promulgated, amendment of the rules adopted herein may be necessary.

7. The record in this proceeding also includes comments pertaining to the specification of spurious emissions for standard, FM and television broadcast transmitters. Specifications for standard and FM broadcast transmitters were adopted September 2, 1959 in Docket 11233 (24 F.R. 7274) by a Report and Order amending §§ 3.40 and 3.317 which took into consideration the record in the instant proceeding. Amendment of the television broadcast specifications has been considered in the instant proceeding; however, it is found that there is insufficient information in the record to warrant adoption of revised television broadcast spurious emission specifications. Likewise, no action is being taken in this proceeding to amend Parts 4 and 6.

8. The notice of proposed rule making in the instant proceeding included proposed changes in § 2.524, concerning bandwidth and spurious emission measurements for type acceptance to require measurement of signal components within 100 percent of the authorized bandwidth removed from the carrier frequency and to direct particular attention to sidebands removed from the carrier by 100 percent or more of the authorized bandwidth. Further consideration of this proposal, however, indicates that the existing language of § 2.524(e), together with the amended specifications adopted in the instant proceeding for the various radio services, requires measurement of these sidebands and signal components without the necessity for the proposed amendment of § 2.524. Consequently, § 2.524 is not being amended in this proceeding.

9. In view of the foregoing: *It is ordered,* Under the authority contained in sections 4(i), 301 and 303 of the Communications Act of 1934, as amended, that Parts 5, 9, 10, 11, 16, 19 and 21 of the Commission's rules are amended, effective January 1, 1961, as set forth below and that the instant proceedings are hereby terminated.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 301, 303, 48 Stat. 1081, 1082; 47 U.S.C. 301, 303)

Adopted: November 22, 1960.

Released: November 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Section 5.103(b) is amended to read as follows:

§ 5.103 Emission limitations.

* * * * *

(b) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: at least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: at least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: at least 43 plus 10Log_{10} (mean output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

2. Section 9.183(a) is amended to read as follows:

§ 9.183 Emission limitations.

(a) The mean power of emission shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: at least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: at least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth:

(i) Aircraft stations below 30 Mc: 40 decibels,

(ii) Aircraft stations above 30 Mc and all ground stations: 43 plus 10Log_{10} (mean output power in watts) decibels.

3. Section 10.104(c) is amended to read as follows:

§ 10.104 Emission limitations.

* * * * *

(c) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidths: At least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus 10Log_{10} (mean output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

4. Section 11.104(c) is amended to read as follows:

§ 11.104 Emission limitations.

* * * * *

(c) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus 10Log_{10} (mean output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

5. Section 16.104(c) is amended to read as follows:

§ 16.104 Emission limitations.

* * * * *

(c) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus 10Log_{10} (mean output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

6. Section 19.35(d) is amended to read as follows:

§ 19.35 Emission limitations.

* * * * *

(d) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth, at least the amounts indicated in the following table:

Maximum authorized plate power input to final radio frequency stage:	*Attenuation (db)*
Over 3 watts	50
3 watts or less	[1] 40

[1] In the case of Class B stations having a maximum plate power input to the final radio frequency stage of 3 watts or less, any emission appearing on any frequency within a band allocated to industrial, scientific and medical equipment under the provisions of Part 2 of this chapter shall be attenuated at least 30 db.

7. Section 21.106 is amended to read as follows:

§ 21.106 Emission limitations.

(a) The mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth: At least 25 decibels;

(2) On any frequency removed from the assigned frequency by more than 100 percent up to and including 250 percent of the authorized bandwidth: At least 35 decibels;

(3) On any frequency removed from the assigned frequency by more than 250 percent of the authorized bandwidth: At least 43 plus 10Log_{10} (mean output power in watts) decibels, or 80 decibels, whichever is the lesser attenuation.

(b) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in paragraph (a) of this section.

[F.R. Doc. 60-11227; Filed, Dec. 1, 1960; 8:50 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 48]

MANUFACTURERS AND RETAILERS EXCISE TAXES

Laminated Tires

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth below in tentative form are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to conform the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) to the Act of April 22, 1960 (Public Law 86-440, 74 Stat. 80), such regulations are amended as follows:

PARAGRAPH 1. Section 48.4071 is amended to read as follows:

§ 48.4071 Statutory provisions; imposition of tax.

SEC. 4071 *Imposition of tax*—(a) *Imposition and rate of tax.* There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

(1) Tires of the type used on highway vehicles, 8 cents a pound.

(2) Other tires (other than laminated tires to which paragraph (5) applies), 5 cents a pound.

(3) Inner tubes for tires, 9 cents a pound.

(4) Tread rubber, 3 cents a pound.

(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound.

(b) *Determination of weight.* For purposes of this section, weight shall be based on total weight, except that in the case of tires such total weight shall be exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary or his delegate.

(c) *Rate reduction.* On and after July 1, 1972—

(1) The tax imposed by paragraph (1) of subsection (a) shall be 5 cents a pound; and

(2) Paragraph (4) of subsection (a) shall not apply.

[Sec. 4071 as amended and in effect Jan. 1, 1959, and as further amended by Act of Apr. 22, 1960 (Pub. Law 86-440, 74 Stat. 80)]

PAR. 2. Paragraph (b) (1) of § 48.4071-1 is amended to read as follows:

§ 48.4071-1 Imposition and rates of tax.

* * * * *

(b) *Rates and computation of tax*—(1) *Rates of tax.* Tax is imposed upon each of the above-mentioned taxable articles at the rate applicable on the date on which the article is sold, as specified below:

	Cents per pound
(i) *Tires:*	
(a) Of the type used on highway vehicles;	
(1) For the period January 1, 1959, to June 30, 1972, inclusive	8
(2) On or after July 1, 1972	5
(b) Of the type used on other than highway vehicles (excluding laminated tires)	5
(c) Laminated tires:	
(1) For the period January 1, 1959, to May 31, 1960, inclusive	5
(2) On or after June 1, 1960	1
(ii) Inner tubes	9
(iii) Tread rubber:	
For the period January 1, 1959, to June 30, 1972, inclusive	3

For definitions of the terms "tires of the type used on highway vehicles" and "laminated tires", see paragraphs (c) and (f) of § 48.4072-1.

PAR. 3. Section 48.4072-1 is amended by striking paragraph (f) and inserting the following:

§ 48.4072-1 Definitions.

* * * * *

(f) *Laminated tires.* The term "laminated tires", for purposes of the tax imposed by section 4071, means tires (1) which are not "tires of the type used on highway vehicles" within the meaning of paragraph (c) of this section, and (2) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent.

(g) *Cross references.* For other definitions, see §§ 48.0-2 and 48.7701.

[F.R. Doc. 60-11221; Filed, Dec. 1, 1960; 8:49 a.m.]

[26 CFR (1954) Part 197]

DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NON-BEVERAGE PRODUCTS

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth below in tentative form are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The purposes of this Treasury decision are (1) to delete strictly internal management instructions, (2) to amend provisions relating to special tax claims to conform to changes effected in the Internal Revenue Code by Public Law 85-859, (3) to prescribe a retention period for records and forms, (4) to correct certain obsolete forms references, (5) to conform certain provisions relating to stamps on distilled spirits containers to related changes in other regulations, and (6) to add a cross-reference to the provisions of Subpart U of 26 CFR Part 170 respecting the recovery of distilled spirits.

Pursuant to the above:

§§ 197.44, 197.45 [Deletion]

1. Sections 197.44 and 197.45 are deleted.

2. The undesignated center heading immediately following § 197.54 is revised to read: "Adjustment or Refund of Special Tax".

§ 197.55 [Amendment]

3. Section 197.55 is amended:

(A) By striking the second sentence and inserting in lieu thereof a new sentence which reads: "On payment of the special tax at the higher rate, the manufacturer may surrender the special tax stamp showing payment of $25, to the district director to whom such tax was paid, with a claim on Form 843 for refund."; and

(B) By revising the citation of authority at the end of the section to read: "(68A Stat. 791; 26 U.S.C. 6402)".

§ 197.56 [Amendment]

4. Section 197.56 is amended:

(A) By striking, in the first sentence, the phrase, "for redemption of the stamp", and inserting in lieu thereof the phrase, "for refund"; and

(B) By revising the citation of authority at the end of the section to read: "(68A Stat. 791; 26 U.S.C. 6402)".

5. Section 197.57 is revised to read as follows:

§ 197.57 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. Where claim for drawback was filed, the special tax may be refunded if it is established that no drawback was paid or allowed for the period covered by the stamp.

6. The undesignated center heading immediately following § 197.57 is deleted.

§ 197.58 [Amendment]

7. Section 197.58 is amended:

(A) By changing the section heading to read: "Filing of claims.";

(B) By striking from the first sentence the phrase "for redemption of a special tax stamp", and inserting in lieu thereof the phrase "for refund of special tax"; and

(C) By revising the citation of authority at the end of the section to read: "(68A Stat. 791; U.S.C. 6402)".

8. Section 197.59 is revised to read as follows:

§ 197.59 Time limit for filing claim.

No claim for refund of special tax shall be allowed unless presented within three years next after the payment of the tax.

(68A Stat. 808; 26 U.S.C. 6511)

§ 197.66 [Amendment]

9. Section 197.66 is amended:

(A) By striking from the first sentence the last part thereof which begins "in Treasury Department Form 356," and inserting in lieu thereof "as set forth in the current revision of Treasury Department Circular 570." and

(B) By striking from the second sentence "Form 356" and inserting in lieu thereof "Circular 570".

§ 197.75 [Amendment]

10. Section 197.75 is amended by striking from the last sentence the words ", Form 1490, or a notice of release, Form 1491" and inserting in lieu thereof the words "or release on Form 1490".

§ 197.79 [Amendment]

11. Section 197.79 is amended:

(A) By striking the first sentence and inserting in lieu thereof "Upon determination that the bond on Form 1730 may be terminated (a) where a superseding bond has been approved, (b) where the principal has discontinued filing monthly claims, or (c) where the surety has made application for release from bond as provided in § 197.76, the assistant regional commissioner will execute, on Form 1490, a notice of termination or release of bond." and

(B) By striking from the second sentence, immediately following the words "termination or", the words "the notice of".

§ 197.80 [Amendment]

12. Section 197.80 is amended by striking from the first sentence the words "Forms 1490 and 1491 of the termination of such bonds" and inserting in lieu thereof the words "Form 1490 of the termination or release of such bonds".

13. Section 197.112 is revised to read as follows:

§ 197.112 Distilled spirits received in tank cars or tank trucks.

Each claim covering distilled spirits received in tank cars or tank trucks will be accompanied by a statement showing in respect of each shipment received: The date of receipt; the name and address of the vendor; the number or other identification mark of the tank car or tank truck; the serial number of the distilled spirits stamp and the date it was affixed to the tank car or tank truck; the name of the producer; and the kind, quantity, and proof of the spirits. If the tank car or tank truck is received without the stamp affixed thereto, the vendee shall note such fact on the bill of lading, if any, or on Form 179, and immediately notify the assistant regional commissioner who will cause such inquiry to be made respecting the shipment and receipt of the conveyance as he may deem appropriate. (The distilled spirits stamp shall be completely destroyed when the distilled spirits have been removed from the tank car or tank truck.)

14. Section 197.113 is revised to read as follows:

§ 197.113 Distilled spirits received in barrels, drums, or other portable containers.

Each claim covering distilled spirits received in barrels, drums, or other portable containers bearing distilled spirits stamps shall be accompanied by a statement showing: The date of receipt; the name and address of the vendor; the kind and serial number of the stamp affixed to the container and the date the stamp was issued or affixed as stated on the stamp; the serial number, if any, of the container; the name of the producer; and the kind, quantity, and proof of the spirits. (When the container is emptied, the stamp shall be completely destroyed.)

§ 197.117 [Amendment]

15. Section 197.117 is amended by adding immediately after the last sentence the following parenthetical sentence, "(For additional provisions respecting the recovery of distilled spirits and the records relating thereto, see Subpart U of 26 CFR Part 170.)"

§ 197.130 [Amendment]

16. Section 197.130 is amended by changing paragraph (c) to read:

(c) Kind of container (such as tank car, drum, case of bottles) and serial number thereof, and the kind and serial number of the stamp affixed to the container (serial numbers of strip stamps if spirits are in bottles).

§ 197.132 [Amendment]

17. Section 197.132 is amended by striking the last sentence thereof.

18. A new § 197.133, as follows, is added:

§ 197.133 Retention of records.

Each manufacturer shall retain for a period of not less than two years all records required by this part, all Forms 179 received by him evidencing tax determination of the spirits, and all bills of lading received by him in respect of shipment of the spirits. In addition, a copy of each approved formula returned to the manufacturer shall be retained by him for not less than two years from the date he files his last claim for drawback under such formula. Such records, forms, and formulas shall be readily available during the manufacturer's regular business hours for examination and taking abstracts therefrom by internal revenue officers.

[F.R. Doc. 60-11220; Filed, Dec. 1, 1960; 8:48 a.m.]

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR Part 50-202]

METAL BUSINESS FURNITURE AND STORAGE EQUIPMENT INDUSTRY

Tentative Decision in Redetermination of Prevailing Minimum Wages

A complete record of proceedings held under sections 1 and 10 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 and 45a) to determine the prevailing minimum wages for persons employed in the metal business furniture and storage equipment industry has been certified by the hearing examiner. A tentative decision, including a statement of findings and conclusions, as well as the reasons and basis therefor, on all material issues of fact, law, and discretion presented on the record, and any proposed wage determination is now appropriate under the applicable rules of practice (41 CFR Part 50-203.21(b)) and the Administrative Procedure Act (5 U.S.C. 1007(b)).

Definition. The definition of the metal business furniture and storage equipment industry published in the notice of hearing (24 F.R. 10077) is essentially the same as that contained in the present wage determination for that industry, and describes the industry to include without limitation the following products:

(1) Bank counters; benches; stools; bookcases; chairs; desks; desk trays; filing boxes; cabinets and cases; cabinets for printers' type; storage cabinets; cabinet partitions; tables; visible business equipment; wardrobes; and waste baskets;

(2) Lockers; racks, and industrial and general-purpose shelving;

(3) Rotating bins and sectional bins; tool boxes, tool cabinets and tool chests;

metal boxes, metal chests and metal cases.

Excluded from the definition are merchandise display racks, show-cases, and display stands; restaurant furniture, carts, and food wagons; telephone booths; and all consumable office supply items.

The economist representing the Wage and Hour and Public Contracts Divisions testified that with regard to the products shown in subparagraph (1) of the definition, the word "cabinet" preceding the word "partitions" should be deleted. The witness pointed out that the deletion would make no change in the products covered by the definition, but would clarify the industry as presently defined, because all metal office partitions have been included by interpretation in the current application of the wage determination. No objection has been raised to the suggested change, and it is adopted for the purpose of this tentative decision.

Representatives of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the Office Equipment Manufacturers Institute (O.E.M.I.) raised no objections to the proposed definition. However, one individual manufacturer, Jebco, Inc., contended that the proposed definition encompassed several industries which should be treated separately. Jebco, Inc., also claimed that there was a great deal of uncertainty about whether certain products were included or excluded in the present definition. That manufacturer, therefore, recommended that the following changes be made in the proposed definition:

(a) Exempt from the proposed definition for the Metal Business Furniture and Storage Equipment Industry all tailormade metal boxes, metal chests, metal cabinets, metal cases, metal lockers and metal racks which are not normally used in the general conduct of private business; or

(b) Segregate the present industry under inquiry into "Metal Office Furniture Industry," "Storage Equipment Industry" and "Metal Fabricating Industry" with a view of permitting a determination of separate minimum wages for these industries.

In conformance with the requirements of the Walsh-Healey Public Contracts Act that the minimum wages determined thereunder be "those prevailing for persons employed on similar work or in the particular or similar industries or groups of industries," the products that are produced by establishments engaged in the same or similar types of industrial activities have been grouped together in the proposed definition. As the record indicates, the basic source of information used in this grouping was the Standard Industrial Classification (SIC) Manual (1957 edition). Most of the products within the proposed definition are contained within two of the Manual's closely related industrial establishment classifications (Industry Nos. 2522 and 2542).

The recommendations of Jebco, Inc., that various products be exempted if "tailor-made" and "not normally used in the general conduct of private business" do not appear to be well advised. As there is no established use of these terms in the industry as a means of classifying the products produced by it, ambiguity rather than clarification would, therefore, attend their use. As the products which these terms would exempt are frequently the object of contracts subject to the Act, adoption of these exemptions would diminish the usefulness of this determination. In regard to the recommendation that the manufacture of metal business furniture, storage equipment, and metal fabricating be considered separate industries, it clearly appears from the previously mentioned classification in the SIC Manual that for the most part the industrial activity involved in the manufacture of metal business furniture and metal storage equipment is indeed closely related. There are, of course, unrelated products in the metal fabricating industry, but they have not been included within the ambit of the present definition. Accordingly, I decline to follow the above recommendation of Jebco, Inc. However, after considering the record, I have decided for the purpose of this tentative decision to revise the language of the definition by adopting the deletion suggested by the Divisions' witness and by incorporating additional illustrative language into the definition. These revisions in no way change the content or scope of the current definition or of the definition carried in the Notice of Hearing. I am satisfied, that as revised, the definition is reasonably clear.

Locality. In connection with the locality issue, the record contains compilations prepared by the Wage and Hour and Public Contracts Divisions showing the origin (place of manufacture) and destination (place of Government use) in terms of successful and unsuccessful bids for about $47.7 million of $53.5 million worth of procurement activity involving products of this industry under contracts subject to the Walsh-Healey Public Contracts Act during 1958. In agreement with industry representatives, the tabulations of this information were shown by individual States and by six regions: the Northeast, Border States, South, Great Lakes, Middle West, and Pacific. The compilations are found in Government Exhibit 4.

An examination of these compilations indicates that the competition for Government contracts for products within the industry has no regional bounds. The establishments in each producing region do a great deal of bidding on contracts calling for shipment to every major consuming region, and much of their bidding is successful. The compilations, therefore, reflect inter-regional and industry-wide competition for Government contracts. For example, Table 2, representing an estimated value of procurement in excess of $30 million and showing the origin and destination of bids for General Services Administration stores stock catalog items on invitations-for-bids issued during calendar year 1958, indicates that the Northeast is one of the major producing areas. Yet, almost 59 percent of all bids on contracts calling for delivery in the Northeast (404 of 687) originated from outside of the region, and about 65 percent of the successful bids on contracts calling for delivery in that region (154 of 238) came from beyond its borders. However, the same table shows that establishments in the Northeast competed successfully in all six regions, acquiring 84 of 238 successful bids in the Northeast itself, 47 of 126 in the Border States, 66 of 227 in the South, 50 of 148 in the Great Lakes, 45 of 131 in the Middle West, and 120 of 449 in the Pacific region. A similar pattern of inter-regional competition is revealed for other areas of the country. Furthermore, Table 3, showing the origin and destination for various Federal Supply Schedule items on invitations-for-bids and solicitations-for-offers issued during calendar year 1958, demonstrates that successful bids were made by establishments in widely separated parts of the country to deliver anywhere in the United States for one price. Table 4, containing a compilation of competition data supplied by various military agencies and the Post Office Department, illustrates graphically the ability of establishments in most regions to compete successfully throughout the United States. For example, establishments in the Northeast were successful bidders on approximately the same proportion of the procurement in the Pacific region as in the Northeast region itself. Moreover, almost three-quarters of the successful bids submitted by establishments in the Northeast were for delivery to other regions.

Aside from matters considered elsewhere, the O.E.M.I. pointed out: (1) that 11 of the 201 contracts possibly encompassing more than 11 of the awards considered in Table 4 should not have been included because they were for amounts of less than $10,000 and, therefore, were not subject to the Walsh-Healey Public Contracts Act; (2) that the compilations contained awards under what is called the "multiple award system" whereunder contractors whose bids are accepted are obligated to supply items to the Government at specified prices, but the Government is not obligated to buy from any particular contractor; and further, the fact that an award is made under this system provides no indication of the destination to which the ultimate order may be shipped; (3) that the notices of awards used by the Divisions in compiling its data do not always establish whether the products called for fall within the proposed definition of the industry; and (4) that only that segment of the market which consists of Government contracts is shown by the compilations.

The evidence of record establishes that the contracts and awards of the type discussed in the first point do not alter the pattern of competition indicated by this table. Furthermore, these contracts must necessarily represent a value of less than $110 thousand ($10,000×11) as compared with the value of over $10 million represented by Table 4.

The second point would not appear to warrant a conclusion that the "multiple award system" is not indicative of competition for Government contracts. The record contains evidence (Government

Exhibit 7) indicating that multiple awards are made to qualified bidders whose bids "will be most advantageous to the Government, taking into consideration the multiplicity and complexity of equipment of various manufacturers and the differences in performance required to accomplish or produce required end results, reasonableness of prices quoted, compliance with delivery requirements, and other pertinent factors." Thus, each award reflects an act of successful competition by the firm making the accepted offer to ship from its specified establishment to the delivery points where it has agreed to do the supplying (i.e., 48 States and the District of Columbia). The record further indicates that Government ordering offices are required to buy at the lowest price available for the type of article or service required or justify why they have not done so.

In regard to the third point, the record shows that in all cases of doubt the procurement agency was contacted, and the exact nature of the product called for was ascertained. Therefore, the data contained in the area of competition tables are confined solely to items covered by the definition of this industry.

The fourth point is, of course, true. However, it is such competition for Government contracts that the Walsh-Healey Public Contracts Act is intended to affect. Evidence regarding commercial competition is not necessarily relevant to the question of patterns existing with respect to competition for Government contracts. Accordingly, the absence of such evidenec obviously does not prevent a determination from resting solely upon evidence relating to Government competition.

In conclusion, it is my opinion that the locality in which products of the metal business furniture and storage equipment industry are to be manufactured or furnished for any Government contract subject to the Walsh-Healey Public Contracts Act cannot be defined more narrowly than the entire area in which the industry operates. Under these circumstances, an industry-wide minimum wage determination is essential in this tentative decision in order to achieve the purposes of the statute. (Cf. the tentative decision in the Textile Industry (17 F.R. 11197); Mitchell v. Covington Mills, Inc., 229 F. 2d 506, certiorari denied, 350 U.S. 1002, rehearing denied 351 U.S. 934).

The wage survey. The record contains a wage survey prepared by the Bureau of Labor Statistics which purports to represent the minimum wages paid by every establishment with eight or more employees, in which the manufacture of metal business furniture and storage equipment constitutes 50 percent or more of the total value of their sales in 1958. The sources of information used to locate the establishments thus defined consisted of State unemployment compensation agency listings of manufacturers of products within the industry definition, a list of Government awards of contracts for such products provided by the Wage and Hour and Public Contracts Divisions, a list of such manufacturers submitted by the International Association of Machinists, a similar list submitted by the O.E.M.I., and the Office Appliance Buyers Index, a trade directory. From this information, the industry was considered to be composed of 213 establishments with 29,963 employees. Of these 21,280 were engaged in work of a type covered by the Walsh-Healey Public Contracts Act when performing on a contract subject to the Act and are referred to hereinafter as "covered workers." The survey contains information concerning the minimum wages paid by the 213 establishments.

The O.E.M.I. challenged the adequacy of the survey, contending that it accounts for only about one-half of the number of establishments that fall within the survey's scope, though it conceded that the survey included over 90 percent of the workers. It attempted to resolve this divergence by assuming that the missing plants averaged only approximately 10 total workers, as compared with the average of 141 among those reporting to, and counted by the Bureau of Labor Statistics. The association also assumed that such smaller plants as a group pay lower minimum wages and reached a conclusion that no determination of the customary type can be made now, for lack of adequate evidence of wages.

The O.E.M.I. rests its basic assumption that half the plants are missing on certain data in the U.S. Census of Manufactures, 1954 Vol. II Industrial Statistics, and 1958 Census of Manufactures preliminary reports. The Census contains statistics on the number of establishments and employees at various times engaged in the manufacture of wood and metal office furniture and partitions and fixtures. Though the Census treatment of furniture gives these figures separately for wood and metal, the wood and metal fabricating plants and employment are not segregated in its treatment of partitions and fixtures. The principal difficulty with the O.E.M.I. estimate lies in the fact that the definition of this industry includes most of these products when made of metal, but none of them when made of wood.

As it conceded that it had no direct evidence, the O.E.M.I. engaged in a series of broad assumptions which resulted in an estimate of the number of plants and employees engaged in the manufacture of products within the scope of the definition that should have been included in the survey. The only omission from the defined scope of the survey which is alleged, is restricted to SIC Industry No. 2541 (Partitions and Fixtures). In order to substantiate its claim, O.E.M.I. adverted to the 1954 Census data for this combined group and attempted to segregate the number of establishments processing metal products. This was attempted by estimating the value of total shipments for such products, determining what proportion this represented of the total value of shipments of all partitions and fixtures (i.e. 40 percent), and assuming that the same ratio would also measure the relative numbers of wood and metal fabricating establishments in the unsegregated group.

As the Census data do not show separately plants with less than 8 employees, a second series of assumptions as to distribution of plants by number of employees was made in an effort to make the data compatible with the 8-employee cut-off point used in the BLS wage-survey.

After the resulting estimates were combined they were updated from 1954 to 1958 by using 1958 Census data. Because 1958 Census preliminary data relate only to establishments with 20 or more employees, an additional assumption was necessary to arrive at the estimated establishment total for 1958.

O.E.M.I. applied the same technique to 1954 and 1958 Census data in arriving at an estimate of 32,271 employees in the industry. It claimed that the validity of the technique was supported by the fact that its estimate of total employment was only 108 percent of that of the BLS. O.E.M.I. also cited the close similarity, with qualification, to March 1958 employment data collected by the Bureau of Employment Security for Unemployment Insurance purposes. O.E.M.I. therefore claims equal validity for its estimate of 400 to 450 establishments.

Basic to this series of assumptions is the proposition that the number of establishments and the number of employees are directly proportional to the value of shipments, regardless of whether the product is wood or metal. Particularly with respect to establishments, BLS expert testimony in the record makes clear no such assumption is warranted. In the first place, the data on value of shipments are drawn from several seven-digit census product groups, whereas the wage survey here, like the four-digit census and standard industrial classifications, on an industry basis. The result is that thirteen percent of the shipments counted by the O.E.M.I. were not produced by establishments within the scope of the survey because these establishments are primarily in some other industry, and twelve percent of the products produced by the industry which is the subject of this portion of the BLS Survey were not counted by the O.E.M.I. because they are minor products of establishments in this industry, not among these seven-digit product groups. Moreover, it is possible that the products of a single establishment may fall into several of these seven-digit groups. For example, a plant specializing in metal partitions (Product group code No. 2541–115) may also make metal lockers (Product group code No. 2541–155). The O.E.M.I. method would, therefore, produce duplication within the system. In the second place, the O.E.M.I. estimate relies on a wholly unwarranted assumption that notwithstanding the obvious differences in raw material, fabricating machinery, labor skills, and product values, the average dollar value of shipments per establishment and per worker is exactly the same in the metal fabricating plants as it is in the wood fabricating plants. The witness who postulated these sundry assumptions admitted that he made no inquiry to determine whether there was even approximate truth in this assumption of exact equality.

Wholly apart from such inaccuracies as must underlie most of the unsup-

ported assumptions on which this criticism of the wage survey is based, adjustment of just this one of them to accord with the actual probabilities as shown by the evidence of record deprives the criticism of practically all of its substance. The relationship between the average dollar value of shipments per establishment and per worker in metal, as contrasted with wood fabricating plants, if it must be assumed, is best guided by the separate data available for the metal office furniture portion of this industry as compared with the wood office furniture industry. The same Census pamphlet which presents the data on which the criticism is based reveals that the value of shipments from the average metal office furniture plant is three and one-third times the value of shipments from the average wood office furniture plant. The average value of shipments per worker from these metal fabricating plants is one and three-tenths times the average value of these shipments from wood fabricating plants. Applying these ratios which represent actual differences between metal and wood fabricating establishments in the place of the equality between them arbitrarily assumed in the O.E.M.I. estimate, the 40 percent factor used by the O.E.M.I. witness for both plants and employees becomes approximately one-sixth for plants and one-third for workers. Indulging each and every other assumption indulged by the O.E.M.I. witness and making every other calculation just as he did, the 213 percent of the BLS count of establishments the O.E.M.I. projected becomes only 118 percent, and 108 percent of the BLS count of employees the O.E.M.I. projected becomes 100 percent. In other words, the discrepancy between the projection and the count is practically eliminated by an appropriate adjustment in this one assumption, such that the remaining projected discrepancy is most plainly nothing more than the margin of error one would normally expect to find in any projected estimate based on such an extensive series of assumptions.

The only other charge of omission of plants or employees related to a number of metal fabricating plants producing boxes, chests, and cases. It was estimated that as many as 5,000 metal fabricating plants were bidding for Government contracts in this field, although no evidence was offered or concession made that any of these plants was within this industry to a greater extent than it was in other industries as required for survey coverage. On this point the record clearly shows that the BLS secured coverage of the plants properly within its survey through the use of all the reasonably relevant and available materials including trade directories, an awards list prepared by the Wage and Hour and Public Contracts Divisions, and lists submitted by the trade association and the union.

In the light of the foregoing, and because I accept the testimony of the expert witness from the Bureau of Labor Statistics who considered these criticisms and reached a soundly based opinion that the survey was reasonably complete and accurate, I find that the survey conducted by the Bureau of Labor Statistics furnishes an appropriate basis for determining the prevailing minimum wage in this industry under the Walsh-Healey Public Contracts Act.

Prevailing minimum wages. The wage survey presents separate wage data for beginners, non-beginners and all covered workers, thus providing a basis for making one determination for beginners, and a separate one for non-beginners, or one determination for all covered workers including beginners. It becomes necessary, therefore, next to decide whether a separate determination should be provided for beginners in order to identify the appropriate wage data.

The O.E.M.I. and Jebco, Inc., recommended a beginner tolerance of 10 cents. The minimum wage determination currently in effect for this industry provides a 10-cent tolerance. The current survey suggests that such special treatment is no longer warranted. It appears that a majority of establishments pay no experienced covered worker less than $1.40, and a majority of the experienced covered workers are employed in plants paying none of them less than $1.52. These check points are identical on the data which include beginners. Other data indicate that on the survey date only 17 of the 213 establishments employed only 81 beginners of the total 21,280 covered workers at rates less than $1.52.

It is clear from these data that a differential for beginners is not warranted. I will not, therefore, exercise any exemptive authority under section 6 of the Act to grant a tolerance for beginners or probationary workers. This tentative decision will be based on the data which include beginners with other covered workers in reporting minimum wages.

The tables of wage data contained in the Bureau of Labor Statistics survey show both the lowest rates of wages actually paid and the lowest established job rates reported. Upon the basis of the former, Labor asserts that the prevailing minimum wage throughout the industry at the time of the survey was $1.52. Upon the basis of the latter, the O.E.M.I. contends that in the event an industry-wide minimum wage be determined that it should be found to be $1.27½ at the time of the survey. Of the 213 establishments surveyed, 139 reported having a lowest established job rate. Of these establishments, 94 paid this rate during the survey payroll period. The remaining 45 establishments did not pay their lowest established job rates during the survey period.

In light of the foregoing contentions, it must be determined initially whether the wage determination should be based only upon the lowest rates actually paid during the payroll period covered by the survey (February 1959) or whether it should be based upon lowest established job rates.

Labor opposes giving any weight to lower wage rates than those actually paid in the survey period. It argues: (1) That it is doubtful that these rates will be used in the future, and (2) that as the Act requires a determination of the minimum wages prevailing for "persons employed," it should not be interpreted as referring to persons who may be employed at a later date.

To the contrary, the O.E.M.I. contends that the lowest established job rate is the best measure of an establishment's minimum rate for the purpose of finding the prevailing minimum wage in this industry under the Act. It points out that most establishments which have lowest established job rates did in fact pay those rates at the time of the survey. Therefore, the O.E.M.I. argues that the lowest established job rates are truly indicative of the minimum wages that are paid and will be paid in the industry.

In the light of past practices, it would appear to be too conjectural, however, to conclude that the 45 establishments within the industry which are not paying their lowest established job rates are likely to pay those rates in the future merely because most other establishments in the same industry do pay from time to time their lowest established job rates. In judging whether these unpaid rates are real rates which will probably be paid in the future evidence concerning the past practices of these 45 establishments must be examined. Of these establishments, employing 4,752 covered workers, only 16 establishments, employing 1,169 covered workers, paid their lowest established job rates within the six-month period preceding the survey date, and these establishments plus two others, employing 558 covered workers, paid their lowest established job rates within a year of the survey period. Consequently, it would seem that in this instance the lowest established job rates would not adhere as closely to the requirement in the Walsh-Healey Public Contracts Act that the Secretary consider the minimum wages of "persons employed" as would the lowest rates actually paid, and I conclude that for the purpose of this decision the lowest rates actually paid provide a better guide to the minimum wages paid in the industry.

The lowest rates actually paid in the industry vary from $1.00 per hour to $2.35 or more, and there are no predominant concentrations at any one rate. However, it is possible here, as in similar cases, to find a rate which is representative of the minimum wages paid throughout the industry.

The O.E.M.I. recommended a statistical method for arriving at the prevailing minimum wage called the "inter-quartile theory." Under this method, the minimum wage a contractor must pay is the lowest wage paid by 75 percent of the industry. It is contended that the prevailing minimum wages are the minimum wages paid by the half of the industry centered around the median for the industry as a whole. It is argued that this is in accord with the text of the statute, because a single wage cannot be regarded to be "prevailing" but a range can be so regarded.

Although a range of wages may be said to prevail more than a single point in a wage distribution does, it is still a single wage and not a range of wages that must be ultimately chosen as the prevailing minimum wage for the purposes of the Act. This is the case no matter what statistical method is used. In effect, "the inter-quartile theory," does no more than choose the wage which is the median between the lowest minimum wage paid in the industry and the median minimum wage paid in the industry. I am not convinced that a wage thus arrived at fairly represents the various minimum wages which are paid throughout the industry.

It appears to me that the requirements of the Act are met more effectively by recognizing that the prevailing minimum wage lies closer to the center of the several minimum rates that are paid. On the basis of my examination of the minimum wages paid in this industry, I find that the prevailing minimum wage in the Metal Business Furniture and Office Equipment Industry is $1.43. The evidence indicates that 46.9 percent of the establishments employing 58.6 percent of the covered workers in this industry paid no covered worker less than $1.43 at the time of the survey. This rate gives consideration to the minimum wages paid by a majority of the establishments within the industry and the minimum wages paid by the establishments employing a majority of the covered workers in the industry. For this reason, $1.43 is representative of the minimum wages paid in the industry as a whole.

Although the higher minimum wage determination advocated by labor would still be representative of the minimum wages paid by establishments employing a majority of the covered workers in the industry, it would not give equal or fair consideration to a minimum wage which is representative of those paid by the several establishments of which the industry is composed.

Labor also asserts the prevailing minimum wage has risen two cents between the survey date in February 1959 and the hearing date in January 1960. The assertion is based upon the fact that the B.L.S. in the latest of its monthly Employment and Earnings Reports available at the time of the hearing had reported a two-cent per hour rise in gross average hourly earnings in the Metal Office Furniture Industry. However, this increase may not have been received at the minimum wage level. It may also have been accounted for in part by an increase in overtime hours worked in the industry. I, therefore, do not believe that this evidence alone warrants a finding of a post-survey increase in the prevailing minimum wage.

Accordingly, upon the findings and conclusions stated herein, pursuant to authority under the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35 et seq.), and in accordance with the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1001 et seq.), notice is hereby given that I propose to amend Title 41 of the Code of Federal Regulations by amending § 50–202.50 to read as follows:

§ 50–202.50 Metal Business Furniture and Storage Equipment Industry.

(a) *Definition.* (1) The Metal Business Furniture and Storage Equipment Industry is defined as that industry which manufactures or furnishes metal business furniture or metal business storage equipment, including but not limited to the following metal products: (1) Bank counters; benches; stools; book cases; chairs; desks; desk trays; filing boxes, cabinets and cases; cabinets for printers' type; storage cabinets; partitions; tables; visible business equipment; and waste baskets; (2) lockers; racks; and industrial and general-purpose shelving; (3) notating bins and sectional bins; tool boxes, tool chests and tool cabinets; boxes, chests and cases including stock boxes, cash and stamp boxes, sorting cases, mail distribution cases, and carrier throwback cases.

(2) Excluded from the definition are merchandise display racks, show-cases, and display stands; restuarant furniture, carts, and food wagons; telephone booths; ammunition racks and chests; bomb racks, chests, and cradles; outdoor mail storage boxes; shipping cases; foot lockers; laboratory cabinets; and all consumable office supply items.

(b) *Minimum wage.* The minimum wage for persons employed in the manufacture or furnishing of the products of the metal business furniture and storage equipment industry under contracts subject to the Walsh-Healey Public Contracts Act shall be $1.43 an hour arrived at either on a time or piece-rate basis.

(c) *Effect on other obligations.* Nothing in this section shall affect any other obligations for the payment of minimum wages that an employer may have under any law or agreement more favorable to employees than the requirements of this section.

Within thirty days from the date of the publication of this notice in the FEDERAL REGISTER, interested parties may submit written exceptions, together with supporting reasons, to the tentative decision above set out. Exceptions should be directed to the Secretary of Labor and filed with the Chief Hearing Examiner, Room 4414, United States Department of Labor, Washington 25, D.C.

Signed at Washington, D.C., this 25th day of November 1960.

JAMES P. MITCHELL,
Secretary of Labor.

[F.R. Doc. 60-11198; Filed, Dec. 1, 1960; 8:46 a.m.]

ATOMIC ENERGY COMMISSION

[10 CFR Part 115]

PROCEDURES FOR REVIEW OF CERTAIN NUCLEAR REACTORS EXEMPTED FROM LICENSING REQUIREMENTS

Notice of Proposed Rule Making

On March 12, 1959 (AEC Press Release B–42) the Commission announced adoption of policies designed to provide opportunity for public participation in the consideration of safety aspects of reactor projects in the Commission's power demonstration reactor program. The proposed regulations set forth below are designed to implement that policy. The proposed regulations incorporate relevant provisions of Part 50 with such modifications as are appropriate to adapt them to the reactor projects which will be subject to this part. Provisions are included which will make Parts 20 and 55, and relevant provisions of Part 2, applicable to reactors subject to this part.

The press release contained the following policy statement by the Commission:

The nuclear power reactors which are planned for operation under the so-called "second round" of the Commission's power demonstration reactor program, and the proposed reactor to be operated by Consumers Public Power District in Nebraska, are not subject to the formal licensing requirements of the Atomic Energy Act of 1954, as amended. Under section 110 of the Act they are exempt from licensing requirements because they are to be constructed and operated under contracts "with and for the account" of the Commission. However, these and all other Commission-owned reactors receive the same technical review to assure the public health and safety as do licensed reactors.

Unlike most Commission-owned reactors, these Commission-owned demonstration reactor projects will not be located at Commission installations but will be operated as an integral part of the power-generation facilities of operating utility systems. For this reason, the Commission has decided that the public interest would best be served by making available to members of the public opportunity for participation in safety considerations concerning these projects in accordance with procedures which would parallel those observed in licensing proceedings. Accordingly, the hazards reports filed by the prime contractors for the construction or operation of these reactors will be made available for public inspection in the Commission's Public Document Room. As in the case of license applications, the Commission will publish and make available in the Public Document Room copies of the reports of the Advisory Committee on Reactor Safeguards and copies of the hazards evaluations prepared by the Division of Licensing and Regulation.

In addition, the Commission has decided to set these cases down for public hearing to consider health and safety questions involved in the proposed construction and operation of the reactors. A notice of hearing will be issued in each case at least 30 days prior to the date of hearing. Following the issuance of the notice of hearing, proceedings will be conducted in accordance with the provisions of Part 2 of the Commission's regulations (10 CFR, Part 2 "Rules of Practice") applicable to formal hearings.

This policy will also be applied to all future Commission-owned reactors not located at Commission-owned installations, which are to be operated as part of conventional electric utility systems.

The proposed rules would apply to any prime contractor of the Commission who proposes to construct or operate a nuclear reactor which (a) is not subject to licensing requirements, (b) is not located at a Commission installation, and (c) is to be operated as a part of the power generating facilities of an electric utility system. The rules would require such contractors to obtain a construction "authorization" and an operating "authorization" corresponding to the construction permits and operating licenses issued by the Commission under Part 50. Reactor projects subject to the proposed rules would be made subject to

formal regulatory requirements, including Part 20 "Standards for Protection Against Radiation", Part 55 "Operators' Licenses", Subparts A, B, G, and H of Part 2 "Rules of Practice", and to such other requirements as may be established by applicable Commission regulations or orders issued pursuant to subsection 161b. of the Atomic Energy Act of 1954, as amended.

Notice is hereby given that adoption of the following rules is under consideration. All interested persons who desire to submit written comments and suggestions for consideration in connection with the proposed rules should send them (in triplicate) to the Secretary, United States Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation, within 60 days after publication of this notice in the FEDERAL REGISTER. Although consideration will be given, if feasible, to comments received after that period, no assurance of consideration can be given except as to comments received within the 60-day period.

GENERAL PROVISIONS

Sec.
115.1 Purpose.
115.2 Scope.
115.3 Definitions.
115.4 Interpretations.
115.5 Specific exemptions.

DESCRIPTION OF AUTHORIZATIONS

115.7 Construction and operating authorizations.

APPLICATIONS FOR AUTHORIZATIONS, FORM, CONTENTS

115.20 Applications for authorizations.
115.21 Elimination of repetition.
115.22 Contents of applications; general information.
115.23 Contents of applications; technical information hazards summary report.
115.24 Extended time for providing technical information.
115.25 Designation of technical specifications.
115.26 Public inspection of applications.

STANDARDS FOR OPERATING AND CONSTRUCTION AUTHORIZATIONS

115.30 Standards for authorizations.
115.31 Standards for construction authorization.

ISSUANCE, LIMITATIONS, AND CONDITIONS OF AUTHORIZATIONS

115.40 Issuance.
115.41 Duration of authorization, renewal.
115.42 Conditions of authorizations.
115.43 Conditions of construction authorizations.
115.44 Conversion of construction authorization or amendment of authorization to operating authorization.
115.45 Provisional operating authorization.
115.46 Hearings and reports of the Advisory Committee on Reactor Safeguards.

INSPECTION, RECORDS, REPORTS

115.50 Inspections.
115.51 Maintenance of records, making of reports.

AMENDMENT OF AUTHORIZATIONS AT REQUEST OF HOLDER

115.60 Application for amendment of authorization.
115.61 Issuance of amendment.

REVOCATION, SUSPENSION, MODIFICATION, AMENDMENT OF AUTHORIZATIONS

Sec.
115.70 Revocation, suspension, modification of authorizations for cause.
115.71 Retaking possession of special nuclear material.

APPLICABILITY OF OTHER REGULATIONS

115.80 Applicability of other regulations.

ENFORCEMENT

115.90 Violations.

AUTHORITY: §§ 115.1 to 115.90 issued under sec. 161(b), 68 Stat. 948, 42 U.S.C. 2201.

GENERAL PROVISIONS

§ 115.1 Purpose.

(a) The regulations in this part are issued by the Atomic Energy Commission pursuant to the Atomic Energy Act of 1954 (68 Stat. 919) to establish public procedures for Commission review of safety considerations involved in the construction and operation by Commission contractors of certain Commission-owned nuclear reactors; to provide opportunity for participation by interested persons in such review of safety considerations; and to establish requirements which must be observed by persons authorized to construct or operate such reactors in order to protect health and minimize danger to life or property.

(b) The procedures and requirements established in this part are designed to parallel those established in Parts 2, 50 and 55 of this chapter for production and utilization facilities subject to the licensing requirements contained in Chapter 10 (42 U.S.C. 2131) of the Atomic Energy Act of 1954.

§ 115.2 Scope.

This part applies to any prime contractor of the Commission to the extent that such contractor proposes to construct or operate a nuclear reactor which:

(a) Is not subject to the licensing requirements set forth in Chapter 10 of the Act and Part 50 of the regulations in this chapter;

(b) Is not located at a Commission installation; and

(c) Is to be operated as part of the power-generation facilities of an electric utility system.

§ 115.3 Definitions.

As used in this part:

(a) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919) including any amendments thereto.

(b) "Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear transformation.

(c) "Atomic weapon" means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(d) "Authorization" means an order issued pursuant to this part authorizing construction or operation of a nuclear reactor.

(e) "By-product material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(f) "Commission" means the Atomic Energy Commission or its duly authorized representatives.

(g) "Nuclear reactor" means an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

(h) "Person" means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

(i) "Source material" means source material as defined in section 11s. of the Act and in the regulations contained in Part 40 of this chapter.

(j) "Special nuclear material" means (1) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the Act, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(k) "United States" when used in a geographical sense, includes all Territories and possessions of the United States, the Canal Zone, and Puerto Rico.

§ 115.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 115.5 Specific exemptions.

The Commission may, upon application by any interested person, grant such exemptions from the requirements of the regulations in this part as it determines will not endanger life or property or the common defense and security and are otherwise in the public interest.

DESCRIPTION OF AUTHORIZATIONS

§ 115.7 Construction and operating authorizations.

A construction authorization for the construction of a reactor will be issued prior to the issuance of an operating authorization, if the application is otherwise acceptable. The construction authorization will be converted upon due completion of the nuclear reactor and Commission action into an operating authorization, as provided in § 115.44.

A construction authorization for the alteration of a nuclear reactor will be issued prior to the issuance of an amendment of an operating authorization, if the application for amendment is otherwise acceptable, as provided in § 115.61.

APPLICATIONS FOR AUTHORIZATIONS FORM, CONTENTS

§ 115.20 Applications for authorizations.

(a) *Place of filing.* Each application for an authorization, including whenever appropriate a construction authorization, or amendment thereof, should be filed with the Atomic Energy Commission, Attention: Division of Licensing and Regulation. Filings made by mail should be addressed to the Commission at Washington 25, D.C. Filings may be made in person at the Commission's offices at 1717 H Street NW., Washington, D.C., or its offices at Germantown, Md.

(b) *Execution of applications.* Each application for an authorization, including whenever appropriate a construction authorization or amendment thereof, should be executed in three signed originals by the applicant or duly authorized officer thereof.

(c) *Number of copies of applications.* Each filing of any application under this section should include, in addition to the three signed originals, 19 copies of the application, except that with respect to that portion of the application containing the information required by § 115.23 (Hazards Summary Report) the filing should include 40 copies.

§ 115.21 Elimination of repetition.

In his application, the applicant may incorporate by reference information contained in previous applications, statements or reports filed with the Commission: *Provided*, That such references are clear and specific.

§ 115.22 Contents of applications; general information.

Each application shall state:

(a) Name of applicant;

(b) Address of applicant;

(c) Description of business or occupation of applicant;

(d) The use to which the nuclear reactor will be put and the period of time for which the authorization is sought;

(e) The technical qualifications of the applicant to engage in the proposed activities;

(f) If the application contains Restricted Data or other defense information, it shall be prepared in such manner that all Restricted Data and other defense information are separated from the unclassified information.

§ 115.23 Contents of applications; technical information hazards summary report.

Each application shall state the following technical information:

(a) A description of the chemical, physical, metallurgical, or nuclear process to be performed, and a statement of the kind and quantity of any radioactive effluent expected to result from the process. The description of the process should be sufficiently detailed to permit evaluation of the radioactive hazards involved. The magnitude of the proposed operation should be indicated in terms of the amount and radioactivity of source, special nuclear, or byproduct material to be handled per unit of time, and thermal power to be generated if any.

(b) A description of the nuclear reactor. The description should be based on the design criteria for the reactor as a whole and for those major component parts which are essential to the safe operation of the reactor, and should be presented in sufficient detail to allow an evaluation of the adequacy of the various means proposed to minimize the probability of danger from radioactivity to persons both on and off-site. The description should also cover any activities, other than those subject to license or otherwise authorized proposed to be carried on in the building which will house the reactor and on the balance of the site.

(c) A description of the site on which the reactor facility is to be located. This should include a map of the area showing the location of the site and indicating the use to which the surrounding land is put, i.e., industrial, commercial, agricultural, residential; location of sources of potable or industrial water supply, watershed areas and public utilities; and a scale plot plan of the site showing the proposed location of the reactor.

(d) A description of proposed procedures for: routine and non-routine operations, start-up and shut-down, maintenance, storage, training of employees, minimizing operational mishaps (such as locked controls, check-lists, and close supervision), investigating unusual or unexpected incidents; and a description of such other details as may be useful in evaluating the existence and effectiveness of safeguards against the radioactive hazards in the operation of the reactor.

(e) A description of plans or proposals in the event that acts or accidents occur which would create radioactive hazards. The description should relate the various operational procedures, the protective devices, and the pertinent features of the site, to such happenings as operational mistakes, equipment or instrument failure or malfunction, fire, electric power failure, flood, earthquake, storm, strike, and riot.

(f) Meteorological, hydrological, geological, and seismological data necessary for evaluating the measures proposed for protecting the public against possible radioactive hazards.

(g) An evaluation of the proposed measures and devices to prevent acts or accidents which would create radioactive hazards or to protect against the consequences should such acts or accidents occur.

(h) A description of procedures for disposal of radioactive solid waste and the final disposal of liquid waste effluent.

(i) A description of means provided to sample atmosphere discharges through stacks where such stacks may emit by-product material or special nuclear material.

§ 115.24 Extended time for providing technical information.

Where, because of the nature of a proposed project, an applicant is not in a position to supply initially all of the technical information otherwise required to complete the application, he shall indicate the reason, the items or kinds of information omitted, and the approximate times when such data will be produced. If the Commission is satisfied that it has information sufficient to provide reasonable assurance that a nuclear reactor of the general type proposed can be constructed and operated at the proposed location without undue risk to the health and safety of the public and that the omitted information will be supplied, it may process the application and issue a construction authorization on a provisional basis without the omitted information subject to its later production and an evaluation by the Commission that the final design provides reasonable assurance that the health and safety of the public will not be endangered.

§ 115.25 Designation of technical specifications.

(a) The Commission will indicate, by notice to the applicant, which of the provisions of his hazards summary report or any supplement thereto will be deemed to be technical specifications that become part of the construction or operating authorization. In giving such notice, the Commission will afford the applicant reasonable opportunity to amend or revise the technical information supplied before proceeding further to process the application.

(b) The Commission may require the applicant to designate those provisions of his hazards summary report or any supplement thereto, which he proposes be incorporated as technical specifications in the construction or operating authorization.

§ 115.26 Public inspection of applications.

Applications and documents submitted to the Commission in connection with applications may be made available for public inspection in accordance with such provisions of the regulations contained in Part 2 of this chapter as would apply if such applications were for licenses under Part 50 of this chapter.

STANDARD FOR OPERATING AND CONSTRUCTION AUTHORIZATIONS

§ 115.30 Standards for authorizations.

In determining that an authorization will be issued to an applicant, the Commission will be guided by the following considerations:

(a) The processes to be performed, the operating procedures, the nuclear reactor and equipment, the use of the reactor, and other technical specifications, or the proposals in regard to any of the foregoing collectively provide reasonable assurance that the applicant will comply with applicable regulations in this chapter, including the regulations in Part 20 of this chapter, and that the health and safety of the public will not be endangered.

(b) The applicant is technically qualified to engage in the proposed activities in accordance with the regulations in this part.

(c) The issuance of an authorization to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public.

§ 115.31 Standards for construction authorization.

An applicant for an operating authorization or an amendment of an operating authorization who proposes to construct or alter a nuclear reactor will be initially granted a construction authorization if the application is in conformity with and acceptable under the provisions of §§ 115.20 through 115.30.

ISSUANCE, LIMITATIONS, AND CONDITIONS OF AUTHORIZATIONS

§ 115.40 Issuance.

Upon determination that an application for an operating authorization meets the standards and requirements of the Act and applicable regulations in this chapter, the Commission will issue an operating authorization, or if appropriate a construction authorization, in such form and containing such conditions and limitations including technical specifications, as it deems appropriate and necessary.

§ 115.41 Duration of authorization, renewal.

Each authorization will be issued for a fixed period of time to be specified in the authorization but in no case to exceed the term specified in the applicable contract with the Commission. Where construction of a reactor is involved, the Commission may specify in the construction authorization the period for which the operating authorization will be issued if approved pursuant to § 115.44. Authorizations may be renewed by the Commission upon the expiration of the period.

§ 115.42 Conditions of authorizations.

Whether stated therein or not, the following shall be deemed conditions in every authorization issued:

(a) Title to all special nuclear material utilized or produced pursuant to the authorization shall at all times be in the United States.

(b) No right to special nuclear material shall be conferred by the authorization except as may be defined by the authorization.

(c) Neither the authorization, nor any right thereunder, nor any right to utilize or produce special nuclear material shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the authorization to any person, unless the Commission shall, after securing full information, give its consent in writing.

(d) The authorization shall be subject to revocation, suspension, modification, or amendment for cause as provided in the Act and applicable regulations.

(e) The holder of the authorization will at any time before expiration of the authorization, upon request of the Commission submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the authorization should be modified, suspended or revoked.

(f) The authorization shall be subject to the provisions of the Act now or hereafter in effect and to all applicable rules, regulations, and orders of the Commission. The terms and conditions of the authorization shall be subject to amendment, revision, or modification, by reason of amendments of the Act or by reason of applicable rules, regulations, and orders issued in accordance with the terms of the Act.

(g) The holder of the authorization shall not permit the manipulation of the controls of the reactor by anyone who is not a licensed operator as provided in § 115.80.

(h) The holder of the authorization shall not, except as authorized pursuant to a construction authorization make any alteration in the reactor constituting a change from the technical specifications previously incorporated in an operating or construction authorization.

§ 115.43 Conditions of construction authorizations.

Each construction authorization shall be subject to the following terms and conditions:

(a) Except as modified by this section, the construction authorization shall be subject to the same conditions to which an operating authorization is subject.

(b) At or about the time of completion of the construction or modification of the nuclear reactor, the applicant will file any additional information needed to bring the original application for authorization up to date.

§ 115.44 Conversion of construction authorization or amendment of authorization to operating authorization.

Upon completion of the construction or alteration of a nuclear reactor, in compliance with the terms and conditions of the construction authorization and subject to any necessary testing of the reactor for health or safety purposes, the Commission will, in the absence of good cause shown to the contrary, issue an operating authorization.

§ 115.45 Provisional operating authorization.

(a) As an intermediate procedure prior to issuance of an operating authorization pursuant to § 115.44, the Commission may issue a provisional operating authorization in a proceeding where findings required for the issuance of a final operating authorization cannot be made because (1) construction of the facility has not been completed, or (2) there are involved features, characteristics, or components of the proposed facility as to which it appears desirable to obtain actual or further operating experience before issuance of an operating authorization for the full term requested in the application.

(b) In any case subject to paragraph (a), a provisional operating authorization will be issued by the Commission upon finding that:

(1) Construction of the facility has proceeded, and there is reasonable assurance that the facility will be completed, in conformity with the construction authorization and the application as amended, the provisions of the Act, and the rules and regulations of the Commission; and

(2) There is reasonable assurance (i) that the activities authorized by the provisional operating authorization can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations in this chapter; and

(3) The applicant is technically and financially qualified to engage in the activities authorized by the provisional operating authorization in accordance with the regulations in this chapter; and

(4) There is reasonable assurance that the facility will be ready for initial loading with nuclear fuel within ninety (90) days from the date of issuance of such provisional authorization.

(c) Each provisional operating authorization will include appropriate provisions with respect to any uncompleted items of construction and such limitations or conditions as are required to assure that operations during the period of the provisional operating authorization will not endanger public health and safety.

(d) The duration of each provisional operating authorization will be specified therein, not to exceed eighteen (18) months from the date of issuance; provided, however, that, upon good cause shown, the expiration date of the provisional operating authorization may be extended.

(e) The presiding officer may, upon good cause being shown, provide that any intermediate decision and order issued pursuant to this section shall become effective immediately upon issuance subject to (1) the review thereof and further decision by the Commission upon exceptions thereto filed by any party within twenty (20) days after issuance of such intermediate decision, pursuant to the Commission's rules of practice, and (2) such further order as the Commission may enter upon such exceptions or upon its own motion within forty-five (45) days after the issuance of such intermediate decision: *Provided, however*, That, in the absence of any further Commission order pursuant to the foregoing and exceptions to the intermediate decision, the intermediate decision of the presiding officer shall become the final decision of the Commission at the end of such forty-five (45) day period. In the event of objection by any party to immediate effectiveness of such intermediate decision and order, the presiding officer may in his discretion stay such effectiveness pending filing by such party within five (5) days of exceptions to the provision for immediate effectiveness and thereafter until decision on such exceptions by the Commission.

§ 115.46 Hearings and reports of the Advisory Committee on Reactor Safeguards.

(a) Each application for an authorization to construct or operate a nuclear reactor subject to this part shall be referred to the Advisory Committee on Reactor Safeguards for review and report thereon. Such report shall be made part of the record of the application and available to the public except to the extent that security classification prevents disclosure.

(b) The Commission will hold a hearing after 30 days' notice and publication once in the FEDERAL REGISTER on each application for authorization to construct or operate a nuclear reactor subject to this part.

INSPECTION, RECORDS, REPORTS

§ 115.50 Inspections.

Each holder of an authorization shall permit inspection, by duly authorized representatives of the Commission, of his records, premises, activities, and of materials in possession or use, related to the construction or operating authorization as may be necessary to effectuate the purposes of this part and other applicable regulations or orders of the Commission.

§ 115.51 Maintenance of records, making of reports.

Each holder of an authorization shall maintain such records and make such reports, in connection with the authorized activity, as may be required by the conditions of the authorization or by the rules, regulations, and orders of the Commission in effectuating the purposes of the Act.

AMENDMENT OF AUTHORIZATIONS AT REQUEST OF HOLDER

§ 115.60 Application for amendment of authorization.

Whenever a holder of an authorization desires to amend the authorization, application for an amendment shall be filed with the Commission, fully describing the changes desired, and following as far as applicable the form prescribed for original applications.

§ 115.61 Issuance of amendment.

In determining whether an amendment to an authorization will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of authorizations, to the extent applicable and appropriate. If the application involves the material alteration of a nuclear reactor, a construction authorization will be issued prior to the issuance of the amendment to the authorization.

REVOCATION, SUSPENSION, MODIFICATION, AMENDMENT OF AUTHORIZATIONS

§ 115.70 Revocation, suspension, modification of authorizations for cause.

An authorization may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application for authorization or in the supplemental or other statement of fact required of the applicant; or because of conditions revealed by the application for authorization or statement of fact or any report, record, inspection, or other means, which would warrant the Commission to refuse to grant an authorization on an original application; or for failure to construct or operate a nuclear reactor in accordance with the terms of the authorization; or for violation of, or failure to observe, any of the terms and provisions of the Act, regulations, authorization or order of the Commission.

§ 115.71 Retaking possession of special nuclear material.

Upon revocation of an authorization, the Commission may immediately retake possession of all special nuclear material possessed by the holder of the authorization.

APPLICABILITY OF OTHER REGULATIONS

§ 115.80 Applicability of other regulations.

(a) The provisions of Subparts A, B, G, and H of Part 2 of this chapter shall apply to authorizations and applications for authorizations, and to proceedings with respect thereto, to the same extent as if such applications were applications for licenses or construction permits under Part 50 of this chapter; and to the same extent as if such authorizations were licenses or construction permits under Part 50.

(b) Each holder of an authorization shall comply with the provisions of Part 20 of this chapter to the same extent as if such authorization were a license or construction permit issued under Part 50 of this chapter.

(c) No individual shall manipulate the controls of any facility authorized pursuant to this part without a valid operator's license issued pursuant to Part 55 of this chapter.

ENFORCEMENT

§ 115.90 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the Act or any regulation or order issued thereunder. Any person who willfully violates any provision of the Act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Dated at Germantown, Md., this 25th day of November 1960.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

[F.R. Doc. 60-11188; Filed, Dec. 1, 1960; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 13854; FCC 60-1408]

TELEVISION BROADCAST STATIONS

Requirements for Frequency Monitors

In the matter of amendment of Part 3 of the Commission rules governing TV broadcast stations concerning requirements for frequency monitors, Docket No. 13854.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. In November 1955, the Commission adopted a Report and Order in Docket No. 11094, which for the first time required television broadcast stations to have an approved frequency monitor in operation during all periods of operation of the station. Since no approved monitors were available at that time, the time for compliance with the rule was set forward to June 1, 1957. This date has subsequently been extended, the most recent extension having been made by order adopted November 16, 1960 (FCC 60-1379) which extended the time for compliance to February 28, 1961. In the extension Orders the Commission stated that it would review the requirement for frequency monitors to determine whether it was still needed.

3. The development of new and better frequency controls and the crystals used therein for television broadcast stations has improved the stability of transmitters to the point where their short term frequency stability is approaching that of the currently available frequency monitors. There have been relatively few incidents where TV stations were found operating beyond their frequency tolerance and in some of those the off-frequency operation came about because the operator attempted to adjust the transmitter frequency to agree with the frequency monitor indication but the frequency monitor had drifted off-frequency.

4. The lack of long-term frequency stability in currently available monitors makes it necessary to check them with an external frequency source of known accuracy at periodic intervals. In most cases the standard frequency transmissions of WWV, operated by the National Bureau of Standards, are used. One of the most commonly used procedures is to check the operating frequency of the transmitter and then correct the monitor to agree with the known transmitter frequency.

5. In view of the foregoing, we believe that the requirement that a continuously operating frequency monitor be installed at television broadcast stations can be eliminated and licensees permitted to compare the operating frequency of the station with an external frequency source of known accuracy at sufficiently frequent intervals to insure that the operating frequency is maintained at all times within the prescribed tolerance. This frequency check should be made as often as necessary to insure compliance and, in all cases, at least once each day. The choice of measuring equipment and the method employed is left to the discretion of the licensee but must be technically sound. Stations desiring to maintain continuously operating frequency monitors of suitable design may continue to do so. However, the daily checks against a frequency source of known accuracy must still be made.

6. It is proposed to amend §§ 3.663 and 3.690 of the Commission rules as set forth below and to delete § 3.693.

7. Authority for the issuance of the proposed amendments is contained in sections 4(i), 303 (e), (f) and (r) of the Communications Act of 1934, as amended.

8. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested parties may file comments on or before December 26, 1960, and reply comments on or before January 6, 1961. In reaching its decision on the rules and standards of general applicability which are proposed herein, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

9. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: November 22, 1960.

Released: November 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Delete § 3.690 *Frequency monitor* and substitute the following:

§ 3.690 Frequency measurements.

(a) The operating frequencies of the visual and aural transmitters shall be checked at sufficiently frequent intervals to insure that they are within the prescribed tolerance and in any event at least once each day. A frequency monitor or other frequency source of known accuracy, independent of the frequency controlling elements of the transmitter, shall be used for this check. The determination may be a measurement of the actual operating frequency of the station or a multiple or sub-multiple thereof, or in terms of the difference between the actual operating frequency and the assigned frequency without regard as to whether the difference is plus or minus.

(b) The frequency monitor or other frequency source employed for the above check shall be capable of supplying a reference signal at the time the check is made, that when compared with the standard frequency transmissions of the National Bureau of Standards, is accurate to within 10 percent of the allowable frequency tolerance at the operating frequency of the station and shall maintain this accuracy during the period required for the frequency check.

(c) The frequency monitor or other frequency source employed for the above frequency determination shall be checked against the standard frequency transmissions of the National Bureau of Standards at sufficiently frequent intervals to insure that the required accuracy is maintained and in any event at intervals no longer than one month.

(d) If a commercial frequency measuring service is employed for the periodic checks of the operating frequency, the licensee of the station shall secure a written statement from the organization performing the frequency measurements giving the guaranteed accuracy of their measurements and the frequency with which their equipment is checked against the standard frequency transmissions of the National Bureau of Standards. This statement shall be posted or filed at the operating position of the station.

§ 3.692 [Amendment]

2. Delete the words "frequency" and "and" from the heading of § 3.692.

3. Delete § 3.693 *Requirements for type approval of frequency monitors* and substitute the following:

§ 3.693 [Reserved]

§ 3.663 [Amendment]

4. Delete subparagraph (iii) of § 3.663 (b) (4).

5. Add the following subparagraphs to § 3.663(b):

(6) An entry showing the time and date of each check of the operating frequency against a frequency source of known accuracy, giving the method used, the deviation noted, and any correction made in the operating frequency. If a fixed routine is employed for such checks, the detailed description of the method may be posted or filed at the operating position and the log entry merely refer to the posted or filed description.

(7) An entry showing the time and date of each check against the standard frequency transmissions of the National Bureau of Standards, of the equipment used to check the operating frequency of the transmitter, giving the method used, the deviation noted, and any correction made. If a fixed routine is employed for these checks, the detailed description of the method may be posted or filed at the operating position and the log entry merely refer to the posted or filed description.

§ 3.694 [Amendment]

6. Delete paragraph (a) of § 3.694 *Requirements for type approval of aural modulation monitors*, and redesignate paragraphs (b) through (e) as (a) through (d) respectively.

[F.R. Doc. 60-11228; Filed, Dec. 1, 1960; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 27]

[Docket No. FDC-70]

CANNED FRUITS AND CANNED FRUIT JUICES; DEFINITIONS AND STANDARDS OF IDENTITY; QUALITY; AND FILL OF CONTAINER

Notice of Hearing Re Establishment of Definitions and Standards of Identity for Orange Juice and Orange Juice Products

In the matter of establishing definitions and standards of identity for orange juice (§ 27.106), pasteurized orange juice (§ 27.107), canned orange juice (§ 27.108), sweetened pasteurized orange juice (§ 27.109), canned sweetened orange juice (§ 27.110), concentrated orange juice (§ 27.111), sweetened concentrated orange juice (§ 27.112), reconstituted orange juice (§ 27.113), sweetened reconstituted orange juice (§ 27.114), and industrial orange juice with added chemical preservatives:

Notices of proposed rule making were published in the FEDERAL REGISTER of November 6, 1956 (21 F.R. 8511), and June 4, 1957 (22 F.R. 3893), setting forth proposals of Kraft Food Company, 500 Prestigo Court, Chicago, Illinois, the National Association of Frozen Food Packers, 1415 K Street NW., Washington, D.C., and the Commissioner of Food and Drugs for the establishment of definitions and standards of identity for orange juice and certain types of orange juice products. Subsequently, an order was published in the FEDERAL REGISTER of March 1, 1960 (25 F.R. 1770), promulgating identity standards for all the above-identified orange juice and orange juice products, except for industrial orange juice, the petition for which was denied. Objections were filed to the order and a public hearing was requested as provided in the Federal Food, Drug, and Cosmetic Act (sec. 701 (e) (2), 70 Stat. 919; 21 U.S.C. 371(e) (2)). A notice was published April 13, 1960 (25 F.R. 3159), announcing that objections had been filed and that the order was stayed pending a resolution of the issues at a public hearing.

The Commissioner of Food and Drugs has concluded that the objections state reasonable grounds for a hearing on the following issues:

I–A. Whether the following designations constitute the common or usual names for the several products:

1. Orange juice.
2. Pasteurized orange juice.
3. Canned orange juice.
4. Sweetened pasteurized orange juice.
5. Canned sweetened orange juice.
6. Concentrated orange juice, orange juice concentrate.
7. Sweetened concentrated orange juice, sweetened orange juice concentrate.
8. Reconstituted orange juice, orange juice from concentrate.
9. Sweetened reconstituted orange juice, sweetened orange juice from concentrate.

B. If the designations listed in I–A do not constitute the common or usual names for the products, what are the common or usual names?

C. If the common or usual names under which any of the products listed in I–A have been marketed fail to convey to the consumer what the products really are and how they differ from freshly squeezed orange juice, thus making it impractical and contrary to the promotion of honesty and fair dealing in the interest of consumers to standardize the foods under such names, what means should be used to avoid consumer deception and confusion?

D. If there are no common or usual names for the several products, or if it is impractical to standardize the foods under such names, will the names designated in the proposed standard promote honesty and fair dealing in the interest of consumers?

II–A. Whether the optional ingredients permitted in the proposed standards should include any of the following:

1. Tangerine juice.
2. Juice from "sour" oranges.
3. Orange oil.
4. Orange essence.
5. Orange pulp.
6. Artificial sweeteners (§§ 27.109, 27.110, 27.112, and 27.114 only).
7. Nutrient sweeteners (§§ 27.109, 27.110, 27.112, and 27.114 only).
8. Orange juice concentrate.
9. Reconstituted orange juice (in pasteurized orange juice only, § 27.107).
10. Liquid sugar sirup (§§ 27.109 and 27.110 only).
11. Liquid invert sugar sirup (§§ 27.109 and 27.110 only).

B. For each item listed in II–A that should be included as an optional ingredient:

1. How can that ingredient best be described in the standard?
2. What should be the maximum amount of that item in the several products?
3. What should be the minimum amount of that item in the several products?

C. For each item listed in II–A that should be included as an optional ingredient:

1. Should the presence of that item in the several products be declared on the label?
2. If so, what label declaration will best promote honesty and fair dealing in the interest of consumers?

III. Whether the following Brix and Brix/acid ratio requirements identify the several products and are necessary for the protection of the consumer:

§ 27.107 Brix tests not less than 10.5° on the Brix hydrometer; Brix/acid ratio of not less than 10:1.
§ 27.108 Brix tests not less than 10.5° on the Brix hydrometer; Brix/acid ratio of not less than 10:1.
§ 27.109 Brix tests not less than 12.5° on the Brix hydrometer; Brix/acid ratio of not less than 10:1.
§ 27.110 Brix tests not less than 12.5° on the Brix hydrometer; Brix/acid ratio of not less than 10:1.
§ 27.113 Brix tests not less than 11.8° on the Brix hydrometer.
§ 27.114 Brix tests not less than 12.5° on the Brix hydrometer; Brix/acid ratio of not less than 10:1.

If not, what Brix and Brix/acid ratio requirements are needed properly to promote honesty and fair dealing in the interest of consumers?

IV. Whether the proposed standards should provide for the optional use of the following methods of manufacture:

§ 27.106 Orange juice—Freezing; heating to permit removal of peel oil.
§ 27.107 Pasteurized orange juice—Freezing; thawing of single-strength juice.
§ 27.111 Concentrated orange juice and § 27.112 Sweetened concentrated orange juice—Heat treatment of finished product as well as ingredients; addition of orange juice concentrate both before and after concentration but before freezing.
§ 27.113 Reconstituted orange juice and § 27.114 Sweetened reconstituted orange juice—Heat treatment of finished product; sealing in containers and heat processing to prevent spoilage.

V–A. Whether the following limits should be placed on the amount of concentrate that may be added to the several products as an optional ingredient:

§ 27.106 Orange juice: None.
§ 27.107 Pasteurized orange juice, § 27.108 Canned orange juice, § 27.109 Sweetened pasteurized orange juice, and § 27.110 Canned sweetened orange juice: One-fourth of the total orange juice solids of the finished product.

B. If such limits should be placed on the amount of concentrate, will it promote honesty and fair dealing in the interest of consumers to declare the presence of such concentrate in such products on the label?

C. If so, what label declaration will best serve to inform the consumer?

D. Whether the concentrated orange juice used in adjusting the orange juice solids of the products listed in V–A may have a concentration of less than 41.8° Brix.

VI–A. Whether it is in the interest of consumers to establish a maximum limit on the amount of sweetener that may be added to:

§ 27.109 Sweetened pasteurized orange juice.
§ 27.110 Canned sweetened orange juice.
§ 27.112 Sweetened concentrated orange juice.
§ 27.114 Sweetened reconstituted orange juice.

B. If so, what maximum should be applied?

C. Should a minimum limit also be established?

VII–A. Whether the extracted residual juices vary as the extracting process varies, so that it will promote honesty and fair dealing in the interest of consumers to identify and/or to limit the processes employed in extracting juice from the particular residual pulp.

B. If the method of preparation of concentrated orange juice should be identified, whether the following statements on the label will serve to identify the method by which the juice is obtained:

1. "Prepared in part from water extract of orange pulp."
2. "Prepared in part from finisher extract of orange pulp."

A number of objections were received requesting the inclusion of chemical preservatives as ingredients in orange juice concentrates. By the order published on March 1, 1960 (25 F.R. 1770), the Commissioner specifically denied the establishment of a definition and standard of identity for industrial orange juice with added chemical preservatives. It is the understanding of the Commissioner that the orange juice concentrates referred to in the objections to that order are either used as bases for orange drinks or are flavoring materials. It is not contemplated that such orange juice concentrates come within the definition and standard of identity for concentrated orange juice now under consideration.

Objections were also received requesting the promulgation of a standard of identity for powdered (dehydrated) orange juice crystals and strained orange juice for infants. It is the opinion of the Commissioner that these products do not come within the proposed standards. Therefore, evidence will not be received regarding these products.

Objections were also received with reference to the size and style of containers in which the several finished products are packaged. It is the opinion of the Commissioner that the size and style of such containers are not issues in this hearing.

Finally, a number of objections were received to the effect that the standards did not make it definite enough that the several products may not be diluted with water. It is the opinion of the Commissioner that the proposed standards are sufficiently clear to establish that the volume of the final products, with the exception of reconstituted orange juice and sweetened reconstituted orange juice as provided for in §§ 27.113 and 27.114, may not be increased by the addition of water.

Now, therefore, pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and delegated to the Commissioner of Food and Drugs (25 F.R. 8625), notice is given that a public hearing will be held for the purpose of receiving evidence relevant and material to the issues set forth above.

The hearing will begin at 10:00 o'clock, eastern standard time, in the morning of January 30, 1961, in the main auditorium, Health, Education, and Welfare Building, 330 Independence Avenue SW., Washington, D.C., and will continue thereafter at such times and places as directed by the presiding officer. All persons interested are invited to attend the hearing and present evidence. The hearing will be conducted in accordance with the rules of practice provided therefor. A prehearing conference for the simplification of the issues, exchange of documentary evidence, the scheduling of witnesses, and such other matters as may aid in the disposition of the proceeding will be held in Room 5131, Health, Education, and Welfare Building, beginning at 10:00 in the morning of January 16, 1961. All interested persons who will attend the hearing are urged to appear or to send a representative. Any interested person intending to introduce documentary evidence at the hearing is requested to bring five copies of such documentary evidence to the prehearing conference or to send five copies to the presiding officer in advance of the conference. Only those persons expecting to actively participate at the hearing should attend the

prehearing conference. All persons expecting to attend the prehearing conference should notify the presiding officer in advance.

Mr. William J. Risteau, Room 5440, Health, Education, and Welfare Building, is hereby designated as presiding officer to conduct the hearing, with full authority to administer oaths and affirmations and do all other things appropriate to the conduct of the hearing. The presiding officer is required to certify the entire record of the proceedings to the Commissioner of Food and Drugs for action.

At the termination of the hearing, written statements may be submitted on factors which may have a bearing on the effective date of the final standard.

Dated: November 25, 1960.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner, of Food and Drugs.

[F.R. Doc. 60-11165; Filed, Dec. 1, 1960; 8:45 a.m.]

[21 CFR Part 120]

O,O-DIETHYL O-(2-ISOPROPYL-4-METHYL-6-PYRIMIDINYL) PHOSPHOROTHIOATE

Notice of Amendment of Petition for Establishment of Tolerances

Pursuant to the provisions of the Federal Food, Drug, and Cosmetics Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice appeared in the FEDERAL REGISTER on May 20, 1960 (25 F.R. 4482), that a petition had been filed by Geigy Agricultural Chemicals, Division of Geigy Chemical Corporation, Saw Mill River Road, Ardsley, New York, proposing the establishment of tolerances for residues of *O,O*-diethyl *O*-(2-isopropyl-4-methly-6-porimidinyl) phosphorothioate in or on raw agricultural commodities as follows:

3.0 parts per million in or on alfalfa, corn forage.

0.75 part per million in or on sweet corn (kernels and cob with husks removed), peas, almond hulls, pea forage, bean forage.

0.25 part per million in or on meat, fat, and other meat byproducts from cattle.

The petition has been modified so that the tolerances now requested are as follows:

10 parts per million in or on alfalfa hay.

3 parts per million in or on alfalfa, bean hay, corn forage, pea hay.

0.75 part per million in or on sweet corn (kernels and cob with husks removed), peas, almond hulls, pea forage, bean forage.

0.25 part per million in or on meat, fat, and other meat byproducts from cattle.

The methods of analysis proposed for determining residues of *O,O*-diethyl *O*-(2-isopropyl-4- methyl - 6 - pyrimidinyl) phosphorothioate are those referred to in the original notice of filing.

Dated: November 25, 1960.

[SEAL] ROBERT S. ROE,
Director, Bureau of Biological and Physical Sciences.

[F.R. Doc. 60-11203; Filed, Dec. 1, 1960; 8:46 a.m.]

Notices

POST OFFICE DEPARTMENT

RELOCATION OF REGIONAL HEADQUARTERS

The following is the text of Order Number 57049 of the Postmaster General dated November 10, 1960:

Effective December 1, 1960, the Regional Office Headquarters for the states of Alaska, Idaho, Montana, Oregon, and Washington will be relocated from Portland, Oregon, to Seattle, Washington.

The Headquarters of the Seattle Regional Office initially will be located in the Republic Building, Third Avenue and Pike Street, Seattle, Washington.

The office of the Regional Controller will temporarily remain in Portland but will be relocated to Seattle as soon as Government-owned space can be acquired.

(R.S. 161, as amended, sec. 1(b), 63 Stat. 1066, sec. 501, Pub. Law 86-682 (74 Stat. 580); 5 U.S.C. 22, 133z-15, 39 U.S. Code 501)

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 60-11202; Filed, Dec. 1, 1960; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 9181]

REOPENED ERIE-DETROIT INVESTIGATION

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be heard on January 17, 1961, at 10:00 a.m., e.s.t., in Room 803, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner William F. Cusick.

Dated at Washington, D.C., November 29, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11234; Filed, Dec. 1, 1960; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 12931; FCC 60M-2009]

CARTER MOUNTAIN TRANSMISSION CORP.

Order Continuing Hearing

In re application of Carter Mountain Transmission Corporation, Cody, Wyoming, Docket No. 12931, File No. 2463-C1-P-58; for construction permit to install an additional transmitter, to transmit on frequency 6387.5 Mc. Location: Copper Mountain, 40 miles south of Worland, Wyoming.

The Chief Hearing Examiner having under consideration the motion filed in the above-entitled proceeding on November 23, 1960, by Carter Mountain Transmission Corporation requesting continuance of date of notification of witnesses to be called for cross-examination and of hearing date from November 23 and November 28, 1960, respectively, to November 29 and December 12, 1960, respectively;

It appearing that all parties have consented to immediate consideration and grant of the said motion and that good cause for a grant thereof is shown;

It appearing further that the Hearing Examiner designated to preside in the instant proceeding has been taken suddenly ill and it cannot presently be determined at what date he will be able to proceed in this matter;

It is ordered, This 25th day of November 1960 that the said motion is granted insofar as continuance of the said dates is requested and is otherwise denied; and

It is ordered further, That the date herein for notification of witnesses to be called for cross-examination and the date for commencement of hearing are continued to dates to be subsequently specified.

Released: November 25, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11229; Filed, Dec. 1, 1960; 8:50 a.m.]

[Docket No. 13222 etc.; FCC 60M-2006]

MICHIGAN BROADCASTING CO. (WBCK) ET AL.

Order Scheduling Prehearing Conference

In re applications of Michigan Broadcasting Company (WBCK), Battle Creek, Michigan, et al., Docket No. 13222, File No. BP-11439; (Group 2): Docket Nos. 13223, 13224, 13226, 13228, 13230, 13231, 13232, 13233, 13237, 13239, 13241, 13242, 13246, 13249, 13654; for construction permits.

Pursuant to request of counsel for Michigan Broadcasting Company and with agreement of other counsel: *It is ordered,* This 23d day of November 1960, that a further conference will be held on December 1, 1960, at 10 a.m., for Group 2 in the above-entitled proceeding, at which time the Joint Motion for Extension of Exchange and Further Conference Dates, filed on November 17, 1960 by thirteen of the applicants in Group 2, among other matters, will be discussed.

Released: November 25, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11230; Filed, Dec. 1, 1960; 8:50 a.m.]

[Docket Nos. 13747, 13748; FCC 60M-2008]

OREGON TELEVISION, INC., AND WILLAMETTE-LAND TELEVISION, INC.

Order Continuing Hearing

In re applications of Oregon Television, Inc., Salem, Oregon, Docket No. 13747, File No. BPCT-2611; Willamette-Land Television, Inc., Salem, Oregon, Docket No. 13748, File No. BPCT-2651; for construction permits for new television broadcast stations (Channel 3).

The Hearing Examiner having under consideration a "Joint Petition for Extension of Procedural Hearing Dates" filed by the applicants in the above-entitled matter on November 23, 1960, and

It appearing that counsel for the Broadcast Bureau has advised the other parties that he has no objection to the immediate consideration and grant of the relief requested therein, and that good cause for granting the petition is shown,

It is ordered, This 23d day of November 1960, that the aforesaid Petition is granted, and

It is further ordered, In accordance therewith, that the following schedule shall govern the procedure in this case:

1. Exchange of exhibits—date changed from December 1, 1960, to January 5, 1961,

2. Notification of witnesses for cross-examination—date changed from December 8, 1960, to January 12, 1961, and

3. Hearing—date changed from December 12, 1960, to 10:00 a.m., January 19, 1961, in the Commission's offices in Washington, D.C.

Released: November 25, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11231; Filed, Dec. 1, 1960; 8:50 a.m.]

[Docket No. 13329; FCC 60M-2010]

RALPH J. SILKWOOD

Order Continuing Hearing

In re application of Ralph J. Silkwood, Klamath Falls, Oregon, Docket No.

13329, File No. BP-12656; for construction permit.

The Hearing Examiner having under consideration a pleading filed on November 23, 1960, on behalf of Ralph J. Silkwood, requesting postponement of hearing in the above-entitled proceeding from the scheduled date of November 28, 1960, to January 6, 1961; and

It appearing that the postponement of the hearing is necessary because of the illness of Mr. Silkwood and the consequent delay in the consideration of matters in connection with the instant application; and

It further appearing that there are no other applicants or respondents in this proceeding and counsel for the Broadcast Bureau has informally agreed to a waiver of the four-day requirement of § 1.43 of the Commission's rules and has no objection to a grant of the request for postponement;

It is ordered, This 25th day of November 1960, that the request be and it is hereby granted; and the hearing in the above-entitled proceeding be and it is hereby continued to January 6, 1961.

Released: November 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11232; Filed, Dec. 1, 1960; 8:50 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G-9288, etc.]

ATLANTIC REFINING CO. ET AL.

Order Canceling Hearing

NOVEMBER 23, 1960.

By order issued October 19, 1960, we fixed January 16, 1961 as the date for the public hearing in these consolidated proceedings to commence.

On October 17, 1960 an order was issued advancing the date of hearing in Continental Oil Company, et al., Docket Nos. G-11024, et al., to November 28, 1960, in which proceeding The Atlantic Refining Company (Atlantic) is one of the applicants. Atlantic filed a petition for reconsideration of our order in Docket Nos. G-11024, et al., in which it avers, among other things, that it cannot prepare for both proceedings at the same time. In order to assure that the proceedings in Docket Nos. G-11024, et al., may be expeditiously concluded and to avoid any hearing conflicts which may interfere in the accomplishment of this objective we deem it advisable to cancel the hearing in these proceedings now scheduled for January 16, 1961, subject to further order of the Commission.

The Commission orders: The public hearing scheduled to commence on January 16, 1961, by our order issued October 19, 1960, in these proceedings is hereby cancelled. In all other respects the order consolidating proceedings, fixing date of hearing and prescribing procedure, issued herein on September 23, 1960, as amended by our order of October 19, 1960, shall remain in full force and effect pending further order of the Commission in these proceedings.

By the Commission (Commissioner Kline dissenting).

MICHAEL FARRELL,
Acting Secretary.

[F.R. Doc. 60-11191; Filed, Dec. 1, 1960; 8:45 a.m.]

[Docket Nos. RI61-247—RI61-251]

BERT FIELDS ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

NOVEMBER 25, 1960.

Bert Fields, et al., Docket No. RI61-247; Prince Marine Drilling and Exploration Company (Operator) et al., Docket No. RI61-248; Continental Oil Company (Operator) et al., Docket No. RI61-249; Edwin L. Cox, Docket No. RI61-250; Midwest Oil Corporation (Operator), et al., Docket No. RI61-251.

The above-named respondents have tendered for filing proposed changes in presently-effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date [1] unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket No.
RI61-247	Bert Fields, et al., 1211 Fidelity Union Life Building, Dallas, Tex.	8	12	Texas Eastern Transmission Corp. (Greenwood-Waskom Field, Caddo Parish, La.).	$98	10-26-60	11-26-60	4-26-61	[2] 16.0058	16.211	G-19738
RI61-247	Bert Fields, et al	9	7	Texas Eastern Transmission Corp. (Waskom Field, Harrison and Panola Counties, Tex.).	2,400	10-26-60	11-26-60	4-26-61	[3] 14.8	15.0	G-19738
RI61-248	Prince Marine Drilling and Exploration Co. (Operator), et al., 1060 San Jacinto Building, Houston, Tex.	1	14	Texas Eastern Transmission Corp. (Englehart Field, Colorado County, Tex.).	1,060	10-31-60	12-1-60	5-1-61	[3] 14.8	15.0	G-20216
RI61-249	Continental Oil Co. (Operator), et al., P.O. Box 2197, Houston 1, Tex.	170	3	Texas Eastern Transmission Corp. (Cherokee Lake Field, Rusk County, Tex.).	312	10-31-60	12-1-60	5-1-61	[3] 14.8	15.0	G-19734
RI61-250	Edwin L. Cox, 2400 Adolphus Tower, Dallas, Tex.	11	5	Panhandle Eastern Pipe Line Co. (Morton County, Kans.).	195	10-31-60	12-1-60	5-1-61	[3] 15.0	16.0	----------
RI61-251	Midwest Oil Corporation (Operator), et al., 1700 Broadway, Denver 2, Colo.	14	2	United Fuel Gas Co. (Ellis Field, Acadia Parish, La.).	3,213	10-31-60	12-1-60	5-1-61	[3] 19.5	19.9	G-19912
RI61-251	do	15	2	United Fuel Gas Co. (Branch Field, Acadia Parish, La.).	2,315	10-31-60	12-1-60	5-1-61	[3] 19.5	19.9	G-19912
RI61-251	do	20	5	United Fuel Gas Co. (Ellis Field, Acadia Parish, La.).	4,083	10-31-60	12-1-60	5-1-61	[3] 19.5	19.9	RI60-182

[1] The proposed effective dates are the first day after the required thirty days' notice or, if later, the date requested by respondent.
[2] The pressure base is 15.025 psia.
[3] The pressure base is 14.65 psia.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds it is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon the dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 9, 1961.

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11206; Filed, Dec. 1, 1960; 8:47 a.m.]

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

[Project No. 2278]

CHIFLO PUMPED DIVERSION PROJECT AND PLAINS ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.

Notice of Land Withdrawal; New Mexico

NOVEMBER 28, 1960.

Conformable to the provisions of section 24 of the Act of June 10, 1920 (41 Stat. 1063), as amended, notice is hereby given that the lands hereinafter described, insofar as title thereto remains in the United States are included in power Project No. 2278 (Chiflo Pumped Diversion Project) for which completed application for preliminary permit was filed August 30, 1960, by the Plains Electric Generation and Transmission Cooperative, Inc., 2401 Aztec Road NE., Albuquerque, N. Mex.

The area reserved by the filing of this application is approximately 4,967.22 acres, of which approximately 4,112.30 acres have been previously withdrawn by water Power Designation No. 1, Power Site Reserves No. 548 and 740, Power Site Classifications No. 360 or 393. Approximately 130 acres are within the boundaries of the Carson National Forest.

NEW MEXICO PRINCIPAL MERIDIAN—NEW MEXICO

All of the following described subdivisions as depicted on the map exhibit submitted to the Federal Power Commission on August 30, 1960, entitled "General Map, Project Area, Proposed Chiflo Pump Diversion Project, Rio Grande and Red River, New Mexico", (FPC No. 2278-1):

T. 28 N., R. 12 E.,
Sec. 4: Lot 4, SW¼NW¼, W½SW¼, S½SE¼SW¼, S½S½SE¼;
Sec. 5: Lots 1, 2, 3, 4, S½N½, S½;
Sec. 6: Lots 1, 2, 3, S½NE¼, SE¼NW¼, E½NE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SE¼;
Sec. 8: E½, E½W½, E½W½W½, W½NW¼NW¼;
Sec. 9: NE¼, W½, W½SE¼, W½NE¼SE¼;
Sec. 10: W½NW¼NW¼;
Sec. 16: W½NW¼NE¼, NW¼, NW¼SW¼;
Sec. 17: E½, E½W½, E½W½W½;
Sec. 19: E½E½E½;
Sec. 20: N½NW¼NE¼, N½NW¼, SW¼NW¼, N½SE¼NW¼, W½W½SW¼.
T. 29 N., R. 12 E.,
Sec. 17: S½ of lot 3, lot 4, SE¼ of lot 6, S½ and NE¼ of lot 7, south portion of lot 9, lot 10;
Sec. 20: lots 1, 2, 3, 4, 6, 7, 8, E½E½NW¼, E½SW¼, E½SW¼SW¼;
Sec. 21: W½W½SW¼;
Sec. 28: W½W½NW¼;
Sec. 29: Lots 1, 2, 3, 4, 5, 6, 7, 8, E½E½, W½;
Sec. 30: E½E½SE¼;
Sec. 31: E½NE¼, E½SW¼NE¼, E½SE¼SW¼, SE¼;
Sec. 32: NW¼NW¼.

Copies of the project map exhibit (FPC No. 2278-1) have been transmitted to the Bureau of Land Management, Geological Survey, and Forest Service.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11190; Filed, Dec. 1, 1960; 8:45 a.m.]

[Docket Nos. RI61-240—RI61-244]

LARIO OIL & GAS CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates, and Allowing Increased Rate To Become Effective Subject to Refund [1]

NOVEMBER 22, 1960.

Lario Oil & Gas Company, Docket No. RI61-240; Crescent Oil and Gas Corporation (Operator), et al., Docket No. RI61-241; K. S. Adams, Jr., Docket No. RI61-242; South-Tex Corporation (Operator), et al., Docket No. RI61-243; French M. Robertson (Operator), et al., Docket No. RI61-244.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. All of the sales are made at a pressure base of 14.65 psia. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI61-240	Lario Oil & Gas Co., 301 South Market Street, Wichita 2, Kans.	12	3	Northern Natural Gas Co. (Hugoton Field, Finney County, Kans.) (Kansas).	$335	10-24-60	[1] 11-24-60	4-24-61	[2] 12.0	[2] 17.0	----------
RI61-241	Crescent Oil and Gas Corp. (Operator), et al., c/o C. N. Haskell, Attorney, 1202 Philtower Building, Tulsa 3, Okla.	1	10	Texas Eastern Trans. Corp. (Waskom Field, Panola County, Tex.) (R.R. Dist. No. 6).	1,638	10-24-60	[1] 11-24-60	4-24-61	14.8	15.0	G-19735
RI61-242	K. S. Adams, Jr., P.O. Box 844, Houston 1, Tex.	3	4	Phillips Petroleum Co. (W. Panhandle Field, Moore County, Tex.) (R.R. Dist. No. 10).	[3] 7,655	10-24-60	[1] 11-24-60	11-25-60	[4] 7.5534 / [5] 8.00	[4] 8.37723 / [5] 9.49625	----------
RI61-243	South-Tex Corp. (Operator), et al., 1410 Bank of the Southwest Building, Houston, Tex.	1	21	Tennessee Gas Trans. Co. (various fields, Nueces and Jim Wells Counties, Tex.) (R.R. Dist. No. 4).	270,814	10-24-60	[6] 12-1-60	5-1-61	11.90337	17.02416	----------
RI61-244	French M. Robertson (Operator), et al., P.O. Box 519, Abilene, Tex.	1	7	El Paso Natural Gas Co. (Noelke Field, Crockett County, Tex.) (R.R. Dist. No. 7-c).	13,427	10-25-60	[1] 11-25-60	4-25-61	[7] 12.0767	14.69575	G-16535

[1] The stated effective date is the first day after expiration of the required thirty days' notice.
[2] Subject to downward Btu adjustment.
[3] No sweet gas deliveries.
[4] Sour gas, sweet gas higher but have no present production.
[5] Sweet gas.
[6] The stated effective date is the effective date proposed by Respondent.
[7] Rate of 16.0 cent per Mcf suspended in Docket No. G-18692 until 11-22-59. Motion never filed to place the suspended rate in effect.

In support of its proposed redetermined rate increase, Lario Oil & Gas Company states that the proposed rate is below the commodity value of the gas; the rate is the result of arm's-length negotiations; and the cost of finding gas has been increasing due to inflation, deeper drilling, drilling in more inaccessible places, lower discovery ratios and smaller reserves.

Crescent Oil and Gas Corporation (Operator), et al., in support of its proposed periodic rate increase, states that the increased rate does not create any new price plateau; it does not operate to trigger prices under other contracts; and

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

it is not greater that the reasonable market price for gas in the particular area.

In support of his proposed spiral escalation adjusted periodic rate increase, K. S. Adams, Jr., cites the contractural provisions [1] and states that the proposed rate is well below the market price for gas and below the 11.0 cents per Mcf ceiling for increased rates in Texas Railroad District No. 10, as announced in the Commission's Statement of General Policy No. 61.

In support of its proposed favored-nation rate increase, South-Tex Corporation (Operator), et al., submits a favored-nation notification letter dated March 10, 1960, cites the contractural provisions, and states that the contract was negotiated at arm's length.

French M. Robertson (Operator), et al., in support of his proposed renegotiated rate increase, states that the rate was negotiated at arm's length; in consideration of such rate Robertson, et al., surrendered their rights under the favored-nation provision of the original contract; and the increased rate is in line with current natural gas prices in the area.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapt. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act: *Provided, however,* That Supplement No. 4 to K. S. Adams, Jr.'s (Adams) FPC Gas Rate Schedule No. 3 shall become effective on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order Adams shall execute and file under Docket No. RI61-242 with the Secretary of the Commission his agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder (prescribed by Order 215 and 215A), accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Adams is advised to the contrary within 15 days after the filing of such agreement and undertaking his agreement and undertaking shall be deemed to have been accepted.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 4, 1961.

By the Commission.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11192; Filed, Dec. 1, 1960; 8:45 a.m.]

[1] Adams' contract with Phillips Petroleum Company, who resells the subject gas to El Paso Natural Gas Company (El Paso), provides that if El Paso is granted a rate increase, then Adams shall be entitled to a corresponding rate increase in the same proportion. El Paso's proposed increased rates (used by Adams in calculating his proposed increased rate) are in effect subject to refund in Docket Nos. G-2018 and RP60-3.

[Project No. 1985]

CALIFORNIA-PACIFIC UTILITIES CO.

Notice of Application for Surrender of License

NOVEMBER 25, 1960.

Public notice is hereby given that California-Pacific Utilities Company, of 550 California Street, San Francisco, California, has filed application under the Federal Power Act (16 U.S.C. 791a-825r) for surrender of the license for water-power Project No. 1985, located on the North and South Forks of Mill Creek in Union County, Oregon, and affecting lands of the United States within the Whitman National Forest, Minan Division.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last date upon which protests or petitions may be filed is January 3, 1961. The application is on file with the Commission for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11207; Filed, Dec. 1, 1960; 8:47 a.m.]

[Docket No. G-9510 etc.]

CITIES SERVICE PRODUCTION CO. ET AL.

Order Continuing Hearing

NOVEMBER 23, 1960.

On October 14, 1960, the presiding examiner recessed the hearing in these proceedings until December 5, 1960, at which time witnesses for interveners and the staff were to be cross-examined by counsel for the Respondents. In view of the facts set forth in our order issued today in the proceedings in Continental Oil Company, et al., Docket No. G-11024 etc., it is appropriate that the hearing in these proceedings be continued until a later date.

The Commission orders: The hearing in these proceedings presently scheduled to resume on December 5, 1960, is hereby continued until January 31, 1961.

By the Commission (Commissioner Kline dissenting).

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11208; Filed, Dec. 1, 1960; 8:47 a.m.]

[Docket No. E-6968]

DUKE POWER CO.

Notice of Application

NOVEMBER 25, 1960.

Take notice that on November 17, 1960, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Duke Power Company ("Applicant") for authorization of the assumption of liability in respect of securities of Carolinas Virginia Nuclear Power Associates, Inc. ("CVNPA"). Applicant is a corporation organized under the laws of the State of New Jersey with its principal business office at 422 South Church Street, Charlotte, North Carolina, and is authorized to do business in the States of North Carolina and South Carolina. Applicant is a public utility operating in the States of North Carolina and South Carolina. CVNPA is incorporated as a non-profit corporation under the laws of the State of North Carolina, and domesticated in the State of South Carolina with its principal business office at Charlotte, North Carolina. CVNPA was formed by four neighboring public utility companies, consisting of Applicant, Carolina Power & Light Company, South Carolina Electric & Gas Company and Virginia Electric and Power Company (the "Member Companies"), for the purpose of research and development in the use of nuclear energy for the generation of electricity. Under a contract with the Atomic Energy Commission (AEC) dated January 12, 1959 (Exhibit N of application) and under a construction license issued by AEC on May 4, 1960, CVNPA is constructing a nuclear steam generating plant on a site at Parr, South Carolina, near the Broad River.

The four Member Companies have agreed with CVNPA and with each other to pay all contractual indebtedness of CVNPA, in the following proportions:

	Percent
Carolina Power & Light Co	20.0
Duke Power Co	34.0
South Carolina Electric & Gas Co	12.5
Virginia Electric and Power Co	33.5

CVNPA proposes to finance the costs of the design and construction of the nuclear plant and the start-up of the reactor through contributions to it by the Member Companies and through loans from commercial banks guaranteed as to principal and interest by the Member Companies severally in the proportions stated above. The Member Companies will first contribute to CVNPA a total of not less than $3,000,000 of which amount $2,150,000 had been contributed to CVNPA by the Member Companies as of July 31, 1960. Thereafter, during the course of the construction of the plant, CVNPA will obtain short-term loans from commercial banks from time to time as funds are required by it for construction costs. CVNPA will issue its promissory notes for such loans and the payment of the principal of, and the interest on, such notes will be guaranteed by the Member Companies proportionately. The interest rate on each note will fluctuate automatically as the prime commercial rate changes, so as to be at all times the prime commercial rate prevailing in New York, New York, plus ½ percent. As of the date of the application such prime interest rate was 4½ percent per annum. Each note will be dated as of its actual date of issue and will mature in no more than one year after the date thereof. As such notes mature, they will be renewed by similar notes, similarly guaranteed, until the construction of the nuclear plant has been completed. It is estimated that, even including possible escalation, the aggregate principal amount of such notes, excluding renewals, will not exceed $19,000,000.

The Chase Manhattan Bank of New York, New York, will make a commitment to CVNPA for the proposed construction loans, and CVNPA will pay that bank a loan commitment fee at the rate of ¼ of 1 percent per annum on the daily average unused amount of the commitment. Upon completion of the construction of the nuclear plant or on December 31, 1962, whichever is earlier, the aggregate principal amount of the notes then outstanding will be funded by a five-year loan or loans from The Chase Manhattan Bank and other participating banks. CVNPA will issue its promissory note or notes for such five-year loan, and payment of CVNPA's note or notes will be guaranteed by the Member Companies severally in the proportions stated above. The interest rate on the aforesaid note or notes will be the prime commercial rate in New York, New York, as of the date of issue, plus ½ percent per annum.

Applicant states that the purpose for which the proposed promissory notes are to be issued is to obtain funds for financing in part the costs of construction of the above-described nuclear plant of CVNPA or for reimbursing the treasury of CVNPA for expenditures made by CVNPA for such construction costs.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 15th day of December 1960, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11209; Filed, Dec. 1, 1960; 8:47 a.m.]

[Docket No. G-11399, etc.]

NEMOURS CORP. ET AL.

Notice of Applications and Date of Hearing

NOVEMBER 25, 1960.

Nemours Corporation, Operator,[1] Docket No. G-11399; The Ohio Oil Company, Operator, et al.,[1] Docket No. G-13373; Skelly Oil Company, Docket No. G-13415; Mayfair Minerals, Inc., Operator,[1] Docket No. G-13672; Hunt Oil Company,[1] Docket No. G-13682; Nelson Bunker Hunt Trust Estate,[1] Docket No. G-14443; Lamar Hunt Trust Estate, Operator,[1] Docket No. G-14444; Lamar Hunt Trust Estate, Operator,[1] Docket No. G-14445; Lamar Hunt,[1] Docket No. G-14446; Nelson Bunker Hunt Trust Estate,[1] Docket No. G-14447; William Herbert Hunt Trust Estate,[1] Docket No. G-14448; William Herbert Hunt Trust Estate,[1] Docket No. G-14449; Placid Oil Company, Operator, et al.,[1] Docket No. G-14680; Hudgins Oil & Gas Co.,[1] Docket No. G-15000; The Bradley Producing Corporation, Docket No. G-15384; Union Producing Company, Docket No. G-15396; General Crude Oil Company, Docket No. G-15444; Gulf Oil Corporation, Docket No. G-15466; Claiborne Gasoline Company, Docket No. G-15703; Plymouth Oil Company, Operator, Docket No. G-15910; E. Doyle Penton and D. N. Penton d/b/a Penton & Penton, et al., Docket No. G-15921; Fred Riggs Gas Company, Docket No. G-15978; J. M. Huber Corporation, Docket No. G-15979; James Roberts Gas Company, Docket No. G-15981; Tate Sisters Oil and Gas Company, Docket No. G-15983; Graham-Michaelis Drilling Company, Operator, et al., Docket No. G-15985; Sinclair Oil & Gas Company, Docket No. G-16000; C. B. Westfall, et al., Docket No. G-16008; G and W Oil & Gas Company, Docket No. G-16009; Graham-Michaelis Drilling Company, Docket No. G-16016; F. E. Jameson, et al., Docket No. G-16090; Lawton L. Clark, et al., Docket No. G-16110; Tex-Star Oil and Gas Corporation, Operator, et al.,[1] Docket No. G-16162; Texam Oil Corporation, Operator, et al., formerly Siboney Petroleum Company,[1] Docket No. G-16163; W. V. Hardin,[1] Docket No. G-16170; Tidewater Oil Company, Docket No. G-16172; Estate of Lyda Bunker Hunt, Deceased, Docket No. G-16219; W. L. Hunt, Docket No. G-16223.

Socony Mobil Oil Company, Inc., formerly Magnolia Petroleum Company, Docket No. G-16307; Placid Oil Company, Operator, et al., Docket No. G-16308; R. M. Hodges, Docket No. G-16371; The Superior Oil Company, Docket No. G-16754; Crown Central Petroleum Corporation, Docket No. G-16907; Pauley Petroleum, Inc., Operator, et al., Docket No. G-18400; Grantsville Oil and Gas Company, Docket No. G-18528; Grantsville Oil and Gas Company, Docket No. G-18529; Grantsville Oil and Gas Company, Docket No. G-18530; Wheless Drilling Company, et al., Docket No. G-18778; David M. Harrison & Charles E. Young, Docket No. G-18789; R. L. Kirkwood,[1] Docket No. G-18936; DDG Gas and Oil Corporation, Operator,[1] Docket No. G-19171; Tidewater Oil Company,[1] Docket No. G-19174; L. D. Cain Oil Company, Operator, et al., Docket No. G-19305; Bright & Schiff, Docket No. G-19400; Leonard Latch, et al., Docket No. G-19443; Union Producing Company, Docket No. G-19514; Arnold Well Service, Operator, et al., Docket No. G-19697; Humble Oil & Refining Company, Docket No. G-19800; Petroleum, Inc., Operator, et al., Docket No. G-19801; Richard F. McCullough, et al., d/b/a J. A. Foster, et al., Lease, Docket No. G-19804; Jocelyn-Varn Oil Company, Operator, et al., Docket No. G-19807; Hudson Oil & Gas Corporation, Operator, et al., Docket No. G-19812; Norman V. Kinsey, Jr., Operator, et al., Docket No. G-19834; Olsen Oils, Inc., Docket No. G-19836; Shell Oil Company, Docket No. G-19840; Trunkline Gas Company,[1] Docket No. G-20048; J. M. Huber Corporation, Docket No. G-20319; Francis E. Cain, et al., Docket No. G-20372; Haynes & V-T Drilling Company, Operator, et al., Docket No. G-20374; T. H. McElvain, Docket No. G-20377; C. P. Talbot, et al., Docket No. G-20381; W. H. McGhee, et al., d/b/a Frank Morrison Well No. 2, Docket No. G-20461; Clarence Powell, et al., Docket No. G-20462; L. B. Wright, Operator, et al., Docket No. G-20463; Mountain States Petroleum Corporation, Docket No. G-20465; Floyd M. Hodge, Docket No. G-20466; H. R. Smith, et al., Docket No. G-20471; H. H. Howell, Operator, et al., Docket No. G-20472; C. I. West Virginia Corporation, et al., Docket No. G-20473; Durl Fluharty, et al., d/b/a Snider Oil & Gas Company, Docket No. G-20474; Durl Fluharty, et al., d/b/a Gill Oil & Gas Company, Docket No. G-20475; Stafford Oil Company, Docket No. G-20476; Carter and Carter, Operator,[2] Docket No. CI61-190; Garfield Gas Gathering Company,[2] Docket No. CI61-191; Sinclair Oil & Gas Company, Docket No. CI61-220.

[1] These respective applications, have been, heretofore, duly noticed by Notice of Application and Date of Hearing issued April 22, 1960 and published in the FEDERAL REGISTER April 29, 1960 (25 F.R. 3769). In the Matters of Elmer R. Lewis, et al., Docket Nos. G-3143, et al. and are included herein for the purpose of hearing.

[2] Garfield Gas Gathering Company (Garfield) in Docket No. CI61-191 seeks authorization to construct and operate approximately 27.5 miles of gathering and transportation facilities and to sell and deliver natural gas to El Paso Natural Gas Company (El Paso) at a point of connection with El Paso's lateral line in the Piceance Creek Field area, Colorado. Garfield will initially purchase all of its gas supply from Carter and Carter in the Rulison Field Area, Rifle, Colorado, as proposed by Carter and Carter in Docket No. CI61-190 in this consolidated proceeding.

Take notice that each of the above Applicants has filed an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing each to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the respective applications, amendments and supplements thereto, which are on file with the Commission and open to public inspection.

The respective Applicants produce and propose to sell natural gas for transportation in interstate commerce for resale as indicated below:

Docket Nos.; Field and Location; Purchaser, and Price per Mcf

G–11399; Carthage, Panola County, Tex.; Arkansas Louisiana Gas Co. and Tennessee Gas Transmission Co.; Predecessor's authorized rate.

G–13373; Phoenix Lake, Calcasieu Parish, La.; United Gas Pipe Line Co.; 15.3584 cents at 15.025 psia.

G–13415; Hugoton, Finney County, Kans.; Northern Natural Gas Co.; 12.06 cents at 14.65 psia.

G–13672; Hidalgo, Hidalgo County, Tex.; Texas Eastern Transmission Corp.; 14.04 cents at 14.65 psia.

G–13682; South Nome, Jefferson County, Tex.; Texas Eastern Transmission Corp.; 14.4 cents at 14.65 psia.

G–14443; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 14.0507 cents at 15.025 psia.

G–14444; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 14.0507 cents at 15.025 psia.

G–14445; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 14.0507 cents at 15.025 psia.

G–14446; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 14.0507 cents at 15.025 psia.

G–14447; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 14.0507 cents at 15.025 psia.

G–14448; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 14.0507 cents at 15.025 psia.

G–14449; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 15.0507 cents at 15.025 psia.

G–14680; Lucky, Bienville Parish, La.; Texas Eastern Transmission Corp.; 14.0507 cents at 15.025 psia.

G–15000; Magnet-Withers, Wharton County, Tex.; Tennessee Gas Transmission Co.; Predecessors authorized rate.

G–15384; Camrick Southeast, Beaver County, Okla.; Natural Gas Pipe Line Co. of America; 16.2 cents at 14.65 psia.

G–15396; Mt. Olive, Union Parish La.; Claiborne Gasoline Co.; 10.76876 cents at 15.025 psia.

G–15444; Coward's Gully, Beauregard and Calcasieu Parishes, La.; United Gas Pipe Line Co.; 18.75 cents at 15.025 psia.

G–15466; North Hutchinson, Hansford County, Tex.; Northern Natural Gas Co.; 16.5 cents at 14.65 psia.

G–15703; Mt. Olive, Union Parish, La.; United Gas Pipe Line Co.; 12.26876 cents at 15.025 psia.

G–15910; North Dubberly Area, Webster Parish, La.; Texas Gas Transmission Corp.; 18.375 cents at 15.025 psia.

G–15921; South Bearhead Creek, Beauregard Parish, La.; Trunkline Gas Co.; 18.15 cents at 15.025 psia.

G–15978; Lee District, Calhoun County, W. Va.; Hope Natural Gas Co.; 20.0 cents at 15.325 psia.

G–15979; Chunn (Morrow), Hansford County, Tex.; Natural Gas Pipe Line Co. of America; 16.55744 cents at 14.65 psia.

G–15981; Lee District, Calhoun County, W. Va.; Hope Natural Gas Co.; 20.0 cents at 15.325 psia.

G–15983; Union District, Ritchie County, W. Va.; Hope Natural Gas Co.; 20.0 cents at 15.325 psia.

G–15985; Acreage in Texas County, Okla.; Panhandle Eastern Pipe Line Co.; 15.0 cents at 14.65 psia.

G–16000; Pecos Valley, Pecos County, Tex.; El Paso Natural Gas Co.; 7.5 cents at 14.65 psia.

G–16008; Lee District Calhoun County, W. Va.; Hope Natural Gas Co.; 20.0 cents at 15.325 psia.

G–16009; Sherman District, Calhoun County, W. Va.; Hope Natural Gas Co.; 20.0 cents at 15.325 psia.

G–16016; Acreage in Sherman County, Tex.; Phillips Petroleum Co.; 8.0 cents at 14.65 psia.

G–16090; Bear, Beauregard Parish, La.; Transcontinental Gas Pipe Line Co.; 17.75 cents at 15.025 psia.

G–16110; Chunn, Ochiltree County, Tex.; Northern Natural Gas Co.; 16.5 cents at 14.65 psia.

G–16162; Placedo, Victoria County, Tex.; Tennessee Gas Transmission Co.; 11.030284 cents at 14.65 psia.

G–16163; Marsden Area, Live Oak County, Tex.; Texas Eastern Transmission Corp.; 11.0 cents at 14.65 psia.

G–16170; Cabeza Creek, Goliad County, Tex.; United Gas Pipe Line Co.; 7.596 cents at 14.65 psia.

G–16172; Ridge Field Area, Lafayette and Vermilion Parishes, La.; United Gas Pipe Line Co.; 22.25 cents at 15.025 psia.

G–16219; Cowpen Creek, Beauregard Parish, La.; Socony Mobil Oil Co., Inc. (formerly Magnolia Petroleum Co.); 9.95 cents at 15.025 psia.

G–16223; Cowpen Creek, Beauregard Parish, La.; Socony Mobil Oil Co., Inc. (formerly Magnolia Petroleum Co.; 9.95 cents at 15.025 psia.

G–16307; Cowpen Creek, Beauregard Parish, La.; Trunkline Gas Co.; 18.15 cents at 15.025 psia.

G–16308; Colquitt, Claiborne Parish, La.; Arkansas Louisiana Gas Co.; 12.437 cents at 15.025 psia.

G–16371; Cotton Valley, Webster Parish, La.; United Gas Pipe Line Co.; 12.26876 cents at 15.025 psia.

G–16754; Theall, Vermilion Parish, La.; United Gas Pipe Line Co.; 20.25 cents at 15.025 psia.

G–16907; North Leroy, Vermilion Parish, La.; United Gas Pipe Line Co.; 22.25 cents at 15.025 psia.

G–18400; Tabasco, Hidalgo County, Tex.; Texas Eastern Transmission Corp.; Predecessor's authorized rate.

G–18528; Sherman District, Calhoun County, W. Va.; Hope Natural Gas Co.; Predecessor's authorized rate.

G–18529; Sherman District, Calhoun County, W. Va.; Hope Natural Gas Co.; Predecessor's authorized rate.

G–18530; Sherman District, Calhoun County, W. Va.; Hope Natural Gas Co.; Predecessor's authorized rate.

G–18778; Simsboro, Lincoln Parish, La.; Arkansas Louisiana Gas Co.; 13.2543 cents at 15.025 psia.

G–18789; Clay District, Ritchie County, W. Va.; Hope Natural Gas Co.; Predecessor's authorized rate.

G–18936; Oakville Area, Live Oak County, Tex.; Transcontinental Gas Pipe Line Corp.; 7.89521 cents at 14.65 psia.

G–19171; North Hostetter, McMullen County, Tex.; Texas Eastern Transmission Corp.; 11.2 cents at 14.65 psia.

G–19174; Chalk Hill, Rust County, Tex.; Texas Eastern Transmission Corp.; 14.6 cents at 14.65 psia.

G–19305; Neely, Duval and Webb Counties, Tex.; Southern Coast Corp.; 7.245 cents at 14.65 psia.

G–19400; Perryton-Morrow, Ochiltree County, Tex.; Northern Natural Gas Co.; 15.5 cents at 14.65 psia.

G–19443; Levelland, Cochran County, Tex.; El Paso Natural Gas Co.; 10.64175 cents at 14.65 psia.

G–19514; Greta, Refugio County, Tex.; United Gas Pipe Line Co.; 15.0 cents at 14.65 psia.

G–19697; Odem, San Particio County, Tex.; W. T. Riley d/b/a Banquete Gas Co.; 9.0 cents at 14.65 psia.

G–19800; Bayou Chauvin Area, Terrebonne Parish, La.; United Gas Pipe Line Co.; 23.55 cents at 15.025 psia.

G–19801; Acreage in Seward County, Kansas and Beaver County, Okla.; Panhandle Eastern Pipe Line Co.; 15.0 cents at 14.65 psia.

G–19804; Spencer District, Roane County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

G–19807; Acreage in Sutton County, Tex.; El Paso Natural Gas Co.; 10.64175 cents at 14.65 psia.

G–19812; Patterson Area, St. Mary Parish, La.; Southern Natural Gas Co.; 14.3584 cents at 15.025 psia.

G–19834; Rocky Mount, Bossier Parish, La.; Arkansas Louisiana Gas Co.; 13.0543 cents at 15.025 psia.

G–19836; Langlie-Mattix, Lea County, N. Mex.; El Paso Natural Gas Co.; 6.5 cents at 14.65 psia.

G–19840; Chauvin, Terrebonne Parish, La.; United Gas Pipe Line Co.; 23.55 cents at 15.025 psia.

G–20048; Tidehaven, Matagorda County, Tex.; Texas Eastern Transmission Corp.; 14.8 cents at 14.65 psia.

G–20319; Mendon, Alfalfa County, Okla.; Cities Service Gas Co.; 12.0 cents at 14.65 psia.

G–20372; Lee District, Calhoun County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

G–20374; Langlie Mattix, Lea County, N. Mex.; El Paso Natural Gas Co.; 6.5 cents at 14.65 psia.

G–20377; Acreage in Rio Arriba County, N. Mex.; El Paso Natural Gas Co.; 11.0 cents at 15.025 psia.

G–20381; Calhoun, Ouachita Parish, La.; Arkansas Louisiana Gas Co.; 18.75 cents at 15.025 psia.

G–20461; Sheridan District, Calhoun County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

G–20462; Grant District, Doddridge County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

G–20463; Hornbuckle and North LaWard Area, Jackson County, Tex.; United Gas Pipe Line Co.; 14.1792 cents at 14.65 psia.

G–20465; Gavilan, Rio Arriba County, N. Mex.; El Paso Natural Gas Co.; 11.0 cents at 15.025 psia.

G–20466; Calhoun, Ouachita Parish, La.; Arkansas Louisiana Gas Co.; 18.75 cents at 15.025 psia.

G–20471; Dilworth Dome, McMullen County, Tex.; Transcontinental Gas Pipe Line Corp.; 14.1890 cents at 14.65 psia.

G–20472; South El Toro, Jackson County, Tex.; United Gas Pipe Line Co.; 15.192 cents at 14.65 psia.

G–20473; Sheridan District, Calhoun County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

G–20474; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

G–20475; Murphy District, Ritchie County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

G–20476; McClellan District, Doddridge County, W. Va.; Hope Natural Gas Co.; 25.0 cents at 15.325 psia.

CI61–190; Rullson Field area near Rifle Colo.; Garfield Gas Gathering Co.; 15.0 cents at 15.025 psia.

CI–191; Rullson Field area near Rifle, Colo.; El Paso Natural Gas Co.; 20.0 cents at 15.025 psia.

CI61–220; Crawar, Crane and Ward Counties, Tex.; Transwestern Pipeline Co.; 16.0 cents at 14.65 psia.

The public convenience and necessity require that these matters be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 29, 1960, at 9:30 a.m., e.s.t., in a Hearing Room at the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such applications: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petition to intevene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 15, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made: *Provided, further,* If a protest, petition to intervene or notice of intervention be timely filed in any of the above dockets, the above hearing date as to that docket will be vacated and a new date for hearing will be fixed as provided in § 1.20(b)(2) of the rules of practice and procedure.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11210; Filed, Dec. 1, 1960; 8:47 a.m.]

[Docket No. G–118502 etc.]

PLACID OIL CO. ET AL.

Notice of Postponement of Hearing

NOVEMBER 25, 1960.

Placid Oil Company, Docket No. G–18502; Humble Oil & Refining Company, Docket No. G–18714; Cities Service Production Company, Docket No. G–19707; Tidewater Oil Company, Docket No. G–19719; Continental Oil Company, Docket No. G–19838; The Atlantic Refining Company, Docket No. G–20020; Tennessee Gas Transmission Company, Docket No. CP60–57; Humble Oil & Refining Company, Docket No. CI60–96; Pan American Petroleum Corporation, Docket No. CI60–133; Humble Oil & Refining Company, Docket No. CI60–531; J. Ray McDermott & Co., Inc., Docket No. CI60–659; Shell Oil Company, Docket No. CI61–104.

The hearing in the above-entitled matters, scheduled by a notice of the Secretary dated November 8, 1960, to be held on December 13, 1960, is hereby postponed to a date to be hereafter fixed by further notice.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11212; Filed, Dec. 1, 1960; 8:48 a.m.]

[Docket No. RI61–252]

UNION OIL CO. OF CALIF.

Order Providing for Hearing on and Suspension of Proposed Change in Rate and Allowing Increased Rate To Become Effective Subject to Refund

NOVEMBER 25, 1960.

On November 1, 1960, Union Oil of California[1] (Union Oil) tendered for filing proposed changes in rate for sales of natural gas subject to the jurisdiction of the Commission. The sales are to Arkansas Louisiana Gas Company from the producing area of Colquitt Field, Claiborne Parish, Louisiana, and the proposed change, designated Supplement No. 4 to Union Oil's FPC Gas Rate Schedule No. 22, reflects an increase from 12.888[2] cents to 13.337 cents per Mcf at a pressure base of 15.025 psia. The amount of annual increase is $1,975.00. Union Oil requests an effective date of December 21, 1960.

The proposed change may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds (1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed change and that the above-designated supplement be suspended and the use thereof be deferred as hereinafter ordered.

(2) It is necessary and proper in carrying out the provisions of the Natural Gas Act that Supplement No. 4 to Union Oil's FPC Gas Rate Schedule No. 22 be allowed to take effect December 22, 1960, subject to refund upon the timely filing of its respective agreement and undertaking, as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in the above-designated supplement.

(B) Neither the supplement hereby suspended nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Supplement No. 4 to Union Oil's FPC Gas Rate Schedule No. 22 shall be effective as of December 22, 1960: *Provided, however,* That within 20 days from the date of the issuance of this order, Union Oil shall execute and file under Docket No. RI61–252 with the Secretary of the Commission its respective agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder (prescribed by Order 215 and 215A), signed by a responsible officer of the corporation, evidenced by proper authority from the Board of Directors and accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Union Oil is advised to the contrary within 15 days after the filing of such agreement and undertaking, its agreement and undertaking shall be deemed to have been accepted.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 9, 1960.

By the Commission.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11213; Filed, Dec. 1, 1960; 8:48 a.m.]

[1] Address: c/o Hogan & Hartson, Atty., Colorado Building, Washington 5, D.C.

[2] Rate in effect subject to refund in Docket No. G–17692.

[Docket No. RI61–138 etc.]

SUN OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rate; Correction

NOVEMBER 10, 1960.

Sun Oil Company (Operator), et al., Docket Nos. RI61–138, etc.; Hidalgo Gas Production Corporation, Docket No. RI61–144.

In the order providing for hearings on and suspension of proposed changes in rate, issued October 26, 1960, and published in the FEDERAL REGISTER on November 2, 1960 (F.R. Doc. 60–10261; 25 F.R. 10505): On page 10506, in the chart under the heading "Docket No." change the last two docket designations from "RI60–144" to read "RI61–144."

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11212; Filed, Dec. 1, 1960; 8:48 a.m.]

FEDERAL RESERVE SYSTEM

FIRSTAMERICA CORPORATION

Notice of Receipt of Application

Notice is hereby given that the Board of Governors of the Federal Reserve System has received an application by Firstamerica Corporation, Los Angeles, California, pursuant to section 3(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), for the Board's prior approval of the acquisition by that Corporation of the capital stock of the proposed First Western Bank and Trust Company, San Francisco, California.

This application, together with several separate but related applications filed pursuant to sections 18(c) and 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828 (c) and (d)) and section 9 of the Federal Reserve Act (12 U.S.C. 321), has been submitted seeking approval of the Board of Governors and the Federal Deposit Insurance Corporation, respectively, of separate but related transactions.

In determining whether to approve the application submitted pursuant to section 3(a) of the Bank Holding Company Act, the Board is required by that Act to take into consideration the following factors: (1) The financial history and condition of the company and the bank concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned; and (5) whether or not the effect of such acquisition would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington 25, D.C.

Dated at Washington, D.C., this 30th day of November 1960.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN, *Secretary.*

[F.R. Doc. 60-11259; Filed, Dec. 1, 1960; 8:51 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

BIRMINGHAM LIVESTOCK COMMISSION CO. ET AL.

Notice of Location and Changes in Names of Posted Stockyards

It has been ascertained, and notice is hereby given, that the names of the livestock markets referred to herein, which were posted on the respective dates specified below as being subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have been changed as indicated below.

Original Name of Stockyard, Location, and Date of Posting	*Current Name of Stockyard and Date of Change in Name*
ALABAMA	
Birmingham Livestock Commission Co., Birmingham, May 22, 1959 (changed to White and Son Livestock Commission Co., Dec. 2, 1959).	White Livestock Commission Co., Inc., June 14, 1960.
White and Son Livestock Commission Co., Birmingham, May 14, 1959.	White Livestock Commission Co., Inc., June 14, 1960.
C. L. Chambers, Brundidge, May 25, 1959.	C. L. Chambers & Sons, Dec. 31, 1959.
Ramsey & Sons Stockyards, Dothan, May 14, 1959.	Ramsey & Sons, Dec. 10, 1959.
King & Newborn Stockyards, Florence, May 28, 1959.	King & Newbourn Stockyards, Mar. 18, 1960.
Union Stock Yards Co. of Montgomery, Inc., Montgomery, Nov. 1, 1921.	Bowman Stock Yards, Inc., Jan. 4, 1960.
Blount County Stock Yards, Oneonta, June 9, 1959.	Blount County Sales Barn, July 29, 1959.
Selma Stock Yards, Selma, Jan. 14, 1936.	Selma Stock Yards, Inc., Sept. 19, 1960.
ARKANSAS	
Glenn Edgar Livestock Commission Co., Batesville, June 28, 1957.	Glenn Edgar Livestock Commission Co., Inc., Apr. 6, 1960.
Bentonville Sale Co., Bentonville, Dec. 11, 1958.	Bentonville Livestock Auction, Aug. 7, 1959.
Brown & Lewis Auction Sale, Conway, Feb. 16, 1959.	Major Lewis Livestock Auction Sales, Aug. 24, 1960.
Eudora Livestock Auction, Eudora, Aug. 15, 1958.	Eudora Livestock Auction Co., Aug. 11, 1960.
Fordyce Auction Sale, Fordyce, Feb. 24, 1959.	Tri-County Auction Sale Co., Mar. 8, 1960.
Jonesboro Stockyards, Jonesboro, May 12, 1959.	Jonesboro Stock Yards, Inc., Aug. 1, 1960.
Bruce Cartwright Livestock Auction, Inc., Magnolia, Sept. 11, 1959.	Magnolia Livestock Auction, Oct. 6, 1960.
Newport Livestock Auction, Newport, Feb. 20, 1959.	Newport Livestock Auction Co., Feb. 11, 1960.
CALIFORNIA	
Willows Livestock Commission Co., Willows, Nov. 13, 1959.	Brahs Commission Market, Sept. 27, 1960.
COLORADO	
Cortez Sale Barn, Cortez, Mar. 8, 1957.	Cortez Livestock Auction, Inc., Sept. 28, 1959.
H. & G. Livestock Commission Co., Montrose, Mar. 11, 1957.	Western Slope Livestock Commission Co., Feb. 1, 1960.
Yampa Valley Livestock Sales, Steamboat Springs, Mar. 20, 1957.	Steamboat Sales Barn, Aug. 19, 1960.
Sterling Livestock Commission Co., Sterling, Feb. 12, 1947.	Sterling Livestock Commission Co., Inc., Dec. 28, 1959.
FLORIDA	
Columbia Livestock Market, Lake City, Mar. 2, 1960.	Columbia Livestock Market, Inc., Sept. 2, 1960.
Sarasota Cattle & Commission Sales, Inc., Sarasota, Feb. 24, 1960.	Livestock Auction, Inc., Aug. 3, 1960.
GEORGIA	
Turner County Stockyards, Inc., Ashburn, May 19, 1959.	Turner County Stockyards, Oct. 3, 1960.
Smith Stockyard, Augusta, May 28, 1959.	Smith Stockyard Co., Dec. 10, 1959.
Special Feeder Breeder Pavilion, Cochran, July 13, 1959.	Bleckley Livestock Sales Co., Aug. 16, 1960.
Dublin Livestock Commission Co., Dublin, May 26, 1959.	Dublin Livestock Co., Oct. 12, 1959.
Elberton Livestock Auction Co., Elberton, June 2, 1959.	Elberton Livestock Auction Barn, Nov. 10, 1959.
Jesup Stockyard, Jesup, May 16, 1959.	Jesup-Wayne County Livestock Market, May 3, 1960.
Moultrie Livestock Co., Moultrie, May 14, 1959.	Moultrie Livestock Co., Inc., July 21, 1960.
Smith Stockyard, Thomson, June 2, 1959.	Smith Stockyard Co., Dec. 10, 1959.
Waycross Livestock Market, Waycross, July 13, 1959.	Waycross Hog and Cattle Market, Jan. 22, 1960.
ILLINOIS	
Kankakee Livestock Sales Co., Bourbonnais, Nov. 17, 1959.	Kanakee County Livestock Sales, Oct. 3, 1960.
Clinton Livestock Sale, Clinton, Nov. 18, 1959.	DeWitt County Livestock Exchange, Inc., July 25, 1960.
Vade Wehmeyer's Mendota Livestock Auction, Mendota, Nov. 27, 1959.	Mendota Livestock Auction, July 1, 1960.
Milford Sales & Commission Co., Milford, Nov. 18, 1959.	Decker's Milford Sales & Commission Co., Sept. 15, 1960.
Warren County Sale Barn, Monmouth, Dec. 1, 1959.	Warren County Livestock Auction, Inc., Aug. 31, 1960.
Franklin County Livestock and Commission Sales, Sesser, Nov. 18, 1959.	Franklin County Auction Sales & Commission, Inc., Apr. 7, 1960.
IOWA	
Bonaparte Community Sale, Bonaparte, May 15, 1959.	Troutman Auction Sale, Feb. 15, 1960.

Original Name of Stockyard, Location, and Date of Posting	*Current Name of Stockyard and Date of Change in Name*
MISSISSIPPI	
Panola Livestock Sales Co., Batesville, Jan. 13, 1959.	Batesville Sales Co., Oct. 29, 1959.
Hinds County Livestock Sales, Edward, Feb. 16, 1959.	Hinds County Commission Sales, Inc., Feb. 12, 1960.
Claiborne County Stockyards, Port Gibson, Feb. 16, 1959.	Southwest Stockyards, Inc., July 18, 1960.
MISSOURI	
Cabool Live Stock, Cabool, Nov. 17, 1959.	Cabool Livestock Market, Inc., Mar. 14, 1960.
Holden Auction Co., Kingsville, Sept. 30, 1959.	Van Meter Auction Co., Jan. 2, 1960.
Lexington Livestock Auction, Lexington, May 16, 1959.	Lexington Livestock Auction Co., Sept. 24, 1959.
Central Missouri Livestock Auction, Mexico, Aug. 8, 1960.	Missouri Livestock Market Center, Inc., Aug. 8, 1960.
Welty Brothers Sale Pavilion, Nev., May 11, 1959.	Welty Bros. Auctioneers, Inc., June 18, 1960.
Munn Sale Barn, New Cambria, May 11, 1959.	New Cambria Sale Barn, Sept. 21, 1959.
Warsaw Sales Co., Warsaw, May 11, 1959.	Warsaw Auction Co., Dec. 7, 1959.
Beebe Bros. Livestock Sale, Warrensburg, July 23, 1957 (changed to Beebe Livestock Sale, Jan. 13, 1958).	H. W. Arnett & Son Livestock Auction Co., Sept. 9, 1960.
NEBRASKA	
Morrison Livestock Commission Co., Gering, Apr. 8, 1959.	Morrison Livestock Commission Co., Inc., June 22, 1960.
North Bend Auction Co., North Bend, July 3, 1959.	North Bend Auction Co., Inc., Dec. 30, 1959.
McKee Sales Company Stockyard, Superior, Aug. 15, 1955.	McKee Sales Co., Apr. 1, 1960.
Thedford Livestock Sales Co., Thedford, Feb. 7, 1960.	Thedford Livestock Sales Co., Inc., Feb. 19, 1960.
Dooley Auction Market, Wahoo, Apr. 15, 1959.	Wahoo Livestock Auction Market, Apr. 6, 1960.
Wayne Sales Co., Wayne, June 10, 1959.	Wayne Sales Co., Inc., Nov. 27, 1959.
NEVADA	
Midwest Livestock Commission Co., Fallon, Oct. 1, 1959.	Valley Livestock Marketing Association, Sept. 12, 1960.
NEW MEXICO	
South Second Livestock Auction, Inc., Albuquerque, Jan. 24, 1957.	Albuquerque Livestock Auction, Oct. 3, 1960.
Clayton Cattle Auction, Clayton, Nov. 6, 1956 (changed to Clayton Cattle Auction, Inc., Mar. 3, 1958).	Clayton Livestock Auction Co., Feb. 1, 1960.
NEW YORK	
Buffalo Stock Yards, Buffalo, Aug. 15, 1958.	Niagara Frontier Stockyards Co., Inc., Aug. 15, 1958.
NORTH DAKOTA	
Park River Live Stock Sale Ring, Park River, June 9, 1959.	Park River Livestock Auction Market, Feb. 12, 1960.
OHIO	
Scio Auction Company, Scio, Dec. 18, 1959.	Scio Auction, Apr. 7, 1960.
OKLAHOMA	
Morris Commission Company, Antlers, Nov. 29, 1949 (changed to A. A. Albert Commission Co., Nov. 2, 1955; Antlers Commission Co., Oct. 18, 1956; Morris Livestock Commission Co., Sept. 19, 1958).	Ranchers Livestock Commission Co., Sept. 5, 1959.
Sparkman Livestock Sale, Elk City, Mar. 10, 1950.	Elk City Livestock Sale, June 22, 1960.
Holton Brothers Stock Yards, Hugo, Feb. 25, 1954.	Hugo Livestock Exchange, Inc., Apr. 18, 1960.
IOWA—Continued	
Adams County Auction, Corning, June 1, 1959.	Adams County Auction Co., Inc., Feb. 1, 1960.
Sales Company of Hawarden, Hawarden, Jan. 7, 1957.	The Sales Company of Hawarden, Inc., Oct. 26, 1959.
Humboldt Livestock Auction, Humboldt, Mar. 12, 1957.	Humboldt Livestock Auction, Inc., Oct. 2, 1959.
LeMars Livestock Sales Co., LeMars, May 29, 1959.	LeMars Sales Co., Oct. 12, 1960.
Moorhead Sale Barn, Moorhead, May 18, 1959.	Moorhead Auction Co., Sept. 3, 1959.
North English Sale, North English, June 9, 1959.	North English Livestock Auction, Aug. 1, 1960.
Oskaloosa Sales Co., Oskaloosa, May 28, 1959.	Oskaloosa Sales Pavilion, May 29, 1959.
Ottumwa Livestock Commission, Ottumwa, May 23, 1958.	Ottumwa Sale Co., Apr. 1, 1960.
Northeast Iowa Sales Commission, Ossian, June 6, 1959.	O. and W. Auction Markets, Sept. 25, 1959.
Oxford Auction Co., Inc., Oxford, Aug. 5, 1958.	Oxford Livestock Market, Inc., Apr. 20, 1960.
Hi Dollar Sales Co., Sigourney, May 1, 1957.	Hi Dollar Sales, Inc., Jan. 4, 1960.
Wadena Livestock Exchange, Wadena, May 18, 1959.	O. and W. Auction Markets, Sept. 25, 1959.
Marvel Sales Company, Webster City, Feb. 10, 1941.	Marvel Livestock Market Center, Inc., Jan. 4, 1960.
KANSAS	
Colby Sale Barn, Colby, Dec. 6, 1960.	Colby Sale Barn, Inc., Jan. 13, 1959.
El Dorado Livestock Commission Co., El Dorado, May 27, 1959.	El Dorado Sales, Inc., Aug. 28, 1960.
Kingman Sale Co., Kingman, July 7, 1959.	Kingman Community Sale Co., Mar. 28, 1960.
Minneapolis Sale Co., Minneapolis, May 28, 1959.	Minneapolis Sale Pavilion, Aug. 26, 1960.
Phillipsburg Sales Co., Phillipsburg, Apr. 24, 1950.	Phillipsburg Sales Co., Inc., Apr. 18, 1960.
Quinter Sale Barn, Quinter, Apr. 20, 1950.	Quinter Livestock Commission Co., Feb. 25, 1960.
Dumler Bros. Livestock Commission Co., Russell, June 10, 1959.	Dumler's Livestock Commission Co., Feb. 3, 1960.
Clemence-Morrison Livestock Commission Co., Salina, Jan. 21, 1936.	Salina Livestock Commission Co., Jan. 1, 1960.
Severy Sale Co., Inc., Severy May 21, 1959.	Severy Livestock Auction, Inc., July 13, 1960.
Winfield Sale Co., Winfield, July 20, 1959.	Winfield Community Sales Co., Oct. 6, 1958.
KENTUCKY	
Berry and Whitford, Mayfield, Dec. 9, 1959.	Berry & Whitford Commission Co., June 1, 1960.
LOUISIANA	
Grand Cane Livestock Commission Co., Grand Cane, Mar. 11, 1959.	Grand Cane Livestock Commission Barn, Dec. 15, 1959.
Leesville Livestock Commission Co., Leesville, Mar. 2, 1959.	Brabham Livestock Commission Market, Jan. 6, 1960.
Welsh Commission Co., Welsh, Nov. 13, 1939 (changed to Welsh Stockyard, July 15, 1955).	Miller & Dominique Stockyards, Aug. 28, 1958.
MICHIGAN	
Gladwin Livestock Auction, Gladwin, Apr. 22, 1959.	Hanchett Livestock Yards, Inc., Aug. 11, 1960.
Hanchett Livestock Yards, Standish, Apr. 24, 1959.	Hanchett Livestock Yards, Inc., Aug. 11, 1960.
MINNESOTA	
Conger Sales, Conger, Nov. 1, 1959.	Russell Babbitt, Jan. 12, 1960.
Marshall Sales Pavilion, Marshall, Sept. 16, 1959.	McCargar-Book Auction Co., Inc., Apr. 28, 1960.
Willmar Sheep & Cattle Auction Sales, Willmar, Sept. 24, 1959.	Willmar Sheep and Cattle Co., Dec. 23, 1959.

OKLAHOMA—Continued

Original Name of Stockyard, Location, and Date of Posting	*Current Name of Stockyard and Date of Change in Name*
The Lawton Stockyards Co., Lawton, Dec. 20, 1949.	Lawton Stockyards Co., May 1, 1960.
Newkirk Sales Co., Inc., Newkirk, Dec. 1, 1950.	Newkirk Sales Co., Mar. 21, 1960.
Pawhuska Auction, Pawhuska, Jan. 12, 1950 (changed to Pawhuska Livestock Commission Co., Sept. 5, 1958).	Pawhuska Auction, July 12, 1960.
Shattuck Sales Barn, Shattuck, Dec. 31, 1959.	Shattuck Livestock Commission, Feb. 4, 1960.
PENNSYLVANIA	
Hatfield Fair Grounds Bazaar, Inc., Hatfield, Nov. 19, 1959.	Hatfield Livestock Market, Inc., Aug. 2, 1960.
Knoxville Sales Company, Knoxville, Mar. 17, 1960.	Knoxville Sales, Inc., Aug. 15, 1960.
SOUTH DAKOTA	
Grossman Sales Co., Brookings, June 1, 1959.	Brookings Livestock Auction Co., Apr. 29, 1960.
Clark Sale Barn, Clark, May 8, 1959.	Clark Livestock Sales Co., Oct. 16, 1959.
Moore's Livestock Sales Barn, De Smet, May 25, 1959.	De Smet Livestock Sales, Dec. 7, 1959.
Mobridge Livestock Commission Co., Inc., Mobridge, Dec. 1, 1949.	Mobridge Livestock Auction, Inc., Mar. 25, 1960.
Wall Commission Co., Wall, May 30, 1959.	Wall Livestock Auction, Mar. 25, 1960.
TENNESSEE	
Athens Livestock Auction Co., Athens, May 15, 1959.	Kirk Auction Co., Apr. 8, 1960.
Collierville Auction Co., Collierville, May 25, 1959 (changed to Collierville Livestock Auction Co., Sept. 1, 1959).	Collierville Auction Co., Oct. 3, 1960.
Hall's Stockyards, Inc., Crossville, June 30, 1959.	Hall Stockyards, Apr. 4, 1960.
Scotts Hill Auction Co., Scotts Hill, May 7, 1959.	Scotts Hill Auction Co., Inc., Aug. 18, 1960.
TEXAS	
Austin Stockyards Corporation, Austin, Apr. 1, 1957.	Austin Stockyards Co., Aug. 4, 1958.
Gulf Coast Commission Co., Bay City, May 1, 1957.	Gulf Coast Stockyards, Inc., Aug. 5, 1960.
Breckenridge Livestock Commission Co., Breckenridge, May 8, 1959.	Green and White Livestock Commission Co., May 31, 1960.
Grabow's Livestock Commission Co., Brenham, Apr. 3, 1957.	Brenham Livestock Auction, Inc., Feb. 28, 1960.
Burkburnett Sales Co., Burkburnett, Apr. 9, 1959.	Nocona and Burkburnett Sales Co., Dec. 4, 1959.
Center Auction Co., Center, June 4, 1957 (changed to Center Livestock Commission Co., Inc., Oct. 1, 1957).	Center Auction Co., Sept. 26, 1960.
Clarksville Auction Co., Clarksville, Mar. 3, 1959.	Buck Turner's Livestock Sales, Nov. 23, 1959.
Corsicana Livestock Commission Co., Corsicana, Jan. 11, 1957.	Corsicana Livestock Co., Inc., May 24, 1960.
Trinity County Auction, Inc, Groveton, Jan. 21, 1960.	Trinity County Livestock Commission Co., July 26, 1960.
Liberty County Auction Co., Inc., Hardin, Apr. 18, 1959.	Liberty County Auction Co., Sept. 26, 1960.
Jacksonville Livestock Auction, Jacksonville, Jan. 11, 1957.	Cherokee Livestock Commission, Feb. 2, 1959.
Madison County Livestock Commission Co., Madisonville, Mar. 18, 1957.	Madison County Livestock Commission Co., Inc., Jan. 18, 1960.
Nocona and Burkburnett Sales Co., Nocona, Apr. 9, 1959.	Nocona Livestock Commission Co., Feb. 15, 1960.
San Angelo Livestock Auction Co., San Angelo, Apr. 1, 1957.	Western Livestock Commission Co., Aug. 21, 1959.
WASHINGTON	
Coulee City Auction, Coulee City, Oct. 27, 1959.	Coulee City Livestock Marketing Co-op., Sept. 26, 1960.
Wards Community Sale Yard, Wapato, Sept. 26, 1959.	Kit Ward's Community Sale, Mar. 1, 1960.
WISCONSIN	
Mattes Livestock Market, Inc., Thorp, May 7, 1959.	Mattes Livestock Auction Market, Inc., Mar. 8, 1960.

On July 25, 1959, a document was published in the FEDERAL REGISTER (24 F.R. 5975) in which notice was given that on April 28, 1959, the West Baden Sale Barn was posted under the Packers and Stockyards Act, 1921, as amended. The location of such market was stated to be West Baden, Indiana. Notice is hereby given that the correct location of the said West Baden Sale Barn is West Baden Springs, Indiana.

Done at Washington, D.C., this 28th day of November 1960.

DONALD L. BOWMAN,
Acting Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 60-11204; Filed, Dec. 1, 1960; 8:47 a.m.]

HARRISON SALES CO. ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the stockyards named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said act for the reason that they are no longer being conducted or operated as public markets, and are, therefore, no longer subject to the provisions of the act.

Name of Stockyard and Date of Posting
Harrison Sales Co., Harrison, Ark.; Dec. 13, 1958.
Kite Stockyards, Kite, Ga.; July 15, 1960.
Clinton Livestock Sale, Clinton, Ill.; Nov. 18, 1959.
Ellington Auction Sales, Ellington, Mo.; May 25, 1959.
Crowley Auction Sale, Crowley Tex.; Mar. 9, 1959.
Clearwater Farms, Inc., Plainfield, Wis.; May 8, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not depositing promptly a stockyard which is no longer within the definition of that term contained in said act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 28th day of November 1960.

DONALD L. BOWMAN,
Acting Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 60-11205; Filed, Dec. 1, 1960; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 416]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 29, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63751. By order of November 22, 1960, the Transfer Board approved the transfer to Dale Hulshizer, doing business as Hulshizer Grain Co., Utica, Minn., of Certificate No. MC 115305, issued September 9, 1960, to Edward J. Brink, doing busines as Ferguson Grain Co., Wykoff, Minn., authorizing the transportation of animal and poultry feed, over irregular routes, from New Richmond, Wis., to Dover, Eyota, and Stewartville (Omsted County), Minn., points in Mower, Fillmore, and Houston Counties, Minn., and those in Winona County, Minn., on and south of U.S. Highway 14. A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn., for applicants.

No. MC-FC 63754. By order of November 22, 1960, the Transfer Board approved the transfer to Lewis R. Hunt and C. L. Hunt, a partnership, doing business as Hunt and Son, Holden, Missouri; Corrected Certificate No. MC 82808, issued May 27, 1960, to Bert A. Savage, Sr., doing business as Blairstown Truck Line, Blairstown, Missouri; authorizing the transportation of livestock, over regular routes, from Blairstown, Mo., to Kansas City, Kans., serving the intermediate and off-route points of Kansas City, Mo., and those within 30 miles of Blairstown; feed, fencing material, roofing material, and agricultural implements, from Kansas City, Kans., to Blairstown, Mo., serving the intermediate and off-route points of Kansas City, Mo., and those within 30 miles of Blairstown; general commodities, excluding household goods, commodities in bulk, and various specified commodities, over regular routes, from Kansas City, Kans., to Blairstown, Mo., serving the intermediate and off-route points of Kansas City, Norris, Chilhowee, Denton, Medford, and Latour, Mo.; general commodities, except household goods, commodities in bulk, and various specified commodities, between Kansas City, Kans., and Blairstown, Mo., serving no intermediate points; livestock, over irregular routes, from points in Benton County, Mo., on and west of U.S. Highway 65, and those in Henry County, Mo., to Kansas City, Kans.; between Quick City, Mo., and points within 20 miles of Quick City, on the one hand, and on the other, Kansas City, Kans.; farm machinery, hay, and feed, from Kansas City, Kans., to Quick City, Mo., and points within 20 miles of Quick City; groceries, from Kansas City, Kans., to Quick City, Mo.; household goods, between Quick City, Mo., and points within 20 miles of Quick City, on the one hand, and, on the other, points in Kansas; between Blairstown, Mo., and points within 30 miles of Blairstown, on the one hand, and, on the other, points in Kansas; and logs, from points in the above specified Missouri territory to Leavenworth, Kans. C. L. Hunt, 420 East South Avenue, Independence, Mo., for applicants.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11216; Filed, Dec. 1, 1960; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3914]

MISSISSIPPI POWER & LIGHT CO.

Notice of Proposed Acquisition of Common Stock of Business Development Corporation

NOVEMBER 25, 1960.

Notice is hereby given that Mississippi Power & Light Company ("Mississippi"), a public-utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 9(c)(3) thereof as applicable to the proposed transaction. All interested persons are referred to said application for a statement of the proposed transaction which is summarized below.

Mississippi proposes to subscribe for not in excess of 9,000 shares of the $10 par value Common Stock of Mississippi Business and Industrial Development Corporation ("Development Corporation") at the subscription price of $10 per share, or for a total consideration of not to exceed $90,000.

The application states that Development Corporation is incorporated in the State of Mississippi under the provisions of "The Mississippi Business Development Corporation Act." The purposes of this corporation are set forth specifically in the State act. They may be briefly summarized as follows: to promote and assist, through loans, investments, or other business transactions, the location of new business and industry and the expansion or rehabilitation of existing industry in the State of Mississippi. Development Corporation has the authority to issue 1,000,000 shares of $10 par value Common Stock. The Common Stock has the right to one vote per share in the election of a Board of Directors. Initially, Development Corporation will issue approximately one million dollars ($1,000,000) of $10 par value Common Stock. Of this amount, approximately five hundred thousand dollars ($500,000) will be subscribed by utility companies, including telephone, gas, electric, and transportation companies. The other half million dollars in capital stock will be sold to business and industry and the general public. It is anticipated that electric and gas companies will purchase stock in the approximate amount of $0.50 per customer served.

The application also states that Mississippi will not exercise control over Development Corporation or its activities. The 9,000 shares of Common Stock proposed to be acquired by Mississippi will represent less than 1 percent of the total authorized amount of such stock, although it will represent 9 percent of the amount of Common Stock proposed to be initially outstanding. At no time will Mississippi's investment exceed 9 percent of the outstanding amount of such stock. Development Corporation presently has 12 directors, which is the maximum permitted by its charter. The President of Mississippi, who is also one of its directors, has been elected a director and Vice President of Development Corporation.

Development Corporation is empowered to borrow money from participating financial institutions ("Members") on a pro rata basis as needs for additional resources occur. When the corporation borrows money from these financial institutions, a Board of Members will assume an equal and joint power with the directors in the affairs of the corporation. As long as any of such indebtedness is outstanding, the direction of the corporation shall, under the charter, be vested in an Executive Committee elected jointly by the Board of Directors and the Board of Members. (In the absence of such borrowings, the Board of Directors will have exclusive direction of the affairs of the corporation.) It is anticipated that Development Corporation will normally be directed by the seven member Executive Committee, composed of three members elected by the Board of Directors, three members elected by the Board of Members, and one member elected by the other six.

At least 10 percent of the net earnings of Development Corporation will be set apart as earned surplus each year until earned surplus equals the amount paid in on the capital stock then outstanding. Whenever earned surplus is thereafter impaired, it will be built up to the required amount in the manner provided for its original accumulation. Subject to this requirement (determined after the provision for such reserve as the directors or the Executive Committee may deem desirable), dividends on the Common Stock may be declared.

To facilitate investment in Development Corporation, section 7(1) of the State law under which it was organized exempts such subscription from the approval of any regulatory authority of the State of Mississippi; however, it is understood that the State Public Service Commission proposes to issue an order stating that any amounts so invested in Development Corporation will be made a part of the rate base of regulated companies which participate in the enterprise. "Membership" by financial institutions in the State of Mississippi is likewise specifically granted (with certain limitations as to amount) without the necessity of approval of any regulatory authority of the State.

Mississippi states that it has the largest public-utility investment and serves the largest number of utility customers of any electric utility operating in the State of Mississippi. It operates and owns property in 43 of the 82 counties of the State. Mississippi believes

that Development Corporation's efforts to promote the economic welfare of the State will benefit both the company and its customers and that its subscription for the Common Stock of Development Corporation will be in the public interest. Mississippi has covenanted that, as long as its interest is more than 5 percent of the outstanding Common Stock and surplus of Development Corporation, no officer or director of the company may be a member of the Board of Members or of the Executive Committee.

The only separable expenses to be incurred in connection with the proposed transaction are miscellaneous expenses which are estimated not to exceed $250.00. The application states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 13, 1960, at 5:30 p.m., request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11199; Filed, Dec. 1, 1960; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Bureau of Foreign Commerce

[Case No. 280]

AMERICAN POTASH & CHEMICAL CORP. ET AL.

Probation and Export Denial Order

In the matter of American Potash & Chemical Corporation, 3000 West 6th Street, Los Angeles 54, California; Edward M. Kolb, 99 Park Avenue, New York 16, New York; Ernest A. Graupner, 20 East 74th Street, New York, New York; respondents; Case No. 280.

The Director of the Investigation Staff, Bureau of Foreign Commerce, charged American Potash & Chemical Corporation of Los Angeles, California (hereafter referred to as American Potash), Edward M. Kolb, General Sales Manager of its Heavy Chemical Division (hereafter referred to as Kolb), and Ernest A. Graupner, Manager of its Export Department prior to his resignation in September 1958 (hereafter referred to as Graupner), with violations of the Export Control Act of 1949, as amended, and regulations promulgated thereunder, by a charging letter dated March 24, 1960, and served upon all three respondents. The charges set forth alleged violations in connection with exportations of boron products by American Potash to Yugoslavia for end-use there.

Respondents, each represented by separate counsel, filed answers to the charging letter. Thereafter respondents discussed the issues with officials of the Bureau of Foreign Commerce (hereafter referred to as BFC), and pursuant to § 382.10 of the export control regulations, by agreement with the Director, Investigation Staff, proposed that a consent order, substantially in the form of Parts I through VI hereof, be entered against them. The respondents in consenting to the issuance of such order admitted certain of the allegations in the charging letter, but maintained that their actions or failure to act did not result from wilfulness or intent to violate the Export Control Act or the regulations promulgated thereunder.

The charging letter, respondent's answers and admissions, and their proposals, together with evidentiary and other supplementary data were presented to the Compliance Commissioner herein. The Compliance Commissioner, having carefully reviewed all of such materials, approved such proposals, and reported the facts of the case to the undersigned Acting Director, Office of Export Supply, with his recommendations.

After reviewing and considering the entire record of this case and the Compliance Commissioner's Report and Recommendations, I hereby make the following findings of fact:

1. Since the year 1955, the Bureau of Foreign Commerce (hereafter referred to as BFC) had been conferring with U.S. producer-exporters of primary boron products with a view to securing effective controls under the regulations to prevent the exportation, re-exportation, diversion, and transshipment of these strategic commodities to unauthorized persons and destinations, especially to the Sino-Soviet bloc. American Potash participated in the discussions and agreed to the program. One type of action to which it agreed was to examine carefully its export transactions covering such commodities, and if it had any suspicion about, or received any information which made suspect, any transaction in that the goods might be intended for an unauthorized person, use, or destination, American Potash would promptly report such information to the BFC and would not enter into or complete the transaction without BFC's subsequent approval. Graupner with others represented American Potash in the conferences with BFC officials, and he and Kolb were primarily responsible at the company's operating levels for carrying out American Potash's internal instructions which were promulgated and circulated to carry out policies and procedures agreed to with BFC.

2. In July 1957, Graupner submitted to BFC license applications for 250 metric tons of borax and 250 metric tons of boric acid. Each of the license applications, with supporting Yugoslav End-use Certificates, stated that a specified Yugoslav company was the ultimate consignee and purchaser, that Yugoslavia was the ultimate destination, and that the borax and boric acid were to be used to manufacture ceramics and glass. On the basis of the license applications and supporting documents submitted, BFC issued validated export licenses in July 1957 authorizing such shipment of the borax and boric acid.

3. The export orders covered by the aforesaid licenses had been negotiated by Graupner with another company in New York. American Potash has an affiliate abroad which generally is responsible for American Potash sales of boron products in the European market, including Yugoslavia. The then managing director of the affiliate, having ascertained from company reports that a proposed shipment under BFC validated export licenses, involving substantial new amounts of borax and boric acid was to be made to the designated Yugoslav company, with further substantial orders in prospect, wrote to Graupner on July 29, 1957, with copies to Kolb and another official, stating that he did not understand the large quantities going to the Yugoslav company involved. He stated that he well knew the Yugoslav market for consumption of boron products, listed a number of Yugoslav customers which the affiliate had been supplying through its Yugoslav agent and the tonnage of boron products supplied during the past year. The named consignee in the orders was not included in his list as a customer. He also indicated that the rest of the Yugoslav consumers used a relatively small amount of such materials, and that his estimate of the then present total yearly consumption of boron products in Yugoslavia would make the present and expected orders in excess of the requirements for that market. He therefore felt that some or all of the boron products being sold there by American Potash might be reexported from Yugoslavia to an unauthorized, or Soviet bloc, destination.

4. On August 1, 1957, Kolb telephoned the said managing director on various matters and during the conversation the managing director's letter of July 29, 1957, was discussed. The latter asserted in addition that if the business covered had been given to his company he would have declined it, and concluded by saying he thought the matter worthy of immediate reconsideration.

5. Graupner and Kolb then, and on at least one subsequent occasion, discussed the facts, views, and suspicions expressed by the managing director, as well as other circumstances which they believed were pertinent to these boron sales to Yugoslavia. These discussions occurred when the exportations were underway, and while Graupner submitted to BFC the additional applications for licenses to export boron products to Yugoslavia which were approved by BFC. Graupner and Kolb, considering for varying reasons (erroneously as it developed) the managing director's statements as being mere unsupported opinion, failed to transmit or cause to be transmitted such facts, views, and suspicions to the BFC, despite their knowledge that this type of information was to be submitted pursuant to BFC policy and export regulations and the related American Potash instructions. Graupner's and Kolb's decisions at those times were made primarily in furtherance of business sales practices. This attitude also led to other of their improper actions and omissions connected with these export transactions.

6. The 500 tons of boron products covered by the first export licenses were exported from the United States on August 10, 1957, and were unloaded at Rijeka, Yugoslavia, on October 8, 1957. In early September 1957, Graupner received information from which he had reason to know that there was another Yugoslav company, not named by him in the license applications, which was a party in interest to these export transactions. Graupner failed to disclose this information and the party's identity to the BFC at any time. Later in September 1957, and in January 1958, Graupner submitted to BFC applications for validated licenses to export a total of 1,000 metric tons of borax to another named company in Yugloslavia. These applications were also supported by Yugoslav import certificates, and the named company was designated as the ultimate consignee and purchaser, and Yugoslavia as the ultimate destination. BFC issued export licenses based upon the September applications, and the 500 tons of borax were shipped from the United States in October 1957, arriving at Rijeka, Yugoslavia, in February 1958. BFC did not issue an export license to cover the January 1958 application. For each of the American Potash applications, Graupner failed to obtain the co-signature of an order party to the export transactions located in New York, a party with which Graupner negotiated the sales, and which received in turn the export orders from Yugoslavia. He also did not notify the BFC that there was such order party in the transactions.

7. A substantial portion of the 1,000 tons of boron products which American Potash shipped to Yugoslavia in these transactions was, upon arrival in Yugoslavia, transshipped to unauthorized persons and destinations in the Soviet bloc.

Conclusions. And from the foregoing, I have concluded:

(A) That American Potash, Kolb, and Graupner failed to report and thereby concealed material facts from the BFC in connection with the preparation, submission, issuance, and use of export control documents, and in connection with effecting exportations from the United States, the re-exportation, transshipment, or diversion of such exportations, and the maintenance in effect of documents relating to export control, having reason to know that these actions were in violation of §§ 381.2 and 381.5 of the Export Regulations. The corporation acted through its officials, Kolb and Graupner, charged by it with the responsibilities mentioned, and therefore is responsible for the legal consequences of their acts herein, unless otherwise indicated.

(B) That American Potash, Kolb, and Graupner sold, disposed of, and transported exportations from the United States, having reason to know that with respect to the whole or part of any such exportation, violations of the Export Control Law and regulations and licenses issued thereunder had occurred, were about to occur and would occur, in violation of §§ 381.2 and 381.4 of the Export Regulations.

(C) That American Potash, Kolb, and Graupner failed to report or to notify the BFC of material changes in the facts, circumstances, or intentions relating to export transactions from those previously represented, in violation of §§ 372.4(f)(5) and 381.5, and had reason to know that they permitted the omission of acts required by the regulations and licenses issued under the Export Control Law, in violation of § 381.2 of the Export Regulations.

(D) That American Potash and Graupner failed to obtain the signature of an order party to applications for validated export licenses, failed to disclose the existence of an order party to, and of other parties concerned with or interested in, proposed exportations, and thereby had reason to know they concealed material facts from the BFC, in violation of §§ 372.4 and 381.5 of the Export Regulations.

(E) That the respondents Kolb and Graupner by their conduct herein acted in violation of § 384.2(a) of the Export Regulations.

Now, after reading the record herein and giving careful consideration to the proposals and the report and recommendations of the Compliance Commissioner, and taking into consideration among other things the full and complete co-operation of American Potash with the BFC in its investigation, its prompt revision of its procedures so as to minimize the possibility of future export control violations, and the fact that a denial of export privileges to American Potash would create a shortage of refined boron products in the industries of friendly foreign countries; and being of the opinion that the proposed order is fair and necessary to achieve effective enforcement of the law: *It is hereby ordered*, That:

I. (1) Upon condition that the American Potash & Chemical Corporation, during the period of one year from the date of the order, does not knowingly violate the Export Control Act of 1949, as amended, and all regulations, orders, and licenses promulgated thereunder, the Corporation shall be permitted all export privileges as though this order had not been made and, at the expiration of the one year period, this order shall without further action be and become terminated. In the event, however, that it be found by the Director, Office of Export Supply, BFC, or such other official as may at that time be exercising his responsibility, after full investigation, that the Corporation has failed to comply with the foregoing condition in any respect during the aforesaid one year period, such official may, as provided in § 382.16, enter and publish a supplemental order against it in substance as provided hereinafter. Said order shall not limit the Bureau of Foreign Commerce from taking other action based on such violation as it shall deem warranted. In the event that such supplemental order is issued, the Corporation shall have the right to a hearing and appeal therefrom, as provided in the Export Regulations.

(2) In the event that a determination is made by the said official that the Corporation has violated the aforesaid condition, an order may be entered which may revoke all outstanding validated licenses as to which the Corporation is a party, and which may for a period up to and including three months, deny to the Corporation, and to all persons and firms related to it, all privileges of participating directly or indirectly in any manner or capacity in an exportation of any commodity or technical data from the United States to any foreign destination, including Canada.

(3) At the end of each three-month period during the period of one year from the date of the order, the Corporation shall furnish to the Bureau of Foreign Commerce a report summarizing the procedures being employed by it to assure compliance with the Export Control Act and the regulations issued thereunder.

II. (1) The respondent Edward M. Kolb is hereby denied all privileges of participating directly or indirectly in any manner or capacity in an exportation of any commodity from the United States to any foreign destination, including Canada, for a period of eight months from the date of this order. An additional four months' period of denial of export privileges shall be withheld conditional upon the respondent's full compliance with the terms of the denial order and of the Export Regulations during the entire twelve months' period. At the end of the first eight months' period, all export privileges shall be restored to the respondent without any further order of the Bureau of Foreign Commerce, provided no action is taken theretofore pursuant to the following paragraph (2).

(2) In the event that respondent Kolb shall knowingly violate the terms of this denial order or of the Export Regulations at any time during the said entire twelve months' period, the Bureau of Foreign Commerce may summarily and without notice to the respondent, at the time that it determines such violation has occurred, issue a supplemental order which shall deny to the respondent all privileges of participating in an exportation for the four months' period which has been conditionally withheld, or for a lesser period, and shall revoke all validated licenses then outstanding as to which the respondent may be a party. Such action shall not thereby limit the Bureau of Foreign Commerce from taking such other and further action based on such violations as it shall deem warranted. In the event that such supplemental order is issued, the respondent shall have the right to hearing and appeal therefrom as provided in the Export Regulations.

III. The respondent Ernest A. Graupner is hereby denied all privileges of participating directly or indirectly in any manner or capacity in an exportation of any commodity pursuant to a validated export license from the United States to any foreign destination, including Canada, for a period of twelve months from the date of this order.

IV. (1) Without limitation of the generality of Parts I and II hereof, participation in an exportation shall be deemed to include and prohibit the aforesaid respondents' participation, directly or indirectly in any manner or capacity (a) as a party or as a representative of a party to any export license application, (b) in the preparation or filing of any export license application or documents to be submitted therewith, (c) in the obtaining or using of any validated or general export license or other export control documents, (d) in the receiving, ordering, buying, selling, using or disposing in any foreign country of any commodities or technical data in whole or in part exported or to be exported from the United States, and (e) in the financing, forwarding, transporting, or other servicing of such exports from the United States.

(2) Without limitation of the generality of Part III hereof, participation in an exportation shall be deemed to include and prohibit the aforesaid respondent's participation, directly or indirectly in any manner or capacity, (a) as a party or as a representative of a party to any export license application, (b) in the preparation or filing of any export license application or document to be submitted therewith, (c) in the obtaining or using of any validated export license or other export control document in connection therewith, (d) in the receiving, ordering, buying, selling, using, or disposing in any foreign country of any commodities in whole or in part exported or to be exported from the United States pursuant to a validated export license, and (e) in the financing, forwarding, transporting or other servicing of such validated license exports from the United States.

V. The aforesaid denials of export privileges in Parts I and II, at this time or in the future conditional upon the happening of future violations shall extend not only to the respondents, but also to any person, firm, corporation, or business organization with which they now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade in which may be involved exports from the United States or services connected therewith.

VI. During the respective periods of time when, and to the respective extents that, respondents Kolb and Graupner are denied export privileges pursuant to this order, no person or business organization shall, without prior disclosure to and specific authorization from the Bureau of Foreign Commerce, directly or indirectly in any manner or capacity (a) apply for, obtain, or use any license, shipper's export declaration, bill of lading, or other export control document relating to any exportation or re-exportation of any commodity or technical data, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any exportation or re-exportation of any commodity or technical data exported or to be exported from the United States, on behalf of or in association with respondents Kolb or Graupner, or when either respondent may have any interest in, or may obtain any benefit from, the transaction, directly or indirectly.

Dated: November 28, 1960.

FRANK W. SHEAFFER,
Acting Director,
Office of Export Supply.

[F.R. Doc. 60-11163; Filed, Nov. 30, 1960; 8:48 a.m.]

[File 23-714]

R. HÄUSLER & CO., K.G. AND SAMPROD GES.M.B.H.-LTD.

Order Temporarily Denying Export Privileges

In the matter of R. Häusler & Co., K.G. and SAMPROD Ges. m.b.H.-Ltd., Graz, Rechbauerstrasse 15, Austria, Respondents; File 23-714.

The Director, Investigation Staff, Bureau of Foreign Commerce, U.S. Department of Commerce, pursuant to the provisions of § 382.11 of the Bureau of Foreign Commerce Export Regulations (Title 15, Chapter III, Subchapter B, Code of Federal Regulations), has applied to the Compliance Commissioner for an order temporarily denying to R. Häusler & Co., K.G. of Graz, Austria, one of the respondents herein, all United States export privileges pending the continued investigation of the facts giving rise to this application and the commencement of such administrative proceedings as may be deemed proper.

The Compliance Commissioner, having considered the evidence submitted in support of said application, has reported the facts upon which the application is based and has recommended that this temporary denial order be issued. After careful consideration of the report and the evidence submitted together therewith, I find that the evidence reasonably supports the conclusion that R. Häusler & Co., K.G., knowing that it was the subject of an investigation concerned with the transshipment by it to the Soviet Union of certain U.S. electronic testing equipment obtained upon representations that it had been intended for use in Austria, resorted to the device of having SAMPROD Ges. m.b.H.-Ltd. purchase other electronic equipment from a supplier in the United States without disclosing either its interest therein or the intended end use and destination thereof. Such actions on the part of both Häusler and SAMPROD suggest an intention to try to obtain electronic materials from the United States for purposes not authorized by the export control regulations and in violation thereof. Now, having concluded that the protection of the public interest requires and that it is necessary to achieve affective enforcement of the law that the respondents be denied all export privileges, at least for the period hereinafter provided, during which they may have an opportunity to contest the findings herein: *It is ordered as follows:*

(1) The respondents, R. Häusler & Co., K.G. and SAMPROD Ges. m.b.H.-Ltd., their owners, officers, agents, servants, and employees, and all other persons and firms associated with them, are hereby denied all privileges of participating directly or indirectly in any manner, form, or capacity in any exportation of any commodity or technical data from the United States to any foreign destination, including Canada. Without limitation of the generality of the foregoing, participation in an exportation shall include and prohibit respondents' participation (a) as parties or as representatives of a party to any validated export license application; (b) in the obtaining or using of any validated or general export license or other export control document; (c) in the receiving, ordering, buying, selling, delivering, or disposing of any commodities in whole or in part exported or to be exported from the United States; and (d) in the financing, forwarding, transporting, or other servicing of exports from the United States;

(2) Such denial of export privileges shall apply not only to the said respondents, but also to any other person, firm, corporation, or business organization with which they may be now or hereafter related by ownership, affiliation, control, position of responsibility, or other connection in the conduct of trade in which may be involved exports from the United States or services connected therewith;

(3) This order shall take effect forthwith and shall remain in effect for a period of forty days from the date hereof unless it is hereafter extended, amended, modified, or vacated in accordance with the provisions of the Export Regulations;

(4) No person, firm, corporation, or other business organization, within the United States or elsewhere, without prior disclosure of the facts to, and specific authorization from the Bureau of Foreign Commerce, shall directly or indirectly in any manner, form, or capacity (a) apply for, obtain, transfer, or use any license, shipper's export declaration, bill of lading, or other export control document relating to any exportation of commodities from the United States, or (b) order, receive, buy, sell, use, deliver, dispose of, finance, transport, forward, or otherwise service or participate in an exportation from the United States, or in a re-exportation of any commodity exported from the United States, with respect to which any of the persons or companies within the scope of paragraphs (1) and (2) hereof may receive any benefit or have any interest or participation of any kind or nature, direct or indirect;

(5) A certified copy of this order shall be served upon the respondents.

(6) In accordance with the provisions of § 382.11(c) of the Export Regulations, the respondents may move at any time to vacate or modify this temporary denial order by filing an appropriate motion therefor, supported by evidence, with the Compliance Commissioner and may request oral hearing thereon, which, if requested, shall be held before the Compliance Commissioner at Washington, D.C., at the earliest convenient date.

Dated: November 25, 1960.

FRANK W. SHEAFFER,
Acting Director,
Office of Export Supply.

[F.R. Doc. 60-11164; Filed, Nov. 30, 1960; 8:49 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-13]

BABCOCK & WILCOX CO.

Notice of Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 7, set forth below, to License No. CX-1. The amendment authorizes The Babcock & Wilcox Company, as requested in its applications for license amendment dated June 9, 1960, and September 16, 1960, to perform certain critical experiments utilizing metal clad oxide fuel at power levels up to 200 kilowatts (thermal) in the Babcock & Wilcox Company's Critical Experiment Laboratory located near Lynchburg, Virginia. The Commission has found that operation of the facility in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the conduct of the proposed experiments does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the facility.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene or requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street NW., Washington, D.C.

For further details see (1) the applications for license amendment dated June 9, 1960 and September 16, 1960, submitted by The Babcock & Wilcox Company, and (2) a hazards analysis prepared by the Hazards Evaluation Staff of the Division of Licensing and Regulation, both on file at the AEC's Public Document Room. A copy of item (2) above may be obtained at the AEC's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Maryland this 28th day of November 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing and Regulation.

[License No. CX-1; Amdt. 7]

In addition to the activities previously authorized by the Commission in License No. CX-1, as amended, The Babcock & Wilcox Company is authorized, as requested in its applications for license amendment dated June 9, 1960, and September 16, 1960, to operate any of the critical assemblies which utilizes metal clad oxide fuel only and conduct any of the experiments which involves metal clad oxide fuel only which has previously been authorized under License No. CX-1 and Amendments 1 through 6 thereto in Bay No. 1 of The Babcock & Wilcox Company's Critical Experimental Laboratory located near Lynchburg, Virginia, at power levels up to 200 kilowatts (thermal).

The activities shall be conducted in accordance with the procedures and subject to the limitations, except those limiting maximum power level, in License No. CX-1 and Amendments 1 through 6 thereto and in the corresponding applications for license and license amendments. The activities shall be conducted also in accordance with all of the limitations and subject to all of the procedures in the applications for license amendment dated June 9, 1960 and September 16, 1960.

This amendment is effective as of the date of issuance.

Date of issuance: November 28, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-11187; Filed, Dec. 1, 1960; 8:45 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR — Page

EXECUTIVE ORDERS:
6260 (amended by EO 10896) .. 12281
10896 .. 12281

5 CFR
2 .. 12285

6 CFR
421 .. 12282, 12283

7 CFR
845 .. 12285
PROPOSED RULES:
51 .. 12298, 12299

8 CFR
211 .. 12290

10 CFR
PROPOSED RULES:
115 .. 12367

14 CFR
49 .. 12352
507 .. 12352
600 .. 12285–12287
601 .. 12287
602 .. 12288
609 .. 12353
PROPOSED RULES:
41 .. 12299
600 .. 12328
601 .. 12328, 12329

16 CFR
13 .. 12337, 12338

21 CFR
8 .. 12288
120 .. 12288
146c .. 12289
PROPOSED RULES:
27 .. 12372
120 .. 12374
121 .. 12299

22 CFR
46 .. 12289

25 CFR
PROPOSED RULES:
176 .. 12299

26 (1939) CFR — Page
29 .. 12339
39 .. 12339
40 .. 12340

26 (1954) CFR
1 .. 12340, 12345
18 .. 12340
PROPOSED RULES:
1 .. 12293
48 .. 12362
197 .. 12362

28 CFR
21 .. 12290

31 CFR
54 .. 12345

32 CFR
805 .. 12291
1619 .. 12291

39 CFR
27 .. 12348

41 CFR
PROPOSED RULES:
50–202 .. 12363

42 CFR
1 .. 12292

43 CFR
192 .. 12352

46 CFR
308 .. 12348

47 CFR
1 .. 12358
5 .. 12359
9 .. 12359
10 .. 12359
11 .. 12359
12 .. 12358
16 .. 12359
19 .. 12359
21 .. 12359
PROPOSED RULES:
3 .. 12371

Check List

CFR SUPPLEMENTS

(As of January 1, 1960)

Titles 1–3 ($1.25); Title 3 ($0.60); Titles 4–5 ($1.00); Title 7, Parts 1–50 ($0.45); Parts 51–52 ($0.45); Parts 53–209 ($0.40); Parts 210–399, Revised ($4.00); Parts 400–899, Revised ($5.50); Parts 900–959 ($1.50); Part 960 to End ($2.50); Title 8 ($0.40); Title 9 ($0.35); Titles 10–13 ($0.50); Title 14, Parts 1–39 ($0.65); Parts 40–399 ($0.75); Part 400 to End ($1.75); Title 15 ($1.25); Title 16, Revised ($6.50); Title 17 ($0.75); Title 18 ($0.55); Title 19 ($1.00); Title 20 ($1.25); Title 21 ($1.50); Titles 22–23 ($0.45); Title 24 ($0.45); Title 25 ($0.45); Title 26 (1939), Parts 1–79 ($0.40); Parts 80–169 ($0.35); Parts 170–182 ($0.35); Parts 300 to End ($0.40); Title 26, Part 1 (§§ 1.01–1.499) ($1.75); Parts 1 (§ 1.500 to End)–19 ($2.25); Parts 20–169 ($1.75); Parts 170–221 ($2.25); Parts 222–299 ($1.75); Part 300 to End ($1.25); Titles 28–29 ($1.75); Titles 30–31 ($0.50); Title 32, Parts 1–399 ($2.00); Parts 400–699 ($2.00); Parts 700–799 ($1.00); Parts 800–999, Revised ($3.75); Parts 1000–1099, Revised ($6.50); Part 1100 to End ($0.60); Title 32A ($0.65); Title 33 ($1.75); Title 35, Revised ($3.50); Title 36, Revised ($3.00); Title 37, Revised ($3.50); Title 38 ($1.00); Title 39 ($1.50); Titles 40–41, Revised ($0.70); Title 42, Revised ($4.00); Title 43 ($1.00); Title 44, Revised ($3.25); Title 45, Revised ($3.75); Title 46, Parts 1–145 ($1.00); Parts 146–149, Revised ($6.00); Parts 146–149 (1950 Supp. 1) ($0.55); Part 150 to End ($0.65); Title 47, Parts 1–29 ($1.00); Part 30 to End ($0.30); Title 49, Parts 1–70 ($1.75); Parts 71–90 ($1.00); Parts 91–164 ($0.45); Part 165 to End ($1.00); Title 50 ($0.70); General Index ($1.00).

Order from the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

Pages 12391–12425

FEDERAL REGISTER

VOLUME 25 NUMBER 235

Washington, Saturday, December 3, 1960

THE UNIVERSITY OF MICHIGAN
DEC 5 1960
MAIN READING ROOM

Contents

Agricultural Marketing Service
RULES AND REGULATIONS:
Fruit grown in California and Arizona; handling limitations:
Lemons .. 12407
Navel oranges .. 12405
Oranges, grapefruit, tangerines, and tangelos grown in Florida; shipments limitations (4 documents) .. 12405–12407

Agriculture Department
See also Agricultural Marketing Service; Commodity Stabilization Service.
NOTICES:
South Dakota; designation of area for production loans .. 12423

Civil Aeronautics Board
NOTICES:
Roanoke service by American Airlines, Inc.; postponement of prehearing conference .. 12422

Civil Service Commission
RULES AND REGULATIONS:
Exception from competitive service; Post Office Department .. 12393

Commerce Department
See also Federal Maritime Board.
NOTICES:
Changes in financial interests:
Abbott, Edward .. 12422
Shea, Kevin G .. 12422

Commodity Stabilization Service
RULES AND REGULATIONS:
Cotton acreage allotments, 1961 crop:
Extra long staple .. 12403
Upland .. 12393

Defense Department
See Engineers Corps.

Engineers Corps
RULES AND REGULATIONS:
Anchorage; City Island Harbor, N.Y. .. 12393

Federal Aviation Agency
RULES AND REGULATIONS:
Aeronautical fixed communications .. 12410
Control area extensions; modification (2 documents) .. 12409
Control zone; modification .. 12409
Federal airways; modification .. 12408
Federal airway, associated control areas and reporting points; revocation; and modification of control area extension .. 12410
Federal airway, associated control areas and reporting points; revocation; and revocation and designation of control area extensions .. 12410
Reporting points; revocation and modification .. 12409

Federal Maritime Board
NOTICES:
United States Lines Co.; application .. 12422

Federal Power Commission
NOTICES:
Hearings, etc.:
Atlantic Seaboard Corp. and Transcontinental Gas Pipe Line Corp .. 12421
El Paso Natural Gas Co .. 12421
Tennessee Gas Transmission Co .. 12422
Texas Gas Transmission Corp .. 12422

Federal Trade Commission
RULES AND REGULATIONS:
Eversharp, Inc., et al.; prohibited trade practices .. 12393

Food and Drug Administration
RULES AND REGULATIONS:
Food additive; refusal to extend effective date .. 12412

Health, Education, and Welfare Department
See Food and Drug Administration.

Indian Affairs Bureau
RULES AND REGULATIONS:
Leasing of tribal lands for mining; administration of mineral permits and leases covering minerals .. 12408

Interior Department
See Indian Affairs Bureau; Land Management Bureau.

Internal Revenue Service
PROPOSED RULE MAKING:
Income tax; taxable years beginning after Dec. 31, 1953:
Certain options .. 12414
Stock options .. 12416

Interstate Commerce Commission
NOTICES:
Fourth section applications for relief .. 12424
Motor carrier transfer proceedings .. 12423
PROPOSED RULE MAKING:
Explosives and other dangerous articles; transportation .. 12420

Land Management Bureau
RULES AND REGULATIONS:
Public land orders:
Alaska (2 documents) .. 12412, 12413
Montana .. 12413

Treasury Department
See Internal Revenue Service.

(Continued on next page)

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

EXECUTIVE ORDERS:
3797–A (see PLO 2209)..... 12412

5 CFR

6..... 12393

7 CFR

722 (2 documents)..... 12893, 12403
914..... 12405
933 (4 documents)..... 12405–12407
953..... 12407

14 CFR

600 (3 documents)..... 12408, 12410
601 (6 documents)..... 12409, 12410
612..... 12410

16 CFR

13..... 12393

21 CFR

121..... 12412

25 CFR

171..... 12408

26 (1954) CFR

PROPOSED RULES:
1 (2 documents)..... 12414, 12416

33 CFR

202..... 12393

43 CFR

PUBLIC LAND ORDERS:
797 (revoked in part by PLO 2210)..... 12413
2209..... 12412
2210..... 12413
2211..... 12413

49 CFR

PROPOSED RULES:
71–78..... 12420
197..... 12420

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953	$6.75
1954	7.25
1955	6.75
1956	7.25
1957	6.75
1958	8.25
1959	7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Post Office Department

Effective upon publication in the FEDERAL REGISTER, paragraph (c)(6) of § 6.309 is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 60–11261; Filed, Dec. 2, 1960; 8:48 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 202—ANCHORAGE REGULATIONS

City Island Harbor, N.Y.

Pursuant to the provisions of section 1 of an Act of Congress approved April 22, 1940 (54 Stat. 150; 33 U.S.C. 180), § 202.60(c–1) is hereby prescribed designating a special anchorage area in City Island Harbor, Long Island Sound, New York, wherein vessels not more than 65 feet in length, when at anchor, shall not be required to carry or exhibit anchor lights, as follows:

§ 202.60 Port of New York and vicinity.

* * * * *

(c–1) *City Island Harbor, East of City Island.* That portion of Long Island Sound Anchorage No. 1 (described in § 202.155) between City Island and Hart Island eastward of a line ranging 339° between the steeple on City Island and the westernmost corner of the Administration Building at Orchard Beach; southward of a line ranging 50° between the northerly abutment on the westerly end of the City Island drawbridge and tangent to Chimney Sweeps; westward of a line tangent to Chimney Sweeps and ranging 163° toward the west gable on Rat Island and westward of a line tangent to the easterly side of High Island and ranging 152°30′ from the west gable on Rat Island; and northward of a line ranging 56° between the Buryea Pier at Belden Point, City Island to Hart Island Light, except for the cable and pipe line area extending between City Island and Hart Island.

Effective date. This amendment shall become effective upon its publication in the FEDERAL REGISTER.

[Regs., Nov. 18, 1960, 285/91 (City Island Harbor, N.Y.)—ENGCW–O] (Sec. 1, 54 Stat. 150; 33 U.S.C. 180)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 60–11235; Filed, Dec. 2, 1960; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7811 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Eversharp, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.20 *Comparative data or merits;* § 13.25 *Competitors and their products:* § 13.25–20 *Competitors' products;* § 13.195 *Safety:* § 13.195–60 *Product.* Subpart—Disparaging competitors and their products—Competitors' products: § 13.1025 *Safety.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Eversharp, Inc. (New York, N.Y.); et al., Docket 7811, September 30, 1960]

In the Matter of Eversharp, Inc., a Corporation, and E. E. Ettinger, Individually and as an Officer of Said Corporation; and Compton Advertising, Inc., a Corporation, and John Hise, Individually and as an Officer of Said Corporation; and Alex Hoffman, Individually and as an Account Executive of Compton Advertising, Inc.

Consent order requiring the manufacturer of "Schick" safety razors and razor blades and its advertising agency to cease use of deceptive television demonstrations purporting to prove that the Schick razor was safer than other safety razors, disparaging competitive razors, and misrepresenting harmful consequences that might result from use of the latter.

The order to cease and desist is as follows:

It is ordered, That respondents Eversharp, Inc., a corporation, and its officers, and E. E. Ettinger, individually and as an officer of said corporation, and Compton Advertising, Inc., a corporation, and its officers, and John Hise, individually and as an officer of said corporation, and Alex Hoffman, individually, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of safety razors and safety razor blades in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any pictorial presentation or demonstration purporting to prove or representing as proving, that the Schick safety razor or any other safety razor of substantially similar design, is safer, than other safety razors, in actual use, when such pictorial presentation or demonstration does not in fact so prove.

2. Disparaging by untruthful statements or any misleading or deceptive method, safety razors competitive with those of respondent Eversharp, Inc., by any pictorial presentation, demonstration, or in any other manner.

3. Misrepresenting, directly or by implication, in any manner, any consequence that may result in the actual use of safety razors competitive with those of respondent Eversharp, Inc.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to the respondent Alex Hoffman as an account executive of Compton Advertising, Inc.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: September 30, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60–11248; Filed, Dec. 2, 1960; 8:47 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 1]

PART 722—COTTON

Subpart—Regulations Pertaining to Acreage Allotments for the 1961 Crop of Upland Cotton

COUNTY ALLOTMENT; ALLOCATIONS TO COUNTIES FROM STATE'S SHARE OF NATIONAL RESERVE AND FROM STATE RESERVE; AND REMAINDER OF STATE RESERVE

Basis and purpose. The purpose of this amendment is to establish county allotments consisting of computed county allotments, allocations from State's share of national reserve, and

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

adjustments from State reserve for trends and abnormal conditions; allocations to counties from State reserve for small farms and to correct inequities and prevent hardship; and to establish the remainder of State reserve which is available for allocation to counties for new farms, late and reconstituted farms and correction of errors.

This amendment is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.). Notice of the proposed issuance of acreage allotment regulations for the 1961 crop of upland cotton was published in the FEDERAL REGISTER on August 13, 1960 (25 F.R. 7761) in accordance with section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) prior to issuance of such regulations.

Farmers engaged in the production of upland cotton in 1960 will determine in a referendum to be held on December 13, 1960, whether marketing quotas will be in effect for the 1961 crop of upland cotton. In order that farm allotments may be established as early as possible and notices of individual farm allotments may be mailed, insofar as practicable, so as to be received by farmers prior to the referendum, as required by section 362 of the Agricultural Adjustment Act of 1938, as amended, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

Section 722.416(h)(1) of the regulations pertaining to acreage allotments for the 1961 crop of upland cotton (25 F.R. 9987) is amended to read as follows:

(1) *County allotments; allocations to counties from State reserve for small farms and to correct inequities and prevent hardships; and remainder of State reserve.* There are set forth below the county allotments consisting of computed county allotments, allocations from State's share of national reserve and adjustments from State reserve for trends and abnormal conditions; allocations to counties from State reserve for small farms and to correct inequities and prevent hardships; and the remainder of the State reserve which is available for allocation to counties for new farms, late and reconstituted farms and correction of errors. No adjustments from the State reserve for minimum farm allotments are required since the allocation from the State's share of the national reserve meets the total needs for minimum farm allotments. The State reserve for Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Kansas, Louisiana, Mississippi, Missouri, Nevada, New Mexico, North Carolina, South Carolina, Texas, and Virginia, does not include a reserve for new farms.

ALABAMA

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Autauga	9,898	61	0	0	9,959	0	0
Baldwin	3,280	181	0	0	3,461	0	0
Barbour	15,443	132	0	0	15,575	0	0
Bibb	4,149	36	0	0	4,185	0	0
Blount	19,043	206	0	0	19,249	0	0
Bullock	9,757	37	0	0	9,794	0	0
Butler	10,474	112	0	0	10,586	0	0
Calhoun	7,572	91	0	0	7,663	0	0
Chambers	10,458	55	0	0	10,513	0	0
Cherokee	23,180	90	0	0	23,270	0	0
Chilton	11,015	256	0	0	11,271	0	0
Choctaw	7,272	142	0	0	7,414	0	0
Clarke	6,705	268	0	0	6,973	0	0
Clay	5,093	238	0	0	5,331	0	0
Cleburne	3,413	46	0	0	3,459	0	0
Coffee	20,526	144	0	0	20,670	0	0
Colbert	23,594	75	0	0	23,669	0	0
Conecuh	13,779	173	0	0	13,952	0	0
Coosa	2,010	123	0	0	2,133	0	0
Covington	17,632	182	0	0	17,814	0	0
Crenshaw	12,182	96	0	0	12,278	0	0
Cullman	36,581	265	0	0	36,846	0	0
Dale	8,954	108	0	0	9,062	0	0
Dallas	28,739	68	0	0	28,807	0	0
De Kalb	34,664	281	0	0	34,945	0	0
Elmore	16,366	76	0	0	16,442	0	0
Escambia	11,505	91	0	0	11,596	0	0
Etowah	13,181	153	0	0	13,334	0	0
Fayette	9,883	156	0	0	10,039	0	0
Franklin	14,611	139	0	0	14,750	0	0
Geneva	21,948	147	0	0	22,095	0	0
Greene	14,383	33	0	0	14,416	0	0
Hale	16,567	63	0	0	16,630	0	0
Henry	16,835	84	0	0	16,919	0	0
Houston	28,476	194	0	0	28,670	0	0
Jackson	26,712	180	0	0	26,892	0	0
Jefferson	4,250	166	0	0	4,416	0	0
Lamar	11,911	134	0	0	12,045	0	0
Lauderdale	30,370	160	0	0	30,530	0	0
Lawrence	41,590	108	0	0	41,717	0	0
Lee	10,232	54	0	0	10,286	0	0
Limestone	54,755	169	0	0	54,924	0	0
Lowndes	11,496	25	0	0	11,521	0	0
Macon	18,140	74	0	0	18,214	0	0
Madison	63,376	155	0	0	63,531	0	0
Marengo	18,023	82	0	0	18,105	0	0
Marion	14,462	179	0	0	14,641	0	0
Marshall	32,739	189	0	0	32,928	0	0
Mobile	3,875	142	0	0	4,017	0	0
Monroe	19,466	118	0	0	19,584	0	0
Montgomery	11,738	43	0	0	11,781	0	0
Morgan	31,087	132	0	0	31,219	0	0
Perry	11,945	57	0	0	12,002	0	0
Pickens	16,130	102	0	0	16,232	0	0
Pike	18,057	100	0	0	18,157	0	0
Randolph	11,209	163	0	0	11,372	0	0
Russell	11,164	45	0	0	11,209	0	0
St. Clair	6,125	105	0	0	6,230	0	0
Shelby	6,488	42	0	0	6,530	0	0
Sumter	15,198	57	0	0	15,255	0	0
Talladega	13,910	90	0	0	14,000	0	0
Tallapoosa	7,767	59	0	0	7,826	0	0
Tuscaloosa	18,114	112	0	0	18,226	0	0
Walker	8,176	432	0	0	8,608	0	0
Washington	2,786	167	0	0	2,953	0	0
Wilcox	12,599	60	0	0	12,659	0	0
Winston	8,145	115	0	0	8,260	0	0
a. State total	1,081,222	8,418	0	0	1,089,640	0	0
b. State reserve available for late and reconstituted farms and correction of errors							200
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b)							1,089,840

ARIZONA

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Cochise	15,119	26	0	0	15,145	0	0
Gila	23	0	8	0	31	0	0
Graham	10,117	1	0	0	10,118	0	0
Greenlee	1,895	7	0	0	1,902	0	0
Maricopa	137,941	79	0	0	138,020	0	0
Mohave	286	1	7	0	294	0	0
Pima	24,933	5	0	0	24,938	0	0
Pinal	149,126	12	0	0	149,138	0	0
Santa Cruz	2,150	0	0	0	2,150	0	0
Yavapai	13	0	0	0	13	0	0
Yuma	32,886	34	0	0	32,920	0	0
a. State total	374,489	165	15	0	374,669	0	0
b. State reserve available for late and reconstituted farms and correction of errors							30
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b)							374,699

ARKANSAS—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Van Buren	1,202	2	0	0	1,204	0	0
Washington	23,805	2	0	0	23,807	0	0
White	36,218	0	4,513	0	40,731	0	0
Woodruff	6,611	0	755	0	7,366	0	0
Yell							1,461
a. State total	1,366,825	1,488	150,002	0	1,518,315	0	1,461
b. State reserve available for late and reconstituted farms and correction of errors							405
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b)							1,520,182

CALIFORNIA

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Fresno	214,187	207.4	0	0	214,394.4	0	0
Imperial	62,314	28.9	0	0	62,342.9	0	0
Kern	106,019	40.7	0	0	106,059.7	0	0
Kings	104,492	57.2	0	0	104,549.2	0	0
Los Angeles	185	2	0	0	185.2	0	0
Merced	51,477	36.6	0	0	51,513.6	0	0
Riverside	31,861	17.7	0	0	31,878.7	0	0
San Bernardino	21,892	25.2	0	0	21,917.2	0	0
San Diego	222	1.3	0	0	223.3	0	0
Stanislaus	535	3.6	0	0	538.6	0	0
Tulare	335	.1	0	0	335.1	0	0
Ventura	80	24.0	0	0	104.0	0	0
a. State total	162,048	171.1	0	0	162,219.1	0	0
b. State reserve available for late and reconstituted farms and correction of errors		604.0	0	0	838,111.0	0	0
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b)	835,507						50
							838,161

FLORIDA

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Alachua	168	5.7	0	0	173.7	0	0
Baker	6	1.0	0	0	7.0	0	0
Bay	61	2.9	0	0	63.9	0	0
Calhoun	792	26.7	0	0	818.7	0	0
Citrus	9	1.0	0	0	10.0	0	0
Columbia	320	17.1	0	0	337.1	0	0
Dixie	3	0	0	0	3.0	0	0
Duval	1,686	42.8	0	0	1,728.8	0	0
Escambia	250	18.1	0	0	268.1	0	0
Gadsden	5	0	0	0	5.0	0	0
Gilchrist	1,369	34.3	0	0	1,403.3	0	0
Hamilton	5,453	120.0	0	0	5,573.0	0	0
Holmes	1,607	31.4	0	0	1,638.4	0	0
Jackson	274	19.0	0	0	293.0	0	0
Jefferson	1,166	23.8	0	0	1,189.8	0	0
Lafayette	7	0	0	0	7.0	0	0
Leon	15	0	0	0	15.0	0	0
Liberty	3,220	80.9	0	0	3,300.9	0	0
Madison	6	1.0	0	0	7.0	0	0
Nassau	1,738	36.2	0	0	1,774.2	0	0
Okaloosa	0	0	0	0	0	0	0
Putnam	6,754	101.9	0	0	6,855.9	0	0
Santa Rosa	744	42.8	0	0	786.8	0	0
Suwannee	33	1.9	0	0	34.9	0	0
Taylor	20	1.9	0	0	21.9	0	0
Union							0

FLORIDA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Walton	2,600	68.5	0	0	2,668.5	0	0
Washington	1,026	31.4	0	0	1,057.4	0	0
a. State total	37,903	952.0	0	0	38,855.0	0	0

b. State reserve available for late and reconstituted farms and correction of errors 300
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 39,155

GEORGIA

Appling	4,824	98.1	0	0	4,922.1	0	41.4
Atkinson	1,026	43.0	0	0	1,069.0	0	8.8
Bacon	2,535	83.7	0	0	2,618.7	0	21.7
Baker	3,511	41.6	0	0	3,552.6	0	30.1
Baldwin	2,730	28.1	0	0	2,767.1	0	23.5
Banks	3,560	56.6	0	0	3,616.6	0	30.5
Barrow	6,210	52.2	0	0	6,262.2	0	53.2
Bartow	18,008	48.0	0	0	18,056.0	0	154.4
Ben Hill	5,460	38.5	0	0	5,498.5	0	46.8
Berrien	3,668	106.3	0	0	3,774.3	0	31.4
Bibb	1,315	10.3	0	0	1,325.3	0	11.3
Bleckley	7,225	26.3	0	0	7,251.3	0	61.9
Brantley	47	4.9	0	0	51.9	0	.4
Brooks	9,655	150.5	0	0	9,805.5	0	82.8
Bryan	222	10.6	0	0	232.6	0	1.9
Bulloch	15,899	87.6	0	0	15,986.6	0	136.4
Burke	37,809	32.0	0	0	37,841.0	0	324.1
Butts	4,836	17.6	0	0	4,853.6	0	41.5
Calhoun	5,787	17.9	0	0	5,804.9	0	49.6
Camden	1	.2	0	0	1.2	0	0
Candler	7,019	34.5	0	0	7,053.5	0	60.2
Carroll	11,033	128.7	0	0	11,161.7	0	94.6
Catoosa	1,514	30.4	0	0	1,544.4	0	13.0
Charlton	14	2.4	0	0	16.4	0	.1
Chatham	50	1.5	0	0	51.5	0	.4
Chattahoochee	155	7.0	0	0	162.0	0	1.3
Chattooga	5,059	45.0	0	0	5,104.0	0	43.4
Cherokee	928	26.5	0	0	954.5	0	8.0
Clarke	2,070	25.3	0	0	2,095.3	0	17.7
Clay	3,748	23.1	0	0	3,771.1	0	32.1
Clayton	1,245	11.6	0	0	1,256.6	0	10.7
Clinch	155	12.1	0	0	167.1	0	1.3
Cobb	1,193	30.0	0	0	1,223.0	0	10.2
Coffee	7,662	109.4	0	0	7,771.4	0	65.7
Colquitt	22,250	116.1	0	0	22,366.1	0	190.8
Columbia	2,149	19.3	0	0	2,168.3	0	18.4
Cook	4,233	76.0	0	0	4,309.0	0	36.3
Coweta	8,133	59.4	0	0	8,192.4	0	69.7
Crawford	1,942	24.9	0	0	1,966.9	0	16.6
Crisp	10,171	25.5	0	0	10,196.5	0	87.2
Dade	451	21.9	0	0	472.9	0	3.9
Dawson	204	6.6	0	0	210.6	0	1.7
Decatur	4,536	101.0	0	0	4,637.0	0	38.9
DeKalb	623	16.3	0	0	639.3	0	5.3
Dodge	14,142	66.7	0	0	14,208.7	0	121.2
Dooly	20,172	40.3	0	0	20,212.3	0	173.0
Dougherty	2,131	13.6	0	0	2,144.6	0	18.3
Douglas	1,263	16.0	0	0	1,279.0	0	10.8
Early	14,479	91.9	0	0	14,570.9	0	124.1
Echols	50	6.2	0	0	56.2	0	.4
Effingham	1,680	35.3	0	0	1,715.3	0	14.4
Elbert	9,603	94.5	0	0	9,697.5	0	82.3
Emanuel	17,821	80.9	0	0	17,901.9	0	152.8
Evans	2,802	30.8	0	0	2,832.8	0	24.0
Fayette	5,053	28.1	0	0	5,081.1	0	43.3
Floyd	7,820	45.5	0	0	7,865.5	0	67.6
Forsyth	2,408	46.8	0	0	2,454.8	0	20.0

GEORGIA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Franklin	8,306	115.3	0	0	8,421.3	0	71.2
Fulton	2,458	27.0	0	0	2,485.0	0	21.1
Gilmer	3	.3	0	0	3.3	0	0
Glascock	5,243	13.8	0	0	5,256.8	0	44.9
Gordon	11,130	92.6	0	0	11,222.6	0	95.4
Grady	4,036	110.0	0	0	4,146.0	0	34.6
Greene	3,353	30.6	0	0	3,383.6	0	28.7
Gwinnett	4,542	62.3	0	0	4,604.3	0	88.9
Habersham	476	24.0	0	0	500.0	0	4.1
Hall	2,502	40.0	0	0	2,542.0	0	21.4
Hancock	9,508	51.1	0	0	9,559.1	0	81.5
Haralson	3,035	52.5	0	0	3,087.5	0	26.0
Harris	1,858	25.9	0	0	1,883.9	0	15.9
Hart	12,551	83.7	0	0	12,634.7	0	107.6
Heard	3,010	45.8	0	0	3,055.8	0	25.8
Henry	12,141	55.5	0	0	12,196.5	0	104.1
Houston	5,696	22.5	0	0	5,718.5	0	48.8
Irwin	10,534	52.5	0	0	10,586.5	0	90.3
Jackson	10,295	82.7	0	0	10,377.7	0	88.2
Jasper	4,636	12.2	0	0	4,648.2	0	39.7
Jeff Davis	2,512	66.3	0	0	2,578.3	0	21.5
Jefferson	21,027	38.9	0	0	21,065.9	0	180.2
Jenkins	12,476	28.9	0	0	12,504.9	0	106.9
Johnson	16,958	28.3	0	0	16,986.3	0	145.4
Jones	569	15.3	0	0	584.3	0	4.9
Lamar	2,695	26.3	0	0	2,721.3	0	23.1
Lanier	699	29.8	0	0	728.8	0	6.0
Laurens	30,813	102.7	0	0	30,915.7	0	264.2
Lee	3,875	30.8	0	0	3,905.8	0	33.2
Liberty	145	12.4	0	0	157.4	0	1.2
Lincoln	2,586	14.0	0	0	2,600.0	0	22.2
Long	571	24.3	0	0	595.3	0	4.9
Lowndes	3,574	100.9	0	0	3,674.9	0	30.6
Lumpkin	90	3.9	0	0	93.9	0	.8
McDuffie	6,924	16.2	0	0	6,940.2	0	59.4
McIntosh	4	1.0	0	0	5.0	0	0
Macon	12,558	24.0	0	0	12,582.0	0	107.6
Madison	10,977	117.8	0	0	11,094.8	0	94.1
Marion	4,090	32.1	0	0	4,122.1	0	35.1
Meriwether	12,524	56.0	0	0	12,580.0	0	107.5
Miller	6,318	59.5	0	0	6,377.5	0	54.2
Mitchell	13,239	58.7	0	0	13,297.7	0	113.5
Monroe	1,647	14.5	0	0	1,661.5	0	14.1
Montgomery	4,255	41.4	0	0	4,296.4	0	36.5
Morgan	15,042	24.3	0	0	15,066.3	0	128.9
Murray	4,089	59.8	0	0	4,148.8	0	35.0
Muscogee	209	3.2	0	0	212.2	0	1.8
Newton	8,141	39.7	0	0	8,180.7	0	69.8
Oconee	8,541	43.5	0	0	8,584.5	0	73.2
Oglethorpe	8,012	65.9	0	0	8,077.9	0	68.7
Paulding	3,128	27.4	0	0	3,155.4	0	26.8
Peach	2,492	10.2	0	0	2,502.2	0	21.4
Pickens	564	16.3	0	0	580.3	0	4.8
Pierce	2,447	74.4	0	0	2,521.4	0	21.0
Pike	6,705	26.7	0	0	6,731.7	0	57.5
Polk	6,691	51.6	0	0	6,742.6	0	57.4
Pulaski	9,347	23.3	0	0	9,370.3	0	80.1
Putnam	1,781	21.3	0	0	1,802.3	0	15.8
Quitman	1,685	12.3	0	0	1,697.3	0	14.4
Randolph	6,100	41.3	0	0	6,141.3	0	52.3
Richmond	2,594	9.9	0	0	2,603.9	0	22.2
Rockdale	3,467	27.9	0	0	3,494.9	0	29.7
Sobley	4,181	11.8	0	0	4,192.8	0	35.8
Screven	17,722	47.7	0	0	17,769.7	0	151.9
Seminole	5,009	36.0	0	0	5,045.0	0	42.9
Spalding	2,709	9.4	0	0	2,718.4	0	23.2
Stephens	1,061	35.7	0	0	1,096.7	0	9.1
Stewart	3,147	27.6	0	0	3,174.6	0	27.0
Sumter	11,231	36.8	0	0	11,267.8	0	96.3
Talbot	1,518	43.0	0	0	1,561.0	0	13.0

GEORGIA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Taliaferro	1,860	19.6	0	0	1,879.6	0	15.9
Tattnall	5,558	102.3	0	0	5,660.3	0	47.6
Taylor	7,545	28.5	0	0	7,573.5	0	64.7
Telfair	5,084	71.1	0	0	5,155.1	0	43.6
Terrell	12,785	32.8	0	0	12,817.8	0	109.6
Thomas	6,296	75.1	0	0	6,371.1	0	54.0
Tift	7,401	66.7	0	0	7,467.7	0	63.4
Toombs	8,200	64.6	0	0	8,264.6	0	70.3
Treutlen	3,652	22.7	0	0	3,684.7	0	31.4
Troup	2,018	34.7	0	0	2,052.7	0	17.3
Turner	8,429	47.6	0	0	8,476.6	0	72.3
Twiggs	3,734	34.9	0	0	3,768.9	0	32.0
Upson	1,367	27.3	0	0	1,394.3	0	11.7
Walker	3,033	92.0	0	0	3,125.0	0	26.0
Walton	20,438	61.8	0	0	20,499.8	0	175.2
Ware	879	56.4	0	0	935.4	0	7.5
Warren	11,966	17.8	0	0	11,983.8	0	102.6
Washington	18,381	44.0	0	0	18,425.0	0	157.6
Wayne	2,618	46.2	0	0	2,664.2	0	22.4
Webster	1,796	29.4	0	0	1,825.4	0	15.4
Wheeler	3,731	29.6	0	0	3,760.6	0	32.0
White	625	26.3	0	0	651.3	0	5.4
Whitfield	2,316	72.0	0	0	2,388.0	0	19.9
Wilcox	11,932	47.7	0	0	11,979.7	0	102.3
Wilkes	4,639	37.8	0	0	4,676.8	0	39.8
Wilkinson	2,709	42.6	0	0	2,751.6	0	23.2
Worth	19,919	91.1	0	0	20,010.1	0	170.7
a. State total	933,271	6,599.0	0	0	939,870.0	0	8,000.0

b. State reserve available for late and reconstituted farms and correction of errors 150
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 948,020

ILLINOIS

Alexander	1,861	2	0	0	1,863	0	19.4
Jefferson	1	0	0	0	1	0	0
Madison	1	0	0	0	1	0	0
Massac	4	0	0	0	4	0	0
Pulaski	1,345	4	0	0	1,349	0	20.6
a. State total	3,212	6	0	0	3,218	0	40.0

b. State reserve available for late and reconstituted farms and correction of errors 10
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 3,268

KANSAS

Cowley	1	0	0	0	1	0	0
Haskell	0	1	0	0	1	0	0
Montgomery	20	0	0	0	20	0	0
a. State total	21	1	0	0	22	0	0

b. State reserve available for late and reconstituted farms and correction of errors 2
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 24

KENTUCKY

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Ballard	15	0.9	0	0	15.9	2	0
Calloway	164	14.5	0	0	178.5	15	10.0
Carlisle	67	4.3	0	0	71.3	3	0
Fulton	6,243	5.8	0	50	6,298.8	15	5.0
Graves	185	14.2	0	0	199.2	15	5.0
Hickman	1,113	28.9	0	50	1,191.9	20	5.0
McCracken	3	.4	0	0	3.4	2	0
Marshall	60	5.0	0	0	65.0	3	0
a. State total	7,850	74.0	0	100	8,024.0	75	25.0

b. State reserve available for new farms, late and reconstituted farms and correction of errors 50
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 8,174

LOUISIANA

Acadia	12,381	93.1	0	0	12,474.1	0	0
Allen	765	29.5	0	0	794.5	0	0
Ascension	562	24.7	0	0	586.7	0	0
Assumption	16	1.5	0	0	17.5	0	0
Avoyelles	25,523	229.6	0	0	25,752.6	0	0
Beauregard	350	14.6	0	0	364.6	0	0
Bienville	5,736	23.9	0	0	5,759.9	0	0
Bossier	19,485	36.5	0	0	19,521.5	0	2,537
Caddo	34,525	63.4	0	0	34,588.4	0	4,195
Calcasieu	191	4.0	0	0	195.0	0	0
Caldwell	7,072	25.3	0	0	7,097.3	0	1,997
Cameron	230	13.9	0	0	243.9	0	0
Catahoula	11,819	62.8	0	0	11,881.8	0	2,199
Claiborne	9,626	3.2	0	0	9,629.2	0	0
Concordia	9,329	34.8	0	0	9,363.8	0	1,595
De Soto	10,051	35.9	0	0	10,086.9	0	0
East Baton Rouge	804	34.6	0	0	838.6	0	0
East Carroll	24,642	27.5	0	0	24,669.5	0	8,013
East Feliciana	3,618	58.3	0	0	3,676.3	0	0
Evangeline	17,334	104.8	0	0	17,438.8	0	0
Franklin	55,661	105.3	0	0	55,766.3	0	9,583
Grant	3,853	9.2	0	0	3,862.2	0	1,094
Iberia	1,821	46.5	0	0	1,867.5	0	0
Iberville	624	10.7	0	0	634.7	0	0
Jackson	1,129	33.3	0	0	1,162.3	0	0
Jefferson	8	.2	0	0	8.2	0	0
Jefferson Davis	497	14.5	0	0	511.5	0	0
Lafayette	14,985	153.6	0	0	15,138.6	0	0
Lafourche	24	0	0	0	24.0	0	0
La Salle	397	8.3	0	0	405.3	0	140
Lincoln	4,022	0	0	0	4,022.0	0	0
Livingston	418	26.0	0	0	444.0	0	0
Madison	18,441	34.2	0	0	18,475.2	0	5,216
Morehouse	30,080	45.0	0	0	30,125.0	0	6,909
Natchitoches	24,359	57.8	0	0	24,416.8	0	0
Orleans	1	0	0	0	1.0	0	0
Ouachita	13,910	32.2	0	0	13,942.2	0	2,257
Pointe Coupee	10,571	51.4	0	0	10,622.4	0	0
Rapides	16,955	61.4	0	0	17,016.4	0	5,138
Red River	11,591	18.5	0	0	11,609.5	0	0
Richland	47,767	83.7	0	0	47,850.7	0	6,541
Sabine	1,983	13.6	0	0	1,996.6	0	0
St. Helena	2,357	78.5	0	0	2,430.5	0	0
St. James	15	1.4	0	0	16.4	0	0
St. John the Baptist	10	1.0	0	0	11.0	0	0

LOUISIANA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
St. Landry	36,608	209.1	0	0	36,817.1	0	0
St. Martin	8,967	124.0	0	0	9,091.0	0	0
St. Mary	4	0	0	0	4.0	0	0
St. Tammany	348	16.2	0	0	364.2	0	0
Tangipahoa	1,584	87.7	0	0	1,671.7	0	0
Tensas	19,441	33.0	0	0	19,474.0	0	3,841
Union	6,084	0	0	0	6,084.0	0	0
Vermilion	5,476	84.1	0	0	5,560.1	0	0
Vernon	1,238	36.6	0	0	1,274.6	0	0
Washington	5,950	117.6	0	0	6,067.6	0	0
Webster	6,850	22.5	0	0	6,872.5	0	0
West Baton Rouge	1,177	11.6	0	0	1,188.6	0	0
West Carroll	25,963	125.5	0	0	26,088.5	0	3,039
West Feliciana	2,525	25.3	0	0	2,550.3	0	0
Winn	1,069	22.6	0	0	1,091.6	0	0
a. State total	578,822	2,719.0	0	0	581,541.0	0	64,300

b. State reserve available for late and reconstituted farms and correction of errors 14
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 645,855

MARYLAND

Caroline	13	0	0	0	13	0	0
a. State total	13	0	0	0	13	0	0

b. State reserve available for new farms, late and reconstituted farms and correction of errors 1
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 14

MISSISSIPPI

Adams	2,984	13	0	0	2,997	0	0
Alcorn	14,710	111	245	0	15,066	0	0
Amite	9,962	115	0	0	10,077	0	0
Attala	14,118	106	236	0	14,460	0	0
Benton	12,049	52	1,005	0	13,106	0	0
Bolivar	121,896	33	10,157	0	132,086	0	0
Calhoun	17,386	94	290	0	17,770	0	0
Carroll	15,971	75	266	0	16,312	0	0
Chickasaw	14,766	58	246	0	15,070	0	0
Choctaw	4,552	86	0	0	4,638	0	141
Claiborne	5,331	30	0	0	5,361	0	0
Clarke	5,305	125	0	0	5,430	0	198
Clay	8,305	37	0	0	8,342	0	0
Coahoma	90,968	14	7,580	0	98,562	0	0
Copiah	9,379	116	0	0	9,495	0	0
Covington	10,512	103	0	0	10,615	0	0
De Soto	33,382	69	1,669	0	35,120	0	14
Forrest	1,378	36	0	0	1,414	0	94
Franklin	1,960	36	0	0	1,996	0	44
George	1,293	44	0	0	1,337	0	137
Greene	1,280	58	0	0	1,338	0	169
Grenada	12,216	38	204	0	12,458	0	0
Hancock	39	1	0	0	40	0	0
Harrison	16	2	0	0	18	0	5
Hinds	28,536	96	0	0	28,632	0	0
Holmes	35,023	83	1,751	0	36,857	0	8
Humphreys	48,569	20	4,046	0	52,635	0	0
Issaquena	10,401	5	866	0	11,272	0	0
Itawamba	11,920	96	0	0	12,016	0	0
Jackson	65	3	0	0	68	0	4
Jasper	7,958	138	0	0	8,096	0	129
Jefferson	5,610	45	0	0	5,655	0	0

MISSISSIPPI—Continued

[Acres]

County	Computed count allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Jefferson Davis	16,674	118	0	0	16,792	0	0
Jones	9,271	170	0	0	9,441	0	306
Kemper	11,349	74	0	0	11,423	0	0
Lafayette	17,996	97	300	0	18,393	0	0
Lamar	4,098	92	0	0	4,190	0	143
Lauderdale	6,585	111	0	0	6,696	0	32
Lawrence	8,619	72	0	0	8,691	0	0
Leake	18,286	165	305	0	18,756	0	0
Lee	28,686	104	478	0	29,268	0	0
Leflore	74,270	14	6,189	0	80,473	0	0
Lincoln	6,234	152	0	0	6,386	0	339
Lowndes	16,926	81	0	0	17,007	0	0
Madison	34,375	97	572	0	35,044	0	0
Marion	10,921	137	0	0	11,058	0	0
Marshall	35,448	97	2,955	0	38,500	0	0
Monroe	30,799	150	1,540	0	32,489	0	0
Montgomery	8,531	50	142	0	8,723	0	0
Neshoba	16,167	192	0	0	16,359	0	0
Newton	9,746	153	0	0	9,899	0	241
Noxubee	16,854	40	843	0	17,737	0	0
Oktibbeha	4,894	54	0	0	4,948	0	0
Panola	40,694	87	2,035	0	42,816	0	0
Pearl River	393	19	0	0	412	0	47
Perry	2,085	64	0	0	2,149	0	112
Pike	6,518	125	0	0	6,643	0	121
Pontotoc	21,008	159	350	0	21,517	0	0
Prentiss	18,128	125	302	0	18,555	0	0
Quitman	60,987	21	5,083	0	66,091	0	0
Rankin	10,310	93	0	0	10,403	0	0
Scott	11,860	106	0	0	11,966	0	0
Sharkey	27,832	11	2,320	0	30,163	0	0
Simpson	13,931	121	0	0	14,052	0	0
Smith	11,091	125	0	0	11,216	0	0
Stone	177	12	0	0	189	0	36
Sunflower	123,756	10	10,313	0	134,079	0	0
Tallahatchie	59,993	48	5,000	0	65,041	0	0
Tate	24,401	58	1,220	0	25,679	0	0
Tippah	17,144	129	286	0	17,559	0	0
Tishomingo	10,232	118	171	0	10,521	0	0
Tunica	48,986	8	4,082	0	53,076	0	0
Union	18,820	125	0	0	18,945	0	0
Walthall	13,803	117	0	0	13,920	0	0
Warren	6,589	22	110	0	6,721	0	0
Washington	84,833	34	7,069	0	91,936	0	0
Wayne	7,004	90	0	0	7,094	0	0
Webster	8,853	71	147	0	9,071	0	0
Wilkinson	4,540	32	0	0	4,572	0	0
Winston	13,724	129	0	0	13,853	0	0
Yalobusha	12,163	53	1,014	0	13,230	0	0
Yazoo	43,358	33	3,613	0	47,004	0	0
a. State total	1,667,782	6,303	85,000	0	1,759,085	0	2,320

b. State reserve available for late and reconstituted farms and correction of errors 458
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 1,761,863

MISSOURI

Bollinger	181	4.7	0	0	185.7	0	0
Butler	20,716	163.2	0	0	20,879.2	0	400.0
Cape Girardeau	121	0	0	0	121.0	0	10.0
Carter	16	0	0	0	16.0	0	0
Dunklin	89,012	80.6	0	0	89,092.6	0	600.0
Howell	47	4.9	0	0	51.9	0	0
Jefferson	7	0.4	0	0	7.4	0	0
Mississippi	29,103	14.0	0	0	29,117.0	0	0
New Madrid	97,336	24.7	0	0	97,360.7	0	0

MISSOURI—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Oregon	128	8.6	0	0	136.6	0	0
Ozark	37	1.6	0	0	38.6	0	0
Pemiscot	102,405	31.0	0	0	102,436.0	0	80.0
Ripley	2,528	49.5	0	0	2,577.5	0	200.0
Scott	18,101	22.5	0	0	18,123.5	0	500.0
Stoddard	44,109	119.5	0	0	44,228.5	0	0
Vernon	5	0.2	0	0	5.2	0	0
Wayne	12	0.6	0	0	12.6	0	0
a. State total	403,864	526.0	0	0	404,390.0	0	1,790.0

b. State reserve available for late and reconstituted farms and correction of errors 211
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 406,391

NEVADA

Clark	58	23	0	0	81	0	20
Nye	2,439	977	0	0	3,416	0	5
a. State total	2,497	1,000	0	0	3,497	0	25

b. State reserve available for late and reconstituted farms and correction of errors 0
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 3,522

NEW MEXICO

Bernalillo	3	2.0	0	0	5.0	0	0
Chaves	34,051	12.6	0	0	34,063.6	0	617.6
Curry	1,632	2.9	0	0	1,634.9	0	61.0
DeBaca	530	7.7	0	0	537.7	0	19.7
Dona Ana	43,087	47.1	0	0	43,134.1	0	135.0
Eddy	29,350	11.3	0	0	29,361.3	0	511.9
Grant	79	1.9	0	0	80.9	0	14.7
Guadalupe	21	0	0	0	21.0	0	0
Hidalgo	6,683	3.7	0	0	6,686.7	0	419.7
Lea	29,013	7.2	0	0	29,020.2	0	1,246.6
Luna	14,560	3.0	0	0	14,563.0	0	371.6
Otero	1,812	3.9	0	0	1,815.9	0	70.5
Quay	3,047	6.0	0	0	3,053.0	0	63.6
Roosevelt	19,970	32.5	0	0	20,002.5	0	1,141.3
Sierra	2,778	9.5	0	0	2,787.5	0	66.9
Socorro	2,108	18.7	0	0	2,126.7	0	100.9
Valencia	32	0	0	0	32.0	0	0
a. State total	188,756	170.0	0	0	188,926.0	0	4,841.0

b. State reserve available for late and reconstituted farms and correction of errors 50
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 193,817

NORTH CAROLINA

Almance	81	9	0	0	90	0	0
Alexander	847	82	0	0	929	0	0
Anson	14,212	120	0	0	14,332	0	0
Beaufort	1,272	325	0	0	1,597	0	0
Bertie	6,813	0	1,030	0	7,843	0	0
Bladen	4,057	429	0	0	4,486	0	0
Brunswick	322	91	0	0	413	0	0
Burke	92	0	0	0	92	0	0

NORTH CAROLINA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Cabarrus	4,684	46	0	0	4,730	0	0
Caldwell	37	0	0	0	37	0	0
Camden	354	31	0	0	385	0	0
Carteret	65	15	0	0	80	0	0
Catawba	2,832	297	0	0	3,129	0	0
Chatham	621	0	0	0	621	0	0
Chowan	2,354	0	372	0	2,726	0	0
Cleveland	32,604	0	4,597	0	37,201	0	862
Columbus	2,823	357	0	0	3,180	0	0
Craven	479	82	0	0	561	0	0
Cumberland	13,422	582	0	0	14,004	0	0
Currituck	357	18	0	0	375	0	0
Davidson	1,008	69	0	0	1,077	0	0
Davie	2,015	114	0	0	2,129	0	0
Duplin	4,041	0	679	0	4,720	0	162
Durham	141	41	0	0	182	0	0
Edgecombe	11,967	0	1,783	0	13,750	0	0
Forsyth	149	3	0	0	152	0	0
Franklin	9,396	0	1,539	0	10,935	0	0
Gaston	3,290	62	0	0	3,352	0	0
Gates	2,172	0	352	0	2,524	0	0
Granville	357	36	0	0	393	0	0
Greene	4,172	0	657	0	4,829	0	0
Guilford	84	12	0	0	96	0	0
Halifax	21,531	0	3,251	0	24,782	0	0
Harnett	14,871	0	1,547	0	16,418	0	304
Hertford	4,470	0	699	0	5,169	0	0
Hoke	14,562	0	1,472	0	16,034	0	925
Hyde	252	0	27	0	279	0	0
Iredell	9,585	733	0	0	10,318	0	0
Johnston	20,817	0	3,365	0	24,182	0	0
Jones	337	45	0	0	382	0	0
Lee	1,219	153	0	0	1,372	0	0
Lenoir	2,363	0	375	0	2,738	0	0
Lincoln	7,951	140	0	0	8,091	0	0
Martin	2,695	0	434	0	3,129	0	0
Mecklenburg	7,476	0	0	0	7,476	0	0
Montgomery	1,947	0	135	0	2,082	0	138
Moore	2,684	0	113	0	2,797	0	210
Nash	13,088	0	2,045	0	15,133	0	0
New Hanover	16	6	0	0	22	0	0
Northampton	19,285	0	1,200	0	20,485	0	1,344
Onslow	398	0	0	0	398	0	0
Orange	98	13	0	0	111	0	0
Pamlico	229	48	0	0	277	0	0
Pasquotank	282	77	0	0	359	0	0
Pender	407	23	0	0	430	0	0
Perquimans	1,420	115	0	0	1,535	0	0
Person	3	1	0	0	4	0	0
Pitt	7,770	0	1,234	0	9,004	0	0
Polk	1,492	157	0	0	1,649	0	0
Randolph	68	0	0	0	68	0	0
Richmond	7,074	44	0	0	7,118	0	0
Robeson	45,359	0	6,824	0	52,183	0	0
Rockingham	1	0	0	0	1	0	0
Rowan	6,211	333	0	0	6,544	0	0
Rutherford	9,184	1,044	0	0	10,178	0	0
Sampson	24,254	0	3,768	0	28,022	0	2,303
Scotland	18,977	0	887	0	19,864	0	0
Stanly	2,173	78	0	0	2,251	0	0
Tyrrell	272	53	0	0	325	0	0
Union	16,473	528	0	0	17,001	0	0
Vance	3,023	0	499	0	3,522	0	0
Wake	5,635	298	183	0	6,116	0	0
Warren	7,499	0	1,200	0	8,699	0	0
Washington	674	64	0	0	738	0	0
Wayne	11,755	0	1,837	0	13,592	0	0
Wilkes	91	11	0	0	102	0	0

OKLAHOMA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Wilson	9,027	0	1,426	0	10,453	0	0
Yadkin	50	5	0	0	55	0	0
a. State total	451,818	6,790	43,530	0	502,138	0	6,248

b. State reserve available for late and reconstituted farms and correction of errors 424
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 508,810

OKLAHOMA

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Adair	86	7	0	0	93	0	4
Aloka	2,068	39	0	0	2,107	0	211
Beaver	23	60	0	0	83	0	15
Beckham	63,053	204	0	0	63,257	0	4,466
Blaine	13,190	43	0	0	13,233	0	902
Bryan	17,522	57	0	0	17,579	0	1,362
Caddo	48,055	156	0	0	48,211	0	3,895
Canadian	14,115	46	0	0	14,161	0	887
Carter	1,509	10	0	0	1,519	0	59
Cherokee	93	0	0	0	93	0	0
Choctaw	4,268	14	0	0	4,282	0	39
Cimarron	1,836	6	0	0	1,842	0	74
Cleveland	3,399	11	0	0	3,410	0	237
Comanche	13,428	44	0	0	13,472	0	946
Cotton	18,875	61	0	0	18,936	0	1,502
Craig	96	1	0	0	97	0	98
Creek	2,474	8	0	0	2,482	0	196
Custer	24,624	80	0	0	24,704	0	1,061
Dewey	8,683	28	0	0	8,711	0	42
Ellis	814	3	0	0	817	0	0
Garfield	88	0	0	0	88	0	0
Garvin	5,555	18	0	0	5,573	0	505
Grady	17,561	57	0	0	17,618	0	1,435
Grant	34	12	0	0	46	0	5
Greer	41,124	133	0	0	41,257	0	3,162
Harmon	48,840	158	0	0	48,998	0	3,206
Harper	17	0	0	0	17	0	0
Haskell	3,509	11	0	0	3,520	0	412
Hughes	5,359	22	0	0	5,381	0	567
Jackson	57,196	185	0	0	57,384	0	4,387
Jefferson	18,155	59	0	0	18,214	0	1,315
Johnston	3,690	12	0	0	3,702	0	400
Kay	334	0	0	0	334	0	0
Kingfisher	1,967	7	0	0	1,967	0	0
Kiowa	55,193	179	0	0	55,372	0	5,674
Latimer	291	56	0	0	347	0	21
Le Flore	3,402	67	0	0	3,469	0	506
Lincoln	1,537	44	0	0	1,581	0	104
Logan	3,460	10	0	0	3,053	0	365
Love	8,573	28	0	0	8,601	0	709
McClain	8,795	28	0	0	8,823	0	322
McCurtain	7,382	24	0	0	7,406	0	986
McIntosh	13,095	42	0	0	13,137	0	36
Major	2,458	8	0	0	2,466	0	461
Marshall	4,668	15	0	0	4,683	0	0
Mayes	709	7	0	0	709	0	57
Murray	399	7	0	0	406	0	1,043
Muskogee	18,912	61	0	0	18,973	0	60
Noble	1,020	3	0	0	1,023	0	0
Nowata	932	0	0	0	932	0	380
Okfuskee	6,334	21	0	0	6,355	0	29
Oklahoma	9,245	26	0	0	487	0	461
Okmulgee	10,977	36	0	0	11,013	0	271
Osage	3,292	0	0	0	3,292	0	232
Pawnee	3,329	11	0	0	3,340	0	54
Payne	2,618	8	0	0	2,626	0	
Pittsburg	6,171	20	0	0	6,191	0	

NORTH CAROLINA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Abbeville	8,651	100.8	0	0	8,751.8	0	0
Alamance	21,715	153.8	0	0	21,868.8	0	0
Alexander	10,284	92.5	0	0	10,376.5	0	0
Anderson	28,964	260.4	0	0	29,225.4	0	0
Bamberg	13,293	96.0	0	0	13,389.0	0	11.7
Barnwell	15,114	62.3	0	0	15,176.3	0	0
Beaufort	1,326	10.0	0	0	1,336.0	0	50.4
Bertie	9,820	172.9	0	0	9,992.9	0	0
Caldwell	16,189	34.7	0	0	16,226.7	0	0
Charleston	1,544	1.7	0	0	1,545.7	0	491.8
Cherokee	13,503	143.0	0	0	13,646.0	0	274.9
Chester	11,064	74.4	0	0	11,138.4	0	0
Chesterfield	33,798	193.8	0	0	33,991.8	0	0
Clarendon	34,912	125.1	0	0	35,037.1	0	230.7
Columbus	10,372	322.1	0	0	10,694.1	0	0
Darlington	31,994	298.2	0	0	32,153.2	0	0
Dillon	23,017	68.3	0	0	23,085.3	0	166.0
Dorchester	10,256	186.6	0	0	10,442.6	0	0
Edgefield	10,332	66.9	0	0	10,398.9	0	0
Fairfield	5,230	79.9	0	0	6,309.9	0	129.5
Florence	33,222	253.3	0	0	33,475.3	0	339.8
Georgetown	24,229	94.2	0	0	3,113.2	0	122.1
Greenville	16,119	191.8	0	0	16,310.8	0	366.2
Greenwood	4,439	58.0	0	0	4,497.0	0	62.6
Hampton	8,617	97.5	0	0	8,714.5	0	0
Horry	10,705	102.2	0	0	10,807.2	0	1,145.6
Jasper	2,953	18.7	0	0	2,971.7	0	0
Kershaw	20,833	111.4	0	0	20,944.4	0	0
Lancaster	8,940	150.5	0	0	9,090.5	0	0
Laurens	18,533	106.6	0	0	18,639.6	0	0
Lee	36,288	47.2	0	0	36,305.2	0	0
Lexington	12,139	176.8	0	0	12,315.8	0	0
McCormick	3,874	47.0	0	0	3,921.0	0	0
Marion	12,245	88.4	0	0	12,333.4	0	86.2
Marlboro	41,334	96.8	0	0	41,240.8	0	0
Newberry	8,245	53.1	0	0	8,298.1	0	183.4
Oconee	60,561	255.5	0	0	60,816.5	0	0
Pickens	6,802	42.1	0	0	6,844.1	0	215.9
Richland	7,088	132.8	0	0	7,220.8	0	13.4
Spartanburg	8,549	83.4	0	0	8,632.4	0	0
Sumter	24,517	343.1	0	0	24,860.1	0	616.2
Union	6,042	110.4	0	0	41,671.4	0	0
		60.7	0	0	6,092.7	0	0

TENNESSEE—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Williamson	140	31	0	0	171	0	0
Wilson	90	12	0	0	102	0	0
a. State total	606,376	4,619	0	0	610,995	0	0

b. State reserve available for new farms, late and reconstituted farms and correction of errors 250D
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 611,245

TEXAS

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Anderson	14,537	513	0	0	15,050	0	0
Andrews	4,143	0	0	0	4,143	0	0
Angelina	4,166	78	0	0	4,244	0	0
Aransas	1,289	0	0	0	1,289	0	0
Archer	2,232	8	0	0	2,240	0	0
Armstrong	2,215	22	0	0	2,237	0	0
Atascosa	12,101	41	0	0	12,142	0	0
Austin	21,460	0	0	0	21,460	0	0
Bailey	107,060	0	0	0	107,060	0	0
Bandera	5	5	0	0	10	0	0
Bastrop	13,750	40	0	0	13,790	0	0
Baylor	20,033	3	0	0	20,036	0	0
Bee	15,887	8	0	0	15,895	0	0
Bell	76,936	2	0	0	76,938	0	0
Bexar	4,820	26	0	0	4,846	0	0
Blanco	140	9	0	0	149	0	0
Borden	20,502	0	0	0	20,502	0	0
Bosque	13,139	117	0	0	13,256	0	0
Bowie	12,978	0	0	0	12,983	0	0
Brazoria	12,623	0	0	0	12,623	0	0
Brazos	20,487	0	0	0	20,487	0	0
Brewster	105	0	0	0	105	0	0
Briscoe	28,684	0	0	0	28,684	0	0
Brooks	4,670	12	0	0	4,682	0	0
Brown	8,546	0	0	0	8,546	0	0
Burleson	30,339	80	0	0	30,419	0	0
Burnet	5,558	7	0	0	5,565	0	0
Caldwell	23,157	3	0	0	23,160	0	0
Calhoun	19,207	0	0	0	19,207	0	0
Callahan	9,578	22	0	0	9,600	0	0
Cameron	170,573	0	0	0	170,573	0	0
Camp	2,750	20	0	0	2,770	0	0
Carson	2,817	230	0	0	3,077	0	0
Cass	10,619	448	0	0	11,067	0	0
Castro	88,558	0	0	0	88,558	0	0
Chambers	112	1	0	0	113	0	0
Cherokee	15,481	563	0	0	16,044	0	0
Childress	11,613	8	0	0	11,621	0	0
Clay	82,038	0	0	0	82,038	0	0
Cochran	7,869	0	0	0	7,869	0	0
Coke	35,481	1	0	24	35,466	0	0
Coleman	91,666	19	0	0	91,667	0	0
Collin	72,504	0	0	0	72,504	0	0
Collingsworth	11,501	29	0	0	11,501	0	0
Colorado	17	250	0	0	267	0	0
Comal	250	0	0	0	250	0	0
Comanche	11,269	138	0	0	11,599	0	0
Concho	27,912	134	0	0	27,913	0	0
Cooke	21,848	26	0	0	21,874	0	0
Corpus Christi	60,779	0	0	0	60,779	0	0
Crockett	71	0	0	0	71	0	0
Crosby	132,549	0	0	0	132,549	0	0
Culberson	4,901	0	0	0	4,901	0	0

SOUTH CAROLINA—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Williamsburg	34,495	239.5	0	0	24,725.5	0	382.6
York	16,718	114.2	0	0	16,832.2	0	0
a. State total	767,379	5,342.0	0	0	772,721.0	0	4,500.0

b. State reserve available for late and reconstituted farms and correction of errors 500
c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 773,721

TENNESSEE

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Bedford	1,990	142	0	0	1,832	0	0
Benton	1,960	151	0	0	2,011	0	0
Bradley	1,142	114	0	0	1,256	0	0
Cannon	34	18	0	0	52	0	0
Carroll	20,898	160	0	0	21,058	0	0
Chester	11,916	72	0	0	11,988	0	0
Crockett	1,732	90	0	0	1,822	0	0
Cumberland	34,118	98	0	0	34,156	0	0
Davidson	3	4	0	0	9	0	0
Decatur	14	53	0	0	53	0	0
De Kalb	3,929	12	0	0	3,982	0	0
Dyer	40	93	0	0	52	0	0
Fayette	34,130	93	0	0	34,229	0	0
Franklin	46,580	73	0	0	46,653	0	0
Gibson	6,892	215	0	0	6,107	0	0
Giles	47,723	261	0	0	47,984	0	0
Grundy	9,714	128	0	0	9,842	0	0
Hamilton	188	23	0	0	211	0	0
Hardeman	719	57	0	0	779	0	0
Hardin	22,910	87	0	0	22,997	0	0
Haywood	4,573	67	0	0	4,954	0	0
Henderson	45,182	103	0	0	45,349	0	0
Henry	4,467	270	0	0	4,736	0	0
Hickman	23	7	0	0	32	0	0
Humphreys	17	6	0	0	23	0	0
Lake	22,105	4	0	0	22,109	0	0
Lauderdale	27,495	82	0	0	27,577	0	0
Lawrence	21,450	187	0	0	21,637	0	0
Lewis	270	47	0	0	317	0	0
Lincoln	14,026	112	0	0	14,138	0	0
London	0	0	0	0	9	0	0
McMinn	737	155	0	0	912	0	0
McNairy	20,941	190	0	0	20,980	0	0
Madison	24,896	177	0	0	24,993	0	0
Marion	267	5	0	0	272	0	0
Marshall	413	58	0	0	471	0	0
Maury	688	63	0	0	751	0	0
Meigs	670	111	0	0	781	0	0
Monroe	250	92	0	0	342	0	0
Montgomery	34	77	0	0	111	0	0
Obion	10,734	80	0	0	10,814	0	0
Perry	196	19	0	0	215	0	0
Polk	885	12	0	0	897	0	0
Rhea	23	5	0	0	28	0	0
Roane	3	0	0	0	3	0	0
Robertson	1	0	0	0	1	0	0
Rutherford	5,122	138	0	0	5,260	0	0
Shelby	45,648	134	0	0	45,782	0	0
Tipton	40,068	96	0	0	40,164	0	0
Van Buren	42	12	0	0	54	0	0
Warren	632	142	0	0	774	0	0
Wayne	3,294	148	0	0	3,442	0	0
Weakley	11,250	266	0	0	11,576	0	0
White	70	21	0	0	91	0	0

TEXAS—Continued

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Dallam	43	1	0	0	44	0	0
Dallas	39,805	13	0	0	39,818	0	0
Dawson	221,638	0	0	0	221,638	0	0
Deaf Smith	11,369	12	0	0	11,381	0	0
Delta	41,437	0	0	0	41,437	0	0
Denton	24,176	25	0	0	24,201	0	0
DeWitt	20,457	27	0	0	20,484	0	0
Dickens	59,324	0	0	0	59,324	0	0
Dimmit	2,439	5	0	0	2,444	0	0
Donley	32,211	0	0	0	32,211	0	0
Duval	15,755	42	0	0	15,797	0	0
Eastland	6,623	153	0	0	6,776	0	0
Ector	231	0	0	0	231	0	0
Ellis	144,686	0	0	0	144,686	0	0
El Paso	27,790	18	0	0	27,808	0	0
Erath	10,346	194	0	0	10,540	0	0
Falls	86,665	0	0	0	86,665	0	0
Fannin	76,666	28	0	0	76,694	0	0
Fayette	33,244	95	0	0	33,339	0	0
Fisher	90,487	0	0	0	90,487	0	0
Floyd	104,536	0	0	0	104,536	0	0
Foard	14,042	0	0	0	14,042	0	0
Fort Bend	65,847	0	0	0	65,847	0	0
Franklin	4,420	44	0	0	4,464	0	0
Freestone	23,618	80	0	0	23,698	0	0
Frio	5,311	5	0	0	5,316	0	0
Gaines	85,368	0	0	0	85,368	0	0
Galveston	37	18	0	0	55	0	0
Garza	44,316	0	0	0	44,316	0	0
Gillespie	1,447	18	0	69	1,534	0	0
Glasscock	11,062	0	0	0	11,062	0	0
Goliad	5,395	10	0	0	5,405	0	0
Gonzales	17,318	34	0	0	17,352	0	0
Gray	4,095	5	0	0	4,100	0	0
Grayson	38,205	41	0	0	38,246	0	0
Gregg	1,692	96	0	0	1,788	0	0
Grimes	17,569	15	0	0	17,584	0	0
Guadalupe	22,908	37	0	0	22,945	0	0
Hale	177,343	0	0	0	177,343	0	0
Hall	104,523	0	0	0	104,523	0	0
Hamilton	11,773	80	0	0	11,853	0	0
Hansford	758	100	0	0	858	0	0
Hardeman	36,530	0	0	0	36,530	0	0
Hardin	53	5	0	0	58	0	0
Harris	4,816	0	0	0	4,816	0	0
Harrison	13,713	352	0	0	14,065	0	0
Hartley	72	25	0	0	97	0	0
Haskell	132,001	0	0	0	132,001	0	0
Hays	8,693	2	0	0	8,695	0	0
Hemphill	1,816	1	0	0	1,817	0	0
Henderson	11,679	181	0	0	11,860	0	0
Hidalgo	209,034	0	0	0	209,034	0	0
Hill	131,077	0	0	0	131,077	0	0
Hockley	203,461	0	0	0	203,461	0	0
Hood	4,097	57	0	0	4,154	0	0
Hopkins	30,657	108	0	0	30,765	0	0
Houston	28,937	15	0	0	28,952	0	0
Howard	81,340	0	0	0	81,340	0	0
Hudspeth	18,700	0	0	0	18,700	0	0
Hunt	100,717	8	0	0	100,725	0	0
Irion	629	2	0	103	734	0	0
Jack	2,197	9	0	0	2,206	p	
Jackson	19,918	0	0	0	19,918	0	0
Jasper	695	194	0	0	889	0	0
Jeff Davis	370	0	0	0	370	0	0
Jefferson	24	1	0	0	25	0	0
Jim Hogg	1,635	5	0	0	1,640	0	0
Jim Wells	25,342	0	0	0	25,342	0	0
Johnson	39,574	0	0	0	39,574	0	0
Jones	119,366	0	0	0	119,366	0	0
Karnes	35,890	10	0	0	35,900	0	0
Kaufman	64,922	16	0	0	64,938	0	0
Kendall	44	4	0	0	48	0	0
Kent	22,610	0	0	0	22,610	0	0
Kerr	98	0	0	0	98	0	0
Kimble	199	20	0	0	219	0	0
King	10,450	0	0	0	10,450	0	0
Kinney	519	0	0	0	519	0	0
Kleberg	9,639	0	0	0	9,639	0	0
Knox	63,800	0	0	0	63,800	0	0
Lamar	64,610	8	0	0	64,618	0	0
Lamb	211,406	0	0	0	211,406	0	0
Lampasas	2,693	30	0	0	2,723	0	0
La Salle	3,460	2	0	0	3,462	0	0
Lavaca	40,623	53	0	0	40,676	0	0
Lee	11,493	90	0	0	11,583	0	0
Leon	13,236	29	0	0	13,265	0	0
Liberty	3,530	18	0	0	3,548	0	0
Limestone	77,954	0	0	0	77,954	0	0
Live Oak	20,597	1	0	0	20,598	0	0
Llano	501	8	0	0	509	0	0
Loving	494	0	0	0	494	0	0
Lubbock	246,701	0	0	0	246,701	0	0
Lynn	202,526	0	0	0	202,526	0	0
McCulloch	18,837	5	0	0	18,842	0	0
McLennan	95,762	0	0	0	95,762	0	0
McMullen	1,441	2	0	0	1,443	0	0
Madison	8,102	41	0	0	8,143	0	0
Marion	2,630	209	0	0	2,839	0	0
Martin	99,487	0	0	0	99,487	0	0
Mason	2,224	39	0	49	2,312	0	0
Matagorda	19,678	0	0	0	19,678	0	0
Maverick	7,409	5	0	0	7,414	0	0
Medina	1,999	59	0	0	2,058	0	0
Menard	1,120	9	0	0	1,129	0	0
Midland	29,274	0	0	0	29,274	0	0
Milam	56,965	0	0	0	56,965	0	0
Mills	3,158	22	0	0	3,180	0	0
Mitchell	76,277	0	0	0	76,277	0	0
Montague	4,486	30	0	0	4,516	0	0
Montgomery	1,612	61	0	0	1,673	0	0
Moore	360	35	0	0	395	0	0
Morris	2,256	94	0	0	2,350	0	0
Motley	37,884	0	0	0	37,884	0	0
Nacogdoches	7,389	204	0	0	7,593	0	0
Navarro	120,164	0	0	0	120,164	0	0
Newton	729	247	0	0	976	0	0
Noland	47,461	0	0	0	47,461	0	0
Nueces	107,593	0	0	0	107,593	0	0
Ochiltree	295	25	0	0	320	0	95
Oldham	75	25	0	0	100	0	26
Palo Pinto	3,665	15	0	0	3,680	0	0
Panola	10,285	382	0	0	10,667	0	0
Parker	4,312	63	0	0	4,375	0	0
Parmer	47,587	0	0	0	47,587	0	0
Pecos	24,347	5	0	0	24,352	0	0
Polk	5,383	24	0	0	5,407	0	0
Potter	128	11	0	0	139	0	0
Presidio	3,444	5	0	0	3,449	0	0
Rains	9,566	33	0	0	9,599	0	0
Randall	1,789	263	0	0	2,052	0	0
Reagan	1,164	1	0	0	1,165	0	0
Real	21	0	0	0	21	0	0
Red River	31,038	22	0	0	31,060	0	0
Reeves	55,973	0	0	0	55,973	0	0
Refugio	13,840	2	0	0	13,842	0	0
Roberts	193	24	0	0	217	0	0
Robertson	28,956	0	0	0	28,956	0	0
Rockwall	22,115	1	0	0	22,116	0	0
Runnels	92,878	0	0	0	92,878	0	0
Rusk	15,242	412	0	0	15,654	0	0
Sabine	3,065	56	0	0	3,121	0	0
San Augustine	7,513	54	0	0	7,567	0	0
San Jacinto	4,840	45	0	0	4,885	0	0
San Patricio	87,116	0	0	0	87,116	0	0
San Saba	8,267	43	0	0	8,310	0	0
Schleicher	10,054	0	0	0	10,054	0	0
Scurry	74,513	0	0	0	74,513	0	0
Schackelford	4,184	4	0	0	4,188	0	0
Shelby	10,105	415	0	0	10,520	0	0
Smith	10,293	541	0	0	10,834	0	0
Somervell	1,689	14	0	0	1,703	0	0
Starr	27,544	18	0	1,665	29,227	0	0
Stephens	1,503	20	0	0	1,523	0	0
Sterling	422	2	0	76	500	0	0
Stonewall	29,517	0	0	0	29,517	0	0
Stutton	18	0	0	0	18	0	0
Swisher	56,659	0	0	0	56,659	0	0
Tarrant	10,932	2	0	0	10,934	0	0
Taylor	38,185	1	0	0	38,186	0	0
Terrell	15	0	0	0	15	0	0
Terry	160,239	0	0	0	160,239	0	0
Throckmorton	12,827	3	0	0	12,830	0	0
Titus	3,985	238	0	0	4,223	0	0
Tom Green	60,103	0	0	0	60,103	0	0
Travis	40,180	0	0	0	40,180	0	0
Trinity	5,810	90	0	0	5,900	0	0
Tyler	582	37	0	0	619	0	0
Upshur	3,700	283	0	0	3,983	0	0
Upton	3	4	0	0	7	0	0
Uvalde	1,330	6	0	0	1,336	0	0
Val Verde	148	0	0	0	148	0	0
Van Zandt	25,528	144	0	0	25,672	0	0
Victoria	27,216	0	0	0	27,216	0	0
Walker	7,186	85	0	0	7,271	0	0
Waller	5,696	9	0	0	5,705	0	0
Ward	11,449	2	0	0	11,451	0	0
Washington	26,231	100	0	0	26,331	0	0
Webb	2,004	2	0	0	2,006	0	0
Wharton	78,347	0	0	0	78,347	0	0
Wheeler	30,874	0	0	0	30,874	0	0
Wichita	6,755	10	0	0	6,765	0	0
Wilbarger	55,338	0	0	0	55,338	0	0
Willacy	100,171	0	0	0	100,171	0	0
Williamson	119,974	0	0	0	119,974	0	0
Wilson	7,264	65	0	0	7,329	0	0
Winkler	12	5	0	0	17	0	2
Wise	3,174	124	0	0	3,298	0	0
Wood	4,764	461	0	0	5,225	0	0
Yoakum	37,033	0	0	0	37,033	0	0
Young	13,133	14	0	0	13,147	0	0
Zapata	2,516	8	0	0	2,524	0	0
Zavala	9,355	2	0	0	9,357	0	0
a. State total	7,835,510	10,686	0	1,986	7,848,182	0	197

b. State reserve available for late and reconstituted farms and correction of errors 817

c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 7,849,196

VIRGINIA

[Acres]

County	Computed county allotment (1)	Allocation from State's share of national reserve (2)	Adjustment from State reserve for: Trends (3)	Adjustment from State reserve for: Abnormal conditions (4)	County allotment, sum of columns (1), (2), (3) and (4) (5)	Allocations from State reserve for: Small farms (6)	Allocations from State reserve for: Inequity and hardship cases (7)
Accomack	16	0	0	0	16.0	0.2	0.2
Appomattox	.1	.1	0	0	1.1	0	0
Brunswick	2,093	55.3	0	0	2,148.3	27.1	27.1
Caroline	4	.2	0	0	4.2	0	0
Charlotte	11	1.3	0	0	12.3	.1	.1
Chesterfield	2	.1	0	0	2.1	0	0
Cumberland	5	.7	0	0	5.7	.1	.1
Dinwiddie	240	8.6	0	0	254.6	3.2	3.2
Franklin	21	.8	0	0	21.8	.3	.3
Greensville	4,467	104.9	0	0	4,571.9	57.8	57.8
Halifax	1	.4	0	0	1.4	0	0
Hanover	1	0	0	0	1.0	0	0
Henrico	0	0	0	0	0	.1	.1
Isle of Wight	281	12.8	0	0	293.8	3.6	3.6
Lunenburg	239	5.5	0	0	244.5	3.1	3.1
Mecklenburg	1,923	50.1	0	0	1,973.1	24.9	24.9
Nansemond	1,596	59.0	0	0	1,655.0	20.6	20.6
Norfolk	30	1.3	0	0	31.3	0.4	0.4
Patrick	1	.2	0	0	1.2	0	0
Prince Edward	7	.5	0	0	7.5	.1	.1
Prince George	65	2.9	0	0	67.9	.8	.8
Princess Anne	7	1.0	0	0	8.0	.1	.1
Southampton	4,691	113.3	0	0	4,804.3	60.6	60.6
Surry	11	.4	0	0	11.4	.1	.1
Sussex	1,684	47.6	0	0	1,731.6	21.8	21.8
a. State total	17,403	467.0	0	0	17,870.0	225.0	225.0

b. State reserve available for late and reconstituted farms and correction of errors 15

c. Total allotment available from national allotment and national reserve for distribution in State (sum of columns (5), (6), and (7), and item b) 18,335

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interprets or applies sec. 344; 63 Stat. 670, as amended; 7 U.S.C. 1344)

Done at Washington, D.C., this 25th day of November 1960.

MARVIN L. MCLAIN,
Acting Secretary.

[F.R. Doc. 60-11118; Filed, Dec. 2, 1960; 8:45 a.m.]

[Amdt. 1]

PART 722—COTTON

Subpart—Regulations Pertaining to Acreage Allotments for the 1961 Crop of Extra Long Staple Cotton

COUNTY ALLOTMENT; ALLOCATIONS TO COUNTIES FROM STATE RESERVE; AND REMAINDER OF STATE RESERVE

Basis and purpose. The purpose of this amendment is to establish county allotments showing components thereof (computed county allotment; adjustments from State reserve for trends and abnormal conditions); allocations to counties from State reserve for small farms, and to correct inequities and prevent hardship; and to establish the remainder of State reserve which is available for allocation to counties for new farms, late and reconstituted farms and correction of errors. The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.), including an amendment under Public Law 86-566 (74 Stat. 295, approved June 30, 1960). Notice of the proposed issuance of acreage allotment regulations for the 1961 crop of extra long staple cotton was published in the FEDERAL REGISTER on August 13, 1960 (25 F.R. 7760) in accordance with section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) prior to issuance of such regulations.

FLORIDA

[Acres]

County	Computed county allotment	Adjustment from State reserve for		County allotment, sum of columns (1), (2), and (3)	Allocations from State reserve for	
		Trends	Abnormal conditions		Small farms	Inequity and hardship cases
	(1)	(2)	(3)	(4)	(5)	(6)
Alachua	78	0	0	78	0	0
Bradford	10	0	0	10	0	0
Hamilton	3	0	0	3	0	0
Jefferson	1	0	0	1	0	0
Lake	64	0	0	64	0	0
Madison	26	0	0	26	0	0
Putnam	108	0	0	108	0	0
Seminole	12	0	0	12	0	0
Sumter	6	0	0	6	0	0
Suwannee	60	0	0	60	0	0
Union	3	0	0	3	0	0
Volusia	53	0	0	53	0	0
	19	0	0	19	0	0
a. State total	442	0	0	442	0	0
b. State reserve available for late and reconstituted farms and correction of errors						49
c. Total allotment available from national allotment for distribution in State (sum of columns (4), (5), and (6), and item b)						491

GEORGIA

	86	0	0	86	0	0
	23	0	0	23	0	0
	3	0	0	3	0	0
a. State total	112	0	0	112	0	0
b. State reserve available for late and reconstituted farms and correction of errors						0
c. Total allotment available from national allotment for distribution in State (sum of columns (4), (5), and (6), and item b)						112

NEW MEXICO

Dona Ana	12,067	0	0	12,067	0	73
Eddy	88	0	0	88	0	5
Lincoln	30	0	0	30	0	2
Otero	17	0	0	17	0	1
Sierra	133	0	0	133	0	5
a. State total	12,355	0	0	12,355	0	86
b. State reserve available for late and reconstituted farms and correction of errors						14
c. Total allotment available from national allotment for distribution in State (sum of columns (4), (5), and (6), and item b)						12,455

TEXAS

Brewster	11	0	0	11	0	0
Culberson	203	0	0	203	0	0
El Paso	15,235	0	0	15,235	0	2
Hudspeth	1,893	0	0	1,893	0	0
Jeff Davis	9	0	0	9	0	0
Loving	321	0	0	321	0	0
Pecos	79	0	0	79	0	0
Presidio	3,655	0	0	3,655	0	0
Reeves	483	0	0	483	0	0
Ward						
a. State total	21,889	0	0	21,889	0	2
b. State reserve available for late and reconstituted farms and correction of errors						0
c. Total allotment available from national allotment for distribution in State (sum of columns (4), (5), and (6), and item b)						21,891

Farmers engaged in the production of extra long staple cotton in 1960 will determine in a referendum to be held on December 13, 1960, whether marketing quotas will be in effect for the 1961 crop of extra long staple cotton. In order that farm allotments may be established as early as possible and notices of individual farm allotments may be mailed, insofar as practicable, so as to be received by farmers prior to the referendum, as required by section 362 of the Agricultural Adjustment Act of 1938, as amended, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

Section 722.466(g) (1) of the regulations pertaining to acreage allotments for the 1961 crop of extra long staple cotton (25 F.R. 9996) is amended to read as follows:

(1) *County allotment showing components thereof; allocations to counties from State reserve for small farms and to correct inequities and prevent hardship; and remainder of the State reserve.* There are set forth below the county allotments showing components thereof (computed county allotments, adjustments from State reserve for trends and abnormal conditions); allocations to counties from State reserve for small farms and to correct inequities and prevent hardship; and the remainder of the State reserve which is available for allocation to counties for new farms, late and reconstituted farms and correction of errors. The State reserve for Arizona, California, Florida, Georgia, New Mexico, Texas, and Puerto Rico, does not include a reserve for new farms.

ARIZONA

[Acres]

County	Computed county allotment	Adjustment from State reserve for		County allotment, sum of columns (1), (2), and (3)	Allocations from State reserve for	
		Trends	Abnormal conditions		Small farms	Inequity and hardship cases
	(1)	(2)	(3)	(4)	(5)	(6)
Cochise	120	0	0	120	0	30
Graham	7,442	0	0	7,442	0	0
Maricopa	11,232	0	0	11,232	0	0
Pima	2,055	0	0	2,055	0	0
Pinal	5,673	0	0	5,673	0	0
Santa Cruz	18	0	0	18	0	0
Yuma	251	0	0	251	0	0
a. State total	26,781	0	0	26,781	0	30
b. State reserve available for late and reconstituted farms and correction of errors						20
c. Total allotment available from national allotment for distribution in State (sum of columns (4), (5), and (6), and item b)						26,831

CALIFORNIA

Imperial	77	0	0	77	2.4	0
Riverside	333	0	0	333	7.6	0
a. State total	410	0	0	410	10.0	0
b. State reserve available for late and reconstituted farms and correction of errors						0
c. Total allotment available from national allotment for distribution in State (sum of columns (4), (5), and (6), and item b)						420

PUERTO RICO

[Acres]

County	Computed county allotment	Adjustment from State reserve for		County allotment, sum of columns (1), (2), and (3)	Allocations from State reserve for	
		Trends	Abnormal conditions		Small farms	Inequity and hardship cases
	(1)	(2)	(3)	(4)	(5)	(6)
North	1,262	0	0	1,262	0	6
South	261	0	0	261	0	2
a. Total	1,523	0	0	1,523	0	8
b. State reserve available for late and reconstituted farms and correction of errors						7
c. Total allotment available from national allotment for distribution in State (sum of columns (4), (5), and (6), and item b)						1,538

(Sec. 375, 52 Stat. 66, as amended, 7 U.S.C. 1375. Interprets or applies secs. 344, 347, 68 Stat. 670, as amended, 675, as amended; 7 U.S.C. 1344, 1347)

Done at Washington, D.C., this 25th day of November 1960.

MARVIN L. MCLAIN,
Acting Secretary.

[F.R. Doc. 60-11117; Filed, Dec. 2, 1960; 8:45 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 195]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 914.495 Navel Orange Regulation 195.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting, the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 1, 1960.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., December 4, 1960, and ending at 12:01 a.m., P.s.t., December 11, 1960, are hereby fixed as follows:

(i) District 1: 900,000 cartons;

(ii) District 2: 227,192 cartons;

(iii) District 3: 75,000 cartons;

(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 2, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11344; Filed, Dec. 2, 1960; 11:17 a.m.]

[Orange Reg. 380]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1035 Orange Regulation 380.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, excluding Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are, except with respect

to the prohibition of shipments recommended for the period December 23–28, 1960, both dates inclusive, identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1178 of this title; 25 F.R. 8211).

(2) During the period beginning at 12:01 a.m., e.s.t., December 5, 1960, and ending at 12:01 a.m., e.s.t., January 2, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, except Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Russet;

(ii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than 2⅝ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos: *Provided,* That in determining the percentage of oranges in any lot which are smaller than 2⅝ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2 1/16 inches in diameter or smaller; or

(iii) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Russet: *Provided,* That such oranges may have slightly rough texture caused only by scarring, and may have scars and discoloration to the extent permitted under the U.S. No. 2 grade.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 1, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11310; Filed, Dec. 2, 1960; 9:06 a.m.]

[Grapefruit Reg. 333]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1036 Grapefruit Regulation 333.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are, except with respect to the prohibition of shipments recommended for the period December 23–28, 1960, both dates inclusive, identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750–51.783 of this title; 25 F.R. 8219).

(2) During the period beginning at 12:01 a.m., e.s.t., December 5, 1960, and ending at 12:01 a.m., e.s.t, January 2, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 1: *Provided,* That such grapefruit may have discoloration to the extent permited under the U.S. No. 2 Russet grade, and may have slightly rough texture caused only by speck type melanose;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than 3 5/16 inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than 3 3/16 inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 1, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11308; Filed, Dec. 2, 1960; 9:06 a.m.]

[Tangerine Reg. 219]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS, GROWN IN FLORIDA

Limitation of Shipments

§ 933.1037 Tangerine Regulation 219.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are, except with respect to the prohibition of shipments recommended for the period December 23–28, 1960, both dates inclusive, identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810–51.1834 of this title; 25 F.R. 8216).

(2) During the period beginning at 12:01 a.m., e.s.t., December 5, 1960, and ending at 12:01 a.m. e.s.t., January 2, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least U.S. No. 1; or

(ii) Any tangerines, grown in the production area, that are of a size smaller than the size that will pack 210 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19⅛ inches; capacity 1,726 cubic inches).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 1, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11311; Filed, Dec. 2, 1960; 9:07 a.m.]

[Tangelo Reg. 25]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1038 Tangelo Regulation 25.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are, except with respect to the prohibition of shipments recommended for the period December 23–28, 1960, both dates inclusive, identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangelos; it is necessary, in order to effectuate the declared policy of the act to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangelos, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1178 of this title; 25 F.R. 8211).

(2) During the period beginning at 12:01 a.m., e.s.t., December 5, 1960, and ending at 12:01 a.m., e.s.t., January 2, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U.S. No. 1 Russet; or

(ii) Any tangelos, grown in the production area, which are of a size smaller than 2⅝ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 1, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11312; Filed, Dec. 2, 1960; 9:07 a.m.]

[Lemon Reg. 875]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.982 Lemon Regulation 875.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part

953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based becomes available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 29, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., December 4, 1960, and ending at 12:01 a.m., P.s.t., December 11, 1960, are hereby fixed as follows:

(i) District 1: 37,200 cartons;

(ii) District 2: 93,000 cartons;

(iii) District 3: 18,600 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: November 30, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11309; Filed, Dec. 2, 1960; 9:06 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER P—MINING

PART 171—LEASING OF TRIBAL LANDS FOR MINING

Administration of Mineral Permits and Leases Covering Minerals

On page 9206 of the FEDERAL REGISTER of November 11, 1959, there was published a notice of intention to add a new section to Title 25 Code of Federal Regulations, Part 171. The purpose of the addition is to provide regulations for administration by the Commissioner of Indian Affairs of those mineral permits and leases which were issued pursuant to 43 CFR prior to the date the minerals were acquired by the Ute Tribe of the Uintah and Ouray Reservation, Utah, under the Act of July 14, 1956 (70 Stat. 546), and the Pueblos of Zia and Jemez, New Mexico, under the Act of August 2, 1956 (70 Stat. 941).

Interested persons were given an opportunity to submit their views, data and arguments concerning the proposed addition within thirty days from the date of publication of the notice. No written communications pertaining to the proposed addition were received.

The proposed addition to the regulations is hereby adopted, without change and is set forth below. This amendment is effective at the beginning of the 30th calendar day following the date of publication in the FEDERAL REGISTER.

ELMER F. BENNETT,
Acting Secretary of the Interior.

NOVEMBER 28, 1960.

Section 171.1a, a new section, is added to read as follows:

§ 171.1a Existing permits or leases on minerals acquired for the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and the Pueblos of Zia and Jemez, New Mexico.

By the Act of July 14, 1956 (70 Stat. 546), title to the minerals underlying certain lands in Utah was vested in the United States in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation and by the Act of August 2, 1956 (70 Stat. 941), title to certain land in New Mexico and the improvements thereon was declared to be in the United States of America in trust for the Pueblos of Zia and Jemez, subject to valid and existing rights. Existing mineral prospecting permits and mining leases on these lands issued pursuant to 43 CFR and all action on the permits and leases shall be administered by the Secretary of the Interior or his authorized representative in accordance with the regulations set forth in Title 43 of the Code of Federal Regulations, except as follows:

(a) Appeals from administrative action shall be made pursuant to applicable regulations set forth in this title.

(b) Payments or reports required by the leases, permits, or regulations in 43 CFR shall be made to the Superintendent having jurisdiction over the land involved instead of the officer of the Bureau of Land Management designated in Title 43 of the Code of Federal Regulations.

[F.R. Doc. 60-11249; Filed, Dec. 2, 1960; 8:47 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-NY-82]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification

On August 19, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8034) stating that the Federal Aviation Agency proposed to realign VOR Federal airway No. 30 from Akron, Ohio, to Clarion, Pa., and realign VOR Federal airway No. 72 from Attica, Ohio, to Youngstown, Ohio.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. In the text of § 600.6030 (14 CFR 600.6030, 25 F.R. 107) "Youngstown, Ohio, omnirange station;" is deleted and "INT of the Akron VOR 092° True and the Clarion VOR 265° True radials;" is substituted therefor.

2. In the text of § 600.6072 (14 CFR 600.6072, 24 F.R. 8491, 25 F.R. 855, 2574, 4376, 3813, 8809) "Cleveland, Ohio, VOR;" is deleted and "Akron, Ohio, VOR;" is substituted therefor.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 28, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11240; Filed, Dec. 2, 1960; 8:46 a.m.]

[Airspace Docket No. 60-WA-213]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Area Extensions

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8823) stating that the Federal Aviation Agency proposed to modify the Peru, Ind., and the Lafayette, Ind., control area extensions.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. Section 601.1258 (14 CFR 601.1258) is amended to read:

§ 601.1258 Control area extension (Lafayette, Ind.).

Within a 25-mile radius of the Purdue University Airport (latitude 40°24'45" N., longitude 86°55'57" W.).

2. Section 601.1405 (14 CFR 601.1405) is amended to read:

§ 601.1405 Control area extension (Peru, Ind.).

Within a 25-mile radius of the Bunker Hill AFB (latitude 40°39'38" N., longitude 86°08'31" W.), excluding the portion which would coincide with the Lafayette, Ind. (§ 601.1258) and the Fort Wayne, Ind. (§ 601.1462), control area extensions; and including the area NW of Peru bounded on the S by the Lafayette control area extension, on the W by VOR Federal airway No. 7, on the N by VOR Federal airway No. 38 and on the E by the Fort Wayne control area extension.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 28, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11238; Filed, Dec. 2, 1960; 8:45 a.m.]

[Airspace Docket No. 60-KC-52]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Area Extension

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8824) stating that the Federal Aviation Agency (FAA) proposed to modify the Rochester, Minn., control area extension.

No adverse comments were received regarding the proposed amendment.

Subsequent to publication of the Notice the FAA has determined that a requirement for the proposed control area extension northeast of the low frequency range no longer exists. Therefore, action is taken herein to eliminate this extension from the description of the control area extension as proposed in the notice.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated herein and in the notice, § 601.1263 (25 F.R. 861) is amended to read:

§ 601.1263 Control area extension (Rochester, Minn.).

Within a 15-mile radius of the Rochester Municipal Airport (latitude 43°54'33" N, longitude 92°29'42" W.); within 5 miles either side of the 209° True radial of the Rochester VOR extending from the 15-mile radius control area extension to 15 miles SW of the VOR.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 28, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11239; Filed, Dec. 2, 1960; 8:45 a.m.]

[Airspace Docket No. 60-KC-55]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 16, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8910) stating that the Federal Aviation Agency proposed to modify the Grand Forks, N. Dak., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2102 (14 CFR 601.2102) is amended to read:

§ 601.2102 Grand Forks, N. Dak., control zone.

Within a 5-mile radius of the Grand Forks International Airport (latitude 47°55'40" N., longitude 97°05'45" W.); within 2 miles either side of the S course of the Grand Forks RR, extending from the 5-mile radius zone to 12 miles S of the RR; within 2 miles either side of the 340° True radial of the Grand Forks VOR, extending from the 5-mile radius zone to the VOR.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 28, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11287; Filed, Dec. 2, 1960; 8:45 a.m.]

[Airspace Docket No. 60-NY-120]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation and Modification of Reporting Points

The purpose of these amendments to § 601.7001 of the regulations of the Administrator is to revoke the Norfolk, Va., VOR as a domestic reporting point and modify the Lithonia, Ga., INT.

Flight progress reports over designated locations, automatically initiated by pilots, will facilitate air traffic management and assist the controller in the performance of his duties. However, due to the continuous modernization of the airway structure, the need for reporting points at particular locations is constantly being revised. The actions taken herein reflect this changing need on the part of air traffic management.

Since these amendments are of a procedural nature and do not assign or reassign the use of navigable airspace, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), the following actions are taken:

In § 601.7001 (14 CFR 601.7001, 25 F.R. 8540), the following changes are made:

1. In the text delete:

Norfolk, Va., VOR.
Lithonia INT: The INT of the McDonough, Ga., VOR 345° True and the Atlanta, Ga., VORTAC 054° True radials.

2. In the text add:

Lithonia INT: The INT of the McDonough, Ga., VOR 345° True and the Atlanta, Ga., VORTAC 063° True radials.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 28, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11243; Filed, Dec. 2, 1960; 8:46 a.m.]

[Airspace Docket No. 60-NY-50]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points, and Modification of Control Area Extension

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8828) stating that the Federal Aviation Agency proposed to revoke, in its entirety, Red Federal airway No. 37, its associated control areas and reporting points, and modify the Roanoke, Va., control area extension.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. In Part 600 (14 CFR Part 600) the following change is made:

§ 600.237 [Revocation]

Section 600.237 *Red Federal airway No. 37 (Roanoke, Va., to Gordonsville, Va.)* is revoked.

2. In Part 601 (14 CFR Part 601) the following changes are made:

§ 601.237 [Revocation]

(a) Section 601.237 *Red Federal airway No. 37 control areas (Roanoke, Va., to Gordonsville, Va.)* is revoked.

§ 601.4237 [Revocation]

(b) Section 601.4237 *Red Federal airway No. 37 (Roanoke, Va., to Gordonsville, Va.)* is revoked.

3. Section 601.1063 (14 CFR 601.1063) is amended to read:

§ 601.1063 Control area extension (Roanoke, Va.).

The airspace S of Roanoke bounded on the N by VOR Federal airway No. 136, on the SE by VOR Federal airway No. 222, and on the W by VOR Federal airway No. 103.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C. on November 28, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11242; Filed, Dec. 2, 1960; 8:46 a.m.]

[Airspace Docket No. 60-NY-53]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points; Revocation and Designation of Control Area Extensions

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8829) stating that the Federal Aviation Agency proposed to revoke, in its entirety, Blue Federal airway No. 29, its associated control areas and reporting points. In addition, the Lynchburg, Va., control area extension would be redesignated and the South Boston, Va., control area extension would be revoked.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. In Part 600 (14 CFR 600) the following change is made:

§ 600.629 [Revocation]

Section 600.629 *Blue Federal airway No. 29 (Raleigh, N.C., to Lynchburg, Va.)* is revoked.

2. In Part 601 (14 CFR 601) the following changes are made:

§ 601.629 [Revocation]

(a) Section 601.629 *Blue Federal airway No. 29 control areas (Raleigh, N.C., to Lynchburg, Va.)* is revoked.

§ 601.4629 [Revocation]

(b) Section 601.4629 *Blue Federal airway No. 29 (Raleigh, N.C., to Lynchburg, Va.)* is revoked.

§ 601.1450 [Revocation]

(c) Section 601.1450 *Control area extenstion (South Boston, Va.)* is revoked.

3. Section 601.1059 (14 CFR 601.1059) is amended to read:

§ 601.1059 Control area extension (Lynchburg, Va.).

Within a 20-mile radius of the Lynchburgh, Va., VOR extending clockwise from VOR Federal airway No. 260 E of Lynchburg to VOR Federal airway No. 143 SW of Lynchburg; within a 15-mile radius of the Lynchburg VOR extending clockwise from VOR Federal airway No. 260 W of Lynchburg to VOR Federal airway No. 143 N of Lynchburg.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on November 28, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11241; Filed, Dec. 2, 1960; 8:46 a.m.]

[Reg. Docket No. 586]

PART 612—AERONAUTICAL FIXED COMMUNICATIONS

Revision of Part

Part 612 contains references to the Civil Aeronautics Administration, Civil Aeronautics Act of 1938, Interstate Airways Communications Stations, Overseas Foreign Aeronautical Communications Stations, and CAA Regional Administrator that are no longer appropriate. In addition it contains language in § 612.1 that is no longer applicable. Therefore, this revision is issued to incorporate all of the previous amendments to Part 612 and to bring the wording of the regulation up-to-date by substituting the words Federal Aviation Agency, Federal Aviation Act of 1958, Flight Service Stations, International Flight Service Stations and FAA Regional Manager where applicable. Section 612.1 is corrected by deleting the last part of the first sentence, which refers to studies by International Civil Aviation Organization and International Telecommunications Union and by substituting Federal Aviation Act of 1958 section references in the last sentence. The ICAO/ITU studies referred to were not completed, therefore, further mention of them is no longer necessary.

Since this revision contains only editorial changes, makes no substantive changes, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary, and good cause exists for making the revised regulation effective immediately.

In consideration of the foregoing, Part 612 of Chapter III of Title 14 of the Code of Federal Regulations is hereby revised as follows to become effective December 3, 1960.

Sec.
612.1 Basis and purpose.
612.2 Acceptability of messages.
612.3 Assessment of fees.
612.4 Methods of payment.
612.5 Priority of transmission.
612.6 Limitation of liability.

AUTHORITY: §§ 612.1 to 612.6 issued under secs. 305, 307(b), 313, 72 Stat. 749, 752; 49 U.S.C. 1346, 1348, 1354; sec. 10, 62 Stat. 453, 49 U.S.C. 1159.

§ 612.1 Basis and purpose.

The purpose of this part is to prescribe the types of messages pertaining to international or overseas aircraft operations which will be accepted for transmission by FAA communications stations and the fees which will be assessed for the transmission of certain types of these messages. The basis for the part is found in sections 305 and 307(b) of the Federal Aviation Act of 1958, and section 10 of the International Aviation Facilities Act of 1948.

§ 612.2 Acceptability of messages.

(a) FAA International Flight Service Stations and FAA Flight Service Stations located in territory (including the states of Alaska and Hawaii) outside the continental United States, will accept for transmission messages regarding international or overseas aircraft operations where such messages are of the following types:

(1) Distress messages and distress traffic.

(2) Messages for the safety of human life.

(3) Flight safety messages comprising:

(i) Air traffic control messages including:

(*a*) Air traffic control messages concerning aircraft in flight or about to depart,

(*b*) Departure messages,

(*c*) Flight plan/departure messages,

(*d*) Arrival messages,

(*e*) Flight plan messages,

(*f*) Flight notification messages,

(*g*) Messages concerning cancellation of flight, and

(*h*) Messages concerning delayed departure.

(ii) Position reports from aircraft.

(iii) Messages originated by an aircraft operating agency of immediate concern to an aircraft in flight or to an aircraft about to depart.

(iv) Meteorological advice of immediate concern to aircraft in flight or to an aircraft about to depart.

(4) Meteorological messages comprising:

(i) Messages containing meteorological forecasts.

(ii) Messages containing exclusively meteorological observations.

(iii) Other meteorological messages exchanged between meteorological offices.

(5) Aeronautical administrative messages comprising:

(i) Messages regarding the operation or maintenance of facilities essential for the safety or regularity of aircraft operation.

(ii) Messages essential to the efficient functioning of aeronautical tele-communication services.

(iii) Messages exchanged between Government Civil Aviation Authorities relating to aircraft operation.

(6) Notices to airmen.

(7) Flight regularity messages comprising:

(i) Messages containing details of the number of passengers and crew, weight of cargo and other data required for weight and balance computation. Other remarks essential to the rapid clearance of the load from the aircraft may be included. These messages shall only be acceptable when addressed to the point of intended landing and to not more than two other addressees concerned in the general area of the route segment of the flight to which the message refers.

(ii) Messages concerning changes in aircraft operating schedules to become effective within 72 hours after the message is filed.

(iii) Messages concerning the servicing of aircraft, when the aircraft is en route or scheduled to depart within 48 hours.

(iv) Messages concerning changes in collective requirements for passengers, crew, and cargo, caused by unavoidable deviations from normal operating schedules and necessary for flight regularity in the case of aircraft en route or about to depart. Individual requirements of passengers or crew are not admissible in this type of message,

(v) Messages concerning nonroutine landings to be made by an aircraft en route or about to depart.

(vi) Messages concerning parts and materials urgently required for the operation of aircraft en route or scheduled to depart within 48 hours.

(vii) Messages concerning the preflight arrangement of air navigation services, and operational servicing for nonscheduled or irregular operations of aircraft, filed within 48 hours of proposed time of departure.

(b) FAA Flight Service Stations located within the continental United States (excluding Alaska and Hawaii) will accept for transmission messages described in paragraph (a) (1) through (6) of this section. In addition, such stations will relay messages described in paragraph (a) or (c) of this section which are originally accepted for transmission at FAA stations located outside the continental United States or are received from foreign stations of the integrated international aeronautical network, and which in normal routing require transit of the continental United States to reach overseas addresses.

(c) Where adequate non-Government communication facilities are not available, FAA International Flight Service Stations, and FAA Flight Service Stations located in territory (including the states of Alaska and Hawaii) outside the continental United States will accept messages, other than those prescribed in paragraph (a) of this section, originated by and addressed to aircraft operating agencies relating to international aircraft operations, overseas aircraft operations, or aircraft operations within a United States territory or possession which, by virtue of their importance, have a direct bearing on the efficient and economic conduct of the day-to-day operations of such agencies, concerning the following:

(1) Messages of the types prescribed in paragraph (a) (7) of this section which do not conform to the time limitations prescribed therein.

(2) Parts, equipment or supplies required for aircraft, air navigation, communication and other essential ground facilities.

(3) Train reservations or hotel accommodations for passengers or agency personnel.

(4) Lost baggage or personal effects.

(5) Tickets or cargo shipments or payment therefor.

(6) Inquiries relative to passenger whereabouts and cargo receipt or delivery.

(7) New or revised passenger or cargo rates.

(8) Crew assignments and similar operations personnel matters to become effective within seven days after the time of the message.

(9) Post-flight reports for routine record purposes.

(10) Publicity messages and special handling of dignitaries.

(11) Reservation messages originated by aircraft operating agencies to secure the space required in transport aircraft.

NOTE: Third party messages or messages addressed to parties other than aircraft operating agencies or their representatives shall not be acceptable.

§ 612.3 Assessment of fees.

(a) No fee shall be assessed for the transmission of a message which is of a type or types specified in § 612.2(a) (1) through (7). A separate fee shall be assessed for the transmission to each addressee of a message which contains, in whole or in part, matter related to any of that described in § 612.2(c).

(b) Transmission of such a message to an addressee may in some cases consist of receipt of the message from a non-FAA communications station and the forwarding of that message without additional use of the FAA communications system. Only one fee per addressee shall be assessed regardless of the number of FAA communications stations through which the message may be sent. Each fee shall be computed on the basis of twenty-five cents for each ten words or portion thereof contained in the text and signature of the message. If delivery of the message involves refiling with a non-FAA communications facility, such refiling will be accomplished on a "Collect" basis at no additional cost to, or assumption of liability by, the FAA. Local tele-communications facilities required for the acceptance or delivery of messages will be provided by the user without expense to the FAA.

NOTE: The Internal Revenue Code provides that there shall be imposed on the

amount paid within the states of the United States, and the District of Columbia, for each telegraph, cable, or radio dispatch or message, a tax equal to (a) fifteen percent of the amount so paid, or (b) ten percent of the amount so paid in the case of an international communication.

(Sec. 3797(a)(9), 53 Stat. 469, sec. 3465(a)(1)(3), 56 Stat. 975; 26 U.S.C. 3797, 3465)

§ 612.4 Methods of payment.

Fees shall be paid in United States dollars to the FAA official in charge of the communications station first transmitting or receiving the message or to any other properly designated FAA official. Deferred payment of fees shall be permitted only where prior written arrangements have been made for such payment on a periodic basis or where prepayment is not practicable in a specific case. Arrangements for the deferred payment of fees may be made with the FAA Regional Manager having jurisdiction over the FAA communications station first transmitting or receiving the message.

§ 612.5 Priority of transmission.

The aeronautical messages of the types stated in § 612.2(a) (1) through (7) shall have priority over messages containing matter described in § 612.2(c).

§ 612.6 Limitation of liability.

The Government shall not be liable for error or delay in the transmission or delivery, or for nondelivery, of any message accepted for transmission under this part, regardless of whether such error, delay, or nondelivery is due to the negligence of any employee of the Government or otherwise, beyond the amount of the fee assessed for the transmission of such message.

Issued in Washington, D.C., on November 28, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-11236; Filed, Dec. 2, 1960; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

PART 121—FOOD ADDITIVES

Subpart A—Definitions and Procedural and Interpretative Regulations

REFUSAL TO EXTEND EFFECTIVE DATE OF STATUTE FOR CERTAIN SPECIFIED FOOD ADDITIVES

The Commissioner of Food and Drugs, pursuant to the authority provided in the Federal Food, Drug, and Cosmetic Act (sec. 6(c), Public Law 85-929; 72 Stat. 1788; 21 U.S.C., note under sec. 342) and delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), hereby refuses to authorize the use in food of safrole, oil of sassafras, dihydrosafrole, and iso-safrole.

Long-term pharmacological studies in the laboratories of the Food and Drug Administration, demonstrated safrole, which is also the principal component of oil of sassafras, to be a carcinogen. The scientific data were carefully reviewed by a group of scientists made up of representatives of government and representatives from a panel recommended by the National Academy of Sciences. This group concluded that safrole is to be classed as a weak hepatic carcinogen. Thus, under the provisions of section 409(b)(3)(a), safrole and oil of sassafras are food additives which may not be the subject of any regulation authorizing their use in foods. Food and Drug Administration studies of dihydrosafrole and iso-safrole demonstrated that they cause liver damage to test animals.

The principal food use of these substances has been in the flavoring of root beer and similar beverages. Representatives of the industry involved were kept advised of the progress of the experimental work, both in the Food and Drug Administration laboratories and in commercial laboratories. As a result, the industry began, months ago, to eliminate the safrole and oil of sassafras from its output. An extensive survey by Food and Drug inspectors covering about 3,200 bottlers and suppliers completed on November 25, 1960 disclosed that neither of these substances is now being used by the industry. The use of dihydrosafrole and iso-safrole has also been eliminated.

Part 121 is amended by adding to Subpart A the following new section:

§ 121.89 Substances refused extension of time for compliance.

On the basis of data before him, the Commissioner cannot find that there is no undue risk to the public health in extending the effective date of the Food Additives Amendment of 1958 as it applies to safrole, oil of sassafras, dihydrosafrole, and iso-safrole. The requests for extensions are denied, and any prior sanction or approval of the use of these articles in food is hereby cancelled.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since the Commissioner is authorized to grant extensions only where he can conclude on reliable scientific evidence that there is no undue risk to the public health. Since there is no reliable basis for reaching that conclusion, a delay in issuance of this order would be contrary to the public interest.

Effective date. This order shall become effective on the date of signature, because there is no adequate scientific basis for extending the effective date of the law beyond that date.

(72 Stat. 1788; 21 U.S.C., note under sec. 342)

Dated: November 30, 1960.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 60-11264; Filed, Dec. 2, 1960; 8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2209]

[Fairbanks 025492]

ALASKA

Withdrawing Lands for Use of Federal Aviation Agency for Air Navigation Purposes

By virtue of the authority vested in the Secretary of the Interior by section 4 of the Act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

Subject to valid existing rights, the following-described lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral-leasing laws, nor the disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended, and reserved for use of the Federal Aviation Agency in the maintenance of air navigation facilities:

UMIAT, ALASKA

From U.S.M. "Able" at 69°22'13.453" N., 152°09'07.330" W., go N. 7°18' W., 78.11 feet, thence
N. 82°42' E., 80.34 feet to runway centerline station 0+00;
S. 7°18' E., 2,500.00 feet to the point of beginning; thence
S. 82°42' W., 6,700.00 feet;
N. 7°18' W., 900.00 feet;
S. 82°42' W., 4,500.00 feet;
N. 7°18' W., 2,600.00 feet;
N. 82°42' E., 19,200.00 feet;
S. 7°18' E., 3,500.00 feet;
S. 82°42' W., 8,000.00 feet to the point of beginning.

The tract described contains 1,449.7 acres.

2. The reservation made by this order shall be subject to the withdrawal made by Executive Order No. 3797-A of February 27, 1923, for oil and gas as Navy Petroleum Reserve No. 4 and to the jurisdiction granted to the Department of the Navy over Naval Petroleum Reserves by the act of August 10, 1956 (70A Stat. 457-462; 10 U.S.C. 7421-7438), and shall take precedence over but not otherwise affect the withdrawal made by Public Land Order No. 82 in connection with the prosecution of the war.

3. There is reserved for the Department of the Navy's Arctic Research Laboratory: (a) A right to use, operate and maintain, and to have rights of ingress to and egress from buildings and other facilities for which said Department may be and remains accountable; (b) access to and use of the airstrip landing field; (c) access to and use of the float landing lagoon; (d) the right to consolidate Arctic Research Laboratory buildings into one general location within the withdrawn area; and, (e) access to and use of existing wells for testing purposes.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

NOVEMBER 28, 1960.

[F.R. Doc. 60-11250; Filed, Dec. 2, 1960; 8:47 a.m.]

[Public Land Order 2210]

[Anchorage 052837]

ALASKA

Partly Revoking Public Land Order No. 797 of January 25, 1952

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Public Land Order No. 797 of January 25, 1952, which excluded the following-described lands from the Chugach National Forest, is hereby revoked so far as it re-withdrew in paragraph 5 thereof, approximately 62,053 acres of the excluded lands for classification:

Beginning at Mile Post 90 on the Alaska Railroad on the North shore of Turnagain Arm in approximate latitude 60°59' N., longitude 149°34'30" W., thence by metes and bounds:

North, 5.90 miles;
East, 13.50 miles;
South, 5.60 miles;
East, 2.20 miles;
South, 5.20 miles to M.P. 71 on the Alaska Railroad;
South, 0.25 mile to mean high tide line Turnagain Arm;
Northwesterly, along mean high tide line Turnagain Arm to a point due south of M.P. 90, Alaska Railroad;
North, 0.12 mile to M.P. 90, the point of beginning.

The tract described contains approximately 76,064 acres.

2. Of the excluded lands, Public Land Order No. 797 provided that the status of 1,270 acres at Indian Creek, 9000 acres at Bird Creek, and 308 acres at Glacier Creek, all as described more particularly in Public Land Order No. 797, would not otherwise be changed until so provided by the issuance of an appropriate order opening the lands to disposition under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended. Except for 378.83 acres described in Small Tract Classification Orders No. 51, 75, and 81, plans for further small tract development in the areas have been abandoned.

3. In the excluded area, Public Land Order No. 797 withdrew (a) 2800 acres for preservation and protection of scenic values, (b) 630 acres for protection of the water supply of the City of Anchorage, and (c) 2.2 acres for airport purposes, all as described in the order, which withdrawals shall remain intact.

4. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the unreserved, unappropriated lands described in paragraphs 1 and 2 of this order, are hereby opened to settlement and to the filing of such applications, selections, and locations as are allowable on unsurveyed lands in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on February 28, 1961, the State of Alaska shall have a preferred right to select the lands in accordance with and subject to the provisions of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), and the regulations in 43 CFR 76.1-18.

(3) All valid applications under the nonmineral public land laws other than any from the State, presented prior to 10:00 a.m. on January 3, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral leasing laws. They will be open to settlement under the Homestead and Alaska Homesite laws, and to location under the United States mining laws, beginning at 10:00 a.m. on February 28, 1961.

5. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

NOVEMBER 28, 1960.

[F.R. Doc. 60-11251; Filed, Dec. 2, 1960; 8:47 a.m.]

[Public Land Order 2211]

[Montana 037251]

MONTANA

Restoration Under Section 24, Federal Power Act

By virtue of the authority contained in section 24 of the act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended, and pursuant to DA-168-Montana issued December 15, 1959, it is ordered as follows:

The following-described lands are hereby opened to application, petition, location and selection under the public land laws, subject to valid existing rights, to the provisions of section 24 of the Federal Power Act, supra, and to the preference rights of application of the State of Montana provided by section 24 of the Federal Power Act and subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852):

PRINCIPAL MERIDIAN

T. 20 N., R. 17 E.,
Sec. 18, SW¼NE¼ and NE¼SE¼.

Containing 80 acres.

Subject to the preference rights of application of the State of Montana, applications received at or before 10:00 a.m. on January 3, 1961, shall be considered as simultaneously filed at that time. Those thereafter received shall be considered in the order of filing, provided, that applications from those having prior existing valid settlement rights, preference rights conferred by existing law or equitable claims subject to allowance and confirmation, will take priority over all other applications.

The lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws by virtue of the act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Billings, Montana.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

NOVEMBER 28, 1960.

[F. R. Doc. 60-11252; Filed, Dec. 2, 1960; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Certain Options

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth below in tentative form are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to provide rules for the tax treatment of certain options, the Income Tax Regulations (26 CFR Part 1) are amended as follows:

PARAGRAPH 1. Paragraph (d)(1) of § 1.61–2 is amended to read as follows:

§ 1.61–2 Compensation for services, including fees, commissions, and similar items.

* * * * *

(d) *Compensation paid other than in cash*—(1) *In general.* If services are paid for other than in money, the fair market value of the property or services taken in payment must be included in income. If the services were rendered at a stipulated price, such price will be presumed, in the absence of evidence to the contrary, to be the fair market value of the compensation received, except in the case of options to purchase stock or other property which are issued as compensation for services (including services performed by employees and services performed by independent contractors). In the case of such options which are not subject to section 421, see paragraph (c) of §§ 1.61–14 and 1.421–6.

PAR. 2. Section 1.61–14 is amended by adding at the end thereof the following new paragraph (c):

§ 1.61–14 Miscellaneous items of gross income.

* * * * *

(c) *Certain options.* There are certain options to purchase stock or other property that are granted as payment of an amount which is includible in gross income and which is not a capital gain. If section 305 or 421 does not apply to such an option, then the time when income is realized by reason of the granting of such option and the amount of such income shall be determined by applying the rules of § 1.421–6. For example, the rules of such section shall be applied to an option which is granted to a person as payment for his services as an independent contractor, or to an option which is granted to a person as part payment for the loan of money or for the entering into of an agreement to loan money.

PAR. 3. Section 1.421–6 is amended to read as follows:

§ 1.421–6 Options to which section 421 does not apply.

(a) *Scope of section.* (1) If an employer or other person grants to an employee or other person for any reason connected with the employment of such employee an option to purchase stock of the employer or other property, and if section 421 is not applicable, then this section shall apply. This section will apply, for example, when an option is not a restricted stock option at the time it is granted (see section 421(d)(1) and § 1.421–2), or when an option is modified so that it no longer qualifies as a restricted stock option (see section 421(e) and § 1.421–4), or when there is a disqualifying disposition of stock acquired by the exercise of a restricted stock option so that section 421 does not apply. When an option is granted for any reason connected with the employment of an employee, this section applies, if section 421 does not apply, irrespective of whether the option is granted by the employer, by a parent or subsidiary of the employer, by a stockholder of any of such corporations, or by any other person, and irrespective of whether the option is granted to the employee, to a member of his family, or to any other person, and irrespective of whether the option is to purchase the stock of the employer, the stock of a parent or subsidiary of the employer, the stock of any other corporation, or to purchase any other property. In addition, paragraph (c) of § 1.61–14 makes the rules of this section applicable in determining the time when certain other options result in the realization of income and the amount of such income.

(2) This section is applicable only to options granted on or after February 26, 1945, except that this section is not applicable to—

(i) Property transferred pursuant to an option exercised before September 25, 1959, if the property is transferred subject to a restriction which has a significant effect on its value, or

(ii) Property transferred pursuant to an option granted before September 25, 1959, and exercised on or after such date, if, under the terms of the contract granting such option, the property to be transferred upon exercise of the option is to be subject to a restriction which has a significant effect on its value and if such property is actually transferred subject to such restriction.

However, if an option granted before September 25, 1959, and on or after February 26, 1945, is sold or otherwise disposed of before exercise, the provisions of this section shall be fully applicable to such disposition.

(3) If an option to which this section applies has a readily ascertainable fair market value when granted, no amount is includible in gross income under this section by reason of the transfer or exercise of such option, irrespective of whether such value was included in income for the taxable year in which the option was granted, and any deduction which is allowable as a result of the granting of such option is allowable only for the taxable year in which the option is granted. Thus, if an option having a readily ascertainable fair market value to which this section applies was granted in a taxable year for which an assessment of deficiency was barred at the time of the adoption of paragraph (c) of this section as a Treasury decision, no amount is includible in gross income under this section by reason of the transfer or exercise of such option. However, if there is a determination to which the rules of sections 1311–1314 apply, there may be an adjustment for the taxable year in which the option was granted.

(b) *Meaning and use of certain terms.* (1) For the purpose of this section, the term "option" includes the right or privilege of a person to purchase property from any person by virtue of an offer continuing for a stated period of time, whether or not irrevocable, to sell such property at a stated price, such person being under no obligation to purchase.

(2) As used in this section, the terms "employee", "employment", and "employer" have reference to the legal and bona fide relationship of employer and employee. For rules applicable to the determination whether the employer-employee relationship exists, see section 3401(c) and the regulations thereunder.

(3) For purposes of applying the rules of this section to the options which are made subject to such rules by paragraph (c) of § 1.61–14—

(i) In the case of options granted to persons performing services for compensation as independent contractors, the term "employee" includes the person who performs such services, the term "employer" includes the person for whom such services are performed, and the term "employment" includes the performance of such services, and

(ii) In the case of options granted as part payment for the loan of money, the term "employee" includes the lender, the term "employer" includes the borrower, and the term "compensation" shall be read as interest.

(c) *Options with a readily ascertainable fair market value.* (1) If there is granted an option to which this section applies and which has a readily ascertainable fair market value (determined in accordance with subparagraphs (2) and (3) of this paragraph) at the time the option is granted, the employee in connection with whose employment such option is granted realizes compensation at such time in an amount equal to the excess, if any, of such fair market value over any amount paid for the option. If an option to which this section applies does not have a readily ascertainable fair market value at the time the option is granted, the time when the compensation is realized and the amount of such compensation shall be determined under paragraph (d) of this section.

(2) Although options may have a value at the time they are granted, that value is ordinarily not readily ascertainable unless the option is actively traded on an established market. If an option is actively traded on an established market, the fair market value of such option is readily ascertainable for purposes of this section by applying the rules of valuation set forth in § 20.2031–2 of this chapter (the Estate Tax Regulations).

(3)(i) When an option is not actively traded on an established market, the fair market value of the option is not readily ascertainable unless the fair market value of the option can be measured with reasonable accuracy. For purposes of this section, if an option is not actively traded on an established market, the option does not have a readily ascertainable fair market value when granted unless the taxpayer can show that all of the following conditions exist:

(*a*) The option is freely transferable by the optionee;

(*b*) The option is exercisable immediately in full by the optionee;

(*c*) The option or the property subject to the option is not subject to any restriction or condition (other than a lien or other condition to secure the payment of the purchase price) which has a significant effect upon the fair market value of the option or such property; and

(*d*) The fair market value of the option privilege is readily ascertainable in accordance with subdivision (ii) of this subparagraph.

(ii) The fair market value of an option includes the value attributable to the option privilege and may include the value attributable to the right to make an immediate bargain purchase of the property subject to the option. If the option provides an option price which is less than the fair market value of the property subject to the option at the time it is granted, an immediate gain may be realized by exercising the option at the bargain price and selling the property so acquired. However, irrespective of whether there is a right to make an immediate bargain purchase of the property subject to the option, the fair market value of the option includes the value of the option privilege. The option privilege is the opportunity to benefit at any time during the period the option may be exercised from any appreciation during such period in the value of the property subject to the option without risking any capital. Therefore, the fair market value of an option is not merely the difference which may exist at a particular time between the option price and the value of the property subject to the option but also includes the value of the option privilege. Accordingly, for purposes of this section, the fair market value of the option is not readily ascertainable unless the value of the option privilege can be measured with reasonable accuracy. In determining whether the value of the option privilege is readily ascertainable, and in determining the amount of such value when such value is readily ascertainable, it is necessary to consider—

(*a*) Whether the value of the property subject to the option can be ascertained;

(*b*) The probability of any ascertainable value of such property increasing or decreasing; and

(*c*) The length of the period during which the option can be exercised.

(d) *Options without a readily ascertainable fair market value.* If there is granted an option to which this section applies, and if the option does not have a readily ascertainable fair market value at the time it is granted, the employee in connection with whose employment the option is granted is considered to realize compensation includible in gross income under section 61 at the time and in the amount determined in accordance with the following rules of this paragraph:

(1) Except as provided in subparagraph (2) of this paragraph, if the option is exercised by the person to whom it was granted, the employee realizes compensation at the time an unconditional right to receive the property subject to the option is acquired by such person, and the amount of such compensation is the difference between the amount payable for the property and the fair market value of the property at the time an unconditional right to receive the property is acquired. An individual has an unconditional right to receive the property subject to the option when his right to receive such property is not subject to any conditions, other than conditions that may be performed by him at any time. Thus, if an individual who has exercised an option has a right to make payment for the property at any time and to receive the property immediately after making such payment, such individual realizes compensation at the time he exercises the option. However, if an individual who has exercised an option is prevented by the terms of the option contract from making payment immediately or from receiving an immediate transfer of the property after making payment, such individual does not realize compensation at the time he exercises the option. Such individual will not realize compensation until he does acquire the right to make payment immediately and to receive an immediate transfer of the property. For purposes of this section, an unconditional right to receive the property subject to the option shall not be considered to have been acquired before the date on which the option is exercised.

(2)(i) If the option is exercised by the person to whom it was granted but, at the time an unconditional right to receive the property subject to the option is acquired by such person, such property is subject to a restriction which has a significant effect on its value, the employee realizes compensation at the time such restriction lapses or at the time the property is sold or exchanged, in an arm's length transaction, whichever occurs earlier, and the amount of such compensation is the lesser of—

(*a*) The difference between the amount paid for the property and the fair market value of the property (determined without regard to the restriction) at the time of its acquisition, or

(*b*) The difference between the amount paid for the property and either its fair market value at the time the restriction lapses or the consideration received upon the sale or exchange, whichever is applicable.

If the property is sold or exchanged in a transaction which is not at arm's length before the time the employee realizes compensation in accordance with this subdivision, any amount of gain which the employee realizes as a result of such sale or exchange is includible in gross income at the time of such sale or exchange, but the amount includible in gross income under this subdivision at the time of the expiration of the restriction on the sale or exchange at arm's length shall be reduced by the amount of gain includible in gross income as a result of the sale or exchange not at arm's length.

(ii) The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (1). On November 1, 1959, X Corporation grants to E, an employee, an option to purchase 100 shares of X Corporation stock at $10 per share. Under the terms of the option, E will be subject to a binding commitment to resell the stock to X Corporation at the price he paid for it in the event that his employment terminates within 2 years after he acquires the stock, for any reason except his death. Evidence of this commitment will be stamped on the face of E's stock certificate. E exercises the option and acquires the stock at a time when the stock, determined without regard to the restriction, has a fair market value of $18 per share. Two years after he acquires the stock, at which time the stock has a

fair market value of $30 per share, E is still employed by X Corporation. E realizes compensation upon the expiration of the 2-year restriction and the amount of the compensation is $600. The $600 represents the difference between the amount paid for the stock ($1,000) and the fair market value of the stock (determined without regard to the restriction) at the time of its acquisition ($1,600), since such value is less than the fair market value of the stock at the time the restriction lapsed ($3,000).

Example (2). Assume, in example (1), that E dies one year after he acquires the stock, at which time the stock has a fair market value of $25 per share. Since the restriction lapses upon E's death, he realizes compensation of $600 ($1,600 less $1,000) and this amount is includible in E's gross income for the taxable year closing with his death.

Example (3). Assume that, pursuant to the exercise of an option not having a readily ascertainable fair market value to which this section applies, an employee acquires stock subject to the sole condition that, if he desires to dispose of such stock during the period of his employment, he is obligated to offer to sell the stock to his employer at its fair market value at the time of such sale. Since this condition is not a restriction which has a significant effect on value, the employee realizes compensation upon acquisition of the stock.

Example (4). Assume, in example (3), that the employee is obligated to offer to sell the stock to his employer at its book value rather than at its fair market value. Since this condition amounts to a restriction which has a significant effect on value, the employee does not realize compensation upon acquisition of the stock, but he does realize such compensation upon the lapse of the restriction, such as, for example, his death or the termination of his employment.

(3) If the option is not exercised by the person to whom it was granted, but is transferred in an arm's length transaction, the employee realizes compensation in the amount of the gain resulting from such transfer of the option, and such compensation is includible in his gross income in accordance with his method of accounting.

(4) If the option is not exercised by the person to whom it was granted, but is transferred in a transaction which is not at arm's length, the employee realizes compensation in the amount of the gain resulting from such transfer of the option, and such compensation is includible in his gross income in accordance with his method of accounting. Moreover, the employee realizes additional compensation at the time and in the amount determined under subparagraph (1), (2), or (3) of this paragraph, except that the amount of compensation determined under subparagraph (1), (2), or (3) of this paragraph shall be reduced by any amount previously includible in gross income as a result of such transfer of the option. For example, if in 1960 an employee is granted an option not having a readily ascertainable fair market value to buy a share of stock for $50 at a time when the stock has a fair market value of $100, and later in 1960 the employee transfers, in a transaction not at arm's length, the option to his wife for $10, the employee realizes compensation of $10 in 1960. If in 1961 the wife exercises the option at a time when the stock has a fair market value of $120, the employee realizes additional compensation in 1961 in the amount of $60 (the $70 bargain spread less the $10 taxed as compensation in 1960). For the purpose of this subparagraph, if a person other than the employee dies holding an unexercised option at a time when the employee is still living, the transfer which results by reason of the death of such person is a transfer in a transaction which is not at arm's length.

(5) If there is granted an option to which this section applies, and the employee dies before realizing the compensation in accordance with the rules of this paragraph, income having the character of compensation is realized at the time and in the amount determined under this paragraph by the person who transfers or exercises the option, or the person who receives the property subject to a restriction which has a significant effect on its value. For example, this subparagraph is applicable:

(i) When an option not having a readily ascertainable fair market value is granted to an employee, and he dies before transferring or exercising the option,

(ii) When an option not having a readily ascertainable fair market value is granted to the employee, and he dies after the transfer of the option in a transaction which is not at arm's length, but before the option is exercised, or

(iii) When an option not having a readily ascertainable fair market value is granted to another person, and the employee dies before realizing all of the compensation which would result from any transfer or exercise of the option. If the option is one which was granted to the employee and he dies before transferring or exercising the option, the option shall be considered a right to receive income in respect of a decedent to which the rules of section 691 apply. In any such case, if the option is transferred, section 691 provides that the amount received for such transfer or the fair market value of the property transferred at the time of transfer, whichever is greater, is income realized at the time of such transfer. Moreover, if a transfer is subject to this rule, it will be treated as a transfer in an arm's length transaction for the purpose of this paragraph.

(6) If an option to which this section applies is exercised in part and transferred in part, the rules of this paragraph shall be applied as if there were two options—one exercised and one transferred.

(7) Notwithstanding the other provisions of this paragraph, if this section is applicable because of a disqualifying disposition of stock acquired by the exercise of a restricted stock option, the taxable year of the employee for which he is required to include in his gross income the compensation resulting from such option is determined under section 421 (f) and paragraph (e) of § 1.421–5.

(e) *Basis.* (1) If an option to which this section applies is exercised by the person to whom it was granted, such person's basis for the property so acquired shall be increased by any amount that is includible in the gross income of the employee under paragraph (d) of this section. If such person transfers such property to a person whose basis is the same as the transferor's basis, such transferee's basis shall also reflect the adjustment made by this paragraph. However, if such property is transferred by either of such persons at death so that its basis is determined under section 1014, the basis so determined shall not be increased by reason of this paragraph.

(2) If an option to which this section applies is transferred in a transaction which is not at arm's length, the transferee who exercises the option shall increase his basis for the property so acquired by any amount that is includible in the gross income of the employee at the time such transferee acquires the property.

(3) If an option to which this section applies is transferred in a transaction which is at arm's length, the basis of the property acquired by an exercise of the option shall not be increased by reason of any amount that is includible in the gross income of the employee under this section.

(4) If an option to which this section applies has a readily ascertainable fair market value at the time it is granted, the basis of such option includes any amount includible in gross income of the employee under paragraph (c) of this section.

(f) *Deductions.* If the employer grants an option to which this section applies, the employer of the employee in connection with whose employment the option is granted is considered to have paid compensation to such employee at the same time and in the same amount as such employee is considered under paragraph (c) or (d) of this section to have realized compensation. The deductibility of the amount considered so paid is determined under section 162 or other provision of the Code which is applicable to such a payment. Whether such amount may be deducted in the taxable year considered so paid, or whether such amount is a capital expenditure which is not deductible or which may be amortized, depends upon the nature of the transaction involved and the facts and circumstances of each case. If this section is applicable because of a disqualifying disposition of stock acquired by the exercise of a restricted stock option, the employer's taxable year for which such compensation is deductible is determined under section 421(f) and paragraph (e) of § 1.421–5.

[F.R. Doc. 60–11260; Filed, Dec. 2, 1960; 8:48 a.m.]

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Stock Options

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) relating to sections 421 and 1014 of the Internal Revenue Code of 1954 to the Act of February 11, 1958 (Public Law 85–320, 72 Stat. 4), and sections 25 and 26 of the Technical Amendments Act of 1958 (72 Stat. 1623, 1624), such regulations are amended as follows:

PARAGRAPH 1. Section 1.421 is amended by revising section 421(a), by revising section 421(d)(1)(A)(ii), by adding a subparagraph (C) to section 421(d)(6), by adding a paragraph (7) to section 421(d), and by adding a historical note. These amended and added provisions read as follows:

§ 1.421 Statutory provisions; employee stock options.

SEC. 421. *Employee stock options*—(a) *Treatment of restricted stock options.* If a share of stock is transferred to an individual pursuant to his exercise after 1949 of a restricted stock option, and no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 6 months after the transfer of such share to him—

(1) No income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) No deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable, with respect to the share so transferred; and

(3) No amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

This subsection and subsection (b) shall not apply unless (A) the individual, at the time he exercises the restricted stock option, is an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary of such corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable, or (B) the option is exercised by him within 3 months after the date he ceases to be an employee of such corporations. In applying paragraphs (2) and (3) of subsection (d) for purposes of the preceding sentence, there shall be substituted for the term "employer corporation" wherever it appears in such paragraphs the term "grantor corporation", or the term "corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable", as the case may be.

* * * * *

(d) *Definitions.* * * *

(1) *Restricted stock option.* * * *

(A) * * *

(ii) In the case of a variable price option, the option price (computed as if the option had been exercised when granted) is at least 85 percent of the fair market value of the stock at the time such option is granted; and

* * * * *

(8) *Exercise by estate.* * * *

(C) *Basis of shares acquired.* In the case of a share of stock acquired by the exercise of an option to which subparagraph (A) applies—

(i) The basis of such share shall include so much of the basis of the option as is attributable to such share; except that the basis of such share shall be reduced by the excess (if any) of the amount, which would have been includible in gross income under subsection (b) if the employee had exercised the option and held such share at the time of his death, over the amount which is includible in gross income under subsection (b); and

(ii) The last sentence of subsection (b) shall apply only to the extent that the amount includible in gross income under such subsection exceeds so much of the basis of the option as is attributable to such share.

(7) *Variable price option.* The term "variable price option" means an option under which the purchase price of the stock is fixed or determinable under a formula in which the only variable is the fair market value of the stock at any time during a period of 6 months which includes the time the option is exercised; except that in the case of options granted after September 30, 1958, such term does not include any such option in which such formula provides for determining such price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised.

[Sec. 421 as amended by sec. 1, Act of February 11, 1958 (Pub. Law 85–320, 72 Stat. 4); secs. 25 and 26, Technical Amendments Act 1958 (72 Stat. 1623, 1624)]

PAR. 2. Paragraph (d)(2) of § 1.421–1 is amended to read as follows:

§ 1.421–1 Meaning and use of certain terms.

* * * * *

(d) *Option price.* * * *

(2)(i) With respect to its option price, a restricted stock option must, when granted, meet either of the following requirements:

(*a*) The option price must be fixed or determinable at the time the option is granted; or

(*b*) In the case of an option exercised during any taxable year of the optionee which begins after December 31, 1953, and ends after August 16, 1954, the option price must be determinable under a variable price option as defined in subdivision (ii) of this subparagraph.

An option which does not meet the requirements of either (*a*) or (*b*) of this subdivision when granted will not be treated as a restricted stock option unless it is subsequently changed to meet such requirements. In case of such a change, see paragraph (c)(2) of § 1.421–4.

(ii) (*a*) The term "variable price option" means an option under which the option price is determined by a formula in which the only variable is the fair market value of the stock at any time during a period of six consecutive months which includes the day on which such option is exercised. Except as provided in (*b*) of this subdivision, such formula may provide for determining such price by reference to such value on any particular day in such 6-month period, or by reference to an average value of the stock over either the whole of such 6-month period or over any shorter period included in such 6-month period. Such 6-month period may begin with, end with, or in any other manner span the day on which such option is exercised. Such formula may also depend upon factors other than such value of the stock, but such other factors must not be variable and must be fixed in the option when granted. For example, such formula may provide that the option price shall be 85 percent of the value of the stock on the day the option is exercised, but such price shall not be less than $85, nor more than $110. Another example of a formula which meets the requirements of this subdivision is a provision that the option price shall be 95 percent of the fair market value of the stock on the day the option is exercised but not more than $95. However, the requirements of this subdivision are not met by a formula which provides that if the profits of the employer for the year do not exceed $100,000, the option price shall be $15 under the fair market value of the stock at the time the option is exercised, but if such profits exceed $100,000, the option price shall be $20 under such value of the stock. For an example of how to determine whether an option which contains a formula meeting the requirements of this subdivision also meets the requirement that the option price must be at least 85 percent of the fair market value of the stock at the time the option is granted, see paragraph (a)(1) of § 1.421–2.

(*b*) In the case of an option granted after September 30, 1958, the term "variable price option" does not include any option in which the formula provides for determining the option price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised. Whether an option meets the requirement of this subdivision shall be determined solely by reference to the terms of the option, and the circumstances existing at the time the option is granted or exercised are immaterial. Thus, an option, granted after September 30, 1958, and containing a pricing formula which takes into consideration the value of the stock at any time before the option is exercised, is subject to the new

limitation and does not meet the requirement of this subdivision, even though the option price is not actually based upon such prior fair market value either at the time the option is exercised or at the time the option price is computed as if it were exercised for the purpose of applying the 85 percent test of section 421(d)(1)(A). For example, a formula which provides that the option price is to be 45 percent of the fair market value of the stock 30 days before the date on which the option is exercised, but not more than $85, will not qualify under this subdivision since under this formula the price may be determinable by reference to a higher prior value. On the other hand, a formula which provides that the option price is to be 90 percent of the average value of the stock during the month the option is exercised or the average value of the stock during the preceding month, whichever is lower, will qualify. In the case of an option granted after September 30, 1958, the only way that a formula which provides for determining the option price by reference to the fair market value of the stock at a time before the option is exercised can come within the requirement of this subdivision is to provide that the option price is to be determined by reference to such fair market value only if such fair market value is not greater than the average fair market value of the stock during the month in which the option is exercised. If under the terms of an option the price is to be determined by reference to the fair market value of the stock at a time before the option is exercised, whether such value is higher or lower than the average fair market value of the stock during the month the option is exercised, such option will not be considered a restricted stock option since the option price may be based upon the prior value of the stock when such value exceeds the average fair market value of the stock during the month the option is exercised. However, if an option provides for determining the option price by reference to a prior fair market value of the stock only when such value is lower than such average value of the stock, such option can qualify as a restricted stock option. The average fair market value of the stock during the month in which the option is exercised means such value during the calendar month the option is exercised and not merely during a 30- or 31-day period including the time the option is exercised. To compute the average fair market value of the stock for the month, it will be necessary to ascertain the fair market value of the stock for each day during the month, including those days which are not business days. In ascertaining the fair market value of the stock for each day, the generally accepted principles for ascertaining such value will be applied.

PAR. 3. Paragraph (a)(1) of § 1.421–2 is amended to read as follows:

§ 1.421–2 Restricted stock option.

(a) *In general.* (1) A "restricted stock option" is an option granted after February 26, 1945, to an individual, for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but, except in the case of options described in subparagraph (2) of this paragraph, only if—

(i) At the time such option is granted the option price is at least 85 percent of the fair market value at such time of the stock subject to the option; and

(ii) Such option by its terms is not transferable by such individual otherwise than by will or by the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(iii) Such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock either of the employer corporation or of its parent or subsidiary corporation; and

(iv) In the case of options granted after June 21, 1954, such option by its terms is not exercisable after the expiration of ten years from the date on which such option was granted.

For the purpose of applying the rule of subdivision (i) of this subparagraph if the option price is determined by a formula described in paragraph (d)(2)(ii) of § 1.421–1, the option price shall, notwithstanding any provision of the option, be computed as if such option is exercised on the day when it is granted. For example, if on June 15, 1959, an option is granted providing that the option price shall be $10 under the average fair market value of the stock during the month in which the option is exercised or the average fair market value of the stock during the preceding month, whichever is lower, and if on June 15, 1959, the value of the stock subject to the option is $100 a share, to determine if the option meets the requirement of subdivision (i) of this subparagraph, it is necessary to determine the average fair market value of the stock during the months of May and June 1959. If such lower average fair market value is $95 or more, the option meets the requirement of subdivision (i) of this subparagraph.

PAR. 4. Paragraph (b) of § 1.421–3 is amended by revising subparagraph (1) and adding example (3) to subparagraph (2). These amended and added provisions read as follows:

§ 1.421–3 Exercise of restricted stock option.

* * * * *

(b) (1) Section 421 is applicable to the exercise of a restricted stock option only if at the time the individual exercises the option he is a bona fide employee of the corporation granting the option, or of a corporation which is at the time the option is exercised a parent or subsidiary of such corporation, unless the old option has been assumed or a new option has been issued in its place under section 421(g). See paragraph (d) of § 1.421–4. In case of such an assumption of the old option or such issuance of a new option, the individual exercising the option must, at the time he exercises the option, be a bona fide employee of the corporation so assuming or issuing the option, or a parent or subsidiary of such corporation. Section 421 is also applicable if the individual exercising the option was a bona fide employee of any of such corporations within three months before the exercise of the option. For purposes of determining whether an individual meets the requirement of this subparagraph, the term "employer corporation", as used in section 421(d)(2) and (3), shall be read as "grantor corporation" or "corporation issuing or assuming a stock option in a transaction to which section 421(g) is applicable", as the case may be. Therefore, for purposes of the employment requirement, the determination of whether a corporation is a parent corporation or a subsidiary corporation is based upon whether the corporation is a parent or subsidiary of the corporation granting an option or of a corporation which issued or assumed an option under section 421(g).

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following examples:

* * * * *

Example (3). Assume that P Corporation which owns all of the stock of S Corporation grants a restricted stock option to E, an employee of S Corporation. If E exercises the option, section 421 is applicable since E is employed by a corporation which is a subsidiary of the corporation which granted the restricted stock option.

PAR. 5. Section 1.421–5 is amended by revising paragraph (b)(1)(i) and (2), by revising the example in paragraph (d)(3)(ii), and by adding a subparagraph (4) to paragraph (d). These amended and added provisions read as follows:

§ 1.421–5 Operation of section 421.

* * * * *

(b) *Additional rules applicable where the option price is between 85 percent and 95 percent of the value of the stock*—(1) *In general.* (i) If all the conditions necessary for the application of section 421(a) exist, section 421(b) provides additional rules which are applicable in cases where, at the time the restricted stock option is granted, the option price per share is less than 95 percent (but not less than 85 percent) of the fair market value of such share. In such case, upon the disposition of such share by the individual after the expiration of the 2-year and the 6-month periods, or upon his death while owning such share (whether occurring before or after the expiration of such periods), there shall be included in the individual's gross income as compensation (and not as gain upon the sale or exchange of a capital asset) an amount determined in the following manner. If the option qualified under section 421(d)(1)(A)(i) (see paragraph (d)(2)(i)(a) of § 1.421–1), such amount shall be the amount, if any, by which the option price is exceeded by the lesser of the fair market value of the share at the time the option was granted or the fair market value of the share at the time of such disposition or death.

However, if the option qualified under section 421(d)(1)(A)(ii) (see paragraph (d)(2)(i)(b) of § 1.421–1), such amount shall be whichever of the following amounts is lesser:

* * * * *

(2) *Basis.* If the special rules provided in section 421(b) are applicable to the disposition of a share of stock by an individual, the basis of such share in the individual's hands at the time of such disposition, determined under section 1011, shall be increased by an amount equal to the amount includible as compensation in his gross income under section 421(b). However, in the case of a share of stock acquired by the exercise of a restricted stock option after the death of the employee to whom the option was granted, the basis of such share shall be determined in accordance with the rules of paragraph (d)(4) of this section. If the special rules provided in section 421(b) are applicable to a share of stock upon the death of an individual, the basis of such share in the hands of the estate or the person receiving the stock by bequest or inheritance shall be determined under section 1014, and shall not be increased by reason of the inclusion upon the decedent's death of any amount in his gross income under section 421(b). See example (9) of this paragraph with respect to the determination of basis of the share in the hands of a surviving joint owner.

* * * * *

(d) *Exercise after death.* * * *

(3) * * *

(ii) The application of subdivision (i) may be illustrated by the following example:

Example. On June 1, 1953, E was granted a restricted stock option to purchase for $85 one share of the stock of his employer. On such day, the fair market value of such stock was $100 a share. E died on February 1, 1954, without having exercised such option. The option was, however, exercisable by his estate, and for purposes of the estate tax was valued at $30. On March 1, 1955, the estate exercised the option, and on March 15, 1955, sold for $150 the share of stock so acquired. For its taxable year including March 15, 1955, the estate is required by section 421(b) to include in its gross income as compensation the amount of $15. During such taxable year, no amounts of income were properly paid, credited, or distributable to the beneficiaries of the estate. However, under section 421(d)(6)(B), the estate is entitled to a deduction determined in the following manner. E's estate includes no other items of income in respect of a decedent referred to in section 691(a), and no deductions referred to in section 691(b), so that the value for estate tax purposes of the restricted stock option, $30, is also the net value of all items of income in respect of the decedent. The estate tax attributable to the inclusion of the restricted stock option in the estate of E is $10. Since $15, the amount includible in gross income by reason of section 421(b), is less than the value for estate tax purposes of the option, only 15/30 of the estate tax attributable to the inclusion of the option in the estate is deductible; that is, 15/30 of $10, or $5. No deduction under section 421(d)(6)(B) is allowable with respect to any capital gain.

(4)(i) In the case of an employee dying before January 1, 1957, the basis of any share of stock acquired by the exercise of the option under this paragraph, determined under section 1011, shall be increased by an amount equal to the amount includible as compensation in his gross income under section 421(b). The basis of the share shall not be increased by reason of the inclusion of the value of the restricted stock option in the estate for estate tax purposes.

(ii)(a) In the case of an employee dying after December 31, 1956, the basis of any share of stock acquired by the exercise of the option under this paragraph, determined under section 1011, shall be increased by an amount equal to the portion of the basis of the option attributable to such share. For example, if a restricted stock option to acquire 10 shares of stock has a basis of $100, the basis of one share acquired by a partial exercise of the option, determined under section 1011, would be increased by 1/10th of $100, or $10. The option acquires a basis, determined under section 1014(a), only if it is exercised in accordance with section 421. Therefore, to the extent the option is so exercised, in whole or in part, it will acquire a basis equal to its fair market value at the date of the employee's death or, if an election is made under section 2032, its value at its applicable valuation date. In certain cases, the basis of the share is subject to the adjustments provided by (b) and (c) of this subdivision, but such adjustments are only applicable in the case of an option which is subject to section 421(b).

(b) If the amount which would have been includible in gross income under section 421(b) had the employee exercised the option and held the share at the time of his death exceeds the amount which is includible in gross income under section 421(b), the basis of the share, determined under (a) of this subdivision, shall be reduced, by such excess. For example, if $15 would have been includible in the gross income of the employee had he exercised the option and held such share at the time of his death, and only $10 is includible under section 421(b), the basis of the share, determined under (a) of this subdivision, would be reduced by $5. For purposes of determining the amount which would have been includible in gross income under section 421(b) if the employee had exercised the option and held such share at the time of his death, the amount which would have been paid for the share shall be computed as if the option had been exercised on the date the employee died.

(c) If the amount includible in gross income under section 421(b) exceeds the portion of the basis of the option attributable to the share, the basis of the share, determined under (a) of this subdivision, shall be increased by such excess. Thus, if $15 is includible in gross income under section 421(b), and the basis of the option with respect to the share is $10, the basis of the share, determined under (a) of this subdivision, will be increased by $5.

(iii) If a restricted stock option is not exercised by the estate of the individual to whom the option was granted, or by the person who acquired such option by bequest or inheritance or by reason of the death of such individual, the option shall be considered to be property which constitutes a right to receive an item of income in respect of a decedent to which the rules of sections 691 and 1014(c) apply.

(iv) The application of this subparagraph may be illustrated by the following examples:

Example (1). On June 1, 1954, the X Corporation granted to E, an employee, a restricted stock option to purchase a share of X Corporation's stock for $85. The fair market value of the X Corporation stock on such date was $100 per share. On June 1, 1955, E died. The fair market value of X Corporation stock on such date exceeded $100 per share and the fair market value of the option on the applicable valuation date was $35. On August 1, 1956, the estate of E exercised the option and sold the share of X Corporation stock at a time when the fair market value of the share was $90. The estate is required by section 421(b) to include $5 in its gross income as compensation. Since E died before January 1, 1957, the basis of the share is $90 (the $85 paid for the stock plus the $5 includible in gross income as compensation), and the basis of the share is not increased by reason of the inclusion of the value of the option in the estate of E (see section 1014(d)). Thus, no gain or loss is realized on the disposition of the share since the basis of the share is equal to the sale price.

Example (2). On June 1, 1956, the X Corporation granted to E, an employee, a restricted stock option to purchase a share of X Corporation stock for $85. The fair market value of X Corporation stock on such date was $100 per share. On June 1, 1957, E died. The fair market value of X Corporation stock on such date exceeded $100 per share and the fair market value of the option on the applicable valuation date was $35. On August 1, 1958, the estate of E exercised the option and sold the share of X Corporation stock at a time when the fair market value of the share was $120. The basis of the share is $120 (the $85 paid for the stock plus the $35 basis of the option). When the share is sold for $120, the estate is required to include $15 in its gross income as compensation. Since $15 would have been includible in E's gross income if he had exercised the option and held such share at the time of his death, subdivision (ii)(b) of this subparagraph does not apply. Moreover, since the $15 includible in the gross income of the estate does not exceed the basis of the option ($35), subdivision (ii)(c) of this subparagraph does not apply. Since the basis of the stock and the sale price are the same, no gain or loss is realized by the estate on the disposition of the share.

Example (3). Assume the same facts as in example (2), except that the fair market value of the share of stock at the time if its sale was $90. The basis of the share, determined under subdivision (ii)(a) of this subparagraph, is $120 (the $85 paid for the stock plus the $35 basis of the option). When the share is sold for $90, the estate is required to include $5 in its gross income as compensation. If the employee had exercised the option and held the share at the time of this death, $15 would have been includible in gross income as compensation for the taxable year ending with his death. Since such amount exceeds by $10 the amount which the estate is required to include in its gross income, subdivision (ii)(b) of this subparagraph applies, and the basis of the share ($120), determined under subdivision (ii)(a) of this subparagraph is reduced by $10. Accordingly, the basis is $110, and a capital loss of $20 is realized on the disposition of the share.

Example (4). Assume the same facts as in example (2), except that the fair market value of the option on the applicable valuation date was $5, and that the fair market value of X Corporation stock on the date the employee died did not exceed $100. The basis of the share, determined under subdivision (ii) (*a*) of this subparagraph, is $90 (the $85 paid for the stock plus the $5 basis of the option). When the share is sold for $120, the estate is required to include $15 in its gross income as compensation. Since such amount exceeds by $10 the basis of the option, subdivision (ii) (*c*) of this subparagraph applies, and the basis of the share ($90), determined under subdivision (ii) (*a*) of this subparagraph, is increased by $10. Accordingly, the basis is $100 and a capital gain of $20 is realized on the disposition of the share.

Example (5). Assume the same facts as in example (2), except that on June 1, 1957, the date the employee died, the fair market value of X Corporation stock was $98, and that on June 1, 1958, the alternate valuation date, the fair market value of the stock had declined substantially, and the fair market value of the option was $5. On August 1, 1958, the estate of E exercised the option and sold the share when its fair market value was $92. The basis of the share, determined under subdivision (ii) (*a*) of this subparagraph, is $90 (the $85 paid for the stock plus the $5 basis of the option). When the share is sold for $92, the estate is required to include $7 in its gross income as compensation. Since $13 would have been includible in E's gross income if he had exercised the option and held such share at the time of his death, subdivision (ii) (*b*) of this subparagraph applies, and the basis of the share ($90), determined under subdivision (ii) (*a*) of this subparagraph, is reduced by $6 to $84. Furthermore, since the $7 that the estate is required to include in its gross income when the share is sold for $92 exceeds by $2 the basis of the option, subdivision (ii) (*c*) of this subparagraph applies, and the basis of the share ($84), determined under subdivision (ii) (*a*) and (ii) (*b*) of this subparagraph, is increased by $2. Accordingly, the basis is $86 and a capital gain of $6 is realized on the disposition of the share.

PAR. 6. Section 1.1014 is amended by striking out subsection (d) of section 1014 and by adding a historical note. This amended provision and historical note read as follows:

§ 1.1014 Statutory provisions; basis of property acquired from a decedent.

SEC. 1014. *Basis of property acquired from a decedent.* • • •

(d) [Deleted]

[Sec. 1014 as amended by sec. 2, Act of February 11, 1958 (Pub. Law 85-320, 72 Stat. 5)]

PAR. 7. Paragraph (c) (2) of § 1.1014 is amended to read as follows:

§ 1.1014-1 Basis of property acquired from a decedent.

• • • • • •

(c) *Property to which section 1014 does not apply.* • • •

(2) Restricted stock options described in section 421 which the employee has not exercised at death if the employee died before January 1, 1957. In the case of employees dying after December 31, 1956, see paragraph (d) (4) of § 1.4215.

[F.R. Doc. 60-11258; Filed, Dec. 2, 1960; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 71-78, 197]

[Docket No. 3666;[1] Notice 46]

TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES

Notice of Proposed Rule Making

NOVEMBER 29, 1960.

Existing regulations governing the transportation of explosives and other dangerous articles by motor vehicle were prescribed under authority of the Transportation of Explosives Act (18 U.S.C. 835) as regards common carriers by motor vehicle, and under authority of the Interstate Commerce Act (49 U.S.C. 304) as regards contract and private carriers by motor vehicle. This notice proposes to prescribe the regulations relating to contract and private carriers by motor vehicle under the Transportation of Explosives Act as amended September 6, 1960, instead of under the Interstate Commerce Act.

The Transportation of Explosives Act provides heavier penalties for violations of its provisions and of regulations thereunder than does Part II of the Interstate Commerce Act. The legislative history of the Act which amended the Transportation of Explosives Act indicates that one of the reasons for the amendment was to bring about uniformity in penalties whether common, contract, or private carriage be involved. This will be accomplished by the changes proposed in this notice. Other changes in the regulations may be proposed at a later date to implement the amended provisions of the Act. If so, a separate notice of proposed rule making will be issued.

Accordingly, notice is hereby given of the Commission's proposal to enter an order setting forth:

(1) That all the then effective provisions of Title 49 Code of Federal Regulations Parts 71 through 78, Regulations for Transportation of Explosives and Other Dangerous Articles, and of Title 49 Code of Federal Regulations Part 197, Transportation of Explosives and Other Dangerous Articles by Motor Vehicle, insofar as they relate to contract carriers by motor vehicle and private carriers of property by motor vehicle, and to shippers by such carriers, are thereafter prescribed under the Transportation of Explosives Act, as amended (18 U.S.C. 834), and not under the Interstate Commerce Act, as amended (49 U.S.C. 304);

(2) That the authority statements in those parts shall be amended to reflect this change; and

(3) That the two bracketed paragraphs following the authority statement in Part 73 and the three bracketed paragraphs following the authority statements in Part 77 shall be amended, without change in Note 1 thereto, to read:

[The regulations in Parts 71-78 of this chapter are applicable to every common and contract carrier by motor vehicle and every private carrier of property by motor vehicle subject to the regulatory provisions of sections 831-835, 62 Stat. 738, 74 Stat. 808; 18 U.S.C. 831-835.

Private carriers of property by motor vehicle subject to Parts 71-78 of this chapter are prohibited from transporting any explosive or other dangerous article unless the article is properly described by name in papers required by Parts 71-78 of this chapter to accompany every shipment of such article; and every such article must be packed and marked and in proper condition for transportation according to the regulations in Parts 71-78 of this chapter.]

Any party desiring to make representations in favor of or against the proposals may do so through the submission of written data, views, or arguments. The original and five copies of such submission may be filed with the Commission on or before December 15, 1960. The proposals are subject to change or changes that may be made as a result of such submissions.

Notice to the general public will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection, and by filing a copy of the notice with the Director, Office of the Federal Register.

(62 Stat. 738, 74 Stat. 808; 18 U.S.C. 834)

By the Commisison, Division 3.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 60-11317; Filed, Dec. 2, 1960; 9:07 a.m.]

[1] This notice embraces Ex Parte No. MC-13, In the Matter of Regulations Governing the Transportation of Explosives and Other Dangerous Articles by Motor Vehicle, and Ex Parte No. MC-8, In the Matter of Need for Establishing Reasonable Requirements To Promote Safety of Operation of Motor Vehicles Used in Transporting Property by Private Carriers.

Notices

FEDERAL POWER COMMISSION

[Docket No. CP61-105]

ATLANTIC SEABOARD CORP. AND TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that Atlantic Seaboard Corporation (Atlantic), a Delaware corporation with a principal office at (P.O. Box 1273), Charleston, West Virginia, and Transcontinental Gas Pipe Line Corporation (Transco), a Delaware corporation with a principal office at 3100 Travis Street, Houston, Texas, filed a joint application in Docket No. CP61-105 on October 4, 1960, for certificates of public convenience and necessity authorizing Atlantic and Transco, respectively, to construct and operate natural gas facilities subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission and open to public inspection.

Atlantic and Transco propose to establish a point of delivery to be located near Beaver Dam, Baltimore County, Maryland, where it is proposed to construct a section of pipeline 1,450 feet long extending from the existing 30-inch main line of Transco to the upstream side of Atlantic's existing measuring and regulating facilities on its main 20-inch line where it delivers gas to Baltimore Gas and Electric Company, which will establish a fifth delivery point near Baltimore and to operate it as an expansion of a previously authorized exchange service.

The application recites the purpose of the delivery point at Beaver Dam is to give added assurance of continuity of service to existing markets in the event of any unforeseen interruption of service and provide additional flexibility in Atlantic's 20-inch system and allow for emergency deliveries in either direction.

The proposed interconnecting facilities, including the 10-inch pipeline, to be constructed by Atlantic are estimated to cost $34,100 and will be financed by Atlantic from cash generated from operations. The main line interconnection, to be constructed by Transco, is estimated to cost $8,600 and will be financed by Transco from company funds.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held January 10, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL, *Acting Secretary.*

[F.R. Doc. 60-11244; Filed, Dec. 2, 1960; 8:46 a.m.]

[Docket No. CP61-108]

EL PASO NATURAL GAS CO.

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that on October 5, 1960, as supplemented on October 25, 1960, El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas (Applicant), filed in Docket No. CP61-108 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of small scale routine budget-type facilities during the calendar year 1961, all as more fully set forth in the application and supplement which are on file with the Commission and open to public inspection.

The proposed facilities consist of:

(1) Not more than 30 main line taps, together with the necessary standard appurtenances for the operation thereof, through which Applicant will sell and deliver from 50 to 500 Mcf of natural gas per day per installation to existing authorized resale customers in Colorado, Utah, Wyoming, Idaho, Oregon, Washington, Texas, New Mexico and Arizona. The estimated cost is $350 per tap, or a maximum total of $10,500 for 30 taps;

(2) Not more than 15 main line measuring and regulating stations, together with main line tap facilities and the necessary standard appurtenances, to sell and deliver from 50 to 5,000 Mcf of natural gas per day per installation to existing authorized resale customers as above. The estimated cost is $2,000 to $6,000 per installation, or a maximum total of $90,000 for the 15 proposed installations; and

(3) Not more than two (2) lateral or branch pipelines of not less than 2½-inch nor more than 6⅝-inch outside diameter, together with related main line taps, measuring and regulating stations, and the necessary standard appurtenances, to sell and deliver from 50 to 5,000 Mcf of natural gas per day per line to existing authorized resale customers as above. The maximum estimated cost is $350,000 per line, or a maximum total of $700,000 for the two.

The total estimated cost of all facilities proposed under this application will not exceed $800,500, which Applicant proposes to finance from its working funds or by the making of short-term bank loans.

The anticipated maximum deliveries through each type of facility during the calendar year 1961 are:

	Mcf at 14.73 psia			
	30 taps	15 meter stations	2 laterals	Total
Peak requirements	2,700	10,800	5,000	18,500
Annual requirements	339,000	1,665,000	900,000	2,904,000

All sales are to be made under Applicant's existing filed rates or those subsequently made effective by the Commission.

No increase in main line capacity is proposed.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 27, 1960, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 19, 1960. Failure of any party to appear at and participate in the hearing shall be construed as

waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11245; Filed, Dec. 2, 1960; 8:46 a.m.]

[Docket No. CP61-106]

TENNESSEE GAS TRANSMISSION CO.

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that on October 4, 1960, as supplemented on October 24, 1960, Tennessee Gas Transmission Company, P.O. Box 2511, Houston 1, Texas, (Applicant) filed in Docket No. CP61-106 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of field facilities to enable Applicant to take into its certificated main transmission pipeline system natural gas which will be purchased from time to time during the calendar year 1961 in the general area of Applicant's existing transmission system, at a total cost not to exceed $5,000,000, with no single project to exceed a cost of $500,000, all as more fully set forth in the application and supplement which are on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 27, 1960, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 19, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11246; Filed, Dec. 2, 1960; 8:46 a.m.]

[Docket No. G-2345]

TEXAS GAS TRANSMISSION CORP.

Notice of Postponement of Hearing

NOVEMBER 28, 1960.

Upon consideration of the motion filed November 23, 1960, by Counsel for Texas Gas Transmission Corporation for postponement of the hearing now scheduled for November 29, 1960, in the above-designated matter;

The hearing now scheduled for November 29, 1960, is hereby postponed to December 16, 1960 at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11247; Filed, Dec. 2, 1960; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

AMERICAN AIRLINES, INC.; ROANOKE SERVICE

[Docket 11801]

Notice of Postponement of Prehearing Conference

In the matter of the petition of American Airlines, Inc., under section 401(g) of the Federal Aviation Act of 1958, as amended, for the termination or suspension of its authority to serve Roanoke, Virginia.

Notice is hereby given that the prehearing conference on the above-entitled application now assigned to be held on December 6, 1960 is postponed to December 7, 1960, 2:00 p.m., e.s.t., Room 725, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner James S. Keith.

Dated at Washington, D.C., November 30, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11263; Filed, Dec. 2, 1960; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

UNITED STATES LINES CO.

Notice of Application

Notice is hereby given that United States Lines Co. has applied for the privilege of carrying cargo (1) between United States Atlantic ports and Panama Canal Zone ports with vessels operating on its Line D Service (Trade Route No. 12) and (2) between United States Atlantic and Gulf ports and Panama Canal Zone ports with vessels operating on its Line E Service (Trade Route No. 16).

Any person, firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1175, should by the close of business on December 16, 1960, notify the Secretary, Federal Maritime Board in writing in triplicate, and file petition for leave to intervene in accordance with the rules of practice and procedure of the Federal Maritime Board.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Federal Maritime Board determines that petitions to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Federal Maritime Board will take such action as may be deemed appropriate.

Dated: November 30, 1960.

By Order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11255; Filed, Dec. 2, 1960; 8:48 a.m.]

Office of the Secretary

EDWARD ABBOTT

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of November 18, 1960.

EDWARD ABBOTT.

NOVEMBER 18, 1960.

[F.R. Doc. 60-11253; Filed, Dec. 2, 1960; 8:47 a.m.]

KEVIN G. SHEA

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of November 14, 1960.

KEVIN G. SHEA.

NOVEMBER 17, 1960.

[F.R. Doc. 60-11254; Filed, Dec. 2, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

SOUTH DAKOTA

Designation of Area for Production Emergency Loans

For the purpose of making production emergency loans pursuant to section 2(a) of Public Law 38, 81st Congress (12 U.S.C. 1148a-2(a)), as amended, it has been determined that in the following counties in the State of South Dakota a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

SOUTH DAKOTA

Corson. Dewey.

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after June 30, 1961, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 29th day of November 1960.

MARVIN L. MCLAIN,
Acting Secretary.

[F.R. Doc. 60-11262; Filed, Dec. 2, 1960; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 417]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 30, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 35355. By order of November 28, 1960, the Transfer Board approved the lease to Machinery & Materials Corporation, Shelbyville, Ind., a portion of Certificate No. MC 119830, issued November 14, 1960, to L. A. Lambrecht Trucking Co., a Corporation, Sterling, Ill., authorizing the transportation of contractor's equipment and machinery which, because of size or weight requires specialized handling or the use of special equipment, over irregular routes, between Sterling, Ill., and points within 5 miles thereof, on the one hand, and, on the other, points in Minnesota, South Dakota, Nebraska, Missouri, Indiana, Ohio, Iowa, Michigan, and Wisconsin. Kenneth F. Dudley, P.O. Box 557, Ottumwa, Iowa for applicants.

No. MC-FC 35357. By order of November 28, 1960, the Transfer Board approved the lease to William Dehlinger, Jr., and Sherrod Smith, a partnership, doing business as Oil Field Trucking Service of Wichita Falls, Abilene, Texas, of Certificate in No. MC 3837, issued June 15, 1953, to L. C. Ficklin, doing business as L. C. Ficklin Trucking Company, Wichita Falls, Texas, authorizing the transportation of: Machinery, materials, supplies and equipment incidental to, or used in the construction, development, operations and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, over irregular routes, between points in Oklahoma and Texas. Dan M. Fergus, 608 Alexander Building, Abilene, Tex., for applicants.

No. MC-FC 63520. By order of November 23, 1960, the Transfer Board approved the transfer to Sherman K. Stromen, doing business as Stromen Transfer, New Richmond, Wis., of a portion of Certificate No. MC 82085, issued September 13, 1960, to Grant Bishop, Hammond, Wis., authorizing the transportation of: Canned vegetables, from New Richmond, Wis., to points in Minnesota within 160 miles of New Richmond, Wis., and fresh vegetables, from points in Minnesota within 160 miles of New Richmond, Wis., to New Richmond, Wis. W. P. Knowles, New Richmond, Wis., for applicants.

No. MC-FC 63545. By order of November 28, 1960, the Transfer Board approved the transfer to Gladys Montague, doing business as Jonesboro Transfer and Storage Company, 105 South Main St., Jonesboro, Ark., of Certificate No. MC 79531, issued January 28, 1953, to Walter Montague, doing business as Jonesboro Transfer & Storage Company, 105 South Main St., Jonesboro, Ark., authorizing the transportation of: Household goods, between Jonesboro, Ark., and points in Arkansas within 50 miles of Jonesboro, on the one hand, and, on the other, points in Alabama, Illinois, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, and those in Kentucky and Louisiana as specified.

No. MC-FC 63594. By order of November 28, 1960, the Transfer Board approved the transfer to Rich Freight Lines, a Corporation, Portland, Oreg., of Certificate No. MC 86419 Sub 1, issued July 26, 1955, as amended, to Rainbow Transportation Co., a Corporation, La Grande, Oreg., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Enterprise and Joseph, Oreg., over Oregon Highway 82, serving no intermediate points and between La Grande, and Enterprise, Oreg., over Oregon Highway 82, serving the intermediate points of Island City, Alicel, Imbler, Elgin, Minam, Wallowa, and Lostine, Oreg., and the off-route point of Clove, Oreg.; flour, from Island City, Oreg., to Weiser, Payette, Emmett, Nampa and Boise, Idaho; and livestock, wool, agricultural commodities, and building materials, between points in Union, Baker, Malheur, and Harney Counties, Oreg., on the one hand, and, on the other, points in Washington, Payette, Gem, Canyon, Boise, and Elmore Counties, Idaho. John M. Hickson, Failing Building, Portland, Oreg., for applicants.

No. MC-FC 63599. By order of November 23, 1960, the Transfer Board approved the transfer to Patrick O'Connor and Thomas O'Connor, doing business as O'Connor Bros., 839 Myrtle St., Elizabeth, N.J., of Certificate No. MC 8526, issued May 26, 1954, to Patrick O'Connor, Thomas O'Connor and James O'Connor, doing business as O'Connor Bros. Movers, 839 Myrtle St., Elizabeth, N.J., authorizing the transportation of: Household goods, between points in Essex, Union, Hudson, and Middlesex Counties, N.J., on the one hand, and, on the other, points in New Jersey and New York.

No. MC-FC 63627. By order of November 28, 1960, the Transfer Board approved the transfer to Charles Beil & Sons, Inc., Millstadt, Ill., of Certificates Nos. MC 110538 Sub 1, and MC 110538 Sub 2, issued December 16, 1957 and July 22, 1958, to Charles Beil, Walter Beil, Charles I. Beil, and Ralph Beil, doing business as Charles Beil & Sons, Millstadt, Ill., authorizing the transportation of: Coal, from points in St. Clair County, Ill., to St. Louis, Mo.; and haydite, in bulk, from Fairview, Ill., to points in Missouri. Delmar O. Koebel, 608 Spivey Building, East St. Louis, Ill., for applicants.

No. MC-FC 63667. By order of November 23, 1960, the Transfer Board approved the transfer to Joseph D. Larson, doing business as Cornish Express Co., Paterson, N.J., of Permit No. MC 110583, issued July 22, 1957, to Albert J. Buller and Joseph D. Larson, doing business as Cornish Express Company, Paterson, N.J., authorizing the transportation of: Household appliances, pianos, radios, and television sets, between Paterson, N.J., on the one hand, and, on the other, New York, N.Y., points in Nassau, Orange, Putnam, Rockland, and Westchester Counties, N.Y., and Monroe, Northampton, and Pike Counties, Pa. George A. Olsen, 69 Tonnele Avenue, Jersey City 6, N.J., for applicants.

No. MC-FC 63694. By order of November 28, 1960, the Transfer Board approved the transfer to English Trucking Corp., Brooklyn, N.Y., of Permit in No. MC 27894, issued June 24, 1943, to Herman Coleman, Brooklyn, New York, authorizing the transportation of: Such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and, in connection therewith, equipment, materials, and supplies used in the conduct of such business, between points in Long Island, and between points therein, on the one hand, and, on the other, points in New York, Bronx, Richmond, and Nassau Counties, N.Y., and points in New Jersey; fruits, vegetables, farm products, poultry and sea food from points in Long Island, N.Y., to points specified above. William D.

Traub, 10 East 40th Street, New York 16, N.Y., for applicants.

No. MC–FC 63755. By order of November 28, 1960, the Transfer Board approved the transfer to Koretz Brothers Express, Inc., doing business as Koretz Bros. Express, Brockton, Mass. of Certificate in No. MC 45847, issued September 20, 1949, to Leo A. Koretz, Edward Koretz and Sidney Koretz, a partnership, doing business as Koretz Bros. Express, Brockton, Mass., and Certificate in No. MC 77156, acquired in No. MC–FC 63479, approved August 10, 1960, consummated October 31, 1960, and assigned No. MC 45847 Sub 2, authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Brockton, Holbrook, Braintree, Quincy, Milton, Boston and Chelsea, Mass.; and between Brockton, Mass. and Lynn, Mass. Marshall M. Dranetz, 18 Tremont Street, Boston, Mass., for applicants.

No. MC–FC 63764. By order of November 28, 1960, the Transfer Board approved the transfer to Raymond Haller, doing business as Blue Springs Truck Line, Route 1, Box 154, Blue Springs, Mo., of Certificate No. MC 9003, issued December 19, 1950, to Herbert A. Wiebusch, doing business as Blue Springs Truck Line, Blue Springs, Mo., authorizing the transportation, over regular routes, of salt, ground feed, tankage, grain, seed, farm machinery, and fertilizer, and hardware and commodities incidental to the conduct of retail hardware stores, and general commodities, excluding household goods, commodities in bulk and other specified commodities, from, to, and between points in Missouri and Kansas, and over irregular routes, of livestock, from points in Wisconsin to Blue Springs, Mo., and points within 10 miles of Blue Springs, and household goods, between Lake Tapawingo, Mo., on the one hand, and, on the other, points in Johnson and Wyandotte Counties, Kans.

No. MC–FC 63765. By order of November 28, 1960, the Transfer Board approved the transfer to James C. Gillum and Hallie Gillum, a partnership, doing business as Gillum Transfer Co., Mayfield, Ky., of Permit No. MC 113201, issued February 21, 1956, to James C. Gillum, doing business as Gillum Transfer Co., Mayfield, Ky., authorizing the transportation of such commodities as are dealt in by chain, retail and mail order department stores, over irregular routes, from Mayfield, Ky., to points in Kentucky and Tennessee, within 25 miles of Mayfield; and returned, damaged, or traded-in shipments of the above-specified commodities, from points in Kentucky and Tennessee within 25 miles of Mayfield, Ky., to Mayfield, Ky. James C. Gillum, 512 West Broadway, Mayfield, Ky., for applicants.

No. MC–FC 63768. By order of November 28, 1960, the Transfer Board approved the transfer to James Messina, doing business as Messina Haulage, Wantagh, Long Island, New York, of Certificate No. MC 113777, issued September 1, 1953, to Reo Messina and James Messina, doing business as Messina Haulage, Wantagh, Long Island, New York, authorizing the transportation over irregular routes, of cement, from Brooklyn, N.Y., to points in Nassau and Suffolk Counties, N.Y. L. Agnew Myers, Jr., Warner Building, Washington 4, D.C., for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60–11257; Filed, Dec. 2, 1960; 8:48 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 30, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36747: *Iron or steel plates—Houston, Tex., to Pascagoula, Miss.* Filed by Southwestern Freight Bureau, Agent (No. B–7932), for interested rail carriers. Rates on iron or steel plates, in carloads, from Houston, Tex., to Pascagoula, Miss.

Grounds for relief: Rail competition.

Tariff: Supplement 142 to Southwestern Freight Bureau tariff I.C.C. 4308.

FSA No. 36748: *Iron or steel plates—Houston, Tex., to Pascagoula, Miss.* Filed by Southwestern Freight Bureau, Agent (No. B–7931), for interested rail carriers. Rates on iron or steel plates, in carloads, from Houston, Tex., to Pascagoula, Miss.

Grounds for relief: Barge competition.

Tariff: Supplement 142 to Southwestern Freight Bureau tariff I.C.C. 4308.

FSA No. 36749: *Rock salt—Kansas points to Chicago, Ill.* Filed by Western Trunk Line Committee, Agent (No. A2153), for interested rail carriers. Rates on rock salt, crushed and screened, in bulk, in carloads, subject to aggregate minimum weight of 250 tons per shipment, from Hutchinson, Kanopolis and Lyons, Kan., to Chicago, Ill., and points grouped therewith.

Grounds for relief: Market competition.

Tariff: Supplement 54 to Western Trunk Line Committee tariff I.C.C. A-3842.

FSA No. 36750: *Petroleum lubricating oil—Between points in southern territory.* Filed by O. W. South, Jr., Agent (No. A4045), for interested rail carriers. Rates on petroleum lubricating oil, in tank-car loads, between points in southern territory, including Ohio and Mississippi River crossings, Washington, D.C., and points in Virginia and West Virginia.

Grounds for relief: Short-line distance formula, grouping, relief line arbitrarles, and operation through higher-rated territories.

Tariff: Supplement 42 to Southern Freight Association tariff I.C.C. S–85.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60–11256; Filed, Dec. 2, 1960; 8:48 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR — Page

EXECUTIVE ORDERS:
3797–A — 12412
6260 — 12281
10896 — 12281

5 CFR
2 — 12285
6 — 12393

6 CFR
421 — 12282, 12283

7 CFR
722 — 12393, 12403
945 — 12285
914 — 12405
933 — 12405–12407
953 — 12407

PROPOSED RULES:
51 — 12298, 12299

8 CFR
211 — 12290

10 CFR
PROPOSED RULES:
115 — 12367

14 CFR
49 — 12352
507 — 12352
600 — 12285–12287, 12408, 12410
601 — 12287, 12409, 12410
602 — 12288
609 — 12353
612 — 12410

PROPOSED RULES:
41 — 12299
600 — 12328
601 — 12328, 12329

16 CFR — Page
13 — 12337, 12338, 12393

21 CFR
8 — 12288
120 — 12288
121 — 12412
146c — 12289

PROPOSED RULES:
27 — 12372
120 — 12374
121 — 12299

22 CFR
46 — 12289

25 CFR
171 — 12408

PROPOSED RULES:
176 — 12299

26 (1939) CFR
29 — 12339
39 — 12339
40 — 12340

26 (1954) CFR
1 — 12340, 12345
18 — 12340

PROPOSED RULES:
1 — 12293, 12414, 12416
48 — 12362
197 — 12362

28 CFR
21 — 12290

31 CFR
54 — 12345

32 CFR
805 — 12291
1619 — 12291

33 CFR — Page
202 — 12393

39 CFR
27 — 12348

41 CFR
PROPOSED RULES:
50–202 — 12363

42 CFR
1 — 12292

43 CFR
192 — 12352

PUBLIC LAND ORDERS:
797 — 12413
2209 — 12412
2210 — 12413
2211 — 12413

46 CFR
308 — 12348

47 CFR
1 — 12358
5 — 12359
9 — 12359
10 — 12359
11 — 12359
12 — 12358
16 — 12359
19 — 12359
21 — 12359

PROPOSED RULES:
3 — 12371

49 CFR
PROPOSED RULES:
71–78 — 12420
197 — 12420

Pages 12427–12498

FEDERAL REGISTER

VOLUME 25 NUMBER 236

Washington, Tuesday, December 6, 1960

THE UNIVERSITY OF MICHIGAN
DEC 6 1960
MAIN READING ROOM

Contents

THE PRESIDENT

Executive Orders

Authorizing the Secretary of State to prescribe rules and regulations relating to the Foreign Service Retirement and Disability System 12429
Establishing the Interdepartmental Highway Safety Board 12429

EXECUTIVE AGENCIES

Agricultural Marketing Service

PROPOSED RULE MAKING:
Fresh Bartlett pears, plums, and Elberta peaches grown in California; order directing a referendum be conducted; designation of agents to conduct such referendum and determination of representative period 12465
Handling of raisins produced from raisin variety grapes grown in California; monthly report of disposition of free tonnage raisins 12476
Milk in Cincinnati, Ohio, marketing area and fifteen northern Kentucky counties; recommended decision and opportunity to file written exceptions on proposed amendments to tentative marketing agreement and order 12466
RULES AND REGULATIONS:
Apples and pears; processing 12430
Lemons grown in California and Arizona; handling limitation 12430

Agriculture Department

See Agricultural Marketing Service.

Air Force Department

RULES AND REGULATIONS:
Air Force procurement instructions; miscellaneous amendments to subchapter 12444

Atomic Energy Commission

NOTICES:
Curtiss-Wright Corp.; notice of termination of utilization facility license 12481
Pennsylvania State University; notice of issuance of facility license 12481
Regents of the University of California; notice of proposed issuance of amendment to facility license 12482

Civil Aeronautics Board

NOTICES:
Hearings, etc.:
Aerovias Condor De Colombia Ltda 12482
Aircraft accident which occurred October 4, 1960, in Boston, Mass 12482
Washington, D.C., helicopter service case 12482
PROPOSED RULE MAKING:
Rules of practice in economic proceedings; statements and oral argument 12477
RULES AND REGULATIONS:
Principles of practice of the Board; hearing 12430
Rules of practice in economic proceedings; motions of interested person for expedition 12432

Commerce Department

See also Defense Air Transportation Administration.
NOTICES:
Statements of changes in financial interests:
McKinney, Arthur W 12496
Petersen, Robert Geoffrey 12496
Vaughn, William E 12497

Defense Air Transportation Administration

RULES AND REGULATIONS:
War risk insurance 12434

Defense Department

See Air Force Department.

Federal Aviation Agency

NOTICES:
Closing of air carrier district office 12485
PROPOSED RULE MAKING:
Airworthiness directives:
Continental engines 12477
Lockheed aircraft 12478
Federal airways, associated control areas and reporting points; revocation (2 documents) 12478, 12479
Restricted area/military climb corridor; alteration 12479
RULES AND REGULATIONS:
Airworthiness directives:
Curtiss-Wright C–46 series aircraft 12433
TSO–C11c fire detectors 12433

Federal Communications Commission

NOTICES:
Hearings, etc.:
Columbia River Broadcasters, Inc., et al 12483
Hopkinsville Broadcasting Co., Inc. (WHOP) 12483
Mid-Kansas, Inc 12484
WCYN Radio, Inc. (WCYN), et al 12485

Federal Power Commission

NOTICES:
Headwater Benefits Investigation in the Kanawha River Basin; order instituting investigation 12494
Hearings, etc.:
American Louisiana Pipe Line Co. et al 12489
Colorado-Wyoming Gas Co 12486
El Paso Natural Gas Co 12486
Gulf States Utilities Co 12486
Hope Natural Gas Co 12494
Natural Gas Pipeline Company of America 12487

(*Continued on next page*)

Natural Gas Storage Company of Illinois 12487
Northern Natural Gas Co. 12487
Public Service Company of Colorado 12488
United Gas Pipe Line Co. 12495
United Gas Pipe Line Co. and Texas Gas Transmission Corp. 12488

Federal Reserve System
PROPOSED RULE MAKING:
Trust powers of national banks; common trust funds 12479

Federal Trade Commission
RULES AND REGULATIONS:
Starday Recording and Publishing Co., Inc., et al.; prohibited trade practices 12441

Food and Drug Administration
PROPOSED RULE MAKING:
Food additives; notice of filing of petition 12477

Health, Education, and Welfare Department
See Food and Drug Administration.

Interior Department
See Land Management Bureau.

Internal Revenue Service
PROPOSED RULE MAKING:
Income tax; taxable years beginning after December 31, 1953; taxation of regulated investment companies and their shareholders 12464
RULES AND REGULATIONS:
Excess profits on Army contracts for aircraft; setoffs of deficiencies in profit against excess profits 12442
Excess profits on Navy contracts; setoffs of deficiencies in profit against excess profits 12443

Interstate Commerce Commission
NOTICES:
Motor carrier transfer proceedings 12497

Land Management Bureau
NOTICES:
Alaska; small tract classification 12481

Securities and Exchange Commission
NOTICES:
Broad Street Investing Corp.; notice of filing of application 12495

Treasury Department
See Internal Revenue Service.

Veterans Administration
RULES AND REGULATIONS:
Veterans' claims; additional disability compensation for certain seriously disabled veterans 12463

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR
EXECUTIVE ORDERS:
9941 (superseded by EO 10897) 12429
10897 12429
10898 12429

7 CFR
33 12430
953 12430
PROPOSED RULES:
936 12465
965 12466
989 12476

12 CFR
PROPOSED RULES:
206 12479

14 CFR
300 12430
302 12432
507 12433
514 12433
1501 12434
PROPOSED RULES:
302 12477
507 (2 documents) 12477, 12478
600 (2 documents) 12478, 12479
601 (2 documents) 12478, 12479
608 12479

16 CFR
13 12441

21 CFR
PROPOSED RULES:
121 12477

26 (1939) CFR
16 12442
17 12443

26 (1954) CFR
PROPOSED RULES:
1 12464

32 CFR
1008 12444
1009 12446
1010 12449
1012 12449
1013 12449
1016 ..... 12450, 12456
1030 12451
1052 12456
1053 12456
1054 12458
1055 12462
1057 12462
1059 12462

38 CFR
3 12463

43 CFR
PUBLIC LAND ORDERS:
1253 (see F.R. Doc. 60-11306) 12481

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953	$6.75
1954	7.25
1955	6.75
1956	7.25
1957	6.75
1958	8.25
1959	7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

Presidential Documents

Title 3—THE PRESIDENT

Executive Order 10897

AUTHORIZING THE SECRETARY OF STATE TO PRESCRIBE RULES AND REGULATIONS RELATING TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

By virtue of the authority vested in me by section 303 of the Foreign Service Act of 1946 (60 Stat. 1002; 22 U.S.C. 843), and section 202 of the Revised Statutes (5 U.S.C. 156), it is ordered as follows:

SECTION 1. The Secretary of State is hereby authorized to exercise the following-described authority of the President:

(a) The authority vested in the President by section 801(a) of the Foreign Service Act of 1946 (22 U.S.C. 1061(a)) to prescribe rules and regulations for the maintenance of the Foreign Service Retirement and Disability System.

(b) The authority vested in the President by section 803(c)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1063(c)(1)), to prescribe regulations governing the participation of certain Foreign Service staff officers and employees in the Foreign Service Retirement and Disability System.

(c) The authority vested in the President by section 881(a) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1116(a)), to prescribe regulations governing the deposit of voluntary contributions into the Foreign Service Retirement and Disability Fund.

SEC. 2. Executive Order No. 9941 of March 26, 1948, is hereby superseded.

SEC. 3. This order shall be effective as of October 16, 1960; and the Secretary of State, in his discretion and consistent with law, may make rules and regulations issued pursuant to section 1 hereof effective on or after that date.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
December 2, 1960.

[F.R. Doc. 60-11357; Filed, Dec. 2, 1960; 3:06 p.m.]

Executive Order 10898

ESTABLISHING THE INTERDEPARTMENTAL HIGHWAY SAFETY BOARD

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) For the purpose of providing Federal leadership and guidance of existing and future official activities that affect the safety of travel on public streets and highways and to establish a coordinated traffic safety program for Federal agencies, there is hereby established the Interdepartmental Highway Safety Board, hereinafter referred to as the Board.

(b) The Board shall have as members the following:

(1) The Secretary of Commerce, who shall be the chairman of the Board.
(2) The Secretary of Defense.
(3) The Postmaster General.
(4) The Secretary of Health, Education, and Welfare.
(5) The Chairman of the Interstate Commerce Commission.
(6) The Administrator of General Services.

(c) Each head of agency referred to in subsection (b) may provide for an alternate member who shall serve as a member of the Board in lieu of the regular member representing the agency when such regular member is unable to attend any meeting of the Board; and any alternate member shall while serving as such have in all respects the same status as a member of the Board as would the regular member in whose place he is serving.

(d) Three members of the Board shall constitute a quorum thereof.

SEC. 2. The functions and duties of the Board shall be as follows:

(a) To provide leadership to, and to coordinate the traffic safety aspects of programs carried on by, the departments and agencies of the Federal Government.

(b) To evaluate the continuing needs in traffic safety research and to formulate plans, priorities, and programs for the conduct of or for assistance to the most urgently needed research through departments and agencies of the Federal Government.

(c) To consult and cooperate with State and local officials having a public responsibility for traffic safety and their national associations, with the motor vehicle industry, and with other related interests, in the development and improvement, and particularly in the application, of traffic safety standards in areas such as uniform traffic laws, enforcement practices, accident records, driver licensing, motor vehicle equipment and inspection, traffic engineering, and safety education.

(d) To conduct continuing studies of national traffic safety needs as they relate to legislative and administrative actions by the Federal Government, and to report thereon.

(e) To perform such other functions and duties as the President may direct to coordinate more effectively the policies, programs, and functions of the departments and agencies of the Federal Government relating to traffic safety, including accident reporting, and to insure an orderly relationship among Federal, State, and local traffic safety programs.

SEC. 3. Consonant with law, each agency represented on the Board shall, as may be necessary for the effectuation of the purpose of this order, furnish assistance to the Board in accordance with section 214 of the act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691). Such assistance may include detailing employees to the Board, one of whom may serve as Executive Officer, to perform such functions, consistent with the purpose of this order, as the Board may assign to them.

SEC. 4. The Board shall be advisory to its individual members and to other heads of executive agencies; and this order shall not be construed as subjecting any agency, officer, or function to its control. The President's Committee for Traffic Safety (provided for in Executive Order No. 10858 of January 13, 1960) shall serve as consultant and advisor to the Board.

SEC. 5. The Board shall, from time to time, submit reports to the President on the national progress in traffic safety. The first such report shall include determinations of the status of Federal legislative and administrative needs in the several areas of traffic safety and recommendations for executive or legislative action.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
December 2, 1960.

[F.R. Doc. 60-11358; Filed, Dec. 2, 1960; 3:06 p.m.]

Rules and Regulations

Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

SUBCHAPTER A—COMMODITY STANDARDS AND STANDARD CONTAINER REGULATIONS

PART 33—EXPORT APPLES AND PEARS

Subpart—Interpretative Rules

APPLES AND PEARS FOR PROCESSING

In accordance with the provisions of section 3 of the Administrative Procedure Act (5 U.S.C. 1001–1011), an interpretative rule is hereinafter promulgated relevant to terms "apples for processing" and "pears for processing" in § 33.12 (c) and (d) of Part 33—Export Apples and Pears (the revised regulations in effect under the Export Apple and Pear Act (7 U.S.C. 581–589).

The purpose of the rule is to make it clear that the intent of the exception for apples and pears for processing set forth in § 33.12 is not to facilitate the export, ostensibly for processing, of these fruits which were packaged for distribution in export in fresh form which have failed to meet the minimum of quality established for these fruits for such distribution. It is believed that the rule will promote uniform application of the provision with respect to the certification for export of apples and pears for processing.

The interpretative rule is issued under a new subpart headed "Interpretative Rules," and reads as follows:

§ 33.50 Apples and pears for processing.

The terms "apples for processing" and "pears for processing" as used in § 33.12 of this part apply only and are restricted to packages of apples or pears which were originally packaged for processing and marked "Cannery" as required by § 33.12 (c) and (d) of this part. Packages of apples or pears not so originally packaged and marked are not eligible for certification as "apples for processing" or "pears for processing" for purposes of this part.

Dated: December 1, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11314; Filed, Dec. 5, 1960; 8:55 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Lemon Reg. 874, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

1. Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b)(1) (i), (ii) and (iii) of § 953.981 (Lemon Regulation 874, 25 F.R. 11205) are hereby amended to read as follows:

(i) District 1: Unlimited movement;
(ii) District 2: Unlimited movement;
(iii) District 3: Unlimited movement.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 30, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11313; Filed, Dec. 5, 1960; 8:55 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter II—Civil Aeronautics Board

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. No. PR–43]

PART 300—PRINCIPLES OF PRACTICE OF CIVIL AERONAUTICS BOARD

Hearings

DECEMBER 1, 1960.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 1st day of December 1960:

On March 18, 1960, the Board issued a notice of proposed rule making, Docket 11221,[1] proposing various amendments to Part 300, the Board's principles of practice, and Part 302, the Board's rules of practice in economic proceedings. This rule making proceeding was instituted as a result of the Board's opinion in the New York-San Francisco Nonstop Service Case, Docket 9214, which was adopted on November 19, 1959. In that decision the Board stated that in view of the various problems of interpretation and application of the Board's Principles of Practice, which became apparent during that proceeding, the Board would undertake a prompt rule making re-examination looking toward modification and clarification of its regulations. In the notice of proposed rule making the Board proposed the following amendments to Parts 300 and 302:

1. Define "private communications."
2. Define "on the merits."
3. Establish guidelines as to what constitutes improper solicitation.
4. Establish at what stage the rules concerning improper attempts to influence become applicable.

In addition to these specific issues, the notice of proposed rule making also contained a general clause inviting suggestions as to other improvements of the Board's rules concerning ethical practices.

Comments and suggestions in response to the notice have been received from 49 C.A.B. practitioners (Practitioners) who responded as a group, and from several air carriers and individual practitioners. The Board has reviewed these comments and suggestions and due consideration has been given to all relevant matters presented.

The most comprehensive comments and recommendations were those submitted by the Practitioners which generally cover but go beyond the scope of the specific issues raised by the notice. The comments relating to the specific issues raised by the Board's notice are generally favorable to the Board's proposed revision of Part 300. The attached final regulation, therefore, defines a "private communication on the merits" as "a written or oral communication on any substantive or procedural issue in the case" (§ 300.2(a)). Thus, procedural issues, including the issue of whether a proceeding should be expedited, are issues on the merits for the purposes of the rule against private communications.

With respect to the issue of solicitation, the Board's notice recognized that existing rules do not expressly authorize or prohibit parties from soliciting persons to support their positions either by participation in the hearing or by communications to the Board which are not improper private communications. The notice took the position that where such solicitation does not constitute an effort to bring pressure or influence to bear on the Members of the Board or its staff, or the examiner in the case and it is contemplated that the support will be expressed within the framework of the Board's rules, the solicitation of support is proper. The Board, therefore, proposed a new § 300.2(e) which would make it improper for any party to a proceeding to engage in any activity which may reasonably be expected to result in producing communications to the Board or its staff, or the examiner in the case, which will not be served upon all the parties or orally presented at a hearing or oral argument. This provision, while not prohibiting parties from soliciting the support of third persons, would nevertheless require that the solicitation be undertaken in a manner which would assure that such persons would not present their position, facts, or any other relevant material outside the framework of the Board's rules. The Practitioners, while not objecting to the Board's substantive proposal, suggest that it would be better to establish definite guidelines as to what constitutes improper solicitation than to rely upon general language. This suggestion appears to have merit and has been incorporated in § 300.2(e) which makes it improper for any party to solicit communications to the Board or its staff, or the examiner in the case, other than proper communications by parties or non-parties permitted under Rules 14 and 15 of the Board's rules of practice. Moreover, a party soliciting support of any person must call such person's attention to the provisions of Rules 14 and 15.

In the New York-San Francisco opinion, the Board raised the question whether its prohibitions against ex parte communications apply to proceedings requesting institution of an evidentiary hearing on a route application. The Board's notice of rule making proposed that these protective principles be made applicable to all matters to be decided upon an evidentiary record. With respect to matters required by statute or general rule to be decided after notice and hearing, the rules would be made applicable from the time an application is filed. As to matters which the Board voluntarily sets down for an evidentiary hearing, the rules would be applicable from the time of such Board action. These provisions are set forth in § 300.2 of the final regulation and will permit the Board in the future to handle problems like those presented in the New York-San Francisco Case.

As indicated above, the comments submitted by the Practitioners were directed not only to the specific issues raised by the Board's notice of rule making, but to other matters as well. With respect to other matters involving Part 300, they recommend the following:

1. *Expand the applicability of § 300.2 to include certain non-hearing cases of an adversary nature.* At the present time, the Board's rules against ex parte communications apply to proceedings which are decided by the Board after notice and hearing and upon a formal record. Practitioners contend that certain non-hearing cases (i.e., exemptions under section 416(b) of the Act) can have a profound competitive effect upon air carriers and, therefore, should fall within the proscription against private communications.

It does not appear to the Board that the solution to this problem lies in expanding Part 300 to include rule making and other non-hearing proceedings. Such a regulation would seriously hamper the Board in carrying out its duties and responsibilities and would result in delays in the Board's work. In addition to its statutory responsibilities of a quasi-judicial nature, the Board has certain quasi-legislative functions as well as the responsibility for the promotion, encouragement, and development of civil aeronautics. In performing these functions the Board and its staff should not be restricted to the same extent as in formal quasi-judicial proceedings.

By making the prohibition against ex parte communications applicable to cases which are determined on the basis of a formal record after notice and hearing, the Board's present rule (which goes beyond the protective provisions of the Administrative Procedure Act) adequately preserves the principles of basic fairness for all concerned with the administrative process. We are cognizant of the fact that certain non-hearing cases may contain adversary issues and therefore require the protective provisions of the principles of practice. The Board should be free to make its principles of practice applicable to such cases and we have amended § 300.2 so that the prohibition against ex parte communications is applicable to (1) cases which are to be decided by the Board after notice and hearing and upon a formal record, and (2) non-hearing cases which the Board by specific order may designate. We believe this is a better solution to the problem than expanding the rule to include all non-hearing cases as suggested by Practitioners.

2. *Establish a procedure whereby improper oral communications are reduced to writing and served on all parties.* The Practitioners have suggested that the Board establish a procedure whereby improper oral communications are preserved and notice of such communications is served on all parties. The burden such a provision would place upon the Board Member or employee would be substantial. Considering the many telephone calls and oral communications made to the Board and its staff in matters other than the merits of formal hearing cases, it would be difficult to delineate between matters which properly fall within such a provision. Moreover, the Member or employee might find himself in the position where he could not readily reduce such oral presentation to writing. From the standpoint of fairness, the person making the oral presentation would not have an opportunity to see the written memorandum until after it had been circulated to the other parties to the proceeding. If it were then contended that the memorandum did not properly reflect the oral conversation, fair play would require that an opportunity should be given to correct the record since one's reputation might well be involved. This, of course, would serve to further delay the disposition of the Board's proceeding. The suggestion of the Practitioners that oral communications be reduced to writing and served upon all parties therefore has not been incorporated in the regulation.

3. *Prohibit certain staff members from communicating with the Board.* The Practitioners have suggested that the Board amend its rules to prohibit certain staff members, in addition to those who served as witness or counsel in a case, from communicating with the Board. In support of this proposal, the Practitioners contend that staff members who have participated in the formulation of the staff's position play just as important a role in the proceeding as staff witnesses and counsel, and therefore should be prohibited from communicating with Members of the Board.

The Board's present regulations prohibit Board witnesses and counsel in all cases from communicating with the Board. In accusatory cases the Board's internal rules not only bar any staff witness and counsel who participated in the case, but also the staff of the entire office or bureau. Both provisions go beyond the separation-of-functions requirement of section 5(c) of the Administrative Procedure Act. The proposals made by Practitioners would prevent the Board from utilizing the expertise of its staff and would result in serious delays in the handling of Board work. We therefore reject this suggestion of Practitioners.

4. *Amendment of rules to deprive a party of the relief he seeks in a proceeding if he violates the Board's rules.* The Board's existing regulation provides that a person who violates its rules may be temporarily or permanently denied the privilege of appearing or practicing before the Board. Practitioners propose that the Board amend its rules to further provide that the Board may deprive a party which violates these rules of the relief he seeks in the proceeding. The Board believes that this suggestion has considerable merit since such a provision will materially assist the Board in enforcing its principles of practice. We

[1] 25 F.R. 2436.

have therefore amended § 300.6 to accomplish this objective.

5. *Congressional appearances in oral argument.* Practitioners suggest that Rule 14 of Part 302 of the Board's procedural regulations be revised so that non-parties could participate in a proceeding "only by presenting at the hearing evidence and memoranda relevant to issues in the case." This proposed change is discussed in the explanatory statement to a notice of proposed rule making issued simultaneously herewith.

This amendment to Part 300 constitutes a procedural regulation and therefore may be made effective on less than 30 days' notice.

In consideration of the foregoing, the Board, effective December 6, 1960, amends Part 300 of its procedural regulations (14 CFR Part 300).

1. By amending § 300.2 to read as follows:

§ 300.2 Hearing cases; improper influence.

It is essential in cases to be determined after notice and hearing and upon a record, or any other cases which the Board by order may designate, that the Board's judicial character be recognized and protected. Therefore, from the time of filing of an application or petition which is to be passed upon by the Board after notice and hearing, or, in case of other matters, from the time of notice by the Board that such matter shall be determined after notice and hearing and upon a record or that its Principles of Practice shall be applicable thereto:

(a) A written or oral communication on any substantive or procedural issue in the case to a Member of the Board or its staff, or to the examiner in the case other than in compliance with the Board's Rules of Practice by any person, either in private or public life, shall be deemed a private communication on the merits. Such communications, unless otherwise provided for by law or published rule are hereby prohibited: *Provided*, That this prohibition shall not be deemed to apply to informal complaints filed with the Board or to communications with staff members of the Board who are in the course of preparing a case, or for the purpose of determining whether a complaint shall be docketed, or to the usual informal communications between counsel, including discussions to effectuate a stipulation, or to settlement discussion between parties and the Board's enforcement staff, or investigative activities, or to other communications which are deemed proper in proceedings in the Federal courts. Communications which merely make inquiry as to the status of a proceeding without discussing issues are not considered communications on the merits. Any prohibited communication in writing received by the Board or its staff or the examiner in the case, shall be made public by placing it in the correspondence file of the case which is available for inspection and copying during business hours in the Board's Docket Section, but will not be considered by the Board or the examiner as part of the record for decision.

(b) Requests for expeditious treatment of a pending application will be considered communications on the merits. If made by a party or applicant for intervention, such a request shall be made by motion (§ 302.18). If made by any other interested person, such a request shall be made in accordance with the requirements in § 302.14. A request which is not made in accordance with the Board's rules shall be placed in the public correspondence file and will not be considered by the Board.

(c) It is improper that there be any private communication on the merits of any substantive or procedural issue in the case to a Member of the Board or to the examiner in the case by any members of the Board's staff who participate in the hearing as witnesses or as counsel.

(d) It is improper that there be any effort by any person interested in the case to sway the judgment of the Board by attempting to bring pressure or influence to bear upon the Members of the Board or its staff, or that such person or any member of the Board's staff, directly or indirectly, give statements to the press or radio, by paid advertisements or otherwise, designed to influence the Board's judgment in the case.

(e) It is improper that any party solicit communications to the Board or any of its members or its staff or to the examiner in the case other than proper communications by parties or non-parties permitted under Rules 14 and 15 of the Board's rules of practice. A party soliciting support of any person shall call such person's attention to the provisions of Rules 14 and 15.

§ 300.6 [Amendment]

2. By amending § 300.6 by inserting the designation (a) after the title "*Violations*" and by adding a new paragraph (b) to read as follows:

(b) Where appropriate in the public interest the Board may deny the relief requested by a party in a proceeding subject to this part in which such party has violated any provisions of this part.

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply sec. 1001, 72 Stat. 788; 49 U.S.C. 1481)

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER, *Secretary.*

[F.R. Doc. 60-11268; Filed, Dec. 5, 1960; 8:45 a.m.]

[Reg. No. PR-44]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Motions of Interested Persons for Expedition

DECEMBER 1, 1960.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 1st day of December 1960:

On March 18, 1960, the Board issued a notice of proposed rule-making, Docket 11221, 25 F.R. 2436, proposing several amendments in Part 300, the Board's principles of practice, and Part 302, the Board's rules of practice in economic proceedings. In respect of Part 302 the notice proposed an amendment to § 302.14 which would provide for a procedure whereby interested persons other than parties may request that a proceeding be expedited.

Final action on the proposals in said notice relating to Part 300 is being taken simultaneously, by adoption of Amendment 1 to Part 300 and the Preamble thereto is hereby incorporated herein by reference. Among the amendments to Part 300 which are being adopted is one which outlaws communications to the Board on procedural issues in a hearing case made otherwise than in compliance with the Board's rules of practice, § 300.2(a). Under this provision persons who, because they are not parties, have no standing to make motions for expedition of the proceeding under Rule 18, could not urge expedition at all. Hence, upon consideration of all pertinent matter presented, it appears to the Board that Rule 14 should be amended to permit interested persons to make motions for expedition.

Since this amendment to Part 302 constitutes a procedural rule it may be made effective on less than 30 days' notice.

Accordingly, the Board hereby amends Part 302 of its Procedural Regulations, 14 CFR Part 302, effective December 6, 1960, and applicable to pending proceedings, by amending § 302.14 to read:

§ 302.14 Participation in hearing cases by persons not parties.

(a) *Requests for expedition.* In any case to which the Board's principles of practice, Part 300, are applicable, any interested person, including any State, subdivision thereof, State aviation commission, or other public body, may by motion request expedition of such case or file an answer in support of or in opposition to such motions. Such motions and answers shall be served upon all parties to the case as provided in § 302.8 hereof.

(b) *Participation in hearings.* Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence which is relevant to the issues. With the consent of the Examiner or the Board, if the hearing is held by the Board, such person may also cross-examine witnesses directly. Such persons may also present to both the Examiner and the Board a written statement on the issues involved in the proceeding. Such statement shall conform to the requirements of these rules as to form, content, service, and time of filing of briefs to the Examiner and the Board.

(c) *Participation in oral argument.* A representative of any department, agency or branch of the Federal Government or of any State Government (including a State aviation commission) may appear and present oral argument in any proceeding in which argument has been assigned.

(Sec. 204(a), 77 Stat. 743; 49 U.S.C. 1324. Interpret or apply sec. 1001, 72 Stat. 788, 49 U.S.C. 1481)

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER, *Secretary.*

[F.R. Doc. 60-11269; Filed, Dec. 5, 1960; 8:46 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 550; Amdt. 230]

PART 507—AIRWORTHINESS DIRECTIVES

Curtiss-Wright C-46 Series Aircraft

Pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), an airworthiness directive was adopted on October 25, 1960, and made effective immediately because of the safety emergency involved, as to all known operators of Curtiss-Wright C-46 Series aircraft by individual telegrams dated October 25, 1960. This directive required replacement of outer wing panel attachment bolts prior to the next flight if not already accomplished within the last 10,000 hours' time in service. Thereafter, replacement was required at intervals of 10,000 hours' time in service. On October 26, 1960, as a result of further evidence regarding the structure involved, an amendment was adopted and made effective immediately as to all known operators of Curtis-Wright C-46 Series aircraft by individual telegrams dated October 26, 1960, amending the directive of October 25, 1960, to define more specifically the inspection intervals and replacement required.

For the reasons stated above it was found that immediate corrective action was required in the interest of safety, that notice and public procedure thereon were impracticable and contrary to the public interest and that good cause existed for making the airworthiness directive and amendment effective immediately by individual directives to all known operators of Curtis-Wright C-46 Series aircraft. Since these conditions still exist, the airworthiness directive (with subsequently corrected part numbers) adopted on October 25, 1960, as amended by the amendment adopted October 26, 1960, is hereby published as an amendment to § 507.10(a) of Part 507 (14 CFR Part 507), and shall become effective upon the date of publication in the FEDERAL REGISTER as to all other persons:

CURTISS-WRIGHT. Applies to all C-46 A, D, E, F, and R; C-46/CW 20T; Super C-46/CW 20T; Super 46; and Super 46C aircraft. Compliance required as indicated.

Due to fatigue failures found in the outer wing panel attachment bolts, the following must be accomplished:

(a) On aircraft having outer wing panel attachment bolts with 10,000 or more hours' time in service that have accumulated more than 5,000 hours' flight time since the last inspection of such bolts, the outer wing panel attachment bolts must be inspected for cracks, elongation and corrosion prior to the next flight except aircraft may be ferried without a special flight permit one time only, with occupancy limited to the required flight crew, to a base where personnel and facilities for required work are available.

(b) On aircraft having outer wing panel attachment bolts with 10,000 or more hours' time in service that have accumulated less than 5,000 hours' flight time since the last inspection of such bolts, the outer wing panel attachment bolts must be reinspected for cracks, elongation and corrosion within the next 25 hours of flight time.

(c) Outer wing panel attachment bolts found, during the inspections under (a) or (b), to be cracked, elongated or corroded must be replaced with new bolts prior to further flight.

(d) Outer wing panel attachment bolts which are not found, during the inspections under (a) or (b), to have cracks, elongation or corrosion, may be reused for a total time not to exceed 500 hours' flight time after such inspection at which time all such bolts must be replaced with new bolts.

(e) After compliance with the requirements of paragraph (c) and/or (d) all outer wing panel attachment bolts must be replaced at intervals of 10,000 hours' time in service.

(f) New bolts, P/N's SS 157-7-21 or MS 20007-21 or NAS 147-35 (31 per wing) and P/N's SS 157-6-20 or MS 20006-20 or NAS 146-33 (88 per wing) or FAA approved equivalents are acceptable replacements.

This amendment shall become effective on the date of publication in the FEDERAL REGISTER for all operators not receiving notice by telegrams dated October 25, 1960, and as amended October 26, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on November 29, 1960.

GEORGE C. PRILL, *Acting Director, Bureau of Flight Standards.*

[F.R. Doc. 60-11276; Filed, Dec. 5, 1960; 8:48 a.m.]

[Reg. Docket No. 507; Amdt. 38]

PART 514—TECHNICAL STANDARD ORDERS FOR AIRCRAFT MATERIALS, PARTS, PROCESSES, AND APPLIANCES

TSO-C11c Fire Detectors

A proposed amendment to § 514.21 establishing minimum performance standards for fire detectors used on civil aircraft of the United States was published in 25 F.R. 8909.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), Part 514 of the regulations of the Administrator (14 CFR Part 514) is hereby amended as follows:

Section 514.21 is revised as follows:

§ 514.21 Fire detectors (thermal sensing and ionization sensing types)—TSO-C11c.

(a) *Applicability*—(1) *Minimum performance standards.* Minimum performance standards are hereby established for fire detectors of the subject types which are required to be approved for use on piston and/or turbine engine-powered civil aircraft of the United States. New models of these types of fire detectors manufactured for use on civil aircraft of the United States on or after January 16, 1961, shall meet the standards specified in Federal Aviation Agency Standard "Fire Detectors (Thermal Sensing and Ionization Sensing Types)." Fire detectors approved prior to January 16, 1961, may continue to be manufactured under the provisions of their original approval.

(b) *Marking.* In lieu of information required in § 514.3(c), the alarm temperature shall be shown. Compliance of the detector with the piston or turbine engine requirements, or both, shall be designated by -P, -T, or -PT, respectively, as a suffix following the TSO designation, as: TSO-C11c-P.

(c) *Data requirements.* (1) The manufacturer shall maintain a current file of complete design data.

(2) The manufacturer shall maintain a current file of complete data describing the inspection and test procedures applicable to his equipment. (See paragraph (d) of this section.)

(3) Six copies each, except where noted, of the following shall be furnished to the Chief, Engineering and Manufacturing Division, Bureau of Flight Standards, Federal Aviation Agency, Washington 25, D.C., with the statement of conformance certifying that the instrument conforms to this section.

(i) Manufacturer's operating instructions and equipment limitations.

(ii) Installation procedures with applicable schematic drawings, wiring diagrams, and specifications. Indicate any limitations, restrictions, or other conditions pertinent to the installation. These data shall include the following:

(*a*) Starting ambient temperature used in determining the response time (see § 7.1.1);

(*b*) Maximum allowable normal ambient temperature at the point of sensor location;

(*c*) Maximum allowable rate of temperature rise at point of sensor location as a result of normal operation;

(*d*) Operating voltage;

(*e*) Mounting or support method; and

(*f*) Maximum or minimum number of units or detector length which can be used in one circuit or one fire zone without adversely affecting sensitivity or causing false indications due to temperature associated with normal operation.

(iii) One copy of the manufacturer's test report.

(d) *Quality control.* Fire detectors shall be produced under a quality control system, established by the manufacturer, which will assure that each detector is in conformity with the requirements of this section and is in a condition for safe operation. This system shall be described in the data required under paragraph (c)(2) of this section. A representative of the Administrator shall be permitted to make such inspections and tests at the manufacturer's facility as may be necessary to determine compliance with the requirements of this section.

Effective date. January 16, 1961.

(Secs. 313(a), 601; 72 Stat. 752, 775; 49 U.S.C. 1354(a), 1421)

Issued in Washington, D.C., on November 29, 1960.

GEORGE C. PRILL,
Acting Director, Bureau of Flight Standards.

[F.R. Doc. 60-11277; Filed, Dec. 5, 1960; 8:48 a.m.]

Chapter XV—Defense Air Transportation Administration, Department of Commerce

[General Order—War Risk Insurance (Revised)]

PART 1501—WAR RISK INSURANCE

The General Order on Aviation War Risk Insurance, dated November 1, 1956, is hereby revised to read as follows:

Title XIII of the Federal Aviation Act of 1958 (72 Stat. 731, 49 U.S.C. 1531), which re-enacted the provisions of Public Law 47, 82d Congress (65 Stat. 65), as amended, authorizes the Secretary of Commerce, with the approval of the President, to provide insurance against loss or damage or legal liability arising out of war risks whenever it appears to the Secretary that such insurance adequate for the needs of the air commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

The Secretary of Commerce, by Department Order No. 137, effective November 12, 1951, authorized the Defense Air Transportation Administrator to perform the functions vested in the Secretary of Commerce under Public Law 47, 82d Congress, "except that the authority to determine that war risk insurance cannot be obtained on reasonable terms and conditions from private insurance companies is reserved to the Secretary of Commerce".

The Secretary of Commerce made a finding on September 11, 1952, that war risk insurance adequate for the needs of the air commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States, and the President, on September 17, 1952, gave the required approval for providing such insurance.

On August 26, 1958, the Secretary of Commerce delegated authority to the Defense Air Transportation Administrator to determine that war risk insurance cannot be obtained on reasonable terms and conditions from private insurance companies.

The President has approved the providing of war risk insurance, without premium, to the Department of Defense for participants in the Civil Reserve Air Fleet (CRAF) Program, and to the Department of State for American air carriers entering into certain agreements with such Department, in consideration of agreements of the Secretary of Defense and the Secretary of State to indemnify the Secretary of Commerce against all losses covered by such insurance.

The Defense Air Transportation Administrator is prepared to provide war risk hull insurance, war risk liability insurance, exclusive of cargo liability, and war risk carriers liability to cargo insurance, except that no insurance will be issued to cover any war risks or persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia. Geographical limits for the coverages may be prescribed by the Defense Air Transportation Administrator. The following rules and regulations for the providing of such insurance are promulgated:

Subpart A—General

Sec.
1501.1 Eligibility of aircraft for insurance.
1501.2 Change in status of an aircraft after interim binders have been issued.
1501.3 Applications for insurance and payment of binding fees.
1501.4 Time of attachment of insurance.
1501.5 Premiums and payment thereof.
1501.6 War risk insurance underwriting agents.
1501.7 Modifications.

Subpart B—War Risk Hull Insurance

1501.100 Amounts of insurance for which application may be made.
1501.101 Form of application.
1501.102 Issuance of interim binder: its terms and conditions.
1501.103 Sums which will be insured under interim binder.
1501.104 Calculation of premiums.
1501.105 Additional war risk hull insurance.
1501.106 Standard forms of war risk hull insurance interim binders.
1501.107 Standard forms of war risk hull insurance policies.

Subpart C—War Risk Liability Insurance, Exclusive of Cargo Liability

1501.200 Limits of liability insurance for which application may be made.
1501.201 Form of applications.
1501.202 Issuance of interim binder: Its terms and conditions.
1501.203 Sums which will be insured under interim binder.
1501.204 Calculation of premiums.
1501.205 Standard forms of war risk liability insurance, exclusive of cargo liability, interim binders.
1501.206 Standard forms of war risk liability insurance, exclusive of cargo liability, policies.

Subpart D—War Risk Carriers Liability to Cargo Insurance

1501.300 Limits of liability insurance for which application may be made.
1501.301 Form of application.
1501.302 Issuance of interim binder: its terms and conditions.
1501.303 Sums which will be insured under interim binder.
1501.304 Calculation of premiums.
1501.305 Standard forms of war risk carriers liability to cargo insurance interim binders.
1501.306 Standard forms of war risk carriers liability to cargo insurance policies.

AUTHORITY: §§ 1501.1 to 1501.306 issued under sec. 1307, 72 Stat. 803; 49 U.S.C. 1537.

Subpart A—General

§ 1501.1 Eligibility of aircraft for insurance.

An aircraft is eligible for insurance if it is:

(a) An American aircraft as defined in section 1301(a), Title XIII of the Federal Aviation Act of 1958; or

(b) A foreign-flag aircraft engaged in aircraft operations deemed by the Defense Air Transportation Administrator to be in the interest of the national defense or the national economy of the United States.

§ 1501.2 Change in status of an aircraft after interim binders have been issued.

In the event that an aircraft shall cease to come within either paragraph (a) or (b) of § 1501.1 after any interim binders set forth in §§ 1501.106, 1501.205 and 1501.305 have been issued, interim binders covering such an aircraft shall automatically terminate. In the event of sale, lease, confiscation, requisition, or total loss of an aircraft, or any other change in the status, which by the terms of the binder causes same to terminate, prompt notice shall be given in writing to the Defense Air Transportation Administrator.

§ 1501.3 Applications for insurance and payment of binding fees.

Applications for war risk hull and war risk liability, exclusive of cargo, insurance shall be filed on the same form, in duplicate, and applications for war risk carriers liability to cargo insurance shall be filed on a separate form, also in duplicate. Applications for insurance on those foreign-flag aircraft referred to in § 1501.1 shall be accompanied by a signed statement in quadruplicate, setting forth the dates of the applications, the forms of insurance applied for, the registry number of the aircraft, its flag, the name of the owner or lessee, the operations in which the aircraft is engaged and the reason such operations should be considered to be in the interest of the national defense or national economy of the United States, which statement shall be deemed to be a part of each application for insurance filed with respect to such aircraft. Applications shall be made to the Administrator, Defense Air Transportation Administration, Department of Commerce, Washington 25, D.C. A check payable to the Treasurer of the United States for the total amount of all binding fees payable by each applicant shall accompany the applications. Binding fees are not returnable unless applications are rejected.

§ 1501.4 Time of attachment of insurance.

The war risk insurance to be provided under this part shall attach at such date and hour as the applicant shall designate, but:

(a) In the case of premium insurance, not earlier than the date and hour commercial war risk insurance terminates by reason of the operation of the "twenty-four hour automatic termination clause", whether or not the aircraft was covered by such commercial insurance; and

(b) In the case of non-premium insurance, not earlier than the date and hour:

(1) The Civil Reserve Air Fleet (CRAF) Program is activated by order of the Secretary of Defense; or

(2) United States air carriers having agreements with the Department of State commence performance of services under such agreements.

§ 1501.5 Premiums and payment thereof.

The rates of premium for insurance shall be subject to review and revision by the Defense Air Transportation Administrator each calendar month, and the Administrator may deem it appropriate to fix premium surcharges or rate loadings. Premiums shall accrue upon the fixing of the rates by the Defense Air Transportation Administrator, and shall be payable within ten days after receipt of notice of the amounts thereof by the assured. Premiums shall be paid to the Defense Air Transportation Administrator by check payable to the order of the Treasurer of the United States.

§ 1501.6 War risk insurance underwriting agents.

Applications from companies or groups of companies authorized to do an aviation insurance business in any State of the United States for appointment as underwriting agents will not be received until the Defense Air Transportation Administrator finds that it is practical to employ such companies as underwriting agents. The Defense Air Transportation Administrator will promulgate, and publish in the FEDERAL REGISTER, the forms and agreements required for the appointment of underwriting agents.

§ 1501.7 Modifications.

The provisions of this part may be amended or modified at any time by the Defense Air Transportation Administrator.

Subpart B—War Risk Hull Insurance

§ 1501.100 Amounts of insurance for which application may be made.

An applicant for war risk hull insurance shall state the amount of insurance desired, but any payment for damage to or total loss of the aircraft will be made as provided in § 1501.103.

§ 1501.101 Form of application.

Applications submitted shall be in strict accordance with one of the following forms:

(a) DATA Form No. WRI-1 (Rev. 11-60).

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

DEFENSE AIR TRANSPORTATION ADMINISTRATION

Application for Premium War Risk Hull and Liability, Exclusive of Cargo, Insurance

Application is made for premium War Risk Hull and Liability, exclusive of Cargo, Insurance, pursuant to Title XIII of the Federal Aviation Act of 1958, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached Schedule of Aircraft, with the understanding that this application does not commit the Defense Air Transportation Administrator to any liability or make the applicant liable for any premium unless insurance is effected by the Administrator:

Name of applicant _____
Address _____
Applicant's interest in aircraft described is that of _____
_____
Mortgage, or other encumbrance, if any _____
_____
Hull loss, if any, payable to _____
_____

Hull

Amounts set forth in the attached Schedule of Aircraft as representing the amount of war risk insurance desired with respect to each of such aircraft shall be deemed to be the "sum insured" in each instance, but in the event of damage to or total loss of any such aircraft, the insured value shall not be in excess of the stated valuation for such type of aircraft as determined by the Defense Air Transportation Administrator in accordance with the provisions of section 1307(a), Title XIII of the Federal Aviation Act of 1958 (49 U.S.C. 1537(a)), and set forth in § 1501.103 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations), and amendments thereto: *Provided*, That in the event the "sum insured" be less than the "stated valuation" determined under said section, this insurance shall not be in excess of the lesser amount.

Liability

The type of coverage required for the aircraft described in the attached Schedule of Aircraft shall be indicated, and the limits of liability desired for each of such coverages shall be specified, but such limits shall not be in excess of the maximum limits set forth below with respect to such coverages:

Type of coverage	Each person		Each occurrence	
	Requested	Maximum	Requested	Maximum
( ) Bodily injury or death (excluding passengers)		$300,000		$3,000,000
( ) Property damage				3,000,000
( ) Bodily injury or death, passengers		300,000		3,000,000
( ) Passengers baggage and personal effects				100,000

General

Insurance to attach, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics and the United States of America), at and from 24 hours from midnight G.M.T. of the day on which such outbreak of war occurs. Nevertheless, should the aircraft:

(1) Be in the air when such outbreak of war occurs, or

(2) Being at an airport depart therefrom as a measure of safety in respect of an insured peril within 24 hours of such outbreak of war,

this insurance shall not attach until midnight G.M.T. of the day on which the aircraft lands wherever such landing may be regardless of whether or not accidental damage has been sustained by the aircraft.

If this application is for insurance with respect to a foreign-flag aircraft, it shall be accompanied by the statement specified in § 1501.3 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations) which statement shall be deemed to be part of this application.

Binding fee (not returnable unless application is rejected) is $100 per aircraft.

Check payable to the Treasurer of the United States for the total amount of all binding fees enclosed herewith.

Rate of premium shall be fixed by the Defense Air Transportation Administrator, acting for the Secretary of Commerce.

During the period in which war risk insurance attaches, aircraft may not engage exclusively in air commerce within the several States of the United States and the District of Columbia.

Applicant warrants that the particulars herein are true and complete to the best of his knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application and the terms and conditions of the form of policy prescribed by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, will constitute the basis of any contract between him and the United States of America.

Applicant _____
Date _____ By _____
Name and title

Schedule of Aircraft

(To be attached to DATA Form No. WRI-1 (Rev. 11-60))

Make and model	*F.A.A. license No. or equivalent*	*Amount of war risk hull insurance desired for each aircraft*	*The value for which each aircraft is currently insured for risks other than war risk; or if not so insured, so state*

(b) DATA Form No. WRI-1A (11-60).

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

DEFENSE AIR TRANSPORTATION ADMINISTRATION

Application for Non-Premium War Risk Hull and Liability, Exclusive of Cargo, Insurance

Application is made for War Risk Hull and Liability, exclusive of Cargo, Insurance, without premium, pursuant to Title XIII of the Federal Aviation Act of 1958, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached Schedule of Aircraft, with the understanding that this application does not commit the Defense Air Transportation Administrator to any liability unless insurance is affected by the Administrator:

Name of applicant _____
Address _____
Date and number of applicant's Civil Reserve Air Fleet Standby Contract _____
Applicant's interest in aircraft described is that of _____
_____
Mortgage, or other encumbrance, if any _____
_____
Hull loss, if any, payable to _____
_____

Hull

Amounts set forth in the attached Schedule of Aircraft as representing the amount of war risk insurance desired with respect to each of such aircraft shall be deemed to be the "sum insured" in each instance, but in the event of damage to or total loss of any such aircraft, the insured value shall not be in excess of the stated valuation for such type of aircraft as determined by the Defense Air Transportation Administrator in accordance with the provisions of section 1307(a), Title XIII of the Federal Aviation Act of 1958 (49 U.S.C. 1537(a)), and set forth in § 1501.103 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (part 1501, Title 14, Code of Federal Regulations), and amendments thereto: *Provided*, That in the event the "sum insured" be less than the "stated valuation" determined under said section, this insurance shall not be in excess of the lesser amount.

Liability

The type of coverage required for the aircraft described in the attached Schedule of Aircraft shall be indicated, and the limits of liability desired for each of such coverages shall be specified, but such limits shall not be in excess of the maximum limits set forth below with respect to such coverages:

Type of coverage	Each person		Each occurrence	
	Requested	Maximum	Requested	Maximum
( ) Bodily injury or death (excluding passengers)		$300,000		$3,000,000
( ) Property damage				3,000,000
( ) Bodily injury or death, passengers		300,000		3,000,000
( ) Passengers baggage and personal effects				100,000

General

Insurance to attach when a Performance Notice becomes effective under applicant's Civil Reserve Air Fleet Standby Contract No. ------, dated ----------.

Binding fee (not returnable unless application is rejected) is $100 per aircraft.

Check payable to the Treasurer of the United States for the total amount of all binding fees enclosed herewith.

During the period in which war risk insurance attaches, aircraft may not engage exclusively in air commerce within the several States of the United States and the District of Columbia.

Applicant warrants that the particulars herein are true and complete to the best of his knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application and the terms and conditions of the form of policy prescribed by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, for war risk hull and liability, exclusive of cargo, insurance provided to civil air carriers participating in the CRAF program, will constitute the basis of any contract between him and the United States of America.

Date ---------- Applicant ----------
By ----------
Name and title

Schedule of Aircraft

(To be attached to DATA Form No. WRI-1A (Rev. 11-60))

Make and model	F.A.A. License No. or equivalent	Amount of war risk hull insurance desired for each aircraft	The value for which each aircraft is currently insured for risks other than war risk; or if not so insured, so state

(c) DATA Form No. WRI-1B (11-60).

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

DEFENSE AIR TRANSPORTATION ADMINISTRATION

Application for Non-Premium War Risk Hull and Liability, Exclusive of Cargo, Insurance

Application is made for War Risk Hull and Liability, exclusive of Cargo, Insurance, without premium, pursuant to Title XIII of the Federal Aviation Act of 1958, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached Schedule of Aircraft, with the understanding that this application does not commit the Defense Air Transportation Administrator to any liability unless insurance is effected by the Administrator:

Name of applicant ----------
Address ----------
Date of applicant's agreement with Department of State ----------
Applicant's interest in aircraft described is that of ----------
Mortgage, or other encumbrance, if any ----------
Hull loss, if any, payable to ----------

Hull

Amounts set forth in the attached Schedule of Aircraft as representing the amount of war risk insurance desired with respect to each of such aircraft shall be deemed to be the "sum insured" in each instance, but in the event of damage to or total loss of any such aircraft, the insured value shall not be in excess of the stated valuation for such type of aircraft as determined by the Defense Air Transportation Administrator in accordance with the provisions of section 1307(a), Title XIII of the Federal Aviation Act of 1958 (49 U.S.C. 1537(a)), and set forth in § 1501.103 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations), and amendments thereto: *Provided*, That in the event the "sum insured" be less than the "stated valuation" determined under said section, this insurance shall not be in excess of the lesser amount.

Liability

The type of coverage required for the aircraft described in the attached Schedule of Aircraft shall be indicated, and the limits of liability desired for each of such coverages shall be specified, but such limits shall not be in excess of the maximum limits set forth below with respect to such coverages:

Type of coverage	Each person		Each occurrence	
	Requested	Maximum	Requested	Maximum
( ) Bodily injury or death (excluding passengers)		$300,000		$3,000,000
( ) Property damage				3,000,000
( ) Bodily injury or death, passengers		300,000		3,000,000
( ) Passengers baggage and personal effects				100,000

General

Insurance to attach when the applicant commences performance of services under its agreement with the Department of State dated ----------.

Binding fee (not returnable unless application is rejected) is $100 per aircraft.

Check payable to the Treasurer of the United States for the total amount of all binding fees enclosed herewith.

During the period in which war risk insurance attaches, aircraft may not engage exclusively in air commerce within the several States of the United States and the District of Columbia.

Applicant warrants that the particulars herein are true and complete to the best of his knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application and the terms and conditions of the form of policy prescribed by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, for war risk hull and liability, exclusive of cargo, insurance provided to United States air carriers having agreements with the Department of State will constitute the basis of any contract between him and the United States of America.

Date ---------- Applicant ----------
By ----------
Name and title

Schedule of Aircraft

(To be attached to DATA Form No. WRI-1B (11-60))

Make and model	F.A.A. License No. or equivalent	Amount of war risk hull insurance desired for each aircraft	The value for which each aircraft is currently insured for risks other than war risk; or if not so insured, so state

§ 1501.102 Issuance of interim binder: its terms and conditions.

Upon acceptance of an application, an interim binder in the form of one of those set forth in § 1501.106 will be issued and there shall be deemed to be incorporated therein by reference, all of the terms, conditions and warranties contained in the standard war risk hull insurance policy to be prescribed by the Defense Air Transportation Administrator pursuant to the provisions of § 1501.107, to the same extent as if such policy were made a part of the binder. The binding fee shall be $100 per aircraft.

§ 1501.103 Sums which will be insured under interim binder.

The Defense Air Transportation Administrator has found, pursuant to section 1307(a) of the Federal Aviation Act of 1959 (49 U.S.C. 1537(a)), that the following values represent the fair and reasonable value of the aircraft to which they apply, and represent the maximum amounts for which the Defense Air Transportation Administrator will provide war risk hull insurance for damage to or total loss of the aircraft and the amounts for which claims for damage to or total loss of such insured aircraft may be compromised, settled, adjusted, or paid, by the Defense Air Transportation Administrator with respect to insurance attaching under the standard forms of war risk hull insurance interim binders prescribed by § 1501.106 or the standard forms of war risk hull insurance policies to be prescribed by the Defense Air Transportation Administrator pursuant to the provisions of § 1501.107:

Aircraft type:	Value
DC-4	$573,911
DC-6	1,199,852
DC-6A	1,561,173
DC-6B	1,561,173
DC-7	1,863,000
DC-7 (Freighter)	1,863,000
DC-7B	2,000,000
DC-7B (Freighter)	2,000,000
DC-7C	2,136,000
DC-7C (Freighter)	2,136,000
DC-8	5,500,000
L-049	1,257,707
L-749	1,257,707
L-749A	1,495,952
L-1049A	1,532,606
L-1049C	1,665,563
L-1049D	1,665,563
L-1049H	2,111,000
L-1649A	2,200,000
L-1649A (Freighter)	2,200,000
B-377	1,794,388
B-707—100	4,700,000
B-707—200	5,200,000
B-707—300	5,500,000

Revised values will be prescribed in subsequent revisions of this part. The latest published values will remain in effect until new ones are published.

§ 1501.104 Calculation of premiums.

Premiums will be calculated on the basis of the applicable premium rate multiplied by the dollar amount of insurance in force during the period under consideration.

§ 1501.105 Additional war risk hull insurance.

Persons having insurable interests in aircraft may obtain, on an excess basis, additional war risk hull insurance in such amounts as desired, and such insurance shall not inure to the benefit of the Defense Air Transportation Administrator as underwriter.

§ 1501.106 Standard forms of war risk hull insurance interim binders.

The following are the standard forms of war risk hull insurance interim binders for premium and non-premium war risk hull insurance:

(a) DATA Form No. WRI-2 (Rev. 11-60).

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

DEFENSE AIR TRANSPORTATION ADMINISTRATION

Interim Binder No. PR-H&LWR

The United States of America, represented by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, in consideration of the binding fee and premium provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Title XIII of the Federal Aviation Act of 1958, against Hull and Liability, exclusive of Cargo, War Risks only, subject to the conditions stated herein, on the aircraft described in the attached Schedule of Aircraft:

Name of Insured ----------
Address ----------
Hull loss, if any, payable to ----------

Hull

Amounts set forth in the Schedule of Aircraft attached to the insured's application for premium war risk hull and liability, exclusive of cargo, insurance, a copy of which is attached hereto and made a part hereof, as representing the amount of war risk hull insurance desired for each of such aircraft shall be deemed to be the "sum insured" in each instance, but in the event of damage to or total loss of any such aircraft, the insured value shall not be in excess of the stated valuation for such type of aircraft as determined by the Defense Air Transportation Administrator in accordance with the provisions of section 1307(a), Title XIII of the Federal Aviation Act of 1958 (49 U.S.C. 1537(a)), and set forth in § 1501.103 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) Part 1501, Title 14, Code of Federal Regulations), and amendments thereto: *Provided*, That in the event the "sum insured" be less than the "stated valuation" determined under said section, this insurance shall not be in excess of the lesser amount.

Liability

Insurance of the type indicated and in the limits shown below, such limits being not in excess of the maximum limits set forth in the insured's application for premium war risk hull and liability, exclusive of cargo, insurance, is provided for the aircraft shown in the attached Schedule of Aircraft:

Type of coverage	Each person	Each occurrence
( ) Bodily injury or death (excluding passengers)		
( ) Property damage		
( ) Bodily injury or death, passengers		
( ) Passengers baggage and personal effects		

General

Attaching in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics and the United States of America), at and from 24 hours from midnight G.m.t. of the day on which such outbreak of war occurs. Nevertheless, should the aircraft:

(1) Be in the air when such outbreak of war occurs, or

(2) Being at an airport depart therefrom as a measure of safety in respect to an insured peril within 24 hours of such outbreak of war,

this insurance shall not attach until midnight G.m.t. of the day on which the aircraft lands wherever such landing may be regardless of whether or not accidental damage has been sustained by the aircraft.

This binder shall terminate:

(a) Upon expiration of the authority of the Secretary of Commerce to provide War Risk Insurance under Title XIII of the Federal Aviation Act of 1958, or

(b) Within three years from its date, or

(c) Within five days after telegraphic notice of cancellation has been dispatched to the Insured by the Defense Air Transportation Administrator, or

(d) Upon the issuance of a policy by the Defense Air Transportation Administrator with respect to any insurance bound herein which is covered by that policy,

whichever shall occur first.

The insurance provided hereunder does not cover any war risks on persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia.

There shall be deemed to be incorporated herein all of the terms, conditions, and warranties contained in the applicable war risk hull and war risk liability, exclusive of cargo, insurance policies prescribed by the Defense Air Transportation Administrator pursuant to the provisions of §§ 1501.107 and 1501.206, respectively, of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations).

The premium rate for this insurance shall be subject to review and revision by the Defense Air Transportation Administrator each calendar month. Unless the revised premium rate is accepted in writing by the insured within ten days after dispatch of notice of the amount thereof, the insurance provided hereunder shall automatically terminate at the end of such ten day period. Premium at the new revised rate shall be charged for the ten day period during which this insurance remained in force, unless the Defense Air Transportation Administrator receives notice within such period of the refusal of the insured to accept such new revised premium rate, in which event premium at the new revised rate shall be charged for that portion of the ten day period prior to receipt of such notice. Upon receipt of such notice of non-acceptance, the insurance provided hereunder shall terminate, notwithstanding any other provision for cancellation in this binder. In the event this insurance is cancelled, or otherwise terminated, and not replaced by a policy, there shall be a premium charge hereunder for the period during which this insurance has been in force. Premium payments shall be made to the Defense Air Transportation Administrator by check payable to the order of the Treasurer of the United States of America.

In the event of any loss covered by this binder, prompt notice thereof shall be given by the insured to the Defense Air Transportation Administrator, but failure to give such prompt notice because of wartime conditions or regulations shall not prejudice this insurance. The insurer shall be subrogated to all rights which the insured may have against any other person or entity in respect of any payment made under this binder to the extent of such payment, and the insured shall, upon the request of the insurer, execute all documents necessary to secure such rights to the insurer.

Warranted that during the period of this binder and the term of any insurance attaching hereunder the aircraft is (1) an American aircraft as defined in section 1301(a), Title XIII of the Federal Aviation Act of 1958, or

(2) a foreign-flag aircraft engaged in aircraft operations deemed by the Defense Air Transportation Administrator to be in the interest of the national defense of the national economy of the United States, and if, at any time during the binder period or after insurance attached hereunder, the aircraft shall cease to come within either (1) or (2) above, this binder and insurance provided hereunder shall automatically terminate at the time of such change with respect to such aircraft, without return of premium unless the Defense Air Transportation Administrator agrees otherwise.

UNITED STATES OF AMERICA,
BY DEFENSE AIR TRANSPORTATION ADMINISTRATOR, ACTING FOR THE SECRETARY OF COMMERCE.

Date ---

(b) DATA Form WRI–2A (11–60).

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

DEFENSE AIR TRANSPORTATION ADMINISTRATION

Interim Binder No. NON–PR–H&LWR

The United States of America, represented by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, in consideration of the agreement of the Secretary of Defense to indemnify the Secretary of Commerce against all losses covered by war risk insurance provided, without premium, for civil air carriers participating in the Civil Reserve Air Fleet (CRAF) Program, and in consideration of the binding fee provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Title XIII of the Federal Aviation Act of 1958, against Hull and Liability, exclusive of Cargo, War Risks only, subject to the conditions stated herein, on the aircraft described in the attached Schedule of Aircraft, to be operated under Civil Reserve Air Fleet Standby Contract No. ----, dated ----:

Name of Insured ---
Address ---
Hull loss, if any, payable to ---

Hull

Amounts set forth in the Schedule of Aircraft attached to the insured's application for war risk hull and liability, exclusive of cargo, insurance, without premium, a copy of which is attached hereto and made a part hereof, as representing the amount of war risk hull insurance desired for each of such aircraft shall be deemed to be the "sum insured" in each instance, but in the event of damage to or total loss of any such aircraft, the insured value shall not be in excess of the stated valuation for such type of aircraft as determined by the Defense Air Transportation Administrator in accordance with the provisions of section 1307(a), Title XIII of the Federal Aviation Act of 1958 (49 U.S.C. 1537(a)), and set forth in § 1501.103 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations), and amendments thereto: *Provided*, That in the event the "sum insured" be less than the "stated valuation" determined under said section, this insurance shall not be in excess of the lesser amount.

Liability

Insurance of the type indicated and in the limits shown below, such limits being not in excess of the maximum limits set forth in the insured's application for war risk hull and liability, exclusive of cargo, insurance, without premium, is provided for the aircraft shown in the attached Schedule of Aircraft:

Type of coverage	Each person	Each occurrence
( ) Bodily injury or death (excluding passengers)		
( ) Property damage		
( ) Bodily injury or death, passengers		
( ) Passengers baggage and personal effects		

General

Attaching when a Performance Notice becomes effective under insured's Civil Reserve Air Fleet Standby Contract No. ----, dated ----.

This binder shall terminate:

(a) Upon expiration of the authority of the Secretary of Commerce to provide War Risk Insurance under Title XIII of the Federal Aviation Act of 1958, or

(b) Within three years from its date, or

(c) Upon expiration or cancellation of the insured's Civil Reserve Air Fleet Standby Contract, or

(d) Within five days after telegraphic notice of cancellation has been dispatched to the insured by the Defense Air Transportation Administrator, or

(e) Upon the issuance of a policy by the Defense Air Transportation Administrator with respect to any insurance bound herein which is covered by that policy,

whichever shall occur first.

The insurance provided hereunder does not cover any war risks on persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia.

There shall be deemed to be incorporated herein all of the terms, conditions, and warranties contained in the applicable war risk hull and war risk liability, exclusive of cargo, insurance policies prescribed by the Defense Air Transportation Administrator pursuant to the provisions of §§ 1501.107 and 1501.206, respectively, of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations).

In the event of any loss covered by this binder, prompt notice thereof shall be given by the insured to the Defense Air Transportation Administrator, but failure to give such prompt notice because of wartime conditions or regulations shall not prejudice this insurance. The insurer shall be subrogated to all rights which the insured may have against any other person or entity in respect of any payment made under this binder, to the extent of such payment and the insured shall, upon the request of the insurer, execute all documents necessary to secure such rights to the insurer.

Warranted that during the period of this binder and the term of any insurance attaching hereunder the aircraft is an American aircraft as defined in section 1301(a), Title XIII of the Federal Aviation Act of 1958, and if, at any time during the binder period or after insurance attaches hereunder, the aircraft shall cease to be an American aircraft as so defined, or ceases to be under the insured's Civil Reserve Air Fleet Standby Contract, this binder and insurance provided hereunder shall automatically terminate at the time of such change with respect to such aircraft, without return of binding fee unless the Defense Air Transportation Administrator agrees otherwise.

UNITED STATES OF AMERICA,
BY DEFENSE AIR TRANSPORTATION ADMINISTRATOR, ACTING FOR THE SECRETARY OF COMMERCE.

(Defense Air Transportation Administrator)

Date ---

(c) DATA Form WRI–2B (11–60).

UNITED STATES OF AMERICA

DEPARTMENT OF COMMERCE

DEFENSE AIR TRANSPORTATION ADMINISTRATION

Interim Binder No. NON–PR–H&LWR

The United States of America, represented by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, in consideration of the agreement of the Secretary of State to indemnify the Secretary of Commerce against all losses covered by war risk insurance provided, without premium, for United States air carriers having agreements with the Department of State for the continuation of regularly scheduled service or the provision of charter service, and in consideration of the binding fee provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Title XIII of the Federal Aviation Act of 1958, against Hull and Liability, exclusive of Cargo, War Risks only, subject to the conditions stated herein, on the aircraft described in the attached Schedule of Aircraft to be operated under an agreement with the Department of State dated ----.

Name of Insured ---
Address ---
Hull loss, if any, payable to ---

Hull

Amounts set forth in the Schedule of Aircraft attached to the insured's application for war risk hull and liability, exclusive of cargo, insurance, without premium, a copy of which is attached hereto and made a part hereof, as representing the amount of war risk hull insurance desired for each of such aircraft shall be deemed to be the "sum insured" in each instance, but in the event of damage to or total loss of any such aircraft, the insured value shall not be in excess of the stated valuation for such type of aircraft as determined by the Defense Air Transportation Administrator in accordance with the provisions of section 1307(a), Title XIII of the Federal Aviation Act of 1958 (49 U.S.C. 1537(a)), and set forth in § 1501.103 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations), and amendments thereto: *Provided*, That in the event the "sum insured" be less than the "stated valuation" determined under said section, this insurance shall not be in excess of the lesser amount.

Liability

Insurance of the type indicated and in the limits shown below, such limits being not in excess of the maximum limits set forth in the insured's application for war risk hull and liability, exclusive of cargo, insurance, without premium, is provided for the aircraft shown in the attached Schedule of Aircraft:

Type of coverage	Each person	Each occurrence
( ) Bodily injury or death (excluding passengers)		
( ) Property damage		
( ) Bodily injury or death, passengers		
( ) Passengers baggage and personal effects		

General

Attaching when the insured commences performance of services under its agreement with the Department of State dated ----.

This binder shall terminate:

(a) Upon expiration of the authority of the Secretary of Commerce to provide War Risk Insurance under Title XIII of the Federal Aviation Act of 1958, or

(b) Within three years from its date, or

(c) Upon expiration or cancellation of the insured's agreement with the Department of State dated ----, or

(d) Within five days after telegraphic notice of cancellation has been dispatched to the insured by the Defense Air Transportation Administrator, or

(e) Upon issuance of a policy by the Defense Air Transportation Administrator with respect to any insurance bound herein which is covered by that policy,

whichever shall occur first.

The insurance provided hereunder does not cover any war risks on persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia.

There shall be deemed to be incorporated herein all of the terms, conditions, and warranties contained in the applicable war risk hull and war risk liability, exclusive of cargo, insurance policies prescribed by the Defense Air Transportation Administrator pursuant to the provisions of §§ 1501.107 and 1501.206, respectively, of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations).

In the event of any loss covered by this binder, prompt notice thereof shall be given by the insured to the Defense Air Transportation Administrator, but failure to give such prompt notice because of wartime conditions or regulations shall not prejudice this insurance. The insurer shall be subrogated to all rights which the insured may have against any other person or entity in respect to any payment made under this binder to the extent of such payment, and the insured shall, upon the request of the insurer, execute all documents necessary to secure such rights to the insurer.

Warranted that during the period of this binder and the term of any insurance attaching hereunder the aircraft is an American Aircraft as defined in section 1301(a), Title XIII of the Federal Aviation Act of 1958, and if at any time during the binder period or after insurance attaches hereunder, the aircraft shall cease to be an American aircraft as so defined, or ceases to be under the agreement with the Department of State, this binder and insurance provided hereunder shall automatically terminate at the time of such change with respect to such aircraft, without return of binding fee unless the Defense Air Transportation Administrator agrees otherwise.

UNITED STATES OF AMERICA,
BY DEFENSE AIR TRANSPORTATION ADMINISTRATOR, ACTING FOR THE SECRETARY OF COMMERCE.

(Defense Air Transportation Administrator)

Date ---

state the limits of liability desired, but such limits shall not exceed the following:

Coverage	Each person	Each occurrence
Bodily injury or death (excluding passengers)	$300,000	$3,000,000
Property damage		3,000,000
Bodily injury or death, passengers	300,000	3,000,000
Passengers baggage and personal effects		100,000

§ 1501.201 Form of applications.

Applications submitted shall be in strict accordance with the forms set forth in §1501.101.

§ 1501.202 Issuance of interim binder; its terms and conditions.

Upon acceptance of an application, an interim binder in the form of one of those set forth in §1501.106 will be issued, and there shall be deemed to be incorporated therein by reference all of the terms, conditions and warranties contained in the standard war risk liability insurance, exclusive of cargo liability, policy to be prescribed by the Defense Air Transportation Administrator, pursuant to the provisions of § 1501.206, to the same extent as if such policy were made a part of the binder. The binding fee of $100 per aircraft set forth in § 1501.102 for war risk hull insurance shall also cover the cost of binding war risk liability insurance, exclusive of cargo liability.

§ 1501.203 Sums which will be insured under interim binder.

The sums insured shall not be in excess of those set forth in § 1501.200.

§ 1501.204 Calculation of premiums.

Premiums for Bodily Injury or Death (Excluding Passengers) and Property Damage liability will be calculated by multiplying the applicable premium rate by airplane miles. Premiums for Bodily Injury or Death, Passengers, and Passengers Baggage and Personal Effects liability will be calculated by multiplying the applicable premium rate by passenger miles.

§ 1501.205 Standard forms of war risk liability insurance, exclusive of cargo liability, interim binders.

The standard forms of war risk liability insurance, exclusive of cargo liability, interim binders for premium and non-premium insurance shall be those set forth in § 1501.106.

§ 1501.206 Standard forms of war risk liability insurance, exclusive of cargo liability, policies.

Standard forms of war risk liability insurance, exclusive of cargo liability, policies for premium and non-premium insurance will be prescribed by the Defense Air Transportation Administrator, and published in the FEDERAL REGISTER as an amendment to this section.

Subpart C—War Risk Liability Insurance, Exclusive of Cargo Liability

§ 1501.200 Limits of liability insurance for which application may be made.

Applicants for war risk liability insurance, exclusive of cargo liability, shall state the limits of liability desired, but the limit for any one accident shall not exceed $1,000,000.00.

§ 1501.301 Form of application.

Applications submitted shall be in strict accordance with one of the following forms:

(a) DATA Form No. WRI–6 (Rev. 11–60).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
DEFENSE AIR TRANSPORTATION ADMINISTRATION

Application for Premium War Risk Carriers Liability to Cargo Insurance

Application is made for premium War Risk Carriers Liability to Cargo Insurance, pursuant to Title XIII of the Federal Aviation Act of 1958, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached Schedule of Aircraft, with the understanding that this application does not commit the Defense Air Transportation Administrator to any liability or make the applicant liable for any premium unless insurance is effected by the Administrator:

Name of applicant ---
Address ---
Loss, if any, payable to ---

Limits of liability desired for each of the aircraft described in the attached Schedule of Aircraft shall be specified, but the limit for any one accident shall not exceed $1,000,000.

Insurance to attach, in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics and the United States of America), at and from 24 hours from midnight G.M.T. of the day on which such outbreak of war occurs. Nevertheless, should the aircraft:

(1) Be in the air when such outbreak of war occurs, or

(2) Being at an airport depart therefrom as a measure of safety in respect to an insured peril within 24 hours of such outbreak of war,

this insurance shall not attach until midnight G.m.t. of the day on which the aircraft lands wherever such landing may be regardless of whether or not accidental damage has been sustained by the aircraft.

If this application is for insurance with respect to a foreign-flag aircraft, it shall be accompanied by the statement specified in § 1501.3 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations) which statement shall be deemed to be a part of this application.

Binding fee (not returnable unless application is rejected) is $25 per aircraft.

Check payable to the Treasurer of the United States for the total amount of all binding fees enclosed herewith.

Rate of premium shall be fixed by the Defense Air Transportation Administrator, acting for the Secretary of Commerce.

During the period in which war risk insurance attaches, aircraft may not engage exclusively in air commerce within the several States of the United States and the District of Columbia.

Applicant warrants that the particulars herein are true and complete to the best of his knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application and the terms and conditions of the form of policy prescribed by the Defense Air Transportation Administrator, acting for the Secretary of Commerce will constitute the basis of any contract between him and the United States of America.

Subpart D—War Risk Carriers Liability to Cargo Insurance

§ 1501.300 Limits of liability insurance for which application may be made.

Applicants for war risk carriers liability to cargo insurance shall state the

Date..... Applicant.....
By.....
Name and Title

Schedule of Aircraft

(To be attached to DATA Form No. WRI-6 (Rev. 11-60))

Make and model	F.A.A. License No. or equivalent	Limits of liability desired for each aircraft

(2b) DATA Form No. WRI-6A (11-60).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
DEFENSE AIR TRANSPORTATION ADMINISTRATION

Application for Non-Premium War Risk Carriers Liability to Cargo Insurance

Application is made for War Risk Carriers Liability to Cargo Insurance, without premium, pursuant to Title XIII of the Federal Aviation Act of 1958, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached Schedule of Aircraft, with the understanding that this application does not commit the Defense Air Transportation Administrator to any liability unless insurance is effected by the Administrator:

Name of applicant _____
Address _____
Date of applicant's agreement with Department of State _____
Loss, if any, payable to _____
_____

Limits of liability desired for each of the aircraft described in the attached Schedule of Aircraft shall be specified, but the limit for any one accident shall not exceed $1,000,000.00.

Insurance to attach when the applicant commences performance of services under its agreement with the Department of State dated _____.

Binding fee (not returnable unless application is rejected) is $25 per aircraft.

Check payable to the Treasurer of the United States for the total amount of all binding fees enclosed herewith.

During the period in which war risk insurance attaches, aircraft may not engage exclusively in air commerce within the several States of the United States and the District of Columbia.

Applicant warrants that the particulars herein are true and complete to the best of his knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application and the terms and conditions of the form of policy prescribed by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, for war risk carriers liability to cargo insurance provided to United States air carriers having agreements with the Department of State, will constitute the basis of any contract between him and the United States of America.

Date..... Applicant.....
By.....
Name and title

Schedule of Aircraft

(To be attached to DATA Form No. WRI-6A (11-60))

Make and model	F.A.A. License No. or equivalent	Limits of liability desired for each aircraft

§ 1501.302 Issuance of interim binder: its terms and conditions.

Upon acceptance of an application, an interim binder in the form of one of those set forth in § 1501.305 will be issued, and there shall be deemed to be incorporated therein by reference all of the terms, conditions and warranties contained in the standard war risk carriers liability to cargo insurance policies to be prescribed by the Defense Air Transportation Administrator, pursuant to the provisions of § 1501.306, to the same extent as if such policies were made a part of the binder. The binding fee shall be $25 per aircraft.

§ 1501.303 Sums which will be insured under interim binder.

The sums insured shall be those stated in the application, but the liability for any one accident shall not exceed $1,000,000.00.

§ 1501.304 Calculation of premiums.

Premiums will be calculated by multiplying the applicable premium rate by the gross revenue received by the insured for the transportation of cargo.

§ 1501.305 Standard forms of war risk carriers liability to cargo insurance interim binders.

The following are the standard forms of carriers liability to cargo insurance interim binders for premium and non-premium war risk carriers liability to cargo insurance:

(b) DATA Form No. WRI-7 (Rev. 11-60).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
DEFENSE AIR TRANSPORTATION ADMINISTRATION

Interim Binder No. PR-CLWR

The United States of America, represented by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, in consideration of the binding fee and premium provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Title XIII of the Federal Aviation Act of 1958, against Carriers Liability to Cargo War Risks only, subject to the conditions stated herein, on the aircraft described in the attached Schedule of Aircraft:

Name of Insured _____
Address _____
Loss, if any, payabe to _____
_____

Limits of liability set forth in the Schedule of Aircraft attached to the insured's application for premium war risk carriers liability to cargo insurance, a copy of which is attached hereto and made a part hereof, as representing the limits of liability insurance desired for each of such aircraft shall be the sums insured, but liability for any one accident shall not exceed $1,000,000.00.

Attaching in the event of outbreak of war between any of the four Great Powers (France, Great Britain and/or any of the British Commonwealth of Nations, the Union of Soviet Socialist Republics and the United States of America), at and from 24 hours from midnight GMT of the day on which such outbreak of war occurs. Nevertheless, should the aircraft:

(1) Be in the air when such outbreak of war occurs, or

(2) Being at an airport depart therefrom as a measure of safety in respect to an insured peril within 24 hours of such outbreak of war,

this insurance shall not attach until midnight G.m.t. of the day on which the aircraft lands wherever such landing may be regardless of whether or not accidental damage has been sustained by the aircraft.

This binder shall terminate:

(a) Upon expiration of the authority of the Secretary of Commerce to provide War Risk Insurance under Title XIII of the Federal Aviation Act of 1958, or

(b) Within three years from its date, or

(c) Within five days after telegraphic notice of cancellation has been dispatched to the insured by the Defense Air Transportation Administrator, or

(d) Upon the issuance of a policy by the Defense Air Transportation Administrator with respect to any insurance bound herein which is covered by that policy,

whichever shall occur first.

The insurance provided hereunder does not cover any war risks on persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia.

There shall be deemed to be incorporated herein all of the terms, conditions, and warranties contained in the applicable war risk carriers liability to cargo insurance policies prescribed by the Defense Air Transportation Administrator pursuant to the provisions of § 1501.306 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations).

The premium rate for this insurance shall be subject to review and revision by the Defense Air Transportation Administrator each calendar month. Unless the revised premium rate is accepted in writing by the insured within ten days after dispatch of notice of the amount thereof, the insurance provided hereunder shall automatically terminate at the end of such ten day period. Premium at the new revised rate shall be charged for the ten day period during which this insurance remained in force, unless the Defense Air Transportation Administrator receives notice within such period of the refusal of the insured to accept such new rate hereunder shall terminate, notwithstanding any other provision for cancellation in this binder. In the event this insurance is cancelled, or otherwise terminated, and not replaced by a policy, there shall be a premium charge hereunder for the period during which this insurance has been in force. Premium payments shall be made to the Defense Air Transportation Administrator by check payable to the order of the Treasurer of the United States of America.

In the event of any loss covered by this binder, prompt notice thereof shall be given by the insured to the Defense Air Transportation Administrator, but failure to give such prompt notice because of wartime conditions or regulations shall not prejudice this insurance. The insurer shall be subrogated to all rights which the insured may have against any other person or entity in respect of any payment made under this binder to the extent of such payment, and the insured shall, upon the request of the insurer, execute all documents necessary to secure such rights to the insurer.

Warranted that during the period of this binder and the term of any insurance attaching hereunder the aircraft is (1) an American aircraft as defined in Section 1301 (a), Title XIII of the Federal Aviation Act of 1958, or (2) a foreign-flag aircraft engaged in aircraft operations deemed by the Defense Air Transportation Administrator to be in the interest of the national defense or the national economy of the United States, and if, at any time during the binder period or after insurance attaches hereunder, the aircraft shall cease to come within either (1) or (2) above, or ceases to be operated by the insured, this binder and insurance provided hereunder shall automatically terminate at the time of such change with respect to such aircraft, without return of premium unless the Defense Air Transportation Administrator agrees otherwise.

UNITED STATES OF AMERICA,
By DEFENSE AIR TRANSPORTATION ADMINISTRATOR, ACTING FOR THE SECRETARY OF COMMERCE.

_____
(Defense Air Transportation Administrator)

Date _____

(b) DATA Form No. WRI-7A (11-60).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
DEFENSE AIR TRANSPORTATION ADMINISTRATION

Interim Binder No. NON-PR-CLWR

The United States of America, represented by the Defense Air Transportation Administrator, acting for the Secretary of Commerce, in consideration of the agreement of the Secretary of State to indemnify the Secretary of Commerce against all losses covered by war risk insurance provided, without premium, for United States air carriers having agreements with the Department of State for the continuation of regularly scheduled service or the provision of charter service, and in consideration of the binding fee provided for herein, hereby insures, in accordance with applicable provisions of law and subject to all limitations thereof, particularly Title XIII of the Federal Aviation Act of 1958, against Carriers Liability to Cargo War Risks only, subject to the conditions stated herein, on the aircraft described in the attached Schedule of Aircraft to be operated under an agreement with the Department of State dated _____.

Name of Insured _____
Address _____
Loss, if any, payable to _____
_____

Limits of liability set forth in the Schedule of Aircraft attached to the insured's application for war risk carriers liability to cargo insurance, without premium, a copy of which is attached hereto and made a part hereof, as representing the limits of liability insurance desired for each of such aircraft shall be the sums insured, but liability for any one accident shall not exceed $1,000,000.00.

Attaching when the insured commences performance of services under its agreement with the Department of State dated _____.

This binder shall terminate:

(a) Upon expiration of the authority of the Secretary of Commerce to provide War Risk Insurance under Title XIII of the Federal Aviation Act of 1958, or

(b) Within three years from its date, or

(c) Upon expiration or cancellation of the insured's agreement with the Department of State dated _____, or

(d) Within five days after telegraphic notice of cancellation has been dispatched to the insured by the Defense Air Transportation Administrator, or

(e) Upon the issuance of a policy by the Defense Air Transportation Administrator with respect to any insurance bound herein which is covered by that policy,

whichever shall occur first.

The insurance provided hereunder does not cover any war risks on persons or property engaged or transported exclusively in air commerce within the several States of the United States and the District of Columbia.

There shall be deemed to be incorporated herein all of the terms, conditions, and warranties contained in the applicable war risk carriers liability to cargo insurance policies prescribed by the Defense Air Transportation Administrator pursuant to the provisions of § 1501.306 of Defense Air Transportation Administration General Order—War Risk Insurance (Revised) (Part 1501, Title 14, Code of Federal Regulations).

In the event of any loss covered by this binder, prompt notice thereof shall be given by the insured to the Defense Air Transportation Administrator, but failure to give such prompt notice because of wartime conditions or regulations shall not prejudice this insurance. The insurer shall be subrogated to all rights which the insured may have against any other person or entity in respect to any payment made under this binder to the extent of such payment, and the insured shall, upon the request of the insurer, execute all documents necessary to secure such rights to the insurer.

Warranted that during the period of this binder and the term of any insurance attaching hereunder the aircraft is an American aircraft as defined in section 1301(a), Title XIII of the Federal Aviation Act of 1958, and if, at any time during the binder period or after insurance attaches hereunder, the aircraft shall cease to be an American aircraft as so defined, or ceases to be under the agreement with the Department of State, this binder and insurance provided hereunder shall automatically terminate at the time of such change with respect to such aircraft, without return of binding fee unless the Defense Air Transportation Administrator agrees otherwise.

UNITED STATES OF AMERICA,
By DEFENSE AIR TRANSPORTATION ADMINISTRATOR, ACTING FOR THE SECRETARY OF COMMERCE.

_____
(Defense Air Transportation Administrator)

Date _____

§ 1501.306 Standard forms of war risk carriers liability to cargo insurance policies.

Standard forms of war risk carriers liability to cargo insurance policies for premium and non-premium insurance will be prescribed by the Defense Air Transportation Administrator, and published in the FEDERAL REGISTER as an amendment to this section.

Dated: November 21, 1960.

THEODORE HARDEEN, Jr.,
Defense Air Transportation Administrator.

Issued: November 29, 1960.

FREDERICK H. MUELLER,
Secretary.

[F.R. Doc. 60-11296; Filed, Dec. 5, 1960; 8:52 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7886 c.o., etc.]

PART 13—PROHIBITED TRADE PRACTICES

Starday Recording & Publishing Co., Inc., et al.

Subpart—Bribing customers' employees: § 13.315 *Employees of private concerns.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist orders: Starday Recording & Publishing Co., Inc., et al., Madison, Tenn., Docket 7886, Sept. 29, 1960; Hit-Record Distributing Company of Cincinnati et al., Cincinnati, Ohio, Docket 7897, Sept. 28, 1960; Merle Schneider et al. doing business as S and S Distributing Company, Detroit, Mich., Docket 7899, Sept. 28, 1960; Peacock Record Company, Inc., Houston, Tex., Docket 7901, Sept. 29, 1960; ARC Distributing Company et al., Detroit, Mich., Docket 7959, Sept. 28, 1960; Mayfair Distributors, Inc., et al., New York, N.Y., Docket 8021, Sept. 29, 1960; and Cadet Distributing Company, Inc., et al., Detroit, Mich., Docket 8037, Oct. 4, 1960]

In the Matters of: Starday Recording & Publishing Co., Inc., a Corporation, Starday International Sales Company, Inc., a Corporation, and Donald F. Pierce, Individually and as an Officer of Said Corporations; Hit-Record Distributing Company of Cincinnati, a Corporation, and Isadore Nathan, Individually and as an Officer of Said Corporation; Merle Schneider and John Shepherd, Individually and as Co-Partners, Trading and Doing Business as S and S Distributing Company; Peacock Record Company, Inc., a Corporation; ARC Distributing Company, a Corporation, and Henry Droz and Ralph Jewell, Individually and as Officers of Said Corporation; Mayfair Distributors, Inc., a Corporation, and Jerry Winston, Individually and as an Officer of Said Corporation; and Cadet Distributing Company, Inc., a Corporation, and Harry Levin, Hyme Levin, and Isadore Levin, Individually and as Officers of Said Corporation

Consent agreements in the above seven cases requiring manufacturers and distributors of phonograph records in Madison, Tenn.; Cincinnati, Ohio; Detroit, Mich.; Houston, Tex.; and New York City, to cease giving concealed payola to disc jockeys or other personnel of radio and television programs to induce frequent playing of their records in order to increase sales.

Respondents in these seven proceedings were ordered to cease and desist as follows:

It is ordered, That respondents Starday Recording & Publishing Co., Inc., a corporation, Starday International Sales Company, Inc., a corporation, and their

officers, and Donald F. Pierce, individually and as an officer of said corporations; Hit-Record Distributing Company of Cincinnati, a corporation, and its officers, and Isadore Nathan, individually and as an officer of said corporation; Merle Schneider and John Shepherd, individually and as copartners, trading and doing business as S and S Distributing Company, or under any other name; Peacock Record Company, Inc., a corporation, and its officers; ARC Distributing Company, a corporation, and its officers, and Henry Droz and Ralph Jewell, individually and as officers of said corporation; Mayfair Distributors, Inc., a corporation, and its officers, and Jerry Winston, individually and as an officer of said corporation; and Cadet Distributing Company, Inc., a corporation, and its officers, and Harry Levin, Hyme Levin, and Isadore Levin, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature;

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or any of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly received by him or his employer.

By separate "Decision of the Commission", etc., in each of the seven captioned matters, reports of compliance were required as follows (combining the orders):

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of these orders, file with the Commission reports in writing setting forth in detail the manner and form in which they have complied with the orders to cease and desist.

Issued: September 28, 1960 (Dockets 7897; 7899; 7959); September 29, 1960 (Dockets 7886; 7901; 8021); October 4, 1960 (Docket 8037).

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-11289; Filed, Dec. 5, 1960; 8:50 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME AND EXCESS-PROFITS TAXES

[T.D. 6511]

PART 16—EXCESS PROFITS ON ARMY CONTRACTS FOR AIRCRAFT

Setoffs of Deficiencies in Profit Against Excess Profits

On June 23, 1960, notice of proposed rule making regarding an amendment of the Excess Profits Regulations (26 CFR (1939) Part 16), relating to setoffs of deficiencies in profit against excess profits under section 14 of the Act of April 3, 1939, as amended, to conform to the decision in Emerson Electric Manufacturing Company (1957) 28 T.C. 1090, was published in the FEDERAL REGISTER (25 F.R. 5766). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so proposed are hereby adopted.

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: November 30, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

COURTNEY JOHNSON,
Assistant Secretary of the Army (Logistics).

NOVEMBER 2, 1960.

P. B. TAYLOR,
Assistant Secretary of the Air Force.

NOVEMBER 17, 1960.

In order to conform the Excess Profits Regulations (26 CFR (1939) Part 16), relating to excess profits on Army contracts for aircraft, to the decision in Emerson Electric Manufacturing Company (1957) 28 T.C. 1090, and to make certain clarifying changes, such regulations are amended as follows:

PARAGRAPH 1. Section 16.5 is amended by revising paragraph (c) (2) and (3) to read as follows:

(2) The amount of any net loss allowable as a credit in determining the excess profit for the income-taxable year (see § 16.9); and

(3) The amount of any deficiency in profit allowable as a credit in determining the excess profit for the income-taxable year (see § 16.9). The amount remaining after such subtraction is the amount of excess profit for the income-taxable year.

PAR. 2. Section 16.6 is amended by revising the example to read as follows:

Example. On September 1, 1939, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into a contract for the construction of Army aircraft coming within the scope of the act, the total contract price of which was $200,000. On March 10, 1940, the corporation entered into another such contract, the total contract price of which was $40,000. Both contracts were completed within the calendar year 1940, the first at a cost of $155,000 and the second at a cost of $45,000. During the year 1940, the B Corporation also completed at a deficiency in profit of $2,000 a contract entered into after April 3, 1939, for the construction of naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)). For the year 1939, the B Corporation sustained a net loss of $1,500 and a deficiency in profit of $1,000 on all contracts and subcontracts entered into after April 3, 1939, for Army aircraft coming within the scope of the act and completed within the calendar year 1939. For the year 1989, the B Corporation also sustained a net loss of $1,000 on a contract, entered into after April 3, 1939, and completed within the calendar year 1939, for naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)). For purposes of the Federal income tax, the net income of the B Corporation for the year 1940, on which the tax was paid, amounted to $96,000, which included the total net profit of $40,000 upon the two contracts entered into on September 1, 1939, and March 10, 1940. The excess profit liability is $4,332, computed as follows:

Total contract prices:		
Contract No. 1	$200,000	
Contract No. 2	40,000	
		$240,000
Less: Cost of performing contracts:		
Contract No. 1	$155,000	
Contract No. 2	45,000	
		200,000
Net profit on contracts		40,000
Less:		
12 percent of total contract prices (12 percent of $240,000)	$28,800	
Deficiency in profit (in naval aircraft contracts) in 1940	2,000	
Net loss (in Army aircraft contracts) from 1939	1,500	
Net loss (in naval aircraft contracts) from 1939	1,000	
Deficiency in profit (in Army aircraft contracts) from 1939	1,000	
		34,300
Excess profit for year 1940		5,700
Less: Credit for Federal income taxes (Federal income tax on $5,700 at rates for 1940)		1,368
Amount of excess profit payable to the United States		4,332

PAR. 3. Section 16.9 is amended:

(A) By revising paragraphs (a) and (b) to read as follows:

(a) The term "net loss" as used in the act and as applied to contracts and subcontracts for aircraft or portions thereof coming within the regulations prescribed under the act or under 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) means the amount by which the total cost of performing all such contracts and subcontracts for aircraft entered into after April 3, 1939, and completed by a particular contracting party within the income-taxable year exceeds the total contract prices of such contracts and subcontracts. As to the meaning of income-taxable year, see § 16.1.

(b) The term "deficiency in profit", as used in the act and as applied to contracts and subcontracts for aircraft or portions thereof coming within the regulations prescribed under the act or under 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)), means the amount by which 12 percent of the total contract prices of all such contracts and subcontracts for aircraft entered into after April 3, 1939, and completed by a particular contracting party within the income-taxable year exceeds the net profit upon all such contracts and subcontracts.

(B) By revising the first sentence of paragraph (c) to read as follows:

(c) A net loss or a deficiency in profit sustained by a contracting party for an income-taxable year is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for aircraft coming within the regulations prescribed under the act or under 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) and completed during the four next succeeding income-taxable years.

(C) By revising the example in paragraph (e) to read as follows:

Example. For the calendar year 1939, the A Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, sustained a net loss of $30,000 on the contracts and subcontracts for Army aircraft and portions thereof coming within the scope of the act and completed within that year. During the year 1939, the A Corporation also completed contracts for naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) at a deficiency in profit of $10,000. In 1940, the A Corporation completed similar contracts for Army aircraft totaling $175,000 at a cost of $155,000, whereby the A Corporation realized a net profit of $20,000 but sustained a deficiency in profit of $1,000 (i.e., 12 percent of $175,000, or $21,000, less $20,000). During the year 1940, the A Corporation also completed contracts for naval aircraft coming within the scope of 10 U.S.C. 2382 (formerly section 3 of the Act of March 27, 1934 (48 Stat. 505)) at a net loss of $2,000. In 1941, the A Corporation completed contracts for Army aircraft coming within the scope of the act totaling $400,000 at a cost of $300,000, or at a net profit of $100,000. After deducting from the net profit of $100,000 for the year 1941 the amount of $48,000 (i.e., 12 percent of the total contract price of $400,000), there remains $52,000 in excess profit on the contracts completed in the year 1941. The A Corporation may deduct from such $52,000, in determining the amount of excess profit it must pay for the year 1941 with respect to the contracts completed in such year, the net loss of $30,000 and the deficiency in profit of $10,000 sustained in 1939 on Army and naval aircraft contracts, respectively, and the net loss of $2,000 and the deficiency in profit of $1,000 sustained in 1940 on naval and Army aircraft contracts, respectively.

(Sec. 3, 48 Stat. 505, as amended, 53 Stat. 467, sec. 14, 53 Stat. 560; 34 U.S.C. 496, 26 U.S.C. 3791, 10 U.S.C. 311, 312)

[F.R. Doc. 60-11301; Filed, Dec. 5, 1960; 8:54 a.m.]

[T.D. 6512]

PART 17—EXCESS PROFITS ON NAVY CONTRACTS

Setoffs of Deficiencies in Profit Against Excess Profits

On June 23, 1960, notice of proposed rule making regarding an amendment of the Excess Profits Regulations (26 CFR (1939) Part 17), relating to setoffs of deficiencies in profit against excess profits under section 3 of the Act of March 27, 1934, as amended, to conform to the decision in Emerson Electric Manufacturing Company (1957) 28 T.C. 1090, was published in the FEDERAL REGISTER (25 F.R. 5767). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so proposed are hereby adopted.

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: November 30, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

WILLIAM B. FRANKE,
Secretary of the Navy.

OCTOBER 19, 1960.

In order to conform the Excess Profits Regulations (26 CFR (1939) Part 17), relating to excess profits on Navy contracts for vessels and aircraft, to the decision in Emerson Electric Manufacturing Company (1957) 28 T.C. 1090, and to make certain clarifying changes, such regulations are amended as follows:

PARAGRAPH 1. Section 17.7 is amended:

(A) By revising paragraph (c) (2) and (3) to read as follows:

(2) The amount of any net loss which was sustained in the same or a prior income-taxable year with respect to contracts or subcontracts for the construction or manufacture of any complete aircraft or any portion thereof, and which is allowable as a credit in determining the excess profit for the income-taxable year with respect to contracts and subcontracts entered into for the construction or manufacture of complete aircraft or any portion thereof (see § 17.10(b)); and

(3) The amount of any deficiency in profit which was sustained in the same or a prior income-taxable year with respect to contracts or subcontracts for the construction or manufacture of any complete aircraft or any portion thereof, and which is allowable as a credit in determining the excess profit for the income-taxable year with respect to contracts and subcontracts entered into for the construction or manufacture of complete aircraft or any portion thereof (see § 17.10(c)).

(B) By revising the example in paragraph (e) to read as follows:

Example. On September 1, 1939, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, entered into a contract with the Secretary of the Navy for the construction of naval aircraft coming within the scope of the act, the total contract price of which was $200,000. On March 10, 1940, the B Corporation entered into another such contract, the total contract price of which was $40,000. Both contracts were completed within the calendar year 1940, the first at a cost of $155,000 and the second at a cost of $45,000. During the year 1940, the B Corporation completed at a deficiency in profit of $2,000 a contract entered into for the construction of Army aircraft coming within the scope of the act. During the year 1940, the B Corporation also completed at a loss of $10,000 two contracts entered into for the construction or manufacture of portions of a naval vessel coming within the scope of the act. For the year 1939, the B Corporation sustained a net loss of $2,500 and a deficiency in profit of $1,000 on all contracts and subcontracts for naval aircraft coming within the scope of the act and completed within the calendar year 1939. For the year 1939, the B Corporation also sustained a net loss of $1,800 on a contract for the construction of Army aircraft coming within the scope of the act which was completed within the calendar year 1939. For the purposes of the Federal income tax, the net income of the B Corporation for the year 1940, on which the tax was paid, amounted to $96,000, which included the net profit of $40,000 upon the contracts entered into on September 1, 1939, and March 10, 1940. The excess profit liability of the B Corporation for 1940 is payable with respect to the contracts for naval aircraft which were completed in 1940. The loss of $10,000 on the contracts for portions of a naval vessel completed in 1940 does not enter into the computation of such liability. Accordingly, the excess profit liability of the B Corporation for 1940 is $2,964 computed as follows:

Total contract prices:		
Contract No. 1	$200,000	
Contract No. 2	40,000	
		$240,000
Less: Cost of performing contracts:		
Contract No. 1	155,000	
Contract No. 2	45,000	
		200,000
Net profit on contracts		40,000
Less:		
12 percent of total contract prices (12 percent of $240,000)	$28,800	
Deficiency in profit (in Army aircraft contracts) in 1940	2,000	
Net loss (in naval aircraft contracts) from 1939	2,500	
Net loss (in Army aircraft contracts) from 1939	1,800	
Deficiency in profit (in naval aircraft contracts) from 1939	1,000	
		36,100
Excess profit for year 1940		3,900
Less: Credit for Federal income taxes (Federal income tax on $3,900 at rates for 1940)		936
Amount of excess profit payable to the United States		2,964

PAR. 2. Section 17.10 is amended:

(A) By revising paragraphs (b) and (c) to read as follows:

(b) *Net loss on contracts and subcontracts for aircraft or portions thereof.* In the case of contracts or subcontracts for the construction or manufacture of any complete aircraft or any portion thereof coming within the scope of the act which are completed within an income-taxable year ending after April 3, 1939, the term "net loss" as used in the act and in these regulations means the amount by which the total costs of performing all such contracts and subcontracts completed within such income-taxable year exceeds the total contract prices of such contracts and subcontracts. Such net loss sustained by a contracting party for an income-taxable year ending after April 3, 1939, is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for the construction or manufacture of any complete aircraft or any portion thereof which are completed within the four next succeeding income-taxable years.

(c) *Deficiency in profit.* The term "deficiency in profit" as used in the act and in this part relates to contracts and subcontracts coming within the scope of the act which are for the construction or manufacture of any complete aircraft or any portion thereof and are completed within an income-taxable year ending after April 3, 1939. As so used, the term "deficiency in profit" means the amount by which 12 percent of the total contract prices of such contracts and subcontracts which are completed by a particular contracting party within the income-taxable year exceeds the net profit upon such contracts and subcontracts. A deficiency in profit sustained by a contracting party with respect to such contracts and subcontracts for the construction or manufacture of complete aircraft or any portion thereof and completed within any income-taxable year ending after April 3, 1939, is allowable as a credit in computing the contracting party's excess profit on contracts and subcontracts for the construction or manufacture of complete aircraft or any portion thereof which are completed within the same or the four next succeeding income-taxable years.

(B) By revising example (2) in paragraph (e) to read as follows:

Example (2). For the calendar year 1939, the B Corporation, which keeps its books and makes its Federal income tax returns on a calendar year basis, sustained a net loss of $10,000 and a deficiency in profit of $35,000 upon all contracts and subcontracts for naval aircraft and portions thereof coming within the scope of the act and completed within that year. During the year 1939, the B Corporation also completed contracts for Army aircraft coming within the scope of the Act at a net profit which was $15,000 in excess of 12 percent of the total contract prices of such contracts. On all contracts and subcontracts for naval aircraft coming within the scope of the act and completed within the calendar year 1940, the B Corporation realized a net profit which was $25,000 in excess of 12 percent of the total contract prices of such contracts and subcontracts while sustaining a deficiency in profit of $10,000 on like contracts and subcontracts for Army aircraft. On all contracts and subcontracts for naval aircraft coming within the scope of the act and completed within the calendar year 1941, the B Corporation realized a net profit which was $20,000 in excess of 12 percent of the total contract prices of such contracts. The net loss of $10,000 and deficiency in profit of $35,000 (or a total of $45,000) sustained in 1939 with respect to contracts and subcontracts for naval aircraft completed within that year may be taken as a credit to the extent of $15,000 in computing the excess profit on the contracts and subcontracts for Army aircraft completed in 1939. The remainder of such net loss and such deficiency in profit ($45,000 minus $15,000, or $30,000) may be combined with the deficiency in profit of $10,000 sustained in 1940 on contracts for Army aircraft and taken as a credit to the extent of $25,000 in computing the excess profit on the contracts and subcontracts for aircraft completed during 1940. The sum of such net loss and such deficiency in profit then remaining ($40,000 minus $25,000, or $15,000) may be taken as a credit in computing the excess profit realized on the contracts and subcontracts for aircraft completed in the year 1941.

(Sec. 3, 48 Stat. 505, as amended, 53 Stat. 467, 53 Stat. 112; 34 U.S.C. 496, 26 U.S.C. 3791, 26 U.S.C. 650, 651)

[F.R. Doc. 60-11302; Filed, Dec. 5, 1960; 8:54 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER J—AIR FORCE PROCUREMENT INSTRUCTIONS

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following miscellaneous amendments are issued to this subchapter:

PART 1008—TERMINATION OF CONTRACTS

Subpart F—Termination Inventory

1. Section 1008.611(e) is amended to read as follows:

§ 1008.611 Special machinery tooling and equipment.

* * * * *

(e) Exceptions. * * *

(1) The acquisition cost of the total amount of tooling provided under the contract is less than $2500.

(2) * * *

(3) [Deleted]

2. Revise § 1008.611-50 (a) and (b) as follows:

§ 1008.611-50 Duties of the local plant clearance officer.

* * * * *

(a) The contractor properly lists on DD Form 545, "Inventory Schedule D (Dies, Jigs, Fixtures, Etc., and Special Tools)," see § 8.802-7 of this title, (BOB No. 22-RO77) by AF part number the parts produced by the tooling, or in the absence of part numbers furnishes a description of the tooling. Program screening (§ 1008.611-53) will not require schedules.

(b) Letters of transmittal are prepared by the local plant clearance officer stating the following information:

* * * * *

(5) Plant clearance case number.

* * * * *

(8) Description of the end item produced by the tooling.

(9) Is end item common to other services?

(10) Designation of the weapon system for which subparagraph (8) of this paragraph is a component (if applicable).

(11) Condition of the tooling.

* * * * *

(14) Whether the tooling has been screened by the prime contractor and found excess to his needs for possible utilization as checked in subdivisions (i) to (iii) of this subparagraph.

3. Revise § 1008.611-51 as follows:

§ 1008.611-51 Screening agencies.

(a) *AMA or depot.* Inventory schedules will be forwarded to the Processing Control Branch, Plans & Management Division, Directorate of Materiel Management at the AMA or depot prime for the item produced by the tooling. Screening procedures will be established within the AMA or depot to determine whether interested activities (supply, maintenance, modification, IRAN, MAP, Offshore procurement, purchasing office (if located at the AMA or depot) weapons phasing and program groups) have potential requirements and to develop disposal recommendations.

(b) *Purchasing office.* Two copies of the schedules will be forwarded to the office through which procurement was accomplished (if not located at the AMA or depot prime for the end item).

(c) *Wright Air Development Division (WADD).* Two copies of the schedule will be forwarded to the assigned project office within WADD if the contract was executed at WPAFB.

(d) *Department of the Navy.* Three copies of schedules listing excess AF special tooling will be forwarded to the Bureau of Naval Weapons, Department of the Navy, Washington 25, D.C., when the end item is common to the Navy. The Navy will be advised that special tooling required by the Navy will be transferred provided there are no Air Force requirements.

(e) *Department of the Army.* Three copies of the schedules listing excess AF special tooling will be forwarded to the Department of the Army, Washington 25, D.C., when the end item is common to the Army. Special tooling required by the Army may be transferred, provided there are no Air Force requirements.

(f) Research and Development contracts under which no end items have been assimilated within the supply system (this may be determined from either the buyer or contractor) will only be screened according to paragraphs (b) and (c) of this section.

4. Revise §§ 1008.611-52 and 1008.611-53 to read as follows:

§ 1008.611-52 Disposal.

(a) Disposition will be accomplished by the local plant clearance officer according to the recommendations received from screening agencies and in conformance with Subpart E, Part 8 of this title. In instances where dual requirements are received as a result of concurrent screening under § 1008.611-51, requirements of the purchasing officer will receive priority. Disposition will not be accomplished until receipt of reply from all activities to whom schedules were submitted according to § 1008.611-51. Followup will be initiated if reply has not been received in 40 days.

(b) Unless otherwise stated, instructions to dispose of tooling used in the fabrication of a specific end item under a prime contract will be sufficient authority to dispose of tooling required for production of the same end item at a subcontractor's plant.

(c) When the screening agency desires retention of the special tooling they will state in their recommendation: (1) Reason for retention, (2) the period of time it is desired to retain the tooling in storage, and (3) office responsible for disposal recommendation in the event tooling is not utilized by expiration of the storage period. The designated plant clearance officer based upon instructions received from the screening agency, will make arrangements with the contractor for the storage of special tooling for the period requested by the screening agency. All storage agreements will be prepared according to § 1008.612 using the form prescribed in § 1008.758. The storage agreements, if possible, will be executed on a no cost basis. When a no cost storage agreement cannot be negotiated, the screening activity which requested that the tooling be stored shall be contacted and provided with the estimated weight of the tooling, the cubic area required for storage, and cost proposal incident to the execution of a cost type storage contract. Screening activity will be requested to furnish the necessary fund citation to cover the cost type storage contract, if after the consideration of the cost involved, the requirements justify the expenditure of funds to retain the tooling in storage.

(d) Two months prior to the completion of the contract, the contracting officer will request the plant clearance officer to contact the activity(s) for which the tooling was stored to determine whether (1) The tooling should be retained for an additional period of time or (2) disposition accomplished according to Subpart E, Part 8 of this title.

§ 1008.611-53 Program screening.

The term screening means the process of screening special tooling related to a complete airframe, engine, or major component before the tooling becomes excess due to production phase-out. This program will be used whenever possible. The general procedures are as follows:

(a) The local plan clearance officer will determine through the contractor when phase-outs are contemplated. The local plan clearance officer will screen the special tooling with the screening agencies by means of a transmittal letter prepared according to § 1008.611-50 and include the approximate date of production phase-out. (Schedules are not required.)

(b) Disposition of the tooling will be accomplished according to the recommendations received from the screening activities and § 1008.611-52.

5. Add § 1008.611-54 as follows:

§ 1008.611-54 Screening of standard test equipment items which are components of special tooling.

In some instances property reported as special tooling or special test equipment may include as a component or unit of a composite item of special tooling or special test equipment, standard shelf type items or items of standard test equipment. Listings containing such items will initially be screened as prescribed in § 1008.611-51 to determine any continuing requirement in connection with the end item procured under the contract.

(a) If there are no further end item requirements for special tooling as composite units, the items of special tooling will be reviewed to determine whether there are standard shelf type or test equipment items which are components of the special tooling which may be economically removed and reused. In event the contractor has a continuing requirement for such items under other cost type or facilities contracts, the administrative contracting officer will authorize their removal from the composite units and transfer to the appropriate contracts.

(1) If the requirement is such that the item is appropriately classified as a facility item, the transfer to a facility contract will be coordinated with WRU, Warner Robins AMA, and upon approval AMC Form 51 (BOB No. 21-RO71.3), "Industrial Equipment Inventory and Inspection Report," will be prepared and submitted to WRU.

(2) In event the continuing requirement is in connection with the fabrication of other special tooling items, into which the standard test items are to be incorporated, the transfer will be to the supplies contract. In this instance, the equipment will not be reported to WRU but will be controlled as a separate item (by the contractor) until incorporated into the special tooling, at which time control will be established as a component of the tooling.

(b) Standard test equipment items which may be economically removed from the composite unit and reused, having a unit cost $500 or more and falling within the categories established as "controlled items" by AMCM 78-1, which are excess to the known requirements of the contractor, will be listed and reported to WRU, WRAMA, see paragraph 6b(2), chapter 4, part one, AMCM 78-1, for decision as to whether the items are desired for inclusion in the Industrial Reserve Inventory. In event the items are not required for inclusion in the Industrial Reserve Inventory, WRU will so advise the originator of the listing and disposition of the composite unit will be accomplished through plant clearance action.

(c) All other items of standard test equipment which are components of special tooling items and which may be economically removed and reused, and are excess to the known requirements of the contractor, will be adequately described and listed as noncontrolled facility items on a DD Form 543, "Inventory Schedule B," and reported for screening. The items will not be removed from the composite units of special tooling unless and until decision has been made that the articles are desired. In event no requirement is established for retention of the items, the composite units will be disposed of through plant clearance actions. Standard items will be completely identified and described if offered for donation or sale.

6. In § 1008.2010(d)(4), a subparagraph (viii) is added as follows:

§ 1008.2010 Responsibility of termination contracting officers authorized to terminate contracts for default.

* * * * *

(d) * * *

(4) * * *

(viii) Hq AMC as follows:

One copy to Termination and Plant Clearance Branch (MCPKT).

One copy to Financial Branch (MCPMF).

One copy to Office of Inspetcion (MCPI).

7. Revise § 1008.2011 to read as follows:

§ 1008.2011 Procedure for handling termination for breach of contract with contracts not over $2,500 that do not contain default clauses.

See § 16.303 of this title.

(a) Where a contractor has failed to perform according to the terms of his contract without justifiable excuse and the contracting officer at the activity issuing the contract is of the opinion that the contractor has thereby "breached" a contract that does not contain a default clause, the contracting officer will take the following action:

(1) Conduct an investigation as described in § 1008.2010 in the degree necessary to determine whether or not the Government may refuse to accept further deliveries and subsequently reprocure the supplies or services from another source. Should such an investigation indicate that the Government may not at the time refuse to accept goods or services, the contracting officer may thereafter attempt to negotiate for and expedite delivery, or in the alternative he may terminate the contract for convenience of the Government on a cost or no cost basis, as warranted. If doubt exists as to whether a bilateral contract exists, it is suggested that the advice of the local staff judge advocate be obtained.

(2) If the investigation indicates that the Government is not obligated to accept future deliveries and may purchase the goods or services from another source, the contracting officer at the activity issuing the contract will, after obtaining a local staff judge advocate review (see Subpart E, Part 1054 of this chapter), notify the contractor by telegram (Written Report of Delivery) or registered mail (Return Receipt) in substantially the format shown below:

You are hereby notified that your failure to perform (Contract or Purchase Order No. ------) in the time required by the terms thereof constitutes a Breach of Contract. The Government will no longer accept delivery thereunder and at its option may procure the undelivered supplies from another source. The Government will hold you liable for any and all damages resulting from your Breach of Contract.

(3) Upon receipt of the "breach" notice by the contractor, the contracting officer may then reprocure the goods or service from another source if the requirement still exists.

(4) Upon execution of the reprocurement contract, the contracting officer will, after coordination with the local staff judge advocate, make demand upon the "breached" contractor for all valid damages, which would be in the form of a letter "Demand for Payment of Damages as a Result of Breach of Contract." The letter demanding damages need not follow any particular format but should clearly state: (i) Contractor's name and complete address, (ii) contract or purchase order number, (iii) the date of the notice of breach of contract, (iv) name and complete address of reprocurement contractor plus the date and contract number, (v) a reasonably detailed computation of the method of arriving at the extent of damages, and (vi) a demand to forward payment to the appropriate accounting and finance activity (payable to the Treasurer of the United States).

(5) Concurrently with the issues of the demand for payment of damages notice, the contracting officer will furnish a copy of that notice to the appropriate accounting and finance office, as cited in the breached contract, to permit instituting necesary collection procedures. (See Subpart V, Part 1054 of this chapter.) After referral to the appropriate accounting and finance office, the contracting officer is not required to make any further attempts to recover the damages caused by the "breach of contract," unless requested to do so by the accounting and finance office.

(b) Some AF contracts do contain a Disputes Clause although the termination clauses have not been incorporated therein. If the contract contains a Disputes Clause the "breached" contractor may properly appeal (the "breach notices" issued by the contracting officer) to the Secretary of the Air Force. In the event of an appeal the provisions of § 1054.504 will be complied with.

(c) If the contract contains neither a default termination clause nor a disputes clause the contractor is not entitled to invoke the appellate procedures afforded by the Disputes Clause. The "breached" contractor may normally resort to a court of law for his remedy, if any.

(d) Distribution of copies of notices: Upon issuance to the contractor of (1) A "breach" notice or (2) a demand for payment of damages, one copy of each notice will be distributed to each recipient of the contract, and one copy of each notice will be promptly forwarded to AMC (MCPKTT). Further distribution of copies of the aforementioned notices will be kept to a minimum; however, major commands may implement this distribution provision to the extent deemed appropriate.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1009—PATENTS, DATA, AND COPYRIGHTS

Subpart A—Patents

§ 1009.107–6 [Amendment]

1. In § 1009.107–6:

a. In paragraph (c) "Specialized Projects Branch (MCPPA)" is changed to: "Procurement Committee (MCPC)."

b. Paragraph (e) is revised to read as follows:

(e) In respect to the clauses of subparagraphs (c) and (d) of this section, the contracting officer will consult the cognizant staff judge advocate for advice, the cognizant staff judge advocate may forward all questions relating to Patent Rights clauses, within:

(1) AMC and WADD to AMC (MCJP).

(2) ARDC to ARDC (RDJP).

2. Revise § 1009.107–7 to read as follows:

§ 1009.107–7 Contracts placed for NASA.

If necessary to obtain the NASA "Property Rights in Inventions" clause as required by § 9.107–7(a)(1)(5) of this title, contracting officers should communicate with National Aeronautics and Space Administration, Patent Counsel, Office of General Counsel, 1520 H Street Northwest, Washington 25, D.C. identifying the work request.

§ 1009.107–50 [Deletion]

3. Section 1009.107–50 is deleted.

4. Revise § 1009.110(a)(1) to read as follows:

§ 1009.110 Reporting of royalties.

(a) • • •

(1) • • •

(i) Hq AMC, AMC Aeronautical Systems Center (ASC), WADD, and AF procuring activities other than AMC or ARDC directly to AMC (MCJP).

(ii) AMC field procurement activities other than AMCASC to the AMC local staff judge advocate. The staff judge advocate will: (*a*) Review the forms for completeness, (*b*) retain one copy, and (*c*) send the remaining two copies to AMC (MCJP).

(iii) ARDC, other than WADD, directly to the Chief, Patents Division (RDJP), Hq ARDC. RDJP will send one copy of the form to MCJP for coordination and recommendation.

Subpart B—Data and Copyrights

In § 1009.202–1(a), a new subparagraph (5) is added, and former subparagraph (5) is redesignated subparagraph (6), as follows:

§ 1009.202–1 Acquisition of data.

(a) *General.* (1) • • •

(5) *Contract number identification on data.* The following clause will be included in the Schedule of all contracts in which data is specified to be delivered.

Contractor agrees to mark the number of this Contract on all Data delivered hereunder.

(6) *Product improvement programs or independent research.* • • •

Subpart K—Processing and Clearance of Invention, Subcontract and Royalty Reports

1. Revise § 1009.1101 to read as follows:

§ 1009.1101 Applicability of subpart.

This subpart applies to the staff judge advocate, Hq AMC and Hq ARDC, AMC field procurement activities, contract administration activities, AMC and ARDC local staff judge advocates, and AF accounting and finance offices responsible for payment of AF contracts, pursuant to the requirements of the Patent Rights clause and Reporting of Royalties clause or approved deviations, contained in such contracts. These provisions are also intended as a guide to contractors in preparing and submitting required reports.

§ 109.1102 [Deletion]

2. Delete § 1009.1102.

§§ 1009.1103 and 1009.1104 [Redesignation]

3. Redesignate §§ 1009.1103 and 1009.1104 as §§ 1009.1102 and 1009.1103.

§ 1009.1105 [Redesignation]

4. Section 1009.1105 is redesignated § 1009.1104; paragraph (a)(4) is deleted and paragraph (c) is amended to read as follows:

§ 1009.1104 Responsibility of contractor.

• • • • •

(c) *Royalty reports.* If the contract contains a Reporting of Royalties clause (Domestic) prescribed by § 9.110 of this title prior to ASPR Revision 38, October 15, 1958, or the Reporting of Royalties (Foreign) clause and is in an amount exceeding $50,000, the contractor is required to submit Royalty Reports according to the provisions of the appropriate clause.

(1) Royalty Reports under paragraph (a) of the Reporting of Royalties (Domestic) clause and under the Reporting of Royalties (Foreign) clause will be submitted as follows:

(i) The contractor has the option of submitting the required information by either of the following methods, by the use of:

(*a*) DD Form 783, "Royalty Report", in three copies including all information called for by that form, if the report is affirmative, and one copy if the report is negative.

(*b*) Contractor's own form or letter, submitted in three copies containing the same information called for by DD Form 783.

(ii) A negative report must be submitted when no royalties in excess of $250 have been paid or are to be paid to any one person or firm in connection with the performance of the contract.

(2) Royalty Reports under paragraph (b) of the Reporting of Royalties (Domestic) clause. (Contracts executed prior to October 15, 1958.)

(i) When the contractor has obtained approval under the provisions of paragraphs (b) and (c) of the clause to file a single consolidated report of royalties, he will furnish only one copy of the letter of approval to the office administering the contract.

§ 1009.1106 [Redesignation]

5. Redesignate § 1009.1106 as § 1009.1105, and revise to read as follows:

§ 1009.1105 Responsibility of office administering the contract.

The office administering the contract is responsible for the following action regarding the various reports submitted by the contractor under § 1009.1104.

(a) *Invention disclosure reports and interim reports of inventions.* (1) Reviewing each report submitted to determine whether it contains all the information required for a report of that type under § 1009.1104(a)(1) and (2), including a complete patentability search report or document where available. If the report does not contain all such information, the necessary additional information should be obtained immediately from the contractor.

(2) Forwarding all copies of each Invention Disclosure Report and two copies of each Interim Report of Inventions, whether affirmative or negative, one of which must be an original and manually signed by the appropriate representative of the contractor, and all inclosures, directly to the staff judge advocate of the procuring activity which wrote the contract or the office of the staff judge advocate to which procurement responsibility has been transferred. One copy of the report itself will be retained by the office administering the contract as a part of the official contract file and disposed of according to existing records disposition procedures. The cover letter forwarding these reports will contain the following information: (i) Date of contract, (ii) amount of contract, (iii) subject of contract, (iv) accounting and finance office which is disbursing funds, (v) indication of whether a Patent Rights Clause and/or a Reporting of Royalties Clause is included in the contract, (vi) name and organizational code of initiator and buyer, (vii) name and organizational code of project engineer, and (viii) type of contract.

(b) *Final reports of inventions, reports of subcontractors and reports of royalties.* (1) Insuring that each of these reports is obtained from the contractor in sufficient time to enable the issuance of clearances, as hereinafter provided, before the presentation by the contractor of its completion voucher to the accounting and finance office. Immediately upon receipt of a contract containing the Patent Rights or Reporting of Royalties clause, the office administering the contract should establish a target date for requesting the required reports from the contractor. Normally at approximately 75 percent of completion of the contract or 60 to 90 days in advance of final shipment on the contract, if the required reports have not been submitted, the contractor should be requested to submit them as soon as practicable.

(2) Checking each report submitted to determine whether it is complete and contains all the information required for a report of that type set forth under § 1009.1104(a)(3), (b), or (c). If the report is not complete in all respects, the necessary additional information should be obtained immediately from the contractor.

(3) Forwarding copies of these reports, at least one of which must be an original and manually signed by the contractor, as follows:

(i) Final report of invention: The original and one copy of the report, whether affirmative or negative, and all inclosures will be sent to the staff judge advocate of the procuring activity which wrote the contract, or the office of staff judge advocate to which procurement responsibility has been transferred. One copy of the report will be retained by the office administering the contract as a part of the official contract file and disposed of according to existing records disposition procedures. The cover letter forwarding these reports will contain the same information as required by paragraph (a)(2) of this section.

(ii) Reports of Subcontracts will be processed as in subparagraph (3)(i) of this paragraph. The copy of any subcontract patent rights clause submitted by the contractor should be forwarded directly to the staff judge advocate of the procuring activity which wrote the contract, or to the office of the staff judge advocate to which procurement responsibility has been transferred. The cover letter forwarding these reports and clauses will contain the same information as required by paragraph (a)(2) of this section, unless such information has been previously furnished.

(c) *Reports of royalties.* After reviewing each report submitted to determine whether it contains all the information required for a report of that type under § 1009.1104(c), the office administering the contract will take the following additional action with respect to royalty reports: (1) Negative royalty reports will be retained by the office administering the contract; without further investigation, that office will issue a clearance under the Reporting of Royalties clause to the accounting and finance office in the manner prescribed in § 1009.1103(b). If the contractor has obtained approval under the provisions of paragraph (b) and (c) of the Reporting of Royalties clause to file a single consolidated report of royalties and has previously furnished a copy of the letter of approval to the office administering the contract, that office will immediately advise the appropriate accounting and finance office not to withhold payment by virtue of the Reporting of Royalties clause in any contracts with the designated contractor, unless otherwise requested by AMC (MCJP) or ARDC (RDJP). (2) The original and one copy of affirmative royalty reports and all inclosures will be forwarded for review and clearance to AMC (MCJP), if the procuring activity which wrote the contract is within AMC or WADD, or to ARDC (RDJP) if the procuring activity which wrote the contract is within ARDC but not WADD. The cover letter forwarding these reports will contain the same information as is required by paragraph (a)(2) of this section.

§ 1009.1107 [Redesignation]

6. Section 1009.1107 is redesignated section 1009.1106 and is revised to read as follows:

§ 1009.1106 Responsibility of AMC or ARDC local staff judge advocate.

The staff judge advocate of the procuring activity which wrote the contract or the office of the staff judge advocate to which procurement responsibility has been transferred will take the following action respecting reports submitted by contractors and transmitted to that staff judge advocate according to § 1009.1105.

(a) *General.* Review all reports for proper compliance with pertinent contractual requirements and the requirements of §1009.1104. If a report is not complete in all respects, the necessary additional information should be obtained immediately from the contractor through the office administering the contract before any clearances are made or reports forwarded to the appropriate command staff judge advocate.

(b) *Invention reports*—(1) *Invention disclosure reports.* (i) With respect to inventions on which the contractor reports it has filed or will file patent applications, the invention disclosure reports, after examination for adequacy and completeness, including a completed patentability search report or document where available, will be forwarded, in the case of contracts written by an AMC or WADD procuring activity, to AMC (MCJPC). (See § 1009.1108 (c).) The staff judge advocate of the procuring activity which wrote the contract or to which procurement responsibility has been transferred will obtain and forward to AMC (MCJP) in the case of contract written by an AMC or WADD procuring activity, or to ARDC (RDJP) in the case of contracts written by an ARDC procuring activity other than WADD, a completed AFPI Form 83, "Contractor's Confirmatory License to Government," or an equivalent form furnished by the contractor, with respect to such inventions.

(ii) With respect to inventions on which the contractor has stated it will not file patent applications, the staff judge advocate will obtain completed ARDC Form 203, "Invention Evaluation", or AFPI Form 70A (formerly AMC Form 78C) for such inventions. Such evaluation, applicable disclosure and patentability search report or document, where available, will be forwarded to AMC (MCJPC) if the contract was written by an AMC or WADD procuring activity, or ARDC (RDJP) if the contract was written by an ARDC procuring activity other than WADD.

(2) *Interim reports of inventions.* (i) Negative: If the Interim Reports of Inventions are negative, the reports will be retained by the staff judge advocate until the contract has been cleared according to paragraph (e) of this section.

(ii) Affirmative: Affirmative Interim Reports of Inventions which summarize only inventions which previously have

been disclosed will be handled in the manner set forth in subdivision (i) of this subparagraph. If an affirmative Report of Inventions lists inventions not previously disclosed, the staff judge advocate will request through the office administering the contract a complete disclosure from the contractor. Upon receipt of the disclosure, the staff judge advocate will take the action prescribed in subparagraph (1) (i) and (ii) of this paragraph.

(3) *Final report of inventions.* (i) Affirmative: (*a*) If the final report is affirmative and lists inventions not previously disclosed, the staff judge advocate will request through the office administering the contract a complete disclosure from the contractor. Upon receipt of the disclosure, the staff judge advocate will take the action prescribed in subparagraph (1) of this paragraph.

(*b*) If the contractor has reported that Subject Inventions were made under the contract and if the development work under the contract has been completed, the opinion of the appropriate project engineer or other similarly qualified Government personnel will be obtained as to whether the contractor has reported all of the Subject Inventions which were made under the contract. It is emphasized that this inquiry should be made independently of the contractor and without his collaboration. If the person contacted concurs in the report, clearance will be made according to paragraph (e) (1) (i) of this section. If the person contacted believes that the contractor has not reported all Subject Inventions made under the contract, the matter will be referred back to the contractor, making specific reference to the Subject Invention in question. Only upon complete reporting by the contractor and concurrence therewith by the project engineer or other qualified Government personnel will clearance be made according to paragraph (e) (1) (i) of this section.

(ii) Negative: If the final report under any type of contract other than a Technical Representative Service Contract is negative in that the contractor has reported that no Subject Inventions were made under the contract, and if the development work under the contract has been completed, the opinion of the appropriate project engineer or other similarly qualified Government personnel will be obtained. It is emphasized that this laboratory check should be made independently of the contractor and without his collaboration. If the person contacted concurs in the report, clearance will be issued according to paragraph (e) (1) (ii). If the person contacted believes that the contractor did conceive or first reduce to practice an invention in the performance of the contract, the matter will be referred back to the contractor, making specific reference to the development in question. Only upon complete reporting by the contractor and concurrence therewith by the project engineer or other qualified Government personnel will clearance be made as in paragraph (e) (1) (i). Negative reports under Technical Representative Service contracts may be cleared without the above inquiry having been made, according to paragraph (e) (1) (i).

(c) *Subcontract reports.* (1) If the report from the prime contractor shows that subcontracts were awarded which contained a Patent Rights clause and that the subcontracts are complete, conduct correspondence with each subcontractor listed to obtain, according to the particular Patent Rights clause included in its subcontract, either of the following:

(i) One copy of a negative report of inventions when no invention within the terms of the subcontract Patent Rights clause, was made by the subcontractor.

(ii) Two copies of full Invention Disclosure Reports containing the information required in § 1009.1104(a) (1) for any inventions, within the terms of the subcontract Patent Rights clause, made by the subcontractor. One copy of each Patentability Search Report or similar document will be requested of the subcontractor for each of such inventions if the subcontractor has had such a search made with respect to such inventions or has otherwise determined that such invention reasonably appears to be patentable, if the subcontractor decides not to file a patent application, and if the costs of such search or determination are allowable as an item of cost under the subcontract, or such search or determination will be furnished without specific charge.

(2) Subcontractors' Invention Disclosure Reports and Patentability Search Reports or Documents will be processed in the same manner as those of prime contractors.

(3) Forwarding of prime contractor invention reports should not be delayed to include subcontractors' invention Disclosure Reports.

(4) If the Report from the prime contractor shows that no subcontracts were awarded which contained a Patent Rights clause, no further notice is required, other than the clearance prescribed in paragraph (e) (1) of this section.

(d) *Clearance record.* When clearance is made according to paragraph (e) of this section, an appropriate record will be maintained.

(e) *Clearance for final payment.* Clearances as defined in § 1009.1102(c) and procedures set forth in § 1009.1103 will be prepared and processed as follows:

(1) Clearance under Patent Rights clause: Contractor must submit both a Subcontract Report (see § 1009.1104(b)) and a Final Invention Report (see §1009.1104(a) (3)) before clearance under the Patent Rights clause can be made. The further processing of prime contractors' affirmative Subcontract Reports required by paragraph (c) of this section need not be accomplished prior to clearance. Clearance procedure further depends on whether the Final Invention Report is affirmative or negative.

(i) Affirmative: Clearance will be made and processed according to § 1009.1103, when it is determined under paragraph (b) (3) (i) of this section that clearance should be granted.

(ii) Negative: If the final report is negative and is submitted under a Technical Representative Service Contract, issue clearance according to § 1009.1103 without further investigation or action. If the final report is negative and is submitted under any other type of contract, issue clearance according to § 1009.1103 when it is determined under paragraph (b) (3) (ii) of this section that clearance should be granted.

(2) Clearance under Reporting of Royalties clause in contracts: Clearance under this clause will not be issued by the AMC or ARDC local staff judge advocate, but clearance will be issued by the office administering the contract if the report is negative or by MCJP or RDJP if the report is affirmative (See § 1009.1105(b) (3) (iii)).

§ 1009.1108 [Redesignation]

7. Redesignate § 1009.1108 as § 1009.1107 and revise to read as follows:

§ 1009.1107 Responsibility of accounting and finance office.

If the Accounting and Finance Office receives the completion voucher from the contractor for final payment on a contract for which necessary clearances have not been received, the accounting and finance office will forward a request for the status of clearance to the office administering the contract. All requests will set forth the contractor's name and address, contract number, and the nature of the clearance about which information is desired. Upon the receipt of such a request, the office administering the contract will obtain the desired information, and advise the requesting accounting and finance office of the status of clearance. Under no circumstance should the accounting and finance office request the status of clearance prior to the actual receipt of the completion voucher from the contractor for final payment. Under no circumstances should the accounting and finance office forward a request for status of clearance to the staff judge advocate.

§ 1009.1109 [Redesignation]

8. Redesignate § 1009.1109 as § 1009.1103 and revise to read as follows:

§ 1009.1108 Responsibility of Hq AMC and Hq ARDC.

AMC (MCJPC), and ARDC (RDJP), will be responsible for the following action with respect to the various types of reports:

(a) *General.* Rendering advice and assistance on all questions concerning this Subpart K which have been forwarded through the appropriate AMC or ARDC local staff judge advocate.

(b) *Invention disclosure reports and interim reports of inventions.* Taking necessary steps, according to the terms of the Patent Rights clause, to obtain assignments of inventions on which the contractor has elected not to file patent applications but on which the Government intends to file patent applications.

(c) *Royalty reports.* Checking all affirmative reports as to appropriateness of payment of the royalties reported and conducting necessary correspondence with contractors and/or their licensors to resolve all questions arising from the reports.

(d) *Clearance.* In the case of affirmative royalty reports, clearance will be issued after the appropriateness of the royalty report has been determined. Clearance as defined in § 1009.1102(c) will be processed according to § 1009.1103 (a), with an information copy being sent to the staff judge advocate of the procuring activity which wrote the contract.

§ 1009.1110 [Redesignation]

9. Redesignate § 1009.1110 as § 1009.1109.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1010—BONDS AND INSURANCE

Subpart C—Insurance; General

1. Add § 1010.300 as follows:

§ 1010.300 Scope of subpart.

See § 10.300 of this title.

§ 1010.301 [Amendment]

2. In § 1010.301 the symbol "MCPPB" is amended to: "MCPF."

3. Revise § 1010.303 to read as follows:

§ 1010.303 Responsibility for loss of or damage to Government property.

For additional clauses covering these responsibilities see § 1007.3103–6 of this chapter (Construction Contracts) and § 1007.2703–2 of this chapter (Facilities Contracts).

§ 1010.305–50 [Amendment]

4. In § 1010.305–50, the symbol "MCPPB" is changed to: "(MCPF)".

PART 1012—LABOR

Subpart A—Basic Labor Policies

Section 1012.102–3(c) is revised to read as follows:

§ 1012.102–3 Procedures.

* * * * *

(c) *Contract clause for approved overtime.* In addition to the clause specified in § 12.102–3(c) of this title, the following clause will be incorporated in all contracts for performance of which a specified amount of overtime or extra-pay shifts has been authorized.

APPROVAL OF OVERTIME AND EXTRA-PAY SHIFTS

* * * * *

Subpart D—Labor Standards in Construction Contracts

1. Revise § 1012.402 to read as follows:

§ 1012.402 Applicability.

The contracting officer will determine the applicability of the acts cited in § 12.401 of this title. In case of doubt, AMC contracting officers will submit the matter to the appropriate AMC staff judge advocate for advice. Major air command contracting officers may seek the advice of their own staff judge advocate or, alternatively, of the Staff Judge Advocate, Hq AMC, using normal command channels. Requests for opinions by the Secretary of Labor concerning the applicability or interpretation of the acts and regulations cited in § 12.401 of this title, supported by full information and documentation, will, after coordination with the Staff Judge Advocate, Hq AMC, be submitted by Hq AMC to Hq USAF (AFMPP–PR–3).

2. In § 1012.404–1, the heading is amended; § 1012.404–1 now reads as follows:

§ 1012.404–1 General.

(a) *Administration of labor standards.* Special labor problems encountered by contracting officers, in connection with administration of contract provisions, may be referred to AMC (MCPK) when related to facility contracts and (MCPP) for all others.

(b) *Examination of records.* Prior to the approval of payment on any construction contract, the contracting officer administering the contract will initiate such examinations into the records and activities of the contractor and his subcontractor(s) as are necessary to insure full compliance with the applicable labor statutes and labor standards provisions in this subpart.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1013—GOVERNMENT PROPERTY

Subpart A—General

1. Revise §1013.101–65 to read as follows:

§ 1013.101–65 AF representative.

The term "AF representative" as used in this part and Part 1030, Appendixes B and C of this chapter, means an AF plant representative or chief of an air procurement district or test site office under the jurisdiction of a contract management region (CMR) commander; or the chief of a procurement office in: (a) An AMC field procurement activity, (b) an AMC foreign central procurement activity, (c) an AF base procurement activity (ConUS and Foreign), or (d) ARDC.

2. In §1013.102–50(b), revised subparagraph (5) and paragraph (c), as follows:

§ 1013.102–50 Bailments.

* * * * *

(b) * * *

(5) Aircraft will be bailed under appropriate bailment agreement when the purpose of use is that defined for codes EB or XU Aircraft assigned for the purposes of code CW only, will not be bailed but will be furnished under the supply or services contract.

* * * * *

(c) The Director of Procurement and Production, Hq AMC, has determined that contracting officers of AMC field procurement activities may enter into and execute bailment agreements and amendments thereto for the loan of Government property, except complete aircraft, to AF contractors. This authorization for contracting officers at depots and AMA level pertains only to bailment actions relative to contracts which are placed by the depot and AMA and in this connection the procedures of § 1013.2004(a) will be followed. Depot and AMA contracting officers will not enter into, execute or amend bailment agreements for which procurement responsibility remains at AMC centers. All master bailment agreements and all AMC bailment actions pertaining to complete aircraft (whether a new bailment or a request for amendment to an existing bailment agreement) will be accomplished by the Bailment and Leasing Section (LMEMSB), AMC Aeronautical Systems Center.

3. In § 1013.102–51, add paragraphs (c) and (d) as follows:

§ 1013.102–51 Emergency assistance to civil aircraft and military contract carriers.

* * * * *

(c) This section applies to AF bases, continental United States and overseas. Civil air carriers, operating under military charter flights, are not considered to be military contract carriers under the conditions set forth in this section.

(d) All bailment agreements entered into by commanders of AF bases will be administered by a contracting officer of the AMC Aeronautical Systems Center (LMENS).

4. In § 1013.103, subparagraphs (5) and (6) of paragraph (b) are revised, and paragraph (c) is revised, as follows:

§ 1013.103 Control of Government property.

* * * * *

(b) * * *

(5) Commanders and deputy commanders of contract management regions, AMC field procurement activities, and separate base procurement activities with power of redelegation of only that authority cited in paragraph (a) (2) of this section, to the director of contract administration for the CMRs or to the staff officer responsible for procurement matters at the other activities, provided such officer is not below the level of the director of procurement and production at their air materiel area, or equivalent organization. Authority contained in paragraph (a) (1) and (3) of this section is not subject to further redelegation.

(6) Commanders and deputy commanders of Air Materiel Forces (AMFEA and AMFPA), with power of redelegation not to extend below a staff officer responsible for procurement of the first echelon of command immediately subordinate thereto.

* * * * *

(d) The Industrial Property Branch (MCPKI), Hq AMC * * * and overseas).

Subpart GG—Providing Vehicles to Air Force Contractors

1. Add § 1013.3300 as follows:

§ 1013.3300 Scope of subpart.

This subpart establishes policies, assigns responsibilities, and prescribes procedures within limitations set forth under §§ 13.102 and 13.103 of this title

and §§ 1013.102 and 1013.103 of this chapter.

(a) Providing industrial vehicular equipment to AF contractors, including industrial facility contracts, lease agreements, and service contracts.

(b) Reporting all vehicles in possession of AF contractors.

2. Revise § 1013.3301(c) to read as follows:

§ 1013.3301 Policy.

* * * * *

(c) Construction vehicular equipment will be provided only under facilities contracts and after approval by the responsible AMC center.

3. Add § 1013.3304 as follows:

§ 1013.3304 Assignment.

(a) Industrial vehicular equipment provided under AF contracts, as specified in § 1013.3300(a), are controlled by the responsible AMC center, however, Industrial Resources Division (MCPM), Hq AMC, may authorize major air commands to acquire and/or control industrial vehicular equipment for AF contractors under the jurisdiction of the respective commands. Vehicles will not be provided until an assignment number has been provided by the responsible AMC center. Requests will state: (i) Why it is not economically feasible for the contractor to furnish or purchase his own vehicular equipment; (ii) the equipment cannot be economically leased or rented by the contractor; and (iii) the type of utilization and complete justification for such requirement.

(b) The request will be initiated by the contractor and submitted to the appropriate ACO.

(c) The ACO will approve on the following basis:

(1) That the contractor cannot provide and that such provisioning is advantageous to the Government.

(2) Proper contractural coverage exists. For facilities contracts, the item must be included in the Facilities Appendix "A", and approved. In supply and service contracts, the item must be listed according to appropriate facilities clause.

(d) After approval by the ACO, the original and two exact duplicates of the request will be processed through channels to the responsible AMC center. The original is retained on file at the AMC center until disposal of the vehicle, one duplicate is retained as a working record in the AMC center and the other returned directly to the ACO.

(e) Since AF industrial vehicles are acquired to accomplish production of aircraft and are built to contractor specifications, to meet such production requirements, military specifications are not practical and seldom applicable. Standard commercial catalog models and types are utilized wherever possible, and the assignment number is approved on this design basis. In the area of special types of vehicular equipment, the design and specifications must be submitted to the responsible AMC center to provide the final basis for approval of assignment number.

4. Revise § 1013.3305 to read as follows:

§ 1013.3305 Lease; rental.

(a) The contractor may request and the ACO authorize the rental or lease for a short period of time and apply the costs against applicable AF contracts. Requests for periods in excess of 6 months or recurrent short period requests exceeding a total of 6 months must be forwarded through channels by the ACO, to the responsible AMC center and must contain the following:

(1) Contractor's statement why he will not, or cannot, provide with private funds.

(2) Contractor's justification for the requirement, type, and quantity of vehicles required, and the costs of lease or rental.

(3) Name and address of lessor or rental agency.

(4) Recommendations and comments by the ACO on conditions connected with the action.

(b) The ACO will not approve a rental action for a period in excess of 6 months until he has received prior approval from the responsible AMC center.

5. Add §§ 1013.3306, 1013.3307 and 1013.3308 as follows:

§ 1013.3306 Registration and identification.

Contractor-operated Government-owned vehicles will retain AF registration numbers. In the ConUS the accountability, tagging, identification, and reporting will be according to Part 30, Appendix B and C of this title. Except for the registration number which may be placed inconspicuously on the vehicle, all AF insignia and markings will be removed by the contractor upon receipt of a vehicle on permanent transfer basis and the words "Contractor Vehicle Operated by (Name and address of contractor)," will be painted conspicuously on both sides of the vehicle.

§ 1013.3307 Transfer, replacement and disposal (ConUS).

(e) After the letter of request has been review by the responsible AMC center and assignment number approved, availability of the required vehicle will be determined. There will be no restrictions on providing standard commercial type vehicles from the surplus listings (SF 120) so long as conformance is made with § 1013.3301(e). Assignment number will be referenced in item 23, AMC Form 266, "Request for/and Shipping Authorization," when requesting available vehicles.

(b) Transfer of vehicles within a prime contract structure will be made according to Category I, Idle Equipment procedures.

(c) Vehicles excess to the requirements of a contractor will be inspected and reported as Idle Equipment Category I, III, IV, or V. Shipping authorizations (AMC Form 266B) will be issued by WRAMA. This authorization will order the vehicle shipped or will request plant clearance action.

(d) Replacement of vehicles will be handled as one item being declared excess, as is paragraph (c) of this section, and one item being acquired, as in paragraph (a) of this section. The original assignment number will be used as authority for the replacing item.

§ 1013.3308 Acquisition under the contract (ConUS).

When the required vehicular equipment cannot be acquired by transfer from the industrial reserve, supply stocks or surplus listings (SF 120, issued by Materials Redistribution Division, Bureau of Supplies and Accounts, Department of the Navy), the assignment number may be used by the ACO to authorize purchase. This method of procurement is accomplished by reimbursement to the contractor, after the item is delivered by reimbursement to the contractor, after the item is delivered according to assignment specifications, under the applicable contract.

§ 1013.3310 [Amendment]

6. In § 1013.3310, "Maintenance", delete the words "to be" in the first line, and add the following as a second sentence: "See § 1007.2703-2(e) of this chapter for guidance."

7. Section 1013.3311(a) is revised as follows:

§ 1013.3311 Modification and cannibalization.

(a) It will become necessary from time to time to modify or cannibalize to meet production schedules. To keep such actions to an absolute minimum and maintain records of costs and usability, it will be necessary to receive written approval from the responsible AMC center, prior to modification or cannibalization of any item of vehicular equipment held under contract within the scope of this subpart.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1016—PROCUREMENT FORMS

Subpart D—Construction Contract Forms

Revise §§ 1016.451–1 and 1016.451–2 to read as follows:

§ 1016.451–1 Preconstruction conference checklist (AFPI Form 27).

(a) Available as a reproducible offset master. Local reproduction of cut sheet forms for fill-in purposes from the offset master is authorized after appropriate additional items have been listed in Section IV of the reproducible master.

(b) See § 1054.3004(b)(1) of this chapter for additional instructions.

§ 1016.451–2 Construction contract progress schedule (AFPI Form 78).

Bureau of Budget approval number 21-R129 for AFPI Form 78 expires December 31, 1960 (see § 1054.3004(b)(2) of this chapter).

PART 1030—APPENDIXES TO AIR FORCE PROCUREMENT INSTRUCTION

§ 1030.2 [Amendment]

Amend § 1030.2 *Appendix B—Manual for control of Government property in possession of contractors*, as follows:

Part II—General Provisions:

1. Revise B–201 to read as follows:

B–201 *Duties and responsibilities of the contract administrator with respect to the control of Government property.* (a) to (e) See § 30.2, Appendix B of this title.

2. Revise B–203 to read as follows:

B–203 *Duties and responsibilities of the property administrator.* (a) The property administrator will be familiar with the functions of other AF personnel who have a duty or responsibility in connection with Government property. These other AF functions include, but are not limited to, audit, quality control, plant clearance, and production.

(b) Approval of the contractor's property control system (see also paragraph B–301(b) is subject to the adequacy of established property control records and procedures. In reviewing this system, the property administrator will evaluate the prescribed internal controls and conduct such tests or examinations as are reasonably necessary to determine that: (1) The records and procedures are commercially sound and (2) that the status of Government property will be properly reflected therein. The property administrator, in performing the above review and subsequent examinations and usage analysis required by the Manual, will take into consideration and utilize, as appropriate, data, reports, and documentation concerning property control which originates from reviews or examinations of the cognizant Government auditor and other assigned representatives.

(c) to (e) See § 30.2, Appendix B of this title.

(f) Research and development projects, because of the nature of the work performed thereunder, are not readily adaptable to the utilization of a bill of materials or other normal measures of allowances as in production contracts. In determining reasonableness of usage or consumption of Government property under such projects, the property administrator will depend largely upon visual and physical observation of the controls exercised in connection with the property, including the handling prior to use and the general conditions under which used.

(g) and (h) See § 30.2, Appendix B of this title.

3. In B–205.1, revise paragraph (b) as follows:

B–205.1 *Military Installations or other contractors' plants.*

* * * * *

(b) The power to authorize shipment of UR Exhibits to contractors for evaluation and study at no cost to the Government, without benefit of contractual coverage, has been extended to the commanders of CMRs, AMAs, AF depots and AMFs with power of redelegation to and through the director of logistics support management or the director of quality control as appropriate to the minimum level of authority set forth in the following: (1) The authority to approve the release of engineering UR Exhibits under the Quick Engineering Fix Program may be delegated to AFPRs and BARs, (2) the authority to approve the release of engineering exhibits other than described in (1) above will be vested in the chief and deputy chief of the appropriate logistics support management division; and (3) the authority to approve the release of procurement quality control UR Exhibits may be delegated to the chief and deputy chief of the quality control division of the AFPROs, TSOs, APDs, and AF field procurement offices not directly under the jurisdiction of an APD, except as may be otherwise designated. The use of the extended authority will require administrative review by the AMA, AMF or depot director of logistics support management, or director of quality control as appropriate, for justification and sufficiency of all requests for release of UR Exhibits to a contractor; adherence to the requirements contained herein; and inclusion of record of shipment or other disposition of the exhibits in the materiel improvement project (MIP) file.

* * * * *

4. In Z–206, "Segregation or commingling of Government property and contractor's property," paragraphs (c) and (d), "ACO" is changed to "property administrator."

5. In B–207, "Physical inventories," add the following: "See § 30.2, Appendix B of this title."

6. B–207.1, B–207.3 and B–207.5 are deleted.

In Part IV—Miscellaneous Provisions:

1. In B–401.1, "Identification," paragraphs (a), (2) and (3), "ACO" is changed to: "property administrator."

2. Revise B–403.3 to read as follows:

B–403.3 *Approval of scrap procedure.* (a) See responsibilities in § 1054.2304 of this chapter.

(b) Where it is recognized that recording scrap data is impracticable, the requirement may be waived by the property administrator, provided it is determined that other established and approved controls are adequate and more feasible in protecting the interest of the Government. A determination of this nature will be accomplished in writing and placed in the pertinent contract control files.

§ 1030.3 [Amendment]

Amend § 1030.3 *Appendix C—Manual for Control of Government property in possession of non-profit research and development contractors*, as follows:

In Part II—Government Administrative Provisions:

1. Revise C–201 to read as follows:

C–201 *Duties and responsibilities of the contract administrator with respect to the control of Government property.*

(a) to (d) see § 30.3, Appendix C of this title.

(e) The written advice of the contract administrator will contain statements as to: (1) An investigation has been made of the facts and circumstances surrounding the particular case, (2) the amount of liability, if any, and (3) where liability is involved, the method and details of settlement selected under Subpart V, Part 1054 of this chapter. It is not required that the property concerned be restated in the written advice if a listing is attached and appropriately referenced.

2. Add C–202.50 as follows:

C–202.50 *Designation of property administrators pursuant to AMC–ARDC agreement.* Contracts with profit organizations under which Government property is furnished or acquired will be assigned to an AMC property administrator, except (1) Contracts with ARO Incorporated; Arnold Engineering Development Center, Tullahoma, Tennessee; Pan American Airways, Incorporated, Patrick Air Force Base, Florida; and Vitro Corporation, Elgin Air Force Base, Florida, will be assigned to an ARDC property administrator located at the respective sites and (2) those contracts with contractors at locations assigned to a procuring activity other than the Air Force for property administration.

(a) The ARDC activity assigned administration of contracts with profit organizations, including the above designated contractors under which Government property is furnished or acquired will forward formal request for assignment of a property administrator to the cognizant Air Procurement District or the AF plant representative office, attn: chief, industrial property.

3. Revise C–203 to read as follows:

C–203 *Duties and responsibilities of the property administrator.* (a) The property administrator will be familiar with the functions of other AF personnel who have a duty or responsibility in connection with Government property. These other AF functions include, but are not limited to, audit, quality control, plant clearance, and production.

(b) Approval of the contractor's property control system (see paragraph C–207.2) is subject to the adequacy of established property control records and procedures. In reviewing this system, the property administrator will evaluate the prescribed internal controls and conduct such tests or examinations as are reasonably necessary to determine that (1) The records and procedures are commercially sound and (2) that the status of Government property will be properly reflected therein. The property administrator, in performing the above review and subsequent examinations and usage analysis required by the Manual, will take into consideration and utilize, as appropriate, the data, reports, and documentation concerning property control which originates from reviews or examinations of the cognizant Government auditor and other assigned representatives.

(c) See § 30.3, Appendix C of this title.

(d) Research and development projects, because of the nature of the work performed thereunder, are not readily adaptable to the utilization of a bill of materials or other normal measures of allowances as in production contracts. In determining reasonableness of usage or consumption of Government property under such projects, the property administrator will depend largely upon visual and physical observation of the controls exercised in connection with the property, including the handling prior to use and the general conditions under which used.

(e) to (i) See § 30.3, Appendix C of this title.

Part III—Contractor's Obligations:

1. In C–304, "Contractor's liability," add the following sentence:

The adjustment of discrepancies incident to shipment of Government property will be accomplished according to Subpart U, Part 1013 of this part.

2. In C–307.1, "Identification," paragraph (a)(iii), "administrative contracting officer" is changed to "property administrator."

Add a new § 1030.5, as follows:

§ 1030.5 Appendix E—Contract Financing.

E–000 *Scope; financing defined.* See § 82.1, Subchapter G of this title.

E–001 *Purposes.* See § 82.2, Subchapter G of this title.

E–002 *Application.* See § 82.3, Subchapter G of this title.

E–003 *Implementation.* See § 82.4, Subchapter G of this title.

Part I—Introduction

E–100 *Scope of part.* See § 82.5, Subchapter G of this title.

E–101 *Guaranteed loans; authority.* See § 82.6, Subchapter G of this title.

E–102 *Guaranteed loans; description.* See § 82.7, Subchapter G of this title.

E–103 *Advance payments; authority.* See § 82.8, Subchapter G of this title.

E–104 *Advance payments; description.* See § 82.9, Subchapter G of this title.

E–105 *Progress payments; authority.* See § 82.10, Subchapter G of this title.

E–106 *Progress payments; description.* See § 82.11, Subchapter G of this title.

E–107 *Responsibilities.* See § 82.12, Subchapter G of this title.

Part II—Basic Policies

E–200 *Scope of part.* See § 82.13, Subchapter G of this title.

E–201 *Acceleration of payments.* See § 82.14, Subchapter G of this title.

E–202 *Timely action.* See § 82.15, Subchapter G of this title.

E–203 *Uniformity.* See § 82.16, Subchapter G of this title.

E–204 *Small business.* See § 82.17, Subchapter G of this title.

E–205 *Purpose of contract financing.* See § 82.18, Subchapter G of this title.

E–206 *Support of procurement; minimizing monetary loss.* See § 82.19, Subchapter G of this title.

E–207 *Reasonable need.* See § 82.20, Subchapter G of this title.

E–208 *Working capital purposes.* See § 82.21, Subchapter G of this title.

E–209 *Order of preference.* See § 82.22, Subchapter G of this title.

E–210 *Financing not a handicap.* See § 82.23, Subchapter G of this title.

E–211 *Financial responsibility of contractors.* See § 82.24, Subchapter G of this title.

E–212 *Coordination before contract award.* See § 82.26, Subchapter G of this title.

E–212.50 *Facility capability report.* The FCR system (see Subpart I, Part I of this title, and Subpart I, Part 1052 of this chapter to be later superseded by appropriate ASPR implementation) provides the services of personnel qualified and competent to evaluate credit and financial problems prior to or contemporaneously with contract awards.

E–212.51 *Financial control list.* (a) Financial Branch (MCPMF), Hq AMC, will screen names received pursuant to the requirements of paragraph E–216 to determine which should appear on the Financial Control List referred to in (d) of this paragraph.

(b) Contract Financing Branch (AFAAF–6C), Hq USAF, furnishes to MCPMF monthly a list of contractors who meet the criteria of § 82.86(d), Subchapter G of this title.

(c) The Departments of Army and Navy furnish MCPMF monthly a list of contractors which require Army or Navy concurrence prior to contract awards by the Air Force. The Air Force has placed similar restrictions on Army and Navy. Each department publishes an identical list known as the interservice concurrence list.

(d) In the interest of administrative simplicity, MCPMF will consolidate the names of the three lists into a single list and distribute the resulting list monthly to all procurement activities, including ARDC, Army, and Navy. The single list will be known as the Financial Control List. See § 82.87–1, Subchapter G of this title.

(e) The reason why a particular name is on the list will not be shown. The list will be classified "For Official Use Only" and access thereto will be governed by AFR 11–30.

(f) MCPMF will establish dollar limitations above which awards may not be made without prior clearance with MCPMF.

E–212.52 *Proceduzes.* (a) If it becomes apparent to procurement personnel during placement of a contract, a supplement to an existing contract, or a substantial spare parts order under an existing contract and any one of the following conditions is present; the procedure set forth in (b) of this paragraph will be followed.

(1) The proposed contractor cannot reasonably be expected to perform without: (i) Guarantee of a bank loan by the Air Force. (See paragraph E–300 of this Appendix E.)

(ii) Unusual progress payments (see paragraph E–500 of this Appendix E).

(iii) Advance payments (See paragraph E–400 of this appendix E).

(2) Award of the proposed contract would overload the proposed contractor's production capacity.

(3) The proposed contractor does not have sufficient working capital, credit, or sources of borrowing to perform the proposed contract.

(4) The amount of Government financial assistance required is out of reasonable proportion to the proposed contractor's investment.

(5) The proposed contractor's name is on the Financial Control List referred to above.

(6) The contractor's name is on the hold-up list referred to in paragraph E–518.2 of this Appendix E.

(b) If any of the conditions set forth in (a) of this paragraph exist, procurement personnel will submit the matter through normal procurement channels to AMC (MCPMF) or to ARDC (RDMK) as appropriate. MCPMF or RDMK, as appropriate, will determine whether approval may be granted directly, or is required either by a General Officer at Hq AMC or Hq ARDC or by Hq USAF according to Part 82, Subchapter G of this title, particularly paragraphs E–517, E–505, E–406 or E–300 of this Appendix E. If coordination with Army or Navy is required, MCPMF or RDMK, will obtain it. Approvals within AMC or ARDC will be obtained according to normal Command procedures. If prior approval by higher authority at Hq USAF is required and is recommended, MCPMF or RDMK will submit the matter with a proposed memorandum of approval on Secretary of the Air Force letterhead outlining the pertinent facts therein and approving the action requested, to Hq USAF (AFMPP–PR). In the case of a small business concern, see § 82.48, Subchapter G, and § 1.705–6 of this title.

(c) Contracting officers and personnel performing an FCR should realize that Government guarantee of a bank loan is a normal method of assisting defense contractors and subcontractors in acquiring working capital. A request by a bank for Government guarantee of a portion of a loan it proposes to make to a contractor does not, in most cases, reflect upon the basic credit, ability, or character of a contractor. Therefore, if the possibility of a request by a bank for Government guarantee of a loan is the only question concerning a contractor's ability to finance a proposed contract, the Financial Branch (MCPMF), Hq AMC, will grant or deny financial clearance. MCPMF will advise the Contract Financing Branch, Directorate of Accounting and Finance, Office of the Comptroller, Hq USAF by letter of actions taken with an information copy to Hq USAF (AFMPP–PR). If other factors present convince MCPMF that prior clearance with Hq USAF would be warranted, the matter will be forwarded as set forth above.

(d) *Guaranteed loans.* In submitting the matter to AMC (MCPMF), use AFPI Form 63C "FCR Financial Action Summary". Attach the following data:

(i) Letter from the bank setting forth its intentions regarding request for Government guarantee or increase or extension of an existing loan.

(ii) A statement from contracting officer as to whether he would recommend issuance of Certificate of Eligibility.

(iii) The information in § 82.28, Subchapter G of this title necessary for MCPMF to arrive at the decision required.

(iv) Breakdown of contractor backlog between Government (by agency) and commercial.

(v) Any other pertinent data necessary to a proper conclusion in the matter.

(e) *Advance payments.* See §§ 82.61 and 82.62, Subchapter G of this title.

(f) *Unusual progress payments.* See § 82.74, Subchapter G of this title.

E–213 *Financial information and analysis.* See § 82.27, Subchapter G of this title.

E–213.50 *Responsibilities.* (a) The director of procurement and production in each APD will obtain financial information from contractors doing business with the Air Force and on a company for which an FCR is being completed when adequate data is not available from published sources. Hq ARDC will obtain financial information from contractors for contracts which are being administered solely by ARDC. When contractors, under AMC administration, also have contracts administered by ARDC, financial surveillance will be done by AMC. See § 1053.404–4(b) of this chapter. Forward an original or a signed copy of each item of financial data to AMC (MCPMF), as soon as received from companies or from internal AF sources. (See paragraph E–214.53).

(b) Buyers, price analysts, or others will not request financial data from contractors or prospective contractors other than cost data for use in pricing contracts. If an FCR is not required, anticipate the need for such data and request the information from the Financial Branch (MCPMF) or the cognizant APD, whichever is nearer. The APD will provide or will direct the appropriate air procurement district to provide the needed information. A division or subsidiary of a company may be asked to obtain financial data from its home office if needed for completion of an FCR.

(c) Procurement personnel who receive financial data direct, will forward it to MCPMF or the cognizant APD whichever is nearer. (See paragraph E–214.53.)

E–213.51 *Obtaining financial data.* (a) When possible make arrangements for automatic forwarding of information without necessity for periodic requests. Normally, regularly published quarterly financial statements will suffice. In exceedingly weak cases, monthly financial statements may be required. With unusually strong companies, semiannual or annual statements may be sufficient.

(b) *Special cases.* If a contractor or a prospective contractor has limited working capital or shows evidence of serious financial weakness, request the following data when completing an FCR.

(1) A cash flow sheet. See § 82.28–1, Subchapter G of this title.

(2) Statement of how the proposed contract will be financed.

(3) If the contract will be financed by new capital, appropriate evidence that the additional capital will be furnished.

(4) If the contract will be financed by borrowing from a bank, an agreement or letter from the bank stating that it will loan a specific amount or that it will furnish working capital sufficient for the performance of proposed contract. (This letter is not to require a commitment fee.)

(5) If the contract will be financed by guarantee of an individual or of a company, a letter from the individual or company (signed by an officer of the company, stamped with the corporate seal, and notarized), together with current balance sheet of company making the guarantee. If a guarantee is made by a corporation, a certified resolution of the board of directors authorizing the guarantee and disclosing the authority of the officer signing on behalf of the corporation to so obligate the corporation. (See paragraph E–214.51.)

(6) If the company is newly organized, a copy of the incorporation papers and a balance sheet reflecting amount of paid-in capital, unless such data has previously been furnished to the Air Force.

(7) Name of parent company and affiliates, and list of subsidiaries, if any.

(8) The APD may, prior to granting financial clearance, require the proposed contractor to agree in writing that it will furnish financial statements acceptable to the Air Force during the life of the contract. The required frequency of interim statements will be determined according to paragraph E–213.51(a) and will be made known to the proposed contractor. Fiscal year-end statements in such cases will be required within 90 days after the close of the fiscal year and interim statements within 30 days after the close of the interim period. The action authorized by this subparagraph normally will be taken by the APD upon determination that close surveillance will be required while contracts are outstanding and the proposed contractor does not publish financial statements adequate for such surveillance.

(c) Any financial statements required of a contractor will be specified in a letter, whether or not oral requests were made for the specific items needed.

E–214 *Appropriate information; purposes.* See §§ 82.28 and 82.27, Subchapter G of this title.

E–214.50 *Access to records.* If a company has an active contract providing for progress payments or advance payments, the company has a contractual obligation to furnish financial statements and other collateral information. See paragraph (g) of Progress Payments clause and paragraph (13) of the Advance Payments clause.

E–214.51 *Financial guaranties.* Agreements to provide financial assistance, performance guaranties, and subordination agreements will be reviewed for financial adequacy and legal sufficiency before granting financial clearance.

E–214.52 *Records and forms.* (a) Use AFPI Form 67, "Subordination Agreement (Applicable to One Government Contract)," AFPI Form 67A, "Subordination Agreement (Applicable to More Than One Government Contract)," AFPI Form 68, "Guaranty Agreement for Corporate Guarantor (Applicable to One Government Contract)," and AFPI Form 69A, "Guaranty Agreement for Corporate Guarantor (Applicable to More Than One Government Contract)," as required. Deviations must be approved by the contract Management Region (CMR) staff judge advocate. The CMR staff judge advocate's written approval will be affixed, preferably on a separate sheet. Each guaranty agreement will be supported by a current financial statement of the guarantor.

(b) Use AFPI Form 32, "Financial Data Record," and AFPI Form 33, "Memorandum for Credit Files," for recording financial data.

E–214.53 *Financial files.* MCPMF, Hq AMC, will maintain complete financial files on AF contractors. The only other complete financial file on any contractor will be maintained at the APD.

E–214.54 *Bureau of Budget clearance.* Bureau of Budget Clearance No. 21–R033 which expires February 15, 1963, has been assigned to requests for financial data within the scope of this part.

E–215 *Termination financing.* See § 82.29, Subchapter G of this title.

E–216 *Report of adverse development; prompt decisions.* (a) Production, quality control, financial, auditor and cognizant personnel will report pertinent facts to the ACO who will take whatever protective or remedial course of action is open to him. The ACO will report the situation in full to the procuring contracting officer with recommendations for additional action through normal channels by the most expeditious means. The PCO will take whatever action is proper, prudent, and in the best interests of the Government.

(b) All echelons will take whatever action they can within their scope of authority and will recommend any necessary additional action by higher authority to protect the interest of the Government. The interest of the Government may be better fostered by providing additional financial assistance and the advisability of recommending additional assistance should be given due weight in the light of the existing situation. All action will be governed by the need for continued production. The cost of reprocurement, the loss of production time, and the essentiality of the procurement should be evaluated against any risks of monetary loss that may be involved in recommending additional financial assistance or continuing existing assistance.

(c) Report known adverse developments through established channels to MCPMF, Hq AMC. Describe the adverse development, its expected impact upon continued satisfactory production by a contractor or subcontractor, remedial or protective measures taken, and recommend a course of action.

(d) MCPMF, Hq AMC, will explore the matter fully with AMC and, after coordination with MCP on the production aspects, will take appropriate action within the limits of the authority. If the adverse development involves a contractor or subcontractor having a bank loan guaranteed by the Air Force, a progress payment or an advance payment, NCPMF will describe the adverse development fully, its expected impact upon continued satisfactory production, remedial actions taken by MCPMF and lower echelons, and recommended additional action by higher authority in an electrically transmitted message or airmail letter to Hq USAF (AFMPP–PR).

(e) All echelons will take timely appropriate protective or remedial action when an adverse development occurs. Requests for information received by AMC activities directly from the Secretarial level of the Air Force will be handled as expeditiously as possible. Complete coordinated responses will be forwarded, through channels, over the signature of the Chief or Deputy Chief, Industrial Resources Division (MCPM), Hq AMC. In the interest of accuracy and completeness, telephonic responses will not be made unless requested. If telephonic response is made, the substance of the inquiry and the reply will be reduced to writing and forwarded by the Chief or Deputy Chief, (MCPM), Hq AMC to Hq USAF (AFMPP–PR) for information.

(f) In addition to the above, the director of procurement and production in each APD will arrange for the preparation of a report as of the end of January, April, July and October of AF contractors under the jurisdiction of the APD who have or who are developing serious financial problems because of production or other difficulties. Also see paragraph E–212. The report will be submitted by the APD through the Contract Management Region (CMR) to reach MCPMF, Hq AMC, by the 15th of February, May, August and November respectively. The report (RCS: 2 AMC–N31) will show, with respect to each contractor reported on, (i) the nature of the contractor's financial difficulty, (ii) factors involved, (iii) subsequent changes, if any, in the condition, (iv) significant financial changes that have taken place or can reasonably be expected to occur as a result of the difficulties experienced, and (v) constructive measures taken, contemplated, or recommended as necessary to protect the interests of the Government. The narrative report will be classified "For Official Use Only."

E–217 *Reports.* See § 82.31, Subchapter G of this title.

E–218 *Deviations; amendments.* See § 82.32, Subchapter G of this title.

E–219 *Interpretations.* Send written requests for interpretations, through channels to Hq USAF (AFMPP–PR).

E–220 *Foreign procurement.* See § 82.33 (a), Subchapter G of this title.

Part III—Guaranteed Loans

E–300 *Scope of part.* See § 82.34, Subchapter G of this title.

E–301 *Federal Reserve Banks.* See § 82.35, Subchapter G of this title.

E–302 *Board of Governors of the Federal Reserve System.* See § 82.36, Subchapter G of this title.

E–303 *Procedure on applications of a private financing institution.* See § 82.37, Subchapter G of this title.

(a) Authority to issue loan guarantees on behalf of the Air Force rests with the Deputy for Contract Financing to the Assistant Secretary (Financial Management).

(b) The financial aspects of an application for guarantee are evaluated by the Contract Financing Branch (AFAAF–6C), Hq USAF.

(c) A contracting officer receiving schedules of defense contracts from a Federal Reserve Bank will notify MCPMF, Hq AMC, to avoid duplication of effort.

E–304 *Loan guarantees to Federal Reserve Banks.* See § 82.38, Subchapter G of this title.

E–305 *Loan guarantees for terminated contracts.* See §82.39, Subchapter G of this title.

E–306 *Guaranteeing agency.* See § 82.40, Subchapter G of this title.

E–307 *100 percent guarantees.* See § 82.41, Subchapter G of this title.

E–308 *Asset formula.* See § 82.42, Subchapter G of this title.

E–309 *Amount and maturity of guaranteed loans.* See § 82.43, Subchapter G of this title.

E–310 *Assignments of claims under contracts.* See § 82.44, Subchapter G of this title. Also see § 1007.103–8 of this chapter and Part 6 of this Appendix E.

E–311 *Other collateral security.* See § 82.45, Subchapter G of this title.

E–312 *Contract surety bonds in relation to loan guarantees.* See § 82.46, Subchapter G of this title.

E–313 *Other borrowings.* See § 82.47, Subchapter G of this title.

E–314 *Eligibility certifications.* See § 82.48, Subchapter G of this title.

E–314.1 *Certificate of eligibility.* The Deputy Chief of Staff, Materiel, Hq USAF, has delegated his authority to issue Certificates of Eligibility, to the Commander, Air Materiel Command, with power of redelegation not below the level of the Chief or Deputy Chief, Industrial Resources Division (MCPM), Hq AMC. Redelegation has been made.

E–315 *Procedure for certificate of eligibility.* (a) Certificates may be requested by the Deputy for Contract Financing (SAAFM) to the Assistant Secretary (Financial Management); the Contract Financing Branch, (AFAAF–6C) Hq USAF; the Department of Army or Navy. Requests for certificates or related information will be directed to MCPMF, Hq AMC, who will immediately collect and evaluate the necessary supporting data.

(b) All procurement activities will furnish MCPMF supporting data upon request on a priority basis (normally within 5 working days). Personnel designated to process requests for certificates should be primarily interested in the procurement, production, or research and development aspects of the matter. Requests by MCPMF for supporting data will identify the principal contracts or subcontracts involved, the items or services being procured if known, and the undelivered dollar amount of the contracts or subcontracts if known.

(c) Data necessary to support a Certificate of Eligibility is set forth in § 82.49(f), Subchapter G of this title.

(d) After authorization of a loan guarantee by the Deputy for Contract Financing (SAAFM) on behalf of the Air Force, MCPMF, Hq AMC, will advise the cognizant procurement activity having contract administration responsibility of that fact. The procurement activity so advised will determine whether the contractor or subcontractor should receive special production surveillance with emphasis on quality control and delivery problems. See paragraph E-216 regarding report of adverse developments.

Part IV—Advance Payments

E-400 *Scope of part; references.* See § 82.50, Subchapter G of this title.

E-400.1 *Advance payments on subcontracts.* See § 82.50-1, Subchapter G of this title.

E-401 *Types of contracts that may have advance payments.* Advance payments in foreign countries for rent for periods necessary to conform with local custom and for tuition may be approved by the Director of Procurement in AMFEA or AMFPA.

E-402 *Advance payments in addition to progress payments.* See § 82.52, Subchapter G of this title.

E-403 *Interest.* See § 82.53, Subchapter G of this title.

E-404 *Standards; amounts; need.* See § 82.54, Subchapter G of this title.

E-405 *Statutory requirements.* See § 82.55, Subchapter G of this title.

E-406 *Responsibility; delegation of authority.* See § 82.56, Subchapter G of this title.

E-407 *Public Law 85-804; formally advertised contracts.* See § 82.57, Subchapter G of this title.

E-408 *Uses of advance payments.* See § 82.58, Subchapter G of this title.

E-409 *Standards for advance payment determinations; all contracts.* See § 82.59, Subchapter G of this title.

E-410 *Findings, determinations and authorization.* See § 82.60, Subchapter G of this title.

E-411 *Application for advance payment.* See § 82.61, Subchapter G of this title.

E-412 *Action by contracting officer; approval.* (a) The appropriate office within the Air Force is either MCPMF in AMC or RDMK in ARDC, hereinafter referred to as "Financial Branch." One copy is sufficient. The data in § 82.62 (e) and (f), Subchapter G of this title will be supplied by MCPMF or RDMK, as appropriate. Contracting officers in the Financial Branch have been delegated authority to act as the duly authorized representatives of the Commander, AMC, or ARDC, with respect to advance payments. Other contracting officers, including those exercising the functions outlined in §§ 1054.2703 to 1054.2706 of this chapter are not authorized to perform functions specifically delegated to contracting officers in the Financial Branch.

(b) If an FCR indicates the need for an advance payment to assure performance, or if a prospective contractor requests an advance payment, the procuring contracting officer may not proceed with the procurement until approval at the Secretarial level in the Air Force is obtained. The matter should be processed through channels with an appropriate recommendation to the Financial Branch which will process the matter according to paragraph E-212.

(c) If an ACO receives a request for an advance payment on an existing contract, or if it becomes apparent during administration of a contract that an advance payment would best serve the interest of the Government, he will make an appropriate recommendation through normal channels to the PCO who will add his recommendation and forward it to the Financial Branch. (Also see paragraph E-412.1.)

(d) Upon receipt of the data set forth in §82.62, Subchapter G of this title, the Financial Branch will arrange a meeting with the contracting officer or his representative, and the contractor to discuss the contractor's financial problems. Prior to the meeting, the Financial Branch will request the contractor to furnish to the extent that such material is not already in the files of the Financial Branch, as much of the information set forth in §§ 82.28 and 82.61, Subpart G of this title as is reasonably necessary to a conclusion regarding the necessity or propriety of an advance payment in the particular case.

(e) If, after consideration of all of the facts in the case, the Financial Branch considers that authority to make an advance payment should be requested, a letter of recommendation will be forwarded to Hq USAF, (AFMPP-PR) over the signature of the Director of Procurement (MCPM), Hq ARDC, or Chief or Deputy Chief, Industrial Resources Division, Hq AMC, as appropriate. The Director of Procurement and Production, Hq USAF, will formulate a recommendation and obtain necessary coordination within the Air Staff before presenting the matter to Secretarial level.

(f) The information to be forwarded to Hq USAF in support of a favorable recommendation is set forth in § 82.62 (d) and (e), Subchapter G of this title. The balance of the data in paragraph E-412 should be summarized in the forwarding letter. Do not send a copy of the contract unless requested.

E-412.1 *Action by contracting officer; disapproval.* The Financial Branch will forward the file to Hq USAF (AFMPP-PR).

E-412.50 *Procedures.* (a) *Payment of advance payment moneys to contractor.* (1) Advance payments to a contractor will be approved by contracting officers in the Financial Branch, authorized to approve such payments. Payments approved will be deposited immediately by the contractor in the special bank account. Approved advance payments will only be in amounts sufficient to satisfy the requirements of the contractor during a limited period.

(2) Requests for advance payments will be submitted (in duplicate) periodically to contracting officers authorized to approve such payments in the Financial Branch. Such requests will include a schedule (in duplicate) of cash requirements during the remaining period of the contract. The contractor will be advised that the first request for an advance payment must include seven copies of Standard Form 1034, "Public Voucher for Purchases and Service other than Personal," signed by the contractor. The request will be sent directly to the Financial Branch with a statement by the contractor that all amounts stated are reasonable and accurate and that payment is necessary.

(3) All subsequent Standard Form 1034 requests for payment of advance payments will be routed through the ACO who will add his comments and recommendations and forward them to the Financial Branch.

(4) The contracting officer in the Financial Branch will examine each request, supporting schedule, and the comments of the ACO. If satisfied that the contractor requires the amount requested and that such amount, plus sums previously advanced to the contractor, remaining unliquidated will not be in excess of the advance payments authorized, he will execute the voucher. The contracting officer will authorize the accounting and finance officer to make the advance payment covered by the voucher and will send him the executed voucher, with the original and one copy of the contractor's request.

E-413 *Security; supervision; covenants.* See § 82.63, Subchapter G of this title.

E-414 *Forms of contract provisions and supplemental agreements.* Contract provision recommended for inclusion in the contract or supplemental agreement will be attached to the proposed findings submitted pursuant to § 82.60. Variations from the approved form will be identified in the forwarding letter referred to in paragraph E-412.

E-414.1 *Forms of agreement for special bank account.* If the proposed form of bank agreement is identical to the form in § 82.64-1, Subchapter G of this title, include a statement to that effect in the forwarding letter (see paragraph E-412) and do not forward the form.

E-414.2 *Advance payment provisions.* See § 82.64-2, Subchapter G of this title.

E-415 *Pooled advance payments; general.* The authority and requirements for approval of advance payment pool agreements are the same as for a single contract.

(a) If it is desired to include a contract in an existing advance payment pool agreement administered by another AF procurement activity (e.g., ARDC), concurrence by the director of procurement of that activity is required before the contract may be included.

(b) Upon receipt of a request for advance payments, the Financial Branch will determine whether a pool agreement would better serve the interest of the Government and whether it would be feasible to request authority to enter into such an agreement.

(c) If a contractor requests inclusion of additional contracts or supplements to existing contracts in existing pool agreements the contracting officer will forward such requests to the Financial Branch with the following information: (i) Originating office, (ii) name and address of contractor, (iii) contracting officer, (iv) PR number, (v) amount of contract or supplemental agreement, (vi) duration of contract and identity of supply or service being procured, (vii) type of contract, (viii) contract number assigned and (ix) accounting and finance officer to make payments.

(d) Contract Clause: Upon approval of the advance payment and receipt of authority to enter into a pool agreement, the following clause will be added to each contract which is to become part of the advance payment pool agreement:

ADVANCE PAYMENTS

Advance payments will be made for the work called for hereunder in accordance with the Findings, Determinations and Authorization for advance payments dated _____. Payments made pursuant to this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement dated _____ as it may be amended from time to time between the United States of America and _____ which agreement is hereby incorporated by reference with the same force and effect as though fully set forth herein.

(e) If an advance payment pool agreement is entered into, disbursing responsibility on all contracts in the pool will be transferred to a single accounting and finance office to be designated by the Financial Branch.

(f) If a university is a party to an advance-payment pool agreement under the terms of which all contracts of a designated class with the university are financed, new contracts with the university will not be entered into without prior clearance with the Financial Branch, Hq ARDC. If financing of such new contracts would require an increase in the amount of advance payment authorization, prior approval of Hq USAF must be obtained. See paragraph E-212.

E-415.1 *Distribution between pool contracts and designated pool contracts.* See § 82.65-1, Subchapter G of this title.

E-416 *Advance payment pool agreements; special features.* See § 82.66, Subchapter G of this title.

E-417 *Liquidation; designated pool contracts; administering office.* The administering office designated in all pool agreements will normally be the Financial Branch. If it is desired to designate another office the forwarding letter will name the office and give reasons why it would be in the best interests of the Air Force to use such office.

E-418 *Pooled advance payments; understandings.* See § 82.68, Subchapter G of this title.

E-419 *Excluded advance payments.* See § 82.68a, Subchapter G of this title.

Part V—Progress Payments Based on Costs

E-500 *Scope.* See § 82.69 Subchapter G of this title.

E-500.2 *Exclusions.* See § 82.69-1, Subchapter G of this title. Cost-reimbursement type letter contracts as described in § 1007.2503 of this chapter are also excluded.

E-501 *Percentage or Stage of completion.* See § 82.70, Subchapter G of this title.

E-502 *General.* See § 82.71, Subchapter G of this title.

E-503 *Customary progress payments; standards.* See § 82.72, Subchapter G of this title.

E-504 *Formal advertising; small business restricted advertising.* See § 82.73, Subchapter G of this title.

E-504.5 *Total costs clause preferable.* See § 82.73-5, Subchapter G of this title. Use the clause in § 82.79, Subchapter G of this title in advertised procurement.

E-504.6 *Non-responsive bids; uninvited progress payment condition.* If progress payments will not be available include a statement to that effect in the IFB. (See § 2.201 of this title and § 1002.201 of this chapter.)

E-505 *Unusual progress payments; standards; procedure.* See §§ 82.74, 82.26 and 82.86, Subchapter G of this title. The Commander, AMC, has delegated to the Director of Procurement and Production, Hq AMC, his authority to approve, or to recommend to higher authority, approval of unusual progress payments. The Director, Procurement and Production, Hq AMC, has redelegated his authority to a Deputy Director of Procurement and Production, Hq AMC, and to the Commander and Vice Commander, ARDC. The Commander, ARDC, has redelegated his authority to the Director of Research, Hq ARDC. Submit requests for approval of unusual progress payments to AMC (MCPMF) or ARDC (RDMK) as appropriate.

E-506 *Accounting systems and control.* Obtain information as to the adequacy of an accounting system and controls from the Air Force Auditor General.

E-507 *Information required.* See § 82.76, Subchapter G of this title.

E-508 *Advance payments.* See § 82.77, Subchapter G of this title.

E-509 *Definitions.* See § 82.78, Subchapter G of this title.

E-510 *Contract clauses.* See § 82.79, Subchapter G of this title.

E-511 *General instructions for progress payment clauses.* See § 82.80, Subchapter G of this title.

E-512 *Progress payment liquidation.* See § 82.81, Subchapter G of this title.

E-513 *Subcontracts.* See § 82.82, Subchapter G of this title.

E-514 *Progress payments on subcontracts under cost-reimbursement types of prime contracts.* See § 82.83, Subchapter G of this title.

E-515 *Letter contracts.* See § 82.84, Subchapter G of this title.

E-516 *Transition.* See § 82.85, Subchapter G of this title.

E-517 *Contract financing office clearance.* See §§ 82.86, 82.74 and 82.26, Subchapter G of this title. The Contract Financing Office in the Air Force is the Deputy for Contract Financing to the Assistant Secretary of the Air Force (Financial Management) (SAFFM), Washington, D.C.

E-518 *Coordination.* See § 82.87, Subchapter G of this title.

E-519 *Contractor's request.* See § 82.88, Subchapter G of this title.

E-520 *Audit.* See § 82.89, Subchapter G of this title.

E-521 *Administration; general.* See § 82.90, Subchapter G of this title.

E-522 *Adjustments; retroactive price reduction; refunds.* See § 82.91, Subchapter G of this title.

E-523 *Maximum unliquidated amount.* See § 82.92, Subchapter G of this title.

E-524 *Suspension or reduction of progress payments; general.* See § 82.93, Subchapter G of this title.

E-525 *Government title.* See § 82.94, Subchapter G of this title.

E-526 *Consideration for progress payments; awards.* See § 82.95, Subchapter G of this title.

E-527 *Amendments to provide progress payments.* See § 82.96, Subchapter G of this title.

E-528 *Consideration for amendments providing for progress payments.* See § 82.97, Subchapter G of this title.

Part VI—Assignments of Claims Arising Under Government Contracts

E-600 *Scope of part.* This part states procedures and responsibilities relating to the assignment of claims for moneys due or to become due under contracts providing for payments aggregating $1,000 or more.

E-601 *Applicability of part.* This part applies to all AF procurement activities.

E-602 *General.* Pursuant to the Assignment of Claims Act of 1940 (Public Law 811, 76th Cong.), as amended, assignment of moneys due or to become due under Government contracts may be made, and the requirements under which such assignment can be made are outlined in § 7.103-8 of this title.

E-603 *Filing notices of assignment and instruments of assignment.* See instructions in § 7.103-8 of this title.

E-604 *Copies of notices for contracting officer and acknowledgement thereof.* (a) The four copies of notices of assignment and instruments of assignment directed to the contracting officer will be sent by receiving personnel as follows:

(1) If the assignment relates to a contract written or administered by an AMC procurement activity, to the contracting officer appointed for the purpose of acknowledging assignments at the AMC procurement activity.

(2) If the assignment relates to a contract written by an ARDC procurement activity, contracting officers mentioned in subparagraphs (A) and (B) below, will follow the procedure in paragraph (b).

(A) If received prior to distribution of the contract, to the cognizant procuring contracting officer.

(B) If received after distribution of the contract, to the cognizant administrative contracting officer.

(3) If the assignment relates to a contract written or administered by an AF procurement activity other than AMC or ARDC, to the appropriate contracting officer at that procurement activity.

(b) The contracting officer specified above to whom the notices of assignment and instruments will be sent, will:

(1) Examine notices of assignment and instruments of assignment and the contract involved.

(2) If satisfied that the assignment is in proper form, was properly executed, and that the contractor is empowered under the contract to assign the claim or claims involved, acknowledge receipt of the notice of assignment in the space provided.

(3) Return three copies of the notice thus acknowledged to the assignee.

(4) When the AMC contracting officer acknowledges the notice of assignment and instrument of assignment, the fourth copy of the notice of assignment and the copy of the instrument of assignment will be filed with the contract.

(5) When the ARDC procuring contracting officer acknowledges the notice of assignment and instrument of assignment prior to distribution of the contract, and when the contract is to be administered by an AMC field procurement activity, the fourth copy of the notice thus acknowledged and the copy of the instrument of assignment will be transmitted with the copy (or copies) of the contract when forwarded to the AMC field procurement activity for administration purposes.

(c) The Accounting and Finance Division (MCCA), Hq AMC, has advised that accounting and finance officers will not make payments to assignees unless the first invoice or voucher covering the amounts to be paid the assignee is accompanied by two copies of the notice of assignment duly acknowledged by the contracting officer.

E-605 *Procedure when acknowledgment is refused or delayed.* If, for any reason, the assignment involved is one which the contract does not authorize the contractor to make, or is not in proper form, or is not properly executed, the contracting officer will return the copies of the notice of assignment and the copy of the instrument of assignment to the assignee with an explanation of the objections to the proposed assignment and the acknowledgment form on the notices of assignment will not be executed by the contracting officer. In addition if, upon receipt of notices of assignment and the copy of the instrument of assignment, it appears that a considerable delay may occur before the notices of assignment are acknowledged or returned unacknowledged as the case may be, the contracting officer will advise the assignee that such a delay is likely to occur and will normally furnish the assignee a statement of the reasons for the delay.

E-606 *Further assignments and reassignments.* Contracts permitting the assignment of claims for moneys due or to become due hereunder also permit such claims to be further assigned and reassigned by the assignee to a bank, trust company, or other financing institution, including any Federal lending agencies. Copies of written notices of further assignment and reassignment and copies of instruments of such further assignment and reassignment will be processed in the same manner as copies of initial assignment and instruments of initial assignment. The three acknowledged copies of the notice of further assignment or reassignment will be sent to the assignee under the assignment thus acknowledged.

E-607 *Examination of assignment.* In ascertaining that an assignment is in proper form, is properly executed, and is one that the contractor is entitled to make under the contract, contracting officers will satisfy themselves that:

(a) The contract has been duly executed and approved where necessary. Contractors frequently make assignments of claims for moneys due or to become due under a contract, upon notice of award of the contract, even though the contract has neither been executed nor approved. Copies of notices of such assignment will be immediately returned to the assignee unacknowledged.

(b) The contract is one under which claims may be assigned under the provisions of the Assignment of Claims Act of 1940. In rare cases, Secret or Confidential contracts will contain provisions prohibiting assignments of claims thereunder. It should be noted that assignment of claims under Secret or Confidential contracts, permitting the assignment thereof, will not be acknowledged by contracting officers until adequate

steps have been taken to protect the interests of the Government.

(c) The assignment covers all amounts payable under the contract, and not already paid, and is not made to more than one person, and the assignee is a bank, trust company, or other financing institution, including any Federal lending agency. In this connection the following will be noted:

(1) Most contracts provide that any assignment of claims thereunder will cover all amounts payable under the contract, and not already paid, and will not be made to more than one person except that assignments may be made to one person as agent or trustee for two or more persons participating in the financing of a contractor. Under the Assignment of Claims Act, however, contracts may provide for assignments of part of the contractor's claims for money due or to become due or for such assignments to more than one person. In the absence of contract provisions authorizing such assignments, the assignments are unlawful. Because of the administrative burden on accounting and finance officers, partial assignments or assignments to more than one person, if permitted under a contract, should be limited to cases where the contractor is financially obligated to Government agencies and the assignment is made for the protection of such Government agencies.

(2) Where the contract provides for advance payments, whether or not advance payments have actually been made to the contractor, notice of assignment will not be acknowledged unless:

(A) The assignment expressly recites that the rights of the assignee are subordinate to the rights of the Government:

(1) To withhold from the contractor amounts required to liquidate advance payments.

(ii) To have deposited in the contractor's special advance payment bank account all moneys payable to the contractor which the contract requires the contractor to deposit in that account.

(B) The contracting officer obtains from the assignee an agreement that the assignee will pay to the contractor all amounts which may be received by the assignee and which the contractor is obligated by the contract to deposit in its special advance payment bank account. See § 82.64, Subchapter G of this title. In special cases, additional documents signed by the contractor or the assignee or both, thought necessary by the contracting officer to protect the interests of the Government against the assignee, may be required by the contracting officer.

Assignments such as those referred to in this subparagraph are subordinate to the rights of the Government against the contractor under the contract involved; for that reason they are not assignments of less than all amounts payable under the contract nor assignments to more than one person.

(d) The assignment will cover only claims for money due or to become due under the contract involved. It must not cover any of the obligations or duties of the contractor under the contract. The contracting officer will be sure that the copy of the instrument of assignment which is submitted to him is a duplicate of the original instrument, or has been certified as a true copy, acknowledged as such before a notary public or other officer authorized by law to administer oaths. Care will also be taken to ascertain that the assignment has been properly executed.

(1) Assignments by corporations should be executed by an authorized representative, attested by the secretary or assistant secretary of the corporation, with the seal of the corporation impressed upon the assignments or in lieu of such seal, accompanied by a certified copy of a resolution of the corporation board of directors authorizing the representative involved to execute the assignment.

(2) If the contractor is a partnership, the instrument of assignment may be signed by one partner, provided it is accompanied by a duly acknowledged certificate to the effect that the signer is a general partner of the partnership.

(3) If the contractor is an individual, the assignment must be signed by such individual and duly acknowledged by him before a notary public or other person authorized to administer oaths.

(e) If there have been previous assignments of claims under the contract, unless assignments to more than one person thereunder are permitted by the contract provisions, the previous assignments have been fully released. Attention is again invited to paragraph E-605 which points out that contracts specifically authorize further assignments and reassignments of claims thereunder.

E-608 *Assignment of claims clause, "No setoff" provision.* See § 7.103-8 of this title.

E-609 *Releases of assignments.* Releases of assignments require the same execution and acknowledgment by the assignee as required of an assignor in the case of an assignment. Releases are required only in cases of reassignment or where further payments are anticipated under the contract.

E-610 *Transfers of businesses and corporate mergers.* Transfers of an entire business, corporate mergers, and assignments by operation of law, each of which may affect the assignment of claims under a contract, are not prohibited by the Federal statutes and hence do not depend upon the Assignment of Claims Act of 1940 for their validity. (See § 16.505 of this title and § 1016.505 of this chapter.) However, in the case of transfers of a business or corporate mergers, notices of assignment or claims under the contract made by the transferee or successor corporation will not be acknowledged until a supplemental agreement has been executed substituting the transferee or successor corporation as the contractor with the Government. Similarly, before acknowledging assignments made by transferees by operation of law, the contracting officer will require the submission of a certified copy of the document evidencing the transfer by operation of law.

E-611 *Procedure.* The Financial Branch (MCPMF), Hq AMC will maintain staff supervision over the procedure for processing and recording requests for acknowledgement of assignments of moneys due or to become due under contracts written or administered at AMC procurement activities, and will be available for consultation and advice.

E-612 *Records.* Contracting officers designated to acknowledge assignments of contracts written or administered by AMC procurement activities will use AFPI Form 26, "Record of Assignment of Contractual Claims" to keep a record of all assignments, acknowledged by them, of moneys due or to become due under contracts and of all releases of such assignments.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1016—PROCUREMENT FORMS

Subpart D—Construction Contract Forms

1. Section 1016.400 is added and §§ 1016.401 and 1016.401-4 are revised, as follows:

§ 1016.400 Scope of subpart.

See § 16.400 of this title.

§ 1016.401 Standard forms 19, 19A, 20, 21, 22, 23, 23A, and DD Form 1260.

§ 1016.401-4 Terms, conditions and provisions.

See § 16.401-4 of this title and Subpart EE, Part 1007 of this chapter. Whenever Standard Form 19 is used, the following will be added:

NOTE: Unless a lesser number of days is inserted by the bidder for acceptance of his bid, the bid will be considered for acceptance until 60 days have expired from the date of opening.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1052—PREAWARD SURVEYS

Subpart D—Management of the FCR

Revise the introductory paragraph in § 1052.402 to read as follows:

§ 1052.402 Overall management of the FCR.

Staff supervision of the FCR policies and procedures is by the industrial Resources Division (MCPM), Hq AMC. The cognizant contract management region commander is responsible for maintaining surveillance over the technical sufficiency and timely execution of requests for FCRs. An FCR monitor will be appointed from the Production Division by each AFPR and each APD chief. The monitor will be responsible for the management aspects of the FCR as covered by this subpart. Chiefs of APDs and AFPRs will establish necessary lines of coordination, priority of FCR work over routine work by all organizations, and invest in the FCR monitor sufficient control authority to enable accomplishment of the FCR management with a minimum of assistance or supervision from higher administrative levels. Duties of the FCR monitor include:

* * * * *

Subpart E—Facility Advisory Boards

1. Revise § 1052.502 to read as follows:

§ 1052.502 Establishment.

Each APD chief and AFPR is responsible for establishment of FABs under his command.

§ 1052.503 [Amendment]

2. Delete paragraphs (b) and (c) in § 1052.503.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1053—CONTRACTS; GENERAL

Subpart A—Miscellaneous Requirements

Subpart A is deleted and reserved.

Subpart D—Administrative Requirements

§ 1053.404-2 [Amendment]

1. In § 1053.404-2:

a. The symbol "AMA" is changed to "CMR," in paragraphs (c), (j) and (k), and the first sentence of paragraph (b) now reads as follows: "A component of a contract management region (CMR)."

b. Revise the second note to read as follows:

NOTE: * * *
(1) * * *
(2) AF personnel will address all official communications intended for the contractor activities at test and missile operational sites through the cognizant AMCTSO/AMCMFO.

2. Revise § 1053.404-5 to read as follows:

§ 1053.404-5 Geographical areas of CMRs, APDs and AFPROs.

(a) *CMRs.*

(1) *Eastern Contract Management Region (ECMR).* The States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Maryland, Delaware, Pennsylvania, District of Columbia, West Virginia, Virginia, North Carolina, South Carolina, Mississippi, Alabama, Georgia, Florida and the Caribbean areas.

(2) *Central Contract Management Region (CCMR).* North Dakota, South Dakota, Minnesota, Iowa, Nebraska, Kansas, Oklahoma, Texas, Missouri, Arkansas, Louisiana, Tennessee, Kentucky, Illinois, Indiana, Ohio, Michigan, Wisconsin, and the Canadian Provinces.

(3) *Western Contract Management Region (WCMR).* Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, California, Nevada, Alaska and Hawaii.

(b) *APDs.*

(1) *Arizona Air Procurement District (WCMR):* Arizona and New Mexico.

(2) *Atlanta Air Procurement District (ECMR):* Alabama, Mississippi, Georgia, South Carolina, and those portions of the States of Virginia and North Carolina located west of U.S. Highway 52, excluding any cities on that highway.

(3) *Boston Air Procurement District (ECMR):* Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut (less Fairfield County).

(4) *Chicago Air Procurement District (CCMR):* Iowa, and that portion of Illinois north of the northern boundaries of the following counties: Adams, Brown, Cass, Douglas, Edgar, Macon, Menard, Moultrie, and Sangamon.

(5) *Cleveland Air Procurement District (CCMR):* Beginning at western boundary of the Ohio State Line, that portion of Ohio north of Highways 30 and 30S and the cities located thereon (excluding the city of Lima) to the western boundary of Marion County and that portion of Ohio north of the southern boundaries of the following counties: Marion, Morrow, Knox, Muskingum, Noble, and Monroe.

(6) *Dallas Air Procurement District (CCMR):* Texas and Louisana.

(7) *Dayton Air Procurement District (CCMR):* Kentucky, Tennessee; and beginning at the western boundary of the Ohio State Line, that portion of Ohio south of Highways 30 and 30S exclusive of cities on said highway lines (but including Lima), to the western boundary of Marion County and that portion of Ohio south of the southern boundaries of the following counties: Marion, Morrow, Knox, Muskingum, Noble, and Monroe.

(8) *Detroit Air Procurement District (CCMR):* Michigan and Dominion of Canada.

(9) *Indianapolis Air Procurement District (CCMR):* Indiana.

(10) *Los Angeles Air Procurement District (WCMR):* Kern, San Luis Obispo, San Bernardino, Los Angeles, Orange, Riverside, Santa Barbara, Ventura Counties in California, and Clark County, Nevada.

(11) *Milwaukee Air Procurement District (CCMR):* Wisconsin, Minnesota, North Dakota, and South Dakota.

(12) *Newark Air Procurement District (ECMR):* Richmond County in New York State and following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, Union, and Warren.

(13) *New York Air Procurement District (ECMR):* Fairfield County in Connecticut; and the following counties in New York State: Bronx, Columbia, Dutchess, Greene, Kings, Nassau, New York, Orange, Putnam, Queens, Rockland, Suffolk, Ulster, and Westchester.

(14) *Ogden Air Procurement District (WCMR):* Utah, Idaho, Montana, and Wyoming.

(15) *Orlando Air Procurement District (ECMR):* Florida and the Caribbean area.

(16) *Philadelphia Air Procurement District (ECMR):* Pennsylvania, Delaware, Maryland, West Virginia, District of Columbia, and the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem.

(17) *Richmond Air Procurement District (ECMR):* Virginia and North Carolina east of U.S. Highway 52, including all cities on that highway.

(18) *Rochester Air Procurement District (ECMR):* That portion of New York State north and west of, but not including, Ulster, Orange, Greene, and Columbia Counties.

(19) *San Diego Air Procurement District (WCMR):* Imperial and San Diego Counties in California.

(20) *San Francisco Air Procurement District (WCMR):* Oregon, Nevada less Clark County, all of California north of the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties, and Hawaii.

(21) *St. Louis Air Procurement District (CCMR):* Missouri, Nebraska, Oklahoma, Kansas, Arkansas, and that portion of Illinois south of the northern boundaries of the following counties: Cass, Adams, Brown, Douglas, Edgar, Macon, Menard, Moultrie, and Sangamon.

(c) *AFPROs (Those with geographical areas).*

(1) *Boeing, Seattle (WCMR):* Washington and Alaska.

(2) *Martin, Denver (WCMR):* Colorado.

Subpart E—Review and Approval of Awards and Contracts

Revise § 1053.510(a)(2) to read as follows:

§ 1053.510 Evidence of contract approval on contracts subject to manual approval.

(a) * * *

(2) When the contract has not yet been executed and when approval of an award is requested, the authorized individual will manually sign his approval either on the face of the Notice of Award or on a separate award page entitled "Approval of Award." This "Approval of Award" page will be retained in the contract file. If the Notice of Award is not manually approved on its face, it will contain the following language:

Award of this contract has been approved by ---------- on
(Name and title)
----------by manual signature on Approval
(Date)
of Award page which is retained in the official contract file.

Subpart G—Contractor Acknowledgment of Receipt of Contractual Documents

Subpart G is deleted.

Subpart K—Use of New Contracts for Follow-on Procurements

Subpart K is deleted.

Subpart O—Prior Government Ownership of Items Being Procured

Subpart O is deleted.

Subpart P—Contracts Between the Government and Its Employees, Proposed Subcontracts Between Prime Contractors and Government Employees

Subpart P is deleted.

Subpart Q—Air Force Policy; Fur Procurement

Subpart Q is deleted.

Subpart R—Preparation and Use of Certain Kinds of Base Procurement Contracts

1. In § 1053.1802:

a. Subparagraphs (1) to (4) are deleted and the following substituted therefor:

§ 1053.1802 Contracts for care of remains of deceased Government personnel.

(a) *General.* (1) Due to the nature of the services, the invitation for bids will not be posted in public places.

(2) When cremation is requested, cremation services will be procured on an individual basis. A suitable casket (cloth-covered suggested) and an urn may be provided.

(3) In the case of all nonviewable remains, a sealer type casket with an all-metal innerseal will be called for. When death is due to a communicable disease and the remains are viewable, a sealer type casket with a viewing panel of glass or acrylic and metal innerseal will be called for. (See paragraph 4.2c(5), specification MIL-C-9876 (USAF).)

b. Paragraph (b)(2)(i) is revised to read as follows:

(b) * * *

(2) The following insertions will be made on the Standard Form 33:

(i) In the introductory paragraph, following the words "for delivery FOB," insert the words "destination as provided in the attached Schedule (Part I) and Specification MIL-C-9876 (USAF)."

2. Revise § 1053.1803(b) to read as follows:

§ 1053.1803 Department of Defense commercial warehousing and related services for household goods of military personnel.

* * * * *

(b) *General.* To achieve maximum uniformity and desired efficiency in performing this function, the duties of the contracting officer located in the transportation activity and procedures to be used are set forth as follows:

(1) Obtain the following, from the transportation officer, on each individual request for services:

(i) Completed DD Form 1099, "Application for Non-Temporary Storage of Household Goods" (chapter 2, part 9, AFM 75-1).

(ii) Completed Standard Form 116, "Application for Transportation of Household Goods," and power of attorney or informal letter of authorization is required only when for some reason the DD Form 1099 cannot be accomplished. Standard Form 116 should indicate:

(*a*) Name and grade of military member.

(*b*) Location of household goods to be stored.

(*c*) Date the household goods will be available for pickup.

(*d*) Approximate weight of household goods involved.

(*e*) The maximum weight allowance of storage the individual member is entitled to at Government expense. In determining storage entitlement, the transportation officer will consider other actions, such as packing and crating, that might have been processed for the same individual under authority of the same travel orders.

(*f*) Other information required in processing the action.

(iii) Sufficient copies of the individual travel orders necessary for required distribution.

(iv) A statement to the effect that commercial storage has been determined to be more economical than Government storage.

(2) Determine the order of preference for selecting the basic agreement to be used for each individual requirement. The cost of the service will be the sole determining factor. In the event of identical rates under two or more basic agreements, the requirements should be distributed according to AF policy concerning award of equal low bids.

(3) Obtain either oral or written offers, as appropriate, from commercial storage firms according to the basic agreement.

(4) Execute service orders (DD Form 1164) in sufficient quantity to satisfy distribution requirements. Where travel orders authorizing the services quote an open allotment, the related service orders will cite that open allotment accounting classification, provided the services are performed in the same fiscal year in which the funds are applicable. If the travel orders are issued in one fiscal year and the services are not performed until the following fiscal year, or where supplemental service orders are issued to continue the services or provide removal and post storage services, the correct accounting classification will be obtained from the accounting and finance office. Neither initial service orders nor supplemental service orders will cover services extending beyond the fiscal year during which the cited appropriation is applicable. All service orders of $2,500 or less will cite authority 10 U.S.C. 2304(a)(3), those exceeding $2,500 will cite 10 U.S.C. 2304(a)(10).

(5) When required, effect renewal of all active service orders in the following manner: (i) Prepare a single supplemental service order, on reproducible master, for each contractor involved, listing all service orders by order number with that particular firm, authorizing extension of services; (ii) reproduce sufficient copies to provide one copy for each individual service order file involved and distribution to each recipient of the basic service order; (iii) cite the correct allotment for each service order recorded on the supplement; and (iv) relate the blanket supplemental order to a selected basic service order using corresponding numbers.

(6) Receive initially all invoices covering services performed. Reconcile charges thereon with rates under the applicable service order to determine accuracy and correctness of billings. Certify on invoices involving storage only that the services have been rendered and forward to accounting and finance officer for payment. Invoices covering prestorage or poststorage services will be forwarded to the transportation officer or his designee for a certification of performance prior to submission to the accounting and finance officer.

(7) Maintain jacket file, by individual lot, containing complete record of each transaction. As a minimum this file should include:

(i) Copy of DD Form 1099.

(ii) Copy of Travel Orders.

(iii) Statement by transportation officer indicating commercial storage was determined to be more economical.

(iv) Record of contractors with whom contract was made with a statement as to why the service was placed with other than the lowest contractor, if applicable.

(v) Copies of initial service order and all supplemental orders issued thereto (DD Form 1164).

(vi) Copy of contractor's offer, when appropriate (DD Form 1163).

(vii) Copies of all reports indicating shortages or damages.

(viii) Copy of inventory list.

(ix) Copy of weight certificate.

(x) Copy of the warehouse receipt submitted by the contractor.

(xi) Records relative to partial removal of household goods.

(xii) Record of all payments effected.

(xiii) Other data considered necessary to proper and efficient administration of the transaction.

(8) Upon receipt of notification from the transportation officer, advise the contractor of the final date to which the individual is entitled to storage at Government expense and that all storage charges accruing thereafter will be a matter between the contractor and the individual concerned. Simultaneously, the contractor will be provided with the individual's mailing address, and the jacket file will be appropriately documented to reflect the action. The fact that household goods remain in storage beyond the individual's period of entitlement does not alter the Government's responsibility to defray the cost for removal and poststorage services. However, supplemental orders requesting this service should not be issued until the contractor has advised that all storage charges, payable by the individual, have been satisfied.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

PART 1054—CONTRACT ADMINISTRATION

Subpart A—Administration of AF Contracts by Contracting Officers

Revise § 1054.104 (n), and (dd) to read as follows:

§ 1054.104 Matters of contract administration to be handled by administrative contracting officers.

* * * * *

(n) Report all litigation involving a CPFF contractor to the Office of the Judge Advocate General, Hq USAF. Confer with his staff judge advocate as required.

* * * * *

(dd) When advised by the contractor according to § 1007.4053 of this chapter that an item being procured under any contract he is administering will contain radioactive materials, he will forward this information to AMC (MCDPE), SAAMA (SANATF), and the inventory manager of the commodity.

Subpart C—Contract Change Notifications

Revise § 1054.302 to read as follows:

§ 1054.302 Definitions.

(a) *Change order.* See § 1001.201-22 of this chapter.

(b) *Contract change notification (CCN).* See § 1001.201-50 of this chapter.

(c) *Supplemental agreement.* See § 1.201-19 of this title.

(d) *Master serial number.* A number assigned by the contract distribution office of the issuing activity, for keeping a record of CCN's in consecutive order as issued.

Subpart G—Contract Change Releases

1. Revise § 1054.702(b) to read as follows:

§ 1054.702 Definitions.

* * * * *

(b) *Logistic Support Manager (LSM) or Inventory Manager (IM).* As used herein the AMA or depot having the inventory management responsibility for the end article under procurement.

§ 1054.704 [Amendment]

2. In § 1054.704(a), change symbol "CCM" to "IM" in subparagraphs (3) and (5). Also in subparagraph (5), change "commodity class" to "IM."

Subpart I—Wage and Salary Acceptance

§ 1054.911 [Amendment]

In § 1054.911(b), delete the second sentence.

Subpart R—Renegotiation Board Inquiries

§ 1054.1803 [Deletion]

1. Section 1054.1803 is deleted.

2. Add § 1054.1802 as follows:

§ 1054.1802 Responsibility and procedures.

(a) The Renegotiation Board will secure procurement and contract information directly from the source of information, i.e., AMC field procurement activity, APD, AFPRO, and from the headquarters of other major commands. The Board may, if it deems necessary, contact the appropriate contract management region having surveillance of the APD, AFPRO, TSO, or Hq AMC (MCPKTT) for information.

(b) The commander of an AMC field procurement activity, chief of an APD or AFPRO, commander of contract management region or major commands will designate an individual to monitor requests from the Renegotiation Board. The individual's name and office identification will be furnished to AMC (MCPKTT). The monitor will insure receipt of adequate information by the Renegotiation Board. The checklists of questions set forth in § 1054.1804 will be used as guides in furnishing information to the Board.

§ 1054.1805 [Redesignation]

3. Redesignate § 1054.1805 as § 1054.1804.

Subpart S—Performance Data on MPSA Contractors

1. Revise the heading of Subpart S as shown above.

2. Revise § 1054.1903 to read as follows:

§ 1054.1903 Source and routing of requests.

Requests for performance information will be received by the cognizant CMR from the Renegotiation Board through its regional boards. (Similar requests will be simultaneously submitted to MPSA by the Board.) The quality control office of the cognizant CMR will process the requests to the appropriate air procurement district office.

Subpart V—Debts Owed by Contractors; Deferred Payments

§ 1054.2203 [Amendment]

1. In § 1054.2203(b), add the following sentence: "Any known changes in the amount of indebtedness except changes arising from payments, whether the indebtedness is under appeal or not, will also be reported by the appropriate contracting officer to the responsible accounting and finance office.

Subpart W—Scrap Control

§ 1054.2302 [Redesignation]

1. Section 1054.2302 is redesignated § 1054.2301 and is revised to read as follows:

§ 1054.2301 Applicability of subpart.

This subpart applies to contract management regions (CMRs) and air materiel forces administering AF contracts involving Government property or property acquired by the contractor under fixed-price contracts with price redetermination clauses.

§ 1054.2303 [Redesignation]

2. Redesignate § 1054.2303 as § 1054.2302.

§ 1054.2304 [Redesignation]

3. Redesignate § 1054.2304 as § 1054.2303 and revise to read as follows:

§ 1054.2303 Responsibilities.

The administrative contracting officer, in administering AF production contracts, will be supported by a Technical Assistance Group (TAG) appointed by authority of CMRs, and consisting of industrial property, quality control, production, and audit personnel, which will operate under the chairmanship of its production representative. The ACO, supported by the TAG, in reviewing contractors' scrap control will:

(a) Review and evaluate the contractor's procedures and practice of scrap control and the results obtained from such control.

(b) Review rejection trends of the contractor and spot-check to satisfy himself that scrap controls as established by the contractor are actually being practiced.

(c) Determine that the contractor's controls pertaining to the generation of scrap, including procedures and records, are according to the generally accepted objectives of scrap control within the segment of the industry concerned and are adequate to protect the Government's interest. Advise the contractor and local cognizant AF personnel, in writing, of the determination. If corrective measures are necessary, advise the contractor so he may accomplish them. A copy of this correspondence will be sent to the cognizant CMR commander.

(d) Advise the CMR commander of any areas in which action by higher authority is necessary to resolve or clarify responsibility for scrap control matters that involve various functional elements of the Air Force.

A new Subpart DD is added as follows:

Subpart DD—Administration of Base Procurement Contracts

Sec.

1054.3000 Scope of subpart.
1054.3001 Applicability of subpart.
1054.3002 General.
1054.3004 Contract administration procedures.
1054.3005 Contract modifications.
1054.3006 Variation in quantity.
1054.3007 Extension of delivery schedules.
1054.3008 Payment of accounts.
1054.3009 Losses, damages, or destruction of Government property in possession of contractors under military suspense accounting.
1054.3010 Control of Government property in possession of contractors.

AUTHORITY: §§ 1054.3000 to 1054.3010 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 1054.3000 Scope of subpart.

This subpart sets forth the procedures and references the guidelines to be followed in the administration of base procurement contracts.

§ 1054.3001 Applicability of subpart.

This subpart applies to all AF procuring activities accomplishing base procurement.

§ 1054.3002 General.

Regardless of the speed, efficiency and economy with which contracts are awarded, an inadequate contract administration program can jeopardize the mission of the Air Force and be detrimental to the Government's best interests. Failure to insure contractor compliance and performance not only hampers the operation of requiring activities but is prejudicial to the interests of other bidders who based their bids on requirements of delivery or performance as established by the Government. The procurement cycle is not completed with the award of a contract. An agressive and systematic contract administration program must be utilized to fulfill the role the base procurement program plays in the overall base logistic program. Following the procedures prescribed by this subpart should materially aid in accomplishing proper contract administration without excessive administrative costs.

§ 1054.3004 Contract administration procedures.

(a) *Purchase and delivery orders (DD Form 1155), requests against blanket purchase agreements and all definite quantity contracts other than construction, service orders for commercial warehousing, utility service contracts and credit card purchases.* Following is the procedure to be followed in connection with proper administration of the above referenced documents.

(1) Review and followup action. (i) Files should be suspensed based upon the: (*a*) Scheduled date indicated on the DD Form 1155; (*b*) the scheduled delivery date indicated on the DD Form 250 or purchase request for Requests against Blanket Purchase Agreements; or (*c*) the specific date(s) established for delivery based upon date of receipt and acceptance of the document by the contractor, as evidenced by AFPI Form 29 or certified mail procedure.

(ii) Review and follow-up action will be completed daily on all files suspended for that day.

(iii) When the review of a contract file fails to indicate evidence of shipment or delivery by the suspensed date, the receiving component will be contacted by telephone and if they verify nonreceipt of the material: (*a*) File will be identified as a delinquent file; (*b*) the contractor will be promptly notified of delinquent delivery. This notification may be accomplished by AFPI Form 92, "Notice of Contract Delinquency," individually typed letter, or orally. Reproduced form letters will not be used for this notification. A copy of the written notification or, in cases of oral notification, a written memorandum of the conversation will be placed in the contract file. Whether notification is written or oral, care must be exercised to clearly indicate to the contractor that this notification

is merely for the purpose of ascertaining the reason for the delinquency so that the Government can determine the appropriate action to be taken and in no way is intended to waive any of the rights or remedies which the Government may have by law or under the contract; and, (c) file will be resuspensed for further action not more than ten (10) days when initial inquiry is made by telephone and not more than ten (10) days plus estimated transmittal time if written inquiry has been made.

(iv) On bona fide contracts (other than Requests against Blanket Purchase Agreements or Purchase Orders on DD Form 1155 where acceptance has not been received), if the contractor fails to make delivery or take action to cure the delinquency as a result of this initial notification and has not adequately justified such delay (for example: Delinquent delivery being wholly due to contractor's fault or negligence), then the contracting officer will immediately take the action required to either: (a) Terminate for default when the default clause is included in the contract (see Subpart T, Part 1008 of this chapter); or (b) terminate for Breach of Contract when a default clause is not included in the contract (see § 1008.2011 of this chapter). See subparagraph (2) (i) of this paragraph for appropriate action for delinquent Requests against Blanket Purchase Agreements and paragraph (d) (2) of this section for delinquent purchase orders on DD Form 1155 where acceptance has not been received.

(2) *Action against habitual delinquent contractors.* (i) Requests against Blanket Purchase Agreements: Periodic reports of current delinquent requests against Blanket Purchase Agreements should be used to establish trends of possible habitual delinquents. After a trend is established from these reports, all requests (completed and delinquent) placed with the contractor over a period of no less than 2 months should be reviewed and analyzed. If this review substantiates habitual delinquency on requests against Blanket Purchase Agreements, the contractor will be: (a) Furnished a detailed findings of the review including number of requests placed, percentage of delinquency, average number of days delinquent, etc.; (b) notified that deliveries against requests placed during the next 30 days will be reviewed and if delivery during that period is not improved, procurements with him through the Blanket Purchase Agreement method will be discontinued.

(ii) Purchase orders issued on DD Form 1155: Individual and complete action will be taken on each delinquent contract according to (1) (iv) of this paragraph. In addition, periodic reports of current delinquent purchase orders should be reviewed to establish trends of possible habitual delinquents. After a trend is established from these reports, all purchase orders (completed and delinquent) placed with this contractor over a period of no less than 2 months should be reviewed and analyzed. If this review substantiates habitual delinquency: (a) All buyers within the procurement office will be notified that future purchase orders on the DD Form 1155 with said delinquent contractor will contain the following statement:

Payment will not be made on partial deliveries accepted by the Government under this contract. Only one payment will be made upon completion of the contract pursuant to General Provision 5 entitled "Payments";

(b) Vendors written acceptance will be obtained on DD Form 1155s in view of the change in the payment provision (also see § 1016.303–52 of this chapter); and (c) contractor will be notified of the detailed findings of the review and of action being taken on future procurements on DD Form 1155.

(iii) Action against habitual delinquent contractors involving other unnumbered and numbered supply contracts and delivery orders will be essentially as outlined in subparagraph (2) (ii) of this paragraph to establish conclusive evidence of habitual delinquency and then consideration will be given to possible debarment action pursuant to § 1.604 of this title and § 1001.604 of this chapter.

(b) *Construction contracts.* Unlike the administration of other base procurement contracts where only a minimum amount of action may be required between the date of award and the expiration of the performance period specified in the contract, effective administration of construction contracts depends upon constant and continual inspection and observation of contractor's performance, the written recording of the deficiencies noted and the transmission of these deficiencies to the contractor for corrective action. By imposing on the contractor continual constructive pressure for strict compliance with the terms and conditions of the contract, especially during the early stages of performance, optimum performance will be assured.

(1) *Preconstruction conference or letter.* The primary factor involved in assuring timely performance is the clear understanding by the contractor of his responsibilities under the contract and of the Government's rights which can be imposed in areas of noncompliance. These responsibilities are conveyed to the contractor through the media of a preconstruction conference conducted prior to the commencement of work. AFPI Form 27, "Preconstruction Conference Checklist," sets forth important factors to be discussed with contractors at the preconstruction conference. (See § 1016.451–1 of this chapter.) AFPI Form 27 will be:

(i) Used as a guide for discussing pertinent factors regarding the performance of construction contracts at installations located within the United States.

(ii) Signed in the space provided by each Government or civilian personnel attending.

(iii) Checked by the contracting officer in the appropriate space after each subject is discussed.

(iv) Dated and signed by the contractor in the space provided at the bottom of the form to indicate that he has been thoroughly briefed on all subjects mentioned.

(v) Filed after completion in the appropriate file. If for some uncontrollable reason a preconstruction conference cannot be held, the contracting officer must write a letter to the contractor explaining the items referred to in the AFPI Form 27. When a preconstruction letter is used in lieu of a conference, the contract file will be documented by: (a) A statement justifying the substitution and (b) the copy of preconstruction letter containing the contractor's acknowledgment of receipt and his understanding of the responsibilities enumerated therein.

(2) *Construction contract progress schedules.* Special Provision 1–07, "Progress Charts, Sundays, Holidays and Nights," of the contract requires construction contractors to prepare and submit to the contracting officer for approval a practical and feasible progress schedule showing the order in which the contractor proposes to carry out work required by the contract. For all construction contracts over $10,000 this schedule, on AFPI Form 78, "Construction Contract Progress Schedule," is required to be submitted to the contracting officer within 5 days after commencement of work or within such time as established by the contracting officer (AFPI Form 78 is optional for use in connection with construction contracts in the $2,000–$10,000 price category awarded on Standard Form 19).

(i) Instructions to the contractor for preparation of AFPI Form 78 are contained on the reverse side. The submission of the brief written report referred to in Paragraph 11 of the instructions may satisfy the requirements for weekly submission of progress information required by SP 1–01.

(ii) After receipt of AFPI Form 78 showing a proposed plan of progress from the contractor, the contracting officer will:

(a) In coordination with the civil engineer, review the proposed plan of progress for accomplishing the work for compliance with the contract; and where applicable, assure that the planned progress is compatible with work being accomplished by other contractors or by the Government.

(b) If the proposed progress schedule submitted by the contractor is approved by the contracting officer, as recommended by the civil engineer, signature of the civil engineer or his designated representative will be obtained in block (10). The contracting officer will manually approve three copies of the schedule in block 11.

(c) Complete blocks 4 through 6 and distribute one copy to the contractor and one copy to the civil engineer.

(iii) AFPI Form 78 will be maintained according to the following instructions:

(a) As required by instructions on reverse of the form, the contractor will submit written reports of progress to the contracting officer. Weekly reports will show the percentage of work accomplished for each of the work elements shown on lines 1 through 15.

(b) The contracting officer or his authorized representative will enter the percentage of work reported complete under the appropriate column opposite the work element involved (lines 1 through 15). All work reported complete for a reporting period will be totaled and entered in the lower half of line 16. The total will then be the basis for computing an overlay graph. The planned progress as computed by the contractor is shown in this graph as a broken line. The contractor's actual progress will be plotted on the graph by a solid line. Where the actual progress is identical to the planned progress the solid line will obliterate the broken or dotted line. Where the actual progress is below the planned progress, immediate action will be taken to ascertain the reason and effect correction. The importance of prompt action in correcting delays as prescribed by Special Provision SP 1–07, cannot be overemphasized.

(c) Written reports of percentage of completion for each work element shown on AFPI Form 78 will be submitted to the contracting officer by the Government inspector assigned to the project. Frequency of reports will be the same as established for the contractor. Where the percentage of work reported as complete by the Government inspector and the contractor differs 5 percent or more, the reason will be ascertained and corrective action taken as indicated by the circumstances.

(d) Upon issuance of a modification to a contract (see § 1054.3005–(c)) which adds, deletes, or changes work to the extent that the completion date is changed or which increases or decreases the original completion date for other reasons such as excusable delays, a revised progress schedule will be obtained from the contractor. The new schedule should be completed to show a rescheduling of all work under the contract, taking into consideration that portion completed at the time the contract was modified. The revised schedule will be prepared, submitted, coordinated and approved in the same manner as the original except that the revised completion dates will be inserted in block 3 by the contractor and the words "First, Second, etc., revised schedule" will be inserted immediately underneath the form title and above block 8 immediately preceding the project title. The contracting officer will determine the time of submission of the revised schedule. However, unless unusual circumstances exist, submission of a revised progress schedule should not be delayed beyond 5 days after starting work, as required by SP 1–07.

(e) Current AFPI Forms 78 will not be filed in the contract folder. Where existing contracting office facilities permit, the schedule may be posted and maintained on office walls, chart boards or in an appropriate ledger binder for easy accessibility and reference.

(f) Upon completion of the construction contract for which an AFPI Form 78 is maintained, block 7 of the form will be completed and the form placed in the contract file as a permanent record.

(3) *Labor law compliance.* Subpart D, Part 1012 of this chapter, outlines the responsibilities and procedures for enforcement of labor standards in construction contracts. AFPI Form 7, "Labor Law Compliance Check Sheet," is designed to insure compliance with the labor provisions of the contract. Proper indoctrination of the contractor of his responsibilities under the labor law provisions of the contract during the preconstruction conference, together with detailed routine checks and field visits utilizing AFPI Form 7 will greatly reduce the possibility of actual or major violations requiring detailed and time-consuming special investigations.

§ 1054.3005 Contract modifications.

(a) *Supplemental agreements.* See § 1.201–19; of this title and § 1016.853 of this chapter.

(b) *Change orders.* See § 1.201–1 of this title and § 1016.854 of this chapter.

(c) *Modification to contracts.* (1) Any change required which is outside the scope of the provisions of the contract and may affect the price, terms, quantity or other conditions of the contract will be effected with the use of AFPI Form 12, "Supplemental Agreement." The contractor has no authority to proceed with performance of work contemplated by the change nor does the Government have authority to direct the contractor to proceed with performance of work contemplated by the change until the Supplemental Agreement is fully executed and all necessary approvals obtained.

(2) Any change required solely to reflect current AF administrative data and which does not affect the existing binding contract between the contracting parties will be incorporated with the use of AFPI Form 13, "Change Order." The recital on the form which reads "Pursuant to the Provisions of Clause _____" will be changed to read: "To accomplish a change in Air Force administrative data _____."

(3) Any change required which is within the scope of the provisions of the contract and where an agreement is reached on the adjustment of price or delivery schedule prior to issuing written direction to the contractor will be effected with the use of AFPI Form 12, "Supplemental Agreement."

(4) Any change required which is within the scope of the provisions of the contract, but time is of the essence not permitting negotiations of an adjustment in price or delivery will be directed with the use of AFPI Form 13. At the earliest possible time after issuance of the Change Order, negotiations will be conducted to establish an adjustment in price or delivery schedule for the directed change. Such mutual agreement will be reflected on AFPI Form 12. Where mutual agreement proves impossible, the contracting officer will prepare and process a findings and decision under the disputes clause.

(5) The contracting officer is responsible for negotiating a fair and reasonable price adjustment for any change made to a contract whether the change is authorized by the provision of the contract or represents a new procurement outside of the scope of the provision of the contract. Records of each negotiated change will be maintained in the contract file. Minimum records to be maintained for each modification to a construction contract will be:

(i) A price breakdown of the estimated cost (increase or decrease) of the contemplated change, prepared by the civil engineer, and submitted with the AF Form 9, "Purchase Request," for the change required. The estimated cost (actual costs will be shown to the extent available) will be broken down to reflect material costs, labor costs, other costs, and profit.

(ii) Contractors proposal with supporting price breakdown showing materials cost, labor costs, other costs, and profit.

(iii) Memorandum of price negotiation as required by § 1003.811 of this chapter.

(d) *Modification of purchase orders, DD Form 1155.* A purchase order issued on DD Form 1155 is an offer (unilateral action) only and therefore is not a binding contract between the parties until it is accepted by the vendor either in the form of a signed acceptance (DD Form 1155s) or by the commencement of performance under the order.

(1) When order has been accepted, changes when required will be issued pursuant to instructions in paragraph (c) of this section.

(2) When acceptance has not been received, one of the following courses of action will be taken:

(i) If vendor refuses to accept order and the reasons for non-acceptance cannot be determined or established, the order will be canceled by letter to the vendor outlining this failure to furnish written acceptance (perform under the order). This letter will be distributed to all recipients of the order.

(ii) If vendor refuses to accept the order and submits a counter-offer to the Government which affects the price, terms, quantity or quality established on the initial order, automatic modification of the order to reflect the counter-offer is not authorized. The counter-offer must be evaluated on the same basis as an additional quotation received for the requirement before award.

(a) If the counter-offer is no longer the most advantageous to the Government, the order will be canceled by letter as indicated in subparagraph (2) (i) of this paragraph and a new order will be issued to the vendor whose quotation is most advantageous to the Government.

(b) If the counter-offer is still the most advantageous received for the requirement, the purchase order will be modified by AFPI Form 13 to reflect the new price, terms, quantity or quality set forth in the counter-offer. The recital on the form reads: "Pursuant to the provisions of clause _____" will be changed to read: "Pursuant to vendor's letter dated _____"

(e) *Modification of delivery orders, DD Form 1155.* When changes are required to delivery orders, such changes will be accomplished according to the terms of the basic contract and paragraph (c) of this section.

§ 1054.3006 Variation in quantity.

(a) *Purchase and delivery orders (DD Form 1155).* When variations in quantities are specified in the schedule and shipments containing overages and/or shortages within the acceptable variation are received and accepted, a separate modifying document to the order reflecting such acceptance need not be written. When variations in quantities are not specified in the schedule, and the shortages exist in the shipment received, if it is determined that such shortages are in quantities so negligible that the operation of the installation will not be affected, and such shipment represents the final shipment by the contractor, such shipment may be accepted and the order completed, and a separate modifying document need not be written. In either of the above circumstances, the adjustment of the total dollar amount for payment will be made and initialed by the accounting and finance officer in the "Differences" section of the original and receiving report copies of the DD Form 1155 to reflect overage or shortage.

(b) *Numbered contracts and unnumbered contracts (other than DD Form 1155).* A separate modifying document is not required to accept quantities which vary from those specified in the contract when such variations in quantity are within the permissible variation prescribed in the contract and are caused by one or more of the conditions specified in the "Variation in Quantity" provisions of the contract. In all other instances if it is determined in the best interests of the Government to accept such variations in quantity, the contract must be modified to reflect acceptance.

§ 1054.3007 Extension of delivery schedules.

(a) *Contractor's fault or negligence.* Extension of delivery, service or construction schedules where the delinquency concerned was wholly due to the contractor's fault or negligence, represents the Government giving to the contractor certain rights and benefits that he was not otherwise entitled to under the original contract. To do so, without receiving consideration therefor, has been declared by the Comptroller General to be beyond the authority of any officer or agent of the Government. The amount of consideration obtained from the contractor in any particular case depends upon the facts involved, e.g., the contract price of the unfinished work or items, the length of extension desired, the availability of other contractors in the area in the event of a default termination, whether it is practical for the Air Force to default the contract at the present stage of the work, etc. A reasonable starting point for establishing "legal consideration" is to seek consideration sufficient to recompense the Government for the administrative expense and inconvenience involved in granting the extension. A nominal consideration may suffice when an extension of the delivery schedule is in the best interests of the Government, but normally the amount of consideration received should represent the fair value of the benefit being received by the contractor. Prior to issuing a contractual modification amending the delivery schedule, the contracting officer will affect coordination with his staff judge advocate to determine whether or not legal consideration exists. The staff judge advocate's determination will be final concerning the existence of legal consideration. The contracting officer is responsible for determining the adequacy or amount of consideration.

§ 1054.3008 Payment of accounts.

(a) *Price reduction on invoices.* (1) As a general rule, invoices submitted for less than the contract price(s) which clearly indicate that a voluntary reduction in price is intended, will be accepted and payment made without further action by the Government.

(2) Where invoices are received for less than the contract price(s) and after coordination between the accounting and finance and base procurement functions, it cannot be definitely established that the invoiced amount represents a voluntary price reduction, the invoice will be accepted and payment made without adjustment. Under these circumstances, the accounting and finance officer is required to notify the contractor.

(3) Contract modifications will not be written to reflect the reduced price paid. Such modifications serve no useful purpose, could be detrimental to the Government, and the delay involved could preclude prompt payment of acceptable commercial invoices.

(b) *Advance payments.* (See Subchapter G, Part 82, Subpart D of this title, and § 1030.5, Part IV of this chapter.)

(c) *Progress payments.* (See Subchapter G, Part 82, Subpart E of this title and § 1030.5, Part V of this chapter.)

(d) *Partial payments.* Partial payments will be made according to the terms of the contract.

§ 1054.3009 Losses, damages, or destruction of Government property in possession of contractors under military suspense accounting.

See Subpart Y of this part.

§ 1054.3010 Control of Government property in possession of contractors.

See § 1030.2 of this chapter.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1055—SPARE PARTS

Subpart A—Policy for Procurement and Delivery of Spare Parts

Subpart A is deleted.

Subpart B—Contractual Provisioning Documents

Add § 1055.204 as follows:

§ 1055.204 Responsibilities of contracting officers.

Contracting officers will:

(a) Assure that the applicable contractual provisioning document is incorporated, by reference or otherwise, in affected contracts.

(b) Notify the contractor of his responsibilities under the provisioning document.

(c) Accomplish the specific responsibilities prescribed in the appropriate provisioning document.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1057—REPORTS

Subpart S—Bailed and Government Furnished Property Aircraft Test and Utilization Monthly Report (AFPI Form 9)

§ 1057.1901 [Amendment]

In § 1057.1901, "AMA's" is changed to "CMRs."

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

PART 1059—AIRCRAFT AND GFAE PROCUREMENT

Subpart B—Use of Production Aircraft in Emergencies and Control of Flight Test and Demonstration Flights

1. Revise § 1059.201(a) to read as follows:

§ 1059.201 Use of production aircraft in emergencies.

(a) *Definitions.* Production aircraft are any aircraft being manufactured for use in the operational inventory.

2. Section 1059.202 is revised as follows:

§ 1059.202 Control of flight test and demonstration flights.

(a) *General.* In the interest of exercising every reasonable safety precaution in the performance of flying these aircraft and to obviate as far as possible criticisms and complaints from residents in areas adjacent to the airports from which these flights originate, CMR commanders will establish and maintain in current status such procedures as they deem necessary to assure positive supervision of the aircraft under their respective jurisdiction. They will accomplish frequent and periodic examinations of the control and coordination between their activities and contractors under their cognizance to assure that any deviation from proven practices will be made the subject of corrective action. It is emphasized to all military and contractor flying personnel operating AF aircraft or aircraft in which the Government has assumed liability for flight risks, the importance of recognizing and feeling personally responsible for the highest possible flying safety standards and the maintenance of the good will of the general public.

(b) *Policies and procedures.* Certain rules and principles are basic in maintaining high flying safety standards. Local conditions may require that these basic rules be implemented with additional and more detailed instructions. CMR commanders are urged to initiate additional detailed instructions considered necessary to control flights of aircraft which are under their immediate jurisdiction and to maintain close supervision over all such flights to assure strict observance of these instructions. The following rules are mandatory:

(1) Test flights of a routine nature, not included in a test-flight program approved by the Government under a specific contract, may be made on authority of the CMR commander or his designated representative.

(2) Demonstration flights will be performed according to provisions of AFR 60–12 (Aerial Demonstrations).

(3) In addition to the authorization required for performing flights pursuant to subparagraphs (1) and (2) of this paragraph, pilot and air crew members will not perform flight tests or demonstration flights unless so authorized in writing by the CMR commander or his designated representative. (Such representative will be designated in writing over the personal signature of the CMR commander.) CMR commanders will use prescribed procedures in approving contractor flight personnel to assure that such personnel are technically qualified and have been certified to be in proper physical condition to perform the required work.

(4) All flights will be conducted according to AF regulations. Deviations from these regulations are prohibited except as specifically authorized by competent authority for test flight and/or demonstration flight purposes.

(5) Normally, all test flying will be conducted under VFR conditions during the hours of daylight. However, CMR commanders may authorize test and acceptance flights under other conditions when deemed necessary to more effectively accomplish their mission.

(6) Formation takeoffs are prohibited. Low-altitude flying over metropolitan and populated areas and any attempts at exhibitionism are prohibited. When tests require accomplishing low-altitude flying, it will be performed over areas specifically designated for this purpose.

(7) CMR commanders will make certain that all practicable rescue equipment is available to insure safeguarding of life in the event of crash landings or ditching. This includes adequate air-sea rescue service.

(c) *Responsibility for adequacy of airport and flying facilities.* CMR commanders will insure that the airport and its facilities are adequate for safe operation of the aircraft to be flown.

(d) *Flights requiring escorts.* It is AF policy that first flights of experimental aircraft, first flights of initial article production aircraft, plus such subsequent flights as deemed necessary, and all flights of any test aircraft which are of a hazardous nature, or those which require observation from another aircraft to obtain data, will be accomplished by an "observer" aircraft.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314)

R. J. PUGH,
Colonel, U.S. Air Force, Deputy Director of Administrative Services.

[F.R. Doc. 60–11233; Filed, Dec. 5, 1960; 8:45 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 3—VETERANS' CLAIMS

Additional Disability Compensation for Certain Seriously Disabled Veterans

In § 3.1550, paragraph (c)(2) is amended to read as follows:

§ 3.1550 Additional disability compensation for certain seriously disabled veterans.

* * * * * * *

(c) *Effective date.* * * *

(2) *New claims.* Claims, formal or informal, received on or after July 14, 1960, will be considered initial claims for the purpose of this act and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than September 1, 1960.

(i) Where a claim identifying the benefit sought is received within 1 year from September 1, 1960, and evidence of entitlement is of record on or before September 1, 1960, benefits will be payable from September 1, 1960.

(ii) For the purpose of this act, a report of Veterans Administration examination or Veterans Administration hospitalization will be accepted as a claim if the report relates to a disability which may establish entitlement to this benefit. (Instruction 1–A, 38 U.S.C. 314, Public Law 86–663)

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective December 6, 1960.

[SEAL] ROBERT J. LAMPHERE,
Deputy Administrator.

[F.R. Doc. 60–11300; Filed, Dec. 5, 1960; 8:53 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Taxation of Regulated Investment Companies and Their Shareholders

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The Income Tax Regulations (26 CFR Part 1) under section 852 of the Internal Revenue Code of 1954 are hereby amended to reflect the amendment of section 852 made by section 39 of the Technical Amendments Act of 1958 (72 Stat. 1639), to provide rules for determining whether the buyer or seller of regulated investment company stock shall be considered the shareholder of such stock, and to make a clarifying change.

PARAGRAPH 1. Section 1.852 is amended (A) by adding a new paragraph (4) at the end of section 852 (b) and (B) by revising the historical note at the end thereof. These added and revised provisions read as follows:

§ 1.852 Statutory provisions; taxation of regulated investment companies and their shareholders.

SEC. 852. *Taxation of regulated investment companies and their shareholders.* • • •

(b) *Method of taxation of companies and shareholders.* • • •

(4) *Loss on sale or exchange of stock held less than 31 days.* If—

(A) Under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain, and

(B) Such share is held by the taxpayer for less than 31 days, then any loss on the sale or exchange of such share shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days; except that "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

• • • • •

[Sec. 852 as amended by sec. 2, Act of July 11, 1956 (Pub. Law 700, 84th Cong., 70 Stat. 530); secs. 39, 101, Technical Amendments Act 1958 (72 Stat. 1638, 1674)]

PAR. 2. Section 1.852–4 is amended (A) by adding a new subdivision (iv) at the end of paragraph (b)(2) and (B) by adding a new paragraph (d) at the end of such section. These added provisions read as follows:

§ 1.852–4 Method of taxation of shareholders of regulated investment companies.

• • • • •

(b) *Capital gains.* • • •

(2) *Undistributed capital gains.* • • •

(iv) For purposes of determining whether the purchaser or seller of a share or regulated investment company stock is the shareholder at the close of such company's taxable year who is required to include an amount of undistributed capital gains in gross income, the amount of the undistributed capital gains shall be treated in the same manner as a cash dividend payable to shareholders of record at the close of the company's taxable year. Thus, if a cash dividend paid to shareholders of record as of the close of the regulated investment company's taxable year would be considered income to the purchaser, then the purchaser is also considered to be the shareholder of such company at the close of its taxable year for purposes of including an amount of undistributed capital gains in gross income. For rules for determining whether a dividend is income to the purchaser or seller of a share of stock, see paragraph (c) of § 1.61–9.

• • • • •

(d) *Special treatment of loss on the sale or exchange of regulated investment company stock held less than 31 days*—(1) *In general.* Under section 852(b)(4), if any person, with respect to a share of regulated investment company stock acquired by such person after December 31, 1957, and held for a period of less than 31 days, is required by section 852(b)(3)(B) or (D) to include in gross income as a gain from the sale or exchange of a capital asset held for more than six months—

(i) The amount of a capital gain dividend, or

(ii) An amount of undistributed capital gains,

then such person shall, to the extent of such amount, treat any loss on the sale or exchange of such share of stock as a loss from the sale or exchange of a capital asset held for more than 6 months. Such special treatment with respect to the sale of regulated investment company stock held for a period of less than 31 days is applicable to losses for taxable years ending after December 31, 1957.

(2) *Determination of holding period.* The rules contained in section 246(c)(3) (relating to the determination of holding periods for purposes of the deduction for dividends received) shall be applied in determining whether, for purposes of section 852(b)(4) and this paragraph, a share of regulated investment company stock has been held for a period of less than 31 days. In applying those rules, however, "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

(3) *Example.* The application of section 852(b)(4) and this paragraph may be illustrated by the following example:

Example. On December 15, 1958, A purchased a share of stock in the X regulated investment company for $20. The X regulated investment company declared a capital gain dividend of $2 per share to shareholders of record on December 31, 1958. A, therefore, received a capital gain dividend of $2 which, pursuant to section 852(b)(3)(B), he must treat as a gain from the sale or exchange of a capital asset held for more than 6 months. On January 5, 1959, A sold his share of stock in the X regulated investment company for $17.50, which sale resulted in a loss of $2.50. Under section 852(b)(4) and this paragraph, A must treat $2 of such loss (an amount equal to the capital gain dividend received with respect to such share of stock) as a loss from the sale or exchange of a capital asset held for more than 6 months.

PAR. 3. Paragraph (a)(1) of § 1.852–9 is amended to read as follows:

§ 1.852–9 Special procedural requirements applicable to designation under section 852(b)(3)(D).

(a) *Regulated investment company*—(1) *Notice to shareholder.* A designation of undistributed capital gains under section 852(b)(3)(D) and paragraph (b)(2)(i) of § 1.852–2 shall be made by notice on Form 2439 mailed by the regulated investment company to each person who is a shareholder of record of the company at the close of the company's taxable year. The notice on Form 2439 shall show the name and address of the regulated investment company, the taxable year of the company for which the designation is made, the name and address of the shareholder, the amount designated by the company for inclusion by the shareholder in computing his long-term capital gains, and the tax paid with respect thereto by the company, which tax is deemed to have been paid by the shareholder. Form 2439 shall be prepared in triplicate, and copies B and C of the form shall be mailed to the shareholder on or before the 30th day following the close of the company's taxable year. Copy A of each Form 2439 must be associated with the undistributed capital gains tax return of the company (Form 2438), as provided in subparagraph (2) of this paragraph.

[F.R. Doc. 60–11307; Filed, Dec. 5, 1960; 8:55 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 936]

FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

Order Directing That a Referendum Be Conducted; Designation of Referendum Agents To Conduct Such Referendum; and Determination of Representative Period

Pursuant to the applicable provisions of Marketing Agreement No. 85, as amended, and Order No. 36, as amended (7 CFR Part 936), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), it is hereby directed that a referendum be conducted during the 2-month period of December 1960 and January 1961, among the producers who, during the current marketing season beginning on March 1, 1960 (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged, in the State of California, in the production of fruit covered by the said amended marketing agreement and order (as the term "Fruit" is therein defined) for shipment in fresh form to determine whether the producers of a particular fruit favor the termination of the said amended marketing agreement and order as to such fruit. Oscar H. Chapin, W. B. Blackburn, and David B. Fitz, of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated as agents of the Secretary of Agriculture to perform, jointly or severally, the following functions in connection with the referendum:

(a) Conduct said referendum in the manner herein prescribed:

(1) By determining the time of commencement and termination of the period of the referendum, and by giving opportunity to each of the aforesaid producers to cast his ballot, in the manner herein authorized, relative to the aforesaid termination of the amended marketing agreement and order, on a copy of the appropriate ballot form. A cooperative association of such producers, bona fide engaged in marketing any such fruit or in rendering services for or advancing the interests of the producers of such fruits, may vote for the producers who are members of, stockholders in, or under contract with, such cooperative association (such vote to be cast on a copy of the appropriate ballot form); and the vote of such cooperative association shall be considered as the vote of such producers.

(2) By giving public notice, as prescribed in (a)(3) hereof, (i) of the time during which the referendum will be conducted, (ii) that any ballot may be cast by mail, and (iii) that all ballots so cast must be addressed to the Western Marketing Field Office, Fruit and Vegetable Division, Room 302, 701 K Street, Sacramento 14, California, and the time prior to which such ballots must be received at such office.

(3) By giving public notice (i) by utilizing available agencies of public information (without advertising expense), including both press and radio facilities in the State of California; (ii) by mailing a notice thereof (including a copy of the appropriate ballot form) to each such cooperative association and to each producer whose name and address are known; and (iii) by each other means as said referendum agent may deem advisable.

(4) By conducting meetings of producers and arranging for balloting at the meeting places, if said referendum agents determine that voting shall be at meetings. At each such meeting, balloting shall continue until all of the producers who are present, and who desire to do so, have had an opportunity to vote. Any producer may cast his ballot at any such meeting in lieu of voting by mail.

(5) By giving ballots to producers at the meeting, and receiving any ballots when they are cast.

(6) By securing the name and address of each person casting a ballot, and inquiring into the eligibility of such person to vote in the referendum.

(7) By giving public notice of the time and place of each meeting authorized hereunder by posting a notice thereof, at least two days in advance of each such meeting, at each such meeting place, and in two or more public places within the applicable area; and, so far as may be practicable, by giving additional notice in the manner prescribed in paragraph (a)(3) hereof.

(8) By appointing any persons deemed necessary or desirable, to assist the said referendum agents in performing their duties hereunder. Each such person so appointed shall serve without compensation and may be authorized, by the said referendum agents to perform any or all of the functions set forth in paragraphs (a) (5), (6), (7), and (8), hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agents) in accordance with the requirements herein set forth; and shall forward to the Western Marketing Field Office, Fruit and Vegetable Division, Room 302, 701 K Street, Sacramento 14, California, immediately after the close of the referendum, the following:

(i) A register containing the name and address of each producer to whom a ballot form was given;

(ii) A register containing the name and address of each producer from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agents in connection with the referendum, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agents during the referendum period;

(iv) A statement showing when and where each notice of referendum posted by said agent was posted and, if the notice was mailed to producers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and

(v) A detailed statement reciting the method used in giving publicity to such referendum.

(b) Upon receipt by the said Western Marketing Field Office of all ballots cast in accordance with the provisions hereof, Oscar H. Chapin, W. B. Blackburn, or David B. Fitz, shall: (i) Canvas the ballots and prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results; and (ii) Forward such report, together with the ballots and other information and data, to the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C.

(c) Each referendum agent and appointees pursuant thereto shall not refuse to accept a ballot submitted or cast; but should they, or any of them, deem that a ballot should be challenged for any reason, or if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(d) All ballots shall be treated as confidential.

The Director of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agents and appointees in conducting said referendum.

Copies of the text of the aforesaid amended marketing agreement and order, and of this order, may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D.C., at the offices of the Field Representatives, Fruit and Vegetable Division, Agricultural Marketing Service, Room 302, 701 K Street, Sacramento 14, California, or at the office of the California Tree Fruit Agreement, 1515 Ninth Street, Sacramento, California.

Ballots to be cast in the referendum, and other necessary forms and instruc-

tions, may be obtained at said offices of the Field Representatives, or from any referendum agent or any appointee hereunder.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: November 30, 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–11293; Filed, Dec. 5, 1960; 8:53 a.m.]

[7 CFR Part 965]

[Docket No. AO–166–A25]

MILK IN CINCINNATI, OHIO, MARKETING AREA AND 15 NORTHERN KENTUCKY COUNTIES

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United State Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Cincinnati, Ohio, marketing area (consideration was given to the alternative of issuing a separate order to regulate the handling of milk in 15 Northern Kentucky Counties). Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., not later than the close of business the 20th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Cincinnati, Ohio, on July 12–15, 1960, pursuant to notice thereof which was issued on June 22, 1960 (25 F.R. 5882).

The material issues on the record of the hearing relate to:

1. Regulation of certain counties in Northern Kentucky by (a) addition to the Cincinnati marketing area, or (b) the issuance of a separate order; and the deletion of part of Clermont County, Ohio, from the marketing area;
2. Basic formula price;
3. Classification;
4. Location adjustments;
5. Transfers;
6. Allocation of packaged Class I receipts from other Federal orders;
7. Shrinkage;
8. Diversion of producer milk;
9. Payments by handlers operating nonpool fluid milk plants; and
10. Seasonal incentive payments.

Issue number 10 was considered separately in a decision issued by the Assistant Secretary on September 13, 1960 (25 F.R. 8909). The remaining issues are considered herein.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Marketing area.* The marketing area should be expanded to include the Kentucky counties of Boone, Kenton, Campbell, Pendleton, Grant and Harrison, and the redefined area should be renamed the "Greater Cincinnati Marketing Area".

The Cincinnati Milk Sales Association proposed that the marketing area be expanded to include Mason, Boone, Kenton, and Campbell Counties, all in Kentucky. As an alternative, the proponent association proposed the four counties as the marketing area of a new and separate Federal order. The majority of handlers operating plants located in Northern Kentucky opposed regulation for the area but proposed that if any of the four counties were included in the marketing area of any Federal order, the regulation should be extended to include eleven additional Kentucky counties; namely, Gallatin, Carroll, Owen, Grant, Pendleton, Harrison, Bracken, Robertson, Fleming, Nicholas, and Lewis (except Magisterial Districts 2, 3 and 8). The inclusion in the Cincinnati marketing area of Kenton, Campbell and Boone Counties was considered at a previous hearing held during September 1958.

Although the Assistant Secretary, in a decision issued April 10, 1959, found that the order should not be expanded on the record of that hearing, the present record indicates the desirability of adding a portion of the Northern Kentucky area to the Cincinnati marketing area at this time.

In contrast to the previous record on this matter the present record shows:

1. Conditions of milk market instability now present in the market not present at the time of the previous hearing;

2. A higher degree of interrelationship in milk marketing between the existing Cincinnati portion of the marketing area and the Northern Kentucky portion in terms of both procurement and distribution of milk and milk products; and

3. Substantially greater support for the order among dairy farmers who ship to Northern Kentucky handlers as evidenced by the increased membership of such dairy farmers in the cooperative association which supported the proposal.

The largest concentration of population within the entire 15-County area proposed for regulation lies within Boone, Kenton and Campbell Counties (commonly referred to as the Tri-County area). The 1960 population estimate of the Tri-County area is 227,387; the population estimate of the six counties proposed herein for regulation is 259,714; and the estimate for the entire 15 counties proposed by interested parties is 338,112 (Official notice is hereby taken of preliminary population totals, 1960 Census of Population, United States Department of Commerce). The Tri-Counties are separated from Hamilton County, Ohio, within which the city of Cincinnati is located by the Ohio River. The two largest cities of Northern Kentucky, Newport and Covington, are located in Campbell and Kenton Counties, respectively, which the United States Department of Commerce includes as part of the Cincinnati metropolitan area.

The handling of milk in the six counties herein proposed to be part of the Cincinnati marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products. Packaged fluid milk products and manufactured milk products from plants located in Ohio are regularly distributed in the six-county area. Manufactured dairy products regularly move from plants located in the six-county area into the present Cincinnati, Ohio, marketing area. Milk from farms located within Northern Kentucky is regularly supplied to milk plants located therein and to plants located in Cincinnati.

Marketing conditions in the area are such that order regulation of the handling of milk in the area will tend to effectuate the declared policy of the Act, and the expansion of the Cincinnati, Ohio, marketing area, rather than the promulgation of a new order, will more appropriately contribute to market stability and reflect the intent of the Agricultural Marketing Agreement Act of 1937.

The majority of farmers who regularly deliver milk to fluid plants primarily serving the six counties proposed for regulation are members of the proponent association. Dairy farmers whose farms are located in the same Kentucky areas who are also members of the proponent association, but who deliver to fluid milk plants located across the Ohio River in Cincinnati, receive classified prices for their milk as determined by the terms of the Cincinnati order. The dairy farmers delivering to Northern Kentucky plants receive prices for their milk which are based on Cincinnati order uniform prices regardless of the use for which it is disposed. Fluid milk plants located in Northern Kentucky have a high Class I utilization as compared with the marketwide utilization of handlers regulated under the terms of the order. Hence, the operators of Northern Kentucky plants, on the average, pay less for Class I milk than do Cincinnati regulated handlers. This has resulted in market instability in that at least some Northern Kentucky handlers are paying less than the use value of milk received from dairy farmers.

Some handlers operating plants in the area will not permit agents of the proponent association to check weights and butterfat content of deliveries of members' milk. This situation has caused dissatisfaction and contributed to market instability since the members have no way of establishing that they are receiving payment based on accurate weights and butterfat tests. The establishment of order regulation for the proposed area would provide a means of insuring accurate weights and butterfat tests of milk.

The sanitary requirements applicable for Grade A milk produced for distribution in Cincinnati and those for Grade A milk distributed in Northern Kentucky are patterned according to the same United States Public Health Ordinance and Code. Class I milk from one plant located in Cincinnati is being distributed throughout the Northern Kentucky area, and three Cincinnati plants are approved to distribute milk into Covington, Kentucky.

In addition, official notice is taken of the fact that one handler, who operated distribution plants in both the present marketing area and in Northern Kentucky, has closed the Northern Kentucky plant since the hearing and has transferred the producers to its Cincinnati plant. The milk which is distributed in Northern Kentucky by this handler is now bottled in Cincinnati. One handler operating a plant located in Newport has a permit from Cincinnati health authorities to distribute Class I milk in Cincinnati. Two Northern Kentucky plants have permits to sell ice cream and ice cream mix made from Grade A milk in Cincinnati.

At the time of the hearing two handlers operating Cincinnati pool plants also operated nearby nonpool plants from which Class I milk is distributed in unregulated areas contiguous to the Cincinnati marketing area, including Northern Kentucky. The nonpool plant of one of these handlers is located in Newport, Kentucky, and the nonpool plant of the other is located in Wilmington, Ohio. A third handler, who operates a pool plant located in Cincinnati, has a bottling arrangement with a nonregulated plant in Northern Kentucky whereby milk is packaged for the regulated handler at the unregulated plant and distributed in Northern Kentucky. These arrangements have contributed to instability. The possibility of other handlers making similar arrangements is always present under existing conditions. The proposed expansion will eliminate any incentive for handlers to so arrange their operations primarily to avoid pooling their Class I sales.

Milk from the same Northern Kentucky farms is marketed at times to Northern Kentucky plants and at times to Cincinnati pool plants. The dairy farmers whose milk is so moved hold permits issued by Kentucky and Cincinnati authorities. It was estimated that the total number of dairy farmers who ship to plants which will be regulated pursuant to the area expansion recommended herein was about 560. Of this total about 120 bulk tank shippers who are members of the proponent association and about 55 can shippers hold permits issued by the two authorities. Accordingly, it can be estimated that, at times, the production of between 25 and 30 percent of dairy farmers shipping to Northern Kentucky plants is carried by the Cincinnati pool. This volume of milk added to the Cincinnati pool depresses Cincinnati uniform prices and also prices paid by Northern Kentucky plants since these plants usually base their prices for milk on the Cincinnati uniform prices.

There are eleven distributing plants located within the fifteen Kentucky counties which were originally proposed for regulation. Of these, nine are located in the Tri-County area and most of the milk packaged in Northern Kentucky is processed at these nine plants. Approximately 560 dairy farmers supply these nine plants. Of the two plants outside the Tri-Counties, one is located in Mason County and the other in Carroll County. The two plants receive milk from about 30 and 10 dairy farmers, respectively.

Most of the handlers whose plants are located in the Tri-Counties did not support the inclusion of the counties to the southeast of the Tri-Counties; namely, Mason, Bracken, Lewis, Fleming, Nicholas and Robertson. However, one handler who operates a bottling plant in Cincinnati, as well as one in the Tri-Counties, did support the inclusion of the southeastern counties.

The handler operating the plant located in Mason County is the major distributor of Class I milk in that county but does not distribute milk in the more densely populated Tri-County area. Routes from this plant extend only into the predominantly rural counties of Bracken, Robertson, Fleming, and Lewis. Milk from two other plants located in Ohio outside of the present marketing area of the Cincinnati order is also distributed within parts of these four counties. Handlers whose plants are regulated by the Louisville-Lexington order distribute milk in Nicholas and Fleming Counties. Only one handler whose plant is located in the Tri-County area distributes milk into Bracken, Robertson, Fleming, Nicholas and Lewis Counties. The record does not disclose what portion of the milk disposed of in these counties is distributed from this handler's plant, from unregulated plants located in Ohio or from plants regulated under the terms of the Louisville-Lexington order.

Most of the Class I sales in Carroll County are made by a handler whose plant is located therein and who does not distribute milk in any other county. The record is not clear as to whether plants located in Northern Kentucky sell most of the Class I milk distributed in Gallatin and Owen Counties. A handler whose plant is located in Indiana testified that he was the major distributor in these counties, whereas another witness testified that Northern Kentucky handlers were the major distributors in the two counties.

Tri-County handlers distribute the major portion of Class I milk sold in the Tri-Counties and in Pendleton, Grant and Harrison Counties. Accordingly, regulation should be expanded to include the handling of milk in these counties. They cover most of the sales area served by the plants which will be fully regulated hereunder. Any larger marketing area would involve regulation of plants not primarily engaged in serving those counties which are the major market for handlers whose plants are located in the Tri-Counties.

Under the terms of the order, fluid milk plants located outside the marketing area are defined as pool plants if not less than 10 percent of Class I route disposition is disposed of within the marketing area. Northern Kentucky handlers whose plants will become pool plants proposed that, should regulation be expanded to include parts of Northern Kentucky, the order should provide for the pooling of any plant from which one quart or more of Class I milk is disposed of in the marketing area.

Only those fluid milk plants from which a substantial proportion of Class I sales are made in the marketing area should be fully subject to the pricing and pooling provisions of the order. The inclusion in the pool of a plant from which only a negligible volume of its total receipts is distributed in the market would not contribute to market stability since it would encourage a plant primarily engaged in manufacturing dairy products to package and distribute a sufficient volume of fluid milk in the marketing area to pool the entire receipts at the plant. Inclusion of such a plant in the pool would result in dissipation of the returns for Class I sales which are intended to secure an adequate supply of milk for the market.

No part of Clermont County, Ohio, should be deleted from the marketing area.

A handler proposed that Clermont County, except Union and Miami townships, be deleted from the marketing area. The deletion would remove his plant from pool status. His Class I utilization is higher than the market average and he must, therefore, make payments into the producer-settlement fund. He purchases Guernsey milk for which he pays a premium above the order uniform price. The proponent testified that were he not subject to payments into the producer-settlement fund, he would use such money for premium payments to his Guernsey producers.

Clermont County is contiguous to Hamilton County within which the city of Cincinnati is located. With the expansion of the Cincinnati urban area, the population of Clermont County has almost doubled since 1950. According to the United States Census, the 1950 population of Clermont County was 42,182 and the 1960 population estimate is 80,142. In the decision of April 10, 1959, the Assistant Secretary found that plants located in Cincinnati distributed approximately 70 percent of all the Class I milk sold in Clermont County. No evidence was offered at the recent hearing upon which this decision is based which would indicate that the proportion of sales in Clermont County by Cincinnati handlers has changed materially. While the proponent handler whose plant is not located in Cincinnati may be the major distributor in certain townships of the county, it would not be in the interests of market stability to split these townships from the area merely to obviate his obligation to make payments into the producer-settlement fund.

2. *Basic formula price.* No change should be made in the nonfat dry milk component of the basic formula price.

It was proposed that the make allowance of the nonfat dry milk component of the basic formula be decreased from 6.4 cents to 5.5 cents and that the component reflect the average of spray and roller process nonfat dry milk prices rather than only the price of spray process nonfat dry milk. The proposed nonfat dry milk formula is the same as that used in the neighboring Dayton-Springfield Federal milk order.

During the 12-month period preceding the hearing, if the proposed formula had been in effect, the basic formula and, accordingly, the Class I price would have been increased in 9 of the 12 months. The average Class I price increase would have been approximately three cents.

The Cincinnati Class I price is adjusted each month on the basis of the supply and demand for milk. Any increase in the Class I price should be the result of changing supply and demand conditions.

3. *Classification.* The order should not be amended to provide Class II rather than Class III classification for skim milk and butterfat disposed of in bulk to commercial food processing establishments where food products are prepared for consumption off the premises. The language of the classification provision should be clarified so that there is no doubt that skim milk and butterfat used to produce "dip" specialties are classified as Class III utilization.

The Cincinnati Milk Sales Association proposed that skim milk and butterfat disposed of to commercial food processing establishments where food products are prepared for consumption off the premises be reclassified from Class III to Class II utilization. Since Class II and Class III prices are identical during the months of September through February, the proposed amendment would increase the price of milk disposed of to food processing plants only during the relatively flush production months of March through August when the disposal of surplus milk is likely to create a problem. Because skim milk and butterfat used by food processors may be obtained from ungraded sources, any increase in the price of surplus Grade A Cincinnati milk which must compete with ungraded milk for a market would be a deterrent to the disposal of Cincinnati surplus.

The classification provision should be rewritten to specify clearly that skim milk and butterfat used in the manufacture of "dip" specialties are classified as Class III utilization. "Dip" specialties are cultured mixtures of skim milk and butterfat to which cheese or a food substance other than a milk product has been added and which contain butterfat equal to not more than 15 percent of the finished product. The current order language is indefinite as to the proper classification of such products. Cincinnati health authorities do not require "dip" products to be made from Grade A milk and such products produced in Cincinnati pool plants compete with similar products which are manufactured at plants located throughout the United States. Any classification other than Class III for these products is impractical under the circumstances.

4. *Location adjustments.* No substantive changes need be made in the provisions by which Class I and uniform prices are adjusted pursuant to the location of the plant at which milk is received.

It was proposed that no location adjustments to prices should apply at distributing plants located within the marketing area. The proposal was predicated on the premise that Mason County, Kentucky, would be included in the marketing area and that prices effective at a distributing plant located therein would be subject to location adjustments. Whether a particular plant is a distributing plant or supply plant and whether a particular plant is or is not located in the marketing area cannot be the only consideration relative to the application of location adjustments. The location adjustment provisions of the current order are appropriate for the marketing area provided in this decision and should remain as written with the exception of the correction noted below.

In an action effective March 1, 1960, the Cincinnati order was amended to eliminate location adjustments effective at plants located more than 20 but less than 30 miles from the City Hall in Cincinnati, but references to plants located "more than 20 miles" were inadvertently left in the order. These references should be corrected.

5. *Transfers.* The transfer provision should be amended to remove specific classfication rules for that skim milk and butterfat disposed of to nonpool distributing plants located in Campbell and Kenton Counties, Kentucky. These nonpool plants will become pool plants and transfers to these plants will be classified pursuant to the provisions applicable to transfers between pool plants.

6. *Allocation of packaged Class I receipts from plants regulated by other Federal orders.* The allocation procedure should be modified relative to Class I receipts in consumer packages from a plant fully regulated under the terms of another Federal order.

A handler proposed that packaged sour cream received at a Cincinnati pool plant from a plant regulated under the terms of another Federal order be allocated to Class I disposition at the Cincinnati plant. The handler further proposed that this allocation would apply only when the sour cream was classified as Class I under the terms of another order and was disposed of as Class I from the Cincinnati plant in the same consumer package as received.

The proponent handler operates a fluid milk plant under the Cincinnati order as well as a fluid milk plant under the Louisville-Lexington order. Sour cream in consumer packages is regularly received at the Cincinnati plant from the Louisville-Lexington plant. Sour cream is not packaged at the Cincinnati plant or received from any plant other than the one regulated under the Louisville-Lexington order. The present Cincinnati order provides prior Class I allocation for packaged Class I products received from Dayton-Springfield Federal order plants.

Since the order currently accommodates receipts of all Class I items received in consumer packages from a Dayton-Springfield plant, it would be appropriate to amend the order similarly to allocate to Class I all packaged Class I items received from a plant regulated by any other Federal order. Otherwise, the allocation provision would give preference to receipts of certain Class I items from a particular Federal order market over receipts from other Federal order markets. Therefore, the provision which gives prior Class I allocation to packaged Class I receipts from Dayton-Springfield should be expanded to include such receipts from a plant pooled under the terms of any other Federal order.

7. *Shrinkage.* No change should be made in the classification of butterfat shrinkage.

The order provides Class III classification for actual shrinkage up to a maximum of 2 percent of the butterfat contained in producer milk. A handler proposed that the order be amended to allow Class III classification of such shrinkage up to a maximum of 2.5 percent. The proponent presented no factual evidence as to actual plant loss of butterfat in his operations.

During 1959 actual plant loss of butterfat in all Cincinnati pool plants was less than 2 percent of total butterfat utilization. On the same marketwide basis, butterfat loss was less than 2 percent of total utilization during each of the first five months of 1960. In view of the fact that plant loss of butterfat has been less than 2 percent of total utilization no change should be made in the classification of the butterfat shrinkage provisions.

8. *Diversion of producer milk.* No change should be made in the provisions of the order which relate to diversion of producer milk.

The order permits diversion of producer milk from a pool plant to a nonpool plant during any month if a cooperative association is the diverting handler and during the months of March through August if a handler operating a pool plant is the diverting handler.

An association of producers proposed that diversion by handlers operating pool plants be limited to the months of April, May, June and July. The proponent testified that, in general, the association has no objection to the diversion provisions of the current order but, recently, has seen some possible abuses of diversion by handlers operating pool plants. The proponent further testified that handlers operating pool plants should have the right to divert milk only in the months of foreseeable unneeded supplies; namely, April, May, June and July.

The diversion provisions of the order are to accommodate the most efficient handling of the reserve milk supply of the market. The diversion of producer milk by proprietary handlers is currently limited to the six months of the year when handlers are most likely to find it necessary to divert unneeded producer milk. One handler who operates a pool plant had recently diverted milk during the months the proponent proposes to be deleted from the period during which proprietary handlers may divert milk. Under these circumstances it would not be in the interest of the orderly marketing of reserve supplies to further limit, at this time, the months during which handlers operating pool plants may divert producer milk.

9. *Payments by handlers operating nonpool fluid milk plants.* Subject to proper reporting and the maintenance of adequate records, handlers operating nonpool plants from which Class I milk is distributed in the marketing area should be given an opportunity to choose to make payments into the producer-settlement fund of either (1) an amount determined by multiplying the hundredweight of Class I milk (less the hundredweight of any Class I milk purchased during the month from a pool plant) disposed of from routes operated in the marketing area by the difference between the Class I price and the butter-powder component of the basic formula price, or (2) the amount by which total payments to dairy farmers delivering milk to such plants are less than the total obligation to producers which would be due if such plant were a pool plant.

The order now requires nonpool fluid milk plant operators to make payments to the producer-settlement fund in accordance with the formula detailed above in (1) of the recommended option. A handler operating a nonpool fluid milk plant testified that he pays, for milk sold in the marketing area, a price which is higher than that paid by fully regulated handlers. However, this can be ascertained only if the particular nonpool plant is subject to the same classification, allocation, and pricing provisions as are fully regulated handlers.

The option afforded herein to partially regulated fluid milk plants will protect the integrity of the regulation. If a handler elects to make payments under the first option, the regulatory plan will be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk. If a handler chooses to pay the full utilization value of his milk either directly to his own farmers or by combination of payments to his farmers and to the producer-settlement fund, his total minimum obligation for milk will be determined in exactly the same way as if he were a fully regulated handler.

Affording this latter option to nonpool plants from which some Class I milk is distributed in the marketing area will adequately protect the classified pricing and marketwide equalization plan in this particular market. Handlers in a position to use this option do not exist to an extent permitting any significant diversion of the revenue derived from Class I sales in the marketing area to farmers only incidentally associated with the market, thus dissipating the return to pool producers of milk for which minimum class prices are established under the order and who are relied upon to produce an adequate and dependable supply of approved milk for the marketing area. Consequently, the exercise of this option will not have a disruptive influence on the handling of milk in this area. Therefore, it is not necessary, in order to maintain the integrity of the regulatory plan in this particular market, to require these partially regulated plants to make payments into the producer-settlement fund if it is ascertained that they have paid their producers at least the total amount of money which they would be required to pay if they were fully regulated.

Under the terms of the present order operators of nonpool fluid milk plants distributing in the marketing area are not subject to any assessment to help pay the expense of administering the order. In the interest of providing equity of treatment between partially and fully regulated handlers, the order should be amended to provide that partially regulated handlers also contribute to the cost of order administration.

The amount of assessment of administrative expense should depend upon which option is selected by the nonpool distributor. If he elects to pay to the producer-settlement fund on the basis of his sales from routes operated in the marketing area, he should be required to pay administrative expense only on such quantities of milk so disposed of from routes operating in the marketing area. If he elects the payment based on the utilization value of his milk, he should pay administrative expense on his entire receipts of milk from Grade A dairy farmers. Obviously, the second option necessitates as much verification of reports and utilization by the market administrator as at a pool plant. Such verification might well include the checking of weights and butterfat tests of receipts from dairy farmers and products sold as well as a complete audit of the books and records for such plant.

It is possible that nonpool plants from which milk is distributed in the Cincinnati market will also be nonpool distributing plants under the terms of another Federal order. To eliminate any duplication of equalization and administrative payments, the Cincinnati order should credit such handlers with payments made under similar provisions of another Federal order.

It would also be in the interest of providing equity between handlers to apply an administrative assessment on other source milk allocated to Class I at Cincinnati pool plants. However, to avoid duplication, an assessment should not be applied on other source milk on which an assessment is made pursuant to the terms of another Federal order.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling if milk in the Cincinnati, Ohio marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

DEFINITIONS

Sec.
965.1 Act.
965.2 Secretary.
965.3 Greater Cincinnati marketing area.
965.4 Person.
965.5 Route.
965.6 Fluid milk plant.
965.7 Pool plant.
965.8 Nonpool plant.
965.9 Dairy farmer.
965.10 Producer.
965.11 Handler.
965.12 Producer milk.
965.13 Producer-handler.
965.14 Other source milk.
965.15 Fluid milk product.
965.16 Chicago butter price.

MARKET ADMINISTRATOR

965.20 Designation.
965.21 Powers.
965.22 Duties.

REPORTS, RECORDS AND FACILITIES

965.30 Monthly reports of receipts and utilization.
965.31 Other reports.
965.32 Verification of handler reports.
965.33 Records and facilities.
965.34 Retention of records.

CLASSIFICATION

Sec.
965.40 Basis of classification.
965.41 Classes of utilization.
965.42 Shrinkage.
965.43 Transfers.
965.44 Responsibility of handlers.
965.45 Computation of skim milk and butterfat in each class.
965.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

965.50 Basic formula price.
965.51 Class prices.
965.52 Butterfat differentials to handlers.
965.53 Location differentials to handlers.
965.54 Use of equivalent prices.

COMPUTATION OF UNIFORM PRICE

965.60 Net obligation of each handler.
965.61 Handlers operating nonpool fluid milk plants.
965.62 Correction of errors.
965.63 Computation of uniform prices.

PAYMENTS FOR MILK

965.70 Payments to producers.
965.71 Producer-settlement fund.
965.72 Payments to producer-settlement fund.
965.73 Payments from producer-settlement fund.
965.74 Butterfat differential to producers.
965.75 Location differentials to producers.
965.76 Expense of administration.
965.77 Marketing services.
965.78 Termination of obligation.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

965.80 Effective time.
965.81 Suspension or termination.
965.82 Continuing power and duty of the market administrator.
965.83 Liquidation after suspension or termination.

MISCELLANEOUS PROVISIONS

965.90 Agents.
965.91 Separability of provisions.
965.92 Plants subject to other Federal orders.

§ 965.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 965.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other employee of the United States authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

§ 965.3 Greater Cincinnati marketing area.

"Greater Cincinnati marketing area", hereinafter called the "marketing area", means all the territory within the perimeter boundaries of Butler, Clermont, Hamilton and Warren counties, all in the State of Ohio; and Boone, Campbell, Grant, Harrison, Kenton and Pendleton counties, all in the State of Kentucky.

§ 965.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 965.5 Route.

"Route" means a delivery (including a sale from a store) of milk, buttermilk, flavored milk drinks, or cream in fluid form to a wholesale or retail stop(s) other than to a milk processing plant(s).

§ 965.6 Fluid milk plant.

"Fluid milk plant" means a plant or other facilities used in the preparation or processing of milk, all or a portion of which is disposed of during the month on a route(s) operated wholly or partially in the marketing area.

§ 965.7 Pool plant.

"Pool plant" means a milk plant, other than a plant operated by a producer-handler, which is:

(a) A fluid milk plant located in the marketing area;

(b) A fluid milk plant located outside the marketing area and from which not less than 10 percent of the entire route disposition of Class I milk from such plant during the month is disposed of on a route(s) operated wholly or partially within the marketing area; or

(c) A plant which receives milk from persons described in § 965.10(a) and from which an amount of milk or skim milk in fluid form has been moved to a plant(s) described in paragraph (a) or (b) of this section equal to not less than one percent of the total Class I utilization of all plants described in paragraphs (a) and (b) of this section during the second month preceding such movement, as specified in the following schedule:

Months Plant Is Pool Plant

Months milk is moved.	
One of the months of October and November.	November.
Two of the months of October, November, and December.	December.
Three of the months of October, November, December, and January.	January through October.

Provided, That upon written request to the market administrator by the operator of a plant which is a pool plant pursuant to this paragraph for the discontinuance of such plant as a pool plant, such plant shall cease to be a pool plant in the first month, following such request, during which no milk is moved to a plant described in paragraph (a) or (b) of this section and shall not become a pool plant until such plant again meets the requirements for a pool plant pursuant to this paragraph.

§ 965.8 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 965.9 Dairy farmer.

"Dairy farmer" means any person who is engaged in the production of milk.

§ 965.10 Producer.

"Producer" means a dairy farmer, other than a producer-handler, who produces milk on a farm which is approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is:

(a) Permitted by the duly constituted health authority having jurisdiction in the marketing area to be labeled and disposed of as Grade A milk in the marketing area; and

(b) Received during the month at a pool plant; or

(c) If from a dairy farmer whose milk previously has been received at a pool plant, is either (1) diverted during any of the months of March through August to a nonpool plant for the account of a handler as defined in § 965.11(a)(1); (2) diverted during the month to a nonpool plant for the account of a handler as defined in § 965.11(b); or (3) diverted during the month from a pool plant to another pool plant for the account of a handler as defined in § 965.11(a)(1) or (b) for not more than two consecutive days of delivery and not more than 10 days of delivery during the month.

§ 965.11 Handler.

"Handler" means (a) any person who operates (1) a pool plant; or (2) a fluid milk plant which is a nonpool plant; or

(b) Any cooperative association with respect to the milk of any producer which is diverted by the cooperative association during the month.

§ 965.12 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk (a) received at a pool plant directly from producers during the month, or (b) diverted from a pool plant pursuant to the conditions set forth in § 965.10(c); *Provided*, That if such diverted milk is from a producer whose milk was physically received from the farm at a pool plant located less than 45 miles from the City Hall in Cincinnati on (1) 60 percent or more of the days of its delivery during the immediately preceding period of September through December or (2) 60 percent or more of the days of its delivery from the date of first delivery to the last day of February in the immediately preceding period of September through February, such milk shall be deemed to have been received by the handler at a pool plant at the same location as the pool plant from which it was diverted. Diverted milk not meeting the conditions specified in subparagraph (1) or (2) of this paragraph shall be deemed to have been received by the handler at a pool plant at the same location as the nonpool plant to which the milk is diverted.

§ 965.13 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and a handler, but who receives no milk from other dairy farmers: *Provided*, That such person provides proof satisfactory to the market administrator that (a) the maintenance, care and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled is the personal enterprise of and at the personal risk of such person in his capacity as a dairy farmer, and (b) the operation of a fluid milk plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

§ 965.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by (a) receipts during the month in the form of fluid milk products except (1) producer milk, (2) such products received from other pool plants, and (3) inventory of fluid milk products at the begining of the month; and (b) products other than fluid milk products from any source (except Class II products from pool plants but including products other than Class II products produced at the pool plant), which are reprocessed, repackaged, or converted to another product during the month or for which other utilization or disposition is not established pursuant to § 965.33.

§ 965.15 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, flavored milk, milk drink; cream (sweet, cultured, sour or whipped), eggnog, concentrated milk; and any mixture of milk, skim milk or cream (including fluid, frozen or semi-frozen malted milk and milk shake mixtures containing less than 15 percent total milk solids; and excluding frozen storage cream, aerated cream in dispensers, ice cream and frozen dessert mixes, and evaporated and condensed milk).

§ 965.16 Chicago butter price.

"Chicago butter price" means the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported for the month by the United States Department of Agriculture.

MARKET ADMINISTRATOR

§ 965.20 Designation.

The agency for the administration of this part shall be a market administrator, who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 965.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 965.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to, the following:

(a) Within 45 days following the date on which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Pay, out of the fund provided by § 965.76, the cost of his bond and of the bonds of those of his employees who handle funds entrusted to the market administrator, his own compensation, and all other expenses which will necessarily be incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(d) Keep such books and records as will clearly reflect the transactions provided for in this part, and surrender the same to his successor or to such other person as the Secretary may designate;

(e) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within ten days after the date upon which he is required to perform such acts, has not made reports pursuant to § 965.30 or has not made payments pursuant to §§ 965.70 and 965.72;

(f) Promptly verify the information contained in the reports submitted by handlers;

(g) Furnish such information and verified reports as the Secretary may request and submit his books and records to examination by the Secretary at any and all times;

(h) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each month as follows:

(1) On or before the 5th day after the end of such month, the minimum class prices computed pursuant to § 965.51 and the butterfat differentials computed pursuant to § 965.52; and

(2) On or before the 20th day after the end of such month the uniform prices computed pursuant to § 965.63, and the producer butterfat differential computed pursuant to § 965.74;

(i) On or before the 13th day after the end of each month:

(1) Notify each handler of his net obligation pursuant to §§ 965.60 and 965.61 and of any adjustments pursuant to § 965.62; and

(2) Report to each cooperative association the amount and class utilization of milk caused to be delivered by such association, either directly or from producers who have authorized such association to receive payments for them under § 965.73(b), to each handler to whom the cooperative association sells milk. For the purpose of this report the milk so received shall be prorated to each class in the proportions that the total receipts of milk from producers by such handler were used in each class.

(j) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation of this part as do not reveal confidential information.

REPORTS, RECORDS AND FACILITIES

§ 965.30 Monthly reports of receipts and utilization.

On or before the 10th day after the end of each month, each handler shall report for such month to the market administrator for each of his pool plants, in the detail and on forms prescribed by the market administrator the following:

(a) The total pounds of skim milk and butterfat contained in or represented by:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Other source milk; and

(4) Beginning and ending inventories of fluid milk products.

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section;

(c) Such other information with respect to such receipts and utilization as the market administrator may prescribe;

(d) His producer payroll, which shall show for each producer: (1) The total pounds of milk with the average butterfat test thereof, (2) the amount of the advance payment to such producer made pursuant to § 965.70 and the nature and amount of deductions and charges made by the handler; and

(e) The name and address of each new producer.

§ 965.31 Other reports.

Each handler who operates a fluid milk plant, which is a nonpool plant shall make reports to the market administrator at such time and in such manner as the market administrator may request.

§ 965.32 Verification of handler reports.

Each handler shall make available to the market administrator or to his agent, or to such other persons as the Secretary may designate, those records which are necessary for the verification of the information contained in the reports submitted pursuant to §§ 965.30 and 965.31, and those facilities which are necessary for the sampling, weighing, and testing of the milk of each producer.

§ 965.33 Records and facilities.

Each handler required to make reports to the market administrator shall maintain, and make available to the market administrator during the usual hours of business, such accounts and records of his operations and such facilities as in the opinion of the market administrator are necessary to verify reports, or to ascertain the correct information with respect to (a) the receipts and utilization of all skim milk and butterfat received, including all milk products received and disposed of in the same form; (b) the weights and tests for butterfat, and for other contents, of all milk and milk products handled; and (c) payments to producers and cooperative associations.

§ 965.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies a handler in writing that the retention of such books and records, or specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from

the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 965.40 Basis of classification.

The skim milk and butterfat which are required to be reported pursuant to § 965.30(a) shall be classified by the market administrator, subject to the provisions of §§ 965.41 through 965.46.

§ 965.41 Classes of utilization.

Subject to the conditions set forth in §§ 965.43 and 965.44, the classes of utilization shall be as follows:

(a) **Class I milk.** Class I milk shall be all skim milk and butterfat (1) disposed of in the form of a fluid milk product, except as provided in paragraph (c) (2) and (3) of this section, and (2) not accounted for as Class II milk or Class III milk;

(b) **Class II milk.** Class II milk shall be all skim milk and butterfat:

(1) Used to produce ice cream, frozen desserts, ice cream and frozen dessert mixes (excluding malted milk or milk shake mixtures containing less than 15 percent total milk solids), milk or skim milk and cream mixtures disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product, and cottage cheese; and

(2) Inventories of fluid milk products; and

(c) **Class III milk.** Class III milk shall be all skim milk and butterfat (1) used to produce butter, frozen cream, spray and roller process nonfat dry milk solids, all cheese (other than cottage cheese), evaporated and condensed milk (or skim milk) either in bulk or hermetically sealed cans, and cutlured mixtures of skim milk and butterfat to which cheese or any food susbtance other than a milk product has been added and which contain butterfat equal to not more than 15 percent of the finished product; (2) specifically accounted for as dumped, spilled or disposed of for animal feed; (3) disposed of in bulk as milk, skim milk, or cream to any commercial food processing establishment where food products are prepared only for consumption off the premises; (4) actual plant shrinkage allocated to producer milk pursuant to § 965.42 but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively; and (5) actual plant shrinkage allocated to other source milk pursuant to § 965.42.

§ 965.42 Shrinkage.

The market administrator shall allocate shrinkage at the handler's pool plant(s) as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat, respectively, in producer milk (including producer milk physically received as diverted milk from another pool plant and excluding producer milk diverted to another pool plant) and other source milk received in the form of a fluid milk product in bulk.

§ 965.43 Transfers.

Skim milk and butterfat disposed of by a handler from a pool plant shall be classified:

(a) As Class I milk if transferred to the pool plant of another handler in the form of a fluid milk product, unless:

(1) Utilization in another class is claimed by the operators of both plants in their reports submitted pursuant to § 965.30; and

(2) The receiving plant has utilization in the claimed clasification of an equivalent amount of skim milk and butterfat, respectively, after making the assignments pursuant to § 965.46(a) (1), (2), and (3) and the corresponding steps of (b): *Provided*, That if either or both plants have other source milk, the milk, skim milk or cream so transferred, shall be classified so as to allocate the highest-valued use classification available at both plants to producer milk: *And provided further*, That milk may be transferred in farm delivery containers from one pool plant to another under the conditions of this paragraph if both such plants are pool plants pursuant to § 965.7 (a) or (b);

(b) As Class I milk if transferred or diverted as milk, skim milk or cream in fluid form to a fluid milk plant operated by a producer-handler.

(c) As Class I milk if transferred or diverted as milk, skim milk or cream in fluid form in bulk to a nonpool plant unless:

(1) The handler claims classification in another class and furnishes, on or before the 10th day after the end of the month, to the market administrator, a statement signed by all parties to the transaction that such skim milk and butterfat was used in a lower priced class;

(2) Books and records are maintained for the nonpool plant showing utilization of all skim milk and butterfat at such plant which are made available, if requested by the market administrator, for the verification of such mutually indicated utilization; and

(3) An equivalent amount of skim milk and butterfat, respectively, was used at such nonpool plant in the classification(s) claimed. Any amounts in excess of the actual use in such claimed classification(s) shall be assigned to the next highest priced classification to the extent available.

§ 965.44 Responsibility of handlers.

In establishing the classification as required in §§ 965.41 and 965.43, the burden rests upon the handler to account for all skim milk and butterfat received by him and to prove to the market administrator that such skim milk and butterfat, should not be classified as Class I milk.

§ 965.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk, Class II milk, and Class III milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all of the water normally associated with such solids in the form of whole milk.

§ 965.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 965.45, the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler during the month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk in producer milk shrinkage assigned to Class III milk pursuant to § 965.41(c)(4);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with the lowest-priced used available, the pounds of skim milk in other source milk less the pounds subtracted pursuant to subparagraph (3) of this paragraph;

(3) Subtract from the remaining pounds of skim milk: (i) In Class I milk, the pounds of skim milk received in the form of fluid milk products in consumer packages not larger than one gallon if such skim milk is subject to the Class I pricing provisions of another order issued pursuant to the Act: *Provided*, That this subdivision shall not apply to skim milk in any product if the same product is processed and packaged in the same size and type of container in the pool plant; and (ii) in each class, in series beginning with the lowest-priced use available, the pounds of skim milk in other source milk received in the form of a fluid milk product, excluding the pounds subtracted pursuant to subdivision (i) of this subparagraph, which is subject to the Class I pricing provisions of an order issued pursuant to the Act;

(4) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from other pool plants according to the classification determined pursuant to §§ 965.41 and 965.43;

(5) Subtract from the remaining pounds of skim milk, in series from Class II milk and then Class I milk, the pounds of skim milk in inventory of fluid milk products on hand at the beginning of the month; and

(6) Add to the pounds of skim milk remaining in Class III milk the skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in all classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with the lowest-priced use available.

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

MINIMUM PRICES

§ 965.50 Basic formula price.

The basic formula price per hundredweight of milk to be used in computing the minimum price for Class I milk shall be the higher of the prices computed by the market administrator pursuant to paragraphs (a) and (b) of this section:

(a) The average of the basic (or field) prices per hundredweight ascertained to have been paid, or to be paid, for milk of 3.5 percent butterfat content received from farmers during such month at the following plants or places for which prices are reported to the market administrator or to the United States Department of Agriculture:

Company and Location

Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus amounts calculated pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply the Chicago butter price by 4.2;

(2) From the average of carlot prices per pound for nonfat dry milk, spray process, for human consumption f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th of the immediately preceding month through the 25th day of the current month by the United States Department of Agriculture, deduct 6.4 cents and multiply the result by 8.2.

§ 965.51 Class prices.

Subject to the provisions of § 965.52 and § 965.53, the class prices for milk per hundredweight for the month shall be determined by the market administrator as follows:

(a) *Class I milk.* The price for Class I milk shall be the basic formula price for the preceding month plus $1.30, plus or minus a "supply-demand adjustment" of not more than 50 cents computed as follows:

(1) Divide the total gross pounds of Class I milk set forth in § 965.41 (adjusted to eliminate duplications due to interhandler transfers) in the second and third months preceding by the total pounds of producer milk for the same months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "Class I utilization percentage";

(2) For each full percentage point that the Class I utilization percentage is above the applicable maximum base percentage listed below increase the Class I price differential by three cents; and for each full percentage point that the Class I utilization percentage is below the applicable minimum base percentage listed below decrease such differential by three cents: *Provided*, That the Class I differtial adjusted pursuant to this subparagraph for the month of June shall not be higher than such adjusted differential for the immediately preceding month of May; and that the Class I differential so adjusted for the month of January shall not be less than the adjusted differential for the immediately preceding month of December.

Month for which price is being computed	Base utilization percentages	
	Minimum	Maximum
January	67	69
February	66	68
March	66	68
April	67	69
May	63	65
June	60	62
July	53	55
August	49	51
September	48	50
October	51	53
November	58	60
December	63	65

(b) *Class II milk.* The price for Class II milk shall be the sum of the plus adjustments computed pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Multiply the Chicago butter price by 4.13; and

(2) From the average price for nonfat dry milk spray process, described in paragraph (b) (2) of § 965.50, deduct 5.5 cents and multiply the result by 8.2.

(c) *Class III milk.* The price for Class III milk during each of the months of March through August shall be the price computed pursuant to subparagraph (1) of this paragraph; and the price for Class III milk during each of the months of September through February shall be the same as the Class II price;

(1) The simple average, as computed by the market administrator of the basic (or field) prices per hundredweight ascertained to have been paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants:

M. and R. Dietetic Laboratories, Inc., Chillicothe, Ohio.
Carnation Milk Co., Hillsboro, Ohio.
Nestles Milk Products, Inc., Greenville, Ohio.
Nestles Milk Products, Inc. (Osgood Milk Co.), Osgood, Ind.
Carnation Milk Co., Maysville, Ky.

§ 965.52 Butterfat differentials to handlers.

If the weighted average butterfat test of producer milk which is classified in any class, respectively, for any handler, is more or less than 3.5 percent there shall be added to, or subtracted from, as the case may be, the price for such class, for each one-tenth of one percent that such weighted average butterfat test is above or below 3.5 percent, a butterfat differential calculated by the market administrator as follows:

(a) *Class I milk.* Add 1.25 cents to the butterfat differential for Class II milk for the preceding month;

(b) *Class II milk.* Multiply the Chicago butter price by 118, subtract therefrom the amount computed pursuant to § 965.51(b)(2) and divide the result by 1000; and

(c) *Class III milk.* Multiply the Chicago butter price less 5.0 cents by 120, subtract therefrom the amount computed pursuant to § 965.50(b)(2) and divide the result by 1000: *Provided*, That for each of the months of September through February, the butterfat differential for Class III milk other than that used to produce butter shall be the same as the butterfat differential for Class II milk for such month.

§ 965.53 Location differentials to handlers.

For that skim milk and butterfat in producer milk received at a pool plant located 30 or more miles by the shortest highway distance from the City Hall in Cincinnati, Ohio, as determined by the market administrator, and which is (a) moved in the form of a fluid milk product or as condensed skim milk or frozen cream to a pool plant located less than 30 miles from the City Hall in Cincinnati, Ohio, or (b) otherwise disposed of or utilized as Class I or Class II milk at such plant, the handlers obligation pursuant to § 965.60, subject to the proviso of this section, shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such skim milk and butterfat are received from producers as follows:

Distance from City Hall (miles):	*Rate per hundredweight (cents)*
30 but less than 40	6.0
40 but less than 50	8.0
50 but less than 60	10.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That in the case of transfers made under paragraph (a) of this section, the location differential credit (1) shall apply to the actual weight of the skim milk and butterfat moved, which weight shall not exceed the difference calculated by subtracting from the total pounds of skim milk and butterfat in Class I milk and Class II milk at the transferee's plant the total skim milk and butterfat in producer milk physically received at such plant, and (2) shall be allowed to the transferee-handler if such credit does not exceed the obligation of such handler to the producer-settlement fund for the month.

§ 965.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

COMPUTATION OF UNIFORM PRICE

§ 965.60 Net obligation of each handler.

The net obligation of each handler for producer milk for the month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class by the applicable class price and add together the resulting amounts;

(b) Subtract the location differential credits pursuant to § 965.53;

(c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 965.46(a)(6) and the corresponding step of (b) by the applicable class price;

(d) Add the amount computed by multiplying the difference between the applicable Class II price for the preceding month and the applicable Class I price for the current month by the pounds of milk in inventory subtracted from Class I milk pursuant to § 965.46 (a)(5) and the corresponding step of (b); and

(e) Add an amount computed by multiplying the pounds of other source milk subtracted from Class I milk and Class II milk pursuant to § 965.46(a)(2) and the corresponding step of (b) by the difference between the price for milk (of the same butterfat content) in the class from which subtracted and the price computed pursuant to § 965.50(b), adjusted to the same test by the Class III butterfat differential (other than butter): *Provided*, That for any month when the aggregate utilization of Class I milk for all handlers at pool plants is 90 percent or more of producer milk, no obligations shall be incurred pursuant to: (1) This paragraph, (2) paragraph (d) of this section on milk which is in excess of producer milk classified as Class II milk for the preceding month, or (3) § 965.61.

§ 695.61 Handlers operating nonpool fluid milk plants.

On or before the 17th day after the end of each month, each handler, except a producer-handler, operating a nonpool fluid milk plant shall pay to the market administrator the amounts computed pursuant to paragraph (a) of this section, unless the handler elects at the time of reporting pursuant to § 965.31 to pay the amounts computed pursuant to paragraph (b) of this section;

(a) An amount:

(1) For deposit to the producer-settlement fund determined by multiplying the hundredweight of milk disposed of as Class I milk from such plant on routes from which milk is disposed of within the marketing area (less the hundredweight of any Class I milk purchased by such handler during the month from a pool plant), by the amount by which the price of Class I milk computed pursuant to §§ 965.51, 965.52, and 965.53, exceeds the price computed pursuant to §965.50(b) adjusted by the Class III butterfat differential (other than butter); and

(2) For administrative assessment, equal to the rate specified in § 965.76 multiplied by the hundredweight of such Class I skim milk and butterfat disposed of on routes from which Class I milk is disposed of within the marketing area, unless an administrative assessment is applied to milk at such nonpool plant pursuant to another order issued pursuant to the Act on the same basis as plants fully regulated by such other order; or

(b) An amount:

(1) For deposit to the producer-settlement fund, equal to any plus amount remaining after deducting the amounts computed under subdivisions (i) and (ii) of this subparagraph from the obligation that would have been computed pursuant to § 965.60 for such nonpool plant, had such plant been a pool plant:

(i) The gross payments made on or before the 17th day after the end of the month for milk received at such nonpool plant during the month from dairy farmers who produce milk in compliance with the Grade A inspection requirements of a duly constituted health authority; and

(ii) Any payments to the producer-settlement fund under other orders issued pursuant to the Act applicable to milk handled at such plant during the month as a partially regulated plant under such other orders;

(2) For administrative assessment, equal to the amount which would have been computed pursuant to § 965.76 if such nonpool plant were a pool plant during the month: *Provided*, That such amount shall be reduced by any amount paid as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in other marketing areas, pursuant to the terms of other orders issued pursuant to the Act: *And provided further*, That if less Class I milk is disposed of from such nonpool plant on routes in the Greater Cincinnati marketing area than is disposed of on routes in another marketing area as defined in an order issued pursuant to the Act, and if an administrative expense assessment is applied at such nonpool plant as if a fully regulated plant pursuant to the terms of the order for the marketing area where the volume of Class I milk disposed of from such nonpool plant is greatest, no administrative expense assessment shall be applicable under this order.

§ 965.62 Correction of errors.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses adjustments to be made, for any reason, which result in monies due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any such amount due, and payment thereof shall be made on or before the next date for making payment set forth in the provision under which such error occurred, following the 5th day after such notice.

§ 965.63 Computation of uniform prices.

For each month, the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content as follows:

(a) Add together the values of milk as computed pursuant to § 965.60 for handlers other than those in arrears in payment (other than in payment for any amount pursuant to § 965.62) to the producer-settlement fund as required by § 965.72 for the preceding month;

(b) Subtract, if the weighted average butterfat test of all producer milk represented in the sum computed under paragraph (a) of this section is greater than 3.5 percent, or add, if the weighted average butterfat test of such milk is less than 3.5 percent, an amount computed as follows: Multiply the hundredweight of such milk by the difference of its weighted average butterfat test from 3.5 percent, and multiply the resulting amount by the butterfat differential computed pursuant to § 965.74 times 10;

(c) Subtract for each of the months of April, May, June, and July an amount computed by multiplying the total hundredweight of milk received from producers during such month by the following amounts: 30 cents in April; 35 cents in May and June; and 20 cents in July;

(d) Add for each of the months of September, October, November, and December an amount computed by dividing by four the total amount of the obligated balance in the producer-settlement fund pursuant to § 965.71(b) on September 30 of such year;

(e) Add the sums of the values of the location differentials allowable pursuant to § 965.75;

(f) Add the unobligated balance in the producer-settlement fund;

(g) Divide by the total hundredweight of producer milk pooled pursuant to paragraph (a) of this section; and

(h) Subtract not less than four cents or more than five cents per hundredweight.

PAYMENTS FOR MILK

§ 965.70 Payments to producers.

On or before the 5th day after the end of each month, each handler shall pay to each producer $1.00 per hundredweight of milk received from such producer during the month: *Provided*, That in the event the total amount of deductions and charges authorized by any producer against payments due such producer for the month next preceding is greater than the payment computed for such producer pursuant to § 965.73(a) with respect to the milk received from such producer during such preceding month, the handler may deduct from the payment required by this section a sum equal to the difference between such amounts.

§ 965.71 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers pursuant to §§ 965.61(a)(1) and (b)(1) and 965.72 shall be deposited in this fund, and all payments made pursuant to § 965.73 shall be made out of this fund;

(b) All amounts subtracted pursuant to § 965.63(c) shall be deposited in this fund and shall remain therein as an obligated balance until withdrawn for the purpose of effectuating § 965.63(d); and

(c) The difference between the amount added pursuant to § 965.63(f) and the amount resulting from the subtraction pursuant to § 965.63(h) shall be deposited in, or withdrawn from, this fund, as the case may be.

§ 965.72 Payments to producer-settlement fund.

On or before the 17th day after the end of each month, each handler shall pay to the market administrator his obligation for milk for such month of which he is notified pursuant to § 965.22(i)(1) less the amount paid out to each producer in accordance with § 965.70, and less the amount of the deductions and charges authorized by such producer which are itemized on the handler's producer payroll: *Provided*, That in the calculation of the total amount of such deductions and charges to be subtracted, the deductions and charges to be considered with respect to each individual producer shall not be greater than an amount which, when added to the payment made to such producer in accordance with § 965.70 (inclusive of the deductions and charges authorized by § 965.70) will not exceed the total value of the milk received from such producer.

§ 965.73 Payments from producer-settlement fund.

(a) The market administrator shall compute the payment due each producer for milk received during the month from such producer by a handler(s) who made the payments for such month pursuant to § 965.72, by multiplying the hundredweight of such milk by the uniform price computed pursuant to § 965.63 adjusted by the location differential pursuant to § 965.75 and the butterfat differential pursuant to § 965.74, and subtracting any charges and deductions made pursuant to § 965.72.

(b) On or before the 20th day after the end of each month, the market administrator shall pay, subject to the provisions of § 965.77:

(1) Direct to each producer who has not authorized a cooperative association to receive payments for such producer, the amount of the payment calculated for such producer pursuant to paragraph (a) of this section; and

(2) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, the aggregate of payments calculated pursuant to paragraph (a) of this section, for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments.

§ 965.74 Butterfat differential to producers.

In computing the payments due each producer for milk pursuant to § 965.73, there shall be added to or subtracted from the uniform price per hundredweight for each one-tenth of one percent of butterfat content in such milk above or below 3.5 percent, as the case may be, a butterfat differential computed by the market administrator as follows:

(a) Compute the percentage of the total butterfat in producer milk assigned to each class pursuant to § 965.46;

(b) Multiply each such percentage figure by the butterfat differential for the respective class pursuant to § 965.52; and

(c) Add into one total the value obtained in paragraph (b) of this section, rounding off the result to the nearest even one-tenth cent.

§ 965.75 Location differentials to producers.

In computing the payment due each producer pursuant to § 965.73, the uniform price for producer milk at a pool plant located 30 or more miles by the shortest hard surfaced highway distance from the City Hall in Cincinnati, Ohio, as determined by the market administrator, shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the City Hall (miles):	*Rate per hundredweight (cents)*
30 but less than 40	6.0
40 but less than 50	8.0
50 but less than 60	10.0
Each additional 10 miles or fraction thereof an additional	1.5

§ 965.76 Expense of administration.

As his pro rata share of the expense incurred in the maintenance and functioning of the office of the market adminstrator and in the performance of the duties of the market administrator, each handler shall pay to the market adminstrator, on or before the 17th day after the end of each month, two cents per hundredweight or such lesser amount as the Secretary may from time to time prescribe, with respect to: (a) all producer milk received during the month; and (b) other source milk as allocated to Class I during the month pursuant to § 965.46 excluding other source milk on which an administrative assessment is payable pursuant to another Federal order. A handler operating a fluid milk plant which is a nonpool plant shall pay administrative assessments pursuant to § 965.61.

§ 965.77 Marketing services.

The market administrator shall deduct an amount not exceeding six cents per hundredweight (the exact amount to be determined by the market administrator) from the payments made pursuant to § 965.73(b), with respect to the milk of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", for the purpose of performing the services set forth in paragraph (b) of this section.

(b) The moneys received by the market administrator pursuant to paragraph (a) of this section shall be expended by the market administrator for market information to, and for the verification of weights, samples, and tests of milk of, producers for whom a cooperative association, as described in paragraph (a) of this section, is not performing the same services on a comparable basis, as determined by the market administrator, subject to review of the Secretary.

§ 965.78 Termination of obligation.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producers or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part, shall terminate two years after the end of the calendar month during which milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 965.80 Effective time.

The provisions of this part, or any amendments to this part shall become

effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 965.81 Suspension or termination.

Any or all provisions of this part, or amendments to this part, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall terminate in any event, whenever the provisions of the act authorizing it cease to be in effect.

§ 965.82 Continuing power and duty of the market administrator.

If upon the suspension or termination of any or all provisions of this part, there are any obligations arising under this part, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate. The market administrator, or such other person as the Secretary may designate, shall continue in such capacity until removed by the Secretary, account from time to time for all receipts and disbursements and, when so directed by the Secretary, deliver all funds on hand, together with the books and records of the market administrator, or such other person to such person as the Secretary shall direct, and execute, if so directed by the Secretary, such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

§ 965.83 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amount necessary to meet outstanding obligations and the expense necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 965.90 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 965.91 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 965.92 Plants subject to other Federal orders.

The provisions of this part shall not apply to a fluid milk plant or a supply plant during any month in which the milk at such plant would be subject to the classification and pricing provisions of another order issued pursant to the act unless such plant meets the requirements for a pool plant pursuant to § 965.7 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Greater Cincinnati marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months, immediately preceding: *Provided*, That the operator of a fluid milk plant or a supply plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

Issued at Washington, D.C., this 1st day of December 1960.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 60–11294; Filed, Dec. 5, 1960; 8:53 a.m.]

[7 CFR Part 989]

HANDLING OF RAISINS PRODUCED FROM RAISIN VARIETY GRAPES GROWN IN CALIFORNIA

Monthly Report of Disposition of Free Tonnage Raisins

Consideration is being given to a proposal to amend § 989.173(d) of the administrative rules and regulations, as amended (Subpart-Administrative Rules and Regulations; 7 CFR 989.101–989.180), effective pursuant to, and for operations under, Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California. The amended marketing agreement and order are effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was recommended by the Raisin Administrative Committee, established under this regulatory program.

Section 989.173(d) requires each handler who is not a processor to report monthly the aggregate quantity of each varietal type of free tonnage raisins, segregated according to prescribed outlets and bulk or consumer packs, which such handler shipped or otherwise disposed of during the preceding month. Interhandler or interplant transfers within the State of California are excluded. The proposed amendment would require such handlers to segregate further the aggregate quantities in consumer packs according to the quantity shipped in consumer cartons and the quantity shipped in bags having a net weight content of four pounds or less. The more detailed information is expected to provide the committee with a better basis on which to formulate its marketing policy, and to determine the need for, or to cause to be carried out, research on the marketing, distribution, and consumption of raisins. In compiled form, it would show the trends in the use of the two types of containers and thus provide guides as to the growth or decline of market outlets for each of the two types of packaged raisins.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than the seventh day after publication of this notice in the FEDERAL REGISTER.

The proposal is to amend § 989.173(d) of the administrative rules and regulations, as amended (Subpart-Administrative Rules and Regulations; 7 CFR 989.101–989.180), to read as follows:

(d) *Monthly report of disposition of free tonnage raisins.* Each handler who is not a processor shall file with the committee on or before the fifth day of each month a report for the preceding month showing the aggregate quantity of each varietal type of free tonnage packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by him during the month (exclusive of transfers within the State of California between handlers and between the plants of any such handler). Such information shall be segregated as to: (1) Domestic outlets (exclusive of Federal Government purchases) according to the quantity shipped in consumer cartons, the quantity shipped in bags having a net weight content of four pounds or less, and the quantity shipped in bulk packs (including but not limited to, those in bags having a net weight content of more than four pounds); (2) Federal Government purchases; (3) export outlets according to the quantity shipped in consumer cartons, the quantity shipped in bags having a net weight content of four pounds or less, and the quantity shipped in bulk packs (including, but not limited to, those in bags having a net weight content of more than four pounds); and (4) each of any other outlets in which the handler has made disposition of such raisins other than by any transfer which is excluded by the preceding sentence. For the purpose of this paragraph, Canada shall be considered as a domestic outlet and not an export outlet.

Dated: December 1, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11315; Filed, Dec. 5, 1960; 8:55 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Wyeth Laboratories, Post Office Box 8299, Philadelphia 1, Pennsylvania, proposing the issuance of a regulation permitting the safe use of promazine hydrochloride (4 gm. per pound of feed base) in animal feed as a tranquilizer.

Dated: November 29, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60–11290; Filed, Dec. 5, 1960; 8:50 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 302]

[Docket No. 11221]

RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Statements and Oral Argument

DECEMBER 1, 1960.

Notice is hereby given that the Civil Aeronautics Board has under consideration a proposed amendment to Part 302 of the Board's rules of practice which would withdraw from persons who are not parties to a proceeding the privilege of presenting statements and oral argument to the Board after the hearing before the examiner is concluded.

The principal reasons for the proposed amendment are explained in the attached Explanatory Statement. This amendment is proposed under authority of sections 204(a) and 1001 of the Federal Aviation Act of 1958 (72 Stat. 743, 778; 49 U.S.C. 1324, 1481).

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D.C. All relevant matter in communications received on or before February 3, 1961, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available after February 3, 1961, for examination by interested persons in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

EXPLANATORY STATEMENT

On March 18, 1960, the Board issued a notice of proposed rule making, Docket 11221, proposing various amendments in Part 300, the Board's principles of practice (14 CFR Part 300), and in Part 302, the Board's rules of practice in economic proceedings (14 CFR Part 302). In addition to requesting comments on the specific proposals contained therein, the Board invited comments and suggestions as to other improvements which could be made in the Board's rules concerning ethical practices.[1]

In response to this notice over 49 C.A.B. practitioners (hereinafter referred to as Practitioners) submitted group comments and suggestions, and several air carriers and practitioners submitted individual comments and suggestions relating to, inter alia, the question of participation of persons who are not parties in Board proceedings.

Practitioners suggest that Rule 14 of Part 302 of the Board's procedural regulations be revised so that non-parties could participate in a proceeding "only by presenting at the hearing evidence and memoranda relevant to issues in the case." This proposed change would eliminate the oral arguments now presented to the Board by Congressmen, spokesmen for the Federal executive departments or agencies, and State Aviation Commissions. The amendment proposed by these Practitioners would also limit the rights now enjoyed by nonparties to present written memoranda expressing their views to the examiner or the Board in route cases by requiring such statements to be presented prior to the close of the hearings in order to afford other parties the opportunity to cross-examine them and rebut the evidence and contentions contained in such memoranda. A minority of the Practitioners issued a separate report favoring continuation of the present provisions of Rule 14.

In support of its position, the majority report contends that a court would not permit such persons to appear at oral arguments or permit its files to be cluttered with pleadings submitted by persons who do not have a sufficient interest to sustain intervention. It is further contended that Bureau Counsel, cities who are parties, and the air carrier parties adequately represent public interest considerations and that there is no need for Congressmen or other elected officials to appear at the oral argument.

The minority report of the Practitioners is opposed to any restriction on Congressmen or public officials participating in Board proceedings. The minority contends that the ability of such persons to present their views at oral argument will make it easier for the Board to enforce the rules against ex parte communications, that their appearances are of value to the Board as a matter of public relations, and that public officials generally have a better grasp of the local needs of their areas than an air carrier party to the proceeding.

It appears that the proposal in the majority report has merit and requires careful consideration. Since the notice heretofore issued by the Board did not contain a specific proposal in this respect, many persons who would be directly affected by withdrawal of the privileges to submit memoranda to the Board after conclusion of the hearing and to present oral argument have had no opportunity to submit comments thereon. The Board therefore has decided to issue an additional notice of proposed rule making containing a specific proposal, thereby providing an opportunity for all interested persons to submit comments.

PROPOSED RULE

The Board proposes to amend Part 302 of the procedural regulations (14 CFR Part 302):

1. By deleting the third and last sentences of paragraph (b) of § 302.14 and inserting in lieu thereof the following text: "Such persons may also present to the examiner a written statement on the issues involved in the proceeding. Unless otherwise directed by the examiner, such written statement shall be filed and served on all parties prior to the close of the hearing."

2. By deleting paragraph (c) of § 302.14.

[F.R. Doc. 60–11270; Filed, Dec. 5, 1960; 8:46 a.m.]

[1] Simultaneously herewith the Board has adopted as final rules the rules proposed in the Notice with certain minor changes, Docket 11221, Regulations Nos. PR–43 and PR–44.

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 588]

AIRWORTHINESS DIRECTIVES

Continental Engines

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring replacement of exhaust valves on certain Continental engines to prevent failures which can result in engine damage.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B–316, 1711 New York Avenue, NW., Washington 25, D.C. All communications received on or before January 5, 1961, will be considered by the Administrator before taking action on the proposed rule. The proposals

contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), by adding the following airworthiness directive:

CONTINENTAL. Applies to all E165, E185, E225, and O-470 Series engines. (These engines may be used in such aircraft as Beech 35 Series, Cessna 180, 182, 310 and Navion.)

Compliance required at next engine top overhaul or overhaul, whichever occurs first after the effective date of this directive.

Unless already accomplished per Continental Motors Corporation Service Bulletin No. M60-1, remove exhaust valves, CMC P/N 40651, 537844, 538997, or 539449, and replace with CMC P/N 626540. P/N 626540 may be identified by the following:

(a) The part number on the top surface of the head, or

(b) The letter "H" stamped or etched 0.06-inch high in two places 180 degrees apart on the valve stem between the keeper groove and the end of the valve.

Issued in Washington, D.C., on November 29, 1960.

GEORGE C. PRILL,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11272; Filed, Dec. 5, 1960; 8:46 a.m.]

[14 CFR Part 507]

[Reg. Docket No. 587]

AIRWORTHINESS DIRECTIVES

Lockheed Aircraft

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring repetitive inspections for cracks and looseness of the main landing gear drag strut attach plates on Lockheed PV-1 and B-34 aircraft. Failures of this part have resulted in collapse of the main landing gear. If cracks or deformation in the attach plates or bolts are found, replacement with strengthened parts must be accomplished.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before January 5, 1961, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. The proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), by adding the following airworthiness directive:

LOCKHEED. Applies to all Model PV-1 and B-34 aircraft with main landing gear drag strut attach plates, P/N 112900 or P/N 12665.

Compliance required as indicated. (It will be necessary for operators to maintain a record of landings in order to ascertain compliance with this AD.)

Investigation has shown that failure of the main landing gear drag strut attach plate, P/N 112900 has caused the main landing gear to collapse. The B-34 main landing gear drag strut attach plate, P/N 12665, is the same as the PV-1. As a result of this service experience the following shall be accomplished:

(a) Within the next 25 landings and every 50 landings thereafter, inspect the main landing gear drag strut attack plates, P/N 112900, or P/N 12665, in place on the aircraft for cracks and looseness.[1] Dye penetrant or FAA approved equivalent must be used for crack detection. If the drag strut attach plate is loose, then it must be visually inspected for elongation of the bolt holes and the attaching bolts visually inspected for cracks, or deformation. If cracks or elongation of the bolt holes are found in the drag strut attach plate, it must be replaced prior to the next flight. Deformed or cracked bolts must be replaced prior to the next flight.

(b) The special inspections contained in this AD may be discontinued after the Howard Aero, Inc., replacement main landing gear drag strut attach plates, P/N 5-302006, or FAA approved equivalents, are installed using 180,000 p.s.i. minimum ultimate tensile strength attaching bolts.

Issued in Washington, D.C., on November 29, 1960.

GEORGE C. PRILL,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11271; Filed, Dec. 5, 1960; 8:46 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-LA-97]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 9 extends from Campo, Calif., to Casa Grande, Ariz. The Federal Aviation Agency is considering revoking Red 9 in its entirety. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available and it appears that the route from Campo to Casa Grande is adequately served by VOR Federal airways No. 66 and No. 94. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 9, and its associated control areas from Campo to Casa Grande. Adoption of this proposal would not necessarily result in the discontinuance of the low frequency navigational aids associated with this segment of Red 9. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Concurrently with this action, § 601.4209, designated reporting points associated with Red 9, would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on November 30, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11273; Filed, Dec. 5, 1960; 8:46 a.m.]

[1] A method of inspection for looseness is to check for gapping of 0.010 inch or greater, between the drag strut plate and the backing plate at a point approximately 4.5 inches above the lower edge of the attach plate. Insert a feeler gage between the attach plate and the backing plate from the outboard side to make this check.

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-LA-96]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 60 extends from Oakland, Calif., to Copper, Calif. The Federal Aviation Agency is considering revoking this airway in its entirety. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Oakland to Copper is adequately served by VOR Federal airway No. 244. In addition, a Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, shows a maximum of six aircraft movements between any two reporting points on Red 60. Therefore, it appears that retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 60 and its associated control areas from Oakland to Copper. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with Red 60. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Concurrently with this action, § 601.4260, designated reporting points associated with Red 60, would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue, NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on November 30, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11274; Filed, Dec. 5, 1960; 8:47 a.m.]

[14 CFR Part 608]

[Airspace Docket No. 60-FW-52]

RESTRICTED AREAS

Alteration of Restricted Area/Military Climb Corridor

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 608.41 of the regulations of the Administrator, the substance of which is stated below.

The Goldsboro, N.C., (Seymour Johnson AFB), Restricted Area/Military Climb Corridor (R-573) (Chart RF-130) is presently based on the 226° True radial of the Seymour Johnson terminal VOR and the controlling agency is the Seymour Johnson AFB control tower.

The Federal Aviation Agency is considering altering the Seymour Johnson AFB Restricted Area/Military Climb Corridor by basing it on the 228° True radial of the Seymour Johnson TACAN (latitude 35°20'53" N., longitude 77°55'33" W.), instead of the 226° True radial of the Seymour Johnson terminal VOR. This would facilitate use of the climb corridor since it is used primarily by TACAN equipped aircraft. In addition, the controlling agency would be changed from the Seymour Johnson AFB control tower to the Federal Aviation Agency, Raleigh-Durham, N.C., approach control facility. This would improve air traffic management since this facility provides the approach control service for Seymour Johnson AFB which is now served by a peripheral radio site located near the airbase.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue, NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on November 30, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11275; Filed, Dec. 5, 1960; 8:48 a.m.]

FEDERAL RESERVE SYSTEM

[12 CFR Part 206]

[Reg. F]

TRUST POWERS OF NATIONAL BANKS

Common Trust Funds

Part 206 (Regulation F), which relates to trust powers of national banks, contains provisions prohibiting the collective investment of trust funds except as permitted in § 206.17. Common Trust Funds as regulated by the Board of Governors by § 206.17, were intended to aid banks and trust companies establishing such Common Trust Funds to administer more effectively and economically certain accounts for which the bank or trust company held an appointment as trustee, executor, administrator or guardian, provided such accounts were created and used for bona fide fiduciary purposes. The Regulation prohibits "the operation of such Common Trust Funds * * * for other than strictly fiduciary purposes."

Questions have arisen from time to time as to the eligibility of various kinds of trusts for participation in Common Trust Funds so established and regulated. In order to emphasize the special purposes and restricted use of Common Trust Funds, to make more specific the types of trusts which may not be properly invested in participations in Common Trust Funds and to prohibit the use of such funds as a medium attracting individuals primarily seeking investment management of their funds, the Board currently is considering an amendment of the Common Trust Fund provisions of its Regulation F by adding a new sentence following the third sentence of subparagraph (3) of paragraph (a) of § 206.17, as follows: "The funds of an inter vivos trust revocable by the settlor and providing for the payment of the principal of the trust to the settlor's estate at his death may not be invested in a Common Trust Fund established and maintained under this section."

This notice is published pursuant to section 4 of the Administrative Pro-

cedure Act and section 2 of the rules of procedure of the Board of Governors of the Federal Reserve System (12 CFR 263.2). The proposed amendment is authorized under the authority cited at 12 CFR Part 206.

To aid in the consideration of this matter the Board will be glad to receive from interested persons any relevant data, views or arguments. Although such material may be sent directly to the Board, it is preferable that it be sent to the Federal Reserve Bank of the district which will forward it to the Board to be considered. All such material should be submitted in writing to be received not later than January 13, 1961.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 60-11288; Filed, Dec. 5, 1960; 8:52 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification No. 3]

FAIRBANKS LAND DISTRICT

Small Tract Classification

1. Pursuant to authority delegated to me by Bureau Order No. 541, dated April 21, 1954 (10 F.R. 2473), I hereby classify the following described public lands, totaling 219.57 acres at Birch Lake, as suitable for lease and sale for recreation purposes under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a), as amended:

T. 7 S., R. 5 E., F. M.,
Section 12: Lots 3, 4 and that portion of Lot 5 which in normal subdivision would be described as $N\frac{1}{2}N\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$ and $SW\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}SW\frac{1}{4}$.
T. 7 S., R. 6 E., F. M.,
Section 27: Lots 1, 2, 4 and $NE\frac{1}{4}NW\frac{1}{4}$.

Containing approximately 219.57 acres.

2. The lands described in paragraph one above were restored from withdrawal by Public Land Order 1253, dated November 15, 1955, but were retained in reserved status pending small tract classification and future opening.

3. Classification of the above described lands by this order segregates them from all appropriation, including locations under the mining laws, except to applications under the mineral leasing laws.

4. Nothing in this order shall preclude application for State selection in accordance with and subject to the provisions of the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b) and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339).

5. The lands classified by this order shall not become subject to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended, until it is so provided by an order to be issued by an authorized officer, opening the lands to application or bid.

RICHARD L. QUINTUS,
Operations Supervisor.

[F.R. Doc. 60-11306; Filed, Dec. 5, 1960; 8:55 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-39]

CURTISS-WRIGHT CORP.

Notice of Termination of Utilization Facility License

Notice is hereby given that, as requested by the licensee, License No. R-36, issued to Curtiss-Wright Corporation, has been terminated, as of December 12, 1960, as set forth below.

Dated at Germantown, Md., this 29th day of November 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

TERMINATION

Pursuant to the request of the licensee, dated November 17, 1960, License No. R-36, issued to Curtiss-Wright Corporation to operate a utilization facility at Quehanna, Pennsylvania, has been terminated as of December 12, 1960. Ownership of the facility is being transferred by Curtiss-Wright Corporation to The Pennsylvania State University upon the receipt of appropriate licenses by the University.

Date of issuance: November 29, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-11265; Filed, Dec. 5, 1960; 8:45 a.m.]

[Docket No. 50-174]

PENNSYLVANIA STATE UNIVERSITY

Notice of Issuance of Facility License

Please take notice that the Atomic Energy Commission has issued Facility License No. R-72, set forth below, authorizing The Pennsylvania State University to possess, but not to operate, the nuclear research reactor facility at the Curtiss-Wright Research and Development Center at Quehanna, Pennsylvania, which has heretofore been owned by the Curtiss-Wright Corporation, and previously operated under License No. R-36. Ownership of the facility will be transferred to the University upon the receipt of this license and the official name of the facility is to be The Curtiss-Wright Nuclear Research Laboratory of The Pennsylvania State University. The license, which becomes effective on December 12, 1960, also authorizes the possession of source and special nuclear material in connection with the eventual operation of the reactor.

The Commission has found that possession of the facility in accordance with the terms and conditions of the license will not present an undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this license is not necessary since the proposed possession of the facility does not present any substantial changes in the hazards to the health and safety of the public from those previously considered and approved in connection with the shutdown and maintenance of the facility on a stand-by basis.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license. Petitions for leave to intervene shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street, Washington, D.C. For further details see (1) the application for license dated September 29, 1960 and amendment thereto dated November 2, 1960 submitted by The Pennsylvania State University, and (2) a hazards analysis of the proposed possession prepared by the Research and Power Reactor Safety Branch of the Division of Licensing and Regulation, both on file at the AEC's Public Document Room. A copy of item (2) above may be obtained at the AEC's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 29th day of November 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[License No. R-72]

1. This license applies to the light water-moderated and -cooled swimming pool-type nuclear reactor facility (hereinafter referred to as "the facility") which is located at Quehanna, Pennsylvania, and which has heretofore been owned by the Curtiss-Wright Corporation, and previously operated under License No. R-36. The facility is described in the Pennsylvania State University's application dated September 29, 1960, and amendment thereto dated November 2, 1960 (hereinafter together referred to as "the application").

2. Pursuant to the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act") and having considered the record in this matter, the Atomic Energy Commission (hereinafter referred to as "the Commission") finds that:

A. The facility has been constructed in conformity with Construction Permit No. CPRR-11 issued to Curtiss-Wright Corporation;

B. There is reasonable assurance that the facility can be possessed at the designated location without endangering the health and safety of the public;

C. The Pennsylvania State University is technically and financially qualified to possess the facility, to assume financial responsibility for payment of Commission charges for special nuclear material and to undertake and carry out the proposed activities in accordance with the Commission's regulations;

D. The possession of the facility and the receipt and possession of the special nuclear

material in the manner proposed in the application will not be inimical to the common defense and security or to the health and safety of the public.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses the Pennsylvania State University:

A. Pursuant to section 104c of the Act and Title 10, CFR, Chapter 1, Part 50, "Licensing of Production and Utilization Facilities", to possess, but not to operate, the facility as a utilization facility at the designated location at Quehanna, Pennsylvania, in accordance with the procedures and limitations described in the application and this license;

B. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 70, "Special Nuclear Material", to receive and possess up to 10 kilograms of contained uranium 235 and 14.99 grams of plutonium contained in a plutonium-beryllium source for use in connection with future operation of the facility; and

C. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 30, "Licensing of Byproduct Material", to possess but not to separate such byproduct material as was produced by previous operation of the reactor.

4. This license shall be deemed to contain and be subject to the conditions specified in § 50.54 of Part 50 and § 70.32 of Part 70, Title 10, Chapter 1, CFR, and to be subject to all applicable provisions of the Act, and to the rules and regulations and orders of the Commission, now or hereafter in effect, and to the additional conditions specified below:

A. The Pennsylvania State University shall not operate the reactor.

B. The fuel elements shall not be moved from their present locations unless procedures for transferring these elements have been reviewed and approved by the Commission.

C. In addition to those otherwise required under this license and applicable regulations, the Pennsylvania State University shall keep the following records:

1. Records showing radioactivity released or discharged into the air or water beyond the effective control of The Pennsylvania State University as measured at the point of such release or discharge.

D. The Pennsylvania State University shall immediately report to the Commission in writing any indication or occurence of a possible unsafe condition relating to the possession of the reactor.

5. This license is effective as of December 12, 1960, and shall expire at midnight December 12, 1962.

Date of issuance: November 29, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing and Regulation.

[F.R. Doc. 60-11266; Filed, Dec. 5, 1960; 8:45 a.m.]

[Docket No. 50-142]

REGENTS OF UNIVERSITY OF CALIFORNIA

Notice of Proposed Issuance of Amendment to Facility License

Please take notice that, unless within fifteen days after the filing of this notice with the Office of the Federal Register a request for a formal hearing is filed with the United States Atomic Energy Commission by the applicant or an intervener as provided by the Commission's rules of practice (Title 10, Chapter 1, Part 2), the Commission proposes to issue to The Regents of The University of California a facility license amendment substantially as set forth below authorizing operation of the Argonaut-type nuclear reactor located on the University of California campus at Los Angeles, at power levels up to 10 kilowatts (thermal). Petitions for leave to intervene shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street NW., Washington, D.C.

For further details see (1) the application amendment dated October 20, 1960, submitted by the University of California, and (2) a hazards analysis prepared by the Hazards Evaluation Staff of the Division of Licensing and Regulation, on file at the AEC's Public Document Room. A copy of item (2) above may be obtained at the AEC's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 30th day of November 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[License No. R-71; Proposed Amdt. 1]

Paragraph 4.A.1. of Facility License No. R-71 is hereby amended to read as follows:

4.A.1. University of California shall not operate the reactor at power levels in excess of 10 kilowatts (thermal) without prior written authorization from the Commission.

Date of issuance: November 30, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing and Regulation.

[F.R. Doc. 60-11267; Filed, Dec. 5, 1960; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

AEROVIAS CONDOR DE COLOMBIA LTDA.

[Docket 11922]

Notice of Prehearing Conference

In the matter of the application of Aerovias Condor de Colombia Ltda., Docket 11922, for a foreign air carrier permit authorizing it to engage in regularly scheduled air transportation of property only between the point Miami, Florida on the one hand and on the other hand the points Barranquilla and/or San Andres, Colombia.

Notice is hereby given that a prehearing conference on the above-entitled matter is assigned to be held on December 8, 1960, at 10:00 a.m., e.s.t., in Room 701, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Barron Fredricks.

Dated at Washington, D.C., November 30, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11303; Filed, Dec. 5, 1960; 8:54 a.m.]

[Docket No. SA-358]

ACCIDENT NEAR BOSTON, MASS.

Notice of Hearing

In the matter of investigation of accident involving aircraft of United States Registry N 5533, which occurred on October 4, 1960, in Boston, Massachusetts.

Notice is hereby given that an Accident Investigation Hearing on the above styled matter will be held commencing 9:30 a.m. (local time) on Wednesday, January 11, 1961, in the auditorium of the Air National Guard headquarters at Logan International Airport, Boston, Massachusetts.

Dated this 29th day of November 1960.

[SEAL] REID C. TAIT,
Hearing Officer.

[F.R. Doc. 60-11304; Filed, Dec. 5, 1960; 8:45 a.m.]

[Docket 11941]

WASHINGTON, D.C.; HELICOPTER SERVICE CASE

Order of Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 30th day of November 1960:

On June 27, 1960, New York Airways, Inc. (NYA) filed an application pursuant to section 401 of the Federal Aviation Act of 1958, as amended, for a certificate authorizing the transportation by vertical lift aircraft of persons, property, and mail between Washington, D.C., Washington National Airport, and Dulles International Airport, and for an exemption pursuant to section 416 of the Act permitting the operation of such service anywhere within the Washington Metropolitan Area (defined as the area included within a radius of 50 miles of the Washington Monument). New York Airways moved for immediate hearing and expedited disposition of its application.

Upon consideration of NYA's motion and more particularly in view of the pendency on the Board's docket of a number of applications to engage in air transportation in the Washington area with helicopter-type aircraft, the Board has decided to institute an investigation to determine whether or not the public convenience and necessity require the certification of such a service. At the present time, carriers certificated to serve Washington operate propeller-type equipment to Washington National Airport and jet equipment to Friendship Airport. Construction will be completed in the relatively near future at the Dulles International Airport which will also serve Washington. The availability of Washington services at three major airport locations may require air transportation between these airports and between the airports and downtown Washington and accordingly the Board concludes that it is timely to consider whether or not an operator of helicopter-type aircraft should be authorized to provide such a service.[1]

Three certificated air carriers presently operate helicopter aircraft in the Los Angeles, Chicago and New York areas. These carriers receive subsidy support in excess of four million dollars annually. With current helicopter carrier subsidy expenditures at this level, it is apparent that the certification of an additional helicopter carrier, with eligibility for subsidy mail pay, raises a serious question whether extension of what the Board has in the past regarded as the helicopter "experiment" would conform to the statutory standards of which subsidy cost is an important element. For that reason, in considering the need for a helicopter operation in the Washington Metropolitan Area, the Board will expect that the parties will make available in the record the latest information as to the operating characteristics and profitability expectations of helicopter aircraft types presently in operation and types expected to be put into service in the reasonably near future. The Board is interested in determining the likelihood of profitable helicopter operations in the light of recent technological development as well as considering the need for such a service in the Washington area.[2]

In past helicopter certification cases the Department of Defense has supported the helicopter carrier experiment and the Post Office Department has indicated that the service is useful for the carriage of mail. Accordingly, we will make these two departments parties to this proceeding so that their views may be made part of the record.

So that the case may be limited to the area of primary need, the proceeding will be limited to consideration of whether or not the Board should certificate one or more air carriers to engage in air transportation of persons, property or mail, with or without eligibility for subsidy, between Washington National Airport, Friendship Airport, Dulles International Airport, and a point or points in the District of Columbia. In view of past subsidy costs we intend to focus particularly on whether any award should be granted on a non-mail basis, non-subsidy mail basis or on the basis of a mail authorization including subsidy eligibility. Pending Washington helicopter applications will be consolidated except that portions of applications which extend beyond the area defined above will be dismissed.[3]

Since the future operating plans of carriers presently certificated to serve Washington will be an important element in determining the need for a route, they will also be made parties for the purpose of insuring that the record includes information as to the expected future volume of schedules at each airport.

New York Airways' motion will be denied except to the extent granted by our action herein.

Accordingly, it is ordered:

1. That an investigation be and it hereby is instituted to determine whether the public convenience and necessity require the certification of one or more carriers to engage in the air transportation of persons, property or mail, with or without subsidy eligibility, between Washington National Airport, Dulles International Airport, Friendship Airport, and a point or points in the District of Columbia;

2. That the applications in Dockets 5794, 6176, 6982, 8458, 9239, 9675, 9702 and 11543 to the extent they seek authority to engage in air transportation between Washington National Airport, Dulles International Airport, Friendship Airport, and a point or points in the District of Columbia, be and they hereby are consolidated with the investigation instituted herein, and to the extent that they seek authority to engage in air transportation to additional points or areas be and they hereby are dismissed;

3. That this proceeding shall be set down for hearing before an Examiner of the Board at a time and place hereafter designated;

4. That except to the extent granted herein the motion of New York Airways be and it hereby is denied;

5. That a copy of this order be served upon Baltimore and Annapolis R. R. Co., The Maryland Co., Henry M. Bliss et al., Pilgrim Helicopter Services, Inc., The Rumson Co., Chesapeake and Potomac Airways, Inc., D.C. Transit System, Inc., New York Airways, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Capital Airlines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Lake Central Airlines, Inc., National Airlines, Inc., Northeast Airlines, Inc., Northwest Airlines, Inc., Piedmont Aviation, Inc., Trans World Airlines, Inc., United Air Lines, Inc., the Postmaster General and the Department of Defense who are hereby made parties to the investigation instituted herein; and

6. That this order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

[F.R. Doc. 60-11305; Filed, Dec. 5, 1960; 8:55 a.m.]

[1] There are many docketed helicopter applications on file but none involve a three-airport situation such as will be the case at Washington in the near future. Also Washington ranked third in certificated carrier aircraft departures and fourth in passenger boardings among U.S. cities in 1959. Air Commerce Traffic Pattern (Scheduled Carriers) Calendar Year 1959, June 1960, Federal Aviation Agency. Additionally, the thirteen passenger carriers certificated to serve Washington will be free to use any one of the three airports so that a need may arise for air transportation service between the airports to accommodate connecting traffic moving through Washington. In view of all these circumstances we deem it appropriate to consider Washington's need at this time.

[2] A complete record on the operating characteristics of helicopter aircraft will assist the Board in determining its future course of action with respect to the pending applications to provide helicopter service at other cities. In this connection, the Board would welcome a presentation in the record by the manufacturers of helicopter-type aircraft.

[3] Those portions of the applications which are being dismissed are either de minimus or of such an extent as to logically require refiling in the light of our action herein.

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13771-13774; FCC 60M-2028]

COLUMBIA RIVER BROADCASTERS, INC. ET AL.

Order Continuing Hearing

In re applications of Columbia River Broadcasters, Inc., Mount Vernon, Washington, Docket No. 13771, File No. BP-11933; Henry Perozzo (Kaye), Puyallup, Washington, Docket No. 13772, File No. BP-12844; KBKW, Inc. (KBKW), Aberdeen, Washington, Docket No. 13773, File No. BP-13406; Carl-Dek, Inc., Kirkland, Washington, Docket No. 13774, File No. BP-13491; for construction permits.

Upon oral request of counsel for the Broadcast Bureau and for good cause shown: *It is ordered,* This 29th day of November 1960, that the hearing in the above-entitled proceeding presently scheduled for December 15, 1960 is hereby rescheduled to commence at 10:00 a.m., December 21, 1960, in the Commission's offices in Washington, D.C.

Released: November 30, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11318; Filed, Dec. 5, 1960; 8:55 a.m.]

[Docket No. 13601; FCC 60M-2020]

HOPKINSVILLE BROADCASTING CO., INC. (WHOP)

Order Continuing Hearing

In re application of Hopkinsville Broadcasting Company, Incorporated (WHOP), Hopkinsville, Kentucky, Docket No. 13601, File No. BP-12506; for construction permit.

The Hearing Examiner having under consideration "Motion for Continuance of Hearing" filed November 23, 1960, on behalf of Hopkinsville Broadcasting Company, Incorporated (WHOP) requesting that the dates for exchange of affirmative engineering and rebuttal engineering exhibits be scheduled for January 13, 1961, and January 27, 1961, respectively, and that the hearing now scheduled for December 19, 1960, be continued to February 3, 1961;

It appearing that good cause exists why said motion should be granted, there is no opposition thereto and all counsel have consented to a waiver of § 1.43 of the Commission's rules thereby permitting immediate consideration of the pleading;

Accordingly, it is ordered, This 28th day of November 1960, that the dates for the exchange of affirmative and rebuttal engineering exhibits shall be on or before January 13, 1961, and January 27, 1961, respectively.

It is further ordered, That the hearing now scheduled for December 19, 1960, be, and the same is hereby continued to February 3, 1961, 10:00 a.m., at the Commission's Offices, Washington, D.C.

Released: November 29, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11319; Filed, Dec. 5, 1960; 8:56 a.m.]

[Docket No. 13853; FCC 60-1398]

MID-KANSAS, INC.

Memorandum Opinion and Order Designating Applications for Hearing on Stated Issues

In re applications of Mid-Kansas, Inc., Docket No. 13853, for construction permit for a common carrier microwave station at Manhattan, Kansas, File No. 2205-C1-P-60; for construction permit for a common carrier microwave station at Junction City, Kansas, File No. 2206-C1-P-60; for construction permit for a common carrier microwave station at Abeline, Kansas, File No. 2207-C1-P-60; for construction permit for a common carrier microwave station at St. Mary's, Kansas, File No. 224-C1-P-61.

1. Topeka Broadcasters Association, Inc. (hereinafter called Topeka), licensee of station WIBW-TV, Topeka, Kansas, timely filed, on October 26, 1960, a protest and request for reconsideration relative to the grants without hearing of the above-identified applications of Mid-Kansas, Inc. (hereinafter called Mid-Kansas). Mid-Kansas timely filed, on November 7, 1960, an opposition to the aforesaid protest and request for reconsideration; and Topeka timely filed a reply thereto on November 15, 1960.

THE PROTEST

2. Topeka alleges that it is a party in interest for the following reasons: It provides a television broadcast service, through station WIBW-TV at Topeka, Kansas, to a circular area with a radius of approximately 63 miles from its transmitter. Topeka also shows that it has pending an application to provide additional coverage to the west, by effecting construction which would achieve service to a circular area with a radius of approximately 71 miles. Mid-Kansas seeks to provide, as a communications common carrier, an off-the-air pickup and relay of three Kansas City television broadcast stations (KCMO-TV, KMBC-TV, and WDAF-TV) for delivery to CATV systems at Manhattan, Junction City, and Salina, Kansas, respectively. Mid-Kansas further indicates[1] that it may also hereafter provide such service to CATV subscribers at Abilene, Clay Center, and Concordia, Kansas. Since Manhattan and Junction City are within the present service area of station WIBW-TV; since Abilene and Clay Center would be within the service area of WIBW-TV as the latter propose to operate if its pending application is granted; and since WIBW-TV is alleged to be received now at all of the locations at which CATV subscribers to the Mid-Kansas system might be located; Topeka alleges that the impact of the competition from the proposed common carrier and CATV operations would seriously cripple station WIBW-TV as a going business concern and diminish its service to the public which it now serves and proposes to serve.

3. Topeka alleges that Mid-Kansas is not a common carrier because of the substantial identify of control of Mid-Kansas and the CATVs at Junction City and Manhattan and the reciprocal interest of each of these entities in the affairs of the other.[2] Topeka alleges that, in these circumstances, the Commission may not lawfully "wait and see" whether the public offering service of Mid-Kansas will actually be implemented by members of the public other than those identified with Mid-Kansas.

4. Topeka alleges that Mid-Kansas, as a common carrier, would not be operating in a "lawful" manner because it would be engaged in delivering converted, misappropriated or "pirated" property. This contention is supported by an argument that the television programs utilized by the CATVs belong to program producers, broadcast stations, networks, film owners and others, and that the utilization of this program material without securing the consent of the owners is in violation of the property rights of such owners. Thus, Mid-Kansas, when participating in such activity, is alleged to be engaged knowingly in such unlawful activity. In this connection, Topeka recognizes that there has been no legal adjudication of this property right question and that such matter will finally be adjudicated by the Courts.

5. Finally, Topeka urges, on the basis of all of the foregoing, that a grant of the subject applications would not serve the public interest and that the Commission's policy and interpretation of the administrative standard of public interest with respect to common carriers serving CATV systems, as expressed in paragraph 75 of its Report and Order in Docket No. 12443, is erroneous and unlawful and should not be applied to the subject applications.

6. Topeka asks that the Mid-Kansas applications be designated for evidentiary hearing on the following issues:

1. To determine the effect of the operation proposed by Mid-Kansas, Inc. in the above-styled applications upon the operation of television Station WIBW-TV, Topeka, Kansas, and upon the public served by the said Station.

2. To determine whether Mid-Kansas, Inc. is, or would be, a common carrier under the provisions of the Communications Act of 1934, as amended, and the Commission's Rules and Regulations.

3. To determine whether Mid-Kansas, Inc. proposes to engage in unfair competition with respect to Station WIBW-TV by distributing television programs to the public directly or indirectly, without compensating, or securing the consent of, those persons who possess property rights and interests in the said programs.

4. To determine whether Mid-Kansas, Inc. proposes to deal in, and profit from, the transmission of converted, misappropriated or unlawfully acquired property and property interests in respect to television programs; and, if so, to determine the effect of such facts upon the character qualifications of the applicant.

5. To determine whether the proposed operation of Mid-Kansas, Inc. would affect adversely the public interest in television broadcasting, with particular reference to the effect of such proposed operation of the effectuation of the Commission television channel allocation plan, the construction of new and improved stations and booster and translator stations, the continued existence of Station WIBW-TV and any other television stations licensed to serve the public interest, the quantity and quality of service presently and proposed to be provided by any television stations, the transmission and distribution of television programs broadcast by television stations outside their service areas and in the service area of Station WIBW-TV or any other television stations.

6. To determine in the light of the evidence adduced in response to the above-stated issues whether Mid-Kansas, Inc. is eligible to receive grants of the subject applications, and whether grants of the said applications would not serve the public interest.

DISPOSITION OF THE PROTEST

7. Upon the allegations of adverse economic impact, we find and conclude that Topeka is a party in interest in this proceeding.

8. In our Report and Order in Docket No. 12443, we set forth certain conclusions (paragraphs 45 thru 51 and 58 thru 79), which are, a priori, controlling in this case. In view of such determinations, and in light of the facts shown herein, we deem Mid-Kansas to be a communications common carrier eligible for a grant of the authorizations herein at issue. We have recognized that a communications common carrier may initially acquire such status by establishing a service and making an offering of such service to any member of the public who may desire it. We have also recognized that this determination should be subject to later review, after the carrier has had a reasonable opportunity to implement its service, so as to determine whether there is any continuing need for the common carrier offering. To this end, we have provided in our rule (§ 21.709) for careful review of this situation at the time of renewal of every such station license.[3][4]

9. In connection with Topeka's allegations of conversion, misappropriation and "piracy" of property, we note two significant facts: first, Topeka, in its pleading (paragraph 11(c)), recognizes that its statements of legal conclusion as to the alleged invasion of property right are not yet supported by any statutory or judicial authority; and second, Topeka has studiously refrained from alleging that the CATVs involved in this case have requested anyone's permission to use the signals which they will disseminate; that anyone has denied such permission; that any specific alleged owner of such signals or program material has objected to, or complained about, the alleged misappropriation here; and Topeka has refrained from addressing itself to consideration of whether the apparently unchallenged proposed operations of the CATVs carry, at least, an implied consent from the alleged property owners. The entire argument of Topeka on this point spins around the proposition that one who misappropriates property commits an unlawful act. While this statement may be correct, Topeka does not come out with a specific accusation or indictment of the CATVs in this case on that charge. For these reasons, we conclude that the allegations relative to the property right question do not adequately specify with particularity the facts relied upon and are not well pleaded. Accordingly, we do not think that any proposed issue relative to this matter requires further consideration.[5]

10. WIBW-TV serves Topeka with a 1960 population of 118,561 (1960 preliminary report). Manhattan, about 49 miles away, with 1960 population of 22,797, and Junction City, about 62 miles distant, with 1960 population of 18,660, are within WIBW-TV Grade B contour. Salina, over 100 miles away, with 1960 population of 42,182 is outside the Grade B contour and receives no television service at this time. On September 7, 1960, station KSLN-TV was authorized to construct a television station at Salina. Mid-Kansas urges that, if it is not stayed in the construction of the stations under protest, it will be in position to extend its system to serve the additional communities of Clay Center, Concordia, Abilene, and Beloit, Kansas. Topeka shows that it has pending an application to move its site to a point which will enable it to include Abilene and Clay Center within its Grade B contour. We do not think it desirable or proper to speculate, at this time, what either or both parties may do in the future. We think this protest should be considered on the basis of the facts as they exist at this time.

11. It is evident that the contested grants are not necessary to the maintenance or conduct of an existing service and, upon consideration of the facts set forth above, we are unable to conclude that the public interest requires that the grants herein remain in effect pending final disposition of this case.

12. In light of our determinations herein, we deem it necessary and appropriate to revise certain issues proposed by Topeka, and to eliminate others. We do not adopt any of the issues as our own.

13. *Accordingly, it is ordered,* That the protest is granted to the extent herein provided, and denied in all other respects; and the petition for reconsideration is denied; and that, pursuant to the provisions of section 309(c) of the Communications Act of 1934, as amended, a hearing be held herein, at the offices of the Commission at Washington, D.C., at a time and place to be hereafter announced, on the following issues:

(a) To determine the nature and extent of any adverse effect which the grant of the applications herein will have upon the operation of station WIBW-TV, Topeka, Kansas, and upon the public served by said station.

(b) To determine whether Mid-Kansas, Inc. is not, or would not be, a common carrier under the provisions of the Communications Act of 1934, as amended, and the Commission's rules and regulations.

(c) To determine whether the conclusions set forth in paragraphs 45 thru 51 and 58 thru 79 of the Report and Order in Docket No. 12443, as applied in this case, are in error.

(d) To determine whether, in the light of the determinations made upon the foregoing issues, the Commission should sustain the protest and set aside the grants of the applications herein.

It is further ordered, That Topeka Broadcasters Association, Inc. shall have the burden of proof on all issues herein; and

It is further ordered, That the grants of the foregoing applications, effected September 16, 1960, are hereby stayed pending the Commission's final decision in this matter after hearing; and

It is further ordered, That Topeka Broadcasters Association, Inc., Mid-Kansas, Inc., the Chief Common Carrier Bureau, and the Chief, Broadcast Bureau, are hereby made parties to the proceeding; and that each party intending to participate in the hearing herein shall file a notice of appearance not later than December 12, 1960.

Adopted: November 22, 1960.

Released: November 30, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60—11320; Filed, Dec. 5, 1960; 8:56 a.m.]

[Docket Nos. 13844-13846; FCC 60M-2021]

WCYN RADIO, INC. (WCYN)

Order Scheduling Prehearing Conference

In re applications of WCYN Radio, Inc. (WCYN), Cynthiana, Kentucky, Docket No. 13844, File No. BP-12717; Paul F. Braden (WPAY), Portsmouth, Ohio, Docket No. 13845, File No. BP-12910; Stokley Bowling, C. A. Diecks, H. F. Skidmore, Horace E. Tabb and J. W. Hodges, d/b as Elizabethtown Broadcasting Company (WIEL), Elizabethtown, Kentucky, Docket No. 13846, File No. BP-13766; for construction permits.

On the oral request of counsel for Elizabethtown Broadcasting Company (WIEL) and without objection by counsel for the other parties: *It is ordered,* This 28th day of November 1960, that the prehearing conference now scheduled for November 30, 1960 is rescheduled to Wednesday, December 21, 1960, 10 a.m., in the offices of the Commission, Washington, D.C., and that the hearing now scheduled for December 21, 1960 will be set at a later date.

Released: November 29, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60—11321; Filed, Dec. 5, 1960; 8:56 a.m.]

FEDERAL AVIATION AGENCY

[Amdt. 29]

ORGANIZATION AND FUNCTIONS

Closing of Air Carrier District Office

In accordance with the public information requirements of the Administrative Procedures Act, section 22(b) of the Organization and Functions of the Federal Aviation Agency as published on December 24, 1957 (22 F.R. 10499), is amended to announce the closing of an Air Carrier Office in Region Two:

1. Region Two, the Air Carrier District Office formerly located at Administration

[1] In its opposition, Mid-Kansas shows that it has firm requests for service at Abilene, Clay Center, Concordia, and Beloit. The latter communities, and Salina are outside Topeka's present Grade B contour.

[2] Mid-Kansas' opposition shows that its principals have only a minority interest in the Manhattan CATV and no interest in the Abilene, Clay Center, Concordia, and Beloit CATVs.

[3] *Section 21.709 Renewal of station licenses.* (a) Upon filing application for renewal of station license of a radio system in the Domestic Public Point-to-Point Microwave Radio Service, each such common carrier licensee who does not also operate a telephone or telegraph wireline system shall make a factual showing that, during its preceding license period, at least 50 percent of the total hours of service rendered over the radio system, and not less than 50 percent of the radio channels therein, have been used by subscribers not directly controlling or controlled by, or under direct or indirect common control with, the applicant.

(b) If the applicant is unable to meet the criteria set forth in paragraph (a) of this section, he shall make a factual showing of the extent of such service rendered, the specific nature, extent, and dates of any efforts the licensee has made to achieve use of the service by the public, and offer such further showing or explanation as he may deem appropriate.

(c) The showing made under paragraphs (a) and (b) of this section shall be made in duplicate and under oath and submitted with the appropriate renewal application.

All microwave relay point-to-point radio licenses expire on February 1, 1961.

[4] Mid-Kansas already shows more than a mere holding out. It has shown that it will have unrelated subscribers for its service.

[5] Even were this issue required to be determined, we would designate it for oral argument, as on demurrer, and ultimate disposition would probably follow our earlier decisions in this connection (cf. In the Matter of J. E. Belknap and Associates, 10 R.R. 518A; and In re Application of Carter Mountain Transmission Corp., Docket No. 12931, Memorandum Opinion and Order, May 18, 1860).

Building, Room 107, Municipal Airport, Tulsa, Oklahoma, will be discontinued as of this date.

Issued in Washington, D.C., on November 30, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-11279; Filed, Dec. 5, 1960; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP61-42]

COLORADO-WYOMING GAS CO.

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that Colorado-Wyoming Gas Company (Applicant), a Delaware corporation with a principal office at 888 Sherman Street, Denver, Colorado, filed an application in Docket No. CP61-42 on August 12, 1960, and a supplement thereto on October 14, 1960, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the Applicant to serve natural gas to Public Service Company of Colorado, an existing customer, for distribution in the Town of Niwot, Colorado and also to construct and operate a 4-inch transmission lateral and one meter station to render the proposed service. The lateral would extend from Applicant's main line between Boulder and Longmont to Niwot and service would be rendered to the distributor at the city gate.

The foregoing is more fully stated in the application and supplement thereto filed with the Federal Power Commission, and open to public inspection.

The application recites that Public Service proposes to construct and operate the necessary connection with Colorado-Wyoming's proposed meter station and the distribution facilities in the Town of Niwot. Such facilities will consist of a regulator station, distribution mains, service lines and meter installation costing about $94,600 in 1961 and increasing gradually to $227,200 in 1965.

Applicant states the estimated maximum day and annual requirements of Public Service in Mcf at 14.73 psia are as follows:

Year:	*Maximum day*	*Annual*
1961	127	12,750
1962	255	58,600
1963	523	135,900
1964	993	187,100
1965	1,260	389,400

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 10, 1961 at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of an concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11280; Filed, Dec. 5, 1960; 8:48 a.m.]

[Docket No. CP61-109]

EL PASO NATURAL GAS CO.

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that on October 5, 1960, El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas (Applicant), filed in Docket No. CP61-109 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of routine field facilities to enable Applicant to take into its certificated pipeline system natural gas which will be purchased from producers thereof in the general area of Applicant's existing transmission system from time to time during the calendar year 1961, at a total cost not to exceed $5,000,000, with no single project to exceed a cost of $500,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 29, 1960, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 19, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11281; Filed, Dec. 5, 1960; 8:48 a.m.]

[Docket No. E-6967]

GULF STATES UTILITIES CO.

Notice of Application

NOVEMBER 28, 1960.

Take notice that on November 17, 1960, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Gulf States Utilities Company ("Applicant"), a corporation organized under the laws of the State of Texas and doing business in the States of Texas and Louisiana with its principal business office at Beaumont, Texas, seeking an order authorizing the issuance of 350,000 shares of Common Stock, without par value. Applicant proposes to issue the aforesaid Common Stock and to sell it at competitive bidding on or about January 24, 1961. The aforesaid Common Stock will have one vote per share. Applicant states that the proceeds from the issuance and sale of the additional Common Stock will be used initially to reimburse Applicant's treasury in part for construction expenses heretofore made; will enable Applicant to pay in full all of its short-term notes estimated to be outstanding as of the date of issuance of said additional Common Stock and will permit Applicant to carry forward its construction program until the Spring of 1961.

Any person desiring to be heard or to make any protests with reference to said application should on or before the 19th day of December 1960, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11282; Filed, Dec. 5, 1960; 8:48 a.m.]

[Docket No. CP61-55]

NATURAL GAS PIPELINE COMPANY OF AMERICA

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that Natural Gas Pipeline Company (Applicant), a Delaware corporation with a principal office at 122 South Michigan Avenue, Chicago, Illinois, filed an application in Docket No. CP61-55 on August 23, 1960, and a supplement thereto on September 30, 1960, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate a tap on its existing 24-inch transmission pipeline, and approximately 100 feet of 2-inch lateral from this tap to the facilities of the city of Nebraska City, Nebraska (Nebraska City), and a meter and regulator station at the terminus of Applicant's proposed lateral, all in Otoe County, Nebraska. Applicant proposes to deliver natural gas to the city of Nebraska City for resale and distribution in the village of Unadilla, Nebraska. Applicant states Nebraska City has secured the necessary franchise and will construct and operate the necessary distribution system in the town and about 2,300 feet of pipeline connecting to Natural's pipeline. Nebraska City is an existing customer of Applicant in this area.

The foregoing is more fully stated in the application and supplement on file with the Commission, and open to public inspection.

Nebraska City estimates Unadilla's gas requirements as follows:

	Volumes in Mcf		
	1st year	2d year	3d year
Annual requirements	9,120	10,640	11,400
Peak day requirements	90	105	107.5

The delivery and sale of the gas will be made as part of the existing contract quantity of Nebraska City. The estimated cost of Nebraska City's proposed project is $25,202, which includes a proposed $5,000 contribution to Applicant, which it proposes to finance from funds on hand in its bond surplus fund which was $296,219 as of July 31, 1960. The interest rate is shown as 4 percent.

Applicant estimates the cost of its proposed facilities at $8,630 which will be paid out of funds on hand. Natural proposes to have Nebraska City reimburse it for $5,000 of the total cost.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 10, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11283; Filed, Dec. 5, 1960; 8:49 a.m.]

[Docket No. CP61-97]

NATURAL GAS STORAGE COMPANY OF ILLINOIS

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that on September 30, 1960, as supplemented on October 17, 1960, Natural Gas Storage Company of Illinois, 122 South Michigan Avenue, Chicago 3, Illinois, (Applicant) filed in Docket No. GP61-97 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain additional storage field facilities at the Herscher Storage Field in Kankakee County, Illinois, all as more fully set forth in the application and supplement which are on file with the Commission and open to public inspection.

The facilities for which authorization is sought herein are:

(1) Supercharging three existing 2,000 BHP engines to 2,800 BHP each, a total of 2,400 additional horsepower; costing $325,000;

(2) Drilling and completing two injection-withdrawal wells at the Galesville Reservoir, with appurtenances; costing $144,300;

(3) Drilling and completing three injection-withdrawal wells at the Mount Simon Reservoir, with appurtenances; costing $417,300;

(4) Gathering facilities to tie in the new wells; costing $101,200;

(5) Overhead and contingencies; costing $91,300; and

(6) 2,612,500 Mcf of cushion gas at Mount Simon Reservoir; costing $771,471.

The total estimated cost above is $1,850,571, which Applicant proposes to finance, along with the cost of other certificated facilities, by the issuance and sale of $6,000,000 of bonds plus internally generated cash.

The proposed facilities will be used to increase the presently authorized maximum daily withdrawal from storage of 650,000 Mcf of natural gas to a total of 725,000 Mcf by using all three reservoirs: namely, the Galesville and Mount Simon at Herscher Field, and the Cooks Mills Field, the increased deliveries to be made to present customers of Applicant commencing with the 1961-62 winter season.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 29, 1960, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 19, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11284; Filed, Dec. 5, 1960; 8:49 a.m.]

[Docket No. CP61-99]

NORTHERN NATURAL GAS CO.

Notice of Application and Date of Hearing

NOVEMBER 29, 1960.

Take notice that Northern Natural Gas Company (Applicant), a Delaware corporation with a principal office at 2223 Dodge Street, Omaha, Nebraska, filed an application in Docket No. CP61-99 on September 29, 1960, for a certificate of public convenience and necessity authorizing the Applicant to construct and operate 1.4 miles of 3-inch pipeline from its Wilmar, Minnesota branch line to Bongards' Creamery, plus a measuring and regulating station, all in Carver County, Minnesota, and to sell natural gas to Minnesota Valley Natural Gas Company (an existing customer) for resale on an interruptible basis to Bongards Cooperative Creameries, near Waconia, Minnesota. Minnesota Valley is an existing customer of Northern, distributing gas in Waconia and other towns.

The foregoing is more fully described in the application on file with the Commission and open to public inspection.

The application recites that the proposed service will neither increase the contract demand or saleable capacity of its system nor affect its ability to serve the firm requirements of its utility customers.

On the basis of Bongards Creamery's actual 1959 fuel consumption, its daily and annual requirements for the first three years are estimated respectively at 750 Mcf and 204,300 Mcf at 14.73 psia. The annual curtailment, based on experience, is estimated at 44,400 Mcf.

Applicant states the cost of the proposed facilities including interest and overhead is estimated at $34,680 which Applicant proposes to meet out of cash on hand and cash generated from operations. Applicant states that Minnesota Valley has agreed to reimburse it for the total cost of the proposed facilities.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 11, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11285; Filed, Dec. 5, 1960; 8:49 a.m.]

[Project No. 2275]

PUBLIC SERVICE COMPANY OF COLORADO

Notice of Application for License

NOVEMBER 29, 1960.

Public notice is hereby given that Public Service Company of Colorado, Denver, Colorado, has filed application under the Federal Power Act (16 U.S.C. 791a–825r) for license for constructed Project No. 2275 located on South Arkansas River and Fooses Creek in Chaffee County, Colorado, affecting lands of the United States within he San Isabel National Forest. The project consists of two hydroelectric developments: (1) Salida Hydro No. 1, consisting of the Garfield Division and the Fooses Creek Reservoirs having a combined storage capacity of 16 acre-feet; Garfield gravity pipeline 4806 feet long; pressure pipeline 8080 feet long; powerhouse containing one 750 kw and two 160 kw generators; substation; control equipment and other appurtenances; and (2) Salida Hydro No. 2, consisting of a forebay which is the afterbay of Salida No. 1; pressure pipeline No. 2, 11,668 feet long; powerhouse containing one 560 kw and one 240 kw generator; substation; control equipment and other appurtenances.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is February 7, 1961. The application is on file with the Commission for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11286; Filed, Dec. 5, 1960; 8:49 a.m.]

[Docket No. CP61-79]

UNITED GAS PIPE LINE CO. AND TEXAS GAS TRANSMISSION CORP.

Notice of Application and Date of Hearing

NOVEMBER 3, 1960.

Take notice that on September 20, 1960, United Gas Pipe Line Company (United) and Texas Gas Transmission Corporation (Texas Gas) filed in Docket No. CP61-79 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas at existing and proposed points of interconnection between their two systems as set forth in their exchange agreement dated August 30, 1960, and authorizing the installation and operation of new metering and interconnecting facilities at said proposed points of interconnection, all as more fully set forth in the joint application which is on file with the Commission and open to public inspection.

Proposed interconnections are:

(A) The intersection of United's 26-inch pipeline with Texas Gas' 20-inch pipeline near Bayou Sale, St. Mary Parish, Louisiana;

(B) The intersection of United's 16-inch pipeline with Texas Gas' 20-inch pipeline near Patoutville, Iberia Parish, Louisiana;

(C) The intersection of United's 6-inch pipeline with Texas Gas' 10-inch pipeline near Church Point, Acadia Parish, Louisiana;

(D) The intersection of United's 20-inch pipeline wtih Texas Gas' 16-inch pipeline near Iowa, Calcasieu Parish, Louisiana; and

(E) The intersection of United's 3-inch pipeline with Texas Gas' 26-inch pipeline near Meeker, Rapides Parish, Louisiana.

Existing interconnections at which exchange of gas is proposed are:

(F) The intersection of United's 26-inch pipeline with Texas Gas 26-inch and 18-inch pipelines near Guthrie, Ouachita Parish, Louisiana;

(G) The intersection of United's 8-inch pipeline with Texas Gas' 20-inch pipeline near the Carthage Corporation's gasoline plant in Carthage Field, Texas; and

(H) The tailgate of the Champlin Oil and Refining Company's gasoline plant in Carthage Field, Texas, where United and Texas Gas receive gas.

Texas Gas proposes to install, maintain and own metering facilities at (A) and (C). Estimated capital cost of such facilities is $18,020.

United proposes to install, maintain and own metering facilities at (B), (D) and (E). Estimated capital cost of such facilities is $29,465.

The exchange agreement contemplates deliveries of gas from either party when the system operation of the other party requires assistance, provided that such delivery causes no curtailment or interruption of service to the market of the party making the delivery. The company receiving the delivery must return an equal volume of gas within 60 days or such other period as is mutually agreeable.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 6, 1960, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before November 25, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11287; Filed, Dec. 5, 1960; 8:49 a.m.]

[Docket No. G-2306 etc.]

AMERICAN LOUISIANA PIPE LINE CO. ET AL.

Order Severing Proceedings, Consolidating Proceedings, Fixing Date of Hearing and Specifying Procedure

DECEMBER 1, 1960.

American Louisiana Pipe Line Company, Docket No. G-2306; Michigan Wisconsin Pipe Line Company, Docket No. G-2327; American Louisiana Pipe Line Company, Docket No. G-10396; Panhandle Eastern Pipe Line Company, Docket No. G-11061; Michigan Wisconsin Pipe Line Company, Docket No. G-17180; Trunkline Gas Company, Docket No. CP60-22, (Phase Two); Panhandle Eastern Pipe Line Company, Docket No. CP60-40; Panhandle Eastern Pipe Line Company, Docket No. CP60-60; Panhandle Eastern Pipe Line Company, Docket No. CP60-126; Village of Tremont, Illinois, Docket No. CP61-8; Panhandle Eastern Pipe Line Company, Docket No. CP61-36; Citizens Gas Company, Docket No. CP61-54; Central Illinois Light Company, Docket No. CP61-114; Central Illinois Light Company, Docket No. CP61-115.

In Docket Nos. G-2306, et al.,[1] the Commission issued Opinion No. 276 and accompanying order, on October 1, 1954, authorizing American Louisiana Pipe Line Company (American Louisiana), a Delaware corporation with principal place of business at 645 Griswold Street, Detroit 26, Michigan, to construct a new gas transmission pipeline system approximately 1,200 miles in length to extend from North Tepetate, Louisiana, to Detroit, Michigan.[2] As certificated, the new pipeline system had an initial sales capacity of approximately 300,000 Mcf of natural gas per day. In its application, American Louisiana sought authorization to deliver this entire initial sales capacity to two affiliated companies, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) in the amount of 100,000 Mcf per day, and Michigan Consolidated Gas Company (Michigan Consolidated) in the amount of 200,000 Mcf per day.[3] However, the allocation of the natural gas and certain other issues were reserved in Opinion No. 276.

In Docket No. G-2327, Michigan Wisconsin, a Delaware corporation with principal place of business at 500 Griswold Street, Detroit, Michigan, filed an application for a certificate authorizing the construction and operation of additional pipeline facilities consisting of looping existing pipeline and increasing compressor facilities in order to enlarge its average day system sales capacity from approximately 303,000 Mcf to 403,000 Mcf or more of natural gas per day.[4] This increase would utilize the 100,000 Mcf per day which American Louisiana sought to deliver to Michigan Wisconsin in Docket No. G-2306.

In Docket Nos. G-2306 and G-2327 et al., the Commission issued Opinion No. 291 and accompanying order, on May 7, 1956, authorizing, inter alia, American Louisiana to construct and operate the facilities described in its application in Docket No. G-2306 with respect to which decision was reserved in Opinion No. 276 and accompanying order. Michigan Wisconsin was authorized to construct and operate the facilities described in its application in Docket No. G-2327, consisting of looping existing pipeline facilities and increasing compressor facilities. (15 F.P.C. 23.)[5]

Of its initial sales capacity of approximately 300,000 Mcf per day, American Louisiana was authorized to sell to Michigan Wisconsin the maximum of 85,000 Mcf per day, and to Michigan Consolidated the maximum amount of 135,000 Mcf per day. Final disposition of the remaining volume of 80,000 Mcf per day was reserved until further order of the Commission and, pending such order, that volume was divided 15,000 Mcf per day to Michigan Wisconsin and 65,000 Mcf per day to Michigan Consolidated. (15 F.P.C. at 43).

Having previously amended the pertinent portion of Opinion No. 291 (16 F.P.C. 897), the Commission entered an order on May 9, 1957, which, inter alia, made a further modification of such opinion. It was there provided that Michigan Consolidated was to receive a permanent allocation of 146,000 Mcf per day and Michigan Wisconsin to receive 90,515 Mcf per day. The balance of 59,885 Mcf per day remaining in the American Louisiana capacity was temporarily allocated as follows: (a) 51,600 Mcf per day to Michigan Consolidated and (b) 8,825 Mcf per day to Michigan Wisconsin. (17 F.P.C. 657.)[6]

In Docket No. G-10396,[7] American Louisiana filed an application on May 14, 1956, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, authorizing it to construct and operate certain facilities for the transportation and sale of natural gas in interstate commerce. American Louisiana sought to construct and operate (as additions to the facilities theretofore certificated in Docket No. G-2306), 35.8 miles of 8⅝ inch "gathering" pipeline, meter and regulator stations, four new compressor stations with an aggregate of 42,000 horsepower and an addition of 2,000 horsepower to two of its three then certificated compressor stations. American Louisiana proposed to construct the facilities in two steps, as follows:

"Step one" to consist of the construction of two new 12,000 horsepower compressor stations in Indiana and Ohio and the addition of 2,000 horsepower in two previously certificated stations. This would result in an increase in the system daily delivery capacity from 300,000 Mcf to approximately 360,000 Mcf of natural gas per day.[8]

"Step two" to consist of the construction, by July 1, 1957, of two new compressor stations, numbers 2 and 5, one of 8,000 horsepower to be constructed in Louisiana and one of 10,000 horsepower to be constructed in Tennessee. The resultant increase in daily delivery capacity would be approximately 40,000 Mcf of natural gas per day.[9]

The overall system daily delivery capacity would be increased from 300,000 Mcf of natural gas per day (Docket Nos. G-2306, et al.) to 400,000 Mcf per day upon completion and operation of all the proposed facilities.

In Docket Nos. G-10398, G-10399, G-10400, G-10442 and G-10443, Gulf Refining Company (Gulf), a Delaware corporation, filed on May 14 and May 21, 1956, applications for certificates of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing it to sell natural gas to American Louisiana for transportation and resale in interstate commerce from the following fields: [10]

---

[1] The entire consolidated proceeding included: American Louisiana Pipe Line Company, G-2306; Michigan Wisconsin Pipe Line Company, G-2327 and G-9850; Northern Natural Gas Company, G-2399, G-2460, G-4259, G-4260, G-4261 and G-12241; El Paso Natural Gas Company, G-12135; Permian Basin Pipeline Company, G-12242; Iron Ranges Natural Gas Company, G-9648, G-12223 and G-12217; Midwestern Gas Transmission Company, G-9451, G-9452 and G-9453; Tennessee Gas Transmission Company, G-9454 and G-11107; and Natural Gas Pipeline Company of America, G-9966.

[2] Notice of the application filed by American Louisiana was published in the FEDERAL REGISTER on December 29, 1953 (18 F.R. 8812).

[3] Michigan Consolidated is exempt from the jurisdiction of the Commission (Docket No. G-6507), but forms a part of the American Natural Gas Company, together with American Louisiana and Michigan Wisconsin.

[4] Notice of the application filed by Michigan Wisconsin was published in the FEDERAL REGISTER on December 29, 1953 (18 F.R. 8812).

[5] References to this proceeding include: 15 F.P.C. 23; 16 F.P.C. 702; 16 F.P.C. 720; 16 F.P.C. 779; 16 F.P.C. 858; 16 F.P.C. 897; 16 F.P.C. 944; 17 F.P.C. 300; 17 F.P.C. 461; 17 F.P.C. 657; 17 F.P.C. 671; 18 F.P.C. 632; 18 F.P.C. 685; 19 F.P.C. 1; 19 F.P.C. 217; 19 F.P.C. 268; 19 F.P.C. 737; 19 F.P.C. 913; 19 F.P.C. 1113; 20 F.P.C. 410; 20 F.P.C. 447; 20 F.P.C. 575; 21 F.P.C. 70; 21 F.P.C. 409 and 21 F.P.C. 414.

[6] This temporary allocation was reaffirmed on June 25, 1958 (19 F.P.C. 1113). On October 31, 1958, the Commission entered an opinion and order in Docket Nos. G-2306, et al. (20 F.P.C. 575). In pertinent part, it was found and held that a permanent allocation of the 59,885 Mcf per day reserved in Docket Nos. G-2306 and G-2327 should not be made and should be deferred, with the temporary allocation set forth in 17 F.P.C. 657, 659 remaining in effect (20 F.P.C. 575 at 611, 613).

[7] References to this proceeding include: 17 F.P.C. 22; 18 F.P.C. 571; 19 F.P.C. 661; 20 F.P.C. 475; 20 F.P.C. 851; 21 F.P.C. 218; 21 F.P.C. 366; 21 F.P.C. 530; 21 F.P.C. 683; 22 F.P.C. 82 and 22 F.P.C. 91.

[8] On July 13, 1956, American Louisiana filed an application for temporary authorization to proceed with "step one" of its construction program, which authorization was granted by the Commission on August 8, 1956, without prejudice to the ultimate disposition of the application filed by American Louisiana.

[9] In Docket No. G-10396, an order was entered on March 14, 1958, denying permission to American Louisiana to withdraw pleadings designed to delete "step two" from the expansion program contained in the application.

[10] As noted herein, action in Docket No. G-10398 (Krotz Springs) has been postponed; in Docket No. G-10400 (West Little Chenier), a certificate has been granted; and in Docket Nos. G-10399 (Church Point), G-10442 (Hayes) and G-10443 (Washington), the applications were withdrawn.

Docket No. G–10398, Krotz Springs, La.
Docket No. G–10399, Church Point, La.
Docket No G–10400, West Little Chenier, La.
Docket No. G–10442, Hayes, La.
Docket No. G–10443, Washington, La.

These applications were related to the application filed by American Louisiana in Docket No. G–10396.[11]

In Docket No. G–11061, Panhandle Eastern Pipe Line Company (Panhandle), a Deleware corporation with principal offices at 1221 Baltimore Avenue, Kansas City 5, Missouri, and 120 Broadway, New York 5, New York, filed an application on September 10, 1956, pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving complete abandonment of service to Michigan Consolidated,[12] including the delivery and sale of 125,000 Mcf of natural gas per day to Michigan Consolidated at Detroit, Michigan, and 2,000 Mcf of natural gas per day at Ann Arbor, Michigan.

In Docket Nos. G–10396, G–10398, G–10399, G–10400, G–10442, G–10443 and G–11061, consolidation was effectuated by an order issued October 5, 1956.

In Docket Nos. G–10399, G–10442 and G–10443, the certificate applications filed by Gulf were withdrawn by order of the Commission issued January 11, 1957. In Docket No. G–10398 (Krotz Springs field), action on the motion filed by Gulf to withdraw the certificate application was postponed. (17 F.P.C. 22.) [13]

In Docket Nos. G–10396, et al., an order was issued on October 10, 1958,[14] granting a certificate to American Louisiana and authorizing the construction and operation of the facilities involved in "step one" but not in "step two" of its application in Docket No. G–10396. The increased capacity made available thereby to American Louisiana was allocated 55 percent to Michigan Wisconsin and 45 percent to Michigan Consolidated until further order of the Commission, but none of the expansion gas was to be used for firm loads. (20 F.P.C. 475.)

In Docket No. G–18312, American Louisiana filed an application on April 15, 1959, for a certificate authorizing construction and operation of compressor stations, numbers 2 and 5, totalling 18,000 horsepower, for the purpose of increasing the daily delivery capacity of American Louisiana by approximately 43,000 Mcf of natural gas per day.[15] On December 29, 1959, the certificate was issued in Docket No. G–18312 and what American Louisiana sought in "step two" of its application in Docket No. G–10396, supra, was achieved. (22 F.P.C. 1116.)

In Docket No. G–11061, the order permitting abandonment of service by Panhandle to Michigan Consolidated was issued on December 19, 1958. It was ordered therein, in pertinent part, that American Louisiana should deliver to Michigan Consolidated 127,000 Mcf of natural gas per day, utilizing the 59,885 Mcf of natural gas per day reserved in Docket No. G–2306, additional output by use of all compressors, and the additional 57,000 Mcf per day capacity made available in Docket No. G–10396, until further order of the Commission. (Docket Nos. G–10396, et al.; 20 F.P.C. 851.)

On January 26, 1959, Michigan Consolidated filed with the Commission a proposal in settlement of the controversy. Under this proposal the order authorizing complete abandonment would be modified and would provide, instead, that Panhandle be authorized to abandon as of October 1, 1959, its present deliveries of 127,000 Mcf per day which are available on the peak days upon condition that on the same date Panhandle commence the delivery to Michigan Consolidated of the same annual volume of 46,355,000 Mcf. This plan, Michigan Consolidated urged, would enable Panhandle to serve 75,000 additional space heating consumers and at the same time permit Michigan Consolidated through the use of storage facilities to meet its own requirements. Numerous responses were filed for and against this plan. Among those opposing the plan were Panhandle and many of its customers. Since the plan was not acceptable to the parties and was otherwise inconsistent with the order authorizing abandonment, it was rejected by the Commission. (Docket Nos. G–10396, et al.; 21 F.P.C. 218 at 227.)

In Docket No. G–17180, Michigan Wisconsin filed an application on December 4, 1958, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing it to construct and operate certain facilities to sell natural gas to eight distributing companies [16] for distribution in 29 communities in Wisconsin and one in Michigan, all as more fully represented in the application.

Although Michigan Wisconsin stated in its application that such application is "wholly independent of any application or proposal" then pending before the Commission, it was stated that, on November 4, 1958, Michigan Wisconsin notified the Commission, in compliance with Opinion No. 316 (dated October 31, 1958) (20 F.P.C. 575), that the application in Docket No. G–17180 would be filed. In was also stated that service was originally sought from Michigan Wisconsin by the distributing companies in conjunction with its application in Docket No. G–2327 and that by Opinion No. 291, and subsequent orders, the Commission reserved for service to these new markets an average day volume of 59,885 Mcf out of the initial 300,000 Mcf per day capacity of American Louisiana (citing 15 F.P.C. 23, 16 F.P.C. 897, 17 F.P.C. 300 and 17 F.P.C. 657, in Docket Nos. G–2306, et al.).[17]

To accomplish the sale to the distributing companies, Michigan Wisconsin proposes to construct and operate approximately 278.9 miles of main line extensions and approximately 2,750 additional horsepower on its pipeline facilties.

The proposed expansion is estimated to cost aproximately $9,162,000. It is anticipated that the expansion would be financed through the issuance of bonds in the amount of $8,000,000. The balance of the funds required would be obtained from treasury funds.

In Docket No. G–18144, Panhandle filed an application on March 24, 1959, as supplemented on April 1, 1959, and April 15, 1959,[18] in the alternative for (1) a modification of the certificate of public convenience and necessity issued to it on June 30, 1956, in Docket No. G–2433 or (2) a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the operation of facilities which Panhandle has installed to modernize and turbocharge its compressor engines at existing stations and the delivery of an additional 30,000 Mcf of natural gas per day to its existing customers.

Docket Nos. G–10396, G–10400, G–11061, and G–18144 [19] were consolidated on April 22, 1959, for the purpose of a hearing on the issues concerning the allocation of (1) the 127,000 Mcf per day resulting from the abandonment by Panhandle of service to Michigan Consolidated and (2) the 30,000 Mcf per day resulting from the application filed by Panhandle in Docket No. G–18144 (21 F.P.C. 530).

In Docket No. G–11061, the Presiding Examiner issued his initial decision on June 16, 1959, approving the plan submitted by Panhandle for allocating the 127,000 Mcf of natural gas per day which resulted from the order authorizing abandonment by Panhandle of its service to Michigan Consolidated.

In Docket No. G–18144, the Presiding Examiner recommended that a certificate of public convenience and necessity issue to Panhandle authorizing the modernization and operation by Panhandle of its compressor station engines and a certificate authorizing Panhandle to allocate the 30,000 Mcf per day of additional capacity made available in Docket No. G–18144.

In Docket Nos. G–10396, et al., the Commission issued an order on July 16, 1959, adopting the initial decision of the Presiding Examiner both as to Docket No. G–11061 and Docket No. G–18144 (22 F.P.C. 82).[20]

In Docket Nos. G–10396 et al, eleven consolidated petitions for review were filed with the United States Circuit Court of Appeals for the District of Columbia Circuit, challenging three related orders of the Commission: (1) the order issued December 19, 1958, authorizing the abandonment by Panhandle and allocating American Louisiana's gas to Michigan Consolidated; (2) the order issued February 13, 1959, denying rehearing, rejecting the offer of settlement submitted by Michigan Consolidated and excluding the American Natural system and its customers from further proceedings involving disposition of the abandonment gas and (3) an order, issued during the course of the hearings, affirming the exclusion of certain evidence by the Presiding Examiner. Upon review, the orders were set aside and the case remanded to the Commission for further proceedings not inconsistent with the opinion of the Court. Michigan Consolidated Gas Company *v.* F.P.C., -- U.S. App. D.C., --, --, F 2d -- (Nos. 14975, et al., decided April 29, 1960, rehearing denied, July 11, 1960).

In Docket Nos. G–10396 et al., petitions were also filed with the Court to review the order of the Commission approving the proposal submitted by Panhandle for the distribution of 157,000 Mcf of gas among its customers, including the 127,000 Mcf of abandonment gas and the 30,000 Mcf made available by the expansion of the transmission facilities of Panhandle. Upon review, it was ordered that the order of allocation of the abandonment gas be set aside as moot. The order denying Michigan Consolidated leave to intervene with respect to the 30,000 Mcf was affirmed. Michigan Consolidated Gas Company v. F.P.C. -- U.S. App. D.C. --, --, F. 2d -- (No. 15358, decided July 11, 1960)

In CP60–22, Trunkline Gas Company (Trunkline), a Delaware corporation with principal place of business at Houston, Texas, filed an application on February 2, 1960, as amended on April 29, 1960, and July 11, 1960, for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of certain facilities, and the sale of gas therefrom, all as more fully represented in the application. Pursuant to a notice of applications, issued August 12, 1960,[21] a consolidated hearing [22] was commenced on September 7, 1960, before a Presiding Examiner and the matter is pending decision on "Phase One" of the application filed by Trunkline.[23]

In Docket No. CP60–22, Trunkline requested in its second amendment filed on July 11, 1960, that consideration of the proposed sale of approximately 130,000 Mcf per day of natural gas to Panhandle, as described in the original application, be deferred until the Commission is prepared to proceed with the pending expansion application filed by Panhandle in Docket No. CP60–60. The notice of application issued on August 12, 1960, supra, related only to the "First Phase" of the application in Docket No. CP60–22 and not to the "Second Phase", the proposed sales to Panhandle.

In "Phase Two", Trunkline requests authorization to expand its certificated design capacity from 605,000 Mcf per day [24] to 710,000 Mcf per day for the purpose of increasing its sale to Panhandle. The application states that Panhandle has advised Trunkline of the intention of Panhandle to increase the volumes of gas to be supplied to its customers for the purpose of meeting the rapidly growing requirements of its markets and that Trunkline has agreed to supply Panhandle with substantial additional quantities of gas and to increase the maximum daily quantity to be sold by Trunkline to Panhandle to 475,000 Mcf, representing an increase of approximately 130,000 Mcf per day.[25]

In order to increase its line capacity to make the sale of an additional 130,000 Mcf per day to Panhandle, Trunkline proposes to install approximately 97.5 miles of main line loop and other necessary appurtenances.[26]

The proposed total expansion is estimated to cost approximately $45,100,000 and the proposed financing includes the sale of $10,000,000 in common stock to Panhandle and the issuance of $35,000,000 in long-term securities, consisting of $27,000,000 in bonds and $8,000,000 in preferred stock. "Phase One" of the application is estimated to cost approximately $25,400,000, and the proposed financing of it includes the issuance of $20,000,000 in long-term securities and the sale of $5,400,000 in common stock to Panhandle.

In CP60–40, Panhandle filed on February 19, 1960, an application, as supplemented on March 21, 1960, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity seeking authorization to construct and operate a measuring and regulating station on its existing main line in Paulding County, Ohio, in order to transport and sell natural gas to General Portland Cement Company (Portland), on an interruptible basis during the period March 15 to November 15 of each year, all as more fully represented in the application.

The application states that Portland will use the natural gas to fire 2 kilns in the manufacture of cement at its plant in Paulding County and that Portland will realize important economies in fuel consumption, ease of operation and other benefits by use of natural gas.

The sale will be made pursuant to an industrial gas contract which provides, among other things, for a maximum delivery of up to 10,000 Mcf per day during the period March 15 to November 15 of each year.

To accomplish the sale to Portland, Panhandle proposes to construct a measuring and regulating station at a cost of approximately $20,700, to be financed from funds on hand. Portland will construct and operate a short connecting lateral to its cement plant from the main line of Panhandle.

Notice of the application filed by Panhandle was published in the FEDERAL REGISTER on September 3, 1960 (25 F.R. 8584). The hearing, originally scheduled for September 29, 1960, was continued on September 28, 1960, subject to further notice by the Secretary of the Commission (25 F.R. 9577).

In Docket No. CP60–60, Panhandle filed, on March 14, 1960, as amended on May 24, 1960, and supplemented on August 19, 1960, an application pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct and operate certain facilities for the transportation and sale of an additional volume of 325,000 Mcf of natural gas per day in interstate commerce, all as more fully represented in the application.

Panhandle seeks authorization to construct and operate approximately 298 miles of 30-inch pipeline loops along its main transmission line between its existing Liberal, Kansas, and Montezuma, Indiana, compressor stations, and to add 25,000 horsepower of compressor units to existing stations along this section of line. Panhandle also proposes to construct and operate approximately 42.8 miles of 16- and 26-inch supply laterals and approximately 80 miles of 6- to 12-inch sales laterals.

---

[11] Notice of the applications of American Louisiana and Gulf was published in the FEDERAL REGISTER on August 24, 1956 (21 F.R. 6397–6398).

[12] Notice of the application filed by Panhandle was published in the FEDERAL REGISTER on October 11, 1956 (21 F.R. 7783).

[13] The right of Gulf to cancel the Krotz Springs contract is now the subject of judicial proceedings (20 F.P.C. 475 at 477).

[14] In Docket No. G–10400, the order of October 10, 1958 also granted a certificate of public convenience and necessity to Gulf. And in the same order, the Commission deferred action on the application by Panhandle to abandon service to Michigan Consolidated in Docket No. G–11061.

[15] Notice of the application filed by American Louisiana was published in the FEDERAL REGISTER on September 18, 1959 (24 F.R. 7558).

[16] Including: City Gas Company, Merrill Gas Company, Peoples Gas Company, Wisconsin Fuel and Light Company, Wisconsin Public Service Corporation, Wisconsin Rapids Gas and Electric Company, Central Wisconsin Gas Company and Natural Gas Distributors, Inc.

[17] In its application in Docket No. G–17180, Michigan Wisconsin also referred to Opinion No. 316, wherein its application to serve the same distributing companies as well as certain other communities and to provide an inter-connection with the facilities of Northern Natural Gas Company was denied (Docket No. G–9850) (20 F.P.C. 575 at 603–606, 613).

See also the application and orders of the Commission issued in the consolidated proceedings involving Docket No. G–18316 (22 F.P.C. 775, 1157; 23 F.P.C. 111, 583, 740; 24 F.P.C. 33), appeal pending, Michigan Gas and Electric Company v. F.P.C., CADC No. 15592.

[18] Notice of the application filed by Panhandle was published in the FEDERAL REGISTER on April 29, 1959 (24 F.R. 3334).

[19] Michigan Consolidated was denied leave to intervene in Docket No. G–18144 (21 F.P.C. 688 and 22 F.P.C. 91).

[20] The initial decision of the Presiding Examiner appears at 22 F.P.C. 86.

[21] Notice of the applications was published in the FEDERAL REGISTER on August 18, 1960 (25 F.R. 8008).

[22] In "Phase One" of Docket No. CP60–22, Trunkline seeks authority to make initial deliveries and sales of gas to Mississippi River Transmission Corporation, Northern Indiana Public Service Company, Central Illinois Electric and Gas Company and the City of Rensselaer, Indiana. Trunkline also proposes to deliver additional volumes of gas to certain of its existing customers, namely, Central Illinois Public Service Company, Citizens Gas Company, United Cities Gas Company and the City of McLeansboro, Illinois.

In the application, as amended, Trunkline proposes to construct and operate only a portion of those facilities described in its original application, including the installation of 154.5 miles of main loop line and 69.4 miles of supply lateral, measuring stations and other appurtances.

[23] The entire consolidated proceeding included: Trunkline Gas Company, Docket Nos. CP60–22 and CP60–61; Mississippi River Transmission Corporation, Docket No. CP60–95; Richardson & Bass, (Operator), Docket No. CI60–209; The California Company, Docket No. CI60–215 and Humble Oil & Refining Company, Docket No. CI60–259.

[24] Assuming that "Phase One" of the application in Docket No. CP60–22 is granted.

[25] The present Panhandle contract-demand from Trunkline is 345,000 Mcf per day.

[26] The 154.5 miles of main line loop proposed in "Phase One" and the 97.5 miles proposed herein will complete the looping of the main transmission line of Trunkline.

The proposed expansion is estimated to cost approximately $46,480,000, of which $43,680,000 is associated with main line and supply lateral facilities. It is anticipated that the expansion would be financed through the issuance of debentures.

Panhandle alleges that it has increased volumes of gas available from Trunkline, its subsidiary, and that it has entered into contracts with independent producers, which, together with existing supplies, assure that Panhandle can make the increased deliveries of gas for which it here seeks authority. Panhandle proposes to distribute the additional volumes of gas made available by this expansion to existing customers and "such other customers as may be sought during the pendency of the proceedings".

In Docket No. CP60–126, Panhandle filed on June 20, 1960, an application and on June 24, 1960, a supplement thereto, pursuant to section 7 of the Natural Gas Act, requesting authorization to transport natural gas in interstate commerce for sale to Johns-Manville Fiber Glass, Inc. (Johns-Manville) in Ohio, all as more fully represented in the application.

Panhandle now has authorization to transport gas to existing plants of Johns-Manville near Defiance, Ohio, and proposes to transport additional gas for sale and delivery to the new Johns-Manville fiberglass plant and to an existing Johns-Manville plant near Waterville, Ohio. The sales are to be made on an interruptible basis. Panhandle has agreed to supply Johns-Manville's natural gas requirements for processing use up to a daily volume of 6,000 Mcf. The estimated annual requirement for the proposed new service will not exceed 600,000 Mcf per year. Panhandle alleges that natural gas is essential to the processes which will be performed in the new Johns-Manville plant. The gas will be used principally to fire smelters and refiners in the glass furnaces, the product of which will be textile fiber glass. Panhandle states that the gas will not be used for boiler fuel. Under the contract between these parties Johns-Manville is required to keep standby fuel on hand.

Panhandle proposes to construct and operate measuring and regulating equipment at the point of connection between the main line of Panhandle and the supply line to the plants. The cost of the measuring and regulating station is estimated to be $15,000, which will be financed from cash on hand.

Notice of the application filed by Panhandle was published in the FEDERAL REGISTER on September 3, 1960 (25 F.R. 8584). The hearing, originally scheduled for October 25, 1960, was continued on September 23, 1960, subject to further notice by the Secretary of the Commission (25 F.R. 9309).

In Docket No. CP61–8, the Village of Tremont, Illinois, a municipal corporation organized and existing under the laws of Illinois, filed an application on July 14, 1960, as supplemented on September 13, 1960, pursuant to section 7(a) of the Natural Gas Act for an order directing Panhandle to establish physical connection of its transmission facilities with the facilities which it proposes to construct and to sell and deliver natural gas to it, all as more fully set forth in the application.[21]

The Village of Tremont is seeking a supply of gas in the following amounts:

[Mcf]

		Annual	Peak day
1st	year	33,520	270
2d	year	53,350	430
3d	year	71,110	580

The Village of Tremont proposes to construct and operate a distribution system and a lateral line extending from the village border to an interconnection with the Panhandle transmission line approximately 4 miles west of the village.

The total estimated cost of constructing the proposed distribution system and supply lateral is $275,000, which would be financed by the issuance of municipal natural gas revenue bonds, payable from the revenues of the gas system.

In Docket No. CP61–36, Panhandle filed an application on August 8, 1960, pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity requesting authorization for the sale and delivery of natural gas to The B.F. Goodrich Company (Goodrich), in Allen County, Indiana, all as more fully set forth in the application.[22]

Panhandle proposes to transport the gas through its existing facilities to its Edgerton Compressor Station in Allen County, Indiana, at which point Northern Indiana Fuel and Light Company (Northern Indiana), a local distributor of gas in Indiana, will interconnect. Northern Indiana will transport the gas to Goodrich for the account of Panhandle and will be paid by Panhandle at the rate of 2 cents per Mcf for each Mcf transported and delivered. No additional facilities will be constructed by Panhandle.

The annual requirements of the Goodrich plant are estimated by Goodrich to be 580,000 Mcf and the contract volume which Panhandle is obligated to deliver does not exceed 5,000 Mcf per day. The service will be interruptible when in Panhandle's judgment firm customer requirements so warrant.

It is anticipated that service would commence on or about October 1, 1961, on which date Goodrich will have completed this new plant. Panhandle states that it has sufficient supplies of gas to furnish the service required by the Goodrich plant. On June 10, 1960, the Public Service Commission of Indiana entered an order granting authorization to Panhandle for the service to Goodrich.

In Docket No. CP61–54, Citizens Gas Company (Citizens Gas), an Illinois corporation of Tuscola, Illinois, filed on August 22, 1960, an application pursuant to section 7(a) of the Natural Gas Act for an order directing Panhandle to establish physical connection of its transportation facilities with the proposed facilities of Citizens Gas and to sell and deliver natural gas to Citizens for distribution and resale in the Village of Pesotum, Illinois, and surrounding area, all as more fully set forth in the application.

The facilities proposed to be constructed by Citizens Gas consist of a 3-inch pipeline extending from the village border for 2½ miles to the point of intersection with the Champaign Lateral on the Panhandle system, together with the necessary distribution lines.

The estimated natural gas requirements for the above service area are as follows:

Year	1	2	3	4	5
Peak day (Mcf)	157	255	324	343	353
Annual (Mcf)	16,778	27,392	37,130	37,206	38,348

Citizens Gas alleges that it is presently engaged in the business of distributing natural gas at retail in several communities in Illinois and that it has contract arrangements with Panhandle for sufficient quantities of natural gas to serve the market in the Village of Pesotum without any increase in firm contract quantities. The estimated cost of the facilities proposed by Citizens Gas is $89,544, initially, increasing to an ultimate cost of $109,000, which costs will be paid from available company funds.

In CP61–114, Central Illinois Light Company (Central Illinois), 300 Liberty Street, Peoria, Illinois, filed an application on October 11, 1960, pursuant to section 7(a) of the Natural Gas Act, for an order directing Panhandle to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Central Illinois and to sell and deliver to Central Illinois its natural gas requirements for the Village of Williamsville, Sangamon County, Illinois (Williamsville), all as more fully represented in the application.

The application states that Williamsville has a population of approximately 750 and is situated approximately one quarter mile east of the 16-inch gas transmission line of Panhandle known as the Peoria Lateral. There are no existing natural gas facilities in Williamsville or its environs. Central Illinois is an operating public utility furnishing electric, gas and steam heating utility services in central Illinois and all the natural gas supplied by it to its customers is purchased from Panhandle, being delivered through the 16-inch Peoria Lateral.

Central Illinois proposes to construct and operate a local distribution system for service to Williamsville and environs at an estimated initial installation cost of $141,200, with an estimated cost at the end of the first five years of $157,600, which will be financed from funds available for construction purposes.

[21] On October 14, 1960, Panhandle filed an answer in opposition to the application filed by the Village of Tremont, including a motion to consolidate Docket No. CP61–8 with the existing application filed by Panhandle in Docket No. CP60–60.

[22] On September 16, 1960, Michigan Consolidated filed a motion to consolidate the applications filed by Panhandle in Docket Nos. CP60–40, CP60–126 and CP61–36 with the remanded proceedings in Docket Nos. G–10396 and G–11061 for hearing and decision.

It is estimated in the application that the peak day and annual requirements for the proposed service are 425 Mcf and 49,610 Mcf, respectively, for the first year and 626 Mcf and 70,489 Mcf, respectively, in the third year of service. Central Illinois alleges that use of this natural gas will afford substantial savings and convenience to the public in Williamsville and environs.

In Docket No. CP61–115, Central Illinois filed an application on October 11, 1960, pursuant to section 7(a) of the Natural Gas Act, for an order directing Panhandle to establish physical connection of its transportation facilities with the facilities proposed to be constructed by Central Illinois, and to sell and deliver to Central Illinois its natural gas requirements for the Village of Sherman, Sangamon County, Illinois (Sherman), all as more fully represented in the application.

The application states that Sherman has a population of approximately 300 and is situated approximately one-half mile west of the 16-inch gas transmission line of Panhandle known as the Peoria Lateral. There are no existing natural gas facilities in Sherman or its environs. Central Illinois is an operating public utility furnishing electric, gas and steam heating utility services in central Illinois and all of the natural gas supplied by it to its customers is purchased from Panhandle, being delivered through the 16-inch Peoria Lateral.

Central Illinois proposes to construct and operate a local distribution system for service to Sherman and environs at an estimated initial installation cost of $94,000, with an estimated cost at the end of the first five years of $123,500, which will be financed from funds available for construction purposes.

It is estimated in the application that the peak day and annual requirements for the proposed service are 164 Mcf and 18,127 Mcf, respectively, for the first year and 358 Mcf and 38,417 Mcf, respectively, in the third year of service. Central Illinois alleges that use of this natural gas will afford substantial savings and convenience to the public in Williamsville and environs.

All applications referred to herein are on file with the Commission and are open for public inspection. This order shall constitute notice of the filing of such applications.

The Commission finds:

(1) It is necessary and appropriate in the public interest to reopen the proceedings in Docket Nos. G–2306, G–2327, G–10396 and G–11061.

(2) It is necessary and appropriate in the public interest that Docket Nos. G–2306, G–2327, G–10396 and CP60–22 (Phase Two) be severed from all other dockets in which consolidation of Docket Nos. G–2306, G–2327, G–10396 and CP60–22 (Phase Two) and such other dockets has previously been ordered and, further, that the issues of allocation of natural gas remaining in Docket Nos. G–2306, G–2327, and G–10396 be severed from all other issues arising in the applications filed in such dockets and, further, that the issues remaining in Docket No. CP60–22 (Phase Two) be severed from all other issues arising in connection with the application filed therein.

(3) It is necesary and appropriate in the public interest that those portions of the applications in Docket Nos. G–2306, G–2327 and G–10396 regarding the allocation of natural gas, the application for abandonment in Docket No. G–11061, "Phase Two" of the application filed in Docket No. CP60–22, and the applications in Docket Nos. G–17180, CP60–40, CP60–60, CP60–126, CP61–8, CP61–36, CP61–54, CP61–114, and CP61–115 be consolidated, pursuant to § 1.20(b) of the rules of practice and procedure of the Commission, for the purpose of hearing on all matters at issue therein, including but not limited to a comparative consideration of the system capacities, markets and supplies of each party.

(4) It is necessary and appropriate in the public interest that an order of procedure be prescribed and followed so that the consolidated proceeding required by this order will be completed with reasonable dispatch.

The Commission orders:

(A) The proceedings in Docket Nos. G–2306, G–2327, G–10396, and G–11061 be reopened in accordance with this order.

(B) The orders consolidating Docket Nos. G–2306, G–2327, G–10396, and CP60–22 (Phase Two) with any other docket or proceeding be modified and all such other dockets or proceedings be severed from the instant consolidated proceedings and, further, the issues concerning allocation of natural gas remaining in Docket Nos. G–2306, G–2327, and G–10396 be severed from any and all other issues arising in the applications filed therein and, further, the issues concerning "Phase Two" of Docket No. CP60–22 be severed from any and all other issues arising in connection with the application filed in Docket No. CP60–22.

(C) The proceedings upon the applications filed in Docket Nos. G–2306, G–2327, G–10396, G–11061, G–17180, CP60–22 (Phase Two), CP60–40, CP60–60, CP60–126, CP61–8, CP61–36, CP61–54, CP61–114, and CP61–115 be consolidated for hearing in accordance with this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and Regulations thereunder, and the rules of practice and procedure of the Commission, a hearing will be held commencing January 31, 1961 at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented in such applications, including but not limited to a comparative consideration of the system capacities, markets and supplies of each party. The hearing required by this order shall be conducted in accordance with the procedure prescribed in paragraph (E) hereof.

(E) With respect to the conduct of the hearing in this consolidated proceeding, unless the Presiding Examiner is convinced that a suggested deviation therefrom will materially assist in the prompt disposition of the issues, the procedure shall be as follows:

(i) The record in the consolidated proceeding shall be numbered consecutively commencing with page number one.

(ii) Other than the evidence referred to in subparagraph (viii) hereof, all testimony shall be presented orally upon the record at the hearing in the consolidated proceeding, in question and answer form. So-called prepared testimony shall be received as evidence in the consolidated proceeding when, in the opinion of the Presiding Examiner, the submission of the prepared testimony of particular witnesses will enable the hearing to be terminated with more reasonable dispatch.

(iii) Direct testimony with respect to all applications shall be presented prior to the commencement of any cross-examination.

(iv) The Village of Tremont shall go forward first with its direct evidence as to all matters related to its application in Docket No. CP61–8; following which Citizens Gas shall present its direct case in support of its application in Docket No. CP61–54; following which Central Illinois shall present its direct case in support of its applications in Docket Nos. CP61–114 and CP61–115.

Following which Trunkline shall present its direct case in support of its application in Docket No. CP60–22 (Phase Two).

Following which Panhandle shall present its direct case in support of its applications in Docket Nos. G–11061, CP60–40, CP60–60, CP60–126 and CP61–36.

Following which American Louisiana shall present its direct case in support of the allocation issues remaining in connection with the applications filed by it in Docket Nos. G–2306 and G–10396.

Following which Michigan Wisconsin shall present its direct case in support of its application in Docket No. G–17180 and in support of the allocation issues remaining in connection with the application filed by it in Docket No. G–2327.

Following which any party filing, pursuant to paragraph (F) hereof, a proposal or offer of settlement in the instant consolidated proceeding which is not agreed to by all the parties, shall present its direct case in support of such proposal or offer of settlement, including all relevant evidence which any other party may desire to offer. In the event that more than one proposal or offer of settlement is filed, the Presiding Examiner shall determine the order of presentation of direct evidence in support of such proposals or offers of settlement: *Provided, however,* That if a proposal or offer of settlement is filed by the Village of Tremont, Citizens Gas, Central Illinois, Trunkline, Panhandle, American Louisiana or Michigan Wisconsin, such party or parties shall present its direct case in support of its proposal or offer at the time it presents its direct case in support of the applications referred to hereinabove in this subparagraph.

(v) The order of presentation of all other evidence by the parties, including

rebuttal evidence, shall be determined by the Presiding Examiner: *Provided, however*, That presentation of evidence, if any, by staff shall be subsequent to that presented by all parties.

(vi) Upon the conclusion of the testimony of the last witness on direct, the Presiding Examiner shall recess the hearing until such date as he determines will permit the parties and staff a reasonable time within which to prepare for cross-examination.

(vii) Any party to this consolidated proceeding desiring to offer any testimony or exhibit previously presented in prior or other Commission proceedings for admission in evidence in this consolidated proceeding by reference to the prior or other proceeding, shall have such testimony or exhibit physically reproduced. Fifteen copies of such reproduced testimony or exhibit material shall be filed with the Commission on or before January 9, 1961, and service thereof shall be made upon those persons named in the list issued in accordance with paragraph (J) hereof.

(viii) Only testimony or exhibits previously presented in prior or other Commission proceedings which are physically reproduced, filed with the Commission and served in accordance with subparagraph (vii) hereof, and admitted into evidence by the Presiding Examiner, will be considered a part of the record in the consolidated proceeding required by this order.

(F) Proposals or plans for settlement of the consolidated proceeding required by this order, by any person, shall be filed with the Commission on or before January 6, 1961, and service thereof shall be made upon those persons named in the list issued in accordance with paragraph (J) hereof. Written response must be submitted by each person receiving a copy of the proposal or plan for settlement. The written responses shall be filed with the Commission on or before January 16, 1961, and service thereof shall be made upon those persons named in the list issued in accordance with paragraph (J) hereof. Fifteen copies of such proposals, plans and responses shall be filed with the Commission.

Consideration of such proposals or plans for settlement will be encompassed within the hearing on the consolidated proceeding required by this order. A settlement proposal which is agreed to by all the parties may be filed in accordance with 18 CFR 1.18 (1949).

(G) This order shall constitute notice of the following:

In Docket No. G–2306, application filed by American Louisiana, the issues regarding the allocation, if any, of the remaining natural gas.

In Docket No. G–2327, application filed by Michigan Wisconsin, the issues regard the allocation, if any, of the remaining natural gas.

In Docket No. G–10396, application filed by American Louisiana, the issues regarding the allocation, if any, of the remaining natural gas.

In Docket No. G–11061, the application filed by Panhandle on September 10, 1956.

Application of Michigan Wisconsin, Docket No. G–17180, filed December 4, 1958.

Application of Trunkline, Docket No. CP60–22 (Phase Two), filed February 2, 1960, as amended on April 29, 1960 and July 11, 1960.

Application of Panhandle, Docket No. CP60–40, filed February 19, 1960, as supplemented on March 21, 1960.

Application of Panhandle, Docket No. CP60–60, filed March 14, 1960, as amended on May 24 and supplemented on August 19, 1960.

Application of Panhandle, Docket No. CP60–126, filed June 20, 1960, as supplemented on June 24, 1960.

Application by the Village of Tremont, Illinois, Docket No. CP61–8, filed July 14, 1960, as supplemented on September 13, 1960.

Application by Panhandle, Docket No. CP61–36, filed August 8, 1960.

Application of Citizens Gas, Docket No. CP61–54, filed August 22, 1960.

Application of Central Illinois, Docket No. CP61–114, filed October 11, 1960.

Application of Central Illinois, Docket No. CP61–115, filed October 11, 1960.

(H) Any person heretofore permitted to intervene in the several and separate or consolidated proceedings in Docket Nos. G–2306, G–2327, G–10396, G–11061, G–17180, CP60–22, CP60–40, CP60–60, CP60–126, CP61–8, CP61–36, CP61–54, CP61–114, or CP61–115 desiring to participate in the consolidated proceeding required by this order shall, on or before December 21, 1960, file with the Commission a notice of intention to participate. An original and fourteen conformed copies of such notice shall be filed with the Commission. It will not be necessary for such person to file a petition for leave to intervene in the consolidated proceeding.

The notice shall include the exact legal name of the person and its principal place of business, the name and address of its attorney and the name, title and mailing address of the person or persons to whom communications concerning the consolidated proceeding are to be addressed.

Any such person who does not file such notice shall not participate in the consolidated proceeding required by this order except upon a showing of extraordinary reason.

(I) Further protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 21, 1960.

(J) Subsequent to December 21, 1960, the Secretary of the Commission shall issue a list showing those persons who have filed applications, notices of intention to participate and further protests or petitions to intervene in the consolidated proceeding required by this order.

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11322; Filed, Dec. 5, 1960; 8:56 a.m.]

[Docket No. E–6969]

HEADWATER BENEFITS INVESTIGATION IN KANAWHA RIVER BASIN

Order Instituting Investigation

DECEMBER 1, 1960.

Pursuant to the provisions of section 10(f) of the Federal Power Act, we are authorized to determine and assess headwater improvement benefit charges against the owner of any water power project directly benefited by upstream improvements constructed by the United States, its licensees or permittees. The United States and its licensees or permittees have constructed and operated reservoir storage developments on the Kanawha River and tributaries in Virginia or West Virginia which may directly provide power benefits to downstream non-Federal water power developments.

The Commission finds: It is appropriate and in the public interest that an investigation be instituted by the Commission as hereinafter provided.

The Commission orders: An investigation is hereby instituted pursuant to the provisions of the Federal Power Act, particularly section 10(f) thereof, for the purpose of enabling the Commission to determine whether any of the non-Federal water power projects located downstream from improvements constructed by the United States, its licensees, or permittees on the Kanawha River and tributaries, are directly benefited by the construction and operation of such upstream improvements of the United States, its licensees or permittees and, if it so finds, to determine the equitable proportion of the annual charges to be paid by the owner of any downstream non-Federal water power project so benefited for interest, maintenance and depreciation on such upstream improvements constructed by the United States, its licensees or permittees.

By the Commission.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11323; Filed, Dec. 5, 1960; 8:56 a.m.]

[Docket No. RP61–14]

HOPE NATURAL GAS CO.

Order Providing for Hearing and Suspending Proposed Revised Tariff

NOVEMBER 30, 1960.

Hope Natural Gas Company (Hope), on October 31, 1960, tendered for filing its FPC Gas Tariff, First Revised Volume No. 1, proposing an annual increase in its rates and charges of approximately $3,551,923, or 5.8 percent, based on sales for the year ended August 31, 1960, as adjusted. Likewise, the company proposes a revision in its rate structure, and requests an effective date of December 1, 1960.

The proposed increased rates and charges would be in addition to the proposed increased rates and charges presently in effect subject to refund in Docket No. G–17220. In support of the increased rates and charges Hope asserts that they are made necesary because of (1) an increase in purchased gas costs to reflect the increased rates and charges of Tennessee Gas Transmission Company (TGT), one of its main suppliers, which became effective subject to refund on April 5, 1960 in Docket No. G–19983; (2) increased rates of local producers; (3) claimed loss of substantial sales volumes; (4) a claimed need for a rate of return of 6¾ percent on properties other than wellhead and rate of return of 10 percent on wellhead properties (exclusive of Louisiana properties); and (5) increases in operating expenses including increased wages and salaries.

The basic change in Hope's rate structure is the substitution of demand and commodity rates for straight volumetric rates. The contract-demand rate schedules contain minimum take-or-pay-for provisions based upon 65 percent of the annual quantity.

Since the proposed increased rates and charges of TGT are subject to hearing and refund, Hope's increased rates and charges to that extent are based upon contingent costs. Additionally, Hope has not fully supported other cost elements of its proposed increased rates and the lawfulness of its proposed changes in rate structure has not been fully shown.

The proposed increased rates and charges provided for in the above designated revised tariff tendered by Hope on October 31, 1960, may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the proposed changes in rates, charges, classifications or services, and that the above designated revised gas tariff be suspended and the use thereof be deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly §§ 4 and 15 thereof, the Commission's rules of practice and procedure and regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held on a date to be designated by notice from the Secretary of the Commission, concerning the lawfulness of the rates, charges, classifications, and services contained in Hope's FPC Gas Tariff as proposed to be revised by the above designated First Revised Volume No. 1.

(B) Pending such hearing and decision thereon, Hope's proposed FPC Gas Tariff, First Revised Volume No. 1 is hereby suspended and the use thereof deferred until May 1, 1961, and until such further time as it may be made effective in the manner prescribed by the Natural Gas Act.

(C) Notices of intervention of petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37 (f) on or before January 16, 1961.

By the Commission.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11324; Filed, Dec. 5, 1960; 8:57 a.m.]

[Docket No. CP61–113]

UNITED GAS PIPE LINE CO.

Notice of Application and Date of Hearing

NOVEMBER 30, 1960.

Take notice that United Gas Pipe Line Company (Applicant), a Delaware corporation with a principal office (1525 Fairfield Ave.) in Shreveport, Louisiana, filed an application in Docket No CP61–113 on October 10, 1960, pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove natural gas facilities subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission, and open to public inspection.

Applicant proposes the removal and abandonment of a sales meter station and appurtenant facilities formerly used to deliver natural gas to Gulf Oil Corporation from Applicant's Sour Lake lateral pipeline in Hardin County, Texas.

The application recites that Applicant's contract with Gulf Oil Corporation covering the delivery of natural gas for use in a treater heater near Sour Lake, Texas, has terminated, and the deliveries of natural gas to such customer ceased on April 1, 1960, according to the application.

The application recites that the original cost of the subject facilities serving Gulf Oil Corporation was $372.80.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 12, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefore is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60–11325; Filed, Dec. 5, 1960; 8:57 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812–1325]

BROAD STREET INVESTING CORP.

Notice of Filing of Application for Order Exempting Sale by Open-End Company of Its Shares at Other Than the Public Offering Price in Exchange for Assets of Private Investment Company

NOVEMBER 29, 1960.

Notice is hereby given that Broad Street Investing Corporation ("Broad Street"), a registered open-end investment company, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting from the provisions of section 22(d) of the Act the proposed issuance of its shares at net asset value for substantially all of the cash and securities of Hudson Investment Corporation ("Hudson").

Shares of Broad Street, a Maryland corporation, are offered to the public on a continuous basis at net asset value plus varying sales charges dependent on the amount purchased. As of September 26, 1960, the net assets of Broad Street amounted to $190,558,865.

Hudson, a New Jersey corporation, is a personal holding company with seven stockholders (of which two hold only directors' qualifying shares) which engages in the business of investing and reinvesting its funds. Hudson is exempt from registration under the Act by reason of the provisions of section 3(c)(1) thereof. Pursuant to an agreement between Broad Street and Hudson, substantially all of the cash and securities of Hudson, with a total value of $2,606,727 as of September 26, 1960, will be transferred to Broad Street in exchange for shares of stock of Broad Street. The shares acquired by Hudson are to be distributed immediately to its shareholders, who intend to take such shares for investment with no present intention of distribution or redemption. The number of shares of Broad Street to be delivered to Hudson will be determined by dividing the net asset value per share of Broad Street in effect at the closing time into the value of the Hudson assets to be exchanged (with certain adjustments as set forth below). The valuation time is fixed in the agreement as 3:30 p.m. on January 3,1961.

Since the exchange will be tax free for Hudson and its shareholders, Broad Street's cost basis for tax purposes on the assets acquired from Hudson will be the same as for Hudson, rather than the price actually paid by Broad Street for

the assets. Of the assets to be acquired from Hudson, Broad Street intends to retain in its portfolio, subject to changes in investment conditions and considerations, securities having a value as of September 26, 1960, of $222,188, including unrealized appreciation of $76,038. Broad Street also will acquire from Hudson for retention in its portfolio common stocks duplicating holdings in Broad Street's portfolio which Hudson intends to acquire prior to the exchange by investing its cash and the proceeds from the sale of its holdings of government securities. The aggregate value of such government securities and cash as of September 26, 1960, was $1,225,000. Other securities to be acquired from Hudson will be sold by Broad Street after acquisition. As of September 26, 1960, the market value of these securities was $1,159,539 and the unrealized capital gain thereon was $438,444. As of September 26, 1960, Broad Street had unrealized appreciation of $43,166,055 and undistributed realized gains of $2,965,000, of which $571,518 and $39,257, respectively, would have become applicable to the shares of Broad Street issued to Hudson if the proposed acquisition of Hudson's assets had occurred on this date.

Because Broad Street will acquire securities from Hudson at a tax-cost basis less than the price actually paid therefor, their sale after acquisition will result in artificial capital gains and consequent tax liability thereon to the present shareholders of Broad Street. As an offset to this unfavorable tax consequence, the acquisition of the Hudson assets will result in a potential tax benefit to the present shareholders of Broad Street by reason of a reduction in the net unrealized appreciation applicable to their shares. An adjustment, which takes into account the tax consequences of the exchange, is to be made in the value of the Hudson assets in accordance with the following formula:

(1) In respect of the securities of Hudson that Broad Street presently intends to sell and the resulting artificial capital gain thereon, there shall be determined the difference between net unrealized taxable capital gain on said securities and the portion of the realized but undistributed taxable long-term capital gain of Broad Street allocable to the aggregate shares of Broad Street to be issued to Hudson. (Such difference, as of September 26, 1960, amounted to $399,187.)

(2) In respect of the securities of Hudson that Broad Street presently intends to hold following acquisition, there shall be determined the difference between net unrealized taxable capital gain on said securities and the portion of Broad Street's unrealized appreciation applicable to the aggregate shares of Broad Street to be issued to Hudson determined on a pro forma basis giving effect to the acquisition of the assets of Hudson. (Such difference as of September 26, 1960, amounted to a negative amount of $496,487.)

(3) The amount computed under (1) shall be increased by the amount, if positive, or decreased by 50 percent of the amount, if negative computed under (2), and 12½ percent of the resulting amount ($150,943 as of September 26, 1960), which is the adjustment for excess unrealized appreciation of Hudson shall be applied to reduce the value of the assets of Hudson to be acquired. If the valuation under the agreement had taken place on September 26, 1960 the adjustment to the market value of the assets of Hudson to be acquired would have amounted to $18,868.

The application, in the foregoing formula, of a 50 percent factor to the reduction in unrealized appreciation resulting from the acquisition of the Hudson assets, is intended to recognize that this will be of full benefit to the present shareholders of Broad Street only in the indefinite future at such time, if any, as all the present unrealized appreciation in Broad Street's portfolio is realized, whereas an immediate tax liability will result from the realization of artificial capital gains upon the sale after acquisition of certain securities acquired from Hudson. The rate of 12½ percent applied to the excess unrealized appreciation of Hudson is used as an estimated measure of the average tax rate payable on capital gains by Broad Street shareholders.

Applicant points out that the proposed acquisition is in the best interests of its shareholders because of the resulting increase in its assets will tend to reduce per share expenses, since it is furnished investment research and administrative facilities and services at cost.

The application recites that the terms of the entire transaction were arrived at through arm's-length bargaining between Broad Street and Hudson. The application further states that there is no affiliation or relationship of any kind between the officers and directors of Broad Street and the officers, directors, and stockholders of Hudson.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current offering price described in the prospectus, with certain exceptions not applicable here. Under the terms of the Agreement, however, the shares of Broad Street are to be issued to Hudson at a price other than the public offering price stated in the prospectus, which lists a sales charge of 2.22 percent for sales of $250,000 or over.

Section 6(c) of the Act authorizes the Commission by order upon application to exempt, conditionally or unconditionally, any transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 15, 1960 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11291; Filed, Dec. 5, 1960; 8:52 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

ARTHUR W. McKINNEY

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of November 8, 1960.

ARTHUR W. McKINNEY.

NOVEMBER 21, 1960.

[F.R. Doc. 60-11297; Filed, Dec. 5, 1960; 8:53 a.m.]

ROBERT GEOFFREY PETERSEN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: None.
B. Additions: None.

This statement is made as of November 22, 1960.

R. G. PETERSEN.

NOVEMBER 22, 1960.

[F.R. Doc. 60-11298; Filed, Dec. 5, 1960; 8:53 a.m.]

WILLIAM E. VAUGHN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No change.
B. Additions: No change.

This statement is made as of November 18, 1960.

WILLIAM E. VAUGHN.

NOVEMBER 18, 1960.

[F.R. Doc. 60-11299; Filed, Dec. 5, 1960; 8:53 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 418]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 1, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63616. By order of November 29, 1960, the Transfer Board approved the transfer to Soonan Transport Corp., Rochester, N.Y., of Certificate No. MC 116548, issued January 20, 1959, to Monroe Mercantile Carriers, Inc., Rochester, N.Y., authorizing the transportation of fresh meat, in vehicles equipped with mechanical refrigeration, from Rochester, N.Y., to New York, N.Y., points on Long Island, N.Y., and Philadelphia, Pa. Raymond A. Richards, 35 Curtice Park, Webster, N.Y., for applicants.

No. MC-FC 63619. By order of November 28, 1960, the Transfer Board approved the transfer to Melvin Parks, doing business as Mel's Trucking Service, Pocatello, Idaho, of certificates in Nos. MC 112558 Sub 1, MC 112558 Sub 2, and MC 112558 Sub 4, issued February 9, 1953, August 6, 1952, and March 14, 1958, respectively, to Clinton A. Gundersen, doing business as Gundersen Trucking Company, Mackay, Idaho, which authorize the transportation of: ore, over irregular routes, from mines in Custer and Lemhi Counties, Idaho, to the railheads at Darby and Armstead, Mont., and Mackay, Idaho, and to smelters in Salt Lake City, Magna, Garfield, Murray, Midvale, Tooele, and International, Utah; general commodities, except household goods, and commodities in bulk, from Mackay, Idaho, to specified points in Idaho. Kenneth G. Bell, 203 McCarty Building, Boise, Idaho, Attorney for applicants.

No. MC-FC 63727. By order of November 28, 1960, the Transfer Board approved the transfer to Wayne Barnett, doing business as Moran Truck Line, Moran, Kansas, of Certificates in No. MC 1946 and MC 1946 Sub 1, issued August 19, 1959, and May 26, 1960, respectively, to Glen Franklin Thomas, doing business as Glen Thomas, Route 2, Humboldt, Kansas, which authorize the transportation of farm machinery, feed, hardware, and building materials, from Kansas City, Mo., and Kansas City, Kans., to Humboldt, Kans., and points within 10 miles thereof other than Iola, and Chanute, Kans.; livestock, and steel, between Humboldt, Kans., and points within 10 miles thereof, on the one hand, and, on the other, Kansas City, Kans., and Kansas City, Mo., and feed, in bulk or in bags, from St. Joseph, Mo., to Humboldt, Kans.

No. MC-FC 63740. By order of November 28, 1960, the Transfer Board approved the transfer to Clyde Bacon, Newark, N.J., of Certificate in No. MC 115376, issued December 12, 1955, to A. & W. Motor Freight Company, Inc., Philadelphia, Pa., which authorizes the transportation of food products, over irregular routes, between Philadelphia, Pa., and Wilmington, Del. Morris J. Winokur, Winokur & Kahn, Two Penn Center Plaza, Pennsylvania Boulevard at 15th Street, Philadelphia 2, Pa., for applicants.

No. MC-FC 63748. By order of November 29, 1960, the Transfer Board approved the transfer to W. M. Lassiter and C. C. Lassiter, a partnership, doing business as City Transfer and Storage Company, High Point, N.C., of Certificates Nos. MC 29914 and MC 29914 Sub 2, issued February 14, 1941, and June 4, 1948, respectively, to Casper A. Warner, doing business as Warner's Transfer, High Point, N.C., authorizing the transportation of meats, over regular routes, from Greensboro, N.C., to Albemarle, N.C.; household goods, as defined by the Commission, over irregular routes, between points in North Carolina, on the one hand, and, on the other, points in South Carolina and Virginia; and between points in Virginia, on the one hand, and on the other, points in South Carolina; new furniture, between Lexington, N.C., on the one hand, and, on the other, Martinsville, Bassets, and Galax, Va., from Lexington, N.C., to points in South Carolina; panels and plywood, between Lexington, N.C., on the one hand, and, on the other, Martinsville, Bassets, and Galax, Va.; and household goods as defined by the Commission, over irregular routes, between High Point, N.C., and points within 10 miles thereof, on the one hand, and, on the other, points in Florida, Georgia, Maryland, New Jersey, New York, Ohio, Pennsylvania, Tennessee, West Virginia and the District of Columbia, traversing Delaware, Kentucky, South Carolina and Virginia for operating convenience only. Robert M. Martin, 307 North Carolina National Bank Building, High Point, N.C., for applicants.

No. MC-FC 63770. By order of November 29, 1960, The Transfer Board approved the transfer to Hayes Moving & Storage, Inc., Clarksville, Tenn., of a portion of Certificate No. MC 10173 issued June 17, 1960, to Marvin Hayes Lines, Inc., Clarksville, Tenn., authorizing the transportation of household goods as defined by the Commission, over regular routes, between Clarksville, Tenn., and Nashville, Tenn.; between Clarksville, Tenn., and Cumberland Furnace, Erin, and Dover, Tenn., and between Springfield, Tenn., and Dover, Tenn.; and household goods, over irregular routes, between Clarksville, Tenn., on the one hand, and, on the other, points in Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee. Robert H. Cowan, 434 Stahlman Building, Nashville 3, Tenn., for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11295; Filed, Dec. 5, 1960; 8:53 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

EXECUTIVE ORDERS:
- 3797–A ... 12412
- 6260 ... 12281
- 9941 ... 12429
- 10896 ... 12281
- 10897 ... 12429
- 10898 ... 12429

5 CFR

- 2 ... 12285
- 6 ... 12393

6 CFR

- 421 ... 12282, 12283

7 CFR

- 33 ... 12430
- 722 ... 12393, 12403
- 845 ... 12285
- 914 ... 12405
- 933 ... 12405–12407
- 953 ... 12407, 12430

PROPOSED RULES:
- 51 ... 12298, 12299
- 936 ... 12465
- 965 ... 12466
- 989 ... 12476

8 CFR

- 211 ... 12290

10 CFR

PROPOSED RULES:
- 115 ... 12367

12 CFR

PROPOSED RULES:
- 206 ... 12479

14 CFR

- 49 ... 12352
- 300 ... 12430
- 302 ... 12432
- 507 ... 12352, 12433
- 514 ... 12433
- 600 ... 12285–12287, 12408, 12410
- 601 ... 12287, 12409, 12410
- 602 ... 12288
- 609 ... 12353
- 612 ... 12410
- 1501 ... 12434

PROPOSED RULES:
- 41 ... 12299
- 302 ... 12477

14 CFR—Continued

Page

PROPOSED RULES—Continued
- 507 ... 12477, 12478
- 600 ... 12328, 12478, 12479
- 601 ... 12328, 12329, 12478, 12479
- 608 ... 12479

16 CFR

- 13 ... 12337, 12338, 12393, 12441

21 CFR

- 8 ... 12288
- 120 ... 12288
- 121 ... 12412
- 146c ... 12289

PROPOSED RULES:
- 27 ... 12372
- 120 ... 12374
- 121 ... 12299, 12477

22 CFR

- 46 ... 12289

25 CFR

- 171 ... 12408

PROPOSED RULES:
- 176 ... 12299

26 (1939) CFR

- 16 ... 12442
- 17 ... 12443
- 29 ... 12339
- 39 ... 12339
- 40 ... 12340

26 (1954) CFR

- 1 ... 12340, 12345
- 18 ... 12340

PROPOSED RULES:
- 1 ... 12293, 12414, 12416, 12464
- 48 ... 12362
- 197 ... 12362

28 CFR

- 21 ... 12290

31 CFR

- 54 ... 12345

32 CFR

- 805 ... 12291
- 1008 ... 12444
- 1009 ... 12446
- 1010 ... 12449
- 1012 ... 12449
- 1013 ... 12449

32 CFR—Continued

Page

- 1016 ... 12450, 12456
- 1030 ... 12451
- 1052 ... 12456
- 1053 ... 12456
- 1054 ... 12458
- 1055 ... 12462
- 1057 ... 12462
- 1059 ... 12462
- 1619 ... 12291

33 CFR

- 202 ... 12393

38 CFR

- 3 ... 12463

39 CFR

- 27 ... 12348

41 CFR

PROPOSED RULES:
- 50–202 ... 12363

42 CFR

- 1 ... 12292

43 CFR

- 192 ... 12352

PUBLIC LAND ORDERS:
- 797 ... 12413
- 1253 ... 12481
- 2209 ... 12412
- 2210 ... 12413
- 2211 ... 12413

46 CFR

- 308 ... 12348

47 CFR

- 1 ... 12358
- 5 ... 12359
- 9 ... 12359
- 10 ... 12359
- 11 ... 12359
- 12 ... 12358
- 16 ... 12359
- 19 ... 12359
- 21 ... 12359

PROPOSED RULES:
- 3 ... 12371

49 CFR

PROPOSED RULES:
- 71–78 ... 12420
- 197 ... 12420

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Pages 12499–12543

FEDERAL REGISTER

VOLUME 25 NUMBER 237

Washington, Wednesday, December 7, 1960

THE UNIVERSITY OF MICHIGAN
DEC 1 1960
MAIN READING ROOM

Contents

THE PRESIDENT

Letter

Letter of November 16, 1960; termination of suspension of certain imports from Poland and areas under provisional administration of Poland ... 12501

EXECUTIVE AGENCIES

Agricultural Marketing Service

RULES AND REGULATIONS:
Milk in certain marketing areas; determination of equivalent prices for Grade AA and Grade A butter at Chicago ... 12504
Oranges and grapefruit grown in the Lower Rio Grande Valley in Texas; container regulation ... 12505
Oranges, grapefruit, tangerines, and tangelos grown in Florida; shipments limitation ... 12504

Agriculture Department

See Agricultural Marketing Service; Commodity Stabilization Service.

Civil Aeronautics Board

NOTICES:
Hearings, etc.:
Aeronaves de Mexico, S.A ... 12526
Compania Mexicana de Aviacion, S.A ... 12526
Ozark Air Lines, Inc., and American Airlines, Inc ... 12526

Commodity Stabilization Service

RULES AND REGULATIONS:
Rice; state and county reserve acreages and county acreage allotments for 1961 crop ... 12503

Federal Aviation Agency

PROPOSED RULE MAKING:
Certain airplanes used for air carrier and commercial operator flight checks or training flights, ferry flights, and airworthiness test flights; installation and use of flight recorders; correction ... 12524
Control zone; alteration ... 12525
Federal airways and associated control areas; alteration ... 12524

RULES AND REGULATIONS:
Airworthiness directives recordation; cancellation ... 12505

Federal Power Commission

NOTICES:
Hearings, etc.:
Northern Natural Gas Co ... 12527
Pacific Power & Light Co ... 12528
Public Service Company of Colorado ... 12528
Sinclair Oil & Gas Co ... 12527
United Gas Pipe Line Co ... 12529
United Gas Pipe Line Co. et al ... 12528

Federal Trade Commission

RULES AND REGULATIONS:
Prohibited trade practices:
Carl W. Herrmann, Inc., et al ... 12502
Ipswich Hosiery Co., Inc ... 12502

Fish and Wildlife Service

RULES AND REGULATIONS:
Sport fishing; special regulations for individual wildlife areas:
Des Lacs, N. Dak ... 12507
Lacreek, S. Dak ... 12507
Valentine, Nebr ... 12507

Food and Drug Administration

RULES AND REGULATIONS:
Labeling of antibiotics for use in milk-producing animals; extension of effective date ... 12506
Pesticide chemicals in or on raw agricultural commodities; tolerances for residues ... 12506

Health, Education, and Welfare Department

See also Food and Drug Administration.

RULES AND REGULATIONS:
Delegations of authority; Medical Service Bureau ... 12502

Indian Affairs Bureau

PROPOSED RULE MAKING:
Tribal reorganization ... 12518

Interior Department

See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau.

Internal Revenue Service

NOTICES:
Director of International Operations; extension of authority to Panama Canal, Puerto Rico, and Virgin Islands ... 12526

PROPOSED RULE MAKING:
Corporate distributions and adjustments ... 12508
Liquors and articles from Puerto Rico and Virgin Islands ... 12511

Interstate Commerce Commission

NOTICES:
Canadian Pacific Railway Co. et al.:
Rerouting of traffic ... 12540
Rerouting of traffic; vacation of order ... 12540
Fourth section applications for relief ... 12541
Motor carrier:
Alternate route deviation notices ... 12538
Applications and certain other proceedings ... 12529
Transfer proceedings ... 12540

RULES AND REGULATIONS:
Locomotives, other than steam; inspection and testing; correction ... 12506
Railroads; operating reports ... 12506

Labor Department

See Public Contracts Division; Wage and Hour Division.

Land Management Bureau

NOTICES:
Alaska; small tract classification ... 12526

Public Contracts Division

PROPOSED RULE MAKING:
Photographic and blueprinting equipment and supplies industry; tentative decision in termination of minimum wage ... 12522

(*Continued on next page*)

State Department

NOTICES:
Delegations of authority; revocation 12526

Treasury Department

See Internal Revenue Service.

Wage and Hour Division

NOTICES:
Certificates authorizing employment of learners at special minimum rates 12541

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

PROCLAMATIONS:
2935 (see Letter, Nov. 16, 1960) ... 12501

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 (see Letter Nov. 16, 1960) 12501
Letter, Nov. 16, 1960 12501

7 CFR

730 12503
903 12504
905—908 12504
911—913 12504
916—919 12504
921 12504
923—925 12504
928—932 12504
933 12504
935 12504
941—944 12504
946—949 12504
952 12504
954 12504
956 12504
963 12504
965—968 12504
971—972 12504
974—978 12504
980 12504
982 12504
985—988 12504
991 12504
994—995 12504
998 12504
1000 12504
1002 12504
1004—1005 12504
1008—1009 12504
1011—1014 12504
1016 12504
1018 12504
1023—1024 12504
1031 12505

14 CFR

506 12505

PROPOSED RULES:
43 12524
600 12524
601 (2 documents) 12524, 12525

16 CFR

13 (2 documents) 12502

21 CFR

120 12506
146 12506

25 CFR

PROPOSED RULES:
52 12518

26 (1954) CFR

PROPOSED RULES:
1 12508
250 12511

41 CFR

3–75 12502

PROPOSED RULES:
50–202 12522

49 CFR

91 12506
122 12506

50 CFR

33 (3 documents) 12507

Now Available

UNITED STATES GOVERNMENT ORGANIZATION MANUAL

1960–61 Edition

(Revised through June 1)

Published by the Office of the Federal Register, the National Archives and Records Service, General Services Administration

817 pages—$1.50 a copy

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Presidential Documents

Title 3—THE PRESIDENT

Letter of November 16, 1960

[TERMINATION OF SUSPENSION OF CERTAIN IMPORTS FROM POLAND AND AREAS UNDER PROVISIONAL ADMINISTRATION OF POLAND]

THE WHITE HOUSE,
Washington, November 16, 1960.

DEAR MR. SECRETARY:

I refer you to Part I of Proclamation No. 2935 of August 1, 1951 [1] carrying out sections 5 and 11 of the Trade Agreements Extension Act of 1951 [2] and to the first paragraph of the President's letter of January 17, 1953 to the Secretary of the Treasury.[3]

I hereby notify you that the suspension there provided shall cease to be applicable to imports from Poland and areas under the provisional administration of Poland which are entered, or withdrawn from warehouse, for consumption on and after December 16, 1960.

Sincerely,

DWIGHT D. EISENHOWER

THE HONORABLE ROBERT B. ANDERSON,
The Secretary of the Treasury.

[F.R. Doc. 60–11418; Filed, Dec. 6, 1960; 10:00 a.m.]

[1] 65 Stat. C25; 19 U.S.C. p. 3595; 3 CFR, 1949–1953 Comp., p. 121.
[2] 65 Stat. 73, 75; 19 U.S.C. 1362, 1367.
[3] 18 F.R. 593; 3 CFR, 1949–1953 Comp., p. 1051.

Rules and Regulations

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7988 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Carl W. Herrmann, Inc., et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* § 13.1108–45 *Fur Products Labeling Act.* Subpart—Misbranding or mislabeling: § 13.1212 *Formal regulatory and statutory requirements:* § 13.1212–30 *Fur Products Labeling Act.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* § 13.1845–30 *Fur Products Labeling Act;* § 13.1852 *Formal regulatory and statutory requirements:* § 13.1852–35 *Fur Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Carl W. Herrmann, Inc., et al., Pittsburgh, Pa., Docket 7988, October 4, 1960]

In the Matter of Carl W. Herrmann, Inc., a Corporation, and Carl W. Herrmann, Jr., and Carl W. Herrmann, III, Individually and as Officers of Said Corporation

Consent order requiring a Pittsburgh furrier to cease violating the Fur Products Labeling Act by failing to set forth the terms "Persian Lamb" and "Dyed Broadtail Processed Lamb" where required on labels and invoices, and by failing to comply in other respects with regulations under the Act.

The order to cease and desist is as follows:

It is ordered, That Carl W. Herrmann, Inc., a corporation, and its officers, and Carl W. Herrmann, Jr. and Carl W. Herrmann, III, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Failing to set forth the term "Persian Lamb" where an election is made to use that term instead of Lamb.

C. Failing to set forth the term Dyed Broadtail processed Lamb where an election is made to use that term instead of Dyed Lamb.

D. Setting forth on labels affixed to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder:

(1) In abbreviated form;

(2) In handwriting.

2. Falsely or deceptively invoicing fur products by:

A. Failing to furnish to purchasers of fur products invoices showing all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

B. Setting forth information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

C. Failing to set forth the term Persian Lamb where an election is made to use that term instead of Lamb.

D. Failing to set forth the term Dyed Broadtail processed Lamb where an election is made to use that term instead of Dyed Lamb.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 4, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60–11336; Filed, Dec. 6, 1960; 8:46 a.m.]

[Docket 7715 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Ipswich Hosiery Co., Inc.

Subpart—Discriminating in price under sec. 2, Clayton Act—Payment for services or facilities for processing or sale under 2(d): § 13.824 *Advertising expenses.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1527; 15 U.S.C. 13) [Cease and desist order, Ipswich Hosiery Company, Inc., Manchester, N.H., Docket 7715, October 12, 1960]

Consent order requiring a distributor of women's hosiery in Manchester, N.H., to cease violating Sec. 2(d) of the Clayton Act by paying certain of its jobber customers for advertising but not their competitors, such as payments of $450, $500, and $900 made in the years 1957, 1958, and 1959 to one Houston, Tex., purchaser.

The order to cease and desist is as follows:

It is ordered, That Ipswich Hosiery Company, Inc., a corporation, its officers, employees, agents or representatives, directly or through any corporate or other device, in or in connection with the sale in commerce, as "commerce" is defined in the Clayton Act, as amended, of hosiery products, do forthwith cease and desist from:

Making or contracting to make, to or for the benefit of J. Weingarten, Inc., or any other customer, any payment of anything of value as compensation or in consideration for advertising or other services or facilities furnished by or through such customer, in connection with the handling, offering for resale, or resale of the respondent's hosiery products, unless such payment is made available on proportionally equal terms to all other customers competing in the distribution or resale of such products.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: October 12, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60–11335; Filed, Dec. 6, 1960; 8:46 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 3—Department of Health, Education, and Welfare

PART 3–75—DELEGATIONS OF AUTHORITY

Subpart B—Delegatees and Specific Limitations

BUREAU OF MEDICAL SERVICES

Section 3–75.6–1 is revised to read as follows:

§ 3–75.6–1 Bureau of Medical Services.

Pursuant to authority vested in the Chief, Division of Administrative Services, the officials occupying the following positions in the Area Offices of the Division of Indian Health, Bureau of Medical Services, are authorized to negotiate and award contracts for architectural and engineering services for bridges, roads, sidewalks, sewers, mains, or other similar items, regardless of construction costs, and for any public building or public improvement when the construction cost is estimated to be less than $200,000; and to advertise and award contracts for construction of Indian health sanitation facilities pursuant to Public Law 86–121; and to advertise and award contracts for construction of Indian health facilities (other than contracts for construction of Indian health sanitation facilities pursuant to Public Law 86–121) when the construction cost is less than $200,000:

Medical Officer in Charge.
Deputy and/or Assistant Medical Officer in Charge.
Executive or Administrative Officer.
General Services Officer.

(41 CFR 3–75.6(d))

PAUL A. CAULK,
Executive Officer,
Public Health Service.

[F.R. Doc. 60–11359; Filed, Dec. 6, 1960; 8:50 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 730—RICE

Subpart—1961–62 Marketing Year

STATE AND COUNTY RESERVE ACREAGES AND COUNTY ACREAGE ALLOTMENTS FOR 1961 CROP

Sec.
730.1205 Basis and purpose.
730.1206 State reserve acreages.
730.1207 County acreage allotments and county reserve acreages.

AUTHORITY: §§ 730.1205 to 730.1207 issued under secs. 301, 353, 375, 52 Stat. 38, 61, as amended, 66; 7 U.S.C. 1301, 1353, 1375.

§ 730.1205 Basis and purpose.

(a) The State and county reserve acreages and county acreage allotments for 1961 crop rice contained in §§ 730.1206 and 730.1207 have been determined pursuant to and in conformity with the provisions of section 353 of the Agricultural Adjustment Act of 1938, as amended. Said sections are issued to announce: (1) State reserve acreage for new farms or new producers in each of the applicable rice-producing States; (2) State reserve acreages for appeals and corrections, missed farms, and adjustments in factored allotments in the producer States of Arizona, California, Florida, North Carolina, Tennessee, Texas, and the "producer administrative area" in Louisiana; and (3) county acreage allotments and county reserve acreages for appeals and corrections, missed farms; and adjustments in factored allotments in the farm States of Arkansas, Illinois, Mississippi, Missouri, Oklahoma, South Carolina, and the "farm administrative area" in Louisiana. Since farm acreage allotments for 1961 crop rice in the producer States, including the "producer administrative area" of Louisiana, will be established pursuant to the act primarily on the basis of past production of rice by the producer on the farm in lieu of past production of rice on the farm, the 1961 State acreage allotments of rice for those States will be apportioned directly to farms, and county acreage allotments and county reserve acreages for appeals and corrections, missed farms, and adjustments in factored allotments will not be determined for such States.

(b) The determinations made in §§ 730.1206 and 730.1207 have been made on the basis of the latest available statistics of the Federal Government. The determinations made in §§ 730.1206 and 730.1207 indicate the amount of State reserve acreages for new farms or new producers in each of the applicable rice-producing States, the amount of State reserve acreages for appeals and corrections, missed farms, and adjustments in factored allotments in the "producer States"; and the amount of county acreage allotments and county reserve acreages for appeals and corrections, missed farms, and adjustments in factored allotments in the "farm States".

(c) The State and county reserve acreages in §§ 730.1206 and 730.1207 were established on the basis of the needs therefor as recommended by the State and county committees.

(d) The county acreage allotments in § 730.1207 were established by apportioning the State acreage allotment, minus the State acreage reserve for new farms, among the counties in the State in the same proportion that they shared in the total acreage allotted in 1956, as provided by section 353(c)(1) and section 353(c)(6) of the Agricultural Adjustment Act of 1938, as amended. No adjustments in county acreage allotments were made under the proviso in section 353(c)(1) of the act.

(e) Prior to the determination of State and county reserve acreages and county acreage allotments for 1961 crop rice, public notice (25 F.R. 9059) was given in accordance with the Administrative Procedure Act (5 U.S.C. 1003). No data, views, or recommendations pertaining to the determination of the State and county reserve acreages and county acreage allotments for 1961 crop rice were submitted pursuant to such notice.

(f) The determinations made in § 730.1207 were on the basis of the latest available statistics of the Federal Government as required by section 301(c) of the Agricultural Adjustment Act of 1938, as amended.

(g) Pursuant to the Agricultural Adjustment Act of 1938, as amended, marketing quotas on the 1961 crop of rice have been proclaimed (25 F.R. 11062) and the date for the referendum to be held to determine whether farmers are in favor of or opposed to such quotas has been set for December 13, 1960 (25 F.R. 11086). The act requires that, insofar as practicable, notices of farm acreage allotments, which are based on State and county allotments and reserves, be mailed to producers in time to be received prior to the referendum. Since the referendum will be held on December 13, 1960, it is necessary to waive the 30-day effective date provision of the Administrative Procedure Act as applied to the determinations herein. Accordingly, this document shall become effective upon publication in the FEDERAL REGISTER.

§ 730.1206 State reserve acreages.

State	State reserve acreage for new farms or new producers	State reserve acreages for appeals, etc.,[1] in producer States
Arizona	0	0
Arkansas	29	
California	700	1,300
Florida	21	0
Illinois	0	
Louisiana:		
Farm administrative area	50	
Producer administrative area	5	0
Mississippi	0	
Missouri	0	
North Carolina	0	0
Oklahoma	0	
South Carolina	15	
Tennessee	6	0
Texas	0	50

[1] For appeals and corrections, missed producers, and adjustments in factored allotments in producer States and the "producer administrative area" in Louisiana.

§ 730.1207 County acreage allotments and county reserve acreages.

ARKANSAS

County	County acreage allotment	County reserve acreage[1]
Arkansas	69,483	10.0
Ashley	5,963	3.0
Chicot	8,908	4.0
Clark	807	0
Clay	7,071	5.0
Conway	10	0
Craighead	15,872	11.0
Crittenden	5,864	3.0
Cross	23,115	3.0
Dallas	65	0
Desha	12,808	0.6
Drew	4,282	2.0
Faulkner	420	0
Grant	31	0
Greene	5,102	2.0
Hot Spring	433	0
Independence	790	5.0
Jackson	13,334	3.0
Jefferson	16,812	0
Lafayette	302	1.0
Lawrence	7,714	2.0
Lee	7,788	9.0
Lincoln	5,579	0
Little River	373	0
Lonoke	36,080	2.8
Miller	686	0
Mississippi	1,402	1.0
Monroe	13,363	3.0
Perry	200	0.1
Phillips	4,704	2.4
Poinsett	38,624	8.0
Prairie	36,723	2.0
Pulaski	1,721	2.0
Randolph	2,063	0
St. Francis	16,984	5.0
White	1,050	2.0
Woodruff	18,543	11.2
State total	388,989	103.1

[1] County reserve acreage for appeals and corrections, missed farms, and adjustments.

ILLINOIS

County	County acreage allotment	County reserve acreage [1]
Adams	20	0

LOUISIANA, FARM ADMINISTRATIVE AREA

Acadia	85,189	121.9
Allen	22,031	15.0
Avoyelles	2,536	126.8
Beauregard	4,561	0
Bossier	60	0
Calcasieu	60,190	60.0
Cameron	12,339	0
Evangeline	40,941	4.0
Grant	166	0
Iberia	5,751	15.0
Jefferson Davis	88,172	93.0
Lafayette	8,612	52.5
Rapides	522	0
St. Landry	15,584	140.7
St. Martin	3,766	0
St. Mary	2,912	0
Vermilion	104,673	42.1
Farm administrative area total	458,007	671.0

MISSISSIPPI

Bolivar	19,542	0
Coahoma	1,514	0
De Soto	1,353	0
Hancock	167	0
Humphreys	1,943	96
Issaquena	96	0
Leflore	8,524	0
Panola	72	0
Quitman	1,281	0
Sharkey	913	0
Sunflower	3,961	0
Tallahatchie	464	0
Tate	109	0
Tunica	2,919	0
Washington	8,816	0
State total	46,674	96

MISSOURI

Butler	1,436	0
Dunklin	47	0
Holt	2	0
Lewis	8	0
Lincoln	34	0
Marion	308	0
Mississippi	87	0
New Madrid	202	0
Pemiscot	547	0
Ripley	469	0
St. Charles	35	0
Scott	242	0
Stoddard	1,350	0
State total	4,767	0

OKLAHOMA

McCurtain	149	0

SOUTH CAROLINA

Berkeley	144	0
Charleston	470	0
Colleton	709	0
Georgetown	40	0
Horry	208	0
Jasper	1,260	0
State total	2,831	0

[1] County reserve acreage for appeals and corrections, missed farms, and adjustments.

Issued at Washington, D.C., this 1st day of December 1960. Witness my hand and the seal of the Department of Agriculture.

WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-11316; Filed, Dec. 6, 1960; 8:45 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Orange Reg. 361]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1039 Orange Regulation 381.

(a) *Findings.* (1) Pursuant to the marketing agreement as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, except Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, and Temple oranges are subject to grade regulation, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29, 1960; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information concerning such provisions has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth; and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1178 of this title; 25 F.R. 8211).

(2) During the period beginning at 12:01 a.m., e.s.t., December 7, 1960, and ending at 12:01 a.m., e.s.t., January 2, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any Temple oranges, grown in the production area, which are of a size smaller than 2⅜₆ inches in diameter, except that a tolerance of 10 percent, by count, of Temple oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the aforesaid United States Standards for Florida Oranges and Tangelos.

(3) Shipments of Temple oranges, grown in the production area, are, until 12:01 a.m., e.s.t., January 2, 1961, subject to the grade limitations specified in Orange Regulation 380 (§ 933.1035).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 5, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11414; Filed, Dec. 6, 1960; 8:52 a.m.]

HANDLING OF MILK IN CERTAIN MARKETING AREAS

Determination of Equivalent Prices for Grade AA (93-Score) and Grade A (92-Score) Butter at Chicago

Part	
903	St. Louis, Mo.
905	Mississippi Delta.
906	Oklahoma Metropolitan.
907	Milwaukee, Wis.
908	Central Arkansas.
911	Texas Panhandle.
912	Dubuque, Iowa.
913	Greater Kansas City.
916	Upstate Michigan.
917	Black Hills, S. Dak.
918	Memphis, Tenn.
919	Southwest Kansas.
921	Ozarks.
923	Appalachian.
924	Southern Michigan.
925	Puget Sound, Wash.
928	Neosho Valley.
929	Eastern South Dakota.
930	Toledo, Ohio.
931	Cedar Rapids-Iowa City.
932	Fort Wayne, Ind.
935	Omaha-Lincoln-Council Bluffs.
941	Chicago, Ill.
942	New Orleans, La.
943	North Texas.
944	Quad Cities.
946	Louisville-Lexington, Ky.
947	Suburban St. Louis.
948	Sioux City, Iowa.
949	San Antonio, Tex.
952	Austin-Waco, Tex.
954	Duluth-Superior.
956	Sioux Falls-Mitchell, S. Dak.
963	Great Basin.
965	Cincinnati, Ohio.
966	Northern Louisiana.
967	South Bend-La Porte-Elkhart, Ind.
968	Wichita, Kans.
971	Dayton-Springfield, Ohio.
972	Tri-State.
974	Columbus, Ohio.
975	Northeastern Ohio.
976	Fort Smith, Ark.
977	Paducah, Ky.
978	Nashville, Tenn.
980	Western Colorado.
982	Central West Texas.
985	Muskegon, Mich.
986	Red River Valley.
987	Central Mississippi.
988	Knoxville, Tenn.
991	Rockford-Freeport, Ill.
994	Colorado Springs-Pueblo.
995	North Central Ohio.
998	Corpus Christi, Tex.
1000	Chattanooga, Tenn.
1002	Wheeling, W. Va.
1004	Central Arizona.
1005	North Central Iowa.
1008	Inland Empire.
1009	Clarksburg, W. Va.
1011	Michigan Upper Peninsula.
1012	Bluefield.
1013	Platte Valley.
1014	Mississippi Gulf Coast.
1016	Northeastern Wisconsin.
1018	Southeastern Florida.
1023	Des Moines, Iowa.
1024	Ohio Valley.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and to the applicable provisions of the orders, as amended, regulating the handling of milk in the aforesaid milk marketing areas (7 CFR Part 900), hereinafter referred to as the "orders", it is hereby found and determined as follows:

(1) Inasmuch as the daily wholesale selling prices for Grade AA (93-score) and Grade A (92-score) butter on the Chicago market, as reported by the Dairy and Poultry Market News Service, Agricultural Marketing Service, United States Department of Agriculture, and employed in the orders as factors in the formulas for computing the class prices and butterfat differentials, are not available on a number of days during the month of November 1960, and the averages of the limited number of daily prices reported are not representative of such prices for the month of November 1960, it is hereby determined that the equivalent price for Grade AA (93-score) butter at Chicago for November 1960 shall be 61.74 cents and the equivalent price for Grade A (92-score) butter at Chicago shall be 61.47 cents for November 1960.

(2) Notice of proposed rule making, public procedure thereon and 30 days prior notice to the effective date hereof are impractical, unnecessary and contrary to the public interest, in that (a) the daily wholesale selling prices for Grade AA (93-score) and Grade A (92-score) butter on the Chicago market have not been reported by the Dairy and Poultry Market News Service, Agricultural Marketing Service, United States Department of Agriculture, on a number of days during the month of November 1960, and the averages of the limited number of daily prices reported are not representative of such prices for the month of November 1960; (b) the determination of an equivalent price immediately is necessary to make possible the announcement of the minimum class prices and butterfat differentials under the orders in valuing producer milk received by handlers during the months of November 1960 and December 1960; (c) an essential purpose of this determination is to give all interested persons notice that the averages of Grade AA (93-score) and Grade A (92-score) butter prices reported by the Dairy and Poultry Market News Service for November 1960 are not being used for the purpose of the price computations required in connection with the computation of class prices and butterfat differentials under the aforesaid orders; and (d) this determination does not require substantial or extensive preparation of any person.

Issued at Washington, D.C., this 1st day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11343; Filed, Dec. 6, 1960; 8:47 a.m.]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Container Regulation

On November 9, 1960, notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 10705) that consideration was being given to a proposed container regulation to be effective under the marketing agreement and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. This is a regulatory marketing program issued pursuant to the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

After consideration of all relevant matters presented, including the proposal set forth in the notice, which was submitted by the Texas Valley Citrus Committee (established pursuant to the said marketing agreement and order), it is hereby found that the container regulation, hereinafter set forth, is in accordance with the provisions of the said marketing agreement and order and will tend to effectuate the declared policy of the act.

§ 1031.307 Container regulation.

(a) Except as otherwise provided herein or by, or pursuant to, the provisions of Marketing Agreement No. 141 and this part (25 F.R. 9093) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, no handler shall, on and after 12:01 a.m., c.s.t., January 16, 1961, handle any fruit unless such fruit is in a container or containers meeting the following specifications:

(1) Containers with inside dimensions of 24⅝ x 11⅜ x 11⅜ inches.

(2) Containers with inside dimensions of 16¼ x 10¼ x 10¼ inches.

(3) Containers with inside dimensions of 16½ x 10¾ x 9½.

(4) Containers with inside dimensions of 19¾ x 13 x 13½ inches.

(5) Containers with inside dimensions of 19¾ x 13 x 12½ inches.

(6) Containers with inside dimensions of 19¾ x 13½ x 13½ inches.

(7) Containers with inside dimensions of 19¾ x 13 x 12¼ inches.

(8) Containers with inside dimensions of 22 x 14 x 16½ inches: *Provided,* That such containers may be used only for the shipment of 8-pound bags of grapefruit, and each such container shall contain 8 such bags of grapefruit.

(9) Bags having a capacity of 5, 8, or 20 pounds of fruit, respectively.

(10) Such other types and sizes of containers as may be approved by the Texas Valley Citrus Committee for testing in connection with a research project conducted by or in cooperation with the said committee: *Provided,* That the handling of each lot of fruit in such test containers shall be subject to prior approval, and under the supervision, of the Texas Valley Citrus Committee.

(b) The provisions of this section shall not apply to the handling of any gift packages of fruit.

(c) The terms used in the said marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

Dated: December 1, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11345; Filed, Dec. 6, 1960; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 590; Amdt. 1]

PART 506—AIRWORTHINESS DIRECTIVES RECORDATION

Cancellation of Part

The recordation requirements of Part 506 are no longer considered necessary. When an aircraft is sold, the extent of compliance with a published airworthiness directive is a part of the record accompanying the aircraft. Where there has, as yet, been no compliance at the time of sale, the published airworthiness directive exists as notice to the new owner. Therefore, it is not necessary to require separate recordation of the extent of compliance and non-compliance with all outstanding airworthiness directives applicable to an aircraft or to major components thereof. Part 506 no longer being necessary is hereby rescinded.

This amendment shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 313, 72 Stat. 752, 49 U.S.C. 1354. Interpret or apply sec. 503, 72 Stat. 772, as amended, 49 U.S.C. 1403)

Issued in Washington, D.C., on November 29, 1960.

OSCAR BAKKE,
Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11326; Filed, Dec. 6, 1960; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Tolerances for Residues of Sodium 2,2-Dichloropropionate

A petition was filed with the Food and Drug Administration by Dow Chemical Company, Midland, Michigan, requesting the establishment of tolerances for residues of sodium 2,2-dichloropropionate, as 2,2-dichloropropionic acid, in or on peas (shelled or unshelled) and peavines (with or without pods) at 15 parts per million.

The data before the Commissioner show that the feeding to livestock of peas and fresh or ensiled peavines containing this pesticide chemical at levels not greater than the proposed tolerance of 15 parts per million will not result in residues in meat and milk. There is no basis for fixing a tolerance for the pesticide in milk or meat at a level higher than zero.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commisioner of Food and Drugs by the Secretary (25 F.R. 8625), § 120.150 of the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR 120.150) is amended by adding thereto tolerances for peas, peavines, and meat and milk. As amended, this section reads as follows:

§ 120.150 Tolerances for residues of sodium 2,2-dichloropropionate.

Tolerances for residues of sodium 2,2-dichloropropionate, as 2,2-dichloropropionic acid, in or on raw agricultural commodities, are established as follows:

75 parts per million in or on flaxseed.
35 parts per million in or on cottonseed.
30 parts per million in or on asparagus.
15 parts per million in or on peaches, peas (shelled or unshelled), peavines (with or without pods).
10 parts per million in or on potatoes.
5 parts per million in or on cranberries, sugar beets (roots), sugar beets (tops).
3 parts per million in or on apples, grapes, pears, pineapples.
1 part per million in or on apricots, plums.
Zero part per million in meat and milk.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: November 29, 1960.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 60-11342; Filed, Dec. 6, 1960; 8:47 a.m.]

SUBCHAPTER C—DRUGS

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Labeling of Antibiotics for Use in Milk-Producing Animals; Extension of Effective Date of Order

On August 31, 1960, there was published in the FEDERAL REGISTER (25 F.R. 8321) an order prescribing certain labeling requirements for antibiotic drugs intended for use in milk-producing animals. On October 20, 1960, the Commissioner published an order (25 F.R. 10014) confirming the effective date of the regulation as originally proposed, i.e., December 1, 1960. The Commissioner has been requested to extend the effective date of this order. Good and sufficient reasons therefor appearing, the effective date is hereby extended to February 1, 1961.

(Sec. 507(f), 59 Stat. 463, as amended; 21 U.S.C. 357(f))

Dated: November 30, 1960.

[SEAL] JOHN L. HARVEY,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 60-11341; Filed, Dec. 6, 1960; 8:47 a.m.]

Title 49—TRANSPORTATION

[Ex Parte No. 174]

Chapter I—Interstate Commerce Commission

PART 91—LOCOMOTIVE INSPECTION

Rules and Instructions for Inspection and Testing of Locomotives Other Than Steam; Modification of Effective Dates

Correction

In F.R. Doc. 11052, appearing at page 12182 of the issue for Tuesday, Nov. 29, 1960, the words "Commissioner Hutchinson." should follow the closing phrase which reads "By the Commission,".

PART 122—MONTHLY AND QUARTERLY OPERATING REPORTS

Subpart A—Railroads

QUARTERLY OPERATING STATISTICS

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 22d day of August A.D. 1960.

On May 16, 1960, the Commission, Division 2, issued its notice of rule making, advising that it had under consideration the revision of 49 CFR 122.3 so as to require that all Class I railroads, including switching and terminal companies, be required to file quarterly reports in lieu of monthly reports on forms to be designated OS-A, OS-B, OS-C, OS-D, OS-E and OS-F, except that switching and terminal companies would not be required to file reports on Forms OS-A, OS-B and OS-D, as set forth therein. The notice stated that any party desiring to make representations in favor of or against the proposed changes might submit written views or data to the Commission within 45 days of publication thereof in the FEDERAL REGISTER; it was served on all Class I railroads, including switching and terminal companies; and it was published in the FEDERAL REGISTER on May 26, 1960, 25 F.R. 4654. Representations in favor of the proposed revisions were received from the Association of American Railroads, and representations in opposition thereto were received from The Railway Labor Executives' Association.

Upon further consideration of the matters and things set forth in the Commission's notice of rule-making, as described above, and on consideration of representations for and against the proposed revisions, as submitted in response to such notice:

It is ordered, That, with respect to reports for the three months beginning with January 1, 1961, and thereafter until further order, the ordering paragraph of the order of October 25, 1956, in the matter of Monthly Operating Reports-Railroads, be, and it is hereby, modified and amended to read as shown below.

It is further ordered, That 49 CFR 122.3, be, and it is hereby, modified to read as follows:

§ 122.3 Operating statistics.

Commencing with reports for the three months beginning January 1, 1961, and thereafter until further order, all Class I railroads, including Class I switching and terminal companies, subject to the provisions of Part I of the Interstate Commerce Act, be, and they are hereby required to file quarterly reports of operating statistics in accordance with forms of reports, and notes of instructions thereon, designated as follows:

Form OS-A—Freight Train Performance
Form OS-B—Passenger Train Performance
Form OS-C—Yard Service Performance
Form OS-D—Revenue Traffic
Form OS-E—Fuel and Power Statistics
Form OS-F—Motive Power and Car Equipment,

which forms are attached hereto and made a part of this section[1]; *Provided however,* that Class I switching and terminal companies are not required to submit reports on forms designated Forms OS-A, OS-B, and OS-D. Such quarterly reports shall be filed in duplicate in the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, Washington 25, D.C., on or before the dates indicated in the notice on each form.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12. Interpret or apply sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

It is further ordered, That the heading of 49 CFR Part 122 be changed so as to read "Monthly and Quarterly Operating Reports".

And it is further ordered, That copies of this order and of Forms OS-A to OS-F, inclusive, shall be served on all Class I railroads, including switching and terminal companies, subject to the provisions of Part I of the Interstate Commerce Act, and upon every receiver, trustee, executor, administrator or assignee of any such railroad, and that notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Division 2.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11346; Filed, Dec. 6, 1960; 8:48 a.m.]

[1] Forms filed as part of original document.

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Valentine National Wildlife Refuge, Nebraska

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Valentine National Wildlife Refuge, Nebraska is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through March 15, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Bait—the use of minnows, fish, or parts thereof, either alive or dead, is prohibited.

(3) Nets and seines—the use of nets or seines for capturing minnows or fish is prohibited.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 3,900 acres and five percent of the total refuge and which includes the waters of the following lakes: Clear, Dewey, Duck, Hackberry, Pelican, Pony, Rice, Watts, West Long, and Willow Lakes.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through March 15, 1961.

W. A. ELKINS,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

NOVEMBER 29, 1960.

[F.R. Doc. 60-11337; Filed, Dec. 6, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Des Lacs National Wildlife Refuge, North Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

DES LACS NATIONAL WILDLIFE REFUGE

Sport fishing on the Des Lacs National Wildlife Refuge, North Dakota is suspended until further notice because no harvestable fish populations exist at the present time.

W. A. ELKINS,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

NOVEMBER 29, 1960.

[F.R. Doc. 60-11338; Filed, Dec. 6, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Lacreek National Wildlife Refuge, South Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

SOUTH DAKOTA

LACREEK NATIONAL WILDLIFE REFUGE

Sport fishing on the Lacreek National Wildlife Refuge, South Dakota is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through February 28, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 1,040 acres and 11 percent of the total refuge and which is described as follows:

The waters of Little White River Recreational Area in the W½ Section 23; and those waters of Pool 10 in Sections 25 and 26, the N½ Section 35 and N½ Section 36; all in Township 37 N., R. 36 W.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through February 28, 1961.

W. A. ELKINS,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

NOVEMBER 29, 1960.

[F.R. Doc. 60-11339; Filed, Dec. 6, 1960; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Corporate Distributions and Adjustments

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to sections 19, 21, and 22 of the Technical Amendments Act of 1958 (72 Stat. 1615 and 1620), relating to gain or loss on sales or exchanges in connection with certain liquidations, property received in certain corporate organizations and reorganizations, and certain acquisitions of stock, respectively, and to make certain corrections, such regulations are amended as follows:

PARAGRAPH 1. Section 1.304–1 is amended to read as follows:

§ 1.304–1 General.

(a) Except as provided in paragraph (b) of this section, section 304 is applicable where a shareholder sells stock of one corporation to a related corporation as defined in section 304. Sales to which section 304 is applicable shall be treated as redemptions subject to sections 302 and 303.

(b) In the case of—

(1) Any acquisition of stock described in section 304 which occurred before June 22, 1954, and

(2) Any acquisition of stock described in section 304 which occurred on or after June 22, 1954, and on or before December 31, 1958, pursuant to a contract entered into before June 22, 1954,

the extent to which the property received in return for such acquisition shall be treated as a dividend shall be determined as if the Internal Revenue Code of 1939 continued to apply in respect of such acquisition and as if the Internal Revenue Code of 1954 had not been enacted. See section 391. In cases to which this paragraph applies, the basis of the stock received by the acquiring corporation shall be determined as if the Internal Revenue Code of 1939 continued to apply in respect of such acquisition and as if the Internal Revenue Code of 1954 had not been enacted.

PAR. 2. Section 1.304–2 is amended by revising paragraph (a) and examples (1), (2), and (3) of paragraph (c). These amended provisions read as follows:

§ 1.304–2 Acquisition by related corporation (other than subsidiary).

(a) If a corporation, in return for property, acquires stock of another corporation from one or more persons and the person or persons from whom the stock was acquired were in control of both such corporations before the acquisition, then such property shall be treated as received in redemption of stock of the acquiring corporation. The stock received by the acquiring corporation shall be treated as a contribution to the capital of such corporation. See section 362(a) for determination of the basis of such stock. The transferor's basis for his stock in the acquiring corporation shall be increased by the basis of stock surrendered by him. (But see below in this paragraph for subsequent reductions of basis in certain cases.) As to each person transferring stock, the amount received shall be treated as a distribution of property under section 302(d), unless as to such person such amount is to be treated as received in exchange for the stock under the terms of section 302(a) or section 303. In applying section 302(b), reference shall be had to the shareholder's ownership of stock in the issuing corporation and not to his ownership of stock in the acquiring corporation (except for purposes of applying section 318(a)). In determining control and applying section 302(b), section 318(a) (relating to the constructive ownership of stock) shall be applied without regard to the 50-percent limitation in section 318(a)(2)(C). A series of redemptions referred to in section 302(b)(2)(D) shall include acquisitions by either of the corporations of stock of the other and stock redemptions by both corporations. If section 302(d) applies to the surrender of stock by a shareholder, his basis for his stock in the acquiring corporation after the transaction (increased as stated above in this paragraph) shall not be decreased except as provided in section 301. If section 302(d) does not apply, the property received shall be treated as received in a distribution in payment in exchange for stock of the acquiring corporation under section 302(a), which stock has a basis equal to the amount by which the shareholder's basis for his stock in the acquiring corporation was increased on account of the contribution to capital as provided for above in this paragraph. Accordingly, such amount shall be applied in reduction of the shareholder's basis for his stock in the acquiring corporation. Thus, the basis of each share of the shareholder's stock in the acquiring corporation will be the same as the basis of such share before the entire transaction. The holding period of the stock which is considered to have been redeemed shall be the same as the holding period of the stock actually surrendered.

* * * * *

(c) The application of section 304(a)(1) may be illustrated by the following examples:

Example (1). Corporation X and corporation Y each have outstanding 100 shares of common stock. One-half of the stock of each corporation is owned by an individual, A, and one-half by another individual, B, who is unrelated to A. A sells 40 shares of corporation X stock to corporation Y for $50,000, such stock having an adjusted basis of $10,000 to A. After the sale, A is considered as owning corporation X stock as follows:

(i) 10 shares directly, and

(ii) 45 shares constructively since by virtue of his 50-percent ownership of Y, he constructively owns 50 percent of the 40 shares owned directly by corporation Y, and 50 percent of the 50 shares attributed to corporation Y because they are owned by Y's stockholder, B.

Since after the sale A owns a total of more than 50 percent of the voting power of all the outstanding stock of corporation X, the transfer is not "substantially disproportionate" as to him as provided in section 302(b)(2). Under these facts, and assuming that section 302(b)(1) is not applicable, the entire $50,000 is treated as a dividend to A to the extent of the earnings and profits of corporation Y. The basis of the corporation X stock to corporation Y is $10,000, its adjusted basis to A. The amount of $10,000 is added to the basis of the stock of corporation Y in the hands of A.

Example (2). Corporation X and corporation Y each have outstanding 100 shares of common stock. A, an individual, owns one-half the stock of each corporation, B owns one-half the stock of corporation X, and C owns one-half the stock of corporation Y. A, B, and C are unrelated. A sells 30 shares

of the stock of corporation X to corporation Y for $50,000, such stock having an adjusted basis of $10,000 to him. After the sale, A is considered as owning 35 shares of the stock of corporation X (20 shares directly and 15 constructively because one-half of the 30 shares owned by corporation Y are attributed to him). Since before the sale, he owned 50 percent of the stock of corporation X and after the sale he owned directly and constructively only 35 percent of such stock, the redemption is substantially disproportionate as to him pursuant to the provisions of section 302(b)(2). He, therefore, realizes a gain of $40,000 ($50,000 minus $10,000). If the stock surrendered is a capital asset, such gain is long-term or short-term capital gain depending on the period of time that such stock was held. The basis to A for the stock of corporation Y is not changed as a result of the entire transaction. The basis to corporation Y for the stock of corporation X is $50,000, i.e., the basis of the transferor ($10,000), increased in the amount of gain recognized to the transferor ($40,000) on the transfer.

Example (3). Corporation X and corporation Y each have outstanding 100 shares of common stock. H, and individual, W, his wife, S, his son, and G, his grandson, each own 25 shares of stock of each corporation. H sells all of his 25 shares of stock of corporation X to corporation Y. Since both before and after the transaction H owned directly and constructively 100 percent of the stock of corporation X, and assuming that section 302(b)(1) is not applicable, the amount received by him for his stock of corporation X is treated as a dividend to him to the extent of the earnings and profits of corporation Y.

PAR. 3. Section 1.337 is amended by adding after section 337(c) a new subsection (d) and a historical note, as follows:

§ 1.337 Statutory provisions; gain or loss on sales or exchanges in connection with certain liquidations.

SEC. 337. *Gain or loss on sales or exchanges in connection with certain liquidations.* * * *

(d) *Special rule for certain minority shareholders.* If a corporation adopts a plan of complete liquidation on or after January 1, 1958, and if subsection (a) does not apply to sales or exchanges of property by such corporation, solely by reason of the application of subsection (c)(2)(A), then for the first taxable year of any shareholder (other than a corporation which meets the 80 percent stock ownership requirement specified in section 332(b)(1)) in which he receives a distribution in complete liquidation—

(1) The amount realized by such shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by this subtitle on such corporation would have been reduced if subsection (c)(2)(A) had not been applicable, and

(2) For purposes of this title, such shareholder shall be deemed to have paid, on the last day prescribed by law for the payment of the tax imposed by this subtitle on such shareholder for such taxable year, an amount of tax equal to the amount of the increase described in paragraph (1).

[Sec. 337 as amended by sec. 19, Technical Amendments Act 1958 (72 Stat. 1615)]

PAR. 4. Section 1.337–5 is deleted and the following new sections are inserted in lieu thereof:

§ 1.337–5 Special rule for certain minority shareholders.

(a) *General.* If, with respect to a plan of complete liquidation adopted on or after January 1, 1958, the liquidating corporation fails to qualify for the treatment prescribed by section 337(a) solely by reason of the application of section 337(c)(2)(A), then, for the first taxable year of any shareholder (other than a corporation which meets the 80-percent stock ownership requirement specified in section 332(b)(1)) in which he receives a distribution in complete liquidation, the treatment prescribed by section 337(d) and this section shall be applicable to such shareholder. Since section 337(d) applies only with respect to distributions in complete liquidation under section 331, it does not apply with respect to a distribution which is treated as part of an exchange to which section 354 or 356 applies.

(b) *Treatment of minority shareholders.* (1) In cases to which section 337(d) and paragraph (a) of this section apply—

(i) The amount realized by the shareholder on the distribution shall be increased by his proportionate share of the amount by which the tax imposed by subtitle A of the Code (income taxes) on the liquidating corporation would have been reduced if section 337(c)(2)(A) had not been applicable (see paragraph (c) of this section for determination of the proportionate share of each shareholder), and

(ii) For purposes of the Code, the shareholder shall be deemed to have paid on the last day prescribed by section 6151 for the payment of the tax (the last day prescribed by section 6072 for the filing of his income tax return) for the taxable year in which he receives the first distribution in complete liquidation (whether the return is filed before, on, or after such last day), an amount of income tax equal to the amount of the increase described in subdivision (i) of this subparagraph.

(2) If a minority shareholder who receives a distribution to which section 337(d) and paragraph (a) of this section apply is a partnership, the amount realized by the partnership for the first taxable year in which it receives a distribution in liquidation shall be increased by the amount determined under paragraph (c) of this section, and the amount of tax referred to in subparagraph (1)(ii) of this paragraph shall be deemed paid by the partnership. Credit or refund of the tax deemed paid by the partnership shall be taken into account by the partners in accordance with section 702(a)(8), and the share taken into account by each partner shall be deemed paid by him on the last day prescribed by section 6151 for the payment of the tax for his taxable year in which or with which the partnership taxable year ends. Finally, the partners shall make such adjustments to the bases of their partnership interests as are required by section 705(a) and, for purposes of that section, the amount of tax deemed paid by the partnership shall be treated as a nondeductible partnership expenditure.

(3) If a minority shareholder who receives a distribution to which section 337(d) and paragraph (a) of this section apply is an electing small business corporation (within the meaning of section 1371(b)), then—

(i) The increase in the amount realized on such distribution, as determined under paragraph (c) of this section, shall be deemed received by such corporation on the last day of its taxable year during which such distribution is received;

(ii) On such last day the amount of tax referred to in subparagraph (1)(ii) of this paragraph shall be deemed distributed to those persons who are shareholders of such corporation on such last day, in the same proportion as the undistributed taxable income of such corporation would be included (under section 1373(b)) in the gross income of such persons, and, for purposes of section 301(c)(2) and (3), the distribution shall be considered a distribution which is not a dividend; and

(iii) The amount of tax deemed distributed to each shareholder under subdivision (ii) of this subparagraph shall be deemed paid by each such shareholder on the last day prescribed by section 6151 for the payment of the tax for his taxable year in which or with which the taxable year of such corporation ends.

(c) *Determination of each minority shareholder's increase in amount realized.* (1) Under section 337(d) and paragraph (b) of this section, the amount realized by each minority shareholder of the liquidating corporation shall be increased by his proportionate share of the amount by which the tax imposed by subtitle A of the Code on the liquidating corporation would have been reduced if section 337(c)(2)(A) had not been applicable. Where the corporation has only the one class of stock outstanding, the increase in the amount realized by each minority shareholder shall be determined by multiplying the reduction in the corporation's tax that would be applicable if section 337(c)(2)(A) did not apply by a fraction, the numerator of which is equal to the sum of all liquidating distributions received by such shareholder and the denominator of which is equal to the sum of all liquidating distributions received by all shareholders. Where the corporation has outstanding preferred stock which is limited to a specified amount on liquidation, as well as common stock, if the holders of the preferred stock receive the entire amount to which they are entitled, the fraction described in the preceding sentence shall be applied to determine the increase in the amount realized by the holders of common stock on the liquidation without taking the preferred stock into account. In all other cases, in determining the increase in the amount realized by each minority shareholder, consideration must be given to the extent to which different classes of stock are entitled to participate in the assets of the corporation on liquidation.

(2) If two or more minority shareholders receive distributions in liquidation with respect to the same stock (e.g., if a minority shareholder sells his stock after receiving one of a series of distributions in complete liquidation), the increase in the amount realized by the minority shareholder who surrenders the stock in liquidation shall be determined as though he received all the distributions in liquidation with respect to such

stock and shall then be divided between himself and the shareholder who has already received distributions in liquidation with respect to the same stock. This division must be in proportion to the amount each minority shareholder received in liquidation with respect to such stock.

(d) *Claim for credit or refund.* Claim for credit or refund of the tax deemed to have been paid by a shareholder pursuant to section 337(d) and paragraph (b) of this section shall be made on the shareholder's income tax return (or in an amended return or claim for credit or refund) for the taxable year in which he receives the first distribution in complete liquidation. In the case of a shareholder which is a partnership, claim shall be made by the partners for credit or refund of their distributive shares of the tax deemed to have been paid by the partnership. In the case of a shareholder which is an electing small business corporation (within the meaning of section 1371(b)), claim shall be made by those persons who are shareholders of such corporation on the last day of the corporation's taxable year in which it received the first distribution in complete liquidation. In the case of a shareholder who is a nonresident alien individual or a nonresident foreign corporation, see section 6012 and the regulations thereunder. In the case of a shareholder which is exempt from tax under section 501(a) and to which section 511 does not apply for the taxable year, claim for refund of the tax deemed to have been paid by such shareholder shall be made on Form 843. For other rules applicable to the filing of claims for credit or refund of an overpayment of tax, see section 6402 and the regulations thereunder. For the limitations applicable to the credit or refund of an overpayment of tax, see section 6511 and the regulations thereunder.

(e) *Illustrations.* The application of this section may be illustrated by the following examples:

Example (1). (i) Assume that corporation S, having only common stock outstanding, is owned 90 percent by corporation P (which has owned the S stock for 3 years) and 10 percent by individual A (a calendar year taxpayer), and that the sole assets of corporation S are two buildings, each having a fair market value of $100,000 and a basis to the corporation of $50,000. Assume further that A's basis for his stock is $10,000. On August 1, 1958, corporation S adopts a plan of complete liquidation. On September 1, 1958, corporation S sells building No. 1 for $100,000 and, during October 1958, the corporation makes a pro rata distribution of building No. 2 and the proceeds of the sale of building No. 1 (less $12,500 retained to pay the tax on such sale at the rate of 25 percent).

(ii) Under section 337(d) and this section, the amount realized by A on the distribution is increased by $1,250, A's proportionate share (10 percent) of the amount by which the tax imposed on corporation S upon such sale would have been reduced ($12,500) if section 337(a) had been applicable. Thus, the tax imposed on A with respect to the complete liquidation is computed as follows: The amount realized by A is $18,750 ($10,000 for A's one-tenth interest in building No. 2, plus $8,750 representing A's proportionate share of the $100,000 received by corporation S on the sale of building No. 1 less the tax imposed on corporation S upon such sale) plus $1,250 (the increase in the amount realized), or $20,000. Since A's basis for his stock is $10,000, the tax imposed on A with respect to the complete liquidation (assuming A's gain is taxed at a rate of 25 percent) is $2,500. Under section 337(d) and this section, A shall be deemed to have paid $1,250 in tax. Accordingly, A will be left with $17,500 in property and money ($18,750 minus $1,250).

Example (2). (i) Assume all the facts set forth in example (1) and the following additional facts: Corporation S has outstanding 1,000 shares of $100 par value preferred stock, the holders of which are entitled to receive full par value on liquidation, after which the common shareholders receive the balance of the assets. Individual A owns 10 percent of the preferred stock, with a basis to him of $10,000, as well as 10 percent of the common stock. Corporation S has, in addition to its two buildings, $100,000 in cash which it distributes in full payment in exchange for the outstanding preferred stock.

(ii) Individual A receives $10,000 in exchange for his preferred stock and recognizes no gain or loss on this portion of the liquidation. Under section 337(d) and this section, A is accorded the same treatment described in example (1) with respect to his common stock as though it were the only stock outstanding. Thus, with respect to his common stock the amount realized by A on the distribution is increased by $1,250, and the tax deemed paid by him is $1,250. Accordingly, after credit, A will be left with $27,500 in property and money ($10,000 on his preferred stock and $17,500 on his common stock).

Example (3). (i) Assume the same facts as in example (1) except that on August 2, 1958, corporation S makes a pro rata distribution of building No. 2 as a first distribution in complete liquidation. Assume further that on August 15, 1958, individual A sells his stock to B, and that on October 1, 1958, building No. 1 is sold and final distribution in liquidation is made of $87,500 ($100,000 sales proceeds less $12,500 retained to pay tax, assuming a 25-percent rate).

(ii) Under section 337(d) and this section, the increase in the amount realized by B shall first be determined as though he had received all the distributions in liquidation with respect to such stock. Then the increase in the amount realized ($1,250) is divided between A and B in proportion to the amount each shareholder received in liquidation with respect to such stock. Thus, A's share of the increase in the amount realized is $666.67 ($1,250×10,000/18,750) and B's share is $583.33 ($1,250×8,750/18,750). A is deemed to have paid tax in the amount of $666.67 and B is deemed to have paid tax in the amount of $583.33.

Example (4). (i) Assume the same facts as in example (1), except that A files his return for 1958 on April 15, 1959, and that corporation S sells building No. 1, and distributes the proceeds of such sale (less tax thereon), in May 1959.

(ii) Since building No. 1 is not sold until after A files his return for 1958, A's 1958 return will report no gain on the liquidation (A's pro rata share of building No. 2 being equal to the basis of his stock). However, under section 337(d) and this section, the amount realized by A on the liquidating distribution received by him in 1958 (the first taxable year in which he received a liquidating distribution) is increased by his entire proportionate share ($1,250) of the amount by which the tax imposed on corporation S upon the sale of building No. 1 would have been reduced if section 337(a) had been applicable. Moreover, A is deemed to have paid, on the last day prescribed by law for the payment of his tax for 1958 (April 15, 1959), an amount of tax equal to such increase. Thus, A will be obliged to file an amended return (or claim for refund) for 1958 to reflect the adjustments required by section 337(d) and this section. The amended return (or claim for refund) will show that in 1958 A realized gain on the liquidation in the amount of $1,250, the excess of the amount realized by A ($10,000 plus $1,250 or $11,250) over his basis ($10,000), and that A incurred a tax of $312.50 on such gain (assuming the gain is taxed at a rate of 25 percent). Moreover, the amended return (or claim) will show that A is deemed to have paid $1,250 in additional tax for 1958. Accordingly, if the excess of the tax deemed paid over the tax incurred, or $937.50, constitutes an overpayment of tax for 1958, such excess will be credited or refunded to A.

(iii) When A receives a further liquidating distribution of $8,750 in 1959 (i.e., his proportionate share of the proceeds of the sale of building No. 1, less tax thereon) he realizes a further gain of $8,750 (since he fully recovered the basis of his stock in 1958) on which, assuming the gain is taxed at a rate of 25 percent, he will incur a tax of $2,187.50. Thus, with respect to the liquidation of corporation S, A will in effect be left with $17,500 in property and money, determined as follows:

Amount actually realized in 1958		$10,000.00
Amount deemed paid as tax for 1958 and recoverable by credit or refund to extent it exceeds A's tax liability for 1958	$1,250.00	
Less: Tax on gain in 1958	312.50	
		937.50
Amount actually realized in 1959	8,750.00	
Less: Tax on gain in 1959	2,187.50	
		6,562.50
Total money and property received or credited		17,500.00

§ 1.337–6 Information to be filed.

(a) *Cases to which section 337(a) applies.* In cases to which section 337(a) applies, there must be attached to the return of the liquidating corporation the following information:

(1) A copy of the minutes of the stockholders' meeting at which the plan of liquidation was formally adopted, including a copy of the plan of liquidation.

(2) A statement of the assets sold after the adoption of the plan of liquidation, including the dates of such sales. If section 337(c)(2)(B), relating to limited nonrecognition of gain on sales by subsidiaries, is applicable, this statement must include a computation of the total gain and of the gain not recognized under section 337.

(3) Information as to the date of the final liquidating distribution.

(4) A statement of the assets, if any, retained to pay liabilities and the nature of the liabilities.

(b) *Cases to which section 337(d) is applicable.* In cases to which section 337(d) applies, a minority shareholder who claims credit or refund of tax deemed to have been paid shall file with the return on which the claim is made (or Form 843) a statement containing the name and address of the liquidating

corporation and the district in which it files its return, together with all information necessary to support the validity of his claim and a detailed computation of the amount of his claim.

PAR. 5. Section 1.358 is amended by revising section 358(a), and adding a historical note at the end of section 358, to read as follows:

§ 1.358 Statutory provisions; basis to distributees.

SEC. 358. *Basis to distributees.*—(a) *General rule.* In the case of an exchange to which section 351, 354, 355, 356, 361, or 371(b) applies—

(1) *Nonrecognition property.* The basis of the property permitted to be received under such section without the recognition of gain or loss shall be the same as that of the property exchanged—

(A) Decreased by—

(i) The fair market value of any other property (except money) received by the taxpayer,

(ii) The amount of any money received by the taxpayer, and

(iii) The amount of loss to the taxpayer which was recognized on such exchange, and

(B) Increased by—

(i) The amount which was treated as a dividend, and

(ii) The amount of gain to the taxpayer which was recognized on such exchange (not including any portion of such gain which was treated as a dividend).

(2) *Other property.* The basis of any other property (except money) received by the taxpayer shall be its fair market value.

* * * * *

[Sec. 358 as amended by sec. 21, Technical Amendments Act 1958 (72 Stat. 1620)]

Par. 6. Paragraph (a) of § 1.358–1 is amended to read as follows:

§ 1.358–1 Basis to distributees.

(a) In the case of an exchange or distribution to which section 354, 355, or 371(b) applies in which, under the law applicable to the year in which the exchange is made, only nonrecognition property is received, the sum of the basis of all of the stock and securities in the corporation whose stock and securities are exchanged or with respect to which the distribution is made, held immediately after the transaction, plus the basis of all stock and securities received in the transaction shall be the same as the basis of all the stock and securities in such corporation held immediately before the transaction allocated in the manner described in § 1.358–2. In the case of an exchange to which section 351 or 361 applies in which, under the law applicable to the year in which the exchange was made, only nonrecognition property is received, the basis of all the stock and securities received in the exchange shall be the same as the basis of all property exchanged therefor. If an exchange or distribution to which section 351, 356, 361, or 371(b) applies both nonrecognition property and "other property" are received, the basis of all the property except "other property" held after the transaction shall be determined as described in the preceding two sentences decreased by the sum of the money and the fair market value of the "other property" (as of the date of the transaction) and increased by the sum of the amount treated as a dividend (if any) and the amount of the gain recognized on the exchange, but the term "gain" as here used does not include any portion of the recognized gain that was treated as a dividend. In any case in which a taxpayer transfers property with respect to which loss is recognized, such loss shall be reflected in determining the basis of the property received in the exchange. The basis of the "other property" is its fair market value as of the date of the transaction.

PAR. 7. Section 1.391 is amended to read as follows:

§ 1.391 Statutory provisions; effective date of part I, subchapter C, chapter 1 of the Code.

SEC. 391. *Effective date of Part I.* Except as otherwise provided in this subchapter, part I shall take effect on June 22, 1954. Section 306 shall apply only with respect to dispositions (or redemptions) occurring on or after June 22, 1954. In the case of—

(1) Any acquisition of stock described in section 304 which occurred before June 22, 1954, and

(2) Any acquisition of stock described in such section which occurred on or after June 22, 1954, and on or before December 31, 1958, pursuant to a contract entered into before June 22, 1954;

the extent to which the property received in return for such acquisition shall be treated as a dividend shall be determined as if the Internal Revenue Code of 1939 continued to apply in respect of such acquisition and as if this Code had not been enacted.

[Sec. 391 as amended by sec. 22, Technical Amendments Act 1958 (72 Stat. 1620)]

PAR. 8. Section 1.391–1 is amended to read as follows:

§ 1.391–1 Effective date of part I of subchapter C.

Pursuant to section 395 and regulations thereunder, the provisions of part I, subchapter C, chapter 1 of the Code, shall be effective with respect to the described transactions which occur on or after June 22, 1954, and with respect to section 306 (relating to the disposition or redemption of "section 306 stock"), such section shall apply only to stock which is received in a transaction subject to the Internal Revenue Code of 1954, and which is disposed of or redeemed after June 22, 1954. Generally, stock issued after June 22, 1954, will be section 306 stock if such stock comes within the definition set forth in section 306(c). However, stock which otherwise qualifies within the definition set forth in section 306 is not section 306 stock if it is issued pursuant to a reorganization which by reason of the application of section 393(b) and section 395 is governed by the provisions of the Internal Revenue Code of 1939 without amendment by the Internal Revenue Code of 1954. In addition, stock which otherwise qualifies within the definition set forth in section 306(c) is not section 306 stock if it is issued pursuant to a reorganization which by reason of an election under section 393(b)(2) is governed by the provisions of the Internal Revenue Code of 1939 without amendment by the Internal Revenue Code of 1954. For rules applicable in the case of certain acquisitions of stock described in section 304, see paragraph (b) of § 1.304–1.

PAR. 9. Paragraph (b)(1)(iv) of § 1.6012–1 is amended to read as follows:

§ 1.6012–1 Individuals required to make returns of income.

* * * * * *

(b) *Returns of nonresident alien individuals.*—(1) *Individuals in class 1 (no United States business and gross income of not more than $15,400).* * * *

(iv) *Claim for refund.* Notwithstanding the provisions of subdivisions (i) and (ii) of this subparagraph, a nonresident alien individual within class 1 shall include on Form 1040NB his entire income described in paragraph (b) of § 1.871–7, whether or not the tax has been fully satisfied at the source upon a portion thereof, if a claim for the refund of an overpayment of tax is made in accordance with section 6402 and the regulations thereunder. However, if the overpayment to be refunded consists solely of tax deemed to have been paid under section 337(d)(2), relating to gain or loss on sales or exchanges in connection with certain liquidations, or section 852(b)(3)(D), relating to undistributed capital gains of a regulated investment company, or both, it is not necessary to include the Form 1040NB the entire income described in paragraph (b) of § 1.871–7.

PAR. 10. Paragraph (g)(1)(ii) of § 1.6012–2 is amended to read as follows:

§ 1.6012–2 Corporations required to make returns of income.

* * * * * *

(g) *Returns by foreign corporations.*—(1) *Nonresident foreign corporations.* * * *

(ii) *Claim for refund.* Notwithstanding the provisions of subdivision (i) of this subparagraph, a nonresident foreign corporation shall include on Form 1120NB its entire income described in § 1.881–2, whether or not the tax has been fully satisfied at the source upon a portion thereof, if a claim for refund of an overpayment of tax is made in accordance with section 6402 and the regulations thereunder. However, if the overpayment to be refunded consists solely of tax deemed to have been paid under section 337(d)(2), relating to gain or loss on sales or exchanges in connection with certain liquidations, or section 852(b)(3)(D), relating to undistributed capital gains of a regulated investment company, or both, it is not necessary to include on the Form 1120NB the entire income described in § 1.881–2.

[F.R. Doc. 60–11355; Filed, Dec. 6, 1960; 8:49 a.m.]

[26 CFR (1954) Part 250]

LIQUORS AND ARTICLES FROM PUERTO RICO

Return System for Payment of Taxes

Notice is hereby given pursuant to the Administrative Procedures Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commis-

sioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to (1) establish a return system for the payment of internal revenue taxes in Puerto Rico on liquors and articles of Puerto Rican manufacture which are to be withdrawn from insular bond for shipment to the United States, and (2) conform to administrative organizational changes, the regulations in 26 CFR Part 250, "Liquors and Articles From Puerto Rico and the Virgin Islands," are amended as follows:

A new section, reading as follows, is inserted immediately following § 250.11.

§ 250.11a Delegate.

The term "Secretary, or his delegate," means the Secretary, or any officer or employee of the Secretary duly authorized to perform the function mentioned or described in this part.

§ 250.20 [Deletion]

Section 250.20 is deleted.

A new section, reading as follows, is inserted immediately following § 250.21.

§ 250.21a Officer-in-Charge.

"Officer-in-Charge" shall mean the principal revenue officer in Puerto Rico charged with the duty of collecting internal revenue taxes, in Puerto Rico, under the jurisdiction of the Director of the Office of International Operations, Internal Revenue Service, Treasury Department, Washington, D.C.

Three new sections, reading as follows, are inserted immediately following § 250.26.

§ 250.26a Revenue agent.

"Revenue agent" shall mean any duly authorized Commonwealth Internal Revenue Agent of the Department of the Treasury of Puerto Rico.

§ 250.26b Secretary.

"Secretary" shall mean the Secretary of the Treasury of Puerto Rico.

§ 250.26c Taxpaid.

"Taxpaid", as used in this part with respect to liquors or articles of Puerto Rican manufacture, shall include liquors or articles on which the tax was computed but with respect to which payment was deferred under the provisions of Subpart E of this part.

§ 250.27 [Deletion]

Section 250.27 is deleted.

Section 250.30 is amended to read:

§ 250.30 United States Internal Revenue Service office.

"United States Internal Revenue Service office," as used in this part, shall mean the United States Internal Revenue Service office in Puerto Rico operating under the direction of the Director of the Office of International Operations, Internal Revenue Service, Treasury Department, Washington, D.C.

§ 250.38 [Amendment]

Section 250.38 is amended as follows:

(A) By striking, in the third sentence, the reference to "§ 250.77", and inserting in lieu thereof "§ 250.86".

(B) By striking the statutory citation at the end of the section and inserting in lieu thereof "(72 Stat. 1374; 26 U.S.C. 5301)."

Section 250.42 is amended to read:

§ 250.42 Destruction of stamps.

All stamps must remain on packages until the contents are emptied. When a package of distilled spirits is emptied, the internal revenue stamp thereon must be completely effaced and obliterated.

(68A Stat. 830, 72 Stat. 1358; 26 U.S.C. 6804, 5205)

§ 250.55 [Amendment]

Section 250.55 is amended by striking the word "treasurer" and inserting in lieu thereof the word "Secretary".

Subpart E is amended to read:

Subpart E—Taxpayment in Puerto Rico of Liquors Withdrawn Before Rectification or Bottling

BONDS

Sec.
250.61 General.
250.62 Corporate surety.
250.63 Deposit of securities in lieu of corporate surety.
250.64 Consents of surety.
250.65 Authority to approve bonds and consents of surety.
250.66 Bond, Form 2896—Distilled spirits and rectification.
250.67 Bond, Form 2897—Wine.
250.68 Bond, Form 2898—Beer.
250.69 Strengthening bonds.
250.70 New or superseding bonds.

TERMINATION OF BONDS

250.71 Termination of bonds.
250.72 Application of surety for relief from bond.
250.73 Relief of surety from bond.
250.74 Release of pledged securities.
250.75 Form 1490, Notice of Termination or Release of Bond.

PERMITS REQUIRED

250.76 Insular permits.

DISTILLED SPIRITS

250.77 Subject to tax.
250.78 Application and permit, Form 2899.
250.79 Computation and payment of tax.
250.80 Action by Officer-in-Charge.
250.81 Action by Secretary.
250.82 Release of spirits.
250.83 Bottling of distilled spirits.
250.84 Stamping bottles.
250.85 Rectification tax.

PACKAGES OF DISTILLED SPIRITS

250.86 Authority for shipment.
250.87 Evidence of taxpayment.
250.88 Application for distilled spirits stamps.
250.89 Issuance of distilled spirits stamps.
250.90 Affixing stamps to packages.
250.91 Release of packages.

WINE

250.92 Subject to tax.
250.93 Application and permit, Form 2900.
250.94 Computation and payment of tax.
250.95 Action by Officer-in-Charge and by the Secretary.
250.96 Release of wine.
250.97 Marking containers of wine.

LIQUEURS, CORDIALS, OR SIMILAR COMPOUNDS CONTAINING WINE

250.98 Insular permits required.
250.99 Taxpayment.
250.100 Permit to ship required.

BEER

250.101 Subject to tax.
250.102 Application and permit, Form 2900.
250.103 Computation and payment of tax.
250.104 Action by Officer-in-Charge and by the Secretary.
250.105 Release of beer.
250.106 Marking containers of beer.

ARTICLES

250.107 Taxable status.
250.108 Application for permit, Form 2899 and/or Form 2900.
250.109 Taxpayment.
250.110 Release of liquors.

PAYMENT OF TAX BY RETURN

250.111 General.
250.112 Taxes to be collected by returns for semimonthly periods.
250.113 Returns for prepayment of taxes.

PERMIT TO SHIP LIQUORS AND ARTICLES

250.114 Permit to ship required.
250.115 Application, Form 487B.
250.116 Issuance of permit, Form 487B, and customs inspection.

PROCEDURE AT PORT OF ARRIVAL

250.117 Action by carrier.
250.118 Inspection by collector of customs at port of arrival.
250.119 Disposition of forms by collector of customs.

Subpart E—Taxpayment in Puerto Rico of Liquors Withdrawn Before Rectification or Bottling

BONDS

§ 250.61 General.

Every person filing a bond under this subpart, or a consent of surety on such bond, shall file it with the Officer-in-Charge.

§ 250.62 Corporate surety.

Surety bonds may be given only with corporate sureties holding certificates of authority from, and subject to the limitations prescribed by, the Secretary of the Treasury of the United States, as set forth in United States Treasury Department Circular 570. Powers of attorney and other evidence of appointment of agents and officers to execute bonds or to consent to changes in the terms of bonds on behalf of corporate sureties are required to be filed with, and passed on by, the Commissioner of Accounts, Surety Bonds Branch, United States Treasury Department, Washington 25, D.C.

(61 Stat. 648; 6 U.S.C. 6, 7)

§ 250.63 Deposit of securities in lieu of corporate surety.

In lieu of corporate surety, the principal may pledge and deposit, as surety for his bond, securities which are transferable and are guaranteed as to both interest and principal by the United States, in accordance with the provisions of 31 CFR Part 225.

(61 Stat. 650; 6 U.S.C. 15)

§ 250.64 Consents of surety.

Consents of surety to changes in the terms of bonds shall be executed on Form 1533 by the principal and by the surety with the same formality and proof of authority as is required for the execution of bonds.

§ 250.65 Authority to approve bonds and consents of surety.

The Officer-in-Charge is authorized to approve all bonds and consents of surety filed under this part.

§ 250.66 Bond, Form 2896—Distilled spirits and rectification.

(a) *Withdrawal of distilled spirits from bonded storage in Puerto Rico.* Where the proprietor of a bonded warehouse or a bonded processing room intends to withdraw, for purpose of shipment to the United States, distilled spirits of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by section 7652(a), I.R.C., equal to the tax imposed in the United States by section 5001(a)(1), I.R.C., he shall, before making any such withdrawal, furnish a bond, Form 2896, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all distilled spirits so withdrawn. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond: *Provided*, That the penal sum of such bond shall not exceed $1,000,000, but in no case shall the penal sum be less than $1,000.

(b) *Rectification in Puerto Rico.* Where the proprietor of a rectifying plant in Puerto Rico intends to ship rectified products to the United States and desires that the tax imposed by section 7652(a), I.R.C., equal to the tax imposed in the United States by section 5021 and/or section 5022, I.R.C., be computed at the time the bottling and casing is completed, but payment thereof be deferred, he shall furnish a bond, Form 2896, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all rectified spirits and wines so bottled and cased. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond: *Provided*, That the penal sum of such bond shall not exceed $100,000, but in no case shall the penal sum be less than $1,000.

(c) *Blanket bond.* Any person who is the proprietor of more than one bonded warehouse, bonded processing room, or rectifying plant in Puerto Rico, may, in lieu of furnishing two or more separate bonds on Form 2896, as required by paragraphs (a) and/or (b) of this section, furnish a blanket bond on Form 2896. The penal sum of such blanket bond shall be equal to the sum of the penal sums of all the bonds in lieu of which it is given. Such blanket bond on Form 2896 shall show each bonded warehouse and/or bonded processing room and/or rectifying plant to be covered by the bond, and the part of the total penal sum (computed in accordance with paragraphs (a) and/or (b) of this section) to be allocated to each of the designated premises. If the penal sum of the bond allocated to a designated premises is in an amount less than the maximum prescribed in paragraphs (a) and/or (b) of this section, transactions at such premises shall not exceed the quantity permissible, as reflected by the penal sum allocated in the bond to such premises. Such blanket bond shall contain the terms and conditions of the bonds in lieu of which it is given and shall be conditioned that the total amount of the bond shall be available for satisfaction of any liability incurred under the terms and conditions of such bond.

(68A Stat. 775, 847, 906, 907; 26 U.S.C. 6301(b), 7101, 7102, 7651(2)(B), 7652(a))

§ 250.67 Bond, Form 2897—Wine.

Where a proprietor intends to withdraw, for purpose of shipment to the United States, wine of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by section 7652(a), I.R.C., equal to the tax imposed in the United States by section 5041, I.R.C., he shall, before making any such withdrawal, furnish a bond, Form 2897, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all wine so withdrawn. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond: *Provided*, That the penal sum of such bond shall not exceed $250,000, but in no case shall the penal sum be less than $500.

(68A Stat. 775, 847, 906, 907; 26 U.S.C. 6301(b), 7101, 7102, 7651(2)(B), 7652(a))

§ 250.68 Bond, Form 2898—Beer.

Where a brewer intends to withdraw, for purpose of shipment to the United States, beer of Puerto Rican manufacture from bonded storage in Puerto Rico on computation, but before payment, of the tax imposed by section 7652(a), I.R.C., equal to the tax imposed in the United States by section 5051, I.R.C., he shall, before making any such withdrawal, furnish a bond, Form 2898, to secure payment of such tax, at the time and in the manner prescribed in this subpart, on all beer so withdrawn. The bond shall be executed in a penal sum not less than the amount of unpaid tax which, at any one time, is chargeable against the bond: *Provided*, That the penal sum of such bond shall not exceed $500,000, but in no case shall the penal sum be less than $1,000.

(68A Stat. 775, 847, 906, 907; 26 U.S.C. 6301(b), 7101, 7102, 7651(2)(B), 7652(a))

§ 250.69 Strengthening bonds.

In all cases where the penal sum of any bond becomes insufficient, the principal shall either give a strengthening bond with the same surety to attain a sufficient penal sum, or give a new bond to cover the entire liability. Strengthening bonds will not be approved where any notation is made thereon which is intended, or which may be construed, as a release of any former bond, or as limiting the amount of any bond to less than its full penal sum. Strengthening bonds shall show the current date of execution and the effective date.

§ 250.70 New or superseding bonds.

New bonds shall be required in case of insolvency or removal of any surety, and may, at the discretion of the Officer-in-Charge, be required in any other contingency affecting the validity or impairing the efficiency of an existing bond. Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity, continuing or liquidating the business of the principal, shall execute and file a new bond or obtain the consent of the surety or sureties on the existing bond or bonds. Where, under the provisions of § 250.72, the surety on any bond given under this subpart has filed an application to be relieved of liability under said bond and the principal desires or intends to continue the operations to which such bond relates, he shall file a valid superseding bond to be effective on or before the date specified in the surety's notice. New or superseding bonds shall show the current date of execution and the effective date.

TERMINATION OF BONDS

§ 250.71 Termination of bonds.

Any bond given under the provisions of this subpart may be terminated as to future transactions—

(a) Pursuant to application of surety as provided in § 250.72;

(b) On approval of a superseding bond;

(c) On notification by the principal to the Officer-in-Charge that he has discontinued transactions under the bond; or

(d) On notification by the principal to the Officer-in-Charge that he has discontinued business.

§ 250.72 Application of surety for relief from bond.

A surety on any bond given under the provisions of this subpart may at any time in writing notify the principal and the Officer-in-Charge that he desires, after a date named, to be relieved of liability under said bond. Such date shall be not less than 10 days after the date the notice is received by the Officer-in-Charge. The surety shall also file with the Officer-in-Charge an acknowledgment or other proof of service on the principal. If such notice is not thereafter in writing withdrawn, the rights of the principal as supported by said bond shall be terminated on the date named in the notice, and the surety shall be relieved from liability to the extent set forth in § 250.73.

§ 250.73 Relief of surety from bond.

Where the surety on a bond given under the provisions of this subpart has filed application for relief from liability, as provided in § 250.72, the surety shall be relieved from liability for transactions occurring wholly subsequent to the date specified in the notice, or the effective date of a new bond, if one is given.

§ 250.74 Release of pledged securities.

Securities of the United States pledged and deposited as provided in § 250.63, shall be released only in accordance with the provisions of 31 CFR Part 225. Such securities will not be released by the Officer-in-Charge until the liability under the bond for which they were pledged has been terminated. When the Officer-in-Charge is satisfied that they may be released, he shall fix the date or dates on which a part or all of such securities may be released. At any time prior to the release of such securities, the Officer-in-Charge may extend the date of release for such additional length of time as he deems necessary.

(61 Stat. 650; 6 U.S.C. 15)

§ 250.75 Form 1490, Notice of Termination or Release of Bond.

When the Officer-in-Charge is satisfied that any bond given under the provisions of this subpart may be terminated or released, he shall issue Form 1490, Notice of Termination or Release of Bond, and shall forward copies to the principal and to the surety. The Officer-in-Charge shall appropriately modify Form 1490 to show his title in lieu of that of the "Assistant Regional Commissioner, Alcohol and Tobacco Tax."

PERMITS REQUIRED

§ 250.76 Insular permits.

Before liquors or articles of Puerto Rican manufacture may be shipped to the United States, an insular permit, Form 2899, to compute the taxes imposed by section 7652(a), I.R.C., and to withdraw the products from the bonded establishment where they may be deposited, must be obtained from the Secretary, and such products may not be shipped to the United States until a permit to ship, on Form 487B, is applied for and obtained from the Secretary.

DISTILLED SPIRITS

§ 250.77 Subject to tax.

Distilled spirits of Puerto Rican manufacture, and any products containing such spirits, coming into the United States and withdrawn for consumption or sale are subject to a tax equal to the internal revenue tax imposed in the United States by sections 5001(a)(1), 5021, and 5022, I.R.C.

(68A Stat. 907; 26 U.S.C. 7652)

§ 250.78 Application and permit, Form 2899.

Application for permit to compute the tax on, and to withdraw, distilled spirits shall be made on Form 2899, in quintuplicate, by the proprietor of the bonded warehouse or bonded processing room. The applicant shall forward all copies of the form to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary, or his delegate, shall execute his permit, retain one copy for his files, and forward the original and remaining copies of the form to the revenue agent at the bonded warehouse or bounded processing room where the spirits are stored. The revenue agent shall gauge the spirits, make a report of his gauge on Form 2630, in quadruplicate, and deliver all copies of Forms 2899 and 2630 to the applicant.

§ 250.79 Computation and payment of tax.

(a) *Deferred payment.* Where the distilled spirits are to be withdrawn from bonded storage on computation of tax, payment of which is to be deferred under bond, Form 2896, given by the proprietor of such bonded storage, such proprietor shall compute the tax, enter the amount of such computed tax on all copies of Form 2899, and execute the agreement to pay the amount of tax which has been computed and entered. He shall also certify under the penalties of perjury that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum or that it is sufficient to cover the amount of tax on the distilled spirits described on the form in addition to all other amounts chargeable against his bond. The proprietor shall forward the original and two copies of Forms 2899 and 2630 to the Officer-in-Charge, and shall retain a copy of each form for his files. Where the penal sum of his bond is less than the maximum prescribed in § 250.66(a) or where the penal sum allocated to his premises under § 250.66(c) is less than the prescribed maximum, the proprietor shall maintain an account of his bond. He shall charge the bond with the amount of liability he accepts at the time he executes Form 2899, and shall credit the bond for the same amount at the time he files his return, Form 2901, and remittance to cover payment of the tax on the distilled spirits covered by such Form 2899.

(b) *Withdrawal after payment.* Where the distilled spirits are to be withdrawn from bonded storage after payment of the computed tax, the proprietor shall enter the amount of such computed tax on all copies of Form 2899, and execute the statement that such tax is being prepaid. He shall then prepare Form 2925, in quadruplicate, and send the original and two copies of Forms 2899, 2925, and 2630, together with his remittance in full for such tax, to the Officer-in-Charge, and retain a copy of each form for his files.

§ 250.80 Action by Officer-in-Charge.

(a) *Deferred payment.* On receipt of Forms 2899 and 2630, covering application to withdraw distilled spirits from bonded storage, on computation, but before payment, of the tax, the Officer-in-Charge shall, if the proprietor has on file a good and sufficient bond, Form 2896, execute his certificate of approval on all copies of Form 2899, and forward two copies of Form 2899 and 2630 to the Secretary, retaining the originals of each form for his records. Where the Officer-in-Charge finds that the proprietor does not have proper and sufficient coverage on bond, Form 2896, or where the Officer-in-Charge finds that the proprietor is in default of payment of any taxes previously charged to his bond, he shall, without approval, return all copies of Form 2899 and 2630 to the proprietor, giving his reasons for withholding approval.

(b) *Prepayment.* On receipt of Forms 2899, 2925 and 2630, with remittance, covering prepayment of tax on distilled spirits to be withdrawn from bonded storage, the Officer-in-Charge shall execute his certificate of receipt on all copies of Form 2925, and his certificate of approval on all copies of Form 2899. He shall then forward two copies of Forms 2899, 2925, and 2630 to the Secretary and retain the originals of each form for his files.

§ 250.81 Action by the Secretary.

On receipt of Forms 2899 and 2630, and Form 2925 where required, from the Officer-in-Charge, the Secretary, or his delegate, shall authorize the release of the spirits on both copies of Form 2899, retain a copy of each form for his files, and forward a copy of each form to the proper revenue agent.

§ 250.82 Release of spirits.

On receipt of Form 2899 from the Secretary, authorizing the release of the distilled spirits, the revenue agent will release the spirits for bottling or withdrawal in accordance with procedures prescribed in this part for bottling and shipment. Distilled spirits released from bonded storage under this section may not be shipped to the United States until permit for such shipment has been obtained from the Secretary as provided in §§ 250.114 through 250.116.

§ 250.83 Bottling of distilled spirits.

On receipt of Form 2899 from the Secretary authorizing the release of distilled spirits for bottling, the revenue agent will so release the spirits. Spirits which are to be bottled without rectification may not be removed through the bonded processing room to the bottling house, but must be removed directly from the bonded warehouse to the bottling house. The bottling operations will be conducted under supervision of the revenue agent.

§ 250.84 Stamping bottles.

Every bottle of distilled spirits of Puerto Rican manufacture to be shipped to the United States must have affixed thereto a red strip stamp of proper size bearing the name of the distiller, rectifier, or bottler. Red strip stamps will be procured, overprinted, and used as provided in Subpart G of this part.

(72 Stat. 1358; 26 U.S.C. 5205)

§ 250.85 Rectification tax.

(a) *Computation.* When rectified spirits on which distilled spirits tax equal to the tax imposed in the United States by section 5001(a)(1), I.R.C., has been paid or deferred (as prescribed in § 250.79) have been bottled and cased, the rectifier shall prepare Form 2926, in quadruplicate. He shall compute on Form 2926 the rectification tax (equal to the tax imposed in the United States by section 5021 and/or section 5022, I.R.C.) incurred on the spirits so rectified and bottled and cased. He shall then submit all copies of the form to the revenue agent who, after verifying the computation of the tax, will return all copies to the rectifier.

(b) *Deferred payment.* When payment of the rectification tax is to be deferred under bond, Form 2896, given by the rectifier, he shall execute, on Form 2926, the agreement to pay the amount of tax which has been computed and entered. He shall also certify under penalties of perjury that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum or that it is sufficient to cover the amount of the rectification tax entered on the form in addition to all other amounts chargeable against his bond. The rectifier shall forward the original and two copies of Form 2926 to the Officer-in-Charge and retain a copy for his files. The provisions of § 250.79(a) shall be applicable with respect to keeping an account of the bond.

(c) *Prepayment.* When the rectification tax is to be prepaid on completion of bottling and casing, the rectifier shall execute the statement on Form 2926 that such tax is being prepaid. He shall then prepare Form 2925, in quadruplicate, and send the original and two copies of Forms 2925 and 2926, together with his remittance in full for such tax, to the Officer-in-Charge and retain a copy of each form for his files.

(d) *Procedures applicable.* The applicable provisions of §§ 250.80 and 250.81 shall govern the processing of Forms 2925 and 2926 by the Officer-in-Charge and the Secretary.

PACKAGES OF DISTILLED SPIRITS

§ 250.86 Authority for shipment.

The laws of Puerto Rico provide that distilled spirits of Puerto Rican manufacture may be shipped or exported from Puerto Rico only in containers holding not more than one gallon, except that where any rectifier presents to the Secretary a sworn application, in duplicate, stating that he wishes to withdraw from business and to liquidate his stock of rum, the Secretary, or his delegate, may authorize the sale of such stock in barrels of forty gallons or more for shipment to the United States. Therefore, subject to the approval of such application by the Secretary, or his delegate, and pursuant to the provisions of this part, rum of Puerto Rican manufacture may be shipped to the United States in such bulk containers.

§ 250.87 Evidence of taxpayment.

Where, under the provisions of § 250.86, a rectifier has made application to the Secretary for authority to ship packages of Puerto Rican rum to the United States, he shall, at the same time, submit sworn evidence to the Secretary that the distilled spirits tax has been paid or will be paid, as provided in § 250.79, and that all rectification taxes incurred have been paid or will be paid in the same manner as provided in § 250.85 for rectified spirits bottled and cased, or he shall submit application, Form 2899, for permit to pay such taxes, as provided in this subpart. When satisfied that the rectifier has complied with all provisions of this part relating to the payment of taxes on such distilled spirits, the Secretary, or his delegate, shall note his approval on both copies of the sworn application, and return one copy to the applicant. On receipt of the approved application, the rectifier shall submit application for permit to ship, Form 487B, as prescribed in §§ 250.114 through 250.116.

§ 250.88 Application for distilled spirits stamps.

On receipt of approved Form 487B from the Secretary, the rectifier shall make written request in triplicate to the Officer-in-Charge for issuance of distilled spirits stamps for the packages. Such requests shall show the name and address of the packer, the serial number of each package and the proof gallon contents thereof, the serial number of the Form 2901 and/or Form 2925 pursuant to which tax was paid, and shall identify the permit, Form 487B, pursuant to which the packages are to be shipped. The request and the permit, Form 487B, shall be submitted to the revenue agent, who if satisfied that the request has been correctly prepared and that the requirements of this subpart relating to the payment of taxes have been met, will note his approval on all copies of the request and return them and Form 487B to the proprietor. The proprietor shall forward all copies of the approved request and Form 487B to the Officer-in-Charge.

§ 250.89 Issuance of distilled spirits stamps.

On receipt of the approved request therefor, and permit Form 487B, the Officer-in-Charge shall issue the required number of distilled spirits stamps. He shall enter, on each stamp, the name of the proprietor removing the spirits, the serial number of the container for which the stamp is issued and, where rectification tax has been paid (as provided in this subpart), the words "Rectified Product." When the stamps have been issued, the issuing officer shall enter the serial numbers thereof, preceded by the symbols "DS" on each copy of the request; return Form 487B and one copy of the request, with the stamps, to the applicant; forward one copy of the request to the Secretary; and retain the original for his files.

§ 250.90 Affixing stamps to packages.

At the time the proprietor affixes the stamp to the package he shall enter on the stamp the date the stamp is affixed. The stamps shall be securely affixed by the proprietor, under supervision of a revenue agent, to the heads of the packages. The revenue agent shall then cancel the stamps by drawing or otherwise imprinting a line (not less than one-eighth inch wide) in durable red ink diagonally across the stamp. When the stamps have been affixed and canceled, the proprietor shall immediately cover them with a transparent coat of shellac, lacquer, varnish, or other equally suitable material, to protect the markings on the stamps.

§ 250.91 Release of packages.

On stamping of packages of spirits authorized for shipment to the United States as provided in § 250.86, the revenue agent shall release the packages for shipment.

WINE

§ 250.92 Subject to tax.

Wine of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale is subject to a tax equal to the internal revenue tax imposed in the United States on wine by section 5041, I.R.C.

(68 Stat. 907; 26 U.S.C. 7652)

§ 250.93 Application and permit, Form 2900.

When wine of Puerto Rican manufacture is to be withdrawn for shipment to the United States, or for use in making any rectified product or article for shipment to the United States, application for permit to compute the tax on, and to withdraw, the wine shall be made on Form 2900, in quintuplicate, by the proprietor of the bonded premises where the wine is stored. If the withdrawal is to be made in casks, barrels, kegs, or similar containers, the applicant shall enter the name of the winemaker producing the wine, the serial numbers of the packages, the total number of wine gallons contained therein, and the taxable grade of the wine, i.e., "not more than 14%" if the wine contains not more than 14 percent of alcohol by volume, "14–21%" if the wine contains more than 14 percent and not exceeding 21 percent of alcohol by volume, "21–24%" if the wine contains more than 21 percent but not exceeding 24 percent of alcohol by volume. On wines containing more than 24 percent of alcohol by volume, the true percentage of alcohol by volume shall be stated. If the application covers more than one taxable grade of wine, the quantity in each taxable grade shall be reported separately. If the withdrawal is to consist of bottled wine, the applicant shall show the number of cases, size of the bottles, the number of bottles per case, the total quantity in wine gallons, and the taxable grade of the wine in the manner stated above. The applicant shall forward all copies of the form to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary, or his delegate, shall execute his permit, retain one copy for his files, and return the original and three copies to the applicant.

§ 250.94 Computation and payment of tax.

(a) *Deferred payment.* When wine is to be withdrawn from bonded storage on computation of tax, payment of which is to be deferred under bond, Form 2897, given by the proprietor of such bonded storage, such proprietor shall compute the tax, enter the amount of the computed tax on all copies of Form 2900, and execute the agreement to pay the amount of tax which has been computed and entered. He shall also certify under the penalties of perjury that he is not

in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum or that it is sufficient to cover the amount of tax described on the form in addition to all other amounts chargeable against his bond. The proprietor shall forward the original and two copies of Form 2900 to the Officer-in-Charge, and shall retain one copy for his files. Where the penal sum of his bond is less than the maximum prescribed in § 250.67, the proprietor shall maintain an account of his bond. He shall charge the bond with the amount of liability he accepts at the time he executes Form 2900, and shall credit the bond for the same amount at the time he files his return, Form 2927, and remittance to cover payment of the tax on the wine covered by such Form 2900.

(b) *Withdrawal after payment.* Where the wine is to be withdrawn from bonded storage after payment of the computed tax, the proprietor shall enter such computed tax on all copies of Form 2900, and execute the statement that such tax is being prepaid. He shall then prepare Form 2928, in quadruplicate, and send the original and two copies of Forms 2900 and 2928, together with his remittance in full for such tax, to the Officer-in-Charge, and retain a copy of each form for his files.

§ 250.95 Action by Officer-in-Charge and by the Secretary.

The procedures prescribed in §§ 250.80 and 250.81 with respect to the processing of Forms 2899 and 2925 by the Officer-in-Charge and by the Secretary, shall be applicable to the processing, by such persons, of Forms 2900 and 2928.

§ 250.96 Release of wine.

On receipt of Form 2900 from the Secretary authorizing the release of the wine, the revenue agent shall release the wine. Wine may not be shipped to the United States until a permit to ship, Form 487B, has been obtained as provided in §§ 250.114 through 250.116.

§ 250.97 Marking containers of wine.

Containers of wine of Puerto Rican manufacture which are to be shipped to the United States must be marked with the name of the winemaker, the serial number of the container, the kind and taxable grade of the wine, the gallon content, and the serial number of the withdrawal permit, Form 487B, prefixed by the number of such form, e.g. "487B–61–3."

LIQUEURS, CORDIALS, OR SIMILAR COMPOUNDS CONTAINING WINE

§ 250.98 Insular permits required.

(a) *Distilled spirits.* When distilled spirits of Puerto Rican manufacture are to be withdrawn for use in the manufacture of liqueurs, cordials, or similar compounds containing wine which are to be shipped to the United States, an insular permit, Form 2899, must first be obtained from the Secretary, in the manner prescribed in § 250.78.

(b) *Wine.* When wine of Puerto Rican manufacture is to be used in the manufacture of liqueurs, cordials, or similar compounds which are to be shipped to the United States, an insular permit, Form 2900, must first be obtained from the Secretary, in the manner prescribed in § 250.93.

§ 250.99 Taxpayment.

(a) *Distilled spirits.* Gauge of distilled spirits withdrawn for use in the manufacture of liqueurs, cordials, or similar compounds containing wine shall be made and reported by the revenue agent in the manner prescribed in § 250.78, and the tax on such spirits, equal to the tax imposed in the United States by section 5001(a)(1), I.R.C., will be computed and paid in accordance with the provisions of § 250.79.

(b) *Wine.* The tax on the wine withdrawn for use in the manufacture of liqueurs, cordials, and similar compounds, equal to the tax imposed in the United States by section 5041, I.R.C., will be computed and paid in accordance with the provisions of § 250.94.

(c) *Finished product.* If the finished product is subject to rectification tax equal to that imposed in the United States by section 5021 or section 5022, I.R.C., such tax will be computed and paid in accordance with the applicable provisions of § 250.85. Containers of liqueurs, cordials, or similar compounds shall bear red strip stamps as provided in Subpart G of this part.

§ 250.100 Permit to ship required.

Before liqueurs, cordials, or similar compounds may be shipped from Puerto Rico to the United States, a permit to ship must be obtained as provided in §§ 250.114 through 250.116.

BEER

§ 250.101 Subject to tax.

Beer of Puerto Rican manufacture coming into the United States and withdrawn for consumption or sale is subject to a tax equal to the internal revenue tax imposed on beer in the United States by section 5051, I.R.C.

(68A Stat. 907; 26 U.S.C. 7652)

§ 250.102 Application and permit, Form 2900.

When beer of Puerto Rican manufacture is to be withdrawn for shipment to the United States, or for use in making an article for shipment to the United States, application for permit to compute the tax on, and to withdraw, the beer shall be made by the brewer on Form 2900, in quintuplicate. If the withdrawal is to be made in hogsheads, barrels, or kegs, the brewer shall enter the total number of each size, according to capacity, of containers which it is desired to withdraw. If the withdrawal is to be made in bottles, the brewer shall enter the number of cases, size of bottles, number of bottles per case, the total contents thereof in gallons (liquid measure), and the equivalent thereof in barrels and fractions of barrels of 31 gallons each. The brewer shall forward all copies of the form to the Secretary. If the application is properly prepared and is otherwise in order, the Secretary, or his delegate, shall execute his permit, retain one copy for his files, and return the original and three copies to the brewer.

§ 250.103 Computation and payment of tax.

(a) *Deferred payment.* When beer is to be withdrawn from bonded storage on computation of tax, payment of which is to be deferred under bond, Form 2898, given by the brewer, such brewer shall compute the tax, enter the amount of the computed tax on all copies of Form 2900, and execute the agreement to pay the amount of tax which has been computed and entered. He shall also certify under the penalties of perjury that he is not in default of any payment of tax chargeable against his bond, and that his bond is in the maximum penal sum or that it is sufficient to cover the amount of tax described on the form in addition to all other amounts chargeable against his bond. The brewer shall forward the original and two copies of Form 2900 to the Officer-in-Charge, and shall retain one copy for his files. Where the penal sum of his bond is less than the maximum prescribed in § 250.68, the brewer shall maintain an account of his bond. He shall charge the bond with the amount of liability he accepts at the time he executes Form 2900, and shall credit the bond for the same amount at the time he files his return, Form 2929, and remittance to cover payment of the tax on the beer covered by such Form 2900.

(b) *Withdrawal after payment.* Where the beer is to be withdrawn from bonded storage after payment of the computed tax, the brewer shall enter such computed tax on all copies of Form 2900, and execute the statement that such tax is being prepaid. He shall then prepare Form 2930, in quadruplicate, and send the original and two copies of Forms 2900 and 2930, together with his remittance in full for such tax, to the Officer-in-Charge, and retain a copy of each form for his files.

§ 250.104 Action by Officer-in-Charge and by the Secretary.

The procedures prescribed in §§ 250.80 and 250.81 with respect to the processing of Forms 2899 and 2925 by the Officer-in-Charge and by the Secretary, shall be applicable to the processing, by such persons, of Forms 2900 and 2930.

§ 250.105 Release of beer.

On receipt of Form 2900 from the Secretary authorizing the release of the beer, the revenue agent shall release the beer. Beer may not be shipped to the United States until a permit to ship, Form 487B, has been obtained as provided in §§ 250.114 through 250.116.

§ 250.106 Marking containers of beer.

Containers of beer of Puerto Rican manufacture which are to be shipped to the United States must be marked with the name of the brewer; the serial number, capacity, and size of the container; the kind of beer; and the serial number of the withdrawal permit, Form 487B, prefixed by the number of such form, e.g. "487B–61–3."

ARTICLES

§ 250.107 Taxable status.

Articles of Puerto Rican manufacture which are to be shipped to the United States and which are not exempt from tax under the provisions of § 250.36 are subject, under section 7652(a), I.R.C., to a tax equal to the tax imposed by the internal revenue laws of the United States on the distilled spirits, wine, or beer contained therein. A formula and process covering the manufacture of each such product shall be filed by the manufacturer in accordance with Subpart D of this part.

§ 250.108 Application for permit, Form 2899 and/or Form 2900.

(a) *Distilled spirits.* Where distilled spirits of Puerto Rican manufacture are to be used in the manufacture of the articles to be shipped to the United States, the manufacturer shall make application on Form 2899, in accordance with the applicable provisions of § 250.78.

(b) *Wine and/or beer.* Where wine and/or beer of Puerto Rican manufacture is to be used in the manufacture of the articles to be shipped to the United States, the manufacturer shall make application on Form 2900, in accordance with the applicable provisions of §§ 250.93 and/or 250.102. Wine and beer may be included in the same application.

(c) *Approval of applications.* The Secretary, or his delegate, shall approve and dispose of the applications in the manner prescribed in §§ 250.78, 250.93, and/or 250.102, as the case may be.

§ 250.109 Taxpayment.

(a) *Distilled spirits.* The tax on distilled spirits used in the manufacture of the articles to be shipped to the United States, equal to the tax imposed in the United States by section 5001(a)(1), I.R.C., shall be computed and paid as prescribed in § 250.79.

(b) *Wine.* The tax on wine used in the manufacture of the articles to be shipped to the United States, equal to the tax imposed in the United States by section 5041, I.R.C., shall be computed and paid as prescribed in § 250.94.

(c) *Beer.* The tax on beer used in the manufacture of articles to be shipped to the United States, equal to the tax imposed in the United States by section 5051, I.R.C., shall be computed and paid as prescribed in § 250.103.

§ 250.110 Release of liquors.

On receipt of authorization from the Secretary, the revenue agent shall release the liquors. A permit must be obtained as provided in §§ 250.114 through 250.116 before the articles manufactured from such liquors may be shipped to the United States.

PAYMENT OF TAX BY RETURN

§ 250.111 General.

All taxes imposed by section 7652(a), I.R.C., and which, under the provisions of this part, are paid in Puerto Rico, shall be paid and collected on the basis of a semimonthly or prepayment return as provided in this subpart. Any tax which has been paid in accordance with the provisions of this part in effect at the time of such payment, and before provision was made in the part for payment of such tax by return, shall be deemed to have been prepaid as prescribed in this part.

§ 250.112 Taxes to be collected by returns for semimonthly periods.

(a) *Distilled spirits.* The taxes imposed by section 7652(a), I.R.C. (equal to the taxes imposed in the United States by sections 5001(a)(1), 5021, and 5022, I.R.C.), the payment of which has been deferred under the provisions of §§ 250.79 (a) and 250.85(b), shall be paid pursuant to a return on Form 2901 prepared in quadruplicate. The proprietor shall list on his return the serial numbers of all Forms 2899 and 2926 covered by the return.

(b) *Wine.* The taxes imposed by section 7652(a), I.R.C. (equal to the taxes imposed in the United States by section 5041, I.R.C.), the payment of which has been deferred under the provisions of § 250.94(a), shall be paid pursuant to a return on Form 2927 prepared in quadruplicate. The proprietor shall list on his return the serial numbers of all Forms 2900 covered by the return.

(c) *Beer.* The taxes imposed by section 7652(a), I.R.C. (equal to the taxes imposed in the United States by section 5051, I.R.C.), the payment of which has been deferred under the provisions of § 250.103(a), shall be paid pursuant to a return on Form 2929 prepared in quadruplicate. The brewer shall list on his return the serial numbers of all Forms 2900 covered by the return.

(d) *Periods.* The periods to be covered by returns on Form 2901, 2927, and 2929, shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(e) *Filing.* The original and two copies of returns on Forms 2901, 2927, and 2929, with remittance covering the full amount of the tax, shall be filed with the Officer-in-Charge not later than the 3d business day next succeeding the last day of the return period. Where the return and remittance are delivered by United States mail to the office of the Officer-in-Charge, the date of the official postmark of the United States Post Office stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of delivery.

(f) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the Officer-in-Charge finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 250.113.

§ 250.113 Returns for prepayment of taxes.

(a) *General.* If a proprietor does not have on file with the Officer-in-Charge an approved bond covering the deferred payment of taxes, or if such bond is in an insufficient penal sum, or if there is default by him in any payment of tax under this subpart, liquors shall not be released from bonded storage before the proprietor has paid the tax thereon.

(b) *Remittances.* Remittances submitted to cover prepayment of taxes under this subpart shall be in cash, United States postal money orders, certified checks, or cashier's checks.

(c) *Distilled spirits.* In all cases where taxes equal to the taxes imposed in the United States by sections 5001(a)(1), 5021, and 5022, I.R.C., are to be paid before distilled spirits may be withdrawn from bonded storage, the proprietor shall pay such taxes pursuant to a return on Form 2925, and as prescribed in § 250.79(b) and/or § 250.85(c).

(d) *Wine.* In all cases where taxes equal to the taxes imposed in the United States by section 5041, I.R.C., are to be paid before wine may be withdrawn from bonded storage, the proprietor shall pay such taxes pursuant to a return on Form 2928, and as prescribed in § 250.94(b).

(e) *Beer.* In all cases where taxes equal to the taxes imposed in the United States by section 5051, I.R.C., are to be paid before beer may be withdrawn from bonded storage, the brewer shall pay such taxes pursuant to a return on Form 2930, and as prescribed in § 250.103(b).

(f) *Applicable procedures.* The procedures of § 250.112(e) with respect to returns delivered by United States mail shall apply to returns and remittances filed under the provisions of this section.

PERMIT TO SHIP LIQUORS AND ARTICLES

§ 250.114 Permit to ship required.

Before liquors and articles of Puerto Rican manufacture, upon which all internal revenue taxes have been paid or deferred as prescribed in this subpart, may be shipped to the United States, a permit to ship, Form 487B, must be obtained from the Secretary as provided in §§ 250.115 and 250.116.

§ 250.115 Application, Form 487B.

Application for permit to ship to the United States liquors and articles of Puerto Rican manufacture on which all taxes have been paid or deferred as prescribed in this subpart shall be made by the shipper on Form 487B, in sextuple. Each Form 487B will be given a serial number, by the applicant, beginning with "1" for the first day of January of each year and running consecutively thereafter to December 31, inclusive. This serial number will be prefixed by the last two digits of the calendar year. e.g. "61–1." All copies of the form shall be delivered to the revenue agent for execution of his certification thereon and forwarding of all copies to the Secretary within sufficient time to allow for the issuance of the permit and customs inspection as provided in § 250.116.

§ 250.116 Issuance of permit, Form 487B, and customs inspection.

If the application has been properly executed and the Secretary, or his delegate, finds that all internal revenue taxes imposed under section 7652(a), I.R.C., have been computed under the provisions of this part and have been paid or, pursuant to a sufficient bond, have been de-

ferred under the applicable provisions of this part, he will execute his permit on all copies thereof, retain one copy of the form, return two copies to the shipper, and send three copies to the collector of customs in Puerto Rico. The shipper will submit the two copies of the Form 487B to the collector at least six hours prior to the intended lading of the merchandise. The collector will then inspect the merchandise covered by the Form 487B after which he will execute his certificate on each copy of Form 487B indicating all exceptions. If discrepancies appear indicating differences between the quantity covered by Form 487B and the quantity actually contained in the shipment or the improper taxpayment of the merchandise, he will withhold release of the shipment and notify the Secretary of such discrepancies. Thereupon, such discrepancies must be corrected in the shipping documents and additional tax paid, if required, prior to release of the merchandise. The collector, upon release of the merchandise for shipment, will retain one copy of the Form 487B, return two copies to the shipper, and send two copies to the collector of customs at the port of arrival in the United States, one of which should be mailed and the other dispatched on the vessel concerned for the guidance of the inspector who will handle the cargo. After the shipment has been cleared by the collector of customs in Puerto Rico, the shipper shall retain one copy of the Form 487B and send one copy thereof, with other shipping documents, to the collector of customs at the port of arrival.

PROCEDURE AT PORT OF ARRIVAL

§ 250.117 Action by carrier.

The carrier of the merchandise specified on the Form 487B shall, at the time of unlading at the port of arrival in the United States, segregate and arrange the cases of liquors or articles for convenient customs examination and will assume any expense incurred in connection therewith.

§ 250.118 Inspection by collector of customs at port of arrival.

On receipt of properly executed Form 487B from the shipper and the copies of Form 487B from the collector of customs in Puerto Rico, the collector of customs at the port of arrival shall inspect the merchandise to determine whether the quantity specified on the Form 487B is contained in the shipment. He will then execute his certificate on each copy of Form 487B received and indicate thereon any exceptions found at the time of discharge. The statement of exceptions should show the serial number of each case or other shipping container which sustained a loss, the quantity of liquor reported shipped in such container and the quantity lost. Losses occurring as the result of missing bottles, cases, or other containers should be listed separately from empty containers and containers which have sustained losses due to breakage. Where the statement is made on the basis of bottles missing or lost due to other cause, the number and size of bottles lost should be shown. If the collector finds that the full amount of the taxes due has not been paid, he will require the difference due to be paid prior to release of the merchandise in accordance with the applicable provisions of this part. When the proper inspection of the merchandise has been effected, and any additional taxes found to be due on the liquors or articles collected, the merchandise will be released.

§ 250.119 Disposition of forms by collector of customs.

Two copies of the Form 487B will be forwarded to the United States Internal Revenue Service office, and one copy of the form will be retained by the collector of customs and be available for inspection by internal revenue officers. If the taxpayer files a claim for refund of tax on losses, the Officer-in-Charge will forward to the assistant regional commissioner of the region in which the port of arrival is located a copy of the completed Form 487B with the claim for refund.

§§ 250.127, 250.142 [Amendments]

Sections 250.127 and 250.142 are amended by striking, wherever it appears, the phrase "insular internal revenue agent" and inserting in lieu thereof the words "revenue agent".

§§ 250.143, 250.144 [Amendments]

Sections 250.143 and 250.144 are amended as follows:

(A) By striking, wherever it appears, the phrase "insular internal revenue agent" and inserting in lieu thereof the words "revenue agent".

(B) By changing the statutory citations to read "(72 Stat. 1358; 26 U.S.C. 5205)".

§ 250.146 [Amendment]

Section 250.146 is amended as follows:

(A) By striking, in the first and fourth sentences, the phrase "insular internal revenue agent" and inserting in lieu thereof the words "revenue agent".

(B) By striking, where it appears twice in the last sentence, the word "treasurer" and inserting in lieu thereof the word "Secretary".

Section 250.180 is amended to read:

§ 250.180 Applicable procedure.

Distilled spirits of less than 190 degrees of proof, wines, and beer of Puerto Rican manufacture (hereinafter referred to as "liquors" unless otherwise indicated) intended for shipment to the United States, which are withdrawn from producing or storage premises for entry into bonded rectification sections, bottling sections, or bonded warehouses, in accordance with the Spirits and Alcoholic Beverages Act, as amended, of Puerto Rico, shall be subject to the provisions of this subpart, and §§ 250.1 through 250.165, in so far as such sections may be applicable.

Section 250.182 is amended to read:

§ 250.182 Alcoholic constituents.

The alcoholic constituents of all liquors constituting a specific bottling lot shall be ascertained from records maintained in accordance with insular requirements. The revenue agent will verify the accuracy of the amount of tax entered on Form 2899 and/or Form 2900, as the case may be. The formula number under which the liquors were produced or manufactured for shipment to the United States will also be shown on the Form 2899 and/or Form 2900.

Section 250.183 is amended to read:

§ 250.183 Basis for computing tax on distilled spirits.

The taxes on distilled spirits to be withdrawn under this subpart shall be computed on the basis of wine gallons, if below proof, or proof gallons, if 100 proof or above, in accordance with the proof ascertained by the revenue agent prior to entry of the spirits into the bonded rectification section, or bonded bottling section, pursuant to appropriate entries in records prescribed by the insular authorities.

(68A Stat. 907, 72 Stat. 1314; 26 U.S.C. 7652(a), 5001)

Section 250.184 is amended to read:

§ 250.184 Procedural requirements.

Taxes shall be computed and paid at the rate(s) prescribed by law. The provisions of Subpart E of this part relative to bonds shall be applicable to liquors withdrawn under this subpart and for which payment of tax is to be deferred. The provisions of Subpart E of this part relative to the procurement of permits on Form 2899 and/or Form 2900, computation and payment of tax, release of liquors, procurement of permit to ship to the United States, and release for shipment, action by carrier, inspection by customs, and disposition of forms shall be applicable to liquors on which the tax is computed and paid on withdrawal after rectification or bottling.

Section 250.186 is amended to read:

§ 250.186 Withdrawal for shipment to United States.

Withdrawal of liquors for shipment to the United States may be made only after all taxes have been paid or deferred as prescribed in this part.

[F.R. Doc. 60–11354; Filed, Dec. 6, 1960; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 52]

TRIBAL REORGANIZATION UNDER SECTION 16 OF THE INDIAN REORGANIZATION ACT

Notice of Proposed Rule Making

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Revised Statutes, sections 161, 463, and 465 (5 U.S.C. 22; 25 U.S.C. 2 and 9), it is proposed to add new Part 52 to Title 25 of the Code of Federal Regulations to read as set forth below. The purpose of this part is to establish regulations and provide policies and procedures for tribal reorganization under section 16 of the Indian Reorganization Act.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested parties may submit written comments, suggestions, or objections with respect to the proposed new part to the Bureau of Indian Affairs, Washington 25, D.C., within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 1, 1960.

Part 52, Chapter I, Title 25 of the Code of Federal Regulations reads as follows:

Sec.
52.1 Definitions.
52.2 Eligibility for reorganization and for voting thereon.
52.3 Drafting of tribal constitutions and bylaws.
52.4 Adoption of a tribal constitution and/or bylaws and Secretarial election therefor.
52.5 Effect of an approved constitution.
52.6 Amendment and revocation of tribal constitutions and/or bylaws.
52.7 Tribal ordinances and resolutions.
52.8 Review of tribal ordinances and resolutions.
52.9 Denial of authority of governing body.
52.10 Secretarial elections.
52.11 Election Board.
52.12 District Election Boards.
52.13 Voting districts.
52.14 Voting list.
52.15 Eligibility disputes.
52.16 Election notices.
52.17 Opening and closing of polls.
52.18 Manner of voting.
52.19 Ballots.
52.20 Absentee voting.
52.21 Publication of election returns.
52.22 Contesting of election results.
52.23 Interpreters.
52.24 Electioneering.
52.25 Tribal elections.
52.26 Powers of the governing body.
52.27 Restrictions on tribal power.
52.28 Subordinate units.
52.29 Tribal membership.
52.101 List of Reorganized Tribes with constitutions in conformity with this part. [Reserved.]
52.102 List of Reorganized Tribes with constitutions approved under prior regulations.
52.103 List of tribes without constitutions approved pursuant to section 16 of the Indian Reorganization Act.

AUTHORITY: §§ 52.1 to 52.103 issued under 25 U.S.C. 476.

§ 52.1 Definitions.

As used in this part:

(a) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(b) "Officer in charge" means the Superintendent, Administrative Officer, or Field Representative, or other official of the local unit of the Bureau of Indian Affairs having administrative jurisdiction.

(c) "Indian" means all persons of Indian descent who are members of any recognized Indian tribe under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the then boundaries of any reservation, and shall further include all other persons of one-half or more Indian blood. Eskimos and other aboriginal peoples of Alaska are also here considered as Indians.

(d) "Adult Indian" means any Indian who has attained the age of 21 years.

(e) "Tribe" means any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.

(f) "Recognized tribe" means any Indian tribe which has entered into a treaty, convention, or executive agreement with the Federal government or whose tribal entity has been otherwise recognized by it.

(g) "Statutory tribe" means any Indian tribe organized pursuant to Federal statute other than the Indian Reorganization Act, the Alaska Act, and the Oklahoma Indian Welfare Act.

(h) "Reorganized tribe" means any Indian tribe reorganized under section 16 of the Indian Reorganization Act (June 18, 1934, c. 576, sec. 16, 48 Stat. 984, 25 U.S.C. 476); section 1 of the Alaska Act (May 1, 1936, c. 254, sec. 1, 49 Stat. 1250, 25 U.S.C. 473a); or section 3 of the Oklahoma Indian Welfare Act (June 26, 1936, c. 831, sec. 3, 49 Stat. 1967, 25 U.S.C. 503).

(i) "Reservation" means any area, regardless of the ownership thereof, set aside by treaty, Federal statute, presidential executive order, or through long administrative action for the use and occupancy of Indians, as identified in § 52.103.

(j) "Restricted lands" means lands or interests therein (1) title to which is in Indian tribes, corporations, associations, or individuals subject to Federal restrictions against alienation or (2) held in trust for them by the United States.

(k) "Constitution" or "constitution and bylaws" means the fundamental organic law of a tribe embodied within a written document or documents. Where there is no such written document it means the fundamental organic law implied in its institutions, usages, and customs.

(l) "Charter" means the written instrument of incorporation granted to a tribe by the Secretary pursuant to section 17 of the Indian Reorganization Act authorizing it to carry out the economic functions therein enumerated.

(m) "General council" means the entire tribal voting membership in council assembled.

(n) "Governing body" means the tribal council, the general council, or other unit which acts for the tribe pursuant to powers granted to it in the tribal constitution.

(o) "Tribal election" means an election held within a tribe pursuant to regulations prescribed by its constitution or by its governing body.

(p) "Secretarial election" means an election held within a tribe pursuant to regulations prescribed by the Secretary of the Interior.

(q) "Indian Reorganization Act" means the act of June 18, 1934 (48 Stat. 984, as amended, 25 U.S.C. 461, et seq.).

§ 52.2 Eligibility for reorganization and for voting thereon.

Any tribe, except the Osage Tribe in Oklahoma, which has voted to accept the terms of the Indian Reorganization Act is eligible to adopt a constitution and bylaws under section 16 thereof. All adult Indians of a single tribe may vote in an election held to adopt such a constitution and/or bylaws but there is a requirement of residence on a reservation when a constitution is adopted not by one tribe alone but by the "Indians residing on one reservation".

§ 52.3 Drafting of tribal constitution and bylaws.

The Department of the Interior will cooperate with and offer advice and assistance to any tribe in the drafting of a constitution and/or bylaws when so requested by its governing body or by any representative committee of the members of the tribe or when so requested by any representative committee authorized to represent the adult Indians residing on a reservation and desiring to form a tribe. The Secretary may also suggest for consideration the adoption of a proposed constitution and/or bylaws. Such constitution, in addition to all the powers vested in any tribe or its governing body by existing law, shall also vest in such tribe or its governing body those specified in section 16 of the Indian Reorganization Act.

§ 52.4 Adoption of a tribal constitution and/or bylaws and Secretarial election therefor.

Where there is presented to the Secretary for consideration by the governing body of a tribe or tribes residing on a reservation or by any representative committee or group authorized to represent the adult Indians residing on a reservation and desiring to form a tribe, a proposed constitution and/or bylaws which appear to meet their needs and to be in consonance with all applicable laws, treaties, and Secretarial regulations made pursuant to Federal statute and published in the Code of Federal Regulations or the FEDERAL REGISTER, the Secretary may call a special election for the adoption thereof by a majority of those actually voting provided the total vote cast is not less than 30 percent of those entitled to vote. This election shall be held pursuant to the regulations therefor set forth in §§ 52.10 through 52.24.

§ 52.5 Effect of an approved constitution.

A reorganized tribe is a corporation which is separate and distinct from the business corporation which may be formed under section 17 of the Indian Reorganization Act. The continued existence of the former is not essential to that of the latter. Its constitution may endow it with both governmental and proprietary functions in contrast to a tribal charter which grants only the latter function. An approved constitution where consistent with law shall prevail over any inconsistent regulation of the Department of the Interior.

§ 52.6 Amendment and revocation of tribal constitutions and/or bylaws.

A constitution and/or bylaws may be amended or revoked by means of a Secretarial election open to the same voters and conducted in the same manner as that held for their adoption, but amendments require the approval of the Secretary (25 U.S.C. 476). An election to amend a constitution may be called by the Secretary. An election to revoke a constitution shall be called if requested by the tribal governing body or by a petition presented to it by the majority of the adult members of the tribe, or by the Secretary.

§ 52.7 Tribal ordinances and resolutions.

Many of a tribe's constitutional powers are not self-executing and must be implemented by ordinances and resolutions of its governing body. These constitute respectively the tribe's written laws and the formal expression of its will. These do not need the approval of officials of the Department of the Interior unless required by treaty, Federal statute, regulation pursuant to statute or by the tribal constitution itself.

§ 52.8 Review of tribal ordinances and resolutions.

Where, pursuant to treaty, Federal statute, regulation pursuant to statute or tribal constitution, the Secretary is required to review or approve any tribal ordinance or resolution, his approval will be confined to those matters contained therein requiring his review. The Secretary may approve the resolution in whole or in part and/or may return the same to the governing body for separation, provided the authority to disapprove in part is exercised only where the disapproved part is determined to deal with separate and separable subjects. It would not be proper to use the disapproval power to amend a resolution by striking out a portion dealing with the same subject matter as the remaining portion of the resolution.

§ 52.9 Denial of authority of governing body.

When the Secretary finds that a governing body is acting outside the scope of its constitutional authority or inconsistent with law, he may refuse to acknowledge the authority or actions of the governing body.

§ 52.10 Secretarial elections.

Secretarial elections for the adoption, amendment, or revocation of a tribal constitution shall be conducted as indicated in §§ 52.11 through 52.25.

§ 52.11 Election Board.

(a) There shall be an Election Board consisting of the officer in charge, acting as chairman thereof, and four other persons appointed by him, all of whom must be able to read and write English. In addition, the officer in charge may appoint an interpreter and as many clerks as he deems necessary but they shall not be members of the Board.

(b) It shall be the duty of the Board to conduct elections in substantial compliance with the procedures described in this part and in particular (1) to see that the name of each qualified person desiring to vote is on the official voting list, (2) that ballot boxes are kept locked at all times except when ballots are being counted, (3) that the ballot is cast by the voter himself and that thereupon the said list be checked to indicate this, (4) to count the regularly cast ballots immediately after the close of the polls, the absentee ballots immediately after expiration of the time for their receipt, and return all the ballots in the ballot boxes, which should be marked and locked together with all unused ballots, and the certified election returns, to the officer in charge.

§ 52.12 District Election Boards.

Where the reservation has been divided into voting districts either by the tribal constitution, ordinance, or resolution, or by the Election Board, the Election Board shall appoint District Election Boards for each district which shall have the duties above prescribed for the Election Board except that it should return the ballots in the ballot boxes, all unused ballots, and its certification of the district election results to the Election Board which will make the final recapitulation of the election results for the entire reservation and transmit it together with all the aforementioned ballots and ballot boxes to the officer in charge.

§ 52.13 Voting districts.

If voting districts have not already been delimited in the tribal constitution or by tribal ordinance or resolution, and in its judgment voting districts throughout the reservation are needed, the Election Board shall delimit them and designate a polling place for each district, taking into consideration the needs and convenience of tribal members. The regular voting places for State, County, and/or tribal elections shall be selected unless for sufficient reasons the Election Board decides to the contrary.

§ 52.14 Voting list.

The Election Board shall compile an official alphabetical voting list, arranged by voting districts, if any, of the members of the tribe who have attained the age of twenty-one years. A copy of this list shall be supplied to each District Election Board and also posted at the headquarters of the local administrative unit of the Bureau of Indian Affairs and at various public places designated by the Election Board throughout the reservation at least 20 days prior to the election.

§ 52.15 Eligibility disputes.

The Election Board shall determine any written claim to vote presented to it by one whose name is not on the official voting list as well as any written challenge of the right to vote of anyone whose name is on this list, and its decision shall be final. It shall set a date not more than ten or less than five days before the election to pass on all such matters. All claims not presented on or before this date shall be automatically disallowed.

§ 52.16 Election notices.

Not less than twenty (20) nor more than sixty (60) days' notice shall be given of an election unless so authorized by the Secretary. If an election is called upon less than twenty (20) days' notice, sick and absentee voters shall nevertheless be allowed twenty (20) days from the giving of such notice in which to mail or otherwise record their votes. The Election Board shall determine whether the notice shall be given by television, radio, newspaper, poster or mail, or by one or more of these methods and whether in an Indian language in addition to English. A copy of any written notice shall be mailed to each voter and posted at the local administrative unit of the Bureau of Indian Affairs and elsewhere as directed by the Election Board.

§ 52.17 Opening and closing of polls.

The polls shall remain open from 6 a.m. to 6 p.m. unless different hours are set by the Election Board and the voters informed thereof in the election notice.

§ 52.18 Manner of voting.

Any qualified voter may vote by presenting himself at the polls of his voting district within the prescribed voting period, announcing to the officials there his name and address and by marking and placing in the ballot box the ballot which shall be handed to him.

§ 52.19 Ballots.

The Election Board shall cause to be prepared and furnish all ballots but each ballot must be numbered and stamped:

Official Ballot
(Facsimile Signature)
Chairman, Election Board

Should any voter spoil or mutilate his ballot in the course of voting, he shall, in the presence of the election officials, and, with their consent, destroy it; the election officials shall then make note of the destroyed ballot and furnish the voter with another ballot.

§ 52.20 Absentee voting.

Whenever due to illness a qualified voter is not able to vote at the polls and duly causes the Election Board to be notified thereof and when absentee voting is permitted under the terms of the Indian Reorganization Act, he, as well as any non-resident voter, shall be entitled to vote by absentee ballot mailed or given to him or them by the Election Board, provided he or they do so within the time prescribed in § 52.16. The ballot must be returned to the Election Board in a sealed envelope marked on the outside "Absentee Ballot". The Election Board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address on the envelope, the date of the return of such ballot, and from whom received, and shall count and register all such votes after all other ballots have been counted, and include them in the results of the election.

§ 52.21 Publication of election returns.

(a) If the number of absentee ballots issued cannot affect the result of the election, the result shall be posted at the local administrative unit of the Bureau of Indian Affairs and at such other places designated by the Election Board as soon as may be after it has been determined. If the result may be affected by the absentee ballots, the result shall be similarly determined and posted immediately after the time for receipt of such absentee ballots has expired.

(b) Ballots and ballot boxes should be kept under lock and key by the Election Board Chairman for six months after which time they may be destroyed.

§ 52.22 Contesting of election results.

Any qualified voter, within ten days following an election, may challenge the announced election results and request a recount by filing with the Secretary his grounds for the challenge, together with substantiating evidence thereof. If in the opinion of the Secretary, the objections are valid, he shall order a recount or a reelection. The results of the recount shall be final.

§ 52.23 Interpreters.

Interpreters where needed may be provided to explain the manner of voting to such Indians who ask for instruction, and assistance in actual marking of ballots may be rendered provided all reasonable precautions are taken so that the interpreter does not influence the voter in casting his ballot.

§ 52.24 Electioneering.

There shall be no electioneering during voting hours within 200 feet of any voting place.

§ 52.25 Tribal elections.

Tribal election regulations need not but may be the same as Secretarial election regulations except that no Bureau of Indian Affairs official may be a member of any Election Board. They may be modeled after those of the State in which the reservation is located so that in case of a dispute as to the meaning of an election ordinance it may be construed analogously to that of the State.

§ 52.26 Powers of the governing body.

Tribal constitutions should expressly confer upon the governing body those powers needed to perform tribal governmental functions within the area under its jurisdiction and those proprietary powers required to manage its property and resources and the governing body shall have all implied powers necessary to carry out these express governmental and proprietary powers.

§ 52.27 Restrictions on tribal power.

Where tribal power is restricted or otherwise controlled by treaty or statute, no constitutional provision, ordinance, or resolution contrary thereto shall be valid.

§ 52.28 Subordinate units.

A tribal constitution may confer on its governing body the right to establish subordinate units such as committees, boards, or tribal agents and to grant certain powers to them. Such a unit enjoys no legal existence independent of the tribe and has no authority greater than that granted to it by the governing body of the tribe to whom it is answerable for its actions. A Federal corporation chartered under section 17 of the Indian Reorganization Act is not such a subordinate unit.

§ 52.29 Tribal membership.

Tribal constitutional provisions shall set forth the criteria for present and future tribal membership and all tribal ordinances and resolutions must be in strict conformity with the provisions in this part and any regulations thereon issued by the Secretary pursuant to Federal statute and published in the Code of Federal Regulations or the FEDERAL REGISTER. Tribal membership is ordinarily for life unless terminated by the governing body for reasons permitted by the tribal constitution or by the voluntary, written resignation of the member.

§ 52.101 List of Reorganized Tribes with constitutions in conformity with this part. [Reserved]

§ 52.102 List of Reorganized Tribes with constitutions approved under prior regulations.

Name and Effective Date of Constitution or Amendment

The Apache Tribe of the Mescalero Reservation, New Mexico; March 25, 1936.

The Bad River Band of the Lake Superior Tribe of Chippewa Indians, Wisconsin; June 20, 1936; amendment I, December 1, 1942; amendment II, October 31, 1944.

The Bay Mills Indian Community, Michigan; November 4, 1936; amended November 27, 1937.

The Big Valley Band of Pomo Indians of the Big Valley Rancheria, California; January 15, 1936; amended May 13, 1940.

The Blackfeet Tribe of the Blackfeet Indian Reservation, Montana; December 13, 1935; amendment I, January 18, 1946; amendment II, May 24, 1950.

The Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, California; November 23, 1941.

The Catawba Tribe of Indians, South Carolina; June 30, 1944.

The Cheyenne River Sioux Tribe, South Dakota; December 27, 1935.

The Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana; November 23, 1935.

The Colorado River Indian Tribes of the Colorado River Reservation, Arizona and California; August 13, 1937.

The Covelo Indian Community, California; December 16, 1936; amended February 24, 1959.

The Duckwater Tribe of Indians of the Duckwater Reservation, Nevada; November 28, 1940; amendment I, June 6, 1944.

The Flandreau Santee Sioux Tribe, South Dakota; April 24, 1936; amended January 6, 1941, and March 17, 1950.

The Forest County Potawatomi Community, Wisconsin; February 6, 1937.

The Fort Belknap Indian Community, Montana; December 13, 1935; amended February 7, 1944.

The Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; June 29, 1936; amended October 16, 1956.

The Fort Bidwell Indian Community, California; January 28, 1936; amended June 8, 1940, and February 4, 1942.

The Fort McDermitt Paiute and Shoshone Tribe, Nevada; July 2, 1936.

The Fort McDowell Mohave-Apache Community, Arizona; November 24, 1936.

The Gila River Pima-Maricopa Indian Community, Arizona; May 14, 1936; amended September 9, 1946, and March 17, 1960.

The Confederated Tribes of the Goshute Reservation in Utah; November 25, 1940.

The Hannahville Indian Community, Michigan; July 23, 1936.

The Havasupai Tribe of the Havasupai Reservation, Arizona; March 27, 1939.

The Hopi Indian Tribe, Arizona; December 19, 1936.

The Hualapai Tribe of the Hualapai Reservation, Arizona; December 17, 1938; amended September 20, 1948, and October 22, 1955.

The Iowa Tribe in Nebraska and Kansas; February 26, 1937.

The Jicarilla Apache Tribe of New Mexico; August 4, 1937; amended July 11, 1960.

The Kaibab Band of Paiute Indians of the Kaibab Reservation, Arizona; June 15, 1951.

The Kalispel Indian Community of the Kalispel Reservation, Washington; March 24, 1938.

The Kashia Band of Pomo Indians of the Stewart's Point Rancheria, California; March 11, 1936; amended May 19, 1940.

The Keweenaw Bay Indian Community, Michigan; December 17, 1936.

The Kickapoo Tribe in Kansas; February 26, 1937.

The Lac du Flambeau Band of the Lake Superior Chippewa Indians of Wisconsin; August 15, 1936; amendment I, November 8, 1941; amendment II, June 2, 1945.

The Lower Brule Sioux Tribe, South Dakota; November 27, 1935; amended February 4, 1942.

The Lower Sioux Indian Community in the State of Minnesota; June 11, 1936.

The Makah Indian Tribe, Washington; May 16, 1936.

The Manchester Band of Pomo Indians of the Manchester Rancheria, California; March 11, 1936; amended May 27, 1939.

The Me-wuk Indian Community of the Wilton Rancheria, California; January 15, 1936; amended May 21 1940.

The Minnesota Chippewa Tribe; July 24, 1936.

The Mississippi Band of Choctaw Indians; May 22, 1945.

The Moapa Band of Paiute Indians; April 17, 1942.

The Muckleshoot Indian Tribe, Washington; May 13, 1936.

The Nisqually Indian Community, Washington; September 9, 1946.

The Northern Cheyenne Tribe, Montana; November 23, 1935; amended July 8, 1960.

The Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; January 15, 1936.

The Omaha Tribe of Nebraska; March 30, 1936; amended July 9, 1954.

The Oneida Tribe of Indians of Wisconsin; December 21, 1936; amended June 3, 1939.

The Papago Tribe, Arizona; January 6, 1937; amended May 9, 1960.

The Ponca Tribe of Native Americans, Nebraska; April 3, 1936.

The Port Gamble Indian Community, Washington; September 7, 1939; amended January 23, 1948.

The Prairie Island Indian Community in the State of Minnesota; June 20, 1936.

The Pueblo of Isleta, New Mexico; March 27, 1947.

The Pueblo of Laguna, New Mexico; December 21, 1949; amended November 10, 1958.

The Pueblo of Santa Clara, New Mexico; December 20, 1935; amended December 19, 1939.

The Puyallup Tribe, Washington; May 13, 1936.

The Pyramid Lake Paiute Tribe, Nevada; January 15, 1936.

The Quartz Valley Indian Community, California; June 15, 1939.

The Quechan Tribe, California; December 16, 1936.

The Quileute Tribe of the Quileute Reservation, Washington; November 11, 1936; amended March 11, 1959.

The Red Cliff Band of Lake Superior Chippewa Indians, Wisconsin; June 1, 1936.

The Reno-Sparks Indian Colony, Nevada; January 15, 1936.

The Rosebud Sioux Tribe, South Dakota; December 20, 1935.

The Sac and Fox Tribe of the Mississippi in Iowa; December 20, 1937.

The Sac and Fox Tribe of Missouri (Kansas and Nebraska); March 2, 1937; amended November 25, 1943.

The Seminole Tribe of Florida; August 21, 1957; amendments I, II, III and IV, July 21, 1959.

The Saginaw Chippewa Indian Tribe of Michigan; May 5, 1937.

The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana; October 28, 1935; amended December 22, 1948 and April 1, 1960.

The St. Croix Chippewa Indians of Wisconsin; November 13, 1942.

The Salt River Pima-Maricopa Community of the Salt River Reseravtion, Arizona; June 11, 1940.

The San Carlos Apache Tribe, Arizona; January 17, 1936; amended February 23, 24, 1954.

The Santee Sioux Tribe of Nebraska; April 3, 1936.

The Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho; April 30, 1936.

The Shoshone Paiute Tribes of the Duck Valley Reservation, Nevada; April 20, 1936.

The Skokomish Indian Tribe of the Skokomish Reservation, Washington; May 3, 1938.

The Sokaogon Chippewa Community, Wisconsin; November 9, 1938.

The Southern Ute Tribe of the Southern Ute Reservation, Colorado; November 4, 1936; amendment I, October 15, 1942; amendment II, February 28, 1946.

The Stockbridge-Munsee Community, Wisconsin; November 18, 1937.

The Swinomish Indian Tribal Community, Washington; January 27, 1936; amended April 17, 1950.

The Te-Moak Bands of Western Shoshone Indians of Nevada; August 24, 1938.

The Tulalip Tribes, Washington; January 24, 1936; amended March 8, 1941, and June 23, 1948.

The Tule River Indian Tribe, California; January 15, 1936; amended May 24, 1940, and March 21, 1956.

The Tuolumne of Me-wuk Indians of the Tuolumne Rancheria, California; January 15, 1936; amended May 25, 1940.

The Upper Lake Pomo Indian Community; January 15, 1936; amended May 16, 1940, and October 22, 1941.

The Ute Indian Tribe of the Uintah and Ouray Reservation, Utah; January 19, 1937.

The Ute Mountain Tribe of the Ute Mountain Reservation, Colorado; June 6, 1940; amended February 7, 1950.

The Walker River Paiute Tribe, Nevada; March 26, 1937; amended July 12, 1945.

The Confederated Tribes of the Warm Springs Reservation, Oregon; February 14, 1938; amended May 15, 1940, May 20, 1948, May 16, 1950, and October 23, 1953.

The Washoe Tribe, Nevada; January 24, 1936.

The White Mountain Apache Tribe, Arizona; August 25, 1938; amended June 30, 1958.

The Winnebago Tribe of Nebraska; April 3, 1936.

The Yavapai Apache Indian Community, Arizona; February 12, 1937; amended August 5, 1947.

The Yerington Paiute Tribe, Nevada; January 4, 1937.

The Yomba Shoshone Tribe, Nevada; December 20, 1939.

§ 52.103 List of tribes without constitutions approved pursuant to Section 16 of the Indian Reorganization Act.

ARIZONA

Ak Chin.	Cocopah.

CALIFORNIA

Alturas.	Millerton.
Capitan Grande.	Rumsay.
Cedarville.	San Pasqual.
Colfax.	Santa Rosa (Sacramento).
Cortina.	Santa Ynez.
Coyote Valley.	Sebastopol.
Cuyapaipe.	Sheep Ranch.
Grindstone Creek.	Strathmore.
Jackson.	Sulphur Banks.
La Posta.	Susanville.
Laguna.	Taylorville.
Likely.	Trinidad.
Lookout.	
Manzanita.	

LOUISIANA

Chitimacha.

MINNESOTA

Red Lake.

NEVADA

Battle Mountain.	Las Vegas Tract.
Ely.	Lovelock.
Gandy.	Skull Valley.
Indian Ranch.	Summit Lake.

NORTH CAROLINA

Eastern Cherokee.

NORTH DAKOTA

Standing Rock Sioux.

OREGON

Burns.

SOUTH DAKOTA

Yankton Sioux.

UTAH

Cedar City.	Washakie.

WASHINGTON

Clallam.	Port Madison.
Hoh.	Quinaielt.
Nooksak.	Skagit—Suiattle.
Ozette.	

WISCONSIN

Lac Courte Oreilles.	Menominee.

[F.R. Doc. 60-11340; Filed, Dec. 6, 1960; 8:46 a.m.]

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR Part 50-202]

PHOTOGRAPHIC AND BLUEPRINTING EQUIPMENT AND SUPPLIES INDUSTRY

Tentative Decision in Determination of Prevailing Minimum Wages

A record of proceedings held under sections 1 and 10 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35 and 45(a)) to determine the prevailing minimum wages for persons employed in the photographic and blueprinting equipment and supplies industry has been certified by the hearing examiner. A tentative decision, including a statement of findings and conclusions, as well as the reasons and basis therefor, on all material issues of fact, law, and discretion presented on the record, and any proposed wage determination is now appropriate under the rules of practice, 41 CFR Part 50-203.21(b), and the Administrative Procedure Act (5 U.S.C. 1006 (b)).

Definition. The notice of hearing defined the photographic and blueprinting equipment and supplies industry as that industry which manufactures or furnishes photographic or blueprinting equipment and supplies.

(1) Photographic equipment and supplies was defined to include all types of still and motion-picture cameras; projection apparatus, including screens; lenses; shutters; photocopy and microfilm equipment; developing and dark-room equipment, including developing tanks and machines, enlargers, plates and film holders, and prepared developers, toners and fixers; lighting equipment, such as studio-type or other floodlighting and flash units; tripods; film reels; and sensitized film, paper and plates.

Expressly excluded were the making, processing or finishing of photographs or photographic reproductions of any kind, including still or motion pictures; photographic meters; photoflash, power pack and other batteries; and photographic bulbs, tubes, and related light sources.

(2) Blueprinting equipment and supplies was defined to include machines and other apparatus and equipment used in blueprinting, the diazotype process (whiteprinting), and other related processes; sensitized blueprint paper and cloth, diazotype sensitized paper, cloth, film, and other similarly sensitized materials; and specially prepared developing solutions intended for use with such sensitized materials, but excluding the manufacture of blueprints or diazoprints (whiteprints).

Neither the management nor labor groups challenge the appropriateness of the definition as proposed in the notice of hearing. The content of the definition is not substantially different from the one currently in effect (41 CFR 50-202.30). After full consideration of the record, I find that the definition as proposed in the notice is appropriate for this industry.

Product division. In the wage determination currently in effect (41 CFR 50-202.30), there are separate determinations for two branches of this industry, photographic equipment and supplies, and blueprinting equipment and supplies. The same minimum wage was determined for each of them.

In the present proceedings, the management groups, the National Association of Photographic Manufacturers, representing the photographic branch, and the National Association of Blueprint and Diazotype Coaters, representing the blueprinting branch, made no recommendations concerning the advisability of separate determinations for the two branches. The labor group, represented by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), states that there should be a single determination, with no special distinction between the photographic and the blueprinting branches.

While there is evidence relating to the diversity of products and composition of the labor force within the industry, there would seem to be greater divergence between establishments within the photographic equipment and supplies branch than there is between this branch and the blueprinting equipment and supplies branch. All the products of the industry, photographic and blueprinting, are classified in the same Standard Industrial Classification industry, No. 3861—Photographic Equipment and Supplies, with the sole exception of photographic lenses, which are classified with Optical Instruments and Lenses, No. 3831. The evidence indicates a number of establishments whose primary product is in each branch also produce products of the other. There is not a large difference between the minimum wages characteristic of each branch. The median establishment in the blueprinting branch pays a minimum wage of $1.47, whereas $1.40 is the comparable figure for the photographic branch. Establishments employing a majority of covered workers in the blueprinting branch had a lowest minimum wage of $1.53, as compared with $1.55 for the photographic establishments. Based upon these considerations, I find that the redetermination should be for the industry as a whole, without product division.

Locality. The notice of hearing informed interested persons that they could appear at the hearing and submit evidence, views, and arguments as to whether there should be a single determination for all the area in which the industry operates or separate determinations for smaller geographic areas (including the appropriate limits for such areas). Neither the National Association of Photographic Manufacturers nor the National Association of Blueprint and Diazotype Coaters took a position on this issue. The labor witness opposed such division on the ground that there is industrywide competition for the contracts which would be subject to the determination.

The wage survey divides the nation into four geographic localities worked out cooperatively with the management group. The calendar year 1958 was selected as a sample to investigate whether the locality of manufacture of products which would be subject to this determination could be defined more narrowly than all that area in which the industry has its plants based on the destination for such products specified in the various solicitations for offers and invitations for bids.

Approximately 70 percent of the procurement in this industry was found to result from such solicitations and offers originating with the military establishments and the Veterans Administration. Each of the four geographic localities made both successful and unsuccessful bids contemplating delivery of its product into each of the other three regions. Slightly less than two-thirds of the unsuccessful bids and slightly more than two-thirds of the successful bids contemplated inter-regional delivery. Twenty-eight percent of the total procurement in the industry was governed by the General Services Administration Federal Supply Schedules compiled under the multiple award system. In each of the four localities 31 percent to 75 percent of the establishments were operated by contractors who obligated themselves to deliver from such establishments at least one item anywhere in the United States at the same price. This obligation extended to 61 percent of the items in this portion of the procurement. A comparable picture of industry-wide competition is presented by the tabular analyses of the several other systems of procurement in this industry.

Under all these circumstances, separate determinations for separate geographic areas would not be in accord with the purposes of the Act, and I find that the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under contracts subject to the Act in the photographic and blueprinting equipment and supplies industry cannot be defined for any particular contract more narrowly than all of that area in which the industry has its establishments.

Prevailing Minimum Wages. The American Federation of Labor and Congress of Industrial Organizations urges that as of the wage survey date a rate of $1.55 per hour was the prevailing minimum wage for both branches of the industry in all of the area where the industry has its plants. It opposes any special minimum wage determination for beginners. In addition, it would add to the $1.55 figure eight cents to represent increases in the prevailing minimum wage which have occurred since the survey date. The result is recommendation of $1.63 per hour for both branches of the industry as the prevailing minimum wage in all of the area where the industry has its plants. The National Association of Photographic Manufacturers requests that I give careful consideration to a rate not to exceed $1.30. The National Association of Blueprinting and Diazotype Coaters makes no recommendation regarding prevailing minimum wages.

The labor proposal of $1.55 as of the time of the survey is based on the tables of minimum wages actually paid. A large majority of covered workers (71.8 percent) were employed in plants where no covered worker was paid less than this amount, although these were less than a majority of all of the plants (32.1 percent). Taking cognizance of the influence on the wage data by the single largest plant in the industry with 17,357 covered workers, the unions point out that even excluding the data for this one plant, 43.4 percent of the plants with a majority of the covered employment paid no covered worker less than $1.48.

The National Association of Photographic Manufacturers observes that a higher rate than its recommended $1.30 would exceed the lowest rate paid in 41.8 percent of all establishments; any higher rate would also exceed the lowest rate of 44.7 percent of the small establishments and the lowest established hiring rate in 47 percent of all establishments. An examination of the Bureau of Labor Statistics tables reveals that a minimum rate of $1.30 or more was actually paid by 62 percent of the establishments with 88.9 percent of all covered workers. Even a consideration of the data concerning size of establishments indicates that this rate was actually paid by 57.8 percent of establishments employing 100 or less workers with 51.2 percent of the total covered employment in such establishments. Similarly, 58.1 percent of all establishments with 88.3 percent of total covered employment had a lowest established hiring rate or paid a lowest rate of $1.30 or more in the photographic branch. Obviously, the evidence does not support a rate as low as $1.30 as the prevailing minimum wage in this industry.

Before making the determination of the prevailing minimum wage, it is necessary to decide whether or not a tolerance will be provided for beginners, defined as new inexperienced covered employees receiving orientation or initial training and receiving an hourly rate or straight-time hourly earnings below those of the lowest paid experienced workers in the same job. Both labor and mangement groups agreed prior to the hearing that the practice of employing beginners was not prevalent in this industry and for this reason data on beginners' rates were not collected by the Bureau of Labor Statistics in its survey. At the hearing, the labor group recommended that no tolerance for beginners be allowed and the management groups acquiesced by their silence on this issue. In view of these considerations, the objectives of the Act will be more fully accomplished by not providing a separate rate for beginners.

The data showing the lowest wages actually paid indicate that the minimum wage paid by the median establishment was $1.40 an hour, but the minimum wage paid by the median of the several establishments weighted for employment was $1.55 an hour. However, the latter minimum wage was greatly affected by employment in the largest plant of the industry, which paid that minimum wage and which employed 49.9 percent, or about one-half, of all covered workers. Establishments paying more than the minimum wage of $1.55 employed only 21.9 percent of the covered workers, while those paying less employed only 28.2 percent of the covered workers. Because of this dominant effect of the largest plant in terms of employment, I deem it appropriate to balance its minimum wage against those of the remaining plants of the industry, which employ the remaining half of the covered workers, and which have a median minimum wage of $1.40. This results in a minimum wage that lies in the penny interval between $1.47 and $1.48. I conclude, therefore, that $1.47 was the prevailing minimum wage as of the survey date.

The unions advocate that there be added to the prevailing minimum wage 8 cents for wage increases between the date of the survey and the hearing date.

Although the unions did not undertake a survey of increases on a plant-by-plant basis, they did submit data of wage increases in 11 establishments in the industry with 20,439 employees. Amounts of the increases ranged from 4 cents to 8 cents an hour, or from 3 percent to 5 percent. In addition, they presented data derived from the Bureau of Labor Statistics monthly earnings series, which showed that between January 1959 and December 1959, gross average hourly earnings had increased by 12 cents, 4 cents of which resulted from overtime premium pay. There is evidence that the largest establishment in this industry with about one-half of the total covered employment of the industry granted a 5 percent wage increase in late January 1959. Again, by weighting the other establishments so as not to give undue prominence to this establishment, I find that there has been a five cent wage increase in this industry from the survey date to the hearing date. It is conceded that this large establishment increased its minimum wage by eight cents per hour. A mathematical analysis of the available evidence on wage increases would indicate that the other establishments in the industry have increased their minimum wage rates by an average of one to two cents an hour. These two figures average approximately five cents per hour and justify a five-cent figure. This tentative decision determines that the prevailing minimum wage has increased five cents per hour from the $1.47 it was in January–February 1959, and that it is $1.52 per hour.

Accordingly, upon the findings and conclusions stated herein, pursuant to authority under the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C. 35 et seq.), and in accordance with the Administrative Procedure Act (60 Stat. 237; 5 U.S.C. 1001 et seq.), notice is hereby given that I propose to amend 41 CFR 50–202.30 to read as follows:

§ 50–202.30 Photographic and blueprinting equipment and supplies industry.

(a) *Definition.* The photographic and blueprinting equipment and supplies industry is that industry which manufactures or furnishes:

(1) Photographic equipment and supplies which include all types of still and motion-picture cameras; projection apparatus, including screens; lenses; shutters; photocopy and microfilm equipment; developing and dark-room equipment, including developing tanks and machines, enlargers, plates and film holders, and prepared developers, toners and fixers; lighting equipment, such as studio-type or other floodlighting and flash units; tripods; film reels; and sensitized film, paper, and plates.

Expressly excluded are the making, processing, or finishing of photographs or photographic reproductions of any kind, including still or motion-pictures; photographic meters; photoflash, power pack and other batteries; and photographic bulbs, tubes, and related light sources.

(2) Blueprinting equipment and supplies which include machines and other apparatus and equipment used in blueprinting, the diazotype process (whiteprinting), and other related processes; sensitized blueprint paper and cloth, diazotype sensitized paper, cloth, film, and other similarly sensitized materials; and specially prepared developing solutions intended for use with such sensitized materials, but excluding the manufacture of blueprints or diazoprints (whiteprints).

(b) *Minimum wage.* The minimum wage for persons employed in the manufacture or furnishing of products of the photographic and blueprinting equipment and supplies industry under contracts subject to the Walsh-Healey Public Contract Act shall be not less than $1.52 per hour, arrived at either on a time or piece-rate basis.

(c) *Effect on other obligations.* Nothing in this section shall affect any obligations for the payment of minimum wages that an employer may have under any law or agreement more favorable to employees than the requirements of this section.

Within thirty days from the date of the publication of this notice in the FEDERAL REGISTER, interested parties may submit written exceptions, together with supporting reasons, to the tentative decision above set out. Exceptions should be directed to the Secretary of Labor and filed with the Chief Hearing Examiner, Room 4414, United States Department of Labor, Washington 25, D.C.

Signed at Washington, D.C., this 2d day of December 1960.

JAMES P. MITCHELL,
Secretary of Labor.

[F.R. Doc. 60–11360; Filed, Dec. 6, 1960; 8:50 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 43]

[Reg. Docket No. 580; Draft Release No. 60–18]

CERTAIN AIRPLANES USED FOR AIR CARRIER AND COMMERCIAL OPERATOR FLIGHT CHECKS OR TRAINING FLIGHTS, FERRY FLIGHTS, AND AIRWORTHINESS TEST FLIGHTS

Installation and Use of Flight Recorders

Correction

In F.R. Document 60–11085 appearing in the issue for Wednesday, November 30, 1960, at page 12250, the bracket at the beginning of the document should read as set forth above.

[14 CFR Parts 600, 601]

[Airspace Docket No. 60–WA–262]

FEDERAL AIRWAYS AND CONTROL AREAS

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6300, 600.6471, 601.6300 and 601.6471 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 300 extends in part from the United States/Canadian border to the Millinocket, Maine, VOR. VOR Federal airway No. 471 extends in part from the Millinocket VOR to the Houlton, Maine, VOR.

The Federal Aviation Agency has under consideration proposals by the Canadian Department of Transport for the extension of Victor 300 and its associated control areas from the Millinocket VOR to a VOR being installed near Fredricton, New Brunswick, at latitude 45°53′43″ N., longitude 66°25′10″ W.; and extension of Victor 471 and its associated control areas from the Houlton VOR to the intersection of the Houlton VOR 085° True radial and the northwest course of the Fredricton radio range (Burtts Intersection), where it would terminate. The extension of these airways would provide routes for VOR equipped aircraft operating between Millinocket, Houlton and Fredricton.

If these actions are taken:

A segment of VOR Federal airway No. 300 and associated control areas would be designated from the Millinocket, Maine, VOR to the intersection of the Millinocket VOR 078° True radial and the United States/Canadian border.

A segment of VOR Federal airway No. 471 and associated control areas would be designated from the Houlton, Maine, VOR to the intersection of the Houlton VOR 085° True radial and the United States/Canadian border.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on November 30, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60–11327; Filed, Dec. 6, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60–NY–106]

CONTROL ZONES

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2360 of the regulations of the Administrator, the substance of which is stated below.

The South Weymouth, Mass., control zone is presently designated within a 4-mile radius of the South Weymouth Naval Air Station and within 1½ miles east and 2½ miles west of and parallel to a line bearing 155° True extending from the Naval Air Station to a point 10 miles southeast of the South Weymouth nondirectional radio beacon.

The Federal Aviation Agency has under consideration the following alterations to this control zone:

1. Enlarge the 4-mile radius zone to a 5-mile radius zone. This enlargement of the radius zone would provide protection for large heavily laden aircraft arriving and departing the South Weymouth NAS.

2. Alter the control zone extension based on the 155° True bearing from the Naval Air Station. It is proposed to redesignate this extension within 2 miles either side of the 336° True bearing from the South Weymouth radio beacon, extending from the 5-mile radius zone to the radio beacon. This altered extension would provide protection for aircraft executing revised ADF instrument approach procedures at the Naval Air Station.

3. Designate a control zone extension within 2 miles either side of the 165° True radial of the South Weymouth TACAN (latitude 42°09′05″ N., longitude 70°56′82″ W.), extending from the 5-mile radius zone to 7 miles south of the TACAN. This extension would provide protection for aircraft executing the prescribed TACAN instrument approach procedures at the Naval Air Station.

If these actions are taken, the South Weymouth, Mass., control zone would be redesignated within a 5-mile radius of the South Weymouth NAS (latitude 42°08′55″ N., longitude 70°56′25″ W.) within 2 miles either side of the 336° True bearing from the South Weymouth radio beacon extending from the 5-mile radius zone to the radio beacon; and within 2 miles either side of the 165° True radial of the South Weymouth TACAN extending from the 5-mile radius zone to 7 miles south of the TACAN.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on November 30, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60–11328; Filed, Dec. 6, 1960; 8:45 a.m.]

Notices

DEPARTMENT OF STATE

[Public Notice 177]

REVOCATION OF DELEGATIONS OF AUTHORITY

Pursuant to the authority contained in section 4 of Public Law 73, 81st Congress, as amended, the following Delegations of Authority are hereby revoked:

1. Delegation of Authority to the Chief, Division of Exchange of Persons, Office of Educational Exchange, dated December 21, 1949 (Public Notice #20 dated January 5, 1950; 15 F.R. 21).

2. Delegation of Authority to the Chief, Federal Programs Branch, and Chief, Fulbright Programs Branch, Division of Exchange of Persons, dated May 19, 1950 (Public Notice #46 dated May 26, 1950; 15 F.R. 3237).

The revocation of the above mentioned Delegations of Authority does not affect other Delegations of Authority relating to the same subject matter.

Dated: November 18, 1960.

For the Secretary of State.

LANE DWINELL,
Assistant Secretary of State for Administration.

[F.R. Doc. 60-11356; Filed, Dec. 6, 1960; 8:49 a.m.]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Order 36 (Rev. 1)]

DIRECTOR OF INTERNATIONAL OPERATIONS

Delegation of Authority Extended to Panama Canal Zone, Puerto Rico and Virgin Islands

NOVEMBER 23, 1960.

Pursuant to the authority vested in me by Commissioner Delegation Order No. 33, dated June 6, 1956, it is hereby ordered:

1. Subject to the limitations contained in paragraph 2, there are delegated to the Director of International Operations the functions of administering the United States internal revenue laws in the Panama Canal Zone, Puerto Rico, and the Virgin Islands of the United States, and in all other areas of the world outside the United States, to the extent of the authority delegated by Commissioner Delegation Order No. 32, dated May 1, 1956.

2. Nothing in this order shall be deemed to affect the procedures for administrative appeal existing immediately prior to August 1, 1956, or any function of the Assistant Regional Commissioner (Alcohol and Tobacco Tax), New York City Region.

This order supersedes Delegation Order No. 36, which was effective August 1, 1956, and is issued for the sole purpose of eliminating from the latter order the words "and the territories of Alaska and Hawaii".

Effective date: November 23, 1960.

[SEAL] WILLIAM H. LOEB,
Assistant Commissioner (Operations).

[F.R. Doc. 60-11353; Filed, Dec. 6, 1960; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

Amendment to Small Tract Classification No. 110

APRIL 9, 1956.

1. Pursuant to authority delegated to the Alaska Operations Supervisor by Bureau Order 541, dated April 21, 1954 (19 F.R. 2473), as amended, the following described lands were classified as suitable for lease and sale for recreational purposes under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended:

FAIRBANKS MERIDIAN

T. 7 S., R. 5 E.,
Section 13: SW¼SE¼.

Containing 40 acres.

2. Classification of the above described lands segregated them from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands classified in the above noted Order are not subject to application under the Small Tract Act of June 1, 1938, as amended, until so provided by an order, as provided for by paragraph three of the Order, to be issued by an authorized officer opening the lands.

4. Small Tract Classification Order No. 110, dated April 9, 1956, is hereby amended by the addition of the following paragraph:

Nothing in this order shall preclude application for state selection in accordance with and subject to the provisions of the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b) and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339).

RICHARD L. QUINTUS,
Operations Supervisor, Fairbanks.

[F.R. Doc. 60-11363; Filed, Dec. 6, 1960; 8:50 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11925]

AERONAVES DE MEXICO, S.A.

Notice of Prehearing Conference

In the matter of the application of Aeronaves de Mexico, S.A. under section 402 of the Federal Aviation Act of 1958, as amended, for a foreign air carrier permit authorizing air transportation of passengers, property and mail between the terminal point Mexico City, Mexico and the terminal point New York, New York via the intermediate point Washington, D.C. and beyond the terminal point New York, New York to Europe; between the terminal points Mazatlan, Mexico, Torreon, Mexico and Monterrey, Mexico and the terminal point San Antonio, Texas via intermediate points in Mexico; between the terminal point Hermosillo, Mexico and the terminal point Tucson, Arizona via intermediate points in Mexico.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on December 9, 1960, at 10:00 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Merritt Ruhlen.

Dated at Washington, D.C., December 1, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11364; Filed, Dec. 6, 1960; 8:50 a.m.]

[Docket 11894]

COMPANIA MEXICANA DE AVIACION, S.A.

Notice of Hearing

In the matter of the application of Compania Mexicana de Aviacion, S.A., for amendment of its foreign air carrier permit.

Notice is hereby given, pursuant to the provisions of The Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on December 20, 1960, at 10:00 a.m. (Local Time) in Room 725, Universal Building, Florida and Connecticut Avenues NW., Washington, D.C., before Examiner Walter W. Bryan.

Dated at Washington, D.C., November 30, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11365; Filed, Dec. 6, 1960; 8:51 a.m.]

[Docket Nos. 11482, 11486]

OZARK AIR LINES, INC., AND AMERICAN AIRLINES, INC.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on January 9, 1961, at 10:00 a.m., e.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Curtis C. Henderson.

Dated at Washington, D.C., December 1, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11366; Filed, Dec. 6, 1960; 8:51 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP61-101]

NORTHERN NATURAL GAS CO.

Notice of Application and Date of Hearing

NOVEMBER 30, 1960.

Take notice that on September 30, 1960, as supplemented on October 27, 1960, Northern Natural Gas Company, 2223 Dodge Street, Omaha 1, Nebraska, (Applicant), filed in Docket No. CP61-101 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to acquire by merger and operate all of the existing jurisdictional natural gas facilities presently owned and operated by Permian Basin Pipeline Company (Permian), all as more fully set forth in the application and exhibits, as supplemented, which are on file with the Commission and open to public inspection.

Permian owns and operates a natural gas pipeline system consisting of approximately 787 miles of main, gathering and supply pipelines, 19 compressor stations with a total of 77,150 installed horsepower, various processing plants and other related facilities. Through these facilities, Permian transports natural gas obtained in West Texas and in Lea County, New Mexico, to its Plains Measuring Station in Yoakum County, Texas, for delivery and sale to Applicant in quantities up to 475,000 Mcf per day (actually delivered at Plains Station to facilities of El Paso Natural Gas Company, which, in turn, delivers equivalent volumes to Applicant near Dumas, Texas, and in Beaver County, Oklahoma). Permian also transports up to 225,000 Mcf per day for El Paso, and sells gas to Pioneer Natural Gas Company for resale, as well as a number of small intrastate sales, mainly for irrigation purposes.

Applicant presently owns approximately 93 percent of the common stock and approximately 58 percent of the preferred stock of Permian, plus all of the $15,460,000 of sinking fund promissory notes outstanding. Applicant proposes to exchange 0.45 of a share of its own common stock for each share of Permian's common stock not owned by Applicant, and one share of its own preferred stock for each share of Permian's preferred stock not owned by Applicant. Applicant will then cancel all of its Permian stock. Applicant will also assume all the corporate debts and liabilities of Permian and will cancel all intercorporate debts.

Applicant will record the acquired facilities at original cost and related depreciation reserve on its books as they are now carried on Permian's books, namely, original cost of utility plant as of June 30, 1960, $76,806,162, with a related reserve for depreciation of $14,339,399, or a depreciated investment of $62,466,763. There will be no acquisition adjustment.

Applicant will adopt Permian's filed FPC Gas Tariff, with the exception of Rate Schedule P-1 (under which the sale to Applicant is made) which will be cancelled.

Applicant states that the proposed merger will eliminate duplication of fees, accounting and administration expenses, and the filing of separate reports to Federal and state agencies. Eliminating duplication of certain franchise and personal taxes would save the simplified corporation $174,338 per year, based on 1959 figures, it is claimed. The merger would simplify the physical operation of the combined systems, eliminate the need to maintain separate accounts for Permian's operations and inter-company transactions and result in savings to Applicant and its customers.

No abandonment of service will result from the proposed merger as Applicant will continue to render all the services now rendered by Permian.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 22, 1960 at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 20, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11329; Filed, Dec. 6, 1960; 8:45 a.m.]

[Docket No. RI61-264]

SINCLAIR OIL & GAS CO.

Order Providing for Hearing on and Suspension of Proposed Change in Rate and Making Rate Effective Upon Filing of Agreement and Undertaking

NOVEMBER 30, 1960.

On October 31, 1960, Sinclair Oil & Gas Company[1] (Sinclair) tendered for filing a proposed change in a presently effective rate schedule for its jurisdictional sales of natural gas to Southern Natural Gas Company (Southeran Natural) in Southern Louisiana, from Duck Lake and Lake Sand Fields in St. Mary, St. Martin and Iberia Parishes, Louisiana. The delivery of this gas is effectuated through an exchange agreement between Sinclair and Humble Oil & Refining Company (Humble) whereby gas produced by Sinclair in the Pledger Field, Brazoria County, Texas, is delivered to Humble and Humble delivers to Southern Natural for Sinclair's account gas produced in the Duck Lake and Lake Sand Fields.

The Sinclair rates on gas delivered to Southern Natural were filed and/or tendered at 14.65 psia pressure measurement, and the current effective rate and the proposed rate have been converted to 15.025 psia, the standard base for Louisiana. The proposed changes are as follows:

Description: Notice of Change dated October 31, 1960.
Rate schedule designation: Supplement No. 10 to Sinclair's FPC Gas Rate Schedule No. 97.
Effective date: December 1, 1960 (effective date is the date proposed by Sinclair).
Rate in effect: 15.384 cents.
Proposed increased rate: 15.8968 cents.
Annual increase: $137,168.

The proposed change may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the proposed change and that the above-designated supplement be suspended and use deferred as hereinafter ordered.

(2) It is necessary and proper in the public interest in carrying out the provisions of the Natural Gas Act that Sinclair's proposed increased rate be made effective as hereinafter provided and that Sinclair be required to file an undertaking as hereinafter ordered and conditioned.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon the dates to be fixed by notices

[1] Address: P.O. Box 521, Tulsa 2, Oklahoma.

from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in the above-designated supplement.

(B) Pending hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until December 2, 1960, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) The above designated supplement shall become effective as of December 2, 1960: *Provided, however,* Within 20 days from the date of issuance of this order, Sinclair executes and files with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder (prescribed by Order 215 and 215A), signed by a responsible officer of the corporation, evidenced by proper authority, from the Board of Directors and accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless Sinclair is advised to the contrary within 15 days after the filing of such agreement and undertaking, its agreements and undertaking shall be deemed to have been accepted.

(D) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure [18 CFR 1.8 and 137(f)] on or before January 16, 1961.

By the Commission (Commissioner Kline dissenting).

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11330; Filed, Dec. 6, 1960; 8:45 a.m.]

PACIFIC POWER & LIGHT CO.

[Docket No. E-6970]

Notice of Application

NOVEMBER 30, 1960.

Take notice that on November 25, 1960, an application was filed with the Federal Power Commission pursuant to section 203 of the Federal Power Act by Pacific Power & Light Company ("Pacific") authorizing the acquisition by Applicant of all of the utility assets now owned by Southern Wyoming Utilities Company ("Southern Wyoming") and substantially all of the electric assets now owned by the Union Pacific Coal Company ("Coal Company"). Applicant is a public utility engaged principally in the business of generating, purchasing, transmitting, distributing, and selling electric energy in Oregon, Washington, Wyoming, Montana and Idaho. Applicant also supplies water, steam heating and telephone service in various communities in its service area. Applicant's principal business office is in Portland, Oregon. Southern Wyoming and Coal Company are wholly owned subsidiaries of Union Pacific Railroad Company and operate properties situated in Carbon and Sweetwater Counties in Wyoming. Said properties are used to provide electric and water service to the communities of Green River, Rock Springs and Hanna, Wyoming and adjacent areas. The base consideration to be paid by Applicant for the facilities to be acquired is $3,200,000 subject to certain adjustments as set forth in the Letter Agreement, dated October 26, 1960, between Union Pacific Railroad Company, Coal Company and Applicant.

Applicant states that if the acquisition of the above-described electric utility facilities is authorized, it plans ultimately to integrate such facilities with its existing Wyoming network, which network is now integrated with those of other utilities and power pools. According to the application, such integration will provide abundant and dependable supplies of power to meet the needs of expanding business, new homes and ranches and will make available adequate electric power in the area for industrial development resulting from utilization of that area's natural resources. The water properties will continue to be operated substantially as they are presently being operated with such improvements as in the judgment of Applicant may be necessary. No rate increases will be required as a result of the proposed acquisition of such electric and water utility assets. Applicant states further that such acquisition will not to its knowledge have any effect upon any contract for the purchase, sale of interchange of any electric energy.

Any person desiring to be heard or to make any protests with reference to said application should on or before the 19th day of December 1960, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11331; Filed, Dec. 6, 1960; 8:45 a.m.]

[Project No. 2187]

PUBLIC SERVICE COMPANY OF COLORADO

Notice of Application for License

NOVEMBER 30, 1960.

Public notice is hereby given that Public Service Company of Colorado, Denver, Colorado, has filed application under the Federal Power Act (16 U.S.C. 791a-825r) for license for constructed Project No. 2187 located on South Clear Creek a tributary stream in the South Platte River Drainage Basin, in Clear Creek County, Colorado, affecting lands of the United States within the Arapahoe National Forest and other lands of the United States. The project consists of the Murray, Silver Dollar Lake and Forebay reservoirs; Clear and Green Lakes; a gravity pipe line; pressure pipe line; Silver Dollar Ditch; Georgetown powerhouse containing two 720 kw generators; substation; switchyard; and appurtenant facilities.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day upon which protests or petitions may be filed is January 30, 1961. The application is on file with the Commission for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11332; Filed, Dec. 6, 1960; 8:45 a.m.]

[Docket No. CP60-36 etc.]

UNITED GAS PIPE LINE CO. ET AL.

Notice of Applications Consolidating Proceedings and Date of Hearing

NOVEMBER 30, 1960.

United Gas Pipe Line Company, Docket No. CP60-36; Gulf Oil Corporation, Docket No. CI60-43; Tidewater Oil Company, Docket No. CI60-142.

Take notice that United Gas Pipe Line Company (United Gas), a Delaware corporation, with its principal place of business at 1525 Fairfield Avenue, Shreveport, Louisiana, filed an application in Docket No. CP60-36 and a supplement thereto on February 15, 1959, and March 31, 1960, respectively, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate approximately 59.4 miles of 36-inch pipeline, a purchase meter station, a check-meter station and other appurtenant facilities which will enable it to transport natural gas to be purchased from Gulf Oil Corporation (Gulf) and Tidewater Oil Company (Tidewater) in interstate commerce for resale. These proposed facilities will connect with the 30-inch transmission pipeline known as the Lirette-Mobile line at a point near Lirette, Terrebonne Parish, Louisiana, and extend easterly through the parishes of Lafourche and Jefferson to a point in the Bastian Bay area of Louisiana. These facilities just described will be used to transport a flow of approximately 330,000 Mcf of natural gas per day at 14.9 psia.

The estimated cost of the proposed facilities is $16,917,010.

United Gas proposes to finance the costs by various means including the sale of bonds, debentures and common stock to United Gas Corporation, an affiliate holding company, and the expenditure of earnings, depreciation and amortization reserves.

On January 15, 1960, Gulf Oil Corporation, a Pennsylvania corporation, whose post office address is Drawer 2100, Houston, Texas, filed an application in Docket No. CI60-43 pursuant to section 7 of the Natural Gas Act for a certificate authorizing the sale of natural gas from certain lands and leases located in the Bastian Bay Field in Plaquemines Parish, Louisiana (all as more fully described in the application), to United Gas Pipe Line Company, above mentioned.

The proposed sale is to be made under the terms of a gas sales contract dated December 22, 1959, a copy of which is attached to the application on file. This document provides that it is subject to cancellation if another similar contract which United Gas has with Tidewater Oil Company is cancelled by Tidewater. The initial price to be charged by the producer is 24.8 cents per Mcf, including tax reimbursement; this initial price is to escalate by 2½ cents per Mcf on July 1, 1962, and thereafter price adjustments are to be made on July 1, 1967, and 1972 respectively. The estimated initial volume of gas to be delivered is 45,000 Mcf per day at 1,025 psig. The exact point of delivery of the gas to be sold is the subject of further agreement, but the point to be determined must lie within the Bastian Bay Field.

On February 4, 1960, Tidewater Oil Company (Tidewater Oil) a Delaware corporation, with its principal office in Los Angeles, and its correspondence office relating to this application is Post Office Box 1404, Houston 1, Texas, filed an application in Docket No. CI60-142, pursuant to section 7 of the Natural Gas Act for a certificate authorizing it to sell natural gas to be produced by it from certain lands and leases located in the West Bastian Bay Field, Plaquemines Parish, Louisiana, under the terms of a gas sales contract made on December 28, 1959, with United Gas Pipe Line Company, above mentioned.

The initial price to be charged is 24.8 cents per Mcf, including tax reimbursement. No liquid hydrocarbons are included and an escalation of 2.5 cents per Mcf on July 1, 1962, is provided for, together with other price adjustments to be redetermined for the last two five-year periods of the twenty-year term. The estimated initial volumes of 50,000 Mcf per day at a maximum pressure of 1025 psig at the point of delivery is agreed to.

The area covered by the leases affected by Tidewater Oil's contract is approximately 3,800 net acres in which it says that it holds 50 percent interest in the land and 25 percent in the water-bottom properties of the West Bastian Bay Field; but the commitment under the contract is limited to only the gas which may be produced from reservoirs lying between the surface and the base of "X" Sand Formation.

Tidewater Oil avers that it is not subject to the jurisdiction of the Federal Power Commission and that it is not a "natural gas company". It also states that the gas to be delivered under said contract will be transported in interstate commerce and re-sold by United Gas for public consumption. The point of delivery of the gas to be sold as above mentioned, is at a central platform in the field.

These related matters should be heard together in a consolidated proceeding and disposed of as promptly as possible under the applicable rules and regulations, and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 4, 1961, at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 23, 1960.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11333; Filed, Dec. 6, 1960; 8:46 a.m.]

[Docket No. CP61-116]

UNITED GAS PIPE LINE CO.

Notice of Application and Date of Hearing

NOVEMBER 30, 1960.

Take notice that United Gas Pipe Line Company (Applicant), a Delaware corporation with a principal office (1525 Fairfield Ave.) in Shreveport, Louisiana, filed an application pursuant to section 7 of the Natural Gas Act in Docket No. CP61-116 on October 13, 1960, for a certificate of public convenience and necessity authorizing applicant to serve natural gas to Mississippi Gas Corporation (Mississippi) for resale in the communities of Bogue Chitto and Norfield, Lincoln County, Mississippi and environs and also to construct and operate 0.0076 mile of 2-inch pipeline lateral, a tap and meter station and the related appurtenances to render the proposed service. The lateral would take off from a point near Milepost 63 on applicant's 6-inch Jackson-Magnolia transmission line and extend westward to connect with the proposed facilities of Mississippi Gas Corporation. The latter would be a new customer of United.

The foregoing is more fully stated in the application on file with the Commission and open to public inspection.

Mississippi proposes to construct and operate the necessary connection with United's proposed facilities and the distribution facilities in the proposed service area. Such facilities will consist of 1.6 miles of transmission main, connecting United's lateral with the proposed distribution systems to be constructed by Mississippi in the area.

Applicant states that on March 11, 1960, the Board of Supervisors of Lincoln County, Mississippi and on September 6, 1960, the Public Service Commission of the State of Mississippi, respectively, granted Mississippi Gas Corporation a franchise and certificate authorization to serve and distribute natural gas in the Towns of Bogue Chitto and Norfield and environs. The area has no gas service at present.

The fuels now being used are butane and wood.

The population of the proposed service area is estimated at 600 with a 10 percent growth per each decade. The estimated peak day and annual requirements in Mcf at 14.73 psia are as follows:

Year	Peak day	Annual
1	163	12,285
2	176	13,478
3	191	14,270

The Applicant recites the total cost of Mississippi's project, including contingencies, is estimated at $55,000, which it proposes to finance by a 6 percent mortgage loan, payable from excess revenues of the system over the cost of its operation.

Applicant's proposed facilities are estimated to cost $5,813 which cost is to be defrayed from its current working funds.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 12, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 3, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11334; Filed, Dec. 6, 1960; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 353]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 2, 1960

The following publications are governed by the Interstate Commerce Commission's general rules of practice including special rules (49 CFR 1.241) governing notice of filing of applications by motor carriers of property or passen-

gers or brokers under sections 206, 209 and 211 of the Interstate Commerce Act and certain other proceedings with respect thereto.

All hearings and pre-hearing conferences will be called at 9:30 o'clock a.m., United States standard time, unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 1124 (Sub No. 167) (AMENDMENT), filed March 1, 1960, published FEDERAL REGISTER, issue of November 9, 1960. Applicant: HERRIN TRANSPORTATION COMPANY, 2301 McKinney Avenue, Houston, Tex. Applicant's attorney: Leroy Hallman, First National Bank Building, Dallas 2, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities including Classes A and B explosives*, except commodities of unusual value, household goods as defined by the Commission, commodities in bulk, and those injurious or contaminating to other lading, (1) between Monroe, La., and Natchez, Miss.; from Monroe, via Louisiana State Highway 15 to Ferriday, thence over U.S. Highway 84 to Natchez; (2) between Baton Rouge, La., and Natchez, Miss.; from Baton Rouge, over U.S. Highway 61 to Natchez; (3) between Alexandria, La., and Natchez, Miss.; from Alexandria, over U.S. Highway 165 to junction Louisiana State Highway 8 at Pollock, thence over Louisiana State Highway 8 to junction U.S. Highway 84 at Trout, thence over U.S. Highway 84 to Natchez, serving all intermediate points on each of the above described routes (1), (2), and (3); and (4) between Natchez, Miss., and Crestview, Fla.; from Natchez, over U.S. Highway 98 to Mobile, Ala., thence over U.S. Highway 90 from Mobile to Crestview, serving no intermediate points.

NOTE: The purpose of this republication is to add to the commodities Classes A and B explosives and number (4) route description.

HEARING: Remains as assigned, January 9, 1961, at Louisiana Public Service Commission, Baton Rouge, La., before Joint Board No. 28.

No. MC 1993 (Sub No. 4), filed November 1, 1960. Applicant: C. E. GRANT, Route 3, Mineral, Va. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Treated poles, posts and other wooden fencing materials*, from points in Orange County, Va., to points in Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, West Virginia, Wisconsin, and the District of Columbia, and *damaged or rejected shipments*, on return.

HEARING: February 1, 1961, at the U.S. Court Rooms, Richmond, Va., before Examiner Garland E. Taylor.

No. MC 1993 (Sub No. 5), filed November 1, 1960. Applicant: C. E. GRANT, Route 3, Mineral, Va. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wooden pallets*, from points in Orange, Louisa, and Powhaton Counties, Va., to points in Connecticut, Delaware, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, West Virginia, and the District of Columbia, and *damaged or rejected wooden pallets*, on return.

HEARING: February 1, 1961, at the U.S. Court Rooms, Richmond, Va., before Examiner Garland E. Taylor.

No. MC 9325 (Sub-No. 12), filed October 17, 1960. Applicant: K LINES, INC., 123 Inman Lane, Grants Pass, Oreg. Applicant's attorney: Earle V. White, Fifth Avenue Building, 2130 Southwest Fifth Avenue, Portland 1, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from Vancouver, Wash., to points in and north of Lane, Deschutes, Crook, Grand, and Baker Counties, Oreg.

HEARING: January 20, 1961, at the Interstate Commerce Commission Hearing Room, 410 Southwest 10th Avenue, Portland, Oreg., before Joint Board No. 45, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 16344 (Sub No. 6), filed July 6, 1959. Applicant: KEYSTONE MOTOR EXPRESS, INC., 2412 Collis Avenue, Huntington, W. Va. Applicant's attorney: John P. McMahon, 44 East Broad Street, Columbus 15, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the intermediate points of Portsmouth and Ironton, Ohio, in an eastbound direction in connection with that portion of applicant's regular route authority from Charleston, W. Va., to Cincinnati, Ohio, serving the intermediate points of Huntington, W. Va., and Portsmouth and Ironton, Ohio: from Charleston over U.S. Highway 60 to Huntington, W. Va., and thence over U.S. Highway 52 to Cincinnati. Applicant is authorized to conduct operations in Pennsylvania, West Virginia, and Ohio.

NOTE: Applicant contends it already holds the authority sought by this application under the above-quoted regular route authorization. Applicant states this application is filed only for the purpose of obtaining such authority in the event it should be determined applicant does not presently hold the requested authority.

HEARING: February 2, 1961, at the New Post Office Building, Columbus, Ohio, before Examiner J. Thomas Schneider.

No. MC 17481 (Sub No. 20), filed November 21, 1960. Applicant: MOORE MOTOR FREIGHT LINES, INC., 2091 Kasota Avenue, St. Paul 8, Minn. Applicant's attorney: Glenn W. Stephens, 121 West Doty Street, Madison 2, Wis. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the plant site of the Mid West Steel Corporation, Division of National Steel Corporation, located on U.S. Highway 12 approximately 2 miles west of the Lake-Porter County line at or near Portage, Ind., as an off-route point in connection with present authorized operations to and from the Chicago Commercial Zone.

HEARING: January 11, 1961, at the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, or, if the Joint Board waives its right to participate, before Examiner John L. York.

No. MC 28733 (Sub No. 4), filed September 6, 1960. Applicant: LESTER AUTO FREIGHT, INC., 526 Southeast Division Place at Grand Avenue, Portland, Oreg. Applicant's attorney: John M. Hickson, Failing Building, Portland 4, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives*, and *rejected shipments*, between Portland and Hood River, Oreg., on the one hand, and, on the other, the John Day Dam Site located approximately three (3) miles east of Rufus, Oreg.

HEARING: January 16, 1961, at the Interstate Commerce Commission Hearing Room, 410 Southwest 10th Avenue, Portland, Oreg., before Joint Board No. 172, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 30887 (Sub No. 102), filed November 14, 1960. Applicant: SHIPLEY TRANSFER, INC., 534 Main Street, Reistertown, Md. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank or hopper type vehicles; from Trenton, Mich., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.

HEARING: January 16, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner David Waters.

No. MC 42487 (Sub No. 486), filed October 24, 1960. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over a regular route, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Crescent City, Calif., and Eureka, Calif., over U.S. Highway 101, serving the intermediate point of Arcata, Calif., except with no local freight service between the termini.

HEARING: January 25, 1961, at the New Mint Building, 133 Hermann Street, San Francisco, Calif., before Joint Board No. 75, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 42710 (Sub No. 5), filed October 3, 1960. Applicant: BENJAMIN A. RYDER, JAMES B. RYDER, JOSEPH B. RYDER AND JOHN H. RYDER, doing business as BEN'S TRANSFER & STORAGE, Second and Valley, Baker, Oreg. Applicant's attorney: Earle V. White, 2130 Southwest Fifth Avenue, Portland 1, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime*, in bulk, from Wing, Oreg., to points in Asotin, Garfield, and Walla Walla Counties, Wash.

HEARING: January 18, 1961, at the Interstate Commerce Commission Hearing Room, 410 Southwest 10th Avenue, Portland, Oreg., before Joint Board No. 45, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 52657 (Sub No. 602) (REPUBLICATION), filed August 31, 1960, published in the FEDERAL REGISTER, issue of September 28, 1960. Applicant: ARCO AUTO CARRIERS, INC., 7530 South Western Avenue, Chicago 20, Ill. Applicant's attorney: Glenn W. Stephens, 121 West Doty Street, Madison, Wis. By application filed August 31, 1960, applicant sought authority to transport trailers, except those designed to be drawn by passenger automobiles, in initial truckaway service, from points in Allegany County, Md., to points in the United States, except Hawaii. At the hearing held November 16, 1960, Hearing Examiner Francis A. Welch presiding, the application was amended to include the transportation of trailer chassis. A Report and Order, served November 28, 1960, authorizes the transportation of *trailers* (except those designed to be drawn by passenger automobiles) and *trailer chassis*, in initial movements, by the truckaway method, from points in Allegany County, Md., to points in the United States, except Hawaii. The purpose of this republication is to advise that any person or persons who might have been prejudiced by the allowance of the amendment, may, within 30 days from the date of this republication in the FEDERAL REGISTER, file an appropriate pleading.

No. MC 60933 (Sub No. 6), filed November 23, 1960. Applicant: EMPIRE EXPRESS, INC., 520 West 51st Street, New York, N.Y. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City 6, N.J. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Batteries, battery acid, rubber tires and tubes, tire building material, rubber cement, camel back, repair material, air bags, flaps, liners, transmission belting, conveyor belting, farm belts, sheet pack* (rubber), *asbestos sheet pack, matting* (all rubber), *matting* (cloth inserted), *hose* (bales or reels), *hose* (lengths), *V belts, display racks, tile flooring, synthetic film, chemical latex, chemical resin, synthetic rubber*, and *hard rubber*, all shown above in packages, from North Brunswick Township, N.J., to New York, N.Y., and *returned or rejected shipments* of above-described commodities, on return.

HEARING: January 16, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Jerry F. Laughlin.

No. MC 70662 (Sub No. 90), filed November 3, 1960. Applicant: CANTLAY & TANZOLA, INC., 2550 East 28th Street, Los Angeles 58, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products* as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, from Barstow, Calif., and Las Vegas, Nev., and points within 10 miles thereof, to points in California, Nevada, Utah, and Arizona and *rejected and contaminated shipments* of the above-specified commodities, from above-specified destination points to points in Los Angeles, Ventura and Orange Counties, Calif. on return.

NOTE: This application is filed for the purpose of following the bulk petroleum traffic to new proposed pipeline origins at Barstow and Las Vegas areas, to points in California, Nevada, Utah, and Arizona, which territory is presently served from origin points in Los Angeles, Orange, and Ventura Counties, also referred to as the Los Angeles Basin shipping areas.

HEARING: January 18, 1961, at the Federal Building, Los Angeles, Calif., before Examiner F. Roy Linn.

No. MC 83539 (Sub No. 71), filed October 31, 1960. Applicant: C & H TRANSPORTATION CO., INC., 1935 West Commerce Street, P.O. Box 5976, Dallas, Tex. Applicant's attorney: W. T. Brunson, 419 Northwest Sixth Street, Oklahoma City, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: A. *Commodities*, the loading, unloading or transportation of which, because of size, weight, or shape, require the use of special equipment, special rigging, or special handling. B. *Parts and accessories*, of commodities described in A above, when moving in connection with shipments of such commodities. C. *Machinery, equipment, materials and supplies*, used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products. D. *Machinery, materials, equipment, and supplies*, used in, or in connection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof. Between points in New York on the one hand, and, on the other, points in Colorado, Montana, North Dakota, South Dakota, and Wyoming. Between points in Idaho, Oregon, Utah, and Washington on the one hand, and, on the other, points in Michigan, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

HEARING: January 30, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Alton R. Smith.

No. MC 83539 (Sub No. 72), filed October 31, 1960. Applicant: C & H TRANSPORTATION CO., INC., 1935 West Commerce Street, P.O. Box 5976, Dallas, Tex. Applicant's attorney: W. T. Brunson, 419 Northwest Sixth Street, Oklahoma City, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: A. *Commodities*, the loading, unloading or transportation of which, because of size, weight, or shape, require the use of special equipment, special rigging, or special handling. B. *Parts and accessories* of commodities described in "A" above, when moving with shipments of such commodities. C. *Machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and dismantling of pipe lines, including the stringing and picking up thereof. Between points in Michigan, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, on the one hand, and, on the other, points in Arizona, California, and Nevada.

HEARING: February 6, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner J. Thomas Schneider.

No. MC 95540 (Sub No. 348), filed November 18, 1960. Applicant: WATKINS MOTOR LINES, INC., Cassidy Road, Thomasville, Ga. Applicant's attorney: Joseph H. Blackshear, Gainesville, Ga. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products* and *articles distributed by meat packing houses*, as defined by the Commission, from Dubuque, Iowa to points in Alabama, Georgia, Mississippi, and points in that part of Louisiana on and east of the Mississippi River including New Orleans, La.

HEARING: January 18, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Alfred B. Hurley.

No. MC 96324 (Sub No. 4), filed November 16, 1960. Applicant: GENERAL DELIVERY, INC., 36 East Grafton Road, Fairmont, W. Va. Applicant's attorney: John C. White, 400 Union Building, Charleston, W. Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, fibreboard boxes, wooden bottle carriers and closures for glass containers*, from Star City, W. Va., to points in Pennsylvania, Ohio, Kentucky, Maryland, Virginia, New Jersey, New York, and Pekin, Ill., and Lawrenceburg, Ind., and *empty containers* or other such incidental facilities (not specified), used in transporting the commodities specified above on return.

HEARING: January 12, 1961, at the Offices of the Interstate Commerce

Commission, Washington, D.C., before Examiner Samuel C. Shoup.

No. MC 103378 (Sub No. 194), filed October 5, 1960. Applicant: PETROLEUM CARRIER CORPORATION, 369 Margaret Street, Jacksonville, Fla. Applicant's attorney: Martin Sack, Atlantic National Bank Building, Jacksonville 2, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sodium silicate*, in bulk, in tank vehicles, from Jacksonville, Fla., to points in Georgia.

HEARING: February 8, 1961, at the Mayflower Hotel, Jacksonville, Fla., before Joint Board No. 64, or, if the Joint Board waives its right to participate, before Examiner Garland E. Taylor.

No. MC 105461 (Sub No. 27) (REPUBLICATION), filed November 9, 1960, published in the FEDERAL REGISTER, issue of November 23, 1960. Applicant: BENJAMIN H. HERR, doing business as HERR'S MOTOR EXPRESS, 36 W. State Street, P.O. Box 8, Quarryville, Pa. Applicant's representative: Bernard N. Gingerich, Quarryville, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood dust*, in bulk, from Goffstown, N.H., to Emmaus, Pa.

NOTE: The purpose of this republication is to change the commodity description as shown above, previously shown as wood flour.

HEARING: Remains as assigned January 5, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Henry A. Cockrum.

No. MC 107403 (Sub No. 318), filed November 15, 1960. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Applicant's attorneys: Shertz, Barnes and Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank or hopper type vehicles; from Trenton, Mich., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.

NOTE: Applicant holds contract authority in MC-117637 and Subs thereunder, therefore, dual operations may be involved.

HEARING: January 16, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner David Waters.

No. MC 107475 (Sub No. 46), filed November 4, 1960. Applicant: DANCE FREIGHT LINES, INC., 728 National Avenue, Lexington, Ky. Applicant's attorney: Paul M. Daniell, 214 Grant Building, Atlanta 3, Ga. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment; (1) between Charlotte, N.C., and Statesville, N.C., from Charlotte over U.S. Highway 21 to Statesville, and return over the same route, serving no intermediate points as an alternate route for operating convenience only, in connection with carrier's authorized regular route operations. RESTRICTION: Carrier shall not transport over such route shipments interchanged at Charlotte, N.C., and destined to Statesville, N.C., or interchanged at Statesville, and destined to Charlotte, N.C.; and (2) between Salisbury, N.C., and Statesville, N.C., from Salisbury over U.S. Highway 70 to Statesville, and return over the same route, serving no intermediate points, as an alternate route for operating convenience only, in connection with carrier's authorized regular route operations. RESTRICTION: Carrier shall not transport over such route shipments interchanged at Salisbury, N.C., and destined to Statesville, N.C., or interchanged at Statesville and destined to Salisbury, N.C.

HEARING: February 3, 1961, at the U.S. Court Rooms, Uptown Post Office Building, Raleigh, N.C., before Joint Board No. 103, or, if the Joint Board waives its right to participate, before Examiner Garland E. Taylor.

No. MC 110525 (Sub No. 429), filed November 17, 1960. Applicant: CHEMICAL TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. Applicant's attorney: Leonard Jaskiewicz, Munsey Building, Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, from Trenton, Mich., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.

NOTE: Applicant holds contract carrier authority in Permit No. MC 117507 and Subs thereunder. Dual operations under section 210 may be involved.

HEARING: January 16, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner David Waters.

No. MC 110698 (Sub No. 144), filed November 18, 1960. Applicant: RYDER TANK LINE, INC., P.O. Box 457, Greensboro, N.C. Applicant's attorney: Frank B. Hand, Jr., 522 Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid glues and resins*, in bulk, in tank vehicles, from Thomasville, N.C., to Louisville, Ky.

HEARING: January 13, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Charles B. Heineman.

No. MC 110969 (Sub No. 10), filed November 7, 1960. Applicant: W. L. BUTLER, doing business as W. L. BUTLER TRANSFER, Elizabethtown, N.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Insecticides* and *fungicides* and *products used in the manufacture of insecticides and fungicides;* from Brunswick, Ga., to Elizabethtown, N.C., and points within 50 miles thereof, and (2) *canned goods;* from Cambridge, Md., to Elizabethtown, N.C., and points within 50 miles thereof, and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, on return, in connection with (1) and (2) above.

HEARING: February 3, 1961, at the U.S. Court Rooms, Uptown Post Office Building, Raleigh, N.C., before Examiner Garland E. Taylor.

No. MC 112391 (Sub No. 23), filed October 31, 1960. Applicant: HADLEY AUTO TRANSPORT, a corporation, 7428 Paramount Boulevard, Pico Rivera, Calif. Applicant's attorney: Phil Jacobson, 510 West Sixth Street, Suite 723, Los Angeles 14, Calif. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New automobiles, trucks, busses* and *chassis*, (1) in secondary movement, in truckaway service, from Milpitas, Calif., to points in Nevada; and (2) in secondary movement, in driveaway and truckaway service, from Salt Lake City, Utah, to points in Idaho, Colorado, and Wyoming, and *damaged, rejected and refused vehicles*, on return.

HEARING: January 20, 1961, at the Federal Building, Los Angeles, Calif., before Examiner F. Roy Linn.

No. MC 112520 (Sub No. 50), filed September 30, 1960. Applicant: McKENZIE TANK LINES, INC., New Quincy Road, P.O. Box 161, Tallahassee, Fla. Applicant's attorney: Sol H. Proctor, 1730 Lynch Building, Jacksonville, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tall oil fatty acids* and *distilled tall oil*, in bulk, in tank vehicles, from Port St. Joe, Fla., to Holyoke and Hebronville, Mass., Elizabeth and Newark, N.J., Philadelphia, Pa., and Detroit, Mich.

HEARING: February 10, 1961, at the Mayflower Hotel, Jacksonville, Fla., before Examiner Garland E. Taylor.

No. MC 112520 (Sub No. 51), filed September 30, 1960. Applicant: McKENZIE TANK LINES, INC., New Quincy Road, P.O. Box 161, Tallahassee, Fla. Applicant's attorney: Sol H. Proctor, 1730 Lynch Building, Jacksonville, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous hydrogen chloride*, in bulk, in tank vehicles, from Freeport, Tex., to Jacksonville, Fla.

HEARING: February 10, 1961, at the Mayflower Hotel, Jacksonville, Fla., before Examiner Garland E. Taylor.

No. MC 112750 (Sub No. 53), filed November 17, 1960. Applicant: ARMORED CARRIER CORPORATION, DeBevoise Building, 222–17 Northern Boulevard, Bayside, N.Y. Applicant's attorney: Paul F. Barnes, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Punch cards and business papers and records* used or useful in the preparation of such punch cards and other business papers and records involving information obtained from the punch cards or pertaining to the use thereof, between Pittsburgh, Pa., on the one hand, and, on the other, points in Ohio, Brooke, Hancock, Marshall, Wetzel, Monongalia, Marion, Taylor, Harrison, Barbour, Upshur, Lewis, Doddridge, Tyler, Pleasants, Ritchie, Wood, Wirt, and Preston Counties, W. Va., and points in Washington, Monroe, Belmont, Jefferson, Columbiana, Mahoning, Trumbull, Ashtabula, Portage, Summit, Stark, Carroll, Harrison, Noble, Guernsey, Muskingum, Coshocton, Licking, Franklin, Tuscarawas, Knox, and Holmes Counties, Ohio.

HEARING: January 13, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Lawrence A. Van Dyke, Jr.

No. MC 113475 (Sub No. 10), filed March 8, 1960. Applicant: RAWLINGS TRUCK LINE, INC., Emporia, Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Boxes, box shooks, crates*, and *crate shooks*, from Chase City, Va., to points in North Carolina, South Carolina, Connecticut, Delaware, Indiana, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, Illinois, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, West Virginia, New York, New Hampshire, Wisconsin, and Washington, D.C.; and (2) *boxes*, from Lawrenceville, Va., to points in Delaware, the District of Columbia, Maryland, New Jersey, Ohio, Pennsylvania, West Virginia, Connecticut, Indiana, Kentucky, Massachusetts, Michigan, North Carolina, Rhode Island, Tennessee, Vermont, and New York, N.Y.

HEARING: January 30, 1961, at the U.S. Court Rooms, Richmond, Va., before Examiner Garland E. Taylor.

No. MC 113666 (Sub No. 5) (AMENDMENT), filed November 3, 1960, published FEDERAL REGISTER issue of November 23, 1960. Applicant: FREEPORT TRANSPORT, INC., Box 215 Freeport, Pa. Applicant's attorney: James W. Hagar, Commerce Building, P.O. Box 432, Harrisburg, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pre-fabricated and pre-cut houses, component parts thereof, and materials, supplies, fixtures and accessories* used or useful in the erection, construction and completion of pre-fabricated and pre-cut houses, from Philadelphia, Pa., to points in Ohio, West Virginia, Virginia, Maryland, North Carolina, and New York, and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodities, on return.

NOTE: The purpose of this republication is to advise the portion of the destination State of New York has been enlarged to include service to all points therein.

HEARING: Remains as assigned January 4, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Maurice S. Bush.

No. MC 113908 (Sub No. 73), filed November 21, 1960. Applicant: ERICKSON TRANSPORT CORPORATION, MPO Box 706, 706 West Tampa, Springfield, Mo. Applicant's attorney: Turner White, 605 Woodruff Building, Springfield, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fruit juices and fruit concentrates*, in bulk, in tank vehicles, between Springdale, Ark., on the one hand, and, on the other, Lawton, Mich., North East, Pa., and Westfield, Brocton, and Watkins Glen, N.Y.

HEARING: January 11, 1961, at the U.S. Court House and Custom House, 1114 Market Street, St. Louis, Mo., before Examiner C. Evans Brooks.

No. MC 114409 (Sub-No. 2), filed October 3, 1960. Applicant: GEORGE A. DOBBERT, doing business as KNOLLENBERG'S MOTOR TRANSFER CO., 200 Irvin Street, Orlando, Fla. Applicant's attorney: J. B. Rodgers, Jr., 227 North Main Street, Orlando, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, having prior movement by rail or motor carrier and general commodities with the above exception, being transported to a motor or rail carrier for movement in interstate commerce, (1) from, to and between points in Orange, Lake, Marion, Volusia, Brevard, Seminole, Osceola, and Polk Counties, Fla.; (2) from Lakeland to Bradenton, Fla., with no intermediate pick-up or deliveries and (3) from Lakeland to Sarasota, Fla., with no intermediate pick-up or deliveries.

HEARING: February 9, 1961, at the Mayflower Hotel, Jacksonville, Fla., before Joint Board No. 205, or, if the Joint Board waives its right to participate, before Examiner Garland E. Taylor.

No. MC 115458 (Sub-No. 10), filed October 7, 1960. Applicant: ROBERT G. VESPER and OTIS A. VESPER, doing business as VESPER COMPANY, 6133 Cherry Avenue, Long Beach 5, Calif. Applicant's attorney: Larry A. Esckilsen, Guardian Building, Detroit 26, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Portable houses*, on removable undercarriages, and along with each portable house the *equipment and material* to be used in installation of said house at destination in truckaway service and (2) *Undercarriages and component parts thereof and installation equipment* that is to be used or has been used in the transportation and installation of portable houses in truckaway service; between points in the United States, including Alaska but excluding Hawaii.

HEARING: January 16, 1961, at the Federal Building, Los Angeles, Calif., before Examiner F. Roy Linn.

No. MC 115601 (Sub No. 11), filed November 18, 1960. Applicant. BROOKS ARMORED CAR SERVICE, INC., 13 East 35th Street, Wilmington, Del. Applicant's attorney: H. James Conaway, Jr., Bank of Delaware Building, Wilmington, Del. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coin and currency, negotiable and non-negotiable securities, inter-office records and correspondence, accounting and billing records and documents*, and *cash letters* with checks for collection, between Philadelphia, Pa., points in Delaware, and points in Kent, Queen Anne's, Talbot, Hartford, Wicomico, Caroline, Dorchester, Somerset, Worcester, and Cecil Counties, Md., and points in Accomac and Northampton, Va.

NOTE: Applicant states the proposed service shall be performed under a continuing contract or contracts with banking institutions, stock brokerage and investment houses and/or other commercial and business institutions and organizations (for example, public utility companies).

HEARING: January 13, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Lacy W. Hinely.

No. MC 116777 (Sub No. 2), filed October 19, 1960. Applicant: J. AND L. LINES, INC., P.O. Box 677, Winchester, Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading; between Harrisonburg, Va., and points in Pendleton County, W. Va.

HEARING: January 31, 1961, at the U.S. Court Rooms, Richmond, Va., before Joint Board No. 245, or, if the Joint Board waives its right to participate, before Examiner Garland E. Taylor.

No. MC 117344 (Sub No. 60) (AMENDMENT), filed October 13, 1960, published in the FEDERAL REGISTER issue of November 16, 1960. Applicant: THE MAXWELL CO., a corporation, 2200 Glendale-Milford Road, Cincinnati 15, Ohio. Applicant's attorney: Herbert Baker, 50 West Broad Street, Columbus 15, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lacquers, paints, resins, varnishes and surface coating compounds*, in bulk, in tank vehicles, from Cincinnati, Ohio, to points in Michigan, and *empty containers or other such incidental facilities* (not specified), used in transporting the commodities specified above, on return.

NOTE: The purpose of this republication is to add the commodity *resins*.

HEARING: Remains as assigned January 26, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 296.

No. MC 118831 (Sub No. 9), filed October 28, 1960. Applicant: CENTRAL TRANSPORT, INCORPORATED, P.O. Box 5044, East College Drive, High Point, N.C. Applicant's attorney: Harry C. Ames, Jr., Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid and dry chemicals*, in bulk, *including synthetic resins, sizings and glues*, in tank and hopper-type vehicles, from Charlotte, N.C., to points in Alabama, Florida, Georgia, South Carolina, and Virginia.

HEARING: December 28, 1960, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Leo A. Riegel.

No. MC 119164 (Sub No. 2) (CORRECTION), filed August 4, 1960, published FEDERAL REGISTER issue of October 5,

1960, and republished in the issue of November 30, 1960. Applicant: J–E–M TRANSPORTATION COMPANY, INC., P.O. Box 444, Middletown, N.Y. Applicant's representative: Charles H. Trayford, 155 East 40th Street, New York 16, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed*, in bulk and in packages, (1) from Jamesburg, N.J., and Howells, N.Y., to points in Pike, Wayne, Susquehanna, Monroe, Lackawanna, Wyoming, and Bradford Counties, Pa.; (2) from Shohola, Pa., and Howells, N.Y., to points in Sussex, Passaic, Bergen, Warren, Morris, Essex, and Hunterdon Counties, N.J.; (3) from Shohola, Pa., and Jamesburg, N.J., to points in Rockland, Orange, Ulster, Sullivan, and Delaware Counties, N.Y.; and (4) *Returned shipments* of the above-specified commodities from the above-specified destination points to their respective origin points.

NOTE: The purpose of this republication is to show the correct location of the hearing room, erroneously shown in previous publication as the Governor Clinton Hotel.

HEARING: Remains as assigned December 6, 1960, at the U.S. Army Reserve Building, 30 West 44th Street, New York, N.Y., before Examiner Michael B. Driscoll.

No. MC 119310 (Sub No. 1), filed August 22, 1960. Applicant: ROBERT A. MILNE, doing business as MILNE TOW SERVICE, 54—6th Street, Sparks, Nev. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked and/or disabled automobiles, trucks, tractors, semi-trailers, full trailers* and *house trailers*, in wrecker type tow trucks, in truckaway service, between points in Nevada and California on and north of U.S. Highway 6.

HEARING: February 3, 1961, at the Nevada Public Service Commission, Room 204, State Office Building, East Musser Street, Carson City, Nev., before Joint Board No. 78, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 119579 (Sub No. 2), filed November 18, 1960. Applicant: J. J. TAYLOR, INCORPORATED, 2028 Jefferson Davis Highway, Arlington, Va. Applicant's attorney: Francis J. Ortman, 1366 National Press Building, Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from points in Prince William County, Va., to points in Pennsylvania, Delaware, New Jersey, New York, and West Virginia, and *empty containers or other such incidental facilities* (not specified) used in transporting the above-described commodities, on return.

HEARING: January 12, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Warren C. White.

No. MC 119632 (Sub No. 6), filed September 12, 1960. Applicant: REED LINES, INC., 210 North Clinton Street, Defiance, Ohio. Applicant's attorney: John P. McMahon, 44 East Broad Street, Columbus 15, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Glass containers, caps*, and *enclosures therefor*, and *corrugated boxes* (knocked down) when transported therewith, from Vienna, W. Va. (a) to points in Indiana on and north of a line commencing at the Ohio-Indiana State line, and extending along U.S. Highway 40 to Indianapolis, Ind., thence along U.S. Highway 136 from Indianapolis to the Indiana-Illinois State line, (b) to points in Illinois on and north of U.S. Highway 136, and (c) to points in Michigan on and south of Michigan Highway 55, and (2) *pallets and other devices* used in connection with the outbound transportation; from the destination territories described in (a), (b), and (c) above, to Vienna, W. Va.

HEARING: February 1, 1961, at the New Post Office Building, Columbus, Ohio, before Examiner J. Thomas Schneider.

No. MC 119641 (Sub No. 20), filed September 22, 1960. Applicant: RINGLE EXPRESS, INC., 405 South Grant Avenue, Fowler, Ind. Applicant's attorney: Robert C. Smith, 512 Illinois Building, Indianapolis 4, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete slabs, building or roofing* made with magnesite, *cement*, and *wood fiber, with accessories* not to exceed 10 percent of truckload minimum or actual weight, if greater, from Newark, Ohio, to points in Michigan, Indiana, Illinois, Iowa, Kentucky, Tennessee, Wisconsin, New York, Pennsylvania, New Jersey, Maryland, and West Virginia, and *damaged or rejected shipments* of above-described commodities, on return.

HEARING: January 30, 1961, at the New Post Office Building, Columbus, Ohio, before Examiner J. Thomas Schneider.

No. MC 119641 (Sub No. 22), filed June 20, 1960. Applicant: RINGLE EXPRESS, INC., 405 South Grant Avenue, Fowler, Ind. Applicant's attorney: Robert C. Smith, 512 Illinois Building, Indianapolis 4, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fiberboard, wallboard, hardboard, mouldings* and *fasteners*, from Laurel, Miss., to points in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, and Wisconsin, and *damaged or rejected shipments*, on return.

HEARING: February 10, 1961, at the Pick-Congress Hotel, Chicago, Ill., before Examiner J. Thomas Schneider.

No. MC 123083, filed September 1, 1960. Applicant: AIRWAY AUTO ASSOCIATES, INC., 1029 First Avenue North, St. Petersburg, Fla. Applicant's attorney: W. K. Zewadski, First Federal Building, St. Petersburg, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used automobiles, trucks* and *motor vehicles*, by drive-a-way methods, between points in Florida and all states in the United States east of the Mississippi River, namely Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Kentucky, Virginia, West Virginia, Maryland, Delaware, North Carolina, South Carolina, Tennessee, Mississippi, Alabama, and Georgia, including the Ports of Entry between the United States and Canada, in Michigan, New York, Vermont, and Maine.

HEARING: February 13, 1961, at the U.S. Court Rooms, Tampa, Fla., before Examiner Garland E. Taylor.

No. MC 123102, filed September 29, 1960. Applicant: BOARDMAN HILL, doing business as HILL LINE, 4028½ Shirley Avenue, El Monte, Calif. Applicant's attorney: Donald Murchison, 211 South Beverly Drive, Beverly Hills, Calif. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wood shingles*, from Amanda Park, Wash., to points in Los Angeles, Riverside and Alameda Counties, Calif., and (2) *wax and wax products* from Glendale, Calif., to Fort Lewis, Bremerton, Sand Point, and Seattle, Wash.

HEARING: January 17, 1961, at the Interstate Commerce Commission Hearing Room, 410 Southwest 10th Avenue, Portland, Oreg., before Joint Board No. 5, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 123115, filed October 6, 1960. Applicant: BEN PACKER, doing business as PACKER TRANSPORTATION CO., 465 South 17th Street, Sparks, Nev. Applicant's attorneys: Royal A. Stewart *and* Richard W. Horton, 6 State Street, Reno, Nev. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, finished and unfinished; *timber*, rough or surfaced; *wooden moulding, shelving, jams and casings; box shook; wooden columns; wooden doors; doors and frames combined; door sills, flooring; door or window frames; mouldings; boards or sheets* (flat) *consisting of sawdust or ground wood with added resin binder; wooden fence pickets; props or timbers; wooden piling; poles; wooden posts; wooden rafters; wooden roof trusses; wooden shingles; railroad ties; veneer, wood buildup or combined with plywood;* and *wooden pallets;* (a) from points in Washoe and Douglas Counties, Nev., to points in California; (b) from points in California to points in Washoe County, Nev.; and (c) from points in Washoe County, Nev., to points in Nevada, including points in Washoe County, Nev.

HEARING: January 30, 1961, at the Nevada Public Service Commission, Room 204, State Office Building, East Musser Street, Carson City, Nev., before Joint Board No. 78, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 132122, filed October 11, 1960. Applicant: J. J. GENTRY, 2634 Highway 99 South, Grants Pass, Oreg. Applicant's attorney: Glenn D. Ramirez, Suite 205, I.O.O.F. Building, 432 Main Street, Klamath Falls, Oreg. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer;* from

Stege and Riverbank, Calif., to points in Jackson, Josephine and Douglas Counties, Oreg., and *lumber* and *plywood*, on return.

NOTE: (1) Applicant states that the loads of fertilizer will be delivered direct to farm sites as a service to farmers. (2) Applicant presently holds common carrier authority in MC–115399 and Sub No. 1 thereunder, therefore, dual operations may be involved.

HEARING: January 20, 1961, at the Interstate Commerce Commission Hearing Room, 410 Southwest 10th Avenue, Portland, Oreg., before Joint Board No. 11, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 123145, filed October 17, 1960. Applicant: BARDAHL OF SO. CALIFORNIA, INC., 7565 Melrose Avenue, Los Angeles, Calif. Applicant's attorney: Donald Murchison, 211 South Beverly Drive, Beverly Hills, Calif. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tile and tile adhesives*, from Paramount, Calif., to Salem and Eugene, Oreg., and Seattle, Wash.

HEARING: January 18, 1961, at the Interstate Commerce Commission Hearing Room, 410 Southwest 10th Avenue, Portland, Oreg., before Joint Board No. 5, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

No. MC 123215, filed November 14, 1960. Applicant: HELEN H. SCHAEFFER AND EDWARD P. SCHAEFFER, a partnership, 502 East Madison Street, Phoenix, Ariz. Applicant's attorney: George A. Olsen, 69 Tonnele Avenue, Jersey City 6, N.J. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Greeting cards* and *sample albums containing cards*, from Boston, Springfield, Leominster and Webster, Mass., Nashau, N.H., New York, White Plains, Elmira, and Brooklyn, N.Y., North Bennington, Vt., Cicero, Ill., Pittsburgh and Philadelphia, Pa., and Cincinnati, Ohio, to Pasadena, El Cerino, Los Angeles, and San Francisco, Calif.

NOTE: Applicant indicates it will transport exempt farm products, on return.

HEARING: January 19, 1961, at the Federal Building, Los Angeles, Calif., before Examiner F. Roy Linn.

No. MC 123216, filed November 15, 1960. Applicant: JAMES T. DAVIS, INC., 1225 Main Street, Lynchburg, Va. Applicant's attorney: Wilbert G. Burnette, 1017 Church Street, Lynchburg, Va. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paint, paint sundries*, and *all types of raw materials used in the manufacture of paint*, between Lynchburg, Va., and points in Ohio, West Virginia, North Carolina, South Carolina, Maryland, Pennsylvania, New Jersey, New York, Delaware, Tennessee, and the District of Columbia.

NOTE: Applicant states that the application involves authority to transport property of Specification Paints Manufactures, Inc., a company almost entirely owned by Davis.

HEARING: February 2, 1961, at the U.S. Court Rooms, Richmond, Va., before Examiner Garland E. Taylor.

MOTOR CARRIERS OF PASSENGERS

No. MC 123126, filed October 12, 1960. Applicant: GURNIE L. BLUNT, doing business as BLUNT'S BUS LINE, 309 Roosevelt Street, Franklin, Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter operations, beginning and ending at points in Greenville, Nansemond, Sussex, Isle of Wight, and Southampton Counties, Va., and extending to points in Maryland and North Carolina, and Washington, D.C., Philadelphia, Pa., and New York, N.Y.

HEARING: January 31, 1961, at the U.S. Court Rooms, Richmond, Va., before Examiner Garland E. Taylor.

No. MC 123144, filed October 17, 1960. Applicant: BORDERLAND TRANSPORTATION CO., a corporation, Route 1, Box 74, Brawley, Calif. Applicant's attorney: Lewis A. Plourd, 1005 State Street, El Centro, Calif. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers* (including transportation of baggage of passengers in the same vehicle with passengers), between points in Texas, Oklahoma, Arizona, New Mexico, Kansas, and California.

HEARING: January 17, 1961, at the Federal Building, Los Angeles, Calif., before Examiner F. Roy Linn.

No. MC 123178, filed October 31, 1960. Applicant: LAWRENCE C. JENSEN, doing business as JENSEN TRANSPORTATION, 155 South First Avenue, St. Helens, Oreg. Applicant's attorney: Wm. P. Ellis, 1121 Equitable Building, Portland, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in special operations, between points in Columbia County, Oreg., and points in Washington.

HEARING: January 19, 1961, at the Interstate Commerce Commission Hearing Room, 410 Southwest 10th Avenue, Portland, Oreg., before Joint Board No. 45, or, if the Joint Board waives its right to participate, before Examiner Leo A. Riegel.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING IS REQUESTED

MOTOR CARRIERS OF PROPERTY

No. MC 8964 (Sub No. 16), filed November 23, 1960. Applicant: WITTE TRANSPORTATION COMPANY, a corporation, 2481 North Cleveland Avenue, St. Paul, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities, including Classes A and B explosives*, but excluding those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment; between Minneapolis, Minn., and Cannon Falls, Minn., from Minneapolis over Minnesota Highway 55 to junction with U.S. Highway 52, thence over U.S. Highway 52 to Cannon Falls, and return over the same route, serving the intermediate points of Pine Bend and Coates, Minn.

No. MC 10297 (Sub No. 7), filed November 25, 1960. Applicant: CAPITOL MOTOR TRANSPORTATION COMPANY, INC., 296 Main Street, Everett, Mass. Applicant's representative: Bert Collins, 140 Cedar Street, New York 6, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wallboard, building board, insulation board, fibreboard, pulpboard, strawboard, rolls prepared roofing;* from the plant site of U.S. Gypsum Co. at Lisbon Falls, Maine, to points in Ohio, Indiana, Illinois, Michigan, and Wisconsin, and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, on return.

No. MC 41849 (Sub No. 8), filed November 21, 1960. Applicant: KEIGHTLEY BROS., INC., 1616 South 39th Street, St. Louis, Mo. Applicant's attorney: Ernest A. Brooks, II, 1301 Ambassador Building, St. Louis 1, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in dump vehicles, from St. Louis, Mo., to points in Illinois within 150 miles of St. Louis, Mo.

NOTE: Applicant presently has authority to transport the above commodity from St. Louis, Mo., to points in Illinois within 100 miles of St. Louis, and by this application, seeks only to enlarge the territorial authority in Illinois from 100 miles of St. Louis to 150 miles of St. Louis, Mo.

No. MC 52579 (Sub No. 33), filed October 13, 1960. Applicant: GILBERT CARRIER CORP., 645 West 40th Street, New York 16, N.Y. Applicant's attorney: Irving Klein, 280 Broadway, New York 7, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Garments and wearing apparel on hangers*, and *hangers*, between New York, N.Y., on the one hand, and, on the other, Atlanta, Ga., and Miami, Fla. RESTRICTION: The authority herein sought shall be limited to the transportation of traffic which has moved or will move between New York, N.Y., and Atlanta, Ga., and Miami, Fla., in carrier's trailers rail cars in substituted rail for motor service.

NOTE: Duplication with present authority to be eliminated.

No. MC 66562 (Sub No. 1752), filed November 25, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED; Principal Office: 219 East 42d Street, New York 17, N.Y.; Local Office: 275 East Fourth Street, St. Paul 1, Minn. Applicant's attorney: William H. Marx, General Attorney, Railway Express Agency, Incorporated (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between Breckenridge, Minn. and Fergus Falls, Minn.: from Breckenridge over Minnesota Highway 210 to Fergus Falls, and return over the same

route, serving the intermediate point of Foxholm. RESTRICTIONS: The service to be performed by applicant shall be limited to service which is auxiliary to or supplemental of air or rail express service of applicant. Shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt.

No. MC 68183 (Sub No. 14), filed November 21, 1960. Applicant: YANKEE LINES, INC., 1400 East Archwood Avenue, Akron 6, Ohio. Applicant's representative: W. R. Hubbard, 1032 Standard Building, Cleveland 13, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, (1) between Akron, Ohio, and Atwater Center, Ohio, from Akron over U.S. Highway 224 to Atwater Center, and (2) between Poland, Ohio, and New Castle, Pa., from Poland over U.S. Highway 224 to New Castle and return over the same route as alternate routes for operating convenience only, serving no intermediate or off-route points in connection with applicant's presently authorized regular route operation between Akron, Ohio, and New Castle, Pa.

No. MC 71096 (Sub No. 35), filed November 23, 1960. Applicant: NORWALK TRUCK LINES, INC., 180 Milan Avenue, Norwalk, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, automobiles, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between points in Indiana, Michigan, Ohio, and Pennsylvania: I. (1) between junction U.S. Highway 6 and Indiana Highway 2 and La Porte, Ind.; from junction U.S. Highway 6 and Indiana Highway 2 over Indiana Highway 2 to La Porte and return over the same route, (2) between junction Indiana Highway 15 and U.S. Highway 6 and Bristol, Ind. (via Goshen); from junction Indiana Highway 15 and U.S. Highway 6 over Indiana Highway 15 to Bristol and return over the same route; (3) between junction Indiana Highway 13 and U.S. Highway 33 and junction Indiana Highway 13 and U.S. Highway 6 (4 miles west of Ligonier); from junction Indiana Highway 13 and U.S. Highway 33 over Indiana Highway 13 to junction U.S. Highway 6 and return over the same route: II. between junction U.S. Highway 131 and U.S. Highway 112 and Kalamazoo, Mich.; from junction U.S. Highway 131 and U.S. Highway 112 over U.S. Highway 131 to Kalamazoo and return over the same route. III. (1) between junction U.S. Highway Alternate 20 and U.S. Highway 20 (north of Montpelier, Ohio), and junction U.S. Highway Alternate 20 and Ohio Highway 2 (North of Wauseon, Ohio); from junction U.S. Highway Alternate 20 and U.S. Highway 20 over U.S. Highway Alternate 20 to junction Ohio Highway 2 and return over the same route; (2) between junction Ohio Highway 65 and Ohio Highway 69 and junction U.S. Highway 30N and Ohio Highway 69; from junction Ohio Highway 65 and Ohio Highway 69 via Ohio Highway 69 to junction with U.S. Highway 30N and return over the same route. NOTE: That segment of Ohio Highway 69 between junction Ohio Highway 18 and McComb is included in Docket No. 71096 page 11, 9th para. (3) between Toledo, Ohio and junction U.S. Highway 25 and U.S. Highway 30N; from Toledo over U.S. Highway 25 to junction U.S. Highway 30N and return over the same route; (4) between junction Ohio Highway 18 and U.S. Highway 25 and Findlay, Ohio; from junction Ohio Highway 18 and U.S. Highway 25 over unnumbered highway to junction with U.S. Highway 224, hence via U.S. Highway 224 to Findlay and return over the same route; (5) between Bucyrus and Shelby, Ohio; from Bucyrus over Ohio Highway 96 to Shelby and return over the same route; (6) between Lodi and Cleveland, Ohio; from Lodi over U.S. Highway 42 to Cleveland and return over the same route; (7) between junction Ohio 82 and Ohio 57 and Warren, Ohio; from junction Ohio 82 and Ohio 57 over Ohio 82 to Warren and return over the same route; (8) between Cleveland and Massillon, Ohio; from junction Ohio 18 and U.S. Highway 21 over U.S. Highway 21 to Massillon and return over the same route; (9) between Ravenna, and Warren, Ohio; from Ravenna over Ohio Highway 5 to Warren and return over the same route, and IV. between junction U.S. Highway 422 and U.S. Highway 19 and Butler, Pa.; from junction U.S. Highway 422 and U.S. Highway 19 over U.S. Highway 422 to Butler and return over the same route.

NOTE: For operating convenience only, serving no termini, intermediate or off-route points.

No. MC 105957 (Sub No. 47), filed November 23, 1960. Applicant: DELTA MOTOR LINE, INC., Post Office Box 3867, Jackson, Miss. Applicant's attorney: Harold D. Miller, Jr., Suite 700 Petroleum Building, P.O. Box 141, Jackson, Miss. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, those requiring special equipment, and those injurious or contaminating to other lading, between the plant site of the Archer Daniels Midland Company, approximately 7.3 miles from Peoria, Ill., at or near Mapleton, Ill., as an off-route point in connection with applicant's authorized regular route operations to and from Peoria, Ill.

No. MC 108905 (Sub No. 20), filed November 22, 1960. Applicant: JASPER & CHICAGO MOTOR EXPRESS, INC., Indiana Highways 45 and 56, Jasper, Ind. Applicant's attorney: John E. Lesow, 3737 North Meridian Street, Indianapolis 8, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, dangerous explosives, livestock, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, and those injurious or contaminating to other lading, serving the plant site of Midwest Steel Corporation, located on U.S. Highway 12, approximately 2 miles east of the Lake-Porter County line, at or near Portage, Ind., as an off-route point in connection with applicant's presently authorized regular route operations in the States of Indiana, Illinois, and Kentucky.

No. MC 110525 (Sub No. 430) filed November 23, 1960. Applicant: CHEMICAL TANK LINES, INC., 520 East Lancaster Avenue, Downington, Pa. Applicant's attorney: Leonard A. Jaskiewicz, Munsey Building, Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soybean oil*, in bulk, in tank vehicles, from Bellevue, Ohio, to Dayton, Ky., and *rejected shipments* of above-described commodity, on return.

NOTE: Section 210, dual operations may be involved. Applicant holds contract carrier authority in Permit No. MC 117505 and Subs thereunder. Common control may be involved.

No. MC 111231 (Sub No. 44), filed November 18, 1960. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, Ark. Applicant's representative: B. J. Wiseman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, livestock, grain, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Springdale, Ark., and Marked Tree, Ark.: (a) from Springdale over Arkansas Highway 68 to its junction with U.S. Highway 62 at or near Alpena, thence over U.S. Highway 62 to its junction with U.S. Highway 65, thence over U.S. Highway 65 to its junction with Arkansas Highway 66 at or near Leslie, serving no intermediate points and serving Leslie for purposes of joinder only; (b) From Leslie over Arkansas Highway 66 to its junction with Arkansas Highway 14, thence over Arkansas Highway 14 to Newport, serving the intermediate points of Elberta, Alco, Timbo, Newnata, Mountain View, St. James, Pleasant Grove, Marcella, Melrose, Locust Grove, Desha, Salado, Rosie, and Macks, and the off-route points of Oxley and Oil Trough, with service at Newport restricted to joinder purposes only; (c) From Newport over Arkansas Highway 14 to its junction with U.S. Highway 63 at or near Marked Tree, serving no intermediate points. Service at Termini restricted to joinder only.

No. MC 114194 (Sub No. 33), filed November 23, 1960. Applicant: KREIDER TRUCK SERVICE, INC., 8003 Collinsville Road, East St. Louis, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rum and blends*, in bulk; from Covington, Ky., to St. Louis, Mo., and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, and *rejected shipments*, on return.

MOTOR CARRIERS OF PASSENGERS

No. MC 1501 (Sub No. 212), filed November 21, 1960. Applicant: THE GREYHOUND CORPORATION, 140 South Dearborn Street, Chicago 3, Ill. Applicant's attorney: R. H. Warns, Commerce Counsel, The Greyhound Corporation (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, express, newspapers* and *mail* in the same vehicle with passengers, between Elizabethtown, Ky., and junction of Interstate Highway 65 and U.S. Highway 31-W, at or near Upton, Ky.: from Elizabethtown over Interstate Highway 65 to its junction with U.S. Highway 31-W, and return over the same route, serving all intermediate points.

No. MC 1501 (Sub No. 213), filed November 21, 1960. Applicant: THE GREYHOUND CORPORATION, 140 South Dearborn Street, Chicago 3, Ill. Applicant's attorney: R. H. Warns, Commerce Counsel, The Greyhound Corporation (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, express, newspapers* and *mail* in the same vehicle with passengers, between Rome, Ga., and junction of U.S. Highway 41 and new unnumbered four-lane highway at or near Cartersville, Ga.: from Rome over new unnumbered four-lane highway to its junction with U.S. Highway 41 north of Cartersville, and return over the same route, serving all intermediate points.

No. MC 1501 (Sub No. 214), filed November 28, 1960. Applicant: THE GREYHOUND CORPORATION, 140 South Dearborn Street, Chicago 3, Ill. Applicant's attorney: Raymond H. Warns, Commerce Counsel, The Greyhound Corporation (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, express, newspapers and mail* in the same vehicle with pasengers, (1) between Marion, Ill., and the junction of Interstate Highway 57 and U.S. Highway 51 approximately two miles north of Ullin, Ill.: from Marion over Interstate Highway 57 to its Junction with U.S. Highway 51, and return over the same route, serving no intermediate points. (2) Between Cairo, Ill., and Sikeston, Mo.: from Cairo, Ill., over U.S. Highway 60 to Sikeston, Mo., and return over the same route, serving no intermediate points.

NOTE: Applicant states it proposes to join or tack this authority, if granted, to: *MC 1501 Sub 25 Route 2* "Between St. Louis, Mo., and Paducah, Ky., serving the intermediate points of Cairo, Ill., and Wickliffe, Ky., and all other intermediate points except those on U.S. Highway 51 between Cairo and Wickliffe." So much of the above as pertains to U.S. Highway 51 between junction of Interstate Highway 57 and U.S. Highway 51 and Cairo, Ill. *MC 1501 Sub 25 Route 1* "Between St. Louis, Mo., and Vicksburg, Miss., serving all intermediate points and the off-route points of Caruthersville, Hayti, Cape Girardeau, Fredericktown, and St. Francois, Mo." So much of the above as pertains to U.S. Highway 61 between Sikeston, Mo., and Vicksburg, Miss.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carrier of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F 7488 (COLORADO MOTORWAY, INC.—PURCHASE—M. M. YOUNG), published in the April 6, 1960, issue of the FEDERAL REGISTER on page 2937. Application filed November 29, 1960, for temporary authority under section 210a(b).

No. MC-F 7715 (correction) (UNITED TRANSPORTATION CO. OF RHODE ISLAND — PURCHASE — THOMAS L. McCORMICK), published in the November 30, 1960, issue of the FEDERAL REGISTER on page 12273. The publication should have indicated that application has been filed for temporary authority under section 210a(b).

No. MC-F 7720. Authority sought for control and merger by READING TRANSPORTATION COMPANY, Reading Terminal, 12th and Market Streets, Philadelphia 7, Pa., of the operating rights (with certain exceptions as noted below) and property of KARN'S TRANSFER, INC., 345 West Elm Street, Hazleton, Pa., and for acquisition by READING COMPANY, also of Philadelphia, of control of such rights and property through the transaction. Applicants' attorney: Lockwood W. Fogg, Jr., Reading Terminal, Philadelphia 7, Pa. KARN'S TRANSFER, INC., holds the following Interstate Commerce Commission *common carrier* operating rights: (1) *General commodities*, excepting, among others, household goods and commodities in bulk, over regular routes, between Reading, Pa., and Carbondale, Pa., serving all intermediate and certain off-route points; *general commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes, between New York, N.Y., and certain points in New Jersey, on the one hand, and, on the other, certain points in Pennsylvania; *shirts and milling supplies*, between Hazelton, Pa., and Baltimore, Md.; *foodstuffs and canned goods* (limited to the transportation of these commodities having an immediately prior movement in rail pool cars), from Hazleton, Pa., to certain points in Pennsylvania; *such commodities* as are dealt in by wholesale and retail grocery stores (limited to the transportation of these commodities having an immediately prior movement in rail pool cars), from Hazleton, Pa., to certain points in Pennsylvania; *synthetic yarn* and *synthetic staple fibre*, from Hazleton, Pa., to certain points in New York, restricted to shipments having a prior or subsequent movement by motor vehicle to Hazleton; *empty racks, beams, and shipping containers* used in transporting the described synthetic yarn and synthetic staple fibre, from certain points in New York to Hazleton, Pa., subject to the restriction that shipments transported by carrier shall be limited to those having a prior or subsequent movement by motor vehicle from Hazleton; (2) *cellulose acetate*, in bulk, over irregular routes, from Parlin, N.J., to Meadville, Pa.; (3) *rayon yarn* and *rayon products*, over irregular routes, from Meadville, Pa., to points in New York, Connecticut, Massachusetts, and Rhode Island and certain points in Virginia; *refused yarn* and *empty spools, cones and other articles* used in the shipping of yarn, from the immediately-above-specified destination points to Meadville, Pa.; *synthetic yarn, synthetic fibre, synthetic staple fibre, synthetic fibre products* (except rayon yarn and rayon products), and *materials and supplies* used in packing and shipping such commodities, from Meadville, Pa., to points in New York, New Jersey, Connecticut, Massachusetts, and Rhode Island and certain points in Virginia; *articles* used in packing and shipping the commodities named immediately above, from the immediately-above-specified destination points to Meadville, Pa.; *synthetic yarn, synthetic fibre, synthetic staple fibre, synthetic fibre products, rayon yarn* and *rayon products* (limited to transportation of traffic having a prior or subsequent movement by connecting motor carrier), from Meadville, Pa., to Scranton, Wilkes-Barre, Hazleton, Reading, and Philadelphia, Pa.; *materials and supplies* used in packing and shipping the commodities described immediately above (subject to the immediately-above-described limitation), from Scranton, Wilkes-Barre, Hazleton, Reading, and Philadelphia, Pa., to Meadville, Pa.; (4) *household goods*, over irregular routes, between Hazleton, Pa., and points within 35 miles of Hazleton, on the one hand, and, on the other, points in Massachusetts, Connecticut, New York, New Jersey, Ohio, Delaware, Maryland, Rhode Island, West Virginia, Virginia, North Carolina, and the District of Columbia. The application states that READING TRANSPORTATION COMPANY will acquire the rights described in (1) above, that the operating rights described in (2) above are to be canceled, and that those in (3) and (4) above are to be transfered by KARN'S TRANSFER, INC., to two other parties. No applications seeking the approval thereof have yet been filed. READING TRANSPORTATION COMPANY is authorized to operate as a *common carrier* of property in Pennsylvania and New Jersey, and as a *common carrier* of passengers in Pennsylvania, New Jersey, Connecticut, New York, Maryland, Delaware, Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F 7721. Authority sought for purchase by PENNSYLVANIA TRANSFER CO., 631 Cascade Street, New

Castle, Pa., of the operating rights and property of FRANK WIMER, 460 East Washington Street, New Castle, Pa., and for acquisition by JULIUS W. GARDOCKY, also of New Castle, of control of such rights and property through the purchase. Applicants' attorney: Henry M. Wick, Jr., 1515 Park Building, Pittsburgh 22, Pa. Operating rights sought to be transferred: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier* over regular routes, between New Castle, Pa., and Mercer, Pa., between New Castle, Pa., and Bessemer, Pa., between New Castle, Pa., and Koppel, Pa., serving certain intermediate points and subject to the following conditions: (1) The service to be performed by said carrier shall be limited to that which is auxiliary to or supplemental of rail service of the Pennsylvania Railroad Company, hereinafter called the Pennsylvania, (2) shipments transported by said carrier shall be limited to those which it receives from or delivers to the Pennsylvania under a through bill of lading covering, in addition to movement by said carrier, a prior or subsequent movement by rail, (3) all contractual arrangements between said carrier and the Pennsylvania shall be reported to the Commission and shall be subject to revisions, if and as the Commission finds it to be necessary in order that such arrangements shall be fair and equitable to the parties, and (4) such further specific conditions as the Commission, in the future, may find it necessary to impose in order to restrict said carrier's operations to service which is auxiliary to, or supplemental of, rail service; *general commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes, between New Castle, Pa., on the one hand, and, on the other, certain points in Pennsylvania; *household goods*, as defined by the Commission, between points in Lawrence County, Pa., on the one hand, and, on the other, points in Ohio, New York, and West Virginia; *soap, soap powder, vegetable shortening, vegetable oil*, and *synthetic detergents*, from New Castle, Pa., to certain points in Pennsylvania. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New Jersey, New York, Ohio, West Virginia, Illinois, Maryland, Michigan, Indiana, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-7723. Authority sought for purchase by M. I. O'BOYLE & SON, INC., doing business as O'BOYLE TANK LINES, 1825 Jefferson Place NW., Washington 6, D.C., of a portion of the operating rights and certain property of JAMES F. BLACK, doing business as PARKVILLE TRUCKING COMPANY, 3818 Pulaski Highway (Mail: P.O. Box 4168 East End Station), Baltimore, Md., and for acquisition by FRANK L. GRIMM, 3708 Oliver Street NW., Washington, D.C. and SARAH F. CARL, Gaithersburg, Md., of control of such rights and property through the purchase. Applicants' attorney: Dale C. Dillon, 1825 Jefferson Place NW., Washington 6, D.C. Operating rights sought to be transferred: *Chemicals*, in bulk, as a *common carrier* over irregular routes from Baltimore, Md., to Coatesville, Marcus Hook, and Philadelphia, Pa., Linden, N.J., and Washington, D.C., and from Linden and Jersey City, N.J., and Marcus Hook and Chester, Pa., to Baltimore, Md.; *sulphuric acid*, in bulk, in tank vehicles, between Baltimore, Md., on the one hand, and, on the other, points on Long Island, N.Y., and points in New Jersey, and New York, N.Y.; *alum*, in bulk and in burlap bags, between Baltimore, Md., on the one hand, and on the other, York, Pa., points in Virginia on and east of U.S. Highway 1, all points in Delaware, and those in New Jersey, except Warners, N.J.; *alum*, in bulk, from Baltimore, Md., to Batavia, Brockport, Fairport, Leroy, and Westfield, N.Y., and points in Ohio; *hydrofluosilicic acid*, in bulk, in tank vehicles, from Carneys Point, N.J., to Baltimore, Md.; *silica gel catalyst*, in bulk, in covered hopper vehicles, from Baltimore, Md., to Delaware City, Del., Westville, N.J., and Yorktown, Va., and from Baltimore, Md., to Warren, Pa.; Vendee is authorized to operate as a *common carrier* in the District of Columbia, Maryland, Virginia, Pennsylvania, West Virginia, Delaware, New Jersey, New York, Ohio, North Carolina, Illinois, Indiana, Michigan, Minnesota, Missouri, Wisconsin, Massachusetts, Rhode Island, Tennessee, Alabama, Florida, Georgia, South Carolina, Arkansas, Connecticut, Iowa, Kentucky, Louisiana, Maine, Mississippi, New Hampshire, and Vermont. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11347; Filed, Dec. 6, 1960; 8:48 a.m.]

[Notice 146]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 2, 1960.

The following letter-notices of proposals to operate over deviation routes for operating convenience only with service at no intermediate points have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1 (c) (8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d) (4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 2202 (Deviation No. 17) ROADWAY EXPRESS, INC., 147 Park Street, P.O. Box 471, Akron 9, Ohio, filed November 22, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Hartford, Conn., over Interstate Highway 91 to Springfield, Mass., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: From New York, N.Y., over U.S. Highway 1 to New Haven, Conn., thence over U.S. Highway 5 via Hartford, Conn., to Springfield, Mass., thence over U.S. Highway 20 via Worcester, Mass., to Boston, Mass.; from New York to Hartford as specified above, thence over Alternate U.S. Highway 5 to Springfield, thence to Worcester as specified above and thence over Massachusetts Highway 9 to Boston, and return over the same routes.

No. MC 3474 (Deviation No. 1), MUNDY MOTOR LINES, P.O. Box 331, Roanoke 3, Va., filed November 22, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Stephens City, Va., over Virginia Highway 277 to junction U.S. Highway 340 near White Post, Va., thence over U.S. Highway 340 to junction U.S. Highway 40 near Frederick, Md., thence over U.S. Highway 40 to Baltimore, Md., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Stephens City over Virginia Highways 277 and 12 to junction U.S. Highway 50, thence over U.S. Highway 50 to Washington, D.C., and thence over U.S. Highway 1 to Baltimore and return over the same route.

No. MC 10875 (Deviation No. 1), BRANCH MOTOR EXPRESS COMPANY, 300 Maspeth Avenue, Brooklyn 11, N.Y., filed November 14, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From junction of Hunterdon County Highway 523 and U.S. Highway 202 near Flemington, N.J., over Hunterdon County Highway 523 to Stockton, N.J., thence across the Delaware River to Center Bridge, Pa., and thence over Pennsylvania Highway 263 to junction U.S. Highway 202 near Lahaska, Pa., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From the junction of U.S. Highways 202 and 206 near Raritan, N.J., over U.S. Highway 202 to junction Pennsylvania Highway 263, near Lahaska, Pa., and return over the same route.

No. MC 29988 (Deviation No. 6), DENVER-CHICAGO TRUCKING COMPANY, INC., 45th and Jackson Streets, Denver, Colo., filed November 9, 1960. Attorney David Axelrod, 39 North La Salle Street, Chicago, Ill. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From the junction of U.S. Highway 30 and Illinois Highway 47 over Illinois Highway 47 to junction U.S. Business Route 30, thence over U.S. Business Route 30 to junction Illinois Highway 55, thence over Illinois Highway 55 to junction East-West Ogden Thruway near Aurora, Ill., thence over East-West Ogden Thruway to junction Interstate Highway 90 near Elmhurst, Ill., and thence over Interstate Highway 90 to Chicago and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: From Denver, Colo., over U.S. Highway 85 to Greeley, Colo., thence over U.S. Highway 34 to junction U.S. Highway 6, thence over U.S. Highway 6 to Sterling, Colo. (also from Denver over U.S. Highway 6 to Sterling) thence over U.S. Highway 138 to junction U.S. Highway 30, thence over U.S. Highway 30 to junction Alternate U.S. Highway 30, and thence over Alternate U.S. Highway 30 to Chicago; from junction of U.S. Highway 30 and Alternate U.S. Highway 30 over U.S. Highway 30 to Aurora, Ill., thence over Illinois Highway 65 to junction U.S. Highway 34, and thence over U.S. Highway 34 to Chicago, and return over the same routes.

No. MC 35628 (Deviation No. 4), INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Avenue SW., Grand Rapids 2, Mich., filed November 21, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Columbus, Ohio, over Interstate Highway 71 to junction U.S. Highway 224 and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: From Cincinnati over Ohio Highway 3 to Wooster, Ohio, thence over Ohio Highway 5 to Akron, Ohio, thence over Ohio Highway 8 to Cleveland, Ohio; from Columbus over U.S. Highway 42 to Cleveland, and return over the same routes.

No. MC 35628 (Deviation No. 5), INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Avenue SW., Grand Rapids 2, Mich., filed November 21, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Painesville, Ohio, over Ohio Highway 44 to junction Interstate Highway 90, thence over Interstate Highway 90 to Interchange No. 50 near Buffalo, N.Y., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: From the Indiana-Ohio State line over U.S. Highway 20 to junction Ohio Highway 120, thence over Ohio Highway 120 to Toledo, Ohio, thence over Ohio Highway 51 to junction U.S. Highway 20 and thence over U.S. Highway 20 to the Pennsylvania-Ohio State line; from the Ohio-Pennsylvania State line over U.S. Highway 20 to Boston, Mass., and return over the same routes.

No. MC 35628 (Deviation No. 6), INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Avenue SW., Grand Rapids 2, Mich., filed November 21, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Albany, N.Y., over Interstate Highway 87 to junction Interstate Highway 90 thence over Interstate Highway 90 to junction U.S. Highway 20 and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Albany over U.S. Highway 20 to junction Interstate Highway 90 and return over the same route.

No. MC 35628 (Deviation No. 7), INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Avenue SW., Grand Rapids 2, Mich., filed November 16, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Cincinnati, Ohio, over Interstate Highway 75 to Dayton, Ohio, and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Cincinnati and Dayton over U.S. Highway 25.

MC 51255 (Deviation No. 4), HAECKL'S EXPRESS, INCORPORATED, P.O. Box 2025, Terre Haute, Ind., filed November 21, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions over a deviation route as follows: From Chicago, Ill., over the Calumet Skyway (Interstate Highway 94) to the Illinois-Indiana State line, thence over the Indiana East-West Toll Road to the Indiana-Ohio State line, thence over the Ohio Turnpike to junction U.S. Highway 25 south of Toledo, Ohio, and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Chicago over U.S. Highway 54 (formerly Illinois Highway 49) to junction unnumbered highway, thence south over unnumbered highway to Chicago Heights, Ill., thence over U.S. Highway 30 to junction Indiana Highway 53, thence over Indiana Highway 53 to Montmorenci, Ind., thence over U.S. Highway 52 to Indianapolis, Ind., thence over U.S. Highway 40 to junction U.S. Highway 35, thence over U.S. Highway 35 to Dayton, Ohio, thence over U.S. Highway 25 to junction Ohio Turnpike south of Toledo, Ohio.

No. MC 65660 (Deviation No. 2), WARNER & SMITH MOTOR FREIGHT, INC., Walnut and Shenango Streets, Sharpsville, Pa., filed November 22, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Cherry Tree, Pa., over Pennsylvania Highway 417 to Franklin, Pa., and return over the same route, for operating convenience only, serving no intermediate point. The notice indicates that the carrier is presently authorized to transport the same commodities between Cherry Tree and Franklin over Pennsylvania Highway 8.

No. MC 77486 (Deviation No. 1), ADMIRAL TRANSIT, INC., 2785 Fairview Avenue, St. Paul 13, Minn., filed November 23, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Hudson, Wis., over Interstate Highway 94 to Eau Claire, Wis., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Hudson and Eau Claire over U.S. Highway 12.

No. MC 109972 (Deviation No. 1), HARRIS EXPRESS INC., 1425 North Tryon Street, Charlotte 6, N.C., filed November 14, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Greensboro, N.C., over U.S. Highway 29 to junction U.S. Highway 58 at Danville, Va., thence over U.S. Highway 58 to junction Virginia Highway 304 near Riverdale, Va., thence over Virginia Highway 304 to junction U.S. Highway 360 near Scottsburg, Va., thence over U.S. Highway 360 to junction U.S. Highway 1 to Richmond, Va., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Greensboro, over U.S. Highway 70 to Durham, N.C., thence over U.S. Highway 15 to Oxford, N.C., thence over U.S. Highway 158 to Henderson, N.C., thence over U.S. Highway 1 to Richmond, and return over the same route.

No. MC 112908 (Deviation No. 1), KINGSWAY TRANSPORTS LIMITED, P.O. Box 1220, Montreal (Quebec) Canada, filed November 15, 1960. Attorney S. Harrison Kahn, 1110 Investment Building, Washington 5, D.C. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over deviation routes as follows: (A) From New York, N.Y., over New York Highway 9A to the George Washington Bridge, thence over the George Washington Bridge to junction U.S. Highway 9W, thence over U.S. Highway 9W to junction New York Thru-

way, Interstate Highway 87, thence over Interstate Highway 87 to Suffern, N.Y.; (B) from Suffern over the New York Thruway, Interstate Highway 87, to Albany, N.Y.; and (C) from Albany, N.Y., over Interstate Highway 87 to Saratoga Springs, N.Y., and return over the same routes for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: From New York through the Holland Tunnel to junction New Jersey Highway 3, thence over New Jersey Highway 3 to junction New Jersey Highway 17, thence over New Jersey Highway 17 to the New York-New Jersey State line; from Suffern over New York Highway 17 to junction New York Highway 32, thence over New York Highway 32 to Newburgh, N.Y., thence over U.S. Highway 9W to Albany, N.Y.; from Albany over U.S. Highway 9 to Saratoga Springs, and return over the same routes.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11348; Filed, Dec. 6, 1960; 8:48 a.m.]

[Notice 419]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 2, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63772. By order of November 30, 1960, the Transfer Board approved the transfer to Daniel's Express Co., Inc., New York, N.Y., of Permit in No. MC 106720, issued November 7, 1946, to Daniel Schack, doing business as Daniel's Express Co., New York, N.Y., authorizing the transportation of: Empty glass bottles, over irregular routes, from New York, N.Y., to Newark, Passaic, and Irvington, N.J., with no transportation for compensation on return. Edward M. Alfano, 2 West 45th Street, New York 36, N.Y., attorney for applicants.

No. MC-FC 63777. By order of November 30, 1960, the Transfer Board approved the transfer to Reichert Transport, Inc., Fosston, Minn., of Certificate in No. MC 17639, issued September 13, 1960, to Donn Reichert, Dean Reichert and Arvilla Reichert, a partnership, doing business as Reichert Transport, Fosston, Minn., authorizing the transportation of: General Commodities, excluding household goods, commodities in bulk, and other specified commodities between Gully, Minn., and points within 25 miles of Gully, on the one hand, and, on the other, Fargo, Grand Forks, and Union Stockyards, N. Dak. A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn., attorney for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11350; Filed, Dec. 6, 1960; 8:48 a.m.]

[Rev. S. O. 562, Taylor's I.C.C. Order 126]

CANADIAN PACIFIC RAILWAY CO. ET AL.

Diversion or Rerouting of Traffic

On account of possible work stoppage by certain employees of Canadian railroads the Railway Association of Canada has issued embargo which, in the opinion of Charles W. Taylor, Agent, will result in the affected carriers being unable to transport traffic routed over their lines. *It is ordered,* That:

(a) Rerouting of traffic: Because of possible work stoppage and embargo placed, the following railroads and their connections:

The Canadian Pacific Railway Company rail lines in Canada, Canadian National Railway Company rail lines in Canada, Quebec Central Railway Company, The Dominion Atlantic Railway Company, Ontario Northland Railway, Napierville Junction Railway Company, Northern Alberta Railways Company, The Algoma Central and Hudson Bay Railway Company, and The Toronto, Hamilton and Buffalo Railway Company.

being unable to transport traffic in accordance with shippers' routing, are hereby authorized to divert and reroute such traffic over any available route to expidite the movement, regardless of the routing shown on the waybill. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) Concurrence of receiving roads to be obtained: The railroad or railroads desiring to divert or reroute traffic under this order shall confer with the proper transportation officer of the railroad or railroads to which such traffic is to be diverted or rerouted, and shall receive the concurrence of such other railroads before the rerouting or diversion is ordered.

(c) Notification to shippers: The carrier diverting or rerouting cars in accordance with this order shall notify each shipper at the time each car is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic authorized by said Agent is deemed to be due to carriers' disability, the rates applicable to traffic diverted or rerouted shall be the rates which were applicable at the time of shipments on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic; divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with the pertinent authority conferred upon it by the Interstate Commerce Act.

(f) Effective date: This order shall become effective at 12:01 p.m., November 29, 1960.

(g) Expiration date: This order shall expire at 11:59 p.m., December 15, 1960, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 29, 1960.

INTERSTATE COMMERCE COMMISSION, CHARLES W. TAYLOR, *Agent.*

[F.R. Doc. 60-11351; Filed, Dec. 6, 1960; 8:49 a.m.]

[Rev. S. O. 562, Taylor's I.C.C. Order 126-A]

CANADIAN PACIFIC RAILWAY CO. ET AL.

Diversion or Rerouting of Traffic; Vacation of Order

Upon further consideration of Taylor's I.C.C. Order No. 126 (Canadian Railroads) and good cause appearing therefor:

It is ordered, That:

(a) Taylor's I.C.C. Order No. 126, be, and it is hereby vacated and set aside.

(b) *Effective date.* This order shall become effective at 9:00 a.m., November 30, 1960.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement and by filing it with the Director, Office of the Federal Register.

Issued at Washington, D.C., November 30, 1960.

INTERSTATE COMMERCE COMMISSION, CHARLES W. TAYLOR, *Agent.*

[F.R. Doc. 60-11352; Filed, Dec. 6, 1960; 8:49 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 2, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36751: *Sugar—To points in southern territory.* Filed by O. W. South, Jr., Agent (No. A4046), for interested rail carriers. Rates on sugar, in packages (returned), in carloads, from points in southern, western trunk-line, southwestern and official (including Illinois), territories, to points in southern territory.

Grounds for relief: Carrier competition.

Tariff: Supplement 41, 26 and 22 to Southern Freight Association tariffs I.C.C. N-10, N-12 and N-5, respectively.

FSA No. 36752: *Bituminous fine coal to Oak Creek Power Plant, Wis.* Filed by Illinois Freight Association, Agent (No. 116), for interested rail carriers. Rates on bituminous fine coal, in carloads, subject to 1,000 tons of 2,000 pounds each minimum per shipment and further subject to 12-month minimum of 1,250,000 tons, from mines in Illinois, Indiana, and western Kentucky via rail-lake or all rail routes, to Oak Creek Power Plant, Wis.

Grounds for relief: Railwater and natural gas competition.

Tariff: Illinois Freight Association tariff I.C.C. 951.

FSA No. 36753: *Fresh meats and packing house products from points in central, Illinois, and WTL territories.* Filed by Western Trunk Line Committee, Agent (No. A-2156), for interested rail carriers. Rates on fresh meats and packing house products, in carloads, as described in the application, from specified points in central, Illinois, and western trunkline territories, to points in southern territory.

Grounds for relief: Truck competition, shortline distance formula and grouping.

Tariff: Western Trunk Line Committee, Agent, tariff I.C.C. A-4344, and supplements 4, 7, and 8 thereto, also other schedules listed in the application.

FSA No. 36754: *Bituminous fine coal to Franklin, Va.* Filed by O. W. South, Jr., Agent (No. A4047), for interested rail carriers. Rates on bituminous fine coal, in carloads, from origins on Southern Railway in southwest Virginia, to Franklin, Va.

Grounds for relief: Maintain origin rate relationships.

Tariff: Supplement 92 to Southern Railway Tariff I.C.C. A-11352.

FSA No. 36755: *Class and commodity rates from and to Midwest (Portage), Ogden Dunes, and Wilson, Ind.* Filed by Illinois Freight Association, Agent (No. 119), for interested rail carriers. Rates on various commodities moving on class or commodity rates from and to Midwest (Portage), Ogden Dunes, and Wilson, Ind.

Grounds for relief: Establishment of new stations.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11349; Filed, Dec. 6, 1960; 8:48 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 524 (24 F.R. 9274) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Alabama Textile Products Corp., Andalusia, Ala.; effective 12-1-60 to 11-30-61 (men's dress and sport shirts, work pants).

Anthracite Shirt Co., 1 South Franklin Street, Shamokin, Pa.; effective 12-1-60 to 11-30-61 (men's and boys' dress and sport shirts).

Berwick Shirt Co., 10th and Pine Streets, Berwick, Pa.; effective 11-24-60 to 11-23-61 (men's sport shirts).

Blue Bell, Inc., Mt. Jackson, Va.; effective 12-1-60 to 11-30-61 (boys', girls' and ladies' dungarees).

Duti-Duds, Inc., 1117 Clay Street, Lynchburg, Va.; effective 12-2-60 to 12-1-61 (women's cotton, nylon and dacron uniforms).

Gattman Sportswear, Inc., Gattman, Miss.; effective 11-27-60 to 11-26-61 (men's dress slacks).

Glen of Michigan, Div. of Rhea Manufacturing Co., 77 Hancock Street, Manistee, Mich.; effective 12-6-60 to 12-5-61. Learners may not be employed at special minimum wage rates in the production of separate skirts. (Misses' dresses, blouses, children's outerwear.)

International Latex Corp., Manchester, Ga.; effective 12-1-60 to 11-30-61 (brassieres).

Lady Ester Lingerie Corp., 10th and Walnut Streets, Berwick, Pa.; effective 12-1-60 to 11-30-61 (ladies' and children's slips).

Myco Manufacturing Co., Inc., Montgomery, Pa.; effective 12-1-60 to 11-30-61 (ladies' housecoats, dusters, robes).

Publix Tennessee Corp., Huntingdon, Tenn.; effective 12-1-60 to 11-30-61 (men's and boys' sport shirts).

Regal Shirt Corp., South Third Street, Catawissa, Pa.; effective 12-1-60 to 11-30-61 (men's knit sport shirts).

Wargosa Manufacturing Co., Inc., 101 Bel Air Drive, Columbia, Tenn.; effective 12-1-60 to 11-30-61 (men's sport shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Armored Garments, Inc., Cabin Road, Spruce Pine, N.C.; effective 12-1-60 to 11-30-61; 10 learners (boys' and men's denim dungarees).

Gloucester Pants Co., Inc., 377 Main Street, Gloucester, Mass.; effective 12-1-60 to 11-30-61; 10 learners (men's and boys' trousers).

The Jay Garment Co., Brookville, Ind.; effective 12-1-60 to 11-30-61; 10 learners (children's overalls, boys').

Meyers & Son Manufacturing Co., Inc., First and Jefferson Streets, Madison, Ind.; effective 11-14-60 to 10-8-61; 10 learners (replacement certificate) (men's one piece work suits, work aprons).

Meyers & Son Manufacturing Co., Inc., New Castle, Ky.; effective 11-16-60 to 11-15-61; 10 learners (men's one piece work suits).

More Manufacturing Co., Marissa, Ill.; effective 11-16-60 to 11-15-61; 10 learners (housecoats, pajamas and petticoats).

The following learner certificate was issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

The H. D. Lee Co., Inc., Sulphur Springs, Texas; effective 11-20-60 to 5-19-61; 50 learners (pants).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.44, as amended).

Corinth Seamless Hosiery, Inc., 311 South Liddon Lake Road, Corinth, Miss.; effective 11-19-60 to 5-18-61; 20 learners for plant expansion purposes (seamless).

Nebel Knitting Co., 101 West Worthington Avenue, Charlotte, N.C.; effective 11-22-60 to 11-21-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (full-fashioned, seamless).

Triangle Hosiery Co., Inc., 510 Grimes Street, High Point, N.C.; effective 11-20-60 to 11-19-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' socks).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Brown Century Corp., Lake Village, Ark.; effective 11-16-60 to 11-15-61; 5 learners for normal labor turnover purposes (men's and boys' knitted underwear).

Brown Century Corp., Lake Village, Ark.; effective 11-16-60 to 5-15-61; 45 learners for plant expansion purposes (men's and boys' knitted underwear).

Chadbourn Textiles, Inc., Chadbourn, N.C.; effective 11-23-60 to 11-22-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's and boys' knitted tee shirts).

Cluett, Peabody & Co., Inc., Eveleth, Minn.; effective 11-28-60 to 11-27-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's underwear).

Shoe Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.50 to 522.55, as amended).

Loree Footwear Corp., Jefferson County, Big Run, Pa.; effective 12-1-60 to 11-30-61; 10 percent of the total number of factory production workers for normal labor turnover purposes (women's casuals).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C., this 25th day of November 1960.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 60-11361; Filed, Dec. 6, 1960; 8:50 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR — Page

PROCLAMATIONS:
2935 — 12501

EXECUTIVE ORDERS:
3797-A — 12412
6260 — 12281
9941 — 12429
10896 — 12281
10897 — 12429
10898 — 12429

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 — 12501
Letter, Nov. 16, 1960 — 12501

5 CFR
2 — 12285
6 — 12393

6 CFR
421 — 12282, 12283

7 CFR
33 — 12430
722 — 12393, 12403
730 — 12503
845 — 12285
903 — 12504
905—908 — 12504
911—913 — 12504
914 — 12405
916—919 — 12504
921 — 12504
923—925 — 12504
928—932 — 12504
933 — 12405-12407, 12504
935 — 12504
941—944 — 12504
946—949 — 12504
952 — 12504
953 — 12407, 12430
954 — 12504
956 — 12504
963 — 12504
965—968 — 12504
971—972 — 12504
974—978 — 12504
980 — 12504
982 — 12504
985—988 — 12504
991 — 12504
994—995 — 12504
998 — 12504
1000 — 12504
1002 — 12504
1004—1005 — 12504
1008—1009 — 12504
1011—1014 — 12504
1016 — 12504
1018 — 12504
1023—1024 — 12504
1031 — 12505

PROPOSED RULES:
51 — 12298, 12299
936 — 12465
965 — 12466
989 — 12476

8 CFR — Page
211 — 12290

10 CFR
PROPOSED RULES:
115 — 12367

12 CFR
PROPOSED RULES:
206 — 12479

14 CFR
49 — 12352
300 — 12430
302 — 12432
506 — 12505
507 — 12352, 12433
514 — 12433
600 — 12285-12287, 12408, 12410
601 — 12287, 12409, 12410
602 — 12288
609 — 12353
612 — 12410
1501 — 12434

PROPOSED RULES:
41 — 12299
43 — 12524
302 — 12477
507 — 12477, 12478
600 — 12328, 12478, 12479, 12524
601 — 12328, 12329, 12478, 12479, 12524, 12525
608 — 12479

16 CFR
13 — 12337, 12338, 12393, 12441, 12502

21 CFR
8 — 12288
120 — 12288, 12506
121 — 12412
146 — 12506
146c — 12289

PROPOSED RULES:
27 — 12372
120 — 12374
121 — 12299, 12477

22 CFR
46 — 12289

25 CFR
171 — 12408

PROPOSED RULES:
52 — 12518
176 — 12299

26 (1939) CFR
16 — 12442
17 — 12443
29 — 12339
39 — 12339
40 — 12340

26 (1954) CFR
1 — 12340, 12345
18 — 12340

PROPOSED RULES:
1 — 12293, 12414, 12416, 12464, 12508
48 — 12362
197 — 12362
250 — 12511

28 CFR — Page
21 — 12290

31 CFR
54 — 12345

32 CFR
805 — 12291
1008 — 12444
1009 — 12446
1010 — 12449
1012 — 12449
1013 — 12449
1016 — 12450, 12456
1030 — 12451
1052 — 12456
1053 — 12456
1054 — 12458
1055 — 12462
1057 — 12462
1059 — 12462
1619 — 12291

33 CFR
202 — 12393

38 CFR
3 — 12463

39 CFR
27 — 12348

41 CFR
3-75 — 12502

PROPOSED RULES:
50-202 — 12363, 12522

42 CFR
1 — 12292

43 CFR
192 — 12352

PUBLIC LAND ORDERS:
797 — 12413
1253 — 12481
2209 — 12412
2210 — 12413
2211 — 12413

46 CFR
308 — 12348

47 CFR
1 — 12358
5 — 12359
9 — 12359
10 — 12359
11 — 12359
12 — 12358
16 — 12359
19 — 12359
21 — 12359

PROPOSED RULES:
3 — 12371

49 CFR
91 — 12506
122 — 12506

PROPOSED RULES:
71-78 — 12420
197 — 12420

50 CFR
33 — 12507

Pages 12545–12584

FEDERAL REGISTER

VOLUME 25 NUMBER 238

Washington, Thursday, December 8, 1960

THE UNIVERSITY OF MICHIGAN
DEC 1 1960
MAIN

Contents

Agricultural Marketing Service

PROPOSED RULE MAKING:
Milk in Appalachian and Bluefield marketing areas; recommended decision and opportunity to file written exceptions on proposed amendments to tentative marketing agreements and orders... 12558

Agricultural Research Service

NOTICES:
Identification of carcasses of certain humanely slaughtered livestock; supplemental list of humane slaughterers... 12579

PROPOSED RULE MAKING:
Screwworm regulations; miscellaneous amendments... 12571

RULES AND REGULATIONS:
Texas (Splenetic) fever in cattle; areas regulated in Florida and New York... 12548

Agriculture Department

See Agricultural Marketing Service; Agricultural Research Service; Commodity Credit Corporation; Commodity Stabilization Service.

Civil Aeronautics Board

NOTICES:
Aircraft accident which occurred October 28, 1960, in Missoula, Mont.; notice of hearing... 12582

Civil Service Commission

RULES AND REGULATIONS:
Exceptions from the competitive service; Farm Credit Administration... 12547

Coast Guard

RULES AND REGULATIONS:
Miscellaneous amendments regarding definitions, marine welding, electrical indicator circuits, casualty investigation records, and temporary exemptions from numbering requirements... 12554

Commerce Department

NOTICES:
Magnussen, Henry G.; statement of changes in financial interests... 12582

Commodity Credit Corporation

NOTICES:
December 1960 monthly sales list; sales of certain commodities... 12580

Commodity Stabilization Service

RULES AND REGULATIONS:
Sugar beets, 1960 crop; determination of prices... 12547

Federal Aviation Agency

NOTICES:
Director, Bureau of Air Traffic Management; delegation of certain airspace authorities... 12582

PROPOSED RULE MAKING:
Airworthiness directive; Fairchild F–27 Series aircraft... 12571
Control area extension; revocation... 12573
Control zone; revocation... 12574
Federal airways, associated control areas and reporting points; revocations (4 documents)... 12572, 12573

RULES AND REGULATIONS:
Airworthiness directives:
Boeing 707 aircraft... 12549
Lockheed 188 aircraft... 12549
Coded jet routes; modification... 12552
Control area extension; revocation... 12552
Control zone; modification (2 documents)... 12551
Federal airways, associated control areas and reporting points; revocations (3 documents)... 12549, 12550
Federal airways, control area extensions, coded jet routes and domestic VOR reporting points; modification... 12551
Revocation of a segment of Federal airway, associated control areas and reporting points; and modification of control area extension... 12550

Federal Trade Commission

RULES AND REGULATIONS:
Contact Lens Specialists, Inc., and Wolfson, Leonard G.; prohibited trade practices... 12552

Fish and Wildlife Service

RULES AND REGULATIONS:
Hunting; Salton Sea National Wildlife Refuge, California... 12555
Sport fishing; North Dakota:
Arrowwood National Wildlife Refuge... 12556
Lake Ilo National Wildlife Refuge... 12556
Long Lake National Wildlife Refuge... 12556
Lower Souris National Wildlife Refuge... 12556
Tewaukon National Wildlife Refuge... 12556
Upper Souris National Wildlife Refuge... 12557

Food and Drug Administration

PROPOSED RULE MAKING:
Tolerances and exemptions from tolerances for certain pesticide chemicals in or on raw agricultural commodities; notice of amendment of petition for establishment of tolerances; correction... 12571

(*Continued on next page*)

General Services Administration
RULES AND REGULATIONS:
Reporting possible antitrust violations 12553

Health, Education, and Welfare Department
See Food and Drug Administration.

Interior Department
See Fish and Wildlife Service; Land Management Bureau.

Interstate Commerce Commission
NOTICES:
Fourth section applications for relief 12577
Motor carrier transfer proceedings 12576

Labor Department
See Public Contracts Division.

Land Management Bureau
NOTICES:
Proposed withdrawal and reservation of lands:
Colorado 12575
Idaho 12575

Public Contracts Division
RULES AND REGULATIONS:
Electron tubes and related products industry; final decision in determination of prevailing minimum wages 12553
Partial exemption of barter or exchange contracts of the Commodity Credit Corporation from the Walsh-Healey Public Contracts Act and miscellaneous amendments 12553

Securities and Exchange Commission
NOTICES:
Hearings, etc.:
Eastern Utilities Associates et al 12577
Research Investing Corp 12578
Rowe Price New Horizons Fund, Inc 12578

Treasury Department
See Coast Guard.

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

5 CFR
6 12547

7 CFR
871 12547
PROPOSED RULES:
923 12558
1012 12558

9 CFR
72 12548
PROPOSED RULES:
83 12571

14 CFR
507 (2 documents) 12549
600 (5 documents) 12549–12551
601 (8 documents) 12549–12552
602 (2 documents) 12552
PROPOSED RULES:
507 12571
600 (4 documents) 12572, 12573
601 (6 documents) 12572–12574

16 CFR
13 12552

21 CFR
PROPOSED RULES:
120 12571

41 CFR
5–1 12553
50–201 12553
50–202 12553

46 CFR
24 12554
30 12554
56 12554
70 12555
90 12555
110 12555
111 12555
136 12555
171 12555

50 CFR
32 12555
33 (6 documents) 12556, 12557

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953	$6.75
1954	7.25
1955	6.75
1956	7.25
1957	6.75
1958	8.25
1959	7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Farm Credit Administration

Effective upon publication in the FEDERAL REGISTER, paragraph (c) of § 6.341 is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 60-11413; Filed, Dec. 7, 1960; 8:50 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER I—DETERMINATION OF PRICES

PART 871—SUGAR BEETS

1960 Crop

Pursuant to the provisions of section 301(c)(2) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and due consideration of evidence presented at the public hearings held in January 1960 (for southern Oregon, California, and western Nevada), and during December 1959 (for States other than those regions), the following determination is hereby issued:

§ 871.13 Fair and reasonable prices for the 1960 crop of sugar beets.

A producer of sugar beets who is also a processor of sugar beets (herein referred to as "processor") shall have paid, or contracted to pay for sugar beets of the 1960 crop grown by other producers and processed by him, in accordance with the following requirements:

(a) *Purchase agreements.* The price for sugar beets shall be not less than that determined pursuant to the 1960 crop sugar beet purchase contract between the processor and producers.

(b) *Applicability.* The requirements of this section apply to sugar beets grown by a producer within the proportionate share for the farm and processed by the processor for the extraction of sugar or liquid sugar.

(c) *Reporting requirements.* The processor shall report to the Director, Sugar Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C., within 60 days after the close of the sales period specified in the sugar beet purchase contract an itemized statement, for each settlement district, signed by an authorized official of the company or certified by an independent accountant showing the computation of "net proceeds" or "net returns" as specified in such contract. Such statement shall be substantially in the form as that contained in Schedule A: *Provided*, That if the processor markets beet sugar to an affiliate company or other affiliate business entity he shall report separately the quantity of sugar so marketed and the gross sales price and the net returns derived therefrom.

SCHEDULE A—STATEMENT OF AVERAGE NET RETURNS OR NET PROCEEDS FROM SALES OF SUGAR[1]

Company .....
Settlement area .....
Period .....

	Per hundredweight sugar (dollars)
Gross sales price:	
Total returns	
Less sales and marketing expenses:	
Federal excise tax	
Freight on sugar to destination	
Cash discount	
Allowances	
Brokerage	
Off-site storage (actually paid)	
Storage (computed charge)[2]	
Loading and handling	
Taxes	
Insurance	
Cost of packing in excess of basis pack	
Advertising	
Sales department expenses:	
Salaries	
Travel	
Miscellaneous	
Other (specify)	
Total expense	
Net returns	

[1] Include proceeds from the sales of molasses and beet pulp where the purchase contract specifies that such proceeds are to be included in calculating the net return.

[2] Explain any charges which have been computed for storage in connection with a facility owned by the processor.

(d) *Subterfuge.* The processor shall not reduce returns to producers below those determined in accordance with the requirements of this section through any subterfuge or device whatsoever.

STATEMENT OF BASES AND CONSIDERATIONS

a. *General.* The foregoing determination establishes the fair and reasonable price requirements which must be met, as one of the conditions for payment under the act, by a producer who processes sugar beets of the 1960 crop grown by other producers.

b. *Requirements of the act.* Section 301(c)(2) of the act provides that the producer on the farm who is also, directly or indirectly, a processor of sugar beets or sugarcane, as may be determined by the Secretary, shall have paid, or contracted to pay under either purchase or toll agreements, for any sugar beets or sugarcane grown by other producers and processed by him at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing.

c. *1960 fair price determination.* This determination provides that a processor shall be deemed to have complied with the fair price provisions of the act if he has paid, or contracted to pay, prices for sugar beets not less than those determined pursuant to his 1960 crop purchase contract with producers.

Several representatives of producers testified at the public hearings. The representative of the Nyssa-Nampa Beet Growers Association stated that the increased volume of sugar beets and sugar production in recent years had resulted in larger profits to processors but that producers' returns per ton of beets were less because of lower net returns from the larger volume of beet sugar sold in distant markets. Representatives of other grower associations concurred in the statement of this witness. The representative of the California Beet Growers Association stated that processors at times sell sugar below their quoted prices which results in lower net returns. The witness recommended that the Department give growers some assistance in pointing the way to an alternative basis for pricing sugar beets, such as determining net returns on the basis of quoted sugar prices, which might cause processors to be less likely to grant price concessions. He also recommended that processors be required to furnish producers with a detailed statement of the marketing expenses used in computing net returns for the purpose of making settlements with producers. In testifying with respect to purchase contracts in the Imperial Valley, the witness pointed out that sugar beets contracted by one processor in this region must be transported a considerable distance to the mill for processing. The contract provides that a stated portion of the freight cost be borne by the producer, subject to change in the amount by which the total freight cost stated in the contract increases or decreases. The witness recommended that the determination prohibit the operation of such an escalator clause because the freight cost to the producer is not fixed.

The viewpoint of producers in wishing to explore a different basis for settlement for sugar beets is completely understandable. They absorb a larger part of sugar price concessions than do processors under current sugar beet purchase contracts at sugar prices which have prevailed in recent years. Sugar beet purchase contracts currently used have evolved through negotiations between producers and processors over the past 40 years. The producer is paid for his sugar beets on the basis of the quality of the beets delivered to the processor and the net returns obtained by the processor from beet sugar sales (or in some re-

gions, sales of sugar and by-products). Thus, the producer shares, along with the processor, the price risk involved in marketing sugar. In the negotiations which led to the development of many of the present contracts, producers actively sought a higher percentage share in increments of net returns encompassing the level of such net returns of recent years and processors sought a larger percentage of net returns at levels below this range. Some contracts were negotiated on a straight-line percentage participation in net return increments rather than the varying percentage participation at the several net return increments, which tended to balance the interests of producers and processors at all levels of net returns.

Marketing beet sugar has become progressively more difficult as the beet sugar marketing quotas have increased. This has sharpened competition, increased discounts, and involved greater freight absorptions.

Most beet sugar is produced in areas having a low population and industrial density. Once the nearby markets which offer high net returns have been saturated, remaining production must be sold in distant and less favorable markets. This involves higher marketing costs such as freight absorption, in-transit storage and additional sales contacts. This sugar is sold in competition with west coast, gulf and east coast cane sugar and frequently at a price concession. Although California has high population and industrial density, it has a surplus of both beet and cane sugar. Beet sugar sales have accounted for an increasingly larger share of the total sugar sales in the State, while the proportion of beet sugar which must be marketed in distant territories has been reduced and average net returns thereby increased. Admittedly, price concessions have been instrumental in achieving a larger share of the home market. To the extent that such price concessions have been greater than necessary to acquire marketing outlets, if indeed there have been any such, the major burden of such price concessions has fallen upon producers. However, it is in the interest of processors to sell their annual production of sugar at times and places and in the manner calculated to yield the most favorable net returns possible within the marketing climate created by the Sugar Act. Their own success depends upon this.

The principal value in the present participating type contract, resides in the fact that the sharing of the price risk enables the processor to pay higher prices for sugar beets than would otherwise be possible at a given level of net returns. If the processor were to pay a fixed price for sugar beets, regardless of sugar prices, he would need to be compensated for assuming the full price risk. Likewise, if the processor were to assume the responsibility of paying for sugar beets on the basis of net returns computed from price quotations, rather than net returns actually realized, he would need to be compensated for the price risk greater than the one he now assumes. It is not clear, therefore, that adoption of a quoted price basis of computing net returns would be more advantageous to producers. It would involve risks which the Government, certainly, should not impose upon growers.

There is no authoritative central source for quoted refined beet sugar prices. In this respect, the situation is different than for raw cane sugar for which there is a central source of price quotations, which is used in making settlements between producers and processors for sugarcane. Processors of refined beet sugar periodically issue announcements of prices for the different types of beet sugar and the terms of sale. These announcements are offers to sell beet sugar. Price changes may be made to meet "announced competition" or "unannounced competition". Usually the announcements contain price concessions or allowances for certain territories or may offer favorable prices for sales during a certain period of time. These releases indicate general market price levels but are complicated because of variations concerning time, place, quality, and package and thus do not constitute a convenient or even an authoritative basis of market price quotations.

Over the past decade a number of alternative methods of pricing sugar beets have been examined. Among these are (1) adjusting net returns for a local area to national average net returns; (2) relating local area net returns to national average raw and refined sugar prices; (3) basing prices for sugar beets on gross returns rather than on net returns; and (4) the use of tolling contracts under which producers would receive payment in kind and would have the responsibility of marketing, or would form a cooperative association to market their sugar. However, each of these alternatives presents special problems and considerations for producers and processors. Some would necessitate reevaluation of risk recognition in the purchase contracts. To the extent that processors assume added risks they would be entitled to added protection. One would necessitate duplication by growers or associations of growers of marketing facilities already available to processors. The Department is not convinced that the adoption of any one of them would be an improvement upon the participating principle incorporated in the present contracts.

An examination of the 1960 crop purchase contracts negotiated by producers and processors shows that the provisions relating to payments for sugar beets conform in most respects to those applicable to the 1959 crop. A majority of the contracts contain minor changes in some of the other provisions. In analyzing these contracts, consideration has been given to the comparative operating results of producers and processors obtained by field study for a recent crop and recast in terms of prospective conditions for the 1960 crop. The analysis indicates that prices payable for sugar beets as specified in the 1960 crop purchase contracts are fair and reasonable at current prices of sugar.

In recent years some of the processors have erected storage facilities to reduce the volume of sugar which would otherwise be placed in public storage. These processors have obtained agreement with producers whereby the accounting system used in computing net returns under the contract for sugar marketed would be modified so as to include a charge for these storage facilities. In recognition of this situation, Schedule A of this determination provides for separate reporting of actual expenditures for public storage and charges computed for storage in facilities owned by the processor.

Accordingly, I hereby find and conclude that the foregoing price determination will effectuate the price provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. Sup. 1153. Interprets or applies Sec. 301, 61 Stat. 929; 7 U.S.C. Sup. 1131)

Issued this 5th day of December 1960.

E. T. BENSON,
Secretary of Agriculture.

[F.R. Doc. 60-11416; Filed, Dec. 7, 1960; 8:51 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

Areas Regulated in Florida and New York

Pursuant to the provisions of sections 1 through 4 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 4 through 7 of the Act of May 29, 1884, as amended (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126), Part 72, Title 9, Code of Federal Regulations, is hereby amended as follows:

1. Section 72.2 is amended by changing the heading and the third and fourth sentences thereof to read, respectively, as follows:

§ 72.2 Splenetic or tick fever in cattle in described territory in Florida, New York, Texas, Puerto Rico, and the Virgin Islands of the United States; restrictions on movement of cattle.

* * * Notice is also hereby given that there is reason to believe that said disease may exist in portions of the States of Florida and New York. Therefore, those portions of the State of Florida described in § 72.5a and those portions of the State of New York described in § 72.5b are hereby regulated, and the movement of cattle therefrom into any other State or Territory or the District of Columbia shall be made only in accordance with the provisions of this part and Part 71 of this chapter.

2. A new § 72.5b is issued to read:

§ 72.5b Area regulated in New York.

(a) The following portion of the State of New York is regulated:

Greene County. Beginning at a point in the Town of Catskill 100 feet north of a large rock, which rock is mentioned in the description of the first premises described in a deed from Austin T. Simmons to the Catskill Game Farm, Incorporated, dated September 8, 1958, recorded in the Greene County Clerks office in book 370 at page 476, and which point of beginning is in the west line of the first described premises in said deed and running southerly from said point of beginning along the west line of the premises first described in the above mentioned deed, and an extension thereof, a distance of 450 feet; thence, running westerly at right angles to the first described line, a distance of 350 feet; thence, running northerly parallel to the first described line, a distance of 450 feet; thence, running easterly a distance of 350 feet to the point of beginning.

(b) All of the provisions of this part and Part 71 of this chapter which are applicable to quarantined areas shall apply to such regulated area in the same manner and to the same extent as if it were quarantined.

§ 72.5a [Amendment]

3. Subparagraph (1) of paragraph (a) of § 72.5a, relating to Hillsborough County in Florida, is amended to read:

(1) Hillsborough County: Beginning at the intersection of U.S. Highway No. 301 and Buffalo Avenue, running 2.7 miles west to the intersection of Buffalo Avenue and 50th Street; thence, 1 mile south to the intersection of 50th Street and Columbus Drive; thence, 1.3 miles east to the intersection of Columbus Drive and State Road No. 574, continuing 1.1 miles east to the intersection of State Road No. 574 and State Road No. 43; thence, 0.7 mile southeast to the intersection of State Road No. 43 and U.S. Highway No. 301; thence, 1.6 miles north to the intersection of U.S. Highway No. 301 and Buffalo Avenue, the point of beginning; and the northeast ¼ of section 20, Township 28 South, Range 19 East, less the rectangle in the southwest corner thereof extending 100 feet eastward from the west boundary of the northeast ¼ section, and 40 feet northward from the south boundary of the northeast ¼ section.

(Secs. 1–4, 33 Stat. 1264, as amended, 1265, as amended, secs. 1, 2, 32 Stat. 791, as amended, 792, as amended, secs. 4–7, 23 Stat. 32, as amended; 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment imposes certain further restrictions necessary to prevent the spread of splenetic or tick fever. It must be made effective immediately to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 2d day of December 1960.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 60-11395; Filed, Dec. 7, 1960; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 592; Amdt. 231]

PART 507—AIRWORTHINESS DIRECTIVES

Lockheed 188 Aircraft

Amendment 202, 25 F.R. 9241, requiring modification of the electrical system on Lockheed 188 aircraft incorrectly referenced Lockheed Electra Alert Service Bulletin 405 rather than 408 in the final parenthetical statement. Therefore, Amendment 202 is being amended to correct the bulletin number. Since the amendment is for correction, notice and public procedure hereon are unnecessary and the amendment will be made effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is amended as follows:

Amendment 202, Lockheed 188 aircraft (25 F.R. 9241) is amended by deleting "405" from the final parenthetical statement and inserting in lieu thereof "408".

This amendment shall become effective December 8, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 2, 1960.

GEORGE C. PRILL,
Acting Director, Bureau of Flight Standards.

[F.R. Doc. 60-11368; Filed, Dec. 7, 1960; 8:45 a.m.]

[Reg. Docket No. 593; Amdt. 232]

PART 507—AIRWORTHINESS DIRECTIVES

Boeing 707 Aircraft

Satisfactory service experience with Boeing 707 main landing gear truck beam on aircraft which have been modified in accordance with Boeing Service Bulletin No. 535 and No. 535B referenced in Amendment 53, 24 F.R. 9386, shows that an increase in the inspection interval from 300 to 320 flight-hours will not adversely affect the current level of safety. Accordingly, the inspection interval in the final paragraph of Amendment 53 is being extended to 320 flight-hours.

Since this amendment provides a relaxation and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment will become effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is amended as follows:

Amendment 53, Boeing Model 707 aircraft, 24 F.R. 9386, is amended by changing the final phrase of the last paragraph to read "the inspection interval may be extended from 60 to 320 flight-hours."

The amendment shall become effective December 8, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 2, 1960.

GEORGE C. PRILL
Acting Director, Bureau of Flight Standards.

[F.R. Doc. 60-11369; Filed, Dec. 7, 1960; 8:45 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-LA-50]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On September 22, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9122) stating that the Federal Aviation Agency proposed to revoke, in its entirety, Red Federal airway No. 56, its associated control areas, and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR Parts 600, 601) are amended as follows:

1. Section 600.256 *Red Federal airway No. 56 (Red Bluff, Calif., to Whitmore, Calif.)* is revoked.

2. Section 601.256 *Red Federal airway No. 56 control areas (Red Bluff, Calif., to Whitmore, Calif.)* is revoked.

3. Section 601.4256 *Red Federal airway No. 56 (Red Bluff, Calif., to Whitmore, Calif.)* is revoked.

These amendments shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 1, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11373; Filed, Dec. 7, 1960; 8:45 a.m.]

[Airspace Docket No. 60-LA-42]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On September 22, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9122) stating that the Federal Aviation Agency proposed to revoke, in its entirety, Red Federal airway No. 71, its associated control areas, and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR Parts 600, 601) are amended as follows:

1. Section 600.271 *Red Federal airway No. 71 (El Paso, Tex., to Lubbock, Tex.)* is revoked.

2. Section 601.271 *Red Federal airway No. 71 control areas (El Paso, Tex., to Lubbock, Tex.)* is revoked.

3. Section 601.4271 *Red Federal airway No. 71 (El Paso, Tex., to Lubbock, Tex.)* is revoked.

These amendments shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 1, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11375; Filed, Dec. 7, 1960; 8:46 a.m.]

[Airspace Docket No. 60-NY-74]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of a Segment of Federal Airway, Associated Control Areas and Reporting Points, and Modification of Control Area Extension

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8827), stating that the Federal Aviation Agency proposed to revoke the segment of Green Federal airway No. 3 which extends from Goshen, Ind., to New York, N.Y., its associated control areas and reporting points. In addition, the Goshen control area extension would be modified.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

§ 600.13 [Amendment]

1. § 600.13 (14 CFR 600.13), the follow changes are made:

(a) In the caption "*(Oakland, Calif., to Des Moines, Iowa, and Goshen, Ind., to New York, N.Y.)*" is deleted and "*(Oakland, Calif., to Des Moines, Iowa)*" is substituted therefor.

(b) In the text "From the Goshen, Ind., RR via the Toledo, Ohio radio range station; Cleveland, Ohio, radio range station; Youngstown, Ohio, radio range station; the intersection of the east course of the Youngstown, Ohio, radio range and the west course of the Philipsburg, Pa., radio range; Philipsburg, Pa., radio range station; Allentown, Pa., radio range station; the intersection of the east course of the Allentown, Pa., radio range and the southwest course of the New York, N.Y., (La Guardia), radio range to the New York, N.Y. (La Guardia), radio range station." is deleted.

§ 601.13 [Amendment]

2. In the caption of § 601.13 (14 CFR 601.13) "*(Oakland, Calif., to Des Moines, Iowa, and Goshen, Ind., to New York, N.Y.)*" is deleted and "*(Oakland, Calif., to Des Moines, Iowa)*" is substituted therefor.

§ 601.4013 [Amendment]

3. In § 601.4013 (14 CFR 601.4013), the following changes are made:

(a) In the caption "*(Oakland, Calif., to Des Moines, Iowa, and Goshen, Ind., to New York, N.Y.)*" is deleted and "*(Oakland, Calif., to Des Moines, Iowa)*" is substituted therefor.

(b) In the text "Des Moines, Iowa, radio range station; Goshen, Ind., radio range station; Toledo, Ohio, radio range station; Cleveland, Ohio, radio range station; Youngstown, Ohio, radio range station; Philipsburg, Pa., radio range station; Selinsgrove, Pa., nondirectional radio beacon; Allentown, Pa., radio range station." is deleted and "Des Moines, Iowa, RR." is substituted therefor.

4. Section 601.1257 (14 CFR 601.1257) is amended to read:

§ 601.1257 Control area extension (Goshen, Ind.).

The airspace within a 15-mile radius of the Goshen VOR, including the airspace NE of the Goshen VOR bounded on the W by VOR Federal airway No. 277, on the N by VOR Federal airway No. 10, on the NE by VOR Federal airway No. 30, and on the S by VOR Federal airway No. 92.

These amendments shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 1, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11376; Filed, Dec. 7, 1960; 8:46 a.m.]

[Airspace Docket No. 60-LA-47]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On September 22, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9121) stating that the Federal Aviation Agency proposed to revoke, in its entirety, Blue Federal airway No. 67, its associated control areas, and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR Parts 600, 601) are amended as follows:

1. Section 600.667 *Blue Federal airway No. 67 (Yuma, Ariz., to Las Vegas, Nev.)* is revoked.

2. Section 601.667 *Blue Federal airway No. 67 control areas (Yuma, Ariz., to Las Vegas, Nev.)* is revoked.

3. Section 601.4667 *Blue Federal airway No. 67 (Yuma, Ariz., to Las Vegas, Nev.)* is revoked.

These amendments shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 1, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11377; Filed, Dec. 7, 1960; 8:46 a.m.]

[Airspace Docket No. 60-WA-266]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Federal Airways, Control Area Extensions, Coded Jet Routes and Domestic VOR Reporting Points

The purpose of these amendments to §§ 600.6066, 601.7001, 601.1111, 602.501, 602.502, and 602.503 of the regulations of the Administrator is to change the name of the San Diego control area extension, VOR Federal airway No. 66, the Pacific, Calif., intersection, and VOR/VORTAC jet routes No. 1, 2, and 3. Such action is taken herein.

Since these changes are editorial in nature and will not assign or reassign the use of the navigable airspace, notice and public procedure hereon are unnecessary and they may be made effective on less than 30 days' notice.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), the following actions are taken:

1. In the text of § 600.6066 (14 CFR 600.6066, 25 F.R. 4278, 6686, 8098, 9944) "From the San Diego, Calif., VOR." is deleted and "From the Mission Bay, Calif., VOR." is substituted therefor.

2. In the text of § 601.1111 (25 F.R. 9364) "The airspace within a 21-mile radius of the San Diego VOR extending counter-clockwise from the San Diego VOR 251° True radial to the boundary of the Miramar, Calif., control area extension (§ 601.1223), within 5 miles either side of the 251° True radial of the San Diego VOR" is deleted and "The airspace within a 21-mile radius of the Mission Bay, Calif., VOR extending counterclockwise from the Mission Bay VOR 251° True radial to the boundary of the Miramar, Calif., control area extension (§ 601.1223), within 5 miles either side of the 251° True radial of the Mission Bay VOR" is substituted therefor.

3. In the text of § 601.7001 (25 F.R. 7489) Pacific INT is amended as follows: "San Diego, Calif.," is deleted and "Mission Bay, Calif.," is substituted therefor.

4. In the text of § 601.7001 (14 CFR 601.7001) "San Diego, Calif., omnirange station." is deleted and "Mission Bay, Calif., VOR." is substituted therefor.

5. In the text of § 602.501 (14 CFR 602.501) "From the San Diego, Calif.," is deleted and "From the Mission Bay, Calif.," is substituted therefor.

6. In the text of § 602.502 (14 CFR 602.502, 25 F.R. 3067) "From the San Diego, Calif.," is deleted and "From the Mission Bay, Calif.," is substituted therefor.

7. In the text of § 602.503 (14 CFR 602.503) "From the San Diego, Calif.," is deleted and "From the Mission Bay, Calif.," is substituted therefor.

These amendments shall become effective 0001 e.s.t., December 15, 1960.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 1, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11372; Filed, Dec. 7, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-74]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Area

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9416) stating that the Federal Aviation Agency proposed to modify the Longview, Tex., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2288 (14 CFR 601.2288) is amended to read:

§ 601.2288 Longview, Tex., control zone.

Within a 5-mile radius of the Gregg County Airport (latitude 32°23'15" N., longitude 94°42'50" W.), and within 2 miles either side of the 313° True radial of the Gregg County, Tex., VOR extending from the 5-mile radius zone to 12 miles NW of the VOR.

This amendment shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 2, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11403; Filed, Dec. 7, 1960; 8:49 a.m.]

[Airspace Docket No. 60-FW-68]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9417) stating that the Federal Aviation Agency proposed to modify the Augusta, Ga., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2131 (14 CFR 601.2131) is amended to read:

§ 601.2131 Augusta, Ga., control zone.

Within a 5-mile radius of Bush Field, Augusta, Ga. (latitude 33°22'05" N., longitude 81°57'40" W.), and within 2 miles either side of the 130° True bearing from the Augusta RR extending from the 5-mile radius zone to the RR; within 2 miles either side of the 141° True radial of the Augusta VOR extending from the 5-mile radius zone to 2.5 miles NW, excluding that portion which coincides with the Savannah River, Ga., Prohibited Area (P-378).

This amendment shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 2, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11371; Filed, Dec. 7, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-66]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Control Area Extension

On September 22, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9123) stating that the Federal Aviation Agency proposed to revoke the Cross City, Fla., control area extension.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Part 601 (14 CFR Part 601) is amended as follows:

Section 601.1320 *Control area extension (Cross City, Fla.)* is revoked.

This amendment shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 1, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11374; Filed, Dec. 7, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-229]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Routes

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9418) stating that the Federal Aviation Agency proposed to modify VOR/VORTAC jet routes No. J-23-V, J-26-V, J-45-V, J-51-V, J-53-V, and J-55-V.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. In the text of § 602.523 (14 CFR 602.523, 25 F.R. 1094) "Wichita Falls, Tex., VOR; Oklahoma City, Okla., VOR;" is deleted and "Wichita Falls, Tex., VORTAC; INT of the Wichita Falls VORTAC 028° True and the Oklahoma City, Okla., VORTAC 202° True radials; Oklahoma City VORTAC;" is substituted therefor.

2. In the text of § 602.526 (14 CFR 602.526) "Roswell 216° radials;" is deleted and "Roswell 213° True radials;" is substituted therefor.

3. In the text of § 602.545 (14 CFR 602.545) "Nashville, Tenn., VOR; St. Louis, Mo., VOR" is deleted and "Nashville, Tenn., VORTAC; INT of the Nashville VORTAC 316° True and the St. Louis, Mo., VORTAC 129° True radials; St. Louis VORTAC;" is substituted therefor.

4. In the text of § 602.551 (14 CFR 602.551) "INT Florence, S.C., 008° and the Raleigh 232° radials" is deleted.

5. In the text of § 602.553 (14 CFR 602.553) "via the Miami, Fla., VOR; West Palm Beach, Fla., VOR; Vero Beach, Fla., VOR; Jacksonville, Fla., VOR; INT Jacksonville 347° and Augusta 176° radials; Augusta, Ga., VOR;" is deleted and "via the INT of the Key West VOR 054° True and the Miami, Fla., VORTAC 214° True radials; Miami VORTAC; West Palm Beach, Fla., VORTAC; Vero Beach, Fla., VOR; INT of the Vero Beach VOR 339° True and the Jacksonville, Fla., VORTAC 163° True radials; Jacksonville VORTAC; INT of the Jacksonville VORTAC 343° True and the Augusta, Ga., VOR 180° True radials; Augusta VOR;" is substituted therefor.

6. In the text of § 602.555 (14 CFR 602.555) "INT Florence 008° and Raleigh 232° radials; Raleigh, N.C., VOR;" is deleted and "INT of the Florence VOR 007° True and the Raleigh, N.C., VORTAC 224° True radials; Raleigh VORTAC;" is substituted therefor.

These amendments shall become effective 0001 e.s.t., January 12, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 1, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11370; Filed, Dec. 7, 1960 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7948 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Contact Lens Specialists, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* § 13.170-22 Corrective, orthopedic, etc.; § 13.190 *Results;* § 13.288 *Unique nature or advantages.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Contact Lens Specialists, Inc. (Boston, Mass.), et al., Docket 7948, October 12, 1960]

In the Matter of Contact Lens Specialists, Inc., a Corporation, and Leonard G. Wolfson, Individually and as an Officer of Said Corporation

Consent order requiring Boston sellers to cease representing falsely in advertising that all persons could wear their contact lenses and without discomfort; that eyeglasses could be discarded; that the lenses would correct all defects in vision; and that they differed from other lenses.

The order to cease and desist is as follows:

It is ordered, That respondents Contact Lens Specialists, Inc., a corporation, and its officers, and Leonard G. Wolfson, individually and as a former officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their contact lenses, do forthwith cease and desist, directly or indirectly, from:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that:

(a) All persons in need of visual correction can successfully wear respondents' contact lenses.

(b) There is no discomfort from wearing respondents' contact lenses.

(c) A person can wear said contact lenses all day without discomfort unless it is clearly revealed that this is possible only after such person has become fully adjusted thereto.

(d) Eyeglasses can always be discarded upon the purchase of respondents' contact lenses.

(e) Respondents' contact lenses will correct all defects in vision.

(f) Respondents' contact lenses are different than other contact lenses in that they permit tears to bathe the cornea of the eye of the wearer; or are different in any other respect, unless such is the fact.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1, above, or which fails to reveal the facts set out in paragraph 1(c) above.

It is further ordered, That the complaint be, and the same hereby is, dismissed as to Leonard G. Wolfson as an officer of said corporation.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondent Contact Lens Specialists, Inc., a corporation and Leonard G. Wolfson, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 12, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-11379; Filed, Dec. 7, 1960; 8:46 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 5—General Services Administration

PART 5-1—GENERAL

Antitrust Violations

Part 5-1 is amended by adding new Subpart 5-1.9, as follows:

Subpart 5-1.9—Reporting Possible Antitrust Violations

§ 5-1.901 General.

Whenever circumstances arise that, in the opinion of the contracting officer, may indicate collusive practices or any other type of suspect bidding procedure, which may result in other than truly competitive prices to the Government and violation of the antitrust laws, he shall handle the matter in accordance with Subpart 1-1.9.

Effective date. These regulations are effective immediately.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: December 1, 1960.

FRANKLIN FLOETE,
Administrator.

[F.R. Doc. 60-11398; Filed, Dec. 7, 1960; 8:49 a.m.]

Chapter 50—Division of Public Contracts, Department of Labor

PART 50-201—GENERAL REGULATIONS

Partial Exemption of Barter or Exchange Contracts of the Commodity Credit Corporation From the Walsh-Healey Public Contracts Act and Miscellaneous Amendments

In accordance with section 6 of the Walsh-Healey Public Contracts Act (49 Stat. 2038, 41 U.S.C. 40) and 41 CFR 50-201.601, the Secretary of Agriculture has requested an exception or exemption from the representation required under section 1(a) of the Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 35(a).) that the government contractor be the manufacturer of or a regular dealer in the materials to be manufactured or used in the performance of the contract, for commodity exchange contracts entered into by the Commodity Credit Corporation with contractors to barter or exchange agricultural commodities under the Commodity Credit Corporation Charter Act (secs. 4(h), 5 (d) and (f), 62 Stat. 1070 and 1072, 15 U.S.C. 714b(h), 714c(d) and (f)), section 416 of the Agricultural Act of 1949 (63 Stat. 1058, 7 U.S.C. 1431), section 103(a)(2) of the Agricultural Act of 1954 (68 Stat. 898, 7 U.S.C. 1743(a)(2)), or section 303 of the Agricultural Trade Development and Assistance Act of 1954 (68 Stat. 459, 7 U.S.C. 1692).

The request is based upon a finding by the Secretary of Agriculture that the stipulation in question would seriously impair the conduct of Government business with respect to the barter or exchange programs since the fundamental purpose of the programs is the disposal abroad of surplus agricultural commodities rather than the procurement of material and, to this end, it is necessary at times to transact business with a contractor who may not be the "manufacturer" or a "regular dealer" within the meaning of the Walsh-Healey Public Contracts Act.

Upon the basis of the presentation of the Secretary of Agriculture and pursuant to section 6 of the Walsh-Healey Public Contracts Act, I have decided that the public interest will be served by excepting and exempting the above-discussed barter or exchange contracts from the requirement of section 1(a) of the Act and 41 CFR 50-201.1 that the contractor represents that he is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract.

Accordingly, to effect this purpose, to separate the total from the partial exemptions, to make editorial revision necessitated by the changed status of Alaska and Hawaii, and to eliminate an obsolete reference to emergency plant facilities contracts, 41 CFR 50-201.603 is amended and a new section, 41 CFR 50-201.604 is provided, to read as follows:

§ 50-201.603 Full administrative exemptions.

The following classes of contracts have been exempted from the application of § 50-201.1 pursuant to the procedure required under section 6 of the act:

(a) Contracts for public utility services including electric light and power, water, steam, and gas;

(b) Contracts for materials, supplies, articles, or equipment no part of which will be manufactured or furnished within the geographic limits of the States of the United States of America, Puerto Rico, the Virgin Islands, or the District of Columbia: In addition, the representations and stipulations required by the act and this part in any contract for materials, supplies, articles, or equipment to be manufactured or furnished in part within and in part outside such geographic limits shall not be applicable to any work performed under the contract outside such geographic limits;

(c) Contracts covering purchases against the account of a defaulting contractor where the stipulations required in this section were not included in the defaulted contract;

(d) Contracts awarded to sales' agents or publisher representatives, for the delivery of newspapers, magazines or periodicals by the publishers thereof.

(Secs. 4 and 6, 49 Stat. 2038, 41 U.S.C. 38 and 40)

§ 50-201.604 Partial administrative exemptions.

(a) Contracts with a person who regularly buys and sells coal on his own account in lots of not less than a cargo or railroad carload, or with a person who is authorized by one or more persons engaged in mining coal to negotiate and conclude contracts for the furnishing thereof in such lots, are exempt from the requirement of section 1(a) of the act and § 50-201.1 of this part that such person represent that he is a manufacturer or a regular dealer in coal: *Provided, however,* That all the following terms and conditions are met:

(1) That such person will notify the persons engaged in mining the coal that the purchaser thereof is the United States and that provisions of the Public Contracts Act are applicable; and

(2) That such person, apart from the liability of the mines, shall be liable for the observance in the mines of all the labor standards provided in section 1 of the act; and

(3) That such person notify the contracting agency that he will accept the contract upon the terms and conditions set forth above.

(b) Commodity exchange contracts entered into by the Commodity Credit Corporation under the Commodity Credit Corporation Charter Act (secs. 4(h), 5 (d) and (f), 62 Stat. 1070 and 1072, 15 U.S.C. 714b(h), 714c (d) and (f)), section 416 of the Agricultural Act of 1949 (63 Stat. 1058, 7 U.S.C. 1431), section 103(a)(2) of the Agricultural Act of 1954 (68 Stat. 898, 7 U.S.C. 1743(a)(2)), or section 303 of the Agricultural Trade Development and Assistance Act of 1954 (68 Stat. 459, 7 U.S.C. 1692), are exempt from the requirement of section 1(a) of the act and of § 50-201.1 that the Government contractor represents that he is the manufacturer of or a regular dealer in the materials, supplies, articles or equipment to be manufactured or used in the performance of the contract.

(Secs. 4 and 6, 49 Stat. 2038, 41 U.S.C. 38 and 40)

Signed at Washington, D.C., this 2d day of December 1960.

JAMES P. MITCHELL,
Secretary of Labor.

[F.R. Doc. 60-11411; Filed, Dec. 7, 1960; 8:50 a.m.]

PART 50-202—MINIMUM WAGE DETERMINATIONS

Electron Tubes and Related Products Industry

Miscellaneous exceptions have been filed criticizing the findings and conclusions expressed in the tentative decision determining the prevailing minimum wages in the electron tubes and related products industry (25 F.R. 7801). Many of these exceptions merely repeat contentions fully discussed in rulings of record, including the tentative decision. Some of them do not relate to the mate-

rial issues of fact, law, and discretion presented by the evidence of record in this proceeding. Through not all of the remaining ones were deemed of sufficient persuasiveness to merit discussion in the tentative decision, none are new in the sense that they were not considered in the preparation of that decision. Each exception has been carefully considered. None appears to warrant further discussion here. Each is overruled. Each finding and conclusion, together with the reason and basis therefor, which is expressed in the tentative decision is hereby made final.

Accordingly, upon the findings and conclusions stated herein, pursuant to authority under the Walsh-Healey Public Contracts Act (49 Stat. 2036; 41 U.S.C., sec. 35 et seq.), and in accordance with the Administrative Procedure Act (60 Stat. 237; 5 U.S.C 1001), Title 41 of the Code of Federal Regulations, Part 50–202, is hereby amended by the addition of § 50–202.58 (41 CFR Part 50–202) to read as follows:

§ 50–202.58 Electron tubes and related products industry.

(a) *Definition.* The electron tubes and related products industry is defined as that industry which manufactures or furnishes electron tubes and related products including the following products and/or parts specially designed for incorporation therein: Radio and television receiving type tubes; transmitting, industrial, and special-purpose tubes, including high vacuum and vapor rectifier tubes, thyratrons, magnetrons, klystrons and other velocity modulated tubes, photo tubes, cathode ray tubes, and geiger-mueller tubes; and solid-state semiconductor devices. The following products are specifically excluded: (1) Gas-filed tubes used for illumination; (2) glow lamps and strobotrons; (3) X-ray and rectifier tubes specially designed for use in X-ray equipment; (4) the following types of parts: Metal stampings, getters, lead wires, and any part made exclusively of glass, plastics, germanium, silicon, ceramics, mica, graphite, or rubber; and (5) television receiving type cathode ray tubes.

(b) *Minimum wages.* (1) The minimum wage for persons employed in the manufacture or furnishing of solid-state semiconductor devices under contracts subject to the Walsh-Healey Public Contracts Act shall be not less than $1.35 per hour arrived at either on a time or piece rate basis.

(2) The minimum wage for persons employed in the manufacture or furnishing of products of the electron tubes and related products industry, except solid-state semiconductors, under contracts subject to the Walsh-Healey Public Contracts Act shall be not less than $1.42 per hour arrived at either on a time or piece rate basis.

(c) *Effect on other obligations.* Nothing in this section shall affect any obligations for the payment of minimum wages that an employer may have under any law or agreement more favorable to employees than the requirements of this section.

(d) *Effective date.* This section shall be effective and the minimum wages established herein shall apply as to all contracts subject to the Walsh-Healey Public Contracts Act, bids for which are solicited or negotiations otherwise commenced on or after January 7, 1960.

(Secs. 1, 4, 49 Stat. 2036, as amended, 2038; 41 U.S.C. 35, 38)

Signed at Washington, D.C., Dec. 3, 1960.

JAMES P. MITCHELL,
Secretary of Labor.

[F.R. Doc. 60–11412; Filed, Dec. 7, 1960; 8:50 a.m.]

Title 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

[CGFR 60–75]

DEFINITIONS, MARINE WELDING, ELECTRICAL INDICATOR CIRCUITS, CASUALTY INVESTIGATION RECORDS, AND TEMPORARY EXEMPTIONS FROM NUMBERING REQUIREMENTS

The amendments in this document are editorial in nature to bring up-to-date certain names and cross references, change wording of a regulation so that requirements in the Code of Federal Regulations and a Coast Guard pamphlet will read the same, and remove from the Code of Federal Regulations those requirements which by their own terms have expired and no longer are in effect. Because these amendments are editorial in nature, it is hereby found that the Coast Guard is exempt from compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements thereof).

To correct references to the States of Alaska and Hawaii, the amendments to 46 CFR 24.10–13, 30.10–36, 70.10–21, 90.10–17, and 110.15–105 delete wording describing them as "territories."

The amendment to 56.01–80(d)(1) clarifies requirements regarding types of welded joints in class I piping where pipes are of diameters not exceeding 2 inches, by inserting a comma after the phrase "pipe ends" and before the word "or" in the third sentence to seperate the types of welded joints described. The amendment to 46 CFR 56.05–1(p) changes a cross reference to the standard qualification test bending jig from figure "56.01–10(e)" to "56.01–10(j6)."

The amendment to 46 CFR 111.45–10(a) changes the general requirements for remote control, electrical interlock, and indicator circuits by changing in the first sentence a phrase from "following deviation" to the word "deviations" so that the wording in the Code of Federal Regulations and the published Coast Guard pamphlet CG–259 will be in agreement.

To remove doubt as to the Coast Guard's actions in a casualty or accident, the amendment to 46 CFR 136.13–20(c) deletes from the first sentence a phrase indicating that determinations have been made with respect to finding persons responsible or otherwise culpable with respect to such casualty or accident. This deletion brings the requirements regarding disclosure of information from casualty records in line with casualty investigation policy and removes the inference that adjudications have been made.

Since the temporary exemptions from numbering requirements for undocumented vessels have expired, for record purposes the text of 46 CFR 171.01–6 is deleted.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167–9, dated August 3, 1954 (19 F.R. 5915), 167–14, dated November 28, 1954 (19 F.R. 8026), 167–17, dated June 29, 1955 (20 F.R. 4976), 167–20, dated June 18, 1956 (21 F.R. 4894), CGFR 56–28, dated July 24, 1956 (21 F.R. 5659), and 167–38, dated October 26, 1959 (24 F.R. 8857), to promulgate regulations in accordance with the statutes cited with the regulations below, the following amendments are prescribed and shall become effective on and after the date of publication of this document in the FEDERAL REGISTER:

SUBCHAPTER C—UNINSPECTED VESSELS

PART 24—GENERAL PROVISIONS

Subpart 24.10—Definition of Terms Used in This Subchapter

Section 24.10–13 *International voyage* is amended by changing in the first sentence a phrase from "* * * the Territory of Alaska, Commonwealth of Puerto Rico, Territory of Hawaii, * * *" to "* * * Alaska, Hawaii, Commonwealth of Puerto Rico, * * *."

(R.S. 4405, as amended, 4462, as amended, sec. 17, 54 Stat. 166, as amended; 46 U.S.C. 375, 416, 526p)

SUBCHAPTER D—TANK VESSELS

PART 30—GENERAL PROVISIONS

Subpart 30.10—Definitions

Section 30.10–36 *International voyage—TB/OC* is amended by changing in the first sentence a phrase from "* * * the Territory of Alaska, Commonwealth of Puerto Rico, Territory of Hawaii, * * *" to "* * * Alaska, Hawaii, Commonwealth of Puerto Rico, * * *."

(R.S. 4405, as amended, 4417a, as amended, 4462, as amended; 46 U.S.C. 375, 391a, 416)

SUBCHAPTER F—MARINE WELDING

PART 56—ARC WELDING, GAS WELDING, AND BRAZING

Subpart 56.01—Arc Welding and Gas Welding

Section 56.01–80 *Welded piping* is amended by revising the third sentence of subparagraph (d)(1) by inserting a comma between the phrase "pipe ends" and the word "or."

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416)

Subpart 56.05—Tests and Inspection

Section 56.05–1 *Test plates* is amended by revising the second sentence of paragraph (p) by changing the cross reference at the end thereof from figure "56.01–10(e)" to "56.01–10(j6)."

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416)

SUBCHAPTER H—PASSENGER VESSELS

PART 70—GENERAL PROVISIONS

Subpart 70.10—Definition of Terms Used in This Subchapter

Section 70.10–21 *International voyage* is amended by changing in the first sentence a phrase from "* * * the Territory of Alaska, Commonwealth of Puerto Rico, Territory of Hawaii, * * *" to "* * * Alaska, Hawaii, Commonwealth of Puerto Rico, * * *."

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416)

SUBCHAPTER I—CARGO AND MISCELLANEOUS VESSELS

PART 90—GENERAL PROVISIONS

Subpart 90.10—Definition of Terms Used in This Subchapter

Section 90.10–17 *International voyage* is amended by changing in the first sentence a phrase from "* * * the Territory of Alaska, Commonwealth of Puerto Rico, Territory of Hawaii, * * *" to "* * * Alaska, Hawaii, Commonwealth of Puerto Rico, * * *."

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416)

SUBCHAPTER J—ELECTRICAL ENGINEERING

PART 110—GENERAL PROVISIONS

Subpart 110.15—Definition of Terms Used in This Subchapter

Section 110.15–105 *International voyage* is amended by changing in the first sentence a phrase from "* * * the Territory of Alaska, Commonwealth of Puerto Rico, Territory of Hawaii, * * *" to "* * * * Alaska, Hawaii, Commonwealth of Puerto Rico, * * *."

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416)

PART 111—ELECTRICAL SYSTEM; GENERAL REQUIREMENTS

Subpart 111.45—Motor Circuits and Controllers

Section 111.45–10 *Remote-control, electrical interlock, and indicator circuits* is amended in the first sentence of paragraph (a) by changing a phrase from "* * * following deviation * * *" to the word "* * * deviations * * *."

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416)

SUBCHAPTER K—MARINE INVESTIGATIONS AND SUSPENSION AND REVOCATION PROCEEDINGS

PART 136—MARINE INVESTIGATION REGULATIONS

Subpart 136.13—Disclosure of Records

Section 136.13–20 *Casualty investigation records* is amended by deleting from the first sentence of paragraph (c) the phrase "* * * whether or not any person(s) has been determined responsible or otherwise culpable with respect to the casualty or accident, and * * *."

(R.S. 4405, as amended, 4462, as amended; 46 U.S.C. 375, 416)

SUBCHAPTER S—NUMBERING OF UNDOCUMENTED VESSELS, STATISTICS ON NUMBERING, AND "BOATING ACCIDENT REPORTS" AND ACCIDENT STATISTICS

PART 171—STANDARDS FOR NUMBERING

Subpart 171.01—General

Section 171.01–6 *Temporary exemptions until July 1, 1960,* is deleted since all exemptions granted thereunder have expired.

(Sec. 3, 60 Stat. 238, and sec. 633, 63 Stat. 545; 5 U.S.C. 1002, 14 U.S.C. 633)

Dated: November 30, 1960.

[SEAL] A. C. RICHMOND,
Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 60–11397; Filed, Dec. 7, 1960; 8:49 a.m.]

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Salton Sea National Wildlife Refuge, California

In compliance with the requirements of the Act of May 18, 1948, (62 Stat. 238, 16 U.S.C. 695) it has been determined that a major portion of the crops in the vicinity of the Salton Sea National Wildlife Refuge, California, has been harvested and that the period of susceptibility of such crops to wildfowl depredation has passed. Accordingly, since the possibility of crops being damaged by waterfowl is minor, the following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER. The limitation of time makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

CALIFORNIA

SALTON SEA NATIONAL WILDLIFE REFUGE

Public hunting of migratory game birds on the Salton Sea National Wildlife Refuge, California, is permitted only on the area designated by signs as open to hunting. This open area, comprising 1,080 acres or 21 percent of the total area of the refuge, is delineated on a map available at the refuge headquarters and from the Bureau of Sport Fisheries and Wildlife, Washington 25, D.C. Hunting shall be subject to the following conditions:

(a) Species permitted to be taken: Coots, ducks (except canvasback and redhead) and geese (except Ross's geese).

(b) Open season: Ducks and coots from 12 noon to sunset December 10, 1960, and from one-half hour before sunrise to sunset December 11, 14, 17, 18, 21, 24, 25, 26, 28, 31, 1960, and January 1, 4, 7, 8, 1961. Geese from 12 noon to sunset December 10, 1960, and from one-half hour before sunrise to sunset December 11, 14, 17, 18, 1960.

(c) Daily bag limits: Duck 6, coots 25, geese 6. The daily bag limit for ducks may not include more than 1 wood duck and 1 hooded merganser; but in addition to the daily bag limit for other ducks, the daily bag limit may include 5 American and red-breasted mergansers, singly or in the aggregate of both kinds; and the daily bag limit for geese may not include more than 1 Canada goose nor more than 3 of the dark species.

(d) Methods of hunting:

(1) Weapons: Shotguns up to and including 10 gauge which are incapable of holding more than 3 shells and longbows with arrows only may be used. The possession or use of single ball or rifle shell shotgun shells is prohibited.

(2) Dogs—Not to exceed two dogs per hunter may be used only to retrieve wounded or dead waterfowl and coots.

(3) Blinds—Temporary blinds of approved material may be constructed.

(4) Guides—Persons may employ guides while hunting on the area subject to the restrictions of State law and regulations.

(5) Boats—Boats only without motors will be permitted.

(e) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

(2) A Federal permit is not required to enter the public hunting area, but a permit issued by the California State Fish and Game Department is required. Hunters, upon entering or leaving the hunting areas, shall report at designated checking stations as may be established for the regulation of hunting activity and shall furnish information pertaining to their hunting as requested.

(3) The provisions of this special regulation are effective to January 9, 1961.

DANIEL H. JANZEN,
Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 2, 1960.

[F.R. Doc. 60–11380; Filed, Dec. 7, 1960; 8:45 a.m.]

PART 33—SPORT FISHING

Arrowwood National Wildlife Refuge, North Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

ARROWWOOD NATIONAL WILDLIFE REFUGE

Sport fishing on the Arrowwood National Wildlife Refuge, North Dakota, is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through March 12, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on all refuge waters of the Arrowwood National Wildlife Refuge, except those designated by signs as closed to fishing. The open areas comprise approximately 2,900 acres or 18 percent of the total refuge area and are delineated on maps available at the refuge headquarters and from the Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis 8, Minnesota.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) Fishermen shall use such routes of travel as are designated by the refuge officer in charge.

(3) A Federal permit is not required to enter the public fishing area.

(4) The provisions of this special regulation are effective December 15, 1960, through March 12, 1961.

W. A. ELKINS,
Acting Regional Director,
Bureau of Sport Fisheries and Wildlife.

DECEMBER 2, 1960.

[F.R. Doc. 60-11381; Filed, Dec. 7, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Lake Ilo National Wildlife Refuge, North Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

LAKE ILO NATIONAL WILDLIFE REFUGE

Sport fishing on the Lake Ilo National Wildlife Refuge, North Dakota is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through March 12, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 1,300 acres and 33 percent of the total refuge and which is described as follows:

All water areas within the refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through March 12, 1961.

W. A. ELKINS,
Acting Regional Director,
Bureau of Sport Fisheries and Wildlife.

DECEMBER 2, 1960.

[F.R. Doc. 60-11382; Filed, Dec. 7, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Long Lake National Wildlife Refuge, North Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

LONG LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Long Lake National Wildlife Refuge, North Dakota is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through March 12, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 10,000 acres and 45 percent of the total refuge and which is described as follows:

All water areas within the refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through March 12, 1961.

W. A. ELKINS,
Acting Regional Director,
Bureau of Sport Fisheries and Wildlife.

DECEMBER 2, 1960.

[F.R. Doc. 60-11383; Filed, Dec. 7, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Lower Souris National Wildlife Refuge, North Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

LOWER SOURIS NATIONAL WILDLIFE REFUGE

Sport fishing on the Lower Souris National Wildlife Refuge, North Dakota is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through March 12, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 10,000 acres and 18 percent of the total refuge and which is described as follows:

All water areas within the refuge except those within 200 feet of water control structures or open spillways.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through March 12, 1961.

W. A. ELKINS,
Acting Regional Director,
Bureau of Sport Fisheries and Wildlife.

DECEMBER 2, 1960.

[F.R. Doc. 60-11384; Filed, Dec. 7, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Tewaukon National Wildlife Refuge, North Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

TEWAUKON NATIONAL WILDLIFE REFUGE

Sport fishing on the Tewaukon National Wildlife Refuge, North Dakota is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through March 12, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 300 acres and five percent of the total refuge and which is described as follows:

The refuge waters in White Lake and Cutler Marsh in the SE¼SE¼ Section 26, SE¼ Section 34, and the NE¼ and S½ of Section 35, T. 130 N., R. 54 W., 5th P.M.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through March 12, 1961.

W. A. ELKINS,
Acting Regional Director,
Bureau of Sport Fisheries & Wildlife.

DECEMBER 2, 1960.

[F.R. Doc. 60-11385; Filed, Dec. 7, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Upper Souris National Wildlife Refuge, North Dakota

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NORTH DAKOTA

UPPER SOURIS NATIONAL WILDLIFE REFUGE

Sport fishing on the Upper Souris National Wildlife Refuge, North Dakota is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period December 15, 1960, through March 12, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Bait—the use of minnows, fish, or parts thereof, either alive or dead, is prohibited in all refuge waters north of the Lake Darling Dam. (Dam No. 83, near refuge headquarters.)

(3) Nets and seines—the use of nets or seines for capturing minnows or fish is prohibited in all refuge waters north of the Lake Darling Dam.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on all refuge waters of the Upper Souris National Wildlife Refuge except those designated by signs as closed to fishing. The open areas comprise approximately 6,000 acres or 19 percent of the total refuge area and are delineated on maps available at the refuge headquarters and from the Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis 8, Minnesota.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through March 12, 1961.

W. A. ELKINS,
Acting Regional Director,
Bureau of Sport Fisheries & Wildlife.

DECEMBER 2, 1960.

[F.R. Doc. 60-11386; Filed, Dec. 7, 1960; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 923, 1012]

[Docket Nos. AO-251-A3, AO-278-A4]

MILK IN APPALACHIAN AND BLUEFIELD MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the Appalachian and Bluefield marketing areas. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., not later than the close of business the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing, on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders, were formulated, was conducted at Bristol, Virginia, on April 12–13, 1960, and Bluefield, West Virginia, on April 14, 1960, pursuant to notice thereof which was issued March 23, 1960 (25 F.R. 2579).

The material issues on the record of the hearing relate to:

1. Consolidation of the Bluefield order with the Appalachian order.
2. Provisions in the consolidated Appalachian order with respect to:
   (a) Marketwide pooling for distribution of proceeds among producers;
   (b) Milk to be priced and pooled;
   (c) Classification and allocation of milk;
   (d) Class prices;
   (e) Payments on other source milk;
   (f) Producer-settlement fund;
   (g) Base and excess plan; and
   (h) Administrative provisions.

1. Consolidation of the Bluefield order with the Appalachian order.

Order No. 112 regulating the handling of milk in the Bluefield marketing area should be consolidated with Order No. 23 regulating the handling of milk in the Appalachian marketing area.

The Appalachian and Bluefield marketing areas are composed of nine counties, three of which are in Southwestern Virginia, and the remainder in adjoining or nearby areas in West Virginia, Kentucky, and Tennessee. Tazewell County in Virginia, which is part of the Bluefield marketing area, adjoins Washington County of the Appalachian marketing area. The two marketing areas thus constitute a continuous territory except for Harlan County, Kentucky, and Wise County, Virginia, which are a part of the Appalachian marketing area but separated from the rest by intervening counties.

The Appalachian order was made effective October 1, 1954, and the Bluefield order on October 1, 1956. Since the issuance of the Bluefield order, developments in the marketing system for milk in both areas have tended to bring the markets into closer relationship with respect to both supplies and sales.

Plants regulated under the Appalachian order and handling more than half of the milk regulated under the order are in competition with the four Bluefield handlers. An Appalachian handler with a plant at Bristol, Virginia, maintains a distribution point at Richlands, Virginia, in the Bluefield marketing area. Another Appalachian handler with a plant at Big Stone Gap, Virginia, distributes milk on routes in the Bluefield marketing area. There are also regular movements of packaged milk from an Appalachian order plant at Bristol, Virginia, to a Bluefield order plant at Welch, West Virginia, both of which are operated by the same company. This handler is one of the largest of the four handlers regulated by the Bluefield order.

Members of the cooperative association represent approximately 85 percent of all producers on the markets, supplying 90 percent of the fluid milk requirements of handlers under both orders. This association also operates a milk receiving plant presently regulated under the Appalachian order. Shipments of milk from this plant are made to plants under both orders to supply variable day-to-day fluid milk requirements.

The Bluefield marketing area is located north of the Appalachian marketing area. The supply for the Bluefield market comes from farms located in the counties in the marketing area and counties to the south and southeast of the marketing area. Some of these counties adjoin the Appalachian marketing area. In large part, handlers serving the two markets now depend upon a common supply. The milk deliveries of producers whose farms are located between or approximately equidistant from the two marketing areas are commonly shifted back and forth among handlers in the two markets according to individual handlers' daily needs. This accommodation of handlers' requirements is provided for by the proponent producer association. The association also arranges for the disposition of the surplus milk of both markets by diversion to manufacturing plants or shipment of milk to other markets after the milk is accumulated at its receiving plant.

Handlers in these markets are engaged mainly in fluid milk operations, although several have minor manufacturing operations, mostly for cottage cheese. They receive at their plants only that milk needed for such uses. From time to time, as their requirements vary, they call upon the cooperative association for milk from additional producers. The disposition of the standby reserve of milk has become the primary responsibility of the cooperative association. The association also has become the primary agency for disposing of the normal seasonal surplus of milk.

The cooperative association has adopted the policy of reblending the proceeds from the sale of its members' milk. Some members objected to this arrangement and withdrew from the association. This has increased the burden of market surplus carried by the remaining members. The proposed consolidation of the two markets, along with a change to marketwide pooling, will result in a proportionate sharing of the burden of surplus milk by producers.

The Appalachian and Bluefield orders should be consolidated to cover the combined territory of the existing marketing areas. The administrative and marketing service accounts under both orders should be consolidated also. At the time the new order is made effective, some handlers will owe producers certain monies for preceding months. Any such amount owed by handlers should be paid into the producer-settlement fund; on the other hand, audit adjustments with respect to underpayment of individual producers for milk delivered prior to order consolidation should be paid to the producers to whom the money is owed. Producers thus will receive all monies owed them for milk delivered in prior periods.

2. Provisions in the consolidated Appalachian order.

Provisions in the Appalachian and Bluefield orders are substantially similar and the Appalachian order provisions are appropriate as the terms and provisions of the consolidated order except as hereinafter discussed. The following findings and conclusions describe the instances in which provisions of the consolidated order would differ from the provisions of the present Appalachian order.

(a) *Marketwide pooling.* Individual-handler pools have been operated under both the Appalachian and Bluefield orders since their inception. Handlers have continued to be primarily distributors of fluid milk, and have little in the way of manufacturing operations except cottage cheese for their own route disposition. At the time the orders were

established it was the practice of handlers to divert seasonal or week-end surplus of milk to nearby manufacturing plants.

The cooperative association, representing about eighty-five percent of the producers for these markets, now has assumed the responsibility for balancing supplies among handlers. This is accomplished through operation of truck routes to bring the milk from producers' farms to handler's plants, the operation of an association plant to carry short-time standby reserves, and diversion of unneeded milk to manufacturing plants. As a result of carrying on this operation of balancing supplies among handlers and disposing of surplus milk, the association has found it necessary to reblend returns from all sales of their members' milk. Otherwise, members delivering milk to the association plant would receive less than fluid, or Class I, milk prices for a larger proportion of their milk than members delivering to other handlers' plants.

Some members of the association have objected to the reblending of proceeds, and one group of producers whose milk is delivered to a high utilization handler have cancelled their membership. Under individual-handler pooling such producers have received virtually a straight Class I price for their milk while the burden of carrying the balancing supplies of the market reserves has fallen on the association. As a result the association members receive a significantly lower blended return than nonmember producers.

To yield an equitable sharing by all producers of the lower returns realized from the necessary seasonal excess and reserve supplies of milk by all producers delivering milk to plants regulated under the consolidated Appalachian order, marketwide pooling should be provided.

(b) *Milk to be priced and pooled.* The intent and precise application of the order regulation will be facilitated by definitions of the terms "producer", "handler", "pool plant", and other terms as needed. The term "plant" should be defined as the lands, buildings, surroundings, facilities and equipment, whether owned and operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged. It is intended that this definition will include not only the plants at which handlers receive and bottle milk for distribution, but also any plant at which the operation consists merely of receiving the milk into holding tanks and shipping the milk out to other plants. In the case of a manufacturing facility handling milk not qualified for the fluid market and operated in conjunction with a facility for handling milk for the fluid market, the two facilities would be considered as one plant unless they are physically separated in a manner which would preclude any commingling of the two milk supplies and separate records are maintained in a manner satisfactory to the market administrator. A facility should not be considered a plant if it serves solely as a place or shelter for transferring milk from one truck to another truck without any other facility for holding and processing the milk on the premises. Use of a building primarily for holding bottled (packaged) milk or products in finished form would not qualify it as a "plant".

The establishment of a marketwide pool requires definition of pool plants. Pool plants should be defined in a manner which qualifies any plant which is substantially associated with the market. Except for the cooperative association plant, all plants upon which the market now depends for fluid milk are engaged primarily in distributing milk on routes in and near the marketing area. Such manufacturing operations as exists are used almost exclusively for the manufacture of cottage cheese. Most of the milk supply of local plants comes directly from producers' farms. Some milk, however, moves through the association plant to proprietary handlers' plants.

Although in the present situation all plants from which distribution is made in the marketing area are largely engaged in only this business, the order should provide standards whereby any plant may qualify as a pool plant if it is substantially associated with the fluid business of the market. Any plant which has as its major function the distribution of milk for fluid use would qualify under these standards, provided it also has a substantial portion of its fluid milk business in the marketing area. On the other hand, if a plant has only a minor portion of its business in the marketing area, it would not be subject to regulation. Regulation of such plants is unnecessary to accomplish the purposes of the order and might place such plants at a competitive disadvantage with respect to unregulated markets with which they are more closely associated.

In line with these general principles, any plant which uses 50 percent of its milk receipts for fluid distribution should be considered as primarily engaged in the fluid milk business. In making such a percentage determination, the receipts to be included should be all receipts of milk qualified under some health authority for use for fluid distribution, whether received directly from producers' farms or from a cooperative association of producers in its capacity as a handler. With respect to the percentage of a pool plant's fluid distribution in the marketing area, at least 10 percent of the business should be on routes in the marketing area. This is sufficient to establish a substantial association with the market.

A requirement of 20 percent of the fluid business in the marketing area, as proposed by the producer association, is unnecessary and could result in administrative problems in the case of any plant which had a large part of such required percentage of its business in the area but failed to meet the total requirement. Although plants now operating in the marketing area generally have enough fluid sales in the area to more than exceed such a percentage, consideration must be given to the possibility of new handlers entering the marketing area and the fact that some of the existing handlers have a large portion of their sales outside the marketing area and may extend such operations. Any plant which distributes milk in the marketing area but fails to meet the requirements of the pool plant definition should be subject to certain obligations under the order regulation with respect to sales in the marketing area. The necessity for such requirements is explained in another part of the findings and conclusions.

The pool plant definition should also include a plant which has insufficient or no direct distribution in the marketing area but which ships 50 percent of its receipts from qualified dairy farmers and cooperative associations to pool plants which distribute milk in the marketing area. This percentage requirement should apply on a month-to-month basis, except that any plant which has so qualified as a pool plant for the months of August through March should be allowed to continue as a pool plant for the succeeding months of April through July. This provision for the months of April through July is in recognition of the seasonal nature of milk production, which for this market tends to be higher during these months than in other times of the year. Normally plants which supply a market through shipments to distributing plants are located at a greater distance from the marketing area than the location of farmers whose milk could be moved directly from their farms to the distributing plants. Consequently, it is normal that the distributing plants will have their requirements more fully met by the direct receipts from farmers during the April through July period, and receive a lesser quantity from the shipping plants upon which they nevertheless must depend during other months. The automatic pooling of a shipping plant during the April through July period would apply unless the plant operator notified the market administrator of his desire to withdraw the plant from the pool.

In the case of a plant operated by a cooperative association which is used to meet the day-to-day requirements of handlers, special provision should be made for pooling. Such a plant is now operated under the Appalachian order to serve both Appalachian and Bluefield handlers. Not enough milk is shipped from the plant to qualify it for pooling under the regular percentage standards, since handlers' changing needs are met largely by adjustments in routes and deliveries direct from producers' farms. In instances where the precise requirements of handlers cannot be met by such direct deliveries, milk received at the association plant is transferred from there to such handlers. Irregularities in handlers' bottling requirements and frequent requests for partial loads are principal reasons for such transfers. Thus, the plant serves as a normal part of the supply system for the market. Further, intermittent deliveries to this plant from dairy farmers who otherwise regularly supply pool handlers is a regular part of the operation of balancing supplies among all handlers and assuring a readily available reserve.

Another part of the milk handling operation by this plant is the accumulation of loads for shipment to other fluid markets. This business has not interfered

with its function in supplying the Appalachian and Bluefield markets. If the association plant were a pool plant under the consolidated order, it would follow that all utilization of producer milk at the plant, including transfers to other fluid markets, must be accounted for in the marketwide pool at class prices. This requirement may affect the ability of the association to compete for sales in unregulated markets. It is not possible, however, to separate the milk disposed of to outside markets from that disposed of to these two markets so that the farmer would be unregulated and the latter subject to the order. All of the milk handled in the plant is supplied by dairy farmers who are regular producers for the Appalachian-Bluefield markets and accordingly should be accounted for in the same manner as all other producer milk received by pool plants under the order.

It is necessary that the order definition of pool plant apply uniformly to all plants which may become associated with the market, regardless of ownership or location. Accordingly, specific standards should be provided for the determination of whether a plant operated by any cooperative association qualifies as a pool plant. The function of the existing association plant as part of the market supply system is definitely related to the fact that most of the milk of association members is needed by handlers in their pool plants, and most frequently moves directly from producers' farms to handlers' plants. The volume of such milk deliveries and the amount of milk shipped from the association plant to other handlers' plants should be used as a measurement of the relationship of the cooperative association plant to the market.

The association proposed that when member deliveries and shipments from its plant amount to 50 percent of the total milk deliveries of all members to all plants (regulated and unregulated), the association plant should qualify as a pool plant. The amount of milk from members delivered directly or indirectly to other handlers' plants usually would be at least 75 percent of total milk deliveries by all members to pool and nonpool plants. (At present receipts of milk from association members at pool plants represent about 90 percent of the total receipts of milk at all pool plants in the two markets.) The recommended standards should accommodate the present operation of the cooperative association and at the same time assure all producers that additional supplies will not be added which will unnecessarily burden the market. To allow some margin for variations in production and sales, a minimum delivery of 70 percent of member milk should be required.

In order to facilitate the application of the definition of pool plant, the order should contain a definition of the term "route". A "route" should be defined as any delivery to retail or wholesale outlets (including delivery by a vendor or sale from a plant or plant store) of any milk or milk products classified as Class I milk other than a delivery to a plant. This definition will cover the normal Class I disposition of distributing plants to customers such as stores, homes, restaurants, and hotels, and will exclude transfers of milk whether in bulk or packaged form to other plants. Contract sales to military installations or Government institutions which are Class I milk business would, of course, be considered "route" disposition.

The term "producer" should apply to any person who produces milk which meets the requirements of a duly constituted health authority for distribution in the marketing area and which is received at a pool plant.

The definitions of "producer" and "producer milk" also should provide for diversion of producer milk to a nonpool plant. If the handler who is an operator of the pool plant diverts the milk for his account, such milk should be deemed to have been received by such handler at the pool plant from which it is diverted. If a cooperative association diverts producer milk from a pool plant which the cooperative association does not operate, the milk should be deemed to have been received by the cooperative association at the location of the pool plant from which diverted.

Because of the limited nature of the manufacturing operations in handlers' plants, it is often necessary that milk in excess of handlers' immediate needs be moved to some unregulated manufacturing plant. It often would be inefficient for such milk to be moved first through a handler's plant, or through the plant operated by the cooperative association, and thence to the manufacturing plant. Diversion of milk so that it moves directly from the producer's farm to the manufacturing plant is the most efficient method of handling, and should be provided for so as to allow the dairy farmer to retain producer status during temporary periods when his milk is not needed in handlers' plants. There should be some general requirement in the order, however, that producers whose milk is diverted have a substantial association with the market, so that the marketwide pool would not at any time become burdened with surplus supplies of milk accumulated by handlers and accounted for continuously under a diversion provision. Although no specific recommendation was made on the record, it is reasonable that producer milk should not be diverted for a greater period during the months of August through February than the period during which the milk is received at pool plants. These are months when producer receipts are just adequate for Class I fluid milk requirements plus the necessary reserve; therefore, diversions of milk should be limited to few occasions. Producers would lose status for the month once diversions exceeded 15 days during any one of the above months. It is so provided in the attached order language.

It is further provided in the definition of "producer" to include dairy farmers whose milk is received from the cooperative association in its capacity as a handler at pool plants. This is in accord with the requirements on handlers as recommended herein.

The definition of "producer milk" should provide that all milk which moves directly from the producer's farm to a handler's pool plant, including that bulk tank milk for which a cooperative association is a handler, shall be producer milk. In the case of bulk tank milk for which a cooperative association is a handler, the milk shall be considered to have been received as producer milk by such cooperative association at the location of the pool plant to which it is delivered.

The term "handler" should include the operator of a pool plant, and the operator of a nonpool plant from which milk is disposed of on routes in the marketing area. With respect to producer milk diverted from a pool plant, if it is diverted by the plant operator, he would be the handler who must account for such milk. If the milk is diverted by a cooperative association, then the association should be the handler to account for such milk.

A cooperative association requested that it be allowed to be the handler with respect to milk picked up at farms in tank trucks which it subsequently delivers to handlers' plants if such collection of milk from the farms is performed under the control of the cooperative association. The principal cooperative association in these markets is already performing such collection function as explained in detail in the previous findings. The measurement of the amount of milk collected at each farm, the taking of samples for butterfat tests, and decisions as to the destination of such milk are under the close supervision of the cooperative association. So that the order may be effective in identifying milk which is producer milk, and establishing responsibility for receipt of milk and its accurate measurement and testing, it is desirable in this market that the cooperative association be the responsible handler for bulk tank milk. This will facilitate record keeping and accounting for deliveries of milk from producers whose milk goes to different handlers on different days during the month, and in cases where a tank truckload is split between two or more pool plants. Under this arrangement the cooperative association, as a handler, will be responsible to the marketwide pool for such milk at class prices.

The payment provisions of the order should require the pool plant operator to pay the cooperative association for milk so delivered at not less than the class prices. These provisions will implement the requirement of the Act that cooperative associations receive for their member milk at least the minimum class prices which all handlers must pay.

The definition of a "producer-handler" should be modified from that now contained in both the Appalachian and Bluefield orders which specifies that a producer-handler is a person who operates a dairy farm and an approved plant from which Class I milk is disposed of in the marketing area, and who receives no milk from other dairy farmers. It is intended that the term "producer-handler" apply to a person dependent primarily upon his own farm

production as a supply for a fluid milk business. Such a person from time to time may obtain supplemental supplies from pool plants. Since it is the nature of the producer-handler's business that he would normally need such supplemental milk for Class I use, the classification provisions of the order should provide for the transfer of Class I milk from pool plants to producer-handlers. A producer-handler might also look to unregulated sources for supplemental milk for his fluid milk requirements. To allow producer-handlers to obtain unpriced milk for fluid milk requirements, would be inequitable to pool handlers who must account for milk at class prices. The term "producer-handler" therefore should not include operators who receive other source milk for utilization as Class I milk.

(c) *Classification and allocation of milk.* The definitions of Class I and Class II milk under the Appalachian and Bluefield orders are identical and may be adopted in the consolidated order with only slight modification.

Handlers proposed that fluid milk products used as animal feed should be classified as Class II milk. The orders now provide that the skim milk portion of any product disposed of for livestock feed may be so classified. In support of their proposal, handlers testified that such packaged products as homogenized milk and chocolate milk, when returned from stores, are ordinarily disposed of for animal feed. Handlers have found it impossible to separate and salvage the butterfat from such route returns.

Both the skim milk and butterfat portions of homogenized milk and milk drinks (plain and flavored) disposed of for animal feed should be classified as Class II milk. Such classification should be based upon specific records showing the amounts of skim milk and butterfat so disposed of, which are made available to the market administrator for verification of such disposition.

The provision for allowance of shrinkage in Class II now in the Bluefield order should be adopted in the same form in the consolidated order. This provision differs slightly from that in the Appalachian order in that proration of shrinkage to Class I and Class II is not affected by use of diverted milk in nonpool plants. Also, milk received from a cooperative association in its capacity as a handler is included with direct receipt of producer milk at the pool plant for the purposes of computing shrinkage.

The classification provisions now in the orders with respect to transfers of milk from pool plants to other pool plants or nonpool plants may be adopted largely in the same form in the consolidated order. The mileage limitation of 200 miles, which was originally adopted in the Bluefield order as the distance within which transfers to unregulated plants would be classified on the basis of actual use, should apply under the consolidated order. The greater distance of 300 miles adopted in the amendment to the Bluefield order April 1, 1959, is no longer applicable to the present market situation. The points of reference from which distance is measured should be the City Halls of Bluefield, West Virginia, and Kingsport, Tennessee.

Provision should be made for the classification in Class I of Class I milk products transferred from a pool handler to a producer-handler.

In the case of concentrated milk products which result from the removal of any of the water contained in the original milk or skim milk from which the product has been prepared, the handler should account for the receipt and utilization of such product on the basis of the quantity of skim milk contained in the original milk used to produce such product. The pounds of skim milk to be accounted for as received and utilized in the case of such concentrated products should, therefore, be the weight of the nonfat milk solids contained in the product plus all of the water originally associated with such solids.

A more refined allocation procedure should be adopted than presently provided for in the two orders. The new procedure would maintain the general principles that producer milk receipts should be given priority in assignment to Class I use. Accordingly, other types of milk receipts should be subtracted first from the gross Class II utilization of the pool plant, or from the class agreed upon under the applicable rules in the case of transfers between pool plants. In the subtraction of other source milk, distinction should be made between processed forms of milk products specified in the definition of Class II milk as compared with fluid forms specified in the definition of Class I milk. This distinction is needed to recognize that the former type of milk product may originate within the plant and enters into the accounting only because it is reprocessed or converted to another product during the month. It follows that if such products are used in Class I disposition, there would be no basis for application of the Class I location allowance thereon. A further distinction should be made between other source milk which originates at plants regulated under another Federal order and other source milk which originates at plants not regulated by any Federal order. This should be done so as to give limited priority in Class I assignment to milk which has been priced under another order. Such a priority is now acknowledged between the Appalachian and Bluefield orders.

Handlers requested that producer milk should not have complete priority for Class I assignment if a pool plant received milk from a plant regulated under another Federal order. It was requested that an amount of Class II utilization equal to 5 percent of the receipts of producer milk at the plant be set aside prior to the assignment of other Federal order milk. This provision is adopted in the accompanying order language so as to allow handlers sufficient flexibility in obtaining needed supplies for their fluid business during periods when the market supply of producer milk is relatively close to the volume of Class I sales. This special assignment provision should apply only when the total receipts of producer milk for the month are less than 110 percent of the net volume of Class I disposition of pool plants. The term "net" is used to indicate that in the case of milk transferred between handlers the same milk would not be accounted for twice in arriving at the amount of Class I disposition of pool plants. Whenever this special allocation provision applies, the amount of Class II utilization which had been set aside would be re-entered in the total amount of utilization being accounted for after the subtraction of other Federal order milk. Provision should be made in the allocation procedure to assure clearance of inventories each month. This may be accomplished by providing that opening inventory shall be allocated to Class II only to the extent that remaining Class II utilization exceeds closing inventory. This procedure will simplify the determination of the appropriate amount of any reclassification payment due on opening inventory assigned to Class I in the current month and assure that no such payment is assessed on other Federal order milk in inventory which was originally classified and priced in Class I in the originating market. Inventories of Class I milk products on hand at a plant which is first pooled during the month should be allocated as other source milk received at the plant during the month.

(d) *Class prices—Class I price.* The Class I price should be the basic formula price plus differentials of $2.10 for the months of August through February, and $1.66 for the months of March through July.

The basic formula prices under the two orders are similar and are continued under the consolidated order in essentially the same form. The basic formula price is the highest of (1) the average price paid by certain Midwest condensaries adjusted to a four percent butterfat test, (2) a price resulting from a formula based on market prices for butter and nonfat dry milk, and (3) the Class II price. The only difference in the basic formula price under the two orders is that in the computation of the Class II price a different list of manufacturing plant pay prices is used. The list to be used under the consolidated order is discussed under the findings on the Class II price. It is not expected that any of the changes in the list of plants would have any immediate effect on the level of Class I price. Since January 1958 the average pay price of all such plants has been considerably lower than the other alternatives for computing the basic formula price. The list of Midwest condensery plants used should omit the plant at Mount Pleasant, Michigan, which has ceased operations.

The proposed revision in the butter-nonfat dry milk basic price formula presented by producers should not be adopted. This revision would have increased the average monthly Class I price approximately 9 cents in 1958 and 8 cents in 1959. Since the purpose of the basic formula price is to arrive at a proper Class I price, the propriety of any such increase in the basic formula

price depends entirely on the level at which the Class I price should be established. The level of Class I prices is discussed below.

Since the Appalachian order was made effective October 1, 1954, the Class I price differentials have been $2.10 for the months of August through February and $1.70 for all other months. The Class I price differentials under the Bluefield order, which were made effective October 1, 1956, have been the same as those under the Appalachian order except that in the months of April, May and June, they have been 25 cents less. This has resulted in an annual average of Class I differentials under the Bluefield order of $1.871 as compared with $1.933 under the Appalachian order.

The schedule of Class I differential adopted herein would result in an annual average differential of $1.917 per hundredweight. It is expected that this would return approximately the same total money to producers under the consolidated order as is now received under the two orders. Since the largest producer association, which represents about 85 percent of the producers delivering to plants in the two markets, has established the practice of payment to producer members at a blended average price based on payments made by handlers in the two areas, the prices adopted herein should result in little change, if any, in the blended returns to producers.

Consolidated statistics of the two markets show a reasonable relationship of producer milk supplies to Class I milk for the years 1957, 1958, and 1959. Substantial quantities of producer milk have been available for shipment during the past two years to other southern markets, primarily for fluid use. In addition, it has been necessary on other occasions to divert producer milk to local manufacturing plants. In view of current supplies, which may be characterized as ample but not burdensome to the market, the proposal of the cooperative association to use the present higher Appalachian Class I price differential for the consolidated Appalachian order, should not be adopted.

A handler proposal which would have established two pricing districts, one for the present Appalachian marketing area and another for Bluefield under the consolidated order was abandoned by proponents at the hearing. Nevertheless, such a pricing arrangement should be reviewed because of the lower Class I price during April, May and June which has applied under the Bluefield order as compared to the Appalachian Class I price for the same months.

The separate price district for the Bluefield area is not established under the consolidated order largely because the location of supply areas and the movement of milk within the consolidated marketing area are more in agreement with the plan for a single price level for the entire area. A large part of the supply for the Bluefield handlers comes from producers with farms located on the side of the Bluefield area nearest to the present Appalachian marketing area. Milk of many of these farmers is shifted between the markets from time to time. Also, there are regular movements of milk from the plant of one Appalachian handler to his plant in the Bluefield area. The common conditions of supply for the present Bluefield and Appalachian marketing areas support a common price under the consolidated order.

Class II price. The list of manufacturing plants specified in the Bluefield order plus the Franklin Milk Company, Jonesboro, Tennessee, should be used for the purposes of establishing the Class II price during the months of March through August and as an alternative to the butter-powder formula price in the months of September through February under the consolidated order. These Class II formula prices are also used as an alternative basic formula price.

The Class II price under each of the Appalachian and Bluefield orders is an average of selected manufacturing plant prices during March through August and the higher of this price or a butter-powder formula price during September through February. The butter-powder formula price is identical in both orders, and no change is herein recommended for the consolidated order. The list of manufacturing plants for the Class II pricing formula under the Bluefield order contains nine plants, two of which are Kraft Foods Company plants located at Independence, Virginia and Greeneville, Tennessee. The list of nine manufacturing plants in the Class II pricing formula under the Appalachian order contains seven of the same plants as under the Bluefield order, and two Pet Milk Company plants at Mayfield and Bowling Green, Kentucky instead of the two Kraft Food Company plants.

Proponents of the consolidated Appalachian order proposed the addition of the prices reported by the Franklin Milk Company plant located at Jonesboro, Tennessee, to the prices reported by the nine manufacturing plants under the Bluefield order. This series was proposed as a more representative value of manufacturing milk in this area. Handlers supported the use of the ten listed manufacturing plants.

During 1959, the proposed annual average Class II price would have exceeded the Appalachian order Class II price by approximately 2 cents and the Bluefield order Class II price by 1 cent. During the period November 1958 to February 1960, manufacturing plant prices were the effective Class II price in 12 months. The butter-powder formula portion of the Class II price exceeded the manufacturing plant prices in September, October, November and December 1959.

Premiums are paid in excess of reported pay prices of manufacturing plants for ungraded milk. The cooperative association has received prices in excess of these prices for surplus milk. The plant at Jonesboro, Tennessee added to the list of manufacturing plants under the order is within the marketing area and serves as an outlet for surplus milk. In view of these considerations, it is concluded that the ten plants being more representative of the price level for manufacturing milk in the consolidated area should be used for Class II pricing purposes.

Location differentials. The City Hall, Harlan, Kentucky, should be included along with the City Limits, Kingsport, Tennessee (under the present Appalachian order); City Halls of Bluefield and Welch, West Virginia, and the County Courthouse, Princeton, West Virginia (under the Bluefield order) as points for determining producer and handler location differentials.

This system of multiple basing points should provide equitable pricing of milk throughout this marketing area consisting of a number of widely scattered communities. The addition of the City Hall, Harlan, Kentucky to those presently under the two orders provides points throughout the consolidated marketing area. The present rate of differentials, which are the same under both orders, should be continued for the consolidated order.

(e) *Payments on other source milk.* The consolidated order should provide for payments on other source milk allocated to Class I milk in pool plant(s), and on Class I milk distributed on routes in the marketing area through a nonpool plant, which is in excess of such plant's receipts of milk from Federal order plants, classified and priced as Class I milk.

Compensatory payment provisions are necessary in orders with marketwide pooling to protect the integrity of regulation and to deter the displacement of regular producer milk by unpriced milk. Regulation of all milk disposed of in the marketing area or the drawing of marketing area boundaries to include the total distribution areas of all handlers doing business in a particular marketing area, is neither practical nor possible.

Full regulation applies only to milk received at pool plants under this order. Special provision is made for plants which distribute minor volumes of milk in this marketing area. Nonpool fluid milk plants distributing fluid milk products on routes in the marketing area in amounts which do not exceed 10 percent of their total fluid milk sales are not required to equalize. These plants, with only a small proportion of their route distribution in the regulated market, should be considered as primarily associated with outside markets. Such plants could be at a serious disadvantage in competition with other nonpool plants in their normal market if they were required to pay order prices for all of their fluid milk. On the other hand, the requirement that Class I milk sales in the marketing area by nonregulated handlers be accounted for at the Class I price by payments to the pool as herein recommended will negate any pricing advantage on such milk.

This provision offers protection from the use of seasonal surplus milk at less than class prices. If handlers were permitted to use surplus milk at a cost less than that provided under the order, such milk would tend to displace producer milk. If other markets could dispose of their seasonal surplus in this market for Class I use, without an equalization payment, regular producer milk would be displaced in Class I use. The supply of milk for this market would be jeopardized, unstable market prices would prevail, and adequate production of milk for the market would be in doubt. These marketing conditions would be contrary to the purposes of the Agricultural Marketing Agreement Act. Therefore, an essential provision of this order is one that neutralizes the advantage created for unpriced other source milk, in order to insure the effectiveness of the classified pricing program and to promote orderly marketing of milk.

The Class II price under the recommended order represents the prevailing price for milk for manufacturing purposes. Similarly, the Class II price reflects the value of surplus milk in adjacent fluid milk markets which is disposed of through manufacturing plants. Thus, payment which reflects the difference between Class I and Class II prices will assure producers and fully regulated handlers that Class I milk disposed of in the marketing area will be priced the same to all handlers as required by the Act.

A proposal was made at the hearing that handlers operating pool plants make payments into the producer-settlement fund on any amount of other source milk which, under the allocation procedure, was allocated to Class I disposition.

Payments would not apply to other source milk which originated under another order where such milk had been classified and priced as Class I milk. The standards used by the Secretary to establish Class I prices under other orders are those used to determine Class I prices under this order. Alignment of Class I prices under the orders can be achieved through adjustment of the prices as recommended herein rather than by assignment of equalization payments on such milk.

Payments are to be made on other source milk received at a pool plant in the form of Class II milk products and allocated to Class I milk at the difference between the applicable Class I price and Class II price for the location of the pool plant. Payments should be made on other source milk received at a pool plant in the form of products specified as Class I milk and allocated to Class I milk, at the difference between the Class I and Class II price, subject to the location differential applicable at the nearest nonpool plant from which such other source milk is received. Further, payments should be made by handlers operating nonpool plants which distribute Class I milk in the marketing area at the difference between the Class I price and Class II price at the location of the nonpool plant.

(f) *Producer-settlement fund.* Provision for the establishment of the producer-settlement fund is necessary under the marketwide pooling arrangement adopted in the consolidated order. The producer-settlement fund, administered by the market administrator, is the repository for payments from handlers of the difference that the value of their milk according to utilization is greater than the amount required to be paid to producers or cooperative associations at the uniform price, payments on unpriced milk made by operators of nonpool plants, and adjustments of errors in previous payments. Payments are made to handlers from the producer-settlement fund, for distribution to producers through the uniform price, when the handlers' total value of milk according to utilization is less than the amount required to be paid to producers or cooperative associations, and for adjustments due to errors in payments.

Money should be retained in the producer-settlement fund to maintain a reserve to compensate for late payments, moneys due a handler on the basis of audit, and the fraction remaining from the computation of the uniform price to the nearest full cent. The maintenance of a reserve will facilitate the orderly operation of the pool. This reserve should be accumulated by deducting between 4 and 5 cents from the uniform price, after adding an amount equal to one-half of the unobligated balance to the pool from which the uniform price is computed.

Payments by handlers operating pool or nonpool plants should be made to the producer-settlement fund on or before the 12th day after the end of each month. Payments out of the producer-settlement fund to handlers operating pool plants should be made before the 13th day after the end of the month.

(g) *Base and excess plan.* The base and excess provisions presently in the two orders are the same as herein adopted with one exception. Base rules should be revised to provide for the establishment of bases for producers who deliver milk to a plant which first becomes regulated either during or after the base-forming months (September through February). Establishment of bases under this provision would depend on the operator of the new plant furnishing to the market administrator the necessary records for each producer.

Producers' representatives proposed that provision be made for bases for producers delivering to a plant operated by a cooperative association which obtained pooling status after the start of the base-forming period.

The purpose of a base-excess plan is to encourage more even production throughout the year in line with the seasonal requirements of Class I milk. This purpose will nevertheless be implemented by providing opportunity for the operator of a newly regulated plant to establish the seasonality of receipts and hence bases for each of his producers. However, the operator should be required to furnish the market administrator the necessary records to verify his receipts from each producer during the base-forming months. Without such a provision, as was pointed out by representatives of the cooperative association, producers delivering to newly regulated plants would receive excess prices for their milk during the months of April through July. The base rules have been so revised.

(h) *Administrative provisions.* The consolidated order is redrafted to incorporate new or revised language consistent with the order revisions, conforming and clarifying changes, and to facilitate application of various provisions.

The milk on which the expense of administration is charged should be revised to exclude milk under another order on which administrative assessment has been paid under another Federal order. Handlers regulated under the Knoxville Federal order proposed elimination of assessment under both orders for milk distributed in parts of the consolidated marketing area. The functions of the market administrator, for which the administrative assessment provides the necessary funds, are sufficiently performed under one Federal order and the resulting information can be made available to additional Federal orders if there is a need for such information regarding milk distributed in the various Federal order marketing areas. Therefore, milk distributed in this marketing area from another Federal order market and subject to the administrative assessment in the market where the milk is under full regulation is excluded from such assessment under this order.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the re-

spective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDERS

The following order amending the orders regulating the handling of milk in the Appalachian and Bluefield marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

DEFINITIONS

§ 923.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 923.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 923.3 Department.

"Department" means the United States Department of Agriculture.

§ 923.4 Person.

"Person" means any individual, partnership, corporation, association or other business unit.

§ 923.5 Cooperative association.

"Cooperative Association" means any cooperative marketing association of dairy farmers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 923.6 Appalachian marketing area.

"Appalachian marketing area" hereinafter called the marketing area, means all of the territory geographically located within the perimeters of the counties of Greene, Sullivan, and Washington in Tennessee; Tazewell, Washington, and Wise in Virginia; McDowell and Mercer in West Virginia; and Harlan in Kentucky.

§ 923.7 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or sale from a plant or plant store) of any milk or milk products classified as Class I milk pursuant to § 923.41(a) other than a delivery to a plant.

§ 923.8 Plant.

"Plant" means the land, buildings, surroundings, facilities and equipment whether owned and operated by one or more persons constituting a single operating unit or establishment at which milk or milk products are received and processed or packaged: *Provided*, That this definition shall not be deemed to include any separate building, premises or facilities the primary function of which is to hold or store packaged milk or milk products in finished form in transit on routes.

§ 923.9 Pool plant.

"Pool plant" means any plant except the plant of a producer-handler or a plant described in § 923.61:

(a) From which during the month:

(1) Total disposition of Class I milk is equal to not less than 50 percent of its receipts of milk, from dairy farmers (including such receipts from a cooperative association in its capacity as a handler), and

(2) Disposition of Class I milk on routes in the marketing area is equal to not less than 10 percent of its total Class I milk disposition on routes both inside and outside the marketing area;

(b) From which milk or milk products approved or recognized by a duly constituted health authority for distribution within the marketing area are shipped as milk, skim milk or cream, in fluid form, in an amount equal to not less than 50 percent of its receipts of such milk or milk products from dairy farmers and cooperative associations to plant(s) specified in paragraph (a) of this section: *Provided*, That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through March shall be a pool plant for the following months of April through July unless the operator of such plant files with the market administrator prior to the first day of any month of April through July a written request for nonpool status for such month; or

(c) Which is operated by a cooperative association, if the volume of milk transferred from such plant to other pool plants during the month, plus the volume of milk received at other pool plants from dairy farmers who are members of such cooperative association is equal to not less than 70 percent of the total volume of milk received at all plants from dairy farmers who are members of such association and who produce milk in compliance with the requirements of a duly constituted health authority for fluid consumption.

§ 923.10 Handler.

"Handler" means (a) any person in his capacity as the operator of a pool plant; (b) any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of on routes in the marketing area or from which milk, skim milk or cream in fluid form is shipped to a plant which disposes of Class I milk on routes in the marketing area; (c) any cooperative association of producers with respect to producer milk diverted by it from a pool plant to a nonpool plant; and (d) any cooperative association with respect to the milk of its producer members which is delivered directly from the farm to the pool plant of another handler, in a tank truck owned and operated by, under contract to, or under control of such cooperative association, if the cooperative notifies in writing both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. The cooperative association shall be considered the handler for such milk, effective the first day following receipt of such notice, and the milk so delivered shall be considered to have been received by such cooperative association at the location of the pool plant to which it is delivered.

§ 923.11 Producer.

"Producer" means any person except a producer-handler, who produces milk in compliance with the requirements of a duly constituted health authority for distribution within the marketing area, which milk is (a) received at a pool plant, or (b) received by a cooperative association in its capacity as a handler pursuant to § 923.10(d), or (c) diverted from a pool plant to a nonpool plant other than a plant of a producer-handler: (1) Any day during the months of March through July, and (2) on not more than 15 days during any of the months of August through February: *Provided*, That the milk so diverted shall be deemed to have been received at the pool plant from which diverted if diverted for the account of the operator of such plant, or at a pool plant at the same location if diverted for the account of a cooperative association.

§ 923.12 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk (a) received at a pool plant directly from producers or from a cooperative association pursuant to § 923.10(d), or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 923.11(c).

§ 923.13 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of products designated as Class I milk pursuant to § 923.41(a), except (1) such products which are received from pool plants including receipts for which the cooperative association is a handler pursuant to § 923.10(d), or (2) producer milk; and

(b) Products designated as Class II milk pursuant to § 923.41(b)(1) from any source (including those from a pool plant's own production), which are reprocessed or converted to another product in the plant during the month.

§ 923.14 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a plant from which Class I milk is disposed of on routes in the marketing area whose only source of supply for Class I milk is milk of his own production and products designated as Class I milk pursuant to § 923.41(a) from pool plants.

§ 923.15 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

§ 923.16 Base milk.

"Base milk" means milk received at a pool plant from a producer during any of the months of April through July which is not in excess of such producer's base for such month computed pursuant to § 923.81.

§ 923.17 Excess milk.

"Excess milk" means either (a) milk received at a pool plant from a producer during any of the months of April through July, which is in excess of base milk received from such producer during such month, or (b) milk received during such month from a producer for whom no base can be computed pursuant to § 923.80.

MARKET ADMINISTRATOR

§ 923.20 Designation.

The agency for the administration of this part shall be a market administrator, appointed by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 923.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) Administer its terms and provisions;

(b) Receive, investigate, and report to the Secretary complaints of violations;

(c) Make rules and regulations as are necessary to effectuate its terms and provisions; and

(d) Recommend amendments to the Secretary.

§ 923.22 Duties.

The market administrator shall perform all the duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon duty and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer terms and provisions of this part;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay from the funds received pursuant to § 923.98, the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 923.97, that are necessarily incurred by him in the maintenance and functioning of his office, and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his descretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports or payments required by this part;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

(h) Prepare and disseminate to producers, handlers, and the public, information as he deems necessary;

(i) On or before the 12th day after the end of each month, report to each cooperative association which so request in writing, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

(j) Verify all reports and payments of each handler, by audit or such other investigation, as may be necessary, of such handler's records and facilities and of the records and facilities of any person upon whose utilization the classification of skim milk and butterfat depends; and

(k) On or before the date specified herein, publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the following: (1) The 6th day of each month, the Class I milk price, and the Class I butterfat differential, both for the current month; and the Class II milk price, and the Class II butterfat differential; both for the preceding month; and (2) the 10th day of each month, the uniform price, or the uniform prices for base milk and excess milk and the producer butterfat differential, all for the preceding month.

REPORTS, RECORDS, AND FACILITIES

§ 923.30 Reports of receipts and utilization.

(a) On or before the 6th day after the end of each month, each handler shall report to the market administer, for each of his pool plants and for each accounting period elected in such month, in the detail and on forms prescribed by the market administrator, as follows:

(1) The respective quantities of skim milk and butterfat contained in receipts of producer milk;

(2) The quantities of skim milk and butterfat contained in products designated as Class I milk pursuant to § 923.41(a)(1) received from other pool plants and from a cooperative association in its capacity as a handler pursuant to § 923.10(d);

(3) The quantities of skim milk and butterfat contained in other source milk;

(4) The inventories of skim milk and butterfat in products designated as Class I milk pursuant to § 923.41(a) on hand at the beginning and end of the month;

(5) The utilization of all skim milk and butterfat required to be reported by this part, including a separate statement of the disposition of Class I milk outside the marketing area; and

(6) Such other information with respect to his utilization of butterfat and skim milk as the market administrator may prescribe.

(b) On or before the 6th day after the end of each month, each cooperative association, with respect to milk for which it is a handler pursuant to § 923.10(d) or § 923.11(c), shall report to the market administrator for such month, and for each accounting period elected in such month, in the detail and on forms prescribed by the market administrator, as follows:

(1) The quantities of skim milk and butterfat contained in receipts of producer milk; and

(2) The quantities of skim milk and butterfat contained in milk delivered to each pool plant and in the milk diverted to each nonpool plant.

(c) Each handler who submits reports on the basis of an accounting period of less than a month, as described in § 923.35, shall submit a summary report of the same information for the entire month.

§ 923.31 Other reports.

(a) Each producer-handler and each handler operating a nonpool plant shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler operating a pool plant shall report to the market administrator on or before the first day other source milk is received in the form of milk, fluid skim milk or cream at his pool plant, his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product.

§ 923.32 Payroll reports.

On or before the 20th day of each month, each handler shall submit to the market administrator his producer payroll for deliveries of milk for the preceding month for each of his pool plants which shall show: (a) The name and address of each producer, (b) the total pounds and the average butterfat test of milk received from such producer, including, for the months of April through July, the total pounds of base and excess milk, (c) the days on which milk was received from such producer if less than a full month, (d) the rate and net amount of payment to each producer, and (e) the amount and nature of any deductions or charges involved in such payments.

§ 923.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such

accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream, and other milk products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream, and other milk products on hand at the beginning and end of each month; and

(d) Payments to producers, including any deductions authorized by producers, and disbursement of money so deducted.

§ 923.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act, or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 923.35 Accounting periods.

A handler may account for receipts of milk, utilization and classification of milk at any of his pool plants(s) for two periods within a month, either period not to be less than seven days, in the same manner as for a month, if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

CLASSIFICATION

§ 923.40 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to §§ 923.30 and 923.31 shall be classified each month by the market administrator, pursuant to the provisions of §§ 923.41 through 923.46.

§ 923.41 Classes of utilization.

Subject to the condition set forth in §§ 923.42, 923.43 and 923.44, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of milk, skim milk, buttermilk, milk drinks (plain or flavored), cream (except frozen cream) and any mixture in fluid form of skim milk and cream (except sterilized products in hermetically sealed containers, ice cream mix, and eggnog); (2) not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than those designated as Class I milk pursuant to paragraph (a) of this section; (2) contained in homogenized and chocolate milk disposed of for animal feed; (3) contained in (skim milk only) products disposed of for animal feed, other than those in (2) of this paragraph; (4) dumped (skim milk only) during the months of April, May, June or July: *Provided*, That the handler shall give the market administrator such advance notice of intention to dump as the market administrator may require; (5) contained in inventory of products designated as Class I milk pursuant to paragraph (a) of this section on hand at the end of the month; and (6) in shrinkage assigned to Class II pursuant to § 923.42.

§ 923.42 Shrinkage.

The market administrator shall determine the assignment of shrinkage to Class II milk as follows:

(a) Determine the total shrinkage of butterfat and skim milk in the pool plant(s) of the handler;

(b) Multiply the pounds of skim milk and butterfat in producer milk (except milk diverted pursuant to § 923.11(c)), and other source milk by 0.02;

(c) Multiply the pounds of butterfat and skim milk, respectively, determined pursuant to paragraph (a) or (b) of this section, whichever is less, by the percentage of butterfat and skim milk, respectively, classified pursuant to § 923.41(a) (1) and (2), and (b) (1), (2), (3) and (4) (excluding that in milk diverted pursuant to § 923.11(c) and shrinkage determined pursuant to paragraph (a) of this section) which is in Class II milk. The resulting amounts of skim milk and butterfat shall be classified as Class II milk; and

(d) Assign the shrinkage of skim milk and butterfat classified as Class II milk pro rata to producer milk and other source milk.

§ 923.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handlers who first received such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise; and

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 923.44 Transfers.

Skim milk or butterfat shall be classified:

(a) As Class I milk if transferred from a pool plant or by a cooperative association in its capacity as a handler pursuant to § 923.10(d) in the form of products designated as Class I milk in § 923.41(a)(1) to a pool plant of another handler unless utilization as Class II milk is claimed by both handlers in the reports submitted by them to the market administrator pursuant to § 923.30: *Provided*, That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of milk pursuant to § 923.46(a) (1) through (7) and (b), and any additional amounts of such skim milk or butterfat shall be assigned to Class I milk: *And provided further*, That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk if transferred from a pool plant in the form of products as designated in § 923.41(a) to a producer-handler;

(c) As Class I milk if transferred from a pool plant or diverted by a handler from his pool plant in bulk form as milk or skim milk to a nonpool plant unless:

(1) Such nonpool plant is located not more than 200 miles from the City Hall in Bluefield, West Virginia, or from the city limits of Kingsport, Tennessee, such mileage to be the shortest highway distance as determined by the market administrator;

(2) The handler claims classification in Class II in his report;

(3) The buyer maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available if requested by the market administrator for the purpose of verification; and

(4) Not less than an equivalent amount of skim milk and butterfat was actually used as Class II milk in such buyer's plant: *Provided*, That the same Class II utilization of butterfat and skim milk, respectively, shall not be claimed for receipts from other pool plant(s) under this or any other Federal order; and

(d) As Class I milk if transferred from a pool plant in bulk form as cream to a nonpool plant unless:

(1) Such cream is transferred without Grade A certification of any health authority;

(2) The handler claims Class II in his report submitted to the market administrator pursuant to § 923.30 on or before the 6th day after the end of the month within which such transaction occurred;

(3) The buyer maintains books and records showing the utilization of all skim milk and butterfat at his plant which are made available, if requested by the market administrator for the purpose of verification; and

(4) Not less than an equivalent amount of skim milk and butterfat was actually used as Class II milk in such buyer's plant: *Provided*, That the same Class II utilization of butterfat and skim milk, respectively, shall not be claimed for receipts from other pool plant(s) under this or any other Federal order.

§ 923.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors, the reports of receipts and utilization of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handler: *Provided*, That if any of the water contained in the milk from which a product is made has been removed before the product is received, utilized or disposed of by a handler, the pounds of skim milk to be accounted for as received, utilized or disposed of shall be the weight of the nonfat milk solids contained in the product, plus all of the water originally associated with such solids.

§ 923.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 923.45, the market administrator shall determine the classification of producer milk for each handler as follows:

(a) Skim milk shall be allocated in the following manner;

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 923.42(d);

(2) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk in other source milk pursuant to § 923.13(b); *Provided*, That if the receipts of skim milk in such other source milk are greater than the remaining pounds of skim milk in Class II milk, the amount equal to the difference shall be subtracted from the pounds of skim milk in Class I milk;

(3) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk in other source milk pursuant to § 923.13(a) received from nonpool plants, not subject to the classification and pricing provisions of another Federal order: *Provided*, That if the receipts of skim milk in such other source milk are greater than the remaining pounds of skim milk in Class II milk, the amount equal to the difference shall be subtracted from the pounds of skim milk in Class I milk;

(4) Subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less, whenever total producer receipts for the market are less than 110 percent of net Class I utilization for the market;

(5) Subtract from the remaining pounds of skim milk in Class II milk the pounds of skim milk in other source milk subject to the classification and pricing provisions of another Federal order; *Provided*, That if the receipts of skim milk in such other source milk are greater than the remaining pounds of skim milk in Class II milk, the amount equal to the difference shall be subtracted from the pounds of skim milk in Class I milk;

(6) Add to Class II milk the pounds of skim milk subtracted pursuant to subparagraph (4) of this paragraph;

(7) Subtract from the pounds of skim milk remaining in Class II milk, in excess of the pounds of skim milk contained in inventory of products designated as Class I milk pursuant to § 923.41(a)(1) on hand at the end of the month, the pounds of skim milk in inventory of such products on hand at the beginning of the month: *Provided*, That if the pounds of skim milk in such inventory are greater than the remaining pounds of skim milk in Class II milk utilization the difference shall be subtracted from the pounds of skim milk in Class I milk;

(8) Subtract from the remaining pounds of skim milk in each class the skim milk received from the pool plants of other handlers or from a cooperative association in its capacity as a handler pursuant to § 923.10(d) in the form of products designated as Class I milk in § 923.41(a)(1), according to its classification as determined pursuant to § 923.44(a);

(9) Add to the remaining pounds of skim milk in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(10) If the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II milk. Any amount so subtracted shall be known as "overage".

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of the Class I and Class II milk allocated to producer milk.

MINIMUM PRICES

§ 923.50 Basic formula price.

The highest of the prices computed pursuant to paragraph (a) or (b) of this section and § 923.51(b), rounded to the nearest whole cent, shall be the basic formula price.

(a) To the average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department on or before the 5th day after the end of the month:

Present Operator and Location

Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Sparta, Mich.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

add an amount computed by multiplying the Chicago butter price for the month by 0.6.

(b) The price per hundredweight computed as follows: Multiply the Chicago butter price by 4.8 and add to such sum 3¾ cents for each full ½ cent that the average of carlot prices per pound of nonfat dry milk, spray and roller process, for human consumption, f.o.b. Chicago area manufacturing plants, as reported by the Department for the period from the 26th day of the immediately preceding month through the 25th day of the current month, is above 5 cents.

§ 923.51 Class prices.

Subject to the provisions of §§ 923.52 and 923.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The Class I milk price shall be the basic formula price for the preceding month, plus $1.66 during the months of March through July; and $2.10 during all other months.

(b) *Class II milk price.* For the months of March through August, the Class II milk price shall be the price computed pursuant to subparagraph (1) of this paragraph, and for all other months the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph:

(1) The average of the basic (or field) prices reported to have been paid or to be paid per hundredweight for milk of 4.0 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department on or before the 6th day after the end of the month.

Company and Location

Borden Co., Lewisburg, Tenn.
Borden Co., Chester, S.C.
Carnation Co., Galax, Va.
Carnation Co., Murfreesboro, Tenn.
Carnation Co., Statesville, N.C.
Franklin Milk Co., Jonesboro, Tenn.
Kraft Foods Co., Independence, Va.
Kraft Foods Co., Greeneville, Tenn.
Pet Milk Co., Greeneville, Tenn.
Pet Milk Co., Abingdon, Va.

(2) Add the amounts obtained pursuant to subdivisions (i) and (ii) of this subparagraph, and subtract 75 cents therefrom.

(i) Multiply the Chicago butter price by 4.8;

(ii) Multiply by 8.2 the weighted average of carlot prices per pound for spray process nonfat dry milk, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month, by the Department.

§ 923.52 Butterfat differential to handlers.

For milk containing more or less than 4.0 percent butterfat, the class prices for the month calculated pursuant to § 923.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate determined as follows;

(a) *Class I price.* Multiply the Chicago butter price for the previous month by 0.12, and round to the nearest one-tenth cent.

(b) *Class II price.* Multiply the Chicago butter price for the previous month by 0.11, and round to the nearest one-tenth cent.

§ 923.53 Location differentials to handlers.

For that milk which is received from producers at a pool plant located 50 miles or more from the nearest of the following listed places, by shortest hard sur-

faced highway distance as determined by the market administrator and is assigned to Class I milk the price specified in § 923.51(a) shall be reduced at the rate of 10 cents per hundredweight for a distance of not less than 50 miles but less than 60 miles, plus 1.5 cents per hundredweight additional for each 10 miles, or fraction thereof, beyond 60 miles, according to the location of the pool plant where such milk is received from producers;

County Courthouse, Princeton, W. Va.
City Hall, Bluefield, W. Va.
City Hall, Welch, W.Va.
City Limits, Kingsport, Tenn.
City Hall, Harlan, Ky.

Provided, That for the purpose of calculating such location differentials, products so designated as Class I milk which are transferred between pool plants shall first be allotted to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 923.46(a) (1) through (7) and the comparable steps in § 923.46(b) for such plant, and after deductions from such remainder an amount equal to 0.05 times the skim milk and butterfat contained in the producer milk received at the transferee-plant, such assignment to transferor plants to be made in sequence accordance to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 923.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 923.60 Producer-handlers.

Sections 923.42 through 923.46, 923.50 through 923.53, 923.62, 923.70 through 923.73, 923.80 through 923.83, and 923.90 through 923.99 shall not apply to a producer-handler.

§ 923.61 Plants subject to other Federal orders.

A plant specified in paragraph (a) or (b) of this section shall be exempt from regulation under this order except that the operator of such plant shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 923.30), and allow verification of such reports by the market administrator.

(a) Any plant qualified pursuant to § 923.9(a) which would be fully regulated under the provisions of another order issued pursuant to the Act unless the Secretary determines that a greater volume of Class I milk is disposed of from such plant on routes in the Appalachian marketing area than in the marketing area regulated pursuant to such other order.

(b) Any plant qualified pursuant to § 923.9 (b) or (c) which would be fully regulated under the provisions of another order issued pursuant to the Act unless such plant was a pool plant pursuant to § 923.9 (b) or (c) for each month during the preceding August through March period.

§ 923.62 Payments on other source milk.

(a) Each handler operating a pool plant who received other source milk which is allocated to Class I pursuant to § 923.46 (a)(2) and (b), shall make payment on the quantity so allocated at the difference between the Class I price and the Class II price adjusted for butterfat content and location of his pool plant qualified pursuant to § 923.9(a);

(b) Each handler operating a pool plant who received other source milk which is allocated to Class I pursuant to § 923.46 (a)(3) and (b), shall make payment on the quantity so allocated at the difference between the Class I price, and the Class II price applicable at the nearest nonpool plant(s) from which an equivalent amount of such other source milk is received; and

(c) Each handler operating a nonpool plant which is not subject to the classification and pricing provisions of another order issued pursuant to the Act, shall, on or before the 12th day after the end of the month, make payment to the market administrator for deposit into the producer-settlement fund, on the quantity of skim milk and butterfat disposed of as Class I milk pursuant to § 923.41(a) from such nonpool plant on routes in the marketing area during the month, which is in excess of his receipts of skim milk and butterfat, respectively, classified and priced as Class I milk under this or any other Federal order, at the difference between the Class I price and the Class II price applicable at the location of such plant.

DETERMINATION OF UNIFORM PRICE

§ 923.70 Computation of the value of milk for each handler.

The net obligation of each handler for milk received at his pool plant and of any cooperative association with respect to milk for which it is a handler pursuant to § 923.10 (c) or (d) each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price and total the resulting amounts;

(b) Add any plus amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 923.46 (a)(10) and (b) by the applicable class price;

(c) Add the amount of any payment due from such handler pursuant to § 923.62 (a) or (b);

(d) Add any plus amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of producer milk classified in Class II during the preceding month less allowable shrinkage allocated pursuant to § 923.46(a)(1) in such month, or the hundredweight of milk subtracted from Class I milk pursuant to § 923.46 (a)(7) and (b) for the current month, whichever is less;

(e) Add the amount computed by multiplying the difference between the appropriate Class II price for the preceding month and the appropriate Class I price for the current month by the hundredweight of milk allocated to Class I pursuant to § 923.46 (a)(7) and (b) for the current month which is in excess of (1) the hundredweight of milk for which an adjustment was made pursuant to paragraph (d) of this section and (2) the hundredweight of milk assigned to Class II pursuant to § 923.46 (a)(5) and (b) for the previous month and which was classified and priced as Class I under another Federal order.

§ 923.71 Computation of the uniform price.

For each of the months of August through March, the market administrator shall compute the uniform price per hundredweight of producer milk of 4.0 percent butterfat content, f.o.b. basing points, as follows:

(a) Combine into one total the values computed pursuant to § 923.70 for the milk of all handlers who submit reports prescribed in § 923.30 and who are not in default of payments pursuant to § 923.90 or § 923.94;

(b) Add the total of the location differential deductions to be made pursuant to § 923.92;

(c) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 4.0 percent, or add, if such average butterfat content is less than 4.0 percent, an amount computed as follows: Multiply the amount by which the average butterfat content of such milk varies from 4.0 percent by the butterfat differential computed pursuant to § 923.91, and multiply the result by the total hundredweight of such milk;

(d) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section; and

(f) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports and payments or delinquencies in payments by handlers.

§ 923.72 Computation of the uniform prices for base milk and for excess milk.

For each of the months of April through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 4.0 percent butterfat content, f.o.b. basing points, as follows:

(a) Compute the aggregate value of excess milk for all handlers who submit reports pursuant to § 923.30, and who are not in default of payments pursuant to §923.90 or § 923.94 as follows: (1) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the price for Class II milk of 4.0 percent butterfat content, (2) multiply the remaining hundredweight quantity of excess milk by the price for Class I milk of 4.0 percent butterfat content, (3) add together the resulting amounts, and (4) add any amount indicated pursuant to the proviso of paragraph (d) of this section;

(b) Divide the total value of excess milk obtained in paragraph (a) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 4.0 percent butterfat content, f.o.b. basing points;

(c) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) of this section times the hundredweight of excess milk from the total value of producer milk for the month as determined by the procedure set forth in § 923.71 (a) through (d);

(d) Divide the amount calculated pursuant to paragraph (c) of this section by the total hundredweight of base milk included in these computations: *Provided*, That if such resulting value is greater than an amount computed by multiplying the pounds of such base milk by the Class I price, such value in excess thereof shall be added to the value computed pursuant to paragraph (a) of this section to the extent that the excess price shall not exceed the base price as calculated herein. Any additional value remaining shall be prorated to the respective volume of base and excess milk; and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section for the purpose of retaining in the producer-settlement fund a cash balance to provide against errors in reports and payments or delinquencies in payments by handlers. The resulting figure shall be the uniform price for base milk of 4.0 percent butterfat content, f.o.b. basing points.

§ 923.73 Notification of handlers.

On or before the 10th day after the end of each month, the market administrator shall mail to each handler, who submitted the report(s) prescribed in § 923.30, at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the totals thereof;

(b) For the months of April through July the amounts and value of his base and excess milk respectively, and the totals thereof;

(c) The uniform price(s) computed pursuant to §§ 923.71 and 923.72 and the butterfat differential computed pursuant to § 923.91; and

(d) The amounts to be paid by such handler pursuant to §§ 923.62, 923.94, 923.97, and 923.98 and the amount due such handler pursuant to § 923.95.

BASE RATING

§ 923.80 Determination of daily base.

The daily base of each producer shall be calculated by the market administrator as follows: Divide the total pounds of milk received from such producer at all pool plants during the months beginning with September of the previous year through February of the current year by the number of days from the first day milk is received from such producer during said months to the last day of February, inclusive, but not less than 120 days.

§ 923.81 Computation of base.

The base of each producer to be applied during the months of April through July shall be a quantity of milk calculated by the market administrator in the following manner: Multiply the daily base of such producer by the number of days such producer's milk was received by such handler during the month: *Provided*, That if the producer's milk was not received on a daily basis, the daily base shall be multiplied by the number of days during the month for which the milk production of such producer was received by such handler.

§ 923.82 Base rules.

The following rules shall apply in connection with the establishment of bases:

(a) A base shall be assigned to each producer for whose account milk is received at a pool plant during the months beginning with September of the preceding year through February of the current year.

(b) Bases may be transferred by notifying the market administrator in writing before the last day of any month for which such bases is to be transferred to the person named in such notice only as follows:

(1) In the event of the death, retirement, or entry into military service of a producer, the entire base may be transferred to a member of such producer's immediate family who carries on the dairy operations.

(2) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders.

(3) The entire daily base of a producer may be removed from one handler to another handler regulated under this part.

(c) The daily base of any producer whose milk was received at a plant which becomes first qualified as a pool plant after September 1, of the previous year shall be computed under § 923.80 on the basis of such producer's deliveries to such plant during the months beginning with the September preceding the current year through February of the current year, if such records are made available to the market administrator.

§ 923.83 Announcement of established bases.

On or before April 1 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer of the daily base established by such producer.

PAYMENTS

§ 923.90 Time and method of payment for producer milk.

(a) Except as provided in paragraph (b) and (c) of this section, each handler shall make payment to each producer for milk received during the month as follows: On or before the 15th day after the end of the month, an amount equal to not less than the applicable uniform price(s) adjusted by the butterfat and location differentials to producers, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(1) Less marketing service deductions made pursuant to § 923.97, and

(2) Less proper deductions authorized in writing by such producer;

(b) In the case of a cooperative association which has so requested the handler in writing, such handler shall, on or before the second day prior to the date payments are due to individual producers pursuant to paragraph (a) of this section, pay the association for milk received during the month from the producer-members of such association an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided*, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the second day prior to the date payments are due individual producers, each handler shall pay a cooperative association for milk received at his pool plant from such association for which the association is the handler not less than the value of such milk computed at the applicable minimum class prices for the location of the pool plant of the buying handler; and

(d) In making the payments to producers pursuant to paragraph (a) or (b) of this section, each handler shall furnish each producer from whom he had received milk with a supporting statement in such form that it may be retained by the producer, which shall show for each month:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer, including, for the months in which base and excess prices apply, the pounds of base and excess milk;

(3) The minimum rate or rates at which payment to the producer or cooperative association is required pursuant to this part;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount payment to the producer or cooperative association.

§ 923.91 Butterfat differential to producers.

The applicable uniform prices to be paid each producer pursuant to § 923.90 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 4.0 percent, respectively, at the rate determined by multiplying the pounds of butterfat in producer milk allocated to Class I and Class II milk pursuant to § 923.46(b) by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 923.92 Location differential to producers.

In making payment to producers pursuant to § 923.90, the applicable uniform prices to be paid for producer milk received at a pool plant located 50 miles or more from the nearest of the following listed places by the shortest hard surfaced highway distance, as determined by the market administrator, shall be reduced according to the location of the pool plant where such milk was received at the following rate: County Courthouse, Princeton, West Virginia; City Hall, Bluefield, West Virginia; City Hall, Welch, West Virginia; City Limits of Kingsport, Tennessee; City Hall of Harlan, Kentucky:

Distance in miles	Rate per hundredweight (cents)
50 but less than 60	10
For each additional 10 miles (or fraction thereof) an additional	1.5

§ 923.93 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 923.62(c), 923.94, and 923.96 and out of which he shall make all payments pursuant to §§ 923.95 and 923.96: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 923.94 Payments to the producer-settlement fund.

On or before the 12th day after the end of each month, each handler shall pay to the market administrator any amount by which the value of his milk as computed pursuant to § 923.70 for such month, is greater than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials.

§ 923.95 Payments out of the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler any amount by which the value of his producer milk computed pursuant to § 923.70, for such month is less than the amount owed by him for such milk at the appropriate uniform price(s) adjusted by the producer butterfat and location differentials.

§ 923.96 Adjustment of errors in payment.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 923.94, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 923.95, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 923.90, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 923.97 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 923.90, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments, to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 15th day after the end of each month, and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions computed for each producer.

§ 923.98 Expense of administration.

As his pro rata share of the expense of administration of this part each handler shall pay to the market administrator, on or before the 15th day after the end of the month, for such month, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe as follows:

(a) Each handler in his capacity as operator of a pool plant with respect to (1) all receipts of producer milk and receipts of milk from a cooperative association in its capacity as a handler pursuant to § 923.10(d), and (2) receipts of other source milk which are classified as Class I milk and not subject to administrative assessment under another Federal order: *Provided*, That if such handler elects two accounting periods within the month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period.

(b) Each handler operating a nonpool plant with respect to Class I milk disposed of during the month on routes in the marketing area from a nonpool plant except from a plant pursuant to § 923.61.

§ 923.99 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or wilful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler within the applicable period of time, files pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 923.100 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 923.101.

§ 923.101 Suspension or termination.

The Secretary may suspend or terminate this part or any provisions thereof whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 923.102 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations arising under it, the final accrual or ascertainment of which requires further acts by any person, such further acts shall be performed notwithstanding such suspension or termination.

§ 923.103 Liquidation.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected over and above the amount necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 923.110 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 923.111 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C., this 2d day of December 1960.

F. R. BURKE,
Acting Deputy Administrator.

[F.R. Doc. 60-11393; Filed, Dec. 7, 1960; 8:48 a.m.]

Agricultural Research Service

[9 CFR Part 83]

SCREWWORMS

Notice of Proposed Rule Making

Notice is hereby given in accordance with section 4 of the Administrative Procedure Act (5 U.S.C. 1003) that pursuant to sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 4 through 7 of the Act of May 29, 1884, as amended (21 U.S.C. 111–113, 115, 117, 120, 121), it is proposed to amend the regulations relating to screwworms, appearing in Part 83, Title 9, Code of Federal Regulations, in the following respects:

1. New paragraphs (s) and (t) would be added to § 83.1 to read:

§ 83.1 Definitions.

* * * * *

(s) *State inspector.* An inspector regularly employed in livestock sanitary work of a State, and who is authorized by such State to perform the function involved.

(t) *Dogs.* Racing, hunting, and livestock working dogs.

§ 83.5 [Amendment]

2. Sections 83.5(a)(4) and 83.8(a) would be amended by inserting the words "or State" between the words "Federal" and "inspector" wherever they appear therein.

3. A new § 83.15 would be added to read:

§ 83.15 Interstate movements of dogs subject to certain provisions.

The provisions of the regulations in this part shall be applicable to dogs with the exception of the requirements pertaining to treatment with a permitted precautionary spray, and movements to and from public stockyards and specifically approved stockyards.

The purposes of these proposed amendments are (1) to permit certain inspections and other functions under the regulations to be performed by inspectors employed by States or political subdivisions thereof who are not now eligible to perform such functions, and (2) to make certain provisions of Part 83 applicable to racing, hunting, and livestock working dogs because screwworms recently have been found to exist in these classes of dogs, and it has been determined that the communicable disease screwworms myasis has been disseminated interstate by such dogs.

All persons who wish to submit written data, views, or arguments concerning the proposed amendments may do so by filing them with the Director, Animal Disease Eradication Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D.C., within 30 days after the date of the publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C., this 2d day of December 1960.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 60-11394; Filed, Dec. 7, 1960; 8:48 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

O,Q-DIETHYL O-(2-ISOPROPYL-4-METHYL-6-PYRIMIDINYL) PHOSPHOROTHIOATE

Notice of Amendment of Petition for Establishment of Tolerances

Correction

In F.R. Doc. 11203, appearing at page 12374 of the issue for Friday, Dec. 2, 1960, the following corrections are made in the last clause of the first paragraph: The word "methly" should read "methyl", and the word "porimidinyl" should read "pyrimidinyl".

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 591]

AIRWORTHINESS DIRECTIVES

Fairchild F–27 Series Aircraft

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring replacement of Walter Kidde Chemical Drier Housings used on Fairchild F–27 Series aircraft. Service experience has shown that the housings are subject to failure at a time limit lower than that originally established by the manufacturer. Such a failure can result in structural damage to the aircraft nacelle area.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before January 9, 1961, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed

in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), by adding the following airworthiness directive:

FAIRCHILD. Applies to Walter Kidde Company Chemical Drier Housings P/N 890395, used on Fairchild F-27 Series aircraft.

Compliance required as indicated.

It has been determined that Walter Kidde Chemical Drier Housing P/N 890395 is subject to cycling failure at a time limit lower than that originally established by the manufacturer. Accordingly, the following must be accomplished:

Chemical Drier Housings, which have been in service 2,000 hours or two years, must be removed from service and replaced with new housings within 30 days from the effective date of this directive. Thereafter, all housings must be removed from service at each 2,000 hours' time in service or two years whichever occurs first.

NOTE: Removed housings should be destroyed or mutilated so as to preclude the possibility of their being returned to service.

The housing must be visually inspected at each cartridge change during service life. If cracking, distortion or corrosion is evidenced, the housing must be removed for a detailed inspection. Cracks or distortion in either the housing tube or end caps, or corrosion in the threaded areas is cause for immediate replacement of the entire unit. Units having corrosion, in other than the threaded areas, which can be removed without reducing the wall thickness below 0.160 inch, may be repaired and returned to service.

(Fairchild Aircraft and Missiles Division Service Bulletin No. 36-6 covers this same subject.)

Issued in Washington, D.C., on December 2, 1960.

GEORGE C. PRILL,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11367; Filed, Dec. 7, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-130]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Blue Federal airway No. 66 presently extends from Bridgeport, Conn., to Poughkeepsie, N.Y. The Federal Aviation Agency is considering revoking Blue 66 in its entirety. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Bridgeport to Poughkeepsie is adequately served by VOR Federal airway No. 34. In addition, the Federal Aviation Agency IFR peakday airway traffic survey for the period July 1, 1959, through June 30, 1960, shows one aircraft movement on Blue 66. Therefore, it appears that the retention of this airway segment is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Blue 66, its associated control areas and reporting points. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with Blue 66. Any proposal to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11406; Filed, Dec. 7, 1960; 8:49 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-132]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 3 extends from the Philipsburg, Pa., radio range to the Harrisburg, Pa., radio range. The Federal Aviation Agency is considering revoking this airway. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Philipsburg to Harrisburg is adequately served by VOR Federal airway No. 33. In addition, the Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, shows no aircraft movements on this airway. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 3 and its associated control areas. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with Red 3. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4203, relating to designated reporting points on Red 3 would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11407; Filed, Dec. 7, 1960; 8:49 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-117]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 51 extends from Blackstone, Va., to Langley, Va. The Federal Aviation Agency is considering revoking Red 51 in its entirety. The Federal Aviation Agency IFR peakday airway traffic survey for the period July 1, 1959, through June 30, 1960, shows a maximum of three aircraft movements between any two reporting points on this airway. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 51 and its associated control areas. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with Red 51. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action § 601.4251 relating to reporting points on Red 51 would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11408; Filed, Dec. 7, 1960; 8:50 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-113]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 72 extends from the intersection of the southwest course of the Millville, N.J., radio range and the south course of the New Castle, Del., radio range (Hartley, Del., Intersection), to the intersection of the north course of the New Castle radio range and the west course of the Philadelphia, Pa., radio range (Dupont, Del., Intersection); and from the intersection of the east course of the Harrisburg, Pa., radio range and the southwest course of the Willow Grove, Pa., radio range (West Chester, Pa., Intersection), to the Paterson, N.J., radio beacon. The Federal Aviation Agency is considering revoking Red 72 in its entirety. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Hartley to Paterson is adequately served by a combination of VOR Federal airways No. 16, No. 271, and No. 3. In addition, the Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, shows a maximum of one aircraft movement between any two reporting points on Red 72. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 72 and its associated control areas and reporting points. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with Red 72. Any proposal to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11409; Filed, Dec. 7, 1960; 8:50 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-AN-29]

CONTROL AREAS

Revocation of Control Area Extension

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Galena, Alaska, control area extension (§ 601.1146) is designated as the airspace within 5 statute miles either side of the 086° and 278° True radials of the Galena AFB TACAN, extending to points 80 nautical miles east and west of the facility. The TACAN IFR approach procedures at the Galena AFB have been cancelled. Therefore, it appears that there would no longer be a requirement for the control area designated to protect aircraft executing these procedures. Accordingly, the Federal Aviation Agency is considering revoking this control area extension.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 440, Anchorage, Alaska. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11409; Filed, Dec. 7, 1960; 8:50 a.m.]

Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11404; Filed, Dec. 7, 1960; 8:49 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-NY-116]

CONTROL ZONES

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.1983 of the regulations of the Administrator, the substance of which is stated below.

The Blackstone, Va., control zone is designated within a 3-mile radius of the Blackstone AAF. The Federal Aviation Agency is considering revoking this control zone. It is the policy of the Agency to consider discontinuance of a control zone when its requirements for establishment can no longer be maintained. The prescribed instrument approach procedure for the Blackstone Airport has been cancelled, and there is no control tower for the control of VFR traffic. Therefore, it appears that the retention of this control zone is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke the Blackstone control zone.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11405; Filed, Dec. 7, 1960; 8:49 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 1, 1960.

The Department of Agriculture has filed an application, Serial Number Idaho 011898 for the withdrawal of the lands described below, from all forms of appropriation under the general mining laws, except the mineral leasing laws, subject to valid existing rights. The applicant desires the land for campgrounds, recreation areas, and public service sites in the Lolo National Forest.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, P.O. Box 2237, Boise, Idaho.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

BOISE MERIDIAN, IDAHO

Jerry Johnson Bar Campground

T. 36 N., R. 12 E.,
Unsurveyed, but will be when surveyed:
Sec. 12; S½S½SE¼NW¼, N½NE¼SW¼, NW¼NW¼SE¼.
Totaling 40 acres.

Colgate Warm Springs Recreational Area

T. 36 N., R. 12 E.,
Unsurveyed, but will be when surveyed:
Sec. 15; W½SW¼NE¼NE¼, E½SW¼NW¼NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼, E½NW¼SW¼NE¼, W½NW¼SE¼NE¼.
Totaling 40 acres.

Squaw Creek Campground

T. 36 N., R. 13 E.,
Unsurveyed, but will be when surveyed:
Sec. 5; SW¼SW¼NW¼NE¼, W½SW¼NE¼.
Totaling 22.5 acres.

Wendover Bar Campground

T. 37 N., R. 13 E.,
Sec. 35; S½N½NE¼, N½N½SW¼NE¼, N½SE¼NE¼, N½SE¼SE¼NE¼,
Sec. 36; SW¼NW¼NW¼, SW¼NW¼, NW¼SE¼NW¼.
Totaling 135 acres.

Cedar Grove Campground

T. 37 N., R. 14 E.,
Sec. 22; S½NE¼NE¼NE¼, SE¼NE¼NE¼, N½NE¼SE¼NE¼.
Totaling 20 acres.

Powell Campground and Lochsa Public Service Site

T. 37 N., R. 14 E.,
Sec. 32; NE¼NE¼, E½NW¼NE¼.
Totaling 60 acres.

White Sand Campground

T. 37 N., R. 14 E.,
Sec. 34; SW¼NE¼NW¼, NE¼SE¼NW¼, N½NW¼SE¼NW¼, N½SE¼SE¼NW¼.
Totaling 30 acres.

Colt Creek Campground

T. 36 N., R. 15 E.,
Sec. 25; SW¼SW¼NW¼.
Sec. 26; E½SW¼SE¼NE¼, SE¼SE¼NE¼.
Totaling 25 acres.

Old Colt Creek Campground

T. 36 N., R. 15 E.,
Sec. 32; S½NW¼NW¼NW¼, N½SW¼NW¼NW¼.
Totaling 10 acres.

Jerry Johnson Hot Springs Public Service Site

T. 36 N., R. 13 E.,
Unsurveyed, but will be when surveyed:
Sec. 7; E½NE¼SW¼, SW¼NE¼SW¼, E½NW¼SW¼, NE¼SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, SW¼SW¼SE¼.
Sec. 17; SW¼SW¼NW¼, NW¼NW¼SW¼.
Sec. 18; W½SW¼NE¼NE¼, W½NE¼NW¼NE¼, SE¼NE¼NW¼NE¼, E½NW¼NW¼NE¼, NW¼NW¼NW¼NE¼, NE¼SE¼NW¼NE¼, NW¼SE¼NE¼, S½SE¼NE¼, NE¼NE¼SE¼.
Totaling 182.5 acres.

The areas described aggregate 565 acres.

JOE T. FALLINI,
State Supervisor.

[F.R. Doc. 60-11387; Filed, Dec. 7, 1960; 8:47 a.m.]

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

NOVEMBER 3, 1960.

The United States Forest Service of the Department of Agriculture has filed an application, Serial Number Colorado 046749, for the withdrawal of the lands described below from location and entry under the General Mining Laws, subject to existing valid claims.

The applicant desires the land for use as campgrounds, picnic grounds, rest area, recreation area, lookout, and administrative sites located in the Routt, San Juan and Uncompahgre National Forests.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Colorado State Office, 339 New Custom House, P.O. Box 1018, Denver 1, Colorado.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, COLORADO

ROUTT NATIONAL FOREST

Lost Lake Recreation Area

T. 6 N., R. 82 W.,
Sec. 30: Lot 4;
Sec. 31: Lot 1.
T. 6 N., R. 83 W. (Unsurveyed), in approximate Sections 25 and 36.
Beginning at corner No. 1, the west ¼ corner of Section 31, T. 6 N., R. 82 W. From corner No. 1 by metes and bounds,
West, 20 chains, to corner No. 2;
North, 30 chains, to corner No. 3;
West, 20 chains, to corner No. 4;
North, 30 chains, to corner No. 5;
East, 40 chains, to corner No. 6;
South, 60 chains, to corner No. 1, the point of beginning.

The tract as described contains approximately 260 acres.

Lake Percy Recreation Area

T. 6 N., R. 83 W. (Unsurveyed), in approximate Section 24.
Beginning at corner No. 1, the west ¼ corner of Section 19, T. 6 N., R. 82 W. From corner No. 1, by metes and bounds,
West, 40 chains to corner No. 2;
North, 30 chains to corner No. 3;
East, 40 chains to corner No. 4;
South, 30 chains to corner No. 1, the point of beginning.

The tract as described contains approximately 160 acres.

Lake Dinosaur Recreation Area

T. 6 N., R. 83 W. (Unsurveyed) in approximate Section 10.
Beginning at corner No. 1, from which the southwest corner of Section 7, T. 6 N., R. 82 W. bears east, 180 chains. From corner No. 1 by metes and bounds,
West, 40 chains to corner No. 2;
North, 40 chains to corner No. 3;
East, 20 chains to corner No. 4;
North, 16 chains to corner No. 5;
East, 40 chains to corner No. 6;
South, 16 chains to corner No. 7;
West, 20 chains to corner No. 8;
South, 40 chains to corner No. 1, the point of beginning.

The tract as described contains approximately 224 acres.

Lake Martha Recreation Area

T. 7 N., R. 83 W. (Unsurveyed),
Beginning at corner No. 1, from which the southwest corner of Section 30, T. 7 N., R. 82 W. bears east 70 chains. From corner No. 1 by metes and bounds,
West, 80 chains to corner No. 2;
North, 100 chains to corner No. 3;
East, 80 chains to corner No. 4;
South, 100 chains to corner No. 1, the point of beginning. The tract does not include the 40.0 acre Summit Lake Recreation Area withdrawn on January 14, 1957 under Public Land Order 1381 (Colorado 013628).

The tract as described contains approximately 760 acres.

Saw Mill Creek Picnic Area (Addition)

T. 9 N., R. 89 W.,
Sec. 1, S½SW¼SW¼.

Total area 20 acres.

Lester Creek Reservoir Recreation Area

T. 10 N., R. 85 W.,
Sec. 26, Lot 20;
Sec. 35, Lots 1, 2, 3, 4, 5, 7, 8, and 9, N½SE¼, NE¼SW¼, and E½NW¼SW¼.

Total area 423.36 acres.

Hahns Peak Reservoir Recreation Area

T. 10 N., R. 86 W.,
Sec. 13, N½NE¼NW¼;
Sec. 12, S½SW¼, NW¼SW¼, SW¼SW¼NW¼;
Sec. 11, E½NE¼SE¼, NE¼SE¼SE¼, SE¼NE¼.

Total area 220 acres.

SIXTH PRINCIPAL MERIDIAN

UNCOMPAHGRE NATIONAL FOREST

Haypress Campground

T. 14 S., R. 102 W.,
Sec. 10, SW¼NW¼NE¼, NW¼SW¼NE¼, S½NE¼NW¼, N½SE¼NW¼.

Total area 60 acres.

Fruita Administrative Site

T. 14 S., R. 102 W.,
Sec. 2, SE¼NW¼, NE¼SW¼, NW¼SE¼.

Total area 120 acres.

NEW MEXICO PRINCIPAL MERIDIAN

UNCOMPAHGRE NATIONAL FOREST

Amphitheatre Campground

T. 44 N., R. 7 W.,
Sec. 31, Lot 1, Lot 6, Lot 7;
Sec. 32, SW¼NW¼NW¼, SW¼NW¼, NW¼NW¼SW¼ (less small acreage included in M.S. 6078—O.I.C. Lode).

Total area 141.67 acres.

Beaver Lake Campground

T. 46 N., R. 6 W.,
Sec. 8 (Unsurveyed), NE¼SE¼, E½NW¼SE¼.

Total area 60 acres.

Big Blue Campground

T. 46 N., R. 5 W.,
Sec. 24 (Unsurveyed), SE¼SW¼;
Sec. 25 (Unsurveyed), N½NE¼NW¼.

Total area 60 acres.

Big Cimarron Campground

T. 46 N., R. 6 W.,
Sec. 8 (Unsurveyed), E½NE¼NE¼, E½SE¼NE¼;
Sec. 9, W½NW¼NW¼, W½SW¼NW¼.

Total area 80 acres.

Columbine Campground Addition

T. 48 N., R. 14 W.,
Sec. 11, SE¼NE¼SW¼, NW¼SE¼SW¼.

Total area 20 acres.

Crystal Lake Back Area Camp

T. 44 N., R. 4 W.,
Sec. 19 (Unsurveyed), S½SW¼NE¼, SW¼SE¼NE¼, SE¼SE¼NW¼, E½NE¼, SW¼, NE¼SE¼SW¼, W½NE¼SE¼, NW¼SE¼, N½SW¼SE¼, NW¼SE¼SE¼.

Total area 160 acres.

Divide Fork Campground

T. 51 N., R. 16 W.,
Sec. 18, S½SW¼NE¼, S½SE¼NE¼, NE¼NE¼SE¼, W½NE¼SE¼, E½NW¼SE¼, NW¼NW¼SE¼.

Total area 100 acres.

Iron Springs Campground Addition

T. 47 N., R. 12 W.,
Sec. 23, SW¼NE¼NW¼.

Total area 10 acres.

Ophir Trailer Park

T. 42 N., R. 9 W.,
Sec. 33, W½SW¼NE¼, SE¼SW¼NE¼, SW¼SE¼NE¼, E½SE¼NW¼, NE¼NE¼SW¼, NW¼NE¼SE¼, N½NW¼SE¼ (Less small acreage included in M.S. 5735—Broadway Lode, M.S. 14048—Loopton Lode, and M.S. 16149—Broncho Lou Placer.

Total area approximately 100 acres.

Trout Lake Campground

T. 41 N., R. 9 W.,
Sec. 16 (Unsurveyed), SW¼NW¼NW¼, SW¼NW¼, W½NE¼SW¼, SE¼NE¼SW¼, NW¼SW¼, N½SW¼SW¼, N½SE¼SW¼, SW¼NW¼SE¼, NW¼SW¼SE¼ (Less small acreage included in M.S. 16066—Illium Placer).
Sec. 17 (Unsurveyed), E½NE¼SE¼.

Total area approximately 200 acres.

Alpine Administrative Site

T. 46 N., R. 5 W.,
Sec. 13, S½SE¼SW¼;
Sec. 24, W½NW¼NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼, W½SW¼NE¼, NE¼NW¼, SE¼NW¼.

Total area 160 acres.

Columbine Administrative Site

T. 48 N., R. 14 W.,
Sec. 11, NW¼NE¼SW¼, NW¼SW¼, N½SW¼SW¼.

Total area 70 acres.

Lone Cone Administrative Site

T. 42 N., R. 12 W.,
Sec. 23, NW¼NE¼, NE¼NW¼.

Total area 80 acres.

Matterhorn Administrative Site

T. 41 N., R. 9 W.,
Sec. 5, N½SW¼NE¼, SE¼SW¼NE¼ (less approximately 10 acres included in M.S. 7301—Lake Placer and M.S. 1176A—San Juan Lode).

Total area approximately 20 acres.

Sanborn Park Administrative Site

T. 45 N., R. 12 W.,
Sec. 4, Lot 2.
T. 46 N., R. 12 W.,
Sec. 33, S½SW¼SE¼.

Total area 59.87 acres.

Silesca Administrative Site

T. 47 N., R. 11 W.,
Sec. 18, Lot 1, Lot 2, S½NE¼NW¼, N½SE¼NW¼.

Total area 119.76 acres.

NEW MEXICO PRINCIPAL MERIDIAN

SAN JUAN NATIONAL FOREST

Sultan Mountain Winter Sports Area

T. 41 N., R. 8 W. (Unsurveyed),
Sec. 13, S½S½;
Sec. 24, All.

Total area 800 acres.

The above described areas in Routt, Uncompahgre and San Juan National Forests aggregate approximately 4,488.66 acres.

J. ELLIOTT HALL,
Lands and Minerals Officer.

[F.R. Doc. 60–11388; Filed, Dec. 7, 1960; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 420]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 5, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 63379. By order of November 30, 1960, the Transfer Board approved the transfer to Alto Distributors, Incorporated, Malden, Missouri, of the "grandfather" operating rights claimed to have been performed by F. D. Trover, Malden, Missouri, under section 7 of the Transportation Act of 1958 (72 Stat. 574), for which a certificate is sought in Docket No. MC 118234 for the transportation of bananas from New Orleans, La., and the territory including ports on the Gulf of Mexico within continental United States, to points in Missouri, Illinois, Michigan, Nebraska, and Kansas. John Paul Jones, 189 Jefferson Avenue, Memphis 3, Tenn., for applicants.

No. MC–FC 63380. By order of November 30, 1960, the Transfer Board approved the transfer to Alto Distributors, Incorporated, Malden, Missouri, of the "grandfather" operating rights claimed to have been performed by Herbert M. Arrington, Malden, Missouri, under section 7 of the Transportation Act of 1958 (72 Stat. 574), for which a certificate is sought in Docket No. MC 118050 for transportation of bananas between points in Louisiana, Mississippi, Michigan, Arkansas, Missouri, Iowa, Illinois, Tennessee, Kentucky, Kansas, and Nebraska. John Paul Jones, 189 Jefferson Avenue, Memphis 3, Tenn., for applicants.

No. MC–FC 63381. By order of November 30, 1960, the Transfer Board approved the transfer to Alto Distributors, Incorporated, Malden, Missouri, of the operating rights authorized to Buford N. Owens, Malden, Mo., in Certificate No. MC 116210, issued November 9, 1960, authorizing the transportation, over irregular routes, of bananas from New Orleans, La., to points in Minnesota and Iowa. John Paul Jones, 189 Jefferson Avenue, Memphis 3, Tenn., for applicants.

No. MC–FC 63382. By order of November 30, 1960, the Transfer Board approved the transfer to Alto Distributors, Incorporated, Malden, Mo., of the "grandfather" operating rights claimed to have been performed by Alva R. Laws, Dba A. R. Laws, Malden, Mo., under Section 7 of the Transportation Act of 1958, (72 Stat. 574), for which a certificate is sought in Docket No. MC 118148 for the transportation of bananas from New Orleans, La., and other ports on the Gulf of Mexico between Tampa, Fla., and Brownsville, Tex., to points in Iowa, Illinois, Michigan, Indiana, Minnesota, Kansas, Nebraska, Missouri, Texas, and Kentucky. John Paul Jones, 189 Jefferson Avenue, Memphis 3, Tenn., for applicants.

No. MC–FC 63629. By order of November 30, 1960, the Transfer Board approved the transfer to John J. Hudson, doing business as John J. Hudson Co., 1, Service Road, Providence 5, R.I., of a portion of Certificate in No. MC 106544, issued June 17, 1947, to W. J. Halloran Trucking Co., a corporation, 303 Chapman St., Providence, R.I., authorizing the transportation of: Liquid bituminous materials used in road building, in bulk, from East Providence, R.I., to points in Rhode Island and Massachusetts, and those in Connecticut on and east of Connecticut Highway 8. From points in Franklin and Worcester Counties, Mass., to points in Massachusetts and New Hampshire. Between points in Connecticut, and between points in New Hampshire.

No. MC–FC 63634. By order of November 30, 1960, the Transfer Board approved the transfer to Advance Express Inc., 1006 S. Barclay St., Milwaukee 4, Wis., of Certificates in Nos. MC 1550, MC 1550 Sub 2, MC 1550 Sub 4, MC 1550 Sub 6, MC 1550 Sub 7, MC 1550 Sub 8, MC 1550 Sub 9, and MC 1550 Sub 11, issued December 16, 1940, August 15, 1942, July 24, 1942, December 9, 1946, February 20, 1947, May 24, 1949, January 9, 1951, and July 21, 1955, respectively, to Charles Hildenbrand and Elias Hildenbrand, a partnership, doing business as Advance Express Co., 1006 S. Barclay St., Milwaukee 4, Wis., authorizing the transportation of: General commodities, with the usual exceptions including household goods and commodities in bulk, from, to, or between specified points in Illinois, Indiana, Minnesota and Wisconsin.

No. MC–FC 63650. By order of November 30, 1960, the Transfer Board approved the transfer to Jordan Banana Distributing Co., A Corporation, McKeesport, Pa., of Certificate in No. MC 118380, issued August 30, 1960, to Anthony C. Jordan, doing business as Jordan's Bananas, McKeesport, Pa., authorizing the transportation of: Bananas, from New York, N.Y., to Somerset and Pittsburgh, Pa. John A. Vuono, 1515 Park Building, Pittsburgh 22, Pa., for applicants.

No. MC–FC 63656. By order of November 30, 1960, the Transfer Board approved the transfer to T. F. Clingman, Roger Thurmond, Humberto Garza, and Mary Lou Carothers Foster, a partnership, doing business as International Transportation Company, 114 East Greenwood Street, Del Rio, Texas, of Certificate in No. MC 104452, issued January 24, 1949, to Humberto Garza, Roger Thurmond, T. F. Clingman, and Radney Foster, a partnership, doing business as International Transportation Company, 114 East Greenwood Street, Del Rio, Texas, authorizing the transportation of: Passengers and their baggage, between Del Rio, Tex., and the boundary line of the United States and Mexico.

No. MC–FC 63665. By order of November 30, 1960, the Transfer Board approved the transfer to Behrens Trucking Corp., Malverne, N.Y., of Permit in No. MC 87720 Sub 2, issued July 7, 1958, to Maurice F. Behrens, Malverne, Long Island, N.Y., authorizing the transportation of: Burlap bagging and burlap cloth, from New York, N.Y., and Hoboken, Jersey City, and Port Newark, N.J., to Flemington, N.J., and, Burlap and cotton bags, and finished burlap cloth, from Flemington, N.J., to New York, N.Y. Maurice F. Behrens, 665 East Jericho Turnpike, Huntington Station, N.Y., for applicants.

No. MC–FC 63670. By order of November 30, 1960, the Transfer Board approved the transfer to J. H. Morgan, doing business as Mt. Pleasant Transfer Co., Blue Grass Avenue, Mt. Pleasant, Tenn., of Certificate in No. MC 71772, issued May 23, 1955, to J. A. Morgan and J. H. Morgan, a partnership, doing business as Mt. Pleasant Transfer Company, Blue Grass Avenue, Mt. Pleasant, Tenn., authorizing the transportation of: General commodities, with the usual exceptions including household goods and commodities in bulk, between Nashville, Tenn., and Mt. Pleasant, Tenn.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60–11396; Filed, Dec. 7, 1960; 8:48 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

NOVEMBER 29, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36742: *Iron and steel articles—East St. Louis, Ill., to Jackson, Miss.* Filed by O. W. South, Jr., Agent (No. A4043), for the Illinois Central Railroad Company. Rates on iron and steel plate or sheet, NOIBN, galvanized, painted or plain corrugated, or not corrugated, loose or in packages, and strip steel, NOIBN, in carloads, from East St. Louis, Ill., to Jackson, Miss.

Grounds for relief: Barge-rail competition.

Tariff: Supplement 119 to Southern Freight Association tariff I.C.C. 1592.

FSA No. 36743: *Soda ash—Baton Rouge, La., to Calhoun, Tenn.* Filed by O. W. South, Jr., Agent (No. A4044), for interested rail carriers. Rates on soda ash, in bulk or in bags, barrels, boxes or pails, in carloads, from Baton Rouge, La., to Calhoun, Tenn.

Grounds for relief: Market competition.

Tariff: Supplement 25 to Southern Freight Association tariff I.C.C. S–89.

FSA No. 36744: *Motor vehicles—St. Louis, Mo., to Texas Points.* Filed by St. Louis-San Francisco Railway Company (No. 232), for interested carriers. Rates on motor vehicles, freight or passenger, in truckloads, as described in the application, from St. Louis, Mo., to points in Texas.

Grounds for relief: Rail-motor competition.

Tariff: St. Louis-San Francisco Railway tariff I.C.C. A–850.

FSA No. 36745: *Crushed stone—Huntington, Mo., to Illinois points.* Filed by Wabash Railroad Company (No. 36). Rates on crushed stone, road surfacing, carloads, from Huntington, Mo., to Bluff, Chapin, Griggsville, Jacksonville, Naples and Valley City, Ill.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 49 to Wabash Railroad Company tariff I.C.C. 7764.

FSA No. 36746: *Crushed stone—Missouri points to Illinois points.* Filed by Wabash Railroad Company (No. 37). Rates on crushed stone, road surfacing, in carloads, from Hannibal and Huntington, Mo., to Arnold and Orleans, Ill.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 49 to Wabash Railroad Company tariff I.C.C. 7764.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60–11446; Filed, Dec. 7, 1960; 8:52 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70–3919]

EASTERN UTILITIES ASSOCIATES ET AL.

Notice of Proposed Issuance and Sale of Short-Term Notes to Banks

DECEMBER 1, 1960.

In the matter of Eastern Utilities Associates, Blackstone Valley Gas and Electric Company, Montaup Electric Company, File No. 70–3919.

Notice is hereby given that Eastern Utilities Associates ("EUA"), a registered holding company, and its public-utility subsidiary companies, Blackstone Valley Gas and Electric Company ("Blackstone") and Montaup Electric Company ("Montaup"), have filed a joint declaration, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 7 and 12(d) of the Act and Rules 42(b)(2), 44, and 50(a)(2) promulgated thereunder as ap-

plicable to the proposed transactions, which are summarized as follows:

EUA, Blackstone, and Montaup have outstanding short-term promissory notes payable to banks that are expected to amount to $2,775,000, $2,700,000, and $2,500,000, respectively, at December 30, 1960. EUA's notes are secured by a pledge of certain first mortgage and collateral trust bonds of Blackstone while the notes of Blackstone and Montaup are unsecured.

EUA proposes to pay its outstanding short-term notes through the issuance and sale of promissory notes to The First National Bank of Boston ("First National"), in an aggregate amount of $2,775,000, such notes to be secured by a pledge of the above mentioned bonds of Blackstone. First National has granted participation in the EUA loans to Rhode Island Hospital Trust Company and Industrial National Bank of Providence to the extent of $740,000 to each bank. EUA contemplates that prior to December 30, 1961, all of its outstanding notes will be retired from the proceeds derived from the retirement of the Blackstone bonds in connection with the divestment of that company's gas properties.

Blackstone proposes to pay its short-term notes outstanding on December 30, 1960, and meet its cash requirements for construction purposes during 1961 through the issuance and sale of unsecured promissory notes to the banks and in the amounts indicated below:

Industrial National Bank of Providence	$2,000,000
Rhode Island Hospital Trust Company, Providence	2,000,000
Total	4,000,000

Montaup proposes to pay its short-term notes outstanding on December 30, 1960 through the issuance and sale of $2,500,000 of unsecured promissory notes to First National. First National has granted participation in the proposed notes to the banks and up to the amounts, indicated below:

The National Shawmut Bank of Boston	$625,000
State Street Bank and Trust Company, Boston	375,000
The First National City Bank of New York	500,000
The Hanover Bank, New York	250,000
Total	1,750,000

Each of the above proposed notes will be issued during the period from December 30, 1960, to December 29, 1961, will mature in less than one year from the date of issuance and will bear interest at the prime rate in effect on the date of issuance thereof, and will be prepayable in whole or in part without penalty.

The estimated fees and expenses to be paid in connection with the proposed transactions consist of legal fees and expenses of $535 to be paid by EUA, $215 by Blackstone, and $265 by Montaup.

It is represented that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 20, 1960 at 5:30 p.m., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said joint declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date the joint declaration, as filed or as amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 or take such other action as it may deem appropriate.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11389; Filed, Dec. 7, 1960; 8:47 a.m.]

[File No. 811-444]

RESEARCH INVESTING CORP.

Notice of Application for Order Declaring That Company Has Ceased To Be An Investment Company

DECEMBER 1, 1960.

Notice is hereby given that Research Investing Corporation ("Applicant"), a registered closed-end investment company, has filed an application pursuant to section 8(f) of the Investment Company Act of 1940 for an order of the Commission declaring that it has ceased to be an investment company.

Applicant was organized under the laws of the State of Indiana on September 18, 1939, under the name of Securities Underwriter, Inc. Its name was changed to Research Investing Corporation on March 2, 1956. Applicant is registered under the Investment Company Act of 1940 as a management, closed-end, non-diversified investment company.

On May 12, 1959, a majority of the shareholders of the Applicant at a special meeting approved a Joint Agreement and Plan of Merger dated April 29, 1959, whereunder the Applicant would be merged into Research Investing Corporation, a New Jersey Corporation organized on February 11, 1959, as Research Investing Fund of America, Inc. and which adopted its present name April 29, 1959. The Joint Agreement and Plan of Merger was approved by unanimous vote of the shareholders of Research Investing Corporation on May 11, 1959.

The merger became effective under the laws of the States of Indiana and New Jersey on June 22, 1959, and Research Investing Corporation of New Jersey became the surviving corporation. The effect of the merger was to reincorporate the Applicant in the State of New Jersey as an open-end investment company.

Section 8(f) of the Act provides, in relevant part, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is hereby given that any interested person may, not later than December 20, 1960 at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11390; Filed, Dec. 7, 1960; 8:48 a.m.]

[File No. 811-958]

ROWE PRICE NEW HORIZONS FUND, INC.

Notice of Application

DECEMBER 1, 1960.

Notice is hereby given that Rowe Price New Horizons Fund, Inc. ("Applicant"), has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting Applicant from the provisions of section 23(b) of the Act during the period ending not later than January 1, 1962, at the close of which it will become an open-end investment company.

Applicant was organized under the laws of Maryland on May 31, 1960, and registered under the Act on July 1, 1960. On September 6, 1960, the Fund filed a Registration Statement on Form S-4 under the Securities Act of 1933 (File No. 2-17009) relating to the public offering of 400,000 shares. Previously, 51,500 shares were purchased at $10 per share by twenty investors. Although presently a closed-end company, Article Fifth, section 5 of its charter, provides that when its total assets shall for the first time aggregate $10,000,000 or on January 1, 1962, whichever is earlier, it will become an open-end investment company and assume the obligation to accept outstanding shares presented for redemption at net asset value less a charge not in excess of 1 percent.

Under section 23(b) of the Act, it is unlawful for a registered closed-end company to sell any of its shares at a price below the current net asset value thereof determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination, unless the transaction falls within one of the exceptions specified in the section or occurs under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

The Applicant proposes to sell shares of its capital stock to the public, without sales load, at an offering price equal to the net asset value per share next determined after the receipt of completed purchase applications. The net asset value of a share of the Applicant will be determined as of the close of business on each day the New York Stock Exchange is open, and each purchase application which is accepted will be executed at the closing price on the day the application is received. If the Stock Exchange is not open, the purchase will be executed at the closing price on the next day on which said Exchange is open. Accordingly, although the Applicant will not become an open-end company until a date not later than January 1, 1962, it proposes to commence immediately to price its shares in accordance with a practice in wide-spread use among no-load open-end companies making continuing offerings which Applicant believes are comparable to its proposed offering.

Applicant states that to the extent section 23(b) of the Act may be deemed to permit or require Applicant to price its shares on the basis of net asset value determined within the forty-eight hours next preceding the receipt of accepted purchase applications, the method now proposed by Applicant is more consistent with a policy of preventing dilution of net asset value as a result of continuing sales. Accordingly, Applicant believes such exemption is necessary and appropriate in the public interest and consistent with the protection of investors.

Notice is hereby given that any interested person may, not later than December 14, 1960 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F.R. Doc. 60-11391; Filed, Dec. 7, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

IDENTIFICATION OF CARCASSES OF CERTAIN HUMANELY SLAUGHTERED LIVESTOCK

Supplemental List of Humane Slaughterers

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904) and the statement of policy thereunder in 9 CFR 181.1 (25 F.R. 5863) the following table lists additional establishments operated under Federal inspection under the Meat Inspection Act (21 U.S.C. 71 et seq.) which have been officially reported as humanely slaughtering and handling the species of livestock respectively designated for such establishments in the table. This list supplements the list previously published under the act (25 F.R. 12257) for November and represents those establishments and species which were reported too late to be included in the earlier list or which have come into compliance with respect to species indicated since the completion of the reports on which the earlier list was based. The establishment number given with the name of the establishment is branded on each carcass of livestock inspected at that establishment. The table should not be understood to indicate that all species of livestock slaughtered at a listed establishment are slaughtered and handled by humane methods unless all species are listed for that establishment in the table. Nor should the table be understood to indicate that the affiliates of any listed establishment use only humane methods:

Name of establishments	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses
Armour and Co.	2AG	(*)					
Do.	2AU	(*)		(*)			
Do.	2B	(*)	(*)			(*)	
Do.	2C	(*)		(*)		(*)	
Do.	2H	(*)	(*)	(*)		(*)	
Swift and Co.	3AN	(*)	(*)			(*)	
Do.	3B	(*)	(*)	(*)		(*)	
Do.	3E	(*)	(*)	(*)		(*)	
Do.	3FF	(*)	(*)	(*)		(*)	
Do.	3NN	(*)	(*)	(*)		(*)	
Do.	3T	(*)	(*)				
Do.	3UU	(*)	(*)	(*)		(*)	
Do.	3W	(*)	(*)			(*)	
Hygrade Food Products Corp.	12D	(*)					
John Morrell and Co.	17	(*)				(*)	
The Cudahy Packing Co.	19	(*)		(*)		(*)	
Wilson and Co., Inc.	20N	(*)	(*)	(*)		(*)	
Brander Meat Co.	25	(*)	(*)				
Roegelein Provision Co.	32	(*)	(*)			(*)	
Pocomoke Provision Co.	39	(*)					
Nevada Meat Packing Co.	52	(*)	(*)	(*)	(*)	(*)	
Midwestern Beef, Inc.	53	(*)					
Empire Packing Corp.	65					(*)	
Somerville Packing Co.	66					(*)	
Minchs Wholesale Meats, Inc.	72	(*)	(*)	(*)		(*)	
The Cudahy Packing Co.	81	(*)				(*)	
Edgar Packing Co.	84		(*)				
John Englehorn and Sons.	97					(*)	
Armour and Co.	100	(*)	(*)	(*)			
Liberty Packing Co.	101	(*)	(*)				
Hoffman Packing Co., Inc.	112	(*)					
West Coast Meat Co., Inc.	117	(*)	(*)	(*)		(*)	
Superior Packing Co.	127	(*)					
John Roth and Son, Inc.	130	(*)					
Armour and Co.	139	(*)	(*)	(*)			
Do.	177	(*)	(*)				
Swift and Co.	184		(*)	(*)			
Seattle Packing Co.	191	(*)	(*)	(*)		(*)	
United Fryer and Stillman, Inc.	196	(*)					
George A. Hormel and Co.	199N	(*)				(*)	
S. Adams Packing Co.	211	(*)	(*)				
York Packing Co., Inc.	220					(*)	
Gwaltney, Inc.	221A					(*)	
Hygrade Food Products Corp.	224	(*)				(*)	
Walt I. Schilling and Co., Inc.	235	(*)		(*)			
P. D. and J. Meats.	240	(*)	(*)				
Swift and Co.	249	(*)				(*)	
Pacific Meat Co., Inc.	267	(*)	(*)				
System Meat Co.	269	(*)					
Wilson and Co., Inc.	275	(*)					
American Stores Co.	279	(*)		(*)			
Solano Meat Co.	285	(*)	(*)	(*)			
Western Packing Co.	288	(*)					
Melton Provision Co.	311	(*)	(*)	(*)	(*)		
Turlock Meat Co.	325	(*)	(*)				
Peters Packing Co., Inc.	341	(*)				(*)	
Union Packing Co.	351	(*)					
Marks Meat Co.	362	(*)					
James Allan and Sons.	365	(*)		(*)		(*)	
Smithfield Packing Co., Inc.	382					(*)	
American Stores Co.	384	(*)					
Roth Packing Co.	394	(*)					
Watsonville Dressed Beef, Inc.	396	(*)	(*)				
Superior Packing Co.	399	(*)	(*)				
Los Banos Abattoir.	400	(*)	(*)				
Alpine Packing Co.	412	(*)	(*)	(*)	(*)	(*)	
Omaha Dressed Beef Co.	441	(*)					
Del Curto Meat Co.	445	(*)	(*)			(*)	
Morris Rifkin and Sons, Inc.	460	(*)					
Litvak Packing Co.	465	(*)					
Cornbusker Packing Co.	468	(*)					
St. Cloud Meat Packing Co.	485	(*)					
Memphis Butchers Association, Inc.	488	(*)	(*)	(*)	(*)	(*)	
Nebraska Beef Co.	489	(*)					
Swift and Co.	505	(*)					
B. Rothschild and Co.	506	(*)					
Shen Valley Meat Packers, Inc.	511	(*)				(*)	
Capitol Packing Co.	513	(*)	(*)	(*)			
Armour and Co.	526	(*)	(*)				

Name of establishments	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses
Omaha Packing Co.	532	(*)					
Pepper Packing Co.	536	(*)				(*)	
Midwest Packing Co.	536	(*)					
Swift and Co.	548	(*)	(*)			(*)	
The Cudahy Packing Co.	559	(*)	(*)			(*)	
Texas Meat Packers, Inc.	565	(*)	(*)				
City of Austin Municipal Abattoir	590	(*)	(*)				
San Antonio Packing Co.	602	(*)	(*)	(*)	(*)	(*)	
National Tea Co.	613	(*)				(*)	
Kummer Packing Co.	617	(*)	(*)	(*)		(*)	
City Packing Co.	625	(*)	(*)	(*)			
E. A. Miller and Sons Packing Co., Inc.	628	(*)					
Auburn Packing Co., Inc.	636	(*)					
E and C Packing Co.	645	(*)					
Wilson and Co., Inc.	655	(*)		(*)			
McCook Packing Corp.	660	(*)	(*)				
Cascade Meats, Inc.	661	(*)					
Nations Brothers Packing Co.	684	(*)	(*)			(*)	
Marco Packing Co.	692	(*)	(*)				
Central Nebraska Packing Co.	713E						(*)
Swift and Co.	726	(*)	(*)	(*)		(*)	
Decker and Son	727					(*)	
William N. Peters, Inc.	741	(*)					
Schaake Packing Co., Inc.	761	(*)					
Granite State Packing Co.	785	(*)	(*)				
William N. Peters, Inc.	813	(*)					
Hibbs Packing Co.	825	(*)					
Berchams Meat Co.	830	(*)					
Rexfoot Packing Co.	840	(*)				(*)	
G. Bartusch Packing Co.	843	(*)					
Wells and Davies Packing Co.	860	(*)	(*)			(*)	
Christensen Meat Co.	865	(*)	(*)				
Long Creek Meat Co.	870	(*)					
Midwestern Packing Co., Inc.	878	(*)	(*)				
Vermont Dressed Beef Co., Inc.	883	(*)					
O'Neill Packing Co.	889	(*)					
Sigman Meat Co., Inc.	901	(*)	(*)				
Valleydale Packers Inc. of Bristol	922	(*)	(*)			(*)	
Peoples Packing Co.	925	(*)	(*)	(*)		(*)	
Whitehall Packing Co.	946	(*)					
Greater Omaha Packing Co., Inc.	960	(*)					
Earl Fleck Wholesale Meats, Inc.	965	(*)	(*)				
Greeley Capitol Packing Co.	969	(*)		(*)			
National Food Stores, Inc.	981	(*)					
Eagle Packing Co.	987	(*)					
Valley Meat Co.	1009	(*)	(*)	(*)			
Browns Packing House	1154	(*)				(*)	
Landy Packing Co.	1171	(*)					
Samuels and Co., Inc.	1313	(*)	(*)				
H. and H. Packing Co.	1315	(*)	(*)				
Nebraska Iowa Dressed Beef Co.	1318	(*)					

Done at Washington, D.C., this 2d day of December 1950.

J. R. SCOTT,
Acting Director,
Meat Inspection Division, Agricultural Research Service.

[F.R. Doc. 60–11362; Filed, Dec. 12, 1960; 8:45 a.m.]

Commodity Credit Corporation

SALES OF CERTAIN COMMODITIES

December 1960 Monthly Sales List

Notice to buyers. Pursuant to the policy of Commodity Credit Corporation issued October 12, 1954 (19 F.R. 6669) and subject to the conditions stated therein, as well as herein, the commodities listed below are available for sale on the price basis set forth.

The CCC Monthly Sales List, which varies from month to month as additional commodities become available or commodities formerly available are dropped, is designed to aid in moving CCC's inventories into domestic or export use through regular commercial channels.

As announced November 7 (press release USDA 3255–60) oats are again eligible for export under the payment-in-kind, barter, and CCC Export Credit Sales programs.

If it becomes necessary during the month to amend this list in any material way—such as by the removal or addition of a commodity in which there is general interest or by a significant change in price or method of sale—an announcement of the change will be sent to all persons currently receiving the list by mail from Washington. To be put on this mailing list, address: Director, Price Division, Commodity Stabilization Service, U.S. Department of Agriculture, Washington 25, D.C.

All commodities currently offered for sale by CCC, plus tobacco from CCC loan stocks, are eligible for export sale under the CCC Export Credit Sales Program. The following commodities are currently eligible for barter: Nonfat dry milk, butter, cotton, tobacco, rice (milled), wheat, corn, barley, rye, oats, and grain sorghums. This list is subject to change from time to time.

Interest rates per annum under the CCC Export Credit Sales Program for December 1960 are 3½ percent for periods up to six months, 4 percent for periods from over six and up to 18 months, and 4½ percent for periods from over 18 months up to a maximum of 36 months.

The CCC will entertain offers from responsible buyers for the purchase of any commodity on the current list. Offers accepted by CCC will be subject to the terms and conditions prescribed by the Corporation. These terms include payment by cash or irrevocable letter of credit before delivery of the commodity, and the conditions require removal of the commodity from CCC storage within a reasonable period of time. Where conditions of sale for export differ from those for domestic sale, proof of exportation is also required, and the buyer is responsible for obtaining any required U.S. Government export permit or license. Purchases from CCC shall not constitute any assurance that any such permit or license will be granted by the issuing authority.

Applicable announcements containing all terms and conditions of sale will be furnished upon request. For easy reference a number of these announcements are identified by code number in the following list. Interested persons are invited to communicate with the Commodity Stabilization Service, USDA, Washington 25, D.C., with respect to all commodities or—for specified commodities—with the designated CSS Commodity Office.

Commodity Credit Corporation reserves the right to amend, from time to time, any of its announcements. Such amendments shall be applicable to and be made a part of the sale contracts thereafter entered into.

CCC reserves the right to reject any or all offers placed with it for the purchase of commodities pursuant to such announcements.

If CCC does not have adequate information as to the financial responsibility of a prospective buyer to meet all contract obligations that might arise by acceptance of an offer or if CCC deems such buyer's financial responsibility to be inadequate CCC reserves the right (i) to refuse to consider the offer, (ii) to accept the offer only after submission by the buyer of a certified or cashier's check, bond, letter of credit or other security acceptable to CCC assuring that the buyer will discharge the responsibility under the contract, or (iii) to accept the offer upon condition that the buyer promptly submit to CCC such of the aforementioned security as CCC may direct. If a prospective buyer is in doubt as to whether CCC is acquainted with his financial responsibility he should communicate with the CSS Office at which the offer is to be placed to determine whether a financial statement or advance financial arrangement will be necessary in his case.

Disposals and other handling of inventory items often result in small quantities at given locations or in qualities not up to specifications. These lots are offered by the appropriate CSS Office promptly upon appearance and therefore generally they do not appear in the Monthly Sales List.

On sales for which the buyer is required to submit proof to CCC of exportation the buyer shall be regularly engaged in the business of buying or selling commodities and for this purpose shall maintain a bona fide business office in the United States, its territories or possessions, and have a person, principal, or resident agent upon whom service of judicial process may be had.

Prospective buyers for export should note that generally, sales to United States Government agencies, with only minor exceptions, will constitute a domestic unrestricted use of the commodity.

Commodity Credit Corporation reserves the right, before making any sales, to define or limit export areas.

Notice to exporters. The Department of Commerce, Bureau of Foreign Commerce (BFC), pursuant to regulations under the Export Control Act of 1949, prohibits the exportation or re-exportation by anyone of any commodities (except bandages, gauze, and absorbent cotton with respect to Cuba only) under this program to Cuba, the Soviet Bloc, or Communist-controlled areas of the Far East including Communist China, North Korea, and the Communist-controlled areas of Vietnam, except under validated license issued by the U.S. Department of Commerce, Bureau of Foreign Commerce.

These regulations generally require that exporters, in or in connection with their contracts with foreign purchasers, where the contract involves $10,000 or more and exportation is to be made to a Group R country or Cuba, obtain from the foreign purchaser a written acknowledgment of his understanding of (1) U.S. Commerce Department prohibitions (Comprehensive Export Schedule, sections 371.4 and 371.8) against sales or resale for re-export of said commodities, or any part thereof, without express Commerce Department authorization, to the Soviet Bloc, Communist China, North Korea or the Communist-controlled area of Vietnam or to Cuba, and (2) the sanction of denial of future U.S. export privileges that may be imposed for violation of the Commerce Department regulations. Exporters who have a continuing and regular relationship with a foreign purchaser may obtain a blanket acknowledgment from such purchaser covering all transactions involving surplus agricultural commodities and manufactures thereof purchased from CCC or subsidized for export by the Secretary of Agriculture or CCC. Where commodities are to be exported by a party other than the original purchaser of the commodities from the CCC the original purchaser should inform the exporter in writing of the requirement for obtaining the signed acknowledgment from the foreign purchaser.

For all exportations, one of the destination control statements specified in BFC Regulation (Comprehensive Export Schedule, section 379.10(c)) is required to be placed on all copies of the shipper's export declaration, all copies of the bill of lading, and all copies of the commercial invoices. For additional information as to which destination control statement to use, the exporter should communicate with the Bureau of Foreign Commerce or one of the field offices of the Department of Commerce.

The above statement is with respect to the regulations of the Department of Commerce as of October 19, 1960. Exporters should consult the applicable regulations for more detailed information if desired and for any changes that may be made therein subsequent to such date.

Commodity	Sales price or method of sale
Dairy products	Sales are in carlots only in store at storage location of products. Submission of offers: For products in Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington, submit offers to the Portland CSS Commodity Office. For products in other States and the District of Columbia, submit offers to the Cincinnati CSS Commodity Office.
Butter	Domestic, unrestricted use; Announced prices, under LD–29 as amended: 66.5 cents per pound New York, Pa., N.J., New England, and other States bordering the Atlantic Ocean and Gulf of Mexico. 65.75 cents per pound Washington, Oregon, and California. All other States 65.5 cents per pound. Export: Competitive bid under LD–33, as amended, pursuant to invitations to bid issued by Cincinnati CSS Commodity Office (may be applied to arrangements for barter and approved credit sales).
Nonfat dry milk	Domestic, unrestricted use; Announced prices, under LD–29 as amended: Spray process, U.S. extra grade, 16.00 cents per pound. Roller process, U.S. extra grade, 13.00 cents per pound. Export: Competitive bid under LD–33, as amended, pursuant to invitations to bid to be issued by Cincinnati and Portland CSS Commodity Offices. Announced prices under LD–35: When sales are made under LD–33, as amended, above any nonfat dry milk offered but not sold under the invitation to bid will be offered for sale through the following Monday at prices announced in Washington each Tuesday. Sales under both announcements may be applied to arrangements for barter and approved credit sales.
Cotton, upland	Domestic or export, unrestricted use: Competitive bid and under the terms and conditions of Announcement CN–A (Revised June 3, 1960), as amended (sales by local sales agencies of 1960-crop Choice (A) cotton for unrestricted use), Announcement NO–C–14, as amended (sale of 1959 and prior crops cotton for unrestricted use), and Announcement NO–C–15, as amended, (sale of 1960-crop Choice (A) cotton for unrestricted use). Under CN–A (Revised) cotton to be sold at highest price offered but in no event at less than 110 percent of the applicable 1960 Choice (B) support price plus carrying charges. Under NO–C–14, as amended, cotton to be sold at highest price offered but in no event at less than the higher of (1) the market price as determined by CCC, or (2) 115 percent of the applicable Choice (B) support price plus carrying charges. Under NO–C–15, as amended, cotton to be sold at highest price offered but in no event at less than the higher of (1) the market price as determined by CCC, or (2) 110 percent of the applicable Choice (B) support price plus carrying charges.
Cotton, extra long staple	Domestic or export, unrestricted use: Competitive bid and under the terms and conditions of Announcements NO–C–6 (revised July 22, 1960), as amended, and NO–C–10, as amended, but not less than the higher of (1) 105 percent of the current support price plus reasonable carrying charges or (2) the domestic market price as determined by CCC.
Catalogs	Catalogs for upland cotton (except cotton offered under CN–A, (revised June 3, 1960), as amended) and extra long staple cotton showing quantities, qualities, and locations may be obtained for a nominal fee from the New Orleans CSS Commodity Office. Catalogs or lists of cotton offered under CN–A (revised June 3, 1960), as amended, may be obtained from local sales agencies.
Wheat, bulk	Domestic, unrestricted use; Commercial wheat-producing area: Market price basis in store but not less than the 1960 applicable loan rate plus (1) 19 cents per bushel if received by truck or (2) 16 cents per bushel if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Examples of the foregoing minimum price per bushel (exrail or barge): Chicago, No. 1 RW ..... $2.24 Minneapolis, No. 1 DNS ..... 2.31 Kansas City, No. 1 HW ..... 2.24 Portland, No. 1 SW ..... 2.15 Noncommercial wheat-producing area: Same basis as in commercial area except 133 percent of applicable support rate. Export: (1) As wheat under Announcement GR–261 (revised Oct. 20, 1955), as amended, or as flour under Announcement GR–262 (revised July 16, 1956), as amended, for application under arrangements for barter which permits exportation of wheat as flour and approved credit sales only at prices determined daily (2) under Announcement GR–212 (revised Nov. 15, 1955), as amended, for specific offerings as announced and (3) under Announcement GR–345 (revised June 20, 1960), as amended, for redemption of certificates under payment-in-kind program. Available Evanston, Dallas, Kansas City, Minneapolis, and Portland CSS Commodity Offices.
Corn, bulk	Domestic, unrestricted use: Market price, basis in store,[1] but not less than the 1960 applicable loan rate plus (1) a markup of 11 cents per bushel for corn in storage at point of production or (2) a markup of 14 cents per bushel and the rail freight from point of production to the present point of storage for corn in storage at other than the point of production. Examples of the foregoing minimum price per bushel for No. 2 yellow corn, 13.3 percent moisture and 1.4 percent foreign material including average paid-in freight from Woodford County, Ill., to Chicago and Redwood County, Minnesota, to Minneapolis, respectively. Chicago ..... $1.36½ Minneapolis ..... 1.20¼ Nonstorable corn, unrestricted use (as available): At not less than market price as determined by CCC. At bin sites, through ASC County Offices. At other locations through the Commodity Offices indicated below. Export: Under Announcement GR–212 (revised Nov. 15, 1955), as amended, for application to arrangements for barter and approved credit and emergency sales and under Announcement GR–368 (revised Aug. 31, 1959) as amended, for feed grain payment-in-kind program. Available Evanston, Dallas, Kansas City, Minneapolis, and Portland CSS Commodity Offices.
Oats, bulk	Domestic, unrestricted use: Market price, basis in store,[1] but not less than the 1960 applicable loan rate, plus (1) a markup of 11 cents per bushel for oats in storage at point of production and (2) a markup of 13 cents per bushel and the rail freight from point of production to present point of storage for oats in storage at other than the point of production. Examples of the foregoing minimum price per bushel including average paid-in freight from Woodford County, Ill., to Chicago and Redwood County, Minn., to Minneapolis respectively. Chicago, No. 3 oats ..... $0.71¼ Minneapolis, No. 3 oats ..... .62¼

[1] In those counties in which grain is stored in CCC bin sites delivery will be made f.o.b. buyer's conveyance at bin sites without additional cost; sales will also be made in store approved warehouses in such county and adjacent counties at the same price, provided the buyer makes arrangements.

Commodity	Sales price or method of sale
Oats, bulk—Continued.	Export: Under Announcement GR-212 (revised Nov. 15, 1955), as amended, for application to arrangements for barter and approved credit and emergency sales and under Announcement GR-368 (revised Aug. 31, 1959), as amended, for feed grain payment-in-kind program. Available Minneapolis, Evanston, Kansas City, Portland, and Dallas CSS Commodity Offices.
Barley, bulk	Domestic, unrestricted use: Market price basis in store but not less than 1960 applicable loan rate plus (1) 13 cents per bushel if received by truck or (2) 11 cents per bushel if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Example of the foregoing minimum price per bushel (exrail or barge): Minneapolis, No. 2 or better ..... $1.11 Export: Under Announcement GR-212 (revised Nov. 15, 1955), as amended, for application to arrangements for barter and approved credit and emergency sales, and under Announcement GR-368 (revised Aug. 31, 1959), as amended, for feed grain payment-in-kind program. Available Minneapolis, Evanston, Kansas City, Portland, and Dallas CSS Commodity Offices.
Rye, bulk	Domestic, unrestricted use: Market price basis in store but not less than the 1960 applicable loan rate plus (1) 15 cents per bushel if received by truck or (2) 12 cents per bushel if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Example of the foregoing minimum price per bushel (exrail or barge): Minneapolis No. 2 or better (or No. 3 on TW only) ..... $1.24 Export: Under Announcement GR-212 (revised Nov. 15, 1955), as amended, for application to arrangements for barter and approved credit and emergency sales and under Announcement GR-368 (revised Aug. 31, 1959), as amended, for feed grain payment-in-kind program. Available Minneapolis, Evanston, Dallas, Portland, and Kansas City CSS Commodity Offices.
Grain sorghums, bulk	Domestic, unrestricted use: Market price basis in store but not less than the 1960 applicable loan rate plus (1) 27 cents per hundredweight if received by truck or (2) 21 cents per hundredweight if received by rail or barge. If delivery is outside the area of production, applicable freight will be added to the above. Example of the foregoing minimum price per hundredweight (exrail or barge): Kansas City, No. 2 or better ..... $2.08 Export: Under Announcement GR-212 (revised Nov. 15, 1955), as amended, for application to arrangements for barter and approved credit and emergency sales, and under Announcement GR-368 (revised Aug. 31, 1959), as amended, for feed grain payment-in-kind program. Available Evanston, Dallas, Kansas City, Minneapolis, and Portland CSS Commodity Offices.
Rice, milled (as available)	Domestic, unrestricted use: Market price but not less than the equivalent 1960 loan rate for rough rice, by varieties and grades, plus 5 percent, adjusted for milling, plus 24 cents per hundredweight, basis in store. Export: Under GR-379, as amended, for application to arrangements for barter and approved credit sales. Available Dallas CSS Commodity Office.
Rice, broken (as available)	Domestic or export, unrestricted use: Competitive bid but not less than $4.78 per hundredweight in bags ($4.63 bulk) basis U.S. No. 4 brewers rice f.o.b. mills and warehouses. Prices and quantities of milled rice including brokens available by varieties and grades may be obtained from Dallas and Portland CSS Commodity Offices.
Rice, rough (as available)	Domestic, unrestricted use: Market price but not less than the applicable 1960 loan rate plus 5 percent, plus 25 cents per hundredweight, basis in store. Export: As milled or brown under Announcement GR-369, as amended, Rice Export Program Payment-in-Kind, and under GR-379, as amended, for approved credit sales. Prices, quantities, and varieties of rough rice available from Dallas and Portland CSS Commodity Offices.
Soybeans, bulk (as available)	Domestic or export: Market price basis in store but not less than the 1960 applicable county loan rate for No. 2 grade, basis point of storage plus 5 percent, plus 9.95 cents per bushel, plus the value of billing, if any, as determined by the CSS Commodity Office. Market discounts for quality factors will be applied to the basic price to determine the actual sales price. Available Evanston, Kansas City, and Minneapolis CSS Commodity Offices.
Peanuts, shelled (as available), all types.	Domestic, unrestricted use: 1960 support price plus 5 percent, adjusted for milling, plus reasonable carrying charges under Peanut Announcement 3, but not less than the following or market prices: *No. 1's* — *Cents per lb.* Virginias ..... 19.76 S.E. Spanish ..... 20.11 S.W. Spanish ..... 20.39 S.E. Runners 19.73
Peanuts, shelled and unshelled (farmers stock) (as available).	Domestic for crushing or export: Competitive bid under CCC Peanut Announcement 1 (revised Feb. 16, 1959), as amended.
Tung oil	Export: Competitive bid on limited quantities under Announcement DL-OP-10, as amended, by Dallas CSS Commodity Office.
Gum turpentine (bulk in tanks)	Domestic, unrestricted use: Offer and acceptance basis in the stated quantities and in the designated storage tanks and subject to the prices, terms and conditions of Announcement TB-21-60 and supplements thereto which will be issued monthly. Available through ATFA, Valdosta, Georgia. Export: Competitive bid for turpentine, bulk in storage tanks, subject to Announcement TB-21-60 and supplements thereto. Available through Naval Stores Branch, Tobacco Division, CSS, U.S. Department of Agriculture.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 407, 63 Stat. 1055; 7 U.S.C. 1427, sec. 208, 63 Stat. 901)

Issued: December 5, 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 60-11415; Filed, Dec. 7, 1960; 8:51 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

HENRY G. MAGNUSSEN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: None.
B. Additions: None.

This statement is made as of November 25, 1960.

HENRY G. MAGNUSSEN.

NOVEMBER 25, 1960.

[F.R. Doc. 60-11402; Filed, Dec. 7, 1960; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. SA-359]

ACCIDENT OCCURRING IN MISSOULA, MONTANA

Notice of Hearing

In the matter of investigation of accident involving aircraft of United States Registry N 48762, which occurred on October 28, 1960, in Missoula, Montana.

Notice is hereby given that an Accident Investigation Hearing on the above-styled matter will be held commencing January 18, 1961, at 8:30 a.m., local time, in the Florence Hotel, Missoula, Montana.

Dated this 2d day of December 1960.

[SEAL] BILL F. BUEL,
Hearing Officer.

[F.R. Doc. 60-11417; Filed, Dec. 7, 1960; 8:51 a.m.]

FEDERAL AVIATION AGENCY

DIRECTOR, BUREAU OF AIR TRAFFIC MANAGEMENT

Delegation of Certain Airspace Authorities

1. *Purpose.* The purpose of this bulletin is to delegate certain authorities of the Administrator under Title III of the Federal Aviation Act relating to the making of rules, regulations, and orders providing for the use of airspace to the Director of the Bureau of Air Traffic Management.

2. *Background.* Section 303(d) of the Federal Aviation Act of 1958 authorizes the Administrator to delegate the performance of any function under the Act to any officer, employee, or administrative unit under his jurisdiction.

Section 307(a) of the Act authorizes the Administrator to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as he may deem necessary to assure the safety of aircraft and the efficient utilization of such airspace.

Section 307(d) of the Act provides that the Administrator shall be subject to the provisions of the Administrative Procedure Act in the exercise of rule-making authority under section 307(a).

3. *Delegation.* Final authority to make, amend and issue rules, regulations and orders under section 307(a) of the Federal Aviation Act of 1958 is hereby delegated to the Director of the Bureau of Air Traffic Management.

4. *Redelegation.* The authority herein delegated, with the exception of that pertaining to restricted areas, may be exercised for the Director of the Bureau of Air Traffic Management, by his Deputy or by the Chief, Airspace Utilization Division.

5. *Effective date.* This Bulletin is effective immediately and supersedes Agency Bulletins 59-28 of May 15, 1959 and 60-15 of August 12, 1960, 24 F.R. 4530 and 25 F.R. 8005.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-11378; Filed, Dec. 7, 1960; 8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR — Page

PROCLAMATIONS:
2935 12501

EXECUTIVE ORDERS:
3797-A 12412
6260 12281
9941 12429
10896 12281
10897 12429
10898 12429

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 12501
Letter, Nov. 16, 1960 12501

5 CFR
2 12285
6 ..... 12393, 12547

6 CFR
421 ..... 12282, 12283

7 CFR
33 12430
722 ..... 12393, 12403
730 12503
845 12285
871 12547
903 12504
905—908 12504
911—913 12504
914 12405
916—919 12504
921 12504
923—925 12504
928—932 12504
933 ..... 12405–12407, 12504
935 12504
941—944 12504
946—949 12504
952 12504
953 ..... 12407, 12430
954 12504
956 12504
963 12504
965—968 12504
971—972 12504
974—978 12504
980 12504
982 12504
985—988 12504
991 12504
994—995 12504
998 12504
1000 12504

7 CFR—Continued — Page
1002 12504
1004—1005 12504
1008—1009 12504
1011—1014 12504
1016 12504
1018 12504
1023—1024 12504
1031 12505

PROPOSED RULES:
51 ..... 12298, 12299
923 12558
936 12465
965 12466
989 12476
1012 12558

8 CFR
211 12290

9 CFR
72 12548

PROPOSED RULES:
83 12571

10 CFR

PROPOSED RULES:
115 12367

12 CFR

PROPOSED RULES:
206 12479

14 CFR
49 12352
300 12430
302 12432
506 12505
507 ..... 12352, 12433, 12549
514 12433
600 ..... 12285–12287, 12408, 12410, 12549–12551
601 ..... 12287, 12409, 12410, 12549–12552
602 ..... 12288, 12552
609 12353
612 12410
1501 12434

PROPOSED RULES:
41 12299
43 12524
302 12477
507 ..... 12477, 12478, 12571
600 ..... 12328, 12478, 12479, 12524, 12572, 12573
601 ..... 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574
608 12479

16 CFR — Page
13 ..... 12337, 12338, 12393, 12441, 12502, 12552

21 CFR
8 12288
120 ..... 12288, 12506
121 12412
146 12506
146c 12289

PROPOSED RULES:
27 12372
120 ..... 12374, 12571
121 ..... 12299, 12477

22 CFR
46 12289

25 CFR
171 12408

PROPOSED RULES:
52 12518
176 12299

26 (1939) CFR
16 12442
17 12443
29 12339
39 12339
40 12340

26 (1954) CFR
1 ..... 12340, 12345
18 12340

PROPOSED RULES:
1 ..... 12293, 12414, 12416, 12464, 12508
48 12362
197 12362
250 12511

28 CFR
21 12290

31 CFR
54 12345

32 CFR
805 12291
1008 12444
1009 12446
1010 12449
1012 12449
1013 12449
1016 ..... 12450, 12456
1030 12451
1052 12456

32 CFR—Continued Page

1053 12456
1054 12458
1055 12462
1057 12462
1059 12462
1619 12291

33 CFR

202 12393

38 CFR

3 12463

39 CFR

27 12348

41 CFR

3–75 12502
5–1 12553
50–201 12553
50–202 12553

PROPOSED RULES:
50–202 12363, 12522

42 CFR Page

1 12292

43 CFR

192 12352

PUBLIC LAND ORDERS:
82 12412
797 12413
1253 12481
2209 12412
2210 12413
2211 12413

46 CFR

24 12554
30 12554
56 12554
70 12555
90 12555
110 12555
111 12555
136 12555
171 12555
308 12348

47 CFR Page

1 12358
5 12359
9 12359
10 12359
11 12359
12 12358
16 12359
19 12359
21 12359

PROPOSED RULES:
3 12371

49 CFR

91 12506
122 12506

PROPOSED RULES:
71–78 12420
197 12420

50 CFR

32 12555
33 12507, 12556, 12557

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Pages 12585–12645

FEDERAL REGISTER

VOLUME 25 NUMBER 239

Washington, Friday, December 9, 1960

THE UNIVERSITY OF MICHIGAN
DEC 1 0 1960
MAIN READING ROOM

Contents

THE PRESIDENT

Proclamation

Civil War Centennial 12587

EXECUTIVE AGENCIES

Agricultural Marketing Service

NOTICES:
Nectarines grown in California; referendum 12628

PROPOSED RULE MAKING:
Milk in San Antonio, Tex., marketing area; correction 12606
Onions grown in South Texas; recommended decision and opportunity to file written exceptions regarding proposed agreement 12606

RULES AND REGULATIONS:
Milk in Southeastern Florida marketing area; correction 12588

Agriculture Department

See Agricultural Marketing Service; Commodity Stabilization Service.

Atomic Energy Commission

NOTICES:
University of Kansas; extension of completion date 12633

Bureau of the Budget

NOTICES:
Federal property in Hawaii; procedure for reports 12633

Civil Aeronautics Board

RULES AND REGULATIONS:
Tariffs of certain certificated airlines; trade agreements; extension 12589

Civil Service Commission

RULES AND REGULATIONS:
Exception from competitive service; Justice Department 12588

Commerce Department

See Federal Maritime Bureau; Maritime Administration; Standards Bureau.

Commodity Stabilization Service

RULES AND REGULATIONS:
Acreage and performance; determination and adjustment of excess acreage 12588

Customs Bureau

NOTICES:
Aluminum chloride (anhydrous) from Canada; purchase price and foreign market value 12628

Federal Aviation Agency

PROPOSED RULE MAKING:
Control area extension and control zone; alteration 12622
Control zone; alteration 12623
Control zone; modification and designation 12623
Federal airways and associated control areas; alteration 12622

RULES AND REGULATIONS:
Control zone; modification 12590
Federal airways and associated control area; modification of amendments 12589
Federal airway segment, associated control areas, and reporting points; revocation 12589
Fees for copying, certification and search of records; increase in certain fee 12589

Federal Communications Commission

NOTICES:
Statements of organization, authority delegations, and other information (3 documents) 12634, 12635

Hearings, etc.:
Alert 12636
Bernalillo Broadcasting Co. et al 12635
Coastal Broadcasting Co. (WLAT) 12636
KWK Radio, Inc 12637
Michigan Broadcasting Co. (WBCK) et al 12638
Mid-America Broadcasting System, Inc., et al 12638
Middle Tennessee Broadcasting Co. (WKRM) et al 12638
Western Broadcasting Co. et al 12639

PROPOSED RULE MAKING:
Annual financial report form 12624
Table of assignments, television broadcast stations (3 documents) 12624, 12626, 12627

RULES AND REGULATIONS:
Practice and procedure:
Applications for broadcast facilities; correction 12602
Revocation and cease and desist proceedings 12602
Safety and special services 12600
Practice and procedure; domestic public radio services (other than maritime mobile):
Annual report 12605
Applications 12603

Federal Maritime Board

NOTICES:
Isbrandtsen Steamship Co. et al.; agreement filed for approval 12631

Hearings, etc.:
Gulf/French Atlantic Hamburg Range Freight Conference; unapproved agreements 12629
Gulf/United Kingdom Conference; unapproved agreement 12629
Isbrandtsen Co., Inc.; bulk rate tariff 12630
Pacific-Atlantic Guam Trade; general increases 12630

Federal Power Commission

NOTICES:
Arkansas; Interior Department; land withdrawal 12641

Hearings, etc.:
Cox, Edwin L. 12639
El Paso Natural Gas Co. 12641
Transcontinental Gas Pipe Line Corp. 12641

(Continued on next page)

Federal Trade Commission
RULES AND REGULATIONS:
Prohibited trade practices:
E. Kapchan & Associates, Optometrists, et al. 12591
Maxine's, Inc., et al. 12592

Food and Drug Administration
RULES AND REGULATIONS:
Animal feed containing antibiotic drugs 12596
Food additives; amprolium 12595
New drugs; labeling and applications 12592

Health, Education, and Welfare Department
See also Food and Drug Administration.
RULES AND REGULATIONS:
Authority delegations; miscellaneous amendments 12596

Housing and Home Finance Agency
See Public Housing Administration.

Interior Department
See Land Management Bureau.

Interstate Commerce Commission
NOTICES:
Fourth section application for relief 12642
Motor carrier transfer proceedings 12642

Labor Department
See Wage and Hour Division.

Land Management Bureau
PROPOSED RULE MAKING:
Disposal of timber and mineral resources; trespassing and unauthorized removal of materials 12606
RULES AND REGULATIONS:
Alaska:
Public land orders (5 documents) 12597–12599
State grants 12597

Maritime Administration
NOTICES:
Great Lakes/Caribbean; essentiality and U.S. flag service requirements 12631

National Science Foundation
RULES AND REGULATIONS:
Public welfare; revocation of rules 12600

Public Housing Administration
NOTICES:
Authority delegation 12639

Securities and Exchange Commission
NOTICES:
American Research and Development Corp.; application for exemption 12639

Standards Bureau
RULES AND REGULATIONS:
Heat; test fees 12590

Treasury Department
See Customs Bureau.

Wage and Hour Division
NOTICES:
Certificates authorizing the employment of learners at special minimum rates 12631

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR
EXECUTIVE ORDERS:
3797–A (see PLO 2215) 12599
PROCLAMATIONS:
3382 12587

5 CFR
6 12588

7 CFR
718 12588
1018 12588
PROPOSED RULES:
949 12606
1033 12606

14 CFR
225 12589
414 12589
600 (2 documents) 12589
601 (3 documents) 12589, 12590
PROPOSED RULES:
600 12622
601 (4 documents) 12622, 12623

15 CFR
203 12590

16 CFR
13 (2 documents) 12591, 12592

21 CFR
1 12592
121 12595
130 12592
146 12596

41 CFR
3–75 12596

43 CFR
76 12597
PROPOSED RULES:
259 12606
PUBLIC LAND ORDERS:
82 (revoked by PLO 2215) 12599
1621 (see PLO 2215) 12599
1965 (see PLO 2215) 12599
2212 12597
2213 12597
2214 12598
2215 12599
2216 12599

45 CFR
601—620 12600

47 CFR
1 (5 documents) 12600, 12602, 12603, 12605
21 (2 documents) 12603, 12605
PROPOSED RULES:
1 12624
3 (3 documents) 12624, 12626, 12627

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3382

CIVIL WAR CENTENNIAL

By the President of the United States of America

A Proclamation

The years 1961 to 1965 will mark the one-hundredth anniversary of the American Civil War.

That war was America's most tragic experience. But like most truly great tragedies, it carries with it an enduring lesson and a profound inspiration. It was a demonstration of heroism and sacrifice by men and women of both sides who valued principle above life itself and whose devotion to duty is a part of our Nation's noblest tradition.

Both sections of our now magnificently reunited country sent into their armies men who became soldiers as good as any who ever fought under any flag. Military history records nothing finer than the courage and spirit displayed at such battles as Chickamauga, Antietam, Kenesaw Mountain, and Gettysburg. That America could produce men so valiant and so enduring is a matter for deep and abiding pride.

The same spirit on the part of the people at home supported and strengthened those soldiers through four years of great trial. That a Nation which contained hardly more than thirty million people, North and South together, could sustain six hundred thousand deaths without faltering is a lasting testimonial to something unconquerable in the American spirit. And that a transcending sense of unity and larger common purpose could, in the end, cause the men and women who had suffered so greatly to close ranks once the contest ended and to go on together to build a greater, freer, and happier America must be a source of inspiration as long as our country may last.

By a joint resolution approved on September 7, 1957 (71 Stat. 626), the Congress established the Civil War Centennial Commission to prepare plans and programs for the nationwide observances of the one-hundredth anniversary of the Civil War, and requested the President to issue proclamations inviting the people of the United States to participate in those observances.

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby invite all of the people of our country to take a direct and active part in the Centennial of the Civil War.

I request all units and agencies of government—Federal, State, and local—and their officials to encourage, foster, and participate in Centennial observances. And I especially urge our Nation's schools and colleges, its libraries and museums, its churches and religious bodies, its civic, service, and patriotic organizations, its learned and professional societies, its arts, sciences, and industries, and its informational media, to plan and carry out their own appropriate Centennial observances during the years 1961 to 1965; all to the end of enriching our knowledge and appreciation of this momentous chapter in our Nation's history and of making this memorable period truly a Centennial for all Americans.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this sixth day of December in the year of our Lord nineteen hundred and sixty, and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER

By the President,

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 60–11544; Filed, Dec. 8, 1960; 10:18 a.m.]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Justice

Effective upon publication in the FEDERAL REGISTER, paragraph (h)(3) of § 6.308 is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 60–11477; Filed, Dec. 8, 1960; 8:53 a.m.]

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 718—DETERMINATION OF ACREAGE AND PERFORMANCE

Determination and Adjustment of Excess Acreage

Basis and purpose. This amendment is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1301 et seq.), the Sugar Act of 1948, as amended (7 U.S.C. 1100 et seq.), the Agricultural Adjustment Act of 1949 as amended (7 U.S.C. 1441 et seq.), and the Soil Bank Act (7 U.S.C. 1801 et seq.), to prescribe the provisions of § 718.13(a) (24 F.R. 4223, 25 F.R. 7237, and 25 F.R. 12166) and to make clear that the amendment pertaining to § 718.13(a) as published in 25 F.R. 7237, dated August 2, 1960, was not intended to rescind or nullify the provisions prescribed in § 718.13(a) (1), (2), (3), and (4) as published in 24 F.R. 4223, dated May 27, 1959.

Since this amendment is issued for the purpose of clarifying the provisions dealing with the conditions governing the determination and adjustment of excess acreage, it is hereby determined that compliance with the notice, public procedure, and effective date provisions of the Administrative Procedure Act (5 U.S.C. 1003) is impracticable and contrary to the public interest and that this amendment shall become effective upon publication in the FEDERAL REGISTER.

Section 718.13(a) (24 F.R. 4223, 25 F.R. 7237, and 25 F.R. 12166) is amended to read as follows:

§ 718.13 Determination and adjustment of excess acreage.

(a) (1) *General.* If the farm operator or other producer on the farm elects to dispose of excess acreage or otherwise adjust a previously determined acreage in accordance with the applicable regulations, the farm shall be revisited for the purpose of determining the adjusted acreage under the conditions outlined in this section. Unless the requirements for the measurement of an adjusted acreage are met by the farm operator or other producer, the acreage as determined prior to such adjustment shall be considered as the acreage of the commodity on the farm in determining whether the applicable farm allotment has been exceeded. When the producer must pay the cost of determining the adjusted acreage, the amount required shall be as determined by the county committee with the approval of the State committee.

(2) *Peanuts.* Farms will be revisited to determine the initially adjusted peanut acreage at the expense of the ASC county office when:

(i) The total acreage of peanuts on an allotment farm exceeds the peanut allotment; or

(ii) An acreage of peanuts has been measured on a farm for which no allotment is established and a statement of the operator or his representative that peanuts would not be dug was not obtained on the report of acreage.

Notwithstanding subparagraph (2) (i) and (ii) of this paragraph, a revisit to a farm is not required when the total peanut acreage is determined to be one (1.0) acre or less and no producer on the farm is interested in an acreage of peanuts planted on another farm. Revisits to a farm for the purpose of determining the dug acreage or a further adjustment of an excess acreage, other than provided for in this section, shall be made only upon request and payment of the cost by the farm operator.

(3) *Wheat.* If the total acreage of wheat determined for the farm exceeds the allotment, the farm shall be revisited for the purpose of determining the initially adjusted acreage at the expense of the ASC county office. In all other cases, the farm will be revisited for the purpose of determining the adjusted acreage of wheat only upon request and payment of the cost of determining the adjusted acreage. A revisit to the farm to determine the final wheat acreage is not required when:

(i) The total acreage of wheat on the farm was reported for use as wheat cover crop, or

(ii) The acreage of wheat exceeds the allotment but is not in excess of 15 acres and the producer does not elect to adjust the excess acreage.

(4) *Allotment crops other than peanuts and wheat.* If the measured acreage of any allotment crop other than peanuts or wheat is in excess of the farm acreage allotment and the producer elects to adjust the acreage by disposition of such excess, the farm shall be revisited for the purpose of determining the adjusted acreage upon timely receipt of a request from the producer and payment of the cost.

(5) *Other soil bank acreages.* If the producer elects to adjust the measured acreage of other soil bank base crops, the farm will be revisited to determine the adjusted acreage upon request and payment of the cost of measuring the adjusted acreage. In cases where a cover crop has been approved for a designated reserve area, the disposition of the cover crop shall be determined at the expense of the ASC county office.

(Sec. 374, 375, 52 Stat. 65, 66, sec. 401, 63 Stat. 1054, sec. 403, 61 Stat. 932, sec. 124, 70 Stat. 198; 7 U.S.C. 1374, 1375, 1421, 1153, 1812)

Done at Washington, D.C., this 6th day of December 1960.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60–11479; Filed, Dec. 8, 1960; 8:54 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Milk Order No. 118]

PART 1018—MILK IN SOUTHEASTERN FLORIDA MARKETING AREA

Order Amending Order; Correction

The following corrections are made in F.R. Doc. 60–11136 filed November 29, 1960, and published on November 30, 1960:

1. In § 1018.45(a) (2), (3) and (4) in column 3, 25 F.R. 12226, change the Roman numeral "IV" as it appears following the words "in series beginning with Class" to Roman numeral "III".

2. In the sixth line of § 1018.43(b)(3) as it appears in column 2, 25 F.R. 12226, insert the word "and" immediately preceding the word "butterfat".

3. Insert immediately preceding the comma at the end of § 1018.43(b)(3) as it appears in column 2, 25 F.R. 12226, the words "from dairy farmers who the market administrator determines constitute the regular approved dairy-farmer supply for the nonpool plant".

4. Determinations (2) and (3) which appear at the bottom of column 2 and top of column 3, 25 F.R. 12227, are part of the determinations under § 1018.0(c) and should be inserted immediately following § 1018.0(c)(1), in column 3, 25 F.R. 12225.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 5th day of December to be effective on and after the 1st day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–11440; Filed, Dec. 8, 1960; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. No. ER–316]

PART 225—TARIFFS OF CERTAIN CERTIFICATED AIRLINES: TRADE AGREEMENTS

Extension of Rules

DECEMBER 5, 1960.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of December 1960.

Part 225 of the Board's Economic Regulations permits the local service carriers, the certificated carriers operating wholly within Hawaii, the certificated Alaskan carriers insofar as their intra-Alaska operations are concerned and carriers holding certificates for the performance of all-expense tours or cruises, to exchange air transportation for advertising goods and services. Part 225 was first adopted in 1955 and has since been extended from year to year.

Under § 225.2, as now written, the time for filing new trade agreements expires December 16, 1960. The Board, on its own initiative, has decided to continue the effectiveness of this regulation.

It appears to the Board that the policies of Part 225 have proved their value and that no detrimental effects on air transportation have arisen. The Board therefore believes that it is not necessary to reconsider these policies every year and that Part 225 should be extended for a longer period at this time. The Board therefore has decided to extend Part 225 for a two-year period.

The Board finds that the findings and conclusions which prompted and supported the issuance and continuation of this regulation in the past continue to be applicable and valid.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 225 of the Economic Regulations (14 CFR Part 225), effective December 18, 1960, as follows:

1. By changing the date specified in § 225.2 from "December 17, 1960" to "December 17, 1962."

2. By changing the date specified in subparagraph (a) of § 225.5 from "January 1, 1961" to "January 1, 1963."

3. By changing the date specified in § 225.13 from "January 1, 1960" to "December 18, 1960."

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 403, 404, and 416, 72 Stat. 758, 760, 771; 49 U.S.C. 1373, 1374, 1386)

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

[F.R. Doc. 60–11476; Filed, Dec. 8, 1960; 8:53 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER A—PROCEDURAL REGULATIONS

[Amdt. 1]

PART 414—FEES FOR COPYING, CERTIFICATION AND SEARCH OF RECORDS

Increase in Certain Fee

In order to more nearly reflect the cost to this Agency for certification or validation with a seal of facsimile copies of records supplied the public upon request, it is found necessary to charge $1.00 for such service rather than $0.50. Acting in accordance with section 3 of the Administrative Procedure Act, section 501 of the Independent Offices Appropriation Act of 1952 and Bureau of the Budget Circular No. A–25 and pursuant to authority delegated to me by the Administrator (24 F.R. 1221), § 414.3 of Part 414 (14 CFR Part 414) is amended effective December 26, 1960, as follows:

1. Change $0.50 to read $1.00.

Issued in Washington, D.C., on December 5, 1960.

ALAN L. DEAN,
Assistant Administrator for Management Services.

[F.R. Doc. 60–11425; Filed, Dec. 8, 1960; 8:46 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 59–WA–414]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Amendments

On April 30, 1960, there were published in the FEDERAL REGISTER (25 F.R. 3816) amendments to §§ 600.6091 and 601.6091 of the regulations of the Administrator. These amendments, to be effective February 9, 1961, modified VOR Federal airway No. 91 and its associated control areas between Poughkeepsie, N.Y., and Albany, N.Y., and revoked VOR Federal airway No. 91 west alternate and its associated control areas between Poughkeepsie and Albany.

These amendments were drafted in anticipation of the revocation of Victor 91 east alternate between Poughkeepsie and Albany in Airspace Docket No. 59–WA–331 (25 F.R. 3156). However, since the effective date of Docket No. 59–WA–331 is being postponed, action is taken herein to alter the amendments to §§ 600.6091 and 601.6091 in Docket No. 59–WA–414 so as to include reference to Victor 91 east alternate.

Since thirty days will elapse from the time of publication of this action to the effective date of the rule as initially adopted, this change is made in compliance with section 4 of the Administrative Procedure Act.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), effective immediately, Airspace Docket No. 59–WA–414 is hereby modified as follows:

1. The amendments to §§ 600.6091 and 601.6091 are deleted and the following are substituted therefor:

§ 600.6091 [Amendment]

a. In the text of § 600.6091 *VOR Federal airway No. 91 (New York, N.Y., to Montreal, Quebec)*, delete "Poughkeepsie, N.Y., VOR; Albany, N.Y., VOR, including an east alternate via the INT of the Poughkeepsie VOR 007° and the Albany VOR 140° radials and also a west alternate;" and substitute therefor "Poughkeepsie, N.Y., VOR; INT of the Poughkeepsie VOR 342° True and the Albany VORTAC 181° True radials; Albany, N.Y., VORTAC, including an east alternate via the INT of the Poughkeepsie VOR 007° True and the Albany VORTAC 140° True radials;".

b. Section 601.6091 is amended to read:

§ 601.6091 VOR Federal airway No. 91 control areas (New York, N.Y., to Montreal, Quebec).

All of VOR Federal airway No. 91 including E alternates.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 2, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11427; Filed, Dec. 8, 1960; 8:46 a.m.]

[Airspace Docket No. 60–FW–59]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Segment of Federal Airway, Associated Control Areas and Reporting Points

On September 14, 1960, a notice of proposed rule making was published in the

FEDERAL REGISTER (25 F.R. 8827) stating that the Federal Aviation Agency proposed to revoke the segment of Amber Federal airway No. 4 from San Antonio, Tex., to Waco, Tex., its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. In § 600.104 (14 CFR 600.104; 25 F.R. 378) the following changes are made:

(a) In the caption *"San Antonio, Tex., to Waco, Tex.,"* is deleted.

(b) In the text "From the San Antonio, Tex., RBN via the INT of a line bearing 004° from the San Antonio RBN and a line bearing 226° from the Austin, Tex., RBN; Austin, Tex., RBN; to the Waco, Tex., RR." is deleted.

2. In the caption of § 601.104 (14 CFR 601.104 *"San Antonio, Tex., to Waco, Tex.,"* is deleted.

3. In § 601.4104 (14 CFR 601.4104; 25 F.R. 378) the following changes are made:

(a) In the caption *"San Antonio, Tex., to Waco, Tex.,"* is deleted.

(b) In the text "San Antonio, Tex., RBN; Austin, Tex., RBN; Waco, Tex., RR;" is deleted.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 2, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11428; Filed, Dec. 8, 1960; 8:46 a.m.]

[Airspace Docket No. 60-AN-30]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 16, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8910) stating that the Federal Aviation Agency proposed to modify the Bethel, Alaska, control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2447 (14 CFR 601.2447) is amended to read:

§ 601.2447 Bethel, Alaska, control zone.

Within a 5-mile radius of the Bethel Municipal Airport (latitude 60°46'55" N., longitude 161°49'55" W.); within 2 miles either side of the 007° True and the 214° True radials of the Bethel VOR extending from the 5-mile radius zone to 12 miles N and SW of the VOR; within 2 miles either side of the 296° True bearing from the Bethel RR extending from the 5-mile radius zone to the RR; and within 2 miles either side of the 023° True bearing from the Bethel RBN extending from the 5-mile radius zone to 12 miles NE of the RBN.

This amendment shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 2, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11426; Filed, Dec. 8, 1960; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter II—National Bureau of Standards, Department of Commerce

SUBCHAPTER A—TEST FEE SCHEDULES

PART 203—HEAT

Revision

In accordance with the provisions of section 4 (a) and (c) of the Administrative Procedure Act, it has been found that notice and hearing on these schedules of fees are unnecessary for the reason that such procedures, because of the nature of these rules, serve no useful purpose. This revision is effective from December 5, 1960.

1. Part 203 is revised to read as follows:

TEMPERATURE PHYSICS

Sec.

203.101 Laboratory thermometers.
203.102 Thermocouples, thermocouple materials, and pyrometer indicators.
203.103 Resistance thermometers.
203.104 Clinical thermometers.
203.105 Optical pyrometers and ribbon filament lamps.

AUTHORITY: §§ 203.101 to 203.105 issued under sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets or applies sec. 7, 70 Stat. 959; 15 U.S.C. 275a.

TEMPERATURE PHYSICS

§ 203.101 Laboratory thermometers.

Only thermometers identified uniquely by serial number will be accepted for test.

Item	Description	Fee
203.101a	Thermometers, testing at points from 0 to 100° C. inclusive, or from 32 to 212° F. inclusive, for each point tested	$8.00
203.101b	Thermometers, testing at points from 101 to 300° C. inclusive, or from 213 to 600° F. inclusive, for each point tested	15.00
203.101c	Thermometers, testing at points from 301 to 500° C. inclusive, or from 601 to 950° F. inclusive, for each point tested	25.00
203.101d	Thermometers, testing at points from −1 to −110° C. inclusive, or from 31 to −166° F. inclusive, for each point tested	27.00
203.101e	Thermometers, testing in liquid air, oxygen, or liquid nitrogen (−183 to −196° C.), for each point tested	44.00
203.101f	Calorimeter thermometers	56.00
203.101g	Beckmann thermometers, with 5° or 6° scale, testing at 1° intervals by comparison with precision standards	61.00
203.101h	When instruments submitted are found to be unsuitable for test or unreliable a charge will be made to cover the cost of the work done. Minimum fee $1.00.	
203.101i	Preliminary examination for foreign material in the mercury column and bulb and for a separated mercury column will be made as required. Separated mercury column will be reunited provided this can be accomplished readily. Maximum fee $2.50.	
203.101z	For special tests not covered by the above schedule, fees will be charged dependent upon the nature of the test.	

§ 203.102 Thermocouples, thermocouple materials and pyrometer indicators.

(a) Only the bare wires are required in order to perform the thermocouple calibrations in this schedule. It is preferable not to send insulating and protecting tubes, as the rate of breakage of these in shipment is high. If the thermocouple is furnished mounted (as in a protection-tube assembly) a charge of $5.00 will be made for dismantling the mounting, and the various parts will be returned to the sender without reassembling them.

(b) Thermocouple length requirements listed below are exclusive of lead wire. Lead wire need not be sent with thermocouples.

(c) All thermocouple calibration data furnished in certificates and reports will be on the basis of a reference junction temperature of 0° C., or 32° F.

(d) The calibration or test of an article will not be undertaken if, in our opinion, the article will not yield the specified accuracy, or if it possesses such unusual characteristics as to prevent the carrying out of the calibration or test at a reasonable cost.

Item	Description	Fee
203.102a	High temperature thermocouples and thermocouple materials. Minimum length 24 inches. Certification of corresponding values of temperature and emf of a thermocouple material against the platinum standards of the NBS or of temperature and emf of a thermocouple at any 4 to 15 points within the range 0° to 1450° C. (32° to 2650° F.)	$75.00
	The certified accuracy of calibration of platinum vs. platinum-rhodium thermocouples is 0.5 degree C. from 0° to 1100° C. and ranges from 0.5 degree at 1100° to 2 degrees at 1450° C. Results above 1100° are obtained by extrapolation.	
	The certified accuracy of calibration of base-metal thermocouples is 1 degree C. in the range 0 to 1100° C. (32 to 2000° F.). Base-metal thermocouples are not calibrated above 1100° C. (2000° F.).	
203.102b	High temperature thermocouples and thermocouple materials. Certification as per item 203.102a at less than 4 points, per point	$25.00
	Minimum charge per thermocouple, 2 points.	
203.102c	Platinum vs. platinum-10% rhodium thermocouples. The thermocouple shall be at least 36 inches long and made of wire not less than 0.014 inch in diameter. Certification of the emf of a thermocouple at any of the following temperatures, per point: 1063° C. (gold point), 960.5° C. (silver point), 630.5° C. (temperature of freezing antimony), 419.5° C. (temperature of freezing zinc).	75.00
	Accuracy of certification 2 microvolts (about 0.2 degree C.).	
203.102d	Platinum vs. platinum-10% rhodium thermocouples. The thermocouple shall be at least 36 inches long and made of wire not less than 0.014 inch in diameter. Primary calibration at all of the temperatures listed in item 203.102c with certified accuracy of 2 microvolts, plus certification of not more than 15 corresponding values of emf and temperature in the range 0° to 1450° C. The certified accuracy of calibration is 0.3 degree from 0° to 1100° C. and decreases from 0.3 degree at 1100° to 2 degrees at 1450° C. If the submitted thermocouple meets the International Temperature Scale requirements for standard thermocouples (see The International Temperature Scale of 1948 by H. F. Stimson, J. Research NBS, 42, 209, 1949), a quadratic equation fitted at 1063°, 960.8°, and 630.5° C. will also be furnished	255.00
203.102e	High temperature thermocouples and thermocouple materials. Certification of interpolated corresponding values of emf and temperature as per item 203.102a or 203.102d, per point	2.00
203.102f	Base-metal thermocouples. Minimum length of 36 inches. Certification of corresponding values of emf and temperature to an accuracy of 0.1° C. in the range 0° to −110° C., per point	33.00
	Minimum calibration per thermocouple, 2 points.	
203.102g	Base-metal thermocouples. Minimum length of 36 inches. Certification of corresponding values of emf and temperature to an accuracy of about 0.1° in the range 0° to 300° C. and to an accuracy of about 0.2° above 300° C., per point	48.00
	Minimum calibration per thermocouple, 2 points.	
203.102h	Base-metal thermocouples. Minimum length of 36 inches. Certification of corresponding values of emf and temperature to an accuracy of about 0.1° in the range −183 to −196° C., per point	23.00
	Minimum calibration per thermocouple, 2 points.	
203.102i	Pyrometer indicators. Calibration of single scale or meter of single dial of potentiometer (reference junction compensator counting as a dial)	8.00
203.102j	Pyrometer indicators. Calibration of each additional dial of a multi-dial instrument (reference junction compensator counting as a dial) or of each additional range of each dial or scale of a multi-range instrument	
	Calibration of a thermocouple and pyrometer indicator as a unit will be charged for as if the thermocouple and indicator were separately calibrated.	
203.102z	For special tests not covered by the above schedule, fees will be charged dependent upon the nature of the test.	

§ 203.103 Resistance thermometers.

Resistance thermometers will normally be tested only if they may reasonably be expected to meet the requirements for certification as a standard on the International Temperature Scale. In general, this requires a 4-lead resistor of very pure platinum hermetically sealed in a protecting tube.

Item	Description	Fee
203.103a	Standard platinum resistance thermometers—calibration at the ice, steam and sulfur points. Table will be furnished with entries at 1-degree intervals	$150.00
203.103b	Standard platinum resistance thermometers—calibration under 203.103a and at the oxygen point. Table will be furnished with entries at 1-degree intervals	200.00
203.103c	Calorimetric type platinum resistance thermometers—calibration at the ice and steam points and at approximately 50° C. Table will be furnished with entries at 1-degree intervals	150.00
203.103d	Capsule-type platinum resistance thermometers—comparison calibration over the range from 12° to 90° K. Results will be in the form of a table with entries at 0.1 degree intervals. Additional tables are not available unless requested at the time of test. See item 203.103f	400.00
203.103e	Determination of the average temperature coefficient of electrical resistance over the interval 0° to 100° C. Minimum length, 16 inches. Samples must have a resistance of at least 0.1 ohm per foot at the ice point	60.00
203.103f	Each additional table expressing the results of test under items 203.103a, b, or c	30.00
	Additional tables under item 203.103d are not available unless requested at the time of test.	
203.103g	Item 203.103g if requested at the same time as the test of the thermometer under items 203.103a, b, c, or d	25.00
203.103y	When instruments submitted are found to be unsuitable for test or unreliable, a charge will be made to cover the cost of the work done.	
203.103z	For special tests not covered by the above schedule, fees will be charged dependent upon the nature of the test.	

§ 203.104 Clinical thermometers.

Item	Description	Fee
203.104z	Test of clinical thermometers for compliance with the current edition of the Commercial Standard for Clinical Thermometers. Fees will be charged dependent upon the time required for making the test.	

§ 203.105 Optical pyrometers and ribbon filament lamps.

(a) Optical pyrometers and ribbon filament lamps submitted for calibration and test should be accompanied by an order requesting the test and specifying the Fee Schedule Item Number. If desired, the calibration points may be specified. A bill will be rendered at the completion of the work.

(b) The calibration or test of an article will not be undertaken if it possesses such unusual characteristics as to prevent the carrying out of the calibration or test at a reasonable cost. If, in the course of a calibration or test, it is found that the article is inferior to its general class, a report will be issued giving results obtained. In such cases, a fee covering the cost of the work performed will be charged.

Item	Description	Fee
203.105a	Optical pyrometers: Calibration of one range between 800° C. and 2400° C. or the first range, between 800° C. and 2400° C. of a calibration involving more than one range; 4 to 12 certified values	$185.00
203.105b	Optical pyrometers: Calibration of ranges in addition to item 203.105a up to 4200° C.; 4 to 12 certified values in each range, per range	120.00
203.105c	Optical pyrometers: Three or fewer certified values, 800° C. to 2400° C.	95.00
203.105d	Ribbon filament lamps: Certified values of brightness temperature (at wavelength of 0.65 microns) versus direct current at 5 to 16 points in the range, 800° to 2000° C.	165.00
203.105e	Ribbon filament lamps: Certified values of brightness temperature (at wavelength of 0.65 microns) versus direct current at 5 or fewer points in the range, 800° C. to 2300° C.	90.00
203.105f	Additional interpolated values as per item 203.105a and 203.105b, per point	2.25
203.105z	For special tests not covered by the above schedule, fees will be charged dependent upon the nature of the test.	

A. V. ASTIN,
Director.

[F.R. Doc. 60-11401; Filed, Dec. 8, 1960; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7953 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

E. Kapchan & Associates, Optometrists et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170-22 Corrective, orthopedic, etc.; § 13.190 *Results.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Elliott Kapchan doing business as Dr. E. Kapchan & Associates, Optometrists, etc., Alameda, Calif., Docket 7953, October 12, 1960]

In the Matter of Elliott Kapchan, Individually and Trading and Doing Business as Dr. E. Kapchan and Dr. J. Jackson, Optometrists

Consent order requiring sellers of corneal contact lenses in Alameda, Calif., to cease representing falsely in advertising that their lenses could be worn successfully by all persons, and worn all day without discomfort; that the lenses would stay in place under all conditions; and that upon purchase thereof, eyeglasses could be discarded.

The order to cease and desist is as follows:

It is ordered, That respondent Elliott Kapchan, an individual trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates, or under any other name or names, his representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of contact lenses do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or by implication that:

(a) All persons in need of visual correction can successfully wear respondent's contact lenses;

(b) There is no discomfort in wearing respondent's contact lenses;

(c) All persons can wear respondent's contact lenses all day without discomfort; or that any person can wear respondent's contact lenses all days without discomfort except after that person has become fully adjusted thereto;

(d) Eyeglasses can always be discarded upon the purchase of respondent's contact lenses;

(e) That respondent's contact lenses will stay in place under all conditions.

2. Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said contact lenses, which advertisement contains any of the representations prohibited in Paragraph 1 hereof.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondent Elliott Kapchan, an individual trading and doing business as Dr. E. Kapchan & Associates, Optometrists, and as E. Kapchan, O. D. & Associates, shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: October 12, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary*.

[F.R. Doc. 60-11433; Filed, Dec. 8, 1960; 8:47 a.m.]

[Docket 7989 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Maxine's, Inc., et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* 13.1845-30 Fur Products Labeling Act; § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act. Subpart—Using misleading name — Goods: § 13.2280 *Composition:* 13.2280-30 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Maxine's, Inc., et al., Pittsburgh, Pa., Docket 7989, October 12, 1960.]

In the Matter of Maxine's, Inc., a Corporation, and Louis J. Azen and Alan Azen, Individually and as Officers of Said Corporation

Consent order requiring Pittsburgh furriers to cease violating the Fur Products Labeling Act by labeling which falsely identified the animals producing certain furs and failed to set forth the term "Dyed Broadtail Lamb" where required; by advertising which failed to disclose the names of animals producing the fur in certain products or the country of origin of imported furs; and by failing in other respects to comply with labeling and invoicing requirements.

The order to cease and desist is as follows:

It is ordered, That Maxine's, Inc., a corporation, and its officers, and Louis J. Azen and Alan Azen, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce of fur products, or in connection with the sale, advertising, offering for sale, transportation, or distribution of fur products which are made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur", and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise falsely or deceptively identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured.

2. Failing to affix labels to fur products showing in words and figures plainly legible, all the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

3. Failing to set forth the term "Dyed Broadtail Lamb" where an election is made to use that term instead of dyed Lamb.

4. Setting forth on labels affixed to fur products information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder:

(a) Mingled with non-required information.

(b) In handwriting.

5. Failing to set forth separately on labels affixed to fur products composed of two or more sections containing different animal furs the information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder with respect to the fur comprising each section.

6. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish to purchasers of fur products an invoice showing all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which fails to disclose:

1. The name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

2. The name of the country of origin of any imported furs contained in a fur product.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 12, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary*.

[F.R. Doc. 60-11434; Filed, Dec. 8, 1960; 8:47 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

SUBCHAPTER C—DRUGS

PART 130—NEW DRUGS

Changes in Drug-Labeling Requirement; Changes in New-Drug Applications

On July 22, 1960, the Commissioner of Food and Drugs, pursuant to section 701 (a) of the Federal Food, Drug, and Cosmetic Act and under the authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 5611) published in the FEDERAL REGISTER (25

F.R. 6985) notice of a proposal to amend the regulations for the enforcement of the drug and device sections and the new-drug section of the law for the purposes of requiring manufacturers to furnish adequate information for the professional use of prescription drugs and devices and to keep new drugs off the market until the adequacy of manufacturing methods, facilities, and controls have been confirmed by establishment inspection, when required.

In response to the Commissioner's invitation, numerous comments were received, and as a result of specific requests the time for the filing of comments on the proposed amendment of § 1.106 (b)(3), (c)(3), and (d)(3) was extended to December 22, 1960 (25 F.R. 9649). The data, comments, and suggestions relative to the remaining proposals have been evaluated, and as a result of this study, *It is ordered*, That the regulations be amended as set forth below:

1. Section 1.106 is amended in the following respects:

a. Paragraph (b) is amended by changing subparagraphs (1) and (2) to read as set forth below and by adding thereto new subparagraphs (4) and (5):

§ 1.106 Drugs and devices; directions for use.

* * * * *

(b) *Exemption for prescription drugs.* A drug subject to the requirements of section 503(b)(1) of the act shall be exempt from section 502(f)(1) if all the following conditions are met:

(1) The drug is:

(i)(*a*) In the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale distribution of prescription drugs; or

(*b*) In the possession of a retail, hospital, or clinic pharmacy, or a public health agency, regularly and lawfully engaged in dispensing prescription drugs; or

(*c*) In the possession of a practitioner licensed by law to administer or prescribe such drugs; and

(ii) It is to be dispensed in accordance with section 503(b).

(2) The label of the drug bears:

(i) The statement "Caution: Federal law prohibits dispensing without prescription"; and

(ii) The recommended or usual dosage; and

(iii) The route of administration, if it is not for oral use; and

(iv) The quantity or proportion of each active ingredient, as well as the information required by section 502 (d) and (e); and

(v) If it is for other than oral use, the names of all inactive ingredients; and if it is intended for administration by parenteral injection, the quantity or proportion of all inactive ingredients; and

(vi) An identifying lot or control number from which it is possible to determine the complete manufacturing history of the package of the drug;

Provided, however, That in the case of containers too small or otherwise unable to accommodate a label with sufficient space to bear all such information, but which are packaged within an outer container from which they are removed for dispensing or use, the information required by subdivisions (ii), (iii) and (v) of this subparagraph may be contained in other labeling on or within the package from which it is to be dispensed, and the information referred to in subdivision (i) of this subparagraph may be placed on such outer container only, and the information required by subdivision (vi) of this subparagraph may be on the crimp of the dispensing tube.

* * * * *

(4) Any labeling, as defined in section 201(m) of the act, whether or not it is on or within a package from which the drug is to be dispensed, distributed by or on behalf of the manufacturer, packer, or distributor of the drug, that furnishes or purports to furnish information for use or which prescribes, recommends, or suggests a dosage for the use of the drug contains:

(i) Adequate information for such use, including indications, effects, dosages, routes, methods, and frequency and duration of administration and any relevant hazards, contraindications, side effects, and precautions, under which practitioners licensed by law to administer the drug can use the drug safely and for the purposes for which it is intended, including all conditions for which it is advertised or represented; and if the article is subject to section 505, 506, or 507 of the act, the labeling providing such information is substantially the same as the labeling authorized by the effective new-drug application or required as a condition for its certification or exemption from certification; and

(ii) The same information concerning the ingredients of the drug as appears on the label and labeling on or within the package from which the drug is to be dispensed;

Provided, however, That the information required by subdivisions (i) and (ii) of this subparagraph is not required on the so-called reminder-piece labeling which calls attention to the name of the drug but does not include indications or dosage recommendations for use of the drug.

(5) All labeling, except labels and cartons, bearing information for use of the drug also bears the date of the issuance or the date of the latest revision of such labeling.

b. Paragraph (c) is amended by changing the introduction to the paragraph and subparagraphs (1) and (2) to read as set forth below and by adding thereto new subparagraphs (4), (5), and (6):

(c) *Exemption for veterinary drugs.* A drug intended for veterinary use which, because of toxicity or other potentiality for harmful effect, or the method of its use, is not safe for animal use except under the supervision of a licensed veterinarian, and hence for which "adequate directions for use" cannot be prepared, shall be exempt from section 502(f)(1) of the act if all the following conditions are met:

(1) The drug is:

(i) In the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of veterinary drugs and is to be sold only to or on the prescription or other order of a licensed veterinarian for use in the course of his professional practice; or

(ii) In the possession of a licensed veterinarian for use in the course of his professional practice.

(2) The label of the drug bears:

(i) The statement "Caution: Federal law restricts this drug to sale by or on the order of a licensed veterinarian"; and

(ii) The recommended or usual dosage; and

(iii) The route of administration, if it is not for oral use; and

(iv) The quantity or proportion of each active ingredient as well as the information required by section 502(e) of the act; and

(v) If it is for other than oral use, the names of all inactive ingredients; and if it is intended for administration by parenteral injection, the quantity or proportion of all inactive ingredients; and

(vi) An identifying lot or control number from which it is possible to determine the complete manufacturing history of the package of the drug;

Provided, however, That in the case of containers too small or otherwise unable to accommodate a label with sufficient space to bear all such information, but which are packaged within an outer container from which they are removed for dispensing or use, the information required by subdivisions (ii), (iii), and (v) of this subparagraph may be contained in other labeling on or within the package from which it is to be so dispensed, and the information referred to in subdivision (i) of this subparagraph may be placed on such outer container only, and the information required by subdivision (vi) of this subparagraph may be on the crimp of the dispensing tube.

* * * * *

(4) Any labeling, as defined in section 201(m) of the act, whether or not it is on or within a package from which the drug is to be dispensed, distributed by or on behalf of the manufacturer, packer, or distributor of the drug, that furnishes or purports to furnish information for use or which prescribes, recommends, or suggests a dosage for the use of the drug contains:

(i) Adequate information for such use, including indications, effects, dosages, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions, and including information relevant to compliance with the food additive provisions of the act, under which veterinarians licensed by law to administer the drug can use the drug safely and for the purposes for which it is intended, including all conditions for which it is advertised or represented; and if the article is subject to section 505 or 507 of the act, the label-

ing providing such information is substantially the same as the labeling authorized by the effective new-drug application or required as a condition for its certification or exemption from certification; and

(ii) The same information concerning the ingredients of the drug as appears on the label and labeling on or within the package from which the drug is to be dispensed;

Provided, however, That the information required by subdivisions (i) and (ii) of this subparagraph is not required on the so-called reminder-piece labeling which calls attention to the name of the drug but does not include indications or dosage recommendations for use of the drug.

(5) All labeling, except labels and cartons, bearing information for use of the drug also bears the date of the issuance or the date of the latest revision of such labeling.

(6) A prescription drug intended for both human and veterinary use shall comply with paragraph (b) of this section and subparagraphs (4) and (5) of this paragraph.

c. Paragraph (d) is amended by changing subparagraph (1) to read as set forth below and by adding thereto new subparagraphs (4) and (5):

(d) *Exemption for prescription devices.* • • •

(1) The device is:

(i) (a) In the possession of a person (or his agents or employees) regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of such device; or

(b) In the possession of a practitioner, such as physicians, dentists, and veterinarians, licensed by law to use or order the use of such device; and

(ii) Is to be sold only to or on the prescription or other order of such practitioner for use in the course of his professional practice.

• • • • •

(4) Any labeling, as defined in section 201(m) of the act, whether or not it is on or within a package from which the device is to be dispensed, distributed by or on behalf of the manufacturer, packer, or distributor of the device, that furnishes or purports to furnish information for use of the device contains adequate information for such use, including indications, effects, routes, methods, and frequency and duration of administration and any relevant hazards, contraindications, side effects, and precautions, under which practitioners licensed by law to employ the device can use the device safely and for the purposes for which it is intended, including all purposes for which it is advertised or represented. This information will not be required on so-called reminder-piece labeling which calls attention to the name of the device but does not include indications or other use information.

(5) All labeling, except labels and cartons, bearing information for use of the device also bears the date of the issuance or the date of the latest revision of such labeling.

d. Paragraph (e) is revoked.

2. In § 130.4 *Applications,* paragraph (c) is amended by changing items (6) (c) and (d) and item (9) in the new-drug application form to read as set forth below; by deleting item (6) (e) from the new-drug application form; and by adding to the section a new paragraph (e) reading as indicated:

§ 130.4 Applications.

• • • • •

(c) • • •

(6) • • •

(c) If the drug is limited in its labeling to use under the professional supervision of a practitioner licensed by law to administer it, its labeling should bear information for use under which such practitioners can use the drug for the purposes for which it is intended, including all the purposes for which it is to be advertised or represented.

(d) Typewritten or other draft labeling copy may be accepted for conditional consideration of an application with the understanding that final printed labeling identical in content to the draft copy will be submitted as soon as available and prior to the marketing of the drug.

• • • • •

(9) It is understood that the labeling and advertising for the drug will prescribe, recommend, or suggest its use only under the conditions stated in the labeling which is part of this application; and if the article is a prescription drug, it is understood that any labeling which furnishes or purports to furnish information for use or which prescribes, recommends, or suggests a dosage for use of the drug will also contain substantially the same information for its use, including indications, effects, dosages, routes, methods, and frequency and duration of administration, any relevant hazards, contraindications, side effects, and precautions, contained in the labeling which is part of this application. It is understood that all representations in this application regarding the components, composition, manufacturing methods, facilities, controls, and labeling apply to the drug produced until an effective supplement to the application provides for a change or the applicant is notified in writing by the Food and Drug Administration that a supplemental application is not required for the change, or the article is no longer a new drug. It is further understood that a new drug for which an application is conditionally effective may not be marketed until the stated conditions have been met, including when such is a condition, the submission of final printed labeling identical in content to the draft copy in the application, and including, when such is a condition, notification by the New Drug Branch that an inspection has verified the adequacy of the manufacturing methods, facilities, and controls described in the application.

• • • • •

(e) When an applicant has been notified as provided in § 130.6(c) that an inspection of the manufacturing methods, facilities, and controls is required, and in the judgment of the New Drug Branch an adequate inspection also requires observation of representative production or control operations on the drug, the application may be made conditionally effective until such an inspection has verified the adequacy of the manufacturing methods, facilities, and controls described in the application. The New Drug Branch will inform the applicant in writing when the verification has been completed and the new-drug application made effective. The New Drug Branch will notify the applicant as soon as it is determined that it is necessary for an inspection to include observation of representative production or control operations on the drug and will arrange for such inspection by a duly authorized inspector of the Food and Drug Administration promptly when it is notified by the applicant that he is prepared to conduct such operations. An application may be made conditionally effective as provided in this paragraph only when the following conditions are met:

(1) The New Drug Branch has determined that the application may be made effective when the adequacy of the manufacturing methods, facilities, and controls has been verified by inspection; and

(2) It is not possible to complete an inspection including observation of representative production or control operations on the drug, when that is required, within the time provided by the act for consideration of a new-drug application.

§ 130.5 [Amendment]

3. In § 130.5 *Reasons for refusing to file applications,* the first sentence of paragraph (a) (3) is amended to read as set forth below. As amended, this subparagraph reads as follows:

(3) The specimens of labeling proposed do not expressly prescribe, recommend, or suggest the use of such drug under such conditions. The New Drug Branch will notify the applicant promptly of such nonacceptance and the reason therefor and, in case of incompleteness as to matter required by any clause of section 505(b) of the act, shall specify such clause. Otherwise, the date on which an application is received will be considered to be the date on which such application is filed, and the New Drug Branch will notify the applicant of such date.

4. Section 130.6 is amended to read as follows:

§ 130.6 Comment on applications.

(a) After the New Drug Branch has studied the application, it will furnish oral or written comment to the applicant on any apparent deficiencies in the data submitted or on the need for any additional data or changes in the application to facilitate its consideration.

(b) The New Drug Branch will disclose to the applicant any information upon which such comment is based, except information as to data or sources of data that have been submitted as part of another person's new-drug application or otherwise submitted, with the specific request that it be considered confidential.

(c) When in the judgment of the New Drug Branch, the description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug appears adequate on its face, but it is not feasible to reach a conclusion as to the safety of the drug solely from consideration of this description, the applicant will be notified that an inspection is required to verify their adequacy.

(d) The New Drug Branch may suggest withdrawal of an application when it finds that additional evidence is required to support a finding that the drug is safe or that the methods, facilities, and controls used in manufacturing, processing, and packing the drug are adequate.

4. Section 130.9 is amended to read as follows:

§ 130.9 Supplemental applications.

(a) After an application is effective, a supplemental application may propose changes. The supplemental application may omit statements made in the effective application concerning which no change is proposed. A supplemental application should be submitted for any change beyond the variations provided for in the application (including changes in the scale of production such as from pilot-plant to production batch), that may alter the conditions of use, the labeling, the safety, identity, strength, quality, or purity of the drug or the adequacy of manufacturing methods, facilities, or controls to preserve them. Labeling changes include deviations from the authorized brochure in any mailing or promotional piece used after the drug is placed on the market. When necessary for the safety of the drug, a supplemental application may be required to specify a period of time within which the proposed change will be made; and in such case the distribution of the drug after such time without such change constitutes distribution without an effective new-drug application. If a material change is made in the components, composition, manufacturing methods, facilities or controls, the labeling or advertising, from the representations in an effective application for a new drug, and the drug is marketed before a supplement is effective for such change, the application may be suspended under § 130.27 on the grounds that it contains an untrue statement of a material fact.

(b) The submission of a supplemental new-drug application is not required for changes made in the new drug, or in its labeling, or in the manufacturing facilities or controls under which it is produced, that are not significant from the standpoint of the safety of the new drug as established by the original new-drug application. The holder of an effective new-drug application should submit to the New Drug Branch, in writing, full details of any proposed change or changes, and he will be notified in writing whether, in the Food and Drug Administration's opinion, the submission of a supplemental application is required for such change or changes. This includes all mailing and promotional pieces that are to be used after the new drug has been placed on the market.

(c) A supplemental application is not required when the article is no longer a new drug, under the labeling submitted in the new-drug application, unless the proposed change itself causes it to become a new drug.

5. Section 130.12 is amended by adding thereto a new paragraph (e), reading as follows:

§ 130.12 Refusal to permit the application to become effective.

• • • • •

(e) When an applicant has been notified that an inspection of the manufacturing methods, facilities, and controls is required, as provided in § 130.6(c), the refusal or failure to furnish duly authorized inspectors of the Food and Drug Administration an adequate opportunity to inspect such manufacturing methods, facilities, controls, or any records pertaining to them will constitute grounds for refusal to permit the application to become effective under the provisions of paragraph (d) of this section.

6. Section 130.13 is amended to read as follows:

§ 130.13 Insufficient information in application.

The information contained in an application may be insufficient for the New Drug Branch to determine whether a drug is safe for use if it fails to include (among other things) a statement showing whether the drug is to be limited to prescription sale and exempt under section 502(f)(1) of the act, from the requirement that its labeling bear adequate directions for use. If the drug is to be exempt, the information may also be insufficient if:

(a) The specimen labeling proposed fails to bear adequate information for use, including indications, effects, dosages, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions under which practitioners licensed by law to administer the drug can use the drug for the purposes for which it is intended, including all purposes for which it is to be advertised or represented.

(b) The application fails to show that the labeling and advertising of the drug will offer the drug for use only under those conditions for which it is offered in the labeling that is part of the application.

(c) The application fails to show that all labeling which furnishes or purports to furnish information for use of the drug will contain substantially the same information for use, including indications, effects, dosages, routes, methods, and frequency and duration of administration, and any relevant hazards, contraindications, side effects, and precautions which is contained in the labeling that is part of the application.

Effective dates. The amendments to § 1.106 (b) (2) and (b) (5) (amendment numbered 1a), (c) (2), and (c) (5) (amendment numbered 1b) and (d) (5) (amendment numbered 1c) shall become effective 90 days from the date of publication in the FEDERAL REGISTER. All other amendments shall become effective 30 days from the date of publication.

(Sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371)

Dated: December 2, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11392; Filed, Dec. 8, 1960; 8:45 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Animal Feed or Animal Feed Supplements

Subpart D—Food Additives Permitted in Food for Human Consumption

AMPROLIUM IN MEDICATED FEED AND IN EDIBLE TISSUES OF POULTRY

I. The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Merck and Company, Inc., Rahway, New Jersey, has concluded that the following amendments should issue in conformance with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to § 121.210 for the food additive amprolium (1-(4-amino-2-*n*-propyl-5-pyrimidinylmethyl)-2-picolinium chloride hydrochloride) in chicken feed, to provide for the addition of certain antibiotics. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welware (25 F.R. 8625), § 121.210 of the Food Additives regulations (21 CFR 121.210; 25 F.R. 9224) is amended as set forth below:

1. Paragraph (a) is amended to read as follows:

§ 121.210 Amprolium (1-(4-amino-2-*n*-propyl-5-pyrimidinylmethyl)-2-picolinium chloride hydrochloride) in chicken feed.

• • • • •

(a) It is used or intended for use in the prevention of coccidiosis in chickens caused by Eimeria acervulina, Eimeria brunetti, Eimeria maxima, Eimeria mitis, Eimeria necatrix, Eimeria praecox, and Eimeria tenella, as follows:

(1) As the sole medication in the feed, or

(2) In combination with one or more of the following antibiotics added as an aid in stimulating growth and improving feed efficiency in growing chickens:

(i) Penicillin: Not less than 2.4 grams nor more than 50 grams of master standard equivalent per ton of finished feed;

(ii) Streptomycin: Not less than 30 grams nor more than 50 grams per ton of finished feed;

except that, in combination, the total amount of antibiotic for this purpose shall not exceed 50 grams per ton of the finished feed.

2. Paragraph (b) is amended by changing the word "additive" to "amprolium." As amended, this paragraph reads as follows:

(b) The quantity of the amprolium to be added is such that the finished feed

contains not less than 125 parts per million (0.0125 percent) nor more than 250 parts per million (0.0125 percent) of the additive.

3. Paragraph (c)(1) is amended to provide for label declaration on the container of the additive or any intermediate mixes of any antibiotic used. As amended, subparagraph (1) reads as follows:

(1) (i) The name of the additive, amprolium, (1-(4-amino-2-*n*-propyl-5-pyrimidinylmethyl)-2-picolinium chloride hydrochloride).

(ii) The name of any antibiotic added as provided by paragraph (a)(2) of this section.

4. Paragraph (d)(1) is amended to provide for label declaration on the finished feed of any antibiotic used. As amended, subparagraph (1) reads as follows:

(1) (i) The name of the additive, amprolium (1-(4-amino-2-*n*-propyl-5-pyrimidinylmethyl)-2-picolinium chloride hydrochloride).

(ii) The name of any antibiotic added as provided by paragraph (a)(2) of this section.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

II. Based upon an evaluation of the data before him and proceeding as provided in the statute (sec. 409(c)(4), 72 Stat. 1786; 21 U.S.C. 348(c)(4)), the Commissioner of Food and Drugs has further concluded that tolerance limitations are required to assure that use of the food additives streptomycin and penicillin will not cause the edible tissues of chickens consuming chicken feed treated with the additives in accordance with § 121.210(a)(2) to be unsafe. Therefore, the following tolerances are established, and Subpart D is amended by adding thereto the following new sections:

§ 121.1025 Streptomycin.

A tolerance of zero is established for residues of streptomycin in the eggs and edible tissues of chickens that have consumed the antibiotic in feed.

§ 121.1026 Penicillin.

A tolerance of zero is established for residues of penicillin and the salts of penicillin in the eggs and edible tissues of chickens that have consumed the antibiotics in feed.

(Sec. 409(c)(4), 72 Stat. 1786; 21 U.S.C. 348(c)(4))

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c) (1), (4); 52 Stat. 1049; as amended, 72 Stat. 1786; 21 U.S.C. 348(c) (1), (4))

Dated: December 2, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11447; Filed, Dec. 8, 1960; 8:49 a.m.]

SUBCHAPTER C—DRUGS

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Animal Feed Containing Antibiotic Drugs

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 357, 371), and delegated to the Commissioner of Food and Drugs by the Secretary (23 F.R. 9500; 25 F.R. 5611), the general regulations for the certification of antibiotic and antibiotic-containing drugs (21 CFR 146.26) are amended as follows:

In § 146.26 *Animal feed containing penicillin* * * *, paragraph (b) is amended by adding thereto the following new subparagraph (44):

(44) It is intended for use solely as an aid in preventing outbreaks of coccidiosis in chickens and as an aid in stimulating growth and improving feed efficiency in growing chickens and its labeling bears adequate directions and warnings for such use, including a warning against its use in laying hens and a warning that its use must be discontinued 4 days before treated chickens are slaughtered for human consumption. It contains, per ton of feed: amprolium (1'-(4-amino-2-*N*-propyl-5-pyrimidinyl-methyl)-2-picolinium chloride hydrochloride) in a quantity, by weight of feed, of not less than 0.0125 percent and not more than 0.025 percent; not less than 2.4 grams of penicillin or 30 grams of streptomycin and not more than 50 grams of one or more of such antibiotics. There shall be submitted to the Commissioner, in triplicate, adequate information of the kind described in § 146.7 to establish the safety and efficacy of the article and to guarantee its identity, strength, quality, and purity. The exemption shall expire at the beginning of any act changing the composition or labeling of such drug or the methods used in and the facilities and controls used for its manufacturing, processing, and packaging, or in its labeling, unless the person who obtained the exemption has submitted to the Commissioner, in triplicate, amended information describing such proposed changes, and such amendment has been accepted by the Commissioner.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it relaxes existing requirements and since it would be contrary to public interest to delay providing for the amendment incorporated in this order.

I further find that animal feed containing antibiotic drugs and conforming with the conditions prescribed in this order need not comply with the requirements of sections 502(l) and 507 of the Federal Food, Drug, and Cosmetic Act in order to insure their safety and efficacy.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interprets or applies secs. 502, 507, 52 Stat. 1050, 59 Stat. 463, as amended; 21 U.S.C. 352, 357)

Dated: December 2, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11448; Filed, Dec. 8, 1960; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 3—Department of Health, Education, and Welfare

PART 3-75—DELEGATIONS OF AUTHORITY

Miscellaneous Amendments

Part 3-75 of the Delegations of Authority for Public Contracts in the Department of Health, Education, and Welfare (24 F.R. 9427) is hereby amended in the following respects:

1. In § 3-75.4 *Office of Vocational Rehabilitation*, paragraph (b)(1)(i) is amended and (iii) is added to read:

(i) Negotiate purchases or contracts under section 302(c) (1), (2), (3), (6), (7), (8), (9), (10), (12), (13), and (14) or to make advance payments under section 305.

* * * * *

(iii) Make the determinations and decisions specified in section 302(c)(11) for contracts in excess of $25,000.

2. In § 3-75.9 *Office of Administration, Division of General Services:*

a. Paragraph (a) is amended to add a new subparagraph at the end thereof, to read:

(5) Purchasing Agents.

b. Paragraph (b)(1)(i) is amended to add a new sentence at the end thereof, to read: "Purchasing Agents' authority is limited to signing of purchase orders not in excess of $5,000."

(GSA Delegation 363 (24 F.R. 2302) and 2-500.40 and 2-500.60, as amended, of the Statement of Organization and Delegation of Authority, Secretary, Department of Health, Education, and Welfare (22 F.R. 1049, 24 F.R. 8612))

Effective date: December 5, 1960.

[SEAL] RUFUS E. MILES, JR.,
Director of Administration.

[F.R. Doc. 60-11449; Filed, Dec. 8, 1960; 8:49 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—ALASKA

[Circular No. 2055]

PART 76—STATE GRANTS

Miscellaneous Amendments

In order to incorporate in the regulations the provisions of the act of September 14, 1960 (74 Stat. 1024), and the fact that the preference provisions of the act of September 27, 1944 (43 U.S.C. 282), as amended, have terminated, it is proposed to amend portions of 43 CFR Part 76 to read as set forth below.

This amendment relates to matters which are exempt from the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003), and although the Department of the Interior customarily observes the rule making requirements voluntarily, that procedure was not followed in this case since this change in the regulations is merely a reflection of the changes in the law. The provisions of the change in § 76.15 became effective on September 27, 1959, and the other changes in the regulations became effective on the effective date of the act, September 14, 1960.

Sections 76.11(a), 76.12(a) and (d), 76.13, and 76.15(a) are amended all to read as follows:

§ 76.11 Statutory authority.

(a) The act of July 7, 1958 (72 Stat. 339-343), referred to in §§ 76.11-76.14 as "the act," grants to the State of Alaska the right to select, within 25 years from January 3, 1959, not to exceed 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of selection. The act of September 14, 1960 (74 Stat. 1024), defines vacant unappropriated, unreserved public lands in Alaska to include the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

§ 76.12 Lands subject to selection; patents; minerals.

(a) The act as amended August 18, 1959 (73 Stat. 395), provides that any lease, permit, license, or contract issued under the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended, or under the Alaska Coal Leasing Act of 1914 (38 Stat. 741; 30 U.S.C. 432 et seq.), as amended, referred to in this section as "the mineral leasing acts," shall have the effect of withdrawing the lands subject thereto from selection by the State, unless the State files an application to select such lands within a period of five years after January 3, 1959.

* * * * *

(d)(1) Where the State selects all the lands in a mineral lease, permit, license, or contract, issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act will convey to the State all mineral deposits in the selected lands. Any such patent shall vest in the State all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract. Issuance of patent will not affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(2) Where the State selects a portion of the lands subject to a mineral lease, permit, license, or contract issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act shall reserve to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, priviliges, and benefits under or with respect to that lease, permit, license, or contracts. Upon the termination of the lease, permit, license, or contract, title to minerals so reserved to the United States shall pass to the State.

* * * * *

(e) Section 76.9(a)(2) (iv), (v), and (vi) do not apply to the extent that an application embraces a reserved or retained interest. See § 76.11(a).

§ 76.15 State preference right of selection; waivers.

(a) The acts of July 28, 1956 (see § 76.7), and July 7, 1958 (see § 76.11), provide that upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than 90 days before the date on which it otherwise becomes effective during which period the State of Alaska shall have a preferred right of selection under the acts of 1956 and 1958, except as against prior existing valid rights, equitable claims subject to allowance and confirmation, and other preferred rights of application confered by law.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 6, 1960.

[F.R. Doc. 60-11517; Filed, Dec. 8, 1960; 8:53 a.m.]

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2212]

[Juneau 010148]

ALASKA

Withdrawing Lands for Use of the Federal Aviation Agency in Maintenance of Air Navigation Facilities

By virtue of the authority vested in the Secretary of the Interior by section 4 of the act of May 24, 1928 (48 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws but not disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended, and reserved for use of the Federal Aviation Agency in the maintenance of air-navigation facilities:

JUNEAU AREA

Beginning at Corner No. 9, U.S. Survey 2390, thence
S. 1°33' E., 21.23 chains;
N. 80°48' E., 20.30 chains;
N. 15°07' W., 4.25 chains;
N. 75°18' E., 12.494 chains;
N. 21°05' E., 17.00 chains;
S. 82°45' W., 38.00 chains to point of beginning.

Containing approximately 63 acres.

Upon acceptance of plat of survey, the area will be described as U.S. Survey No. 3818.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 5, 1960.

[F.R. Doc. 60-11437; Filed, Dec. 8, 1960; 8:48 a.m.]

[Public Land Order 2213]

[Fairbanks 012151]

ALASKA

Establishing the Kuskokwim National Wildlife Range

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, except the mining and the mineral leasing laws, and disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604) as amended, and reserved for use of the Department of the Interior as a refuge, breeding ground and management area for all forms of wildlife, to be known as the Kuskokwim National Wildlife Range: *Provided*, That the reservation made by this order shall not prohibit the hunting or trapping of game animals and game birds or the trapping of fur animals in accordance with the provisions of applicable law and as may be permitted by regulations of

the Secretary of the Interior prescribed and issued pursuant thereto:

AREA I

Beginning on the shore of Bering Sea at the line of mean high tide and at the south side of the entrance to Hooper Bay near latitude 61°31′ N., longitude 166°12′ W., from Greenwich; thence southeasterly with the line of mean high tide on the south side of the entrance to Hooper Bay and along the south side of said Bay, 16 miles to the mouth of Askinuk River (Kleoklevuk River) near latitude 61°26′ N., longitude 165°48′ W.; thence easterly up the left bank of said river 22 miles to its source at the Kashunuk River near latitude 61°24′ N., longitude 165°26′ W.; thence easterly up the left bank of Kashunuk River, 12 miles to its junction with a channal "A" flowing to the south, near latitude 61°28′ N., longitude 165°11′ W.; thence southerly down the right bank of the last aforesaid channel "A" 1½ miles to a point near latitude 61°21′ N., longitude 165°10′ W., about one-half mile south of the mouth of an unnamed stream coming into said channel on the left bank side; thence due east approximately 38.6 miles to the volcanic cone in the Ingakslugwat Hills near latitude 61°21′ N., longitude 164°00′ W.; thence due south approximately 10 miles to the north shore of a lake "B"; thence southerly around the easterly side of the last aforesaid lake "B" one mile to a point on the southeast side of said lake "B"; thence south 63° east four miles to a point near latitude 61°10½′ N., longitude 163°56′ W., on the northwest shore of Aropuk Lake opposite the center of an island; thence southerly with the western shore of the said lake and a chain of lakes 45 miles to a point of land near latitude 60°50½′ N., longitude 163°57′ W., on the north side of Baird Inlet; thence westerly along the north side of Baird Inlet 50 miles to a point of land near latitude 60°54′ N., longitude 165°02′ W., at the mouth of Baird Inlet and at the line of mean high tide on the shore of Bering Sea; thence northwesterly at the line of mean high tide of Bering Sea eight miles to the point of a headland near latitude 60°58′ N., longitude 165°12′ W., at the south side of Hazen Bay; thence north 38° W., eight miles across the mouth of Hazen Bay to the point of a headland at the west side of Hazen Bay; thence northwesterly with the line of mean high tide of Bering Sea 50 miles to the place of beginning, containing approximately 1,870 square miles of lands and waters, but excluding lands beneath navigable waters as defined in section 2 of the Submerged Lands Act of 1953 (67 Stat. 29; 43 U.S.C. 1301).

AREA II

Beginning on the shore of Bering Sea at the line of mean high tide and on the north side of the mouth of Kinia River, near latitude 60°11′ N., longitude 164°30′ W.; thence northwesterly with the line of mean high tide of Bering Sea 8½ miles to the headland at the mouth of a stream "C" separating Nelson Island from the mainland; thence northeasterly up the left bank of the last aforesaid stream "C" 46 miles to a point near latitude 60°39′ N., longitude 164°12′ W., at the south end of the southwest bay of Baird Inlet; thence easterly, northerly, easterly and southerly along the south shore of Baird Inlet 35 miles to the mouth of a small stream "D", near latitude 60°33½′ N., longitude 163°43′ W., at the south end of the east bay of Baird Inlet; thence southwesterly up the left bank of the last aforesaid small stream "D" four miles to the head thereof; thence south 10° E., 4½ miles to the head of a stream "E" draining to the south, near latitude 60°28′ N., longitude 163°46′ W.; thence southerly down the right bank of the last aforesaid stream "E" four miles to the mouth thereof in the north shore of Dall Lake; thence westerly, southerly, easterly and southerly around the west shore of Dall Lake 75 miles to the most southerly point of said lake near latitude 60°09½′ N., longitude 163°47′ W.; thence south 30° W., 1½ miles to the head of the Kuguklik River; thence southwesterly with the right bank of the aforesaid Kuguklik River 19 miles to the mouth thereof at the line of mean high tide of Bering Sea, near latitude 59°59′ N., longitude 164°07′ W.; thence northwesterly with the line of mean high tide 20 miles to the place of beginning, containing approximately 1,054 square miles of lands and waters, but excluding lands beneath navigable waters as defined in section 2 of the Submerged Lands Act of 1953 (67 Stat. 29; 43 U.S.C. 1301).

The descriptions above are based on Alaska Reconnaissance Topographic Maps designated Baird Inlet, Hooper Bay, Marshall and Nunivak Island, Editions of 1951.

This order shall not be construed to abrogate or impair any legal or aboriginal claim of right of the natives to use the lands, if any, and they may hunt, fish, and trap in accordance with applicable law, and carry on any other lawful activities.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 6, 1960.

[F.R. Doc. 60-11518; Filed, Dec. 8, 1960; 8:53 a.m.]

[Public Land Order 2214]

[Fairbanks 017050]

ALASKA

Establishing the Arctic National Wildlife Range

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. For the purpose of preserving unique wildlife, wilderness and recreational values, all of the hereinafter described area in northeastern Alaska, containing approximately 8,900,000 acres is hereby, subject to valid existing rights, and the provisions of any existing withdrawals, withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, nor disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604), as amended, and reserved for use of the United States Fish and Wildlife Service as the Arctic National Wildlife Range;

Beginning at the intersection of the International Boundary line between Alaska and Yukon Territory, Canada, with the line of extreme low water of the Arctic Ocean in the vicinity of Monument 1 of said International Boundary line;
thence westerly along the said line of extreme low water, including all offshore bars, reefs, and islands to a point of land on the Arctic Seacoast known as Brownlow Point, at approximate longitude 145°51′ W., and latitude 70°10′ N.;
thence in a southwesterly direction approximately three (3) miles to the mean high water mark of the extreme west bank of the Canning River;
thence southerly up the said west bank of the Canning River along the mean high water mark approximately seventy (70) miles to the mouth of Marsh Fork of Canning River at approximately longitude 145°53′ W., and latitude 69°12′ N., and 10½ miles E. of Mt. Salisbury;
thence continuing in a southerly direction up the west bank of the Canning River approximately fourteen (14) miles to another fork of the river at approximate longitude 145°40′ W., and latitude 69°00′ N.;
thence easterly up the south bank of the stream approximately fifteen (15) miles to its source at the crest of an unnamed mountain whose elevation is approximately 7,900 feet and whose location is at approximate longitude 145°13′ W., and latitude 68°53′ N.;
thence southeasterly down the west and south banks of a stream which is tributary to the east fork of the Chandalar River approximately eighteen (18) miles to its junction with the Chandalar River at approximately longitude 144°47′ W., and latitude 68°42′ N.;
thence up the east bank of the said Chandalar River approximately three (3) miles to a point opposite the south bank of a tributary stream which flows from the southeast;
thence up the south bank of the said tributary stream approximately fifteen (15) miles to the crest of a mountain at the head of a branch of Old Woman Creek whose elevation is approximately 7,400 feet and whose location is approximate longitude 144°14′ W., and latitude 68°41′ N.;
thence in a generally southerly direction down the west and south banks of the said branch of Old Woman Creek approximately fifteen (15) miles to its junction with Old Woman Creek;
thence routheasterly down the south bank of Old Woman Creek approximately twelve and one-half (12½) miles to the point where said creek intersects a straight line projected from Brushman Mountain to Index Mountain;
thence approximately two and one-half (2½) miles south along said line to its intersection with a north fork of Monument Creek;
thence southerly down the west bank of said fork to its junction with Monument Creek;
thence down the west and south banks of Monument Creek approximately sixteen and one-half (16½) miles to a point on the east bank of Sheenjak River opposite the mouth of Monument Creek;
thence northeasterly up the east bank of the Sheenjak River approximately eight and one-half (8½) miles to its junction with a tributary which flows from the east, at approximate longitude 143°09′ W., and latitude 68°05′ N.;
thence up the east and south banks of the said tributary stream approximately ten (10) miles to a fork in the stream one-half (½) mile above a one and one-half (1½) mile lake, at approximate longitude 142°52′ W., and latitude 68°11′ N.;
thence up the south bank of the main south fork of the stream approximately eight (8) miles to the crest of the saddle where it arises at approximate longitude 142°35′ W., and latitude 68°14′ N.;
thence easterly from the said saddle following down the south bank of a stream which arises at approximately this point for approximately eleven (11) miles to its junction with the Coleen River at approximate longitude 142°10′ W., and latitude 68°15′ N.;
thence following down the west bank of the Coleen River along the mean high water mark for approximately eight (8) miles to its junction with the tributary stream which flows into the Coleen River from the east at approximate longitude 141°57′ W., and latitude 68°10′ N.;
thence up the east and south bank of the said tributary stream in a northeasterly direction to the saddle between its headwaters and those of Bilwaddy Creek at approximate longitude 141°32′ W., and latitude 68°14′ N.;
thence down the south bank of the said Bilwaddy Creek approximately eighteen (18) miles to the International Boundary line between Alaska and Yukon Territory, being a point located at approximate longitude 141°00′ W., and latitude 68°11′ N.;
thence north with the said International Boundary line approximately one hundred (100) miles to the point of beginning.

2. The Secretary of the Interior is authorized to permit the hunting and the taking of game animals, birds, and fish in the wildlife range, or parts thereof, as well as the trapping of fur animals. However, no person may hunt, trap, capture, kill, or willfully disturb any wild mammal, wild bird, or fish or take or destroy the eggs or nests of any such bird or fish within the wildlife range, except as may be prescribed by the Secretary. The provisions of State law shall govern all hunting and taking of wildlife which the Secretary of the Interior permits under the terms of this order.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 6, 1960.

[F.R. Doc. 60-11519; Filed, Dec. 8, 1960; 8:53 a.m.]

[Public Land Order 2215]

[1941468]

ALASKA

Revoking Public Land Order No. 82 of January 22, 1943 (Northern Alaska)

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Public Land Order No. 82 of January 22, 1943, reserving the following-described lands under jurisdiction of the Secretary of the Interior for use in connection with the prosecution of the War is hereby revoked:

All that part of Alaska lying north of a line beginning at a point on the boundary between the United States and Canada, on the divide between the north and south forks of Firth River, approximate latitude 68°52′ N., longitude 141°00′ W., thence westerly, along this divide, and the periphery of the watershed northward to the Arctic Ocean, along the crest of portions of the Brooks Range and the De Long Mountains, to Cape Lisburne.

The area described contains approximately 48,000,000 acres.

2. The following-described lands lying within the exterior boundaries of the area described in paragraph 1 are withdrawn by Executive Order No. 3797–A of February 27, 1923, for Naval Petroleum Reserve No. 4, for classification, examination and preparation of plans for development and until otherwise ordered by the Congress or the President:

Commencing at the most northwestern extremity of the point of land shown on the maps of Alaska as Icy Cape, approximately latitude 70°21′, longitude 161°46′; thence extending in a true south course to the crest of the range of mountains forming the watershed between the Noatak River and its northern tributaries and the streams flowing into the Arctic Ocean; thence eastward along the crest of this range of mountains to a peak at the head of the northernmost of the two eastern forks of Midas Creek (Pl. 1, U.S.G.S., Bull. 536), at approximately latitude 67°50′, longitude 156°00′; thence in a true north course to a point at the highest high water on the western or left bank of the Colville River; thence following said highest highwater mark downstream along said Colville River and the western bank of the most western slough at its mouth to the highest highwater mark on the Arctic coast. From here, following the highest highwater mark westward to the point of beginning.

The coast line to be followed shall be that of the ocean side of the sandspits and islands forming the barrier reefs and extending across small lagoons from point to point, where such barrier reefs are not over three miles of shore, except in the case of Plover Islands, from Point Tangent to Point Barrow (Pl. 3, U.S.G.S., P.P. 109), longitude approximately 154°50′, where it shall be the highest highwater mark on the outer shore of the islands forming the groups and extending between the most adjacent points of these islands and the sandspits at either end. In cases where the barrier reef is over three miles off shore the boundary shall be the highest highwater mark of the coast of the mainland.

The area described contains approximately 23,000,000 acres. Jurisdiction over the lands in Naval Petroleum Reserve No. 4 is vested in the Department of the Navy by the Act of August 10, 1956 (70 Stat. 457–462; 10 U.S.C. 7421–7438). These lands, therefore, are not affected by the opening hereinafter provided in this order.

3. An area included within the area described in paragraph 1 of this order, and which may be described generally as "all lands lying east of Canning River, extending from its mouth on the Arctic Ocean at Flaxman Island in approximate longitude 146° W., to its source in the Brooks Range in approximate longitude 145°13′ W., latitude 68°53′ N.," and containing approximately 5 million acres, is included in an application for withdrawal, Fairbanks 017050, filed by the Bureau of Sport Fisheries and Wildlife for use as the Arctic Wildlife Range. As provided by the regulations in 43 CFR 295.11(a), the lands shall remain segregated from all forms of disposal under the public land laws, including the mining and mineral leasing laws, to the extent that the withdrawal applied for, if effected, would prevent such forms of disposal, until final action has been taken on the application for withdrawal.

4. Subject to any existing valid rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 hereof, exclusive of those described in paragraphs 2 and 3, are hereby opened to settlement and to filing of applications, selections, and locations as are allowable on unsurveyed lands in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Until 10:00 a.m. on March 8, 1961, the State of Alaska shall have a preferred right to select the lands or portions thereof, in accordance with and subject to the limitations in and requirements of the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46–3b), or section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 399), and subject further to the provision of section 6(b) of the said Act of July 7, 1958, prohibiting such selections within the limits described in section 10(b) of the Act without the approval of the President or his designated representative.

(2) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(3) All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on January 11, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

(4) The lands will be open to settlement under the homestead and Alaska homesite laws at 10:00 a.m. on March 8, 1961.

5. The lands, except those described in paragraphs 2 and 3, were opened to location under the United States mining laws and to leasing under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended and supplemented, by Public Land Order No. 1621 of April 18, 1958, as amended by Public Land Order No. 1965 of August 29, 1959, to which orders reference is made for the conditions under which applications and offers may be filed for oil and gas leases.

6. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

7. Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Fairbanks, Alaska.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 6, 1960.

[F.R. Doc. 60-11520; Filed, Dec. 8, 1960; 8:53 a.m.]

[Public Land Order 2216]

[Anchorage 023347]

ALASKA

Establishing the Izembek National Wildlife Range

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

Subject to valid existing rights, the following-described areas of public land and water in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, nor the disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604), as amended, and reserved for use of the Department of the Interior, as a refuge, breeding ground, and management area for all forms of wildlife, to be known as the Izembek National Wildlife Range: *Provided*, That the reservation made by this order shall not prohibit the hunting or trapping of game animals and game birds or the trapping of fur animals in accordance with the provisions of applicable law, and as may be permitted by regulations of the Secretary of the Interior prescribed and issued pursuant thereto:

Beginning at corner No. 1, from which U.S.C. & G.S. station "COW", located on the edge of Cold Bay at latitude 55°12'10.71" N., and longitude 162°41'57.76" W., bears N. 85°53'50" E., a distance of 1.34 miles (7,066.5 feet), thence with two (2) courses of the westerly boundary of Air Navigation Site Withdrawal No. 176, S. 15°30' W. 1.61 miles (8,500.00 feet) to corner No. 2; thence due south 1.0 mile (5,280.00 feet) to corner No. 3, which is the southwest corner of Air Navigation Site Withdrawal No. 176; thence leaving said Air Navigation Site southwesterly along the crest of a spur ridge of Frosty Peak with three courses, approximately, S. 41°00' W.—2.05 miles (Elev. 1300') to a point; S. 68°30' W.—0.55 mile (Elev. 2000') to a point; S. 34°30' W.—1.35 miles (Elev. 4200') to corner No. 4, an angle point at forks of spur ridge leading to Frosty Peak; thence with two courses, approximately, S. 30°30' E.—1.20 miles (Elev. 4000') to a point; S. 19°45' W.—2.28 miles (Elev. 5600') to corner No. 5, the summit of Frosty Peak; thence leaving Frosty Peak along the crest of a spur ridge, with three courses approximately S. 33°30' W.—1.12 miles (Elev. 4000') to a point; S. 64°00' W.—2.04 miles (Elev. 1600') to a point; S. 76°30' W.—4.0 miles to corner No. 6, at the mouth of an unnamed stream at the intersection of the line of mean high tide on the east side of Morzhovoi Bay, approximately at latitude 55°03', longitude 162°59'; thence northerly, westerly, and southwesterly with the line of mean high tide of Morzhovoi Bay approximately 14 miles to corner No. 7, at the mouth of an unnamed stream at the intersection of the line of mean high tide on the west side of Morzhovoi Bay, approximately at latitude 55°02'40"—longitude 163°13'30"; thence westerly with the north bank of said stream and with the north shore of two (2) small unnamed lakes 2.10 miles, to a point on the west shore of the most westerly lake at approximate latitude 55°02'45"; thence due west—1.00 mile to corner No. 8, at the intersection of an unnamed stream with the line of mean high tide on the east side of Bechevin Bay at approximate latitude 55°02'45"—longitude 163°17'30"; thence northwesterly, northeasterly, and southwesterly with the line of mean high tide of Bechevin Bay, 8.86 miles to a point on the most westerly extremity of the Alaska Peninsula-Bering Sea shore at approximate latitude 55°05'50"—longitude 163°21'30"; thence northeasterly with the line of mean high tide of Bering Sea, 18.20 miles to the most northerly point of Cape Glazenap, approximate latitude 55°15'—longitude 163°00'; thence N. 52°30' E.—1.28 miles across the Cape Glazenap inlet to Izembek Bay, to a point at the line of mean high tide of Glen Island, one of the Kudiakof Islands; thence northeasterly with the line of mean high tide of Bering Sea, 4.90 miles to a point on the northerly shore of Glen Island at approximate latitude 55°10'—longitude 162°54'20"; thence N. 35°15' E.—2.52 miles, across an inlet to Izembek Bay, to a point on the line of mean high tide of Operl Island, one of the Kudiakof Islands; thence northeasterly with the line of mean high tide of Bering Sea, 8.10 miles to the most northerly point of Operl Island at approximate latitude 55°24'30"—longitude 162°42'; thence due east 3.22 miles, across an inlet to Izembek Bay, to a point on the southern shore of Neumann Island; thence northeasterly with the line of mean high tide of Bering Sea, 3.38 miles to the most northeasterly point of Neumann Island at approximate latitude 55°26'50"—longitude 162°34'50"; thence N. 71°00' E.—0.22 mile, across an inlet to Muffet Bay, to Moffet Point on the Alaska Pepinsula; thence northeasterly with the line of mean high tide of Bering Sea, 8.40 miles to corner No. 9, at approximate latitude 55°32'10"—longitude 162°26'; thence three courses with the boundaries of the watershed of Moffet Bay, southeasterly approximately 17.40 miles to the summit of the Aghileen Pinnecles, southerly approximately 19.60 miles to the summit of Mt. Dutton, westerly approximately 10.20 miles to corner No. 10, at the line of mean high tide on the east side of Cold Bay at approximate latitude 55°10'22"; thence northerly, northwesterly, and southwesterly with said line of mean high tide approximately 13.10 miles to corner No. 11, at the line of mean high tide on the northwest side of Cold Bay, approximate latitude 55°15'30"—longitude 162°40'30"; thence due west, 1.5 miles to corner No. 12, which is the northeast corner of Air Navigation Withdrawal No. 176; thence with two (2) courses of Air Navigation Site Withdrawal No. 176 boundary; due west 2.50 miles (13,216.8 feet) to corner No. 13; thence S. 24°57'30" E., 4.28 miles (22,530.0 feet) to corner No. 1, the point of beginning containing approximately 500 square miles of land and 149 square miles of water area, but excluding lands beneath navigable waters as defined in section 2 of the Submerged Lands Act of 1953 (67 Stat. 29; 43 U.S.C. 1301).

This order shall not be construed to abrogate or impair any legal or aboriginal claim of right of the natives to use the lands, if any, and they may hunt, fish, and trap in accordance with applicable law, and carry on any other lawful activities.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 6, 1960.

[F.R. Doc. 60-11521; Filed Dec. 8, 1960; 8:53 a.m.]

Title 45—PUBLIC WELFARE

Chapter VI—National Science Foundation

REVOCATION OF CHAPTER

Chapter VI of Title 45 of the Code of Federal Regulations is hereby revoked in its entirety, effective upon publication of this notice in the FEDERAL REGISTER.

Issued in Washington, D.C., on December 1, 1960.

ALAN T. WATERMAN,
Director.

[F.R. Doc. 60-11488; Filed, Dec. 8, 1960; 8:48 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 60-1443]

PART 1—PRACTICE AND PROCEDURE

Pre-Grant Procedures; Safety and Specidl Services Applications and Proceedings

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 2d day of December 1960;

The Commission having under consideration Public Law 86-752, 86th Congress, 2d Session, enacted on September 13, 1960, and the necessity for promulgating rules to implement various amendments of section 309 of the Communications Act of 1934 contained in that law; and

It appearing that the new provisions of section 309 of the Act will become effective on December 12, 1960; and

It further appearing that section 309 (b) (2) (G) authorizes the Commission to prescribe by rules that the procedure specified in section 309 shall apply to such other applications for authorizations in the Safety and Special Radio Services as the Commission may designate; and

It further appearing that applications for Public Coast Stations, excluding those in Alaska which will not render service for hire, and Fixed Stations to operate in the 72–76 Mc band involve special public interest considerations and should be made subject to such procedural requirements; and

It further appearing that it is necessary that the rules implementing section 309 of the Act be effective on December 12, 1960, and that applicants involved and other interested persons should have adequate notice of the rules they will be required to follow; and

It further appearing that while amending § 1.546 of the Commission's rules to implement the provisions of new section 309 of the Act, additional amendments of § 1.546 are necessary to state accurately procedures presently reflected in section 0.291 of the Commission's Statement of Organization, Delegation of Authority and other information; and

It further appearing that the rules adopted herein are procedural in nature and hence compliance with the notice and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary; and

It further appearing that adoption of the rule amendments ordered herein would serve the public interest, convenience and necessity; and

It further appearing that authority for the adoption of these rules is contained in section 4(i), 303 and 309 of the Communications Act of 1934, as amended;

It is ordered, That effective December 12, 1960, Subpart F of Part 1, of the Commission's rules and regulations is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154. Interpret or apply secs. 303, 309, 48 Stat. 1082, 1085, 47 U.S.C. 303, 309)

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Paragraph (b) of § 1.546 is amended in part to read:

§ 1.546 How applications are processed.

* * * * *

(b) * * *

(2) Requests are made for waiver of, or exception to, a rule for a period in excess of 90 days, but not including certain categories of requests for waivers in excess of 90 days pertaining to ships stations covered by section 0.291(b)(13) of the Commission's Statement of Organization, Delegations of Authority, and Other Information;

(3) Applicant requests construction permit for new public coast station at locations other than Alaska;

(4) The staff is not authorized to dismiss an application consistent with the provisions of this chapter and is unable to reach the positive public interest findings prescribed by § 1.548(a); or

(5) A petition has been filed to deny an application of the categories listed in § 1.547.

2. Sections 1.547 and 1.548 are redesignated as §§ 1.548 and 1.549, respectively, and amended to read as follows; §§ 1.549 and 1.550 are redesignated as §§ 1.550 and 1.551, respectively; and a new § 1.547 is added to read as follows:

§ 1.547 Petitions to deny applications of specified categories.

(a) Except as qualified in paragraph (b) of this section, the provisions of this section shall apply to all applications for authorizations, and substantial amendments thereof, for the categories of stations and services listed in this paragraph which are filed with the Commission on or after December 12, 1960, and to such applications which were filed prior to December 12, 1960, but are amended substantially on or after that date.

(1) Fixed point-to-point stations using frequencies above 890 Mc (exclusive of control, relay, and repeater stations used as integral parts of mobile radio systems).

(2) Industrial radiopositioning stations for which frequencies are assigned on an exclusive basis.

(3) Aeronautical enroute stations.

(4) Aeronautical advisory stations.

(5) Airdrome control stations.

(6) Aeronautical fixed stations.

(7) Public coast stations, excluding those located in Alaska which will not render service for hire.

(8) Fixed stations using frequencies in the 72–76 Mc band.

(b) The provisions of this section are not applicable to applications for the type of authorizations listed in this paragraph.

(1) A minor change in the facilities of an authorized station or a minor amendment of an application on file.

(2) Consent to an involuntary assignment or transfer under section 310(b) of the Communications Act or to a voluntary assignment or transfer thereunder which does not involve a substantial change in ownership or control.

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such licensee.

(4) Extension of time to complete construction of authorized facilities.

(5) A special temporary authorization not to exceed 30 days where no application for regular operation is contemplated to be filed or pending the filing or after the filing of an application for such regular operation.

(6) An authorization under any of the proviso clauses of section 308(a) of the Communications Act.

(c) For the purposes of this section, a substantial amendment of an application on file and applications for a substantial change in the facilities of an authorized station shall be:

(1) Any addition or change in frequency (except deletion of a frequency);

(2) Any change in antenna azimuth;

(3) Any change in antenna beam width;

(4) Any change in antenna location greater than 5 seconds;

(5) Any change in antenna location of less than 5 seconds but also involving a requirement for special aeronautical study;

(6) Any change in emission;

(7) Any increase in antenna height;

(8) Any increase in authorized power in excess of a 2 to 1 ratio;

(9) Any increase in emission bandwidth.

(d) All amendments of an application on file and all changes requested in the facilities of an authorized station other than those amendments and modifications listed in paragraph (c) of this section shall be considered minor.

(e) The Commission will issue at regular intervals a "Public Notice" listing all applications subject to this section which have been accepted for filing. Such "Public Notice" will re-list any application which has been amended substantially since its previous listing. For the purposes of this section, "accepted for filing" means that an application has been received at the Commission. Such acceptance for filing shall not preclude the subsequent dismissal of an application, pursuant to the provisions of this chapter, as being defective.

(f) No application subject to the provisions of this section, as originally filed or substantially amended, will be granted by the Commission prior to the thirty-first day following the issuance of public notice of the acceptance for filing of such application or of any substantial amendment thereof: *Provided, however*, That the Commission, notwithstanding the requirements of this paragraph, may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring emergency operations in the public interest and that delay in institution of such emergency operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such emergency operation for a period not exceeding 90 days, and upon making like findings may extend such temporary authorization for one additional period not to exceed 90 days.

(g) Any party in interest may file with the Commission a petition to deny any application, whether as filed originally or as subsequently amended, subject to the provisions of this section, at any time prior to the day the Commission grants such application or formally designates such application for hearing. A petitioner shall serve a copy of such petition on the applicant. A petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity. Such allegations of fact except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof.

(h) The applicant may file an opposition to any petition to deny and the petitioner may file a reply thereto (see § 1.13) in which allegations of fact or denials thereof, except for those of which official notice may be taken, shall be supported by affidavit of a person or persons with personal knowledge thereof. The applicant shall serve a copy of his opposition on the petitioner, and the petitioner shall serve a copy of his reply on the applicant.

§ 1.548 Grants without a hearing.

(a) The Commission will grant without a hearing an application for a station authorization if it is proper upon its face and if the Commission finds from an examination of such application and supporting data, any pleadings, filed, or other matters which it may officially notice, that:

(1) There are no substantial and material questions of fact;

(2) The applicant is legally, technically, financially, and otherwise qualified;

(3) A grant of the application would not involve modification, revocation, or non-renewal of any existing license or outstanding construction permit;

(4) A grant of the application would not preclude the grant of any mutually exclusive application; and

(5) A grant of the application would serve the public interest, convenience, and necessity.

(b) If a petition to deny an application has been filed pursuant to § 1.547 and the Commission grants such application pursuant to paragraph (a) of this section, the Commission will deny the petition and issue a concise statement of the reason for such denial and disposing of all substantial issues raised by the petition.

§ 1.549 Designation for hearing.

(a) If the Commission is unable to make the findings prescribed by § 1.548(a) with reference to an application filed prior to December 12, 1960, and not amended substantially on or after that date, the Commission, by letter, will notify the applicant and other known parties in interest of the grounds and reasons for its inability to make such findings and of all the objections made to such application. Following such notice, the applicant will be given an opportunity to reply. If the Commission after considering such reply is still unable to make the findings prescribed by § 1.548(a), it will formally designate the application for hearing on the grounds or reasons then obtaining and shall notify the applicant and all other known parties in interest of such action.

(b) If the Commission is unable to make the findings prescribed in § 1.548 (a) with reference to any application filed on or after December 12, 1960, or any application filed prior to December 12, 1960, but amended substantially on or after that date, it will formally designate the application for hearing on the grounds or reasons then obtaining and will notify forthwith the applicant and all other known parties in interest of such action.

(c) Orders designating applications for hearing will specify with particularity the matters and things in issue and will not include issues or requirements phrased generally.

(d) Parties in interest, if any, who are not notified by the Commission of its action in designating a particular application for hearing may acquire the status of a party to the proceeding by filing a petition for intervention showing the basis of their interest at any time not less than ten days prior to the date of hearing.

(e) Any hearing subsequently held upon such applications shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and burden of proof shall be upon the applicant, except that with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

[F.R. Doc. 60-11457; Filed, Dec. 8, 1960; 8:50 a.m.]

PART 1—PRACTICE AND PROCEDURE

Applications for Broadcast Facilities

Correction

The Appendix to the Commission's Order in the above-entitled proceeding, FCC 60-1381 (published in the FEDERAL REGISTER on November 24, 1960, 25 F.R. 11153) is corrected, as follows:

1. In § 1.358(a), "any amendments" is corrected to read "any amendment".

2. The introductory text of § 1.359(a) is corrected to read as follows:

(a) All applications for instruments of authorization in the broadcast service (and major amendments thereto, as indicated in §§ 1.354, 1.355, 1.356, 1.357 and 1.358) are subject to the provisions of this section, except applications for:

3. In § 1.359(a)(3), the last word "licensee" is corrected to read "license".

4. In § 1.359(d), the reference to "paragraph (d)" is corrected to read "paragraph (c) of this section."

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11455; Filed, Dec. 8, 1960; 8:50 a.m.]

[FCC 60-1434]

PART 1—PRACTICE AND PROCEDURE

Revocation and Cease and Desist Proceedings

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960;

The Commission having under consideration § 1.62 of its rules of practice and procedure; pertaining to cease and desist and revocation proceedings; and

It appearing that § 1.62 presently prescribes formal hearing procedures where respondent waives a hearing and where in fact there is no formal evidentiary hearing and no record; and

It further appearing that under these procedures the hearing examiner in most cases must issue an initial decision invoking the sanctions specified in the order to show cause (§ 1.62 (d) and (e)), and has no discretion to do otherwise; and

It further appearing that these formal hearing procedures are unnecessary and wasteful in terms of time and manpower, and they have in some instances been a source of confusion to respondents in such cases; and

It further appearing that neither the Administrative Procedure Act nor the Communications Act of 1934, as amended, require formal hearing procedures or separation of functions in such cases after waiver of hearing; and

It further appearing that the public interest, convenience and necessity will be served by provision of informal nonhearing procedures in such cases after waiver of hearing; and

It further appearing that the amendments herein adopted are issued pursuant to authority contained in sections 4(i), 303(r), and 312 of the Communications Act of 1934, as amended; and

It further appearing, that the amendments herein adopted pertain to matters of procedure, and hence that compliance with the notice, procedural, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary;

It is ordered, Effective December 12, 1960, that Part 1, the Commission's rules of practice and procedure, is amended as set forth below; and

It is further ordered, That these changes shall apply in all cases in which the order to show cause was issued after the above-stated effective date, but not in cases where the order to show cause was issued before that date.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 303, 312, 48 Stat. 1082, 1066, 47 U.S.C. 303, 312)

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Section 1.26 is amended to read as follows:

§ 1.26 Appearances.

Rules relating to appearances are set forth in §§ 1.63, 1.77, 1.140 and 1.402.

§§ 1.61, 1.76 [Redesignation]

2. Section 1.61 is redesignated as § 1.76.

§ 1.62 [Deletion]

3. Section 1.62 is deleted in its entirety.

4. New §§ 1.77 and 1.78 (derived from § 1.62) are adopted as follows:

§ 1.77 Revocation and/or cease and desist proceedings; hearings.

(a) If it appears that a station license or construction permit should be revoked and/or that a cease and desist order should be issued, the Commission will issue an order directing the person to show cause why an order of revocation and/or a cease and desist order, as the facts may warrant, should not be issued.

(b) An order to show cause why an order of revocation and/or a cease and desist order should not be issued will contain a statement of the matters with respect to which the Commission is inquiring and will call upon the person to whom it is directed (the respondent) to appear before the Commission at a hearing, at a time and place stated in the order, but not less than thirty days after the receipt of such order, and give evidence upon the matters specified in the order to show cause. However, if safety of life or property is involved, the order to show cause may specify a hearing date less than thirty days from the receipt of such order.

(c) To avail himself of such opportunity for hearing, the respondent, personally or by his attorney, shall file with the Commission, within thirty days of the service of the order or such shorter period as may be specified therein, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the order. The Commission in its discretion may accept a late appearance. However, an appearance tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petition for acceptance of late appearance will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(d) Hearings on the matters specified in such orders to show cause shall accord with the practice and procedure prescribed in this subpart and Subpart B of this part, with the following exceptions: (1) In all such revocation and/or cease and desist hearings, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission; and (2) the Commission may specify in a show cause order, when the circumstances of the proceeding require expedition, a time less than that prescribed in §§ 1.153 and 1.154 within which the initial decision in the proceeding shall become effective, exceptions to such initial decision must be filed, parties must file requests for oral argument, and parties must file notice of intention to participate in oral argument.

(e) Correction of or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or cease and desist order should be issued.

(f) Any order of revocation and/or cease and desist order issued after hearing pursuant to this section shall include a statement of findings and the grounds therefor, shall specify the effective date of the order, and shall be served on the person to whom such order is directed.

§ 1.78 Revocation and/or cease and desist proceedings; after waiver of hearing.

(a) After the issuance of an order to show cause, pursuant to § 1.77, calling upon a person to appear at a hearing before the Commission, the occurrence of any one of the following events or circumstances will constitute a waiver of such hearing and the proceeding thereafter will be conducted in accordance with the provisions of this section.

(1) The respondent fails to file a timely written appearance as prescribed in § 1.77(c) indicating that he will appear at a hearing and present evidence on the matters specified in the order.

(2) The respondent, having filed a timely written appearance as prescribed in § 1.77(c), fails in fact to appear in person or by his attorney at the time and place of the duly scheduled hearing.

(3) The respondent files with the Commission, within the time specified for a written appearance in § 1.77(c), a written statement expressly waiving his rights to a hearing.

(b) When a hearing is waived under the provisions of paragraph (a) (1) or (3) of this section, a written statement signed by the respondent denying or seeking to mitigate or justify the circumstances or conduct complained of in the order to show cause may be submitted within the time specified in § 1.77(c). The Commission in its discretion may accept a late statement. However, a statement tendered after the specified time has expired will not be accepted unless accompanied by a petition stating with particularity the facts and reasons relied on to justify such late filing. Such petitions for acceptance of a late statement will be granted only if the Commission determines that the facts and reasons stated therein constitute good cause for failure to file on time.

(c) Whenever a hearing is waived by the occurrence of any of the events or circumstances listed in paragraph (a) of this section, the Chief Hearing Examiner at the earliest practicable date shall issue an order reciting the events or circumstances constituting a waiver of hearing, terminating the hearing proceeding, and certifying the case to the Commission. Such order shall be served upon the respondent.

(d) After a hearing proceeding has been terminated pursuant to paragraph (c) of this section, the Commission will act upon the matters specified in the order to show cause in the regular course of business. The Commission will determine on the basis of all the information available to it from any source, including such further proceedings as may be warranted, if a revocation order and/or a cease and desist order should issue, and if so, will issue such order. Otherwise, the Commission will issue an order dismissing the proceeding. All orders specified in this paragraph will include a statement of the findings of the Commission and the grounds and reasons therefor, will specify the effective date thereof, and will be served upon the respondent.

(e) Corrections or promise to correct the conditions or matters complained of in a show cause order shall not preclude the issuance of a cease and desist order. Corrections or promises to correct the conditions or matters complained of, and the past record of the licensee, may, however, be considered in determining whether a revocation and/or cease and desist order should be issued.

5. Section 1.402(a) is amended to read as follows:

§ 1.402 Appearances.

(a) *Hearings.* Except as otherwise required by § 1.140 regarding application proceedings, by § 1.77 regarding proceedings instituted under section 312 of the Communications Act of 1934, as amended, or by Commission order in any proceeding, no written statement indicating intent to appear need be filed in advance of actual appearance at any hearing by any person or his attorney.

[F.R. Doc. 60-11458; Filed, Dec. 8, 1960; 8:51 a.m.]

[FCC 60-1433]

PART 1—PRACTICE AND PROCEDURE

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Applications

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960:

The Commission having under consideration Public Law 86-752, 86th Congress, 2d Session, which was enacted into law on September 13, 1960, and the necessity for promulgating rules to implement various amendments of the Communications Act of 1934 contained in that law;

It appearing that the amendments to section 309 (pertaining to pre-grant procedures) will become effective on December 12, 1960; and

It further appearing that the law permits the Commission to make the new provisions of section 309 of the Act applicable, under certain conditions, to applications filed before December 12, 1960; and

It further appearing that it is necessary that the rules implementing section 309 of the Act be effective on December 12, 1960, and that applicants and other interested persons should have adequate advance notice of the rules they will be required to follow as well as of the Commission's decision concerning what applications will be subject to those rules; and

It further appearing that the rules in question are procedural in nature and that following the notice and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and that the rules should be promulgated at this time and made effective on December 12, 1960; and

It further appearing that in view of the importance of these rules and the impracticability of affording an opportunity to comment on the rules before their adoption, all interested parties should be specifically advised that they may file timely petitions to reconsider the rules now being adopted or petitions requesting specific amendments in the rules; and

It further apearing, that authority for the adoption of these rules is contained in sections 4(i), 303(r), and 309 of the Communications Act of 1934, as amended;

It is ordered, That, effective December 12, 1960, Parts 1 and 21 of the Commission's rules and regulations are amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended, 47 U.S.C. 154. Interpret or apply secs. 303, 309, 48 Stat. 1082, 1085, 47 U.S.C. 303, 309)

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. Section 1.106(b)(3) is amended to read as follows:

§ 1.106 Consolidations.

* * * * * *

(b) * * *

(3) In common carrier cases, any application that is mutually exclusive with another previously filed application will be considered with such prior filed application only if the later filed application is substantially complete and tendered for filing prior to the close of business on the day preceding the day the earlier filed application is designated for hearing.

2. Section 21.23(a) is amended to read as follows:

§ 21.23 Amendments of applications.

(a) Any application may be amended as a matter of right prior to the designation of such application for hearing

by filing the appropriate number of copies of the amendments. However, see § 21.33 for the effect of certain amendments.

3. Section 21.24(d) is amended to read as follows:

§ 21.24 Dismissal of applications.

• • • • •

(d) Any mutually exclusive application filed after the date prescribed in § 21.26(b) will be dismissed without prejudice and will be eligible for refiling only after a final decision is rendered by the Commission with respect to the prior application or applications or after such application or applications are dismissed or removed from the hearing docket.

4. Section 21.26 is amended to read as follows:

§ 21.26 Grants without a hearing.

(a) Where an application for radio facilities is proper on its face and, where it appears from an examination of the application, supporting data, and such other matters as the Commission may officially notice, that (1) the applicant is legally, technically, financially and otherwise qualified; (2) a grant of the application would not cause harmful interference to an existing station or stations for which a construction permit is outstanding within its service area; (3) a grant of the application would not preclude the grant of any pending applications; and (4) a grant of the application would serve the public interest, convenience or necessity, the Commission will grant the application without a hearing.

(b) In making its determinations pursuant to the provisions of paragraph (a) of this section, the Commission will not consider any other application, or any other application amended so as to constitute a major change therein (as defined in § 21.33), as being mutually exclusive with the application under consideration unless such other application was substantially complete and filed with the Commission by the close of business one business day preceding the day on which the Commission takes action with respect to the application under consideration. An application filed after the date specified herein will be disposed of in accordance with the provisions of § 21.24(d).

(c) Before Commission action on any application for an instrument of authorization, other than a license pursuant to a construction permit, any person may file informal objections to a grant thereof. Such objections shall be signed by the objector. The limitation on pleadings provided in § 1.13 of this chapter shall not be applicable to any objections filed pursuant to this section. Such informal objections will be considered by the Commission but will not be accorded the formal status of petitions as set forth in § 21.27.

(d) If a petition to deny the application has been filed in accordance with § 21.27, and the Commission makes the grant in accordance with paragraph (a) of this section, the Commission will deny the petition and issue a concise statement setting forth the reasons for denial and disposing of all substantial issues raised by the petition.

5. Section 21.27 is amended to read as follows:

§ 21.27 Processing of applications.

(a) All applications for instruments of authorization covered by this part and major application amendments (as indicated in § 21.33) are subject to the provisions of this section, except applications for:

(1) A minor change in the facilities of an authorized station, as indicated in § 21.33;

(2) Consent to an involuntary assignment or transfer under section 310(b) of the Communications Act or to an assignment or transfer thereunder which does not involve a substantial change in ownership or control;

(3) A license under section 319(c) of the Communications Act or, pending application for or grant of such license, any special or temporary authorization to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as would be authorized by such license;

(4) Extension of time to complete construction of authorized facilities;

(5) An authorization of facilities for remote pickups, studio links and similar facilities for use in the operation of a broadcast station;

(6) A special temporary authorization for nonbroadcast operation not to exceed thirty days where no application for regular operation is contemplated to be filed or pending the filing of an application for such regular operation; or

(7) An authorization under any of the proviso clauses of section 308(a) of the Communications Act.

(b) No application acceptable for filing and subject to the provisions of this section (whether as originally filed or as amended) will be acted upon by the Commission less than 30 days following issuance of public notice of the tender for filing of such application or amendment: *Provided, however,* That the Commission may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring emergency operations in the public interest and that delay in the institution of such emergency operations would seriously prejudice the public interest, grant a temporary authorization, accompanied by a statement of its reasons therefor, to permit such emergency operations for a period not exceeding 90 days, and upon making like findings may extend such temporary authorization for one additional period not to exceed 90 days.

(c) Any party in interest may file with the Commission a petition to deny any application (whether as originally filed or as amended) to which paragraph (a) of this section applies, at any time prior to the day of Commission grant thereof without hearing, or the day of formal designation thereof for hearing. The petitioner shall serve a copy of such petition on the applicant no later than the date of filing thereof with the Commission. The petition shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with § 21.26 (a). Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. The applicant may file an opposition to any petition to deny, and the petitioner may file a reply to such opposition (see §1.13 of this chapter) and allegations of fact or denials thereof shall similarly be supported by affidavit.

(d) Applications subject to this section, which are pending before the Commission and which have not been acted upon before December 12, 1960, will not be acted on by the Commission until at least 30 days after that date. Any party in interest may file a petition to deny such an application pursuant to the provisions of this section. The provisions of section 309 of the Communications Act, as in effect prior to December 12, 1960, shall not be applicable to such applications.

(e) If the Commission finds, on the basis of the application, the pleadings filed, or other matters which it may officially notice, that there are no substantial and material questions of fact and that a grant of the application would be consistent with § 21.26(a), it shall make the grant, deny the petition, and issue a concise statement of the reasons for denying the petition, which statement shall dispose of all substantial issues raised by the petition. If a substantial and material question of fact is presented, or if the Commission, for any reason, is unable to find that grant of the application would be consistent with §21.26(a), the Commission shall proceed as provided in paragraph (f) of this § 21.27.

(f) If, in the case of any application to which § 21.26(a) applies, a substantial and material question of fact is presented, or the Commission, for any reason, is unable to make the finding specified in such section, it shall formally designate the application for hearing on the ground or reasons then obtaining and shall forthwith notify the applicant and all other known parties in interest of such action and the grounds and reasons therefor, specifying with particularity the matters and things in issue, but not including issues or requirements phrased generally. When the Commission has so designated an application for hearing, the parties in interest, if any, who are not notified by the Commission of such action, may acquire the status of a party to the proceeding thereon by filing a petition for intervention, showing the basis for their interest, at any time not less than 10 days prior to the date of hearing. Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate. The burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicant, except that, with respect to any issue presented by a petition to deny or a petition to enlarge the issues, such burdens shall be as determined by the Commission.

(g) Where a grant of the application would preclude the grant of an application or applications mutually exclusive with it, the Commission may, if public interest will be served thereby, make a conditional grant of one or more of such mutually exclusive applications and designate all of the mutually exclusive applications for hearing. Such conditional grant will be made upon the express condition that it is subject to being withdrawn if, at the hearing, it is shown that public interest will be better served by a grant of one of the other applications. Such conditional grants will be issued only where it appears:

(1) That some or all of the applications were not filed in good faith but were filed for the purpose of delaying or hindering the grant of another application; or

(2) That public interest requires the prompt establishment of radio service in a particular community or area; or

(3) The grant of one or more applications would be in the public interest and that a delay in making a grant to any applicant until after the conclusion of a hearing on all applications might jeopardize the rights of the United States under the provisions of an international agreement to the use of the frequency in question; or

(4) That a grant of one application would be in the public interest in that it appears from an examination of the remaining applications that they cannot be granted because they are in violation of provisions of the Communications Act, or of other statutes, or of the provisions of this chapter.

6. Section 21.32 paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 21.32 License period.

• • • • •

(b) The Commission reserves the right to grant or renew station licenses in this service for a shorter period of time than that generally prescribed for such stations if, in its judgment, public interest, convenience or necessity would be served by such action.

(c) Upon the expiration or termination of any station license, any related construction permit, which bears a later expiration date, shall be automatically terminated concurrently with the related station license, unless it shall have been determined by the Commission that the public interest convenience or necessity would be served by continuing in effect said construction permit.

7. A new § 21.23 is added as follows:

§ 21.33 Status of amendments to applications.

(a) All applications governed by this part, except those enumerated in § 21.27 (a), and major amendments thereto (e.g., any amendment which will change or add a frequency; or improve the operating characteristics of an existing or proposed station; or enlarge the service contour or significantly change the location or points of communication of an existing or proposed station; or which will materially alter the nature of an existing or proposed service) are subject to the provisions of § 21.27.

(b) Amendments, other than major amendments as defined in paragraph (a) of this section, will be considered on a case-by-case basis and, if found to materially alter an existing or proposed station, will be listed in a public notice and thereafter be subject to the provisions of § 21.27.

[F.R. Doc. 60-11456; Filed, Dec. 8, 1960; 8:50 a.m.]

[Docket No. 13631; FCC 60-1430]

PART 1—PRACTICE AND PROCEDURE

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Annual Report of Licensee in Domestic Public Land Mobile Radio Service

1. On July 7, 1960 the Commission adopted a notice of proposed rule making in the above-entitled matter, which was published in the FEDERAL REGISTER on July 15, 1960 (25 F.R. 6704), in accordance with section 4(a) of the Administrative Procedure Act. This notice presented for comment, on or before August 19, 1960 (with allowance for reply comments within twenty days thereafter), a proposal by the Commission to rearrange and clarify the existing reporting requirements for Form L.

2. The only comment received was from the United States Independent Telephone Association, reporting for its Accounting and Engineering Committees, which favored the adoption of the changes in report Form L as proposed in the notice of proposed rule making.

3. However, after further review of the schedule, the Commission believes that certain additional minor changes to clarify Form L should be made at this time. These changes, none of which is substantive, are as follows:

(a) In Instruction 1 the reference to section 219(b) of the Communications Act is corrected to read 219;

(b) In section I, xx's have been inserted in column (e) for items 1, 3 and 4 and in column (f) for items 1 and 3 to indicate that no entries are to be reported where xx's have been inserted;

(c) Item 8 is revised by inserting the words "by licensee" and substituting the word "operated" for "used." As revised, this item reads as follows: "Indicate total number of mobile stations served by licensee which are operated by persons directly or indirectly controlling, controlled by, or under direct or indirect common control with, the licensee";

(d) In item 32 the word "(net)" is added to clarify the nature of the amount to be reported;

(e) In item 43, the parenthetical insert is revised to read as follows: "(explain in a note any differenece from amount reported for item 28, column (p), of Section IV)"; and

(f) Below line 52, the caption is changed to read "Remarks (Attach supplemental sheet, if necessary)."

It appearing, that the proposed rule making proceeding in this matter has indicated the desirability of amendment of the Commission's Report Form L exactly as set forth in the notice of proposed rule making and, in addition, as noted in the next appearing clause of this order; and

It further appearing, that the additional changes as outlined in paragraph 3 above will further improve and clarify Report Form L;

It is ordered, That under the authority contained in sections 4(i), 219(a), 303(j), 303(r), and 308(b) of the Communications Act of 1934, as amended, Annual Report Form L is hereby amended in exactly the form proposed in the notice of proposed rule making and, in addition, as indicated in paragraph 3 hereof, the amendments to become effective in the report form for the year 1960.

Adopted: November 30, 1960.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11459; Filed, Dec. 8, 1960; 8:51 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 259]

DISPOSAL OF TIMBER AND MINERAL RESOURCES

Trespass; Penalty for Unauthorized Removal of Materials

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the act of July 31, 1947 (61 Stat. 681) (30 U.S.C. 601–604) as amended, it is proposed to amend 43 CFR 259.71 as set forth below. The purpose of this amendment is to more clearly define a trespass of timber or mineral materials.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Bureau of Land Management, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

Section 259.71 is amended to read as follows:

§ 259.71 Trespass; penalty for unauthorized removal of materials.

The extraction, severance, injury, or removal of timber or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 5, 1960.

[F.R. Doc. 60–11486; Filed, Dec. 8, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 949]

[Docket No. AO–232–A8]

MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

Correction

The following corrections are made in F.R. Doc. 60–10848 filed November 21, 1960 and published on November 22, 1960.

1. In § 949.11 delete the figure "1" as it appears immediately following the word "February" in the last line in column 3, 25 F.R. 11079 and delete the word "November" as it appears in the second line of column 1, 25 F.R. 11080 and substitute therefor the word "February".

2. In § 949.83 as it appears in column 1, 25 F.R. 11084 insert immediately preceding section reference "949.61" section reference "949.60,".

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 5th day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–11441; Filed, Dec. 8, 1960; 8:48 a.m.]

[7 CFR Part 1033]

[AO–322]

ONIONS GROWN IN SOUTH TEXAS

Notice of Recommended Decision and Opportunity To File Written Exceptions With Respect to Proposed Marketing Agreement and Order

Pursuant to the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed marketing Agreement No. 143 and Order No. 133, regulating the handling of onions grown in designated counties of South Texas, to be effective pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), hereinafter called the "Act."

Interested parties may file exceptions to this recommended decision with the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., not later than the close of business on the 15th day after its publication in the FEDERAL REGISTER. Exceptions should be filed in quadruplicate.

Preliminary statement. The public hearing on the record of which the proposed marketing agreement and order (hereinafter referred to collectively as the "proposed order") were formulated was held at Edinburg, Texas, on June 13–14, 1960, pursuant to notice thereof which was published May 25, 1960, in the FEDERAL REGISTER (25 F.R. 4597). Such notice set forth a proposed marketing agreement and order which were sponsored by growers and handlers of onions in South Texas as represented by the South Texas Onion Committee, supported by the Valley Farm Bureau and the Texas Citrus and Vegetable Growers and Shippers Association.

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of the right to exercise Federal jurisdiction;

(2) The need for the proposed regulatory program to effectuate the declared purposes of the Act;

(3) The definition of the commodity and determination of the production area to be covered by the proposed order;

(4) The identity of the persons and transactions to be regulated; and

(5) The specific terms and provisions of the proposed order including:

(a) Definitions of terms used therein which are necessary and incidental to attain the declared objectives of the Act, and including those set forth in the notice of hearing, among which are those applicable to the following additional terms and provisions:

(b) The establishment, maintenance, composition, powers, duties, and operation of a committee which shall be the administrative agency for assisting the Secretary in the administration of the program;

(c) The authority to incur expenses and to levy assessments on shipments;

(d) The authority for the establishment of marketing research and development projects;

(e) The authority for limiting the handling of onions grown in the production area;

(f) The methods for establishing minimum standards of quality and maturity;

(g) The authority for establishing special regulations applicable to the handling of onions for specified purposes or to specified outlets including modifications of, or amendments to, grade, size, quality, and other regulations;

(h) The prohibition of the shipment of rollers as an unfair method of competition and an unfair trade practice;

(i) The necessity for inspection and certification of shipments;

(j) The procedure for establishing reporting requirements upon handlers;

(k) The requirements of compliance with all provisions of the proposed order and with regulations issued pursuant thereto; and

(l) Additional terms and conditions as set forth in §§ 1033.82 through 1033.95 of the notice of hearing published in the FEDERAL REGISTER (25 F.R. 4597) on May 25, 1960, which are common to marketing agreements and marketing orders.

(1) Onions rank as one of the more important commercial vegetable crops grown in Texas. The South Texas production area, as defined in the proposed order, is one of the more important onion producing areas in the United States and the only area reporting early spring crop onions in the nation. It includes such well known onion producing sections as the Lower Rio Grande Valley, Coastal Bend, Laredo, Winter Garden and Eagle Pass.

The U.S. early spring crop is confined to South Texas. Harvest in the Lower Valley generally starts early in March and movement from the production area continues in fairly good volume through most of May, but the heaviest shipping period is usually from mid-April to mid-May, depending on weather conditions.

The 1959 South Texas onion crop totaled 2,145,000 hundredweight, harvested from 33,000 acres, with an average yield of 65 hundredweight per acre. This area's average production for the 1949–1958 period was 2,296,000 hundredweight or about 10 percent of the total U.S. production. It was produced on about 30 percent of the U.S. onion acreage with an average yield in South Texas of 69 hundredweight per acre, which is considerably below the average yield for most other onion producing areas.

The great bulk of the onions produced in this production area is marketed outside of the production area and moves in interstate and foreign commerce. Exhibit No. 10, "Carlot Unloads of Certain Fruits and Vegetables in 100 U.S. and 5 Canadian Cities for Calendar Year 1959," shows unloads of Texas onions in 76 U.S. cities and in 4 of the 5 Canadian cities listed. The largest number of unloads in the order of volume were in New York, Chicago, Philadelphia, Boston, Detroit, Pittsburgh, and Baltimore.

There were 14,402 carlot unloads of onions in the 100 U.S. cities in 1959 of which Texas shipped 3,463, or 24 percent of the total. Also 1,218 carlots were unloaded in 5 Canadian cities of which Texas shipped 164, or 13 percent. Truck unloads in 35 U.S. cities and 5 Canadian cities totaled 25,699, of which Texas shipped 3,481 or 14 percent.

Local markets within the State of Texas also received substantial quantities of onions from South Texas. Unloads of Texas onions are officially reported for Amarillo, Dallas, El Paso, Fort Worth, Houston, Lubbock, and San Antonio, all of which are outside the production area. In addition, onions from shipping points outside of Texas are transported and sold in the current of interstate and foreign commerce in these Texas cities. For example, Exhibit No. 10 shows that in 1959, out of 702 truck unloads of onions in Dallas 319 originated in Texas and 383 were shipped into Texas from other States and from Mexico and Chile.

The chief competition to South Texas onions at the start of the season comes from old onions in storage which are grown in New York, Michigan, Minnesota, Idaho, and other northern production areas. Some onions are imported from Mexico and Chile in competition with South Texas onions. Shipments from Southern California and Arizona begin toward the latter part of the deal and Georgia also comes in with a small crop about this time.

South Texas onions compete directly at certain times of the marketing season with onions produced outside of Texas. Thus South Texas onions directly burden and affect the supply of onions in interstate and foreign commerce and in turn onions produced outside of Texas likewise directly burden and affect the supply of onions in all markets, including markets in Texas.

Producers and handlers of South Texas onions maintain close, constant communication through telephone, telegraph, teletype, market news reports, and other modern methods of communication, with receiving markets outside the production area such as Chicago, New York, Philadelphia, Toronto, Dallas, and similar important centers of distribution. Both shipping point sellers and terminal receivers exchange information as to supplies and prices. Prices at shipping point and at terminals outside the production area tend to move each day, and even during each hour of the marketing day within relatively narrow price ranges. Factors affecting supplies at shipping points are soon known and reflected in prices both at shipping points and receiving markets outside the production area. Also, shifts in supplies at terminal markets, either in quantity or quality on hand, or estimated as available or to become available, affect prices at terminal markets and, due to the rapid, constant communication between terminal markets and handlers within the production area, such changes and prices are soon reflected in the offerings and bids between these buyers and sellers, and the resultant sales prices are inevitably reflected in prices to growers in the production area.

On the basis of the foregoing, it is hereby found and determined that in the marketing of onions grown in the production area all sales of such onions which are in the stream of the commerce between the production area and any point outside thereof, and all transportation of such onions between points within the production area and points outside the production area are in the current of interstate or foreign commerce, or directly burden, obstruct, or affect such commerce. It is concluded, therefore, that the right to exercise Federal jurisdiction with respect to the proposed order for South Texas onions hereinafter set forth, is established.

(2) The need for the proposed regulatory program for South Texas onions is supported by substantial evidence in the record of hearing.

The bulk of the onions grown in this production area is of the hybrid Granex and Grano varieties, both yellow and white. Small quantities of Crystal Wax and Bermuda varieties are also grown in this area. The crop is generally marketed directly after harvest since these varieties do not store well, especially during hot weather.

Prices for South Texas onions have fluctuated rather widely from month to month and from year to year. During the ten-year 1949–58 period, as shown in Exhibit 7, the farm value of South Texas onions ranged from a low of 3.9 million dollars in 1949, to a high of 15.4 million dollars in 1952, and averaged about 7.8 million dollars. During this period the season average price to producers ranged from a low of $2.30 per hundredweight in 1953 to a high of $7.20 per hundredweight in 1952, and averaged $3.72 per hundredweight. These prices represent a range of 46 to 181 percent of parity equivalent, returning less than parity in six and more than parity in four of the ten years.

Prices for South Texas onions are affected by the size of the crop grown in the production area as well as by the quality and sizes of the onions marketed. On several occasions during recent years the onion market at the beginning of the season started out with relatively good prices. Some handlers then shipped everything in the field, including seed stems, splits, and other culls. By the time harvesting advanced, volume picked up, and good onions became available for shipment, the price had dropped to low levels, often below the cost of harvesting and packing. For example, in 1959, according to Exhibit 7 evidence, the average f.o.b. price per 50 pound sack of South Texas Crystal White Wax onions, 2 to 3 inches diameter, was $6.00 at the beginning of the season and dropped steadily during the season to a low of $2.00 per 50 pound sack. The average price of medium size Granex opened at a high of $5.00 per sack at the beginning of the season and dropped steadily to a low of $1.10 per sack. Large size Granex, 3 inches and larger, were reported at $6.00 at the start of the season and dropped to a low of $1.25 per 50-pound sack.

According to record evidence onions marketed early in each season often are of poor quality but they frequently return higher prices than those marketed later. Due to the shipment of poor quality onions at the beginning of the season and to the other price depressing practices listed below, prices of all South Texas onions often tend to decline as the season progresses to a point where growers receive little or nothing for their onions and often incur substantial losses.

A minor percentage, usually considerably less than half, of South Texas onion shipments are officially inspected and certified as to grade and size. Because of lack of uniformity or satisfactory grade, according to experienced handlers, South Texas onions do not now enjoy a good reputation in the trade. A "Texas One" is referred to as a fairly good pack, but it is not usually up to the quality of a U.S. No. 1. One shipper testified that when his onions are shipped in stock brand sacks simply labeled "Texas Onions" they are discounted. However, when the same quality onions are shipped in sacks labeled with an established brand name, they bring 25 cents more per 50-pound sack. He indicated there is a great need to restore the confidence of the trade by improving the reputation of South Texas onions.

The percentage of culls in a crop varies with weather conditions. A cull, in trade terminology, is an onion of inferior quality which is below the requirements of any grade. Some years a high percentage of seed stems characterizes the crop. A seed stem is an onion with a tough, fibrous stem in the center of the bulb. Seed stems are not acceptable to the user and have a tendency to decay more rapidly than sound onions. If the

stem is sufficiently large it is considered serious damage in grading and the onion is classed marketwise as a cull. Occasionally, difficulty is experienced with soured skins caused by a fungus disease which forms a slimy, gummy cover over the onion. Obviously, such onions are not suitable for shipment and they are usually picked out as culls. In addition to these forms of damage there are other types of serious defects which cause onions to be classed as culls.

Each packing house accumulates a pile of culls every few days of operation. The record indicates that many handlers in the production area make a practice of selling onions from their cull piles to certain people who come into the area for the purpose of purchasing culls. Most shippers do not notice the detrimental effects of such sales at first. They think such sales bring extra money for discards that would otherwise be an expense to dispose of. Others take the attitude that if everyone else is doing so, they might as well sell their culls also. These culls are sold for very little, $10 to $20 per truck load. They are taken to collection points where they are cleaned up, picked over, sorted, and sacked without any brand name. They may yield 200 to 300 sacks per truck load. Before long, substantial quantities of these below-grade onions are found in nearby markets. They not only displace No. 1 grade onions, but also they actually cause a decrease in the sale of preferred grades since retailers report each bag of culls displaces larger quantities of good onions. These culls and pick-outs sold to truckers by production area handlers actually ruin the market for good onions in nearby Texas cities.

There is also at times a similar problem with No. 2 onions. When market conditions are good, and there is a healthy supply and demand situation, No. 2 onions have a rightful place in the market. However, they can act much the same way as culls on a draggy market and, of course, due to their better quality than culls, they are transported farther and affect more markets than culls. No. 2 onions are sold at discounts from prices for No. 1 grade. Receivers of good quality, i.e., No. 1 onions in the market find it difficult to compete with dealers offering No. 2 grade or culls, and they must buy as cheaply as possible to compete successfully. Price adjustments are frequently requested on No. 1 stock so that the receivers can move the onions into markets depressed by lower prices of No. 2's or culls. Thus, lower grade onions in the market not only displace, but also depress market prices for better grade onions.

Marketing of lower grade and cull onions is not only detrimental to producers and the onion trade as a whole, but also low grades, and especially culls, are not as acceptable to the housewife as better grade onions. In turn, these consumer preferences are reflected in reduced sales and lower prices that carry back through distributive channels to shipping point. Because packing costs, transportation, wholesale handling, and retailer's mark-up are about the same for lower grades or culls as for No. 1 or better grades, retail prices for culls or lower grades often are only a small percentage less than prices for top grades. On the other hand, grower prices for the culls or low grades often are only a small fraction of the price he receives for No. 1 or better grades.

South Texas onions are marketed as "new crop" onions and are distinguished from northern grown storage onions. They have a shorter market life, usually limited to a few weeks at most after being graded and packed. Short market life accentuates marketing risks and, with large and oftentimes excessive supplies, adds to the urgency for moving them quickly into wholesale and retail channels.

The urgency for marketing a commodity with these features by moving it to market, especially when aggravated by overproduction and consequent excessive supplies available for market, has led to another marketing practice presented by proponents as one of the most serious marketing problems for South Texas onions, i.e., shipments of "rollers." A "roller" is a shipment of produce which has not been sold at the time of shipment. Shipments of rollers, or rolling shipments, is a common practice in the produce trade, and especially so in South Texas onions.

Proponents emphasized the importance of this marketing practice as disruptive of orderly marketing. They also urged authorization of regulatory features to prohibit rollers as unfair trade practices and unfair methods of competition in marketing South Texas onions. Proponents' interest in and engrossment with the practice of shipping rollers is obviously apparent in the hearing record.

The association of rollers with distress shipments, i.e., low quality, discounted sizes, poor keeping quality, deterioration, and similar features, is embedded in South Texas onion handlers' marketing and bargaining processes. The failure or inability to limit South Texas onion marketings to better grades, preferred sizes, and assured qualities is aggravated and accentuated in proponents' views of their bargaining processes.

The need for a marketing agreement and order program, such as the proposed order, to eliminate certain price depressing practices with respect to onions grown in the production area is clearly established in the record. The establishment of more orderly marketing conditions as may be brought about by proposed marketing order regulations will tend to improve prices to producers for onions grown in the production area. Also, the exercise of the authority in the proposed order with respect to the establishment and maintenance in effect of minimum standards of quality, in terms of grades and sizes, together with grading and inspection requirements, when prices are above the parity level, would tend to effectuate such orderly marketing of production area onions as will be in the public interest.

(3) Certain terms and provisions of the proposed order should be defined and explained for the purpose of designating specifically their applicability and limitations whenever they are used.

The term "onions" is defined to specify the commodity covered by the proposed order and with respect to which the terms and provisions of the proposed order are applicable. The agricultural commodity, botanically known as "Allium cepa," is commonly known to producers and handlers in the production area as "onions." Such term is defined to include all varieties of onions which are grown within the production area and marketed dry. This definition excludes green onions which are usually marketed in bunches. By "dry" is meant only the bulb of the plant which is normally marketed after it has matured and allowed to dry sufficiently, or is dried, and from which the top and roots are cut off. The term includes yellow, white, brown, and red onions of all varieties and hybrids grown within the production area.

"Production area" is defined to include all the territory in the Counties of Val Verde, Kinney, Uvalde, Medina, Wilson, Karnes, Goliad, Victoria, Calhoun, Maverick, Zavala, Frio, Atascosa, Dimmit, La Salle, McMullen, Live Oak, Bee, Refugio, Webb, Duval, Jim Wells, San Patricio, Nueces, Zapata, Jim Hogg, Brooks, Kleberg, Kenedy, Starr, De Witt, Aransas, Hidalgo, Willacy, and Cameron, in the State of Texas.

This is a contiguous area and comprises generally the most southerly counties in the State. It is roughly triangular in shape and is bounded on one side by the Gulf of Mexico, the Rio Grande River on another, and ranch country to the north. It comprises all of the sections in Texas which produce or could produce the early spring onion crop. The boundary lines of the production area do not cut through any commercial onion producing section.

Onions have been grown, are now being grown, or could be grown, under similar growing and climatic conditions, in each of these counties. Also, the types of onions grown in all parts of this area are similar and several growers and handlers operate in more than one county within this area. Minor variations in practices, methods of production, harvesting and marketing may occur between counties, nevertheless grade and quality standards for commercial sales are the same throughout the production area. Also, onions marketed from each county within this production area share in, and compete in, common markets during the same early spring marketing season.

Market News reports (Exhibit No. 7) show that onions are shipped daily from each of the major shipping sections in South Texas during most of the early spring marketing season and each section of the production area competes directly with the other sections.

It was testified that there are no onions grown in commercial quantities within a radius of approximately 200 miles of this area in the State of Texas, due mainly to climatic conditions which are not favorable for growing onions. Onions grown in other sections of the State, principally in the high plains around Hereford, and in the north-central part of the State, are grown under different

climatic conditions and are harvested later in the season than those produced in the South Texas area.

Customary recognition of South Texas as the producer of the early spring onion crop provides a proper basis for the production area. There is no reasonable basis for dividing the production area into two or more areas for purposes of separate marketing agreements and orders. All territory included within the boundaries of the production area constitutes the smallest regional production area that is practical and consistent with carrying out the policy of the Act. Accordingly, the production area should be defined as including all of the 35 counties as hereinafter set forth in the proposed order.

(4) The terms "handler" and "shipper" are synonymous and they should be defined to identify the persons who handle onions in the manner described and set forth in the definition of "handle". The persons who are subject to the regulations and upon whom rests the obligation of complying with regulations authorized by the proposed order are identified and established under the definition of handler. Any person who is engaged in the act or acts of handling onions grown in the production area or who causes such onions to be handled is a handler. Such persons are responsible for the grade, size, and quality of the onions delivered to transportation agencies, or which are transported or sold in the current of commerce so as to directly burden, obstruct, or affect such commerce. The responsibility for handling often involves more than one person. Persons who make sales of onions are handlers. Also, any person who transports South Texas onions in the current of commerce between the production area and any point outside thereof is a handler. Each party is subject to the definition of handler and is responsible for complying with regulations issued under the proposed order.

A common or contract carrier transporting onions which are owned by another person is performing a handling function. Such handling, however, should be exempted from the proposed order since such carriers are not responsible for the grade, size, quality or pack of the onions being transported. Neither are they the persons who cause the introduction of such onions into the stream of commerce. The only interest of common or contract carriers in such onions is to transport them for a service charge to destinations given by others. The person or persons delivering onions to a common or contract carrier should be responsible for compliance under the proposed order. As defined, therefore, the term "handler" or "shipper" means any person, except a common or contract carrier of onions owned by another person, who handles onions or causes onions to be handled.

The term "handle" is defined in the proposed order to establish the specific marketing functions which are primarily responsible for placing South Texas onions in the current of commerce between the production area and points outside thereof, and to provide a basis for determining which functions are subject to regulation under authority of the proposed order. "Handle" and "ship" are used synonymously and the definition should so indicate.

South Texas onions are commonly recognized as a distinct crop because of numerous considerations, including their recognition as "new crop" onions being marketed towards or at the end of the storage season for northern grown onions, the area from which they come, and the months in which they are the chief source of supplies.

The South Texas marketing season begins usually in March, and continues throughout April, May and early June. Generally, onion harvest starts in particular fields when 30 to 50 percent of the tops have fallen over. However, market prices, condition of the crop, and weather often influence the actual time of harvesting.

Prior to pulling, the soil is customarily loosened by running a knife or cutter blade a few inches below the bulbs. This cuts the roots in the same operation. As the onions are pulled they are thrown into windrows, four rows together. Next, the tops and the roots are cut off, or clipped. Clipping may be done immediately after pulling, or the onions may be left on the ground prior to clipping with the bulbs covered with the leaves of other onions for protection from the sun. In this case they may be clipped several hours or days later depending on weather conditions.

After clipping the bulbs are put into field bags, baskets, or crates which are usually left in the field for at least 24 hours to allow the onions to cure, i.e., the bulbs are allowed to dry. Curing also tends to make the bulbs a little tougher so that when they rub together, bruises do not occur so easily. Once onions are in the field bags, baskets, or crates, they may remain in the field for several days to a few weeks, depending on market conditions.

The Act provides that no orders shall be applicable to any producer in his capacity as a producer. Growing onions, that is, the planting and care of onions in the field through growth to commercially marketable bulbs that are turned over to a handler by sale, contract, or other means, is a producer function within the above exception.

South Texas onion producers sell their onions in various ways. Under customary arrangements, producers often turn whole fields over to shippers prior to harvest with the producer retaining title to the onions. The shipper supervises the harvesting, then grades, packs, and sells the onions, and pays the producer the net proceeds after deducting handling charges.

Most onions marketed from the production area are handled for the grower's account. The handler or shipper, in these customary dealings, charges for harvesting, if he performs that function as he usually does, for packing, and for selling; in brief, he charges for the complete job of marketing the grower's onions. The grower retains title to the onions until they are sold for him by his agent, the handler. Settlements are made with the growers on the net proceeds of sale, whether the sale was made at shipping point or at some subsequent point in the marketing process.

Some producers sell onions in the field to a handler prior to harvest for a fixed price. The producer then may harvest the onions at a time mutually agreeable to him and the handler or harvesting may be taken over by the handler. Other producers have their own packing sheds. They grow, harvest, grade, pack, sell, and ship their own onions.

Some producers also harvest and pack their own onions then turn them over to a broker to sell them for a fee. Others may haul the field-run onions to the packing shed and sell them to the handler on a weight basis. A few producers have sold onions in the field at the "end of the row" to truckers without running the onions over a mechanical grader. Some handlers advance money to producers, or finance the growing of the crop under various arrangements which sometimes result in shippers becoming partners in growing operations.

Other variations also occur in methods of sale by producers. However, regardless of the method of sale, most onions produced in South Texas are hauled field-run to a packing house in the production area and are subjected to grading, sizing and packing prior to their movement to market.

The packing house operator is responsible for preparing the onions for market. He determines the grade, size, quality, and container of the onions entering market channels. He packages the onions, thus making them a part of the visible marketable supply which is the subject of offer, acceptance, and sale in the current of the commerce in the commodity. He also ships the onions, thus transporting them in the current of commerce. Packing house operators, or others too, often sell onions that have been picked out or discarded in grading, sizing, and packaging operations for shipment to customary terminal markets. Sale of any onions, either grades and sizes customarily acceptable in established terminal markets or those of less or unacceptable grades and sizes, constitutes an act of handling. Each of these activities by itself is a handling operation and, as such, makes the person responsible for it, a handler, subject to the rules and regulations issued under the order. The sale, transportation, or delivery of field-run onions to a packing house located in the production area which is registered with the committee, according to record evidence, should be excepted from the definition of "handle." In this case the onions have not yet been prepared for market nor are they in their existing condition being transported to market. Most sellers and buyers do not consider them as yet suitable or appropriate for commercial transactions in the commodity, and as such, they have not yet entered the stream of commerce.

The committee should have authority to register each handler who, according to its determination, is responsible and willing to conduct his handling operations in accordance with requirements of the order. Such requirements would

include inspection and certification of the onions and compliance with grade, size, and pack regulations. Thus, the proposed order should contain a definition of "registered handler" so as to identify those persons to whom field-run onions may be sold or delivered without being considered a handling activity. All other sales, packaging, or transportation of South Texas onions, by a producer or by any other person, should be included in the definition of handle, except sales at retail by a person in his capacity as a retailer.

In summary, the packaging, sale, or transportation of South Texas onions which places them in the current of commerce between the production area and any point outside thereof is included in the definition of handle. Such handling may be performed or caused by one or more persons, such as packing house operators or their agents, producers in their capacity as handlers, truckers, brokers, or any other person engaged in marketing such onions. The failure of any one such person to comply with marketing regulations does not relieve subsequent handlers from responsibilities therefor. With the exception of the activities specifically excluded from the definition by the above findings, all packaging, sales and transportation of South Texas onions are found and determined to be in the current of the commerce between the production area and points outside thereof and are included in the definition of "handle" set forth in the proposed order.

(5) Certain terms and provisions of the proposed order should be defined and explained for the purpose of designating specifically their applicability and limitations whenever they are used.

(a) The definition of "Secretary" should include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for such programs, but also, in order to recognize the fact that it is physically impossible for him to perform personally all of the functions and duties imposed upon him by law, any other officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

The definition of "Act" provides the appropriate legal citation for the statute pursuant to which the proposed regulatory program is to be operative.

The definition of "person" follows the definition of that term as set forth in the Act, and will insure that it will have the same meaning as when used in the Act.

"Producer" should be defined to mean any person who is engaged in a proprietary capacity in the production of onions within the production area and who is producing such onions for market. The term is used in determining the eligibility of persons to vote for, and to serve as producer members or alternates on the committee.

Since a person is defined as an individual, partnership, corporation, association, or any other business unit, each such person establishes a legal entity. Each person, or legal entity, whether an individual, partnership, joint venture, or corporation, engaged in the production of onions for market, should be classified as a producer and he should be allowed to participate in the rights and privileges accorded a producer under the proposed order. The term producer should be limited to those who have an ownership interest in the onions which gives them title or authority to pass title to such onions.

South Texas growers or producers occasionally sell their onions prior to harvest to packing shed operators or others. While title may actually pass, agreements in most instances include additional requirements that the producer will care for the crop until it is harvested. In such cases even though title passes to the handler at the time of purchase, the buyer should not be classified or qualified as a producer since the buyer does not actually perform customary producer functions with regard to growing the crop.

Some onion crops in the production area are grown under a joint venture arrangement with money advanced for seed, labor, water, etc., by banks, handlers, or others for an interest in the crop. When the crop is sold the person who advanced the money is repaid in money. In such cases the grower should be considered the producer since he, rather than the financier, performs the producer functions.

Some producers in South Texas own or operate packing sheds. A producer who owns or operates a packing shed should not be precluded from qualifying as a producer under the provisions of the proposed order.

"Grading" is defined to mean the sorting of onions by hand or mechanical means, or both, so that the onions are separated into grades, sizes and packs. Such classifications are determined by the handler who directs in person, or through his agent, how and in what number of grades a particular lot of onions shall be separated. Grading may vary from an operation performed entirely by hand in which certain onions are picked out when they are being loaded in the field, to a production line operation whereby onions are carried by mechanical conveyor to be graded, sized, and packaged so that the onions which are to go to preferred price outlets are separated from those going to discounted price outlets or to be discarded as culls. Grading, or preparation for market, is an operation which applies to all onions grown in the production area even though the extent to which onions are separated into market classes may vary considerably among the different outlets.

Definitions of "grade" and "size" are incorporated in the proposed order to enable persons affected thereby to determine the basis for application of grade and size limitations to the product they handle. "Grade" and "size," the essential terms in which regulations are issued, should be defined as encompassing the meanings assigned these terms in the various official United States Standards for onions issued by the United States Department of Agriculture. Also, the definition includes modifications or amendments to such standards, and any variations from such standards in regulations under the proposed order. Regulations can then incorporate such terms (grade and size) with the constant meaning assigned them in the standards. Also, the use of these terms in regulations may be varied by prescribing, for example, a percentage of a grade such as "85 percent U.S. No. 1." Federal and Federal-State inspectors are qualified to certify the grade, size, and quality of onions grown in the production area under the terms of the aforesaid standards, or as such standards may be amended or modified.

At the present time four sets of standards are applicable to onions grown in Texas. The most widely used are the United States Standards for Bermuda-Granex Type Onions, and the United States Standards for Northern Grown Onions. The others are the United States Standards for Creole Onions, and the United States Standards for Onions for Processing. Any of these standards could be utilized, if needed.

The term "pack" is commonly used in the onion trade and refers to one or more of the factors relating to grade, size, quality, and type of container, or a combination of all of these factors. For example, "85% U.S. No. 1 quality, 3 inches minimum, 50-lb. sacks," is considered by the trade as a specific pack. South Texas onions are mostly packed in 50-pound mesh bags. However, some production area onions are shipped in other sizes and types of containers. In addition, they may be of different grades, such as U.S. No. 1, U.S. No. 2, or U.S. Combination; or of different sizes, such as large, medium, or small. It is essential that the committee should have authority to recommend, and the Secretary to approve, regulations in terms of packs, and to define and establish such packs in terms of size tolerances, grades allowed, weight of contents, etc. The definition of the term "pack" should, therefore, be as set forth in the proposed order.

The term "container" should be defined in the proposed order to mean a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transportation, sale, or other handling of onions. This definition is sufficiently broad to include each of the various shipping receptacles in which South Texas onions are sold, or move to market, and for which different regulations could be applicable.

The term "varieties" is included in the proposed order so that the committee may consider the differences in the characteristics of onions in connection with its recommendations for regulations. The principal varieties grown in the production area at the present time are the white and yellow Granex, the white and yellow Grano, and the white and yellow Bermuda. However, new varieties or hybrids are introduced from time to time and may become commercially important. The definition of varieties as set forth in the proposed order is appropriate for determining the different varieties, or types of onions, grown in the production area so that a basis for regulating some and not regulating others may be established.

The definition of "committee" is incorporated in the proposed order to identify the administrative agency which is responsible for assisting the Secretary in the administration of the program. Committee is defined to mean the South Texas Onion Committee. Such committee is authorized by the Act and the definition thereof minimizes the use of words in referring to this administrative agency in the proposed order.

"Fiscal period" should be defined to mean the period beginning and ending on the dates recommended by the committee and approved by the Secretary. This definition provides authority for the committee and the Secretary to set the beginning of the fiscal period relatively close to the beginning of the shipping season. Such flexibility is essential in the event changes in the beginning date of the shipping season should take place in the future.

"District" should be defined in the proposed order to provide a basis for the nomination and selection of committee members. It means each of the geographic sections, or divisions of the production area, as initially established or as later reestablished. The proposed division into districts is adequate and equitable and should provide a practical basis for the purpose intended.

The term "export" means shipment of onions to any destination which is not within the 48 contiguous States or the District of Columbia of the United States. Seperate treatment for export shipments may be necessary because the requirements of certain export markets may differ from those of the domestic market. Therefore different or special regulations, or even no regulations, may be justified with respect to such shipments.

(b) The South Texas Onion Committee consisting of 17 members (10 producers and 7 handlers) is the administrative agency sponsored by the industry to aid the Secretary in administering the proposed order and in carrying out the declared policy of the Act. A committee composed of 17 members, with a like number of alternates, will provide adequate industry representation and assure reasonable judgment and deliberation with respect to recommendations made to the Secretary, and in the discharge of other committee duties. More producers are on the proposed committee than handlers because marketing orders are intended primarily for the benefit of producers. However, restrictions under the proposed order will be at the handler level, so it is also appropriate and prudent for handlers to have representation on the committee.

The number of members from each district, as well as the total number of committee members, and members' distribution within districts, were given thorough consideration by proponents of the proposed order. It is concluded, therefore, all interests within the industry will be fairly and adequately represented. In determining the number of producer representatives on the committee from each of the five districts, consideration was given to onion acreage shown by the latest census figures in each county within a district. Thus, the number of producer representatives for each district is related to such district's portion of the total onion acreage in the production area. Similar methods were applied in apportioning handlers on the committee from each district. The industry position supports at least one handler from each district. This should be a practicable and equitable method of providing producer and handler representatives on the committee. They will be familiar with current market demands, available supplies, current prices, and price trends by grades, sizes, quality, packs, varieties, containers; also other relevant factors with respect to the marketing of onions.

The proposed order should provide that an alternate be selected for each member of the committee so that, in the event a member is sick or should otherwise be unable to attend a meeting, the district which he represents will have adequate representation on the committee. This provides a logical method for representation at all times. Also, alternates can relieve members by serving on subcommittees or performing other assigned tasks necessary for the administration of the program. Such alternates should have the same qualifications as members.

Each member and alternate selected to represent producers in a particular district should be an individual who is a producer, or an officer or employee of a corporate producer or other type of business unit engaged in producing onions in such district and he should also be a resident of the production area. Persons selected to serve as producer members and alternates should have no proprietary interest in, or be employees of, a handler organization. In the event a producer owns, or has an interest in, a packing shed handling onions for others, other than as a member of a marketing cooperative, he should not be qualified to be selected as a producer member or alternate. However, if a producer grades and sells only his own onions, he would not lose his status as a producer and may be selected to represent producers.

Each member or alternate selected to represent handlers in a particular district should be an individual who is a handler, or an officer or an employee of a corporate handler or other type of business unit, engaged in handling such district's onions, and he should be a resident in the production area.

The term of office for committee members and alternates under the proposed program should be for two years. Terms of office should begin on August 1 and should end as of July 31, of the second year, except for initial committee membership. Terms of individual members should be so determined that about one-half of the committee would be selected each year so as to provide continuity of experience on the committee. August 1 is an appropriate date for the beginning of a term of office because it is after the harvest and sale of one crop and before planting of the new crop commences. This term of office will allow time for the committee to organize and start operating prior to the beginning of each marketing season. Committee members and alternates should serve during the term of office for which they are selected and until their successors are selected and have qualified. Such a provision is necessary in order to provide continuity of operation.

Five districts, each of which includes a well known producing section, are established in the proposed order to provide a geographical basis for the selection of committee membership. Producers and handlers within the production area commonly recognize and accept the districts as set forth and customarily consider onion supplies and marketing problems in terms of these districts.

Redistricting authority is necessary in the proposed order to enable the committee and the Secretary to consider from time to time whether the basis for representation has changed or could be improved and how such improvement may be made. Future shifts or other changes in onion production in South Texas cannot be foreseen at the present time, since rather quick shifts may occur in the acreage of the various commodities produced from one year to another. Therefore, it is desirable to provide flexibility of operations so that if it would be in the best interests of the industry to readjust districts or reapportion membership, the committee may so recommend and the Secretary may approve such action.

The guides and limitations set forth in the proposed order which should be considered in making changes in districts or reapportionment of members are appropriate and desirable. Recommendations for such changes should be made well in advance of the intended effective date. Also, changes should not be made effective less than 30 days prior to the date on which terms of office begin. These safeguards are desirable so that producers and handlers may become well acquainted with any redistricting or reapportionment of members prior to the nominations.

The Secretary has the legal authority for the selection of the members and alternates of the committee, but the industry should have the responsibility for recommending proper and appropriate nominees to the Secretary so that he may select from such nominees or from other eligible persons. The nomination procedure outlined in the proposed order will provide a means of making available to the Secretary the names of prospective members and alternates desired by the industry to serve on the committee.

Since the membership of the committee will not have been selected by the time the proposed order becomes effective, the Secretary should have authority to call initial nomination meetings. Such meetings may be sponsored by the United States Department of Agriculture or by any other agency or group requested by the Department. The responsibility for calling subsequent nomination meetings should be with the committee as one of its administrative duties. The committee may work with other existing organizations in conducting such nomination meetings.

Meetings for nominating members of subsequent committees and their alter-

nates should be held or caused to be held by the committee not later than June 15 of each year. Inasmuch as the term of office begins August 1 of each year, nomination meetings should be held in sufficient time to assure that nominations for members and alternates will be supplied the Secretary not later than July 1, so he may select members and alternates prior to the beginning of each new term of office. Not less than one nominee should be designated for each position which is to be filled the following August 1.

Nominations should be supplied in such manner and form as the Secretary may prescribe. The industry, through the committee, should provide enough information about each nominee so the Secretary may be able to determine if such person is qualified for the particular position.

Only producers should participate in designating nominees for producer members and alternates and only handlers may participate in designating handler nominees. Such persons should be actively engaged in the production or handling of onions within the district in which they so participate. If a person is engaged in producing or handling onions in more than one district such person shall elect the district within which he wishes to participate in electing nominees for committee members and alternates. Each grower or handler will thereby have the same voice in the nomination of committee members.

Regardless of the number of districts in which a person produces or handles onions, as the case may be, each person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries and affiliates and representatives in nominating members and alternates for the committee. This provision is deemed necessary as an appropriate safeguard for the protection of all growers and handlers participating in their respective meetings irrespective of the size of an individual's operations. This limitation, however, is construed to mean that one vote may be cast for each position which is to be filled.

If a person is both a producer and a handler he may vote either as a producer or as a handler by selecting the group with which he wishes to participate. Such person may not vote both as a producer and a handler because to do so would enable him to participate in nominations to a greater degree than persons who are only producers or only handlers.

To provide an administrative agency at all times to administer the proposed order, the Secretary should be allowed to select committee members and alternates without regard to nominations if, for any reason, nominations are not submitted to him in conformance with the procedure prescribed therein. Such selection should be on the basis of the representation provided in the proposed order to insure that all producers and handlers in the production area are fairly and adequately represented on the committee.

Each person selected by the Secretary as a committee member or alternate should qualify by filing with the Secretary a written acceptance of his willingness and intention to serve in such capacity. This requirement is necessary so that the Secretary will have definite knowledge that the person appointed is willing to serve and that the position has been filled. Acceptance within 10 days is an appropriate and necessary requirement so that the full committee membership may be obtained without excessive delay.

It is also desirable and necessary that the Secretary be authorized to fill vacancies on the committee without regard to nominations if the names of nominees to fill such vacancies are not made available to him within 30 days after such vacancy occurs. This requirement is necessary to maintain continuity of the committee operations and to insure that all portions of the production area are adequately represented in the conduct of committee business.

To insure that all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted, the proposed order should provide for alternate members on the committee. Each alternate should be authorized to act in the place and stead of the member during the member's temporary absence, or in the case of the death, removal, resignation, or disqualification of a member. The alternate should serve as member until a new member is selected and has qualified. Also, the committee should be permitted to request the attendance of alternates at any or all meetings regardless of whether the members are present or not. This would be desirable at times especially when the committee is considering important matters and when it is necessary to have a greater expression of industry opinion.

The proposed order provides that eleven of the seventeen committee members are necessary to constitute a quorum. This number would assure ample representation from the districts. If a lesser number is permitted to carry on committee business it is possible that some districts would not be represented and this would not be fair or equitable to the producers and handlers affected. Proponents testified that nine concurring votes, or two-thirds of the votes cast, whichever is greater, should be required to pass any motion or to approve any committee action. This would represent more than a simple majority of those voting and would result in greater assurance that action taken by the committee will reflect industry support.

The committee should be authorized to vote by telephone, telegraph, or other means of communication as it may be necessary at times for the committee to act more promptly than a meeting in person would allow. The chairman, or other persons delegated to conduct telephone, telegraph, or other similar meetings, should exhaust reasonable efforts to get in touch with each member or his alternate. Records of such meetings should show efforts followed, extent and tenor of discussions with each member or alternate, and written confirmation of each vote cast. A unanimous vote of all members participating in such action should be required to properly protect the industry's interests.

At assembled meetings all votes should be cast in person. This would insure that a person voting on a motion or any committee action will have had an opportunity to participate in the committee's discussion and present the views of the growers and handlers he represents. If a member is unable to attend a meeting he should arrange for his alternate to attend and vote in his stead.

Committee members and alternates while on committee business will necessarily incur some expenses. Reasonable expenses, which may include travel and living expenses, should be reimbursed so as to avoid personal financial loss to members which might otherwise occur because of their service to the committee. Also, compensation of not to exceed $10.00 per day, or portion thereof, should be authorized in addition to the above, since committee members or alternates may incur additional expenses with respect to their own affairs when attending to committee affairs. These provisions should also extend to alternate members when performing official duties.

The committee should be given those specific powers which are set forth in section 8c(7)(c) of the Act because such powers are granted by the enabling statuatory authority and they are necessary for an administrative agency, such as the South Texas Onion Committee, to carry out its proper functions.

The committee's duties as set forth in the proposed order are necessary for the discharge of its responsibilities. The duties established for the committee are generally similar to those specified for administrative agencies under programs of this character. They are reasonable and necessary if the committee is to function in the manner prescribed under the Act and the proposed order. It should be recognized that the duties specified are not necessarily all inclusive and it is probable that there are other duties which the committee may need to perform which are incidental to, and not inconsistent with, these specified duties.

(c) The committee should be authorized to incur such expenses as the Secretary finds are reasonable and legitimate expenses incidental to the proper administration of the proposed order. Authorized expenses should include such items as salaries for the committee manager, clerical help, field personnel, office equipment, supplies, maintenance, travel, expenses and compensation for committee members and alternates. The authority to incur expenses should not be confined to a predetermined list, but committee funds may not be used for other industry programs such as advertising.

Expenses incurred by the committee in operating the proposed order must, under the Act, be borne by handlers. The fairest and most practical way of distributing the costs of the program among handlers is to require each handler who first handles onions to pay his pro rata share of such expenses on the

basis of the ratio of his total onion shipments to the total shipments by all first handlers during each fiscal period. The first handler is most generally the person who is the applicant for inspection on each shipment. In addition, such person is usually the one who starts the commodity on its way to market. For onions which are not inspected, the handler responsible for assessment should continue to be the handler who first handles the onions and should be so designated by the committee. The requirement that first handlers pay assessments will preclude multiple assessments on onions that are handled more than once.

The committee should be required to prepare a budget at the beginning of each fiscal period showing estimates of income and expenditures necessary for the administration of the order for such period. The budget should be presented to the Secretary with an analysis of its components and an explanation thereof in the form of a report. The committee should be authorized to recommend a rate of assessment to the Secretary which is designed to bring in during each fiscal period sufficient income to cover expenses incurred by the committee. No increase should be made in the total budget without prior recommendation of the committee and approval of the Secretary.

The rate of assessment should be established by the Secretary on the committee's recommendation, which should be based on estimated expenses and the volume of shipments during a fiscal period. Such rate should be applied on a fair and equitable unit basis, such as a 50-pound bag, hundredweight, carload or truckload.

Each handler, therefore, who ships onions as the first handler thereof, should pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the program's expenses, so that the committee may have adequate funds to carry on its operations on a current basis.

Should developments indicate that assessments collected, or to be collected, during any fiscal period will not provide sufficient income to cover committee expenses, the committee should be authorized to recommend that the Secretary approve an amended budget and fix an increased rate of assessment. If such a revised budget is approved, together with an increased rate of assessment, such increased rate should be retroactive to the beginning of the fiscal period, so as to avoid inequities among handlers.

Proponents testified that the committee should have authority to continue assessments for the maintenance and functioning of the committee even though grade, size, or other regulations may not be in effect for a certain period.

If, at the close of a fiscal period the committee has a carry-over of funds in excess of expenses, and such funds are not retained in a reserve, handlers should be entitled to a proportionate refund. Such refund should be credited to each contributing handler against his operations for the following fiscal period, unless payment should be demanded, in which event the proportionate refund should be paid.

Good business practice requires provision for contingencies. The committee should be authorized, with approval of the Secretary, to set aside excess funds in a reserve or reserves to be used for specified purposes. Such reserves could be used to allow the committee to function at the beginning of a season prior to the time assessment income is available; to cover any deficits during a fiscal period in which assessment income is not sufficient to cover expenses; or to pay any expenses incurred during any period when any or all of the provisions of the order are suspended or inoperative. A reserve fund would be especially needed in the event the order is ever terminated. If and when the committee should be required to liquidate its affairs expenses will necessarily be involved. Funds may be set aside from year to year for reserves, provided they do not exceed approximately one year's expenses.

Any balance remaining after liquidation should be prorated, to the extent practical, to the persons from whom such funds were collected.

All funds received by the committee may be used only for administration of the proposed order. The committee should be required to maintain books and records clearly reflecting the true and up-to-date operations of its affairs, so that its administration may be subject to inspection at any time by the Secretary. This is merely a sound business practice. Also, persons who will have anything to do with committee funds should be adequately bonded by a bonding company with a permit to do business in the State of Texas.

Each member and each alternate, as well as employees, agents, and other persons working for or on behalf of the committee should be required to account for all receipts and disbursements, funds, property, or records for which they are responsible and the Secretary should have the authority, at any time, to ask for such accounting.

Whenever any person ceases to be a member or alternate of the committee he should be required to account for all receipts, disbursements, funds, property, books, records, and other committee assets for which he is responsible. Such person should also be required to execute assignments or such other instruments as may be appropriate to vest in his successor, or any agency or person designated by the Secretary, the right to all such property and all claims vested in such person.

If the committee should recommend that the operations of the marketing order should be suspended, or if no regulations should be in effect for a part or all of a marketing season, the committee should be authorized to recommend, as a practical measure, that one or more of its members, or any other person, should be designated by the Secretary to act as a trustee or trustees during such period. This would provide a practical method for taking care of the committee's business affairs during periods of inactivity and would permit resumption of operations with a minimum of delay.

(d) One of the important functions of the South Texas Onion Committee would be to provide for marketing research and development projects designed to assist, improve, or promote the marketing, distribution and consumption of onions. The Act, as amended, permits such projects and such authorization should be included in the proposed order.

Research into market development, transportation, methods of handling, containers, and studies on the relative merits of different stages at which onions should be marketed are other examples mentioned which the committee may deem worthy of investigation.

As the industry and the committee become more aware of the value of and need for marketing research and development, projects will undoubtedly be initiated, the need for which will not have been foreseen early in committee operations. Therefore, the committee should have the authority to recommend and the Secretary should have the authority to approve the establishment of such projects which would improve, and promote the marketing, distribution, and consumption of South Texas onions. After approval, the committee should be empowered to engage in or contract for such projects, to spend funds for that purpose, and to consult and cooperate with other agencies with regard to their establishment. All such projects should receive the prior approval of the Secretary.

(e) The declared policy of the act, inter alia, is to establish and maintain such orderly marketing conditions for onions, among other commodities, as will tend to establish parity prices therefor, and to establish and maintain such minimum standards of quality and maturity and such grading and inspection requirements as will be in the public interest. The regulation of onion shipments by grade, size or quality, or any combination thereof, as authorized in the proposed order, provides a means of carrying out such policy.

The procedures and methods outlined in the proposed order for the development of marketing policies provide a practical basis for the committee to obtain appropriate and adequate information relating to onion marketing problems. As a prerequisite to making recommendations with respect to limitations of shipments in accordance with the proposed order, the committee should be required to consider and develop a marketing policy for the handling of onions.

A marketing policy should set forth the over-all plan of the committee for orderly marketing of onions during the ensuing season, including, to the extent practical, the kinds of regulations that may be desirable. Such marketing policy should be made available through the various news media to producers and handlers in the production area as soon as possible at the beginning of each season in order to give them ample time to familiarize themselves with proposed regulations and to make any objections which they believe are necessary. It

should also be made available to the Secretary to aid him in considering the recommendations of the committee for regulations.

The factors set forth in the proposed order which the committee should consider in developing its marketing policy are necessary for a proper evaluation of the market outlook. The committee should have available all of the latest crop, supply, and price information for its area and competing areas. It should know, from information available and from the informed members themselves the condition and quality of the crop in its area as well as in competing areas. The committee members themselves will be informed concerning problems peculiar to the area, such as weather conditions, disease, quality and maturity of the crop, and will be able to consider these factors in determining the marketing policy.

If the marketing policy statement should need amending or modification during a season the committee should be authorized to do so and the Secretary should receive a report regarding the revised policy. The committee should give the same publicity to each revised policy report as is given to the initial report for the season in order to notify producers and handlers of the changes.

The South Texas Onion Committee should, as the local administrative agency under the proposed order, be authorized to recommend such grade, size, and quality regulations, as well as any other regulations and amendments thereto authorized by the proposed order, as will tend to effectuate the declared policy of the Act. It is the key to successful operation of the proposed marketing program that the committee should have such responsibility.

The Secretary should look to the committee, which reflects the thinking of the industry, for its views and recommendations for promoting more orderly marketing conditions in the interests of improving returns to producers. The committee would be responsible for determining the need for and the type of regulations for each season or period. The committee, on making recommendations to the Secretary, should utilize all information and experience at its command and should justify its recommendations with supporting facts, considerations, and conclusions.

The proposed order authorizes the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality and other appropriate regulations which are necessary for the improvement of marketing conditions for production area onions. The Secretary should not be precluded from using such information which he may have, and which may or may not be available to the committee for consideration, in issuing such regulations. Also, when he determines that any regulation no longer tends to effectuate the declared policy of the act, the proposed order obviously should provide authority to amend or terminate the regulation.

The grade, size, quality and pack of onions which are shipped to market at any particular time have a direct effect on returns to producers. It is a fact that poorer grades and less desirable sizes of onions marketed return lower producer prices than do better grades and sizes. Shipments of onions with seed stems, splits, and other culls not only depress the price received for good quality onions but usually return little or nothing to the producer. Shipments of poor quality onions also harm the reputation of production area onions, thus decreasing the demand therefor.

At the beginning of a season demand for small-to-medium size South Texas onions, or boilers, frequently returns prices prompting growers and handlers to sell them in relatively large volume. However, as the season progresses and there is an ample supply of medium-to-large onions, average price levels for onions decline and price differentials between small-to-medium and medium-to-large increase considerably, with prices for small sizes falling to levels that return only packing costs or less.

Another price depressing practice in the production area is that some producers are required to harvest onions by a certain deadline in order to plant cotton. Because of this planting deadline many onions are dumped on the market at a time when supplies are already excessive.

By having authority to regulate shipment of onions by grade, size, quality and pack during any period, the shipment of culls and poor quality onions, as well as undesirable sizes, can be restricted to the extent deemed desirable by the committee and in accord with the particular preference for sizes and packs during any period. This would result in higher returns for the better grades and preferred sizes and it would enhance the reputation of South Texas onions. In addition, the withholding of poor quality and undesirable sizes of onions would reduce the supply of onions available for market which in turn would increase the demand and price of the good quality and desirable sizes available.

Since the production area is made up of several producing sections, a variance may occur at times among some sections in the size and condition of the crop because of weather, soil, or other factors. Flexibility should be contained in the order so that differences in geography, varieties, marketable quality, seasonal differences, and cultural differences can be recognized and regulations may be issued in any or all portions of the production area, or that regulations which are justified may be varied for different portions of the production area in order to meet each section's particular problems as they arise.

Due to the fact that conditions such as price, supply and demand vary at times with different varieties of onions, authority should be flexible to permit different grade and size regulations by different varieties during any period.

Containers used in handling production area onions are now fairly uniform with most onions being shipped in new 50-pound capacity mesh bags. Onions shipped for repacking are usually packaged in used 50-pound capacity bags since such onions will be removed from these containers and packaged in new consumer size containers before they are sold at retail. While no particular container problems are apparent at present for South Texas onions, abuses may occur in the future. For example, the use of off-size or deceptive containers could adversely affect the reputation and returns of South Texas onions. Therefore, the proposed order should provide authority to regulate containers by fixing the size, capacity, weight, dimensions or pack. This authority should be used to correct or preclude any abuses which may develop, but it should not be used to discourage experimenting with new containers or to prevent the use of new or superior containers which may be developed.

The proposal for establishment of shipping holidays in paragraph (b) (5) of § 1033.52, as published in the notice of hearing, should be deleted from the proposed order. No testimony was offered at the hearing to support this provision.

The proposed order should provide for prompt notification of the committee by the Secretary whenever he takes action with respect to regulations and the committee should promptly notify the industry of any such actions. This requirement is appropriate and necessary for the proper and efficient administration of the program.

(f) The committee should be authorized to recommend and the Secretary to establish such minimum standards of quality and maturity and such grading and inspection requirements during any or all periods when onion prices reach the equivalent parity as will be in the public interest. Some onions are of such low quality and undesirable size that they do not give consumer satisfaction at any time and consumers do not receive proper value for their expenditures for such low quality onions even when prices are above parity so it would not be in the public interest either of producers or consumers to permit shipments of such poor quality onions irrespective of the price level. The proposed order, therefore, should contain authority for the establishment of such minimum standards of quality and maturity as will be in the public interest and such grading and inspection requirements as may be necessary to insure such minimum standards of quality and maturity are met.

The proposed order should provide for the amendment, modification, suspension or termination of regulations whenever such action is warranted upon recommendation of the committee or other available information. The need for this authority is obvious in that flexibility will oftentimes be required to adjust regulations to effectuate the declared policies of the Act. Likewise, it is obvious that if regulations no longer tend to effectuate the declared policy of the Act they should be terminated.

The proposed order is intended primarily to improve orderly marketing conditions with respect to commercial shipments, that is carlots or truck lots of onions going into the markets. However, some smaller shipments are made

which constitute a very minor percentage of the total movement and are much smaller in volume than what is normally considered a commercial shipment. It may be an accommodation sale which most handlers deal in from time to time, or they may give their product to friends. Such handling would be in a nuisance category insofar as requirements under the order would be concerned. Therefore, authority should be contained in the proposed order to relieve such shipments from regulations, assessments, or inspection when such is in the best interest of the program.

(g) The Secretary should be authorized upon the basis of the recommendations and information submitted by the committee to modify, suspend or terminate regulations with respect to the handling of onions for purposes other than for disposition in normal trade channels. Onions moving to or serving such outlets are usually handled in a different manner, or such outlets usually accept different grades, sizes, qualities, packs, and containers, or different prices are returned, or combinations of such considerations may apply. Such shipments usually do not have any appreciable effect on the marketing of the great bulk of onions handled in commercial markets. The proposed order should provide authority for the committee to give appropriate consideration to the handling of onions for such purposes so that every opportunity may be taken to improve orderly marketing conditions for onions thereby tending to increase total returns to onion growers in the production area.

Such outlets would be for relief or for charity, experimental purposes, export, or for other purposes which may become apparent in the future and which would be specified by the committee and approved by the Secretary. Most shipments intended for relief or for charity are usually by the way of donation or due to some special consideration between the shipper and the receiver. Occasionally shipments are made to orphan homes or to veterans' hospitals or some other facility and the committee should have authority to recommend waiving of the requirements in regard to these shipments in that they do not interfere with regular commercial movement. Shipments are sometimes made for experimental purposes. Many times shipments of onions are made in order to study improved varieties or improved shipping containers, or in order to develop new markets for onions and their by-products. Since these studies are intended to benefit the industry as a whole, no particular purpose would be served by the application of all the requirements of the proposed order to such shipments. Some export markets accept or prefer certain grades and particularly some sizes which normally are discounted for domestic markets. The proposed order should provide for appropriate modification, suspension or termination of regulations with respect to movement of onions to export outlets so that these demands can be met and the sale of the onions grown in the production area will continue to such markets.

Other outlets or special purposes may arise that are not known at this time. If such outlets are found not competitive with fresh market channels the committee may recommend and the Secretary may approve such movement under modified, suspended or terminated regulations.

The authority for modifying, suspending or terminating grade, size, quality, assessment, or inspection regulations should be accompanied by additional administrative authority for the committee to recommend, and the Secretary to prescribe, adequate safeguards to prevent shipments for such purposes from entering market channels contrary to provisions of such special regulations. Authority for the establishment of safeguards should include such limitations or appropriate qualifications on shipments which are necessary and incidental for proper and efficient administration of the proposed order.

(h) On the issue of prohibiting the shipment of "rollers" as an unfair method of competition and an unfair trade practice, proponents offered considerable evidence through a number of witnesses. They proposed to define a "roller" as follows: "A shipment not supported by evidence of sale at a firm price at time of shipment, not subject to adjustment other than due to failure to grade and delay in transit. A consigned shipment shall be termed a roller, and shall be denefid as a shipment to a consignee who upon receipt of the merchandise sells for the shipper's account, remitting the proceeds of the sale, less freight, handling, and selling charges."

A finding and determination with respect to this issue must be based on the testimony in the record of the hearing pertaining thereto and whether the asserted unfairness is "unfair" within practices and methods normally recognized and adhered to by the trade or industry engaged in producing, selling and buying the commodity, or "unfair" in the sense of being fraudulent or deceptive. Additionally, proponents have the burden of proof with respect to this issue (as well as other issues presented) and such burden must be sustained by reliable, probative, and substantial evidence.

(1) Proponents offered considerable evidence on the subject which, among other considerations, indicated the difficulties and complexities of distinguishing, through evidence normally available, between shipments which are, and shipments which are not "rollers."

(2) The need for administrative standards limiting application of rules to handlers' operations and, at the same time, applying standards sufficiently extensive and penetrating to obtain essential evidence for adequate proof that shipment of a lot of onions under a marketing order could be identified as a roller, or not a roller, was exposed by the promulgation hearing.

(3) South Texas onions are marketed under various arrangements with growers, local handlers, and others. Many of these marketing practices were presented and analyzed at the hearing, others were not. While some practices associated with rollers may be questionable in the growers' interest, or disruptive of orderly marketing processes, or even unsound economically, it does not follow that such practices are necessarily fraudulent, deceptive, or unfair. A handler shipping for the account of a grower may be operating in the grower's best and fairest interests by rolling a shipment on a rising or a prospectively rising market.

Consignment sales have been an established method of handling produce, including onions, although evidence attests to the diminishing role of consignment dealers in South Texas onions. The acceptability, success, and equity of consignment sales to growers, handlers, and receivers depends largely upon the mutual confidence among all concerned. Where mutual confidence prevails, consignment handling may well benefit growers or any other party to the marketing transactions.

Some terminal market receivers may also be South Texas onion producers so that shipment of their own onions to their own firm with no price commitment thereon is normal trade practice and cannot be characterized as fraudulent, deceptive, or unfair.

Testimony indicated that rolling cars of onions unsold generally start as market prices decline and demand slackens and the number of rollers increases with oncoming supplies. Thus, indications are that rollers result from major problems previously mentioned, i.e., the short market life of South Texas onions and the urgency to move them quickly to market, which is aggravated by overproduction and consequent excessive supplies available for market.

The effect of a high percentage of South Texas onion sales for the account of the growers, with such effect accentuated during some portions of a season by a high percentage of roller shipments, is questionable as a sound marketing practice, but its unfairness is not proven and the alternatives of shipping point sales offered by the proposed prohibition raises additional questions of fairness.

(4) Effective enforcement is essential to administration of each marketing order. Effective enforcement to attain proponents' proposed prohibition of rollers would necessitate comprehensive, specific standards of performance by each handler applicable to each shipment. Proponents' proof on standards for administrative rules essential to effective administration was not sufficiently reliable, probative, and substantial to find and conclude that their proposal would be adequately enforceable.

For the reasons stated it is concluded that this proposal cannot be included in the proposed order.

(i) Inspection of onions grown in the production area by the Federal or Federal-State Inspection Service is necessary for the purpose of determining officially whether shipments meet requirements effective under marketing regulations issued pursuant to the proposed order. The Federal or Federal-State Inspection Service has operated in Texas for a number of years and onion producers and handlers throughout the

production area are well acquainted with the service and with the inspection which it offers on shipments of onions. The service is available at onion packing sheds throughout the entire production area and reasonably prompt inspection can be given at all such points. Provision is made in the proposed order for inspection of onions grown in the production area by the Federal or Federal-State Inspection Service during any period in which the handling of onions is regulated under the program. Inspection and certification requirements should apply to all onions shipped under regulations issued under the proposed order except when relieved therefrom pursuant to rules and regulations applicable to minimum quantities or special purpose shipments.

Inspection and certification requirements are necessary so that the shipper as well as subsequent handlers, the committee, and other interested parties may determine if shipments comply with the regulations in effect and applicable to such shipments. Effective regulation of the handling of onions grown in the production area requires evidence that each shipment is in compliance with regulations under the order and the provision for inspection and certification affords the practical means of establishing the fact that the shipments do comply and can be so identified.

Responsibility for obtaining inspection should fall primarily on the handler who first handles regulated onions after they have been prepared for market since he is usually the person responsible for the grade, size, quality, pack and container in which the onions are being shipped or handled. However, each handler, regardless of whether the first or subsequent handler, should be required to bear responsibility for determining that each of his shipments is inspected and certified. Identification and certification is essential to proper administration of the order so that a determination may be made as to whether each shipment accords with regulations issued thereunder. The handler who first handles onions should be required to obtain such inspection. Subsequent handlers should not be permitted to handle onions unless a properly issued inspection certificate, valid under the terms of the order, applies to such onions. If a handler should receive onions which have not been inspected he should be responsible for having them inspected before selling or transporting them. This procedure avoids the potential shift of responsibility which would be expected to occur in the absence of making each handler responsible for inspection and certification of any uninspected onions handled by him. This requirement is also necessary so that the committee can obtain evidence in the form of inspection certificates to determine whether the requirements of regulations in effect are being met.

Whenever any shipments of onions subject to regulation have been inspected, but are later dumped from the containers in which they were inspected, or the lot on which the inspection certificate was issued is broken up, such onions can no longer be specifically identified with reference to the inspection certificate. If any such lot of onions should thereafter be repacked, the repacked onions have a new identity. Any subsequent handling of such onions should be in compliance with regulations in effect. Otherwise, effective regulation will not be obtained. Therefore, the order should provide that the committee may require the person who handles onions after they have been repacked, resorted, or regraded to have such onions reinspected and recertified prior to further handling so that the shipper thereof as well as subsequent handlers and the committee may determine that such shipments comply with regulations in effect and applicable to onions that have been repacked or regraded.

The committee may prescribe rules and regulations, subject to approval by the Secretary, whereby any or all onions inspected shall be identified by appropriate seals, stamps, or tags affixed to the containers by the handler. In areas where warehouse or lot inspections are used compliance problems under a marketing order program can be more difficult than in other areas where all lots are inspected at the time of loading. Also, in areas where truck movement is relatively important, compliance can be a problem. Both of these situations apply to the production area.

The marking requirement could be used if it was found that uninspected lots were being substituted for inspected warehouse lots, or if trucks were moving out of the production area with uninspected onions when check stations are not being operated. Therefore, it is concluded that the provision for identifying shipments or containers by marking or labeling under appropriate rules and regulations recommended by the committee and approved by the Secretary may be necessary and incidental to successful operation of the proposed order, and should be included therein.

The committee with the approval of the Secretary should be authorized to determine the length of time an inspection certificate is valid insofar as the requirements of the proposed order are concerned. Such requirement is appropriate and necessary especially with respect to floor lot or platform inspections which might be administratively desirable to accommodate handlers and truckers. It would not be practical and feasible for the committee to rely upon inspection certificates which are not reasonably current.

South Texas onions are marketed soon after harvest and they are perishable. If held for unreasonable lengths of time they would deteriorate to the point where they would not meet regulations in effect at the time of shipment and would no longer conform to the quality shown on the inspection certificate.

Copies of inspection certificates issued pursuant to the requirements of the proposed order should be supplied to the committee promptly so it can discharge its administrative responsibilities under the program.

The committee should be authorized to recommend, and the Secretary to issue regulations requiring that onions transported by motor vehicle shall be accompanied by a copy of the inspection certificate issued thereon or by other approved evidence of inspection. These requirements may include the surrender of such documents to such authority or agency as designated by the Secretary upon committee recommendation. The committee is authorized under the proposed order to administer its terms and provisions and this procedure enables the committee to enforce regulations in connection with the movement of onions passing through compliance check stations which may be set up along the production area boundary. Since a sizable percentage of onions produced in the production area move by truck such authority is necessary to effectuate the other provisions of the proposed order.

(j) The committee should have authority, with the approval of the Secretary, to require that handlers submit to it such reports and information as are needed to perform its functions. It is difficult to anticipate every type of report, or kind of information, which the committee may need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request reports and information if needed, of the type set forth in the proposed order. The standards to be followed by the committee in requesting handlers to furnish reports should follow principles included in the rules incorporated in § 1033.80 of the proposed order and such reports should be those necessary for operation of the committee in carrying out its responsibilities under the order. Reports furnished to the committee should be submitted in such manner and at such times as the committee, with approval of the Secretary, may designate. Such reporting procedures should accord with the need and requirements of the committee which are essential to administration of the order because changing conditions may warrant changes in the forms and methods of reporting. The right to approve, and also to modify, change, or rescind, any requests by the committee for information in order to protect handlers from unreasonable requests for reports is retained by the Secretary.

Since it is possible that a question may arise with respect to compliance with the proposed order, each handler should maintain complete records of his handling and disposition of onions for a period of not less than two years subsequent to the termination of each crop year.

In order to determine handlers' compliance with the proposed order and regulations issued thereunder, the committee with approval of the Secretary should be authorized to prescribe, through rules and regulations, the type records and documents which shall be maintained by each handler with respect to each sale of onions. Such authorization should include authority for requiring proof or evidence of sale for each lot of onions sold, including the date of sale, the name of the buyer, the quantity, price, grade and size, the buyer's confirmation and record of payment, and other pertinent information which may be required by the committee. This information should be available for inspection by an authorized agent of the committee or the Secretary.

Any or all reports and records submitted for committee use by handlers shall remain under appropriate protective classification and be disclosed to none other than persons authorized by the Secretary. Such reports would become part of the committee's and the Secretary's records. Any reported information released to the industry should be on a composite basis, and no such release of information should disclose either the identity of the handlers or their operations.

(k) Except as provided in the proposed order, no handler should be permitted to handle onions, the handling of which is prohibited by the proposed order or pursuant to regulations issued under the proposed order. If the program is to be effective, no handler should be permitted to evade its provisions since such action on the part of one handler, although possibly of small impact on the industry measured by the proportion of onions handled by him, such action would, in any appreciable aggregate, tend to impair operation of the program and otherwise render it ineffective.

(l) The provisions of §§ 1033.82 through 1033.92, as published in the FEDERAL REGISTER of May 25, 1960 (25 F.R. 4597), and as hereinafter set forth, are common to marketing agreements and orders now operating. Also, the provisions of §§ 1033.93 through 1033.95, as hereinafter set forth, are included in other marketing agreements now operating. Each of these sections sets forth certain rights, obligations, privileges, or procedures which are necessary and appropriate for the effective operation of the proposed order. These provisions are incidental to, and not inconsistent with, sections 8c (6) and (7) of the Act, and are necessary to effectuate the other provisions of the proposed order and to effectuate the declared policy of the Act. The substance of such provisions, therefore, should be included in the proposed order.

General findings. Upon the basis of evidence introduced in the hearing and the record thereof, it is found that:

(1) The marketing order hereinafter set forth, and all of the terms and provisions thereof, will tend to effectuate the declared policy of the Act with respect to onions produced in the production area, by establishing and maintaining such orderly marketing conditions therefor as will tend to establish as prices to the producers thereof parity prices and by protecting the interest of the consumer (i) by approaching the level of prices which it is declared in the Act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (ii) by authorizing no action which has for its purpose the maintenance of prices to producers of such onions above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such onions as will be in the public interest;

(2) The marketing order authorizes regulation of the handling of onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a proposed marketing order upon which a hearing has been held;

(3) The marketing order is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the Act; and the issuance of several marketing orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of onions grown in the production area; and

(5) All handling of onions as defined in the marketing order is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement and order. The following marketing agreement and order are recommended as to the detailed means by which the aforesaid conclusions may be carried out:

DEFINITIONS

§ 1033.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may be hereafter delegated, to act in his stead.

§ 1033.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

§ 1033.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 1033.4 Production area.

"Production area" means the counties of Val Verde, Kinney, Uvalde, Medina, Wilson, Karnes, Goliad, Victoria, Calhoun, Maverick, Zavala, Frio, Atascosa, Dimmit, La Salle, McMullen, Live Oak, Bee, Refugio, Webb, Duval, Jim Wells, San Patricio, Nueces, Zapata, Jim Hogg, Brooks, Kleberg, Kenedy, Starr, De Witt, Aransas, Hidalgo, Willacy, and Cameron, in the State of Texas.

§ 1033.5 Onions.

"Onions" means all varieties of Allium cepa commonly known as onions grown within the production area and marketed dry.

§ 1033.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of onions owned by another person) who handles onions or causes onions to be handled.

§ 1033.7 Handle.

"Handle" or "ship" means to package, sell, transport, or in any way to place onions in the current of the commerce between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery of onions to a person in the production area who is a registered handler.

§ 1033.8 Registered handler.

"Registered handler" means any person with adequate facilities within the production area for preparing onions for commercial market, who customarily does so, and who is so recorded by the committee, or any person who has access to such facilities within the production area, and has recorded with the committee his ability and willingness to assume customary obligations of preparing onions for commercial market.

§ 1033.9 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of onions for market.

§ 1033.10 Grading.

"Grading" is synonymous with "preparation for market" and means the sorting or separation of onions into grades, sizes, and packs for market purposes.

§ 1033.11 Grade and size.

"Grade" means any of the established grades of onions, and "size" means any of the established sizes of onions as defined and set forth in the United States Standards for Bermuda-Granex Type Onions (§§ 51.3195 to 51.3209 of this title) or any other United States Standards for onions, or amendments thereto, or modifications thereof, or variations based thereon, recommended by the committee and approved by the Secretary

§ 1033.12 Pack.

"Pack" means a quantity of onions in any type of container and which falls within specific weight limits, numerical limits, grade limits, size limits or any combination of these, recommended by the committee and approved by the Secretary.

§ 1033.13 Container.

"Container" means a box, bag, crate, hamper, basket, package, or any other receptacle used in the packaging, transportation, sale, shipment or other handling of onions.

§ 1033.14 Varieties.

"Varieties" means and includes all classifications, subdivisions, or types of

onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture or recommended by the committee and approved by the Secretary.

§ 1033.15 Committee.

"Committee" means the South Texas Onion Committee, established pursuant to § 1033.22.

§ 1033.16 Fiscal period.

"Fiscal period" means the annual period beginning and ending on such dates as may be approved by the Secretary pursuant to recommendations of the committee.

§ 1033.17 District.

"District" means each of the geographic divisions of the production area initially established pursuant to § 1033.24 or as reestablished pursuant to § 1033.25.

§ 1033.18 Export.

"Export" means to ship onions to any destination which is not within the 48 contiguous States, or the District of Columbia, of the United States.

COMMITTEE

§ 1033.22 Establishment and membership.

The South Texas Onion Committee, consisting of seventeen members, ten of whom shall be producers and seven of whom shall be handlers, is hereby established. For each member of the committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

§ 1033.23 Term of office.

(a) The term of office of committee members and their respective alternates shall be for two years and shall begin as of August 1 and end as of July 31. The terms shall be so determined that about one-half of the total committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 1033.24 Districts.

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

District No. 1: (Coastal Bend) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, and McMullen in the State of Texas.

District No. 2: (Laredo) The Counties of Zapata, Webb, and Jim Hogg in the State of Texas.

District No. 3: (Lower Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

District No. 4: (Wilson-Karnes) The Counties of DeWitt, Wilson, Atascosa, and Karnes in the State of Texas.

District No. 5: (Winter Garden) The Counties of Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

§ 1033.25 Redistricting.

The committee may recommend, and pursuant thereto, the Secretary may approve, the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the committee shall give consideration to:

(a) Shifts in onion acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts;

(d) Economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(e) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 1033.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to § 1033.24 or § 1033.25. Initial selections shall be as follows:

District No. 1—3 producer members and alternates; 1 handler member and alternate.

District No. 2—2 producer members and alternates; 1 handler member and alternate.

District No. 3—3 producer members and alternates; 2 handler members and alternates.

District No. 4—1 handler member and alternate.

District No. 5—2 producer members and alternates; 2 handler members and alternates.

§ 1033.27 Nomination.

The Secretary may select the members of the committee and alternates from nominations which may be made in the following manner:

(a) A meeting or meetings of producers and handlers shall be held for each district to nominate members and alternates for the committee. For nominations to the initial committee, the meetings may be sponsored by the United States Department of Agriculture or by any agency or group requested to do so by such department. For nominations for succeeding members and alternates on the committee, the committee shall hold such meetings or cause them to be held prior to June 15 of each year, after the effective date of this subpart;

(b) At each such meeting at least one nominee shall be designated for each position as member and for each position as alternate member on the committee;

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 1 of each year;

(d) Only producers may participate in designating producer nominees, and only handlers may participate in naming handler nominees. In the event a person is engaged in producing or handling onions in more than one district, such person shall elect the district within which he may participate as aforesaid in designating nominees;

(e) Regardless of the number of districts in which a person produces or handles onions, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the respective district in which he elects to vote.

§ 1033.28 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 1033.27, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in §§ 1033.22 through 1033.26.

§ 1033.29 Acceptance.

Any person selected as a committee member or alternate shall qualify by filing a written acceptance within ten days after being notified of such selection.

§ 1033.30 Vacancies.

To fill committee vacancies, the Secretary may select such members or alternates from unselected nominees on the current nominee list from the district involved, or from nominations made in the manner specified in § 1033.27. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, such vacancy may be filled without regard to nominations, which selection shall be made on the basis of the representation provided for in §§ 1033.24 to 1033.26.

§ 1033.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or when designated to do so by the member for whom he is an alternate. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor of such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1033.32 Procedure.

(a) Eleven members of the committee shall be necessary to constitute a quorum. Nine concurring votes, or two-thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any committee action. At assembled meetings all votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication and any vote at such a meeting shall be promptly confirmed in writing. On such occasions unanimous vote of committee members voting will be required to approve any action.

§ 1033.33 Expenses and compensation.

Committee members and alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part. In addition they may receive compensation at a rate to be determined by the committee and approved by the Secretary, not to exceed $10 for each day, or portion thereof, spent in attending to committee business.

§ 1033.34 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1033.35 Duties.

It shall be, among other things, the duty of the committee:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members and alternates, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person, and to protect the handling of committee funds through fidelity bonds for employees;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to onions;

(f) To prepare a marketing policy;

(g) To recommend marketing regulations to the Secretary;

(h) To recommend rules and procedures for, and to make determinations in connection with, issuance of certificates of privilege;

(i) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee, and such minutes, books and records shall be subject to examination at any time by the Secretary or by his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(j) At the beginning of each fiscal period, to prepare a budget of its expenses for such fiscal period, together with a report thereon;

(k) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. A copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers, and a copy of each such report shall be furnished the Secretary;

(l) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

EXPENSES AND ASSESSMENTS

§ 1033.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses on the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of onions handled by him as the first handler thereof during a fiscal period and the quantity of onions handled by all handlers as first handlers thereof during such fiscal period.

§ 1033.41 Budget.

As soon as practicable after the beginning of each fiscal period and as may be necessary thereafter, the committee shall prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompanying report showing the basis for its calculations.

§ 1033.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who first handles onions, which are regulated under this part, shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all onions which were regulated under this part and which were handled by the first handlers thereof during such fiscal period.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 1033.43 Accounting.

(a) Assessments collected in excess of expenses incurred shall be accounted for in accordance with one of the following:

(1) Excess funds not retained in a reserve, as provided in subparagraph (2) of this paragraph shall be refunded proportionately to the persons from whom they were collected.

(2) The committee, with the approval of the Secretary, may carry over excess funds into subsequent fiscal periods as reserves: *Provided*, That funds already in reserves do not equal approximately one fiscal period's expenses. Such reserve funds may be used (i) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided for in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in ef-

fect and if the Secretary determines such action appropriate, he may direct that such person or persons shall act as trustee or trustees for the committee.

RESEARCH AND DEVELOPMENT

§ 1033.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of onions. The expenses of such projects shall be paid from funds collected pursuant to § 1033.42.

REGULATIONS

§ 1033.50 Marketing policy.

(a) At the beginning of each season, and as the Secretary may require, the committee shall prepare a marketing policy. Such policy shall indicate the data on onion supplies and demand on which the committee bases its judgments and recommendations. It shall indicate also the kind or types of regulations contemplated during the ensuing season, and, to the extent practical, shall include recommendations for specific regulations. Notice of such marketing policy shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be submitted to the Secretary and shall be available generally.

(b) Marketing policy statements relating to recommendations for regulations shall give appropriate consideration to onion supplies for the season, with special consideration to:

(1) Estimates of total supplies, including grade, size, and quality thereof, in the production area;

(2) Estimates of supplies in the competing areas;

(3) Market prices by grades, sizes, containers, and packs;

(4) Estimates of supplies of competing commodities;

(5) Anticipated marketing problems;

(6) Level and trend of consumer income; and

(7) Other relevant factors.

§ 1033.51 Recommendations for regulations.

Upon complying with the requirements of § 1033.50 the committee may recommend regulations to the Secretary whenever it finds that such regulations as are provided for in this subpart will tend to effectuate the declared policy of the act.

§ 1033.52 Issuance of regulations.

(a) The Secretary shall limit the handling of onions by regulations specified in this section whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the act.

(b) Such regulations may:

(1) Limit in any or all portions of the production area the handling of particular grades, sizes, qualities or packs, or any combination thereof, of any or all varieties of onions during any period;

(2) Limit the handling of particular grades, sizes, qualities, or packs of onions differently for different varieties, for different containers, for different portions of the production area, or any combination of the foregoing, during any period;

(3) Limit the handling of onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(4) Fix the size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of onions.

(c) Regulations issued hereunder may be amended, modified, suspended, or terminated whenever it is determined:

(1) That such action is warranted upon recommendation of the committee or other available information;

(2) That such action is essential to provide relief from inspection, assessment, or regulations under paragraph (b) of this section for minimum quantities less than customary commercial transactions; or

(3) That regulations issued hereunder no longer tend to effectuate the declared policy of the act.

§ 1033.53 Handling for special purposes.

Regulations in effect pursuant to §§ 1033.42, 1033.52, or 1033.60 may be modified, suspended, or terminated to facilitate handling of onions for:

(a) Relief or charity;

(b) Experimental purposes;

(c) Export; and

(d) Other purposes which may be recommended by the committee and approved by the Secretary.

§ 1033.54 Safeguards.

The committee, with the approval of the Secretary, may establish through rules such requirements as may be necessary to establish that shipments made pursuant to § 1033.53 were handled and used for the purpose stated.

§ 1033.55 Notification of regulation.

The Secretary shall promptly notify the committee of regulations issued or of any modification, suspension, or termination thereof. The committee shall give reasonable notice thereof to handlers.

INSPECTION

§ 1033.60 Inspection and certification.

(a) Whenever the handling of onions is regulated pursuant to § 1033.52, or at other times when recommended by the committee and approved by the Secretary, no handlers shall handle onions unless they are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to § 1033.52(c) or § 1033.54, or paragraph (b) of this section.

(b) Regrading, resorting, or repacking any lot of onions shall invalidate any prior inspection certificate insofar as the requirements of this section are concerned. No handler shall handle onions after they have been regraded, resorted, or repacked unless such onions are inspected by an authorized representative of the Federal or Federal-State Inspection Service. Such inspection requirements on regraded, resorted, or repacked onions may be modified, suspended, or terminated upon recommendation by the committee and approval of the Secretary.

(c) Upon recommendation of the committee and approval by the Secretary, any or all onions so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the containers by the handler under the direction and supervision of a Federal or Federal-State Inspector or the Committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) At any time this marketing order is inoperative, compulsory inspection is not required.

(e) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(f) When onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the Inspection Service.

(g) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of onions by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other document authorized by the committee to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

REPORTS

§ 1033.80 Reports.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner or form and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of onions received by a handler; (2) the quantities disposed of by him segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such onions; and (4) identification of the inspection certificates relating to the onions which were handled pursuant to § 1033.52 or § 1033.53, or both.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handlers' identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records and documents on onions received and onions disposed of by him as may be necessary to verify reports he submits to the committee pursuant to this section.

COMPLIANCE

§ 1033.81 Compliance.

Except as provided in this subpart, no handler shall handle onions, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, or the rules and regulations thereunder, and no handler shall handle onions except in conformity to the provisions of this subpart.

MISCELLANEOUS PROVISIONS

§ 1033.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 1033.83 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 1033.84 Termination.

(a) The Secretary may, at any time, terminate the provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of onions for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such onions produced for market.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 1033.85 Proceeding after termination.

(a) Upon the termination of the provisions of this subpart the then functioning members of the committee shall continue as joint trustees for the purpose of settling the affairs of the committee by liquidating all of the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 1033.86 Effect of termination or amendments.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 1033.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 1033.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this subpart.

§ 1033.89 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 1033.90 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 1033.91 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 1033.92 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

§ 1033.93 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.[1]

§ 1033.94 Additional parties.

After the effective date hereof, any handler who has not previously executed this agreement may become a party hereto if a counterpart hereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.[1]

§ 1033.95 Order with marketing agreement.

Each signatory handler favors and approves the issuance of an order by the Secretary regulating the handling of onions in the same manner as is provided for in this agreement; and each signatory handler hereby requests the Secretary to issue, pursuant to the act such an order.[1]

Copies of this notice of hearing may be procured from the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D.C., or may be there inspected.

Dated: December 5, 1960.

ROY W. LENNARTSON,
Deputy Administrator,
Marketing Services.

[F.R. Doc. 60-11443; Filed, Dec. 8, 1960; 8:49 a.m.]

[1] Applicable only to the proposed marketing agreement.

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-112]

FEDERAL AIRWAYS AND CONTROL AREAS

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.123, 600.157, 600.166, 600.239, 600.276, 601.157, 601.166, 601.239, and 601.276 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the following proposed airspace actions:

1. Alteration of the segment of VOR Federal airway No. 123 which presently extends from Baltimore, Md., via the intersection of the Baltimore VORTAC 035° and the New Castle, Del., VORTAC 257° True radials; New Castle VORTAC; Woodstown, N.J., VOR; intersection of the Pottstown, Pa., VOR 104° and the Robbinsville, N.J., VOR 239° True radials; thence to the Robbinsville VOR. It is proposed to redesignate this segment of Victor 123 from the Baltimore VORTAC via the intersection of the Baltimore VORTAC 035° and the New Castle VORTAC 260° True radials; New Castle VORTAC; thence direct to the Robbinsville VOR.

2. Alteration of the segment of VOR Federal airway No. 157 which presently extends from Richmond, Va., to Washington, D.C. It is proposed to extend Victor 157 and associated control areas from the Washington VOR via the Baltimore VORTAC; intersection of the Baltimore VORTAC 035° and the New Castle VORTAC 260° True radials; New Castle VORTAC; Robbinsville VOR; intersection of the Robbinsville VOR 097° and the Idlewild, N.Y., VORTAC 212° True radials; thence to the Idlewild VORTAC.

3. Alteration of the segment of VOR Federal airway No. 166, which presently extends from the Westminster, Md., VOR to the Norris, Pa., Intersection (intersection of the Westminster VOR 060° and the Lancaster, Pa., VOR 198° True radials). It is proposed to realign and extend this segment of Victor 166 and its associated control areas from the Westminster VOR direct to the New Castle VORTAC.

4. Revocation of the segment of Victor 166 which presently extends from the New Castle VORTAC to the Colts Neck, N.J., VOR.

5. Alteration of the segment of VOR Federal airway No. 239 which presently extends from the Woodstown VOR to the intersection of the West Chester, Pa., VORTAC 120° True radial and the Philadelphia, Pa., International Airport ILS localizer 256° True course. It is proposed to redesignate this segment of Victor 239 and its associated control areas from the Woodstown VOR direct to the New Castle VOR where it would terminate.

6. Alteration of the terminating segment of VOR Federal airway No. 276 which presently extends from the Yardley, Pa., VOR to the intersection of the Yardley VOR 098° True radial and the Coyle, N.J., VOR direct radial to the Idlewild VORTAC. It is proposed to realign and extend this segment of Victor 276 and its associated control areas from the Yardley VOR via the Robbinsville VOR; to the intersection of the Robbinsville VOR 097° and the Coyle VOR 058° True radials, at which point it would terminate.

These proposed airway alterations would provide a revised route structure and would simplify route selection for flight planning purposes. In addition, these alterations would facilitate air traffic management of the high volume of air traffic operating between the Washington and New York terminals by providing better airway alignment and continuity.

The control areas associated with Victor 123 are so designated that they would automatically conform to the modified airway. Accordingly, no amendment relating to such control areas would be necessary.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11424; Filed, Dec. 8, 1960; 8:46 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-KC-97]

CONTROL AREAS AND CONTROL ZONES

Alteration of Control Area Extension and Control Zone

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 601.1026 and 601.2051 of the regulations of the Administrator, the substance of which is stated below.

The Grand Island, Nebr., control area extension (§ 601.1026) is presently designated from the Grand Island, Nebr., radio range station extending within 5 miles either side of the north course of the Grand Island radio range, to a point 20 miles north of the radio range station and within 5 miles either side of the 180° True and 360° True radials of the Grand Island VOR extending from the VOR to points 25 miles north and south.

The Grand Island, Nebr., control zone is presently designated within a 5-mile radius of the Grand Island Airport and within 2 miles either side of the north course of Grand Island radio range extending 10 miles from the range station.

The Federal Aviation Agency is considering altering the control area extension and control zone as follows:

1. Revoke the portion of the control area extension north of Grand Island based on the north course of the radio range. This portion of the control area extension would no longer be required as the L/MF radio range instrument approach procedure is being cancelled.

2. Revoke the portion of the control area extension south of Grand Island based on the 180° True radial of the Grand Island VOR. This portion of the control area extension would no longer be required for the protection of aircraft as the VOR instrument missed approach procedure is being revised.

3. Alter the portion of the control area extension north of Grand Island based on the 360° True radial of the Grand Island VOR. It is proposed to redesignate it within 8 miles west and 5 miles east of the 360° True radial of the VOR, extending from the VOR to 17 miles north. The altered control area extension would provide protection for aircraft executing VOR instrument approach procedures to the Grand Island Airport.

4. Alter the control zone extension based on the north course of the radio range by redesignating it on the 360° True radial of the Grand Island VOR and extending it to 12 miles north of the VOR. This extension would provide protection for aircraft executing prescribed VOR instrument approach procedures at the Grand Island Airport.

If these actions are taken, the Grand Island, Nebr., control area extension would be redesignated within 8 miles west and 5 miles east of the 360° True radial of the Grand Island, Nebr., VOR control zone by redesignating it within a 5-mile radius of Tucson Municipal Airport (latitude 32°07'05" N., longitude 110°56'35" W.), bounded on the northeast by a line extending from latitude 32°11'16" N., longitude 110°57'58" W., to latitude 32°05'45" N., longitude 110° 51'40" W. It is also proposed to designate a control zone within a 5-mile radius of Davis-Monthan Air Force Base (latitude 32°10'00". N., longitude 110° 53'00" W.) and within a 1-mile radius of Downtown Tucson Airport (latitude 32°11'10" N., longitude 110°56'55" W.), bounded on the southwest by a line extending from latitude 32° 11' 16" N., longitude 110°57'58" W., to latitude 32°05'45" N., longitude 110°51'40" W.

Operations at Tucson Municipal Airport and Davis-Monthan AFB are governed by official United States Weather Bureau observations at Tucson Municipal Airport which often results in restricting VFR operations at Davis-Monthan AFB. The Department of Air Force Weather Service provides weather observations at Davis-Monthan AFB. Therefore, it would appear that the management of air traffic in the Tucson terminal area would be facilitated by the designation of a control zone at each airport. The Downtown Tucson Airport, a private airport with a small number of operations, is partially within the present Tucson control zone. Its traffic patterns are adjacent to the departure course and are underneath the northwest portion of the Davis-Monthan AFB traffic patterns. It is proposed to include the Downtown Tucson Airport within the Davis-Monthan AFB control zone to provide adequate protection for aircraft operating at Downtown Tucson Airport and those operations at the airbase during weather conditions of less than VFR minimums. Aircraft executing the prescribed instrument approach procedures at Tucson Municipal Airport or Davis-Monthan AFB would be afforded adequate protection by the 5-mile radius zones at these airports. Therefore, it is proposed to revoke the southeast extension to the Tucson control zone since it would no longer serve a useful purpose.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11421; Filed, Dec. 8, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-LA-66]

CONTROL ZONES

Modification and Designation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 and § 601.2209 of the regulations of the Administrator, the substance of which is stated below.

The Tucson, Ariz., control zone is designated within a 5-mile radius of Tucson Municipal Airport, within a 5-mile radius of Davis-Monthan Air Force Base and within 2 miles either side of the 130° True radial of the Davis-Monthan AFB TACAN extending from the TACAN to a point 10 miles southeast. The Federal Aviation Agency has under consideration modification of the Tucson

extending from the VOR to 17 miles north. The Grand Island, Nebr., control zone would be redesignated within a 5-mile radius of the Grand Island Airport (latitude 40°58'04" N., longitude 98°18'51" W.), and within 2 miles either side of the 360° True radial of the Grand Island VOR, extending from the 5-mile radius zone to 12 miles north of the VOR.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 2, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11422; Filed, Dec. 8, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-NY-108]

CONTROL ZONES

Alteration

Pursuant to the authority delegated to me by the Adminstrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2269 of the regulations of the Administrator, the substance of which is stated below.

The Fort Dix, N.J., control zone is presently designated within a 7-mile radius of the McGuire AFB and within 5 miles either side of the southwest course of the McGuire AFB radio range extending from the radio range to a point 10 miles southwest, excluding the portions which lie within the geographic limits of the Fort Dix Restricted Area (R-25) at all times and all altitudes. The portions of this control zone which lie within the Wrightstown, N.J. (McGuire AFB), Restricted Area/Military Climb Corridor (R-539) shall be used only after obtaining prior approval from the controlling agency.

The Federal Aviation Agency has under consideration the following alterations to this control zone:

1. Reduce the 7-mile radius zone to a 5-mile radius zone. This revised radius zone would provide adequate protection to aircraft arriving and departing the McGuire AFB.

2. Redesignate the extension based on the southwest course of the McGuire radio range. It is proposed to redesignate this extension within 2 miles either side of the southwest course extending from the proposed 5-mile radius zone to 12 miles southwest of the radio range. The proposed redesignation would reduce the width and increase the length of this control zone extension. The redesignated extension would provide protection to aircraft executing instrument approach procedures at the airbase utilizing the radio range.

3. Designate control zone extensions within 2 miles either side of the 051° and 213° True radials of the McGuire VOR (latitude 40°00'32" N., longitude 74°35'50" W.), extending from the 5-mile radius zone to 7 miles northeast

and 6 miles southwest of the VOR. These proposed extensions would provide protection to aircraft executing prescribed VOR instrument approach procedures at the airbase.

4. Designate a control zone extension within 2 miles either side of the 223° True radial of the McGuire TACAN (latitude 40°01'41" N., longitude 74°33'58" W.), extending from the 5-mile radius zone to 8 miles southwest of the TACAN. This extension would provide protection to aircraft executing prescribed TACAN approaches at the airbase.

If these actions are taken, the Fort Dix, N.J., control zone would be redesignated within a 5-mile radius of the McGuire AFB (latitude 40°00'55" N., longitude 74°35'25" W.), within 2 miles either side of the southwest course of the McGuire AFB radio range extending from the 5-mile radius zone to 12 miles southwest of the radio range, within 2 miles either side of the 051° and the 213° True radials of the McGuire VOR extending from the 5-mile radius zone to 7 miles northeast and 6 miles southwest of the VOR, and within 2 miles either side of the 223° True radial of the McGuire TACAN extending from the 5-mile radius zone to 8 miles southwest of the TACAN, excluding the portions which would coincide with the Fort Dix Restricted Area (R-25). The portions of this control zone which would coincide with the Wrightstown, N.J., (McGuire AFB) Restricted Area/Military Climb Corridor (R-539) would be used only after obtaining prior approval from the appropriate authority.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11423; Filed, Dec. 8, 1960; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 13842; FCC 60-1427]

ANNUAL FINANCIAL REPORT FORM

Order Extending Time for Filing Comments and Reply Comments

In the Matter of amendment of F.C.C. Form 324, Annual Financial Report (Including Associated Data) for Networks and Licensees of Broadcast Stations, Docket No. 13842.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960;

The Commission has before it for consideration the request of the National Association of Broadcasters (NAB) filed November 23, 1960, for an extension of time from December 9, 1960, to February 1, 1961, in which to file comments in the above-entitled rule-making proceeding.

The NAB urges that the additional time is required to bring the matter to the attention of as many individual licensees as possible, thereby making possible assessment of the practical effects of the proposal on a wide variety of broadcasting stations.

We are persuaded that the requested extension of time will contribute to the filing of more thorough and helpful replies and would be, therefore, in the public interest.

Accordingly, it is ordered, That the request of the National Association of Broadcasters for an extension of time is granted, and that the time for filing comments in this proceeding is extended from December 9, 1960, to February 1, 1961. The time for filing reply comments is, herewith, also extended from December 23, 1960, to February 15, 1961.

Released: December 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11460; Filed, Dec. 8, 1960; 8:51 a.m.]

[47 CFR Part 3]

[Docket No. 13858; FCC 60-1424]

TABLE OF ASSIGNMENTS

Television Broadcast Stations

In the matter of amendment of § 3.606 *Table of assignments,* Television Broadcast Stations (Syracuse, Rochester, Elmira, Binghamton, and Corning, New York and Williamsport, Pennsylvania), Docket No. 13858 (RM-22), (RM-16, 43, 122, 136, 137).

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission has for some time recognized the desirability of a third VHF television assignment for Syracuse, New York.[1] Channel 9 has been available for allocation within this general area since it was deleted from Elmira, New York, by Report and Order dated March 1, 1957 (15 R.R. 1515).

3. A petition for rule making concerning television channel assignments in the Syracuse area was filed April 18, 1958, by Daniel W. Casey, Sr., Robert J. Conan, T. Frank Dolan, Jr., and Richard N. Groves, a group of business and professional men from Syracuse (hereinafter referred to as the Syracuse Group). That petition requested that Channel 9 be allocated to Syracuse. The proposal also involves removing Channel 8 from Syracuse and assigning it to Rochester with removal of Channel 5 from Rochester and its assignment to Syracuse. It was requested that the licensees of the stations affected be issued appropriate show cause orders.

4. Until recently no useful purpose would have been served by such rule making because the Canadian Government was in the process of revising its domestic television standards and its consent to the change could not be obtained. Recent negotiations with that Government, however, give hope that Canadian approval may be forthcoming.[2] We, therefore, deem it in the public interest to initiate rule making on the proposal without further delay. Accordingly, the petition of April 18, 1958, filed by the Syracuse Group is granted and it is proposed to amend the Table of Assignments, Television Broadcast Stations (§ 3.606 of the rules) in the following respects:

City	Present allocations	Proposed allocations
Syracuse, N.Y.	3−, 8, *43+	3−, 5−, 9−, *43+
Rochester, N.Y.	5−, 10+, 15−, *21, 27+	8, 10+, 15−, *21, 27+

5. As to petitioner's suggestion that consolidated consideration be given this proposal along with the requests for Channel 13 for Rochester, we have, for the reasons stated in a notice of proposed rule making released this date and dealing with those proposals for Rochester, decided against such consolidation (FCC 60-1425).

6. Opposition to the petition was filed by Transcontinent Television Corporation, licensee of WROC-TV, Channel 5, Rochester, on May 26, 1958. Transcontinent argues that WROC-TV once before changed its facilities from Channel 6 to Channel 5 and it would be unfair that they be required to change again.

[1] The Syracuse 1950 urbanized population was 265,286. It is generally ranked about 50th in population of the metropolitan areas.

[2] Such approval may contain certain limitations.

The Syracuse Group replies that whatever equities may exist in such a situation do not belong to Transcontinent because it purchased the station from General Dynamics in 1956, two years after the change from Channel 6 to Channel 5. Transcontinent also contends that on January 22, 1958, WPTZ, Channel 5, Lake Placid, New York, applied for modification of its outstanding construction permit to move its transmitter to a new site (File No. BMPCT-4667). It alleges that the grant of Channel 5 to Syracuse would effectively preclude the requested change in facilities. The Syracuse Group replies that WPTZ operates with only 20 kilowatts effective radiated power and that it is not clear that their coverage cannot be increased in other ways without moving the transmitter. Transcontinent states that it will not consent to modification of its license and would demand a hearing. Finally, Transcontinent alleged certain losses in service area if it were required to change to Channel 8, and that it would be forced to incur minimum expenses of approximately $324,000 in making such a change. The Syracuse Group replied that such estimate did not consider a possible sale of its Channel 5 facilities to whoever becomes licensee of Channel 5 proposed for Syracuse. It also offers a point by point refutation of Transcontinent's allegations. The parties will have ample opportunity to discuss such matters in their comments herein and to have them considered in detail. Moreover, if the proposal is finally adopted, show cause orders would be issued at that time and the licensee on Channel 5 in Rochester, as well as the licensee of Channel 8 in Syracuse, would have the right to a section 316 hearing.

7. American Broadcasting Company (ABC) filed a petition for rule making on April 11, 1958 wherein it proposed that we delete Channel 8 from Syracuse and add Channels 9 and 11. The proposal would also substitute Channel 8 for 11 at Kingston, Ontario and add Channel 11 to Cornwall, Ontario. Since the filing of this petition Canada has assigned Channel 8 to Cornwall where it is presently operating. The ABC proposal conflicts with such assignment when it proposes Channel 8 for Kingston, only 100 miles from Cornwall. Pursuant to the Canada-United States Television Agreement we must obtain Canada's consent to all television allocations within 250 miles of the common border. The ABC proposal involves changes in Canadian domestic assignments to which that Government will not assent. Its petition is, therefore, denied.

8. In its opposition to the ABC and Syracuse Group proposals, Mohawk Valley Television, Inc., renewed its proposal earlier filed in Docket 11751 (Albany-Schenectady-Troy) wherein it requested that Channel 7 be added to Utica, New York, by adding Channel 9 to Syracuse and deleting Channel 8 and by substituting Channel 8 for Channel 7 in Carthage-Watertown, New York. Since the filing of that pleading, however, Channel 8 has been utilized in Cornwall, Ontario, about 90 miles from its proposed use at Carthage-Watertown. Canada not consenting to the changes involved, the Mohawk Valley petition is denied.

9. Several other petitions for rule making have been filed which would allocate Channel 9 to some area other than Syracuse. They are as follows:

(a) Petition filed January 21, 1958, by Veterans Broadcasting Company, Inc., permittee of WVET-TV, Rochester, which requests allocation of Channels 9 and 13 to Elmira. On February 18, 1960 the same petitioner requested a third VHF channel for Rochester, which we have construed as an abandonment of its request for Channel 13 at Elmira. (See notice of proposed rule making, FCC 60-1425, dealing with Rochester and released this date, wherein we dismissed that portion of the petition). In the Elmira Deintermixture case (Docket No. 11758, FCC 57-179, 15 RR 1515), we spelled out in detail our reasons for deleting Channel 9 from Elmira, prominent among them being its character as a UHF area. Our considerations were based upon our determination of the public interest and what is best for the entire area. In our judgment nothing brought to our attention warrants reopening the entire television situation in that area to consider restoring Channel 9 to Elmira. On the contrary, such action would simply add considerable and unnecessary delay to this already long delayed proceeding. Veterans petition is, therefore, denied.[3]

(b) A petition of the Joint Council on Educational Television (JCET) on September 2, 1959 would have us assign Channel 9 to Corning-Elmira and reserve it for noncommercial educational use. It alleges that the hilly terrain in the general area of Corning-Elmira makes VHF highly preferable to UHF for wide educational television coverage. Northeastern Pennsylvania Broadcasting, Inc., Scranton Broadcasters, Inc., and WBRE-TV, Inc., operators of UHF stations in nearby Scranton and Wilkes-Barre, Pennsylvania, filed a joint opposition to the petition noting that there are two unoccupied and unapplied-for lower frequency UHF channels in Elmira, both of which are open to applications for commercial or educational use. They point out that the technical qualities of educational service in the UHF band at Elmira would be comparable to local commercial service and that a UHF educational station would not encounter the difficulty of securing and maintaining an audience which factor has undoubtedly restricted educational television development in some VHF markets. It concludes that if there is a genuine interest in and support for educational television in Corning-Elmira, it can be satisfied without disturbing the existing pattern of allocations in that area. With this analysis we agree. ABC also filed a pleading in opposition to the request. JCET other than its allegation that a VHF allocation would be "highly preferable" makes no showing that such is the case. Moreover, the needs of Syracuse for additional commercial service could not be satisfied if Channel 9 were assigned to Corning-Elmira. For these reasons, the petition of the Joint Council on Educational Television is denied.

(c) A petition requesting allocation of Channel 9 to Willamsport, Pennsylvania, was filed July 8, 1958, by English and Spain, a partnership. Oppositions to the proposal were filed by ABC, First Broadcasting Corporation, and a joint opposition by Northeastern Pennsylvania Broadcasting, Inc., Scranton Broadcasters, Inc., WBRE-TV, Inc., WHP, Inc., and Lock Haven Broadcasting Corporation. In our Report and Order of February 26, 1957, concerning Television Allocations in Elmira, New York Area (Docket No. 11758, FCC 57-179, 15 R.R. 1515) we found that Elmira "is in the midst of a predominantly UHF area from the standpoint of operating stations and channel assignments" (para. 8). Reference therein was made to UHF Channel 36 in Williamsport, 60 miles from Elmira. We also noted that "the only VHF station which puts a Grade B or stronger signal into Elmira is Station WNBF-TV on Channel 12, Binghamton, New York, 45 miles from Elmira," with all the other VHF stations which serve "parts of the area" being located 75 to 119 miles from Elmira (para. 8). Elsewhere in our Report and Order we called attention to the high percentage of UHF receivers in the Elmira area (para. 9), to the general public acceptance of UHF in the Wilkes-Barre, Scranton, Elmira area (para. 10), and to the necessity of utilizing UHF channels in the "southern New York and North central Pennsylvania" area if the public is to have competitive television service in that region (para. 16).

(1) It is argued, and we believe persuasively so, that Williamsport is in that same UHF area and that like considerations apply. In the joint opposition it is noted that within 100 miles of Williamsport are 10 UHF stations on the air, 7 UHF stations which are authorized but not on the air, and 10 UHF channel allocations for which grants are not outstanding. Within 75 miles of Williamsport, it points out, there are 7 operating UHF stations, 6 authorized UHF stations and 5 UHF allocations. On the other hand, it shows that there is not a single operating or authorized VHF station or VHF channel allocation within 75 miles of Williamsport. The nearest VHF stations to Williamsport are at Binghamton, Altoona, and Lancaster which are 76, 90 and 99 miles respectively from Williamsport. There are no other VHF channels within 118 miles of Williamsport. It is contended, moreover, that 10 operating UHF stations provide a Grade B or stronger signal to large areas which would fall within the Grade B contour of a Channel 9 station at Williamsport, that Grade B contours of 4 operating UHF stations reach Williamsport, but

[3] Oppositions filed February 21, 1958 by Federal Broadcasting System, Inc., licensee of radio station WSAY, Rochester, and March 24, 1958 by Central New York Broadcasting Corporation, licensee of WSYR-TV, Syracuse and WSYE-TV, Elmira, substantially argue for the position we have adopted.

that no VHF Grade B contour comes any closer than 20 miles to Williamsport.[4] It also quotes from a Nielsen Market Coverage report to show that at least 90 percent of all television homes in Lycoming County, where Williamsport is located, are equipped with UHF receivers. The joint opposition cites many figures, which it is not necessary to repeat here, to show how the contours of a Channel 9 station at Williamsport would overlap the contours of existing UHF stations.

(2) We entertain no doubts as to the UHF character of the Williamsport area. And as we have pointed out on many occasions, establishment of a VHF station in a predominantly UHF area generally seriously affects, if not cripples, the ability of the UHF stations in the area to compete effectively and provide service (see e.g. Channel Assignment to Moses Lake, Washington, 14 R.R. 1531, 1532(b) (1956); Channel Assignment to St. Joseph, Tennessee, 15 R.R. 1646, 1648–49 (1957)). Allocation of a VHF channel to Williamsport would contravene rather than effectuate our policy of improving the opportunities for effective competition among a greater number of stations in order that resultant service to the public may be enhanced. (See also our determination that rule making was not warranted to assign a VHF channel to the predominantly UHF area of Clearfield, Pennsylvania (15 R.R. 1649 (1957)). Moreover, as the parties note, use of Channel 9 in Williamsport would foreclose its use to provide a needed service to the Syracuse area. Finally, although the parties disagree on the matter, there is at least some serious question whether a principal city signal, as required by § 3.685 of our rules, could be provided to Williamsport from available sites. For the reasons stated we conclude the public interest would not be served by such an assignment and that rule making thereon is not warranted. The petition of English and Spain is denied.

10. Two final petitions remain for consideration. These are a petition filed by Veterans Broadcasting Company on August 24, 1959, seeking Channel 7 for Binghamton, New York, and one filed June 26, 1959, by Binghamton Press Company, Inc. seeking Channel 4 or 9 or both for Binghamton. None of the proposals comply with the mileage separation requirements of our rules (§ 3.610). We are considering the problem of "short separations" on a broader basis in our rule making in Docket No. 13340. Action on individual cases is being deferred until we have had an opportunity to fully evaluate the entire matter. The Veterans proposal seeking Channel 7 for Binghamton and the Binghamton Press Company proposal insofar as it seeks Channel 4 for Binghamton will not be acted upon at this time and consideration thereof is hereby deferred. However, the portion of the Binghamton Press Company proposal which alternatively seeks Channel 9 for Binghamton is inconsistent with the proposal granted herein for rule making to utilize Channel 9 in Syracuse and is denied. We have no hesitancy in taking such action at this time. No reasonable alternatives to Channel 9 are available in the Syracuse area. As noted, at least two other frequencies would be available to Binghamton if we decide to permit such short separations and if that area meets whatever criteria, if any, might be finally adopted. With these alternatives available to Binghamton under those conditions, that area is not prejudiced and we conclude it would not be in the public interest to delay action in the Syracuse area until all such problems can be solved.

11. For the reasons stated: *It is ordered*, That the petition of April 18, 1958, filed by the Syracuse Group seeking rule making on the proposal noted in paragraph 4 herein is granted and the following petitions are denied:

(a) The portion of the Syracuse Group's petition of April 18, 1958, which requests show cause orders directed to the licensees of Channel 5 in Rochester and Channel 8 in Syracuse is denied in view of our determination that appropriate show cause orders can await conclusion of the rule making.

(b) American Broadcasting Company petition filed April 11, 1958.

(c) Mohawk Valley Television, Inc. petition filed May 12, 1958.

(d) Veterans Broadcasting Company, Inc., petition filed January 21, 1958, insofar as it requests Channel 9 for Elmira.

NOTE: We have this day in a companion proceeding dismissed the remaining portion of this petition which requested Channel 13 for Elmira.

(e) Joint Council on Educational Television petition filed September 2, 1959.

(f) English and Spain petition filed July 8, 1958.

(g) Binghamton Press Company, Inc., petition of June 26, 1959, insofar as it requests Channel 9 for Binghamton.

NOTE: Action on its request for Channel 4 for Binghamton is deferred.

12. Authority for the adoption of the amendments proposed herein is contained in sections 4, 303, and 307(b) of the Communications Act of 1934, as amended.

13. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested persons may file comments on or before January 6, 1961, and reply comments on or before January 17, 1961. All submissions by parties to this proceeding or by persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

14. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished to the Commission.

Adopted: November 30, 1960.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Acting Secretary.*

[F.R. Doc. 60–11461; Filed, Dec. 8, 1960; 8:51 a.m.]

[4] While some of these details may have changed in the interim since the petition was filed, the UHF character of the Williamsport area has not changed.

[47 CFR Part 3]

[Docket No. 13859; FCC 60–1425]

TABLE OF ASSIGNMENTS

Television Broadcast Stations

In the matter of amendment of § 3.606, *Table of Assignments*, Television Broadcast Stations (Rochester, New York), Docket No. 13859, RM–71, RM–98, RM–164.

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission has before it for consideration petitions for rule making looking toward amendment of the Table of Assignments, Television Broadcast Stations (§ 3.606 of the rules) to add Channel 13 to Rochester, New York, filed by the following:

a. Star Broadcasting Company, Inc. (Star), permittee of WCBF–TV, Channel 15, Rochester. Its petition of October 29, 1957 also requested that it be ordered to show cause why its authorization for Channel 15 in Rochester should not be modified to specify operation on Channel 13;

b. Joint Council on Educational Television—November 3, 1958—seeks Channel 13 for Rochester and its reservation for noncommercial educational use;

c. Genesee Valley Television Co., Inc.—March 3, 1959;

d. Veterans Broadcasting Co., Inc. (Veterans), licensee (on a share-time basis with WHEC–TV) of WVET–TV, Channel 10, Rochester. Its petition of February 18, 1960 specifically requests rule making to put a third VHF channel into Rochester. This same petitioner had, on January 21, 1958, petitioned for rule making to allocate Channels 9 and 13 to Elmira, New York. In this later petition it now states that Channel 13 for Rochester "would accomplish the desired purpose." Interpreting these two petitions together, it is reasonable to conclude that this petitioner has indicated its preference for Channel 13 at Rochester and has abandoned its earlier request for Channel 13 at Elmira. Moreover, Channel 13 is the only VHF channel which it appears feasible to add to Rochester in compliance with existing Rules. The portion of Veterans petition of January 21, 1958 which sought rule making to add Channel 13 to Elmira is, therefore, dismissed.

As to Channel 13 in Rochester, Veterans proposes a share-time arrangement with Rochester Area Educational Television Association whereby Veterans would use Channel 13 during the hours it does not operate on Channel 10 under its existing share-time arrangement.

3. American Broadcasting-Paramount Theatres, Inc. (ABC) on March 15, 1960, filed a statement supporting a third VHF channel for Rochester but indicating that it must be a fully competitive facility. It therefore opposes Veterans share-time proposal.

4. ABC on May 23, 1958, filed a pleading entitled "Petition to Allocate Channel 13 to Rochester, New York, and to Consolidate with Syracuse, New York, Proposals." It proposed that, because both Rochester and Syracuse are important markets, certain proposals for these two cities should be submitted to Canada as a "package". It recognized, however, that Channel 13 can be added to Rochester regardless of the action taken on the Syracuse proposals and vice versa.

5. No domestic changes are required in order to permit the use of Channel 13 at Rochester. Nor are any short spacings involved. We are this date also issuing a notice of proposed rule making directed to the Syracuse area. The proposals for Rochester and Syracuse, however, are not interdependent and we believe they can be handled more expeditiously in separate proceedings. ABC's request for consolidation is denied.

6. Star filed a statement with reference to Veterans' 1960 petition, pointing out the apparent abandonment of the earlier request for Channel 13 at Elmira.

7. Federal Broadcasting System, Inc., licensee of radio Station WSAY, Rochester, supports Star's request for rule making but opposes its request for show cause in its opposition of November 20, 1957. Veterans, simultaneously with its petition for rule making to assign Channels 9 and 13 to Elmira, filed an opposition to the portion of Star's petition requesting a show cause.

8. The only opposition to the rule making proposal itself was filed November 19, 1957, by Van Curler Broadcasting Corp., permittee of WTRI, Albany, which pointed out that Star had earlier requested the same relief in Docket No. 11751 and that the Commission's Report and Order therein deferred action on Star's proposal (Report and Order of September 9, 1957, FCC 57–961). At that time Star also had pending a petition for reconsideration of that Report and Order and Van Curler was apparently concerned lest the proposed assignment of Channel 13 to Albany be in some way affected. Obviously, mere deferment of action on the proposal at that date is no reason for its denial now. We specifically stated in our Report and Order of September 9, 1957 in Docket No. 11751: "* * * it is our view that the site specified by Van Curler for Channel 13 in Albany will not have any substantial bearing on the possibility of the use of this channel in Rochester."

9. Rochester, a city with a 1950 population of 332,448, a metropolitan area of 487,632, and rated as the 35th metropolitan area in the United States, has only two operating television stations—WROC–TV, Channel 5, and WVET–TV, Channel 10 (on a share-time basis with WHEC–TV). The Commission, for some time, has recognized the desirability of a third VHF television outlet for Rochester. Recent negotiations with representatives of the Canadian government give some hope that Canadian approval of the allocation proposed herein might be obtained, with certain limitations. In any event, negotiations have reached a point where it is desirable to secure comments on the proposed allocation.

10. In view of the foregoing, it is proposed to amend § 3.606 of the Commission's rules in the following respect:

City	Present allocations	Proposed allocations
Rochester, N.Y.	5–, 10+, 15–, *21, 27+	5–, 10+, 13–, 15–, *21, 27+

11. On November 28, 1960 (Docket No. 13551) the Commission denied an application for extension of time within which to complete construction filed by Star Broadcasting Company, Inc. and pertaining to Channel 15. Its request herein that it be ordered to show cause why its authorization for Channel 15 should not be modified to specify operation on Channel 13, therefore, is moot. The petitions enumerated herein which request rule making looking toward the addition of Channel 13 to Rochester, New York, are granted.

12. Authority for the adoption of the amendment proposed herein is contained in sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended.

13. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested persons may file comments on or before January 6, 1961, and reply comments on or before January 17, 1961. All submissions by parties to this proceeding or by persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

14. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished to the Commission.

Adopted: November 30, 1960.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Acting Secretary.*

[F.R. Doc. 60–11462; Filed, Dec. 8, 1960; 8:51 a.m.]

[47 CFR Part 3]

[Docket No. 13860; FCC 60–1426]

TABLE OF ASSIGNMENTS

Television Broadcast Stations

In the matter of amendment of § 3.606, *Table of Assignments*, Television Broadcast Stations (Superior, Nebraska), Docket No. 13860 (RM–199).

1. The Commission has before it for consideration a petition filed September 26, 1960, by Bi-States Company (Bi-States), licensee of Stations KHOL–TV, Kearney, Nebraska, and KHPL–TV (a satellite of KHOL–TV), Hayes Center, Nebraska, which seeks to amend § 3.606, *Table of Assignments*, Television Broadcast Stations, in the following respect:

City	Channel No.	
	Present	Proposed
Superior, Nebr.	----------	4+

2. In support of the proposal, petitioner points out that § 3.606 of the rules does not provide any VHF frequencies to the segment of southeastern Nebraska and northern Kansas in which Superior is located; that the nearest VHF allocation is approximately 40 miles from Superior; and that assignment of Channel 4+ to Superior meets the minimum spacing requirements for co-channel and adjacent channel operations. Further, in the event this amendment is adopted, Bi-States proposes to file an application for Channel 4+ at Superior, looking toward a satellite operation which would duplicate the present programs of KHOL–TV.

3. The Commission is of the view that rule making should be instituted on this proposal in order that all interested parties may submit their views and relevant data.

4. Authority for the adoption of the amendment proposed herein is contained in sections 4 (i) and (j), 303, and 307(b) of the Communications Act of 1934, as amended.

5. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested persons may file comments on or before January 6, 1961, and reply comments on or before January 17, 1961. In reaching its decision herein, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

6. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished to the Commission.

Adopted: November 30, 1960.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Acting Secretary.*

[F.R. Doc. 60–11463; Filed, Dec. 8, 1960; 8:51 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[643.3–0]

ALUMINUM CHLORIDE (ANHYDROUS) FROM CANADA

Notice That There Is Reason To Believe or Suspect Purchase Price Is Less or Likely To Be Less Than Foreign Market Value

DECEMBER 5, 1960.

Pursuant to section 201(b) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), notice is hereby given that there is reason to believe or suspect, from information presented to me, that the purchase price of aluminum chloride (anhydrous) manufactured by Welland Chemical Company of Canada, Ltd., Port Colborne, Ontario, Canada, is less or likely to be less than the foreign market value, as defined by sections 203 and 205, respectively of the Antidumping Act, 1921, as amended (19 U.S.C. 162 and 164).

Customs officers are being authorized to withhold appraisement of entries of aluminum chloride (anhydrous) from this manufacturer pursuant to § 14.9 of the Customs Regulations (19 CFR 14.9).

[SEAL] LAWTON M. KING,
Acting Commissioner of Customs.

[F.R. Doc. 60–11475; Filed, Dec. 8, 1960; 8:53 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

NECTARINES GROWN IN CALIFORNIA

Order Directing That a Referendum Be Conducted; Designation of Referendum Agents To Conduct Such Referendum; and Determination of Representative Period

Pursuant to the applicable provisions of Marketing Agreement No. 124 and Order No. 37 (7 CFR Part 937), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), it is hereby directed that a referendum be conducted within the 2-month period of December 1960 and January 1961, among the growers who, during the current marketing season beginning on March 1, 1960 (which period is hereby determined to be a representative period for the purposes of such referendum), were engaged, in the State of California, in the production of nectarines for market to determine whether such growers favor the termination of the said marketing agreement and order. Oscar H. Chapin, W. B. Blackburn, and David B. Fitz, of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, are hereby designated as agents of the Secretary of Agriculture to perform, jointly or severally, the following functions in connection with the referendum:

(a) Conduct said referendum in the manner herein prescribed:

(1) By determining the time of commencement and termination of the period of the referendum, and by giving opportunity to each of the aforesaid growers to cast his ballot, in the manner herein authorized, relative to the aforesaid termination of the marketing agreement and order, on a copy of the appropriate ballot form. A cooperative association of such growers bona fide engaged in marketing fresh nectarines grown in California, or in rendering services for or advancing the interests of the growers of such nectarines, may vote for the growers who are members of, stockholders in, or under contract with, such cooperative association (such vote to be cast on a copy of the appropriate ballot form); and the vote of such cooperative association shall be considered as the vote of such growers.

(2) By giving public notice, as prescribed in (a)(3) hereof, (i) of the time during which the referendum will be conducted, (ii) that any ballot may be cast by mail, and (iii) that all ballots so cast must be addressed to the Western Marketing Field Office, Fruit and Vegetable Division, Room 302, 701 K Street, Sacramento 14, California, and the time prior to which such ballots must be received at such office.

(3) By giving public notice (i) by utilizing available agencies of public information (without advertising expense), including both press and radio facilities in the State of California; (ii) by mailing a notice thereof (including a copy of the appropriate ballot form) to each such cooperative association and to each grower whose name and address are known; and (iii) by such other means as said referendum agents may deem advisable.

(4) By conducting meetings of growers and arranging for balloting at the meeting places, if said referendum agents determine that voting shall be at meetings. At each such meeting, balloting shall continue until all of the growers who are present, and who desire to do so, have had an opportunity to vote. Any grower may cast his ballot at any such meeting in lieu of voting by mail.

(5) By giving ballots to growers at the meeting, and receiving any ballots when they are cast.

(6) By securing the name and address of each person casting a ballot, and inquiring into the eligibility of such person to vote in the referendum.

(7) By giving public notice of the time and place of each meeting authorized hereunder by posting a notice thereof, at least two days in advance of each such meeting, at each such meeting place, and in two or more public places within the applicable area; and, so far as may be practicable, by giving additional notice in the manner prescribed in paragraph (a)(3) hereof.

(8) By appointing any persons deemed necessary or desirable, to assist the said referendum agents in performing their duties hereunder. Each such person so appointed shall serve without compensation and may be authorized, by the said referendum agents to perform any or all of the functions set forth in paragraphs (a) (5), (6), (7), and (8) hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agents) in accordance with the requirements herein set forth; and shall forward to the Western Marketing Field Office, Fruit and Vegetable Division, Room 302, 701 K Street, Sacramento 14, California, immediately after the close of the referendum, the following:

(i) A register containing the name and address of each grower to whom a ballot form was given;

(ii) A register containing the name and address of each grower from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agent in connection with the referendum, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agent during the referendum period;

(iv) A statement showing when and where each notice of referendum posted by said agent was posted and, if the notice was mailed to growers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and

(v) A detailed statement reciting the method used in giving publicity to such referendum.

(b) Upon receipt by the said Western Marketing Field Office of all ballots cast in accordance with the provisions hereof, Oscar H. Chapin, W. B. Blackburn, or David B. Fitz, shall: (i) Canvass the ballots and prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results; and (ii) forward such report, together with the ballots and other information and data, to the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C.

(c) Each referendum agent and appointees pursuant hereto shall not refuse to accept a ballot submitted or cast; but should they, or any of them, deem that a ballot should be challenged for any reason, or if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(d) All ballots shall be treated as confidential.

The Director of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agents and appointees in conducting said referendum.

Copies of the text of the aforesaid marketing agreement and order, and of this order, may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington 25, D.C., at the offices of the Field Representatives, Fruit and Vegetable Division, Agricultural Marketing Service, Room 302, 701 K Street, Sacramento 14, California, or at the office of the Nectarine Administrative Committee, 1515 Ninth Street, Sacramento 10, California.

Ballots to be cast in the referendum, and other necessary forms and instructions, may be obtained at said offices of the Field Representatives, or from any referendum agent or any appointee hereunder.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 5, 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–11442; Filed, Dec. 8, 1960; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[Docket No. 925]

GULF/FRENCH ATLANTIC HAMBURG RANGE FREIGHT CONFERENCE

Unapproved Agreements; Notice of Investigation and of Hearing

On November 21, 1960, the Federal Maritime Board entered the following order:

It appearing from information before the Board that agreements fixing uniform rates for the movement of Cotton Seed Hull Shavings Pulp and Cotton Linters from U.S. Gulf ports to various Continental European ports may have been made during the period from 1955 to the present time by the Gulf/French Atlantic Hamburg Range Freight Conference (Agreement No. 140–1, as amended) or its members, namely:

Aktiebolaget Svenska Amerika Linien (Swedish American Line)
Armement Deppe, S.A.
Bloomfield Steamship Company
Compagnie Generale Transatlantique (French Line)
Hamburg Amerika Linie
Lykes Bros. Steamship Co., Inc. (Southern States Line)
Norddeutscher Lloyd
N.V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn" (Ozean/Stinnes Lines)—Joint Service of—
Ozean Linie G.m.b.H.
Hugo Stinnes O.H.
Polskie Linie Oceaniczne (Polish Ocean Lines) (Admitted July 10, 1958—withdrew July 1, 1960)
Ropner Line (withdrew June 6, 1956)
Sir R. Ropner & Company, Ltd.
The Pool Shipping Company, Ltd.
The Ropner Shipping Co., Ltd.
States Marine Line, Inc., Global Bulk Transport Corporation, formerly joint service of—
States Marine Corp.
States Marine Corp. of Delaware
Waterman Steamship Corporation
(Wilhelmsen Line) Joint Service of—
Wilhelmsens Dampskibsaktieselskab
A/S Den Norske Africa—og Australielinie
A/S Tonsberg
A/S Tankfart I
A/S Tankfart IV
A/S Tankfart V
A/S Tankfart VI

It further appearing that the member lines of the Gulf/French Atlantic Hamburg Range Conference by agreement, understanding or cooperative working arrangement, did not file such rates with the Federal Maritime Board, as apparently required by the terms of approved Agreement No. 140–1, as amended, and

It further appearing that the member lines of the Gulf/French Atlantic Hamburg Range Conference by agreement, understanding or cooperative working arrangement, did not charge the precise rates on such items set forth in the tariffs on file with the Federal Maritime Board, as apparently required by the terms of approved Agreement No. 140–1, as amended, and

It further appearing that the foregoing practices may be new agreements, or modifications of approved Agreement No. 140–1, as amended and may have been carried out without approval by the Board in violation of approved Agreement No. 140–1, as amended, and section 15 of the Shipping Act, 1916, as amended (46 U.S.C. 814),

Now therefore, it is ordered, That an investigation is hereby instituted to determine whether the persons named above have violated the provisions of approved Agreement No. 140–1, as amended, and have carried out before approval under said section 15 any agreement requiring such approval in violation of said section 15; and

It is further ordered, That all persons named above are made respondents in this proceeding which is to be set for hearing before an examiner from the Hearing Examiner's Office at a time and place to be announced, and

It is further ordered, That a copy of this order be served on each of the respondents and published in the FEDERAL REGISTER.

Dated: December 5, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60–11450; Filed, Dec. 8, 1960; 8:49 a.m.]

[Docket No. 924]

GULF/UNITED KINGDOM CONFERENCE

Unapproved Agreement; Notice of Investigation and of Hearing

On November 21, 1960, the Federal Martime Board entered the following order:

It appearing from information before the Board that agreement fixing uniform rates for the movement of cotton linters and lumber from U.S. Gulf ports to United Kingdom ports may have been made during the period from 1955 to the present time, by the Gulf/United Kingdom Conference (Agreement No. 161, as amended) and its members, namely:

Bloomfield Steamship Co.
Cunard Steam-Ship Company Limited
Harrison Line
Holland American Line
Lykes Bros. Steamship Co., Inc.
States Marine Line, Inc., Global Bulk Transport Corporation, formerly joint service of—
States Marine Corp.
States Marine Corp. of Delaware
Waterman Steamship Corporation, and

It further appearing that the member lines of the Gulf/United Kingdom Conference by agreement, understanding, or cooperative working arrangement, did not file such rates with the Federal Maritime Board, as apparently required by the terms of approved Agreement No. 161, as amended, and

It further appearing that the member lines of the Gulf/United Kingdom Conference by agreement, understanding, or cooperative working arrangement, did not charge the precise rates on such items set forth in the tariffs on file with the Federal Maritime Board, as apparently required by the terms of approved Agreement No. 161, as amended, and

It further appearing that the foregoing practices may be new agreements, or modifications of approved Agreement No. 161, as amended, and may have been carried out without approval by the Board in violation of approved Agreement No. 161, as amended, and section 15 of the Shipping Act, 1916, as amended,

Now therefore, it is ordered, That an investigation is hereby instituted to determine whether the persons named above have violated the provisions of approved Agreement No. 161, as amended, and have carried out before approval under said section 15, any agreement, or modification of any agreement, requiring such approval, in violation of said section 15; and

It is further ordered, That all persons named above are made respondents in this proceeding which is to be set for hearing before an examiner from the Hearing Examiner's Office at a time and place to be announced;

It is further ordered, That a copy of this order be served on each of the respondents and published in the FEDERAL REGISTER.

Pursuant to the above order, notice is hereby given that the hearing herein ordered will be held before an examiner of the Board's Office of Hearing Examiners' at a date and place to be de-

termined and announced by the Chief Examiner. The hearing will be conducted in accordance with the Board's rules of practice and procedure, and an initial decision will be issued by the examiner.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies), having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Board promptly and file petitions for leave to intervene in accordance with Rule 5(n) (46 CFR 201.74) of said rules.

Dated: December 5, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11451; Filed, Dec. 8, 1960; 8:49 a.m.]

[Docket No. 923]

ISBRANDTSEN COMPANY, INC.

Bulk Rice Tariff No. 1; Notice of Supplemental Order

On December 5, 1960, the Federal Maritime Board entered the following order supplementing its previous order in this proceeding, dated November 21, 1960, notice of which appeared in the FEDERAL REGISTER of November 29, 1960 (25 F.R. 12212):

It appearing that on November 21, 1960, the Board ordered instituted an investigation of the lawfulness of a tariff filed by Isbrandtsen Company, Inc., setting forth the rates, charges, rules and regulations and practices applicable to the movement of rice, not polished or coated, in bulk, from Oakland, California, to San Juan, Puerto Rico;

It further appearing that Isbrandtsen Company, Inc. was not named as a respondent in said Board order of November 21, 1960;

Now therefore, it is ordered, That Isbrandtsen Company, Inc. be made a respondent in Docket No. 923.

It is further ordered, That this order be published in the FEDERAL REGISTER.

Dated: December 6, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11452; Filed Dec. 8, 1960; 8:50 a.m.]

[Docket No. 901]

PACIFIC-ATLANTIC GUAM TRADE

General Increases in Rates; Notice of Supplemental Orders

The Federal Maritime Board, on November 21, 1960, entered the following Eleventh, Twelfth and Thirteenth Supplemental Orders to the original order in this proceeding, dated March 21, 1960, which appeared in the FEDERAL REGISTER of April 1, 1960 (25 F.R. 2780):

Eleventh supplemental order. It appearing that by Sixth Supplemental Order, the Board ordered suspended in full to and including January 26, 1961, American President Lines, Ltd., Pacific/Guam Freight Tariff No. 6, F.M.B.-F. No. 11; and

It further appearing that pursuant to Sixth Supplemental Order, the Board ordered that the investigation and hearing instituted should carry over the running of the suspension date; and

It further appearing that said Order provides that "neither the tariffs hereby suspended nor any sought to be altered thereby may be changed until this investigation and suspension proceeding have been disposed of, or until the period of suspension has expired, unless otherwise authorized by the Board"; and

It further appearing that on November 16, 1960, American President Lines, Ltd., filed Application No. 6 seeking authority to publish, post and file, on not less than one day's notice, a consecutively numbered revised page to F.M.B.-F. No. 9 for the purpose of correcting a typographical error in Item 1800 therein by amending the application of rates from one applying on a W/M (Weight and Measurement) Basis to one applying on a Weight Basis; and

It further appearing that the Board having found good cause therefor has on November 21, 1960, granted special permission to publish such change on not less than one day's notice under Special Permission No. 3888;

Now therefore, it is ordered, That the Sixth Supplemental Order herein be modified to the extent necessary to permit the publication and filing of the changes covered by such Special Permission No. 3888; and

It is further ordered, That any rates, charges, rules, regulations and practices set forth in the schedules filed pursuant to such special permission shall be subject to the investigation and hearing herein to the same extent as the rates, charges, rules, regulations and practices under schedules cancelled thereby, and that the special permission granted hereby shall be without prejudice to the Board's determination as to the lawfulness of the rates established pursuant hereto; and

It is further ordered, That copies of this order shall be filed with said tariff schedules in the Office of Regulations of the Federal Maritime Board; and

It is further ordered, That a copy of this order shall be forthwith served upon all respondents and protestants herein; and that this order be published in the FEDERAL REGISTER.

Twelfth supplemental order. It appearing that by Sixth Supplemental Order, the Board ordered suspended in full to and including January 26, 1961, Pacific Far East Line, Inc., Pacific/Guam Freight Tariff No. 3, F.M.B.-F. No. 3; and

It further appearing that said order provides that "neither the tariffs hereby suspended nor any sought to be altered thereby may be changed until this investigation and suspension proceeding have been disposed of, or until the period of suspension has expired, unless otherwise authorized by the Board"; and

It further appearing that on November 8, 1960, Pacific Far East Line, Inc., filed application seeking authority to publish, post and file on not less than thirty days' notice, consecutively numbered revised pages to F.M.B.-F. No. 2 naming reduced rates on "Talking Machines and Accessories" and "Petroleum and Petroleum Products"; and

It further appearing that the Board having found good cause therefor has on November 21, 1960, granted special permission to publish such changes on not less than 30 days' notice under Special Permission No. 3886;

Now therefore, it is ordered, That the Sixth Supplemental Order herein be modified to the extent necessary to permit the publication and filing of the changes covered by such Special Permission No. 3886; and

It is further ordered, That any rates, charges, rules, regulations and practices set forth in the schedules filed pursuant to such special permission shall be subject to the investigation and hearing herein to the same extent as the rates, charges, rules, regulations and practices under schedules cancelled thereby and that the special permission granted hereby shall be without prejudice to the Board's determination as to the lawfulness of the rates established pursuant hereto; and

It is further ordered, That copies of the order shall be filed with said tariff schedules in the Office of Regulations of the Federal Maritime Board; and

It is further ordered, That a copy of this order shall be forthwith served upon all respondents and protestants herein; and that this order be published in the FEDERAL REGISTER.

Thirteenth supplemental order. It appearing that by Sixth Supplemental Order, the Board ordered suspended in full to and including January 26, 1961, American President Lines, Ltd., Pacific/Guam Freight Tariff No. 6., F.M.B.-F. No. 11; and

It further appearing that said order provides that "neither the tariffs hereby suspended nor any sought to be altered thereby may be changed until this investigation and suspension proceeding has been disposed of, or until the period of suspension has expired, unless otherwise authorized by the Board"; and

It further appearing that on November 16, 1960, American President Lines, Ltd., filed application seeking authority to publish, post and file on not less than thirty days' notice, consecutively numbered revised pages to F.M.B.-F. No. 9 naming reduced rates on "Talking Machines and Accessories" and "Petroleum and Petroleum Products"; and

It further appearing that the Board having found good cause therefor has on November 21, 1960, granted special permission to publish such changes on not less than 30 days' notice under Special Permission No. 3891;

Now therefore, it is ordered, That the Sixth Supplemental Order herein be modified to the extent necessary to permit the publication and filing of the changes covered by such Special Permission No. 3891; and

It is further ordered, That any rates, charges, rules, regulations and practices set forth in the schedules filed pursuant to such special permission shall be subject to the investigation and hearing herein to the same extent as the rates, charges, rules, regulations and practices under schedules cancelled thereby and that the special permission granted hereby shall be without prejudice to the Board's determination as to the lawfulness of the rates established pursuant hereto; and

It is further ordered, That copies of the order shall be filed with said tariff schedules in the Office of Regulations of the Federal Maritime Board; and

It is further ordered, That a copy of this order shall be forthwith served upon all respondents and protestants herein; and that this order be published in the FEDERAL REGISTER.

Dated: December 5, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11453; Filed, Dec. 8, 1960; 8:50 a.m.]

ISBRANDTSEN STEAMSHIP CO., INC.

Notice of Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8555 is an arrangement for the sale of the outstanding stock of Isbrandtsen Steamship Company, Inc., by Isbrandtsen Company, Inc., to American Export Lines, Inc., and an arrangement for the sale of the ships of Isbrandtsen Company, Inc., to Isbrandtsen Steamship Company, Inc. The latter arrangement provides that in consideration of the sale of 14 vessels by Isbrandtsen Company, Inc., to Isbrandtsen Steamship Company, Inc., the seller agrees with the buyer that from and after the closing in connection with the last vessel sold and purchased under the "Ship Contract", that seller will not, without prior written consent of the buyer and American Export, directly or indirectly own, manage, operate or join in, or control or participate in the ownership, management, operation or control of any steamship business which, in any manner, directly or indirectly, competes with the buyer in the operation of the common carrier steamship business presently operated by the seller, i.e., the Eastbound 'Round-the-World Service, and services between North Atlantic and Great Lakes ports of the United States and Continental European and United Kingdom ports; provided, however, that the seller and its present stockholders shall retain all rights to use the name "Isbrandtsen" other than in the operation of common carrier steamship services.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to this agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 7, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11522; Filed, Dec. 8, 1960; 8:58 a.m.]

Maritime Administration

[Trade Route No. 33]

GREAT LAKES/CARIBBEAN

Notice of Tentative Conclusions and Determinations Regarding Essentiality and United States Flag Service Requirements

Notice is hereby given that on November 29, 1960, the Maritime Administrator, acting pursuant to section 211 of the Merchant Marine Act, 1936, as amended, found and determined the essentiality and United States flag service requirements of United States foreign Trade Route No. 33 and in accordance with the Maritime Administrator's action of July 27, 1956 ordered that the following tentative conclusions and determinations reached by the Maritime Administrator with respect to said trade route be published in the FEDERAL REGISTER:

1. Trade Route No. 33, as described below, is reaffirmed as an essential foreign Trade Route of the United States:

Trade Route No. 33—Great Lakes/Caribbean

Between United States ports on the Great Lakes and St. Lawrence River, intermediate Canadian Great Lakes ports and other Canadian ports along the general track of the route, and foreign ports in the Gulf of Mexico, Caribbean Sea and the Guianas (Mexico to southern border of French Guiana, all islands of the Caribbean and West Indies and other nearby islands including Barbados, Trinidad and Tobago).

2. Requirements for United States flag operation on Trade Route No. 33 during the open season of navigation on the Great Lakes are one to two sailings per month serving primarily ports on the North Coast of South America. These sailing requirements may be met in conjunction with other essential services.

Any person, firm or corporation having any interest in the foregoing who desires to offer comments and views or request a hearing thereon, should submit same in writing in triplicate to the Chief, Office of Government Aid, Maritime Administration, Department of Commerce, Washington 25, D.C. by close of business on December 28, 1960. In the event a hearing is requested, a statement must be included giving the reasons therefor. Any hearing thereby afforded will be before an Examiner on an informal basis only. The Maritime Administrator will consider these comments and views and take such action with respect thereto as in his discretion he deems warranted.

Dated: December 6, 1960.

By order of the Maritime Administrator.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11454; Filed, Dec. 8, 1960; 8:50 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 524 (24 F.R. 9274) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Alabama Textile Products Corp., Troy, Ala.; effective 12-1-60 to 11-30-61 (men's dress shirts).

The Andala Co., Andalusia, Ala.; effective 12-1-60 to 11-30-61 (men's work shirts and pants).

Blue Bell, Inc., 450 East Barnes Street, Bushnell, Ill.; effective 12-9-60 to 12-8-61 (men's cotton twill pants).

Blue Bell, Inc., Luray, Va.; effective 12-1-60 to 11-30-61 (men's and boys' dungarees).

Blue Buckle Overall Co., 1415 Kemper Street, Lynchburg, Va.; effective 12-7-60 to 12-6-61 (men's boys', women's, girls' and children's work and sport clothing).

Byrds Manufacturing Corp., Byrdstown, Tenn.; effective 11-29-60 to 11-28-61 (ladies' sportswear, men's and boys' dress shirts).

to 11-27-61 (overalls and jackets).

Cameron Dress Co., 147 North Cameron Street, Harrisburg, Pa.; effective 11-28-60 to 11-27-61 (ladies' dresses).

Cowden Manufacturing Co., 112 Hamilton Avenue, Lancaster, Ky.; effective 11-28-60 to 11-27-61 (overalls and jackets).

Danville Manufacturing Inc., 328 Ferry Street, Danville, Pa.; effective 12-1-60 to 11-30-61 (women's sleepwear).

Dushore Lingerie Co., Inc., Cherry Street, Dushore, Pa.; effective 11-25-60 to 11-24-61 (women's sleepwear).

Florence Manufacturing Co., Inc., 1104 Chase Avenue, Florence, S.C.; effective 11-29-60 to 11-28-61 (ladies' dresses).

The Jay Garment Co., Portland, Ind.; effective 12-1-60 to 11-30-61 (men's cotton work clothing).

Jo Ann Dress Manufacturing, Lovell Park, Ebensburg, Pa.; effective 11-25-60 to 11-24-61 (women's dresses).

Jonny Jax, Inc., Somerset County, Holsopple, Pa.; effective 11-23-60 to 11-22-61 (children's jackets and snowsuits, men's jackets).

McAdoo Manufacturing Co., Inc., South Hancock Street, McAdoo, Pa.; effective 12-6-60 to 12-5-61 (men's and infants' polo shirts).

Manhattan Shirt Co., Tripp Street, Americus, Ga.; effective 11-27-60 to 11-26-61 (men's dress shirts).

Manhattan Shirt Co., Poplar Hill Avenue and Calvert Street, 416 East Main Street, Salisbury, Md.; effective 12-1-60 to 11-30-61 (men's and ladies' dress shirts).

Manhattan Shirt Co., U.S. By-Pass No. 29 and No. 70, Lexington, N.C.; effective 12-1-60 to 11-30-61 (men's and ladies' sport shirts).

Manhattan Shirt Co., 717 Capouse Avenue, Scranton, Pa.; effective 12-1-60 to 11-30-61 (men's sport shirts).

Manhattan Shirt Co., Leeds Ave., Charleston Heights, S.C.; effective 12-1-60 to 11-30-61 (men's dress and sport shirts).

Primo Pants Co., Versailles, Mo.; effective 12-1-60 to 11-30-61 (men's pants).

Renovo Shirt Co., Inc., Mena, Ark.; effective 12-1-60 to 11-30-61 (men's and ladies' shirts).

Shane Manufacturing Co., 1500 West Franklin Street, Evansville, Ind.; effective 12-9-60 to 12-8-61 (pants, shirts, and jackets).

States Nitewear Manufacturing Co., Inc., Healy and Bates Streets, New Bedford, Mass.; effective 12-1-60 to 11-30-61 (ladies' woven cotton nightgowns and pajamas).

Sun Garment Co., 2401 Hyde Parkway, St. Joseph, Mo.; effective 12-1-60 to 11-30-61 (shirts).

Sunnyvale of Pennsylvania, Inc., 3 South Webster Avenue, Scranton, Pa.; effective 11-23-60 to 11-22-61 (women's dresses).

Troy Textiles, Inc., Troy, Ala.; effective 11-24-60 to 11-23-61 (men's sport shirts).

The following learner certificate was issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Sorbeau Juvenile Manufacturing Co., 821 Central Avenue, Dubuque, Iowa; effective 12-1-60 to 11-30-61; 10 learners (infants' layette garments).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Sustan Garments, Inc., Winnsboro, La.; effective 11-23-60 to 5-22-61; 25 learners (men's and boys' cotton trousers).

Sweet-Orr & Co., Inc., Dawsonville, Ga.; effective 11-24-60 to 5-23-61; 50 learners (boys' uniform shirts).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.60 to 522.66, as amended).

The Boss Manufacturing Co., 319 West Main Cross Street, Findlay, Ohio; effective 12-6-60 to 12-5-61; 10 learners for normal labor turnover purposes (work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.44, as amended).

Francis-Louise Full Fashion Mills, Inc., West Connelly Street, Valdese, N.C.; effective 11-28-60 to 11-27-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (full-fashioned and seamless).

Selma Hosiery Co., Dillon, S.C.; effective 12-2-60 to 6-1-61; 50 learners for plant expansion purposes (seamless).

Shoe Industry Learner Regulations.

Lazar of Santa Fe, 228 Don Caspar, Santa Fe, N. Mex.; effective 12-1-60 to 11-30-61; 10 learners for normal labor turnover purposes (moccasins—hand-laced and beaded).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Ariadne, Inc., Km. 2.8 Road No. 20, Guaynabo, P.R.; effective 10-20-60 to 4-19-61; 20 learners for plant expansion purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours; (2) hand cutting of applique on embroidery panels for a learning period of 240 hours at the rates of 60 cents an hour for the first 160 hours and 70 cents an hour for the remaining 80 hours. (Applique embroideries on women's and children's underwear and women's blouses and neckwear.)

Beatrice Needle Craft, Inc., 60 Comercio Street, Mayaguez, P.R.; effective 10-24-60 to 10-23-61; 10 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (brassieres).

Caribe General Electric, Inc., Palmer, P.R.; effective 10-31-60 to 10-30-61; 53 learners for normal labor turnover purposes in the occupations of: (1) molders, power press operators, calibrators and welders, each for a learning period of 480 hours at the rates of 80 cents an hour for the first 240 hours and 90 cents an hour for the remaining 240 hours; (2) assemblers, plastic finishers, platers, stampers and metal finishers, each for a learning period of 240 hours at the rate of 80 cents an hour (electrical products).

Central Products Co., Mayaguez, P.R.; effective 10-17-60 to 2-28-61; 46 learners for plant expansion purposes in the occupations of press operators, pull-in operators, quality control (gage readers), and final inspection, each for a learning period of 480 hours at the rates of 75 cents an hour for the first 240 hours and 88 cents an hour for the remaining 240 hours (measuring tape).

Santiago R. Palmer, San German, P.R.; effective 10-31-60 to 4-30-61; 8 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours (lingerie).

Santiago R. Palmer, San German, P.R.; effective 10-31-60 to 10-30-61; 12 learners for normal labor turnover purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours (lingerie).

Sea Isle Manufacturing Corp., Fajardo, P.R.; effective 10-12-60 to 4-11-61; 20 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 60 cents an hour for the first 240 hours and 70 cents an hour for the remaining 240 hours (panties).

Sprague Caribe Co., Pampanos Ward, Road No. 2, Km. 22.1, Ponce, P.R.; effective 10-17-60 to 4-16-61; 39 learners for plant expansion purposes in the occupations of molder, loader, plastic finisher, solderers, testers, impregnators, rolling machine operators, pin and preform machine operators, each for a learning period of 480 hours at the rates of 72 cents an hour for the first 240 hours and 81 cents an hour for the remaining 240 hours (paper molded tubular capacitors).

Sprague Caribe Co., Pampanos Ward, Road No. 2 Km. 22.1, Ponce, P.R.; effective 10-17-60 to 10-16-61; 11 learners for normal labor turnover purposes in the occupations of molder, loader, plastic finisher, solderers, testers, impregnators, rolling machine operators, pin and preform machine operators, each for a learning period of 480 hours at the rates of 72 cents an hour for the first 240 hours and 81 cents an hour for the remaining 240 hours (paper molded tubular capacitors).

Superior Knitting Corp., Aguas Buenas, P.R.; effective 10-17-60 to 4-10-61; 14 learners for normal labor turnover purposes in the occupation of machine knitting (hand fashioning and full-fashioned knitting machine operators) for a learning period of 480 hours at the rates of 75 cents an hour for the first 240 hours and 88 cents an hour for the remaining 240 hours (replacement certificate) (sweaters).

Superior Knitting Corp., Aguas Buenas, P.R.; effective 10-17-60 to 3-8-61; 10 learners for plant expansion purposes in the occupation of machine knitting (hand fashioning and full-fashioned knitting machine operators) for a learning period of 480 hours at the rates of 75 cents an hour for the first 240 hours and 88 cents an hour for the remaining 240 hours (replacement certificate) (sweaters).

Surtex Glove Corp., Coamo, P.R.; effective 10-23-60 to 1-31-61; 24 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 57 cents an hour for the first 240 hours and 66 cents an hour for the remaining 240 hours (replacement certificate) (machine sewing of gloves).

Tobacco Products Manufacturing Corp. of Puerto Rico, Caguas, P.R.; effective 10-24-60 to 4-23-61; 25 learners for plant expansion purposes in the occupation of sorters for a learning period of 240 hours at the rate of 60 cents an hour (process tobacco).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C. this 1st day of December 1960.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 60-11410; Filed, Dec. 7, 1960; 8:50 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-148]

UNIVERSITY OF KANSAS

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to June 1, 1961, the latest completion date specified in Construction Permit No. CPRR-52 for the construction of the 10-kilowatt water-cooled and moderated pool-type training reactor to be located on the University's campus in Lawrence, Kansas.

Copies of the Commission's order and of the application of The University of Kansas are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 1st day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-11419; Filed, Dec. 8, 1960; 8:45 a.m.]

BUREAU OF THE BUDGET

[Circular No. A-52]

PROCEDURES FOR REPORTS ON FEDERAL PROPERTY IN HAWAII

NOVEMBER 14, 1960.

To the heads of executive departments and establishments:

1. *Purpose.* Section 5(e) of the Act of March 18, 1959, providing for the admission of the State of Hawaii into the Union, Public Law 86-3 (73 Stat. 4, 5), requires that, within five years from August 21, 1959, the date Hawaii was admitted into the Union, each Federal Agency having control over any land or property retained by the United States pursuant to sections 5(c) and 5(d) of the Statehood Act shall report to the President the facts regarding its continued need for such land or property. It further provides that, if the President determines that the land or property is no longer needed by the United States, it shall be conveyed to the State of Hawaii.

This Circular prescribes procedures to assure that the reports to be submitted by Federal agencies pursuant to section 5 of the Hawaii Statehood Act shall be prepared and required actions shall be effected in accordance with uniform policies and procedures, as set forth below, and coordinated within the executive branch.

2. *Authority.* These procedures are prescribed under sections 1(q) and 1(r) of Executive Order No. 10530, as amended, and in accordance with section 40 of the Hawaii Omnibus Act, Public Law 86-624 (74 Stat. 411, 422). See Attachment A[1] for pertinent excerpts from law and Executive orders.

3. *Definitions.* Pending further determination of the scope of section 5(e) of the Hawaii Statehood Act, the phrase "land or property" shall be defined, for purposes of all parts of this Circular except paragraphs 7, 13, and 14, to be limited to:

a. All lands or other properties, including personal properties, to which the Territory of Hawaii and its subdivisions held title and which, as of August 21, 1959, were set aside for the use of the United States by one of the methods set forth in section 5(c) of the Statehood Act, i.e., by Act of Congress, Executive order, or proclamation of the President or the Governor of Hawaii;

b. All lands or other properties, including personal properties, acquired by cession from the Republic of Hawaii under the joint resolution of annexation approved July 7, 1898, which, as of August 21, 1959, were similarly set aside;

c. All lands or other properties, including personal properties, acquired in exchange for ceded lands or other ceded properties which, as of August 21, 1959, were similarly set aside;

d. All interests, such as easements, and other vested or contingent interests of the United States, in lands, title to which was transferred or granted to the State of Hawaii or its political subdivisions under sections 5(a) and 5(b) of the Statehood Act, if such interests were similarly set aside as of August 21, 1959; and

e. All permits, licenses, or permissions from the Territory of Hawaii or any department thereof under which, immediately prior to August 21, 1959, the United States controlled any property conveyed to the State of Hawaii by section 5(b) of the Statehood Act.

4. *Referrals to Department of Justice.* Where doubt exists as to applicability of the definitions as set forth in paragraph 3 to individual properties which are considered by an agency to be no longer needed, the question shall be referred by the agency to the Assistant Attorney General, Lands Division, Department of Justice, for advice.

5. *Policy guidelines.* In evaluating the need to retain land or property, as defined in paragraph 3 of this Circular, each agency shall be guided by the general policy that the Federal Government will retain only such land or property in Hawaii as is required for the effective performance of its program responsibilities and assigned mission. Land or property generally shall not be retained when:

a. It is not being used by the controlling agency and there are no firm plans for future use;

b. The costs of operation and maintenance are substantially higher than for other suitable properties of equal or less value which are, or can be made, available to the Federal Government without direct cost;

c. It is being leased to private individuals or enterprises and there are no firm plans for future Federal use; or

d. It is being used by the Government to produce goods or services which are available from private enterprise, except when it is demonstrated clearly in each instance that it is not in the public interest to obtain such requirements from private enterprise.

Bureau of the Budget Circular No. A-2 will not be applicable in Hawaii to land or property, as defined in paragraph 3, until August 21, 1964.

6. *Property review and reporting requirements.* Each agency having any land or property, as defined in paragraph 3 of this Circular, under its control in Hawaii on August 21, 1959, shall submit the following reports in quadruplicate to the Bureau of the Budget. Should an agency not have any such land or property under its control, a negative report shall be submitted.

a. *Designation of responsible officer.* A report shall be submitted by December 15, 1960, designating the officer to be responsible for reviewing and reporting on such land or property.

b. *Report on land or property defined in paragraph 3 of this Circular.* A report in the form shown in Attachment B[2] shall be submitted by June 30, 1961, except by the Department of Defense which will report by December 31, 1961, covering specified data relating to, and reviewing the need for, land or property defined in paragraph 3 of this Circular.

(1) The report shall contain a separate statement on each tract of land or property subject to review. A tract of land or property shall consist, as nearly as possible, of all the land or property at a single installation which is subject to review. Where necessary and feasible, a tract should be subdivided to indicate the portions being put to substantially different uses or to indicate that there are differing continuing needs for portions of a tract. Copies of the set-aside actions should be submitted as exhibits where a tract or part of a tract is considered to be no longer needed by the agency.

(2) The controlling agency's report shall identify and cover any land or property subject to review which is being used by another Federal agency by permit or other means. The using agency's views regarding the continued need for such land or property shall be included in the controlling agency's report.

(3) The report shall include any land or property defined in paragraph 3 which, pursuant to the Federal Property and Administrative Services Act of 1949, has already been reported to the General Services Administration as excess or determined to be surplus but which has not yet been disposed of.

(4) In the event any land or property covered by the review has been disposed of since August 21, 1959, by transfer to another Federal agency or otherwise, except to the State of Hawaii under the provisions of section 5(e) of the Statehood Act, the agency having had control on August 21, 1959, shall include such tracts in its report, together with

[1] Attachment A filed as part of original document.

[2] Attachment B filed as part of original document.

a statement of the manner in which the land or property was disposed of.

(5) In the event that a tract of land or part of a tract of land, which is considered by an agency to be no longer needed, is interspersed with, or surrounds parcels of land which are not covered by this review because of the manner in which they were acquired, the controlling agency shall include in its report the facts regarding such parcels and a statement of its continuing need for such parcels. Easements necessary to provide access to a tract of land or part of a tract of land which is no longer needed shall also be described.

7. *Data on other land.* In order to provide an adequate basis for a determination as to the need for land or interests in land reviewed and reported on under paragraph 6b, each agency shall submit to the Bureau of the Budget a report with respect to each tract of real property and interest in real property under its control in Hawaii which is not reported on under paragraph 6b. Such report shall be submitted at the same time as the report to be made under paragraph 6b. The report shall consist of a map of each tract and interest, a statement indicating acreage and use or uses, and a statement of whether such use or uses, or any other requirement for the property, are expected to continue after August 21, 1964. A tract should consist, as nearly as possible, of all the land at a single installation which is not reported on under paragraph 6b. This information shall be furnished with respect to all real property, and all interests therein, regardless of the method of acquisition. The Bureau of the Budget may, in specific instances, require additional information.

8. *Priority reviews.* If the Governor of Hawaii submits a request to the Bureau of the Budget that a determination be made with respect to a particular tract of land or property, as defined in paragraph 3, such land or property shall be reviewed on a priority basis and a separate report submitted to the Director of the Bureau of the Budget at the earliest practicable date. The Governor of Hawaii will be advised by the Bureau of the Budget concerning the facts disclosed by such review prior to any final determination.

9. *Screening of property.* If a tract or part of a tract of land or property reviewed under paragraph 6b is no longer needed by the agency, a description of such tract or part thereof shall be furnished to the General Services Administration together with a request that necessary steps be taken to determine whether other Federal agencies have any need for such tract or part thereof. The General Services Administration will undertake the necessary screening and furnish the controlling agency with a statement regarding the needs of other agencies for such tract or part thereof. Such GSA statement shall be included in the controlling agency's report to the Director of the Bureau of the Budget. The furnishing of the aforesaid description to the GSA shall not constitute a report of excess under the Federal Property and Administrative Services Act of 1949 or have the effect of transferring control of the property described to GSA.

10. *Alternate sites.* The State of Hawaii may offer to make land available to the Federal Government for the purpose of relocating Federal installations, in order to make available for disposition to the State under this Circular the land on which the installations are now located. In the event that such offers are made regarding any tract of land or part of a tract of land covered by the review required in paragraph 6b, full details regarding such offers shall be included in the pertinent report to the Director of the Bureau of the Budget. Estimates of the appraised value or cost of the properties involved shall also be included.

11. *Subsequent reviews.* In the event that a future need is cited as the reason for retaining a tract or part of a tract of land or property reviewed under paragraph 6b, or in the event that a tract or part of a tract previously reviewed is subsequently found not to be needed, such tract or part of a tract again shall be reviewed by the controlling agency as provided in paragraph 6b at a time appropriate, but in no event later than December 31, 1963. Reports on the results of such subsequent review shall also be made to the Director of the Bureau of the Budget. If any land or property is subsequently set aside for United States use pursuant to section 5(d) of the Statehood Act, it shall be reviewed and reported on by the controlling agency not later than December 31, 1963.

12. *Conveyances to State of Hawaii.* Pursuant to the authority vested in the President by section 5(e) of the Hawaii Statehood Act and delegated to the Director of the Bureau of the Budget by section 1(q) of Executive Order No. 10530, as amended, the Director will determine whether the land or property reported on under paragraphs 6b and 11 is no longer needed by the United States. The controlling agency will be notified of the Director's determination and such conveyances to the State of Hawaii as may be required of land or property found not to be needed by the United States will be effected.

13. *Property records.* Pending further determination of the scope of section 5(e) of the Statehood Act, each agency controlling land or property in the State of Hawaii should immediately review its real property records and take such steps as may be necessary to assure that complete and accurate information is available to determine:

a. What real property in Hawaii was controlled by the agency on August 21, 1959, and the precise method by which control over such property was acquired.

b. What real property in Hawaii has been acquired subsequent to August 21, 1959, in exchange for property controlled by the agency on August 21, 1959.

c. Any dispositions of real property covered by paragraphs 11a and 11b above, subsequent to August 21, 1959.

The information should clearly indicate whether the property was ceded, whether it was property title to which was in the Territory or its subdivisions, or whether it was property acquired by the United States by lease, purchase, exchange, condemnation or other means.

14. *Suspension of disposal actions.* Until further notice, lands and other property as defined in this paragraph shall not be disposed of by the controlling agency, by transfer to another Federal agency or otherwise, except pursuant to instructions of the Director of the Bureau of the Budget. The term "lands and other property" as used in this paragraph, shall consist only of lands and interests therein in Hawaii (excluding, however, leases to the United States by other than the Territory or State of Hawaii) owned, held or used by the United States on August 21, 1959, or exchanged thereafter for other property by the United States.

15. *Communication with State of Hawaii.* Communications from Federal agencies to the State of Hawaii regarding matters within the scope of this Circular should be addressed to the Governor of Hawaii. All correspondence should include the original letter and one copy.

Inquiries to the Bureau of the Budget about this Circular should be addressed to Harold Seidman, Assistant Chief, Office of Management and Organization (code 113, ext. 413).

MAURICE H. STANS,
Director.

[F.R. Doc. 60-11420; Filed, Dec. 8, 1960; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 60-1435]

STATEMENT OF ORGANIZATION, DELEGATIONS OF AUTHORITY, AND OTHER INFORMATION

Miscellaneous Amendments

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960;

The Commission having under consideration its Statement of Organization, Delegations of Authority, and Other Information; and

It appearing that the Commission has this day revised its rules of practice and procedure to provide informal nonhearing procedures in cease and desist and revocation proceedings in cases where respondent waives his right to a hearing; and

It further appearing that the Chief Hearing Examiner may most appropriately rule on the question of waiver and that provision for such action is made in § 1.78(c) of the revised rules; and

It further appearing that the amendments adopted herein pertain to Commission organization, and hence that compliance with the public notice, procedural, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4(i), 5(d)(1), 303(r), and 312 of the Communications Act of 1934, as amended;

It is ordered, Effective December 12, 1960, that the Commission's Statement of Organization, Delegations of Authority, and Other Information is amended as set forth below.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. In section 0.224, paragraph (a)(4) is added and paragraph (b)(8) is amended, to read as follows:

SEC. 0.224 *Authority delegated.*

(a) • • •

(4) Termination of hearing proceedings in accordance with § 1.78(c) of the Commission's rules.

(b) • • •

(8) Petitions for acceptance of late written appearances pursuant to § 1.77 (c), and petitions for acceptance of late written statements pursuant to § 1.78(b) of the Commission's rules.

2. Section 0.231(e) is amended to read as follows:

SEC. 0.231 *Authority delegated.*

• • • • • •

(e) Those which are to be acted upon by the Chief Hearing Examiner under section 0.224.

[F.R. Doc. 60-11464; Filed, Dec. 8, 1960; 8:51 a.m.]

[FCC 60-1442]

STATEMENT OF ORGANIZATION, DELEGATIONS OF AUTHORITY, AND OTHER INFORMATION

Delegation

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 2d day of December 1960;

The Commission having under consideration the necessity for amending section 0.291 of its Statement of Organization, Delegations of Authority, and Other Information in order to implement Public Law 86-752, 86th Congress, 2d Session, which was enacted into law on September 13, 1960;

It appearing, that authority should be delegated to the Chief of the Safety and Special Radio Services Bureau consistent with the provisions of section 309(f) of the Communications Act of 1934, to grant or deny requests for temporary authorizations, but only prior to the time a petition to deny the application involved has been filed or the application has been designated for hearing; and

It further appearing, that the amendment ordered herein relates to internal Commission organization and procedure, and, therefore, that the provisions of section 4 of the Administrative Procedures Act are inapplicable; and

It further appearing, that the authority for the adoption of the amendment ordered herein is contained in sections 4(i), 5(d), and 303 of the Communications Act of 1934, as amended;

It is ordered, That effective December 12, 1960, the Commission's Statement of Organization, Delegations of Authority, and Other Information is amended as set forth below.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

A new paragraph (c) is added to section 0.291 to read:

SEC. 0.291 *Matters delegated.*

• • • • • •

(c) Consistent with the provisions of section 309(f) of the Communications Act of 1934, as amended, to grant or deny requests for temporary authorizations and to issue orders stating the reasons therefor, but only prior to the time a petition to deny the application involved has been filed or the application has been designated for hearing.

[F.R. Doc. 60-11465; Filed, Dec. 8, 1960; 8:51 a.m.]

[FCC 60-1432]

STATEMENT OF ORGANIZATION, DELEGATIONS OF AUTHORITY, AND OTHER INFORMATION

Delegation

At a session of the Federal Communications Commission held at its office in Washington, D.C., on the 30th day of November 1960:

The Commission having under consideration the necessity for amending its Statement of Organization, Delegations of Authority, and Other Information in order to implement Public Law 86-752, 86th Congress, 2d Session, which was enacted into law on September 13, 1960;

It appearing that authority should be delegated to the Chief of the Common Carrier Bureau to determine whether an application for modification constitutes a major change in facilities, and whether an amendment constitutes a major amendment; and

It further appearing that the amendment ordered herein relates to internal Commission organization and procedure, and therefore that the provisions of section 4 of the Administrative Procedure Act are inapplicable; and

It further appearing that the amendment adopted herein is issued pursuant to the authority contained in sections 4(i), 5(d), 303(r) and 309(g) of the Communications Act of 1934, as amended;

It is ordered, That, effective December 12, 1960, the Commission's Statement of Organization, Delegations of Authority, and Other Information is amended as set forth below.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

A new paragraph (h) is added to section 0.251, as follows:

SEC. 0.251 *Matters delegated.*

The Chief of the Common Carrier Bureau is delegated authority to act upon the following applications, requests, and other matters which are not in hearing status, involving the use of radio, insofar as they apply to common carrier services (except marine and aeronautical), where the estimated construction cost is less than $2,000,000.

• • • • • •

(h) To determine whether an application for modification constitutes a major change in facilities, and whether an amendment to an application constitutes a major amendment; and, if so, to so designate such change or amendment.

[F.R. Doc. 60-11466; Filed, Dec. 8, 1960; 8:52 a.m.]

[Docket Nos. 13837-13840; FCC 60M-2042]

BERNALILLO BROADCASTING CO. ET AL.

Order Continuing Hearing

In re applications of Oscar E. Reeder, tr/as Bernalillo Broadcasting Co., Albuquerque, New Mexico, Docket No. 13837, File No. BP-12708; Carter M. Waid, tr/as Belen Broadcasting Company, Belen, New Mexico, Docket No. 13838, File No. BP-12822; Philip B. Rosenthal, tr/as Cosmopolitan Broadcasting Co., Santa Fe, New Mexico, Docket No. 13839, File No. BP-13706; Kara, Incorporated (KARA), Albuquerque, New Mexico, Docket No. 13840, File No. BP-14024; for construction permits.

Upon the Hearing Examiner's own motion: *It is ordered*, This 1st day of December 1960, that a prehearing conference in the above-entitled proceeding will be held on December 16, 1960, 10:00 a.m., at the Commission's Offices, Washington, D.C.

It is further ordered, That the hearing now scheduled for December 12, 1960, be, and the same is hereby continued to January 24, 1961, 10:00 a.m., at the Commission's Offices, Washington, D.C.

Released: December 1, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11467; Filed, Dec. 8, 1960; 8:52 a.m.]

[Docket No. 13841; FCC 60M-2047]

COASTAL BROADCASTING CO. (WLAT)

Order Following Prehearing Conference

In re application of Loys Marsdon Hawley and Herman Lee Hanks d/b as Coastal Broadcasting Company (WLAT), Conway, South Carolina, Docket No. 13841, File No. BMP-8480; for construction permit.

Pursuant to agreement of counsel for the parties at the prehearing conference

held in this proceeding on this date: *It is ordered*, This 30th day of November 1960, as follows:

1. That the hearing in this matter heretofore scheduled to commence on December 14, 1960 is continued to Tuesday, February 14, 1961, at 10:00 a.m., in the offices of the Commission, Washington, D.C.

2. Copies of the proposed exhibits of the applicant will be supplied to counsel for the Broadcast Bureau and also to the Hearing Examiner by January 27, 1961.

Released: December 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11468; Filed, Dec. 8, 1960; 8:52 a.m.]

[Docket Nos. 13861-13862; FCC 60-1428]

ALERT

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Gordon Evans, d/b as Alert, 1145 Bishop Street, Honolulu, Hawaii, for construction permit to establish a one-way signaling common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA218), Docket No. 13861, File No. 2796-C2-P-60; for construction permit to establish a new two-way common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA219), Docket No. 13862, File No. 2797-C2-P-60.

1. The Commission has before it for consideration, (a) a protest filed on November 2, 1960, pursuant to section 309 (c) of the Communications Act of 1934, as amended, by Radio Call Service, Ltd. (hereinafter called Protestant), licensee of station KUA217, a one-way signaling station licensed in the Domestic Public Land Mobile Radio Service at Honolulu, Hawaii, and of station KUA215, a two-way station in the same service at Honolulu, Hawaii, protesting the Commission's action of September 28, 1960, public notice of which was issued on October 3, 1960 (Report No. 547, Mimeo No. 94513), granting without hearing the above entitled applications of Gordon Evans, d/b as Alert (hereinafter called Applicant) for construction permits to provide a new one-way and a new two-way communication service in the Domestic Public Land Mobile Radio Service both in the Honolulu, Hawaii area; (b) an opposition to the said protest timely filed by Applicant on November 14, 1960 and, in the alternative, a motion to require Protestant to file renewal applications and designate such renewals for comparative consolidated hearing with the captioned applications; and (c) a reply to the opposition timely filed on November 21, 1960.

Protestant's protest. 2. In support of its protest, Protestant asserts that it is a party in interest within the meaning of section 309(c) of the Communications Act, since Protestant is the licensee of one-way station KUA217 and two-way station KUA215, both at Honolulu, Hawaii. Protestant states that Applicant's proposed one-way and two-way facilities will, with one exception, serve the principal areas now served by Protestant. The exception mentioned is the Kailua area which Protestant asserts it now serves but cannot be served by Applicant's facilities. Thus, Protestant states Applicant's proposed stations will be in direct competition for revenues and customers in Honolulu and vicinity; that Protestant's one-way and two-way stations have ample excess capacity to meet the existing and future demands; that Protestant's facilities are still not operating at a profit; and that Applicant's proposed stations will cause serious and irreparable damage to Protestant and may prevent Protestant from achieving profitable operation to the ultimate detriment of the public it serves. Protestant further asserts that it is now operating at approximately 28 percent capacity on its one-way station and approximately 40 percent capacity on its two-way station; that it has made substantial improvements in its facilities to afford better public service; that in spite of a concentrated sales effort by newspaper advertising, telephone directory and personal customer and prospect contacts, both its stations are still operating at less than one-half their full capacity; that the growth potential is seriously limited by private radio systems, the telephone company and the newness of the service; that Protestant's principal activity is the common carrier radio business rather than an adjunct to a telephone answering business as it alleged is the case of Applicant; that there is no need either for a second one-way or two-way service in Honolulu; and that the addition of second like services would dilute the market to the extent that neither Protestant or Applicant would be able to conduct a profitable operation and service to the public would deteriorate. Protestant further alleges that Applicant is not financially qualified; the lease under which Applicant would secure radio equipment is defective; and that Applicant's proposed transmitter site is not available

Opposition to the protest. 3. Applicant asserts that the need for a second service is clear in view of size and importance of Honolulu and the fact that, while both Protestant's and Applicant's radio services will be similar, they will serve different and distinct public needs in that Applicant will serve members of the public who primarily desire the radio service as an adjunct to a wire-line answering service while Protestant would fulfil the public need of those members of the public who desire primarily a radio service; that attached to Applicant's opposition to the protest are certain documents which are represented to satisfy the other matters alleged by Protestant, i.e., the defects in Alert's conditional sales contract, the financial qualification of Applicant and the availability of Alert's site; that there are, therefore, no issues to resolve at an evidentiary hearing; that in view of the different type of public service to be provided by Applicant, the grants should not be stayed pending the resolution of the protest; and that if the Commission allows the protest, Applicant moves, under the doctrine of our decision in Herbert P. Michels, 17 RR 557 and 17 RR 560, that Protestant be required to submit renewal applications for its stations; and that the said applications be consolidated with the captioned applications in a comparative hearing in order that, if the Commission should find, after hearing, that there is need for only one service, a determination could then be made which of the two mutually exclusive applicants can best serve the public interest.

4. The reply to the opposition filed on November 21, 1960, has also been considered in the disposition hereof.

Disposition of the protest. 5. Upon the allegations of adverse economic impact, we find and conclude that Protestant is a party in interest. Protestant has also submitted facts in its protest which would tend to show, if established at a hearing, that a grant of the captioned applications would not be in the public interest, convenience and necessity. Accordingly, it appears desirable to resolve such matters at an evidentiary hearing and, at such hearing, we believe a full record should be established on Protestant's allegations that Applicant is not financially qualified; that the equipment lease is defective and that the transmitter site is unavailable.

6. Applicant's request that its grants not be stayed pending disposition of the protest must be denied since, clearly, the captioned authorizations are not necessary to the maintenance or conduct of an existing service and no facts on the record now before us permits a finding that the public interest requires that the captioned grants remain in effect. Applicant does not deny that its proposed radio services are the same as now afforded by Protestant nor does Applicant deny the Protestant's statement that Protestant now has excess capacity on its one-way signaling facility and two-way communication facility by which radio service can be provided to any member of the public in the areas proposed to be covered by Applicant. Applicant's claim of the superiority of its related wire-line service and the public need flowing therefrom, as a basis for not staying these grants, are matters to be resolved at the hearing hereinafter ordered.

7. Applicant's motion to require Protestant to file renewal applications and consider such applications in a comparative consolidated proceeding should not be granted. There are basic differences between a common carrier licensee and a broadcast licensee. The Michels case, supra, cited by Applicant, relates to a broadcast licensee. A common carrier is different from the broadcaster on a variety of bases: the common carrier may not curtail or discontinue service without first complying with all the incidents of regulation achieved through the regulation of its tariffs and the issuance of any necessary certificate of public interest, convenience or necessity required as a condition precedent to a reduction in service or abandonment of facilities; the common carrier has a duty to call the Commission's attention, when appropriate, to the possibilities of adverse impact from competition, because of its obligation to provide service to the public unimpaired; and, if the rates and charges or services of the common carrier are found wanting, Federal or State regulatory Commissions generaly have the right, upon a proper record, to compel necessary changes.

8. For these reasons, and in the absence of any affirmative showing by Applicant of Protestant's disqualification, or improper operation, or such other facts as would warrant the Commission, upon complaint, to initiate an investigation of the propriety of continuing a carrier in a licensed status, we believe that a common carrier (Protestant in this case) is entitled to a measure of protection with respect to continuity of operation under an outstanding authorization from the Commission.

9. *Accordingly, it is ordered*, That the protest is allowed and the matter is designated for hearing in a consolidated proceeding upon the following issues, substantially as proposed by the Protestant:

A. To determine the nature and extent of one-way and two-way services proposed by Applicant, including the rates, charges, practices, classifications, regulations, personnel and facilities pertaining thereto.

B. To determine the nature and extent of one-way and two-way services provided by Protestant, including the rates, charges, practices, classifications, regulations, personnel and facilities pertaining thereto.

C. To determine the need for the proposed one-way and two-way services of Applicant and the nature and extent of any benefit to the public which would accrue because of Applicant's proposed services.

D. To determine whether any disadvantage to the public would accrue because of Applicant's proposed one-way and two-way services.

E. To determine whether Applicant would have a right to use the radio equipment in the rendition of common carrier service for hire.

F. To determine whether the conditional sales contract, pursuant to which Applicant proposed to obtain radio equipment for his stations is consistent with the Commission's policies with respect to the repossession of equipment upon default.

G. To determine whether Applicant is financially qualified to construct and operate the proposed stations.

H. To determine whether the proposed transmitter site is available to Applicant for the proposed stations.

I. To determine whether, in the light of the determinations made upon the foregoing issues, the Commission should sustain the protest and set aside the grants of the applications herein.

10. *It is further ordered*, That the effective date of the Commission's action of September 28, 1960, granting the above-captioned applications, is postponed pending a final decision by the Commission with respect to the evidentiary hearing herein provided; and

11. *It is further ordered*, That the hearing herein, upon the issues specified above, shall be held at the Commission's offices in Washington, D.C., on a date, and before an Examiner, to be announced in a subsequent order; and

12. *It is further ordered*, That the burden of proof on issues A, C, and G, which are adopted by the Commission, is placed upon the applicant, and the burden of proof on issues B, D, E, F, H, and I, which are not specifically adopted by the Commission, is placed on the Protestant; and

13. *It is further ordered*, That the Protestant and the Chief, Common Carrier Bureau are made parties to the proceedings herein; and

14. *It is further ordered*, That the parties desiring to participate herein, shall file their appearance on or before the time specified in § 1.140 of our rules; and

15. *It is further ordered*, That Applicant's motion to require Protestant to file renewal applications and designate such applications for comparative hearing with the captioned applications is denied for the reasons stated herein.

Adopted: November 30, 1960.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11469; Filed, Dec. 8, 1960; 8:52 a.m.]

[Docket No. 13827; FCC 60M-2056]

KWK RADIO, INC.

Memorandum Opinion and Order Scheduling Prehearing Conference

In the matter of revocation of License of KWK Radio, Inc. for standard Broadcast Station KWK, St. Louis, Missouri, Docket No. 13827.

The Hearing Examiner has under consideration the petition to reschedule hearing filed in the above-entitled proceeding on November 18, 1960, by the Commission's Broadcast Bureau; the supplement thereto filed on November 23, 1960; the oppositions to the petition and to the supplement filed on November 23, 1960, and November 28, 1960, respectively, by KWK Radio, Inc.; and the oral argument on the said petition held on December 1, 1960, pursuant to request therefor by KWK Radio, Inc. Continuance of the hearing from December 14, 1960 to January 16, 1961, is requested. KWK Radio, Inc. simultaneously with its opposition to the petition filed a "Request for a Bill of Particulars" which is presently pending before the Commission.

In support of the requested continuance the Broadcast Bureau urges that under the provisions of § 1.140(a) of the Commission's rules[1] it has been customary for the Commission to afford in all proceedings a period of at least 60 days for preparation for hearing whereas in the instant proceeding a lesser period was afforded; that because of conflicting commitments of Bureau counsel the period afforded for preparation is not sufficient; and further that the Commission has scheduled oral argument for December 15, 1960, in the proceeding In re Charles J. Lanphier, et al. (Docket Nos. 12788, 12792, 12797) in which Bureau counsel must appear making it impossible to meet both commitments. In the oral argument Bureau counsel further urged that orderly procedure herein requires disposition of the said request for a bill of particulars prior to commencement of the hearing.

By its oppositions KWK Radio, Inc. urges that it has been almost four months since commencement of the investigation herein and Bureau counsel should have had adequate time since issuance of the order to show cause to prepare for hearing. Relative to the conflict in scheduled date it is urged that continuance would more properly be sought in the other proceeding in view of the nature of the instant proceeding or that other Bureau counsel could be assigned. It is asserted that fairness and equity require the Commission to proceed herein without the delay requested as such delay will compound the adverse publicity and injury which KWK already has suffered and will deny KWK its basic right to a prompt hearing. In the oral argument respondent also relies upon that portion of the Administrative Procedure Act (5 U.S.C. Sec. 1004(a)) which provides that "In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives." It is pointed out that the report of the Committee on The Judiciary 79th Congress Report No. 752, stated that "The * * * sentence requiring the convenience and necessity of the parties to be consulted in fixing the times and places for hearings, includes an agency party as well as a private party; but the agency's convenience is not to outweigh that of the private parties and, while the due and required execution of agency functions may be said to be paramount, that consideration would be controlling only where a lack of time has been unavoidable or a particular place of hearing is indispensable and does not deprive the private parties of their full opportunity for a hearing."

The request of the Bureau is for a reasonable continuance and good cause for a grant thereof is shown. The presently existing conflict in proceedings to which Bureau counsel is assigned makes it impossible for both commitments to be met. Continuance in the instant proceeding which is in its initial stages would be less disruptive of Commission

[1] Section 1.140(a): When an application has been designated for hearing, the Secretary of the Commission will mail an order to the applicant setting forth the reasons for the Commission's action and the issues upon which the application will be heard. In addition, the notice of hearing will be published in the FEDERAL REGISTER. The Commission will, when possible, give at least 60 days advance notice on comparative hearings.

processes than would a continuance in the aforestated proceeding with which conflict has arisen which is in its final stages and pending before the full Commission. Assignment of other Bureau counsel herein would require preparation anew for the proceeding and would tend toward additional delay rather than serving to expedite the proceeding. Nor has respondent shown in what manner the limited continuance requested could deprive it of its full opportunity for a hearing.

Without regard to the other matters urged, however, it is apparent that Commission consideration and disposition of Respondent's "Request For a Bill of Particulars" are necessary to orderly conduct of the proceeding. Respondent states therein that only by grant of the relief requested will it "be afforded that measure of due process to which it is entitled" as "It has no information as to the time, place or contest incidents upon which the Commission relied. It is impossible to prepare to defend against unknown charges."

Commission rules provide a period of ten days for filing of a response to this pleading. This date would expire on December 5, 1960. The pleadings must thereafter be afforded processing time, time for Commission consideration, and time for preparation of a memorandum disposing of the pleadings. It is thus apparent that the presently scheduled hearing date would not permit of disposition of this pleading.[3] Respondent is in the position of urging before the Hearing Examiner commencement of the proceeding which it is urging before the Commission it cannot prepare itself to defend. Thus commencement of the proceeding on the presently scheduled hearing date could lead only to confusion and disruption of the proceeding to the detriment of all parties. Nor can the date upon which disposition of this pleading may reasonably be expected presently be determined. Such disposition being necessary to orderly procedures herein, the proceeding should be continued to a date to be specified subsequent to such action. Therefore, the petition of the Bureau will be granted to the extent that a continuance is sought and otherwise denied and the proceeding will be continued to a date to be subsequently specified.

Accordingly, it is ordered, This 2d day of December 1960 that the petition of the Commission's Broadcast Bureau is granted to the extent that a continuance is sought and is otherwise denied and the proceeding herein is, on the Hearing Examiner's own motion, continued to a date to be subsequently specified.

It is further ordered, That a prehearing conference pursuant to the provisions of § 1.111 of the Commission's rules shall be held herein commencing on December 8, 1960, at 9:00 a.m. in the offices of the Commission at Washington, D.C.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11470; Filed, Dec. 8, 1960; 8:52 a.m.]

[3] Respondent indicated during the course of oral argument that this request rested under the jurisdiction of the Hearing Examiner. Jurisdiction, however, is in the Commission as it involves making available to respondent non-public files and Commission working papers.

[Docket No. 13222 etc.; FCC 60M-2050]

MICHIGAN BROADCASTING CO. (WBCK) ET AL.

Order Scheduling Hearing

In re applications of Michigan Broadcasting Company (WBCK), Battle Creek, Michigan, et al. (Group 2), Docket No. 13222, File No. BP-11439; Docket Nos. 13223, 13224, 13226, 13228, 13230-13233, 13237, 13239, 13241, 13242, 13246, 13249, 13654; for construction permits.

The Hearing Examiner having under consideration the Joint Motion for Extension of Exchange and Further Conference Dates, filed by thirteen of the applicants in Group 2 of the above-styled proceeding on November 17, 1960, and the further prehearing conference held on this date; and

It appearing, that in view of the agreements arrived at during the conference and hereinafter set forth in the ordering clauses, the joint motion has been rendered moot;

It is ordered, This 1st day of December 1960, that at the prehearing conference now scheduled for December 22, 1960, consideration will be given to the exchange date for engineering exhibits and the hearing relative to that phase of the case.

It is further ordered, That the following schedule will apply as to all non-engineering phases of the case, except evidence with respect to possible waiver of § 3.28(c) of the rules:

(1) Exhibits pertaining to such non-engineering phases of the case shall be exchanged on January 5, 1961;

(2) Notification as to witnesses desired for cross-examination in connection with the exchanged exhibits shall be made on January 16, 1961;

(3) A further prehearing conference shall be held on January 18, 1961;

(4) Hearing as to the non-engineering phases of the proceeding shall commence on February 6, 1961, at 10 a.m.

It is further ordered, That the exhibits to be exchanged as above set forth shall be subscribed and sworn to by the sponsoring witnesses and the pages of such exhibits shall be numbered consecutively.

It is further ordered, That the joint motion for extension of exchange and further conference dates be and the same is hereby dismissed as moot.

Released: December 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11471; Filed, Dec. 8, 1960; 8:52 a.m.]

[Docket No. 13010 etc.; FCC 60M-2045]

MID-AMERICA BROADCASTING SYSTEM, INC., ET AL.

Statement and Order After Further Prehearing Conference

In re applications of Mid-America Broadcasting System, Inc., Highland Park, Illinois, et al., Docket Nos. 13010, 13014, 13016—13053, 13058, 13060-13061, 13641-13648; File No. BP-11689; for construction permits.

At a further prehearing conference of Group V on November 30, 1960, the following schedule was prescribed:

Exchange of exhibits—February 1, 1961.
Notification of witnesses desired for cross-examination—February 15, 1961.
Hearing—Wednesday, March 1, 1961, 10 a.m.

So ordered, This 1st day of December 1960.

Released: December 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.D. Doc. 60-11472; Filed, Dec. 8, 1960; 8:52 a.m.]

[Docket Nos. 13830-13836; FCC 60M-2046]

MIDDLE TENNESSEE BROADCASTING CO. (WKRM) ET AL.

Order Continuing Hearing

The Middle Tennessee Broadcasting Company (WKRM), Columbia, Tennessee, Docket No. 13830, File No. BP-12393; WBAC, Inc. (WBAC), Cleveland, Tennessee, Docket No. 13831, File No. BP-12478; Florence Broadcasting Company, Incorporated (WJOI), Florence, Alabama, Docket No. 13832, File No. BP-12838; Cullman Broadcasting Company, Incorporated (WKUL), Cullman, Alabama, Docket No. 13833, File No. BP-13149; Radio Greeneville, Inc. (WGRV), Greeneville, Tennessee, Docket No. 13834, File No. BP-13167; WKGN, Inc. (WKGN), Knoxville, Tennessee, Docket No. 13835, File No. BP-13485; Franklin County Radio and Broadcasting Company, Inc. (WCDT), Winchester, Tennessee, Docket No. 13836, File No. BP-13677; for construction permits.

On the Examiner's own motion: *It is ordered,* This 1st day of December 1960, that a prehearing conference in the above-entitled matter will be held in the offices of the Commission, Washington, D.C., on December 13, 1960, at 10:00 a.m.;

It is further ordered, That the hearing presently scheduled for December 15, 1960, be and the same is, hereby continued to a date to be set by subsequent order.

Released: December 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11473; Filed, Dec. 8, 1960; 8:52 a.m.]

[Docket No. 13796 etc.; FCC 60M-2052]

WESTERN BROADCASTING CO. ET AL.

Order Continuing Hearing Conference

In re applications of David P. Pinkston and Leroy Elmore, d/b as Western Broadcasting Company, Odessa, Texas, Requests: 1550 kc, 50 kw, Day, Docket No. 13796, File No. BP-12329; W. J. Harpole, Canyon, Texas, Requests: 1550 kc, 1 kw, Day, Docket No. 13797, File No. BP-12335; R. L. McAlister, Odessa, Texas, Requests: 1550 kc, 5 kw, Day, Docket No. 13803, File No. BP-13058; for construction permits.

It appearing, that the date heretofore scheduled for a prehearing conference in this matter in an order released November 23, 1960, conflicts with a hearing commitment of counsel for the Broadcast Bureau: *It is ordered,* This 2d day of December 1960, on the Hearing Examiner's own motion, that the prehearing conference herein is postponed from Wednesday, December 7, 1960, to Friday, December 9, 1960, at 10:00 o'clock a.m., in the offices of the Commission, Washington, D.C.

Released: December 2, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11474; Filed, Dec. 8, 1960; 8:53 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1294]

AMERICAN RESEARCH AND DEVELOPMENT CORP.

Notice of Filing of Application

DECEMBER 2, 1960.

Notice is hereby given that American Research and Development Corporation ("Applicant"), a Massachusetts corporation and registered closed-end, non-diversified management investment company, has filed an application under section 17(b) of the Investment Company Act of 1940 ("Act"), for an order of the Commission exempting from the provisions of section 17(a) of the Act proposed loans of not to exceed an aggregate of $50,000 at any one time outstanding, to Intercontinental Electronics Corporation ("Intercontinental").

Intercontinental, a Delaware corporation, was organized in 1956, and is engaged in the business of the development and sale of various electronic, aircraft detection and navigation equipment. Applicant states that it owns approximately 17 percent of the outstanding voting securities of Intercontinental, and that it believes the making of the proposed loan would be prohibited by section 17(a) of the Act, unless exempted therefrom by an order of the Commission.

By an order dated May 17, 1960, pursuant to section 17(b) of the Act, the Securities and Exchange Commission exempted from the provisions of section 17(a)(3) of the Act a loan of $50,000 from the Applicant to Intercontinental. Payment of this loan is due December 2, 1960. If the proposed loans were to be made, they would be accomplished either by the Applicant surrendering the promissory notes given for the old loan for new promissory notes or by the Applicant receiving payment for the old promissory notes and making additional loans not exceeding an aggregate of $50,000 at any one time outstanding. In either event the proposed loans would be evidenced by promissory notes in the principal sum of any loans so made with a maturity date not later than twelve months from the date of the first of the proposed loans and providing for interest on the principal sum at the rate of six percent per annum. Applicant requests the right to make loans of lesser amounts and for shorter periods of time if deemed advisable and with the right to later make other loans with the aggregate principal amount of all loans outstanding to be limited to $50,000 at any one time, or to extend the term of any of the loans up to twelve months from the date of the first of the proposed loans in its sole discretion.

Section 17(a) of the Act, among other things, prohibits the borrowing of money from a registered investment company by an affiliated person thereof unless the Commission by order upon application pursuant to section 17(b) of the Act grants an exemption from section 17(a) of the Act, upon a finding that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; and that the proposed transaction is consistent with the policy of the registered investment company concerned, and consistent with the general purposes of the Act.

In support of its application, Applicant states that the making of the proposed loans would make additional working capital available to Intercontinental, would promote the commercial development of Intercontinental's business enterprises, and would thereby increase the possibility of ultimate profit or gain to Applicant. It is stated that the proposed transaction is consistent with Applicant's investment policy and that the application is filed in the normal course of business of Applicant.

Notice is further given that any interested person may, not later than December 16, 1960, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60-11439; Filed, Dec. 8, 1960; 8:48 a.m.]

HOUSING AND HOME FINANCE AGENCY

Public Housing Administration

ASSISTANT COMMISSIONER FOR DEVELOPMENT

Delegations of Final Authority

Section II, Delegations of Final Authority, is amended as follows:

Paragraph C8 is added as follows:

To exercise all powers and authorities vested in the Commissioner in all matters relating to the initiation, planning, and construction of such housing including the acquisition of sites.

Assistant Commissioner for Development.

Approved: November 30, 1960.

[SEAL] BRUCE SAVAGE,
Commissioner.

[F.R. Doc. 60-11435; Filed, Dec. 8, 1960; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. RI61-253—RI61-263]

EDWIN L. COX ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates, and Allowing Increased Rates To Become Effective Subject to Refund [1]

DECEMBER 2, 1960.

Edwin L. Cox, Docket No. RI61-253; Cotton Valley Operators Committee (Operator), et al., Docket No. RI61-254; Phillips Petroleum Company, Docket No. RI61-255; Crow Drilling and Producing Company, Docket No. RI61-256; Sohio Petroleum Company, Docket No. RI61-257; Socony Mobil Oil Company, Inc., Docket No. RI61-258; Gulf Oil Corporation, Docket No. RI61-259; Sunray Mid-Continent Oil Company, Docket No. RI61-260; Peerless Oil & Gas Company, Docket No. RI61-261; Arkansas Fuel Oil Corporation, Docket No. RI61-262; Arkansas Fuel Oil Corporation (Operator), et al., Docket No. RI61-263.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in Docket Nos.
RI61-253...	Edwin L. Cox, 2100 Adolphus Tower, Dallas, Tex.	20	5	Kansas-Nebraska Natural Gas Co., Inc. (Texas County, Okla.).	[1] $29	11- 2-60	[2] 12- 3-60	5- 3-61	16.6	[3] 16.8	R160-135
RI61-254...	Cotton Valley Operators Committee (Operator) et al., P.O. Box 7, Cotton Valley, La.	1	5	Louisiana Nevada Transit Co. (Cotton Valley Field, Webster Parish, La.) (Northern La.).	[4] 51,341	11- 2-60	[2] 12- 3-60	[18] 12- 4-60	11.274	[4] 13.1753	R160-195
RI61-255...	Phillips Petroleum Co., Bartlesville, Okla.	2A	17	Texas Eastern Trans. Corp. (N. Port Neches Field, Orange Co., Tex.) (R.R. Dist. No. 3).	[1] 7,905	11- 2-60	[2] 12- 3-60	5- 3-61	14.8	[5] 15.0	R160-367
RI61-256...	Crow Drilling and Producing Co., c/o John M. Shuey, Atty., Johnson Building, Shreveport, La.	2	4	Arkansas Louisiana Gas Co. (Athens Field, Claiborne Parish, La.) (Northern La.).	[1] 512	11- 3-60	[2] 12-21-60	[18] 12-22-60	13.471	[4] 13.92	[7] G-17684
RI61-256...	Crow Drilling and Producing Co.	1	4	Arkansas Louisiana Gas Co. (Colquitt Field, Claiborne Parish, La.) (Northern La.).	[1] 1,931	11- 7-60	[6] 12-21-60	[18] 12-22-60	12.888	[4] [8] 13.337	[7] G-17531
RI61-257...	Sohio Petroleum Co., 1432 Skirvin Tower Hotel, Oklahoma City 2, Okla.	29	2	Natural Gas Pipeline Co. of America (Beaver County, Okla.).	[1] 164	11- 7-60	[2] 12- 9-60	5- 9-61	15.0	[9] [10] 16.0	----------
RI61-258...	Socony Mobil Oil Co., Inc., P.O. Box 900, Dallas 21, Tex.	158	3	Northern Natural Gas Co. (Hugoton Field, Finney County, Kansas) (Kansas).	[11] 207	11- 7-60	[2] 12- 8-60	5- 9-61	12.0	[9] 17.0	----------
RI61-259...	Gulf Oil Corp., P.O. Drawer 2100, Houston 1, Tex.	41	6	Texas Gas Pipe Line Corp. (Big Hill Field, Jefferson County, Tex.) (R.R. Dist. No. 3).	[8] 11,626	11- 8-60	[2] 12- 9-60	5- 9-61	14.1344	[8] 16.5	----------
RI61-260...	Sunray Mid-Continent Oil Co., P.O. Box 2039, Tulsa 2, Okla.	150	5	Natural Gas Pipeline Co. of America (Wise County Fields, Jack, Wise, and Parker Counties, Tex.) (R.R. Dist. Nos. 9 and 7B).	[11] 16,705	11- 8-60	[6] 12-30-60	5-30-61	13.3748	[3] [12] 14.3844	----------
RI61-261...	Peerless Oil & Gas Co., 1670 Denver Club Building, Denver 2, Colo.	5	3	Hugoton Plains Gas and Oil Co. (Hugoton Field, Texas County, Okla.) (Oklahoma).	[14] 11,108	11- 8-60	[6] 12- 9-60	[17] 12-10-60	8.059	[3] [13] 18.9496	----------
RI61-262...	Arkansas Fuel Oil Corp., c/o Ross, Marsh & Foster Attys., 725 15th Street NW., Washington 5, D.C.	2	8	United Gas Pipe Line Co. (Bourg Field, Terrebonne Parish, La.) (Southern La.).	[1] 7,300	11- 8-60	[6] 1- 1-61	6- 1-61	20.25	[4] 22.25	G-12997
RI61-263...	Arkansas Fuel Oil Corp. (Operator), et al.	44	8	United Gas Pipe Line Co. (Cresent Farms Field, Terrebonne Parish, La.) (Southern La.).	[1] 52,560	11- 8-60	[6] 1- 1-61	6-1-61	20.25	[4] 22.25	G-10036

[1] Periodic increase per contract.
[2] The stated effective date is the first day after expiration of the required 30 days' notice.
[3] The pressure is 14.65 psia.
[4] The pressure is 15.025 psia.
[5] Redetermined increase per contract.
[6] The stated effective is the effective date requested by respondent.
[7] Insofar as it pertains to tax reimbursement only.
[8] Includes 0.65 cent per Mcf for compression deducted by buyer.
[9] Rate subject to Btu adjustment above 1000 Btu (by 0.5 cent per Mcf).
[10] Redetermined increase, by arbitration, per contract.
[11] Periodic increase plus applicable tax reimbursement.
[12] Includes 0.25 cent per Mcf for dehydration charged by seller. Subject to Btu adjustment.
[13] Rate of 21.75 cents at 16.4 psia corrected for compressibility.
[14] Revenue-sharing increase based on buyer's rate to Northern Natural Gas Company, less 1.25 cents.
[15] Suspended for one day (question involved is contract interpretation).
[16] Suspended for one day (includes questionable reimbursement for Louisiana severance tax. Only such tax portion of Crow's increased rate is made effective subject to refund).
[17] Suspended for one day (based on buyer's resale rate to Northern Natural Gas Company which is now in effect subject to refund in Docket No. RI60-102).

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated suplements be suspended and the use thereof deferred as hereinafter ordered.

(2) It is necessary and proper in carrying out the provisions of the Natural Gas Act that Supplement No. 5 to Cotton Valley Operators Committee (Operator), et al's (Operators Committee) FPC Gas Rate Schedule No. 1; Supplements No. 4 to Crow Drilling and Producing Company's (Crow) FPC Gas Rate Schedules Nos. 1 and 2, respectively, and Supplement No. 3 to Peerless Oil & Gas Company's (Peerless) FPC Gas Rate Schedule No. 5, be allowed to take effect subject to refund upon the timely filing of their agreements and undertakings, as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, each of the above-designated supplements is hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Supplement No. 5 to Operators Committee's FPC Gas Rate Schedule No. 1 (proposing a redetermined rate increase the contract interpretation for which is questionable and should be determined after hearing); Supplements No. 4 to Crow's FPC Gas Rate Schedules Nos. 1 and 2, respectively, and Supplement No. 3 to Peerless' FPC Gas Rate Schedule No. 5, shall be effective (with only the Louisiana severance tax reimbursement portion of Crow's increased rates shall be effective subject to refund) as of December 4, 1960, December 22, 1960, and December 10, 1960, respectively: *Provided, however,* That within 20 days from the date of the issuance of this order, Operators Committee, Crow and Peerless shall file under Docket Nos. RI61-254, RI61-256 and RI61-261, respectively, with the Secretary of the Commission their agreements and undertakings to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder. The agreements and undertakings shall be signed by Respondent, or if Respondent is a corporation, signed by a responsible officer thereof accompanied by proper authorization from the Board of Directors and by a certificate showing service of copies upon all purchasers under the rate schedule involved. Unless Respondents (Operators Committee, Crow and Peerless) are advised to the contrary within 15 days after the filing of such agreements and undertakings, their agreements and undertakings shall be deemed to have been accepted.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 14, 1961.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11429; Filed, Dec. 8, 1960; 8:46 a.m.]

[Docket No. CP61-127]

EL PASO NATURAL GAS CO.

Notice of Application and Date of Hearing

DECEMBER 2, 1960.

Take notice that on October 27, 1960, El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas (Applicant), filed in Docket No. CP61-127 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, during the calendar year 1961, and operation of small scale routine budget-type facilities to enable Applicant to sell and deliver natural gas to existing jurisdictional customers on a short-term project basis for resale for use in drilling oil or gas wells, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The proposed facilities consist of:

(1) Main line or field system tap facilities, together with the standard appurtenances necessary for the operation of same, to be installed at not to exceed 25 separate locations, at an estimated cost of $350.00 per tap, or a total maximum of not to exceed $8,750 for 25 taps; and

(2) Portable measuring and regulating facilities, together with the standard appurtenances necessary for the operation of same, to be installed at not to exceed a total of 25 main line or field system tap locations, at an estimated cost of $1,200 per station, or a total maximum of not to exceed $30,000 for 25 stations.

Applicant proposes to render resale drilling gas service for not to exceed 25 drilling projects which would require from 200 Mcf per day to 3,000 Mcf per day per well for a period ranging from 30 to 90 days which is stated to be the normal duration of drilling operations per well.

No increase in main line capacity is proposed by Applicant, and all sales and deliveries would be made under rates on file with the Commission.

The purpose of this budget-type application is to avoid the time required for the filing, processing and authorization of separate specific projects as each might come up, and to eliminate the need for abandonment applications at the end of each such proposed sale.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 11, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 27, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11430; Filed, Dec. 8, 1960; 8:46 a.m.]

[Docket No. CP61-137]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Application and Date of Hearing

DECEMBER 2, 1960.

Take notice that on November 2, 1960, Transcontinental Gas Pipe Line Corporation, 3100 Travis Street, Houston 6, Texas, (Applicant), filed in Docket No. CP61-137 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery to South Jersey Gas Company (South Jersey) of 1,000 Mcf of natural gas per day under Applicant's presently effective FPC Rate Schedule LTF-3 from date of authorization to February 15, 1961, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

By order of the Commission issued November 17, 1959, in Docket Nos. G-16603, et al., Applicant was authorized to sell and deliver 7,400 Mcf of natural gas per day to Palmerton Gas Company (Palmerton), under Applicant's FPC Rate Schedule CD-3, of which Palmerton had contracted to resell 7,000 Mcf per day on a firm basis to New Jersey Zinc Company of Pennsylvania (New Jersey Zinc) for use in the latter's plants in the Borough of Palmerton.

Because of a strike now in progress, New Jersey Zinc is unable to take the entire volume which it has contracted to purchase from Palmerton. To relieve New Jersey Zinc, Palmerton has requested South Jersey and South Jersey has agreed to take, until February 15, 1961, 1,000 Mcf of natural gas under Applicant's FPC Rate Schedule LTF-3 (which has the same demand and commodity charges as its FPC Rate Schedule CD-3) from Applicant which would otherwise be delivered to Palmerton for resale to New Jersey Zinc.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 17, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 6, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11431; Filed, Dec. 8, 1960; 8:46 a.m.]

LAND WITHDRAWN IN PROJECT NO. 324

Partial Vacation of Withdrawal and Order Denying Application In Part

DECEMBER 1, 1960.

Docket No. DA-59-Arkansas—Bureau of Land Management, United States Department of the Interior.

The Bureau of Land Management, United States Department of the Interior, has requested that the Commission review the necessity for the exist-

ing power withdrawal pertaining to the following described land:

FIFTH PRINCIPAL MERIDIAN, KANSAS

T. 21 N., R. 26 W.,
Sec. 7, Fractional W½.

The above-described land lies on both sides of Cedar Creek, a short distance above the confluence of Cedar Creek with the White River, and was reserved, among other lands, pursuant to the filing on December 31, 1925, of an application for a license for proposed Project No. 324. The license for the project was terminated by the Commission on July 16, 1935.

The land in the fractional E½W½ of said sec. 7 is affected to some extent by the miximum flow line (931 feet elevation) of the Table Rock dam and reservoir now under construction for flood control and power purposes on the White River by the Corps of Engineers.

In view of the imminent complete development of this portion of the river, it appears that the land in the fractional W½W½ of sec. 7 is no longer required for the purposes of power development.

The Commission finds:

(1) Inasmuch as the land in the fractional E½W½ of sec. 7, T. 21 N., R. 26 W., Fifth Principal Meridian, Arkansas, is valuable for power purposes, the power withdrawal with respect thereto should not be revoked.

(2) Under the circumstances a determination that the value of the land described in finding (1) herein will not be injured or destroyed for purposes of power development by location, entry, or selection under the public land laws is not justified.

(3) The existing power withdrawal pertaining to the land in the fractional W½W½ of sec. 7, T. 21 N., R. 26 W., Fifth Principal meridian, Arkansas, pursuant to the filing of the application for a license for proposed Project No. 324 serves no useful purpose and vacation of the withdrawal is in the public interest.

The Commission orders:

(A) The existing power withdrawal pertaining to the land described in finding (3) herein under section 24 of the Federal Water Power Act pursuant to the filing of the application for a license for proposed Project No. 324 is vacated.

(B) The application insofar as it pertains to the land described in finding (1) herein is denied.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11432; Filed, Dec. 8, 1960; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 6, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36756: *Iron or steel wire to Memphis, Tenn.* Filed by O. W. South, Jr., Agent (No. A4048), for interested rail carriers. Rates on iron or steel wire, in carloads, as described in the application, from Gulfport, Miss., Mobile, Ala., Pensacola and Panama City, Fla. (Import), to Memphis, Tenn.

Grounds for relief: Market competition and port relationship.

Tariff: Supplement 68 to Southern Freight Association tariff I.C.C. S-87.

FSA No. 36757: *Substituted service—TP&W and PRR for Spector Freight Systems, Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 168), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Peoria, Ill., on the one hand, and Kearny, N.J., and Philadelphia, Pa., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 5 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36758: *Substituted service—PRR for Middle Atlantic Transportation Co., Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 169), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Kearny, N.J., on the one hand, and Cincinnati, Cleveland, Columbus, Dayton and Toledo, Ohio, and Detroit, Mich., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 5 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36759: *Substituted service—PRR, Et Al., for Middle Atlantic Transportation Co., Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 170), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between East Cambridge, Holyoke and Worcester, Mass., on the one hand, and Cincinnati, Cleveland, Columbus, and Toledo, Ohio and Detroit, Mich., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 5 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36760: *Substituted service—PRR, Et Al., for Middle Atlantic Transportation Co., Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 171), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Cincinnati, Cleveland, Toledo, Ohio and Detroit, Mich., on the one hand, and Boston and Worcester, Mass., and Hartford and New Haven, Conn., on the other, also between Columbus, Ohio on the one hand, and Boston and Worcester, Mass., on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 5 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36761: *Substituted service—C&O and LV for Middle Atlantic Transportation Co., Inc., Et Al.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 172), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Jersey City, N.J., on the one hand, and Detroit and Saginaw, Mich., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 5 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36762: *Substituted service—Maine Central RR for Maine Freightways.* Filed by Maine Motor Rate Bureau, Agent (No. 1), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Portland, Maine and Bangor, Maine, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

FSA No. 36763: *Anhydrous ammonia to Florida points.* Filed by Southwestern Freight Bureau, Agent (No. B-7939), for interested carriers. Rates on anhydrous ammonia, in tank-car loads, from Lake Charles, La., and Houston, Texas, to Agricola, Armour, Bonnie, Brewster, East Tampa, Nichols, Pierce, Ridgewood, Royster and Tampa, Fla.

Grounds for relief: Barge competition.

Tariff: Supplement 117 to Southwestern Freight Bureau, tariff I.C.C. 4290.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11444; Filed, Dec. 8, 1960; 8:49 a.m.]

[Notice 421]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 6, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by

petitioners must be specified in their petitions with particularity.

No. MC-FC 63660. By order of December 2, 1960, the Transfer Board approved the transfer to Dunn's Van Lines, Inc., Odessa, Tex., of Certificate in No. MC 104850, issued May 15, 1958, to Ralph S. Dunn, doing business as Dunn's Van Line, Odessa, Tex., authorizing the transportation of: Household goods, between points in Texas, Louisiana, New Mexico, and Oklahoma; and household goods, and immigrant movables, between points in Logan County, Okla.; on the one hand, and, on the other points in Kansas. Roy A. Downey, P.O. Box 4134, Odessa, Tex., attorney for applicants.

No. MC-FC 63674. By order of November 30, 1960, the Transfer Board approved the transfer to Andrews Van Lines, Inc., 7th and Park, Norfolk, Nebr., of Certificates in Nos. MC 26825 and MC 26825 Sub 3, issued March 2, 1955, and March 15, 1957, respectively, to Albert Roy Andrews, doing business as Andrews Van Lines, 7th and Park, Norfolk, Nebr., authorizing the transportation of: Household goods, between points in Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and Wyoming, between Philadelphia, Pa., on the one hand, and, on the other, points in New York, New Jersey, Delaware, Maryland, Virginia, and the District of Columbia, between points in Montana, on the one hand, and, on the other, points in Montana, Idaho, North Dakota, Oregon, South Dakota, Utah, Wyoming, and Washington.

No. MC-FC 63681. By order of November 30, 1960, the Transfer Board approved the transfer to John P. Severson and Junior R. Finer,, a partnership, doing business as Severson and Finer Trucking, Leland, Iowa, of Certificate in No. MC 25138, issued June 12, 1941, to Omer Maakestad, Leland, Iowa, authorizing the transportation of: Livestock, from Leland, Iowa, to Austin, Minn., and Tankage, from Austin, Minn., to Leland, Iowa.

No. MC-FC 63716. By order of November 30, 1960, the Transfer Board approved the transfer to John C. Bowman, doing business as J. C. Bowman Trucking Co., Natchez, Miss., of Certificate No. MC 50242 Sub 1, issued November 30, 1956, to L. J. Denny and J. R. Denny, doing business as L. J. Denny and Son Trucking Company, Vidalia, La., authorizing the transportation of: Structural steel, tanks, heavy machinery, and oilfield equipment, materials, and supplies, in truck loads, between points in Louisiana and Mississippi; trees, between points in Mississippi, on the one hand, and, on the other, New Orleans, La., and points in Louisiana within ten miles of New Orleans; and boats, between points in Louisiana and Mississippi. Harold D. Miller, Jr., 700 Petroleum Building, Jackson, Miss., attorney for applicants.

No. MC-FC 63712. By order of November 30, 1960, the Transfer Board approved the transfer to River Trails Transit Lines Inc., 340 Central Ave., Dubuque, Iowa, of Certificates in Nos. MC 58522 Sub 1, and MC 58522 Sub 6, issued December 12, 1955, and June 8, 1956, respectively, to Joseph F. Wenzel, doing business as River Trails Transit Lines, 340 Central Ave., Dubuque, Iowa, authorizing the transportation of: Passengers and their baggage, and express, newspapers, and mail in the same vehicle with passengers, between various named points in Illinois, Iowa, and Wisconsin.

No. MC-FC 63729. By order of November 30, 1960, the Transfer Board approved the transfer to Wymore Transfer Co., a Corporation, Oregon City, Oreg., of Certificate in No. MC 475, issued August 9, 1950, to Eugene Wymore, doing business as Wymore Transfer Co., Oregon City, Oreg., authorizing the transportation of: Paper, paper products, paper mill supplies, machinery, and equipment, between Oregon City, Oreg., and Camas, Wash., and household goods, between West Linn and Oregon City, Oreg., on the one hand, and, on the other, points in Washington. Earle V. White, 2130 Southwest Fifth Avenue, Portland 1, Oreg., attorney for applicants.

No. MC-FC 63739. By order of November 30, 1960, the Transfer Board approved the transfer to Domenic Cristinzio, Inc., Philadelphia, Pa., of a portion of Certificate No. MC 94435, issued November 21, 1960, to James Adams, doing business as Adams Moving & Hauling Co., Philadelphia, Pa., authorizing the transportation of: Household goods, between Philadelphia, Pa., and points within 25 miles thereof, on the one hand, and, on the other, points in the New York, N.Y., Commercial Zone, as defined by the Commission, and points in New Jersey, Delaware, Maryland, and the District of Columbia. Morris J. Winokur, 1920 Two Penn Center Plaza, Philadelphia, Pa., attorney for applicants.

No. MC-FC 63742. By order of November 30, 1960, the Transfer Board approved the transfer to Bi-State Transfer, Inc., St. Louis, Mo., of Certificate in No. MC 3165, issued November 21, 1941, to John Hamm Transfer Company, a Corporation, St. Louis, Mo., authorizing the transportation of: General Commodities, with the usual exceptions including household goods and commodities in bulk, between points in the St. Louis, Mo.-East St. Louis, Ill., Commercial Zone. Austin C. Knetzger, 722 Chestnut Street, St. Louis, Mo., attorney for applicants.

No. MC-FC 63752. By order of December 2, 1960, the Transfer Board approved the transfer to Mahr Freight Lines, Inc., South Windson, Conn., of the remaining portion of Certificate No. MC 2108, issued June 3, 1941, to Bay State Motor Express Company, a Corporation, Boston, Mass., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, over regular routes, between Cambridge and Holyoke, Mass., between Cambridge and Worcester, Mass., between Cambridge and Haverhill, Mass., between Cambridge and Lawrence, Mass., between Boston, Mass., and Stamford, Conn., between Providence, R.I., and New Haven, Conn., between Boston, Mass., and Franklin, N.H., and between Boston, Mass., and Dover, N.H.; latex, washing compound and paper, from Boston, Mass., to Amsterdam, N.Y.; and groceries, drugs, rugs, and batteries, from Boston, Mass., to Albany, N.Y. Reubin Kaminsky, 410 Asylum Street, Hartford, Conn., attorney for transferee. Arthur T. Wasserman, 1 Court Street, Boston, Mass., attorney for transferor.

No. MC-FC 63774. By order of November 30, 1960, the Transfer Board approved the transfer to Barney L. Burke, doing business as Barney Burke Transfer Company, 100 Winthrope Avenue, Millen, Ga., of Certificate No. MC 115874, issued June 25, 1957, to Capus Burke, 403 East Cotton Avenue, Millen, Ga., authorizing the transportation, over irregular routes, of lumber, between points in a described portion of Georgia, on the one hand, and, on the other, points in Florida and South Carolina.

No. MC-FC 63781. By order of November 30, 1960, the Transfer Board approved the transfer to Arnold E. White, doing business as A. E. White Company, East Rockaway, N.Y., of Certificate No. MC 101816 issued March 2, 1955, to Phoenix Transportation Co., Inc., Brooklyn, N.Y., authorizing the transportation of household goods as defined by the Commission, over irregular routes, between New York, N.Y., on the one hand, and, on the other, points in New Jersey, Pennsylvania, and New York. Arthur J. Piken, 160-16 Jamaica Avenue, Jamaica 32, N.Y., attorney for applicants.

No. MC-FC 63783. By order of November 30, 1960, the Transfer Board approved the transfer to Gunderson Truck Line, Inc., Bejou, Minn., of Certificate in No. MC 20177, issued October 28, 1954, to Lloyd Gunderson, doing business as Gunderson Truck Line, Bejou, Minn., authorizing the transportation of: Tires, batteries, machinery, tractors, and petroleum products, in containers, between Fargo, N. Dak., on the one hand, and, on the other, Winger, McIntosh, and Bejou, Minn.; livestock, between Winger, Minn., and points within 15 miles of Winger, on the one hand, and, on the other, West Fargo and Union Stockyards, N. Dak., and general commodities, excluding household goods, commodities in bulk, and other specified commodities, between Winger and Bejou, Minn., on the one hand, and, on the other, Fargo, West Fargo, Union Stockyards, Southwest Fargo, and Grand Forks, N. Dak. Gene P. Johnson, Attorney for applicants, 502 First National Bank Bldg., Fargo, N. Dak.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11445; Filed, Dec. 8, 1960; 8:49 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

PROCLAMATIONS:
- 2935 — 12501
- 3382 — 12587

EXECUTIVE ORDERS:
- 3797–A — 12412, 12599
- 6260 — 12281
- 9041 — 12429
- 10696 — 12281
- 10697 — 12429
- 10698 — 12429

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
- Letter, Jan. 17, 1953 — 12501
- Letter, Nov. 16, 1960 — 12501

5 CFR

- 2 — 12285
- 6 — 12393, 12547, 12588

6 CFR

- 421 — 12282, 12283

7 CFR

- 33 — 12430
- 718 — 12588
- 722 — 12393, 12403
- 730 — 12503
- 845 — 12285
- 871 — 12547
- 903 — 12504
- 905—908 — 12504
- 911—913 — 12504
- 914 — 12405
- 916—919 — 12504
- 921 — 12504
- 923—925 — 12504
- 928—932 — 12504
- 933 — 12405–12407, 12504
- 935 — 12504
- 941—944 — 12504
- 946—949 — 12504
- 952 — 12504
- 953 — 12407, 12430
- 954 — 12504
- 956 — 12504
- 963 — 12504
- 965—968 — 12504
- 971—972 — 12504
- 974—978 — 12504
- 980 — 12504
- 982 — 12504
- 985—988 — 12504
- 991 — 12504
- 994—995 — 12504
- 998 — 12504
- 1000 — 12504
- 1002 — 12504
- 1004—1005 — 12504
- 1006—1009 — 12504
- 1011—1014 — 12504
- 1016 — 12504
- 1018 — 12504, 12588
- 1023—1024 — 12504
- 1031 — 12505

PROPOSED RULES:
- 51 — 12298, 12299
- 923 — 12558
- 936 — 12465
- 949 — 12606
- 965 — 12466
- 989 — 12476
- 1012 — 12558
- 1033 — 12606

8 CFR

Page

- 211 — 12290

9 CFR

- 72 — 12548

PROPOSED RULES:
- 83 — 12571

10 CFR

PROPOSED RULES:
- 115 — 12367

12 CFR

PROPOSED RULES:
- 206 — 12479

14 CFR

- 49 — 12352
- 225 — 12589
- 300 — 12430
- 302 — 12432
- 414 — 12589
- 506 — 12505
- 507 — 12352, 12433, 12549
- 514 — 12433
- 600 — 12285–12287, 12408, 12410, 12549–12551, 12589
- 601 — 12287, 12409, 12410, 12549–12552, 12589, 12590
- 602 — 12288, 12552
- 609 — 12353
- 612 — 12410
- 1501 — 12434

PROPOSED RULES:
- 41 — 12299
- 43 — 12524
- 302 — 12477
- 507 — 12477, 12478, 12571
- 600 — 12328, 12478, 12479, 12524, 12572, 12573, 12622
- 601 — 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623.
- 608 — 12479

15 CFR

- 203 — 12590

16 CFR

- 13 — 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592

21 CFR

- 1 — 12592
- 8 — 12288
- 120 — 12288, 12506
- 121 — 12412, 12595
- 130 — 12592
- 146 — 12506, 12596
- 146c — 12289

PROPOSED RULES:
- 27 — 12372
- 120 — 12374, 12571
- 121 — 12299, 12477

22 CFR

- 46 — 12289

25 CFR

- 171 — 12408

PROPOSED RULES:
- 52 — 12518
- 176 — 12299

26 (1939) CFR

- 16 — 12442
- 17 — 12443

26 (1954) CFR—Continued

Page

- 29 — 12339
- 39 — 12339
- 40 — 12340

26 (1954) CFR

- 1 — 12340, 12345
- 18 — 12340

PROPOSED RULES:
- 1 — 12293, 12414, 12416, 12464, 12508
- 48 — 12362
- 197 — 12362
- 250 — 12511

28 CFR

- 21 — 12290

31 CFR

- 54 — 12345

32 CFR

- 805 — 12291
- 1008 — 12444
- 1009 — 12446
- 1010 — 12449
- 1012 — 12449
- 1013 — 12449
- 1016 — 12450, 12456
- 1030 — 12451
- 1052 — 12456
- 1053 — 12456
- 1054 — 12458
- 1055 — 12462
- 1057 — 12462
- 1059 — 12462
- 1619 — 12291

33 CFR

- 202 — 12393

38 CFR

- 3 — 12463

39 CFR

- 27 — 12348

41 CFR

- 3–75 — 12502, 12596
- 5–1 — 12553
- 50–201 — 12553
- 50–202 — 12553

PROPOSED RULES:
- 50–202 — 12363, 12522

42 CFR

- 1 — 12292

43 CFR

- 76 — 12597
- 192 — 12352

PROPOSED RULES:
- 259 — 12606

PUBLIC LAND ORDERS:
- 82 — 12412, 12599
- 797 — 12413
- 1253 — 12481
- 1621 — 12599
- 1965 — 12599
- 2209 — 12412
- 2210 — 12413
- 2211 — 12413
- 2212 — 12597
- 2213 — 12597
- 2214 — 12598
- 2215 — 12599
- 2216 — 12599

45 CFR

Page

- 601—620 — 12600

46 CFR

- 24 — 12554
- 30 — 12554
- 56 — 12554
- 70 — 12555
- 90 — 12555
- 110 — 12555
- 111 — 12555
- 136 — 12555
- 171 — 12555

46 CFR—Continued

Page

- 308 — 12348

47 CFR

- 1 — 12358, 12600, 12602, 12603, 12605
- 5 — 12359
- 9 — 12359
- 10 — 12359
- 11 — 12359
- 12 — 12358
- 16 — 12359
- 19 — 12359
- 21 — 12359, 12603, 12605

47 CFR—Continued

Page

PROPOSED RULES:
- 1 — 12624
- 3 — 12371, 12624, 12626, 12627

49 CFR

- 91 — 12506
- 122 — 12506

PROPOSED RULES:
- 71–78 — 12420
- 197 — 12420

50 CFR

- 32 — 12555
- 33 — 12507, 12556, 12557

Pages 12647–12725

FEDERAL REGISTER

VOLUME 25 NUMBER 240

Washington, Saturday, December 10, 1960

DEC 1 1960
MAIN READING ROOM

Contents

Agricultural Marketing Service

NOTICES:
Canned ripe pitted olives; notice of purchase program BMP 196a.. 12714
Fresh peaches grown in Georgia; referendum 12715
PROPOSED RULE MAKING:
Carrots grown in South Texas; proposed expenses and rate of assessment 12712
RULES AND REGULATIONS:
Handling limitations:
Lemons 12651
Navel oranges 12650
Oranges and grapefruit grown in Lower Rio Grande Valley, Texas; processing into fresh juice fruit exempt from regulations 12651
Shipment limitations:
Grapefruit 12652
Oranges 12652

Agriculture Department

See Agricultural Marketing Service; Commodity Stabilization Service.

Census Bureau

NOTICES:
Distributors' stocks of canned food; notice of consideration to continue surveys 12720

Civil Aeronautics Board

NOTICES:
Hearings, etc.:
Aerovias Nacionales De Colombia, S.A 12720
Qantas Empire Airways, Ltd 12720

Commerce Department

See Census Bureau.

Commodity Stabilization Service

PROPOSED RULE MAKING:
Sugar requirements for 1961 and quotas for the three-month period ending March 31, 1961; Hawaii and Puerto Rico 12712
RULES AND REGULATIONS:
Sugar commercially recoverable from sugarcane in Mainland cane sugar area 12650

Customs Bureau

PROPOSED RULE MAKING:
Liability for duties; entry for imported merchandise; free entry of shipments valued at not in excess of one dollar 12681

Federal Aviation Agency

PROPOSED RULE MAKING:
Federal airways, associated control areas and reporting points; revocation (3 documents) 12711, 12712
RULES AND REGULATIONS:
Coded jet routes; modifications (2 documents) 12678
Control zones; modifications (5 documents) 12677
Federal airways, associated control areas and reporting points:
Revocations (2 documents) 12676
Revocation and modification of segments 12676
Restricted areas; modifications (2 documents) 12678, 12679

Federal Communications Commission

NOTICES:
Mandan Radio Association; order to show cause 12718
Standard broadcast stations; operation with full carrier and single sideband; order providing time for filing reply comments 12718
Hearings, etc.:
Coastal Broadcasting Co. (WLAT) 12716
East Texas Transmission Co 12716
Frier, W. R. (WBHF) 12716
Queen City Broadcasting Co. and Val Verde Broadcasting Co 12716
Rollins Broadcasting, Inc., et al 12717
Thomas, Norman A., et al 12718
Walterboro Radiocasting Co. (WALD) and Altamaha Broadcasting Co. (WBGR) 12718
RULES AND REGULATIONS:
Experimental, auxiliary, and special broadcast services; frequency assignment 12680

Federal Power Commission

NOTICES:
Hearings, etc.:
Central Main Power Co. (2 documents) 12720, 12721
Kansas Gas and Electric Co 12721
Texas Gas Transmission Corp. 12721
RULES AND REGULATIONS:
Rate schedules and tariffs; making producer rates effective at the end of the suspension period 12653

Federal Trade Commission

RULES AND REGULATIONS:
Prohibited trade practices:
Orsi, Inc., et al 12649
S. Schneiderman and Sons et al. 12649

Fish and Wildlife Service

NOTICES:
Hunting of Canada geese in Alexander, Jackson, Union and Williamson Counties, Illinois; notice of closing of Canada goose season 12714

Interior Department

See also Fish and Wildlife Service; Reclamation Bureau; Land Management Bureau.

NOTICES:
California:
Honey Lake Waterfowl Management Area Classification Agreement 12714
Topaz Lake and Tower House Springs Wildlife Area Classification Agreements 12714

(Continued on next page)

Internal Revenue Service

PROPOSED RULE MAKING:
Gift taxes; miscellaneous amendments 12707
Income tax; taxable years beginning after December 31, 1953; life insurance companies 12681
Income tax; taxable years beginning after December 31, 1953; miscellaneous amendments 12703
Miscellaneous regulations relating to liquors; redemption of stamps in Puerto Rico 12710

RULES AND REGULATIONS:
Income tax; taxable years beginning after December 31, 1953; life insurance companies 12654
Manufacturers and retailers excise taxes; tax on sale of jewelry and related items, furs, toilet preparations, and luggage, handbags, etc 12669

Interstate Commerce Commission

NOTICES:
Fourth section applications for relief 12723

Land Management Bureau

RULES AND REGULATIONS:
Veterans', soldiers' and sailors' rights; sale or lease of small tracts; miscellaneous amendments 12679

Reclamation Bureau

NOTICES:
Riverton Project, Wyoming; annual water rental charges 12714

Securities and Exchange Commission

NOTICES:
Hearings, etc.:
Aluminum Company of America et al 12722
Hoover Ball and Bearing Co. (2 documents) 12722
Rohr Aircraft Corp 12722

Small Business Administration

NOTICES:
Kansas; declaration of disaster area 12723

Treasury Department

See Customs Bureau; Internal Revenue Service.

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

7 CFR
833 12650
914 12650
953 12651
1031 (3 documents) 12651, 12652
PROPOSED RULES:
812 12712
1032 12712

14 CFR
600 (3 documents) 12676
601 (8 documents) 12676, 12677
602 (2 documents) 12678
608 (2 documents) 12678, 12679
PROPOSED RULES:
600 (3 documents) 12711, 12712
601 (3 documents) 12711, 12712

16 CFR
13 (2 documents) 12649

18 CFR
154 12653

19 CFR
PROPOSED RULES:
8 12681

26 (1954) CFR
1 12654
19 12654
48 12669
PROPOSED RULES:
1 (2 documents) 12681, 12703
25 12707
170 12710

43 CFR
181 12679
257 12679

47 CFR
4 12680

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7958 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Orsi, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* § 13.1185–90 *Wool Products Labeling Act.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* § 13.1852–80 *Wool Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2–5, 54 Stat. 1128–1130; 15 U.S.C. 45, 68) [Cease and desist order, Orsi, Inc., et al., New York, N.Y., Docket 7958, October 18, 1960]

In the Matter of Orsi, Inc., a Corporation, and Domenico Orsi and Richard F. C. Bemporad, Individually and as Officers of Said Corporation

Consent order requiring a New York City distributor to cease violating the Wool Products Labeling Act by labeling as "100 percent Re-used wool", fabrics which contained substantially less than 100 percent woolen fibers, and by failing to label certain fabrics as required under the Act.

The order to cease and desist is as follows:

It is ordered, That respondents Orsi, Inc., a corporation, and its officers, and Domenico Orsi and Richard F. C. Bemporad, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act, of wool fabrics or other wool products, as "wool products" are defined in and subject to the Wool Products Labeling Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to affix labels to such products showing each element of information required to be disclosed by section 4 (a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Orsi, Inc. a corporation, and its officers, and Domenico Orsi and Richard F. C. Bemporad, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the constituent fibers of which their products are composed or the percentage or amount thereof in sales invoices, shipping memorandum or any other manner.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 18, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60–11500; Filed, Dec. 9, 1960; 8:47 a.m.]

[Docket 7983 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

S. Schneiderman & Sons et al.

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices:* § 13.155–40 *Exaggerated as regular and cutomary.* Subpart—Furnishing means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception.* Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* § 13.1108–45 *Fur Products Labeling Act.* Subpart—Misrepresenting oneself and goods—PRICES: § 13.1805 *Exaggerated as regular and customary.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Joseph Schneiderman et al. trading as S. Schneiderman & Sons, New York, N.Y., Docket 7983, October 13, 1960]

In the Matter of Joseph Schneiderman, Harry Schneiderman, and Louis Schneiderman Individually and as Copartners Trading as S. Schneiderman & Sons

Consent order requiring manufacturing furriers in New York City to cease violating the Fur Products Labeling Act by listing fictitious prices on consignment invoices of fur products, intended to promote the sale of the products, and by failing to maintain adequate records as a basis for such pricing.

The order to cease and desist is as follows:

It is ordered, That Joseph Schneiderman, Harry Schneiderman and Louis Schneiderman, individually and as copartners trading as S. Schneiderman & Sons, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising, offering for sale, transportation or distribution, in commerce, of fur products; or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Falsely or deceptively invoicing fur products by representing, directly or by implication, on invoices that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such products in the recent regular course of business;

B. Falsely or deceptively advertising fur products through the use of any advertisement, representations, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale, or offering for sale of fur products, and which represents, directly or by implication that the former, regular or usual price of any fur product is any amount which is in excess of the price at which respondents have formerly, usually or customarily sold such product in the recent regular course of business;

C. Misrepresenting in any manner the savings available to purchasers of respondents' fur products;

D. Making pricing claims or representations respecting prices or values of fur products unless respondents maintain full and adequate records disclosing the facts upon which such claims and representations are based.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the above-named respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 13, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60–11501; Filed, Dec. 9, 1960; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER E—DETERMINATION OF SUGAR COMMERCIALLY RECOVERABLE

[Sugar Determination 833.7]

PART 833—MAINLAND CANE SUGAR AREA

1960 Crop

Pursuant to the provisions of section 302(a) of the Sugar Act of 1948, as amended (hereinafter referred to as "act"), the following determination is hereby issued:

§ 833.7 Sugar commercially recoverable from sugarcane in the mainland cane sugar area.

(a) *Definitions.* For the purpose of this section, the terms:

(1) "Trash" means green or dried leaves, sugarcane tops, dirt and all other extraneous material.

(2) "Gross weight" means the total weight (short tons) of sugarcane, including trash, as delivered by a producer for processing for sugar production.

(3) "Net weight" means:

(i) In Florida, 96.0 percent of gross weight, and

(ii) In Louisiana, the weight obtained by deducting the weight of trash from the gross weight of sugarcane as delivered by a producer.

(b) *Recoverable sugar.* For the 1960 crop of sugarcane, the amount of sugar, in hundredweight, raw value, commercially recoverable from sugarcane grown on a farm in the Mainland Cane Sugar Area and marketed (or processed by the producer) for the extraction of sugar or liquid sugar, from an acreage not in excess of the proportionate share for the farm, shall be obtained by multiplying the net weight of the sugarcane in tons by the rate of recoverability specified for the average percentage of sucrose in the normal juice of such sugarcane as follows:

(1) *For Farms in Louisiana:* Percentage of sucrose in normal juice: [1]	*Rate of recoverable sugar (hundredweight) per ton of sugarcane*
8.0	0.946
9.0	1.117
10.0	1.289
11.0	1.463
12.0	1.638
13.0	1.814
14.0	1.992
15.0	2.171
16.0	2.347
17.0	2.526
18.0	2.705

[1] Rates for the intervening tenths of 1 percent shall be calculated by interpolation.

(2) *For Farms in Florida:* Percentage of sucrose in normal juice: [1]	*Rate of recoverable sugar (hundredweight) per ton of sugarcane*
8.0	0.946
9.0	1.145
10.0	1.331
11.0	1.508
12.0	1.684
13.0	1.859
14.0	2.034
15.0	2.207
16.0	2.383
17.0	2.558
18.0	2.734

[1] Rates for the intervening tenths of 1 percent shall be calculated by interpolation.

STATEMENT OF BASES AND CONSIDERATIONS

Determinations of amounts of sugar commercially recoverable from sugar beets and sugarcane are required under section 302(a) of the act to establish the amounts of sugar upon which payments are to be made pursuant to the act.

The rates of sugar commercially recoverable at the various normal juice sucrose levels, as specified in this determination, were calculated from data reported to the Department by the processors of sugarcane for sugar in each of the States of Florida and Louisiana. The calculation made use of data representing averages in each State for the crop years 1955, 1956, 1957, 1958, and 1959 of each of the factors of normal juice extraction (the quantity of normal juice extraction per ton of sugarcane), boiling house efficiency (the ratio of the amount of sugar produced to the amount that could theoretically be produced), the polarization of the sugar produced, and net sugarcane as a percent of gross sugarcane. The calculation also used the purity or retention factor which correlates purity of normal juice with sugar recovery based on the well-established Winter-Carp formula. That formula is expressed mathematically as follows: Purity or Retention Factor = (1.4 − 40/*P* in which *P* is purity of normal juice. For the purposes of this determination, the computed purity at each of the various normal juice sucrose levels for the crop years 1955, 1956, 1957, 1958 and 1959 was used.

In calculating sugar, commercially recoverable, the data are used in the following manner: The product of normal juice extraction and boiling house efficiency is divided by the product of the polarization of sugar produced and net sugarcane as a percent of gross sugarcane. The result so obtained is multiplied by 2,000 to obtain a factor which when multiplied by normal juice sucrose and the purity or retention factor for that normal juice sucrose gives pounds of sugar per ton of net sugarcane. By use of the applicable raw value conversion factor, in accordance with section 101(h) of the Sugar Act, pounds of sugar per ton of net sugarcane are converted into sugar, commercially recoverable raw value. Expressed mathematically the formula reads:

$$\text{CRS., RV.} = \frac{\text{N.J.E.} \times \text{B.H.E.} \times 2{,}000 \times \text{N.J.S.} \times \text{P.R.} \times \text{R.V.C.F.}}{(\text{Pol. of sugar}) \times (\text{net sugarcane, \% gross sugarcane})}$$

Except for appropriate changes in each of the two moving five-year averages, the aforestated calculation is the same as that used for the 1959 crop. The use of data for the most recent five crops results in increases in rates of recoverable sugar of about one percent as an average for both Louisiana and Florida.

Accordingly, I hereby find and conclude that the aforestated determination will effectuate the applicable provisions of the act.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies secs. 302, 303, 304; 61 Stat. 930, as amended, 931; 7 U.S.C. 1132, 1133, 1134)

Issued this 7th day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

[F.R. Doc. 60-11541; Filed, Dec. 9, 1960; 8:52 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 196]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 914.496 Navel Orange Regulation 196.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting, the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 8, 1960.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., December 11, 1960, and ending at 12:01 a.m., P.s.t., December 18, 1960, are hereby fixed as follows:

(i) District 1: 700,000 cartons;

(ii) District 2: 214,818 cartons;

(iii) District 3: 80,000 cartons;

(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 9, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11582; Filed, Dec. 9, 1960; 11:26 a.m.]

[Lemon Reg. 876]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.983 Lemon Regulation 876.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based becomes available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 6, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., December 11, 1960, and ending at 12:01 a.m., P.s.t., December 18, 1960, are hereby fixed as follows:

(i) District 1: 32,550 cartons;

(ii) District 2: 130,200 cartons;

(iii) District 3: 23,250 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 8, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11577; Filed, Dec. 9, 1960; 9:20 a.m.]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Processing Into Fresh Juice

Pursuant to the provisions of the marketing agreement and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093) regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby found and determined, on the basis of the recommendations of the Texas Valley Citrus Committee, established under the aforesaid marketing agreement and order, and other available information, that the following amendment of the rules and regulations (Sec. 1031.120; 25 F.R. 9757; 10422) is in accordance with the provisions of the marketing agreement and order and will tend to effectuate the declared policy of the act; and the said rules and regulations are hereby amended as follows:

Section 1031.120 *Fruit exempt from regulations* (25 F.R. 9757; 10422) is amended by revising the provisions of paragraph (b) thereof to read as follows:

(b) *Processing into fresh juice.* Any handler may handle oranges and grapefruit for processing into fresh juice exempt from the provision of §§ 1031.34 and 1031.40: *Provided*, That, prior to such handling the handler notifies the committee of the proposed handling and furnishes the committee (1) with a statement, executed by the intended processor, that the fruit will be used only for processing into fresh juice, and (2) with an agreement by such processor to furnish the committee with a report as to the quantity of each shipment of fruit received and the carrier (including the truck license number or railroad car number, as the case may be) of each such shipment.

It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which the provisions hereof are based became available and the time when such provisions must become effective in order to effectuate the declared policy of the act is insufficient; and such provisions re-

lieve restrictions on the handling of oranges and grapefruit.

The provisions of this amendment shall become effective at 12:01 a.m., c.s.t., December 12, 1960.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 7, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11538; Filed, Dec. 9, 1960; 8:52 a.m.]

[Orange Reg. 6]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

§ 1031.312 Orange Regulation 6.

(a) *Findings.* (1) Pursuant to the marketing agreement, and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093), regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective September 22, 1960, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of the Texas Valley Citrus Committee established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Texas Valley Citrus Committee on December 5, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter, when used herein, shall have the same meaning as is given to the respective term in the United States Standards for Oranges (Texas and States other than Florida, California, and Arizona) (§§ 51.680–51.712 of this title).

(2) During the period beginning at 12:01 a.m., c.s.t., December 12, 1960, and ending at 12:01 a.m., c.s.t., January 9, 1961, no handler shall handle:

(i) Any oranges of any variety, grown in the production area, unless such oranges grade at least U.S. No. 2;

(ii) Any Navel or Early and Midseason oranges, grown as aforesaid, which are of a size smaller than 2$^{7}/_{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such oranges in any lot of containers and not more than fifteen (15) percent, by count, of such oranges in any individual container in such lot may be of a size smaller than 2$^{7}/_{16}$ inches in diameter;

(iii) Any Valencia and similar late type oranges, grown as aforesaid, which are of a size smaller than 3$^{3}/_{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such oranges in any lot of containers, and not more than fifteen (15) percent, by count, of such oranges in any individual container in such lot, may be of a size smaller than 3$^{3}/_{16}$ inches in diameter; or

(iv) Any oranges of any variety, grown as aforesaid, which are place packed in containers, unless such oranges meet the requirements of standard pack or, if not so packed, such oranges meet all applicable requirements of standard sizing and fill; *Provided,* That the minimum and maximum diameters of the individual oranges in any container shall conform to the following applicable range of diameter measurements except that not to exceed ten (10) percent, by count, of the oranges in any such container may measure less than the minimum or more than the maximum applicable diameter limits specified for the particular size: *Provided, further,* That the provisions of this subdivision (iv) shall not apply to the oranges in any gift package of fruit.

Pack sizes in 1⅗ bushel box:	Diameter limits in inches	
	Minimum	*Maximum*
100	3$^{5}/_{16}$	3$^{13}/_{16}$
125	3$^{3}/_{16}$	3$^{9}/_{16}$
163	2$^{15}/_{16}$	3$^{5}/_{16}$
200	2$^{11}/_{16}$	3$^{1}/_{16}$
252	2$^{7}/_{16}$	2$^{13}/_{16}$

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 7, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.D. Doc. 60–11512; Filed, Dec. 9, 1960; 8:49 a.m.]

[Grapefruit Reg. 6]

PART 1031—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

Limitation of Shipments

§ 1031.313 Grapefruit Regulation 6.

(a) *Findings.* (1) Pursuant to the marketing agreement, and Order No. 131 (7 CFR Part 1031; 25 F.R. 9093), regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas, effective September 22, 1960, under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of the Texas Valley Citrus Committee established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Texas Valley Citrus Committee on December 5, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; and terms relating to grade and diameter when used herein, shall have the same meaning as is given to the respective term in the United States Standards for Grapefruit (Texas and States other than Florida, California, and Arizona) (§§ 51.620–51.658 of this title).

(2) During the period beginning at 12:01 a.m., c.s.t., December 12, 1960, and ending at 12:01 a.m., c.s.t., January 9, 1961, no handler shall handle:

(i) Any container of grapefruit of any variety, grown in the production area, unless such grapefruit grade U.S. Fancy, U.S. No. 1 Bright, U.S. No. 1, or U.S. No. 2;

(ii) Any seedless grapefruit, grown as aforesaid, which are of a size smaller than 3$^{9}/_{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such seedless grapefruit in any lot of containers, and not more than fifteen (15) percent, by count, of such seedless grapefruit in any individual container in such lot, may be of a size smaller than 3$^{9}/_{16}$ inches in diameter: *Provided,* That none of such seedless grapefruit that is smaller than 3$^{9}/_{16}$ inches in diameter may be smaller than 3$^{6}/_{16}$ inches in diameter;

(iii) Any seeded grapefruit, grown as aforesaid, which are of a size smaller than 3$^{13}/_{16}$ inches in diameter, except that not more than ten (10) percent, by count, of such seeded grapefruit in any lot of containers, and not more than fifteen (15) percent, by count, of such seeded grapefruit in any individual container in such lot, may be a size smaller than 3$^{13}/_{16}$ inches in diameter; or

(iv) Any grapefruit of any variety, grown as aforesaid, which are place packed in boxes or cartons, unless such grapefruit meet the requirements of standard pack or, if not so packed, such grapefruit are fairly uniform in size and the containers are well filled: *Provided,* That the provisions of this subdivision (iv) shall not apply to the grapefruit in any gift package of fruit.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 7, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11511; Filed, Dec. 9, 1960; 8:49 a.m.]

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

SUBCHAPTER E—REGULATIONS UNDER NATURAL GAS ACT

[Docket No. R–198; Order No. 230]

PART 154—RATE SCHEDULES AND TARIFFS

Making Producer Rates Effective at End of Suspension Period

DECEMBER 5, 1960.

The Commission has before it for consideration the amendment of § 154.102, Part 154, Rate Schedules and Tariffs, of Subchapter E, regulations under the Natural Gas Act, Chapter I of Title 18, Code of Federal Regulations.

The section amended hereby was prescribed by Order No. 215 issued October 9, 1959 (24 F.R. 8373; 22 FPC 668), and was designed to establish a procedure whereby suspended filings of proposed changes in rates may be made effective at the expiration of the suspension period as provided in section 4(e) of the Natural Gas Act which reads, in pertinent part, as follows:

> If the proceeding on the lawfulness of the proposed changes has not been concluded and an order made at the expiration of the suspension period, on motion of the natural gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect.

The purpose of the amendment herein adopted is to make it clear that the rate or charge which thus "shall go into effect" upon the filing of a motion is the only legally effective rate which the producer may charge until or unless otherwise ordered by the Commission. The regulation, as amended, directs that that rate shall be charged.

The Commission finds:

(1) Since the amendment herein prescribed (a) is an interpretation of the Natural Gas Act; (b) a clarification of the regulation which is amended; and (c) could be provided for by Commission order without notice in the case of each individual motion to make proposed changes effective at the expiration of the suspension period, prior notice under the provisions of section 4(a) of the Administrative Procedure Act is not required.

(2) The amendments herein adopted are necessary and appropriate to carry out the provisions of the Natural Gas Act.

The Commission, acting pursuant to the authority contained in the Natural Gas Act, particularly sections 4 and 16 thereof (52 Stat. 822, 830; 15 U.S.C. 717c, 717o), orders:

(A) Paragraphs (a) and (b) of § 154.102, Part 154 of Subchapter E, Chapter I of Title 18 of the Code of Federal Regulations are amended to read as follows:

(a) If a rate suspension proceeding initiated under section 4(e) of the Natural Gas Act has not been concluded and an order made at the expiration of the suspension period, the proposed change of rate, charge, classification, or service shall go into effect upon motion of the independent producer proposing the change as the legally effective rate and shall be charged, effective as of a date not earlier than the date of receipt of such motion by the Commission or the expiration of the suspension period, whichever is later. The Secretary, upon receipt of such a motion, shall, if the motion is legally adequate for the purpose, notify the movant that the proposed change shall be effective as provided in this section: *Provided,* That the Secretary shall refer to the Commission any motion requesting that a change in rate, charge, clasification, or service be made effective, if in his judgment the motion should receive the specific attention of the Commission;

(b) Unless otherwise ordered by the Commission, increased rates or charges shall be charged and collected pursuant to paragraph (a) of this section and there shall be filed by the independent producer a surety bond, or other undertaking, to be approved by the Secretary, to comply with the provisions of paragraph (c) of this section.

(B) In paragraph (c) of § 154.102 delete the words "allowed to become effective" near the end of the paragraph and insert in lieu thereof "which become effective pursuant to the motion".

(C) In paragraph (d) of § 154.102, insert the words "the bond or undertaking" in lieu of "his bond or agreement and undertaking."

(D) Paragraph (e) of § 154.102 is amended to read as follows:

(e) The bond or undertaking required by paragraph (b) of this section may be filed concurrently with the motion to make the increased rates effective. If with his motion the producer has not filed a satisfactory bond or undertaking such bond or undertaking must be filed within 30 days after the issuance of the Secretary's notice provided for in paragraph (a) of this section. Unless notified to the contrary by the Secretary of the Commission within 30 days from the date of filing, such bond or undertaking shall be deemed to be satisfactory and to have been accepted for filing.

(E) These amendments shall be effective on the issuance of this order.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–11499; Filed Dec. 9, 1960; 8:47 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6513]

SUBCHAPTER A—INCOME TAX

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Life Insurance Companies

On August 18, 1960, notice of proposed rule making regarding amendment of the Income Tax Regulations under sections 801, 802, 804, 805, and 806 of the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112), relating to life insurance companies, was published in the FEDERAL REGISTER (25 F.R. 7983). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published, subject to the changes set forth below, are hereby adopted. Section 1.806–3 of such regulations supersedes § 19.1–1 of Treasury Decision 6415 (26 CFR Part 19), approved September 10, 1959 (24 F.R. 7373).

PARAGRAPH 1. Paragraphs (c) and (d) of § 1.801–3 are revised.

PAR. 2. Paragraphs (a), (d), (e), and (f) of § 1.801–4 are revised.

PAR. 3. Paragraphs (b) and (c) of § 1.801–5 are revised.

PAR. 4. Paragraphs (b), (e), and (f) of § 1.804–2 are revised.

PAR. 5. Paragraph (a) of § 1.804–3 is revised.

PAR. 6. Paragraph (b) (1) (i), (ii), and (iii), (2), and (4) of § 1.804–4 is revised.

PAR. 7. Paragraph (a) (4) (iii) of § 1.805–5 is revised.

PAR. 8. Paragraph (a) of § 1.805–7 is revised.

PAR. 9. Paragraph (a) and paragraph (b) (1), (2), and (3) of § 1.805–8 are revised.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 2, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 801, 802, 804, 805, and 806 of the Internal Revenue Code of 1954 to the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112), such regulations are amended as follows:

PARAGRAPH 1. Section 1.801 is amended to read as follows:

DEFINITION; TAX IMPOSED

§ 1.801 Statutory provisions; life insurance companies; definition of life insurance company.

SEC. 801. *Definition of life insurance company*—(a) *Life insurance company defined.* For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with health and accident insurance), or noncancellable contracts of health and accident insurance, if—

(1) Its life insurance reserves (as defined in subsection (b)), plus

(2) Unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, health, or accident policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)).

(b) *Life insurance reserves defined*—(1) *In general.* For purposes of this part, the term "life insurance reserves" means amounts—

(A) Which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) Which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies.

(2) *Reserves must be required by law.* Except—

(A) In the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation,

(B) In the case of policies issued by an organization which meets the requirements of section 501(c)(9) other than the requirement of subparagraph (B) thereof, and

(C) As provided in paragraph (3), in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) *Assessment companies.* In the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

(A) Sums actually deposited by such company or association with State or Territorial officers pursuant to law as guaranty or reserve funds, and

(B) Any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

For purposes of this part, the rate of interest assumed in calculating the reserves described in subparagraphs (A) and (B) shall be 3 percent.

(4) *Deficiency reserves excluded.* The term "life insurance reserves" does not include deficiency reserves. For purposes of this subsection and subsection (c), the deficiency reserve for any contract is that portion of the reserve for such contract equal to the amount (if any) by which—

(A) The present value of the future net premiums required for such contract, exceeds

(B) The present value of the future actual premiums and consideration charged for such contract.

(5) *Amount of reserves.* For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) *Total reserves defined.* For purposes of subsection (a), the term "total reserves" means—

(1) Life insurance reserves,

(2) Unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) All other insurance reserves required by law.

The term "total reserves" does not include deficiency reserves (within the meaning of subsection (b)(4)).

(d) *Adjustments in reserves for policy loans.* For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) *Guaranteed renewable contracts.* For purposes of this part, guaranteed renewable life, health, and accident insurance shall be treated in the same manner as noncancellable life, health, and accident insurance.

(f) *Burial and funeral benefit insurance companies.* A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 821 or section 831.

(g) *Variable annuities*—(1) *In general.* For purposes of this part, an annuity contract includes a contract which provides for the payment of a variable annuity computed on the basis of recognized mortality tables and the investment experience of the company issuing the contract.

(2) *Adjusted reserves rate; assumed rate.* For purposes of this part—

(A) The adjusted reserves rate for any taxable year with respect to annuity contracts described in paragraph (1), and

(B) The rate of interest assumed by the taxpayer for any taxable year in calculating the reserve on any such contract,

shall be a rate equal to the current earnings rate determined under paragraph (3).

(3) *Current earnings rate.* For purposes of this part, the current earnings rate for any taxable year with respect to annuity contracts described in paragraph (1) is the current earnings rate determined under section 805(b)(2) with respect to such contracts, reduced by the percentage obtained by dividing—

(A) The amount of the actuarial margin charge on all annuity contracts described in paragraph (1) issued by the taxpayer, by

(B) The mean of the reserves for such contracts.

(4) *Increases and decreases in reserves.* For purposes of subsections (a) and (b) of section 810, the sum of the items described in section 810(c) taken into account as of the close of the taxable year shall, under regulations prescribed by the Secretary or his delegate, be adjusted—

(A) By subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves for annuity contracts described in paragraph (1) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(B) By adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

(5) *Companies issuing variable annuities and other contracts.* In the case of a life insurance company which issues both annuity contracts described in paragraph (1) and other contracts, under regulations prescribed by the Secretary or his delegate—

(A) The policy and other contract liability requirements shall be considered to be the sum of—

(i) The policy and other contract liability requirements computed by reference to the items which relate to annuity contracts described in paragraph (1), and

(ii) The policy and other contract liability requirements computed by excluding the items taken into account under clause (i); and

(B) Such additional separate computations, with respect to such annuity contracts and such other contracts, shall be made as may be necessary to carry out the purposes of this subsection and this part.

(6) *Termination.* Paragraphs (1), (2), (3), (4), and (5) shall not apply with respect to any taxable year beginning after December 31, 1962.

[Sec. 801 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 36); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 112)]

PAR. 2. There are inserted immediately after § 1.801–1 the following new sections:

§ 1.801–2 Taxable years affected.

Section 1.801–1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.801–3 through 1.801–7 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.801–3 Definitions.

For purposes of part I, subchapter L, chapter 1 of the Code, this section defines the following terms, which are to be used in determining if a taxpayer is a life insurance company (as defined in section 801(a) and paragraph (b) of this section):

(a) *Insurance company.* (1) The term "insurance company" means a company whose primary and predominant business activity during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies. Thus, though its name, charter powers, and subjection to State insurance laws are significant in determining the business which a company is authorized and intends to carry on, it is the character of the business actually done in the taxable year which determines whether a company is taxable as an insurance company under the Internal Revenue Code.

(2) Insurance companies include both stock and mutual companies, as well as mutual benefit insurance companies. A voluntary unincorporated association of employees (including an association fulfilling the requirements of section 801(b)(2)(B)) formed for the purpose of relieving sick and aged members and the dependents of deceased members is an insurance company, whether the fund for such purpose is created wholly by membership dues or partly by contributions from the employer. A corporation which merely sets aside a fund for the insurance of its employees is not an insurance company, and the income from such fund shall be included in the return of the corporation.

(b) *Life insurance company.* (1) The term "life insurance company", as used in subtitle A of the Code, is defined in section 801(a). For the purpose of determining whether a company is a "life insurance company" within the meaning of that term as used in section 801(a), it must first be determined whether the company is taxable as an insurance company (as defined in paragraph (a) of this section). An insurance company shall be taxed as a life insurance company if it is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with health and accident insurance), or noncancellable contracts of health and accident insurance, and its life insurance reserves (as defined in section 801(b) and § 1.801–4), plus unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, health, or accident policies not included in life insurance reserves, comprise more than 50 percent of its total reserves (as defined in section 801(c) and § 1.801–5). For purposes of determining whether it satisfies the percentage requirements of the preceding sentence, a company shall first make any adjustments to life insurance reserves and total reserves required by section 806(a) (relating to adjustments for certain changes in reserves and assets) and then as required by section 801(d) (relating to adjustments in reserves for policy loans). For examples of the adjustments required under section 806(a), see paragraph (b)(4) of § 1.806–3. For an example of the adjustments required under section 801(d), see paragraph (c) of § 1.801–6. Furthermore, if an insurance company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), such revalued basis shall be disregarded for purposes of section 801.

(2) An insurance company writing only noncancellable life, health, or accident policies and having no "life insurance reserves" may qualify as a life insurance company if its unearned premiums, and unpaid losses (whether or not ascertained), on such policies comprise more than 50 percent of its total reserves.

(3) Section 801(f) provides that a burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under section 802 but shall be taxable under section 821 or section 831 as an insurance company other than life.

(c) *Noncancellable life, health, or accident insurance policy.* The term "noncancellable life, health, or accident insurance policy" means a health and accident contract, or a health and accident contract combined with a life insurance or annuity contract, which the insurance company is under an obligation to renew or continue at a specified premium and with respect to which a reserve in addition to the unearned premiums (as defined in paragraph (e) of this section) must be carried to cover that obligation. Such a health and accident contract shall be considered noncancellable even though it states a termination date at a stipulated age, if, with respect to the health and accident contract, such age termination date is 60 or over. Such a contract, however, shall not be considered to be noncancellable after the age termination date stipulated in the contract has passed. However, if the age termination date stipulated in the contract occurs during the period covered by a premium received by the life insurance company prior to such date, and the company cannot cancel or modify the contract during such period, the age termination date shall be deemed to occur at the expiration of the period for which the premium has been received.

(d) *Guaranteed renewable life, health, and accident insurance policy.* The term "guaranteed renewable life, health, and accident insurance policy" means a health and accident contract, or a health and accident contract combined with a life insurance or annuity contract, which is not cancellable by the company but under which the company reserves the right to adjust premium rates by classes in accordance with its experience under the type of policy involved, and with respect to which a reserve in addition to the unearned premiums (as defined in paragraph (e) of this section) must be carried to cover that obligation. Section 801(e) provides that such policies shall be treated in the same manner as noncancellable life, health, and accident insurance policies. For example, the age termination date requirements applicable to noncancellable health and accident insurance policies shall also apply to guaranteed renewable life, health, and accident insurance policies. See paragraph (c) of this section.

(e) *Unearned premiums.* The term "unearned premiums" means those amounts which shall cover the cost of carrying the insurance risk for the period for which the premiums have been paid in advance. Such term includes all unearned premiums, whether or not required by law.

(f) *Life insurance reserves.* For the definition of the term "life insurance reserves", see section 801(b) and § 1.801–4.

(g) *Unpaid losses (whether or not ascertained).* The term "unpaid losses (whether or not ascertained)" means a reasonable estimate of the amount of the losses (based upon the facts in each case and the company's experience with similar cases)—

(1) Reported and ascertained by the end of the taxable year but where the amount of the loss has not been paid by the end of the taxable year,

(2) Reported by the end of the taxable year but where the amount thereof has not been either ascertained or paid by the end of the taxable year, or

(3) Which have occurred by the end of the taxable year but which have not been reported or paid by the end of the taxable year.

(h) *Total reserves.* For the definition of the term "total reserves", see section 801(c) and § 1.801–5.

(i) *Amount of reserves.* For purposes of subsections (a), (b), and (c) of section 801 and this section, section 801(b)(5) provides that the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or

portion thereof) at the beginning and end of the taxable year.

§ 1.801–4 Life insurance reserves.

(a) *Life insurance reserves defined.* For purposes of part I, subchapter L, chapter 1 of the Code, the term "life insurance reserves" (as defined in section 801(b)) means those amounts—

(1) Which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest;

(2) Which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is computed, life, health, or accident contingencies; and

(3) Which, except as otherwise provided by section 801(b)(2) and paragraphs (b) and (c) of this section, are required by law. For the meaning of the term "reserves required by law", see paragraph (b) of § 1.801–5.

For purposes of determining life insurance reserves, only those amounts shall be taken into account which must be reserved either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute. Moreover, such amounts must actually be held by the company during the taxable year for which the reserve is claimed. However, reserves held by the company with respect to the net value of risks reinsured in other solvent companies (whether or not authorized) shall be deducted from the company's life insurance reserves. For example, if an ordinary life policy with a reserve of $100 is reinsured in another solvent company on a yearly renewable term basis, and the reserve on such yearly renewable term policy is $10, the reinsured company shall include $90 ($100 minus $10) in determining its life insurance reserves. Generally, life insurance reserves, as in the case of level premium life insurance, are held to supplement the future premium receipts when the latter, alone, are insufficient to cover the increased risk in the later years. For examples of reserves which qualify as life insurance reserves, see paragraph (d) of this section. For examples of reserves which do not qualify as life insurance reserves, see paragraph (e) of this section.

(b) *Certain reserves which need not be required by law.* Section 801(b)(2) sets forth certain reserves which, though not required by law, may still qualify as life insurance reserves, provided, however, that they first satisfy the requirements of section 801(b)(1) (A) and (B) and paragraph (a) (1) and (2) of this section. Thus, reserves need not be required by law—

(1) In the case of policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(2) In the case of policies issued by an organization which meets the requirements of section 501(c)(9) other than the requirement of subparagraph (B) thereof.

(c) *Assessment companies.* Section 801(b)(3) provides that in the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

(1) Sums actually deposited by such company or association with officers of a State or Territory pursuant to law as guaranty or reserve funds, and

(2) Any funds maintained, under the charter or articles of incorporation or association of such company or association (or bylaws approved by the State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued upon the assessment plan and not subject to any other use.

For purposes of part I, subchapter L, chapter 1 of the Code, the reserves described in this paragraph shall be included as life insurance reserves even though such reserves do not meet the requirements of section 801(b) and paragraph (a) of this section. However, for such reserves to be included as life insurance reserves, they must be deposited or maintained to liquidate future unaccrued claims arising from life insurance, annuity, or noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance) involving, at the time with respect to which the reserve is deposited or maintained, life, health, or accident contingencies. The rate of interest assumed in calculating the reserves described in this paragraph shall be 3 percent, regardless of the rate of interest (if any) specified in the contract in respect of such reserves.

(d) *Reserves which qualify as life insurance reserves.* The following reserves, provided they meet the requirements of section 801(b) and paragraph (a) of this section, are illustrative of reserves which shall be included as life insurance reserves:

(1) Reserves held under life insurance contracts.

(2) Reserves held under annuity contracts (including reserves held under variable annuity contracts as described in section 801(g)(1)).

(3) Reserves held under noncancellable health and accident insurance contracts (as defined in paragraph (c) of § 1.801–3) and reserves held under guaranteed renewable health and accident insurance contracts (as defined in paragraph (d) of § 1.801–3).

(4) Reserves held either separately or combined under contracts described in subparagraphs (1), (2), or (3) of this paragraph.

(5) Reserves held under deposit administration contracts. Generally, the reserves held by a life insurance company on both the active and retired lives under deposit administration contracts will meet the requirements of section 801(b) and paragraph (a) of this section.

However, reserves held by the company with respect to the net value of risks reinsured in other solvent companies (whether or not authorized) shall be deducted from the company's life insurance reserves. See paragraph (a) of this section.

(e) *Reserves and liabilities which do not qualify as life insurance reserves.* The following are illustrative of reserves and liabilities which do not meet the requirements of section 801(b) and paragraph (a) of this section and, accordingly, shall not be included as life insurance reserves:

(1) Liability for supplementary contracts not involving at the time with respect to which the liability is computed, life, health, or accident contingencies.

(2) In the case of cancellable health and accident policies and similar cancellable contracts, the unearned premiums and unpaid losses (whether or not ascertained).

(3) The unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, health, or accident policies (and guaranteed renewable life, health, and accident policies) not included in life insurance reserves. (However, such amounts shall be taken into account under section 801(a)(2) for purposes of determining whether an insurance company is a life insurance company.)

(4) The deficiency reserve (as defined in section 801(b)(4)) for each individual contract, that is, that portion of the reserve for such contract equal to the amount (if any) by which—

(i) The present value of the future net premiums required for such contract, exceeds

(ii) The present value of the future actual premiums and consideration charged for such contract.

(5) Reserves required to be maintained to provide for the ordinary operating expenses of a business which must be currently paid by every company from its income if its business is to continue, such as taxes, salaries, and unpaid brokerage.

(6) Liability for premiums received in advance.

(7) Liability for premium deposit funds.

(8) Liability for annual and deferred dividends declared or apportioned.

(9) Liability for dividends left on deposit at interest.

(10) Liability for accrued but unsettled policy claims whether known or unreported.

(11) A mandatory securities valuation reserve.

(f) *Adjustments to life insurance reserves.* In the event it is determined on the basis of the facts of a particular case that premiums deferred and uncollected and premiums due and unpaid are not properly accruable for the taxable year under section 809 and, accordingly, are not properly includible under assets (as defined in section 805(b)(4)) for the taxable year, appropriate reduction shall be made in the life insurance reserves. This reduction shall be made when the insurance company has calculated life insurance reserves on the assumption that the premiums on all policies are paid annually or that all premiums due on or prior to the date of the annual statement have been paid.

§ 1.801–5 Total reserves.

(a) *Total reserves defined.* For purposes of section 801(a) and § 1.801–3, the term "total reserves" is defined in section 801(c) as the sum of—

(1) Life insurance reserves (as defined in section 801(b) and § 1.801–4),

(2) Unearned premiums (as defined in paragraph (e) of § 1.801–3), and unpaid losses (whether or not ascertained) (as defined in paragraph (g) of § 1.801–3), not included in life insurance reserves, and

(3) All other insurance reserves required by law.

The term "total reserves" does not, however, include deficiency reserves (within the meaning of section 801(b)(4) and paragraph (e)(4) of § 1.801–4), even though such deficiency reserves are required by State law. In determining total reserves, a company is permitted to make use of the highest aggregate reserve required by any State or Territory or the District of Columbia in which it transacts business, but the reserve must have been actually held during the taxable year for which the reserve is claimed. For example, during the taxable year 1958 a life insurance company sells life insurance and annuity contracts in States A and B. State A requires reserves of 10 against the life and 5 against the annuity business. State B requires reserves of 9 against the life and 7 against the annuity business. Assuming the company actually holds these reserves during the taxable year 1958, its highest aggregate reserve for such taxable year is the 16 required by State B. Thus, the company is not permitted to compute its highest aggregate reserve by taking State A's requirement of 10 against its life insurance business and adding it to State B's requirement of 7 against its annuity business.

(b) *Reserves required by law defined.* For purposes of part I, subchapter L, chapter 1 of the Code, the term "reserves required by law" means reserves which are required either by express statutory provisions or by rules and regulations of the insurance department of a State, Territory, or the District of Columbia when promulgated in the exercise of a power conferred by statute, and which are reported in the annual statement of the company and accepted by state regulatory authorities as held for the fulfillment of the claims of policyholders or beneficiaries.

(c) *Information to be filed.* In any case where reserves are claimed, sufficient information must be filed with the return to enable the district director to determine the validity of the claim. See section 6012 and paragraph (c) of § 1.6012–2. If the basis (for Federal income tax purposes) for determining the amount of any of the life insurance reserves as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year then the following information must be filed with respect to all such changes in basis:

(1) The nature of the life insurance reserve (i.e., life, annuity, etc.);

(2) The mortality or morbidity table, assumed rate of interest, method used in computing or estimating such reserve on the old basis, and the amount of such reserve at the beginning and close of the taxable year computed on the old basis;

(3) The mortality or morbidity table, assumed rate of interest, method used in computing or estimating such reserve on the new basis, and the amount of such reserve at the close of the taxable year computed on the new basis;

(4) The deviation, if any, from recognized mortality or morbidity tables, or recognized methods of computation;

(5) The reasons for the change in basis of such reserve; and

(6) Whether such change in the reserve has been approved or accepted by the regulatory authorities of the State of domicile, and if so, a copy of the letter, certificate, or other evidence of such approval or acceptance.

(d) *Illustration of principles.* The provisions of section 801 relating to the percentage requirements for qualification as a life insurance company may be illustrated by the following example:

Example. The books of Y, an insurance company, selling life insurance, noncancellable health and accident insurance, and cancellable accident and health insurance, reflect (after adjustment under sections 806(a) and 801(d)) the following facts for the taxable year 1958:

	Jan. 1	Dec. 31	Mean of year
1. Life insurance reserves	$3,000	$5,000	$4,000
2. Unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable accident and health insurance not included in life insurance reserves	400	600	500
3. Unearned premiums, and unpaid losses (whether or not ascertained), on cancellable accident and health insurance	1,800	2,200	2,000
4. All other insurance reserves required by law	900	1,100	1,000
5. Total reserves			7,500

The rules provided by section 801 require that the sum of the mean of the year figures in items 1 and 2 comprise more than 50 percent of the mean of the year figure in item 5 for an insurance company to qualify as a life insurance company. Thus, Y would qualify as a life insurance company for the taxable year 1958 as the sum of the mean of the year figures in items 1 and 2 ($4,500) comprise 60 percent of the mean of the year figure in item 5 ($7,500).

§ 1.801–6 Adjustments in reserves for policy loans.

(a) *In General.* Section 801(d) provides that for purposes only of determining whether or not an insurance company is a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), the life insurance reserves (as defined in section 801(b) and § 1.801–4), and the total reserves (as defined in section 801(c) and paragraph (a) of § 1.801–5), shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained. Such reduction shall be made after any adjustments required under section 806(a) and § 1.806–3 have been made.

(b) *Policy loans defined.* The term "policy loans" includes loans made by the insurance company, by whatever name called, for which the reserve on a contract is the collateral.

(c) *Illustration of principles.* The provisions of section 801(d) and this section may be illustrated by the following example:

Example. The books of T, an insurance company, selling only life insurance and cancellable accident and health insurance, reflect (after adjustment under section 806(a)) the following facts for the taxable year 1958:

	Jan. 1	Dec. 31	Mean of year
1. Life insurance reserves	$1,000	$2,000	$1,500
2. Policy loans	80	360	450
3. Life insurance reserves less policy loans			1,050
4. Unearned premiums; and unpaid losses (whether or not ascertained), on cancellable accident and health insurance	900	1,600	1,250
5. Total reserves adjusted for policy loans (item 3 plus item 4)			2,300

As the rules provided by section 801 (a) and (d) require that the figure in item 3 ($1,050) be more than 50 percent of the mean of the year figure in item 5 ($2,300) for an insurance company to qualify as a life insurance company, T would not qualify as a life insurance company for the taxable year 1958.

§ 1.801–7 Variable annuities. [Reserved]

PAR. 3. Section 1.802(b) is amended to read as follows:

§ 1.802 Statutory provisions; life insurance companies; tax imposed; life insurance company taxable income defined.

SEC. 802. *Tax imposed*—(a) *Tax imposed*—(1) *In general.* A tax is hereby imposed for each taxable year beginning after December 31, 1957, on the life insurance company taxable income of every life insurance company. Such tax shall consist of—

(A) A normal tax on such income computed at the rate provided by section 11(b), and

(B) A surtax, on so much of such income as exceeds $25,000, computed at the rate provided by section 11(c).

(2) *Tax in case of capital gains.* If for any taxable year beginning after December 31, 1958, the net long-term capital gain of any life insurance company exceeds the net short-term capital loss, there is hereby imposed a tax equal to 25 percent of such excess.

(3) *Special rule for 1959 and 1960.* If any amount is subtracted from the policyholders surplus account under section 815(c)(3) for a taxable year beginning in 1959 or 1960 on account of a distribution in 1959 or 1960 (not including any distribution treated under section 815(d)(2)(B) as made in 1959 or 1960), the tax imposed for such taxable year on the life insurance company taxable income shall be the amount determined under paragraph (1) reduced by the following

percentage of the amount by which the tax imposed by paragraph (1) is (without regard to this paragraph) increased, on account of the amount so subtracted, by reason of section 802(b)(3)—

(A) In the case of a taxable year beginning in 1960, 66⅔ percent; and

(B) In the case of a taxable year beginning in 1960, 33⅓ percent.

The preceding sentence shall not apply with respect to any payment treated as a distribution under section 815(d)(3).

(b) *Life insurance company taxable income defined.* For purposes of this part, the term "life insurance company taxable income" means the sum of—

(1) The taxable investment income (as defined in section 804) or, if smaller, the gain from operations (as defined in section 809),

(2) If the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) The amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

[Sec. 802 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 38); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 115)]

PAR. 4. There are inserted immediately after § 1.802(b)–1 the following new sections:

§ 1.802–2 Taxable years affected.

Section 1.802(b)–1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.802–3 through 1.802–5 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.802–3 Tax imposed on life insurance companies.

(a) *In general.* For taxable years beginning after December 31, 1957, section 802(a)(1) imposes a tax on the life insurance company taxable income (as defined in section 802(b) and paragraph (a) of § 1.802–4) of every life insurance company (including a foreign life insurance company carrying on a life insurance business within the United States if with respect to its United States business it would qualify as a life insurance company under section 801(a)). The tax imposed by section 802(a)(1) is payable upon the basis of returns rendered by the life insurance companies liable thereto. See subchapter A, chapter 61 (section 6001 and following) of the Code.

(b) *Tax imposed.* The tax imposed by section 802(a)(1) consists of a normal tax and a surtax, computed at the regular corporate normal tax and surtax rates provided by section 11 (b) and (c), respectively. The normal tax and the surtax are both computed upon the life insurance company taxable income (as defined in section 802(b)) of the life insurance company for the taxable year.

(c) *Normal tax.* The normal tax is computed by applying to the life insurance company taxable income the regular corporate normal tax rate (as in effect for the taxable year) provided by section 11(b).

(d) *Surtax.* The surtax is computed by applying to the life insurance company taxable income, in excess of $25,000, the regular corporate surtax rate (as in effect for the taxable year) provided by section 11(c). However, in certain circumstances the $25,000 exemption from surtax may be disallowed in whole or in part. See sections 269 and 1551, and the regulations thereunder.

(e) *Special rule for 1959 and 1960.* See section 802(a)(3) and paragraph (a) of § 1.802–5 for a transitional rule applicable in certain cases in determining tax liability for the taxable years 1959 and 1960 by reason of the operation of section 802(b)(3).

(f) *Tax imposed in case of certain capital gains.* For taxable years beginning after December 31, 1958, if the net long-term capital gain (as defined in section 1222(7)) of any life insurance company exceeds its net short-term capital loss (as defined in section 1222(6)), section 802(a)(2) imposes a separate tax equal to 25 percent of such excess. This separate 25 percent tax rate applies whether or not there is life insurance company taxable income, taxable investment income, or a gain or loss from operations for the taxable year. For taxable years beginning after December 31, 1958, only the excess (if any) of net short-term capital gain (as defined in section 1222(5)) over net long-term capital loss (as defined in section 1222(8)) shall be taken into account in computing taxable investment income and gain or loss from operations. See sections 804(b) and 809(b). Except as modified by section 817 (rules relating to certain gains and losses), the general rules of the Code relating to gains and losses (such as the rules for determining the amount, characterization, and treatment thereof) shall apply with respect to life insurance companies.

(g) *Foreign life insurance companies.* Foreign life insurance companies not carrying on an insurance business within the United States are not taxable under section 802, but are taxable as other foreign corporations. See section 881.

(h) *Assessment and collection of tax imposed.* All provisions of the Internal Revenue Code and of the regulations in this part not inconsistent with the specific provisions of sections 801 to 820, inclusive, are applicable to the assessment and collection of the tax imposed by section 802(a), and life insurance companies are subject to the same penalties as are provided in the case of returns and payment of income tax by other corporations. The return shall be on Form 1120L.

(i) *Illustration of principles.* The provisions of section 802(a), other than paragraph (3) thereof, and this section may be illustrated by the following example:

Example. For the taxable year 1959, T, a life insurance company, has life insurance company taxable income of $300,000 (including $25,000 of net short-term capital gain) and $80,000 of net long-term capital gain. The tax of T under section 802(a) for 1959 is $170,500 ($90,000 normal tax, $60,500 surtax, and $20,000 capital gains tax) computed as follows:

COMPUTATION OF NORMAL TAX

Life insurance company taxable income	$300,000
Normal tax (30% of $300,000)	90,000

COMPUTATION OF SURTAX

Life insurance company taxable income	$300,000
Less: Exemption from surtax	25,000
Excess of life insurance company taxable income subject to surtax	275,000
Surtax (22% of $275,000)	60,500

COMPUTATION OF CAPITAL GAINS TAX

Excess of net long-term capital gain over net short-term capital loss	$80,000
Capital gains tax (25% of $80,000)	20,000

§ 1.802–4 Life insurance company taxable income.

(a) *Life insurance company taxable income defined.* Section 802(b) defines the term "life insurance company taxable income", for purposes of part I, subchapter L, chapter 1 of the Code, as the sum of—

(1) The taxable investment income (as defined in section 804), or, if smaller, the gain from operations (as defined in section 809),

(2) If the gain from operations exceeds the taxable investment income, an amount equal to 50 percent of such excess, plus

(3) The amount subtracted from the policyholders surplus account for the taxable year, as determined under section 815.

If for any taxable year there is a loss from operations (as defined in section 809(b)(2)), the amount taken into account under paragraphs (1) and (2) of section 802(b) and subparagraphs (1) and (2) of this paragraph shall be zero. However, even in such a case, there may still be an amount includible in life insurance company taxable income (and hence an amount subject to tax) by reason of an amount includible under section 802(b)(3) and subparagraph (3) of this paragraph.

(b) *Illustration of principles.* The provisions of section 802(b) and this section may be illustrated by the following examples:

Example (1). For the taxable year 1959, Y, a life insurance company, has taxable investment income of $250,000, and a gain from operations of $175,000. Y made no subtractions from the policyholders surplus account during such taxable year. For the taxable year 1959, Y has life insurance company taxable income of $175,000.

Example (2). The facts are the same as in example (1) except that for the taxable year 1959, Y has a gain from operations of $400,000. For the taxable year 1959, Y has life insurance company taxable income of $325,000, computed by adding taxable investment income ($250,000) and 50 percent ($75,000) of the amount ($150,000) by which the gain from operations ($400,000) exceeds the taxable investment income ($250,000).

Example (3). For the taxable year 1959, W, a life insurance company, has taxable investment income of zero (0) and a gain from operations of $90,000. W made no subtractions from the policyholders surplus account during such taxable year. For the taxable year 1959, W has life insurance company taxable income of $45,000, computed by adding taxable investment income (0) and 50 percent ($45,000) of the amount ($90,000) by which the gain from operations ($90,000) exceeds the taxable investment income (0).

Example (4). For the taxable year 1961, Z, a life insurance company, has taxable investment income of $100,000, a policyholders surplus account of $50,000 as of the beginning of such taxable year, a loss from operations (as defined in section 809(b)(2)) of $25,000, and subtractions from the policyholders surplus account in the amount of $20,000. For the taxable year 1961, Z has life insurance company taxable income of $20,000, as only the amount ($20,000) subtracted from the policyholders surplus account is taken into account.

§ 1.802–5 Special rule for 1959 and 1960.

(a) *Transitional rule.* Section 802(a)(3) provides a transitional rule for the determination of the tax liability of a life insurance company for the taxable years 1959 and 1960 by reason of the operation of section 802(b)(3). Except as limited by section 802(a)(3) and paragraph (b) of this section, any increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) is taken into account only to the extent of one-third and two-thirds for the taxable years 1959 and 1960, respectively. To the extent there is an increase in a life insurance company's tax that is attributable to the operation of section 802(b)(3) which is not taken into account for the taxable years 1959 and 1960 because of the transitional rule provided by section 802(a)(3) and this paragraph, such amounts shall be included in "other accounts" under section 815(a)(3). For taxable years commencing after December 31, 1960, the full amount of any increase in tax due to the operation of section 802(b)(3) shall be imposed without any further transitional reduction.

(b) *Limitations.* The transitional rule provided by section 802(a)(3) is limited solely to an increase in tax under section 802(b)(3) that is occasioned by the operation of section 815(c)(3) (relating to subtractions from the policyholders surplus account by reason of distributions to shareholders). This rule is further limited to actual distributions that are made by life insurance companies in 1959 or 1960 and does not extend to other distributions that are treated under section 815(d)(2)(B) as made by life insurance companies in 1959 or 1960. Furthermore, section 802(a)(3) shall not apply to any increase in tax under section 802(b)(3) that is attributable to other subtractions from the policyholders surplus account by reason of the operation of the special rules contained in section 815(d). However, the transitional rule provided by section 802(a)(3) does apply in the case of a distribution to which section 815(e)(1)(B)(ii) applies.

(c) *Illustration of principles.* The provisions of section 802(a)(3) and this section may be illustrated by the following example:

Example. For the taxable year 1960, X, a life insurance company, had taxable investment income of $9,000, gain from operations of $27,000, and subtractions from the policyholders surplus account of $22,000. Based upon these figures, X had life insurance company taxable income of $40,000 for 1960, of which $18,000 was includible under section 802(b)(1) and (2) and $22,000 under section 802(b)(3). Applying the tax imposed by section 802(a)(1) (at rates as in effect for 1960), without regard to the transitional rule of section 802(a)(3), X would have a tax liability of $15,300 ($40,000 multiplied by 52 percent, less $5,500). However, applying the transitional rule of section 802(a)(3), the actual tax liability of X, for 1960, would be $12,000, computed as follows:

(1)	Total tax liability (without regard to sec. 802(a)(3))	$15,300
(2)	Life insurance company taxable income	$40,000
(3)	Amount subtracted from policyholders surplus account	22,000
(4)	Item (2) less item (3)	18,000
(5)	Tax on amount includible under sec. 802(b)(1) and (2) (30% of $18,000)	5,400
(6)	Tax attributable to sec. 802(b)(3) (item (1) less item (5))	9,900
(7)	Less: 33⅓ percent of tax attributable to sec. 802(b)(3) (⅓ of $9,900)	3,300
(8)	Tax liability for 1960 after application of sec. 802(a)(3) (item (1) less item (7))	12,000

PAR. 5. Section 1.803 is amended to read as follows:

§ 1.803 Statutory provisions; life insurance companies; income and deductions.

SEC. 803. *Income and deductions*—(a) *Application of section.* The definitions and rules contained in this section shall apply only in the case of life insurance companies.

(b) *Gross investment income.* For purposes of this part, the term "gross investment income" means the sum of the following:

(1) The gross amount of income received or accrued from—

(A) Interest, dividends, rents, and royalties,

(B) The entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

(C) The alteration or termination of any instrument or agreement described in subparagraph (B).

(2) The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

In computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(c) *Net investment income defined.* The term "net investment income" means the gross investment income less the following deductions:

(1) *Tax-free interest.* The amount of interest received or accrued during the taxable year which under section 103 is excluded from gross income.

(2) *Investment expenses.* (A) Investment expenses paid or accrued during the taxable year.

(B) If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed—

(i) One-fourth of 1 percent of the mean of the book value of the invested assets held at the beginning and end of the taxable year, plus

(ii) One-fourth of the amount by which the net investment income (computed without any deduction for investment expenses allowed by this paragraph, or for tax-free interest allowed by paragraph (1)) exceeds 3¾ percent of the book value of the mean of the invested assets held at the beginning and end of the taxable year.

(3) *Real estate expenses.* Taxes (as provided in section 164), and other expenses, paid or accrued during the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(4) *Depreciation.* The depreciation deduction allowed by section 167.

(5) *Depletion.* The deduction allowed by section 611 (relating to depletion).

(6) *Trade or business deductions.* The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner; except that for purposes of this paragraph—

(A) There shall be excluded losses from—

(i) Sales or exchanges of capital assets,

(ii) Sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and

(iii) The compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

(B) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account.

(C) The deduction for net operating losses provided in section 172, and the special deductions for corporations provided in part VIII of subchapter B, shall not be allowed.

(d) *Rental value of real estate.* The deduction under subsection (c) (3) and (4) on account of any real estate owned and occupied in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this subsection) as the rental value of the space not so occupied bears to the rental value of the entire property.

(e) *Amortization of premium and accrual of discount.* The gross investment income, the deduction for wholly-exempt interest allowed by subsection (c)(1), and the deduction allowed by section 242 (relating to partially tax-exempt interest) shall each be decreased to reflect the appropriate amortization of premium and increased to reflect the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(1) In accordance with the method regularly employed by such company, if such method is reasonable, and

(2) In all other cases in accordance with regulations prescribed by the Secretary or his delegate.

[Sec. 803 as amended by Sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 39)]

PAR. 6. There are inserted immediately after § 1.803–6 the following new sections:

§ 1.803–7 Taxable years affected.

Sections 1.803–1 through 1.803–6 are applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments.

INVESTMENT INCOME

§ 1.804 Statutory provisions; life insurance companies; taxable investment income.

SEC. 804. *Taxable investment income*—(a) *In general*—(1) *Exclusion of policyholders' share of investment yield.* The policyholders' share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company shall not be included in taxable investment income. For purposes of the preceding sentence, the policyholders' share of any item shall be that percentage obtained by dividing the policy and other contract liability requirements by the investment yield; except that if the policy and other contract liability requirements exceed the investment yield, then the policyholders' share of any item shall be 100 percent.

(2) *Taxable investment income defined.* For purposes of this part, the taxable investment income for any taxable year shall be an amount (not less than zero) equal to the sum of the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), reduced by—

(A) The sum of—

(i) The life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) The deduction for partially tax-exempt interest provided by section 242 (as modified by paragraph (3)) computed with respect to the life insurance company's share of such interest, and

(iii) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by paragraph (5)) computed with respect to the life insurance company's share of the dividends received; and

(B) The small business deduction provided by paragraph (4).

For purposes of the preceding sentence, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of paragraph (1), equals 100 percent.

(3) *Partially tax-exempt interest.* For purposes of this part, the deduction allowed by section 242 shall be an amount which bears the same ratio to the amount determined under such section without regard to this paragraph as (A) the normal tax rate for the taxable year prescribed by section 11, bears to (B) the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11.

(4) *Small business deduction.* For purposes of this part, the small business deduction is an amount equal to 10 percent of the investment yield for the taxable year. The deduction under this paragraph shall not exceed $25,000.

(5) *Application of section 246(b).* In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of this subsection, the limit on the aggregate amount of the deductions allowed by sections 243 (a), 244, and 245 shall be 85 percent of the taxable investment income computed without regard to the deductions allowed by such sections.

(6) *Exception.* If it is established in any case that the application of the definition of taxable investment income contained in paragraph (2) results in the imposition of tax on—

(A) Any interest which under section 103 is excluded from gross income,

(B) Any amount of interest which under section 242 (as modified by paragraph (3)) is allowable as a deduction, or

(C) Any amount of dividends received which under sections 243, 244, and 245 (as modified by paragraph (5)) is allowable as a deduction.

Adjustment shall be made to the extent necessary to prevent such imposition.

(b) *Gross investment income.* For purposes of this part, the term "gross investment income" means the sum of the following:

(1) *Interest, etc.* The gross amount of income from—

(A) Interest, dividends, rents, and royalties,

(B) The entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

(C) The alteration or termination of any instrument or agreement described in subparagraph (B).

(2) *Short-term capital gain.* In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) *Trade or business income.* The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(c) *Investment yield defined.* For purposes of this part, the term "investment yield" means the gross investment income less the following deductions—

(1) *Investment expenses.* Investment expenses for the taxable year. If any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed the sum of—

(A) One-fourth of one percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year,

(B) The amount of the mortgage service fees for the taxable year, plus

(C) Whichever of the following is the greater:

(i) One-fourth of the amount by which the investment yield (computed without any deduction for investment expenses allowed by this paragraph) exceeds 3¾ percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year, reduced by the amount described in subparagraph (B), or

(ii) One-fourth of one percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees for the taxable year.

(2) *Real estate expenses.* The amount of taxes (as provided in section 164), and other expenses, for the taxable year exclusively on or with respect to the real estate owned by the company. No deduction shall be allowed under this paragraph for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property.

(3) *Depreciation.* The deduction allowed by section 167. The deduction under this paragraph and paragraph (2) on account of any real estate owned and occupied for insurance purposes in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this sentence) as the rental value of the space not so occupied bears to the rental value of the entire property.

(4) *Depletion.* The deduction allowed by section 611 (relating to depletion).

(5) *Trade or business deductions.* The deductions allowed by this subtitle (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner; except that in computing the deduction under this paragraph—

(A) There shall be excluded losses—

(i) From (or considered as from) sales or exchanges of capital assets,

(ii) From sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and

(iii) From the compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

(B) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account.

(C) The deduction for net operating losses provided in section 172, and the special deductions for corporations provided in part VIII of subchapter B, shall not be allowed.

[Sec. 804 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 41); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 115)]

§ 1.804–1 Taxable years affected.

Sections 1.804–2 through 1.804–4 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.804–2 Taxable investment income.

(a) *In general.* Section 804 provides the rules for determining the taxable investment income of a life insurance company, which amount is necessary to determine life insurance company taxable income. In order to determine taxable investment income, a life insurance company must first determine its gross investment income (as defined in section 804(b) and § 1.804–3). After making such determination, the next step is to determine its investment yield (as defined in section 804(c) and § 1.804–4). After determining its investment yield, a company shall then determine the policyholders' share of each and every item of its investment yield (as computed under section 804(a)(1) and paragraph (b) of this section), as this share is excluded from taxable investment income (as defined in section 804(a)(2) and paragraph (d) of this section). Thus, only the life insurance company's share of the items comprising investment yield (less certain reductions) shall be taken into account in computing taxable investment income.

(b) *Exclusion of policyholders' share of investment yield.* Section 804(a)(1) provides that the policyholders' share

of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company shall not be included in taxable investment income. For this purpose, the percentage used in determining the policyholders' share of each of these items comprising the investment yield shall be determined by dividing the policy and other contract liability requirements (as defined in section 805(a) and paragraph (b) of § 1.805–4) by the investment yield. The percentage thus obtained is then applied to each and every item of investment yield shall be that the policyholders' share of each and every item of investment yield may be excluded from taxable investment income. However, if in any case the policy and other contract liability requirements exceed the investment yield, then the policyholders' share of any item shall be 100 percent.

(c) *Computation of life insurance company's share of investment yield.* Section 804(a)(2) provides that the percentage used in determining the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be the percentage obtained by subtracting the percentage obtained under paragraph (b) of this section from 100 percent. Only the life insurance company's share of the items comprising investment yield (less certain reductions specified in section 804(a)(2) and paragraph (d)(1) of this section) shall be taken into account in computing taxable investment income. For example, if the policyholders' percentage (as determined under section 804(a)(1) and paragraph (b) of this section) is 80 percent, then the life insurance company's share is 20 percent (100 percent minus 80 percent). In such a case, if the amount of a particular item is $1,000, then the life insurance company's share of such item included in determining taxable investment income is $200 ($1,000 multiplied by 20 percent) and the policyholders' share of such item (which is excluded from taxable investment income) is $800 ($1,000 multiplied by 80 percent).

(d) *Taxable investment income of a life insurance company*—(1) *Definition.* Section 804(a)(2) defines the term "taxable investment income" for any taxable year, for purposes of part I, subchapter L, chapter 1 of the Code, as an amount (not less than zero) equal to the sum of the life insurance company's share (as determined under paragraph (c) of this section) of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), reduced by the sum of—

(i) The life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3) and subparagraph (2)(i) of this paragraph) computed with respect to the life insurance company's share of such interest,

(iii) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 804(a)(5) and subparagraph (2)(ii) of this paragraph) computed with respect to the life insurance company's share of the dividends received, and

(iv) The small business deduction provided by section 804(a)(4). For purposes of part I, such small business deduction shall be an amount equal to 10 percent of the investment yield for the taxable year (but not to exceed $25,000).

(2) *Modifications*—(i) *Partially tax-exempt interest.* For purposes of part I, the deduction allowed by section 242 (relating to partially tax-exempt interest) shall be determined by applying to the life insurance company's share of such interest the ratio which the normal tax rate (as prescribed by section 11) for the taxable year bears to the sum of the normal tax rate and the surtax rate (as prescribed by section 11) for the taxable year. For example, if for the taxable year 1959 the life insurance company's share of partially tax-exempt interest is $104, the deduction provided by section 804(a)(2)(A)(ii) (as modified by this subdivision) is $60 (thirty fifty-seconds of such partially tax-exempt interest).

(ii) *Application of section 246(b).* The sum of the deductions allowed by sections 243(a) (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock), and 245 (relating to dividends received from certain foreign corporations) shall be limited to 85 percent of the taxable investment income (as defined in subparagraph (1) of this paragraph) of the company. The taxable investment income of the company for this purpose shall be computed without regard to the deductions provided in sections 243(a), 244, and 245.

(e) *Illustration of principles.* The provisions of section 804(a)(1) through (5) and paragraphs (a) through (d) of this section may be illustrated by the following example:

Example. For the taxable year 1958, R, a life insurance company, had investment yield of $1,000,000, including $200,000 of dividends received from domestic corporations subject to taxation under chapter 1 of the Code, $16,800 of wholly tax-exempt interest, and $83,200 of partially tax-exempt interest. For such taxable year, the policyholders' share of each and every item of investment yield was 75 percent and the company's share of each and every item of investment yield was 25 percent. Based upon these figures, R had taxable investment income of $166,300 for the taxable year 1958, computed as follows:

	Col. 1 Total	Col. 2 (75%× Col. 1) Policyholders' share	Col. 3 (25%× Col. 1) Company's share
Interest wholly tax-exempt	$16,800	$12,600	$4,200
Interest partially tax-exempt	83,200	62,400	20,800
Dividends received	200,000	150,000	50,000
Other items of investment yield	700,000	525,000	175,000
Investment yield	1,000,000	750,000	250,000
Less:			
Company's share of interest wholly tax-exempt			$4,200
30/52 of company's share of interest partially tax-exempt (30/52×$20,800)			12,000
85% of company's share of dividends received (but not to exceed 85% of taxable investment income computed without regard to this deduction) (85%×$50,000)			42,500
Small business deduction (10% of investment yield, not to exceed $25,000)			25,000
Taxable investment income			166,300

(f) *Exception.* (1) In accordance with section 804(a)(6), if it is established in any case to the satisfaction of the Commissioner, or by a determination of The Tax Court of the United States, or of any other court of competent jurisdiction, which has become final, that the application of the definition of taxable investment income contained in section 804(a)(2) results in the imposition of tax on—

(i) Any interest which under section 103 is excluded from gross income,

(ii) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(iii) Any amount of dividends received which under sections 243, 244, and 245 (as modified by section 804(a)(5)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(2) For the date upon which a decision by the Tax Court becomes final, see section 7481. For the date upon which a judgment of any other court becomes final, see paragraph (c) of § 1.1313(a)–1.

§ 1.804–3 Gross investment income of a life insurance company.

(a) *Gross investment income defined.* For purposes of part I, subchapter L, chapter 1 of the Code, section 804(b) defines the term "gross investment income" of a life insurance company as the sum of the following:

(1) The gross amount of income from—

(i) Interest (including tax-exempt interest and partially tax-exempt inter-

est), as described in § 1.61–7. Interest shall be adjusted for amortization of premium and accrual of discount in accordance with the rules prescribed in section 818(b) and the regulations thereunder.

(ii) Dividends, as described in § 1.61–9.

(iii) Rents and royalties, as described in § 1.61–8.

(iv) The entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company may derive interest, rents, or royalties.

(v) The alteration or termination of any instrument or agreement described in subdivision (iv) of this subparagraph.

For example, gross investment income includes amounts received as commitment fees, as a bonus for the entering into of a lease, or as a penalty for the early payment of a mortgage.

(2) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net short-term capital gain (as defined in section 1222(5)) exceeds the net long-term capital loss (as defined in section 1222(8)), and

(3) The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner.

(b) *No double inclusion of income.* In computing the gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner, any item described in section 804(b)(1) and paragraph (a)(1) of this section shall not be considered as gross income arising from the conduct of such trade or business or partnership, but shall be taken into account under section 804(b)(1) and paragraph (a)(1) of this section.

(c) *Exclusion of net long-term capital gains.* Any net long-term capital gains from the sale or exchange of a capital asset (or any gain considered to be from the sale or exchange of a capital asset under applicable law) shall be excluded from the gross investment income of a life insurance company. However, section 804(b)(2) and paragraph (a)(2) of this section provide that the amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss shall be included in the gross investment income of a life insurance company.

§ 1.804–4 Investment yield of a life insurance company.

(a) *Investment yield defined.* Section 804(c) defines the term "investment yield" of a life insurance company for purposes of part I, subchapter L, chapter 1 of the Code. Investment yield means gross investment income (as defined in section 804(b) and paragraph (a) of § 1.804–3), less the deductions provided in section 804(c) and paragraph (b) of this section for investment expenses, real estate expenses, depreciation, depletion, and trade or business (other than an insurance business) expenses. However, such expenses are deductible only to the extent that they relate to investment income and the deduction of such expenses is not disallowed by any other provision of subtitle A of the Code. For example, investment expenses are not allowable unless they are ordinary and necessary expenses within the meaning of section 162, and under section 265, no deduction is allowable for interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under chapter 1 of the Code. A deduction shall not be permitted with respect to the same item more than once.

(b) *Deductions from gross investment income—(1) Investment expenses.* (i) Section 804(c)(1) provides for the deduction of investment expenses by a life insurance company in determining investment yield. "Investment expenses" are those expenses of the taxable year which are fairly chargeable against gross investment income. For example, investment expenses include salaries and expenses paid exclusively for work in looking after investments, and amounts expended for printing, stationery, postage, and stenographic work incident to the collection of interest. An itemized schedule of such expenses shall be attached to the return.

(ii) Any assignment of general expenses to the investment department of a life insurance company for which a deduction is claimed under section 804(c)(1) subjects the entire deduction for investment expenses to the limitation provided in that section and subdivision (iii) of this subparagraph. As used in section 804(c)(1), the term "general expenses" means any expense paid or incurred for the benefit of more than one department of the company rather than for the benefit of a particular department thereof. For example, if real estate taxes, depreciation, or other expenses attributable to office space owned by the company and utilized by it in connection with its investment function are assigned to investment expenses, such items shall be deductible as general expenses assigned to or included in investment expenses and as such shall be subject to the limitation of section 804(c)(1) and subdivision (iii) of this subparagraph. Similarly, if an expense, such as a salary, is attributable to more than one department, including the investment department, such expense may be properly allocated among these departments. If such expenses are allocated, the amount properly allocable to the investment department shall be deductible as general expenses assigned to or included in investment expenses and as such shall be subject to the limitation of section 804(c)(1) and subdivision (iii) of this subparagraph. If general expenses are in part assigned to or included in investment expenses, the maximum allowance (as determined under section 804(c)(1)) shall not be granted unless it is shown to the satisfaction of the district director that such allowance is justified by a reasonable assignment of actual expenses. The accounting procedure employed is not conclusive as to whether any assignment has in fact been made. Investment expenses do not include Federal income and excess profits taxes, if any. In cases where the investment expenses allowable as deductions under section 804(c)(1) exceed the limitation contained therein, see section 809(d)(9).

(iii) If any general expenses are in part assigned to or included in investment expenses, the total deduction under section 804(c)(1) shall not exceed the sum of—

(*a*) One-fourth of one percent of the mean of the assets (as defined in section 805(b)(4) and paragraph (a)(4) of § 1.805–5) held at the beginning and end of the taxable year,

(*b*) The amount of the mortgage service fees for the taxable year, plus

(c) Whichever of the following is the greater:

(*1*) One-fourth of the amount by which the investment yield (computed without any deduction for investment expenses allowed by section 804(c)(1)) exceeds 3¾ percent of the mean of the assets (as defined in section 805(b)(4)) held at the beginning and end of the taxable year, reduced by the amount of the mortgage service fees for the taxable year, or

(*2*) One-fourth of one percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees for the taxable year. For purposes of the preceding sentence, the term "mortgages held" refers to mortgages, and other similar liens, on real property which are held by the company as security for "mortgage loans".

For purposes of section 804(c)(1)(B) and (C)(*1*) and (*b*) and (c)(*1*) of this subdivision, the term "mortgage service fees" includes mortgage origination fees. Such mortgage origination fees shall be amortized in accordance with the rules prescribed in section 818(b) and the regulations thereunder.

(iv) The operation of the limitation contained in section 804(c)(1) and subdivision (iii) of this subparagraph may be illustrated by the following example:

Example. The books of S, a life insurance company, reflect the following items for the taxable year 1958:

Investment expenses (including general expenses assigned to or included in investment expenses)	$125,000
Mean of the assets held at the beginning and end of the taxable year	20,000,000
Mortgage service fees	25,000
Investment yield computed without regard to investment expenses	1,200,000
Mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees	6,000,000

In order to determine the limitation on investment expenses, S would make up the following schedule:

1. Mean of the assets held at the beginning and end of the taxable year	$20,000,000
2. One-fourth of 1 percent of item 1 (¼ of 1% of $20,000,000)	50,000
3. Mortgage service fees	$25,000
4. The greater of (a) or (b):	
(a)(i) Investment yield computed without regard to investment expenses	$1,200,000
(ii) Three and three-fourths percent of item 1 (3¾% × $20,000,000)	750,000
(iii) Excess of (i) over (ii) ($1,200,000 minus $750,000)	450,000
(iv) One-fourth of (iii) (¼ × $450,000)	112,500
(v) Less: Mortgage service fees (item 3)	25,000
(vi) Excess of (iv) over (v) ($112,500 minus $25,000)	$87,500
(b) One-fourth of 1 percent of the mean of the value of mortgages held at the beginning and end of the taxable year for which there are no mortgage service fees (¼ of 1% × $6,000,000)	15,000
5. The greater of item 4 (a) or (b)	$87,500
6. Limitation on investment expenses (items 2, 3, and 4(a))	162,500

As the investment expenses (including general expenses assigned to or included in investment expenses) of S for the taxable year 1958 ($125,000) do not exceed the limitation on such expenses ($162,500), S would be entitled to deduct the entire $125,000 under section 804(c)(1).

(2) *Real estate expenses and taxes.* The deduction for expenses and taxes under section 804(c)(2) includes taxes (as defined in section 164) and other expenses for the taxable year exclusively on or with respect to real estate owned by the company. For example, no deduction shall be allowed under section 804(c)(2) for amounts allowed as a deduction under section 164(e) (relating to taxes of shareholders paid by a corporation). No deduction shall be allowed under section 804(c)(2) for any amount paid out for new buildings, or for permanent improvements or betterments made to increase the value of any property. An itemized schedule of such taxes and expenses shall be attached to the return. See subparagraph (4) of this paragraph for limitation of such deduction.

(3) *Depreciation.* The deduction allowed for depreciation is, except as provided in section 804(c)(3) and subparagraph (4) of this paragraph, identical to that allowed other corporations by section 167. Such amount allowed as a deduction from gross investment income in determining investment yield is limited to depreciation sustained on the property used, and to the extent used, for the purpose of producing the income specified in section 804(b). An election with respect to any of the methods of depreciation provided in section 167 shall not be affected in any way by the enactment of the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112). However, in appropriate cases, the method of depreciation may be changed with the consent of the Commissioner. See section 167(e) and § 1.167(e)–1. See subparagraph (4) of this paragraph for limitation of such deduction. See section 809(d)(12) and the regulations thereunder for the treatment of depreciable property used in the operation of a life insurance business.

(4) *Limitation on deductions allowable under section 804 (c)(2) and (c)(3).* Section 804(c)(3) provides that the amount allowable as a deduction for taxes, expenses, and depreciation on or with respect to any real estate owned and occupied for insurance purposes in whole or in part by a life insurance company shall be limited to an amount which bears the same ratio to such deduction (computed without regard to this limitation) as the rental value of the space not so occupied bears to the rental value of the entire property. For example, T, a life insurance company, owns a twenty-story downtown home office building. The rental value of each floor of the building is identical. T rents nine floors to various tenants, one floor is utilized by it in operating its investment department, and the remaining ten floors are occupied by it in carrying on its insurance business. Since floor space equivalent to eleven-twentieths, or 55 percent, of the rental value of the entire property is owned and occupied for insurance purposes by the company, the deductions allowable under section 804(c)(2) and (3) for taxes, depreciation, and other real estate expenses shall be limited to nine-twentieths, or 45 percent, of the taxes, depreciation, and other real estate expenses on account of the entire property. However, the portion of such allowable deductions attributable to the operation of the investment department (one-twentieth, or 5 percent) may be deductible as general expenses assigned to or included in investment expenses and as such shall be subject to the limitations of section 804(c)(1). Where a deduction is claimed as provided in this section, the parts of the property occupied and the parts not occupied by the company in carrying on its insurance business, together with the respective rental values thereof, must be shown in a schedule accompanying the return.

(5) *Depletion.* The deduction for depletion (and depreciation) provided in section 804(c)(4) is identical to that allowed other corporations by section 611. The amount allowed by section 611 in the case of a life insurance company is limited to depletion (and depreciation) sustained on the property used, and to the extent used, for the purpose of producing the income specified in section 804(b). See section 611 and § 1.611–5 for special rules relating to the depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber.

(6) *Trade or business deductions.* (i) Under section 804(c)(5), the deductions allowed by subtitle A of the Code (without regard to this part) which are attributable to any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner are, subject to the limitations in subdivisions (ii), (iii), and (iv) of this subparagraph, allowable as deductions from the gross investment income of a life insurance company in determining its investment yield. Such deductions are allowable, however, only to the extent that they are attributable to the production of income which is included in the life insurance company's gross investment income by reason of section 804(b)(3). However, since any interest, dividends, rents, and royalties received by any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner, is included in the life insurance company's gross investment income by reason of section 804(b)(1) and paragraph (b) of § 1.804–3, any expenses fairly chargeable against the production of such income may be deductible under section 804(c)(1), (2), (3), or (4). The allowable deductions may exceed the gross income from such business.

(ii) In computing the deductions under section 804(c)(5), there shall be excluded losses—

(*a*) From (or considered as from) sales or exchanges of capital assets,

(*b*) From sales or exchanges of property used in the trade or business (as defined in section 1231(b)), and

(c) From the compulsory or involuntary conversion (as a result of destruction, in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business (as so defined).

(iii) Any item, to the extent attributable to the carrying on of the insurance business, shall not be taken into account. For example, if a life insurance company operates a radio station primarily to advertise its own insurance services, a portion of the expenses of the radio station shall not be allowed as a deduction. The portion disallowed shall be an amount which bears the same ratio to the total expenses of the station as the value of advertising furnished to the insurance company bears to the total value of services rendered by the station.

(iv) The deduction for net operating losses provided in section 172, and the special deductions for corporations provided in part VIII, subchapter B, chapter 1 of the Code, shall not be allowed.

PAR. 7. Section 1.805 is amended to read as follows:

§ 1.805 Statutory provisions; life insurance companies; policy and other contract liability requirements.

SEC. 805. *Policy and other contract liability requirements*—(a) *In general.* For purposes of this part, the term "policy and other contract liability requirements" means, for any taxable year, the sum of—

(1) The adjusted life insurance reserves, multiplied by the adjusted reserves rate,

(2) The mean of the pension plan reserves at the beginning and end of the taxable year, multiplied by the current earnings rate, and

(3) The interest paid.

(b) *Adjusted reserves rate and earnings rates*—(1) *Adjusted reserves rate.* For purposes of this part, the adjusted reserves rate for any taxable year is the average earnings rate or, if lower, the current earnings rate.

(2) *Current earnings rate.* For purposes of this part, the current earnings rate for any taxable year is the amount determined by dividing—

(A) The taxpayer's investment yield for such taxable year, by

(B) The mean of the taxpayer's assets at the beginning and end of the taxable year.

(3) *Average earnings rate*—(A) *In general.* For purposes of this part, the average earnings rate for any taxable year is the average of the current earnings rates for such taxable year and for each of the 4 taxable years immediately preceding such taxable year (excluding any of such 4 taxable years for which the taxpayer was not an insurance company).

(B) *Special rules.* For purposes of subparagraph (A)—

(i) The current earnings rate for any taxable year beginning before January 1, 1958, shall be determined as if this part (as in effect for 1958) and section 381(c)(22) applied to such taxable year, and

(ii) The current earnings rate for any taxable year of any company which, for such year, is an insurance company (but not a life insurance company) shall be determined as if this part applied to such company for such year.

(4) *Assets.* For purposes of this part, the term "assets" means all assets of the company (including nonadmitted assets), other than real and personal property (excluding money) used by it in carrying on an insurance trade or business. For purposes of this paragraph, the amount attributable to—

(A) Real property and stock shall be the fair market value thereof, and

(B) Any other asset shall be the adjusted basis (determined without regard to fair market value on December 31, 1958) of such asset for purposes of determining gain on sale or other disposition.

(c) *Adjusted life insurance reserves*—(1) *Adjusted life insurance reserves defined.* For purposes of this part, the term "adjusted life insurance reserves" means—

(A) The mean of the life insurance reserves (as defined in section 801(b)), other than pension plan reserves, at the beginning and end of the taxable year, multiplied by

(B) That percentage which equals 100 percent—

(i) Increased by that percentage which is 10 times the average rate of interest assumed by the taxpayer in calculating such reserves, and

(ii) Reduced by that percentage which is 10 times the adjusted reserves rate.

(2) *Average interest rate assumed.* For purposes of this part, the average rate of interest assumed in calculating reserves shall be computed—

(A) By multiplying each assumed rate of interest by the means of the amounts of such reserves computed at that rate at the beginning and end of the taxable year, and

(B) By dividing (i) the sum of the products ascertained under subparagraph (A), by (ii) the mean of the total of such reserves at the beginning and end of the taxable year.

(d) *Pension plan reserves*—(1) *Pension plan reserves defined.* For purposes of this part, the term "pension plan reserves" means that portion of the life insurance reserves which is allocable to contracts—

(A) Purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be (i) trusts described in section 401(a) and exempt from tax under section 501(a), or (ii) trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws;

(B) Purchased under contracts entered into under plans which (as of the time the contracts were entered into) were deemed to be plans meeting the requirements of section 401(a) (3), (4), (5), and (6), or the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1939;

(C) Provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of section 401(a) (3), (4), (5), and (6); or

(D) Purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws.

(2) *Special transitional rule.* For purposes of this part, the amount taken into account as pension plan reserves shall be—

(A) In the case of a taxable year beginning after December 31, 1957, and before January 1, 1959, zero;

(B) In the case of a taxable year beginning after December 31, 1958, and before January 1, 1960, 33⅓ percent of the amount thereof (determined without regard to this paragraph);

(C) In the case of a taxable year beginning after December 31, 1959, and before January 1, 1961, 66⅔ percent of the amount thereof (determined without regard to this paragraph); and

(D) In the case of a taxable year beginning after December 31, 1960, 100 percent of the amount thereof.

(e) *Interest paid.* For purposes of this part, the interest paid for any taxable year is the sum of—

(1) *Interest on indebtedness.* All interest for the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from taxation under this chapter.

(2) *Amounts in the nature of interest.* All amounts in the nature of interest, whether or not guaranteed, for the taxable year on insurance or annuity contracts (including contracts supplementary thereto) which do not involve, at the time of accrual, life, health, or accident contingencies.

(3) *Discount on prepaid premiums.* All amounts accrued for the taxable year for discounts in the nature of interest, whether or not guaranteed, on premiums or other consideration paid in advance on insurance or annuity contracts.

(4) *Interest on certain special contingency reserves.* Interest for the taxable year on special contingency reserves established pursuant to section 8(d) of the Federal Employees' Group Life Insurance Act of 1954 (5 U.S.C., 2097(d)).

[Sec. 805 as amended by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 43); sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 118)]

PAR. 8. There are inserted immediately after § 1.805–2 the following new sections:

§ 1.805–3 Taxable years affected.

Sections 1.805–1 and 1.805–2 are applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.805–4 through 1.805–8, except as otherwise provided therein, are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.805–4 Policy and other contract liability requirements.

(a) *Introduction.* Section 805 relates to the determination of the policy and other contract liability requirements of a life insurance company. This determination furnishes the numerator of a fraction to be used in determining the policyholders' share of each and every item of the investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received). The denominator of this fraction is the investment yield (as determined under section 804(c) and § 1.804–4). The percentage obtained from this fraction is used in determining the policyholders' share of each and every item of the investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), which shall not be included in taxable investment income (as determined under section 804(a)(2) and paragraph (d) of § 1.804–2).

(b) *Policy and other contract liability requirements defined.* Section 805(a) defines the term "policy and other contract liability requirements" of a life insurance company, for any taxable year, for purposes of part I, subchapter L, chapter 1 of the Code, as the sum of—

(1) The adjusted life insurance reserves (as defined in section 805(c)(1)), multiplied by the adjusted reserves rate (as defined in section 805(b)(1)),

(2) The mean of the pension plan reserves (as defined in section 805(d)(1)) at the beginning and end of the taxable year, multiplied by the current earnings rate (as defined in section 805(b)(2)), and

(3) The interest paid (as defined in section 805(e)).

§ 1.805–5 Adjusted reserves rate and earnings rates.

(a) *In general.* For purposes of part I, subchapter L, chapter 1 of the Code, section 805(b) defines the terms "adjusted reserves rate", "current earnings rate", "average earnings rate", and "assets". These terms, with such meaning ascribed to them, are to be used in computing the policy and other contract liability requirements (as determined under section 805(a)). For the meaning of the term "current earnings rate" in the case of variable annuity contracts, see section 801(g)(3). The terms "adjusted reserves rate", "current earnings rate", "average earnings rate", and "assets" are defined as follows:

(1) *Adjusted reserves rate.* For any taxable year, the term "adjusted reserves rate" means the average earnings rate (as defined in section 805(b)(3) and subparagraph (3) of this paragraph), or, if lower, the current earnings rate (as defined in section 805(b)(2) and subparagraph (2) of this paragraph).

(2) *Current earnings rate.* For any taxable year, the term "current earnings rate" means the amount determined by dividing—

(i) The taxpayer's investment yield (as determined under section 804(c)) for such taxable year, by

(ii) The mean of the taxpayer's assets (as defined in section 805(b)(4) and subparagraph (4) of this paragraph) at the beginning and end of such taxable year.

(3) *Average earnings rate*—(i) *Definition.* For any taxable year, the term "average earnings rate" means the average of the current earnings rate for such taxable year and the current earnings rate for each of the 4 taxable years immediately preceding such taxable year (excluding any of such 4 taxable years for which the taxpayer was not an insurance company).

(ii) *Special rules.* For purposes of computing the 5-year average earnings rate under section 805(b)(3)(A) and subdivision (i) of this subparagraph, the following special rules are to be applied—

(a) The current earnings rate for any taxable year beginning before January 1, 1958, shall be determined as if part I (as in effect for 1958) and section 381(c)(22) applied to such taxable year;

(b) The current earnings rate for any taxable year of any company which, for such year, is an insurance company (but not a life insurance company as defined in section 801(a)) shall be determined as if part I applied to such company for such year; and

(c) A fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) shall be a preceding taxable year for the purpose of determining the first, second, third, or fourth preceding taxable year. For the determination of the current earnings rate for such short taxable year, see section 818(d) and the regulations thereunder.

(4) *Assets*—(i) *Definition.* Section 805(b)(4) defines the term "assets" as meaning all assets of the life insurance company (including nonadmitted assets), other than real and personal property (excluding money) used by the life insurance company in carrying on an insurance trade or business. For purposes of the preceding sentence, the term "money" includes cash, currency, bank deposits (including time deposits) whether or not interest bearing, share accounts in savings and loan associations, checks (whether or not certified), drafts, money orders, and any other item of similar nature. The following items are the only ones to be excluded from the term "assets" as being considered "used by the life insurance company in carrying on an insurance trade or business":

(a) The home office and branch office buildings (including land) owned and occupied by the life insurance company;

(b) Furniture and equipment owned by the life insurance company and used in the home office and branch office buildings occupied by the life insurance company;

(c) Supplies, stationery, and printed matter used in the operations conducted in the home office and branch office buildings occupied by the life insurance company where for tax purposes such items are inventoried; and

(d) Automobiles and other depreciable personal property used in connection with the operations conducted in the home office and branch office buildings occupied by the life insurance company.

However, if any item, or portion thereof, of property falls within one of the above-listed groups and also is an "investment asset" (an asset from which gross investment income, as defined in section 804(b), is derived), such item, or portion thereof, shall not be excluded from the term "assets". Any item, or portion thereof, excluded from the definition of the term "assets" shall not be taken into account in computing the denominator used in determining the current earnings rate under section 805(b)(2) and subparagraph (2) of this paragraph. Conversely, any item or portion thereof, included in the term "assets" shall be taken into account in computing the denominator used in determining the current earnings rate.

(ii) *Illustration of principles.* The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (1). Included in the statement of assets of P, a life insurance company, are the following items: Bonds; stocks; mortgages; home office and branch office buildings owned and wholly occupied by the company; furniture and equipment owned by the company and used in the home office and branch office buildings occupied by the company; agents' debit balances; premiums deferred and uncollected and premiums due and unpaid; bank deposits (including time deposits); and share accounts in savings and loan associations. For purposes of section 805(b)(4) and this subparagraph, the home office and branch office buildings owned and wholly occupied by the company, and the furniture and equipment owned by the company and used by it in connection with the operations conducted in the home office and branch office buildings occupied by the company, shall be excluded from the term "assets" since such items are the only ones considered as being used by P in carrying on an insurance trade or business. Accordingly, since bonds, stocks, mortgages, agents' debit balances, premiums deferred and uncollected and premiums due and unpaid, bank deposits (including time deposits), and share accounts in savings and loan associations are not considered as being used by P in carrying on an insurance trade or business, they are included within the term "assets" and, therefore, shall be taken into account by P in determining its current earnings rate.

Example (2). M, a life insurance company, owns an eleven-story downtown home office building, the ground floor of which it rents to various tenants and the remaining ten floors of which are occupied by it in carrying on its insurance business and operating its investment department. Under the provisions of section 805(b)(4) and this subparagraph, the ten floors occupied by M in carrying on its insurance business and operating its investment department shall be excluded from the term "assets". However, the ground floor rented to various tenants is an "investment asset" and as such shall be included within the term "assets" and, therefore, shall be taken into account by M in determining its current earnings rate.

(iii) *Valuation of assets.* For purposes of section 805(b)(4)—

(a) The amount attributable to real property and to stock shall be the fair market value thereof, and

(b) The amount attributable to any other asset shall be the adjusted basis (determined without regard to fair market value on December 31, 1958) of such asset for purposes of determining gain on sale or other disposition.

In applying the provisions of section 805(b)(4) and this subdivision, the fair market value or the adjusted basis (as the case may be) shall not be reduced by the amount of any incumbrance, lien, mortgage, etc.

(iv) *Special rules.* (a) All items included within the term "assets" shall be valued at the beginning and end of the taxable year. If, during the taxable year, there is a change in life insurance reserves (either increases or decreases) attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such reserves, the mean of the assets shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in such transfer. See section 806(a) and paragraph (b)(3) and (4) of § 1.806–3.

(b) In the case of real property, under appropriate circumstances the fair market value may be determined on the basis of a reasonable approximation of fair market value as shown to the satisfaction of the district director, rather than on the basis of an annual reappraisal.

(c) In determining the fair market value of stocks, any reasonable valuation method may be used. Such methods include the valuation methods described in § 20.2031–2 of this chapter (Estate Tax Regulations).

(b) *Illustration of principles.* The provisions of section 805(b) and paragraph (a) of this section may be illustrated by the following examples. For purposes of these examples, it is assumed that all computations have been carried out to a sufficient number of decimal places to insure substantial accuracy and to eliminate any significant error in the resulting tax liability.

Example (1). For the taxable year 1958, T, a life insurance company (as defined in section 801(a)) organized in 1951, had the following current earnings rate history:

Taxable year:	Current earnings rate
1951	3.1
1952	3.3
1953	3.2
1954	3.3
1955	3.5
1956	3.8
1957	3.6
1958	3.8

For the taxable year 1958, T would have an average earnings rate of 3.6 percent, computed by taking into account only the current earnings rates for the taxable year 1958 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3.6 percent since the average earnings rate of 3.6 percent is lower than the 1958 current earnings rate of 3.8 percent.

Example (2). The facts are the same as in example (1) except that the taxable year in issue is 1959, and the current earnings rate for such taxable year was 2.8 percent. For the taxable year 1959, T would have an

average earnings rate of 3.5 percent, computed by taking into account only the current earnings rates for the taxable year 1959 and each of the 4 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 2.8 percent since the current earnings rate of 2.8 percent for 1959 is lower than the average earnings rate of 3.5 percent.

Example (3). For the taxable year 1959, P, a life insurance company (as defined in section 801(a)) organized in 1957, had the following current earnings rate history:

Taxable year:	Current earnings rate
1957	3.1
1958	3.3
1959	3.8

For the taxable year 1959, P would have an average earnings rate of 3.4 percent. Since P has been in existence for only 3 years, the average earnings rate is computed on the basis of the current earnings rate for the taxable year 1959 and the 2 taxable years immediately preceding such taxable year. The adjusted reserves rate for such taxable year would be 3.4 percent.

Example (4). Y was organized as an insurance company (other than life) in 1954. In 1957, Y qualified as a life insurance company (as defined in section 801(a)) and has remained a life insurance company since that date. Since its formation, Y has had the following current earnings rate history:

Taxable year:	Current earnings rate
1954	3.1
1955	3.3
1956	3.5
1957	3.4
1958	3.6
1959	3.7

For the taxable year 1959, Y would have an average earnings rate of 3.5 percent, computed by taking into account the current earnings rate for the year 1959 and the 4 taxable years immediately preceding such taxable year. The taxable years 1956 and 1955 are included in this computation since Y was an insurance company (though not a life insurance company) during such taxable years. The adjusted reserves rate for such taxable year would be 3.5 percent.

Example (5). The facts are the same as in example (4) except that prior to becoming a life insurance company in 1957, Y was an ordinary corporation. For the taxable year 1959, Y would have an average earnings rate of 3.57 percent, computed by taking into account only the current earnings rates for those taxable years during which Y was a life insurance company (1957, 1958, 1959). The adjusted reserves rate for such taxable year would be 3.57 percent.

§ 1.805–6 Adjusted life insurance reserves.

(a) *Adjusted life insurance reserves defined.* For purposes of part I, subchapter L, chapter 1 of the Code, section 805(c)(1) defines the term "adjusted life insurance reserves" as—

(1) The mean of the life insurance reserves (as defined in section 801(b)), other than pension plan reserves (as defined in section 805(d)), at the beginning and end of the taxable year, multiplied by

(2) That percentage which equals 100 percent—

(i) Increased by that percentage which is 10 times the average rate of interest assumed by the taxpayer (as determined under section 805(c)(2) and paragraph (b) of this section) in calculating such reserves, and

(ii) Reduced by that percentage which is 10 times the adjusted reserves rate (as defined in section 805(b)(1) and paragraph (a)(1) of § 1.805–5).

(b) *Average rate of interest assumed defined.* For purposes of part I, section 805(c)(2) defines the term "average rate of interest assumed" by the company in calculating reserves, as the rate determined by—

(1) Multiplying each assumed rate of interest by the means of the amounts of such reserves computed at that rate at the beginning and end of the taxable year, and

(2) Dividing the sum of the products ascertained under subparagraph (1) of this paragraph by the mean of the total of such reserves at the beginning and end of the taxable year.

(c) *Special rule.* For purposes of section 805(c) and this section, the amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis), and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets). However, no adjustment shall be made under section 806(b) (relating to change in basis in computing reserves) for the year in which the change occurs, since such adjustment is not taken into account until the beginning of the next taxable year.

(d) *Illustration of principles.* The provisions of section 805(c) and this section may be illustrated by the following examples:

Example (1). The books of R, a life insurance company, reflect the following:

Mean of the life insurance reserves (other than pension plan reserves)	$800,000
Company's current earnings rate	4%
Company's average earnings rate (for the current and 4 prior years)	3.5%
Company's average assumed rate (as defined in section 805(c)(2))	2.5%

In order to determine the amount of its adjusted life insurance reserves, R would first determine its adjusted reserves rate. This rate would be 3.5 percent since R's average earnings rate (3.5 percent) is lower than its current earnings rate (4 percent). R would then make up the following schedule:

1. Mean of the life insurance reserves (other than pension plan reserves)		$800,000
2. Item 1 multiplied by:		
(a) That percentage which equals	100%	
(b) Increased by 10 times the average rate of interest assumed (10×2.5%)	25%	
(c) Total	125%	
(d) Less: 10 times the adjusted reserves rate (10×3.5%)	35%	
(e) Item 2(c) minus item 2(d) (125% minus 35%)		90%
3. Adjusted life insurance reserves ($800,000 multiplied by 90%)		720,000

Example (2). The books of S, a life insurance company, reflect the following items:

Col. 1 Reserves at beginning of year	Col. 2 Reserves at end of year	Col. 3 Means of reserves	Col. 4 Assumed rate of interest	Col. 5 (Col. 3 × Col. 4) Product
			Percent	
$850,000	$1,150,000	$1,000,000	2	20,000
750,000	1,250,000	1,000,000	2.5	25,000
300,000	500,000	400,000	2.25	9,000
Total		2,400,000		54,000

For purposes of section 805(c), the average rate of interest assumed for the taxable year would be 2.25 percent (54,000÷2,400,000).

§ 1.805–7 Pension plan reserves.

(a) *In general.* One of the elements to be taken into account in computing the amount of the policy and other contract liability requirements (as defined in section 805(a) and paragraph (b) of § 1.805–4) of a life insurance company is the investment income attributable to pension plan reserves (as defined in section 805(d)(1) and paragraph (b) of this section). The amount of this element to be included in the policy and other contract liability requirements shall be determined by multiplying the mean of such pension plan reserves at the beginning and end of the taxable year by the current earnings rate (as defined in section 805(b)(2)) of the company. However, the amount of such reserves taken into account must be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets) before applying the current earnings rate thereto. Reserves held by a life insurance company under deposit administration contracts shall be included in pension plan reserves if they qualify as life insurance reserves (as defined in section 801(b) and paragraph (a) of § 1.801–4) and otherwise meet the definition of pension plan reserves.

(b) *Pension plan reserves defined.* For purposes of part I, subchapter L, chapter 1 of the Code, section 805(d)(1) defines the term "pension plan reserves" as that portion of the life insurance reserves (as defined in section 801(b)) which is allocable to contracts—

(1) Purchased under contracts entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) of the Internal Revenue Code of 1954, or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 (prior to, or after, the 1942 amendments) or the corresponding provisions of prior revenue laws;

(2) Purchased under contracts entered into under plans which (as of the time the contracts were entered into) were deemed to be plans meeting the requirements of section 401(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1954, or the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1939;

(3) Provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of section 401(a) (3), (4), (5), and (6). For this purpose, the term "employees" includes full-time life insurance salesmen treated as employees under section 7701(a)(20); or

(4) Purchased to provide retirement annuities for the employees of an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws. The definition of pension plan reserves described in section 805(d)(1)(D) and this subparagraph includes only life insurance reserves held under contracts purchased by those organizations described in section 501(c)(3) and exempt from tax under section 501(a), and does not include life insurance reserves held under contracts purchased by organizations described under any other provision of section 501(c). Accordingly, the reserves held under contracts purchased by such other exempt organizations, or by entities not subject to Federal income tax (such as a State, municipality, etc.), shall not be treated as pension plan reserves unless they qualify as such under section 805(d)(1)(A), (B), or (C).

(c) *Special transitional rule.* For purposes of part I, section 805(d)(2) provides a special transitional rule for the treatment of pension plan reserves. Such rule provides that—

(1) For a taxable year beginning after December 31, 1957, and before January 1, 1959, the pension plan reserves shall be included with life insurance reserves in determining the policy and other contract liability requirements under section 805(a)(1);

(2) For a taxable year beginning after December 31, 1958, and before January 1, 1960, two-thirds of the pension plan reserves shall be taken into account under section 805(a)(1) as life insurance reserves and one-third shall be taken into account under section 805(a)(2) as pension plan reserves;

(3) For a taxable year beginning after December 31, 1959, and before January 1, 1961, one-third of the pension plan reserves shall be taken into account under section 805(a)(1) as life insurance reserves and two-thirds shall be taken into account under section 805(a)(2) as pension plan reserves; and

(4) For a taxable year beginning after December 31, 1960, the entire amount of the pension plan reserves shall be taken into account under section 805(a)(2) as pension plan reserves.

(d) *Illustration of principles.* The provisions of section 805(d)(2) and paragraph (c) of this section may be illustrated by the following example:

Example. For each of the taxable years 1958, 1959, 1960, and 1961, the mean of the life insurance reserves of Y, a life insurance company, is $100,000, including $30,000 allocable to contracts described in section 805(d)(1). In determining its policy and other contract liability requirements for the taxable year 1958, Y shall treat the entire $100,000 as life insurance reserves and no part of such amount shall be treated as pension plan reserves. For the taxable year 1959, Y shall treat $90,000 as life insurance reserves and $10,000 (⅓ of $30,000) as pension plan reserves in determining its policy and other contract liability requirements for such taxable year. For the taxable year 1960, Y shall treat $80,000 as life insurance reserves and $20,000 (⅔ of $30,000) as pension plan reserves in determining its policy and other contract liability requirements for such taxable year. For the taxable year 1961, Y shall treat $70,000 as life insurance reserves and $30,000 as pension plan reserves in determining its policy and other contract liability requirements for such taxable year.

§ 1.805–8 Interest paid.

(a) *In general.* Section 805(e) provides four categories of interest items the sum of which constitutes the "interest paid" for any taxable year. Interest paid is one of the elements of the policy and other contract liability requirements of a life insurance company. The amount of the policy and other contract liability requirements is used in determining the policyholders' share of each and every item of investment yield which is not included in taxable investment income. See section 804(a) and § 1.804–2. Interest paid includes interest on indebtedness, discounts on prepaid premiums, and interest on insurance or annuity contracts for which no provision is made in the life insurance reserves. Interest paid does not include dividends to policyholders (as defined in section 811(a) and paragraph (a) of § 1.811–2) or amounts derived from mortality savings or expense savings. In computing the interest paid for any taxable year the same item may not be included more than once.

(b) *Interest paid defined.* For purposes of part I, subchapter L, chapter 1 of the Code, the term "interest paid" as used in section 805(e) means the sum of—

(1) All interest for the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from tax under chapter 1 of the Code. Indebtedness does not include reserves such as life insurance reserves (as defined in section 801(b) and § 1.801–4) nor does it include deferred dividends. Interest on indebtedness includes interest on deferred policy and contract benefit funds as well as interest on a mortgage. See section 163 and the regulations thereunder.

(2) All amounts in the nature of interest, whether or not guaranteed, for the taxable year on insurance or annuity contracts (including contracts supplementary thereto) which do not involve, at the time of accrual, life, health, or accident contingencies. Amounts in the nature of interest do not include amounts derived from or representing mortality gains, expense savings, underwriting profits, or other items not in the nature of interest. Amounts in the nature of interest include so-called excess-interest dividends as well as guaranteed interest accrued within the taxable year on such contracts. A contract to pay insurance benefits in installments over a specified period, for example, a contract to pay the insurance benefit in 10 annual installments, is considered as a supplementary contract not involving life contingencies. It is immaterial whether the optional mode of settlement specified in the insurance or annuity contract arises from an option exercised by the insured during his or her lifetime or from an option exercised by either the insured or a beneficiary after the policy matured. Thus, no distinction is made based on the person choosing the method of payment, and the full amount of the interest accrued, and not merely the guaranteed interest, is considered as interest paid. Amounts in the nature of interest include interest on dividends left on deposit with the company and interest on premiums paid in advance.

(3) All amounts accrued for the taxable year for discounts in the nature of interest, whether or not guaranteed, on premiums or other consideration paid in advance on insurance or annuity contracts. Such accrual shall be determined in accordance with the rules prescribed in section 818(b) and the regulations thereunder. For example, if at the beginning of the taxable year 1958 a life insurance company granted a discount in the nature of interest of $40 as the result of the prepayment of life insurance premiums for 5 years, the company may, under the straight line method, accrue $8 in 1958 and each of the four succeeding taxable years ($40÷5=$8) and include this $8 as interest paid for each such taxable year.

(4) Interest for the taxable year on special contingency reserves established pursuant to section 8(d) of the Federal Employees' Group Life Insurance Act of 1954 (5 U.S.C. 2097(d)).

PAR. 9. Section 1.806 is amended to read as follows:

§ 1.806 Statutory provisions; life insurance companies; certain changes in reserves and assets.

SEC. 806. *Certain changes in reserves and assets*—(a) *Adjustments to means for certain transfers of liabilities.* For purposes of this part, if, during the taxable year, there is a change in life insurance reserves attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such reserves, then, under regulations prescribed by the Secretary or his delegate, the means of such reserves, and the mean of the assets, shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in such transfer. This subsection shall not apply to reinsurance ceded to the taxpayer or to another person.

(b) *Change of basis in computing reserves.* If the basis for determining the amount of any item referred to in section 810(c) as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year, then for purposes of this subpart the amount of such item—

(1) As of the close of the taxable year shall be computed on the old basis, and

(2) As of the beginning of the next taxable year shall be computed on the new basis.

[Sec. 806 as amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 120)]

PAR. 10. There are inserted immediately after § 1.806–1 the following new sections:

§ 1.806–2 Taxable years affected.

Section 1.806–1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments. Sections 1.806–3 and 1.806–4 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.806–3 Certain changes in reserves and assets.

(a) *In general.* For purposes of part I, subchapter L, chapter 1 of the Code, section 806(a) provides that if there is a change in life insurance reserves (as defined in section 801(b)), during the taxable year, which is attributable to the transfer between the taxpayer and another person of liabilities under contracts taken into account in computing such life insurance reserves, then the means of such reserves, and the mean of the assets, shall be appropriately adjusted to reflect the amounts involved in such transfer. For example, the adjustments required under section 806(a) are applicable to transfers in which one life insurance company purchases or acquires a part or all of the business of another life insurance company under an arrangement whereby the purchaser or transferee becomes solely liable on the contracts transferred. This provision shall apply in the case of assumption reinsurance but not in the case of indemnity reinsurance or reinsurance ceded. Thus, no adjustments shall be required under section 806(a) when, in the ordinary course of business, an indemnity reinsurance contract is entered into with another company (on a yearly renewable term basis, on a coinsurance basis, or otherwise) whereby there is a sharing of risks under one or more individual contracts. It will be necessary for each life insurance company participating in a transfer described in section 806(a) to make the adjustments required by such section. Such adjustments shall be made without regard to whether or not the transferor of the liabilities was the original insurer.

(b) *Manner in which adjustments shall be made*—(1) *Daily basis.* The means of the life insurance reserves, and the mean of the assets, shall be appropriately adjusted, on a daily basis, to reflect the amounts involved in a transfer described in section 806(a) and paragraph (a) of this section. The transferor and the transferee shall be treated as having held such life insurance reserves and assets for a fraction of the year in which the transfer occurs.

(2) *Determination of period held.* In determining the fraction which represents the fractional year that such reserves and assets were held, the numerator shall be the number of days during the taxable year which such reserves and assets were actually held, and the denominator shall be the number of days in the calendar year of the transfer. In computing the period held for purposes of the numerator, the day on which such reserves and assets are transferred is included by the transferor and excluded by the transferee.

(3) *Adjustments to the means of life insurance reserves and assets not transferred.* All life insurance reserves and assets transferred during the taxable year, within the meaning of section 806(a), shall be excluded from the beginning and end of the taxable year balances of the transferor and transferee, respectively. The amount of assets to be excluded from the beginning of the taxable year balance of the transferor shall be an amount equal to the value of such reserves at the beginning of the taxable year. The amount of assets to be excluded from the end of the taxable year balance of the transferee shall be an amount equal to the value of such reserves at the end of the taxable year. The means of the life insurance reserves and assets not so transferred shall be determined in the ordinary manner, that is, the arithmetic means. There shall be added to these means an amount to appropriately adjust them, on a daily basis, for the life insurance reserves and assets that were transferred during the taxable year. This adjustment shall be determined by multiplying (i) the mean of the transferred life insurance reserves (or assets, as the case may be) at the beginning of the taxable year (or, if acquired later, at the beginning of the period held as defined in subparagraph (2) of this paragraph) and the end of the period held as defined in subparagraph (2) of this paragraph (or at the end of the taxable year, if held at such time) by (ii) the fraction determined under subparagraph (2) of this paragraph.

(4) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). On March 14, 1958, the M Company, a life insurance company, transferred to the N Company, a life insurance company, pursuant to an assumption reinsurance agreement, all of its life insurance reserves, and related assets, on one block of policies. The reserves (and assets) for this block were held by the M Company on January 1, 1958, and totaled $60,000; on March 14, the reserves (and assets) totaled $64,000. The M Company had life insurance reserves of $1,000,000 at the beginning of 1958 (including those subsequently transferred) and $1,040,000 at the end of 1958. The M Company had assets of $1,300,000 at the beginning of 1958 (including those subsequently transferred) and $1,380,000 at the end of 1958. The mean of M's life insurance reserves for the taxable year 1958 is computed as follows:

Reserves at 1–1–58		$1,000,000
Exclude reserves (at beginning of year) on contracts transferred to N	60,000	
Recomputed amount at 1–1–58		$940,000
Reserves at 12–31–58		1,040,000
Sum		1,980,000
Mean		990,000
Adjustment for reserves transferred on 3–14–58:		
Reserves at 1–1–58 on contracts transferred to N	$60,000	
Reserves at 3–14–58 on such contracts	64,000	
Sum	124,000	
Mean	62,000	
Fraction taken into account	73/365	
Adjustment (73/365 × $62,000)		$12,400
Mean of M's life insurance reserves after section 806(a) adjustment		1,002,400

Example (2). Assuming the facts to be the same as in example (1), the mean of M's assets for the taxable year 1958 is computed as follows:

Assets at 1–1–58		$1,300,000
Exclude assets (at beginning of year) on contracts transferred to N	60,000	
Recomputed amount at 1–1–58		$1,240,000
Assets at 12–31–58		1,380,000
Sum		2,620,000
Mean		1,310,000
Adjustments for assets transferred on 3–14–58:		
Assets at 1–1–58 on contracts transferred to N	$60,000	
Assets at 3–14–58 on such contracts	64,000	
Sum	124,000	
Mean	62,000	
Fraction taken into account	73/365	
Adjustment (73/365 × $62,000)		12,400
Mean of M's assets after section 806(a) adjustment		1,322,400

Example (3). Assume the facts are the same as in example (1). At the end of 1958, N Company had life insurance reserves (and assets) of $80,000 on the contracts transferred on March 14, 1958. The N Company had life insurance reserves of $6,000,000 at the beginning of 1958 and $6,400,000 at the end of 1958 (including those transferred). The N Company had assets of $6,800,000 at the beginning of 1958 and $7,300,000 at the end of 1958 (including those on the contracts transferred). The mean of N's life insurance reserves for the taxable year 1958 is computed as follows:

Reserves at 1–1–58		$6,000,000
Reserves at 12–31–58		$6,400,000
Exclude reserves (at end of year) on contracts transferred from M	80,000	
Recomputed amount at 12–31–58		6,320,000
Sum		12,320,000
Mean		6,160,000
Adjustment for reserves transferred on 3–14–58:		
Reserves at 3–14–58 on contracts transferred from M	$64,000	
Reserves at 12–31–58 on such contracts	80,000	
Sum	144,000	
Mean	72,000	
Fraction taken into account	292/365	
Adjustment (292/365 × $72,000)		$57,600
Mean of N's life insurance reserves after section 806(a) adjustment		6,217,600

Example (4). Assuming the facts to be the same as in example (3), the mean of N's assets for the taxable year 1958 is computed as follows:

Assets at 1–1–58		$6,800,000
Assets at 12–31–58	$7,300,000	
Exclude assets (at end of year) on contracts transferred from M	80,000	
Recomputed amount at 12–31–58		7,220,000
Sum		14,020,000
Mean		7,010,000
Adjustments for assets transferred on 3–14–58:		
Assets at 3–14–58 on contracts transferred from M	$64,000	
Assets at 12–31–58 on such contracts	80,000	
Sum	144,000	
Mean	72,000	
Fraction taken into account	292/365	
Adjustment (292/365 × $72,000)		$57,600
Mean of N's assets after section 806(a) adjustment		7,067,600

Example (5). The facts are the same as in example (1), except that on October 19, 1958, company N transfers to company P, a life insurance company, all of the life insurance reserves, and related assets, on the block of policies it had received from company M on March 14, 1958. The reserves (and assets) for this block totaled $76,000 on October 19, 1958. The means of company M's life insurance reserves and assets, as computed in examples (1) and (2), respectively, would be unchanged by the transfer of October 19, 1958. Since company N did not own this block of policies at either the beginning or end of the taxable year, it would not have to recompute its beginning or end of the taxable year reserves or assets. Company N will, however, have to adjust (or increase) the mean of its life insurance reserves and assets on account of the policies it received from company M. This adjustment will be $42,000, which is determined by multiplying the means of the life insurance reserves (or assets) on these policies as of March 15, 1958, and October 19, 1958, $70,000 ($64,000+$76,000=$140,000÷2) by the fraction 219/365 (the numerator of 219 is determined by excluding the day of the transfer to N, March 14, 1958, and including the day of the transfer from N to P, October 19, 1958). Company P will have to recompute its end of the year life insurance reserves and assets (in the same manner as illustrated in examples (3) and (4)). Assuming the end of the year reserves (and assets) on this block of policies is $80,000, company P will have an adjustment under section 806(a) of $15,600, which is determined by multiplying the means of the reserves on these policies as of October 20, 1958, and December 31, 1958, $78,000 ($76,000+$80,000=$156,000÷2) by the fraction 73/365.

§ 1.806–4 Change of basis in computing reserves.

(a) *In general.* For purposes of subpart B, part I, subchapter L, chapter 1 of the Code, section 806(b) provides that if the basis for determining the amount of any item referred to in section 810(c) (relating to items taken into account) as of the close of the taxable year differs from the basis for such determination as of the beginning of the taxable year, then in determining taxable investment income the amount of the item as of the close of the taxable year shall be the amount computed on the old basis, and the amount of the item as of the beginning of the next taxable year shall be the amount computed on the new basis. For purposes of the preceding sentence, an election under section 818(c) shall not be treated as a change in basis for determining the amount of an item referred to in section 810(c). A change of basis in computing any of the items referred to in section 810(c) is not a change of accounting method requiring the consent of the Secretary or his delegate under section 446(e).

(b) *Illustration of change of basis in computing reserves.* The application of section 806(b) and paragraph (a) of this section may be illustrated by the following examples:

Example (1). Assume that the life insurance reserves of Y, a life insurance company, at the beginning of the taxable year 1959 are $100 and that during such taxable year a portion of the reserves is strengthened (by reason of a change in mortality or interest assumptions, or otherwise), so that at the end of the taxable year 1959 the reserves (computed on the new basis) are $130 but computed on the old basis would be $120. Assume further that at the close of the next taxable year, 1960, the reserves (computed on the new basis) are $142. Under the provisions of section 806(b) and paragraph (a) of this section, the mean of such reserves for the taxable year of the reserve strengthening, namely 1959, is $110 (the mean of $100, the balance at the beginning of the taxable year 1959, and $120, the balance at the end of the taxable year 1959 computed on the old basis). The mean of such reserves for the next taxable year, 1960, is $136 (the mean of $130, the balance at the beginning of the taxable year 1960 computed on the new basis, and $142, the balance at the end of the taxable year 1960 computed on the new basis).

Example (2). The life insurance reserves of S, a life insurance company, computed with respect to contracts for which such reserves are determined on a recognized preliminary term basis amount to $50 on January 1, 1959, and $80 on December 31, 1959. For the taxable year 1959, S elects to revalue such reserves on a net level premium basis under section 818(c). Such reserves computed under section 818(c) amount to $60 on January 1, 1959, and $96 on December 31, 1959. Under the provisions of paragraph (a) of this section, the mean of such reserves for the taxable year 1959 is $78 (the mean of $60, the balance at the beginning of the taxable year 1959 computed under section 818(c), and $96, the balance at the end of the taxable year 1959 computed under section 818(c)).

(68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 60–11399; Filed, Dec. 9, 1960; 8:45 a.m.]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 6514]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Sale of Jewelry and Related Items, Furs, Toilet Preparations, and Luggage, Handbags, etc.

On July 22, 1960, notice of proposed rule making with respect to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under subchapters A, B, C, and D of chapter 31 of the Internal Revenue Code of 1954, as amended, relating to retailers excise taxes on jewelry and related items, furs, toilet preparations, and luggage, handbags, etc., was published in the FEDERAL REGISTER (25 F.R. 6974). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes set forth below. The regulations adopted by this Treasury decision do not include regulations under section 4021, relating to the retailers excise tax on toilet preparations, as set forth in § 48.4021–1 of the aforesaid notice of proposed rule making. Section 48.4021–1 will remain outstanding as a notice of proposed rule making and will be given further consideration before final action is taken thereon.

The regulations hereby prescribed are applicable to sales of the articles referred to therein made on or after January 1, 1959, except as otherwise provided.

PARAGRAPH 1. Section 48.4001–4 is amended by revising paragraph (a).

PAR. 2. Section 48.4003–1 is amended by revising paragraph (b)(2).

PAR. 3. Section 48.4021–1 is amended.

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: December 6, 1960.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

Subpart B—Jewelry and Related Items

Sec.	
48.4001	Statutory provisions; imposition of tax.
48.4001–1	Imposition of tax.
48.4001–2	Jewelry.
48.4001–3	Certain real or synthetic stones.
48.4001–4	Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.
48.4001–5	Watches and clocks.

Sec.
48.4001–6 Gold, gold-plated, silver, or sterling flatware, or hollow ware, and silver-plated hollow ware.
48.4001–7 Opera glasses, lorgnettes, marine glasses, etc.
48.4001–8 Repairs.
48.4002 Statutory provisions; definition of sale includes auctions.
48.4002–1 Definition of sale includes auctions.
48.4003 Statutory provisions; exemptions.
48.4003–1 Exemptions; certain articles.
48.4003–2 Exemptions; certain auction sales.
48.4003–3 Exemptions; certain clocks.
48.4003–4 Other tax-free sales.

Subpart C—Furs

48.4011 Statutory provisions; imposition of tax.
48.4011–1 Imposition of tax.
48.4011–2 Repairing, remodeling, and restyling.
48.4012 Statutory provisions; definitions.
48.4012–1 Manufacture from customer's material.
48.4012–2 Definition of sale includes auctions.
48.4013 Statutory provisions; exemption of certain auction sales.
48.4013–1 Exemption of certain auction sales.
48.4013–2 Other tax-free sales.

Subpart D—Toilet Preparations

48.4021 Statutory provisions; imposition of tax.
48.4021–1 [Reserved]
48.4022 Statutory provisions; exemptions.
48.4022–1 Exemptions.
48.4022–2 Other tax-free sales.

Subpart E—Luggage, Handbags, Etc.

48.4031 Statutory provisions; imposition of tax.
48.4031–1 Imposition of tax.

AUTHORITY: §§ 48.4001 to 48.4003–4, incl., 48.4011 to 48.4013–2, incl., 48.4021 to 48.4022–2, incl., 48.4031, and 48.4031–1, issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

Subpart B—Jewelry and Related Items

§ 48.4001 Statutory provisions; imposition of tax.

SEC. 4001. *Imposition of tax.* There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 percent of the price for which so sold:

All articles commonly or commercially known as jewelry, whether real or imitation.

The following stones, by whatever name called, whether real or synthetic:

Amber.
Beryl of the following types: Aquamarine, emerald, golden beryl, heliodor, morganite.
Chrysoberyl of the following types: Alexandrite, cat's eye, chrysolite.
Corundum of the following types: Ruby, sapphire.
Diamond.
Feldspar of the following type: Moonstone.
Garnet.
Jadeite (jade).
Jet.
Lapis lazuli.
Nephrite (jade).
Opal.
Pearls (natural and cultured).
Peridot.
Quarts of the following types: Amethyst, bloodstone, citrine, moss agate, onyx, sardonyx, tiger-eye.
Spinel.
Topas.
Tourmaline.
Turquoise.
Zircon.

Articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof.

Watches.
Clocks.
Cases and movements for watches and clocks.
Gold, gold-plated, silver, or sterling flatwear or hollow ware and silver-plated hollow ware.
Opera glasses.
Lorgnettes.
Marine glasses.
Field glasses.
Binoculars.

[Sec. 4001 as amended and in effect Jan. 1, 1959, and as amended by sec. 1, Act of Sept. 21, 1959 (Pub. Law 86–344, 73 Stat. 617)]

§ 48.4001–1 Imposition of tax.

(a) *In general.* Section 4001 imposes a tax upon the following articles sold at retail:

(1) Articles commonly or commercially known as jewelry, whether real or imitation;

(2) Certain real or synthetic stones listed in § 48.4001–3(a);

(3) Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof; and

(4) Watches and clocks and cases and movements therefor; gold, gold-plated, silver, or sterling flatware or hollow ware; silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses; and binoculars.

(b) *Cross references.* For provisions relating to the specific articles taxable under section 4001, see the following regulations in this subpart:

(1) Section 48.4001–2 for jewelry;

(2) Section 48.4001–3 for certain real or synthetic stones;

(3) Section 48.4001–4 for articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof;

(4) Section 48.4001–5 for watches and clocks, etc.;

(5) Section 48.4001–6 for gold, gold-plated, silver, or sterling flatware or hollow ware, and silver-plated hollow ware; and

(6) Section 48.4001–7 for opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

(c) *Rate of tax.* The tax is imposed at the rate of 10 percent of the price for which the taxable article is sold at retail. For definition of the term "price", see section 4051 and the regulations thereunder contained in Subpart G.

(d) *Liability for tax.* The tax is payable by the person who sells at retail any article subject to tax under section 4001. For tax applicable to leases, see section 4052 and the regulations thereunder contained in Subpart G.

(e) *Sales by United States.* For provisions relating to sales at retail made by the United States, its agencies or instrumentalities, see section 4054 and the regulations thereunder contained in Subpart G.

§ 48.4001–2 Jewelry.

(a) *Generally.* Jewelry in general includes articles designed to be worn on the person or on apparel for the purpose of adornment and which in accordance with custom or ordinary usage are worn so as to be displayed, such as rings, chains, brooches, bracelets, cuff buttons, necklaces, earrings, beads, charms, pendants, etc. The tax is imposed on the sale of any of such articles at retail, regardless of the substance of which made and without reference to their utilitarian value or purpose, unless for a purpose specifically exempted by law. It is immaterial whether the articles taxable under this paragraph are real or imitation jewelry. Thus, articles constituting costume jewelry are subject to tax regardless of the material of which they are made.

(b) *Articles made of, or ornamented with, certain stones.* Jewelry also includes articles to be carried in the hand, or hung on the arm, or carried or worn on the person, whether in pocket or bag or under the outer garments, such as cigarette cases, pocket mechanical lighters for cigarettes, cigars, and pipes, eyeglass cases, pencils, powder boxes, garter buckles, canes, purses or handbags, if made of, or ornamented, mounted or fitted with, any of the stones enumerated in section 4001 whether such stones are real or synthetic. Such articles are likewise subject to tax without regard to their utilitarian value or purpose. Mother-of-pearl is not a real or synthetic pearl; therefore, articles not otherwise subject to the tax are not made taxable by reason of their ornamentation with mother-of-pearl. See also § 48.4001–4 as to the taxability of the sale at retail of articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof, and section 4031, and the regulations thereunder contained in Subpart E, relating to the taxability of the sale at retail of purses, handbags, pocketbooks, etc.

(c) *Credit or refund of manufacturers excise tax.* See section 6416 (d) and the regulations thereunder contained in Subpart O for credit or refund of the manufacturers excise tax paid under section 4201 on mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes, in the case where because of further manufacture the tax imposed by section 4001 applies to the sale of such articles at retail.

§ 48.4001–3 Certain real or synthetic stones.

(a) *Real stones*—(1) *In general.* The tax imposed by section 4001 applies to sales at retail of the following stones, by whatever name called:

Amber.
Beryl of the following types: Aquamarine, emerald, golden beryl, heliodor, morganite.
Chrysoberyl of the following types: Alexandrite, cat's eye, chrysolite.
Coral.
Corundum of the following types: Ruby, sapphire.
Diamond.
Feldspar of the following type: Moonstone.
Garnet.
Jadeite (jade).
Jet.
Lapis lazuli.
Nephrite (jade).
Opal.
Pearls (natural and cultured).
Peridot.
Quarts of the following types: Amethyst, bloodstone, citrine, moss agate, onyx, sardonyx, tiger-eye.
Spinel.
Topas.
Tourmaline.
Turquoise.
Zircon.

In the case of articles not otherwise taxable under chapter 31 which are ornamented, mounted or fitted with, any of the stones enumerated in section 4001, the tax shall apply to that portion of the retail selling price attributable to such stones.

(2) *Coral.* The tax on sales at retail of coral does not apply to sales after October 31, 1959.

(b) *Synthetic stones.* The tax imposed by section 4001 also applies to the sale at retail of any synthetic stone which has a molecular composition similar to a natural stone listed in paragraph (a) of this section.

(c) *Condition of stones.* The tax applies to sales at retail of the stones referred to in paragraphs (a) and (b) of this section whether they are in rough or natural state, whether cut or uncut, whether drilled, mounted or matched, whether or not strung, and if strung whether with or without clasps.

(d) *Stones used exclusively for industrial, scientific, or educational purposes, or as part of mechanical devices.* (1) For purposes of section 4001, the stones enumerated in such section do not include stones which are sold to be used exclusively as—

(i) A tool or material for industrial, scientific, research, or educational purposes (including mineral hardness testing, polishing, cutting, and grinding); or

(ii) A part of the mechanism of a mechanical device (for example, a bearing in a watch).

(2) The person making the sale at retail for a purpose indicated in subparagraph (1) of this paragraph shall keep adequate records in the nature of invoices or other documents identifying the stones, the person to whom sold, the date of sale, and the purpose for which the stones are to be used.

§ 48.4001–4 Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof.

(a) *In general.* The tax imposed by section 4001 applies to the sale at retail of articles (as distinguished from those articles commonly or commercially known as jewelry as described in § 48.4001–2) which are made of, or ornamented, mounted or fitted with, precious metals or imitations thereof. Examples of articles which become subject to the tax when made of, or ornamented, mounted or fitted with, precious metals or imitations thereof are as follows: photograph frames, book ends, ash trays, vanity cases, mesh bags, cigarette cases and lighters, glassware, china, pottery, umbrellas, and walking sticks. Buttons, belts, belt buckles, and shoe buckles, made of, or ornamented, mounted or fitted with, imitations of precious metals are in the nature of dress or shoe findings and are not subject to the tax. For exemption from tax of sales at retail of certain pens, pencils, and smokers' pipes, see section 4003 and paragraph (a) of § 48.4003–1.

(b) *Definitions.* For purposes of section 4001—

(1) The term "precious metals" includes platinum, gold, silver, and other metals of similar or greater value.

(2) The term "imitations thereof" includes (i) alloys of precious metals, and (ii) platings of precious metals and platings of alloys of precious metals, provided such platings are one one-hundred-thousandth of an inch or more in thickness. Substances such as metal alloys which resemble but do not contain precious metals (for example, "nickel silver" (sometimes known as "German silver") or polished brass) are not included in the term.

(c) *Credit or refund of manufacturers excise tax.* See section 6416(d) and the regulations thereunder contained in Subpart O for credit or refund of the manufacturers excise tax paid under section 4201 on mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes, in the case where because of further manufacture the tax imposed by section 4001 applies to the sale of such articles at retail.

§ 48.4001–5 Watches and clocks.

(a) *In general.* Section 4001 imposes a tax on the sale at retail of watches and clocks and cases and movements therefor. The tax applies to such articles sold at retail regardless of whether they are new, secondhand, or antique, or whether they are in working condition. The term "watches and clocks" includes all time-measuring devices which when in operation indicate the time of day, whether activated by weights, springs, or electrical energy. Any instrument the sole function of which is to indicate elapsed time and which is incapable of being used to tell the time of day at all times, such as a stop watch, is not considered to be a watch or clock within the meaning of section 4001.

(b) *Combined with nontaxable articles*—(1) *Generally.* Except as provided in subparagraph (2) of this paragraph, if a watch or clock and one or more articles not subject to the tax imposed by section 4001 (for example, a barometer, lamp, or an advertising device) are combined in a single unit, the tax shall apply to that portion of the retail sales price charged for the combination which is attributable to such watch or clock. For the method of computing the tax in such cases, see section 4051 and the regulations thereunder contained in Subpart G.

(2) *Exemptions.* See section 4003(a) and paragraph (a) of § 48.4003–1 for exemption for watches designed especially for use by the blind. See also section 4003 (c) and (d) and § 48.4003–3 for the exemption provided for certain clocks, watches, and cases and movements therefor, which are taxed under chapter 32 (relating to manufacturers excise taxes), or which are part of a control or regulatory device not taxable under chapter 32.

§ 48.4001–6 Gold, gold-plated, silver, or sterling flatware or hollow ware, and silver-plated hollow ware.

(a) *In general.* Section 4001 imposes a tax on the sale at retail of any article which is commonly or commercially known and sold as gold, gold-plated, silver, or sterling flatware or hollow ware, or as silver-plated hollow ware. However, a gold, gold-plated, silver, silver-plated, or sterling article which is neither commonly nor commercially known or sold in the trade as flatware or hollow ware, may be subject to the tax as an article made of, or ornamented, mounted or fitted with, precious metals or imitations thereof (see § 48.4001–4).

(b) *Silver-plated flatware.* No tax attaches to the sale at retail of any article commonly or commercially known or sold in the trade as "silver-plated flatware".

§ 48.4001–7 Opera glasses, lorgnettes, marine glasses, etc.

(a) *In general.* Section 4001 imposes a tax on the sale at retail of opera glasses, lorgnettes, marine glasses, field glasses, and binoculars.

(b) *Definitions.* The terms "opera glasses", "lorgnettes", "marine glasses", "field glasses", and "binoculars" generally include all instruments known as such. However, the terms do not include:

(1) Optical instruments which by reason of their size or weight are ordinarily mounted upon tripods or other bases; or

(2) Telescopes and sextants.

§ 48.4001–8 Repairs.

(a) *Taxable operations.* If an item is repaired and in connection therewith the person making the repair furnishes an article which would be taxable under section 4001 if sold separately at retail, the tax applies to the charge made for the article so furnished. In such case, the total charge made for the repair shall be deemed to be the price charged for the taxable article used in the repair, unless the portion of the total charge attributable to labor and to the use of any nontaxable materials is billed as a separate item. The following are examples of articles which are taxable under section 4001 when furnished in connection with the repair of other articles: (1) Articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof, such as a ring mounting or setting, a bracelet link or safety chain, a complete shank of a ring (extending from one side of the head of the ring to the other side), a spring ring or swivel, catch, earring back or screw; and (2) a stone enumerated in section 4001.

(b) *Nontaxable operations.* If an article referred to in section 4001 is repaired and the repair operation consists of labor only, the repair operation is not subject to the tax. Also, the tax does not apply to repair operations (1) in which the person making the repair furnishes only materials such as unfabricated metal, wire, solder, etc., or (2) where he furnishes only a portion of an article made of, or ornamented, mounted or fitted with, a precious metal or imitation thereof, such as a section of a shank of a ring.

(c) *Watches and clocks.* The tax imposed by section 4001 with respect to watches and clocks is limited to watches and clocks as such and cases and movements therefor. Accordingly, the tax imposed by section 4001 attaches to the repair of a watch or clock only if a case or movement is furnished in connection with the repair.

§ 48.4002 Statutory provisions; definition of sale includes auctions.

SEC. 4002. *Definition of sale includes auctions.* For the purposes of section 4001, the term "articles sold at retail" includes an article sold at retail by an auctioneer or other agent in the course of his business on behalf of (1) a person who is not engaged in the business of selling like articles, or (2) the legal representative of the estate of a decedent who was not engaged in the business of selling like articles. In the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail."

[Sec. 4002 as originally enacted and in effect Jan. 1, 1959]

§ 48.4002–1 Definition of sale includes auctions.

(a) *In general.* Section 4002 provides that for purposes of section 4001, the term "articles sold at retail" includes articles sold at retail by an auctioneer or other agent in the course of his business on behalf of (1) a person who is not engaged in the business of selling like articles, or his legal representative, or (2) the legal representative of the estate of a decedent who was not engaged in the business of selling like articles. Section 4002 also provides that in the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail". Thus, such auctioneer or agent shall be liable for payment of the tax imposed by section 4001 and the filing of returns.

(b) *Sales not at auction.* The provisions of section 4002 and paragraph (a) of this section are not limited to auction sales but are applicable to all sales at retail of articles enumerated in section 4001 by an auctioneer or other agent in the course of his business.

(c) *Exemption.* See section 4003(b) and § 48.4003–2 for the limited exemption which applies to certain auction sales.

§ 48.4003 Statutory provisions; exemptions.

SEC. 4003. *Exemptions*—(a) *Specific articles.* The tax imposed by section 4001 shall not apply to any article used for religious purposes, to surgical instruments, to watches designed especially for use by the blind, to frames or mountings for spectacles or eyeglasses, to a fountain pen, mechanical pencil, or smokers' pipe if the only parts of the pen, the pencil, or the pipe which consist of precious metals are essential parts not used for ornamental purposes, or to buttons, insignia, cap devices, chin straps, and other devices prescribed for use in connection with the uniforms of the armed forces of the United States.

(b) *Certain auction sales.* (1) In the case of an auction sale held at the home of a person whose articles are being sold, any taxable article (as defined in paragraph (2)) of such person sold by the auctioneer shall be exempt from the tax imposed by section 4001 except to the extent that the price for which such article is sold, when added to the sum of the sale prices of all other taxable articles of such person previously sold at the same auction, exceeds $100.

(2) For the purposes of this subsection—

(A) The term "taxable article" means an article which, by reason of section 4002 and without regard to the exemption provided in paragraph (1), is taxable under section 4001 when sold at auction; and

(B) In the case of articles of a decedent sold on behalf of the legal representative of his estate, an auction sale held at the home of such decedent shall be considered as "held at the home of a person whose articles are being sold".

(c) *Clocks subject to manufacturers tax.* The tax imposed by section 4001 shall not apply to a clock or watch, or to a case or movement for a clock or watch, if a tax in respect of such clock, watch, case, or movement was imposed under chapter 32 by reason of its sale (1) as a part or accessory, or (2) on or in connection with or with the sale of any article.

(d) *Certain parts of control or regulatory devices.* The tax imposed by section 4001 shall not apply to a clock or watch, or to a case or movement for a clock or watch, if such clock, watch, case, or movement is (1) a part of a control or regulatory device which is an article (or part thereof) not taxable under chapter 32, or (2) sold as a repair or replacement part for such a device.

[Sec. 4003 as amended and in effect Jan. 1, 1959]

§ 48.4003–1 Exemptions: certain articles.

(a) *In general.* Section 4003 specifically provides that the tax imposed by section 4001 shall not apply to: Any article used for religious purposes; surgical instruments; watches designed especially for use by the blind; frames or mountings for spectacles or eye-glasses; fountain pens, mechanical pencils, or smokers' pipes, if the only parts thereof which consist of precious metals are essential parts not used for ornamental purposes; and buttons, insignia, cap devices, chin straps, and other devices prescribed for use in connection with the uniforms of the armed forces of the United States. See section 7701(a)(15) and the regulations thereunder contained in part 301, for meaning of the term "Armed Forces of the United States".

(b) *Articles used for religious purposes.* (1) The tax imposed by section 4001 does not apply to articles of such nature as to be intended for use only for religious purposes (for example, a crucifix, rosary, chalice, etc.). Such articles may be sold tax free without a statement from the purchaser as to the purpose for which the article is to be used.

(2) The tax imposed by section 4001 also does not apply to articles of such nature as to be usable for nonreligious purposes as well as for religious purposes if such articles are purchased by a church or other religious organization and if—

(i) The articles (such as pins, medals, or buttons, which have the Cross and Crown symbol) are to be used by a religious organization as an award in connection with a religious program, or

(ii) The articles (such as crosses, candlesticks, vases, etc.) are used in connection with religious services by a religious organization.

With respect to these articles, the retailer must have in his possession a statement from a representative of the religious organization certifying that the articles were purchased solely for religious purposes in order to establish the right to exemption from the tax on the sale.

(c) *Fountain pens, mechanical pencils, smokers' pipes*—(1) *Essential parts defined.* For purposes of the exemption from tax provided by section 4003 applicable to fountain pens, mechanical pencils, and smokers' pipes, the term "essential parts" shall include:

(i) *Fountain pen.* In the case of a fountain pen—the pen point, lever, clip, and the plain narrow band or bands placed on the cap for the purpose of preventing the cap from splitting or expanding.

(ii) *Mechanical pencil.* In the case of a mechanical pencil—the tapered point holding the lead for writing, the clip, and the plain narrow band or bands placed on the barrel or cap, or both, for the purpose of preventing such part or parts from splitting or expanding.

(iii) *Smoker's pipe.* In the case of a smoker's pipe—the plain narrow band or bands placed on the shank of the pipe to prevent the shank from splitting.

All other parts of such pens, pencils, or pipes consisting of precious metals or imitations thereof shall be deemed to be ornamentations unless it is established that a particular part is an essential part not used for ornamental purposes. Furthermore, the tax imposed by section 4001 shall attach if the aforementioned essential band or bands on a fountain pen, mechanical pencil, or smoker's pipe consist of precious metals or imitations thereof and have a combined width of more than ⅜ of an inch.

(2) *Credit or refund of manufacturers excise tax.* See section 6416(d) and the regulations thereunder contained in Subpart O of this part for credit or refund of the manufacturers excise tax paid under section 4201 on mechanical pencils, fountain and ball point pens, and mechanical lighters for cigarettes, cigars, and pipes, in the case where because of further manufacture the tax imposed by section 4001 applies to the sale of such articles at retail.

§ 48.4003–2 Exemptions; certain auction sales.

A limited exemption in the amount of $100 of the sale price is provided by section 4003(b) in the case of an auction sale held at the home of the owner of an article or articles taxable under section 4001. Thus, for example, if a pearl necklace was first sold by an auctioneer at the owner's home for $40 and a diamond pin was next sold at the same sale for $150, the sale of the necklace would be tax free and the remaining $60 of the $100 exemption would be applied against the sale price of the pin, $90 of such sale price being subject to tax. Sales of articles not taxable under section 4001 shall not be considered in applying the $100 exemption. Only one exemption shall be allowed regardless of the period of time during which the auction sale takes place. This exemption also applies to an auction sale of articles of a decedent held at the home of such decedent. See section 4013 and § 48.4013–1 for $100 exemption in the case of furs sold at certain auction sales.

§ 48.4003–3 Exemptions; certain clocks.

(a) *Clocks subject to manufacturers excise tax.* Section 4003(c) provides that a clock or watch (or a case or movement for a clock or watch) shall be exempt from the tax imposed by section 4001 if a tax was imposed in respect of such clock, watch, case, or movement under chapter 32 (relating to manufacturers excise taxes) by reason of its sale as a part or accessory (for example, an automobile clock) or by reason of its sale on or in connection with or with the sale of any article (for example, a stove). The exemption is limited to clocks, watches, and cases and movements in respect of which tax under chapter 32 was imposed. Thus, for example, the exemption does not apply where a clock or watch (or a case or movement therefor) in respect of which tax was not imposed under chapter 32 is (1) sold at retail in conjunction with the sale of another article which is subject to a manufacturers excise tax imposed by chapter 32, or (2) sold separately at retail to replace a clock, watch, case, or movement in an article subject to a manufacturers excise tax imposed by chapter 32.

(b) *Clocks in control or regulatory devices*—(1) *In general.* Section 4003(d) provides that sales at retail of a clock or watch (or a case or movement for a clock or watch) shall be exempt from the tax imposed by section 4001 if such clock, watch, case, or movement is—

(i) A part of a control or regulatory device (for example, a thermostat) which is an article, or part thereof, not taxable under chapter 32 (relating to manufacturers excise taxes), or

(ii) Sold as a repair or replacement part for such a device.

(2) *Control or regulatory device defined.* For purposes of this paragraph, the term "control or regulatory device" does not include clocks which in themselves have control or regulatory features, such as electric clocks that can be used to turn on radios, coffeemakers, etc., or defrost refrigerators. To qualify for the exemption, the control or regulatory device must be the major item of the combination and the clock a subsidiary item.

§ 48.4003–4 Other tax-free sales.

For provisions relating to other tax-free sales of articles referred to in section 4001, see—

(a) Section 4055, relating to the exemption of sales for the exclusive use of any State or political subdivision thereof, or the District of Columbia,

(b) Section 4056, relating to the exemption of sales for export, and

(c) Section 4057, relating to the exemption of sales to nonprofit educational organizations,

and the regulations thereunder contained in Subpart G.

Subpart C—Furs

§ 48.4011 Statutory provisions; imposition of tax.

SEC. 4011. *Imposition of tax.* There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 percent of the price for which so sold: Articles made of fur on the hide or pelt, and articles of which such fur is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material.

[Sec. 4011 as originally enacted and in effect Jan. 1, 1959]

§ 48.4011–1 Imposition of tax.

(a) *In general.* (1) Section 4011 imposes a tax upon the following articles sold at retail:

(i) Articles made of fur on the hide or pelt; and

(ii) Articles of which fur on the hide or pelt is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material.

(2) The tax imposed by section 4011 is not limited to wearing apparel, but applies to sales of an article suitable for any use, such as a rug, robe, toy, novelty, etc.

(3) The tax does not apply to the sale of raw fur.

(4) For tax applicable in respect of fur articles manufactured from a customer's materials, see section 4012(a) and § 48.4012–1.

(5) For provisions relating to sales by an auctioneer or other agent, see section 4012(b) and § 48.4012–2.

(b) *Fur on hide or pelt.* For purposes of section 4011 and the regulations in this subpart, the term "fur on the hide or pelt" means animal hides or pelts with hair wholly or partially intact. However, the term does not include hides or pelts with hair which does not have the appearance of fur and is not used as fur. For example, certain sheep have hair so fine that its natural tendency is to become matted or felted, and, therefore, in its natural condition it neither resembles fur nor is used as fur. But if such hides or pelts are processed so that the hair loses its matted or felted appearance and takes on the appearance of fur, they will be deemed to be "fur on the hide or pelt".

(c) *Articles made of fur.* The term "articles made of fur on the hide or pelt", as used in section 4011 and this section, includes all articles made of such fur as distinguished from fur-trimmed or fur-lined articles. For example, fur coats, capes, stoles, hats, etc., shall be subject to the tax referred to in paragraph (a)(1)(i) of this section without regard to the relative values of the component parts. Fur-trimmed or fur-lined articles shall be subject to the tax referred to in paragraph (a)(1)(ii) of this section if the value of the fur is more than three times the value of the next most valuable component material.

(d) *Articles of which fur is a component material*—(1) *Valuation.* In determining, for the purposes of paragraph (a)(1)(ii) of this section, whether the sale of an article of which fur is a component material is subject to tax, the value of such fur at the time of assemblage of the article must be compared to the value of each other single component at such time. In comparing the value of the fur to the other components, all costs (including labor) of making or preparing a complete component shall be considered. However, the cost of assembling the components into the finished article shall not be considered.

(2) *Records.* Where fur is a component material of an article and exemption with respect to the sale of such article is claimed on the ground that the value of the fur as compared with that of the most valuable of the other component materials is not such as to render the sale taxable under paragraph (a)(1)(ii) of this section, the retailer must maintain adequate records or have in his possession proper documentary evidence to establish that fact to the satisfaction of the Commissioner. An example of documentary evidence which will be acceptable is a written statement from the manufacturer or producer of the article stating that the value of the fur at the time of assemblage of the article was not more than three times the value at such time of the next most valuable component material. In the absence of such records or documentary evidence, the tax must be paid with respect to the sale of such article at retail.

(e) *Rate of tax.* The tax is imposed at the rate of 10 percent of the price for which the taxable article is sold at retail. For definition of the term "price", see section 4051 and the regulations thereunder contained in Subpart G.

(f) *Liability for tax.* The tax is payable by the person who sells at retail any article subject to tax under section 4011. For tax applicable to leases, see section 4052 and the regulations thereunder contained in Subpart G.

(g) *Sales by United States.* For provisions relating to sales at retail made by the United States, its agencies or instrumentalities, see section 4054 and the regulations thereunder contained in Subpart G of this part.

§ 48.4011–2 Repairing, remodeling, and restyling.

(a) *Fur furnished by furrier.* If a furrier uses fur on the hide or pelt which he furnishes to repair, remodel, or restyle a fur article owned by a customer, the tax imposed by section 4011 shall apply if a garment or an article such as a collar, cuff, sleeve, lapel, button, border, etc., is produced from the fur furnished by the furrier. The tax shall not apply if, for example, the fur furnished by the furrier is used merely to replace a worn section of a sleeve or cuff. If a taxable garment or article is produced, the tax shall attach to that portion of the price charged for the entire repairing, remodeling, or restyling operation which is attributable to the garment or article so produced, and the person repairing, remodeling, or restyling shall be deemed to be the person selling such garment or article at retail for the purposes of the tax imposed by section 4011. For purposes of this paragraph, the term "furrier" includes a person in the business of repairing, remodeling, or restyling fur articles.

(b) *Fur furnished by customer.* The tax shall not apply in the case where the fur furnished by the customer is used merely to replace a section of a garment or other article, such as a worn section of a sleeve or cuff. For tax applicable in respect of repairing, remodeling, or restyling of fur articles where an article is produced from fur furnished by the customer, see § 48.4012–1.

§ 48.4012 Statutory provisions; definitions.

SEC. 4012. *Definitions*—(a) *Manufacture from customers material.* Where a person, who is engaged in the business of dressing or dyeing fur skins or of manufacturing, selling, or repairing fur articles, produces an article of the kind described in section 4011 from fur on the hide or pelt furnished, directly or indirectly, by a customer and the article is for the use of, and not for resale by, such customer, the transaction shall be deemed to be a sale at retail and the person producing the article shall be deemed to be the person selling such article at retail for the purposes of such section. The tax on such a transaction shall be computed and paid by such person upon the fair retail market value, as determined by the Secretary or his delegate, of the finished article.

(b) *Sale includes auctions.* For the purposes of section 4011, the term "articles sold at retail" includes an article sold at retail by an auctioneer or other agent in the course of his business on behalf of—

(1) A person who is not engaged in the business of selling like articles, or

(2) The legal representative of the estate of a decedent who was not engaged in the business of selling like articles. In the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail."

[Sec. 4012 as originally enacted and in effect Jan. 1, 1959]

§ 48.4012–1 Manufacture from customer's fur.

The tax imposed by section 4011 applies where a person, who is engaged in the business of dressing or dyeing fur skins or of manufacturing, selling, or repairing fur articles, produces a garment, or article such as a muff, collar, cuff, sleeve, lapel, button, border, or other article of the kind described in section 4011 and paragraph (a)(1) of § 48.4011–1, from unused fur on the hide or pelt furnished directly or indirectly by a customer and the article is for the use of, and not for resale by, such customer. The transaction shall be deemed to be a sale at retail and the person producing the article shall be deemed to be the person selling such article for purposes of section 4011. The tax applicable to such transaction shall be computed upon the fair retail market value of the finished article as determined by the district director of internal revenue for the district in which the principal place of business of the taxpayer is located, and shall be determined without regard to the fact that the fur was furnished by the customer. In general, the fair retail market value may be considered as the retail sale price for which the same or a similar finished article is sold by retailers generally in the ordinary course of the retail trade.

§ 48.4012–2 Definition of sale includes auctions.

(a) *In general.* Section 4012(b) provides that for purposes of section 4011, the term "articles sold at retail" includes an article sold at retail by an auctioneer or other agent in the course of his business on behalf of (1) a person who is not engaged in the business of selling like articles or his legal representative, or (2) the legal representative of the estate of a decedent who was not engaged in the business of selling like articles. Section 4012(b) also provides that in the case of articles so sold, the auctioneer or other agent shall be considered the "person who sells at retail". Thus, such auctioneer or agent shall be liable for payment of the tax imposed by section 4011 and the filing of returns.

(b) *Sales not at auction.* The provisions of section 4012(b) and paragraph (a) of this section are not limited to auction sales but are applicable to all sales at retail of articles enumerated in section 4011 by an auctioneer or other agent in the course of his business.

(c) *Exemption.* See section 4013 and § 48.4013–1 for the limited exemption which applies to certain auction sales.

§ 48.4013 Statutory provisions; exemption of certain auction sales.

SEC. 4013. *Exemption of certain auction sales.* (a) In the case of an auction sale held at the home of a person whose articles are being sold, any taxable article (as defined in subsection (b)) of such person sold by the auctioneer shall be exempt from the tax imposed by section 4011 except to the extent that the price for which such article is sold, when added to the sum of the sale prices of all other taxable articles of such person previously sold at the same auction, exceeds $100.

(b) For the purposes of this section—

(1) The term "taxable article" means an article which, by reason of section 4012(b) and without regard to the exemption provided in subsection (a), is taxable under section 4011 when sold at auction; and

(2) In the case of articles of a decedent sold on behalf of the legal representative of his estate, an auction sale held at the home of such decedent shall be considered as "held at the home of a person whose articles are being sold".

[Sec. 4013 as originally enacted and in effect Jan. 1, 1959]

§ 48.4013–1 Exemption of certain auction sales.

Section 4013 provides a limited exemption in the amount of $100 of the sale price in the case of an auction sale held at the home of the owner of an article or articles taxable under section 4011. Thus, for example, if a fur neck piece was first sold by an auctioneer at the owner's home for $80 and a fur coat was next sold at the same sale for $200, the sale of the fur neck piece would be tax free and the remaining $20 of the $100 exemption would be applied against the sale price of the fur coat, $180 of such sale price being subject to tax. Sales of articles not taxable under section 4011 shall not be considered in applying the $100 exemption. Only one exemption shall be allowed regardless of the period of time during which the auction sale takes place. This exemption also applies to an auction sale of articles of a decedent held at the home of such decedent. See section 4003(b) and § 48.4003–2 for $100 exemption in the case of certain auction sales of jewelry and other articles taxable under section 4001.

§ 48.4013–2 Other tax-free sales.

For provisions relating to other tax-free sales of articles referred to in section 4011, see—

(a) Section 4055, relating to the exemption of sales for the exclusive use of any State or political subdivision thereof, or the District of Columbia,

(b) Section 4056, relating to the exemption of sales for export, and

(c) Section 4057, relating to the exemption of sales to nonprofit educational organizations,

and the regulations thereunder contained in Subpart G.

Subpart D—Toilet Preparations

§ 48.4021 Statutory provisions; imposition of tax.

SEC. 4021. *Imposition of tax.* There is hereby imposed upon the following articles sold at retail a tax equivalent to 10 percent of the price for which so sold—

Perfume.	Hair oils.
Essences.	Pomades.
Extracts.	Hair dressings.
Toilet waters.	Hair restoratives.
Cosmetics.	Hair dyes.
Petroleum jellies.	Toilet powders.

Any other similar substance, article, or preparation, by whatsoever name known or distinguished; any of the above which are used or applied or intended to be used or applied for toilet purposes.

[Sec. 4021 as originally enacted and in effect Jan. 1, 1959, and as amended by sec. 1, Act of April 8, 1960 (Pub. Law 86–413, 74 Stat. 31)]

§ 48.4021–1 [Reserved]

§ 48.4022 Statutory provisions; exemptions.

SEC. 4022. *Exemptions*—(a) *Items for babies.* The tax imposed by section 4021 shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the care of babies.

(b) *Barber shops and beauty parlors.* For the purposes of section 4021, the sale of any article described in such section to any person operating a barber shop, beauty parlor, or similar establishment for use in the operation thereof, or for resale, shall not be considered as a sale at retail. The resale of such article at retail by such person shall be subject to the provisions of section 4021.

(c) *Miniature samples.* For the purposes of section 4021, the sale of miniature samples of any article described in such section for demonstration use only to a house-to-house salesman by the manufacturer or distributor, shall not be considered as a sale at retail. The resale of such sample at retail by such house-to-house salesman shall be subject to the provisions of section 4021.

[Sec. 4022 as originally enacted and in effect Jan. 1, 1959]

§ 48.4022–1 Exemptions.

(a) *Items for babies.* Section 4022 provides that the tax imposed by section 4021 does not apply to the sale of lotions, oils, powders, or other articles intended to be used or applied only in the care of babies. The determination of whether toilet articles are intended to be used or applied only in the care of babies will be made only by reference to the advertising with respect to, and the labeling contained on, the article. If an article is advertised and labeled as being for use in the care of babies and is not advertised or labeled as usable by persons other than babies, the sale of the article is exempt from tax even though the particular purchaser buys it for adult use. On the other hand, the sale of an article which is represented by advertising or labeling as fit for adult use, in addition to use in the care of babies, shall not be exempt from tax even though sold to a purchaser who intends to use the article only in the care of babies.

(b) *Barber shops and beauty parlors.* (1) The sale of any article taxable under section 4021 to a person operating a barber shop, beauty parlor, or similar establishment, whether for use in the operation thereof or for resale purposes, shall not be considered as a sale at retail and the tax imposed by section 4021 shall not be applicable to such sale.

(2) In any case where the operator of a barber shop, beauty parlor, or similar establishment sells at retail an article taxable under section 4021, he is liable for the tax imposed by such section.

(c) *Miniature samples.* The sale by the manufacturer or distributor of miniature samples of any article taxable under section 4021 to a house-to-house salesman for demonstration use only shall not be considered as a sale at retail and the tax imposed by section 4021 shall not be applicable to such sale. In any case where the house-to-house salesman sells at retail any of the miniature samples purchased from the manufacturer or distributor for demonstration use, he is liable for the tax imposed by section 4021.

§ 48.4022–2 Other tax-free sales.

For provisions relating to other tax-free sales of articles referred to in section 4021, see—

(a) Section 4055, relating to the exemption of sales for the exclusive use of any State or political subdivision thereof, or the District of Columbia,

(b) Section 4056, relating to the exemption of sales for export, and

(c) Section 4057, relating to the exemption of sales to nonprofit educational organizations,

and the regulations thereunder contained in Subpart G.

Subpart E—Luggage, Handbags, Etc.

§ 48.4031 Statutory provisions; imposition of tax.

SEC. 4031. *Imposition of tax.* There is hereby imposed upon the following articles, by whatever name called, sold at retail (including in each case fittings or accessories therefor sold on or in connection with the sale thereof) a tax equivalent to 10 percent of the price for which so sold—

Bathing suit bags.
Beach bags or kits.
Billfolds.
Briefcases.
Brief bags.
Camping bags.
Card and pass cases.
Collar cases.
Cosmetic bags and kits.
Dressing cases.
Duffebags.
Furlough bags.
Garment bags designed for use by travelers.
Hatboxes designed for use by travelers.
Haversacks.
Key cases or containers.
Knapsacks.
Knitting or shopping bags (suitable for use as purses or handbags).
Makeup boxes.
Manicure set cases.
Memorandum pad cases (suitable for use as card or pass cases, billfolds, purses, or wallets).
Musette bags.
Overnight bags.
Pocketbooks.
Purses and handbags.
Ring binders, capable of closure on all sides.
Salesmen's sample or display cases, bags, or trunks.
Satchels.
Shoe and slipper bags.
Suitcases.
Tie cases.
Toilet kits and cases.
Traveling bags.
Trunks.
Valises.
Vanity bags or cases.
Wallets.
Wardrobe cases.

[Sec. 4031 as amended and in effect Jan. 1, 1959]

§ 48.4031–1 Imposition of tax.

(a) *In general.* Section 4031 imposes a tax on:

(1) The following articles, by whatever name called, sold at retail—

Bathing suit bags.
Beach bags or kits.
Billfolds.
Briefcases.
Brief bags.
Camping bags.
Card and pass cases.
Collar cases.
Cosmetic bags and kits.
Dressing cases.
Duffebags.
Furlough bags.
Garment bags designed for use by travelers.
Hatboxes designed for use by travelers.
Haversacks.
Key cases or containers.
Knapsacks.
Knitting or shopping bags (suitable for use as purses or handbags).
Makeup boxes.
Manicure set cases.
Memorandum pad cases (suitable for use as card or pass cases, billfolds, purses, or wallets).
Musette bags.
Overnight bags.
Pocketbooks.
Purses and handbags.
Ring binders, capable of closure on all sides.
Salesmen's sample or display cases, bags, or trunks.
Satchels.
Shoe and slipper bags.
Suitcases.
Tie cases.
Toilet kits and cases.
Traveling bags.
Trunks.
Vanity bags or cases.
Valises.
Wallets.
Wardrobe cases.

(2) Fittings or accessories for any article enumerated in subparagraph (1) of this paragraph sold on or in connection with the sale at retail of such article.

(b) *Meaning of terms*—(1) *In general.* For purposes of the tax imposed by section 4031, the articles listed in such section include all receptacles commonly or commercially known and sold as such regardless of design, size, or materials from which made or the purpose for which they are to be used. If there is doubt as to whether an article is taxable, the manner in which the article is advertised or otherwise held out for sale shall be considered. The articles listed in section 4031 include any such articles regardless of the name attached to, or associated with, the articles for merchandising or other reasons. For example, an article marketed as a "money holder" is taxable if in fact it is a "billfold" or "wallet".

(2) *Briefcases.* The term "briefcases" includes, for purposes of the tax imposed by section 4031, articles commonly or commercially known and sold as such regardless of materials from which made or the purpose for which they are to be used. The term also includes so-called "portfolios", "envelopes", etc., capable of being closed on all four sides which are designed and constructed for carrying or conveying unfolded legal-size or letter-size papers, documents, etc. The term does not include "portfolios", "envelopes", etc., designed and constructed primarily for storage purposes.

(3) *Knitting or shopping bags.* A knitting or shopping bag shall be considered suitable for use as a purse or handbag, for purposes of the tax imposed by section 4031, if it is capable of being carried in the hand, or hung on the arm or across the shoulder, and if—

(i) The bag has a secure closure, or

(ii) The bag has a built-in purse, side pocket, or compartment closed by a zipper, snap fastener, or other secure closure,

provided the bag, or the built-in purse, side pocket, or compartment, is capable, when open, of holding the normal contents of a purse or handbag.

(c) *Children's luggage and toy luggage.* The tax applies to the sale at retail of articles listed in section 4031 which are designed and constructed for use as such by a child (for example, a child's purse, handbag, or suitcase). However, the tax does not attach to the sale at retail of articles which simulate articles of the type referred to in section 4031 but which are toys, that is, articles designed, constructed, and advertised or otherwise held out for sale for the amusement of a child or for use in a child's play. For example, the tax shall not apply to the sale at retail of a trunk designed, constructed, and held out for sale solely to hold clothing for a doll.

(d) *Rate of tax.* The tax is imposed at the rate of 10 percent of the price for which the taxable article is sold at retail. For definition of the term "price", see section 4051 and the regulations thereunder contained in Subpart G.

(e) *Liability for tax.* The tax is payable by the person who sells at retail any article subject to tax under section 4031. For tax applicable to leases, see section 4052 and the regulations thereunder contained in Subpart G.

(f) *Sales by United States.* For provisions relating to sales at retail made by the United States, its agencies or instrumentalities, see section 4054 and the regulations thereunder contained in Subpart G.

(g) *Tax-free sales.* For provisions relating to tax-free sales of articles referred to in section 4031, see—

(1) Section 4055, relating to the exemption of sales for the exclusive use of

any State or political subdivision thereof, or the District of Columbia,

(2) Section 4066, relating to the exemption of sales for export, and

(3) Section 4067, relating to the exemption of sales to nonprofit educational organizations,

and the regulations thereunder contained in Subpart G of this part.

[F.R. Doc. 60-11514; Filed, Dec. 9, 1960; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-LA-52]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On September 29, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9294) stating that the Federal Aviation Agency proposed to revoke Red Federal airway No. 15, in its entirety, its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR 600, 601) are amended as follows:

1. Section 600.215 *Red Federal airway No. 15 (Prescott, Ariz., to Phoenix, Ariz.)* is revoked.

2. Section 601.215 *Red Federal airway No. 15 control areas (Prescott, Ariz., to Phoenix, Ariz.)* is revoked.

3. Section 601.4215 *Red Federal airway No. 15 (Prescott, Ariz., to Phoenix, Ariz.)* is revoked.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11486; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 60-NY-49]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation and Modification of Segments of Federal Airway, Associated Control Areas and Reporting Points

On July 8, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 6438) stating that the Federal Aviation Agency proposed to revoke two segments of Red Federal airway No. 20 and to modify its eastern terminus. In addition, two designated reporting points associated with this airway are being revoked.

Although not mentioned in the Notice, the segment of Red 20 between Lansing, Mich., and Windsor, Ontario, Canada is being redesignated to eliminate the Selfridge AFB, Mich., radio range station from the description of the airway, as the Department of the Air Force plans to decommission this facility. The Federal Aviation Agency has determined, by flight check, that the Flint, Mich., ILS outer compass locator can be used in describing this segment of Red 20 in lieu of the Selfridge radio range.

The modification of the eastern terminus of Red 20, as mentioned in the notice is being accomplished in Airspace Docket No. 60-NY-24 (25 F.R. 10798) which is effective January 12, 1961.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated herein and in the notice, the following actions are taken:

1. Section 600.220 (14 CFR 600.220) is amended to read:

§ 600.220 Red Federal airway No. 20 (Lansing, Mich., to Cleveland, Ohio; Pittsburgh, Pa., to Martinsburg, W. Va.; and Washington, D.C., to Meekins Neck, Md.).

That airspace over the United States from the Lansing, Mich., RR via the Flint, Mich., ILS outer compass locator; INT of the 106° True bearing from the Flint ILS outer compass locator and the NW course of the Windsor, Ont., Canada, RR; Windsor RR; to the Cleveland, Ohio, RR. From the Pittsburgh, Pa., RR to the INT of the SE course of the Pittsburgh RR and the NW course of the Washington, D.C., RR. From the Washington RR to the INT of the SE course of the Washington RR and the NE course of the Tappahannock, Va., RR, excluding the portion below 6,000 feet MSL which would coincide with the Patuxent Restricted Area (R-71).

2. Section 601.220 (14 CFR 601.220) is amended to read:

§ 601.220 Red Federal airway No. 20 control areas (Lansing, Mich., to Cleveland, Ohio; Pittsburgh, Pa., to Martinsburg, W. Va.; and Washington, D.C., to Meekins Neck, Md.).

All of Red Federal airway No. 20.

3. Section 601.4220 (14 CFR 601.4220) is amended to read:

§ 601.4220 Red Federal airway No. 20 (Lansing, Mich., to Cleveland, Ohio; Pittsburgh, Pa., to Martinsburg, W. Va.; and Washington, D.C., to Meekins Neck, Md.).

The INT of the SE course of the Pittsburgh, Pa., RR and the NE course of the Morgantown, W. Va., RR.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11487; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 60-KC-68]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points

On September 15, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8887) stating that the Federal Aviation Agency proposed to revoke Red Federal airway No. 100 in its entirety, its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Parts 600 and 601 (14 CFR 600, 601) are amended as follows:

1. Section 600.300 *Red Federal airway No. 100 (South Bend, Ind., to Battle Creek, Mich.)* is revoked.

2. Section 601.300 *Red Federal airway No. 100 control areas (South Bend, Ind., to Battle Creek, Mich.)* is revoked.

3. Section 601.4300 *Red Federal airway No. 100 (South Bend, Ind., to Battle Creek, Mich.)* is revoked.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11489; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 60-KC-64]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9416) stating that the Federal Aviation Agency proposed to modify the Garden City, Kans., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2050 (14 CFR 601.2050) is amended to read:

§ 601.2050 Garden City, Kans., control zone.

Within a 5-mile radius of the New Garden City Airport (latitude 37°56'08" N., longitude 100°43'46" W.), within 2 miles either side of the 144° True bearing from the RR extending from the 5-mile radius zone to the RR and within 2 miles either side of the 004° and 171° True radials of the VOR extending from the 5-mile radius zone to 12 miles N and S of the VOR.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11484; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-76]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 13, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9815) stating that the Federal Aviation Agency proposed to modify the Tallahassee, Fla., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2167 (14 CFR 601.2167) is amended to read:

§ 601.2167 Tallahassee, Fla., control zone.

Within a 5-mile radius of the Tallahassee Municipal Airport (Latitude 30°23'33" N., Longitude 84°21'06" W.), and within 2 miles either side of the NW course of the Tallahassee RR extending from the 5-mile radius zone to 12 miles NW of the RR.

This amendment shall be effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11485; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-64]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 21, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9062) stating that the Federal Aviation Agency proposed to modify the Brunswick, Ga., (McKinnon Airport) control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2230 (14 CFR 601.2230) is amended to read:

§ 601.2230 Brunswick, Ga., (McKinnon Airport) control zone.

Within a 5-mile radius of McKinnon Airport, Brunswick, Ga. (latitude 31°09'05" N., longitude 81°23'20" W.), within 2 miles either side of the 226° True bearing from the Brunswick RBN extending from the 5-mile radius zone to 12 miles SW of the RBN, and within 2 miles either side of the 023° True radial of the Brunswick VOR extending from the 5-mile radius zone to the VOR.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11483; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-234]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 8, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9687) stating that the Federal Aviation Agency proposed to modify the Beaumont, Tex., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following action is taken: In the text of § 601.2332 (25 F.R. 5377) "LOM, and within 2 miles either side of the Beaumont ILS localizer SE course extending from the 5-mile radius zone to a point 10 miles SE of the airport." is deleted and "LOM." is substituted therefor.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 6, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11486; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-FW-63]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9417) stating that the Federal Aviation Agency pro-

posed to modify the Brunswick, Ga., control zone (NAAS Glynco).

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2357 (14 CFR 601.2357) is amended to read:

§ 601.2357 Brunswick, Ga., (NAAS Glynco) control zone.

Within a 5-mile radius of NAAS Glynco (latitude 31°15'31" N., longitude 81°28'01" W.), within 2 miles either side of the 055° True radial of the Glynco TACAN extending from the 5-mile radius zone to 7 miles NE of the TACAN, within 2 miles either side of the 250° True radial of the Glynco TACAN extending from the 5-mile radius zone to 9 miles SW of the TACAN and excluding that portion which coincides with the McKinnon Airport control zone, Brunswick, Georgia.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11482; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-232]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Route

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9419) stating that the Federal Aviation Agency (FAA) proposed to modify the segment of VOR/VORTAC jet route No. 15 between Roswell, N. Mex., and Albuquerque, N. Mex.

As stated in the notice, the FAA proposed to realign J-15-V from the Roswell VOR to the Albuquerque VORTAC via the intersection of the Roswell VOR 319° True and the Albuquerque VORTAC 128° True radials.

The Department of the Air Force offered no objections to the proposed modification. However, the Department of the Navy submitted the following comment, which is quoted in its entirety:

Except for those segments which will not have radar advisory service, the Navy has no objections to the proposed realignment of VOR/VORTAC Jet Route No. 15 from Roswell, New Mexico to Albuquerque, New Mexico. The establishment of any segment of a jet route, for turbo-jet civil air carriers, in which radar advisory service cannot be provided restricts military operations by creating additional areas of positive controlled airways which are objected to by the Navy.

This route is not approved for use by civil aircarrier turbojet aircraft. This realignment is to permit the application of non-radar lateral separation between aircraft operating on this segment of J-15-V and aircraft operating in the White Sands, N. Mex., Restricted Area (R-522). Therefore, the FAA is modifying J-15-V herein as proposed.

No other adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated herein and in the Notice, the following action is taken:

In the text of § 602.515 (14 CFR 602.515) "Albuquerque, N. Mex., VOR;" is deleted and "INT of the Roswell VOR 319° True and the Albuquerque, N. Mex., VORTAC 128° True radials; Albuquerque VORTAC;" is substituted therefor.

This amendment shall become effective 0001 e.s.t. January 12, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11480; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-219]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Route

On September 29, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9295) stating that the Federal Aviation Agency proposed to extend VOR/VORTAC jet route No. 38 from Duluth, Minn., to the United States/Canadian border via the direct radial between the Duluth VOR and the Kenora, Ontario, VOR, and revoke the segment of J-38-V between Philipsburg, Pa., and New York, N.Y.

No adverse comments were received regarding the proposed amendment. The Department of the Air Force, in advising that they did not object to the airspace action proposed, did state that they would object if radar surveillance was not available for the proposed extension. Radar coverage does exist for this route segment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 602.538 (25 F.R. 2886) is amended to read:

§ 602.538 VOR/VORTAC jet route No. 38 (United States/Canadian Border to Peck, Mich.).

From the INT of the United States-Canadian Border and the direct radial between the Duluth, Minn., VOR and the Kenora, Ont., VOR via the Duluth VOR; Green Bay, Wis., VORTAC; to the Peck, Mich., VOR.

This amendment shall become effective 0001 e.s.t. January 12, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11481; Filed, Dec. 9, 1960; 8:45 a.m.]

[Airspace Docket No. 60-NY-40]

PART 608—RESTRICTED AREAS

Modification of Restricted Area

On September 20, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9024) stating that the Federal Aviation Agency proposed to modify the De Blois, Maine, Restricted Area (R-397) (Lewiston Chart).

No adverse comments were received regarding the proposed amendment.

Subsequent to publication of the notice, the Department of the Air Force advised that the controlling agency should be the 4038th Strategic Wing, Dow AFB, Maine, in lieu of the 4060th Air Refueling Wing, Dow AFB, Maine. Such action is taken herein to reflect this change.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 8005) and for the reasons stated herein and in the notice, in § 608.27 *Maine*, the De Blois, Maine, Restricted Area (R-397) (Lewiston Chart) (23 F.R. 8581) is amended to read:

De Blois, Maine, Restricted Area (R-397) (Lewistown Chart).

Description by geographical coordinates.

North boundary: latitude 44°50'00" N.; south boundary: latitude 44°40'00" N.; east boundary: longitude 67°42'00" W.; west boundary longitude 67°56'00" W.

Designated altitudes. Surface to 39,000 feet MSL.

Time of designation. 1000 hours to 2400 hours local standard time, Monday through Friday.

Controlling agency. 4038th Strategic Wing, Dow AFB, Maine.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11490; Filed, Dec. 9, 1960; 8:46 a.m.]

[Airspace Docket No. 59-KC-79]

PART 608—RESTRICTED AREAS

Modification

The purpose of this amendment to § 608.31 of the regulations of the Administrator is to modify the Upper Red Lake, Minn., Restricted Area (R-186) (Lake of the Woods Chart).

The presently designated altitudes of R-186 are from the surface to 50,000 feet MSL and its time of designation is unlimited. The activities conducted within this restricted area are strafing and bombing. A review of these activities by the Federal Aviation Agency (FAA) and the Department of the Navy indicates that the designated altitudes can be reduced to surface to 10,000 feet MSL and the time of designation reduced to sunrise to sunset from May 16 through October 14, and sunrise Saturday to sunset Sunday, October 15 through May 15. In addition, the size of the area can be reduced from 667 square miles to approximately 180 square miles.

The FAA is planning an additional detailed study of R-186 in the near future with a view toward further modification of the area. Pending the results of that study, action is being taken herein to reduce the size of R-186 as described above.

Since this amendment reduces a burden on the public, notice and public procedure hereon are unnecessary, and it may be made effective as indicated.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 8005), the following action is taken:

In § 608.31 *Minnesota*, the Upper Red Lake, Minn., Restricted Area (R-186) (Lake of the Woods Chart) (23 F.R. 8583) is amended to read:

Upper Red Lake, Minn., Restricted Area (R-186) (Lake of the Woods Chart)

Description by geographical coordinates. North boundary, latitude 48°23'00" N; east boundary, longitude 94°40'00" W.; south boundary, latitude 48°13'00" N; west boundary, longitude 95°00'00" W.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. Sunrise to sunset, May 16 through October 14, and sunrise Saturday to sunset Sunday, October 15 through May 15, annually.

Controlling agency. Naval Air Station (Minneapolis-St. Paul International Airport), Minneapolis, Minn.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 5, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11491; Filed, Dec. 9, 1960; 8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 2054]

SUBCHAPTER K—MILITARY AND NAVAL SERVICE

PART 181—VETERANS', SOLDIERS' AND SAILORS' RIGHTS

SUBCHAPTER T—SALE, LEASE, OR USE, AND ACQUISITIONS

PART 257—SALE OR LEASE OF SMALL TRACTS

In order to eliminate from the regulations the provisions of section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U.S.C. 282), as amended, which expired September 26, 1959, the regulations are revised as set forth below.

This amendment relates to matters which are exempt from the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003), and although the Department of the Interior customarily observes the rule making requirements voluntarily, that procedure was not followed in this case since this change in the regulations is merely a reflection of the fact that the provisions of section 4 of the law terminated on September 26, 1959.

§ 181.7 [Revocation]

§ 181.8 [Redesignation]

In order to eliminate from the regulations provisions which were authorized or required by said section, the following revisions are necessary: (1) § 181.7 is revoked in its entirety, § 181.8 is renumbered as § 181.7, and (2) § 257.5, paragraph (b) of § 257.7, § 257.8, paragraphs (c) and (e) of § 257.14, and paragraph (c) of § 257.18 are revised to read as follows:

§ 257.5 Preference rights of applicants.

Where public land is classified pursuant to an application on Form 4-776, which application was filed prior to the receipt by the land office of notice that the area was under consideration for small tract classification, the applicant is entitled to a preference right of lease or purchase, as the case may be, if (a) the land is thereafter classified for the type of site applied for; (b) the applicant agrees to conform his application to the area, classification, and dimensions of the tract as specified in the classification order; and (c) where the land is classified for direct sale, the applicant tenders the fair market value of the land when required.

* * * * *

§ 257.7 Drawing procedure.

(b) The classification or other order may require the filing of "Special Drawing Cards," Form 4-775b, in lieu of Application Form 4-776. Any person who has the necessary qualifications may obtain an official drawing entry card upon request to the land office manager. The request should designate the classification order by number. It should be accompanied by a stamped, self-addressed return envelope. Each successful entrant in a drawing will be furnished in duplicate Form 4-776, bearing the description of the tract allocated to him. The forms must be completely filled out, signed and returned, accompanied by the proper rental and fees within the time allowed by the authorized officer of the Bureau of Land Management. Where an entrant for any reason fails to comply with the requirements within the time allowed, the tract will become available to the alternate next in line in the drawing.

§ 257.8 Filing fee.

Every application on Form 4-776 must be accompanied by a filing fee of $10. No fee is required for the filing of a "Special Drawing Entry Card," Form 4-775b, but the fee is required of entrants who are successful in the drawing. No fee is required in connection with a bid in a sale at public auction. A fee of $10 is required with each application to purchase, based upon an outstanding lease and with each application for renewal or assignment of an outstanding lease. All filing fees will be retained by the Government.

§ 257.14 Public auctions.

* * * * *

(c) A bid sent by mail must be received at the place and within the time specified in the classification order. Each such bid must clearly state (1) the name and address of the bidder and (2) the specific tract, as described in the classification order, for which the bid is made. The envelope must be noted as required by the classification order.

* * * * *

(e) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared high bidder. If the high bidder meets the general requirements of a small tract applicant, he will be declared purchaser. Any person who is declared high bidder will automatically be disqualified from consideration for other tracts for which he may have submitted bids.

§ 257.18 Application following lease terminations and unsuccessful public auctions.

* * * * *

(c) The order will specify which one of the following methods will be used for disposing of the land: (1) Sale at public auction to the highest bidder in accordance with § 257.14; (2) a special drawing procedure indicated in paragraph (d) of this section.

(52 Stat. 609, as amended; interprets or applies R.S. 2478 and 58 Stat. 748, as amended; 43 U.S.C. 682a–e; 43 U.S.C. 282–284; 43 U.S.C. 1201)

The provisions eliminated from the regulations by this amendment became ineffective September 27, 1959, except with respect to unexpired preferences granted by orders issued prior to that date, and became completely ineffective when rights and privileges under such orders were exhausted.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 5, 1960.

[F.R. Doc. 60–11502; Filed, Dec. 9, 1960; 8:48 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 4—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST SERVICES

Channels 5 and 6 Are Not Available for TV Translator Use in Alaska and Hawaii

On July 27, 1960, the Commission adopted a Report and Order in Docket No. 12116 amending Part 4 of the rules to provide for the licensing of television broadcast translator stations on VHF television channels. Section 4.702 failed to note that the frequency bands 76–82 Mc and 82–88 Mc (television channels 5 and 6) are allocated for nonbroadcast use in Alaska and Hawaii and, consequently, are not available for use by VHF translators in those states.[1]

The amendment adopted herein is corrective only and therefore may be accomplished and made effective without compliance with the public notice, procedural, and effective date requirements of section 4 of the Administrative Procedure Act.

Authority for the amendment herein is contained in sections 4(i) and 303(c), (d) and (f) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Organization, Delegations of Authority, and Other Information.

Accordingly, it is ordered, That, effective December 15, 1960, § 4.702(b) of the Commission's rules and regulations is amended; the paragraph reading as follows:

§ 4.702 Frequency assignment.

* * * * *

(b) Any one of the 12 standard VFH channels (2–13 inclusive) may be assigned to a VHF translator on condition that no interference is caused to the direct reception of any television broadcast station operating on the same or an adjacent channel: *Provided, however*, That channels 5 and 6 are allocated for nonbroadcast use in Alaska and Hawaii and will not be assigned to VHF translators in those states.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082 as amended; 47 U.S.C. 303)

Adopted: December 6, 1960.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60–11525; Filed, Dec. 9, 1960; 8:50 a.m.]

[1] See Section 2.104, footnote US 33 of the Commission's rules and regulations.

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 8]

LIABILITY FOR DUTIES; ENTRY FOR IMPORTED MERCHANDISE

Notice of Proposed Amendment of the Customs Regulations Relating to Free Entry of Shipments Valued at Not in Excess of One Dollar

Notice is hereby given that, under the authority of section 321(b), Tariff Act of 1930, as amended, the Treasury Department is considering an amendment to § 8.3 of the Customs Regulations relating to free entry of shipments valued at not in excess of $1.

Under section 321(a)(2)(C), Tariff Act of 1930, as amended, and § 8.3 of the Customs Regulations, articles may be admitted free of duty, without the preparation of an entry, if among other requirements the value of such articles imported by one person on one day does not exceed $1.

The admission of articles free of duty and without the preparation of an entry under section 321(a)(2)(C) of the tariff act in the case of articles of a class or kind prescribed for in quotas is inconsistent with the purpose of such quotas.

Accordingly, to insure that quota merchandise will not enter the country under section 321(a)(2)(C) and pursuant to section 321(b) of the tariff act, it is proposed to amend § 8.3 of the Customs Regulations by adding paragraph (d)(7) which will read as follows:

(7) The exemption referred to in section 321(a)(2)(C) is not to be allowed in the case of any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed. In the case of merchandise of a class or kind provided for in a tariff-rate quota, the merchandise is subject to the rate of duty in effect on the date of entry.

Prior to the final adoption of the amendment to the regulations herein proposed, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Customs, Washington 25, D.C., within 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearing will be held.

[SEAL] LAWTON M. KING,
Acting Commissioner of Customs.

Approved: December 5, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60–11542; Filed, Dec. 9, 1960; 8:52 a.m.]

Internal Revenue Service

[26 CFR (Part 1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Life Insurance Companies

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to provide regulations under sections 809, 810, 811, 812, and 815 of the Internal Revenue Code of 1954, as added by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 121), the Income Tax Regulations (26 CFR Part 1) are amended as follows:

There are inserted immediately after § 1.807–1 the following new sections:

§ 1.807–2 Taxable years affected.

Section 1.807–1 is applicable only to taxable years beginning after December 31, 1953, and before January 1, 1955, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, before amendments.

GAIN AND LOSS FROM OPERATIONS

§ 1.809 Statutory provisions; life insurance companies; in general.

SEC. 809. *In general*—(a) *Exclusion of share of investment yield set aside for policyholders*—(1) *Amount.* The share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For purposes of the preceding sentence, the share of any item set aside for policyholders shall be that percentage obtained by dividing the required interest by the investment yield; except that if the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(2) *Required interest.* For purposes of this part, the required interest for any taxable year is the sum of the products obtained by multiplying—

(A) Each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by

(B) The means of the amount of such reserves computed at that rate at the beginning and end of the taxable year.

(b) *Gain and loss from operations*—(1) *Gain from operations defined.* For purposes of this part, the term "gain from operations" means the amount by which the sum of the following exceeds the deductions provided by subsection (d):

(A) The life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) The sum of the items referred to in subsection (c).

(2) *Loss from operations defined.* For purposes of this part, the term "loss from operations" means the amount by which the sum of the deductions provided by subsection (d) exceeds the sum of—

(A) The life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received); and

(B) The sum of the items referred to in subsection (c).

(3) *Life insurance company's share.* For purposes of this subpart, the life insurance company's share of any item shall be that percentage which, when added to the percentage obtained under the second sentence of subsection (a)(1), equals 100 percent.

(4) *Exception.* If it is established in any case that the application of the definition of gain from operations contained in paragraph (1) results in the imposition of tax on—

(A) Any interest which under section 103 is excluded from gross income,

(B) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(C) Any amount of dividends received which under sections 243, 244, and 245 (as modified by subsection (d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(c) *Gross amount.* For purposes of subsections (b)(1) and (2), the following items shall be taken into account:

(1) *Premiums.* The gross amount of premiums and other consideration (including advance premiums, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer) on insurance and annuity contracts (including contracts supplementary thereto) less return premiums, and premiums and other consideration arising out of reinsurance ceded. Except in the case of amounts of premiums or other consideration returned to another

life insurance company in respect of reinsurance ceded, amounts returned where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management shall not be included in return premiums.

(2) *Decreases in certain reserves.* Each net decrease in reserves which is required by section 810 or 811(b)(2) to be taken into account for purposes of this paragraph.

(3) *Other amounts.* All amounts, not included in computing investment yield and not includible under paragraph (1) or (2), which under this subtitle are includible in gross income.

Except as included in computing investment yield, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(d) *Deductions.* For purposes of subsections (b) (1) and (2), there shall be allowed the following deductions:

(1) *Death benefits, etc.* All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto).

(2) *Increases in certain reserves.* The net increase in reserves which is required by section 810 to be taken into account for purposes of this paragraph.

(3) *Dividends to policyholders.* The deduction for dividends to policyholders (determined under section 811(b)).

(4) *Operations loss deduction.* The operations loss deduction (determined under section 812).

(5) *Certain nonparticipating contracts.* An amount equal to 10 percent of the increase for the taxable year in the reserves for nonparticipating contracts or (if greater) an amount equal to 3 percent of the premiums for the taxable year (excluding that portion of the premiums which is allocable to annuity features) attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more. For purposes of this paragraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (excluding that portion of the reserves which is allocable to annuity features) as relates to nonparticipating contracts (other than group contracts). For purposes of this paragraph and paragraph (6), the term "premiums" means the net amount of the premiums and other consideration taken into account under subsection (c)(1).

(6) *Group life, accident, and health insurance.* An amount equal to 2 percent of the premiums for the taxable year attributable to group life insurance contracts and group accident and health insurance contracts. The deduction under this paragraph for the taxable year and all preceding taxable years shall not exceed an amount equal to 50 percent of the premiums for the taxable year attributable to such contracts.

(7) *Assumption by another person of liabilities under insurance, etc., contracts.* The consideration (other than consideration arising out of reinsurance ceded) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto).

(8) *Tax-exempt interest, dividends, etc.*—(A) *Life insurance company's share.* Each of the following items:

(i) The life insurance company's share of interest which under section 103 is excluded from gross income,

(ii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)) computed with respect to the life insurance company's share of such interest, and

(iii) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by subparagraph (B)) computed with respect to the life insurance company's share of the dividends received.

(B) *Application of section 246(b).* In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A)(iii), the limit on the aggregate amount of the deductions allowed by sections 243(a), 244, and 245 shall be 85 percent of the gain from operations computed without regard to—

(i) The deductions provided by paragraphs (3), (5), and (6) of this subsection,

(ii) The operations loss deduction provided by section 812, and

(iii) The deductions allowed by sections 243(a), 244, and 245,

but such limit shall not apply for any taxable year for which there is a loss from operations.

(9) *Investment expenses, etc.* Investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield, and the amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income.

(10) *Small business deduction.* A small business deduction in an amount equal to the amount determined under section 804(a)(4).

(11) *Certain mutualization distributions.* The amount of distributions to shareholders made in 1958 and 1959 in acquisition of stock pursuant to a plan of mutualization adopted before January 1, 1958.

(12) *Other deductions.* Subject to the modifications provided by subsection (e), all other deductions allowed under this subtitle for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this subsection in respect of dividends to policyholders.

(e) *Modifications.* The modifications referred to in subsection (d)(12) are as follows:

(1) *Interest.* In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 810(c).

(2) *Bad debts.* Section 166(c) (relating to reserve for bad debts) shall not apply.

(3) *Charitable, etc., contributions and gifts.* In applying section 170—

(A) The limit on the total deductions under such section provided by the first sentence of section 170(b)(2) shall be 5 percent of the gain from operations computed without regard to—

(i) The deduction provided by section 170,

(ii) The deductions provided by paragraphs (3), (5), (6), and (8) of subsection (d), and

(iii) Any operations loss carryback to the taxable year under section 812; and

(B) Under regulations prescribed by the Secretary or his delegate, a rule similar to the rule contained in section 170(b)(3) shall be applied.

(4) *Amortizable bond premium.* Section 171 shall not apply.

(5) *Net operating loss deduction.* The deduction for net operating losses provided in section 172 shall not be allowed.

(6) *Partially tax-exempt interest.* The deduction for partially tax-exempt interest provided by section 242 shall not be allowed.

(7) *Dividends received.* The deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(f) *Limitation on certain deductions*—(1) *In general.* The amount of the deductions under paragraphs (3), (5), and (6) of subsection (d) shall not exceed $250,000 plus the amount (if any) by which—

(A) The gain from operations for the taxable year, computed without regard to such deductions, exceeds

(B) The taxable investment income for the taxable year.

(2) *Application of limitation.* The limitation provided by paragraph (1) shall apply first to the amount of the deduction under subsection (d)(6), then to the amount of the deduction under subsection (d)(5), and finally to the amount of the deduction under subsection (d)(3).

(g) *Limitations on deduction for certain mutualization distributions*—(1) *Deduction not to reduce taxable investment income.* The amount of the deduction under subsection (d)(11) shall not exceed the amount (if any) by which—

(A) The gain from operations for the taxable year, computed without regard to such deduction (but after the application of subsection (f)), exceeds

(B) The taxable investment income for the taxable year.

(2) *Deduction not to reduce tax below 1957 law.* The deduction under subsection (d)(11) for the taxable year shall be allowed only to the extent that such deduction (after the application of all other deductions provided by subsection (d)) does not reduce the amount of the tax imposed by section 802(a)(1) for such taxable year below the amount of tax which would have been imposed by section 802(a) as in effect for 1957, if this part, as in effect for 1957, applied for such taxable year

(3) *Application of section 815.* That portion of any distribution with respect to which a deduction is allowed under subsection (d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distribution made in 1959, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B).

[Sec. 809 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 121)]

§ 1.809–1 Taxable years affected.

Sections 1.809–2 through 1.809–8 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.809–2 Exclusion of share of investment yield set aside for policyholders.

(a) *In general.* Section 809 provides the rules for determining the gain or loss from operations of a life insurance company, which amount is necessary to determine life insurance company taxable income. In order to determine gain or loss from operations, a life insurance company must first determine the share of each and every item of its investment yield (as defined in section 804(c) and paragraph (a) of § 1.804–4) set aside for policyholders (as computed under section 809(a)(1) and paragraph (b) of this section), as this share is excluded from gain or loss from operations (as defined in section 809(b)(1) and (2) and paragraphs (a) and (b) of § 1.809–3, respectively). The life insurance company shall then add its share of each and every item of its investment yield to the sum of the items comprising gross amount (as described in section 809(c) and paragraph (a) of § 1.809–4). From this sum there shall then be subtracted the deductions provided in section 809(d) and paragraph (a) of § 1.809–5. The amount thus obtained is the gain or loss from operations for the taxable year.

(b) *Computation of share of investment yield set aside for policyholders.* Section 809(a)(1) provides that the share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) of any life insurance company set aside for policyholders shall not be included in gain or loss from operations. For this purpose, the percentage used in determining the share of each of these items comprising the investment yield set aside for policyholders shall be determined by dividing the required interest (as defined in section 809(a)(2) and paragraph (d) of this section) by the investment yield (as defined in section 804(c) and paragraph (a) of § 1.804–4). The percentage thus obtained is then applied to each and every item of the investment yield so that the share of each and every item of investment yield set aside for policyholders shall be excluded from gain or loss from operations. However, if in any case the required interest exceeds the investment yield, then the share of any item set aside for policyholders shall be 100 percent.

(c) *Computation of life insurance company's share of investment yield.* For purposes of subpart C, part I, subchapter L, chapter 1 of the Code, section 809(b)(3) provides that the percentage used in determining the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be obtained by subtracting the percentage obtained under paragraph (b) of this section from 100 percent. For example, if the policyholders' percentage (as determined under section 809(a)(1) and paragraph (b) of this section) is 72.38 percent, then the life insurance company's share is 27.62 percent (100 percent minus 72.38 percent). In such a case, if the amount of a particular item is $200, then the life insurance company's share of such item included in determining gain or loss from operations is $55.24 ($200 multiplied by 27.62 percent) and the share of such item set aside for policyholders (which is excluded from gain or loss from operations) is $144.76 ($200 multiplied by 72.38 percent). For purposes of determining gain or loss from operations, the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) shall be added to the sum of the items comprising gross amount (as described in section 809(c) and paragraph (a) of § 1.809–4).

(d) *Required interest defined.* (1) For purposes of part I, section 809(a)(2) defines the term "required interest" for any taxable year as the sum of the products obtained by multiplying (i) each rate of interest required, or assumed by the taxpayer, in calculating the reserves described in section 810(c), by (ii) the means of the amount of such reserves computed at that rate at the beginning and end of the taxable year. In the case of the reserves described in section 810(c)(1), such rate of interest shall be the same as that used by the taxpayer for purposes of paragraph (b) of § 1.801–5 (relating to the definition of reserves required by law) with respect to such reserves. In the case of the reserves described in section 810(c)(2) through (5), such rate of interest shall be the same as that actually paid, credited, or accrued by the taxpayer with respect to such reserves. Thus, the required interest for any taxable year includes the elements of interest paid (as defined in section 805(e)) with respect to the reserves described in section 810(c).

(2) For purposes of computing required interest under section 809(a)(2) and subparagraph (1) of this paragraph, the amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets) before applying the rate of interest required, or assumed by the taxpayer, thereto. However, in the case of the adjustments required by section 810(d) as a result of a change in the basis of computing reserves, the adjustments to any of the reserves described in section 810(c) shall be taken into account in accordance with the rules prescribed in section 810(d) and § 1.810–3.

§ 1.809–3 Gain and loss from operations defined.

(a) *Gain from operations.* For purposes of part I, subchapter L, chapter 1 of the Code, section 809(b)(1) defines the term "gain from operations" as the excess of the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), and (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809–4, over the sum of the deductions provided by section 809(d) and § 1.809–5.

(b) *Loss from operations.* For purposes of part I, section 809(b)(2) defines the term "loss from operations" as the excess of the sum of the deductions provided by section 809(d) and § 1.809–5 over the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received), and (2) the items of gross amount taken into account under section 809(c) and paragraph (a) of § 1.809–4.

(c) *Illustration of principles.* The provisions of section 809(b)(1) through (3) and paragraphs (a) and (b) of this section may be illustrated by the following example:

Example. For the taxable year 1958, T, a life insurance company, had investment yield of $900,000, including $150,000 of dividends received from domestic corporations subject to taxation under chapter 1 of the Code, $10,000 of wholly tax-exempt interest, and $78,000 of partially tax-exempt interest. T also had items of gross amount under section 809(c) in the amount of $12,000,000 and deductions under section 809(d) of $6,963,500 (exclusive of any deductions for wholly tax-exempt interest, partially tax-exempt interest, and dividends received). For such taxable year, the share of each and every item of investment yield set aside for policyholders was 80 percent and the company's share of each and every item of investment yield was 20 percent. Based upon these figures, T had a gain from operations of $5,180,000 for the taxable year 1958, computed as follows:

	Col. 1	Col. 2 (80% x Col. 1) exclusion of policyholder's share	Col. 3 (20% x Col. 1) company's share
Interest wholly tax-exempt	$10,000	$8,000	$2,000
Interest partially tax-exempt	78,000	62,400	15,600
Dividends received	150,000	120,000	30,000
Other items of investment yield	662,000	529,600	132,400
Investment yield	900,000	720,000	180,000

Gross amount (sum of items under sec. 809(c))		$12,000,000
Total		12,180,000
Less:		
Deductions under sec. 809(d)(8):		
Company's share of interest wholly tax-exempt	$2,000	
35/52 of company's share of interest partially tax-exempt 35/52 × $15,600)	9,000	
85% of company's share of dividends received (but not to exceed 85% of gain from operations as computed under sec. 809(d)(8)(B)) (85% × $30,000)	25,500	
All other deductions under sec. 809(d)	6,963,500	
		7,000,000
Gain from operations		5,180,000

(d) *Exception.* (1) In accordance with section 809(b)(4), if it is established in any case to the satisfaction of the Commissioner, or by a determination of The Tax Court of the United States, or of any other court of competent jurisdiction, which has become final, that the application of the definition of gain from operations contained in section 809(b)(1) results in the imposition of tax on—

(i) Any interest which under section 103 is excluded from gross income,

(ii) Any amount of interest which under section 242 (as modified by section 804(a)(3)) is allowable as a deduction, or

(iii) Any amount of dividends received which under sections 243, 244, and 245 (as modified by section 809(d)(8)(B)) is allowable as a deduction,

adjustment shall be made to the extent necessary to prevent such imposition.

(2) For the date upon which a decision by the Tax Court becomes final, see section 7481. For the date upon which a judgment of any other court becomes final, see paragraph (c) of § 1.1313(a)-1.

§ 1.809-4 Gross amount.

(a) *Items taken into account.* For purposes of determining gain or loss from operations under section 809(b) (1) and (2), respectively, section 809(c) specifies three categories of items which shall be taken into account. Such items are in addition to the life insurance company's share of the investment yield (as determined under section 809(a)(1) and paragraph (c) of § 1.809-2). The three categories of items taken into account are:

(1) *Premiums.* (i) The gross amount of all premiums and other consideration on insurance and annuity contracts (including contracts supplementary thereto); less return premiums, and premiums and other consideration arising out of reinsurance ceded. The term "gross amount of all premiums" means the premiums and other consideration provided in the insurance or annuity contract. Thus, the amount to be taken into account shall be the total of the premiums and other consideration without any deduction for commissions, return premiums, reinsurance, dividends to policyholders, dividends left on deposit with the company, interest applied in reduction of premiums, or any other item of similar nature. Such term includes advance premiums, premiums deferred and uncollected and premiums due and unpaid, deposits, fees, assessments, and consideration in respect of assuming liabilities under contracts not issued by the taxpayer (such as a payment or transfer of property in an assumption reinsurance transaction as defined in paragraph (a)(7)(ii) of § 1.809-5). Amounts representing premiums charged itself by the company with respect to liability for insurance and annuity benefits for employees and agents shall not be included under section 809(c)(1).

(ii) The term "return premiums" means amounts returned which are fixed by contract and do not depend on the experience of the company or the discretion of the management. Thus, such term includes amounts rebated or refunded due to policy cancellations or erroneously computed premiums. Furthermore, amounts of premiums or other consideration returned to another life insurance company in respect of reinsurance ceded shall be included in return premiums. For the treatment of amounts which do not meet the requirements of return premiums, see section 811 (relating to dividends to policyholders).

(iii) For purposes of section 809(c)(1) and this subparagraph, the term "reinsurance ceded" means an arrangement whereby the taxpayer (the reinsured) remains solely liable to the policyholder, whether all or only a portion of the risk has been transferred to the reinsurer. Such term includes indemnity reinsurance transactions but does not include assumption reinsurance transactions. See paragraph (a)(7)(ii) of § 1.809-5 for the definition of assumption reinsurance.

(2) *Decreases in certain reserves.* Each net decrease in reserves which is required by section 810 (a) and (d)(1) or 811(b)(2) to be taken into account for the taxable year as a net decrease for purposes of section 809(c)(2).

(3) *Other amounts.* All amounts, not included in computing investment yield and not otherwise taken into account under section 809(c) (1) or (2), shall be taken into account under section 809(c)(3) to the extent that such amounts are includible in gross income under subtitle A of the Code. See section 61 (relating to gross income defined) and the regulations thereunder.

(b) *Exclusion of net long-term capital gains.* Any net long-term capital gains (as defined in section 1222(7)) from the sale or exchange of a capital asset (or any gain considered to be from the sale or exchange of a capital asset under applicable law) shall be excluded from the determination of gain or loss from operations of a life insurance company. However, section 809(c) provides that any excess of net short-term capital gain (as defined in section 1222(5)) over a net long-term capital loss (as defined in section 1222(8)) included in computing investment yield (as defined in section 804(c)) shall be taken into account in determining gain or loss from operations under section 809.

§ 1.809-5 Deductions.

(a) *Deductions allowed.* Section 809(d) provides the folowing deductions for purposes of determining gain or loss from operations under section 809(b) (1) and (2), respectively:

(1) *Death benefits, etc.* All claims and benefits accrued (less reinsurance recoverable), and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts (including contracts supplementary thereto). The term "all claims and benefits accrued" includes, for example, matured endowments and amounts allowed on surrender. The term "losses incurred (whether or not ascertained)" means a reasonable estimate of the amount of the losses (based upon the facts in each case and the company's experience with similar cases) incurred but not reported by the end of the taxable year as well as losses reported but where the amount thereof cannot be ascertained by the end of the taxable year.

(2) *Increases in certain reserves.* The net increase in reserves which is required by section 810(b) and (d)(1) to be taken into account for the taxable year as a net increase for purposes of section 809(d)(2).

(3) *Dividends to policyholders.* The deduction for dividends to policyholders as determined under section 811(b) and § 1.811-2. Except as provided in section 809(d)(3) and this subparagraph, no amount shall be allowed as a deduction in respect of dividends to policyholders under section 809(d). See section 809(f) and § 1.809-7 for limitation of such deduction.

(4) *Operations loss deduction.* The operations loss deduction as determined under section 812.

(5) *Certain nonparticipating contracts.* (i) An amount equal to the greater of:

(a) 10 percent of the increase for the taxable year in certain life insurance reserves for nonparticipating contracts (other than group contracts); or

(b) 3 percent of the premiums for the taxable year attributable to nonparticipating contracts (other than group contracts) which are issued or renewed for periods of 5 years or more.

(ii) For purposes of section 809(d)(5) and this subparagraph, the term "nonparticipating contracts" means those contracts having a guaranteed premium rate throughout the premium-paying period but no rights to dividends or similar distributions. If at any time during the taxable year for which the deduction allowed under section 809(d)(5) and this subparagraph is claimed such contracts have rights to dividends or similar distributions, such contracts shall no longer be deemed nonparticipating contracts and, therefore, no deduction shall be allowed. For example, if a class of contracts with a guaranteed premium rate and having no rights to dividends is in force for nine years and on March 10, 1958, it is announced that such contracts shall be accorded dividend rights as of August 1, 1958, no deduction shall be allowed under section 809(d)(5) and this subparagraph for the taxable year 1958 or any succeeding taxable year, whether or not dividends are actually paid on such contracts. However, if the announcement of March 10, 1958, states that such contracts shall be accorded dividend rights as of January 1, 1959, a deduction under section 809(d)(5) and this subparagraph shall be allowed for the taxable year 1958 but not for any succeeding taxable year.

(iii) For purposes of section 809(d)(5) and this subparagraph, the term "reserves for nonparticipating contracts" means such part of the life insurance reserves (as defined in section 801(b) and § 1.801-4), other than that portion of such reserves which is allocable to annuity features, as relates to nonparticipating contracts (as defined in subdivision (ii) of this subparagraph). The amount of life insurance reserves taken into account shall be adjusted first as required by section 818(c) (relating to an election with respect to life insurance reserves computed on a preliminary term basis) and then as required by section 806(a) (relating to adjustments for certain changes in reserves and assets). In the case of the adjustments required by section 810(d) (relating to adjustment for change in computing reserves), the increase in life insurance reserves attributable to reserve strengthening shall be taken into account in accordance with the rules prescribed in section 810(d) and § 1.810-3.

(iv) For purposes of section 809(d)(5) and this subparagraph, the term "premiums" means the net amount of the premiums and other consideration attributable to nonparticipating contracts (as defined in subdivision (ii) of this subparagraph) which are taken into account under section 809(c)(1). For this purpose, premiums include only such amounts attributable to such contracts which are issued or renewed for periods of 5 years or more, but does not include that portion of the premiums which is allocable to annuity features. No portion of a premium shall be deemed allocable to annuity features solely because a contract, such as an endowment contract, provides that at maturity the insured shall have an option to take an annuity. The determination of whether a contract meets the 5-year requirement shall be made as of the date the contract is issued, or as of the date it is renewed, whichever is applicable. Thus, a 20-year nonparticipating endowment policy shall qualify for the deduction under section 809(d)(5), even though the insured subsequently dies at the end of the second year, since the policy is issued for a period of 5 years or more. However, a 1-year renewable term contract shall not qualify, since as of the date it is issued (or of any renewal date) it is not issued (or renewed) for a period of 5 years or more. In like manner, a policy originally issued for a 3-year period and subsequently renewed for an additional 3-year period shall not qualify. However, if this policy is renewed for a period of 5 years or more, the policy shall qualify for the deduction under section 809(d)(5) from the date it is renewed.

(v) The provisions of section 809(d)(5) and this subparagraph may be illustrated by the following example:

Example. Assume the following facts with respect to X, a life insurance company, for the taxable year 1958:

Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 1-1-58	$150,000
Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 12-31-58	225,000
Annuity reserves on nonparticipating contracts (other than group contracts) at 1-1-58	48,000
Annuity reserves on nonparticipating contracts (other than group contracts) at 12-31-58	57,000
Premiums on nonparticipating contracts without annuity features (other than group contracts) issued or renewed for 5 years or more	85,000
Premiums on nonparticipating contracts allocable to annuity features (other than group contracts) issued or renewed for 5 years or more	14,000
Return premiums on nonparticipating contracts without annuity features (other than group contracts)	5,000

In order to determine the deduction under section 809(d)(5) (without regard to the limitation of section 809(f)), X would make up the following schedule:

(1) Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 12-31-58	$225,000
(2) Life insurance reserves on nonparticipating contracts without annuity features (other than group contracts) at 1-1-58	$150,000
(3) Excess of item (1) over item (2) ($225,000 minus $150,000)	75,000
(4) 10 percent of item (3) (10% × $75,000)	$7,500
(5) Net premiums on nonparticipating contracts without annuity features issued or renewed for 5 years or more (other than group contracts) (gross premiums on such contracts ($85,000) minus return premiums ($5,000) on such contracts)	80,000
(6) 3 percent of item (5) (3% × $80,000)	2,400
(7) The greater of item (4) or item (6)	7,500
(8) Tentative deduction under sec. 809(d)(5) (computed without regard to the limitation of sec. 809(f))	7,500

(vi) See section 809(f) and § 1.809-7 for limitation of the deduction provided by this subparagraph.

(6) *Group life, accident, and health insurance.* (i) An amount equal to two percent of the premiums for the taxable year attributable to group life insurance contracts, group accident and health insurance contracts, or group accident and health insurance contracts with a life feature. For purposes of section 809(d)(6) and this subparagraph, the term "premiums" means the net amount of the premiums and other consideration attributable to such contracts taken into account under section 809(c)(1). The deduction allowed by section 809(d)(6) and this subparagraph for the taxable year and all preceding taxable years shall not exceed 50 percent of the net amount of the premiums attributable to such contracts for the taxable year. For example, assume that premiums attributable to group life insurance and group accident and health insurance contracts are $103,000 for the taxable year. Assume further that there are $3,000 of return premiums attributable to such contracts for the taxable year. Under the provisions of section 809(d)(6) and this subparagraph, a deduction (determined without regard to section 809(f)) of $2,000 (2 percent of $100,000 ($103,000 minus $3,000)) is allowed. Assuming that the company continues to receive net premiums of $100,000 attributable to such contracts for 15 years, the cumulative amount of these deductions is $30,000 ($2,000 for 15 years). If, in the sixteenth year, net premiums attributable to such contracts amount to $60,000, no deduction shall be allowed under section 809(d)(6) and this subparagraph since the cumulative amount of these deductions ($30,000) equals 50 percent of the current year's premiums ($60,000) from such contracts.

(ii) In computing the deduction under section 809(d)(6), the determination as to when the 50 percent limitation on such deduction has been reached shall be based upon the amount allowed as a deduction for the taxable year and all preceding taxable years after the application of the limitation provided in section 809(f) and § 1.809-7. Thus, if in the example set forth in subdivision (i) of this subparagraph the application of the limitation provided in section 809(f) and § 1.809-7 limited the deduction allowed in the fifteenth year to $500, then for purposes of determining the 50 percent limitation on such deduction, the cumulative amount of these deductions equals $28,500 ($2,000 for 14 years plus $500 for 1 year). Accordingly, in the sixteenth year, a deduction of $1,200 (2 percent of $60,000) shall be allowed since the cumulative amount of the deductions for the taxable year and all preceding taxable years ($29,700 or $1,200 plus $28,500) is less than 50 percent ($30,000) of the net premiums ($60,000) attributable to such contracts for the taxable year.

(iii) For purposes of determining whether the 50 percent limitation applies to any taxable year, the deduction provided by section 809(d)(6) for all preceding taxable years shall be taken into account, irrespective of whether or not the life insurance company claimed a deduction for these amounts for such preceding taxable years.

(iv) See section 809(f) and § 1.809-7 for limitation of the deduction provided by this subparagraph.

(7) *Assumption by another person of liabilities under insurance, etc., contracts.* (i) The consideration (other than consideration arising out of reinsurance ceded as defined in paragraph (a)(1)(iii) of § 1.809-4) in respect of the assumption by another person of liabilities under insurance and annuity contracts (including contracts supplementary thereto) of the taxpayer.

(ii) For purposes of section 809(d)(7) and this subparagraph, the term "assumption reinsurance" means an arrangement whereby another person (the reinsurer) becomes solely liable to the policyholders on the contracts transferred by the taxpayer. Such term does not include indemnity reinsurance or reinsurance ceded (as defined in paragraph (a)(1)(iii) of § 1.809-4).

(iii) The provisions of section 809(d)(7) and this subparagraph may be illustrated by the following example:

Example. During the taxable year 1958, T, a life insurance company, transferred a block of insurance policies and made a payment of $50,000 to R, a life insurance company, under an arrangement whereby R became solely liable to the policyholders on the policies transferred by T. Under the provisions of section 809(d)(7) and this subparagraph, T is allowed a deduction of $50,000 for the taxable year 1958. For the treatment by R of this $50,000 payment, see section 809(c)(1) and paragraph (a)(1)(i) of § 1.809-4. See section 806 (a) and § 1.806-3 for the adjustments in reserves and assets to be made by T and R as a result of this transaction.

(8) *Tax-exempt interest, dividends, etc.* (i) Each of the following items:

(a) The life insurance company's share of interest which under section 103 is excluded from gross income;

(b) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3) and paragraph (d)(2)(i) of § 1.804–2) computed with respect to the life insurance company's share of such interest; and

(c) The deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B) and subdivision (ii) of this subparagraph) computed with respect to the life insurance company's share of the dividends received.

(ii) The modification contained in section 809(d)(8)(B) provides the method for applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of section 809(d)(8)(A)(iii) and subdivision (i)(c) of this subparagraph. Under this method, the sum of the deductions allowed by sections 243(a) (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock), and 245 (relating to dividends received from certain foreign corporations) shall be limited to 85 percent of the gain from operations computed without regard to:

(a) The deductions provided by section 809(d)(3), (5), and (6);

(b) The operations loss deduction provided by section 812; and

(c) The deductions allowed by sections 243(a), 244, and 245.

If a life insurance company has a loss from operations (as determined under section 812) for the taxable year, the limitation provided in section 809(d)(8)(B) and this subdivision shall not be applicable for such taxable year. In that event, the deductions provided by sections 243(a), 244, and 245 shall be allowable for all tax purposes to the life insurance company for such taxable year without regard to such limitation. If the life insurance company does not have a loss from operations for the taxable year, however, the limitation shall be applicable for all tax purposes for such taxable year. In determining whether a life insurance company has a loss from operations for the taxable year under section 812, the deductions allowed by sections 243(a), 244, and 245 shall be computed without regard to the limitation provided in section 809(d)(8)(B) and this subdivision. For an example of the operation of this rule, see paragraph (b) of §1.812-3.

(9) *Investment expenses, etc.* (i) The amount of investment expenses to the extent not allowed as a deduction under section 804(c)(1) in computing investment yield. For example, if a deduction in the amount of $100,000 is claimed for investment expenses, which amount includes general expenses assigned to or included in investment expenses, and due to the operation of the limitation provided by section 804(c)(1) only $85,000 is allowed, then the excess ($15,000) shall be allowed as a deduction under section 809(d)(9) and this subparagraph.

(ii) The amount (if any) by which the sum of the deductions allowable under section 804(c) exceeds the gross investment income. For example, if gross investment income under section 804(b) equals $400,000, and the sum of the deductions allowable under section 804(c) equals $425,000, then the excess ($25,000) shall be allowed as a deduction under section 809(d)(9) and this subparagraph.

(iii) In determining the amount of the deductions allowed under subdivisions (i) and (ii) of this subparagraph, a life insurance company shall first take such deductions to the full extent allowable under section 804(c)(1), and any amount which is allowed as a deduction under section 804(c) shall not again be allowed as a deduction under section 809(d)(9).

(10) *Small business deduction.* The small business deduction as determined under section 804(a)(4).

(11) *Certain mutualization distributions.* The amount of distributions to shareholders actually made by the life insurance company in 1958 and 1959 in acquisition of stock pursuant to a plan of mutualization adopted by the company before January 1, 1958. If such deduction is claimed, there must be attached to the return of the company claiming such deduction a certified copy of the plan of mutualization and proof that such plan was adopted prior to January 1, 1958. See section 809(g) and § 1.809–8 for limitation of such deduction.

(12) *Other deductions.* Except as modified by section 809(e) and § 1.809–6, all other deductions allowed under subtitle A of the Code for purposes of computing taxable income to the extent not allowed as deductions in computing investment yield. However, a life insurance company shall not be allowed a deduction under section 162 or 404 for amounts representing premiums charged itself by the company with respect to liability for insurance and annuity benefits for employees and agents.

(b) *Denial of double deduction.* Nothing in section 809(d) shall permit the same item to be deducted more than once in determining gain or loss from operations. For example, if an item is claimed as a deduction for the taxable year by reason of its being a loss incurred within such taxable year (whether or not ascertained) under section 809(d)(1), such item, or any portion thereof, shall not also be claimed as a deduction for such taxable year under section 809(d)(2).

§ 1.809–6 Modifications.

Under section 809(e), the deductions allowed under section 809(d)(12) and paragraph (a)(12) of § 1.809–5 (relating to other deductions) are subject to the following modifications—

(a) *Interest.* No deduction shall be allowed under section 163 for interest in respect of items described in section 810(c) since such interest is taken into account in the determination of required interest under section 809.

(b) *Bad debts.* No deduction shall be allowed for an addition to reserves for bad debts under section 166(c). However, a deduction for specific bad debts shall be allowed to the extent that such deduction is allowed under section 166 and the regulations thereunder. In the case of a loss incurred on the sale of mortgaged or pledged property, see § 1.166–6.

(c) *Charitable, etc., contributions and gifts.* (1) The deduction by a life insurance company in any taxable year for a charitable contribution (as defined in section 170(c)) shall be limited to 5 percent of the gain from operations (as determined under section 809(b)(1)), computed without regard to any deductions for:

(i) Charitable contributions under section 170;

(ii) Dividends to policyholders under section 811(b);

(iii) Certain nonparticipating contracts under section 809(d)(5);

(iv) Group life insurance contracts and group accident and health insurance contracts under section 809(d)(6);

(v) Tax-exempt interest, dividends, etc., under section 809(d)(8); and

(vi) Any operations loss carryback to the taxable year under section 812.

(2) In applying the second sentence of section 170(b)(2) (relating to charitable contributions carryovers) as required by section 809(e)(3)(B), any excess of the charitable contributions made by a life insurance company in a taxable year over the amount deductible in such year under the limitation contained in subparagraph (1) of this paragraph, shall be reduced to the extent that such excess:

(i) Reduces life insurance company taxable income (computed without regard to section 802(b)(3)) for the purpose of determining the offsets referred to in section 812(b)(2); and

(ii) Increases an operations loss carryover under section 812 for a succeeding taxable year.

(3) The application of the rules provided in section 809(e)(3) and this paragraph may be illustrated by the following example:

Example. Assume that life insurance company P is organized on January 1, 1958, and has a loss from operations for that year in the amount of $100,000 which is an operations loss carryover to 1959. In 1959, company P has a gain from operations and tax base (computed without regard to section 802(b)(3)) of $100,000 before the allowance of a deduction for a $5,000 charitable contribution made in 1959 and before the application of the operations loss carryover from 1958. Under section 170(b)(2), the operations loss carryover from 1958 is first applied to eliminate the $100,000 gain from operations and tax base in 1959 and the $5,000 charitable contribution carryover would (except for the limitation contained in this paragraph) become a charitable contribution carryover to 1960. However, for the purpose of computing the offsets referred to in section 812(b)(2), the $5,000 charitable contribution is applied to reduce the gain from operations and tax base for 1959 to $95,000 before the application of the operations carryover from 1958. Since only $95,000 of the $100,000 loss from operations in 1958 is an offset for 1959, the remaining $5,000 becomes an operations loss carryover to 1960. Accordingly, under the limitation contained in this paragraph, the charitable contributions carryover provided under the second sentence of section 170(b)(2) is eliminated.

(d) *Amortizable bond premium.* No deduction shall be allowed under section 171 for the amortization of bond premiums since a special deduction for such premiums is specifically taken into account under section 818(b).

(e) *Net operating loss deduction.* No deduction shall be allowed under section 172 since section 812 allows an "operations loss deduction".

(f) *Partially tax-exempt interest.* No deduction shall be allowed under section 242 for partially tax-exempt interest since section 809(d)(8) allows a deduction for such interest.

(g) *Dividends received.* No deduction shall be allowed under sections 243, 244, and 245 for dividends received since section 809(d)(8) allows a deduction for such dividends.

§ 1.809–7 Limitation on certain deductions.

(a) *In general.* Section 809(f)(1) limits the deductions under section 809(d)(3), (5), and (6), relating to deductions for dividends to policyholders, certain nonparticipating contracts, and group life, accident, and health insurance contracts, respectively. This limitation provides that the amount of such deductions shall not exceed the sum of (1) the amount (if any) by which the gain from operations for the taxable year (determined without regard to such deductions) exceeds the taxpayer's taxable investment income for such year, plus (2) $250,000.

(b) *Application of limitation.* Section 809(f)(2) provides a priority system for applying the limitation contained in section 809(f)(1) and paragraph (a) of this section. Under this priority system, the limitation shall be applied in the following order:

(1) First to the amount of the deduction under section 809(d)(6) (relating to group life, accident, and health insurance);

(2) Then to the amount of the deduction under section 809(d)(5) (relating to certain nonparticipating contracts); and

(3) Finally to the amount of the deduction under section 809(d)(3) (relating to dividends to policyholders).

(c) *Illustration of principles.* The operation of the limitation and priority system provided by section 809(f) and this section may be illustrated by the following example:

Example. Assume the following facts with respect to M, a life insurance company, for the taxable year 1958:

Gain from operations computed without regard to the deductions under sec. 809(d)(3), (5), and (6)	$100,000,000
Taxable investment income	83,000,000
Tentative deduction for group life, accident, and health insurance under sec. 809(d)(6)	4,000,000
Tentative deduction for certain nonparticipating contracts under sec. 809(d)(5)	6,000,000
Tentative deduction for dividends to policyholders under sec. 809(d)(3)	10,000,000

In order to determine the limitation on the deductions under section 809(d)(3), (5), and (6), M would make up the following schedule:

(1) Statutory amount provided under sec. 809(f)(1)	$250,000
(2) Gain from operations computed without regard to the deductions under sec. 809(d)(3), (5), and (6)	$100,000,000
(3) Taxable investment income	83,000,000
(4) Excess of item (2) over item (3)	17,000,000
(5) Limitation on deductions under sec. 809(d)(3), (5), and (6) (item (1) plus item (4))	17,250,000

Since the total tentative deductions under section 809(d)(3), (5), and (6) ($20,000,000) exceeds the limitation on such deductions ($17,250,000), M would make up the following schedule to determine the application of the priority system:

(6) Maximum possible deduction under sec. 809(d)(3), (5), and (6) (item (5))	$17,250,000
(7) Deduction for group life, accident, and health insurance under sec. 809(d)(6) (not in excess of item (6))	4,000,000
(8) Maximum possible deduction under sec. 809(d)(5) (item (6) less item (7))	13,250,000
(9) Deduction for certain nonparticipating contracts under sec. 809(d)(5) (not in excess of item (8))	6,000,000
(10) Maximum possible deduction under sec. 809(d)(3) (item (8) less item (9))	7,250,000
(11) Deduction for dividends to policyholders under sec. 809(d)(3) (not in excess of item (10))	7,250,000

Thus, as a result of the application of the limitation and priority system for the taxable year 1958, M shall be allowed a deduction of $4,000,000 under section 809(d)(6), $6,000,000 under section 809(d)(5), and only $7,250,000 of the $10,000,000 tentative deduction under section 809(d)(3).

§ 1.809–8 Limitation on deductions for certain mutualization distributions.

(a) *Deduction not to reduce taxable investment income.* Section 809(g)(1) limits the deduction under section 809(d)(11) for certain mutualization distributions. This limitation provides that such deduction shall not exceed the amount (if any) by which the gain from operations for the taxable year, computed without regard to such deduction (but after the application of the limitation contained in section 809(f) and § 1.809–7), exceeds the taxpayer's taxable investment income for such year.

(b) *Deduction not to reduce tax below that imposed by 1957 law.* Section 809(g)(2) further limits the deduction under section 809(d)(11). Under section 809(g)(2), such deduction shall be allowed only to the extent that it (after the application of all other deductions) does not reduce the tax imposed by section 802(a)(1) for the taxable year below the amount of tax which would have been imposed for such taxable year if the law in effect for 1957 applied for such taxable year. If such deduction is claimed for 1958 (or 1959), the company shall attach to its return a schedule showing what its tax for 1958 (or 1959) would have been had such tax been computed under the law in effect for 1957.

(c) *Application of section 815.* Section 809(g)(3) provides that any portion of a distribution which is allowed as a deduction under section 809(d)(11) shall not be treated as a distribution to shareholders for purposes of section 815; except that in the case of any distributions made in 1959, such portion shall be treated as a distribution with respect to which a reduction is required under section 815(e)(2)(B) (relating to adjustment in allocation ratio for certain distributions after December 31, 1958).

§ 1.810 Statutory provisons; life insurance companies; rules for certain reserves.

SEC. 810. *Rules for certain reserves*—(a) *Adjustment for decrease.* If the sum of the items described in subsection (c) as of the beginning of the taxable year exceeds the sum of such items as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)), the excess shall be taken into account as a net decrease referred to in section 809(c)(2).

(b) *Adjustment for increase.* If the sum of the items described in subsection (c) as of the close of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)) exceeds the sum of such items as of the beginning of the taxable year, the excess shall be taken into account as a net increase referred to in section 809(d)(2).

(c) *Items taken into account.* The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 801(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 801(c)(2).

(3) The amounts (discounted at the rates of interest assumed by the company) necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplementary thereto), but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, health, or accident contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto).

(5) Premiums received in advance, and liabilities for premium deposit funds.

In applying this subsection, the same item shall be counted only once.

(d) *Adjustment for change in computing reserves*—(1) *In general.* If the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(A) The amount of the item at the close of the taxable year, computed on the new basis, and

(B) The amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account for purposes of this subpart as follows:

(i) If the amount determined under subparagraph (A) exceeds the amount determined under subparagraph (B), 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d)(2) applies; or

(ii) If the amount determined under subparagraph (B) exceeds the amount determined under subparagraph (A), 1/10 of such excess shall be taken into account for each of the 10 succeeding taxable years, as a net decrease to which section 809(c)(2) applies.

(2) *Termination as life insurance company.* Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this paragraph shall be taken into account for the preceding taxable year.

(3) *Effect of preliminary term election.* An election under section 818(c) shall not be treated as a change in the basis for determining an item referred to in subsection (c) to which this subsection applies. If an election under section 818(c) applies for the taxable year, the amounts of the items referred to in subparagraphs (A) and (B) of paragraph (1) shall be determined without regard to such election. If such an election would apply in respect of such item for the taxable year but for the new basis, the amount of the item referred to in subparagraph (B) shall be determined on the basis which would have been applicable under section 818(c) if the election applied in respect of the item for the taxable year.

(e) *Certain decreases in reserves of voluntary employees' beneficiary associations*—(1) *Decreases due to voluntary lapses of policies issued before January 1, 1958.* For purposes of subsections (a) and (b), in the case of a life insurance company which meets the requirements of section 501(c)(9) other than the requirement of subparagraph (B) thereof, there shall be taken into account only 11½ percent of any decrease in the life insurance reserve on any policy issued before January 1, 1958, which is attributable solely to the voluntary lapse of such policy on or after January 1, 1958. In applying the preceding sentence, the decrease in the reserve for any policy shall be determined by reference to the amount of such reserve as of the beginning of the taxable year, reduced by any amount allowable as a deduction under section 809(d)(1) in respect of such policy by reason of such lapse. This paragraph shall apply for any taxable year only if the taxpayer has made an election under paragraph (3) which is effective for such taxable year.

(2) *Disallowance of carryovers from pre-1958 losses from operations.* In the case of a life insurance company to which paragraph (1) applies for the taxable year, section 812(b)(1) shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

(3) *Election.* Paragraph (1) shall apply to any taxpayer for any taxable year only if the taxpayer elects, not later than the time prescribed by law (including extensions thereof) for filing the return for such taxable year, to have such paragraph apply. Such election shall be made in such manner as the Secretary or his delegate shall prescribe by regulations. Such election shall be effective for the taxable year for which made and for all succeeding taxable years, and shall not be revoked except with the consent of the Secretary or his delegate.

[Sec. 810 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 125)]

§ 1.810–1 Taxable years affected.

Sections 1.810–2 through 1.810–4 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.810–2 Rules for certain reserves.

(a) *Adjustment for decrease or increase in certain reserve items*—(1) *Adjustment for decrease.* Section 810(a) provides that if the sum of the items described in section 810(c) and paragraph (b) of this section at the beginning of the taxable year exceeds the sum of such items at the end of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)), the amount of such excess shall be taken into account as a net decrease referred to in section 809(c)(2) and paragraph (a)(2) of § 1.809–4 in determining gain or loss from operations.

(2) *Adjustment for increase.* Section 810(b) provides that if the sum of the items described in section 810(c) and paragraph (b) of this section at the end of the taxable year (reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1)) exceeds the sum of such items at the beginning of the taxable year, the amount of such excess shall be taken into account as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations.

(b) *Items taken into account.* The items described in section 810(c) and referred to in section 810 (a) and (b) and paragraph (a) of this section are:

(1) The life insurance reserves (as defined in section 801(b) and § 1.801–4);

(2) The unearned premiums and unpaid losses included in total reserves under section 801(c)(2) and § 1.801–5;

(3) The amounts (discounted at the rates of interest assumed by the company) necessary to satisfy the obligations under insurance or annuity contracts (including contracts supplementary thereto), but only if such obligations do not involve (at the time with respect to which the computation is made under this subparagraph) life, health, or accident contingencies;

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance or annuity contracts (including contracts supplementary thereto); and

(5) Premiums received in advance, and liabilities for premium deposit funds.

For purposes of this paragraph, the same item shall be counted only once and deficiency reserves (as defined in section 801(b)(4) and paragraph (e)(4) of § 1.801–4) shall not be taken into account.

(c) *Special rules.* For purposes of section 810 (a) and (b) and paragraph (a) of this section, in determining whether there is a net increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section for the taxable year, the following rules shall apply:

(1) *Computation of net increase or decrease in reserves.* The sum of the items described in section 810(c) and paragraph (b) of this section at the beginning of the taxable year shall be the aggregate of the sums of each of such items at the beginning of the taxable year. The sum of the items described in section 810(c) and paragraph (b) of this section at the end of the taxable year shall be the aggregate of the sums of each of such items at the end of the taxable year. However, in order to determine whether there is a net increase or decrease in such items for the taxable year, the aggregate of the sums of the items at the end of the taxable year must first be reduced by the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1).

(2) *Effect of change in basis in computing reserves.* Any increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section for the taxable year which is attributable to a change in the basis used in computing such items during the taxable year shall not be taken into account under section 810 (a) and (b) and paragraph (a) of this section but shall be taken into account in the manner prescribed in section 810(d) and paragraph (a) of § 1.810–3.

(3) *Effect of section 818(c) election.* If a company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), the sum of such reserves at the beginning and end of all taxable years (including the first taxable year) for which the election applies shall be the sum of such reserves computed on such net level premium basis.

(4) *Cross references.* See section 810(e) and § 1.810–4 for special rules for determining the net increase or decrease in the sum of the items described in section 810(c) and paragraph (b) of this section in the case of certain voluntary employees' beneficiary associations. For similar special rules in the case of life insurance companies issuing variable annuity contracts, see section 801(g)(4) and the regulations thereunder.

(d) *Illustration of principles.* The provisions of section 810 (a) and (b) and this section may be illustrated by the following examples:

Example (1). Assume the following facts with respect to R, a life insurance company:

Sum of items described in sec. 810(c) (1) through (5) at beginning of taxable year	$940
Sum of items described in sec. 810(c) (1) through (5) at end of taxable year	1,606
Required interest (as defined in sec. 809(a)(2))	70
Investment yield (as defined in sec. 804(c))	100
Amount of investment yield not included in gain or loss from operations for the taxable year by reason of sec. 809(a)(1)	70

In order to determine the adjustment for decrease or increase in the sum of the items described in section 810(c) for the taxable year, R must first reduce the sum of such items at the end of the taxable year ($1,060) by the amount of investment yield ($70) not included in gain or loss from operations for the taxable year by reason of section 809(a)(1). Since the adjusted sum of such items at the end of the taxable year, $990 ($1,060 minus $70), exceeds the sum of such items at the beginning of the taxable year, $940, the excess of $50 ($990 minus $940) shall be taken into account as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations.

Example (2). Assume the facts are the same as in example (1), except that the sum of the items described in section 810(c) at the beginning of the taxable year is $1000. Since the sum of the items described in section 810(c) at the beginning of taxable year, $1000, exceeds the sum of such items at the end of the taxable year after adjustment for the amount of investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1), $990 ($1060 minus $70), the excess of $10 ($1000 minus $990) shall be taken into account as a net decrease under section 809(c)(2) and paragraph (a)(2) of § 1.809–4 in determining gain or loss from operations.

Example (3). Assume the following facts with respect to S, a life insurance company:

Sum of items described in sec. 810(c) (1) through (5) at beginning of taxable year	$1,970
Sum of items described in sec. 810(c) (1) through (5) at end of taxable year	2,040
Required interest (as defined in sec. 809(a)(2))	60
Investment yield (as defined in sec. 804(c))	40
Amount of investment yield not included in gain or loss from operations by reason of sec. 809(a)(1)	40

Under the provisions of section 809(a)(1), since the required interest ($60) exceeds the investment yield ($40), the share of each and every item of investment yield set aside for policyholders and not included in gain or loss from operations for the taxable year shall be 100 percent. Thus, applying the provisions of section 810 (a) and (b), the sum of the items described in section 810(c) at the end of the taxable year ($2,040) must first be reduced by the entire amount of the investment yield ($40) in order to determine the net increase or decrease in the sum of such items for the taxable year. Since the adjusted sum of such items at the end of the taxable year, $2,000 ($2,040 minus $40), is greater than the sum of such items at the beginning of the taxable year, $1,970, the excess of $30 ($2,000 minus $1,970) shall be taken into account as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations. No additional deduction is allowed under section 809(d) for the amount ($20) by which the required interest exceeds the investment yield for the taxable year.

Example (4). Assume the facts are the same as in example (1), except that as a result of a change in the basis used in computing an item described in section 810(c) during the taxable year, the sum of such items at the end of the taxable year is $1,200. Under the provisions of paragraph (c)(2) of this section, any increase or decrease in the sum of the section 810(c) items for the taxable year which is attributable to a change in the basis used in computing such items during the taxable year shall not be taken into account under section 810 (a) and (b). Thus, for purposes of section 810 (a) and (b), the sum of the items described in section 810(c) at the end of the taxable year shall be $1,060 (the amount computed without regard to the change in basis) and S shall treat the $50 computed in the manner described in example (1) as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining its gain or loss from operations for the taxable year. The amount of the increase in the section 810(c) items which is attributable to the change in basis during the taxable year, $140 ($1,200 minus $1,060), shall be taken into account in the manner prescribed in section 810(d) and paragraph (a) of § 1.810–3.

Example (5). The life insurance reserves of M, a life insurance company, computed with respect to contracts for which such reserves are determined on a recognized preliminary term basis amount to $100 on January 1, 1960, and $110 on December 31, 1960. For the taxable year 1960, M elects to revalue such reserves on a net level premium basis under section 818(c). Such reserves computed under section 818(c) amount to $115 on January 1, 1960, and $127 on December 31, 1960. Under the provisions of paragraph (c)(3) of this section, a company which makes the section 818(c) election must use the net level premium basis in computing the sum of its life insurance reserves at the beginning and end of all taxable years for which the election applies. Thus, for purposes of section 810 (a) and (b), in determining whether there is a net increase or decrease in the sum of the section 810(c) items for the taxable year 1960, M shall include $115 as its reserves with respect to such contracts under section 810(c)(1) at the beginning of the taxable year and $127 as its reserves with respect to such contracts under section 810(c)(1) at the end of the taxable year.

§ 1.810–3 Adjustment for change in computing reserves.

(a) *Reserve strengthening or weakening.* Section 810(d)(1) provides that if the basis for determining any item referred to in section 810(c) and paragraph (b) of § 1.810–2 at the end of any taxable year differs from the basis for such determination at the end of the preceding taxable year, then so much of the difference between—

(1) The amount of the item at the end of the taxable year, computed on the new basis, and

(2) The amount of the item at the end of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account as follows:

(i) If the amount of the item at the end of the taxable year computed on the new basis exceeds the amount of the item at the end of the taxable year computed on the old basis, 1/10 of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a net increase to which section 809(d)(2) and paragraph (a)(2) of § 1.809–5 applies; or

(ii) If the amount of the item at the end of the taxable year computed on the old basis exceeds the amount of the item at the end of the taxable year computed on the new basis, 1/10 of such excess shall be taken into account, for each of the 10 succeeding taxable years, as a net decrease to which section 809(c)(2) and paragraph (a)(2) of § 1.809–4 applies.

(b) *Illustration of principles.* The provisions of section 810(d)(1) and paragraph (a) of this section may be illustrated by the following examples:

Example (1). Assume that the amount of an item described in section 810(c) of L, a life insurance company, at the beginning of the taxable year 1959 is $100. Assume that at the end of the taxable year 1959, as a result of a change in the basis used in computing such item during the taxable year, the amount of the item (computed on the new basis) is $200 but computed on the old basis would have been $150. Since the amount of the item at the end of the taxable year computed on the new basis, $200, exceeds the amount of the item at the end of the taxable year computed on the old basis, $150, by $50, 1/10 of the amount of such excess, or $5, shall be taken into account as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1959. Any increase (or decrease) in the sum of the section 810(c) items computed on the old basis at the end of the taxable year 1959 ($150) after adjustment for investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1), over the sum of such items computed on the old basis at the beginning of the taxable year 1959 ($100), shall be taken into account in the manner prescribed in section 810 (a) or (b) and § 1.810–2 for purposes of determining L's gain or loss from operations for 1959.

Example (2). Assume the facts are the same as in example (1), and that the sum of the items described in section 810(c) (computed on the new basis) is $200 on January 1, 1960, and $260 on December 31, 1960. Under the provisions of section 810(d)(1), as a result of the reserve strengthening attributable to the change in basis which occurred in 1959, L would include $5 (computed in the manner described in example (1)) as a net increase under section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining its gain or loss from operations for 1960. In addition to this amount, any increase (or decrease) in the sum of the items described in section 810(c) at the end of the taxable year 1960 ($260) after adjustment for investment yield not included in gain or loss from operations for the taxable year by reason of section 809(a)(1), over the sum of such items at the beginning of the taxable year 1960 ($200), shall be taken into account in the manner prescribed in section 810 (a) or (b) and § 1.810–2 for purposes of determining L's gain or loss from operations for 1960.

(c) *Termination as life insurance company.* Section 810(d)(2) provides, subject to the provisions of section 381(c)(22) and the regulations thereunder (relating to carryovers in certain corporate readjustments), that if for any taxable year a company which previously was a life insurance company no longer meets the requirements of section 801(a) and paragraph (b) of § 1.801–3 (relating to the definition of a life insurance company), the balance of any adjustments remaining to be made under section 810(d)(1) and paragraph (a) of this section shall be taken into account for the preceding taxable year.

(d) *Illustration of principles.* The provisions of section 810(d)(2) and paragraph (c) of this section may be illustrated by the following example:

Example. Assume the facts are the same as in example (1) of paragraph (b) of this section, except that for the taxable year 1962, L no longer meets the requirements of section 801(a) (relating to the definition of a life insurance company) and that the provisions of section 381(c)(22) are not applicable. Under the provisions of section 810(d)(2), the entire balance of the adjustment remaining to be made with respect to the change in basis which occurred in 1959, 9/10 of $50, or $40, shall be taken into account for the taxable year 1961, the last year L was a life insurance company. Thus, for the taxable year 1961, the total amount to be taken

into account by L as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining its gain or loss from operations shall be $45. Of this amount, $5 (1/10 of $50) represents the amount determined under the provisions of section 810(d)(1), and $40 represents the amount determined under the provisions of section 810(d)(2).

(e) *Effect of preliminary term election.* (1) Section 810(d)(3) provides that if a company which computes its life insurance reserves on a preliminary term basis elects to revalue such reserves on a net level premium basis under section 818(c), such election shall not be treated as a change in basis within the meaning of section 810(d)(1) and paragraph (a) of this section. Thus, any increase or decrease in reserves attributable to such election shall not be taken into account under section 810(d)(1) and paragraph (a) of this section but shall be taken into account in the manner prescribed in section 810 (a) and (b) and paragraph (a) of § 1.810–2. See paragraph (c)(3) of § 1.810–2.

(2) Section 810(d)(3) further provides that where an election under section 818(c) would apply to an item referred to in section 810(c) but for the fact that the basis used in computing such item has actually been changed, any increase or decrease in such item attributable to such actual change in basis shall be subject to the adjustment required under section 810(d)(1) and paragraph (a) of this section. In such a case, however, for purposes of section 810(d)(1)(B) and paragraph (a)(2) of this section, the amount of such item at the end of the taxable year computed on the old basis shall be the amount of such item at the end of the taxable year computed as if the election under section 818(c) applied in respect of such item for the taxable year.

(f) *Illustration of principles.* The provisions of section 810(d)(3) and paragraph (e) of this section may be illustrated by the following examples:

Example (1). Assume that S, a life insurance company which computes its life insurance reserves on a 3-percent assumed rate and the Commissioner's reserve valuation method (one of the recognized preliminary term reserve methods), elects to revalue such reserves on a net level premium method under section 818(c) and that the significant facts are as follows:

	Jan. 1, 1958	Dec. 31, 1958
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method	100	118
Reserves at 3-percent assumed rate, after restatement under section 818(c)	110	131

Under the provisions of section 810(d)(3), an election under section 818(c) is not treated as a change in basis for purposes of section 810(d)(1). Accordingly, the increase of $21 ($131 minus $110) attributable to such election shall not be subject to the adjustment provided by section 810(d)(1) but shall be taken into account in the manner prescribed in section 810(b). For purposes of determining the amount to be taken into account under section 810(b), the reserves with respect to the contracts subject to the section 818(c) election shall be $110 at the beginning of the taxable year 1958 and $131 at the end of the taxable year 1958. However, as a result of making the election under section 818(c), the difference ($10) between the reserves computed on the preliminary term basis on January 1, 1958 ($100) and the reserves restated on the net level premium basis on January 1, 1958 ($110) shall not be taken into account under section 809(d) for the year 1958, or for any subsequent taxable year.

Example (2). Assume the facts are the same as in example (1), except that during the taxable year 1959, S actually changed from the preliminary term basis to a net level premium basis which was identical with the net level premium basis used under the section 818(c) election and that the significant facts are as follows:

	Jan. 1, 1959	Dec. 31, 1959
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method	118	127
Reserves at 3-percent assumed rate, after restatement under section 818(c)	131	142
Strengthened reserves at 3-percent assumed rate and net level premium method		142

Under the provisions of section 810(d)(3), if a company which has made an election under section 818(c) which has not been revoked actually changes the basis used by it in computing the reserves subject to such election, any increase or decrease in reserves attributable to such change in basis shall be taken into account in the manner prescribed in section 810(d)(1). Since S actually changed to the same basis which it used in computing its reserves under section 818(c), the reserves at the end of the taxable year computed on the new basis ($142) are the same as the reserves at the end of the taxable year computed on the old basis ($142), i.e., the basis which would have applied under section 818(c) if the election applied for 1959. Accordingly, no adjustment under section 810(d)(1) is required.

Example (3). Assume the facts are the same as in example (1), except that during the taxable year 1960, S actually changed the basis used by it in computing its reserves on a certain block of contracts subject to the election under section 818(c) and that the significant facts with respect to this block of contracts are as follows:

	Jan. 1, 1960	Dec. 31, 1960
Book reserves at 3-percent assumed rate, Commissioner's reserve valuation method	50	63
Reserves at 3-percent assumed rate, after restatement under section 818(c)	60	75
Strengthened reserves at 2-percent assumed rate and net level premium method		95

Under the provisions of section 810(d)(3), the amount of the reserves subject to the section 818(c) election at the end of the taxable year computed on the old basis shall be the amount of such reserves at the end of the taxable year determined under section 818(c) ($75). Since the reserves at the end of the taxable year computed on the new basis, $95, exceeds the reserves at the end of the taxable year computed on the old basis, $75, by $20, 1/10 of the excess of $20, or $2, shall be taken into account as a net increase referred to in section 809(d)(2) and paragraph (a)(2) of § 1.809–5 in determining gain or loss from operations for each of the 10 taxable years immediately following the taxable year 1960. For purposes of determining whether there is a net increase or decrease in the sum of the items described in section 810(c) for the taxable year 1960 under section 810 (a) or (b), the sum of the reserves with respect to such block of contracts shall be $60 at the beginning of the taxable year and $75 at the end of the taxable year (the amount of such reserves computed under section 818(c) at the beginning and end of the taxable year). The difference ($10) between the reserves computed on the preliminary term basis on January 1, 1960 ($50) and the reserves restated on the net level premium basis on January 1, 1960 ($60) shall not be taken into account under section 809(d) for the year 1960, or for any subsequent taxable year.

§ 1.810–4 Certain decreases in reserves of voluntary employees' beneficiary associations.

(a) *Decreases due to voluntary lapses of policies issued before January 1, 1958.* (1) Section 810(e) provides that if for any taxable year a life insurance company which meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, makes an election in the manner provided in section 810(e)(3) and paragraph (b) of this section, only 11½ percent of any decrease in life insurance reserves (as defined in section 801(b) and § 1.801–4) attributable to the voluntary lapse on or after January 1, 1958, of any policy issued prior to that date shall be taken into account under section 810 (a) or (b) and paragraph (a) of § 1.810–2 in determining the net increase or decrease in the sum of the items described in section 810(c) during the taxable year. In applying the preceding sentence, the decrease in the reserve for any policy shall be determined by reference to the amount of such reserve at the beginning of the taxable year, reduced by any amount allowable as a deduction under section 809(d)(1) and paragraph (a)(1) of § 1.809–5 in respect of such policy by reason of such lapse. The election under section 810(e) shall be adhered to in computing the company's gain or loss from operation for the taxable year for which the election is made and for all subsequent taxable years, unless consent to revoke such election is obtained from the Commissioner.

(2) The application of the election provided under section 810(e) and subparagraph (1) of this paragraph may be illustrated by the following example:

Example. For the taxable year 1960, M, a life insurance company which meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, makes the election under section 810(e). Assume the following facts with respect to a policy issued in 1955 which voluntarily lapsed during the taxable year:

(1) Life insurance reserve on January 1, 1960	$600
(2) Amount allowable as a deduction under sec. 809(d)(1)	200
(3) Decrease in life insurance reserves for sec. 810(e) purposes (item (1) minus item (2))	400
(4) Amount taken into account under sec. 810 (a) and (b) by reason of sec. 810(e) election (11½% × $400)	46

Under the provisions of section 810(e) and subparagraph (1) of this paragraph, M would include $46 as its life insurance reserve with respect to such policy under section 810(c)(1) at the beginning of the taxable year 1960 for purposes of determining the net increase or decrease in the sum of the items described in section 810(c) for the taxable year under section 810 (a) or (b).

(b) *Time and manner of making election.* The election provided by section 810(e)(3) shall be made in a statement attached to the life insurance company's income tax return for the first taxable year for which the company desires the election to apply. The return and statement must be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. The statement shall indicate that the company meets the requirements of section 501(c)(9), other than the requirement of subparagraph (B) thereof, and has made the election provided under section 810(e) and paragraph (a) of this section. The statement shall set forth the following information with respect to each policy described in paragraph (a) of this section which has voluntarily lapsed during such year:

(1) Type of policy.
(2) Date issued.
(3) Date lapsed.
(4) Reason for lapse.
(5) Policy reserve as of beginning of taxable year.
(6) Deduction allowable under section 809(d)(1) and paragraph (a)(1) of § 1.809–5 during taxable year by reason of lapse.
(7) Decrease in policy reserve for section 810(e) purposes (excess of (5) over (6)).

In addition, the statement shall set forth the total of the amounts referred to in subparagraph (7) of this paragraph with respect to all policies described in paragraph (a) of this section which have voluntarily lapsed during the taxable year.

(c) *Scope of election.* An election made under section 810(e)(3) and paragraph (a) of this section shall be effective for the taxable year for which made and for all succeeding taxable years, unless consent to revoke the election is obtained from the Commissioner. However, for taxable years beginning prior to the issuance of the final regulations under subpart C, part I, subchapter L, chapter 1 of the Code, a taxpayer may revoke such election without obtaining consent from the Commissioner by filing, within 90 days after the date of publication of such final regulations in the FEDERAL REGISTER, a statement that the company desires to revoke the election under section 810(e)(3). An amended return reflecting such revocation must accompany the statement for all taxable years for which returns have been filed with respect to such election.

(d) *Disallowance of carryovers from pre-1958 losses from operations.* For any taxable year for which the election provided under section 810(e)(3) and paragraph (b) of this section is effective, the provisions of section 812(b)(1) and § 1.812–4 shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

§ 1.811 Statutory provisions; life insurance companies; dividends to policyholders.

SEC. 811. *Dividends to policyholders*—(a) *Dividends to policyholders defined.* For purposes of this part, the term "dividends to policyholders" means dividends and similar distributions to policyholders in their capacity as such. Such term does not include interest paid (as defined in section 805(e)).

(b) *Amount of deduction*—(1) *In general.* Except as limited by section 809(f), the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

(A) Increased by the excess of (i) the amounts held at the end of the taxable year as reserves for dividends to policyholders (as defined in subsection (a)) payable during the year following the taxable year, over (ii) such amounts held at the end of the preceding taxable year, or

(B) Decreased by the excess of (i) such amounts held at the end of the preceding taxable year, over (ii) such amounts held at the end of the taxable year.

For purposes of subparagraphs (A) and (B), there shall be included as amounts held at the end of any taxable year amounts set aside, before the 16th day of the third month of the year following such taxable year (or, in the case of a mutual savings bank subject to the tax imposed by section 594, before the 16th day of the fourth month of the year following such taxable year), for payment during the year following such taxable year.

(2) *Certain amounts to be treated as net decreases.* If the amount determined under paragraph (1)(B) exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c)(2).

[Sec. 811 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 44); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 126)]

§ 1.811–1 Taxable years affected.

Section 1.811–2, except as otherwise provided therein, is applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.811–2 Dividends to policyholders.

(a) *Dividends to policyholders defined.* Section 811(a) defines the term "dividends to policyholders", for purposes of part I, subchapter L, chapter 1 of the Code, to mean dividends and similar distributions to policyholders in their capacity as such. The term includes amounts returned to policyholders where the amount is not fixed in the contract but depends on the experience of the company or the discretion of the management. In general, any payment not fixed in the contract which is made with respect to a participating contract (that is, a contract which during the taxable year contains a right to participate in the divisible surplus of the company) shall be treated as a dividend to policyholders. Similarly, any amount refunded or allowed as a rate credit with respect to either a participating or a nonparticipating contract shall be treated as a dividend to policyholders if such amount depends on the experience of the company. However, the term does not include interest paid (as defined in section 805(e) and paragraph (b) of § 1.805–8) or return premiums (as defined in section 809(c) and paragraph (a)(1)(ii) of § 1.809–4). Thus, so-called excess-interest dividends and amounts returned by one life insurance company to another in respect of reinsurance ceded shall not be treated as dividends to policyholders even though such amounts are not fixed in the contract but depend upon the experience of the company or the discretion of the management.

(b) *Amount of deduction*—(1) *In general.* Section 811(b)(1) provides, subject to the limitation of section 809(f), that the deduction for dividends to policyholders for any taxable year shall be an amount equal to the dividends to policyholders paid during the taxable year—

(i) Increased by the excess of the amounts held as reserves for dividends to policyholders at the end of the taxable year for payment during the year following the taxable year, over the amounts held as reserves for dividends to policyholders at the end of the preceding taxable year for payment during the taxable year, or

(ii) Decreased by the excess of the amounts held as reserves for dividends to policyholders at the end of the preceding taxable year for payment during the taxable year, over the amounts held as reserves for dividends to policyholders at the end of the taxable year for payment during the year following the taxable year.

For the rule as to when dividends are considered paid, see section 561 and the regulations thereunder. For the determination of the amounts held as reserves for dividends to policyholders, see paragraph (c) of this section. For special provisions relating to the treatment of dividends to policyholders paid with respect to policies reinsured under modified coinsurance contracts, see section 820(c)(5) and the regulations thereunder.

(2) *Certain amounts to be treated as net decreases.* Section 811(b)(2) provides that if the amount determined under subparagraph (1)(ii) of this paragraph exceeds the dividends to policyholders paid during the taxable year, the amount of such excess shall be a net decrease referred to in section 809(c)(2).

(c) *Reserves for dividends to policyholders defined*—(1) *In general.* The term "reserves for dividends to policyholders", as used in section 811(b)(1)(A) and (B) and paragraph (b)(1) of this section, means only those amounts—

(i) Actually held, or set aside as provided in subparagraph (2) of this paragraph and thus treated as actually held, by the company at the end of the taxable year, and

(ii) With respect to which, at the end of the taxable year or, if set aside, within the period prescribed in subparagraph (2) of this paragraph, the company is under an obligation, fixed and not contingent, to pay such amounts as divi-

dends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following the taxable year.

(2) *Amounts set aside.* (i) In the case of a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), all amounts set aside before the 16th day of the 3d month of the year following the taxable year for payment as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following such taxable year shall be treated as amounts actually held at the end of the taxable year.

(ii) In the case of a mutual savings bank subject to the tax imposed by section 594, all amounts set aside before the 16th day of the 4th month of the year following the taxable year for payment as dividends to policyholders (as defined in section 811(a) and paragraph (a) of this section) during the year following such taxable year shall be treated as amounts actually held at the end of the taxable year.

(3) *1958 reserve for dividends to policyholders.* For purposes of section 811 (b) and paragraph (b) of this section, the amounts held at the end of 1957 as reserves for dividends to policyholders payable during 1958 shall be determined as if part I, subchapter L, chapter 1 of the Code (as in effect for 1958) applied for 1957. Any adjustment in the reserves for dividends to policyholders at the beginning of 1957 required as a result of an understatement or overstatement of such reserves by the company shall be made to the balance of such reserves as of the beginning of 1957. For example, if at the beginning of 1957 the reserves for dividends to policyholders are stated to be $100 and it is subsequently determined that such reserves should have been $90, the reserves at the beginning of 1957 shall be reduced by $10. Under no circumstances shall an adjustment required with regard to the beginning 1957 reserves be made to the reserves at the end of 1957.

(4) *Information to be filed.* Every company claiming a deduction for dividends to policyholders shall keep such permanent records as are necessary to establish that the dividends with respect to which such deduction is claimed were actually paid during the taxable year. Such company shall file with its return a copy of the dividend resolution and a concise statement of the pertinent facts relating to the payment of the dividend and to the amounts held or set aside as reserves for dividends to policyholders during the taxable year.

(d) *Illustration of principles.* The provisions of section 811(b) and this section may be illustrated by the following examples:

Example (1). On December 31, 1959, M, a life insurance company, held $200 as reserves for dividends to policyholders due and payable in 1960. On March 10, 1960, M set aside an additional $50 as reserves for dividends to policyholders due and payable in 1960. During the taxable year 1960, M paid $240 as dividends to its policyholders and at the end of the taxable year 1960, held $175 as reserves for dividends to policyholders due and payable in 1961. No additional amount was set aside before March 16, 1961, as reserves for dividends to policyholders due and payable in 1961. For the taxable year 1960, subject to the limitation of section 809(f), M's deduction for dividends to policyholders is $165, computed as follows:

(1) Dividends paid to policyholders during the taxable year 1960	$240
(2) Decreased by the excess of item (a) over item (b):	
(a) Reserves for dividends to policyholders as of 12–31–59 (including amounts set aside as provided in paragraph (c)(2) of this section)	$250
(b) Reserves for dividends to policyholders as of 12–31–60	175
	75
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))	165

Example (2). On December 31, 1960, S, a life insurance company, held $100 as reserves for dividends to policyholders due and payable in 1961. During the taxable year 1961, S paid $125 as dividends to its policyholders and at the end of the taxable year 1961, held $110 as reserves for dividends to policyholders due and payable in 1962. No additional amount was set aside for dividends to policyholders as provided in paragraph (c)(2).

(1) Dividends paid to policyholders during the taxable year 1961	$125
(2) Increased by the excess of item (a) over item (b):	
(a) Reserves for dividends to policyholders as of 12–31–61	$110
(b) Reserves for dividends to policyholders as of 12–31–60	100
	10
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f)	135

Example (3). Assume the facts are the same as in example (2), except that on December 31, 1960, the amount held as reserves for dividends to policyholders due and payable in 1961 is $250. For the taxable year 1961, S's deduction for dividends to policyholders is zero, computed as follows:

(1) Dividends paid to policyholders during the taxable year 1961	$125
(2) Decreased by the excess of item (a) over item (b):	
(a) Reserves for dividends to policyholders as of 12–31–60	$250
(b) Reserves for dividends to policyholders as of 12–31–61	110
	140
(3) Deduction for dividends to policyholders under sec. 811(b) (computed without regard to the limitation of sec. 809(f))	0

Under the provisions of section 811(b)(2) and paragraph (b)(2) of this section, since the decrease in the reserves for dividends to policyholders during the taxable year, $140 ($250 minus $110), exceeds the dividends to policyholders paid during the taxable year 1961, $125, S shall include $15 (the amount of such excess) as a net decrease under section 809(c)(2) and paragraph (a)(2) of § 1.809–4 in determining its gain or loss from operations for 1961.

§ 1.812 Statutory provisions; life insurance companies; operations loss deduction.

SEC. 812. *Operations loss deduction.*—(a) *Deduction allowed.* There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) The operations loss carryovers to such year, plus

(2) The operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

(b) *Operations loss carrybacks and carryovers.*—(1) *Years to which loss may be carried.*—(A) *In general.* The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") beginning after December 31, 1954, shall be—

(i) An operations loss carryback to each of the 3 taxable years preceding the loss year,

(ii) An operations loss carryover to each of the 5 taxable years following the loss year, and

(iii) Subject to subsection (e), if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 5 taxable years described in clause (ii).

(B) *Special transitional rules for carrybacks.* A loss from operations for any taxable year beginning before January 1, 1958, shall not be an operations loss carryback to any taxable year beginning before January 1, 1955. A loss from operations for any taxable year beginning after December 31, 1957, shall not be an operations loss carryback to any taxable year beginning before January 1, 1958.

(C) *Application for years prior to 1958.* For purposes of this section, this part (as in effect for 1958) and section 381(c)(22) shall be treated as applying to all taxable years beginning after December 31, 1954, and before January 1, 1958.

(2) *Amount of carrybacks and carryovers.* The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(c) *Computation of loss from operations.* In computing the loss from operations for purposes of this section—

(1) The operations loss deduction shall not be allowed.

(2) The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 809(d)(8)(B).

(d) *Offset defined.*—(1) *In general.* For purposes of subsection (b)(2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to section 802(b)(3)) for such year to zero.

(2) *Operations loss deduction.* For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) *Rules relating to new companies.*—(1) *New company defined.* For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies or would have applied if in effect) was authorized to do business as an insurance company.

(2) *Limitations on 8-year carryover.*—(A) *In general.* For purposes of subsection (b)(1)(A)(iii), a life insurance company shall not be treated as a new company for any loss year if at any time during such year it was a nonqualified corporation. If, at any time during any taxable year after the loss year, the life insurance company is a nonqualified corporation, subsection (b)(1)(A)(iii) shall cease to apply with respect to such loss for such taxable year and all subsequent taxable years.

(B) *Nonqualified corporation defined.* For purposes of subparagraph (A), the term "nonqualified corporation" means any corporation connected through stock ownership with any other corporation, if either of such corporations possesses at least 50 percent of the voting power of all classes of stock of the other such corporation. For purposes of subparagraph (A), a corporation shall be treated as becoming a nonqualified corporation at any time at which it becomes a party to a reorganization (other than a reorganization which is not described in any subparagraph of section 368(a)(1) other than subparagraphs (E) and (F) thereof.

(f) *Application of subtitle A and subtitle F.* Except as provided in section 809(e), subtitle A and subtitle F shall apply in respect of operations loss carrybacks, operations loss carryovers, and the operations loss deduction under this part in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

[Sec. 812 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 45); amended by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 127)]

§ 1.812–1 Taxable years affected.

Sections 1.812–2 through 1.812–8, except as otherwise provided therein, are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.812–2 Operations loss deduction.

(a) *Allowance of deduction.* Section 812 provides that a life insurance company shall be allowed a deduction in computing gain or loss from operations for any taxable year beginning after December 31, 1957, in an amount equal to the aggregate of the operations loss carryovers and operations loss carrybacks to such taxable year. This deduction is referred to as the operations loss deduction. The loss from operations (computed under section 809), is the basis for the computation of the operations loss carryovers and operations loss carrybacks and ultimately for the operations loss deduction itself. Section 809(e)(5) provides that the net operating loss deduction provided in section 172 shall not be allowed a life insurance company since the operations loss deduction provided in section 812 and this paragraph shall be allowed in lieu thereof.

(b) *Steps in computation of operations loss deduction.* The three steps to be taken in the ascertainment of the operations loss deduction for any taxable year beginning after December 31, 1957, are as follows:

(1) Compute the loss from operations for any preceding or succeeding taxable year from which a loss from operations may be carried over or carried back to such taxable year.

(2) Compute the operations loss carryovers to such taxable year from such preceding taxable years and the operations loss carrybacks to such taxable year from such succeeding taxable years.

(3) Add such operations loss carryovers and carrybacks in order to determine the operations loss deduction for such taxable year.

(c) *Statement with tax return.* Every life insurance company claiming an operations loss deduction for any taxable year shall file with its return for such year a concise statement setting forth the amount of the operations loss deduction claimed and all material and pertinent facts relative thereto, including a detailed schedule showing the computation of the operations loss deduction.

(d) *Ascertainment of deduction dependent upon operations loss carryback.* If a life insurance company is entitled in computing its operations loss deduction to a carryback which it is not able to ascertain at the time its return is due, it shall compute the operations loss deduction on its return without regard to such operations loss carryback. When the life insurance company ascertains the operations loss carryback, it may within the applicable period of limitations file a claim for credit or refund of the overpayment, if any, resulting from the failure to compute the operations loss deduction for the taxable year with the inclusion of such carryback; or it may file an application under the provisions of section 6411 for a tentative carryback adjustment.

(e) *Law applicable to computations.* The following rules shall apply to all taxable years beginning after December 31, 1957—

(1) In determining the amount of any operations loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(2) The loss from operations for any taxable year shall be determined under the law applicable to that year without regard to the year to which it is to be carried and in which, in effect, it is to be deducted as part of the operations loss deduction.

(3) The amount of the operations loss deduction which shall be allowed for any taxable year shall be determined under the law applicable for that year.

(f) *Special rules.* For purposes of taxable years beginning after December 31, 1954, and before January 1, 1958—

(1) The amount of any:

(i) Loss from operations;

(ii) Operations loss carryback; and

(iii) Operations loss carryover.

shall be computed as of part I, subchapter L, chapter 1 of the Code (as in effect for 1958) and section 381(c)(22) applied to such taxable years.

(2) A loss from operations (determined in accordance with the provisions of section 812(b)(1)(C) and this paragraph) for such taxable years shall in no way affect the tax liability of any life insurance company for such taxable years. However, such loss may, to the extent allowed as an operations loss carryover under section 812, affect the tax liability of a life insurance company for a taxable year beginning after December 31, 1957. For example, for the taxable year 1956, X, a life insurance company, has a loss from operations (determined in accordance with the provisions of section 812(b)(1)(C) and this paragraph). Such loss shall in no way affect X's tax liability for the taxable years 1956 (the year of the loss), 1955 (a year to which such loss shall be carried back), or 1957 (a year to which such loss shall be carried forward). However, to the extent allowed under section 812, any amount of the loss for 1956 remaining after such carryback and carryforward shall be taken into account in determining X's tax liability for taxable years beginning after December 31, 1957.

§ 1.812–3 Computation of loss from operations.

(a) *Modification of deductions.* A loss from operations is sustained by a life insurance company in any taxable year, if and to the extent that, for such year, there is an excess of the sum of the deductions provided by section 809(d) over the sum of (1) the life insurance company's share of each and every item of investment yield (including tax-exempt interest, partially tax-exempt interest, and dividends received) as determined under section 809(b)(3), and (2) the sum of the items of gross amount taken into account under section 809(c). In determining the loss from operations for purposes of section 812—

(i) No deduction shall be allowed under section 812 for the operations loss deduction.

(ii) The 85 percent limitation on dividends received provided by section 246 (b) as modified by section 809(d)(8)(B) shall not apply to the deductions otherwise allowed under—

(a) Section 243(a) in respect to dividends received by corporations,

(b) Section 244 in respect of dividends received on certain preferred stock of public utilities, and

(c) Section 245 in respect of dividends received from certain foreign corporations.

(b) *Illustration of principles.* The application of paragraph (a) of this section may be illustrated by the following example:

Example. For the taxable year 1960, X, a life insurance company, has items taken into account under section 809(c) amounting to $150,000, its share of the investment yield amounts to $250,000, and total deductions allowed by section 809(d) of $375,000, exclusive of any operations loss deduction and exclusive of any deduction for dividends received. In 1960, X received as its share of dividends entitled to the benefits of section 243(a) the amount of $100,000. These dividends are included in X's share of the investment yield. X has no other deductions to which section 812(c) applies. On the basis of these facts, X has a loss from operations

for the taxable year 1960 of $60,000, computed as follows:

Deductions for 1960	$375,000
Plus: Deduction for dividends received computed without regard to the limitation provided by sec. 246(b), as modified by sec. 809(d)(8)(B) ($5% of $100,000)	85,000
Total deductions as modified by sec. 812(c)	460,000
Less: Sum of sec. 809(c) items and X's share of investment yield (including $100,000 of dividends)	400,000
Loss from operations for 1960	(60,000)

§ 1.812–4 Operations loss carrybacks and operations loss carryovers.

(a) *In general*—(1) *Years to which loss may be carried.* In order to compute the operations loss deduction of a life insurance company the company must first determine the part of any losses from operations for any preceding or succeeding taxable years which are carryovers or carrybacks to the taxable year in issue. Except as otherwise provided by this paragraph, a loss from operations for taxable years beginning after December 31, 1954, shall be carried back to each of the 3 taxable years preceding the loss year and shall be carried forward to each of the 5 taxable years succeeding the loss year. Except as limited by section 812(e)(2) and paragraph (b) of § 1.812–6, if the life insurance company is a new company (as defined in section 812(e)(1)) for the loss year, the loss from operations shall be carried back to each of the 3 taxable years preceding the loss year and shall be carried forward to each of the 8 taxable years succeeding the loss year. In determining the span of years for which a loss from operations may be carried, taxable years in which a company does not qualify as a life insurance company (as defined in section 801(a)), or is not treated as a new company, shall be taken into account.

(2) *Special transitional rules.* (i) A loss from operations for any taxable year beginning before January 1, 1958, shall not be carried back to any taxable year beginning before January 1, 1955. Furthermore, a loss from operations for any taxable year beginning after December 31, 1957, shall not be carried back to any taxable year beginning before January 1, 1958.

(ii) If for any taxable year a life insurance company has made an election under section 810(e) (relating to certain decreases in reserves for voluntary employees' beneficiary associations) which is effective for such taxable year, the provisions of section 812(b)(1) and subparagraph (1) of this paragraph shall not apply with respect to any loss from operations for any taxable year beginning before January 1, 1958.

(3) *Illustration of principles.* The provisions of section 812(b)(1) and of this paragraph may be illustrated by the following examples:

Example (1). P, a life insurance company, organized in 1940, has a loss from operations of $1,000 in 1958. This loss cannot be carried back, but shall be carried forward to each of the 5 taxable years following 1958.

Example (2). Q, a life insurance company, organized in 1940, has a loss from operations of $1,200 in 1960. This loss shall be carried back to the taxable year 1958 and then shall be carried forward to each of the 5 taxable years following 1959.

Example (3). R, a life insurance company, organized in 1940, has a loss from operations of $1,300 for the taxable year 1956. This loss shall first be carried back to the taxable year 1955 and then shall be carried forward to each of the 5 taxable years following 1956. The loss for 1956, carryback to 1955, and carryover to 1957 shall each be computed as if part I, subchapter L, chapter 1 of the Code (as in effect for 1958) applied to such taxable years.

Example (4). S, a life insurance company, organized in 1958 and meeting the provisions of section 812(e) (rules relating to new companies), has a loss from operations of $1,400 for the taxable year 1958. This loss cannot be carried back, but shall be carried forward to each of the 8 taxable years following 1958, provided, however, S is not a nonqualified corporation at any time during the loss year (1958) or any taxable year thereafter.

Example (5). T, a life insurance company, organized in 1954 and meeting the provisions of section 812(e) (rules relating to new companies), has a loss from operations of $1,500 for the taxable year 1956. This loss shall first be carried back to the taxable year 1955 and then carried forward to each of the 8 taxable years following 1956, provided, however, T is not a nonqualified corporation at any time during the loss year (1956) or any taxable year thereafter. The loss for 1956, carryback to 1955, and carryover to 1957 shall each be computed as if part I of subchapter L (as in effect for 1958) applied to such taxable years.

(4) *Periods of less than 12 months.* A fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) is a preceding or a succeeding taxable year for the purpose of determining under section 812 the first, second, etc., preceding or succeeding taxable year. For the determination of the loss from operations for periods of less than 12 months, see section 818(d) and the regulations thereunder.

(5) *Amount of loss to be carried.* The amount which is carried back or carried over to any taxable year is the loss from operations to the extent it was not absorbed in the computation of gain from operations for other taxable years, preceding such taxable year, to which it may be carried back or carried over. For the purpose of determining the gain from operations for any such preceding taxable year, the various operations loss carryovers and carrybacks to such taxable year are considered to be applied in reduction of the gain from operations in the order of the taxable years from which such losses are carried over or carried back, beginning with the loss for the earliest taxable year.

(6) *Corporate acquisitions.* For the computation of the operations loss carryovers in the case of certain acquisitions of the assets of a life insurance company by another life insurance company, see section 381(c)(22) and the regulations thereunder.

(b) *Portion of loss from operations which is a carryback or a carryover to the taxable year in issue*—(1) *Manner of computation.* (i) A loss from operations shall first be carried back to the earliest taxable year permissible under section 812(b) and paragraph (a) of this section for which such loss is allowable as a carryback or a carryover. The entire amount of the loss from operations shall be carried back to such earliest year.

(ii) Section 812(b)(2) provides that the portion of the loss from operations which shall be carried to each of the taxable years subsequent to the earliest taxable year shall be the excess (if any) of the amount of the loss from operations over the sum of the offsets (as defined in section 812(d) and paragraph (a) of § 1.812–5) for all prior taxable years to which the loss from operations may be carried.

(2) *Illustration of principles.* The application of this paragraph may be illustrated by the following example:

Example. T, a life insurance company (which is not a new company as defined in section 812(e)(1)), has a loss from operations for 1960. The entire amount of the loss from operations for 1960 shall first be carried back to 1958. The amount of the carryback to 1959 is the excess (if any) of the 1960 loss over the offset for 1958. The amount of the carryover to 1961 is the excess (if any) of the 1960 loss over the sum of the offsets for 1958 and 1959. The amount of the 1960 loss remaining (if any) to be carried over to 1962, 1963, or 1964 shall be computed in a like manner.

§ 1.812–5 Offset.

(a) *Offset defined.* Section 812(d) defines the term "offset" for purposes of section 812(b)(2) and paragraph (b)(1)(ii) of § 1.812–4. For any taxable year the offset is only that portion of the increase in the operations loss deduction for the taxable year which is necessary to reduce the life insurance company taxable income (computed without regard to section 802(b)(3)) for such year to zero. For purposes of the preceding sentence, the offset shall be determined with the modifications prescribed in paragraph (b) of this section. Such modifications shall be made independently of, and without reference to, the modifications required by paragraph (a) of § 1.812–3 for purposes of computing the loss from operations itself.

(b) *Modifications*—(1) *Operations loss deduction*—(i) *In general.* Section 812(d)(2) provides that for purposes of section 812(d)(1) (relating to the definition of offset), the operations loss deduction for any taxable year shall be computed by taking into account only such losses from operations otherwise allowable as carryovers or as carrybacks to such taxable year as were sustained in taxable years preceding the taxable year in which the life insurance company sustained the loss from operations from which the offset is to be deducted. Thus, for such purposes the loss from operations for the loss year or for any taxable year thereafter shall not be taken into account.

(ii) *Illustration of principles.* The provisions of this subparagraph may be illustrated by the following example:

Example. In computing the operations loss deduction for 1960, T, a life insurance company, has a carryover from 1958 of $9,000, a carryover from 1959 of $6,000, a carryback from 1961 of $18,000, and a carryback from 1962 of $10,000, or an aggregate of $43,000 in carryovers and carrybacks. Thus, the operations loss deduction for 1960, for purposes of determining the tax liability for 1960, is $43,000. However, in computing the offset for 1960 which is subtracted from the loss from operations for 1961 for the purpose of determining the portion of such loss which may be carried over to subsequent taxable years, the operations loss deduction for 1960 is $15,000, that is, the aggregate of the $9,000 carryover from 1958 and the $6,000 carryover from 1959. In computing the operations loss deduction for such purpose, the $18,000 carryback from 1961 and the $10,000 carryback from 1962 are disregarded. In computing the offset for 1960, however, which is subtracted from the loss from operations for 1962 for the purpose of determining the portion of such 1962 loss which may be carried over for subsequent taxable years, the operations loss deduction for 1960 is $33,000, that is, the aggregate of the $9,000 carryover from 1958, the $6,000 carryover from 1959, and the $18,000 carryback from 1961. In computing the operations loss deduction for such purpose, the $10,000 carryback from 1962 is disregarded.

(2) *Recomputation of deductions limited by section 809(f)*—(i) *In general.* If in any taxable year a life insurance company has deductions under section 809(d)(3), (5), and (6), as limited by section 809(f), and sustains a loss from operations in a succeeding taxable year which may be carried back as an operations loss deduction, such limitation and deductions shall be recomputed. This recomputation is required since the carryback must be taken into account for purposes of determining such limitation and deductions.

(ii) *Illustration of principles.* The provisions of this subparagraph may be illustrated by the following example:

Example. The books of P, a life insurance company, reveal the following facts:

Taxable year	Taxable investment income	Gain from operations	Loss from operations
1959	$11,000,000	$10,000,000	
1960			($9,800,000)

The gain from operations thus shown is computed without regard to any operations loss deduction or deductions under section 809(d)(3), (5), and (6), as limited by section 809(f). Assume that for the taxable year 1959, P has (without regard to the limitation of section 809(f) or the operations loss deduction for 1959) a deduction under section 809(d)(3) of $2,500,000 for dividends to policyholders and no deductions under section 809(d)(5) or (6).

(a) *Determination of section 809(f) limitation and deduction for dividends to policyholders without regard to the operations loss deduction for 1959.* In order to determine gain or loss from operations for 1959, P must determine the deduction for dividends to policyholders for such year. Under the provisions of section 809(f), the amount of such deduction shall not exceed the sum of (*1*) the amount (if any) by which the gain from operations for such year (determined without regard to such deduction) exceeds P's taxable investment income for such year, plus (2) $250,000. Since the gain from operations as thus determined ($10,000,000) exceeds the taxable investment income

($9,000,000) by $1,000,000, the limitation on such deduction is $1,250,000 ($1,000,000 plus $250,000). Accordingly, only $1,250,000 of the $2,500,000 deduction for dividends to policyholders shall be allowed. The gain from operations for such year is $8,750,000 ($10,000,000 minus $1,250,000).

(b) *Recomputation of section 809(f) limitation and deduction for dividends to policyholders after application of the operations loss deduction for 1959.* Since P has sustained a loss from operations for 1960 which shall be carried back to 1959 as an operations loss deduction, it must recompute the section 809(f) limitation and deduction for dividends to policyholders. Taking into account the $9,800,000 operations loss deduction for 1959 reduces gain from operations for such year to $200,000 ($10,000,000 minus $9,800,000). Since the gain from operations as thus determined ($200,000) is less than the taxable investment income ($9,000,000), the limitation on the deduction for dividends to policyholders is $250,000. Thus, only $250,000 of the $2,500,000 deduction for dividends to policyholders shall be allowed. The gain from operations for such year as thus determined is $9,750,000 ($10,000,000 minus $250,000) since for purposes of this determination the operations loss deduction for tion 812(c)(1)). Accordingly, the offset for 1959 is $9,750,000 (the increase in the operations loss deduction for 1959, computed without regard to the carryback for 1960, which reduces life insurance company taxable income for 1959 to zero); thus, the portion of the 1960 loss from operations which shall be carried forward to 1961 is $50,000 (the excess of the 1960 loss ($9,800,000) over the offset for 1959 ($9,750,000)).

(3) *Minimum limitation.* The life insurance company taxable income, as modified under this paragraph, shall in no case be considered less than zero.

§ 1.812–6 Rules relating to new companies.

(a) *New company defined.* Section 812(e)(1) provides that for purposes of part I, subchapter L, chapter 1 of the Code, a life insurance company is a "new company" for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies or would have applied if in effect) was authorized to do business as an insurance company.

(b) *Limitations on 8-year carryover.* (1) Section 812(e)(2)(A) provides that for purposes of section 812(b)(1)(A)(iii) (relating to an 8-year carryover of losses for new companies), a life insurance company shall not be treated as a new company for any loss year if at any time during such loss year it was a nonqualified corporation (as defined in subparagraph (2) of this paragraph). Furthermore, if at any time during any taxable year after the loss year the life insurance company is a non-qualified corporation, section 812(b)(1)(A)(iii) shall cease to apply to (i) such loss for the taxable year of the nonqualification, and (ii) all subsequent taxable years.

(2) Section 812(e)(2)(B) defines the term "nonqualified corporation" for purposes of section 812(e)(2)(A) as any corporation connected through stock ownership with any other corporation where either of such corporations possesses at least 50 percent of the total combined voting power of all classes of stock entitled to vote of the other corporation. For such purpose, a corporation shall be treated as becoming a nonqualified corporation at any time it becomes a party to a reorganization other than a reorganization described in section 368(a)(1)(E) or (F).

(c) *Illustration of principles.* The provisions of section 812(e) and this section may be illustrated by the following examples:

Example (1). R, a life insurance company, organized on January 1, 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. Regardless of what events take place in future taxable years, R is a new company for any taxable year beginning not more than 5 years after January 1, 1958. The loss for 1958 may be carried forward to each of the 8 taxable years following 1958, provided, however, R is not a nonqualified corporation at any time during the loss year (1958) or any taxable year thereafter.

Example (2). The facts are the same as in example (1), except that from March 10, 1958 through August 1, 1958, R was a nonqualified corporation. R is still a new company for the taxable year 1958 but shall not be treated as such since it was a nonqualified corporation at some time during such taxable year. Accordingly, the loss for 1958 shall be carried forward to each of the 5 taxable years following 1958, but shall not be carried forward to any of the 3 taxable years following such 5 taxable years.

Example (3). S, a life insurance company organized in 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. In 1960, S was a nonqualified corporation. Since S was a nonqualified corporation during a taxable year (1960) after the loss year (1958), the loss for 1958 shall be carried forward to each of the 5 taxable years following 1958, but shall not be carried forward to any of the 3 taxable years following such 5 taxable years. In determining the 5 taxable years to which the loss for 1958 may be carried, the taxable year during which S was a nonqualified corporation (1960) shall be taken into account.

Example (4). The facts are the same as in example (3), except that in 1961 S was no longer a nonqualified corporation. With respect to the loss for 1958, the results are the same as in example (3).

Example (5). The facts are the same as in example (4), except that in 1962 S had a loss from operations. With respect to the loss for 1958, the results are the same as in example (4). With respect to the loss for 1962, such loss may be carried forward to each of the 8 taxable years following 1962, provided, however, S is not a nonqualified corporation at any time during the loss year (1962) or any taxable year thereafter.

Example (6). T, a life insurance company, organized on January 1, 1958, and qualifying as a new company, had a loss from operations for the taxable years 1959 and 1964. With respect to the loss for 1959, such loss may be carried forward to each of the 8 taxable years following 1959, provided, however, T is not a nonqualified corporation at any time during the loss year (1959) or any taxable year thereafter. With respect to the loss for 1964, such loss may be carried forward to each of the 5 taxable years following 1964, but not to any of the 3 taxable years following such 5 taxable years since the loss

for 1964 was sustained in a taxable year beginning more than 5 taxable years after the first day (January 1, 1958) on which T was authorized to do business as an insurance company.

Example (7). U, a life insurance company, organized in 1958, and qualifying as a new company, had a loss from operations for the taxable year 1958. In 1965, U was a nonqualified corporation. The loss for 1958 shall be carried forward to each of the 6 taxable years following 1958 (1959, 1960, 1961, 1962, 1963, and 1964), but shall not be carried forward to any of the 2 taxable years following such 6 taxable years (1965 and 1966).

§ 1.812–7 Application of subtitle A and subtitle F.

Section 812(f) provides that except as modified by section 809(e) (relating to modifications of deduction items otherwise allowable under subtitle A of the Code) subtitles A and F of the Code shall apply to operations loss carrybacks and carryovers, and to the operations loss deduction, in the same manner and to the same extent that such subtitles apply in respect of net operation loss carrybacks, net operating loss carryovers, and the net operating loss deduction of corporations generally. For the computation of the operations loss carrybacks and carryovers, and of the operations loss deduction in the case of certain acquisitions of the assets of a life insurance company by another life insurance company, see section 381(c)(22) and the regulations thereunder.

§ 1.812–8 Illustration of operations loss carrybacks and carryovers.

The application of § 1.812-4 may be illustrated by the following example:

(a) *Facts.* The books of M, a life insurance company, organized in 1940, reveal the following facts:

Taxable year	Taxable investment income	Gain from operations	Loss from operations
1958	$11,000	$15,000	
1959	23,000	30,000	
1960			($75,000)
1961	25,000	20,000	
1962			(150,000)
1963	22,000	30,000	
1964	40,000	35,000	
1965	62,000	75,000	
1966	25,000	17,000	
1967	39,000	53,000	

The gain from operations thus shown is computed without regard to any operations loss deduction. The assumption is also made that none of the other modifications prescribed in paragraph (b) of § 1.812-5 apply. There are no losses from operations for 1955, 1956, 1957, 1968, 1969, 1970.

(b) *Loss sustained in 1960.* The portions of the $75,000 loss from operations for 1960 which shall be used as carrybacks to 1958 and 1959 and as carryovers to 1961, 1962, 1963, 1964, and 1965 are computed as follows:

(1) *Carryback to 1958.* The carryback to this year is $75,000, that is, the amount of the loss from operations.

(2) *Carryback to 1959.* The carryback to this year is $60,000 (the excess of the loss for 1960 over the offset for 1958), computed as follows:

Loss from operations	$75,000
Less:	
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	15,000
Carryback	60,000

(3) *Carryover to 1961.* The carryover to this year is $30,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958 and 1959), computed as follows:

Loss from operations	$75,000
Less:	
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Sum of offsets	45,000
Carryover	30,000

(4) *Carryover to 1962.* The carryover to this year is $10,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958, 1959, and 1961), computed as follows:

Loss from operations	$75,000
Less:	
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000
Sum of offsets	65,000
Carryover	10,000

(5) *Carryover to 1963.* The carryover to this year is $10,000 (the excess, if any, of the loss for 1960 over the sum of the offsets for 1958, 1959, 1961, and 1962), completed as follows:

Loss from operations	$75,000
Less:	
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000
Offset for 1962 (a year in which a loss from operations was sustained)	0
Sum of offsets	$65,000
Carryover	10,000

(6) *Carryover to 1964.* The carryover to this year is $0 (the excess, if any, of the loss from 1960 over the sum of the offsets for 1958, 1959, 1961, 1962, and 1963), computed as follows:

Loss from operations	$75,000
Less:	
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction of the carryback from 1960 or the carryback from 1962)	30,000
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryback from 1962)	20,000
Offset for 1962 (a year in which a loss from operations was sustained)	0
Offset for 1963 (the $30,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryover from 1962)	30,000
Sum of offsets	95,000
Carryover	0

(7) *Carryover to 1965.* The carryover to this year is $0 (the excess, if any, of the loss from 1960 over the sum of the offsets for 1958, 1959, 1961, 1962, 1963, and 1964), computed as follows:

Loss from operations	$75,000
Less:	
Offset for 1958 (the $15,000 gain from operations for such year computed without the deduction of the carryback from 1960)	$15,000
Offset for 1959 (the $30,000 gain from operations for such year computed without the deduction for the carryback from 1960 or the carryback from 1962)	30,000
Offset for 1961 (the $20,000 gain from operations for such year computed without the deduction for the carryover from 1960 or the carryback from 1962)	20,000
Offset for 1962 (a year in which a loss from operations was sustained)	0
Offset for 1963 (the $30,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryover from 1962)	30,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	$35,000
Sum of offsets	$55,000
Carryover	95,000

(7) *Carryover to 1966.* The carryover to this year is $20,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, and 1965), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	35,000
Offset for 1965 (the $75,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1965 not being taken into account)	75,000
Sum of offsets	130,000
Carryover	20,000

(8) *Carryover to 1967.* The carryover to this year is $3,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, 1965, and 1966), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	35,000
Offset for 1965 (the $75,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1965 not being taken into account)	75,000
Offset for 1966 (the $17,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1966 not being taken into account)	17,000
Sum of offsets	$147,000
Carryover	3,000

Offset for 1963 (the $30,000 gain from operations for such year computed without the deduction for the carryover from 1960 or the carryover from 1962)	$30,000
Offset for 1964 (the $35,000 gain from operations for such year computed without the deduction of the carryover from 1960 or the carryover from 1962)	35,000
Sum of offsets	$130,000
Carryover	0

(c) *Loss sustained in 1962.* The portions of the $150,000 loss from operations for 1962 which shall be used as carrybacks to 1959, 1960, and 1961 and as carryovers to 1963, 1964, 1965, 1966, and 1967 are computed as follows:

(1) *Carryback to 1959.* The carryback to this year is $150,000, that is, the amount of the loss from operations.

(2) *Carryback to 1960.* The carryback to this year is $150,000 (the excess, if any, of the loss from 1962 over the offset for 1959), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	0
Carryback	150,000

(3) *Carryback to 1961.* The carryback to this year is $150,000 (the excess if any, of the loss from 1962 over the sum of the offsets for 1959 and 1960), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Sum of offsets	0
Carryback	150,000

(4) *Carryover to 1963.* The carryover to this year is $150,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, and 1961), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 the ($20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Sum of offsets	0
Carryback	150,000

(5) *Carryover to 1964.* The carryover to this year is $130,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, and 1963), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Sum of offsets	20,000
Carryover	130,000

(6) *Carryover to 1965.* The carryover to this year is $95,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, and 1964), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	$35,000
Sum of offsets	$55,000
Carryover	95,000

(7) *Carryover to 1966.* The carryover to this year is $20,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, and 1965), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0
Offset for 1960 (a year in which a loss from operations was sustained)	0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	0
Offset for 1963 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	35,000
Offset for 1965 (the $75,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1965 not being taken into account)	75,000
Sum of offsets	130,000
Carryover	20,000

(8) *Carryover to 1967.* The carryover to this year is $3,000 (the excess, if any, of the loss from 1962 over the sum of the offsets for 1959, 1960, 1961, 1963, 1964, 1965, and 1966), computed as follows:

Loss from operations	$150,000
Less:	
Offset for 1959 (the $30,000 gain from operations for such year reduced by the carryback to such year of $60,000 from 1960, the carryback from 1962 to 1959 not being taken into account)	$0

Offset for 1960 (a year in which a loss from operations was sustained)	$0
Offset for 1961 (the $20,000 gain from operations for such year reduced by the carryover to such year of $30,000 from 1960, the carryback from 1962 to 1961 not being taken into account)	
Offset for 1962 (the $30,000 gain from operations for such year reduced by the carryover to such year of $10,000 from 1960, the carryover from 1962 to 1963 not being taken into account)	20,000
Offset for 1964 (the $35,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1964 not being taken into account)	35,000
Offset for 1965 (the $75,000 gain from operations for such year reduced by the carryover to such year of $0 from 1960, the carryover from 1962 to 1965 not being taken into account)	75,000
Offset for 1966 (the $17,000 gain from operations for such year computed without the deduction of the carryover from 1962)	17,000
Sum of offsets	$147,000
Carryover	3,000

(d) ***Determination of operations loss deduction for each year.*** **The carryovers and carrybacks computed under paragraphs (b) and (c) of this section are used as a basis for the computation of the operations loss deduction in the following manner:**

Taxable year	Carryover		Carryback		Operations loss deductions
	From 1960	From 1962	From 1960	From 1962	
1958			$75,000		$75,000
1959			60,000	$150,000	210,000
1961	$30,000			150,000	180,000
1963	10,000	$150,000			160,000
1964		130,000			130,000
1965		95,000			95,000
1966		20,000			20,000
1967		3,000			3,000

§ 1.813 Statutory provisions; life insurance companies; adjustment for certain reserves.

SEC. 813. *Adjustment for certain reserves.* In the case of a life insurance company writing contracts other than life insurance, annuity, and noncancellable health and accident insurance contracts (including life insurance or annuity contracts combined with noncancellable health and accident insurance), the term "adjustment for certain reserves" means, for purposes of this subpart, an amount equal to 3¼ percent of the unearned premiums and unpaid losses on such other contracts which are not included in life insurance reserves (as defined in section 801(b)). For purposes of this section, such unearned premiums shall not be considered to be less than 25 percent of the net premiums written during the taxable year on such other contracts.

[Sec. 813 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46)]

DISTRIBUTIONS TO SHAREHOLDERS

§ 1.815 Statutory provisions; life insurance companies; distributions to shareholders.

SEC. 815. *Distributions to shareholders*—(a) *General rule.* For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, shall be treated as made—

(1) First out of the shareholders surplus account, to the extent thereof,

(2) Then out of the policyholders surplus account, to the extent thereof, and

(3) Finally out of other accounts.

For purposes of this section, the term "distribution" includes any distribution in redemption of stock or in partial or complete liquidation of the corporation, but does not include any distribution made by the corporation in its stock or in rights to acquire its stock, and does not (except for purposes of paragraph (3) and subsection (e)(2)(B)) include any distribution in redemption of stock issued before 1958 which at all times on and after the date of issuance and on and before the date of redemption is limited as to dividends and is callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of the issue price and the amount of any contribution to surplus made by the original purchaser at the time of his purchase.

(b) *Shareholders surplus account*—(1) *In general.* Each stock life insurance company shall, for purposes of this part, establish and maintain a shareholders surplus account. The amount in such account on January 1, 1958, shall be zero.

(2) *Additions to account.* The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1957, shall be the amount by which—

(A) The sum of—

(i) The life insurance company taxable income (computed without regard to section 802(b)(3)),

(ii) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss,

(iii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)), the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B)), and the amount of interest excluded from gross income under section 103, and

(iv) The small business deduction provided by section 809(d)(10), exceeds

(B) The taxes imposed for the taxable year by section 802(a), determined without regard to section 802(b)(3).

(3) *Subtractions from account*—(A) *In general.* There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(B) *Distributions in 1958.* There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of distributions to shareholders made during 1958.

(c) *Policyholders surplus account*—(1) *In general.* Each stock life insurance company shall, for purposes of this part, establish and maintain a policyholders surplus account. The amount in such account on January 1, 1959, shall be zero.

(2) *Additions to account.* The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(A) An amount equal to 50 percent of the amount by which the gain from operations exceeds the taxable investment income,

(B) The deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

(C) The deduction for group life and group accident and health insurance contracts provided by section 809(d)(6) (as limited by section 809(f)).

(3) *Subtractions from account.* There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) The amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) The amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a)(1) is increased by reason of section 802(b)(3).

(d) *Special rules*—(1) *Election to transfer amounts from policyholders surplus account to shareholders surplus account*—(A) *In general.* A taxpayer may elect for any taxable year for which it is a life insurance company to subtract from its policyholders surplus account any amount in such account as of the close of such taxable year. The amount so subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(B) *Manner and effect of election.* The election provided by subparagraph (A) shall be made (in such manner and in such form as the Secretary or his delegate may by regulations prescribe) after the close of the taxable year and not later than the time prescribed by law for filing the return (including extensions thereof) for the taxable year. Such an election, once made, may not be revoked.

(2) *Termination as life insurance company*—(A) *Effect of termination.* Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if—

(i) For any taxable year the taxpayer is not an insurance company, or

(ii) For any two successive taxable years the taxpayer is not a life insurance company,

then the amount taken into account under section 802(b)(3) for the last preceding taxable year for which it was a life insurance company shall be increased (after the application of subparagraph (B)) by the amount remaining in its policyholders surplus account at the close of such last preceding taxable year.

(B) *Effect of certain distributions.* If for any taxable year the taxpayer is an insurance company but not a life insurance company, then any distribution to shareholders during such taxable year shall be treated as made on the last day of the last preceding taxable year for which the taxpayer was a life insurance company.

(3) *Treatment of certain indebtedness.* If—

(A) The taxpayer makes any payment in discharge of its indebtedness, and

(B) Such indebtedness is attributable to a distribution by the taxpayer to its shareholders after February 9, 1959,

then the amount of such payment shall, for purposes of this section and section 802(b)(3), be treated as a distribution in cash to shareholders, but only to the extent that the distribution referred to in subparagraph (B) was treated as made out of accounts other than the shareholders and policyholders surplus accounts.

(4) *Limitation on amount in policyholders surplus account.* There shall be treated as a subtraction from the policyholders surplus account for a taxable year for which the taxpayer is a life insurance company the amount by which the policyholders surplus account (computed at the end of the taxable year without regard to this paragraph) exceeds whichever of the following is the greatest—

(A) 15 percent of life insurance reserves at the end of the taxable year,

(B) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

(C) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year under section 809(c)(1).

The amount so treated as subtracted, less the amount of the tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the succeeding taxable year.

(e) *Special rule for certain mutualizations*—(1) *In general.* For purposes of this section and section 802(b)(3), any distribution to shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization shall be treated—

(A) First, as made out of paid-in capital and paid-in surplus, to the extent thereof,

(B) Thereafter, as made in two allocable parts—

(i) One part of which is made out of the other accounts referred to in subsection (a)(3), and

(ii) The remainder of which is a distribution to which subsection (a) applies.

(2) *Special rules*—(A) *Allocation ratio.* The part referred to in paragraph (1)(B)(i) is the amount which bears the same ratio to the amount to which paragraph (1)(B) applies as—

(i) The excess (determined as of December 31, 1958, and adjusted to the beginning of the year of the distribution as provided in subparagraph (B)) of the assets over the total liabilities, bears to

(ii) The sum (determined as of the beginning of the year of the distribution) of the excess described in clause (i), the amount in the shareholders surplus account, plus the amount in the policyholders surplus account.

(B) *Adjustment for certain distributions.* The excess described in subparagraph (A)(i) shall be reduced by the aggregate of the prior distributions which have been treated under subsection (a)(3) as made out of accounts other than the shareholders surplus account and the policyholders surplus account.

[Sec. 815 as added by sec. 2, Life Insurance Company Income Tax Act 1959 (73 Stat. 129)]

§ 1.815–1 Taxable years affected.

Sections 1.815–2 through 1.815–6 are applicable only to taxable years beginning after December 31, 1957, and all references to sections of part I, subchapter L, chapter 1 of the Code are to the Internal Revenue Code of 1954, as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 112).

§ 1.815–2 Distributions to shareholders.

(a) *In general.* Section 815 provides that every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain two special surplus accounts for Federal income tax purposes. These special accounts are the shareholders surplus account (as defined in section 815(b) and § 1.815–3) and the policyholders surplus account (as defined in section 815(c) and § 1.815–4). To the extent that a distribution to shareholders (as defined in paragraph (c) of this section) is treated as being made out of the shareholders surplus account, no tax is imposed on the company with respect to such distribution. However, to the extent that a distribution to shareholders is treated as being made out of the policyholders surplus account, the amount subtracted from the policyholders surplus account by reason of such distribution shall be taken into account in determining life insurance company taxable income under section 802(b).

(b) *Priority system for distributions to shareholders.* (1) For purposes of section 815 (other than subsection (e) thereof relating to certain mutualizations) and section 802(b)(3) (relating to the determination of life insurance company taxable income), any distribution made to shareholders after December 31, 1958, shall be treated in the following manner:

(i) Distributions shall be treated as first being made out of the shareholders surplus account (as defined in section 815(b) and § 1.815–3);

(ii) Once the shareholders surplus account has been reduced to zero, distributions shall then be treated as being made out of the policyholders surplus account (as defined in section 815(c) and § 1.815–4) until that account has been reduced to zero; and

(iii) Finally, any distributions in excess of the amounts in the shareholders surplus account and the policyholders surplus account shall be treated as being made out of other accounts (as defined in § 1.815–5).

(2) For purposes of subparagraph (1) of this paragraph, in order to determine whether a distribution (or any portion thereof) shall be treated as being made out of the shareholders surplus account, policyholders surplus account, or other accounts, the amount in such accounts at the end of any taxable year shall be the cumulative balance in such accounts at the end of the taxable year, computed without diminution by reason of a distribution (or any portion thereof) during the taxable year which is treated as being made out of such accounts. For example, on January 1, 1960, S, a stock life insurance company, had $1,000 in its shareholders surplus account and $3,000 in its policyholders surplus account. On November 1, 1960, S distributed $4,000 to its shareholders. Under the provisions of section 815(b)(2) and paragraph (b) of § 1.815–3, S added $5,000 to its shareholders surplus account for the taxable year 1960. Since the distributions to shareholders during the taxable year 1960, $4,000, does not exceed the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions treated as made out of such account during the taxable year, $6,000 ($1,000 plus $5,000), the entire distribution is treated as being made out of the shareholders surplus account.

(3) Except in the case of a distribution in cash and as otherwise provided herein, the amount to be charged to the special surplus accounts referred to in subparagraph (1) of this paragraph with respect to any distributions to shareholders (as defined in section 815(a) and paragraph (c) of this section) shall be the fair market value of the property distributed, determined as of the date of distribution. However, for the amount of the adjustment to earnings and profits reflecting such distributions, see section 312 and the regulations thereunder. For a special rule relating to the determination of the amount to be charged to such special surplus accounts in the case of a distribution by a foreign life insurance company carrying on a life insurance business within the United States, see section 819(c)(1) and the regulations thereunder.

(c) *Distributions to shareholders defined.* (1) Except as provided in subparagraph (2) of this paragraph, the term "distribution," as used in section 815(a) and paragraph (b) of this section, means any distribution of property made by a life insurance company to its shareholders. For purposes of the preceding sentence, the term "property" means any property (including money, securities, and indebtedness to the company) other than stock, or rights to acquire stock, in the company making the distribution. Thus, for example, the term includes a distribution which is considered a dividend under section 316, but is not limited to the extent that such distribution must be made out of the accumulated or current earnings and profits of the company making the distribution. Similarly, there is a distribution within the meaning of this paragraph in any case in which a corporation acquires the stock of a shareholder in exchange for property in a redemption treated as a distribution in exchange for stock under section 302(a) or treated as a distribution of property under section 302(d). For special rules relating to distributions to shareholders in acquisition of stock pursuant to a plan of mutualization, see section 815(e) and paragraph (e) of § 1.815–6.

(2) The term "distribution", as used in section 815(a) and paragraph (b) of this section, does not (except for purposes of section 815(a)(3) and (e)(2)(B)) include any distribution in redemption of stock issued prior to January 1, 1958, where such stock was at all times on and after the date of its issuance and on and before the date of its redemption limited as to the amount of dividends payable and was callable, at the option of the issuer, at a price not in excess of 105 percent of the sum of its issue price plus the amount of contribution to surplus (if any) made by the original purchaser at the time of his purchase.

§ 1.815–3 Shareholders surplus account.

(a) *In general.* Every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain a shareholders surplus account. This account shall be established as of January 1, 1958, and the beginning or opening balance of the shareholders surplus account on that date shall be zero.

(b) *Additions to shareholders surplus account.* (1) The amount added to the shareholders surplus account for any taxable year beginning after December

31, 1957, shall be the amount by which the sum of—

(i) The life insurance company taxable income (computed without regard to section 802(b)(3)),

(ii) In the case of a taxable year beginning after December 31, 1958, the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss,

(iii) The deduction for partially tax-exempt interest provided by section 242 (as modified by section 804(a)(3)), the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 809(d)(8)(B)), and the amount of interest excluded from gross income under section 103, and

(iv) The small business deduction provided by section 809(d)(10),

exceeds the taxes imposed for the taxable year by section 802(a), computed without regard to section 802(b)(3).

(2) For amounts which are to be added to the shareholders surplus account at the beginning of the succeeding taxable year, see section 815(d)(1) and (4) and paragraphs (a) and (d) of § 1.815–6.

(c) *Subtractions from shareholders surplus account*—(1) *In general.* There shall be subtracted from the cumulative balance in the shareholders surplus account at the end of any taxable year, computed without diminution by reason of distributions made during the taxable year, the amount which is treated as being distributed out of such account under section 815(a) and paragraph (b) of § 1.815–2.

(2) *Special rule; distributions in 1958.* There shall be subtracted from the shareholders surplus account (to the extent thereof) for any taxable year beginning in 1958 the amount of the distributions to shareholders made by the company during 1958. For example, assume S, a stock life insurance company, had additions to its shareholders surplus account (as determined under section 815(b)(2) and paragraph (b) of this section) for the taxable year 1958 of $10,000, and actually distributed as dividends to its shareholders $8,000 during the year 1958. The balance in S's shareholders surplus account as of January 1, 1959, shall be $2,000. If S had distributed $12,000 as dividends in 1958, the balance in its shareholders surplus account as of January 1, 1959, would be zero and the other accounts referred to in section 815(a)(3) and paragraph (b)(1)(iii) of § 1.815–2 would be reduced by $2,000.

(d) *Illustration of principles.* The application of section 815(b) and this section may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Balance in shareholders surplus account as of 1–1–60	$5,000
Life insurance company taxable income computed without regard to sec. 802(b)(3)	4,000
Excess of net long-term capital gain over net short-term capital loss	1,700
Tax-exempt interest included in gross investment income under sec. 804(b)	100
Small business deduction (determined under sec. 809(d)(10))	200
Tax liability under sec. 802(a) (1) and (2) computed without regard to sec. 802(b)(3)	$1,625
Amount distributed to shareholders	9,000

For purposes of determining the amount to be subtracted from its shareholders surplus account for the taxable year, S would first make up the following schedule in order to determine the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year:

(1) Balance in shareholders surplus account as of 1–1–60		$5,000
(2) Additions to account:		
(a) Life insurance company taxable income computed without regard to sec. 802(b)(3)	$4,000	
(b) Excess of net long-term capital gain over net short-term capital loss	1,700	
(c) Tax-exempt interest included in gross investment income under sec. 804(b)	100	
(d) Small business deduction (determined under sec. 809(d)(10))	200	
Total	6,000	
Less: Tax liability under sec. 802(a) (1) and (2) computed without regard to sec. 802(b)(3)	1,625	
		4,375
(3) Cumulative balance in shareholders surplus account as of 12–31–60 (item (1) plus item (2))		9,375

Since the amount distributed to shareholders during the taxable year, $9,000, does not exceed the cumulative balance in the shareholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year, $9,375, under the provisions of section 815(a), the entire distribution shall be treated as being made out of the shareholders surplus account. Thus, $9,000 shall be subtracted from the shareholders surplus account (leaving a balance of $375 in such account at the end of the taxable year) and S shall incur no additional tax liability by reason of the distribution to its shareholders during the taxable year 1960.

§ 1.815–4 Policyholders surplus account.

(a) *In general.* Every stock life insurance company subject to the tax imposed by section 802 shall establish and maintain a policyholders surplus account. This account shall be established as of January 1, 1959, and the beginning or opening balance of the policyholders surplus account on that date shall be zero.

(b) *Additions to policyholders surplus account.* The amount added to the policyholders surplus account for any taxable year beginning after December 31, 1958, shall be the sum of—

(1) An amount equal to 50 percent of the amount by which the gain from operations for the taxable year exceeds the taxable investment income,

(2) The deduction for certain nonparticipating contracts provided by section 809(d)(5) (as limited by section 809(f)), and

(3) The deduction for group life and group accident and health insurance contracts provided by section 809(d)(6) (as limited by section 809(f)).

(c) *Subtractions from policyholders surplus account*—(1) *In general.* There shall be subtracted from the cumulative balance in the policyholders surplus account at the end of any taxable year, computed without diminution by reason of distributions made during the taxable year, an amount equal to the sum of—

(i) The amount which (without regard to subdivision (ii) of this subparagraph) is treated under section 815(a) as distributed out of the policyholders surplus account for the taxable year, plus

(ii) The amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a)(1) is increased by reason of section 802(b)(3).

In addition, there shall be subtracted from the policyholders surplus account for the taxable year those amounts which, at the close of the taxable year, are subtracted or treated as subtracted from the policyholders surplus account under section 815(d)(1) and (4) and paragraphs (a) and (d) of § 1.815–6. For purposes of this paragraph, the subtractions from the policyholders surplus account shall be treated as made in the following order:

(a) First the amount determined under section 815(c)(3) by reason of distributions to shareholders during the taxable year which are treated as being made out of the policyholders surplus account;

(b) Next the amount elected to be subtracted from the policyholders surplus account for the taxable year under section 815(d)(1);

(c) Then the amount which is treated as a subtraction from the policyholders surplus account for the taxable year by reason of the limitation provided in section 815(d)(4); and

(d) Finally the amount taken into account upon termination as a life insurance company as provided in section 815(d)(2).

(2) *Method of computing amount subtracted from policyholders surplus account*—(i) *Where life insurance company taxable income, computed without regard to section 802(b)(3), exceeds $25,000.* If the life insurance company taxable income for any taxable year computed under section 802(b), computed without regard to section 802(b)(3), exceeds $25,000, the amount subtracted from the policyholders surplus account shall be determined by multiplying the amount treated as distributed out of such account by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the sum of the normal tax rate and the surtax rate for the taxable year.

(ii) *Where life insurance company taxable income does not exceed $25,000.* If the life insurance company taxable income for any taxable year, computed under section 802(b), does not exceed $25,000, the amount subtracted from the policyholders surplus account shall be determined by multiplying the amount treated as distributed out of such account by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the normal tax rate for the taxable year.

(iii) *Where life insurance company taxable income, computed without regard to section 802(b)(3) does not exceed $25,000, but computed with regard to section 802(b)(3) does exceed $25,000.* If the life insurance company taxable income for any taxable year, computed without regard to section 802(b)(3) does not exceed $25,000, but computed with regard to section 802(b)(3) does exceed $25,000, the amount subtracted from the policyholders surplus account shall be determined in the following manner:

(a) First, determine the amount by which $25,000 exceeds the amount determined under section 802(b)(1) and (2);

(b) Then, multiply the amount determined under (a) by a ratio, the numerator of which is 100 percent minus the normal tax rate and the denominator of which is 100 percent;

(c) Next, determine the amount by which the amount treated as distributed out of the policyholders surplus account exceeds the amount determined under (b) and multiply such excess by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the sum of the normal tax rate and the surtax rate; and

(d) Finally, add the amounts determined under (a) and (c).

(3) *Illustration of principles.* The application of section 815(c)(3) and subparagraph (2) of this paragraph may be illustrated by the following examples:

Example (1). The life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), exceeds $25,000 for the taxable year 1959. Assume that of the amount distributed by S to its shareholders during the taxable year, $9,600 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since the sum of the normal tax rate (30%) and the surtax rate (22%) in effect for 1959 is 52 percent, S shall subtract $20,000 from its policyholders surplus account for the taxable year 1959, computed as follows:

$$\$9{,}600 \times \frac{100}{(100-52)} = \$9{,}600 \times \frac{100}{48} = \$20{,}000$$

Of this amount, $9,600 is due to the application of section 815(c)(3)(A) and $10,400 to the application of section 815(c)(3)(B).

Example (2). Assume that for the taxable year 1960, S, a stock life insurance company, has taxable investment income of $1,000 and a gain from operations of $2,000. Assume further that of the amount distributed by S to its shareholders during the taxable year, $3,500 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since S's life insurance company taxable income does not exceed $25,000 for the taxable year and the normal tax rate in effect for 1960 is 30 percent, S shall subtract $5,000 from its policyholders surplus account for the taxable year 1960, computed as follows:

$$\$3{,}500 \times \frac{100}{(100-30)} = \$3{,}500 \times \frac{100}{70} = \$5{,}000$$

Of this amount, $3,500 is due to the application of section 815(c)(3)(A), and $1,500 to the application of section 815(c)(3)(B).

Example (3). For the taxable year 1960, the life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), is $10,000. Assume that of the amount distributed by S to its shareholders during the taxable year, $12,000 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Since the life insurance company taxable income of S, computed with regard to section 802(b)(3), exceeds $25,000, in order to determine the amount to be subtracted from its policyholders surplus account, S would make up the following schedule:

(1) $25,000 minus life insurance company taxable income, computed without regard to sec. 802(b)(3) ($25,000 minus $10,000)	$15,000
(2) Item (1) multiplied by 100 percent minus the normal tax rate as in effect for 1960, over 100 percent $\left(\$15{,}000 \times \frac{(100-30)}{100}\right)$	10,500
(3) Amount by which the amount treated as distributed out of policyholders surplus account ($12,000) exceeds item (2) ($10,500), multiplied by 100 percent over 100 percent minus the sum of the normal tax rate and the surtax rate as in effect for 1960 $\left(\$1{,}500 \times \frac{100}{(100-52)}\right)$	3,125
(4) Item (1) plus item (3) ($15,000 plus $3,125)	18,125

For the taxable year 1960, S shall subtract $18,125 from its policyholders surplus account. Of this amount, $10,500 represents the distribution from the policyholders surplus account which is taxed at a 30 percent tax rate and $1,500 the distribution from the policyholders surplus account which is taxed at a 52 percent tax rate. Thus, of the amount subtracted from the policyholders surplus account for the taxable year 1960, $12,000 is due to the application of section 815(c)(3)(A), and $6,125 to the application of section 815(c)(3)(B).

(d) *Illustration of principles.* The application of section 815(c) and this section may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Taxable investment income	$25,000
Gain from operations	30,000
Tax base (sec. 802(b)(1) and (2))	27,500
Deduction for certain nonparticipating policies provided by sec. 809(d)(5) (as limited by sec. 809(f))	600
Deduction for group policies provided by sec. 809(d)(6) (as limited by sec. 809(f))	400
Amount distributed to shareholders	60,000
Cumulative balance in shareholders surplus account as of 12–31–60	36,000
Balance in policyholders surplus account as of 1–1–60	48,000

For purposes of determining the amount to be subtracted from its policyholders surplus account for the taxable year, S would first make up the following schedule in order to determine the cumulative balance in the policyholders surplus account at the end of the taxable year, computed without diminution by reason of distributions made during the taxable year:

(1) Balance in policyholders surplus account as of 1–1–60		$48,000
(2) Additions to account:		
(a) 50 percent of the amount by which the gain from operations ($30,000) exceeds the taxable investment income ($25,000) ($\frac{1}{2} \times \$5{,}000$)	$2,500	
(b) The deduction for certain nonparticipating contracts provided by sec. 809(d)(5) (as limited by sec. 809(f))	600	
(c) The deduction for group contracts provided by sec. 809(d)(6) (as limited by sec. 809(f))	400	
		3,500
(3) Cumulative balance in policyholders account as of 12–31–60 item (1) plus item (2))		51,500

Under the provisions of section 815(a), since the amount distributed to shareholders during the taxable year, $60,000, exceeds the cumulative balance in the shareholders surplus at the end of the taxable year, computed without diminution by reason of distributions during the taxable year, $36,000, the shareholders surplus account shall first be reduced to zero. The remaining $24,000 ($60,000 minus $36,000) of the distribution shall then be treated as made out of the policyholders surplus account. Thus, since the tax base under section 802(b)(1) and (2) is in excess of $25,000, the total amount to be subtracted from the policyholders surplus account at the end of the taxable year would be $50,000 $\left(\$24{,}000 \times \frac{100}{100-52}\right)$. Of this amount $26,000 ($50,000 minus $24,000) represents the tax on the portion of the distribution to shareholders which is treated as being out of the policyholders surplus account.

(e) *Special rule for 1959 and 1960.* For a special transitional rule applicable to any increase in tax liability under section 802(b)(3) for the taxable years 1959 and 1960 which is due solely to the operation of section 815(c)(3) and this section, see section 802(a)(3) and § 1.802–5.

§ 1.815–5 Other accounts defined.

The term "other accounts", as used in section 815(a)(3) and paragraph (b) of § 1.815–2, means all amounts which are not specifically included in the shareholders surplus account under section 815(b) and paragraph (b) of § 1.815–3, or in the policyholders surplus account under section 815(c) and paragraph (b) of § 1.815–4. Thus, for example, other accounts include amounts representing the increase in tax due to the operation of section 802(b)(3) which is not taken into account for the taxable years 1959 and 1960 because of the special transitional rule provided in section 802(a)(3) and § 1.802–5, earnings and profits accumulated prior to January 1, 1958, paid-in surplus, capital, etc. To the extent that a distribution (or any portion thereof) is treated as being made out of other accounts, no tax is imposed on the company with respect to such distribution.

§ 1.815–6 Special rules.

(a) *Election to transfer amounts from policyholders surplus account to shareholders surplus account*—(1) *In general.* Section 815(d)(1) permits a life insurance company to elect, after the close of any taxable year for which it is a life insurance company, to subtract any amount (or any portion thereof) in its policyholders surplus account as of the close of the taxable year. The effect of such election is to subject the company to tax on the amounts elected to be subtracted for the taxable year for which the election applies. The amount so subtracted, less the amount of tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account as of the beginning of the taxable year following the taxable year for which the election applies and no further tax shall be imposed upon the company if the amount elected to be transferred to the shareholders surplus account is subsequently distributed to shareholders.

(2) *Manner and effect of election.* (i) The election provided by section 815(d)(1) and this section shall be made in a statement attached to the life insurance company's income tax return for any taxable year for which the company desires the election to apply. The statement shall include the name and address of the taxpayer, shall be signed by the taxpayer (or his duly authorized representative), and shall be filed not later than the date prescribed by law (including extensions thereof) for filing the return for such taxable year. In addition, the statement shall indicate that the company has made the election provided under section 815(d)(1) for the taxable year and the amount elected to be subtracted from the policyholders surplus account.

(ii) An election made under section 815(d)(1)(B) and subdivision (i) of this subparagraph shall be effective only with respect to the taxable year for which the election is made. Thus, the company must make a new election for each taxable year for which it desires the election to apply. Once such an election has been made for any taxable year it may not be revoked.

(3) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. For the taxable year 1960, the life insurance company taxable income of S, a stock life insurance company, computed without regard to section 802(b)(3), exceeds $25,000. Assume that S elects to subtract $20,000 from its policyholders surplus account under section 815(d)(1) for the taxable year. Since S is subject to a 52 percent tax rate, the tax on the amount elected to be subtracted from the policyholders surplus account (as of the close of the taxable year 1960) is $10,400 ($20,000 × 52 percent). Thus, the amount to be added to the shareholders surplus account as of January 1, 1961, is $9,600 (the amount subtracted from the policyholders surplus account by virtue of the section 815(d)(1) election, less the tax imposed upon such amount by reason of section 802(b)(3), or $20,000 minus $10,400).

(b) *Termination as life insurance company*—(1) *Effect of termination.* Except as provided in section 381(c)(22) (relating to carryovers in certian corporate readjustments), section 815(d)(2)(A) provides that if for any taxable year the taxpayer is not an insurance company (as defined in paragraph (a) of § 1.801–3), or if for any two successive taxable years the taxpayer is not a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), the amount taken into account under section 802(b)(3) for the last preceding year for which the company was a life insurance company shall be increased (after the application of section 815(d)(2)(B)) by the entire balance in the policyholders surplus account at the close of such last preceding taxable year.

(2) *Effect of certain distributions.* If for any taxable year the taxpayer is an insurance company (as defined in paragraph (a) of § 1.801–3) but is not a life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801–3), section 815(d)(2)(B) provides that any distribution to shareholders during such taxable year shall be treated as having been made on the last day of the last preceding taxable year for which the company was a life insurance company.

(3) *Examples.* The application of section 815(d)(2) and this paragraph may be illustrated by the following examples:

Example (1). At the end of the taxable year 1959, the balance in the policyholders surplus account of S, a life insurance company within the meaning of section 801(a) and paragraph (b) of § 1.801–3, is $12,000. If S fails to qualify as an insurance company (as defined in paragraph (a) of § 1.801–3) for the taxable year 1960, and section 381(c)(22) does not apply, under the provisions of section 815(d)(2)(A), the entire balance of $12,000 in the policyholders surplus account at the end of 1959, the last year S was a life insurance company, shall be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959.

Example (2). Assume the facts are the same as in example (1), except that for the taxable years 1960 and 1961, S qualifies as an insurance company (as defined in paragraph (a) of § 1.801–3) but does not qualify as a life insurance company within the meaning of section 801(a) and paragraph (b) of § 1.801–3. Assume further that as a result of a distribution by S to its shareholders in 1960, $4,800 (as determined under section 815(a) and without regard to section 815(c)(3)(B)) is treated as distributed out of the policyholders surplus account. Under the provisions of section 815(d)(2)(B), if section 381(c)(22) does not apply, any distribution to shareholders during the taxable years 1960 and 1961 shall be treated as having been made on December 31, 1959 (the last day of the last preceding taxable year for which S was a life insurance company). Thus, assuming S is subject to a 52 percent tax rate on additions to life insurance company taxable income, $10,000 ($4,800 plus $5,200, the tax on the portion of the distribution treated as made out of the policyholders surplus account) shall be treated as being subtracted from the policyholders surplus account at the end of 1959 and shall be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959. Under the provisions of section 815(d)(2)(A), the entire balance of $2,000 ($12,000 minus $10,000) in the policyholders surplus account at the end of 1959 (after the application of section 815(d)(2)(B)), shall also be taken into account under section 802(b)(3) for purposes of determining S's tax liability for the taxable year 1959.

(c) *Treatment of certain indebtedness.* Section 815(d)(3) provides that if a taxpayer makes any payment in discharge of its indebtedness which is attributable to a distribution of such indebtedness by the taxpayer to its shareholders after February 9, 1959, the amount of such payment shall be treated as a distribution in cash to the shareholders both for purposes of section 802(b)(3) and section 815. However, this paragraph shall only apply to the extent that the distribution of such indebtedness to shareholders was treated as being out of accounts other than the shareholders and policyholders surplus accounts at the time of distribution.

(d) *Limitation on amount in policyholders surplus account*—(1) *In general.* Section 815(d)(4) provides a limitation on the amount that any life insurance company may accumulate in its policyholders surplus account. If the policyholders surplus account at the end of any taxable year (computed without regard to this paragraph) exceeds whichever of the following is the greatest—

(i) 15 percent of life insurance reserves (as defined in section 801(b) and paragraph (a) of § 1.801–4) at the end of the taxable year,

(ii) 25 percent of the amount by which the life insurance reserves at the end of the taxable year exceed the life insurance reserves at the end of 1958, or

(iii) 50 percent of the net amount of the premiums and other consideration taken into account for the taxable year under section 809(c)(1),

then such excess shall be treated as a subtraction from the policyholders surplus account as of the end of such taxable year. The amount so treated as subtracted, less the amount of tax imposed with respect to such amount by reason of section 802(b)(3), shall be added to the shareholders surplus account at the beginning of the succeeding taxable year.

(2) *Example.* The application of the limitation contained in subparagraph (1) of this paragraph may be illustrated by the following example:

Example. The books of S, a stock life insurance company, reflect the following items for the taxable year 1960:

Balance in policyholders surplus account, computed without regard to sec. 815(d)(4), as of 12–31–60	$175
Life insurance reserves (as defined in sec. 801(b)) as of 12–31–60	4,500
Life insurance reserves (as defined in sec. 801(b)) as of 12–31–58	3,900
Premiums and other consideration taken into account for the taxable year under sec 809(c)(1)	310

In order to determine the limitations on the amount that it may accumulate in its policyholders surplus account at the end of the taxable year under section 815(d)(4), S would make up the following schedule:

(1) 15 percent of life insurance reserves at the end of the taxable year (15% × $4,500)	$675
(2) 25 percent of amount by which life insurance reserves at the end of the taxable year ($4,500) exceed life insurance reserves as of 12–31–58 ($3,900) (25% × $600)	$150
(3) 50 percent of premiums and other consideration taken into account under sec. 809(c)(1) for the taxable year (50% × $310)	155
(4) Limitation on policyholders surplus account (the greatest of items (1), (2), or (3))	675

Since the balance in the policyholders surplus account at the end of the taxable year 1960, $175, does not exceed the limitation provided by section 815(d)(4), $675, S is not required to make any further adjustment to its policyholders surplus account at the end of the taxable year.

(e) *Special rule for certain mutualizations*—(1) *In general.* Section 815(e) provides a rule for determining priorities which shall operate in place of section 815(a) and paragraph (b) of § 1.815–2 where a life insurance company makes any distribution to its shareholders after December 31, 1958, in acquisition of stock pursuant to a plan of mutualization. Section 815(e)(1) provides that such a distribution shall first be treated as being made out of paid-in capital and paid-in surplus, and, to the extent thereof, no tax shall be imposed on the company with respect to such distribution. Thereafter, distributions made pursuant to such plan of mutualization shall be treated as made in two allocable parts. One part shall be treated as being made out of other accounts (as defined in § 1.815–5) and the company shall incur no tax with respect to such portion of the distribution. The other part shall be treated as a distribution to which section 815(a) and paragraph (b) of § 1.815–2 applies. Thus, such portion of the distribution shall be treated as first being made out of the shareholders surplus account (as defined in section 815(b) and § 1.815–3), to the extent thereof, and then out of the policyholders surplus account (as defined in section 815(c) and § 1.815–4), to the extent thereof. See paragraph (a) of § 1.815–2. For purposes of this paragraph, a distribution shall be considered as being made pursuant to a plan of mutualization only if the requirements of applicable State law for the adoption of such plan (as, for example, approval by the requisite majority of the board of directors, shareholders, and policyholders) have been fulfilled.

(2) *Allocation ratio.* Section 815(e)(2)(A) provides an allocation ratio which when applied to the amount distributed under a plan of mutualization in excess of the balance in the paid-in capital and paid-in surplus accounts determines the portion of such excess to be treated as distributed out of the shareholders surplus account, policyholders surplus account, or other accounts. The numerator of this ratio is the excess of the assets of the company (as defined in section 805(b)(4) and paragraph (a)(4) of § 1.805–5) over the total liabilities (including reserves), both determined as of December 31, 1958, and adjusted in the manner provided in subparagraph (3) of this paragraph. The denominator of this ratio is the amount included in the numerator plus the amounts in the shareholders surplus account and policyholders surplus account, all determined as of the beginning of the year of the distribution.

(3) *Adjustment for certain distributions.* Section 815(e)(2)(B) provides that if between 1958 and the year of distribution the taxpayer has been treated as having made a distribution (under a plan of mutualization or otherwise) which is treated as a return of paid-in capital and paid-in surplus or as out of other accounts (as defined in § 1.815–5), the aggregate amount of any such prior distributions must be subtracted from the numerator and denominator in all cases where the allocation ratio provided by subparagraph (2) of this paragraph applies.

(f) *Recomputation required as a result of a subsequent loss from operations under section 812*—(1) *In general.* Any amounts added to or subtracted from the special surplus accounts referred to in section 815(a) and paragraph (b) of § 1.815–2 for any taxable year shall be adjusted to the extent necessary to properly reflect a subsequent loss from operations which under section 812 is carried back to the taxable year for which such additions or subtractions were made.

(2) *Example.* The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Assume that for the taxable years 1959 through 1961, the books of S, a stock life insurance company subject to a 30 percent tax rate for all taxable years involved, reflect the following items:

	1959	1960	1961
Taxable investment income	$40.00	$40.00	$40.00
Gain from operations	60.00	60.00	60.00
Tax base (sec. 802(b) (1) and (2))	50.00	50.00	50.00
Tax (sec. 802(b) (1) and (2) base)	15.00	15.00	15.00
Shareholders surplus account—			
At beginning of year	0	35.00	37.00
Added at beginning of year by reason of election under sec. 815(d)(1)	0	7.00	0
Added for year (with regard to election under sec. 815(d)(1))	35.00	35.00	35.00
Subtracted (distributions)	0	40.00	40.00
Policyholders surplus account—			
At beginning of year	0	0	10.00
Added for year	10.00	10.00	10.00
Subtracted (distributions)	0	0	0
Subtracted (by reason of election under sec. 815(d)(1))	10.00	0	0
Tax base (sec. 802(b)(3))	10.00	0	0
Tax (sec. 802(b)(3) base)	3.00	0	0

Assume further that S has a loss from operations for the taxable year 1962 of $25. Under provisions of section 812, the $25 loss from operations would be carried back to the taxable year 1959 and would reduce the 1959 tax base under section 802(b)(1) and (2) to $35 ($60 minus $25). After adjustments reflecting the 1962 loss from operations, the results for the taxable years 1959 through the beginning of 1962 would be as follows:

	1959	1960	1961	1962
Taxable investment income	$40.00	$40.00	$40.00	------
Gain from operations	35.00	60.00	60.00	------
Tax base (sec. 802(b) (1) and (2))	35.00	50.00	50.00	------
Tax (sec. 802(b) (1) and (2) base)	10.50	15.00	15.00	------
Shareholders surplus account—				
At beginning of year	0	24.50	19.50	$14.50
Added for year (without regard to election under sec. 815(d)(1))	24.50	25.00	25.00	------
Added by reason of election under sec. 815(d)(1)	0	0	0	------
Subtracted (distributions)	0	30.00	30.00	------
Policyholders surplus account—				
At beginning of year	0	0	10.00	20.00
Added for year	0	10.00	10.00	------
Subtracted (distributions)	0	0	0	------
Subtracted (by reason of election under sec. 815(d)(1))	0	0	0	------
Tax base (sec. 802(b)(3))	0	0	0	------
Tax (sec. 802(b)(3) base)	0	0	0	------

As a result of the loss from operations for 1962, the election under section 815(d)(1) for the taxable year 1959 has become inapplicable in its entirety since the balance in the policyholders surplus account at the end of 1959, as recomputed, is zero. Thus, S would be entitled to a total refund of $7.50 for the taxable year 1959. Of this amount, $4.50 is due to the recomputation of the section 802(b)(1) and (2) tax base and $3 to the amount of tax paid by reason of the election under section 815(d)(1).

§ 1.816 Statutory provisions; life insurance companies; foreign life insurance companies.

SEC. 816. *Foreign life insurance companies*—(a) *Carrying on United States insurance business.* A foreign life insurance company carrying on a life insurance business within the United States, if with respect to its United States business it would qualify as a life insurance company under section 801, shall be taxable in the same manner as a domestic life insurance company; except that the determinations necessary for purposes of this subtitle shall be made on the basis of the income, disbursements, assets, and liabilities reported in the annual statement for the taxable year of the United States business of such company on the form approved for life insurance companies by the National Association of Insurance Commissioners.

[Sec. 816 as added by sec. 2, Life Insurance Company Tax Act 1955 (70 Stat. 46)]

[F.R. Doc. 60–11400; Filed, Dec. 9, 1960; 8:45 a.m.]

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Acquisitions Made To Evade or Avoid Income Tax

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final

adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under sections 269 (relating to acquisitions made to evade or avoid income tax) and 482 (relating to allocation of income and deductions among taxpayers) of the Internal Revenue Code of 1954:

Sec.
1.269 Statutory provisions; acquisitions made to evade or avoid income tax.
1.269–1 Meaning and use of terms.
1.269–2 Purpose and scope of section 269.
1.269–3 Instances in which section 269(a) disallows a deduction, credit, or other allowance.
1.269–4 Power of district director to allocate deduction, credit, or allowance in part.
1.269–5 Presumption in case of disproportionate purchase price.
1.269–6 Relationship of section 269 to section 382.
1.482 Statutory provisions; allocation of income and deductions among taxpayers.
1.482–1 Determination of the taxable income of a controlled taxpayer.

§ 1.269 Statutory provisions; acquisitions made to evade or avoid income tax.

SEC. 269. *Acquisitions made to evade or avoid income tax*—(a) *In general.* If—

(1) Any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) Any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then such deduction, credit, or other allowance shall not be allowed. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

(b) *Power of Secretary or his delegate to allow deduction, etc., in part.* In any case to which subsection (a) applies the Secretary or his delegate is authorized—

(1) To allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) To distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(3) To exercise his powers in part under paragraph (1) and in part under paragraph (2).

(c) *Presumption in case of disproportionate purchase price.* The fact that the consideration paid upon an acquisition by any person or corporation described in subsection (a) is substantially disproportionate to the aggregate—

(1) Of the adjusted basis of the property of the corporation (to the extent attributable to the interest acquired specified in paragraph (1) of subsection (a)), or of the property acquired specified in paragraph (2) of subsection (a); and

(2) Of the tax benefits (to the extent not reflected in the adjusted basis of the property) not available to such person or corporation otherwise than as a result of such acquisition,

shall be prima facie evidence of the principal purpose of evasion or avoidance of Federal income tax. This subsection shall apply only with respect to acquisitions after March 1, 1954.

§ 1.269–1 Meaning and use of terms.

As used in section 269 and §§ 1.269–2 through 1.269–6—

(a) *Allowance.* The term "allowance" refers to anything in the internal revenue laws which has the effect of diminishing tax liability. The term includes, among other things, a deduction, a credit, an adjustment, an exemption, or an exclusion.

(b) *Evasion or avoidance.* The phrase "evasion or avoidance" is not limited to cases involving criminal penalties, or civil penalties for fraud.

(c) *Control.* The term "control" means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote, or at least 50 percent of the total value of shares of all classes of stock of the corporation. For control to be "acquired on or after October 8, 1940", it is not necessary that all of such stock be acquired on or after October 8, 1940. Thus, if A, on October 7, 1940, and at all times thereafter, owns 40 percent of the stock of X Corporation and acquires on October 8, 1940, an additional 10 percent of such stock, an acquisition within the meaning of such phrase is made by A on October 8, 1940. Similarly, if B, on October 7, 1940, owns certain assets and transfers on October 8, 1940, such assets to a newly organized Y Corporation in exchange for all the stock of Y Corporation, an acquisition within the meaning of such phrase is made by B on October 8, 1940. If, under the facts stated in the preceding sentence, B is a corporation, all of whose stock is owned by Z Corporation, then an acquisition within the meaning of such phrase is also made by Z Corporation on October 8, 1940, as well as by the shareholders of Z Corporation taken as a group on such date, and by any of such shareholders if such shareholders as a group own 50 percent of the stock of Z on such date.

(d) *Person.* The term "person" includes an individual, a trust, an estate, a partnership, an association, a company, or a corporation.

§ 1.269–2 Purpose and scope of section 269.

(a) *General.* Section 269 is designed to prevent in the instances specified therein the use of the sections of the Internal Revenue Code providing deductions, credits, or allowances in evading or avoiding Federal income tax. See § 1.269–3.

(b) *Disallowance of deduction, credit, or other allowance.* Under the Code, an amount otherwise constituting a deduction, credit, or other allowance becomes unavailable as such under certain circumstances. Characteristic of such circumstances are those in which the effect of the deduction, credit, or other allowance would be to distort the liability of the particular taxpayer when the essential nature of the transaction or situation is examined in the light of the basic purpose or plan which the deduction, credit, or other allowance was designed by the Congress to effectuate. The distortion may be evidenced, for example, by the fact that the transaction was not undertaken for reasons germane to the conduct of the business of the taxpayer, by the unreal nature of the transaction such as its sham character, or by the unreal or unreasonable relation which the deduction, credit, or other allowance bears to the transaction. The principle of law making an amount unavailable as a deduction, credit, or other allowance in cases in which the effect of making an amount so available would be to distort the liability of the taxpayer, has been judicially recognized and applied in several cases. Included in these cases are Gregory v. Helvering (1935) (293 U.S. 465; Ct. D. 911, C.B. XIV–1, 193); Griffiths v. Helvering (1939) (308 U.S. 355; Ct. D. 1431, C.B. 1940–1, 136); Higgins v. Smith (1940) (308 U.S. 473; Ct. D. 1434, C.B. 1940–1, 127); and J. D. & A. B. Spreckles Co. v. Commissioner (1940) (41 B.T.A. 370). In order to give effect to such principle, but not in limitation thereof, several provisions of the Code, for example, section 267 and section 270, specify with some particularity instances in which disallowance of the deduction, credit, or other allowance is required. Section 269 is also included in such provisions of the Code. The principle of law and the particular sections of the Code are not mutually exclusive and in appropriate circumstances they may operate together or they may operate separately. See, for example, § 1.269–6.

§ 1.269–3 Instances in which section 269(a) disallows a deduction, credit, or other allowance.

(a) *Instances of disallowance.* Section 269 specifies two instances in which a deduction, credit, or other allowance is to be disallowed. These instances, described in paragraphs (1) and (2) of section 269(a), are those in which—

(1) Any person or persons acquire, or acquired on or after October 8, 1940, directly or indirectly, control of a corporation, or

(2) Any corporation acquires, or acquired on or after October 8, 1940, directly or indirectly, property of another corporation (not controlled, directly or indirectly, immediately before such acquisition by such acquiring corporation or its stockholders), the basis of which property in the hands of the acquiring corporation is determined by reference to the basis in the hands of the transferor corporation.

In either instance the principal purpose for which the acquisition was made must have been the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy. The principal purpose actuating the acquisition must have been to secure the benefit which such person or persons or corporation would not otherwise enjoy. If this requirement is satisfied, it is immaterial by what method or by what conjunction of events the benefit was sought. Thus, an acquiring person or corporation may secure the benefit of a deduction, credit, or other allowance within the meaning of section 269 even though it is the acquired corporation that is entitled to such deduction, credit, or other allowance in the determination of its tax. If the purpose to evade or avoid Federal income tax exceeds in importance any other purpose, it is the principal purpose. This does not mean that only those acquisitions fall within the provisions of section 269 which would not have been made if the evasion or avoidance purpose was not present. The determination of the purpose for which an acquisition was made requires a scrutiny of the entire circumstances in which the transaction or course of conduct occurred, in connection with the tax result claimed to arise therefrom. For the presumption of a principal purpose of tax evasion or avoidance, see section 269(c) and § 1.269–5.

(b) *Acquisition of control; transactions indicative of purpose to evade or avoid tax.* If the requisite acquisition of control within the meaning of paragraph (1) of section 269(a) exists, the transactions set forth in the following subparagraphs are among the transactions which ordinarily are indicative that the principal purpose for which such acquisition of control was made is evasion or avoidance of Federal income tax:

(1) A corporation or other business enterprise (or the interest controlling such corporation or enterprise) with large profits acquires control of a corporation with current, past, or prospective credits, deductions, net operating losses, or other allowances and the acquisition is followed by such transfers or other action as is necessary to bring the deduction, credit, or other allowance into conjunction with the income (see further § 1.269–6). This subparagraph may be illustrated by the following example:

Example. Individual A acquires all of the stock of L Corporation which has been engaged in the business of operating retail drug stores. At the time of the acquisition, L Corporation has net operating loss carryovers aggregating $50,000 and its net worth is $100,000. After the acquisition, L Corporation continues to engage in the business of operating retail drug stores but the profits attributable to such business after the acquisition are not sufficient to absorb any substantial portion of the net operating loss carryovers. Shortly after the acquisition, individual A causes to be transferred to L Corporation the assets of a hardware business previously controlled by A which business produces profits sufficient to absorb a substantial portion of L Corporation's net operating loss carryovers. The transfer of the profitable business, which has the effect of using net operating loss carryovers to offset gains of a business unrelated to that which produced the losses, indicates that the principal purpose for which the acquisition of control was made is evasion or avoidance of Federal income tax.

(2) A person organizes two or more corporations instead of a single corporation in order to secure the benefit of multiple surtax exemptions (see section 11(c) or multiple minimum accumulated earnings credits (see section 535(c)(2) and (3)).

(3) A corporation with high earning assets transfers them to a newly organized subsidiary retaining assets likely to produce losses or to be disposed of at a loss for the purpose of securing refunds through a utilization of the net operating loss carryback.

(c) *Acquisition of property; transactions indicative of purpose to evade or avoid tax.* If the requisite acquisition of property within the meaning of paragraph (2) of section 269(a) exists, the transactions set forth in the following subparagraphs are among the transactions which ordinarily are indicative that the principal purpose for which such acquisition of property was made is evasion or avoidance of Federal income tax:

(1) A corporation acquires property having in its hands a carryover basis which is materially greater than its fair market value at the time of such acquisition in order to utilize the property to create tax-reducing losses.

(2) A subsidiary corporation, which has sustained large net operating losses in the operation of business X and which has filed separate returns for the taxable years in which the losses were sustained, acquires high earning assets, comprising business Y, from its parent corporation. The acquisition occurs at a time when the parent would not succeed to the net operating loss carryovers of the subsidiary if the subsidiary were liquidated, and the profits of business Y are sufficient to offset a substantial portion of the net operating loss carryovers attributable to business X (see further example (3) of § 1.269–6).

§ 1.269–4 Power of district director to allocate deduction, credit, or allowance in part.

The district director is authorized by section 269(b) to allow a part of the amount disallowed by section 269(a), but he may allow such part only if and to the extent that he determines that the amount allowed will not result in the evasion or avoidance of Federal income tax for which the acquisition was made. The district director is also authorized to use other methods to give effect to part of the amount disallowed under section 269(a), but only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made. Whenever appropriate to give proper effect to the deduction, credit, or other allowance, or such part of it which may be allowed, this authority includes the distribution, apportionment, or allocation of both the gross income and the deductions, credits, or other allowances the benefit of which was sought, between or among the corporations, or properties, or parts thereof, involved, and includes the disallowance of any such deduction, credit, or other allowance to any of the taxpayers involved.

§ 1.269–5 Presumption in case of disproportionate purchase price.

Section 269(c) provides that the fact that the consideration paid upon an acquisition by any person or corporation described in section 269(a) is substantially less than the aggregate—

(a) Of the adjusted basis of the property of the corporation (to the extent attributable to the interest acquired specified in paragraph (1) of section 269(a)), or of the property acquired specified in paragraph (2) of section 269(a); and

(b) Of the tax benefits (to the extent not reflected in the adjusted basis of the property) not available to such person or corporation otherwise than as a result of such acquisition,

shall be prima facie evidence of the principal purpose of evasion or avoidance of Federal income tax. Under principles applicable to income tax litigation generally, the Commissioner's determination that an acquisition was made for the principal purpose of evasion or avoidance of Federal income tax is presumptively correct, and the burden of proving such determination wrong by a preponderance of the evidence, together with the corresponding burden of first going forward with the evidence, is on the taxpayer. The effect of section 269(c), if applicable, is to give further weight to the presumption of correctness already arising from the Commissioner's determination, by expressly providing an additional presumption of the existence of a principal purpose of evasion or avoidance of Federal income tax. Section 269(c) shall apply only with respect to acquisitions occurring after March 1, 1954.

§ 1.269–6 Relationship of section 269 to section 382.

Section 269 and §§ 1.269–1 through 1.269–5 may be applied to disallow a net

operating loss carryover even though such carryover is not disallowed (in whole or in part) under section 382 and the regulations thereunder. This section may be illustrated by the following examples:

Example (1). L Corporation has been computing its taxable income on a calendar year basis and has been sustaining heavy net operating losses for a number of years. Assume that A purchases all of the stock of L Corporation on December 31, 1955, with the intention of changing its business to a profitable new business in order to utilize its net operating loss carryovers. Assume further that A makes no attempt to revitalize the business of L Corporation during the calendar year 1956 and that during January 1957 the business is changed to an entirely new and profitable business. If the net operating loss carryovers are not eliminated under the provisions of section 382, the carryovers will be disallowed under the provisions of section 269(a).

Example (2). L Corporation has been sustaining heavy net operating losses for a number of years and the outlook for its business in the future is very poor. P Corporation, a profitable corporation, wishes to utilize the net operating loss carryovers of L Corporation. Assume that on December 31, 1955, P Corporation purchases 60 percent of the stock of L Corporation for the purpose of liquidating L Corporation in order to utilize the net operating loss carryovers of L Corporation against the profits of P Corporation's business. During 1956, no attempt is made to revitalize the business of L Corporation. Assume further that on January 2, 1957, P Corporation purchases the rest of the stock of L Corporation and that on January 3, 1957, a plan of liquidation is adopted by L Corporation and the corporation is liquidated soon thereafter. If P Corporation would be entitled to the net operating loss carryovers of L Corporation under the provisions of section 381, and if section 382 does not operate to eliminate the carryovers, the carryovers will be disallowed under the provisions of section 269(a).

Example (3). L Corporation has been sustaining net operating losses for a number of years. P Corporation, a profitable corporation, on December 31, 1955, acquires all the stock of L Corporation for the purpose of continuing and improving the operation of L Corporation's business. Under the provisions of sections 334(b)(2) and 381(a)(1), P Corporation would not succeed to L Corporation's net operating loss carryovers if L Corporation were liquidated pursuant to a plan of liquidation adopted within two years after the date of the acquisition. During 1956, P Corporation transfers a profitable business to L Corporation for the purpose of using the profits of such business to absorb the net operating loss carryovers of L Corporation. The transfer is such as to cause the basis of the transferred assets in the hands of L Corporation to be determined by reference to their basis in the hands of P Corporation. If L Corporation's net operating loss carryovers are not eliminated under the provisions of section 382, the carryovers will be disallowed under the provisions of section 269(a).

§ 1.482 Statutory provisions; allocation of income and deductions among taxpayers.

SEC. 482. *Allocation of income and deductions among taxpayers.* In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary or his delegate may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses.

§ 1.482–1 Determination of the taxable income of a controlled taxpayer.

(a) *Definitions.* When used in this section—

(1) The term "organization" includes any organization of any kind, whether it be a sole proprietorship, a partnership, a trust, an estate, an association, or a corporation (as each is defined or understood in the Internal Revenue Code or the regulations thereunder), irrespective of the place where organized, where operated, or where its trade or business is conducted, and regardless of whether domestic or foreign, whether exempt, whether affiliated, or whether a party to a consolidated return.

(2) The term "trade" or "business" includes any trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place where carried on.

(3) The term "controlled" includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

(4) The term "controlled taxpayer" means any one of two or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests.

(5) The terms "group" and "group of controlled taxpayers" mean the organizations, trades, or businesses owned or controlled by the same interests.

(6) The term "true taxable income" means, in the case of a controlled taxpayer, the taxable income (or, as the case may be, any item or element affecting taxable income) which would have resulted to the controlled taxpayer, had it in the conduct of its affairs (or, as the case may be, in the particular contract, transaction, arrangement, or other act) dealt with the other member or members of the group at arm's length. It does not mean the income, the deductions, the credits, the allowances, or the item or element of income, deductions, credits, or allowances, resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement, the controlled taxpayer, or the interests controlling it, chose to make (even though such contract, transaction, or arrangement be legally binding upon the parties thereto).

(b) *Scope and purpose.* (1) The purpose of section 482 is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer, by determining, according to the standard of an uncontrolled taxpayer, the true taxable income from the property and business of a controlled taxpayer. The interests controlling a group of controlled taxpayers are assumed to have complete power to cause each controlled taxpayer so to conduct its affairs that its transactions and accounting records truly reflect the taxable income from the property and business of each of the controlled taxpayers. If, however, this has not been done, and the taxable incomes are thereby understated, the district director shall intervene, and, by making such distributions, apportionments, or allocations as he may deem necessary of gross income, deductions, credits, or allowances, or of any item or element affecting taxable income, between or among the controlled taxpayers constituting the group, shall determine the true taxable income of each controlled taxpayer. The standard to be applied in every case is that of an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.

(2) Section 482 and this section apply to the case of any controlled taxpayer, whether such taxpayer makes a separate or a consolidated return. If a controlled taxpayer makes a separate return, the determination is of its true separate taxable income. If a controlled taxpayer is a party to a consolidated return, the true consolidated taxable income of the affiliated group and the true separate taxable income of the controlled taxpayer are determined consistently with the principles of a consolidated return.

(3) Section 482 grants no right to a controlled taxpayer to apply its provisions at will, nor does it grant any right to compel the district director to apply such provisions. It is not intended (except in the case of the computation of consolidated taxable income under a consolidated return) to effect in any case such a distribution, apportionment, or allocation of gross income, deductions, credits, or allowances, or any item of gross income, deductions, credits, or allowances, as would produce a result equivalent to a computation of consolidated taxable income under subchapter A, chapter 6 of the Code.

(c) *Application.* Transactions between one controlled taxpayer and another will be subjected to special scrutiny to ascertain whether the common control is being used to reduce, avoid, or escape taxes. In determining the true taxable income of a controlled taxpayer, the district director is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits, or allowances. The authority to determine true taxable income extends to any case in which either by inadvertence or design the taxable income, in whole or in part, of a controlled taxpayer, is other than it would have been had the taxpayer in the conduct of his affairs been an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.

[F.R. Doc. 60–11543; Filed, Dec. 9, 1960; 8:53 a.m.]

[26 CFR (1954) Part 25]

ESTATE AND GIFT TAXES

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to conform the Gift Tax Regulations (26 CFR Part 25) to sections 23(f), 30(d), 43(b), 68, and 102(b) of the Technical Amendments Act of 1958 (72 Stat. 1623, 1631, 1641, 1659, 1674) and to section 4(d) of Public Law 86–779 (74 Stat. 1000), and in order to make a correction of a typographical error in paragraph (f)(4) of § 25.2523(e)–1 such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a) of § 2501 is amended to read as follows:

§ 25.01 Introduction.

(a) *In general.* (1) The regulations in this part are designated "Gift Tax Regulations." These regulations pertain to (i) the gift tax imposed by chapter 12 of subtitle B of the Internal Revenue Code on the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and (ii) certain related administrative provisions of subtitle F of the Code. It should be noted that the application of some of the provisions of these regulations may be affected by the provisions of an applicable gift tax convention with a foreign country. Unless otherwise indicated, references in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. The Gift Tax Regulations are applicable to the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and supersede the regulations contained in Part 86, Subchapter B, Chapter I, Title 26, Code of Federal Regulations (1939) (Regulations 108, Gift Tax), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F.R. 5167, Aug. 17, 1954).

(2) Section 2501(b) makes the provisions of chapter 12 of the Code apply in the case of gifts made after September 2, 1958, by certain citizens of the United States who were residents of a possession thereof at the time the gifts were made. Section 2501(c) makes the provisions of chapter 12 apply in the case of gifts made after September 14, 1960, by certain other citizens of the United States who were residents of a possession thereof at the time the gifts were made. See paragraphs (c) and (d) of § 25.2501–1. Except as otherwise provided in paragraphs (c) and (d) of § 25.2501–1, the provisions of these regulations do not apply to the making of gifts by such citizens.

PAR. 2. Section 25.2501 is amended to read as follows:

§ 25.2501 Statutory provisions; imposition of tax.

SEC. 2501. *Imposition of tax.*—(a) *General rule.* For the calendar year 1955 and each calendar year thereafter a tax, computed as provided in section 2502, is hereby imposed on the transfer of property by gift during such calendar year by any individual, resident or nonresident, except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year.

(b) *Certain residents of possessions considered citizens of the United States.* A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(c) *Certain residents of possessions considered nonresidents not citizens of the United States.* A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(d) *Cross references.* (1) For increase in basis of property acquired by gift for gift tax paid, see section 1015(d).

(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511(a).

[Sec. 2501 as amended by secs. 43(b) and 102(b), Technical Amendments Act 1958 (72 Stat. 1641, 1674) and as amended by sec. 4 (d), Act of Sept. 14, 1960, Pub. Law 86–779 (74 Stat. 1000)]

PAR. 3. Section 25.2501–1 is amended by striking paragraph (b) and inserting in lieu thereof the following paragraphs:

§ 25.2501–1 Imposition of tax.

* * * * *

(b) *Resident.* A resident is an individual who has his domicile in the United States at the time of the gift. For this purpose the United States includes the States and the District of Columbia. The term also includes the Territories of Alaska and Hawaii prior to admission as a State. See section 7701(a)(9). All other individuals are nonresidents. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of moving therefrom. Residence without the requisite intention to remain indefinitely will not constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

(c) *Certain residents of possessions considered citizens of the United States.* As used in this part, the term "citizen of the United States" includes a person who makes a gift after September 2, 1958 and who, at the time of making the gift, was domiciled in a possession of the United States and was a United States citizen, and who did not acquire his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The gift of such a person is, therefore, subject to the tax imposed by section 2501 in the same manner in which a gift made by a resident of the United States is subject to the tax. See paragraph (a) of § 25.01 and paragraph (d) of this section for further information relating to the application of the Federal gift tax to gifts made by persons who were residents of possessions of the United States. The application of this paragraph may be illustrated by the following example and the examples set forth in paragraph (d) of this section:

Example. A, a citizen of the United States by reason of his birth in the United States at San Francisco, established residence in Puerto Rico and acquired Puerto Rican citizenship. A makes a gift of stock of a Spanish corporation on September 4, 1958, while a citizen and domiciliary of Puerto Rico. A's gift is, by reason of the provisions of section 2501(b) subject to the tax imposed by section 2501 inasmuch as his United States citizenship is based on birth in the United States and is not based solely on being a citizen of a possession or solely on birth or residence in a possession.

(d) *Certain residents of possessions considered nonresidents not citizens of the United States.* As used in this part, the term "nonresident not a citizen of the United States" includes a person who makes a gift after September 14, 1960, and who at the time of making the gift, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The gift of such a person is, therefore, subject to the tax imposed by section 2501 in the same manner in which a gift is subject to the tax when made by a donor who is a "nonres-

ident not a citizen of the United States." See paragraph (a) of § 25.01 and paragraph (c) of this section for further information relating to the application of the Federal gift tax to gifts made by persons who were residents of possessions of the United States. The application of this paragraph may be illustrated by the following examples and the example set forth in paragraph (c) of this section. In each of the following examples the person who makes the gift is deemed a "nonresident not a citizen of the United States" and his gift is subject to the tax imposed by section 2501 in the same manner in which a gift is subject to the tax when made by a donor who is a nonresident not a citizen of the United States, since he made the gift after September 14, 1960, but would not have been so deemed and subject to such tax if the person who made the gift had made it on or before September 14, 1960.

Example (1). C, who acquired his United States citizenship under section 5 of the Act of March 2, 1917 (39 Stat. 953), by reason of being a citizen of Puerto Rico, while domiciled in Puerto Rico makes a gift on October 1, 1960, of real estate located in New York. C is considered to have acquired his United States citizenship solely by reason of his being a citizen of Puerto Rico.

Example (2). E, whose parents were United States citizens by reason of their birth in Boston, was born in the Virgin Islands on March 1, 1927. On September 30, 1960, while domiciled in the Virgin Islands, he made a gift of tangible personal property situated in Kansas. E is considered to have acquired his United States citizenship solely by reason of his birth in the Virgin Islands (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)).

Example (3). N, who acquired United States citizenship by reason of being a native of the Virgin Islands and a resident thereof on June 28, 1932 (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)), made a gift on October 1, 1960, at which time he was domiciled in the Virgin Islands, of tangible personal property situated in Wisconsin. N is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (4). P, a former Danish citizen, who on January 17, 1917, resided in the Virgin Islands, made the declaration to preserve his Danish citizenship required by Article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark. Subsequently P acquired United States citizenship when he renounced such declaration before a court of record (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)). P, while domiciled in the Virgin Islands, made a gift on October 1, 1960, of tangible personal property situated in California. P is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (5). R, a former French citizen, acquired his United States citizenship through naturalization proceedings in a court located in the Virgin Islands after having qualified for citizenship by residing in the Virgin Islands for 5 years. R, while domiciled in the Virgin Islands, made a gift of tangible personal property situated in Hawaii on October 1, 1960. R is considered to have acquired his United States citizenship solely by reason of his birth or residence within the Virgin Islands.

PAR. 4. Paragraph (b) of § 25.2511–1 is amended to read as follows:

§ 25.2511–1 Transfers in general.

* * * * *

(b) In the case of a nonresident not a citizen who was not engaged in business in the United States (see § 25.2501–1) during the calendar year, the tax is imposed only if the gift consisted of real estate or tangible personal property situated within the United States at the time of transfer. See §§ 25.2501–1 and 25.2511–3.

PAR. 5. Section 25.2511–3 is amended to read as follows:

§ 25.2511–3 Transfers by nonresidents not citizens.

(a) *In general.* Sections 2511 and 2501 contain provisions relating to the taxation of transfers by a donor who is a nonresident not a citizen of the United States. (See paragraph (b) of § 25.2501–1 for definition of the term "resident".) As combined these rules are—

(1) If the nonresident not a citizen of the United States was not engaged in business in the United States during the calendar year in which the gift was made, the tax applies only to the transfer of real property and tangible personal property situated in the United States.

(2) If the nonresident not a citizen of the United States was engaged in business in the United States during the calendar year in which the gift was made, the tax applies to the transfer of all property (whether real or personal, tangible or intangible) situated in the United States.

(b) *Situs of property.* (1) Real property, tangible personal property, and, except as otherwise provided in subparagraph (2) of this paragraph (relating to shares of stock), the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforceable against a resident of the United States or a domestic corporation (public or private) irrespective of where such written evidence is physically located.

(2) Shares of stock owned and held by a nonresident not a citizen of the United States constitute property within the United States if issued by a domestic corporation, irrespective of where the certificates are physically located. However, since a share of stock is intangible property, the transfer by gift by a nonresident not a citizen of the United States of a share of stock issued by a domestic corporation would, under the provisions of paragraph (a) of this section, be subject to the tax only if the donor was engaged in business in the United States during the calendar year in which the gift was made.

(3) Shares of stock owned and held by a nonresident not a citizen of the United States do not constitute property within the United States if issued by a corporation which is not a domestic corporation, irrespective of where the certificates are physically located. Therefore, the tax will not under any circumstances apply to the transfer of a share of such stock by a nonresident not a citizen of the United States.

PAR. 6. Section 25.2512–6 is amended by adding at the end thereof the following additional example:

§ 25.2512–6 Valuation of certain life insurance and annuity contracts.

* * * * *

Example (5). A donor purchases from a life insurance company for $15,198 a joint and survivor annuity contract which provides for the payment of $60 a month to the donor during his lifetime, and then to his sister for such time as she may survive him. The premium which would have been charged by the company for an annuity of $60 monthly payable during the life of the donor alone is $10,690. The value of the gift is $4,508 ($15,198 less $10,690).

PAR. 7. There is inserted immediately after § 25.2516–2 the following new sections:

§ 25.2517 Statutory provisions; certain annuities under qualified plans.

SEC. 2517. *Certain annuities under qualified plans*—(a) *General rule.* The exercise or nonexercise by an employee of an election or option whereby an annuity or other payment will become payable to any beneficiary at or after the employee's death shall not be considered a transfer for purposes of this chapter if the option or election and annuity or other payment is provided for under—

(1) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a) (3), (4), (5), and (6); or

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a).

(b) *Transfers attributable to employee contributions.* If the annuity or other payment referred to in subsection (a) is attributable to any extent to payments or contributions made by the employee, then subsection (a) shall not apply to that part of the value of such annuity or other payment which bears the same proportion to the total value of the annuity or other payment as the total payments or contributions made by the employee bear to the total payments or contributions made. For purposes of the preceding sentence, payments or contributions made by the employee's employer or former employer toward the purchase of an annuity contract described in subsection (a)(3) shall, to the extent not excludable from gross income under section 403(b), be considered to have been made by the employee.

(c) *Employee defined.* For purposes of this section, the term "employee" includes a former employee.

[Sec. 2517 as added by sec. 68 and as amended by sec. 23(f), Technical Amendments Act 1958 (72 Stat. 1659)]

§ 25.2517–1 Employees' annuities.

(a) *In general.* (1) Section 2517 provides an exception to the general rule of section 2511 by exempting from gift tax all or part of the value of certain annuities or other payments for the benefit of employees' surviving beneficiaries. Under the general rule in section 2511, where an employee has an unqualified right to an annuity but takes a lesser annuity with the provision that upon his death a survivor annuity or other payment will be paid to his designated beneficiary, the employee has made a gift to the beneficiary at the time he gives up his power to deprive the beneficiary of the survivor annuity or other payment. See especially § 25.2511–1(h)(10). The making of such a gift by the employee may be accomplished in three principal ways:

(i) By irrevocably electing to take the reduced annuity and designating the individual who is to receive the survivor annuity or other payment. In this case the gift is made at the time the election and designation are irrevocably made.

(ii) By permitting a prior revocable election of a reduced annuity and designation of beneficiary to become irrevocable through failure to revoke during the period during which revocation could be made. In this case the gift is made at the time the prior election and designation become irrevocable.

(iii) By permitting an option to expire under which the employee could, by exercising the option, have defeated the beneficiary's interest in the survivor annuity or other payment, and thereby regain for himself the right to a full annuity. In this case the gift is made at the time the employee permits the option to expire.

The value of the gift is the value, on the date of the gift, of the survivor annuity or other payment, computed in accordance with the principles set forth in §§ 25.2512–1, 25.2512–5, and 25.2512–6. It should be noted that such a gift is a gift of a future interest within the contemplation of § 25.2503–3 and no part thereof may be excluded in determining the total amount of gifts made during the calendar year.

(2) Section 2517 exempts from gift tax all or a portion of the value of the annuities or other payments described in subparagraph (1) of this paragraph which otherwise would be considered as gifts by employees to their beneficiaries. See paragraph (b) of this section for a complete description of the annuities and other payments to which the exemption applies. Also see paragraph (c) of this section for the portion of the annuity or other payment which is to be excluded in those cases where the annuity or other payment is attributable to payments or contributions made by both the employee and the employer. In the case of an annuity or other payment payable under an employees' trust or under a retirement annuity contract described in paragraph (b)(1) (i) or (ii) of this section, the exemption applies if the gift would otherwise be considered as having been made on or after January 1, 1955. In the case of an annuity or other payment payable under a retirement annuity contract described in paragraph (b)(1)(iii) of this section, the exclusion applies if the gift would otherwise be considered as having been made on or after January 1, 1958.

(b) *Annuities or other payments to which section 2517 applies.* (1) Except to the extent provided otherwise in paragraph (c) of this section, section 2517 exempts from transfers subject to the gift tax the value of an annuity or other payment which, upon the death of an employee, will become payable to the employee's beneficiary under:

(i) An employees' trust (or under a contract purchased by an employees' trust) forming part of a pension, stock bonus or profit-sharing plan which, at the time of such exercise or nonexercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a);

(ii) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of such exercise or non-exercise, or at the time of termination of the plan if earlier, met the requirements of section 401(a) (3), (4), (5), and (6); or

(iii) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a).

(2) The term "annuity or other payment" as used in this section, has reference to one or more payments extending over any period of time. The payments may be equal or unequal, conditional or unconditional, periodic or sporadic. For purposes of this section, the term "employee" includes a former employee. The application of this paragraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer made contributions to a trust which was to provide each employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary. No contributions under the plan were made by the employee. At the time of designating the surviving beneficiary (January 20, 1955), the pension trust formed part of a plan meeting the requirements of section 401(a). Assume that an employee made an irrevocable election whereby he would receive a lesser annuity, and after his death, annuity payments would be continued to his wife. Since the wife was designated annuitant under a qualified pension plan, no part of the value of such annuity is includible in the total amount of gifts for the calendar year by reason of the provisions of section 2517.

(c) *Amount excludable from gift.* (1) If an annuity or other payment described in paragraph (a)(1) of this section is attributable to payments or contributions made by both the employee and the employer, the exclusion is limited to that proportion of the value on the date of the gift (see paragraph (a)(1) of this section) of the annuity or other payment which the employer's contribution (or a contribution made on the employer's behalf) to the plan on the employee's account bears to the total contributions to the plan on the employee's account. In applying the ratio set forth in the preceding sentence, payments or contributions made by the employer toward the purchase of an annuity contract described in paragraph (b)(1)(iii) of this section are considered to be contributions made by the employee (and not by the employer) to the extent that such contributions are, or were, not excludable from the employee's gross income under section 403(b). The application of this subparagraph may be illustrated by the following examples:

Example (1). Pursuant to a pension plan, contributions were made by employer and employee to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary upon the employee's death. Assume that the employee made an irrevocable election on January 20, 1955, whereby he would receive a lesser annuity and that after his death annuity payments would be continued to his wife. At the time of making the election, the pension trust formed part of a plan meeting the requirements of section 401(a); contributions to the plan on the employee's account amounted to $20,000 of which $15,000 was contributed by the employer and $5,000 was contributed by the employee; and the value of the survivor annuity was $8,000. Since the wife's annuity was receivable under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions $\left(\frac{\$15,000}{\$20,000} \times \$8,000 \text{ or } \$6,000\right)$ is excludable from gifts by reason of the provisions of section 2517(b).

Example (2). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which in accordance with the employee's irrevocable election, under which he agreed to accept reduced annuity payments, provided that annuity payments would be continued to his wife after his death. At the time of making the election (January 20, 1955), the plan under which the retirement annuity contract was purchased met the requirements of section 401(a) (3), (4), (5), and (6). The retirement annuity contract was purchased from a life insurance company at a cost of $15,198 of which $3,039.60 was contributed by the employee. The premium which would have been charged by the life insurance company for the reduced retirement annuity payments for the life of the employee alone is $10,690. The value, at the time of the election, of the survivor annuity which will become payable to the wife if she survives the employee is $4,508 ($15,198−$10,690). Of such amount, only $901.60 is includible in the employee's gifts, computed as follows:

$$\frac{\$3,039.60 \text{ (employee's contribution)}}{\$15,198.00 \text{ (total contribution)}} \times \$4,508 = \$901.60.$$

Example (3). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which contained a provision for designating a surviving beneficiary. Assume that the employee made an irrevocable election whereby he would receive a lesser annuity, and after his death, annuity payments would be continued to his wife. At the time of making the election (January 20, 1959), the employer was an organization referred to

in section 503(b) (1), (2), or (3) and exempt from tax under section 501(a). As of the date of the election the total contributions toward the cost of the annuity, all by the employer, amounted to $25,000. Of this amount $6,000 was includible in the employee's income under the requirements of section 403(b) and is, therefore, considered as the employee's contributions for the purpose of applying section 2517(b).

(2) In certain cases, the employer's contribution (or a contribution made on his behalf) to a plan on the employee's account and thus the total contributions to the plan on the employee's account cannot be readily ascertained. In order to apply the ratio stated in subparagraph (1) of this paragraph in such a case, the method outlined in the following two sentences must be used unless a more precise method is presented. In such a case, the total contributions to the plan on the employee's account is the value of the annuities or other payments payable to the employee and his beneficiary computed in accordance with the rules set forth in § 25.2512-5. By subtracting from such value the amount of the employee's contribution to the plan, the amount of the employer's contribution to the plan on the employee's account may be obtained. The application of this subparagraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer and the employee contributed to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which contained a provision for designating either before or after retirement, a surviving beneficiary to receive an annuity upon the employee's death. At the time of the employee's retirement on January 20, 1955, he made an irrevocable election designating his wife as beneficiary. Also, at that time, the pension trust formed part of a plan meeting the requirements of section 401(a). Assume the following: (i) That the employer's contributions to the fund were not credited to the accounts of individual employees; (ii) that the value of the employee's annuity and his wife's annuity, computed as of the time of the employee's retirement, was $40,000; (iii) that the employee contributed $10,000 to the plan; and (iv) that the value at the time of the employee's retirement of the wife's annuity was $16,000. On the basis of these facts, the total contributions to the fund on the employee's account are presumed to be $40,000 and the employer's contribution to the plan on the employee's account is presumed to be $30,000 ($40,000 less $10,000). Since the election and the wife's annuity were provided for under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions $\left(\frac{\$30,000}{\$40,000} \times \$16,000, \text{ or } \$12,000\right)$ is excludable in determining the total amount of gifts for the calendar year by reason of the provisions of section 2517. Since the wife's right to a deferred annuity is a gift of a future interest the $3,000 exclusion provided in section 2503 is not allowable.

PAR. 8. Section 25.2522(c) is amended to read as follows:

§ 25.2522(c) Statutory provisions; charitable and similar gifts; disallowance of deductions in certain cases.

SEC. 2522. *Charitable and similar gifts.* • • •

(c) *Disallowance of deductions in certain cases.* For disallowance of certain charitable, etc., deductions otherwise allowable under this section, see sections 503 and 681. [Sec. 2522(c) as amended by sec. 30(d), Technical Amendments Act 1958 (72 Stat. 1681)]

PAR. 9. Subparagraph (4) of § 25.2523(e)-1(f) is revised to read as follows:

§ 25.2523(e)-1 Marital deduction; life estate with power of appointment in donee spouse.

• • • • •

(f) *Right to income.* • • •

(4) Provisions granting administrative powers to the trustees will not have the effect of disqualifying an interest transferred in trust unless the grant of powers evidences the intention to deprive the donee spouse of the beneficial enjoyment required by the statute. Such an intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of the powers. Among the powers which if subject to reasonable limitations will not disqualify the interest transferred in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, the power to apply the income or corpus for the benefit of the spouse, and the power to retain the assets transferred to the trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Nor will such a power disqualify the interest if the applicable rules for administration of the trust require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. Further, a power to retain a residence for the spouse or other property for the personal use of the spouse will not disqualify the interest transferred in trust.

[F.R. Doc. 60-11516; Filed, Dec. 9, 1960; 8:50 a.m.]

[26 CFR (1954) Part 170]

MISCELLANEOUS REGULATIONS RELATING TO LIQUORS

Redemption of Stamps in Puerto Rico

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The purpose of this Treasury decision is to provide regulations for the redemption, in Puerto Rico, of certain stamps which, by reason of the amendment of 26 CFR Part 250, are no longer required. In order to accomplish this, the regulations in 26 CFR Part 170 are amended by adding, immediately following § 170.618, a new Subpart V, as follows:

Subpart V—Redemption of Stamps in Puerto Rico

Preamble. The regulations in this part shall not affect any act done or any liability or right accruing or accrued, or any suit or proceeding had or commenced before the effective date of the regulations in this subpart.

Sec.
170.631 Scope of subpart.
170.632 Meaning of terms.

REDEMPTION OF STAMPS IN PUERTO RICO

170.633 Stamps eligible for redemption.
170.634 Claim, Form 843.
170.635 Time for filing claim.
170.636 Authorized claimant.

AUTHORITY: §§ 170.631 to 170.636 issued under sec. 7805, I.R.C., 68A Stat. 917; 26 U.S.C. 7805. Provisions of section 6805 I.R.C., 68A Stat. 830, 26 U.S.C. 6805, interpreted.

§ 170.631 Scope of subpart.

The regulations in this subpart provide for the allowance or redemption, by refund of monies paid therefor, of unused special Puerto Rican rectification stamps and of unused rectification tax sheet stamps procured by bottlers in Puerto Rico.

§ 170.632 Meaning of terms.

When used in this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in this section. Words in the plural shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine.

Chief, Collection Branch. The principal revenue officer in Puerto Rico charged with the duty of collecting internal revenue taxes, in Puerto Rico, under the jurisdiction of the Director of the Office of International Operations, Internal Revenue Service, Treasury Department, Washington, D.C.

I.R.C. The Internal Revenue Code of 1954, as amended.

Person. An individual, trust, estate, partnership, association, company, or corporation.

U.S.C. The United States Code.

REDEMPTION OF STAMPS IN PUERTO RICO

§ 170.633 Stamps eligible for redemption.

Subject to the provisions of section 6805, I.R.C., and of this subpart, unused Puerto Rican special rectification stamps, or unused rectification tax sheet stamps, may be redeemed if claim is filed within 3 years of the date of purchase of the stamps.

§ 170.634 Claim, Form 843.

Redemption of unused stamps under this subpart shall be allowed by the Chief, Collection Branch, pursuant to a claim on Form 843, for refund of the amount paid for unused stamps and shall be made only to the person or his legal representative, who purchased such stamps from the Government. The claim shall be filed with the Chief, Collection Branch. Separate claims shall be filed for each of the premises for which the stamps were procured. The stamps for which claim is made shall be attached to the Form 843, and the class, number, and denomination thereof shall be listed in the claim or in an attachment thereto. If the claim includes stamps which had been destroyed, evidence satisfactory to the Chief, Collection Branch, establishing such destruction must accompany the claim.

§ 170.635 Time for filing claim.

No claim for the redemption of stamps eligible for redemption under § 170.633 shall be allowed unless presented within 3 years after the purchase of such stamps from the Government.

§ 170.636 Authorized claimant.

Claims should be made in the name of the purchaser of the stamps, except that in the case where such person is deceased the claim should be made in the name of the executor or administrator. Certified copies of the letters of administration or letters testamentary, or other similar evidence, should be attached to the claim to show that the claimant is the executor, etc. If the claim is signed by an attorney-in-fact for an individual, partnership, association, or corporation, or by one of the members of a partnership or association, or, in the case of a corporation, by an officer or other person, the authority for such signing must be evidenced by a duly authenticated copy of the power of attorney conferring authority upon the person signing the document to execute the same or, in the case of a corporation, by properly certified copies of extracts of the minutes of meetings of the board of directors authorizing certain officers or other persons to sign for the corporation: *Provided*, That such evidence of authority to sign need not be submitted with the claim where such document has previously been filed by the claimant with the Chief, Collection Branch. Powers of attorney shall be executed on Form 1534.

[F.R. Doc. 60-11515; Filed, Dec. 9, 1960; 8:49 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-125]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 19 extends from Traverse City, Mich., to Flint, Mich., and Brooke, Va., to Cape Charles, Va.

In an amendment to the Regulations of the Administrator, published in the FEDERAL REGISTER by the Federal Aviation Agency on November 29, 1960 (25 F.R. 12173), as Airspace Docket No. 60-KC-65 it was stated that the segment of Red 19 from Traverse City, Mich., to Flint, Mich., and its associated control areas and reporting points would be revoked effective February 9, 1961.

The Federal Aviation Agency is now considering revoking the remaining segment of Red 19 from Brooke, Va., to Cape Charles, Va. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Brooke to Cape Charles is adequately served by VOR Federal airway No. 286. Therefore, it appears that retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 19, and its associated control areas from Brooke to Cape Charles. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4219, relating to reporting points associated with Red 19, would also be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11493; Filed, Dec. 9, 1960; 8:46 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-118]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 33 extends from Norfolk, Va., to Richmond, Va. The Federal Aviation Agency is considering revoking this airway. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route between the Norfolk and Richmond terminal areas presently served by Red 33 is adequately served by a combination of VOR Federal airways No. 260, No. 156 and the application of radar air traffic control procedures by the Norfolk Air Route Traffic Control Center. In addition, the Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, shows a maximum of nine aircraft movements between any two reporting points on this airway. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 33, its associated control areas and reporting points. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4233, relating to designated reporting points on Red 33 would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after pub-

lication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11492; Filed, Dec. 9, 1960; 8:46 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-115]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 73 extends from the intersection of the west course of the New Castle, Del., radio range and the west course of the Philadelphia, Pa., radio range via the New Castle radio range to the intersection of the east course of the New Castle radio range and the northeast course of the Millville, N.J., radio range. The Federal Aviation Agency is considering revoking this airway. A Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, showed one aircraft movement on the segment from the Newfield Intersection to the Elmer Intersection and no movements on the remainder of the airway. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 73 and its associated control areas. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4273 relating to reporting points associated with Red 73 would also be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 5, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11494; Filed, Dec. 9, 1960; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1032]

CARROTS GROWN IN SOUTH TEXAS

Notice of Proposed Expenses and Rate of Assessment

Notice is hereby given that the Secretary of Agriculture is considering the approval of the expenses and rate of assessment hereinafter set forth, which were recommended by the South Texas Carrot Committee, established pursuant to Marketing Agreement No. 142 and Marketing Order No. 132 (7 CFR Part 1032; 25 F.R. 9523).

Said marketing order regulates the handling of carrots grown in designated counties of South Texas, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Consideration will be given to any data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 15 days following publication of this notice in the FEDERAL REGISTER.

§ 1032.201 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the South Texas Carrot Committee, established pursuant to Marketing Agreement No. 142, and Order No. 132, to enable such committee to perform its functions pursuant to the provisions of the aforesaid marketing agreement and order during the fiscal period October 5, 1960, through July 31, 1961, will amount to $50,000.

(b) The rate of assessment to be paid by each handler pursuant to Marketing Agreement No. 142 and Order No. 132 shall be one and one-fourth cents ($0.0125) per 50 pound sack (or crate) of carrots, or the equivalent quantity thereof packed in other containers, handled by him as the first handler thereof during said fiscal period.

(c) All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 142 and Order No. 132 (7 CFR Part 1032; 25 F.R. 9523).

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 7, 1960.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-11513; Filed, Dec. 9, 1960; 8:49 a.m.]

Commodity Stabilization Service

[7 CFR Part 812]

HAWAII AND PUERTO RICO

Sugar Requirements for 1961 and Quotas for the Three-Month Period Ending March 31, 1961

Notice is hereby given that the Secretary of Agriculture, pursuant to authority vested in him by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), is considering the determination of sugar requirements for local consumption in Hawaii and Puerto Rico for the calendar year 1961 and the establishment of quotas for the three-month period ending March 31, 1961.

In accordance with the rule making requirements of the Administrative Procedure Act (60 Stat. 237) all persons who desire to submit written data, views or arguments for consideration in connection with the proposed regulation may file the same in duplicate with the Director of the Sugar Division, Commodity Stabilization Service, United States Department of Agriculture, Washington 25, D.C., within 10 days after publication of this notice in the FEDERAL REGISTER.

The proposed determination of sugar requirements for Hawaii and Puerto Rico for 1961 and quotas for the three-month period ending March 31, 1961, set forth in form and language appropriate for issuance, if adopted by the Secretary, is as follows:

Basis and purpose. The purpose of Sugar Regulation 812 is to determine pursuant to sections 201 and 203 of the Sugar Act of 1948, as amended (hereinafter referred to as the "act"), the amount of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico and to establish quotas for local consumption in such areas. To the extent required by Sec. 201 of the act, this regulation establishes sugar requirements based on official estimates of the Department of Agriculture and on statistics published by other agencies of the government.

Since the act provides that the Secretary of Agriculture determine during December 1960 sugar requirements for local consumption in Hawaii and in Puerto Rico and establish local consumption quotas for the three-month period ending March 31, 1961, it is found to be impracticable and not in the public interest to comply with the 30-day effective date requirements of the Administrative Procedure Act, and these regulations shall be effective January 1, 1961.

§ 812.1 Sugar requirements and quota—Hawaii.

It is hereby determined, pursuant to section 203 of the act, that the amounts of sugar needed to meet the requirements of consumers in Hawaii for the calendar year 1961 is 45,000 short tons, raw value, and a quota of 11,250 short tons, raw value, is hereby established for Hawaii for local consumption for the three-month period ending March 31, 1961.

§ 812.2 Sugar requirements and quota—Puerto Rico.

It is hereby determined, pursuant to section 203 of the act, that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1961 is 120,000 short tons, raw value, and a quota of 30,000 short tons, raw value, is hereby established for Puerto Rico for local consumption for the three-month period ending March 31, 1961.

§ 812.3 Restrictions on marketing.

Pursuant to section 209 of the act, for the three-month period ending March 31, 1961, all persons are hereby prohibited from marketing, pursuant to Part 816 of this chapter (23 F.R. 1943), in Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the area for the three-month period ending March 31, 1961, has been filled. Pursuant to section 211(c) of the act, the quota for each area may be filled only with sugar produced from sugarcane grown in the respective area.

STATEMENT OF BASES AND CONSIDERATIONS

Pursuant to section 203 of the act, the provisions of section 201 of the act deemed applicable to the determination of the amounts of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico relate to (1) the quantities of sugar distributed for local consumption in Hawaii and in Puerto Rico during the twelve-month period ended October 31, 1960, (2) deficiencies or surpluses in inventories of sugar, and (3) changes in consumption because of changes in population and demand conditions.

The quantities of sugar distributed for consumption in Hawaii and Puerto Rico, including that which was lost in refining after charge to the local quotas, during such twelve-month period were approximately 41,000 short tons of sugar, raw value, and 113,000 short tons of sugar, raw value, respectively.

The official estimate of the total population for Hawaii as of April 1, 1960, is 632,772 and for Puerto Rico 2,349,544. Compared to official estimates of 1959 population, this represents a minute increase for Puerto Rico and a small decline for Hawaii. No official estimate for either of these areas for 1961 is available.

In Hawaii industrial use accounts for a substantial portion of the total consumption of sugar and this demand varies enough to make it a significant factor in the total sugar requirements. Recent trends and year-to-year variations suggest the possibility that requirements may be considerably higher in 1961 than in the twelve months ended October 31, 1960, when distribution was approximately 41,000 short tons, raw value.

In Puerto Rico during the first ten months of 1960, local distribution plus refining losses totaled 92,998 short tons, raw value. If stocks of refiners in Puerto Rico on December 31, 1960, are the same as a year previous, the total quantity of sugar used to meet the local needs in 1960 may approximate 117,000 short tons, raw value. In view of such possible local consumption in 1960, and after making allowance for expected consumption increases in 1961 resulting from population increases, the total sugar needed to meet requirements for local consumption in Puerto Rico in 1961 may be approximately 120,000 short tons, raw value.

Circumstances prevailing in the utilization of quota for local consumption in Hawaii and Puerto Rico are such that no special problems arise nor are the objectives of the act jeopardized if the 1961 local quota is not completely filled. It is, therefore, desirable to establish the 1961 requirements and quotas sufficiently high initially so that later adjustments may be avoided.

In accordance with the above, the requirements for local consumption in Hawaii and Puerto Rico for 1961 have been determined to be 45,000 and 120,000 short tons, raw value, respectively. Pursuant to Public Law 86-592 approved July 6, 1960, the quotas for local consumption in Hawaii and Puerto Rico for the three-month period ending March 31, 1961, have been established at one-fourth of the determined local consumption requirements for 1961.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies Secs. 201, 203, 209, 210, 412; 61 Stat. 923, as amended, 925, 928; 7 U.S.C. 1111, 1112, 1119, 1120; Sec. 1, Pub. Law 86-592)

Done at Washington, D.C., this 7th day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

[F.R. Doc. 60-11540; Filed, Dec. 9, 1960; 8:52 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[No. 41]

RIVERTON PROJECT, WYOMING

Annual Water Rental Charges

NOVEMBER 29, 1960.

1. *Water rental.* Irrigation water will be furnished upon a rental basis during the irrigation season of 1961 to the irrigable acreages within the lands described in Public Notice No. 28 for the North Pavillion area, and in Public Notice No. 30 for the North Portal Area.

2. *Charges and terms of payment.* A minimum water rental charge shall be payable for irrigable acreages within the lands described in Public Notices Nos. 28 and 30, whether water is used or not. Such minimum charge need not be paid in any year for any acreage which the Riverton Project Manager certifies to be temporarily nonirrigable during such year due to seepage, land subsidence, shallow or impermeable soils, or excessive amounts of salts. Payment of the minimum water rental charge will entitle the water user to two acre-feet of water per irrigable acre. The minimum charge shall be payable in advance, and no water will be furnished until such charge is paid in full. Charges for water furnished in excess of two acre-feet per irrigable acre shall be payable on January 1 for water furnished during the preceding year.

The minimum water rental charge for lands in the North Pavillion and North Portal Areas described in Public Notices Nos. 28 and 30 shall be $2.30 per irrigable acre. Water in addition to two acre-feet per irrigable acre, if available, shall be furnished at the rate of $2.00 per acre-foot, or such lower rate as may be determined by the Secretary on or about November 15 or the year in which the water is used.

3. *Water for other lands.* Irrigation water, when available, will also be furnished at the rates described in Paragraph 2, to other lands in the North Pavillion and North Portal Areas upon the filing each year of a temporary water rental application covering such other lands. The approval of a water rental application for these lands shall not be deemed to constitute an action leading to a continuing right to receive water in subsequent years. The application for water on other lands can be made at any time during the irrigation year. At the time of application, the water rental charge is due, and no water will be delivered until all charges have been paid in full.

4. *Discounts and penalties.* If payment of the minimum charge for 1961 is made on or before December 31, 1960, a discount of 5 percent of such charge will be allowed. If payment of the charge for additional water used in 1961 is made on or before December 31, 1961, a discount of 5 percent will be allowed. If payment of the minimum is not made by April 1, 1961, and if payment for additional water furnished to any lands is not made by April 1, 1962, there shall be added on the following day a penalty of one-half of one percent of the amount unpaid and the same penalty shall be added on the first day of each calendar month thereafter so long as such default shall continue, and no water will be delivered until all charges and penalties have been paid in full.

5. *Place of payment.* Payment of water rental charges shall be made at the Bureau of Reclamation office in Riverton, Wyoming, or mailed to the Bureau of Reclamation, Riverton, Wyoming.

6. *Public Notice.* This notice supersedes Public Notices Nos. 39 and 40 with respect to water furnished in 1960, and supplements subparagraphs 24(b) and 24(c) of Public Notice No. 28, and subparagraphs 25(a) and 25(b) of Public Notice No. 30, Riverton Project.

BRUCE JOHNSON,
Regional Director.

[F.R. Doc. 60-11503; Filed, Dec. 9, 1960; 8:48 a.m.]

Fish and Wildlife Service

HUNTING OF CANADA GEESE IN ALEXANDER, JACKSON, UNION AND WILLIAMSON COUNTIES, ILLINOIS

Notice of Closing of Canada Goose Season

Pursuant to the regulations prescribed and published in the FEDERAL REGISTER of September 9, 1960 (25 F.R. 8717), which limit to 14,000 the number of Canada geese that may be killed in the counties of Alexander, Jackson, Union and Williamson, Illinois, it having been determined that on the basis of the daily kill which has occurred since the opening of the hunting season November 1, 1960, the permissive kill of 14,000 Canada geese will occur on or before 3:00 p.m., Monday, December 12, 1960, the hunting season on Canada geese will be closed effective at 3:00 p.m. December 12, 1960, and no Canada geese shall be killed in these four counties after 3:00 p.m.

DANIEL H. JANZEN,
Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 7, 1960.

[F.R. Doc. 60-11545; Filed, Dec. 9, 1960; 8:53 a.m.]

Office of the Secretary

CALIFORNIA

Topaz Lake and Tower House Springs Wildlife Area Classification Agreements

DECEMBER 5, 1960.

On pages 8036 and 8037 of the FEDERAL REGISTER for August 19, 1960, there was published a notice of preliminary approval of the classification agreements opening to oil and gas leasing certain lands withdrawn for the Topaz Lake Public Fishing Area and the Tower House Springs Upland Game Management Area in accordance with the regulations 43 CFR 192.9 as amended January 8, 1958. Interested persons were given thirty days within which to submit written comments, suggestions, or objections to the classification agreements. No adverse comments having been received, the Topaz Lake and Tower House Springs classification agreements are hereby finally approved without change.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 5, 1960.

[F.R. Doc. 60-11504; Filed, Dec. 9, 1960; 8:48 a.m.]

CALIFORNIA

Honey Lake Waterfowl Management Area Classification Agreement

DECEMBER 5, 1960.

On page 8036 of the FEDERAL REGISTER for August 19, 1960, there was published a notice of preliminary approval of the classification agreement closing to oil and gas leasing certain lands withdrawn for the Honey Lake Waterfowl Management Area in accordance with the regulations 43 CFR 192.9 as amended January 8, 1958. Interested persons were given thirty days within which to submit written comments, suggestions, or objections to the classification agreement. No adverse comments having been received, the Honey Lake classification agreement is hereby finally approved without change.

FRED A. SEATON,
Secretary of the Interior.

[F.R. Doc. 60-11535; Filed, Dec. 9, 1960; 8:52 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

CANNED RIPE PITTED OLIVES

Notice of Purchase Program BMP 196a

In order to encourage the domestic consumption of olives by diverting them from the normal channels of trade and commerce in accordance with section 32, Public Law 320, 74th Congress, approved August 24, 1935, as amended, the Agricultural Marketing Service offers to purchase canned ripe pitted olives from 1960 crop olives grown in the United States, for subsequent use in nonprofit school lunch programs and other eligible outlets. Details and specification of the offer to purchase are contained in Canned Ripe Pitted Olives Announcement FV-292 issued by the Department. Purchases will depend upon the quantities and prices offered. Information concerning this purchase program may be obtained from Mr. W. Allmendinger, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2082 Center Street, Berkeley 4, California, or the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington 25, D.C.

(Sec. 32, 49 Stat. 774, as amended, 7 U.S.C. 612c)

Dated: December 7, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11539; Filed, Dec. 9, 1960; 8:52 a.m.]

FRESH PEACHES GROWN IN GEORGIA

Order Directing That a Referendum Be Conducted; Designation of Referendum Agents To Conduct Such Referendum; and Determination of Representative Period

Pursuant to the applicable provisions of Marketing Agreement No. 99, as amended, and Order No. 62, as amended (7 CFR Part 962), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674), it is hereby directed that a referendum be conducted among the growers who, during the calendar year 1960 (which period is hereby determined to be a representative period for the purpose of such referendum), were engaged, in Georgia, in the production of peaches for market to determine whether such growers favor the termination of the said amended marketing agreement and order. M. F. Miller of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as agent of the Secretary of Agriculture to perform the following functions in connection with the referendum:

(a) Conduct said referendum in the manner herein prescribed:

(1) By giving opportunity to each of the aforesaid growers to cast his ballot, in the manner herein authorized, relative to the aforesaid termination of the amended marketing agreement and order, on a copy of the appropriate ballot form. A cooperative association of such growers, bona fide engaged in marketing fresh peaches grown in Georgia or in rendering services for or advancing the interests of the growers of such peaches, may vote for the growers who are members of, stockholders in, or under contract with, such cooperative association (such vote to be cast on a copy of the appropriate ballot form), and the vote of such cooperative association shall be considered as the vote of such growers.

(2) By determining the time of commencement and termination of the period of the referendum and by giving public notice, as prescribed in (a)(3) hereof, (i) of the time during which the referendum will be conducted, (ii) that any ballot may be cast by mail, and (iii) that all ballots so cast must be addressed to the Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 19, Lakeland, Florida, and the time prior to which such ballots must be postmarked.

(3) By giving public notice (i) by utilizing available agencies of public information (without advertising expense) including both press and radio facilities in the State of Georgia; (ii) by mailing a notice thereof (including a copy of the appropriate ballot form) to each such cooperative association and to each grower whose name and address are known; and (iii) by such other means as said referendum agent may deem advisable.

(4) By conducting meetings of growers and arranging for balloting at the meeting places, if said referendum agent determines that voting shall be at meetings. At each such meeting, balloting shall continue until all of the growers who are present, and who desire to do so, have had an opportunity to vote. Any grower may cast his ballot at any such meeting in lieu of voting by mail.

(5) By giving ballots to growers at the meeting; and receiving any ballots when they are cast.

(6) By securing the name and address of each person casting a ballot and inquiring into the eligibility of such person to vote in the referendum.

(7) By giving public notice of the time and place of each meeting authorized hereunder by posting a notice thereof, at least two days in advance of each such meeting, at each such meeting place, and in two or more public places within the applicable area; and, so far as may be practicable, by giving additional notice in the manner prescribed in paragraph (a)(3) hereof.

(8) By appointing any county agricultural agent in the State of Georgia, and any other persons deemed necessary or desirable, to assist the said referendum agent in performing his duties hereunder. Each county agricultural agent and other person so appointed shall serve without compensation and may be authorized, by the said referendum agent, to perform any or all of the functions set forth in paragraphs (a) (5), (6), (7), and (8) hereof (which, in the absence of such appointment of subagents, shall be performed by said referendum agent) in accordance with the requirements herein set forth, and shall forward to M. F. Miller, Field Representative, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 19, Lakeland, Florida, immediately after the close of the referendum, the following:

(i) A register containing the name and address of each grower to whom a ballot form was given;

(ii) A register containing the name and address of each grower from whom an executed ballot was received;

(iii) All of the ballots received by the respective referendum agent in connection with the referendum, together with a certificate to the effect that the ballots forwarded are all of the ballots cast and which were received by the respective agent during the referendum period;

(iv) A statement showing when and where each notice of referendum posted by said agents was posted and, if the notice was mailed to growers, the mailing list showing the names and addresses to which the notice was mailed and the time of such mailing; and

(v) A detailed statement reciting the method used in giving publicity to such referendum.

(b) Upon receipt by M. F. Miller of all ballots cast in accordance with the provisions hereof, he shall canvass the ballots and prepare and submit to the Secretary a detailed report covering the results of the referendum, the manner in which the referendum was conducted, the extent and kind of public notice given, and all other information pertinent to the full analysis of the referendum and its results; and shall forward such report, together with the ballots and other information and data, to the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C.

(c) The referendum agent and appointee pursuant hereto shall not refuse to accept a ballot submitted or cast; but should he, or any of them, deem that a ballot should be challenged for any reason, or if such ballot is challenged by any other person, said agent or appointee shall endorse above his signature, on the back of said ballot, a statement that such ballot was challenged, by whom challenged, and the reasons therefor; and the number of such challenged ballots shall be stated when they are forwarded as provided herein.

(d) All ballots shall be treated as confidential.

The Director of the Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby authorized to prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the said referendum agent and appointees in conducting said referendum.

Copies of the text of aforesaid amended marketing agreement and order may be examined in the Office of the Hearing Clerk, United States Department of Agriculture, Washington, D.C., and at the Office of W. E. Leigh, Manager, Industry Committee, Georgia Peach Marketing Agreement and Order, currently at 704 Grand Bldg., Macon, Georgia.

Ballots to be cast in the referendum may be obtained from the referendum agent and any appointee hereunder.

Dated: December 6, 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11478; Filed, Dec. 8, 1960; 8:58 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13841; FCC 60-1421]

COASTAL BROADCASTING CO. (WLAT)

Order Designating Application for Hearing on Stated Issues

In re application of Loys Marsdon Hawley and Herman Lee Hanks, d/b as Coastal Broadcasting Company (WLAT), Conway, South Carolina, has 1330 kc, 5 kw, D, requests 1330 kc, 500 w, 5 kw-LS, DA-N, U, Docket No. 13841, File No. BMP-8480; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960;

The Commission having under consideration the above-captioned and described application;

It appearing that except as indicated by the issues specified below, the instant applicant is legally, technically, financially, and otherwise qualified to construct and operate the instant proposal; and

It further appearing that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated June 24, 1960, and incorporated herein by reference, notified the applicant that the instant proposal would lose approximately 88.5 percent of the normally protected nighttime service area and about 46 percent of the population residing therein owing to interference received, and that, therefore, a question obtained as to whether the proposal represented an efficient utilization of the channel; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the applicant filed a timely reply to the aforementioned letter, stating that Conway has no existing nighttime facility; that this proposal would serve the entire city of Conway; and that WLAT is, therefore, proposing the first primary nighttime service to 100 percent of the population within the proposed nighttime service area and falls within one of the express exceptions to § 3.28(c) of the rules; but we are of the opinion that a question still obtains as to whether, under § 3.24(b) of the rules, this proposal represents an efficient utilization of the channel; and that the Commission is unable to make a determination in this matter on the basis of the information before it and that an evidentiary hearing is necessary to obtain complete information relative to the above-captioned proposal and the grounds advanced in support of the applicant's belief that a grant of the application would serve the public interest; and is of the opinion that the application must be designated for hearing on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WLAT and the availability of other primary service to such areas and populations.

2. To determine whether, because of interference received, the proposed operation of WLAT would be consistent with § 3.24(b) of the rules, and, if not, whether circumstances exist which would warrant a waiver of said section.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant applications would serve the public interest, convenience and necessity.

It is further ordered, That this Order shall supersede the Commission's Order (FCC 60-1319) adopted herein on November 2, 1960.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11526; Filed, Dec. 9, 1960; 8:50 a.m.]

[Docket Nos. 12925-12927; FCC 60M-2061]

EAST TEXAS TRANSMISSION CO.

Order Continuing Hearing

In re applications of East Texas Transmission Company, Tyler, Texas: For construction permit for new fixed video radio station. Frequencies: 5937.5, 6037.5, 6137.5 and 6237.5 Mc. Location: Hwy No. 429, 0.6 miles SW of College Mound, Texas, Docket No. 12925, File No. 2007-C1-P-58; for construction permit for new fixed video radio station. Frequencies: 5987.5, 6087.5, 6187.5 and 6287.5 Mc. Location 1.3 miles NW of Colfax, Texas, Docket No. 12926, File No. 2008-C1-P-58; for construction permit for new fixed video radio station. Frequencies: 5937.5, 6037.5, 6137.5 and 6237.5 Mc. Location: North Glenwood Blvd. and West Cloud St., Tyler, Texas, Docket No. 12927, File No. 2009-C1-P-58.

It is ordered, This 5th day of December 1960, on the Chief Hearing Examiner's own motion, that, because of the illness of the presiding Hearing Examiner, formal hearing in the above-entitled proceeding, which is scheduled to commence on December 12, 1960, is continued indefinitely, and that, in the near future, a new date will be specified by the presiding Hearing Examiner.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11527; Filed, Dec. 9, 1960; 8:50 a.m.]

[Docket No. 13659; FCC 60M-2054]

W. R. FRIER (WBHF)

Order Continuing Hearing

In re application of W. R. Frier (WBHF), Cartersville, Georgia, Docket No. 13659, File No. BP-12264; for construction permit.

The Chief Hearing Examiner having under consideration a petition filed on November 30, 1960, by the applicant, for continuance of hearing in the above-entitled proceeding which is presently scheduled to commence December 5, 1960;

It appearing that good cause exists to warrant a continuance of this matter and it is appropriate that the exact date be specified by the presiding Hearing Examiner;

It is ordered, This 2d day of December 1960, that the petition is granted and that hearing in the above proceeding is continued to a date to be specified by a subsequent order.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11528; Filed, Dec. 9, 1960; 8:51 a.m.]

[Docket Nos. 13856, 13857; FCC 60-1419]

QUEEN CITY BROADCASTING CO. AND VAL VERDE BROADCASTING CO.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Queen City Broadcasting Company, Del Rio, Texas, requests 1490 kc, 250 w, U, Docket No. 13856, File No. BP-12115; Eugene Albert Houghton and Alton W. Stewart d/b as Val Verde Broadcasting Company, Del Rio, Texas, requests 1490 kc, 250 w, U, Docket No. 13857, File No. BP-13050; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 30th day of November 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing, that except as indicated by the issues specified below, the Queen City Broadcasting Company is legally, technically, financially and otherwise qualified to construct its proposed station; and the Val Verde Broadcasting Company is legally and technically qualified but may not be financially and otherwise qualified; and

It further appearing, that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission in letters dated February 25, September 3, and November 17, 1959, and April 8, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of either of the applications would serve the public interest, convenience, and necessity; and that copies of the aforementioned letters are available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letters; and

It further appearing, that, in an affidavit filed on June 1, 1959, E. A. Houghton, a partner in Val Verde Broadcasting Company, alleged that Julius Sadowsky, an officer and stockholder in Queen City Broadcasting Company, is not qualified to own and operate a broadcast station, but that the Commission is of the opinion that Houghton has stated insufficient facts to support said allegation or to raise a substantial question as to the qualifications of Julius Sadowsky; and

It further appearing that Don R. Howard tr/as Del Rio Broadcasting Company, licensee of Station KDLK, Del Rio, Texas, has alleged that the Queen City Broadcasting Company's estimates of construction and operating costs and expected revenues are unrealistic and that Queen City Broadcasting Company has not demonstrated its financial ability to meet the costs of constructing and operating its proposed station; but that examination of the Queen City application and amendments thereto indicates that Queen City is financially qualified to meet the costs of construction and initial operation of its proposed station; and

It further appearing that the licensee of Station KDLK, by a series of correspondence and pleadings dating from January 8, 1959, contends, in substance, that the authorizations of a second standard broadcast station in Del Rio would result in economic injury to KDLK, that the Del Rio and Val Verde County area cannot support another radio station at this time, that the granting of either application herein would result in financial destruction of both the successful applicant and KDLK to the detriment of the public interest, convenience and necessity, would be a disservice to the public and would deprive the public of the excellent radio coverage it presently enjoys; and that, therefore, KDLK must be made a party to a hearing proceeding on the applications herein; and

It further appearing that the above contentions have not been sufficiently supported by factual allegations to warrant the specification of an issue as to whether the operation of a second standard broadcast station in Del Rio would be detrimental to the public interest; and

It further appearing that Don R. Howard's allegations that he is the licensee of the only standard broadcast station in Del Rio and that said station would suffer economic injury as a result of the operation of a second station in Del Rio require that Howard be named a party to the hearing ordered below; and

It further appearing that by letters dated March 4, and April 13, 1960, the Queen City Broadcasting Company alleged, in substance, that the transmitter site proposed by the Val Verde Broadcasting Company was purchased from two persons, one of whom is the father of Don R. Howard, licensee of KDLK, that the application of the Val Verde Broadcasting Company was not filed in good faith but for the purpose of impeding, obstructing or delaying determination on the Queen City application; that Queen City has requested a conditional grant of its application pursuant to § 1.362(b)(1) of the Commission rules; that by affidavit filed May 16, 1960, the Val Verde Broadcasting Company denied that its application was filed to block or delay the granting of any other application; that, on the basis of the information before, it, the Commission is unable to conclude that the facts alleged raise a substantial question with respect to the bona fides of the Val Verde Broadcasting Company in filing its application; and

It further appearing that the Commission letter of April 8, 1960, advised the Val Verde Broadcasting Company that the information then on file did not show that adequate funds were available to finance the construction and initial operation of its proposed station; and that, on the basis of additional information filed in response to the Commission's letter, it cannot be determined that the Val Verde Broadcasting Company has sufficient cash or liquid assets available in sufficient amount over and above those needed to meet current expenditures to demonstrate that the Val Verde Broadcasting Company is financially qualified; and

It further appearing that, by amendment filed April 28, 1960, the application of the Val Verde Broadcasting Company was amended to show geographical coordinates which correctly indicate the location of the proposed antenna site; and that the antenna structure at the site proposed may constitute a hazard to air navigation; and

It further appearing that after consideration of the applicant's replies, the Commission is still unable to make the statutory finding that a grant of either of the instant applications would serve the public interest, convenience and necessity, and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the Val Verde Broadcasting Company is financially qualified to construct and operate its proposed station.

2. To determine whether the antenna system proposed by Val Verde Broadcasting Company would constitute a hazard to air navigation.

3. To determine, on a comparative basis, which of the instant proposals would better serve the public interest, convenience and necessity in the light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

a. The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

b. The proposals of each of the applicants with respect to the management and operation of the proposed station.

c. The programming service proposed in each of the said applicants.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either of the instant applications should be granted.

It is further ordered, That Don R. Howard tr/as Del Rio Broadcasting Company, licensee of Station KDLK, Del Rio, Texas, is made a party to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That, the issues in the above-captioned proceedings may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11529; Filed, Dec. 9, 1960; 8:51 a.m.]

[Docket Nos. 13749-13753; FCC 60M-2064]

ROLLINS BROADCASTING, INC., ET AL.

Order Continuing Hearing

In re applications of Rollins Broadcasting, Inc., Wilmington, Delaware, Docket No. 13749, File No. BPCT-2583; The Wilmington Television Co., Inc., Wilmington, Delaware, Docket No. 13750, File No. BPCT-2603; WHYY, Inc., Wil-

[1] Commissioner King dissenting.

mington, Delaware, Docket No. 13751, File No. BPCT-2634; Metropolitan Broadcasting Corporation, Wilmington, Delaware, Docket No. 13752, File No. BPCT-2715; National Telefilm Associates, Inc., Wilmington Delaware, Docket No. 13753, File No. BPCT-2769; for construction permits for new television broadcast stations (Channel 12).

It is ordered, This 5th day of December 1960, on the Chief Hearing Examiner's own motion, that, because of the illness of the presiding Hearing Examiner herein, the dates presently scheduled for (a) exchange of direct cases (December 9, 1960); (b) commencement of hearing (January 9, 1961); (c) notification of witnesses desired for cross-examination (January 23, 1961); and (d) further hearing (February 6, 1961), in the above-entitled proceeding, are hereby cancelled, and that new dates will be specified, in the near future, by the presiding Hearing Examiner.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11530; Filed, Dec. 9, 1960; 8:51 a.m.]

[Docket Nos. 13663-13666; FCC 60M-2063]

NORMAN A. THOMAS ET AL.

Order Continuing Hearing

In re applications of Norman A. Thomas, Greeneville, Tennessee, Docket No. 13663, File No. BP-12729; Greene County Broadcasting Company, Incorporated, Greeneville, Tennessee, Docket No. 13664, File No. BP-13271; Wilkes Broadcasting Company (WATA), Boone, North Carolina, Docket No. 13665, File No. BP-13451; Radio Hendersonville, Inc. (WHKP), Hendersonville, North Carolina, Docket No. 13666, File No. BP-13487; for construction permits.

The Hearing Examiner having under consideration a "Petition for Continuance of Procedural Dates" filed by Greene County Broadcasting Company, Inc., on December 2, 1960, requesting a continuance of the procedural dates established by the parties in the above-entitled proceeding at a conference on October 5, 1960;

It appearing that the date established for the exchange of exhibits in response to issues 6 and 8 as set forth in the Commission Order of Designation was December 5, 1960; that notification of witnesses and program logs desired was December 15, 1960; and formal hearing to begin on January 4, 1961; and

It further appearing that additional time will be required for the preparation of the engineering exhibit; and

It further appearing that counsel for all of the parties have consented to a grant of the instant petition, and have agreed to waive the provisions of § 1.43 of the Commission's rules to permit immediate consideration thereof;

Now, therefore, it is ordered, This 5th day of December 1960 that the "Petition for Continuance of Procedural Dates" filed by Greene County Broadcasting Company, Inc., on December 2, 1960, be, and the same is, hereby granted, and that the dates for the exchange of exhibits, the notification of witnesses and program logs, and the formal hearing, presently scheduled for December 5, 1960, December 15, 1960, and January 4, 1961, be, and the same are, hereby continued to January 9, 1961, January 18, 1961, and February 1, 1961, respectively.

Released: December 6, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11531; Filed, Dec. 9, 1960; 8:51 a.m.]

[Docket Nos. 13828, 13829; FCC 60M-2058]

WALTERBORO RADIOCASTING CO. (WALD) AND ALTAMAHA BROADCASTING CO. (WBGR)

Order Continuing Hearing

In re applications of Walterboro Radiocasting Company (WALD), Walterboro, South Carolina, Docket No. 13828, File No. BP-12246, William Glenn Thomas, tr/as Altamaha Broadcasting Company (WBGR), Jesup, Georgia, Docket No. 13829, File No. BP-12461, for construction permits.

A prehearing conference in the above-entitled proceeding having been held as scheduled on December 2, 1960, and counsel having reached agreement on the procedures to be adopted which meet with the Examiner's approval;

It is ordered, This 5th day of December 1960, that the hearing presently scheduled to commence at 10:00 a.m. on December 13, 1960, at the Commission's offices, Washington, D.C., is hereby continued to Tuesday, February 7, 1961, at the same time and place;

It is ordered further, That engineering exhibits complete, but in draft form, are to be exchanged by January 13, 1961, that all exhibits in final form are to be exchanged by January 27 (with copies to be provided the hearing examiner), and that all other matters agreed upon are hereby deemed incorporated by reference to the transcript of the prehearing conference.

Released: December 5, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11532; Filed, Dec. 9, 1960; 8:51 a.m.]

[Docket No. 13596]

STANDARD BROADCAST STATIONS

Operation With Full Carrier and Single Sideband; Order Providing Time for Filing Reply Comments

In the matter of Inquiry into amendment of Part 3 of the Commission's rules and technical standards to permit standard broadcast stations to operate with full carrier and single sideband; Docket No. 13596 (RM-156).

1. The Commission has before it for consideration a request of Westinghouse Broadcasting Company, Inc., filed on November 30, 1960, for authorization to file reply comments during a period of at least 45 days after original comments are filed.

2. Westinghouse submits that it has experimented with single sideband operation on its experimental station KG2XIB for a period of time after April 1958; that its engineers have observed laboratory tests conducted by the Kahn Research Laboratories; and that it is not able to submit further comments and views until it has had an opportunity to examine the comments filed by the Kahn Laboratories and others. It therefore urges that the Commission authorize a period of not less than 45 days for the filing of reply comments.

3. The Commission is of the view that the public interest would be served by granting the request.

4. *In view of the foregoing, it is ordered*, This 5th day of December 1960, that the request of Westinghouse Broadcasting Company is granted, and that the time for filing comments in reply to original comments filed in this proceeding is specified as January 16, 1961.

Released: December 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11533; Filed, Dec. 9, 1960; 8:51 a.m.]

[Docket No. 13855; FCC 60-1417]

MANDAN RADIO ASSN.

Order To Show Cause

In the matter of revocation of license of Mandan Radio Association, for standard broadcast Station KBOM, Bismarck-Mandan, North Dakota, Docket No. 13855.

The Commission having under consideration certain violations of the Communications Act of 1934, as amended, and the Commission's rules involving (1) a series of Ownership Reports—FCC Form 323—filed by Mandan Radio Association on August 8, 1956, March 6, 1959, April 27, 1959, June 8, 1959, and April 11, 1960, respectively, pursuant to §§ 1.342 and 1.343 of the Commission's rules and regulations; (2) an application (BR-658) for the renewal of license of Station KBOM, which application was filed on March 6, 1959, by Mandan Radio Association and granted by the Commission on September 30, 1959; (3) a pending application (BTC-3423) filed by Mandan Radio Association on April 11, 1960, for Commission consent to the unauthorized relinquishment of positive control of said licensee through sale of stock from Charles E. Kempel to Clifford Nygard and 38 others (all stockholders); (4) a failure on the part of Mandan Radio Association, licensee of Station KBOM, Bismarck-Mandan, North Dakota, to file, in compliance with § 1.327 of the Commission's rules an application for modification of license to change its name to Mandan Radio Association, Inc.; and (5) certain misrepresentations and concealments of material facts; and

It appearing (1) That in the August 8, 1956, Ownership Report—FCC Form 323—which is signed by John K. Harris as President, it is indicated that the licensee had increased its capital authorization to 100,000 shares of common voting, $1.00 par value stock (previously 500 shares at $100 par value), of which 48,300 shares (previously 483 shares issued) had been issued to only three stockholders, as follows: 38,300 shares (79.30 percent) to C. E. Kempel, Chairman of the Board—5000 shares (10.35 percent) to John K. Harris, President and Manager—5000 shares (10.35 percent to Richard C. Johnson, Secretary—and that the licensee was also authorized to issue 500 shares of preferred nonvoting stock of $100 par value, of which none had been issued;

(2) That in the March 6, 1959 Ownership Report submitted with the above renewal application (BR-658), which was signed by Richard C. Johnson, Secretary, Messrs. Kempel, Harris and Johnson are represented, as to their holdings and offices, as in the August 8, 1956 report, but it is indicated that the preferred stock authorized was increased to 50,000 shares; that on the April 27, 1959 Ownership Report which was signed by Richard C. Johnson, Secretary, although Messrs. Kempel, Harris and Johnson maintained their offices in the licensee, the following changes had occurred as to stock: 57,000 shares of common stock were issued—C. E. Kempel owning 38,300 (67.19 percent)—John K. Harris owning 5,000 (8.77 percent)—Richard C. Johnson owning 13,700 (24.04 percent), and that 43,500 shares of preferred stock had now been issued (no stockholders listed); and that in the June 8, 1959 Ownership Report, which is signed by Richard C. Johnson, Secretary, all entries remained as stated above except that the preferred stock authorization was now at 500 shares of which 435 shares had been issued to 40 stockholders;

(3) That said licensee has changed its name to Mandan Radio Association, Inc., without having filed an application with the Commission requesting a modification of license to properly effectuate said change and without receiving Commission authorization therefor; and

It further appearing that subsequent to the grant of the above renewal of license application, and the filing of the above-mentioned Ownership Reports, information was brought to the attention of the Commission which indicated

(1) That an unauthorized transfer of control of Mandan Radio Association had been effectuated in 1956, in that Charles E. Kempel sold his 80 percent holdings in the licensee to several persons, and that John K. Harris had sold his 10 percent holdings; that Richard C. Johnson advised the Commission on November 16, 1959, that he would file an application showing that a transfer of control of the licensee had occurred in 1956; that on January 6, 1960, the Commission informed the licensee that no application had as yet been received and that an unauthorized transfer of control of the licensee had taken place; and that it was not until April 11, 1960, that the above-captioned application (BTC-3423) was filed by the licensee for Commission consent to the unauthorized relinquishment of positive control of said licensee by Charles E. Kempel to Clifford Nygard and 38 others;

(2) That section II, page 2, paragraph 12 of said application refers to one Merrel T. Elberg as a voting stockholder, said Mr. Elberg never having appeared on any of the licensee's Ownership Reports as such throughout its history, and whom it is later alleged by the licensee resigned as director and sold his stock in 1958; that Exhibit 2 of said application, showing stockholders and amounts, in general, remains inconsistent as to dates and amounts; that page 2 of said Exhibit 2 is incompatible with prior and subsequent statements regarding stock acquisitions by Messrs. Kempel, Harris and Johnson; and that section I, page 5, para. 2, is inconsistent with the stated facts surrounding the unauthorized transfer of control of the licensee;

(3) That in their sworn statement submitted with said application, Messrs. Kempel and Johnson alleged, among other things, that the duty to seek Commission consent to the stock transactions and informing the Commission of increases in stock authorizations was left to John K. Harris; that the unauthorized and unreported transactions occurred from July 1, 1956, to February 1, 1957, with the unauthorized transfer of control occurring on July 1, 1956; that between May 1956, and December 15, 1957, Mr. Harris was ill; that on December 15, 1957, Mr. Harris resigned his position at the station; that at the same time, the station's chief engineer resigned; that several stock transactions occurred as a result of the two foregoing resignations; that a Mr. Leupp replaced the engineer and Mr. Johnson assumed management of the station; that on January 20, 1958, the 8,000 shares of stock belonging to one Merrel T. Elberg were sold to his wife and son; and that it was not until 1958 that Mr. Johnson and Mr. Leupp became aware of the station's situation; and

It further appearing that after receipt of the above-mentioned application, further inquiry by the Commission disclosed, among other things,

(1) That several unauthorized and unreported transactions amounting to an unauthorized transfer of control had been effectuated within the licensee corporation from July 1, 1956 through 1958; that although John K. Harris had resigned his office in 1957 and disposed of his stock to Mr. Johnson, he had been carried as President and 8.77 percent stockholder of the licensee in its Ownership Reports through June 8, 1959; that Messrs. Kempel and Johnson could give no explanation as to the discrepancies concerning Messrs. Elberg and Harris except to say that these were part of a series of transactions they intended to clear up after the grant of the above renewal of license application; and that Mr. Elberg actually acquired 8,000 shares of stock from Mr. Kempel on July 1, 1956, and disposed of same to Mrs. Elberg on January 20, 1958;

(2) That it was admitted by Mr. Johnson that the only reason for not making any report to the Commission as to the unauthorized transactions, although he had knowledge of same in 1958, was that he wanted the renewal of license application to be granted first; that he admitted he believed that if a report had been made to the Commission, it would have delayed the grant of said renewal of license application; that he realized that, at the time of the grant of said renewal of license application, he had sworn to misrepresentations to the Commission; and that he could offer no excuse or reason for having waited so long to correct his and the station's situation except that he believed proper disclosure to the Commission would have jeopardized the granting of said renewal of license application; and

It further appearing that in the above-described applications (BR-658) and (BTC-3423), and in the above-described Ownership Reports Charles E. Kempel, John K. Harris, Richard C. Johnson and Mandan Radio Association did wilfully and knowingly, in violation of section 310 of the Communications Act of 1934, as amended, and of §§ 1.303, 1.304, 1.327, 1.329, 1.342 and 1.343 of the Commission's rules and regulations, and in order to deceive the Commission, make misrepresentations and false statements concerning the ownership and control of Mandan Radio Association and Station KBOM, upon which misrepresentations and statements the Commission relied in granting the application (BR-658) for renewal of license of Station KBOM on September 30, 1959; in accepting the Ownership Reports submitted to it on August 8, 1956, March 6, 1959, April 27, 1959, June 8, 1959, and April 11, 1960; and in accepting for filing on April 11, 1960, the application (BTC-3423) for Commission consent to the unauthorized relinquishment of positive control of Mandan Radio Association through the sale of stock from Charles E. Kempel to Clifford Nygard and 38 others (all stockholders);

It is ordered, This 30th day of November 1960, pursuant to the provisions of sections 301, 308(b), 312(a)(1), 312(a)(2), 312(a)(4) and 312(c) of the Communications Act of 1934, as amended, that the said licensee, Mandan Radio Association, is directed to show cause why an order revoking the aforementioned license for standard broadcast Station KBOM, Bismarck-Mandan, North Dakota, should not be issued, and to appear and give evidence with respect thereto at a hearing[1] to be held at a

[1] Section 1.62 of the Commission's rules provides that a licensee, in order to avail itself of the opportunity to be heard, shall, in person or by its attorney, file with the Commission, within thirty days of the receipt of the order to show cause, a written statement stating that it will appear at the hearing and present evidence on the matter specified in the order. In the event it would not be possible for respondent to appear for hearing in the proceeding if scheduled to be held in Washington, D.C., it should advise the Commission of the reasons for such inability within five days of the receipt of this

time and place to be specified by subsequent order, said time in no event to be less than 30 days after receipt of this Order; and

It is further ordered, That the Acting Secretary of the Commission send a copy of this Order by Registered Mail, Return Receipt Requested to the said licensee, Mandan Radio Association.

Released: December 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11534; Filed, Dec. 9, 1960; 8:51 a.m.]

DEPARTMENT OF COMMERCE

Bureau of the Census

DISTRIBUTORS' STOCKS OF CANNED FOOD

Notice of Consideration To Continue Surveys

Notice is hereby given that the Bureau of the Census is planning to conduct its usual annual survey of inventories covering 32 canned and bottled products, including vegetables, fruits, juices, and fish as of December 31, 1960, under the provisions of the Act of Congress approved August 31, 1954, 13 U.S.C. 181, 224, and 225. This survey, together with the previous surveys, provides the only continuing source of information on stocks of the specified canned foods held by wholesalers and in warehouses of retail multi-unit organizations.

On the basis of information received by the Bureau of the Census, these data will have significant application to the needs of the public, industry and the distributive trades, and governmental agencies and are not publicly available from nongovernmental or other governmental sources.

Such survey, if conducted, shall begin not earlier than 30 days after publication of this notice in the FEDERAL REGISTER.

Reports will not be required from all firms but will be limited to a scientifically selected sample of wholesalers and retail multi-unit organizations handling canned foods, in order to provide year-end inventories of the specified canned food items with measurable reliability. These stocks will be measured in terms of actual cases with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger."

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington 25, D.C.

Any suggestions or recommendations concerning the subject matter of this proposed survey should be submitted in writing to the Director of the Census within 30 days after the date of this publication and will receive consideration.

ROBERT W. BURGESS,
Director, Bureau of the Census.

[F.R. Doc. 60-11524; Filed, Dec. 9, 1960; 8:50 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11934]

AEROVIAS NACIONALES DE COLOMBIA, S.A.

Notice of Prehearing Conference

In the matter of the application of Aerovias Nacionales de Colombia, S.A. for an amendment of its foreign air carrier permit authorizing it to engage in foreign air transportation with respect to persons, property and mail between a point or points in Colombia, an intermediate point in Panama City, Panama (Tocumen), an intermediate point in Jamaica, British West Indies, and the co-terminal points Miami, Florida, and New York, New York.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 15, 1960, at 10:00 a.m., e.s.t., Room 701, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner John A. Cannon.

Dated at Washington, D.C., December 6, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11536; Filed, Dec. 9, 1960; 8:52 a.m.]

[Docket 11826]

QANTAS EMPIRE AIRWAYS LTD.

Notice of Hearing

In the matter of the application of Qantas Empire Airways Limited for amendment of its foreign air carrier permit under section 402 of the Federal Aviation Act of 1958, as amended.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on December 20, 1960, at 10:00 a.m., e.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., December 6, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11537; Filed, Dec. 9, 1960; 8:52 a.m.]

FEDERAL POWER COMMISSION

[Project No. 2283]

CENTRAL MAINE POWER CO.

Notice of Application for License

DECEMBER 6, 1960.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by Central Maine Power Company, of Augusta, Maine, for license for a constructed hydroelectric development, known as the Gulf Island-Deer Rips Project, designated Project No. 2283, and situated on the Androscoggin River, navigable waters of the United States, in Androscoggin County, Maine.

The project consists of two dams and three powerhouses and other appurtenant facilities, described as follows: Gulf Island—a concrete and earthfill dam, the concrete portion being comprised of a spillway section equipped with 7-foot hinged flashboards, two Stoney gates and seven Tainter gates, a powerhouse intake section and bulkhead section; a reservoir with an area of about 4,000 acres with normal water surface at an elevation of 262 feet (USGS) and extending upstream about 17 miles; a powerhouse integral with the dam containing three 9,000 horsepower turbines each connected to a 6,400-kilowatt generator; step-up transformers; and appurtenant facilities; Deer Rips—a concrete dam comprised of four gravity overflow sections, a canal intake section and powerhouse intake section; a reservoir with an area of about 130 acres with normal water surface at an elevation of 205.7 feet (USGS) and extending upstream to the tailwater of Gulf Island; a canal on the right bank extending about 600 feet to the Deer Rips powerhouse, which contains seven generating units with a total turbine capacity of 10,650 horsepower and generator capacity of 6,440 kilowatts; a step-up transformer; a forebay on the left bank about 25 feet long connecting the intake to Androscoggin No. 3 powerhouse, which contains one 5,500-horsepower turbine connected to a 3,600-kilowatt generator; excavated tailraces at both powerhouses; and appurtenant facilities.

Protests and petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day on which protests or petitions may be filed is January 31, 1961. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11495; Filed, Dec. 9, 1960; 8:47 a.m.]

order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the order to show cause. If such statement contains, with particularity, factual allegations denying or justifying the facts upon which the show cause order is based, the Hearing Examiner may call upon the submitting party to furnish additional information, and shall request all opposing parties to file an answer to the written statement and/or additional information. The record will then be closed and an initial decision issued on the basis of such procedure. Where a hearing is waived and no written statement has been filed within the thirty days of the receipt of the order to show cause, the allegations of fact contained in the order to show cause will be deemed correct and the sanctions specified in the order to show cause will be invoked.

[Project No. 2284]

CENTRAL MAINE POWER CO.

Notice of Application for License

DECEMBER 6, 1960.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by Central Maine Power Company, of Augusta, Maine, for license for a constructed hydroelectric development, known as the Brunswick-Topsham Project, designated Project No. 2284, and situated on the Androscoggin River, navigable waters of the United States, in Cumberland and Sagadahoc Counties, Maine.

The project consists of two dams and two powerhouses and other appurtenant facilities, described as follows: Brunswick—a dam comprised of two timber-crib overflow sections and a short concrete masonry non-overflow section connecting to the powerhouse on the right bank; a reservoir, with an area of about 12 acres and normal water surface at elevation 17.4 feet (USGS) contained within the river banks; a powerhouse containing four 483-horsepower turbines connected to three 375-kilowatt generators and one 348-kilowatt generator; step-up transformers; and appurtenant facilities; Topsham—a dam comprised of two concrete and one timber-crib sections; two intake sections, one on each shore; a reservoir, with an area of about 300 acres and normal water surface at elevation 39 feet (USGS), extending upstream about 4½ miles; an enclosed concrete flume extending from the left bank intake to a powerhouse containing three 400-horsepower turbines each connected to a 300-kilowatt generator; an overhead circuit to a non-project substation; step-up transformers; and appurtenant facilities.

Protests and petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure of the Commission (18 CFR 1.8 or 1.10). The last day on which protests or petitions may be filed is January 31, 1961. The application is on file with the Commission for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11496; Filed, Dec. 9, 1960; 8:47 a.m.]

[Docket No. E-6971]

KANSAS GAS AND ELECTRIC CO.

Notice of Application

DECEMBER 5, 1960.

Take notice that on November 29, 1960, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Kansas Gas and Electric Company ("Applicant"), a corporation organized under the laws of the State of West Virginia and doing business in the State of Kansas with its principal business office at Wichita, Kansas, seeking an order authorizing the issuance of $7,000,000 principal amount of First Mortgage Bonds, __ percent Series due 1991. Applicant proposes to issue $7,000,000 in principal amount of First Mortgage Bonds, __ percent Series due 1991 under a Mortgage and Deed of Trust to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York) and Wesley L. Baker (successor individual Trustee), as Trustees, dated as of April 1, 1940, as supplemented thereafter and as it will be further supplemented by a proposed Eighth Supplemental Indenture to be dated as of January 1, 1961. The interest rate to be borne by the Bonds (which shall be a multiple of ⅛ of 1 percent) and the price (exclusive of accrued interest) to be paid to Applicant for the Bonds (which shall be not less than the principal amount thereof and not more than 102¾ percent of such principal amount) will be determined by competitive bidding. Applicant states that the proceeds from the issuance and sale of the aforesaid First Mortgage Bonds will be used to meet expenditures in connection with its construction program.

Any person desiring to be heard or to make any protests with reference to said application should on or before the 30th day of December 1960, file with the Federal Power Commission, Washington 25, D.C. petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

MICHAEL J. FARRELL,
Acting Secretary.

[F.R. Doc. 60-11497; Filed, Dec. 9, 1960; 8:47 a.m.]

[Docket No. RP61-15]

TEXAS GAS TRANSMISSION CORP.

Order Permitting Filing of Tariff Sheets and Providing for Hearing on Proposed Revised Tariff Sheets and Suspension of Certain Filings

DECEMBER 5, 1960.

Texas Gas Trafnsmission Corporation (Texas Gas) tendered for filing 52 revised tariff sheets[1] proposing an increase in rates over those established by the Commission's order issued October 14, 1960 in settlement of the rate proceedings in Docket No. G-18886. The increased charges amount to $4,742,199, or 4.4 percent, annually based upon sales for the year ended June 30, 1960, as adjusted. Texas Gas requests an effective date of December 6, 1960, for the increases, but Texas Gas further requests that if its suspendable filings are in fact suspended, the non-suspendable filings—concerning the sale of gas for resale for industrial use only[2]—be made effective on the date the suspended tariff sheets become effective.

In support of its filings Texas Gas alleges (1) increased costs of purchased gas due to increased rates of suppliers and to shifts in sources from cheaper to higher priced gas, (2) reduced sales and volumes transported, (3) increased wages and salaries, (4) increased regulatory expenses, (5) increased depreciation expenses, and (6) a need for a 6½ percent rate of return and associated income taxes.

The claimed increased cost of purchased gas is partly contingent, the rates of 39 of Texas Gas's suppliers being effective subject to refund and the increased rates of two suppliers being suspended. In addition, several items in the cost data submitted by Texas Gas are questionable. Some of the questionable items are the 6½ percent rate of return and associated taxes, the extent of the reduction in volumes sold and transported, the claimed regulatory expense, the allocation of costs, and the rate tilt.

The proposed increased rates and charges provided for in the above-designated revised tariff tendered by Texas Gas on October 21, 1960, may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a hearing concerning the lawfulness of the proposed changes in rates, charges, classifications or services, and that certain of the above-designated revised tariff sheets be suspended and the use thereof be deferred as hereinafter ordered.

(2) Good cause exists for waiving the 60-day maximum notice limit of § 154.22 of the Commission's regulations under the Natural Gas Act; for permitting the filing of Eighth Revised Sheet Nos. 45, 47, and 51 and Ninth Revised Sheet No. 49 to Texas Gas's FPC Gas Tariff, Second Revised Volume No. 1; and for making the said tariff sheets effective on the date hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing be held on a date to be designated by notice from the Secretary of the Commission, concerning the lawfulness of the rates, charges, classifications, and services contained in Texas Gas's proposed revised tariff sheets filed on October 21, 1960.

(B) Pending such hearing and decision thereon, Texas Gas's proposed Third Revised Sheet No. 68–I, Fourth Revised Sheets Nos. 68–BB, 68–G, 68–H,

[1] Third Revised Sheet No. 68–I; Fourth Revised Sheets Nos. 68–BB, 68–G, 68–H, 68–K, 68–L and 70–A; Fifth Revised Sheets Nos. 13, 15 and 68–C, Sixth Revised Sheets Nos. 7, 9, 19, 21, 25, 27 and 71; Seventh Revised Sheets Nos. 68–A, 68–B, 68–E and 68–F; Eighth Revised Sheets Nos. 45, 47, 51, 79–I and 79–J; Ninth Revised Sheets Nos. 5, 11, 23, 29, 33, 41, 49, 53, 55, 59, 61, 63, 67, 69, 70, 73 and 74; Tenth Revised Sheets Nos. 17, 31, 35, 37, 43, 57 and 65 and Eleventh Revised Sheet No. 39 to FPC Gas Tariff, Second Revised Volume No. 1 and First Revised Sheet No. 254 to FPC Gas Tariff, Original Volume No. 2.

[2] Eighth Revised Sheets Nos. 45, 47, and 51 and Ninth Revised Sheet No. 49.

68–K, 68–L, and 70–A; Fifth Revised Sheets Nos. 13, 15 and 68–C; Sixth Revised Sheets Nos. 7, 9, 19, 21, 25, 27 and 71; Seventh Revised Sheets Nos. 68–A, 68–B, 68–E and 68–F; Eighth Revised Sheets Nos. 70–I and 70–J; Ninth Revised Sheets Nos. 5, 11, 23, 29, 33, 41, 53, 55, 59, 61, 63, 67, 69, 70, 73 and 74; Tenth Revised Sheets Nos. 17, 31, 35, 37, 43, 57 and 65 and Eleventh Revised Sheet No. 39 to Texas Gas' FPC Gas Tariff, Second Revised Volume No. 1 and First Revised Sheet No. 254 to Texas Gas' FPC Gas Tariff, Original Volume No. 2 are hereby suspended and the use thereof deferred until May 6, 1961, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) The 60-days-maximum notice limit of § 154.22 of the Commission's regulations under the Natural Gas Act is waived; Eighth Revised Sheet Nos. 45, 47 and 51 and Ninth Revised Sheet No. 49 to Texas Gas's FPC Gas Tariff, Second Revised Volume No. 1, may be filed; and said tariff sheets shall become effective on the date the tariff sheets suspended in paragraph (B) above become effective.

(D) Neither the tariff sheets suspended, nor the tariffs sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 20, 1961.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–11498; Filed, Dec. 9, 1960; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

ALUMINUM COMPANY OF AMERICA ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

DECEMBER 6, 1960.

In the matter of applications of the Cincinnati Stock Exchange for unlisted trading privileges in certain securities.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(2) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Aluminum Co. of America	7–2110
Ampex Corp	7–2111
General Telephone and Electronics Corp	7–2112
Goodyear Tire and Rubber Co	7–2113
Gulf Oil Corp	7–2114
Minnesota Mining and Manufacturing Co	7–2115
United Aircraft Corp	7–2116
Western Union Telegraph Co	7–2117

Upon receipt of a request, on or before December 23, 1960 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60–11505; Filed, Dec. 9, 1960; 8:48 a.m.]

HOOVER BALL AND BEARING CO.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

DECEMBER 6, 1960.

In the Matter of Application of the Detroit Stock Exchange for unlisted trading privileges in a certain security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to Section 12(f)(2) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

Hoover Ball and Bearing Co., File 7–2119.

Upon receipt of a request, on or before December 23, 1960 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60–11506; Filed, Dec. 9, 1960; 8:48 a.m.]

[File No. 1–1368]

HOOVER BALL AND BEARING CO.

Notice of Application To Strike From Listing and Registration and of Opportunity for Hearing

DECEMBER 6, 1960.

In the Matter of Hoover Ball and Bearing Company, Common Stock, File No. 1–1368.

Detroit Stock Exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–1(b) promulgated thereunder, to strike the specified security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following: This application is made at the request of the issuer. The stock remains listed on the New York Stock Exchange.

Upon receipt of a request, on or before December 23, 1960, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D.C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official files of the Commission pertaining to the matter.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60–11507; Filed, Dec. 9, 1960; 8:48 a.m.]

ROHR AIRCRAFT CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

DECEMBER 6, 1960.

In the matter of application of the Philadelphia-Baltimore Stock Exchange For Unlisted Trading Privileges in a Certain Security.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(2) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

Rohr Aircraft Corp., File 7–2118.

Upon receipt of a request, on or before December 23, 1960 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60–11508; Filed, Dec. 9, 1960; 8:48 a.m.]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 300]

KANSAS

Declaration of Disaster Area

Whereas, it has been reported that during the month of November, 1960, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Kansas;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Deputy Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property situated in the following county (including any areas adjacent to said county) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

County: Cloud (tornado occurring on or about November 26 and 27, 1960).

Offices: Small Business Administration Regional Office, Home Savings Building, Fifth Floor, 1006 Grand Avenue, Kansas City 6, Mo. Small Business Administration Branch Office, Board of Trade Building, Room 215, 120 South Market Street, Wichita 2, Kans.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to May 31, 1961.

Dated: November 30, 1960.

ROBERT F. BUCK,
Deputy Administrator.

[F.R. Doc. 60–11509; Filed, Dec. 9, 1960; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 7, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36764: *Substituted service—C&EI and L&N for Jones Truck Lines, Inc.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 43), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., and Memphis, Tenn., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 1 to Central and Southern Motor Freight Tariff Association, Incorporated tariff MF–I.C.C. 228.

FSA No. 36765: *Substituted service—IC for Jones Truck Lines, Inc.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 44), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., on the one hand, and East St. Louis, Ill., and Memphis, Tenn., on the other, also between East St. Louis, Ill., and Memphis, Tenn., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 1 to Central and Southern Motor Freight Tariff Association, Incorporated tariff MF–I.C.C. 228.

FSA No. 36766: *Substituted service—L&N for T.I.M.E. Incorporated.* Filed by Central and Southern Motor Freight Tariff Association, Incorporated, Agent (No. 45), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between East St. Louis, Ill., and Atlanta, Ga., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief—Motor-truck competition.

Tariff—Supplement 1 to Central and Southern Motor Freight Tariff Association, Incorporated tariff MF–I.C.C. 228.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60–11523; Filed, Dec. 9, 1960; 8:50 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

PROCLAMATIONS:
2935 ... 12501
3382 ... 12587

EXECUTIVE ORDERS:
3797–A ... 12412, 12599
6260 ... 12281
9041 ... 12429
10696 ... 12281
10697 ... 12429
10698 ... 12429

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 ... 12501
Letter, Nov. 16, 1960 ... 12501

5 CFR

2 ... 12285
6 ... 12393, 12547, 12588

6 CFR

421 ... 12282, 12283

7 CFR

33 ... 12430
718 ... 12588
722 ... 12393, 12403
730 ... 12503
833 ... 12650
845 ... 12285
871 ... 12547
903 ... 12504
905—908 ... 12504
911—913 ... 12504
914 ... 12405, 12650
916—919 ... 12504
921 ... 12504
923—925 ... 12504
928—932 ... 12504
933 ... 12405–12407, 12504
935 ... 12504
941—944 ... 12504
946—949 ... 12504
952 ... 12504
953 ... 12407, 12430, 12651
954 ... 12504
956 ... 12504
963 ... 12504
965—968 ... 12504
971—972 ... 12504
974—978 ... 12504
980 ... 12504
982 ... 12504
985—988 ... 12504
991 ... 12504
994—995 ... 12504
998 ... 12504
1000 ... 12504
1002 ... 12504
1004—1005 ... 12504
1008—1009 ... 12504
1011—1014 ... 12504
1016 ... 12504
1018 ... 12504, 12588
1023—1024 ... 12504
1031 ... 12505, 12651, 12652

PROPOSED RULES:
51 ... 12298, 12299
812 ... 12713
923 ... 12558
936 ... 12465
949 ... 12606

7 CFR—Continued

Page

PROPOSED RULES—Continued
965 ... 12466
989 ... 12476
1012 ... 12558
1032 ... 12712
1033 ... 12606

8 CFR

211 ... 12290

9 CFR

72 ... 12548

PROPOSED RULES:
83 ... 12571

10 CFR

PROPOSED RULES:
115 ... 12367

12 CFR

PROPOSED RULES:
206 ... 12479

14 CFR

49 ... 12352
225 ... 12589
300 ... 12430
302 ... 12432
414 ... 12589
506 ... 12505
507 ... 12352, 12433, 12549
514 ... 12433
600 ... 12285–12287, 12408, 12410, 12549–12551, 12589, 12676
601 ... 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677
602 ... 12288, 12552, 12678
608 ... 12678, 12679
609 ... 12353
612 ... 12410
1501 ... 12434

PROPOSED RULES:
41 ... 12299
43 ... 12524
302 ... 12477
507 ... 12477, 12478, 12571
600 ... 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712
601 ... 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712
608 ... 12479

15 CFR

203 ... 12590

16 CFR

13 ... 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649

18 CFR

154 ... 12653

19 CFR

PROPOSED RULES:
8 ... 12681

21 CFR

1 ... 12592
8 ... 12288
120 ... 12288, 12506
121 ... 12412, 12595
130 ... 12592
146 ... 12506, 12596
146c ... 12289

21 CFR—Continued

Page

PROPOSED RULES:
27 ... 12372
120 ... 12374, 12571
121 ... 12299, 12477

22 CFR

46 ... 12289

25 CFR

171 ... 12408

PROPOSED RULES:
52 ... 12518
176 ... 12299

26 (1939) CFR

16 ... 12442
17 ... 12443
29 ... 12339
39 ... 12339
40 ... 12340

26 (1954) CFR

1 ... 12340, 12345, 12654
18 ... 12340
19 ... 12654
48 ... 12669

PROPOSED RULES:
1 ... 12293, 12414, 12416, 12464, 12508, 12681, 12703
25 ... 12707
48 ... 12362
170 ... 12710
197 ... 12362
250 ... 12511

28 CFR

21 ... 12290

31 CFR

54 ... 12345

32 CFR

805 ... 12291
1008 ... 12444
1009 ... 12446
1010 ... 12449
1012 ... 12449
1013 ... 12449
1016 ... 12450, 12456
1030 ... 12451
1052 ... 12456
1053 ... 12456
1054 ... 12458
1055 ... 12462
1057 ... 12462
1059 ... 12462
1619 ... 12291

33 CFR

202 ... 12393

38 CFR

3 ... 12463

39 CFR

27 ... 12348

41 CFR

3–75 ... 12502, 12596
5–1 ... 12553
50–201 ... 12553
50–202 ... 12553

PROPOSED RULES:
50–202 ... 12363, 12522

42 CFR

Page

1 ... 12292

43 CFR

76 ... 12597
181 ... 12679
192 ... 12352
257 ... 12679

PROPOSED RULES:
259 ... 12606

PUBLIC LAND ORDERS:
82 ... 12412, 12599
797 ... 12413
1253 ... 12481
1621 ... 12599
1965 ... 12599
2209 ... 12412
2210 ... 12413
2211 ... 12413
2212 ... 12597
2213 ... 12597
2214 ... 12598
2215 ... 12599
2216 ... 12599

45 CFR

601—620 ... 12600

46 CFR

24 ... 12554
30 ... 12554
56 ... 12554
70 ... 12555
90 ... 12555
110 ... 12555
111 ... 12555
136 ... 12555
171 ... 12555
308 ... 12348

47 CFR

1 ... 12358, 12600, 12602, 12603, 12605
4 ... 12680
5 ... 12359
9 ... 12359
10 ... 12359
11 ... 12359
12 ... 12358
16 ... 12359
19 ... 12359
21 ... 12359, 12603, 12605

47 CFR—Continued

Page

PROPOSED RULES:
1 ... 12624
3 ... 12371, 12624, 12626, 12627

49 CFR

91 ... 12506
122 ... 12506

PROPOSED RULES:
71–78 ... 12420
197 ... 12420
33 ... 12507, 12556, 12557

50 CFR

32 ... 12555

Check List

CFR SUPPLEMENTS

(As of January 1, 1960)

Titles 1–3 ($1.25); Title 3 ($0.60); Titles 4–5 ($1.00); Title 7, Parts 1–50 ($0.45); Parts 51–52 ($0.45); Parts 53–209 ($0.40); Parts 210–399, Revised ($4.00); Parts 400–899, Revised ($5.50); Parts 900–959 ($1.50); Part 960 to End ($2.50); Title 8 ($0.40); Title 9 ($0.35); Titles 10–13 ($0.50); Title 14, Parts 1–39 ($0.65); Parts 40–399 ($0.75); Part 400 to End ($1.75); Title 15 ($1.25); Title 16, Revised ($6.50); Title 17 ($0.75); Title 18 ($0.55); Title 19 ($1.00); Title 20 ($1.25); Title 21 ($1.50); Titles 22–23 ($0.45); Title 24 ($0.45); Title 25 ($0.45); Title 26 (1939), Parts 1–79 ($0.40); Parts 80–169 ($0.35); Parts 170–182 ($0.35); Parts 300 to End ($0.40); Title 26, Part 1 (§§ 1.01–1.499) ($1.75); Parts 1 (§ 1.500 to End)–19 ($2.25); Parts 20–169 ($1.75); Parts 170–221 ($2.25); Parts 222–299 ($1.75); Part 300 to End ($1.25); Titles 28–29 ($1.75); Titles 30–31 ($0.50); Title 32, Parts 1–399 ($2.00); Parts 400–699 ($2.00); Parts 700–799 ($1.00); Parts 800–999, Revised ($3.75); Parts 1000–1099, Revised ($6.50); Part 1100 to End ($0.60); Title 32A ($0.65); Title 33 ($1.75); Title 35, Revised ($3.50); Title 36, Revised ($3.00); Title 37, Revised ($3.50); Title 38 ($1.00); Title 39 ($1.50); Titles 40–41, Revised ($0.70); Title 42, Revised ($4.00); Title 43 ($1.00); Title 44, Revised ($3.25); Title 45, Revised ($3.75); Title 46, Parts 1–145 ($1.00); Parts 146–149, Revised ($6.00); Parts 146–149 (1950 Supp. 1) ($0.55); Part 150 to End ($0.65); Title 47, Parts 1–29 ($1.00); Part 30 to End ($0.30); Title 49, Parts 1–70 ($1.75); Parts 71–90 ($1.00); Parts 91–164 ($0.45); Part 165 to End ($1.00); Title 50 ($0.70); General Index ($1.00).

Order from the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

Part II begins on page 12763

Pages 12727–12806

PART I

FEDERAL REGISTER

VOLUME 25 NUMBER 241

Washington, Tuesday, December 13, 1960

THE UNIVERSITY OF MICHIGAN
DEC 1 1960
MAIN READING ROOM

Contents

THE PRESIDENT

Executive Order

Authorization for the communication of restricted data by the Central Intelligence Agency ... 12729

EXECUTIVE AGENCIES

Agricultural Marketing Service

PROPOSED RULE MAKING:
Carrots grown in South Texas ... 12752
Irish potatoes grown in Red River Valley of North Dakota and Minnesota; exemption certificates and safeguards ... 12752
Milk in Denver, Colo., marketing area; hearing on proposed agreement and order ... 12742

Agriculture Department

See Agricultural Marketing Service.

Army Department

See Engineers Corps.

Atomic Energy Commission

NOTICES:
Extensions of completion dates:
Martin ... 12758
National Aeronautics and Space Administration ... 12758

PROPOSED RULE MAKING:
Permits for access to restricted data ... 12753

RULES AND REGULATIONS:
Licensing of byproduct material; exemption of luminous dial timepieces containing tritium ... 12730
Special nuclear material; material transfer reports ... 12730

Civil Aeronautics Board

NOTICES:
Capital Airlines, Inc., et al.; Greensboro-High Point/Winston-Salem service through single airport; hearing ... 12758
McDonnell Aircraft Corp.; prehearing conference ... 12758

Civil Service Commission

RULES AND REGULATIONS:
Annual and sick leave; definitions, and travel time ... 12733
Exceptions from competitive service; Interior Department ... 12733

Commerce Department

See Federal Maritime Board; Foreign Commerce Bureau.

Defense Department

See Engineers Corps.

Engineers Corps

RULES AND REGULATIONS:
Bridge and navigation regulations; Taylors Bayou, Texas, and Oakland Harbor, California ... 12740

Federal Aviation Agency

RULES AND REGULATIONS:
Federal airway segment, associated control areas and reporting points; revocation ... 12734
Restricted area, revocation; and modification of Federal airways ... 12734
Standard instrument approach procedures; miscellaneous amendments ... 12735

Federal Maritime Board

NOTICES:
Hawaii; increase inter-island class and commodity rates between ports of call; investigation and hearing ... 12757

Federal Power Commission

RULES AND REGULATIONS:
Uniform system of accounts for Class C public utilities and licensees (*see* Part II of this issue).

Federal Trade Commission

RULES AND REGULATIONS:
Asheville Tobacco Board of Trade, Inc., et al.; prohibited trade practices ... 12733

Fish and Wildlife Service

PROPOSED RULE MAKING:
Importation of feathers of wild birds; permit fees and quota allocations ... 12741

Food and Drug Administration

RULES AND REGULATIONS:
Animal feed containing antibiotic drugs ... 12732
Food additives in human and animal foods ... 12731

Foreign Commerce Bureau

RULES AND REGULATIONS:
General licenses; surplus agricultural commodities and manufactures thereof; exceptions ... 12734

Health, Education, and Welfare Department

See Food and Drug Administration.

Interior Department

See Fish and Wildlife Service; Land Management Bureau.

Internal Revenue Service

RULES AND REGULATIONS:
Liquor; miscellaneous amendments ... 12732

Interstate Commerce Commission

NOTICES:
Fourth section applications for relief ... 12758
Motor carrier transfer proceedings ... 12759

Land Management Bureau

NOTICES:
Proposed withdrawal and reservation of lands:
Colorado ... 12756
Wyoming ... 12757

(Continued on next page)

Narcotics Bureau

NOTICES:
Excepted narcotic pharmaceutical preparations 12756

Securities and Exchange Commission

NOTICES:
Columbia Gas System, Inc.; issuance and sale of notes 12760

Small Business Administration

NOTICES:
Financial assistance; authority delegations to Disaster Field Office managers in Florida:
Ft. Myers 12759
Marathon 12760
Naples 12760
Legal functions; authority delegations to branch counsels:
Birmingham, Ala. 12760
Miami, Fla. 12760

PROPOSED RULE MAKING:
Small business investment companies; miscellaneous amendments 12754

Treasury Department

See also Internal Revenue Service; Narcotics Bureau.

NOTICES:
Internal Revenue District, Anchorage 12756

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

EXECUTIVE ORDERS:
10899 12729

5 CFR

6 12733
30 12733

7 CFR

PROPOSED RULES:
901 12742
938 12752
1032 12752

10 CFR

30 12730
70 12730

PROPOSED RULES:
25 12753

13 CFR

PROPOSED RULES:
107 12754

14 CFR

600 (2 documents) 12734
601 12734
608 12734
609 12735

15 CFR

371 12734

16 CFR

13 12733

18 CFR

104 12763

21 CFR

121 12731
146 12732

26 (1954) CFR

170 12732

33 CFR

203 12740
207 12740

50 CFR

PROPOSED RULES:
14 12741

Now Available

UNITED STATES GOVERNMENT ORGANIZATION MANUAL

1960–61 Edition

(Revised through June 1)

Published by the Office of the Federal Register, the National Archives and Records Service, General Services Administration

817 pages—$1.50 a copy

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Presidential Documents

Title 3—THE PRESIDENT

Executive Order 10899

AUTHORIZATION FOR THE COMMUNICATION OF RESTRICTED DATA BY THE CENTRAL INTELLIGENCE AGENCY

By virtue of the authority vested in me by the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act; 42 U.S.C. 2011 *et seq.*), and as President of the United States, it is ordered as follows:

The Central Intelligence Agency is hereby authorized to communicate for intelligence purposes, in accordance with the terms and conditions of any agreement for cooperation arranged pursuant to subsections 144a, b, or c of the Act (42 U.S.C. 2162 (a), (b), or (c)), such Restricted Data and data removed from the Restricted Data category under subsection 142d of the Act (42 U.S.C. 2162 (d)) as is determined

(i) by the President, pursuant to the provisions of the Act, or

(ii) by the Atomic Energy Commission and the Department of Defense, jointly pursuant to the provisions of Executive Order No. 10841,

to be transmissible under the agreement for cooperation involved. Such communications shall be effected through mechanisms established by the Central Intelligence Agency in accordance with the terms and conditions of the agreement for cooperation involved: *Provided*, that no such communication shall be made by the Central Intelligence Agency until the proposed communication has been authorized either in accordance with procedures adopted by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by those agencies, or in accordance with procedures approved by the Atomic Energy Commission and the Department of Defense and applicable to conduct of programs for cooperation by the Central Intelligence Agency.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
December 9, 1960.

[F.R. Doc. 60-11643; Filed, Dec. 12, 1960; 10:29 a.m.]

Rules and Regulations

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 30—LICENSING OF BYPRODUCT MATERIAL

Exemption of Luminous Dial Timepieces Containing Hydrogen 3 (Tritium)

On July 2, 1960, the Commission issued for public comment a proposed amendment to 10 CFR Part 30 to exempt from licensing and other regulatory controls luminous dial timepieces containing tritium. Comments filed by interested persons have been given careful consideration.

The amendment is designed to relieve from licensing and AEC regulatory controls persons who receive luminous dial timepieces containing tritium in accordance with the standards set forth in the amendment.

The principal changes which have been made in the amendment as published on July 2, 1960, as a notice of proposed rule making are as follows:

(a) The amendment will provide for a prelicensing evaluation of luminous dial timepieces to determine if the standards set forth in the amendment will be met rather than merely setting standards which licensees must meet in order to distribute timepieces. A person who applies tritium to timepieces or imports timepieces containing tritium from a foreign manufacturer must obtain a specific license which would authorize the exempt distribution of luminous timepieces.

(b) A requirement has been added to § 30.24 which requires an applicant for a specific license to submit detailed information on the type of luminous products which will be applied to timepieces, the methods which will be used in applying the luminous products to the timepieces, and the prototype and quality control testing which will be carried out to determine that the radioactive material is firmly bound to the hands or dials contained in the timepieces.

(c) A requirement has been added to § 30.24 which requires an applicant for a specific license to carry out specific tests which include (1) bending of hands, (2) a shock test by means of vibration of a timepiece and (3) an immersion test. Any visible flaking or chipping of the radioactive material or loss of more than five percent of the tritium will be considered a cause for rejection.

Further study is being given by the Commission to exemption of other radionuclides for use as luminescing agents for timepieces.

Notice is hereby given that the following amendments are adopted to be effective 30 days after publication in the FEDERAL REGISTER.

1. Add a new § 30.10 to read as follows:

§ 30.10 Certain luminous timepieces.

(a) Except for persons who apply tritium to luminous timepieces or hands or dials and persons who import for sale or distribution luminous timepieces or hands or dials containing tritium, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in Parts 20 and 30 of this chapter to the extent that such person receives, possesses, uses, transfers, exports, owns or acquires luminous timepieces or hands or dials containing tritium.

(b) Any person who desires to apply tritium to luminous timepieces or hands or dials for sale or distribution, or desires to import for sale or distribution luminous timepieces or hands or dials containing tritium, should apply for a specific license, pursuant to § 30.24(i), which license states that the luminous timepieces or hands or dials may be distributed by the licensee to persons exempt from the regulations pursuant to paragraph (a) of this section.

§ 30.24 [Amendment]

2. Add a new paragraph (i) to § 30.24 to read as follows:

(i) *Certain luminous timepieces.* An application for a specific license to apply tritium contained in luminous compounds to timepieces or hands or dials, or to import timepieces or hands or dials containing tritium for use pursuant to § 30.10 will be approved if: (1) The applicant satisfies the general requirements specified in § 30.23 and (2) the applicant submits sufficient information relating to the chemical and physical composition and characteristics of the luminous compound(s), the method of application of each compound, quality control procedures and prototype testing of luminous dials, and

(i) The tritium is bound in the luminous compound in a non-water-soluble and non-labile form and the compound is bound to the dials or hands. The tritium will be considered to be properly bound to the dials and hands if there is no visible flaking or chipping and the total loss of tritium does not exceed 5 percent of the total tritium when prototype dials and hands are subjected to the following tests in the order specified below:

(a) Attachment of dials to a vibrating fixture and vibration at a rate of not less than 26 cycles per second and a vibration acceleration of not less than 2G for a period of not less than one hour; and

(b) Attachment of the hub ends of the hands to a clamp and bending of hands over a one-inch diameter cylinder; and

(c) Total immersion of the dials and hands used in the tests described in (a) and (b) of this subdivision in 100 milliliters of water at room temperature for a period of 24 consecutive hours and analysis of the test water for its radioactive material content by liquid scintillation counting or other equally sensitive method.

(ii) Not more than a total of 25 millicuries of tritium will be applied per timepiece; and

(iii) Not more than a total of 5 millicuries of tritium will be applied per hand and not more than 15 millicuries will be applied per dial (bezels when used shall be considered as part of the dial).

(Secs. 81, 161, 68 Stat. 935, 948; 42 U.S.C. 2111, 2201)

Dated at Germantown, Md., this 2d day of December 1960.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

[F.R. Doc. 60-11548; Filed, Dec. 12, 1960; 8:45 a.m.]

PART 70—SPECIAL NUCLEAR MATERIAL

Material Transfer Reports

The following amendment prescribes a standard transfer and receipting form to be used by persons holding licenses issued pursuant to the regulations in Part 70, Chapter 1, Title 10, Code of Federal Regulations, in initiating and receipting shipments of special nuclear material.

Notice of proposed issuance of the amendment was published in the FEDERAL REGISTER on August 17, 1960 (25 F.R. 7890), and a period of 60 days was allowed for receipt of comments by interested persons. The comments filed have been given careful consideration.

The provisions of the new § 70.54 are unchanged from those which appeared in the notice of proposed rule making. However, slight changes have been made in the Form AEC-388, and in the accompanying instructions, as follows:

1. On the face of the Form AEC-388 the parenthetical instruction "(For AEC Use Only)" has been deleted from Item 5.

2. On the Face of Form AEC-388 Item 11 has been changed to read: "The items and quantities listed above were shipped on * * *".

3. On the face of Form AEC-388 Item 12 has been changed to read: "The items and quantities listed above were received on * * *".

4. In the instructions appearing on the reverse side of Form AEC-388 the "Note" at the bottom of the page is designated "Note No. 1", and a "Note No. 2" is added, reading: "Licensees are not required to report transfers of special nuclear material to another licensee or to the Commission, for disposal, if the material is contained in waste and if the material has been declared to the Commission as 'consumed' by a licensee. Licensees are required to report all other transfers of special nuclear material, even though the Commission may have been paid the full value therefor. In such cases the following statement should be inserted in Item 8: 'Full value paid to AEC'."

5. Instruction 5 has been changed to read: "Enter name, address, license number and lease number of the organization assuming lease responsibility for the material; also the applicable order (Form AEC-640) number, if available."

Copies of Form AEC-388 referred to in the amendment will be furnished upon request made to AEC Material Leasing Officer, U.S. Atomic Energy Commission, Oak Ridge, Tennessee.

Notice is hereby given that the following amendment to 10 CFR Part 70 is published as a document subject to codification and is effective 30 days after publication in the FEDERAL REGISTER:

1. Redesignate §§ 70.54 and 70.55 as 70.55 and 70.56, respectively.

2. Add the following new § 70.54:

§ 70.54 Material Transfer Reports.

Each licensee who transfers and each licensee who receives special nuclear material shall submit to the Commission on Form AEC-388,[1] in accordance with the instructions set out therein, reports concerning each transfer of special nuclear material which has been distributed by the Commission pursuant to section 53 of the Act. Such reports shall be transmitted to the Commission promptly after the transfer takes place.

Dated at Germantown, Md., this 2d day of December 1960.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

[F.R. Doc. 60-11547; Filed, Dec. 12, 1960; 8:45 a.m.]

[1] Filed as part of original document.

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Animal Feed or Animal-Feed Supplements

Subpart D—Food Additives Permitted in Food for Human Consumption

HYGROMYCIN B AND CHLORTETRACYCLINE IN ANIMAL FEED, ANIMAL FEED SUPPLEMENTS, AND IN FOOD FOR HUMAN CONSUMPTION

1. The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Amercian Cyanamid Company, P.O. Box 383, Princeton, New Jersey, and other relevant material has concluded that the following regulation should issue in conformity with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to the food additives hygromycin B and chlortetracycline in medicated swine feed for the prevention and treatment of bacterial swine enteritis, for maintenance of weight gain in the presence of atrophic rhinitis, for reducing the incidence of cervical abscesses, and as an aid in the control of infestation of large roundworms (Ascaris suis), nodular worm (Oesophagostemum dentatum), and whipworm (Trichuris suis).

Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625): *It is ordered,* That § 121.208 (21 CFR 121.208) be amended to read as follows:

§ 121.208 Chlortetracycline in medicated feeds.

Chlortetracycline may be safely used in medicated feeds when incorporated therein in accordance with the conditions prescribed in this section:

(a) It is used, or intended for use as a component of low calcium diets in the treatment of the diseases of chickens described in § 146.26(b)(7) of this chapter, as follows:

(1) The quantity of chlortetracycline added to low calcium feed is such that the finished medicated feed contains not less than 110 parts per million (0.0110 percent) no more than 220 parts per million (0.0220 percent) of chlortetracycline.

(2) When feed contains 0.40 percent to 0.55 percent of dietary calcium, it shall not be fed continuously for more than 5 days.

(3) When feed contains 0.80 percent of dietary calcium, it shall not be fed continuously for more than 8 weeks.

(b) It is used, or intended for use, in combination with hygromycin in diets of normal calcium content in the prevention or treatment of diseases of swine described in § 146.26(b)(32)(iv) of this chapter and as an aid in the control of infestation of large roundworms (Ascaris suis), nodular worm (Oesophagostemum dentatum), and whipworm (Trichuris suis), as follows:

(1) For preventive use, the finished medicated feed shall contain 13 parts per million (0.0013 percent) of hydromycin B and 55 parts per million (0.0055 percent) of chlortetracycline.

(2) For treatment, the finished medicated feed shall contain 13 parts per million (0.0013 percent) of hygromycin B and 110 parts per million (0.0110 percent) of chlortetracycline.

(c) The quantities of the antibiotics referred to in this section refer to an activity equivalent to that of the antibiotic master standard.

(d) To assure safe use of the additive or additives, the label and labeling of the food-additive container, or that of any intermediate premix prepared therefrom, shall contain, in addition to other information required by the act, the following:

(1) The name of the additive or additives provided for in this section.

(2) A statement of the concentration or strength of the additive or additives contained therein.

(3) The word "medicated" prominently and conspicuously, wherever the term "feed" or "premix" is used, and in juxtaposition therewith.

(4) Adequate mixing directions to provide for a finished feed with the proper concentration of the additive or additives, whether or not intermediate premixes are to be used.

(5) Adequate use directions to provide a finished feed labeled as provided in paragraph (e) of this section.

(e) To assure safe use of the additive or additives, the label and labeling of the finished medicated feed shall contain, in addition to other information required by the act, the following:

(1) The name of the additive or additives provided for in this section.

(2) A statement of the concentration or strength of the additive or additives contained therein.

(3) The word "medicated" prominently and conspicuously, wherever the term "feed" appears on the label.

(4) If the additive is to be used as prescribed in paragraph (a) of this section, the label and labeling shall also include:

(i) The statement "contains 0.40 percent to 0.55 percent of dietary calcium—not to be fed continuously for more than 5 days", or the statement "contains 0.8 percent of dietary calcium—not to be fed continuously for more than 8 weeks", whichever is appropriate.

(ii) A statement that the medicated feed should not be used for laying hens.

(5) If the additive is to be used as prescribed in paragraph (b) of this section, the label and labeling shall also include:

(i) A statement that the medicated feed is to be used for prevention or treatment of the diseases of swine listed in § 146.26(b)(32)(iv) of this chapter, and as an aid in the control of infestation of large roundworms (Ascaris suis), nodular worm (Oesophagostemum dentatum), and whipworm (Trichuris suis), whichever is appropriate.

(ii) A statement that the medicated feed is to be fed to swine only.

(iii) A statement that the medicated feed must be withdrawn 48 hours prior to slaughtering for food.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

2. Based upon an evaluation of the data before him, and proceeding under the authority of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(4), 72 Stat. 1786; 21 U.S.C. 348(c)(4)), the Commissioner of Food and Drugs has further concluded that a tolerance limitation is required in order to assure that the use of the food additives hygromycin B and chlortetracycline will not cause the edible tissues of chickens or swine to which are fed foods treated with the additives in accordance with § 121.208 to be unsafe. Therefore, the following tolerances are established and Subpart D is amended by changing § 121.1044, and adding the following new section, to read as follows:

§ 121.1014 Tolerances for residues of chlortetracycline in the edible tissues of animals slaughtered for human food.

Tolerances are established for residues of chlortetracycline in the edible tissues of animals slaughtered for human food as follows:

(a) In edible tissues of chickens fed on chlortetracycline medicated feeds as follows:

(1) 4 parts per million (0.0004 percent) in uncooked kidneys.

(2) 1 part per million (0.0001 percent) in uncooked muscle, liver, fat, and skin.

Residues established in this section may be in addition to residues of chlortetracycline in chicken tissues provided for in § 120.117(a).

(b) In edible tissues of swine fed on chlortetracycline medicated feeds as follows:

Zero in all tissues.

§ 121.1024 Tolerance for residues of hygromycin B.

A tolerance of zero is established for residues of the food additive hygromycin B in or on the uncooked edible tissues of swine.

(Sec. 409(c)(4), 72 Stat. 1786; 21 U.S.C. 348(c)(4))

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c), 72 Stat. 1786; 21 U.S.C. 348(c))

Dated: December 6, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11573; Filed, Dec. 12, 1960; 8:49 a.m.]

SUBCHAPTER C—DRUGS

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Animal Feed Containing Antibiotic Drugs

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (23 F.R. 9500), the general regulations for the certification of antibiotic and antibiotic-containing drugs (21 CFR Part 146) are amended as follows:

In § 146.26 *Animal feed containing penicillin;* * * *, paragraph (b)(32) is amended by adding a new subdivision (iv) as follows:

(iv) It is also intended for the prevention and treatment of bacterial swine enteritis, for the maintenance of weight gains of swine in the presence of atrophic rhinitis and for reducing the incidence of cervical abscesses in swine, it contains hygromycin B in the amounts and under the conditions set forth in subdivision (i) of this subparagraph, and it contains, per pound of feed, 0.025 gram (50 grams per ton), of the chlortetracycline; except that if it is intended for use in the treatment of bacterial swine enteritis it shall contain, per pound of feed, 0.05 gram (100 grams per ton), of chlortetracycline.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it relaxes existing requirements; and since animal feed containing antibiotic drugs and conforming with the conditions prescribed in this order need not comply with the requirements of section 502(l) and 507 of the Federal Food, Drug, and Cosmetic Act in order to insure their safety and efficacy.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interprets or applies secs. 502, 507, 52 Stat. 1050, 59 Stat. 463, as amended; 21 U.S.C. 352, 357)

Dated: December 6, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11574; Filed, Dec. 12, 1960; 8:49 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER E—ALCOHOL, TOBACCO, AND OTHER EXCISE TAXES

[T.D. 6515]

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Miscellaneous Amendments

In order to (1) delete reference to forms made obsolete by revision of other parts of this chapter; (2) to provide for the use of distilled spirits stamps in lieu of the now obsolete wholesale liquor dealer's stamps; and (3) to conform to changes made in Chapter 51, Internal Revenue Code, by the enactment of Public Law 85-859, the regulations in Subpart A of 26 CFR Part 170, Miscellaneous Regulations Relating to Liquor, are amended as follows:

1. Section 170.1 is amended to read:

§ 170.1 Scope of subpart.

The regulations in this subpart provide for the issuance of stamps to other than proprietors of distilled spirits plants for the restamping of packages of distilled spirits which have been duly stamped, but from which the stamps have been lost or destroyed by unavoidable accident.

§ 170.2 [Amendment]

2. Section 170.2 is amended by striking the Internal Revenue Code number "5010(a)" and inserting in lieu thereof "5205(e)".

3. Section 170.3 is amended to read:

§ 170.3 Applications.

Applications for restamping packages of distilled spirits should be made in writing to the assistant regional commissioner, alcohol and tobacco tax, for the region in which the packages to be restamped are situated. The applicant should state in detail the number of packages, description of the contents, the place where the packages are located, the kind of stamps lost or destroyed, and the nature of the applicant's interest in the property. The applicant shall submit with his application a certified copy of the Internal Revenue Service form on which (a) as to a package filled in internal revenue bond, report was made of the gauge for withdrawal of the package from bond; or (b) as to a package filled after tax payment or determination, report was made of the gauge of the package at the time of its filling.

§ 170.6 [Amendment]

4. Section 170.6 is amended by striking "wholesale liquor dealer's" before the word "stamp" in the first sentence and inserting in lieu thereof "distilled spirits."

§ 170.7 [Amendment]

5. Section 170.7 is amended by striking "wholesale liquor dealer's" before the word "stamps" and inserting in lieu thereof "distilled spirits."

This Treasury decision shall be effective December 31, 1960.

Because this Treasury decision makes changes only of a technical nature conforming to revisions made in related regulations and does not adversely affect the public, it is found unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: DECEMBER 7, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11569; Filed, Dec. 12, 1960; 8:48 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6490]

PART 13—PROHIBITED TRADE PRACTICES

Asheville Tobacco Board of Trade, Inc., et al.

Subpart—Combining or conspiring: § 13.395 *To control marketing practices and conditions;* § 13.470 *To restrain and monopolize trade.* Subpart—Cutting off access to customers or market: § 13.573 *Limiting new warehouse facilities.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45). [Cease and desist order, Asheville Tobacco Board of Trade, Inc. (Asheville, N.C.), et al., Docket 6490, Oct. 18, 1960]

In the Matter of Asheville Tobacco Board of Trade, Inc., a Corporation, and Max M. Roberts, President and Director, J. Carlie Adams, Vice President and Director, Fred D. Cockfield, Secretary-Treasurer and Director, Jeter P. Ramsey, Ex Officio Assistant to the Secretary, Supervisor of Sales and General Director of the Asheville Market, L. G. Hill, Director, James W. Stewart, Director, and James E. Walker, Jr., Director, all Individually and as Officers and Directors of Asheville Tobacco Board of Trade, Inc., and James E. Walker, Jr., and John B. Walker, Part Owners, Co-Managers and Operators of Bernard-Walker Warehouses; J. Carlie Adams and Luther Hill, Co-Partners Trading Under the Name and Style of Adams & Hill Warehouses; Farmers Federation Cooperative, Inc., a Corporation, Leasing and Operating Carolina Warehouse; Fred D. Cockfield, and James W. Stewart, Co-Partners Trading Under the Name and Style of Planters Warehouses; Henry B. Duncan, A. R. Johnson, Jr., Sherrod N. Landon, J. W. Moore, E. G. Anderson, J. E. Godwin, Beverly G. Connor, W. G. Maples, Members of Asheville Tobacco Board of Trade, Inc.

Order, following remand by the Court of Appeals for the Fourth Circuit, clarifying the desist order of February 14, 1958 (23 F.R. 2178, Apr. 3, 1958)—requiring the Asheville Tobacco Board of Trade to discontinue unlawful restraints on new tobacco auction warehouses in the Asheville, N.C., area—by modifying paragraphs "1" and "2".

The modified order to cease and desist is as follows, including the further order requiring compliance therewith:

It is ordered, That respondents, Asheville Tobacco Board of Trade, Inc., a corporation, and Max M. Roberts, President and director, J. Carlie Adams, Vice President and director, Fred D. Cockfield, Secretary-Treasurer and director, Jeter P. Ramsey, ex officio Assistant to the Secretary, Supervisor of Sales and General Director of the Asheville market, L. G. Hill, director, James W. Stewart, director, and James E. Walker, Jr., director, all individually and as officers and directors of Asheville Tobacco Board of Trade, Inc., and James E. Walker, Jr., and John B. Walker, part owners, co-managers and operators of Bernard-Walker Warehouses; J. Carlie Adams and Luther Hill, co-partners trading under the name and style of Adams & Hill Warehouses; Farmers Federation Cooperative, Inc., a corporation, leasing and operating Carolina Warehouse; Fred D. Cockfield, and James W. Stewart, co-partners trading under the name and style of Planters Warehouses; Sherrod N. Landon, J. W. Moore, E. G. Anderson, J. E. Godwin, Beverly G. Connor, W. G. Maples, members of Asheville Tobacco Board of Trade, Inc., individually and as officers, directly or through any corporate or other device, in connection with procuring, purchasing, offering to purchase, selling or offering for sale leaf tobacco, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from devising, adopting, using, adhering to, maintaining or cooperating in the carrying out of any plan, system, method, policy or practice which:

1. Allots selling time to new entrant warehouses on the Asheville tobacco market on any basis or in any manner which fails to take into account and give reasonable credit for the size and capacity of a new entrant;

2. Limits the possible gain or loss in selling time allotted to any warehouse for any one selling season to 3½ percent, or any other unreasonably low percentage, of the selling time allotted to such warehouse for the preceding selling season, or in any other manner unreasonably limits the possible gain or loss in selling time allotted to any warehouse; or

3. Has the purpose or effect of foreclosing or preventing any new entrant warehouse on the Asheville tobacco market, or any other warehouse doing business on that market, from competing therein on a fair and equal basis.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this modified order to cease and desist, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied therewith.

Issued: October 18, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-11555; Filed, Dec. 12, 1960; 8:46 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of the Interior

Effective upon publication in the FEDERAL REGISTER, paragraph (a)(11) of § 6.310 is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,

[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 60-11571; Filed, Dec. 12, 1960; 8:49 a.m.]

PART 30—ANNUAL AND SICK LEAVE REGULATIONS

Definitions; Travel Time

1. Section 30.101 is amended by the addition of three new paragraphs and rearrangement of the entire section to place the definitions in alphabetical order. As amended, the section reads as follows:

§ 30.101 Definitions.

(a) "Act" as used in this part means the Annual and Sick Leave Act of 1951, as amended.

(b) "Accrued leave" means leave earned by an employee during the current leave year.

(c) "Accumulated leave" means the unused leave remaining to the credit of the employee at the beginning of the first complete pay period occurring in any calendar year.

(d) "Agency" or "agency head" means "the heads of governing bodies" of the various Governmental agencies.

(e) "Contagious disease" means a disease ruled as subject to quarantine or requiring isolation of the patient by the health authorities having jurisdiction.

(f) "Employee" and "employees" include officer and officers, respectively.

(g) "Leave year" means the period from the beginning of the first complete pay period in the calendar year to the beginning of the first complete pay period in the following calendar year.

(h) "Medical certificate" means a written statement signed by a registered practicing physician or other practitioner, certifying to the period of disability of the patient while he was undergoing professional treatment.

(i) "Pay period" shall include biweekly, semimonthly, or other pay period when used in these regulations.

(j) "Terminal leave" means leave granted prior to separation from the Federal service without a return to duty.

(k) "United States" means the several States of the United States of America and the District of Columbia.

2. Effective the first day of the first pay period following September 6, 1960, § 30.802 is amended as set out below.

§ 30.802 Travel time.

The travel time granted an employee pursuant to § 203(e) shall be inclusive of the time necessarily occupied in traveling to and from his post of duty and his place of residence in the United States, in the Commonwealth of Puerto Rico or the possessions of the United States when his residence is outside the area of employment. His place of residence must be designated by the employee in his request for leave under the Act.

(Sec. 206, 65 Stat. 681; 5 U.S.C. 2065)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 60-11570; Filed, Dec. 12, 1960; 8:48 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[9th Gen. Revision of Export Regs., Amdt. 45]

PART 371—GENERAL LICENSES

Surplus Agricultural Commodities and Manufactures Thereof; Exceptions

Section 371.8 *General License GRO; shipments of non-Positive List commodities*, paragraph (b) *Surplus agricultural commodities and manufactures thereof*, subparagraph (2) *Exceptions* is amended to read as follows:

(2) *Exceptions.* The provisions of this paragraph do not apply to an exportation to a Group O country or to a sale pursuant to Title I of Public Law 480, 83d Congress, where the purchaser is a foreign government.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023. E.O. 9630, 10 F.R. 12245, 3 CFR, 1945 Supp., E.O. 9919, 13 F.R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Director,
Bureau of Foreign Commerce.

[F.R. Doc. 60-11572; Filed, Dec. 12, 1960; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-EC-57]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Segment of Federal Airway, Associated Control Areas and Reporting Points

On September 9, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8723) stating that the Federal Aviation Agency proposed to revoke the segment of Blue Federal airway No. 3 from Goshen, Ind., to Grand Rapids, Mich., together with its associated control areas and reporting points.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), and for the reasons stated in the notice, the following actions are taken:

1. Section 600.603 (14 CFR 600.603, 25 F.R. 2159, 4450) is amended to read:

§ 600.603 Blue Federal airway No. 3 (Miami, Fla., to Tampa, Fla.; Kokomo, Ind., to Goshen, Ind.).

From the Miami, Fla., RBN via the Fort Myers, Fla., RBN to the Tampa, Fla., RR. From the INT of the S course of the Goshen, Ind., RR and the SW course of the Fort Wayne, Ind., RR to the Goshen, Ind., RR.

§ 601.603 [Amendment]

2. In the caption of § 601.603 (14 CFR 601.603, 25 F.R. 2159, 4450) *"Grand Rapids, Mich."* is deleted and *"Goshen, Ind."* is substituted therefor.

§ 601.4603 [Amendment]

3. In the caption of § 601.4603 (25 F.R. 4450) *"Grand Rapids, Mich."* is deleted and *"Goshen, Ind."* is substituted therefor.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 7, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11553; Filed, Dec. 12, 1960; 8:46 a.m.]

[Airspace Docket No. 60-WA-268]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 608—RESTRICTED AREAS

Revocation of Restricted Area and Modification of Federal Airways

The purpose of this amendment to §§ 608.26, 600.6009, and 600.6020 of the regulations of the Administrator is to revoke the Camp Villere (Slidell), La., Restricted Area (R-440) (New Orleans Chart) and modify the description of VOR Federal airways No. 9 and No. 20.

The Department of the Army has stated it no longer has a requirement for Restricted Area (R-440). Therefore, this area is unjustified as an assignment of airspace and revocation thereof will be in the public interest. Concurrent with this action, it is necessary to delete all reference to R-440 in the description of Victor 9 and Victor 20.

Since these amendments reduce a burden on the public, compliance with the notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and they may be made effective upon publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530, 25 F.R. 8005) the following actions are taken:

1. In § 608.26 *Louisiana*, the Camp Villere (Slidell), La., Restricted Area (R-440) (23 F.R. 8581, 9773, 24 F.R. 2234) is revoked.

2. In the text of § 600.6009 (14 CFR 600.6009) "The portion of this airway which lies within the geographical limits of, and between the designated altitudes of, the Camp Villere Restricted Area (R-440) is excluded during its time of designation." is deleted.

3. In the text of § 600.6020 (14 CFR 600.6020, 25 F.R. 5178, 7147, 7148, 7488) "The portion of this airway which lies within the geographical limits of, and between the designated altitudes of, the Camp Villere Restricted Area (R-440) is excluded during its time of designation." is deleted.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 7, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11554; Filed, Dec. 12, 1960; 8:46 a.m.]

[Reg. Docket No. 583; Amdt. 195]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

The amendments to standard instrument approach procedures contained herein are being adopted to become effective when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures.

As a situation exists which demands immediate action in the interests of safety in air commerce, I find that compliance with the notice, procedure and effective date provisions of section 4 of the Administrative Procedure Act would be contrary to the public interest and is therefore not required.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 609 is amended as follows:

1. The low or medium frequency range procedures prescribed in § 609.100(a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
				T-dn	300-1	300-1	200-½
				C-dn	500-1	600-1	600-1½
				A-dn	800-2	800-2	800-2

Standard procedure turn not authorized. All maneuvering and descent shall be accomplished in a one-minute right turn holding pattern on NW crs 303° Outbnd, 123° Inbnd. Minimum altitude, 2000'. Descent to 1400' authorized on final approach course inbnd 123°.
Minimum altitude over facility on final approach crs, 1400'.
Crs and distance, facility to airport, 153°—2.6.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.6 miles, make a climbing left turn to Merced LFR. Hold at 2000' on NW crs in a one-minute pattern—all turns to the right (303° Outbnd, 123° inbnd).

City, Merced; State, Calif.; Airport Name, Merced; Elev., 155'; Fac. Class., MRAWZ; Ident., CSL; Procedure No. 1, Amdt. Orig.; Eff. Date, 17 Dec. 60

2. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure or such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those estaolished for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Lexington VOR	LEX RBn	Direct	2300	T-dn	300-1	300-1	200-½
Richmond Int	LEX RBn	Direct	2300	C-dn	400-1	500-1	500-1½
				S-dn-4	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn South side of crs, 222° Outbnd, 042° Inbnd, 2200' within 10 mi.
Minimum altitude over facility on final approach crs, 2000'.
Crs and distance, facility to airport, 042°—3.5 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.5 miles, climb to 2300' on crs 042° from LOM within 15 miles.
Major Change: Deletes transition from Duncan Int.

City, Lexington; State, Ky.; Airport Name, Blue Grass; Elev., 978'; Fac. Class., HW; Ident., LEX; Procedure No. 1, Amdt. 2; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 1; Dated, 13 Dec. 58

Louisville VOR	LOM	Direct	2100	T-dn	300-1	300-1	200-½
Bourbon Int	LOM	Direct	2100	C-dn	500-1	500-1	500-1½
Elizabeth Int	LOM	Direct	2100	S-dn	500-1	500-1	500-1
				A-dn	800-2	800-2	800-2

Procedure turn West side of final approach crs, 189° Outbnd, 009° Inbnd, 2100 feet within 10 miles of SDF RBn (LOM).
Minimum altitude over facility on final approach crs, 1900'.
Crs and distance, facility to airport, 009°—4.9 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.9 miles after passing LOM, climb to 2100' on 010° crs from LOM within 10 miles.
CAUTION: 1060' tower 4 mi North; 760' tower 2 mi North of Standiford Field.

City, Louisville; State, Ky.; Airport Name, Standiford Field; Elev., 497'; Fac. Class., LOM; Ident., SDF; Procedure No. 1, Amdt. 20; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 19; Dated, 5 Dec. 59

ADF STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
Langley LFR	LOM	Direct	1100	T–dn	300–1	300–1	200–½
Bacons Castle MHW	LOM	Direct	1100	C–dn	400–1	500–1	500–1½
Yorktown MHW	LOM	Direct	1300	S–dn–6	400–1	400–1	400–1
Norfolk Radar NW quadrant of Langley LFR.	Radar site	Within 10 mi	1500	A–dn	800–2	800–2	800–2
All other quadrants of Langley LFR	Radar site	Within 15 mi	1500				

Procedure turn West side of crs, 244° Outbnd, 064° Inbnd, 1100′ within 5 miles of LOM.
Minimum altitude over facility on final approach crs, 800′.
Crs and distance, facility to airport, 064°—2.7 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.7 miles after passing LOM, climb to 1500′ on crs 320° within 15 miles of LOM.
Major Change: Deletes transition from Norfolk LFR.

City, Newport News; State, Va.; Airport Name, Patrick Henry; Elev., 41′; Fac. Class., LOM; Ident., PH; Procedure No. 1, Amdt. 8; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 7; Dated, 14 Mar. 59

ORL–VOR	LOM	Direct	1200	T–dn	300–1	300–1	200–½
				C–dn	500–1	500–1	500–1½
				S–dn–31	400–1	400–1	400–1
				A–dn	800–2	800–2	800–2

Procedure turn N side of crs, 120° Outbnd, 310° Inbnd, 1300′ within 10 mi.
Minimum altitude over facility on final approach crs, 1100′.
Crs and distance, facility to airport, 310°—4.1 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.1 mi. after passing LOM, climb to 1700′ on crs of 310° within 20 mi.

City, Orlando; State, Fla.; Airport Name, Orlando Municipal; Elev., 113′; Fac. Class., LOM; Ident., OR; Procedure No. 1, Amdt. 9; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 8; Dated, 21 Mar. 59

Oceanside RBn	LOM	Direct	2500	T–dn	300–1	300–1	200–½
Miramar RBn	LOM	Direct	3000	C–dn	800–2	800–2	800–2
Sargo Int	LOM (Final)	Direct	1000	S–dn–9	600–1	600–1	600–1
Lemon Grove Int	LOM	Direct	2500	A–dn	800–2	800–2	800–2

Procedure turn South side of crs, 271° Outbnd, 091° Inbnd, 1500′ within 10 mi.
Minimum altitude over facility on final approach crs, 1000′. CAUTION: 281′ trees and terrain between LOM and LMM.
Crs and distance, facility to airport, 091°—2.7 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.7 mi, turn right, climb to 2000′ to Coronado RBn/FM or, when directed by ATC, if visual contact not established at LMM, (1) make left climbing turn, climb to 1500′ on a 271° crs from ILS LOM within 10 mi, or (2) make left climbing turn to 2000′ on crs of 226° to Oceanside RBn. CAUTION: Buildings and terrain 472′ MSL 0.5 mile East of airport. Missed approach must be initiated at LMM if landing is not assured.
NOTE: Vectoring to final approach by Miramar Radar authorized in accordance with approved patterns.
6000–1 required on Runway 9.

City, San Diego; State, Calif.; Airport Name, Lindbergh Field; Elev., 15′; Fac. Class., LOM; Ident., SA; Procedure No. 1, Amdt. 3; Eff. Date, 17 Dec. 60; Sup Amdt. No. 2; Dated, 6 Aug. 60

3. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
				T–dn	300–1	300–1	200–½
				C–d	600–1	600–1	600–1½
				C–n	600–2	600–2	600–2
				A–dn	800–2	800–2	800–2

Procedure turn W side of crs, 007° Outbnd, 187° Inbnd, 2500′ within 10 mi.
Minimum altitude over facility on final approach crs, 2000′.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.0 mi, climb to 2800′ on R–214 within 10 mi.
Crs and distance, facility to airport, 187°—2.0.
CAUTION: 1780′ m.s.l. TV tower located 10 mi WNW VOR. 1350′ m.s.l. tower 2.2 mi SE of airport on direct line of NW/SE runway. 1847′ MSL tower located 3.6 mi SSE.

City, Eau Claire; State, Wis.; Airport Name, Eau Claire; Elev., 887′; Fac. Class., BVOR; Ident., EAU; Procedure No. 1, Amdt. 6; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 5; Dated, 7 Dec. 58.

Lexington HW	LEX–VOR	Direct	2300	T–dn	300–1	300–1	200–½
Richmond Int	LEX–VOR	Direct	2500	C–dn	500–1	500–1	500–1½
Union Hall Int	LEX–VOR	Direct	2500	A–dn	800–2	800–2	800–2

Procedure turn N side of crs, 124° Outbnd, 304° Inbnd, 2200′ within 10 miles.
Minimum altitude over facility on final approach crs, 2000′.
Crs and distance, facility to airport, 304°—7.3 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 7.3 miles, climb to 2200′ on R–304 LEX–VOR within 10 miles or, when requested by ATC, make climbing left turn and return to Lexington VOR at 2300′.

City, Lexington; State, Ky.; Airport Name, Blue Grass; Elev., 978′; Fac. Class., BVORTAC; Ident., LEX; Procedure No. 1, Amdt. 4; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 3; Dated, 28 Nov. 59

VOR STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
				T–dn	300–1	300–1	300–1
				C–d	700–1½	700–1½	700–1½
				C–d*	400–1	500–1	500–1½
				C–n	700–2	700–2	700–2
				C–n*	400–1½	500–1½	500–2
				A–dn	1000–2	1000–2	1000–2

Procedure turn E side of crs, 150° Outbnd, 330° Inbnd, 2000′ within 10 miles.
Minimum altitude over VOR facility on final approach crs, 2000′; Minimum altitude over FM, 1200′.
Crs and distance, facility to airport, 330°—8.3.
Crs and distance, Fan Marker to Airport, 330°—2.0.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 8.3 miles, or 2 miles from Fan Marker, climb to 2600′ on outbnd crs of 330 within 15 miles of VOR.
*Descent authorized if Fan Marker is received.

City, Louisville; State, Ky.; Airport Name, Bowman; Elev., 549′; Fac. Class., BVORTAC; Ident., LOU; Procedure No. 1, Amdt. 3; Eff. Date, 17 Dec. 60; Sup. Amdt. No 2, Dated, 12 Dec. 57.

Clermont Int	*LOU–VOR	Direct	2000	T–dn	300–1	300–1	200–½
Bourbon Int	LOU–VOR	Direct	2000	C–dn	600–2	600–2	600–2
				S–dn–29	600–1½	600–1½	600–1½
				A–dn	800–2	800–2	800–2

Procedure turn N side of crs. 120° Outbnd, 300° Inbnd, 2000′ within 10 miles.
Minimum altitude over facility on final approach crs, 2000′.
Crs and distance, facility to airport, 300°—8.4.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 8.4 miles, climb to 2500′ on 300 R within 20 miles, of LOU–VOR. Alternate missed approach, when requested by ATC, make a right climbing turn, return to VOR at 2000′.

City, Louisville; State, Ky.; Airport Name, Standiford Field; Elev., 497′; Fac. Class., BVORTAC; Ident., LOU; Procedure No. 1, Amdt. 4; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 3; Dated, 6 June 57

PB–LFR	PUB–VOR	Direct	6600	T–dn*	300–1	300–1	200–½
COS LOM	PUB–VOR	Direct	7500	C–dn	600–1	600–1	600–1½
ELL RBn	PUB–VOR	Direct	7500	S–dn–26	400–1	400–1	400–1
HNR RBn	PUB–VOR	Direct	7000	A–dn	800–2	800–2	800–2
PU LOM	PUB–VOR	Direct	6800				

Procedure turn S side of crs, 067° Outbnd, 247° Inbnd, 6000′ within 10 miles. (Procedure turn South for more favorable terrain.)
Minimum altitude over facility on final approach crs, 5400′.
Crs and distance, facility to airport, 247°—2.4.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.4 miles, make left climbing turn to 135° heading, intercept R–163 PUB–VOR, climbing to 7000′ outbound on R–163 within 10 miles or, when directed by ATC, make left climbing turn, return to PUB–VOR, continue climb to 7000′ on R–350 PUB–VOR within 15 miles.
*Takeoff below 300–1 not authorized on Runways 26 and 35.

City, Pueblo; State, Colo.; Airport Name, Pueblo Memorial; Elev., 4725′; Fac. Class., BVORTAC; Ident., PUB; Procedure No. 1, Amdt. 7; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 6; Dated, 5 Dec. 59

4. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
Sunflower Int	Mango Int	Direct	4000	T–d	800–1	800–1	800–1
Int LNY R–096 and R–205 OGG	Mango Int	Direct	4000	T–n	800–2	800–2	800–2
Mango Int	Int R–193 OGG and R–081 LNY (or 143° brng to MAU LFR).	Direct	3000	C–d	700–1	700–1	700–1½
				C–n	700–3	700–3	700–3
Int R–193 OGG and R–081 LNY (or 143° brng to MAU LFR).	OGG VOR (Final)	Direct	800	A–dn	800–3	800–3	800–3

Procedure turn not authorized. Straight-in approach from Mango Int only.
Minimum altitude over facility on final approach crs, 800′.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile, climb to 3000′ on R–027 within 20 miles, reverse course climbing to 4000′ over station.

City, Kahului, Maui; State, Hawaii; Airport Name, Kahului; Elev., 59′; Fac. Class., VOR; Ident., OGG; Procedure No. TerVOR–2, Amdt. 2; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 1; Dated, 21 Dec. 57

5. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
Lexington VOR	Fayette Int.*	Direct	2600	T-dn	300-1	300-1	200-½
Lexington LOM	Fayette Int.*	Direct	2600	C-dn	500-1	500-1	500-1½
				S-dn-22	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn North side NE crs, 042° Outbnd, 222° Inbnd, 2300′ within 10 miles.
No glide slope.
Minimum altitude over Fayette Int, 2000′.
Crs and distance, Fayette Int to airport, 222°—4.8 mi.
NOTE: Procedure authorized only when aircraft equipped to receive ILS and VOR simultaneously.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.8 mi after passing Fayette Int, climb to 2200′ on SW crs ILS to Lexington LOM within 10 mi.
*Int. NE crs Lexington, Ky ILS localizer and R-340 Lexington, Ky VOR.

City, Lexington; State, Ky.; Airport Name, Blue Grass; Elev., 978′; Fac. Class., ILS; Ident., I-LEX; Procedure No. ILS-22, Amdt. 2; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 1; Dated, 28 Nov. 59

Louisville VOR	LOM	Direct	2100	T-dn#	300-1	300-1	200-½
Bourbon Int	LOM	Direct	2100	C-dn	500-1	500-1	500-1½
Elisabeth Int	LOM	Direct	2100	S-dn-1*#	200-½	200-½	200-½
				A-dn	600-2	600-2	600-2

Procedure turn West side of final approach crs, 189° Outbnd, 009° Inbnd 2100′ within 10 mi of SDF RBn (LOM).
Minimum altitude at glide slope int inbnd, 2100′.
Altitude of glide slope and distance to approach end of rny at OM 1870—4.9; at MM 665—0.5.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 2600′ on R-309 LOU-VOR within 20 miles.
CAUTION: 1060′ tower 4 mi North and 760′ tower 2 mi North of Standiford Field.
*400-½ required with glide slope inoperative.
#Runway 1 only: Runway Visual Range 2600′ also authorized for takeoff and landing on Rnwy-1; provided all components of the ILS high intensity runway lights, approach lights, condenser discharge flashers, middle and outer compass locators, and all related airborne equipment are in satisfactory operating condition. Descent below 697′ msl shall not be made unless visual contact with the approach lights has been established, or the aircraft is clear of clouds.

City, Louisville; State, Ky.; Airport Name, Standiford Field; Elev., 497′; Fac. Class., ILS; Ident., I-SDF; Procedure No. ILS-1, Amdt. 20; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 19; Dated, 12 Nov. 60

Langley LFR	LOM	Direct	1100	T-dn	300-1	300-1	200-½
Rectus Castle MHW	LOM	Direct	1100	C-dn	400-1	500-1	500-1½
Yorktown MHW	LOM	Direct	1300	S-dn-6*	200-½	200-½	200-½
Norfolk Radar NW quadrant of Langley LFR.	Radar site	Within 10 mi	1500	A-dn	600-2	600-2	600-2
All other quadrants of Langley LFR	Radar site	Within 15 mi	1500				

Procedure turn West side of SW crs, 244° Outbnd, 064° Inbnd, 1100′ within 5 mi of LOM.
Minimum altitude at glide slope int inbnd, 1100′.
Altitude of glide slope and distance to approach end of Rny at OM, 965′—2.7 mi; at MM, 272′—0.5 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 2.7 miles after passing LOM, climb to 1500′ to the Williamsburg Int. Hold NW one-minute left turns.
Major Change: Deletes transition from Norfolk LFR.
*400-1 required with glide slope inoperative.

City, Newport News; State, Va.; Airport Name, Patrick Henry; Elev., 41′; Fac. Class., ILS; Ident., I-PHF; Procedure No. ILS-6, Amdt. 8; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 7; Dated, 14 Mar. 59

ORL-VOR	LOM	Direct	1200	T-dn	300-1	300-1	200-½
				C-dn	500-1	500-1	500-1½
				S-dn-31*	300-¾	300-¾	300-¾
				A-dn	600-2	600-2	600-2

Procedure turn N side crs, 130° Outbnd, 310° Inbnd, 1500′ within 10 mi.
Minimum altitude at G.S. int inb, 1500′.
Altitude of G.S. and distance to approach end of rny at OM, 1440′—4.1 mi; at MM, 340°—0.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 1700′ on NW crs of ILS within 20 miles or, when directed by ATC, climb to 1700′ on R-220 ORL-VOR within 20 miles.
NOTE: No approach lights.
*400-¾ required when glide slope not utilized.

City, Orlando; State, Fla.; Airport Name, Orlando Municipal; Elev., 113′; Fac. Class., ILS; Ident., I-ORL; Procedure No. ILS-31, Amdt. 9; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 8; Dated, 21 Mar. 59

Sargo Int	LOM (Final)	Direct	1000	T-dn*	300-1	300-1	200-½
Lemon Grove Int	LOM	Direct	2500	C-dn	800-2	800-2	800-2
La Jolla FM/Mt. Dad Int	LOM	Direct	1500	S-dn-9	600-1	600-1	600-1
				A-dn	800-2	800-2	800-2

Procedure turn S side of crs, 271° Outbnd, 091° Inbnd, 1500′ within 10 mi.
Minimum altitude over LOM on final approach crs, 1000′.
Crs and distance, LOM to airport, 091°—2.7 mi.
No Glide Slope. Descent to landing minimums authorized after passing LOM. CAUTION: 281′ trees and terrain between LOM and LMM.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished make a right climbing turn, climb to 2000′ on SAN VOR R-127 or on crs 127° to Coronado RBn/FM or, when directed by ATC, if visual contact not established at LMM, make a left climbing turn to 2500′ on SAN VOR R-325 or 330° crs from LMM to Mt. Dad Int.
CAUTION: Buildings and terrain 472′ MSL 0.5 mi East of airport. Missed approach must be initiated at LMM if landing is not assured.
NOTE: Vectoring to final approach by Miramar Radar authorized in accordance with approved patterns.
*800-1 required for Runway 9.

City, San Diego; State, Calif.; Airport Name, Lindbergh; Elev., 15′; Fac. Class., ILS; Ident., SAN; Procedure No. ILS-9, Amdt. Orig.; Eff. Date, 17 Dec. 60

6. The radar procedures prescribed in § 609.500 are amended to read in part:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Radar terminal area maneuvering sectors and altitudes														Ceiling and visibility minimums			
From	To	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
360	040	10	1900	20	2200									Surveillance approach			
040	065	10	1900	17	2200	20	2700										
065	095	10	1900	20	2200									T-dn	300-1	300-1	200-½
095	122	10	1900	12	2200	20	2300							C-dn#	400-1	500-1	500-1½
122	230	10	1900	12	2200	20	1900							S-dn#	400-1	400-1	400-1
230	295	10	2000	20	2000									A-dn	800-2	800-2	800-2
295	360	10	1900	16	2200	20	2500										
														Precision approach			
														T-dn*	300-1	300-1	200-½
														S-dn-5R*	200-½	200-½	200-½
														S-dn-5L	400-1	400-1	400-1
														A-dn	600-2	600-2	600-2

Radar terminal area transition altitudes—all bearings are from the radar site with sector azimuths progressing clockwise.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished.
Runways 23L, 23R, 27R, 27L, 14 and 18, climb to 2300′ and proceed to YIP LOM.
Runways 5L, 5R, 9L, 36 and 32, climb to 2500′, proceed to SVM VOR on 170R or when directed by ATC, (1) climb to 2300′, proceed via W crs DTW LFR to the DTW LFR.
#Runways 9L, 23L–R, 5L–R, 36, 18, 27L–R, 14, 32. Surveillance approaches to runway 9R NA due to antenna location and ground clutter.
*Runway visual range 2600′ also authorized for takeoff and landing on Rnwy 5R; provided that all components of the PAR or ILS, high-intensity runway lights, approach lights, condenser-discharge flashers, middle and outer compass locators and all related airborne equipment are operating satisfactorily. Descent below authorized landing minimum altitude of 916′ MSL shall not be made unless visual contact with the approach lights has been established or the aircraft is clear of clouds.

City, Detroit; State, Mich.; Airport Name, Willow Run; Elev., 716′; Fac. Class., Willow Run; Ident., Radar; Procedure No. 1, Amdt. 4; Eff. Date, 17 Dec. 60; Sup. Amdt. No. 3; Dated, 17 Sept. 60

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
All Quadrants		Within 10 mi	1100	Surveillance approach			
All Quadrants		Within 15 mi	1400				
All Quadrants		Within 20 mi	2100	T-dn-13 and 31	300-1	NA	NA
All Quadrants		Within 25 mi	2100	C-dn-13 and 31	500-1	NA	NA
				A-dn-13 and 31	1000-1	NA	NA
				Precision approach			
				C-dn-13	400-1	NA	NA
				S-dn-13	800-1	NA	NA

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished:
Surveillance approach: Make a climbing left turn to a heading of 025°, climb to 1500′ MSL to intercept R-322 of Norfolk VOR. Proceed to Williamsburg Int*. Hold Northwest on R-322 Norfolk VOR one-minute left turns. Contact Norfolk Center for further instructions.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished:
Precision approach: Make an immediate right climbing turn to a heading of 025°, climb to 1500′ MSL to intercept R-322 of Norfolk VOR. Proceed to Williamsburg Int*. Hold Northwest on R-322 Norfolk VOR one-minute left turns. Contact Norfolk Center for further instructions.
NOTE: Prior arrangement for landing required for civil aircraft not on official business.
*Williamsburg Int: Int R-322 ORF-VOR and R-094 HPW-VOR.

City, Ft. Eustis; State, Va.; Airport Name, Felker U.S. AAF; Elev., 10′; Fac. Class., Ft. Eustis; Ident., Radar; Procedure No. 1, Amdt. Orig.; Eff. Date, 17 Dec. 60

These procedures shall become effective on the dates specified therein.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on November 23, 1960.

GEORGE C. PRILL,
Acting Director, Bureau of Flight Standards.

[F.R. Doc. 60-11140; Filed, Dec. 12, 1960; 8:45 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

PART 207—NAVIGATION REGULATIONS

Taylors Bayou, Texas; and Oakland Harbor, California

1. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.245 is hereby amended with respect to paragraph (j)(21) governing the operation of the Texas and New Orleans Railroad Company and Texas Highway Department bridges across Taylors Bayou, West Port Arthur, Texas, as follows:

§ 203.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(j) *Waterways discharging into the Gulf of Mexico west of Mississippi River.* * * *

(21) Taylors Bayou, Tex.; Texas and New Orleans Railroad Company bridge and Texas Highway Department bridge at West Port Arthur. The draws need not be opened for the passage of vessels, and paragraphs (b) to (e), inclusive, of this section shall not apply to these bridges.

[Regs., Nov. 22, 1960, 285/91 (Taylors Bayou, Tex.)—ENGCW-O] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

2. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.640(g)(2) is hereby amended to prescribe a system of traffic control signals to govern navigation in the entrance channel to the Naval Supply Center, Oakland Harbor, California, as follows:

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, Calif.

* * * * *

(g) *Oakland Harbor in vicinity of Naval Supply Center, Oakland.* * * *

(2) All vessels over 1,000 tons displacement, bound for Naval Supply Center, Oakland, shall, before navigating the entrance channel, receive a signal that the channel is clear. Signals will be displayed on top of a signal tower which is located on top of a transit shed on the westerly end of Pier 4, Naval Supply Center. The signals are as follows:

(i) *Clear channel.* A black ball displayed from yard arm on top of signal tower between sunrise and sunset, and a green light displayed from the top of signal tower at night.

(ii) *Front channel.* A red light displayed on top of signal tower during daylight and at night with the following meanings:

One flash each 15 seconds—channel will be clear in less than 1 hour.

Two flashes each 15 seconds—channel will be foul for 1 to 3 hours.

Three flashes each 15 seconds—channel will be foul for 3 or more hours.

Effective date. These amendments shall become effective upon their publication in the FEDERAL REGISTER.

[Regs., 22 Nov. 22, 1960, 285/91 (Oakland Harbor, Calif.)—ENGCW-O] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 60-11551; Filed, Dec. 12, 1960; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 14]

IMPORTATION OF FEATHERS OF WILD BIRDS

Permit Fees and Quota Allocations

Notice is hereby given that pursuant to authority vested in the Secretary of the Interior by par. 1518, 46 Stat. 661, as amended (19 U.S.C. 1001, par. 1518), it is proposed to revise Part 14, Title 50, Code of Federal Regulations. The purpose of this revision is to establish a user's charge or fee for importation permits issued under Part 14 and to revise the methods of allocation and reallocation of annual import quotas among the qualified applicants. Final adoption of this revision is proposed on or about December 30, 1960, to become effective September 1, 1961.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed revision to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C., within 15 days of publication of this notice in the FEDERAL REGISTER.

Part 14 is revised to read as follows:

PART 14—IMPORTATION OF FEATHERS OF WILD BIRDS

Sec.
14.1 Fees and applications for importation permits.
14.2 Filing dates for applications.
14.3 Allocation of calendar year quotas.
14.4 Reallocation of unused calendar year quotas.
14.5 Issuance of importation permits.
14.6 Tenure of importation permits.
14.7 Compliance with other regulations.

AUTHORITY: §§ 14.1 to 14.7 issued under par. 1518, 46 Stat. 661, as amended; 19 U.S.C. 1001, par. 1518.

§ 14.1 Fees and applications for importation permits.

(a) Effective September 1, 1961 and thereafter, a fee of $10 will be charged for any importation permit issued pursuant to this part. Such fee must be submitted at the time and in the form prescribed in §§ 14.2(b) and 14.3(d).

(b) All persons desiring to share in the allocation of annual import quotas of skins bearing feathers of the grey jungle fowl (Callus sonneratii), the mandarin duck (Dendronessa galericulata), and the following species of pheasant: Lady Amherst pheasant (Chrysolophus amherstiae), golden pheasant (Chrysolophus pictus), silver pheasant (Lophura nycthemera), Reeves pheasant (Syrmaticus reevesii), blue-eared pheasant (Crossoptilon auritum), and brown-eared pheasant (Crossoptilon mantchuricum), must apply during the periods specified in § 14.2 by letter addressed to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C. The letter must contain the following information:

(1) Name and address of applicant, nature of business, and the purpose for which feathers are required.

(2) Port at which entry has been or is to be made.

(3) Quantity of each species of bird skin or part thereof for which an importation permit is desired.

(4) Certification, that in the case of grey jungle fowl and mandarin duck, the skins are to be used only in the manufacture of fishing flies.

§ 14.2 Filing dates for applications.

Each application for a quota allocation must be postmarked during the dates set forth in paragraphs (a) and (b) of this section in order to be considered.

(a) Applicants desiring to participate in the allocation of calendar year quotas shall submit applications from September 1 through September 30 of the year preceding the calendar year for which quota allocations are to be made.

(b) Applicants desiring to participate in the reallocation of such portions of the established annual quotas as may become available for reallocation, shall submit applications from July 1 through July 31 of the calendar year for which the unused portions of the quota allocations were originally made, and in order to be considered, such applications must be accompanied by the prescribed $10 fee in the form of a postal money order or a check made payable to the Bureau of Sport Fisheries and Wildlife.

§ 14.3 Allocation of calendar year quotas.

As promptly as possible after the closing date for filing, all applications timely filed will be considered and tentative quotas allocated by the method set forth in paragraphs (a) through (e) of this section. For the purposes of this section, the six species of pheasant named in § 14.1 shall be grouped together and considered as one species.

(a) The number of eligible applicants for skins of grey jungle fowl, mandarin duck, and pheasants, respectively, shall be divided into the quotas of skins available for the ensuing calendar year for the respective species, to determine the number of skins of each species the several applicants would be entitled to import on an equal basis.

(b) Any applicant for an allocation in an amount equal to or less than the average quantity established for all applicants pursuant to paragraph (a) of this section is entitled to receive an allocation of the quantity for which he applied.

(c) After the allocations are made under paragraph (b) of this section, all remaining unallocated quantities of skins of the respective species shall be allocated equally among those applicants who applied for more than the average quantities determined under paragraph (a) of this section. However, no applicant shall be allocated a quantity of skins in excess of the number applied for.

(d) Each applicant shall then be furnished a tabulation by Registered or Certified Mail, Return Receipt requested, of the quantities of each species requested and the quantities proposed to be allocated to each applicant. Each applicant must then report by letter addressed to the Director, postmarked not later than 30 days after date of receipt of the notice of proposed allocations, that he accepts the proposed allocation. The letter must contain satisfactory proof, such as a copy of a currently confirmed order, that orders have been placed for the importing of his allocation of bird skins and must be accompanied by the prescribed $10 fee in the form of a postal money order or a check made payable to the Bureau of Sport Fisheries and Wildlife. Applicants failing to respond to the notice of proposed allocations or failing to furnish the prescribed fee shall be deemed to have withdrawn their applications. Applicants who submit the required showing and fee by other than Registered or Certified Mail, do so at their own risk.

(e) Any quantities of bird skins of the respective species which become available for allocation through the failure of applicants to submit the proper showing as required in paragraph (d) of this section, shall promptly be allocated among those applicants whose requests were not satisfied in full, using the methods prescribed in paragraphs (a) through (c) of this section to determine the additional quantity of skins allowable to each such applicant.

§ 14.4 Reallocation of unused calendar year quotas.

Any portion of the calendar year quotas which may become available for reallocation through surrender or nonuse, in whole or in part, of permits expiring on June 30 of any year, shall be reallocated as promptly as possible after the closing date for filing among applicants who have submitted proper applications in accordance with § 14.2(b). Such reallocations shall be made by the method prescribed in § 14.3 (a) through (c). If the quantities of the respective species of bird skins are insufficient to permit reallocation among all applicants by such method, preference shall be given to those applications bearing the earliest postmark.

§ 14.5 Issuance of importation permits.

As soon as practicable after the annual quota allocations or reallocations have been determined, the quotas allocated to successful applicants shall be evidenced by importation permits, issued in letter

form, directed to the respective Collectors of Customs at the Ports of Entry specified in the applications. Such permits shall authorize the entry, or withdrawal from warehouse, of the quantities of bird skins allocated to each applicant. Until such time as it shall be found necessary to reduce the import quota established for pheasants, importation permits will not differentiate between the six species of pheasant named in § 14.1, but will authorize the importation of a stated number of pheasant skins in the aggregate, without specifying the species. A copy of the importation permit will be furnished each successful applicant as notice to him of his allocation. Importation permits are nontransferable and are subject to cancellation only if it is determined that the permit has been mistakenly issued, that the applicant has made a material misrepresentation in connection therewith, or if the permittee informs the Director that he will be unable to bring or import his quota of bird skins into the United States during the period specified in the permit. Permits are also subject to the further conditions set forth in § 14.6.

§ 14.6 Tenure of importation.

(a) Importation permits covering the calendar year quota allocations are issued as of January 1, and remain in effect through June 30 of the year of issue. No extension of time shall be granted on such permits and any portion of the quota allocations which become available through surrender or nonuse, in whole or in part, of a permit expiring on June 30, shall be reallocated among applicants who submit proper applications.

(b) Importation permits covering the reallocations made pursuant to § 14.2 (b) shall be issued as promptly as possible after July 31 and remain in effect through December 31 of the year of issue. No extension of time shall be granted on such permits, and any portion of the quotas so reallocated which are not imported through surrender of nonuse of reallocation permits, in whole or in part, on or before December 31 of the year of issue, shall lapse and no further allocation thereof shall be made.

§ 14.7 Compliance with other regulations.

Any importation permitted by the regulations in this part is also subject to any applicable health, quarantine, customs, or other requirements imposed by law or by regulation of duly authorized Federal or State agencies and municipalities.

ELMER F. BENNETT,
Under Secretary of the Interior.

DECEMBER 8, 1960.

[F.R. Doc. 60-11568; Filed, Dec. 12, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 901]

[Docket No. AO-326]

MILK IN DENVER, COLO., MARKETING AREA

Notice of Hearing on Proposed Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the State Grange Building, 2425 West 26th Avenue, Denver, Colorado, beginning at 10:00 a.m., local time, on January 4, 1961, with respect to a proposed marketing agreement and order, regulating the handling of milk in the Denver, Colorado, marketing area.

The public hearing is for the purpose of receiving evidence with respect to economic and marketing conditions which relate to the proposed marketing agreement and order, hereinafter set forth, and any appropriate modifications thereof; and for the purpose of determining (1) whether the handling of milk in the area proposed for regulation is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce, (2) whether there is need for a marketing agreement or order regulating the handling of milk in the area, and (3) whether provisions specified in the proposals or some other provisions appropriate to the terms of the Agricultural Marketing Agreement Act of 1937, as amended, will tend to effectuate the declared policy of the Act.

The proposals, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Denver Milk Producers, Inc.:

Proposal No. 1.

DEFINITIONS

§ 901.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 901.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 901.3 Department.

"Department" means the United States Department of Agriculture or such other Federal agency authorized to perform the price reporting functions specified in this part.

§ 901.4 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 901.5 Cooperative Association.

"Cooperative Association" means any cooperative association of producers which the Secretary determines, after application by the association to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

§ 901.6 Denver, Colorado, marketing area.

"Denver, Colorado, marketing area" hereinafter called the "marketing area" means all territory within the boundaries of the counties of Adams, Arapahoe, Boulder, Cheyenne, Clear Creek, Denver, Douglas, Elbert, Gilpin, Grand, Jefferson, Kit Carson, Larimer, Lincoln, Logan, Morgan, Park, Phillips, Sedgwick, Washington, Weld, and Yuma, all in the State of Colorado.

§ 901.7 Pool plant.

A "pool plant" shall be any plant meeting the conditions of paragraph (a) or (b) of this section except the plant of a handler exempted in § 901.60 or § 901.61:

(a) Any plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which 20 percent or more of the total Class I sales are made on routes in the marketing area: *Provided*, That the total quantity of Class I milk disposed from such plant during the month is not less than 50 percent of such plants receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant or by a cooperative association;

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to a distributing pool plant: *Provided*, That any supply plant which has qualified as a pool plant for each of the months of September through February in any year shall be a pool plant for each of the months of March through August unless written request for nonpool status is furnished in advance to the market administrator.

§ 901.8 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant.

§ 901.9 Handler.

"Handler" means;

(a) Any person in his capacity as the operator of a pool plant;

(b) Any person who operates a nonpool plant from which fluid milk products are disposed of on routes in the marketing area; or

(c) A cooperative association with respect to the milk of its member producers which is diverted from a pool plant to a nonpool plant for the account of such cooperative association. Such milk shall be considered as having been received by such cooperative association at the plant to which it was diverted.

§ 901.10 Producer.

"Producer" means any person other than a producer-handler who produces milk in compliance with fluid milk product requirements of a duly constituted health authority having jurisdiction within the marketing area and whose milk is (a) received at a pool plant in an amount representing 16 or more days production during the month or (b) diverted to a nonpool plant for the account of a handler in an amount not to exceed 15 days production. Milk so diverted shall be deemed to have been received by the diverting handler at the plant to which it was diverted.

§ 901.11 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant at which, during the month, there is received no other source milk or milk from other producers.

§ 901.12 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pursuant to § 901.10.

§ 901.13 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month of fluid milk products except: (1) Receipts from other pool plants or (2) producer milk; and

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 901.14 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream (sweet or sour, including any mixture of cream and milk or skim milk) and concentrated (fresh or frozen) milk, flavored milk or flavored milk drinks which are neither sterilized nor in hermetically sealed cans.

§ 901.15 Route.

"Route" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product, other than a delivery to a pool plant or nonpool plant.

MARKET ADMINISTRATOR

§ 901.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at, the discretion of the Secretary.

§ 901.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 901.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds received by § 901.88 the cost of his bond and those of his employees, his own compensation, and all other expenses (except those incurred under § 901.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(g) Verify all reports and payments of each handler, by audit of such handler's records and the records of any other handler or person upon whose utilization the classification of skim milk and butterfat for such handler depends; and by such other means as are necessary;

(h) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the date upon which he is required to perform such acts, has not made (1) reports pursuant to § 901.30 to § 901.32 or (2) payments pursuant to § 901.80 to § 901.88;

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, and mail to each handler at his last known address, the prices determined for each month as follows:

(1) On or before the 6th day of each month, the Class I price and butterfat differential for the month, computed pursuant to § 901.51(a) and § 901.53(a), respectively;

(2) On or before the 6th day of each month, the Class II price and butterfat differential for the preceding month, computed pursuant to § 901.51(b) and § 901.53(b), respectively;

(3) On or before the 12th day of each month, the uniform price for producer milk computed pursuant to § 901.71, the location differential computed pursuant to § 901.81, and the butterfat differential computed pursuant to § 901.82, all for the preceding month;

(j) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler; and

(k) Prepare and make available for the benefit of producers, consumers, and handlers, such general statistics and such information concerning the operations hereof as are appropriate to the purpose and functioning of this part and which do not reveal confidential information.

REPORTS, RECORDS, AND FACILITIES

§ 901.30 Reports of receipts and utilization.

On or before the 7th day after the end of each delivery period each handler, except a producer-handler or handler making payments pursuant to § 901.62(a) shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(a) The receipts at each plant of milk from each producer, the average butterfat test, and the pounds of butterfat contained therein;

(b) The quantities of skim milk and butterfat contained in (or used in the production of) fluid milk products received from other handlers;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk;

(d) The pounds of skim milk and butterfat contained in all fluid milk products on hand at the beginning and at the end of the delivery period;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section; and

(f) Such other information with respect to receipts and utilization as the market administrator may prescribe.

§ 901.31 Payroll reports.

On or before the 23d day of each delivery period, each handler except a producer-handler or a handler making payments pursuant to § 901.62(a) shall submit to the market administrator his producer payroll for receipts during the preceding delivery period which shall show:

(a) The total pounds of milk, the average butterfat test thereof, and the pounds of butterfat received from each producer and cooperative association;

(b) The amount of payment to each producer and cooperative association; and

(c) The nature and amount of any deduction or charges involved in such payments.

§ 901.32 Other reports.

Each producer-handler and each handler making payments pursuant to § 901.61 or § 901.62(a) shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 901.33 Records and facilities.

Each handler shall maintain and make available to the market administrator during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form;

(b) The weights and tests for butterfat and other content of all products handled;

(c) The pounds of skim milk and butterfat contained in or represented by all items of products on hand at the beginning and end of each month; and

(d) Payments to producers, including any deductions, and the disbursement of money so deducted.

§ 901.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 901.40 Skim milk and butterfat to be classified.

All skim milk and butterfat at pool plants which is required to be reported pursuant to § 901.30 shall be classified by the market administrator, pursuant to the provisions of §§ 901.41 to 901.46.

§ 901.41 Classes of utilization.

Subject to the conditions set forth in §§ 901.42 to 901.46, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (1) disposed of in the form of fluid milk products except those classified pursuant to paragraph (b) (2) and (3) of this section, or (2) not specifically accounted for as Class II utilization;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat: (1) Used to produce any product other than a fluid milk product; (2) accounted for as livestock feed; (3) in skim milk dumped after prior notification to and opportunity for verification by the market administrator; (4) in inventory of fluid milk products on hand at the end of the month; (5) in shrinkage allocated to receipts of producer milk but not in excess of 2 percent of receipts of skim milk and butterfat directly from producers, plus 1.5 percent of receipts of skim milk and butterfat, respectively, transferred in bulk from pool plants of other handlers, less 1.5 percent of skim milk and butterfat, respectively, disposed of in bulk lots to the pool plants of other handlers; and (6) in shrinkage allocated to receipts of other source milk.

§ 901.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat, respectively, for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat (1) in the quantity of milk from producers and in bulk tanks from pool plants of other handlers, and (2) in other source milk.

§ 901.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 901.44 Transfers.

Skim milk or butterfat disposed of from a pool plant shall be classified:

(a) As Class I milk if transferred or diverted in the form of fluid milk product to the pool plant of another handler unless utilization in Class II is mutually indicated in writing to the market administrator by the operators of both plants on or before the 7th day after the end of the delivery period within which such transfer occurred: *Provided*, That the skim milk or butterfat so assigned to Class II shall be limited to the amount thereof remaining in Class II in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 901.46, and any additional amount of such skim milk or butterfat shall be assigned to Class I: *And provided further*, That if either or both plants have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to producer milk;

(b) As Class I milk if transferred in the form of a fluid milk product to a producer-handler;

(c) As Class I milk if transferred or diverted in the form of a fluid milk product to a nonpool plant located more than 200 miles from the Denver or Larimer County Courthouse, whichever is closer, by the shortest highway distance as determined by the market administrator;

(d) As Class I milk if transferred to a nonpool plant in the form of a fluid milk product in consumer packages; and

(e)(1) As Class I milk, if transferred or diverted in the form of a fluid milk product, in bulk, to a nonpool plant located not more than 200 miles from the Denver or Larimer County Courthouse, whichever is closer, by the shortest highway distance as determined by the market administrator, unless the following conditions are met:

(i) The transferring handler claims Class II utilization in his report submitted pursuant to § 901.30;

(ii) The operator of the nonpool plant keeps adequate books and records showing the utilization of all skim milk and butterfat received at such plant and the market administrator is permitted to examine such books and records for the purpose of verification; and

(iii) The skim milk and butterfat so transferred or diverted is allocated to the highest use classification remaining after subtracting in series beginning with the highest use classification, the skim milk and butterfat in milk received at the nonpool plant directly from dairy farmers who the market administrator determines constitutes its regular source of supply for Class I milk.

(2) If any skim milk or butterfat is transferred to a second nonpool plant under this paragraph, the same conditions of audit, classification, and allocation shall apply.

§ 901.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and other obvious errors, the report submitted by each handler pursuant to § 901.30 and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk at all of the pool plants of such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be a quantity equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 901.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 901.45 the market administrator shall determine the classification of milk received from producers at the pool plant(s) of each handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk allocated to shrinkage in skim milk received from producers pursuant to § 901.41(b)(5);

(2) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk other than that to be subtracted pursuant to subparagraph (3) of this paragraph;

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the Act;

(4) Subtract from the pounds of skim milk remaining in each class the skim milk received from other pool plants according to its classification as determined pursuant to § 901.44(a).

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the pounds of skim milk remaining in Class II the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(7) Subtract from the pounds of skim milk remaining in each class any amount by which the pounds of skim milk remaining in both classes exceed the pounds of skim milk in milk received from producers in series beginning with Class II. Such excess shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of the Class I milk and of the Class II milk computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 901.50 Basic formula price.

The basic formula price of each month to be used in determining the class prices set forth in § 901.51, shall be the higher of the prices computed pursuant to paragraphs (a) and (b) of this section, rounded to the nearest one-tenth cent:

(a) Determine the average of the basic, or field prices paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the Department:

Present Operator and Location

Carnation Co., Sparta, Mich.
Pet Milk Co., Wayland, Mich.
Pet Milk Co., Coopersville, Mich.
Borden Co., Orfordville, Wis.
Borden Co., New London, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Oconomowoc, Wis.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Belleville, Wis.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(b) The price per hundredweight computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph:

(1) From the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-Score) bulk creamery butter per pound at Chicago, as reported by the Department during the month, subtract 3 cents, add 20 percent thereof, and multiply by 3.5.

(2) From the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound of nonfat dry milk, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, multiply by 8.5, and then multiply by 0.965.

§ 901.51 Class prices.

Subject to the provisions of §§ 901.52 and 901.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk.* During the first eighteen months following the effective date of this part, the basic formula price for the preceding month plus $2.335.

(b) *Class II milk.* During the months of August through February the basic formula price for the month, and during the months of March through July the basic formula price for the month less 20 cents.

§ 901.52 Location differentials to handlers.

For milk which is received from producers at a pool plant located more than 80 miles by the shortest highway distance, as determined by the market administrator, from the Courthouse in Denver or Larimer, whichever is closest, and which is classified as Class I milk the prices computed pursuant to § 901.51 (a) shall be reduced by 13.5 cents of such plant is located more than 80 miles but not more than 90 miles from such Courthouse and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 90 miles: *Provided*, That for the purpose of calculating such differential transfers between pool plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds the receipts from producers at such plant, such assignment to transferor plants to be made first to plants at which no differential credit is applicable and then in the sequence beginning with the plant at which the lowest location differential credit would apply.

§ 901.53 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices pursuant to § 901.51 shall be increased or decreased, respectively, for each one-tenth of one percent of butterfat by the appropriate rate rounded in each class to the nearest one-tenth cent, determined as follows:

(a) *Class I milk.* Multiply the butter price specified in § 901.50(b)(1) for the preceding month by 1.40 and divide the result by 10.

(b) *Class II milk.* Multiply the butter price specified in § 901.50(b)(1) by 1.20 and divide the result by 10.

§ 901.54 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 901.60 Producer-handler.

Sections 901.40 to 901.46, 901.50 to 901.54, 901.70 to 901.72, and 901.80 to 901.88 shall not apply to a producer-handler.

§ 901.61 Exempt plants.

The provisions of this part shall not apply to any distributing pool plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless (a) more Class I milk is disposed of from such plant on routes in the Denver marketing area than in the marketing area regulated pursuant to such other order, or (b) such plant was qualified as a supply plant under the other order, except that the operator of such plant shall make such reports of receipts and utilization of milk as the market administrator may require and allow verification of such reports by the market administrator.

§ 901.62 Handler operating a nonpool plant.

In lieu of the payments required pursuant to §§ 901.80 to 901.88, each handler, other than a producer-handler or one exempt pursuant to § 901.61, who operates during the month a nonpool plant, shall pay to the market administrator on or before the 25th day after the end of the month the amounts calculated pursuant to paragraph (a) of this section unless the handler elects, at the time of reporting pursuant to § 901.30, to pay the amounts computed pursuant to paragraph (b) of this section;

(a) The following amounts:

(1) To the producer-settlement fund, an amount equal to the value of all skim milk and butterfat disposed of as Class I

milk on routes in the marketing area at the Class I price applicable at the location of such handler's plant, less the value of such skim milk and butterfat at the Class II price; and

(2) As his share of the expense of administration, the rate specified in § 901.88 with respect to Class I milk so disposed of in the marketing area.

(b) The following amounts:

(1) To the producer-settlement fund, any plus amount remaining after deducting from the value that would have been computed pursuant to § 901.70 if such handler had operated a pool plant the gross payments made by such handler for milk received during the month from Grade A dairy farmers at such plant or at a plant which serves as a supply plant; and

(2) As his share of the expense of administration, an amount equal to that which would have been computed pursuant to § 901.88 had such plant been a pool plant, except that if such plant is also a nonpool plant under another order issued pursuant to the Act, and his Class I sales in such other marketing area exceed those made in the Denver marketing area, the payments due under this subparagraph shall be reduced by the amount of any administrative expense payments under the other order.

DETERMINATION OF UNIFORM PRICE

§ 901.70 Computation of the value of producer milk for each handler.

For each month, the market administrator shall compute the value of producer milk for each handler as follows:

(a) Multiply the quantity of producer milk in each class computed pursuant to § 901.46 by the applicable class price and total the resulting amounts;

(b) Add an amount computed by multiplying the pounds of any overage deducted from any class pursuant to § 901.46(a)(7) and, the corresponding step of § 901.46(b) by the applicable class price;

(c) Add an amount computed by multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 901.46 (a) (6) and (b) for the preceding month or the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 901.46(a)(5) and the corresponding step of § 901.46(b) for the current month, whichever is less; and

(d) For any skim milk or butterfat subtracted from Class I milk pursuant to § 901.46(a)(2) and the corresponding step of § 901.46(b), and pursuant to § 901.46(a)(5) and the corresponding step of § 901.46(b) which is in excess of the skim milk and butterfat applied pursuant to paragraph (c) of this section, add an amount equal to the differences between the values of such skim milk and butterfat at the Class I price and at the Class II price: *Provided*, That such calculations shall not apply if the total receipts of producer milk at pool plants during the month are less than 110 percent of the total Class I utilization of such plants for the month.

§ 901.71 Computation of the uniform price.

The market administrator shall compute the uniform price per hundredweight of producer milk as follows:

(a) Combine into one total the values computed pursuant to § 901.70 for the producer milk of all handlers who submitted reports prescribed in § 901.30, and who are not in default of payments pursuant to § 901.80 for the preceding month;

(b) Subtract, if the average butterfat content of the producer milk included under paragraph (a) of this section is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential pursuant to § 901.82 and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the sum of the deduction to be made from producer payments for location differentials pursuant to § 901.81;

(d) Add an amount equal to one-half of the unobligated balance on hand in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included under paragraph (a) of this section; and

(f) Subtract not less than 4 cents nor more than 5 cents. The resulting figure shall be the uniform price per hundredweight of producer milk of 3.5 percent butterfat content delivered to plants within the 80-mile zone.

§ 901.72 Notification of handlers.

On or before the 12th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(a) The amount and value of his producer milk in each class and the total thereof;

(b) The uniform price computed pursuant to § 901.71 and the producer location and butterfat differentials computed pursuant to §§ 901.81 and 901.82; and

(c) The amounts to be paid by such handler pursuant to §§ 901.84, 901.86, 901.87, and 901.88 and the amount due such handler pursuant to § 901.85.

PAYMENTS

§ 901.80 Payment to producers.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received as specified in paragraphs (a) and (b) of this section:

(a) On or before the last day of the month, to each producer who had not discontinued shipping milk to such handler before the 18th day of the month, an advance payment with respect to milk received during the first 15 days of the month at the Class II price for the preceding month;

(b) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 901.71, subject to the butterfat differential computed pursuant to § 901.82 and location adjustment computed pursuant to § 901.81, plus or minus adjustments for errors made in previous payments to such producers and less (1) payments made pursuant to paragraph (a) of this section, (2) marketing service deductions pursuant to § 901.87, and (3) proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 901.85 he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer:

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

§ 901.81 Location differential to producers.

For milk which is received at pool plants located more than 80 miles but not more than 90 miles by shortest highway distance, as determined by the market administrator, from the Courthouse in Denver or Larimer County, whichever is closest, there should be deducted 13.5 cents per hundredweight and an additional 1.5 cents shall be deducted for each 10 miles or fraction thereof that such distance exceeds 90 miles.

§ 901.82 Butterfat differential to producers.

The applicable uniform price to be paid producers pursuant to § 901.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of milk is above or below 3.5 percent, respectively, by a butterfat differential equal to the average of the butterfat differentials determined pursuant to paragraphs (a) and (b) of § 901.52 weighted by the pounds of butterfat in producer milk in each class and the result rounded to the nearest tenth of a cent.

§ 901.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 901.62 and 901.84 and out of which he shall make all payments pursuant to § 901.85: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 901.84 Payments to the producer-settlement fund.

On or before the 14th day after the end of each month, each handler who operates a pool plant shall pay to the market administrator any amount by which the value of his producer milk as computed pursuant to § 901.70, is greater than the amount owed by him for such milk at the appropriate uniform prices determined pursuant to § 901.80.

§ 901.85 Payments out of the producer-settlement fund.

On or before the 14th day after the end of each month, the market administrator shall pay to each handler any amount by which the total value of his producer milk, computed pursuant to § 901.70 is less than the amount owed by him for such milk at the appropriate uniform price determined pursuant to § 901.80. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 901.86 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator; the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 901.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 901.80, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 16th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such services from a cooperative association;

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deductions and the quantity of milk on which the deduction was computed from each producer.

§ 901.88 Expense of administration.

As his pro rate share of the expense of the administration hereof, each handler shall pay the market administrator, on or before the 16th day after the end of each month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to (a) all milk received from producers during such month, including such handler's own farm production, (b) other source milk received at a pool plant and classified as Class I, and (c) the quantities of milk at the plants of handlers operating nonpool plants as specified in § 901.62 (a)(2) or (b)(2).

§ 901.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate 2 years after the last day of the month during which the market administrator received the handler's utilization report on the milk involved in such obligation, unless within such 2-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The months during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the names of such producer or cooperative associations, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the 2-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period, with respect to such obligation shall not begin to run until the first day of the month following the month during which all such books and records pertaining to such obligations are made available to the market administrator or his representative.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate 2 years after the end of the month during which the payment (including deduction or offset by the market administrator) was made by the handler, if a refund on such payment is claimed unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION, OR TERMINATION

§ 901.90 Effective time.

The provisions of this part or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 901.91 Suspension or termination.

The Secretary shall, whenever he finds that any or all provisions of this part, or

any amendment thereto, obstruct or do not tend to effectuate the declared policy of the Act, terminate or suspend the operation of any or all provisions of this part or any amendment thereto. This part shall terminate in any event whenever the provisions of the Act authorizing it cease to be in effect.

§ 901.92 Continuing obligations.

If upon the suspension or termination of any or all provisions of this part, or any amendment thereto, there are any obligations thereunder, the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 901.93 Liquidation.

(a) Upon the suspension or termination of any or all provisions of this part, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition.

(b) If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidating and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 901.100 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent and representative in connection with any of the provisions of this part.

§ 901.101 Separability of provisions.

If any provisions of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Proposed by the Cache Valley Dairy Association:

Proposal No. 2. Modify §§ 901.1 through 901.70 of the order included in Proposal No. 1 to read as follows:

DEFINITIONS

§ 901.1 Act.

(Same as proponents).

§ 901.2 Secretary.

(Same as proponents).

§ 901.3 Department.

(Same as proponents).

§ 901.4 Person.

(Same as proponents).

§ 901.5 Cooperative Association.

(Same as proponents).

§ 901.6 Marketing area.

(Same as proponents).

§ 901.7 Fluid milk product.

"Fluid milk product" means the fluid form of milk, skim milk, buttermilk, milk concentrates, milk drinks (plain or flavored) cream (including sterilized cream), or any mixture of milk, skim milk, or cream which is approved for human consumption within the marketing area, except:

(a) Storage cream held in a commercial warehouse;

(b) Sour cream, or products with a sour cream base;

(c) Aerated cream products;

(d) Ice cream, ice cream mix, frozen desserts, or frozen dessert mix; and

(e) Evaporated or condensed milk and sterilized condensed products packaged in hermetically sealed metal containers.

§ 901.8 Route delivery.

"Route delivery" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) to a wholesale, institutional, or retail outlet(s) other than to a:

(a) Milk plant(s);

(b) Distribution point(s); or

(c) Food processing plant(s) for use other than for fluid consumption.

§ 901.9 Fluid milk plant.

"Fluid milk plant" means the building used for the receipt, preparation, or processing of milk which is approved by a duly constituted health authority for disposition as a fluid milk product, and:

(a) All or a portion of such milk is (1) disposed of during the month in the form of a fluid milk product(s) in the marketing area through route delivery, or (2) moved in the form of a fluid milk product(s) to a plant which disposes of milk as described in subparagraph (1) of this paragraph: *Provided*, That this definition shall not include any building which is used to hold or store bottled milk or milk products in finished form in transit for route delivery: *And provided further*, That this definition shall not include any location or equipment used for the transfer of milk which has moved from the farm in a tank truck and is commingled with other milk before entering a building: *And provided further*, That a "fluid milk plant" pursuant to this section shall not mean such portions of a building used for receiving or processing such milk, or milk products, as is required by the appropriate health authority to be kept physically separate from the receiving or processing of fluid milk product(s) for the community(s) served.

§ 901.10 Nonfluid milk plant.

"Nonfluid milk plant" means any milk receiving, manufacturing or processing plant other than a "fluid milk plant".

§ 901.11 Handler.

"Handler" means (a) any person who operates a fluid milk plant qualified pursuant to § 901.9, or (b) any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 901.14(c)(2).

§ 901.12 Approved dairy farmer.

"Approved dairy farmer" means any person who produces milk which is:

(a) Approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is permitted by the appropriate health authority in the marketing area to be disposed of as a fluid milk product within the marketing area (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the U. S. Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases); and

(b) Received at a fluid milk plant or diverted in accordance with the conditions set forth in § 901.14(c).

§ 901.13 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, who distributes any portion of such milk on delivery routes within the marketing area, and who receives no fluid milk product from other dairy farmers or from any source other than a fluid milk plant qualified pursuant to § 901.9: *Provided*, That any person who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that:

(a) The care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from plants qualified pursuant to § 901.9) is the personal enterprise of and at the personal risk of such person; and

(b) The operation of the processing and distribution milk business is the personal enterprise of and at the personal risk of such person.

§ 901.14 Pool plant.

"Pool plant" means a fluid milk plant meeting the conditions of paragraph (a) or (b) of this section, except a plant operated by a producer-handler, or a plant pooled under another order issued pursuant to the Act:

(a) Any such plant wherein, during the months of August through January, at least 50 percent, and during all other months, at least 30 percent of the milk of approved dairy farmers reported pursuant to § 901.30 is classified as Class I milk pursuant to § 901.41(a), and at least 20 percent of such Class I milk is a route delivery(s) within the marketing area;

(b) Any such plant wherein, during the months of August through January, at least 50 percent, and during all other months, at least 30 percent of the milk of approved dairy farmers reported pursuant to § 901.30 is delivered to (and is physically received in) a plant(s) which operated in the manner described in paragraph (a) of this section: *Provided*, That any such plant that was a pool plant during each of the months of August through January immediately preceding shall continue to be a pool plant for each of the succeeding months of February through July unless the milk received at the plant does not continue to be qualified for use as a fluid milk product in the marketing area, or the plant delivers more than 50 percent of its milk from approved dairy farmers to a plant(s) regulated under another order issued pursuant to the Act, or the operator of the plant notifies the market administrator in writing that the plant should be withdrawn from the pool, and in the event such notification is given, the plant will no longer be a pool plant starting with the beginning of the delivery period following receipt of the notification by the market administrator, except during any delivery period(s) in which the pool plant requirements under this paragraph are fulfilled; and

(c) For the purpose of this definition (1) milk of an approved dairy farmer diverted by a handler other than a cooperative association from a pool plant to the pool plant of another handler for not more than ten consecutive days (10 days' production in the case of every-other-day pick up) during any month shall be deemed to have been received at the pool plant from which diverted, and milk diverted for more than ten consecutive days during the month shall be considered as received at the plant to which it was diverted for the entire period of diversion; (2) milk diverted by a cooperative association, which does not operate a pool plant, for the account of such cooperative association from the pool plant of another handler to a nonpool plant shall be considered to have been received by such cooperative association at a pool plant at the same location as that from which the milk was diverted; and (3) milk diverted from a pool plant by the handler operating such pool plant to a nonpool plant shall be considered to have been received at the plant from which diverted.

§ 901.15 Producer.

"Producer" means an approved dairy farmer described pursuant to § 901.12, other than a producer-handler, whose milk is:

(a) Received at a pool plant; or

(b) Diverted from a pool plant by a handler for his account: *Provided*, That for each of the months of August through January milk so diverted shall be limited to deliveries of such person not exceeding 12 days production during such month.

§ 901.16 Producer milk.

"Producer milk" means milk produced by one or more producers handled under the conditions set forth pursuant to § 901.15.

§ 901.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in, or represented by:

(a) Receipts during the month in the form of a fluid milk product(s), except:

(1) Producer milk;

(2) Fluid milk products received from other pool plants;

(3) Inventory of fluid milk products at the beginning of the month; or

(4) Cream held in storage by the handler pursuant to § 901.41(b)(3); and

(b) Products derived in whole or in part from milk, other than fluid milk products, from any source (including those produced at the plant) which are repackaged, reprocessed or converted to another product in the plant, or for which other utilization or disposition is not established pursuant to § 901.41.

§ 901.18 Nonpool plant.

"Nonpool plant" means a fluid, or nonfluid milk plant other than a pool plant.

MARKET ADMINISTRATOR

§ 901.20 Designation.

(Same as proponents).

§ 901.21 Powers.

(Same as proponents).

§ 901.22 Duties.

(Same as proponents).

REPORTS, RECORDS, AND FACILITIES

§ 901.30 Reports of receipts and utilization.

(Same as proponents).

§ 901.31 Payroll reports.

(Same as proponents).

§ 901.32 Other reports.

(Same as proponents).

§ 901.33 Records and facilities.

(Same as proponents).

§ 901.34 Retention of records.

(Same as proponents).

CLASSIFICATION

§ 901.40 Skim milk and butterfat to be classified.

(Same as proponents).

§ 901.41 Classes of utilization.

The classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce concentrated and reconstituted or fortified skim milk) and butterfat (1) disposed of as a fluid milk product except those classified pursuant to paragraph (b)(2) of this section, and (2) not specifically accounted for as Class II milk; and

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce other than a fluid milk product; (2) disposed of for livestock feed and skim milk (only) dumped, upon prior notice as prescribed by the market administrator; (3) in cream stored and frozen; (4) in inventory of fluid milk products on hand at the end of the month; (5) in shrinkage not to exceed one-half of one percent of the skim milk and butterfat, respectively, in producer milk physically received at the plant, plus one and one-half percent of such receipts and of the receipts of skim milk and butterfat in bulk fluid milk products from pool plants, less such products disposed of by such plants in bulk to another plant; and (6) in shrinkage of other source milk.

§ 901.42 Shrinkage.

In computing shrinkage for the purposes of § 901.41(b) (5) and (6) the market administrator shall determine the shrinkage of skim milk and butterfat, respectively, in the following manner:

(a) Compute total shrinkage at each pool plant by subtracting the skim milk and butterfat, respectively, classified as Class I milk pursuant to § 901.41(a)(1) and as Class II milk pursuant to § 901.41(b)(1), (2), (3), and (4) (subject to the provisions of §§ 901.43 to 901.45) from the receipts of the skim milk and butterfat, respectively, required to be reported pursuant to § 901.30; and

(b) Prorate the total shrinkage of skim milk and butterfat, respectively, computed pursuant to paragraph (a) of this section, among the pounds of producer milk, physically received at such plant, other source milk received in the form of fluid milk products in bulk, and fluid milk products in bulk received from other pool plants in excess of transfers of such products in bulk to other plants.

§ 901.43 Responsibility of handlers and reclassification of milk.

(Same as proponents.)

§ 901.44 Transfers.

Skim milk or butterfat disposed of by a handler from a pool plant shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to another pool plant, unless:

(1) Utilization in another class is claimed by the operator of both plants in their reports submitted pursuant to § 901.30; and

(2) The transferee plant has utilization in Class II milk of an equivalent amount of skim milk and butterfat, respectively, after making the assignments pursuant to § 901.46(a) (1) to (5) and the corresponding steps of § 901.46(b) and any remaining quantities shall be classified as Class I milk: *Provided*, That if the transferring plant has other source milk during the month, the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the highest priced available class utilization to the producer milk at both plants;

(b) As Class I milk if transferred or diverted to a producer-handler in the form of a fluid milk product;

(c) As Class I milk, if transferred or diverted in the form of a fluid milk product, in bulk tank loads or containers larger than 5 gallons, to a nonpool plant located in Cache or Weber Counties of the State of Utah, or not more than 200 miles from the Denver County Courthouse by the shortest highway distance, as determined by the market administrator, unless the following conditions are met:

(1) The handler claims classification in Class II in his report submitted to the market administrator pursuant to § 901.30;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for verification;

(3) An amount of skim milk and butterfat, respectively, of not less than that so claimed by the handler was used in products included in Class II milk;

(4) The classification reported by the handler results in an amount of skim milk and butterfat in Class I milk claimed by all handlers transferring or diverting milk to such nonpool plant of not less than the amount of assignable Class I milk remaining after the following computation:

(i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk, pursuant to the classification provisions of this order applied to such nonpool plant, subtract the skim milk and butterfat received at such plant directly from dairy farmers who are approved by a duly constituted health authority to supply Grade A milk and who the market administrator determines constitute the regular source of supply for such nonpool plant; and

(ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk products received from another market and which is classified and priced as Class I milk pursuant to another order issued pursuant to the Act: *Provided*, That the amount subtracted pursuant to this subdivision shall be limited to such market's pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the Act;

(5) If the skim milk and butterfat, respectively, transferred by all handlers (including transfers from fluid milk plants subject to § 901.62(a)) to such a nonpool plant and reported as Class I milk is less than the skim milk and butterfat assignable to Class I milk, pursuant to subparagraph (4) of this paragraph, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk pro rata in accordance with the total of the lower price classification reported by each of such handlers;

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product, in bulk tank loads or containers larger than 5 gallons, to a nonpool plant not located in Cache or Weber Counties of the State of Utah, or more than 200 miles from the Denver County Courthouse by the shortest highway distance, as determined by the market administrator; and

(e) As Class I milk if transferred in packaged form of less than 5 gallons to any nonpool handler.

§ 901.45 Computation of skim milk.

For each month, the market administrator shall correct for mathematical and other obvious errors the monthly report submitted for the pool plant of each handler pursuant to § 901.30 and compute the total pounds of skim milk and butterfat, respectively, in Class I milk and Class II milk for such plant: *Provided*, That if any of the water contained in the milk from which a product is made is removed before such product is disposed of by the handler, the hundredweight of skim milk used to produce and disposed of in such products shall be considered to be an amount equivalent to the nonfat solids contained in such product, plus all of the water originally associated with such solids.

§ 901.46 Allocation of skim milk and butterfat classified.

(a) The pounds of skim milk remaining in each class after making the following computations each month with respect to each pool plant of each handler, shall be the pounds of skim milk in such class allocated to the producer milk for such month.

(1) Subtract from the total pounds of skim milk in Class II milk the shrinkage of skim milk classified as Class II pursuant to § 901.41(b)(5);

(2) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk in fluid milk products received in consumer packages, not larger than five (5) gallons, and so disposed of in such package, if such skim milk is subject to the Class I pricing provisions of another order issued pursuant to the Act;

(3) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk which is not subject to the Class I pricing provisions of an order issued pursuant to the Act: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(4) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk in other source milk received in the form of a fluid milk product in bulk and which was subject to the Class I pricing provisions of another order issued pursuant to the Act: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk;

(5) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in frozen storage cream which had previously been classified pursuant to § 901.41(b)(3) and was reported as a receipt in the plant during the current month: *Provided*, That if the pounds of skim milk to be subtracted are greater than the remaining pounds in Class II milk, the balance shall be subtracted from the pounds of skim milk in Class I milk.

(6) Subtract from the pounds of skim milk remaining in Class II milk the pounds of skim milk contained in inventory of fluid milk products at the beginning of the month: *Provided*, That if the pounds of skim milk in such inventory exceed the remaining pounds of skim milk in Class II milk, the balance shall be subtracted from the pounds of skim milk remaining in Class I milk;

(7) Subtract the pounds of skim milk in fluid milk products received from other pool plants from the pounds of skim milk remaining in the class to which assigned, pursuant to § 901.44(a)(2).

(8) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(9) If the pounds of skim milk remaining in all classes exceed the pounds of skim milk in milk received from producers, subtract such excess from the pounds of skim milk remaining in series beginning with Class II milk. Any amount so subtracted shall be known as "overage."

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the manner prescribed in paragraph (a) of this section for determining the allocation of skim milk to producer milk; and

(c) Add the pounds of skim milk and pounds of butterfat in each class calculated pursuant to paragraphs (a) and (b) of this section and determine the percentage of butterfat in the producer milk allocated to each class.

MINIMUM PRICES

§ 901.50 Basic formula price.

(Same as proponents.)

§ 901.51 Class prices.

(Same as proponents.)

§ 901.52 Location differentials to handlers.

For producer milk which is received at a pool plant located 70 miles or more from the closest point within the marketing area, by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the price specified in § 901.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers.

Distance from closest point within the marketing area:	*Rate per hundredweight (cents)*
70 but less than 80 miles	7.5
For each additional 10 miles or major fraction thereof an additional	1.0

Provided, That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II in the transferee plant after making the calculations prescribed in § 901.46(a)(6), and the comparable steps in § 901.46(b) for such plant, such assignment to transferrer-plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

§ 901.53 Butterfat differentials to handlers.

(Same as proponents).

§ 901.54 Use of equivalent prices.

(Same as proponents).

§ 901.55 Rate of payment on unpriced milk.

The rate of payment per hundredweight on unpriced Class I milk shall be calculated as follows:

(a) For the months of April through July, subtract the Class II price, adjusted by the Class II butterfat differential from the Class I price, adjusted by the Class I butterfat differential and the Class I location differential at the location of the plant from which such milk is supplied.

(b) For the months of August through March, subtract the uniform price to producers from the Class I price adjusted by the appropriate butterfat differential and adjusted by the Class I location differential at the location of the plant from which such milk is supplied.

APPLICATION OF PROVISIONS

§ 901.60 Producer-handler.

(Same as proponents.)

§ 901.61 Plants subject to other Federal orders.

(Same as proponents).

§ 901.62 Handler operating a nonpool plant.

On or before the 25th day after the end of each month, each handler, except a producer-handler, operating a fluid milk plant pursuant to § 901.9(a)(1) which is a nonpool plant, shall pay to the market administrator the amounts computed pursuant to paragraph (a) of this section, unless the handler elects at the time of reporting pursuant to § 901.30 to pay the amounts computed pursuant to paragraph (b) of this section.

(a) An amount:

(1) For deposit into the producer-settlement fund, equal to any plus amount remaining after deducting from the obligation that would have been computed pursuant to § 901.70 for such nonpool plant and any supply plant(s) (meeting the requirements equivalent to § 901.14(b)) which serves as a source of milk for such nonpool plant if such plant(s) were a pool plant(s),

(i) The gross payments made on or before the 18th day after the end of the month for milk received at such plant(s) during the month from dairy farmers meeting the conditions in § 901.12(a); and

(ii) Any obligations incurred in accordance with provisions similar to those contained in this subparagraph or paragraph (b)(1) of this section applicable to such plant as a partially regulated plant under another order issued pursuant to the Act: *Provided*, That in the application of § 901.44 for the purpose of this subparagraph, transfers or diversions of milk from such milk plant(s) to a pool plant shall be classified as Class I and Class II milk in the same ratio as other source milk is allocated to each class in such pool plant pursuant to § 901.46 (a)(3) and the corresponding step of (b): *And provided further*, That in the application of § 901.46(a)(7) and the corresponding step of § 901.46(b), receipts of fluid milk products at such fluid milk plant(s) from a pool plant(s) shall be allocated from the class in which such products are classified at the pool plant pursuant to § 901.44 (c) or (d); and

(2) For administrative assessment, equal to the amount which would have been computed pursuant to § 901.86 if such fluid milk plant were a pool plant during the month: *Provided*, That such amount shall be reduced by any amounts paid as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in other marketing areas, pursuant to the terms of other orders issued under the Act: *And provided further*, That

(i) If less Class I milk is disposed of from such plant on routes in the Denver marketing area than is disposed of on routes in another marketing area(s) as defined in an order(s) issued pursuant to the Act; and

(ii) If an administrative expense assessment is applied at such plant as if a fully regulated (pool) plant under the order for the marketing area where the volume of Class I milk disposed of from such plant is greatest, no administrative expense assessment shall be applicable under this order.

(b) An amount:

(1) For deposit in the producer-settlement fund, equal to the rate of payment on unpriced milk pursuant to § 901.55 multiplied by the hundredweight of skim milk and butterfat disposed of from such plant as Class I milk (computed in accordance with § 901.45) in the marketing area on routes during such month; and

(2) For administrative assessment, equal to the rate specified in § 901.86 applied to such Class I milk.

DETERMINATION OF UNIFORM PRICES

§ 901.70 Net obligation of each handler.

The net obligation of each handler for producer milk received during the month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of such milk in each class by the applicable class price and add together the resulting amounts;

(b) Add an amount computed by multiplying the pounds of any overage deducted from each class pursuant to § 901.46(a)(9) by the applicable class price(s);

(c) Add an amount computed by multiplying the hundredweight of other source milk subtracted from Class I milk pursuant to § 901.46(a)(3) and the corresponding step in § 901.46(b) by the rate of payment determined pursuant to § 901.55 applicable to milk at the nearest plant(s) from which an equivalent amount of other source milk was received: *Provided*, That if the source of any such fluid milk product is not clearly established or if such skim milk and butterfat is in a form other than a fluid milk product, such product shall be considered to have been received from a source at the location of the pool plant where it is classified; and

(d) Add an amount computed by multiplying the difference between the applicable Class II price plus 25 cents for the month in which such product was classified as Class II and the applicable Class I price for the month by the pounds of skim milk and butterfat contained in frozen stored cream substracted from Class I pursuant to § 901.46(a)(5) and the corresponding step in § 901.46(b);

(e) Add the amounts computed under subparagraphs (1) and (2) of this paragraph:

(1) Multiply the difference between the applicable Class II price for the preceding month and the applicable Class I price for the month by the pounds of skim milk and butterfat remaining in Class II milk after the calculations pursuant to § 901.46(a)(6) and the corresponding step of § 901.46(b) for the preceding month, or the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 901.46(a)(6) and the corresponding step of § 901.46(b) for the month, whichever is less; and

(2) If the pounds on which payment is applicable pursuant to subparagraph (1) of this paragraph are less than the pounds subtracted from Class I milk pursuant to § 901.46(a)(6) for the month, add an additional amount computed by multiplying the rate of payment pursuant to § 901.55 by such difference to the extent that the pounds of skim milk and butterfat in other source milk assigned to Class II milk pursuant to § 901.46(a)(3) and the corresponding step of § 901.46(b) for the preceding month exceeds the total pounds of skim milk and butterfat classified as Class II milk pursuant to § 901.41(b)(1), (2), (3), and (6) (subject to the provisions of § 901.44) for such preceding month.

Proposed by the National Cheese Company:

Proposal No. 3. That sour cream manufactured from milk subject to the pricing and pooling of Chicago Marketing Order No. 41 be allocated to Class I at plants which may be designated as pool plants or otherwise fully regulated, under the proposed order for the Denver, Colorado, milk marketing area where such sour cream is received, handled and distributed in the same consumer or institutional size package in which it is received.

Proposed by the Borden's Carlson-Frink Company:

Proposal No. 4. That this order be written in such a way that a handler could buy milk from the producer cooperative in tank load lots, paying the cooperative for the tank of milk received using the blended test of the tank. Individual producer's samples would be taken at the farm. These samples to be delivered to the cooperative, who would use the samples and the individual weights of producers to pay producers. The handler would have an allowable shrinkage in Class II of one and one-half percent and the cooperative would have an allowable shrinkage of one-half of one percent.

Copies of this notice may be procured from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 8th day of December 1960.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 60-11580; Filed, Dec. 12, 1960; 8:50 a.m.]

[7 CFR Part 938]

IRISH POTATOES GROWN IN RED RIVER VALLEY OF NORTH DAKOTA AND MINNESOTA

Exemption Certificates and Safeguards

Notice is hereby given that the Secretary of Agriculture is considering the approval of a proposed amendment to § 938.140 of the rules and regulations for establishment of safeguards (Subpart—Exemption Certificates and Safeguards) as hereinafter set forth. This amendment pertains to evidence required of registered handlers of potatoes for chipping with respect to handling of potatoes for chips as set forth in § 938.140(a)(1)(iv). The amendment was recommended by the Red River Valley Potato Committee, established pursuant to Marketing Agreement No. 135 and Order No. 38 (7 CFR Part 938), regulating the handling of Irish potatoes grown in certain designated counties in North Dakota and Minnesota. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Consideration will be given to any data, views, or arguments pertaining thereto, which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 15 days following publication of this notice in the FEDERAL REGISTER.

As amended, § 938.140 is set forth below.

§ 938.140 Registered handlers of potatoes for chipping.

(a)(1) Handlers of potatoes that have been conditioned, or are to be conditioned, for special use as potato chips may apply for registration with the committee as registered handlers of potatoes for chipping. Handlers who apply for registration as registered handlers of potatoes for chipping shall furnish the committee with evidence of special storage and other facilities for conditioning potatoes for potato chips and shall agree to furnish the committee with such reports as the committee may require. Application may be made on forms furnished by the committee. Evidence required by the committee shall include the following:

(i) Location of the applicant's storage facilities within the production area.

(ii) Size or other description of storage facilities.

(iii) Facilities for control of storage, temperature and humidity, and other pertinent information concerning the adequacy and effectiveness of applicant's facilities for conditioning potatoes for chipping.

(iv) Evidence of a contract or other arrangement with a manufacturer or processor of potatoes for potato chips, or such other evidence of regular operations as a supplier of potatoes for potato chips as the committee deems adequate.

(v) Such other information as the committee may require to enable the committee to determine the applicant's qualifications as a handler of potatoes for chipping.

(2) The committee or its duly authorized agent shall give prompt consideration to each application. Approval of an application based upon a determination as to whether the information contained therein and other information available to the committee supports approval shall be evidenced by notification in writing to the applicant. If an application is denied it shall be returned to the applicant with a brief statement in writing of the reasons therefor.

(b) The committee from time to time may conduct surveys of the operations of registered handlers of potatoes for chipping to determine whether such handlers are complying with requirements applicable to the handling of potatoes for chipping. Whenever the committee finds that a registered handler of potatoes for chipping has failed to furnish reports or information requested by the committee or is failing to comply with requirements and regulations applicable to the handling of potatoes for chipping, the committee may rescind the registration of such handler. Such disqualification shall apply to and not exceed a reasonable period of time as determined by the committee but in no event shall it extend beyond the succeeding fiscal period. Any handler whose registration as a registered handler of potatoes for chipping is rescinded, or whose application therefor has been denied, may appeal to the committee in writing for reconsideration of such disqualification or denial.

Dated: December 8, 1960.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60–11579; Filed, Dec. 12, 1960; 8:50 a.m.]

[7 CFR Part 1032]

CARROTS GROWN IN SOUTH TEXAS

Notice of Proposed Rule Making

Notice is hereby given that the Secretary of Agriculture is considering the approval of the rules and regulations, hereinafter set forth, which were recommended by the South Texas Carrot Committee, established pursuant to Marketing Agreement No. 142 and Order No. 132 (7 CFR Part 1032; 25 F.R. 9523) regulating the handling of carrots grown in designated counties of South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Consideration will be given to any data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 10 days following publication of this notice in the FEDERAL REGISTER. The proposals are as follows:

GENERAL

Sec.
1032.100 Order.
1032.101 Terms.
1032.102 Communications.
1032.103 Registered handler.
1032.104 Fiscal period.

SAFEGUARDS

1032.120 Policy.
1032.121 Qualification.
1032.122 Application.
1032.123 Approval.
1032.124 Reports.
1032.125 Disqualification.

AUTHORITY: §§ 1032.100 to 1032.125 issued under Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL

§ 1032.100 Order.

Order means this part (§ 1032.1 to 1032.92; 25 F.R. 9523) regulating the handling of carrots grown in South Texas.

§ 1032.101 Terms.

The terms used in this subpart shall have the same meaning as when used in the order.

§ 1032.102 Communications.

Unless otherwise provided in the order, or by specific direction of the committee, all reports, applications, submittals, requests and communications in connection with the order shall be addressed to the South Texas Carrot Committee, at its principal office.

§ 1032.103 Registered handler.

For purposes of this part any person who operates an established packing house within the production area with commonly accepted adequate facilities for grading and packing carrots for market, and who customarily buys carrots from producers for grading, packing, and marketing shall be recorded by the committee as a registered handler. Any other person who wishes to be listed as a registered handler may make application for registration on forms furnished by the committee. If such applicant has facilities available to him that are determined by the committee to be adequate for grading and packing carrots for market, and he assumes responsibility for inspection of carrots handled by him, and for assessments thereon, he may be approved and recorded as a registered handler. If the committee determines from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating the reason for denial of his application. Any registration of a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application. Any handler whose registration has been canceled shall be so informed by written notice thereof stating the reason therefor. The committee shall also notify producers of each such cancellation of handler registration through committee bulletins or published notice in local newspapers of general distribution or both.

§ 1032.104 Fiscal period.

The inital fiscal period shall begin on the effective date of this part, October 5, 1960, and end on July 31, 1961. Thereafter, each fiscal period shall begin on August 1 of each year and end on July 31 of the following year, both dates inclusive.

SAFEGUARDS

§ 1032.120 Policy.

Whenever shipments of carrots for special purposes pursuant to § 1032.53 are relieved in whole or in part from regulations issued under § 1032.52, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such carrots in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

§ 1032.121 Qualification.

Before handling carrots for special purposes which do not meet regulations issued pursuant to § 1032.52, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle carrots, (b) agree to comply with reporting and other requirements set forth in §§ 1032.120 to 1032.125, inclusive, with respect to such shipments, and (c) receive approval of the committee, or its duly authorized agents, to so handle carrots. Such approval will be based upon evidence furnished in his application for Certificate of Privilege and other information available to the committee.

§ 1032.122 Application.

(a) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, and quality of the carrots to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the carrots are to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 1032.120.

(b) The committee may require each handler making shipments of carrots for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525–V applicable to such shipment.

§ 1032.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of carrots to be sold or transported to a designated consignee for the purposes declared.

§ 1032.124 Reports.

Each handler of carrots shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 1032.125 Disqualification.

The committee from time to time may conduct surveys of handling of carrots for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with requirements and regulations applicable to handling of carrots in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a Certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

Dated: December 8, 1960.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60–11578; Filed, Dec. 12, 1960; 8:50 a.m.]

ATOMIC ENERGY COMMISSION

[10 CFR Part 25]

PERMITS FOR ACCESS TO RESTRICTED DATA

Notice of Proposed Rule Making

The Atomic Energy Commission is considering proposed amendments to the regulations governing "Permits for Access to Restricted Data," 10 CFR Part 25.

All classified work in the gas centrifuge field that private firms may desire to perform for private accounts will be within the purview, and subject to the applicable conditions, of the AEC access program. The proposed amendments would establish the criteria for access to Secret Restricted Data in a new Category C–24, Isotope Separation—Gas Centrifuge Method, and prescribe additional information to be included in an application for a permit for access to Secret Restricted Data in Category C–24.

In addition to the terms and conditions prescribed in § 25.23 and the requirements of section 151 of the Atomic Energy Act of 1954, a person granted an access permit authorizing access to Secret Restricted Data in Category C–24, Isotope Separation—Gas Centrifuge Method, will be required (i) to report to the Atomic Energy Commission on a quarterly basis all patent applications on inventions and discoveries and other information (including proprietary information) pertaining to the permittee's activities in the gas centrifuge field during the term of the access permit and for one year thereafter; and (ii) to make available to the Atomic Energy Commission for inspection all experimental equipment and technical data developed during the term of the access permit and for one year thereafter in the course of the permittee's work in the gas centrifuge field. To the extent that the Atomic Energy Commission desires to use any such invention, discovery or proprietary information, it will have the right to do so and will pay just compensation for any such use.

Notice is hereby given that adoption of the following amendments to 10 CFR Part 25, is contemplated. All interested persons who desire to submit written comments and suggestions for consideration in connection with the proposed rules should send them in triplicate to the Secretary, U.S. Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Reactor Development, within sixty days after publication of this notice in the FEDERAL REGISTER.

The Atomic Energy Commission emphasizes that the granting of an access permit under the proposed amendment will impose no obligation on the Commission to grant any license for a production facility or otherwise facilitate the commercial use or sale of any invention or development which may result therefrom.

The proposed amendments are as follows:

1. Section 25.11 is amended by revising the undesignated sentence following paragraph (d)(7) to read as follows:

In addition, if access to Secret Restricted Data in Category C–24, Isotope Separation—Gas Centrifuge Method, or Category C–65, Plutonium Production is requested, the application should also include sufficient information to satisfy the requirements of § 25.15(b)(2) or (3), as the case may be.

2. Section 25.15(b) is amended by adding subparagraph (3) as follows:

(3) An application for an access permit authorizing access to Secret Restricted Data in Category C–24, Isotope Separation—Gas Centrifuge Method will be approved only if the application demonstrates also that the applicant: (i) Possesses qualifications demonstrating that he is capable of making a contribution to research and development in the gas centrifuge method of isotope separation and is directly engaged in or proposes to engage in a substantial research and development program in the centrifuge field or a substantial effort to develop, design, build or operate a gas centrifuge plant; or (ii) is furnishing to a permittee having access to Category C–24 under the subdivision (i) of this subparagraph substantial scientific, engineering or other professional services

to be used by said permittee in carrying out the activities for which said permittee received access to Category C–24.

3. Section 25.23 is amended as follows:

a. The following sentence is added to paragraph (c) (4):

In the case of an access permit authorizing access to Secret Restricted Data in Category C–24, Isotope Separation—Gas Centrifuge Method, the agreement shall also provide for such requirements as the permittee considers necessary for purposes of fulfilling its obligations under paragraph (d) of this section.

b. The following new paragraph (d) is added:

(d) The following terms and conditions are applicable to an access permit authorizing access to Secret Restricted Data in Category C–24, Isotope Separation—Gas Centrifuge, irrespective of whether access to AEC's Restricted Data information is desired:

(1) The permittee will, upon request, grant to the United States a non-exclusive, irrevocable license, to use and have used for Government purposes any U.S. patent or any U.S. patent application (otherwise in condition for allowance except for a secrecy order thereon) on any invention or discovery made or conceived, during the term of the permit and for one year thereafter, by the permittee or its employees or others engaged by the permittee, in the course of the permittee's work in the gas centrifuge field. The United States will pay reasonable royalties for any use it may make of any such invention or discovery.

(2) The permittee will, upon request, grant to the Commission the right to use, for any Commission research development, production, or manufacturing programs, any technical information or data of a proprietary nature, developed during the term of the permit and for one year thereafter, by the permittee or its employees or others engaged by the permittee, in the course of the permittee's work in the gas centrifuge field, and not covered by a U.S. patent or U.S. patent application referred to in subsection 1 above. In the event that the Commission desires to make use of such proprietary, technical information or data it will pay reasonable compensation therefore. If the Commission disseminates any such proprietary technical information or data in its possession to any of its contractors for use in any Commission research, development, production, or manufacturing programs, it will do so under contractural provisions pursuant to which the contractor would undertake to use the information only for the work under the pertinent Commission contract. Notwithstanding the foregoing provisions of this subparagraph, the permittee waives any claim against the Commission for compensation, or otherwise, in connection with any use or dissemination of information or data not specifically identified and claimed by the permittee as proprietary in a written notice to the Commission at the time of the furnishing of the information or data to the Commission. As used in this subsection 2, the term "technical information or data of a proprietary nature" means information or data which (i) is not the property of the Government by virtue of any agreement; (ii) concerns the details of trade secrets or manufacturing processes which the permittee has protected from use by others; and (iii) is specifically identified as proprietary at the time it is made available to the Commission. Technical information or data shall not be deemed proprietary in nature whenever similar technical information is available to the Commission which has been prepared, developed or furnished as non-proprietary information by another source independently of the proprietary information and data furnished by the permittee.

(3) The acceptance, exercise, or use of the licenses or rights provided for subparagraphs (1) and (2) of this paragraph shall not prevent the Government, at any time, from contesting their validity, scope or enforceability.

(4) The permittee agrees to make quarterly reports to the Commission in writing, in reasonable detail, respecting all technical information or data which the permittee or the Commission considers may be of interest to the Commission including reports of patent applications on inventions and discoveries and of technical information and data of a proprietary nature. These reports will cover the results of the permittee's work in the gas centrifuge field. All reports referred to in this subparagraph shall pertain only to activities during the term of the access permit and for one year thereafter.

(5) The permittee agrees to make available to the Commission, at all reasonable times, for inspection by Commission personnel, or by mutual agreement, others on behalf of the Commission, all experimental equipment and technical data developed, during the term of the permit and for one year thereafter, by the permittee or its employee or others engaged by the permittee, in the course of the permittee's work in the gas centrifuge field. The foregoing provision of this subparagraph shall be subject to the provisions of subparagraphs (1) and (2) of this paragraph.

4. Appendix "A" is amended by adding the following:

C–24 Isotope Separation—Gas Centrifuge Method. This Category includes information on the following:

(a) Any aspect of separating one or more isotopes of an element from a composition containing a mixture of isotopes of that element by the gas centrifuge method.

(b) Design, construction and operation of any plant, facility or device capable of separating one or more isotopes of an element from a composition containing a mixture of isotopes of that element by the gas centrifuge method, including means and methods of transporting materials from one to another centrifuge.

Dated at Germantown, Md., this 6th day of December 1960.

For the Atomic Energy Commission.

HAROLD D. ANAMOSA,
Acting Secretary.

[F.R. Doc. 60–11546; Filed, Dec. 12, 1960; 8:45 a.m.]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 107]

SMALL BUSINESS INVESTMENT COMPANIES

Notice of Proposed Rule Making

Notice is hereby given that pursuant to the authority contained in sections 304 and 308 of the Small Business Investment Act of 1958, Pub. Law 85–699, 72 Stat. 694, as amended, it is proposed to amend, as set forth below, § 107.103–1, twelfth paragraph, § 107.304–1, and § 107.305–1 of Part 107, Subchapter B, Chapter I, of Title 13 of the Code of Federal Regulations. Prior to the final adoption of such amendments, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in triplicate, to the Small Business Investment Division, Small Business Administration, Washington 25, D.C., within a period of twenty days of the date of publication of this notice in the FEDERAL REGISTER.

Information. The amendments under consideration provide a clarification of the definition of a small business concern, in addition to the size standards, and clarify and provide certain requirements to assure long-term financing.

It is proposed to amend the Small Business Investment Company Regulations as follows:

1. Deleting § 107.103–1, twelfth paragraph, and inserting in lieu thereof the following new paragraph. As amended § 107.103–1, twelfth paragraph, reads as follows:

§ 107.103–1 Definitions.

* * * * *

Small business concern. "Small business concern" means (a) one which meets the size standard under § 121.3–11 of this chapter; (b) one which intends to conduct a regular and continuous business operation for profit for a period of not less than five years from the date of any financing by the Licensee, including a regular operation consisting of a series of projects, ventures, or activities; and (c) one which is not a holding company or passive investor.

2. Deleting paragraphs (e) to (g) of § 107.304–1 and inserting in lieu thereof the following new paragraphs (e) through (i) and redesignating paragraphs (h), (i), (j), (k), (l), (m), (n), and (o) as (j), (k), (l), (m), (n), (o), (p), and (q). As amended § 107.304–1 (e) to (i) reads as follows:

§ 107.304–1 Equity Capital for incorporated small business concerns.

* * * * *

(e) A Licensee shall not purchase or acquire any type of Equity Securities if the purpose of such purchase or acquisition is to furnish the small business concern with financing for a period of less than five years' duration. Equity Securities shall not require repayments during the first five years at a rate exceeding twenty percent of principal per annum.

(f) A small business concern which conducts a business operation consisting of a series of projects, ventures or activities, each of which would normally require less than five years to complete, shall not be permitted to repay or redeem the financing during the first five years at a rate in excess of twenty percent of the principal per annum.

(g) Equity Securities which evidence a debt shall have stated maturities of not less than five years and, except as provided in paragraph (f) of this section, shall be callable on such terms as may be negotiated at the time of issuance of such Equity Securities, in whole or in part, by the issuer on any interest payment date, upon three months' notice, provided that any right to convert the debt may be exercised prior to the effective date of such call. Such securities shall be acquired by a Licensee simultaneously with the disbursement of Equity Capital and shall evidence the total principal amount, plus interest rate, required to be paid by the small business concern in consideration for the amount of Equity Capital disbursed. Such disbursement may be evidenced by an instrument or instruments in such form and substance as may be negotiated between the Licensee and said concern consistent with the Act and regulations thereunder, provided that the maturity or maturities set forth in such instrument or instruments shall not require repayment of the total principal amount evidenced by such instrument or instruments during the first five years at a rate in excess of twenty percent of the total principal thereof per annum. Whenever more than one instrument is employed, each instrument shall state on the face thereof the maturity date of the particular instrument and make reference to the maturity date(s) of the other instrument(s) constituting the disbursement.

(h) Except as provided in paragraph (f) of this section, any redemption provisions of certificates of stock shall be on such terms as may be negotiated at the time of issuance thereof, provided the redemption provisions are exercisable, in whole or in part, upon three months' notice, and provided further that any such stock which contains conversion rights may be converted prior to the effective date of such redemption.

(i) Equity Securities with maturities of less than five years may be purchased or acquired by a Licensee when necessary to protect the interests of the Licensee in previously issued long-term Equity Securities provided that the identical conditions and privileges covering the long-term Equity Securities shall otherwise apply thereto. Equity Securities with maturities of less than five years' duration will not be construed "to protect the interests of the Licensee in previously issued Equity Securities" if the purpose of such short-term Equity Securities is to take care of seasonal or routine short-term requirements of the small business concern.

3. Deleting paragraphs (b) and (c) of § 107.305–1 and inserting in lieu thereof the following new paragraphs (b) to (e) and redesignating paragraphs (d), (e), and (f) as (f), (g), and (h). As amended § 107.305–1 reads as follows:

§ 107.305–1 Long-term loans by Licensees to small business concerns.

* * * * *

(b) A Licensee shall not make any such loan if the purpose of such loan is to furnish the small business concern with financing for a period of less than five years' duration. Any such loan shall not require repayments during the first five years at a rate exceeding twenty percent of principal per annum.

(c) A small business concern which conducts a business operation consisting of a series of projects, ventures or activities, each of which would normally require less than five years to complete, shall not be permitted to repay any such loan during the first five years at a rate in excess of twenty percent of the principal per annum.

(d) Any such loan shall have a stated maturity of not less than five years and, except as provided in paragraph (c) of this section, all or any part of any such loan may be anticipated by the borrower on any interest payment date upon such terms as may be negotiated at the time of disbursement of the loan. The instrument or instruments evidencing any such loan shall be acquired by a Licensee simultaneously with the disbursement of the loan funds and shall evidence the total principal amount, plus interest rate, required to be paid by the small business concern, in consideration for the amount of loan funds disbursed. Such disbursement may be evidenced by an instrument or instruments in such form and substance as may be negotiated between the Licensee and said concern consistent with the Act and regulations thereunder, provided that the maturity or maturities set forth in such instrument or instruments shall not require repayment of the total principal amount evidenced by such instrument or instruments during the first five years at a rate in excess of twenty percent of the total principal thereof per annum. Whenever more than one instrument is employed, each instrument shall state on the face thereof the maturity date of the particular instrument and make reference to the maturity date(s) of the other instrument(s) constituting the disbursement.

(e) Loans with maturities of less than five years may be made by a Licensee to a borrower when necessary to protect the interests of the Licensee in previously issued long-term loans or Equity Securities. Loans with maturities of less than five years' duration will not be construed "to protect the interests of the Licensee" if the purpose of such short-term loan is to take care of seasonal or routine short-term requirements of the small business concern.

Dated: December 5, 1960.

PHILIP MCCALLUM,
Administrator.

[F.R. Doc. 60–11559; Filed, Dec. 12, 1960; 8:47 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Narcotics

REGULATORY TAXES ON NARCOTIC DRUGS

Excepted Narcotic Pharmaceutical Preparations

On November 9, 1960, a notice was published in the FEDERAL REGISTER (25 F.R. 10702) that the Commissioner of Narcotics proposed to make a finding excepting certain narcotic pharmaceutical preparations from some of the requirements of the Federal narcotic laws and regulations pursuant to the provisions of section 4702(a) of the Internal Revenue Code of 1954, as amended by section 4(c) of the Narcotics Manufacturing Act of 1960 (74 Stat. 58).

After due notice and opportunity for public hearing, and after consideration of all relevant matters presented, including the proposal set forth in the notice, it is hereby found that the following described pharmaceutical preparations containing narcotic drugs either possess no addiction-forming or addiction-sustaining liability, or do not possess an addiction-forming or addiction-sustaining liability sufficient to warrant imposition of all the requirements of the Federal narcotic laws, and do not permit recovery of a narcotic drug having such an addiction-forming or addiction-sustaining liability, with such relative technical simplicity and degree of yield as to create a risk of improper use:

1. Pharmaceutical preparations containing not more than 129.6 mgs. (2 grs.) opium per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

2. Pharmaceutical preparations containing not more than 16.2 mgs. (¼ gr.) morphine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

3. Pharmaceutical preparations containing not more than 64.8 mgs. (1 gr.) codeine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

4. Pharmaceutical preparations containing not more than 32.4 mgs. (½ gr.) dihydrocodeine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

5. Pharmaceutical preparations containing not more than 16.2 mgs. (¼ gr.) ethylmorphine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.).

Each preparation mentioned in 1, 2, 3, 4, and 5 shall in addition contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

6. Pharmaceutical preparations in solid form containing not more than 2.5 mgs. diphenoxylate and not less than 25 micrograms atropine sulfate per dosage unit;

7. Pharmaceutical preparations containing noscapine, or any of its salts;

8. Pharmaceutical preparations containing papaverine, or any of its salts;

9. Pharmaceutical preparations containing narceine, or any of its salts;

10. Pharmaceutical preparations containing cotarnine, or any of its salts.

Each preparation mentioned in 7, 8, 9, and 10 shall not be limited by quantity of the narcotic drug, but the preparation shall contain active or inactive non-narcotic ingredients of the type used in medicinal preparations.

It is further found that the first six pharmaceutical preparations shall be designated as Class "X" products, to be subjected to such requirements as indicated for Class "X" products, as set forth in 26 CFR 151.421–151.427, as amended.

It is found further that the last four pharmaceutical preparations shall be designated as Class "M" products, to be subjected to such requirements as indicated for Class "M" products in 26 CFR 151.421–151.427, as amended.

This notice shall be effective on and after January 1, 1961.

Dated: December 2, 1960.

[SEAL] H. J. ANSLINGER,
Commissioner of Narcotics.

Approved: December 6, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60–11561; Filed, Dec. 12, 1960; 8:50 a.m.]

Office of the Secretary

[Treasury Dept. Order 150–53]

ANCHORAGE, ALASKA

Internal Revenue District

By virtue of the authority vested in me as Secretary of the Treasury by Reorganization Plan No. 26 of 1950, Reorganization Plan No. 1 of 1952, section 7621 of the Internal Revenue Code of 1954, as amended, and Executive Order 10289, approved September 17, 1951, made applicable to the Internal Revenue Code of 1954 by Executive Order 10574, approved November 5, 1954, it is hereby ordered:

1. *Area comprising Alaska removed from Internal Revenue District, Seattle.* The area comprising the State of Alaska is removed from the Internal Revenue District, Seattle.

2. *Establishment of Internal Revenue District and Office of District Director.* An internal revenue district to be known as Internal Revenue District, Anchorage, which shall include the area comprising the State of Alaska, and an office of District Director, Anchorage, are established in the San Francisco Region for all purposes authorized by the internal revenue laws of the United States.

3. *Effective date.* This order shall be effective January 1, 1961.

Dated: December 7, 1960.

[SEAL] FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F.R. Doc. 60–11510; Filed, Dec. 12, 1960; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 6, 1960.

The Bureau of Reclamation of the United States Department of the Interior has filed an application, Serial Number Colorado 046748, for withdrawal of the lands described below from public entry, under the first form of withdrawal as provided by section 3 of the Act of June 17, 1902 (32 Stat. 388).

The applicant desires the land for reclamation purposes in connection with the Savery-Pot Hook Project.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Colorado State Office, 339 New Custom House, P.O. Box 1018, Denver 1, Colorado.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary of the Interior on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 11 N., R. 89 W.,
Sec. 4, Lots 6 and 7.
T. 12 N., R. 89 W.,
Sec. 17, SW¼SW¼;
Sec. 18, SE¼SE¼;
Sec. 19, Lot 5;
Sec. 20, Lots 1 to 4 incl., 6 to 10 incl., 13 and 14;
Sec. 21, Lots 1, 2, 3, 6 and 7;
Sec. 22, Lot 4;
Sec. 28, Lots 4, 6 and 8;
Sec. 29, Lots 1, 2 and 5 to 9 incl.,;
Sec. 30, Lots 13 and 20;
Sec. 32, Lots 1, 2 and 3;
Sec. 33, Lots 2, 4, 7, 13 and 16.
T. 12 N., R. 90 W.,
Sec. 16, NE¼SE¼ and S½S½.
T. 11 N., R. 91 W.,
Sec. 1, Lots 7, 8, 9, 10, 16 and 17;
Sec. 2, Lots 7, 8, 9, 13, 14, 15, 16, 18, 19 and 20;
Sec. 3, Lots 19 and 20;
Sec. 4, Lots 5 to 11 incl., and 13 to 20 incl.;
Sec. 5, Lots 5 to 20 incl.;
Sec. 6, Lots 8 to 18 incl., and 21 to 23 incl.;
Sec. 7, Lots 5 to 14 incl., 19 and 20;
Sec. 8, Lots 1 to 14 incl.;
Sec. 9, Lots 1 to 16 incl.;
Sec. 10, Lots 1 and 2;
Sec. 11, Lots 3 and 4;
Sec. 14, Lot 16;
Sec. 15, Lots 8 and 9;
Sec. 17, Lots 1 to 7 incl.;
Sec. 18, Lots 5, 6, 12, 13 and 20;
Sec. 19, Lots 5, 6, 11, 12, 13, 14, 19 and 20;
Sec. 20, Lot 3;
Sec. 22, Lot 10;
Sec. 23, Lots 1 and 8;
Sec. 30, Lots 5 and 6.
T. 12 N., R. 91 W.,
Sec. 19, Lots 5, 6 and 11 to 20 incl.;
Sec. 20, Lots 3, 7, 8, 10, 11 and 14;
Sec. 21, SW¼NE¼, SE¼NW¼ and S½;
Sec. 22, Lots 11 to 16 incl.;
Sec. 23, Lot 13;
Sec. 26, Lots 3 to 7 incl., and 9 to 16 incl.;
Sec. 27, Lots 1 to 11 incl., 13, 15 and 16;
Sec. 28, All;
Sec. 29, Lots 1, 4, 5, 8, 9 and 12 to 16 incl.;
Sec. 30, Lots 5 to 20 incl.;
Sec. 31, Lots 5 to 20 incl.;
Sec. 32, Lots 1 to 12 incl.;
Sec. 33, Lots 1 to 16 incl.;
Sec. 34, Lots 1, 2, 4, 5, 7 to 10 incl., 12, 13 and 16;
Sec. 35, Lots 1 to 8 incl., and 11 to 14 incl.
T. 11 N., R. 92 W.,
Sec. 1, Lots 5 to 8 incl., S½N½, and S½;
Sec. 2, Lots 5 to 8 incl., S½N½, and S½;
Sec. 3, Lots 5 to 8 incl., S½N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 4, Lots 5 to 8 incl., S½N½, N½SW¼ and NW¼SE¼;
Sec. 5, Lot 5;
Sec. 11, E½NE¼, NW¼NE¼, NW¼NW¼ SW¼, and NE¼SE¼;
Sec. 12, N½NE¼, SW¼NE¼, NW¼ and NW¼SW¼.
T. 12 N., R. 93 W.,
Sec. 17, Lots 6 to 13 incl., and 16 to 23 incl.;
Sec. 18, Lots 1 to 4 incl., 7 to 10 incl., 12 to 18 incl., and SW¼SE¼.
T. 12 N., R. 94 W.,
Sec. 13, Lots 2, 3, and 4, 7, 8, and 9;
Sec. 14, Lots 1 and 5.
T. 8 N., R. 96 W.,
Sec. 6, Lots 2, 6, 11, 14, 21 and 22;
T. 9 N., R. 96 W.,
Sec. 20, NE¼;
Sec. 29, Lots 7, 8, 9, 10, 18 and S½NE¼;
Sec. 31, Lots 21, 22, 23, 35 and 36;
Sec. 32, Lots 6 to 10 incl., 12 and 13.
T. 7 N., R. 97 W.,
Sec. 5, Lot 4, SW¼NW¼ and NW¼SW¼;
Sec. 6, Lots 1, 2, 5, 6 and 13, S½NE¼, NE¼SW¼ and N½SE¼.
T. 8 N., R. 97 W.,
Sec. 1, Lots 14, 15, 17, 18, 19, 20 and S½;
Sec. 10, S½NE¼ and SE¼;
Sec. 11, S½NE¼, W½NW¼, SW¼, N½ SE¼ and SW¼SE¼;
Sec. 12, NW¼NW¼;
Sec. 14, NW¼NW¼;
Sec. 15, N½;
Sec. 16, E½;
Sec. 21, Lot 12, NE¼, N½SE¼ and SW¼ SE¼;
Sec. 28, NW¼NW¼;
Sec. 29, Lots 9, 10, 11, E½SW¼, W½SE¼ and NE¼SE¼;
Sec. 32, NE¼NW¼, SW¼NW¼ and W½ SW¼.
T. 6 N., R. 98 W.,
Sec. 5, Lots 6, 7, 8, 12, 17, 21 and SW¼NW¼;
Sec. 6, Lot 8, SE¼NE¼ and E½SE¼;
Sec. 7, Lot 9, NE¼ and E½SW¼;
Sec. 8, Lots 6, 7 and 17;
Sec. 16, Lots 1 to 4 incl., NW¼NW¼, and S½NW¼;
Sec. 17, Lot 1;
Sec. 18, Lot 8 and E½W½;
Sec. 19, Lots 5, 6 and 12.
T. 7 N., R. 98 W.,
Sec. 1, Lots 11 to 14 incl., S½SW¼, and NE¼SE¼;
Sec. 2, Lot 21;
Sec. 11, E½NE¼;
Sec. 29, SE¼SW¼;
Sec. 32, Lot 3, W½NW¼, NW¼SW¼ and W½SW¼SW¼.
T. 6 N., R. 99 W.,
Sec. 22, S½SE¼;
Sec. 23, SW¼NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 24, Lot 1, N½NE¼, SW¼NE¼ and S½NW¼;
Sec. 27, Lot 1.

The above areas aggregate 23,746.41 acres.

J. ELLIOTT HALL,
Lands and Minerals Officer.

[F.R. Doc. 60–11556; Filed, Dec. 12, 1960; 8:46 a.m.]

[W–0118976]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 6, 1960.

The Bureau of Reclamation, United States Department of the Interior, has filed an application in the Wyoming Land Office, Serial No. Wyoming 0118976, for withdrawal of the lands described below from all forms of appropriation under the first form of withdrawal as provided by section 3 of the Act of June 17, 1902 (32 Stat. 388). Grazing administration will remain under the jurisdiction of the Bureau of Land Management until such time as the lands are actually required for reclamation purposes.

The applicant desires the land for construction of the Savery-Pot Hook Project features and potential farm units, in connection with the Savery-Pot Hook Project.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the State Supervisor, Bureau of Land Management, P.O. Box 929, Cheyenne, Wyoming.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary of the Interior on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN

T. 13 N., R. 89 W.,
Sec. 11, SE¼NW¼, NE¼SW¼, SW¼SW¼;
Sec. 15, SW¼SE¼.
T. 14 N., R. 89 W.,
Sec. 2, Lots 5, 6, 7, NE¼NW¼;
T. 15 N., R. 89 W.,
Sec. 25, Lot 6;
Sec. 35 Lots 1 to 5, inclusive, SE¼NW¼, SW¼.
T. 12 N., R. 90 W.,
Sec. 1, Lot 1;
Sec. 8, SE¼;
Sec. 17, NE¼NE¼;
Sec. 19, Lots 1, 2.
T. 13 N., R. 91 W.,
Sec. 27, SW¼NW¼;
Sec. 34, Lot 1.
T. 12 N., R. 93 W.,
Sec. 17, SW¼NE¼, S½NW¼, S½;
Sec. 18, SE¼SE¼;
Sec. 19, Lot 2;
Sec. 20, Lots 1, 2;
Sec. 21, Lots 1, 2.

The above areas aggregate 1485.45 acres more or less of public lands.

EUGENE L. SCHMIDT,
Lands and Minerals Officer.

[F.R. Doc. 60–11557; Filed, Dec. 12, 1960; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

[Docket No. 926]

INCREASED INTER-ISLAND CLASS AND COMMODITY RATES BETWEEN PORTS OF CALL WITHIN STATE OF HAWAII

Notice of Investigation and Hearing

On December 1, 1960, the Federal Maritime Board entered the following order:

It appearing, that there has been filed with the Federal Maritime Board by Young Brothers, Limited of Honolulu, Hawaii, a tariff setting forth increased class and commodity rates between ports of call on the Islands of Oahu, Hawaii, Maui, Kauai, and Molokai, to become effective December 4, 1960, designated as follows:

Young Brothers, Limited of Honolulu, Hawaii, F.M.B.F.—No. 2

It further appearing, that upon consideration of the said schedule, there is reason to believe that it would, if permitted to become effective, result in rates and charges, rules and regulations or practices which would be unjust and unreasonable or otherwise unlawful in violation of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, as amended; and good cause appearing therefor;

It is ordered, That an investigation be, and it is hereby, instituted into and concerning the lawfulness of the rates, charges, rules, regulations and practices contained in said schedule, as amended, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant; and

It is further ordered, That the operation of said schedule, be and it is hereby suspended in full, and that the use thereof be deferred to and including April 3, 1961, unless otherwise ordered by the Board; and

It is further ordered, That the schedule hereby suspended may not be changed until this investigation and suspension proceeding has been disposed of or until the period of suspension has expired, unless otherwise authorized by the Board; and

It is further ordered, That there shall be filed immediately with the Board by the Young Brothers, Limited of Honolulu, Hawaii, a consecutively-numbered supplement to Tariff F.M.B.F.-No. 2 which shall reproduce the portion of this Order

wherein the suspended designated tariff is described, and shall state that such tariff as amended is suspended and that the rates, charges, rules, regulations and practices therein stated may not be used until the fourth day of April, 1961, unless otherwise authorized by the Board; and that neither the rates, charges, rules, regulations and practices hereby deferred nor those which sought to be altered thereby, may be changed during the period of suspension or any extension thereof, unless otherwise authorized by the Board; and

It is further ordered, That copies of this order shall be filed with said tariff schedule in the Office of Regulations of the Federal Maritime Board; and

It is further ordered, That the investigation herein ordered be assigned for hearing before an examiner of the Board's Office of Hearing Examiners at a date and place to be determined and announced by the Chief Examiner; that Young Brothers, Limited of Honolulu, Hawaii, be and is hereby made respondent in this proceeding; that a copy of this order shall be forthwith served upon respondent and protestants herein; that respondent and protestants be duly notified of the time and place of the hearing herein ordered; and that this order be published in the FEDERAL REGISTER.

Pursuant to the above order, notice is hereby given that the hearing herein ordered will be held before an examiner of the Board's Office of Hearing Examiners' at a date and place to be determined and announced by the Chief Examiner. The hearing will be conducted in accordance with the Board's rules of practice and procedure, and an initial decision will be issued by the examiner.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies), having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Board promptly and file petitions for leave to intervene in accordance with Rule 5(n) (46 CFR 201.74) of said rules.

Dated: December 7, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11565; Filed, Dec. 12, 1960; 8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-154]

MARTIN CO.

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to March 1, 1961, the latest completion date specified in Construction Permit No. CPCX-17 for the construction of the liquid fluidized bed reactor critical experiments facility to be located near Middle River, Md.

Copies of the Commission's order and of the application of the Martin Co. are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 6th day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-11549; Filed, Dec. 12, 1960; 8:45 a.m.]

[Docket No. 50-30]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to January 1, 1962, the latest completion date specified in Construction Permit No. CPTR-3 for the construction of the research and testing reactor to be located at NASA's site near Sandusky, Ohio.

Copies of the Commission's order and of the application of National Aeronautics and Space Administration are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 6th day of December 1960.

For the Atomic Energy Commission,

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-11550; Filed, Dec. 12, 1960; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 3496]

CAPITAL AIRLINES, INC., ET AL.; GREENSBORO-HIGH POINT/WINSTON-SALEM; SERVICE THROUGH A SINGLE AIRPORT

Notice of Hearing

In the matter of the investigation to determine whether Greensboro-High Point/Winston-Salem should be served through a single designated airport and, if so, which airport should be designated for service by Capital Airlines, Inc., Eastern Air Lines, Inc., and/or Piedmont Aviation, Inc.

Notice is hereby given pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on January 4, 1961, in the Board Room of the Winston-Salem Chamber of Commerce, 2640 North Cherry Street, Winston-Salem, North Carolina, at 10 a.m., e.s.t., before Examiner Paul N. Pfeiffer.

Without limiting the scope of the issues to be considered, particular attention will be directed to the following matters:

1. Whether the Board should order the alteration, amendment, or modification of the certificates of public convenience and necessity of Capital Airlines, Inc., Eastern Air Lines, Inc., and/or Piedmont Aviation, Inc., so as to provide service to the single designated point Greensboro-High Point/Winston-Salem through a single airport or through more than one airport.

2. If the Board orders service by one or more of the above-designated air carriers through a single airport, whether the airport so designated for service shall be the Greensboro-High Point Friendship Airport, the Winston-Salem Smith Reynolds Airport or a third airport in the area as yet unconstructed.

For further details of the issues involved in this proceeding interested persons are referred to the applications and any amendments thereto, petitions, motions, and orders entered in the docket of this proceeding, all of which are on file with the Civil Aeronautics Board.

Notice is further given that any person other than parties of record desiring to be heard in this proceeding should file with the Board, on or before January 4, 1961, a statement setting forth the issues of fact or law to be presented.

Dated at Washington, D.C., December 8, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11575; Filed, Dec. 12, 1960; 8:49 a.m.]

[Docket 11612]

McDONNELL AIRCRAFT CORP.

Notice of Prehearing Conference

In the matter of the application of McDonnell Aircraft Corporation for a temporary certificate of public convenience and necessity authorizing supplemental air service to transport persons and property between points within the United States.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 19, 1960, at 10:00 a.m., e.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Paul N. Pfeiffer.

Dated at Washington, D.C., December 7, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11576; Filed, Dec. 12, 1960; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 8, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36767: *Vermiculite and perlite from and to southwestern territory.* Filed by Southwestern Freight Bureau, Agent, (No. B-7933), for interested rail carriers. Rates on Vermiculite and perlite, in carloads, as described in the application, between points in southwestern territory, on the one hand, and points in Illinois territory, on the other.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 84 to Southwestern Freight Bureau tariff I.C.C. 4330.

FSA No. 36768: *Bituminous coal to Connecticut points.* Filed by R. G. Gill, Agent, (No. E.R. 2564), for interested rail carriers. Rates on bituminous coal, in carloads, as described in the application, from origins in Clearfield and Westmoreland mine regions of Pennsylvania, as described in the application, to East Wallingford, Middlefield, Rockfall and Middletown, Conn.

Grounds for relief: Maintain origin rate relationships.

Tariff: Supplement 49 to Baltimore and Ohio Railroad tariff C&C I.C.C. 3150, and other schedules named in the application.

FSA No. 36769: *Peanut hulls from and to points in official territory.* Filed by Traffic Executive Association-Eastern Railroads, Agent, (No. E.R. 2563), for interested rail carriers. Rates on peanut hulls, in carloads, between points in official (not including Illinois) territory, between points in official (not including Illinois) territory, on the one hand, and points in Illinois territory, on the other, between points in Illinois territory, also from points in southern territory to points in official (including Illinois) territory.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplements 23 and 25 to Traffic Executive Association-Eastern Railroads tariffs I.C.C. 137 and 135, respectively, and supplements 24 and 32 to Illinois Freight Association tariffs I.C.C. 935 and 938, respectively.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11566; Filed, Dec. 12, 1960; 8:48 a.m.]

[Notice 422]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 8, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63642. By order of December 7, 1960, the Transfer Board approved the transfer to Beaufort Transfer Company, Gerald, Mo., of Certificates Nos. MC-78400 and MC-78400 Sub 9, issued August 8, 1957 and August 20, 1958, respectively, to John Meyer, Leo Flottmann, Roy Flottmann, and Olin Flottmann, doing business as Beaufort Transfer Company, Gerald, Mo., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Belle, Mo., and Jeffriesburg, Mo., between Jeffriesburg, Mo., and St. Louis, Mo., between Jeffriesburg, Mo., and East St. Louis, Ill., between Owensville, Mo., and St. Louis, Mo., and between Gerald, Mo., and Japan, Mo., serving intermediate and off-route points as specified; general commodities, excluding household goods and other specified commodities, between Belle, Mo., and the plant site of the Kingsford Charcoal Company southwest of Belle; livestock, from Owensville, Mo., to National Stock Yards, Ill., serving intermediate and off-route points within 12 miles of Owensville; mixed feed, fertilizer, and tankage, from East St. Louis, Ill., to Beaufort, Mo., and points within 10 miles of Beaufort, livestock, between Beaufort, Mo., and points within ten miles of Beaufort, on the one hand, and, on the other, National Stock Yards, Ill.; household goods, between Gerald, Mo., and points within 25 miles of Gerald, on the one hand, and, on the other, points in Illinois; charcoal, in containers, from the site of Hickory Charcoal, Inc., plant located approximately five miles northwest of Owensville, Mo., to Owensville, Mo., from junction Missouri Highway 28, and U.S. Highway 50 north of Owensville, Mo., to Kansas City, Mo.; and empty containers and equipment, materials, and supplies used in the production of charcoal from Owensville, Mo., to the site of Hickory Charcoal Inc., plant, and from Kansas City, Mo., to junction Missouri Highway 28 and U.S. Highway 50 north of Owensville, Mo. Joseph R. Nacy, P.O. Box 352, Jefferson City, Mo., and William J. Tate, 7 North Seventh Street, St. Louis, Mo., attorneys for applicants.

No. MC-FC 63749. By order of December 7, 1960, the Transfer Board approved the transfer to Joseph Conrad, Florence, Ky., of Certificate No. MC 7929, issued July 1, 1959, to Joseph Dringenburg, doing business as Heile Brothers Company, Covington, Ky., authorizing the transportation of: General commodities, over irregular routes, excluding household goods, commodities in bulk, and other specified commodities, between Covington, Ky., on the one hand, and, on the other, Cincinnati, Ohio, and between points in Covington, Ky., and Cincinnati, Ohio.

No. MC-FC 63788. By order of December 7, 1960, the transfer Board approved the transfer to D. C. Wattenburger and W. Wattenburger, a partnership, doing business as Wattenburger Truck Service, Fort Worth, Texas, of Certificate in No. MC 31515, issued July 27, 1955, to D. C. Wattenburger and Ott Wattenburger, a partnership, doing business as Wattenburger Truck Service, Fort Worth, Texas, authorizing the tranportation of: Building materials, between Bennett, Texas, and Denton, Texas, serving all intermediate regular route points and building materials between points within 50 miles of Fort Worth, Texas, including Fort Worth, over irregular routes. Cecil A. Morgan, 2108 Continental Life Building, Fort Worth, Tex., attorney for applicants.

No. MC-FC 63773. By order of December 7, 1960, the Transfer Board approved the transfer to C. A. Magill, doing business as Magill Truck Line, Wichita, Kans., of Permit in No. MC 86610, issued May 6, 1954, to Alfred Moore, Wichita, Kansas, authorizing the transportation of: Sash and doors, mill work, steel rods, hardwood flooring, roofing and insulating materials, asphalt, in drums, brick, stone, natural and cast, cement, glass blocks, plaster, tile, and a variety of other commodities, from, to, or between specified points in Kansas and Oklahoma. John E. Jandera, 641 Harrison Street, Topeka, Kans., for applicants.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11567; Filed, Dec. 12, 1960; 8:48 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30-V-23 (Revision 1)]

MANAGER, DISASTER FIELD OFFICE, FT. MYERS, FLA.

Delegation Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation No. 30 (Revision 6), as amended (25 F.R. 1706 and 7418), there is hereby redelegated to the Manager of the Disaster Field Office at Fort Myers, Florida, the authority:

A. *Financial assistance.* 1. To approve direct and participation disaster loans in an amount not to exceed $20,000.

2. To disburse approved loans.

3. To execute disaster loan authorizations for Washington approved disaster loans and for disaster loans approved under delegated authority, said execution to read as follows:

(Name), *Administrator.*
By ----------,
(Name)
Manager, Disaster Field Office.

4. To cancel, reinstate, modify and amend authorizations for disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Correspondence.* To sign all nonpolicymaking correspondence relating to the disaster functions, except Congressional correspondence, and correspondence which includes a decision that an applicant is ineligible for disaster loan assistance.

II. The authority delegated herein may not be redelegated, with the exception of I. B.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Manager, Disaster Field Office.

Dated: October 25, 1960.

JAMES F. HOLLINGSWORTH,
Regional Director,
Atlanta Regional Office.

[F.R. Doc. 60-11560; Filed, Dec. 12, 1960; 8:47 a.m.]

[Delegation of Authority 30-V-24 (Revision 1)]

MANAGER, DISASTER FIELD OFFICE, NAPLES, FLA.

Delegation Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation No. 30 (Revision 6), as amended (25 F.R. 1706 and 7418), there is hereby redelegated to the Manager of the Disaster Field Office at Naples, Florida, the authority:

A. *Financial assistance.* 1. To approve direct and participation disaster loans in an amount not to exceed $20,000.

2. To disburse approved loans.

3. To execute disaster loan authorizations for Washington approved disaster loans and for disaster loans approved under delegated authority, said execution to read as follows:

(Name), *Administrator.*
By ----------
(Name)
Manager, Disaster Field Office.

4. To cancel, reinstate, modify and amend authorizations for disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Correspondence.* To sign all nonpolicymaking correspondence relating to the disaster functions, except Congressional correspondence, and correspondence which includes a decision that an applicant is ineligible for disaster loan assistance.

II. The authority delegated herein may not be redelegated, with the exception of I. B.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Manager, Disaster Field Office.

Dated: October 25, 1960.

JAMES F. HOLLINGSWORTH,
Regional Director,
Atlanta, Regional Office.

[F.R. Doc. 60-11561; Filed, Dec. 12, 1960; 8:47 a.m.]

[Delegation of Authority 30-V-25 (Revision 1)]

MANAGER, DISASTER FIELD OFFICE, MARATHON, FLA.

Delegation Relating to Financial Assistance Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation No. 30 (Revision 6), as amended (25 F.R. 1706 and 7418), there is hereby redelegated to the Manager of the Disaster Field Office at Marathon, Florida, the authority:

A. *Financial assistance.* 1. To approve direct and participation disaster loans in an amount not to exceed $20,000.

2. To disburse approved loans.

3. To execute disaster loan authorizations for Washington approved disaster loans and for disaster loans approved under delegated authority, said execution to read as follows:

(Name), *Administrator.*
By ----------
(Name)
Manager, Disaster Field Office.

4. To cancel, reinstate, modify and amend authorizations for disaster loans.

5. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

B. *Correspondence.* To sign all nonpolicymaking correspondence relating to the disaster functions, except Congressional correspondence, and correspondence which includes a decision that an applicant is ineligible for disaster loan assistance.

II. The authority delegated herein may not be redelegated, with the exception of I.B.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Manager, Disaster Field Office.

Dated: October 25, 1960.

JAMES F. HOLLINGSWORTH,
Regional Director,
Atlanta Regional Office.

[F.R. Doc. 60-11562; Filed, Dec. 12, 1960; 8:47 a.m.]

[Delegation of Authority 30-V-26]

BRANCH COUNSEL, MIAMI, FLA.

Delegation Relating to Legal Functions

I. Pursuant to the authority delegated to the Branch Manager by Delegation of Authority No. 30-V-6 (Revision 2), dated June 28, 1960, there is hereby redelegated to the Branch Counsel, Miami Branch Office, the following authority:

A. *Legal.* To disburse all approved loans.

B. *Correspondence.* To sign routine correspondence, except Congressional correspondence, relating to the legal functions of the branch office.

II. The authority delegated herein may not be redelegated.

III. The authority delegated herein may be exercised by any SBA employee designated as Acting Branch Counsel.

Effective date: October 28, 1960.

JAMES D. CARPENTER,
Branch Manager,
Atlanta Regional Office.

[F.R. Doc. 60-11563; Filed, Dec. 12, 1960; 8:47 a.m.]

[Delegation of Authority 30-V-27]

BRANCH COUNSEL, BIRMINGHAM, ALA.

Delegation Relating to Legal Functions

I. Pursuant to the authority delegated to the Branch Manager by Delegation of Authority No. 30-V-5 (Revision 2), dated June 27, 1960, there is hereby redelegated to the Branch Counsel, Birmingham Branch Office, the following authority:

A. *Legal.* To disburse all approved loans.

B. *Correspondence.* To sign routine correspondence, except Congressional correspondence, relating to the legal functions of the branch office.

II. The authority delegated herein may not be redelegated.

III. The authority delegated herein may be exercised by any SBA employee designated as Acting Branch Counsel.

Effective date: October 28, 1960.

FRED H. FOY,
Branch Manager,
Atlanta Regional Office.

[F.R. Doc. 60-11564; Filed, Dec. 12, 1960; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-8925]

COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Issuance and Sale of Short-Term Notes to Banks

DECEMBER 5, 1960.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), a registered holding company, has filed a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 and 7 of the Act and Rule 50(a)(2) thereunder as applicable to the proposed transaction. All interested persons are referred to said declaration for a statement of the proposed transaction which is summarized below.

Columbia proposes to issue and sell up to $5,000,000 face amount of its unsecured promissory notes to each of two banks, namely, Morgan Guaranty Trust Company of New York and Mellon National Bank and Trust Company, Pittsburgh, Pa. The notes are to be issued on or about December 15, 1960, are to mature 60 days from date of issue, are to bear interest at the prime commercial rate in effect at the date of their issuance and may be prepaid at any time without penalty. No stand-by or commitment fee is to be paid by Columbia.

The proceeds from the sale of the notes to banks are to be used for various temporary corporate purposes including the payment in December 1960 of State and Federal taxes, gas purchases and possible rate refunds by certain subsidiaries.

The estimated fees and expenses to be incurred in connection with the proposal aggregate $300. It is represented that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 15, 1960, at 12:30 p.m., request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F.R. Doc. 60-11558; Filed, Dec. 12, 1960; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

	Page
PROCLAMATIONS:	
2935	12501
3382	12587
EXECUTIVE ORDERS:	
3797-A	12412, 12599
6260	12281
9941	12429
10896	12281
10897	12429
10898	12429
10899	12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Letter, Jan. 17, 1953	12501
Letter, Nov. 16, 1960	12501

5 CFR

2	12285
6	12393, 12547, 12588, 12733
30	12733

6 CFR

421	12282, 12283

7 CFR

33	12430
718	12588
722	12393, 12403
730	12503
833	12650
845	12285
871	12547
903	12504
905—908	12504
911—913	12504
914	12405, 12650
916—919	12504
921	12504
923—925	12504
928—932	12504
933	12405-12407, 12504
935	12504
941—944	12504
946—949	12504
952	12504
953	12407, 12430, 12651
954	12504
956	12504
963	12504
965—968	12504
971—972	12504
974—978	12504
980	12504
982	12504
985—988	12504
991	12504
994—995	12504
998	12504
1000	12504
1002	12504
1004—1005	12504
1008—1009	12504
1011—1014	12504
1016	12504
1018	12504, 12588
1023—1024	12504
1031	12505, 12651, 12652
PROPOSED RULES:	
51	12298, 12299
812	12712
901	12742
923	12558
936	12465
938	12752
949	12606
965	12466
989	12476
1012	12558
1032	12712, 12752
1033	12606

8 CFR

211	12290

9 CFR

72	12548
PROPOSED RULES:	
83	12571

10 CFR

30	12730
70	12730
PROPOSED RULES:	
25	12753
115	12367

12 CFR

PROPOSED RULES:	
206	12479

13 CFR

PROPOSED RULES:	
107	12754

14 CFR

49	12352
225	12589
300	12430
302	12432
414	12589
506	12505
507	12352, 12433, 12549
514	12433
600	12285-12287, 12408, 12410, 12549-12551, 12589, 12676, 12734
601	12287, 12409, 12410, 12549-12552, 12589, 12590, 12676, 12677, 12734
602	12288, 12552, 12678
608	12678, 12679, 12734
609	12353, 12735
612	12410
1501	12434
PROPOSED RULES:	
41	12299
43	12524
302	12477
507	12477, 12478, 12571
600	12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712
601	12328, 12329, 12478, 12479, 12524, 12525, 12572-12574, 12622, 12623, 12711, 12712
608	12479

15 CFR

203	12590
371	12734

16 CFR

13	12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733

18 CFR

104	12763
154	12653

19 CFR

PROPOSED RULES:	
8	12681

21 CFR

1	12592
8	12288
120	12288, 12506
121	12412, 12595, 12731
130	12592
146	12506, 12596, 12732
146c	12289
PROPOSED RULES:	
27	12372
120	12374, 12571
121	12299, 12477

22 CFR

46	12289

25 CFR

171	12408

25 CFR—Continued Page

PROPOSED RULES:
52 ... 12518
176 ... 12299

26 (1939) CFR
16 ... 12442
17 ... 12443
29 ... 12339
39 ... 12339
40 ... 12340

26 (1954) CFR
1 ... 12340, 12345, 12654
18 ... 12340
19 ... 12654
48 ... 12669
170 ... 12732

PROPOSED RULES:
1 ... 12293, 12414, 12416, 12464, 12508, 12681, 12703
25 ... 12707
48 ... 12362
170 ... 12710
197 ... 12362
250 ... 12511

28 CFR
21 ... 12290

31 CFR
54 ... 12345

32 CFR
805 ... 12291
1008 ... 12444
1009 ... 12446
1010 ... 12449
1012 ... 12449
1013 ... 12449
1016 ... 12450, 12456
1030 ... 12451
1052 ... 12456
1053 ... 12456
1054 ... 12458
1055 ... 12462

32 CFR—Continued Page
1057 ... 12462
1059 ... 12462
1619 ... 12291

33 CFR
202 ... 12393
203 ... 12740
207 ... 12740

38 CFR
3 ... 12463

39 CFR
27 ... 12348

41 CFR
3-75 ... 12502, 12596
5-1 ... 12553
50-201 ... 12553
50-202 ... 12553

PROPOSED RULES:
50-202 ... 12363, 12522

42 CFR Page
1 ... 12292

43 CFR
76 ... 12597
181 ... 12679
192 ... 12352
257 ... 12679

PROPOSED RULES:
259 ... 12606

PUBLIC LAND ORDERS:
82 ... 12412, 12599
797 ... 12413
1253 ... 12481
1621 ... 12599
1965 ... 12599
2209 ... 12412
2210 ... 12413
2211 ... 12413
2212 ... 12597
2213 ... 12597
2214 ... 12598

43 CFR—Continued Page
PUBLIC LAND ORDERS—Continued
2215 ... 12599
2216 ... 12599

45 CFR
601—620 ... 12600

46 CFR
24 ... 12554
30 ... 12554
56 ... 12554
70 ... 12555
90 ... 12555
110 ... 12555
111 ... 12555
136 ... 12555
171 ... 12555
308 ... 12348

47 CFR
1 ... 12358, 12600, 12602, 12603, 12605
4 ... 12680
5 ... 12359
9 ... 12359
10 ... 12359
11 ... 12359
12 ... 12358
16 ... 12359
19 ... 12359
21 ... 12359, 12603, 12605

PROPOSED RULES:
1 ... 12624
3 ... 12371, 12624, 12626, 12627

49 CFR
91 ... 12506
122 ... 12506

PROPOSED RULES:
71-78 ... 12420
197 ... 12420
33 ... 12507, 12556, 12557

50 CFR
32 ... 12555

PROPOSED RULES;
14 ... 12741

Pages 12763–12806

PART II

FEDERAL REGISTER

VOLUME 25 NUMBER 241

Washington, Tuesday, December 13, 1960

Uniform System of Accounts for Class C Public Utilities and Licensees

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

SUBCHAPTER C—ACCOUNTS, FEDERAL POWER ACT

[Order No. 225; Docket No. R–184]

PART 104—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS C PUBLIC UTILITIES AND LICENSEES

This Commission has under consideration in this proceeding the revision of Part 104—Application of Uniform System of Accounts to Class C and Class D Public Utilities and Licensees of Subchapter C—Accounts, Federal Power Act, of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations (CFR), to prescribe a revised Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class C). That revised System of Accounts, as set forth in the attachment to the Notice of Proposed Rulemaking in this docket (25 F.R. 7567–7600) is prescribed hereinafter to become effective January 1, 1961.

Part 104, §§ 104.1 through 104.11, of said Title and Code correspond to, and appear at pages 195–219 of the Commission's pamphlet publication of its Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, effective January 1, 1937 (effective January 1, 1938, as to Class C and Class D Public Utilities and Licensees),[1] revised to September 1, 1957, as amended by Order No. 204[2] issued May 29, 1958 (23 F.R. 4160, June 12, 1958). That System of Accounts, as revised and prescribed hereinafter, follows the numbering system (accounts, instructions, definitions, etc.) used in the Notice of Proposed Rulemaking referred to above.

Important developments in the electric power industry since the adoption in 1936 of the Uniform System of Accounts effective January 1, 1938, and the experience of the Commission over the past 24 years indicated the need for a revision of the System of Accounts. Accordingly, this proceeding was commenced by Notice of Proposed Rulemaking served upon interested parties, including State and Federal regulatory agencies, and by publication in the FEDERAL REGISTER on August 10, 1960 (25 F.R. 7566). Copies of the proposed revised System of Accounts were served and published as a part of that general notice, as heretofore noted.

The revisions of the Commission's System of Accounts, as then proposed are prescribed hereinafter as a part of the Commission's Uniform System of Accounts to become effective January 1, 1961.

Heretofore, the Commission has not had a separately issued Uniform System of Accounts for Class C Public Utilities and Licensees, as such. The accounting requirements presently effective for small utilities (Class C and Class D), consist of an abridgement of the accounts for large public utilities and licensees by means of account charts appearing as Appendix III of the pamphlet version of the Uniform System of Accounts. In these account charts, the condensed accounts applicable to the small utilities are indicated by bracketing related account titles applicable to Class A and Class B utilities. The result is that small utilities have had to work with an inordinate amount of textual materials designed for larger utilities. An objective of the System of Accounts, prescribed hereinafter is to relieve small utilities from that burden. It is believed that the revised System of Accounts provides these smaller utilities with a simplified System of Accounts appropriate for the magnitude of their operations. The revised System of Accounts prescribed herein reflects the basic principles found in this Commission's recently issued revised Uniform System of Accounts Prescribed for Class A and Class B Public Utilities and Licensees subject to the Provisions of the Federal Power Act, Docket No. R–173. The revised System of Accounts introduces the following important improvements in this Commission's small utility accounting requirements:

a. New size classifications for electric utilities;

b. Certain necessary new accounts;

c. New arrangement of balance sheet and certain other accounts to make them more informative;

d. A reduced number of expense account classifications, mainly but not entirely, by the discontinuance of segregations of numerous functional accounts as to labor and other expenses;

e. Expanded items lists of account texts and clearer description of such items according to their functional nature, to facilitate use and consistency of respective account classifications; and

f. Restatements of the accounting aspects of certain accounting interpretations issued in the past.

In recommending the form of revised System of Accounts accompanying the Notice of Proposed Rulemaking in this proceeding, the staff of this Commission correlated its activities with the activities of the National Association of Railroad and Utility Commissioners (NARUC) which has recently prepared a form of NARUC Uniform System of Accounts for Class C electric utilities. This was done to promote continued consistency and uniformity of approach to the common problems with which the two accounting systems are concerned; and to assure a minimum amount of deviation where the two accounting systems do differ. The staff's activities in this regard were undertaken mainly with the Committee on Statistics and Accounts of the NARUC.

The aforesaid Notice of Proposed Rulemaking provided for the submission of data, views, comments, or protests in writing not later than September 12, 1960. To date no such data, views, comments, or protests have been received.

The Commission recognizes that some burden and expense will have to be borne by the accounting and reporting parties affected in connection with the transition from the present to the revised System of Accounts. However, the Commission is of the opinion that the physical burden and monetary cost of the change over is of minor importance when viewed in relation to the immediate and future benefits to be derived from the revised System of Accounts, as prescribed herein.

For the convenience of all parties concerned, Appendix A set forth below correlates the account titles of the Commission's Uniform System of Accounts applicable to Class C Public Utilities and Licensees, effective January 1, 1938, with the revised System of Accounts prescribed herein effective January 1, 1961. Being a schematic presentation only, and of a very general nature, nothing contained therein shall be construed as in any way modifying the general or specific account titles, texts, and instructions of either of the Systems of Accounts.

Also, it should be noted that for the period of time required for the preparation and publication of the revised System of Accounts prescribed herein in pamphlet form, the revised System of Accounts (18 CFR Part 104) will be available in the printed form set forth below as Appendix B.

The Commission finds:

(1) In view of the foregoing, and upon consideration of all relevant matters presented, it is necessary and appropriate for the purposes of the Federal Power Act, that the proposed revised System of Accounts as set forth in the Notice of Proposed Rulemaking (25 F.R. 7567–7600), be adopted and promulgated as this Commission's revised Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class C), effective January 1, 1961, all in the manner as hereinafter provided.

(2) Good cause exists for the adoption of the revised System of Accounts set forth herein to be effective as of January 1, 1961.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 301(a), 304, and 309 (16 U.S.C. 825, 825c, and 825h), orders:

(A) Effective January 1, 1961, Part 104, Subchapter C—Accounts, Federal Power Act of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations is amended to read as set forth in Appendix B below.

(B) Effective January 1, 1961, all Class C Public Utilities and Licensees under the Federal Power Act shall keep their accounts in the manner set forth in the revised System of Accounts appearing in Appendix B below.

(C) The Secretary of the Commission shall cause prompt publication of this order.

Issued: December 13, 1960.

By the Commission.

[SEAL] J. H. GUTRIDE, *Secretary.*

[1] The Uniform System of Accounts effective January 1, 1938, was prescribed by Commission Order No. 43, dated December 31, 1936 (2 F.R. 77, January 16, 1937); and was contained in the codification and reissuance of the Commission's general rules promulgated by Commission Order No. 141, December 11, 1947, effective January 1, 1948 (12 F.R. 8461). Insofar as the above sections are by their terms applicable to State and municipal licensees, that requirement was dispensed with by the Act of August 15, 1953, 67 Stat. 587.

[2] Also see Order No. 216 issued October 22, 1959 (24 F.R. 8790, October 29, 1959).

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Electric plant:			
Electric plant in service, leased to others and held for future use.	1100.1	101 104 105	Electric plant in service. Electric plant leased to others. Electric plant held for future use.
Construction work in progress	1100.3	107	Construction work in progress—electric.
Electric plant acquisition adjustments	1100.5	114	Electric plant acquisition adjustments.
Electric plant in process of reclassification	1100.6	103	Electric plant in process of reclassification.
Electric plant adjustments	1107	116	Other electric plant adjustments.
Other utility plant	1108	118	Other utility plant.
2. Investment and Fund Accounts			*2. Other Property and Investments*
Other physical property	1110	121	Nonutility property.
Miscellaneous investments and special funds	1114	124 125	Other investments. Special funds.
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	1120	131	Cash and working funds.
Temporary cash investments	1123	132	Temporary cash investments.
Notes and accounts receivable	1124	141 142 143	Notes receivable. Customer accounts receivable. Other accounts receivable.
Receivables from associated companies	1126	145 146	Notes receivable from associated companies. Accounts receivable from associated companies.
Materials and supplies	1131	150	Materials and supplies.
Prepayments	1132	165	Prepayments.
Miscellaneous current and accrued assets	1133	170	Other current and accrued assets.
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	1140	181	Unamortized debt discount and expense.
Extraordinary property losses	1141	182	Extraordinary property losses.
Miscellaneous deferred debits	1146	183	Other deferred debits.
5. Capital Stock Discount and Expense			
Discount on capital stock	1150	213	Discount on capital stock.
Capital stock expense	1151	214	Capital stock expense.
6. Reacquired Securities			
Reacquired securities	1152	217 221	Reacquired capital stock. Bonds.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Electric plant in service	101	1101.1	Electric plant in service.
Electric plant purchased or sold	102	1391 1392	Electric plant purchased. Electric plant sold.
Electric plant in process of reclassification	103	1100.6	Electric plant in process of reclassification.
Electric plant leased to others	104	1101.1	Electric plant leased to others.
Electric plant held for future use	105	1101.1	Electric plant held for future use.
Construction work in progress—electric	107	1100.3	Construction work in progress.
Accumulated provision for depreciation and amortization of electric plant.	110	1250 1251	Reserve for depreciation of electric plant. Reserve for amortization of limited term electric investments.
Electric plant acquisition adjustments	114	1100.5 1252	Electric plant acquisition adjustments. Reserve for amortization of electric plant acquisition adjustments.
Other electric plant adjustments	116	1107	Electric plant adjustments.
Other utility plant	118	1108	Other utility plant.
Accumulated provision for depreciation and amortization of other utility plant.	119	1253	Reserve for depreciation and amortization of other property.
2. Other Property and Investments			*2. Investment and Fund Accounts*
Nonutility property	121	1110	Other physical property.
Accumulated provision for depreciation and amortization of nonutility property.	122	1253	Reserve for depreciation and amortization of other property.
Other investments	124	1114	Miscellaneous investments and special funds.
Special funds	125		
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	131	1120	Cash and working funds.
Temporary cash investments	132	1123	Temporary cash investments.
Notes receivable	141	1124	Notes and accounts receivable.
Customer accounts receivable	142	1221	Notes receivable discounted.
Other accounts receivable	143		
Accumulated provision for uncollectible accounts—cr.	144	1254	Reserve for uncollectible accounts.
Notes receivable from associated companies	145	1126	Receivables from associated companies.
Accounts receivable from associated companies	146		
Materials and supplies	150	1131	Materials and supplies.
Prepayments	165	1132	Prepayments.
Other current and accrued assets	170	1133	Miscellaneous current and accrued assets.
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	181	1140	Unamortized debt discount and expense.
Extraordinary property losses	182	1141	Extraordinary property losses.
Other deferred debits	183	1146	Miscellaneous deferred debits.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
7. Capital Stock			*5. Proprietary Capital*
Common capital stock	1200	201	Common capital stock.
Preferred capital stock	1201	204	Preferred capital stock.
Stock liability for conversion	1202	207	Other paid-in capital.
Premiums and assessments on capital stock	1203		
Capital stock subscribed	1204		
Installments received on capital stock	1205	212	Installments received on capital stock.
8. Long-Term Debt			*6. Long-Term Debt*
Bonds	1210	221	Bonds.
Receivers' certificates	1211	224	Other long-term debt.
Advance from associated companies	1212	223	Advances from associated companies.
Miscellaneous long-term debt	1213	224	Other long-term debt.
9. Current and Accrued Liabilities			*7. Current and Accrued Liabilities*
Notes and accounts payable	1220	231 232	Notes payable. Accounts payable.
Notes receivable discounted	1221	141	Notes receivable (see note).
Payables to associated companies	1223	233 234	Notes payable to associated companies. Accounts payable to associated companies.
Dividends declared	1224	238	Other current and accrued liabilities.
Matured long-term debt	1225		
Matured interest	1226		
Customers' deposits	1227	235	Customer deposits.
Taxes accrued	1228	236	Taxes accrued.
Interest accrued	1229	237	Interest accrued.
Other current and accrued liabilities	1230	238	Other current and accrued liabilities.
10. Deferred Credits			*8. Deferred Credits*
Unamortized premium on debt	1240	251	Unamortized premium on debt.
Customers' advances for construction	1241	252	Customer advances for construction.
Other deferred credits	1242	253	Other deferred credits.
11. Reserves			*9. Operating Reserves*
Reserve for depreciation of electric plant	1250	110	Accumulated provision for depreciation and amortization of electric plant.
Reserve for amortization of limited-term electric investments.	1251		
Reserve for amortization of electric plant acquisition adjustments.	1252	114	Electric plant acquisition adjustments.
		119	Accumulated provision for depreciation and amortization of other utility plant.
Reserve for depreciation and amortization of other property.	1253	122	Accumulated provision for depreciation and amortization of nonutility property.
Reserve for uncollectible accounts	1254	144	Accumulated provision for uncollectible accounts—cr.
		261	Property insurance reserve.
		262	Injuries and damages reserve.
		263	Pensions and benefit reserve.
		264	Amortization reserve—Federal.
Miscellaneous reserves	1258	265	Miscellaneous operating reserves.
12. Contributions in Aid of Construction			*10. Contributions in Aid of Construction*
Contributions in aid of construction	1265	271	Contributions in aid of construction.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
5. Proprietary Capital			*7. Capital Stock*
			14. Surplus
Common capital stock	201	1200	Common capital stock.
Preferred capital stock	204	1201	Preferred capital stock.
		1202	Stock liability for conversion.
Other paid-in capital	207	1203	Premiums and assessments on capital stock.
		1204	Capital stock subscribed.
		1270	Capital surplus.
Installments received on capital stock	212	1205	Installments received on capital stock.
Discount on capital stock	213	1150	Discount on capital stock.
Capital stock expense	214	1151	Capital stock expense.
Appropriated earned surplus	215	1271	Earned surplus.
Unappropriated earned surplus	216		
Reacquired capital stock	217	1152	Reacquired securities.
6. Long-Term Debt			*8. Long-Term Debt*
Bonds	221	1152	Reacquired securities.
		1210	Bonds.
Advances from associated companies	223	1212	Advance from associated companies.
Other long-term debt	224	1211	Receiver's certificates.
		1213	Miscellaneous long-term debt.
7. Current and Accrued Liabilities			*9. Current and Accrued Liabilities*
Notes payable	231	1220	Notes and accounts payable.
Accounts payable	232		
Notes payable to associated companies	233	1223	Payables to associated companies.
Accounts payable to associated companies	234		
Customer deposits	235	1227	Customers' deposits.
Taxes accrued	236	1228	Taxes accrued.
Interest accrued	237	1229	Interest accrued.
		1224	Dividends declared.
		1225	Matured long-term debt.
Other current and accrued liabilities	238	1226	Matured interest.
		1230	Other current and accrued liabilities.
8. Deferred Credits			*10. Deferred Credits*
Unamortized premium on debt	251	1240	Unamortized premium on debt.
Customer advances for construction	252	1241	Customers' advances for construction.
Other deferred credits	253	1242	Other deferred credits.
9. Operating Reserves			*11. Reserves*
Property insurance reserve	261		
Injuries and damages reserve	262		
Pensions and benefits reserve	263	1258	Miscellaneous reserves.
Amortization reserve—Federal	264		
Miscellaneous operating reserves	265		
10. Contributions in Aid of Construction			*12. Contributions in Aid of Construction*
Contributions in aid of construction	271	1265	Contributions in aid of construction.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961				From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938			
System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title	Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued	BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.	LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.
13. Accumulated Deferred Taxes on Income			*11. Accumulated Deferred Income Taxes*	*11. Accumulated Deferred Income Taxes*			*13. Accumulated Deferred Taxes on Income*
Accumulated deferred taxes on income—accelerated amortization.	1266.1	281	Accumulated deferred income taxes—accelerated amortization.	Accumulated deferred income taxes—accelerated amortization.	281	1266.1	Accumulated deferred taxes on income—accelerated amortization.
Accumulated deferred taxes on income—liberalized depreciation.	1266.2	282	Accumulated deferred income taxes—liberalized depreciation.	Accumulated deferred income taxes—liberalized depreciation.	282	1266.2	Accumulated deferred taxes on income—liberalized depreciation.
Accumulated deferred taxes on income—other	1266.3	283	Accumulated deferred income taxes—other.	Accumulated deferred income taxes—other	283	1266.3	Accumulated deferred taxes on income—other.
14. Surplus							
Capital surplus	1270	207	Other paid-in capital.				
Earned surplus	1271	215	Appropriated earned surplus.				
		216	Unappropriated earned surplus.				
ELECTRIC PLANT ACCOUNTS			ELECTRIC PLANT ACCOUNTS	ELECTRIC PLANT ACCOUNTS			ELECTRIC PLANT ACCOUNTS
1. Intangible Plant			*1. Intangible Plant*	*1. Intangible Plant*			*1. Intangible Plant*
Organization	1301	301	Organization.	Organization	301	1301	Organization.
Franchises and consents	1302	302	Franchises and consents.	Franchises and consents	302	1302	Franchises and consents.
Miscellaneous intangible plant	1303	303	Miscellaneous intangible plant.	Miscellaneous intangible plant	303	1303	Miscellaneous intangible plant.
2. Production Plant			*2. Production Plant*	*2. Production Plant*			*2. Production Plant*
A. Steam Production			*A. Steam Production*	*A. Steam Production*			*A. Steam Production*
Land and land rights	1310	310	Land and land rights.	Land and land rights	310	1310	Land and land rights.
Structures and improvements	1311	311	Structures and improvements.	Structures and improvements	311	1311	Structures and improvements.
Boiler plant equipment	1312	312	Boiler plant equipment.	Boiler plant equipment	312	1312	Boiler plant equipment.
Engines and generators	1313	313	Engines and engine driven generators.	Engines and engine driven generators	313	1313	Engines and generators.
		314	Turbogenerator units.	Turbogenerator units	314	1315	Other power plant equipment.
Other power plant equipment	1315	315	Accessory electric equipment.	Accessory electric equipment	315		
		316	Miscellaneous power plant equipment.	Miscellaneous power plant equipment	316		
B. Hydraulic Production			*B. Hydraulic Production*	*B. Hydraulic Production*			*B. Hydraulic Production*
Land and land rights	1320	330	Land and land rights.	Land and land rights	330	1320	Land and land rights.
Structures and improvements	1321	331	Structures and improvements.	Structures and improvements	331	1321	Structures and improvements.
Reservoirs, dams, and waterways	1322	332	Reservoirs, dams and waterways.	Reservoirs, dams and waterways	332	1322	Reservoirs, dams and waterways.
Water wheels, turbines, and generators	1323	333	Water wheels, turbines and generators.	Water wheels, turbines and generators	333	1323	Water wheels, turbines, and generators.
		334	Accessory electric equipment.	Accessory electric equipment	334	1324	Other power plant equipment.
Other power plant equipment	1324	335	Miscellaneous power plant equipment.	Miscellaneous power plant equipment	335		
Roads, railroads, and bridges	1326	336	Roads, railroads and bridges.	Roads, railroads, and bridges	336	1326	Roads, railroads, and bridges.
C. Internal Combustion Engine Production			*C. Other Production*	*C. Other Production*			*C. Internal Combustion Engine Production*
Land and land rights	1330	340	Land and land rights.	Land and land rights	340	1330	Land and land rights.
Structures and improvements	1331	341	Structures and improvements.	Structures and improvements	341	1331	Structures and improvements.
Fuel holders, producers, and accessories	1332	342	Fuel holders, producers and accessories.	Fuel holders, producers and accessories	342	1332	Fuel holders, producers, and accessories.
Engines and generators	1333	343	Prime movers.	Prime movers	343	1333	Engines and generators.
		344	Generators.	Generators	344		
Other power plant equipment	1335	345	Accessory electric equipment.	Accessory electric equipment	345	1335	Other power plant equipment.
		346	Miscellaneous power plant equipment.	Miscellaneous power plant equipment	346		
3. Transmission Plant			*3. Transmission Plant*	*3. Transmission Plant*			*3. Transmission Plant*
Land and land rights	1340	350	Land and land rights.	Land and land rights	350	1340	Land and land rights.
Clearing land and rights-of-way	1341	351	Clearing land and rights of way.	Clearing land and rights-of-way	351	1341	Clearing land and rights-of-way.
Structures and improvements	1342	352	Structures and improvements.	Structures and improvements	352	1342	Structures and improvements.
Station equipment	1343	353	Station equipment.	Station equipment	353	1343	Station equipment.
		354	Towers and fixtures.	Towers and fixtures	354	1344	Poles, towers, and fixtures.
Poles, towers, and fixtures	1344	355	Poles and fixtures.	Poles and fixtures	355		
Overhead conductors and devices	1346	356	Overhead conductors and devices.	Overhead conductors and devices	356	1346	Overhead conductors and devices.
Underground conduit	1347	357	Underground conduit.	Underground conduit	357	1347	Underground conduit.
Underground conductors and devices	1348	358	Underground conductors and devices.	Underground conductors and devices	358	1348	Underground conductors and devices.
Roads and trails	1349	359	Roads and trails.	Roads and land trails	359	1349	Roads and trails.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961				From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938			
System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title	Account title	No.	No.	Account title
ELECTRIC PLANT ACCOUNTS—Con.			ELECTRIC PLANT ACCOUNTS—Con.	ELECTRIC PLANT ACCOUNTS—Con.			ELECTRIC PLANT ACCOUNTS—Con.
4. Distribution Plant			*4. Distribution Plant*	*4. Distribution Plant*			*4. Distribution Plant*
Land and land rights	1350	360	Land and land rights.	Land and land rights	360	1350	Land and land rights.
Structures and improvements	1351	361	Structures and improvements.	Structures and improvements	361	1351	Structures and improvements.
		362	Station equipment.	Station equipment	362	1352	Station and storage battery equipment.
Station and storage battery equipment	1352	363	Storage battery equipment.	Storage battery equipment	363		
Poles, towers, and fixtures	1354	364	Poles, towers and fixtures.	Poles, towers and fixtures	364	1354	Poles, towers, and fixtures.
Overhead conductors and devices	1355	365	Overhead conductors and devices.	Overhead conductors and devices	365	1355	Overhead conductors and devices.
Underground conduit	1356	366	Underground conduit.	Underground conduit	366	1356	Underground conduit.
Underground conductors and devices	1357	367	Underground conductors and devices.	Underground conductors and devices	367	1357	Underground conductors and devices.
Line transformers	1358	368	Line transformers.	Line transformers	368	1358	Line transformers.
Services	1359	369	Services.	Services	369	1359	Services.
Meters	1360	370	Meters.	Meters	370	1360	Meters.
Installations on customers' premises	1361	371	Installations on customers' premises.	Installations on customers' premises	371	1361	Installations on customers' premises.
Leased property on customers' premises	1362	372	Leased property on customers' premises.	Leased property on customers' premises	372	1362	Leased property on customers' premises.
Street lighting and signal systems	1363	373	Street lighting and signal systems.	Street lighting and signal systems	373	1363	Street lighting and signal systems.
5. General Plant			*5. General Plant*	*5. General Plant*			*5. General Plant*
Land and land rights	1370	389	Land and land rights.	Land and land rights	389	1370	Land and land rights.
Structures and improvements	1371	390	Structures and improvements.	Structures and improvements	390	1371	Structures and improvements.
Office furniture and equipment	1372	391	Office furniture and equipment.	Office furniture and equipment	391	1372	Office furniture and equipment.
Transportation equipment	1373	392	Transportation equipment.	Transportation equipment	392	1373	Transportation equipment.
Stores equipment	1374	393	Stores equipment.	Stores equipment	393	1374	Stores equipment.
Shop equipment	1375	394	Tools, shop and garage equipment.	Tools, shop and garage equipment	394	1375	Shop equipment.
Laboratory equipment	1376	395	Laboratory equipment.			1377	Tools and work equipment.
Tools and work equipment	1377	394	Tools, shop and garage equipment.	Laboratory equipment	395	1376	Laboratory equipment.
Communication equipment	1378	397	Communication equipment.	Power operated equipment	396		New account.
Miscellaneous equipment	1379	398	Miscellaneous equipment.	Communication equipment	397	1378	Communication equipment.
Other tangible property	1390	399	Other tangible property.	Miscellaneous equipment	398	1379	Miscellaneous equipment.
Electric plant purchased	1391	102	Electric plant purchased or sold.	Other tangible property	399	1390	Other tangible property.
Electric plant sold	1392						
EARNED SURPLUS ACCOUNTS			EARNED SURPLUS				
Credits:			Credits:				
Earned surplus (at beginning of period)	1271	216	Unappropriated earned surplus (at beginning of period).	In the system of accounts effective Jan. 1, 1961, the earned surplus accounts are included with the income accounts. (See below.)			
Credit balance transferred from income account	1400	433	Balance transferred from income.				
Miscellaneous credits to surplus	1401	434	Miscellaneous credits to surplus.				
Debits:			Debits:				
Debit balance transferred from income account	1410	433	Balance transferred from income.				
Dividend appropriations—preferred stock	1411	437	Dividends declared—preferred stock.				
Dividend appropriations—common stock	1412	438	Dividends declared—common stock.				
Miscellaneous reservations of surplus	1413	436	Appropriations of surplus.				
Miscellaneous debits to surplus	1414	435	Miscellaneous debits to surplus.				
Earned surplus (at end of period)	1271	216	Unappropriated earned surplus (at end of period).				
INCOME ACCOUNTS			INCOME ACCOUNTS	INCOME ACCOUNTS			INCOME ACCOUNTS
1. Utility Operating Income			*1. Utility Operating Income*	*1. Utility Operating Income*			*1. Utility Operating Income*
Electric operating income:							
Operating revenues	1501	400	Operating revenues.	Operating revenues	400	1501	Operating revenues.
Operating revenue deductions:				Operating expenses:			Operating revenue deductions:
		401	Operation expense.	Operation expense	401	1502	Operating expenses.
Operating expenses	1502	402	Maintenance expense.	Maintenance expense	402		
		403	Depreciation expense.	Depreciation expense	403	1503	Depreciation.
Depreciation	1503	404	Amortization of limited-term electric plant.	Amortization of limited-term electric plant	404	1504	Amortization of limited-term electric investments.
Amortization of limited-term electric investments.	1504						New account.
		405		Amortization of other electric plant	405		
Amortization of electric plant acquisition adjustments.	1505	406	Amortization of electric plant acquisition adjustments.	Amortization of electric plant acquisition adjustments.	406	1505	Amortization of electric plant acquisition adjustments.
Property losses chargeable to operations	1506	407	Amortization of property losses.	Amortization of property losses	407	1506	Property losses chargeable to operations.
		408	Taxes other than income taxes.	Taxes other than income taxes	408	1507	Taxes.
Taxes	1507	409	Income taxes.	Income taxes	409		
Provision for deferred taxes on income	1507A	410	Provision for deferred income taxes.	Provision for deferred income taxes	410	1507A	Provision for deferred taxes on income.
Taxes on income deferred in prior years—credit.	1507B	411	Income taxes deferred in prior years—credit.	Income taxes deferred in prior years—credit	411	1507B	Taxes on income deferred in prior years—credit.
Income from electric plant leased to others	1508	412, 413	Income from electric plant leased to others.	Income from electric plant leased to others	412, 413	1508	Income from electric plant leased to others.
Revenues from plant leased to others	1508.1	412	Revenues from electric plant leased to others.				
Expenses of plant leased to others	1508.2	413	Expenses of electric plant leased to others.				
Other utility operating income	1509	414	Other utility operating income.	Other utility operating income	414	1509	Other utility operating income.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
INCOME ACCOUNTS—Con.			INCOME ACCOUNTS—Con.
2. Other Income			*2. Other Income*
Income from merchandising, jobbing, and contract work.	1520	415, 416	Income from merchandising, jobbing, and contract work.
Revenues from merchandising, jobbing, and contract work.	1520.1	415	Revenues from merchandising, jobbing, and contract work.
Costs and expenses of merchandising, jobbing, and contract work.	1520.2	416	Costs and expenses of merchandising, jobbing, and contract work.
Income from non-utility operations	1521	417	Income from nonutility operations.
Revenues from lease of other physical property	1522	418	Nonoperating rental income.
Dividend revenues	1523	419	Interest and dividend income.
Interest revenues	1524		
Revenues from sinking and other funds	1525		
Miscellaneous non-operating revenues	1526	421	Miscellaneous nonoperating income.
Non-operating revenue deductions	1527		Deleted.
3. Income Deductions			*3. Miscellaneous Income Deductions*
Interest on long-term debt	1530	427	Interest on long-term debt.
Amortization of debt discount and expense	1531	428	Amortization of debt discount and expense.
Amortization of premium on debt—credit	1532	429	Amortization of premium on debt—cr.
Taxes assumed on interest	1533	431	Other interest expense.
Interest on debt to associated companies	1534	430	Interest on debt to associated companies.
Other interest charges	1535	431	Other interest expense.
Interest charged to construction—credit	1536	432	Interest charged to construction—cr.
Miscellaneous amortization	1537	425	Miscellaneous amortization.
Miscellaneous income deductions	1538	426	Other income deductions.
4. Disposition of Net Income			
Miscellaneous reservations of net income	1540		Deleted.
OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS
1. Sales of Electric Energy			*1. Sales of Electricity*
Residential or domestic sales	1600	440	Residential sales.
Rural sales	1601	440	Residential sales.
		442	Commercial and industrial sales.
Commercial and industrial sales	1602	442	Commercial and industrial sales.
Public street and highway lighting	1603	444	Public street and highway lighting.
Other sales to public authorities	1604	449	Other sales.
Sales to other electric utilities	1605	447	Sales for resale.
Sales to railroads and railways	1606	449	Other sales.
Interdepartmental sales	1607	448	Interdepartmental sales.
Other sales	1608	449	Other sales.
2. Other Electric Revenues			*2. Other Operating Revenues*
Rent from electric property	1610	454	Rent from electric property.
Interdepartmental rents	1611	455	Interdepartmental rents.
Customers' forfeited discounts and penalties	1612	450	Forfeited discounts.
Sales of water and water power	1613	453	Sales of water and water power.
Servicing of customers' installations	1614	451	Miscellaneous service revenues.
Miscellaneous electric revenues	1615	456	Other electric revenues.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
INCOME ACCOUNTS—Con.			INCOME ACCOUNTS—Con.
2. Other Income			*2. Other Income*
Income from merchandising, jobbing, and contract work.	415, 416	1520	Income from merchandising, jobbing, and contract work.
Income from nonutility operations	417	1521	Income from non-utility operations.
Nonoperating rental income	418	1522	Revenues from lease of other physical property.
Interest and dividend income	419	1523	Dividend revenues.
		1524	Interest revenues.
		1525	Revenues from sinking and other funds.
Miscellaneous nonoperating income	421	1526	Miscellaneous non-operating revenues.
3. Miscellaneous Income Deductions			*3. Income Deductions*
Miscellaneous amortization	425	1537	Miscellaneous amortization.
Other income deductions	426	1538	Miscellaneous income deductions.
4. Interest Charges			
Interest on long-term debt	427	1530	Interest on long-term debt.
Amortization of debt discount and expense	428	1531	Amortization of debt discount and expense.
Amortization of premium on debt—cr	429	1532	Amortization of premium on debt—cr.
Interest on debt to associated companies	430	1534	Interest on debt to associated companies.
Other interest expense	431	1533	Taxes assumed on interest.
		1535	Other interest charges.
Interest charged to construction—cr	432	1536	Interest charged to construction—credit.
5. Earned Surplus			*Earned Surplus Accounts*
Unappropriated earned surplus (at beginning of period).	216	1271	Earned Surplus (at beginning of period).
Balance transferred from income	433	1400	Credit balance transferred from income account.
		1410	Debit balance transferred from income account.
Miscellaneous credits to surplus	434	1401	Miscellaneous credits to surplus.
Miscellaneous debits to surplus	435	1414	Miscellaneous debits to surplus.
Appropriations of surplus	436	1413	Miscellaneous reservations of surplus.
Dividends declared—preferred stock	437	1411	Dividend appropriations—preferred stock.
Dividends declared—common stock	438	1412	Dividend appropriations—common stock.
Unappropriated earned surplus (at end of period)	216	1271	Earned surplus (at end of period).
OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS
1. Sales of Electricity			*1. Sales of Electric Energy*
Residential sales	440	1600	Residential or domestic sales.
		1601	Rural sales.
Commercial and industrial sales	442	1601	Rural sales.
		1602	Commercial and industrial sales.
Public street and highway lighting	444	1603	Public street and highway lighting.
Sales for resale	447	1605	Sales to other electric utilities.
Interdepartmental sales	448	1607	Interdepartmental sales.
Other sales	449	1604	Other sales to public authorities.
		1606	Sales to railroads and railways.
		1608	Other sales.
2. Other Operating Revenues			*2. Other Electric Revenues*
Forfeited discounts	450	1612	Customers' forfeited discounts and penalties.
Miscellaneous service revenues	451	1614	Servicing of customers' installations.
Sales of water and water power	453	1613	Sales of water and water power.
Rent from electric property	454	1610	Rent from electric property.
Interdepartmental rents	455	1611	Interdepartmental rents.
Other electric revenues	456	1615	Miscellaneous electric revenues.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS
1. Production Expenses			*1. Power Production Expenses*
A. Electric Generation—Steam Power			*A. Steam Power Generation.*
Operation:			Operation:
Operation supervision and engineering	1701	500	Operation supervision and labor.
Station labor	1702		
Fuel	1703	501	Fuel.
Water	1704	502	Operation supplies and expenses.
Supplies and expenses	1705		
Maintenance:			Maintenance:
Maintenance supervision and engineering	1706	506	Maintenance of steam production plant.
Maintenance of structures and improvements	1707		
Maintenance of boiler plant equipment	1708		
Maintenance of generating and electric equipment.	1709		
Miscellaneous:			
Rents	1710	505	Rents.
Steam from other sources	1711	503	Steam from other sources.
Steam transferred—credit	1712	504	Steam transferred—cr.
Joint expenses—debit	1713	------	Deleted.
Joint expenses—credit	1714	------	Deleted.
B. Electric Generation—Hydraulic Power			*B. Hydraulic Power Generation*
Operation:			Operation:
Operation supervision and engineering	1715	530	Operation supervision and labor.
Station labor	1716		
Water for power	1717	531	Water for power.
Supplies and expenses	1718	532	Operation supplies and expenses.
Maintenance:			Maintenance:
Maintenance supervision and engineering	1719	535	Maintenance of hydraulic production plant.
Maintenance of structures and improvements	1720		
Maintenance of reservoirs, dams and waterways	1721		
Maintenance of generating and electric equipment.	1722		
Maintenance of roads, railroads and bridges	1723		
Miscellaneous:			
Rents	1724	533	Rents.
Joint expenses—debit	1725		Deleted.
Joint expenses—credit	1726		Deleted.
C. Electric Generation—Internal Combustion Engine Power			*C. Other Power Generation*
Operation:			Operation:
Operation supervision and engineering	1727	538	Operation supervision and labor.
Station labor	1728		
Engine Fuel	1729	539	Fuel.
Supplies and expenses	1730	540	Operation supplies and expenses.
Maintenance:			Maintenance:
Maintenance supervision and engineering	1731	543	Maintenance of other power production plant.
Maintenance of structures and improvements	1732		
Maintenance of fuel holders, producers, and accessories.	1733		
Maintenance of generating and electric equipment.	1734		

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS			OPERATING EXPENSE ACCOUNTS
1. Power Production Expenses			*1. Production Expenses*
A. Steam Power Generation			*A. Electric Generation—Steam Power.*
Operation:			Operation:
Operation supervision and labor	500	1701	Operation supervision and engineering.
		1702	Station labor.
Fuel	501	1703	Fuel.
Operation supplies and expenses	502	1704	Water.
		1705	Supplies and expenses.
Steam from other sources	503	1711	Steam from other sources.
Steam transferred—cr	504	1712	Steam transferred—credit.
Rents	505	1710	Rents.
Maintenance:			Maintenance:
Maintenance of steam production plant	506	1706	Maintenance supervision and engineering.
		1707	Maintenance of structures and improvements.
		1708	Maintenance of boiler plant equipment.
		1709	Maintenance of generating and electrical equipment.
B. Hydraulic Power Generation			*B. Electric Generation—Hydraulic Power*
Operation:			Operation:
Operation supervision and labor	530	1715	Operation supervision and engineering.
		1716	Station labor.
Water for power	531	1717	Water for power.
Operation supplies and expenses	532	1718	Supplies and expenses.
Rents	533	1724	Rents.
Maintenance:			Maintenance:
Maintenance of hydraulic production plant	535	1719	Maintenance supervision and engineering.
		1720	Maintenance of structures and improvements.
		1721	Maintenance of reservoirs, dams, and waterways.
		1722	Maintenance of generating and electrical equipment.
		1723	Maintenance of roads, railroads, and bridges.
C. Other Power Generation			*C. Electric Generation—Internal Combustion Engine Power*
Operation:			Operation:
Operation supervision and labor	538	1727	Operation supervision and engineering.
		1728	Station labor.
Fuel	539	1729	Engine fuel.
Operation supplies and expenses	540	1730	Supplies and expenses.
Rents	541	1735	Rents.
Maintenance:			Maintenance:
Maintenance of other power production plant	543	1731	Maintenance supervision and engineering.
		1732	Maintenance of structures and improvements.
		1733	Maintenance of fuel holders, producers, and accessories.
		1734	Maintenance of generating and electric equipment.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.
1. Production Expenses—Con.			*1. Power Production Expenses*—Con.
C. Electric Generation—Internal Combustion Engine Power—Con.			*C. Other Power Generation*—Con.
Miscellaneous:			
Rents	1735	541	Rents.
Joint expenses—debit	1736		Deleted.
Joint expenses—credit	1737		Deleted.
D. Other Production Expenses and Credits			*D. Other Power Supply Expenses*
Purchased power	1738	545	Purchased power.
Interchange power	1739		
Other expenses	1740	546	Other expenses.
Joint expenses—debit	1741		Deleted.
Joint expenses—credit	1742		Deleted.
2. Transmission Expenses			*2. Transmission Expenses*
Operation:			Operation:
System operation	1744	550	Operation supervision and labor.
		551	Operation supplies and expenses.
Maintenance:			Maintenance:
System maintenance	1748	553	Maintenance of transmission plant.
Miscellaneous:			
Rents	1753	552	Rents.
Joint expenses—debit	1754		Deleted.
Joint expenses—credit	1755		Deleted.
3. Distribution Expenses			*3. Distribution Expenses*
Operation:			Operation:
Operation supervision and office expenses	1757	560	Operation supervision expenses.
		569	Miscellaneous distribution expenses.
Operation of stations	1760	561	Line and station labor.
Operation of lines	1761	562	Line and station supplies and expenses.
		566	Meter expenses.
Services on customers' premises	1762	567	Customer installations expenses.
Operation of street lighting and signal system	1763	565	Street lighting and signal system expenses.
Maintenance:			Maintenance:
Maintenance supervision and engineering	1764		To be recorded in applicable accounts below.
Maintenance of structures and station equipment	1765	571	Maintenance of structures and equipment.
Maintenance of lines	1768	572	Maintenance of lines.
Maintenance of line transformers and devices	1770	573	Maintenance of line transformers.
Maintenance of services	1771	572	Maintenance of lines.
Maintenance of meters	1772	575	Maintenance of meters.
Maintenance of installations and leased property on customers' premises.	1773	576	Maintenance of miscellaneous distribution plant.
Maintenance of street lighting and signal systems.	1775	574	Maintenance of street lighting and signal systems.
Miscellaneous:			
Rents	1776	570	Rents.
Joint expenses—debit	1777		Deleted.
Joint expenses—credit	1778		Deleted.
4. Customers' Accounting and Collecting Expenses			*4. Customer Accounts Expenses*
		901	Meter reading labor.
Meter reading, accounting, and collecting	1780	902	Accounting and collecting labor.
		903	Supplies and expenses.
Uncollectible accounts	1783	904	Uncollectible accounts.
Rents	1784		Deleted.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
1. Power Production Expenses—Con.			*1. Production Expenses*—Con.
C. Other Power Generation—Con.			*C. Electric Generation—Internal Combustion Engine Power*—Con.
D. Other Power Supply Expenses			*D. Other Production Expenses and Credits*
Purchased power	545	1738	Purchased power.
		1739	Interchange power.
Other expenses	546	1740	Other expenses.
2. Transmission Expenses			*2. Transmission Expenses*
Operation:			Operation:
Operation supervision and labor	550	1744	System operation.
Operation supplies and expenses	551		
Rents	522	1753	Rents.
Maintenance:			Maintenance:
Maintenance of transmission plant	553	1748	System maintenance.
3. Distribution Expenses			*3. Distribution Expenses*
Operation:			Operation:
Operation supervision expenses	560	1757	Operation supervision and office expenses.
Line and station labor	561	1760	Operation of stations.
Line and station supplies and expenses	562	1761	Operation of lines.
Street lighting and signal system expenses	565	1763	Operation of street lighting and signal system.
Meter expenses	566	1762	Services on customers' premises.
Customer installations expenses	567		
Miscellaneous distribution expenses	569	1757	Operation supervision and office expenses.
Rents	570	1776	Rents.
Maintenance:			Maintenance:
Maintenance of structures and equipment	571	1765	Maintenance of structures and station equipment.
Maintenance of lines	572	1768	Maintenance of lines.
		1771	Maintenance of services.
Maintenance of line transformers	573	1770	Maintenance of line transformers and devices.
Maintenance of street lighting and signal systems.	574	1775	Maintenance of street lighting and signal systems.
Maintenance of meters	575	1772	Maintenance of meters.
Maintenance of miscellaneous distribution plant.	576	1773	Maintenance of installations and leased property on customers' premises.
4. Customer Accounts Expenses			*4. Customers' Accounting and Collecting Expenses*
Meter reading labor	901	1780	Meter reading, accounting, and collecting.
Accounting and collecting labor	902		
Supplies and expenses	903		
Uncollectible accounts	904	1783	Uncollectible accounts.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.
5. Sales Promotion Expenses			*5. Sales Expenses*
Sales expenses	1786	910	Sales expenses.
Rents	1788		Deleted.
		914	Revenues from merchandising, jobbing and contract work.
Merchandising, jobbing, and contract work	1789	915	Costs and expenses of merchandising, jobbing and contract work.
6. Administrative and General Expenses			*6. Administrative and General Expenses*
Operation:			Operation:
General office salaries	1790	920	Administrative and general salaries.
General office and miscellaneous expenses	1793	921	Office supplies and expenses.
Management and supervision fees and expenses	1794	923	Outside services employed.
Legal services	1796		
Regulatory commission expenses	1797	928	Regulatory commission expenses.
Insurance	1798	924	Property insurance.
Injuries and damages	1799	925	Injuries and damages.
Other general expenses	1800	926	Employee pensions and benefits.
		930	Miscellaneous general expenses.
Maintenance of general property	1802	935	Maintenance of general plant.
General rents	1803	931	Rents.
Franchise requirements	1805	927	Franchise requirements.
Duplicate miscellaneous charges—credit	1806	929	Duplicate charges—credit.
Administrative and general expenses transferred—credit.	1807	922	Administrative expenses transferred—credit.
Joint expenses—debit	1808		Deleted.
Joint expenses—credit	1809		Deleted.
CLEARING ACCOUNTS			
Charges by associated companies—clearing	1901		Deleted. See Account 183.
Stores expenses—clearing	1902		Deleted. See Account 183.
Transportation expenses—clearing	1903	933	Transportation expenses. (May be used as a clearing account.)

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
5. Sales Expenses			*5. Sales Promotion Expenses*
Sales expenses	910	1786	Sales expenses.
Revenues from merchandising, jobbing and contract work.	914	1789	Merchandising, jobbing, and contract work.
Costs and expenses of merchandising, jobbing and contract work.	915		
6. Administrative and General Expenses			*6. Administrative and General Expenses*
Operation:			Operation:
Administrative and general salaries	920	1790	General office salaries.
Office supplies and expenses	921	1793	General office and miscellaneous expenses.
Administrative expenses transferred—credit	922	1807	Administrative and general expenses transferred—credit.
Outside services employed	923	1794	Management and supervision fees and expenses.
		1796	Legal services.
Property insurance	924	1798	Insurance.
Injuries and damages	925	1799	Injuries and damages.
Employee pensions and benefits	926	1800	Other general expenses.
Franchise requirements	927	1805	Franchise requirements.
Regulatory commission expenses	928	1797	Regulatory commission expenses.
Duplicate charges—credit	929	1806	Duplicate miscellaneous charges—credit.
Miscellaneous general expenses	930	1800	Other general expenses.
Rents	931	1803	General rents.
Transportation expenses	933	1903	Transportation expenses—clearing.
Maintenance of general plant	935	1802	Maintenance of general property.

APPENDIX B—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT (CLASS C)

Definitions

When used in this system of accounts:

1. "Accounts" means the accounts prescribed in this system of accounts.

2. "Actually issued," as applied to securities issued or assumed by the utility, means those which have been sold to bona fide purchasers for a valuable consideration, those issued as dividends on stock, and those which have been issued in accordance with contractual requirements direct to trustees of sinking funds.

3. "Actually outstanding," as applied to securities issued or assumed by the utility, means those which have been actually issued and are neither retired nor held by or for the utility; provided, however, that securities held by trustees shall be considered as actually outstanding.

4. "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

5. A. "Associated companies" means companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the accounting company.

B. "Control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trusts, associated companies, contract or any other direct or indirect means.

6. "Book cost" means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, amortization, or for other purposes.

7. "Commission" means the Federal Power Commission.

8. "Cost" means the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common stock in a merger or a pooling of interest, the value of such consideration shall be determined on a cash basis.

9. "Cost of removal" means the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto.

10. "Debt expense" means all expenses in connection with the issuance and initial sale of evidences of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds and certificates of indebtedness; fees paid trustees; specific costs of obtaining governmental authority: fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

11. "Depreciation," as applied to depreciable electric plant, means the loss in service value not restored by current maintenance incurred in connection with the consumption or prospective retirement of electric plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.

12. "Discount" as applied to the securities issued or assumed by the utility, means the excess of the par (stated value of no-par stocks) or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

13. "Investment advances" means advances, represented by notes or book accounts only, with respect to which it is mutually agreed or intended between the creditor and debtor that they shall be settled by the issuance of securities or shall not be subject to current settlement.

14. "Licensee" means any person, or State, licensed under the provisions of the Federal Power Act and subject to the Commission's accounting requirements under the terms of the license.

15. "Minor items of property" means the associated parts or items of which retirement units are composed.

16. "Net salvage value" means the salvage value of property retired less the cost of removal.

17. "Nominally issued," as applied to securities issued or assumed by the utility, means those which have been signed, certified, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the utility, but which have not been sold, or issued direct to trustees of sinking funds in accordance with contractual requirements.

18. "Nominally outstanding," as applied to securities issued or assumed by the utility, means those which, after being actually issued, have been reacquired by or for the utility under circumstances which require them to be considered as held alive and not retired, provided, however, that securities held by trustees shall be considered as actually outstanding.

19. "Nonproject property" means the electric plant of a licensee which is not a part of the project property subject to a license issued by the Commission.

20. "Original cost," as applied to electric plant, means the cost of such property to the person first devoting it to public service.

21. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or any organized group of persons, whether incorporated or not, or any receiver or trustee.

22. "Premium," as applied to securities issued or assumed by the utility, means the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no-par stocks) or face value and interest or dividends accrued at the date of sale.

23. "Project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights of way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

24. "Project property" means the property described in and subject to a license issued by the Commission.

25. "Property retired," as applied to electric plant, means property which has been removed, sold, abandoned, destroyed, or which for any cause has been withdrawn from service.

26. "Public utility" means any person who owns or operates facilities subject to the jurisdiction of the Commission under the Federal Power Act. (See section 201(e) of said act.)

27. "Replacing" or "replacement," when not otherwise indicated in the context, means the construction or installation of electric plant in place of property retired, together with the removal of the property retired.

28. "Retirement units" means those items of electric plant which, when retired, with or without replacement, are accounted for by crediting the book cost thereof to the electric plant account in which included.

29. "Salvage value" means the amount received for property retired, less any expenses incurred in connection with the sale or in preparing the property for sale; or, if retained, the amount at which the material recoverable is chargeable to materials and supplies, or other appropriate account.

30. "Service life" means the time between the date electric plant is includible in electric plant in service, or electric plant leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, then service life should be measured in terms of the appropriate unit of production.

31. "Service value" means the difference between original cost and net salvage value of electric plant.

32. "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

33. "Utility," as used herein and when not otherwise indicated in the context, means any public utility or licensee to which this system of accounts is applicable.

General Instructions

1. *Classification of Utilities.*

A. For the purpose of applying systems of accounts prescribed by the Commission, electric utilities and licensees are divided into four classes, as follows:

Class A. Utilities having annual electric operating revenues of $2,500,000 or more.

Class B. Utilities having annual electric operating revenues of $1,000,000 or more but less than $2,500,000.

Class C. Utilities having annual electric operating revenues of $150,000 or more but less than $1,000,000.

Class D. Utilities having annual electric operating revenues of $25,000 or more but less than $150,000.

B. This system of accounts applies to Class C utilities. Those applicable to Classes A and B and to Class D utilities are issued separately.

C. The class to which any utility belongs shall originally be determined by the average of its annual electric operating revenues for the last three consecutive years. Subsequent changes in classification shall be made when the annual electric operating revenues for each of the three immediately preceding years shall exceed the upper limit, or be less than the lower limit, of the annual electric operating revenues of the classification previously applicable to the utility.

D. Any utility may, at its option, adopt the system of accounts prescribed by the Commission for any larger class of utilities.

2. *Records.*

A. Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

B. The books and records referred to herein include not only accounting records in a limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction.

C. No utility shall destroy any such books or records unless the destruction thereof is permitted by rules and regulations of the Commission.

D. In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subdivisions of any account, may be kept, provided the integrity of the prescribed accounts is not impaired.

E. All amounts included in the accounts prescribed herein for electric plant and operating expenses shall be just and reasonable and any payments or accruals by the utility in excess of just and reasonable charges shall be included in account 426, Other Income Deductions.

F. The arrangement or sequence of the accounts prescribed herein shall not be controlling as to the arrangement or sequence in report forms which may be prescribed by the Commission.

3. *Numbering System.*

A. The account numbering plan used herein consists of a system of three-digit whole numbers as follows:

100–199	Assets and other debits.
200–299	Liabilities and other credits.
300–399	Plant accounts.
400–439	Income accounts.
440–459	Revenue accounts.
500–599	Production, transmission and distribution expenses.
900–949	Customer accounts, sales and general administrative expenses.

B. In certain instances, numbers have been skipped in order to allow for possible later expansion or to permit better coordination with the number system for other utility departments.

C. The numbers prefixed to account titles are to be considered as parts of the titles. Each utility, however, may adopt for its own purposes a different system of account numbers (see also general instruction 2D) provided that the numbers herein prescribed shall appear in the descriptive headings of the ledger accounts and in the various sources of original entry; however, if a utility uses a different group of account numbers and it is not practicable to show the prescribed account numbers in the various sources of original entry, such reference to the prescribed account numbers may be omitted from the various sources of original entry. Moreover, each utility using different account numbers for its own purposes shall keep readily available a list of such account numbers which it uses and a reconciliation of such account numbers with the account numbers provided herein. It is intended that the utility's records shall be so kept as to permit ready analysis by prescribed accounts (by direct reference to sources of original entry to the extent practicable) and to permit preparation of financial and operating statements directly from such records at the end of each accounting period according to the prescribed accounts.

4. *Accounting Period.*

Each utility in Class C shall keep its books on a monthly basis so that for each accounting period all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Each utility shall close its books at the end of each calendar year unless otherwise authorized by the Commission.

5. *Submittal of Questions.*

To maintain uniformity of accounting, utilities shall submt questions of doubtful interpretation to the Commission for consideration and decision.

6. *Item Lists.*

Lists of "items" appearing in the texts of the accounts or elsewhere herein are for the purpose of more clearly indicating the application of the prescribed accounting. The lists are intended to be representative, but not exhaustive. The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts.

7. *Accounting to be on Accrual Basis.*

A. The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts. If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

B. When payments are made in advance for items such as insurance, rents, taxes, or interest, the amount applicable to future periods shall be charged to account 165, Prepayments, and spread over the periods to which applicable by credits to account 165, and charges to the accounts appropriate for the expenditure.

8. *Distribution of Pay and Expenses of Employees.*

The charges to electric plant, operating expense, and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

9. *Payroll Distribution.*

Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, electric operating functions (steam generation, hydraulic generation, transmission, distribution, etc.) and nonutility operations.

10. *Operating Reserves.*

Accretions to operating reserve accounts made by charges to operating expenses shall not exceed a reasonable provision for the expense. Material balances in such reserve accounts shall not be diverted from the purpose for which provided unless the permission of the Commission is first obtained.

11. *Accounting for Other Departments.*

If the utility also operates other utility departments, such as gas, water, etc., it shall keep such accounts for the other departments as may be prescribed by proper authority and in the absence of prescribed accounts, it shall keep such accounts as are proper or necessary to reflect the results of operating each such department. It is not intended that pro-

prietary and similar accounts which apply to the utility as a whole shall be departmentalized.

12. *Separate Accounts or Records for Each Licensed Project.*

The accounts or records of each licensee shall be so kept as to show for each project under license:

(a) The actual legitimate original cost of the project, including the original cost (or fair value as determined under section 23 of the Federal Power Act) of the original project, the original cost of additions thereto and betterments thereof, credits for property retired from service, and credits for related contributions in aid of construction, as determined under the Commission's regulations.

(b) The charges for operation and maintenance of the project property directly assignable to the project;

(c) The credits and debits to the depreciation reserve account, and the balance in such account;

(d) The credits and debits to operating revenue, income, and surplus accounts that can be identified with and directly assigned to the project.

NOTE: The purpose of this instruction is to insure that accounts or records are currently maintained by each licensee from which reports may be made to the Commission for use in determining the net investment in each licensed project. The instruction covers only the debit and credit items appearing in the licensee's accounts which may be identified with and assigned directly to any licensed project. In the determination of the net investment as defined in section 3 of the Federal Power Act, allocations of items affecting the net investment may be required where direct assignment is not practicable.

Electric Plant Instructions

1. *Electric Plant To Be Recorded at Cost.*

A. All amounts included in the accounts for electric plant acquired as an operating unit or system, except as otherwise provided in the texts of the intangible plant accounts, shall be stated at the cost incurred by the person who first devoted the property to utility service. All other electric plant shall be included in the accounts at the cost incurred by the utility. Where the term "cost" is used in the detailed plant accounts, it shall have the meaning stated in this paragraph.

B. When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis. (See, however, definition 8). In the entry recording such transaction, the actual consideration shall be described with sufficient particularity to identify it. The utility shall be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration if other than cash.

C. When property is purchased under a plan involving deferred payments, no charge shall be made to the electric plant accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

D. Electric plant contributed to the utility or constructed by it from contributions to it of cash or its equivalent shall be charged to the electric plant accounts at cost of construction, estimated if not known. There shall be credited to the accounts for accumulated depreciation and amortization the estimated amount of depreciation and amortization applicable to the property at the time of its contribution to the utility. The difference between the amounts included in the electric plant accounts and the accumulated depreciation and amortization shall be credited to account 271, Contributions in Aid of Construction.

2. *Components of Construction Cost.*

The cost of construction of property chargeable to the electric plant accounts shall include, where applicable, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and permits, special machine service, interest during construction and such portion of general engineering, administrative salaries and expenses, insurance, taxes and other analogous items as may be properly includible in construction costs.

3. *Overhead Construction Costs.*

A. All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, law expense, insurance, injuries and damages, relief and pensions, taxes and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit, both direct and overhead, shall be deducted from the plant accounts at the time the property is retired.

B As far as practicable, the determination of payroll charges includible in construction overheads shall be based on time card distributions thereof. Where this procedure is impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities to the end that only such overhead costs as have a definite relation to construction shall be capitalized. The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.

4. *Electric Plant Purchased or Sold.*

A. When utility plant constituting an operating unit or system is acquired by purchase, merger, consolidation, liquidation, or otherwise, after the effective date of this system of accounts, the costs of acquisition, including expenses incidental thereto properly includible in utility plant, shall be charged to account 102, Electric Plant Purchased or Sold.

B. The accounting for the acquisition shall then be completed as follows:

(1) The original cost of plant, estimated if not known, shall be credited to account 102, Electric Plant Purchased or Sold, and concurrently charged to the appropriate utility plant in service accounts and to account 104, Electric Plant Leased to Others, account 105, Electric Plant Held for Future Use, and account 107, Construction Work in Progress—Electric, as appropriate.

(2) The depreciation and amortization applicable to the original cost of the properties purchased, shall be charged to account 102, Electric Plant Purchased or Sold, and concurrently credited to the appropriate account for accumulated provision for depreciation or amortization.

(3) The cost to the utility of any property includible in account 121, Nonutility Property, shall be transferred thereto.

(4) The amount of contributions in aid of construction applicable to the property acquired, shall be charged to account 102, Electric Plant Purchased or Sold, and concurrently credited to account 271, Contributions in Aid of Construction, unless otherwise authorized by the Commission.

(5) The amount remaining in account 102, Electric Plant Purchased or Sold, shall then be closed to account 114, Electric Plant Acquisition Adjustments.

C. If property acquired in the purchase of an operating unit or system is in such physical condition when acquired that it is necessary substantially to rehabilitate it in order to bring the property up to the standards of the utility, the cost of such work, except replacements, shall be accounted for as a part of the purchase price of the property.

D. When any property acquired as an operating unit or system includes duplicate or other plant which will be retired by the accounting utility in the reconstruction of the acquired property or its consolidation with previously owned property, the proposed accounting for such property shall be presented to the Commission.

E. In connection with the acquisition of electric plant constituting an operating unit or system, the utility shall procure, if possible, all existing records relating to the property acquired, or certified copies thereof, and shall preserve such records in conformity with regulations or practices governing the preservation of records of its own construction.

F. When electric plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate electric plant accounts, including amounts carried in account 114, Electric Plant Acquisition Adjustments, and the amounts (estimated if not known) carried with respect thereto in the accounts for accumulated provision for depreciation and amortization and in account 252, Customer Advances for Construction, and account 271, Contributions in Aid of Construction, shall be charged to such accounts and the contra entries made to account 102, Electric Plant Purchased or Sold. Unless otherwise ordered by the Commission, the difference, if any, between (a) the net amount of debits and credits and (b) the consideration received for the property (less commissions and other expenses of making the sale), shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus. (See account 102, Electric Plant Purchased or Sold.)

NOTE: In cases where existing utilities merge or consolidate because of financial or operating reasons or statutory requirements rather than as a means of transferring title of purchased properties to a new owner, the accounts of the constituent utilities, with the approval of the Commission, may be combined. In the event original cost has not been determined, the resulting utility shall proceed to determine such cost as outlined herein.

5. *Expenditures on Leased Property.*

A. The cost of substantial initial improvements (including repairs, rearrangements, additions and betterments) made in the course of preparing for utility service property leased for a period of more than one year, and the cost of subsequent substantial additions, replacements, or betterments to such property, shall be charged to the electric plant account appropriate for the class of property leased. If the service life of the improvements is terminable by action of the lease, the cost, less net salvage, of the improvements shall be spread over the life of the lease by charges to account 404, Amortization of Limited-Term Electric Plant. However, if the service life is not terminated by action of the lease but by depreciation proper, the cost of the improvements, less net salvage, shall be accounted for as depreciable plant.

B. If improvements made to property leased for a period of more than one year are of relatively minor cost, or if the lease is for a period of not more than one year, the cost of the improvements shall be charged to the account in which the rent is included, either directly or by amortization thereof.

6. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights of way, and other like interests in land.

B. Where special assessments for public improvements provide for deferred payments, the full amount of the assessments shall be charged to the appropriate land account and the unpaid balance shall be carried in an appropriate liability account. Interest on unpaid balances shall be charged to the appropriate interest account. If any part of the cost of public improvements is included in the general tax levy, the amount thereof shall be charged to the appropriate tax account.

C. The net profit from the sale of timber, cord wood, or other property acquired with rights of way or other lands shall be credited to the appropriate land and land rights or clearing land account. Where land is held for a considerable period of time and timber on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the timber) from the sales of timber or its products shall be credited to account 421, Miscellaneous Nonoperating Income.

D. Separate entries shall be made for the acquisition, transfer or retirement of each parcel of land, and each land right (except rights of way for distribution lines), or water right having a life of more than one year. A record shall be maintained showing the nature of ownership, full legal description, area, map reference, purpose for which used, city, county, and tax district in which situated, from whom purchased or to whom sold, payment given or received, other costs, contract date and number, date of recording of deed, and book and page of record. Entries transferring or retiring land or land rights shall refer to the original entry recording its acquisition.

E. Any difference between the amount received from the sale of land or land rights, less agents' commissions and other costs incident to the sale, and the book cost of such land or rights, shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate, unless a reserve therefore has been authorized and provided. Appropriate adjustments of the accounts shall be made with respect to any structures or improvements located on land sold.

F. The cost of buildings and other improvements (other than public improvements) shall not be included in the land accounts. If at the time of acquisition of an interest in land such interest extends to buildings or other improvements (other than public improvements), which are then devoted to utility operations, the land and improvements shall be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking shall be charged and the salvage credited to the account in which the cost of the land is recorded.

G. When the purchase of land for electric operations requires the purchase of more land than needed for such purposes, the charge to the specific land account shall be based upon the cost of the land purchased, less the fair market value of that portion of the land which is not to be used in utility operations. The portion of the cost measured by the fair market value of the land not to be used shall be included in account 105, Electric Plant Held for Future Use, or account 121, Nonutility Property, as appropriate.

H. Provision shall be made for amortizing amounts carried in the accounts for limited-term interests in land so as to apportion equitably the cost of each interest over the life thereof. (See account 404, Amortization of Limited-Term Electric Plant.)

I. The items of cost to be included in the accounts for land and land rights are as follows:

1. Bulkheads, buried, not requiring maintenance or replacement.
2. Cost, first, of acquisition including mortgages and other liens assumed (but not subsequent interest thereon).
3. Clearing (first cost) the land of brush, trees, and debris, except in the case of account 332, Reservoirs, Dams and Waterways, and account 351 (Transmission Plant), Clearing Land and Rights of Way.
4. Condemnation proceedings, including court and counsel costs.
5. Consents and abutting damages, payment for.
6. Conveyancers' and notaries' fees.
7. Fees, commissions, and salaries to brokers, agents and others in connection with the acquisition of the land or land rights.
8. Grading the land, except when directly occasioned by the building of a structure.
9. Leases, cost of voiding upon purchase to secure possession of land.
10. Removing, relocating, or reconstructing property of others, such as buildings, highways, railroads, bridges, cemeteries, churches, telephone and power lines, etc., in order to acquire quiet possession.
11. Retaining walls unless identified with structures.
12. Special assessments levied by public authorities for public improvements on the basis of benefits for new roads, new bridges, new sewers, new curbing, new pavements, and other public improvements, but not taxes levied to provide for the maintenance of such improvements.
13. Surveys in connection with the acquisition, but not amounts paid for topographical surveys and maps where such costs are attributable to structures or plant equipment erected or to be erected or installed on such land.
14. Taxes assumed, accrued to date of transfer of title.
15. Title, examining, clearing, insuring and registering in connection with the acquisition and defending against claims relating to the period prior to the acquisition.
16. Appraisals prior to closing title.
17. Cost of dealing with distributees or legatees residing outside of the state or county, such as recording power of attorney, recording will or exemplification of will, recording satisfaction of state tax.
18. Filing satisfaction of mortgage.
19. Documentary stamps.
20. Photographs of property at acquisition.
21. Fees and expenses incurred in the acquisition of water rights and grants.
22. Cost of fill to extend bulkhead line over land under water, where riparian rights are held, which is not occasioned by the erection of a structure.
23. Sidewalks and curbs constructed by the utility on public property.
24. Labor and expenses in connection with securing right of way, where performed by company employees and company agents.

7. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land.

B. The cost of specially provided foundations not intended to outlast the machinery or apparatus for which provided, and the cost of angle irons, castings, etc., installed at the base of any item of equipment, shall be charged to the same account as the cost of the machinery, apparatus, or equipment.

C. Minor buildings and structures, such as valve towers, patrolmen's towers, telephone stations, etc., which are used directly in connection with or form a part of a reservoir dam, waterway, etc., shall be considered a part of the facility

in connection with which constructed or operated and the cost thereof accounted for accordingly.

D. Where furnaces and boilers are used primarily for furnishing steam for some particular department and only incidentally for furnishing steam for heating a building and operating the equipment therein, the entire cost of such furnaces and boilers shall be charged to the appropriate plant account, and no part to the building account.

E. Where the structure of a dam forms also the foundation of the power plant building, such foundation shall be considered a part of the dam.

F. The cost of disposing of materials excavated in connection with construction of structures shall be considered as a part of the cost of such work, except as follows: (a) When such material is used for filling, the cost of loading, hauling, and dumping shall be equitably apportioned between the work in connection with which the removal occurs and the work in connection with which the material is used; (b) When such material is sold, the net amount realized from such sales shall be credited to the work in connection with which the removal occurs. If the amount realized from the sale of excavated materials exceeds the removal costs and the costs in connection with the sale, the excess shall be credited to the land account in which the site is carried.

G. Lighting or other fixtures temporarily attached to buildings for purposes of display or demonstration shall not be included in the cost of the building but in the appropriate equipment account.

H. The items of cost to be included in the accounts for structures and improvements are as follows:

1. Architects' plans and specifications including supervision.
2. Athletic field structures and improvements.
3. Boilers, furnaces, piping, wiring fixtures, and machinery for heating, lighting, signaling, ventilating, and air conditioning systems, plumbing, vacuum cleaning systems, incinerator and smoke pipe, flues, etc.
4. Bulkheads, including dredging, riprap fill, piling, decking, concrete, fenders, etc., when exposed and subject to maintenance and replacement.
5. Coal bins and bunkers.
6. Commissions and fees to brokers, agents, architects and others.
7. Conduit (not to be removed) with its contents.
8. Damages to abutting property during construction.
9. Drainage and sewerage systems.
10. Elevators, cranes, hoists, etc., and the machinery for operating them.
11. Excavation, including shoring, bracing, bridging, refill, and disposal of excess excavated material, cofferdams around foundation, pumping water from cofferdam during construction, test borings.
12. Fences and fence curbs (not including protective fences isolating items of equipment, which shall be charged to the appropriate equipment account).
13. Fire protection systems when forming a part of a structure.
14. Foundations and piers for machinery, constructed as a permanent part of a building or other item listed herein.
15. Grading and clearing when directly occasioned by the building of a structure.
16. Intrasite communication system, poles, pole fixtures, wires and cables.
17. Landscaping, lawns, shrubbery, etc.
18. Leases, voiding upon purchase to secure possession of structures.
19. Leased property, expenditures on.
20. Lighting fixtures and outside lighting system.
21. Painting, first cost.
22. Permanent paving, concrete, brick, flagstone, asphalt, etc., within the property lines.
23. Permits and privileges.
24. Platforms, railings and gratings when constructed as a part of a structure.
25. Retaining walls except when identified with land.
26. Roadways, railroads, bridges, and trestles intrasite, except railroads provided for in equipment accounts.
27. Sidewalks, culverts, curbs and streets constructed by the utility on its property.
28. Stacks—brick, steel, or concrete, when set on foundation forming part of general foundation and steel work of a building.
29. Storage facilities constituting a part of a building.
30. Subways, areaways, and tunnels, directly connected to and forming part of a structure.
31. Tanks, constructed as part of a building or as a distinct structural unit.
32. Temporary shanties and other facilities used during construction (net cost).
33. Tunnels, intake and discharge, when constructed as part of a structure, including sluice gates, and those constructed to house mains.
34. Vaults constructed as part of a building.
35. Water basins or reservoirs.
36. Wharves.

NOTE: Structures and Improvements accounts shall be credited with the cost of coal bunkers, stacks, foundations, subways, tunnels, etc., the use of which has terminated with the removal of the equipment with which they are associated even though they have not been physically removed.

8. *Equipment.*

A. The cost of equipment chargeable to the electric plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate.

B. Exclude from equipment accounts hand and other portable tools, which are likely to be lost or stolen or which have relatively small value (for example, $50 or less) or short life, unless the correctness of the accounting therefor as electric plant is verified by current inventories. Special tools acquired and included in the purchase price of equipment shall be included in the appropriate plant account. Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as production, transmission, distribution, etc., or in "stores," shall be charged to the plant account appropriate for their use.

C. The equipment accounts shall include angle irons and similar items which are installed at the base of an item of equipment, but piers and foundations which are designed to be as permanent as the buildings which house the equipment or which are constructed as a part of the building and which cannot be removed without cutting into the walls, ceilings or floors or without in some way impairing the building, shall be included in the building accounts.

D. The equipment accounts shall include the necessary costs of testing or running a plant or part thereof during an experimental or test period prior to becoming available for service. The utility shall furnish the Commission with full particulars of and justification for any test or experimental run extending beyond a period of thirty days.

E. The cost of efficiency or other tests made subsequent to the date equipment becomes available for service shall be charged to the appropriate expense accounts, except that tests to determine whether equipment meets the specifications and requirements as to efficiency, performance, etc., guaranteed by manufacturers, made after operations have commenced and within the period specified in the agreement or contract of purchase, may be charged to the appropriate electric plant account.

9. *Additions and Retirements of Electric Plant.*

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of utility plant, all property shall be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall use such list of retirement units as is in use by it at the effective date hereof or as may be prescribed by the Commission, with the option, however, of using smaller units, provided the utility's practice in this respect is consistent.

B. The addition and retirement of retirement units shall be accounted for as follows:

(1) When a retirement unit is added to electric plant, the cost thereof shall be added to the appropriate electric plant account, except that when units are acquired in the acquisition of any electric plant constituting an operating system, they shall be accounted for as provided in electric plant instruction 4.

(2) When a retirement unit is retired from electric plant, with or without replacement, the book cost thereof shall be credited to the electric plant account in which it is included, determined in the manner set forth in paragraph D, below. If the retirement unit is of a depreciable class the book cost of the unit retired and credited to electric plant shall be charged to the accumulated provision for depreciation applicable to such property. The cost of removal and the salvage shall be charged or credited, as appropriate, to such depreciation account.

C. The addition and retirement of minor items of property shall be accounted for as follows:

(1) When a minor item of property which did not previously exist is added to plant, the cost thereof shall be accounted for in the same manner as for the addition of a retirement unit, as set forth in paragraph B(1), above, if a substantial addition results, otherwise

the charge shall be to the appropriate maintenance expense account.

(2) When a minor item of property is retired and not replaced, the book cost thereof shall be credited to the electric plant account in which it is included; and, in the event the minor item is a part of depreciable plant, the account for accumulated provision for depreciation shall be charged with the book cost and cost of removal and credited with the salvage. If, however, the book cost of the minor item retired and not replaced has been or will be accounted for by its inclusion in the retirement unit of which it is a part when such unit is retired, no separate credit to the property account is required when such minor item is retired.

(3) When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement shall be charged to the maintenance account appropriate for the item, except that if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment shall be charged to the appropriate electric plant account.

D. The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done, it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

E. The book cost of land retired shall be credited to the appropriate land account. If the land is sold, the difference between the book cost (less any accumulated provision for depreciation or amortization therefor which has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) shall be included in account 435, Miscellaneous Debits to Surplus, or account 434, Miscellaneous Credits to Surplus, as appropriate. If the land is not used in utility service but is retained by the utility, the book cost shall be charged to account 105, Electric Plant Held for Future Use, or account 121, Nonutility Property, as appropriate.

F. The book cost less net salvage of electric plant retired shall be charged in its entirety to account 110, Accumulated Provision for Depreciation and Amortization of Electric Plant. Any amounts which, by approval or order of the Commission, are charged to account 182, Extraordinary Property Losses, shall be credited to account 110, Accumulated Provision for Depreciation and Amortization of Electric Plant.

10. *Transfers of Property.*

When property is transferred from one electric plant account to another, from one utility department to another, such as from electric to gas, from one operating division or area to another, to or from Electric Plant in Service, Electric Plant Leased to Others, Electric Plant Held for Future Use, and Nonutility Property, the transfer shall be recorded by transferring the original cost thereof from one account, department, or location to the other. Any related amounts carried in the accounts for accumulated provision for depreciation or amortization shall be transferred in accordance with the segregation of such accounts.

11. *Common Utility Plant.*

A. If the utility is engaged in more than one utility service such as electric, gas, and water, and any of its utility plant is used in common for several utility services or for other purposes to such an extent and in such a manner that it is impracticable to segregate it by utility services currently in the accounts, such property, with the approval of the Commission, may be designated and classified as "common utility plant."

B. The book amount of utility plant designated as common plant shall be included in account 118, Other Utility Plant, and if applicable in part to the electric department, shall be segregated and accounted for in subaccounts as electric plant is accounted for in accounts 101 to 107, inclusive, and electric plant adjustments in account 116; any amounts classifiable as common plant acquisition adjustments or common plant adjustments shall be subject to disposition as provided in paragraphs C and B of accounts 114 and 116, respectively, for amounts classified in those accounts. The original cost of common utility plant in service shall be classified according to detailed utility plant accounts appropriate for the property.

C. The utility shall be prepared to show at any time and to report to the Commission annually, or more frequently, if required, and by utility plant accounts (301 to 399) the following: (1) The book cost of common utility plant, (2) the allocation of such cost to the respective departments using the common utility plant, and (3) the basis of the allocation.

D. The accumulated provision for depreciation and amortization of the utility shall be segregated so as to show the amount applicable to the property classified as common utility plant.

E. The expenses of operation, maintenance, rents, depreciation and amortization of common utility plant shall be recorded in the accounts prescribed herein, but designated as common expenses, and the allocation of such expenses to the departments using the common utility plant shall be supported in such manner as to reflect readily the basis of allocation used.

12. *Transmission and Distribution Plant.*

For the purpose of this system of accounts:

A. "Transmission system" means:

(1) All land, conversion structures, and equipment employed at a primary source of supply (i.e., generating station, or point of receipt in the case of purchased power) to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission;

(2) All land, structures, lines, switching and conversion stations, high tension apparatus, and their control and protective equipment between a generating or receiving point and the entrance to a distribution center or wholesale point; and

(3) All lines and equipment whose primary purpose is to augment, integrate or tie together the sources of power supply.

B. "Distribution system" means all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply (i.e., generating station, or point of receipt in the case of purchased power) and of delivery to customers, which are not includible in transmission system, as defined in paragraph A, whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system.

NOTE: Stations which change electricity from transmission to distribution voltage shall be classified as distribution stations.

C. Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights of way shall be classified as transmission system. The conductors, crossarms, braces, grounds, tiewire, insulators, etc., shall be classified as transmission or distribution facilities, according to the purpose for which used.

D. Where underground conduit contains both transmission and distribution conductors, the underground conduit and right of way shall be classified as distribution system. The conductors shall be classified as transmission or distribution facilities according to the purpose for which used.

E. Land (other than rights of way) and structures used jointly for transmission and distribution purposes shall be classified as transmission or distribution according to the major use thereof.

Operating Expense Instructions

1. *Maintenance.*

A. The cost of maintenance chargeable to the various operating expense and clearing accounts includes labor, materials, overheads and other expenses incurred in maintenance work. A list of work operations applicable generally to electric plant is included hereunder. Other work operations applicable to specific classes of plant are listed in functional maintenance expense accounts.

B. Materials recovered in connection with the maintenance of property shall be credited to the same account to which the maintenance cost was charged.

C. If the book cost of any property is carried in account 102, Electric Plant Purchased or Sold, the cost of maintaining such property shall be charged to the accounts for maintenance of property of the same class and use, the book cost of which is carried in other utility plant in service accounts. Maintenance of property leased from others shall be treated

as provided in operating expenses instruction 2.

Items

1. Direct field supervision of maintenance.

2. Inspecting, testing, and reporting on condition of plant specifically to determine the need for repairs, replacements, rearrangements and changes and inspecting and testing the adequacy of repairs which have been made.

3. Work performed specifically for the purpose of preventing failure, restoring service ability or maintaining life of plant.

4. Rearranging and changing the location of plant not retired.

5. Repairing for reuse materials recovered from plant.

6. Testing for, locating and clearing trouble.

7. Net cost of installing, maintaining, and removing temporary facilities to prevent interruptions in service.

8. Replacing or adding minor items of plant which do not constitute a retirement unit. (See electric plant instruction 9.)

2. *Rents.*

A. The rent expense accounts provided under the several functional groups of expense accounts shall include all rents, including taxes paid by the lessee on leased property, for property used in utility operations, except (1) minor amounts paid for occasional or infrequent use of any property or equipment and all amounts paid for use of equipment that, if owned, would be includible in plant accounts 391 to 398, inclusive, which shall be treated as an expense item and included in the appropriate functional account and (2) rents which are chargeable to clearing accounts, and distributed therefrom to the appropriate account. If rents cover property used for more than one function, such as production and transmission, or by more than one department, the rents shall be apportioned to the appropriate rent expense or clearing accounts of each department on an actual, or, if necessary, an estimated basis.

B. When a portion of property or equipment rented from others for use in connection with utility operations is subleased, the revenue derived from such subleasing shall be credited to the rent revenue account in operating revenues; provided, however, that in case the rent was charged to a clearing account, amounts received from subleasing the property shall be credited to such clearing account.

C. The cost, when incurred by the lessee, of operating and maintaining leased property, shall be charged to the accounts appropriate for the expense if the property were owned.

D. The cost incurred by the lessee of additions and replacements to electric plant leased from others shall be accounted for as provided in electric plant instruction 5.

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

1. Utility Plant

101 Electric plant in service.
102 Electric plant purchased or sold.
103 Electric plant in process of reclassification.
104 Electric plant leased to others.
105 Electric plant held for future use.
107 Construction work in progress—Electric.
110 Accumulated provision for depreciation and amortization of electric plant.
114 Electric plant acquisition adjustments.
116 Other electric plant adjustments.
118 Other utility plant.
119 Accumulated provision for depreciation and amortization of other utility plant.

2. Other Property and Investments

121 Nonutility property.
122 Accumulated provision for depreciation and amortization of nonutility property.
124 Other investments.
125 Special funds.

3. Current and Accrued Assets

131 Cash and working funds.
132 Temporary cash investments.
141 Notes receivable.
142 Customer accounts receivable.
143 Other accounts receivable.
144 Accumulated provision for uncollectible accounts—Cr.
145 Notes receivable from associated companies.
146 Accounts receivable from associated companies.
150 Materials and supplies.
165 Prepayments.
170 Other current and accrued assets.

4. Deferred Debits

181 Unamortized debt discount and expense.
182 Extraordinary property losses.
183 Other deferred debits.

LIABILITIES AND OTHER CREDITS

5. Proprietary Capital

201 Common capital stock.
204 Preferred capital stock.
207 Other paid-in capital.
212 Installments received on capital stock.
213 Discount on capital stock.
214 Capital stock expense.
215 Appropriated earned surplus.
216 Unappropriated earned surplus.
217 Reacquired capital stock.

6. Long-Term Debt

221 Bonds.
223 Advances from associated companies.
224 Other long-term debt.

7. Current and Accrued Liabilities

231 Notes payable.
232 Accounts payable.
233 Notes payable to associated companies.
234 Accounts payable to associated companies.
235 Customer deposits.
236 Taxes accrued.
237 Interest accrued.
238 Other current and accrued liabilities.

8. Deferred Credits

251 Unamortized premium on debt.
252 Customer advances for construction.
253 Other deferred credits.

9. Operating Reserves

261 Property insurance reserve.
262 Injuries and damages reserve.
263 Pensions and benefits reserve.
264 Amortization reserve—Federal.
265 Miscellaneous operating reserves.

10. Contributions in Aid of Construction

271 Contributions in aid of construction.

11. Accumulated Deferred Income Taxes

281 Accumulated deferred income taxes—Accelerated amortization.
282 Accumulated deferred income taxes—Liberalized depreciation.
283 Accumulated deferred income taxes—Other.

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

1. Utility Plant

101 Electric plant in service.

A. This account shall include the original cost of electric plant, included in the plant accounts prescribed herein, owned and used by the utility in its electric operations, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees.

B. The cost of additions to and betterments of property leased from others, which are includible in this account, shall be maintained in subdivisions separate and distinct from those relating to owned property. (See electric plant instruction 5.)

102 Electric plant purchased or sold.

A. This account shall be charged with the cost of electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and shall be credited with the selling price of like property transferred to others pending the distribution to appropriate accounts in accordance with electric plant instruction 4.

B. Within six months from the date of acquisition or sale of property recorded herein, there shall be filed with the Commission the proposed journal entries to clear from this account the amounts recorded herein.

103 Electric plant in process of reclassification.

A. This account shall include temporarily the balance of electric plant as of the effective date of the prior system of accounts, which has not yet been reclassified as of the effective date of this system of accounts. The detail or primary accounts in support of this account employed prior to such date shall be continued pending reclassification into the electric plant accounts herein prescribed (301–399), but shall not be used for additions, betterments, or new construction.

B. No charges other than as provided in paragraph A, above, shall be made to this account, but retirements of such unclassified electric plant shall be credited hereto and to the supporting (old) fixed capital accounts until the reclassification shall have been accomplished.

104 Electric plant leased to others.

A. This account shall include the original cost of electric plant owned by the utility, but leased to others as operating units or systems, where the lessee has exclusive possession.

B. The property included in this account shall be classified according to the detailed accounts (301–399) prescribed for utility plant in service, and this account shall be maintained in such detail as though the property were used by the owner in its utility operations.

105 Electric plant held for future use.

A. This account shall include the original cost of electric plant owned and held for future use in electric service under a definite plan for such use. There shall

be included herein property acquired but never used by the utility in electric service, but held for such service in the future under a definite plan, and property previously used by the utility in electric service, but retired from such service and held pending its reuse in the future, under a definite plan, in electric service.

B. The property included in this account shall be classified according to the detailed accounts (301–399) prescribed for electric plant in service and the account shall be maintained in such detail as though the property were in service.

Note: Materials and supplies, meters and transformers held in reserve, or normal spare capacity of plant in service shall not be included in this account.

107 Construction work in progress—Electric.

This account shall include the total of the balances of work orders for electric plant in process of construction but not ready for service at the date of the balance sheet.

110 Accumulated provision for depreciation and amortization of electric plant.

A. This account shall be credited with the following:

(1) Amounts charged to account 403, Depreciation Expense, to account 404, Amortization of Limited-Term Electric Plant, to account 405, Amortization of Other Electric Plant, to account 413, Expenses of Electric Plant Leased to Others, to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work, or to clearing accounts for currently accruing depreciation and amortization.

(2) Amounts charged to account 435, Miscellaneous Debits to Surplus, for past accrued depreciation or amortization.

(3) Amounts of depreciation applicable to electric properties acquired as operating units or systems. (See electric plant instruction 4.)

(4) Amounts chargeable to account 182, Extraordinary Property Losses, when authorized by the Commission.

(5) Amounts of depreciation applicable to electric plant donated to the utility.

B. At the time of retirement of electric plant, this account shall be charged with the book cost of the property retired and the cost of removal, and shall be credited with the salvage value and any other amounts recovered, such as insurance. When retirements, cost of removal and salvage are entered originally in retirement work orders, the net total of such work orders may be included in a separate subaccount hereunder. Upon completion of the work order, the proper distribution to subdivisions of this account shall be made as provided in the following paragraph.

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation. This account shall be subdivided to show the amount applicable to Electric Plant in Service, Electric Plant Leased to Others, and Electric Plant Held for Future Use. These subsidiary records shall show the current credits and debits to this account in sufficient detail to show separately for each subdivision, (1) the amount of accrual for depreciation or amortization, (2) the book cost of property retired, (3) cost of removal, (4) salvage and (5) other items, including recoveries from insurance.

D. When transfers of plant are made from one electric plant account to another, or from or to nonutility property, the accounting shall be as provided in electric plant instruction 10.

E. The utility is restricted in its use of the accumulated provision for depreciation to the purposes set forth above. It shall not transfer any portion of this account to surplus or make any other use thereof without authorization by the Commission.

114 Electric plant acquisition adjustments.

A. This account shall include the difference between (a) the cost to the accounting utility of electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated, if not known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated provision for depreciation and amortization and contributions in aid of construction with respect to such property.

B. With respect to acquisitions after the effective date of this system of accounts, this account shall be subdivided so as to show the amounts included herein for each property acquisition and to electric plant in service, electric plant held for future use, and electric plant leased to others. (See electric plant instruction 4.)

C. The amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct.

116 Other electric plant adjustments.

A. This account shall include the difference between the original cost, estimated if not known, and the book cost of electric plant to the extent that such difference is not properly includible in account 114, Electric Plant Acquisition Adjustments.

B. Amounts included in this account shall be classified in such manner as to show the origin of each amount and shall be disposed of as the Commission may approve or direct.

Note: The provisions of this account shall not be construed as approving or authorizing the recording of appreciation of electric plant.

118 Other utility plant.

This account shall include the balances in accounts for utility plant, other than electric plant, such as gas, railway, etc.

119 Accumulated provision for depreciation and amortization of other utility plant.

This account shall include the accumulated provision for depreciation and amortization applicable to utility property other than electric plant.

2. Other Property and Investments

121 Nonutility property.

A. This account shall include the book cost of land, structures, equipment or other tangible or intangible property owned by the utility, but not used in utility service and not properly includible in account 105, Electric Plant Held for Future Use.

B. This account shall be subdivided so as to show the amount of property used in operations which are nonutility in character but nevertheless constitute a distinct operating activity of the company (such as operation of an ice department where such activity is not classed as a utility) and the amount of miscellaneous property not used in operations. The records in support of each subaccount shall be maintained so as to show an appropriate classification of the property.

122 Accumulated provision for depreciation and amortization of nonutility property.

This account shall include the accumulated provision for depreciation and amortization applicable to nonutility property.

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by other companies, investment advances to such companies, and any investments not accounted for elsewhere. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See account 419, Interest and Dividend Income.)

B. The cost of capital stock of the utility reacquired by it under a definite plan for resale pursuant to authorization by the Board of Directors may, if permitted by statutes, be included in a separate subdivision of this account. (See also account 207, Other Paid-in Capital, and account 217, Reacquired Capital Stock.)

C. The records shall be maintained in such manner as to show the amount of each investment and the investment advances to each person.

Note A: Securities owned and pledged shall be included in this account, but securities held in special deposits or in special funds shall be included in appropriate deposit or fund accounts. A complete record of securities pledged shall be maintained.

Note B: Securities held as temporary cash investments shall not be included in this account.

Note C: The utility may write down the cost of any security in recognition of a decline in the value thereof. Securities shall be written off or written down to a nominal value if there be no reasonable prospect of substantial value. Fluctuations in market value shall not be recorded but a permanent impairment in the value of securities shall be recognized in the accounts. When securities are written off or written down, the amount of the adjustment shall be charged to account 435, Miscellaneous Debits to Surplus, or to an appropriate account for provisions for loss in value established as a separate subdivision of this account.

125 Special funds.

This account shall include the amount of cash and book cost of investments

which have been segregated in special funds for bond retirements, property additions and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. A separate account, with appropriate title, shall be kept for each fund.

NOTE A: Amounts deposited with a trustee under the terms of an irrevocable trust agreement for pensions or other employees benefits shall not be included in this account.

NOTE B: Licensees under the Federal Power Act which are required to establish an amortization fund under terms of the license shall provide a special subdivision of this account for the purpose of accounting for and identifying the cash, investments or other specific assets associated with account 264, Amortization Reserve—Federal.

3. CURRENT AND ACCRUED ASSETS

Current and accrued assets are cash, those assets which are readily convertible into cash or are held for current use in operations or construction, current claims against others, payment of which is reasonably assured, and amounts accruing to the utility which are subject to current settlement, except such items for which accounts other than those designated as current and accrued assets are provided. There shall not be included in the group of accounts designated as current and accrued assets any item, the amount or collectibility of which is not reasonably assured, unless an adequate provision for possible loss has been made therefor. Items of current character but of doubtful value may be written down and for record purposes carried in these accounts at nominal value.

131 Cash and working funds.

This account shall include the amount of cash on hand and in banks and cash advanced to officers, agents, employees, and others as petty cash or working funds. Special cash deposits for payment of interest, dividends or other special purposes shall be included in this account in separate subdivisions which shall specify the purpose for which each such special deposit is made.

NOTE: Special Deposits for more than one year, which are not offset by current liabilities, shall not be charged to this account but to account 125, Special Funds.

132 Temporary cash investments.

A. This account shall include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

B. This account shall be so maintained as to show separately temporary cash investments in securities of associated companies and of others. Records shall be kept of any pledged investments.

141 Notes receivable.

This account shall include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable and similar evidences (except interest coupons) of money due on demand or within one year from the date of issue, excepting, however, notes receivable from associated companies. (See account 132, Temporary Cash Investments, and account 145, Notes Receivable from Associated Companies.)

NOTE: The face amount of notes receivable, discounted, sold, or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

142 Customer accounts receivable.

A. This account shall include amounts due from customers for utility service, and for merchandising, jobbing and contract work. This account shall not include amounts due from associated companies.

B. This account shall be maintained so as to permit ready segregation of the amounts due for merchandising, jobbing and contract work.

143 Other accounts receivable.

A. This account shall include amounts due the utility upon open accounts, other than amounts due from associated companies and from customers for utility services and merchandising, jobbing and contract work.

B. This account shall be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees, but the account shall not include amounts advanced to officers or others as working funds. (See account 131, Cash and Working Funds.)

144 Accumulated provision for uncollectible accounts—Cr.

A. This account shall be credited with amounts provided for losses on accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. Concurrent charges shall be made to account 904, Uncollectible Accounts, for amounts applicable to utility operations, and to corresponding accounts for other operations. Records shall be maintained so as to show the write-offs of accounts receivable for each utility department.

B. This account shall be subdivided to show the provision applicable to the following classes of accounts receivable:

Utility customers.
Merchandising, jobbing and contract work.
Officers and employees.
Other.

NOTE A: Accretions to this account shall not be made in excess of a reasonable provision against losses of the character provided for.

NOTE B: If provisions for uncollectible notes receivable or for uncollectible receivables from associated companies are necessary, separate subaccounts therefor shall be established under the account in which the receivable is carried.

145 Notes receivable from associated companies.

146 Accounts receivable from associated companies.

These accounts shall include notes and drafts upon which associated companies are liable, and which mature and are expected to be paid in full not later than one year from date of issue, together with any interest thereon, and debit balances subject to current settlement in open accounts with associated companies. Items which do not bear a specified due date but which have been carried for more than twelve months and items which are not paid within twelve months from due date shall be transferred to account 124, Other Investments.

NOTE A: On the balance sheet, accounts receivable from an associated company may be set off against accounts payable to the same company.

NOTE B: The face amount of notes receivable discounted, sold or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

150 Materials and supplies.

A. This account shall include the cost of fuel on hand and unapplied materials and supplies (except line transformers and meters). It shall include also the book cost of materials recovered in connection with construction, maintenance or the retirement of property, such materials being credited to construction, maintenance, or accumulated depreciation provision, respectively, and included herein as follows:

(1) Reusable materials consisting of large individual items shall be included in this account at original cost, estimated if not known. The cost of repairing such items shall be charged to the maintenance account appropriate for the previous use.

(2) Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the final abandonment or sale thereof) cannot be ascertained without undue refinement in accounting, shall be included in this account at current prices new for such items. The cost of repairing such items shall be charged to the appropriate expense account as indicated by previous use.

(3) Scrap and nonusable materials included in this account shall be carried at the estimated net amount realized therefrom. The difference between the amounts realized for scrap and nonusable materials sold and the net amount at which the materials were carried in this account, as far as practicable shall be adjusted to the accounts credited when the materials were charged to this account.

B. Materials and supplies issued shall be credited hereto and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative average, first-in first-out, or such other method of inventory accounting as conforms with accepted accounting standards consistently applied.

C. Inventories of materials, supplies, fuel, etc., shall be taken at least annually and the necessary adjustments shall be made to bring this account into agreement with the actual inventories. In effecting the adjustments, large differences which can be assigned to important classes of materials shall be equitably adjusted among the accounts to which such classes of materials have been charged since the previous inventory. Other differences shall be equitably apportioned among the accounts to which materials have been charged.

ITEMS

1. Invoice price of materials less cash or other discounts.
2. Freight, switching or other transportation charges when practicable to include as part of the cost of particular materials to which they relate.
3. Customs duties and excise taxes.
4. Costs of inspection and special tests prior to acceptance.
5. Insurance and other directly assignable charges.

NOTE A: Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be charged to a stores expense clearing account and distributed therefrom to the appropriate account.

NOTE B: When materials and supplies are purchased for immediate use, they need not be carried through this account but may be charged directly to the appropriate utility plant or expense account.

165 Prepayments.

A. This account shall include the amount of rents, taxes, insurance, interest and like disbursements made in advance of the period to which they apply. As the periods covered by such prepayments expire, credit this account and charge the proper operating expense or other account with the amount applicable to the period.

B. This account shall be kept or supported in such manner as to disclose the amount of each class of prepayments.

170 Other current and accrued assets.

This account shall include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included herein.

4. DEFERRED DEBITS

181 Unamortized debt discount and expense.

A. This account shall include the total of the unamortized balance of discount and expense for all classes of long-term debt.

B. The discount and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be charged to account 428, Amortization of Debt Discount and Expense. The utility may, however, accelerate the writing off of discount and expense where the amounts are insignificant.

182 Extraordinary property losses.

A. When authorized or directed by the Commission, this account shall include extraordinary losses on property abandoned or otherwise retired from service which are not provided for by the accumulated provisions for depreciation or amortization and which could not reasonably have been foreseen and provided for, and extraordinary losses, such as unforeseen damages to property, which could not reasonably have been anticipated and which are not covered by insurance or other provisions.

B. The entire cost, less net salvage, of depreciable property retired shall be charged to accumulated provision for depreciation. If all, or a portion, of the loss is to be included in this account, the accumulated provision for depreciation shall then be credited and this account charged with the amount properly chargeable hereto.

C. Application to the Commission for permission to use this account shall be accompanied by a statement giving a complete explanation with respect to the items which it is proposed to include herein, the period over which, and the accounts to which it is proposed to write off the charges and other pertinent information.

183 Other deferred debits.

A. This account shall include the following classes of items:

(1) Expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of utility projects under contemplation. If construction results, this account shall be credited with the amount applicable thereto and the appropriate plant accounts shall be charged with an amount which does not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to plant. If the work is abandoned, the charge shall be to account 435, Miscellaneous Debits to Surplus, or to the appropriate operating expense accounts.

(2) Undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein relate to a future period.

(3) Balances representing expenditures for work in progress other than on utility plant. This includes jobbing and contract work in progress.

(4) Other debit balances, the proper final disposition of which is uncertain, and unusual or extraordinary expenses, not included in other accounts, which are in process of being written off.

B. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit included herein.

5. PROPRIETARY CAPITAL

201 Common capital stock.

204 Preferred capital stock.

A. These accounts shall include the par value or the stated value of stock without par value if such stock has a stated value, and if not, the cash value of the consideration received for such nonpar stock, of each class of capital actually issued, including the par or stated value of such capital stock in account 124, Other Investments, and account 217, Reacquired Capital Stock.

B. When the actual cash value of the consideration received is more or less than the par or stated value of any stock having a par or stated value, the difference shall be credited or debited, as the case may be, to the premium or discount account for the particular class and series.

C. When capital stock is retired, these accounts shall be charged with the amount at which such stock is carried herein.

D. A separate ledger account, with a descriptive title, shall be maintained for each class and series of stock. The supporting records shall show the shares nominally issued, actually issued, and nominally outstanding.

NOTE: When a levy or assessment, except a call for payment on subscriptions, is made against holders of capital stock, the amount collected upon such levy or assessment shall be credited to account 207, Other Paid-in Capital; provided, however, that the credit shall be made to account 213, Discount on Capital Stock, to the extent of any remaining balance of discount on the issue of stock.

207 Other paid-in capital.

This account shall include the balance of all other credits for paid-in capital not includible in the capital stock accounts, and shall be kept so as to show the source of the credits includible herein.

ITEMS

1. Premium received on original issues of capital stock.
2. Donations received from stockholders or reduction of debt of the utility, and the cash value of other assets received as a donation.
3. Reduction in par or stated value of capital stock.
4. Gain on resale or cancellation of reacquired capital stock.
5. Miscellaneous paid-in capital.

NOTE: Premium on capital stock shall not be set off against expenses. Further, a premium received on an issue of a certain class or series of stock shall not be set off against expense of another issue of the same class or series.

212 Installments received on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock the amount of installments received on capital stock on a partial or installment payment plan for subscribers who are not bound by legally enforceable subscription contracts.

B. As subscriptions are paid in full and certificates issued, this account shall be charged and the appropriate capital stock account credited with the par or stated value of such stock. Any discount or premium on an original issue shall be included in the appropriate discount or premium account.

213 Discount on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock all discount on the original issuance and sale of capital stock, including additional capital stock of a particular class or series as well as first issues.

B. When capital stock which has been actually issued is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-in Capital, provided, however, that the amount shall be charged to account 435, Miscellaneous Debits to

Surplus, to the extent that it exceeds the balance in account 207.

C. The utility may amortize the balance in this account by systematic charges to account 425, Miscellaneous Amortization, or it may write off capital stock discount in whole or in part by charges to account 435, Miscellaneous Debits to Surplus.

214 Capital stock expense.

A. This account shall include in a separate subdivision for each class and series of stock all commissions and expenses incurred in connection with the original issuance and sale of capital stock, including additional capital stock of a particular class or series as well as first issues. Expenses applicable to capital stock shall not be deducted from premium on capital stock.

B. When capital stock which has been actually issued by the utility is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-in Capital, to the extent of gains on resale or cancellation of reacquired stock includible therein; provided, however, that the amount shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that it exceeds the balance in account 207, from such source.

C. The utility may amortize the balance carried in this account by systematic charges to account 425, Miscellaneous Amortization, or it may write off capital stock expense in whole or in part by charges to account 435, Miscellaneous Debits to Surplus.

NOTE: Expenses in connection with the reacquisition or resale of the utility's capital stock shall not be included herein.

215 Appropriated earned surplus.

This account shall include the amount of earned surplus which has been appropriated or set aside for specific purposes. Separate subaccounts shall be maintained under such titles as will designate the purpose for which each appropriation was made.

216 Unappropriated earned surplus.

This account shall include the balance, either debit or credit, of unappropriated surplus arising from earnings. It shall not include items includible in any subaccount of account 207, Other Paid-in Capital.

217 Reacquired capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock, the cost of capital stock actually issued by the utility and reacquired by it and not retired or canceled, except, however, stock which is held by trustees in sinking or other funds.

B. When reacquired capital stock is retired or canceled, the difference between its cost, including commissions and expenses paid in connection with the reacquisition, and its par or stated value plus any premium and less any discount and expenses applicable to the shares retired, shall be debited or credited, as appropriate, to account 207, Other Paid-in Capital, provided, however, that debits shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that they exceed the balance of gains on resale or cancellation of reacquired stock included in account 207.

C. When reacquired capital stock is resold by the utility, the difference between the amount received on the resale of the stock, less expenses incurred in the resale, and the cost of the stock included in this account shall be accounted for as outlined in paragraph B.

NOTE A: See account 124, Other Investments, for permissive accounting treatment of stock reacquired under a definite plan for resale.

NOTE B: The accounting for reacquired stock shall be as prescribed herein unless otherwise specifically required by statute.

6. LONG-TERM DEBT

221 Bonds.

A. Separate accounts shall be maintained hereunder for unmatured bonds of each class and series. Each such account shall be subdivided so as to show, (1) the face value of the actually issued and unmatured bonds, which have not been retired or canceled; also the face value of such bonds issued by others, the payment of which has been assumed by the utility, (2) the face value of bonds actually issued or assumed by the utility and reacquired by it and not paid, retired, or canceled. The account for reacquired debt shall not include securities which are held by trustees in sinking or other funds.

B. When bonds are reacquired, the difference between face value, adjusted for unamortized discount, expense or premium and the amount paid upon reacquisition, shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate.

223 Advances from associated companies.

A. This account shall include the face value of notes payable to associated companies and the amount of open book accounts representing advances from associated companies. It does not include notes and open accounts representing indebtedness subject to current settlement which are includible in account 233, Notes Payable to Associated Companies, or account 234, Accounts Payable to Associated Companies.

B. The records supporting the entries to this account shall be so kept that the utility can furnish complete information concerning each note and open account.

224 Other long-term debt.

A. This account shall include, until maturity, all long-term debt not otherwise provided for. This covers such items as receivers' certificates, real estate mortgages executed or assumed, assessment for public improvement, notes and unsecured certificates of indebtedness now owned by associated companies, receipts outstanding for long-term debt, and other obligations maturing more than one year from date of issue or assumption.

B. Separate accounts shall be maintained for each class of obligation, and records shall be maintained to show for each class all details as to date of obligation, date of maturity, interest dates and rates, security for the obligation, etc.

NOTE: Miscellaneous long-term debt reacquired shall be accounted for in accordance with the procedure set forth in account 221, Bonds.

7. CURRENT AND ACCRUED LIABILITIES

Current and accrued liabilities are those obligations which have either matured or which become due within one year from the date thereof; except, however, bonds, receivers' certificates and similar obligations which shall be classified as long-term debt until date of maturity; accrued taxes, such as income taxes, which shall be classified as accrued liabilities even though payable more than one year from date; compensation awards, which shall be classified as current liabilities regardless of date due; and minor amounts payable in installments which may be classified as current liabilities. If a liability is due more than one year from date of issuance or assumption by the utility, it shall be credited to a long-term debt account appropriate for the transaction, except, however, the current liabilities previously mentioned.

231 Notes payable.

This account shall include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding one year from date of issue, to other than associated companies.

232 Accounts payable.

This account shall include all amounts payable by the utility within one year, which are not provided for in other accounts.

233 Notes payable to associated companies.

234 Accounts payable to associated companies.

These accounts shall include amounts owing to associated companies on notes, drafts, acceptances, or other similar evidences of indebtedness, and open accounts payable on demand or not more than one year from date of issue or creation.

NOTE: Exclude from these accounts notes and accounts which are includible in account 223, Advances from Associated Companies.

235 Customer deposits.

This account shall include all amounts deposited with the utility by customers as security for the payment of bills.

236 Taxes accrued.

A. This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet, shall be shown under account 165, Prepayments.

B. If accruals for taxes are found to be insufficient or excessive, correction thereof shall be made through current tax accruals. However, if such corrections are so large as to seriously distort current expenses, they shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate.

C. Accruals for taxes shall be based upon the net amount payable after credit for any discounts and shall not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds shall be credited to account 419, Interest and Dividend Income, and interest paid on deficiencies shall be charged to account 431, Other Interest Expense.

D. The records supporting the entries to this account shall be kept so as to show for each class of taxes, the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

237 Interest accrued.

This account shall include the amount of interest accrued but not matured on all liabilities of the utility not including, however, interest which is added to the principal of the debt on which incurred. Supporting records shall be maintained so as to show the amount of interest accrued on each obligation.

238 Other current and accrued liabilities.

This account shall include the amount of all other current and accrued liabilities not provided for elsewhere appropriately designated and supported so as to show the nature of each liability.

Items

1. Dividends declared but not paid.
2. Matured long-term debt.
3. Matured interest.
4. Taxes collected through payroll deductions or otherwise pending transmittal to the proper taking authority.

8. DEFERRED CREDITS

251 Unamortized premium on debt.

A. This account shall include the total of the unamortized balance of premium and expense for all classes of long-term debt, including receivers' certificates.

B. The premium and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be credited to account 429, Amortization of Premium on Debt—Credit.

252 Customer advances for construction.

This account shall include advances by customers for construction which are to be refunded either wholly or in part. When a customer is refunded the entire amount to which he is entitled, according to the agreement or rule under which the advance was made, the balance, if any, remaining in this account shall be credited to account 271, Contributions in Aid of Construction.

253 Other deferred credits.

This account shall include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

9. OPERATING RESERVES

261 Property insurance reserve.

A. This account shall include amounts reserved by the utility for self-insurance against losses through accident, fire, flood, or other hazards to its own property or property leased from others. A schedule of risks covered by this reserve shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered by self-insurance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

262 Injuries and damages reserve.

A. This account shall be credited with amounts charged to account 925, Injuries and Damages, or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others, and for damages to property neither owned nor held under lease by the utility.

B. When liability for any injury or damage is admitted by the utility either voluntarily or because of the decision of a court or other lawful authority, such as a workmen's compensation board, the admitted liability shall be charged to this account and credited to the appropriate liability account. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

NOTE: Recoveries or reimbursements for losses charged to this account shall be credited hereto; the cost of repairs to property of others if provided for herein, shall be charged to this account.

263 Pensions and benefits reserve.

A. This account shall include provisions made by the utility and amounts contributed by employees for pensions, accident and death benefits, savings, relief, hospital and other provident purposes, where the funds represented by the reserve are included in the assets of the utility either in general or in segregated fund accounts.

B. Amounts paid by the utility for the purposes for which this reserve is established shall be charged hereto.

C. A separate account shall be kept for each kind of reserve included herein.

NOTE: If employee pension or benefit plan funds are not included among the assets of the utility but are held by outside trustees, payments into such funds, or accruals therefor, shall not be included in this account.

264 Amortization reserve—Federal.

A. This account shall be credited with such amounts as are appropriated or set aside by a licensee from earnings for amortization purposes in accordance with the requirements of a license; also interest or other income from investments of a special amortization fund established pursuant to license requirements. (See account 125, Special Funds.)

B. This account shall be debited with only such items or amounts as the Commission may require or approve.

265 Miscellaneous operating reserves.

A. This account shall include all operating reserves maintained by the utility which are not provided for elsewhere.

B. This account shall be maintained in such manner as to show the amount of each separate reserve and the nature and amounts of the debits and credits thereto.

NOTE: This account includes only such reserves as may be created for operating purposes and does not include any reservations of income the credits for which should be carried in account 215, Appropriated Earned Surplus.

10. CONTRIBUTIONS IN AID OF CONSTRUCTION

271 Contributions in aid of construction.

A. This account shall include donations or contributions in cash, services, or property from States, municipalities or other governmental agencies, individuals, and others for construction purposes.

B. The credits to this account shall not be transferred to earned surplus or to any other account without the approval of the Commission.

C. The records supporting the entries to this account shall be so kept that the utility can furnish information as to the purpose of each donation, the conditions, if any, upon which it was made, the amount of donations from (a) States, (b) municipalities, (c) customers and (d) others, and the amount applicable to each utility department.

D. This account shall be subdivided as follows:

Contributions in Aid of Construction—General.
Contributions in Aid of Construction—Federal.

Contributions in Aid of Construction—General shall include all the donations to the various utility departments except those which are made in respect to a licensed project. Contributions in Aid of Construction—Federal shall be kept only by licensees. There shall be included therein donations from States, municipalities, individuals or others which have been expended for plant, or which are included in the plant accounts, of a licensed project, referred to in section 3, subsection (13) of the Federal Power Act, 49 Stat. 839; 16 U.S.C. 796(13). This treatment shall not affect the determination of actual legitimate original cost or net investment in accordance with the Act.

NOTE: There shall not be included in this account advances for construction which are ultimately to be repaid wholly or in part. (See account 252, Customer Advances for Construction.)

11. ACCUMULATED DEFERRED INCOME TAXES

Public utilities and licensees shall use the accounts provided below for prior

accumulations of deferred taxes on income and for additional provisions. A copy of the order or other authorization to practice deferred tax accounting of the state public service commission also having jurisdiction shall be filed with the Commission, or, in the absence of a state public service commission having accounting jurisdiction, the public utility or licensee shall file with this Commission a copy of its plan of accounting for deferred taxes on income. The filing of such order or other authorization, or accounting plan, shall constitute permission for additional accumulations of deferred taxes on income. Account 283 is provided for use of those public utilities and licensees which have obtained permission of the Commission for specific types of deferrals on taxes on income other than with respect to accelerated amortization or liberalized depreciation.

NOTE A: The text of the accounts below are designed primarily to cover deferrals of federal income taxes pursuant to provisions of the Internal Revenue Code of 1954 but the accounts are also applicable to deferrals of State taxes on income.

NOTE B: Public Utilities and Licensees which, in addition to an electric utility department, have another utility department, gas, water, etc., and which have deferred taxes on income with respect thereto shall classify such deferrals in the accounts provided below under subdivisions for each utility department.

281 Accumulated deferred income taxes—Accelerated amortization.

A. This account shall be credited and account 410, Provision for Deferred Income Taxes, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the use of accelerated (5-year) amortization of certified defense facilities in computing such taxes, as permitted by section 168 of the Internal Revenue Code of 1954 (section 124A of previous Internal Revenue Code), as compared to the depreciation deduction otherwise appropriate and allowable for tax purposes according to the straight line or other nonaccelerated depreciation method and appropriate estimated useful life for such property.

B. This account shall be debited and account 411 Income Taxes Deferred in Prior Years—Credit, shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of the use in prior years of accelerated (5-year) amortization of certified defense facilities instead of nonaccelerated or nonliberalized depreciation otherwise appropriate for income tax purposes, and deferral of taxes in such prior years as described in paragraph A, above. Such debit to this account and credit to account 411 shall, in general, represent the effect on taxes payable for the current year of the unavailability of a depreciation deduction for tax purposes, or a reduced amount, with respect to any depreciable property for which accelerated amortization was used in prior years, as compared to the depreciation deduction otherwise available and appropriate for such property, considering its estimated useful life, according to the depreciation method ordinarily used by the utility for similar property in computing depreciation for tax purposes by a nonaccelerated or nonliberalized depreciation method.

C. Records with respect to entries to this account, as described above, and the account balance, shall be so maintained as to show the factors of calculation and the separate amounts applicable to the facilities of each certification or authorization of accelerated amortization for tax purposes.

D. The use of this account and the accounting described above are not mandatory for any utility, which in accordance with a consistent policy elects not to follow deferred tax accounting even though accelerated amortization is used in computing taxes on income. If, however, deferred tax accounting is initiated with respect to any certified defense facility, the accounting shall not be suspended or discontinued on the property covered by that certificate, without approval of the Commission.

E. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in this account or any portion thereof to surplus or make any use thereof except as provided in the text of this account without prior approval of the Commission. Any remaining balance of accumulated deferred taxes with respect to any certified defense facility for which deferred tax accounting has been followed, shall, upon expiration of the estimated useful life of the facility on which deferred tax calculations were based, or upon retirement of such facility or predominant part thereof, be credited to account 411, Income Taxes Deferred in Prior Years—Credit, or otherwise be applied as the Commission may authorize or direct.

282 Accumulated deferred income taxes—Liberalized depreciation.

A. This account shall be credited and account 410, Provision for Deferred Income Taxes, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the use of liberalized depreciation in computing such taxes, as permitted by Section 167 of the Internal Revenue Code of 1954, as compared to the depreciation deduction otherwise appropriate and allowable for tax purposes for similar property of the same estimated useful life according to the straight line or other nonliberalized method of depreciation.

B. This account shall be debited and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of the use in prior years of liberalized depreciation for income tax purposes, and deferral of taxes in such prior years as described in paragraph A above. Such debit to this account and credit to account 411, shall, in general, represent the effect on taxes payable for the current year of the smaller amount of depreciation permitted for tax purposes for the current year with respect to any depreciable property for which liberalized depreciation was used in prior years, as compared to the depreciation deduction otherwise appropriate and available for similar property of the same estimated useful life according to the straight line or other nonliberalized depreciation method ordinarily used by the utility in computing depreciation for tax purposes.

C. Records with respect to entries to this account, as described above, and account balance, shall be so maintained as to show the factors of calculation and the separate amounts applicable to the plant additions of each vintage year for each class, group, or unit as to which different liberalized depreciation methods and estimated useful lives have been used. The underlying calculations to segregate and associate deferred tax amounts with the respective vintage years may be based on reasonable methods of approximation, if necessary, consistently applied.

D. The use of this account and the accounting described above are not mandatory for any utility, which in accordance with a consistent policy, elects not to follow deferred tax accounting even though liberalized depreciation is used in computing taxes on income. If however, deferred tax accounting is initiated with respect to any property such accounting shall not be discontinued on that property, without approval of the Commission.

E. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in the account or any portion thereof to surplus or make any use thereof except as provided in the text of this account without prior approval of the Commission. Any remaining deferred tax balance with respect to any year's plant additions or subdivisions thereof for which liberalized depreciation accounting has been followed upon retirement from service of such property or predominant portion thereof, or upon expiration of the estimated useful life on which the depreciation calculations for tax purposes are based, shall be credited to account 411, Income Taxes Deferred in Prior Years—Credit, or otherwise applied as the Commission may authorize or direct.

283 Accumulated deferred income taxes—Other.

A. This account, when its use has been authorized by the Commission for specific types of tax deferrals shall be credited and account 410, Provision for Deferred Income Taxes, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the current use of deductions other than accelerated amortization or liberalized depreciation in the computation of income taxes, which deductions for general accounting purposes will not be fully reflected in the utility's determination of annual net income until subsequent years.

B. This account, when its use has been authorized by the Commission, shall be debited and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of deferral of taxes on income in previous years, as provided by paragraph A, above, because of difference in timing for tax purposes of particular income deductions from that recognized by the utility for general accounting purposes, other than with respect to accelerated amortization or liberalized depreciation. Such debit to this account and credit to account 411 shall, in general, represent the effect on taxes payable in the current year of the smaller deduction permitted for tax purposes as compared to the amount recognized in the utility's general accounts with respect to the item or class of items for which deferred tax accounting by the utility was authorized by the Commission.

C. Records with respect to entries to this account, as described above, and the account balance, shall be so maintained as to show the factors of calculation with respect to each annual amount of the item or class of items, other than accelerated amortization or liberalized depreciation, for which tax deferral accounting by the utility is authorized by the Commission.

D. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in the account or any portion thereof to surplus or make any use thereof except as provided in the text of this account, without prior approval of the Commission. Any remaining deferred tax account balance with respect to an amount for any prior year's tax deferral, the amortization of which or other recognition in the utility's income accounts has been completed, or other disposition made, shall be credited to account 411, Income Taxes Deferred in Prior Years—Credit, or otherwise disposed of as the Commission may authorize or direct.

NOTE: In determining appropriate use of this account as a basis of request to the Commission for authorization of its use, consideration shall be given to the relative importance of the amount involved, and to other items in the utility's accounts where "prepaid tax accounting" may be appropriate such as situations (a) where the time of taking a deduction in computing taxes on income is such that the tax deduction must be delayed or applied to a series of future years as opposed to earlier recognition of such item in determination of income in the general accounts of the utility, or (b) where inclusion of an income item is required for tax purposes but is to be recognized in whole or in part in the utility's income accounts of a subsequent year or years.

Electric Plant Accounts

1. INTANGIBLE PLANT

301 Organization.
302 Franchises and consents.
303 Miscellaneous intangible plant.

2. PRODUCTION PLANT

A. STEAM PRODUCTION

310 Land and land rights.
311 Structures and improvements.
312 Boiler plant equipment.
313 Engines and engine driven generators.
314 Turbogenerator units.
315 Accessory electric equipment.
316 Miscellaneous power plant equipment.

B. HYDRAULIC PRODUCTION

330 Land and land rights.
331 Structures and improvements.
332 Reservoirs, dams and waterways.
333 Water wheels, turbines and generators.
334 Accessory electric equipment.
335 Miscellaneous power plant equipment.
336 Roads, railroads and bridges.

C. OTHER PRODUCTION

340 Land and land rights.
341 Structures and improvements.
342 Fuel holders, producers and accessories.
343 Prime movers.
344 Generators.
345 Accessory electric equipment.
346 Miscellaneous power plant equipment.

3. TRANSMISSION PLANT

350 Land and land rights.
351 Clearing land and rights of way.
352 Structures and improvements.
353 Station equipment.
354 Towers and fixtures.
355 Poles and fixtures.
356 Overhead conductors and devices.
357 Underground conduit.
358 Underground conductors and devices.
359 Roads and trails.

4. DISTRIBUTION PLANT

360 Land and land rights.
361 Structures and improvements.
362 Station equipment.
363 Storage battery equipment.
364 Poles, towers and fixtures.
365 Overhead conductors and devices.
366 Underground conduit.
367 Underground conductors and devices.
368 Line transformers.
369 Services.
370 Meters.
371 Installations on customers' premises.
372 Leased property on customers' premises.
373 Street lighting and signal systems.

5. GENERAL PLANT

389 Land and land rights.
390 Structures and improvements.
391 Office furniture and equipment.
392 Transportation equipment.
393 Stores equipment.
394 Tools, shop and garage equipment.
395 Laboratory equipment.
396 Power operated equipment.
397 Communication equipment.
398 Miscellaneous equipment.
399 Other tangible property.

Electric Plant Accounts

1. INTANGIBLE PLANT

301 Organization.

This account shall include all fees paid to federal or state governments for the privilege of incorporation and expenditures incident to organizing the corporation, partnership, or other enterprise and putting it into readiness to do business.

ITEMS

1. Cost of obtaining certificates authorising an enterprise to engage in the public-utility business.
2. Fees and expenses for incorporation.
3. Fees and expenses for mergers or consolidations.
4. Office expenses incident to organizing the utility.
5. Stock and minute books and corporate seal.

NOTE A: This account shall not include any discounts upon securities issued or assumed; nor shall it include any costs incident to negotiating loans, selling bonds or other evidences of debt or expenses in connection with the authorization, issuance or sale of capital stock.

NOTE B: Exclude from this account and include in the appropriate expense account the cost of preparing and filing papers in connection with the extension of the term of incorporation unless the first organization costs have been written off. When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included herein or in similar accounts in the books of the companies concerned shall be excluded from this account.

302 Franchises and consents.

A. This account shall include amounts paid to the federal government, to a State or to a political subdivision thereof in consideration for franchises, consents, water power licenses, or certificates, running in perpetuity or for a specified term of more than one year, together with necessary and reasonable expenses incident to procuring such franchises, consents, water power licenses, or certificates of permission and approval, including expenses of organizing and merging separate corporations where statues require, solely for the purpose of acquiring franchise.

B. If a franchise, consent, water power license, or certificate is acquired by assignment, the charge to this account in respect thereof shall not exceed the amount paid therefor by the utility to the assignor, nor shall it exceed the amount paid by the original grantee, plus the expense of acquisition, to such grantee. Any excess of the amount actually paid by the utility over the amount above specified shall be charged to account 435, Miscellaneous Debits to Surplus.

C. When any franchise has expired, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or to account 110, Accumulated Provision for Depreciation and Amortization of Electric Plant, as appropriate.

D. Records supporting this account shall be kept so as to show separately the book cost of each franchise or consent.

NOTE: Annual or other periodic payments under franchises shall not be included herein but in the appropriate operating expense account.

303 Miscellaneous intangible plant.

A. This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility operations and not specifically chargeable to any other account.

B. When any item included in this account is retired or expires, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or account 110, Accumulated Provision for Depreciation and Amortization of Electric Plant, as appropriate.

C. This account shall be maintained in such a manner that the utility can furnish full information with respect to the amounts included herein.

2. Production Plant

A. Steam production

310 Land and land rights.

This account shall include the cost of land and land rights used in connection with steam-power generation. (See electric plant instruction 6.)

311 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with steam-power generation. (See electric plant instruction 7.)

NOTE: Include steam production roads and railroads in this account.

312 Boiler plant equipment.

This account shall include the cost installed of furnaces, boilers, coal and ash handling and coal preparing equipment, steam and feed water piping, boiler apparatus and accessories used in the production of steam, mercury, or other vapor, to be used primarily for generating electricity.

ITEMS

1. Ash handling equipment, including hoppers, gates, cars, conveyors, hoists, sluicing equipment, including pumps and motors, sluicing water pipe and fittings, sluicing trenches and accessories, etc., except sluices which are a part of a building.

2. Boiler feed system, including feed water heaters, evaporator condensers, heater drain pumps, heater drainers, deaerators, and vent condensers, boiler feed pumps, surge tanks, feed water regulators, feed water measuring equipment, and all associated drives.

3. Boiler plant cranes and hoists and associated drives.

4. Boilers and equipment, including boilers and baffles, economizers, superheaters, soot blowers, foundations and settings, water walls, arches, grates, insulation, blow-down system, drying out of new boilers, also associated motors or other power equipment.

5. Breeching and accessories, including breeching, dampers, soot spouts, hoppers and gates, cinder eliminators, breeching insulation, soot blowers and associated motors.

6. Coal handling and storage equipment, including coal towers, coal lorries, coal cars, locomotives and tracks when devoted principally to the transportation of coal, hoppers, downtakes, unloading and hoisting equipment, skip hoists and conveyors, weighing equipment, magnetic separators, cable ways, housings and supports for coal handling equipment.

7. Draft equipment, including air preheaters and accessories, induced and forced draft fans, air ducts, combustion control mechanisms, and associated motors or other power equipment.

8. Gas-burning equipment, including holders, burner equipment and piping, control equipment, etc.

9. Instruments and devices, including all measuring, indicating, and recording equipment for boiler plant service together with mountings and supports.

10. Lighting systems.

11. Oil-burning equipment, including tanks, heaters, pumps with drive, burner equipment and piping, control equipment, etc.

12. Pulverized fuel equipment, including pulverizers, accessory motors, primary air fans, cyclones and ducts, dryers, pulverized fuel bins, pulverized fuel conveyors and equipment, burners, burner piping, priming equipment, air compressors, motors, etc.

13. Stacks, including foundations and supports, stack steel and ladders, stack brick work, stack concrete, stack lining, stack painting (first), when set on separate foundations, independent of substructure or superstructure of building.

14. Station piping, including pipe, valves, fittings, separators, traps, desuperheaters, hangers, excavation, covering, etc. for station piping system, including all steam, condensate, boiler feed and water supply piping, etc., but not condensing water, plumbing, building heating, oil, gas, air piping or piping specifically provided for in account 313.

15. Stoker or equivalent feeding equipment, including stokers and accessory motors, clinker grinders, fans and motors, etc.

16. Ventilating equipment.

17. Water purification equipment, including softeners and accessories, evaporators and accessories, heat exchangers, filters, tanks for filtered or softened water, pumps, motors, etc.

18. Water-supply systems, including pumps, motors, strainers, raw-water storage tanks, boiler wash pumps, intake and discharge pipes and tunnels not a part of a building.

19. Wood fuel equipment, including hoppers, fuel hogs and accessories, elevators and conveyors, bins and gates, spouts, measuring equipment and associated drives.

NOTE: When the system for supplying boiler or condenser water is elaborate, as when it includes a dam, reservoir, canal, pipe line, cooling ponds, or where gas or oil is used as a fuel for providing steam and is supplied through a pipe line system owned by the utility, the cost of such special facilities shall be charged to a subdivision of account 311, Structures and Improvements.

313 Engines and engine driven generators.

This account shall include the cost installed of steam engines, reciprocating or rotary, and their associated auxiliaries; and engine driven main generators, except turbogenerator units.

ITEMS

1. Air cleaning and cooling apparatus, including blowers, drive equipment, air ducts not a part of building, louvers, pumps, hoods, etc.

2. Belting, shafting, pulleys, reduction gearing, etc.

3. Circulating pumps, including connections between condensers and intake and discharge tunnels.

4. Cooling system, including towers, pumps, tank, and piping.

5. Condensers, including condensate pumps, air and vacuum pumps, ejectors, unloading valves and vacuum breakers, expansion devices, screens, etc.

6. Cranes, hoists, etc., including items wholly identified with items listed herein.

7. Engines, reciprocating or rotary.

8. Fire-extinguishing systems.

9. Foundations and settings, especially constructed for and not expected to outlast the apparatus for which provided.

10. Generators—main, A.C. or D.C., including field rheostats and connections for self-excited units, and excitation systems when identified with the generating unit.

11. Governors.

12. Lighting systems.

13. Lubricating systems, including gauges, filters, tanks, pumps, piping, motors, etc.

14. Mechanical meters, including gauges, recording instruments, sampling and testing equipment.

15. Piping—main exhaust, including connections between generator and condenser and between condenser and hotwell.

16. Piping—main steam, including connections from main throttle valve to turbine inlet.

17. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.

18. Pressure oil system, including accumulators, pumps, piping, motors, etc.

19. Throttle and inlet valve.

20. Tunnels, intake and discharge, for condenser system, when not a part of a structure.

21. Water screens, motors, etc.

314 Turbogenerator units.

This account shall include the cost installed of main turbine driven units and accessory equipment used in generating electricity by steam.

ITEMS

1. Air cleaning and cooling apparatus, including blowers, drive equipment, air ducts not a part of building, louvers, pumps, hoods, etc.

2. Circulating pumps, including connections between condensers and intake and discharge tunnels.

3. Condensers, including condensate pumps, air and vacuum pumps, ejectors, unloading valves and vacuum breakers, expansion devices, screens, etc.

4. Generator hydrogen gas piping system and hydrogen detrainment equipment.

5. Cooling system, including towers, pumps, tanks, and piping.

6. Cranes, hoists, etc., including items wholly identified with items listed herein.

7. Excitation system, when identified with main generating units.

8. Fire-extinguishing systems.

9. Foundations and settings, especially constructed for and not expected to outlast the apparatus for which provided.

10. Governors.

11. Lighting systems.

12. Lubricating systems, including gauges, filters, water separators, tanks, pumps, piping, motors, etc.

13. Mechanical meters, including gauges, recording instruments, sampling and testing equipment.

14. Piping—main exhaust, including connections between turbogenerator and condenser and between condenser and hotwell.

15. Piping—main steam, including connections from main throttle valve to turbine inlet.

16. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.

17. Pressure oil systems, including accumulators, pumps, piping, motors, etc.

18. Steelwork, specially constructed for apparatus listed herein.

19. Throttle and inlet valve.

20. Tunnels, intake and discharge, for condenser system, when not a part of structure, water screens, etc.

21. Turbogenerators—main, including turbine and generator, field rheostats and electric connections for self-excited units.

22. Water screens, motors, etc.

23. Moisture separators for turbine steam.

24. Turbine lubricating oil (initial charge).

315 Accessory electric equipment.

This account shall include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced by steam power, and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts. Such motors shall be included in the account in which the equipment with which they are associated is included.

ITEMS

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.

2. Excitation system, including motor, turbine and dual-drive exciter sets and rheostats, storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats, etc., special housing, protective screens, etc.

3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, etc., special housing, protective screens, etc.

4. Station buses, including main, auxiliary, transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, starting transformers, current transformers, potential transformers, protective relays, storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station grounding system, special fire-extinguishing system, and test equipment.

5. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, truck-type boards complete, cubicles, station supervisory control boards, generator and exciter signal stands, temperature recording devices, frequency-control equipment, master clocks, watt-hour meters and synchronoscope in the turbine room, station totalising wattmeter, boiler-room load indicator equipment, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housing for batteries, protective screens, doors, etc.

NOTE A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electricity for the purpose of transmission or distribution.

NOTE B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

316 Miscellaneous power plant equipment.

This account shall include the cost installed of miscellaneous equipment in and about the steam generating plant devoted to general station use, and which is not properly includible in any of the foregoing steampower production accounts.

ITEMS

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, piping, etc.

2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, hoists, etc., with electric and mechanical connections.

3. Fire-extinguishing equipment for general station use.

4. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.

5. Locomotive cranes not includible elsewhere.

6. Locomotives not includible elsewhere.

7. Marine equipment, including boats, barges, etc.

8. Miscellaneous belts, pulleys, countershafts, etc.

9. Miscellaneous equipment, including atmospheric and weather indicating devices, intrasite communication equipment, laboratory equipment, signal systems, callophones, emergency whistles and sirens, fire alarms, insect-control equipment, and other similar equipment.

10. Railway cars not includible elsewhere.

11. Refrigerating systems, including compressors, pumps, cooling coils, etc.

12. Station maintenance equipment, including lathes, shapers, planers, drill presses, hydraulic presses, grinders, etc., with motors, shafting, hangers, pulleys, etc.

13. Ventilating equipment, including items wholly identified with apparatus listed herein.

NOTE: When any item of equipment listed herein is wholly used in connection with equipment included in another account its cost shall be included in such other account.

B. Hydraulic production

330 Land and land rights.

This account shall include the cost of land and land rights used in connection with hydraulic power generation. (See electric plant instruction 6.)

331 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with hydraulic power generation. (See electric plant instruction 7.)

332 Reservoirs, dams and waterways.

This account shall include the cost in place of facilities used for impounding, collecting, storage, diversion, regulation, and delivery of water used primarily for generating electricity.

ITEMS

1. Bridges and culverts (when not a part of roads or railroads).

2. Clearing and preparing land.

3. Dams, including wasteways, spillways, flash boards, spillway gates with operating and control mechanisms, tunnels, gate houses, and fish ladders.

4. Dikes and embankments.

5. Electric system, including conductors, control system, transformers, lighting fixtures, etc.

6. Excavation, including shoring, bracing, bridging, refill, and disposal of excess excavated materials.

7. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.

8. Intakes, including trash racks, rack cleaners, control gates and valves with operating mechanisms, and intake house when not a part of station structure.

9. Platforms, railings, steps, gratings, etc., appurtenant to structures listed herein.

10. Power lines wholly identified with items included herein.

11. Retaining walls.

12. Water conductors and accessories, including canals, tunnels, flumes, penstocks, pipe conductors, forebays, tailraces, navigation locks and operating mechanisms, water-hammer and surge tanks, and supporting trestles and structures.

13. Water storage reservoirs, including dams, flashboards, spillway gates and operating mechanisms, inlet and outlet tunnels, regulating valves and valve towers, silt and mud sluicing tunnels with valve or gate towers, and all other structures wholly identified with any of the foregoing items.

333 Water wheels, turbines and generators.

This account shall include the cost installed of water wheels and hydraulic turbines (from connection with penstock or flume to tail-race) and generators driven thereby devoted to the production of electricity by water power or for the production of power for industrial or other purposes, if the equipment used for such purposes is a part of the hydraulic power plant works.

ITEMS

1. Exciter water wheels and turbines, including runners, gates, governors, pressure regulators, oil pumps, operating mechanisms, scroll cases, draft tubes, and draft-tube supports.

2. Fire-extinguishing equipment.

3. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.

4. Generator cooling system, including air cooling and washing apparatus, air fans and accessories, air ducts, etc.

5. Generators-main, A.C. or D.C., including field rheostats and connections for self-excited units and excitation system when identified with the generating unit.

6. Lighting systems.

7. Lubricating systems, including gauges, filters, tanks, pumps, piping, etc.

8. Main penstock valves and appurtenances, including main valves, control equipment, bypass valves and fittings, and other accessories.

9. Main turbines and water wheels, including runners, gates, governors, pressure regulators, oil pumps, operating mechanisms, scroll cases, draft tubes, and draft-tube supports.

10. Mechanical meters and recording instruments.

11. Miscellaneous water-wheel equipment, including gauges, thermometers, meters, and other instruments.

12. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.

13. Scroll case filling and drain system, including gates, pipe, valves, fittings, etc.

14. Water-actuated pressure-regulator system, including tanks and housings, pipes, valves, fittings and insulations, piers and anchorage, and excavation and backfill.

334 Accessory electric equipment.

This account shall include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced by hydraulic power and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts, such motors being included in the account in which the equipment with which they are associated is included.

ITEMS

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.

2. Excitation system, including motor, turbine, and dual-drive exciter sets and rheostats, storage batteries and charging equipment, circuit breakers, panels and accessories,

knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats, etc., special housings, protective screens, etc.

3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, etc., special housings, protective screens, etc.

4. Station buses, including main, auxiliary, transfer, synchronizing, and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, starting transformers, current transformers, potential transformers, protective relays, storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special fire-extinguishing system, and test equipment.

5. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, truck type boards complete, cubicles, station supervisory control devices, frequency control equipment, master clocks, watt-hour meter, station totalizing watt-meter, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housings for batteries, protective screens, doors, etc.

NOTE A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electricity for the purpose of transmission or distribution.

NOTE B: When any item of equipment listed herein is used wholly to furnish power to equipment, it shall be included in such equipment account.

335 Miscellaneous power plant equipment.

This account shall include the cost installed of miscellaneous equipment in and about the hydroelectric generating plant which is devoted to general station use and is not properly includible in other hydraulic production accounts.

ITEMS

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, piping, etc.

2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, hoists, etc., with electric and mechanical connections.

3. Fire-extinguishing equipment for general station use.

4. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.

5. Locomotive cranes not includible elsewhere.

6. Locomotives not includible elsewhere.

7. Marine equipment, including boats, barges, etc.

8. Miscellaneous belts, pulleys, countershafts, etc.

9. Miscellaneous equipment, including atmospheric and weather indicating devices, intrasite communication equipment, laboratory equipment, insect control equipment, signal system, callophones, emergency whistles and sirens, fire alarms, and other similar equipment.

10. Railway cars, not includible elsewhere.

11. Refrigerating system, including compressors, pumps, cooling coils, etc.

12. Station maintenance equipment, including lathes, shapers, planers, drill presses, hydraulic presses, grinders, etc., with motors, shafting, hangers, pulleys, etc.

13. Ventilating equipment, including items wholly identified with apparatus listed herein.

NOTE: When any item of equipment, listed herein is used wholly in connection with equipment included in another account, its cost shall be included in such other account.

336 Roads, railroads and bridges.

This account shall include the cost of roads, railroads, trails, bridges, and trestles used primarily as production facilities. It includes also those roads, etc., necessary to connect the plant with highway transportation systems, except when such roads are dedicated to public use and maintained by public authorities.

ITEMS

1. Bridges, including foundations, piers, girders, trusses, flooring, etc.

2. Clearing land.

3. Railroads, including grading, ballast, ties, rails, culverts, hoists, etc.

4. Roads, including grading, surfacing, culverts, etc.

5. Structures, constructed and maintained in connection with items listed herein.

6. Trails, including grading, surfacing, culverts, etc.

7. Trestles, including foundations, piers, girders, trusses, flooring, etc.

NOTE A: Roads intended primarily for connecting employees' houses with the power plant shall not be included herein but in account 331, Structures and Improvements.

NOTE B: The cost of temporary roads, bridges, etc., necessary during the period of construction but abandoned or dedicated to public use upon completion of the plant, shall not be included herein but shall be charged to the accounts appropriate for the construction.

C. OTHER PRODUCTION

340 Land and land rights.

This account shall include the cost of land and land rights used in connection with other power generation. (See electric plant instruction 6.)

341 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with other power generation. (See electric plant instruction 7.)

342 Fuel holders, producers, and accessories.

This account shall include the cost installed of fuel handling and storage equipment used between the point of fuel delivery to the station and the intake pipe through which fuel is directly drawn to the engine, also the cost of gas producers and accessories devoted to the production of gas for use in prime movers driving main electric generators.

ITEMS

1. Blower and fans.
2. Boilers and pumps.
3. Economizers.
4. Exhauster outfits.
5. Flues and piping.
6. Pipe system.
7. Producers.
8. Regenerators.
9. Scrubbers.
10. Steam injectors.
11. Tanks for storage of oil, gasoline, etc.
12. Vaporizers.

343 Prime movers.

This account shall include the cost installed of Diesel or other prime movers devoted to the generation of electric energy, together with their auxiliaries.

ITEMS

1. Air-filtering system.
2. Belting, shafting, pulleys, reduction gearing, etc.
3. Cooling system, including towers, pumps, tanks, and piping.
4. Cranes, hoists, etc., including items wholly identified with apparatus listed herein.
5. Engines, Diesel, gasoline, gas or other internal combustion.
6. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.
7. Governors.
8. Ignition system.
9. Inlet valve.
10. Lighting systems.
11. Lubricating systems, including filters, tanks, pumps, and piping.
12. Mechanical meters, including gauges, recording instruments, sampling and testing equipment.
13. Mufflers.
14. Piping.
15. Starting systems, compressed air, or other, including compressors and drives, tanks, piping, motors, boards and connections, storage tanks, etc.
16. Steelwork, specially constructed for apparatus listed herein.
17. Waste heat boilers, antifluctuators, etc.

344 Generators.

This account shall include the cost installed of Diesel or other power driven main generators.

ITEMS

1. Cranes, hoists, etc., including items wholly identified with such apparatus.
2. Fire-extinguishing equipment.
3. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
4. Generator cooling system, including air cooling and washing apparatus, air fans and accessories, air ducts, etc.
5. Generators—main, A.C. or D.C., including field rheostats and connections for self-excited units and excitation system when identified with the generating unit.
6. Lighting systems.
7. Lubricating system, including tanks, filters, strainers, pumps, piping, coolers, etc.
8. Mechanical meters, and recording instruments.
9. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.

NOTE: If prime movers and generators are so integrated that it is not practical to separately classify as Prime Movers, the entire unit may be included in account 344, Generators.

345 Accessory electric equipment.

This account shall include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced in other power generating stations, and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts. Such motors shall be included in the account in which the equipment with which it is associated is included.

ITEMS

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.

2. Excitation system, including motor, turbine and dual drive exciter sets and rheostats, storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats, etc., special housings, protective screens, etc.

3. Generator main connections, including oil circuit breakers, and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, etc., special housing, protective screens, etc.

4. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, trunk-type boards complete, cubicles, station supervisory control boards, generator and exciter signal stands, temperature-recording devices, Frequency control equipment, master clocks, watt-hour meter, station totalizing watt-meter, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housing for batteries, protective screens, doors, etc.

5. Station buses, including main, auxiliary, transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, starting transformers, current transformers, potential transformers, protective relays, storage batteries, and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station ground system, special fire-extinguishing system, and test equipment.

NOTE A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

NOTE B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

3. TRANSMISSION PLANT

350 Land and land rights.

This account shall include the cost of land and land rights used in connection with transmission operations. (See electric plant instruction 6.)

351 Clearing land and rights of way.

This account shall include the cost of initial or original clearing of transmission land and rights of way.

NOTE: The cost of removing stumps, grading, excavating, etc., incident to the preparation of foundations for towers or other structures or to the construction of roads, trails, and bridges, shall not be included in this account but in the accounts directly benefited.

352 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with transmission operations. (See electric plant instruction 7.)

353 Station equipment.

This account shall include the cost installed of transforming, conversion, and switching equipment used for the purpose of changing the characteristics of electricity in connection with its transmission or for controlling transmission circuits.

ITEMS

1. Bus compartments, concrete, brick, and sectional steel, including items permanently attached thereto.
2. Conduit, including concrete and iron duct runs not part of a building.
3. Control equipment, including batteries, battery charging equipment, transformers, remote relay boards, and connections.
4. Conversion equipment, including transformers, indoor and outdoor, frequency changers, motor generator sets, rectifiers, synchronous converters, motors, cooling equipment, and associated connections.
5. Fences.
6. Fixed and synchronous condensers, including transformers, switching equipment, blowers, motors, and connections.
7. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
8. General station equipment, including air compressors, motors, hoists, cranes, test equipment, ventilating equipment, etc.
9. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.
10. Primary and secondary voltage connections, including bus runs and supports, insulators, potheads, lightning arresters, cable and wire runs from and to outdoor connections or to manholes and the associated regulators, reactors, resistors, surge arresters, and accessory equipment.
11. Switchboards, including meters, relays, control wiring, etc.
12. Switching equipment, indoor and outdoor, including oil circuit breakers and operating mechanisms, truck switches, and disconnect switches.
13. Tools and appliances.

354 Towers and fixtures.

This account shall include the cost installed of towers and appurtenant fixtures used for supporting overhead transmission conductors.

ITEMS

1. Anchors, guys, braces.
2. Brackets.
3. Crossarms, including braces.
4. Excavation, backfill, and disposal of excess excavated material.
5. Foundations.
6. Guards.
7. Insulator pins and suspension bolts.
8. Ladders and steps.
9. Railings, etc.
10. Towers.

355 Poles and fixtures.

This account shall include the cost installed of transmission line poles, wood, steel, concrete, or other material, together with appurtenant fixtures used for supporting overhead transmission conductors.

ITEMS

1. Anchors, head arm and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
2. Brackets.
3. Crossarms and braces.
4. Excavation and backfill, including disposal of excess excavated material.
5. Extension arms.
6. Gaining, roofing, stenciling, and tagging.
7. Insulator pins and suspension bolts.
8. Paving.
9. Pole steps.
10. Poles, wood, steel, concrete, or other material.
11. Racks complete with insulators.
12. Reinforcing and stubbing.
13. Settings.
14. Shaving and painting.

356 Overhead conductors and devices.

This account shall include the cost installed of overhead conductors and devices used for transmission purposes.

ITEMS

1. Circuit breakers.
2. Conductors, including insulated and bare wires and cables.
3. Ground wires and ground clamps.
4. Insulators, including pin, suspension, and other types.
5. Lightning arresters.
6. Switches.
7. Other line devices.

357 Underground conduit.

This account shall include the cost installed of underground conduit and tunnels used for housing transmission cables or wires. (See electric plant instruction 12.)

ITEMS

1. Conduit, concrete, brick or tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
2. Excavation, including shoring, bracing, bridging, backfill, and disposal of excess excavated material.
3. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.
4. Lighting systems.
5. Manholes, concrete or brick, including iron or steel, frames and covers, hatchways, gratings, ladders, cable racks and hangers, etc., permanently attached to manholes.
6. Municipal inspection.
7. Pavement disturbed, including cutting and replacing pavement, pavement base and sidewalks.
8. Permits.
9. Protection of street openings.
10. Removal and relocation of subsurface obstructions.
11. Sewer connections, including drains, traps, tide valves, check valves, etc.
12. Sumps, including pumps.
13. Ventilating equipment.

358 Undergound conductors and devices.

This account shall include the cost installed of underground conductors and devices used for transmission purposes.

ITEMS

1. Armored conductors, buried, including insulators, insulating materials, splices, potheads, trenching, etc.
2. Armored conductors, submarine, including insulators, insulating materials, splices in terminal chambers, potheads, etc.
3. Cables in standpipe, including pothead and connection from terminal chamber of manhole to insulators on pole.
4. Circuit breakers.
5. Fireproofing, in connection with any item listed herein.
6. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, ventilating equipment, etc.
7. Lead and fabric covered conductors, including insulators, compound filled, oil filled, or vacuum splices, potheads, etc.
8. Lightning arresters.
9. Municipal inspection.
10. Permits.
11. Protection of street openings.
12. Racking of cables.
13. Switches.
14. Other line devices.

359 Roads and trails.

This account shall include the cost of roads, trails, and bridges used primarily as transmission facilities.

ITEMS

1. Bridges, including foundation piers, girders, trusses, flooring, etc.
2. Clearing land.
3. Roads, including grading, surfacing, culverts, etc.
4. Structures, constructed and maintained in connection with items included herein.
5. Trails, including grading, surfacing, culverts, etc.

NOTE: The cost of temporary roads, bridges, etc., necessary during the period of construction but abandoned or dedicated to public use upon completion of the plant, shall be charged to the accounts appropriate for the construction.

4. DISTRIBUTION PLANT

360 Land and land rights.

This account shall include the cost of land and land rights used in connection with distribution operations. (See electric plant instruction 6.)

NOTE: Do not include in this account the cost of permits to erect poles, towers, etc., or to trim trees. See account 364, Poles, Towers and Fixtures, and account 365, Overhead Conductors and Devices.

361 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with distribution operations. (See electric plant instruction 7.)

362 Station equipment.

This account shall include the cost installed of station equipment, including transformer banks, etc., which are used for the purpose of changing the characteristics of electricity in connection with its distribution.

ITEMS

1. Bus compartments, concrete, brick and sectional steel, including items permanently attached thereto.
2. Conduit, including concrete and iron duct runs not part of building.
3. Control equipment, including batteries, battery charging equipment, transformers, remote relay boards, and connections.
4. Conversion equipment, indoor and outdoor, frequency changers, motor generator sets, rectifiers, synchronous converters, motors, cooling equipment, and associated connections.
5. Fences.
6. Fixed and synchronous condensers, including transformers, switching equipment, blowers, motors, and connections.
7. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
8. General station equipment, including air compressors, motors, hoists, cranes, test equipment, ventilating equipment, etc.
9. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.
10. Primary and secondary voltage connections, including bus runs and supports, insulators, potheads, lightning arresters, cable and wire runs from and to outdoor connections or to manholes and the associated regulators, reactors, resistors, surge arresters, and accessory equipment.
11. Switchboards, including meters, relays, control wiring, etc.
12. Switching equipment, indoor and outdoor, including oil circuit breakers and operating mechanisms, truck switches, disconnect switches.

NOTE: The cost of rectifiers, series transformers, and other special station equipment devoted exclusively to street lighting service shall not be included in this account, but in account 373, Street Lighting and Signal Systems.

363 Storage battery equipment.

This account shall include the cost installed of storage battery equipment for the purpose of supplying electricity to meet emergency or peak demands.

ITEMS

1. Batteries, including elements, tanks, tank insulators, etc.
2. Battery room connections, including cable or bus runs and connections.
3. Battery room flooring, when specially laid for supporting batteries.
4. Charging equipment, including motor generator sets and other charging equipment and connections, and cable runs from generator or station bus to battery room connections.
5. Miscellaneous equipment, including instruments, water stills, etc.
6. Switching equipment, including end-cell switches and connections, boards and panels, used exclusively for battery control, not part of general station switchboard.
7. Ventilating equipment, including fans and motors, louvers, and ducts not part of building.

NOTE: Storage batteries used for control and general station purposes shall not be included in this account but in the account appropriate for their use.

364 Poles, towers, and fixtures.

This account shall include the cost installed of poles, towers, and appurtenant fixtures used for supporting overhead distribution conductors and service wires.

ITEMS

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, pole plates, etc.
2. Brackets.
3. Crossarms and braces.
4. Excavation and backfill, including disposal of excess excavated material.
5. Extension arms.
6. Foundations.
7. Guards.
8. Insulator pins and suspension bolts.
9. Paving.
10. Permits for construction.
11. Pole steps and ladders.
12. Poles, wood, steel, concrete, or other material.
13. Racks complete with insulators.
14. Railings.
15. Reinforcing and stubbing.
16. Settings.
17. Shaving, painting, gaining, roofing, stenciling, and tagging.
18. Towers.
19. Transformer racks and platforms.

365 Overhead conductors and devices.

This account shall include the cost installed of overhead conductors and devices used for distribution purposes.

ITEMS

1. Circuit breakers.
2. Conductors, including insulated and bare wires and cables.
3. Ground wires, clamps, etc.
4. Insulators, including pin, suspension, and other types, and tie wire or clamps.
5. Lightning arresters.
6. Railroad and highway crossing guards.
7. Splices.
8. Switches.
9. Tree trimming initial cost including the cost of permits therefor.
10. Other line devices.

NOTE: The cost of conductors used solely for street lighting or signal systems shall not be included in this account but in account 373, Street Lighting and Signal Systems.

366 Underground conduit.

This account shall include the cost installed of underground conduit and tunnels used for housing distribution cables or wires.

ITEMS

1. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
2. Excavation, including shoring, bracing, bridging, backfill, and disposal of excess excavated material.
3. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
4. Lighting systems.
5. Manholes, concrete or brick, including iron or steel frames and covers, hatchways, gratings, ladders, cable racks and hangers, etc., permanently attached to manholes.
6. Municipal inspection.
7. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
8. Permits.
9. Protection of street openings.
10. Removal and relocation of subsurface obstructions.
11. Sewer connections, including drains, traps, tide valves, check valves, etc.
12. Sumps, including pumps.
13. Ventilating equipment.

NOTE: The cost of underground conduit used solely for street lighting or signal systems shall be included in account 373, Street Lighting and Signal Systems.

367 Underground conductors and devices.

This account shall include the cost installed of underground conductors and devices used for distribution purposes.

ITEMS

1. Armored conductors, buried, including insulators, insulating materials, splices, potheads, trenching, etc.
2. Armored conductors, submarine, including insulators, insulating materials, splices in terminal chamber, potheads, etc.
3. Cables in standpipe, including pothead and connection from terminal chamber or manhole to insulators on pole.
4. Circuit breakers.
5. Fireproofing, in connection with any items listed herein.
6. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, etc.
7. Lead and fabric covered conductors, including insulators, compound-filled, oil-filled or vacuum splices, potheads, etc.
8. Lightning arresters.
9. Municipal inspection.
10. Permits.
11. Protection of street openings.
12. Racking of cables.
13. Switches.
14. Other line devices.

NOTE: The cost of underground conductors and devices used solely for street lighting or signal systems shall be included in account 373, Street Lighting and Signal Systems.

368 Line transformers.

A. This account shall include the cost installed of overhead and underground distribution line transformers and pole-type and underground voltage regulators owned by the utility, for use in transforming electricity to the voltage at which it is to be used by the customer, whether actually in service or held in reserve.

B. When a transformer is permanently retired from service, the original installed cost thereof shall be credited to this account.

C. The records covering line transformers shall be so kept that the utility can furnish the number of transformers of various capacities in service and those in reserve, and the location and the use of each transformer.

ITEMS

1. Installation, labor of (first installation only).
2. Transformer cut-out boxes.
3. Transformer, lightning arresters.
4. Transformers, line and network.
5. Capacitors.
6. Network protectors.

NOTE: The cost of removing and resetting line transformers shall not be charged to this account but to account 561, Line and Station Labor, or account 562, Line and Station Supplies and Expenses, as appropriate. The cost of line transformers used solely for street lighting or signal systems shall be included in account 373, Street Lighting and Signal Systems.

369 Services.

This account shall include the cost installed of all overhead and underground conductors leading from a point where wires leave the last pole of the overhead system or the distribution box or manhole, or the top of the pole of the distribution line, to the point of connection with the customer's outlet or wiring. Conduit used for underground service conductors shall be included herein.

ITEMS

1. Brackets.
2. Cables and wires.
3. Conduit.
4. Insulators.
5. Municipal inspection.
6. Overhead to underground, including conduit or standpipe and conductor from last splice on pole to connection with customer's wiring.
7. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
8. Permits.
9. Protection of street openings.
10. Service switch.
11. Suspension wire.

370 Meters.

A. This account shall include the cost installed of meters or devices and appurtenances thereto, for use in measuring the electricity delivered to its users; whether actually in service or held in reserve.

B. When a meter is permanently retired from service, the installed cost included herein shall be credited to this account.

C. The records covering meters shall be so kept that the utility can furnish information as to the number of meters of various capacities in service and in reserve as well as the location of each meter owned.

ITEMS

1. Alternating current watt-hour meters.
2. Current limiting devices.
3. Demand indicators.
4. Demand meters.
5. Direct current watt-hour meters.
6. Graphic demand meters.
7. Installation, labor of (first installation only).
8. Instrument transformers.
9. Maximum demand meters.
10. Meter badges and their attachments.
11. Meter boards and boxes.
12. Meter fittings, connections, and shelves (first set).
13. Meter switches and cut-outs.
14. Prepayment meters.
15. Protective devices.
16. Testing new meters.

NOTE A: This account shall not include meters for recording output of a generating station, substation meters, etc. It includes only those meters used to record energy delivered to customers.

NOTE B: The cost of removing and resetting meters shall be charged to account 566, Meter Expenses.

371 Installations on customers' premises.

This account shall include the cost installed of equipment on the customer's side of a meter when the utility incurs such cost and when the utility retains title to and assumes full responsibility for maintenance and replacement of such property. This account shall not include leased equipment for which see account 372, Leased Property on Customers' Premises.

ITEMS

1. Cable vaults.
2. Commercial lamp equipment.
3. Foundations and settings specially provided for equipment included herein.
4. Frequency changer sets.
5. Motor generator sets.
6. Motors.
7. Switchboard panels, high or low tension.
8. Wire and cable connections to incoming cables.

NOTE: Do not include in this account any costs incurred in connection with merchandising, jobbing, or contract work activities.

372 Leased property on customers' premises.

This account shall include the cost of electric motors, transformers, and other equipment on customers' premises (including municipal corporation), leased or loaned to customers, but not including property held for sale.

NOTE A: The cost of setting and connecting such appliances or equipment on the premises of customers and the cost of resetting or removal shall not be charged to this account but to operating expenses, account 567, Customer Installations Expenses.

NOTE B: Do not include in this account any costs incurred in connection with merchandising, jobbing, or contract work activities.

373 Street lighting and signal systems.

This account shall include the cost installed of equipment used wholly for public street and highway lighting or traffic, fire alarm, police, and other signal systems.

ITEMS

1. Armored conductors, buried or submarine, including insulators, insulating materials, splices, trenching, etc.
2. Automatic control equipment.
3. Conductors, overhead or underground, including lead or farbric covered, parkway cables, etc., including splices, insulators, etc.
4. Lamps, arc, incandescent, or other types, including glassware, suspension fixtures, brackets, etc.
5. Municipal inspection.
6. Ornamental lampposts.
7. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
8. Permits.
9. Posts and standards.
10. Protection of street openings.
11. Relays or time clocks.
12. Series contactors.
13. Switches.
14. Transformers, pole or underground.

5. GENERAL PLANT

389 Land and land rights.

This account shall include the cost of land and land rights used for utility purposes, the cost of which is not properly includible in other land and land rights

accounts. (See electric plant instruction 6.)

390 Structures and improvements.

This account shall include the cost in place of structures and improvements used for utility purposes, the cost of which is not properly includible in other structures and improvements accounts. (See electric plant instruction 7.)

391 Office furniture and equipment.

This account shall include the cost of office furniture and equipment owned by the utility and devoted to utility service, and not permanently attached to buildings, except the cost of such furniture and equipment which the utility elects to assign to other plant accounts on a functional basis.

ITEMS

1. Bookcases and shelves.
2. Desks, chairs, and desk equipment.
3. Drafting-room equipment.
4. Filing, storage, and other cabinets.
5. Floor covering.
6. Library and library equipment.
7. Mechanical office equipment, such as accounting machines, typewriters, etc.
8. Safes.
9. Tables.

392 Transportation equipment.

This account shall include the cost of transportation vehicles used for utility purposes.

ITEMS

1. Airplanes.
2. Automobiles.
3. Bicycles.
4. Electrical vehicles.
5. Motor trucks.
6. Motorcycles.
7. Repair cars or trucks.
8. Tractors and trailers.
9. Other transportation vehicles.

393 Stores equipment.

This account shall include the cost of equipment used for the receiving, shipping, handling, and storage of materials and supplies.

ITEMS

1. Chain falls.
2. Counters.
3. Cranes (portable).
4. Elevating and stacking equipment (portable).
5. Hoists.
6. Lockers.
7. Scales.
8. Shelving.
9. Storage bins.
10. Trucks, hand and power driven.
11. Wheelbarrows.

394 Tools, shop and garage equipment.

This account shall include the cost of tools, implements, and equipment used in construction, repair work, general shops and garages and not specifically provided for or includible in other accounts.

ITEMS

1. Air compressors.
2. Anvils.
3. Automobile repair shop equipment.
4. Battery charging equipment.
5. Belts, shafts and countershafts.
6. Boilers.
7. Cable pulling equipment.
8. Concrete mixers.
9. Drill presses.
10. Derricks.
11. Electric equipment.
12. Engines.
13. Forges.
14. Furnaces.
15. Foundations and settings specially constructed for and not expected to outlast the equipment for which provided.
16. Gas producers.
17. Gasoline pumps, oil pumps and storage tanks.
18. Greasing tools and equipment.
19. Hoists.
20. Ladders.
21. Lathes.
22. Machine tools.
23. Motor driven tools.
24. Motors.
25. Pipe threading and cutting tools.
26. Pneumatic tools.
27. Pumps.
28. Riveters.
29. Smithing equipment.
30. Tool racks.
31. Vises.
32. Welding apparatus.
33. Work benches.

395 Laboratory equipment.

This account shall include the cost installed of laboratory equipment used for general laboratory purposes and not specifically provided for or includible in other departmental or functional plant accounts.

ITEMS

1. Ammeters.
2. Current batteries.
3. Frequency changers.
4. Galvanometers.
5. Inductometers.
6. Laboratory standard millivolt meters.
7. Laboratory standard volt meters.
8. Meter-testing equipment.
9. Millivolt meters.
10. Motor generator sets.
11. Panels.
12. Phantom loads.
13. Portable graphic ammeters, voltmeters, and wattmeters.
14. Portable loading devices.
15. Potential batteries.
16. Potentiometers.
17. Rotating standards.
18. Standard cell, reactance, resistor, and shunt.
19. Switchboards.
20. Synchronous timers.
21. Testing panels.
22. Testing resistors.
23. Transformers.
24. Voltmeters.
25. Other testing, laboratory, or research equipment not provided for elsewhere.

396 Power operated equipment.

This account shall include the cost of power operated equipment used in construction or repair work exclusive of equipment includible in other accounts. Include, also, the tools and accessories acquired for use with such equipment and the vehicle on which such equipment is mounted.

ITEMS

1. Air compressors, including driving unit and vehicle.
2. Back filling machines.
3. Boring machines.
4. Bulldozers.
5. Cranes and hoists.
6. Diggers.
7. Engines.
8. Pile drivers.
9. Pipe cleaning machines.
10. Pipe coating or wrapping machines.
11. Tractors—Crawler type.
12. Trenchers.
13. Other power operated equipment.

NOTE: It is intended that this account include only such large units as are generally self-propelled or mounted on movable equipment.

397 Communication equipment.

This account shall include the cost installed of telephone, telegraph, and wireless equipment for general use in connection with utility operations.

ITEMS

1. Antennae.
2. Booths.
3. Cables.
4. Distributing boards.
5. Extension cords.
6. Gongs.
7. Hand sets, manual and dial.
8. Insulators.
9. Intercommunicating sets.
10. Loading coils.
11. Operators' desks.
12. Poles and fixtures used wholly for telephone or telegraph wire.
13. Radio transmitting and receiving sets.
14. Remote control equipment and lines.
15. Sending keys.
16. Storage batteries.
17. Switchboards.
18. Telautograph circuit connections.
19. Telegraph receiving sets.
20. Telephone and telegraph circuits.
21. Testing instruments.
22. Towers.
23. Underground conduit used wholly for telephone or telegraph wires and cable wires.

398 Miscellaneous equipment.

This account shall include the cost of equipment, apparatus, etc., used in the utility operations, which is not includible in any other account of this system of accounts.

ITEMS

1. Hospital and infirmary equipment.
2. Kitchen equipment.
3. Recreation equipment.
4. Radios.
5. Restaurant equipment.
6. Soda fountains.
7. Operators' cottage furnishings.
8. Other miscellaneous equipment.

NOTE: Miscellaneous equipment of the nature indicated above wherever practicable shall be included in the utility plant accounts on a functional basis.

399 Other tangible property.

This account shall include the cost of tangible utility plant not provided for elsewhere.

Income Accounts

1. UTILITY OPERATING INCOME

400	Operating revenues.
	Operating expenses:
401	Operation expense.
402	Maintenance expense.
403	Depreciation expense.
404	Amortization of limited-term electric plant.
405	Amortization of other electric plant.
406	Amortization of electric plant acquisition adjustments.
407	Amortization of property losses.
408	Taxes other than income taxes.
409	Income taxes.
410	Provision for deferred income taxes.
411	Income taxes deferred in prior years—Credit.
	Total operating expenses.
	Operating income.
412–413	Income from electric plant leased to others.
414	Other utility operating income.
	Total operating income.

2. OTHER INCOME

415–416	Income from merchandising, jobbing and contract work.
417	Income from nonutility operations.
418	Nonoperating rental income.
419	Interest and dividend income.
421	Miscellaneous nonoperating income.
	Total other income.

3. MISCELLANEOUS INCOME DEDUCTIONS

425	Miscellaneous amortization.
426	Other income deductions.
	Total income deductions.
	Income before interest charges.

4. INTEREST CHARGES

427	Interest on long-term debt.
428	Amortization of debt discount and expense.
429	Amortization of premium on debt—Cr.
430	Interest on debt to associated companies.
431	Other interest expense.
432	Interest charged to construction—Cr.
	Total interest charges.
	Net income.

5. EARNED SURPLUS

216	Unappropriated earned surplus (at beginning of period).
433	Balance transferred from income.
434	Miscellaneous credits to surplus.
435	Miscellaneous debits to surplus.
436	Appropriations of surplus.
	Net addition to earned surplus.
437	Dividends declared—Preferred stock.
438	Dividends declared—Common stock.
216	Unappropriated earned surplus (at end of period).

Income Accounts

1. UTILITY OPERATING INCOME

400 Operating revenues.

There shall be shown under this caption the total amount included in the electric operating revenue accounts provided herein.

401 Operation expense.

There shall be shown under this caption the total amount included in the electric operation expense accounts provided herein.

402 Maintenance expense.

There shall be shown under this caption the total amount included in the electric maintenance expense accounts provided herein.

403 Depreciation expense.

A. This account shall include the amount of depreciation expense for all classes of depreciable electric plant in service except such depreciation expense as is chargeable to clearing accounts or to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

B. The utility shall keep such records of property and property retirements as will reflect the service life of property which has been retired and aid in estimating probable service life by mortality, turnover, or other appropriate methods; and also such records as will reflect the percentage of salvage and cost of removal for property retired from each account, or subdivision thereof, for depreciable electric plant.

NOTE A: Depreciation expense applicable to property included in account 104, Electric Plant Leased to Others, shall be charged to account 413, Expenses of Electric Plant Leased to Others.

NOTE B: Depreciation expense applicable to transportation equipment, shop equipment, tools, work equipment, power operated equipment, and other general equipment may be charged to clearing accounts as necessary, in order to obtain a proper distribution of expenses between construction and operation.

404 Amortization of limited-term electric plant.

This account shall include amortization charges applicable to amounts included in the electric plant accounts for limited-term franchises, licenses, patent rights, limited-term interests in land, and expenditures on leased property where the service life of the improvements is terminable by action of the lease. The charges to this account shall be such as to distribute the book cost of each investment as evenly as may be over the period of its benefit to the utility. (See account 110, Accumulated Provision of Depreciation and Amortization of Electric Plant.)

405 Amortization of other electric plant.

A. When authorized by the Commission, this account shall include charges for amortization of intangible or other electric plant in service which does not have a definite or terminable life and which is not subject to charges for depreciation expense.

B. This account shall be supported in such detail as to show the amortization applicable to each investment being amortized, together with the book cost of the investment and the period over which it is being written off.

406 Amortization of electric plant acquisition adjustments.

This account shall be debited or credited, as the case may be, with amounts includible in operating expenses, pursuant to approval or order of the Commission, for the purpose of providing for the extinguishment of the amount in account 114, Electric Plant Acquisition Adjustments.

407 Amortization of property losses.

This account shall be charged with amounts credited to account 182, Extraordinary Property Losses, when the Commission has authorized the amount in the latter account to be amortized by charges to electric operations.

408 Taxes other than income taxes.

A. This account shall include the amount of ad valorem, gross revenue or gross receipts taxes, state unemployment insurance, franchise taxes, federal excise taxes, social security taxes, and all other taxes assessed by federal, state, county, municipal, or other local governmental authorities, which are properly chargeable to electric operations, except income taxes.

B. This account shall be charged with the amount of taxes which is applicable thereto, with concurrent credits to account 236, Taxes Accrued, or account 165, Prepayments, as appropriate. When it is not possible to determine the exact amount of taxes, the amount shall be estimated and adjustments made in current accruals as the actual tax levies become known.

C. The charges to this account shall be made or supported so as to show the amount of each tax and the basis upon which each charge is made. In the case of a utility rendering more than one utility service, taxes of the kind includible in this account shall be assigned directly to the utility department the operation of which gave rise to the tax in so far as practicable. Where the tax is not attributable to a specific utility department, it shall be distributed among the utility departments or nonutility operations on an equitable basis.

NOTE A: Taxes applicable to nonutility property or investments shall be charged to the account in which the income from the property or investments is included.

NOTE B: Special assessments for street and similar improvements shall be included in the appropriate utility plant or nonutility property account.

NOTE C: Taxes specifically applicable to construction shall be included in the cost of construction.

NOTE D: Taxes assumed by the utility on property leased from others for use in utility operations shall be charged to the appropriate rent expense or clearing account.

NOTE E: Gasoline and other sales taxes shall be charged as far as practicable to the same account as the materials on which the tax is levied.

NOTE F: Social Security and other forms of so-called pay roll taxes shall be distributed to utility departments and to nonutility functions on a basis related to pay roll. Amounts applicable to construction shall be charged to the appropriate plant account.

409 Income taxes.

A. This account shall include the amount of State and federal taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals shall be made to account 236, Taxes Accrued, and as the exact amount of taxes becomes known, the current tax accruals shall be adjusted accordingly so that this account, as nearly as can be ascertained, shall include the actual taxes payable which are chargeable to utility operations.

B. The accruals for income taxes shall be apportioned among utility departments and nonutility operations so that, as nearly as practicable, each tax shall be included in the expenses of the utility department or nonutility operation the income from which gave rise to the tax.

NOTE A: Taxes assumed by the utility on interest shall be charged to account 431, Other Interest Expense.

NOTE B: Income taxes on income from electric plant leased to others shall be charged to account 413, Expenses of Electric Plant Leased to Others.

NOTE C: Where statutes or regulatory practices require that the profits or losses of merchandising, jobbing and contract work shall not be considered in arriving at rates to be charged for utility service, income taxes on income from merchandising, jobbing and contract work shall be charged to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

NOTE D: Income taxes on nonutility income shall be charged to the account in which the income is included. If the amount of nonutility income is relatively small, the allocation of income taxes thereto may be made annually.

NOTE E: Interest on tax refunds or deficiencies shall not be included in this account but in account 419, Interest and Dividend Income, or account 431, Other Interest Expense, as appropriate.

410 Provision for deferred income taxes.

This account shall be debited, and Accumulated Deferred Income Taxes shall be credited with an amount equal to any deferral of taxes on income as provided by the texts of accounts 281, 282 and 283. There shall not be netted against entries required to be made to this account any credit amounts appropriately includible in account 411, Income Taxes Deferred in Prior Years—Credit.

411 Income taxes deferred in prior years—Credit.

This account shall be credited and Accumulated Deferred Income Taxes debited with an amount equal to the portion of taxes on income payable for the year that is attributable to a deferral of taxes on income in a prior year, in accordance with the plan of deferred tax accounting provided by the texts of accounts 281, 282, and 283. There shall not be netted against entries required to be made to this account any debit amounts appropriately includible in account 410, Provision for Deferred Income Taxes.

412 Revenues from electric plant leased to others.

413 Expenses of electric plant leased to others.

A. These accounts shall include, respectively, revenues from electric property constituting a distinct operating unit or system leased by the utility to others, and which property is properly includible in account 104, Electric Plant Leased to Others, and the expenses attributable to such property.

B. The detail of expenses shall be kept or supported so as to show separately the following:

Operation.
Maintenance.
Rents.
Depreciation.
Amortization.
Taxes Other Than Income Taxes.
Income Taxes.

414 Other utility operating income.

A. This account shall include the revenues received and expenses incurred in connection with the operations of utility plant, the book cost of which is included in account 118, Other Utility Plant.

B. The expenses shall include every element of cost incurred in such operations, including depreciation, rents, taxes, and insurance.

2. OTHER INCOME

415 Revenues from merchandising, jobbing and contract work.

416 Costs and expenses of merchandising, jobbing and contract work.

A. These accounts shall include, respectively, all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission, and all expenses incurred in such activities.

B. Records in support of these accounts shall be so kept as to permit ready summarization of revenues, costs and expenses by such major items as are feasible.

NOTE: Revenues and expenses of merchandising, jobbing and contract work shall be reported in these accounts, if a state regulatory body having jurisdiction over the utility requires the net income to be reported as other income; but the revenues and expenses shall be reported in accounts 914, Revenues from Merchandising, Jobbing and Contract Work, and 915, Costs and Expenses of Merchandising, Jobbing and Contract Work, if such regulatory body requires the net income to be reported as an operating income or expense item. In the absence of a requirement by a state regulatory body, the utility may use these accounts or accounts 914 and 915 at its option, in which case the practice of the utility must be consistent.

ITEMS

Account 415:

1. Revenues from sale of merchandise and from jobbing and contract work.
2. Discounts and allowances made in settlement of bills for merchandise and jobbing work.

Account 416:

Labor—

1. Canvassing and demonstrating appliances in homes and other places for the purpose of selling appliances.
2. Demonstrating and selling activities in sales rooms.
3. Installing appliances on customer premises where such work is done only for purchasers of appliances from the utility.
4. Installing wiring, piping, or other property work, on a jobbing or contract basis.
5. Preparing advertising materials for appliance sales purposes.
6. Receiving and handling customer orders for merchandise or for jobbing services.
7. Cleaning and tidying sales rooms.
8. Maintaining display counters and other equipment used in merchandising.
9. Arranging merchandise in sales rooms and decorating display windows.
10. Reconditioning repossessed appliances.
11. Bookkeeping and other clerical work in connection with merchandise and jobbing activities.
12. Supervising merchandise and jobbing operations.

Materials and Expenses—

13. Advertising in newspapers, periodicals, radio, television, etc.
14. Cost of merchandise sold and of materials used in jobbing work.
15. Stores expenses on merchandise and jobbing stocks.
16. Fees and expenses of advertising and commercial artists' agencies.
17. Printing booklets, dodgers, and other advertising data.
18. Premiums given as inducement to buy appliances.
19. Light, heat, and power.
20. Depreciation on equipment used primarily for merchandise and jobbing operations.
21. Rent of sales rooms or of equipment.
22. Transportation expense in delivery and pick-up of appliances by utility's facilities or by others.
23. Stationery and office supplies and expenses.
24. Taxes directly assignable to merchandise and jobbing operations including income taxes on net income derived therefrom.
25. Losses from uncollectible merchandise and jobbing accounts.

417 Income from nonutility operations.

A. This account shall include revenues and expenses applicable to operations which are nonutility in character but nevertheless constitute a distinct operating activity of the enterprise as a whole, such as the operation of an ice department where applicable statutes do not define such operation as a utility, or the operation of a servicing organization for furnishing supervision, management, engineering, and similar services to others.

B. The expenses shall include all elements of costs incurred in such operations, and the accounts shall be maintained so as to permit ready summarization as follows:

Operation.
Maintenance.
Rents.
Depreciation.
Amortization.
Taxes Other Than Income Taxes.
Income Taxes.

418 Nonoperating rental income.

A. This account shall include all rent revenues and related expenses of land, buildings, or other property included in account 121, Nonutility Property, which is not used in operations covered by account 417.

B. The expenses shall include all elements of costs incurred in the ownership and rental of the property and the accounts shall be maintained so as to permit ready summarization as follows:

Operation.
Maintenance.
Rents.
Depreciation.
Amortization.
Taxes Other Than Income Taxes.
Income Taxes.

419 Interest and dividend income.

A. This account shall include interest revenues on securities, loans, notes, advances, special deposits, tax refunds and all other interest-bearing assets, and dividends on stocks of other companies, whether the securities on which the interest and dividends are received are carried as investments or included in sinking or other special fund accounts.

B. If any interest or dividends are required to be retained in a special fund and the fund is represented by a reserve, the amount of such accretion to the fund shall concurrently be credited to the appropriate reserve account and charged to account 436, Appropriations of Surplus.

C. This account may include the pro rata amount necessary to extinguish (during the interval between the date of acquisition and the date of maturity) the difference between the cost to the utility and the face value of interest-bearing securities. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried.

D. Where significant in amount, expenses, including operating taxes and income taxes, applicable to security investments and to interest and dividend

revenues thereon shall be charged hereto.

NOTE: Interest accrued, the payment of which is not reasonably assured, dividends receivable which have not been declared or guaranteed, and interest or dividends upon reacquired securities issued or assumed by the utility shall not be credited to this account.

421 Miscellaneous nonoperating income.

This account shall include all revenue and expense items properly includible in the income account and not provided for elsewhere.

ITEMS

1. Profit on sale of timber. (See electric plant instruction 6, C.)
2. Profits from operations of others realized by the utility under contracts.

3. MISCELLANEOUS INCOME DEDUCTIONS

425 Miscellaneous amortization.

This account shall include amortization charges not includible in other accounts which are properly deductible in determining the income of the utility before interest charges. Charges includible herein, if significant in amount, must be in accordance with an orderly and systematic amortization program. Similar charges made irregularly without a definite program, or which are dependent upon the amount of net income shall be charged to account 435, Miscellaneous Debits to Surplus.

ITEMS

1. Amortization of utility plant acquisition adjustments, or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by the Commission.
2. Amortization of amounts in account 182, Extraordinary Property Losses, when not authorized to be included in utility operating expenses by the Commission.
3. Amortization of capital stock discount or expenses when in accordance with a systematic amortization program.

426 Other income deductions.

This account shall include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

ITEMS

1. Donations for charitable, social or community welfare purposes.
2. Life insurance of officers and employees where utility is beneficiary (net premiums less increase in cash surrender value of policies).
3. Penalties or fines for violation of statutes pertaining to regulation.

NOTE: The classification of expenses as nonoperating and their inclusion in this account is for accounting purposes. It does not preclude Commission consideration of proof to the contrary for ratemaking or other purposes.

4. INTEREST CHARGES

427 Interest on long-term debt.

A. This account shall include the amount of interest on outstanding long-term debt issued or assumed by the utility, the liability for which is included in account 221, Bonds, or account 224, Other Long-Term Debt.

B. This account shall be so kept or supported as to show the interest accruals on each class and series of long-term debt.

NOTE: This account shall not include interest on nominally issued or nominally outstanding long-term debt, including securities assumed.

428 Amortization of debt discount and expense.

A. This account shall include the amortization of unamortized debt discount and expense on outstanding long-term debt. Amounts charged to this account shall be credited concurrently to account 181, Unamortized Debt Discount and Expense.

B. This account shall be so kept or supported as to show the debt discount and expense on each class and series of long-term debt.

429 Amortization of premium on debt—Cr.

A. This account shall include the amortization of unamortized net premium on outstanding long-term debt. Amounts credited to this account shall be charged concurrently to account 251, Unamortized Premium on Debt.

B. This account shall be so kept or supported as to show the premium on each class and series of long-term debt.

430 Interest on debt to associated companies.

A. This account shall include the interest accrued on amounts included in account 223, Advances from Associated Companies, and on all other obligations to associated companies.

B. The records supporting the entries to this account shall be so kept as to show to whom the interest is to be paid, the period covered by the accrual, the rate of interest and the principal amount of the advances or other obligations on which the interest is accrued.

431 Other interest expense.

This account shall include all interest charges not provided for elsewhere.

ITEMS

1. Interest on notes payable on demand or maturing one year or less from date and on open accounts, except notes and accounts with associated companies.
2. Interest on customers' deposits.
3. Interest on claims and judgments, tax assessments, and assessments for public improvements past due.
4. Income and other taxes levied upon bondholders of utility and assumed by it.

432 Interest charged to construction—Cr.

This account shall include concurrent credits for interest charged to construction based upon the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate upon other funds when so used. No interest shall be capitalized on plant which is completed and ready for service.

5. EARNED SURPLUS

433 Balance transferred from income.

This account shall include the net credit or debit transferred from income for the year.

434 Miscellaneous credits to surplus.

This account shall include credits affecting earned surplus not provided for elsewhere. If an amount otherwise required by the uniform system of accounts to be credited to this account is not significant with respect to net income determination for the year, it may be credited to the appropriate non-operating income account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

ITEMS

1. Delayed credits.
2. Profit on reacquisition and resale or retirement of utility's debt securities.
3. Profit on sale of property or investments.

435 Miscellaneous debits to surplus.

This account shall include amounts chargeable to earned surplus but not provided for elsewhere. If an amount otherwise required by the uniform system of accounts to be charged to this account is not significant with respect to net income determination for the year, it may be charged to the appropriate non-operating income deduction account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

ITEMS

1. Decline in value of investments.
2. Delayed debits.
3. Loss on reacquisition and resale or retirement of utility's debt securities.
4. Provision for past accrued depreciation not provided for.
5. Long-term debt discount or expense written off.
6. Loss on sale of property or investments.
7. Write-off of utility plant acquisition adjustments or of intangibles when not done under an orderly systematic program indicating the propriety of inclusion of the annual charges in account 425, Miscellaneous Amortization.
8. Preliminary survey and investigation expenses on abandoned projects.
9. Income taxes, both state and federal, occasioned by items included in account 434, Miscellaneous Credits to Surplus.
10. Charges from retirement or resale of reacquired capital stock.

436 Appropriations of surplus.

This account shall include appropriations of earned surplus for purposes not provided for elsewhere.

ITEMS

1. Appropriations of income required under terms of mortgages, orders of courts, contracts or other agreements.
2. Appropriations of income required by action of regulatory authorities.
3. Miscellaneous appropriations of income made at option of utility for specified purposes.

437 Dividends declared—Preferred stock.

A. This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding preferred or prior lien capital stock issued by the utility.

B. Dividends shall be segregated for each class and series of preferred stock as to those payable in cash, stock and other forms. If not payable in cash, the

medium of payment shall be described with sufficient particularity to identify it.

438 Dividends declared—Common stock.

A. This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding common capital stock issued by the utility.

B. Dividends shall be segregated for each class of common stock as to those payable in cash, stock and other forms. If not payable in cash, the medium of payment shall be described with sufficient particularity to identify it.

Operating Revenue Accounts

1. SALES OF ELECTRICITY

440 Residential sales.
442 Commercial and industrial sales.
444 Public street and highway lighting.
447 Sales for resale.
448 Interdepartmental sales.
449 Other sales.

2. OTHER OPERATING REVENUES

450 Forfeited discounts.
451 Miscellaneous service revenues.
453 Sales of water and water power.
454 Rent from electric property.
455 Interdepartmental rents.
456 Other electric revenues.

Operating Revenue Accounts

1. SALES OF ELECTRICITY

440 Residential sales.

A. This account shall include the net billing for electricity supplied for residential or domestic purposes.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available.

NOTE: When electricity supplied through a single meter is used for both residential and commercial purposes, the total revenue shall be included in this account, or account 442, Commercial and Industrial Sales, according to the rate schedule which is applied. If the same rate schedules apply to residential as to commercial and industrial service, classification shall be made according to principal use.

442 Commercial and industrial sales.

A. This account shall include the net billing for electricity supplied to customers for commercial and industrial purposes.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available. Records shall be maintained also so as to show separately the revenues from commercial and industrial customers (a) which have demands generally of 1000 kw or more, and (b) those which have demands generally less than 1000 kw. Reasonable deviations above or below the 1000 kw demand are permissible in order that transfers of customers between the two classes during the year may be minimized.

NOTE A: If the utility classifies large commercial and industrial customers and related revenues on a lesser basis than 1000 kilowatts of demand, or segregates industrial customers and related revenues according to a recognized definition of an industrial customer, such classifications are acceptable in lieu of those otherwise required by the text of this account on the basis of 1000 kilowatts of demand.

NOTE B: When electricity supplied through a single meter is used for both commercial and residential purposes, the total revenue shall be included in this account, or in account 440, Residential Sales, according to the rate schedule which is applied. If the same rate schedules apply to residential as to commercial and industrial service, classification shall be made according to the principal use.

444 Public street and highway lighting.

A. This account shall include the net billing for electricity supplied and services rendered for the purposes of lighting streets, highways, parks and other public places, or for traffic or other signal system service, for municipalities or other divisions or agencies of state or federal governments.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received from each customer shall be readily available. In addition, the records shall be maintained so as to show the revenues from (a) contracts which include both electricity and services, and (b) contracts which include sales of electricity only.

447 Sales for resale.

A. This account shall include the net billing for electricity supplied to other electric utilities or to public authorities for resale purposes.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenue received from each customer. (See account 545, Purchased Power, for credits includible herein arising from exchange, pooling or interconnection arrangements.)

NOTE: Revenues from electricity supplied to other public utilities for use by them and not for distribution, shall be included in account 442, Commercial and Industrial Sales, unless supplied under the same contract as and not readily separable from revenues includible in this account.

448 Interdepartmental sales.

A. This account shall include amounts charged by the electric department at tariff or other specified rates for electricity supplied by it to other utility departments.

B. Records shall be maintained so that the quantity of electricity supplied each other department and the charges therefor shall be readily available.

449 Other sales.

A. This account shall include revenues for electricity supplied which are not provided for elsewhere.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenues received from each customer.

2. OTHER OPERATING REVENUES

450 Forfeited discounts.

This account shall include the amount of discounts forfeited or additional charges imposed because of the failure of customers to pay their electric bills on or before a specified date.

451 Miscellaneous service revenues.

This account shall include revenues for all miscellaneous services and charges billed to customers which are not specifically provided for in other accounts.

ITEMS

1. Fees for changing, connecting or disconnecting service.
2. Profit on maintenance of appliances, wiring, piping or other installations on customers' premises.
3. Net credit or debit (cost less net salvage and less payment from customers) on closing of work orders for plant installed for temporary service of less than one year.
4. Recovery of expenses in connection with current diversion cases (billing for the electricity consumed shall be included in the appropriate electric revenue account).

453 Sales of water and water power.

A. This account shall include revenues derived from the sale of water for irrigation, domestic, industrial or other uses, or for the development by others of water power, or for headwater improvements; also, revenues derived from furnishing water power for mechanical purposes when the investment in the property used in supplying such water or water power is carried as electric plant in service.

B. The records for this account shall be kept in such manner as to permit an analysis of the rates charged and the purposes for which the water was used.

454 Rent from electric property.

A. This account shall include rents received for the use by others of land, buildings, and other property devoted to electric operations by the utility.

B. When property owned by the utility is operated jointly with others under a definite arrangement for apportioning the actual expenses among the parties to the arrangement, any amount received by the utility for interest or return or in reimbursement of taxes or depreciation on the property shall be credited to this account.

NOTE. Do not include in this account rents from property constituting an operating unit or system. (See account 412, Revenues from Electric Plant Leased to Others.)

455 Interdepartmental rents.

This account shall include rents credited to the electric department on account of rental charges made against other departments (gas, water, etc.) of the utility. In the case of property operated under a definite arrangement to allocate the costs among the departments using the property, any reimbursement to the electric department for interest or return and depreciation and taxes shall be credited to this account.

456 Other electric revenues.

This account shall include revenues derived from electric operations not includible in any of the foregoing accounts.

ITEMS

1. Commission on sale or distribution of electricity of others when sold under rates filed by such others.
2. Compensation for minor or incidental services provided for others such as customer billing, engineering, etc.
3. Profit or loss on sale of material and supplies not ordinarily purchased for resale and not handled through merchandising and jobbing accounts.
4. Sale of steam, but not including sales made by a steam-heating department or transfers of steam under joint facility operations.

Operation and Maintenance Expense Accounts

1. POWER PRODUCTION EXPENSES

A. STEAM POWER GENERATION

Operation

500 Operation supervision and labor.
501 Fuel.
502 Operation supplies and expenses.
503 Steam from other sources.
504 Steam transferred—Cr.
505 Rents.

Maintenance

506 Maintenance of steam production plant.

B. HYDRAULIC POWER GENERATION

Operation

530 Operation supervision and labor.
531 Water for power.
532 Operation supplies and expenses.
533 Rents.

Maintenance

535 Maintenance of hydraulic production plant.

C. OTHER POWER GENERATION

Operation

538 Operation supervision and labor.
539 Fuel.
540 Operation supplies and expenses.
541 Rents.

Maintenance

543 Maintenance of other power production plant.

D. OTHER POWER SUPPLY EXPENSES

Operation

545 Purchased power.
546 Other expenses.

2. TRANSMISSION EXPENSES

Operation

550 Operation supervision and labor.
551 Operation supplies and expenses.
552 Rents.

Maintenance

553 Maintenance of transmission plant.

3. DISTRIBUTION EXPENSES

Operation

560 Operation supervision expenses.
561 Line and station labor.
562 Line and station supplies and expenses.
563 Street lighting and signal system expenses.
566 Meter expenses.
567 Customer installations expenses.
569 Miscellaneous distribution expenses.
570 Rents.

Maintenance

571 Maintenance of structures and equipment.
572 Maintenance of lines.
573 Maintenance of line transformers.
574 Maintenance of street lighting and signal systems.
575 Maintenance of meters.
576 Maintenance of miscellaneous distribution plant.

4. CUSTOMER ACCOUNTS EXPENSES

Operation

901 Meter reading labor.
902 Accounting and collecting labor.
903 Supplies and expenses.
904 Uncollectible accounts.

5. SALES EXPENSES

Operation

910 Sales expenses.
914 Revenues from merchandising, jobbing and contract work.
915 Costs and expenses of merchandising, jobbing and contract work.

6. ADMINISTRATIVE AND GENERAL EXPENSES

Operation

920 Administrative and general salaries.
921 Office supplies and expenses.
922 Administrative expenses transferred—Cr.
923 Outside services employed.
924 Property insurance.
925 Injuries and damages.
926 Employee pensions and benefits.
927 Franchise requirements.
928 Regulatory commission expenses.
929 Duplicate charges—Cr.
930 Miscellaneous general expenses.
931 Rents.
933 Transportation expenses.

Maintenance

935 Maintenance of general plant.

Operation and Maintenance Expense Accounts

1. POWER PRODUCTION EXPENSES

A. STEAM POWER GENERATION

Operation

500 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of steam power generating stations.

ITEMS

Boiler Room Labor:
1. Supervising steam production.
2. Operating fuel conveying, storage, weighing and processing equipment within boiler plant.
3. Operating boiler and boiler auxiliary equipment.
4. Operating boiler feed water purification and treatment equipment.
5. Operating ash collecting and disposal equipment located inside the plant.
6. Operating boiler plant electrical equipment.
7. Keeping boiler plant log and records and preparing reports on boiler plant operations.
8. Testing boiler water.
9. Testing, checking, and adjusting meters, gauges and other instruments in boiler plant.
10. Cleaning boiler plant equipment when not incidental to maintenance work.
11. Repacking glands and replacing gauge glasses where the work involved is of a minor nature and is performed by regular operating crews. Where the work is of a major character such as that performed on high pressure boilers the item should be considered as maintenance.

Electric Plant Labor:
12. Supervising electric production.
13. Operating turbines, engines, generators and exciters.
14. Operating condensers, circulating water systems and other auxiliary apparatus.
15. Operating generator cooling system.
16. Operating lubrication and oil control system, including oil purification.
17. Operating switchboards, switch gear and electric control and protective equipment.
18. Keeping electric plant log and records and preparing reports on electric plant operations.
19. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls and other equipment in electric plant.
20. Cleaning electric plant equipment when not incidental to maintenance work.
21. Repacking glands and replacing gauge glasses.

Miscellaneous Labor:
22. General clerical and stenographic work at plant.
23. Guarding and patrolling plant and yard.
24. Building service.
25. Care of grounds including snow removal, cutting grass, etc.
26. Miscellaneous labor.

501 Fuel.

A. This account shall include the cost of fuel used in the production of steam for the generation of electricity, including expenses in unloading fuel from the shipping media and handling thereof up to the point where the fuel enters the first boiler plant bunker, hopper, bucket, tank or holder of the boiler house structure. Records shall be maintained to show the quantity, B.T.U. content and cost of each type of fuel used.

B. The cost of fuel shall be charged initially to appropriate fuel accounts carried under account 150, Materials and Supplies, and cleared to this account on the basis of the fuel used. Fuel handling expenses may be charged to this account as incurred or charged initially to an appropriate subaccount of account 150, Materials and Supplies. In the latter event, they shall be cleared to this account on the basis of the fuel used. Respective amounts of fuel stock and fuel stock expenses shall be readily available.

ITEMS

Labor:
1. Supervising purchasing and handling of fuel.
2. All routine fuel analyses.
3. Unloading from shipping facility and putting in storage.
4. Moving of fuel in storage and transferring fuel from one station to another.
5. Handling from storage or shipping facility to first bunker, hopper, bucket, tank or holder of boiler house structure.
6. Operation of mechanical equipment, such as locomotives, trucks, cars, boats, barges, cranes, etc.

Materials and Expenses:
7. Cost of fuel including freight, switching, demurrage and other transportation charges.
8. Excise taxes, insurance, purchasing commissions and similar items.
9. Stores expenses to extent applicable to fuel.
10. Transportation and other expenses in moving fuel in storage.
11. Tools, lubricants, and other supplies.
12. Operating supplies for mechanical equipment.
13. Residual disposal expenses less any proceeds from sale of residuals.

NOTE: Abnormal fuel handling expenses occasioned by emergency conditions shall be charged to expense as incurred.

502 Operation supplies and expenses.

This account shall include the cost of materials used and expenses incurred in the operation of steam power generating stations.

ITEMS

1. Chemicals and boiler inspection fees.
2. Lubricants and control system oils.
3. Boiler feed water purchased and pumping supplies.
4. Generator cooling gases.
5. Circulating water purification supplies.
6. Cooling water purchased.

7. Motor and generator brushes.
8. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms, etc.
9. First-aid supplies and safety equipment.
10. Employees' service facilities expenses.
11. Building service supplies.
12. Communication service.
13. Miscellaneous office supplies and expenses, printing and stationery.
14. Transportation expenses.
15. Meals, traveling and incidental expenses.

503 Steam from other sources.

This account shall include the cost of steam purchased, or transferred from another department of the utility or from others under a joint facility operating arrangement, for use in prime movers devoted to the production of electricity.

NOTE: The records shall be so kept as to show separately for each company from which steam is purchased, the point of delivery, the quantity, the price, and the total charge. When steam is transferred from another department or from others under a joint operating arrangement, the utility shall be prepared to show full details of the cost of producing such steam, the basis of the charge to electric generation and the extent and manner of use by each department or party involved.

504 Steam transferred—Cr.

A. This account shall include credits for expenses of producing steam which are charged to others or to other utility departments under a joint operating arrangement. Include also credits for steam expenses chargeable to other electric accounts outside of the steam generation group. Full details of the basis of the determination of the cost of steam transferred shall be maintained.

B. If the charges to others or to other departments of the utility include an amount for depreciation, taxes and return on the joint steam facilities, such portion of the charge shall be credited, in the case of others, to account 454, Rent from Electric Property, and in the case of other departments of the utility, to account 455, Interdepartmental Rents.

505 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with steam power generation. (See operating expense instruction 2.)

Maintenance

506 Maintenance of steam production plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of steam production plant the book cost of which is includible in plant accounts 311 to 316, inclusive. (See operating expense instruction 1.)

B. HYDRAULIC POWER GENERATION

Operation

530 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of hydraulic power generating stations.

ITEMS

Hydraulic Labor:
1. Supervising hydraulic operation.
2. Removing debris and ice from trash racks, reservoirs and waterways.
3. Patrolling reservoirs and waterways.
4. Operating intakes, spillways, sluiceways, and outlet works.
5. Operating bubbler, heater or other deicing systems.
6. Ice and log jam work.
7. Operating navigation facilities.
8. Operations relating to conservation of game, fish, forests, etc.
9. Insect control activities.

Electric Labor:
10. Supervising electric production.
11. Operating prime movers, generators and auxiliary equipment.
12. Operating generator cooling system.
13. Operating lubrication and oil control systems, including oil purification.
14. Operating switchboards, switchgear, and electric control and protection equipment.
15. Keeping plant log and records and preparing reports on plant operations.
16. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in the plant.
17. Cleaning plant equipment when not incidental to maintenance work.
18. Repacking glands.

Miscellaneous Labor:
19. General clerical and stenographic work.
20. Guarding and patrolling plant and yard.
21. Building service.
22. Care of grounds, including snow removal, cutting grass, etc.
23. Snow removal from roads and bridges.
24. Miscellaneous labor.

531 Water for power.

This account shall include the cost of water used for hydraulic power generation.

ITEMS

1. Cost of water purchased from others, including water tolls paid reservoir companies.
2. Periodic payments for licenses or permits from any governmental agency for water rights, or payments based on the use of the water.
3. Periodic payments for riparian rights.
4. Periodic payments for headwater benefits or for detriments to others.
5. Cloud seeding.

532 Operation supplies and expenses.

This account shall include the cost of materials used and expenses incurred in the operation of hydraulic power generating stations.

ITEMS

1. Insect control materials.
2. Lubricants, packing, and other supplies used in operation of hydraulic equipment.
3. Supplies and expenses in conservation of game, fish, forests, etc.
4. Transportation expense.
5. Control system oils.
6. Motor and generator brushes.
7. General operating supplies, such as tools, gaskets, packing, waste hose, indicating lamps, record and report forms, etc.
8. First-aid supplies and safety equipment.
9. Employees' service facilities expenses.
10. Building service supplies.
11. Communication service.
12. Office supplies, printing and stationery.
13. Transportation expenses.
14. Fuel.
15. Meals, traveling and incidental expenses.

533 Rents.

This account shall include all rents of property of others used, occupied or operated in connection with hydraulic power generation, including amounts payable to the United States for the occupancy of public lands and reservations for reservoirs, dams, flumes, forebays, penstocks, power houses, etc., but not including transmission right of way. (See operating expense instruction 2.)

Maintenance

535 Maintenance of hydraulic production plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of hydraulic production plant the book cost of which is includible in plant accounts 331 to 336, inclusive. (See operating expense instruction 1.)

C. OTHER POWER GENERATION

Operation

538 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of other power generating stations.

ITEMS

Generating Labor:
1. Supervising other power generation operation.
2. Operating prime movers, generators and auxiliary apparatus and switching and other electric equipment.
3. Keeping plant log and records and preparing reports on plant operations.
4. Testing, checking, cleaning, oiling and adjusting equipment.

Miscellaneous Labor:
5. General clerical and stenographic work.
6. Guarding and patrolling plant and yard.
7. Building service.
8. Care of grounds, including snow removal, cutting grass, etc.
9. Miscellaneous labor.

539 Fuel.

This account shall include the cost delivered at the station (see account 150, Materials and Supplies) of all fuel, such as gas, oil, kerosene, and gasoline used in other power generation.

540 Operation supplies and expenses.

This account shall include the cost of materials used and expenses incurred in the operation of other power generating stations.

ITEMS

1. Dynamo, motor, and generator brushes.
2. Lubricants and control system oils.
3. Water for cooling engines and generators.
4. Building service supplies.
5. First-aid supplies and safety equipment.
6. Communication service.
7. Employees' service facilities expenses.
8. Office supplies, printing and stationery.
9. Transportation expense.
10. Meals, traveling and incidental expenses.
11. Fuel for heating.
12. Water for fire protection or general use.
13. Miscellaneous supplies, such as hand tools, drills, saw blades, files, etc.

541 Rents.

This account shall include all rents of property of others used, occupied, or operated in connection with other power

generation. (See operating expense instruction 2.)

Maintenance

543 Maintenance of other power production plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of other power generation plant, the book cost of which is includible in plant accounts 341 to 346, inclusive. (See operating expense instruction 1.)

D. OTHER POWER SUPPLY EXPENSES

Operation

545 Purchased power.

A. This account shall include the cost at point of receipt by the utility of electricity purchased for resale. It shall include, also, net settlements for exchange of electricity or power, such as economy energy, off-peak for on-peak energy, spinning reserve capacity, etc. In addition, the account shall include the net settlements for transactions under pooling or interconnection agreements wherein there is a balancing of debits and credits for energy, capacity, etc. Distinct purchases and sales shall not be recorded as exchanges and net amounts only recorded merely because debit and credit amounts are combined in the voucher settlement.

B. The records supporting this account shall show, by months, the demands and demand charges, kilowatt-hours and prices thereof, under each purchase contract and the charges and credits under each exchange or power pooling contract.

546 Other expenses.

A. This account shall be charged with any production expenses, including expenses incurred directly in connection with the purchase of electricity, which are not specifically provided for in other production expense accounts. Charges to this account shall be supported so that a description of each type of charge will be readily available.

B. Recoveries from insurance companies, under use and occupancy provisions of policies, of amounts in reimbursement of excessive or added production costs for which the insurance company is liable under the terms of the policy shall be credited to this account.

2. TRANSMISSION EXPENSES

Operation

550 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of the transmission system.

ITEMS

Load Dispatching Labor:
1. Directing switching.
2. Arranging and controlling clearances for construction, maintenance, test and emergency purposes.
3. Controlling system voltages.
4. Obtaining reports on the weather and special events.
5. Preparing operating reports and data for billing and budget purposes.

Station Labor:
6. Supervising station operation.
7. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine or changing voltage of regulators, changing station transformer taps.
8. Inspecting, testing and calibrating station equipment for the purpose of checking its performance.
9. Keeping station log and records and preparing reports on station operation.
10. Operating switching and other station equipment.
11. Standing watch, guarding, and patrolling station and station yard.
12. Sweeping, mopping, and tidying station.
13. Care of grounds, including snow removal, cutting grass, etc.

Line Labor:
14. Supervising line operation.
15. Inspecting and testing lightning arresters, circuit breakers, switches, and grounds.
16. Load tests of circuits.
17. Routine line patrolling.
18. Routine voltage surveys made to determine the condition or efficiency of transmission system.
19. Transferring loads, switching and reconnecting circuits and equipment for operating purposes. (Switching for construction or maintenance purposes is not includible in this account.)
20. Routine inspection and cleaning of manholes, conduit, network and transformer vaults.
21. Electrolysis surveys.
22. Inspecting and adjusting line testing equipment such as voltmeters, ammeters, wattmeters, etc.
23. Regulation and addition of oil or gas in high voltage cable systems.

Miscellaneous Labor:
24. General records of physical characteristics of lines and stations, such as capacities, etc.
25. Ground resistance records.
26. Janitor work at transmission office buildings, including care of grounds, snow removal, cutting grass, etc.
27. Joint pole maps and records.
28. Line load and voltage records.
29. Preparing maps and prints.
30. General clerical and stenographic work.
31. Miscellanequs labor.

551 Operation supplies and expenses.

This account shall include the cost of materials used and expenses incurred in the operation of the transmission system.

ITEMS

1. Building service expenses.
2. Operating supplies, such as lubricants, commutator brushes, water, and rubber goods.
3. Station meter and instrument supplies, such as ink and charts.
4. Station record and report forms.
5. Communication service.
6. First-aid supplies.
7. Tool expense.
8. Transportation expenses.
9. Meals, traveling, and incidental expenses.

552 Rents.

This account shall include rents of property of others used, occupied, or operated in connection with the transmission system, including payments to the United States and others for use of public or private lands and reservations for transmission line rights of way. (See operating expense instruction 2.)

Maintenance

553 Maintenance of transmission plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of transmission plant the book cost of which is includible in plant accounts 351 to 359, inclusive. (See operating expense instruction 1.)

ITEMS

1. Work of the following character on poles, towers and fixtures:
a. Installing or removing additional clamps or strain insulators on guys in place.
b. Moving line or guy pole in relocation of the same pole or section of line.
c. Painting poles, towers, crossarms or pole extensions.
d. Readjusting and changing position of guys or braces.
e. Realigning and straightening poles, crossarms, braces and other pole fixtures.
f. Reconditioning reclaimed pole fixtures.
g. Relocating crossarms, racks, brackets, and other fixtures on poles.
h. Repairing or realigning pins, racks, or brackets.
i. Repairing pole supported platform.
j. Repairs by others to jointly owned poles.
k. Shaving, cutting rot, or treating poles or crossarms in use or salvaged for reuse.
l. Stubbing poles already in service.
m. Supporting fixtures and conductors and transferring them to new pole during pole replacement.
n. Maintenance of pole signs, stencils, tags, etc.
2. Work of the following character on overhead conductors and devices:
a. Overhauling and repairing line cutouts, line switches, line breakers, etc.
b. Cleaning insulators and bushings.
c. Refusing cutouts.
d. Repairing line oil circuit breakers and associated relays and control wiring.
e. Repairing grounds.
f. Resagging, retying, or rearranging position or spacing of conductors.
g. Standing by phones, going to calls, cutting faulty lines clear, or similar activities at times of emergencies.
h. Sampling, testing, changing, purifying, and replenishing insulating oil.
i. Repairing line testing equipment.
j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.
k. Trimming trees and clearing brush.
l. Chemical treatment of right of way areas when occurring subsequent to construction of line.
3. Work of the following character on roads and trails:
a. Repairing roadway, bridges, etc.
b. Trimming trees and brush to maintain previous roadway clearance.
c. Snow removal from roads and trails.
d. Maintenance work on publicly owned roads and trails when done by utility at its expense.
4. Work of the following character on underground conduit:
a. Cleaning ducts, manholes, and sewer connections.
b. Minor alterations of handholes, manholes, or vaults.
c. Refastening, repairing, or moving racks, ladders, or hangers in manholes, or vaults.
d. Plugging and shelving or replugging ducts.
e. Repairs to sewers and drains, walls and floors, rings and covers.
5. Work of the following character on underground conductors and devices:
a. Repairing oil circuit breakers, switches, cutouts, and control wiring.
b. Repairing grounds.

c. Retraining and reconnecting cables in manhole, including transfer of cables from one duct to another.
d. Repairing conductors and splices.
e. Repairing or moving junction boxes and potheads.
f. Refireproofing of cables and repairing supports.
g. Repairing electrolysis preventive devices for cables.
h. Repairing cable bonding systems.
i. Sampling, testing, changing, purifying and replenishing insulating oil.
j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.
k. Repairing line testing equipment.
l. Repairs to oil or gas equipment in high voltage cable system and replacement of oil or gas.

3. Distribution Expenses

Operation

560 Operation supervision expenses.

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of the distribution system. Direct supervision of specific activities, such as station operation, line operation, meter department operation, etc., shall be charged to the appropriate account.

561 Line and station labor.

This account shall include the cost of labor incurred in the operation of distribution lines and stations.

Items

Line Labor:
1. Supervising line operation.
2. Changing line transformer taps.
3. Inspecting and testing lightning arrester, line circuit breakers, switches, and grounds.
4. Inspecting and testing line transformers for the purpose of determining load, temperature, or operating performance.
5. Patrolling lines.
6. Load tests and voltages surveys of feeders, circuits, and line transformers.
7. Removing line transformers and voltage regulators with or without replacement.
8. Installing line transformers or voltage regulators with or without change in capacity provided that the cost of first installation of these items is included in account 368, Line Transformers.
9. Voltage surveys, either routine or upon request of customers, including voltage tests at customer's main switch.
10. Transferring loads, switching and reconnecting circuits and equipment for operation purposes.
11. Electrolysis surveys.
12. Inspecting and adjusting line testing equipment.

Station Labor:
1. Supervising station operation.
2. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine, changing voltage of regulators, or changing station transformer taps.
3. Keeping station log and records and preparing reports on station operation.
4. Inspecting, testing, and calibrating station equipment for the purpose of checking its performance.
5. Operating switching and other station equipment.
6. Standing watch, guarding and patrolling station and station yard.
7. Sweeping, mopping, and tidying station.
8. Care of grounds, including snow removal, cutting grass, etc.

562 Line and station supplies and expenses.

This account shall include the cost of materials used and expenses incurred in the operation of distribution lines and stations.

Items

1. Building service expenses.
2. Operating supplies, such as lubricants, commutator brushes, water, and rubber goods.
3. Station meter and instrument supplies, such as ink and charts.
4. Station record and report forms.
5. Tool expense.
6. Transportation expense.
7. Meals, traveling, and incidental expenses.

565 Street lighting and signal system expenses.

This account shall include the cost of labor, materials used and expenses incurred in the operation of street lighting and signal system plant.

Items

Labor:
1. Supervising street lighting and signal systems operation.
2. Replacing lamps and incidental cleaning of glassware and fixtures in connection therewith.
3. Routine patrolling for lamp outages, extraneous nuisances or encroachments, etc.
4. Testing lines and equipment including voltage and current measurement.
5. Winding and inspection of time switch and other controls.

Materials and Expenses:
6. Street lamp renewals.
7. Transportation and tool expense.
8. Meals, traveling, and incidental expenses.

566 Meter expenses.

This account shall include the cost of labor, materials used and expenses incurred in the operation of customer meters and associated equipment.

Items

Labor:
1. Supervising meter operation.
2. Clerical work on meter history and associated equipment record cards, test cards, and reports.
3. Disconnecting and reconnecting, removing and reinstalling, sealing and unsealing meters and other metering equipment in connection with initiating or terminating services including the cost of obtaining meter readings, if incidental to such operation.
4. Consolidating meter installations due to elimination of separate meters for different rates of service.
5. Changing or relocating meters, instrument transformers, time switches, and other metering equipment.
6. Resetting time controls, checking operation of demand meters and other metering equipment, when done as an independent operation.
7. Inspecting and adjusting meter testing equipment.
8. Inspecting and testing meters, instrument transformers, time switches, and other metering equipment on premises or in shops excluding inspecting and testing incidental to maintenance.

Materials and Expenses:
9. Meter seals and miscellaneous meter supplies.
10. Transportation expenses.
11. Meals, traveling, and incidental expenses.
12. Tool expenses.

Note: The cost of the first setting and testing of a meter is chargeable to utility plant account 370, Meters.

567 Customer installations expenses.

This account shall include the cost of labor, materials used and expenses incurred in work on customer installations and in inspecting premises and in rendering services to customers of the nature of those indicated by the list of items hereunder.

Items

Labor:
1. Supervising customer installations work.
2. Inspecting premises, including check of wiring for code compliance.
3. Investigating, locating, and clearing grounds on customers' wiring.
4. Investigating service complaints, including load tests of motors and lighting and power circuits on customers' premises; field investigations of complaints on bills or of voltage.
5. Installing, removing, renewing, and changing lamps and fuses.
6. Radio, television, and similar interference work including erection of new aerials on customers' premises and patrolling of lines, testing of lightning arresters, inspection of pole hardware, etc., and examination on or off premises of customers' appliances, wiring, or equipment to locate cause of interference.
7. Installing, connecting, reinstalling, or removing leased property on customers' premises.
8. Testing, adjusting, and repairing customers' fixtures and appliances in shop or on premises.
9. Cost of changing customers' equipment due to changes in service characteristics.
10. Investigation of current diversion including setting and removal of check meters and securing special readings thereon; special calls by employees in connection with discovery and settlement of current diversion; changes in customer wiring and any other labor cost identifiable as caused by current diversion.

Materials and Expenses:
11. Lamp and fuse renewals.
12. Materials used in servicing customers' fixtures, appliances and equipment.
13. Power, light, heat, telephone, and other expenses of appliance repair department.
14. Tool expense.
15. Transportation expense, including pickup and delivery charges.
16. Meals, traveling and incidental expenses.
17. Rewards paid for discovery of current diversion.

Note A: Amounts billed customers for any work, the cost of which is charged to this account, shall be credited to this account. Any excess over costs resulting therefrom shall be transferred to account 451, Miscellaneous Service Revenues.

Note B: Do not include in this account expenses incurred in connection with merchandising, jobbing and contract work.

569 Miscellaneous distribution expenses.

This account shall include the cost of labor, materials used and expenses incurred in distribution system operation not provided for elsewhere.

Items

Labor:
1. General records of physical characteristics of lines and substations, such as capacities, etc.
2. Ground resistance records.
3. Joint pole maps and records.
4. Distribution system voltage and load records.
5. Preparing maps and prints.
6. Service interruption and trouble records.
7. General clerical and stenographic work except that chargeable to account 566, Meter Expenses.
8. Operating records covering poles, transformers, manholes, cables, and other distribution facilities. Exclude meter records chargeable to account 566, Meter Expenses, and station records chargeable to account 561, Line and Station Labor.
9. Janitor work at distribution office buildings including snow removal, cutting grass, etc.

Materials and Expenses:
10. Communication service.
11. Building service expenses.
12. Miscellaneous office supplies and expenses, printing, and stationery, maps and records and first-aid supplies.

570 Rents.

This account shall include rents of property of others used, occupied or operated in connection with the distribution system, including payments to the United States and others for the use and occupancy of public lands and reservations for distribution line rights of way. (See operating expense instruction 2.)

Maintenance

571 Maintenance of structures and equipment.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of structures, the book cost of which is includible in account 361, Structures and Improvements, account 362, Station Equipment, and account 363, Storage Battery Equipment. (See operating expense instruction 1.)

572 Maintenance of lines.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of distribution line facilities, the book cost of which is includible in account 364, Poles, Towers and Fixtures, account 365, Overhead Conductors and Devices, account 366, Underground Conduit, account 367, Underground Conductors and Devices, and account 369, Services. (See operating expense instruction 1.)

Items

1. Work of the following character on poles, towers, and fixtures:
a. Installing additional clamps or removing clamps or strain insulators on guys in place.
b. Moving line or guy pole in relocation of pole or section of line.
c. Painting poles, towers, crossarms, or pole extensions.
d. Readjusting and changing position of guys or braces.
e. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.
f. Reconditioning reclaimed pole fixtures.
g. Relocating crossarms, racks, brackets, and other fixtures on pole.
h. Repairing pole supported platform.
i. Repairs by others to jointly owned poles.
j. Shaving, cutting rot, or treating poles or crossarms in use or salvage for reuse.
k. Stubbing poles already in service.
l. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacement.
m. Maintaining pole signs, stencils, tags, etc.
2. Work of the following character on overhead conductors and devices:
a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.
b. Cleaning insulators and bushings.
c. Refusing line cutouts.
d. Repairing line oil circuit breakers and associated relays and control wiring.
e. Repairing grounds.
f. Resagging, retying, or rearranging position or spacing of conductors.
g. Standing by phones, going to calls, cutting faulting lines clear, or similar activities at times of emergencies.
h. Sampling, testing, changing, purifying, and replenishing insulating oil.
i. Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.
j. Repairing line testing equipment.
k. Trimming trees and clearing brush.
l. Chemical treatment of right of way area when occurring subsequent to construction of line.
3. Work of the following character on underground conduit:
a. Cleaning ducts, manholes, and sewer connections.
b. Moving or changing position of conduit or pipe.
c. Minor alterations of handholes, manholes, or vaults.
d. Refastening, repairing or moving racks, ladders, or hangers in manholes or vaults.
e. Plugging and shelving ducts.
f. Repairs to sewers, drains, walls and floors, rings and covers.
4. Work of the following character on underground conductors and devices:
a. Repairing circuit breakers, switches, cutouts, network protectors, and associated relays and control wiring.
b. Repairing grounds.
c. Retraining and reconnecting cables in manhole including transfer of cables from one duct to another.
d. Repairing conductors and splices.
e. Repairing or moving junction boxes and potheads.
f. Refireproofing cables and repairing supports.
g. Repairing electrolysis preventive devices for cables.
h. Repairing cable bonding systems.
i. Sampling, testing, changing, purifying and replenishing insulating oil.
j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.
k. Repairing line testing equipment.
l. Repairing oil or gas equipment in high voltage cable system and replacement of oil or gas.
5. Work of the following character on services:
a. Moving position of service either on pole or on customers' premises.
b. Pulling slack in service wire.
c. Retying service wire.
d. Refastening or tightening service bracket.
e. Cleaning ducts.

573 Maintenance of line transformers.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of distribution line transformers, the book cost of which is includible in account 368, Line Transformers. (See operating expense instruction 1.)

574 Maintenance of street lighting and signal systems.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant, the book cost of which is includible in account 373, Street Lighting and Signal Systems. (See operating expense instruction 1.)

575 Maintenance of meters.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of meters and meter testing equipment, the book cost of which is includible in account 370, Meters, and account 395, Laboratory Equipment, respectively. (See operating expense instruction 1.)

576 Maintenance of miscellaneous distribution plant.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of plant, the book cost of which is includible in account 371, Installations on Customers' Premises, and 372, Leased Property on Customers' Premises, and any other plant the maintenance of which is assignable to the distribution function and is not provided for elsewhere. (See operating expense instruction 1.)

Items

1. Work of similar character to that listed in other distribution maintenance accounts.
2. Maintenance of office furniture and equipment used by distribution system department.

4. Customer Accounts Expense

Operation

901 Meter reading labor.

This account shall include the cost of labor incurred in reading customer meters and determining consumption when performed by employees engaged in reading meters.

Items

1. Addressing forms for obtaining meter readings by mail.
2. Changing and collecting meter charts used for billing purposes.
3. Inspecting time clocks, checking seals, etc., when performed by meter readers and the work represents a minor activity incidental to regular meter reading routine.
4. Reading meters, including demand meters, and obtaining load information for billing purposes. Exclude and charge to account 568, Meter Expenses, or to account 902, Accounting and Collecting Labor, as applicable, the cost of obtaining meter readings, first and final, if incidental to the operation of removing or resetting, sealing, or locking, and disconnecting, or reconnecting meters.
5. Computing consumption from meter reader's book or from reports by mail when done by employees engaged in reading meters.
6. Collecting from prepayment meters when incidental to meter reading.
7. Maintaining record of customers' keys.
8. Computing estimated or average consumption when performed by employees engaged in reading meters.

902 Accounting and collecting labor.

This account shall include the cost of labor on customer applications, contracts, orders, credit investigations, billing and accounting, collections and complaints.

Items

1. Receiving, preparing, recording and handling routine orders for service, disconnections, transfers or meter tests initiated by the customer, excluding the cost of carrying

out such orders, which is chargeable to the account appropriate for the work called for by such orders.

2. Investigations of customers' credit and keeping of records pertaining thereto, including records of uncollectible accounts written off.

3. Receiving, refunding or applying customer deposits and maintaining customer deposit, line extension, and other miscellaneous records.

4. Checking consumption shown by meter readers' reports where incidental to preparation of billing data.

5. Preparing address plates and addressing bills and delinquent notices.

6. Preparing billing data.

7. Operating billing and bookkeeping machines.

8. Verifying billing records with contracts or rate schedules.

9. Preparing bills for delivery, and mailing or delivering bills.

10. Collecting revenues, including collection from prepayment meters unless incidental to meter reading operations.

11. Balancing collections, preparing collections for deposit, and preparing cash reports.

12. Posting collections and other credits or charges to customer accounts and extending unpaid balances.

13. Balancing customer accounts and controls.

14. Preparing, mailing, or delivering delinquent notices and preparing reports of delinquent accounts.

15. Final meter reading of delinquent accounts when done by collectors incidental to regular activities.

16. Disconnecting and reconnecting services because of nonpayment of bills.

17. Receiving, recording, and handling of inquiries, complaints, and request for investigations from customers, including preparation of necessary orders, but excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by such orders.

18. Statistical and tabulating work on customer accounts and revenues, but not including special analyses for sales department, rate department, or other general purposes, unless incidental to regular customer accounting routines.

19. Preparing and periodically rewriting meter reading sheets.

20. Determining consumption and computing estimated or average consumption when performed by employees other than those engaged in reading meters.

NOTE: The cost of work on meter history and meter location records is chargeable to account 586, Meter Expenses.

903 Supplies and expenses.

This account shall include the cost of materials used and expenses incurred in meter reading and the handling of customer accounts.

ITEMS

1. Badges, lamps and uniforms.

2. Demand charts, meter books and binders and forms for recording readings, but not the cost of preparation.

3. Address plates and supplies.

4. Cash overages and shortages when written off.

5. Commissions or fees to others for collecting.

6. Payments to credit organizations for investigations and reports.

7. Postage.

8. Transportation of customer bills and meter books under centralized billing procedure.

9. Bank charges, exchange, and other fees for cashing and depositing customers' checks.

10. Forms for recording orders for services, removals, etc.

11. Rent of mechanical equipment.

12. Transportation, meals and incidental expenses.

13. Communication service.

14. Miscellaneous office supplies and expenses and stationery and printing.

904 Uncollectible accounts.

This account shall be charged with amounts sufficient to provide for losses from uncollectible utility revenues. Concurrent credits shall be made to account 144, Accumulated Provision for Uncollectible Accounts—Cr. Losses from uncollectible accounts shall be charged to account 144.

5. SALES EXPENSES

Operation

910 Sales expenses.

This account shall include the cost of labor and expenses incurred for the purpose of promoting the sale of electricity, other than merchandising, jobbing or contract work activities.

ITEMS

1. Advertising.
2. Demonstrating uses of utility service.
3. Home service activities.
4. Solicitation of new business.

914 Revenues from merchandising, jobbing and contract work.

915 Costs and expenses of merchandising, jobbing and contract work.

A. These accounts shall include, respectively, all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission and all expenses incurred in such activities.

B. Records in support of these accounts shall be so kept as to permit ready summarization of revenues, costs and expenses by such major items as are feasible.

NOTE: Revenues and expenses of merchandising, jobbing, and contract work shall be reported in this account, if a state regulatory body having jurisdiction over the utility requires such income to be reported as an operating expense item; but the revenues and expenses shall be reported in accounts 415 and 416, if such regulatory body requires such income to be reported as nonoperating income. In the absence of a requirement by a state regulatory body, the utility may use these accounts or accounts 415 and 416, at its option, in which case the practice of the utility must be consistent.

ITEMS

Account 914

1. Revenues from sale of merchandising and from jobbing and contract work.

2. Discounts and allowances made in settlement of bills for merchandise and jobbing work.

Account 915

Labor:

1. Canvassing and demonstrating appliances in homes and other places for the purpose of selling appliances.

2. Demonstrating and selling activities in sales rooms.

3. Installing appliances on customer premises where such work is done only for purchasers of appliances from the utility.

4. Installing wiring, piping, or other property work on jobbing or contract basis.

5. Preparing advertising materials for appliance sales purposes.

6. Receiving and handling customer orders for merchandise or for jobbing services.

7. Cleaning and tidying sales rooms.

8. Maintaining display counters and other equipment used in merchandising.

9. Arranging merchandise in sales rooms and decorating display windows.

10. Reconditioning repossessed appliances.

11. Bookkeeping and other clerical work in connection with merchandise and jobbing activities.

12. Supervising merchandise and jobbing operations.

Materials and Expenses:

13. Advertising in newspapers, periodicals, radio, television, etc.

14. Cost of merchandise sold and of materials used in jobbing work.

15. Stores expense on merchandise and jobbing stocks.

16. Fees and expenses of advertising and commercial artists' agencies.

17. Printing booklets, dodgers, and other advertising data.

18. Premiums given as inducement to buy appliances.

19. Light, heat and power.

20. Rent of sales rooms or of equipment.

21. Transportation expense in delivery and pick-up of appliances by utility's facilities or by others.

22. Stationery and office supplies and expenses.

23. Taxes directly assignable to merchandise and jobbing operations.

24. Losses from uncollectible merchandise and jobbing accounts.

6. ADMINISTRATIVE AND GENERAL EXPENSES

Operation

920 Administrative and general salaries.

A. This account shall include the compensation (salaries, bonuses, and other consideration for services, but not including directors' fees) of officers, executives, and other employees of the utility properly chargeable to utility operations and not chargeable directly to a particular operation function.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

921 Office supplies and expenses.

A. This account shall include office supplies and expenses incurred in connection with the general administration of the utility's operations which are assignable to specific administrative or general departments and are not specifically provided for in other accounts. This includes the expenses of the various administrative and general departments, the salaries and wages of which are includible in account 920.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

NOTE: Office expenses which are clearly applicable to any group of operating expenses other than the administrative and general group shall be included in the appropriate account in such group. Further, general expenses which apply to the utility as a whole rather than to a particular administrative function shall be included in account 930, Miscellaneous General Expenses.

ITEMS

1. Automobile service, including charges through clearing account.

2. Bank messenger and service charges.

3. Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax services, etc.

4. Building service expenses for customer accounts, sales, and administrative and general purposes.

5. Communication service expenses.

6. Cost of individual items of office equipment used by general departments which are of small value or short life.

7. Membership fees and dues in trade, technical, and professional associations paid by a utility for employees. (Company memberships are includible in account 930.)

8. Office supplies and expenses.

9. Payment of court costs, witness fees, and other expenses of legal department.

10. Postage, printing, and stationery.

11. Meals, traveling and incidental expenses.

922 Administrative expenses transferred—Cr.

This account shall be credited with administrative expenses recorded in account 920, and 921 which are transferred to construction costs or to nonutility accounts. (See electric plant instruction 3.)

923 Outside services employed.

A. This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operating function or to other accounts. It shall include also the pay and expenses of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered an employee of the utility.

B. This account shall be so maintained as to permit ready summarization according to the nature of service and the person furnishing the same.

ITEMS

1. Fees, pay and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc.

2. Supervision fees and expenses paid under contracts for general management services.

NOTE: Do not include inspection and brokerage fees and commissions chargeable to other accounts or fees and expenses in connection with security issues which are includible in the expenses of issuing securities.

924 Property insurance.

A. This account shall include the cost of insurance or reserve accruals to protect the utility against losses and damages to owned or leased property used in its utility operations.

B. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

C. Records shall be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies shall be credited to the accounts to which the insurance premiums were charged.

ITEMS

1. Premiums payable to insurance companies, for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.

2. Amounts credited to account 261, Property Insurance Reserve for similar protection.

3. Special costs incurred in procuring insurance.

4. Insurance inspection service.

5. Insurance counsel, brokerage fees, and expenses.

NOTE A: The cost of insurance or reserve accruals capitalized shall be charged to construction either directly or by transfer to construction work orders from this account.

NOTE B: The cost of insurance or reserve accruals for the following classes of property shall be charged as indicated:

(1) Materials and supplies and stores equipment to stores expenses or to appropriate materials account.

(2) Transportation and garage equipment, to account 933, Transportation Expenses.

(3) Electric plant leased to others, to account 413, Expenses of Electric Plant Leased to Others.

(4) Nonutility property, to the appropriate nonutility income account.

(5) Merchandise and jobbing property, to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work, or account 915, as appropriate.

925 Injuries and damages.

A. This account shall include the cost of insurance or reserve accruals to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims.

B. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries and damages and insurance dividends or refunds shall be credited to this account.

ITEMS

1. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to account 262, Injuries and Damages Reserve for similar protection.

2. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

3. Fees and expenses of claim investigators.

4. Payment of awards to claimants for court costs and attorneys' services.

5. Medical and hospital service and expenses for employees as the result of occupational injuries, or resulting from claims of others.

6. Compensation payments under workmen's compensation laws.

7. Compensation paid while incapacitated as the result of occupational injuries. (See Note A.)

8. Cost of safety, accident prevention and similar educational activities.

NOTE A: Payments to or in behalf of employees for accident or death benefits, hospital expenses, medical supplies or for salaries while incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, shall be charged to account 926, Employee Pensions and Benefits. (See also Note B of account 926.)

NOTE B: The cost of injuries and damages or reserve accruals capitalized shall be charged to construction directly or by transfer to construction work orders from this account.

NOTE C: Exclude herefrom the time and expenses of employees (except those engaged in injuries and damages activities) spent in attendance at safety and accident prevention educational meetings, if occurring during the regular work period.

NOTE D: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in injuries and damages activities may be included in accounts 920 and 921 as appropriate.

926 Employee pensions and benefits.

A. This account shall include pensions paid to or on behalf of retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for this purpose, when the utility has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes, and payments for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses incurred in medical, education or recreational activities for the benefit of employees.

B. The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

C. There shall be credited to this account the portion of pensions and benefits expenses which is applicable to nonutility operations or which is charged to construction unless such amounts are distributed directly to the account involved and are not included herein in the first instance.

ITEMS

1. Payment of pensions under a nonaccrual or nonfunded basis.

2. Accruals for or payments to pension funds or to insurance companies for pension purposes.

3. Group and life insurance premiums (credit dividends received).

4. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

5. Payments for accident, sickness, hospital, and death benefits or insurance.

6. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, or in excess of statutory awards.

7. Expenses in connection with educational and recreational activities for the benefit of employees.

NOTE A: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in accounts 920 and 921, as appropriate.

NOTE B: Salaries paid to employees during periods of nonoccupational sickness may be charged to the appropriate labor account rather than to employee benefits.

931 Rents.

This account shall include rents properly includible in utility operating expenses for the property of others used, occupied or operated in connection with the customer accounts, sales, and general administrative functions of the utility. (See operating expense instruction 2.)

933 Transportation expenses.

A. This account shall include the cost of labor, materials used and expenses incurred in the operation and maintenance of general transportation equipment of the utility.

B. This account may be used as a clearing account in which event the charges hereto shall be cleared by apportionment to the appropriate operating expense, electric plant, or other accounts on a basis which will distribute the expenses equitably. Credits to this account shall be made in such detail as to permit ready analysis.

ITEMS

1. Supervision.
2. Building service.
3. Care of grounds, including snow removal, cutting grass, etc.
4. Utility services.
5. Depreciation of transportation equipment.
6. Fuel and lubricants for vehicles (including sales and excise taxes thereon).
7. Insurance on garage equipment and transportation equipment, including public liability and property damage.
8. Maintenance of transportation and garage equipment.
9. Compensation of drivers, mechanics, clerks, and other garage employees.
10. Rent of garage buildings and grounds, vehicles or equipment.
11. Replacement of tires, tubes, batteries, etc.
12. Direct taxes, licenses, and permits.
13. Miscellaneous garage supplies, tools, and equipment.
14. Miscellaneous office supplies and expense, printing, and stationery.
15. Transportation, meals, and incidental expenses.

NOTE A: The pay of employees driving trucks or other transportation equipment incidental to their regular occupation, shall not be included herein but charged directly to the appropriate expense or other account.

NOTE B: Transportation expenses applicable to construction shall not be included in operating expenses.

Maintenance

935 Maintenance of general plant.

A. This account shall include the cost assignable to customer accounts, sales and administrative and general functions of labor, materials used and expenses incurred in the maintenance of property, the book cost of which is includible in account 390, Structures and Improvements, account 391, Office Furniture and Equipment, and other general equipment accounts (not including transportation equipment). (See operating expense instruction 1.)

B. Maintenance expenses on office furniture and equipment used elsewhere than in general, commercial and sales offices shall be charged to the following accounts:

Steam generation	Account 506.
Hydraulic generation	Account 535.
Other generation	Account 549.
Transmission	Account 559.
Distribution	Account 576.
Merchandise and jobbing	Account 416 or 915.
Garages, shops, etc.	Appropriate general expense or clearing account.

NOTE: Maintenance of plant included in other general equipment accounts shall be included herein unless charged to clearing accounts or to the particular functional maintenance expense account indicated by the use of the equipment.

[F.R. Doc. 60-11602; Filed, Dec. 12, 1960; 8:51 a.m.]

927 Franchise requirements.

A. This account shall include payments to municipal or other governmental authorities, and the cost of materials, supplies and services furnished such authorities without reimbursement in compliance with franchise, ordinance, or similar requirements: *Provided, however,* That the utility may charge to this account at regular tariff rates, instead of cost, electric service furnished without charge under provisions of franchises.

B. When no direct outlay is involved, concurrent credit for such charges shall be made to account 929, Duplicate Charges—Cr.

C. The account shall be maintained so as to readily reflect the amounts of cash outlays, electric service supplied without charge, and other items furnished without charge.

NOTE A: Franchise taxes shall not be charged to this account but to account 408, Taxes Other Than Income Taxes.

NOTE B: Any amount paid as initial consideration for a franchise running for more than one year shall be charged to account 302, Franchises and Consents.

928 Regulatory commission expenses.

A. This account shall include all expenses (except pay of regular employees only incidentally engaged in such work) properly includible in utility operating expenses, incurred by the utility in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party, including payments made to a regulatory commission for fees assessed against the utility for pay and expenses of such commission, its officers, agents, and employees, and also including payments made to the United States for the Administration of the Federal Power Act.

B. Amounts of regulatory commission expenses which by approval or direction of the Commission are to be spread over future periods shall be charged to account 183, Other Deferred Debits and amortized by charges to this account.

C. The utility shall be prepared to show the cost of each formal case.

ITEMS

1. Salaries, fees, retainers, and expenses of counsel, solicitors, attorneys, accountants, engineers, clerks, attendants, witnesses, and others engaged in the prosecution of, or defense against petitions or complaints presented to regulatory bodies, or in the validation of property owned or used by the utility in connection with such cases.
2. Office supplies and expenses, payments to public service or other regulatory commissions, stationery and printing, traveling expenses, and other expenses incurred directly in connection with formal cases before regulatory commissions.

NOTE A: Exclude from this account and include in other appropriate operating expense accounts, expenses incurred in the improvement of service, additional inspection, or rendering reports, which are made necessary by the rules and regulations, or orders, of regulatory bodies.

NOTE B: Do not include in this account amounts includible in account 302, Franchises and Consents, account 181, Unamortized Debt Discount and Expense, or account 214, Capital Stock Expense.

929 Duplicate charges—Cr.

This account shall include concurrent credits for charges which may be made to operating expenses or to other accounts for the use of electric service from its own supply. Include, also, offsetting credits for any other charges made to operating expenses for which there is no direct money outlay.

930 Miscellaneous general expenses.

This account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.

ITEMS

Labor:
1. Miscellaneous labor not elsewhere provided for.
Expenses:
2. Industry association dues for company memberships.
3. Contributions for conventions and meetings of the industry.
4. Experimental and general research work for the industry.
5. Communication service not chargeable to other accounts.
6. Trustee, registrar, and transfer agent fees and expenses.
7. Stockholder meeting expenses.
8. Dividend and other financial notices.
9. Printing and mailing dividend checks.
10. Directors' fees and expenses.
11. Publishing and distributing annual reports to stockholders.
12. Institutional or goodwill advertising.
13. Public notices of financial, operating, and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.

Pages 12807–12865

FEDERAL REGISTER

VOLUME 25 NUMBER 242

Washington, Wednesday, December 14, 1960

UNIVERSITY OF MICHIGAN
DEC 1 1960
MAIN READING ROOM

Contents

Agricultural Marketing Service

RULES AND REGULATIONS:
Carrots grown in South Texas; shipments limitation 12828
Milk in North Texas marketing area; order amending order 12813
Navel oranges grown in Arizona and designated part of California; handling limitation 12812
Raisins produced from grapes grown in California; handling 12813

Agricultural Research Service

RULES AND REGULATIONS:
Foreign quarantine; broomcorn; administrative instructions prescribing, conditions of entry without treatment 12809
Prohibited and restricted importations; designation of Sweden as country where foot-and-mouth disease exists 12831

Agriculture Department

See Agricultural Marketing Service; Agricultural Research Service; Commodity Stabilization Service.

Atomic Energy Commission

NOTICES:
Power Reactor Development Co.; extension of completion date 12863

Commerce Department

NOTICES:
Changes in financial interests:
Dugan, Edmund W 12863
Sands, James H 12864

Commodity Stabilization Service

RULES AND REGULATIONS:
Cotton acreage allotments, 1961 crops, county reserves:
Extra long staple 12812
Upland 12809

Customs Bureau

NOTICES:
Purchase price, foreign market and fair value:
Rayon staple fiber from:
Cuba 12847
Japan 12847
Residual feed yeast from Cuba 12848

Federal Aviation Agency

PROPOSED RULE MAKING:
Airworthiness directive; Luscombe 12844
Federal airways, associated control areas, and reporting points; revocations (3 documents) 12845
Restricted area/military climb corridor; withdrawal of proposed designation 12846

RULES AND REGULATIONS:
Airworthiness directives:
Aero Design Model 500 aircraft 12829
Lockheed 188 aircraft 12829
Coded jet route; modification 12831
Control area extension; designation 12830
Restricted area and control zone; modification 12830

Federal Communications Commission

NOTICES:
Mexican broadcast stations; changes, proposed changes, and corrections in assignments 12850
Standard broadcast applications ready and available for processing 12849
Hearings, etc.:
Empire Communications Co. and Telephone Answering Service 12848
Frier, W. R. (WBHF) 12848
Maine Radio and Television Co. (WCSH–TV) 12848
Southeastern Broadcasting System, Inc. (WMJM), and Washington Broadcasting Co., Inc. (WSNT) 12848
Triangle Publications, Inc. (WNHC), et al 12848

Food and Drug Administration

PROPOSED RULE MAKING:
Food additives; filing of petitions (3 documents) 12839, 12840

RULES AND REGULATIONS:
Food additives permitted in food for human consumption 12831

General Services Administration

NOTICES:
Magnesium scrap held in national stockpile; proposed disposition 12864

Health, Education, and Welfare Department

See Food and Drug Administration; Social Security Administration.

Interior Department

See Land Management Bureau.

Internal Revenue Service

PROPOSED RULE MAKING:
Employment taxes; applicable on and after Jan. 1, 1955 12835
Income tax; taxable years beginning after Dec. 31, 1953; prepaid subscription income 12833

Interstate Commerce Commission

NOTICES:
Motor carrier:
Applications and certain other proceedings 12851
Transfer proceedings 12851

Land Management Bureau

NOTICES:
Alaska; small tract classification; correction 12847
California; small tract classification order 12847
Montana; filing of protraction diagrams 12847

(*Continued on next page*)

Securities and Exchange Commission

NOTICES:

Hearings, etc.:
Cities Service Co. and Arkansas Fuel Oil Corp. 12861
Institutional Shares, Ltd. 12861
Variable Annuity Life Insurance Company of America 12862

Social Security Administration

PROPOSED RULE MAKING:
Federal credit unions 12840

Treasury Department

See Customs Bureau; Internal Revenue Service.

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

7 CFR

319 12809
722 (2 documents) 12809, 12812
914 12812
943 12813
989 12813
1032 12828

9 CFR

94 12831

14 CFR

507 (2 documents) 12829
601 (2 documents) 12830
602 12831
608 12830

PROPOSED RULES:
507 12844
600 (3 documents) 12845
601 (3 documents) 12845
608 12846

21 CFR

121 12831

PROPOSED RULES:
121 (3 documents) 12839, 12840

26 CFR

PROPOSED RULES:
1 12833
31 12835

45 CFR

PROPOSED RULES:
301 12840
306 12840
307 12841
308 12842
309 12843
311 12844

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953	$6.75
1954	7.25
1955	6.75
1956	7.25
1957	6.75
1958	8.25
1959	7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Indian Corn or Maize, Broomcorn, and Related Plants

ADMINISTRATIVE INSTRUCTIONS PRESCRIBING CONDITIONS FOR ENTRY OF BROOMSTRAW WITHOUT TREATMENT

Pursuant to the proviso in paragraph (c) of notice of quarantine No. 41 relating to Indian corn or maize, broomcorn, and related plants (7 CFR 319.41(c)), under sections 5 and 9 of the Plant Quarantine Act of 1912 (7 U.S.C. 159, 162), administrative instructions to be designated as 7 CFR 319.41b are hereby issued as follows:

§ 319.41b Administrative instructions prescribing conditions for entry of broomstraw without treatment.

Broomstraw, sometimes referred to as "combed stalkless", when consisting of individual straws entirely free from stems, stalks, stubs of stalks, and leaves, may be imported from all countries without seasonal limitation through ports of entry designated in the permit, provided it is bundled and baled to prevent breakage and scattering and to facilitate inspection, in the following manner:

(a) The broomstraw shall be assembled into bundles with the base of the individual straws at the same end, no alternating of layers being permitted.

(b) Each bundle shall be securely tied to prevent breakage.

(c) Individual bundles shall be compacted, grouped into bales, and so arranged that the butt of each bundle is exposed on the outside of the bale.

(d) Each bale shall be securely bound to prevent shifting or loosening of the bundles in transit.

(e) Broomstraw found upon inspection at the port of entry to contain stems, stalks, stubs of stalks, or leaves shall be sterilized under the supervision of an inspector. Broomstraw contaminated in the aforesaid manner, from countries other than those on the North or South American Continents or the West Indies, shall be considered as broomcorn and shall be subject to compliance with § 319.41-3(b).

(Sec. 9, 37 Stat. 318; 7 U.S.C. 162. Interprets or applies sec. 5, 37 Stat. 316; 7 U.S.C. 159)

These administrative instructions shall become effective December 14, 1960.

These instructions authorize the importation of broomstraw which in processing is entirely separated from stems, stalks, stubs of stalks, and leaves. Importations that are properly processed and free of contamination with parts of broomcorn are not likely to be carriers of the European corn borer, or other injurious insects and plant diseases. Consequently they may be permitted entry through ports designated in the permits where plant quarantine service is available, without treatment and without seasonal limitation. The instructions are therefore a lessening of restrictions.

United States importers of broomcorn and foreign shippers of that commodity have been working together to develop a satisfactory procedure for the shipment of broomstraw, the essential part of broomcorn used in the manufacture of brooms. The separation of the straws from the stems, stalks, stubs of stalks, and leaves would reduce shipping and handling costs. At the same time it would eliminate the danger of plant pest introduction inherent in the importation of broomcorn.

The importation of properly processed broomstraw will greatly reduce the hazards of pest entry, and if imported on a year around basis will eliminate a peak period in cargo inspection and fumigation.

In order to be of maximum benefit to importers of broomstraw during the current shipping season that is about to begin, these administrative instructions should be made effective as soon as possible. Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the instructions are impracticable and unnecessary, and the instructions may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of December 1960.

[SEAL] E. P. REAGAN,
Director, Plant Quarantine Division.

[F.R. Doc. 60-11633; Filed, Dec. 13, 1960; 8:50 a.m.]

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 2]

PART 722—COTTON

Subpart—Regulations Pertaining to Acreage Allotments for the 1961 Crop of Upland Cotton

COUNTY RESERVES

Basis and purpose. The purpose of this amendment is to establish county reserves. The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 USC 1281 et seq.). Notice of the proposed issuance of acreage allotment regulations for the 1961 crop of upland cotton was published in the FEDERAL REGISTER on August 13, 1960 (25 F.R. 7761) in accordance with section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) prior to issuance of such regulations.

In order that the Agricultural Stabilization and Conservation State and county committees may perform their assigned functions in an orderly manner, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

Section 722.416(h)(2) of the regulations pertaining to acreage allotments for the 1961 crop of upland cotton (25 F.R. 9987, 10332, 12393) is amended to read as follows:

(2) *County reserve.* There are set forth below the county reserves established for each county:

ALABAMA

County	County reserve (acres)	County	County reserve (acres)
Autauga	20.9	Houston	124.1
Baldwin	13.9	Jackson	207.9
Barbour	270.1	Jefferson	629.4
Bibb	25.7	Lamar	237.4
Blount	361.3	Lauderdale	89.9
Bullock	99.6	Lawrence	43.9
Butler	910.1	Lee	196.8
Calhoun	289.0	Limestone	101.5
Chambers	38.3	Lowndes	39.7
Cherokee	25.4	Macon	71.6
Chilton	82.0	Madison	647.6
Choctaw	811.0	Marengo	14.8
Clarke	810.2	Marion	44.7
Clay	47.1	Marshall	121.4
Cleburne	71.4	Mobile	19.3
Coffee	79.0	Monroe	65.2
Colbert	144.8	Montgomery	25.8
Conecuh	15.0	Morgan	23.9
Coosa	20.0	Perry	75.1
Covington	352.5	Pickens	54.0
Crenshaw	304.7	Pike	354.2
Cullman	53.1	Randolph	22.5
Dale	732.9	Russell	23.3
Dallas	34.1	St. Clair	98.8
De Kalb	57.2	Shelby	24.9
Elmore	20.0	Sumter	87.1
Escambia	19.5	Talladega	17.2
Etowah	577.7	Tallapoosa	243.8
Fayette	174.1	Tuscaloosa	50.0
Franklin	56.5	Walker	128.4
Geneva	424.8	Washington	14.5
Greene	29.7	Wilcox	17.9
Hale	44.4	Winston	76.2
Henry	30.7	State total	11,039.5

ARIZONA

Cochise	3.8	Pima	15.5
Gila	0.0	Pinal	46.3
Graham	10.5	Santa Cruz	4.9
Greenlee	5.5	Yavapai	0.0
Maricopa	148.3	Yuma	22.5
Mohave	2.1	State total	259.4

ARKANSAS

County	County reserve (acres)	County	County reserve (acres)
Arkansas	10.6	Lee	29.7
Ashley	5.0	Lincoln	9.5
Baxter	2.8	Little River	1.7
Benton	0.0	Logan	104.6
Boone	2.0	Lonoke	2.4
Bradley	409.1	Marion	2.2
Calhoun	276.8	Miller	732.5
Chicot	5.4	Mississippi	27.9
Clark	312.6	Monroe	8.5
Clay	24.2	Montgomery	0.5
Cleburne	23.7	Nevada	358.2
Cleveland	333.5	Newton	3.7
Columbia	20.0	Ouachita	22.7
Conway	507.3	Perry	76.5
Craighead	11.4	Phillips	8.9
Crawford	2.9	Pike	2.9
Crittenden	17.9	Poinsett	23.5
Cross	4.5	Polk	2.4
Dallas	174.9	Pope	4.7
Desha	18.4	Prairie	8.0
Drew	23.7	Pulaski	14.3
Faulkner	5.5	Randolph	17.3
Franklin	5.5	St. Francis	5.5
Fulton	3.3	Saline	2.7
Garland	0.0	Scott	15.2
Grant	33.9	Searcy	16.4
Greene	1.2	Sebastian	28.3
Hempstead	837.0	Sevier	3.5
Hot Spring	15.8	Sharp	34.7
Howard	246.8	Stone	1.4
Independence	5.4	Union	280.0
Izard	1.4	Van Buren	11.7
Jackson	10.2	Washington	0.0
Jefferson	21.7	White	1,814.2
Johnson	10.5	Woodruff	8.6
Lafayette	20.9	Yell	3.2
Lawrence	6.7	State total	7,138.4

CALIFORNIA

County	County reserve (acres)	County	County reserve (acres)
Fresno	1,549.4	San Benito	0.0
Imperial	136.2	San Bernardino	12.1
Kern	415.1	San Diego	7.0
Kings	491.7	Stanislaus	5.6
Los Angeles	2.0	Tulare	1,092.6
Madera	392.9	State total	4,329.2
Merced	190.6		
Riverside	34.0		

FLORIDA

County	County reserve (acres)	County	County reserve (acres)
Alachua	12.9	Lafayette	6.7
Baker	0.0	Leon	157.9
Bay	9.1	Levy	0.0
Calhoun	95.9	Liberty	0.2
Clay	0.0	Madison	169.1
Columbia	15.0	Nassau	0.9
Dixie	0.0	Okaloosa	218.5
Duval	0.0	Putnam	0.0
Escambia	164.8	Santa Rosa	886.3
Gadsden	36.5	Suwannee	22.7
Gilchrist	0.5	Taylor	4.3
Hamilton	100.1	Union	3.0
Holmes	708.0	Walton	322.6
Jackson	777.5	Washington	153.4
Jefferson	93.6	State total	3,959.5

GEORGIA

County	County reserve (acres)	County	County reserve (acres)
Appling	544.1	Candler	115.8
Atkinson	22.0	Carroll	345.3
Bacon	160.7	Catoosa	146.2
Baker	6.4	Charlton	0.0
Baldwin	39.8	Chatham	2.6
Banks	44.9	Chattahoochee	5.1
Barrow	186.8	Chattooga	190.5
Bartow	40.7	Cherokee	53.9
Ben Hill	14.6	Clarke	198.2
Berrien	361.3	Clay	130.3
Bibb	41.9	Clayton	76.3
Bleckley	40.4	Clinch	5.0
Brantley	1.2	Cobb	150.6
Brooks	56.4	Coffee	119.9
Bryan	7.9	Colquitt	491.4
Bulloch	181.5	Columbia	186.8
Burke	3,837.4	Cook	53.6
Butts	73.4	Coweta	81.7
Calhoun	9.5	Crawford	54.0
Camden	0.0	Crisp	23.6
Dade	35.6	Dawson	5.9
Decatur	9.2	De Kalb	28.6
Dodge	45.4	Dooly	77.1
Dougherty	11.1	Douglas	35.8
Early	78.6	Echols	0.9
Effingham	240.5	Elbert	451.2
Emanuel	194.3	Evans	46.1
Fayette	166.4	Floyd	173.3
Forsyth	80.1	Fulton	152.5
Gilmer	0.0	Glascock	336.6
Gordon	106.9	Grady	49.8
Greene	96.3	Gwinnett	602.5
Haberasham	48.5	Hall	32.8
Hancock	87.2	Haralson	31.9
Harris	52.2	Hart	101.2
Heard	152.1	Henry	398.1
Houston	40.0	Irwin	114.5
Jackson	568.7	Jasper	132.6
Jeff Davis	319.6	Jefferson	1,412.9
Jenkins	344.4	Johnson	1,256.0
Jones	15.4	Lamar	24.1
Lanier	22.3	Laurens	97.2
Lee	7.6	Liberty	3.0
Lincoln	190.7	Long	14.0
Lowndes	388.0	Lumpkin	1.7
McDuffie	348.1	McIntosh	0.2
Macon	48.1	Madison	369.6
Marion	13.1	Meriwether	120.4
Miller	52.8	Mitchell	45.0
Monroe	33.0	Montgomery	10.9
Morgan	141.5	Murray	41.3
Muscogee	28.9	Newton	565.1
Oconee	240.8	Oglethorpe	302.7
Paulding	254.2	Peach	29.8
Pickens	34.9	Pierce	204.5
Pike	29.0	Polk	246.4
Pulaski	30.7	Putnam	79.0
Quitman	22.2	Randolph	34.4
Richmond	161.8	Rockdale	100.2
Schley	25.7	Screven	301.3
Seminole	25.2	Spalding	56.3
Stephens	111.5	Stewart	13.9
Sumter	37.3	Talbot	25.6
Taliaferro	41.5	Tattnall	173.0
Taylor	525.1	Telfair	52.2
Terrell	35.1	Thomas	39.6
Tift	24.4	Toombs	250.7
Treutlen	36.9	Troup	109.6
Turner	2.8	Twiggs	17.3
Upson	66.2	Walker	176.9
Walton	943.2	Ware	5.0
Warren	488.3	Washington	105.2
Wayne	60.6	Webster	5.4
Wheeler	35.5	White	14.6
Whitfield	309.9	Wilcox	92.7
Wilkes	104.3	Wilkinson	28.6
Worth	82.3	State total	25,290.3

ILLINOIS

County	County reserve (acres)	County	County reserve (acres)
Alexander	30.8	Massac	0.1
Jefferson	0.0	Pulaski	22.5
Madison	0.0	State total	53.4

KANSAS

County	County reserve (acres)	County	County reserve (acres)
Cowley	0.0	Montgomery	0.0
Haskell	0.0	State total	0.0

KENTUCKY

County	County reserve (acres)	County	County reserve (acres)
Ballard	2.2	Hickman	89.2
Calloway	21.5	McCracken	0.4
Carlisle	6.2	Marshall	5.4
Fulton	13.9	State total	166.5
Graves	27.7		

LOUISIANA

County	County reserve (acres)	County	County reserve (acres)
Acadia	1,730.8	Calcasieu	24.6
Allen	57.6	Caldwell	323.7
Ascension	24.8	Cameron	22.7
Assumption	0.0	Catahoula	935.0
Avoyelles	2,626.4	Claiborne	734.4
Beauregard	4.0	Concordia	907.4
Bienville	840.9	De Soto	1,196.3
Bossier	2,889.3	East Baton Rouge	60.2
Caddo	3,445.5	East Carroll	359.8
East Feliciana	204.9	Evangeline	1,780.8
Franklin	1,107.4	Grant	564.5
Iberia	266.7	Iberville	81.0
Jackson	168.1	Jefferson	0.0
Jefferson Davis	34.8	Lafayette	2,068.3
Lafourche	0.0	La Salle	10.0
Lincoln	598.2	Livingston	5.8
Madison	123.6	Morehouse	2,968.8
Natchitoches	2,404.4	Orleans	0.0
Ouachita	1,795.4	Pointe Coupee	1,581.2
Rapides	826.8	Red River	1,737.5
Richland	610.2	Sabine	269.9
St. Helena	250.1	St. James	2.1
St. John the Baptist	0.1	St. Landry	4,714.5
St. Martin	289.2	St. Mary	0.0
St. Tammany	43.7	Tangipahoa	219.8
Tensas	924.0	Union	909.5
Vermilion	752.3	Vernon	106.3
Washington	598.6	Webster	1,015.8
West Baton Rouge	99.6	West Carroll	39.9
West Feliciana	293.8	Winn	137.0
State total	45,788.0		

MARYLAND

Carolina	0.0
State total	0.0

MISSISSIPPI

County	County reserve (acres)	County	County reserve (acres)
Adams	329.6	Lincoln	407.7
Alcorn	1,122.6	Lowndes	1,150.2
Amite	873.8	Madison	3,009.3
Attala	355.9	Marion	659.6
Benton	655.0	Marshall	187.8
Bolivar	41.3	Monroe	3,523.8
Calhoun	1,289.0	Montgomery	626.4
Carroll	1,332.1	Neshoba	799.6
Chickasaw	1,012.5	Newton	348.8
Choctaw	85.9	Noxubee	1,545.2
Claiborne	351.3	Oktibbeha	206.4
Clarke	302.1	Panola	4,968.9
Clay	491.0	Pearl River	8.0
Coahoma	13.7	Perry	122.9
Copiah	346.8	Pike	695.0
Covington	546.3	Pontotoc	668.7
DeSoto	55.1	Prentiss	787.0
Forrest	33.0	Quitman	42.3
Franklin	190.8	Rankin	752.9
George	68.2	Scott	605.1
Greene	14.3	Sharkey	23.0
Grenada	1,118.7	Simpson	1,010.7
Hancock	5.7	Smith	432.3
Harrison	0.0	Stone	5.5
Hinds	2,395.2	Sunflower	24.0
Holmes	20.8	Tallahatchie	5,038.8
Humphreys	16.1	Tate	81.9
Issaquena	50.1	Tippah	827.1
Itawamba	720.2	Tishomingo	141.1
Jackson	2.4	Tunica	13.6
Jasper	447.5	Union	517.0
Jefferson	435.1	Walthall	972.3
Jefferson Davis	1,132.3	Warren	518.0
Jones	649.9	Washington	23.1
Kemper	691.9	Wayne	643.3
Lafayette	900.8	Webster	549.2
Lamar	28.2	Wilkinson	518.8
Lauderdale	441.7	Winston	600.7
Lawrence	736.2	Yalobusha	1,673.2
Leake	930.0	Yazoo	6,736.3
Lee	2,619.1	State total	64,359.4
Leflore	31.7		

MISSOURI

County	County reserve (acres)	County	County reserve (acres)
Bollinger	3.0	Howell	0.7
Butler	60.0	Jefferson	0.3
Cape Girardeau	5.0	Mississippi	25.0
Carter	0.5	New Madrid	50.0
Dunklin	50.0	Oregon	6.2
Ozark	0.0	Pemiscot	30.0
Ripley	22.2	Scott	15.0
Stoddard	25.0	Vernon	0.2
Wayne	0.0	State total	293.1

NEVADA

Clark	0.0	State total	0.0
Nye	0.0		

NEW MEXICO

County	County reserve (acres)	County	County reserve (acres)
Bernalillo	0.0	Lea	319.8
Chaves	3,931.1	Luna	59.4
Curry	14.8	Otero	1.9
De Baca	22.3	Quay	33.6
Dona Ana	9.9	Roosevelt	367.9
Eddy	3,435.4	Sierra	33.2
Grant	0.1	Socorro	31.9
Guadalupe	3.1	Valencia	4.0
Hidalgo	5.7	State total	8,274.1

NORTH CAROLINA

County	County reserve (acres)	County	County reserve (acres)
Alamance	2.4	Lincoln	8.2
Alexander	51.6	Martin	243.1
Anson	11.3	Mecklenburg	184.8
Beaufort	22.0	Montgomery	136.1
Bertie	675.0	Moore	51.1
Bladen	28.7	Nash	1,497.8
Brunswick	7.3	New Hanover	1.7
Burke	3.5	Northampton	1,213.9
Cabarrus	19.0	Onslow	12.8
Caldwell	4.3	Orange	2.2
Camden	6.0	Pamlico	4.3
Carteret	0.3	Pasquotank	6.3
Catawba	26.1	Pender	6.9
Chatham	25.0	Person	0.3
Chowan	234.9	Pitt	782.6
Cleveland	4,598.9	Perquimans	14.6
Columbus	10.0	Polk	25.1
Craven	9.3	Randolph	1.7
Cumberland	30.0	Richmond	11.8
Currituck	2.9	Robeson	6,685.2
Davidson	11.7	Rockingham	0.0
Davie	11.6	Rowan	99.7
Duplin	190.0	Rutherford	24.8
Durham	3.6	Sampson	2,899.0
Edgecombe	1,765.2	Scotland	1,514.9
Forsyth	1.6	Stanly	29.7
Franklin	675.8	Tyrrell	7.5
Gaston	33.7	Union	52.5
Gates	175.3	Vance	186.3
Granville	2.3	Wake	25.0
Greene	443.3	Warren	701.3
Guilford	1.7	Washington	15.0
Halifax	3,111.2	Wayne	1,343.9
Harnett	1,159.1	Wilkes	7.2
Hertford	502.7	Wilson	945.6
Hoke	1,786.3	Yadkin	2.3
Hyde	0.8	State total	36,600.2
Iredell	86.9		
Johnston	1,860.6		
Jones	1.8		
Lee	16.5		
Lenoir	229.8		

OKLAHOMA

County	County reserve (acres)	County	County reserve (acres)
Adair	0.9	Garvin	175.2
Atoka	0.9	Grady	767.0
Beaver	0.7	Grant	0.7
Beckham	4,425.2	Greer	2,480.0
Blaine	779.5	Harmon	2,793.6
Bryan	1,154.9	Harper	0.0
Caddo	2,808.7	Haskell	52.0
Canadian	1,117.1	Hughes	0.9
Carter	4.7	Jackson	2,548.5
Cherokee	1.2	Jefferson	1,254.7
Choctaw	395.3	Johnston	124.9
Cleveland	147.8	Kay	26.2
Coal	237.4	Kingfisher	36.9
Comanche	1,214.3	Kiowa	2,058.5
Cotton	759.5	Latimer	0.1
Craig	0.8	LeFlore	3.9
Creek	91.7	Lincoln	0.7
Custer	1,071.5	Logan	15.4
Dewey	233.7	Love	430.2
Ellis	57.1	McClain	447.3
Garfield	0.1	McCurtain	583.1
McIntosh	660.8	Major	160.8
Marshall	319.3	Mayes	84.2
Murray	0.1	Muskogee	1,307.6
Noble	50.6	Nowata	91.5
Okfuskee	315.4	Oklahoma	43.1
Okmulgee	903.5	Osage	467.5
Pawnee	124.2	Payne	24.1
Pittsburg	666.0	Pontotoc	0.6
Pottawatomie	5.3	Pushmataha	0.4
Roger Mills	1,148.1	Rogers	39.4
Seminole	70.9	Sequoyah	30.1
Stephens	290.4	Texas	0.5
Tillman	3,249.9	Tulsa	270.0
Wagoner	956.6	Washington	0.0
Washita	4,671.8	Woodward	95.5
State total	44,351.0		

SOUTH CAROLINA

County	County reserve (acres)	County	County reserve (acres)
Abbeville	1,237.1	Hampton	996.1
Aiken	3,029.9	Horry	144.9
Allendale	1,222.1	Jasper	330.5
Anderson	3,584.5	Kershaw	2,713.1
Bamberg	1,424.1	Lancaster	1,194.4
Barnwell	1,666.4	Laurens	2,706.8
Beaufort	98.1	Lee	4,263.5
Berkeley	1,394.8	Lexington	1,496.1
Calhoun	1,848.7	McCormick	540.7
Charleston	231.6	Marion	1,244.5
Cherokee	1,310.9	Marlboro	4,721.4
Chester	1,392.8	Newberry	776.8
Chesterfield	3,928.4	Oconee	1,056.2
Clarendon	3,548.0	Orangeburg	6,740.2
Colleton	1,170.1	Pickens	923.6
Darlington	3,481.5	Richland	753.5
Dillon	2,336.7	Saluda	1,226.3
Dorchester	1,225.5	Spartanburg	2,652.9
Edgefield	1,261.6	Sumter	4,497.4
Fairfield	455.3	Union	878.7
Florence	3,283.2	Williamsburg	3,379.0
Georgetown	224.5	York	2,222.0
Greenville	1,644.1	State total	86,855.8
Greenwood	375.3		

TENNESSEE

County	County reserve (acres)	County	County reserve (acres)
Bedford	32.5	Lewis	44.5
Benton	30.8	Lincoln	58.2
Bradley	32.2	Loudon	0.4
Cannon	3.2	McMinn	24.3
Carroll	1,332.2	McNairy	95.3
Chester	97.6	Madison	102.4
Coffee	29.7	Marion	5.2
Crockett	35.8	Marshall	58.9
Cumberland	0.0	Maury	35.7
Davidson	0.0	Meigs	20.7
Decatur	36.6	Monroe	17.2
DeKalb	5.6	Moore	8.1
Dyer	49.6	Obion	58.7
Fayette	102.7	Perry	28.3
Franklin	33.4	Polk	25.8
Gibson	61.2	Rhea	0.9
Giles	751.9	Roane	0.0
Grundy	4.2	Robertson	0.0
Hamilton	15.5	Rutherford	19.0
Hardeman	109.4	Shelby	129.7
Hardin	111.9	Tipton	115.3
Haywood	112.8	Van Buren	6.2
Henderson	133.7	Warren	85.1
Henry	43.5	Wayne	324.8
Hickman	3.7	Weakley	61.1
Humphreys	1.9	White	9.5
Lake	41.4	Williamson	19.8
Lauderdale	28.4	Wilson	3.7
Lawrence	190.3	State total	4,784.5

TEXAS

County	County reserve (acres)	County	County reserve (acres)
Anderson	406.1	Austin	29.9
Andrews	4.1	Bailey	76.7
Angelina	336.3	Bandera	0.7
Aransas	0.5	Bastrop	1,667.8
Archer	74.1	Baylor	15.3
Armstrong	80.2	Bee	59.2
Atascosa	100.7	Bell	63.3
Bexar	59.1	Blanco	13.3
Borden	28.5	Bosque	73.2
Bowie	211.8	Brazoria	26.1
Brazos	99.4	Brewster	2.0
Briscoe	49.1	Brooks	80.3
Brown	228.6	Burleson	573.6
Burnet	178.3	Caldwell	59.8
Calhoun	31.7	Callahan	1,084.2
Cameron	28.6	Camp	48.5
Carson	74.2	Cass	354.2
Castro	43.6	Chambers	4.4
Cherokee	478.9	Childress	52.5
Clay	155.5	Cochran	23.3
Coke	48.3	Coleman	290.7
Collin	255.4	Collingsworth	32.5
Colorado	26.0	Comal	24.3
Comanche	590.6	Concho	61.5
Cooke	113.2	Coryell	121.1
Cottle	19.4	Crockett	0.0
Crosby	9.5	Culberson	4.8
Dallam	6.0	Dallas	179.4
Dawson	12.7	Deaf Smith	15.1
Delta	150.4	Denton	160.5
DeWitt	81.7	Dickens	227.1
Dimmit	8.8	Donley	25.6
Duval	123.9	Eastland	200.9
Ector	10.0	Ellis	150.0
El Paso	57.5	Erath	83.3
Falls	106.2	Fannin	276.8
Fayette	1,289.6	Fisher	55.3
Floyd	54.0	Foard	9.0
Fort Bend	30.7	Franklin	71.1
Freestone	80.0	Frio	4.6
Gaines	128.6	Galveston	1.3
Garza	21.9	Gillespie	55.0
Glasscock	2.6	Goliad	60.2
Gonzales	54.6	Gray	20.7
Grayson	141.0	Gregg	44.0
Grimes	250.5	Guadalupe	287.1
Hale	14.7	Hall	55.5
Hamilton	295.3	Hansford	29.8
Hardeman	36.5	Hardin	5.0
Harris	638.2	Harrison	258.7
Hartley	0.0	Haskell	92.8
Hays	169.9	Hemphill	7.1
Henderson	155.8	Hidalgo	274.4
Hill	109.6	Hockley	29.6
Hood	107.5	Hopkins	180.9
Houston	441.5	Howard	399.7
Hudspeth	15.9	Irion	3.1
Jack	210.5	Jackson	62.5
Jasper	7.0	Jeff Davis	6.0
Jefferson	1.0	Jim Hogg	33.3
Jim Wells	48.2	Johnson	152.2
Jones	63.8	Karnes	90.3
Kaufman	120.2	Kendall	2.7
Kent	9.5	Kerr	0.9
Kimble	27.0	King	9.6
Kinney	23.0	Kleberg	41.6
Knox	26.8	Lamar	227.6
Lamb	44.5	Lampasas	106.2
LaSalle	132.3	Lavaca	53.0
Lee	509.6	Leon	61.0
Liberty	28.1	Limestone	106.6
Live Oak	50.9	Llano	69.1
Loving	2.1	Lubbock	48.1
Lynn	101.6	McCulloch	695.4
McLennan	67.9	McMullen	45.6
Madison	45.2	Marion	109.6
Martin	16.5	Mason	79.9
Matagorda	10.6	Maverick	96.2
Medina	88.2	Menard	27.3
Midland	19.7	Milam	103.2
Mills	358.0	Mitchell	37.7
Montague	243.9	Montgomery	150.4
Moore	47.5	Morris	49.3
Motley	29.9	Nacogdoches	245.9
Navarro	99.7	Newton	101.6
Nolan	42.3	Nueces	32.7
Ochiltree	2.9	Oldham	1.6
Palo Pinto	156.8	Panola	152.2
Parker	148.7	Parmer	154.5
Pecos	11.3	Polk	180.9
Potter	1.5	Presidio	26.2
Rains	317.3	Randall	139.8
Reagan	4.2	Real	0.0

TEXAS—Continued			
County	County reserve (acres)	County	County reserve (acres)
Red River	50.2	Titus	9.3
Reeves	22.0	Tom Green	303.6
Refugio	20.4	Travis	185.0
Roberts	2.8	Trinity	141.4
Robertson	151.5	Tyler	19.6
Rockwall	30.5	Upshur	127.0
Runnels	119.9	Upton	0.4
Rusk	292.7	Uvalde	5.9
Sabine	220.2	Val Verde	5.0
San Augustine	592.8	Van Zandt	48.6
San Jacinto	98.9	Victoria	32.6
San Patricio	31.6	Walker	284.7
San Saba	579.8	Waller	50.4
Schleicher	2.9	Ward	4.9
Scurry	101.2	Washington	379.3
Shackelford	52.1	Webb	31.5
Shelby	90.0	Wharton	44.5
Smith	59.9	Wheeler	35.4
Somervell	63.2	Wichita	63.5
Starr	111.6	Wilbarger	101.9
Stephens	90.4	Willacy	39.4
Sterling	3.8	Williamson	96.7
Stonewall	21.0	Wilson	284.7
Sutton	0.0	Winkler	0.0
Swisher	38.4	Wise	59.8
Tarrant	93.6	Wood	468.4
Taylor	34.3	Yoakum	19.9
Terrell	0.0	Young	255.9
Terry	50.3	Zapata	24.3
Throckmorton	23.8	Zavala	41.8
		State total	29,380.5

VIRGINIA			
Accomack	2.5	Mecklenburg	112.3
Appomattox	0.0	Nansemond	126.7
Brunswick	176.3	Norfolk	4.5
Caroline	0.0	Patrick	0.0
Charlotte	1.0	Prince Edward	1.0
Chesterfield	0.1	Prince George	5.3
Cumberland	0.0	Princess Anne	1.2
Dinwiddie	15.8	Southampton	206.8
Franklin	0.0	Surry	0.9
Greensville	10.2	Sussex	96.5
Halifax	0.0	State total	807.4
Hanover	0.1		
Henrico	0.0		
Isle of Wight	27.0		
Lunenburg	17.2		

(Sec. 378, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interpret or apply sec. 344, 63 Stat. 670, as amended; 7 U.S.C. 1344)

Done at Washington, D.C., this 9th day of December, 1960.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-11594; Filed, Dec. 12, 1960; 1:00 p.m.]

[Amdt. 2]

PART 722—COTTON

Subpart—Regulations Pertaining to Acreage Allotments for the 1961 Crop of Extra Long Staple Cotton

COUNTY RESERVES

Basis and purpose. The purpose of this amendment is to establish county reserves. The amendment contained herein is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.). Notice of the proposed issuance of acreage allotment regulations for the 1961 crop of extra long staple cotton was published in the FEDERAL REGISTER on August 13, 1960 (25 F.R. 7760) in accordance with section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) prior to issuance of such regulations.

In order that the Agricultural Stabilization and Conservation State and county committees may perform their assigned functions in an orderly manner, it is essential that this amendment be made effective as soon as possible. Accordingly, it is hereby determined and found that compliance with the notice and public procedure requirements and the 30-day effective date requirement of section 4 of the Administrative Procedure Act is impracticable and contrary to the public interest and this amendment shall be effective upon filing of this document with the Director, Office of the Federal Register.

Section 722.466(g)(2) of the regulations pertaining to acreage allotments for the 1961 crop of extra long staple cotton (25 F.R. 9996, 12403) is amended to read as follows:

(2) *County reserve.* There are set forth below the county reserves establish for each county:

ARIZONA	
County	County reserve (acres)
Cochise	1.1
Graham	9.3
Maricopa	39.9
Pima	5.7
Pinal	22.2
Santa Cruz	0.0
Yuma	5.2
State total	83.4

CALIFORNIA	
Imperial	3.0
Riverside	14.8
State total	17.8

FLORIDA	
Alachua	0.1
Bradford	0.0
Hamilton	0.4
Jefferson	0.0
Lake	2.1
Madison	0.0
Marion	0.0
Putnam	0.0
Seminole	0.7
Sumter	2.1
Suwannee	0.0
Union	0.0
Volusia	2.0
State total	7.4

GEORGIA	
Berrien	12.9
Cook	0.0
Lanier	0.0
State total	12.9

NEW MEXICO	
Dona Ana	0.0
Eddy	1.8
Luna	0.0
Otero	0.4
Sierra	0.3
State total	2.5

TEXAS	
Brewster	0.6
Culberson	1.5
El Paso	14.9
Hudspeth	3.7
Loving	0.0
Pecos	0.8
Presidio	0.1
Reeves	4.7
Ward	0.0
State total	26.3

PUERTO RICO	
County	County reserve (acres)
North	28.3
South	5.5
State total	33.8

(Sec. 375, 52 Stat. 66, as amended; 7 U.S.C. 1375. Interprets or applies secs. 344, 347, 63 Stat. 670, 675, as amended; 7 U.S.C. 1344, 1347)

Done at Washington, D.C., this 9th day of December 1960.

CLARENCE D. PALMBY,
Acting Administrator,
Commodity Stabilization Service.

[F.R. Doc. 60-11595; Filed, Dec. 12, 1960; 1:00 p.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 195, Amdt. 1]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of navel oranges grown in Arizona and designated part of California.

Order, as amended. The provisions in paragraph (b)(1)(i) of § 914.495 (Navel Orange Regulation 195, 25 F.R. 12405) are hereby amended to read as follows:

(i) District 1: 1,100,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 9, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11631; Filed, Dec. 13, 1960; 9:03 a.m.]

[Milk Order No. 43]

PART 943—MILK IN THE NORTH TEXAS MARKETING AREA

Order Amending Order

§ 943.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the North Texas marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* (1) It is necessary in the public interest to make this order amending the order partially effective on January 1, 1961, and fully effective on July 1, 1961.

(2) The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued October 3, 1960 and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued November 16, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. However, the changes in base transfer rules may seriously disrupt the operation of certain producers who have either made arrangement to transfer their established bases or to acquire additional bases for the 1961 base-operating period. In view of the foregoing, it is hereby found and determined that good cause exist for making this order partially effective January 1, 1961, and fully effective July 1, 1961 and that it would be contrary to the public interest to delay the effective date of this order for 30 days after it publication in the FEDERAL REGISTER (sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the North Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1. Amend the proviso in § 943.45 to read as follows: "*Provided,* That if any of the water contained in the milk from which a product is made has been removed, or if any of the solids, other than butterfat, contained in milk have been added to the product in any form, before it is utilized or disposed of by the handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to all of the milk solids, other than butterfat, contained in such product, plus all the water originally associated with an amount of nonfat dry milk equal in weight to such solids."

2. Amend § 943.70 by deleting the word, "producer", in the first sentence thereof and by substituting the word, "producer", in place of the word, "such", in paragraph (a) thereof.

3. Amend § 943.80(a) to read as follows:

(a) Divide the total pounds of producer milk received from such producers at a pool plant(s) during the immediately preceding base-forming period of August through January by the number of days from the first day for which such producer made deliveries during such period to the last day of such period, less the number of days for which no deliveries are made, or by 153, whichever is greater. However, in the application of this provision prior to August 1961, the months of September through December 1960, shall be used in lieu of the August through January period and the figure, 112, shall be used in lieu of the figure, 153.

4. Amend § 943.81(b) by adding thereto an additional proviso as follows: "*And provided further,* That if a base(s) is transferred to a producer already holding a base which was either earned by such producer, or transferred to him, a new base shall be computed by adding together the total deliveries during the base-forming period of all persons in whose name such bases were earned and dividing the total by the number of days from the earliest date of delivery during the base-forming period by any of such persons to the last day of the base-forming period, or by 153 whichever is greater."

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 9th day of December 1960, to be effective as follows:

The amendments to §§ 943.45, 943.70 and 943.80(a) shall be effective on and after January 1, 1961, and the amendment to § 943.81(b) shall be effective on and after July 1, 1961.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11583; Filed, Dec. 13, 1960; 8:52 a.m.]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Order, as Amended, Regulating Handling

Sec.
989.0 Findings and determinations.

DEFINITIONS

989.1 Secretary.
989.2 Act.
989.3 Person.
989.4 Area.
989.5 Raisins.
989.6 Bleached raisins.
989.7 Golden seedless raisins.
989.8 Natural condition raisins.
989.9 Packed raisins.
989.10 Varietal type.
989.11 Producer.
989.12 Dehydrator.
989.13 Processor.
989.14 Packer.
989.15 Handler.
989.16 Blend.
989.17 Acquire.
989.18 Board.
989.19 Committee.
989.20 Ton.
989.21 Crop year.
989.22 District.

Sec.
989.23 File.
989.24 Standard raisins and off-grade raisins.
989.25 Part and subpart.

RAISIN ADVISORY BOARD

989.26 Establishment and membership.
989.26a Changes in handler representation.
989.26b Changes in producer representation.
989.27 Eligibility.
989.28 Term of office.
989.29 Initial members and nomination of successor members.
989.30 Selection.
989.31 Failure to nominate.
989.32 Acceptance.
989.33 Alternate members.
989.34 Vacancies.
989.35 Meetings.
989.36 Duties.
989.37 Procedure.

RAISIN ADMINISTRATIVE COMMITTEE

989.39 Establishment and membership.
989.39a Changes in handler representation.
989.39b Changes in producer representation.
989.40 Eligibility.
989.41 Term of office.
989.42 Nomination.
989.43 Selection.
989.44 Failure to nominate.
989.45 Acceptance.
989.46 Alternate members.
989.47 Vacancies.
989.48 Compensation and expenses.
989.49 Powers.
989.50 Duties.
989.51 Obligation.
989.52 Procedure.

RESEARCH AND DEVELOPMENT

989.53 Research and development.

MARKETING POLICY

989.54 Marketing policy.
989.55 Modification.
989.56 Verbatim record.
989.57 Publicity and notice.

GRADE AND CONDITION STANDARDS

989.58 Natural condition raisins.
989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.
989.60 Exemption.
989.61 Above-parity situations.

TRADE PRACTICES

989.62 Authorization for prohibition of trade practices.

VOLUME REGULATION

989.63 Recommendation for designation of percentages.
989.64 Regulation by the Secretary.
989.65 Free tonnage.
989.66 Reserve and surplus tonnage generally.
989.67 Special provisions relating to reserve tonnage.
989.68 Disposal of surplus raisins.
989.69 Substitution for Layer Muscats.
989.70 Storage of raisins held on memorandum receipt and of packer-owned tonnage.
989.71 Disposition of unsold reserve and surplus tonnage in above-parity situations.
989.72 Exemption of educational institutions.

REPORTS AND RECORDS

989.73 Reports.
989.75 Confidential information.
989.76 Records.
989.77 Verification of reports and records.

EXPENSES AND ASSESSMENTS

Sec.
989.79 Expenses.
989.80 Assessments.
989.81 Accounting.
989.82 Expenses of reserve and surplus raisin operations.
989.83 Funds.

MISCELLANEOUS PROVISIONS

989.84 Disposition limitation.
989.85 Personal liability.
989.86 Separability.
989.87 Derogation.
989.88 Duration of immunities.
989.89 Agents.
989.90 Effective time.
989.91 Suspension or termination.
989.92 Proceedings after termination.
989.93 Effect of termination or amendment.
989.94 Amendments
989.95 Right of Secretary.
989.96 Exhibit A; producer members of the Raisin Advisory Board.
989.97 Exhibit B; minimum grade and condition standards for natural condition raisins.

AUTHORITY: §§ 989.0 to 989.97 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 989.0 Findings and determinations.

(a) *Previous findings and determinations.* The findings and determinations hereinafter set forth are supplementary, and in addition, to the findings and determinations which were made in connection with issuance of the order and of each previously issued amendment thereto. Except the finding as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of the said previous findings and determinations are hereby ratified and affirmed. (For prior findings and determinations see 14 F.R. 5136; 20 F.R. 6435; 21 F.R. 8182.)

(b) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and the applicable rules of practice and procedure, as amended (7 CFR Part 900), a public hearing was held at Fresno, California, April 20 to 23, 1960, inclusive, on proposed amendments to Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989), regulating the handling of raisins produced from raisin variety grapes grown in California. On the basis of the evidence adduced at the hearing, and the record thereof, it is found that:

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of raisins produced from grapes grown in California in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) There are no differences in the production and marketing of raisins in the production area covered by the order, as amended and as hereby further amended, which require different terms applicable to different parts of such area;

(4) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable, consistently with carrying out the declared policy of the act; and

(5) All handling of raisins produced from grapes grown in California is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

(c) *Additional findings.* It is hereby further found that good cause exists for making the provisions of this amendatory order effective upon publication in the FEDERAL REGISTER rather than postponing the effective date until 30 days after such publication (5 U.S.C. 1001–1011). This amendatory order removes the requirement for written reconditioning agreements and relieves handlers from certain obligations, such as the requirement for storing reserve tonnage and surplus tonnage separately. Such relief should be afforded handlers as soon as possible. Moreover, such order provides for improvements in program operations and procedures; hence, for deriving the maximum benefits from such improvements during the current crop year, the amendatory order should become effective promptly. For example, such order provides a better method of offering and allocating surplus tonnage raisins to handlers for export than the method authorized by present § 989.66(e)(4); and such method should be available to the committee and handlers for the disposition of the remaining surplus tonnage raisins of the current crop year. With respect to a number of other changes in the present provisions of the regulatory program effected by the amendatory order, which may result in changed or additional obligations or restrictions on handlers, the completion of certain antecedent administrative and other actions will be required after the amendatory order becomes effective; and handlers will be given notice of all recommendations of the Raisin Administrative Committee (established under this regulatory program) with respect thereto. The specified effective date hereof will provide an early opportunity for taking the required actions, and permit the benefits derivable from the amendatory order to be available during as great a part of the remainder of the current crop year as possible, thereby tending to effectuate the declared policy of the act. The provisions of the amendatory order are well known to raisin handlers. The public hearing in connection therewith was held April 20 to 23, 1960, inclusive, in Fresno, California, the recommended decision was published in the FEDERAL REGISTER on September 8, 1960 (25 F.R. 8656, 8887), and the final decision on November 3, 1960 (25 F.R. 10540). The text of the amendatory order has been made available to all known interested persons. Accordingly, handlers need no further advance notice to prepare for compliance

with the provision of this amendatory order.

(d) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced from Grapes Grown in California", upon which the aforesaid public hearing was held, has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping raisins covered by the said order, as amended and as hereby further amended) who, during the period July 1, 1959 through June 30, 1960, handled not less than 50 percent of the volume of such raisins covered by the said order, as amended and as hereby further amended; and

(2) The issuance of this amendatory order, further amending the aforesaid order, as amended, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period July 1, 1959 through June 30, 1960 (which has been determined to be a representative period), have been engaged, within the State of California, in the production for market of the commodity specified in such amendatory order, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

It is, therefore, ordered, That, on and after the effective date hereof, all handling of raisins produced from grapes grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended, as follows:

DEFINITIONS

§ 989.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

§ 989.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 et seq.; 68 Stat. 906, 1047).

§ 989.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 989.4 Area.

"Area" means the State of California.

§ 989.5 Raisins.

"Raisins" means grapes of any variety grown in the area, from which a part of the natural moisture has been removed by sun-drying or artificial dehydration after such grapes have been removed from the vines.

§ 989.6 Bleached raisins.

"Bleached raisins" means (a) any raisins which have been produced by soda dipping, with or without oil, whether sun-dried or artificially dehydrated, or (b) any raisins which have been produced by soda dipping, sulfuring, and sun-drying.

§ 989.7 Golden Seedless raisins.

"Golden Seedless raisins" means raisins, the production of which includes soda dipping, sulfuring, and artificial dehydration.

§ 989.8 Natural condition raisins.

"Natural condition raisins" means raisins the production of which includes sun-drying or artificial dehydration, with or without bleaching, but which have not been further processed to a point where they meet any of the conditions for "packed raisins", as defined in § 989.9.

§ 989.9 Packed raisins.

"Packed raisins" means raisins which have been stemmed, graded, sorted, cleaned, or seeded, and placed in any container customarily used in the marketing of raisins or in any container suitable or usable for such marketing. Raisins in the process of being packed or raisins which are partially packed shall be subject to the same requirements as packed raisins.

§ 989.10 Varietal type.

"Varietal type" means raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. Varietal types are the following: Natural (sun-dried) Thompson Seedless, natural (sun-dried) Muscat, natural (sun-dried) or artificially dehydrated Sultana, natural (sun-dried) or artificially dehydrated Zante Currant, Layer Muscat, Golden Seedless, Sulfur Bleached, Soda Dipped, Valencia, Alicante Bouschet, Cardinal, Carignane, Italia, Malaga, Monukka, and Zinfandel raisins: *Provided,* That the committee may from time to time, subject to approval of the Secretary, change this list of varietal types.

§ 989.11 Producer.

"Producer" means any person engaged in a proprietary capacity in the production of grapes which are sun-dried or dehydrated by artificial means until they become raisins.

§ 989.12 Dehydrator.

"Dehydrator" means any person who produces raisins by dehydrating grapes by artificial means.

§ 989.13 Processor.

"Processor" means any person who acquires raisins and uses them within the area, with or without other ingredients, in the production of a product other than raisins, for market or distribution.

§ 989.14 Packer.

"Packer" means any person who, within the area, stems, sorts, cleans, or seeds raisins, grades stemmed raisins, or packages raisins for market as raisins: *Provided,* That any producer shall be deemed to be a packer, with respect to the raisins produced by him, only if he stems, cleans with water, seeds or packages them for market as raisins: *And provided further,* That any dehydrator shall be deemed to be a packer, with respect to raisins dehydrated by him, only if he stems, cleans with water subsequent to such dehydration, seeds or packages them for market as raisins.

§ 989.15 Handler.

"Handler" means: (a) Any processor or packer; (b) any person who ships natural condition raisins out of the area; or (c) any person who blends raisins: *Provided,* That blending shall not cause a person not otherwise a handler to be a handler on account of such blending if he is either: (1) A producer who, in his capacity as a producer, blends raisins entirely of his own production in the course of his usual and customary practices of preparing raisins for delivery to processors, packers, or dehydrators; (2) a person who blends raisins after they have been placed in trade channels by a packer with other such raisins in trade channels; or (3) a dehydrator who, in his capacity as a dehydrator, blends raisins entirely of his own manufacture.

§ 989.16 Blend.

"Blend" means to mix or commingle raisins.

§ 989.17 Acquire.

"Acquire" means to have or obtain physical possession of raisins by a handler at his packing or processing plant or at any other established receiving station operated by him: *Provided,* That a handler shall not be deemed to acquire any raisins (including raisins produced or dehydrated by him) while: (a) He stores them for another person or as handler-produced tonnage in compliance with the provisions of §§ 989.58 and 989.70; (b) he reconditions them, or; (c) he has them in his possession for the purpose of inspection; and *Provided further,* That the term shall apply only to the handler who first acquires the raisins.

§ 989.18 Board.

"Board" means the Raisin Advisory Board established pursuant to § 989.26, or as changed pursuant to § 989.26a or § 989.26b.

§ 989.19 Committee.

"Committee" means the Raisin Administrative Committee established pursuant to § 989.39, or as changed pursuant to § 989.39a or § 989.39b.

§ 989.20 Ton.

"Ton" means a short ton of 2,000 pounds.

§ 989.21 Crop year.

"Crop year" means the 12-month period beginning with September 1 of any year and ending with August 31 of the following year.

§ 989.22 District.

"District" means any one of the geographical areas referred to in § 989.26

and specified in § 989.96 (Exhibit A), or as changed pursuant to § 989.26b.

§ 989.23 File.

"File" means transmit or deliver to the Secretary or committee, as the case may be, and such act shall be deemed to have been accomplished at the time: (a) Of actual receipt by the Secretary or committee in the event of personal delivery; (b) of receipt at the office of the telegraph company, in case submission is by telegram; or (c) shown by the postmark, in case submission is by mail.

§ 989.24 Standard raisins and off-grade raisins.

(a) "Standard raisins" means raisins which meet the then effective minimum grade and condition standards for natural condition raisins.

(b) "Off-grade raisins" means raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins.

§ 989.25 Part and subpart.

"Part" means the order regulating the handling of raisins produced from grapes grown in California, and all rules, regulations, and supplementary orders issued thereunder. This order regulating the handling of raisins produced from grapes grown in California shall be a "subpart" of such part.

RAISIN ADVISORY BOARD

§ 989.26 Establishment and membership.

The Raisin Advisory Board is hereby established, consisting of 46 members, of whom 36 shall represent producers, eight shall represent handlers, and two shall represent dehydrators: *Provided*, That, effective May 1, 1961, the board shall consist of 45 members of whom 35 shall represent producers, eight shall represent handlers, and two shall represent dehydrators. The dehydrator members shall represent all dehydrators within the area and shall be selected from dehydrators as provided in § 989.29(b)(4). The handler members of the board shall include the following: (a) One member selected from and representing handlers doing business as cooperative marketing associations, or cooperative marketing organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year; (b) two members selected from and representing the three handlers, other than cooperatives, who acquired the largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; (c) one member selected from and representing the two handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; (d) two members selected from and representing the five handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; and (e) two members selected from and representing all other handlers, including cooperatives each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year, and including all processors. The producer members shall be selected in the number and for the districts as designated in § 989.96 (Exhibit A), or as such number or districts may be changed pursuant to § 989.26b. For each member of the board there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

§ 989.26a Changes in handler representation.

The Secretary, on recommendation of the committee, may change the total number of handler members on the board, the handler size groups set forth in § 989.26 from which handler members shall be selected, the number of handlers comprising any such size group, or the number of handler members to represent any such size group. In making any such change, consideration shall be given to such factors as changes in the numbers of handlers, relative raisin acquisition positions of handlers, and their similarity of interests in the handling of raisins.

§ 989.26b Changes in producer representation.

The Secretary, on recommendation of the committee, may change the total number of producer members on the board, may change the number of districts designated in § 989.96 (Exhibit A), may redefine such districts into which the production area is divided, or may change the number of producer members which shall be selected to represent particular districts. In making any such change consideration shall be given to such factors as geographical shifts in the numbers of producers and in raisin production within the area.

§ 989.27 Eligibility.

The conditions of producer eligibility for serving as member or alternate member on the board shall be those which were effective immediately preceding the effective date of this amended subpart, but on and after May 1, 1961, the conditions of such eligibility shall be those effective under this amended subpart. No person shall be selected or continue to serve as a member or alternate member of the board, who is not actively engaged in the business of the group which he represents, either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That any handler eligible to represent a particular size group at the time of his selection who later falls in a different size group shall continue to represent for the entire term the size group for which he was selected.

§ 989.28 Term of office.

(a) *Producer members.* The terms of one-third or approximately one-third of the producer members and producer alternate members of the board shall end on April 30 of each year, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified. The producer members and alternate producer members of the board shall serve for terms of three years, beginning on May 1, and ending on April 30 of the third following year: *Provided*, That the ending dates of the initial terms of office of the three producer members and their alternate members to be selected in 1961 to represent producers in District No. 21 under this amended subpart shall be April 30, 1962, for one producer member and his alternate, April 30, 1963, for another producer member and his alternate, and April 30, 1964, for the other producer member and his alternate, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified.

(b) *Handler and dehydrator members.* The handler members and dehydrator members, and their respective alternates, shall each serve for terms of one year, beginning on May 1, and ending on April 30 of the following year, but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified.

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the board serving immediately prior to the effective date of this amended subpart shall, if thereafter they are also eligible, continue to serve on the board as the initial members and alternate members of the board for their specified terms of office and until their respective successors have been selected and have qualified: *Provided*, That the terms of office of the three producer members and three alternate producer members representing producers in District No. 21 and of the one producer member and one producer alternate member representing producers in District No. 22, who are serving on the effective date of this amended subpart, shall terminate on April 30, 1961.

(b) *Nomination for successor members.* Nominations for successor members and alternate members of the board shall be made as set forth in subparagraphs (1) to (6) of this paragraph.

(1) The board shall give reasonable publicity of a meeting or meetings of producers, handlers, and dehydrators, respectively, for the purpose of making nominations for member and alternate member positions to be filled on the board: *Provided*, That, with respect to producer members and producer alternate members, a meeting or meetings shall be held in each district for which nominations are to be made to fill producer member and producer alternate member positions on the board.

(2) Only producers, as defined in § 989.11, engaged as such with respect to the most recent grape crop in the particular district for which nominations are to be made, may nominate, or vote for, any producer member or producer alternate member for such district. Any such producer so engaged in any of the districts may be nominated to represent any district as producer member or producer alternate member of the board, except that a producer may be a nominee for only one district: *Provided*, That every three years at least one of the nominees for a producer member position on the board and one of the nominees for the alternate position thereto shall be producers of grapes used in the production of Golden Seedless raisins. One or more eligible producers for each producer member position to be filled on the board may be proposed for nomination and one or more eligible producers for each alternate member position to be filled may be proposed for nomination. Each producer shall cast only one vote with respect to each position for which nomination is to be made. The person receiving a majority of votes with respect to each producer member or producer alternate member position shall be the person to be certified to the Secretary as the nominee for each such position. In the event no person receives a majority, there shall be a run-off vote between the two persons receiving the largest number of votes.

(3) Only handlers who packed or processed raisins during the then current crop year may nominate, or vote for, handler members or handler alternate members. One or more eligible handlers for each handler member position to be filled may be proposed for nomination, and one or more eligible handlers for each alternate member position to be filled on the board may be proposed for nomination. Nominations by each of the handler groups specified in § 989.26 or pursuant to § 989.26a, shall be made by and from handlers, or employees, representatives, or agents of handlers falling within such groups. Each handler shall cast only one vote with respect to each position for which nomination is to be made: *Provided*, That only handlers coming within the particular group, as specified in § 989.26 or pursuant to § 989.26a, as applicable, for which nomination is to be made, shall vote. The person receiving the most votes with respect to each handler member or handler alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(4) Only dehydrators who produced raisins by dehydrating grapes during the then current crop year may nominate, or vote for, dehydrator members or dehydrator alternate members. One or more eligible dehydrators for each dehydrator member position to be filled on the board may be proposed for nomination, and one or more eligible dehydrators for each alternate member position may be proposed for nomination. Each dehydrator shall cast only one vote with respect to each position for which nomination is to be made. The person receiving the most votes with respect to each dehydrator member or dehydrator alternate member position shall be the person to be certified to the Secretary as the nominee for each such position.

(5) Each vote cast shall be on behalf of the person voting, his agents, subsidiaries, affiliates, and representatives. Voting at each meeting shall be in person. The result of each ballot at each such meeting shall be announced at that meeting. Voting at each meeting of producers shall be by secret ballot, and at each meeting of handlers, and dehydrators, voting may be by secret ballot.

(6) Each such nomination shall be certified by the board to the Secretary on or before April 5 immediately preceding the commencement of the term of office of the member or alternate member position for which the nomination is certified.

§ 989.30 Selection.

The Secretary shall select producer, handler, and dehydrator members and alternate members in the numbers specified in § 989.26, or pursuant to § 989.26a or § 989.26b, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from the nominations certified pursuant to § 989.29 or from other eligible producers, handlers, and dehydrators.

§ 989.31 Failure to nominate.

In the event nomination for a member or alternate member position on the board is not certified pursuant to and within the time specified in § 989.29, the Secretary may select an eligible person to fill such position without regard to nomination.

§ 989.32 Acceptance.

Each person selected by the Secretary as a member or as an alternate member of the board shall, prior to serving on the board, qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of his selection.

§ 989.33 Alternate members.

The alternate for a member of the board shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death, until a successor for such member's unexpired term has been selected and and has qualified.

§ 989.34 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the board to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.29 and 989.30, insofar as such provisions are applicable. If nomination to fill any vacancy is not filed within 40 calendar days after such vacancy occurs, the Secretary may select an eligible person to fill such vacancy without regard to nomination.

§ 989.35 Meetings.

The board shall meet at the call of its chairman or its vice chairman when acting as chairman, or at the call of any officer of the board upon the request of at least one-third of its producer or handler members. Reasonable advance notice of each meeting shall be given by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable. The notice of each meeting shall specify the time, place, and general purpose thereof.

§ 989.36 Duties.

The duties of the board shall consist of the conducting of meetings for the purpose of making nominations for membership on the board and the certifying of nominations made for such purpose to the Secretary, the making of nominations to the Secretary for member and alternate member positions on the committee, the making of recommendations to the committee with respect to marketing policy, the free, reserve, and surplus percentages, and such other operational matters as it deems proper or as the committee may request.

§ 989.37 Procedure.

(a) Except as otherwise provided in § 989.42, all decisions of the board shall be by majority vote of the members present. The presence of not less than 19 producer members and not less than five members other than producer members shall be required to constitute a quorum: *Provided*, That the Secretary, on recommendation of the committee, may change such quorum requirements if warranted by a change made pursuant to § 989.26a in the total number of handler members on the board or by a change made pursuant to § 989.26b in the total number of producer members on the board.

(b) The board shall give to the Secretary the same notice of meetings of the board as it gives to its members.

RAISIN ADMINISTRATIVE COMMITTEE

§ 989.39 Establishment and membership.

A Raisin Administrative Committee is hereby established to administer the terms and provisions of this part. Such committee shall consist of 14 members, of whom eight shall represent producers (one of whom shall be a producer of grapes used in the production of Golden Seedless raisins), five shall represent handlers, and one shall represent dehydrators. Of the five handler members, one shall be selected from and represent each of the following divisions: (a) The handlers doing business as cooperative marketing associations, or cooperative marketing organizations engaged in the business of packing raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then current crop year; (b) the three handlers, other than cooperatives, who acquired the largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year; (c) the two handlers, other than cooperatives, who acquired the next largest percentages of total raisin acquisitions during the 12-month period preceding the then current crop year; (d) the five handlers, other than cooperatives, who acquired the next largest percentages of the total raisin acquisitions during the 12-month period preceding the then current crop year; and (e) all other handlers, including cooperatives each of which acquired less than 10 percent of the total raisin acquisitions during the 12-month period preceding the then cur-

rent crop year, and including all processors. For each member of the committee there shall be an alternate member who shall have the same qualifications as the member for whom he is an alternate.

§ 989.39a Changes in handler representation.

The Secretary, on recommendation of the committee, may change the total number of handler members on the committee, the handler size groups set forth in § 989.39 from which handler members shall be selected, the number of handlers comprising any such size group, or the number of handler members to represent any such size group. In making any such change, consideration shall be given to such factors as changes in the numbers of handlers, relative raisin acquisition positions of handlers, and their similarity of interests in the handling of raisins.

§ 989.39b Changes in producer representation.

The Secretary, on recommendation of the committee, may change the total number of producer members on the committee. In making such a change, consideration shall be given to such factors as changes in the producer or handler membership of the board, representation of the several producing districts, and maintenance of producer positions as a majority of the committee.

§ 989.40 Eligibility.

The conditions of producer eligibility for serving as member or alternate member of the committee shall be those which were effective immediately preceding the effective date of this amended subpart, but on and after June 1, 1961, the conditions of such eligibility shall be those effective under this amended subpart. No person shall be selected or continue to serve as a member or alternate member of the committee, who is not actively engaged in the business of the group which he represents, either in his own behalf, or as an officer, agent, or employee of a business unit engaged in such business: *Provided*, That any handler eligible to represent a particular size group at the time of his selection who later falls in a different size group shall continue to represent for the entire term the size group for which he was selected.

§ 989.41 Term of office.

Members and alternate members of the committee shall each serve for terms of one year, beginning on June 1, and ending on May 31 of the following year but each such member and alternate member shall continue to serve until his respective successor is selected and has qualified.

§ 989.42 Nomination.

(a) *Producer members.* The producer members of the board, and producer alternate members when acting as members, shall nominate from among the producer members and producer alternate members of the board the required number of persons for producer member positions on the committee and an alternate for each such person: *Provided*, That one of the persons nominated for a producer member position on the committee and his alternate shall be producers of grapes used in the production of Golden Seedless raisins.

(b) *Handler members.* The handler members of the board and handler alternate members when acting as members, shall nominate from among the handler members and alternate members of the board, the required number of persons for handler member positions on the committee, and an alternate for each such person. Nomination for each of the handler groups specified in § 989.39, or pursuant to § 989.39a, as applicable, shall be made by and from handlers, employees, representatives or agents of handlers falling within each such group.

(c) *Dehydrator members.* The dehydrator members of the board, and dehydrator alternate members when acting as members, shall nominate from among the dehydrator members and dehydrator alternate members of the board one person for the dehydrator member position on the committee and an alternate for such person.

(d) *Initial members.* Members and alternate members of the committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are also eligible, continue to serve on the committee as the initial members and alternate members of the committee for their specified terms of office and until their respective successors have been selected and have qualified.

(e) *Successor members.* Nominations for successor members and alternate members of the committee shall be certified by the board to the Secretary annually within 30 days following the selection by the Secretary of board members.

§ 989.43 Selection.

The Secretary shall select producer, handler, and dehydrator members and alternate members of the committee in the numbers specified in § 989.39 or pursuant to § 989.39a or § 989.39b, as applicable, and with the qualifications specified in § 989.40. Such selections may be made from the nominations certified pursuant to § 989.42 or from other eligible producers, handlers, and dehydrators.

§ 989.44 Failure to nominate.

In the event nomination for a member or alternate member position on the committee is not certified pursuant to and within the time specified in § 989.42, the Secretary may select an eligible person to fill such position without regard to nomination.

§ 989.45 Acceptance.

Each person selected by the Secretary as a member or as an alternate member of the committee shall, prior to serving on the committee, qualify by filing with the Secretary a written acceptance within 10 calendar days after being notified of such selection.

§ 989.46 Alternate members.

An alternate for a member of the committee shall act in the place and stead of such member (a) during his absence, and (b) in the event of his removal, resignation, disqualification, or death until a successor for such member's unexpired term has been selected and has qualified.

§ 989.47 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the removal, resignation, disqualification, or death of any member or alternate member, a successor for such person's unexpired term shall be nominated and selected in the manner set forth in §§ 989.42 and 989.43, insofar as such provisions are applicable. If nomination to fill any such vacancy is not filed within 40 calendar days after such vacancy occurs, the Secretary may select an eligible person to fill such vacancy without regard to nomination.

§ 989.48 Compensation and expenses.

The members of the committee and the board, and the alternate members when acting as members, shall serve without compensation but shall be allowed their necessary expenses as approved by the committee. Whenever specifically authorized in advance by the committee, or when requested to attend due to the anticipated absence of a member, an alternate member of the committee shall be reimbursed for reasonable expenses incurred by him in attending not to exceed three committee meetings per crop year when the committee member for whom he serves as alternate also attends such meetings.

§ 989.49 Powers.

The committee shall have the following powers:

(a) To administer the terms and provisions of this part;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary, complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 989.50 Duties.

The committee shall have, among others, the following duties:

(a) To act as intermediary between the Secretary and any producer, packer, dehydrator, or processor;

(b) To keep minutes, books, and other records, which shall clearly reflect all of its acts and transactions, and such minutes, books, and other records shall be subject to examination by the Secretary at any time;

(c) To investigate and assemble data on the production, handling, and market conditions with respect to raisins;

(d) To submit to the Secretary such available information with respect to raisins and grapes as he may request, and such other information as the committee may deem desirable and pertinent;

(e) To select, from among its members, a chairman and other officers, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(f) To appoint or employ such other persons as it may deem necessary, and to determine the salaries and define the duties of each such person;

(g) To cause the books of the committee to be audited by certified public accountants at least once each crop year, and at such other times as the committee may deem necessary or as the Secretary may request, and the report of each such audit shall show, among other things, the receipts and expenditures of funds, and at least two copies of each such audit shall be submitted to the Secretary;

(h) To prepare quarterly statements of its financial operations and make such statements, together with the minutes of its meetings, available at the office of the committee for inspection by producers, handlers and dehydrators;

(i) To give reasonable advance notice of the times, places, and purposes of its meetings by mail or other appropriate means to each member and alternate member and such notice shall be given as widespread publicity as is practicable.

(j) To investigate compliance with and to use means available to the committee to prevent violation of the provisions of this part; and

(k) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this subpart as may be consistent with the provisions contained in this subpart and as may be necessary to accomplish the purposes of the act and the efficient administration of this subpart.

§ 989.51 Obligation.

Upon the removal, resignation, disqualification, or expiration of the term of office of any member or alternate member, such member or alternate member shall account for all receipts and disbursements and deliver to his successor, to the committee, or to a designee of the Secretary all property (including, but not limited to, all books and records) in his possession or under his control as member or alternate member, and he shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, committee, or designee full title to such property and funds, and all claims vested in such member or alternate member. Upon the death of any member or alternate member of the committee, full title to such property, funds, and claims vested in such member or alternate member shall be vested in his successor or, until such successor has been selected and has qualified, in the committee.

§ 989.52 Procedure.

(a) All decisions of the committee reached at an assembled meeting shall be by majority vote of the members present. All votes in an assembled meeting shall be cast in person and a quorum must be present. The presence of nine members shall be required to constitute a quorum: *Provided*, That the Secretary, on recommendation of the committee, may change such quorum requirement if warranted by a change made pursuant to § 989.39a in the total number of handler members on the committee or by a change made pursuant to § 989.39b in the total number of producer members on the committee. The committee may vote by mail or telegraph when there is no assembled meeting, but any proposition to be so voted upon first shall be explained accurately, fully, and identically in a notice by mail or telegraph to all members, or alternates acting in the place and stead of the members. Said notice shall contain a statement of a reasonable time not to exceed 10 days in which a member or alternate must vote by mail or telegraph in order that the vote may be counted. A unanimous vote of all selected and eligible members or alternates acting in the place and stead of members shall be required to reach a decision on a mail or telegraphic vote. Failure of any such member or alternate to vote within the prescribed time shall be held to be a dissenting vote. No action to recommend a marketing policy or volume regulation can be taken on the basis of a mail or telegraphic vote.

(b) The committee shall give to the Secretary the same notice of its meetings as it gives to its members and also advance notice of all subcommittee meetings.

(c) The committee shall defer action with respect to any marketing policy or percentage recommendation of the board until at least the day following the day on which any such recommendation is adopted by the board.

RESEARCH AND DEVELOPMENT

§ 989.53 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of raisins. Such projects may include, but need not be limited to, those designed to: (a) Improve through research the accuracy of raisin production estimates; (b) improve through research the preparation for market, sanitation, quality, condition, storability, processing, or packaging of raisins; (c) ascertain through research the factors affecting acceptance of raisins by manufacturers or consumers; and (d) promote the marketing, distribution, or consumption of raisins in domestic and foreign markets by collecting data thereon, consulting with members of the trade, and making the information available to producers, handlers, and exporters. The expense of any such project relating solely to free tonnage raisins shall be paid from funds collected pursuant to § 989.79. The expense of any such project relating solely to surplus tonnage raisins shall be paid from the sales proceeds from such raisins. If any such project encompasses both free tonnage and surplus tonnage raisins, such as one which is designed to promote the consumption in export outlets of raisins generally on a long-term basis, the expense of the project may be allocated between the assessment fund and the pool fund.

MARKETING POLICY

§ 989.54 Marketing policy.

Prior to or simultaneously with making its recommendation to the Secretary for fixing the initial free, reserve, and surplus percentages for any crop year (which shall be not later than October 5 of such crop year unless this date is extended by the committee not more than five days as provided in § 989.63 (a)), the committee shall hold a meeting to formulate and adopt a marketing policy for the marketing of raisins for the crop year and shall submit promptly to the Secretary a report setting forth its marketing policy for the regulation of the handling of raisins in such crop year. The report shall include the data and information used by the committee in formulating the marketing policy, and the recommendation of the board. In developing the marketing policy, the committee shall give consideration to the following factors with respect to any varietal type on which volume regulation is intended for the crop year:

(a) The estimated tonnage held by producers, handlers, and for the account of the committee at the beginning of the crop year;

(b) The expected general quality and any intended modifications of the minimum grade standards;

(c) The estimated tonnage of standard and off-grade raisins which will be produced;

(d) The estimated trade demand for such raisins in free tonnage outlets;

(e) An estimated desirable carryout at the end of the crop year for free tonnage and, if applicable, for surplus tonnage;

(f) The estimated market requirements for such raisins outside free tonnage outlets, considering the estimated world raisin supply and demand situation;

(g) Current prices being received and the probable general level of prices to be received for such raisins by producers and handlers;

(h) The trend and level of consumer income;

(i) Any prohibition of trade practices, pursuant to § 989.62, intended for the crop year; and

(j) Any other pertinent factors bearing on the marketing of such raisins including the estimated supply of and demand for other varietal types and regulations applicable thereto.

§ 989.55 Modification.

In the event the committee subsequently deems it advisable to modify such marketing policy, because of changed demand or supply conditions, it should hold a meeting for that purpose, and file a report thereof with the Secretary within five days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show each modification, the bases therefor, as well as the recommendation of the board.

§ 989.56 Verbatim record.

The committee shall file with its report to the Secretary a verbatim record of that portion of its meeting or meetings relating to its marketing policy.

§ 989.57 Publicity and notice.

The committee shall promptly give reasonable publicity to producers, de-

hydrators, and handlers of each meeting to consider a marketing policy or any modifications thereof, and each such meeting shall be open to them. Similar notice shall be given to producers, dehydrators, and handlers of each marketing policy report, or modification thereof, filed with the Secretary. Copies of all such reports shall be maintained in the office of the committee where they shall be made available for examination by any producer, dehydrator, or handler.

GRADE AND CONDITION STANDARDS

§ 989.58 Natural condition raisins.

(a) *Regulation.* No handler shall acquire or receive natural condition raisins which fail to meet the minimum grade and condition standards as set forth in § 989.97 (Exhibit B) or as later changed and then in effect: *Provided,* That a handler may receive raisins for inspection, may receive off-grade raisins for reconditioning, and may receive or acquire off-grade raisins for use in distillation, animal feed, or outlets other than for human consumption: *And provided further,* That nothing contained in this paragraph shall apply to the acquisition or receipt of natural condition raisins of a particular varietal type for which minimum grade and condition standards are not applicable or then in effect pursuant to this part.

(b) *Changes in minimum grade and condition standards for natural condition raisins.* The committee may recommend to the Secretary changes in the minimum grade and condition standards for natural condition raisins of any varietal type, as set forth in § 989.97 (Exhibit B) or as later changed and then in effect, and may recommend to the Secretary that minimum grade and condition standards for any varietal type be added to or deleted from § 989.97 (Exhibit B). The committee shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall issue any such change relative to the minimum grade and condition standards for natural condition raisins if he finds upon the basis of data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice.* The committee shall give prompt and reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of such regulation shall be given to all handlers by registered or certified mail.

(d) *Inspection and certification.* (1) Each handler shall cause an inspection and certification to be made of all natural condition raisins acquired or received by him, except with respect to: (i) An inter-plant or inter-handler transfer of off-grade raisins as described in § 989.58(e) (2) unless such inspection and certification are required by rules and procedures made effective pursuant to this amended subpart; (ii) an inter-plant or inter-handler transfer of free tonnage raisins as described in § 989.59 (e); (iii) raisins received from a dehydrator which have previously been inspected pursuant to subparagraph (2) of this paragraph; (iv) any raisins for which minimum grade and condition standards are not then in effect; and (v) any raisins, if permitted in accordance with such rules and procedures as the committee may establish with the approval of the Secretary, acquired or received for disposition to distillation, animal feed, or uses other than for human consumption. The handler shall be reimbursed by the committee for inspection costs incurred by him and applicable to pool tonnage held for the account of the committee. Except as otherwise provided in this section, prior to blending raisins, acquiring raisins, storing raisins, reconditioning raisins, or acquiring raisins which have been reconditioned, each handler shall obtain an inspection certification showing whether or not the raisins meet the applicable grade and condition standards: *Provided,* That these requirements shall not preclude fumigation by the handler prior to completion of inspection and certification in accordance with such rules and procedures as the committee shall establish with the approval of the Secretary. The handler shall submit or cause to be submitted to the committee a copy of such certification, together with such other documents or records as the committee may require. Such certification shall be issued by inspectors of the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency would improve the administration of this amended subpart. The committee may require that raisins held on memorandum receipt be reinspected and certified as a condition for their acquisition by a handler.

(2) The committee may, in accordance with rules and procedures established with the approval of the Secretary, authorize handlers to receive or acquire natural condition raisins which have been produced by any dehydrator by dehydrating grapes by artificial means and have been inspected and certified on his premises. In the event there shall have been compliance with committee requirements, any handler who receives or acquires such inspected and certificated raisins shall be deemed to have satisfied the requirements contained in subparagraph (1) of this paragraph with respect to inspection and certification of natural condition raisins received or acquired by him.

(e) *Off-grade raisins.* (1) Any natural condition raisins tendered to a handler which fail to meet the applicable minimum grade and condition standards may: (i) Be received or acquired by the handler for disposition, without further inspection, for distillation, animal feed, or uses other than for human consumption; (ii) be returned unstemmed to the person tendering the raisins; or (iii) be received by the handler for reconditioning. Off-grade raisins received by a handler under any one of the three described categories may be changed to any other of the categories under such rules and procedures as the committee, with the approval of the Secretary, shall establish. No handler shall ship or otherwise dispose of off-grade raisins which he does not return to the tenderer, transfer to another handler as provided in subparagraph (2) of this paragraph, or recondition so that they at least meet the minimum standards prescribed in or pursuant to this amended subpart, except for distillation, animal feed, or uses other than for human consumption.

(2) Off-grade raisins may be transferred from the plant of the handler where received to another plant of his or to that of another handler within the State of California under such rules and procedures as the committee, with the approval of the Secretary, shall establish to safeguard the objectives of this part.

(3) Each handler shall, while holding any off-grade raisins, store them separate and apart from other raisins and the off-grade raisins shall be stored in accordance with disposition and reconditioning categories. The committee with the approval of the Secretary may prescribe rules and procedures for the storage of the raisins.

(4) If the handler is to acquire the raisins after they are reconditioned, his obligation with respect to such raisins shall be based on the weight of the raisins (if stemmed, adjusted to natural condition weight) after they have been reconditioned. If, after such reconditioning, such raisins meet the minimum standards but are no longer natural condition raisins, any handler who acquires such raisins shall meet his surplus and reserve tonnage obligations from natural condition standard raisins acquired by him. Any off-grade raisins (including stemmer waste and raisin offal) accumulated as a final residual by a handler in reconditioning raisins shall, during or after reconditioning has been completed, be disposed of by the handler, without further inspection, for distillation, animal feed, or uses other than for human consumption.

(5) The committee shall establish, with the approval of the Secretary, such additional rules and procedures as may be necessary to insure adequate control of off-grade raisins, including, but not limited to, the reconditioning of off-grade raisins, the disposition and use of unsuccessfully reconditioned raisins, and the disposition and use of residual matter from reconditioning operations.

(f) *Blending.* No handler shall blend raisins except: (1) Incidental to reconditioning raisins as permitted under rules and procedures established by the committee, with the approval of the Secretary; (2) blending standard raisins with standard raisins; or (3) blending raisins which meet the minimum grade standards for packed raisins with other raisins which meet such standards.

§ 989.59 Regulation of the handling of raisins subsequent to their acquisition by handlers.

(a) *Regulation.* Unless otherwise provided in this part, no handler shall:

(1) Ship or otherwise make final disposition of natural condition raisins unless they at least meet the effective applicable minimum grade and condition standards for natural condition raisins; or (2) ship or otherwise make final disposition of packed raisins unless they at least meet the following minimum grade standards or such standards as changed or prescribed pursuant to the provisions of paragraph (b) of this section: (i) With respect to natural (sun-dried) Thompson Seedless, natural (sun-dried) Muscat, natural (sun-dried) or artificially dehydrated Sultana, Golden Seedless, Sulfur Bleached, Soda Dipped and Valencia raisins, "U.S. Grade C" as defined in effective United States Standards for Grades of Processed Raisins; (ii) with respect to Golden Seedless and Sulfur Bleached raisins, the color requirements for "bleached color" (or "choice color") as defined in the said standards; (iii) with respect to Layer Muscat raisins, "U.S. Grade B" as defined in the said standards; and (iv) with respect to Zante Currant raisins, "U.S. Grade B" as defined in the effective United States Standards for Grades of Dried Currants: *Provided,* That nothing contained in this paragraph shall prohibit the shipment or final disposition of any raisins of a particular varietal type for which minimum standards are not applicable or then in effect pursuant to this part.

(b) *Changes in minimum grade standards for packed raisins.* The committee may recommend to the Secretary changes in the minimum grade standards for packed raisins of any varietal type as prescribed in paragraph (a) of this section or as later changed and then in effect, and may recommend to the Secretary that minimum grade standards for any varietal type be prescribed or terminated, and shall submit with its recommendation all data and information upon which it acted in making its recommendation, and such other information as the Secretary may request. The Secretary shall issue any such change if he finds upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the declared policy of the act.

(c) *Publicity and notice.* The committee shall give prompt and reasonable publicity to producers, dehydrators, and handlers of each recommendation submitted by it to the Secretary and of each regulation issued by the Secretary. Notice of each such regulation shall be given to all handlers by registered or certified mail.

(d) *Inspection and certification.* Unless otherwise provided in this section, each handler shall, at his own expense, before shipping or otherwise making final disposition of raisins, cause and inspection to be made of such raisins to determine whether they meet the then applicable minimum grade and condition standards for natural condition raisins or the then applicable minimum grade standards for packed raisins. Such handler shall obtain a certificate that such raisins meet the aforementioned applicable minimum standards and shall submit or cause to be submitted to the committee a copy of such certificate together with such other documents or records as the committee may require. The certificate shall be issued by the Processed Products Standardization and Inspection Branch of the United States Department of Agriculture, unless the committee determines, and the Secretary concurs in such determination, that inspection by another agency will improve the administration of this amended subpart. Any certificate issued pursuant to this paragraph shall be valid only for such period of time as the committee may specify, with the approval of the Secretary, in appropriate rules and regulations.

(e) *Inter-plant and inter-handler transfers.* Any handler may transfer from his plant to his own or another handler's plant within the State of California any free tonnage raisins without having had such raisins inspected as provided in paragraph (d) of this section. The transferring handler shall transmit promptly to the committee a report of such transfer, except that transfers between plants owned or operated by the same handler need not be reported. Before shipping or otherwise making final disposition of such raisins, the receiving handler shall comply with the requirements of this section.

(f) *Off-grade raisins accumulated by handlers.* Any off-grade raisins (including stemmer waste and raisin offal) which may be received by a processor or accumulated by a handler by removing them from his standard raisins, and any raisins acquired as standard raisins by a handler which do not meet the applicable grade and condition standards for shipment or final disposition as raisins, shall be disposed of or marketed, without further inspection, for distillation, animal feed, or uses other than for human consumption: *Provided,* That this shall not preclude a packer from recovering raisins from such accumulations or acquisitions. The committee shall establish, with the approval of the Secretary, such rules and procedures as may be necessary to insure such uses. The provisions of this paragraph are not intended to excuse any failure to comply with all applicable food and sanitary rules and regulations of city, county, state, federal or other agencies having jurisdiction.

(g) *Exemption of gift and specialty packs.* The committee may establish, with the approval of the Secretary, rules and procedures providing for the exemption of gift and specialty packs of raisins from the grade, inspection, and certification requirements of this section.

§ 989.60 Exemption.

Notwithstanding any other provisions of this amended subpart, the committee may establish, with the approval of the Secretary, such rules and procedures as may be necessary to permit the acquisition and disposition of any off-grade or surplus pool raisins, free from any or all regulations, for uses in distillation, animal feed, or any use other than for human consumption.

§ 989.61 Above-parity situations.

(a) *Continuance of grading and inspection requirements.* The provisions of this part relating to minimum grade and condition standards and inspection requirements, within the meaning of section 2(3) of the act, and any other provisions pertaining to the administration and enforcement thereof, shall continue in effect irrespective of whether the estimated season average price to producers for raisins is in excess of the parity level specified in section 2(1) of the act.

(b) *Modification of minimum standards.* Should there occur (1) technological changes or advances in production, processing or packing operations; or (2) changes in consumer or user preferences; or (3) conditions requiring more precise correlation of incoming and outgoing standards; or (4) changes in economic factors affecting the orderly marketing of the available supply of raisins making necessary in the public interest modifications in applicable standards of quality and maturity; then and in any such event the committee may recommend to the Secretary for any varietal type modification of the minimum grade and condition standards prescribed in or pursuant to this amended subpart for natural condition raisins and of minimum grade standards so prescribed for packed raisins. The committee shall submit with its recommendation all data and information upon which it acted in making the recommendation, and such other information as the Secretary may request. The Secretary shall issue such modification if he finds upon the basis of the recommendation and supporting data submitted to him by the committee, or from other pertinent information available to him, that to do so would tend to effectuate the purposes of sections 2(3) of the act.

TRADE PRACTICES

§ 989.62 Authorization for prohibition of trade practices.

Whenever the Secretary finds, upon recommendation of the committee or other information, that continuance of certain practices in trade channels would tend to interfere with the achieving of the objectives of this part, he may prohibit handlers from using such practices, for any crop year or portion thereof, in selling raisins in containers exceeding four pounds net weight. The prohibited practices may include:

(a) Any provision within or added to a sales contract, or action or agreement outside such contract, whereby the handler is obligated to reflect declines in market prices of raisins by charging the buyer a subsequent market price in lieu of the sales price specified in the contract.

(b) Any agreement in an undertaking to hold raisins in reserve for possible future delivery to a buyer, or action or agreement outside such undertaking, whereby the handler is obligated to not reflect increases in market prices by charging the buyer a price specified in the agreement.

Prior to any such practices being prohibited in any crop year, the committee

shall recommend, for the approval of the Secretary, such rules and procedures and such record keeping requirements as are necessary to administer these prohibitions and obtain compliance therewith.

VOLUME REGULATION

§ 989.63 Recommendation for designation of percentages.

(a) If the committee concludes that the supply and demand conditions for raisins make it advisable to designate the percentages of standard raisins acquired by handlers in any crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively, it shall recommend such percentages to the Secretary. The committee may recommend such percentages separately, for each varietal type. The committee also shall submit, together with any recommendation with respect to percentages, the information on the basis of which such recommendation was made, and the recommendation of the board, and also shall specify for each varietal type of raisins the outlets which were considered in determining the free and surplus tonnages and the free and surplus percentages. In the event the committee subsequently deems it desirable to modify, suspend, or terminate any designation by the Secretary of such percentages, it shall submit to the Secretary its recommendation in that regard along with the information on the basis of which such modification, suspension or termination is recommended, and the recommendation of the board. The committee shall file with its recommendation to the Secretary, a verbatim record of that portion of its meeting or meetings, relating to the free, reserve and surplus percentages. The recommendations of the committee for the fixing of the initial free, reserve, and surplus percentages for any crop year shall be made not later than October 5 of such year, but this date may be extended by the committee not more than five days if warranted by a late crop.

(b) The committee may, for any crop year, recommend to the Secretary a formula for computing the free, reserve, and surplus percentages for any varietal type of raisins and such formula may continue to apply in the absence of a recommendation from the committee or other basis of modification.

(c) The committee shall give prompt and reasonable publicity to producers, dehydrators and handlers of each meeting to consider the recommendation of the percentages to be fixed pursuant to § 989.64 or of any recommendation to modify, suspend or terminate such percentages and each such meeting shall be open to them. The committee shall also give similar notice to producers, dehydrators and handlers, of all such recommendations submitted to the Secretary.

§ 989.64 Regulation by the Secretary.

(a) Whenever the Secretary finds from the recommendation and supporting information supplied by the committee, or from any other available information, that to designate, on the basis of a formula as may be recommended by the committee or otherwise, the percentages of standard raisins acquired by handlers during any crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively, would tend to effectuate the declared policy of the act, he shall so designate the percentages of standard raisins acquired by handlers during such crop year which shall be free tonnage, reserve tonnage, and surplus tonnage, respectively. In the event the Secretary subsequently finds from the recommendations and supporting information supplied by the committee, or from any other available information, that modification, suspension, or termination of any such designation will tend to effectuate the declared policy of the act, he shall so modify, suspend, or terminate such designation. No such modification shall decrease the free percentage initially designated by the Secretary.

(b) The Secretary may designate separately for each varietal type of standard raisins acquired by handlers in any crop year, the percentages which shall be considered as free tonnage, reserve tonnage, and surplus tonnage, respectively.

(c) The Secretary shall notify the committee promptly of each such percentage so fixed. The committee shall give prompt and reasonable publicity thereof to producers and shall notify handlers and dehydrators of such percentages by registered or certified mail.

§ 989.65 Free tonnage.

The standard raisins acquired by a handler which are free tonnage may be disposed of by him in any marketing channel, subject to the applicable provisions of this amended subpart. A handler's free tonnage of a varietal type shall be either the designated free tonnage percentage of the standard raisins of that varietal type acquired by him, or all of the standard raisins of a varietal type acquired by him if no free tonnage percentage is designated by the Secretary for that varietal type.

§ 989.66 Reserve and surplus tonnage generally.

(a) The standard raisins acquired by a handler which are designated as reserve tonnage and those which are designated as surplus tonnage shall be held by him for the account of the committee and subject to the applicable restrictions of this part.

(b) (1) Each handler shall hold in storage all reserve and surplus tonnage acquired by him until he has been relieved of such responsibility by the committee, either by delivery to the committee, or otherwise. Such handler shall store such reserve and surplus tonnage raisins in natural condition without addition of moisture and in such a manner as will maintain the raisins in the same condition as when he acquired them, except for normal and natural deterioration and shrinkage, and except for loss through fire, acts of God, force majeure, or other conditions beyond the handler's control: *Provided*, That, in the case of Layer Muscat raisins, the committee may permit handlers to satisfy the applicable reserve and surplus tonnage obligations with residual Muscat raisins obtained by them in layering operations subject to such safeguards as it may prescribe.

(2) Reserve tonnage and surplus tonnage acquired or held by a handler may be stored together but shall be stored separate and apart from other raisins to such extent and identified in such manner as the committee shall specify in its rules and procedures with the approval of the Secretary.

(3) Each handler may, under the direction and supervision of the committee, substitute for any quantity of reserve tonnage or surplus tonnage raisins a like quantity of free tonnage raisins of like quality and varietal type and of the same or more recent year's production. Each such handler shall give the committee reasonable advance notice of his intention to substitute, the exact location of the raisins for which substitution is to be made, and arrange with the committee a mutually satisfactory time for the substitution.

(4) The committee may, after giving reasonable notice, require a handler to deliver to it, or to any one designated by it, at such handler's warehouse or at such other place as the raisins may be stored, part or all of the reserve tonnage or surplus tonnage raisins held by him. The committee may require that such delivery consist of natural condition raisins, or it may arrange for such delivery to consist of packed raisins.

(c) Each handler shall, at all times, hold in his possession or under his control reserve and surplus tonnage referable to his acquisitions of standard raisins, less any quantity of such reserve or surplus tonnage delivered by him pursuant to instructions of the committee and any quantity of such tonnage sold to him by the committee: *Provided*, That the committee shall defer, upon the written request of any handler and for good and sufficient cause, the meeting by such handler of such requirement for a specified period ending not later than November 15 of the particular crop year. As a condition to the granting of any such deferment, the committee shall require the handler to obtain and file with it a written undertaking that by the end of the deferment period he will have fully satisfied his obligation with respect to the holding or control by him of the reserve or surplus tonnages applicable to his acquisitions of raisins. Such undertaking shall be secured by a bond or bonds to be filed with and acceptable to the committee, with surety or sureties satisfactory to the committee, running in favor of the committee and the Secretary, and for an amount computed on the basis of the then current market value of the raisins in the quantity for which the deferment is granted. The cost of such bond shall be borne by the handler. Any sums collected through default of a handler on his bond shall, after reimbursement of the committee for any expenses incurred by it in effecting collection, be deposited with the funds obtained by it from the disposition of the reserve or surplus pools as applicable and disbursed to producers as set forth in paragraph (g) of this section. In addition to the foregoing, the committee may establish other reasonable and necessary terms and conditions upon which such deferments may be granted.

(d) Reserve tonnage and surplus tonnage raisins delivered by any handler to the committee, or to any person designated by it, whether in the form of natural condition raisins or packed raisins shall meet the applicable minimum grade and condition standards, except for normal and natural deterioration. The committee shall have the authority to require, in its discretion and at its expense, such reinspection and certification of reserve and surplus pool tonnage raisins as it may deem necessary.

(e) (1) In the event the committee offers to handlers reserve tonnage raisins for purchase as provided in § 989.67, or surplus tonnage raisins for contract packing or for sale in export as provided in § 989.68, each such handler shall be given the opportunity to purchase his share of each offer. Each share of an offer or reoffer under such an offer shall be determined in accordance with the appropriate provisions of subparagraphs (2), (3) or (4) of this paragraph, unless the committee determines and prescribes that any such share shall be in accordance with any modified procedure established pursuant to subparagraph (5) of this paragraph.

(2) Each handler's share of an offer of reserve tonnage raisins for purchase shall be determined as the same proportion that the reserve tonnage held by him is of the reserve tonnage held by all handlers: *Provided*, That any reserve tonnage for which a deferment has been granted to a handler pursuant to the provisions of paragraph (c) of this section shall be included in his holdings in determining his share. In the event that any handler fails to purchase any or all of his share of any such offer, the remaining portion of the offer shall be reoffered by the committee to all handlers who purchased all of their respective shares of such offer, in proportion to their respective volumes purchased in the current and all prior offers and reoffers. Any handler whose holdings of reserve tonnage raisins have been exhausted may participate in any reoffer in proportion to the volume purchased by him in the current and all prior offers and reoffers. If the committee determines an offer to be the last which will be made prior to July 1 of each crop year, each handler entitled to participate in any reoffer made in connection therewith, shall be eligible to purchase an equal share of the tonnage reoffered, and as many reoffers of unpurchased tonnage as the committee deems advisable may be made.

(3) Each packer's share of an offer of surplus tonnage raisins for contract packing shall be determined as the same proportion that the surplus tonnage raisins acquired by him is of the surplus tonnage raisins acquired by all packers. In the event that any packer fails to contract for packing any or all of his share of any offer, the remaining portion thereof shall be reoffered by the committee to all packers who contracted for packing all of their respective shares, in proportion to their respective acquisitions: *Provided*, That, if such amount which packers fail to contract for packing does not exceed 250 tons, or if it is necessary to deviate from the foregoing in order to meet terms and conditions of shipment, the committee may, in its discretion, allocate such surplus tonnage raisins among packers as it deems appropriate, but the shares of packers in subsequent offers or reoffers shall be adjusted accordingly.

(4) (i) Except as provided in subdivision (ii) of this subparagraph for new handlers, each handler's share of surplus tonnage raisins offered for sale in export prior to November 1 of any crop year shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the preceding crop year is of the free tonnage raisins acquired by all handlers during the preceding crop year who remain handlers. Subsequent to October 31, each handler's share shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by the handler during the then current crop year is of the total free tonnage raisins acquired by all handlers during the then current crop year. With respect to any offer other than the initial offer, each handler's share of the total quantity offered as of that date (the then current offer plus all prior offers of that crop year) shall first be determined by the appropriate formula. His share of the current offer shall then be determined by subtracting from his share of the total quantity offered, the total of his share of prior offers from the beginning of the crop year.

(ii) If any handler did not acquire raisins during the preceding crop year, the basis for his share of any quantity of surplus tonnage raisins offered prior to November 1 shall be his acquisitions of free tonnage raisins during the then current crop year. The current free tonnage acquisitions of all such new handlers shall, for the purposes of determining the shares of all handlers prior to November 1, be added to the total acquisitions of free tonnage raisins during the preceding crop year of all handlers in business at the time the offer is made.

(iii) If prior to November 1 of any crop year, a handler's share of any offer exceeds the quantity of surplus tonnage raisins held by him for the account of the committee (the shortage being for reasons other than deferment of his set aside obligations pursuant to paragraph (c) of this section), and upon the committee concluding that the handler's acquisitions of surplus as of October 31 will exceed the total of his shares or upon said handler furnishing the committee such written undertaking secured by a bond as the committee may require, the committee may permit the handler to borrow, for a period ending not later than October 31, raisins from any reserve tonnage held by him for the account of the committee. Any handler who has not repaid all prior loans from the reserve pool by October 31, may not participate in any subsequent offers of surplus tonnage until the loan is repaid.

(iv) At any time during a crop year when there is an accumulation of unsold surplus tonnage raisins previously offered by the committee for sale to handlers for resale in export, the committee may make a special offer to sell such unsold tonnage, or any portion thereof, to handlers for such resale. Each handler's share of any such offer shall be determined as the same proportion of the quantity offered that the free tonnage raisins acquired by him during the then current crop year is of the total free tonnage raisins acquired by all handlers during such year. The committee may provide with respect to such a special offer that any surplus tonnage unpurchased at the end of the share reservation period will be reoffered to handlers without regard to shares and that approvals for handlers' applications for purchase may be made in the same order in which the applications are received by the committee. The committee may allocate and deliver to any handler, holding insufficient special offer tonnage, sufficient such tonnage to fulfill his purchase in such a special offer and his purchase in any reoffer. The cost of transporting any such surplus tonnage raisins from one handler to another shall be paid by the committee from surplus pool funds.

(v) Whenever essentially all of the surplus tonnage raisins acquired as surplus, or the reserve tonnage which becomes surplus on August 1, have been offered on a share basis, and any unpurchased or unoffered tonnage of surplus is offered to handlers, approval of applications may be made in the same order in which the applications are filed with the committee.

(vi) Whenever a handler's share or allocation pursuant to this subparagraph is less than or exceeds his holdings of surplus by a minor quantity, the committee may adjust the handler's share or allocation so as to avoid the cost of the physical transfer. The maximum quantity by which a handler's share or allocation may be so adjusted shall be prescribed in rules and procedures with respect to the allocation of surplus tonnage raisins to handlers which the committee shall establish with the approval of the Secretary.

(5) In the event the committee determines that the applicable procedures, as specified in subparagraphs (2), (3), or (4) of this paragraph, will not provide an allocation for handlers which is suitable for a particular situation, the committee, with the prior approval of the Secretary, may establish such modifications of such applicable procedures, consistent with the provisions of subparagraph (1) of this paragraph, as will facilitate the disposition of reserve and surplus tonnages through handlers.

(f) Handlers shall be compensated for receiving, storing, handling, and inspection of reserve and surplus tonnage raisins held by them for the account of the committee, in accordance with a schedule of payments established by the committee and approved by the Secretary. A box rental shall be paid by the committee to producers or handlers for boxes used in storing reserve or surplus

tonnage raisins beyond the crop year of acquisition in accordance with a rental schedule established by the committee and approved by the Secretary. Any handler may request the committee at any time, by registered or certified mail, to remove all surplus tonnage raisins held for the account of the committee and remaining in his possession from any previous crop year, and at any time after August 1, of any crop year may request removal of all surplus tonnage raisins remaining in his possession from the current crop year, and may request that the committee provide the necessary containers for such removal. In this event, the committee shall make the removal within 30 days after the receipt of the request, supplying the necessary containers if so requested. If any handler makes such a request, the committee shall immediately give notice thereof to the Secretary.

(g) The committee shall have the authority, in its discretion, to obtain loans, nonrecourse or otherwise, on any part or all of the reserve tonnage or surplus tonnage, or both, and to pledge or hypothecate the raisins on which such loans are obtained as security therefor: *Provided*, That, in every such case, there shall be included in the loan agreement a provision to the effect that, in case the lender obtains possession or control of such raisins, he will dispose of them in such a manner as will not tend to defeat the objectives of this amended subpart. The net proceeds of any such loan shall be distributed by the committee to the respective producers, or their successors in interest, on the basis of the volume of their respective contributions to the pooled raisins of each varietal type on which the loan is obtained. The net proceeds from the disposition of reserve and surplus tonnages of raisins of each varietal type shall be distributed by the committee to the respective producers, or their successors in interest thereto, on the basis of the volume of their respective contributions to the reserve and surplus tonnages of such varietal type. Distribution of the proceeds in connection with the reserve and surplus tonnages contributed by a nonprofit cooperative marketing association which has authority to market the raisins of its members and to allocate the proceeds therefrom to such members shall be made to such association. Advance or progress payments may be made by the committee, in conformity with the provisions of this paragraph, as sufficient funds become available.

(h) The committee may establish, from time to time, with the approval of the Secretary, additional procedures, not inconsistent with the provisions of this amended subpart, which are deemed necessary to effectuate the provisions of this section, and §§ 989.67, 989.68, 989.69 and 989.70.

§ 989.67 Special provisions relating to reserve tonnage.

(a) The committee may sell reserve tonnage of any varietal type to handlers so as to provide them with the quantity which is needed to meet the free tonnage commercial trade requirements for that varietal type in the event that such requirements cannot be filled by the total free tonnage of that varietal type: *Provided*, That no such sale of natural (sun-dried) Thompson Seedless raisins shall be made prior to December 1 of the particular crop year. Any such quantities made available for such sale to handlers shall be offered to them pro rata as required by the provisions of § 989.66(e).

(b) Reserve tonnage of any varietal type shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee, to which shall be added the costs incurred by the committee on account of the receiving, inspecting, storing, insuring, and holding of said raisins: *Provided*, That where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee. No offer to sell reserve tonnage raisins to handlers shall be made by the committee until five days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, and price involved in such offer, and the Secretary may disapprove the offer or any term thereof: *Provided*, That at any time prior to the expiration of the five-day period, the offer may be made to handlers upon the committee receiving from the Secretary notice that he does not disapprove the making of the offer.

(c) Reserve tonnage held unsold by the committee on August 1, shall on August 1, and any reserve tonnage acquired between August 1 and the end of the crop year shall, at the time of acquisition, become surplus tonnage for all purposes and subject to the provisions of this amended part relating to surplus tonnage. If the committee finds within a crop year that the current holdings of surplus tonnage are insufficient to meet the current demand therefor and that it would be inappropriate to change the volume percentages, it may temporarily borrow, with the prior approval of the Secretary, sufficient reserve tonnage for disposition in the surplus outlets with provision for subsequent replacement from the surplus tonnage.

(d) If the committee finds that because of national emergency, crop failure or other major change in economic conditions, a shortage of raisins has developed or is likely to develop, it may waive for any crop year, with the prior approval of the Secretary, the time limitations of paragraph (c) of this section.

§ 989.68 Disposal of surplus raisins.

(a) The committee shall dispose of all surplus tonnage raisins in such a manner as to achieve, as nearly as may be practicable, complete disposal of such raisins by or before November 1 of the subsequent crop year. Any surplus tonnage raisins held unsold by the committee on November 1 of the subsequent crop year shall be physically disposed of promptly in any available outlet not competitive with normal market channels for free tonnage raisins or sales of surplus tonnage raisins in export: *Provided*, That whenever the Secretary approves a finding by the committee, or finds on the basis of information otherwise available to him, that, because of national emergency, crop failure, or other major change in economic conditions, retention of surplus tonnage raisins carried over is warranted, the foregoing requirement as to disposal shall not apply, and the committee may then sell any of such surplus tonnage raisins as though they were reserve tonnage raisins.

(b) Surplus tonnage raisins shall be disposed of by the committee: (1) By sale to handlers for sale in specified surplus outlets or for resale to exporters for sale in such outlets; (2) by direct sale to any agency of the United States Government for non-competitive use; (3) by direct sale to foreign government agencies or foreign importers in any country not listed pursuant to paragraph (c) of this section or where the procurement of raisins is so regulated as to preclude purchases from domestic handlers; (4) by gift; and (5) by any other means consistent with the provisions of this section, and in outlets non-competitive with those for free tonnage raisins.

(c) The committee shall sell surplus raisins to handlers for export sale to listed countries. The Secretary shall establish, on the basis of the recommendation of the committee or from other available information, a list specifying the countries to which sale in export of surplus tonnage raisins may be made by or through handlers. The recommended list shall be submitted by the committee to the Secretary at the time it submits its recommendation as to volume percentages, and in recommending such list the committee shall give consideration to the pertinent factors enumerated in § 989.54. The list shall not be changed except upon approval by the Secretary of a recommendation by the committee subsequent to its review of such pertinent factors. No country may be removed from the list unless a finding is made by the committee that such removal and subsequent direct sale by the committee will not lead to disruption of sales of surplus tonnage raisins by handlers in other countries on the list and a further finding that, although handlers have been able to offer surplus tonnage raisins at competitive prices to the country to be removed, there remains an unfulfilled demand in such country which has not been supplied by handlers and which could be supplied by the committee at the same prices by means of direct sale. No country may be added to the list unless a finding is made by the committee that such addition represents a practical means of making sales of surplus raisins to such country.

(d) Surplus tonnage raisins shall be sold to handlers at prices and in a manner intended to maximize producer returns and achieve complete disposition of such raisins by or before November 1 of the subsequent crop year. No offer to sell surplus tonnage raisins to handlers shall be made by the committee until five days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, and price involved in such offer, and the Secretary may disapprove the offer or any term thereof: *Provided*, That at any time prior to the expiration of the five-day period the offer may be made to handlers upon the committee receiving from the Secretary notice that he does not disapprove the making of the offer. Subject to the same conditions as are set forth in the preceding sentence with respect to the making of such offers, the committee may withdraw an offer to sell surplus tonnage raisins to handlers for export, or may extend the offer period but not when such extension would deprive one or more handlers of any opportunity to purchase raisins.

(e) The committee may sell surplus tonnage raisins as provided in paragraph (b)(3) of this section only when such country is not included in the list of specified countries established pursuant to paragraph (c) of this section and may sell surplus tonnage raisins to foreign government agencies or foreign importers in any country removed from such list. No agreement to sell surplus tonnage raisins shall be entered into by the committee until five days (exclusive of Saturdays, Sundays, and holidays) have elapsed from the time it files with the Secretary complete information as to varietal type, quantity, price, and foreign country involved in any such proposed sale, and the Secretary may disapprove such sale or any term thereof: *Provided*, That at any time prior to the expiration of the five-day period, the sale may be made upon the committee receiving from the Secretary notice that he does not disapprove the making of the sale.

(f) Whenever the committee determines, prior to the beginning of a crop year, that the orderly disposition of surplus tonnage of that crop year would be promoted by the committee replacing any portion of or all handler shipments of raisins (other than surplus tonnage from the preceding crop year) made for export outside the free tonnage outlets prior to the committee's first offer to sell such surplus tonnage but after September 1, with surplus tonnage from the first such offer or surplus tonnage in addition to such offer, it may do so and may specify such requirements and conditions as are necessary to carry out the replacement consistent with the objectives of this amended subpart. The committee may establish a price for such replacement tonnage which is higher, the same as, or lower than that for surplus tonnage in the first offer of the crop year and shall announce such replacement tonnage price prior to or at the beginning of the crop year. Any such replacement offer by the committee shall be governed by those provisions of paragraph (d) of this section which prescribe prior action by the Secretary on committee offers to sell tonnage to handlers.

(g) The committee may refuse to sell surplus tonnage raisins for export: (1) To any handler who is in default on any previous purchase of surplus tonnage raisins from the committee; (2) to any handler currently not in compliance with the provisions of a sales agreement covering surplus tonnage raisins, executed by such handler with the committee; or (3) to any handler who signifies an intention to sell surplus tonnage to or through any person who has previously failed to complete a sale of surplus tonnage raisins to a foreign buyer and such raisins remain to be exported and remain unsold to any foreign buyer in eligible export markets.

(h) The committee shall prescribe, with the approval of the Secretary, such rules and procedures as are necessary for carrying out the provisions of this section.

§ 989.69 Substitution for Layer Muscats.

A handler may substitute an equal quantity of natural (sun-dried) Muscat or Valencia raisins for any portion or all of the reserve and surplus tonnage referable to his acquisitions of Layer Muscat raisins: *Provided*, That he shall have made arrangements satisfactory to each producer of the Layer Muscat raisins for such substitution. The handler shall report promptly to the committee any such substitution.

§ 989.70 Storage of raisins held on memorandum receipt and of packer-owned tonnage.

All raisins stored by a handler for another person on memorandum or warehouse receipt, or raisins produced and stored by a handler, shall be stored separate and apart from other raisins and shall be clearly marked or tagged as raisins stored on memorandum or warehouse receipt or as raisins produced by the handler but not acquired by him in his capacity as a handler.

§ 989.71 Disposition of unsold reserve and surplus tonnage in above-parity situations.

In the event that the Secretary should find, during a crop year when reserve or surplus tonnage percentages have been designated and are in effect pursuant to this part, that the estimated season average price for raisins for that crop year will be in excess of the price level contemplated by the provisions of section 2(1) of the act, he shall issue an order providing for the orderly disposition of the unsold reserve and surplus tonnage, then on hand, in such outlets, at such times, and in accordance with such terms and conditions, as he may determine to be appropriate in the circumstances. In determining the liquidation procedures and terms, the Secretary shall give consideration to the data and recommendations, if any, which may be submitted by the committee.

§ 989.72 Exemption of educational institutions.

The committee may exempt, wholly or in part, from the volume regulation provisions of this part, that volume of raisins received or acquired by public or private educational agencies or institutions incidental to or in connection with teaching, experimental, or research activities.

REPORTS AND RECORDS

§ 989.73 Reports.

(a) *Inventory reports.* Each handler shall, upon request of the committee, file promptly with the committee a certified report, showing such information as the committee shall specify with respect to any raisins which were held by him on a date designated by the committee, which information as specified may include, but not be limited to: (1) The quantity of any raisins so held, segregated as to varietal type, natural condition, packed, standard quality or off-grade quality; and (2) the locations of the raisins.

(b) *Acquisition reports.* Each handler shall submit to the committee in accordance with such rules and procedures as are prescribed by the committee, with the approval of the Secretary, certified reports, for such periods as the committee may require, with respect to his acquisitions of each varietal type of raisins during the particular period covered by such report, which report shall include, but not be limited to: (1) The total quantity of standard raisins acquired; (2) the quantity of reserve tonnage and the quantity of surplus tonnage referable to his acquisitions of standard raisins; (3) the locations of such reserve and surplus tonnages; (4) the total quantity of off-grade raisins acquired pursuant to § 989.58(e)(1)(i); and (5) cumulative totals of such acquisitions from the beginning of the then current crop year to and including the end of the period for which the report is made. Upon written application made to the committee, a handler may be relieved of submitting such reports after completing his packing operations for the season. Upon request of the committee, each handler shall furnish to the committee, in such manner and at such times as it may require, the name and address of each person from whom he acquired raisins and the quantity of each varietal type of raisins acquired from each such person.

(c) *Other reports.* Upon the request of the committee, with the approval of the Secretary, each handler shall furnish to the committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this amended part.

§ 989.75 Confidential information.

All reports and records furnished or submitted by a handler to the committee shall be received by, and at all times kept under the custody or control of, one or more employees of the committee, who shall disclose to no person, except the Secretary upon request therefor, data or information obtained or extracted therefrom which would constitute a trade secret or the disclosure of which might affect the trade position, financial condition, or business operations of the particular handler from whom received: *Provided*, That the committee may re-

quire such an employee to disclose to it, or to any person designated by it or by the Secretary, information and data of a general nature, compilations of data affecting handlers as a group, and any data affecting one or more handlers, so long as the identity of the individual handlers involved is not disclosed.

§ 989.76 Records.

Each handler shall maintain such records of all raisins received, and of all raisins acquired, by him as prescribed by the committee. Such records shall include, but not be limited to, the quantity of raisins of each varietal type acquired from each person and the name and address of each such person, total acquisitions, total sales, and total other disposition of each varietal type which he handles, and each handler shall maintain such records for at least two years after the termination of the crop year in which the transactions occurred.

§ 989.77 Verification of reports and records.

For the purpose of checking and verifying reports filed by handlers and records prescribed in or pursuant to this amended subpart, the committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours and shall be permitted at any such times to inspect such premises and any raisins held by such handler, and any and all records of the handler with respect to the holding or disposition of raisins by him. Each handler shall furnish all labor and equipment necessary to make such inspections. Each handler shall store raisins in a manner which will facilitate inspection, and shall maintain storage records which will permit accurate identification of raisins held by him or theretofore disposed of. Insofar as is practicable and consistent with the carrying out of the provisions of this amended subpart, all data and information obtained or received through checking and verification of reports and records shall be treated as confidential information.

EXPENSES AND ASSESSMENTS

§ 989.79 Expenses.

The committee is authorized to incur such expenses (other than those specified in § 989.82) as the Secretary finds are reasonable and likely to be incurred by it during each crop year, for the maintenance and functioning of the committee and the board. The funds to cover such expenses shall be obtained by levying assessments as provided in § 989.80. The committee shall file with the Secretary for each crop year a proposed budget of these expenses and a proposal as to the assessment rate to be fixed pursuant to § 989.80, together with a report thereon. Such filing shall be not later than October 5 of the crop year, but this date may be extended by the committee not more than five days if warranted by a late crop. Also, it shall file at the same time a proposed budget of the expenses likely to be incurred during the crop year in connection with reserve or surplus raisins held for the account of the committee, exclusive of the receiving, storing, and handling expenses which are covered by a schedule of payments to handlers effective pursuant to § 989.66(f) or any rules and procedures established by the committee, and exclusive of any expenses it may incur in connection with the disposition of such raisins and which are unknown at the time. The said report shall also cover this proposed budget.

§ 989.80 Assessments.

Each handler shall, with respect to all free tonnage acquired by him, and all reserve tonnage sold to him pursuant to § 989.67, pay to the committee, upon demand, his pro rata share of the expenses (exclusive of expenses for receiving, handling, holding, or disposing of any quantity of reserve and surplus tonnage) which the Secretary finds will be incurred, as aforesaid, by the committee during each crop year. Such handler's pro rata share of such expenses shall be equal to the ratio between the total free tonnage acquired by such handler, plus all reserve tonnage sold to him for use as free tonnage during the applicable crop year and the total free tonnage acquired by all handlers, plus all reserve tonnage sold to all handlers for use as free tonnage during the same crop year. During any crop year or any portion of a crop year for which volume percentages are not effective for a varietal type, all standard raisins of that varietal type acquired by handlers during such period shall be free tonnage for purposes of levying assessments pursuant to this section. The Secretary shall fix the rate of assessment to be paid by such handler on the basis of a specified rate per ton. At any time during or after a crop year, the Secretary may increase the rate of assessment to apply to all free tonnage acquired, plus all reserve tonnage sold to handlers as free tonnage, during such crop year to obtain sufficient funds to cover any later finding by the Secretary relative to the expenses of the committee. Each handler shall pay such additional assessment to the committee upon demand. In order to provide funds to carry out the functions of the committee and the board, the committee may accept advance payments from any handler to be credited toward such assessments as may be levied pursuant to this section against the respective handler during the crop year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

§ 989.81 Accounting.

(a) If, at the end of the crop year, the assessments collected for such crop year exceed the expenses incurred with respect to such crop year, each handler's share of such excess shall be credited to him against, and may be used for, the operations of the following crop year, unless such handler demands payment thereof, in which case his share shall be paid to him.

(b) The committee may, with the approval of the Secretary, maintain in its own name or in the name of its members, a suit against any handler for the collection of such handler's pro rata share of the expenses.

§ 989.82 Expenses of reserve and surplus raisin operations.

The committee is authorized to incur such expenses as are reasonable and are necessary in discharging its obligations, pursuant to this part with respect to the receiving, handling, holding, or disposing of any quantity of reserve or surplus raisins held for the account of the committee. The committee is authorized to pay any taxes assessed against raisins held by or for the account of the committee on the first Monday in March, in the reserve or surplus pools established pursuant to this subpart: *Provided*, That any equity holder may pay his own taxes upon giving notice to the committee on or before May 1 of each year of his intention to do so. All pool expenses shall be deducted from the proceeds obtained by the committee from the sale or other disposal of such reserve or surplus raisins held for the account of the committee.

§ 989.83 Funds.

All funds received by the committee pursuant to the provisions of this part, shall be used solely for the purposes authorized, and shall be accounted for in the manner provided, in this part. The Secretary may, at any time, require the committee and its members and alternate members to account for all receipts and disbursements.

MISCELLANEOUS PROVISIONS

§ 989.84 Disposition limitation.

No handler shall dispose of any free, reserve, surplus tonnage raisins, or offgrade raisins except in accordance with the provisions of this subpart or pursuant to regulations and instructions issued by the committee.

§ 989.85 Personal liability.

No member or alternate member of the committee or any employee or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any person, for errors in judgment, mistakes, or other acts either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty.

§ 989.86 Separability.

If any provision of this amended subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this amended subpart or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 989.87 Derogation.

Nothing contained in this amended subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 989.88 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this amended subpart shall cease upon the termination of this amended subpart, except with respect to acts done under and during the existence of this subpart.

§ 989.89 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any bureau or division in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this amended subpart.

§ 989.90 Effective time.

The provisions of this amended subpart, as well as any amendments to this amended subpart shall become effective at such time as the Secretary may declare, and shall continue in force until terminated, or during suspension, in one of the ways specified in § 989.91.

§ 989.91 Suspension or termination.

(a) The Secretary may, at any time, terminate the provisions of this amended subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this amended subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this amended subpart at the end of any crop year whenever he finds that such termination is favored by a majority of the producers who, during a representative period determined by the Secretary, have been engaged in the production for market of grapes used in the production of raisins in the State of California: *Provided*, That such majority have, during such representative period, produced for market more than 50 percent of the volume of such grapes produced for market within said State; but such termination shall be effective only if announced before August 31 of the then current crop year.

(d) The provisions of this amended subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 989.92 Proceedings after termination.

(a) Upon the termination of the provisions of this amended subpart, the members of the committee then functioning shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all funds and property then in the possession or under the control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) Said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such person as the Secretary may direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the joint trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered by the committee or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the said committee and upon said joint trustees.

§ 989.93 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this amended subpart or any regulation issued pursuant to this amended subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this amended subpart or any regulation issued under this amended subpart, (b) release or extinguish any violation of this amended subpart, or of any regulation issued under this amended subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person, with respect to any such violation.

§ 989.94 Amendments.

Amendments to this amended subpart may be proposed from time to time, by any person or by the committee.

§ 989.95 Right of Secretary.

The members of the board and committee (including alternates and successors), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary, in his discretion, at any time. Every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void.

§ 989.96 Exhibit A; producer members of the Raisin Advisory Board.

(a) One member for each of the following districts in Fresno County:

CLOVIS—DISTRICT NO. 1

All of T. 12 S., R. 20 E. in said county; all of T. 11 S., R. 20 E. in said county; all of T. 11 S., R. 21 E. in said county; all of T. 12 S., R. 21 E.; all of T. 12 S., R. 22 E.; Secs. 1, 2, 11, 12, 13, and 14 of T. 13 S., R. 20 E.; Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36 of T. 13 S., R. 21 E.; and Secs. 4, 5, 6, 7, 8, 9, 16, 19, 30, and 31 of T. 13 S., R. 22 E.

KERMAN—DISTRICT NO. 2

All of T. 13 S., R. 14 E. in said county; all of T. 13 S., R. 15 E. in said county; all of T. 13 S., R. 16 E. in said county; all of T. 13 S., R. 17 E. in said county; Secs. 30 and 31 of T. 13 S., R. 18 E.; all of T. 14 S., R. 14 E.; all of T. 14 S., R. 15 E.; all of T. 14 S., R. 16 E.; all of T. 14 S., R. 17 E.; all of T. 14 S., R. 18 E.; the west two-thirds of T. 14 S., R. 19 E.; all of T. 15 S., R. 14 E.; all of T. 15 S., R. 15 E.; all of T. 15 S., R. 16 E.; all of T. 15 S., R. 17 E.; and all of T. 15 S., R. 18 E.

BIOLA—DISTRICT NO. 3

All of T. 13 S., R. 18 E. in said county, except Secs. 30 and 31; all of T. 12 S., R. 19 E. in said county; and all of T. 13 S., R. 19 E., except Secs. 25, 26, 27, 28, 33, 34, 35, and 36.

FRESNO—DISTRICT NO. 4

Secs. 25, 26, 27, 28, 33, 34, 35, and 36, T. 13 S., R. 19 E.; all of T. 13 S., R. 20 E., except Secs. 1, 2, 11, 12, 13, and 14; Secs. 19, 20, 29, 30, 31, and 32 of T. 13 S., R. 21 E.; the east one-third of T. 14 S., R. 19 E.; all of T. 14 S., R. 20 E.; and Secs. 5, 6, and 7 of T. 14 S., R. 21 E.

SANGER—DISTRICT NO. 5

The east one-half and Secs. 16, 17, 20, 21, 28, 29, 32, and 33, T. 13 S., R. 22 E.; all of T. 13 S., R. 23 E. lying north and west of the east channel of Kings River; all of T. 14 S., R. 23 E. lying west of the east channel of Kings River; and Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, and 36, T. 14 S., R. 22 E.; all of Secs. 5 and 6, T. 15 S., R. 23 E., lying north of Kings River.

LONE STAR—DISTRICT NO. 6

All of T. 14 S., R. 21 E., except Secs. 5, 6, 7, and 36.

EASTON-OLEANDER—DISTRICT NO. 7

The north one-half of T. 15 S., R. 19 E.; the north two-thirds of T. 15 S., R. 20 E., except Sec. 19; and Secs. 6, 7, 18, and 19, T. 15 S., R. 21 E.

FOWLER—DISTRICT NO. 8

The south one-half of Sec. 1, and Secs. 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 26, 27, 28, 29, and 33, T. 15 S., R. 21 E.; and Sec. 18, T. 15 S., R. 22 E.

DEL REY—DISTRICT NO. 9

Secs. 29, 30, 31, 32, 33, and 34, T. 14 S., R. 22 E.; Sec. 36, T. 14 S., R. 21 E.; the north one-half of Sec. 1, T. 15 S., R. 21 E.; and Secs. 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, and 17, T. 15 S., R. 22 E.

PARLIER—DISTRICT NO. 10

All of Secs. 4, 9, 16, and 21 lying west of Kings River, and all of Secs. 5 and 6 lying west and south of Kings River, and Secs. 7, 8, 17, 18, 19, 20, 29, 30, 31, and 32, T. 15 S., R. 23 E.; Secs. 1, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, 35, and 36, T. 15 S., R. 22 E.; and Secs. 5 and 6, T. 16 S., R. 23 E.

REEDLEY—DISTRICT NO. 11

All of T. 13 S., R. 24 E., lying east and south of the east channel of Kings River; all of T. 13 S., R. 23 E., lying east and south of the east channel of Kings River; all of T. 14 S., R. 23 E., lying east and south of the east channel of Kings River; T. 14 S., R. 24 E.; T. 14 S., R. 25 E.; all of T. 15 S., R. 23 E., lying east of the east channel of Kings River; all of Secs. 28 and 34, T. 15 S., R. 23 E., lying west of Kings River; Sec. 33, T. 15 S., R. 23 E.; all of Sec. 4, T. 16 S., R. 23 E., lying within said county; and T. 15 S., R. 24 E.

KINGSBURG—DISTRICT NO. 12

Secs. 11, 12, 13, 14, 15, 21, 22, 23, 27, 28, and 33, T. 16 S., R. 22 E., and those portions of Secs. 24, 26 and 34, T. 16 S., R. 22 E., lying within said county; Sec. 7, T. 16 S., R. 23 E., and those portions of Secs. 8 and 18, T. 16 S., R. 23 E., lying within said county; and those portions of Secs. 4, 5, 8, 9, and 17, T. 17 S., R. 22 E., lying within said county.

for the account of the committee, ex- own name or in the name of its mem- advisable.

SELMA—DISTRICT No. 13

Secs. 25, 34, 35, and 36, T. 15 S., R. 21 E.; Secs. 19, 20, 28, 29, 30, 31, 32, 33, and 34, T. 15 S., R. 22 E.; Secs. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 29, 30, 31, and 32, T. 16 S., R. 22 E.; the east one-half of T. 16 S., R. 21 E.; Secs. 1 to 23, both inclusive, T. 17 S., R. 21 E., and that part of Secs. 24 to 30, both inclusive, T. 17 S., R. 21 E., lying within said county; Secs. 6 and 7, T. 17 S., R. 22 E.; and those portions of Secs. 18 and 19, T. 17 S., R. 22 E., lying within said county.

MONMOUTH—DISTRICT No. 14

Secs. 25, 26, 27, 34, 35, and 36, T. 15 S., R. 20 E.; Secs. 30, 31, and 32, T. 15 S., R. 21 E.; and the west one-half of T. 16 S., R. 21 E.

CARUTHERS—DISTRICT No. 15

The south one-half of T. 15 S., R. 19 E.; Secs. 19, 28, 29, 30, 31, 32, and 33, T. 15 S., R. 20 E.; T. 16 S., R. 15 E.; T. 16 S., R. 16 E.; T. 16 S., R. 17 E.; T. 16 S., R. 18 E.; T. 16 S., R. 19 E.; T. 16 S., R. 20 E.; T. 17 S., R. 16 E.; T. 17 S., R. 17 E.; T. 17 S., R. 18 E.; T. 17 S., R. 19 E.; T. 17 S., R. 20 E.; T. 18 S., R. 16 E.; T. 18 S., R. 17 E.; T. 18 S., R. 18 E.; T. 19 S., R. 17 E.; T. 19 S., R. 18 E.; T. 20 S., R. 17 E.; and all of T. 20 S., R. 18 E., lying within said county.

(b) Three members for District No. 16 (Kings, Monterey, and San Benito Counties).

(c) Five members for District No. 17 (Tulare and Inyo Counties).

(d) Three members for District No. 18 (Kern, San Bernardino, Riverside, Imperial, San Diego, Orange, Los Angeles, Ventura, Santa Barbara, and San Luis Obispo Counties).

(e) Three members for District No. 19 (Madera and Mono Counties).

(f) Three members for District No. 20 (Merced, Tuolumne, and Mariposa Counties).

(g) Effective May 1, 1961, three members for District No. 21 (Stanislaus, San Joaquin, Santa Clara, San Francisco, San Mateo, Santa Cruz, Alameda, Contra Costa, Calaveras, Alpine, Marin, Solano, Sacramento, Amador, Eldorado, Placer, Nevada, Sutter, Yolo, Napa, Sonoma, Mendocino, Lake, Colusa, Yuba, Sierra, Plumas, Butte, Glenn, Tehama, Shasta, Lassen, Modoc, Siskiyou, Del Norte, Humboldt, and Trinity Counties).

§ 989.97 Exhibit B; minimum grade and condition standards for natural condition raisins.

Raisins meeting the varietal standards set forth hereinafter shall be considered as standard raisins and those failing to meet such standards shall be considered as off-grade raisins. Where the raisins in any lot consist of two or more varietal types commingled within their containers, the lot shall be considered as standard raisins if each varietal type in the lot meets the applicable minimum standards for that varietal type: *Provided*, That, in the event Layer Muscat raisins are commingled within their containers, with Natural (Sun-dried) Muscat raisins, the entire lot shall be considered as Natural (sun-dried) Muscat raisins, and as standard raisins if the lot as a whole meets the minimum standards for Natural (sun-dried) Muscat raisins: *Provided further*, That, should the requirements with respect to the maximum moisture content differ as between any two or more varietal types which are commingled, the lower (lowest) maximum moisture content requirement shall apply for each varietal type. In each category, only those raisins which have been properly dried and cured in original natural condition, are free from active infestation, and are in such condition that they are capable of being received, stored, and packed without undue deterioration or spoilage, shall be considered as storable raisins.

A. *Thompson Seedless raisins.*

Natural condition Thompson Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor, and odor of properly prepared raisins.

3. The moisture content shall not exceed 16 percent (except Golden Seedless, Sulfur Bleached, and Soda Dipped shall not exceed 14 percent), as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U.S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

4. Golden Seedless and Sulfur Bleached raisins shall possess a characteristic bleached color (or choice color). "Choice color" (or "bleached color") means that the raisins may be variable in color and may range from yellowish green to dark amber or dark greenish amber; that not more than 15 percent, by weight, of all the raisins may be definitely dark berries.

5. Soda Dipped raisins shall possess a good typical color characteristic of such raisins.

B. *Muscat raisins.*

Natural condition Muscat raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor and odor of properly prepared raisins.

3. The moisture content shall not exceed 16 percent (except Layer Muscats shall not exceed 16 percent) as determined by Dried Fruit Moisture Tester Method and the raisins (except Layer Muscats) shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U.S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins; and that with respect to Layer Muscat raisins in addition to the above requirements the raisins shall be:

a. Fairly free from shattered (or loose end) berries.

b. Uniformly cured.

c. 30 percent or more "3 Crown size" or larger.

d. Of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order, and that when processed in accordance with good commercial practice will meet "U.S. Grade B" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

4. Muscat (Valencia), soda dipped raisins shall possess a good typical color with not more than 10 percent, by weight, that may be dark reddish-brown raisins.

C. *Sultana raisins.*

Natural condition Sultana raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor, and odor of properly prepared raisins.

The moisture content shall not exceed 16 percent as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U.S. Grade C" or better grade as defined in the effective United States Standards for Grades of Processed Raisins.

D. *Zante Currants.*

Natural condition Zante Currants shall have been prepared from sound, wholesome, matured grapes properly dried and cured and shall meet the following additional requirements:

1. Shall be fairly free from damage by sugaring, mechanical injury, sunburn or other similar injury.

2. Shall be fairly free from immature (skinny) raisins and shall have a normal characteristic color, flavor and odor of properly prepared raisins for the varietal type.

3. The moisture content shall not exceed 16 percent as determined by Dried Fruit Moisture Tester Method and the raisins shall be of such quality and condition as can be expected to withstand storage as provided in the marketing agreement and order and that when processed in accordance with good commercial practice will meet "U.S. Grade B" or better grade as defined in the effective United States Standards for Grades of Dried Currants.

Dated: December 9, 1960, to become effective upon publication in the FEDERAL REGISTER.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11629; Filed, Dec. 13, 1960; 9:03 a.m.]

[1032.301, Amdt. 1]

PART 1032—CARROTS GROWN IN SOUTH TEXAS

Limitation of Shipments

Pursuant to Marketing Agreement No. 142 and Order No. 132 (7 CFR Part 1032; 25 F.R. 9523), regulating the handling of carrots grown in designated counties in South Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of recommendations and information submitted by the South Texas Carrot Committee, established pursuant to said Marketing Agreement and Order, and upon other available information, it is hereby found that the following amendment to the limitation of shipments regulation will tend to effectuate the declared policy of the act.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment for 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) the time intervening between the date when information upon which this amendment is based became available, and the time when this amendment must become effective in order to effectuate the declared policy of the act, is insufficient, (2) more orderly marketing in the public interest than would otherwise prevail will be promoted by regulating shipments of carrots in the manner set forth below on and after the effective date of this amendment, (3) compliance with this amendment will not require any special preparation on the part of handlers which cannot be completed by the effective date, (4) reasonable time is permitted under the circumstances for such preparation, (5) information regarding the committee's recommendations has been made available to producers and handlers in the production area, and (6) this amendment relieves restrictions on the handling of carrots grown in the production area.

Order, as amended. In § 1032.301 (25 F.R. 11207), delete the introductory paragraph and paragraphs (a), (d), (f), (g) and (i), and substitute in lieu thereof a new introductory paragraph and new paragraphs (a), (d), (f), (g), and (i) as set forth below.

§ 1032.301 Limitation of shipments.

During the period from December 10, 1960 to January 30, 1961, no person shall handle any lot of carrots grown in the production area unless such carrots meet the grade requirements of paragraph (a), one of the sizing requirements of paragraph (b), and the container and pack requirements of paragraph (c) and (d), or unless such carrots are handled in accordance with paragraphs (e), (f), and (g) of this section.

(a) *Minimum grade requirements.* U.S. No. 1, or better grade.

* * * * *

(d) *Pack requirements for master containers.* (1) Master containers of 1-pound or 2-pound packages shall contain the following number of packages only:

(i) 24 1-pound packages;
(ii) 48 1-pound packages; or
(iii) 24 2-pound packages.

(2) Master containers of 48 1-pound packages or 24 2-pound packages shall not exceed an average gross weight of 57-pounds in sacks or bags or 61-pounds in crates.

(3) Master containers of 24 1-pound packages shall not exceed an average gross weight of 28½ pounds in sacks or bags or 30½ pounds in crates.

(4) Master containers of 20-ounce packages shall not exceed 15 percent, and master containers of 3-pound and 5-pound packages shall not exceed 10 percent, respectively, of the net weight of contents plus tare allowance for weight of master container. The net weight of contents shall be determined by multiplying the average number of packages in the master containers by 20-ounces, 3-pounds or 5-pounds, respectively, as the case may be. Tare allowances for master containers shall be 4 pounds for crates Nos. 4015 and 3820, or their equivalent in other containers, and 2 pounds for a "half val" crate, or the equivalent in other containers.

* * * * *

(f) *Special purpose shipments.* The requirements set forth in paragraphs (a), (b), (c), and (d), of this section and the inspection and assessment requirements of this part shall not be applicable to carrots handled for the following purposes:

(1) canning or freezing;
(2) relief or charity;
(3) experimental purposes; and
(4) livestock feed within the production area.

(g) *Safeguards.* (1) Each handler of carrots which do not meet the requirements of paragraphs (a), (b), (c), and (d), and which are handled pursuant to paragraph (f) for relief or charity, experimental purposes, and canning or freezing, except for canning or freezing within Starr, Hidalgo, Cameron, or Willacy Counties, shall prior to handling, apply for and obtain a Certificate of Privilege from the committee which shall require the handler to furnish such reports and documents as the committee may require, showing that the carrots so handled were utilized for the purpose specified in the Certificate of Privilege.

(2) Each handler of carrots which do not meet the requirements of paragraphs (a), (b), (c), and (d) may handle such carrots for livestock feed without obtaining a certificate of privilege therefor if such handling (i) is confined to Starr, Hidalgo, Cameron, and Willacy Counties (the Lower Valley area), or (ii) is confined to a 25-mile radius of loading. All other handling of carrots for livestock feed shall be confined to disposal of the carrots to a livestock feeder registered as such with the committee and, prior to handling, a handler shall apply for and obtain a certificate of privilege from the committee which shall require the handler to furnish such reports and documents as the committee may require showing that the carrots so handled were utilized only for livestock feed purposes.

* * * * *

(i) *Definitions.* The term "U.S. No. 1" shall have the same meaning as set forth in the U.S. Standards for Topped Carrots (51.2360–51.2381 of this title) including the tolerances set forth therein. The term "loading point" means a commercial facility maintained and operated by a Registered Handler as defined in § 1032.8 of this part. All other terms used in this section shall have the same meaning as when used in this part (Marketing Order No. 132).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated December 9, 1960, to become effective December 10, 1960.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-11630; Filed, Dec. 13, 1960; 9:03 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 547; Amdt. 283]

PART 507—AIRWORTHINESS DIRECTIVES

Aero Design Model 500 Aircraft

A proposal to amend Part 507 of the regulations of the Administrator to include an airworthiness directive requiring inspection for cracks in engine mount angles of Aero Design Model 500 aircraft and incorporation of a reinforcement if cracks are founds was published in 25 F.R. 10433.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

AERO DESIGN. Applies to all Model 500 aircraft.

Compliance required within the next 100 hours' time in service after the effective date of this directive and at each 100 hours' time in service thereafter.

In order to preclude propagation of fatigue cracks in engine mount angles P/N 5620023–9 and –10, the following inspection must be accomplished.

Visually inspect the inside of angles P/N 5620023–9 and –10 in the area of the lower row of Huck bolts attaching the angles and the lower mount fitting P/N 3620025–1 and –2. If cracks are found, prior to further flight incorporate the reinforcement as indicated in Aero Design Service Bulletin No. 68, dated September 14, 1960, or equivalent.

Angles incorporating Federal Aviation Agency approved reinforcement need not be reinspected in accordance with the provisions of this AD.

This amendment shall become effective January 13, 1961.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 8, 1960.

OSCAR BAKKE,
Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11618; Filed, Dec. 13, 1960; 9:00 a.m.]

[Reg. Docket No. 598; Amdt. 284]

PART 507—AIRWORTHINESS DIRECTIVES

Lockheed 188 Aircraft

Numerous failures of the retaining clamp and cracks in the flange area of the swirl straightener assembly on Lockheed 188 aircraft have resulted from dynamic loads imposed on the aft section of the engine due to the deflection of exhaust gases. In at least two cases, overheating from the exhaust gases

caused extensive damage to the nacelle. In view of the potential fire hazard, it is necessary to require corrective modifications to the swirl straightener assembly.

In the interest of safety notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

LOCKHEED. Applies to all 188 aircraft. Compliance required as indicated.

Failure of the clamp or flange of the swirl straightener assembly resulted in at least two cases of overheating the nacelle area causing extensive damage to the nacelle. In addition, there have been a number of failures of the retaining clamp and cracks in the flange area of this assembly caused by dynamic loads imposed by the sugar scoop deflection of exhaust gases.

The following modifications shall be accomplished to correct the above conditions at the first engine change after December 14, 1960.

(a) Remove the present sugar scoop and the lower bellmouth. Install a new lower bellmouth of extended length to mate properly with the engine after removal of the sugar scoop. When this rework has been accomplished, it will be necessary to relocate the fire sensing elements on the structural shroud.

(b) Tack-weld the vanes to the clips located on the perimeter of the straightener assembly.

(c) Add rubbing strips on the tailpipe shroud door and drill holes in the nacelle cooling duct assembly to cool the bellmouth.

(The above items must be accomplished in accordance with Lockheed S/B No. 430, which covers the same subject.)

This amendment shall become effective December 14, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423.)

Issued in Washington, D.C., on December 8, 1960.

OSCAR BAKKE,
Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11619; Filed, Dec. 13, 1960; 9:00 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-FW-67]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Designation of Control Area Extension

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9415) stating that the Federal Aviation Agency proposed to designate a control area extension at Kinston, N.C.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Part 601 (14 CFR Part 601) is amended by adding the following section:

§ 601.1023 Control area extension (Kinston, N.C.).

The area NE of Kinston bounded by parallel lines 9 miles NW and 5 miles SE of the 047° True radial of the Kinston VOR extending from the VOR to 18 miles NE, excluding the portion that coincides with the Cherry Point, N.C., Restricted Area (R-125), during the time of designation of the restricted area.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 7, 1960.

D. D. THOMAS,
Director,
Bureau of Air Traffic Management.

[F.R. Doc. 60-11621; Filed, Dec. 13, 1960; 9:01 a.m.]

[Airspace Docket No. 59-WA-391]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

PART 608—RESTRICTED AREAS

Modification of Restricted Area and Control Zone

On November 11, 1959, a notice of proposed rule making was published in the FEDERAL REGISTER (24 F.R. 9212) stating that the Federal Aviation Agency was considering an amendment to § 608.38 of the regulations of the Administrator which would revoke the Fort Dix, N.J., Restricted Area (R-25) (New York and Washington Charts).

As stated in the notice, the Federal Aviation Agency (FAA) is reviewing the utilization of all existing restricted areas. This review is based upon all data available to the Agency, including any received in response to Special Airspace Regulation No. 1 (24 F.R. 5898). According to the data available, it appeared that Restricted Area (R-25) did not have sufficient justification to warrant continued designation, and the revocation thereof would be in the public interest.

In response to the notice, the Department of the Army submitted the following information:

1. Restricted Area (R-25) is located approximately 18 miles southwest of Trenton, New Jersey and covers an area of approximately 32,066 acres.

2. The total investment cost to the Government of Fort Dix and the firing sites and targets located in the restricted area represents $97,023,000.

3. This restricted area is utilized by Fort Dix and is an essential part of the basic training program for the Department of the Army in training inexperienced recruits in the actual firing of small arms, machine guns, mortars, recolless weapons and howitzers.

4. Approximately 83,000 troops are trained annually in this area.

5. Normal firing activities within R-25 utilize the airspace from the surface to 3000 feet MSL, with the exception of the 4.2 inch mortar firing which has a maximum ordinate altitude of 3800 feet MSL.

6. Consideration of the human and mechanical error, with particular regard to premature aerial bursts, requires a reasonable safety zone, justifying the designation of surface to 8000 feet MSL for R-25.

As a result of data submitted by the Department of the Army, the FAA will continue the designation of R-25 as a restricted area. However, the size will be reduced from the existing 47 square miles to approximately 32 square miles. With regard to the existing designated altitude, surface to 26,000 feet MSL, the FAA is of the opinion that an altitude designation of surface to 4,000 feet MSL will contain the activities conducted in R-25. The Department of the Army concurred in the reduction of the size of R-25, but did not agree to the altitude designation of surface to 4,000 feet MSL. The Army contended that even though the maximum normal ordinate altitudes will not exceed 804 to 3,000 feet above ground, it must be borne in mind that this firing is performed by inexperienced recruits. They further stated that, notwithstanding the strict supervision exercised by instructor personnel and the stringent safety precautions imposed, experience has shown frequent incidences of "wild" shots which oftentimes cause rounds to exceed the maximum normal ordinate altitude and approach the maximum possible ordinate altitudes of 6,900 feet above ground. Therefore, the Army is of the opinion that it cannot give 100 percent assurance that some rounds will not exceed the normal ordinate of 3,000 feet above ground but will approach or equal the maximum altitude of 6,900 feet and that R-25 should be designated from surface to 8,000 feet MSL, as a safety factor.

In view of the information supplied by the Army, the FAA has determined, in the interest of safety, to reduce the designated altitude to surface to 8,000 feet MSL for a period of 1 year succeeding the effective date of this amendment. At the expiration of this period, the altitude will automatically be reduced to 4,000 feet MSL. The FAA feels that the interim period will provide a reasonable time for the Department of the Army to take the necessary corrective action to contain all necessary training activities within the 4,000 feet MSL designation.

The FAA is, therefore, modifying R-25 to reduce the area by approximately 15 square miles and to change the designated altitude from surface to 26,000 feet MSL to surface to 8,000 feet MSL for a period of 1 year succeeding the effective date of this amendment, at which time the altitude will be further reduced to 4,000 feet MSL. This modification will require a redescription of the Fort Dix, New Jersey, control zone (§ 601.2269) to exclude the portion of the control zone which lies within the geographical limits of R-25. Such action is also taken herein.

No other comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 8005, 24 F.R. 4530), the following actions are taken:

1. In § 608.38 New Jersey (23 F.R. 8584), the Fort Dix, N.J., Restricted Area (R-25) (New York and Washington Charts) is amended to read:

Description by geographical coordinates. Beginning at Lat. 40°02'45" N., Long. 74°27'00" W.; southsoutheast to Lat. 39°58'45" N., Long. 74°25'40" W.; west to Lat. 39°58'45" N., Long. 74°33'30" W.; north to Lat. 40°02'45" N., Long. 74°33'30" W.; east to point of beginning.

Designated altitude. Surface to 8,000 feet MSL, for a period of 1 year, February 9, 1961 to February 8, 1962; as of February 9, 1962, surface to 4,000 feet MSL.

Time of designation. Continuous.

Controlling agency. Headquarters, First Army, Governors Island 4, N.Y.

2. In the text of § 601.2269 (14 CFR 601.2269) "excluding the portions which lie within the geographic limits of the Fort Dix Restricted Area (R-25) at all times and all altitudes." is deleted and "excluding the portion which coincides with the Fort Dix Restricted Area (R-25) during the restricted area's time of designation." is substituted therefor.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 7, 1960.

D. D. THOMAS,
Director,
Bureau of Air Traffic Management.

[F.R. Doc. 60-11622; Filed, Dec. 13, 1960; 9:01 a.m.]

[Airspace Docket No. 60-WA-132]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Route

On September 29, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9296) stating that the Federal Aviation Agency proposed to extend VOR/VORTAC jet route No. 89 from the Northbrook (Chicago) Ill., VORTAC to the Duluth, Minn., VOR via the Milwaukee, Wis., VORTAC.

The Department of the Air Force (USAF) stated they had no objection to the modification provided radar advisory service is established in conjunction with the route extension and that the use of the "Quick Time" high altitude refueling area would not be prejudiced. This extension of the jet route will have radar advisory service. Since this service will be provided, no difficulty in the use of the refueling area by the USAF is anticipated.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following action is taken: In § 602.589 (14 CFR 602.589), the following changes are made:

(a) In the caption "(*Miami, Fla., to Chicago, Ill.*)." is deleted an "(*Miami, Fla., to Duluth, Minn.*)." is substituted therefor.

(b) In the text "to the Northbrook, Ill., VOR" is deleted and "Northbrook, Ill., VORTAC; Milwaukee, Wis., VORTAC; to the Duluth, Minn., VOR" is substituted therefor.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C. on December 7, 1960.

D. D. THOMAS,
Director,
Bureau of Air Traffic Management.

[F.R. Doc. 60-11620; Filed, Dec. 13, 1960; 9:01 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), AND NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS): PROHIBITED AND RESTRICTED IMPORTATIONS

Designation of Sweden as a Country Where Foot-and-Mouth Disease Exists

Pursuant to the provisions of section 306 of the Act of June 17, 1930, as amended (19 U.S.C. 1306), and section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), it has been determined, and the Secretary of the Treasury has been notified, that foot-and-mouth disease now exists in Sweden, and Part 94, as amended, Title 9, Code of Federal Regulations, is hereby further amended by deleting the words "and Sweden" from subparagraph (4) of paragraph (a) of § 94.1.

The effect of this amendment is to prohibit the importation into the United States from Sweden of certain animals and meats and to restrict such importations of certain other animals, animal products, hay, straw, and similar material, as specified in 9 CFR Parts 94 and 95.

The protection of the livestock of the United States demands that this amendment be made effective as soon as possible. Accordingly, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure concerning this amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

This amendment shall become effective upon issuance.

(Sec. 306, 46 Stat. 689, as amended, sec. 2, 32 Stat. 792, as amended; 19 U.S.C. 1306, 21 U.S.C. 111)

Done at Washington, D.C., this 9th day of December 1960.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 60-11632; Filed, Dec. 13, 1960; 8:50 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

HYDROXYLATED LECITHIN

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition filed by Central Soya Company, Inc., 1825 North Laramie Avenue, Chicago, Illinois, and other relevant material, has concluded that the following regulation should issue in conformity with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to the food additive hydroxylated lecithin. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), Subpart D (21 CFR Part 121) of the food additive regulations is amended by adding thereto the following new section:

§ 121.1027 Hydroxylated lecithin.

The food additive hydroxylated lecithin may be safely used as an emulsifier in foods in accordance with the following conditions:

(a) The additive is obtained by treatment of lecithin with hydrogen peroxide, benzoyl peroxide, and lactic acid under

controlled conditions whereby the separated fatty acid fraction of the resultant product has an acetyl value of 33 to 38.

(b) It is used or intended for use, in accordance with good manufacturing practice, as an emulsifier in foods, except for those standardized foods that do not provide for such use.

(c) To assure safe use of the additive, the label of the food additive container shall bear, in addition to the other information required by the act:

(1) The name of the additive, "hydroxylated lecithin."

(2) Adequate directions for its use.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 7, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11606; Filed, Dec. 13, 1960; 8:59 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Prepaid Subscription Income

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations relating to prepaid subscription income, effective for taxable years beginning after December 31, 1957, are hereby prescribed under section 455 of the Internal Revenue Code of 1954, as added by section 28 of the Technical Amendments Act of 1958 (72 Stat. 1625):

Sec.
1.455 Statutory provisions; prepaid subscription income.
1.455-1 Treatment of prepaid subscription income.
1.455-2 Scope of election under section 455.
1.455-3 Method of allocation.
1.455-4 Cessation of liability.
1.455-5 Definitions and other rules.
1.455-6 Time and manner of making election.

§ 1.455 Statutory provisions; prepaid subscription income.

Sec. 455. *Prepaid subscription income*—(a) *Year in which included.* Prepaid subscription income to which this section applies shall be included in gross income for the taxable years during which the liability described in subsection (d)(2) exists.

(b) *Where taxpayer's liability ceases.* In the case of any prepaid subscription income to which this section applies—

(1) If the liability described in subsection (d)(2) ends, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which the liability ends.

(2) If the taxpayer dies or ceases to exist, then so much of such income as was not includible in gross income under subsection (a) for preceding taxable years shall be included in gross income for the taxable year in which such death, or such cessation of existence, occurs.

(c) *Prepaid subscription income to which this section applies*—(1) *Election of benefits.* This section shall apply to prepaid subscription income if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such income is received. The election shall be made in such manner as the Secretary or his delegate may by regulations prescribe. No election may be made with respect to a trade or business if in computing taxable income the cash receipts and disbursements method of accounting is used with respect to such trade or business.

(2) *Scope of election.* An election made under this section shall apply to all prepaid subscription income received in connection with the trade or business with respect to which the taxpayer has made the election; except that the taxpayer may, to the extent permitted under regulations prescribed by the Secretary or his delegate, include in gross income for the taxable year of receipt the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt. An election made under this section shall not apply to any prepaid subscription income received before the first taxable year for which the election is made.

(3) *When election may be made*—(A) *With consent.* A taxpayer may, with the consent of the Secretary or his delegate, make an election under this section at any time.

(B) *Without consent.* A taxpayer may, without the consent of the Secretary or his delegate, make an election under this section for his first taxable year (i) which begins after December 31, 1957, and (ii) in which he receives prepaid subscription income in the trade or business. Such election shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made.

(4) *Period to which election applies.* An election under this section shall be effective for the taxable year with respect to which it is first made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary or his delegate to the revocation of such election. For purposes of this title, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) *Definitions.* For purposes of this section—

(1) *Prepaid subscription income.* The term "prepaid subscription income" means any amount (includible in gross income) which is received in connection with, and is directly attributable to, a liability which extends beyond the close of the taxable year in which such amount is received, and which is income from a subscription to a newspaper, magazine, or other periodical.

(2) *Liability.* The term "liability" means a liability to furnish or deliver a newspaper, magazine, or other periodical.

(3) *Receipt of prepaid subscription income.* Prepaid subscription income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(e) *Deferral of income under established accounting procedures.* Notwithstanding the provisions of this section, any taxpayer who has, for taxable years prior to the first taxable year to which this section applies, reported his income under an established and consistent method or practice of accounting for prepaid subscription income (to which this section would apply if an election were made) may continue to report his income for taxable years to which this title applies in accordance with such method or practice.

[Sec. 455 as added by sec. 28, Technical Amendments Act, 1958 (72 Stat. 1625)]

§ 1.455-1 Treatment of prepaid subscription income.

Effective with respect to taxable years beginning after December 31, 1957, section 455 permits certain taxpayers to elect with respect to a trade or business in connection with which prepaid subscription income is received, to include such income in gross income for the taxable years during which a liability exists to furnish or deliver a newspaper, magazine, or other periodical. If a taxpayer does not elect to treat prepaid subscription income under the provisions of section 455, such income is includible in gross income for the taxable year in which received by the taxpayer, unless under the method or practice of accounting used in computing taxable income such amount is to be properly accounted for as of a different period.

§ 1.455-2 Scope of election under section 455.

(a) If a taxpayer makes an election under section 455 and § 1.455-6 with respect to a trade or business, all prepaid subscription income from such trade or business shall be included in gross income for the taxable years during which the liability exists to furnish or deliver a newspaper, magazine, or other periodical. Such election shall be applicable to all prepaid subscription income received in connection with the trade or business for which the election is made; except that the taxpayer may further elect to include in gross income for the taxable year of receipt (as described in section 455(d)(3) and paragraph (c) of § 1.455-5) the entire amount of any prepaid subscription income if the liability from which it arose is to end within 12 months after the date of receipt, hereinafter sometimes referred to as "within 12 months" election.

(b) If the taxpayer is engaged in more than one trade or business in which a liability is incurred to furnish or deliver a newspaper, magazine, or other periodical, a separate election may be made under section 455 with respect to each such trade or business. In addition, a taxpayer may make a separate "within 12 months" election for each separate

trade or business for which it has made an election under section 455.

(c) An election made under section 455 shall be binding for the first taxable year for which the election is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Commissioner to the revocation of such election. Thus, in any case where the taxpayer has elected a method prescribed by section 455 for the inclusion of prepaid subscription income in gross income, such method of reporting income may not be changed without the prior approval of the Commissioner. In order to secure the Commissioner's consent to the revocation of such election, an application must be filed with the Commissioner in accordance with section 446(e) and the regulations thereunder. For purposes of subtitle A of the Code, the computation of taxable income under an election made under section 455 shall be treated as a method of accounting. For adjustments required by changes in method of accounting, see section 481 and the regulations thereunder.

(d) An election made under section 455 shall not apply to any prepaid subscription income received before the first taxable year to which the election applies. For example, Corporation M, which computes its taxable income under an accrual method of accounting and files its income tax returns on the calendar year basis, publishes a monthly magazine and customarily sells subscriptions on a 3-year basis. In 1958 it received $135,000 of 3-year prepaid subscription income for subscriptions beginning during 1958, and in 1959 it received $142,000 of prepaid subscription income for subscriptions beginning after December 31, 1958. In February 1959 it elected, with the consent of the Commissioner, to report its prepaid subscription income under the provisions of section 455 for the year 1959 and subsequent taxable years. The $135,000 received in 1958 from prepaid subscriptions must be included in gross income in full in that year, and no part of such 1958 income shall be allocated to the years 1959, 1960, and 1961 during which M was under a liability to deliver its magazine. The $142,000 received in 1959 from prepaid subscriptions shall be allocated to the years 1959, 1960, 1961, and 1962.

(e) No election may be made under section 455 with respect to a trade or business if, in computing taxable income, the cash receipts and disbursements method of accounting is used with respect to such trade or business. However, if the taxpayer is on a "combination" method of accounting under section 446(c)(4) and the regulations thereunder, it may elect the benefits of section 455 if it uses an accrual method of accounting for subscription income.

§ 1.455–3 Method of allocation.

(a) Prepaid subscription income to which section 455 applies shall be included in gross income for the taxable years during which the liability to which the income relates is discharged or is deemed to be discharged on the basis of the taxpayer's experience.

(b) For purposes of determining the period or periods over which the liability of the taxpayer extends, and for purposes of allocating prepaid subscription income to such periods, the taxpayer may aggregate similar transactions during the taxable year in any reasonable manner, provided the method of aggregation and allocation is consistently followed.

§ 1.455–4 Cessation of liability.

(a) If a taxpayer has elected to apply the provisions of section 455 to a trade or business in connection with which prepaid subscription income is received, and if its liability to furnish or deliver a newspaper, magazine, or other periodical ends for any reason, then so much of the prepaid subscription income attributable to such liability as was not includible in its gross income under section 455 for preceding taxable years shall be included in its gross income for the taxable year in which such liability ends. A taxpayer's liability may end, for example, because of the cancellation of a subscription.

(b) If a taxpayer who has elected to apply the provisions of section 455 to a trade or business dies or ceases to exist, then so much of the prepaid subscription income attributable to such trade or business which was not includible in its gross income under section 455 for preceding taxable years shall be included in its gross income for the taxable year in which such death or cessation of existence occurs.

§ 1.455–5 Definitions and other rules.

(a) *Prepaid subscription income.* (1) The term "prepaid subscription income" means any amount includible in gross income which is received in connection with, and is directly attributable to, a liability of the taxpayer which extends beyond the close of the taxable year in which such amount is received and which is income from a newspaper, magazine, or other periodical. For example where Corporation X, a publisher of newspapers, magazines, and other periodicals makes sales on a subscription basis and the purchaser pays the subscription price in advance, prepaid subscription income would include the amounts actually received by X in connection with its liability to furnish or deliver the newspaper, magazine, or other periodical.

(2) Prepaid subscription income of the taxpayer does not include amounts retained by agents or independent contractors as commissions or payments for services rendered. For example, where Corporation X hires A, an agent, to solicit subscriptions, allowing A to retain 5 percent of the subscription price and A remits only 95 percent of the total subscription price, prepaid subscription income includes only the 95 percent of the total subscription price.

(3) For purposes of section 455, prepaid subscription income does not include amounts received by a taxpayer in connection with sales of subscriptions on a prepaid basis where such taxpayer does not have the liability to furnish or deliver a newspaper, magazine, or other periodical. The provisions of this subparagraph may be illustrated by the following example. Corporation D has a contract with each of several large publishers which grants it the right to sell subscriptions to their periodicals. Corporation D collects the subscription price from the subscribers, retains a portion thereof as its commission and remits the balance to the publishers. The amount retained by Corporation D represents commissions on the sale of subscriptions, and is not prepaid subscription income for purposes of section 455 since the commissions represent compensation for services rendered and are not directly attributable to a liability of Corporation D to furnish or deliver a newspaper, magazine, or other periodical.

(b) *Liability.* The term "liability" means a liability of the taxpayer to furnish or deliver a newspaper, magazine, or other periodical.

(c) *Receipt of prepaid subscription income.* For purposes of section 455, prepaid subscription income shall be treated as received during the taxable year for which it is includible in gross income under section 451, relating to general rule for taxable year of inclusion, without regard to section 455.

(d) *Treatment of prepaid subscription income under an established accounting method.* Notwithstanding the provisions of section 455 and § 1.455–1, any taxpayer who, for taxable years beginning before January 1, 1958, has reported prepaid subscription income for income tax purposes under an established and consistent method or practice of deferring such income may continue to report such income in accordance with such method or practice for all subsequent taxable years to which section 455 applies without making an election under section 455.

§ 1.455–6 Time and manner of making election.

(a) *Election without consent.* (1) A taxpayer may, without consent, elect to treat prepaid subscription income of a trade or business under section 455 for the first taxable year—

(i) Which begins after December 31, 1957, and

(ii) In which there is received prepaid subscription income from the trade or business for which the election is made.

Such an election shall be made not later than the time prescribed by law for filing the income tax return for such year (including extensions thereof), and shall be made by means of a statement attached to such return.

(2) The statement shall indicate that the taxpayer is electing to apply the provisions of section 455 to his trade or business, and shall contain the following information:

(i) The name and a description of the taxpayer's trade or business to which the election is to apply;

(ii) The method of accounting used in such trade or business;

(iii) The total amount of prepaid subscription income from such trade or business for the taxable year;

(iv) The period or periods over which the liability of the taxpayer to furnish or deliver a newspaper, magazine, or other periodical extends;

(v) The amount of prepaid subscription income applicable to each such period; and

(vi) A description of the method used in allocating the prepaid subscription income to each such period.

In any case in which prepaid subscription income is received from more than one trade or business, the statement shall set forth the required information with respect to each trade or business subject to the election.

(3) See paragraph (c) of this section for additional information required to be submitted with the statement if the taxpayer also elects to include in gross income for the taxable year of receipt the entire amount of prepaid subscription income attributable to a liability which is to end within 12 months after the date of receipt.

(b) *Election with consent.* A taxpayer may, with the consent of the Commissioner, elect at any time to apply the provisions of section 455 to any trade or business in which it receives prepaid subscription income. The request for such consent shall be in writing, signed by the taxpayer or its authorized representative, and shall be addressed to the Commissioner of Internal Revenue, Attention: T:R:C, Washington 25, D.C. The request must be filed on or before the later of the following dates: (1) 90 days after the beginning of the first taxable year to which the election is to apply or (2) 90 days after the date of publication of the regulations under section 455 in the FEDERAL REGISTER as a Treasury decision, and must contain the information described in paragraph (a) (2) of this section. See paragraph (c) of this section for additional information required to be submitted with the request if the taxpayer also elects to include in gross income for the taxable year of receipt the entire amount of prepaid subscription income attributable to a liability which is to end within 12 months after the date of receipt.

(c) *"Within 12 months" election.* (1) A taxpayer who elects to apply the provisions of section 455 to any trade or business may also elect to include in gross income for the taxable year of receipt (as described in section 455(d)(3) and paragraph (c) of § 1.455–5) the entire amount of any prepaid subscription income from such trade or business if the liability from which it arose is to end within 12 months after the date of receipt. Any such election is binding for the first taxable year for which it is effective and for all subsequent taxable years, unless the taxpayer secures permission from the Commissioner to treat such income differently. Application to revoke or change a "within 12 months" election shall be made in accordance with the provisions of section 446(e) and the regulations thereunder.

(2) The "within 12 months" election shall be made by including in the statement required by paragraph (a) of this section or the request described in paragraph (b) of this section, whichever is applicable, a declaration that the taxpayer elects to include such income in gross income in the taxable year of receipt, and the amount of such income. If the taxpayer is engaged in more than one trade or business for which the election under section 455 is made, it must include, in such statement or request, a declaration for each trade or business for which it makes the "within 12 months" election. See also paragraph (e) of § 1.455–2.

(3) If the taxpayer does not make the "within 12 months" election for its trade or business at the time prescribed for making the election to include prepaid subscription income in gross income for the taxable years during which its liability to furnish or deliver a newspaper, magazine, or other periodical exists for such trade or business, but later wishes to make such election, it must apply for permission from the Commissioner. Such application shall be made in accordance with the provisions of section 446(e) and the regulations thereunder.

[F.R. Doc. 60–11593; Filed, Dec. 13, 1960; 8:56 a.m.]

[26 CFR (1954) Part 31]

EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to conform the Employment Tax Regulations (26 CFR Part 31) to sections 201 and 202 of the Act of May 19, 1959 (Public Law 86–28, 73 Stat. 28, 30), such regulations are amended as follows:

PARAGRAPH 1. Section 31.3201 is amended to read as follows:

§ 31.3201 Statutory provisions; rate of tax.

SEC. 3201. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to—

(1) 6¾ percent of so much of the compensation paid to such employee for services rendered by him after the month in which this provision was amended in 1959, and before January 1, 1962, and

(2) 7¼ percent of so much of the compensation paid to such employee for services rendered by him after December 31, 1961,

as is not in excess of $400 for any calendar month: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services after December 31, 1964, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956.

[Sec. 3201 as amended by sec. 206(a), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec. 201(a), Act of May 19, 1959 (Pub. Law 86–28, 73 Stat. 28)]

PAR. 2. Section 31.3201–1 is amended to read as follows:

§ 31.3201–1 Measure of employee tax.

The employee tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee to one or more employers, excluding, however, the amount of—

(a) Compensation in excess of $400 which is paid to the employee after May 31, 1959, for services rendered during any one calendar month after May 31, 1959;

(b) Compensation in excess of $350 which is paid to the employee after 1954 and before June 1, 1959, for services rendered during any one calendar month after May 31, 1959; and

(c) Compensation in excess of $350 which is paid to the employee after 1954 for services rendered during any one calendar month after 1954 and before June 1, 1959.

The employee tax with respect to compensation paid after May 31, 1959, for services rendered after such date, is measured without regard to any amount of compensation paid before June 1, 1959, for such services. The employee tax with respect to compensation paid before June 1, 1959, for services rendered after May 31, 1959, is measured without regard to any amount of compensation paid after May 31, 1959, for such services. For provisions relating to compensation, see § 31.3231(e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax, see paragraph (a) (4) and (5) of § 31.3231(e)–1.

PAR. 3. Section 31.3201–2 is amended to read as follows:

§ 31.3201–2 Rates and computation of employee tax.

(a) *Rates.* The rates of employee tax applicable with respect to compensation are as follows:

	Percent
Compensation paid at any time after 1964 for services rendered after 1954 and before June 1, 1965; and compensation paid after 1964 and before June 1, 1968, for services rendered after May 31, 1959	6¼
Compensation paid after May 31, 1959, for services rendered after May 31, 1959, and before 1962	6¾
Compensation paid after May 31, 1959, for services rendered during the calendar years 1962, 1963, and 1964	7¼

The rate of employee tax with respect to compensation paid after May 31, 1959, for services rendered after 1964 is the sum of 7¼ percent and an additional percentage. Such additional percentage is determined by subtracting 2¾ percent from the rate of tax imposed by section 3101 with respect to wages received at the time such services are rendered.

Example. If the rate of tax imposed by section 3101 with respect to wages received in 1965 is 3½ percent, then the rate of tax imposed by section 3201 with respect to compensation paid after May 31, 1959, for services rendered in 1965 is 8 percent. (That is, 2¾ percent subtracted from 3½ percent leaves a remainder of ¾ percent. Such remainder of ¾ percent added to 7¼ percent equals 8 percent.)

(b) *Computation.* The employee tax is computed by multiplying the amount of the employee's compensation with respect to which the employee tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section.

PAR. 4. Section 31.3202 is amended by revising section 3202(a) and the historical note to read as follows:

§ 31.3202 Statutory provisions; deduction of tax from compensation.

SEC. 3202. *Deduction of tax from compensation*—(a) *Requirement.* The tax imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after the month in which this provision was amended in 1959, by more than one employer for services rendered during any calendar month after the month in which this provision was amended in 1959 and the aggregate of such compensation is in excess of $400, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after the month in which this provision was amended in 1959, to the employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $400, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after the month in which this provision was amended in 1959, to such employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month.

* * * * *

[Sec. 3202 as amended by sec. 206(a), Act of Aug. 31, 1959 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec. 201(b), Act of May 19, 1959 (Pub. Law 86-28, 73 Stat. 29)]

PAR. 5. Section 31.3202–1 is amended by revising paragraph (b), and by adding a new paragraph (f), to read as follows:

§ 31.3202–1 Collection of, and liability for, employee tax.

* * * * *

(b) *Collection; payments by two or more employers in excess of monthly compensation limitation*—(1) *Aggregate monthly compensation in excess of $400 paid after May, 31, 1959, for services rendered after that date.* If an employee is paid compensation after May 31, 1959, by two or more employers for services rendered during any one calendar month after such date, and if the aggregate compensation paid to such employee after such date by all employers for services rendered during that month is in excess of $400, the employee tax to be deducted by each employer from the compensation as and when paid by him after May 31, 1959, to the employee shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a)(6) of § 31.3231(a)–1), each employer shall deduct the employee tax with respect to that proportion of $400 of compensation which the compensation paid after May 31, 1959, by such employer to the employee for the month bears to the total compensation paid after such date to such employee by all employers for that month. See example (1) in subdivision (vii) of this subparagraph.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employee tax with respect to that proportion of $400 of compensation which the compensation paid after May 31, 1959, by such subordinate unit to the employee for the month bears to the total compensation paid after such date to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after May 31, 1959, to the employee by the employer other than a subordinate unit equals or exceeds $400 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after such date to such employee for that month, and the employer other than a subordinate unit shall deduct the employee tax with respect to $400 of compensation paid by him after such date to such employee for that month. See example (2) in subdivision (vii) of this subparagraph.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by the employers other than a subordinate unit equals or exceeds $400 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after such date to such employee for that month, and each employer other than subordinate unit shall deduct the employee tax with respect to that proportion of $400 of compensation which the compensation paid after such date by such employer to the employee for the month bears to the total compensation paid after such date to such employee by all such employers other than a subordinate unit for that month. See example (3) in subdivision (vii) of this subparagraph.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate unit is less than $400 for the month, then each employer other than the subordinate unit shall deduct the employee tax with respect to the full amount of compensation paid by him after such date to such employee for that month, and the subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to the remainder of $400 of compensation less the total compensation paid after such date to such employee for that month by all other employers. See example (4) in subdivision (vii) of this subparagraph.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate units is less than $400 for the month, then each employer other than the subordinate units shall deduct the employee tax with respect to the full amount of compensation paid by him after such date to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to that proportion of the remainder of $400 of compensation less the total compensation paid after such date to such employee for the month by all employers other than the subordinate units which the compensation paid after such date by such subordinate unit to the employee for that month bears to the total compensation paid after such date to such employee by all such subordinate units for that month. See example (5) in subdivision (vii) of this subparagraph.

(vii) The application of certain of the principles stated in this subparagraph may be illustrated by the following examples:

Example (1). A, an employee, renders services during June 1959 for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in June 1959 or thereafter compensation of $100 by X, $100 by Y, and $300 by Z, or an aggregate of $500 for the month. In such case X pays one-fifth of A's aggregate compensation for the month, Y pays one-fifth, and Z pays three-fifths. X and Y, therefore, are each required to deduct the employee tax with respect to one-fifth of $400, or $80, and Z is required to deduct the employee tax with respect to three-fifths of $400, or $240.

Example (2). A, an employee, renders services during June 1959 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $400 by X, $50 by Y, and $35 by Z. Since the compensation paid A for the month by X equals $400, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month; and X is required to deduct the employee tax with respect to the full $400 paid by him to A for the month.

Example (3). A, an employee, renders services during June 1959 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $200 by W and $300 by X, or an aggregate of $500 for the month, and compensation of $50 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $400, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month. Of the aggregate compensation of $500 paid A for the month by W and X, W pays two-fifths and X pays three-fifths. W, therefore, is required to deduct the employee tax with respect to two-fifths of $400, or $160, and X is required to deduct the employee tax with respect to three-fifths of $400, or $240.

Example (4). A, an employee, renders services during June 1959 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $250 by X and $200 by Y. In such case X is required to deduct the employee tax with respect to the full $250 paid by him to A for the month; and Y is required to deduct the employee tax only with respect to $150 ($400 minus $250 paid by X).

Example (5). A, an employee, renders services during June 1959 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $190 by W, $120 by X, $50 by Y, and $100 by Z. In such case W and X are each required to deduct the employee tax with respect to the full amount paid to A for the month, that is, W with respect to $190 and X with respect to $120; and Y and Z are required to deduct the employee tax with respect to their proportionate share of $90 ($400 minus $310 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is required to deduct the employee tax with respect to one-third of $90, or $30, and Z is required to deduct the employee tax with respect to two-thirds of $90, or $60.

(2) *Aggregate monthly compensation in excess of $350 paid before June 1, 1959, for services rendered after May 31, 1959.* If an employee is paid compensation within the period January 1, 1955, to May 31, 1959, both dates inclusive, by two or more employers for services rendered during any one calendar month after May 31, 1959, and if the aggregate compensation paid within such period to such employee by all employers for services rendered during such month is in excess of $350, the employee tax to be deducted by each employers from the compensation as and when paid by him to the employee within such period shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

(3) *Aggregate monthly compensation in excess of $350 paid after 1954 for services rendered before June 1, 1959.* If an employee is paid compensation at any time after 1954 by two or more employers for services rendered during any one calendar month within the period January 1, 1955, to May 31, 1959, both dates inclusive, and if the aggregate compensation paid after 1954 to such employee by all employers for services rendered during such month is in excess of $350, the employee tax to be deducted by each employer from the compensation as and when paid by him after 1954 to the employee shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

* * * * *

(f) *Cross reference.* See paragraph (a) (4) and (5) of § 31.3231(e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax.

PAR. 6. Section 31.3211 is amended to read as follows:

§ 31.3211 Statutory provisions; rate of tax.

SEC. 3211. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to—

(1) 13½ percent of so much of the compensation paid to such employee representative for services rendered by him after the month in which this provision was amended in 1959, and before January 1, 1962, and

(2) 14½ percent of so much of the compensation paid to such employee representative for services rendered by him after December 31, 1961,

as is not in excess of $400 for any calendar month: *Provided*, That the rate of tax imposed by this section shall be increased, with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points (including fractional points) equal at any given time to twice the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3101 at such time exceeds the rate provided by paragraph (2) of such section 3101 as amended by the Social Security Amendments of 1956.

[Sec. 3211 as amended by sec. 206(a), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec. 201(c), Act of May 19, 1959 (Pub. Law 86-28, 73 Stat. 29)]

PAR. 7. Section 31.3211–1 is amended to read as follows:

§ 31.3211–1 Measure of employee representative tax.

(a) *General rule.* Except as provided in paragraph (b) of this section the employee representative tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee representative, excluding, however, the amount of—

(1) Compensation in excess of $400 which is paid to the employee representative after May 31, 1959, for services rendered during any one calendar month after May 31, 1959;

(2) Compensation in excess of $350 which is paid to the employee representative after 1954 and before June 1, 1959, for services rendered during any one calendar month after May 31, 1959; and

(3) Compensation in excess of $350 which is paid to the employee representative after 1954 for services rendered during any one calendar month after 1954 and before June 1, 1959.

The employee representative tax with respect to compensation paid after May 31, 1959, for services rendered after such date, is measured without regard to any amount of compensation paid before June 1, 1959, for such services. The employee representative tax with respect to compensation paid before June 1, 1959, for services rendered after May 31, 1959, is measured without regard to any amount of compensation paid after May 31, 1959, for such services. For provisions relating to compensation, see § 31.3231(e)–1.

(b) *Aggregate monthly compensation as employee representative and employee in excess of monthly compensation limitation*—(1) *Compensation in excess of $400 paid after May 31, 1959, for services rendered after that date.* (i) If during any one calendar month after May 31, 1959, an individual renders services both as an employee representative and as an employee and the total compensation paid after such date to the individual for services rendered during such month both as an employee representative and as an employee exceeds $400, the measure of the employee representative tax for such month shall be $400 minus the compensation paid after May 31, 1959, to such individual for services rendered by him during such month as an employee.

(ii) The application of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. A renders services as an employee representative during June 1959 for which he is paid $100 in June 1959 or thereafter. During such month A also renders

services as an employee for one or more employers and receives during such month or thereafter compensation of $350. Inasmuch as the total amount of compensation paid after May 31, 1959, to A for services rendered during June 1959 as an employee representative and as an employee exceeds $400 ($100 plus $250, or $450), the measure of the employee representative tax is $400 minus $350 (A's compensation for services rendered as an employee), or $50.

(2) *Compensation in excess of $350 paid before June 1, 1959, for services rendered after May 31, 1959.* If during any one calendar month after May 31, 1959, an individual renders services as an employee representative and as an employee and the total compensation paid after 1954 and before June 1, 1959, to the individual for services rendered during such month as an employee representative and as an employee exceeds $350, the measure of the employee representative tax for such month shall be $350 minus the compensation paid after 1954 and before June 1, 1959, to such individual for services rendered by him during such month as an employee.

(3) *Compensation in excess of $350 paid after 1954 for services rendered after 1954 and before June 1, 1959.* If during any one calendar month after 1954 and before June 1, 1959, an individual renders services as an employee representative and as an employee and the total compensation paid at any time after 1954 to the individual for services rendered during such month as an employee representative and as an employee exceeds $350, the measure of the employee representative tax for such month shall be $350 minus the compensation paid at any time after 1954 to such individual for services rendered by him during the month as an employee.

PAR. 8. Section 31.3211–2 is amended to read as follows:

§ 31.3211–2 Rates and computation of employee representative tax.

(a) *Rates.* The rates of employee representative tax applicable with respect to compensation are as follows:

	Percent
Compensation paid at any time after 1954 for services rendered after 1954 and before June 1, 1959; and compensation paid after 1954 and before June 1, 1959, for services rendered after May 31, 1959	12½
Compensation paid after May 31, 1959, for services rendered after May 31, 1959, and before 1962	13½
Compensation paid after May 31, 1959, for services rendered during the calendar years 1962, 1963, and 1964	14½

The rate of employee representative tax with respect to compensation paid after May 31, 1959, for services rendered after 1964 is the sum of 14½ percent and an additional percentage. Such additional percentage is determined by subtracting 2¾ percent from the rate of tax imposed by section 3101 with respect to wages received at the time such services are rendered, and by doubling the remainder.

Example. If the rate of tax imposed by section 3101 with respect to wages received in 1965 is 3½ percent, then the rate of tax imposed by section 3211 with respect to compensation paid after May 31, 1959, for services rendered in 1965 is 16 percent. (That is, 2¾ percent subtracted from 3½ percent leaves a remainder of ¾ percent. Such remainder doubled is 1½ percent. The sum of 1½ percent and 14½ percent is 16 percent.)

(b) *Computation.* The employee representative tax is computed by multiplying the amount of the employee representative's compensation with respect to which the employee representative tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section.

PAR. 9. Section 31.3221 is amended to read as follows:

§ 31.3221 Statutory provisions; rate of tax.

SEC. 3221. *Rate of tax.* (a) In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to—

(1) 6¾ percent of so much of the compensation paid by such employer for services rendered to him after the month in which this provision was amended in 1959, and before January 1, 1962, and

(2) 7¼ percent of so much of the compensation paid by such employer for services rendered to him after December 31, 1961,

as is, with respect to any employee for any calendar month, not in excess of $400; except that if an employee is paid compensation after the month in which this provision was amended in 1959, by more than one employer for services rendered during any calendar month after the month in which this provision was amended in 1959, the tax imposed by this section shall apply to not more than $400 of the aggregate compensation paid to such employee by all such employers after the month in which this provision was amended in 1959, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after the month in which this provision was amended in 1959, to the employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $400, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after the month in which this provision was amended in 1959, to such employee for services rendered during such month bears to the total compensation paid by all such employers after the month in which this provision was amended in 1959, to such employee for services rendered during such month.

(b) The rate of tax imposed by subsection (a) shall be increased, with respect to compensation paid for services rendered after December 31, 1964, by a number of percentage points (including fractional points) equal at any given time to the number of percentage points (including fractional points) by which the rate of the tax imposed with respect to wages by section 3111 at such time exceeds the rate provided by paragraph (2) of such section 3111 as amended by the Social Security Amendments of 1956.

[Sec. 3221 as amended by sec. 206(a), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040); sec. 201(d), Act of May 19, 1959 (Pub. Law 86–28, 73 Stat. 29)]

PAR. 10. Section 31.3221–1 is amended by revising paragraphs (a) and (b), and by adding a new paragraph (d), as follows:

§ 31.3221–1 Measure of employer tax.

(a) *General rule.* Except as provided in paragraph (b) of this section, the employer tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid by an employer to his employees, excluding, however, the amount of—

(1) Compensation in excess of $400 which is paid to any employee after May 31, 1959, for services rendered during any one calendar month after May 31, 1959;

(2) Compensation in excess of $350 which is paid to any employee after 1954 and before June 1, 1959, for services rendered during any one calendar month after May 31, 1959; and

(3) Compensation in excess of $350 which is paid to any employee after 1954 for services rendered during any one calendar month after 1954 and before June 1, 1959.

The employer tax with respect to compensation paid after May 31, 1959, for services rendered after such date, is measured without regard to any amount of compensation paid before June 1, 1959, for such services. The employer tax with respect to compensation paid before June 1, 1959, for services rendered after May 31, 1959, is measured without regard to any amount of compensation paid after May 31, 1959, for such services. For provisions relating to compensation, see § 31.3231(e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax, see paragraph (a) (4) and (5) of § 31.3231(e)–1.

(b) *Payments by two or more employers in excess of monthly compensation limitation*—(1) *Aggregate monthly compensation in excess of $400 paid after May 31, 1959, for services rendered after that date.* If an employee is paid compensation after May 31, 1959, by two or more employers for services rendered during any one calendar month after such date, and if the aggregate compensation paid to such employee after such date by all employers for services rendered during such month is in excess of $400, the measure of the employer tax of each employer with respect to the compensation paid by him after such date to the employee for the month shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a)(6) of § 31.3231(a)–1), the measure of the employer tax of each employer shall be that proportion of $400 which the compensation paid after May 31, 1959, by such employer to the employee for the month bears to the total compensation paid after such date to such employee by all employers for that month.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employer tax of each subordinate unit shall be that proportion of $400 which the compensation paid after May 31, 1959, by such subordinate unit to the employee for the month bears to the total compensation paid after such date to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after May 31, 1959, to the employee by the employer other than a subordinate unit equals or exceeds $400 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after such date to such employee for that month, and the measure of the employer tax of the employer other than a subordinate unit with respect to the compensation paid by him after 1954 to such employee for that month shall be $400.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by the employers other than a subordinate unit equals or exceeds $400 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after such date to such employee for that month, and the measure of the employer tax of each employer other than a subordinate unit shall be that proportion of $400 which the compensation paid after such date by such employer to the employee for the month bears to the total compensation paid after such date to such employees other than a subordinate unit for that month.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate unit is less than $400 for the month, then the measure of the employer tax of each employer other than the subordinate unit shall be the full amount of compensation paid by him after such date to such employee for that month, and the measure of the employer tax of each subordinate unit of a national railway-labor-organization employer shall be that proportion of the remainder of $400 less the total compensation paid after such date to such employee for the month by all employers other than the subordinate units which the compensation paid after such date by such subordinate unit to the employee for that month bears to the total compensation paid after such date to such employee by all such subordinate units for that month.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer, and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after May 31, 1959, to the employee by all employers other than the subordinate units is less than $400 for the month, then the measure of the employer tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after such date to such employee for that month, and the measure of the employer tax of each subordinate unit of a national railway-labor-organization employer shall be that proportion of the remainder of $400 less the total compensation paid after such date to such employee for the month by all employers other than the subordinate units which the compensation paid after such date by such subordinate unit to the employee for that month bears to the total compensation paid after such date to such employee by all such subordinate units for that month.

(vii) For illustrations of the application of certain of the principles in this subparagraph, see the examples, illustrating the analogous principles with respect to the deduction of employee tax, set forth in paragraph (b)(1)(vii) of § 31.3202–1.

(2) *Aggregate monthly compensation in excess of $350 paid before June 1, 1959, for services rendered after May 31, 1959.* If an employee is paid compensation within the period January 1, 1955, to May 31, 1959, both dates inclusive, by two or more employers for services rendered during any one calendar month after May 31, 1959, and if the aggregate compensation paid within such period to such employee by all employers for services rendered during such month is in excess of $350, the measure of the employer tax of each employer with respect to the compensation paid by him to the employee within such period shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

(3) *Aggregate monthly compensation in excess of $350 paid after 1954 for services rendered before June 1, 1959.* If an employee is paid compensation at any time after 1954 by two or more employers for services rendered during any one calendar month within the period January 1, 1955, to May 31, 1959, both dates inclusive, and if the aggregate compensation paid after 1954 to such employee by all employers for services rendered during such month is in excess of $350, the measure of the employer tax of each employer with respect to the compensation paid by him to the employee after 1954 shall be determined in accordance with the principles stated in subparagraph (1) of this paragraph. Such principles should be applied, however, with reference to the compensation and services described in this subparagraph.

* * * * *

(d) *Cross reference.* See paragraph (a) (4) and (5) of § 31.3231(e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax.

PAR. 11. Section 31.3221–2 is amended to read as follows:

§ 31.3221–2 Rates and computation of employer tax.

(a) *Rates.* The rates of employer tax applicable with respect to compensation are as follows:

	Percent
Compensation paid at any time after 1954 for services rendered after 1954 and before June 1, 1959; and compensation paid after 1954 and before June 1, 1959, for services rendered after May 31, 1959	6¼
Compensation paid after May 31, 1959, for services rendered after May 31, 1959, and before 1962	6¾
Compensation paid after May 31, 1959, for services rendered during the calendar years 1962, 1963, and 1964	7¼

The rate of employer tax with respect to compensation paid after May 31, 1959, for services rendered after 1964 is the sum of 7¼ percent and an additional percentage. Such additional percentage is determined by subtracting 2¾ percent from the rate of tax imposed by section 3111 with respect to wages paid at the time such services are rendered.

Example. If the rate of tax imposed by section 3111 with respect to wages paid in 1965 is 3½ percent, then the rate of tax imposed by section 3221 with respect to compensation paid after May 31, 1959, for services rendered in 1965 is 8 percent. (That is, 2¾ percent subtracted from 3½ percent leaves a remainder of ¾ percent. Such remainder of ¾ percent added to 7¼ percent equals 8 percent.)

(b) *Computation.* The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by the rate applicable to such compensation, as determined under paragraph (a) of this section.

[F.R. Doc. 60–11611; Filed, Dec. 13, 1960; 8:56 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Food Machinery and Chemical Corporation, Middleport, New York, proposing the issuance of a regulation to establish a tolerance of 10 parts per million of 2,4,5,4'-tetrachlorodiphenyl sulfone in or on dried figs.

Dated: December 8, 1960.

[SEAL] W. B. RANKIN,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60–11608; Filed, Dec. 13, 1960; 8:59 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by E. I. du Pont de Nemours and Company, Inc., Wilmington 98, Delaware, proposing the issuance of a regulation to provide for the safe use of polyvinyl alcohol as a component of food packaging materials.

Dated: December 8, 1960.

[SEAL] W. B. RANKIN,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-11604; Filed, Dec. 13, 1960; 8:59 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by American Cyanamid Company, Thirty Rockefeller Plaza, New York 20, New York, proposing the issuance of a regulation permitting the safe use of anionic polyacrylamide for improving the dry-strength of paper and paperboard used in food packaging.

Dated: December 8, 1960.

[SEAL] W. B. RANKIN,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-11605; Filed, Dec. 13, 1960; 8:59 a.m.]

Social Security Administration

[45 CFR Parts 301, 306, 307, 308, 309, 311]

FEDERAL CREDIT UNIONS

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946 (60 Stat. 238, 5 U.S.C. 1003) that the regulations set forth in tentative form below are proposed to be prescribed by the Director of the Bureau of Federal Credit Unions with approval of the Commissioner of Social Security and the Secretary of Health, Education, and Welfare.

The proposed regulations will add to the existing regulations a new section covering interest refunds, and five new parts covering the conversion of credit unions from Federal to State charter and from State to Federal charter, mergers of credit unions, voluntary partial liquidation of Federal credit unions to enable a division of assets and liabilities, and under certain conditions, the scaledown of credit union shares. They are necessary both to implement, interpret and apply 1959 amendments to the Federal Credit Union Act, and to implement and apply long-standing Bureau of Federal Credit Union's policy, interpretation and practice in the other areas proposed for regulation.

Prior to the official adoption of the proposed regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in duplicate to the Director of the Bureau of Federal Credit Unions, Department of Health, Education, and Welfare, Washington 25, D.C., within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under authority contained in section 14 and section 21(a) of the Federal Credit Union Act, as amended. (73 Stat. 628, 12 U.S.C. 1761b and 1766.)

Dated: December 2, 1960.

[SEAL] J. DEANE GANNON,
Director, Bureau of Federal Credit Unions.

Approved: December 5, 1960.

JOSEPH H. MEYERS,
Acting Commissioner of Social Security.

Approved: December 7, 1960.

EDWARD FOSS WILSON,
Acting Secretary of Health, Education, and Welfare.

1. Part 301, Chapter III of Title 45 of The Code of Federal Regulations, is amended by adding § 301.24, as follows:

§ 301.24 Refund of interest.

The board of directors of a Federal credit union may authorize an interest refund to all members who paid interest to the credit union during the year and who are members of record at the close of business on December 31 of that year. The amount of interest refund to the members shall be in proportion to the amount of interest paid by them as determined by the application of a uniform percentage. When an interest refund is authorized with respect to a year, it shall be recorded in the books of the credit union as a reduction of interest income for that year. The interest refund may be credited to the members' share accounts or paid directly to the members.

(Sec. 14, 73 Stat. 632; Sec. 21, 73 Stat. 635)

2. Chapter III of Title 45 of The Code of Federal Regulations is amended by adding Parts 306, 307, 308, 309, and 311, as follows:

PART 306—CONVERSION FROM FEDERAL TO STATE

Sec.
306.1 Requirements for conversion.
306.2 Meeting of members and notice to Bureau.
306.3 Notice of meeting of members.
306.4 Notice of meeting to Bureau.
306.5 Report of results of meeting to Bureau.
306.6 Approval by majority of all members required.
306.7 Compliance with State laws.
306.8 Completion of conversion.
306.9 Assistance by Bureau.

AUTHORITY: §§ 306.1 to 306.9 issued under sec. 21, 73 Stat. 635, sec. 26, 73 Stat. 638.

§ 306.1 Requirements for conversion.

Any Federal credit union may convert into a State credit union by (a) complying with the requirements of the Act and the regulations in this part requisite to enabling it to convert to a State credit union; (b) taking such action as may be necessary under applicable State law for the conversion of Federal credit unions to State credit unions to obtain a State credit union charter; and (c) filing with the Bureau a copy of the State credit union charter issued to it within ten days after receipt thereof.

§ 306.2 Meeting of members and notice to Bureau.

Upon approval of the proposition to convert to a State credit union by a majority of the board of directors, it shall set a date for a meeting of the members, at which the individual members shall have the option to vote on the proposition either in person at the meeting or by written ballot to be filed on or before the date of the meeting. The board of directors promptly shall notify the Regional Representative in writing of its approval of the proposition to convert to a State credit union, and of the date set for the meeting of the members.

§ 306.3 Notice of meeting of members.

(a) Written notice of the meeting shall be delivered in person to each member or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty days nor less than seven days prior to the date set for the meeting.

(b) In addition to setting forth the proposition for conversion and the date, time, and place of the meeting, the written notice of the meeting shall (1) inform the members of the opportunity to vote by written ballot, and when, where and how (on or before the date of the meeting) such written ballots may be filed; (2) contain a form of written ballot for the use of those members who will vote thereby instead of in person at the meeting; and (3) set forth, for the advance consideration of the members, a brief and accurate statement of the reasons for and against the proposed conversion, including the effect, if any, it will have upon shareholdings and obligations of members, and the policies and practices of the credit union.

§ 306.4 Notice of meeting to Bureau.

A copy of the written notice of the meeting, verified by the affidavit of the secretary of the credit union, shall be delivered to the Regional Representative, at the same time, in advance of the meeting, that it is delivered to the members.

§ 306.5 Report of results of meeting to Bureau.

A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the Regional Representative within ten days after the vote is taken.

§ 306.6 Approval by majority of all members required.

In order for the proposition for conversion to be approved and acted upon further by the credit union it must receive the affirmative vote of a majority of all the members.

§ 306.7 Compliance with State laws.

If the proposition for conversion is approved by the affirmative vote of a majority of all the members, the board of directors promptly, and in no event later than 90 days after such approval, shall take such action on behalf of the credit union as may be necessary under the applicable State law for the conversion of Federal credit unions to State credit unions to convert the credit union to a State chartered credit union. In addition, the board of directors promptly shall inform the Regional Representative of the action so taken and, from time to time, of the progress of such action.

§ 306.8 Completion of conversion.

(a) Within ten days after the credit union receives a State credit union charter it shall file a copy thereof with the Regional Office. The Regional Representative promptly shall notify the credit union in writing of the receipt of the State charter. The credit union shall cease to be a Federal credit union as of the close of the business of the date such copy is received by the Regional Office unless the credit union has been notified in writing or is notified in writing to the contrary pursuant to paragraph (b) of this section. Upon ceasing to be a Federal credit union, such credit union shall no longer be subject to any of the provisions of the Act. The successor State credit union shall be vested with all of the assets and shall continue responsible for all of the obligations of the Federal credit union to the same extent as though the conversion had not taken place.

(b) Notwithstanding the provisions of paragraph (a) of this section, if the requirements of the Act and the regulations in this part have not been satisfied, the attempted conversion shall be ineffective and the credit union shall continue to be a Federal credit union, subject to the provisions of the Act, to the same extent as though the conversion had not been attempted. The Regional Representative promptly shall notify the credit union in writing either before or after the copy of the State charter is filed with the Regional Office, of any findings by the Bureau, including the reasons therefor, which adversely affect the validity of the attempted conversion.

§ 306.9 Assistance by Bureau.

(a) Upon the request of any credit union which desires to convert, or which is converting, pursuant to the provisions in this part, the Bureau will furnish information, assistance and advice which, in the discretion of the Director, is pertinent to the proposed conversion and consistent with the powers and duties of the Bureau under the Act.

(b) The Bureau will cooperate, to the extent deemed consistent with its powers and duties under the Act, with State agencies and State officials having responsibility under applicable State law for the issuance of charters to and the supervision of State credit unions, in questions and matters relating to the conversion of any Federal credit union to State charter pursuant to the Act and the provisions in this part.

PART 307—CONVERSION FROM STATE TO FEDERAL

Sec.
307.1 Requirements for conversion.
307.2 Preliminary application to convert.
307.3 Information required with preliminary application.
307.4 Approval of preliminary application to convert.
307.5 Compliance with State laws.
307.6 Application for Federal charter.
307.7 Completion of conversion.

AUTHORITY: §§ 307.1 to 307.7 issued under sec. 21, 73 Stat. 635, sec. 26, 73 Stat. 638.

§ 307.1 Requirements for conversion.

Any State credit union may convert into a Federal credit union by (a) complying with all the requirements of the State requisite to enabling it to convert to a Federal credit union, if any, or to cease being a State credit union; (b) filing with the Bureau proof of such compliance, satisfactory to the Director; (c) filing with the Bureau an organization certificate as required by the Act; and (d) filing with the Bureau proof satisfactory to the Director that all other requirements of the Act and the regulations in this part have been complied with.

§ 307.2 Preliminary application to convert.

(a) Any State credit union that desires to convert into a Federal credit union may, after approval by its board of directors and prior to taking the steps prescribed in § 307.1 file with the Bureau a preliminary application for conversion. Such preliminary application shall be on a form, copies of which may be obtained from any Regional Office of the Bureau.

(b) A preliminary application for conversion shall be filed with the Bureau through the Regional Office. It shall authorize an examination of its books and records by the Bureau and contain an undertaking to pay the examination fee therefor in accordance with § 301.7 of this chapter.

§ 307.3 Information required with preliminary application.

(a) A preliminary application shall be accompanied by a current financial and statistical report, Form FCU 109, as revised, or a form substantially equivalent thereto, certified correct by the treasurer and verified by the affidavit of the president or vice-president of the credit union and a statement verified by the affidavits of the president or vice-president and treasurer of the credit union which shall contain (1) a statement of its policies and procedures with respect to loans to members, including interest rates and charges incident to making loans, maturities of loans, unsecured loan limit, types of security accepted, and requirements for amortization; (2) a list of all outstanding unsecured loans with unpaid balances in excess of $750; (3) a list of all outstanding loans with maturities in excess of 5 years; (4) a schedule of all loans which are delinquent two months or more; (5) a statement of the kinds of accounts (share, savings, deposit, or other) which members are required or permitted to maintain; (6) a description of its real property holdings; (7) a description of investments other than loans to members, loans to other credit unions, United States bonds, and shares in savings and loan associations insured by Federal Savings and Loan Insurance Corporation; (8) the names and locations of depositaries of its funds; (9) a description of any services rendered to or on behalf of members or the public other than accepting and maintaining accounts of members and making loans to members; (10) a statement of the field of membership.

(b) It shall be accompanied, also, by a preliminary plan of conversion which shall show what the credit union proposes to do about any of its policies, procedures, practices, assets and liabilities which do not comply with the requirements of the Act if its conversion to a Federal credit union should be approved.

§ 307.4 Approval of preliminary application to convert.

(a) The Director will consider the preliminary application for conversion, the financial and statistical report, the preliminary plan of conversion, and such other information or reports of examination or investigation as may have been submitted or required, and will accord such application conditional approval upon his determination that the credit union does or is able to comply with all the requirements of the Act. The Director will disapprove the preliminary application if he determines that the credit union is unable to comply with all the requirements of the Act.

(b) Upon disapproval of a preliminary application for conversion into a Federal credit union, the credit union, if it nevertheless believes that it is able to comply with all the requirements of the Act, may submit promptly additional information, including a new preliminary plan for conversion, for the reconsideration of the Director.

§ 307.5 Compliance with State laws.

Upon the conditional approval, either initially or upon reconsideration, of a preliminary application for conversion into a Federal credit union, the credit union shall proceed promptly to comply with all the requirements of the State requisite to enabling it to convert to a Federal credit union, if any, or to cease being a credit union of such State. After obtaining the vote of its members required by the laws of such State for the accomplishment of such purpose, the credit union shall proceed promptly to comply with all the conditions prescribed in the conditional approval of the preliminary application.

§ 307.6 Application for Federal charter.

(a) Upon compliance with all the requirements of the State requisite to enabling it to convert to a Federal credit union, if any, or to cease being a credit union of such State, and upon compliance with all the conditions prescribed in the conditional approval of the preliminary application, the credit union may file with the Regional Representative an organization certificate, together with proposed bylaws, as required by the Act, which shall constitute its formal application for conversion into a Federal credit union.

(b) Such organization certificate and proposed bylaws shall be accompanied by evidence satisfactory to the Director showing compliance by the credit union with all the requirements of the State requisite to enabling it to convert to a Federal credit union, if any, or to cease being a credit union of such State and compliance by the credit union with all the conditions prescribed in the conditional approval of the preliminary application.

§ 307.7 Completion of conversion.

(a) Upon approval of the organization certificate by the Director the credit union shall become a Federal credit union as of the date it ceases to be a State credit union. It shall be vested with all of the assets and shall continue responsible for all of the obligations of the State credit union to the same extent as though the conversion had not taken place.

(b) All directors and credit committee members holding office at the time the credit union becomes a Federal credit union shall hold office until the first annual meeting of the members of the Federal credit union and until the election and qualification of their respective successors, or until the qualification of their respective successors elected at a special meeting of the members as may be required pursuant to the provisions of paragraph (d) of this section.

(c) If a special meeting of the members is not required pursuant to the provisions of paragraph (d) of this section, the board of directors shall hold a legal meeting promptly upon the credit union becoming a Federal credit union. At such meeting the board of directors shall elect such executive officers, appoint such committees, and transact such other business as is necessary to carry into effect the conversion as approved by the Director and to operate the Federal credit union in accordance with the requirements of the Act.

(d) If required in the conditional approval of the preliminary application or upon approval of the organization certificate and bylaws, a board of directors, or a credit committee, or both, shall be elected at a special meeting of the members to be held promptly upon the credit union becoming a Federal credit union, all to hold office until the first annual meeting of the Federal credit union and until the election and qualification of their respective successors. At such meeting such other action shall be taken as is necessary to carry into effect the conversion as approved by the Director and to operate the Federal credit union in accordance with the requirements of the Act. Immediately after such meeting the board of directors shall meet, elect such executive officers, appoint such committees, and transact such other business as is necessary to carry into effect the conversion as approved by the Director and to operate the Federal credit union in accordance with the requirements of the Act.

PART 308—MERGERS OF FEDERAL CREDIT UNIONS

Sec.
308.1 When permissible.
308.2 Preparation of merger plan.
308.3 Approval of plan by Director.
308.4 Approval by members.
308.5 Completion of merger.

AUTHORITY: §§ 308.1 to 308.5 issued under sec. 21, 73 Stat. 635.

§ 308.1 When permissible.

Two or more Federal credit unions, the combined membership of which would have a common bond of occupation or association or would be limited to groups within a well-defined neighborhood, community, or rural district, may merge into a single Federal credit union; or, two or more Federal and State credit unions, the combined membership of which would have a common bond of occupation or association or would be limited to groups within a well-defined neighborhood, community, or rural district, may merge into a single Federal credit union: *Provided*, That the State credit unions have the power and authority to merge under applicable State laws; or, two or more Federal and State credit unions, the combined membership of which would be eligible for credit union charter under applicable State law, may merge into a single State credit union: *Provided*, That the State credit unions have the power and authority to merge under the said applicable State law. Any such merger shall take place in accordance with the Regulations in this part, and, with respect to any State credit union involved in such merger, in accordance with the provisions of applicable State law.

§ 308.2 Preparation of merger plan.

Upon the approval of a proposition for a merger by the boards of directors of the credit unions, they shall prepare, or cause to be prepared for their approval, a plan for the proposed merger. The plan for the proposed merger shall include, but not by way of limitation, a current financial and statistical report of each credit union; an appraisal of the share value with respect to each credit union and the basis for the determination of such share value; whether differences in share values between the credit unions will be absorbed or adjusted, and, if there is to be an adjustment of such differences, how it will be accomplished; any provisions that are made with respect to reserves, undivided earnings and dividends; provisions with respect to notification and payment of creditors; provisions for bringing the assets and liabilities of any merging State credit unions into conformity with the requirements of the Act, if necessary, where it is proposed that the merged credit unions are to continue as a Federal credit union; and which of the merging credit unions is to continue and which will lose identity in the proposed merger. Also, if the merged credit unions are to continue as a Federal credit union, the plan should include any proposed amendments to the charter of the continuing Federal credit union.

§ 308.3 Approval of plan by Director.

Upon approval of the plan of the proposed merger by the board of directors of each credit union, it shall be submitted to the Regional Representative. If the Director finds that it is equitable, in the best interests of the members of the credit unions, and in accordance with the Act and the regulations in this part and with any applicable State law, the plan will be approved for submittal to the members of the credit unions. If the Director disapproves the plan of the proposed merger, the credit unions will be notified in writing of the decision and the reasons therefor and shall be given the opportunity to submit an amended plan for the reconsideration of the Director.

§ 308.4 Approval by members.

Upon approval of the plan of the proposed merger by the Director it may be submitted to the members of each Federal credit union at their annual meetings if such are scheduled within 120 days after such approval, or it shall be submitted to the members of each Federal credit union at special meetings to be called within 120 days after such approval; it shall be submitted to the members of any State credit union included in the proposed merger, and acted upon thereby, in accordance with the requirements of applicable State law. Federal credit union members shall have the right to vote on the proposition in person at the meeting, or by written ballot to be filed not later than 30 days following the date of the meeting. Written notice of the Federal credit union meetings, annual or special, at which the proposed merger is to be considered, shall include a summary of the plan of the proposed merger, shall inform the members of the opportunity to vote on the proposition by written ballot, and when and where such written ballots may be filed, and shall contain a form of written ballot for the use of those members who will vote thereby instead of in person at the meeting. The written notice shall be handed to each member in person, or mailed to each member at his address as the same appears on the records of the credit union, as provided in the bylaws. In order for the plan to be approved and acted upon further by the Federal credit unions it must receive the affirmative vote of a majority of all the members of each such Federal credit union. The results of the votes shall be certified to the Regional Representative promptly after the meetings by the president and secretary of each of the credit unions.

§ 308.5 Completion of merger.

Upon approval of the plan of the proposed merger by the members of each of the credit unions, such action as may be necessary to carry out the approved plan shall be taken. If the Director is satisfied that the merger has been accomplished in accordance with the approved plan he will cancel the charters of the Federal credit unions which have lost their identity in the merger, and, if the continuing credit union is a Federal credit union, he will approve any amendments to the charter thereof included in the plan.

PART 309—VOLUNTARY PARTIAL LIQUIDATION FOR DIVISION OF ASSETS AND LIABILITIES

Sec.
309.1 When permissible.
309.2 Approval by board and appointment of committee.
309.3 Preparation of plan.
309.4 Notice of option to transfer.
309.5 Submittal of plan to Bureau.
309.6 Approval of plan by Director.
309.7 Approval of plan by majority of all members.
309.8 Completion of plan.

AUTHORITY: §§ 309.1 to 309.8 issued under sec. 21, 73 Stat. 635.

§ 309.1 When permissible.

When a group properly within the field of membership of a Federal credit union has come to constitute a separately identifiable group having a common bond of occupation or association or a separately identifiable group within a well-defined neighborhood, community, or rural district, with respect to which the director would be satisfied to approve the organization of a new Federal credit union, a Federal credit union may undertake a voluntary partial liquidation for the accomplishment of an equitable and proportionate division of its assets and liabilities (including reserves and undivided earnings) between itself and such a new Federal credit union to which such a sufficient number of the members of the said separately identifiable group have authorized transfer of their membership as to make such partial liquidation and division reasonable and feasible. The organization of the new Federal credit union, the transfer of membership, and the division of assets and liabilities, shall take place in accordance with the regulations in this part.

§ 309.2 Approval by board and appointment of committee.

Upon the approval by the board of directors of a proposition for voluntary partial liquidation of the Federal credit union in order to divide its assets and liabilities between itself and a new Federal credit union to be organized among the members of the separately identifiable group referred to in § 309.1, it shall appoint a committee of at least seven members identified with the said group to cooperate and assist in the preparation and carrying out of a voluntary partial liquidation for division of assets and liabilities, and to subscribe to and submit to the Bureau an organization certificate, in accordance with the Act, for the proposed new Federal credit union. The board of directors promptly shall notify the Regional Representative in writing of these actions.

§ 309.3 Preparation of plan.

The board of directors, with the cooperation and assistance of the committee, shall prepare a plan which shall provide that members within the group referred to in § 309.1 shall have the option, to be exercised in writing on or before a date fixed in the plan, of authorizing the transfer of their membership, i.e., their shares and their loans as of the date hereinafter provided for the closing of the books, to the new Federal credit union upon the completion of its organization. The plan shall provide also for the equitable and proportionate division of the remaining assets and liabilities and shall fix a time, subsequent to the date fixed for exercise of the option to transfer membership, but no later than six months thereafter for the closing of the books of the credit union as of which the division shall be made.

§ 309.4 Notice of option to transfer.

The board of directors, with the cooperation and assistance of the committee, shall cause written notice of the option to transfer membership to be handed to each member within the group referred to in § 309.1 in person, or mailed to each such member at his address as the same appears on the records of the credit union. The written notice shall contain a summary of the plan and a form of authorization for use by the members which shall cover, in addition to transfer of membership, confirmation of the members' share balance and loan balance, and an authorization to the committee to seek approval for the organization certificate for the proposed new Federal credit union in accordance with the Act. The authorization shall be valid for no longer than six months from the date fixed for the exercise of the option, and shall not prevent termination of membership during such period, except for any brief period contemplated by the plan during which the transfer and division are being accomplished and recorded on the books of the respective credit unions.

§ 309.5 Submittal of plan to Bureau.

Promptly after the date fixed in the plan for the exercise of the option to authorize transfer of membership, the board of directors shall submit to the Regional Representative the plan for voluntary partial liquidation for division of assets and liabilities, together with a current financial and statistical report and a report covering the members who authorized the transfer of their memberships to the proposed new Federal credit union including a list of their individual share balances and loan balances. At the same time, the committee shall submit to the Regional Representative the organization certificate of the proposed new Federal credit union.

§ 309.6 Approval of plan by Director.

If the Director finds that the plan provides for an equitable and proportionate division of the assets and liabilities, taking into consideration the interests of the members who have authorized transfer of their membership to the proposed new Federal credit union and the interests of the remaining members, the Regional Representative will inform the board of directors that the Director approves the plan for submittal to the members at either an annual or special meeting as provided in § 309.7. The Regional Representative also will notify the board of directors and the subscribers to the organization certificate of the Director's approval of the organization certificate subject to the approval of the plan by the members.

§ 309.7 Approval of plan by majority of all members.

If the Director approves the plan, as provided in § 309.6, it may be submitted to the members at an annual meeting, if one is timely scheduled within the six months from the date fixed for the exercise of the option, or it shall be submitted to the members at a special meeting to be called as provided in the bylaws and within such six month period. In either event, written notice of the meeting, stating the purpose thereof and a summary of the plan, shall be handed to each member in person, or mailed to each member at his address as the same appears on the records of the credit union, as provided in the bylaws. In order for the plan to be approved and acted upon further, it must receive the affirmative vote of a majority of the members present and voting at the meeting.

§ 309.8 Completion of plan.

The president and secretary of the credit union shall certify the results of the vote to the Regional Representative promptly after the meeting. If the plan was approved by the members, the Bureau will issue the approved organization certificate to the new Federal credit union. Promptly upon the issuance of the organization certificate, and within the six months from the date fixed for the exercise of the option, the members of the new Federal credit union, being the subscribers and all those who authorized transfer of membership to it and who have not terminated membership prior thereto, shall meet upon at least seven days but no more than thirty days written notice to be given by the subscribers, for the purpose of nominating and electing a board of directors and a credit committee, all to hold office in accordance with the provisions of the bylaws governing the organization meeting of the new credit union, and the transaction of such other business as may be necessary and proper. Immediately after such meeting, the board of directors shall meet, elect executive officers and appoint a supervisory committee, all to hold office in accordance with the provisions of the bylaws governing the organization of the credit union, and transact such other business as may be necessary and proper. The division of assets and liabilities shall take place promptly after the foregoing organization meetings of the new Federal credit union have been held, and upon such

transfer the new Federal credit union shall be vested with all the assets received and shall be responsible for all the liabilities assumed, as though the division of assets and liabilities had not taken place.

PART 311—SCALEDOWN OF SHARES

Sec.

311.1 When scaledown of shares is permissible.
311.2 Approval by board of directors and suspension.
311.3 Determination of amount of scaledown required.
311.4 Submittal to Bureau for approval.
311.5 Approval of scaledown by Director.
311.6 Approval by majority of all members.
311.7 Completion of scaledown.
311.8 Recoveries on assets charged off.
311.9 Future earnings not available for restoration of scaledown.

AUTHORITY: §§ 311.1 to 311.9 issued under sec. 21, 73 Stat. 635.

§ 311.1 When scaledown of shares permissible.

When a Federal credit union is in a condition of insolvency to the extent that the members' shareholdings are impaired, and when it appears that there is a reasonable expectation of future succesful credit union operations upon a restoration of solvency by means of charging off actual and reasonably estimated losses against a uniform pro-rata reduction of the members' shareholdings (hereinafter referred to as a scaledown), the credit union may conduct such a scaledown in accordance with the regulations in this part.

§ 311.2 Approval by board of directors and suspension.

The proposition for such scaledown shall first be approved by a majority of the board of directors and a suspension of the acceptance of payments on and withdrawal of shares and the granting of loans shall be put into immediate force and effect. This suspension, and any prior suspension action taken by the board including any requirement of written notice of intention to withdraw shares, then in force and effect, shall remain in force and effect until terminated by the board of directors following accomplishment of the scaledown, or until such termination is authorized by the Director.

§ 311.3 Determination of amount of scaledown required.

(a) The board of directors shall prepare an analysis of the credit union's financial condition covering the causes of its insolvency and its actual and estimated losses, including an analysis of its outstanding delinquent and doubtful loans to members. Those items which are proposed to be charged off against the scaledown shall be separately identified in detail and listed on a separate schedule.

(b) On the basis of the actual and estimated losses of all kinds, the board of directors shall determine the amount by which it is necessary to scaledown the members' shareholdings in order to restore the solvency of the credit union, and, on the basis of the total of such shareholdings, the percentage by which such shareholdings will be scaled down in achieving such result.

§ 311.4 Submittal to Bureau for approval.

The analysis, schedule and determination required by § 311.3 (a) and (b), together with a current financial and statistical report of the credit union (Form FCU–109) shall be submitted by the board of directors to the Regional Representative.

§ 311.5 Approval of scaledown by Director.

If the Director is satisfied that the proposed scaledown is fair and equitable to the members, that it will restore the solvency of the credit union, and that there is a reasonable expectation of future successful credit union operations, he will approve the proposal for the scaledown and authorize the board of directors to submit it to the members.

§ 311.6 Approval by majority of all members.

Upon authorization by the Director the board of directors promptly shall cause a special meeting of the members to be called in accordance with the provisions of the bylaws for consideration of the proposal. The members shall have the right to vote in person at the meeting, or by written ballot to be filed not later than thirty days following the date of the meeting. In addition to stating the purpose of the meeting, the written notice shall contain a form of written ballot for the use of those members who chose to vote thereby, and shall state when and where such ballots may be filed. Approval of the proposition for the scaledown shall be by the affirmative vote of a majority of all the members.

§ 311.7 Completion of scaledown.

If the scaledown is approved by the majority of the members it shall be recorded on the books and records of the credit union, including the individual share accounts of the members. In addition, a schedule of the individual share accounts of the members showing the account number, the name, the individual share balance before the scaledown, the amount of scaledown applicable to each member and the individual share balance after the scaledown shall be prepared in duplicate and one copy, certified correct by the treasurer of the credit union, shall be forwarded to the Regional Representative. Thereafter the board of directors shall terminate the suspension on share payments and withdrawals and on the granting of loans, and credit union operations may be resumed.

§ 311.8 Recoveries on assets charged off.

The assets of the credit union which were charged off in the scaledown may be segregated on the books and records of the credit union and held for the benefit of the members whose share account balances were reduced in the scaledown if provided for in the scaledown proposal voted on by the members. Any recoveries on these assets shall be distributed to such individuals (whether or not they are members at the time of recovery or distribution) from time to time in amounts which bear the same ratio to the amounts by which the individual members' share accounts were reduced as the total amount to be distributed bears to the total amount of assets so segregated.

§ 311.9 Future earnings not available for restoration of scaledown.

Future earnings of the credit union shall not be available for distribution to restore in whole or in part amounts by which members' share accounts were reduced by virtue of the scaledown.

[F.R. Doc. 60–11586; Filed, Dec. 13, 1960; 8:54 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 507]

[Reg. Docket No. 597]

AIRWORTHINESS DIRECTIVES

Luscombe

Pursuant to the authority delegated to me by the Administrator (14 CFR Part 405), notice is hereby given that the Federal Aviation Agency has under consideration a proposal to amend Part 507 of the Regulations of the Administrator to include an airworthiness directive requiring inspection of the wing root area on Luscombe Model 8 Series aircraft for chafing between the aileron pulley and/or aileron cable and the forward wing tank fuel line. Existence of such a condition has resulted in the leakage of fuel into the cockpit and the creation of a fire or explosion hazard.

Interested persons may participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should be submitted in duplicate to the Docket Section of the Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. All communications received on or before January 13, 1961, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, in the Docket Section, for examination by interested persons when the prescribed date for return of comments has expired. This proposal will not be given further distribution as a draft release.

This amendment is proposed under the authority of sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423).

In consideration of the foregoing, it is proposed to amend § 507.10(a) of Part 507 (14 CFR Part 507), by adding the following airworthiness directive:

LUSCOMBE. Applies to all Model 8 Series aircraft incorporating wing fuel tanks.

Compliance required as indicated.

Within 50 hours' time in service after the effective date of this directive, remove the fairing at the wing root of each wing and inspect the wing root area for interference between the forward fuel line and the aileron cable and/or aileron pulley. Remove the trim panel over the forward door post and inspect the forward door post area for interference between the forward fuel line and the aileron cable and/or pulley. If any interference is found, bend fuel line sufficiently to provide the necessary clearance. Replace any worn fuel lines being careful to provide clearance when installing the replacement fuel line.

Issued in Washington, D.C., on December 8, 1960.

OSCAR BAKKE,
Director,
Bureau of Flight Standards.

[F.R. Doc. 60–11623; Filed, Dec. 13, 1960; 9:02 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60–NY–124]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Blue Federal airway No. 16 extends from the Waverly, Va., radio range to the Tappahannock, Va., radio range. The Federal Aviation Agency is considering revoking this airway. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Waverly to Tappahannock is adequately served by VOR Federal airway No. 213. Therefore, it appears that the retention of Blue 16 is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Blue 16, its associated control areas and reporting points. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 8, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60–11624; Filed, Dec. 13, 1960; 9:02 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60–NY–114]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Blue Federal airway No. 49 extends from Wildwood, N.J., to Philadelphia, Pa. The Federal Aviation Agency is considering revoking this airway. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Wildwood to Philadelphia is adequately served by VOR Federal airway No. 239. In addition, the Federal Aviation Agency peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, shows no aircraft movements on this airway. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Blue 49 and its associated control areas. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures. Concurrently with this action, § 601.4649, relating to designated reporting points on Blue 49 would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 8, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60–11625; Filed, Dec. 13, 1960; 9:02 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60–NY–123]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Red Federal airway No. 45 extends from the Blackstone, Va., radio range to the intersection of the north course of the Quantico, Va., (MCAS) radio range and the northwest course of the Washington, D.C., radio range (McLean, Va., Intersection). The Federal Aviation Agency is considering revoking this airway. It is the policy of this agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Blackstone to McLean is adequately served by VOR Federal airway No. 3. Therefore, it appears that the retention of Red 45 is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Red 45, its associated control areas and reporting points. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this airway. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be

submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on December 8, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11626; Filed, Dec. 13, 1960; 9:02 a.m.]

[14 CFR Part 608]

[Airspace Docket No. 59-KC-43]

RESTRICTED AREAS

Withdrawal of Proposal To Designate a Restricted Area/Military Climb Corridor

In a notice of proposed rule making published in the FEDERAL REGISTER as Airspace Docket No. 59-KC-43 on December 9, 1959 (24 F.R. 9937), it was proposed to designate a Restricted Area/Military Climb Corridor to extend along the 039° True radial of the TVOR at the K. I. Sawyer AFB, Mich.

In response to this Notice, the Department of the Air Force has advised the Federal Aviation Agency that the proposed alignment of the climb corridor would not meet the requirements for aircraft operations being conducted at the K. I. Sawyer AFB. Therefore, the proposal to designate a Restricted Area/Military Climb Corridor at K. I. Sawyer AFB as proposed in Airspace Docket No. 59-KC-43 is being withdrawn. The designation of a Restricted Area/Military Climb Corridor at K. I. Sawyer AFB will be further coordinated between the Federal Aviation Agency and the Department of the Air Force.

In consideration of the foregoing, the notice of proposed rule making contained in Airspace Docket 59-KC-43 is hereby withdrawn.

(Sec. 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 7, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11627; Filed, Dec. 13, 1960; 9:02 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Classification No. 3]

ALASKA

Fairbanks Land District; Small Tract Classification

CORRECTION

1. Pursuant to authority delegated to me by Bureau Order No. 541, dated April 21, 1954 (10 F.R. 2473), certain lands in the Fairbanks Land District were classified for small tract purposes by Classification Order No. 3, dated November 30, 1960.

2. The lands described in that order as lying in T. 7 S., R. 6 E., F.M., are corrected to read as follows:

Section 7: Lots 1, 2, 4, and NE¼NW¼

3. All other parts of Classification Order No. 3 remain as is.

RICHARD L. QUINTUS,
Operations Supervisor, Fairbanks.

[F.R. Doc. 60-11587; Filed, Dec. 13, 1960; 8:54 a.m.]

[California No. 606]

CALIFORNIA

Small Tract Classification Order

NOVEMBER 28, 1960.

1. Pursuant to the authority delegated to me by the California State Supervisor, Bureau of Land Management, under Part II, Document 4, California State Office, dated November 19, 1954 (19 F.R. 7697), I hereby classify the following described public land, totaling approximately 1527.10 acres in Siskiyou County, California as suitable for title transfer under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a), as amended:

MOUNT DIABLO MERIDIAN

T. 45 N., R. 7 W.,
Sec. 2: Lots 1, 2, 3, 4, 5, 6, S½N½, N½SE¼, and SW¼;
Sec. 3: Lots 1 thru 18 inclusive;
Sec. 10: Lots 23, 24, 25, 26 thru 44 inclusive, 48, 49 and M.S. 6463;
Sec. 11: Lots 1 thru 6 inclusive, 8 thru 11 inclusive, N½NW¼, SE¼NW¼.

Containing approximately 1527.10 acres, of which 150 acres are covered by 46 applications from persons entitled to preference under 43 CFR 257.5(a).

2. Classification of the above described lands by this order segregates them from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands classified by this order shall not become subject to applications under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended, until it is so provided by an order to be issued by an authorized officer, opening the lands to application or bid.

4. All valid applications filed prior to November 28, 1960, will be granted, as soon as possible, the preference right provided for by 43 CFR 257.5(a).

R. G. SPORLEDER,
Officer - in - Charge, Northern Field Group, Sacramento 14, California.

[F.R. Doc. 60-11588; Filed, Dec. 13, 1960; 8:55 a.m.]

MONTANA

Notice of Filings of Protraction Diagrams

DECEMBER 6, 1960.

Notice is hereby given that, effective with this publication, the following protraction diagrams are officially filed of record in the Montana Land Office, 1245 North 29th Street, Billings, Montana. In accordance with 43 CFR 192.42a(c) (24 F.R. 4140, May 22, 1959) and amendments of Parts 188, 193, 195, 196, 198, 199 and 200 of Title 43, Code of Federal Regulations, as published in 25 F.R. 2797, April 2, 1960 (Circular 2040), these protractions will become the basic record for the description of land in applications and offers for mineral leases and permits filed at and after 10:00 a.m. on the thirty-first day after publication of this notice. These protractions will also become the basic record for the description of lands in applications for all other authorized uses at the above specified time.

PRINCIPAL MERIDIAN, MONTANA

Unsurveyed townships:
Tps. 4 N., Rs. 17 and 18 W.
Tps. 5 N., Rs. 17 and 18 W.
Tps. 6 N., Rs. 16, 17 and 18 W.
Tps. 7 N., Rs. 12, 13, 17 and 18 W.
Tps. 8 N., Rs. 16 and 17 W.
Tps. 9 N., Rs. 15, 16 and 17 W.
T. 17 N., R. 28 W.
Tps. 19 N., Rs. 15 and 28 W.
Tps. 20 N., Rs. 28 and 29 W.
T. 21 N., R. 31 W.
T. 22 N., R. 28 W.
T. 23 N., R. 29 W.
Tps. 24 N., Rs. 28 and 29 W.
Unsurveyed sections in:
T. 4 N., R. 19 W.
Tps. 5 N., Rs. 16 and 19 W.
T. 6 N., R. 19 W.
T. 7 N., R. 19 W.
T. 9 N., R. 12 W.
Tps. 15 N., Rs. 18 and 19 W.
Tps. 16 N., Rs. 18 and 19 W.
Tps. 17 N., Rs. 17, 18, 29 and 30 W.
Tps. 18 N., Rs. 17, 18, 19, 30 and 31 W.
Tps. 19 N., Rs. 16, 18, 19, 27 and 31 W.
Tps. 20 N., Rs. 18, 19, 30, 31, 32 and 33 W.
Tps. 21 N., Rs. 18, 19 and 32 W.
Tps. 22 N., Rs. 18, 19, 31 and 32 W.
Tps. 23 N., Rs. 18, 19, 28, 31, 32 and 33 W.
Tps. 24 N., Rs. 18, 19, 30, 32, 33 and 34 W.
T. 25 N., R. 28 W.

Copies of these diagrams are for sale at one dollar ($1.00) per sheet by the Cadastral Engineering Office, Bureau of Land Management, 1245 North 29th Street, Billings, Montana.

J. R. PENNY,
State Supervisor.

[F.R. Doc. 60-11589; Filed, Dec. 13, 1960; 8:55 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[643.3-0]

RAYON STAPLE FIBER FROM CUBA

Notice That There Is Reason To Believe or Suspect Purchase Price Is Less or Likely To Be Less Than Foreign Market Value

DECEMBER 8, 1960.

Pursuant to section 201(b) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), notice is hereby given that there is reason to believe or suspect, from information presented to me, that the purchase price of rayon staple fiber imported from Cuba is less or likely to be less than the foreign market value, as defined by sections 203 and 205, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162 and 164).

Customs officers are being authorized to withhold appraisement of entries of rayon staple fiber from Cuba pursuant to § 14.9 of the Customs Regulations (19 CFR 14.9).

[SEAL] D. B. STRUBINGER,
Acting Commissioner of Customs.

[F.R. Doc. 60-11612; Filed, Dec. 13, 1960; 8:59 a.m.]

[643.3-0]

RAYON STAPLE FIBER FROM JAPAN

Notice That There Is Reason To Believe or Suspect Purchase Price, or Exporter's Sales Price, Is Less or Likely To Be Less Than Foreign Market Value

DECEMBER 8, 1960.

Pursuant to section 201(b) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), notice is hereby given there is reason to believe or suspect, from information presented to me, that the purchase price, or exporter's sales price, as the case may be, of rayon staple fiber imported from Japan is less or likely to be less than the foreign market value, as defined by sections 203, 204, and 205, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163, and 164).

Customs officers are being authorized to withhold appraisement of entries of rayon staple fiber from Japan pursuant

to § 14.9 of the Customs Regulations (19 CFR 14.9).

[SEAL] D. B. STRUBINGER,
Acting Commissioner of Customs.

[F.R. Doc. 60-11613; Filed, Dec. 13, 1960; 8:59 a.m.]

[AA 643.2-A]

RESIDUAL FEED YEAST FROM CUBA

Determination of No Sales at Less Than Fair Value

DECEMBER 8, 1960.

A complaint was received that residual feed yeast from Cuba was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that residual feed yeast from Cuba is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. Residual feed yeast identical to that exported to the United States is sold for home consumption in Cuba. Comparison was, accordingly, made between purchase price and home market price. The comparison disclosed no sales to the United States at less than home market price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11614; Filed, Dec. 13, 1960; 8:59 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13692, 13693; FCC 60M-2068]

EMPIRE COMMUNICATIONS CO. AND TELEPHONE ANSWERING SERVICE

Order Continuing Hearing

In re applications of Leslie F. Smith, Jr., d/b as Empire Communications Company, Docket No. 13692, File Nos. 2233-C2-P-59, 2234-C1-P-59, for Construction Permits to establish a new two-way communication service in the Domestic Public Land Mobile Radio Service at Salem, Oregon; Vincent W. Elliott, d/b as Telephone Answering Service, Docket No. 13693, File Nos. 2639-C2-P-59, 1530-C1-P/L-60, for construction permits to establish a new two-way communication service in the Domestic Public Land Mobile Radio Service at Salem, Oregon.

The Hearing Examiner having under consideration the desirability of continuing this proceeding;

It appearing that the matter is scheduled to go to hearing on December 13, 1960; and

It further appearing that Leslie F. Smith on December 2, 1960, filed a motion to dismiss the opposing application, which pleading can not be acted upon in advance of the scheduled hearing date and that such date should be continued to remove any ambiguity in the minds of the parties;

It is ordered, This 6th day of December 1960, on the Hearing Examiner's own motion that the hearing is continued from December 13 to December 20, 1960.

Released: December 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11636; Filed, Dec. 13, 1960; 8:52 a.m.]

[Docket No. 13659; FCC 60M-2067]

W. R. FRIER (WBHF)

Order Scheduling Hearing

In re application of W. R. Frier (WBHF), Cartersville, Georgia, Docket No. 13659, File No. BP-12264; for construction permit.

Pursuant to the provisions of the Chief Hearing Examiner's order of December 2, 1960 (FCC 60M-2054) and at the suggestion of petitioner, W. R. Frier (WBHF), that 60 days should be allowed to afford the Commission opportunity to act upon his petition for reconsideration and grant without hearing: *It is ordered,* This 6th day of December 1960, that the date for hearing in the above-entitled matter is designated as February 3, 1961.

Released: December 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11637; Filed, Dec. 13, 1960; 8:52 a.m.]

[Docket No. 13850; FCC 60M-2069]

MAINE RADIO AND TELEVISION CO. (WCSH-TV)

Order Continuing Hearing

In re application of Maine Radio and Television Company (WCSH-TV), Portland, Maine, Docket No. 13850, File No. BPCT-2703; for construction permit (Channel 6).

It is ordered, This 6th day of December 1960, that the hearing in the above-entitled proceeding now scheduled for December 21, 1960, is continued to a date to be determined at a pre-hearing conference to be held on December 21, 1960, at 10:00 a.m., in the offices of the Commission, Washington, D.C.

Released: December 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11638; Filed, Dec. 13, 1960; 8:52 a.m.]

[Docket Nos. 13639, 13640; FCC 60M-2075]

SOUTHEASTERN BROADCASTING SYSTEM, INC. (WMJM) AND WASHINGTON BROADCASTING CO., INC. (WSNT)

Order Scheduling Prehearing Conference

In re applications of Southeastern Broadcasting System, Inc. (WMJM), Cordele, Georgia, Docket No. 13639, File No. BP-12389; Washington Broadcasting Company, Inc (WSNT), Sandersville, Georgia, Docket No. 13640, File No. BP-13105; for construction permits.

On the Examiner's own motion: *It is ordered,* This 7th day of December 1960, that a further prehearing conference in the above-entiteld matter will be held in the offices of the Commission, Washington, D.C., on January 12, 1961, at 10:00 a.m.

Released: December 8, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11639; Filed, Dec. 13, 1960; 8:52 a.m.]

[Docket No. 13711 etc.; FCC 60-1415]

TRIANGLE PUBLICATIONS, INC. (WNHC) ET AL.

Memorandum Opinion and Order

In re applications of Triangle Publications, Inc. (WNHC), Radio and Television Division, New Haven, Connecticut, Docket No. 13711, File No. BP-12107; Charlottesville Broadcasting Corporation (WJMA), Orange, Virginia, Docket No. 13712, File No. BP-12161; WKRZ, Inc. (WKRZ), Oil City, Pennsylvania, Docket No. 13714, File No. BP-12231; C. M. Zinn and C. Leslie Golliday, d/b as Martinsburg Broadcasting Company (WEPM), Martinsburg, West Virginia, Docket No. 13717, File No. BP-12375; United Broadcasting Company, Inc. (WOOK), Washington, D.C., Docket No. 13720, File No. BP-12426; Eastern Broadcasting Corporation (WHAP), Hopewell, Virginia, Docket No. 13723, File No. BP-12702; WSTV, Inc. (WSTV), Steubenville, Ohio, Docket No. 13728, File No. BP-13115; Fred Glosser, Isadore Glosser, Sidney Ossip and Herbert Sinberg, d/b as GOSCO Broadcasters, Windber, Pennsylvania, Docket No. 13729, File No. BP-13125; Connellsville Broadcasters, Incorporated (WCVI), Connellsville, Pennsylvania, Docket No. 13731, File No. BP-13441; Cumberland Valley Broadcasting Corporation, Westernport, Maryland, Docket No. 13733, File No. BP-13472; Harry A. Epperson, Sr., Luray, Virginia, et al., Docket No. 13735, File No. BP-13474 et al.

1. The Commission has before it for consideration a petition to sever filed by United Broadcasting Company, Inc., on October 21, 1960, and a statement in support filed by the Commission's Broadcast Bureau on November 3, 1960.

2. By Order released August 5, 1960 (FCC 60-942), the Commission designated for hearing United's application to increase power from 250 watts to 1 kw and install a new transmitter. Twenty-five other applicants were designated for hearing in a consolidated proceeding. The applicants were placed into three groups for hearing purposes. The only link between Groups 1 and 2 and Group 3 is the interference between petitioner's application, which was placed in Group 2, and that of Independence Broadcasting Company, Inc. (WHAT), Philadelphia, Pennsylvania, in Group 3. Petitioner now requests that Groups 1 and 2 be severed from Group 3.

3. The interference to petitioner from the proposal of WHAT would affect 1,260 persons or 0.1 percent of the population within petitioner's 0.5 mv/m contour; a number of existing stations serve the area of interference. The aggregate total proposed and existing interference to petitioner's proposal would affect 1.74 percent of the population within its proposed 0.5 mv/m contour. The petitioner does not cause interference to the present or proposed operation of WHAT. Additionally, petitioner and WHAT have agreed to accept any interference caused each other by their respective proposals.

Accordingly, it is ordered, This 30th day of November 1960, That the petition to sever filed by United Broadcasting Company, Inc. on October 21, 1960, is granted;

It is further ordered, That the applications of WKRZ, Inc. (BP-12231), Connellsville Broadcasters, Incorporated (BP-13441), Fred Glosser, Isadore Glosser, Sidney Ossip and Herbert Sinberg, d/b as Gosco Broadcasters (BP-13125), WSTV, Inc. (BP-13115), Cumberland Valley Broadcasting Corporation (BP-13472), C. M. Zinn and C. Leslie Golliday, d/b as Martinsburg Broadcasting Company (BP-12375), Harry A. Epperson, Sr. (BP-13474), Charlottesville Broadcasting Corporation (BP-12161), Eastern Broadcasting Corporation (BP-12702), United Broadcasting Company, Inc. (BP-12426) and Windber Community Broadcasting System, Windber, Pennsylvania (BP-13475) are severed from the above-captioned proceeding;

It is further ordered, That the applications so severed shall be retained in hearing to resolve the issues which were specified in an Order released August 5, 1960 (FCC 60-942) and which are pertinent to these applications; and that in the event the application of C. M. Zinn and C. Leslie Golliday d/b as Martinsburg Broadcasting Company or the application of Connellsville Broadcasters, Incorporated, is granted, their respective construction permits shall contain the applicable conditions specified in the aforesaid Order;

It is further ordered, That the parties respondent to the severed applications are made parties to the proceeding on the severed applications;

It is further ordered, That the issues in the severed proceeding may be enlarged by the Examiner in the manner specified in the Order of August 5, 1960 (FCC 60-942).

Released: December 8, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11640; Filed, Dec. 13, 1960; 8:52 a.m.]

[List 18; FCC 60-1471]

STANDARD BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

DECEMBER 9, 1960

Notice is hereby given, pursuant to § 1.354(c) of the Commission rules, that on January 17, 1961, the standard broadcast applications listed in the Appendix set forth below will be considered as ready and available for processing, and that pursuant to §§ 1.106(c)(1) and 1.361(b) of the Commission rules, an application, in order to be considered with any application appearing on the attached list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., no later than (a) the close of business on January 16, 1961 or (b) if action is taken by the Commission on any listed application prior to January 17, 1961, no later than the close of business on the day preceding the date on which such action is taken, or (c) the day on which a conflicting application was "cut-off" because it was timely filed for consideration with an application on a previous such list.

Adopted: December 7, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

APPENDIX

Applications from the top of the processing line

BP-13403 NEW, Port Jefferson, New York
Port Jefferson Broadcasting Co.
Req: 1490 kc, 100 w, U.

BP-13621 KAFP, Petaluma, Calif.
Lloyd Burlingham
Has: 1490 kc, 250 w, U.
Req: 1490 kc, 250 w, 1 kw-LS, U.

BP-13623 NEW, Corbin, Ky.
Tri-County Broadcasting Co.
Req: 1330 kc, 5 kw, Day.

BP-13624 NEW, Ukiah, Calif.
Ukiah Radio
Req: 1300 kc, 5 kw, Day.

BP-13627 NEW, Port Arthur, Tex.
KWEN Broadcasting Co.
Req: 1510 kc, 1 kw, Day.

BMP-8789 KVIL, Highland Park, Tex.
University Advertising Co.
Has: 1150 kc, 500 w, Day.
Req: 1150 kc, 1 kw, Day.

BP-13628 NEW, Americus, Ga.
Sumter Broadcasting Co.
Req: 1390 kc, 5 kw, Day.

BP-13632 WTMP, Temple Terrace, Fla.
Rounsaville of Tampa, Inc.
Has: 1150 kc, 5 kw, DA, Day (Tampa, Fla.).
Req: 1150 kc, 1 kw, 5 kw-LS, DA-2, U (Temple Terrace, Fla.).

BP-13633 NEW, Norwood, Ohio.
Massillon Broadcasting Co., Inc.
Req: 1320 kc, 500 w, Day.

BP-13634 KIUL, Garden City, Kans.
KIUL, Inc.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1kw-LS, U.

BP-13635 NEW, Anadarko, Okla.
James R. Williams.
Req: 540 kc, 250 w, Day.

BMP-8790 WTRN, Tyrone, Pa.
Tyrone Broadcasting Co.
Has: 1290 kc, 1 kw, Day.
CP: 1340 kc, 250 w, U.
Req: 1340 kc, 250 w, 1 kw-LS, U.

BP-13636 WMGW, Meadville, Pa.
Regional Broadcasters, Inc.
Has: 1490 kc, 250 w, U..
Req: 1490 kc, 250 w, 1 kw-LS, U.

BP-13638 KETX, Livingston, Tex.
Polk County Broadcasting Co.
Has: 1440 kc, 1 kw, Day.
Req: 1440 kc, 5 kw, Day.

BP-13639 NEW, Trenton, Tenn.
Trenton Broadcasting Co.
Req: 1530 kc, 1 kw (250w critical hours), Day.

BP-13640 KRAL, Rawlins, Wyo.
Rawlins Broadcasting Co.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw-LS, U.

BP-13641 WJIM, Lansing, Mich.
Gross Telecasting, Inc.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw-US, U.

BP-13645 WIST, Charlotte, N.C.
WIST, Inc.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw-LS, DA-D, U.

BP-13646 NEW, Wood River, Ill.
Madison County Broadcasting Co.
Req: 590 kc, 500 w, DA, Day.

BP-13647 KFBC, Cheyenne, Wyo.
Frontier Broadcasting Co.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw-LS, U.

BP-13649 NEW, Jacksonville, Fla.
B. F. J. Timm.
Req: 970 kc, 1 kw, DA, Day.

BP-13650 KGFW, Kearney, Nebr.
Central Nebraska Broadcasting Co.
Has: 1340 kc, 250 w, U.
Req: 1340 kc, 250 w, 1 kw-LS, U.

BP-13655 WAVC, Boaz, Ala.
Cicero Broadcasting Co.
Has: 1300 kc, 500 w, Day.
Req: 1300 kc, 1 kw, Day.

BP-13656 WTIV, Titusville, Pa.
Crawford County Broadcasting Co.
Has: 1290 kc, 500 w, Day.
Req: 1230 kc, 250 w, 500 w-LS, U.

BP-13657 WAGY, Forest City, N.C.
Tri-City Broadcasting Co.
Has: 1320 kc, 500 w, Day.
Req: 1320 kc, 1 kw, Day.

BP-13660 KOPR, Butte, Mont.
Copper Broadcasting Co.
Has: 550 kc, 1 kw, DA-N, U.
Req: 550 kc, 1 kw, 5 kw-LS, DA-N, U.

BP-13661 WCUE, Cuyahoga Falls, Ohio.
WCUE Radio, Inc.
Has: 1150 kc, 1 kw, DA-D (Akron, Ohio).
Req: 1150 kc, 500 w, 1 kw-LS, DA-2, U (Cuyahoga Falls, Ohio).

BP-13663 NEW, Ybor City, Fla.
Ybor City Broadcasting Co.
Req: 1510 kc, 250 w, Day.

BP-13664 WPAX, Thomasville, Ga.
H. Wimpy
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw-LS, U.

BP-13665 NEW, New Port Richey, Fla.
Jasmin Properties, Inc.
Req: 1400 kc, 250 w, Day.

BP-13666 **KXLE, Ellensburg, Wash.**
Western Broadcasters, Inc.
Has: 1240 kc, 250 w, U.
Req: 1240 kc, 250 w, 1 kw-LS, U.

BP-13667 **WVOW, Logan, W. Va.**
Logan Broadcasting Corp.
Has: 1290 kc, 1 kw, 5 kw-LS, DA-2, U.
Req: 1290 kc, 1 kw, 5 kw-LS, DA-N, U.

BP-13668 **WGIL, Galesburg, Ill.**
Galesburg Broadcasting Co.
Has: 1400 kc, 250 w, U.
Req: 1400 kc, 250 w, 1 kw-LS, U.

BP-13669 **NEW, Tupelo, Miss.**
Marshall C. and Sarah C. Parker.
Req: 1440 kc, 1 kw, Day.

BP-13670 **NEW, Rantoul, Ill.**
Regional Radio Service.
Req: 1460 kc, 500 w, Day.

BP-13673 **NEW, New Milford, Conn.**
Colonial Broadcasting Co.
Req: 940 kc, 1 kw, Day.

BMP-8808 **WMOZ, Mobile, Ala.**
WMOZ, Inc.
Has: 960 kc, 1 kw, Day.
Req: 960 kc, 5 kw, Day.

BP-13674 **NEW, Fresno, Calif.**
Higson-Frank Radio Enterprises.
Req: 1510 kc, 500 w, Day.

BP-13676 **WLAY, Muscle Shoals, Ala.**
Slatton-Quick Co., Inc.
Has: 1450 kc, 250 w, U.
Req: 1450 kc, 250 w, 1 kw-LS, U.

BP-13678 **NEW, Laurinburg, N.C.**
George W. Phillips.
Req: 1300 kc, 500 w, Day.

BP-13679 **NEW, Aitkin, Minn.**
Lake Region Broadcasting Service.
Req: 930 kc, 1 kw, Day.

BP 13680 **NEW, Flagstaff, Ariz.**
Flagstaff Broadcasting, a joint venture.
Req: 930 kc, 1 kw, Day.

BMP-8809 **WMNT Manati, P.R.**
Arecibo Broadcasting Corp., Inc.
Has: 1500 kc, 250 w, U.
Req: 1400 kc, 250 w, 1 kw-LS, U.

BP-13681 **NEW, Holly Springs, Miss.**
Holly Spring Broadcasting Co.
Req: 1500 kc, 1 kw, Day.

BP-13683 **NEW, Chadbourn, N.C.**
Ebony Enterprises, Inc.
Req: 1590 kc, 1 kw, Day.

Applications on which 309(b) letters have been issued

BP-13625 **NEW, Madison, Wis.**
Don L. Huber.
Req: 920 kc, 1 kw, Day.

BP-13626 **NEW, Ft. Atkinson, Wis.**
Jefferson County Broadcasting Co.
Req: 940 kc, 1 kw, Day.

BP-13644 **NEW, Ft. Atkinson, Wis.**
Don L. Huber.
Req: 940 kc, 500 w, Day.

BP-13651 **NEW, Holly, Mich.**
Baraland, Inc.
Req: 1530 kc, 1 kw, DA, Day.

BP-13652 **WOKY, Milwaukee, Wis.**
Bartell Broadcasters, Inc.
Has: 920 kc, 1 kw, DA-1, U.
Req: 920 kc, 1 kw, 5 kw-LS, DA-2, U.

Application deleted from Public Notice of August 2, 1960

(FCC 60-936) (25 F.R. 7410)

BP-13310 **NEW, Columbus, Nebr.**
The City and Farm Broadcasting Incorporation.
Req: 1590 kc, 500 w, Day.
(Assigned new file number BP-14419.)

[F.R. Doc. 60-11642; Filed, Dec. 13, 1960; 8:52 a.m.]

NOTICES

[Mexican List 221]

MEXICAN BROADCAST STATIONS

List of Changes, Proposed Changes, and Corrections in Assignments

NOVEMBER 14, 1960.

Notification under the provisions of part III, section 2 of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignments of Mexican Broadcast Stations modifying the appendix containing assignments of Mexican Broadcast Stations (Mimeograph 47214-6) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
		550 kilocycles				
XEUC (increase in day power from 0.25 kw).	Tehuantepec, Oaxaca.	1 kw D/0.25 kw N.	ND	U	IV-N, III-D	Feb. 14, 1961
		570 kilocycles				
XEVX (now in operation).	Colmalcalco, Tabasco.	1 kw D/0.25 kw N.	ND	U	III-D, IV-N	Nov. 14, 1960
XEOA (change in daytime classification).	Oaxaca, Oaxaca.	5 kw D/0.25 kw N.	ND	U	III-D, IV-N	Dec. 14, 1960
		580 kilocycles				
XEFI (change in daytime classification).	Chihuahua, Chihuahua.	5 kw D/0.25 kw N.	ND	U	III-D, IV-N	Do.
		610 kilocycles				
XEKZ (now in operation on new frequency).	Tehuantepec, Oaxaca.	1 kw D/0.5 kw N.	ND	U	III	Nov. 14, 1960
		690 kilocycles				
XEFJ (correction in classification, previously notified as Class IV).	Tezintlan, Puebla.	1 kw D/0.100 kw N.	ND	U	II	Do.
		850 kilocycles				
XEM (PO: 1300 kc 1 kw D/0.5 kw N ND U III).	Chihuahua, Chihuahua.	5 kw.	ND	D	II	Apr. 14, 1961
		860 kilocycles				
XETW (new).	Tampico, Tamaulipas.	0.5 kw.	ND	D	II	Do.
XENL (reduction in night power and change in directional antenna system).	Monterrey, Nuevo Leon.	5 kw D/2 kw N.	DA-N	U	III	Feb. 14, 1961
		970 kilocycles				
XEDF (increase in power—previously notified with 5 kw D/1 kw N DA-N).	Mexico, D.F.	10 kw D/2.5 kw N.	DA-N	U	III	Do.
		1080 kilocycles				
New.	Ciudad Camargo, Chihuahua.	0.25 kw.	ND	D	II	Apr. 14, 1961
		1080 kilocycles				
XEVR (new).	Irtlan del Rio, Nayarit.	0.25 kw.	ND	D	II	Do.
		1110 kilocycles				
XEVS (new in operation).	Villa de Seris, Sonora.	0.25 kw.	ND	D	II	Nov. 14, 1960
		1190 kilocycles				
XEWK (increase in power, previously 10 kw ND U).	Guadalajara, Jalisco.	50 kw.	DA-N	U	I-B	Feb. 14, 1961
		1260 kilocycles				
XEL (increase in day power, previously 5 kw D/1 kw N ND U III-B).	Mexico, D. F.	10 kw D/1 kw N.	ND	U	III-B	Nov. 14, 1960
		1310 kilocycles				
XETIA (change in call letters and increase in day power—previously XEJE 0.25 kw ND U IV).	Guadalajara, Jalisco.	1 kw D/0.25 kw N.	ND	U	III-D, IV-N	Feb. 14, 1961
XECX (new).	Tehuacan, Puebla.	0.25 D/0.100 kw N.	ND	U	IV	Apr. 14, 1961
		1340 kilocycles				
XELU (now in operation).	Cd. Serdan, Puebla.	0.25 kw.	ND	U	IV	Oct. 14, 1960
		1370 kilocycles				
XEXL (change in classification—previously notified as Class IV).	Patzcuaro, Michoacan.	10 kw D/0.1 kw N.	ND	U	III-D, IV-N	Nov. 14, 1960
		1380 kilocycles				
XERS (notified previously with 2.5 kw DA-N).	Gomez Palacio, Durango.	0.5 kw D/0.25 kw N.	ND	U	III-D, IV-N	Do.
		1390 kilocycles				
XESP (now in operation on new frequency).	San Pedro Tlaquepaque, Jalisco.	1 kw D/0.25 kw N.	ND	U	III-D, IV-N	Do.
		1400 kilocycles				
XELH (increase in day power—previously 0.25 kw ND U).	Acaponeta, Nayarit.	1 kw D/0.25 kw N.	ND	U	IV	Feb. 14, 1961

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
		1410 kilocycles				
XEXJ (change in call letters from XEWM).	Villahermosa, Tabasco.	5 kw D/0.5 kw N.	ND	U	III-B	Nov. 14, 1960
		1430 kilocycles				
XEII (add "reduction in night power" to annotation to notification contained in Change List No. 218).	Chihuahua, Chihuahua.	5 kw D/0.15 kw N.	ND	U	III-D, IV-N	Do.
		1430 kilocycles				
XEIG (change in call letters and frequency—previously notified as XEYG on 1,330 kc.).	Iguala, Guerrero.	1 kw D/0.100 kw N.	ND	U	III-D, IV-N	Apr. 14, 1961
		1450 kilocycles				
XEXD (new).	Atlixco, Puebla.	0.5 kw D/0.25 kw N.	ND	U	IV	Do.
		1470 kilocycles				
New (new).	Irapuato, Guanajuato.	1 kw.	ND	D	III	Do.
		1490 kilocycles				
XESK (increase in power—previously 0.25 kw ND U).	San Blas, Nayarit.	0.5 kw D/0.25 kw N.	ND	U	IV	Feb. 14, 1961
XEDR (increase in day power—previously 0.5 kw D/0.25 kw N ND U).	Guaymas, Sonora.	1 kw D/0.25 kw N.	ND	U	IV	Do.
		1520 kilocycles				
XEUR (change in call letters from XECX).	Tehuacan, Puebla.	0.25 kw.	ND	U	II	Nov. 14, 1960

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11641; Filed, Dec. 13, 1960; 8:52 a.m.]

INTERSTATE COMMERCE COMMISSION

MOTOR CARRIER TRANSFER PROCEEDINGS

[Notice 423]

DECEMBER 9, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63432. By order of December 7, 1960, Division 4, Acting as an Appellate Division, approved the transfer to Stevens Express, Inc., Hutchinson, Kansas, a portion of Certificate No. MC 52054, issued August 1, 1957, to S. & C. Transport Company, Inc., South Hutchinson, Kansas, authorizing the transportation of general commodities, excluding household goods and specified commodities, over regular routes, between Kansas City, Mo., and Hutchinson, Kans., serving no intermediate points but serving the off-route points of Hillsboro, and South Hutchinson, Kans.; general commodities, excluding household goods, commodities in bulk, and various specified commodities, between St. Joseph, Mo., and Newton, Kans., serving the intermediate points of Atchison, Nortonville, Lawrence, Topeka, Manhattan, Junction City, Abilene, Salina, Lindsborg, and McPherson, Kans.; and, dairy products, from McPherson, Kans., to St. Joseph, Mo., serving the intermediate points of Lindsborg, Salina, Abilene, Junction City, Manhattan, Topeka, Lawrence, and Atchison, Kans. James F. Miller, 500 Board of Trade, 10th and Wyandotte, Kansas City 5, Mo., attorney for applicants.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60-11599; Filed, Dec. 13, 1960; 8:57 a.m.]

[Notice 354]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 9, 1960.

The following publications are governed by the Interstate Commerce Commission's general rules of practice including special rules (49 CFR 1.241) governing notice of filing of applications by motor carriers of property or passengers or brokers under sections 206, 209, and 211 of the Interstate Commerce Act and certain other proceedings with respect thereto.

All hearings and pre-hearing conferences will be called at 9:30 o'clock a.m., United States standard time, unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 263 (Sub No. 125), filed November 17, 1960. Applicant: GARRETT FREIGHTLINES, INC., 2055 Pole Line Road, P.O. Box 349, Pocatello, Idaho. Applicant's attorney: Maurice H. Greene, Boise, Idaho. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the plant site and damsite of the Four-Corners Electric Generating Plant and Dam located approximately 6½ miles southwest of Fruitland, N. Mex., as an off-route point in connection with applicant's regular route operations between Farmington and Shiprock, N. Mex., over U.S. Highway 550.

HEARING: January 25, 1961, at the New Mexico State Corporation Commission, Santa Fe, N. Mex., before Joint Board No. 87.

No. MC 531 (Sub No. 108), filed November 10, 1960. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, Houston, Tex. Applicant's attorney: Ewell H. Muse, Jr., Suite 415, Perry Brooks Building, Austin 1, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude tall oil*, in bulk, in tank vehicles, from Crossett, Pine Bluff, and Texarkana, Ark., to Oakdale, La.

NOTE: Common control may be involved.

HEARING: January 26, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Richard H. Roberts.

No. MC 531 (Sub No. 109), filed November 10, 1960. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, Houston, Tex. Applicant's attorney: Ewell H. Muse, Jr., Suite 415, Perry Brooks Building, Austin 1, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Terpene polychlorinates* and *agricultural insecticides*, in bulk, in tank vehicles, from Oakdale, La.; to Columbia, S.C., Glendale, Ariz., Greenville, Miss., Houston and Harlengin, Tex., Little Rock, Ark., and Tampa and Jacksonville, Fla.

NOTE: Common control may be involved.

HEARING: January 26, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Richard H. Roberts.

No. MC 703 (Sub No. 12), filed November 14, 1960. Applicant: HINCHCLIFF MOTOR SERVICE, INC., 3400 South Pulaski Road, Chicago 23, Ill. Applicant's attorney: Howell Ellis, Suite 1210-12 Fidelity Building, 111 Monument Circle, Indianapolis 4, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes,

transporting: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, sand, stone, and coal, household goods as defined in *Practices of Motor Common-Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious and contaminating to other lading, serving the new plant site of the W. S. Tyler Co. located in or near Mentor, Ohio, as an off-route point in connection with applicant's presently authorized regular route operations between Chicago, Ill., and Cleveland, Ohio, including Cleveland and the Commercial Zone thereof.

HEARING: February 10, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 117.

No. MC 2815 (Sub No. 18), filed November 18, 1960. Applicant: PENN-TRUCK COMPANY, INC., 392 McCoy Street, Columbus 3, Ohio. Applicant's attorney: Robert H. Griswold, Commerce Building, P.O. Box 432, Harrisburg, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities, including commodities in bulk, and those requiring special equipment*, but excluding Classes A and B explosives, and household goods as defined by the Commission, in service auxiliary to, or supplemental of rail service of The Pennsylvania Railroad Company, (1) between Indianapolis, Ind., and Crawfordsville, Ind.; from Indianapolis over U.S. Highway 136 to Crawfordsville, and return over the same route serving no intermediate points, (2) between Brazil, Ind., and junction Indiana Highways 59 and 236, near Guion, Ind.; from Brazil over Indiana Highway 59 to junction Indiana Highway 236, near Guion, and return over the same route, serving no intermediate points, (3) between Rockville, Ind., and Bellmore, Ind.; from Rockville over U.S. Highway 36 to Bellmore, and return over the same route serving no intermediate points, and serving Bellmore for purposes of joinder only, (4) between Indianapolis, Ind., and Anderson, Ind.; from Indianapolis, over Indiana Highway 67 to Huntsville, thence over Indiana Highway 9 to Anderson and return over the same route, serving no intermediate points, (5) between Crawfordsville, Ind., and Lebanon, Ind.; from Crawfordsville over Indiana Highway 32 to Lebanon, and return over the same route, serving no intermediate points, (6) between Hagerstown, Ind., and Cambridge City, Ind.; from Hagerstown over Indiana Highway 1 to Cambridge City, and return over the same route, serving no intermediate points, (7) between Muncie, Ind., and Winchester, Ind.; from Muncie over Indiana Highway 32 to Winchester, and return over the same route serving no intermediate points, (8) between Winchester, Ind., and Union City, Ind.; from Winchester over Indiana Highway 32 to Union City, and return over the same route, serving no intermediate points, (9) between Muncie, Ind., and Dunkirk, Ind.; from Muncie over Indiana Highway 67 to Albany, thence over Indiana Highway 167 to Dunkirk, and return over the same route, serving no intermediate points and serving Albany, Ind., for purposes of joinder only, (10) between Flora, Ind., and Kokomo, Ind.; from Flora over Indiana Highway 18 to junction Indiana Highway 29, thence over Indiana Highway 29 to junction Indiana Highway 22, thence over Indiana Highway 22 to Kokomo, and return over the same route, serving no intermediate points, (11) between Indianapolis, Ind., and Kokomo, Ind.; from Indianapolis over U.S. Highway 31 to Kokomo, and return over the same route, serving no intermediate points, and serving junction U.S. Highway 31 and Indiana Highway 32, and junction U.S. Highway 31 and Indiana Highway 28 for purposes of joinder only, (12) between Indianapolis, Ind., and Elwood, Ind.; from Indianapolis over Indiana Highway 37 to junction Indiana Highway 13, thence over Indiana Highway 13 to Elwood, and return over the same route, serving no intermediate points, and serving Noblesville, Ind., for purposes of joinder only, (13) between Kokomo, Ind., and Gas City, Ind.; from Kokomo over Indiana Highway 22 to Gas City, and return over the same route, serving no intermediate points and serving junction Indiana Highway 22 and 37 for purposes of joinder only, (14) between Lebanon, Ind., and Anderson, Ind.; from Lebanon over Indiana Highway 32 to Anderson, and return over the same route, serving no intermediate points and serving Noblesville, Ind., and junction U.S. Highway 31 and Indiana Highway 32 for purposes of joinder only, (15) between Rushville, Ind., and Muncie, Ind., from Rushville over Indiana Highway 3 to Muncie, and return over the same route, serving no intermediate points, and serving junction U.S. Highway 40 and Indiana Highway 3, and junction Indiana Highways 3 and 38 for purposes of joinder only, (16) between Matthews, Ind., and junction Indiana Highways 22 and 221, from Matthews over Indiana Highway 221 to junction Indiana Highway 22 and return over the same route, serving no intermediate points, and serving junction Indiana Highways 22 and 221 for purposes of joinder only, (17) between Frankfort, Ind., and Elwood, Ind., from Frankfort over Indiana Highway 28 to Elwood, and return over the same route, serving no intermediate points, and serving junction U.S. Highway 31 and Indiana Highway 28 for purposes of joinder only, (18) between Elwood, Ind., and Anthony, Ind., from Elwood over Indiana Highway 28 to Anthony, and return over the same route, serving no intermediate points, and serving junction Indiana Highways 28 and 37 and junction Indiana Highway 28 and unnumbered Indiana Highway (approximately 4 miles west of Anthony), for purposes of joinder only, (19) between Albany, Ind., and junction Indiana Highways 28 and 1, from Albany over Indiana Highway 28 to junction Indiana Highway 1, and return over the same route, serving Albany, Ind., and the junction of Indiana Highways 28 and 1 for purposes of joinder only, and (20) between Elwood, Ind., and Marion, Ind., from Elwood over Indiana Highway 28 to junction Indiana Highway 37, thence over Indiana Highway 37 to Marion, and return over the same route, and serving junction Indiana Highways 28 and 37 and junction Indiana Highways 22 and 37 for purposes of joinder only.

NOTE: Alternate routes for operating convenience only. Applicant is controlled by the Pennsylvania Railroad Company, therefore, common control may be involved.

HEARING: February 14, 1961, at the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed).

No. MC 13079 (Sub No. 5) (REPUBLICATION—CLARIFICATION), filed October 3, 1960, published FEDERAL REGISTER issue of November 23, 1960. Applicant: WARD TRANSFER, INC., 1000 Northeast North Street, Anoka, Minn. Applicant's attorneys: Charles V. White, Ward Transfer, Inc. (same address as applicant) and Val M. Higgins, 1000 First National Bank Building, Minneapolis 2, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Classes A and B explosives*, and *empty containers or other such incidental facilities* used in transporting the above-specified commodities, on return, (1) Between St. Paul and Anoka, Minn., over specified regular routes, serving the intermediate points of Minneapolis, Osseo, Robbinsdale, and Coon Rapids, Minn., and (2) between Anoka and Ogilvie, Minn., serving all intermediate points and the off-route points of Nowthen and Cedar, Minn., over Minnesota Highway 56.

NOTE: Applicant's attorneys state that applicant is presently authorized to conduct operations as above described which restricts the transportation of Classes A and B explosives to those originating at or destined to Anoka, Minn. The purpose of this application is to remove said restriction and permit the transportation of Classes A and B explosives from St. Paul, Minn., via Anoka, to all points on carrier's presently authorized routes.

HEARING: Remains as assigned January 9, 1961, at the Metropolitan Building, Room 926, Second Avenue South and Third, Minneapolis, Minn., before Joint Board No. 145.

No. MC 15167 (Sub No. 26), filed November 25, 1960. Applicant: PAUL F. CULLUM, doing business as CULLUM TRUCKING COMPANY, 1218 West side Avenue, Jersey City, N.J. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coke*, in bulk, in dump trucks, equipped with automatic hoists, from plant site of Koppers Co., Inc., at Kearny, N.J., to Albany, Ravena, Watervliet, Binghampton, Elmira, Norwich, Walton, Athens, Coxsackie, Ilion, Oneida, Utica, Syracuse, Goshen, Schenectady, Painted Post, and Owego, N.Y.

HEARING: February 16, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 31600 (Sub No. 487), filed November 28, 1960. Applicant: P. B. MUTRIE MOTOR TRANSPORTATION, INC., Calvary Street, Waltham, Mass. Applicant's attorney: Harry C. Ames, Jr., 216 Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank or hopper type vehicles; from Trenton, Mich., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.

HEARING: January 16, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner David Waters.

No. MC 39431 (Sub No. 13), filed November 23, 1960. Applicant: TOLEDO CARTAGE COMPANY, a corporation, 983 Front Street, Toledo, Ohio. Applicant's representative: Earl J. Thomas, 5844–5850 North High Street, Worthington, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silica flour*, in bulk, from Rockwood, Mich., to points in Ohio, and *rejected shipments*, on return.

HEARING: February 10, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 57.

No. MC 41409 (Sub No. 3), filed November 23, 1960. Applicant: BLOCK & ROSE, INC., 6 West Broadway, New York 7, N.Y. Applicant's attorney: Irving Abrams, 1776 Broadway, New York 19, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum furniture*, between Passaic and Clifton, N.J., on the one hand, and, on the other, points in Connecticut, New Jersey and New York, and Philadelphia, Pa., and points in Pennsylvania within 60 miles of Philadelphia, Pa.

HEARING: February 16, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 44300 (Sub No. 8), filed November 25, 1960. Applicant: HESS CARTAGE COMPANY, 17065 Hess Avenue, Melvindale, Mich. Applicant's attorney: Walter N. Bieneman, Guardian Building, Detroit 26, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in tank equipment, from Detroit, Port Huron, Schoolcraft, and St. Joseph, Mich., to points in Indiana.

HEARING: February 24, 1961, at the Federal Building, Room 215, Lansing, Mich., before Joint Board No. 23.

No. MC 50069 (Sub No. 235) (CORRECTION), filed November 7, 1960, published in the FEDERAL REGISTER, issue of November 30, 1960, as MC 112446 (Sub No. 29), in error. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 2111 Woodward Avenue, Detroit 1, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, in tank vehicles, from Painesville, Ohio and points within five miles thereof, to points in Michigan.

NOTE: The purpose of this republication is to show applicant's correct docket number, No. MC 50069 (Sub No. 235), previously published as No. MC 112446 (Sub No. 29), in error.

HEARING: Remains as assigned February 7, 1961, in Room 215, Federal Building, Lansing, Mich., before Joint Board No. 57.

No. MC 52657 (Sub No. 604), filed December 7, 1960. Applicant: ARCO AUTO CARRIERS, INC., 7530 South Western Avenue, Chicago 20, Ill. Applicant's attorney: G. W. Stephens, 121 West Doty Street, Madison, Wis. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Radioactive waste in lead casks;* from Sandusky, Ohio to Arco, Idaho, and *empty lead casks* on return, and (2) *liquid hydrogen and liquid nitrogen*, in government-owned research type trailers; between Cleveland, Ohio, and Temperanceville, Va.

HEARING: January 16, 1961, at the Old Post Office Building, Public Square and Superior Avenue, Cleveland, Ohio, before Examiner Francis A. Welch.

No. MC 52896 (Sub No. 25), filed November 3, 1960. Applicant: WILLIAM L. LANGDON, doing business as COLUMBIA CARTAGE CO., Ellsworth at North Water, Sharon, Pa. Applicant's attorney: Marshall G. Matheny, 462 First National Bank Building, New Castle, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrogen*, in manifold cylinder trailers, from Barberton, Ohio, to Follansbee, W. Va., and *empty containers or other such incidental facilities* used in transporting the above-described commodities, and *empty manifold cylinder trailers*, on return.

HEARING: February 7, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 356.

No. MC 55811 (Sub No. 68), filed December 1, 1960. Applicant: CRAIG TRUCKING, INC., Albany, Ind. Applicant's attorney: Howell Ellis, Suite 1210–12 Fidelity Building, Indianapolis 4, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt;* from ports of entry on the International Boundary line between the United States and Canada located on the St. Marys, St. Clair, Detroit, Niagara, and St. Lawrence Rivers, and on Lakes St. Clair, Ontario, Erie, Huron, Michigan, Superior, and Saginaw Bay, to points in Illinois, Indiana, Kentucky, Michigan, Ohio, those in Pennsylvania on and west of U.S. Highway 219 and those in Missouri within ten (10) miles of the Missouri-Illinois State line, having a prior movement by water from Detroit, Port Huron, and St. Clair, Mich., Cleveland and Fairport, Ohio, or Ontario, Canada.

HEARING: January 26, 1961, at the Interstate Commerce Commission, Room 1439, Book Building, 1249 Washington Boulevard, Detroit, Mich., before Examiner John L. York.

No. MC 55873 (Sub No. 33), filed November 16, 1960. Applicant: GREAT AMERICAN TRANSPORT, INC., 347—23d Street, Detroit 16, Mich. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, serving Momence, Ill., as an off-route point in connection with applicant's presently authorized regular route operations to and from Chicago, Ill.

NOTE: Common control may be involved.

HEARING: February 15, 1961, at the U.S. Custom House Building, Room 852, 610 South Canal Street, Chicago, Ill., before Joint Board No. 149.

No. MC 59531 (Sub No. 84), filed November 1, 1960. Applicant: AUTO CONVOY CO., a corporation, 3020 Haskell Avenue, Dallas, Tex. Applicant's attorney: Reagan Sayers, Century Life Building, Fort Worth 2, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New automobiles, new trucks*, and *chassis*, in truckaway service, in secondary movements; from Tulsa, Okla., to points in Kansas and Missouri, and *rejected and damaged shipments* of the above commodities, on return. RESTRICTION: Restricted to shipments having a prior movement by rail.

HEARING: January 16, 1961, at the Federal Building, Oklahoma City, Okla., before Joint Board No. 180.

No. MC 60012 (Sub No. 51) (CORRECTION), filed July 7, 1960, published in the FEDERAL REGISTER issue of November 30, 1960. Applicant: RIO GRANDE MOTOR WAYS, INC., 775 Wazee Street, Denver, Colo. Applicant's attorney: Ernest Porter, Denver 17, Colo. The purpose of this correction is to show applicant's correct docket number as shown above, previously published as No. MC 60012 (Sub No. 12), in error.

HEARING: Remains as assigned January 16, 1961, at the New Customs House, Denver, Colo., before Joint Board No. 126.

No. MC 69116 (Sub. No. 60), filed November 16, 1960. Applicant: SPECTOR FREIGHT SYSTEM, INC., 3100 South Wolcott Avenue, Chicago 8, Ill. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those contaminating to other lading, serving Momence, Ill., as an off-route point in connection with applicant's presently authorized regular route operations in the State of Illinois.

NOTE: Common control may be involved.

HEARING: February 15, 1961, at the U.S. Custom House, Room 852, 610 South Canal Street, Chicago, Ill., before Joint Board No. 149.

No. MC 69833 (Sub No. 58), filed November 21, 1960. Applicant: ASSOCIATED TRUCK LINES, INC., 15 Andre Street SE., Grand Rapids 7, Mich. Applicant's attorney: Walter N. Bieneman,

Guardian Building, Detroit 26, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals*, in bulk, and *general commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading, serving La Grange, Ind., as an off-route point in connection with carrier's authorized operations in Michigan, Illinois, Indiana, and Ohio.

HEARING: January 26, 1961, at the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed).

No. MC 92983 (Sub No. 386) (CORRECTION), filed October 27, 1960, published in the FEDERAL REGISTER, issue of November 30, 1960. Applicant: ELDON MILLER, INC., 300 East Washington, Iowa City, Iowa. Previous publication showed applicant's name as Eldon Miller, doing business as Eldon Miller, Inc., in error. The correct name of applicant is Eldon Miller, Inc.

HEARING: Remains as assigned January 26, 1961, at the Kentucky Hotel, Louisville, Ky., before Examiner A. Lane Cricher.

No. MC 98407 (Sub No. 1), filed November 25, 1960. Applicant: BORDER FREIGHT LINES, INC., Minot, N. Dak. Applicant's attorney: Alan Foss, First National Bank Building, Fargo, N. Dak. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment; between Minot, N. Dak., and the boundary between the United States and Canada at Portal, N. Dak., from Minot over U.S. Highway 52 to the International Boundary between the United States and Canada at Portal, N. Dak., and return over the same route, serving all intermediate points.

NOTE: Applicant states it is presently and for several years has conducted the proposed operations as a second proviso carrier. A certificate is here sought so as to permit the continuation of the operations by applicant under common control with a Canadian carrier and to enable applicant to operate into North Portal, Saskatchewan.

HEARING: January 4, 1961, at the North Dakota Public Service Commission, Bismarck, N. Dak., before Joint Board No. 274.

No. MC 108586 (Sub No. 51), filed November 16, 1960. Applicant: STEFFKE FREIGHT CO., a corporation, P.O. Box 990, Wausau, Wis. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehcile, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, serving the off-route point of Momence, Ill. in connection with applicant's presently authorized regular route operations to and from Chicago, Ill.

HEARING: February 15, 1961, at the U.S. Custom House Building, Room 852, 610 South Canal Street, Chicago, Ill., before Joint Board No. 149.

No. MC 108937 (Sub No. 19), filed November 7, 1960. Applicant: MURPHY MOTOR FREIGHT LINES, INC., 965 Eustis Street, St. Paul 14, Minn. Applicant's representative: Raymond L. Stevens, 2937 Arona Street, St. Paul 13, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, and those requiring special equipment (1) between Minneapolis and St. Paul, Minn. and Redwood Falls, Minn.: from St. Paul over city streets to Minneapolis, thence over U.S. Highway 212 to junction Minnesota Highway 5, thence over Minnesota Highway 5 to junction Minnesota Highway 19 at Gaylord, thence over Minnesota Highway 19 via Winthrop to Redwood Falls, and return over the same route, serving the intermediate points of Hamburg, Green Isle, Arlington, Gaylord, Winthrop, Gibbon, Fairfax, and Franklin. (2) Between Granite Falls, Minn., and Clarkfield, Minn.: from Granite Falls over Minnesota Highway 67 to Clarkfield, and return over the same route, serving the off-route point of Hazel Run. (3) Between Montevideo, Minn., and Dawson, Minn.: from Montevideo over U.S. Highway 212 to Dawson, and return over the same route, serving no intermediate points. (4) Between Glencoe, Minn., and Green Isle, Minn.: from Glencoe over county roads to Green Isle, thence over Minnesota Highway 5 to Hamburg, thence over county roads to Glencoe. (5) Between Albert Lea, Minn., and Emmons, Minn.: from Albert Lea over U.S. Highway 69 to Emmons, and return over the same route, serving the intermediate point of Twin Lakes. (6) Between Winthrop, Minn., and Dunnell, Minn.: from Winthrop over Minnesota Highway 15 to junction Minnesota Highway 60 at Madelia, thence over Minnesota Highway 60 to junction Minnesota Highway 4 at St. James, thence over Minnesota Highway 4 to Dunnell, and return over the same route, serving the intermediate points of Lafayette, Klossner, Searles, Echols, Ormsby, and Trimont, and the off-route points of Hanska and La Salle. (7) Between Redwood Falls, Minn., and Echo, Minn.: from Redwood Falls over county roads to Echo, and return over the same route, serving the intermediate points of North Redwood, Delhi, and Belview; also from Redwood Falls over Minnesota Highway 19 to junction Minnesota Highway 67, thence over Minnesota Highway 67 to Echo, and return over the same route, serving no intermediate points. (8) Between Granite Falls, Minn., and Echo, Minn.: from Granite Falls over Minnesota Highway 67 to Echo, and return over the same route, serving no intermediate points. (9) Between Granite Falls, Minn., and Wood Lake, Minn.: from Granite Falls over Minnesota Highway 67 to junction Minnesota Highway 274, thence over Minnesota Highway 274 to Wood Lake, and return over the same route, serving no intermediate points. (10) Between Granite Falls, Minn., and Hanley Falls, Minn.: from Granite Falls over Minnesota Highway 23 to Hanley Falls, and return over the same route, serving no intermediate points. (11) Between Echo, Minn., and Hanley Falls, Minn.: from Echo over county roads via Wood Lake to Hanley Falls, and return over the same route, serving no intermediate points. (12) Between Clarkfield, Minn., and Boyd, Minn.: from Clarkfield over U.S. Highway 59 to junction unnumbered county road, thence over unnumbered county road to Boyd, and return over the same route, serving no intermediate points; also from Clarkfield over Minnesota Highway 67 to junction unnumbered county road, thence over unnumbered county road to Boyd, and return over the same route, serving no intermediate points. (13) Between Montevideo, Minn., and Boyd, Minn.: from Montevideo over U.S. Highway 212 to junction Minnesota Highway 275, thence over Minnesota Highway 275 to Boyd, and return over the same route, serving no intermediate points. (14) Between St. Paul, Minn., and Gluek, Minn.: from St. Paul over city streets to Minneapolis, thence over Minnesota Highway 7 via Clara City to junction Minnesota Highway 277, thence over Minnesota Highway 277 to Gluek, and return over the same route, serving the intermediate points of Cedar Mills, Corvuso, Cosmos, Thorp, Lake Lillian, Blomkest, Roseland, and Prinsburg.

HEARING: February 20, 1961, at the Metropolitan Building, Room 926, Second Avenue South and Third, Minneapolis, Minn., before Joint Board No. 145.

No. MC 109397 (Sub No. 50), filed November 28, 1960. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, Mo. Applicant's attorney: Max G. Morgan, 443-54 American National Building, Oklahoma City 2, Okla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives and ammunition* not so classified and *component parts of ammunition*, however classified, from the site of the Naval Ammunition Depot at Crane, Ind., to East Alton, Ill.

NOTE: Applicant has authority for service between the Crane Naval Ammunition Depot and points in Oklahoma. It also holds authority between points in Oklahoma and St. Louis, Mo., and the off-route points of East Alton under its basic authority. It therefore is certificated between the points over a circuitous gateway. Should there be any question regarding authority to operate by irregular routes from Crane to East Alton in view of a certificated regular route, then applicant seeks authority to serve East Alton as an off-route point in connection with its previous authority.

HEARING: February 13, 1961, at the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 21, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed).

No. MC 109873 (Sub No. 15), filed November 7, 1960. Applicant: EXPRESSWAYS, INC., 3200 Maumee Avenue, Fort Wayne, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading; serving the site of Kelsey-Hayes Company plant at 38481 Huron River Drive, Corner Huron River Drive and North Line Road, Romulus Township, Mich., as an off-route point in connection with applicant's presently authorized regular-route operations.

HEARING: February 23, 1961, at the Federal Building, Room 215, Lansing, Mich., before Joint Board No. 76.

No. MC 111023 (Sub No. 3), filed November 25, 1960. Applicant: EPHRAIM NAFZIGER, R.F.D. No. 2, Cochranville, Pa. Applicant's attorney: Morris J. Winokur, Two Penn Center Plaza, Pennsylvania Boulevard at 15th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, including *limestone* in bulk; from points in Delaware to points in Maryland.

HEARING: January 30, 1961, in Room 709, U.S. Appraisers' Stores Building, Gay and Lombard Streets, Baltimore, Md., before Joint Board No. 199, or, if the Joint Board waives its right to participate, before Examiner Abraham J. Essrick.

No. MC 111397 (Sub No. 37), filed December 5, 1960. Applicant: DAVIS TRANSPORT, INC., 1345 South Fourth Street, Paducah, Ky. Applicant's attorney: Herbert S. Melton, Jr., Broadway at 17th, Box 1282, Avondale Station, Paducah, Ky. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Chemicals*, in bulk, in tank, hopper and dump vehicles, from Calvert City, Ky., and points within 8 miles thereof, to points in Kentucky. (2) *Chemicals* (except vinyl acetate, acetylene chemicals, liquid detergents, trichloromonofluoromethane, dichlorodifluoromethane, monochlorodifluoromethane, trichlorotrifluoroethane, and dichlorotetrafluoroethane), in bulk, in tank, hopper and dump vehicles; from Calvert City, Ky., and points within 8 miles thereof, to points in Alabama, Georgia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, Texas, and Wisconsin. Also except; adhesives to Iowa, benzol, toluol and xylol to Detroit, Mich., nonyl phenol to Missouri, and liquid caustic potash to Mt. Pleasant, Tex. (3) *Chemicals* (except trichloromonofluoromethane, dichlorodifluoromethane, monochlorodifluoromethane, trichlorotrifluoroethane and dichlorotetrafluoroethane), in bulk, in tank, hopper and dump vehicles; from Calvert City, Ky., and points within 8 miles thereof, to points in Arkansas, Kansas, and Oklahoma. Also except; liquid caustic potash to West Tulsa, Okla. (4) *Chemicals* (except vinyl acetate and acetylene chemicals), in bulk, in tank, hopper and dump vehicles; from Calvert City, Ky., and points within 8 miles thereof, to points in Florida. (5) *Chemicals* (except vinyl acetate, acetylene chemicals and liquid detergents), in bulk, in tank, hopper and dump vehicles; from Calvert City, Ky., and points within 8 miles thereof, to points in Nebraska, North Carolina, and West Virginia. Also except; adhesives to points in Nebraska. (6) *Chemicals* (except liquid detergents, trichloromonofluoromethane, dichlorodifluoromethane, monochlorodifluoromethane, trichlorotrifluoroethane and dichlorotetrafluoroethane), in bulk, in tank, hopper and dump vehicles; from Calvert City, Ky., and points within 8 miles thereof, to points in South Carolina.

HEARING: January 26, 1961, at the Kentucky Hotel, Louisville, Ky., before Examiner A. Lane Cricher.

No. MC 111435 (Sub No. 24), filed November 17, 1960. Applicant: C & E TRUCKING CORPORATION, R.R. 3, Box 42, Saugerties, N.Y. Applicant's attorney: W. T. Croft, 1624 Eye Street NW., Washington 6, D.C. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid sugar, invert sugar*, and *blends of liquid and/or invert sugar and corn syrup*, in bulk, in tank vehicles, from Yonkers, N.Y., and Bayonne, N.J., to Wilmington, Del., and to Philadelphia, Pa., and points within 25 miles thereof, and *empty containers or other such incidental facilities* (not specified) used in transporting the above-described commodities, and exempt commodities, on return.

HEARING: February 15, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 112184 (Sub No. 12), filed November 8, 1960. Applicant: THE MANFREDI MOTOR TRANSIT COMPANY, a corporation, Newbury, Ohio. Applicant's representative: J. J. Kuhner, Society National Bank Building, Cleveland 14, Ohio. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Compressed gases*, in bulk, in shipper-owned tank vehicles, from Cleveland, Ohio, to points in Indiana and Kentucky, and *empty shipper-owned tank vehicles*, on return.

HEARING: February 8, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 208.

No. MC 112497 (Sub No. 169), filed October 25, 1960. Applicant: HEARIN TANK LINES, INC., 6440 Rawlins Street, Baton Rouge, La. Applicant's attorney: Harry C. Ames, Jr., Ames, Hill & Ames, Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude tall oil*, in bulk, in tank vehicles, from Crossett, Pine Bluff, and Texarkana, Ark., to Oakdale, La.

HEARING: January 26, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Richard H. Roberts.

No. MC 112497 (Sub No. 170), filed October 26, 1960. Applicant: HEARIN TANK LINES, INC., 6440 Rawlins Street, Baton Rouge, La. Applicant's attorney: Harry C. Ames, Jr., Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Terpene polychlorinates* (agricultural insecticide), in bulk, in tank vehicles, from Oakdale, La., to Columbia, S.C., Glendale, Ariz., Greenville, Miss., Houston and Harlingen, Tex., Little Rock, Ark., and Tampa and Jacksonville, Fla.

HEARING: January 26, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Richard H. Roberts.

No. MC 112617 (Sub No. 81), filed October 31, 1960. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 5135, Cherokee Station, Louisville 5, Ky. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum* and *petroleum products*, in bulk, in tank vehicles, from Marietta, Ohio and points within ten miles thereof, to points in Kentucky and West Virginia, and *rejected shipments* of above-described commodities, on return.

HEARING: February 7, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 62.

No. MC 112908 (Sub No. 3), filed November 15, 1960. Applicant: KINGSWAY TRANSPORTS LIMITED, P.O. Box 1220, Montreal, Quebec, Canada. Applicant's attorney: S. Harrison Kahn, 1110-14 Investment Building, Washington, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between the plant site of the Kelsey-Hayes Company located at 38481 Huron River Drive, Romulus Township, Wayne County, Mich., on the one hand, and, on the other, the port of entry on the International Boundary line between the United States and Canada at Detroit, Mich. RESTRICTION: The transportation requested herein shall be restricted to foreign commerce only.

HEARING: February 23, 1961, at the Federal Building, Lansing, Mich., before Joint Board No. 163.

No. MC 113779 (Sub No. 136), filed November 14, 1960. Applicant: YORK INTERSTATE TRUCKING, INC., 9020 La Porte Expressway, P.O. Box 12385, Houston 17, Tex. Applicant's attorney: Dale Woodall (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chloral*, in bulk, in tank vehicles, from Henderson, Nev., to Newark, N.J.

HEARING: February 15, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 114211 (Sub No. 25), filed December 5, 1960. Applicant: DONALDSON TRANSFER COMPANY, a corporation, 213 Witry Street, Waterloo, Iowa. Applicant's attorney: Charles W. Singer,

33 North La Salle Street, Chicago 2, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pressure treated poles, posts*, and *lumber*, from Sallisaw, Okla., and 25 miles thereof, to points in Iowa, Nebraska, Kansas, Illinois, Wisconsin, Missouri, and South Dakota, and *rejected shipments*, on return.

HEARING: January 17, 1961, at the U.S. Custom House, Room 852, 610 South Canal Street, Chicago, Ill., before Examiner John L. York.

No. MC 114463 (Sub No. 5), filed December 5, 1960. Applicant: J. FREDERICK STEVENSON AND HESTER L. STEVENSON, a partnership, doing business as STEVENSON'S REFRIGERATED TRUCK SERVICE, 1017 Perkins Street, Muncie, Ind. Applicant's attorney: Mario Pieroni, 523 Johnson Building, Muncie, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, packing house products*, and *articles distributed by meat packing houses*, as defined in Section A, B & C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, in pool truck and pool rail-car distribution; from Muncie, Ind., to points in Allen, Auglaize, Darke, Defiance, Fulton, Henry, Miami, Mercer, Paulding, Putnam, Shelby, Van Wert, Hardin, Hancock, Logan, Champaign, and Williams Counties, Ohio, and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, and *damaged or rejected shipments*, on return. NOTE: Applicant states that any duplication of authority granted herein, or to the extent that such authority duplicates any heretofore granted to or now held by said carrier, shall not be construed as conferring more than one operating right.

HEARING: January 9, 1961, at the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 60, or, if the Joint Board waives its right to participate, before Examiner John L. York, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed).

No. MC 115523 (Sub No. 64) (REPUBLICATION), filed April 7, 1960, published in the FEDERAL REGISTER, issues of May 11, 1960, and October 26, 1960. Applicant: CLARK TANK LINES COMPANY, a corporation, 1450 Beck Street, P.O. Box 1895, Salt Lake City 10, Utah. Applicant's attorney: Bertram S. Silver, 126 Post Street, Suite 600, San Francisco 8, Calif. The application in this proceeding originally sought authority to transport dry fertilizers, dry fertilizer ingredients and dry fertilizer compounds used in the manufacture of fertilizer, in the territory as set forth in the previous publication. Prior to the hearing, two amendments to the application were filed, one of which, applicant claims inadvertently omitted dry fertilizer from the application. At the hearing November 9 and 10, 1960, held at Salt Lake City, Utah, Examiner Lawrence A. Van Dyke, Jr., presiding, the application was amended to include the commodity dry fertilizer, and also to reduce the territorial scope of the application. The scope of the application as amended at the hearing is as follows: (a) *Dry fertilizer, dry fertilizer ingredients* and *dry fertilizer compounds* used in the manufacture of fertilizer, (1) from points in Washington to points in California, Arizona, Colorado, Nevada, New Mexico, Utah, Washington, Wyoming, and points in Idaho south of the southerly boundary of Idaho County; (2) from points in Montana to points in California, Arizona, Colorado, Nevada, New Mexico, Utah, and points in Idaho south of the southerly boundary of Idaho County; and (3) from points in Idaho, to points in Idaho, California, Arizona, Colorado, Nevada, New Mexico, Utah, Oregon, and Washington, except that no shipment originating in Idaho north of the southerly boundary of Idaho County shall be transported to points in Washington, Oregon, or Montana, and except that no superphosphate, in bulk, shall be transported from points in Idaho to points in Arizona, Colorado, Nevada, Utah, and California. RESTRICTION: No traffic moving in bags or containers shall be transported when moving to incorporated municipalities unless said traffic is moving in combination with a bulk movement in the same vehicle at the same time; in connection with (1), (2), and (3) above. (b) *Liquid fertilizer, fertilizer solutions*, and *liquid ingredients* used in the manufacture thereof, not including anhydrous ammonia, in bulk, in tank vehicles, from Hedges, Finley, and Pasco, Wash., and points within 7 miles of each to points in Idaho south of the Southerly boundary of Idaho County. The purpose of this republication is to advise that any person or persons who might have been prejudiced by the allowance of the amendments, may, within 30 days from this publication in the FEDERAL REGISTER, file an appropriate pleading.

No. MC 115915 (Sub No. 5), filed November 14, 1960. Applicant: FRED E. HAGEN, doing business as HAGEN TRUCK LINE, 4120 Floyd Avenue, Sioux City, Iowa. Applicant's attorney: J. Max Harding, IBM Building, 605 South 12th Street, P.O. Box 2041, Lincoln 8, Nebr. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products* and *meat by-products, dairy products*, and *articles distributed by meat packinghouses* as described in Ex Parte MC-38, Appendix I, Sections A, B, and C; from Fremont, Nebr., to points in Kansas and Oklahoma, and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, and *rejected shipments*, on return.

NOTE: Common control may be involved.

HEARING: January 16, 1961, at the Nebraska State Railway Commission, Capitol Building, Lincoln, Nebr., before Joint Board No. 307.

No. MC 116446 (Sub No. 1), filed November 16, 1960. Applicant: HAROLD SCHUGEL, doing business as HAROLD SCHUGEL MILLING SUPPLIES, 301 North Water Street, New Ulm, Minn. Applicant's attorney: Richard M. Bosard, 1160 Northwestern Bank Building, Minneapolis 2, Minn. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *feed and feed ingredients*, from Belmond, Fort Dodge, Sheldon, and Alden, Iowa, to New Ulm and Willmar, Minn.

HEARING: January 10, 1961, in Room 926, Metropolitan Building, Second Avenue South and Third, Minneapolis, Minn., before Joint Board No. 146.

No. MC 117288 (Sub No. 1), filed November 7, 1960. Applicant: FEDERAL FREIGHT, INC., Delsea Drive, Port Elizabeth, N.J. Applicant's attorney: Irving Abrams, 1776 Broadway, New York 19, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe and conduits and fittings and attachments* for pipes and conduits, between points in Atlantic County, N.J., on the one hand, and, on the other, points in Maine, New Hampshire, Ohio, Vermont, Virginia, West Virginia, and the District of Columbia.

HEARING: February 14, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 117664 (Sub No. 3), filed November 28, 1960. Applicant: FRANCES HARRIS & FREDERICK R. BILBROUGH, a partnership, doing business as HARRIS & BILBROUGH TRUCKING CO., Route 1, Box 212, Denton, Md. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ground limestone*, in bulk; from the plant sites of J. E. Baker Co., and National Gypsum Co., at or near York, Pa., to Denton, Md.

HEARING: January 30, 1961, in Room 709, U.S. Appraisers' Stores Building, Gay and Lombard Streets, Baltimore, Md., before Joint Board No. 199, or, if the Joint Board waives its right to participate, before Examiner Abraham J. Essrick.

No. MC 117792 (Sub No. 3), filed November 25, 1960. Applicant: J. C. JACKSON, JR. AND FORREST JAY NICHOLS, a partnership, doing business as FARM PRODUCTS COMPANY, East Prairie, Mo. Applicant's attorney: Herman W. Huber, 101 East High Street, Jefferson City, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas;* from Mobile, Ala., to Peoria, Ill.

HEARING: January 12, 1961, in the U.S. Court House and Custom House, 1114 Market Street, St. Louis, Mo., before Examiner C. Evans Brooks.

No. MC 118745 (Sub No. 1), filed November 15, 1960. Applicant: JOHN PFROMMER, P.O. Box 96, Douglassville, Pa. Applicant's attorney: Raymond A. Thistle, Jr., Suite 601, 226 South 16th Street, Philadelphia, Pa. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lime, limestone products, crushed stone and cement* from points in Whitemarsh Township, Montgomery County, Pa., to points in New Jersey, Delaware, Maryland, New York, and the District of Columbia, and *empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified above, on return.

NOTE: Carrier presently has authority for the transportation of lime and crushed stone from Plymouth Meeting, Pa., to points in New Jersey, with no transportation for compensation or return except as otherwise authorized. This carrier has no intention of creating any duplicating authority and therefore, requests the Commission that if the requested authority is granted the present authority of said carrier be cancelled.

HEARING: February 9, 1961, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Abraham J. Essrick.

No. MC 119478 (Sub No. 1) (AMENDMENT), filed June 28, 1960, published in the FEDERAL REGISTER, issue of November 23, 1960. Applicant: BENNIE W. HASKINS, doing business as HASKINS TRUCKING COMPANY, 203 East Collins, Henderson, Tex. Applicant's attorney: Mert Starnes, 401 Perry-Brooks Building, Austin 1, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wooden poultry coops*, from Nacogdoches, Tex., to points in California, Georgia, North Carolina, and South Carolina, excluding Rion, S.C., and *damaged, defective or rejected commodities* specified above, on return.

NOTE: Applicant holds authority under Permit No. MC 116087 Sub 1, therefore, dual operations may be involved. The purpose of this republication is to add California to the destination States.

HEARING: Remains as assigned January 10, 1961, at the Federal Office Building, Franklin and Fannin Streets, Houston, Tex., before Examiner Walter R. Lee.

No. MC 119519 (Sub No. 10) (AMENDMENT), filed October 13, 1960, published in FEDERAL REGISTER issue of November 30, 1960. Applicant: ALLEN RUSSELL, doing business as ALLEN RUSSELL TRUCKING COMPANY, Franklin, Ky. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feeds*, from Feed Mills in Murfreesboro, Nashville, and Shelbyville, Tenn., to points in Allen, Barren, Hart, Logan, Simpson, and Warren Counties, Ky., and *exempt commodities*, on return.

NOTE: The purpose of this republication is to include Hart County, Ky.

HEARING: Remains as assigned February 1, 1961, at the Dinkler-Andrew Jackson Hotel, Nashville, Tenn., before Joint Board No. 25, or, if the Joint Board waives its right to participate, before Examiner A. Lane Cricher.

No. MC 119527 (Sub No. 1), filed October 27, 1960. Applicant: LEE GRAHAM, doing business as LOCK HAVEN TRANSFER, 380 Irvin Street, Lock Haven, Pa. Applicant's representative: John W. Frame, 603 North Front Street, Harrisburg, Pa. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper, printing*, other than newsprint, not printed or imprinted in bales, boxes, bundles (on skids or otherwise), crates or rolls. *Paper, scrap or waste* (not senitized), in barrels, bags, boxes, crates or in bales, including *scrap or waste, fibreboard, pulpboard, strawboard, old directories, old magazines, old newspapers* and *old pamphlets*, folded flat, securely tied in bundles. *Woodpulp*, not powdered, in packages. *Cores, chocks* and *canvas covers*, loose or in packages. *Machinery* and *machinery parts. Paper mill rolls*, loose or in boxes. *Flour:* Cassave, sago or tapioca, in bulk, in bags, barrels or boxes. *Oil and greases*, in barrels, boxes, kits or steel pails or in metal cans in crates. *Chemicals, chemical products and constituents* used in the manufacture of woodpulp and paper or in the processing thereof, between the plant sites of the New York and Pennsylvania Co., Inc., in Lock Haven, Pa., on the one hand, and on the other, points in Illinois, Indiana, Ohio, Michigan, New York, New Jersey, Connecticut, and Massachusetts, under a continuous or continuing contract with New York and Pennsylvania Co., Inc.

HEARING: February 2, 1961, at the Pennsylvania Public Utility Commission, Harrisburg, Pa., before Examiner Abraham J. Essrick.

No. MC 119902 (Sub No. 2), filed November 28, 1960. Applicant: PAUL S. BARRON, JR., M.C. Box 153, Laurel, Del. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap iron and metals*, and *scrap iron and metals loose*, in dump vehicles, (1) from Salisbury, Md., to Wilmington, Del., and Coatesville, Pa., and (2) from Wilmington, Del., to Columbia and Marietta, Pa., and Reading Metals Refining Corp. (six miles north of Reading, Pa.) and Baltimore, Md., and *empty containers or other such incidental facilities* (not specified) used in transporting the commodities above, on return.

HEARING: January 31, 1961, in Room 709, U.S. Appraisers' Stores Building, Gay and Lombard Streets, Baltimore, Md., before Joint Board No. 199, or, if the Joint Board waives its right to participate, before Examiner Abraham J. Essrick.

No. MC 123101, filed September 28, 1960. Applicant: VAUGHN F. LARUE, R.R. No. 5, Celina, Ohio. Applicant's attorney: Charles W. Daley, 504 Cook Tower, Lima, Ohio. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer* and *fertilizer materials*, in bulk and in bags, excluding liquids, between Cairo, Ohio, and points in Adams, Allen, Blackford, DeKalb, Delaware, Elkhart, Grant, Huntington, Jay, Kosciusko, Lagrange, Noble, Steuben, Wabash, Wells, and Whitley Counties, Ind.

HEARING: February 9, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 60.

No. MC 12371, filed October 28, 1960. Applicant: MECCA & SON TRUCKING CORP., 25 Fairmount Avenue, Jersey City, N.J. Applicant's attorney: August W. Heckman, 880 Bergen Avenue, Jersey City 6, N.J. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Woodpulp and benares*, in bales from Hoboken, Port Newark, and Jersey City piers, N.J., to Lee, Mass. (2) *Calcium carbonate* in bags, from Adams, Mass., to Elizabeth and Spotswood, N.J., plants of the Peter J. Schweitzer Co., a Division of Kimberley Clark Corp.

HEARING: February 13, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 123174, filed October 31, 1960. Applicant: JAMES R. BARGO, doing business as BARGO EXPRESS, R.R. No. 3, Batavia, Ohio. Applicant's attorney: Nicholas L. White, 603 Dixie Terminal Building, Cincinnati 2, Ohio. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated paper, corrugated paper containers and related products*, between Cincinnati and Sharonville, Ohio, on the one hand, and, on the other, points in Indiana, south and east of a line extending in a northerly direction from Jeffersonville along U. S. Highway 31E to Sellersburg, Ind., thence along U.S. Highway 31 to Indianapolis and thence in a easterly direction along U.S. Highway 40 to the Indiana-Ohio State line, and points in Kentucky north of U.S. Highway 60, including points on the indicated highways.

HEARING: February 9, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 208.

No. MC 123188, filed November 4, 1960. Applicant: GUS SICLARI, doing business as SICLARI TRUCKING, 91 14th Street, Brooklyn 15, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood and hardboard*, from the New York, N.Y., Commercial Zone, as defined by the Commission, to points in Bergen, Essex, Hudson, Union, Passaic, Middlesex, and Somerset Counties, N.J., and Nassau and Westchester Counties, N.Y., and *refused, rejected or returned shipments* of commodities specified in this application, on return.

NOTE: Applicant holds contract carrier authority in Permit No. MC 101506. Dual operations under Section 210 may be involved.

HEARING: February 14, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 123190, filed November 4, 1960. Applicant: STILLPASS TRANSIT COMPANY, INC., 4967 Spring Grove Avenue, Cincinnati 32, Ohio. Authority sought to operate as a *common or contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid caustic soda*, in bulk, in tank vehicles, from Barberton, Ohio, to Covington, Ky., and *rejected shipments*, on return.

NOTE: A proceeding was instituted under section 212(c) of the Interstate Commerce Act to determine whether applicant's status is that of a contract or common carrier in No. MC 101126 (Sub No. 36), wherein applicant's rights were found to be those of a common carrier pursuant to the Report of October 25, 1960.

HEARING: February 8, 1961, at the New Post Office Building, Columbus, Ohio, before Joint Board No. 208.

No. MC 123220, filed November 17, 1960. Applicant: GEORGE MEROS, doing business as GEORGE MEROS SERVICE, 748 Marinette Avenue, Ma-

rinette, Wis. Applicant's attorney: Michael D. O'Hara, Spies Building, Menominee, Mich. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked or disabled vehicles*, between points in Marinette County, Wis., and points in the Upper Peninsula of Michigan.

HEARING: February 16, 1961, at the Wisconsin Public Service Commission, Madison, Wis., before Joint Board No. 95.

No. MC 123227, filed November 22, 1960. Applicant: HAROLD ZEISLOFT, JR., R. D. No. 3, Danville, Pa. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Weehauken, N.J., Brooklyn, N.Y., and Baltimore, Md., to Bloomsburg, Pa., and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodity, on return.

HEARING: February 9, 1961, at the Penn Sherwood Hotel, 3900 Chestnut Street, Philadelphia, Pa., before Examiner Abraham J. Essrick.

No. MC 123232, filed November 25, 1960. Applicant: E. O. MUIR & CO., 458 South First West, Salt Lake City, Utah. Applicant's attorney: Mark K. Boyle, 345 South State Street, Salt Lake City 1, Utah. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen potatoes*, from points in Idaho to points in Georgia, Florida, Louisiana, Texas, Mississippi, Alabama, Virginia, West Virginia, North Carolina, South Carolina, Tennessee, Maryland, Kentucky, Arkansas, and Oklahoma and *exempt commodities* on return.

HEARING: January 18, 1961, at the Utah Public Service Commission, Salt Lake City, Utah, before Examiner Leo W. Cunningham.

No. MC 123236, filed November 25, 1960. Applicant: WAYNE TRUCKING COMPANY, 2930 Wayne Street, Toledo 14, Ohio. Applicant's attorney: Earl F. Boxell, 902 Toledo Trust Building, Toledo 4, Ohio. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Barrel and batter cement blocks, cinder blocks, catch basins, casement windows, mortar, stone and sand, and similar building materials* (no passengers), from Toledo, Ohio, to points in Monroe, Lenawee, Hillsdale, Branch, Wayne, Washtenau, Jackson, and Calhoun Counties, Mich., and Steuben, De Kalb and Allen Counties, Ind., and *empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified above, on return.

HEARING: February 24, 1961, at the Federal Building, Room 215, Lansing, Mich., before Joint Board No. 9.

No. MC 123239, filed November 25, 1960. Applicant: J. W. PETERSON, doing business as PARR TRUCKING CO., 13700 Piney Meeting House Road, Rockville, Md. Applicant's attorney: Jerome Solomon, 1325–27 Grant Building, Pittsburgh 19, Pa. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Crushed stone;* from the plant site of the Rockville Crushed Stone, Inc., quarry in Montgomery County, Md., to points in the District of Columbia, and *empty containers or other such incidental facilities*, used in transporting the above-described commodity, on return.

HEARING: January 17, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Joint Board No. 68.

MOTOR CARRIERS OF PASSENGERS

No. MC 119556 (Sub No. 4), filed December 1, 1960. Applicant: ROUND HILL LIMOUSINE SERVICE, INC., 93 Arch Street, Greenwich, Conn., Applicant's attorneys: Royall, Koegel, Harris & Caskey, 100 Broadway, New York 5, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and passengers baggage* in the same vehicle, having an immediately prior or subsequent movement by air, in round trips, between New Haven, Conn., and Newark Airport, Newark, N.J., originating at the Taft Hotel, New Haven, Conn.; thence over New Haven city streets to the Connecticut Turnpike; over the Connecticut Turnpike to the Connecticut-New York State line; thence over the New England Thruway to the Cross Westchester Expressway; over the Cross Westchester Expressway to White Plains, N.Y.; over White Plains city streets to the Bronx River Parkway; over the Bronx River Parkway and various New York City streets, boulevards, expressways and avenues, and the George Washington Bridge to the New York-New Jersey State line; thence over the New Jersey Turnpike to the Newark Airport, and return along a reverse of the foregoing routes, serving the intermediate points of Bridgeport, Norwalk, and Stamford, Conn., and White Plains, N.Y.

NOTE: Applicant states it is its intention to supplement the proposed service by operating express routes directly from New Haven, Conn., to Newark Airport, from Bridgeport, Conn., to Newark Airport, from Norwalk, Conn., to Newark Airport, from Stamford, Conn., to Newark Airport and from White Plains, N.Y., to Newark Airport as soon as the volume of traffic warrants. Applicant further states it holds authority from the Public Utilities Commission of the State of Connecticut (Permit No. IN–77) to engage in intrastate commerce over the portion of its present operation which lies between Stamford, Conn. and the Connecticut-New York State line. The applicant is making application to said Public Utilities Commission for authority to operate between New Haven, Bridgeport, Norwalk, and Stamford, Conn.

HEARING: January 12, 1961, at 346 Broadway, New York, N.Y., before Joint Board No. 305, or, if the Joint Board waives, its right to participate, before Examiner Donald R. Sutherland.

No. MC 123168, filed October 27, 1960. Applicant: MODEL SCHOOL BUS SERVICE, INC., 698 West End Avenue, New York, N.Y. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passengers, and their baggage*, (1) from, to, and between points in New York, N.Y., and (2) between New York, N.Y., and points in Connecticut, and (3) between points in the states of New York and Connecticut.

NOTE: Applicant indicates the passengers will include school children and adults.

HEARING: February 13, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 123175, filed October 31, 1960. Applicant: RENTAL LIMOUSINE, INC., 50 Sutton Place South, New York, N.Y. Applicant's attorney: Robert Ehrenbard, The Hanover Bank Building, 70 Broadway, New York 4, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in special operations, in year-round nonscheduled door-to-door service, limited to the transportation of not more than seven (7) passengers in any one vehicle, but not including the driver thereof and children under ten (10) years of age who do not occupy a seat or seats, beginning and ending at New York, N.Y., and extending to points in Berlin, Buckingham, Damascus, Dreher, Lake, Lehigh, Palmyra, Paupack, Preston, Salem, Sterling, and Texas Townships, in Wayne County, Pa., points in Kidder Township, Carbon County, Pa., and points in Upper Mount Bethel and Washington Townships, Northampton County, Pa., and those in Monroe and Pike Counties, Pa.

HEARING: February 10, 1961, at 346 Broadway, New York, N.Y., before Joint Board No. 42, or, if the Joint Board waives its right to participate, before Examiner Abraham J. Essrick.

APPLICATIONS FOR BROKERAGE LICENSES

MOTOR CARRIERS OF PASSENGERS

No. MC 12743, filed November 9, 1960. Applicant: MORGAN THOMAS EDWARDS, 2643 Schley Street, Erie, Pa. For a license as a *broker* (BMC 5) at Erie, Pa., in arranging for transportation in interstate or foreign commerce, by motor vehicle, of *passengers and their baggage*, in charter operations, beginning and ending at points in Erie County, Pa., and extending to points in New York, Pennsylvania, Ohio, Florida, Washington, D.C., California, Kentucky, and Illinois.

HEARING: February 3, 1961, at the Pennsylvania Public Utility Commission, Harrisburg, Pa., before Joint Board No. 65, or, if the Joint Board waives its right to participate, before Examiner Abraham J. Essrick.

No. MC 12744, filed November 16, 1960. Applicant: CHRISTIAN H. SHENK AND HELEN E. R. SHENK, doing business as RIDGEWAY TOURS, 126 North Queen Street, Lancaster, Pa. Applicant's attorney: Ralph W. Eby, Jr., 41 East Grant Street, Lancaster, Pa. For a license as a *broker* (BMC 5) at Lancaster, Pa. in arranging for transportation in interstate or foreign commerce, by motor vehicle, of *groups of passengers and their baggage*, on all expense conducted tours, beginning and ending at Lancaster, Pa., and extending to all points in the United States.

HEARING: February 3, 1961, at the Pennsylvania Public Utility Commission, Harrisburg, Pa., before Joint Board No. 65, or, if the Joint Board waives its right to participate, before Examiner Abraham J. Essrick.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING IS REQUESTED

MOTOR CARRIERS OF PROPERTY

No. MC 1649 (Sub No. 70), filed December 1, 1960. Applicant: RAILWAY EXPRESS MOTOR TRANSPORT, INC., Principal Office: 219 East 42d Street, New York 17, N.Y.; Local Office: Room 101, Union Station, Indianapolis, Ind. Applicant's attorney: William H. Marx, General Attorney, Railway Express Agency Law Department, 219 East 42d Street, New York 17, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between Richmond, Ind., and Hagerstown, Ind.: from Richmond over U.S. Highway 40 to Cambridge City, thence over Indiana Highway 1 to Hagerstown, and return over the same route, serving the intermediate point of Cambridge City. RESTRICTION: The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of air or rail express service of applicant. The shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt, covering, in addition to the motor carrier movements by applicant, an immediately prior or an immediately subsequent movement by air or rail.

NOTE: Applicant states the proposed operation shall be an extension of applicant's presently authorized regular route operation between Logansport, Ind., and Richmond, Ind., in Certificate No. MC 1649 Subs 10 and 57. Applicant further states it is a wholly owned subsidiary of Railway Express Agency, Incorporated. Common control may be involved.

No. MC 22195 (Sub No. 81), filed December 5, 1960. Applicant: DAN S. DUGAN, doing business as DUGAN OIL & TRANSPORT COMPANY, P.O. Box 946, 41st Street and Grange Avenue, Sioux Falls, S. Dak. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Emulsified asphalt*, in bulk, in tank vehicles; from Alton, Iowa, to points in South Dakota, and *rejected shipments*, on return.

No. MC 64932 (Sub No. 283), filed December 1, 1960. Applicant: ROGERS CARTAGE CO., 1934 South Wentworth Avenue, Chicago, Ill. Applicant's attorney: Edward G. Bazelon, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Acids and chemicals*, in bulk, in tank vehicles, from Seneca, Ill., and points within 10 miles thereof, to points in Iowa, Indiana, Michigan, Ohio, Wisconsin, Kentucky, and Missouri.

No. MC 66562 (Sub. No. 1753), filed November 30, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Applicant's attorney: William H. Marx, General Attorney, Railway Express Agency Law Department (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between Waterville, Maine, and Pittsfield, Maine: from Waterville over U.S. Highway 201 to junction Maine Highways 11 and 100, thence over Maine Highways 11 and 100 to Pittsfield, and return over the same route, serving the intermediate point of Burnham Junction and the off-route point of Hartland. RESTRICTIONS: The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of air or rail express service of applicant. The shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt covering, in addition to the motor carrier movements by applicant, an immediately prior or an immediately subsequent movement by rail or air.

NOTE: Applicant states the proposed service will be an extension of applicant's presently authorized regular route operations between Pittsfield and Greenville, Maine, in Certificate No. MC 66562 (Sub No. 1660).

No. MC 66562 (Sub No. 1754), filed December 2, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Applicant's attorney: William H. Marx, General Attorney, Railway Express Agency Law Department (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between Winchester, Va., and Charles Town, W. Va.: (1) from Winchester, Va., over Alternate U.S. Highway 340 to Berryville, thence over U.S. Highway 340 to Charles Town, W. Va., and return over the same route; and (2) from Winchester, Va., over U.S. Highway 522 to junction U.S. Highway 340, thence over U.S. Highway 340 to Charles Town, W. Va., and return over the same route, serving the intermediate points of Berryville and White Post, Va. RESTRICTION: The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of rail or air express service of applicant. The shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt.

NOTE: Applicant states the proposed operation shall be an extension of applicant's presently authorized regular route operations between Martinsburg, W. Va., and Winchester, Va., in Certificate No. MC 66562 (Sub No. 946).

No. MC 66562 (Sub No. 1757), filed December 1, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Applicant's attorney: William H. Marx, General Attorney, Railway Express Agency Law Department (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between Portland, Maine, and North Stratford, N.H.: from Portland over Maine Highway 26 to junction U.S. Highway 202, thence over U.S. Highway 202 to Danville Junction, Maine, thence over Maine Highway 11 to Mechanic Falls, Maine, thence over Maine Highway 121 to junction Maine Highway 26, thence over Maine Highway 26 to Bethel, Maine, thence over U.S. Highway 2 to Gorham, N.H., thence over New Hampshire Highway 16 to Berlin, N.H., thence over New Hampshire Highway 110 to Groveton, N.H., thence over U.S. Highway 3 to North Stratford, N.H., and return over the same route, serving the intermediate points of Danville Junction, Mechanic Falls, Oxford, Norway, Locke Mills, Bethel, and West Bethel, Maine, and Gorham, Berlin, and Groveton, N.H. RESTRICTION: The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of air or rail express service of applicant. The shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt.

No. MC 66562 (Sub No. 1758), filed December 1, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Applicant's attorney: William H. Marx, General Attorney, Railway Express Agency Law Department (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between Buffalo, N.Y., and the port of entry on the International Boundary line between the United States and Canada at Niagara Falls, N.Y.: (1) from Buffalo over New York Highway 62 to Niagara Falls (Whirlpool Bridge), N.Y., and return over the same route; also (2) from Buffalo over New York State Thruway (Niagara Section) to Niagara Falls (Whirlpool Bridge), N.Y., and return over the same route. RESTRICTION: The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of air or rail express service of applicant. The shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt, covering, in addition to the motor carrier movements by applicant, an immediately prior or an immediately subsequent movement by air or rail.

No. MC 107403 (Sub No. 321), filed December 1, 1960. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Applicant's attorney: Shertz, Barnes and Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lard*, in bulk, in tank vehicles, from Sandusky, Ohio, to Pittsburgh, Pa.

No. MC 107496 (Sub No. 179), filed November 28, 1960. Applicant: RUAN TRANSPORT CORPORATION, 408 Southeast 30th Street, Des Moines, Iowa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from Havana, Ill., to points in Missouri.

No. MC 116564 (Sub No. 12), filed December 2, 1960. Applicant: LEWIS W.

McCURDY AND MARGARET J. McCURDY, a partnership, doing business as McCURDY'S TRUCKING COMPANY, 571 Unity Street, Latrobe, Pa. Applicant's attorney: Paul F. Sullivan, Sundial House, 1821 Jefferson Place NW., Washington 6, D.C. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers; from Latrobe, Pa., to points in Virginia, and *empty containers or other such incidental facilities*, used in transporting the above-described commodity, on return.

NOTE: Applicant holds common carrier authority in MC–119118, therefore, dual operations may be involved.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 22167 (Sub No. 11), filed December 2, 1960. Applicant: CONSOLIDATED COPPERSTATE LINES, a corporation, 1220 West Washington Boulevard, Montbello, Calif. Applicant's attorney: Reagan Sayers, Century Life Building, Fort Worth 2, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except household goods as defined by the Commission, commodities of unusual value, those requiring the use of special equipment, livestock, and petroleum products, in bulk, in tank vehicles, between Salt Lake City, and Cedar City, Utah, and Page (Glen Canyon Dam Site), Ariz.: (1) from Salt Lake City over U.S. Highways 91 and 89 to Springville, thence over U.S. Highway 89 to Page, and return over the same route, serving no intermediate points. (2) From Salt Lake City as in (1) above to Springville, thence over U.S. Highway 91 to Spanish Fork, thence over U.S. Highway 50 to junction U.S. Highway 89, thence to Page as in (1) above, and return over the same route, serving no intermediate points. (3) From Salt Lake City as in (1) and (2) above to Spanish Fork, thence over U.S. Highway 91 to Cedar City, thence over Utah Highway 14 to junction U.S. Highway 89, thence to Page as in (1) above, and return over the same route, serving no intermediate points. (4) From Salt Lake City to Cedar City as in (3) above, thence over U.S. Highway 91 to intersection with Utah Highway 15, thence over Utah Highway 15 to intersection with U.S. Highway 89, thence to Page as in (1) above, and return over the same route, serving no intermediate points. (5) From Cedar City to Page as in (4) above, and return over the same route, serving no intermediate points. (6) From Cedar City over Utah Highway 14 to intersection with U.S. Highway 89, thence to Page as in (1) above, and return over the same route, serving no intermediate points. (7) From Salt Lake City and Cedar City to La Verkin as in (4) above, thence over Utah Highways 15 and 17 to Hurricane, thence over Utah Highway 15 to Kanab, thence to Page as in (1) above, and return over the same route, serving no intermediate points. All above-described routes (1) through (7), inclusive, serving junctions for joinder or tacking of authority only and serving all points within a ten mile radius of Page. RESTRICTION: Subject to the restriction that the authority granted therein, to the extent it authorizes transportation of Class A and B explosives, shall be limited in point of time to a period expiring five years after June 6, 1958.

NOTE: This application is directly related to MC–F–7724. Applicant states the purpose of this application is to convert such irregular route authority into regular route authority covering the same commodities over regular routes as herein set forth. Page, Ariz., is the name of the town of Glen Canyon Dam Site, and the purpose of this application is to permit the conversion of the present irregular route authority authorized in Certificate MC 99828 Sub 1 into a regular route authority between Salt Lake City and Cedar City, Utah, and Page, Ariz. Common control may be involved.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carrier of property or passengers under section 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC–F 7719. Authority sought for control and merger by CROUSE CARTAGE COMPANY, Carroll, Iowa, of the operating rights and property of STOMAC MOTOR EXPRESS, INCORPORATED, 2515 Seventh Avenue, South, P.O. Box 703, Fort Dodge, Iowa, and for acquisition by PAUL E. CROUSE, 906 West 18th Street, Carroll, Iowa, of control of such rights and property through the transaction. Applicants' Attorney: Russell H. Wilson, 602 Seventh Street, Des Moines, Iowa. Operating rights sought to be controlled and merged: Operations under the Second Proviso of Section 206(a)(1) of the Interstate Commerce Act covering the transportation as a *common carrier* of *intrastate freight* over regular and/or irregular routes in the State of Iowa as more specifically described in Docket Nos. MC 99346 and Subs 1 and 2. CROUSE CARTAGE COMPANY (a Corporation) holds no authority from this Commission. However, PAUL CROUSE, doing business as CROUSE CARTAGE COMPANY, P.O. Box 348, Carroll, Iowa, is authorized to operate as a *common carrier* in Nebraska and Iowa. Application has been filed for temporary authority under section 210a(b).

No. MC–F–7724. Authority sought for purchase by CONSOLIDATED COPPERSTATE LINES, 1220 West Washington Boulevard, Montebello, Calif., of a portion of the operating rights of PAUL W. NIELSEN (DALE M. BELTS, RECEIVER) doing business as NIELSEN TRUCKING COMPANY, 106 South Second West Street, Salt Lake City, Utah, and for acquisition by HORACE W. STEELE, 546 West Madison Street, Phoenix, Ariz., and SERVICE TANK LINES, 117 West Ninth Street, Los Angeles, Calif., by C. G. ALLEN, 117 West Ninth Street, Los Angeles, Calif., and NELLA CORPORATION, Carson City, Nev., through SERVICE TANK LINES, and by W. B. ALLEN, 117 West Ninth Street, Los Angeles, Calif., through NELLA CORPORATION, of control of such rights through the purchase. Applicants' Attorney: Reagan Sayers, 301 Century Life Building, Fort Worth 2, Tex. Operating rights sought to be transferred: *general commodities*, excepting among others, household goods, but not excepting commodities in bulk, as a *common carrier* over irregular routes between Salt Lake City and Cedar City, Utah, on the one hand, and, on the other, Glen Canyon Dam Site in Arizona (on the Colorado River near the Arizona-Utah State line) and points within ten miles thereof; RESTRICTION: The authority granted herein, to the extent it authorizes transportation of Class A and B explosives, shall be limited in point of time to a period expiring five years after June 6, 1958. Vendee is authorized to operate as a *common carrier* in Arizona, California, Texas, and New Mexico. Application has been filed for temporary authority under section 210a(b).

NOTE: No. MC–22167 Sub 11 is a matter directly related.

No. MC–F 7725. Authority sought for purchase by E. M. KELLER & CO., INC., 725 South Cuyler, Pampa, Tex., of the operating rights of J. C. HORN, doing business as J. C. HORN TRUCKING COMPANY, East Highway 82, P.O. Box 733, Gainesville, Tex., and for acquisition by E. M. KELLER and E. M. KELLER, JR., also of Pampa, Tex., of control of such rights through the purchase. Applicants' attorney: W. T. Brunson, 419 Northwest Sixth, Oklahoma City, Okla. Operating rights sought to be transferred: *Oilfield commodities*, as a *common carrier* over irregular routes, between points in Texas and Oklahoma. Vendee holds no authority from this Commission. However, E. M. KELLER, doing business as E. M. KELLER & COMPANY, 725 Cuyler Street, Pampa, Tex., is authorized to operate as a *common carrier* in Texas, New Mexico, Oklahoma, and Kansas. Application has not been filed for temporary authority under section 210a(b).

No. MC–7726. Authority sought for purchase by KULP AND GORDON, INC., 370 Hall Street, Phoenixville, Pa., of the operating rights and certain property of GEORGE M. KNOX AND WAYNE M. MARSHMAN doing business as KNOX & MARSHMAN, 127 East Miner Street, P.O. Box 52, West Chester, Pa., and for acquisition by CHARLES KULP, 370 Hall Street, Phoenixville, Pa., of control of such rights and property through the purchase. Applicants' Attorney: Robert H. Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Operating rights sought to be transferred: *general commodities*, excepting among others, household goods and commodities in bulk, as a *common carrier* over a regular route between Philadelphia, Pa., and West Chester, Pa., serving no intermediate points. Vendee is authorized to operate as a *common carrier* in Pennsylvania, Maryland, New Jersey, New York, Delaware, Virginia, Connecticut, Massachusetts, Rhode Island, Maine, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F 7727. Authority sought for control by HARMS HOLDINGS, INC., 14410 State Highway 2, Bellevue, Wash., of HAMILTON TRUCKING SERVICE, INC., 5916 Corson Avenue, Seattle, Wash., and for acquisition by J. D. HARMS, 14410 State Highway 2, Seattle, Wash., of control of HAMILTON TRUCKING SERVICE, INC., through the acquisition by HARMS HOLDINGS, INC. Applicant's Attorneys: Edward M. Berol, 100 Bush Street, San Francisco 4, Calif, and George H. Hart, Central Building, Seattle 4, Wash. Operating rights sought to be controlled: *machinery, contractors' equipment*, and *structural steel*, as a *common carrier*, over irregular routes between points in King County, Wash., on the one hand, and, on the other, points in Washington and points in King County, Wash., on the one hand, and, on the other, points in Oregon and Idaho, and certain points in California and Montana; *prefabricated buildings*, from Richmond, Calif., to points in King County, Wash.; *heavy machinery* which because of size or weight requires the use of special equipment, from points in Snohomish, Skagit, and Whatcom Counties, Wash., to ports of entry on the United States-Canada International boundary at or near Blaine and Sumas, Wash.; restricted against combination with any other authority held by carrier, to operate in the United States in interstate or foreign commerce, in order to render a service between points other than as authorized herein. HARMS HOLDINGS, INC., holds no authority from this Commission. However it is affiliated with J. D. HARMS, J. D. HARMS, JR., And GRETCHEN HARMS, doing business as HARMS PACIFIC TRANSPORT, 14410 State Highway 2, Bellevue, Wash., which is authorized to operate as a *common carrier* in Washington, Oregon, Idaho, and Montana. Application has been filed for temporary authority under section 210a(b).

No. MC–F 7728. Authority sought for purchase by LOMBARD BROS., INCORPORATED, 249 Mill Street, Waterbury 20, Conn., of a portion of the operating rights of FERGUSON MOTOR TRANSPORTATION, INC. (JOEL J. STEIGER, RECEIVER), 152 Market Street, Paterson 1, N.J., and for acquisition by JOSEPH R. LOMBARD, New Haven Road, Prospect, Conn., CLOTILDA LOMBARD, New Haven Road, Prospect, Conn., GIOCONDA LOMBARD, 764 Bunker Hill Avenue, Waterbury, Conn., and the ESTATE OF NICHOLAS LOMBARD (JOSEPH R. LOMBARD, LOUIS L. LOMBARD, and CLOTILDA LOMBARD, EXECUTORS), of control of such rights through the purchase. Applicants' Attorneys: Joseloff, Murrett & Throwe, 410 Asylum Street, Hartford 3, Conn., and Joel J. Steiger, 152 Market Street, Paterson 1, N.J. Operating rights sought to be transferred: *general commodities*, excepting among others, household goods and commodities in bulk, as a *common carrier* over irregular routes between certain points in New Jersey, on the one hand, and, on the other, certain points in Pennsylvania. Vendee is authorized to operate as a *common carrier* in Connecticut. Massachusetts, Pennsylvania, New Jersey, Rhode Island, and New York. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60–11598; Filed, Dec. 13, 1960; 8:56 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 30–196, 30–153]

CITIES SERVICE CO. AND ARKANSAS FUEL OIL CORP.

Notice of Filing of Application for Order and Request for Release of Jurisdiction

DECEMBER 7, 1960.

Notice is hereby given that Cities Service Company ("Cities"), a registered holding company, has filed an application, pursuant to section 5(d) of the Public Utility Holding Company Act of 1935 ("Act"), for an order declaring that it has ceased to be a holding company; and Arkansas Fuel Oil Corporation ("Arkansas"), a subsidiary company of Cities, has requested the release of the jurisdiction reserved by the Commission's orders issued October 1, 1952 (Holding Company Act Release No. 11511) and October 7, 1953 (Holding Company Act Release No. 12166).

All interested persons are referred to the application on file at the office of the Commission for a statement of the grounds of the application and the facts submitted in support thereof, which are summarized as follows:

Cities, a Delaware corporation, registered under the Act as a public-utility holding company on January 29, 1941. Since then it has disposed of all of its interests in public-utility companies. It now owns common stocks and other securities of companies engaged in the oil and gas business.

Arkansas, a Delaware corporation, is engaged in the marketing of petroleum products. It is a wholly owned subsidiary of Cities. Prior to October 7, 1953, Arkansas was a registered holding company. By order issued on that date (Holding Company Act Release No. 12166, supra), Arkansas was declared not to be a holding company, subject to the condition that it would be considered a holding company in all respects necessary to the resolution of the problems presented by the continued existence of a minority public interest therein, as to which jurisdiction has been reserved by the order of October 1, 1952 (Holding Company Act Release No. 11511, supra).

On July 14, 1960, the Commission adopted and approved, and on September 2, 1960, the United States District Court for the District of Delaware ordered enforced, a plan providing for the elimination of the minority public interest in Arkansas. On December 2, 1960, Cities and Arkansas consummated the plan in accordance with its provisions and the order of the enforcement Court. The plan and the order of the Court enforcing it provide that from and after the consummation of the plan, all minority public common stockholders of Arkansas shall cease to be stockholders of Arkansas at the close of business on the date the plan is consummated. Cities and Arkansas assert that they have taken all action required of them in connection with the plan and the order of the Court, except in respect of the reservation of jurisdiction over fees and expenses in connection with the plan, as to which jurisdiction was reserved in the order of July 14, 1960.

Notice is further given that any interested person may, not later than December 22, 1960, request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for the request, and the issues of fact or law which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the Commission may grant the application and request, as filed or as amended; or the Commission may take such other action as is deemed appropriate.

By the Commission.

[SEAL] ORVAL L. DuBOIS, *Secretary.*

[F.R. Doc. 60–11590; Filed, Dec. 13, 1960; 8:55 a.m.]

[File No. 812–1353]

INSTITUTIONAL SHARES, LTD.

Notice of Filing of Application

DECEMBER 7, 1960.

Notice is hereby given that Institutional Shares, Ltd. ("Institutional"), a registered open-end investment company, has filed an application, and amendment thereto, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting from the provisions of section 22(d) of the Act the proposed issuance of shares of Institutional Foundation Fund class of voting stock of Institutional ("Foundation") at net asset value for substantially all of the cash and securities of Burton Pierce Company ("Burton Pierce") on the basis set forth below.

Institutional, a Delaware corporation, offers Foundation shares to the public on a continuous basis at net asset value plus varying sales charges dependent upon the amount purchased. As of October 7, 1960, the net assets of Foundation amounted to $34,596,389.

Burton Pierce, a New Jersey corporation, is an investment company with two stockholders. It is exempt from registration under the Act by reason of the

provisions of section 3(c)(1) thereof. Pursuant to an agreement between Institutional and Burton Pierce, substantially all of the cash and securities owned by Burton Pierce, with a value of approximately $1,037,647 as of October 7, 1960, will be transferred to Institutional in exchange for shares of Foundation. The shares acquired by Burton Pierce are to be distributed to its shareholders, who intend to take such shares for investment with no present intention of distribution or redemption. The number of shares of Foundation to be delivered to Burton Pierce will be determined by dividing the net asset value per share of Foundation in effect at the closing time into the value of the Burton Pierce assets (with certain adjustments as set forth below) to be exchanged.

The value of Burton Pierce's assets will be determined in substantially the same manner as used for calculating net asset value for the purpose of issuance of Foundation shares. Since the exchange will be tax free for Burton Pierce and its shareholders, Institutional's cost basis for tax purposes on the assets acquired from Burton Pierce will be the same as for Burton Pierce, rather than the price actually paid by Institutional for the assets.

Of the assets to be acquired from Burton Pierce, Institutional intends to retain in the Foundation portfolio, subject to changes in investment conditions and considerations, securities having a value of $889,172, with unrealized appreciation of $681,224 as of October 7, 1960. Institutional intends to sell immediately upon acquisition securities having a value of $148,475, with unrealized depreciation of $75,044 as of the same date. The net unrealized appreciation on the assets to be acquired from Burton Pierce amounts to $607,818, or approximately 58.5 percent of their value as of October 7, 1960, as compared to net unrealized appreciation on the Foundation portfolio of $1,168,722, or 3.3 percent of their value as of the same date.

An adjustment will be made to the value of the Burton Pierce assets in order to offset the adverse impact to the Foundation shareholders of a possible capital gains tax on artificial gains should Institutional subsequently sell the securities being acquired which have a greater percentage of unrealized appreciation than the present portfolio securities of Foundation. The assets of Burton Pierce will be reduced by 12½ percent of the difference between that amount which would have to be subtracted from the net unrealized appreciation of the portfolio securities of Burton Pierce in order to make the resulting figure divided by the market value of the Burton Pierce assets equal to the net unrealized appreciation on all the securities held in the Foundation portfolio divided by the market value of the total assets, and the net realized capital gains of Foundation allocable to the shares of Foundation to be issued to the shareholders of Burton Pierce; less the saving in brokerage commissions resulting from the exchange measured by the difference between the commissions which would be payable if the securities of Burton Pierce which Institutional will retain for investment were acquired through a broker and the commissions on the securities of Burton Pierce which Institutional will sell. The credit for brokerage commissions is permitted because of the inclusion by Institutional of an allowance for estimated brokerage commissions on portfolio securities in its determination of net asset value per share for purposes of computing the number of shares to be issued to Burton Pierce, and said allowance on these shares represents an amount greater than the net brokerage commissions allowed as a credit in the exchange.

If the transaction had been consummated on October 7, 1960, the assets of Burton Pierce would be reduced by an adjustment as computed above in the amount of $66,888, and the Burton Pierce shareholders would have received approximately 93,422 shares of Foundation. These shares would represent approximately 3.6 percent of the total shares of Foundation outstanding on that date.

The application recites that the terms of the entire transaction were arrived at through arm's-length bargaining between Institutional and Burton Pierce. The application further states that there is no affiliation or relationship of any kind between the officers and directors of Institutional and the officers, directors, and stockholders of Burton Pierce.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current offering price described in the prospectus, with certain exceptions not applicable here. Under the terms of the Agreement, however, the shares of Foundation are to be issued to Burton Pierce at a price other than the public offering price stated in the prospectus, which lists a sales charge of 1 percent for sales of $500,000 or over.

Section 6(c) of the Act authorizes the Commission by order upon application to exempt, conditionally or unconditionally, any transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 21, 1960 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60–11591; Filed, Dec. 13, 1960; 8:55 a.m.]

[File No. 812–1244]

VARIABLE ANNUITY LIFE INSURANCE COMPANY OF AMERICA

Notice of Filing of Application

DECEMBER 7, 1960.

Notice is hereby given that Variable Annuity Life Insurance Company of America ("Valic"), an open-end investment company registered under the Investment Company Act of 1940 ("Act") has filed an application for modification of the existing Commission Order of February 25, 1960, pursuant to section 6(c) of the Act, to relieve it from certain restrictions on its participation in the insurance business and from the requirement that it maintain reserves equal to 125 percent of the regular reserves required for variable annuity contracts in the pay-out period, as more fully set forth below.

The Commission's Order of February 25, 1960 (Investment Company Act Release No. 2974) exempted Valic from the prohibitions against the issuance of senior securities as provided in section 18(f)(1) of the Act to the extent necessary to permit the issuance of variable annuity contracts and contracts of life and disability insurance upon the condition that Valic coinsure or reinsure the liabilities assumed under such life and disability insurance contracts. Said exemptive order was predicated, among other things, upon Valic's undertaking to maintain total reserves with respect to variable annuity contracts upon which variable annuity payments have commenced, of not less than 125 percent of the reserves required for such contracts by the Life Insurance Act of the District of Columbia.

Valic points out that at the time the Commission issued its order it was not possible to differentiate between assets of applicant available in the first instance for the satisfaction of claimants under variable annuity contracts and those available for claimants under policies of conventional insurance. Both classes of claimants looked to all of applicant's assets for the satisfaction of their claims and their claims were deemed to be of equal rank.

Subsequent to the Commission's order, on June 12, 1960, Section 41 of the Life Insurance Act of the District of Columbia was amended to provide for the establishing of separate accounts in connection with the issuance of variable annuity contracts. Among other things, the new law provides that "the assets of any such separate account shall not be chargeable with liabilities arising out of any other business the company may conduct."

As a result of the enactment of the separate accounts law, Valic proposes to establish a separate variable annuity account with respect to its existing variable annuity contracts. Valic intends to allocate to such separate account assets equal to the contract liabilities and regular reserves applicable to its existing contracts. After the necessary steps have been taken, Valic proposes to issue new series of variable annuity contracts which will provide that the net investment rate applicable to such contracts will be determined on the basis of the investment experience of the equity investments allocated to a separate variable annuity account or accounts for such contracts.

In view of the substantially changed circumstances brought about by enactment of the separate accounts bill, Valic requests modification of the Commission's order to the extent necessary to enable it to offer its variable annuity contracts on the basis set forth herein without reference to certain of the aforementioned undertakings and certain of the conditions contained in such order. Valic requests that the order be modified to eliminate, as a condition of offering variable annuity contracts, the reinsuring or coinsuring of life and disability insurance risks. In addition, Valic now proposes to eliminate the present requirement of its charter that life and disability insurance be written only in combination with variable annuity contracts, thus enabling it to write any and all forms of life and disability insurance permitted by the Life Insurance Act. In its application, Valic states that it does not propose to reinsure or coinsure the risks attending such insurance beyond limits determined in its business judgment or required by local insurance regulatory authorities. Valic also proposes to the extent deemed feasible to reacquire the life and disability insurance risks currently reinsured or coinsured. Valic contends that under the provision of the separate accounts law, there appears to be no possibility that the interests of variable annuity contract owners could be subjected to liabilities which might arise out of the life insurance or other business it may conduct and therefore no justification exists for obligating it to continue reinsuring or coinsuring either existing or future life and disability insurance risks.

The application also requests modification of the Commission's order so that Valic will be relieved of its undertaking to maintain reserves with respect to variable annuity contracts in the pay-out period in an amount equal to 125 percent of the regular reserves for such contracts. The Commission's Opinion of February 25, 1960, referred to the 125 percent reserve requirement as one of the substantial protections which exist to minimize the possibility that the risks involved in selling and administering the variable annuity and insurance contracts and the mortality risks inherent in the variable annuity contracts will not devolve upon the variable annuity contract holders. Valic contends that the added margin of protection provided by the 125 percent reserve is not necessary. In this connection, it points out that the separate accounts law provides that any surplus or deficit which may arise in any separate account by virtue of mortality experience shall be adjusted by withdrawals from or additions to such account so that "the assets of such account shall always equal the assets required to satisfy the company's obligations for such variable payments."

Moreover, Valic points out that because of its use of a more conservative annuity table than required, its reserves for annuities in the pay-out period exceed the minimum required by the Life Insurance Act. Valic also points out that it is required by the District of Columbia Insurance Department to maintain a "contingent mortality reserve" which would probably provide for an increase of up to 6 percent of the reserves for annuity payments at the commencement of such annuity payments, and that this additional reserve would provide for an increased life expectancy at age 65 of one and a third years. In this connection, Valic refers to evidence that the life expectancy of the white population of the United States showed a total increase of 1.4 years at age 65 in the period from 1902 to 1956 while the requirement of a special 125 percent reserve of Valic's regular reserve would in effect provide for an increased life expectation of approximately six years. Valic urges that determination as to the adequacy of its reserves for its liabilities on its variable annuity contracts are the primary responsibility of the District of Columbia Insurance Superintendent and accordingly, Valic should not be obligated to maintain contingent mortality reserves in excess of those prescribed from time to time by the Superintendent.

Section 6(c) of the Act authorizes the Commission by order upon application to exempt, conditionally or unconditionally, any transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 20, 1960, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by the statement as to the nature of his interest, the reason for sueh request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60–11592; Filed, Dec. 13, 1960; 8:55 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. F–16]

POWER REACTOR DEVELOPMENT CO.

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to July 15, 1961, the latest completion date specified in Construction Permit No. CPRR–4 for the construction of a fast neutron breeder power reactor at Lagoona Beach, Michigan, subject to any final judgment or order entered by a court in the pending judicial proceeding, No. 15,271, U.S. Court of Appeals for the District of Columbia Circuit, and Nos. 315 and 454, U.S. Supreme Court.

Copies of the Commission's order and of the application of the Power Reactor Development Company are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 7th day of December 1960.

UNITED STATES ATOMIC ENERGY COMMISSION, WOODFORD B. MCCOOL, *Secretary.*

[F.R. Doc. 60–11616; Filed, Dec. 13, 1960; 9:00 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

EDMUND W. DUGAN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No changes.
B. Additions: No changes.

This statement is made as of December 1, 1960.

EDMUND W. DUGAN.

[F.R. Doc. 60–11584; Filed, Dec. 13, 1960; 8:53 a.m.]

JAMES H. SANDS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions:

Gustin Bacon Manufacturing Co.
Schering Corporation.
Smith Kline and French Laboratories.

B. Additions:

Scott Foresman and Co.
Frank G. Shattuck Co.
Coastal States Gas Producing Co.
Polaroid Corporation.
Harcourt Brace and Co. Inc.

This statement is made as of November 18, 1960.

JAMES H. SANDS.

[F.R. Doc. 60-11585; Filed, Dec. 13, 1960; 8:53 a.m.]

GENERAL SERVICES ADMINISTRATION

MAGNESIUM SCRAP HELD IN NATIONAL STOCKPILE

Proposed Disposition

Pursuant to the provisions of section 3(e) of the Strategic and Critical Materials Stock Piling Act, 50 U.S.C. 98b(e), notice is hereby given of a proposed disposition of approximately 2,624 short tons of magnesium scrap now held in the national stockpile.

The Office of Civil and Defense Mobilization has made a revised determination, pursuant to section 2(a) of the Strategic and Critical Materials Stock Piling Act, that there is no longer any need for stockpiling said magnesium scrap. The revised determination was based upon the finding of the Office of Civil and Defense Mobilization that said magnesium scrap is obsolescent for use in time of war.

General Services Administration proposes to transfer said magnesium scrap to other Government agencies, or to sell the material to the public on a competitive basis. Initial disposal of approximately 551 short tons will be made six months following the date of publication of this notice in the FEDERAL REGISTER or as soon thereafter as possible.

Subsequent offerings of the remainder of the magnesium scrap will be scheduled, at minimum intervals of six weeks from previous offerings, in quantities of approximately 550 short tons each until disposal is completed.

This plan and the dates of disposition have been fixed with due regard to the protection of producers, processors, and consumers against avoidable disruption of their usual markets as well as the protection of the United States against avoidable loss on disposal.

Dated: December 7, 1960.

FRANKLIN FLOETE,
Administrator.

[F.R. Doc. 60-11628; Filed, Dec. 13, 1960; 9:02 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

	Page
PROCLAMATIONS:	
2935	12501
3382	12587
EXECUTIVE ORDERS:	
3797-A	12412, 12599
6260	12281
9941	12429
10896	12281
10897	12429
10898	12429
10899	12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Letter, Jan. 17, 1953	12501
Letter, Nov. 16, 1960	12501

5 CFR

2	12285
6	12393, 12547, 12588, 12733
30	12733

6 CFR

421	12282, 12283

7 CFR

33	12430
319	12809
718	12588
722	12393, 12403, 12809, 12812
730	12503
833	12650
845	12285
871	12547
903	12504
905—908	12504
911—913	12504
914	12405, 12650, 12812
916—919	12504
921	12504
923—925	12504
928—932	12504
933	12405–12407, 12504
935	12504
941–942	12504
943	12504, 12813
944	12504
946—949	12504
952	12504
953	12407, 12430, 12651
954	12504
956	12504
963	12504
965—968	12504
971—972	12504
974—978	12504
980	12504
982	12504
985—988	12504
989	12813
991	12504
994—995	12504
998	12504
1000	12504
1002	12504
1004—1005	12504
1008—1009	12504
1011—1014	12504
1016	12504
1018	12504, 12588
1023—1024	12504
1031	12505, 12651, 12652
1032	12828
PROPOSED RULES:	
51	12298, 12299
812	12712
901	12742
923	12558
936	12465
938	12752
949	12606
965	12466
989	12476

7 CFR—Continued

PROPOSED RULES—Continued	
1012	12558
1032	12712, 12752
1033	12606

8 CFR

211	12290

9 CFR

72	12548
94	12831
PROPOSED RULES:	
83	12571

10 CFR

30	12730
70	12730
PROPOSED RULES:	
25	12753
115	12367

12 CFR

PROPOSED RULES:	
206	12479

13 CFR

PROPOSED RULES:	
107	12754

14 CFR

49	12352
225	12589
300	12430
302	12432
414	12589
506	12505
507	12352, 12433, 12549, 12829
514	12433
600	12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734
601	12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830

14 CFR—Continued

602	12288, 12552, 12678, 12831
608	12678, 12679, 12734, 12830
609	12353, 12735
612	12410
1501	12434
PROPOSED RULES:	
41	12299
43	12524
302	12477
507	12477, 12478, 12571, 12844
600	12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845.
601	12328, 12339, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845
608	12479, 12846

15 CFR

203	12590
371	12734

16 CFR

13	12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733

18 CFR

104	12763
154	12653

19 CFR

PROPOSED RULES:	
8	12681

21 CFR

1	12592
8	12288
120	12288, 12506
121	12412, 12595, 12731, 12831
130	12592
146	12506, 12596, 12732
146c	12289
PROPOSED RULES:	
27	12372
120	12374, 12571
121	12299, 12477, 12839, 12840

22 CFR

46	12289

25 CFR

171	12408
PROPOSED RULES:	
52	12518
176	12299

26 (1939) CFR

16	12442
17	12443
29	12339
39	12339
40	12340

26 (1954) CFR

1	12340, 12345, 12654
18	12340
19	12654
48	12669
170	12732
PROPOSED RULES:	
1	12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833
25	12707
31	12835
48	12362
170	12710
197	12362
250	12511

28 CFR

21	12290

31 CFR

54	12345

32 CFR

805	12291
1008	12444
1009	12446
1010	12449
1012	12449
1013	12449
1016	12450, 12456
1030	12451
1052	12456
1053	12456
1054	12458
1055	12462
1057	12462
1059	12462
1619	12291

33 CFR

202	12393
203	12740
207	12740

38 CFR

3	12463

39 CFR

27	12348

41 CFR

3–75	12502, 12596
5–1	12553
50–201	12553
50–202	12553
PROPOSED RULES:	
50–202	12363, 12522

42 CFR

1	12292

43 CFR

76	12597
181	12679
192	12352
257	12679
PROPOSED RULES:	
259	12606
PUBLIC LAND ORDERS:	
82	12412, 12599
797	12413
1253	12481
1621	12599
1965	12599
2209	12412
2210	12413
2211	12413
2212	12597
2213	12597
2214	12598
2215	12599
2216	12599

45 CFR

601—620	12600
PROPOSED RULES:	
301	12840
306	12840
307	12841
308	12842
309	12843
311	12844

46 CFR

24	12554
30	12554
56	12554
70	12555
90	12555
110	12555
111	12555
136	12555
171	12555
308	12348

47 CFR

1	12358, 12600, 12602, 12603, 12605
4	12680
5	12359
9	12359
10	12359
11	12359
12	12358
16	12359
19	12359
21	12359, 12603, 12605
PROPOSED RULES:	
1	12624
3	12371, 12624, 12626, 12627

49 CFR

91	12506
122	12506
PROPOSED RULES:	
71–76	12420
197	12420
33	12507, 12556, 12557

50 CFR

32	12555
PROPOSED RULES:	
14	12741

THE UNIVERSITY OF MICHIGAN
DEC 21 1960
MAIN READING ROOM

Pages 12867–12905

FEDERAL REGISTER

VOLUME 25 NUMBER 243

Washington, Thursday, December 15, 1960

Contents

Army Department

RULES AND REGULATIONS:
Army nurses, dietitians and physical therapy aides; Army Medical Specialist Corps 12869
Safeguarding defense information; visitors 12869

Atomic Energy Commission

NOTICES:
Elk River power demonstration reactor program project; order postponing and setting new date for hearing 12901

Civil Service Commission

RULES AND REGULATIONS:
Exceptions from the competitive service; National Aeronautics and Space Administration 12869

Defense Department

See Army Department; Navy Department.

Federal Communications Commission

PROPOSED RULE MAKING:
Applications for voluntary assignments or transfers of control 12898
Ownership of AM, FM, and TV broadcast stations 12899

Federal Trade Commission

RULES AND REGULATIONS:
Prohibited trade practices:
Biglaiser, Leo 12883
Nu-Vision Optical Studios, Inc., et al 12883
Scepter Music, Inc., et al 12884

Fish and Wildlife Service

RULES AND REGULATIONS:
Hunting; Kentucky Woodlands National Wildlife Refuge, Kentucky 12888
Sport fishing; Horicon National Wildlife Refuge, Wisconsin 12888

Interior Department

See also Fish and Wildlife Service; Land Management Bureau.

NOTICES:
Noncompetitive oil and gas leases; establishment of new rental rate 12903

Internal Revenue Service

PROPOSED RULE MAKING:
Income tax; taxable years beginning after December 31, 1953 (2 documents) 12890, 12898

Interstate Commerce Commission

NOTICES:
Fourth section applications for relief 12902
Motor carrier alternate route deviation notices 12901

RULES AND REGULATIONS:
Motor carrier operation in Hawaii; certificate of exemption and order 12888

Land Management Bureau

RULES AND REGULATIONS:
Public land orders:
Alaska (2 documents) 12885, 12887
California 12887
Idaho 12885
Washington (2 documents) 12886, 12887

Navy Department

RULES AND REGULATIONS:
Navy general and foreign claims 12870

Post Office Department

RULES AND REGULATIONS:
Directory of international mail; miscellaneous amendments 12884

Small Business Administration

NOTICES:
Branch Manager, Augusta, Maine, delegation relating to financial assistance and administrative functions 12903
Branch Manager, Providence, Rhode Island; delegation relating to financial assistance and administrative functions 12903

Tariff Commission

NOTICES:
"Escape clause" reports:
Binding twines (binder and baler twines) 12902
Hard-fiber cords and twines (except binding twines) 12902
Spring clothespins; reports to the President 12902

Treasury Department

See Internal Revenue Service.

(*Continued on next page*)

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

EXECUTIVE ORDERS:
Oct. 20, 1916 (modified by PLO 2220) 12887
June 8, 1926 (revoked in part by PLO 2221) 12887

5 CFR

6 12869

16 CFR

13 (3 documents) 12883, 12884

26 (1954) CFR

PROPOSED RULES:
1 (2 documents) 12890, 12898

32 CFR

505 12869
570 12869
750 12870
753 12879

39 CFR

168 12884

43 CFR

PUBLIC LAND ORDERS:
1124 (revoked in part by PLO 2218) 12885
2217 12885
2218 12885
2219 12886
2220 12887
2221 12887
2222 12887

47 CFR

PROPOSED RULES:
1 12898
3 12899

49 CFR

171 12888

50 CFR

32 12888
33 12888

Check List

CFR SUPPLEMENTS

(As of January 1, 1960)

Titles 1–3 ($1.25); Title 3 ($0.60); Titles 4–5 ($1.00); Title 7, Parts 1–50 ($0.45); Parts 51–52 ($0.45); Parts 53–209 ($0.40); Parts 210–399, Revised ($4.00); Parts 400–899, Revised ($5.50); Parts 900–959 ($1.50); Part 960 to End ($2.50); Title 8 ($0.40); Title 9 ($0.35); Titles 10–13 ($0.50); Title 14, Parts 1–39 ($0.65); Parts 40–399 ($0.75); Part 400 to End ($1.75); Title 15 ($1.25); Title 16, Revised ($6.50); Title 17 ($0.75); Title 18 ($0.55); Title 19 ($1.00); Title 20 ($1.25); Title 21 ($1.50); Titles 22–23 ($0.45); Title 24 ($0.45); Title 25 ($0.45); Title 26 (1939), Parts 1–79 ($0.40); Parts 80–169 ($0.35); Parts 170–182 ($0.35); Parts 300 to End ($0.40); Title 26, Part 1 (§§ 1.01–1.499) ($1.75); Parts 1 (§ 1.500 to End)–19 ($2.25); Parts 20–169 ($1.75); Parts 170–221 ($2.25); Parts 222–299 ($1.75); Part 300 to End ($1.25); Titles 28–29 ($1.75); Titles 30–31 ($0.50); Title 32, Parts 1–399 ($2.00); Parts 400–699 ($2.00); Parts 700–799 ($1.00); Parts 800–999, Revised ($3.75); Parts 1000–1099, Revised ($6.50); Part 1100 to End ($0.60); Title 32A ($0.65); Title 33 ($1.75); Title 35, Revised ($3.50); Title 36, Revised ($3.00); Title 37, Revised ($3.50); Title 38 ($1.00); Title 39 ($1.50); Titles 40–41, Revised ($0.70); Title 42, Revised ($4.00); Title 43 ($1.00); Title 44, Revised ($3.25); Title 45, Revised ($3.75); Title 46, Parts 1–145 ($1.00); Parts 146–149, Revised ($6.00); Parts 146–149 (1950 Supp. 1) ($0.55); Part 150 to End ($0.65); Title 47, Parts 1–29 ($1.00); Part 30 to End ($0.30); Title 49, Parts 1–70 ($1.75); Parts 71–90 ($1.00); Parts 91–164 ($0.45); Part 165 to End ($1.00); Title 50 ($0.70); General Index ($1.00).

Order from the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

National Aeronautics and Space Administration

Effective upon publication in the FEDERAL REGISTER, paragraph (b) of § 6.347 is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 60-11615; Filed, Dec. 14, 1960; 8:59 a.m.]

Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army

SUBCHAPTER A—AID OF CIVIL AUTHORITIES AND PUBLIC RELATIONS

PART 505—SAFEGUARDING DEFENSE INFORMATION

Visitors

In § 505.17, add new paragraphs (d)(1)(viii), and (7), and (e)(6), as follows:

§ 505.17 Visitors.

* * * * * *

(d) *Foreign Nationals*—(1) *Authority of the installation commander or Army representative.* * * *

(viii) Canadian defense suppliers and representatives of the Canadian Department of Defense Production in connection with procurement solicitations or other matters related thereto. Discussions conducted during visits in this category cannot be expanded to include classified matters.

* * * * * *

(7) *Authority of commandants of service schools.* Commandants of service schools are authorized to approve visits of foreign nationals to military installations and activities when such visits are field trips scheduled in the program of instruction of a course in which the foreign nationals are students, and when such field trips are in consonance with the purpose and scope of the school course attended. The school commandant will obtain the concurrence of the commander of the installation or activity to be visited before approval. During such visits, foreign students will not be furnished classified information higher than that which they have been authorized to receive in the school course which they have been attending.

(e) *United States citizens.* * * *

(6) Union officials not employed by contractors but who may require access to classified defense information or to closed or restricted areas in connection with the specific terms of a bargaining or other agreement with a contractor, may be granted access to such information or areas by the commander of an installation under the following procedures:

(i) Appropriate documentation shall be furnished by the union official to the commander of the installation as follows:

(*a*) Name and address of the person for whom visit is requested.

(*b*) Citizenship.

(*c*) Date and place of birth.

(*d*) Organization with which the person is associated.

(*e*) Position of person in organization.

(*f*) Date of requested visit or dates of intermittent visits.

(*g*) Purpose of visit in detail, including classified information to which access is required and the reason therefor.

(*h*) Person(s) to be visited, if known.

(*i*) Name and address of any facility or Army installation to which the person has submitted previously, forms, identified in (*j*) of this subdivision.

(*j*) Five signed Personnel Security Questionnaires (DD Form 48), five signed Certificate of Non-Affiliation with Certain Organizations (DD Form 48–1) and one executed fingerprint card.

(ii) The contractor who employs the union members may act as sponsor in submission of the foregoing documentation except that forms required in subdivision (i)(*j*) of this subparagraph may be submitted directly to the installation commander.

(iii) Provisions of paragraph 3–104, AR 380–130 (Armed Forces Industrial Security Regulation) will be accomplished.

(iv) Notice of approval or disapproval of visit will be furnished the requestor by the commander.

(v) These provisions are not to be interpreted as modifying in any way the authority of the commander of a military installation to deny admittance of any individual to a military installation under his control. Actions under such authority are not appealable.

Effective date. These amendments shall become effective upon their publication in the FEDERAL REGISTER.

[C 3 and C 4, AR 380–25, Sept. 20 and Nov. 28, 1960] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 60-11647; Filed, Dec. 14, 1960; 8:45 a.m.]

SUBCHAPTER F—PERSONNEL

PART 570—ARMY NURSES, DIETITIANS AND PHYSICAL THERAPY AIDES

Army Medical Specialist Corps

Sections 570.21 through 570.24 are revoked and the following substituted therefor:

§ 570.21 Composition.

The Army Medical Specialist Corps is composed of a Dietitian Section, a Physical Therapist Section, and an Occupational Therapist Section. It consists of commissioned officers who are qualified as dietitians, physicial therapists or occupational therapists, and commissioned officers participating in Army Medical Specialist Corps professional education programs for the purpose of becoming qualified in one of these three specialties.

§ 570.22 Duties of Army Medical Specialist Corps officers.

Duties will be those directly related to the specialties of dietetics, physical therapy, and occupational therapy as practiced by the respective civilian professions including the development and adoption of principles and standards to meet the total needs of patients in these specialized fields.

§ 570.23 Utilization of Army Medical Specialist Corps officers.

Officers of this corps will be assigned those professional and administrative duties which contribute to the accomplishment of the mission of the Army Medical Service and will be utilized in their military occupational specialty or in activities related thereto. When Army Medical Specialist Corps officers are assigned to Army medical treatment facilities, the senior dietitian will be chief of the Food Service Division, and the senior physical therapist and senior occupational therapist will be chiefs of their respective sections.

Effective date. These amendments shall become effective upon their publication in the FEDERAL REGISTER.

[AR 40–1, Nov. 4, 1960] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012. Interpret or apply sec. 3070, 70A Stat. 169; 10 U.S.C. 3070)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 60-11646; Filed, Dec. 14, 1960; 8:45 a.m.]

Chapter VI—Department of the Navy

SUBCHAPTER E—CLAIMS

PART 750—NAVY GENERAL CLAIMS

PART 753—NAVY FOREIGN CLAIMS

Revision

Scope and purpose. Parts 750 and 753 are revised to reflect current law and regulations.

1. Part 750 is revised to read as follows:

PART 750—NAVY GENERAL CLAIMS

Subpart A—Federal Tort Claims

ADMINISTRATIVE CLAIMS

Sec.
750.1 Definitions.
750.2 Statutory authority.
750.3 Scope of provisions governing administrative settlement of Federal tort claims under Title 28, United States Code.
750.4 Effect on prior legislation.
750.5 Claims in excess of $2,500.
750.6 Attorney's fees.
750.7 Statute of limitations.

SUIT AGAINST THE UNITED STATES

750.8 Statutory authority for action.
750.9 Scope of civil action provisions of 28 U.S.C. 1346(b).
750.10 Extent of Government liability.
750.11 Compromise settlements.
750.12 Effect of judgment.
750.13 Attorney's fees.
750.14 Action on claims previously presented administratively.
750.15 Statute of limitations.
750.16 Appeal.

Subpart B—Other Administrative Claims

MILITARY CLAIMS ACT (10 U.S.C. 2733)

750.17 Definitions.
750.18 Statutory authority.
750.19 Scope of the Military Claims Act (10 U.S.C. 2733).
750.20 Claims in excess of $1,000.
750.21 Claims "otherwise incident to noncombat activities" of the Department of the Navy.
750.22 Bailed personal property.
750.23 Use and occupancy of real property.
750.24 Damage, loss, or destruction of mail.
750.25 Claims arising in foreign countries.
750.26 Statute of limitations.

10 U.S.C. 7625

750.27 Statutory authority.
750.28 Scope of 10 U.S.C. 7625.

Subpart C—General Provisions: Investigation and Procedure

750.29 Measure of damages.
750.30 Who constitutes a proper claimant.
750.31 The submission of a claim.
750.32 The contents of a claim.
750.33 Investigation; general.
750.34 Investigation; when required.
750.35 Investigation; responsibility for.
750.36 The investigating officer.
750.37 Duties of the investigating officer.
750.38 Contents of the investigative report.
750.39 Action by the commanding officer or officer in charge.
750.40 Action by the district or staff legal officer.
750.41 Approval of claims.
750.42 Notice and appeal.
750.43 Settlement agreement.
750.44 Payment of claims.
750.45 Claims in favor of the United States
750.46 Disclosure of information.
750.47 Authority for issuance of instructions by the Judge Advocate General.
750.48 Single service assignment of responsibility for processing of claims.

Subpart A—Federal Tort Claims

AUTHORITY: §§ 750.1 to 750.16 issued under R.S. 161, secs. 5031, 6011, 70A Stat. 278, 375, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 6011. Interpret or apply secs. 2671–2680, 62 Stat. 982–984, as amended; 28 U.S.C. 2671–2680.

ADMINISTRATIVE CLAIMS

§ 750.1 Definitions.

The term "employee of the Government", as used in §§ 750.1 to 750.16, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation. The words "Navy" and "naval" as used herein, include the Marine Corps except where the context indicates otherwise.

§ 750.2 Statutory authority.

Pursuant to, and subject to the limitations of, Part 2 of the Federal Tort Claims Act as amended (28 U.S.C. 2671–2680), the Secretary of the Navy, or his designee for the purpose, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine and settle any claim for money damages of $2,500 or less against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant, in accordance with the law of the place where the act or omission occurred.

§ 750.3 Scope of provisions governing administrative settlement of Federal tort claims under Title 28, United States Code.

(a) Subject to the exceptions set forth in paragraphs (b) and (c) of this section, the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code and §§ 750.1 to 750.7 provide the exclusive authorization and procedure whereby the Secretary of the Navy or his designee may consider, ascertain, adjust, determine and settle claims for money damages of $2,500 or less against the United States for injury or loss of property or personal injury or death determined to have been caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(b) The provisions of the Federal Tort Claims Act and §§ 750.1 to 750.7 do not apply to:

(1) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused.

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(4) Any claim for which a remedy is provided by the act of March 9, 1920, as amended (46 U.S.C. 741–752) or the act of March 3, 1925, as amended (46 U.S.C. 781–790) relating to claims or suits in admiralty against the United States.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading With the Enemy Act as amended (50 U.S.C. App. 1–39).

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(7) Any claim arising from the activities of the Panama Canal Company.

(8) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(9) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(10) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(11) Any claim arising in a foreign country.

(12) Any claim arising from the activities of the Tennessee Valley Authority.

(c) Although not expressly excepted from the application of the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, the following types of claims shall not be considered administratively under the provisions of §§ 750.1 to 750.7:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred in line of duty.

(2) Any claim for the personal injury or death of a civilian employee of the Navy to whom the Federal Employees' Compensation Act as amended (5 U.S.C. 751–793) is applicable.

(3) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 10 U.S.C. 2732 and the applicable Navy Personnel Claims Regulations (Part 751 of this chapter).

§ 750.4 Effect on prior legislation.

(a) With respect to claims cognizable under the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, section 424 of the Federal Tort Claims Act (the only section of the original law not repealed by Public Law 773, 80th Cong.) repeals all provisions of law authorizing the Navy to consider, ascertain, adjust, or determine claims on account of damage to or loss of property or on account of personal injury or death, with respect to which causation by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is a jurisdictional fact.

(b) Section 424 of the Federal Tort Claims Act further provided that nothing contained therein should be deemed to repeal any provision of law authorizing the Navy to consider, ascertain, adjust, settle, determine, or pay any claim on account of damage to or loss of property, or on account of personal injury or death, in cases in which such damage, loss, injury, or death was not caused by any negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under the administrative claims provisions of Part 2 of the Federal Tort Claims Act, now revised and embodied in Title 28, United States Code.

§ 750.5 Claims in excess of $2,500.

The Navy does not have legal authorization under the Federal Tort Claims Act to pay claims in excess of $2,500 even though they are otherwise cognizable under the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code. The claimant's remedy in such cases is by civil action in the United States district court for the district where the claimant resides or wherein the act or omission complained of occurred, as set forth in the civil action provisions of 28 U.S.C. 1346(b), and §§ 750.8 to 750.16.

§ 750.6 Attorneys' fees.

(a) The Secretary of the Navy or his designee making an award pursuant to the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code and §§ 750.1 to 750.7 may, as a part of the award, determine and allow reasonable attorneys' fees which, if the amount awarded is $500 or more, are not to exceed 10 per centum of the sum approved. Attorneys' fees so determined are to be paid to the attorney representing the claimant out of, but not in addition to, the amount of the award. The limitation of 10 per centum does not apply when the award is less than $500.

(b) The authority to fix attorneys' fees as set forth in paragraph (a) of this section may be exercised only upon the written request of both the claimant and his attorney.

§ 750.7 Statute of limitations.

Every claim against the United States for $2,500 or less, to be cognizable under the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, and §§ 750.1 to 750.7 must be presented in writing to the Navy within two years after the claim accrued or be forever barred.

SUIT AGAINST THE UNITED STATES

§ 750.8 Statutory authority for action.

(a) Pursuant to, and subject to the limitations of, Part 3 of the Federal Tort Claims Act as amended (28 U.S.C. 1254, 1255, 1346, 1402, 2402, 2411, 2412, 2674), the United States district court for the district where the plaintiff resides or wherein the act of omission complained of occurred, including the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, sitting without a jury, has exclusive jurisdiction of civil actions on claims against the United States, for money damages, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred.

(b) The jurisdiction conferred as set forth in paragraph (a) of this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under 28 U.S.C. 1346(b).

§ 750.9 Scope of civil action provisions of 28 U.S.C. 1346(b).

(a) The remedies provided by 28 U.S.C. 1346(b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States, for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred.

(b) The types of claims listed in § 750.3(b) (1)–(12) are expressly excepted from the application of 28 U.S.C. 1346(b).

§ 750.10 Extent of Government liability.

(a) Subject to the provisions of Title 28, United States Code, the United States is liable in respect of claims cognizable thereunder, in the same manner, and to the same extent, as a private individual under like circumstances, but is not liable for interest prior to judgment, or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred, provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought, in lieu thereof.

(b) On all final judgments rendered against the United States in actions instituted under 28 U.S.C. 1346(b), interest is to be computed at the rate of 4 per centum per annum from the date of judgment up to, but not exceeding, 30 days after the date of approval of any appropriation act providing for payment of the judgment.

(c) Costs are to be allowed in all courts to the successful claimant but such costs are not to include attorneys' fees.

§ 750.11 Compromise settlements.

The Attorney General, with the approval of the court, is authorized to arbitrate, compromise, or settle any claim cognizable under the civil action provisions of 28 U.S.C. 1346(b), after the commencement of an action thereon. Any such award, compromise, or settlement made by the Attorney General is required to be paid by the Navy out of appropriations made therefor.

§ 750.12 Effect of judgment.

The judgment in an action brought under Title 28 U.S.C. 1346(b) constitutes a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the Government whose act or omission gave rise to the claim.

§ 750.13 Attorneys' fees.

The court rendering a judgment for the plaintiff, or the Attorney General making an arbitration, compromise, or settlement, pursuant to 28 U.S.C. 1346(b) or 2677, respectively, may as a part of the judgment or settlement, determine and allow reasonable attorneys' fees, which, if the recovery is $500 or more, are not to exceed 20 per centum of the amount recovered, to be paid to the attorney representing the claimant out of, but not in addition to, the amount of the judgment or settlement recovered.

§ 750.14 Action on claims previously presented administratively.

(a) No action can be instituted upon a claim against the United States which has been presented to the Navy pursuant to the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, and §§ 750.1 to 750.7 unless the Navy has made final disposition of the claim. The claimant may, however, upon 15 days' written notice, withdraw the claim from consideration by the Navy and commence action thereon. No action on a claim so withdrawn from consideration by the Navy may be instituted for any sum in excess of the claim presented to the Navy, except where the increased amount is based on newly discovered evidence not reasonably discoverable at the time of presenting the claim to the Navy, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(b) The disposition of any claim made by the Attorney General or the Secretary of the Navy or his designee is not competent evidence of liability or amount of damages.

§ 750.15 Statute of limitations.

An action against the United States pursuant to 28 U.S.C. 1346(b), must be

UNIVERSITY OF MICHIGAN LIBRARIES

begun within two years after the claim accrued, or be forever barred. If a claim not exceeding $2,500 has been presented in writing to the Navy within that period of time, suit thereon shall not be barred until the expiration of a period of six months after either the date of withdrawal of such claim from the Navy or the date of mailing notice by the Navy of final disposition of the claim.

§ 750.16 Appeal.

(a) The United States courts of appeals have jurisdiction of appeals from final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands in actions brought under 28 U.S.C. 1346(b).

(b) The United States Court of Claims has jurisdiction to review by appeal final judgments in the district courts in civil actions based on tort claims brought under 28 U.S.C. 1346(b), if the notice of appeal filed in the district court has affixed thereto the written consent on behalf of all the appellees that the appeal be taken to the Court of Claims. Appeals to the Court of Claims in such cases shall be taken within 3 months after the entry of the final judgment of the district court.

(c) Cases in the courts of appeals may be reviewed by the Supreme Court of the United States by writ of certiorari, by appeal, or by certification of questions of law, as provided in 28 U.S.C. 1254. Cases in the Court of Claims may be reviewed by the Supreme Court by writ of certiorari or by certification of questions of law, as provided in 28 U.S.C. 1255.

Subpart B—Other Administrative Claims

AUTHORITY: §§ 750.17 to 750.28 issued under R.S. 161, secs. 5031, 6011, 70A Stat. 278, 375, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 6011. Interpret or apply secs. 2733, 7625, 70A Stat. 153, 478, as amended; 10 U.S.C. 2733, 7625.

MILITARY CLAIMS ACT (10 U.S.C. 2733)

§ 750.17 Definitions.

As used in §§ 750.17 to 750.26:

(a) The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

(b) The words "military personnel or civilian employees of the Navy" include all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, and volunteer workers and others serving as employees of the Navy whether with or without compensation.

(c) The words "Navy" or "naval" include the Marine Corps unless the context indicates a contrary intention.

(d) The word "military" includes "naval."

§ 750.18 Statutory authority.

10 U.S.C. 2733, commonly known as the Military Claims Act, authorizes the Secretary of the Navy to pay certain types of claims when they are substantiated in such manner as he by regulations may prescribe. The claim must be for damage to or loss or destruction of property, real or personal, or for personal injury or death caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government and claims for damages to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise. The authority to pay a claim may be delegated, subject to appeal to the Secretary of the Navy and under such regulations as he may prescribe, to such other officer or officers as he may designate for such purposes when the amount to be paid is $1,000 or less, but may be delegated only to the Judge Advocate General when the amount exceeds $1,000 and does not exceed $5,000. When such a claim is in excess of $5,000, the Secretary of the Navy may make a partial payment of $5,000 and refer the balance to Congress for its consideration.

§ 750.19 Scope of 10 U.S.C. 2733.

(a) Subject to the exceptions set forth in paragraph (b) of this section, claims not in excess of $2,500 for damage to or loss or destruction of real or personal property or for personal injury or death, caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or otherwise incident to noncombat activities of the Navy, including claims for damages to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise, are payable by the Secretary of the Navy or his designees under 10 U.S.C. 2733 and §§ 750.17 to 750.26.

(b) The provisions of 10 U.S.C. 2733 and §§ 750.17 to 750.26 do not apply to:

(1) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, his agent or his employee.

(2) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat.

(3) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States.

(4) Any claim for personal injury or death of military personnel or civilian employees of the Navy if such injury or death occurs incident to their service.

(5) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 10 U.S.C. 2732 and the applicable Navy Personnel Claims Regulations (Part 751 of this chapter).

(6) Any claim the cause of which has been determined to be the negligent or wrongful act or omission of an employee of the Government (as defined in § 750.1) while acting within the scope of his office or employment, and which is in all other respects within the cognizance of the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, and §§ 750.1 to 750.7.

(7) Any claim arising in a foreign country or possession thereof which is cognizable under the provisions of the Foreign Claims Act (10 U.S.C. 2734) and regulations issued pursuant thereto (including Part 753 of this chapter).

(8) Any claim cognizable under 10 U.S.C. 7622. (This law relates to admiralty claims and to claims for damages caused by naval vessels.)

(9) Any claim for damage to or loss or destruction of property founded in contract, express or implied, with the exception of claims arising from the bailment of personal property to the Government and from the use and occupancy of real property as set forth in §§ 750.22 and 750.23.

(10) Any claim for the rent of real or personal property.

(11) Any claim involving the infringement of patents.

§ 750.20 Claims in excess of $1,000.

(a) Claims in excess of $1,000 but not in excess of $5,000 are payable only by the Secretary of the Navy, and, under authority delegated by the Secretary of the Navy, by the Judge Advocate General.

(b) Claims in excess of $5,000, if otherwise within the scope of the Military Claims Act (10 U.S.C. 2733), may be paid partially in the amount of $5,000 by the Secretary of the Navy who may then report the excess to Congress for its consideration. Such claims, if found to be meritorious, will ordinarily be reported to Congress in a deficiency appropriation bill, obviating the claimant's initiation of private relief legislation.

§ 750.21 Claims "otherwise incident to noncombat activities" of the Department of the Navy.

Claims for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, are payable under the provisions of the Military Claims Act (10 U.S.C. 2733) if otherwise incident to noncombat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operation of missiles, aircraft and of antiaircraft equipment; use of barrage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

§ 750.22 Bailed personal property.

(a) Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government under an agreement, expressed or implied, are payable under the provisions of the Military Claims Act (10 U.S.C. 2733) even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss or destruction. Subject to the exceptions set forth in § 750.19(b), the cause of loss is immaterial.

(b) Claims of prisoners of war and of interned enemy aliens for damage to or loss or destruction of personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy. The authority to pay claims of this nature is also subject to the exceptions set forth in § 750.19(b).

(c) Claims in the category covered by this section may, if deemed in the best interests of the Government, be processed as contract claims through the General Accounting Office.

§ 750.23 Use and occupancy of real property.

(a) Subject to the exceptions set forth in § 750.19(b), claims for damage to real property incident to the use and occupancy thereof by the Government, whether under a lease, express or implied, or otherwise, are payable under the provisions of the Military Claims Act (10 U.S.C. 2733) even though legally enforceable against the Government as contract claims.

(b) Claims in the category covered by this section may, if deemed in the best interests of the Government, be processed as contract claims through the General Accounting Office.

§ 750.24 Damage, loss, or destruction of mail.

(a) Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act (10 U.S.C. 2733). This provision of the act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or be otherwise incident to noncombat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Post Office Department of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or delivery to the addressee. For this reason, any award to a claimant for the damage to or loss or destruction of registered or insured mail while in the possession of the military authorities, where the damage, loss, or destruction results from a criminal act, shall be limited in amount to the indemnity to which the claimant would be entitled from the Post Office Department in accordance with the registry or insurance fee paid, and shall be in all other respects subject to the conditions of and limitations upon indemnity set forth in the Postal Manual, United States Post Office Department (cf. 39 CFR Part 54), as applicable to the payment of indemnity by the Post Office Department where the damage, loss, or destruction occurs while the mail matter is in the possession of that department.

(b) Claims for damage to or loss or destruction of mail matter of any class, whether or not such mail is insured or registered, are payable, upon proper substantiation, if shown to have been caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or if otherwise incident to noncombat activities of the Navy, or if within the provisions of § 750.22 with respect to bailed personal property. However, failure to insure or register mail containing money or articles of substantial value may constitute negligence on the part of the claimant which will preclude recovery. In claims for damage, loss, or destruction of mail matter not resulting from criminal acts, the amount of the award is not limited to the amount of coverage provided by the insurance or registry fee paid to the Post Office Department, but is governed by the general provisions of § 750.29 with respect to measure of damages. If claimed, additional damages may be recovered in mail cases in the amount of postage and any registration or insurance or other special fees prepaid, except that no such postage or fees shall be paid if actual delivery of the mail matter is made to the correct addressee.

(c) In addition to the exceptions set forth in § 750.19(b), the provisions of the Military Claims Act do not apply to:

(1) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Post Office Department to authorized military personnel or civilian employees of the Navy (e.g., designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, and postal officers).

(2) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of or while in the hands of bonded personnel.

(3) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Post Office Department (e.g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee.

§ 750.25 Claims arising in foreign countries.

(a) There are no geographical limitations upon the scope of application of the Military Claims Act (10 U.S.C. 2733) and §§ 750.17 to 750.26. The Foreign Claims Act (10 U.S.C. 2734) and regulations issued pursuant thereto (including Part 753 of this chapter), however, have preemptive application to claims for damage to or loss or destruction of real or personal property, and for personal injury or death, caused by military forces or individual members thereof, whether military personnel or civilian employees, or otherwise incident to noncombat activities of such forces, in a foreign country, to public property located therein, or to the privately owned property or to the persons of inhabitants of a foreign country. Any claim which arises in a foreign country, therefore, and which is within the scope of the Foreign Claims Act, is precluded from consideration under the Military Claims Act. Any claim which arises in a foreign country and is for any reason not cognizable under the Foreign Claims Act and the regulations issued thereunder, however, may be considered and paid under the Military Claims Act and §§ 750.17 to 750.26 provided it is in all respects within the scope thereof.

(b) In addition to the exceptions set forth in § 750.19(b), the provisions of the Military Claims Act do not apply to any claim arising in a foreign country, of an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States.

(c) Claims arising in foreign countries may, in proper cases, be cognizable under 10 U.S.C. 7625 and §§ 750.27 and 750.28. They are expressly excluded, however, from consideration under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, and from the application of the civil action provisions of 28 U.S.C. 1346(b).

§ 750.26 Statute of limitations.

No claim may be settled under the Military Claims Act (10 U.S.C. 2733) unless it is presented in writing within two years after it accrues. However, if such accident or incident occurs in time of war or armed conflict, or if war or armed conflict intervenes within two years after its occurrence, any claim may, on good cause shown, be presented within two years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President.

10 U.S.C. 7625

§ 750.27 Statutory authority.

Pursuant to and subject to the limitations of 10 U.S.C. 7625, the Secretary of the Navy is authorized to consider, ascertain, adjust, determine, and pay the amounts due in all claims for damages (other than such as are occasioned by

UNIVERSITY OF MICHIGAN LIBRARIES

vessels of the Navy) to and loss of privately owned property, where the amount of the claim does not exceed $500, for which damage or loss members of the naval service are found to be responsible.

§ 750.28 Scope of 10 U.S.C. 7625.

(a) Subject to the exceptions and limitations set forth in paragraphs (b) and (c) of this section, 10 U.S.C. 7625 provides authority whereby the Secretary of the Navy may, in certain restricted circumstances, consider, ascertain, adjust, determine, and pay claims not in excess of $500 for damage to and loss of privately owned property, for which damage or loss a member of the naval service is found to be responsible.

(b) The provisions of 10 U.S.C. 7625 and §§ 750.27 to 750.28 do not apply to:

(1) Any claim in excess of $500.

(2) Any claim for personal injury or death.

(3) Any claim for property damage or loss occasioned by vessels of the Navy.

(4) Any claim for property damage or loss for which civilian employees of the naval service are found to be responsible.

(5) Any claim for property damage or loss caused through the negligence of members of the naval service while acting within the scope of their employment (4 Comp. Gen. 876 (1925), 10 Comp. Gen. 229 (1930), 11 Comp. Gen. 502 (1932)).

(6) Any claim or part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract.

(7) Any subrogated claim.

(c) Favorable consideration under 10 U.S.C. 7625 of claims arising from acts or omissions of members of the naval service, acting outside the scope of their employment, will ordinarily be restricted to claims arising from acts or omissions involving the use of Navy property.

Subpart C—General Provisions: Investigation and Procedure

AUTHORITY: §§ 750.29 to 750.48 issued under R.S. 161, secs. 5031, 6011, 70A Stat. 278, 375, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 6011. Interpret or apply secs. 2671–2680, 62 Stat. 982–984, as amended, secs. 2733, 7625, 70A Stat. 158, 478, as amended; 28 U.S.C. 2671–2680, 10 U.S.C. 2733, 7625.

§ 750.29 Measure of damages.

(a) In claims for damage to or loss or destruction of property cognizable under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, or the civil action provisions of 28 U.S.C. 1346(b), the measure of damages is determined by the law of the place where the act or omission occurred. In cases cognizable under the Military Claims Act (10 U.S.C. 2733) and 10 U.S.C. 7625, however, the measure of damages shall be as follows:

(1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value thereof immediately after the incident. All estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically reparable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs, and provided that idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

(b) In claims for personal injury or death cognizable under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, or the civil action provisions of 28 U.S.C. 1346(b), the measure of damages is determined by the law of the place where the act or omission occurred.

(c) In claims for personal injury or death cognizable under the Military Claims Act (10 U.S.C. 2733), the measure of damage may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim arises; the amount approved therefor will, to the extent found practicable or feasible, be apportioned among the beneficiaries and in the proportions, prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

(d) In claims cognizable under the Military Claims Act or 10 U.S.C. 7625, payment shall not be made for the following elements of damage: Interest, cost of preparation of claims; attorneys' fees; or inconvenience and similar items.

(e) If a claimant under the Military Claims Act or 10 U.S.C. 7625 has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award made by the Government to the claimant.

§ 750.30 Who constitutes a proper claimant.

(a) A claim for damage to or loss or destruction of property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner," as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary.

(b) A claim on account of personal injury shall be presented by the person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

(c) Settlement of claims involving subrogation by reason of insurance or operation of law when the combined claims of both insured and insurer do not exceed $2,500 in the case of the Federal Tort Claims Act, or $5,000 in the case of the Military Claims Act, may be made separately with the subrogor or the subrogee for their respective interests when separate claims are submitted, or jointly with both when one claim has been filed in the names of both and signed by both, but only with the subrogee when the subrogor has received full compensation from him in cases of damage, loss, destruction, injury or death. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

(d) All transfers and assignments made of any claim upon the United States, or of any part or share thereof or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. (R.S. 3477, as amended, 31 U.S.C. 203.) This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.31 The submission of a claim.

(a) A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form No. 95, shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signature of the claimant or his agent shall be identical throughout. When more claims than one arise from a single incident, each such claim shall be filed separately and individually.

(b) The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known; otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which or nearest to which the incident occurred, or to the Judge Advocate General of the Navy, Washington 25, D.C.

§ 750.32 The contents of a claim.

(a) The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant.

(2) The amount claimed for property damage, loss, or destruction, and the amount claimed on account of personal injury or death.

(3) The date, time, and place of occurrence of the incident giving rise to the claim.

(4) The persons, vehicles, and other property involved.

(5) The identity of the Government department, agency, or activity involved.

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it.

(7) The nature and extent of the resulting damage, loss, destruction, or injury.

(8) The names and addresses of any witnesses to the occurrence of the incident.

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

(b) The amount of the claim shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit, in triplicate, an itemized, signed statement or estimate of the cost of repairs. If the property is not economically reparable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically reparable, the value, both before and after the incident, of the land damaged, or of the improvement or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to or loss or destruction of registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of the fees and postage paid, or in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit, in triplicate, a written report by the attending physician showing the nature and extent of the injury and the treatment, the period of hospitalization or incapacitation, the degree of permanent disability, if any, and the prognosis. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred.

(c) The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

§ 750.33 Investigation; general.

Every service-connected incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to insure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of resulting claims against and in favor of the Government, and for all other official action required by the circumstances of the case. The procedures set forth in §§ 750.34 and 750.35 shall be followed with respect to the appointment of investigating officers, the conduct of the investigation, the preparation of the investigative report, and the processing of claims cognizable under the regulations in this part.

§ 750.34 Investigation; when required.

(a) Investigation of service-connected incidents shall be made in any of the following circumstances:

(1) When private property is damaged, lost, or destroyed.

(2) When Government property is damaged, lost, or destroyed under circumstances which indicate the existence of a claim in favor of the Government.

(3) When injury or death results to any civilian other than an employee of the Government acting in the performance of his duty and covered by the Federal Employees' Compensation Act.

(4) When a claim is filed within the provisions of this part, though irrespective of amount.

(5) When specifically directed by competent authority.

(b) Incidents falling within any of the categories listed in paragraph (a) of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

(c) Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 U.S.C. 1346(b), a request shall be made upon the Commandant of the appropriate naval district for an investigative report of the incident giving rise to the action, if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed. The commencement under the civil action provisions of 28 U.S.C. 1346 (b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the Commandant of the cognizant naval district, to the attention of the District Legal Officer, who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or omission committed within the scope of his employment, which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner.

(d) The regulations in this part in no way modify the requirements of Navy Regulations; the Manual for Courts-Martial, United States, 1951 (E.O. 10214, 3 CFR 1949–1953 Comp., p. 408, as amended); and other provisions of the 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951 and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of Navy Regulations; the Manual for Courts-Martial, United States, 1951; and other provisions of the 1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951.

§ 750.35 Investigation; responsibility for.

(a) Immediate responsibility for the investigation of an incident in accordance with this part lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of the personnel involved or of the activity in which the incident occurred. Where two or more activities are involved, the senior of the commanding officers or officers in charge concerned shall decide who of

UNIVERSITY OF MICHIGAN LIBRARIES

them shall have immediate responsibility for the investigation.

(b) When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter will comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage or other expenses incurred by the investigating installation or unit.

(c) The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form No. 91. This driver's report shall be made even though the driver of the other vehicle or any other person involved states that no claim will be filed, or even though the only vehicles involved are Government-owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy, and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

§ 750.36 The investigating officer.

(a) Every investigation required by this part shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and experienced in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all and the same powers as the investigating officer, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To insure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an officer in his capacity as an investigating officer shall ordinarily have priority over any other assignments he may have.

§ 750.37 Duties of the investigating officer.

It shall be the duty of the investigating officer, in making an investigation pursuant to the regulations in this part:

(1) To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

(2) To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against or in favor of the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.

(3) To secure and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity and he should obtain from them full statements. Statements from principal witnesses should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses lose their clear recollection or can be confused by questioning by persons with adverse interests.

(4) To inspect the property damage and to interview injured persons or their representatives personally, and if such personal inspection and interview is not conducted, to state the reason therefor.

(5) To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For proper method of computing the amount of damages, see § 750.29. Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public, or where the claimant is in business for himself a certified copy of company records, showing claimant's age, occupation, wage or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained. Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a written statement by the attending physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

(6) In all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability, to obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident.

(7) To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed. The investigating officer, if the injured person does not object, should have a physical examination made of the injured person at a military installation, as may be adequate considering available personnel and facilities of the installation, when such examination is considered necessary in connection with a claim incident to such injuries, provided that no expense for services or supplies from other federal agencies or civilian agencies is incurred with such examination. A copy of the report of such examination obtained from the medical installation will be included in the report of investigation or, if made subsequent to the forwarding of the latter report, will be forwarded to the same command as the report of investigation.

(8) To reduce to writing and incorporate into a unified investigative report, prepared in triplicate, all pertinent testimony, exhibits, and any other evidence taken or considered. (See, however, the exception contained in § 750.38(b).)

(9) To furnish the proper claim forms to any person who inquires concerning the procedure for making claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim.

(10) To submit the complete investigative report to his commanding officer or officer in charge as promptly as the circumstances permit; and in the case of an incident involving any personal injury or property damage estimated to be in excess of $1,000, to submit immediately a preliminary report, containing such information as is at that time available, to his commanding officer for forwarding to reach the Judge Advocate General within twenty days of the occurrence of the incident under investigation. In a case where not all of the required information is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report shall be submitted promptly, containing all available information at the time of submission and shall be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

§ 750.38 Contents of the investigative report.

A written report of investigation will be made in each case, using standard forms whenever appropriate forms are available.

(a) Except in cases falling within the provisions of paragraph (b) of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement whether a claim has been or, if known, will be filed and, if so, the name and address of the claimant.

(4) A statement whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file the claim.

(5) Names, service numbers, grades, organizations and addresses of military personnel and civilian employees involved as participants or witnesses.

(6) Names and addresses of witnesses.

(7) A statement whether military personnel and civilian employees were acting within the scope of their employment and the basis for such determination.

(8) Accurate description of Government property involved, and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(9) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(10) Names, addresses, and ages of all civilians or military personnel injured or killed. Information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred, occupation, and wage or salary of civilians injured or killed. Names, addresses, ages, relationship, and extent of dependency of survivors of any such person killed or fatally injured should be stated.

(11) If straying animals are involved, a statement whether the jurisdiction has "open range law" and, if so, reference to such statute.

(12) A statement whether any person involved violated any State or Federal statute, local ordinance, or installation regulations and, if so, in what respect. The statute, ordinance, or regulations should be set out in full.

(13) A statement whether a police investigation was made. A copy of the police report of investigation will be included if available.

(14) A statement whether any arrests were made or charges preferred, and the result of any trial in civil or military courts.

(15) The comments and recommendations of the investigating officer as to the existence of liability and as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death.

(16) As many exhibits or enclosures as are pertinent, and as may appear necessary or useful in the circumstances of each case, shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

(b) In lieu of the formal investigation contemplated by § 750.37 and the detailed report described in paragraph (a) of this section, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $100.00 or less.

(2) The claim is cognizable under the Federal Tort Claims Act (§§ 750.1 to 750.7) or the Military Claims Act (§§ 750.16 to 750.26).

(3) The amount payable on the claim has been agreed upon. This limited report will take the form of a certification and should provide substantially as follows:

CERTIFICATE

---------- 196--

I certify that I have investigated the accident (incident), that the facts fully substantiate the claim, and that I have taken the following action:

I further find that the amount claimed represents the claimant's loss and recommend payment under the provisions of sections 1–7 NGCR [§§ 750.1 to 750.7] (sections 17–26 [§§ 750.17 to 750.26]).

(Investigating officer)

(Commanding officer)

Encl ---X--- Std Form 91*
------ Police Report.
------ Paid bill or estimate.
------ Other.

Approved for payment:

(Authorized adjudicating officer)

In the space provided for noting the action taken by the investigating officer, he should describe very briefly the limited investigation upon which his recommendation is based, for example, information (estimates, etc.) received by telephone from ----------; interviewed Government driver (other driver, witnesses, etc.); inspected damaged property; violation of local law; etc.

*Must be included in all cases involving motor vehicle accidents.

§ 750.39 Action by the commanding officer or officer in charge.

The investigative report will be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a legal officer available, the commanding officer or officer in charge should ordinarily use his services in reviewing and, if desirable, endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized by § 750.38 (b) is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing this report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request. The original and one copy of the report, together with all three copies of any claim filed, shall be forwarded by means of the aforementioned endorsement, without regard to chain of command, to the Commandant of the naval district in which the incident occurs, attention District Legal Officer. If the incident arises in Guam, the report and claims shall be forwarded to Commander Naval Forces Marianas, attention Staff Legal Officer. In other cases where the incidents occur outside the geographical limits of any naval district, the commanding officer or officer in charge shall promptly forward such reports to the Judge Advocate General.

§ 750.40 Action by the district or staff legal officer.

(a) The district or staff legal officer may, in his discretion, return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, he shall endorse the investigative report with his recommendations as to whether any claim or claims should be paid, and in what amount, stating the legal basis for his recommendations.

(b) The commandant of the naval district (or, with respect to cases arising in Guam, Commander Naval Forces Marianas) or the district or staff legal officer shall approve or disapprove the claims within his adjudicating authority (see § 750.41) as the law and the facts may warrant. In exceptional and unusual cases, even though the claim or claims may appear to fall within the adjudicating authority of the commandant or commander, or his staff legal officer, the entire record, together with pertinent comments and recommendations, may be referred to the Judge Advocate General for appropriate action.

(c) In all cases not coming within the adjudicating authority of the commandant or commander or his staff legal officer, one copy of the investigative report shall be retained for the files and the original of the report, together with all related papers and all three copies of any claims filed shall be forwarded, with pertinent comments and recommendations, to the Judge Advocate General.

§ 750.41 Approval of claims.

(a) Claims cognizable under the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, and §§ 750.1 to 750.7 shall be approved or disapproved, in whole or in part, by any of the follow-

ing, all of whom are designated to administer those provisions of law for the Navy:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) The Assistant Judge Advocate General (International and Administrative Law).

(4) The Director, Civil Law Division, Office of the Judge Advocate General.

(5) The Head, General Claims Branch, Civil Law Division, Office of the Judge Advocate General.

(6) The Director, Office of the Judge Advocate General, West Coast.

(7) Such other officers as may be designated by the Secretary of the Navy.

(8) The Commandant or the District Legal Officer of the Naval District within which the claims arose or, if the claims arose in Guam, Commander Naval Forces Marianas or his staff legal officer or, if the claims arose in the Potomac River Naval Command, the Commandant or the District Legal Officer of that Command, if no claim arising from the accident or incident exceeds $1,000 and there are no known possible claims in any amount for either personal injury or death as a result of the accident or incident. Two copies of the approval and one copy of the voucher shall be forwarded to the Office of the Judge Advocate General without a letter of transmittal.

(9) The Legal Officer, U.S. Naval Base, Newport, Rhode Island, and the Legal Officer, U.S. Naval Submarine Base, New London, Connecticut, for claims accruing to operators of fishing vessels for damage to nets, booms, lines, and other trawler impedimenta as a result of contact with naval ordnance (mines and torpedoes), if no claim arising from the accident or incident exceeds $1,000 and there are no known possible claims in any amount for either personal injury or death as a result of the accident or incident. Two copies of the approval and one copy of the voucher shall be forwarded to the Office of the Judge Advocate General without a letter of transmittal.

(b) Claims cognizable under the Military Claims Act and §§ 750.17 to 750.26 shall be approved or disapproved, in whole or in part by any of the following, all of whom are designated to administer those provisions of law for the Navy provided that the Judge Advocate General is designated to approve or disapprove a claim in an amount of not more than $5,000 and the others are designated to approve or disapprove a claim in an amount of not more than $1,000:

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) The Assistant Judge Advocate General (International and Administrative Law).

(4) The Director, Civil Law Division, Office of the Judge Advocate General.

(5) The Head, General Claims Branch, Civil Law Division, Office of the Judge Advocate General.

(6) The Director, Office of the Judge Advocate General, West Coast.

(7) Such other officers as may be designated by the Secretary of the Navy.

(8) The Commandant or the District Legal Officer of the Naval District within which the claims arose or, if the claims arose in Guam, Commander Naval Forces Marianas or his staff legal officer or, if the claims arose in the Potomac River Naval Command, the Commandant or the District Legal Officer of that Command, if no claim arising from the accident or incident exceeds $1,000 and there are no known possible claims in any amount for either personal injury or death as a result of the accident or incident.

(9) The Officer in Charge, U.S. Sending State Office for Italy.

(10) The Legal Officer, U.S. Naval Base, Newport, Rhode Island, and the Legal Officer, U.S. Naval Submarine Base, New London, Connecticut, for claims accruing to operators of fishing vessels for damage to nets, booms, lines and other trawler impedimenta as a result of contact with naval ordnance (mines and torpedoes), if no claim arising from the accident or incident exceeds $1,000 and there are no known possible claims in any amount for either personal injury or death as a result of the accident or incident.

(11) Foreign Claims Commissions to the extent authorized by Department of Defense Notice of 22 August 1958 (23 F.R. 6839). (See § 753.31 of this chapter.)

(c) Claims cognizable under 10 U.S.C. 7625 and §§ 750.27 to 750.28 shall be approved or disapproved by the Secretary of the Navy.

(d) Subject to the provisions of 28 U.S.C. 1346(b) and §§ 750.8 to 750.16 respecting civil action against the United States, and subject to the provisions of § 750.42, with regard to appeal, any award or determination of the Secretary of the Navy, or his designees, under the provisions governing administrative settlement of Federal tort claims under Title 28, United States Code, is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy under the authority of the Military Claims Act (10 U.S.C. 2733) and §§ 750.17 to 750.26, or subject to the provisions of § 750.42 with regard to appeal to the Secretary of the Navy, by his designees for the purpose, is final and conclusive for all purposes.

§ 750.42 Notice and appeal.

(a) The claimant shall, in every case, be notified by the approving or disapproving authority, in writing, of the action taken on his claim.

(b) When a claim has been disapproved, either in whole or in part, the claimant may, within thirty days after receipt of the aforementioned notification, appeal to the Secretary of the Navy (Judge Advocate General), stating the grounds relied upon for such appeal. Such appeals may be decided either by the Secretary of the Navy or the Judge Advocate General, except that in cases originally processed and disapproved by the Judge Advocate General, the appeal shall be decided by the Secretary of the Navy. When an appeal from a decision under the Military Claims Act (10 U.S.C. 2733) has been considered and denied either in whole or in part by the Judge Advocate General, a further appeal may be made to the Secretary of the Navy.

§ 750.43 Settlement agreement.

(a) In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury, Standard Form #95, is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated in writing his willingness to accept such amount in full satisfaction and final settlement of the claim.

(b) The acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees for the purpose, in pursuance of the authority granted by statute and the regulations in this part, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant and constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under Title 28, United States Code, or the civil action provisions of 28 U.S.C. 1346(b), and §§ 750.1 to 750.16 also constitutes a complete release by the claimant of any claim against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 750.44 Payment of claims.

Claims approved by the Secretary of the Navy, the Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (International and Administrative Law), the Director, Civil Law Division, Office of the Judge Advocate General, or the Head, General Claims Branch, Civil Law Division, Office of the Judge Advocate General as provided in § 750.41 shall be forwarded to the U.S. Navy Regional Accounts Office, Washington 25, D.C., for payment from appropriations designated for that purpose. Claims approved by the Officer in Charge, U.S. Sending State Office for Italy, the Legal Officer, U.S. Naval Base, Newport, Rhode Island, the Legal Officer, U.S. Naval Submarine Base, New London, Connecticut, or a Commandant or Commander or District or Staff Legal Officer as provided in § 750.41 shall be forwarded to such disbursing officer as may be designated by the Bureau of Supplies and Accounts for payment from appropriations designated for that purpose.

§ 750.45 Claims in favor of the United States.

(a) Demands for the payment of all claims in favor of the United States shall be made only by the Judge Advocate General of the Navy or by such other officers as may be specifically designated by the Judge Advocate General for that purpose. Ordinarily, in cases where the Commandant of a Naval District determines that a valid claim exists in favor of the United States, the record together with his recommendations shall be forwarded to the Judge Advocate General for appropriate action.

(b) Where a private party who has caused damage to Government property, or the insurer of such private party, agrees to have the Government property repaired to the satisfaction of the proper Government official concerned, and to pay therefor directly to the person making the repairs, and where such a procedure would be to the interest of the Government, the commanding officer of the activity concerned is authorized to permit such private accomplishment of the necessary repairs. The commanding officer is further authorized to assure the private party who caused the damage that a full release of the claim of the United States arising from such damage will be executed by the Judge Advocate General of the Navy or his designee upon completion of the repairs to the entire satisfaction of the proper Government official, and upon payment by the private party of the entire cost of such repairs.

(c) The procedure authorized in paragraph (b) of this section may be followed without prior approval by the Judge Advocate General and without awaiting the submission of the investigative report required by the regulations in this part. The investigative report submitted in accordance with the requirements of the regulations in this part, however, shall contain a statement of the cost of the repairs and a certification by the proper Government official to the effect that all damages have been satisfactorily repaired and that full payment therefor has been made. A release will then be executed by the Judge Advocate General or his designee and will be forwarded promptly to the appropriate District Legal Officer, or, upon request, to the private party paying for the repairs, or to the insurer of such private party.

(d) In the event repairs to the Government property have been made or are to be made at Government expense and the private party who caused the damage, or the insurer of such private party, tenders full payment for such repairs, such payment should be made in the form of a check, draft or money order, payable to the order of the Treasurer of the United States, and forwarded to the Judge Advocate General. A release will then be executed by the Judge Advocate General or his designee and will be forwarded promptly to the appropriate district legal officer, or, upon request, to the private party paying for the repairs, or the insurer of such private party.

EXCEPTION: Where repairs have been paid for out of Industrial Funds, such payment may be deposited locally to such Funds; Navy Comptroller Manual, paragraph 043114. A notation that the claim is based on a payment from a Navy Industrial Fund should be included whenever applicable on all claims forwarded to the Office of the Judge Advocate General for collection.

§ 750.46 Disclosure of information.

No military personnel or civilian employees of the Navy shall release copies of official papers or any other information which can be used as the basis of a claim against the United States, unless such release be properly authorized by competent authority and be made in the discharge of official duties. In particular, the contents of the investigative report shall not be disclosed to the claimant or his attorney or agent, nor shall the claimant be advised as to the recommendations made with regard to his claim. In cases where the claim and investigative report have been forwarded to the Judge Advocate General of the Navy for consideration, claimants who make inquiry as to the status of their claim should be advised that such information may be obtained from the Judge Advocate General.

§ 750.47 Authority for issuance of instructions by the Judge Advocate General.

The Judge Advocate General of the Navy is hereby authorized to issue such instructions, not in conflict with the regulations in this part, as may be necessary to give full force and effect thereto.

§ 750.48 Single service assignment of responsibility for processing of claims.

(a) The Secretary of Defense (Department of Defense Notice, 25 F.R. 9065) has assigned responsibility for the processing of all claims in favor of the United States, or against the United States and cognizable under:

(1) The Foreign Claims Act (10 U.S.C. 2734),

(2) The Military Claims Act (10 U.S.C. 2733), and

(3) The Act of August 31, 1954 (68 Stat. 1006, 31 U.S.C. 2241–2 to 2241–5),

which arise in the following countries to the military departments indicated below in this section:

I. Department of the Army: Belgium, Ethiopia, France, The Federal Republic of Germany, Iran, Korea, and as the Receiving State Office in the United States under the Act of August 31, 1954, supra, and the North Atlantic Treaty Organization Status of Forces Agreement (4 UST 1792, TIAS 2846).

II. Department of the Navy: Italy and Portugal.

III. Department of the Air Force: Canada, Denmark, Greece, Iceland, Japan, Libya, Luxembourg, Netherlands, Norway, Pakistan, Saudi Arabia, Turkey, and the United Kingdom.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Department of the Navy has been authorized by the Secretary of Defense to settle non-scope of duty claims under $100 arising in foreign ports visited by the Sixth Fleet and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to Article VIII, paragraph 6 of the NATO Status of Forces Agreement.

2. Part 753 is revised to read as follows:

PART 753—NAVY FOREIGN CLAIMS

Subpart A—Scope of the Foreign Claims Act

Sec.
753.1 General.
753.2 Purpose.
753.3 Territorial application.
753.4 Acts not within scope of employment.
753.5 Criminal acts.
753.6 Elements of damage in case of personal injury and death.
753.7 Bailed or leased property.
753.8 Use and occupancy of real property.
753.9 Other noncombat activities.

Subpart B—Limitations of Application

753.10 Persons excluded as claimants.
753.11 Claims excluded.
753.12 Negligence or wrongful act on the part of claimant.
753.13 Combat activities.
753.14 Claims of subrogee.
753.15 Statute of limitations.
753.16 Nature of claim.
753.17 Claims for damage occasioned by naval vessels.

Subpart C—Foreign Claims Commissions

753.18 Creation.
753.19 Membership of commissions.

Subpart D—Procedure

753.20 No formal procedure prescribed.
753.21 Report of proceedings.
753.22 Notification to claimant of award.
753.23 Payments.

Subpart E—Conditions of Payment

753.24 Conditions to be fulfilled.

Subpart F—Nature of Releases

753.25 Release when award is made.

Subpart G—Claims Disallowed by Foreign Claims Commissions

753.26 Forwarded to the Judge Advocate General.

Subpart H—Claims Not Within Jurisdiction of Foreign Claims Commissions

753.27 Meritorious claims in excess of $15,000.
753.28 Claims arising from incidents on the high seas.
753.29 Claims arising in specified foreign countries.

Subpart I—Cross-Servicing and Miscellaneous Special Authority

753.30 Claims generated by other than Department of the Navy personnel.
753.31 Settlement authority under the Military Claims Act (10 U.S.C. 2733).

AUTHORITY: §§ 753.1 to 753.31 issued under R.S. 161, secs. 5031, 6011, 70A Stat. 278, 375, as amended; 5 U.S.C. 22, 10 U.S.C. 5031, 6011. Interpret or apply secs. 1–4, 68 Stat 1006–1007, sec. 2734, 70A Stat. 154, as amended; 31 U.S.C. 2241–2—2241–5, 10 U.S.C. 2734.

Subpart A—Scope of the Foreign Claims Act

§ 753.1 General.

Claims for damage to or loss of real or personal property of a foreign country, political subdivision or inhabitant of a foreign country, and for personal injury or death of the inhabitant of a foreign country, occurring outside the United States, its Territories, Commonwealths or possessions and caused by its military

forces or individual members (whether military personnel or civilian employees) thereof or otherwise incident to noncombat activities of such forces are within the scope of the Foreign Claims Act (10 U.S.C. 2734). The word "claims" as used in the regulations in this part refers to those demands for payment submitted by individuals, partnerships, associations, or corporations, including foreign countries, and states, territories, and other political subdivisions of such countries, other than such demands for payment as arise under ordinary obligations incurred by the Department of the Navy in the procurement of services or supplies. The words "Navy" and "naval", as used herein, include the Marine Corps except where the context indicates otherwise.

§ 753.2 Purpose.

The purpose of the Foreign Claims Act (10 U.S.C. 2734) is the "promoting" and "maintaining" of "friendly relations" in foreign countries by the prompt "settlement" of "meritorious" claims. The regulations in this part are to be so administered as to effectuate the expressed purpose of Congress.

§ 753.3 Territorial application.

The provisions of the regulations in this part are applicable to claims arising outside the United States, or its Territories, Commonwealths or possessions. The fact that a claim arises at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States does not preclude the allowance thereunder of a claim which would otherwise be within the Foreign Claims Act.

§ 753.4 Acts not within scope of employment.

As far as military personnel are concerned, the doctrine of scope of employment has no application. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the naval personnel or employee of the United States who caused the damage, injury, or death was acting within the scope of his employment: *Provided*, That no claim may be allowed if the damage, injury, or death is caused by a civilian employee of the United States, who, if a citizen of the foreign country, is acting outside the scope of his employment. In determining whether conduct, although not expressly authorized, is nevertheless within the scope of employment, consideration may be given to all of the attendant facts and circumstances including, the time, place, and purpose of the activity; whether the activity was for the furtherance of the general interest of the Government; whether the activity is usual for personnel of the grade and classification involved or reasonably to be expected of such personnel; and whether the instrumentality from which the damage or injury resulted was owned or furnished by the Government. A slight deviation as to time or place will ordinarily not constitute a departure from scope of employment; such a deviation, to have legal effect, must be a material deviation.

§ 753.5 Criminal acts.

That the act giving rise to the claim may constitute a crime does not bar relief. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the act of the officer or employee of the United States which caused the damage, injury, or death was a crime or other wrongful act, or negligence or mere mistake of judgment.

§ 753.6 Elements of damage in case of personal injury and death.

Actual and reasonable medical and hospital expenses, reasonable compensation for pain and suffering and loss of earning capacity may be paid in cases of personal injury. If death results, actual and reasonable burial expenses and reasonable compensation for loss of prospective support may also be allowed. Claims of dependents for loss of prospective support are allowable only if such claims are recognized by the law of the country where the injury occurred. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a controlling factor. In case of death, only one claim arises; the amount approved therefor will, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions, prescribed by law or custom of the place in which the accident or incident resulting in the death occurs.

§ 753.7 Bailed or leased property.

Claims for damage to or loss or destruction of personal property, otherwise within the Foreign Claims Act, may be settled thereunder, notwithstanding the fact that the property was loaned, rented, or otherwise bailed to the Government under an agreement, express or implied. Claims for rent of personal property are not payable under the regulations in this part.

§ 753.8 Use and occupancy of real property.

Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, express or implied, or otherwise, are payable under the provisions of the regulations in this part even though legally enforceable against the Government, as contract claims; payment may, however, be precluded by the provisions of § 753.13. Claims payable under this section may, if deemed preferable as in the best interests of the Government, be processed as contract claims. Claims for rent of real property are not payable under the regulations in this part.

§ 753.9 Other noncombat activities.

Claims for damage to or loss or destruction of property, or for personal injury or death, though not caused by acts or omissions of military personnel or civilian employees of the Navy, are payable under the provisions of this section if otherwise incident to the noncombat activities of the Navy. In general the claims within the above category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits and out of situations which historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of military personnel or civilian employees is present or if present and though occurring within the scope of their employment is at least less obvious or less personal but where, because of the peculiar nature of the activity or of the resulting damage or injury, the burden of the loss should be borne rather by the Government than by the particular individual on whom the loss initially fell. Included also are claims arising out of activities such as those involving the use of explosives, whether or not involving negligent acts or omissions, of which damage or injury is a natural consequence. For example, included are claims for damage or injury arising out of, and which are natural or probable results of incidents of, maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and antiaircraft, use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions, movement of combat vehicles or other vehicles, designed especially for military use, and use and occupancy of real estate.

Subpart B—Limitations of Application

§ 753.10 Persons excluded as claimants.

The following classes of claimants are among those excluded:

(a) Members and civilian employees of the armed forces of the United States and their dependents who are inhabitants of the United States and who are in a foreign country primarily because of their sponsors' or their own military orders.

(b) Nationals of a country at war with the United States, or any ally of such an enemy country, except as the Foreign Claims Commission considering the claim, or the local military commander, shall determine that the claimant is friendly to the United States.

§ 753.11 Claims excluded.

The following classes of claims are excluded: Claims purely contractual in character; private contractual and domestic obligations of individual military personnel or civilian employees; claims based solely on compassionate grounds; bastardy claims; claims for patent infringement.

§ 753.12 Negligence or wrongful act on the part of claimant.

No claim will be allowed where the damage, injury, or death is proximately caused in whole or in part by negligence or wrongful act on the part of the claimant, his agent, or employee. This limitation is applicable to situations where under the law of the country where the injury arises contributory negligence bars the claim. If, however, under the law or custom of the country in which the claim arises, such contributory negligence or wrongful act is not recognized generally as a bar to recovery in tort claims, or is held to be a factor diminishing the extent of the claimant's recovery, then in that case such local law or custom will be applied so far as practicable, in determining the effect of such negligence or wrongful act.

§ 753.13 Combat activities.

Claims for damage to or loss or destruction of property, or for personal injury or death, resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act.

§ 753.14 Claims of subrogees.

Settlement will be made solely with the insured, rather than with the insurer or with both the insured and the insurer, in cases of damage to or loss or destruction of property or personal injury or death covered by insurance. No inquiry will be made into, or determination made of, the relative interests as between insured and insurer. The entire claim, including any portion thereof insured against, will be filed by or on behalf of the insured and payment of the entire amount allowed will be made to the insured as the real claimant. Claims by insurers in their own right are not within the provisions of the Foreign Claims Act, and will not be considered; insurers presenting claims shall be so advised and informed that subrogation claims are not recognized under the act. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney, or other documentary evidence satisfactory to the Foreign Claims Commission.

§ 753.15 Statute of limitations.

A claim may be allowed under this part only if it is presented within two years after it accrued.

§ 753.16 Nature of claim.

Any claim will be considered if it states substantially the material facts with such definiteness as to give reasonable notice of the time, place, and nature of the accident or incident out of which the claim arose and an estimate or statement of the damage, loss, destruction, injury, or death resulting. The claim should be signed by or on behalf of the claimant and should, if practicable, be under oath. In cases in which the claim is made in behalf of the true claimant, satisfactory evidence of authority to act for the claimant must be furnished.

§ 753.17 Claims for damage occasioned by naval vessels.

Unless specifically authorized by the Judge Advocate General in each case, the Foreign Claims Commission shall not assume jurisdiction or proceed to hear any claim for damage occasioned by a naval vessel. This provision applies to claims for damage caused to land structures as well as claims of an admiralty nature. The occurrence of any such damage, if brought to the attention of a claims commission, shall be reported immediately to the Judge Advocate General, attention of the Admiralty Division.

Subpart C—Foreign Claims Commissions

§ 753.18 Creation.

(a) All commanding officers are hereby granted authority to appoint Foreign Claims Commissions. For the purposes of the Foreign Claims Act and the regulations in this part, the Officer in Charge, U.S. Sending State Office for Italy, Chiefs of Naval Missions (including chiefs of the naval section of military missions), Chiefs, Military Assistance Advisory Groups (including Chiefs, Naval Section, Military Assistance Advisory Groups), Senior Naval Advisor to Argentina and naval attachés are to be considered commanding officers. Commissions may be appointed to consider each claim as presented, or to constitute a standing claims commission to consider all claims presented to it. The commanding officer to whom a claim is presented has the duty of referring the claim to a commission, and of appointing a commission himself where necessary or expeditious. Each Foreign Claims Commission will be composed of one or more officers.

(b) Claims may be considered by a commission of not more than one member when the amount claimed is not in excess of $1,000; claims may be considered by a commission consisting of three members when the amount claimed exceeds $1,000. The findings of a claims commission are final and not subject to review where the amount awarded is not in excess of $2,500. Where the amount which the commission recommends be paid exceeds $2,500 but does not exceed $15,000, the findings and opinion of the claims commission are subject to the review of the commanding officer; claims as to which the amount the commission recommends be paid exceeds $2,500 but does not exceed $15,000 may be paid only when the commanding officer has approved the action of the commission in allowing such claim. Claims as to which the amount the commission recommends be paid exceeds $5,000 but does not exceed $15,000 may be paid only when the Judge Advocate General or, with respect to claims which arose in Italy, the Officer in Charge, U.S. Sending State Office for Italy, has approved the action of the commission in allowing such claims. As to claims exceeding $15,000, see §§ 753.24(b) and 753.27.

(c) In addition to those listed in paragraph (a) of this section, the Judge Advocate General is hereby designated to appoint Foreign Claims Commissions. The appointment and conduct of these commissions shall be in accordance with this part wherever applicable, except that the findings of the claims commissions appointed by the Judge Advocate General shall be final and not subject to review in cases where the amount awarded is $2,500 or less; and that in cases where the amount awarded is greater than $2,500, the findings shall be subject to the review of the Judge Advocate General.

§ 753.19 Membership of commissions.

The commission shall consist of one or three, as appropriate, commissioned officers of either the Navy or Marine Corps, who shall have rank commensurate with the claim being investigated.

Subpart D—Procedure

§ 753.20 No formal procedure prescribed.

No formal procedure for the conduct of an investigation of a claim is prescribed. However, the instructions governing the procedure of courts of inquiry and boards of investigation by the 1955 Naval Supplement to the Manual for Courts Martial, United States, 1951, should be followed in principle as a guide. A transcript of the testimony of witnesses is not required and only the substance of statements of witnesses need be recorded. However, it is desirable that signed statements of material witnesses be made a part of the record. The formal rules of evidence need not be adhered to and any evidence, regardless of its form, which the commission deems material may be received and evaluated.

§ 753.21 Report of proceedings.

The commission shall at the conclusion of its hearings make findings of fact regarding each claim and of the amount, in the indigenous currency of the country in which the incident occurred or of which claimant was or is an inhabitant, found by it to be just compensation to the claimant and make a brief written report of its proceedings. The report should set forth as a minimum:

(a) The date or dates of the hearing or hearings.

(b) The date of the final determination.

(c) The amount claimed stated in the indigenous currency and, solely for administrative control purposes, the conversion into United States currency at the existing official rate of exchange on the date of initial consideration of the claim.

(d) The amount awarded stated in the indigenous currency and, solely for administrative control and memorandum accounting purposes, the conversion into United States currency at the existing official rate of exchange on the date of final determination.

(e) A brief statement of facts, including the date of accident or injury, the date the claim was filed, and the nature of the damage or injury (i.e., whether to person or property).

(f) Findings as to the necessary jurisdictional facts. A copy of the precept creating the commission together with a copy of claimant's release (in case of allowance) or notification to claimant (in case of disallowance) should be attached to the report. The original report, together with three copies, will be submitted to the convening authority. When the findings of fact of such commission are received by the convening authority they shall

in each case be final and conclusive. This procedure applies to claims where the amount to be paid does not exceed $2,500. Where the amount which the commission recommends be paid exceeds $2,500 but does not exceed $5,000, the findings of the commission are transmitted to the convening authority for his consideration and approval; upon receiving such approval, the findings shall in such cases be final and conclusive. For claims which the commission considers meritorious in an amount exceeding $15,000, see §§ 753.24(b) and 753.27.

§ 753.22 Notification to claimant of award.

Upon completion of the report of the commission and approval by the convening authority when required, the claimant will be notified of the award and, if the claimant executes a release for the amount of the award, this release together with the original and one copy of the report of the commission shall be transmitted to the nearest disbursing officer for payment. At the same time one copy of the report shall be forwarded to the Secretary of the Navy (Office of the Judge Advocate General) for filing.

§ 753.23 Payments.

Claims authorized to be paid hereunder will be forwarded after approval to the nearest Navy or Marine Corps disbursing officer for preparation and payment of the public voucher.

Subpart E—Conditions of Payment

§ 753.24 Conditions to be fulfilled.

Prior to payment of any claim within the Foreign Claims Act, each of the following conditions must be fulfilled:

(a) The amount due on account of the damage, loss, destruction, injury, or death must be determined.

(b) The award must not exceed $15,000, but recommendation for awards in excess of that amount may be reported to Congress for consideration.

(c) The claim must be presented within two years.

(d) Claims by subrogees will not be recognized, except as a part of the insured's claim.

(e) Contributory negligence or wrongful act, which is in whole or in part the proximate cause of the injury, bars a claim unless such contributory negligence is not a bar to recovery or is only a diminution of the extent of recovery in tort claims under the local law or custom.

(f) The damage, injury, or death must not have resulted from any action by the enemy or directly or indirectly from any act of American or Allied armed forces engaged in combat.

(g) The damage, loss, personal injury or death must occur outside the United States, its Territories, Commonwealths or Possessions and be

(1) damage to, or loss of, real property of a foreign country or of a political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy, or

(2) damage to, or loss of, personal property of a foreign country or of a political subdivision or inhabitant of a foreign country, including property bailed to the United States, or

(3) personal injury to, or death of, an inhabitant of a foreign country.

(h) If the claimant is a national of a country at war with the United States, or of any ally of such enemy country, there must be a determination by the Foreign Claims Commission or by the local commander that the claimant is friendly to the United States.

(i) The claim must be approved by a Foreign Claims Commission and, if in excess of $2,500, by such higher authority as prescribed by § 753.18(b).

(j) The claimant must accept, in full satisfaction and in final settlement, the amount approved, and give a release therefor.

Subpart F—Nature of Releases

§ 753.25 Release when award is made.

(a) A release should be obtained from the claimant in every case in which an award is made by a commission and accepted by the claimant.

(b) The release executed by the claimant should release the United States and also release the tort-feasor or the person or persons who have done the damage occasioned if their identity is known. If the identity of such persons is unknown and they cannot be described by name, in such an instance, the release should recite that the claimant also releases the person or persons who occasioned the injury, the names and identity of said person or persons being unknown to the claimant.

(c) The release executed should preclude any possible future assertion of the claim for which the United States has made compensation.

Subpart G—Claims Disallowed by Foreign Claims Commissions

§ 753.26 Forwarded to the Judge Advocate General.

Claims within the final jurisdiction of the commission but disallowed as not meritorious or for any other reason will be forwarded direct to the Judge Advocate General within 30 days. In all such cases the original and two copies of the report, claim, and supporting papers (including a copy of the notification of disallowance to the claimant) will be so forwarded; the remaining copy will be retained by the commission for its files.

Subpart H—Claims Not Within Jurisdiction of Foreign Claims Commissions

§ 753.27 Meritorious claims in excess of $15,000.

Claims within the Foreign Claims Act, except that the total amount due on account of damage, injury, and death exceeds $15,000 and the claimant will not accept $15,000 in full satisfaction and in final settlement of his claim, will be forwarded direct to the Judge Advocate General for legal review and appropriate administrative action. All claims of this nature shall be considered by a commission consisting of three members, and the record of such proceedings shall include signed statements of material witnesses or transcripts of their oral testimony. The Foreign Claims Commission will forward with any such claims its findings, and any recommendation as to the action to be taken (including its findings as to the total damage, injury, and death sustained) together with, if practicable, a statement from the owner of the property or the person injured, or the legal representative of the person killed, signifying his willingness to accept the amount so found in full satisfaction and in final settlement of his claim. In all such cases, the original and two copies of the report, claim and supporting papers will be so forwarded; the remaining copy will be retained by the commission for its files.

§ 753.28 Claims outside the jurisdiction of the commission.

Claims arising from incidents on the high seas are ordinarily not within the jurisdiction of a Foreign Claims Commission; see § 753.17. In cases in which a commission considers that the claimant (or decedent in the case of a death claim) is not an inhabitant of a foreign country (or is not the government or a political subdivision of a foreign country) reports shall be forwarded in triplicate to the Judge Advocate General as in cases under § 753.27.

§ 753.29 Claims arising in specified foreign countries.

(a) The United States has ratified the North Atlantic Treaty Organization Status of Forces Agreement (4 U.S.T. 1792, TIAS 2846) and has entered into and contemplates entering into, other similar agreements with foreign countries. Article VIII of the NATO Status of Forces Agreement and certain provisions of other agreements are inconsistent with the continued unrestricted use of the Foreign Claims Act and its implementing regulations in certain countries. It is, therefore, directed that the directives of the cognizant area commander be consulted and that claims not be referred to foreign claims commissions until it has been determined that such action is not inconsistent with the provisions of the aforementioned agreements and their implementing directives. A Department of Defense notice published on September 5, 1958 (23 F.R. 6839) directs that, where a single service has been or may be assigned responsibility for claims in a particular country or area, all reimbursements, settlements or payments that may be made in such country or area under the Foreign Claims Act (10 U.S.C. 2734) and the Military Claims Act (10 U.S.C. 2733) shall be made normally by that service. In countries in which the NATO Status of Forces Agreement or a similar agreement is in force, accidents which may give rise to a tort claim against the United States arising from acts or omissions of naval personnel, or members of the civilian component of the naval service, including claims for death or personal injury, resulting from the navigation or operation of a ship, or from the loading, carriage or discharge of its cargo will be investigated and reports will be made in accordance with the instructions promulgated by the cognizant naval commander.

(b) The Secretary of Defense (Department of Defense Notice, 25 F.R. 9065) has assigned responsibility for the processing of all claims in favor of the United States, or against the United States and cognizable under:

(1) The Foreign Claims Act (10 U.S.C. 2734)

(2) The Military Claims Act (10 U.S.C. 2733) and

(3) The Act of August 31, 1954 (68 Stat. 1006, 31 U.S.C. 224i-2—224i-5),

which arise in the following countries to the military departments indicated in this paragraph below:

I. Department of the Army: Belgium, Ethiopia, France, The Federal Republic of Germany, Iran, Korea, and as the Receiving State Office in the United States under the Act of August 31, 1954, supra, and the NATO Status of Forces Agreement.

II. Department of the Navy: Italy and Portugal.

III. Department of the Air Force: Canada, Denmark, Greece, Iceland, Japan, Libya, Luxembourg, Netherlands, Norway, Pakistan, Saudi Arabia, Turkey and the United Kingdom.

Notwithstanding the foregoing provisions of this paragraph, the Department of the Navy has been authorized by the Secretary of Defense to settle non-scope of duty claims under $100 arising in foreign ports visited by the Sixth Fleet and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to article VIII, paragraph 6 of the NATO Status of Forces Agreement.

§ 753.30 Claims generated by other than Department of the Navy personnel.

(a) *Cross-servicing.* A Department of Defense notice published on September 5, 1958 (23 F.R. 6839) provides that any claim, which may be settled under the provisions of the Foreign Claims Act and the Military Claims Act may be settled by any commission or commissions appointed by the Army, Air Force, Navy or Marine Corps under the provisions thereof, without regard to the service of the military tort-feasor. See § 753.29 in regard to areas in which cross-servicing is mandatory.

(b) *Civilian employees in the immediate office of the Secretary of Defense.* A Department of Defense notice published on July 30, 1960 (25 F.R. 7220) provides that all Foreign Claims Commissions are designated to settle and pay claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department.

§ 753.31 Settlement authority under the Military Claims Act (10 U.S.C. 2733).

A Department of Defense notice published on September 5, 1958 (23 F.R. 6839) provides that any claims, whether Army, Air Force, Navy or Marine Corps, which may be settled under the provisions of the Foreign Claims Act or of the Military Claims Act, may be settled by any commission or commissions appointed under the regulations of any of the above-listed services, without regard to the service of the military tort-feasor. See § 753.29 in regard to areas in which cross-servicing is mandatory. The regulations implementing this statutory settlement authority are contained in the Navy General Claims Regulations (Part 750 of this chapter) and will be followed, as far as applicable, in the settlement of claims under this Act by foreign claims commissions.

By direction of the Secretary of the Navy.

[SEAL] ROBERT D. POWERS, Jr.,
Captain, U.S. Navy, Acting Judge Advocate General of the Navy.

DECEMBER 9, 1960.

[F.R. Doc. 60-11670; Filed, Dec. 14, 1960; 8:54 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7951 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Leo Biglaiser

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service*: § 13.170-22 *Corrective, orthopedic, etc.;* § 13.170-30 *Durability or permanence;* § 13.170-70 *Preventive or protective;* § 13.190 *Results;* § 13.205 *Scientific or other relevant facts.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Leo Biglaiser, Phoenix, Ariz., Docket 7951, October 19, 1960]

Consent order requiring a seller of corneal contact lenses in Phoenix, Ariz., to cease advertising falsely that all persons could successfully wear his contact lenses and without discomfort, that the lenses corrected all defects in vision, protected the eye, and could be worn a lifetime without change of prescription.

The order to cease and desist is as follows:

It is ordered, That respondent Leo Biglaiser, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of contact lenses, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or by implication, that:

a. All persons can successfully wear his contact lenses;

b. There is no discomfort in wearing his contact lenses;

c. His contact lenses will correct all defects of vision;

d. Eyeglasses can always be discarded upon the purchase of his contact lenses;

e. Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby;

f. Said contact lenses may be worn a lifetime without change of prescription; or misrepresent the time that they may be worn;

g. Said contact lenses can be worn all day without discomfort unless it is clearly revealed that this is possible only after the wearer has become fully adjusted thereto.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1, above or which fails to reveal the facts required by paragraph 1(g).

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent Leo Biglaiser shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with the order to cease and desist.

Issued: October 19, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-11651; Filed, Dec. 14, 1960; 8:45 a.m.]

[Docket 7949 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Nu-Vision Optical Studios, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections:* § 13.15-235 *Producer status of dealer or seller:* § 13.15-235(m) *Manufacturer:* § 13.170 *Qualities or properties of product or service:* § 13.170-22 *Corrective, orthopedic, etc.;* § 13.170-30 *Durability or permanence;* § 13.170-70 *Preventive or protective;* § 13.190 *Results;* § 13.205 *Scientific or other relevant facts.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Nu-Vision Optical Studios, Inc., et al., Flint, Mich., Docket 7949, October 19, 1960]

In the Matter of Nu-Vision Optical Studios, Inc., a Corporation, and Eli Shapiro and Arthur Shapiro, Individually and as Officers of Said Corporation

Consent order requiring sellers of contact lenses in Flint, Mich., to cease advertising falsely that their contact lenses could be worn all day and without discomfort by all persons, would correct all

eye defects and protect the eye, were unbreakable, eliminated need of eyeglasses, and were manufactured by respondents.

The order to cease and desist is as follows:

It is ordered, That Respondents Nu-Vision Optical Studios, Inc., a corporation, and its officers, and Eli Shapiro and Arthur Shapiro, individually and as officers of said corporation, and Respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of contact lenses, do forthwith cease and desist from, directly or indirectly:

A. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that:

1. All persons in need of visual correction can successfully wear their contact lenses;

2. There is no discomfort in wearing their lenses;

3. All persons can wear Respondents' lenses all day without discomfort; or that any person can wear Respondents' lenses all day without discomfort except after that person has become fully adjusted thereto;

4. Eyeglasses can always be discarded upon purchase of Respondents' lenses;

5. Respondents' contact lenses will correct all defects in vision;

6. Said lenses will protect the eye unless limited to the small portion covered thereby;

7. Said lenses are unbreakable;

8. Respondents manufacture the contact lenses sold by them;

B. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph A, above.

By "Decision of the Commission," etc., report of compliance was required as follows:

It is ordered, That respondents Nu-Vision Optical Studios, Inc., a corporation, and Eli Shapiro and Arthur Shapiro, individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

Issued: October 19, 1960.

[F.R. Doc. 60-11662; Filed, Dec. 14, 1960; 8:45 a.m.]

[Dockets 7896 c.o. etc.]

PART 13—PROHIBITED TRADE PRACTICES

Scepter Music, Inc., Et Al.

Scepter Music, Inc., et al. (Docket 7896 c.o.); Old Town Record Corporation et al. (Docket 7900 c.o.); and B & H Distributing Co. et al. (Docket 7940 c.o.).

Subpart—Bribing cutomers' employees: § 13.315 *Employees of private concerns.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist orders: Scepter Music, Inc., et al., New York, N.Y., Docket 7896, Oct. 15, 1960; Old Town Record Corporation et al., New York, N.Y., Docket 7900, Oct. 15, 1960; and James Higgins et al. trading as B & H Distributing Co. et al., Detroit, Mich., Docket 7940, Oct. 21, 1960]

In the Matters of Scepter Music, Inc., a Corporation, and Florence Greenberg, Individually and as an Officer of Said Corporation; Old Town Record Corporation, a Corporation, and Hy Weiss, Individually and as an Officer of Said Corporation; and James Higgins and Robert West, Individually and as Copartners, Trading and Doing Business as B & H Distributing Co., and Betty Alexander, General Manager

Consent orders requiring a manufacturer in New York City and two distributors, in New York City and Detroit, Mich., respectively, to cease paying concealed payola to disc jockeys and other personnel of television and radio stations to induce frequent playing of their records in order to increase sales.

Respondents in these three proceedings were ordered to cease and desist as follows:

It is ordered, That respondents Scepter Music, Inc., a corporation, and its officers, and Florence Greenberg, individually and as an officer of said corporation; Old Town Record Corporation, a corporation, and its officers, and Hy Weiss, individually and as an officer of said corporation; and James Higgins and Robert West, individually and as copartners, trading and doing business as B & H Distributing Co., or under any other name, and Betty Alexander, General Manager; and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with phonograph records which have been distributed, in commerce, or which are used by radio or television stations in broadcasting programs in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Giving or offering to give, without requiring public disclosure, any sum of money or other material consideration, to any person, directly or indirectly, to induce that person to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

(2) Giving or offering to give, without requiring public disclosure, any sum of money, or other material consideration, to any person, directly or indirectly, as an inducement to influence any employee of a radio or television broadcasting station, or any other person, in any manner, to select, or participate in the selection of, and the broadcasting of, any such records in which respondents, or either of them, have a financial interest of any nature.

There shall be "public disclosure" within the meaning of this order, by any employee of a radio or television broadcasting station, or any other person, who selects or participates in the selection and broadcasting of a record when he shall disclose, or cause to have disclosed, to the listening public at the time the record is played, that his selection and broadcasting of such record are in consideration for compensation of some nature, directly or indirectly, received by him or his employer.

By separate "Decision of the Commission", etc., in each of the three captioned matters, reports of compliance were required as follows (combining the orders):

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of these orders, file with the Commission reports in writing setting forth in detail the manner and form in which they have complied with the orders to cease and desist.

Issued: October 14, 1960 (Dockets 7896 and 7900); October 21, 1960 (Docket 7940).

By the Commission.

[SEAL] ROBERT M. PARRISH, *Secretary.*

[F.R. Doc. 60-11653; Filed, Dec. 14, 1960; 8:45 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 168—DIRECTORY OF INTERNATIONAL MAIL

Miscellaneous Amendments

The regulations of the Post Office Department in Part 168—Directory of International Mail—are amended by making the following changes in § 168.5, *Individual country regulations:*

I. In country "Iceland", under Parcel Post, delete the item *Import restrictions* as a result of import restrictions being removed by that country.

II. In country "Kuwait", under Parcel Post, insert a new item *Prohibitions* immediately following the item *Indemnity* to read as follows:

Prohibitions. Magazines or other articles containing photographs of nude women.

III. In country "Nicaragua", under Parcel Post, make the following changes:

A. Amend the fourth paragraph of the item *Observations* by striking out "Austin, Tex., and Long Beach, Calif."; and inserting in lieu thereof "San Diego, Calif., and Tallahassee, Fla." in proper alphabetical order therein to show the location of new Nicaraguan consuls.

B. Amend the item *Prohibitions* by adding the following to the list therein:

Footwear, including shoes, slippers, boots, and rubbers, except when sent as personal gifts.

IV. In country "Spain", amend the parenthetical phrase immediately following the country heading to read: "(For Fernando Po, Rio Muni and Spanish West Africa, see individual country items.)".

V. In country "Vietnam", under Parcel Post, delete the last paragraph of the item *Prohibitions.*

(R.S. 161, as amended, secs. 501, 505, Pub. Law 86-682 (74 Stat. 580, 581); 5 U.S.C. 22, 39 U.S. Code 501, 505)

[SEAL] HERBERT B. WARBURTON, *General Counsel.*

[F.R. Doc. 60-11601; Filed, Dec. 14, 1960; 8:57 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2217]

[Idaho 09333]

IDAHO

Partial Revocation of Reclamation Withdrawals (Minidoka Project)

By virtue of the authority contained in section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

1. The departmental orders of November 17, 1902, March 18, 1908, October 7, 1908, May 23, 1913, September 29, 1919, October 22, 1925, July 23, 1927, and August 5, 1927, reserving lands for reclamation purposes in connection with the Minidoka Project, are hereby revoked so far as they affect the following-described lands:

BOISE MERIDIAN

T. 4 S., R. 15 E.,
Sec. 24, E½SW¼ and SE¼;
Sec. 25, NE¼NW¼ and NE¼SE¼;
Sec. 31, NW¼SE¼.
T. 5 S., R. 15 E.,
Sec. 3, lot 4;
Sec. 4, lot 1;
Sec. 5, lot 3;
Sec. 14, SW¼NW¼;
Sec. 15, SE¼NW¼.
T. 6 S., R. 15 E.,
Sec. 20, S½SW¼, E½SE¼, E½NW¼SE¼, and SW¼SE¼;
Sec. 21, S½.
T. 4 S., R. 16 E.,
Sec. 19, lot 4 and SE¼SW¼;
Sec. 28, NE¼SW¼.
T. 5 S., R. 17 E.,
Sec. 15, SW¼NW¼.
T. 6 S., R. 18 E.,
Sec. 28, S½;
Sec. 29, W½NE¼, NW¼, and S½;
Sec. 34, E½SW¼.
T. 7 S., R. 18 E.,
Sec. 12, SE¼NE¼.
T. 7 S., R. 19 E.,
Sec. 5, lot 3, SE¼NW¼, and E½SW¼;
Sec. 6, lots 1, 2, 3, 4, 5, 6, 7, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 7, lots 1, 2, 3, 4, W½NE¼, and E½NW¼;
Sec. 20, NE¼NW¼ and W½SW¼;
Sec. 29, SE¼NW¼;
Sec. 30, NE¼NE¼;
Sec. 31, E½NE¼ and NE¼SE¼;
Sec. 32, N½SW¼.
T. 8 S., R. 19 E.,
Sec. 2, NE¼SW¼;
Sec. 4, N½SE¼;
Sec. 10, E½;
Sec. 11, S½NW¼ and SW¼;
Sec. 14, lot 3, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 15, N½NE¼, N½SE¼NE¼, and W½;
Sec. 22, W½ and SE¼;
Sec. 23, lot 1, E½NE¼, S½S½, and NE¼SE¼;
Sec. 24, N½, N½SE¼, and N½S½SE¼;
Sec. 25, W½;
Sec. 26, NW¼ and NW¼NW¼SE¼;
Sec. 28, W½W½NE¼, NW¼NE¼, N½N½SW¼NE¼, NW¼NW¼SE¼NE¼, N½NW¼, N½S½NW¼, and N½S½S½NW¼;
Sec. 29;
Sec. 31, lots 2, 3, SE¼NW¼, and NE¼SW¼;
Sec. 32, lots, 1, 2, and N½N½.
T. 9 S., R. 19 E.,
Sec. 4, SW¼SE¼;
Sec. 9, W½NE¼NE¼, W½NE¼, SE¼NE¼, and S½;
Sec. 10, SW¼NW¼, W½SW¼, SE¼SW¼, and SE¼SE¼;
Sec. 11, S½NE¼SW¼, S½S½NW¼SW¼, S½NW¼SE¼, and S½S½;
Sec. 12, S½W½E½SW¼SE¼;
Secs. 13, 14, 15, 23, and 24.
T. 10 S., R. 19 E.,
Sec. 18, lot 1;
Sec. 22, lot 1.
T. 8 S., R. 20 E.,
Sec. 7, SE¼NW¼;
Sec. 19, lots 1, 2, 3, and E½SW¼;
Sec. 31, NE¼NE¼;
Sec. 32, N½NW¼, SE¼NW¼, and NE¼SE¼.
T. 9 S., R. 20 E.,
Sec. 4, lots 1, 2, 3, 4, and S½N½;
Sec. 7, S½SE¼;
Sec. 8, lots 1, 2, 3, SW¼NE¼, E½E½NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 11, SE¼;
Sec. 13, lots 8 and 9;
Sec. 17, W½;
Sec. 18;
Sec. 19, lots 1, 2, 3, 4, 5, 6, 8, E½, and E½W½;
Sec. 20;
Sec. 21, SW¼;
Sec. 24, lot 1, N½NE¼, and S½SE¼;
Sec. 25, NW¼NE¼, W½N½N½SE¼NE¼, NE¼NW¼, S½NW¼, and NW¼SE¼;
Sec. 26, S½N½ and S½, except SE¼SE¼;
Sec. 27, SE¼SW¼NE¼, S½SE¼NE¼, S½NW¼NW¼, SW¼NW¼, SW¼SE¼NW¼, and S½;
Sec. 28, S½NE¼, NW¼, N½S½, and SE¼SE¼;
Sec. 29, N½ and N½S½;
Sec. 30, NE¼;
Sec. 35, SE¼NE¼, NE¼NW¼, NE¼SW¼, and S½SE¼.
T. 9 S., R. 21 E.,
Sec. 20, E½SW¼;
Sec. 29, N½ and N½S½;
Sec. 30, E½NE¼, E½NW¼NE¼, and NE¼NW¼.

The areas described aggregate 18,272.98 acres.

The lands are in Gooding, Lincoln, and Jerome Counties. All are undeveloped desert lands.

2. Subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands are hereby opened to filing of applications, selections and locations in accordance with the following:

a. Until 10:00 a.m. on June 9, 1961, the State of Idaho shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851-2), and the regulations in 43 CFR.

b. All valid applications under the nonmineral public land laws other than any coming under subparagraph (a) above, presented at or before 10:00 a.m. on January 13, 1961, will be considered as simultaneously filed at that hour. Any rights under such applications filed thereafter will be governed by the time of filing.

c. Applications under subparagraphs (a) and (b) above, shall be subject to those from persons having prior existing valid settlement rights, preference rights conferred by existing law, and equitable claims subject to allowance and confirmation.

3. The lands have been open to applications and offers under the mineral leasing laws, and those in second form withdrawals, to location under the United States mining laws. The remainder shall be open to such locations at 10:00 a.m. on June 9, 1961.

4. Persons claiming preferential consideration must submit evidence of their entitlement.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Boise, Idaho.

GEORGE W. ABBOTT, *Assistant Secretary of the Interior.*

DECEMBER 8, 1960.

[F.R. Doc. 60-11656; Filed, Dec. 14, 1960; 8:46 a.m.]

[Public Land Order 2218]

[2124158]

[Fairbanks 023685]

ALASKA

Partly Revoking Public Land Order No. 1124 of April 14, 1955

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Public Land Order No. 1124 of April 14, 1955, so far as it reserved the following-described lands under jurisdiction of the Secretary of the Interior for public service sites is hereby revoked:

FAIRBANKS MERIDIAN

T. 1 S., R. 2 E.,
Sec. 10, unsurveyed, NE¼SW¼, E½NW¼SW¼, NW¼NW¼SW¼, SW¼NW¼SW¼, that part lying northeasterly of Chena River.
T. 1 S., R. 3 E., unsurveyed,
Sec. 22,
E½SE¼SW¼, that part lying southerly of Chena River;
W½SW¼SE¼, that part lying westerly of Chena River;

Sec. 27,
NE¼NE¼NW¼, NW¼NW¼NE¼, those parts lying northerly of Chena River.

The areas described contain approximately 120 acres.

2. The following-described lands were among those included in the revocation of a prior withdrawal made by Public Land Order No. 1124. Their restoration was deferred, however, pending issuance of a supplemental order opening them to application under the Small Tract Act, plans for which have been abandoned.

FAIRBANKS MERIDIAN

T. 1 S., R. 2 E.,
Sec. 10, unsurveyed, NW¼, and W½W½NE¼;
Sec. 13, unsurveyed, SW¼SW¼, S½NW¼SW¼, those parts lying south of Chena River;
Sec. 24, unsurveyed, N½NW¼NW¼, that part lying north of Chena River.
T. 1 S., R. 3 E., unsurveyed,
Sec. 13,
E½SW¼NE¼, NW¼NE¼, that part lying southerly of the Chena River;
W½NE¼NE¼, that part lying westerly of the Chena River;
W½SE¼NE¼, that part lying southwesterly of the Chena River;
Sec. 14,
SE¼SW¼SW¼, that part lying southeasterly of the Chena River;
SW¼SE¼SW¼, that part lying southwesterly of the Chena River;
Sec. 22,
W½NE¼SW¼SE¼, SE¼SW¼NW¼, W½NE¼SW¼, those parts lying east of Chena River;
SW¼SE¼NW¼, NW¼SE¼, those parts lying southwesterly of Chena River;
E½NE¼SW¼, that part lying south of Chena River;
N½N½SE¼SW¼, that part lying north of Chena River;
NW¼SW¼SE¼, that part lying northeasterly of Chena River;
Sec. 23,
W½NE¼NW¼, that part lying southwesterly of Chena River;
E½NW¼NW¼, that part lying east of Chena River;
NE¼SW¼NW¼, that part lying northeasterly of Chena River;
Sec. 27,
SW¼SW¼NW¼, W½NW¼SW¼, NW¼SW¼NW¼, E½NW¼SW¼, those parts lying westerly of the Chena River;
NW¼SW¼SW¼, that part lying northwesterly of Chena River;
Sec. 28,
NW¼SW¼SW¼, that part lying northwesterly of Chena River;
E½SW¼SE¼, that part lying easterly of Chena River;
W½SE¼SE¼, that part lying westerly of Chena River;
E½SE¼NE¼, E½NW¼SE¼NE¼;
W½NW¼SE¼NE¼, that part lying south of Chena River;
SW¼SE¼NE¼, that part lying northerly of Chena River;
E½SW¼NE¼, that part lying easterly of Chena River;
E½NE¼SE¼, that part lying northeasterly of Chena River;
Sec. 30,
NW¼SW¼NW¼, that part lying west of Chena River;
S½N½NW¼NE¼, N½S½NW¼NE¼, those parts lying north and west of Chena River.

T. 1 S., R. 4 E., unsurveyed
Sec. 9,
E½SW¼NE¼, that part lying easterly of Chena River;
SE¼NE¼, that part lying north of Chena River;
Sec. 10,
SW¼NW¼, W½SE¼NW¼, those parts lying westerly of Chena River;
W½NE¼SW¼, that part lying northwesterly of Chena River;
NW¼SW¼, that part lying northeasterly of Chena River.

Containing approximately 693 acres.

3. Subject to any existing valid rights and the requirements of applicable law, the lands are hereby opened to filing of such applications, selections, and locations as may be made for unsurveyed lands in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) In accordance with and subject to the provisions of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46–3b), and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), the State of Alaska shall be entitled until 10:00 a.m., on March 10, 1961, to a preferred right of application to select the lands released by paragraph 1 of this order.

(2) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(3) All valid applications and selections under the nonmineral public land laws other than preference right applications under paragraph 3(a)(1) and 3(a)(2) above, presented prior to 10:00 a.m. on January 13, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

4. The lands described in paragraph 1 have been open to applications and offers under the mineral leasing laws. All the lands will be open to location under the United States mining laws, and those described in paragraph 2 to applications and offers under the mineral leasing laws beginning at 10:00 a.m. on March 10, 1961. They will be open to settlement under the homestead and Alaska homesite laws at 10:00 a.m. on March 10, 1961.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Fairbanks, Alaska.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 8, 1960.

[F.R. Doc. 60–11657; Filed, Dec. 14, 1960; 8:46 a.m.]

[Public Land Order 2219]

[5465]

[Washington 03399]

WASHINGTON

Partly Revoking Reclamation Withdrawals of October 17, 1903; July 27, 1904; and January 20, 1910 (Okanogan Project)

By virtue of the authority contained in section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

1. The departmental orders of October 17, 1903; July 27, 1904, and January 20, 1910, which withdrew lands in the first form for reclamation purposes in connection with the Okanogan Project, are hereby revoked so far as they affect the following-described lands:

WILLAMETTE MERIDIAN

T. 35 N., R. 24 E.,
Sec. 1, lot 6.
T. 35 N., R. 25 E.,
Sec. 4, lot 1;
Sec. 6, lots 10, 11, and 12.
T. 36 N., R. 25 E.,
Sec. 33, lot 6.

The areas described aggregate 117.31 acres. In T. 35 N., R. 25 E., section 6, lot 10 is patented, and lot 12 is withdrawn for the Conconully Bird Reserve. In T. 36 N., R. 25 E., section 33, lot 6 is withdrawn for the Okanogan National Forest.

2. The lands are situated in northwestern Okanogan County, adjacent to the town of Conconully. They lie primarily on steeply sloping hillsides. Soils are shallow rocky silt loam with numerous granite outcrops. Vegetation is limited to sagebrush and grass with a scattered occurence of fir and pine timber.

3. Subject to any existing valid rights and the requirements of applicable law, the lands are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on June 9, 1961, the State of Washington shall have a preferred right of application to select lot 1, section 4, T. 35 N., R. 25 E., in accordance with and subject to the provisions of subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852), and the regulations in 43 CFR. The State has waived its preference right of application as to the remainder of the lands released by this order.

(3) All valid applications and selections under the nonmineral public land laws, other than from the State, presented prior to 10:00 a.m. on January 13, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral leasing laws. They will be open to location under the United States mining laws begining at 10:00 a.m. on June 9, 1961, as to lot 1, section 4, and at 10:00 a.m. on March 10, 1961, as to the remaining lands released by this order.

4. Persons claiming preference rights based on valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Spokane, Washington.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 8, 1960.

[F.R. Doc. 60–11658; Filed, Dec. 14, 1960; 8:46 a.m.]

[Public Land Order 2220]

[69319]

[Washington 04001]

WASHINGTON

Modifying the Executive Order of October 20, 1916, Which Created Power Site Reserve No. 154

By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

The Executive order of October 20, 1916, creating Power Site Reserve No. 154, is hereby modified to the extent necessary to permit the grant of a highway right-of-way made by section 2477, United States Revised Statutes (43 U.S.C. 932), to become effective as to those portions of the following-described lands delineated on maps filed with the application (Washington 04001) designated "Primary State Highway No. 10, Rock Island Dam to Vulcan, Douglas County" approved June 28, 1955, by the Director of Highways, being sheets 1, 2, and 3 of 15 sheets:

WILLAMETTE MERIDIAN

T. 21 N., R. 22 E.,
Sec. 4, lots 4, 5, 6, and 8.

Containing 126.50 acres.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 8, 1960.

[F.R. Doc. 60–11659; Filed, Dec. 14, 1960; 8:46 a.m.]

[Public Land Order 2221]

[85690]

CALIFORNIA

Partly Vacating Withdrawals for Power Purposes (Sequoia National Forest)

By virtue of the authority vested in the President by Section 1 of the Act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, and as Secretary of the Interior, it is ordered as follows:

1. The Executive order of June 8, 1926, creating Reservoir Site Reserve No. 17, the departmental order of July 17, 1924 (Power Site Classification No. 80), and the departmental order of August 24, 1933 (Power Site Classification No. 267), are hereby revoked so far as they affect the following-described lands:

MOUNT DIABLO MERIDIAN

T. 25 S., R. 33 E.,
Sec. 9, NE¼NE¼;
Sec. 23, W½NW¼.

Containing 120 acres.

2. In DA–980 and DA–991, the Federal Power Commission vacated Power Project No. 564 so far as it affects the following-described lands:

MOUNT DIABLO MERIDIAN

T. 25 S., R. 33 E.,
Sec. 9, NE¼NE¼;
Sec. 10, W½NW¼, SE¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 14, SW¼NW¼ and S½SW¼;
Sec. 23, NW¼.

Containing 720 acres.

3. The lands described in this order are national forest lands. At 10:00 a.m. on March 10, 1961, they shall be open to such forms of disposal as may by law be made of national forest lands, provided, however, that with respect to those portions of the lands in the NE¼NE¼ of Section 9 and in the NW¼NW¼ of Section 10, T. 25 S., R. 33 E., now under permit for operation and maintenance of Southern California Edison Company's Kern No. 3 power plant, and that portion of the NE¼NE¼ of Section 9 now being used under license for transmission line purposes, in Project 174, this opening shall be subject to the provisions of section 24 of the Federal Power Act and to the prior right of said permittee and licensee and their successors to use the lands for power purposes in accordance with the terms and conditions of the permit and license.

4. Until 10:00 a.m. on March 10, 1961, the State of California shall have a preferred right to apply for the reservation to it or to any of its political subdivisions of any of the lands required for rights-of-way or materials sites in accordance with the provisions of section 24 of the Federal Power Act.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 8, 1960.

[F.R. Doc. 60–11660; Filed, Dec. 14, 1960; 8:46 a.m.]

[Public Land Order 2222]

[1935558]

[Fairbanks 07195]

ALASKA

Partly Revoking Air Navigation Site No. 172

By virtue of the authority contained in section 4 of the act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. The departmental order of December 31, 1941, which established Air Navigation Site Withdrawal No. 172, is hereby revoked so far as it affects the following-described lands:

GALENA

Tract 1

From Corner No. 4 of Air Navigation Site Withdrawal No. 172, U.S. Survey 2627, which is the point of beginning; thence
S. 66°35' E., 15,840 feet along the line which runs between Corners 4 and 5 of said U.S. Survey;
S. 23°25' W., 2,640 feet;
N. 66°35' W., 5,280 feet;
S. 23°35'' W., 2,640 feet;
N. 66°35' W., 10,560 feet to a point on the line which runs between Corners 3 and 4 of said U.S. Survey;
N. 23°25' E., 5,280 feet along said line to the point of beginning.
(Containing 1,600 acres.)

Tract 2

From Corner No. 6 of said U.S. Survey, which is the point of beginning; thence
S. 66°35' E., 11,998.80 feet to Corner No. 7;
N. 89°12' W., 12,998.67 feet to Corner No. 5;
N. 23°25' E., 4,999.50 feet to the point of beginning.
(Containing 688 acres.)

The tracts described aggregate 2,288 acres.

2. The lands are situated on the right bank of the Yukon River, approximately 280 miles west of Fairbanks, Alaska. They are for the most part soggy boglands typical of the area. Topography is flat and nearly featureless. Vegetation consists typically of stunted black spruce and willow.

3. Subject to any valid existing rights and the requirements of applicable law, the lands described in paragraph 1 hereof, are hereby opened to settlement, and to filing of such applications, selections, and locations as may be allowed for unsurveyed lands in accordance with the following:

a. Applications and selections under the nonmineral public land laws, and applications and offers under the mineral leasing laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications other than those referred to in this paragraph will be subject to the ap-

plications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on March 10, 1961, the State of Alaska shall have a preferred right of application to select the lands in accordance with and subject to the provisions of the act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46–3b), and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339; Public Law 85–508).

(3) All valid applications and selections under the nonmineral public land laws, other than from the State of Alaska under paragraph 3(a)(2), and applications and offers under the mineral leasing laws presented prior to 10:00 a.m. on January 13, 1961, will be considered as simultaneously filed at that hour. Rights under such applications, selections, and offers filed after that hour will be governed by the time of filing.

b. The lands will be open to settlement under the Homestead and Alaska Homesite laws, to applications and offers under the mineral leasing laws, and to location under the United States mining laws beginning at 10:00 a.m. on March 10, 1961.

4. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Fairbanks, Alaska.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 8, 1960.

[F.R. Doc. 60–11661; Filed, Dec. 14, 1960; 8:47 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER B—CARRIERS BY MOTOR VEHICLE

[Ex Parte No. MC–59]

PART 171—MOTOR CARRIER OPERATION IN THE STATE OF HAWAII

Certificate of Exemption and Order

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 5th day of December A.D. 1960:

Section 204(a)(4a) of the Interstate Commerce Act and the transportation by motor vehicle, in interstate or foreign commerce, solely within the State of Hawaii being under consideration, and good cause appearing therefor:

It is ordered, That 49 CFR be, and it is hereby, amended by adding thereto Part 171, as follows:

Sec.
171.1 Definitions.
171.5 Motor carriers operating solely in Hawaii exempt.

AUTHORITY: §§ 171.1 and 171.5, issued under sec. 204(a)(4a), 54 Stat. 921, 49 U.S.C. sec. 304(a)(4a).

§ 171.1 Definitions.

For the purposes of this part, the following terms and phrases are defined:

(a) "Motor carriers" means carriers by motor vehicle operating in the State of Hawaii.

(b) "Lawfully engaged in operation solely within the State of Hawaii" means engaged within the boundaries of that State in conformity with applicable State laws.

(c) "Qualified" as used to modify "motor carriers" means those motor carriers lawfully operating in Hawaii and which are not affiliated with a carrier operating in another State or States.

§ 171.5 Motor carriers operating solely in Hawaii exempt.

It is hereby certified that transportation in interstate or foreign commerce performed by all qualified motor carriers lawfully engaged in operation solely within the State of Hawaii is in fact of such nature, character or quantity as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in interstate or foreign commerce in effectuating the national transportation policy: *Provided, however*, That if the State of Hawaii makes a determination of the intrastate operating rights of the respective motor carriers, the exemption granted herein shall not be construed as exempting operations in interstate or foreign commerce any more extensive than those corresponding to the respective intrastate authorities granted by the State.

It is further ordered, That this certificate of exemption, during the period it shall remain effective and unrevoked, shall exempt the class of motor carriers described above from compliance with the provisions of Part II of said Act in respect of transportation in interstate or foreign commerce.

It is further ordered, That this order shall become effective January 23, 1961, and shall remain in effect until modified or revoked in whole or in part by further order of the Commission.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60–11600; Filed, Dec. 14, 1960; 8:57 a.m.]

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Kentucky Woodlands National Wildlife Refuge, Kentucky

The following special regulation is issued.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

KENTUCKY

KENTUCKY WOODLANDS NATIONAL WILDLIFE REFUGE

Hunting of upland game on the Kentucky Woodlands National Wildlife Refuge, Kentucky is permissible only under the following conditions:

(a) Species permitted to be taken: Raccoon.

(b) Open season: Daylight hours January 16 through February 19, 1961.

(c) Daily bag limits: No limit.

(d) Methods of hunting:

(1) Taking of raccoons, alive only, is permitted employing "shake out" techniques.

(2) Tree climbing devices may be used.

(3) Dogs: No dogs allowed.

(4) Weapons: No firearms or other weapons allowed.

(e) Description of areas open to hunting:

Hunting is permitted in accordance with (a) above on the posted area which comprises approximately 65,000 acres and 98 percent of the total refuge and which is described as follows:

The entire refuge area except strategic waterfowl use areas which will be posted.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32.

(2) A Federal permit is required to enter the public hunting area. Federal permits may be obtained from the Refuge Manager, Kentucky Woodlands National Wildlife Refuge, Golden Pond, Kentucky. A special State permit is required prior to the issuance of a Federal permit. The special State permit may be obtained from the Commissioner, Department of Fish and Wildlife Resources, Frankfort, Kentucky. Groups will be covered by single permits, both State and Federal.

(3) The provisions of this special regulation are effective December 15, 1960, through February 19, 1961.

(4) Hunters must check in and check out at Kentucky Woodlands National Wildlife Refuge Headquarters.

FRANCIS C. GILLETT,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 9, 1960.

[F.R. Doc. 60–11655; Filed, Dec. 14, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Horicon National Wildlife Refuge, Wisconsin

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

WISCONSIN

HORICON NATIONAL WILDLIFE REFUGE

Sport fishing on the Horicon National Wildlife Refuge, Wisconsin is permissable only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours from December 15, 1960, through March 15, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted areas which comprise approximately 250 acres and 1.2 percent of the total refuge and which is described as follows:

All excavated ditches and waterways and the stream of the Rock River within the Horicon National Wildlife Refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective December 15, 1960, through March 15, 1961.

W. A. ELKINS,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 8, 1960.

[F.R. Doc. 60–11654; Filed, Dec. 14, 1960; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381(c) (3) (capital loss carryover), (10) (treatment of certain expenses deferred by the election of distributor or transferor corporation), (13) (involuntary conversions under section 1033), (18) (percentage depletion on extraction of ores or minerals from the waste or residue of prior mining), and (19) (charitable contributions in excess of prior years' limitation). Except as otherwise provided therein, such regulations shall apply to liquidations and reorganizations, the tax treatment of which is determined under the Internal Revenue Code of 1954.

Sec.
1.381(c)(3) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; capital loss carryover.
1.381(c)(3)-1 Capital loss carryovers.
1.381(c)(10) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; treatment of certain expenses deferred by the election of distributor or transferor corporation.
1.381(c)(10)-1 Deferred exploration and development expenditures
1.381(c)(13) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; involuntary conversions under section 1033.
1.381(c)(13)-1 Involuntary conversions.
1.381(c)(18) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; percentage depletion on extraction of ores or minerals from the waste or residue of prior mining.
1.381(c)(18)-1 Depletion on extraction of ores or minerals from the waste or residue of prior mining.
1.381(c)(19) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; charitable contributions in excess of prior years' limitation.
1.381(c)(19)-1 Charitable contribution carryovers in certain acquisitions.

§ 1.381(c)(3) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; capital loss carryover.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • • •

(3) *Capital loss carryover.* The capital loss carryover determined under section 1212, subject to the following conditions and limitations:

(A) The taxable year of the acquiring corporation to which the capital loss carryover of the distributor or transferor corporation is first carried shall be the first taxable year ending after the date of distribution or transfer.

(B) The capital loss carryover shall be a short-term capital loss in the taxable year determined under subparagraph (A) but shall be limited to an amount which bears the same ratio to the net capital gain (determined without regard to a short-term capital loss attributable to capital loss carryover), if any, of the acquiring corporation in such taxable year as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

(C) For purposes of determining the amount of such capital loss carryover to taxable years following the taxable year determined under subparagraph (A), the net capital gain in the taxable year determined under subparagraph (A) shall be considered to be an amount equal to the amount determined under subparagraph (B).

§ 1.381(c)(3)-1 Capital loss carryovers.

(a) *Carryover requirement.* (1) Section 381(c)(3) requires the acquiring corporation in a transaction to which section 381(a) applies to succeed to, and take into account, the capital loss carryovers of the distributor or transferor corporation. To determine the amount of these carryovers as of the close of the date of distribution or transfer, and to integrate them with the capital loss carryovers of the acquiring corporation for purposes of determining the taxable income of the acquiring corporation for taxable years ending after the date of distribution or transfer, it is necessary to apply the provisions of section 1212 in accordance with the conditions and limitations of section 381(c)(3) and this section.

(2) The capital loss carryovers of the acquiring corporation as of the close of the date of distribution or transfer shall be determined without reference to any capital gains or capital losses of the distributor or transferor corporation. The capital loss carryovers of a distributor or transferor corporation as of the close of the date of distribution or transfer shall be determined without reference to any capital gains or capital losses of the acquiring corporation.

(b) *First taxable year to which carryovers apply.* (1) The capital loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall first be carried to the first taxable year of the acquiring corporation ending after that date. This rule applies irrespective of whether the date of distribution or transfer is on the last day, or any other day, of the acquiring corporation's taxable year.

(2) The capital loss carryovers available to the distributor or transferor corporation as of the close of the date of distribution or transfer shall be carried to the acquiring corporation without diminution by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation.

(c) *Limitation on capital loss carryovers for first taxable year ending after date of distribution or transfer.* (1) Any capital loss carryover of a distributor or transferor corporation which is available to the acquiring corporation as of the close of the date of distribution or transfer shall be a short-term capital loss of the acquiring corporation in each of the taxable years to which the net capital loss giving rise to such carryover may be carried to the extent provided in section 1212 and this section. However, in the first taxable year of the acquiring corporation ending after the date of distribution or transfer, the total capital loss carryovers of the distributor or transferor corporation which may be treated in that year as short-term capital losses of the acquiring corporation is limited by section 381(c)(3)(B) to an amount which bears the same ratio to the acquiring corporation's net capital gain for such first taxable year (determined without regard to any capital loss carryovers) as the number of days in such first taxable year which follow the date of distribution or transfer bears to the total number of days in such taxable year. Thus, if the date of distribution or transfer is the last day of the acquiring corporation's taxable year, there is no limitation under section 381(c)(3)(B) on the amount of such carryovers which may be treated as short-term capital losses of the acquiring corporation for its first taxable year ending after that date.

(2) The limitation provided by section 381(c)(3)(B) shall be applied to the aggregate of the capital loss carryovers of the distributor or transferor corporation without reference to the taxable years in which the net capital losses giving rise to the carryovers were sustained. If the acquiring corporation has acquired the assets of two or more distributor or transferor corporations on the same date of distribution or transfer, then the limitation provided by section 381(c)(3)(B) shall be applied to the aggregate of the capital loss carryovers from all of such distributor or transferor corporations.

(3) If the acquiring corporation succeeds to the capital loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer during the same taxable year of the acquiring corporation, the limitation to be applied under section 381(c)(3)(B) to the aggregate of such carryovers shall be determined consistently with the rules prescribed in paragraph (b) of § 1.381(c)(1)-2.

(4) The application of this paragraph may be illustrated by the following example:

Example. (i) X and Y Corporations are organized on January 1, 1954, and make their returns on the basis of the calendar year. On July 4, 1957, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies. The net capital losses and the net capital gains (computed without regard to any capital loss carryovers) of the two corporations are as follows:

Taxable year:	*X Corporation (transferor)*	*Y Corporation (acquirer)*
1954	($5,000)	0
1955	(10,000)	$5,000
1956	(25,000)	(7,000)
Ending 7-4-57	(8,000)	------
1957	--------	36,500

(ii) The capital loss carryovers of X Corporation which are available to Y Corporation as of the close of July 4, 1957, amount to $48,000 in the aggregate; but only $18,000 ($36,500 × 180/365) of such amount may be treated as short-term capital losses of Y Corporation for 1957.

(d) *Computation of carryovers; general rule*—(1) *Sequence for applying losses and determination of net capital gain.* Section 1212 provides that a net capital loss sustained in any taxable year (hereinafter referred to as the "loss year") shall be carried over to each of the five succeeding taxable years and treated in each of such succeeding years as a short-term capital loss to the extent not allowed as a deduction against any net capital gains of any taxable years intervening between the loss year and the taxable year to which such loss is carried. For this purpose, the net capital gain of any intervening taxable year is determined without regard to the net capital loss for the loss year or for any taxable year thereafter, and the various capital loss carryovers from taxable years preceding the loss year to any such intervening taxable year are considered to be applied in reduction of the net capital gain for such year in the order of the taxable years in which the losses were sustained, beginning with the loss for the earliest preceding taxable year. The application of these rules to the net capital gain of the acquiring corporation for any taxable year ending after the date of distribution or transfer involves the use of carryovers of the distributor or transferor corporation and of the acquiring corporation. In determining the order in which the capital loss carryovers of the distributor or transferor and acquiring corporations from taxable years ending on or before the date of distribution or transfer are considered to be applied in reduction of the net capital gain of the acquiring corporation for any intervening taxable year ending after such date, the following rules shall apply:

(i) Each taxable year of the distributor or transferor and acquiring corporations which, with respect to the first taxable year of the acquiring corporation ending after the date of distribution or transfer, constitutes a first preceding taxable year, shall be treated as if each such year ended on the same day, whether or not such taxable years actually end on the same day. In like manner, each taxable year of the distributor or transferor and acquiring corporations which, with respect to such first taxable year of the acquiring corporation ending after the date of distribution or transfer, constitutes a second preceding taxable year, shall be treated as if each such year ended on the same day (whether or not such taxable years actually end on the same day), and a similar rule shall be applied with respect to those taxable years of the distributor or transferor and acquiring corporations which constitute third, fourth, and fifth preceding taxable years;

(ii) If in the same preceding taxable year both the distributor or transferor and acquiring corporations incurred a net capital loss which is a carryover to an intervening taxable year of the acquiring corporation ending after the date of distribution or transfer, then in applying such losses in reduction of the net capital gain for such an intervening year, either such loss may be taken into account before the other; and

(iii) The rules of subdivisions (i) and (ii) of this subparagraph shall apply regardless of the number of distributor or transferor corporations the assets of which are acquired by the acquiring corporation on the same date of distribution or transfer.

(2) *Cross reference.* If the date of distribution or transfer is a day other than the last day of a taxable year of the acquiring corporation, then in determining the net capital gain of the acquiring corporation for its first taxable year ending after the date of distribution or transfer, section 1212 and this paragraph shall be applied in the special manner set forth in paragraph (e) of this section.

(3) *Years to which losses may be carried.* The taxable years to which a net capital loss shall be carried are prescribed by section 1212. Since the taxable year of a distributor or transferor corporation ends with the close of the date of distribution or transfer, such taxable year and the first taxable year of the acquiring corporation which ends after that date are considered two separate taxable years to which a net capital loss of the distributor or transferor corporation for any taxable year ending before that date shall be carried. This rule applies even though the taxable year of the distributor or transferor corporation which ends on the date of distribution or transfer is a period of less than twelve months. However, the distribution or transfer has no effect in determining under section 1212 the taxable years to which a net capital loss of the acquiring corporation is carried. For this purpose, the first taxable year of the acquiring corporation which ends after the date of distribution or transfer constitutes only one taxable year even though such taxable year is considered under paragraph (e) of this section as two taxable years for certain purposes. The application of this subparagraph may be illustrated by the following example:

Example: R and S Corporations are organized on January 1, 1954, and both corporations make their returns on the basis of the calendar year. R Corporation has net capital losses for its years 1954, 1955, and 1957, and S Corporation has net capital losses for its years 1954 and 1956. On June 30, 1958, R Corporation transfers all its assets to S Corporation in a statutory merger to which section 361 applies. The taxable years to which these losses of R and S Corporations may be carried are as follows:

Loss year	*Carried to*
R1954	R1955, R1956, R1957, R6/30/58, S1958.
S1954	S1955, S1956, S1957, S1958, S1959.
R1955	R1956, R1957, R6/30/58, S1958, S1959.
S1956	S1957, S1958, S1959, S1960, S1961.
R1957	R6/30/58, S1958, S1959, S1960, S1961.

(4) *Computation of carryovers in case where date of distribution or transfer occurs on last day of acquiring corporation's taxable year.* The computation of the capital loss carryovers from the distributor or transferor corporation and from the acquiring corporation in a case where the date of distribution or transfer occurs on the last day of a taxable year of the acquiring corporation may be illustrated by the following example:

Example. X and Y Corporations are organized on January 1, 1955, and make their returns on the basis of the calendar year. On December 31, 1956, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies. The net capital losses and the net capital gains (computed without regard to any capital loss carryovers) of the two corporations are as follows:

Taxable year	*X Corporation (transferor)*	*Y Corporation (acquirer)*
1955	($20,000)	($2,000)
1956	(10,000)	(8,000)
1957	------	25,000
1958	------	10,000

The sequence in which the net capital losses of X and Y Corporations are applied, and the computation of the capital loss carryovers to Y Corporation's taxable year 1956, may be illustrated as follows. (For purposes of this example, the carryover from a preceding

taxable year of the transferor corporation will be applied before the carryover from the same preceding taxable year of the acquiring corporation):

(i) *X Corporation's 1955 loss.* The carryover to 1959 is $0, computed as follows:

Net capital loss		$20,000
Less: Y's 1957 net capital gain (computed without regard to any capital loss carryovers)		25,000
Carryover to Y 1958 and Y 1959		0

(ii) *Y Corporation's 1955 loss.* The carryover to 1959 is $0, computed as follows:

Net capital loss		$2,000
Less:		
Y's 1957 net capital gain (computed without regard to any capital loss carryovers)	$25,000	
Minus capital loss carryovers to Y 1957 (i.e., carryover to $20,000 from X 1955)	20,000	
		5,000
Carryover to Y 1958 and Y 1959		0

(iii) *X Corporation's 1956 loss.* The carryover to 1959 is $0, computed as follows:

Net capital loss		$10,000
Less:		
Y's 1957 net capital gain (computed without regard to any capital loss carryovers)	$25,000	
Minus capital loss carryovers to Y 1957 (i.e., carryovers of $20,000 from X 1955 and $2,000 from Y 1955)	22,000	
		3,000
Carryover to Y 1958		7,000
Less:		
Y's 1958 net capital gain (computed without regard to any capital loss carryovers)	$10,000	
Minus capital loss carryovers to Y 1958	0	
		10,000
Carryover to Y 1959		0

(iv) *Y Corporation's 1956 loss.* The carryover to 1959 is $5,000, computed as follows:

Net capital loss		$8,000
Less:		
Y's 1957 net capital gain (computed without regard to any capital loss carryovers)	$25,000	
Minus capital loss carryovers to Y 1957 (i.e., carryovers of $20,000 from X 1955, $2,000 from Y 1955, and $10,000 from X 1956)	32,000	
		0
Carryover to Y 1958		8,000
Less:		
Y's 1958 net capital gain (computed without regard to any capital loss carryovers)	$10,000	
Minus capital loss carryovers to Y 1958 (i.e., carryover of $7,000 from X 1956)	7,000	
		3,000
Carryover to Y 1959		5,000

(e) ***Computation of carryovers when date of distribution or transfer is not on last day of acquiring corporation's taxable year.*** (1) *General rule.* If, in determining under paragraph (d) of this section the portion of a net capital loss for any taxable year which is carried over to a succeeding taxable year, an intervening taxable year is a taxable year of the acquiring corporation which includes, but does not end on, the date of distribution or transfer, the net capital gain of such intervening year shall be determined by applying section 1212 in the special manner provided by this paragraph.

(2) *Taxable year considered as two taxable years.* Such intervening taxable year of the acquiring corporation shall be considered as though it were two taxable years, but only for the limited purpose of computing capital loss carryovers to subsequent taxable years. The first of such two taxable years shall be referred to in this paragraph as the preacquisition part year; the second, as the postacquisition part year. Though considered as two separate taxable years for purposes of this paragraph, the preacquisition part year and the postacquisition part year are treated as one taxable year in determining the years to which a net capital loss is carried under section 1212. See paragraph (d)(3) of this section.

(3) *Preacquisition part year.* The preacquisition part year shall begin with the beginning of such taxable year of the acquiring corporation and shall end with the close of the date of distribution or transfer.

(4) *Postacquisition part year.* The postacquisition part year shall begin with the day following the date of distribution or transfer and shall end with the close of such taxable year of the acquiring corporation.

(5) *Division of net capital gain.* The net capital gain for such intervening taxable year (computed without regard to any capital loss carryovers) of the acquiring corporation shall be divided between the preacquisition part year and the postacquisition part year in proportion to the number of days in each. Thus, if in a statutory merger to which section 361 applies Y Corporation acquires the assets of X Corporation on June 30, 1956, and Y Corporation has net capital gain (computed in the manner so prescribed) of $36,600 for its calendar year 1956, then the preacquisition part year net capital gain would be $18,200 ($36,000×$\frac{182}{366}$) and the postacquisition part year net capital gain would be $18,400 ($36,000×$\frac{184}{366}$).

(6) *Application of capital loss carryovers.* After obtaining the net capital gain of the preacquisition part year and postacquisition part year in the manner described in subparagraph (5) of this paragraph, it is necessary to determine the capital loss carryovers which are taken into account with respect to each such part year. The carryovers to be taken into account and the sequence in which such carryovers are applied, shall be determined in accordance with paragraph (d)(1) of this section but subject to the provisions of this subparagraph. With respect to the preacquisition part year, no capital loss carryovers of the distributor or transferor corporation shall be taken into account; that is, only capital loss carryovers of the acquiring corporation shall be taken into account. With respect to the postacquisition part year, capital loss carryovers of both the distributor or transferor corporation and the acquiring corporation shall be taken into account.

(7) *Cross reference.* If any intervening taxable year is a taxable year of the acquiring corporation during which the acquiring corporation succeeds to the capital loss carryovers of two or more distributor or transferor corporations on two or more dates of distribution or transfer, the net capital gain of the acquiring corporation for such intervening taxable year shall be determined consistently with the rules prescribed in paragraph (c) of § 1.381(c)(1)–2, except that the sequence in which the capital loss carryovers of the distributor or transferor and acquiring corporations shall be applied shall be determined under paragraph (d)(1) of this section.

(8) *Illustration.* The application of this paragraph may be illustrated as follows:

Example. X Corporation is organized on April 1, 1959, and makes its return on the basis of the fiscal year ending March 31. Y Corporation is organized on January 1, 1959, and makes its return on the basis of the calendar year. On June 30, 1961, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies. The net capital losses and the net capital gains (computed without regard to any capital loss carryovers) of the two corporations are as follows:

Taxable year:	*X Corporation (transferor)*	*Y Corporation (acquirer)*
1959		($24,000)
Ending 3–31–60	($19,000)	
1960		(6,000)
Ending 3–31–61	(5,000)	
Ending 6–30–61	0	
1961		36,500
1962		12,000

The following table shows those taxable years of the transferor and acquiring corporations which, with respect to Y Corporation's calendar year 1961, are first, second, and third preceding taxable years:

	X Corporation	*Y Corporation*
First preceding year	Ending 6–30–61	1960
Second preceding year	Ending 3–31–61	1959
Third preceding year	Ending 3–31–60	----

The sequence in which the net capital losses of X and Y Corporations are applied, and the computation of the capital loss carryovers to Y Corporation's calendar year 1963, may be illustrated as follows. (For purposes of this example, the carryover from a preceding taxable year of the acquiring corporation will be applied before the carryover from the same preceding taxable year of the transferor corporation):

(i) *X Corporation's 3/31/60 loss.* The carryover to 1963 is $0, computed as follows:

Net capital loss		$19,000
Less: Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph ($36,500×$\frac{184}{365}$)		18,400
Carryover to Y 1962		600
Less: Y's 1962 net capital gain (computed without regard to any capital loss carryovers)		12,000
Carryover to Y 1963		0

(ii) *Y Corporation's 1959 loss.* The carryover to 1963 is $0, computed as follows:

Net capital loss		$24,000
Less: Y's preacquisition part year net capital gain computed under subparagraph (5) of this paragraph ($36,500×$\frac{181}{365}$)		18,100
Carryover to Y's postacquisition part year		5,900
Less:		
Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,400	
Minus capital loss carryovers to postacquisition part year (i.e., carryover of $19,000 from X 3/31/60)	19,000	
		0
Carryover to Y 1962		5,900
Less:		
Y's 1962 net capital gain (computed without regard to any capital loss carryovers)	$12,000	
Minus capital loss carryovers to Y 1962 (i.e., carryover of $600 from X 3/31/60)	600	
		11,400
Carryover to Y 1963		0

(iii) *X Corporation's 3/31/61 loss.* The carryover to 1963 is $0, computed as follows:

Net capital loss		$5,000
Less:		
Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,400	
Minus capital loss carryovers to postacquisition part year (i.e., carryovers of $19,000 from X 3/31/60 and $5,900 from Y 1959)	24,900	
		0
Carryover to Y 1962		5,000
Less:		
Y's 1962 net capital gain (computed without regard to any capital loss carryovers)	$12,000	
Minus capital loss carryovers to Y 1962 (i.e., carryovers of $600 from X 3/31/60 and $5,900 from Y 1959)	6,500	
		5,500
Carryover to Y 1963		0

(iv) *Y Corporation's 1960 loss.* The carryover to 1963 is $5,500, computed as follows:

Net capital loss		$6,000
Less:		
Y's preacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,100	
Minus capital loss carryovers to preacquisition part year (i.e., carryover of $24,000 from Y 1959)	24,000	
		0
Carryover to Y's postacquisition part year		6,000
Less:		
Y's postacquisition part year net capital gain computed under subparagraph (5) of this paragraph	$18,400	
Minus capital loss carryovers to postacquisition part year (i.e., carryovers of $19,000 from X 3/31/60, $5,900 from Y 1959, and $5,000 from X 3/31/61)	29,900	
		$0
Carryover to Y 1962		6,000
Less:		
Y's 1962 net capital gain (computed without regard to any capital loss carryovers)	$12,000	
Minus capital loss carryovers to Y 1962 (i.e., carryovers of $600 from X 3/31/60, $5,900 from Y 1959, and $5,000 from X 3/31/61)	11,500	
		500
Carryover to Y 1963		5,500

(g) *Successive acquiring corporations.* An acquiring corporation which, in a transaction to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall succeed to and take into account, subject to the conditions and limitations of sections 1212 and 381, the capital loss carryovers available to the first acquiring corporation under sections 1212 and 381.

§ 1.381(c)(10) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; treatment of certain expenses deferred by the election of distributor or transferor corporation.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • •

(10) *Treatment of certain expenses deferred by the election of distributor or transferor corporation.* The acquiring corporation shall be entitled to deduct, as if it were the distributor or transferor corporation, expenses deferred under section 615 and 616 (relating to exploration and development expenditures, respectively) if the distributor or transferor corporation has so elected. For the purpose of applying the limitation provided in section 615, if, for any taxable year, the distributor or transferor corporation was allowed the deduction in section 615(a) or made the election in section 615(b), the acquiring corporation shall be deemed to have been allowed such deduction or to have made such election, as the case may be.

§ 1.381(c)(10)–1 Deferred exploration and development expenditures.

(a) *Carryover requirement.* (1) If for any taxable year a distributor or transferor corporation has elected under section 615 or section 616 (or corresponding provisions of prior law) to defer and deduct on a ratable basis any exploration or development expenditures made in connection with any ore, mineral, mine, or other natural deposit transferred to the acquiring corporation in a transaction described in section 381(a), then under the provisions of section 381(c)(10) the acquiring corporation shall be entitled to deduct such expenditures on a ratable basis in the same manner, and to the same extent, as they would have been deductible by the distributor or transferor corporation in the absence of the distribution or transfer. For this purpose, the acquiring corporation shall be treated as though it were the distributor or transferor corporation. The principles set forth in paragraph (e) of § 1.615–3 and paragraph (f) of § 1.616–2 are applicable in computing the amount of the deduction allowable to the acquiring corporation in respect of expenditures deferred by a distributor or transferor corporation.

Example. X and Y Corporations are both organized on January 1, 1955, and both corporations compute their taxable income on the basis of the calendar year. During 1955, X Corporation purchases a mineral property which it begins to develop in 1956. During 1956, X Corporation incurs development expenditures of $500,000 in respect of such property which it elects to defer under section 616(b). On December 31, 1956, Y Corporation acquires all of the assets of X Corporation in a reorganization to which section 381(a) applies, no gain being recognized to X Corporation on the transfer. In 1957, Y Corporation sells 150,000 units of produced ore benefited by the development expenditures incurred and deferred by X Corporation, and the number of units remaining as of the end of 1957, plus the number of units sold during that year, is estimated to be 1,000,000. In addition to its deduction for depletion, Y Corporation is, in 1957, entitled to a deduction under sections 616(b) and 381(c)(10) of $75,000 of the development expenditures previously deferred by X Corporation, that is, $500,000×$\frac{150,000}{1,000,000}$.

(2) If a distributor or transferor corporation has elected under section 615 or section 616 (or corresponding provisions of prior law) to defer exploration or development expenditures in respect of a mine or other natural deposit which it subsequently disposes of except for a retained economic interest therein, such as the right to royalty income or in-ore payments, and such retained economic interest is transferred to the acquiring corporation in a transaction to which section 381(a) applies, then the acquiring corporation shall be entitled to deduct such deferred expenditures attributable to the economic interest retained on a ratable basis to the same extent they would have been deductible by the distributor or transferor corporation in the absence of the distribution or transfer. See paragraph (c) of § 1.615–3 and paragraph (c) of § 1.616–2.

(3) For purposes of this section, the terms "exploration expenditures" and "development expenditures" shall have the same meaning as that ascribed to them in the regulations under sections 615 and 616 of the Internal Revenue Code of 1954, or under sections 23(cc) and 23(ff) of the Internal Revenue Code of 1939, whichever applies. See, for example, paragraph (a) of § 1.615–1 and paragraph (a) of § 1.616–1.

(b) *Effect and identification of election previously made.* (1) The election made by a distributor or transferor corporation under the provisions of section 615 or section 616 (or corresponding provisions of prior law) to defer exploration or development expenditures in respect of any taxable year may not be revoked by the acquiring corporation for any reason whatsoever.

(2) When filing its return for the first taxable year for which it deducts exploration or development expenditures which were deferred under section 615 or section 616 (or corresponding provisions of prior law) by a distributor or transferor corporation, the acquiring corporation shall attach thereto a statement properly identifying the taxable year for which the election to defer was made by the distributor or transferor corporation, the name of the corporation which made the election, and the district director with whom the election was filed.

(3) It is unnecessary for an acquiring corporation to renew an election to defer exploration or development expenditures which was made by a distributor or transferor corporation.

(c) *Successive transactions to which section 381(a) applies.* If, by virtue of section 381(c)(10), the acquiring corporation is entitled to deduct exploration or development expenditures deferred by a distributor or transferor corporation, then such acquiring corporation shall be deemed to have made the election to defer such expenditures for purposes of applying section 381(c)(10) to any subsequent transaction in which such acquiring corporation is a distributor or transferor corporation.

(d) *Carryover of 4-year limitation.* (1) If a distributor or transferor corporation transfers any mineral property to the acquiring corporation in a transaction described in section 381(a), then in applying the 4-year limitation of section 615(c) in the case of exploration expenditures paid or incurred by the acquiring corporation in any taxable year ending after the date of distribution or transfer, the acquiring corporation shall be deemed to have been allowed any deduction which, for any taxable year ending on or before such date, was allowed to the distributor or transferor corporation under section 615(a), or under section 23(ff)(1) of the Internal Revenue Code of 1939, or to have made any election which, for any preceding taxable year, was made by the distributor or transferor corporation under section 615(b), or under section 23(ff)(2) of the Internal Revenue Code of 1939. Thus, in such instance, the acquiring corporation shall take into account for purposes of the 4-year limitation any taxable year in which the distributor or transferor corporation availed itself of the benefits of section 615 or section 23(ff) of the Internal Revenue Code of 1939. For this purpose, it is immaterial whether or not the deduction has been allowed to, or the election has been made by, the distributor or transferor corporation with respect to the specific mineral property transferred by that corporation to the acquiring corporation.

(2) Generally, if there are two or more distributor or transferor corporations that transfer any mineral property to the acquiring corporation, each taxable year of any such corporation ending on or before the date of distribution or transfer in which exploration expenditures were deducted or deferred shall be treated as a separate taxable year for purposes of applying the 4-year limitation regardless of the fact that the taxable years of two or more such corporations end on the same date. However, if the date of distribution or transfer is the same with respect to more than one distributor or transferor corporation, then the taxable years of such corporations ending on the same date of distribution or transfer shall be considered as one taxable year for purposes of applying the 4-year limitation even though more than one such corporation deducted or deferred exploration expenditures for such taxable years.

(3) If a distributor or transferor corporation that transfers any mineral property to the acquiring corporation is required under section 615 and paragraph (b) of § 1.615–4 to take into account for purposes of the 4-year limitation any taxable years in which any individual or corporation has deducted or deferred exploration expenditures, then the acquiring corporation shall also take these taxable years into account in applying the 4-year limitation.

(4) The provisions of this paragraph may be illustrated by the following examples:

Example (1). M and N Corporations were organized on January 1, 1955, and each corporation computes its taxable income on the basis of the calendar year. For its taxable years 1955 and 1956, M Corporation deducted exploration expenditures made in such years under section 615(a). N Corporation made no exploration expenditures during its taxable years 1955 and 1956. On December 31, 1956, M Corporation transferred all its assets to N Corporation in a reorganization to which section 381(a) applies, no gain being recognized to the transferor corporation on the transfer. On the basis of these facts, N Corporation may deduct or defer exploration expenditures in accordance with section 615 for any two (not necessarily consecutive) taxable years ending after December 31, 1956.

Example (2). O and P Corporations were organized on January 1, 1955, and each corporation computes its taxable income on the basis of the calendar year. For their taxable years 1955, 1956, and 1957, each corporation deducted exploration expenditures made in such years under section 615(a). On June 30, 1958, O Corporation transferred all its assets to P Corporation in a reorganization to which section 381(a) applies, no gain being recognized to the transferor corporation on the transfer. If, during its short taxable year ending June 30, 1958, O Corporation has made additional exploration expenditures, such expenditures may be deducted or deferred under section 615 since O Corporation has utilized section 615 in only three previous taxable years. However, for its taxable years ending after June 30, 1958, P Corporation may not deduct or defer exploration expenditures under section 615.

Example (3). X, Y, and Z Corporations were organized on January 1, 1955, and each corporation computes its taxable income on the basis of the calendar year. For their taxable years ending December 31, 1955, X and Y Corporations each deducted exploration expenditures made in such taxable years under section 615(a). Z Corporation made no exploration expenditures during its taxable year ending December 31, 1955. On March 31, 1956, X and Y Corporations transferred all their assets to Z Corporation in a reorganization to which section 381(a) applies, no gain being recognized to the transferor corporations on the transfer. X and Y Corporations each made exploration expenditures during their short taxable years ending March 31, 1956, which they deducted under section 615(a). Z Corporation must take into account for purposes of the 4-year limitation the taxable years in which X and Y Corporations have deducted exploration expenditures. In so doing, each taxable year in which exploration expenditures were deducted must be taken into account except that the taxable years of X and Y Corporations ending on March 31, 1956, shall be considered as one taxable year. Therefore, Z Corporation may deduct or defer exploration expenditures in accordance with section 615 for any one taxable year ending after March 31, 1956.

Example (4). For purposes of this example, assume that each taxpayer computes taxable income on the basis of the calendar year. Taxpayer A, an individual who has deducted exploration expenditures under section 23(ff) of the Internal Revenue Code of 1939 for his taxable years 1952 and 1953, transferred a mineral property to S Corporation on July 1, 1954, in a transaction in which the basis of the mineral property in the hands of S Corporation is determined under section 362(a). For its taxable year 1954, S Corporation deducted exploration expenditures made in such year under section 615(a). S Corporation had made no exploration expenditures in any preceding taxable year. On December 31, 1954, S Corporation transferred all its assets to T Corporation in a reorganization to which section 381(a) applies, no gain being recognized to the transferor corporation on the transfer. Assuming that T Corporation has not deducted or deferred exploration expenditures in any preceding taxable year, T Corporation may deduct or defer exploration expenditures in accordance with section 615 for any one taxable year ending after December 31, 1954.

(e) *Effective date.* The provisions of paragraph (d) of this section shall not apply to taxable years beginning after July 6, 1960. For the purpose of applying the $400,000 limitation in the case of taxable years beginning after July 6, 1960, see section 615(c) as amended by the Act of July 6, 1960 (Public Law 86–594, 74 Stat. 333).

§ 1.381(c)(13) Statutory provisions; carryovers in certain corporate acquisitions; items of distributor or transferor corporation; involuntary conversions under section 1033.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

* * * * *

(13) *Involuntary conversions under section 1033.* The acquiring corporation shall be treated as the distributor or transferor corporation after the date of distribution or transfer for purposes of applying section 1033.

§ 1.381(c)(13)–1 Involuntary conversions.

(a) *Carryover requirement*—(1) *General rule.* Section 381(c)(13) requires that after the date of distribution or transfer the acquiring corporation, in a transaction to which section 381 (a) applies, shall be treated as the distributor or transferor corporation for purposes of applying section 1033, relating to involuntary conversions. This rule shall apply even though the property similar or related in service or use to the property converted, or the stock of a corporation owning such similar property, is purchased by the acquiring corporation after the date of distribution or transfer and is not received from the distributor or transferor corporation in the transaction to which section 381(a) applies. Accordingly, if any factor essential to the application of section 1033 occurs on or before the date of distribution or transfer and any other such factor also occurs after that date, then, in accordance with section 381(c)(13) and this section, the provisions of section 1033 shall apply to the acquiring corporation in the same manner that they would have applied to the distributor or transferor corporation in the absence of the distribution or transfer. For purposes of this section, the terms "involuntary conversion" and "disposition of the converted property" shall have the meaning ascribed to them by the regulations under section 1033.

(2) *Application to other transactions.* The provisions of this section shall apply to any transaction which, under provisions of the Internal Revenue Code of 1954, is treated as though it were an involuntary conversion within the meaning of section 1033. See, for example, section 1071, relating to gain from a sale or exchange to effectuate the policies of the Federal Communications Commission; and sections 1332(b)(3) and 1333(3), relating to war loss recoveries.

(b) *Conversion into similar property.* Section 1033(a)(1) provides that no gain shall be recognized if property is involuntarily converted only into property which is similar or related in service or use to the property so converted. If there is a disposition of property of a distributor or transferor corporation and, subsequent to the date of distribution or transfer, property similar or related in service or use to the property disposed of is received by the acquiring corporation as compensation for the property so disposed of, then no gain shall be recognized to the acquiring corporation, provided that no gain would have been recognized under section 1033(a)(1) if the similar property had been received directly by the distributor or transferor corporation.

Example. Property of S Corporation with an adjusted basis of $100 is condemned by the local government. Shortly after the property is so condemned, S Corporation liquidates and distributes its assets to P Corporation in a distribution to which section 381(a) applies. Subsequent to the date of distribution, P Corporation receives from the government (in settlement of the condemnation proceedings) property with a market value of $500 which is similar or related in service or use to the property so condemned. No gain is recognized to either corporation upon P Corporation's receipt of the similar property, and the property so received has a basis of $100 in the hands of P Corporation on the date of its acquisition.

(c) *Conversion into money or dissimilar property when disposition occurs after December 31, 1950*—(1) *General rule.* Section 1033(a)(3) and § 1.1033(a)–2 provide rules for involuntary conversions of property into money or dissimilar property where the disposition of the converted property occurs after December 31, 1950. In such a case, the gain on the conversion, if any, shall be recognized, at the election of the taxpayer, only to the extent that the amount realized on the conversion exceeds the cost of other property purchased by the taxpayer which is similar or related in service or use to the property so converted, or exceeds the cost of stock purchased by the taxpayer in the acquisition of control of a corporation owning such other property, provided (i) the taxpayer purchases such other property or stock for the purpose of replacing the property so converted and (ii) the purchase occurs during the period of time specified in section 1033(a)(3)(B). The provisions of this paragraph shall apply to involuntary conversions where the disposition of the property occurs after December 31, 1950, and where the election to have section 1033(a)(3) apply to the treatment of the gain upon the conversion is contingent upon activities of both the distributor or transferor corporation and the acquiring corporation. For purposes of section 381(c)(13), the period of time specified in section 1033(a)(3)(B) shall be determined by taking into account taxable years of, and extensions of time granted to, both the distributor or transferor corporation and the acquiring corporation.

(2) *Replacement period.* The period during which the purchase of similar property or stock must be made in order to prevent the recognition of gain on the involuntary conversion terminates one year after the close of the first taxable year in which any part of the gain upon the conversion is realized, or at the close of such later date as may be designated pursuant to an application of the taxpayer. See paragraph (c)(3) of § 1.1033(a)–2. Therefore, if, in a case to which this subparagraph applies, the first taxable year in which gain is realized is the taxable year of the distributor or transferor corporation ending with the close of the date of distribution or transfer, the acquiring corporation will have a maximum of only one year after that date in which to purchase the similar property or stock, unless an extension of time has been granted upon application by the distributor, transferor, or acquiring corporation within the time prescribed. See paragraph (a) of § 1.381(b)–1 as to the termination of the taxable year of the distributor or transferor corporation. See paragraph (c)(3) of § 1.1033(a)–2 as to applications to extend the period within which to replace the converted property. In addition to the information otherwise required under paragraph (c)(3) of § 1.1033(a)–2, the application shall contain sufficient detail in connection with the distribution or transfer to establish that section 381(c)(13) applies to the involuntary conversion involved.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A and B Corporations compute their taxable income on the basis of the calendar year, and both corporations use the cash method of accounting. During 1955 property of A Corporation is destroyed by fire, and in January 1956, A Corporation receives $15,000 from an insurance company as compensation for its loss of property. The adjusted basis of the property on the date of destruction is $10,000; as a consequence, A Corporation realizes a gain of $5,000 on the involuntary conversion. On June 30, 1956, B Corporation acquires all of the assets of A Corporation in a reorganization to which section 381(a) applies. In accordance with paragraph (c)(2) of § 1.1033(a)–2, A Corporation reports in its return for the short taxable year ending June 30, 1956, all the details in connection with the involuntary conversion but does not include the realized gain in gross income, thereby electing to have the gain recognized only to the extent provided in section 1033(a)(3). On June 15, 1957, B Corporation purchases for $20,000 property which is similar or related in service or use to the property previously destroyed. In its return for 1957, B Corporation reports all of the details in connection with its replacement of the property, as required by paragraph (c)(2) of § 1.1033(a)–2. As a result of this replacement by B Corporation, none of the gain realized by A Corporation is recognized. The replacement property which is purchased by B Corporation has a basis to that corporation of $15,000 on the date of its purchase, that is, the cost of such property ($20,000) decreased by the amount of gain not recognized to A Corporation on the involuntary conversion ($5,000).

Example (2). Assume the same facts as in example (1), except that B Corporation does not purchase similar property on or before June 30, 1957, and does not apply on or before that date (in accordance with paragraph (c)(3) of § 1.1033(a)–2) for an extension of time in which to make a replacement. In such event, the gain realized by A Corporation is recognized to that corporation for its taxable year ending June 30, 1956. A Corporation's tax liability for such taxable year must be recomputed in accordance with paragraph (c)(2) of § 1.1033 (a)–2 in order to reflect this additional income.

Example (3). M and N Corporations compute their taxable income on the basis of the calendar year, and both corporations use the cash method of accounting. During 1955, property of M Corporation is destroyed by fire. The adjusted basis of the property on the date of destruction is $10,000. The property is insured against loss by fire, but the insurance claim is not satisfied on or before June 30, 1956, the date on which N Corporation acquires all of the assets (including the insurance claim) of M Corporation in a reorganization to which section 381 (a) applies. On September 1, 1957, N Corporation receives $15,000 from the insurance company as compensation for the fire loss suffered by M Corporation. Upon receipt of the insurance proceeds, N Corporation realizes a gain of $5,000 upon the involuntary conversion; however, in its return for 1957, N Corporation elects under the provisions of paragraph (c)(2) of § 1.1033(a)–2 to have the gain recognized only to the extent provided by section 1033(a)(3). On December 30, 1958, N Corporation purchases for $20,000 property which is similar or related in service or use to the property previously destroyed in the hands of M Corporation. As a result of this replacement by N Corporation, none of the gain realized by N Corporation in 1957 is recognized. The replacement property which is purchased by N Corporation

has a basis to that corporation of $15,000 on the date of its purchase, that is, the cost of such property ($20,000) decreased by the amount of gain not recognized to N Corporation on the involuntary conversion ($5,000).

Example (4). R and S Corporations compute their taxable income on the basis of the calendar year, and both corporations use the cash method of accounting. During 1954 property of R Corporation is destroyed by fire. The adjusted basis of the property on the date of destruction is $10,000. In anticipation of taking the benefit of section 1033(a)(3), R Corporation purchases for $20,000 on June 1, 1955, property which is similar or related in service or use to the destroyed property. In its return for 1955, R Corporation reports all of the details in connection with the replacement of the property, as required by paragraph (c)(2) of § 1.1033(a)-2. The property destroyed in 1954 is insured against loss by fire, but the insurance claim is not satisfied on or before March 1, 1956, the date on which S Corporation acquires all of the assets (including the insurance claim) of R Corporation in a reorganization to which section 381(a) applies. On October 1, 1956, S Corporation receives $12,000 from the insurance company as compensation for the fire loss suffered by R Corporation. Upon receipt of the insurance proceeds, S Corporation realizes a gain of $2,000 upon the involuntary conversion; however, in its return for 1956, S Corporation elects under the provisions of paragraph (c)(2) of § 1.1033(a)-2 to have the gain recognized only to the extent provided by section 1033(a)(3). As a result of the replacement by R Corporation, none of the gain realized by S Corporation in 1956 is recognized. Assuming there are no adjustments for depreciation, the replacement property has a basis on October 1, 1956, of $18,000, that is, the cost of such property ($20,000) decreased by the amount of gain not recognized to S Corporation on the involuntary conversion ($2,000).

(d) *Conversion into money when disposition occurs before January 1, 1951.* Section 1033(a)(2) provides that, if property is disposed of in an involuntary conversion before January 1, 1951, and money is received as compensation for the conversion, no gain shall be recognized if such money is forthwith expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund. That section also provides that, if any part of the money is not so expended, the gain, if any, shall be recognized to the extent of the money which is not so expended. For example, if, pursuant to section 381(c)(13) and section 1033(a)(2), property of a distributor or transferor corporation is disposed of before January 1, 1951, in an involuntary conversion, and the proceeds from the conversion are received by the acquiring corporation so that the gain on the conversion is realized by that corporation, the acquiring corporation may avoid recognition of the gain if it complies with the provisions of section 1033(a)(2) for nonrecognition of gain. Thus, the acquiring corporation must forthwith expend the proceeds in the acquisition of similar property or stock, or in the establishment of a replacement fund, in order to avoid recognition of the gain, if the disposition occurred before January 1, 1951. See the provisions of § 1.1033(a)-3 and § 1.1033(a)-4 relating to involuntary conversions and replacement funds when disposition of the converted property occurred before January 1, 1951.

(e) *Successive acquiring corporations.* An acquiring corporation which, in a transaction to which section 381(a) applies, acquires the assets of a corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall be treated as such other corporation for purposes of applying sections 381(c)(13) and 1033 (relating to involuntary conversions). Thus, for example, if any factor essential to the application of section 1033 occurs on or before the date of distribution or transfer in one transaction to which section 381(a) applies, and any other such factor occurs after the date of distribution or transfer in a subsequent transaction to which section 381(a) applies, then the acquiring corporation in such subsequent transaction shall be treated as the first distributor or transferor corporation subject to the rules and limitations of this section for purposes of sections 381(c)(13) and 1033.

§ 1.381(c)(18) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; percentage depletion on extraction of ores or minerals from the waste or residue of prior mining.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • • •

(18) *Percentage depletion on extraction of ores or minerals from the waste or residue of prior mining.* The acquiring corporation shall be considered to be the distributor or transferor corporation for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground).

§ 1.381(c)(18)-1 Depletion on extraction of ores or minerals from the waste or residue of prior mining.

(a) *Carryover requirement.* Section 381(c)(18) provides that the acquiring corporation in a transaction described in section 381(a) shall be considered as though it were the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the applicability of section 613(c)(3) (relating to extraction of ores or minerals from the ground). Thus, an acquiring corporation which has acquired the waste or residue of prior mining from a distributor or transferor corporation in a transaction described in section 381(a) shall be entitled, after the date of distribution or transfer, to an allowance for depletion under section 611 in respect of ores or minerals extracted from such waste or residue if the distributor or transferor corporation would have been entitled to such an allowance for depletion in the absence of the distribution or transfer. See paragraph (f) of § 1.613-3 to determine whether a distributor or transferor corporation is entitled to an allowance for depletion with respect to the waste or residue of prior mining.

(b) *Application of section 614 to waste or residue of prior mining.* If, in a transaction described in section 381(a), the acquiring corporation acquires waste or residue of prior mining from a distributor or transferor corporation, then the acquiring corporation shall be considered as though it were the distributor or transferor corporation for the purpose of applying section 614 and the regulations thereunder to the waste or residue so acquired. Thus, if the distributor or transferor corporation was required under paragraph (c) of § 1.614-1 to treat the waste or residue as part of the mineral deposit from which it was extracted and if the acquiring corporation acquires both the waste or residue and the mineral deposit from which it was extracted in a transaction described in section 381(a), then such waste or residue shall be treated as a part of such mineral deposit in the hands of the acquiring corporation. On the other hand, if the waste or residue was required to be treated as a separate mineral deposit in the hands of the distributor or transferor corporation, such waste or residue shall be treated as a separate mineral deposit in the hands of the acquiring corporation.

§ 1.381(c)(19) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; charitable contributions in excess of prior years' limitation.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • • •

(19) *Charitable contributions in excess of prior years' limitation.* Contributions made in the taxable year ending on the date of distribution or transfer and the prior taxable year by the distributor or transferor corporation in excess of the amount deductible under section 170(b)(2), in such taxable years shall be deductible by the acquiring corporation in its first two taxable years which begin after the date of distribution or transfer, subject to the limitations imposed in section 170(b)(2).

§ 1.381(c)(19)-1 Charitable contribution carryovers in certain acquisitions.

(a) *Carryover requirement.* Section 381(c)(19) provides that, in computing taxable income for its first two taxable years which begin after the date of a distribution or transfer to which section 381(a) applies, the acquiring corporation shall take into account any charitable contributions made by a distributor or transferor corporation during the taxable year ending on the date of distribution or transfer, and in the immediately preceding taxable year, which are in excess of the maximum amount deductible for those taxable years under section 170(b)(2). To determine the amount of the excess contributions made by a distributor or transferor corporation and to integrate them with contributions made by the acquiring corporation for the purpose of determining the charitable contributions deductible by the acquiring corporation for its first two taxable years beginning immediately after the date of distribution or transfer, it is necessary to apply the provisions of section 170(b)(2) in accordance with the conditions and limitations of section 381(c)(19) and this section.

(b) *Manner of computing excess charitable contribution carryovers.* (1) The amount of any charitable contribution made by a distributor or transferor corporation in any taxable year ending on or before the date of distribution or transfer, or made by the acquiring corporation in any taxable year before its taxable year beginning after the date of distribution or transfer, in excess of the amount allowable as a deduction to such corporation for such taxable year under section 170(b)(2) shall be determined by taking into account the taxable income of, and the contributions made by, that corporation only.

(2) An acquiring corporation which, in a distribution or transfer to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which previously acquired the assets of another corporation in a transaction to which section 381(a) applies, shall succeed to and take into account, subject to the conditions and limitations of sections 170 and 381, the charitable contribution carryovers available to the first acquiring corporation under sections 170 and 381, including those derived by such first acquiring corporation from its distributor or transferor corporation.

(3) The excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer and in its immediately preceding taxable year which are not deductible by the distributor or transferor corporation because of the 5 percent limitation of section 170(b)(2) shall be available to the acquiring corporation without diminution by reason of the fact that the acquiring corporation does not acquire 100 percent of the assets of the distributor or transferor corporation. Thus, if a parent corporation owning 80 percent of all classes of stock of its subsidiary corporation were to acquire its share of the assets of the subsidiary corporation upon a complete liquidation described in paragraph (b)(1)(i) of § 1.381(a)-1, then, subject to the conditions and limitations of this section, 100 percent of the excess contributions made by the subsidiary corporation would be available to the acquiring corporation.

(c) *Taxable years to which carryovers apply and amount deductible.* (1) The excess charitable contributions made by a distributor or transferor corporation in its taxable year immediately preceding that ending on the date of distribution or transfer, to the extent not deductible by it because of the limitations of section 170(b)(2) in its taxable year ending on that date, shall be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) in its first taxable year beginning after the date of distribution or transfer. Any portion of such excess which is not deductible under this section by the acquiring corporation in such first taxable year shall not be deducted by that corporation in any other taxable year.

(2) The excess charitable contributions made by a distributor or transferor corporation in its taxable year ending on the date of distribution or transfer shall first be deductible by the acquiring corporation to the extent prescribed by section 170(b)(2) and this section in its first taxable year beginning after that date and then, to the extent prescribed by section 170(b)(2) and this section, in its second taxable year beginning after that date. Any portion of such excess which is not deductible under this section by the acquiring corporation in such first and second taxable years shall not be deducted by that corporation in any other taxable year.

(3) No excess charitable contributions made by a distributor or transferor corporation shall be deductible by the acquiring corporation in its taxable year which includes the date of distribution or transfer.

(d) *Rules governing amounts deductible by acquiring corporations.* (1) In applying the provisions of section 170(b)(2) for the purpose of determining the amount of excess charitable contributions which are deductible by the acquiring corporation in its first taxable year beginning after the date of distribution or transfer, all taxable years of the distributor or transferor and acquiring corporations which, with respect to such first taxable year, constitute the second preceding taxable year shall together be considered as one taxable year even though the taxable years involved may not end on the same date. Any excess charitable contributions carried over from such preceding taxable years considered as one taxable year shall be taken into account by the acquiring corporation as one amount, without regard to the extent to which the contributions were made by a distributor or transferor corporation or the acquiring corporation.

(2) In applying the provisions of section 170(b)(2) for the purpose of determining the amount of excess charitable contributions which are deductible by the acquiring corporation in its second taxable year beginning after the date of distribution or transfer, all taxable years of the distributor or transferor and acquiring corporations which, with respect to such second taxable year, constitute the second preceding taxable year shall together be considered as one taxable year even though they may not end on the same date. Any excess charitable contributions carried over from such preceding taxable years considered as one taxable year shall be taken into account by the acquiring corporation as one amount, without regard to the extent to which the contributions were made by a distributor or transferor corporation or the acquiring corporation.

(3) For purposes of this paragraph, the taxable year of a distributor or transferor corporation which ends on the date of distribution or transfer shall be considered a first preceding taxable year with reference to the acquiring corporation's first taxable year beginning after that date and a second preceding taxable year with reference to the acquiring corporation's second taxable year beginning after that date. The taxable year of a distributor or transferor corporation which immediately precedes its taxable year ending on the date of distribution or transfer shall be considered a second preceding taxable year with reference to the acquiring corporation's first taxable year beginning after that date.

(e) *Illustration.* The application of this section may be illustrated by the following example:

Example. (i) X Corporation is organized on April 1, 1956, and computes its taxable income on the basis of the fiscal year ending March 31. Y Corporation is organized on July 1, 1955, and computes its taxable income on the basis of the fiscal year ending June 30. Z Corporation is organized on January 1, 1956, and computes its taxable income on the basis of the calendar year. On June 30, 1957, X Corporation distributes all its assets to Y Corporation in a complete liquidation to which section 381(a) applies. On November 30, 1957, Y Corporation transfers all its assets to Z Corporation in a statutory merger to which section 381(a) applies.

(ii) The 5-percent limitation (computed in the manner prescribed by section 170(b)(2)), the charitable contributions actually paid, and the excess contributions with respect to each such corporation during the taxable years involved are as follows:

Name of corporation *Taxable year ending*	*X* *6-31-57*	*X* *6-30-57*	
5-percent limitation	$20,000	$20,000	
Current contributions	32,000	14,000	
(Excess contributions)	(12,000)	(6,000)	
Name of corporation *Taxable year ending*	*Y* *6-30-58*	*Y* *6-30-57*	*Y* *11-30-57*
5-percent limitation	$15,000	$18,000	$18,000
Current contributions	29,000	0	17,000
(Excess contributions)	(14,000)	-------	-------
Balance of 5-percent limitation	-------	10,000	1,000
Name of corporation *Taxable year ending*	*Z* *12-31-56*	*Z* *12-31-57*	*Z* *12-31-58*
5-percent limitation	$10,000	$30,000	$58,000
Current contributions	40,000	28,000	2,000
(Excess contributions)	(30,000)	-------	-------
Balance of 5-percent limitation	-------	2,000	56,000

(iii) X Corporation was in existence for two taxable years, in each of which it made charitable contributions in excess of the maximum amount deductible for those years under section 170(b)(2). The excess contributions made in the year ending March 31, 1957, of $12,000, are deductible by X Corporation in its short taxable year ending June 30, 1957, and then by Y Corporation in its short taxable year ending November 30, 1957, in each instance in the manner and to

the extent prescribed by section 170(b)(2) and this section. The excess contributions made by X Corporation in the year ending June 30, 1957, of $6,000, are deductible by Y Corporation in its short taxable year ending November 30, 1957, and then by Z Corporation in its taxable year 1958, in each instance in the manner and to the extent prescribed by section 170(b)(2) and this section.

(iv) Y Corporation was in existence for three taxable years. In the year ended June 30, 1956, its contributions in excess of the amount deductible for that year under section 170(b)(2) amounted to $14,000. Such excess is deductible by Y Corporation in its taxable ending June 30, 1957, and, together with X Corporation's excess contributions of $18,000, in its short taxable year ending November 30, 1957, in each instance in the manner and to the extent prescribed by section 170(b)(2) and this section. Accordingly, since Y Corporation made no contributions in its taxable year ending June 30, 1957, its deduction for that year on account of excess contributions carried over is $10,000, an amount equal to the 5-percent limitation of section 170(b)(2). The deduction is attributable to excess contributions made by Y Corporation in the taxable year ended June 30, 1956; thus, the excess of those contributions over $10,000, namely, $4,000, is deductible by Y Corporation in its short taxable year ending November 30, 1957, in the manner and to the extent prescribed by section 170(b)(2) and this section. With respect to the short taxable year ending November 30, 1957, the excess contributions of the second preceding year are X Corporation's excess contributions of $12,000 made in the year ending March 31, 1957, and Y Corporation's excess contributions of $4,000 made in the year ending June 30, 1956, which were not deductible by Y Corporation in the taxable year ending June 30, 1957, because of the 5-percent limitation prescribed by section 170(b)(2), an aggregate of $16,000. Inasmuch as Y Corporation's limitation for the short taxable year ended November 30, 1957, exceeds the contributions made in that year by $1,000, the excess contributions of the second preceding taxable year are deductible in the taxable year ending November 30, 1957, to the extent of $1,000 and the remainder ($15,000) is not deductible by any corporation in any taxable year. The excess contributions of the first preceding taxable year, namely, X Corporation's excess contributions made in the short taxable year ending June 30, 1957, are deductible by Z Corporation in its taxable year 1958, in the manner and to the extent prescribed in section 170(b)(2) and this section.

(v) Z Corporation has been in existence for 3 taxable years. The contributions made in 1956 in excess of the amount deductible for that year under section 170(b)(2) amounted to $30,000. Such excess is deductible by Z Corporation in its taxable year 1957 and, together with X Corporation's excess contributions of $6,000 (derived through Y Corporation) made in the taxable year ending June 30, 1957, in the taxable year 1958, in each instance in the manner and to the extent prescribed by section 170(b)(2) and this section. Thus, $2,000 of the $30,000 excess contributions made in the year 1956 are deducted in 1957 and the remainder ($28,000), together with X Corporation's excess contributions of $6,000 made in the short taxable year ending June 30, 1957, are deducted in 1958 since the aggregate of such amounts plus the contributions actually made in that year does not exceed the 5-percent limitation prescribed by section 170(b)(2).

[F.R. Doc. 60-11610; Filed, Dec. 14, 1960; 8:53 a.m.]

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Hearings on Proposed Regulations

Public hearings will be held in Room 3313, Internal Revenue Building, Twelfth and Constitution Avenue NW., Washington 25, D.C., on the provisions of the proposed regulations listed below on the dates and at the times indicated.

Subject	Date notice published in FEDERAL REGISTER	Date of hearing	Time (e.s.t.)
			a.m.
"Dollar value method" of computing LIFO inventory	12-1-60	1-5-61	10:00
Options to which Section 421 does not apply. (Page 12414 of FEDERAL REGISTER.)	12-3-60	1-9-61	10:00
Taxation of life insurance companies	12-10-60	1-12-61	10:00

Persons who plan to attend any of these hearings are requested to notify the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., as to those hearings they will attend. Notice with respect to any particular hearing should be given at least three days before the date scheduled for such hearing.

[SEAL] MAURICE LEWIS,
Director,
Technical Planning Division,
Internal Revenue Service.

[F.R. Doc. 60-11671; Filed, Dec. 14, 1960; 8:54 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 13864; FCC 60-1466]

APPLICATIONS FOR VOLUNTARY ASSIGNMENTS OR TRANSFERS OF CONTROL

Notice of Proposed Rule Making

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. Commission records show that for the calendar years 1957-1959 inclusive, there were filed with the Commission an average of approximately 555 voluntary applications per year seeking substantial changes in ownership of well over that number of broadcast facilities since many of the applications involved more than one facility (AM, FM or TV). For example, a detailed study was made of all such applications acted upon by the Commission in 1958. Standard broadcast stations were involved in 83 percent of the applications; FM stations in 9 percent; and TV stations in 8 percent. In approximately 10 percent of the applications, more than one station was involved. With respect to the length of time the seller had held its interest, it was determined that in 47 percent of the cases, the interest had been held over three years; in 35 percent it had been held between one and three years; in 11 percent it had been held for six to twelve months; and in 7 percent it had been held less than six months. Of those sellers holding their interests less than three years, 53 percent acquired their interests by purchase and 47 percent by the grant of new construction permits. Thirty-five percent of the transactions involved an all-cash purchase, while in 42 percent of the cases, less than 30 percent of the purchase price was to be in cash. In 4 percent of the cases, no cash consideration was involved (cases involving settlement of estates, exchanges of properties, the creation of trusts, etc.).

3. A supplemental survey was conducted of the 318 applications (involving substantial ownership changes as distinguished from pro forma cases) acted upon by the Commission during the period January 1–October 1, 1960. These applications involved 287 AM, 45 FM and 23 TV stations. The survey indicated that 75 applications called for all cash payments for the facility with the remaining applications involving installment payments over an extended period. In 67 of the applications, the facility had been held by the seller for less than one year, and an additional 129 for less than three years, whereas only 161 of the 355 facilities had been held by the seller for three years or more. In nearly 50 percent of the applications where the facilities had been held less than three years, the selling price indicated a substantial increase over the amount paid by the seller or expended by him in the construction of the station.

4. The frequent turnover of a large number of broadcast stations has been and is a matter of great concern to the Commission, and to the Congress (See House Report No. 2711, 85th Cong., 2d Sess., and House Report 1258, 86th Cong., 2d Sess.). Voluntary sales of stations which have been held by their owners for short periods of time raise questions as to whether they are engaged in trafficking in broadcast interests; and whether the resultant uncertainty on the part of station personnel and disruption in operational continuity cause programming deterioration incompatible with broadcasting in the public interest. Experience has shown that time is needed to adequately ascertain and fully understand the program needs and desires of a community, and to adjust programming requirements to such needs and interests.

5. The Commission considers that each application for acquisition of a construction permit or a license for a broadcast facility whether by initial grant or through purchase includes an implied (if not expressed) representation to the Commission that the applicant intends to operate the station involved for the full period authorized by the license.

6. In light of the above, the Commission is of the view that many of the questions raised may be resolved if persons acquiring stations by purchase or by original grant were required to operate them for a minimum of three years. The Commission appreciates that certain exceptions should be made to such a requirement and has included them in the attached proposed rule.

7. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested parties may file comments on or before January 16, 1961, and reply comments on or before January 26, 1961. All submissions by parties to this proceeding or by persons acting in behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

8. In reaching its decision on the proposed rule, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

9. In accordance with the provisions of § 1.54 of the rules, the Commission shall be furnished with an original and 14 copies of all written comments filed herein.

10. Authority for the adoption of the amendment proposed herein is contained in sections 4 (i) and (j), 303(r), 308(b), 309 and 310(b) of the Communications Act of 1934, as amended.

Adopted: December 7, 1960.

Released: December 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

§ 1.365 Hearings on transfer and assignment applications.

(a) If, upon the examination, pursuant to sections 309(a) and 310(b) of the Communications Act of 1934, as amended, of an application for Commission consent to an assignment of a broadcast construction permit or license or for a transfer of control of a corporate permittee or licensee it appears that the station involved has been operated by the proposed assignor or transferor for less than three successive years and the Commission is unable to find that:

(1) The application involves a translator station only, or a FM station operated for at least three years together with a Subsidiary Communications Authorization held for a lesser period; or

(2) The application involves a pro forma assignment or transfer of controls; or

(3) The assignor or transferor has made an affirmative showing, based on probative evidence, to support his assertion that due to inadequacy of operating capital, to death or disability of station principals or of key management personnel, or to other changed circumstances affecting the licensee or permittee occurring subsequent to the acquisition of the license or permit, Commission consent to the proposed assignment or transfer of control will serve the public interest, convenience and necessity; the application will be designated for hearing on appropriate issues pursuant to section 309(b) of the Communications Act of 1934, as amended.

(b) The commencement date of the three-year period set forth in paragraph (a)(1) of this section shall be determined as follows:

(1) Where the authorizations involved in the application consist of a license and a construction permit authorizing a major change in the facilities of the licensed station (as defined in §§ 1.354, 1.355 and 1.356), the three-year period shall commence with the date of the Commission's grant of the construction permit.

(2) Where the authorization involved in the application consists of a construction permit of an operating station, or a license issued subsequent to the issuance of initial operating authority, the three-year period shall commence with the date of issuance of initial operating authority.

(3) Where the operating station involved in the application was obtained by means of an assignment or transfer of control (other than pro forma), the three-year period shall commence with the date of grant by the Commission of the application for said assignment or transfer of control. If the station was put in operation after such assignment or transfer, subparagraphs (1) and (2) of this paragraph shall apply.

(4) Where an application is filed for Commission consent to a transfer of control of a corporation holding multiple licenses and/or construction permits, the commencement date applicable to the last-acquired station shall apply to all the stations involved in the transfer, except where the application involves a FM station operated for less than three years and an AM station operated for more than three years, both serving substantially the same area. Said exception shall apply to the same circumstances where assignment applications are involved.

[F.R. Doc. 60-11634; Filed, Dec. 14, 1960; 8:50 a.m.]

[1] Dissenting statement of Commissioner Hyde filed as part of original document.

[47 CFR Part 3]

[Docket No. 13897; FCC 60-1494]

MULTIPLE OWNERSHIP OF AM, FM, AND TV BROADCAST STATIONS

Notice of Proposed Rule Making

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. On November 25, 1953, the Commission adopted a Report and Order making certain changes in §§ 3.35, 3.240, and 3.636 of our rules, which relate to the multiple ownership of AM, FM, and television stations, respectively (Docket No. 8967, Report and Order released November 27, 1953, FCC 53-1570, 9 Pike & Fischer R.R. 1563). Up until that time, our multiple ownership rules had referred to stations "directly or indirectly owned, operated or controlled" by the same person (including persons under common control); the word "control" being defined in the rules as "not limited to majority stock ownership but including actual working control in whatever manner exercised".

3. Under the provisions of the 1953 revision, for the first time "interests" as such, whether majority or minority and whether or not amounting to actual control, were taken into account, so that one person (or persons under common control) cannot hold directly or indirectly interests in more than 7 AM, 7 FM, and 5 television stations (in 1954 the limit on TV stations was changed to 5 VHF and 2 UHF). In our Report and Order (par. 12) we concluded that minority interests should be included because the holder of only a small minority of stock (especially where he has numerous broadcast interests and therefore is active in the field) may often exercise a significant influence on the affairs of the licensee. However, it was recognized that in the case of large corporations with a great many holders of small percentages of outstanding voting stock, the influence of very small stockholders (who are not officers or directors) would normally be so small as not to be of significance in this area. Therefore, footnotes to each of the rules provide that in applying the provisions thereof "to the stockholders of a corporation which has more than 50 voting stockholders, only those stockholders need be considered who are officers or directors or who directly or indirectly own 1% or more of the outstanding voting stock." (Note 2 to §§ 3.35, 3.240, and 3.636.)

In adopting the one percent standard, the Commission rejected the argument that in the case of such large corporations interests of less than five percent of the outstanding voting stock should not be counted; it was concluded that a holder of one percent but less than five percent might have considerable voice in management. (Report and Order, par. 14.)

4. In January, 1955, Westinghouse Broadcasting Company, licensee of several radio and television stations, filed a "Petition for Reconsideration and Amendment of §§ 3.35, 3.240 and 3.636", purportedly in connection with Docket 8967, asking in substance that the respective footnotes to the rules be changed so as to state that in the case of corporations having fewer than 50 stockholders, an interest would not be counted unless the stockholder (other than an officer or director) owns directly or indirectly five percent or more of the outstanding voting stock. Westinghouse's particular interest in this matter arose from the fact that one of the directors of Westinghouse Electric Company, the parent of Westinghouse Broadcasting, owned 2.8 percent of the stock of a television station having 34 stockholders, and not otherwise connected with Westinghouse. To the extent that this interest is chargeable to a director of Westinghouse, it is chargeable to Westinghouse, and the existence of such an interest prevents a licensee in these circumstances from owning as many stations as are available to other licensees where the relatively inconsequential outside interests of an officer or director are not

present. The Westinghouse "Petition" argues as follows:

The philosophy underlying the rule requiring that account be taken of interests as small as one percent in corporations having a large number of stockholders is that the owner of a relatively small percentage of outstanding voting stock may, because of failure of a significant number of stockholders to vote or otherwise express their views, exercise a voice in the control and management of the corporation out of proportion to the size of his stockholdings. The corollary of that reasoning is that a stock interest of that size in a corporation having a small number of stockholders (the majority or all of whom would be presumed to vote) would not be sufficient to support the presumption of control or "considerable voice".

Pointing out that under the rule the holder of even one share of the voting stock of a corporation having 49 stockholders is an "interest" within the meaning of the Rule as it now reads, Westinghouse argues that this is an "unintended and unsustainable result" and that in this respect the Rules fail to carry out the meaning and intent of the Report. Therefore, Westinghouse asks that the respective footnotes be changed so as to provide that in the case of corporations having 50 or fewer holders of voting stock, only holders of five percent or more of such stock (plus of course officers and directors) will be considered as having interests in the corporation within the meaning of these rules.

5. It appears that as a general proposition there is substantial merit in the argument asserted by Westinghouse, since in the case of a corporation with a relatively small number of stockholders it may be assumed, as a rule, that most of the stockholders are likely to exercise the voice in the conduct of corporate affairs to which their holdings entitle them. That being so, it seems improbable that the holder of only one or two percent of the corporate voting stock, having no other position in the corporate structure, would exercise the substantial role in the management of the corporation and its business which is the concern of our multiple ownership rules as revised in 1953.

6. Since the rules as they presently read require the inclusion as an "interest" of any voting stock holding in the case of a corporation with 50 or fewer stockholders, we believe that a change therein may be warranted, in line with the considerations set forth in the last paragraph above. The figure of 5 percent as a cutoff point appears to be satisfactory as a basis upon which to proceed. We also believe that there should be a further provisions in the footnote providing that where a stockholder has less than the percentage of voting stock mentioned in the rule (1 percent or 5 percent) but in fact has a substantial voice in the management of the corporation or its affairs, this interest should be taken into account for the purpose of the multiple ownership rules (the Westinghouse "Petition" proposes a provision essentially to the same effect).

7. Accordingly we propose to amend the multiple ownership rules, §§ 3.35, 3.240, and 3.636, by changing the pertinent notes thereto in these respects. Note 2 to §§ 3.35, 3.240 and 3.636 would read as follows:

In applying the foregoing provisions, a person who is not an officer or director of a corporation shall not be deemed to have an interest in or to be a stockholder of that corporation unless he: (1) Directly or indirectly owns 1 percent or more of the outstanding voting stock thereof if the corporation has more than 50 holders of voting stock; or (2) directly or indirectly owns 5 percent or more of the outstanding voting stock if the corporation has 50 or fewer holders of voting stock; or (3) owns any of the stock of the corporation whatsoever and in fact controls or has a substantial voice in the control or management of the corporation or its affairs.

8. The Commission is of the view that rule making proceedings should be instituted in this matter in order that all interested parties may submit their views.

9. Authority for the adoption of the amendments proposed herein is contained in sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended.

10. Pursuant to applicable procedures set out in §1.213 of the Commission rules, interested persons may file comments on or before January 16, 1961, and reply comments on or before January 31, 1961. In reaching its decision on the rules and standards of general applicability which are proposed herein, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

11. In accordance with the provisions of §1.54 of the rules, the Commission shall be furnished with an original and 14 copies of all written comments filed herein.

Adopted: December 7, 1960.

Released: December 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11635; Filed, Dec. 14, 1960; 8:51 a.m.]

Notices

ATOMIC ENERGY COMMISSION

[Docket No. PP-1]

ELK RIVER POWER DEMONSTRATION REACTOR PROGRAM PROJECT

Order Postponing and Setting New Date for Hearing

On December 9, 1960, the Atomic Energy Division of Allis Chalmers Manufacturing Company, together with the Rural Cooperative Power Association, filed a Motion for postponement of the hearing now scheduled for December 20, 1960, in the above entitled proceeding, on the ground that difficulties have arisen in the fabrication of the fuel elements contemplated for use in the proposed reactor facility, which will necessarily prevent a loading of fuel as originally scheduled. The movants further requested that this hearing be postponed until March 7, 1961. The Staff has consented to the postponement.

The Presiding Officer finds:

A. Good cause exists for a postponement of the hearing to March 7, 1961.

B. In addition to the public notice given of this notice of postponement, including its publication in the FEDERAL REGISTER, a subsequent notice should be issued at least 30 days prior to the hearing, designating the courtroom facilities available for this hearing.

The Presiding Officer orders:

A. The hearing in this proceeding, scheduled by the Commission to convene at 10:30 a.m. on December 20, 1960, in a courtroom to be assigned in the U.S. District Court, Saint Paul, Minnesota, is postponed.

B. The hearing in this proceeding shall convene on March 7, 1961, in either Saint Paul or Minneapolis, Minnesota.

C. A subsequent notice will be issued designating the courtroom space available for this hearing and will be published in the FEDERAL REGISTER 30 days prior to the hearing scheduled for this proceeding.

Issued: December 9, 1960, Germantown, Md.

SAMUEL W. JENSCH,
Presiding Officer.

[F.R. Doc. 60-11644; Filed, Dec. 14, 1960; 8:54 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 147]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 9, 1960.

The following letter-notices of proposals to operate over deviation routes for operating convenience only with service at no intermediate points have been filed with the Interstate Commerce Commission, under the Commission's Deviation Rules Revised, 1957 (49 CFR 211.1(c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Deviation Rules Revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 1658 (Deviation No. 2), NORWALK TRUCK LINES INC. OF DELAWARE, Manheim Pike, Lancaster, Pa., filed November 16, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Buffalo, N.Y., over the New York Thruway to junction U.S. Highway 20 near Ripley, N.Y., thence over U.S. Highway 20 to junction Interstate Highway 90, thence over Interstate Highway 90 to junction Ohio Highway 44, thence over Ohio Highway 44 to junction U.S. Highway 20, thence over U.S. Highway 20 to Cleveland, Ohio, and return over the same routes for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Buffalo over New York Highway 5 to Batavia, N.Y., thence over New York Highway 63 to Wayland, N.Y., thence over U.S. Highway 15 to Painted Post, N.Y., thence over New York Highway 17 to junction U.S. Highway 20, thence over U.S. Highway 20 to Cleveland, Ohio, and return over the same route.

No. MC 43654 (Deviation No. 3) DIXIE OHIO EXPRESS INC., 237 Fountain Street, P.O. Box 750, Akron 9, Ohio, filed November 14, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Cleveland, Ohio over Temporary Interstate Highway 90 to its junction with Interstate Highway 90, thence over Interstate Highway 90 to the Pennsylvania-New York State line, and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Cleveland over U.S. Highway 21 to Akron, Ohio, thence over Ohio Highway 5 to junction Ohio Highway 7, thence over Ohio Highway 7 to Conneaut, Ohio, and thence over U.S. Highway 20 to the Pennsylvania-New York State line.

No. MC 104004 (Deviation No. 12), ASSOCIATED TRANSPORT INC., 380 Madison Avenue, New York 17, N.Y., filed November 25, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Cleveland, Ohio over U.S. Highway 42 to junction Ohio Highway 18; thence over Ohio Highway 18 to junction Interstate Highway 71, thence over Interstate Highway 71 to junction U.S. Highway 36, thence over U.S. Highway 36 to junction U.S. Highway 42, and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Cincinnati and Cleveland, Ohio, over U.S. Highway 42.

No. MC 104004 (Deviation No. 13), ASSOCIATED TRANSPORT INC., 380 Madison Avenue, New York 17, N.Y., filed December 2, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Lebanon, Tenn., over Tennessee Highway 26 to junction U.S. Highway 70-S, thence over U.S. Highway 70-S to Junction U.S. Highway 70-N near Crossville, Tenn., and return over the same route for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Nashville over U.S. Highway 70-N to junction U.S. Highway 70-S, thence over U.S. Highway 70-S to Crossville, thence over U.S. Highway 70 to Knoxville, Tenn., and return over the same route.

MOTOR CARRIERS OF PASSENGERS

No. MC-1501 (Deviation No. 56), THE GREYHOUND CORPORATION, P.O. Box 2553, Charlestown 29, W. Va., filed November 25, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *passengers*, over a deviation route as follows: From a point near Suwanee, Ga., over unnumbered highway for a distance of approximately 2 miles to Junction Interstate Highway 85, thence over Interstate Highway 85 to Atlanta, Ga., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport passengers over a pertinent service route as follows: From Suwanee over U.S. Highway 23 to Atlanta and return over the same route. This notice supersedes Deviation No. 5 filed by the same carrier. Carrier requests can-

cellation of Deviation Notice No. 5 (between Duluth and Atlanta, Ga.), filed by Atlantic Greyhound Corporation on May 14, 1959.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11597; Filed, Dec. 14, 1960; 8:56 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 9, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36770: *T.O.F.C. service from and to Maine and New Hampshire and WTL territory.* Filed by Western Trunk Line Committee, Agent (No. A-2154), for interested rail carriers. Rates on various commodities moving on class rates loaded in trailers and transported on railroad flat cars, between specified points in Maine and New Hampshire, on the one hand, and points in western-truck-line territory, on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 45 to Western Trunk Line Committee tariff I.C.C. A-4281.

FSA No. 36771: *Talc, soapstone, etc., from Montana to Minnesota and Wisconsin.* Filed by Western Trunk Line Committee, Agent (No. A-2157), for interested rail carriers. Rates on talc, soapstone, wollastonite, and related articles, in carloads, from Alder, Butte, Norris and East Helena, Mont., to specified points in Minnesota and Wisconsin.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 1 to Trans-Continental Freight Bureau tariff I.C.C. 1644.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11596; Filed, Dec. 14, 1960; 8:56 a.m.]

TARIFF COMMISSION

BINDING TWINES (BINDER AND BALER TWINES)

"Escape Clause" Report

DECEMBER 9, 1960.

The Tariff Commission today submitted a report to the President in connection with "escape clause" investigation No. 7-90, conducted under section 7 of the Trade Agreements Extension Act of 1951, as amended. This investigation covered binding twines (binder and baler twines), which are free of duty under paragraph 1622 of the Tariff Act of 1930. The duty-free status of such twines was bound in the General Agreement on Tariffs and Trade (GATT).

The four members of the Tariff Commission who participated in the investigation to its conclusion divided two to two in their findings. Commissioners Schreiber and Sutton found that binding twines are being imported into the United States in such increased quantities, both actual and relative (to domestic production), as to cause serious injury to the domestic industry producing like or directly competitive products. They also found that in order to remedy the serious injury it is necessary to impose a duty of 30 percent ad valorem on such twines.

Commissioners Talbot and Jones found that binding twines are not being imported into the United States in such increased quantities, either actual or relative (to domestic production), as to cause or threaten serious injury to the domestic industry producing like or directly competitive products. They therefore made no recommendation to the President for the modification or withdrawal of the concession applicable to such twines.

Under the law the President may adopt the findings of either group of Commissioners. This is the first escape-clause case involving a recommendation for escape-clause action on a duty-free item. An amendment in the Trade Agreements Extension Act of 1958 authorized the President to impose a duty up to 50 percent ad valorem on a free-list item.

Copies of the Commission's report are available as long as the limited supply lasts. Address requests to the U.S. Tariff Commission, Eighth and E Streets NW., Washington 25, D.C.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 60-11607; Filed, Dec. 14, 1960; 8:58 a.m.]

HARD-FIBER CORDS AND TWINES (EXCEPT BINDING TWINES)

"Escape Clause" Report

DECEMBER 9, 1960.

The Tariff Commission today submitted a report to the President in connection with "escape clause" investigation No. 7-91 under section 7 of the Trade Agreements Extension Act of 1951, as amended. This investigation covered hard-fiber cords and twines dutiable at 15 percent ad valorem under paragraph 1005(b) of the Tariff Act of 1930, as amended. These twines were originally dutiable at 40 percent ad valorem and the present rate is in effect pursuant to concessions granted in the General Agreement on Tariffs and Trade (GATT).

The four members of the Tariff Commission who participated in the investigation to its conclusion divided two to two in their findings. Commissioners Schreiber and Sutton found that hard-fiber cords and twines provided for in paragraph 1005(b) are being imported into the United States in such increased quantities, both actual and relative (to domestic production), as to cause serious injury to the domestic industry producing like or directly competitive products. They also found that in order to remedy the serious injury, it is necessary to increase the duty on such twines from 15 percent to 30 percent ad valorem.

Commissioners Talbot and Jones found found that hard-fiber cords and twines are not being imported into the United States in such increased quantities, either actual or relative (to domestic production), as to cause or threaten serious injury to the domestic industry producing like or directly competitive products. These Commissioners, therefore, made no recommendation to the President for the modification or withdrawal of the concession applicable to such twines.

Under the law the President may adopt the findings of either group of Commissioners.

Copies of the Commission's report are available as long as the limited supply lasts. Address requests to the U.S. Tariff Commission, Eighth and E Streets NW., Washington 25, D.C.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 60-11608; Filed, Dec. 14, 1960; 8:58 a.m.]

SPRING CLOTHESPINS

Reports to the President

DECEMBER 9, 1960.

The Tariff Commission today submitted to the President its second periodic report on the developments in the trade in spring clothespins since the "escape clause" action, on December 10, 1957, withdrawing the concession thereon granted in the General Agreement on Tariffs and Trade. This report is made pursuant to paragraph 1 of Executive Order 10401 of October 14, 1952, which order prescribes procedures for the periodic review of escape-clause actions. Such review is limited to the determination of whether a concession that has been modified or withdrawn can be restored in whole or in part without causing or threatening serious injury to the domestic industry concerned. In submitting its report to the President under paragraph 1 of Executive Order 10401 with respect to spring clothespins the Commission advised the President that the conditions of competition between imported and domestic spring clothespins had not so changed as to warrant the institution of a formal investigation under the provisions of paragraph 2 of Executive Order 10401. This means that, in the Commission's view, the developments in the trade in spring clothespins do not warrant a formal inquiry into the question of whether a reduction in the duty on spring clothespins could be made without resulting in serious injury to the domestic industry concerned.

Copies of the Commission's report are available as long as the limited supply lasts. Address requests to the U.S. Tariff Commission, Eighth and E Streets NW., Washington 25, D.C.

[SEAL] DONN N. BENT, *Secretary.*

[F.R. Doc. 60-11609; Filed, Dec. 14, 1960; 8:58 a.m.]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

NONCOMPETITIVE OIL AND GAS LEASES

Establishment of New Rental Rate

Notice is hereby given that pursuant to Public Law 86-705, approved September 2, 1960, the annual rental for noncompetitive oil and gas leases issued under the Act of February 25, 1920 (41 Stat. 437, 30 U.S.C., sec. 181), as amended, will be 50 cents per acre or fraction of an acre. If it is determined that the lands are wholly or partly within the known structure of a producing oil or gas field the annual rental shall be $2 per acre or fraction of an acre beginning with the first lease year after 30 days notice.

Pending the approval of new regulations and the printing of new lease forms, the issuance of leases suspended since September 2, 1960, may be resumed provided the applicants agree to a revision in the terms of the lease form to provide for annual rental payments as specified above and such other revisions as are necessary to comply with Public Law 86-705.

ELMER F. BENNETT, *Acting Secretary of the Interior.*

DECEMBER 9, 1960.

[F.R. Doc. 60-11668; Filed, Dec. 14, 1960; 8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30-I-15]

BRANCH MANAGER, AUGUSTA, MAINE

Delegation Relating to Financial Assistance and Administrative Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 6), as amended (25 F.R. 1706 and 7418), there is hereby redelegated to the Branch Manager, Augusta, Maine, the authority:

A. *Financial assistance.* 1. To approve but not decline the following types of loans.

a. Participation loans in an amount not exceeding $20,000.

b. Disaster loans in an amount not exceeding $20,000.

c. Limited loan participation loans.

B. *Administration.* 1. To administer oaths of office.

2. To approve (a) annual and sick leave, except advanced annual and sick leave, and (b) leave without pay, not to exceed 30 days.

3. To (a) make emergency purchases chargeable to the administrative expense fund, not in excess of $10 in any one object class in any one instance but not more than $20 in any one month for total purchases in all object classes; (b) make purchases not in excess of $10 in any one instance for "one-time use items" not carried in stock subject to the total limitation set forth in (a) of this paragraph and (c) to contract for the repair and maintenance of equipment and furnishings in an amount not to exceed $20 in any one instance.

4. To administratively approve all types of vouchers, invoices and bills submitted by public creditors of the Agency for articles or services rendered.

5. To rent motor vehicles from the General Services Administration and to rent garage space for the storage of such vehicles when not furnished by this Administration.

C. *Correspondence.* To sign all nonpolicymaking correspondence, including Congressional correspondence, relating to the functions of the branch office.

II. The specific authority delegated herein may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Branch Manager.

IV. All previous authority delegated to the branch manager is hereby rescinded without prejudice to actions taken under such delegations of authority prior to the date hereof.

Effective date: August 31, 1960.

EDWARD J. STEWART, *Regional Director, Boston Regional Office.*

[F.R. Doc. 60-11666; Filed, Dec. 14, 1960; 8:47 a.m.]

[Delegation of Authority 30-I-16]

BRANCH MANAGER, PROVIDENCE, RHODE ISLAND

Delegation Relating to Financial Assistance and Administrative Functions

I. Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30 (Revision 6), as amended (25 F.R. 1706 and 7418), there is hereby redelegated to the Branch Manager, Providence, Rhode Island, the authority:

A. *Financial assistance.* 1. To approve but not decline the following types of loans:

a. Participation loans in an amount not exceeding $20,000.

b. Disaster loans in an amount not exceeding $20,000.

c. Limited loan participation loans.

2. To execute loan authorizations for Washington approved loans and for loans approved under delegated authority, said execution to read as follows:

PHILIP McCALLUM, *Administrator.*

By ----------
(Name)
Branch Manager.

3. To disburse approved loans.

4. To enter into Disaster Loan Participation Agreements with banks.

5. To cancel, reinstate, modify and amend authorizations for business or disaster loans.

6. To extend the disbursement period on all loan authorizations or undisbursed portions of loans.

7. To approve, when requested, in advance of disbursement, conformed copies of notes and other closing documents and certify to the participating bank that such documents are in compliance with the participation authorization.

8. To take all necessary actions in connection with the administration, servicing and collection of current loans.

9. To take the following actions in the administration of fisheries' loans:

(a) Amend loan authorizations;

(b) Extend the period of disbursement of loans of $50,000 or less for a period not to exceed four months;

(c) Amend the hull insurance provision of any authorization issued prior to September 3, 1958, for a loan of $20,000, or less;

(d) Cancel loan authorizations prior to disbursement upon the written request of the applicant;

(e) Disburse fisheries' loans in the same manner as SBA business loans; and

(f) Administer current fisheries' loans and those loans delinquent not more than 60 days within the same authority exercised with respect to SBA loans, except execute satisfactions, releases or partial release of Preferred Ship Mortgages, or other mortgages, deeds of trust, etc., securing fisheries' loans, or to postpone, or change payments due or to endorse checks in payment of insurance claims when said checks are not being paid to the Government as a payment on a fishery loan.

B. *Administration.* 1. To administer oaths of office.

2. To approve (a) annual and sick leave, except advanced annual and sick leave, and (b) leave without pay, not to exceed 30 days.

3. To (a) make emergency purchases chargeable to the administrative expense fund, not in excess of $10 in any one object class in any one instance but not more than $20 in any one month for total purchases in all object classes; (b) make purchases not in excess of $10 in any one instance for "one-time use items" not carried in stock subject to the total limitation set forth in (a) of this paragraph; and (c) to contract for the repair and maintenance of equipment and furnishings in an amount not to exceed $20 in any one instance.

4. To administratively approve all types of vouchers, invoices and bills submitted by public creditors of the Agency for articles or services rendered.

5. To rent motor vehicles from the General Services Administration and to rent garage space for the storage of such vehicles when not furnished by this Administration.

C. *Correspondence.* To sign all correspondence, including Congressional

correspondence, relating to the functions of the branch office, except correspondence involving new policy and correspondence to borrowers or guarantors containing any threat of legal actions.

II. The specific authority delegated herein may not be redelegated, except that the signing of routine correspondence relating to the functions of the branch office may be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Branch Manager.

IV. All previous authority delegated by the Regional Director to the Branch Manager is rescinded without prejudice to actions taken under all such delegations of authority prior to the date hereof.

Effective date: August 31, 1960.

EDWARD J. STEWART,
Regional Director,
Boston Regional Office.

[F.R. Doc. 60-11667; Filed, Dec. 14, 1960; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

PROCLAMATIONS:
2935 ... 12501
3382 ... 12587

EXECUTIVE ORDERS:
Oct. 20, 1916 ... 12887
June 8, 1926 ... 12887
3797-A ... 12412, 12599
6260 ... 12281
9041 ... 12429
10896 ... 12281
10897 ... 12429
10898 ... 12429
10899 ... 12729

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 ... 12501
Letter, Nov. 16, 1960 ... 12501

5 CFR

2 ... 12285
6 ... 12393, 12547, 12588, 12733, 12869
30 ... 12733

6 CFR

421 ... 12282, 12283

7 CFR

33 ... 12430
319 ... 12809
718 ... 12588
722 ... 12393, 12403, 12809, 12812
730 ... 12503
833 ... 12650
845 ... 12285
871 ... 12547
903 ... 12504
905—908 ... 12504
911—913 ... 12504
914 ... 12405, 12650, 12812
916—919 ... 12504
921 ... 12504
923—925 ... 12504
928—932 ... 12504
933 ... 12405–12407, 12504
935 ... 12504
941–942 ... 12504
943 ... 12504, 12813
944 ... 12504
946—949 ... 12504
952 ... 12504
953 ... 12407, 12430, 12651
954 ... 12504
956 ... 12504
963 ... 12504
965—968 ... 12504

7 CFR—Continued

Page

971—972 ... 12504
974—978 ... 12504
980 ... 12504
982 ... 12504
985—988 ... 12504
989 ... 12813
991 ... 12504
994—995 ... 12504
998 ... 12504
1000 ... 12504
1002 ... 12504
1004—1005 ... 12504
1008—1009 ... 12504
1011—1014 ... 12504
1016 ... 12504
1018 ... 12504, 12588
1023—1024 ... 12504
1031 ... 12505, 12651, 12652
1032 ... 12828

PROPOSED RULES:
51 ... 12298, 12299
812 ... 12712
901 ... 12742
923 ... 12558
936 ... 12465
938 ... 12752
949 ... 12606
965 ... 12466
989 ... 12476
1012 ... 12558
1032 ... 12712, 12752
1033 ... 12606

8 CFR

211 ... 12290

9 CFR

72 ... 12548
94 ... 12831

PROPOSED RULES:
83 ... 12571

10 CFR

30 ... 12730
70 ... 12730

PROPOSED RULES:
25 ... 12753
115 ... 12367

12 CFR

PROPOSED RULES:
206 ... 12479

13 CFR

PROPOSED RULES:
107 ... 12754

14 CFR

Page

49 ... 12352
225 ... 12589
300 ... 12430
302 ... 12432
414 ... 12589
506 ... 12505
507 ... 12352, 12433, 12549, 12829
514 ... 12433
600 ... 12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734
601 ... 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830
602 ... 12288, 12552, 12678, 12831
608 ... 12678, 12679, 12734, 12830
609 ... 12353, 12735
612 ... 12410
1501 ... 12434

PROPOSED RULES:
41 ... 12299
43 ... 12524
302 ... 12477
507 ... 12477, 12478, 12571, 12844
600 ... 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845.
601 ... 12328, 12339, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845
608 ... 12479, 12846

15 CFR

203 ... 12590
371 ... 12734

16 CFR

13 ... 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884

18 CFR

104 ... 12763
154 ... 12653

19 CFR

PROPOSED RULES:
8 ... 12681

21 CFR

1 ... 12592
8 ... 12288
120 ... 12288, 12506
121 ... 12412, 12595, 12731, 12831
130 ... 12592
146 ... 12506, 12596, 12732
146c ... 12289

21 CFR—Continued

Page

PROPOSED RULES:
27 ... 12372
120 ... 12374, 12571
121 ... 12299, 12477, 12839, 12840

22 CFR

46 ... 12289

25 CFR

171 ... 12408

PROPOSED RULES:
52 ... 12518
176 ... 12299

26 (1939) CFR

16 ... 12442
17 ... 12443
29 ... 12339
39 ... 12339
40 ... 12340

26 (1954) CFR

1 ... 12340, 12345, 12654
18 ... 12340
19 ... 12654
48 ... 12669
170 ... 12732

PROPOSED RULES:
1 ... 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898.
25 ... 12707
31 ... 12835
48 ... 12362
170 ... 12710
197 ... 12362
250 ... 12511

28 CFR

21 ... 12290

31 CFR

54 ... 12345

32 CFR

505 ... 12869
570 ... 12869
750 ... 12870
753 ... 12879
805 ... 12291
1008 ... 12444
1009 ... 12446
1010 ... 12449
1012 ... 12449
1013 ... 12449
1016 ... 12450, 12456

32 CFR—Continued

Page

1030 ... 12451
1052 ... 12456
1053 ... 12456
1054 ... 12458
1055 ... 12462
1057 ... 12462
1059 ... 12462
1619 ... 12291

33 CFR

202 ... 12393
203 ... 12740
207 ... 12740

38 CFR

3 ... 12463

39 CFR

27 ... 12348
168 ... 12884

41 CFR

3-75 ... 12502, 12596
5-1 ... 12553
50-201 ... 12553
50-202 ... 12553

PROPOSED RULES:
50-202 ... 12363, 12522

42 CFR

1 ... 12292

43 CFR

76 ... 12597
181 ... 12679
192 ... 12352
257 ... 12679

PROPOSED RULES:
259 ... 12606

PUBLIC LAND ORDERS:
82 ... 12412, 12599
797 ... 12413
1124 ... 12885
1253 ... 12481
1621 ... 12599
1965 ... 12599
2209 ... 12412
2210 ... 12413
2211 ... 12413
2212 ... 12597
2213 ... 12597
2214 ... 12598
2215 ... 12599
2216 ... 12599
2217 ... 12885
2218 ... 12885
2219 ... 12886

43 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued
2220 ... 12887
2221 ... 12887
2222 ... 12887

45 CFR

601—620 ... 12600

PROPOSED RULES:
301 ... 12840
306 ... 12840
307 ... 12841
308 ... 12842
309 ... 12843
311 ... 12844

46 CFR

24 ... 12554
30 ... 12554
56 ... 12554
70 ... 12555
90 ... 12555
110 ... 12555
111 ... 12555
136 ... 12555
171 ... 12555
308 ... 12348

47 CFR

1 ... 12358, 12600, 12602, 12603, 12605
4 ... 12680
5 ... 12359
9 ... 12359
10 ... 12359
11 ... 12359
12 ... 12358
16 ... 12359
19 ... 12359
21 ... 12359, 12603, 12605

PROPOSED RULES:
1 ... 12624, 12898
3 ... 12371, 12624, 12626, 12627, 12899

49 CFR

91 ... 12506
122 ... 12506
171 ... 12888

PROPOSED RULES:
71-78 ... 12420
197 ... 12420

50 CFR

32 ... 12555, 12888
33 ... 12507, 12556, 12557, 12888

PROPOSED RULES:
14 ... 12741

Pages 12907–12929

FEDERAL REGISTER

VOLUME 25 NUMBER 244

Washington, Friday, December 16, 1960

THE UNIVERSITY OF MICHIGAN
DEC 21 1960
MAIN READING ROOM

Contents

Atomic Energy Commission
NOTICES:
Pacific Gas and Electric Co.; issuance of amendment to construction permit 12918

Civil Aeronautics Board
NOTICES:
Statement of organization and delegations of final authority .. 12918
PROPOSED RULE MAKING:
Military Traffic Management Agency; charter operations 12913
RULES AND REGULATIONS:
Classification and exemption of air taxi operators; revision 12909
Classification and exemption of Alaskan air taxi operators; revocation 12908
Filing of reports by Alaskan air carriers; revocation 12908

Federal Aviation Agency
PROPOSED RULE MAKING:
Federal airway and associated control areas; alteration 12914
Federal airway segment, associated control areas, and reporting points; revocation 12914
RULES AND REGULATIONS:
Scheduled air carrier operations outside continental limits of U.S.; aircraft dispatcher; qualification for route 12908

Federal Power Commission
NOTICES:
Hearings, etc.:
Colorado Interstate Gas Co 12925
Monsanto Chemical Co. et al .. 12926

Interior Department
See Land Management Bureau.

Interstate Commerce Commission
NOTICES:
Fourth section applications for relief 12927

Land Management Bureau
NOTICES:
Arizona; small tract classification .. 12915
California; partial termination of proposed withdrawal and reservation of lands 12917
Montana; proposed withdrawal and reservation of lands 12915
Nevada; filing of plats of survey and opening of public lands 12915

Securities and Exchange Commission
RULES AND REGULATIONS:
Exemptions 12912

Small Business Administration
Disaster area declarations:
Oregon 12927
Wisconsin 12927

Tariff Commission
NOTICES:
Transfer valves; extension of time for filing information in writing 12927

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR
PROCLAMATIONS:
Oct. 3, 1905 (see F.R. Doc. 60–11664) 12915
Dec. 7, 1907 (see F.R. Doc. 60–11664) 12915
Feb. 10, 1909 (see F.R. Doc. 60–11664) 12915
Dec. 10, 1910 (see F.R. Doc. 60–11664) 12915
Oct. 18, 1912 (see F.R. Doc. 60–11664) 12915

14 CFR
41 12908
243 12908
293 12908
298 12909
PROPOSED RULES:
221 12913
600 (2 documents) 12914
601 (2 documents) 12914

17 CFR
230 12912

Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

[Regulatory Docket No. 599; Amdt. 41-35]

PART 41—CERTIFICATION AND OPERATION RULES FOR SCHEDULED AIR CARRIER OPERATIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES

Aircraft Dispatcher; Qualification for Route

Section 41.86 of the Civil Air Regulations states in part that "Each dispatcher within 6 months immediately preceding his qualification for a route, or part thereof, shall have made at least one trip over the route on which he is to serve prior to dispatching any aircraft." Section 41.88 states that "After 24 consecutive months of absence from dispatching duty over a route or part thereof, a dispatcher will no longer be considered qualified to dispatch aircraft over such route." Section 41.93 states in part that "Flights shall be started only on the authority of an aircraft dispatcher qualified for the route."

While these requirements were appropriate in the days when aircraft were dispatched from point to point along a single route involving relatively short distances, the changing nature of international scheduled air carrier operations has indicated a need to amend these requirements accordingly. The advent of modern aircraft has resulted in long nonstop flights traversing several dispatch areas. A literal interpretation of §§ 41.86, 41.88, and 41.93 would, today, require each dispatcher who initially dispatches a long nonstop flight to be qualified over the entire route of the flight, even though the flight proceeds far beyond the limits of his area of responsibility, and into and through areas for which other dispatchers exercise responsibility. This would require the air carriers to qualify, by actual flight, many of these dispatchers over routes and portions of routes far removed from the geographic areas for which they have dispatch responsibility. Such qualification flights would impose an undue burden on the air carriers which is not required in the interest of safety. The joint dispatch of these flights by dispatchers, each of whom is qualified for the portion of the route within his assigned area of dispatch responsibility, is operationally feasible and consistent with safety requirements.

An overall revision of Part 41 of the Civil Air Regulations is in the process of being prepared as a notice of proposed rule making. This proposed revision will cover the entire subject of dispatcher qualification and dispatch procedures. However, as it will be several months before a revised Part 41 can become effective, immediate regulatory action to relax the dispatcher qualification requirements in the case of joint dispatch procedures is necessary.

As this amendment imposes no burden upon any person, but provides relief from present requirements, compliance with the notice and public procedure provisions of the Administrative Procedure Act is not required, and it may be made effective immediately.

In consideration of the foregoing, Part 41 of the Civil Air Regulations (14 CFR Part 41, as amended) is hereby amended as follows, effective December 8, 1960.

1. By amending § 41.86 by inserting in the introductory paragraph between the words "route" and "on" and by inserting in the introductory statement of paragraph (c) between the words "route," and "the" the following: ", or part thereof,".

2. By amending § 41.88 by adding at the end thereof the following: ", or part thereof."

3. By amending § 41.93 by adding at the end of the first sentence the following proviso: *"Provided,* That where an aircraft dispatcher is qualified only on a portion of the route, he may dispatch the flight, but only after coordinating with dispatchers who are qualified for the other portions of the route between the points to be served."

(Secs. 313(a), 601, 604; 72 Stat. 752, 775, 778; 49 U.S.C. 1354, 1421, 1424)

Issued in Washington, D.C., on December 8, 1960.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 60-11648; Filed, Dec. 15, 1960; 8:45 a.m.]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation No. ER-318]

PART 243—FILING OF REPORTS BY ALASKAN AIR CARRIERS

Repeal of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of December 1960.

At the time the Board adopted Part 293 of the Economic Regulations, entitled Classification and Exemption of Alaskan Air Taxi Operators, it also imposed certain reporting requirements on those operators in revised § 243.3 (Regulation No. ER-245, 24 F.R. 95). The Board has decided to repeal Part 293, as explained in the preamble to the revision of Part 298 issued concurrently herewith (Reg. No. ER-317) and incorporated herein by reference. Consequently, § 243.3 and certain other provisions of Part 243 which are ancillary thereto must also be repealed.

This rule making action is based on the Notice of Proposed Rule Making, EDR-20, of November 2, 1960, 25 F.R. 10575, in which repeal of Part 293 was proposed. Interested persons thus have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all relevant matter submitted.

It further appears that §§ 243.1 and 243.2 have become obsolete since there are no air carriers to which the reporting requirements of these sections are applicable. It follows that Part 243 should at this time be repealed in its entirety.

For the reasons stated in the referenced preamble to revised Part 298, this amendment will be made effective less than 30 days after publication.

In consideration of the foregoing, the Civil Aeronautics Board hereby repeals Part 243 of its Economic Regulations, 14 CFR Part 243, effective January 1, 1961.

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply sec. 407, 72 Stat. 766; 49 U.S.C. 1377)

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

[F.R. Doc. 60-11676; Filed, Dec. 15, 1960; 8:46 a.m.]

[Regulation No. ER-319]

PART 293—CLASSIFICATION AND EXEMPTION OF ALASKAN AIR TAXI OPERATORS

Repeal of Part

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of December 1960.

Part 293 of the Board's Economic Regulations contains the exemption and regulations applicable to air taxi operators in Alaska. It was promulgated at a time when Alaska was a Territory, and consequently applied to and regulated all operations of Alaskan air taxi operators, including intra-Alaskan operations.

Alaska became a State on January 3, 1959, and, through the Alaska Air Commerce Act of 1960, will assume regulation of intra-Alaskan transportation by air on January 1, 1961. Consequently, pursuant to section 8(d) of the Alaska Statehood Act, the Board's jurisdiction to regulate intra-Alaskan transportation by air will terminate at that time.

A revision of Part 298 of the Economic Regulations is being adopted concurrently herewith, Reg. No. ER-317. As explained in the preamble thereto, which in pertinent part is incorporated herein by reference, the Board has decided to repeal Part 293 and to extend Part 298, with suitable modifications, to air taxi operations in Alaska beginning January 1, 1961.

This rule making action is based on the notice of proposed rule making, EDR-20, of November 2, 1960, 25 F.R. 10575, in which repeal of Part 293 was proposed. Interested persons have been afforded an opportunity to participate in the making of this rule, and due consideration has been given to all relevant matter submitted. For the reasons stated in the referenced preamble to Part 298, this amendment will be made effective less than 30 days after publication.

In consideration of the foregoing, the Civil Aeronautics Board hereby repeals Part 293 of its Economic Regulations, 14 CFR Part 293, effective January 1, 1961.

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply sec. 416, 72 Stat. 771; 49 U.S.C. 1386)

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

[F.R. Doc. 60-11677; Filed, Dec. 15, 1960; 8:46 a.m.]

[Reg. No. ER-317]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Revision

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of December 1960.

Part 298 of the Board's Economic Regulations, as amended, grants a blanket authorization for the operations of air taxi operators, as defined therein, in all areas of the United States except Alaska. On September 21, 1960, the Board issued a notice of rule making, EDR-13A, Docket 11285, 25 F.R. 9183, in which it proposed to grant operating authority to the air taxi operators for another five years and to reissue the licensing regulation with certain amendments. On November 2, 1960, the Board issued a further notice of rule making, EDR-20, Docket 11886, 25 F.R. 10575, in which it proposed to repeal Part 293 of the Regulations—Classification and Exemption of Alaskan Air Taxi Operators—and to bring those operators under the coverage of revised Part 298. Comments on these notices have been received from air taxi operators, as well as from certificated route air carriers.

The Board concludes that revised Part 298 should be adopted as proposed in the notices except for the modifications hereafter discussed and some editorial changes.

Several air taxi operators and one trade association submitted comments opposing the adoption of § 298.3(a)(1), which prohibits air taxi operators from utilizing aircraft having a maximum take-off weight of more than 12,500 pounds in non-air transportation services. In support of their position they contend that air taxi operators must operate other aviation businesses in order to survive and that the rule appears to be an attempt by the Board to regulate non-air transportation services for which it has no statutory authority.

Without deciding the question of legal authority, the Board has decided to modify its proposal with respect to the operation of large aircraft in "air transportation" by taxi operators. New § 298.22 of the regulation will require all air taxi operators to report any interest they may own in large aircraft or enterprises operating large aircraft; to report subsequent acquisition of such interests; and to report to the Board their method of operations with large aircraft, giving all pertinent particulars and stating why it is believed that the operation is not in "air transportation." Willful violations of this rule would, of course, be ground for revocation of the carrier's air taxi operator authorization, § 298.30.

Comments were also received concerning the adoption of § 298.21(b)(3) which prohibits air taxi operators from providing regularly scheduled air taxi service in competition with "community center and interairport service." One comment suggested that "community center and interairport service" should more clearly be defined for the reason that in time this term might be interpreted to mean airports 50 miles or more apart which, if so interpreted, could be detrimental to air taxi operators. Other comments were received which were concerned with the expansion of "interairport and community center service" into markets which have been developed by air taxi operators.

The Board, in the past, has clearly stated its position that helicopter service, authorized by the Board, must be protected from undue competition from air taxi operators. In accordance with this position the Board has prohibited air taxi operators from competing with helicopter service authorized by the Board. In 1960, the Board redefined the type of service that New York Airways, Inc., a certificated helicopter operator, may provide from "helicopter service" to "community center service and interairport service."[1] This change only means that New York Airways will be permitted to operate, in addition to helicopters, newly developed aircraft, which have the capability of vertical (VTOL) or near vertical (STOL) ascent and descent, when they become available. Such aircraft could be used in place of, or supplemental to, service now provided by helicopters. Thus, the pre-existing protection from regular air taxi operations has been extended to operations with such aircraft. This provision does not restrict air taxi operators in markets where there is no Board-authorized helicopter or community center and interairport service, and therefore does not change the substance of the existing rule. Section 298.21(d) has been amended to express the same principle.

A certificated air carrier requested that § 298.21(b)(4) be clarified to the effect that prohibition against regular service paralleling scheduled certificated service with small aircraft is not restricted to situations where certificated service is provided solely by small aircraft, but that it applies to situations where some of the certificated service is provided with such aircraft. Section 298.21(b)(4) of the draft release prohibited irregular air taxi operations "between any points where (a certificated route air carrier) provides such transportation with aircraft having a maximum take-off weight of 12,500 pounds or less." In response to these comments, the Board has decided to modify this provision to make it applicable where certificated air carriers, operating small aircraft in scheduled service, provide daily scheduled service with small aircraft. Thus, the limitation will apply even where not all the daily certificated service is provided with small aircraft. On the other hand, this modification will prevent a token scheduling of flights with small aircraft by certificated air carriers as a means of preventing taxi operators from providing regular service.

In addition to the comments concerning the specific proposals in the notice, a number of comments were received urging the Board to amend other rules contained in Part 298. Thus, comments were received urging the Board to amend § 298.2(e) (now (f)) by deleting the 3-mile and 25-mile radius provision; to amend § 298.3(a)(1) by increasing the maximum take-off weight of the aircraft used in air taxi service; and to amend § 298.21(b) to prohibit air taxi operators from rendering regular service along the routes of local service carriers.

The Board rejects all three of these proposals for the reason that none of the comments contained sufficient economic data or information which would justify Board consideration of such proposals at this time.

Some Alaskan air carriers advert to the provisions of section 7(4)(b) of the Alaska Air Commerce Act of 1960 which incorporate certain provisions of Part 293 of the Board's Regulations,[2] and express concern lest the Board's proposed action of repealing Part 293 eliminate the 7,900 pounds weight limitation east of 138° West Longitude which the Alaska Air Commerce Act contemplates. Under general principles, amendment or repeal by the Board of regulations incorporated in the Alaska Air Commerce Act of 1960 cannot have any effect on Alaskan law. The Alaska Legislature obviously did not intend either to curtail the Board's freedom of changing its regulations or to subject Alaskan law to changes beyond its control whenever the Board changes its regulations. It appears clear under the Alaska Air Commerce Act that the Legislature intended to incorporate provisions of Part 293 as they were in force at the time of adoption of the Act, and indeed the Act carefully refers to "Part 293 of the Economic Regulations of the Federal Civil Aeronautics Board, adopted December 30, 1958, and made effective February 3, 1959" (sec. 7(4)(b)). Hence no subsequent change in Part 293 which

[1] New York Airways Renewal Case, Docket 8569, Orders E-15021 and E-15022, March 17, 1960.

[2] Sections 1, 2, 3 and 17(a) of Part 293 are incorporated and the definition in 293.1 (e) is adopted.

the Board may make can affect the continuing effectiveness as Alaskan law of those provisions thereof which have been incorporated in the Alaska Air Commerce Act. Significantly, the proposed repeal of Part 293 was not protested by any agency of the State of Alaska.

The suggestion that the Board continue the requirement for individual letters of registration for Alaskan taxi operators is rejected since no sufficient showing has been made why these taxi operators should be treated differently from all others now that the Board's powers in Alaska will be the same as in all other States. The Board also rejects the suggestion to extend Part 298 indefinitely on the ground that continually changing circumstances appear to require periodic re-examination and re-evaluation of the blanket exemption granted air taxi operators in the public interest. A suggestion that the air safety regulations for Alaskan air taxi operators be amended should be addressed to the Administrator of the Federal Aviation Agency since the Board lacks jurisdiction to entertain it.

Interested persons have been afforded an opportunity to participate in the making of this rule and due consideration has been given to all relevant matter presented.

In view of the foregoing, the Board finds that extension of operating authority to the air taxi operators, subject to the changes made herein, for another five years is in the public interest. The Board reaffirms and incorporates herein the findings supporting its exercise of the exemption power in this respect made at the time of adoption of Part 293 and of Part 298 in its original form and when it was continued in effect.

Since the present license of these air carriers (except in Alaska) expires by its own terms on January 1, 1961, the new license provided by the instant revision of this Part must be effective not later than January 1, 1961, since otherwise a hiatus in the operations of these carriers would result which would work a great hardship on them as well as the public. Furthermore, since under section 8(d) of the Alaska Statehood Act, 72 Stat. 344, the Board's jurisdiction to regulate intra-Alaskan transportation by air expires upon the State of Alaska taking over this function, this regulatory action of the Board should be made effective concurrently with such action by the State. The Alaska Air Commerce Act of 1960 under which the State assumes regulation of the intra-Alaskan operations of air taxi operators, provides in section 27 that it "shall take effect on January 1, 1961." Consequently, there is good cause for making this regulation effective on less than 30 days' notice after publication thereof.

Accordingly, the Board hereby adopts and promulgates revised Part 298 of its Economic Regulations, 14 CFR Part 298, effective January 1, 1961, as stated below, terminating the rule-making proceedings, Dockets 11285 and 11886, as of the same date.

Subpart A—General

Sec.
298.1 Applicability of part.
298.2 Definitions.
298.3 Classification.
298.4 Requests for statement of authority.
298.5 Separability.

Subpart B—Exemptions

298.11 Exemption authority.
298.12 Effect of exemption on anti-trust laws.
298.13 Duration of exemption.

Subpart C—Limitations on Exemptions

298.21 Scope of service authorized.
298.22 Operation of large aircraft.
298.23 Business name of air taxi operator.

Subpart D—Violations

298.30 Enforcement.

AUTHORITY: §§ 298.1 to 298.30 issued under sec. 204(a), 72 Stat. 743. Interpret or apply secs. 411, 416, 72 Stat. 769, 771; 49 U.S.C. 1381, 1386.

Subpart A—General

§ 298.1 Applicability of part.

This part establishes a classification of air carriers known as "air taxi operators," provides certain exemptions from Title IV of the Federal Aviation Act of 1958, as amended, for such air carriers, and establishes rules and regulations applicable to their operations. This part applies to operations of air taxi operators in air transportation in all States, Territories and possessions of the United States of America.

§ 298.2 Definitions.

As used in this part:

(a) "Act" means the Federal Aviation Act of 1958, as amended.

(b) "Air taxi operator" means an air carrier coming within the classification of "air taxi operators" established by § 298.3.

(c) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft. This includes carriage by aircraft as a common carrier between places in the same State (1) through airspace outside that State (over other States or the District of Columbia or the open sea or foreign territory) or (2) where such carriage is part of the movement of the passengers or property carried, in interstate, overseas or foreign air commerce.[1]

(d) "Large aircraft" means an aircraft whose maximum certificated take-off weight is greater than 12,500 pounds.

(e) "Maximum certificated take-off weight" means the maximum take-off weight authorized by the terms of the aircraft airworthiness certificate. (This is found in the airplane operating record or in the airplane flight manual which is incorporated by regulation into the airworthiness certificate.)

(f) "Point" when used in connection with any territory or possession of the United States, or the States of Alaska and Hawaii, means any airport or place where aircraft may be landed or taken off, including the area within a 25-mile radius of such airport or place; when used in connection with the Continental United States, except Alaska, it shall have the same meaning except be limited to the area within a 3-mile radius of such airport or place.

§ 298.3 Classification.

(a) There is hereby established a classification of air carriers, designated "air taxi operators" which engage in the direct air transportation of passengers and/or property and which:

(1) Do not utilize aircraft having a maximum take-off weight of more than 12,500 pounds in air transportation.

(2) Do not hold a certificate of public convenience and necessity or other economic authority issued by the Board.

(b) A person who does not observe the conditions set forth in paragraph (a) of this section shall not be an air taxi operator within the meaning of this part with respect to any operations conducted by him while such conditions are not being observed, and during such periods is not entitled to any of the exemptions set forth in this part.

§ 298.4 Requests for statement of authority.

In any instance where an air taxi operator is required by a foreign government to produce evidence of its authority to engage in foreign air transportation under the laws of the United States, the Secretary of the Board will, upon request, furnish the carrier with a written statement, outlining its general operating privileges under this part for presentation to the proper authorities of the foreign government.

§ 298.5 Separability.

If any provision of this part or the application thereof to any air transportation, person, class of persons, or circumstances is held invalid, the remainder of the part and the application of such provision to other air transportation, persons, classes of persons, or circumstances shall not be affected thereby.

Subpart B—Exemptions

§ 298.11 Exemption authority.

Air taxi operators are exempt from the following provisions of Title IV of the Act:

(a) Subsection 401(a);

(b) Section 403;

(c) All provisions in subsection 404(a) except the requirement that air taxi operators shall provide safe service, equipment, and facilities in connection with air transportation;

(d) Subsection 404(b);

(e) Subsection 405(b);

(f) Subsections 407 (b), (c), and (d);

(g) Subsection 408(a); except that no exemption is granted hereby for any air taxi operator to enter into any of the transactions or relationships prohibited by subsection 408(a) with any person (excluding air carriers) who operates for compensation or hire, aircraft having a maximum take-off weight of more than 12,500 pounds.

[1] Section 401(a) of the Federal Aviation Act of 1958, 49 U.S.C. 1371, prohibits any person from engaging in "air transportation" except to the extent he is authorized to do so by the Board.

(h) Subsection 409(a); except that no exemption is granted hereby for any air taxi operator to enter into any of the relationships prohibited by subsection 409(a) with any person (excluding air carriers) who operates for compensation or hire, aircraft having a maximum take-off weight of more than 12,500 pounds.

(i) Subsection 412(a): *Provided*, That air taxi operators shall not be relieved from filing with the Board a true copy, or, if oral, a true and complete memorandum of every contract or agreement (whether enforceable by provisions of liquidated damages, penalties, bonds or otherwise) affecting air transportation, between any air taxi operator and any person (excluding air carriers) who operates for compensation or hire, aircraft having a maximum take-off weight of more than 12,500 pounds.

§ 298.12 Effect of exemption on anti-trust laws.

The exemption granted in § 298.11 from sections 408, 409(a), and 412 of the Act shall not constitute an order under such sections, within the meaning of section 414 of the Act, and shall not confer any immunity or relief from operation of the "anti-trust laws," or any other statute (except the Federal Aviation Act of 1958, as amended) with respect to any transaction, interlocking relationship, or agreement otherwise within the purview of such sections.

§ 298.13 Duration of exemption.

The exemption from any provision of Title IV of the Act provided by § 298.11 shall continue in effect only until such time as the Board shall find that enforcement of such provision would be in the public interest or would no longer be a burden on air taxi operators: *Provided*, That upon such a finding as to any air taxi operator or class of air taxi operators, such exemption shall to that extent terminate with respect to such operator or class of operators: *And provided further*, That unless otherwise ordered by the Board the temporary exemption granted by § 298.11 shall terminate five years from the effective date of this reissued part.

Subpart C—Limitations on Exemptions

§ 298.21 Scope of service authorized.

(a) *General scope.* The exemption authority provided to air taxi operators by this part shall extend to the direct air transportation of persons and property in aircraft having a maximum take-off weight of 12,500 pounds or less, except as prohibited by paragraphs (b), (c) and (d) of this section.

(b) *General limitations.* An air taxi operator is prohibited from providing air transportation, or holding out to the public expressly or by course of conduct, that it provides such transportation regularly or with a reasonable degree of regularity (1) within territories or possessions of the United States, (2) within the State of Hawaii, (3) between any points where scheduled helicopter passenger service, or community center and interairport service, is provided by the holder of a certificate of public convenience and necessity either in accordance with such certificate or pursuant to exemption order of the Board, and (4) between any points where an air carrier certificated by the Board to provide unlimited route-type air transportation of persons, property, and mail provides scheduled daily transportation with aircraft having a maximum take-off weight of 12,500 pounds or less.

(c) *Air taxi service in Alaska.* No service in air transportation shall be offered or performed by an air taxi operator between points both of which are in the State of Alaska, or one of which is in Alaska and the other in Canada, unless the air taxi operator also holds authority from the State of Alaska to operate aircraft of a maximum take-off weight not over 12,500 pounds as a common carrier in intrastate commerce, or has applied to the Board for, and received, special exemption authority (see Subpart D of Part 302 of the Procedural Regulations): *Provided*, That the operator is prohibited from rendering the above authorized service in air transportation, or holding out to the public expressly or by course of conduct that it renders such service, regularly or with a reasonable degree of regularity. Air taxi operators may also transport over postal routes Nos. 78150 and 78151 or such other designation as may be assigned thereto, and over postal routes designated by the Postmaster General as "gratuitous routes", such mail as may be tendered by the Postmaster of Alaska for transportation over such routes: *Provided*, That the foregoing restrictions on frequency of service in air transportation shall not apply to the carriage of such mail.

(d) *Special limitation.* No service by helicopter, STOL or VTOL aircraft shall be offered or performed by an air taxi operator between any two points between which scheduled helicopter, STOL or VTOL aircraft service is provided by the holder of a certificate of public convenience and necessity authorizing such service.

NOTE: Service shall be deemed to be regular within the meaning of this section unless it is of such infrequency as to preclude an implication of uniform pattern or normal consistency of operations between, or within, such designated points.

§ 298.22 Operation of large aircraft.

(a) *Prohibition of operation of large aircraft in air transportation.* Nothing in this part shall be construed as authorizing the operation of aircraft having a maximum take-off weight of more than 12,500 pounds by air taxi operators in air transportation.

(b) *Reporting of interest in large aircraft.* Every air taxi operator shall report to the Board any proprietary interest, direct or indirect, in any large aircraft or any enterprise operating large aircraft. Such reports shall be filed in duplicate within 30 days of the effective date of this part and thereafter within 5 days of acquisition of such interests. They shall be addressed to the Civil Aeronautics Board, Washington 25, D.C., attention of the Chief, Special Authorities Division, Bureau of Air Operations.

(c) *Reporting of operations with large aircraft.* Any air taxi operator which operates or intends to operate large aircraft for compensation or hire shall file with the Board a description of the method or proposed method of operations and state why such operations are believed not to constitute air transportation. Such reports shall state, among other pertinent matters, whether State lines or the boundaries of the United States will be crossed; the ultimate origin and destination (not only the places between which carriage is provided) of the persons or property carried; and the persons with whom contracts for transportation have been made or are expected to be made. In case operations not falling within the description on file with the Board are to be undertaken, a report containing the same data shall be filed within three days after the particulars of such operations have been decided upon. These reports shall be submitted in duplicate, by air mail if mailed more than 200 miles from Washington, D.C., addressed to the Civil Aeronautics Board, attention of the Chief, Special Authorities Division, Bureau of Air Operations.

§ 298.23 Business name of air taxi operator.

(a) It shall be an express condition upon the exercise of the privileges herein granted and the operating authorizations issued hereunder, that any air taxi operator, in holding out to the public and in performing air transportation services, shall do so only in a name or names in which its air carrier operating certificate is issued pursuant to section 604 of the Act by the Administrator of the Federal Aviation Agency: *Provided*, That the Board may require an air taxi operator to change such name or names where they appear contrary to the public interest.

(b) Slogans shall not be considered names for the purposes of this section, and their use is not restricted hereby.

(c) Neither the provisions of this section nor the grant of a permission hereunder shall be deemed to constitute a finding for purposes other than for this section, or to effect a waiver of, or exemption from any provisions of the Act, or orders, rules or regulations issued thereunder.

Subpart D—Violations

§ 298.30 Enforcement.

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a United States District Court, as the case may be, to compel compliance therewith, or, in the case of a willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions including revocation of operating authority.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER, *Secretary.*

[F.R. Doc. 60-11675; Filed, Dec. 15, 1960; 8:46 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Adoption of Revised Exemption for First Lien Notes and an Exemption for Securities of Cooperative Housing Corporations

The Securities and Exchange Commission has adopted a new rule, designated § 230.234 (Rule 234), which provides a revised exemption from registration under the Securities Act of 1933 for certain notes secured by a first lien on real estate. The new rule supersedes §§ 230.230–230.233 (Regulation A–R; Rules 230–233) which has been rescinded.

The new rule makes clear what has been the Commission's long standing interpretation, that the exemption is available only for notes directly secured by a first lien on real estate, and hence is unavailable for collateral trust notes or participations in an underlying note, even though such underlying note is secured by a first lien on real estate, or for investment contracts involved in the offering of first lien notes. The new rule also provides that the amount of first lien indebtedness for which an exemption is available shall not exceed 75 percent of the appraised value of the property securing the notes. This is a liberalization of the previous requirement that all indebtedness against the property, whether secured by senior or junior liens, shall not exceed 75 percent of the appraised value of the property.

The Commission has also adopted a new rule, designated § 230.235 (Rule 235), which provides an exemption from registration under the Act for securities of certain cooperative housing corporations. This rule provides an exemption for stock or other securities representing membership in a cooperative housing corporation where the securities are issued only in connection with the sale or lease of dwelling units in the housing project and are transferable by the purchaser only in connection with the transfer of such dwelling units.

The text of the new rules, which were adopted pursuant to sections 3(b) and 19(a) of the Securities Act of 1933, follows:

§ 230.234 Exemption of first lien notes.

(a) Promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial property shall be exempt from registration under the Act if such notes are offered in accordance with the following terms and conditions:

(1) Neither the aggregate unpaid principal amount of the notes secured by the lien on the property nor the aggregate amount at which such notes are offered to the public shall exceed $100,000;

(2) The aggregate unpaid principal amount of all indebtedness secured by the first lien on the property shall not exceed 75 percent of the appraised value of such property;

(3) The principal amount of each note to be offered under this regulation shall not be less than $500, and the total number of notes secured by the first lien on the property shall not exceed 125; and

(4) The notes shall be sold for cash or purchasers' obligations to pay cash within 60 days after sale.

(b) Interests or participations in, or promissory notes secured by a lien upon, another note or notes which are in turn secured by a first lien upon real estate shall not be deemed to be directly secured by a first lien on real estate within the meaning of this section.

(c) No exemption shall be available under this section for any investment contract or other security the offering of which is involved in the offering of the notes directly secured by a first lien upon real estate.

§ 230.235 Exemption of securities of cooperative housing corporations.

(a) Stock or other securities representing membership in any cooperative housing corporation shall be exempt from registration under the Act if the terms and conditions of this section are met. The term "cooperative housing corporation" as used herein means a corporation each of whose members is entitled, solely by reason of his membership in such corporation:

(1) To occupy for dwelling purposes a house, or an apartment in a building, owned or leased or to be owned or leased, by such corporation; or

(2) To purchase a dwelling constructed or to be constructed by such corporation.

(b) Such corporation shall not be or intend to be engaged in any business or activity other than the ownership, leasing, management or construction of residential properties for its members, except to the extent that such business or activity is incidental to the ownership, leasing, management or construction of such residential properties.

(c) The securities shall be issued only in connection with the sale or lease of dwelling units to persons who are or thereupon become members of the corporation and shall be transferable by the purchasers only in connection with the transfer of such dwelling units or leases to other persons who are thereupon become such members.

(d) The aggregate offering price of all securities of the corporation offered pursuant to this rule during any twelve-month period shall not exceed $300,000 including any unsold securities initially offered prior to the beginning of such period.

(e) The aggregate offering price of securities offered pursuant to this section shall be computed upon the basis of the price at which the securities are to be sold to members or, if such price is not separately specified, upon the basis of the par or stated value of the securities to be offered.

(Sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s. Interprets or applies sec. 3, 48 Stat. 75 as amended; 15 U.S.C. 77c)

The foregoing action shall become effective January 9, 1961.

DECEMBER 8, 1960.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60–11665; Filed, Dec. 15, 1960; 8:46 a.m.]

Proposed Rule Making

CIVIL AERONAUTICS BOARD

[14 CFR Part 221]

[Docket No. 11976; Order No. E–16132]

MILITARY TRAFFIC MANAGEMENT AGENCY

Notice of Proposed Rule Making

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of December 1960. In the matter of an Agreement, No. 13233–A2, filed by the Supplemental Air Carrier Conference. In the matter of exemption of certain carriers from provisions of section 403 of the Federal Aviation Act and the Economic Regulations (14 CFR Part 221) with respect to charter operations by the Military Traffic Management Agency; Docket No. 11976.

By Order E–15459, June 28, 1960, the Board granted an exemption from the provisions of section 403 of the Act and Part 221 of the Economic Regulations to all air carriers to the extent that they would otherwise require such carriers to apply the ferry rates in their published tariffs to the actual ferry mileage flown in those cases where such mileage exceeds that estimated in bids or contracts with the Military Traffic Management Agency, U.S. Army (MTMA). That exemption by its terms expired on September 30, 1960.

The so-called "ferry mileage" exemption was originally granted by Order E–13158, November 14, 1958, and was subsequently extended by Order E–14079, June 19, 1959, and Order E–15459. The circumstances which gave rise to the exemption are discussed in detail in the cited orders and will not be repeated here.

On September 9, 1960, MTMA filed with the Board a letter in which it stated that study of the ferry mileage problem had resulted in a plan which, if approved by the Board, should eliminate the long existing difficulties in connection with this matter. According to the letter, details of this plan were to be incorporated in a revision of Joint Military Air Transportation Agreement No. 3 (SACC) to be submitted to the Board for approval in the immediate future. Inasmuch as time did not permit adoption of the plan by the expiration date of the current exemption, MTMA requested that the outstanding exemption in Order E–15459 be extended until December 31, 1960. Additionally, various air carriers filed requests (Dockets 11731, 11792, 11793, and 11794) for an extension of Order E–15459 for an additional period. By Order E–15825 of September 26, 1960, the exemption was continued in effect through December 31, 1960.

On September 26, 1960 (amended October 10, 1960), SACC filed an agreement for approval under section 412 of the Act, which contains a substitute for ferry miles and a ferry mile rate. In effect, under the agreement only a "live" rate would be stated in the carriers' tariffs, with a provision for an additional charge for "guaranty/warranty" services. However, the amount of this charge is not to be set forth in the tariff, is not controlled by any stated criteria, and depends solely upon the carrier's bid in each contract.

MTMA has supported approval of the agreement by letter of November 17, 1960, which letter was served on three carrier associations—SACC, IAA and ATA. MTMA indicates that the procedure under the agreement will be administratively more simple in that, for example, no post-audit of "ferry-miles" will be needed. It also asserts that the legal sufficiency of the current exemption (MTMA to pay for ferry miles not in excess of those stated in the contract) may not be free from doubt. No statements have been filed by any party other than MTMA.

Upon consideration of all relevant factors, the Board finds that the agreement is not in the public interest and, accordingly, must be disapproved. The agreement does not appear to bring any real substantive improvement in this area, and serves to involve a further departure from the principle that air carrier services should be provided at published tariff rates rather than at rates arrived at through competitive bidding. Weighing the above against the advantage claimed for the agreement, it is believed that, on balance, the agreement might well result in a deterioration of current practices; and could have an impact on the carriers collectively which would not be consistent with their development on a sound economic basis. In this connection, it is noted that the MTMA letter of November 17, 1960, states that "the mechanics of CAM procurement can operate satisfactorily under" the current exemption method.

Disapproval of the agreement, combined with the fact that the current ferry mileage exemption expires as of December 31, 1960, might leave the carriers and MTMA in an awkward position as of January 1, 1961. We construe the MTMA letter as advocating continuation of the currently effective exemption, provided that the SACC agreement is not approved. Under these circumstances, and in view of the shortness of time, the Board proposes on its own initiative to extend the currently effective exemption through December 31, 1961, subject to its being revoked at an earlier date in the event that a better procedure is developed or should subsequent events disclose deficiencies in such procedure. Since the wording of the exemption is being revised to remove any possible legal ambiguity, and since we have had no carrier comment, our order provides that it shall not become final until December 22, 1960, that any interested party may file statements in support of or in opposition to the proposed extension before that date and that, if any such comments are so filed, the extension of the exemption shall not become final until further order of the Board.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 412 and 416 thereof: *It is ordered*, That:

1. Agreement 13233–A2 is disapproved, as not in the public interest; and

2. Paragraph 1 of the directory portion of Order E–15459, June 28, 1960, be and hereby is amended to read as follows: "Subject to the conditions listed hereafter, an exemption from the provisions of section 403 of the Act and 14 CFR Part 221 is hereby granted to the extent necessary to permit air carriers to enter into binding contracts with MTMA requiring such air carriers to apply the ferry rates stated in their tariffs to ferry mileage not in excess of that stated in such contracts in those cases where the actual ferry mileage exceeds that stated in such contracts: *Provided*, That this exemption shall only apply with respect to charter operations, to be performed within the continental United States, at the request of the Military Traffic Management Agency, U.S. Army: *And provided, further*, That this exemption authority expires December 31, 1961.[1]"

3. Interested persons may file, in this Docket, statements in support of or in opposition to the proposed extension set out in ordering paragraph 2 above, on or before December 21, 1960, by filing an original and nineteen copies of such statement with the Board's Docket Section;

4. Ordering clause 2, above shall become final and take effect on December 22, 1960, unless before that date objections are filed thereto; if objections are so filed, that portion of this Order shall be stayed pending further order of the Board.

5. This order may be revoked at any time by the Board without prior notice.

6. This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER, *Secretary.*

[F.R. Doc. 60–11673; Filed, Dec. 15, 1960; 8:46 a.m.]

[1] The intent of the revised language in this paragraph is to make clear that, under contracts entered into pursuant to the exemption granted herein, the carriers shall not have any right to claim payment for ferry mileage in excess of that provided in such contracts.

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-145]

FEDERAL AIRWAYS AND CONTROL AREAS

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6478 and 601.6478 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 478 extends in part from Falmouth, Ky., to Newcombe, Ky. The Federal Aviation Agency has under consideration a proposal by the Air Transport Association of America to extend Victor 478 and its associated control areas eastward from the Newcombe VOR direct to the Beckley, W. Va., VOR. This proposed segment of Victor 478 would provide a by-pass route south of the Charleston, W. Va., terminal area for aircraft operating from Lexington, Ky., and Cincinnati, Ohio, over Newcombe to the Beckley and Roanoke, Va., terminals.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 9, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11649; Filed, Dec. 15, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-129]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation of Segment of Federal Airway, Associated Control Areas and Reporting Points

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.15, 601.15 and 601.4015 of the regulations of the Administrator, the substance of which is stated below.

Green Federal airway No. 5 extends in part from Pulaski, Va., to Boston, Mass. The Federal Aviation is considering revoking this segment of Green 5. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Pulaski to Boston is adequately served by VOR Federal airway No. 16. Therefore, it appears that the retention of this airway segment is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke the segment of Green 5 and its associated control areas from Pulaski to Boston. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this segment of Green 5. Any proposal to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Concurrently with this action, the designated reporting points associated with Green 5 from the Roanoke, Va., radio range station to and including the intersection of the west course of the Providence, R.I., radio range and the southwest course of the Boston radio range would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 9, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11650; Filed, Dec. 15, 1960; 8:45 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Document No. 233; Classification No. 71]

ARIZONA

Small Tract Classification

1. Pursuant to authority delegated to me by Bureau Order No. 541, dated April 21, 1954 (19 F.R. 2473), I hereby classify the following described public lands, totaling approximately 90 acres in Pima County, Arizona, as suitable for public auction under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended:

GILA AND SALT RIVER MERIDIAN

T. 15 S., R. 11 E.,
Sec. 12: S½SE¼ lying south of State Highway 86.
T. 15 S., R. 12 E.,
Sec. 7: S½SW¼ lying south of State Highway 86.

2. Classification of the above described lands by this order segregates them from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands classified by this order shall not become subject to application under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended until it is so provided by an order to be issued by an authorized officer, opening the lands to application or bid.

4. There are no preference right applications filed under the provisions of 43 CFR 257.5(a).

Dated: December 7, 1960.

E. I. ROWLAND,
State Supervisor.

[F.R. Doc. 60-11662; Filed, Dec. 15, 1960; 8:45 a.m.]

MONTANA

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 8, 1960.

The Bureau of Reclamation, U.S. Department of the Interior, has filed an application, Serial Number M-037751 for the withdrawal of the lands described below, from all forms of appropriation. The applicant desires the land for the Lonesome Lake Reservoir, Lower Marias Unit, Missouri River Basin Project.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1245 North 29th Street, Billings, Montana.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

PRINCIPAL MERIDIAN, MONTANA

T. 29 N., R. 12 E.,
Sec. 29: SW¼NW¼.

J. R. PENNY,
State Supervisor.

[F.R. Doc. 60-11663; Filed, Dec. 15, 1960; 8:45 a.m.]

NEVADA

Notice of Filing of Plats of Survey and Order Providing for Opening of Lands

Plats of survey of lands described below will be officially filed at the Land Office, Reno, Nevada, effective at 10:00 a.m. on the 31st day following the publication of this notice.

MOUNT DIABLO MERIDIAN, NEVADA

1. T. 17 N., R. 19 E. (groups 156 and 332), sec. 29, lots 1 through 12; sec. 30, lots 5 through 12; sec. 32, lots 1 through 8.

The area described aggregates 1,098.65 acres. The plat was accepted November 27, 1956.

a. Available data indicates the lands included in this plat are rough steep mountains and flats with shallow to deep medium and fine textured soils.

b. The above described lands are withdrawn by President's Proclamation dated October 3, 1905 for the National Forest now known as the Toiyabe National Forest. In view of this withdrawal the lands described will not be subject to disposition under the general public land laws by reason of official filing of this plat.

2. T. 15 N., R. 21 E. (group 313), secs. 1, 2, 3, 9 through 17, 19 through 36.

a. The area described aggregates 19,131.43 acres. The plat was accepted February 14, 1956.

b. Available data indicates that the lands described are rough broken hills with shallow rocky medium textured soils.

c. It has been determined that springs created a reservation under Public Water Reserve No. 107, and lands listed below are not subject to disposition under the general public lands laws by official filing of this plat:

T. 15 N., R. 21 E., sec. 2, NW¼SE¼, S½SE¼, SE¼SW¼; sec. 14, N½NE¼, NE¼NW¼; sec. 23, NE¼, N½SE¼; sec. 20, SW¼SE¼, SE¼SW¼; sec. 29, NW¼, W½NE¼.

3. T. 45 N., R. 37 E. (groups 326 and 350), secs. 4, 5, 6, all; sec. 7, N½; sec. 8, N½; sec. 9, N½.

a. The area described aggregates 2,808.94 acres. The plat was accepted April 4, 1958.

b. Available data indicates the lands described are low rolling hills and flats with moderately deep medium textured soils.

4. T. 8 N., R. 44 E. (group 252), secs. 1 through 8; sec. 9, lots 1, 2, 3, 4, N½NE¼, W½, S½SE¼; sec. 10, lots 1, 2, E½, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼; secs. 11 through 15; sec. 16, lots 1 through 8, E½NE¼, W½NW¼, N½S½, SE¼SE¼; sec. 17, lot 1, N½, SW¼, N½SE¼, SW¼SE¼; sec. 18, lots 1 through 8, E½NW¼, N½SE¼, SE¼SE¼, NE¼; sec. 19, lots 1 through 20; sec. 20, lots 1 through 19; sec. 21, lots 1 through 15; sec. 22, lots 1 through 9, NE¼, N½NW¼; secs. 23 through 27, all; sec. 28, lots 1 through 7, S½, SW¼NW¼, SE¼NE¼; sec. 29, lots 1 through 3, S½, S½N½, NW¼NE¼; sec. 30, lots 1 through 7, NE¼, E½NW¼, E½SW¼, W½SE¼; sec. 31, lots 1 through 12, NW¼SE¼, S½NE¼, N½SE¼, NE¼SW¼; secs. 32 through 36, all.

a. The area described aggregates 21,808.70 acres. The plat was accepted on April 10, 1957.

b. Available data indicates the lands in this plat are rough steep mountains and hills with shallow rocky soils.

c. The following described lands are withdrawn by President's Proclamation of December 10, 1910 for the National Forest now known as the Toiyabe National Forest and are not therefore, subject to disposition under the general public land laws by official filing of this plat:

T. 8 N., R. 44 E., secs. 1 through 18; secs. 22 through 34; sec. 35, N½, SW¼; sec. 36 N½.

5. T. 8 N., R. 44½ E. (group 252), secs. 1, 12, 13, 24, 25, 36.

a. The area described aggregates 3,127.93 acres. The plat was accepted July 13, 1951.

b. Available data indicates the lands of this plat are rough steep mountains with shallow rocky medium textured soils.

c. The following lands are withdrawn by Presidential Proclamation of December 10, 1910 for inclusion within the (now) Toiyabe National Forest and are not subject to disposition under the general public land laws by official filing of this plat.

T. 8 N., R. 44½ E., secs. 1, 12, 13, 24.

6. T. 26 N., R. 48 E. (group 316), secs. 1, 12, 13, 24, 25, 36.

a. The area described aggregates 3,959.73 acres. The plat was accepted January 28, 1959.

b. Available data indicates the lands described are rolling hills and benches with shallow to moderately deep medium textured soils.

7. T. 26 N., R. 52 E. (group 201), secs. 4 through 9; secs. 16 through 21; secs. 29 through 32.

a. The area described aggregates 10,384.89 acres. The plat was accepted October 15, 1953.

b. Available data indicates the lands included in this plat are steep rough mountains and rolling benches with shallow to moderately medium textured soils.

8. T. 19 N., R. 53 E. (group 185), secs. 1 through 9 all; sec. 10, lots 1 through 4, N½, N½SE¼, SE¼SE¼, W½SW¼; secs. 11, 12; sec. 13, lots 1, 2, E½, E½NW¼, NE¼ SW¼; sec. 14, lot 1, W½, W½NE¼; sec. 15, lots 1 through 19, NE¼SE¼, SE¼NE¼; sec. 16, lots 1 through 7, NW¼, N½NE¼, SW¼ NE¼, W½SW¼, NE¼SW¼; secs. 17 through 20; sec. 21, lots 1 through 6, W½, W½SE¼, SE¼SE¼; sec. 22, lots 1 through 14, sec. 23, lots 1, 2, W½, SW¼NE¼, W½SE¼, NE¼SE¼; sec. 24, lots 1 through 5, E½, E½SW¼ sec. 25, lots 1 through 7, SW¼, S½SE¼, E½NE¼, NW¼NE¼, E½NW¼; sec. 26, lots 1 through 10, E½NW¼, SW¼NW¼, E½SE¼, SW¼SE¼, S½SW¼; sec. 27, lots 1 through 21; sec. 28, lots 1, 2, N½, SW¼, N½SE¼; sec. 29, lot 1, N½, N½SW¼, SE¼, SE¼SW¼; sec. 30, lots 1 through 7, NE¼, E½NW¼, N½SE¼, NE¼SW¼; sec. 31, lots 1 through 12, S½NE¼, SE¼NW¼, E½SW¼, N½SE¼, SE¼SE¼; sec. 32, lot 1, E½, SW¼, E½ NW¼, SW¼NW¼; sec. 33, lots 1, 2, 3, W½, SE¼, SW¼NE¼; sec. 34, lots 1 through 40; sec. 35, lots 1 through 8, E½, E½W½; sec. 36.

a. The area described aggregates 19,016.20 acres. The plat was accepted May 13, 1958.

b. Available data indicates the lands included in this plat are rough to gently rolling hills with shallow to moderately deep medium textured soils.

c. The lands listed below are not subject to disposition under the general public land laws by official filing of this plat because it has been determined that a spring created a reservation under Public Water Reserve 107.

T. 19 N., R. 53 E., sec. 36, E½NE¼, SW¼NE¼, N½SE¼.

9. T. 20 N., R. 53 E. (group 201), secs. 1, 2, all; sec. 3, lots 1, 2, and 5 through 10; sec. 5, lots 3 through 11, SW¼, W½SE¼; sec. 6, lots 1 through 14, S½NE¼, NE¼SE¼, SE¼NW¼, S½SE¼; sec. 7, lots 1 through 9, E½, SE¼SW¼; sec. 8, all; sec. 9, lots 1 through 6; sec. 10, lots 1 through 4, W½E½; secs. 11, 12, 13, 14, all; sec. 16, lots 1 through 8; secs. 17, 18, 19, 20, all; sec. 21, lots 1 through 8; sec. 29, lots 1 through 8; secs. 30, 31, all.

a. The area described aggregates 12,055.25 acres. The plat was accepted October 15, 1958.

b. Available data indicates the lands included in this plat are rough steep mountains and flats with shallow to deep medium to fine textured soils.

c. It has been determined that springs created reservations under Public Water Reserve 107 on the following lands:

Sec. 5, lot 11, SW¼SE¼; sec. 8, N½NE¼, SE¼NE¼; sec. 9, lot 2; sec. 29, lots 3 through 8.

10. T. 19 N., R. 55 E. (group 323) sec. 4, N½SW¼; sec. 5, lot 5, N½, SW¼, N½SE¼, SW¼SE¼; secs. 6, 7, 8, lots 1 through 6, W½, W½SE¼, SE¼SE¼; sec. 9, lots 1 through 6, SE¼SW¼, NE¼NW¼; sec. 16, W½; secs. 17 through 20; sec. 21, W½; sec. 29, N½; sec. 30.

a. The area described aggregates 7,471.49 acres. This plat was accepted April 10, 1957.

b. Data available indicates the described lands are rough steep mountains with shallow rocky soils.

11. T. 20 N., R. 55 E. (group 322), sec. 1, all; sec. 2, E½, SW¼; sec. 11, N½, SE¼; secs. 12, 13, all; sec. 14, NE¼; sec. 15, SW¼; sec. 22, W½; sec. 24, NE¼; sec. 27, W½.

a. The area described aggregates 3,972.89 acres. The plat was accepted April 10, 1957.

b. Available data indicates the lands described are alkali flats and dry lake beds with sandy loam and clay soils.

12. T. 21 N., R. 55 E. (group 322), sec. 1, all; sec. 2, E½; sec. 4, N½, SW¼; secs. 5, 8, all; sec. 11, E½; secs. 12, 13, all; sec. 14, E½; secs. 17, 20, 23 through 26, 29, 32, 35, 36, all.

a. The area described aggregates 11,037.22 acres. The plat was accepted April 10, 1957.

b. Available data indicates the lands in this plat are dry lake beds and rough hills with clay to sandy loam soils.

13. T. 22 N., R. 55 E. (group 281), secs. 3 through 9, all; sec. 10, N½, SW¼; sec. 12, S½NE¼, SE¼; sec. 13, E½, SW¼; sec. 15, W½; secs. 16 through 21; sec. 22, W½; sec. 23, E½; secs. 24, 25; sec. 26, E½; secs. 28 through 33; sec. 35, E½; sec. 36.

a. The area described aggregates 16,604.64 acres. The plat was accepted March 15, 1957.

b. Available data indicates the lands in this plat are rough broken hills and dry lake beds with shallow to deep medium textured and fine textured soils.

14. T. 18 N., R. 57 E. (group 261), secs. 1 through 36.

a. The area described aggregates 23,291.02 acres. The plat was accepted December 5, 1956.

b. Available data indicates the lands included in this plat are steep rough mountains and ridges with shallow medium textured soils.

c. The following lands were withdrawn by Presidential Proclamation of February 10, 1909 for inclusion in the (now) Humboldt National Forest and are not subject to disposition under the general public land laws by official filing of this plat:

Secs. 1, 2, E½; sec. 11, E½; secs. 12, 13; sec. 14, E½; sec. 23, E½; secs. 24, 25; sec. 36.

15. T. 14 N., R. 57 E. (group 261), secs. 1 through 36.

a. The area described aggregates 24,257.87 acres. The plat was accepted December 5, 1956.

b. Available data indicates the lands in this township are steep rough mountains and ridges with shallow medium textured soils.

c. The following lands were withdrawn by Presidential Proclamation of October 18, 1912 for inclusion in the (now) Humboldt National Forest and are not subject to disposition under the general public land laws by official filing of this plat:

Secs. 1, 2, 3, 10 through 15, 23 through 26; sec. 35, E½; sec. 36, all.

16. T. 11 N., R. 58 E. (group 188), secs. 7 through 9; sec. 13, N½, SW¼, W½SE¼, SE¼SE¼, lot 1; secs. 14 through 18.

a. The area described aggregates 5,764.57 acres. The plat was accepted December 5, 1956.

b. Available data indicates the lands included in this plat are rough steep hills with shallow to moderately deep medium textured soils.

c. The following lands were withdrawn by Presidential Proclamation of December 7, 1907 for inclusion in the (now) Humboldt National Forest and are not subject to disposition under general public land laws by official filing of this plat:

Sec. 13, lot 1, N½, SW¼, W½SE¼, SE¼SE¼; sec. 14.

17. T. 14 N., R. 60 E. (group 277), secs. 1 through 36.

a. The area described aggregates 23,377.81 acres. The plat was accepted August 9, 1956.

b. Available data indicates the lands in this township are generally rough broken hills with shallow medum textured soils.

c. The following lands were withdrawn by Presidential Proclamation of February 10, 1909 for inclusion in the (now) Humboldt National Forest and are not subject to disposition under the general public land laws by official filing of this plat:

Secs. 6, 7, 18, 19, 29, 30, 31, 32.

18. T. 18 N., R. 60 E. (group 278), secs. 23 through 26, secs. 35, 36, all.

a. The area described aggregates 3,840 acres. The plat was accepted April 26, 1956.

b. Available data indicates the lands described vary from rough steep mountains with shallow rocky soils to flats with fine textured soils.

19. T. 19N., R. 60 E. (group 279), secs. 1 through 36.

a. The area described aggregates 22,559.10 acres. The plat was accepted April 25, 1960.

b. Available data indicates the lands described are rough broken hills with shallow medium textured soils.

20. T. 20 N., R. 60 E. (group 279), secs. 1 through 36.

a. The area described aggregates 22,744.88 acres. The plat was accepted April 25, 1960.

b. Available data indicates the lands are rough broken to rolling hills and benches with shallow to moderately deep medium textured soils.

21. T. 3 S., R. 60 E. (group 353), secs. 1, 2, 3, 10 through 15, 22 through 27, 34 through 36.

a. The area described aggregates 11,527.21 acres. The plat was accepted March 10, 1959.

b. Available data indicates the lands described are steep rough hills and benches cut by arroyos. Soils are rocky, medium texture, and generally shallow.

22. T. 14 N., R. 61 E. (group 277), secs. 1 through 36.

a. The area described aggregates 23,527.73 acres. This plat was accepted August 9, 1956.

b. Available data indicates the lands described are rough broken hills and flats. Soils are generally shallow rocky medium to fine textured soils.

23. T. 17 N., R. 65 E. (group 257), sec. 31, all.

a. The area described aggregates 657.79 acres. The plat was accepted March 28, 1956.

b. Available data indicates the lands described are rolling hills with shallow gravelly soils.

c. All of sec. 31 was withdrawn by President's Proclamation of February 10, 1909 and placed in the (now) Humboldt National Forest and is not subject to disposition under the general public land laws by reason of official filing of this plat.

24. T. 5 N., R. 66 E. (group 199), sec. 6, lots 3 through 14, E½SW¼, W½SE¼; secs. 7, 18, 19, 30, 31.

a. The area described aggregates 4,144.37 acres. The plat was accepted February 19, 1959.

b. Available data indicates the lands in this township are rough hills to rolling hills with medium textured soils.

25. T. 12 S., R. 66 E. (group 182), secs. 32 through 36.

a. The area described aggregates 3,200 acres. The plat was accepted November 2, 1956.

b. Available data indicates the lands included in this plat are rolling broken benches, cut by arroyos, with shallow gravelly medium textured soils.

26. T. 16 N., R. 66 E., (group 189), sec. 4, E½; sec. 9 E½; sec. 19, S½; sec. 30, all; sec. 32, all.

a. The area described aggregates 2,221.11 acres. The plat was accepted November 8, 1956.

b. Available data indicates the lands described are rough steep timbered mountains with shallow rocky soils.

27. T. 5 S., R. 66 E. (group 295), sec. 1, lots 1 through 4, S½N½, S½; secs. 12, 13, 24, 25, 36.

a. The area described aggregates 3,836.56 acres. The plat was accepted February 15, 1956.

b. Available data indicates the lands in this plat are rolling to steep broken hills. Soils are shallow, of medium texture.

28. T. 8 S., R. 66 E. (group 295), secs. 31 through 36.

a. The area described aggregates 3,835.06 acres. The plat was accepted February 15, 1956.

b. Available data indicates the lands in this plat are rough mountains and steep hills with shallow medium textured soils.

29. T. 15 N., R. 70 E. (group 266), secs. 11 through 14 and 19 through 36.

a. The area described aggregates 14,033.06 acres. The plat was accepted October 4, 1957.

b. Available data indicates the lands described are steep hills and flats with shallow rocky to deep fine textured soils.

30. T. 8½ S., R. 70 E. (group 183), secs. 31 through 36.

a. The area described aggregates 2,932.90 acres. The plat was accepted December 16, 1955.

b. Available data indicates the lands described are rough steep hills with gravelly coarse textured soils.

31. T. 9 S., R. 70 E. (group 183), secs. 1 through 36.

a. The area described aggregates 22,887.66 acres. The plat was accepted December 16, 1955.

b. Available data indicates the lands described are steep to rolling hills with shallow medium textured soils.

32. T. 10 S., R. 70 E. (group 183), secs. 1 through 36.

a. The area described aggregates 22,936.58 acres. The plat was accepted December 16, 1955.

b. Available data indiactes the lands included in this plat are rough hills and benches broken by sandy arroyos. Soils are of gravelly outwash origin.

33. T. 15 N., R. 71 E (group 266), secs. 7, 18, 19, 30, 31.

a. The area described aggregates 1,430.40 acres. The plat was accepted October 4, 1957.

b. Available data indicates the lands described are rolling hills and flats with shallow and deep medium textured and fine textured soils.

34. T. 8½ S., R. 71 E. (group 183), secs. 31 through 33; sec. 34, lots 1, 2, 8.

a. The area described aggregates 1,593.72 acres. The plat was accepted December 16, 1955.

b. Available data indicates the lands described vary from flats to rough hills with gravelly coarse textured soils.

35. T. 9 S., R. 71 E. (group 183), sec. 3, lots 1, 2, 3, 4; secs. 4 through 9; sec. 10, lots 1, 2, 3, 4; sec. 15, lots 1, 2, 3 4; secs. 16 through 21; sec. 22, lots 1, 2, 3, 4; sec. 27, lots 1, 2, 3, 4; secs. 28 through 33; sec. 34, lots 1, 2, 3, 4.

a. The area described aggregates 12,300.25 acres. The plat was accepted December 16, 1955.

b. Available data indicates the lands described are rough hills and benches with gravelly coarse textured soils.

36. T. 10 S., R. 71 E. (group 183), sec. 3, lots 1, 2, 3, 4; secs. 4 through 9; sec. 10, lots 1, 2, 3, 4; sec. 15, lots 1, 2 3 4; secs. 16 through 21; sec. 22, lots 1, 2, 3, 4; sec. 27, lots 1, 2, 3, 4; secs. 28 through 33; sec. 34, lots 1, 2, 3, 4.

a. The area described aggregates 12,534.68 acres. The plat was accepted December 16, 1955.

b. Available data indicates the lands described are rough steep mountains and hills with gravelly coarse textured soils.

37. The lands described above in paragraphs 1 through 36 inclusive have been subject to operation of the United States mining laws and mineral leasing laws at all times, except as noted above.

38. Subject to any existing valid rights and the requirements of applicable law, the above-described lands are hereby opened to filing applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of the order. Such applications, selections and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m., on the 31st day following publication, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

39. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations. Inquiries concerning these lands shall be addressed to the Manager, Land Office, Bureau of Land Management, P.O. Box 1551, Reno, Nevada.

J. E. KEOGH,
Manager, Land Office.

[F.R. Doc. 60-11664; Filed, Dec. 15, 1960; 8:46 a.m.]

CALIFORNIA

Notice of Partial Termination of Proposed Withdrawal and Reservation of Lands

NOVEMBER 29, 1960.

Notice of an application Serial No. Sacramento 048740, for withdrawal and reservation of lands was published as Federal Register Document No. 57-8355 on page 8090 of the issue for October 11, 1957. The applicant agency has cancelled its application insofar as it involved the land described below. Therefore, pursuant to the regulations contained in 43 CFR, Part 295, such land will be at 10:00 a.m. on December 29, 1960, relieved of the segregative effect of the above-mentioned application.

The land involved in this notice of partial termination is:

MOUNT DIABLO MERIDIAN, CALIFORNIA
ADMINISTRATIVE SITES

Lake City

T. 44 N., R. 15 E.,
Sec. 34: E½NE¼NE¼;
Sec. 35; NW¼NW¼.

Lakeside

T. 47 N., R. 13 E.,
Sec. 32: Lots 2 and 3.

The areas described above aggregate 117.64 acres in the Modoc National Forest.

[SEAL] JOHN E. CLUTE,
Acting Manager, Land Office, Sacramento.

[F.R. Doc. 60-11685; Filed, Dec. 15, 1960; 8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-133]

PACIFIC GAS AND ELECTRIC CO.

Notice of Issuance of Amendment to Construction Permit

Please take notice that the Atomic Energy Commission has issued Amendment No. 1, set forth below, to Construction Permit No. CPPR-10. The amendment changes the allocation of special nuclear material to Pacific Gas and Electric Company for use through 2004 in connection with operation of its reactor to be located at Buhne Point, near Eureka, Humboldt County, California, from 2754.0 kilograms of contained uranium 235 to 2666.9 kilograms of contained uranium 235, and amends the schedule of transfers of special nuclear material between the Company and the Commission as described in the permittee's Amendment No. 10 to its application for license dated November 10, 1960.

In accordance with the Commission's "Rules of Practice" (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the amendment to the permit upon receipt of a request therefor from the permitee or an intervener within thirty days after issuance of the amendment to the permit. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street, Washington, D.C. For further details see Amendment No. 10 to the application for license dated November 18, 1960, submitted by Pacific Gas and Electric Company on file at the AEC's Public Document Room.

Dated at Germantown, Maryland this 8th day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[Construction Permit No. CPPR-10. Amdt. No. 1]

Paragraph E. of Construction Permit No. CPPR-10 is hereby amended to read as follows:

E. Pursuant to Section 50.60 of the regulations in Title 10, Chapter 1, CFR, Part 50, the Commission has allocated to the permittee for use in the operation of the reactor 2666.9 kilograms of Uranium-235 contained in uranium in the isotopic ratios specified in Pacific Gas and Electric Company's Amendment No. 10 to its application for license dated November 18, 1960. Estimated schedules of special nuclear material transfers to the permittee and returns to the Commission are contained in revised Exhibit C in application Amendment No. 10. Transfers by the Commission to the permittee will be conditioned upon return to the Commission by the permittee of material substantially in accordance with said revised Exhibit C in application Amendment No. 10.

This amendment is effective as of the date of issuance.

Date of issuance: December 8, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-11645; Filed, Dec. 15, 1960; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Public Notice PN-14 Revision]

STATEMENT OF ORGANIZATION AND DELEGATIONS OF FINAL AUTHORITY

Description of organization, including delegations of final authority and the places at which and methods whereby the public may secure information or make submittals or requests.

This revision to Public Notice PN-14 (25 F.R. 657) is issued to (1) consolidate into a single Public Notice all information required by the Administrative Procedure Act to be published in the FEDERAL REGISTER (60 Stat. 238, 5 U.S.C. 1002), (2) reflect recent changes in organization, (3) incorporate additions or modifications in final delegations of authority made since the publication of PN-14 and (4) reflect changes with respect to the places at which and the methods whereby the public may secure information or make submittals or requests resulting from relocation of the Board's Washington offices and internal procedural changes. This revision supersedes Public Notices PN-3 (F.R. Doc. 50-5838) and PN-14 (25 F.R 657).

GENERAL STATEMENT

Sec.
1.1 Authority.
1.2 Functions.
1.3 Offices.
1.4 Formal submissions.
1.5 Release of information.
1.6 Access to records.

OFFICES OF BOARD MEMBERS

2.1 Functions of the Board Members.
2.2 Functions of the Chairman.
2.3 Functions of the Executive Director of the Board.

BUREAU OF HEARING EXAMINERS

3.1 Organization.
3.2 Function of the Chief Examiner.
3.3 Delegated authority of the Chief Examiner.
3.4 Redelegation of authority.
3.5 Functions of the Hearing Examiners.
3.6 Functions of the Docket Section.
3.7 Functions of the Indices Section.
3.8 Delegated authority of Hearing Examiners.

BUREAU OF AIR OPERATIONS

4.1 Organization.
4.2 Functions of the Director.
4.3 Delegated authority of the Director.
4.4 Redelegation of authority.
4.5 Redelegations to Members of the Director's Office.
4.6 Functions of the International Division.
4.7 Functions of the Routes Division.
4.8 Redelegations of authority to the Chief, Routes Division.
4.9 Functions of the Special Authorities Division.
4.10 Redelegations of authority to the Chief, Special Authorities Division.
4.11 Functions of the Rates Division.
4.12 Redelegations of authority to the Chief, Tariffs Section of the Rates Division.
4.13 Bureau Counsel.
4.14 The Alaska Liaison Office.
4.15 Redelegations of authority to Alaska Liaison Representative.

BUREAU OF SAFETY

5.1 Organization.
5.2 Functions of the Director.
5.3 Delegated authority of the Director.
5.4 Redelegations of authority to Associate Director.
5.5 Functions of the Safety Investigation Division.
5.6 Delegated authority of Presiding Officers and Hearing Officials.
5.7 Functions of the Operations Division.
5.8 Functions of the Engineering Division.
5.9 Functions of the Safety Analysis Division.

OFFICE OF CARRIER ACCOUNTS AND STATISTICS

6.1 Organization.
6.2 Functions of the Chief.
6.3 Delegated authority.
6.4 Redelegation of authority.
6.5 Functions of the Regulations and Reports Division.
6.6 Redelegations of authority to the Chief, Regulations and Reports Division.
6.7 Functions of the Field Audits Division.
6.8 Functions of the Research and Statistics Division.

OFFICE OF THE GENERAL COUNSEL

7.1 Organization.
7.2 Functions of the General Counsel.
7.3 Delegated authority of the General Counsel.
7.4 Redelegation of Authority.
7.5 Functions of the Rules and Legislation Division.
7.6 Redelegations of authority to Associate General Counsel, Rules and Legislation.
7.7 Functions of the Litigation and Research Division.
7.8 Functions of the Opinion Writing Division.
7.9 Redelegations of authority to the Associate General Counsel, Opinion Writing.
7.10 Functions of the Special Counsel Division.

BUREAU OF ENFORCEMENT

8.1 Organization.
8.2 Functions of the Director.
8.3 Delegated authority of the Director, Bureau of Enforcement.
8.4 Functions of the Legal Division.
8.5 Functions of the Investigation Division.
8.6 Functions of the Service Complaint Section.
9.1 [Reserved.]

OFFICE OF THE SECRETARY

10.1 The Secretary.
10.2 Delegations of authority.

OFFICE OF ADMINISTRATION

11.1 Organization.
11.2 Functions.

PERSONS IN "ACTING" CAPACITY

12.1 Authority to designate.
12.2 Authority of person in acting capacity.

GENERAL DELEGATIONS OF AUTHORITY

13.1 Special agents and auditors.
13.2 Officers and employees.

OPTIONS OF APPLICANT

14.1 Options of applicant where application is denied under delegated authority.

GENERAL STATEMENT

SECTION 1.1 *Authority.* The Civil Aeronautics Board derives its authority from and is organized in accordance with the Federal Aviation Act of 1958. It is an independent federal agency comprised of five members appointed for six year terms by the President with the consent of the Senate, with no more than three members appointed from the same political party. Each year the President designates one member as chairman and another as vice chairman.

The Board exercises its powers independently. Its decisions are not subject to review by any executive department or agency, except for the approval of the President required in Board decisions granting or affecting certificates for overseas and foreign air transportation, and foreign air carrier permits.

SEC. 1.2 *Functions.* In general the Board performs three functions: regulation of the economic aspects of domestic and international United States air carrier operations and of the operations of foreign air carriers to and from the United States, participation in the establishment and development of international air transportation, and promotion of safety in civil aviation. These functions are described briefly in the following paragraphs.

(a) *Economic regulation.* The Board is responsible for granting authorizations to air carriers to engage in interstate and foreign air transportation. It issues permits to foreign air carriers authorizing them to engage in air transportation between the United States and foreign countries, and also authorizes the navigation of foreign civil aircraft in the United States for other purposes.

The Board has jurisdiction over tariffs, and the rates and fares charged the public for air transportation; it establishes rates for the carriage of mail by air carriers; and it authorizes and pays subsidy to certain air carriers where required for the development of an adequate air transportation system.

In the interest of maintaining regulated competition, the Board passes on mergers, acquisitions of control and interlocking relationships involving air carriers and passes on contracts for cooperative working arrangements between air carriers. The Board also has jurisdiction over unfair competitive practices of air carriers and ticket agents selling air transportation.

The Board regulates the accounting practices of air carriers and requires them to file regular financial and operating reports with the Board. Much of the information from these reports is published by the Board and thereby made available to other government agencies and to the general public.

Under Public Law 85-307 the Board guarantees loans to certain air carriers for the purchase of aircraft.

(b) *International Civil Aviation.* The Board consults with and assists the Department of State in the negotiation of agreements with foreign governments for the establishment or development of air routes and services.

(c) *Safety activities.* The Board investigates accidents involving civil aircraft and makes reports on the facts, circumstances and probable causes thereof; it makes such recommendations to the Administrator of the Federal Aviation Agency as will tend to prevent similar accidents in the future; makes such reports public as may be deemed by it to be in the public interest; and conducts special studies and investigations of aeronautical hazards to reduce aircraft accidents and prevent their recurrence.

Upon the request of aggrieved parties, the Board reviews in quasi-judicial proceedings, conducted pursuant to the Administrative Procedure Act, denials by the Administrator of the Federal Aviation Agency of applications for airman certificates and orders of the Administrator modifying, amending, suspending, or revoking any air safety certificates. The Board also participates as an interested party in safety rulemaking proceedings conducted by the Administrator of the Federal Aviation Agency.

SEC. 1.3 *Offices.* (a) The central offices of the Civil Aeronautics Board are located in the Universal Building, 1825 Connecticut Avenue NW., Washington 25, D.C.

(b) The Bureau of Air Operations, the Bureau of Safety and the Office of Carrier Accounts and Statistics maintain field offices in selected cities throughout the country. The location of these offices and a description of their functions are included in sections of this notice describing the Office or Bureau of which the field offices are a part.

(c) Public hearings into the facts, conditions and circumstances surrounding an aircraft accident, public hearings on applications and petitions in both safety certificate and economic proceedings and oral arguments before the Board are held at the time and place announced in the notice thereof which is served on the parties to the proceeding and published in the FEDERAL REGISTER.

(d) The hours of business for Board offices are 8:30 a.m. to 5:00 p.m., local time, Monday through Friday, excluding legal holidays, unless otherwise provided by statute or Executive Order.

SEC. 1.4 *Formal submissions.* (a) All formal submissions required or permitted to be made in economic and safety certificate proceedings should be addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D.C., unless specifically provided otherwise in the provision requiring or permitting such submission. Requirements as to the form and content of such submissions are set forth in the Board's Procedural Regulations, codified in the Code of Federal Regulations, Title 14, Chapter II.

(b) Notification and reports of aircraft accidents and of missing aircraft required to be reported pursuant to Part 320 of the Board's Procedural Regulations should be directed to the nearest Civil Aeronautics Board office or Federal Aviation Agency communications station or agent.

(c) Instructions concerning the use of forms, and the scope of content of material required or permitted to be filed or maintained are set forth in the Board's Economic, Safety Investigation, Special or Procedural Regulations codified in the Code of Federal Regulations, Title 14, Chapter II. If the form of any document required or permitted to be filed is not prescribed, such document shall be in letter form.

SEC. 1.5 *Release of information.* (a) The Public Information Officer, Office of Secretary, is the primary channel through which general inquiries from the public and press are answered. Persons seeking general information concerning the Board, its organization, functions, procedures or activities should communicate with that office.

(b) Persons seeking information concerning employment opportunities with the Board should communicate with the Personnel Section, Office of Administration.

(c) The Publications Section, Office of Administration, periodically prepares a list of Board documents and publications which have been duplicated and are available to the public. Items offered for sale are available from the Government Printing Office or other indicated sources on payment of a charge therefor. A list of available publications and free items in limited quantity are available from the Publications Section upon request. Mailing lists are maintained for the weekly Notice of Applications or Amendments Thereto and certain other free publications. Upon written request therefor, the Publications Section will furnish for the remainder of the fiscal year, publications for which mailing lists are maintained.

SEC. 1.6. *Access to records.* (a) All records of the Board are in the custody of the Secretary of the Board subject to access by employees for purposes relating to their official duties.

(b) Public records, available for inspection or copying during office hours upon application to the Secretary include:

(1) Documents required or permitted to be filed with the Board by the Federal Aviation Act of 1958, as amended, or any other statute or by any rule or order of the Board. These include tariffs, general schedules, contracts and agreements affecting air carriers, undocketed applications and petitions, notices of intent, flight reports, mileage records, carriers' operating and financial reports, and operators' reports of aircraft accidents or of missing aircraft.

(2) The material of record filed in any adjudicatory, investigative or rule-making procedure. These include applications, petitions, complaints, correspondence and related documents in connection with formal proceedings, transcripts of testimony, copies of depositions, exhibits, briefs, examiner's initial decisions, comments on proposed rules, orders and accompanying opinions, if any, the Board's official reports on the facts, conditions, circumstances and probable cause of aircraft accidents and Economic, Accident Investigation, Spe-

cial and Procedural Regulations. Comments on proposed rules are available for public inspection after the date set forth in the notice of proposed rule making.

(3) Public notices, compilations, tabulations, reports and other materials published by the Board or authorized by the Board for public release.

(4) Approved Minutes of Board meetings, except portions relating to pending matters. Minutes are available only to persons properly and directly concerned with the subject thereof.

(c) Not available for public inspection are matters classified in the interest of national defense pursuant to Executive Order 10501 or withheld from public disclosure by the Board under sections 902(f), 1001 or 1104 of the Federal Aviation Act of 1958, as amended, and § 302.39 of the Procedural Regulations.

(d) Not available for public inspection are other records, letters, memoranda, files and information created by or coming into the possession of, or within the knowledge of the Board or its staff in the discharge of their official duties, except that particular information may be disclosed in response to a request to persons having a legitimate interest if the disclosure of such information is found by an authorized employee to be appropriate to the furtherance of the objectives of the Act or is approved by the Board upon good cause shown. Information ordered by the Board to be withheld may be disclosed only by direction of the Board.

(e) Copies of documents (other than duplicated publications described in section 1.5c above) which are available to the public will, upon written request to the Secretary specifying the number of copies desired, be provided at the expense of the requestor. Without fee, the Secretary, upon written request, will certify that copies are true and correct copies of the original, except that publications of the Board need not be certified, since they are competent evidence of the orders, decisions, rules, regulations and reports of the Board therein contained in all Federal and State courts without further proof or authentication, pursuant to section 204(d) of the Federal Aviation Act of 1958 (49 U.S.C. 1324).

OFFICES OF BOARD MEMBERS

SEC. 2.1 *Functions of the Board Members.* The Board Members are charged with carrying out the duties and responsibilities of the Board under the Act and the statutes. Action initiated pursuant to the Board's own initiative or by any document authorized or required to be filed with the Board originates in or is referred to the appropriate organizational unit for study and recommendation to the Board in accordance with the description of functions outlined hereinafter. In cases other than those in which action is taken pursuant to a final delegation of authority, or in which the responsibility is that of the Chairman (see below), final action is taken by the Board.

SEC. 2.2 *Functions of the Chairman.* In addition to his duties as a Member of the Board, the Chairman serves as presiding officer at meetings of the Board, determines the order in which day-to-day matters will receive attention of the Board, and by virtue of his role as Chairman, acts as spokesman for the Board before committees of Congress.

Pursuant to Reorganization Plan No. 13 of 1950, and subject to certain limitations stated therein, the Chairman is responsible for the executive and administrative functions of the Board.

SEC. 2.3 *Functions of the Executive Director of the Board.* The Executive Director is the chief operating and executive staff official of the Civil Aeronautics Board, assisting the Chairman in the performance of major administrative and executive functions and the Board through the coordination of quasi-judicial matters. The Executive Director is also responsible, through the Congressional Relations Officer for maintaining an effective exchange of information between the Board and the Congress and for serving as the primary channel through which Congressional inquiries are handled.

BUREAU OF HEARING EXAMINERS

SEC. 3.1 *Organization.* The Bureau of Hearing Examiners consists of the following components: Office of the Chief Examiner, the Hearing Examiners, Docket Section and Indices Section.

SEC. 3.2 *Functions of the Chief Examiner.* The Chief Examiner supervises the Bureau of Hearing Examiners, which is responsible for the conduct of all formal proceedings under Titles IV, VI, and X of the Federal Aviation Act of 1958 in accordance with the requirements of the Procedural Regulations.

SEC. 3.3 *Delegated authority of the Chief Examiner.* By delegation of authority from the Board, the Chief Examiner is authorized to:

A. Approve or disapprove requests for changes in procedural requirements in economic cases for good cause shown, provided that an extension of time for filing documents shall not be granted within three days of the date originally set for the filing except in cases involving unusual hardship on the requesting party or parties.

B. Consolidate, upon recommendation of the Director, Bureau of Air Operations (or such staff member of the Bureau of Air Operations as he may designate), into one proceeding cases involving the investigation of a tariff or of complaints concerned with related tariffs.

C. With the concurrence of the Director, Bureau of Air Operations (or such staff member of the Bureau of Air Operations as he may designate): grant intervention in formal proceedings; deny intervention in formal proceedings to cities or Chambers of Commerce representing cities which are off-line points; dismiss applications or complaints when such dismissal is requested or consented to by the applicant or complainant, or where such party has failed to prosecute such application or complaint, provided that in the case of complaints involving the Office of Compliance, the Chief of such office concurs; consolidate into one proceeding for the purpose of hearing and decision, and approve applications for such consolidation, or cases arising under sections 401, 402, 408, 409, and 412 of the Federal Aviation Act; approve or deny any request for the severance of a previous application consolidated in accordance with the preceding authority; and dismiss proceedings upon his finding that the proceeding has become moot or that no further basis for continuation exists.

D. The Chief Examiner also has all the authority delegated to Hearing Examiners generally as listed in section 3.8.

SEC. 3.4 *Redelegation of authority.* The Chief Examiner is authorized to redelegate the authority cited in subsection 3.3B above.

SEC. 3.5 *Functions of the Hearing Examiners.* Hearing Examiners are responsible for conducting proceedings involving the economic regulatory powers of the Board under Titles IV and X of the Federal Aviation Act, including issuance of certificates of public convenience and necessity concerning both domestic and foreign operations, issuance of foreign air carrier permits, mail, passenger and property rate cases, mergers, acquisitions of control, interlocking relationships, and enforcement cases; and safety enforcement proceedings under Title VI of the Act, including disciplinary proceedings involving suspension or revocation of airman certificates and appeals from action of the Administrator, Federal Aviation Agency, in refusing to issue airman certificates. In carrying out these proceedings examiners hold hearings, make initial decisions, and carry out the other requirements of the Administrative Procedure Act, the Board's procedural regulations, and the delegations of authority to examiners.

SEC. 3.6 *Functions of the Docket Section.* The Docket Section examines all applications, complaints and petitions for compliance with the requirements of the Procedural Regulations, advises and assists persons filing documents with respect to filing requirements; maintains the Official Docket binder on all formal proceedings and issues periodic reports on the status of docketed cases; maintains a copy of all dockets, financial and operational statistical reports, comments on proposed rules and similar material for public reference; and makes official service of notices, reports, decisions and rules on parties to proceedings.

SEC. 3.7 *Functions of the Indices Section.* The Indices Section devises and maintains the master subject index, selects orders and opinions and writes digests to cover points involving precedent for publication in the Civil Aeronautics Board Reports, and periodically prepares cumulative index-digests of Board decisions.

SEC. 3.8 *Delegated authority of Hearing Examiners.* By delegation of authority from the Board each Hearing Examiner is authorized to:

A. Give notice concerning and hold hearings.

B. Administer oaths.

C. Examine witnesses.

D. Issue subpenas and take or cause depositions to be taken.

E. Rule upon offers of proof and receive relevant evidence.

F. Regulate the course and conduct of the hearing.

G. Hold conferences, before or during the hearing, for the settlement or simplification of issues.

H. Rule on motions and dispose of procedural requests or similar matters.

I. Within his discretion, or upon the direction of the Board, certify any question to the Board for its consideration and disposition.

J. Issue initial decisions in proceedings for the amendment, modification, suspension or revocation of airman or other safety certificates upon appeal from an order of the Administrator of the Federal Aviation Agency, and for the review of the Administrator's refusal to issue an airman certificate.

K. Render an initial decision orally on the record or in writing if, before the close of the hearing, any party so requests in cases relating to rates, fares or charges, classification rules or regulations or practices affecting such matters or value of service, or mail compensation.

L. Render a recommended decision orally on the record or in writing in cases where the action of the Board is subject to the approval of the President pursuant to Section 801 of the Federal Aviation Act of 1958.

M. Render an initial decision orally on the record or in writing in cases relating to economic proceedings other than those covered by paragraphs K and L above.

BUREAU OF AIR OPERATIONS

SEC. 4.1 *Organization.* The Bureau of Air Operations consists of the following organizational components: Office of the Director, International Division, Routes Division, Special Authorities Division, Rates Division, Alaska Liaison Office.

SEC. 4.2 *Functions of the Director.* The Director supervises the Bureau of Air Operations, which is responsible for the development and interpretation of economic data and for advising the Board regarding, and recommending action on individual matters involving, the policy and procedure to be followed in the economic regulation of domestic, overseas, and international air transportation.

SEC. 4.3 *Delegated authority of the Director.* By delegation of authority from the Board the Director, Bureau of Air Operations, is authorized to take the actions specified below.

A. To terminate or limit Bureau participation in adversary proceedings when full participation is found to be unnecessary. In those cases in which full participation is found unnecessary, the Director will immediately advise the parties to the proceedings and the Examiner of the nature and extent of future Bureau participation. When the Director finds that renewed participation of Bureau personnel is required in the public interest, he shall immediately so advise the parties.

B. To disapprove an application filed under Part 295 of the Economic Regulations by letter stating such disapproval and the reasons therefor and the options the applicant may exercise. If no option is exercised by the applicant within 15 days from the date of the letter, the application shall be considered withdrawn.

C. With respect to route matters he is authorized:

(1) To approve Airport Notices which indicate an intention to serve regularly a point through any airport not regularly used by a holder of a certificate of public convenience and necessity.

(2) To approve Nonstop Notices which indicate an intention to inaugurate a scheduled nonstop service between any two points nonconsecutively named in the certificate of public convenience and necessity.

(3) To approve interchange schedules which appear to conform to the service plan contemplated by the Board's orders approving the basic interchange agreements.

(4) To deny by letter applications of air carriers for exemptions permitting a carrier to serve a point certificated on one segment of its route in place of a point certificated on another segment of its route whenever no substantial competition to other lines will result or when no new policy is involved and permitting certificated carriers (other than supplemental air carriers) to perform single flights outside the authority contained in the certificate.

D. With respect to rates and tariffs, he is authorized:

(1) To reject any tariff, supplement, or revised page which is filed by any United States air carrier or by any foreign air carrier, and which is subject to rejection because it is not consistent with section 403 of the Act or with Part 221 of the Economic Regulations.

(2) To approve or disapprove any application for permission to make tariff changes upon less than statutory notice, filed pursuant to § 221.190 of the Economic Regulations, which (a) has as its only purpose the correction of mechanical, clerical, or administrative errors, or (b) does not involve new or substantial questions of policy.

(3) To permit cancellation of a tariff in instances when an investigation of a tariff is pending, or the tariff is under suspension, or when a complaint requesting investigation or suspension of a tariff has been filed.

(4) To approve or disapprove methods for indicating cancellation of an existing rate or rule in the publication of tariffs stating the new rate or rule in a manner other than that specifically required by Subpart H of Part 221 of the Economic Regulations.

(5) To determine the form and manner in which a supplement is to be prepared whenever the operation of any provision of a tariff, supplement or looseleaf page is suspended by the Board, in accordance with Subpart I of Part 221 of the Economic Regulations.

(6) To authorize the issuance of supplements to looseleaf tariffs in accordance with § 221.112 of the Economic Regulations.

(7) To approve or disapprove applications for waiver of the provisions of Part 221 of the Economic Regulations in accordance with § 221.201.

(8) To approve or disapprove applications filed under section 403(b) of the Act and § 223.8 of the Economic Regulations for permission to furnish free or reduced rate air transportation in overseas or foreign air transportation. If an application is denied the applicant may request Board review of the matter.

E. With respect to special authorities matters he is authorized:

(1) To approve applications for operating authority filed pursuant to Parts 296 and 297 of the Economic Regulations.

(2) To dismiss, by letter, applications for operating authority filed pursuant to Parts 296 and 297 of the Economic Regulations, provided that each applicant is given notice that his application will be dismissed if, in appropriate cases he does not, within 30 days, file information necessary to complete the processing of his application, or file a tariff.

(3) To approve relationships prohibited by §§ 296.45 and 297.36 of the Economic Regulations.

(4) To Cancel an operating authority upon the filing by a domestic or international Air Freight Forwarder of a written notice with the Board indicating the discontinuance of common carrier activities.

(5) To issue foreign aircraft permits provided for in §§ 375.41 and 375.42 of the Special Regulations if he finds that applications for such permits are in order and meet the requirements of the Sections.

(6) To dispose, without action, of contracts and agreements which, prior to review thereof, have expired, have been terminated, or have been superseded.

(7) To approve, in whole or in part, or deny applications for Letters of Registration filed pursuant to Part 293 of the Economic Regulations.

(8) To approve, in whole or in part, or deny applications for authorization to conduct off-route charter trips filed pursuant to Part 212 of the Economic Regulations.

SEC. 4.4 *Redelegation of authority.* The Director, Bureau of Air Operations has the authority to redelegate all the authority listed in section 4.3 above except subsections 4.3A and 4.3C(4). He may also redelegate the recommendation authority cited in subsection 3.3B and the concurrence authority cited in subsection 3.3C.

SEC. 4.5 *Redelegations to Members of the Director's Office.* The Director of the Bureau of Air Operations has redelegated to the Associate Director (Domestic) and to the Associate Director (International) all the authority listed in section 4.3 above except subsections 4.3A and 4.3C(4).

SEC. 4.6 *Functions of the International Division.* The International Division advises on the formulation of positions to be taken by the United States on international civil aviation matters involving economic foreign policy; serves as liaison between the Board and the Department of State; provides repre-

sentation, when so designated, in connection with international conferences and bilateral and multilateral relations with foreign countries. In the discharge of these duties the International Division analyzes economic data bearing on the problems to be dealt with.

SEC. 4.7 *Functions of the Routes Division.* The Routes Division is concerned with the legal and economic aspects of matters arising under sections 401, 402, 404, 405(b), 416, and 1002 of the Federal Aviation Act of 1958 relating to the authorizations of routes and other services required to meet the objectives of the Act, whether by issuance of a certificate of public convenience and necessity, foreign air carrier permit or exemption order, and relating to the determination of the route pattern and the carriers required to provide such services.

SEC. 4.8 *Redelegations of authority to the Chief, Routes Division.* The Director, Bureau of Air Operations, has redelegated to the Chief, Routes Division all the authority pertaining to route matters cited in subsection 4.3C, except the authority stated in subsection 4.3C(3).

SEC. 4.9 *Functions of the Special Authorities Division.* The Special Authorities Division is concerned with the legal and economic aspects of all carrier relationship matters arising under sections 401(h), 402(g), 407(a), 407(b), 407(c), 408, 409, 411, 412, 1002(i), and 1102 of the Act and to matters arising under sections 401, 402, 404, 405(b), 416, and 1002 of the Federal Aviation Act of 1958, and section 1108(b) of the Act relating to the authorizations of supplemental charter and indirect carrier services required to meet the objects of the Act.

SEC. 4.10 *Redelegations of authority to the Chief, Special Authorities Division.* The Director, Bureau of Air Operations, has redelegated to the Chief, Special Authorities Division, all the authority cited in subsection 4.3E, except the authority cited in subsection 4.3E(5).

SEC. 4.11 *Functions of the Rates Division.* The Rates Division is concerned with the economic and legal aspects of matters relating to the fixing of the compensation to be paid to the airlines by the Government for the transportation of United States mail, including a determination of the service mail rates and subsidy, pursuant to section 406 of the Act, determination of commercial rates pursuant to sections 403, 404, and 1002 of the Act and the commercial rate aspects of International Air Transport Association resolutions.

SEC. 4.12 *Redelegations of authority to the Chief, Tariffs Section of the Rates Division.* The Director, Bureau of Air Operations, has redelegated to the Chief, Tariffs Section, Rates Division, all the authority pertaining to rates and tariffs cited in section 4.3D.

SEC. 4.13 *Bureau Counsel.* An attorney from the Bureau of Air Operations is designated as Bureau Counsel to present the Bureau position in formal proceedings before the Board arising under the Federal Aviation Act of 1958.

SEC. 4.14 *The Alaska Liaison Office.* The Alaska Liaison Office is a field office of the Bureau of Air Operations. It is located at Loussac-Sogn Building, Anchorage, Alaska (P.O. Box 2219). This office is concerned with the administration of the Act and the Economic Regulations as they relate to Alaska air taxi operators and to tariff and service matters affecting Alaskan air carriers; advising the Board and the Bureau Director on Alaskan air transportation problems; and conferring with the Alaskan air carriers, government and civic bodies and with users of air transportation in Alaska.

This office is responsible for posting and maintaining for inspection, copies of applications, petitions, notices and complaints submitted to the Board; copies of tariffs, statistical reports and other documents required to be filed with the Board; documents filed in connection with formal proceedings before the Board; and orders, opinions, rules or regulations issued by the Board; insofar as such matters relate to Alaskan air carriers, Alaskan air taxi operators or air transportation to, from, or within Alaska.

SEC. 4.15 *Redelegations of authority to Alaska Liaison Representative.* The Director, Bureau of Air Operations, has redelegated to the Alaska Liaison Representative, the authorities cited in subsections 4.3D(1), 4.3D(2), 4.3D(6), and 4.3D(7) insofar as they relate to Alaskan Carriers.

BUREAU OF SAFETY

SEC. 5.1 *Organization.* The Bureau of Safety consists of the following organizational components: Office of the Director, Safety Investigation Division, Operations Division, Engineering Division and Safety Analysis Division.

SEC. 5.2 *Functions of the Director.* The Director supervises the Bureau of Safety, which is responsible for the investigation and analysis of aircraft accidents occurring within the United States, and the investigation and analysis of accidents involving United States flag carriers occurring abroad in conjunction with the government of the country in which the accident occurred. This Bureau is also responsible for investigating aeronautical hazards, making recommendations for corrective action to prevent recurring accidents and for making appropriate recommendations to the Board regarding international aviation activities in the air safety area and in air safety matters considered by the interdepartmental Committees requiring Board action.

SEC. 5.3 *Delegated authority of the Director.* The Board has delegated to the Director, Bureau of Safety, the authority to:

A. Order an inquiry, by depositions, or otherwise, into the facts, conditions, circumstances and probable cause of all accidents involving civil aircraft, and to order a public hearing in accordance with the provisions of Part 303 of the Board's Procedural Regulations on the following types of accidents:

(1) Accidents in which unusual, nationwide public interest is demonstrated.

(2) Fatal air carrier accidents in air transportation.

(3) Accidents in air transportation involving an apparent serious departure from good operating practice or significant deficiency in design in which catastrophe is narrowly averted.

(4) Accidents which appear indicative of serious and widespread hazards in air commerce.

(5) Other accidents where the Director deems a public hearing necessary in the public interest.

B. Designate in writing a hearing officer and technical staff for public hearings in accordance with the provisions of Part 303 of the Board's Procedural Regulations; in cases where the Director, Bureau of Safety, will not personally serve on a Board of Inquiry, he may designate one of his staff to take his place.

C. Designate one or more hearing officials with authority to sign and issue subpoenas, administer oaths and affirmations, and to take depositions or cause them to be taken.

D. Order a special study or investigation on matters pertaining to safety in air navigation, and if necessary, designate a hearing officer in this connection who may be authorized to sign and issue subpoenas, administer oaths and affirmations, and take depositions or cause them to be taken.

SEC. 5.4 *Redelegations of authority to the Associate Director.* The Director, Bureau of Safety, has redelegated all of the authorities listed in section 5.3 above to the Associate Director.

SEC. 5.5 *Functions of the Safety Investigation Division.* This Division is responsible for the development of accident investigation procedures and techniques, and for the administration of the accident investigation program. Through its field offices, described below, it conducts aircraft accident investigations. It is also responsible for conducting public accident inquiries to determine the facts, conditions, circumstances, and probable cause of aircraft accidents and prepares formal accident investigation reports for adoption by the Board. In addition, the Safety Investigation Division programs and directs special investigations, surveys, and studies relating to incidents, operational procedures and hazards capable of causing serious accidents in order to make recommendations to the Administrator of the Federal Aviation Agency for the implementation of accident prevention measures.

Field Offices of the Safety Investigation Division. Air Safety Investigators assigned to the Division's field offices conduct the accident investigations, special investigations, studies and surveys mentioned above. In the course of their accident investigations they maintain coordination with other interested government agencies and industry representatives. They also participate in public hearings and deposition taking, and prepare reports stating the facts, conditions and circumstances discovered during the investigation and the investigators' recommendation of what the finding of probable cause should be.

The Safety Investigation Division's field offices are located as follows:

Field Office Address and Territory

Federal Building, Room 101, New York International Airport, Jamaica, N.Y.—Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Vermont, New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and Virginia.

P.O. Box 48-0931, Miami International Airport, Miami 48, Fla.—North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi.

6127 West Cermak Road, Cicero, Ill.—Ohio, Kentucky, Indiana, Michigan, Wisconsin, Illinois, Minnesota, North Dakota.

912 East 63d Street, Kansas City, Mo.—Missouri, Iowa, South Dakota, Nebraska, and Kansas.

P.O. Box 105, Fort Worth 1, Tex.—Texas, Oklahoma, Arkansas, and Louisiana.

1725 Centinela Avenue, Inglewood, Los Angeles, Calif.—Arizona and that portion of California and Nevada south of the following boundary: intersection of the coastline and the 36th parallel eastward to longitude 118°30', thence northerly along the ridge of the Sierra Nevada Mountains to longitude 119°30' and parallel 38° to the Utah State line.

1549 Emporia Street, Aurora, Colo.—Wyoming, Colorado, New Mexico, and Utah.

P.O. Box 2386, Oakland Airport Station, Oakland 14, Calif.—The northern portion of Nevada and California north of Los Angeles office boundary.

Room 202, Administration Building, King County Airport, Seattle 8, Wash.—Washington, Oregon, Idaho, and Montana.

P.O. Box 2219, Anchorage, Alaska—Alaska.

SEC. 5.6 *Delegated authority of Presiding Officers and Hearing Officials.* Presiding Officers and Hearing Officials appointed by the Director, Bureau of Safety, pursuant to delegation of authority stated in subsections 5.3B and 5.3C have the authority to hold hearings, to sign and issue subpoenas, administer oaths and affirmations, examine witnesses, receive evidence and take or cause depositions to be taken.

SEC. 5.7 *Functions of the Operations Division.* The Operations Division is responsible for providing specialized staff services in the area of aircraft operations. Its specialists in air carrier, general aviation, helicopter and jet operations, meteorology and air traffic control, participate directly in aircraft accident investigations. They participate in public inquiries by testifying and questioning witnesses, and assist in the preparation of the Board's accident report. They also participate in special safety studies and investigations of aeronautical hazards and safety incidents and draft comments and recommendations for corrective action to be forwarded to the Administrator of the Federal Aviation Agency; and they draft comments on safety rules and standards proposed by the Federal Aviation Agency.

SEC. 5.8 *Functions of the Engineering Division.* This Division provides specialized staff services in the area of engineering and airworthiness. Division personnel participate in the investigation of aircraft accidents, assist in the conduct of public inquiries and prepare the technical portion of accident reports. The Division makes recommendations on engineering problems to further air safety and assist in eliminating aeronautical hazards, drafts comments and recommendations to the Administrator, Federal Aviation Agency, thereon, and represents the Board on committees wherein engineering and airworthiness problems are involved.

SEC. 5.9 *Functions of the Safety Analysis Division.* This Division is charged with the responsibility for the detailed analysis of all civil aircraft accidents, incidents and flight hazards, to determine all casual and contributory factors necessary for the recommendation of preventive measures; for the researching, collecting, digesting and indexing of technical studies and reports for application to Bureau technical or engineering problems, for preparing and maintaining comprehensive statistics of factors involved in aircraft accidents; for developing, assembling and disseminating recurrent and special statistical analyses reports.

OFFICE OF CARRIER ACCOUNTS AND STATISTICS

SEC. 6.1 *Organization.* The Office of Carrier Accounts and Statistics consists of the following organizational components: Office of the Chief, Regulations and Reports Division, Field Audits Division, and the Research and Statistics Division.

SEC. 6.2 *Functions of the Chief.* The Chief supervises the Office of Carrier Accounts and Statistics, which is responsible for recommending economic regulations related to the general accounting and statistical reporting programs and participating with the General Counsel in the formulation of such regulations; administering the Board accounting and reporting regulations; approving all accounting and economic statistical data prepared for release as an official publication; providing expert advice and assistance to the Board and staff on accounting, auditing and statistical matters; and representing the Board at interdepartmental, industry and international conferences at the discretion of the Board.

SEC. 6.3 *Delegated authority.* Under delegated authority from the Board the Chief, Office of Carrier Accounts and Statistics, is authorized to take any or all of the following actions in administering the accounting, reporting and record-retention requirements of Parts 234, 241, 242, 243, 244, 248, and 249 of the Economic Regulations:

A. Waive any of the accounting, reporting and record-retention requirements as warranted, to meet temporary or local conditions.

B. Interpret the Board's accounting, reporting and record-retention requirements.

C. Require submission by carriers of special statements necessary to an explanation of any carrier accounting or reporting practices.

D. Establish detailed standard accounting, reporting and record-retention practices required to achieve conformance with regulations promulgated by the Board.

E. Grant or deny individual requests for extension of time for filing reports.

F. Dismiss, by letter, petitions for Board action when such dismissal is requested, or consented to, by petitioner.

G. Grant or deny by letter, with the concurrence of the General Counsel and the Director, Bureau of Air Operations, requests for confidential treatment of preliminary year-end financial reports.

H. Extend, with the concurrence of the Director, Bureau of Enforcement, the time period for the preservation of records relating to errors, oversales, irregularities and delays in handling passengers (§ 249.11(f), Category No. 303(a) of the Schedule of Records to Part 249 of the Economic Regulations).

I. Grant or deny by letter, individual requests by air carriers for permission to use their own continuous-feed machine reporting forms, where Board approval for the use of such forms is required by the Economic Regulations.

SEC. 6.4 *Redelegation of authority.* The Chief, Office of Carrier Accounts and Statistics has the power to redelegate all the authority recited in section 6.3 above except that recited in section 6.3B.

SEC. 6.5 *Functions of the Regulations and Reports Division.* The Regulations and Reports Division develops and recommends uniform systems of periodic financial operational and accounting reports, and necessary revisions thereof for all air carriers; drafts instructions and letters of interpretation; recommends modification or waiver of uniform requirements; provides expert advice and assistance on accounting matters; comments on prospectuses relating to the issuance of securities by air carriers when so requested by the Securities and Exchange Commission; conducts desk audits of carrier financial and statistical reports filed with the Board; and maintains liaison with accounting personnel in private, public and government practice.

SEC. 6.6 *Redelegations of authority to the Chief, Regulations and Reports Division.* The Chief, Office of Carrier Accounts and Statistics, has redelegated to the Chief, Regulations and Reports Division, the authority cited in subsections 6.3E, 6.3F, and 6.3H.

SEC. 6.7 *Functions of the Field Audits Division.* The Field Audits Division conducts field examinations of accounts and records of air carriers to insure adherence to the accounting and reporting requirements; obtains correction by carriers of deficiencies in accounting and reporting practices as revealed by audit; collects data requested by other organizational units of the Board requiring access to carrier records, provides expert advice and assistance on auditing matters; and maintains liaison with auditing personnel in industry and other Federal agencies. The Field Audits Division maintains field offices at 2 Park Avenue, Room 2004, New York 16, New York; 207 Second Avenue, San Mateo, California; and the Pacific Building, Room 1401, 324

Northeast First Avenue, Miami 32, Florida.

SEC. 6.8 *Functions of the Research and Statistics Division.* The Research and Statistics Division conducts comprehensive economic surveys and studies related to the development and regulation of civil air transportation; develops instructions for the conduct of periodic traffic surveys and other research projects and supervises the technical performance of such projects; prepares recurrent reports of operational and financial data; prepares special reports to meet stipulated requirements and maintains liaison with statistical personnel in industry and government.

OFFICE OF THE GENERAL COUNSEL

SEC. 7.1 *Organization.* The Office of the General Counsel consists of the following organizational components: The Immediate Office of the General Counsel, the Rules and Legislation Division, the Litigation and Research Division, the Opinion Writing Division and the Special Counsel Division.

SEC. 7.2 *Functions of the General Counsel.* The General Counsel supervises the Office of the General Counsel which is responsible for advising the Board and its staff on legal aspects (relating to domestic as well as international or foreign law) of the regulatory and accident investigation activities of the Board; representing the Board in negotiations and at conferences where legal matters are involved; and representing the Board on governmental committees and committees of international organizations. In addition, the Office of the General Counsel performs the functions handled by its four Divisions as stated below.

SEC. 7.3 *Delegated authority of the General Counsel.* The Board has delegated to the General Counsel the authority to:

A. In accordance with the provisions of Part 311 of the Board's Procedural Regulations approve, disapprove, or request further information concerning requests for testimony of Board employees, with respect to their participation in the investigation of aircraft accidents.

B. In safety enforcement proceedings the General Counsel is authorized to: approve or disapprove for good cause shown requests for changes in procedural requirements subsequent to the initial decision; grant or deny requests to file additional briefs pursuant to Section 301.47 of the Procedural Regulations; raise on appeal any issue, the resolution of which he deems important to the proper disposition of proceedings under Section 301.46 of the Procedural Regulations; dismiss appeals from initial decisions upon his finding that the appellant has failed to prosecute his appeal as required by §§ 301.46 and 301.47 of the Procedural Regulations, that the appellant has requested dismissal of the appeal, or that the matter has otherwise become moot.

C. Approve or disapprove for good cause shown requests to extend the time for filing comments on proposed new or amended regulations.

D. To grant or deny, by letter, any motion made by an air carrier association pursuant to § 263.3 of the Economic Regulations for leave to participate in a Board proceeding in which no formal hearing is held.

E. To issue revised Certificates of Public Convenience and Necessity and Foreign Air Permits when revisions thereof are made necessary due to a change in name of the carrier or of points specified in the certificate or permit, providing that no issue of substance concerning the operating authority of a carrier is involved.

F. To issue revised Certificates of Public Convenience and Necessity in cases where the Board has previously authorized a certain carrier to serve a particular point in substitution for another carrier, after proper showing has been made that such a transfer of service has or will be completed on a specified date.

SEC. 7.4 *Redelegation of authority.* The General Counsel is authorized to redelegate the authority recited in section 7.3 above.

SEC. 7.5 *Functions of the Rules and Legislation Division.* The Rules and Legislation Division examines legislative proposals of official interest to the Board and prepares comments and reports thereon; drafts proposed legislation; prepares, reviews and interprets regulations and amendments thereto, and insures that the proper procedural steps are followed in the promulgation thereof; and provides legal advice and assistance on matters relating to defense mobilization and internal administration.

SEC. 7.6 *Redelegations of authority to Associate General Counsel, Rules and Legislation.* The General Counsel has redelegated to the Associate General Counsel, Rules and Legislation, the authority stated in subsections 7.3A, 7.3C, and 7.3D.

SEC. 7.7 *Functions of the Litigation and Research Division.* The Litigation and Research Division represents the Board in court actions to which the Board is a party, or is interested, except enforcement litigation handled by the Bureau of Enforcement, and performs legal research and renders legal opinions based thereon on matters relating to the Board's work.

SEC. 7.8 *Functions of the Opinion Writing Division.* In accordance with instructions of the Board, the Opinion Writing Division drafts opinions, orders, certificates and permits in cases where the issues, substantive or procedural, warrant formal expression by the Board; and recommends to the Board appropriate action (a) with respect to motions to review the decision of the Bureau of Enforcement not to institute an enforcement proceeding; (b) on appeals from rules of Examiners; (c) on petitions for reconsideration of previously prepared orders, and (d) with respect to other motions or petitions filed at any time after the Examiner's report is issued.

SEC. 7.9 *Redelegations of authority to the Associate General Counsel, Opinion Writing.* The General Counsel has redelegated to the Associate General Counsel, Opinion Writing, the authority stated in subsections 7.3B, 7.3E, and 7.3F.

SEC. 7.10 *Functions of the Special Counsel Division.* The Special Counsel Division advises the Members, staff, industry representatives and the public on legal and related aspects of the Board's regulatory responsibilities including international civil aviation, air carrier routes, routes structures and operating authorizations, inter-carrier and intercorporate agreements and relationships and anti-trust and labor matters and rates and subsidy matters. The Division also furnishes substantive and technical advice in connection with projects affecting several areas of the Board's legal activities, assists attorneys in other offices and bureaus as required.

BUREAU OF ENFORCEMENT

SEC. 8.1 *Organization.* The Bureau of Enforcement consists of the following organizational components: The Office of the Director, the Legal Division, the Investigation Division and the Service Complaint Section.

SEC. 8.2 *Functions of the Director.* The Director supervises the Bureau of Enforcement which is responsible for the development and execution of a program to obtain compliance with the provisions of the Federal Aviation Act of 1958, and of regulations, orders and other requirements promulgated by the Board.

SEC. 8.3 *Delegated authority of the Director, Bureau of Enforcement.* The Board has delegated to the Director, Bureau of Enforcement, the authority to:

A. Institute an economic enforcement proceeding by docketing a petition for enforcement whenever, in his opinion, there are reasonable grounds to believe that any provision of the Act or any rule, regulation, order, limitation, condition or other requirement established pursuant thereto, has been or is being violated, that efforts to arrive at any adjustment or settlement have failed and that investigation of the alleged violation is in the public interest.

B. Advise the complainant in writing within a reasonable time after a formal complaint has been processed that no enforcement proceeding will be instituted with respect to his complaint and the reasons therefor; such letter shall be deemed an order of the Board dismissing the complaint unless complainant requests the Board to review the ruling.

C. Institute and prosecute in the proper court, as agent of the Board, all necessary proceedings for the enforcement of the provisions of the Act or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof.

D. Determine, in accordance with Board policies, in each case where a relationship has been established illegally prior to Board approval required under sections 408 and 409 of the Act, whether "exceptional circumstances" exist which would justify processing an application for approval of such relationship notwithstanding the existence of the violation.

E. Compromise civil penalties being imposed for violation of the Board's Safety Investigation Regulations, according to established Board policies and standards and when the penalty does not exceed $100.

F. Additional authority of the Director, Bureau of Enforcement, is set forth in Subpart B of this Part 302 of the Code of Federal Regulations.

SEC. 8.4 *Functions of the Legal Division.* The Legal Division negotiates with air carriers and ticket agents to obtain voluntary compliance with the Act or Board regulations. The Legal Division also institutes and prosecutes formal actions before the Board against air carriers and ticket agents alleged to have violated the Act or Board orders and regulations, seeking revocation or suspension of operating authority or entry of orders to cease and desist. This Division also institutes and prosecutes on behalf of the Board, through the Department of Justice and appropriate U.S. Attorneys, civil and criminal actions to obtain compliance with provisions of the Act or regulations of the Board; and represents the Board as amicus curiae or intervenor in litigation between private parties involving possible violations of the Act or regulations thereunder.

SEC. 8.5 *Functions of the Investigation Division.* The Investigation Division conducts investigations of alleged or suspected violations of the economic provisions of the Act and of the Board's Economic Regulations on its own initiative, by request of the Board or other Offices or Bureaus of the Board, or on the basis of complaints received from outside individuals, organizations or air carriers; makes reports on all investigations performed for use in considering or effecting compliance actions; testifies at Board hearings or in court cases; and performs field studies and other investigations as assigned.

SEC. 8.6 *Functions of the Service Complaint Section.* The Service Complaint Section conducts informal investigations of passenger and shipper complaints filed with the Board, seeking to obtain compliance with the economic provisions of the Act or Board regulations by informal means wherever apparent violations are uncovered.

SEC. 9.1 [Reserved]

OFFICE OF THE SECRETARY

SEC. 10.1 *The Secretary.* The Secretary is responsible for recording all formal actions of the Board; for processing, including review as to accuracy, form and content, of all documents evidencing such action; and for authenticating Board records for any official purpose. Pursuant to the Federal Aviation Act of 1958, the Secretary has legal custody of records and documents as specified therein. He is also responsible, through the Public Information Officer for keeping the public and the air transport industry advised of major actions of the Board and for serving as the primary channel through which inquiries from the public, the press or the industry are answered.

SEC. 10.2 *Delegations of authority.* The Secretary is authorized to certify as true and correct copies, transcripts of records required by section 1006(c) of the Federal Aviation Act to be filed with the Appellate Court.

OFFICE OF ADMINISTRATION

SEC. 11.1 *Organization.* The Office of Administration consists of the following organizational components: The Office of the Chief, the Budget and Fiscal Section, the Carrier Payments Section, the Management Analysis Section, the Personnel Section, the General Services Section, the Publications Section and the Library.

SEC. 11.2 *Functions.* The Office of Administration is responsible for providing budget, fiscal, management, personnel and other administrative services to the Board and the staff which include: (a) Developing the Board's annual budget estimates for "Salaries and Expenses" as well as estimates of appropriations for "Payments to Air Carriers" and the justification of these estimates before the Bureau of the Budget and the Appropriations Committees of Congress; (b) developing the Board's annual fiscal plan for utilizing the appropriation for "Salaries and Expenses" and maintaining a system for administrative control of expenditures to conform with such plan and the requirements of law and of regulations; (c) disbursement of, and accounting for, subsidy payments to air carriers which involves among other things, review and processing of the carriers' monthly billings; (d) appraisal of and recommendations concerning the organization of the Board, distribution of functions, operating procedures and management techniques and maintenance of a Manual setting forth current organization, methods and administrative practices; (e) recommending and administering personnel policies and programs and insuring that the same comply with the law and regulations; (f) provision for space, equipment, supplies, communications, duplicating and other resources and facilities.

PERSONS IN "ACTING" CAPACITY

SEC. 12.1 *Authority to designate.* The head of each Office and Bureau has the authority to designate a member of his staff to serve as acting head of the Office or Bureau in his absence or disability or to serve as the acting chief of any organizational component of the Office or Bureau in the absence or disability of the chief of such component.

SEC. 12.2 *Authority of person in acting capacity.* The person serving in an acting capacity may exercise all of the authority including delegated authority, which is vested in the officer for whom he serves.

GENERAL DELEGATIONS OF AUTHORITY

SEC. 13.1 *Special agents and auditors.* Special agents and auditors are authorized to inspect and examine lands, buildings, equipment, accounts, records and memoranda of air carriers and to make notes and copies thereof. The terms "special agent" and "Auditor" are respectively construed to mean (1) any employee of the Bureau of Enforcement, any employee of the Bureau of Safety and any other employee of the Board specifically designated by it or the Secretary of the Board; and (2) any employee of the Audits Division, Office of Carrier Accounts and Statistics.

SEC. 13.2 *Officers and employees.* All officers and employees of the Board are authorized to request such information from, or make such contact with, the public or agencies of Government as may be necessary to the proper discharge of assigned duties.

OPTIONS OF APPLICANT

SEC. 14.1 *Options of applicant where application is denied under delegated authority.* Whenever an application is denied by a staff official acting pursuant to a delegation of authority from the Board, the applicant has the following options: He may (a) withdraw his request, (b) modify and resubmit the request, (c) ask that the request be referred to the Board or (d) request a hearing before an examiner, as appropriate, for the particular case.

Effective: August 1, 1960.

[SEAL] JOHN B. RUSSELL,
Chief, Office of Administration.

[F.R. Doc. 60-11674; Filed, Dec. 15, 1960; 8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP61-53]

COLORADO INTERSTATE GAS CO.

Notice of Application and Date of Hearing

DECEMBER 8, 1960.

Take notice that Colorado Interstate Gas Company (Applicant), a Delaware corporation with a principal place of business in the Colorado Springs National Bank Building, Colorado Springs, Colorado, filed an application on August 22, and a supplement thereto on October 3, 1960, in Docket No. CP61-53, pursuant to section 7 of the Natural Gas Act for authorization to (1) construct and operate two new meter stations in or near the Southeast Quarter of the Southeast Quarter of Section 17, Township 19 South, Range 68 West, Fremont County, Colorado; (2) abandon and transfer by sale to Ideal Cement Company (Ideal) a segment of lateral (Portland lateral and Portland lateral extension) consisting of 0.463 miles of 8-inch pipeline and the Ideal Cement West Plant meter station; (3) to abandon and transfer by sale to Plateau Natural Gas Company (Plateau) a segment of lateral (Fibreboard Paper Products lateral) consisting of 1.98 miles of 4-inch pipeline, the Fibreboard Paper Products meter station and the Portland Village meter station; and (4) abandon and retire an existing meter station (Ideal Cement Plant station) and three short segments of lateral, simultaneously with the transfer of facilities to Ideal and Plateau.

The foregoing is more fully described in the application and supplement on file with the Commission and open to public inspection.

The application states Applicant now makes three sales of natural gas in the vicinity of Portland from its 8-inch Portland lateral, two direct interruptible sales to the Ideal Cement Company plant and Fibreboard Paper Products Corporation, and a third to Plateau Natural Gas Company for resale in Portland.

Applicant states it operates meter stations at the end of two branch lines off the 8-inch lateral for deliveries to Ideal Cement at two points; it also operates a separate meter station on one of those branch lines for service to Fibreboard and another meter station on the same line for service to Plateau. It proposes to simplify its operations in this area by transferring segments of the branch lines to Ideal and Plateau, letting Plateau serve Fibreboard and consolidating its metering to Ideal and Plateau in one location at the eastern terminus of the lines to be transferred. In connection with the proposal, Plateau will build a new 4-inch branch line about 0.275 miles long from Applicant's new meter station so that it will be able to handle its gas for distribution in Portland and for sale to its new customer, Fibreboard, without commingling with Ideal's gas. Ideal will operate the two existing branch lines which would extend to the two existing Ideal meter stations, one of which will also be transferred to Ideal and the other retired. That portion of the branch line now serving Fibreboard will be disconnected and attached to Plateau's new 4-inch line.

Applicant states facilities to be sold to Plateau have an original cost of $35,406, accrued depreciation of $29,755 and a net book value of $5,651, which Plateau proposes to pay to Applicant. Those to be transferred to Ideal Cement have an original cost value of $14,599, estimated accrued depreciation of $5,973, and a net book value of $8,626. The facilities are to be transferred to Ideal at a nominal value of "one dollar ($1.00) and other good and valuable consideration," with the estimated book loss of $8,626 to be charged to reserve for depreciation. The facilities to be retired have an original cost of $3,412, accrued depreciation of $3,174, and a net book value of $238.

The two metering stations to be constructed are estimated to cost $30,800 which will be financed from current funds on hand.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 29, 1960, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street, NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules and practice and procedure (18 CFR 1.8 or 1.10) on or before December 27, 1960. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11683; Filed, Dec. 15, 1960; 8:48 a.m.]

[Docket Nos. RI61-265—RI61-269]

MONSANTO CHEMICAL CO. ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates [1]

DECEMBER 8, 1960.

Monsanto Chemical Company, Docket No. RI61-265; Monsanto Chemical Company (Operator), et al., Docket No. RI61-266; Tennessee-Texan Oil Company (Operator), et al., Docket No. RI61-267; Socony Mobil Oil Company, Inc., Docket No. RI61-268; United Carbon Company, Docket No. RI61-269.

The above-named respondents have tendered for filing proposed changes in presently-effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date [1] unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in Docket Nos.
RI61-265	Monsanto Chemical Co., c/o Lion Oil Co., 1401 South Coast Building, Houston 2, Tex.	1	11	Texas Eastern Trans. Corp. (Bryceland Field, Bienville Parish, La.).	$882	11-10-60	12-11-60	5-11-61	[3] 16.0066	16.211	G-19238
RI61-266	Monsanto Chemical Co. (Operator), et al.	20	7	Texas Eastern Trans. Corp. (Logansport Field, De Soto Parish, La.).	859	11-10-60	12-11-60	5-11-61	[3] 16.0058	16.211	G-19239
RI61-267	Tennessee-Texan Oil Co. (Operator), et al., P.O. Box 2511, Houston, Tex.	6	7	Texas Eastern Trans. Corp. (W. Rockport Field, Aransas County, Tex.).	3,305	11- 8-60	12- 9-60	5- 9-61	{ [3] 14.8 / 14.2	{ 15.0 / [4] 15.0	G-19927
RI61-268	Socony Mobil Oil Co., Inc., P.O. Box 900, Dallas 21, Tex.	181	2	Natural Gas P/L Co. of America (Alvord Field, Wise County, Tex.).	694	11-14-60	12-27-60	5-27-61	[3] 13.25	14.25	----------
RI61-269	United Carbon Co., P.O. Box 1503, Houston 1, Tex.	12	18	United Fuel Gas Co. (Eastern Kentucky Fields, various counties, Kentucky).	81,915	11-14-60	12-15-60	5-15-61	[5] 26.0	27.5	G-9672
	----------	12	19	----------	----------	11-14-60	----------	----------	----------	----------	----------

[1] The proposed effective dates are the first day after the required thirty days' notice or, if later, the date requested by respondent.
[2] The pressure base is 15.025 psia.
[3] The pressure base is 14.65 psia.
[4] The pressure base is 15.325 psia.
[5] Four-step periodic increase for J. Ray McDermott & Co., Inc. interest only.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon the dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 23, 1961.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11684; Filed, Dec. 15, 1960; 8:48 a.m.]

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Area 301]

OREGON

Declaration of Disaster Area

Whereas, it has been reported that during the month of November 1960, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Oregon;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Offices below indicated from persons or firms whose property situated in the following County (including any areas adjacent to said County) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

County: Clackamas (floods occurring on or about November 23-24, 1960).
Offices: Small Business Administration Regional Office, Smith Tower, Room 1206, 506 Second Avenue, Seattle 4, Wash. Small Business Administration Branch Office, 600 Lincoln Building, 208 Southwest Fifth Avenue, Portland 4, Oreg.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to June 30, 1961.

Dated: December 5, 1960.

PHILIP MCCALLUM,
Administrator.

[F.R. Doc. 60-11686; Filed, Dec. 15, 1960; 8:48 a.m.]

[Declaration of Disaster Area 302]

WISCONSIN

Declaration of Disaster Area

Whereas, it has been reported that during the month of November 1960, because of the effects of certain disasters, damage resulted to residences and business property located in certain areas in the State of Wisconsin;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b) of the Small Business Act may be received and considered by the Office below indicated from persons or firms whose property situated in the following County (including any areas adjacent to said County) suffered damage or destruction as a result of the catastrophe hereinafter referred to:

County: Bayfield (high wind occurring on or about November 28, 29, and 30, 1960).
Office: Small Business Administration Regional Office, Lewis Building, 603 Second Avenue, South, Minneapolis 2, Minn.

2. No special field offices will be established at this time.

3. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to June 30, 1961.

Dated: December 2, 1960.

PHILIP MCCALLUM,
Administrator.

[F.R. Doc. 60-11687; Filed, Dec. 15, 1960; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 12, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36772: *Lumber from Arkansas points to central territory.* Filed by Southwestern Freight Bureau, Agent (No. B-7936), for interested rail carriers. Rates on cypress and yellow pine lumber, in carloads, from specified points in Arkansas, to points in central territory.

Grounds for relief: Grouping and operation through higher-rated intermediate points.

Tariff: Supplement 123 to Southwestern Freight Bureau tariff I.C.C. 4061.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11669; Filed, Dec. 15, 1960; 8:46 a.m.]

TARIFF COMMISSION

[337-L-27]

TRANSFER VALVES

Notice of Extension of Time for Filing Information in Writing

On November 18, 1960, the United States Tariff Commission published a notice that it had received a complaint under section 337 of the Tariff Act of 1930, filed by the Modern Faucet Manufacturing Company of Los Angeles, California, alleging unfair methods of competition and unfair acts in the importation and domestic sale of certain transfer valves (25 F.R. 11018). Interested persons were given until December 15, 1960 to file with the Commission information in writing relevant and material to the subject matter of a preliminary investigation into the allegations of the complaint. The Commission has extended the time for filing such written information until the close of business January 15, 1961.

Issued: December 13, 1960.

By order of the Commission.

DONN N. BENT,
Secretary.

[F.R. Doc. 60-11672; Filed, Dec. 15, 1960; 8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

PROCLAMATIONS:
Oct. 3, 1905 — 12915
Dec. 7, 1907 — 12915
Feb. 10, 1909 — 12915
Dec. 10, 1910 — 12915
Oct. 18, 1912 — 12915
2935 — 12501
3382 — 12587

EXECUTIVE ORDERS:
Oct. 20, 1916 — 12887
June 8, 1926 — 12887
3797–A — 12412, 12599
6260 — 12281
9041 — 12429
10696 — 12281
10697 — 12429
10698 — 12429
10699 — 12729

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 — 12501
Letter, Nov. 16, 1960 — 12501

5 CFR

2 — 12285
6 — 12393, 12547, 12588, 12733, 12869
30 — 12733

6 CFR

421 — 12282, 12283

7 CFR

33 — 12430
319 — 12809
718 — 12588
722 — 12393, 12403, 12809, 12812
730 — 12503
833 — 12650
845 — 12285
871 — 12547
903 — 12504
905—908 — 12504
911—913 — 12504
914 — 12405, 12650, 12812
916—919 — 12504
921 — 12504
923—925 — 12504
928—932 — 12504
933 — 12405–12407, 12504
935 — 12504
941–942 — 12504
943 — 12504, 12813
944 — 12504
946—949 — 12504
952 — 12504
953 — 12407, 12430, 12651
954 — 12504
956 — 12504
963 — 12504
965—968 — 12504
971—972 — 12504
974—978 — 12504
980 — 12504
982 — 12504
985—988 — 12504
989 — 12813
991 — 12504
994—995 — 12504
998 — 12504
1000 — 12504
1002 — 12504
1004—1005 — 12504

7 CFR—Continued

Page

1008—1009 — 12504
1011—1014 — 12504
1016 — 12504
1018 — 12504, 12588
1023—1024 — 12504
1031 — 12505, 12651, 12652
1032 — 12828

PROPOSED RULES:
51 — 12298, 12299
812 — 12712
901 — 12742
923 — 12558
936 — 12465
938 — 12752
949 — 12606
965 — 12466
989 — 12476
1012 — 12558
1032 — 12712, 12752
1033 — 12606

8 CFR

211 — 12290

9 CFR

72 — 12548
94 — 12831

PROPOSED RULES:
83 — 12571

10 CFR

30 — 12730
70 — 12730

PROPOSED RULES:
25 — 12753
115 — 12367

12 CFR

PROPOSED RULES:
206 — 12479

13 CFR

PROPOSED RULES:
107 — 12754

14 CFR

41 — 12908
49 — 12352
225 — 12589
243 — 12908
293 — 12908
298 — 12909
300 — 12430
302 — 12432
414 — 12589
506 — 12505
507 — 12352, 12433, 12549, 12829
514 — 12433
600 — 12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734
601 — 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830
602 — 12288, 12552, 12678, 12831
608 — 12678, 12679, 12734, 12830
609 — 12353, 12735
612 — 12410
1501 — 12434

PROPOSED RULES:
41 — 12299
43 — 12524
221 — 12913
302 — 12477
507 — 12477, 12478, 12571, 12844

14 CFR—Continued

Page

PROPOSED RULES—Continued
600 — 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914
601 — 12328, 12339, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914
608 — 12479, 12846

15 CFR

203 — 12590
371 — 12734

16 CFR

13 — 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884

17 CFR

230 — 12912

18 CFR

104 — 12763
154 — 12653

19 CFR

PROPOSED RULES:
8 — 12681

21 CFR

1 — 12592
8 — 12288
120 — 12288, 12506
121 — 12412, 12595, 12731, 12831
130 — 12592
146 — 12506, 12596, 12732
146c — 12289

PROPOSED RULES:
27 — 12372
120 — 12374, 12571
121 — 12299, 12477, 12839, 12840

22 CFR

46 — 12289

25 CFR

171 — 12408

PROPOSED RULES:
52 — 12518
176 — 12299

26 (1939) CFR

16 — 12442
17 — 12443
29 — 12339
39 — 12339
40 — 12340

26 (1954) CFR

1 — 12340, 12345, 12654
18 — 12340
19 — 12654
48 — 12669
170 — 12732

PROPOSED RULES:
1 — 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898
25 — 12707
31 — 12835
48 — 12362
170 — 12710
197 — 12362
250 — 12511

28 CFR

21 — 12290

31 CFR

Page

54 — 12345

32 CFR

505 — 12869
570 — 12869
750 — 12870
753 — 12879
805 — 12291
1008 — 12444
1009 — 12446
1010 — 12449
1012 — 12449
1013 — 12449
1016 — 12450, 12456
1030 — 12451
1052 — 12456
1053 — 12456
1054 — 12458
1055 — 12462
1057 — 12462
1059 — 12462
1619 — 12291

33 CFR

202 — 12393
203 — 12740
207 — 12740

38 CFR

3 — 12463

39 CFR

27 — 12348
168 — 12884

41 CFR

3–75 — 12502, 12596
5–1 — 12553
50–201 — 12553
50–202 — 12553

PROPOSED RULES:
50–202 — 12363, 12522

42 CFR

1 — 12292

43 CFR

76 — 12597
181 — 12679
192 — 12352
257 — 12679

PROPOSED RULES:
259 — 12606

PUBLIC LAND ORDERS:
82 — 12412, 12599

43 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued
797 — 12413
1124 — 12885
1253 — 12481
1621 — 12599
1965 — 12599
2209 — 12412
2210 — 12413
2211 — 12413
2212 — 12597
2213 — 12597
2214 — 12598
2215 — 12599
2216 — 12599
2217 — 12885
2218 — 12885
2219 — 12886
2220 — 12887
2221 — 12887
2222 — 12887

45 CFR

601—620 — 12600

PROPOSED RULES:
301 — 12840
306 — 12840
307 — 12841
308 — 12842
309 — 12843
311 — 12844

46 CFR

24 — 12554
30 — 12554
56 — 12554
70 — 12555
90 — 12555
110 — 12555
111 — 12555
136 — 12555
171 — 12555
308 — 12348

47 CFR

1 — 12358, 12600, 12602, 12603, 12605
4 — 12680
5 — 12359
9 — 12359
10 — 12359
11 — 12359
12 — 12358
16 — 12359
19 — 12359
21 — 12359, 12603, 12605

47 CFR—Continued

Page

PROPOSED RULES:
1 — 12624, 12898
3 — 12371, 12624, 12626, 12627, 12899

49 CFR

91 — 12506
122 — 12506
171 — 12888

PROPOSED RULES:
71–78 — 12420
197 — 12420

50 CFR

32 — 12555, 12888
33 — 12507, 12556, 12557, 12888

PROPOSED RULES:
14 — 12741

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953 — $6.75
1954 — 7.25
1955 — 6.75
1956 — 7.25
1957 — 6.75
1958 — 8.25
1959 — 7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Part II begins on page 12961

Pages 12931–12984

PART I

FEDERAL REGISTER

VOLUME 25 NUMBER 245

Washington, Saturday, December 17, 1960

THE UNIVERSITY OF MICHIGAN
DEC 21 1960
MAIN READING ROOM

Contents

Agricultural Marketing Service

RULES AND REGULATIONS:
Grapefruit grown in Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of White Water, California; shipments limitation ---------- 12949
Handling limitations:
Lemons grown in California and Arizona ---------- 12948
Navel oranges grown in Arizona and designated part of California ---------- 12941
Milk in San Antonio, Texas, marketing area; order amending order ---------- 12941
United States standards for lemons; fairly uniform in size ---------- 12941

Agriculture Department

See Agricultural Marketing Service.

Civil Aeronautics Board

NOTICES:
McDonnell Aircraft Corp.; notice of postponement of prehearing conference ---------- 12957
RULES AND REGULATIONS:
Rules of practice in economic proceedings; formal intervention ---------- 12933

Federal Aviation Agency

PROPOSED RULE MAKING:
Control zone; alteration ---------- 12952
Navigable airspace of obstructions to air navigation; construction or alteration; criteria, procedures and rules for determination of effect upon use ---------- 12952
RULES AND REGULATIONS:
Control zone; modification ---------- 12934
Federal airway, associated control areas and designated reporting points; modification ---------- 12934
Modification of Federal airways and associated control areas, and revocation of reporting point ---------- 12933
Restricted area; modification ---------- 12934
Standard instrument approach procedures; miscellaneous amendments ---------- 12935

Federal Communications Commission

NOTICES:
Various intruder alarm devices; notice of inquiry ---------- 12956
Hearings, etc.:
Abilene Radio and Television Co. et al ---------- 12953
Alert ---------- 12953
Audiocasting of Texas, Inc., and Jackson, Horace K., Sr ---------- 12953
Brandywine Broadcasting Corp. et al ---------- 12954
Brennan Broadcasting Co ---------- 12954
Hennepin Broadcasting Associates et al ---------- 12953
KOMY, Inc., et al ---------- 12955
Mandan Radio Association ---------- 12955
Mid-Kansas, Inc ---------- 12955
Queen City Broadcasting Co. and Val Verde Broadcasting Co ---------- 12955
PROPOSED RULE MAKING:
Charlotte Amalie, St. Thomas, Virgin Islands; availability of frequency for assignment ---------- 12951

Federal Power Commission

RULES AND REGULATIONS:
Uniform system of accounts for Class D public utilities and licensees (*see* Part II of this issue) ---------- 12961

Interior Department

See Land Management Bureau.

Interstate Commerce Commission

NOTICES:
Fourth section applications for relief ---------- 12957

Labor Department

See Wage and Hour Division.

Land Management Bureau

RULES AND REGULATIONS:
Alaska; State grants; correction ---------- 12949

Wage and Hour Division

PROPOSED RULE MAKING:
Various industries in Puerto Rico; appointment to investigate conditions and recommend minimum wages; notice of hearing ---------- 12960

(Continued on next page)

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

7 CFR

51 12941
914 12941
949 12941
953 12948
955 12949

14 CFR

302 12933
600 (2 documents) 12933, 12934
601 (3 documents) 12933, 12934
608 12934
609 12935

PROPOSED RULES:

601 12952
626 12952

18 CFR

105 (see Part II of this issue) 12961

29 CFR

PROPOSED RULES:

604 12950
606 12950
713 12950

43 CFR

76 12949

47 CFR

PROPOSED RULES:

7 12951
8 12951

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953	$6.75
1954	7.25
1955	6.75
1956	7.25
1957	6.75
1958	8.25
1959	7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 14—AERONAUTICS AND SPACE

Chapter II—Civil Aeronautics Board

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. No. PR-45]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Formal Intervention

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of December 1960.

The Board, on November 15, 1960, delegated to the Chief Examiner, with authority to redelegate to Examiners, authority to grant or deny intervention in all hearing proceedings, such actions to be by "notice" rather than by Board order. Action under this delegated authority is subject to modification or reversal by the Board, on its own motion or upon petition or application by an air carrier or other person affected by, or having a substantial interest in, such action.

The Procedural Regulation dealing with formal intervention, § 302.15 of Part 302, contains language which could be interpreted to signify that petitions for intervention are always disposed of by Board order. It therefore appears advisable to amend said section to avoid this appearance of inconsistency.

Since this amendment is not a substantive rule but one of agency procedure, notice and public procedure hereon are unnecessary, and the amendment may be made effective upon less than 30 days' notice.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends § 302.15 of Part 302 of the Procedural Regulations (14 CFR 302.15) effective December 17, 1960 in the following manner:

1. By amending the introductory phrase of paragraph (b) as follows:

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered:

* * * * *

2. By amending subparagraph (4) of paragraph (c) to read as follows:

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(Sec. 204(a), 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply sec. 1001, 72 Stat. 788; 49 U.S.C. 1481)

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER, *Secretary.*

[F.R. Doc. 60-11705; Filed, Dec. 16, 1960; 8:47 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-NY-79]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Federal Airways and Associated Control Areas, and Revocation of Reporting Point

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8830) stating that the Federal Aviation Agency proposed to modify VOR Federal airways Nos. 3, 4, 223 and 265. In addition, the Fairland, Md., intersection would be revoked as a domestic VOR reporting point.

Although not mentioned in the Notice, the modification of Victor 3 and Victor 4 requires amendments to the captions of §§ 601.6003 and 601.6004 which designate the control areas associated with these airways. Such action is taken herein.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

§ 600.6003 [Amendment]

1. In § 600.6003 (14 CFR 600.6003; 25 F.R. 2011, 2662, 5691, 3814, 8861, 10342) the following changes are made:

(a) In the caption "*(Key West, Fla., to Presque Isle, Maine)*" is deleted and "*(Key West, Fla., to McLean, Va., and Riverdale, Md., to Presque Isle, Maine)*" is substituted therefor.

(b) In the text "point of INT of the Herndon, Va., VOR 145° and the Washington TVOR 245° radials; to the Washington, D.C., TVOR." is deleted and "to the INT of the Brooke VOR 012° True and the Herndon, Va., VOR 118° True radials." is substituted therefor.

§ 600.6004 [Amendment]

2. In § 600.6004 (14 CFR 600.6004; 25 F.R. 2009, 2883, 5329, 8483, 3755, 4857) the following changes are made:

(a) In the caption "*(Seattle, Wash., to Herndon, Va.)*" is deleted and "*(Seattle, Wash., to McLean, Va.)*" is substituted therefor.

(b) In the text "to the Herndon, Va., VOR." is deleted and "Herndon, Va., VOR; to the INT of the Herndon VOR 118° True and the Brooke, Va., VOR 012° True radials." is substituted therefor.

3. Section 600.6223 (14 CFR 600.6223) is amended to read:

§ 600.6223 VOR Federal airway No. 223 (Doncaster, Md., to Harrisburg, Pa.).

From the INT of the Herndon, Va., VOR 143° True and the Washington, D.C., VOR 189° True radials via the Herndon VOR; to the Harrisburg, Pa., VOR.

§ 600.6265 [Amendment]

4. In § 600.6265 (14 CFR 600.6265) the following changes are made:

(a) In the caption "*(Washington, D.C., to Dunkirk, N.Y.)*" is deleted and "*(Linden, Va., to Dunkirk, N.Y.)*" is substituted therefor.

(b) In the text "From the Riverdale, Md., nondirectional radio beacon via the Westminster, Md., omnirange station;" is deleted and "From the Linden, Va., VOR via the Herndon, Va., VOR; INT of the Herndon VOR 090° True and the Westminster, Md., VOR 189° True radials; Westminster VOR;" is substituted therefor.

5. Section 601.6003 is amended to read:

§ 601.6003 VOR Federal airway No. 3 control areas (Key West, Fla., to McLean, Va., and Riverdale, Md., to Presque Isle, Maine).

All of VOR Federal airway No. 3 including east alternates but excluding the airspace between the main airway and its E alternate from the Florence, S.C., VOR to the Raleigh, N.C., VOR.

§ 601.6004 [Amendment]

6. In the caption of § 601.6004 (14 CFR 601.6004) "*(Seattle, Wash., to Herndon, Va.)*" is deleted and "*(Seattle, Wash., to McLean, Va.)*" is substituted therefor.

7. Section 601.6223 (14 CFR 601.6223) is amended to read:

§ 601.6223 VOR Federal airway No. 223 control areas (Doncaster, Md., to Harrisburg, Pa.).

All of VOR Federal airway No. 223.

8. Section 601.6265 (14 CFR 601.6265) is amended to read:

§ 601.6265 VOR Federal airway No. 265 control areas (Linden, Va., to Dunkirk, N.Y.).

All of VOR Federal airway No. 265.

§ 601.7001 [Amendment]

9. In the text of § 601.7001 (14 CFR 601.7001) "Fairland Intersection: The intersection of the Herndon, Va., omnirange 084° True and the Washington, D.C., terminal omnirange 016° True radials." is deleted.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 9, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11680; Filed, Dec. 16, 1960; 8:45 a.m.]

[Airspace Docket No. 60-KC-80]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Federal Airway, Associated Control Areas and Designated Reporting Points

On October 8, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9686) stating that the Federal Aviation Agency proposed to revoke the segment of Red Federal airway No. 8, its associated control areas and reporting points, between Rushville, Ind., and South Solon, Ohio.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. Section 600.208 (14 CFR 600.208) is amended to read:

§ 600.208 Red Federal airway No. 8 (Lock Haven, Pa., to Crystal Lake, Pa.).

From the INT of the SW course of the Elmira, N.Y., RR and the W course of the Williamsport, Pa., RR via the Williamsport RR to the Crystal Lake, Pa., RBN.

§ 601.208 [Amendment]

2. In the caption of § 601.208 (14 CFR 601.208) *"Rushville, Ind., to South Solon, Ohio, and"* is deleted.

§ 601.4208 [Amendment]

3. In the caption of § 601.4208 (14 CFR 601.4208) *"Rushville, Ind., to South Solon, Ohio, and"* is deleted.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 9, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11679; Filed, Dec. 16, 1960; 8:45 a.m.]

[Airspace Docket No. 60-KC-58]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 23, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9152) stating that the Federal Aviation Agency proposed to modify the Pellston, Mich., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2060 (14 CFR 601.2060) is amended to read:

§ 601.2060 Pellston, Mich., control zone.

Within a 5-mile radius of the Emmet County Airport, Pellston, Mich. (latitude 45°34'40'' N., longitude 84°47'40'' W.), within 2 miles either side of the 132° True bearing from the Pellston RBN extending from the 5-mile radius zone to 12 miles SE of the RBN, and within 2 miles either side of the 240° True radial of the Pellston VOR extending from the 5-mile radius zone to the VOR.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 9, 1960.

GEORGE S. CASSADY,
Brig. Gen., U.S. Air Force, Acting Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11679; Filed, Dec. 16, 1960; 8:45 a.m.]

[Airspace Docket No. 59-NY-57]

PART 608—RESTRICTED AREAS

Modification of Restricted Area

The purpose of this amendment to § 608.25 of the regulations of the Administrator is to modify the Camp Breckinridge, Ky., Restricted Area (R-51) (Nashville Chart).

The presently designated altitudes and time of designation of Restricted Area (R-51) are from the surface to 20,000 feet MSL, continuously, during the period April 1 through September 30, annually. Restricted Area (R-51) is an area of approximately 76 square miles, designated for artillery, mortar and small arms firing, and its controlling agency is the 101st Airborne Division and Camp Breckinridge, Ky.

The Department of the Army has concurred that a reduction of approximately 38 square miles in the size of R-51 can be accomplished without adversely affecting the Army mission and that the time of use can be changed to June 1 through August 31 annually. Additionally, the controlling agency is changed to the Commanding General, U.S. Army Armor Center, Ft. Knox, Ky., to indicate the command presently responsible for utilization of the airspace within R-51. The Federal Aviation Agency is taking action herein to reflect these changes.

Since this amendment reduces a burden on the public, compliance with the notice, public procedure and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective immediately.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 8005), the following action is taken:

In § 608.25 *Kentucky*, the Camp Breckinridge, Ky., Restricted Area (R-51) (Nashville Chart) (23 F.R. 8581, 9773) is amended to read:

Camp Breckinridge, Ky. (R-51) (Nashville Chart):

Description by geographical coordinates. From latitude 37°39'20'' N., longitude 87°-52'20'' W., northeast to latitude 37°40'20 N., longitude 87°51'10'' W., east to latitude 37°40'20'' N., longitude 87°49'40'' W., north to latitude 37°42'20'' N., longitude 87°49'40'' W., northeast to latitude 37°42'45'' N., longitude 87°47'30'' W., southeast to latitude 37°-38'35'' N., longitude 87°42'00'' W., south to latitude 37°36'40'' N., longitude 87°42'00'' W., northwest to latitude 37°37''30'' N., longitude 87°45'00'' W., northwest to point of beginning.

Designated altitudes. Surface to 20,000 feet MSL.

Time of designation. June 1 through August 31 annually.

Controlling agency. Commanding General, U.S. Army Armor Center, Fort Knox, Ky.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 9, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11682; Filed, Dec. 16, 1960; 8:45 a.m.]

[Reg. Docket No. 589; Amdt. 196]

PART 609—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

The amendments to standard instrument approach procedures contained herein are being adopted to become effective when indicated in order to promote safety. The revised procedures supersede the existing procedures of the same classification now in effect for the airports specified therein. For the convenience of the users, the revised procedures specify the complete procedure and indicate the changes to the existing procedures.

As a situation exists which demands immediate action in the interests of safety in air commerce, I find that compliance with the notice, procedure and effective date provisions of section 4 of the Administrative Procedure Act would be contrary to the public interest and is therefore not required.

Pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 609 is amended as follows:

1. The low or medium frequency range procedures prescribed in § 609.100(a) are amended to read in part:

LFR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
PROCEDURE CANCELLED, EFFECTIVE 24 DECEMBER 1960.							

City, Annette; State, Alaska; Airport Name, Annette Airport; Elev., 119'; Fac. Class., SBRAZ; Ident., ANN; Procedure No. 1, Amdt. 8; Eff. Date, 29 Oct. 55; Sup. Amdt. No. 7; Dated, 19 May 55

2. The automatic direction finding procedures prescribed in § 609.100(b) are amended to read in part:

ADF STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
					2-engine or less		More than 2-engine, more than 65 knots
From—	To—	Course and distance	Minimum altitude (feet)	Condition	65 knots or less	More than 65 knots	
CLT VOR	LOM	Direct	2100	T-dn	200-1	200-1	200-½
FT. Mill VOR	Clover Int*	Direct	1900	C-dn	400-1	400-1	400-1½
Clover Int*	LOM (Final)	Direct	1700	S-dn-5	400-1	400-1	400-1
York Int	Clover Int*	Direct	1900	A-dn	800-2	800-2	800-2
Bradley Int	LOM	Direct	2900				
Mt. Holly Int	LOM	Direct	2300				
Weddington Int	LOM	Direct	2100				

Procedure turn N side of 8W crs, 230° Outbnd, 050° Inbnd, 1900' within 10 miles.
Minimum altitude over LOM inbnd final, 1700'.
Crs and distance, facility to airport, 050°—4.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.6 mi of LOM, climb to 2900' on crs of 050° from LOM within 15 miles or, when directed by ATC, turn left, climb to 2400' on FML-VOR R-007 to Mt. Holly Int or turn right, climb to 2100' on R-007 to FML-VOR.
Major Changes: Deletes transitions from Charlotte LFR, Int N crs Charlotte LFR and 8W crs ILS, Union Int, and Waco Int.
*Clover Int: Int R-329 FML-VOR and Brng 050° to LOM.

City, Charlotte; State, N.C.; Airport Name, Douglas; Elev., 748'; Fac. Class., LOM; Ident., CL; Procedure No. 1, Amdt. 16; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 15; Dated 18 June 60

Wright-Patterson LFR	LOM	Direct	2500	T-dn	200-1	200-1	200-½
W crs Columbus LFR and brg. 236° to LOM.	LOM	Direct	2200	C-dn	400-1	400-1	400-1¼
Liberty Int	LOM	Direct	3000	S-dn-6	400-1	400-1	400-1
West Alexandria Int*	LOM (Final)	Direct	2200	A-dn	800-2	800-2	800-2
Dayton VOR	LOM	Direct	2200				

Procedure turn West side of SW crs, 236° Outbnd, 056° Inbnd, 2200' within 10 miles.
Minimum altitude over facility on final approach crs, 1700'.
Crs and distance, facility to airport, 056°—3.7 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.7 miles after passing LOM, climb to 2200' on 360° crs from Tipp City RBn within 10 miles.
*Int W crs Wright-Patterson LFR and 056° brng to LOM.

City, Dayton; State, Ohio; Airport Name, Dayton Municipal; Elev., 1008'; Fac. Class., LOM; Ident., DA; Procedure No. 1, Amdt. 15; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 14; Dated, 7 May 60

RST-VOR	RS RBn	Direct	2800	T-dn	200-1	200-1	200-½
ODI-VOR	Bell Int*	Direct	2600	C-dn	400-1	400-1	400-1½
Bell Int*	RS RBn (Final)	Direct	2500	S-dn-31	400-1	400-1	400-1
Byron Int**	RS-RBn	Direct	2800	A-dn	800-2	800-2	800-2

Procedure turn North side crs, 127° Outbnd, 307° Inbnd, 2500' within 10 mi.
Crs and distance, facility to airport, 307°—4.27 mi.
Minimum altitude over facility on final approach crs, 2500'.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.27 miles, climb to 2800' on 307° crs from RBn within 20 mi or, when directed by ATC, make left climbing turn to 2500', proceed direct to RBn.
*Bell Int: Int RST-VOR R-076 and 307° brng to RBn.
**Byron Int: Int RST-VOR R-351 and 126° brng to RBn.

City, Rochester; State, Minn.; Airport Name, Rochester Municipal; Elev., 1310'; Fac. Class., MHW; Ident., RS; Procedure No. 1, Amdt. Orig.; Eff. Date, 24 Dec. 60

ADF STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
STL-VOR	LOM	Direct	1800	T-dn	300-1	300-1	200-½
SL-LFR	LOM	Direct	1800	C-dn	500-1	500-1	500-1½
Jerseyville Int	LOM	Direct	2000	S-dn-24	400-1	400-1	400-1
Corn Int	LOM	Direct	1800	A-dn	800-2	800-2	800-2
Lake "H"	LOM	Direct	2000				
Academy Int	LOM	Direct	1900				
Mitchell Int	LOM	Direct	1800				
Maryland Hgts VOR	LOM	Direct	2000				
Prairie Int	LOM	Direct	2000				

Radar transitions to final approach course authorized. Information for radar terminal area transition altitudes on St. Louis radar procedure.
Procedure turn North side of crs, 058° Outbnd, 238° Inbnd, 1900′ within 10 miles of LOM.
Minimum altitude over facility on final approach crs, 1300′.
Crs and distance, facility to airport, 238°—4.1.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.1 miles after passing LOM, climb to 2000′ on crs of 238° to Lake "H" or, as directed by ATC, make right (North) turn, climb to 2000′ direct to STL-VOR.
Major Change: Deletes No. 2 missed approach procedure.

City, St. Louis; State, Mo.; Airport Name, Lambert-St. Louis Municipal; Elev., 571′; Fac. Class., LOM; Ident., ST; Procedure No. 1, Amdt. 18; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 17; Dated, 30 Jan. 60

SL-LFR	Lake RBn	Direct	2000	T-dn	300-1	300-1	200-½
STL-VOR	Lake RBn	Direct	2000	C-dn	500-1	500-1	500-1½
ST-LOM	Lake RBn	Direct	2000	S-dn-6	500-1	500-1	500-1
MTS-VOR	Lake RBn	Direct	1800	A-dn	800-2	800-2	800-2

Radar transitions to final approach course authorized. Radar terminal area transitions altitudes on radar procedure.
Procedure turn South side of crs, 238° Outbnd, 058° Inbnd, 2000′ within 10 miles of Lake "H".
Minimum altitude over facility on final approach crs, 1500′.
Crs and distance, facility to airport, 058°—3.8.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.8 miles after passing Lake "H", climb to 1800′ on crs of 058° to LOM or, when directed by ATC, make left (North) turn, climb to 2000′ direct to STL-VOR.
CAUTION: Bright mercury vapor lights on Interstate Highway 70 approximately 3000′ from approach end of Runway 6 may be mistaken for runway when breaking clear of overcast from Lake approach at night.
Major Change: Deletes transition from Barracks Int.

City, St. Louis; State, Mo.; Airport Name, Lambert-St. Louis Municipal; Elev., 571′; Fac. Class., HW; Ident., LAQ; Procedure No. 2, Amdt. 5; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 4; Dated, 26 Mar. 60

3. The very high frequency omnirange (VOR) procedures prescribed in § 609.100(c) are amended to read in part:

VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Newark LOM	COL-VOR	Direct	1500	T-dn	300-1		
Int SW crs LGA-LFR and R-360 COL-VOR.	COL-VOR (Final)	Direct	1400	C-d	500-1		
				C-n	500-1½		
				A-dn	800-2		

No procedure turn authorized final approach crs, 180°.
Minimum altitude over facility on final approach crs, 1400′.
Crs and distance, facility to airport, 180°—6.0.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 6.0 mi after passing Colt's Neck VOR, climb to 1500′ on crs of 180 within 10 mi and return to Colt's Neck VOR.

City, Belmar; State, N.J.; Airport Name, Monmouth County; Elev., 155′; Fac. Class., BVOR; Ident., COL; Procedure No. 2, Amdt. 1; Eff. Date, 24 Dec. 60; Sup. Amdt. No. Orig.; Dated, 24 July 54

PROCEDURE CANCELLED, EFFECTIVE 24 DECEMBER 1960, OR UPON DECOMMISSIONING OF CHARLOTTE LFR.

City, Charlotte; State, N.C.; Airport Name, Douglas; Elev., 748′; Fac. Class., BVORTAC; Ident., FML; Procedure No. 1, Amdt. 4; Eff. Date, 26 Mar. 60; Sup. Amdt. No. 3; Dated 21 Dec. 57

				T-dn*	300-1	300-1	200-½
				C-dn*	600-1	600-1	600-1½
				A-dn*	800-2	800-2	800-2

Procedure turn S side of crs, 288° Outbnd, 108° Inbnd, 2100′ within 10 mi.
Minimum altitude over facility on final approach crs, 1900′.
Crs and distance, facility to airport, 108°—6.8.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 6.8 mi., climb to 2000′ on R-108, turn right and return to LaGrange VOR.
NOTE: *Night operations authorized on Runway 13-31 only.

City, LaGrange; State, Ga.; Airport Name, Callaway; Elev., 700′; Fac. Class., BVOR; Ident., LGC; Procedure No. 1, Amdt. 4; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 3, Dated, 25 Apr. 59

4. The terminal very high frequency omnirange (TerVOR) procedures prescribed in § 609.200 are amended to read in part:

TERMINAL VOR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.
If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
Pleasantville Int*	ACY-VOR (Final)	Direct	#500′	T-dn	300-1	300-1	200-½
				C-dn#	400-1	500-1	500-1½
				S-dn-4#	400-1	400-1	500-1
				A-dn	800-2	800-2	800-2

Procedure turn East side of crs, 229° Outbnd, 049° Inbnd, 1500′ within 10 mi.
Minimum altitude over facility on final approach crs, #500′.
Breakoff point to approach end of Runway, 037°—0.45 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile, turn left and climb to 1500′ on CYN-VOR R-213 to Elwood Int.
*Atlantic City VOR R-229 and 120° ADF brng to AY-LFR.
#Maintain 600′ until after passing Pleasantville Int*. If aircraft not equipped to identify Pleasantville Int* ceiling minimum of 500′ is applicable for landing.

City, Atlantic City; State, N.J.; Airport Name, Nat'l Aviation Facilities Experimental Center; Elev., 69′; Fac. Class., VORTAC; Ident., ACY; Procedure No. TerVOR-4, Amdt. 1; Eff. Date, 24 Dec. 60; Sup. Amdt. No. Orig.; Dated, 11 July 59

Oceanville Int*	ACY-VOR (Final)	Direct	#500	T-dn	300-1	300-1	200-½
				C-dn#	400-1	500-1	500-1½
				S-dn-31#	400-1	400-1	500-1
				A-dn	800-2	800-2	800-2

Procedure turn North side of crs, 121° Outbnd, 301° Inbnd, 1500′ within 10 mi.
Minimum altitude over facility on final approach crs, 500′.
Breakoff point to approach end of Runway, 307°—0.3 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 0.0 mile, turn right and climb to 1500′ on CYN-VOR R-213 to Elwood Int.
*Atlantic City VOR R-121 and 220° ADF brng to AY-LFR.
#Maintain 900′ until passing Oceanville Int*. If aircraft not equipped to identify Oceanville Int* ceiling minimum of 800′ is applicable for landing.

City, Atlantic City; State, N.J.; Airport Name, Nat'l Aviation Facilities Experimental Center; Elev., 68′; Fac. Class., VORTAC; Ident., ACY; Procedure No. TerVOR-31, Amdt. 1; Eff. Date, 24 Dec. 60; Sup. Amdt. No. Orig.; Dated 11 July 59

COL-VOR	BLM-VOR	Direct	1600	T-dn	300-1	300-1	200-½
NEL-LFR	BLM-VOR	Direct	1600	C-dn	500-1	600-1	600-1½
Woolf Int	BLM-VOR	Direct	1600	S-dn-14	400-1	400-1	400-1
				A-dn	NA	NA	NA

Procedure turn West side of crs, 330° Outbnd, 150° Inbnd, 1500′ within 10 mi.
Facility on airport. *600′ after crossing Int BLM-VOR R-330 and COL-VOR R-195 or 230° crs to NEL LFR.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, climb to 1600′ on R-150, turn right and return to BLM-VOR at 1600′.
NOTE: Prior arrangement for landing required for civil aircraft not on official business.
*Descent below 700′ not authorized if intersection not identified.

City, Belmar; State, N.J.; Airport Name, Monmouth County; Elev., 155′; Fac. Class., LVOR; Ident., BLM; Procedure No. TerVOR-14, Amdt. Orig.; Eff. Date, 24 Dec. 60

COL-VOR	BLM-VOR	Direct	1600	T-dn	300-1	300-1	200-½
NEL-LFR	BLM-VOR	Direct	1600	C-dn	500-1	600-1	600-1½
Woolf Int	BLM-VOR	Direct	1600	S-dn-32*	400-1	400-1	400-1
				A-dn	NA	NA	NA

Procedure turn East side of crs, 140° Outbnd, 320° Inbnd, 1600′ within 10 mi SE of BLM-VOR.
Facility on airport. Maintain 1600′ until after passing BLM FM inbnd on final.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished over BLM-VOR, climb outbound on R-320 to 1000′ within 10 mi, then turn left, climbing to 1600′ and return to BLM-VOR.
NOTE: Prior arrangement for landing required for civil aircraft not on official business.
*Descent below circling minimums not authorized if Belmar FM not identified inbound on final.

City, Belmar; State, N.J.; Airport Name, Monmouth County; Elev., 155′; Fac. Class., LVOR; Ident., BLM; Procedure No. TerVOR-32, Amdt. Orig.; Eff. Date, 24 Dec. 60

5. The instrument landing system procedures prescribed in § 609.400 are amended to read in part:

ILS STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If an instrument approach procedure of the above type is conducted at the below named airport, it shall be in accordance with the following instrument approach procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitudes shall correspond with those established for en route operation in the particular area or as set forth below.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
AY-LFR	LOM	Direct	1500	T-dn	300-1	300-1	200-½
Vineland Int	LOM	Direct	1500	C-dn	400-1	500-1	500-1½
Atlantic City VOR	LOM	Direct	1500	S-dn-13	200-½	200-½	200-½
				A-dn	600-2	600-2	600-2

Procedure turn South side of crs, 306° Outbnd, 126° Inbnd, 1500′ within 10 mi.
Minimum altitude at glide slope interception inbnd, 1300′.
Altitude of glide slope and distance to approach end of Runway at OM, 1300′—4.3 mi; at MM, 270′—0.5 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished turn left and climb to 1500′ on CYN-VOR R-213 to Elwood Int.

City, Atlantic City; State, N.J.; Airport Name, Nat'l Aviation Facilities Experimental Center; Elev., 66′; Fac. Class., ILS; Idant., ACY; Procedure No. ILS-13, Amdt. 2; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 1; Dated, 3 Sept. 60

Marsh Int	Groves Int (Final)*	Direct	1000	T-dn	300-1	300-1	200-½
BPT-VOR	Groves Int*	Direct	1400	C-dn	400-1	500-1	500-1½
ILS LOM	Groves Int*	Direct	1400	S-dn-29	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2

Procedure turn E side SE crs ILS, 113° Outbnd, 293° Inbnd, 1400′ within 10 mi of Groves Int.*
No glide slope. 1000′ over Groves Int*. Brng and dist. to Rwy-29, 293°—4.0 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 4.0 miles after passing Groves Int*, climb to 1400′ on NW crs BPT-ILS within 20 mi or, when directed by ATC, turn left and climb to 1600′ on R-247 BPT-VOR within 20 mi.
*Groves Int: Int SE crs ILS and R-063 BPT-VOR.

City, Beaumont; State, Tex; Airport Name, Jefferson County Municipal; Elev., 15′; Fac. Class., ILS; Ident., I-BPT; Procedure No. ILS-29, Amdt. 2; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 1; Dated, 27 Apr. 57

CLT VOR	LOM	Direct	2100	T-dn	300-1	300-1	200-½
Ft. Mill VOR	Clover Int**	Direct	2300	C-dn	400-1	500-1	500-1½
Clover Int**	LOM (Final)	Direct	2300	S-dn-6*	200-½	200-½	200-½
Union Int	Clover Int**	Direct	2300	A-dn	600-2	600-2	600-2
Bradley Int	LOM	Direct	2900				
Mt. Holly Int	LOM	Direct	2300				
Weddington Int	LOM	Direct	2100				
Ft. Mill VOR	LOM	Direct	2300				

Procedure turn N side of SW crs, 230° Outbnd, 050° Inbnd, 2300′ within 10 miles.
Minimum altitude at glide slope int inbnd, 2200′.
Altitude of G.S. and distance to appr end of rny at OM 2200—4.6, at MM 980—0.8.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 2900′ on NE crs ILS within 20 miles or, when directed by ATC, turn left, climb to 2400′ on FML-VOR R-007 to Mt. Holly Int or turn right, climb to 2100′ on R-007 to FML-VOR.
Major Changes: Deletes transitions from Charlotte LFR, Int N crs Charlotte LFR and SW crs ILS, York Int, Waco Int, Bethany Int and High Rock Int.
*400-½ required when glide slope not utilized.
**Clover Int: Int R-320 FML-VOR and CLT-ILS SW crs.

City, Charlotte; State, N.C.; Airport Name, Douglas; Elev., 748′; Fac. Class., ILS; Ident., I-CLT; Procedure No. ILS-5, Amdt. 15; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 14; Dated, 16 Apr. 60

PB-LFR	LOM	Direct	6800	T-dn*	300-1	300-1	200-½
PUB-VOR	LOM	Direct	6800	C-dn	600-1	600-1	600-1½
Midway Int	LOM	Direct	6800	S-dn-8*	200-½	200-½	200-½
Hanover "H"	LOM	Direct	7300	A-dn	600-2	600-2	600-2

Procedure turn N side of W crs, 255° Outbnd, 075° Inbnd, 6800′ within 10 mi of OM. Beyond 10 mi NA. (All turns to be made on N side of crs; high terrain to South.)
Minimum altitude at glide slope interception inbnd, 6800′.
Altitude of glide slope and distance to approach end of Runway at OM, 6780′—6.4 mi; at MM, 4920′—0.6 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 6000′ on E crs PUB ILS within 20 miles or when directed by ATC, climb to 7000′ on E crs PUB ILS, turn left and proceed to Hanover "H" at 7000′.
NOTE: Narrow localizer course 4 degrees.
*200-1 required for takeoff Runways 26 and 35.
#400-1 required with any component of the ILS inoperative, except procedure not authorized without glide slope.

City, Pueblo; State, Colo; Airport Name, Memorial; Elev., 4725′; Fac. Class., ILS; Ident., PUB; Procedure No. ILS-8, Amdt. Orig.; Eff. Date, 24 Dec. 60

St. Louis LFR	Lake RBn	Direct	2000	T-dn	300-1	300-1	200-½
St. Louis VOR	Lake RBn	Direct	2000	C-dn	500-1	500-1	500-1½
St. Louis LOM	Lake RBn	Direct	2000	S-dn-6	500-1	500-1	500-1
Int R-130 STL-VOR and SW crs ILS	Lake RBn	Direct	2000	A-dn	800-2	800-2	800-2
Int R-130 STL-VOR and SW crs ILS	Lake RBn (Final)	Direct	1500				
Maryland Hgts. VOR	SW crs ILS (Final)	R-072, MTS-VOR.	1800				

Radar transitions to final approach course authorized. Information for radar terminal area transition altitudes on radar procedure.
Procedure turn S side SW crs, 238° Outbnd, 058° Inbnd, 2000′ within 10 mi of Lake "H".
No glide slope or markers. Alt. over Lake "H", 1500′. Distance from Lake "H" to Rnwy 6, 3.8 mi.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished within 3.8 miles after passing Lake "H", climb to 1800′ on NE crs ILS to LOM or, when directed by ATC, make left (North) turn, climb to 2000′ direct to STL-VOR.
CAUTION: Bright mercury vapor lights on Interstate Highway 70 approximately 3000′ from approach end of Rnwy 6 may be mistaken for runway, when breaking clear of overcast from Lake approach at night.
Major Change: Deletes transition from Barracks Int.

City, St. Louis; State, Mo.; Airport Name, Lambert-St.Louis Municipal; Elev., 571′; Fac. Class., ILS; Ident., I-STL; Procedure No. ILS-6, Amdt. 11; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 10; Dated, 26 Mar. 60

ILS STANDARD INSTRUMENT APPROACH PROCEDURE—Continued

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
St. Louis VOR	LOM	Direct	1800	T-dn	300-1	300-1	200-½
St. Louis LFR	LOM	Direct	1800	C-dn	500-1	500-1	500-1½
Jerseyville Int	LOM	Direct	2000	S-dn 24	200-½	200-½	200-½
Wood River Int	LOM	Direct	1800	A-dn	600-2	600-2	600-2
Wood River Int	NE crs ILS (Final) (to intercept ILS crs 2 mi from LOM).	Direct	1800				
Lake RBn	LOM	Direct	2000				
Cora Int	LOM (Final)	Direct	1800				
Academy Int	NE crs ILS (Final)	Direct	1900				
Mitchell Int	LOM	Direct	1800				
Maryland Hgts VOR	LOM	Direct	2000				
Prairie Int	LOM	Direct	2000				
Godfrey Int	NE crs ILS (Final)	Direct	1900				

Radar transitions to final approach course authorized. Information for radar terminal area transition altitudes on St. Louis radar procedure.
Procedure turn N side NE crs, 058° Outbnd, 238° Inbnd, 1900′ within 10 mi.
Minimum altitude at glide slope int inbnd, 1800′.
Altitude of glide slope and distance to approach end of runway at OM, 1782—4.1; at MM, 748—0.6.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished climb to 2000′ on SW crs of ILS to Lake "H" or, when directed by ATC, make right (North) turn, climb to 2000′ direct to STL-VOR.

City, St. Louis; State, Mo.; Airport Name, Lambert-St. Louis Municipal; Elev., 571′; Fac. Class., ILS; Ident., I-STL; Procedure No. ILS-24, Amdt. 20; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 19; Dated, 30 Jan. 60

6. The radar procedures prescribed in § 609.500 are amended to read in part:

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue (A) visual contact is established on final approach at or before descent to the authorized landing minimums, a missed approach shall be executed as provided below when (A) communication the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less: 65 knots or less	2-engine or less: More than 65 knots	More than 2-engine, more than 65 knots
				Precision approach			
1.7 mi either side of 140° radial BLM-VOR	Radar site	Within 7 mi	1500	T-dn-32 and 14	300-1	300-1	200-½
1.7 mi either side of 320° radial BLM-VOR	Radar site	7 mi	1500	C-dn-14 and 32	400-1	500-1	500-1½
				S-dn-32	200-½	200-½	200-½
				A-dn-32 and 14	NA	NA	NA
				Surveillance approach			
				C-dn-32	400-1	500-1	500-1½
				S-dn-32 and 14	400-1	400-1	400-1

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished—Runway 32: Climb on heading of 320° to 1000′ within 10 miles, then turn left, climbing to 1500′ and return to BLM-VOR at 1500′. Runway 14: Climb on heading 140° to 1000′ within 10 miles, then turn right climbing to 1500′ and return to BLM-VOR at 1500′.
NOTE: Prior arrangements for landing required for civil aircraft not on official business.

City, Belmar; State, N.J.; Airport Name, Monmouth County; Elev., 155′; Fac. Class., Monmouth Co.; Ident., Radar; Procedure No. 1, Amdt. Orig.; Eff. Date, 24 Dec. 60

260	120	Within 20 mi	*2300	Surveillance approach			
120	260	Within 20 mi	2000	T-dn	300-1	300-1	200-½
				C-dn	400-1	500-1	500-1½
				S-dn-All	400-1	400-1	400-1
				A-dn	800-2	800-2	800-2
				Precision approach			
				T-dn	300-1	300-1	200-½
				C-dn	400-1	500-1	500-1½
				S-dn-4	200-½	200-½	200-½
				A-dn	800-2	800-2	800-2

Radar terminal area transition altitudes—all bearings are from the radar site with sector azimuths progressing clockwise.
If visual contact not established upon descent to authorized landing minimums or if landing not accomplished—All Runways: Climb to 3000′ and proceed via R-265 of Shelbyville to Shelbyville VOR or, when directed by ATC, (1) Climb to 3000′ on NE crs ILS and proceed to Castleton Int; (2) Climb to 3000′ and proceed direct to IND-VOR.
*2800′ within 3 miles of 1849′ tower; 2800′ within 3 miles of 1815′ tower; and 2900′ within 3 miles of 1855′ tower, E and NE of airport.

City, Indianapolis; State, Ind.; Airport Name, Weir Cook; Elev., 797′; Fac. Class., Weir Cook; Ident., Radar; Procedure No. 1, Amdt. 9; Eff. Date, 24 Dec. 60; Sup. Amdt. No. 8; Dated, 3 Dec. 60

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Radar terminal area maneuvering sectors and altitudes														Ceiling and visibility minimums			
From	To	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Dist.	Alt.	Condition	2-engine or less		More than 2-engine, more than 65 knots
															65 knots or less	More than 65 knots	
000	210	25	2000											Precision approach			
210	000	25	2500											T-dn-18@	@300-1	@300-1	°300-1
														C-dn	500-1	700-1	700-1½
														S-dn-18°°	400-1	400-1	400-½
														A-dn-18	600-2	700-2	700-2

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished make right climbing turn, climb to 2500' and intercept the 310° bearing of Farley "H". Proceed to and hold at FRY "H" or, when directed by ATC. (1) Make right climbing turn, climb to 2500' on SW crs KS–LFR within 20 miles. (2) If VHF equipped only, make right climbing turn, climb to 2500' on R–310 MKC–VOR within 20 miles.

CAUTION: Grain elevators 903' MSL and Railroad Floodlights 867' ¼ mi NNE of Runway 18. Cracking plant and stack ¼ mi WNW of airport. Congested buildings 1422' MSL 1 mi SSE of airport. TV tower 1949' MSL 4.3 mi SE of airport, and TV tower 2.5 mi S of airport.

*Takeoffs to S or SW when weather is below 1000–3 will intercept a 210° ADF crs from ILS–LMM or R–190 MKC–VOR as soon as practicable. After takeoff maintain course until reaching 2600' MSL prior to making left turn due to 2049' tower 2.8 mi S of airport. When KMBC TV tower not visible (4.3 mi SE of airport) on N or NE takeoff, climb to 2000' MSL on 090° ADF course from KS–LFR prior to turning towards tower.

°AIR CARRIER NOTE: 200–½ authorized on Runway 36 only.

°°When approach lights are inoperative, circling minimums apply to all aircraft except more than 2-engine type which are authorized only 700–1.

@No reduction in 2-engine or less takeoff minimums except on Runway 36.

City, Kansas City; State, Mo.; Airport Name, Kansas City Municipal; Elev., 758'; Fac. Class., Kansas City; Ident., Radar; Procedure No. 1, Amdt. Orig.; Eff. Date, 24 Dec. 60

RADAR STANDARD INSTRUMENT APPROACH PROCEDURE

Bearings, headings, courses and radials are magnetic. Elevations and altitudes are in feet, MSL. Ceilings are in feet above airport elevation. Distances are in nautical miles unless otherwise indicated, except visibilities which are in statute miles.

If a radar instrument approach is conducted at the below named airport, it shall be in accordance with the following instrument procedure, unless an approach is conducted in accordance with a different procedure for such airport authorized by the Administrator of the Federal Aviation Agency. Initial approaches shall be made over specified routes. Minimum altitude(s) shall correspond with those established for en route operation in the particular area or as set forth below. Positive identification must be established with the radar controller. From initial contact with radar to final authorized landing minimums, the instructions of the radar controller are mandatory except when (A) visual contact is established on final approach at or before descent to the authorized landing minimums, or (B) at pilot's discretion if it appears desirable to discontinue the approach, except when the radar controller may direct otherwise prior to final approach, a missed approach shall be executed as provided below when (A) communication on final approach is lost for more than 5 seconds during a precision approach, or for more than 30 seconds during a surveillance approach; (B) directed by radar controller; (C) visual contact is not established upon descent to authorized landing minimums; or (D) if landing is not accomplished.

Transition				Ceiling and visibility minimums			
From—	To—	Course and distance	Minimum altitude (feet)	Condition	2-engine or less		More than 2-engine, more than 65 knots
					65 knots or less	More than 65 knots	
100–190		Within 25 mi	°2200	Surveillance approach			
190–100		25 mi	2000	T-dn	300–1	300–1	200–½
				C-dn	500–1	500–1	500–1½
				S-dn	500–1	500–1	500–1
				A-dn	800–2	800–2	800–2
				Precision approach			
				S-dn-24	200–½	200–½	200–½
				A-dn	600–2	600–2	600–2

Radar terminal area transition altitudes: All bearings and distances are from the radar site with sector azimuths progressing clockwise.

If visual contact not established upon descent to authorized landing minimums or if landing not accomplished, climb to 3000' on W crs SL–LFR to St Peters Int or, when directed by ATC, (1) climb to 2000', proceed direct to STL–VOR; (2) climb to 2000' direct to MTS–VOR.

°2000' within 3 mi of 1949' TV tower 10.7 mi S of airport.

City, St. Louis; State, Mo.; Airport Name, Lambert-St. Louis Municipal; Elev., 571'; Fac. Class., St. Louis; Ident., Radar; Procedure No. 1, Amdt. 4; Eff. Date, 24 Dec. 60. Sup. Amdt. No. 3; Dated, 15 Nov. 58

These procedures shall become effective on the dates specified therein.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

Issued in Washington, D.C., on November 29, 1960.

GEORGE C. PRILL,
Acting Director, Bureau of Flight Standards.

[F.R. Doc. 60–11278; Filed, Dec. 16, 1960; 8:48 a.m.]

Title 7—AGRICULTURE

Chapter I—Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

Subpart—United States Standards for Lemons [1]

FAIRLY UNIFORM IN SIZE

On August 6, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 7436) regarding a proposed amendment to § 51.2802(c) of the United States Standards for Lemons (§§ 51.2795–51.2819).

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, § 51.2802(c) of the United States Standards for Lemons is hereby amended pursuant to the authority contained in the Agricultural Marketing Act of 1946 (secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627). As amended, paragraph (c) reads as follows:

(c) "Fairly uniform in size" means that when lemons are packed for 165 carton count or smaller size, or equivalent sizes when packed in other containers, not less than 90 percent, by count, of the lemons in any container shall be within a diameter range of four-sixteenths inch; when packed for sizes larger than 165 carton count, or equivalent sizes packed in other containers, not less than 90 percent, by count, of the lemons in any container shall be within a diameter range of six-sixteenths inch.

Amended § 51.2802(c) of the United States Standards for Lemons set forth herein shall become effective January 15, 1961.

Dated: December 14, 1960, to become effective January 15, 1961.

S. T. WARRINGTON,
Acting Deputy Administrator, Marketing Services.

[F.R. Doc. 60–11707; Filed, Dec. 16, 1960; 8:47 a.m.]

[1] Packing of the product in conformity with the requirements of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable State laws and regulations.

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 197]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 914.497 Navel Orange Regulation 197.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting, the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 15, 1960.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., December 18, 1960, and ending at 12:01 a.m., P.s.t., December 25, 1960, are hereby fixed as follows:

(i) District 1: 400,000 cartons;

(ii) District 2: 70,290 cartons;

(iii) District 3: 25,000 cartons;

(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 16, 1960.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11774; Filed, Dec. 16, 1960; 11:25 a.m.]

[Milk Order 49]

PART 949—MILK IN SAN ANTONIO, TEX., MARKETING AREA

Order Amending Order

Sec.
949.0 Findings and determinations.

DEFINITIONS

949.1 Act.
949.2 Secretary.
949.3 Person.
949.4 Cooperative association.
949.5 San Antonio, Texas, marketing area.
949.6 Distributing plant.
949.7 Supply plant.
949.8 Pool plant.
949.9 Nonpool plant.
949.10 Handler.
949.11 Producer.
949.12 Producer milk.
949.13 Other source milk.
949.14 Fluid milk products.
949.15 Route.

MARKET ADMINISTRATOR

949.20 Designation.
949.21 Powers.
949.22 Duties.

REPORTS, RECORDS, AND FACILITIES

949.30 Reports of receipts and utilization.
949.31 Reports of payments to producers.
949.32 Records and facilities.
949.33 Retention of records.

CLASSIFICATION

949.40 Skim milk and butterfat to be classified.
949.41 Classes of utilization.
949.42 Shrinkage.
949.43 Responsibility of handlers and reclassification of milk.
949.44 Transfers.
949.45 Computation of skim milk and butterfat in each class.
949.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES

949.50 Minimum prices.
949.51 Class I milk.
949.52 Class II and Class II–A milk.
949.53 Butterfat differentials to handlers.
949.54 Location adjustment credit to handlers.
949.55 Use of equivalent prices.

APPLICATION OF PROVISIONS

949.60 Handlers subject to other orders.
949.61 Handlers operating nonpool plants.

UNPRICED MILK

Sec.
949.65 Rate of payment on unpriced milk.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

949.70 Computation of value of milk for each handler.
949.71 Computation of uniform price for pool milk.

PAYMENT FOR MILK

949.80 Time and method of payment.
949.81 Producer butterfat differential.
949.83 Location adjustment to producers.
949.85 Producer-settlement fund.
949.86 Payments to the producer-settlement fund.
949.87 Payments out of the producer-settlement fund.
949.88 Adjustment of accounts.
949.87 Marketing service.
949.88 Payment of administration expense.
949.89 Termination of obligation.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

949.90 Effective time.
949.91 Suspension or termination.
949.92 Continuing obligations.
949.93 Liquidation.

MISCELLANEOUS PROVISIONS

949.100 Agents.
949.101 Separability of provisions.

AUTHORITY: §§ 949.0 to 949.101 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 949.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the San Antonio, Texas, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe with respect to skim milk and butterfat (i) received from producers, (ii) received at a pool plant as other source milk and allocated to Class I milk, or (iii) distributed as Class I milk in the marketing area from a nonpool plant during such preceding month.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decisions of the Deputy Administrator of the Agricultural Marketing Service were issued February 1 and August 19, 1960 and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued November 16, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the San Antonio, Texas, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order as hereby amended, and the aforesaid order is hereby amended to read as follows:

DEFINITIONS

§ 949.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended, by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 949.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

§ 949.3 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 949.4 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act".

§ 949.5 San Antonio, Texas, marketing area.

"San Antonio, Texas, marketing area" hereinafter called the "marketing area" means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Texas.

§ 949.6 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Which is approved by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority for the processing of Grade A milk or which is acceptable to an agency of the Federal government for distribution of milk to its installations in the marketing area;

(b) In which milk or skim milk is processed or packaged; and

(c) From which Class I milk is disposed of during the month on routes in the marketing area or from which Class I milk is supplied to installations located in the marketing area of an agency of the Federal government.

§ 949.7 Supply plant.

"Supply plant" means all the buildings, premises, and facilities of a plant

equipped to either receive or cool milk, which is approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area, and from which an amount equal to not less than 50 percent of its receipts from dairy farmers, who would be producers if the plant qualified as a pool plant, are shipped to a distributing plant during the month: *Provided*, That any plant which qualifies as a supply plant for each of the months of July through February shall be considered to be a supply plant for the following months of March through June of such year, except that if the operator of such plant files a written request with the market administrator, supply plant status shall be terminated as of the first of the following month.

§ 949.8 Pool plant.

"Pool plant" means:

(a) A distributing plant (other than one exempt pursuant to § 949.60) which disposes of as Class I milk on routes in the marketing area 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 949.11;

(b) A supply plant; and

(c) Any plant approved by an appropriate health authority having jurisdiction in the marketing area to supply milk for distribution as Grade A milk in the marketing area which is operated by a cooperative association, and 50 percent or more of the producer milk of members is received during the month in the pool plants of other handlers, or is transferred to such plants from the plant of the cooperative association.

§ 949.9 Nonpool plant.

"Nonpool plant" means any plant, other than a pool plant, engaged in receiving, manufacturing or distributing milk.

§ 949.10 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any person in his capacity as the operator of a nonpool plant from which Class I milk is disposed of on routes in the marketing area;

(c) A cooperative association with respect to the milk of a member producer diverted to a nonpool plant for its account pursuant to § 949.11 for each day's milk production that such producer's milk is diverted during the month. Milk so diverted shall be deemed to have been received by the association at a pool plant at the location of the pool plant at which the milk was received prior to diversion; and

(d) A cooperative association with respect to the producer milk of its members which is delivered directly from the farm to the pool plant of a handler in a tank truck owned and operated by or under contract to such cooperative association unless the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing, prior to the first day of the month, that it does not desire to be the handler for such milk. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the association at a pool plant at the location of the pool plant to which it is delivered.

§ 949.11 Producer.

"Producer" means any person who produces milk, (a) under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk, issued by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority, or (b) which is acceptable to an agency of the Federal government for fluid consumption in its institutions or bases located in the marketing area; which is received directly from the farm at a pool plant or diverted from a pool plant to a nonpool plant for the account of a cooperative association: *Provided*, That if the days of production of such person for which milk is diverted exceeds one-third of the days of production that milk is delivered to a pool plant during the month, such milk shall cease to be producer milk for the entire period of such diversion. This definition shall not include any person with respect to milk produced by him which is received by a handler partially exempt, pursuant to § 949.60, nor shall it include a dairy farmer during the months of March through June, if milk from the same dairy farmer (or farm) was received at a nonpool plant operated by the same handler, as other than producer milk, on more than half the days of delivery during the preceding months of July through February, except that in the application of this proviso to operations prior to July 1, 1961, the period from the effective date of this amended order through February 1961 shall be substituted for the period of July through February otherwise indicated.

§ 949.12 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk of a producer received at a pool plant or diverted by a cooperative association in accordance with § 949.10(c).

§ 949.13 Other source milk.

"Other source milk" means all skim milk and butterfat:

(a) Other than that contained in producer milk or in receipts of fluid milk products from pool plants;

(b) In products designated as Class II milk pursuant to § 949.41(b) from any source (including those of a plant's own production) which are reprocessed or converted to another product in the plant during the month; and

(c) In any disappearance of non-fluid milk products not otherwise accounted for.

§ 949.14 Fluid milk products.

"Fluid milk products" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, cream or any mixture of cream and milk or skim milk (except eggnog, cultured sour cream, frozen storage cream and bulk ice cream and frozen dairy product mixes).

§ 949.15 Route.

"Route" means any delivery of Class I milk (including any delivery by a vendor or disposition at a plant store) to wholesale or retail outlets, except deliveries in bulk form to other pool plants.

MARKET ADMINISTRATOR

§ 949.20 Designation.

The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 949.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 949.22 Duties.

The market administrator shall:

(a) Within 30 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 949.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 949.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and, upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as the Secretary may request;

(g) Verify all reports and payments of each handler by audit, or such other means as the market administrator finds necessary, of such handler's records and of the records of any other person upon whose utilization the classification of skim milk or butterfat for such handler depends;

(h) Publicly announce, at his discretion, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, within 10 days after the day upon which he is required to perform such acts has not:

(1) Made reports pursuant to §§ 949.30 to 949.31, or

(2) Made payments pursuant to § 949.61 and §§ 949.80 to 949.88.

(i) On or before the twelfth day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler;

(j) Notify handlers and make announcement by such other means as he deems appropriate of prices as follows:

(1) On or before the tenth day of each month the Class I price for such month computed pursuant to § 949.51 and the Class I butterfat differential computed pursuant to § 949.53;

(2) On or before the fifth day of each month the prices of Class II and Class II–A milk for the preceding month computed pursuant to § 949.52 and the butterfat differential for Class II and Class II–A milk computed pursuant to § 949.53; and

(3) On or before the twelfth day of each month for the preceding month the uniform price computed pursuant to § 949.71, and the butterfat differential to producers computed pursuant to § 949.81.

(k) Prepare and publish such statistics and information as he deems advisable and as do not reveal confidential information.

REPORTS, RECORDS, AND FACILITIES

§ 949.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator for each of his pool plants as follows:

(a) The quantities of skim milk and butterfat contained in producer milk;

(b) The quantities of skim milk and butterfat contained in (or represented by) receipts from pool plants;

(c) The quantities of skim milk and butterfat contained in receipts of other source milk;

(d) The quantities of skim milk and butterfat contained in receipts of Class II and Class II–A products disposed of in the form in which received without further processing or packaging by the handler;

(e) The utilization of all skim milk and butterfat required to be reported pursuant to this section; and

(f) Such other information with respect to the receipt and utilization of skim milk and butterfat as the market administrator may prescribe.

§ 949.31 Reports of payments to producers.

On or before the 20th day after the end of each month, each handler who received milk from producers shall submit to the market administrator his producer payroll for the month, which shall show for each producer:

(a) His total deliveries of milk;

(b) The average butterfat content of such milk; and

(c) The net amount of such handler's payments to such producer with the prices, deductions, and charges involved.

§ 949.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of all skim milk and butterfat received from any source;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and other milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products on hand at the beginning and end of each month.

§ 949.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly, upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 949.40 Skim milk and butterfat to be classified.

All skim milk and butterfat received within the month at a pool plant in the form of producer milk, other source milk, or receipts from other pool plants shall be classified by the market administrator pursuant to the provisions of §§ 949.41 to 949.46.

§ 949.41 Classes of utilization.

Subject to the conditions set forth in §§ 949.43 and 949.44, the classes of utilization shall be as follows:

(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat:

(1) Disposed of in the form of fluid milk products;

(2) Contained in inventories of fluid milk products on hand at the end of the month; and

(3) All other skim milk and butterfat not specifically accounted for as Class II milk or Class II–A milk;

(b) Class II milk shall be all skim milk and butterfat:

(1) Used to produce any product other than those designated as Class I in paragraph (a) of this section or as Class II–A in paragraph (c) of this section;

(2) Disposed of for livestock feed;

(3) In shrinkage allocated to (i) receipts of other source milk in the form of fluid milk products, (ii) receipts of producer milk in an amount not to exceed one-half of one percent of the total receipts of skim milk and butterfat received from producers at the pool plant, plus one and one-half percent of the total pounds of skim milk and butterfat in milk received at a pool plant from producers and in bulk as milk in fluid form from other pool plants (including milk received from a cooperative association in its capacity as a handler pursuant to § 949.10(d)) and which are not disposed of in bulk as milk in fluid form to another pool plant; and

(c) Class II–A milk shall be all skim milk and butterfat used to produce Cheddar cheese.

§ 949.42 Shrinkage.

The market administrator shall allocate shrinkage to a handler's receipts at pool plants as follows:

(a) Compute the total shrinkage of skim milk and butterfat; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat in milk of producers and other source milk received in the form of fluid milk products.

§ 949.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat classified as Class II or Class II–A shall be reclassified if such skim milk or butterfat is later disposed of (whether in original or other form) in another classification.

§ 949.44 Transfers.

Skim milk or butterfat transferred or diverted from a pool plant in the form of milk, skim milk, or cream shall be classified:

(a) As Class I milk, if transferred to the pool plant of another handler, unless utilization as Class II or Class II–A milk is mutually reported in writing to the market administrator by both handlers on or before the 7th day after the end of the month within which such transfer occurred, and the amount of skim milk or butterfat so assigned to Class II or Class II–A does not exceed the amount of skim milk or butterfat, respectively, remaining in Class II or Class II–A utilization by the transferee-handler after the subtraction of other source milk pursuant to § 949.46: *Provided*, That the skim milk and butterfat so transferred shall be classified so as to result in a maximum assignment of producer milk first to Class I milk and secondly to Class II milk. In no case shall the assignment to Class I milk in the transferee plant be greater than the difference between its total receipts of milk and its total utilization of such milk in Class II and Class II–A.

(b) As Class I milk, if transferred or diverted to a nonpool plant except as:

(1) The transferring or diverting handler claims utilization as Class II milk or Class II–A milk;

(2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification, in which case skim milk and butterfat so transferred or diverted shall be allocated to the highest use classification remaining after subtracting in series beginning with the highest use classification, the skim milk and butterfat in milk received at the nonpool plant directly from dairy farmers who the market administrator determines constitute its regular source of supply for Class I milk.

(c) As Class II milk if transferred subject to verification by the market administrator to a wholesale food manufacturing establishment which has no Class I disposition of skim milk or butterfat.

§ 949.45 Computation of skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the report submitted by each handler and shall compute the pounds of skim milk and butterfat in each class of milk for such handler. Skim milk contained in any product utilized, produced, or disposed of by the handler during the month shall be considered to be an amount equivalent to the nonfat milk solids contained in such product, plus all of the water originally associated with such solids.

§ 949.46 Allocation of skim milk and butterfat classified.

(a) The pounds of skim milk remaining in each class after making the following computations for each handler for each month shall be the pounds of skim milk in such class allocated to producer milk received by such handler during such month.

(1) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in fluid milk products which were on hand at the beginning of the month;

(2) Subtract from the pounds of skim milk in each class the pounds of skim milk received from other pool plants in a form other than milk, skim milk, or cream according to its classification pursuant to § 949.41;

(3) Subtract from the pounds of skim milk remaining in Class II milk the plant shrinkage of skim milk in producer milk classified as Class II milk pursuant to § 949.41(b)(3)(ii);

(4) Subtract from the pounds of skim milk in Class I milk the pounds of skim milk received from a nonpool plant in the form of packaged fluid milk products which are not in excess of the pounds of skim milk transferred to such plant from the pool plant of the handler in fluid form and classified as Class I milk;

(5) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk which were received in the form of nonfluid milk products other than condensed skim milk or nonfat dry milk;

(6) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of condensed skim milk or nonfat dry milk;

(7) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing and payment provisions of another order issued pursuant to the Act and on which a compensatory payment has not been paid under the order;

(8) Subtract from the pounds of skim milk remaining in each class beginning with the lowest priced class the pounds of skim milk in other source milk received in the form of fluid milk products which were subject to the Class I pricing and payment provisions of another order issued pursuant to the Act or on which a compensatory payment had been paid under another order;

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received from other pool plants according to the class to which they were assigned pursuant to § 949.44(a);

(10) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (3) of this paragraph and if the pounds of skim milk remaining in all classes exceed the pounds of skim milk received from producers, subtract such excess from the pounds of skim milk remaining in the various classes in series beginning with the lowest priced class.

(b) Determine the pounds of butterfat in each class to be allocated to producer milk in the same manner prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of Class I, Class II, and Class II–A milk computed pursuant to paragraphs (a) and (b) of this section.

MINIMUM PRICES

§ 949.50 Minimum prices.

Subject to the appropriate differentials computed purusant to §§ 949.53 and 949.54 each handler shall pay in the manner set forth in §§ 949.70 to 949.86 for milk received at his pool plant from producers at not less than the prices per hundredweight set forth in §§ 949.51 and 949.52.

§ 949.51 Class I milk.

The Class I milk price shall be the price for Class I milk established under Federal Order No. 42 regulating the handling of milk in the North Texas marketing area plus 42 cents.

§ 949.52 Class II and Class II–A milk.

(a) *Class II milk.* The price rounded to the nearest cent, for Class II milk shall be determined pursuant to subparagraph (1) of this paragraph for the months of April, May, and June, and the higher of the prices determined pursuant to subparagraphs (1) and (2) of this paragraph for all other months.

(1) The average of the basic or field prices per hundredweight reported to have been paid for milk of 4.0 percent butterfat content received from farms during the month at the following plants or places for which prices have been reported to the market administrator or to the United States Department of Agriculture;

Carnation Co., Sulphur Springs, Tex.
The Borden Co., Mount Pleasant, Tex.
Lamar Creamery, Paris, Tex.

(2) The sum of the amounts computed pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) Multiply by 4.4 the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the United States Department of Agriculture during the month;

(ii) From the average of the carlot prices per pound of nonfat dry milk for human consumption, spray process, f.o.b. manufacturing plants in the Chicago area as reported by the United States Department of Agriculture for the period from the 26th day of the preceding month through the 25th day of the current month, subtract 5 cents, multiply by 8.16.

(b) *Class II–A milk.* The minimum price per hundredweight to be paid by each handler for milk received at his plant from producers and classified as Class II–A milk shall be computed by multiplying by 8.4 the average of the daily prices paid per pound of cheese at Wisconsin Primary markets ("Cheddars" f.o.b. Wisconsin assembling points, cars or truckloads) as reported by the Department for the month involved and rounding to the nearest cent.

§ 949.53 Butterfat differentials to handlers.

If the average butterfat content of the milk of any handler allocated to any class pursuant to § 949.46 is more or less than 4.0 percent, there shall be added to the respective class price, computed pursuant to §§ 949.51 and 949.52 for each one-tenth of 1 percent, that the average butterfat content of such milk is above 4.0 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content is below 4.0 percent, an amount equal to the butterfat differential computed by multiplying the simple

average, as computed by the market administrator, of the daily wholesale prices per pound (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter at Chicago as reported by the United States Department of Agriculture during the appropriate month by the applicable factor listed below:

(a) *Class I milk.* Multiply such price for the preceding month by 0.125;

(b) *Class II and Class II–A milk.* Multiply such price for the current month by 0.108.

§ 949.54 Location adjustment credit to handlers.

For milk which is received from producers at a pool plant located more than 50 miles from the City Hall, in San Antonio, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator and which is classified as Class I milk, the price specified in § 949.51 shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the City Hall in San Antonio, Texas: *Provided*, That in calculating such adjustments, transfers to a pool plant at which a location adjustment is not applicable or at which it is less than at the transferor plant may be assigned to Class I only to the extent that Class I disposition at the transferee plant exceeds 95 percent of the receipts from producers at such plant. Such assignment to transferor plants shall be made first to plants at which no location adjustment credit is applicable and then in sequence to plants at which the lowest rate of such adjustment credit would apply.

§ 949.55 Use of equivalent prices.

If for any reason the price quotation required by this part for computing class prices or for any other purpose is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 949.60 Handlers subject to other orders.

In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by an order issued pursuant to the Act for more than two consecutive months, and the handler would be subject to full regulation under such order if he were exempt from this part, the provisions of this part shall not apply after the second month except that the handler, with respect to the total receipts of skim milk and butterfat, shall make reports to the market administrator at such time and in such manner as the market administrator may require, shall allow verification of such reports by the market administrator, and, in the event he has disposed of on routes in the marketing area Class I milk which was neither classified nor priced under such other order or on which a compensatory payment was not made under any other order, shall pay to the market administrator on or before the 13th day of each month an amount computed by multiplying the total volume of such Class I milk disposed of on routes in the marketing area from such plant during the preceding month by the rate of compensatory payment computed pursuant to § 949.65.

§ 949.61 Handlers operating nonpool plants.

Each handler who is the operator of a nonpool plant whose milk is not subject to the classification and Class I pricing provisions of another order issued pursuant to the Act shall report, as required pursuant to § 949.30, reporting receipts from dairy farmers in lieu of such information with respect to producers, shall allow verification of such reports, and on or before the 13th day of each month he shall pay to the market administrator an amount computed by multiplying the total volume of Class I milk disposed of on routes in the marketing area from such nonpool plant during the preceding month by the rate of compensatory payments computed pursuant to § 949.65.

UNPRICED MILK

§ 949.65 Rate of payment on unpriced milk.

The rate of payment per hundredweight applicable to other source milk which has not been subject to the classification and Class I pricing provisions of another order issued pursuant to the Act or on which a compensatory payment has not been made pursuant to another order and which is assigned to Class I use at pool plants or which is disposed of as Class I milk on routes in the marketing area from nonpool plants shall be calculated as follows:

(a) For the months of February through July, subtract the Class II price, adjusted by the Class II butterfat differential, from the Class I price, adjusted by the Class I butterfat differential, and, except in the case of condensed skim milk and nonfat dry milk, by the location adjustment pursuant to § 949.54 which would be applicable if the nonpool plant were a pool plant; and

(b) During the months of January and August, subtract from the Class I price, adjusted by the Class I butterfat differential, the uniform price to producers, adjusted by the Class I butterfat differential.

DETERMINATION OF UNIFORM PRICES TO PRODUCERS

§ 949.70 Computation of value of milk for each handler.

For each month the market administrator shall compute the value of milk for each handler as follows:

(a) *Handlers who receive milk from producers:*

(1) Multiply the quantity of producer milk in each class computed pursuant to § 949.46 by the applicable class price;

(2) If any overage has been deducted pursuant to § 949.46 (a) and (b), multiply such amount by the applicable class price;

(3) For the months of January through August, multiply the hundredweight of other source skim milk and butterfat subtracted from Class I milk pursuant to § 949.46(a) (5) through (7) and (b) by the applicable rate determined pursuant to §949.65; and

(4) Add together the resulting amounts in (1) through (3) of this paragraph.

(b) *Handlers who operate pool plants but who receive no milk from producers:*

(1) If any overage has been deducted pursuant to § 949.46 (a) and (b), multiply such amount by the applicable class price;

(2) For the months of January through August, multiply the hundredweight of other source skim milk and butterfat subtracted from Class I milk pursuant to § 949.46(a) (5) through (7) and (b) by the applicable rate determined pursuant to § 949.65; and (3) Add the resulting amounts in (1) and (2) of this paragraph.

§ 949.71 Computation of uniform price for pool milk.

For each month the market administrator shall compute the uniform price for all milk received from producers as follows:

(a) Combine into one total the amounts computed pursuant to § 949.70 (a) and (b) for all handlers who made the reports prescribed in § 949.30 and who are not in default of payments required pursuant to §§ 949.80 and 949.84;

(b) Add an amount representing not less than one-half of the unobligated cash balance in the producer-settlement fund account pursuant to § 949.83;

(c) Add the total value of the location adjustments to producers computed pursuant to § 949.82;

(d) Subtract if the average butterfat content of the producer milk of handlers included in the computations pursuant to paragraph (a) of this section is greater than 4.0 percent, or add if such average is less than 4 percent, an amount computed by multiplying the amount by which such average butterfat content varies from 4.0 percent by the butterfat differential computed pursuant to § 949.81 and multiply the resulting amount by the hundredweight of such milk;

(e) Divide by the total hundredweight of producer milk of handlers included in the computation pursuant to paragraph (a) of this section;

(f) Subtract not less than 4 cents nor more than 5 cents. The resulting figure shall be the uniform price per hundredweight for all milk of 4.0 percent butterfat content received from producers.

PAYMENT FOR MILK

§ 949.80 Time and method of payment.

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month for milk received from it during the preceding month, for which such association is a handler pursuant to § 949.10(d), the value of such milk at not less than the applicable class prices.

(b) Except as provided in paragraph (3) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of such month at not less than the price per hundredweight for Class II milk for the preceding month;

(2) On or before the 15th day after the end of the month during which the milk was received at not less than the uniform price per hundredweight computed for such month pursuant to § 949.71 subject to the following adjustments: (i) the butterfat differential pursuant to § 949.81, (ii) the location adjustment pursuant to § 949.82, (iii) the payment made pursuant to subparagraph (1) of this section, (iv) marketing service deductions pursuant to § 949.87, and (v) proper deductions authorized by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 949.85, he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this subparagraph not later than the date for making such payments next following receipt of the balance due from the market administrator;

(3) (i) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall on or before the 20th day of each month furnish the cooperative association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the 10th day after the end of each month, such information for the 16th through the end of such month, and shall pay to such association on or before the 26th and 13th day of each month, in lieu of payments pursuant to subparagraphs (1) and (2) respectively, of this paragraph an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(ii) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(4) In making the payments to producers pursuant to subparagraphs (2) and (3) of this paragraph, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show:

(i) The month for which payment is made and the identity of the handler and of the producer;

(ii) The total pounds and average butterfat test of milk received from such producer;

(iii) The minimum rate or rates at which payment to such producer is required;

(iv) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(v) The amount or rate per hundredweight of each deduction claimed by the handler; together with a description of the respective deductions; and

(vi) The net amount of payment to such producer.

§ 949.81 Producer butterfat differential.

In making payments pursuant to § 949.80 there shall be added to the uniform price for each one-tenth of one percent that the average butterfat content of such milk is above 4.0 percent not less than, or there may be deducted from the uniform price for each one-tenth of one percent that the average butterfat content of such milk is below 4.0 percent not more than an amount computed as follows: Multiply by 1.1 the simple average computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the United States Department of Agriculture during the month, divide the result by 10 and round to the nearest one-tenth of a cent.

§ 949.82 Location adjustment to producers.

In making payments to producers pursuant to § 949.80 for that milk which is received from producers at a pool plant located more than 50 miles from the City Hall in San Antonio, Texas, by the shortest hard-surfaced highway distance as determined by the market administrator, the handler may deduct an amount equal to not more than 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the City Hall in San Antonio, Texas.

§ 949.83 Producer-settlement fund.

The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers, pursuant to §§ 949.60, 949.61, 949.84, and 949.86 and out of which he shall make all payments, pursuant to §§ 949.85 and 949.86.

§ 949.84 Payments to the producer-settlement fund.

On or before the 13th day after the end of the month during which the milk was received, each handler, including a cooperative association which is a handler, shall pay to the market administrator the amount of money, if any, by which the value of the milk received by such handler from producers as determined pursuant to § 949.70 is greater than the value of such milk calculated at the uniform price adjusted by the producer butterfat differential and the location adjustment to producers.

§ 949.85 Payments out of the producer-settlement fund.

On or before the 14th day after the end of the month during which the milk was received, the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the value of the milk received by such handler from producers during the month as determined pursuant to § 949.70 is less than the value of such milk calculated at the uniform price adjusted by the producer butterfat differential and the location adjustment to producers.

§ 949.86 Adjustment of accounts.

Whenever audit by the market administrator of any handler's books, reports, records, or accounts discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

§ 949.87 Marketing service.

(a) *Marketing service deduction.* Except as set forth in paragraph (b) of this section each handler, in making payments to producers (other than himself) shall make a deduction of six cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.

(b) *Marketing service deduction with respect to producers who are members of or are marketing through a cooperative association.* In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the

rate authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the month during which such milk was received.

§ 949.88 Payment of administration expense.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may from time to time prescribe, with respect to skim milk and butterfat (a) received from producers, (b) received at a pool plant as other source milk and allocated to Class I milk, or (c) distributed as Class I milk in the marketing area from a nonpool plant during such preceding month.

§ 949.89 Termination of obligation.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The delivery period during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the agreement (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 949.90 Effective time.

The provisions of this part or any amendment to this part shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated pursuant to § 949.91.

§ 949.91 Suspension or termination.

The Secretary may suspend or terminate this part or any provision of this part whenever he finds this part or any provision of this part obstructs or does not tend to effectuate the declared policy of the Act. This part shall terminate in any event whenever the provisions of the Act authorizing it cease to be in effect.

§ 949.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part there are any obligations thereunder the final accrual or ascertainment of which requires further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 949.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated, all assets, books and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 949.100 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 949.101 Separability of provisions.

If any provision of this part or its application to any person or circumstances is held invalid, the application of such provision, and the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C., this 13th day of December 1960, to be effective on and after the 1st day of January 1961.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11688; Filed, Dec. 16, 1960; 8:41 a.m.]

[Lemon Reg. 877]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.984 Lemon Regulation 877.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based becomes available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 13, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., December 18, 1960, and ending at 12:01 a.m., P.s.t., December 25, 1960, are hereby fixed as follows:

(i) District 1: 27,900 cartons;

(ii) District 2: 130,200 cartons;

(iii) District 3: 23,250 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 15, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11724; Filed, Dec. 16, 1960; 8:48 a.m.]

[Grapefruit Reg. 133]

PART 955—GRAPEFRUIT GROWN IN ARIZONA; IN IMPERIAL COUNTY, CALIF., AND IN THAT PART OF RIVERSIDE COUNTY, CALIF., SITUATED SOUTH AND EAST OF WHITE WATER, CALIF.

Limitation of Shipments

§ 955.394 Grapefruit Regulation 133.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 55, as amended (7 CFR Part 955), regulating the handling of grapefruit grown in the State of Arizona; in Imperial County, California; and in that part of Riverside County, California, situated south and east of White Water, California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the administrative committee (established under the aforesaid amended marketing agreement and order), and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective date. The Administrative Committee held an open meeting on December 8, 1960, to consider recommendations for a regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the regulation recommended by the committee has been disseminated to shippers of grapefruit, grown as aforesaid, and this section, including the effective time thereof, is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this section effective on the date hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective date hereof.

(b) *Order.* (1) During the period beginning at 12:01 a.m., P.s.t., December 18, 1960, and ending at 12:01 a.m., P.s.t., January 15, 1961, no handler shall handle:

(i) Any grapefruit of any variety grown in the State of Arizona; in Imperial County, California; or in that part of Riverside County, California, situated south and east of White Water, California, unless such grapefruit are fairly well colored, and otherwise grade at least U.S. No. 2; or

(ii) From the State of California or the State of Arizona to any point outside thereof in the United States, any grapefruit, grown as aforesaid, which measure less than 3 11/16 inches in diameter, except that a tolerance of 5 percent, by count, of grapefruit smaller than the foregoing minimum size shall be permitted which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the revised United States Standards for Grapefruit (California and Arizona), §§ 51.925 to 51.955 of this title: *Provided*, That, in determining the percentage of grapefruit in any lot which are smaller than 3 11/16 inches in diameter, such percentage shall be based only on the grapefruit in such lot which are of a size 4 2/16 inches in diameter and smaller.

(2) As used in this section, "handler," "variety," "grapefruit," and "handle" shall have the same meaning as when used in said amended marketing agreement and order; the terms "U.S. No. 2" and "fairly well colored" shall each have the same meaning as when used in the aforesaid revised United States Standards for Grapefruit; and "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to blossom end of the fruit.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 15, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-11723; Filed, Dec. 16, 1960; 8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—ALASKA

[Circular No. 2055]

PART 76—STATE GRANTS

Miscellaneous Amendments

Correction

In F.R. Doc. 60-11517, appearing at page 12597 of the issue for Friday, Dec. 9, 1960, a section heading reading "§ 76.13 *Applications for selection.*" should appear immediately above the row of asterisks which precedes paragraph (e).

Proposed Rule Making

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Parts 604, 606, 713]

[Administrative Order 542]

VARIOUS INDUSTRIES IN PUERTO RICO

Appointment To Investigate Conditions and Recommend Minimum Wages; Notice of Hearing

Pursuant to authority contained in the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.), and Reorganization Plan No. 6 of 1950 (64 Stat. 1263; 3 CFR, 1949–53 Comp., p. 1004), I hereby appoint, convene, and give notice of the hearings of Industry Committee No. 51–A for the Electrical, Instrument, and Related Products Industry in Puerto Rico; Industry Committee No. 51–B for the Metal, Machinery, Transportation Equipment, and Allied Products Industry in Puerto Rico; and Industry Committee No. 51–C for the Fabricated Plastic Products Industry in Puerto Rico.

Industry Committee No. 51–A is composed of the following representatives:

For the public:
John W. McConnell, Chairman, Ithaca, N.Y.
Wesley J. Hennessy, New York, N.Y.
Rafael de J. Cordero, San Juan, P.R.
For the employees:
Albin F. Hartnett, Washington, D.C.
Gilbert X. Barker, Atlanta, Ga.
Andrew Barral, Santurce, P.R.
For the employers:
Leslie E. Woods, Waltham, Mass.
Eugene J. Linder, Guayama, P.R.
Bernard J. Reilly, Vega Alta, P.R.

For the purpose of this order, the Electrical, Instrument, and Related Products Industry in Puerto Rico is defined as follows:

The manufacture, assembly, and repair of machinery, apparatus, equipment and supplies for the generation, storage, transmission, transformation and utilization of electrical energy; and the manufacture, assembly, and repair of instruments, lenses, apparatus, and equipment for scientific, professional, industrial measurement, photographic, ophthalmic, musical, and horological purposes; *Provided, however,* That the industry shall not include industrial and commercial machinery powered by electric motors; measuring-and-dispensing pumps; ophthalmic frames; or any activity included in the stone, clay, glass, cement, and related products industry, as defined in the wage order for that industry in Puerto Rico (29 CFR Part 678): *And provided, further,* That the industry shall not include any of the activities defined and described in 29 CFR Part 606.2 (a) and (b).

Industry Committee No. 51–B is composed of the following representatives:

For the public:
John W. McConnell, Chairman, Ithaca, N.Y.
Wesley J. Hennessy, New York, N.Y.
Rafael de J. Cordero, San Juan, P.R.
For the employees:
Albin F. Hartnett, Washington, D.C.
Gilbert X. Barker, Atlanta, Ga.
Andrew Barral, Santurce, P.R.
For the employers:
Leslie E. Woods, Waltham, Mass.
Pedro J. Balleste, Santurce, P.R.
George M. Goldberg, San Juan, P.R.

For the purpose of this order, the Metal, Machinery, Transportation Equipment, and Allied Products Industry in Puerto Rico is defined as follows:

The mining and other extraction of metal ore and the processing of such ore into metal; the manufacture (including repair) of any product or part made chiefly of metal; and the manufacture from any material of machinery, tools, transportation equipment and ordnance; *Provided, however,* That the industry shall not include the production of any basic material other than metal; the further processing of any basic material other than metal except when done by an establishment producing from such material a product of this industry or subassembly of such product; and any activity included in the button, jewelry, and lapidary work industry as defined in the wage order for that industry (29 CFR Part 616) or in the electrical, instrument, and related products industry as defined in the Administrative Order appointing Industry Committee No. 51–A, for Puerto Rico: *And, provided, further,* That the industry shall not include any of the activities defined and described in 29 CFR Part 604.2 (a) and (b).

Industry Committee No. 51–C is composed of the following representatives:

For the public:
John W. McConnell, Chairman, Ithaca, N.Y.
Wesley J. Hennessy, New York, N.Y.
Rafael de J. Cordero, San Juan, P.R.
For the employees:
David Lasser, Washington, D.C.
George Burdon, Akron, Ohio.
Frank Grillo, Santurce, P.R.
For the employers:
Leslie E. Woods, Waltham, Mass.
Samuel M. Seltzer, Rio Piedras, P.R.
David Schatzow, Caguas, P.R.

For the purpose of this order, the Fabricated Plastic Products Industry in Puerto Rico is defined as follows:

The molding, extrusion, lamination, or other forming, and the fabrication of plastic products: *Provided, however,* That the industry shall not include the manufacture of buttons, buckles, jewelry (including rosaries), and jewelry findings (including beads); the manufacture from plastic materials (except plastic molded to shape) of footwear and cut stock and findings for footwear; the manufacture of apparel and apparel furnishings and accessories; and any activity included in the artificial flower, decoration, and party favor industry (29 CFR Part 688), the chemical, petroleum, rubber, and related products industry (29 CFR Part 670), the leather, leather goods, and related products industry (29 CFR Part 602), and the needlework and fabricated textile products industry (29 CFR Part 612), as defined in the wage orders for those industries in Puerto Rico: *And provided, further,* That the industry shall not include any of the activities defined and described in 29 CFR, Part 713.2(a).

I hereby refer to each of the above-named industry committees the question of the minimum wage rate or rates to be fixed under the provisions of section 6(c) of the Act in the particular industry with which it is concerned. Each industry committee shall investigate conditions in its industry, and the committee, or any authorized sub-committee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act.

Industry Committee No. 51–A shall convene at 10:00 a.m. on January 16, 1961, in the office of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, New York Department Store Building, Fortaleza and San Jose Streets, San Juan, Puerto Rico, to conduct its investigation and shall commence its hearings at 2:00 p.m. on the same date at the same place. Following this hearing, Industry Committees Nos. 51–B and then 51–C shall convene in the same place at hours designated by the committee chairmen to conduct their investigations and to hold their hearings.

In order to reach as rapidly as is economically feasible the objective of the minimum wage prescribed in paragraph (1) of section 6(a) of the Act, each industry committee shall recommend to the Administrator the highest minimum wage rate or rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands, and American Samoa. Where an industry committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry, the industry committee shall recommend such reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein which will not substantially curtail employment in such classifications and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within the industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following: (1) Competitive conditions as affected by transportation, living, and production costs; (2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

The Administrator shall prepare an economic report for such committees containing such data as he is able to assemble pertinent to the matters referred to these committees. Copies of each such report may be obtained at the national and Puerto Rican offices of the United States Department of Labor as soon as they are completed and prior to the hearings. Each committee will take official notice of the facts stated in the economic report to the extent they are not refuted at the hearings.

The procedure of these industry committees will be governed by 29 CFR Part 511. As a prerequisite to participation as witnesses or parties these regulations require, among other things, that interested persons in the present matters shall file pre-hearing statements containing certain specified data, not later than January 6, 1961.

Signed at Washington, D.C., this 14th day of December 1960.

JAMES P. MITCHELL,
Secretary of Labor.

[F.R. Doc. 60–11708; Filed, Dec. 16, 1960; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 7, 8]

[Docket No. 13898 (RM–194); FCC 60–1495]

CHARLOTTE AMALIE, ST. THOMAS, VIRGIN ISLANDS

Availability of Frequency for Assignment

1. Notice is hereby given of proposed rule-making in the above-entitled matter. The amendments proposed to be adopted are set forth below.

2. This proposal is being issued in response to a petition to amend Parts 7 and 8 of the Commission's rules. The petition was received by the Commission on August 22, 1960, from Albert R. Crumley, Jr., and Manuel Pirallo, d/b as Virgin Isles Communications, San Juan, Puerto Rico. Petitioner requests that the Commission's rules be amended so as to make available for assignment the frequency pair 2506 kc (coast)–2009 kc (ship) for public ship-shore communication in the vicinity of Charlotte Amalie, St. Thomas, Virgin Islands, for use daily between the hours of 8:00 a.m. and 9:00 p.m., Atlantic standard time. The petitioner has on file also a related application for construction permit for a public class II–B coast station to be located at Charlotte Amalie, St. Thomas, Virgin Islands.

3. The frequency pair 2506 kc (coast)–2009 kc (ship) is not now available for assignment under the Commission's rules in the vicinity of St. Thomas, Virgin Islands. The frequency 2506 kc (coast) is assigned to public class II–B stations located near Boston, Massachusetts, and Delcambre, Louisiana. In the Eastern part of the United States, the frequency 2009 kc (ship) is assigned to ship stations for use in the Gulf of Mexico area for communication with the public coast station near Tampa, Florida. It is believed that assignment of the proposed frequency pair for use in the vicinity of St. Thomas, Virgin Islands is feasible on a limited basis as requested provided harmful interference will not be caused to ship station reception on 2506 kc in the vicinity of Boston and Delcambre, and to coast station reception on 2009 kc at Tampa. The distance from St. Thomas to Tampa is approximately 1,220 statute miles and to Boston and Delcambre is approximately 1,660 statute miles. In summary, this proposal would make available for assignment the frequency pair 2506 kc (coast)–2009 kc (ship) during the hours 8:00 a.m. to 9:00 p.m. Atlantic standard time in the vicinity of St. Thomas, Virgin Islands on a noninterference basis to existing public coast and ship stations operating on these frequencies.

4. It is stated in the petition that the present unavailability of a public coast station in the Virgin Islands area adversely affects the safety of ships in these waters in case of emergencies such as those caused by hurricanes and tornadoes. The station proposed by the petitioner on the island of St. Thomas will enhance the safety of navigation in these waters particularly since the station will maintain a listening watch on the calling and distress frequency 2182 kc. The petition also states that the closest public coast station is located in the vicinity of San Juan, Puerto Rico, and that ships in the Virgin Islands waters cannot satisfactorily communicate through the facilities of the San Juan station. The distance between these points is approximately 75 miles. The petitioner states that there is a great unfulfilled need and demand for a public coast station located directly in the Virgin Islands area.

5. It is believed that the proposed rule amendment would provide for more effective utilization of maritime frequencies in the public interest in that it would make a frequency pair available for direct service to an area which apparently is not now adequately served under the present frequency assignment plan.

6. This proposal is issued under the authority contained in section 303 (c), (d), (f), and (r) of the Communications Act of 1934 as amended.

7. Any interested person who is of the opinion that the proposed amendments should not be adopted or should not be adopted in the form set forth herein, may file with the Commission, on or before January 16, 1961, written data, views or briefs setting forth his comments. Comments in support of the proposed amendments may also be filed on or before the same date. Comments in reply to the original comments may be filed within ten days from the last day for filing said original data, views or briefs. The Commission will consider all such comments prior to taking final action in this matter.

8. In accordance with the provisions of § 1.54 of the Commission's rules, an original and fourteen copies of all statements, briefs, or comments filed shall be furnished the Commission.

Adopted: December 7, 1960.

Released: December 14, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

A. Part 7 is amended as follows:

1. The Table is § 7.306(b) is amended by the addition of the following new location, frequencies, and specific limitation of use after the entry for Palmyra Island, Hawaii.

§ 7.306 Availability of frequencies below 30 Mc.

(b) • • •

Coast stations located in the vicinity of—	Coast station transmitting carrier frequency [1]		Associated coast station receiving carrier frequency	
	Frequency (kc)	Specific limitations imposed upon availability for use.[3]	Frequency (kc)	Specific conditions relating to use of these frequencies by ship stations for transmission as shown in § 8.354(a)(1) of this chapter.[3]
• • • •				
St. Thomas Island, V.I..	2506	8 a.m. to 9 p.m., A.s.t., only; on condition that no harmful interference will be caused to any service or any station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.	2009	8 a.m. to 9 p.m., A.s.t., only; on condition that no harmful interference will be caused to any service or any station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.

B. Part 8 is amended as follows:

1. The Table in § 8.354(a)(1) is amended by the addition of the following new location, frequencies, and specific limitation of use after the entry for Palmyra Island, Hawaii.

§ 8.354 Frequencies below 5000 kc for public correspondence.

(a) • • •
(1) • • •

For communication with coast stations located in the vicinity of—	Mobile station transmitting carrier frequency [1]		Associated coast station carrier frequency	
	Frequency (kc)	Specific limitations imposed upon availability for use.[2]	Frequency (kc)	Specific conditions relating to use of these frequencies by coast stations for transmission as shown in § 7.305(b) of this chapter.[3]
•	•	•	•	•
St. Thomas Island, V.I.	2009	8 a.m. to 9 p.m., A.s.t., only; on condition that no harmful interference will be caused to any service or any station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.	2506	8 a.m. to 9 p.m., A.s.t., only; on condition that no harmful interference will be caused to any service or any station which in the discretion of the Commission may have priority on the frequency or frequencies used for the service to which interference is caused.

[F.R. Doc. 60-11698; Filed, Dec. 16, 1960; 8:46 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Part 601]

[Airspace Docket No. 60-EC-91]

CONTROL ZONES

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2083 of the regulations of the Administrator, the substance of which is stated below.

The Huron, S. Dak., control zone is presently designated within a 5-mile radius of the Huron Municipal Airport extending 2 miles either side of the southwest course of the radio range to its intersection with the east course of the Pierre, S. Dak., radio range, and within 2 miles either side of the Huron ILS localizer northwest course extending from the localizer to a point 12 miles northwest of the outer marker.

The Federal Aviation Agency is considering altering the Huron control zone as follows:

1. Revoke the southwest control zone extension. The radio range approach procedure is being revised to eliminate the requirement for this control zone extension.

2. Revoke the portion of the control zone extension, presently based on the Huron ILS localizer northwest course, which extends northwest of the Huron VOR, and realign the remaining portion, between the 5-mile radius zone and the VOR, to base it on the Huron VOR 134° True radial. The prescribed ILS, ADF and VOR instrument approach procedures are being revised to eliminate the requirement for the portion of this control zone extension northwest of the VOR. The remaining portion of the extension would be realigned to coincide with the prescribed VOR final approach course.

If this action is taken, the Huron, S. Dak., control zone would be redesignated within a 5-mile radius of the Howes Airport (latitude 44°23'03" N., longitude 98°13'39" W.), and within 2 miles either side of the 134° True radial of the Huron, S. Dak., VOR extending from the 5-mile radius zone to the VOR.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 9, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11678; Filed, Dec. 16, 1960; 8:45 a.m.]

[14 CFR Part 626]

[Airspace Docket No. 60-WA-159]

CONSTRUCTION OR ALTERATION; CRITERIA, PROCEDURES AND RULES FOR DETERMINATION OF EFFECT UPON USE OF NAVIGABLE AIRSPACE OF OBSTRUCTIONS TO AIR NAVIGATION

Supplemental Notice of Public Hearing

On September 16, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8911) stating that the Federal Aviation Agency was considering the adoption of Part 626 of the regulations of the Administrator as set forth therein. This proposed regulation would establish when public notice of proposed construction or alteration of structures must be given to the Agency; establish criteria as to which proposed structures would constitute hazards to air navigation by reason of their location and height; provide procedures for giving individual consideration to any specific construction proposal to determine whether waiver of the criteria as applied to that structure would be consistent with safety in air navigation; and would provide for the regulatory establishment of "antenna farm areas" of specific dimensions of area and height within which tall structures could be erected exempt from the hazard criteria.

Requests for a public hearing on this proposal have been received from representatives of a number of industrial organizations. Because of the complexity of detail of the proposed regulation and its effect upon diverse non-aviation interests, it is the determination of the Administrator that it would be in the public interest to grant these petitions for a hearing.

Accordingly, a public hearing will be held to afford interested persons an opportunity to present data, views or arguments on the proposed regulation. The hearing will convene on January 10, 1961, at 10:00 a.m., e.s.t., in the 7th Floor Conference Room of Wing C, Federal Aviation Agency Headquarters, 1711 New York Avenue, Washington, D.C.

Persons desiring to be heard are requested to notify the Director, Bureau of Air Traffic Management, Federal Aviation Agency, Washington 25, D.C. Mr. D. D. Thomas, Director, Bureau of Air Traffic Management, will be the presiding officer.

This hearing is scheduled under § 409.14 of the regulations of the Administrator (14 CFR 409.14).

Issued in Washington, D.C., on December 15, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11731; Filed, Dec. 16, 1960; 8:46 a.m.]

Notices

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13861-13862; FCC 60M-2080]

ALERT

Order Scheduling Hearing

In re applications of Gordon Evans, d/b as ALERT, 1145 Bishop Street, Honolulu, Hawaii, for construction permit to establish a one-way signaling common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA218), Docket No. 13861, File No. 2796-C2-P-60; for construction permit to establish a new two-way common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA219), Docket No. 13862, File No. 2797-C2-P-60.

It is ordered, This 7th day of December 1960, that David I. Kraushaar will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 16, 1961, in Washington, D.C.

Released: December 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11695; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket Nos. 12876-12877; FCC 60-1461]

AUDIOCASTING OF TEXAS, INC., AND HORACE K. JACKSON, SR.

Memorandum Opinion and Order

In re applications of Audiocasting of Texas, Inc., Waco, Texas, Docket No. 12876, File No. BP-11851; Horace K. Jackson, Sr., Gatesville, Texas, Docket No. 12877, File No. BP-12550; for construction permits for new standard broadcast stations.

1. Audiocasting of Texas, Inc. (Audiocasting) seeks a construction permit for a new station at Waco, Texas, to operate on 1580 kc, 500 w, 1 kw-LS, DA-2, unlimited time. Horace K. Jackson, Sr., sought a similar permit on the same frequency to operate with 250 watts power, daytime only, at Gatesville, Texas. On September 16, 1959, Audiocasting filed a petition for leave to amend, stating that a merger had been arranged with Jackson, whereby Jackson would withdraw his application and receive 25 percent of the voting stock of Audiocasting. An Initial Decision released April 7, 1960 (FCC 60D-43, Mimeo No. 86818) granted Audiocasting's amendment and application and dismissed Jackson's application without prejudice. The Broadcast Bureau supported the ultimate conclusion of the Examiner, but filed exception to certain portions of the Initial Decision. Audiocasting also filed exceptions, but withdrew them and adopted the Bureau's exception. (See Memorandum Opinion and Order [released July 25, 1960, FCC 60-865, Mimeo No. 90948] denying Audiocasting's request for immediate consideration of the Initial Decision.)

2. On September 13, 1960, there became effective amendments to the Communications Act of 1934, which, inter alia, revised section 311 to include provisions relating to withdrawals and mergers of and payments to any of the applicants. The Commission has reviewed the record and the Initial Decision herein and is unable to make a determination as to whether the agreement between the above-captioned applicants is permissible under section 311 of the Act, as recently amended.

Accordingly, it is ordered, This 7th day of December 1960, that the record herein is reopened and the proceeding is remanded to the Hearing Examiner who originally presided at the hearing, for further hearing with respect to the following issue and for the preparation of a Supplemental Initial Decision: "To determine whether the agreement between the applicants herein is permissible under 47 U.S.C. 311(c)."

Released: December 13, 1960.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11696; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket Nos. 13605-13607; FCC 60M-2089]

ABILENE RADIO AND TELEVISION CO. ET AL.

Order Continuing Hearing Conference

In re applications of Abilene Radio and Television Company, San Angelo, Texas, Docket No. 13605, File No. BPCT-2639; E. C. Gunter, San Angelo, Texas, Docket No. 13606, File No. BPCT-2663; Dornita Investment Corp., San Angelo, Texas, Docket No. 13607, File No. BPCT-2714; for construction permits.

The Hearing Examiner having under consideration a motion filed on December 9, 1960, by Abilene Radio and Television Company, requesting that the further prehearing conference in the above-entitled proceeding presently scheduled for December 12, 1960, be continued to December 21, 1960; and

It appearing, that counsel for the other parties to this proceeding have informally agreed to a waiver of the four-day requirement of § 1.43 of the Commission's rules and consented to a grant of the instant petition; and good cause has been shown for the grant thereof;

It is ordered, This 9th day of December 1960, that the further prehearing conference be and it is hereby continued to December 21, 1960.

Released: December 13, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11694; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket Nos. 13673-13675; FCC 60-1446]

HENNEPIN BROADCASTING ASSOCIATES ET AL.

Memorandum Opinion and Order Amending Issues

In re applications of Albert S. Tedesco and Patricia W. Tedesco, d/b as Hennepin Broadcasting Associates, Minneapolis, Minnesota, Docket No. 13673, File No. BP-12416; Robert E. Smith, River Falls, Wisconsin, Docket No. 13674, File No. BP-13339; Jack I. Moore, James L. Magner, Ray Ekberg, Ingvald C. Ryan, Donald E. Nebelung, Post Publishing Company, Inc., and Carl Bloomquist, d/b as Crystal Broadcasting Company, Crystal, Minnesota, Docket No. 13675, File No. BP-13750; for construction permits.

1. The Commission has before it for consideration (1) a Petition of Hennepin Broadcasting Associates to enlarge the issues, filed August 8, 1960; (2) a Reply in support by Crystal Broadcasting Company, filed August 17, 1960; (3) an Opposition of Robert E. Smith, filed August 18, 1960; (4) an Opposition of the Broadcast Bureau filed on August 22, 1960; and (5) a Reply by Hennepin, filed on September 7, 1960.

2. Hennepin seeks by this Petition to enlarge the issues beyond those designated for hearing by the Commission's Order published July 22, 1960 (25 F.R. 6996) to include the financial and other qualifications of Smith. Hennepin charges that the sources of Smith's financing are: (1) uncertain; (2) not available as a matter of law; and (3) not fully disclosed. Hennepin further contends that Smith has undisclosed business interests or backers; that this is probably a "block application;" and that Smith's character and other qualifications should be put in issue due to his failure to reveal that certain of his funds were received as outright gifts; his inclusion of the transmitter site that he did not own among his claimed assets; his possible management interest in a competing radio station; and because of his repeated failure to disclose required information until compelled by Hennepin's inquiries.

3. Smith contends that whatever information he failed to provide was due either to innocent oversight, or to the failure of his advisers and counsel to

[1] Concurring statement of Commissioner Bartley filed as part of the original document.

properly transmit the information; that, in most cases, he demonstrated his good faith by providing such information on other portions of his application; and that whatever erroneous or unclear statements were made conveyed the substance of the truth and were merely formally incorrect. Smith asserts that he is not connected in any way with any persons or interests undisclosed in his application; that he has no interest other than as an employee in any other radio station; and that his rapid increase in assets has been due to the enhancement in value of the transmitter site, to diligent budgeting of his personal income and to the sale of his prior residence.

4. Neither petitioner's allegations nor Smith's explanations are wholly persuasive. Considering the contradictory charges and explanations in the pleadings and all the facts and circumstances of this case, the matter can best be resolved through an evidentiary hearing in order that further light may be shed on the matters alleged through the vehicle of cross-examination of the parties and affiants.

Accordingly, it is ordered, This 7th day of December 1960, that the petition to enlarge issues, filed by Hennepin Broadcasting Associates on August 8, 1960, is granted; that the existing issue No. 10 is renumbered issue No. 13; and the issues in this proceeding are enlarged as follows:

10. To determine whether Robert E. Smith is financially qualified to construct and operate for a reasonable period of time the station he proposes in River Falls, Wisconsin.

11. To determine whether the application of Robert E. Smith fails to disclose all of his business interests and relationships; whether any other persons are financing his application and/or the construction of the station; whether any other persons may have an equity interest in the station; whether the application is in the nature of a "block application"; and, in the event of an affirmative finding on any of the foregoing, whether Robert E. Smith possesses the character qualifications requisite to a license of the Commission.

12. To determine whether Robert E. Smith has entered into a lease agreement with respect to the New Richmond, Wisconsin station or negotiated with respect thereto, and, if so, all of the facts and circumstances relating to such an agreement or negotiation; and, in the event Robert E. Smith is found to own, operate or control, directly or indirectly, the New Richmond station (WIXK), then to determine whether a grant of his application for River Falls would violate § 3.35 of the Commission's rules.

Released: December 14, 1960.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11699; Filed, Dec. 16, 1960; 8:46 a.m.]

[1] Dissenting statement of Commissioner King filed as part of the original document.

[Docket Nos. 13466-13468; FCC 60M-2082]

BRANDYWINE BROADCASTING CORP. ET AL.

Order Continuing Hearing

In re applications of Brandywine Broadcasting Corporation, Media, Pennsylvania, Docket No. 13466, File No. BP-11856; David G. Hendricks and Lester Grenewalt, d/b as Boyertown Broadcasting Company, Boyertown, Pennsylvania, Docket No. 13467, File No. BP-12548; Dinkson Corporation, Hammonton, New Jersey, Docket No. 13468, File No. BP-12955; for construction permits.

The Hearing Examiner having under consideration a petition filed December 7, 1960, on behalf of Brandywine Broadcasting Corporation requesting that the prehearing conference scheduled for December 7, 1960, be continued to December 14, 1960, and that the evidentiary hearing scheduled for December 14, 1960, be continued to a date to be later designated; and

It appearing that the reason for the requested continuance is the fact that at an informal engineering conference held in the offices of the Commission on December 5, 1960, a request was made for additional engineering exhibits which cannot be prepared by December 7, 1960, the date now scheduled for a formal prehearing conference and additional time is needed for the preparation of such exhibits; and

It further appearing that all parties have consented to the requested continuance, that good cause has been shown for granting the petition and that the element of time requires immediate consideration thereof;

It is ordered, This the 7th day of December 1960, that the petition to postpone hearing conference and hearing date is granted and the date for the prehearing conference is continued from December 7, 1960, to December 14, 1960, and the date for the further evidentiary hearing is continued from December 14, 1960, to a date to be announced at the conclusion of the prehearing conference to be held on such date.

Released: December 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11697; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket No. 8584; FCC 60-1453]

BRENNAN BROADCASTING CO.

Memorandum Opinion and Order

In re application of William J. Brennan, Cyril G. Brennan, and Daniel M. Brennan, doing business as Brennan Broadcasting Company, Jacksonville, Florida, Docket No. 8584, File No. BP-6222; for construction permit.

1. The Commission has before it for consideration the following two petitions, filed June 29, 1960, and September 16, 1960, by the Brennan Broadcasting Company, and pleadings filed in response thereto. In these petitions, Brennan requests (a) reconsideration and rehearing; (b) leave to amend its application and for acceptance of the attached amendment; (c) that the application as thus amended be retained in hearing status and granted; (d) that § 3.28(c) of the rules be waived for good cause shown.

2. In an Initial Decision released July 14, 1949 (5 RR 454), the Hearing Examiner proposed a grant of the application of William J. Brennan, Cyril G. Brennan and Daniel M. Brennan, doing business as Brennan Broadcasting Company (hereinafter "Brennan"), for a new standard broadcast station at Jacksonville, Florida, to operate on 690 kc, 25 kw, unlimited time. Before the Initial Decision became final, the Commission, on October 26, 1951, announced the policy it would follow with respect to signatory countries, pending action on the ratification and entry into force of the new NARBA, and at the same time, released procedural amendments to the rules to implement this proposed policy.[1]

3. The Brennan daytime proposal afforded protection to Cuba in accordance with NARBA then being negotiated, but the nighttime proposal did not. The Commission, in an Order released October 7, 1952 (8 RR 309(b) (1952)), therefore placed the Brennan application in the pending file and continued it in hearing status, in accordance with the amended policy. No action was thereafter taken until May 22, 1956, when Brennan petitioned to have the Initial Decision adopted, or in the alternative, that a grant be made of its daytime proposal and that action on its nighttime proposal be temporarily withheld. In a Decision released March 4, 1957 (15 RR 7, 23 FCC 498), the Commission granted Brennan the right to the daytime operation, but retained the portion concerning nighttime operation in hearing status in the pending file pending ratification of NARBA, with the understanding the said nighttime portion would be dismissed by the Commission on its own motion without further hearing in the event that it conflicts with any provisions of NARBA at such time as the treaty shall be ratified. The NARBA agreement was ratified and became effective as of April 19, 1960. Thereafter, the Commission, by Order released June 2, 1960 (FCC 60-630), dismissed the nighttime portion of the above-entitled application in accordance with the aforementioned Decision because it did not afford Cuba the required protection.

4. Brennan now requests that the Order released June 2, 1960, supra, be set aside or stayed; that the application be returned to the pending file and retained in hearing status; and that he be given a reasonable opportunity to amend his application, in accordance with § 1.352 (c) (3) of the rules,[2] so that he may thus achieve consistency with NARBA. The Bureau is of the view that the Commission should reconsider the dismissal of the application and should return it to the pending file, but urges that the application be removed from hearing status, contending that petitioner had a reasonable period of time within which to amend, since he was long aware of the inconsistency of the nighttime portion of the application with the NARBA which had been negotiated but which did not become effective until April 19, 1960.

5. Section 1.352 of the rules governs the situation here presented. That section contemplates the retention of this application in hearing status and the granting of a reasonable period of time within which to amend. In view of the fact that NARBA was not ratified until April 19, 1960, and petitioner's application was not dismissed until June 2, 1960, petitioner herein was diligent in filing his request for leave to amend. The amendment eliminates the previous inconsistency with NARBA, and it will therefore be accepted. Hence, the petitioner's application as thus amended will be retained in hearing status with no change in file number. However, with respect to the request for an immediate grant and a waiver of § 3.28(c) of the rules, the Commission does not at this time deem it feasible to afford such relief.

Accordingly, it is ordered, This 7th day of December 1960, that the above-described petitions filed by William J. Brennan, Cyril G. Brennan and Daniel M. Brennan, doing business as Brennan Broadcasting Company on June 29, 1960 and September 16, 1960, respectively, are granted to the extent indicated herein and is in all other respects denied.

It is further ordered, That the Commission Order released June 2, 1960 (FCC 60-630) dismissing the nighttime portion of the above-entitled application, is set aside.

It is further ordered, That the request for leave to amend is granted, the amendment attached to the second of the moving petitions is accepted, and the application as amended is retained in hearing status with no change in file number.

It is further ordered, That the record herein is reopened, the proceeding is remanded for further hearing upon the issue specified below, and thereafter that a Supplemental Initial Decision be issued: "To determine whether interference received from any existing station would affect more than ten per cent of the population within the normally protected primary service area of the instant proposal of Radio Station WAPE, in contravention of § 3.28(c) (3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section."

Released: December 14, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11698; Filed, Dec. 16, 1960; 8:46 a.m.]

[1] A. Amendment to § 3.28(b) of the rules—Footnote to support b and g, released October 26, 1951 (FCC 51-1060); Mimeo. No. 68894; 16 F.R. 11186 (November 2, 1951):

"3. *Applications in hearing status.* (a) Whenever it appears with respect to any application which has been designated for hearing by itself or with respect to all of the applications in any consolidated proceeding that a grant of the application or applications involved would be inconsistent with the NARBA or would result in objectionable interference to a station in a North American Country, not signatory to the NARBA, and where the hearing involved has not been commenced, such application or applications will be removed from the hearing docket and placed in the pending file. Where the hearing involved has been commenced, such application or applications will be placed in the pending file, but will not be removed from the hearing docket. Such action shall be by order and may be taken by the Commission upon its own motion or by the Motions Commissioner upon motion of any party to the proceeding or of the Chief of the Broadcast Bureau."

B. Footnote 9a (part 3), released October 26, 1951 (FCC 51-1059); Mimeo. No. 68893; 16 F.R. 11187 (November 2, 1951):

"9a. Pending action with respect to ratification and entry into force of • • • (NARBA) • • • no assignment for a standard broadcast station will be made which would be inconsistent with the terms of the Agreement."

[2] Section 1.352(c)(3) is substantially identical with its precursor, footnote 3(c) to § 3.28(b), supra, and provides in pertinent part: "Section 1.352(c)(3): "In any proceeding in which, after the hearing has commenced, it becomes necessary to place the applications involved in the pending file or to add, with respect to any application or applications, an issue concerning consistence with the NARBA • • •, the applicants concerned will, notwithstanding the status of proceeding and the provisions of § 1.311(b), be afforded a reasonable opportunity to amend for the purpose of achieving consistency with these agreements • • •;"

[Docket Nos. 13805-13807; FCC 60M-2090]

KOMY, INC., ET AL.

Order Scheduling Hearing

In re applications of KOMY, Inc., Watsonville, California, Docket No. 13805, File No. BPH-2942; G. Stuart Nixon, San Jose, California, Docket No. 13806, File No. BPH-2961; Franklin Mieuli (KHIP), San Francisco, California, Docket No. 13807, File No. BPH-3075; for construction permits (FM).

The Hearing Examiner having under consideration an informal request from counsel for G. Stuart Nixon for a continuance of the second prehearing conference now scheduled for December 16, 1960;

It appearing that there has been a delay in the exchange of exhibits but that all of the parties have agreed among themselves upon a new exchange date which is satisfactory to the Hearing Examiner and that this means that additional time is required for study of the material by all of the engineers; and

It further appearing that a change in the date of the second prehearing conference will not affect the date of hearing which is tentatively established as January 17, 1961;

It is ordered, This 9th day of December 1960, that the second prehearing conference is continued from December 16, 1960, to January 9, 1961, and the date of January 17, 1961, is set for the commencement of hearing.

Released: December 13, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11700; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket No. 13855; FCC 60M-2078]

MANDAN RADIO ASSOCIATION

Order Scheduling Hearing

In the matter of revocation of license of Mandan Radio Association for Standard Broadcast Station KBOM, Bismarck-Mandan, North Dakota, Docket No. 13855.

It is ordered, This 7th day of December 1960, that Charles J. Frederick will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 15, 1961, in Bismarck, North Dakota.

Released: December 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11701; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket No. 13853; FCC 60M-2077]

MID-KANSAS, INC.

Order Scheduling Hearing

In re applications of Mid-Kansas, Inc., Docket No. 13853; for construction permit for a common carrier microwave station at Manhattan, Kansas, File No. 2205-C1-P-60; for construction permit for a common carrier microwave station at Junction City, Kansas, File No. 2206-C1-P-60; for construction permit for a common carrier microwave station at Abilene, Kansas, File No. 2207-C1-P-60; for construction permit for a common carrier microwave station at St. Marys, Kansas, File No. 224-C1-P-61.

It is ordered, This 7th day of December 1960, that Forest L. McClenning will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on January 16, 1961, in Washington, D.C.

Released: December 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11702; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket Nos. 13856-13857; FCC 60M-2079]

QUEEN CITY BROADCASTING CO. AND VAL VERDE BROADCASTING CO.

Order Scheduling Hearing

In re applications of Queen City Broadcasting Company, Del Rio, Texas, Docket No. 13856; File No. BP-12115;

Eugene Albert Houghton and Alton W. Stewart, d/b as Val Verde Broadcasting Company, Del Rio, Texas, Docket No. 13857, File No. BP-13050; for construction permits.

It is ordered, This 7th day of December 1960, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 16, 1961, in Washington, D.C.

Released: December 9, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11703; Filed, Dec. 16, 1960; 8:46 a.m.]

[Docket No. 13863 (RM-64, RM-153); FCC 60-1464]

VARIOUS INTRUDER ALARM DEVICES

Notice of Inquiry

The Commission has before it two petitions for amendment of its rules to permit the operation of radio-frequency devices for detection purposes, or so-called intruder alarms.

The first of these, filed by Radar-Eye Corporation, RM-64, filed October 9, 1958, requests that:

1. The maximum permissible radiation limits specified in Part 15 of the Rules be changed

(a) To remove the limits; or

(b) To raise the limits to 100 microvolts per meter at 1000 feet; or

2. Part 18 of the Rules be amended to make the Radar-Eye eligible as an industrial, scientific or medical (ISM) device; or

3. Part 19, Citizens Radio Service Rules, be changed to permit operation of the device in the range 460-470 Mc with a radiated field of 100 microvolts per meter at 1000 feet; or

4. The Commission legalize operation of the device within the frequency range now being employed, 300-400 Mc, with 100 microvolts per meter at 1000 feet.

The second of these petitions, also involving the Radar-Eye device, was filed by the Electro-Security Corporation, RM-153, filed November 20, 1959, and requests that:

1. (a) The Commission institute rule-making providing for operation of Radio Frequency Burglar Alarm Systems operating on a frequency of 401 megacycles plus or minus one megacycle with a radiation limit not to exceed one volt per meter at a distance of twenty-five feet from the outside surface of any enclosures containing said system.

(b) The radiated signal be a continuous, unmodulated wave carrier.

(c) The emission outside the above band be limited to at least 30 db below the carrier level as measured at a distance of twenty-five feet from any outdoor antenna or a distance of twenty-five feet from the outside surface of any enclosure containing said system.

2. The radiation limits and definitions as contained in Part 15 of the Commission's rules respecting Restricted Radiation Devices be amended to include Radio Frequency Burglar Alarms operating continuously on an unlicensed basis and that the radiation limit for such Burglar Alarms be amended to permit a radiation level of one volt per meter as defined in paragraph 1 (a), (b), and (c) above.

3. The Commission issue an interim ruling permitting operation of Radio Frequency Burglar Alarms consistent with the existing operational conditions.

The Commission is aware of other similar devices which have been developed using frequencies in the vicinity of 1700 and 2200 Mc and there are undoubtedly other devices which have been developed to use still other portions of the spectrum that have not come to the attention of the Commission.

Section 303 of the Communications Act of 1934, as amended, requires that the Commission study new uses for radio, provide for experimental uses of radio frequencies, and generally encourage the larger and more effective use of radio in the public interest. Although the Commission recognizes the importance of promoting the general advancement of the state of the art, the complexity of our present national allocations structure resulting from the tremendous growth in spectrum usage in recent years makes it exceedingly difficult to find suitable radiofrequency channels for new developments.

The table of frequency allocations and our present classification of radio services have been developed over the years through formal rule-making proceedings in which every known use of radio and its relationship to public service was taken into consideration. The Commission must give due consideration to these factors as well as the technical aspects of the new development in determining whether to make provision for this new radio development in the existing rules, or to provide a new service and promulgate new rules, or whether the development is sufficiently in the public interest to warrant rule-making.

The Commission is instituting this Inquiry to provide the information that it requires to properly evaluate the mentioned petitions. Comments are requested on the specific issues listed below as well as on the petitions in general.

1. Why is it in the public interest to use radio for intruder alarms, in lieu of using other means such as sound waves, light beams, infra-red radiation, etc.?

2. If radio is to be used should intruder alarms be regulated without requirement of licensing? What should be the technical limitations and operating conditions so that interference will not be caused to the licensed radio services?

3. If licensing is proposed what should be the technical and operating requirements, including operating frequencies, power and emission?

4. Can intruder alarms share frequencies with an existing service or would separate frequencies for their exclusive use be needed?

5. To what extent is intruder alarm equipment impervious to interference from similar units and from other equipment on the same frequency? On adjacent frequencies? What is the probability of interference to other radio services on the same frequency? On adjacent frequencies?

6. To what extent is it desirable to classify intruder alarm equipment as a radiodetermination device and require it to operate on frequencies allocated for this purpose?

7. Information is requested on the extent to which intruder alarms are likely to be used. Will use be limited to a particular industry, to certain groups of individuals, or will it be mass produced for use by the general public? What pattern of use by geographic area can be anticipated?

Proponents of a specific device intended to serve as an intruder alarm are requested to provide the following information, also:

8. Describe the device and how it operates.

a. Give reasons for selection of operating frequency.

b. Give entire frequency range over which the equipment is capable of operating.

c. Describe the emission characteristics.

d. Indicate the minimum field strength needed for satisfactory operation.

e. State the minimum bandwidth required.

f. Discuss the equipment susceptibility to interference from similar units and from other electronic equipment on the same frequency. On adjacent frequencies.

g. Discuss the interference potential of your device to other radio services on the same frequency. On adjacent frequencies.

h. Useful range of the device in feet.

i. In a multiple unit installation, can all units be installed to operate on the same frequency? If not, what is the minimum number of frequencies required, and what is the minimum feasible separation between frequencies?

Any interested person, especially anyone who is of the opinion that interference will be caused by operation of intruder alarm type equipment in accordance with the various specifications contained in the petitions above, is urged to submit comments on his views.

Comments in response to this Inquiry should be submitted on or before April 3, 1961. In accordance with the provisions of § 1.54 of the Commission's rules, an original and 14 copies of all statements or comments shall be furnished the Commission.

Adopted: December 7, 1960.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11704; Filed, Dec. 16, 1960; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 14, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36773: *Substituted service—L & N for A & H Truck Line, Inc.* Filed by Southern Motor Carriers Rate Conference, Agent (No. 47) for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Memphis, Tenn., on the one hand, and Evansville, Ind., Covington and Louisville, Ky., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Southern Motor Carriers Rate Conference, tariff MF-I.C.C. 1121, I.C.C. 34.

FSA No. 36774: *Substituted service—L & N for T.I.M.E. Incorporated.* Filed by Southern Motor Carriers Rate Conference, Agent (No. 48), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Atlanta, Ga., Covington, Ky., Evansville, Ind., Memphis and Nashville, Tenn., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Southern Motor Carriers Rate Conference tariff MF-I.C.C. 1121, I.C.C. 34.

FSA No. 36775: *Soda ash—Louisiana and Texas to Illinois Points.* Filed by Southwestern Freight Bureau, Agent (No. B-7938), for interested rail carriers. Rates on soda ash (other than modified soda ash), in bulk, or in bulk in bags, barrels, boxes or pails, in carloads, from Lake Charles, La., Corpus Christi, Freeport, and Houston, Texas, to specified points in Illinois.

Grounds for relief: Market competition.

Tariff: Supplements 483 and 22 to Southwestern Freight Bureau tariffs I.C.C. 4087 and 4370.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11691; Filed, Dec. 16, 1960; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11612]

McDONNELL AIRCRAFT CORP.

Notice of Postponement of Prehearing Conference

In the matter of the application of McDonnell Aircraft Corporation for a temporary certificate of public convenience and necessity authorizing supplemental air service to transport persons and property between points within the United States.

Notice is hereby given that the prehearing conference in the above-entitled matter now assigned to be held on December 19, 1960, is postponed to January 24, 1961, 10:00 a.m., e.s.t., Room 925, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Paul N. Pfeiffer.

Dated at Washington, D.C., December 13, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11706; Filed, Dec. 16, 1960; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

PROCLAMATIONS:
Oct. 3, 1905 — 12915
Dec. 7, 1907 — 12915
Feb. 10, 1909 — 12915
Dec. 10, 1910 — 12915
Oct. 18, 1912 — 12915
2935 — 12501
3382 — 12587

EXECUTIVE ORDERS:
Oct. 20, 1916 — 12887
June 8, 1926 — 12887
3797–A — 12412, 12599
6260 — 12281
9941 — 12429
10896 — 12281
10897 — 12429
10898 — 12429
10899 — 12729

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 — 12501
Letter, Nov. 16, 1960 — 12501

5 CFR

2 — 12285
6 — 12393, 12547, 12588, 12733, 12869
30 — 12733

6 CFR

421 — 12282, 12283

7 CFR

33 — 12430
51 — 12941
319 — 12809
718 — 12588
722 — 12393, 12403, 12809, 12812
730 — 12503
833 — 12650
845 — 12285
871 — 12547
903 — 12504
905—908 — 12504
911—913 — 12504
914 — 12405, 12650, 12812, 12941
916—919 — 12504
921 — 12504
923—925 — 12504
928—932 — 12504
933 — 12405–12407, 12504
935 — 12504
941—942 — 12504
943 — 12504, 12813
944 — 12504
946—948 — 12504
949 — 12504, 12941
952 — 12504
953 — 12407, 12430, 12651, 12948
954 — 12504
955 — 12949
956 — 12504
963 — 12504
965—968 — 12504
971—972 — 12504
974—978 — 12504
980 — 12504
982 — 12504
985—988 — 12504
989 — 12813

7 CFR—Continued

991 — 12504
994—995 — 12504
998 — 12504
1000 — 12504
1002 — 12504
1004—1005 — 12504
1008—1009 — 12504
1011—1014 — 12504
1016 — 12504
1018 — 12504, 12588
1023—1024 — 12504
1031 — 12505, 12651, 12652
1032 — 12828

PROPOSED RULES:
51 — 12298, 12299
812 — 12712
901 — 12742
923 — 12558
936 — 12465
938 — 12752
949 — 12606
965 — 12466
989 — 12476
1012 — 12558
1032 — 12712, 12752
1033 — 12606

8 CFR

211 — 12290

9 CFR

72 — 12548
94 — 12831

PROPOSED RULES:
83 — 12571

10 CFR

30 — 12730
70 — 12730

PROPOSED RULES:
25 — 12753
115 — 12367

12 CFR

PROPOSED RULES:
206 — 12479

13 CFR

PROPOSED RULES:
107 — 12754

14 CFR

41 — 12908
49 — 12352
225 — 12589
243 — 12908
293 — 12908
298 — 12909
300 — 12430
302 — 12432, 12933
414 — 12589
506 — 12505
507 — 12352, 12433, 12549, 12829
514 — 12433
600 — 12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734, 12933, 12934
601 — 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934
602 — 12288, 12552, 12678, 12831
608 — 12678, 12679, 12734, 12830, 12934
609 — 12353, 12735, 12935

14 CFR—Continued

612 — 12410
1501 — 12434

PROPOSED RULES:
41 — 12299
43 — 12524
221 — 12913
302 — 12477
507 — 12477, 12478, 12571, 12844
600 — 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914
601 — 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952.
608 — 12479, 12846
626 — 12952

15 CFR

203 — 12590
371 — 12734

16 CFR

13 — 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884

17 CFR

230 — 12912

18 CFR

104 — 12763
105 — 12961
154 — 12653

19 CFR

PROPOSED RULES:
8 — 12681

21 CFR

1 — 12592
8 — 12288
120 — 12288, 12506
121 — 12412, 12595, 12731, 12831
130 — 12592
146 — 12506, 12596, 12732
146c — 12289

PROPOSED RULES:
27 — 12372
120 — 12374, 12571
121 — 12299, 12477, 12839, 12840

22 CFR

46 — 12289

25 CFR

171 — 12408

PROPOSED RULES:
52 — 12518
176 — 12299

26 (1939) CFR

16 — 12442
17 — 12443
29 — 12339
39 — 12339
40 — 12340

26 (1954) CFR

1 — 12340, 12345, 12654
18 — 12340
19 — 12654
48 — 12669
170 — 12732

26 (1954) CFR—Continued

PROPOSED RULES:
1 — 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898.
25 — 12707
31 — 12835
48 — 12362
170 — 12710
197 — 12362
250 — 12511

28 CFR

21 — 12290

29 CFR

PROPOSED RULES:
604 — 12950
606 — 12950
713 — 12950

31 CFR

54 — 12345

32 CFR

505 — 12869
570 — 12869
750 — 12870
753 — 12879
805 — 12291
1008 — 12444
1009 — 12446
1010 — 12449
1012 — 12449
1013 — 12449
1016 — 12450, 12456
1030 — 12451
1052 — 12456
1053 — 12456
1054 — 12458
1055 — 12462
1057 — 12462
1059 — 12462
1619 — 12291

33 CFR

202 — 12393
203 — 12740
207 — 12740

38 CFR

3 — 12463

39 CFR

27 — 12348
168 — 12884

41 CFR

3–75 — 12502, 12596
5–1 — 12553
50–201 — 12553
50–202 — 12553

PROPOSED RULES:
50–202 — 12363, 12522

42 CFR

1 — 12292

43 CFR

76 — 12597, 12949
181 — 12679
192 — 12352
257 — 12679

PROPOSED RULES:
259 — 12606

PUBLIC LAND ORDERS:
82 — 12412, 12599
797 — 12413
1124 — 12885
1253 — 12481
1621 — 12599
1965 — 12599
2209 — 12412
2210 — 12413
2211 — 12413
2212 — 12597
2213 — 12597
2214 — 12598
2215 — 12599
2216 — 12599
2217 — 12885
2218 — 12885
2219 — 12886
2220 — 12887
2221 — 12887
2222 — 12887

45 CFR

601—620 — 12600

45 CFR—Continued

PROPOSED RULES:
301 — 12840
306 — 12840
307 — 12841
308 — 12842
309 — 12843
311 — 12844

46 CFR

24 — 12554
30 — 12554
56 — 12554
70 — 12555
90 — 12555
110 — 12555
111 — 12555
136 — 12555
171 — 12555
308 — 12348

47 CFR

1 — 12358, 12600, 12602, 12603, 12605
4 — 12680
5 — 12359
9 — 12359
10 — 12359
11 — 12359
12 — 12358
16 — 12359
19 — 12359
21 — 12359, 12603, 12605

PROPOSED RULES:
1 — 12624, 12898
3 — 12371, 12624, 12626, 12627, 12899
7 — 12951
8 — 12951

49 CFR

91 — 12506
122 — 12506
171 — 12888

PROPOSED RULES:
71–78 — 12420
197 — 12420

50 CFR

32 — 12555, 12888
33 — 12507, 12556, 12557, 12888

PROPOSED RULES:
14 — 12741

Pages 12961–12984

PART II

FEDERAL REGISTER

VOLUME 25 NUMBER 245

Washington, Saturday, December 17, 1960

Uniform System of Accounts for Class D Public Utilities and Licensees

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

SUBCHAPTER C—ACCOUNTS, FEDERAL POWER ACT

[Order No. 226; Docket No. R-185]

PART 105—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS D PUBLIC UTILITIES AND LICENSEES

This Commission has under consideration in this proceeding the revision of Part 104—Application of Uniform System of Accounts to Class C and Class D Public Utilities and Licensees of Subchapter C—Accounts, Federal Power Act, of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations (CFR), to prescribe a revised Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class D). That revised System of Accounts, as set forth in the attachment to the Notice of Proposed Rulemaking in this docket (25 F.R. 7602–7616) is prescribed hereinafter to become effective January 1, 1961, as a new part of the CFR, Part 105.

Part 104, §§ 104.1 through 104.11, of said Title and Code correspond to, and appear at pages 193–219 of the Commission's pamphlet publication of its Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, effective January 1, 1937 (effective January 1, 1938, as to Class C and Class D Public Utilities and Licensees),[1] revised to September 1, 1957, as amended by Order No. 204[2] issued May 29, 1958 (23 F.R. 4160, June 12, 1958). That System of Accounts, as revised and prescribed hereinafter, follows the numbering system (accounts, instructions, definitions, etc.) used in the Notice of Proposed Rulemaking referred to above.

Important developments in the electric power industry since the adoption in 1936 of the Uniform System of Accounts effective January 1, 1938, and the experience of the Commission over the past 24 years indicated the need for a revision of the System of Accounts. Accordingly, this proceeding was commenced by Notice of Proposed Rulemaking served upon interested parties, including State and Federal regulatory agencies, and by publication in the FEDERAL REGISTER on August 10, 1960 (25 F.R. 7601). Copies of the proposed revised System of Accounts were served and published as a part of that general notice, as heretofore noted.

The revisions of the Commission's System of Accounts, as then proposed are prescribed hereinafter as part of the Commission's Uniform System of Accounts to become effective January 1, 1961.

Heretofore, the Commission has not had a separately issued Uniform System of Accounts for Class D Public Utilities and Licensees, as such. The accounting requirements presently effective for small utilities (Class C and Class D), consist of an abridgment of the accounts for large public utilities and licensees by means of account charts appearing as Appendix III of the pamphlet version of the Uniform System of Accounts. In these account charts, the condensed accounts applicable to the small utilities are indicated by bracketing related account titles applicable to Class A and Class B utilities. The result is that small utilities have had to work with an inordinate amount of textual materials designed for larger utilities. An objective of the System of Accounts, prescribed hereinafter, is to relieve small utilities from that burden. It is believed that the revised System of Accounts provides these smaller utilities with a simplified System of Accounts appropriate for the magnitude of their operations. The revised System of Accounts

[1] The Uniform System of Accounts effective January 1, 1938, was prescribed by Commission Order No. 43, dated December 31, 1936 (1 F.R. 77, January 16, 1937); and was contained in the codification and reissuance of the Commission's general rules promulgated by Commission Order No. 141, December 11, 1947, effective January 1, 1948 (12 F.R. 8461). Insofar as the above sections are by their terms applicable to State and municipal licensees, that requirement was dispensed with by the Act of August 15, 1950, 67 Stat. 617.

[2] Also see Order No. 216 issued October 29, 1959 (24 F.R. 8790, October 29, 1959).

counts prescribed herein reflects the basic principles found in this Commission's recently issued revised Uniform System of Accounts Prescribed for Class A and Class B Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, Docket No. R-173. The revised System of Accounts introduces the following important improvements in this Commission's small utility accounting requirements:

a. New size classifications for electric utilities;

b. Certain necessary new accounts;

c. New arrangement of balance sheet and certain other accounts to make them more informative;

d. A reduced number of expense account classifications, mainly but not entirely, by the discontinuance of segregations of numerous functional accounts as to labor and other expenses;

e. Expanded items lists of account texts and clearer description of such items according to their functional nature, to facilitate use and consistency of respective account classifications; and

f. Restatements of the accounting aspects of certain accounting interpretations issued in the past.

In recommending the form of revised System of Accounts accompanying the Notice of Proposed Rulemaking in this proceeding, the staff of this Commission correlated its activities with the activities of the National Association of Railroad and Utility Commissioners (NARUC) which has recently prepared a form of NARUC Uniform System of Accounts for Class D electric utilities. This was done to promote continued consistency and uniformity of approach to the common problems with which the two accounting systems are concerned; and to assure a minimum amount of deviation where the two accounting systems do differ. The staff's activities in this regard were undertaken mainly with the Committee on Statistics and Accounts of the NARUC.

The aforesaid Notice of Proposed Rulemaking provided for the submission of data, views, comments, or protests in writing not later than September 12, 1960. To date no such data, views, comments, or protests have been received.

The Commission recognizes that some burden and expense will have to be borne by the accounting and reporting parties affected in connection with the transition from the present to the revised System of Accounts. However, the Commission is of the opinion that the physical burden and monetary cost of the change over is of minor importance when viewed in relation to the immediate and future benefits to be derived from the revised System of Accounts, as prescribed herein.

For the convenience of all parties concerned, Appendix A set forth below correlates the account titles of the Commission's Uniform System of Accounts applicable to Class D Public Utilities and Licensees, effective January 1, 1938, with the revised System of Accounts prescribed herein effective January 1, 1961. Being a schematic presentation only, and of a very general nature, nothing contained therein shall be construed as in any way modifying the general or specific account titles, texts, and instructions of either of the Systems of Accounts.

Also, it should be noted that for the period of time required for the preparation and publication of the revised System of Accounts prescribed herein in pamphlet form, the revised System of Accounts (18 CFR Part 105) will be available in the printed form set forth below as Appendix B.

The Commission finds:

(1) In view of the foregoing, and upon consideration of all relevant matters presented, it is necessary and appropriate for the purposes of the Federal Power Act, that the proposed revised System of Accounts as set forth in the Notice of Proposed Rulemaking (25 F.R. 7602-7616), be adopted and promulgated as this Commission's revised Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class D), effective January 1, 1961, all in the manner as hereinafter provided.

(2) Good cause exists for the adoption of the revised System of Accounts set forth herein to be effective as of January 1, 1961.

The Commission, acting pursuant to the Federal Power Act, as amended particularly sections 301(a), 304, and 309 (16 U.S.C. 825, 825c, and 825h) orders:

(A) Effective January 1, 1961, Subchapter C—Accounts, Federal Power Act of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations is amended by the addition of a new Part 105 to read as set forth in Appendix B below.

(B) Effective January 1, 1961, all Class D Public Utilities and Licensees under the Federal Power Act shall keep their accounts in the manner set forth in the revised System of Accounts appearing in Appendix B below.

(C) The Secretary of the Commission shall cause prompt publication of this order.

Issued: December 17, 1960.

By the Commission.

[SEAL] J. H. GUTRIDE, *Secretary.*

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Electric plant:			
Electric plant in service, leased to others and held for future use.	2100.1	100	Electric plant.
		393	Electric plant leased to others.
		394	Electric plant held for future use.
Construction work in progress	2100.3	395	Construction work in progress—electric.
Electric plant acquisition adjustments	2100.5	396	Electric plant acquisition adjustments.
Electric plant in process of reclassification	2100.6	392	Electric plant in process of reclassification.
Electric plant adjustments	2107	397	Other electric plant adjustments.
Other utility plant	2108	118	Other utility plant.
2. Investment and Fund Accounts			*2. Other Property and Investments*
Other physical property	2110	121	Nonutility property.
Miscellaneous investments and special funds	2114	124	Other investments.
		125	Special funds.
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	2120	131	Cash and working funds.
Temporary cash investments	2123	132	Temporary cash investments.
Notes and accounts receivable	2124	141	Notes receivable.
Receivables from associated companies	2126	142	Customer accounts receivable.
		143	Other accounts receivable.
Materials and supplies	2131	160	Materials and supplies.
Prepayments	2132	165	Prepayments.
Miscellaneous current and accrued assets	2133	170	Other current and accrued assets.
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	2140	181	Unamortized debt discount and expense.
Extraordinary property losses	2141	182	Extraordinary property losses.
Miscellaneous deferred debits	2146	183	Other deferred debits.
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
7. Capital Stock			*5. Proprietary Capital*
Common capital stock	2200	201	Common capital stock.
Preferred capital stock	2201	204	Preferred capital stock.
Stock liability for conversion	2202		
Premiums for assessments on capital stock	2203	207	Other paid-in capital.
Capital stock subscribed	2204		
Installments received on capital stock	2205	212	Installments received on capital stock.
8. Long-Term Debt			*6. Long-Term Debt*
Bonds	2210	221	Bonds.
Receivers' certificates	2211	224	Other long-term debt.
Advances from associated companies	2212	223	Advances from associated companies.
Miscellaneous long-term debt	2213	224	Other long-term debt.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Electric plant	100	2100.1	Electric plant in service, leased to others, and held for future use.
Accumulated provision for depreciation and amortization of electric plant.	110	2250	Reserve for depreciation of electric plant.
		2251	Reserve for limited term electric investments.
Other utility plant	118	2108	Other utility plant.
Accumulated provision for depreciation and amortization of other utility plant.	119	2253	Reserve for depreciation and amortization of other property.
2. Other Property and Investments			*2. Investment and Fund Accounts*
Nonutility property	121	2110	Other physical property.
Accumulated provision for depreciation and amortization of nonutility property.	122	2253	Reserve for depreciation and amortization of other property.
Other investments	124	2114	Miscellaneous investments and special funds.
Special funds	125		
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	131	2120	Cash and working funds.
Temporary cash investments	132	2123	Temporary cash investments.
		2124	Notes and accounts receivable.
Notes receivable	141	2126	Receivables from associated companies.
		2221	Notes receivable discounted.
Customer accounts receivable	142	2124	Notes and accounts receivable.
Other accounts receivable	143	2124	Notes and accounts receivable.
		2126	Receivables from associated companies.
Accumulated provision for uncollectible accounts—credit.	144	2254	Reserve for uncollectible accounts.
Materials and supplies	150	2131	Materials and supplies.
Prepayments	165	2132	Prepayments.
Other current and accrued assets	170	2133	Miscellaneous current and accrued assets.
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	181	2140	Unamortized debt discount and expense.
Extraordinary property losses	182	2141	Extraordinary property losses.
Other deferred debits	183	2146	Miscellaneous deferred debits.
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
5. Proprietary Capital			*7. Capital Stock*
Common capital stock	201	2200	Common capital stock.
Preferred capital stock	204	2201	Preferred capital stock.
		2202	Stock liability for conversion.
Other paid-in capital	207	2203	Premiums for assessments on capital stock.
		2204	Capital stock subscribed.
		2270	Capital surplus.
Installments received on capital stock	212	2205	Installments received on capital stock.
Discount on capital stock	213	2150	Discount on capital stock.
Capital stock expense	214	2151	Capital stock expense.
Appropriated earned surplus	215	2271	Earned surplus.
Unappropriated earned surplus	216		
Reacquired capital stock	217	2152	Reacquired securities.
Non-corporate proprietorship	218	-------	New account.
6. Long-Term Debt			*8. Long-Term Debt*
Bonds	221	2210	Bonds.
		2152	Reacquired securities.
Advances from associated companies	223	2212	Advances from associated companies.
Other long-term debt	224	2211	Receivers' certificates.
		2213	Miscellaneous long-term debt.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.
9. Current and Accrued Liabilities			*7. Current and Accrued Liabilities*
Notes and accounts payable	2220	231 232	Notes payable. Accounts payable.
Notes receivable discounted	2221	141	Notes receivable (see note).
Payables to associated companies	2223	238	Other current and accrued liabilities.
Dividends declared	2224	238	Other current and accrued liabilities.
Matured long-term debt	2225		
Matured interest	2226		
Customers' deposits	2227	235	Customer deposits.
Taxes accrued	2228	236	Taxes accrued.
Interest accrued	2229	237	Interest accrued.
Other current and accrued liabilities	2230	238	Other current and accrued liabilities.
10. Deferred Credits			*8. Deferred Credits*
Unamortized premium on debt	2240	251	Unamortized premium on debt.
Customers' advances for construction	2241	252	Customer advances for construction.
Other deferred credits	2242	253	Other deferred credits.
11. Reserves			*9. Operating Reserves*
Reserve for depreciation of electric plant	2250		
Reserve for amortization of limited-term electric investments	2251	110	Accumulated provision for depreciation and amortization of electric plant.
Reserve for amortization of electric plant acquisition adjustments	2252	396	Electric plant acquisition adjustments.
		119	Accumulated provision for depreciation and amortization of other utility plant.
Reserve for depreciation and amortization of other property	2253	122	Accumulated provision for depreciation and amortization of nonutility property.
Reserve for uncollectible accounts	2254	144	Accumulated provision for uncollectible accounts—credit.
		261	Property insurance reserve.
Miscellaneous reserves	2258	264	Amortization reserve—Federal.
		265	Miscellaneous operating reserves.
12. Contributions in Aid of Construction			*10. Contributions in Aid of Construction*
Contributions in aid of construction	2265	271	Contributions in aid of construction.
14. Surplus			
Capital surplus	2270	207	Other paid-in capital.
Earned surplus	2271	215	Appropriated earned surplus.
		216	Unappropriated earned surplus.
ELECTRIC PLANT ACCOUNTS			ELECTRIC PLANT ACCOUNTS
1. Intangible Plant			*1. Intangible Plant*
Intangible plant	2301	301	Organization.
		302	Franchises and consents.
		303	Miscellaneous intangible plant.
2. Production Plant			*2. Production Plant*
A. Steam Production			*A. Steam Production*
Land and land rights	2310	310	Land and land rights.
Structures and improvements	2311	311	Structures and improvements.
Steam production plant equipment	2312	312	Steam power equipment.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.
7. Current and Accrued Liabilities			*9. Current and Accrued Liabilities*
Notes payable	231	2220	Notes and accounts payable.
Accounts payable	232		
Customer deposits	235	2227	Customers' deposits.
Taxes accrued	236	2228	Taxes accrued.
Interest accrued	237	2229	Interest accrued.
		2223	Payables to associated companies.
		2224	Dividends declared.
Other current and accrued liabilities	238	2225	Matured long-term debt.
		2226	Matured interest.
		2230	Other current and accrued liabilities.
8. Deferred Credits			*10. Deferred Credits*
Unamortized premium on debt	251	2240	Unamortized premium on debt.
Customer advances for construction	252	2241	Customers' advances for construction.
Other deferred credits	253	2242	Other deferred credits.
9. Operating Reserves			*11. Reserves*
Property insurance reserve	261		
Amortization reserve—Federal	264	2258	Miscellaneous reserves.
Miscellaneous operating reserves	265		
10. Contributions in Aid of Construction			*12. Contributions in Aid of Construction*
Contributions in aid of construction	271	2265	Contributions in aid of construction.
ELECTRIC PLANT ACCOUNTS			ELECTRIC PLANT ACCOUNTS
1. Intangible Plant			*1. Intangible Plant*
Organization	301		
Franchises and consents	302	2301	Intangible plant.
Miscellaneous intangible plant	303		
2. Production Plant			*2. Production Plant*
A. Steam Production			*A. Steam Production*
Land and land rights	310	2310	Land and land rights.
Structures and improvements	311	2311	Structures and improvements.
Steam power equipment	312	2312	Steam production plant equipment.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
ELECTRIC PLANT ACCOUNTS—Con.			ELECTRIC PLANT ACCOUNTS—Con.
2. Production Plant—Continued			*2. Production Plant*—Continued
B. Hydraulic Production			*B. Hydraulic Production*
Land and land rights	2320	330	Land and land rights.
Structures and improvements	2321	331	Structures and improvements.
Reservoirs, dams, and waterways	2322	332	Reservoirs, dams, and waterways.
Hydraulic production plant equipment	2323	333	Hydraulic power equipment.
Roads, railroads, and bridges	2326	331	Structures and improvements.
C. Internal Combustion Engine Production			*C. Other Production*
Land and land rights	2330	340	Land and land rights.
Structures and improvements	2331	341	Structures and improvements.
Internal combustion production plant equipment	2332	342	Other power equipment.
3. Transmission Plant			*3. Transmission and Distribution Plant*
Land and land rights	2340	350	Land and land rights.
Clearing land and rights of way	2341		Deleted.
Structures and improvements	2342	351	Structures and improvements.
Station equipment	2343	352	Station equipment.
Overhead lines	2344	353	Overhead lines.
Underground lines	2347	356	Underground lines.
Roads and trails	2349	361	Structures and improvements.
4. Distribution Plant			
Land and land rights	2350	350	Land and land rights.
Structures and improvements	2351	351	Structures and improvements.
Station and storage battery equipment	2352	352	Station equipment.
Overhead lines	2354	353	Overhead lines.
Underground lines	2356	356	Underground lines.
Line transformers	2358	358	Line transformers.
Services	2359	353	Overhead lines.
Meters	2360	360	Meters.
Installations on customers' premises	2361	361	Installations on customers' premises.
Leased property on customers' premises	2362	362	Leased property on customers' premises.
Street lighting and signal systems	2363	363	Street lighting and signal systems.
5. General Plant			*4. General Plant*
Land and land rights	2370	370	Land and land rights.
Structures and improvements	2371	371	Structures and improvements.
Office furniture and equipment	2372	372	Office furniture and equipment.
		373	Transportation equipment.
General plant equipment	2373	370	Other general equipment.
			5. Other Electric Plant
Other tangible property	2390	390	Other tangible property.
Electric plant purchased	2391	391	Electric plant purchased or sold.
Electric plant sold	2392		

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title
ELECTRIC PLANT ACCOUNTS—Con.			ELECTRIC PLANT ACCOUNTS—Con.
2. Production Plant—Continued			*2. Production Plant*—Continued
B. Hydraulic Production			*B. Hydraulic Production*
Land and land rights	330	2320	Land and land rights.
Structures and improvements	331	2321	Structures and improvements.
		2326	Roads, railroads, and bridges.
Reservoirs, dams, and waterways	332	2322	Reservoirs, dams, and waterways.
Hydraulic power equipment	333	2323	Hydraulic production plant equipment.
C. Other Production			*C. Internal Combustion Engine Production*
Land and land rights	340	2330	Land and land rights.
Structures and improvements	341	2331	Structures and improvements.
Other power equipment	342	2332	Internal combustion production plant equipment.
3. Transmission and Distribution Plant			*3-4. Transmission and Distribution Plant*
Land and land rights	350	2340	Land and land rights.
		2350	Land and land rights.
Structures and improvements	351	2342	Structures and improvements.
		2349	Roads and trails.
Station equipment	352	2351	Structures and improvements.
		2343	Station equipment.
		2352	Station and storage battery equipment.
Overhead lines	353	2344	Overhead lines.
		2354	Overhead lines.
		2359	Services.
Underground lines	356	2347	Underground lines.
		2356	Underground lines.
Line transformers	358	2358	Line transformers.
Meters	360	2360	Meters.
Installations on customers' premises	361	2361	Installations on customers' premises.
Leased property on customers' premises	362	2362	Leased property on customers' premises.
Street lighting and signal systems	363	2363	Street lighting and signal systems.
4. General Plant			*5. General Plant*
Land and land rights	370	2370	Land and land rights.
Structures and improvements	371	2371	Structures and improvements.
Office furniture and equipment	372	2372	Office furniture and equipment.
Transportation equipment	373	2373	General plant equipment.
Other general equipment	379		
5. Other Electric Plant			
Other tangible property	390	2390	Other tangible property.
Electric plant purchased or sold	391	2391	Electric plant purchased.
		2392	Electric plant sold.
Electric plant in process of reclassification	392	2100.6	Electric plant in process of reclassification.
Electric plant leased to others	393	2100.1	Electric plant in service, leased to others, and held for future use.
Electric plant held for future use	394		
Construction work in progress—electric	395	2100.3	Construction work in progress.
Electric plant acquisition adjustments	396	2100.5	Electric plant acquisition adjustments.
		2252	Reserve for electric plant acquisition adjustments.
Other electric plant adjustments	397	2107	Electric plant adjustments.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title	Account title	No.	No.	Account title
EARNED SURPLUS ACCOUNTS			EARNED SURPLUS				
Credits:			Credits:				
Earned surplus (at beginning of period)	2271	216	Unappropriated earned surplus (at beginning of period).				
Credit balance transferred from income account	2400	433	Balance transferred from income.	(In the system of accounts effective Jan. 1, 1961, the earned surplus accounts are included with the income accounts. See below.)			
Miscellaneous credits to surplus	2401	434	Miscellaneous credits to surplus.				
Debits:			Debits:				
Debit balance transferred from income account	2410	433	Balance transferred from income.				
Dividend appropriations—preferred stock	2411	437	Dividends declared—preferred stock.				
Dividend appropriations—common stock	2412	438	Dividends declared—common stock.				
Miscellaneous reservations of surplus	2413	436	Appropriations of surplus.				
Miscellaneous debits to surplus	2414	435	Miscellaneous debits to surplus.				
Earned surplus (at end of period)	2271	216	Unappropriated earned surplus (at end of period).				
INCOME ACCOUNTS			INCOME ACCOUNTS	INCOME ACCOUNTS			INCOME ACCOUNTS
1. Utility Operating Income			*1. Utility Operating Income*	*1. Utility Operating Income*			*1. Utility Operating Income*
Electric operating income:							
Operating revenues	2501	400	Operating revenues.	Operating revenues	400	2501	Operating revenues.
Operating revenue deductions:			Operating expenses:	Operating expenses:			Operating revenue deductions:
Operating expenses	2502	401	Operation and maintenance expense.	Operation and maintenance expense	401	2502	Operating expenses.
Depreciation	2503	403	Depreciation expense.	Depreciation expense	403	2503	Depreciation.
Amortization of limited-term electric investments.	2504	404	Amortization expense.	Amortization expense	404	2504	Amortization of limited-term electric investments.
Amortization of electric plant acquisition adjustments.	2505					2505	Amortization of electric plant acquisition adjustments.
Property losses chargeable to operations	2506					2506	Property losses chargeable to operations.
Taxes	2507	408	Taxes other than income taxes.	Taxes other than income taxes	408	2507	Taxes.
		409	Income taxes.	Income taxes	409		
Income from electric plant leased to others:	2508	412–413	Income from electric plant leased to others:	Income from electric plant leased to others	412–413	2508	Income from electric plant leased to others.
Revenues from plant leased to others	2508.1	412	Revenues from electric plant leased to others.	Revenues from electric plant leased to others	412	2508.1	Revenues from plant leased to others.
Expenses of plant leased to others	2508.2	413	Expenses of electric plant leased to others.	Expenses of electric plant leased to others	413	2508.2	Expenses of plant leased to others.
Other utility operating income	2509	414	Other utility operating income.	Other utility operating income	414	2509	Other utility operating income.
2. Other Income			*2. Other Income*	*2. Other Income*			*2. Other Income*
Income from merchandising, jobbing, and contract work.	2520	415–416	Income from merchandising, jobbing, and contract work.	Income from merchandising, jobbing and contract work.	415–416	2520	Income from merchandising, jobbing and contract work.
Revenues from merchandising, jobbing, and contract work.	2520.1	415	Revenues from merchandising, jobbing, and contract work.	Revenues from merchandising, jobbing, and contract work.	415	2520.1	Revenues from merchandising, jobbing, and contract work.
Costs and expenses of merchandising, jobbing, and contract work.	2520.2	416	Costs and expenses of merchandising, jobbing, and contract work.	Costs and expenses of merchandising, jobbing, and contract work.	416	2520.2	Costs and expenses of merchandising, jobbing, and contract work.
Income from non-utility operations	2521	421	Miscellaneous nonoperating income.	Nonoperating rental income	418	2522	Revenues from lease of other physical property.
Revenues from lease of other physical property	2522	418	Nonoperating rental income.				
Dividend revenues	2523	419	Interest and dividend income.	Interest and dividend income	419	2524	Interest revenues.
Interest revenues	2524					2525	Revenues from sinking and other funds.
Revenues from sinking and other funds	2525					2521	Income from non-utility operations.
Miscellaneous non-operating revenues	2526	421	Miscellaneous nonoperating income.	Miscellaneous nonoperating income	421	2526	Miscellaneous non-operating revenues.
Non-operating revenue deductions	2527	------	Deleted.				
3. Income Deductions			*3. Miscellaneous Income Deductions*	*3. Miscellaneous Income Deductions*			*3. Income Deductions*
				Miscellaneous amortization	425	2537	Miscellaneous amortization.
				Other income deductions	426	2538	Miscellaneous income deductions.
			4. Interest Charges	*4. Interest Charges*			
Interest on long-term debt	2530	427	Interest on long-term debt.	Interest on long-term debt	427	2530	Interest on long-term debt.
Amortization of debt discount and expense	2531	428	Amortization of debt discount and expense.	Amortization of debt discount and expense	428	2531	Amortization of debt discount and expense.
Amortization of premium on debt—credit	2532	429	Amortization of premium on debt—credit.	Amortization of premium on debt—credit	429	2532	Amortization of premium on debt—credit.
Taxes assumed on interest	2533	431	Other interest expense.	Interest on debt to associated companies	430	2534	Interest on debt to associated companies.
Interest on debt to associated companies	2534	430	Interest on debt to associated companies.	Other interest expense	431	2533	Taxes assumed on interest.
Other interest charges	2535	431	Other interest expense.			2535	Other interest charges.
Interest charged to construction—credit	2536	432	Interest charged to construction—credit.	Interest charged to construction—credit	432	2536	Interest charged to construction—credit.
Miscellaneous amortization	2537	425	Miscellaneous amortization.				
Miscellaneous income deductions	2538	426	Other income deductions.				

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938

System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title	Account title	No.	No.	Account title
INCOME ACCOUNTS—Con.			INCOME ACCOUNTS—Con.	INCOME ACCOUNTS—Con.			INCOME ACCOUNTS—Con.
4. Disposition of Net Income				*5. Earned Surplus*			*Earned Surplus Accounts*
Miscellaneous reservations of net income	2540	------	Deleted.	Unappropriated earned surplus (at beginning of period).	216	2271	Earned surplus (at beginning of period).
				Balance transferred from income	433	2400	Credit balance transferred from income account.
						2410	Debit balance transferred from income account.
				Miscellaneous credits to surplus	434	2401	Miscellaneous credits to surplus.
				Miscellaneous debits to surplus	435	2414	Miscellaneous debits to surplus.
				Appropriations of surplus	436	2413	Miscellaneous reservations of surplus.
				Dividends declared—preferred stock	437	2411	Dividend appropriations—preferred stock.
				Dividends declared—common stock	438	2412	Dividend appropriations—common stock.
				Unappropriated earned surplus (at end of period).	216	2271	Earned surplus (at end of period).
OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS	OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS
1. Sales of Electric Energy			*1. Sales of Electricity*	*1. Sales of Electricity*			*1. Sales of Electric Energy*
Residential or domestic sales	2600	440	Residential sales.	Residential sales	440	2600	Residential or domestic sales.
Rural sales	2601	440	Residential sales.			2601	Rural sales.
		442	Commercial and industrial sales.			2601	Rural sales.
Commercial and industrial sales	2602	442	Commercial and industrial sales.	Commercial and industrial sales	442	2602	Commercial and industrial sales.
Public street and highway lighting	2603	444	Public street and highway lighting.	Public street and highway lighting	444	2603	Public street and highway lighting.
Other sales to public authorities	2604	449	Other sales.	Sales for resale	447	2605	Sales to other electric utilities.
Sales to other electric utilities	2605	447	Sales for resale.	Interdepartmental sales	448	2607	Interdepartmental sales.
Sales to railroads and railways	2606	449	Other sales.	Other sales	449	2604	Other sales to public authorities.
Interdepartmental sales	2607	448	Interdepartmental sales.			2606	Sales to railroads and railways.
Other sales	2608	449	Other sales.			2608	Other sales.
2. Other Electric Revenues			*2. Other Operating Revenues*	*2. Other Operating Revenues*			*2. Other Electric Revenues*
Rent from electric property	2610	456	Other electric revenues.	Forfeited discounts	450	2612	Customers' forfeited discounts and penalties.
Interdepartmental rents	2611			Other electric revenues	456	2610	Rent from electric property.
Customers' forfeited discounts and penalties	2612	450	Forfeited discounts.			2611	Interdepartmental rents.
Sales of water and water power	2613	456	Other electric revenues.			2613	Sales of water and water power.
Servicing of customers' installations	2614					2614	Servicing of customers' installations.
Miscellaneous electric revenues	2615					2615	Miscellaneous electric revenues.
OPERATING EXPENSE ACCOUNTS			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS	OPERATION AND MAINTENANCE EXPENSE ACCOUNTS			OPERATING EXPENSE ACCOUNTS
1. Production Expenses			*1. Production Expenses*	*1. Production Expenses*			*1. Production Expenses*
A. Electric Generation—Steam Power			*A. Steam Power Generation*	*A. Steam Power Generation*			*A. Electric Generation—Steam Power*
Operation:							
Operation supervision and labor	2701	500	Supervision and labor.	Supervision and labor	500	2701	Operation supervision and labor.
						2706	Maintenance of steam production plant.
Fuel	2703	501	Fuel.	Fuel	501	2703	Fuel.
Water	2704	502	Supplies and expenses.	Supplies and expenses	502	2704	Water.
Supplies and expenses	2705					2705	Supplies and expenses.
						2710	Rent.
Maintenance:							
Maintenance of steam production plant	2706	500	Supervision and labor.	Steam from other sources	503	2711	Steam from other sources.
		506	Repairs of steam production plant.	Steam transferred—credit	504	2712	Steam transferred—credit.
				Repairs of steam production plant	506	2706	Maintenance of steam production plant.
Miscellaneous:							
Rents	2710	502	Supplies and expenses.				
Steam from other sources	2711	503	Steam from other sources.				
Steam transferred—credit	2712	504	Steam transferred—credit.				
Joint expenses—debit	2713	------	Deleted.				
Joint expenses—credit	2714	------	Deleted.				
B. Electric Generation—Hydraulic Power			*B. Hydraulic Power Generation*	*B. Hydraulic Power Generation*			*B. Electric Generation—Hydraulic Power*
Operation:							
Operation supervision and labor	2715	520	Supervision and labor.	Supervision and labor	520	2715	Operation supervision and labor.
						2719	Maintenance of hydraulic production plant.
Water for power	2717	521	Water for power.	Water for power	521	2717	Water for power.
Supplies and expenses	2718	522	Supplies and expenses.	Supplies and expenses	522	2718	Supplies and expenses.
						2724	Rents.
Maintenance:							
Maintenance of hydraulic production plant	2719	520	Supervision and labor.	Repairs of hydraulic production plant	524	2719	Maintenance of hydraulic production plant.
		524	Repairs of hydraulic production plant.				
Miscellaneous:							
Rents	2724	522	Supplies and expenses.				
Joint expenses—debit	2725	------	Deleted.				
Joint expenses—credit	2726	------	Deleted.				

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961				From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938			
System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title	Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.	OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
1. Production Expenses—Con.			*1. Production Expenses*—Con.	*1. Production Expenses*—Con.			*1. Production Expenses*—Con.
C. Electric Generation—Internal Combustion Engine Power			*C. Other Power Generation*	*C. Other Power Generation*			*C. Electric Generation—Internal Combustion Engine Power*
Operation:						2727	Operation supervision and labor.
Operation supervision and labor	2727	530	Supervision and labor.	Supervision and labor	530	2731	Maintenance of internal combustion production plant.
Engine fuel	2729	531	Fuel.	Fuel	531	2729	Engine fuel.
Supplies and expenses	2730	532	Supplies and expenses.	Supplies and expenses	532	2730	Supplies and expenses.
Maintenance:						2735	Rents.
Maintenance of internal combustion production plant.	2731	530	Supervision and labor.	Repairs of other power production plant	534	2731	Maintenance of internal combustion production plant.
		534	Repairs of other power production plant.				
Miscellaneous:							
Rents	2735	532	Supplies and expenses.				
Joint expenses—debit	2736		Deleted.				
Joint expenses—credit	2737		Deleted.				
D. Other Production Expenses and Credits			*D. Other Power Supply Expenses*	*D. Other Power Supply Expenses*			*D. Other Production Expenses and Credits*
Purchased power	2738	540	Purchased power.	Purchased power	540	2738	Purchased power.
Interchange power	2739					2739	Interchange power.
Other expenses	2740	549	Other expenses.	Other expenses	549	2740	Other expenses.
Joint expenses—debit	2741		Deleted.				
Joint expenses—credit	2742		Deleted.				
2. Transmission Expenses			*2. Transmission and Distribution Expenses*	*2. Transmission and Distribution Expenses*			*2–3. Transmission and Distribution Expenses*
System operation	2744	550	Supervision and labor.			2744	System operation.
		552	Supplies and expenses.			2748	System maintenance.
System maintenance	2748	555	Transportation expenses.			2753	Rents.
Rents	2753	552	Supplies and expenses.			2757	System operation.
Joint expenses—debit	2754		Deleted.	Supervision and labor	550	2763	Operation of street lighting and signal system.
Joint expenses—credit	2755		Deleted.	Supplies and expenses	552	2765	System maintenance.
3. Distribution Expenses				Transportation expenses	555	2775	Maintenance of street lighting and signal systems.
System operation	2757	550	Supervision and labor.			2776	Rents.
Operation of street lighting and signal systems	2763	552	Supplies and expenses.			2811	Transportation expenses.
System maintenance	2765	555	Transportation expenses.			2903	Transportation expenses—clearing.
Maintenance of street lighting and signal systems	2775						
Rents	2776	552	Supplies and expenses.				
Joint expenses—debit	2777		Deleted.				
Joint expenses—credit	2778		Deleted.				

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Public Utilities and Licensees effective Jan. 1, 1938, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1938, to the system of accounts effective Jan. 1, 1961				From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1938			
System of accounts effective Jan. 1, 1938		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1938	
Account title	No.	No.	Account title	Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.	OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
4. Customers' Accounting and Collecting Expenses			*3. General Expenses*	*3. General Expenses*			*4. Customers' Accounting Expenses*
							5. Sales Promotion Expenses
							6. Administrative and General Expenses
Meter reading, accounting, and collecting	2780	580	Administrative and general salaries.			2780	Meter reading, accounting, and collecting.
		581	Office supplies and expenses.			2786	Sales expenses.
Uncollectible accounts	2783	590	Uncollectible accounts.			2790	General office salaries.
Rents	2784	589	Miscellaneous general expenses.	Administrative and general salaries	580	2807	Administrative and general expenses transferred—credit.
5. Sales Promotion Expenses						2780	Meter reading, accounting, and collecting.
						2781	Sales expenses.
Sales expenses	2786	580	Administrative and general salaries.			2790	Office supplies and expenses.
		581	Office supplies and expenses.			2802	Maintenance of general property.
Rents	2788	589	Miscellaneous general expenses.			2803	General rents.
		592	Revenues from merchandising, jobbing, and contract work.	Office supplies and expenses	581	2807	Administrative and general expenses transferred—credit.
Merchandising, jobbing, and contract work	2789	593	Costs and expenses of merchandising, jobbing, and contract work.			2811	Transportation expenses.
6. Administrative and General Expenses				Outside services employed	582		
				Insurance	584	2793	General expenses.
General office salaries	2790	580	Administrative and general salaries.	Employees pensions and benefits	586		
		581	Office supplies and expenses.	Regulatory commission expenses	588	2797	Regulatory commission expenses.
		582	Outside services employed.			2784	Rents.
General expenses	2793	584	Insurance.			2788	Rents.
		586	Employees pensions and benefits.			2793	General expenses.
		589	Miscellaneous general expenses.	Miscellaneous general expenses	589	2802	Maintenance of general property.
Regulatory commission expenses	2797	588	Regulatory commission expenses.			2803	General rents.
		581	Office supplies and expenses.			2805	Franchise requirements.
Maintenance of general property	2802	589	Miscellaneous general expenses.			2783	Uncollectible accounts.
		581	Office supplies and expenses.	Uncollectible accounts	590		
General rents	2803	589	Miscellaneous general expenses.	Revenues from merchandising, jobbing, and contract work.	592		
Franchise requirements	2805	589	Miscellaneous general expenses.			2789	Merchandising, jobbing, and contract work.
Duplicate miscellaneous charges—credit	2806		Deleted.	Costs and expenses of merchandising, jobbing, and contract work.	593		
		580	Administrative and general salaries.				
Administrative and general expenses transferred—credit.	2807	581	Office supplies and expenses.				
Joint expenses—debit	2808		Deleted.				
Joint expenses—credit	2809		Deleted.				
Stores expenses	2810		Deleted. See account 183.				
		555	Transportation expenses.				
Transportation expenses	2811	581	Office supplies and expenses.				
CLEARING ACCOUNTS							
Charges by associated companies—clearing	2901		Deleted. See account 183.				
Stores expenses—clearing	2902		Deleted.				
Transportation expenses—clearing	2903	555	Transportation expenses. (May be used as a clearing account).				

APPENDIX B—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT (CLASS D)

Definitions

When used in this system of accounts:

1. "Accounts" means the accounts prescribed in this system of accounts.

2. "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

3. "Book cost" means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, amortization or for other purposes.

4. "Commission" means the Federal Power Commission.

5. "Cost" means the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common stock in a merger or a pooling of interest, the value of such consideration shall be determined on a cash basis.

6. "Cost of removal" means the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto.

7. "Depreciation," as applied to depreciable electric plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of electric plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.

8. "Investment advances" means advances, represented by notes or by book accounts only, with respect to which it is mutually agreed or intended between the creditor and debtor that they shall be settled by the issuance of securities or shall not be subject to current settlement.

9. "Licensee" means any person, or State, licensed under the provisions of the Federal Power Act and subject to the Commission's accounting requirements under the terms of the license.

10. "Minor items of property" means the associated parts or items of which retirement units are composed.

11. "Net salvage value" means the salvage value of property retired less the cost of removal.

12. "Original cost," as applied to electric plant, means the cost of such property to the person first devoting it to public service.

13. "Nonproject property" means the electric plant of a licensee which is not a part of the project property subject to a license issued by the Commission.

14. "Project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights of way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

15. "Project property" means the property described in and subject to a license issued by the Commission.

16. "Property retired," as applied to electric plant, means property which has been removed, sold, abandoned, destroyed, or which for any cause has been withdrawn from service.

17. "Public utility" means any person who owns or operates facilities subject to the jurisdiction of the Commission under the Federal Power Act. (See section 201(e) of said act.)

18. "Replacing" or "replacement," when not otherwise indicated in the context, means the construction or installation of electric plant in place of property retired, together with the removal of the property retired.

19. "Retirement units" means those items of electric plant which, when retired, with or without replacement, are accounted for by crediting the book cost thereof to the electric plant account in which included.

20. "Salvage value" means the amount received for property retired, less any expenses incurred in connection with the sale or in preparing the property for sale; or, if retained, the amount at which the material recoverable is chargeable to materials and supplies, or other appropriate account.

21. "Service life" means the time between the date electric plant is includible in electric plant in service, or electric plant leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, then service life should be measured in terms of the appropriate unit of production.

22. "Service value" means the difference between original cost and net salvage value of electric plant.

23. "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

24. "Utility," as used herein and when not otherwise indicated in the context, means any public utility or licensee to which this system of accounts is applicable.

General Instructions

1. *Classification of Utilities.*

A. For the purpose of applying systems of accounts prescribed by the Commission, electric utilities and licensees are divided into four classes as follows:

Class A. Utilities having annual electric operating revenues of $2,500,000 or more.

Class B. Utilities having annual electric operating revenues of $1,000,000 or more but less than $2,500,000.

Class C. Utilities having annual electric operating revenues of $150,000 or more but less than $1,000,000.

Class D. Utilities having annual electric operating revenues of $25,000 or more but less than $150,000.

B. This system of accounts applies to Class D utilities. Those applicable to Classes A and B and to Class C utilities are issued separately.

C. The class to which any utility belongs shall originally be determined by the average of its annual electric operating revenues for the last three consecutive years. Subsequent changes in classification shall be made when the annual electric operating revenues for each of the three immediately preceding years shall exceed the upper limit, or be less than the lower limit, of the annual electric operating revenues of the classification previously applicable to the utility.

D. Any utility may, at its option, adopt the system of accounts prescribed by the Commission for any larger class of utilities.

2. *Records.*

A. Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto.

B. In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subdivisions of any account, may be kept provided the integrity of the prescribed accounts is not impaired.

C. Each utility shall keep its books on either a monthly or quarterly basis. Each utility shall close its books at the end of each calendar year unless otherwise authorized by the Commission.

3. *Item Lists.*

Lists of "items" appearing in the texts of the accounts or elsewhere herein are for the purpose of more clearly indicating the application of the prescribed accounting. The lists are intended to be representative, but not exhaustive. The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts. In cases of doubtful interpretation, the matter shall be submitted to the Commission for decision.

4. *Distribution of Pay and Expenses of Employees.*

The charges to electric plant, operating expenses and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

5. *Functions and Accounts not Included.*

If the utility contemplates or is following accounting for deferred taxes on income (and is permitted by the Commission to practice such accounting) it shall use the accounts for deferred taxes on income prescribed for Classes A and B or Class C electric utilities and licensees and comply with the related instructions and account texts of such Class A and B or Class C Uniform System of Accounts as though such accounts and instructions were a part of this system of accounts.

6. *Separate Accounts or Records for Each Licensed Project.*

The accounts or records of each licensee shall be so kept as to show for each project under license:

(a) the actual legitimate original cost of the project, including the original cost (or fair value as determined under section 23 of the Federal Power Act) of the original project, the original cost of additions thereto and betterments thereof, credits for property retired from service, and credits for related contributions in aid of construction, as determined under the Commission's regulations;

(b) the charges for operation and maintenance of the project property directly assignable to the project;

(c) the credits and debits to the depreciation reserve account, and the balance in such account;

(d) the credits and debits to operating revenue, income, and surplus accounts that can be identified with and directly assigned to the project.

NOTE: The purpose of this instruction is to insure that accounts or records are currently maintained by each licensee from which reports may be made to the Commission for use in determining the net investment in each licensed project. The instruction covers only the debit and credit items appearing in the licensee's accounts which may be identified with and assigned directly to any licensed project. In the determination of the net investment as defined in section 3 of the Federal Power Act, allocations of items affecting the net investment may be required where direct assignment is not practicable.

Electric Plant Instructions

1. *Electric Plant To Be Recorded at Cost.*

A. All amounts included in the accounts for electric plant acquired as an operating unit or system, except as otherwise provided in the texts of the intangible plant accounts, shall be stated at the cost incurred by the person who first devoted the property to utility service. All other electric plant shall be included in the accounts at the cost incurred by the utility. Where the term "cost" is used in the detailed plant accounts, it shall have the meaning stated in this paragraph.

B. When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis (see, however, Definition 5). In the entry recording such transaction, the actual consideration shall be described with sufficient particularity to identify it. The utility shall be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration if other than cash.

C. When property is purchased under a plan involving deferred payments, no charge shall be made to the electric plant accounts for interest, insurance or other expenditures occasioned solely by such form of payment.

D. Electric plant contributed to the utility or constructed by it from contributions to it of cash or its equivalent shall be charged to the electric plant accounts at cost of construction estimated if not known. There shall be credited to the accounts for accumulated depreciation and amortization the estimated amount of depreciation and amortization applicable to the property at the time of its contribution to the utility. The difference between the amounts included in the electric plant accounts and the accumulated depreciation and amortization shall be credited to account 271, Contributions in Aid of Construction.

2. *Components of Construction Cost.*

The cost of construction of property chargeable to the electric plant accounts shall include, where applicable, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and permits, special machine service, interest during construction and such portion of general engineering, administrative salaries and expenses, insurance, taxes and other analogous items as may be properly includible in construction costs.

3. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights of way, and other like interest in land.

B. Where special assessments for public improvements provide for deferred payments, the full amount of the assessments shall be charged to the appropriate land account and the unpaid balance shall be carried in an appropriate liability account. Interest on unpaid balances shall be charged to the appropriate interest account. If any part of the cost of public improvements is included in the general tax levy, the amount thereof shall be charged to the appropriate tax account.

C. The cost of buildings and other improvements (other than public improvements) shall not be included in the land accounts. If at the time of acquisition of an interest in land such interest extends to buildings or other improvements (other than public improvements), which are then devoted to utility operations, the land and improvements shall be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking shall be charged and the salvage credited to the account in which the cost of the land is recorded.

D. When the purchase of land for utility operations requires the purchase of more land than needed for such purposes, the charge to the specific land account shall be based upon the cost of the land purchased, less the fair market value of that portion of the land which is not to be used in utility operations. The portion of the cost measured by the fair market value of the land not to be used shall be included in account 394, Property Held for Future Use, or account 121, Nonutility Property, as appropriate.

4. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land.

B. The cost of specially provided foundations not intended to outlast the machinery or apparatus for which provided, and the cost of angle irons, castings, etc., installed at the base of any item of equipment, shall be charged to the same account as the cost of the machinery, apparatus or equipment.

C. Where furnaces and boilers are used primarily for furnishing steam for some particular department and only incidentally for furnishing steam for heating a building and operating the equipment therein, the entire cost of such furnaces and boilers shall be charged to the appropriate plant account, and no part to the building account.

D. Where the structure of a dam forms also the foundation of the power plant building, such foundation shall be considered a part of the dam.

5. *Equipment.*

A. The cost of equipment chargeable to the electric plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate.

B. Exclude from equipment accounts hand and other portable tools, which are likely to be lost or stolen or which have relatively small value or short life, unless the correctness of the accounting therefor as utility plant is verified by

current inventories. Special tools acquired and included in the purchase price of equipment shall be included in the appropriate plant account. Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as production, transmission, distribution, etc., or in "stores," shall be charged to the plant account appropriate for their use.

C. The equipment accounts shall include angle irons and similar items which are installed at the base of an item of equipment, but piers and foundations which are designed to be as permanent as the buildings which house the equipment, or which are constructed as a part of the building and which cannot be removed without cutting into the walls, ceilings, or floors, or without in some way impairing the building, shall be included in the building accounts.

6. *Electric Plant Retired.*

A. When depreciable electric plant is abandoned, destroyed, withdrawn or otherwise retired from service for any cause, the book cost of the plant shall be deducted from the electric plant accounts and charged to accumulated provision for depreciation. The cost of removing such plant (except customer meters and line transformers) shall be charged to accumulated provision for depreciation and the amount received for any materials recovered and sold, or salvage value if returned to stores, shall be credited to the accumulated provision for depreciation. It is not intended that the above procedure shall be followed in the replacement of minor items of plant, the replacement of which is charged to operating expense accounts.

B. The book cost of land retired shall be credited to the appropriate land account. If the land is sold, the difference between the book cost (less any accumulated provision for depreciation or amortization therefor which has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate. If the land is not used in utility service but is retained by the utility, the book cost shall be charged to account 394, Electric Plant Held for Future Use, or account 121, Nonutility Property, as appropriate.

C. The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and, if this cannot be done, it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any difference in size and character, shall be used as the book cost of the units retired.

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

1. UTILITY PLANT

100 Electric plant.
110 Accumulated provision for depreciation and amortization of electric plant.
118 Other utility plant.
119 Accumulated provision for depreciation and amortization of other utility plant.

2. OTHER PROPERTY AND INVESTMENTS

121 Nonutility property.
122 Accumulated provision for depreciation and amortization of nonutility property.
124 Other investments.
125 Special funds.

3. CURRENT AND ACCRUED ASSETS

131 Cash and working funds.
132 Temporary cash investments.
141 Notes receivable.
142 Customer accounts receivable.
143 Other accounts receivable.
144 Accumulated provision for uncollectible accounts—Cr.
150 Materials and supplies.
165 Prepayments.
170 Other current and accrued assets.

4. DEFERRED DEBITS

181 Unamortized debt discount and expense.
182 Extraordinary property losses.
183 Other deferred debits.

LIABILITIES AND OTHER CREDITS

5. PROPRIETARY CAPITAL

201 Common capital stock.
204 Preferred capital stock.
207 Other paid-in capital.
212 Installments received on capital stock.
213 Discount on capital stock.
214 Capital stock expense.
215 Appropriated earned surplus.
216 Unappropriated earned surplus.
217 Reacquired capital stock.
218 Non-corporate proprietorship.

6. LONG-TERM DEBT

221 Bonds.
223 Advances from associated companies.
224 Other long-term debt.

7. CURRENT AND ACCRUED LIABILITIES

231 Notes payable.
232 Accounts payable.
235 Customer deposits.
236 Taxes accrued.
237 Interest accrued.
238 Other current and accrued liabilities.

8. DEFERRED CREDITS

251 Unamortized premium on debt.
252 Customer advances for construction.
253 Other deferred credits.

9. OPERATING RESERVES

261 Property insurance reserve.
264 Amortization reserve—Federal.
265 Miscellaneous operating reserves.

10. CONTRIBUTIONS IN AID OF CONSTRUCTION

271 Contributions in aid of construction.

Balance Sheet Accounts

1. UTILITY PLANT

100 Electric plant.

A. This account shall include the book amount of electric plant, included in the plant accounts 301 to 397, inclusive, prescribed herein, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees.

B. The cost of additions to and betterments of property leased from others, which are includible in this account, shall be maintained in subdivisions separate and distinct from those relating to owned property.

110 Accumulated provision for depreciation and amortization of electric plant.

A. This account shall be credited with the following:

(1) Amounts charged to account 403, Depreciation Expense, to account 404, Amortization Expense, to account 413, Expenses of Electric Plant Leased to Others, to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work, or to clearing accounts for currently accruing depreciation or amortization of plant.

(2) Amounts charged to account 435, Miscellaneous Debits to Surplus, for past accrued depreciation or amortization.

(3) Amounts of depreciation applicable to electric properties acquired as operating units or systems.

(4) Amounts chargeable to account 182, Extraordinary Property Losses, when authorized by the Commission.

(5) Amounts of depreciation applicable to electric plant donated to the utility.

B. At the time of retirement of electric plant, this account shall be charged with the book cost of the property retired and the cost of removal, and shall be credited with the salvage value and any other amounts recovered, such as insurance.

C. The credits and debits to this account shall be so kept as to show separately: (1) the amount of accrual for depreciation or amortization, (2) the book cost of property retired, (3) cost of removal, (4) salvage, and (5) other items, including recoveries from insurance.

D. The utility is restricted in its use of the accumulated provision for depreciation to the purposes set forth above. It shall not transfer any portion of this account to surplus or make any other use thereof without authorization by the Commission.

118 Other utility plant.

This account shall include the balances in accounts for utility plant, other than electric plant, such as gas, railway, etc.

119 Accumulated provision for depreciation and amortization of other utility plant.

This account shall include the accumulated provision for depreciation and amortization applicable to utility property other than electric plant.

2. OTHER PROPERTY AND INVESTMENTS

121 Nonutility property.

This account shall include the book cost of land, structures, equipment or other tangible or intangible property owned by the utility, but not used in utility service and not properly includible in account 394, Electric Plant Held for Future Use.

122 Accumulated provision for depreciation and amortization of nonutility property.

This account shall include the accumulated provision for depreciation and amortization applicable to property other than utility plant.

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by other companies, investment advances to such companies, and any investments not accounted for elsewhere. Include also the offsetting entry to the recording of amortization of discount or premium on interest-bearing investments. (See account 419, Interest and Dividend Income.)

B. The records shall be maintained in such manner as to show the amount of each investment and the investment advances to each person.

125 Special funds.

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for bond retirements, property additions, and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. A separate account, with appropriate title, shall be kept for each fund.

NOTE A: Amounts deposited with a trustee under the terms of an irrevocable trust agreement for pensions or other employees' benefits shall not be included in this account.

NOTE B: Licensees under the Federal Power Act which are required to establish an amortization fund under terms of the license shall provide a special subdivision of this account for the purpose of accounting for and identifying the cash, investments or other specific assets associated with account 264, Amortization Reserve—Federal.

3. CURRENT AND ACCRUED ASSETS

131 Cash and working funds.

This account shall include the amount of cash on hand and in banks and cash advanced to officers, agents, employees, and others as petty cash or working funds. Special cash deposits for payment of interest, dividends or other special purposes shall be included in this account in separate subdivisions which shall specify the purpose for which each such special deposit is made.

NOTE: Special deposits for more than one year, which are not offset by current liabilities, shall not be charged to this account but to account 125, Special Funds.

132 Temporary cash investments.

A. This account shall include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

B. This account shall be so maintained as to show separately temporary cash investments in securities of associated companies and of others. Records shall be kept of any pledged investments.

141 Notes receivable.

This account shall include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable and similar evidences (except interest coupons) of money due on demand or within one year from the date of issue.

NOTE: The face amount of notes receivable, discounted, sold, or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

142 Customer accounts receivable.

A. This account shall include amounts due from customers for utility service, and for merchandising, jobbing and contract work.

B. This account shall be maintained so as to permit ready segregation of the amounts due for merchandising, jobbing and contract work.

143 Other accounts receivable.

A. This account shall include amounts due the utility upon open accounts, other than amounts due from customers for utility services and merchandising, jobbing and contract work.

B. This account shall be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees, but the account shall not include amounts advanced to officers or others as working funds.

144 Accumulated provision for uncollectible accounts—Cr.

A. This account shall be credited with amounts provided for losses on accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. Concurrent charges shall be made to account 590, Uncollectible Accounts, for amounts applicable to utility operations, and to corresponding accounts for other operations. Records shall be maintained so as to show the writeoffs of accounts receivable for each utility department.

B. This account shall be subdivided to show the provision applicable to the following classes of accounts receivable:

Utility Customers.
Merchandising, Jobbing and Contract Work.
Officers and Employees.
Other.

NOTE A: Accretions to this account shall not be made in excess of a reasonable provision against losses of the character provided for.

NOTE B: If provisions for uncollectible notes receivable are necessary, separate subaccounts therefor shall be established under account 141, Notes Receivable.

150 Materials and supplies.

A. This account shall include the cost of fuel on hand and unapplied materials and supplies (except line transformers and meters). It shall include also the book cost of materials recovered in connection with construction, maintenance or the retirement of property, such materials being credited to construction, maintenance, or accumulated depreciation provision, respectively, and included herein as follows:

(1) Reusable materials consisting of large individual items shall be included in this account at original cost, estimated if not known. The cost of repairing such items shall be charged to the maintenance account appropriate for the previous use.

(2) Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the final abandonment or sale thereof) cannot be ascertained without undue refinement in accounting, shall be included in this account at current prices new for such items. The cost of repairing such items shall be charged to the appropriate expense account as indicated by previous use.

(3) Scrap and nonusable materials included in this account shall be carried at the estimated net amount realized therefrom. The difference between the amounts realized for scrap and nonusable materials sold and the net amount at which the materials were carried in this account, as far as practicable, shall be adjusted to the accounts credited when the materials were charged to this account.

B. Materials and supplies issued shall be credited hereto and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative-average, first-in-first-out, or such other method of inventory accounting as conforms with accepted accounting standards consistently applied.

C. Inventories of materials, supplies, fuel, etc. shall be taken at least annually and the necessary adjustments shall be made to bring this account into agreement with the actual inventories. In effecting the adjustments, large differences which can be assigned to important classes of materials shall be equitably adjusted among the accounts to which such classes of materials have been charged since the previous inventory. Other differences shall be equitably apportioned among the accounts to which materials have been charged.

ITEMS

1. Invoice price of materials less cash or other discounts.
2. Freight, switching or other transportation charges when practicable to include as part of the cost of particular materials to which they relate.
3. Customers duties and excise taxes.
4. Cost of inspection and special tests prior to acceptance.
5. Insurance and other directly assignable charges.

NOTE A: Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be charged to a stores expense clearing account and distributed therefrom to the appropriate account.

NOTE B: When materials and supplies are purchased for immediate use, they need not be carried through this account but may be charged directly to the appropriate utility plant or expense account.

165 Prepayments.

A. This account shall include the amount of rents, taxes, insurance, interest and like disbursements made in advance of the period to which they apply. As the periods covered by such prepayments expire, credit this account and charge the proper operating expense or other account with the amount applicable to the period.

B. This account shall be kept or supported in such manner as to disclose the amount of each class of prepayments.

170 Other current and accrued assets.

This account shall include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included herein.

4. DEFERRED DEBITS

181 Unamortized debt discount and expense.

A. This account shall include the total of the unamortized balance of discount and expense for all classes of long-term debt.

B. The discount and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be charged to account 428, Amortization of Debt Discount and Expense. The utility may, however, accelerate the writing off of discount and expense where the amounts are insignificant.

182 Extraordinary property losses.

A. When authorized or directed by the Commission, this account shall include extraordinary losses on property abandoned or otherwise retired from service which are not provided for by the accumulated provisions for depreciation or amortization and which could not reasonably have been foreseen and provided for, and extraordinary losses, such as unforeseen damages to property, which could not reasonably have been anticipated and which are not covered by insurance or other provisions.

B. The entire cost, less net salvage, of depreciable property retired shall be charged to accumulated provision for depreciation. If all, or a portion, of the loss is to be included in this account, the accumulated provision for depreciation shall then be credited and this account charged with the amount properly chargeable hereto.

C. Application to the Commission for permission to use this account shall be accompanied by a statement giving a complete explanation with respect to the items which it is proposed to include herein, the period over which, and the accounts to which it is proposed to write off the charges, and other pertinent information.

183 Other deferred debits.

A. This account shall include the following classes of items:

(1) Expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of projects under contemplation. If construction results, this account shall be credited with the amount applicable thereto and the appropriate plant accounts shall be charged with an amount which does not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to plan. If the work is abandoned, the charge shall be to account 435, Miscellaneous Debits to Surplus, or to the appropriate operating expense account.

(2) Undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein related to a future period.

(3) Balances representing expenditures for work in progress other than on utility plant. This includes jobbing and contract work in progress.

(4) Other debit balances, the proper final disposition of which is uncertain, and unusual or extraordinary expenses, not included in other accounts, which are in process of being written off.

B. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit included herein.

LIABILITIES AND OTHER CREDITS

5. PROPRIETARY CAPITAL

201 Common capital stock.

204 Preferred capital stock.

A. These accounts shall include the par value or the stated value of stock without par value if such stock has a stated value, and, if not, the cash value of the consideration received for such nonpar stock, of each class of capital stock actually issued, including the par or stated value of such capital stock in account 217, Reacquired Capital Stock.

B. When the actual cash value of the consideration received is more or less than the par or stated value of any stock having a par or stated value, the difference shall be credited or debited, as the case may be, to the premium or discount account for the particular class and series.

C. When capital stock is retired, these accounts shall be charged with the amount at which such stock is carried herein.

D. A separate ledger account, with a descriptive title, shall be maintained for each class and series of stock. The supporting records shall show the shares nominally issued, actually issued, and nominally outstanding.

NOTE: When a levy or assessment, except a call for payment on subscriptions, is made against holders of capital stock, the amount collected upon such levy or assessment shall be credited to account 207, Other Paid-In Capital: *Provided, however,* That the credit shall be made to account 213, Discount on Capital Stock, to the extent of any remaining balance of discount on the issue of stock.

207 Other paid-in capital.

This account shall include the balance of all other credits for paid-in capital not includible in the capital stock accounts, and shall be kept so as to show the source of the credits includible herein.

ITEMS

1. Premium received on original issues of capital stock.
2. Donations received from stockholders consisting of capital stock or reduction of debt of the utility, and the cash value of other assets received as a donation.
3. Reduction in par or stated value of capital stock.
4. Gain on resale or cancellation of reacquired capital stock.
5. Miscellaneous paid-in capital.

NOTE: Premium on capital stock shall not be set off against expenses. Further, a premium received on an issue of a certain class or series of stock shall not be set off against expense of another issue of the same class or series.

212 Installments received on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock the amount of installments received on capital stock on a partial or installment payment plan for subscribers who are not bound by legally enforceable subscription contracts.

B. As subscriptions are paid in full and certificates issued, this account shall be charged and the appropriate capital stock account credited with the par or stated value of such stock. Any discount or premium on an original issue shall be included in the appropriate discount or premium account.

213 Discount on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock all discount on the original issuance and sale of capital stock, including additional capital stock of a particular class or series as well as first issues.

B. When capital stock which has been actually issued is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-In Capital: *Provided, however,* That the amount shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that it exceeds the balance in account 207.

C. The utility may amortize the balance in this account by systematic charges to account 425, Miscellaneous Amortization, or it may write off capital stock discount in whole or in part to account 435, Miscellaneous Debits to Surplus.

214 Capital stock expense.

A. This account shall include in a separate subdivision for each class and series of stock all commissions and expenses incurred in connection with the original issuance and sale of capital stock, including additional capital stock of a particular class or series as well as first issues. Expenses applicable to capital stock shall not be deducted from premium on capital stock.

B. When capital stock which has been actually issued by the utility is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-In Capital, to the extent of gains on resale or cancellation of reacquired stock includible therein: *Provided, however,* That the amount shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that it exceeds the balance in account 207, from such source.

C. The utility may amortize the balance carried in this account by systematic charges to account 425, Miscellaneous Amortization, or it may write off capital stock expense in whole or in part by charges to account 435, Miscellaneous Debits to Surplus.

NOTE: Expenses in connection with the reacquisition or resale of the utility's capital stock shall not be included herein.

215 Appropriated earned surplus.

This account shall include the amount of earned surplus which has been appropriated or set aside for specific purposes. Separate subaccounts shall be maintained under such titles as will designate the purpose for which each appropriation was made.

216 Unappropriated earned surplus.

This account shall include the balance, either debit or credit, of unappropriated surplus arising from earnings. It shall not include items includible in any subaccount of account 207, Other Paid-In Capital.

217 Reacquired capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock, the cost of capital stock actually issued by the utility and reacquired by it and not retired or canceled, except, however, stock which is held by trustees in sinking or other funds.

B. When reacquired capital stock is retired or canceled, the difference between its cost, including commissions and expenses paid in connection with the reacquisition, and its par or stated value plus any premium and less any discount and expenses applicable to the shares retired, shall be debited or credited, as appropriate, to account 207, Other Paid-In Capital, provided, however, that debits shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that they exceed the balance of gains on resale or cancellation of reacquired stock included in account 207.

C. When reacquired capital stock is resold by the utility, the difference between the amount received on the resale of the stock, less expenses incurred in the resale, and the cost of the stock included in this account shall be accounted for as outlined in paragraph B.

NOTE: The accounting for reacquired stock shall be as prescribed herein unless otherwise specifically required by statute.

218 Noncorporate proprietorship.

This account shall include the investment in an unincorporated utility by the proprietor thereof, and shall be charged with all withdrawals from the business by its proprietor. At the end of each calendar year the net income for the year, as developed in the income account, shall be transferred to this account. (See optional accounting procedure provided in Note C, hereunder.)

NOTE A: Amounts payable to the proprietor as just and reasonable compensation for services performed shall not be charged to this account but to appropriate operating expense or other accounts.

NOTE B: When the utility is owned by a partnership, a separate account shall be kept to show the net equity of each member therein and the transactions affecting the interest of each such partner.

NOTE C: This account may be restricted to the amount considered by the proprietor to be the permanent investment in the business, subject to change only by additional investment by the proprietor or the withdrawal of portions thereof not representing net income. When this option is taken, the earned surplus accounts shall be maintained and entries thereto shall be made in accordance with the texts thereof.

6. LONG-TERM DEBT

221 Bonds.

A. Separate accounts shall be maintained hereunder for unmatured bonds of each class and series. Each such account shall be subdivided so as to show: (1) the face value of the actually issued and unmatured bonds, which have not been retired or canceled; also, the face value of such bonds issued by others, the payment of which has been assumed by the utility, (2) the face value of bonds actually issued or assumed by the utility and reacquired by it and not paid, retired, or canceled. The account for reacquired debt shall not include securities which are held by trustees in sinking or other funds.

B. When bonds are reacquired, the difference between face value, adjusted for unamortized discount, expense or premium and the amount paid upon reacquisition, shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus as appropriate.

223 Advances from associated companies.

A. This account shall include the face value of notes payable to associated companies and the amount of open book accounts representing advances from associated companies. It does not include notes and open accounts representing indebtedness subject to current settlement.

B. The records supporting the entries to this account shall be so kept that the utility can furnish complete information concerning each note and open account.

224 Other long-term debt.

A. This account shall include, until maturity, all long-term debt not otherwise provided for. This covers such items as receivers' certificates, real estate mortgages executed or assumed, assessments for public improvements, notes and unsecured certificates of indebtedness not owned by associated companies, receipts outstanding for long-term debt, and other obligations maturing more than one year from date of issue or assumption.

B. Separate accounts shall be maintained for each class of obligation, and records shall be maintained to show for each class all details as to date of obligation, date of maturity, interest dates and rates, security for the obligation, etc.

NOTE: Miscellaneous long-term debt reacquired shall be accounted for in accordance with the procedures set forth in account 221, Bonds.

7. CURRENT AND ACCRUED LIABILITIES

231 Notes payable.

This account shall include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding one year from date of issue.

232 Accounts payable.

This account shall incude all amounts payable by the utility within one year, which are not provided for in other accounts.

235 Customer deposits.

This account shall include all amounts deposited with the utility by customers as security for the payment of bills.

236 Taxes accrued.

A. This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet shall be shown under account 165, Prepayments.

B. If accruals for taxes are found to be insufficient or excessive, correction therefor shall be made through current tax accruals. However, if such corrections are so large as to seriously distort current expenses, they shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate.

C. Accruals for taxes shall be based upon the net amount payable after credit for any discounts and shall not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds shall be credited to account 419, Interest and Dividend Income, and interest paid on deficiencies shall be charged to account 431, Other Interest Expense.

D. The records supporting the entries to this account shall be kept so as to show for each class of taxes, the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

237 Interest accrued.

This account shall include the amount of interest accrued but not matured on all liabilities of the utility, not including, however, interest which is added to the principal of the debt on which incurred. Supporting records shall be maintained so as to show the amount of interest accrued on each obligation.

238 Other current and accrued liabilities.

This account shall include the amount of all other current and accrued liabilities

not provided for elsewhere appropriately designated and supported so as to show the nature of each liability.

ITEMS

1. Dividends declared but not paid.
2. Matured long-term debt.
3. Matured interest.
4. Taxes collected through payroll deductions or otherwise pending transmittal to the proper taxing authority.

8. DEFERRED CREDITS

251 Unamortized premium on debt.

A. This account shall include the total of the unamortized balance of premium and expense for all classes of long-term debt, including receivers' certificates.

B. The premium and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be credited to account 429, Amortization of Premium on Debt—Cr.

252 Customer advances for construction.

This account shall include advances by customers for construction which are to be refunded either wholly or in part. When a customer is refunded the entire amount to which he is entitled, according to the agreement or rule under which the advance was made, the balance, if any, remaining in this account shall be credited to account 271, Contributions in Aid of Construction.

253 Other deferred credits.

This account shall include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

9. OPERATING RESERVES

261 Property insurance reserve.

A. This account shall include amounts reserved by the utility for self-insurance against losses through accident, fire, flood, or other hazards to its own property or property leased from others. A schedule of risks covered by this reserve shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered by self-insurance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

264 Amortization reserve—Federal.

A. This account shall be credited with such amounts as are appropriated or set aside by a licensee from earnings for amortization purposes in accordance with the requirements of a license; also the interest derived from the "Amortization Fund—Federal," or income from investments belonging to such fund.

B. This account shall be debited with only such items or amounts as the Commission may require or approve. (See account 125, Amortization Fund—Federal.)

265 Miscellaneous operating reserves.

A. This account shall include all operating reserves maintained by the utility which are not provided for elsewhere.

B. This account shall be maintained in such manner as to show the amount of each separate reserve and the nature and amounts of the debits and credits thereto.

NOTE: This account includes only such reserves as may be created for operating purposes and does not include any reservations of income the credits for which should be carried in account 215, Appropriated Earned Surplus.

10. CONTRIBUTIONS IN AID OF CONSTRUCTION

271 Contributions in aid of construction.

A. This account shall include donations or contributions in cash, services, or property from states, municipalities or other governmental agencies, individuals, and others for construction purposes.

B. The credits to this account shall not be transferred to earned surplus or to any other account without the approval of the Commission.

C. The records supporting the entries to this account shall be so kept that the utility can furnish information as to the purpose of each donation, the conditions, if any, upon which it was made, the amount of donations from (a) States, (b) municipalities, (c) customers and (d) others, and the amount applicable to each utility department.

D. This account shall be subdivided as follows:

Contributions in Aid of Construction—General.
Contributions in Aid of Construction—Federal.

Contributions in Aid of Construction—General shall include all the donations to the various utility departments except those which are made in respect to a licensed project. Contributions in Aid of Construction—Federal shall be kept only by licensees. There shall be included therein donations from States, municipalities, individuals or others which have been expended for plant, or which are included in the plant accounts, of a licensed project, referred to in section 3, subsection (13) of the Federal Power Act, 49 Stat. 839; 16 U.S.C. 796(13). This treatment shall not affect the determination of actual legitimate original cost or net investment in accordance with the Act.

NOTE: There shall not be included in this account advances for construction which are ultimately to be repaid wholly or in part. (See account 252, Customer Advances for Construction.)

Electric Plant Accounts

1. INTANGIBLE PLANT

301 Organization.
302 Franchises and consents.
303 Miscellaneous intangible plant.

2. PRODUCTION PLANT

A. STEAM PRODUCTION

310 Land and land rights.
311 Structures and improvements.
312 Steam power equipment.

B. HYDRAULIC PRODUCTION

330 Land and land rights.
331 Structures and improvements.
332 Reservoirs, dams, and waterways.
333 Hydraulic power equipment.

C. OTHER PRODUCTION

340 Land and land rights.
341 Structures and improvements.
342 Other power equipment.

3. TRANSMISSION AND DISTRIBUTION PLANT

350 Land and land rights.
351 Structures and improvements.
352 Station equipment.
353 Overhead lines.
356 Underground lines.
358 Line transformers.
360 Meters.
361 Installations on customers' premises.
362 Leased property on customers' premises.
363 Street lighting and signal systems.

4. GENERAL PLANT

370 Land and land rights.
371 Structures and improvements.
372 Office furniture and equipment.
373 Transportation equipment.
379 Other general equipment.

5. OTHER ELECTRIC PLANT

390 Other tangible property.
391 Electric plant purchased or sold.
392 Electric plant in process of reclassification.
393 Electric plant leased to others.
394 Electric plant held for future use.
395 Construction work in progress—Electric.
396 Electric plant acquisition adjustments.
397 Other electric plant adjustments.

Electric Plant Accounts

1. INTANGIBLE PLANT

301 Organization.

This account shall include the cost of organizing and incorporating the utility and putting it into readiness to do business. This includes the cost of legal services, amounts paid for privileges of incorporation, office expenses, incident to organizing the company and stock and minute books and corporate seal.

NOTE: This account shall not include any discounts upon securities issued or assumed, nor shall it include any costs incident to negotiating loans, selling bonds, or other evidences of debt, or expenses in connection with the authorization, issuance or sale of capital stock.

302 Franchises and consents.

A. This account shall include amounts paid to the federal government, to a state or to a political subdivision thereof in consideration for franchises, consents, water power licenses, or certificates, running in perpetuity or for a specified term of more than one year, together with necessary and reasonable expenses incident to procuring such franchises, consents, water power licenses, or certificates of permission and approval, including expenses of organizing and merging separate corporations, where statutes require, solely for the purpose of acquiring franchises.

B. If a franchise, consent, water power license, or certificate is acquired by assignment, the charge to this account in respect thereof shall not exceed the amount paid therefor by the utility to the assignor, nor shall it exceed the amount paid by the original grantee, plus the expense of acquisition to such

grantee. Any excess of the amount actually paid by the utility over the amount above specified shall be charged to account 435, Miscellaneous Debits to Surplus.

C. When any franchise has expired, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or to account 110, Accumulated Provision for Depreciation and Amortization of Electric Plant, as appropriate.

D. Records supporting this account shall be maintained so as to show separately the book cost of each franchise or consent.

NOTE: Annual or other periodic payments under franchises shall not be included herein but in the appropriate operating expense account.

303 Miscellaneous intangible plant.

A. This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility operations and not specifically chargeable to any other account.

B. When any item included in this account is retired or expires, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or account 110, Accumulated Provision for Depreciation and Amortization of Electric Plant, as appropriate.

C. This account shall be maintained in such a manner that the utility can furnish full information with respect to the amounts included herein.

2. PRODUCTION PLANT

A. STEAM PRODUCTION

310 Land and land rights.

This account shall include the cost of land and land rights used in connection with steam-power generation. (See electric plant instruction 3.)

311 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with steam-power generation. (See electric plant instruction 4.)

NOTE: Include steam production roads and railroads in this account.

312 Steam power equipment.

This account shall include the cost installed of equipment in steam production plants used in generating electricity, such as:

(1) Furnaces, boilers, coil and ashhandling equipment, steam and feed water piping, water supply and purification systems, boiler apparatus and accessories.

(2) Steam engines, reciprocating or rotary, and their associated auxiliaries; generators, engine driven and turbine driven.

(3) Accessory and other equipment in steam plants.

NOTE: This account shall not include boilers or steam pipes whose primary purpose is the heating of structures.

B. HYDRAULIC PRODUCTION

330 Land and land rights.

This account shall include the cost of land and land rights used in connection with hydraulic power generation. (See electric plant instruction 3.)

331 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with hydraulic power generation. (See electric plant instruction 4.)

332 Reservoirs, dams and waterways.

This account shall include the cost in place of facilities used for impounding, collecting, storage, diversion, regulation and delivery of water used primarily for generating electricity. This includes reservoirs, dams and waterways with all construction appurtenant thereto, such as spillways, flash boards, gates, canals, tunnels, gate houses, fish ladders, intakes, flumes, penstocks, forbays, tailraces, and all other construction identified therewith.

333 Hydraulic power equipment.

This account shall include the cost installed of equipment in hydraulic power plants used in generating electricity, such as:

(1) Water wheels and hydraulic turbines and generators driven thereby and their accessories.

(2) Accessory and other equipment in hydraulic power plants.

C. OTHER PRODUCTION

340 Land and land rights.

This account shall include the cost of land and land rights used in connection with other power generation. (See electric plant instruction 3.)

341 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with other power generation. (See electric plant instruction 4.)

342 Other power equipment.

This account shall include the cost installed of equipment in internal combustion engine and other power production plants used in generating electricity, such as:

(1) Fuel handling and storage equipment, and gas producers and accessories devoted to the production of gas for use in internal combustion engines driving electric generators.

(2) Diesel engines or other prime movers with their auxiliaries.

(3) Generators and their accessories.

(4) Accessory and other equipment in other power production plants.

3. TRANSMISSION AND DISTRIBUTION PLANT

350 Land and land rights.

This account shall include the cost of land and land rights used in connection with transmission and distribution operations. (See electric plant instruction 3.)

351 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with transmission and distribution operations. (See electric plant instruction 4.)

352 Station equipment.

This account shall include the cost installed of transforming, conversion, and switching equipment, including transformer banks, etc., used for the purpose of changing the characteristics of electricity in connection with its transmission or distribution, and equipment for controlling the electric circuits.

NOTE: The cost of rectifiers, series transformers and other special station equipment devoted exclusively to street lighting or signal system service shall not be included in this account, but in account 363, Street Lighting and Signal Systems.

353 Overhead lines.

A. This account shall include the cost installed of overhead transmission and distribution lines, including:

(1) Poles, towers, and appurtenant fixtures, such as anchors, guys, crossarms, brackets, guards, pins, pole steps, transformer racks, and platforms, pole plates, etc.

(2) Wire and cable, circuit breakers, insulators, clamps, lightning arresters and ground wires, switches and other line devices, except transformers.

(3) Services, i.e., conductors leading from last pole to the connection with customer's service outlet and wiring.

B. The costs chargeable to this account include also such items as permits, municipal inspection, protection of street openings, etc.

NOTE: The cost of plant used solely for street lighting or signal systems shall not be included in this account but in account 363, Street Lighting and Signal Systems.

356 Underground lines.

A. This account shall include the cost installed of underground transmission and distribution lines, including:

(1) Conduit, including foundations, manholes, lighting systems, sewer connections, ventilating equipment, etc.

(2) Wire and cable, circuit breakers, insulators, clamps, lightning arresters, switches, and other line devices, except transformers.

(3) Service, i.e., conductors, leading from distribution box or manhole to the connection with customer's service outlet or wiring.

B. The costs chargeable to this account include also such items as permits, municipal inspection, protection of street openings, etc.

NOTE: The cost of plant used solely for street lighting or signal systems shall not be included in this account but in account 363, Street Lighting and Signal Systems.

358 Line transformers.

A. This account shall include the cost installed of overhead and underground distribution line transformers and pole-type and underground voltage regulators owned by the utility, for use in transforming electricity to the voltage at which it is to be used by the customer,

and the cost of transformers held in reserves. The installation cost includible herein is the first installation only.

B. When a transformer is permanently retired from service, the installed cost thereof shall be credited to this account.

C. The records covering line transformers shall be so kept that the utility can furnish the number of transformers of various types and capacities in service and those in reserve, and the location and the use of each transformer.

ITEMS

1. Installation, labor of (first installation only).
2. Network protectors, installed.
3. Transformers, line and network.
4. Transformer cut-out boxes, installed.
5. Transformer lightning arrester, installed.
6. Voltage regulators.
7. Capacitors.

NOTE A: The cost of removing and resetting line transformers shall not be charged to this account but to account 550, Supervision and Labor.

NOTE B: The cost of line transformers used solely for street lighting or signal systems shall be included in account 363, Street Lighting and Signal Systems.

360 Meters.

A. This account shall include the cost installed of meters or devices and appurtenances thereto, for use in measuring the electricity delivered to its users, and the cost of meters held in reserve. The installation cost includible herein is the first installation only.

B. When a meter is permanently retired from service, the installed cost included herein shall be credited to this account.

C. The records covering meters shall be so kept that the utility can furnish information as to the number of meters of various types and capacities in service and in reserve as well as the location of each meter owned.

ITEMS

1. Meters.
2. Current limiting devices.
3. Demand indicators.
4. Instrument transformers.
5. Meter badges and their attachments, installed.
6. Testing new meters.
7. Installation, labor of (first installation only).
8. Meter boards and boxes, installed.
9. Meter fittings and materials used in installation.
10. Meter switches and cut-outs, installed.
11. Protective devices, installed.

NOTE A: This account shall not include meters for recording output of a generating station, substation meters, etc. It includes only meters for use to record energy delivered to customers.

NOTE B: The cost of removing and resetting meters shall be charged to account 550, Supervision and Labor.

361 Installations on customers' premises.

This account shall include the cost installed of equipment on the customers' side of a meter when the utility incurs such cost and when the utility retains title to and assumes full responsibility for maintenance and replacement of such property. This account shall not include equipment leased to customers. (See account 362, Leased Property on Customers' Premises.)

ITEMS

1. Cable vaults.
2. Commercial lamp equipment.
3. Foundations and setting specially provided for equipment included herein.
4. Frequency changer sets.
5. Motor generator sets.
6. Motors.
7. Switchboard panels, high or low tension.
8. Wire and cable connections to incoming cables.

NOTE: Do not include in this account any costs incurred in connection with merchandising, jobbing or contract work activities.

362 Leased property on customers' premises.

This account shall include the cost of electric motors, transformers, and other equipment on customers' premises (including municipal corporations), leased to customers, but not including property held for sale.

NOTE A: The cost of setting and connecting such appliances or equipment on the premises of customers and the cost of resetting or removal shall not be charged to this account but to operating expense account 550, Supervision and Labor.

NOTE B: Do not include in this account any costs incurred in connection with merchandising, jobbing, or contract work activities.

363 Street lighting and signal systems.

This account shall include the cost installed of equipment used wholly for public street and highway lighting or traffic, fire alarm, police and other signal systems.

ITEMS

1. Armored conductors, buried or submarine, including insulators, insulating materials, splices, trenching, etc.
2. Automatic control equipment.
3. Conductors, overhead or underground, including lead or fabric covered, parkway cables, etc., including splices, insulators, etc.
4. Conduit runs used solely for street lighting or signal systems, not including ducts in a bank, part of which is used or held for use for other purposes.
5. Lamps, arc, incandescent, or other types, including glassware, suspension fixtures, brackets, etc.
6. Municipal inspection.
7. Ornamental lamp posts.
8. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
9. Permits.
10. Poles and towers and appurtenant attachments.
11. Posts and standards.
12. Protection of street openings.
13. Relays or time clocks.
14. Series contactors.
15. Switches.
16. Transformers, pole or underground.
17. Transformers, rectifiers, and other special station equipment devoted exclusively to street lighting and signal systems.

4. GENERAL PLANT

370 Land and land rights.

This account shall include the cost of land and land rights used for utility purposes, the cost of which is not properly includible in other land and land rights accounts. (See electric plant instruction 3.)

371 Structures and improvements.

This account shall include the cost in place of structures and improvements used for utility purposes, the cost of which is not properly includible in other structures and improvements accounts. (See electric plant instruction 4.)

372 Office furniture and equipment.

This account shall include the cost of office furniture and equipment owned by the utility and devoted to utility service, and not permanently attached to buildings, except the cost of such furniture and equipment which the utility elects to assign to other plant accounts on a functional basis.

ITEMS

1. Bookcases and shelves.
2. Desks, chairs, and desk equipment.
3. Drafting-room equipment.
4. Filing, storage, and other cabinets.
5. Floor covering.
6. Library and library equipment.
7. Mechanical office equipment, such as accounting machines, typewriters, etc.
8. Safes.
9. Tables.

373 Transportation equipment.

This account shall include the cost of transportation vehicles used for utility purposes.

ITEMS

1. Airplanes.
2. Automobiles.
3. Bicycles.
4. Electrical vehicles.
5. Motor trucks.
6. Motorcycles.
7. Repair cars or trucks.
8. Tractors and trailers.
9. Other transportation vehicles.

379 Other general equipment.

This account shall include the cost installed of the following equipment:

(1) Equipment used for the receiving, shipping, handling and storage of materials and supplies when not an integral part of the housing structure.

(2) Equipment specially provided for general shops when such equipment is not an integral part of the housing structure.

(3) Laboratory equipment used for general laboratory purposes and not specially provided for or includible in other departmental or functional plant accounts.

(4) Tools, implements, and equipment used in construction or repair work exclusive of equipment includible in other equipment accounts.

(5) Other general equipment, apparatus, etc., used in the utility's electric operations, and which is not includible in any other account.

NOTE: General equipment of the nature indicated above whenever practicable shall be assigned to the electric plant accounts on a functional basis.

5. OTHER ELECTRIC PLANT

390 Other tangible property.

This account shall include the cost of tangible electric plant not provided for elsewhere.

391 Electric plant purchased or sold.

This account shall be charged with the cost of utility plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and shall be credited with the selling price of like property transferred to others pending the distribution to appropriate accounts as the Commission shall approve or direct.

392 Electric plant in process of reclassification.

A. This account shall include temporarily the balance of electric plant as of the effective date of the prior system of accounts, which has not yet been reclassified as of the effective date of this system of accounts. The detail or primary accounts in support of this account employed prior to such date shall be continued pending reclassification into the electric plant accounts herein prescribed (301–390), but shall not be used for additions, betterments, or new construction.

B. No charges other than as provided in paragraph A, above, shall be made to this account, but retirements of such unclassified electric plant shall be credited hereto and to the supporting (old) fixed capital accounts until the reclassification shall have been accomplished.

393 Electric plant leased to others.

A. This account shall include the original cost of electric plant owned by the utility, but leased to others as operating units or systems, where the lessee has exclusive possession.

B. The property included in this account shall be classified according to the detailed accounts (301–390) prescribed for electric plant in service, and this account shall be maintained in such detail as though the property were used by the owner in its utility operations.

394 Electric plant held for future use.

A. This account shall include the original cost of property owned and held for future use in electric service under a definite plan for such use. There shall be included herein property acquired but never used by the utility in electric service, but held for such service in the future under a definite plan, and property previously used by the utility in electric service pending its reuse in the future, under a definite plan, in electric service.

B. The property included in this account shall be classified according to the detailed accounts (301–390) prescribed for electric plant in service and the account shall be maintained in such detail as though the property were in service.

NOTE: Materials and supplies, meters and transformers held in reserve, and normal spare capacity of plant in service shall not be included in this account.

395 Construction work in progress—Electric.

This account shall include the total of the balances of work orders for electric plant in process of construction but not ready for service at the date of the balance sheet.

396 Electric plant acquisition adjustments.

A. This account shall include the difference between (a) the cost to the accounting utility of electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated, if not known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated provision for depreciation and amortization and contributions in aid of construction with respect to such property.

B. The amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct.

397 Other electric plant adjustments.

A. This account shall include the difference between the original cost, estimated if not known, and the book cost of electric plant to the extent that such difference is not properly includible in account 396, Electric Plant Acquisition Adjustments.

B. Amounts included in this account shall be classified in such manner as to show the origin of each amount and shall be disposed of as the Commission may approve or direct.

NOTE: The provisions of this account shall not be construed as approving or authorizing the recording of appreciation of electric plant.

Income Accounts

1. UTILITY OPERATING INCOME

400 Operating revenues.
Operating expenses:
401 Operation and maintenance expense.
403 Depreciation expense.
404 Amortization expense.
408 Taxes other than income taxes.
409 Income taxes.
Total operating expenses.
Operating income.
412–413 Income from electric plant leased to others.
414 Other utility operating income.
Total operating income.

2. OTHER INCOME

415–416 Income from merchandising, jobbing and contract work.
418 Nonoperating rental income.
419 Interest and dividend income.
421 Miscellaneous nonoperating income.
Total other income.
Total income.

3. MISCELLANEOUS INCOME DEDUCTIONS

425 Miscellaneous amortization.
426 Other income deductions.
Total income deductions.
Income before interest charges.

4. INTEREST CHARGES

427 Interest on long-term debt.
428 Amortization of debt discount and expense.
429 Amortization of premium on debt—Cr.
430 Interest on debt to associated companies.
431 Other interest expense.
432 Interest charged to construction—Cr.
Total interest charges.
Net income.

5. EARNED SURPLUS

216 Unappropriated earned surplus (at beginning of period).
433 Balance transferred from income.
434 Miscellaneous credits to surplus.
435 Miscellaneous debits to surplus.
436 Appropriations of surplus.
Net addition to earned surplus.
437 Dividends declared—Preferred stock.
438 Dividends declared—Common stock.
216 Unappropriated earned surplus (at end of period).

Income Accounts

1. UTILITY OPERATING INCOME

400 Operating revenues.

There shall be shown under this caption the total amount included in the electric operating revenue accounts provided herein and in similar accounts for other utility departments.

401 Operation and maintenance expense.

There shall be shown under this caption the total amount included in the electric operation and maintenance expense accounts provided herein and in similar accounts for other utility departments.

403 Depreciation expense.

This account shall include the amount of depreciation expense for all classes of depreciable electric plant in service except such depreciation expense as is chargeable to clearing accounts or to merchandising, jobbing and contract work activities.

404 Amortization expense.

This account shall include amortization charges applicable to amounts included in the electric plant accounts for limited-term franchises, licenses, patent rights, limited-term interests in land, and expenditures on leased property where the service life of the improvements is terminable by action of the lease. The charges to this account shall be such as to distribute the book cost of each investment as evenly as may be over the period of its benefit to the utility. Include, also, when authorized by the Commission, amortization of extraordinary property losses. (See account 182, Extraordinary Property Losses.)

408 Taxes other than income taxes.

A. This account shall include the amount of ad valorem, gross revenue or gross receipts taxes, state unemployment insurance, franchise taxes, federal excise taxes, social security taxes, and all other taxes assessed by federal, state, county, municipal, or other local governmental authorities, which are properly chargeable to electric operations, except income taxes.

B. This account shall be charged with the amount of taxes which is applicable thereto, with concurrent credits to account 236, Taxes Accrued, or account 165, Prepayments, as appropriate. When it is not possible to determine the exact amount of taxes, the amount shall be estimated and adjustments made in current accruals as the actual tax levies become known.

C. The charges to this account shall be made or supported so as to show the amount of each tax and the basis upon which each charge is made. In the case of a utility rendering more than one utility service, taxes of the kinds includible in this account shall be assigned directly to the utility department the

operation of which gave rise to the tax in so far as practicable. Where the tax is not attributable to a specific utility department, it shall be distributed among the utility departments or nonutility operations on an equitable basis.

NOTE A: Taxes applicable to nonutility property or investments, including taxes on net income derived therefrom, shall be charged to the account in which the income from the property or investments is included.

NOTE B: Special assessments for street and similar improvements shall be included in the appropriate utility plant or nonutility property account.

NOTE C: Taxes specifically applicable to construction shall be included in the cost of construction.

NOTE D: Taxes assumed by the utility on property leased from others for use in utility operations shall be charged to the appropriate rent expense or clearing account.

NOTE E: Gasoline and other sales taxes shall be charged as far as practicable to the same account as the materials on which the tax is levied.

NOTE F: Social Security and other forms of so-called pay roll taxes shall be distributed to utility departments and to nonutility functions on a basis related to pay roll. Amounts applicable to construction shall be charged to the appropriate plant account.

409 Income taxes.

A. This account shall include the amount of state and federal taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals shall be made to account 236, Taxes Accrued, and as the exact amount of taxes becomes known, the current tax accruals shall be adjusted accordingly so that this account, as nearly as can be ascertained, shall include the actual taxes payable which are chargeable to utility operations.

B. The accruals for income taxes shall be apportioned among utility departments and nonutility operations so that, as nearly as practicable, each tax shall be included in the expenses of the utility department or nonutility operation the income from which gave rise to the tax.

NOTE A: Taxes assumed by the utility on interest shall be charged to account 431, Other Interest Expense.

NOTE B: Income taxes on income from electric plant leased to others shall be charged to account 413, Expenses of Electric Plant Leased to Others.

NOTE C: Where statutes or regulatory practices require that the profits or losses of merchandising, jobbing and contract work shall not be considered in arriving at rates to be charged for utility service, income taxes on income from merchandising, jobbing and contract work shall be charged to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

NOTE D: Income taxes on nonutility income shall be charged to the account in which the income is included.

NOTE E: Interest on tax refunds or deficiencies shall not be included in this account but in account 419, Interest and Dividend Income, or account 431, Other Interest Expense, as appropriate.

412 Revenues from electric plant leased to others.

413 Expenses of electric plant leased to others.

A. These accounts shall include, respectively, revenues from electric property constituting a distinct operating unit or system leased by the utility to others, and which property is properly includible in account 393, Electric Plant Leased to Others, and the expenses attributable to such property.

B. The detail of expense shall be kept or supported so as to show separately the following:

Operation and Maintenance.
Rents.
Depreciation.
Amortization.
Taxes Other Than Income Taxes.
Income Taxes.

414 Other utility operating income.

A. This account shall include the revenues received and expenses incurred in connection with the operations of utility plant, the book cost of which is included in account 118, Other Utility Plant.

B. The expenses shall include every element of cost incurred in such operations, including depreciation, rents, taxes, and insurance.

2. OTHER INCOME

415 Revenues from merchandising, jobbing and contract work.

416 Costs and expenses of merchandising, jobbing and contract work.

These accounts shall include, respectively, all revenues derived from the sale of merchandise and jobbing or contract work including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission, and all expenses incurred in such activities.

NOTE: The revenues and expenses of merchandising, jobbing and contract work shall be reported in these accounts if a state regulatory body having jurisdiction over the utility requires the net income therefrom to be reported as other income; but the revenues and expenses shall be reported in accounts 592 and 593 if such regulatory body requires the net income to be reported as an operating income or expense item. In the absence of a requirement by a state regulatory body, the utility may use these accounts or accounts 592 and 593 at its option, in which case the practice of the utility must be consistent.

ITEMS

Account 415:

1. Revenues from sale of merchandise and from jobbing and contract work.
2. Discounts and allowances made in settlement of bills for merchandise and jobbing work.

Account 416:

1. Cost of merchandise sold and materials used in jobbing work.
2. Labor and expenses incurred in merchandising and jobbing operations.

418 Nonoperating rental income.

This account shall include all rent revenues and related expenses of land, buildings, or other property included in account 121, Nonutility Property.

419 Interest and dividend income.

A. This account shall include interest revenues on securities, loans, advances, special deposits, tax refunds and all other interest-bearing assets, and dividends on stocks of other companies, whether the securities on which the interest and dividends are received are carried as investments or included in sinking- or other special-fund accounts.

B. If any interest or dividends are required to be retained in a special fund and the fund is represented by a reserve, the amount of such accretion to the fund shall concurrently be credited to the appropriate reserve account and charged to account 436, Appropriations of Surplus.

421 Miscellaneous nonoperating income.

This account shall include all revenue and expense items properly includible in the income account and not provided for elsewhere.

3. MISCELLANEOUS INCOME DEDUCTIONS

425 Miscellaneous amortization.

This account shall include amortization charges not includible in other accounts which are properly deductible in determining the income of the utility before interest charges. Charges includible herein, if significant in amount, must be in accordance with an orderly and systematic amortization program. Similar charges made irregularly without a definite program, or which are dependent upon the amount of net income shall be charged to account 435, Miscellaneous Debits to Surplus.

ITEMS

1. Amortization of utility plant acquisition adjustments or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by the Commission.
2. Amortization of amounts in account 182, Extraordinary Property Losses, when not authorized to be included in utility operating expenses by the Commission.
3. Amortization of capital stock discount or expenses when in accordance with a systematic amortization program.

426 Other income deductions.

This account shall include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

ITEMS

1. Donations for charitable, social or community welfare purposes.
2. Life insurance of officers and employees where utility is beneficiary (net premiums less increase in cash surrender value of policies).
3. Penalties or fines for violation of statutes pertaining to regulation.

NOTE: The classification of expenses as nonoperating and their inclusion in this account is for accounting purposes. It does not preclude Commission consideration of proof to the contrary for ratemaking or other purposes.

4. INTEREST CHARGES

427 Interest on long-term debt.

A. This account shall include the amount of interest on outstanding long-term debt issued or assumed by the utility, the liability for which is included in account 221, Bonds, or account 224, Other Long-Term Debt.

B. This account shall be so kept or supported as to show the interest accruals on each class and series of long-term debt.

NOTE: This account shall not include interest on nominally issued or nominally outstanding long-term debt, including securities assumed.

428 Amortization of debt discount and expense.

A. This account shall include the amortization of unamortized debt discount and expense on outstanding long-term debt. Amounts charged to this account shall be credited concurrently to account 181, Unamortized Debt Discount and Expense.

B. This account shall be so kept or supported as to show the debt discount and expense on each class and series of long-term debt.

429 Amortization of premium on debt—Cr.

A. This account shall include the amortization of unamortized net premium on outstanding long-term debt. Amounts credited to this account shall be charged concurrently to account 251, Unamortized Premium on Debt.

B. This account shall be so kept or supported as to show the premium on each class and series of long-term debt.

430 Interest on debt to associated companies.

A. This account shall include the interest accrued on amounts included in account 223, Advances from Associated Companies, and on all other obligations to associated companies.

B. The records supporting the entries to this account shall be so kept as to show to whom the interest is to be paid, the period covered by the accrual, the rate of interest and the principal amount of the advances or other obligations on which the interest is accrued.

431 Other interest expense.

This account shall include all interest charges not provided for elsewhere.

ITEMS

1. Interest on notes payable on demand, or maturing one year or less from date and on open accounts, except notes and accounts with associated companies.
2. Interest on customers' deposits.
3. Interest on claims and judgments, tax assessments, and assessments for public improvements past due.
4. Income and other taxes levied upon bondholders of utility and assumed by it.

432 Interest charged to construction—Cr.

This account shall include concurrent credits for interest charged to construction based upon the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate upon other funds when so used. No interest shall be capitalized on plant which is completed and ready for service.

5. EARNED SURPLUS

433 Balance transferred from income.

This account shall include the net credit or debit transferred from income for the year.

434 Miscellaneous credits to surplus.

This account shall include credits affecting earned surplus not provided for elsewhere. If an amount otherwise required by the uniform system of accounts to be credited to this account is not significant with respect to net income determination for the year, it may be credited to the appropriate nonoperating income account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

ITEMS

1. Delayed credits.
2. Profit on reacquisition and resale or retirement of utility's debt securities.
3. Profit on sale of property or investments.

435 Miscellaneous debits to surplus.

This account shall include amounts chargeable to earned surplus but not provided for elsewhere. If an amount otherwise required by the uniform system of accounts to be charged to this account is not significant with respect to net income determination for the year, it may be charged to the appropriate nonoperating income deduction account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

ITEMS

1. Decline in value of investments.
2. Delayed debits.
3. Loss on reacquisition and resale or retirement of utility's debt securities.
4. Provision for past accrued depreciation not provided for.
5. Long-term debt discount and expense written off.
6. Loss on sale of property or investments.
7. Write off of utility plant acquisition adjustments or of intangibles when not done under an orderly systematic program indicating the propriety of inclusion of the annual charges in account 425, Miscellaneous Amortization.
8. Preliminary survey and investigation expenses on abandoned projects.
9. Income taxes, both State and Federal, occasioned by items included in account 434, Miscellaneous Credits to Surplus.
10. Charges from retirement or resale of reacquired capital stock.

436 Appropriations of surplus.

This account shall include appropriations of earned surplus for purposes not provided for elsewhere in this system of accounts.

ITEMS

1. Appropriations of income required under terms of mortgages, orders of courts, contracts or other agreements.
2. Appropriations of income required by action of regulatory authorities.
3. Miscellaneous appropriations of income made at option of utility for specified purposes.

437 Dividends declared—preferred stock.

This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding preferred or prior lien capital stock issued by the utility.

438 Dividends declared—common stock.

This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding common capital stock issued by the utility.

Operating Revenue Accounts

1. SALES OF ELECTRICITY

440 Residential sales.

A. This account shall include the net billing for electricity supplied for residential or domestic purposes.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available.

NOTE: When electricity supplied through a single meter is used for both residential and commercial purposes, the total revenue shall be included in this account, or account 442, Commercial and Industrial Sales, according to the rate schedule which is applied. If the same rate schedules apply to residential as to commercial and industrial service, classification shall be made according to principal use.

442 Commercial and industrial sales.

A. This account shall include the net billing for electricity supplied to customers for commercial and industrial purposes.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available.

NOTE: When electricity supplied through a single meter is used for both commercial and residential purposes, the total revenue shall be included in this account, or in account 440, Residential Sales, according to the rate schedule which is applied. If the same rate schedules apply to residential as to commercial and industrial service, classification shall be made according to the principal use.

444 Public street and highway lighting.

A. This account shall include the net billing for electricity supplied and services rendered for the purposes of lighting streets, highways, parks and other public places, or for traffic or other signal system service, for municipalities or other divisions or agencies of state or federal governments.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received from each customer shall be readily available. In addition, the records shall be maintained so as to show the revenues from (a) contracts which include both electricity and services, and (b) contracts which include sales of electricity only.

Operating Revenue Accounts

1. SALES OF ELECTRICITY

440 Residential sales.
442 Commercial and industrial sales.
444 Public street and highway lighting.
447 Sales for resale.
448 Interdepartmental sales.
449 Other sales.

2. OTHER OPERATING REVENUES

450 Forfeited discounts.
456 Other electric revenues.

447 Sales for resale.

A. This account shall include the net billing for electricity supplied to other electric utilities or to public authorities for resale purposes.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenue received from each customer.

NOTE: Revenues from electricity supplied to other public utilities for use by them and not for distribution, shall be included in account 442, Commercial and Industrial Sales, unless supplied under the same contract as and not readily separable from revenues includible in this account.

448 Interdepartmental sales.

A. This account shall include amounts charged by the electric department at tariff or other specified rates for electricity supplied by it to other utility departments.

B. Records shall be maintained so that the quantity of electricity supplied each other department and the charges therefor shall be readily available.

449 Other sales.

A. This account shall include revenues for electricity supplied which are not provided for elsewhere.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenue received from each customer.

2. OTHER OPERATING REVENUES

450 Forfeited discounts.

This account shall include the amount of discounts forfeited or additional charges imposed because of the failure of customers to pay their electric bills on or before a specified date.

456 Other electric revenues.

This account shall include revenues derived from electric operations not includible in any of the foregoing accounts.

ITEMS

1. Charges for maintenance of appliances, wiring, piping or other installations on customers' premises.
2. Commission on sale or distribution of electricity of others when sold under rates filed by such others.
3. Fees for changing, connecting or disconnecting service.
4. Minor or incidental management or supervision services charged to others.
5. Profit or loss on sale of material and supplies not ordinarily purchased for resale.
6. Rent from utility plant used in electric operations.
7. Interdepartmental rents.
8. Revenues from transmission of electricity for others.
9. Sales of steam, but not including sales made by a steam-heating department or transfers of steam under joint facility operations.
10. Sale of water and water power.

Operation and Maintenance Expense Accounts

1. PRODUCTION EXPENSES

A. STEAM POWER GENERATION

500 Supervision and labor.
501 Fuel.
502 Supplies and expenses.
503 Steam from other sources.
504 Steam transferred—Cr.
506 Repairs of steam production plant.

B. HYDRAULIC POWER GENERATION

520 Supervision and labor.
521 Water for power.
522 Supplies and expenses.
524 Repairs of hydraulic production plant.

C. OTHER POWER GENERATION

530 Supervision and labor.
531 Fuel.
532 Supplies and expenses.
534 Repairs of other power production plant.

D. OTHER POWER SUPPLY EXPENSES

540 Purchased power.
549 Other expenses.

2. TRANSMISSION AND DISTRIBUTION EXPENSES

550 Supervision and labor.
552 Supplies and expenses.
555 Transportation expenses.

3. GENERAL EXPENSES

580 Administrative and general salaries.
581 Office supplies and expenses.
582 Outside services employed.
584 Insurance expense.
585 Employees pensions and benefits.
588 Regulatory commission expenses.
589 Miscellaneous general expenses.
590 Uncollectible accounts.
592 Revenues from merchandising, jobbing, and contract work.
593 Costs and expenses of merchandising, jobbing, and contract work.

Operation and Maintenance Expense Accounts

1. PRODUCTION EXPENSES

A. STEAM POWER GENERATION

500 Supervision and labor.

This account shall include the cost of supervision and labor in the operation and maintenance of steam power generating stations.

ITEMS

1. Attending stokers.
2. Blowing flues.
3. Cleaning boilers.
4. Firing and operating furnaces.
5. Handling coal and ashes.
6. Janitor work.
7. Operating water pumps.
8. Operating machinery, switchboard, etc.
9. Repairing steam power plant.
10. Supervision of steam power operation and maintenance.
11. Testing steam meters.

501 Fuel.

This account shall include the cost delivered at stations of coal, oil, gas or other fuel used in the production of steam which is used in generating electricity. This includes the invoice cost of fuel plus freight, switching, hauling and all handling costs incurred in connection with the delivery of the fuel at the station or storage pile. It shall also include the net cost of, or amount realized from, the disposal of ashes.

502 Supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in the operation of steam power generating stations. It shall also include the cost of supplies used in pumping water for steam.

ITEMS

1. Boiler compounds.
2. Boiler inspection fees.
3. Fireroom tools.
4. Filter cleaning.
5. Log sheets and charts.
6. Lubricants for machinery.
7. Packing.
8. Pumping supplies.
9. Rents.
10. Tools.
11. Water for steam.
12. Water purchased for boilers, condensers and cooling engines.
13. Washers.
14. Wipers.

503 Steam from other sources.

This account shall include the cost of steam purchased or transferred from another department of the utility or from others under a joint facility operating arrangement for use in prime movers devoted to the production of electricity.

504 Steam transferred—Cr.

This account shall include credits for expenses of producing steam which are charged to others or to other utility departments under a joint operating arrangement. Include also credits for steam expenses chargeable to other electric accounts outside of the steam generation group. Full details of the basis of determination of the cost of steam transferred shall be maintained.

506 Repairs of steam production plant.

This account shall include the amount of bills from others for repairs made to steam production plant. It does not include the cost of labor of the utility's own plant operating force.

ITEMS

1. Contract work in plants and in rearranging or relocating plant not retired.
2. Repair parts and materials used in maintenance of steam production plant.

B. HYDRAULIC POWER GENERATION

520 Supervision and labor.

This account shall include the cost of supervision and labor in the operation and maintenance of the hydraulic power generating stations.

ITEMS

1. Attending generators.
2. Cleaning reservoirs and dams.
3. Janitor work.
4. Operating intakes.
5. Operating machinery and switchboards.
6. Patrolling flumes.
7. Repairing hydraulic power plant.
8. Supervision of hydraulic production operations.

521 Water for power.

This account shall include the cost of water used for hydraulic power generation.

ITEMS

1. Cost of water purchased from others, including water tolls paid reservoir companies.
2. Periodic payments for licenses or permits from any governmental agency for water rights, or payments based on the use of the water.
3. Periodic payments for riparian rights.
4. Periodic payments for headwater benefits or for detriments to others.

522 Supplies and expenses.

This account shall include the cost of supplies and expenses incurred in the operation of hydraulic generating stations.

ITEMS

1. Log sheets and charts.
2. Lubricants for machinery.
3. Materials to protect dam and gates.
4. Packing.
5. Rents.
6. Tools (hand).
7. Washers.
8. Wipers.

524 Repairs of hydraulic production plant.

This account shall include the amount of bills from others for repairs made to hydraulic production plant. It does not include the cost of labor of the utility's own plant operating force.

ITEMS

1. Contract work in repairing plant and in rearranging or relocating plant not retired.
2. Repair parts and materials used in maintenance of hydraulic production plant.

C. OTHER POWER GENERATION

530 Supervision and labor.

This account shall include the cost of supervision and labor incurred in the operation and maintenance of other power generating stations.

ITEMS

1. Attending generators.
2. Fueling engines.
3. Janitor work.
4. Operating machinery and switchboards.
5. Protective service.
6. Supervision of internal combustion engine production.

531 Fuel.

This account shall include the cost delivered at the station of all fuel, such as gas, oil, kerosene, and gasoline used in internal combustion engines or other prime movers. This includes the invoice cost of fuel plus freight, switching, hauling and all handling costs incurred in connection with the delivery of the fuel at the station. It shall also include the net cost of, or amount realized from, disposal of residuals.

532 Supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in the operation of internal combustion engine power generating stations.

ITEMS

1. Log sheets and charts.
2. Lubricants.
3. Packing, washers, etc.
4. Rents.
5. Tools (hand).

534 Repairs of other power production plant.

This account shall include the amount of bills from others for repairs made to other power production plant. It does not include the cost of labor of the utility's own plant operating force.

ITEMS

1. Contract work in repairing plant and in rearranging or relocating plant not retired.
2. Repair parts and materials used in maintenance of other power production plants.

D. OTHER POWER SUPPLY EXPENSES

540 Purchased power.

A. This account shall include the cost at the point of delivery to the utility of electricity purchased for resale, including net settlements for exchange of electricity or power.

B. The records shall be so kept as to show, by months, the demands and demand charges and kilowatt-hours and prices thereof under each purchase or interchange agreement.

549 Other expenses.

A. This account shall be charged with any production expenses, including expenses incurred directly in connection with the purchase of electricity, which are not specifically provided for in other production expense accounts. Charges to this account shall be supported so that a description of each type of charge will be readily available.

B. Recoveries from insurance companies, under use and occupancy provisions of policies, of amounts in reimbursements of excessive or added production costs for which the insurance company is liable under the terms of the policy shall be credited to this account.

2. TRANSMISSION AND DISTRIBUTION EXPENSES

550 Supervision and labor.

This account shall include the cost of supervision and labor in connection with the operation and maintenance of transmission and distribution plant. This includes the pay of employees engaged in the care and operation of transformers, conversion equipment, transmission and switching substations, transmission and distribution lines, structures, street lighting equipment and services on customers' premises.

ITEMS

1. Cutting and replacing pavement, pavement base and sidewalks, in connection with repairs.
2. Inspecting and testing lightning arresters.
3. Inspecting, testing, removing and resetting transformers or meters, but not including initial testing chargeable to utility plant.
4. Load dispatching.
5. Maintaining roads, trails and bridges.
6. Operating substations and switching stations.
7. Pulling up slack.
8. Patrolling, testing, etc.
9. Repairing customer installations and services.
10. Repainting towers and structures.
11. Repairing conductors and devices.
12. Repairing and maintaining transmission and distribution structures.
13. Repairing materials for reuse.
14. Rearranging and changing the location of property not retired.
15. Refusing transformer cut-outs.
16. Renewing oil, repainting and rewinding transformers.
17. Replacing minor items of plant.
18. Restoring the condition of property damaged by storm, flood, etc.
19. Straightening poles and crossarms.
20. Tightening guys and racking stubs.
21. Trimming trees, clearing brush, etc.
22. Testing for, locating and clearing trouble.
23. Tools and implements used.
24. Voltage surveys.

552 Supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in the operation and maintenance of transmission and distribution plant.

ITEMS

1. Distilled water for storage batteries.
2. Gloves.
3. Lamps and globes.
4. Lubricants.
5. Maps and records.
6. Material used in repair and maintenance, such as brushes for boosters and compensators, brackets, wire, paint, insulators, etc.
7. Rents of transmission and distribution facilities.
8. Tools.

555 Transportation expenses.

A. This account shall include the cost of labor, materials used and expenses incurred in the operation and maintenance of general transportation equipment of the utility.

B. This account may be used as a clearing account in which event the charges hereto shall be cleared by apportionment to the appropriate operating expense, utility plant, or other accounts on a basis which will distribute the expenses equitably. Credits to this account shall be made in such detail as to permit ready analysis.

ITEMS

1. Depreciation of transportation equipment.
2. Insurance on transportation equipment.
3. License fees for vehicles and drivers.
4. Rents for equipment and garages.
5. Repairs of transportation equipment.
6. Supplies, such as gas, oil, tires, tubes, grease, etc.

NOTE: Transportation expenses applicable to construction shall not be included in operating expenses.

3. GENERAL EXPENSES

580 Administrative and general salaries.

This account shall include the cost of supervision and labor incurred in administrative, customer accounts, and sales activities.

ITEMS

1. Accounting and clerical work on customers accounts and on general records.
2. Meter reading.
3. Solicitation of business.
4. Stenographic work.
5. Supervision and administration.

581 Office supplies and expenses.

This account shall include office supplies and expenses incurred in connection with customer accounts, sales and general administration of the utility's operations.

ITEMS

1. Address plates and supplies.
2. Automobile service, including charges through clearing account.
3. Bank messenger and service charges.
4. Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax services, etc.
5. Building service expenses for customer accounts, sales, and administrative and general purposes.
6. Commissions or fees to others for collecting revenues.

7. Communication service expenses.
8. Cost of individual items of office equipment used by general departments which are of small value or short life.
9. Meals, traveling and incidental expenses.
10. Membership fees and dues in trade, technical, and professional associations paid by utility for employees. (Company memberships are includible in account 589).
11. Meter books and binders.
12. Office supplies and expenses.
13. Payment of court costs, witness fees, and other expenses of legal department.
14. Postage, printing and stationery.
15. Rent of office equipment.
16. Repairs of office equipment.

582 Outside services employed.

A. This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operation function nor to other accounts. It shall include also the pay and expenses of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered an employee of the utility.

B. This account shall be so maintained as to permit ready summarization according to the nature of service and the person furnishing the same.

ITEMS

1. Fees, pay and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc.
2. Supervision fees and expenses paid under contracts for general management services.

NOTE: Do not include inspection and brokerage fees and commissions chargeable to other accounts or fees and expenses in connection with security issues which are includible in the expenses of issuing securities.

584 Insurance expense.

A. This account shall include the cost of insurance or of reserve accruals (1) to protect the utility against losses and damages to owned or leased property used in its utility operations and (2) to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims.

B. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

C. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries and damages and insurance dividends or refunds shall be credited to this account.

586 Employee pensions and benefits.

A. This account shall include pensions paid to or on behalf of retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for the purpose, when the utility has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes, and payment for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses incurred in medical, educational or recreational activities for the benefit of employees.

B. The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

C. There shall be credited to this account the portion of pensions and benefits expenses which is applicable to nonutility operations or which is charged to construction unless such amounts are distributed directly to the accounts involved and are not included herein in the first instance.

588 Regulatory commission expenses.

A. This account shall include all expenses (except pay of regular employees only incidentally engaged in such work) properly includible in utility operating expenses, incurred by the utility in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party, including payments made to a regulatory commission for fees assessed against the utility for pay and expenses of such commission, its officers, agents, and employees, and, also, including payments made to the United States for the administration of the Federal Power Act.

B. Amounts of regulatory commission expense which by approval or direction of the Commission are to be spread over future periods shall be charged to account 183, Other Deferred Debits, and amortized by charges to this account.

C. The utility shall be prepared to show the cost of each formal case.

589 Miscellaneous general expenses.

This account shall include the cost of expenses incurred in connection with the general management of the utility not provided for elsewhere.

ITEMS

1. Industry association dues for company memberships.
2. Contributions for conventions and meetings of the industry.
3. Experimental and general research work for the industry.
4. Communication service not chargeable to other accounts.
5. Trustee, registrar, and transfer agent fees and expenses.
6. Stockholders meeting expenses.
7. Dividend and other financial notices.
8. Printing and mailing dividend checks.
9. Directors' fees and expenses.
10. Publishing and distributing annual reports to stockholders.
11. Institutional or goodwill advertising.
12. Public notices of financial, operating, and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.
13. Rents for property used in customer accounts, sales or administrative and general functions.

590 Uncollectible accounts.

This account shall be charged with losses from uncollectible accounts or with accruals to provide for anticipated losses from uncollectible utility revenues. Such accruals shall be credited to account 144, Accumulated Provision for Uncollectible Accounts—Cr. If the accrual method is used, losses from uncollectible accounts shall be charged to account 144.

592 Revenues from merchandising, jobbing, and contract work.

593 Costs and expenses of merchandising, jobbing, and contract work.

These accounts shall include respectively all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission, and all expenses incurred in such activities.

NOTE A: The revenues and expenses of merchandising, jobbing and contract work shall be reported in this account if a state regulatory body having jurisdiction over the utility requires the net income therefrom to be reported as an operating expense item; but the amounts shall be reported in accounts 415 and 416 if such regulatory body requires such income to be reported as nonoperating income. In the absence of a requirement by a state regulatory body, the utility may use these accounts or accounts 415 and 416, at its option, in which case the practice of the utility must be consistent.

NOTE B: See accounts 415 and 416 for list of items includible herein.

[F.R. Doc. 60-11690; Filed, Dec. 16, 1960; 8:45 a.m.]

Part II begins on page 13031

THE UNIVERSITY OF MICHIGAN
DEC 2[illegible] 1960
MAIN READING ROOM

Pages 12985–13127

PART I

FEDERAL REGISTER

VOLUME 25 NUMBER 246

Washington, Tuesday, December 20, 1960

Contents

Agricultural Marketing Service

PROPOSED RULE MAKING:
Milk in Philadelphia and Wilmington, Del.; decision on proposed amendments to tentative marketing agreements and order ---------- 13001

RULES AND REGULATIONS:
Milk handling:
Quad Cities-Dubuque marketing area ---------- 12987
Wilmington, Del., marketing area ---------- 12994
Oranges, grapefruit, tangerines, and tangelos grown in Florida; temporary prohibition of shipments ---------- 12987
Potatoes, Irish; approval of expenses and rate of assessment ---------- 12994

Agricultural Research Service

RULES AND REGULATIONS:
Scabies in sheep; interstate movement ---------- 12995

Agriculture Department

See Agricultural Marketing Service; Agricultural Research Service; Commodity Stabilization Service; Farmers Home Administration.

Air Force Department

RULES AND REGULATIONS:
Miscellaneous amendments to chapter ---------- 12999

Census Bureau

NOTICES:
Surveys in manufacturing areas; continuance ---------- 13009

Civil Aeronautics Board

NOTICES:
Hearings, etc.:
Hawaiian common fares case ---------- 13023
Intercontinental U.S., Inc. ---------- 13024

Commerce Department

See Census Bureau.

Commodity Stabilization Service

RULES AND REGULATIONS:
Cotton; regulations pertaining to acreage allotments for 1961 crop of upland cotton, correction ---------- 12987

Defense Department

See Air Force Department.

Farmers Home Administration

RULES AND REGULATIONS:
Oklahoma; acreage values of farms ---------- 12994

Federal Aviation Agency

RULES AND REGULATIONS:
Airworthiness directive; Brantly B–2 helicopters ---------- 12995
Coded jet route; modification ---------- 12997
Federal airways, control zones and reporting points; modification and revocation (3 documents) ---------- 12996, 12997
Restricted area; modification ---------- 12997
Technical standard orders for aircraft materials, parts, processes, and appliances; TSO–C68 airborne automatic dead reckoning computer equipment ---------- 12995

Federal Communications Commission

NOTICES:
Hearings, etc.:
Alert ---------- 13019
Auburn Broadcasting Co., Inc. (WAUD) ---------- 13020
Capitol Broadcasting Corp., Inc. (WKXL) et al ---------- 13020
Cherokee County Radio Station ---------- 13021
Commodity News Services, Inc., et al ---------- 13022
Deters, Arthur A., and College Radio ---------- 13022
Dixie Radio, Inc., and Harry Llewellyn Bowyer, Jr. ---------- 13010
Eugene Broadcasters and W. Gordon Allen ---------- 13011
Franklin Broadcasting Co., Inc. (KMAR) et al ---------- 13013
Fort Hamilton Broadcasting Co. (WMOH) et al ---------- 13012
Hennepin Broadcasting Associates and Robert E. Smith ---------- 13014
Hughey, L. M. (WTWB), and Sugarland Broadcasting Co. ---------- 13014
"Jet" Broadcasting Co., Inc. (WJET) et al ---------- 13015
Laurino, John, et al ---------- 13016
Martin Theatres of Georgia, Inc. (WTVM), and Columbus Broadcasting Co., Inc. (WRBL–TV) ---------- 13017
Mid-America Broadcasting System, Inc., et al ---------- 13018
Sawnee Broadcasting Co ---------- 13018
Spencer Broadcasting Co. et al ---------- 13018
WDUL Television Corp ---------- 13019
Western Broadcasting Co. et al ---------- 13019

Federal Power Commission

NOTICES:
Hearings, etc.:
Texas Gas Transmission Corp ---------- 13027
Wolfson Oil Co., et al ---------- 13026

Federal Trade Commission

RULES AND REGULATIONS:
Prohibited trade practices:
Anniston Foundry Co ---------- 12998
Wilson Trading Corp., et al ---------- 12998

Fish and Wildlife Service

PROPOSED RULE MAKING:
Federal aid to States in fish and wildlife restoration ---------- 13001

Food and Drug Administration

PROPOSED RULE MAKING:
Food additives; filing of petition ---------- 13008

Health, Education, and Welfare Department

See Food and Drug Administration.

(Continued on next page)

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Oil Import Administration.

Internal Revenue Service
PROPOSED RULE MAKING:
Notice of hearings 13001
RULES AND REGULATIONS:
Employment taxes; applicable on or after Jan. 1, 1960 (*see* Part II of this issue) 13031

Interstate Commerce Commission
NOTICES:
Fourth section applications for relief 13023
Motor carrier transfer proceedings 13023

Labor Department
See Wage and Hour Division.

Land Management Bureau
NOTICES:
Montana; proposed withdrawal and reservation of lands 13009

Oil Import Administration
RULES AND REGULATIONS:
Oil import; allocations of crude oil and unfinished oils—District V 12999

Securities and Exchange Commission
NOTICES:
Hearings, etc.:
Mississippi Power and Light Co. 13024
National Investors Corporation 13024
Pennsylvania Power Co. 13025
Virginia Capital Corp. 13026

Treasury Department
See also Internal Revenue Service.
NOTICES:
No sales at less than fair value; determination:
Moskvitch autos from U.S.S.R. 13009
Shoeboard from United Kingdom 13009

Wage and Hour Division
NOTICES:
Certificates authorizing employment of learners at special minimum rates 13027

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

6 CFR
331 12994

7 CFR
722 12987
933 12987
944 12987
970 12994
1010 12994
PROPOSED RULES:
961 13001
1010 13001

9 CFR
74 12995

14 CFR
507 12995
514 12995
601 (3 documents) 12996, 12997
602 12997
608 12997

16 CFR
13 (2 documents) 12998

21 CFR
PROPOSED RULES:
121 13008

26 (1939) CFR
PROPOSED RULES:
81 13001

26 (1954) CFR
31 (see Part II of this issue) 13031
PROPOSED RULES:
1 13001
20 13001
48 13001

32 CFR
888 12999
1001 12999
1002 13000
1003 13000
1004 13000
1006 13000
1007 13000
1010 13000
1013 13000
1052 13000
1054 13000
1057 13000

32A CFR
OIA (CH. X):
OI Reg. 1 12999

50 CFR
PROPOSED RULES:
41 13001

Now Available

UNITED STATES GOVERNMENT ORGANIZATION MANUAL

1960–61 Edition

(Revised through June 1)

Published by the Office of the Federal Register, the National Archives and Records Service, General Services Administration

817 pages—$1.50 a copy

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 7—AGRICULTURE

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

[Amdt. 2]

PART 722—COTTON

Subpart—Regulations Pertaining to Acreage Allotments for the 1961 Crop of Upland Cotton

Correction

In F.R. Doc. 60–11594, appearing at page 12809 of the issue for Wednesday, Dec. 14, 1960, the following corrections are made:

1. Under Arkansas, the entry for Faulkner County should read "43.2" instead of "5.5".

2. Under Mississippi, the entry for Benton County should read "665.0" instead of "655.0".

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Orange Regs. 380, 381; Grapefruit Reg. 333; Tangerine Reg. 219; Tangelo Reg. 25]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Miscellaneous Amendments

Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of all shipments of oranges, including Temple oranges, grapefruit, tangerines, and tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendatory order until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this order is based became available and the time when it must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, including Temple oranges, grapefruit, tangerines, and tangelos, grown in the production area, are currently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period December 5, 1960–January 2, 1961, including a proposed prohibition of shipments during the period specified herein, were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 29, 1960; such meeting was held to consider recommendations for regulations, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; necessary supplemental information for consideration in connection with the proposed prohibition of shipments was not available until December 14, 1960; the provisions of this order temporarily prohibiting shipments of fruit, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such fruit; it is necessary, in order to effectuate the declared policy of the act, to make this order effective during the period hereinafter set forth; and compliance with the provisions hereof will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

It is, therefore, ordered, That, the respective provisions of § 933.1035 (Orange Regulation 380; 25 F.R. 12405); § 933.1036 (Grapefruit Regulation 333; 25 F.R. 12406); § 933.1037 (Tangerine Regulation 219; 25 F.R. 12406); § 933.1038 (Tangelo Regulation 25; 25 F.R. 12407); and § 933.1039 (Orange Regulation 381; 25 F.R. 12505) are each hereby amended by adding thereto the following paragraph:

(c) *Temporary prohibition of shipments.* Notwithstanding the provisions of paragraph (b) of this section, no handler shall, during the period beginning at 12:01 a.m., e.s.t., December 23, 1960, and ending at 12:01 a.m., e.s.t., December 29, 1960, ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico, any fruit of any variety specified in paragraph (b) of this section.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 15, 1960.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11765; Filed, Dec. 19, 1960; 8:51 a.m.]

[Milk Order No. 44]

PART 944—MILK IN QUAD CITIES-DUBUQUE MARKETING AREA

Order Amending Order

Sec.
944.0 Findings and determinations.

DEFINITIONS
944.1 Act.
944.2 Secretary.
944.3 Department.
944.4 Person.
944.5 Cooperative association.
944.6 Quad Cities-Dubuque marketing area.
944.7 Producer.
944.8 Distributing plant.
944.9 Supply plant.
944.10 Pool plant.
944.11 Nonpool plant.
944.12 Handler.
944.13 Producer-handler.
944.14 Producer milk.
944.15 Fluid milk product.
944.16 Other source milk.
944.17 Chicago butter price.

MARKET ADMINISTRATOR
944.20 Designation.
944.21 Powers.
944.22 Duties.

REPORTS, RECORDS AND FACILITIES
944.30 Reports of receipts and utilization.
944.31 Other reports.
944.32 Records and facilities.
944.33 Retention of records.

CLASSIFICATION
944.40 Skim milk and butterfat to be classified.
944.41 Classes of utilization.
944.42 Shrinkage.
944.43 Responsibility of handlers and reclassification of milk.
944.44 Transfers.
944.45 Computation of the skim milk and butterfat in each class.
944.46 Allocation of skim milk and butterfat classified.

MINIMUM PRICES
944.50 Class prices.
944.51 Butterfat differentials to handlers.
944.52 Location differential to handlers.
944.53 Use of equivalent prices.

APPLICATION OF PROVISIONS
944.60 Producer-handler.
944.61 Plants subject to other Federal orders.
944.62 Handler operating a nonpool distributing plant.
944.63 Rate of payment on unpriced milk.

DETERMINATION OF UNIFORM PRICE

Sec.
944.70 Computation of value of milk for each handler.
944.71 Computation of uniform price.

PAYMENT FOR MILK

944.80 Time and method of payment for producer milk.
944.81 Butterfat differentials to producers.
944.82 Location differentials to producers.
944.83 Producer-settlement fund.
944.84 Payments to the producer-settlement fund.
944.85 Payments out of the producer-settlement fund.
944.86 Adjustment of accounts.
944.87 Expense of administration.
944.88 Marketing services.
944.89 Termination of obligation.

MISCELLANEOUS PROVISIONS

944.90 Effective time.
944.91 Suspension or termination.
944.92 Continuing obligations.
944.93 Liquidation.
944.94 Agents.
944.95 Separability of provisions.

AUTHORITY: §§ 944.0 to 944.95 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 944.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Quad Cities and Dubuque marketing areas. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order is hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 3 cents per hundredweight or such amount not to exceed 3 cents per hundredweight as the Secretary may prescribe, with respect to butterfat and skim milk contained in (a) producer milk; (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 944.46(a) (3) and (4) and the comparable step of § 944.46(b); and (c) any amount due pursuant to § 944.62 (a)(2) or (b)(2).

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued September 2, 1960 and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued November 18, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER (sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Quad Cities-Dubuque marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended:

DEFINITIONS

§ 944.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 944.2 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the United States authorized to exercise the powers or to perform the duties of the Secretary of Agriculture.

§ 944.3 Department.

"Department" means the United States Department of Agriculture or any other Federal agency authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 944.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 944.5 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 944.6 Quad Cities-Dubuque marketing area.

"Quad Cities-Dubuque marketing area" hereinafter called the marketing area, means the territory within the boundaries of the counties of Clinton, Dubuque, Jackson, Muscatine and Scott in the state of Iowa; the county of Rock Island, and the city of East Dubuque, in the state of Illinois, including territory within such boundaries that is occupied by government (Municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 944.7 Producer.

"Producer" means any person, except a producer-handler, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant.

§ 944.8 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which any fluid milk product is processed or packaged and disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 944.9 Supply plant.

"Supply plant" means a plant from which milk, skim milk or cream which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 944.10(a).

§ 944.10 Pool plant.

"Pool plant" means a plant described in paragraph (a), (b) or (c) of this section except as provided in §§ 944.60 and 944.61: *Provided*, That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which a volume of Class I milk not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products shipped during the month to plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of December through August, unless written application is filed with the market administrator on or before the 1st day of any of the months of December through August to be designated a nonpool plant for such month and for each subsequent month through August.

(c) A plant operated by a cooperative association from whose members the total pounds of producer milk received at the pool plants of other handlers during the month, or during the 12-month period immediately preceding such month, are more than the total pounds of Grade A milk received at its plant from dairy farmers during the corresponding period: *Provided*, That if written application is filed with the market administrator on or before the 5th day of any month such plant may be designated a nonpool plant for such month and for any subsequent months.

§ 944.11 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

§ 944.12 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more distributing or supply plants.

(b) A cooperative association which is the operator of a pool plant pursuant to § 944.10(c).

(c) Any cooperative association with respect to the milk from producers diverted by the association for the account of such association from a pool plant to a nonpool plant.

§ 944.13 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from producers or other source milk.

§ 944.14 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk received at a pool plant directly from producers: *Provided*, That milk diverted from a pool plant to a nonpool plant for the account of either the operator of the pool plant or a cooperative association shall be deemed to have been received by the diverting handler at the plant from which diverted: *And provided further*, That in any of the months of July through January milk diverted from the farm of a producer on more than the number of days that milk was delivered to a pool plant from such farm during the month shall not be deemed to have been received by the diverting handler.

§ 944.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream or any mixture in fluid form of skim milk and butterfat (except aerated cream products, products containing cheese and labeled as such, yogurt, ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

§ 944.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, (2) producer milk, or (3) inventory at the beginning of the month; and

(b) Products other than fluid milk products from any source (including those produced at the plant) which are reprocessed or converted to another product in the plant during the month.

§ 944.17 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any range as one price) per pound of 92-score bulk creamery butter at Chicago as reported during the month by the Department.

MARKET ADMINISTRATOR

§ 944.20 Designation.

The agency for the administration of this part shall be a market administrator, appointed by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal by the Secretary.

§ 944.21 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 944.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(c) Obtain a bond in a reasonable amount, and with reasonable surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 944.87: (1) The cost of his bond and of the bonds of his employees, (2) his own compensation, and (3) all other expenses, except those incurred under § 944.88, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties.

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate the name of any person who within 10 days after the date upon which he is required to perform such acts, has not made reports and payments required by this part;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The 5th day of each month, the minimum price for Class I milk pursuant to § 944.50(a) and the Class I butterfat differential, pursuant to § 944.51(a) both for the current month; and the minimum price for Class II milk, pursuant to § 944.50(b), and the Class II butterfat differential, pursuant to § 944.51(b) both for the preceding month; and

(2) The 10th day of each month the uniform price pursuant to § 944.71 and the producer butterfat differential pursuant to § 944.81 for the preceding month; and

(k) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of milk caused to be delivered by the cooperative association or its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

REPORTS, RECORDS AND FACILITIES

§ 944.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler, except a producer-handler, shall report for such month to the market administrator in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk;

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

(c) The quantities of skim milk and butterfat contained in other source milk;

(d) The quantities of skim milk and butterfat contained in producer milk diverted to nonpool plants pursuant to § 944.14.

(e) Inventories of fluid milk products on hand at the beginning and end of the month;

(f) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk outside the marketing area; and

(g) Such other information with respect to his receipts and utilization of butterfat and skim milk as the market administrator may prescribe.

§ 944.31 Other reports.

Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

§ 944.32 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts and records of his operations together with such facilities as are necessary for the market administrator to verify or establish the correct data which are required to be reported pursuant to this part and the payments required pursuant to this part.

§ 944.33 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records is necessary in connection with a proceeding under section 8c(15)(A) of the act or a court action specified in such notice the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 944.40 Skim milk and butterfat to be classified.

The skim milk and butterfat which are required to be reported pursuant to § 944.30 shall be classified each month by the market administrator, pursuant to the provisions of §§ 944.41 through 944.46.

§ 944.41 Classes of utilization.

Subject to the conditions set forth in § 944.44 the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including concentrated and reconstituted skim milk) and butterfat (1) disposed of in the form of a fluid milk product (except as provided in paragraphs (b) (2) and (4) of this section) and (2) not accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat (1) used to produce any product other than a fluid milk product; (2) disposed of to wholesale bakeries, candy manufacturers, soup companies, or for livestock feed; (3) contained in inventory of fluid milk products on hand at the end of the month; (4) skim milk dumped if the market administrator has been notified in advance and afforded the opportunity of verifying such dumping; (5) in shrinkage allocated to receipts of producer milk (except milk diverted to a nonpool plant pursuant to § 944.14) but not in excess of 2 percent of such receipts of skim milk and butterfat, respectively; and (6) in shrinkage of other source milk.

§ 944.42 Shrinkage.

The market administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler; and

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat contained in producer milk and in other source milk.

§ 944.43 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

§ 944.44 Transfers.

Skim milk or butterfat disposed of each month from a pool plant shall be classified:

(a) As Class I milk, if transferred in the form of a fluid milk product to the pool plant of another handler unless utilization as Class II milk is claimed by both handlers in their reports submitted for the month to the market administrator pursuant to § 944.30: *Provided*, That the skim milk or butterfat so assigned to Class II milk shall be limited to the amount thereof remaining in Class II milk in the plant of the transferee-handler after the subtraction of other source milk pursuant to § 944.46, and any additional amounts of such skim milk or butterfat shall be classified as Class I milk: *And provided further*, That if either or both handlers have received other source milk, the skim milk or butterfat so transferred shall be classified at both plants so as to allocate the greatest possible Class I utilization to the producer milk of both handlers;

(b) As Class I milk, if transferred to a producer-handler in the form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of a fluid milk product to a nonpool plant located more than 300 miles from the City Hall, Rock Island, Illinois, by the shortest highway distance as determined by the market administrator; and

(d) As Class I milk, if transferred or diverted in the form of a fluid milk product in bulk to a nonpool plant located not more than 300 miles from the City Hall, Rock Island, Illinois, by the shortest highway distance as determined by the market administrator, unless:

(1) The transferring or diverting handler claims classification in Class II milk in his report submitted to the market administrator pursuant to § 944.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat in the fluid milk products (except in ungraded fluid milk products disposed of for manufacturing uses) disposed of from such nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month directly from Grade A dairy farms that the market administrator determines constitute the regular source of supply for such plant: *Provided*, That any skim milk or butterfat in fluid milk products (except in ungraded fluid milk products disposed of for manufacturing uses) disposed of from the nonpool plant which is in excess of receipts from such dairy farms shall be assigned to the fluid milk products so transferred or diverted and classified as Class I milk: *And provided further*, That if the total skim milk and butterfat which were transferred or diverted during the month to such nonpool plant from all plants subject to the classification and pricing provisions of this part and other orders issued pursuant to the Act are more than the skim milk and butterfat available for assignment to Class I milk pursuant to the preceding proviso hereof, the skim milk and butterfat assigned to Class I milk at a pool plant shall be not less than that obtained by prorating the assignable Class I milk at the transferee plant over the receipts at such plant from all plants subject to the classification and pricing provisions of this and other orders issued pursuant to the Act.

§ 944.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the reports of receipts and utilization for the pool plant(s) of each handler and shall compute the pounds of butterfat and skim milk in Class I milk and Class II milk for such handlers: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such products, plus all of the water reasonably associated with such solids in the form of whole milk.

§ 944.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 944.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II milk the pounds of skim milk assigned to producer milk pursuant to § 944.41(b)(5);

(2) Subtract from the total pounds of skim milk in Class I milk the pounds of skim milk that were received in the form of fluid milk products in containers not larger than a gallon, that are subject to the Class I pricing provisions of another order issued pursuant to the Act, and in the case of cream subject to the Class II pricing provisions of Federal Order No. 41 and that are disposed of in the same form as received; *Provided*, That this subparagraph shall not apply to any items received if the same item is processed and packaged in the pool plant during the month.

(3) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk other than that received in the form of fluid milk products;

(4) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which were not subject to the Class I pricing provisions of an order issued pursuant to the act;

(5) Subtract from the remaining pounds of skim milk in Class II milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less;

(6) Subtract from the remaining pounds of skim milk in each class in series beginning with Class II milk, the pounds of skim milk in other source milk received in the form of fluid milk products which are subject to the Class I pricing provisions of another order issued pursuant to the act and that were not subtracted pursuant to subparagraph (2) of this paragraph;

(7) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (5) of this paragraph;

(8) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 944.44(a);

(9) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(10) Add to the pounds of skim milk remaining in Class II milk the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph and if the remaining pounds of skim milk in both classes exceed the pounds of skim milk contained in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class II. Any amount of excess so subtracted shall be called "overage".

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) The amounts of skim milk and butterfat in producer milk allocated pursuant to paragraphs (a) and (b) of this section shall be combined into one total for each class and the weighted average butterfat content of producer milk in each class determined from such totals.

MINIMUM PRICES

§ 944.50 Class prices.

Subject to the provisions of §§ 944.51 and 944.52 the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The Class I milk price shall be the price for Class I milk established under Federal Order No. 41, as amended, regulating the handling of milk in the Chicago, Ill., marketing area, plus 20 cents.

(b) *Class II milk price.* The Class II milk price shall be the average of the basic or field prices reported to have been paid or to be paid per hundredweight for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

PRESENT OPERATOR AND PLANT LOCATION

Amboy Milk Products Co., Amboy, Ill.
Borden Co., Dixon, Ill.
Carnation Co., Morrison, Ill.
Carnation Co., Oregon, Ill.
Carnation Co., Waverly, Iowa.
United Milk Products Co., Argo Fay, Ill.

§ 944.51 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, the class prices for the month calculated pursuant to § 944.50 shall be increased or decreased, respectively, for each one-tenth percent butterfat at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the Chicago butter price for the preceding month by 0.125.

(b) *Class II price.* Multiply the Chicago butter price for the current month by 0.110 for the months of April, May, and June, and by 0.115 for all other months.

§ 944.52 Location differentials to handlers.

For that milk which is received from producers at pool plants in Dubuque and Jackson Counties, Iowa, and East Dubuque, Illinois, and which is classified as Class I milk, the price specified in § 944.50(a) shall be reduced 10 cents and for that milk which is received from producers at pool plants outside the marketing area and 70 miles or more from the City Hall, Rock Island, Illinois, by the shortest hard surfaced highway distance, as determined by the market administrator, and which is classified as Class I milk, the price specified in § 944.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Rock Island City Hall (miles):	*Rate per hundredweight (cents)*
70 but less than 80	10.0
For each additional 10 miles or fraction thereof an additional	1.5

Provided, That for the purpose of calculating the location differential adjustment applicable pursuant to this section, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II milk in the transferee-plant after making the calculations prescribed in § 944.46(a)(6) and the comparable steps in (b) for such plant, such assignment to transferor plants to be made in sequence according to the location differential applicable to each plant, beginning with the plant having the largest differential.

§ 944.53 Use of equivalent prices.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 944.60 Producer-handler.

Sections 944.70, 944.71 and 944.80 through 944.88 shall not apply to a producer-handler.

§ 944.61 Plants subject to other Federal orders.

The provisions of this part shall not apply to a distributing plant, a supply plant or a plant otherwise qualified as a pool plant pursuant to § 944.10(c) during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the act unless such plant would otherwise be qualified as a pool plant pursuant to § 944.10 and a greater volume of fluid milk products is disposed of from such plant to retail or wholesale outlets and to pool plants in the Quad Cities-Dubuque marketing area than in the marketing area regulated pursuant to such other order: *Provided*, That the operator of a distributing plant or a supply plant which is exempt from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require (in lieu of the reports required pursuant to § 944.30) and allow verification of such reports by the market administrator.

§ 944.62 Handler operating a nonpool distributing plant.

Each handler, other than a producer-handler, who during the month operates a nonpool plant from which Grade A fluid milk products are distributed on a route in the marketing area, shall make payment to the market administrator as follows:

(a) If such handler so elects at the time of reporting pursuant to § 944.30 his obligations shall be as follows:

(1) On or before the 25th day after the end of the month, for the producer-settlement fund, any plus amount resulting from the following computation:

(i) Compute an amount equal to the value of milk which would be computed pursuant to § 944.70 for Grade A milk received from dairy farmers at such plant for such month if such plant had been a pool plant;

(ii) Deduct the gross payments made by the handler to dairy farmers, for Grade A milk received at such plant for such month. Gross payments to be included in this computation shall be limited to cash payments made to the dairy farmer or his assignee on or before the 15th day after the end of the month, plus the value of any supplies or services furnished by the handler on prior written authorization or as evidenced by a delivery ticket signed by the dairy farmer; and

(2) On or before the 15th day after the end of the month, as his pro rata share of the expense of administration, an amount equal to that which would have been computed pursuant to § 944.87 had such plant been a pool plant.

(b) Unless such handler elects to have his obligations computed pursuant to paragraph (a) of this section, his obligations shall be as follows:

(1) On or before the 13th day after the end of the month, for the producer-settlement fund, an amount determined by multiplying the quantity of Class I milk disposed of during the month on routes in the marketing area by the applicable rates as set forth in § 944.63; and

(2) On or before the 15th day after the end of the month, as his pro rata share of the expense of administration, the rate specified in § 944.87 with respect to Class I milk disposed of on routes in the marketing area.

§ 944.63 Rate of payment on unpriced milk.

The rate of payment per hundredweight to be made by handlers on unpriced other source milk allocated to Class I milk shall be any plus amount calculated as follows:

(a) During the months of December through June, subtract from the Class I price adjusted by the Class I butterfat and location differentials applicable at a pool plant of the same location as the nonpool plant supplying such other source milk, the Class II price adjusted by the Class II butterfat differential; and

(b) During the months of July through November subtract from the Class I price the uniform price to producers.

DETERMINATION OF UNIFORM PRICE

§ 944.70 Computation of value of milk for each handler.

The value of producer milk received during each month by each handler shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of milk in each class by the applicable class price and add together the resulting amounts;

(b) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 944.46(a)(10) and the corresponding step of (b) by the applicable class prices;

(c) Add the amount obtained in multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified in Class II (less shrinkage) during the preceding month, or the hundredweight of milk subtracted from Class I pursuant to § 944.46(a)(9) and the corresponding step of (b), whichever is less; and

(d) Add an amount calculated by multiplying the hundredweight of skim milk and butterfat subtracted from Class I milk pursuant to § 944.46(a)(3) and (4) and the corresponding step of (b) by the rate of payment on unpriced milk determined pursuant to § 944.63 at the nearest nonpool plant(s) from which an equivalent amount of other source skim milk or butterfat was received: *Provided*, That if the source of any Class I products at a pool plant is not clearly established or if such skim milk is in the form of nonfat dry milk, they shall be considered to have been received from a source at the location of the pool plant where they are classified.

§ 944.71 Computation of uniform price.

For each of the months the market administrator shall compute a uniform price for producer milk of 3.5 percent butterfat content f.o.b. Rock Island, Illinois as follows:

(a) Combine into one total the values computed pursuant to § 944.70 for all handlers who made the reports prescribed in § 944.30 for such month, except those in default of payments required pursuant to § 944.84 for the preceding month;

(b) Add or subtract for each one-tenth percent that the average butterfat content of producer milk represented by the values included under paragraph (a) of this section is less or more, respectively, than 3.5 percent, an amount computed by multiplying such differences by the butterfat differential to producers, and multiplying the result by the total hundredweight of producer milk;

(c) Add an amount equal to the sum of the location differential deductions to be made pursuant to § 944.82;

(d) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(e) Divide the resulting amount by the total hundredweight of producer milk included in these computations; and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The resulting figure shall be the uniform price for producer milk.

PAYMENT FOR MILK

§ 944.80 Time and method of payment for producer milk.

Each handler shall make payment as follows:

(a) On or before the 17th day after the end of each month during which the milk was received, to each producer for milk received from him and for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, at not less than the uniform price computed in accordance with § 944.71, subject to the butterfat differential computed pursuant to § 944.81 and less location differential deductions pursuant to § 944.82.

(b) On or before the 15th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 10th day after the end of the month, each handler shall pay to each cooperative association which is also a handler, for milk received from it not less than the value of such milk as classified pursuant to this part at the applicable respective class prices including differentials prescribed by this part.

§ 944.81 Butterfat differentials to producers.

The applicable uniform prices to be paid each producer pursuant to § 944.80 shall be increased or decreased for each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 944.46 by the respective butterfat differential for such class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

§ 944.82 Location differentials to producers.

In making payment pursuant to § 944.80 the uniform price pursuant to § 944.71 for milk which is received from producers at pool plants in Dubuque and Jackson Counties, Iowa, and East Dubuque, Illinois, shall be reduced 10 cents and for milk which is received from producers at pool plants outside the marketing area and 70 miles or more from the City Hall, Rock Island, Illinois, by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Rock Island City Hall (miles):	*Rate per hundredweight (cents)*
70 but less than 80	10.0
For each additional 10 miles or fraction thereof an additional	1.5

§ 944.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 944.62, 944.84 and 944.86 and out of which he shall make all payments to handlers pursuant to §§ 944.85 and 944.86.

§ 944.84 Payments to the producer-settlement fund.

On or before the 12th day after the end of each month, each handler shall pay to the market administrator the amount by which the value of milk for such handler pursuant to § 944.70 for such month exceeds the obligation pursuant to § 944.80 of such handler to producers for milk received during the month.

§ 944.85 Payments out of the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount by which the obligation, pursuant to § 944.80, of such handler to producers for milk received during the month exceeds the value of milk for such handler computed pursuant to § 944.70: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 944.80 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 944.86 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due; and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

§ 944.87 Expense of administration.

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator, on or before the 15th day after the end of each month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to butterfat and skim milk contained in (a) producer milk; (b) other source milk at a pool plant which is allocated to Class I milk pursuant to § 944.46(a)(3) and (4) and the comparable step of § 944.46(b); and (c) any amount due pursuant to § 944.62 (a)(2) or (b)(2).

§ 944.88 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 944.80, shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information.

(b) In case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 944.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files pursuant to section 8c(15)(A) of the act, a petition claiming such money.

MISCELLANEOUS PROVISIONS

§ 944.90 Effective time.

The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 944.91 Suspension or termination.

The Secretary shall, whenever he finds this part, or any provision hereof, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or any such provision of this part.

§ 944.92 Continuing obligations.

If, upon the suspension or termination of any or all provisions of this part, there are any obligations hereunder the final accrual or ascertainment of which require further acts by any person (including the market administrator) such further acts shall be performed notwithstanding such suspension or termination.

§ 944.93 Liquidation.

Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all accounts, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

§ 944.94 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 944.95 Separability of provisions.

If any provision of this part or its application to any person or circumstance, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C., this 15th day of December 1960, to be effective on and after the 1st day of January 1961.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11763; Filed, Dec. 19, 1960; 8:51 a.m.]

PART 970—IRISH POTATOES GROWN IN MAINE

Approval of Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and rate of assessment, to be made effective under Marketing Agreement No. 122 and Order No. 70 (7 CFR Part 970), regulating the handling of Irish potatoes grown in the State of Maine, was published in the FEDERAL REGISTER November 23, 1960 (25 F.R. 11110). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which proposals were adopted and submitted for approval by the Maine Potato Administrative Committee established pursuant to said marketing agreement and order, it is hereby found and determined that:

§ 970.206 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the Maine Potato Administrative Committee to enable such committee to perform its functions pursuant to the provisions of aforesaid marketing agreement and order, during the fiscal period ending August 31, 1961, will amount to $57,875.00.

(b) The rate of assessment to be effective for the fiscal period ending August 31, 1961, shall be $1.25 per railroad car, $1.00 per truckload of 25,000 pounds or over 25,000 pounds, and $0.50 (fifty cents) per truckload of less than 25,000 pounds, or the respective equivalent quantities, of potatoes handled during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 122 and this part.

It is hereby found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001-1011) in that: (1) the relevant provisions of said marketing agreement and order require that rates of assessment fixed for a particular fiscal period shall be applicable to all assessable potatoes from the beginning of such period and (2) the current fiscal period began on September 1, 1960, and the rates of assessment herein fixed will automatically apply to all assessable potatoes beginning with such date.

(Secs. 1-9, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 14, 1960.

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-11725; Filed, Dec. 19, 1960; 8:47 a.m.]

[Milk Order No. 110]

PART 1010—MILK IN WILMINGTON, DELAWARE, MARKETING AREA

Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Wilmington, Delaware, marketing area (7 CFR Part 1010), it is hereby found and determined that:

(a) The following provisions of the order do not tend to effectuate the declared policy of the Act: The provisions of § 1010.22(j)(2) except "the 15th day of the month * * * the Class I price * * *;".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions in the marketing area.

(3) There is pending before the Secretary a final decision on proposed amendments to the Philadelphia, Pennsylvania, and Wilmington, Delaware, Federal milk orders. There is insufficient time prior to the regular date of Class I price announcement, December 15, 1960 for Wilmington order prices effective in January, February and March, 1961 for the Secretary to issue a final decision on the proposed amendments which were considered in the revised recommended decision issued November 14, 1960 (25 F.R. 10938) on the Philadelphia and Wilmington milk orders and to issue amendments to these orders.

(4) If this suspension order were not issued the Class I price which would be announced on December 15, 1960, could differ from the price which would result from order provisions which might be adopted to be effective for January 1961 and subsequent months, and this could result in confusion as to the intent of the Department in connection with current amendment procedure.

Therefore, good cause exists for making this order effective immediately.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended effective upon issuance of this order: *Provided*, That this suspension action shall not affect the price heretofore announced for December 1960.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Issued at Washington, D.C., this 15th day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11764; Filed, Dec. 19, 1960; 8:51 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER B—FARM OWNERSHIP LOANS

[FHA Instruction 428.1]

PART 331—POLICIES AND AUTHORITIES

Average Values of Farms; Oklahoma

On December 1, 1960, for the purposes of Title I of the Bankhead-Jones Farm Tenant Act, as amended, the average values of efficient family-type farm-

management units for 73 of the 77 counties in Oklahoma were determined to be as herein set forth. The average values heretofore established for the 73 of the 77 counties which appear in the tabulations of average values under § 331.17, Chapter III, Title 6 of the Code of Federal Regulations, are superseded by the average values set forth below for said 73 counties.

OKLAHOMA

County	Average value	County	Average value
Adair	$31,000	Le Flore	30,000
Alfalfa	50,000	Lincoln	31,000
Atoka	30,000	Logan	38,000
Beaver	50,000	Love	35,000
Beckham	50,000	McClain	32,000
Blaine	45,000	McCurtain	35,000
Bryan	35,000	McIntosh	30,000
Caddo	44,000	Major	50,000
Canadian	45,000	Marshall	35,000
Carter	35,000	Mayes	38,000
Cherokee	31,000	Murray	31,000
Choctaw	35,000	Muskogee	34,000
Cimarron	50,000	Noble	44,000
Cleveland	32,000	Nowata	38,000
Coal	30,000	Okfuskee	30,000
Comanche	38,000	Oklahoma	38,000
Cotton	40,000	Okmulgee	31,000
Craig	38,000	Osage	44,000
Creek	30,000	Ottawa	38,000
Custer	50,000	Pawnee	38,000
Delaware	31,000	Payne	38,000
Dewey	50,000	Pittsburg	31,000
Ellis	50,000	Pontotoc	33,000
Garfield	50,000	Pottawatomie	31,000
Garvin	38,000	Pushmataha	30,000
Grady	44,000	Roger Mills	50,000
Grant	50,000	Rogers	38,000
Greer	50,000	Seminole	30,000
Harmon	50,000	Sequoyah	31,000
Harper	50,000	Stephens	38,000
Haskell	30,000	Texas	50,000
Hughes	33,000	Tillman	50,000
Jackson	50,000	Tulsa	38,000
Jefferson	35,000	Wagoner	38,000
Johnston	33,000	Washington	38,000
Kay	50,000	Washita	50,000
Kingfisher	45,000	Woods	50,000
Kiowa	50,000	Woodward	50,000
Latimer	30,000		

(Sec. 41, 50 Stat. 528, as amended; 7 U.S.C. 1015; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188)

Dated: December 14, 1960.

DARREL A. DUNN,
Acting Administrator,
Farmers Home Administration.

[F.R. Doc. 60-11726; Filed, Dec. 19, 1960; 8:47 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 74—SCABIES IN SHEEP

Interstate Movement

Pursuant to the provisions of sections 1 and 3 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 111-113, 120, 121, 123, 125), §§ 74.2 and 74.3 of Part 74, Subchapter C, Chapter I, Title 9, Code of Federal Regulations, as amended, are hereby amended in the following respects:

1. Subparagraph (3) of paragraph (a) of § 74.2 is amended to read:

(3) All counties in New Mexico except Bernalillo and San Miguel.

2. Subparagraph (2) of paragraph (a) of § 74.3 is amended to read:

(2) The following counties in New Mexico: Bernalillo and San Miguel.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, secs. 1, 3, 33 Stat. 1264, as amended, 1265, as amended; 21 U.S.C. 111-113, 120, 121, 123, 125. Interpret or apply secs. 6, 7, 23 Stat. 32, as amended, secs. 2, 4, 33 Stat. 1264, as amended, 1265, as amended; 21 U.S.C. 115, 117, 124, 126. 19 F.R. 74, as amended)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment deletes the County of San Miguel in New Mexico from the free areas and adds such County to the infected areas and to the eradication areas, as sheep scabies is known to exist in such County. Hereafter, the restrictions pertaining to the interstate movement of sheep from, into, and through infected and eradication areas as contained in 9 CFR Part 74, as amended, will apply to this County.

The amendment imposes certain restrictions necessary to prevent the spread of scabies, a communicable disease of sheep, and must be made effective immediately in order to accomplish its purpose in the public interest. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 15th day of December 1960.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 60-11767; Filed, Dec. 19, 1960; 8:52 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Regulatory Docket No. 601; Amdt. 235]

PART 507—AIRWORTHINESS DIRECTIVES

Brantly B-2 Helicopters

A failure of the tail rotor drive shaft just forward of the oil cooler fan drive pulley occurred in flight on a Brantly B-2 helicopter resulting in complete loss of directional control. Investigation indicated the failed shaft had been subjected to bending forces which were apparently introduced by shaft misalignment. As such a failure represents a safety hazard, inspection and modifications are required to preclude additional failures.

In the interest of safety notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

BRANTLY. Applies to all Brantly Model B-2 helicopters prior to Serial No. 44 not previously modified in accordance with Brantly Service Bulletin No. 4.

Compliance required within 25 hours' time in service after the effective date of this directive.

(a) Remove the B2-108-34 drive shaft extension and the B2-108-35 coupling from between the transmission and the oil cooler fan drive pulley. Using Brantly alining jig No. AT-108-31 and following instructions in Brantly Service Bulletin No. 4, check alinement of the tail rotor drive shaft installation. Adjust bearing positions as necessary per instructions to obtain satisfactory alinement.

(b) Using Brantly drill jig No. MT-339-16 and in accordance with instructions in Service Bulletin No. 4, install an additional flexible coupling on the aft end of the B2-108-34 drive shaft extension. Brantly parts B2-108-45 (one), B2-14-14 (two), plus associated standard attachments prescribed in Service Bulletin No. 4 are required for this modification. Orientation of the two flexible couplings on the shaft with respect to each other in accordance with Modification Step No. 15 of Service Bulletin No. 4 is imperative.

This amendment shall become effective December 20, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 13, 1960.

GEORGE C. PRILL,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11710; Filed, Dec. 19, 1960; 8:45 a.m.]

[Regulatory Docket No. 532; Amdt. 39]

PART 514—TECHNICAL STANDARD ORDERS FOR AIRCRAFT MATERIALS, PARTS, PROCESSES, AND APPLIANCES

TSO-C68 Airborne Automatic Dead Reckoning Computer Equipment

Proposed § 514.74 establishing minimum performance standards for airborne automatic dead reckoning computer equipment utilizing aircraft heading and doppler-obtained ground speed and drift angle data for use as a primary aid in navigation on civil aircraft of the United States engaged in air carrier operations was published in 25 F.R. 9671.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), Part 514 of the regulations of the Administrator (14 CFR Part 514) is hereby amended as follows:

Section 514.74 is added as follows:

§ 514.74 Airborne automatic dead reckoning computer equipment utilizing aircraft heading and doppler-obtained ground speed and drift angle data (for air carrier aircraft)—TSO–C68.

(a) *Applicability*—(1) *Minimum performance standards.* Minimum performance standards are hereby established for airborne automatic dead reckoning computer equipment utilizing aircraft heading and doppler-obtained ground speed and drift angle data which is to be used on civil aircraft of the United States engaged in air carrier operations. New models of airborne automatic dead reckoning computer equipment utilizing aircraft heading and doppler-obtained ground speed and drift angle data manufactured for use on civil air carrier aircraft on or after January 16, 1961, shall meet the standards in Radio Technical Commission for Aeronautics Papers 101–60/DO–104[1] dated June 8, 1960; 100–54/DO–60[1] dated April 13, 1954; and 256–58/EC–366[1] dated November 13, 1958. Exceptions, additions, and substitutions to these standards are listed in subparagraph (2) of this paragraph.

(2) *Exceptions.* (i) Radio Technical Commission for Aeronautics Paper 100–54/DO–60, and amendment Paper 256–58/EC–366 dated November 13, 1958, outline environmental test procedures for equipment designed to operate under three environmental test conditions as specified therein under Procedures A, B, and C. Only airborne automatic dead reckoning computer equipment utilizing aircraft heading and doppler-obtained ground speed and drift angle data which meets the operating requirements as outlined under Procedure A or Procedure B of Paper 100–54/DO–60, as amended, is eligible under this section.

(ii) The vibration values specified below may be used for equipment designed exclusively for installation on the instrument panel of aircraft in lieu of those specified in Paper 100–54/DO–60 as amended. No shock mounting shall be used during the conduct of this test if the vibration values specified below are used.

Amplitude: 0.01" (0.02" total excursion).
Frequency: Variable 10–55 c.p.s.
Maximum Acceleration: 1.5 g.

(iii) Equipment which is designed exclusively for installation on the instrument panel of aircraft need not be subjected to the shock requirements outlined in Paper 100–54/DO–60 as amended.

(iv) Indicating instruments which are a part of the system, but which are not designed exclusively for installation on the instrument panel of aircraft, may also be tested to the vibration requirements specified in subdivision (ii) of this subparagraph, and need not be subjected to the shock requirements outlined in Paper 100–54/DO–60 as amended.

(b) *Marking.* (1) In addition to the markings specified in § 514.3, equipment which has been designed to operate over the environmental conditions outlined in Procedure A of RTCA Paper 100–54/DO–60, as amended, shall be marked as Category A equipment. Equipment which has been designed to operate over the environmental conditions outlined in Procedure B of this same paper shall be marked as Category B equipment. Equipment which has been designed exclusively for installation on the instrument panel of aircraft and which meets only the amended vibration requirements outlined above shall be identified with the letters I.P. following the category of equipment, such as CAT. A—I.P.

(2) Each major component of equipment (antenna, power supply, etc.) shall be identified with at least the manufacturer's name and TSO number.

(c) *Data requirements.* (1) The manufacturer shall maintain a current file of complete design data.

(2) The manufacturer shall maintain a current file of complete data describing the inspection and test procedures applicable to his product. (See paragraph (d) of this section.)

(3) Six copies each, except where noted, of the following shall be furnished to the Chief, Engineering and Manufacturing Division, Bureau of Flight Standards, Federal Aviation Agency, Washington 25, D.C.

(i) Manufacturer's operating instructions and equipment limitations.

(ii) Installation procedures with applicable schematic drawings, wiring diagrams, and specifications. Indicate any limitations, restrictions, or other conditions pertinent to installation.

(iii) One copy of the manufacturer's test report.

(d) *Quality control.* Airborne automatic dead reckoning computer equipment utilizing aircraft heading and doppler-obtained ground speed and drift angle data shall be produced under a quality control system, established by the manufacturer, which will assure that each equipment is in conformity with the requirements of this section and is in a condition for safe operation. This system shall be described in the data required under paragraph (c)(2) of this section. A representative of the Administrator shall be permitted to make such inspections and tests at the manufacturer's facility as may be necessary to determine compliance with the requirements of this section.

(e) *Previously approved equipment.* Airborne automatic dead reckoning computer equipment utilizing aircraft heading and doppler-obtained ground speed and drift angle data approved prior to January 16, 1961, may continue to be manufactured under the provisions of its original approval.

Effective date. January 16, 1961.

(Secs. 313(a), 601; 72 Stat. 752, 775; 49 U.S.C. 1354(a), 1421)

Issued in Washington, D.C., on December 13, 1960.

GEORGE C. PRILL,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60–11711; Filed, Dec. 19, 1960; 8:45 a.m.]

[1] Copies of these papers may be obtained from the RTCA Secretariat, Room 1072, T–5 Building, 16th and Constitution Avenue NW., Washington 25, D.C., Paper 101–60/DO–104, 45 cents per copy; Paper 100–54/DO–60 with Amendment Paper 256–58/EC–366, 30 cents per copy.

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60–LA–67]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 1, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 9415) stating that the Federal Aviation Agency proposed to modify the Las Vegas, Nev., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2177 (14 CFR 601.2177) is amended to read:

§ 601.2177 Las Vegas, Nev., control zone.

Within a 5-mile radius of McCarran Field (latitude 36°05'06" N., longitude 115°09'37" W.); within a 5-mile radius of Nellis AFB (latitude 36°14'45" N., longitude 115°02'00" W.); including the area within 2 miles either side of the SW course of the Las Vegas RR and within 2 miles either side of the Las Vegas VORTAC 032° True radial, extending from the McCarran Field 5-mile radius zone to the Nellis AFB 5-mile radius zone.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 13, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60–11713; Filed, Dec. 19, 1960; 8:45 a.m.]

[Airspace Docket No. 60–NY–92]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Designation of Control Zone and Control Area Extension

On October 1, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 9418) stating that the Federal Aviation Agency proposed to designate a control zone and control area extension at Bluefield, W. Va.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, Part 601 (14 CFR Part 601) is amended by adding the following sections:

§ 601.2214 Bluefield, W. Va., control zone.

Within a 5-mile radius of the Mercer County Airport (latitude 37°17'45" N., longitude 81°12'29" W.), and within 2 miles either side of the 047° True radial of the Bluefield VOR extending from the 5-mile radius zone to 12 miles NE of the VOR.

§ 601.1022 Control area extension (Bluefield, W. Va.).

The airspace NE of the Bluefield VOR bounded on the NE by VOR Federal airway No. 140, on the SW by VOR Federal airway No. 59, on the SE by VOR Federal airway No. 45, and on the NW by a line eight miles NW of and parallel to the 047° True radial of the Bluefield VOR.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 13, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60–11714; Filed, Dec. 19, 1960; 8:45 a.m.]

[Airspace Docket No. 60–WA–263]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation, Modification and Designation of Reporting Points

The purpose of these amendments to §§ 601.5001 and 601.7001 of the regulations of the Administrator is to revoke the Antwerp, Ohio, intersection as a domestic VOR reporting point, modify the Turlock, Calif., intersection, and designate the Balboa, Fla., intersection and the Lake Tahoe, Calif., VOR as reporting points.

Flight progress reports over designated locations, automatically initiated by pilots, will facilitate air traffic management and assist the controller in the performance of his duties. However, due to the continuous modernization of the airway structure, the need for reporting points at particular locations is constantly being revised. The actions taken herein reflect this changing need on the part of air traffic management.

Since these amendments are of a procedural nature and do not assign or reassign the use of navigable airspace, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), the following actions are taken:

1. In the text of § 601.5001 (14 CFR 601.5001) the following is added: "Balboa Intersection: INT of a line bearing 166° True from the Key West, Fla., RR and a line bearing 215° True from the Marathon, Fla., RBN."

2. In the text of § 601.7001 (14 CFR 601.7001, 25 F.R. 7489) "Turlock INT: the INT of the Fresno, Calif., VOR 322° True and the Castle, Calif., VOR 010° True radials." is deleted and "Turlock INT: the INT of the Fresno, Calif., VOR 322° True and the Los Banos, Calif., VOR 025° True radials." is substituted therefor.

3. In the text of § 601.7001 (25 F.R. 3576) "Antwerp INT: the INT of the Fort Wayne, Ind., VORTAC 068° True and the Findlay, Ohio, VOR 289° True radial." is revoked.

4. In the text of § 601.7001 (14 CFR 601.7001) the following is added: "Lake Tahoe, Calif., VOR".

These amendments shall be effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 13, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60–11715; Filed, Dec. 19, 1960; 8:45 a.m.]

[Airspace Docket No. 60–WA–96]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification and Revocation of Coded Jet Routes

On October 6, 1960, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (25 F.R. 9683) stating that the Federal Aviation Agency proposed to modify VOR/VORTAC jet route No. 2 between El Paso, Tex., and San Antonio, Tex., extend VOR/VORTAC jet route No. 15 from Wink, Tex., to San Antonio, and revoke VOR/VORTAC jet route No. 48 in its entirety between El Paso and San Antonio.

No adverse comments were received regarding the proposed amendments. However, the Air Transport Association requested radar advisory service be provided on J–15–V between Wink and San Antonio. This service will be provided.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the Notice, the followings actions are taken:

1. In the text of § 602.502 (14 CFR 602.502, 25 F.R. 3067) "Wink, Tex., VOR;" is deleted and "Fort Stockton, Tex., VORTAC;" is substituted therefor.

2. In § 602.515 (14 CFR 602.515) the following changes are made:

(a) In the caption *"Wink, Tex.,"* is deleted and *"San Antonio, Tex.,"* is substituted therefor.

(b) In the text "From the Wink, Tex., VOR via the Roswell, N. Mex., VOR;" is deleted and "From the San Antonio, Tex., VORTAC via the Wink, Tex., VOR; Roswell, N. Mex., VOR;" is substituted therefor.

3. In Part 602 (14 CFR 602) the following section is revoked:

Section 602.548 *VOR/VORTAC jet route No. 48 (El Paso, Tex., to San Antonio, Tex.).*

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 13, 1960.

D. D. THOMAS,
Director, Bureau of
Air Traffic Management.

[F.R. Doc. 60–11712; Filed, Dec. 19, 1960; 8:45 a.m.]

[Airspace Docket No. 60–WA–267]

PART 608—RESTRICTED AREAS

Modification of Restricted Area

The purpose of this amendment to §608.26 of the regulations of the Administrator is to change the controlling agency of the Camp Claiborne, La., Restricted Area (R–431) (Beaumont Chart). The activities conducted within this area are air-to-air gunnery, rocket firing and dive bombing.

The Department of the Air Force has agreed to changing the controlling agency for Restricted Area (R–431) from "Alexandria, La., AFB" to "Federal Aviation Agency, New Orleans ARTC" in order to provide for the maximum utilization of the airspace within this area.

Since this amendment imposes no additional burden on the public, compli-

ance with the notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary and it may be made effective immediately.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 8005), the following action is taken:

In § 608.26 *Louisiana*, the Camp Claiborne, La., Restricted Area (R–431) (Beaumont Chart) (23 F.R. 8581) "Alexandria, La., AFB." is deleted and "Federal Aviation Agency, New Orleans ARTC Center." is substituted therefor.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 13, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11716; Filed, Dec. 19, 1960; 8:46 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 8031 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Anniston Foundry Co.

Subpart—Discriminating in price under section 2, Clayton Act—Payment for Services or Facilities for Processing or Sale Under 2(d): § 13.824 *Advertising Expenses.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1527; 15 U.S.C. 13) [Cease and desist order, Anniston Foundry Company, Anniston, Ala., Docket 8031, October 19, 1960]

Consent order requiring a manufacturer of cast iron soil pipe and fittings in Anniston, Ala., to cease discriminating among its customers in violation of section 2(d) of the Clayton Act by making payments to some customers for promoting its products but not to all their competitors on proportionally equal terms, such as sums amounting to $3,300 paid to the American-Radiator and Standard Sanitary Corp. for promoting the sale of its products through television programs sponsored by the company in the trading areas of New Orleans, Pittsburgh, and elsewhere.

The order to cease and desist is as follows:

It is ordered, That respondent, Anniston Foundry Company, a corporation, and its officers, employees, agents and representatives, directly or through any corporate or other device, in or in connection with the offering for sale, sale or distribution of pipe, pipe fittings, and related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from: Paying or contracting for the payment of anything of value to, or for the benefit of, any customers of respondent as compensation or in consideration for any services or facilities furnished by or through such customers in connection with the handling, offering for sale, sale or distribution of said products, unless such payment or consideration is affirmatively made available on proportionally equal terms to all other customers competing in the distribution of such products.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: October 19, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60–11719; Filed, Dec. 19, 1960; 8:46 a.m.]

[Docket 6656]

PART 13—PROHIBITED TRADE PRACTICES

Wilson Trading Corp. et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* § 13.1108–90 *Wool Products Labeling Act.* Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* § 13.1185–90 *Wool Products Labeling Act.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* § 13.1845–80 *Wool Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2–5, 54 Stat. 1128–1130; 15 U.S.C. 45, 68) [Cease and desist order, Wilson Trading Corporation et al., New York, N.Y., Docket 6656, October 20, 1960]

In the Matter of Wilson Trading Corporation, a Corporation, Jacob Bleetstein and Norman Glauber, Jr., Individually and as Officers of Said Corporation

Order requiring distributors of yarn in New York City to cease violating the Wool Products Labeling Act by representing as 100 percent cashmere, on invoices and carton labels, cones of yarn which contained substantially less than 100 percent cashmere fibers; and by failing to label certain of said wool products to show the percentages of the total fiber weight, as required.

The order to cease and desist is as follows:

It is ordered, That the respondents, Wilson Trading Corporation, a corporation, and its officers, Jacob Bleetstein and Norman Glauber, Jr., individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of yarns or any other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, which products contain, purport to contain, or in any way are represented as containing "wool", "reprocessed wool", or "reused wool", as those terms are defined in said Act, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers included therein;

2. Failing securely to affix to or place on each such product, a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool products, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five percentum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentages of the total weight of such wool products of any non-fibrous loading, filling or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool products or of one or more persons engaged in introducing such wool products into commerce, or in the offering for sale, sale, transportation, distribution, or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

It is further ordered, That Wilson Trading Corporation, a corporation, and its officers, Jacob Bleetstein and Norman Glauber, Jr., individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of yarn or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Misrepresenting by statements or representations in contracts, orders, confirmations, invoices, or other documents, by correspondence, orally, or by any other means the character or amount of the constituent fiber content of such products.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondents, Wilson Trading Corporation, a corporation, Jacob Bleetstein and Norman Glauber, Jr., individually and as officers of said corporation, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail

the manner and form in which they have complied with the order to cease and desist.

Issued: October 20, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60–11720; Filed, Dec. 19, 1960; 8:46 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Oil Import Administration, Department of the Interior

[Revision 2; Amdt. 2]

OIL IMPORT REGULATION 1

Allocations of Crude Oil and Unfinished Oils; District V

Section 11 of Oil Import Regulation 1 (Revision 2) (25 F.R. 4958) is amended to read as follows:

Sec. 11 Allocations of crude oil and unfinished oils; District V.

(a) The quantity of imports of crude oil determined to be available for allocation in District V for the allocation period January 1, 1961, through June 30, 1961, shall be allocated by the Administrator among eligible applicants as provided in paragraphs (b) and (c) of this section.

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the year ending September 30, 1960, and computed according to the following schedule:

Average B/D input:	Percent of input
0– 10,000	42.0
10– 20,000	33.0
20– 30,000	23.9
30– 60,000	14.2
60–100,000	11.5
100–150,000	10.5
150–200,000	7.6
200,000 plus	9.4

(c) If an eligible applicant has been importing crude oil pursuant to an allocation under the Voluntary Oil Import Program and if an allocation computed under paragraph (b) of this section would be less than 70 percent of the applicant's last allocation of imports of crude oil under the Voluntary Oil Import Program, the applicant shall nevertheless receive an allocation under this section equal to 70 percent of his last allocation of imports of crude oil under the Voluntary Oil Import Program.

(d) Allocations made pursuant to this section shall not permit the importation of unfinished oils in excess of 10 percent of the permissible imports of crude oil. With respect to any allocation made pursuant to this section, the Administrator upon request shall issue a license permitting the importation of unfinished oils in an amount not in excess of 10 percent of the allocation. If the total quantity of unfinished oils applied for is less than 10 percent of the permissible imports of crude oils, the Administrator may to that extent increase the percentage amount of unfinished oils specified in licenses of persons who request such increases. Each person making such a request shall receive an increase in the proportion that his allocation bears to the total of allocations made to all persons requesting increases. Each barrel of unfinished oil imported shall be deemed to be the equivalent of one barrel of crude oil and will be so charged against the person's license by the respective Collectors of Customs. The permissible percentage of imports of unfinished oils and the equivalence of unfinished oils to crude oil may be changed during the allocation period, if necessary to prevent impairing accomplishment of the purposes of the program. Such a change will be made only after notice of proposed rule making and will not become effective until the 30th calendar day following publication in the FEDERAL REGISTER of the amendment making such change.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Because notices of allocations must be mailed, applications for licenses returned, and licenses issued before January 1, 1961, it is impracticable to give notice of proposed rule making on, or to delay the effective date of, this amendment. Accordingly, this amendment shall become effective immediately.

ELMER F. BENNETT,
Acting Secretary of the Interior.

DECEMBER 16, 1960.

[F.R. Doc. 60–11801; Filed, Dec. 16, 1960; 4:48 p.m.]

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

SUBCHAPTER G—PERSONNEL

SUBCHAPTER J—AIR FORCE PROCUREMENT INSTRUCTIONS

Miscellaneous Amendments to Chapter

The following amendments are issued to this chapter:

PART 888—GENERAL STANDARDS OF CONDUCT RELATING TO CONFLICT BETWEEN PRIVATE INTERESTS AND OFFICIAL DUTIES

In Part 888 the beginning of the second sentence of § 888.3(b) is revised to read as follows:

§ 888.3 Conflicts of interest.

* * * * * *

(b) * * * Personnel charged with the administration of AFR 34–21 (Commercial Solicitation Controls), who own stock in * * * to solicit sales.

PART 1001—GENERAL PROVISIONS

Subpart A—Introduction

§ 1001.104 [Amendment]

Amend the AFR reference in § 1001.104 to read: "AFR 70–1 (Procurement Publications)."

Subpart B—Definition of Terms

1. Delete §§ 1001.201 and 1001.201–1 and substitute the following therefor:

§ 1001.201 Definitions.

See § 1.201 of this title.

§ 1001.201–1 Change orders.

AMC field procurement activities, AMFEA, and Air Defense Command will not use Change Orders (AFPI Forms of 13 series) when the criteria of § 1001.201–50 and Part 1054, Subpart C of this chapter, concerning Contract Change Notifications (AFPI Forms 35) are applicable. This restriction applies only to central procurement activities.

§§ 1001.201–2, 1001.201–4, 1001.201–5 [Deletion]

2. Delete §§ 1001.201–2, 1001.201–4, and 1001.201–5.

3. Delete § 1001.201–3 and substitute the following therefor:

§ 1001.201–3 Contracting officer.

In addition to the personnel set forth in § 1.201–3 of this title, the term "officer" is defined to include senior noncommissioned officers who: (a) Hold AFSC 65170 or 65080, (b) are in supervisory positions prior to appointment, and (c) have the requisite procurement experience and other qualifications (see § 1001.452); provided the authority of individuals so appointed is limited to executing purchase and delivery orders (and amendments) within the monetary limitation of $2,500 and under.

§§ 1001.201–10—1001.201–18 [Deletion]

4. Sections 1001.201–10 to 1001.201–18 are deleted.

§ 1001.201–9 [Redesignation; amendment]

5. Redesignate § 1001.201–9 as § 1001.201–18 and amend the reference in paragraph (a)(3) to read: "§ 1.201–18(b)(2) of this title."

§§ 1001.201–19—1001.201–22 [Deletion]

6. Sections 1001.201–19 to 1001.201–22 are deleted.

Subpart C—General Policies

§§ 1001.305—1001.305–7 [Deletion]

1. Delete §§ 1001.305 to 1001.305–7.

§§ 1001.306—1001.306–7 [Deletion]

2. Delete §§ 1001.306 to 1001.306–7.

3. A new § 1001.306 is added as follows:

§ 1001.306 Approval signatures.

See § 1.306 of this title.

4. Delete §§ 1001.307 and substitute the following therefor:

§ 1001.307 Priorities, allocations, and allotments.

See § 1.307 of this title and § 1001.460.

§ 1001.307–50 [Redesignation and amendment]

5. Redesignate § 1001.307–50 as § 1001.358 and amend the symbol "MCPI" to "MCPP."

§§ 1001.309–1001.311 [Deletion]

6. Delete §§ 1001.309 to 1001.311.

§ 1001.312 [Redesignation and revision]

7. Redesignate § 1001.312 as § 1001.309 and revise to read as follows:

§ 1001.309 Solicitations for information or planning purposes.

Requests for quotations (including letter requests) for informational or planning purposes relating to weapon systems, subsystems, components, or support equipment, or developments leading to such items, and price and availability studies applicable to Military Assistance Program (Grant Aid only) may be issued only when completely justified to and with the prior approval of the Commander, or his designee, of the cognizant AMC procuring activity, i.e., AMC centers, AMAs and depot. All other requests will be submitted to AMC (MCPP) for prior approval of the Director of Procurement and Production, Hq AMC.

§ 1001.313 [Redesignation]

8. Redesignate § 1001.313 as § 1001.310.

Subpart E—Contingent or Other Fees

§ 1001.508–2 [Amendment]

In Subpart E, "Contingent or Other Fees", § 1001.508–2, amend the symbol "MCPI" in paragraph (d) to read: "MCPP."

Subpart F—Debarred, Ineligible, and Suspended Bidders

1. Revise § 1001.601–3(a) to read as follows:

§ 1001.601–3 Joint consolidated list.

(a) *Changes.* Additions, deletions, or modifications to the Joint Consolidated List will be forwarded through the Procurement Division (MCPP), Hq AMC, to DCS/M, Hq USAF for transmittal to the Department of the Army. MCPP will recommend to DCS/M action to be taken.

§ 1001.601–5 [Deletion]

2. Delete § 1001.601–5.

§§ 1001.603–1—1001.603–3; 1001.604–50; 1001.605–1 and 1001.605–2 [Deletion]

3. Delete §§ 1001.603–1 to 1001.603–3; 1001.604–50; 1001.605–1 and 1001.605–2.

4. Revise § 1001.605–4 to read as follows:

§ 1001.605–4 Notice of suspension.

The DCS/M, Hq USAF, will furnish the notice of suspension required by § 1.605–4 of this title. All inquiries or correspondence from or in behalf of suspended contractors concerning their status, reasons for suspension action, etc., will be referred through command channels to AMC (MCPP) for appropriate action. MCPP will refer these matters to DCS/M, Hq USAF (AFMPP–PR) if review, advice, or action by that Headquarters is considered appropriate.

§§ 1001.609—1001.609–9 [Deletion]

5. Delete §§ 1001.609 to 1001.609–9.

§ 1001.650 [Amendment]

6. In the second sentence of § 1001.650, the words "through MCPI" are changed to: "through Hq AMC (MCPP), and the symbol "MCPI" in the third sentence is changed to: "MCPP."

Subpart K—Qualified Products

§§ 1001.1104—1001.1104–3; 1001.1104–5—1001.1104–8, and 1001.1105—1001.1105–2 [Deletion]

7. In Subpart K, "Qualified Products", delete §§ 1001.1104 to 1001.1104–3; 1001.1104–5 to 1001.1104–8 and 1001.1105 to 1001.1105–2.

PART 1002—PROCUREMENT BY FORMAL ADVERTISING

Subpart B—Solicitation of Bids

In subpart B, Solicitation of Bids:

§ 1002.201 [Amendment]

1. Delete paragraphs (c) to (e) of § 1002.201.

§§ 1002.206—1002.206–50 [Deletion]

2. Delete §§ 1002.206 to 1002.206–50.

PART 1003—PROCUREMENT BY NEGOTIATION

Subpart H—Price Negotiation Policies and Techniques

§ 1003.804–1 [Amendment]

In Subpart H, Price Negotiation Policies and Techniques, delete the last sentence of § 1003.804–1.

PART 1004—SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 1004 is changed to read as follows:

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Procurement by Barter—Commodity Credit Corporation

CROSS REFERENCE: See Subpart E, Part 4 of this title.

PART 1006—FOREIGN PURCHASES

Subpart T—Offshore Procurement

In Subpart T:

§ 1006.2001 [Amendment]

1. Delete paragraph (c) of § 1006.2001.

§ 1006.2005 [Amendment]

2. Delete and reserve paragraph (b) of § 1006.2005.

PART 1007—CONTRACT CLAUSES

Subpart B—Clauses for Cost-Reimbursement Supply Contracts

§ 1007.204–19 [Amendment]

1. In Subpart B, add the following to § 1007.204–19: "See § 7.204–19 of this title."

Subpart C—Clauses for Fixed-Price Research and Development Contracts

§ 1007.304–6 [Deletion]

In Subpart C, delete § 1007.304–6.

Subpart D—Clauses for Cost-Reimbursement-Type Research and Development Contracts

§ 1007.404–5 [Deletion]

In Subpart D, delete § 1007.404–5.

PART 1010—BOND AND INSURANCE

Subpart A—Contract Bonds

In Subpart A:

§ 1010.102–52 [Amendment]

1. Delete last sentence of paragraph (a) in § 1010.102–52.

§ 1010.108–56 [Amendment]

2. Delete second sentence from end in § 1010.108–56.

PART 1013—GOVERNMENT PROPERTY

Subpart U—Adjustment of Discrepancies Incident to the Shipment of Government Property

§ 1013.2104–4 [Amendment]

In Subpart U, delete "(19)" in introduction of § 1013.2104–4.

PART 1052—PRE-AWARD SURVEYS

Subpart D—Management of the FCR

§ 1052.402–6 [Amendment]

In Subpart D, in § 1052.402–6, delete the reference "§ 1053.407–9(c)" and "§ 1053.407–9(b)."

PART 1054—CONTRACT ADMINISTRATION

Subpart I—Wage and Salary Acceptance

In Subpart I, revise § 1054.902 to read as follows:

§ 1054.902 Definition.

Section 15.205–6 of this title defines "wages and salaries" as used in this subpart.

§ 1054.903 [Amendment]

2. In § 1054.903 revise the parenthetical phrase to read: "(see § 15.205–6 of this title;".

PART 1057—REPORTS

Subpart KK—Financial Management Report

§ 1057.3703 [Amendment]

In Subpart KK, § 1057.3703(d), revise the references to read: "§§ 1007.204–52 and 1007.403–54 of this chapter."

R. J. PUGH,
Colonel, U.S. Air Force,
Deputy Director of Administrative Services.

[F.R. Doc. 60–11709; Filed, Dec. 19, 1960; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1939) Part 81]

[26 CFR (1954) Parts 1, 20, 48]

NOTICE OF HEARINGS ON PROPOSED REGULATIONS

Public hearings will be held in Room 3313, Internal Revenue Building, 12th and Constitution Avenue NW., Washington 25, D.C., on the provisions of the proposed regulations listed below on the dates and at the times indicated.

Subject	Date notice published in FEDERAL REGISTER	Date of hearing	Time (e.s.t.)
Nonrecognition of gain or loss in certain railroad reorganizations	11–17–60	1– 4–61	10:00 a.m.
Miscellaneous amendments to Estate Tax Regulations (1939 Code)	11–24–60	1– 4–61	1:30 p.m.
Miscellaneous amendments to Estate Tax Regulations (1954 Code)	11–24–60	1– 4–61	1:30 p.m.
Carryover of excess contributions to a profit sharing trust	11–26–60	1– 6–61	10:00 a.m.
Employee stock options	12– 3–60	1–10–61	10:00 a.m.
Amortization of bond discount or premium and provisions relating to personal holding companies	11–29–60	1–11–61	10:00 a.m.

Persons who plan to attend any of these hearings are requested to notify the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., as to those hearings they will attend. Notice with respect to any particular hearing should be given at least three days before the date scheduled for such hearing.

[SEAL] MAURICE LEWIS,
Director, Technical Planning Division, Internal Revenue Service.

[F.R. Doc. 60–11738; Filed, Dec. 19, 1960; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 41]

FEDERAL AID TO STATES IN FISH AND WILDLIFE RESTORATION

Nondiscrimination in Employment and in Use of Facilities

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by RS 161; 5 U.S.C. 22, as well as that contained in section 10 of the Federal Aid in Wildlife Restoration Act (50 Stat. 917; 16 U.S.C. 669i) and the Federal Aid in Fish Restoration Act (64 Stat. 430; 16 U.S.C. 777i) as amended, authorizing the Secretary to make rules and regulations for carrying out provisions of these Acts, it is proposed to amend 50 CFR, as set forth below.

Although the proposed amendments are exempt from the rule making requirements of the Administrative Procedure Act (5 U.S.C. 1003), it is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections to the Secretary of the Interior, Washington 25, D.C., within thirty days of the publication of this notice in the FEDERAL REGISTER.

Sections 41.28 and 41.70 are amended to read as follows:

§ 41.28 Project agreements.

After the Secretary shall have approved the preliminary project statement and the plans, specifications, and estimates of cost, the mutual obligations to be undertaken by the cooperating agencies shall be evidenced by a project agreement to be executed between the State Fish and Game Department and the Secretary for each such project or project segment of a project. Each project agreement shall contain a nondiscrimination in employment provision as required by Executive Order 10557, September 3, 1954 (3 CFR 1954 Supp., page 69) as follows:

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

§ 41.70 Project standards.

* * * * *

(g) The State Fish and Game Department and its employees, in the administration of any structure or other facility acquired or constructed under the Acts, shall not discriminate against any person because of race, religion, color, or national origin by refusing to furnish such person any accommodation, service, or privilege offered to or enjoyed by the general public, and shall not publicize the accommodations, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, or national origin. The State Fish and Game Department shall include and require compliance with a provision similar to the foregoing provision in any contract made with respect to the operations to be carried out hereunder.

ELMER F. BENNETT,
Acting Secretary of the Interior.

DECEMBER 13, 1960.

[F.R. Doc. 60–11721; Filed, Dec. 19, 1960; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 961, 1010]

[Docket Nos. AO–160–A22–R01 and AO–276–A2–R01]

MILK IN PHILADELPHIA, PA., AND WILMINGTON, DEL., MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Philadelphia, Pennsylvania, on October 22–23, 1959, pursuant to notice thereof issued on October 2, 1959 (24 F.R. 8117), and reopened at Philadelphia, Pennsylvania, on November 23, 1959, pursuant to notice thereof which was issued November 5, 1959 (24 F.R. 9166).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on March 29, 1960 (25 F.R. 2769) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. Interested parties were given through June 1, 1960 to file exceptions, and at the request of a producer cooperative association, an additional period of September 2 through September 10, 1960. Because of the nature of exceptions and the extent of the changes deemed necessary to modify the findings and conclusions contained in the March 29 recommended decision, the Acting Deputy Administrator, Agricultural Marketing Service, on November 14, 1960, filed with the Hearing Clerk a re-

vised recommended decision (25 F.R. 10939) containing notice of opportunity to file exceptions thereto.

The material issues on the record of the hearing relate to:

1. Revision of the Philadelphia and Wilmington Class I pricing provisions to update the base years of the various components of the formula index, to change the seasonality of such components, and to relate the Class I price to Class I prices in other Federally regulated marketing areas and to the value of milk for manufacturing uses. Also, to add a supply-demand adjuster provision to the Wilmington order.

2. Revision under the Wilmington order of the Class I, Class II, and producer butterfat differentials and the basic butterfat test of milk to which the established minimum prices apply.

Findings and conclusions. The following findings and conclusions on the material issues are based upon the evidence introduced at the hearing including the reopened hearing and the record thereof:

Issue No. 1. The Philadelphia, Pennsylvania, and the Wilmington, Delaware, orders should be amended to (1) update the base period used in the components of the Class I formula index, (2) revise the seasonal adjustment of various components of the formula index, (3) revise the index of Class I sales, (4) change the Class I price schedule, (5) revise the supply-demand adjustment mechanism and include such a provision under the Wilmington order, and (6) add a provision limiting the level of the Class I prices under the Philadelphia and Wilmington orders in relation to the Midwestern manufacturing milk prices.

The Class I prices under the Philadelphia and Wilmington orders are currently determined by an economic-type formula initially adopted under the Philadelphia order on April 1, 1951. The formula was incorporated in the Wilmington order when that order was issued on June 1, 1956. The Wilmington order, however, provides for a basic price 15 cents less than the Philadelphia Class I price and no supply-demand factor is applicable. Class I prices under each order are established on a quarterly basis and, exclusive of movements in the formula index, the price decreases seasonally 40 cents on January 1 and April 1 and increases 40 cents on July 1 and October 1.

Since the formula was initially adopted it has been modified to accommodate changes made in the reporting of various components of the formula index and other provisions of the order. Specifically, the Philadelphia order was amended on June 11, 1952, to include the United States wholesale commodity price index as revised to a 1947–49 base period by the Bureau of Labor Statistics, United States Department of Labor. The Class I price schedule under the Philadelphia order was further amended effective on February 1, 1958, to reflect the change from pricing milk on 4.0 percent butterfat content to 3.7 percent butterfat content. Also, determinations have been necessary for both orders on several occasions resulting from a change in method of calculating the index of prices received by Pennsylvania farmers for farm products except dairy.

Proponents for revision of the Class I pricing provisions suggested that under the diverse economic conditions which have existed during the period from 1951 to 1959, the pricing formula has generally provided appropriate prices. They pointed out, however, that movements of the formula index in response to inappropriate seasonal adjustments in several of the formula components are disrupting the intended seasonality of pricing. They further suggested that during the past two years the Class I price resulting from the formula has been unduly low in relation to prices in surrounding fluid markets. It was proposed that these alleged defects be corrected by revision of the seasonality in three of the component indexes, adjustment of the Class I sales index to include sales from fluid milk plants under the Wilmington order and revision of the "bracket" system by which the formula index is related to a specific price schedule. It was further proposed that, as an attendant change, the base period be updated.

The seasonality of Midwestern condensery prices and Class I sales has changed since the adoption of the formula in 1951. There is no longer any significant seasonality reflected in the index of prices received by Pennsylvania farmers for farm products except dairy. The computed seasonal change for the period July 1956 to June 1959, indicates a variation of only 1.4 points, from 99.3 to 100.7 on a quarterly basis whereas under the present order the variation in seasonal adjustment provided is 8 points. In line with proponent's recommendations, it is concluded that the seasonal adjustment of this index should be discontinued. It is further concluded that seasonal adjustment of the indexes of Midwestern condensery prices and Class I sales should be revised to reflect seasonal variation characteristic in recent years. These changes will contribute to assuring intended seasonal changes in the Class I price prior to the recommended "tie-in" and supply-demand provisions discussed in subsequent findings and conclusions.

The Class I sales index has been one of the dominant components in movements of the pricing formula. Notwithstanding the institution of regulation in Wilmington on June 1, 1956, extension of the Philadelphia marketing area in 1958, and more recently, consolidation by certain handlers of their Philadelphia and Wilmington operations, the Class I sales index reflects a direct comparison of the volume of specified current sales by Philadelphia handlers with the volume of such sales in a base period (1936–40) preceding these changes. Modification of this index is essential to maintain the validity of the pricing formula. To avoid ambiguity which might attach to the term "Class I sales", the term "Class I disposition" should be used instead.

The Class I disposition index should be revised to include Class I disposition by regulated plants under the Philadelphia and Wilmington orders. Proponents, while recommending an expansion to include Wilmington order Class I disposition, contended that in-area disposition and only specified outside-area disposition should be included. They stated that out-of-area disposition other than to New Jersey and Delaware, and disposition outside the marketing areas by handlers having Class I disposition in the marketing areas of less than 5 percent of their total Class I milk, both tend to fluctuate to an extent that their inclusion results in erratic movements in the index.

The exclusion of outside disposition (on routes or otherwise) of handlers with less than 5 percent of their route disposition in the marketing areas will be some protection against fluctuations of the index due to erratic changes in out-of-area disposition. Adoption of this provision makes unnecessary the provision in the recommended decision of March 29, 1960, which would have excluded plants not regulated under the orders during the 3 months ending with the second month preceding the quarter for which prices are established. The provision would apply to plants distributing milk on routes in the marketing areas.

In view of producers' exceptions asking for the continued use of the weekly figures of the wholesale price index rather than the monthly figure so that the date of price announcement might continue to be on the 15th of the month and in view of the apparent close agreement between the weekly and monthly figures, it is concluded that the weekly figures should continue to be used.

The proposed revisions to a 1957–1958 base period can be achieved by using as "base quantities" the following:

United States wholesale commodity price index, 118.3; prices paid by Pennsylvania farmers for mixed dairy feed, $3.896; index of prices received by Pennsylvania farmers for farm products except dairy, 210.3; prices paid by Midwestern condenseries, $3.0673; and the average daily Class I sales of 2.9476 million pounds under Order Nos. 61 and 110.

Under the present orders, the formula index is based primarily on data reported for the one month immediately preceding the date of announcing Class I prices for the next quarter. Thus, the conditions reflecting one-month data determine the price for three months. Interested parties at the hearing recommended using Class I disposition data for the three months preceding the date of price announcement so as to minimize the effect that the varying number of days in a month has on the average daily figure used to compute the Class I disposition index.

It is appropriate under the quarterly pricing system to reflect quarterly changes in the components of the index by including the data for three months. Therefore, it is concluded that data for the five components of the formula index for three months be used in determining such index.

One of the major reasons that proponents offered for changing the level of Class I prices was to correct the abnormal seasonal changes in Class I prices that occurred during 1958 and 1959.

The Class I prices, both in 1958 and in 1959, decreased 20 cents rather than 40 cents from the first to the second quarter and increased 20 cents rather than 40 cents from the third to the fourth quarter. The intended seasonal changes between quarters are in 40-cent intervals. These recommended intervals can be achieved by revising the Class I price schedule to accommodate both the revised formula index and the proposed seasonal changes.

The level of the Class I prices under these orders should be related to all supply and demand conditions affecting the respective market. Some of these conditions are reflected in the various formula factors already discussed. It is possible, and to be expected, that occasionally other influences not reflected in the formula indexes will be important factors in the supply-demand situation. Such factors may include changes of a fundamental nature in the supply-demand situations in neighboring markets. Beyond such more immediate relationships, there is need to recognize inter-regional relationships. The importance of such inter-regional relationships as well as relationships to nearby markets is augmented by the increased efficiency of modern milk transportation methods. For this reason, it is necessary to anticipate a greater sensitivity in competitive relationships among milk supplies normally associated with separate markets.

Official notice is taken of the Class I prices and market statistics announced for the Philadelphia, Wilmington, Washington, D.C., Upper Chesapeake Bay and New York-New Jersey markets for periods referred to herein, including the months intervening since the hearing.

During the entire period since the Class I pricing formula was installed in 1951, the Philadelphia market has been served by an adequate supply. Also, the level of supply in relation to Class I disposition has resulted in a percentage of producer milk in Class I on an annual average marketwide basis which has varied in only a narrow range. In 1951 the weighted average percentages of producer milk used in Class I was 76.1. In following years the annual average utilization continued within 1 percent of this figure until 1955, when the percentage was 74.1, and continued very close to the 1955 level through 1958. In 1959, the annual average percentage was 74.3, although there was a discernible change in the relation of supply to sales in the latter part of the year.

Part of the Class I milk utilization of Philadelphia handlers is sales of Order 61 milk in the Wilmington marketing area. In recent years an increased portion of the Wilmington market has been so served. The portion of the market served by farmers who are producers under the Wilmington order, however, has continued to provide a relatively high utilization outlet for such producers. On an annual average basis, Wilmington producer milk was 83 percent Class I in 1957, 90 percent in 1958 and 92 percent in 1959. The weighted average percentages for the combined markets were 74.9 percent in 1957, 76.4 in 1958 and 75.2 percent in 1959.

During the latter part of 1959, production for the Philadelphia market increased substantially both in relation to the previous year and in relation to Class I disposition. Production at a level higher than a year earlier continued through the first half of 1960. In July and August 1960, however, the percentage of producer milk used in Class I was about the same as the year earlier, and in September 1960 it was higher than the year before.

Under Order No. 61 the annual average Class I prices in 1957, 1958 and 1959 were $5.49, $5.59 and $5.59, respectively, for milk of 3.7 percent butterfat content. Prices effective or announced for the four calendar quarters in 1960 also would produce an annual average of $5.59. Class I prices under the Wilmington order have been 15 cents less (for milk of 3.7 percent butterfat test) than Philadelphia order prices.

In the nearby markets of Upper Chesapeake Bay and Washington, D.C., which recently became regulated, Class I prices (for 3.7 milk f.o.b. the market) have been established to yield an annual average price of approximately $5.56. The New York-New Jersey Class I–A price for the years 1957, 1958 and 1959 averaged $5.72, $5.67 and $5.72, respectively (for 3.7 milk in the 201–210 mile zone). Since the present formula became fully effective in 1952 the Philadelphia f.o.b. market Class I price on an annual basis has averaged approximately 13 cents over the New York-New Jersey Class I–A (201–210 mile zone). This price difference ranged from 51 cents over the New York-New Jersey Class I–A price in 1952 to 23 cents under that price in 1957. In the two years 1958 and 1959, the New York-New Jersey Class I–A price has exceeded the Order No. 61 price by an average of approximately 10 cents.

Based on the above considerations, it is concluded that the Philadelphia order prices in recent years generally have been in conformance with a reasonable balance of supply-demand. It is concluded that the continuation of the annual average level of Class I price which has been effective under the order for the three years 1958–1960 would be an appropriate method of maintaining a balance of local supply and demand conditions and a reasonable relationship to other markets for the immediate future.

Exceptions to the revised recommended decision issued November 14, 1960 pointed out that the annual level of price for the three years 1958–1960 resulted from a formula which contained defective seasonal adjustment factors. It was further argued that had such seasonal adjustment factors been corrected earlier, the formula would have yielded an average annual level of Class I price of $5.69 for each of the three years.

This argument does not weaken the appropriateness of the Class I price of $5.59 adopted herein. This level is adopted on the basis of a full re-evaluation of factors in the current supply-demand situation. On this basis, the price is concluded to be more appropriate and suitable than the higher price requested. Although changes are being made in the seasonal factors of the component indexes which would have resulted in a higher level of prices during 1958–1960, this does not support the argument that the price in those years should have been the price produced with these adjustments. On the contrary the level of prices for the period as a whole was reasonable in the circumstances.

Exceptions received to the prior recommended decision of March 29, 1960 from producers and from some handlers raised objections to the proposed "tie-in" of the Philadelphia and Wilmington Class I prices to the Class I–A price under the New York-New Jersey Federal order. These objections were critical particularly of the relative levels of the prices under the Philadelphia and New York-New Jersey orders which would result from the tie-in, and of the procedural aspect that there could be changes in the level of prices under the Philadelphia and Wilmington orders as a result of amendments to the New York-New Jersey order.

It is important, however, to provide some safeguard in the Philadelphia and Wilmington orders to limit the action of the Class I price formulas to a range which will maintain reasonable coordination of prices on an inter-regional basis. Relating the Class I prices under these orders to Midwest condensery prices which are used as part of the basic price in many of the Federal milk orders will achieve this purpose. It must be recognized that milk from any source meeting the quality requirements for the markets is part of the potential supply. Thus, it is important to consider the relation of prices under these orders to the level of prices in Midwest areas where large reserve supplies exist.

The average price paid by the group of condenseries, which is used in Midwestern order markets as part of the basis price, is reported by the United States Department of Agriculture on the basis of milk containing 3.5 percent butterfat. For purposes of comparison, the Philadelphia order Class I price, which is on a 3.7 butterfat test, should be converted to a price for 3.5 test. To eliminate the effects of seasonal variation and temporary variations of a random nature, the comparison is made with 12-month average of the condensery prices for the period ending with the second month preceding the calendar quarter for which the Class I price is established.

A review of the relationship which has existed during the period in which the Class I formula has been in operation shows differences of the Philadelphia Class I price over the condensery price ranging from about $2.00 in the earliest period to $2.55 in early 1960. Since 1952 the average of the Midwest condensery price has declined from the annual level of $3.80 to $3.02 in 1960, with a somewhat higher level indicated for 1960. The annual level of $5.59 for the Philadelphia Class I price contemplated in this action would correspond to approximately $5.45 for milk of 3.5 percent butterfat content. This exceeds the 12-

month average of condensery prices for the period ending with September 1960 by $2.36.

It is necessary, considering the circumstances of adequate supply which have persisted in recent years under relatively stable price conditions, and in view of the need to maintain price relationships with other markets, that the condensery price tie-in be geared to a level of price close to the level contemplated for the market pursuant to this action. It is concluded that the so called "annual level" of the Philadelphia order Class I price, converted to a price for milk of 3.5 percent butterfat test, should not exceed the 12-month average condensery price by more than $2.60. The application of this limitation under the bracket system would require that the price be adjusted, if adjustment under this limitation were called for, in multiples of 20 cents so that the resulting price would not exceed the condensery price by more than $2.60.

It is intended that the 15-cent differential between the Philadelphia and Wilmington Class I prices shall be continued. It is necessary, therefore, that this 15-cent differential be reflected in the "tie-in" relationship to the condensery price. This can be done if the Wilmington price, prior to seasonal and supply-demand adjustment, is adjusted to a price bracket such that it does not exceed the 12-month average of the Midwestern condensery prices by more than $2.45.

Relating the prices to the condensery price in the above stated manner will permit the seasonal price adjustment to operate. The recommended "tie-in" provision also will permit the supply-demand adjustment factor to operate freely to increase or decrease the price in response to changed local supply-demand conditions in the Philadelphia and Wilmington markets even though the price so adjusted might exceed the Midwestern manufacturing price by more than the amount indicated above.

Some changes in the bracketing system are adopted. The change to a new base period of 1957–58 for the composite formula index will reduce it a little more than half of the old index value. The average of the index values on the old base was 207.36 during the two years 1957–58. The amount of index equivalent to a 20-cent price change should, accordingly, be reduced from 7.8 units of index to 3.8 index units. The current level of index should be made to correspond to a current level of price by centering an index bracket at such current index value. Producers have asked that the existing system of intervals between brackets be retained. The effect of such intervals is that a price change does not occur if the index moves out of a bracket and into such interval, but not into the next index bracket. In the price schedules adopted herein, the range of each bracket is two units of index and the interval between brackets is 1.8 units of index. The bracket representing the current price under Order No. 61 of $5.59 per hundredweight (annual basis) is centered at 100.

There was testimony that the supply-demand adjustment mechanism should be deleted from the Class I pricing formula on the grounds that the several components of the pricing formula tend to reflect conditions of supply and demand and that the provision has not influenced the price since its adoption and, therefore, is not necessary. Nevertheless, retention of the provision is desirable and necessary to provide assurance that should supplies increase or decrease relative to Class I sales to the extent that the market is generally in short or in long supply, the Class I price will be adjusted to reflect such conditions. There is merit, however, for revision of the supply-demand provision under the Philadelphia order and for use of the same device in the Wilmington order.

Under the present Philadelphia order this provision would adjust the Class I price upward or downward in any quarter when supplies during the 12-month period ending with the second preceding month were less than 115 percent of Class I sales or more than 137 percent, respectively. It is herein proposed that Class I sales and producer receipts, respectively, of the Wilmington and Philadelphia orders be combined in measuring the change in supply-sales relationship.

In exceptions by producers it was claimed that changes in the make-up of the market and changes in the allocation provisions of the order have resulted in handlers carrying larger supplies of producer milk. A basis for estimating to what extent this may be true has not been found in the record. It is likely that, currently, the level of supplies carried by handlers has been affected by the general increase in production per farm which has occurred in recent years. It is concluded, however, that the current supply-demand situation in the market does not call for a price adjustment from the level established by the modified formula index.

Exceptions from producers point to the fact that the revised supply demand computation including the milk subject to the Wilmington order, would result in a supply-sales ratio a fraction less than the 137 percent which under the current formula would call for a price reduction. In view of this, producers suggest that a certain latitude be allowed before the new supply demand adjustment becomes effective, and further suggest that this be accomplished by raising the percentage to 139 percent for a first downward price adjustment of 20 cents per hundredweight and 142 percent for a second 20-cent reduction.

In concluding that the new annual level of price should be established at $5.59 for Class I milk, the recent levels of supply in relation to sales were considered. This annual level of price is appropriate for current conditions and should not be modified by only slight changes in the supply-sales ratio. For this reason the percentages should be modified as requested by producers.

The supply-demand adjustment should provide a downward price adjustment of 20 cents per hundredweight if the supply-sales ratio exceeds 139 percent, and an additional downward adjustment of 20 cents if the ratio exceeds 142 percent. Price adjustments intended as a response to a short supply situation should similarly be in two steps. The standard percentages used for this purpose should be more in conformance with market experience than the present standard of 115 percent. The price should be adjusted upward 20 cents per hundredweight if the supply-sales ratio is less than 129 percent, and upward an additional 20 cents if the ratio is less than 126 percent. Although the higher of these percentages is slightly more than some of the percentages which resulted from the computations made under the order prior to 1955, some recognition is given here to the likelihood that when the market is relatively short, changes in market practices and changes in the order provisions referred to by producers which have taken place since such earlier periods may result in handlers carrying slightly more reserve in their own plants. This method of price adjustment in two steps of 20 cents each will permit a smoother readjustment of production to demand. The same adjustment should apply in both the Philadelphia and Wilmington markets.

Under the present Philadelphia order, receipts of plants which were not regulated during three consecutive months are not included in the computation of the receipts and sales percentages under the supply-demand provisions. This requirement was intended to exclude plants which are not associated in a major way with the market. It is concluded, however, that such a provision is not practical in light of the possible shifts by a handler of producers and sales from one of his plants to another. In some cases where one of these plants might come under the three-month exclusion provision (or urider any similar provision) the result of such exclusion could cause as much distortion in the supply-sales ratio as the provision may be intended to correct in other instances. Accordingly, the data to be included in the 12-month percentage should include producer receipts and Class I disposition at all producer milk plants (Order No. 61) and fluid milk plants (Order No. 110), excluding any duplication as the result of inter-order or inter-plant transactions.

It is provided also that the various formula index factors and supply-demand utilization percentages will be computed and announced for each month.

The provisions for announcement of the Class I price in § 961.22(j)(2) will call for announcement of the price for each calendar quarter on or before the 15th day of the month preceding the calendar quarter. For the months of October, November and December 1960, part of this provision has been suspended so that the market administrator is not required to announce the price for the January–March 1961 quarter until January 15. The attached order amendment contains a modification of this provision so that for the first quarter of 1961 the market administrator may announce the Class I price on or before January 5. Price announcements for subsequent calendar quarters would be made on or before the 15th day of the month preceding the calendar quarter. The same change should be made in announcement of the Wilmington order price.

Issue No. 2. Revision should be made in Class I, Class II and producer butterfat differentials as part of the procedure of establishing prices for milk on the basis of 3.7 percent butterfat content under the Wilmington order as in the Philadelphia order.

In view of the increasing inter-relationship of the Wilmington and Philadelphia markets in recent years, it is desirable that both markets use the same butterfat differentials and the same basic tests. At the time the Wilmington order was issued milk under both orders was priced at the same basic 4.0 percent test. Subsequently, on February 1, 1958, the Philadelphia order was amended to provide for pricing milk on the basis of 3.7 percent butterfat. It is concluded, therefore, that milk should be priced under the Wilmington order on the basis of 3.7 percent butterfat content. Moreover, the Class I, Class II and producer butterfat differentials should be the same under both orders. The Class I price schedule in the Wilmington order should be revised to maintain the price 15 cents below the Philadelphia Class I price.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders as hereby proposed to be amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the proposed marketing agreements and the orders as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreements and orders. Annexed hereto and made a part hereof are four documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Philadelphia, Pennsylvania, Marketing Area", "Order Amending the Order Regulating the Handling of Milk in the Philadelphia, Pennsylvania, Marketing Area", "Marketing Agreement Regulating the Handling of Milk in the Wilmington, Delaware, Marketing Area" and "Order Amending the Order Regulating the Handling of Milk in the Wilmington, Delaware, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreements are identical with those contained in the orders as hereby proposed to be further amended by the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent.

It is hereby directed that referendums be conducted to determine whether the issuance of the attached orders amending the orders, regulating the handling of milk in the Philadelphia, Pennsylvania, and Wilmington, Delaware, marketing areas, respectively, are approved or favored by the producers, as defined under the terms of the respective order as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the respective marketing area.

The month of September 1960 is hereby determined to be the representative period for the conduct of each referendum.

L. S. Iverson is hereby designated agent of the Secretary to conduct such referenda in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referenda to be completed on or before the 30th day from the date this decision is issued.

Issued at Washington, D.C. this 15th day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order[1] Amending the Order Regulating the Handling of Milk in the Philadelphia, Pennsylvania, Marketing Area

§ 961.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Philadelphia, Pennsylvania, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Philadelphia marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

§ 961.22 [Amendment]

1A. In § 961.22(j) delete subparagraph (2) and substitute the following:

(2) The 15th day of the month preceding the start of each calendar quarter, the Class I price for such calendar quarter: *Provided*, That the Class I price for the calendar quarter of January, February and March 1961 shall be announced on or before January 5, 1961;

1B. In § 961.22(j) delete the word "and" at the end of subparagraph (4), change the period at the end of subparagraph (5) to a semicolon and add the word "and" and add a new subparagraph as follows:

(6) The 15th day of each month, the indexes computed pursuant to § 961.50 (a)(1) for the preceding month, the 12-month average of condensery prices for the period ending with the preceding month calculated in the manner described in § 961.50(a)(3), and the 12-month percentage utilization factor for the period ending with the preceding month calculated in the matter described in § 961.50(a)(4) and (5).

§ 961.50 [Amendment]

2. Delete § 961.50(a) and substitute therefor the following:

(a) *Class I milk.* For each month in each calendar quarter the price per hundredweight of Class I milk shall be the price computed for such quarter pursuant to subparagraphs (1) through (5) of this paragraph.

(1) Compute the indexes set forth in subdivisions (i) through (v) of this subparagraph for the 2d, 3d and 4th months preceding the first month of the pricing quarter and divide the sum of these indexes by 15. The result shall be the formula index.

(i) Compute an index of wholesale commodity prices, using a 1957–1958 base period, by dividing by 1.183, the average of the four latest weekly index figures (those available on the 15th day of the following month) of wholesale commodity prices as reported on a 1947–1949 base by the Bureau of Labor Statistics, United States Department of Labor.

(ii) Compute an index of prices paid by Pennsylvania farmers per hundredweight for 20 percent protein mixed dairy feed, using a 1957–1958 base period, by dividing by 0.03896 the monthly price for such feed published by the Pennsylvania Federal-State Crop Reporting Service.

(iii) Compute an index of prices received by Pennsylvania farmers for farm products except dairy, using a 1957–1958 base period, by dividing by 2.103 the monthly index published by the Pennsylvania Federal-State Crop Reporting Service.

(iv) Compute an index of prices paid for milk by selected Midwestern condenseries, using a 1957–1958 base period, by dividing by 0.030673 the monthly average prices paid by the following selected Midwestern condenseries;

COMPANY AND LOCATION

Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

as reported by the United States Department of Agriculture, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for such month:

January	1.027	July	0.974
February	1.023	August	.986
March	1.011	September	.999
April	.981	October	1.015
May	.968	November	1.022
June	.968	December	1.026

(v) Compute an index of average daily pounds of Class I milk disposition under Order No. 61 and Order No. 110, using a 1957–1958 base period, by dividing by 29,476 the daily average for the month of pounds of Class I milk disposition by producer milk plants under Order No. 61 and fluid milk plants under Order No. 110, excluding Class I milk disposition (on routes or otherwise) outside the marketing areas by any handler whose Class I disposition on routes in the marketing areas is less than 5.0 percent of his total Class I route disposition, and excluding any duplication because of disposition between plants, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for the month:

January	1.009	July	0.946
February	1.023	August	.949
March	1.011	September	1.020
April	1.025	October	1.046
May	1.010	November	1.005
June	.966	December	.990

(2) Subject to the conditions set forth in subparagraphs (3), (4) and (5) of this paragraph the Class I price shall be that price indicated for the pricing quarter in the following Class I price schedule in the line corresponding to the bracket in which the formula index computed pursuant to subparagraph (1) falls, or if such index value is not within a bracket, the price for the calendar quarter shall be determined by the adjacent index bracket which is the same as or nearest to the bracket equivalent to the price in the previous quarter: *Provided*, That for the purposes of this subparagraph for pricing in the first quarter of 1961, the bracket equivalent to the price in the previous quarter shall be considered to be "99.0 to 101.0".

CLASS I PRICE SCHEDULE

[Price per hundredweight]

Formula index	1st Quarter (January, February, March)	2d Quarter (April, May, June)	3d Quarter (July, August, September)	4th Quarter (October, November, December)
At least but less than—				
80.0–82.0	4.59	4.19	4.59	4.99
83.8–85.8	4.79	4.39	4.79	5.19
87.6–89.6	4.99	4.59	4.99	5.39
91.4–93.4	5.19	4.79	5.19	5.59
95.2–97.2	5.39	4.99	5.39	5.79
99.0–101.0	5.59	5.19	5.59	5.99
102.8–104.8	5.79	5.39	5.79	6.19
106.6–108.6	5.99	5.59	5.99	6.39
110.4–112.4	6.19	5.79	6.19	6.59
114.2–116.2	6.39	5.99	6.39	6.79
118.0–120.0	6.59	6.19	6.59	6.99

[1] If the formula index is more than 120.0 or less than 80.0 this table shall be extended at the same rate as the increase or decrease in the preceding bracket.

(3) If the annual level of the price for any calendar quarter (the price indicated for the first and third quarters for the bracket in which the formula index computed pursuant to subparagraph (1) falls) adjusted to a price for milk of 3.5 percent butterfat content (using the Class I butterfat differential computed for the second month preceding the quarter, pursuant to § 961.51) is greater than $2.60 over the simple average of prices of selected Midwestern condenseries (identified in subparagraph (1) of this paragraph) as reported by the United States Department of Agriculture for the 12-month period ending with the second month preceding the quarter for milk of 3.5 percent butterfat, the Class I price for such quarter shall be adjusted downward (in multiples of 20 cents) to a price so adjusted which will be within such $2.60 variance.

(4) For each month of any calendar quarter the Class I price shall be 20 cents more per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are less than 129 percent of total Class I disposition by such plants in the same period, (excluding any duplication because of disposition between plants), and shall be an additional 20 cents more if the percentage of such receipts to such disposition is less than 126: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year plus 80 cents.

(5) For each month of any calendar quarter the Class I price shall be 20 cents less per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are more than 139 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents less if the percentage of such receipts to such disposition is more than 142: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year less 80 cents.

Order[1] Amending the Order Regulating the Handling of Milk in the Wilmington, Delaware, Marketing Area

§ 1010.0 Findings and determinations.

The findings and determinations hereinafter set forth in supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Wilmington, Delaware, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manners as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Wilmington marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 1010.22 [Amendment]

1A. In § 1010.22(j) delete subparagraph (2) and substitute the following:

(2) The 15th day of the month preceding the start of each calendar quarter, the Class I price for such calendar quarter: *Provided*, That the Class I price for the calendar quarter of January, February, and March 1961 shall be announced on or before January 5, 1961;

1B. In § 1010.22(j) add a new subparagraph as follows:

(4) The 15th day of each month, the indexes computed pursuant to § 1010.50 (a)(1) for the preceding month, the 12-month average of condensery prices for the period ending with the preceding month calculated in the manner described in § 1010.50(a)(3), and the 12-month percentage utilization factor for the period ending with the preceding month calculated in the manner described in § 1010.50(a) (4) and (5).

§ 1010.50 [Amendment]

2. Delete § 1010.50(a) and substitute therefor the following:

(a) *Class I milk.* For each month in each calendar quarter the price per hundredweight of Class I milk shall be the price computed for such quarter pursuant to subparagraphs (1) through (5) of this paragraph.

(1) Compute the indexes set forth in subdivisions (i) through (v) of this subparagraph for the 2d, 3d and 4th months preceding the first month of the pricing quarter and divide the sum of these indexes by 15. The result shall be the formula index.

(i) Compute an index of wholesale commodity prices, using a 1957–1958 base period, by dividing by 1.183, the average of the four latest weekly index figures (those available on the 15th day of the following month) of wholesale commodity prices as reported on a 1947–1949 base by the Bureau of Labor Statistics, United States Department of Labor.

(ii) Compute an index of prices paid by Pennsylvania farmers per hundredweight for 20 percent protein mixed dairy feed, using a 1957–1958 base period, by dividing by 0.03896 the monthly price for such feed published by the Pennsylvania Federal-State Crop Reporting Service.

(iii) Compute an index of prices received by Pennsylvania farmers for farm products except dairy, using a 1957–1958 base period, by dividing by 2.103 the monthly index published by the Pennsylvania Federal-State Crop Reporting Service.

(iv) Compute an index of prices paid for milk by selected Midwestern condenseries, using a 1957–1958 base period, by dividing by 0.030673 the monthly average prices paid by the following selected Midwestern condenseries

COMPANY AND LOCATION

Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

as reported by the United States Department of Agriculture, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for such month:

January	1.027	July	0.974
February	1.023	August	.986
March	1.011	September	.999
April	.981	October	1.015
May	.968	November	1.022
June	.968	December	1.026

(v) Compute an index of average daily pounds of Class I milk disposition under Order No. 61 and Order No. 110, using a 1957–1958 base period, by dividing by 29,476 the daily average for the month of pounds of Class I milk disposition by producer milk plants under Order No. 61 and fluid milk plants under Order No. 110, excluding Class I milk disposition (on routes or otherwise) outside the marketing areas by any handler whose Class I disposition on routes in the marketing areas is less than 5.0 percent of his total Class I route disposition and excluding any duplication because of disposition between plants, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for the month:

January	1.009	July	0.946
February	1.023	August	.949
March	1.011	September	1.020
April	1.025	October	1.046
May	1.010	November	1.005
June	.966	December	.990

(2) Subject to the conditions set forth in subparagraphs (3), (4), and (5) of this paragraph the Class I price shall be that price indicated for the pricing quarter in the following Class I price schedule in the line corresponding to the bracket in which the formula index computed pursuant to subparagraph (1) falls, or if such index value is not within a bracket, the price for the calendar quarter shall be determined by the adjacent index bracket which is the same as or nearest to the bracket equivalent to the price in the previous quarter: *Provided*, That for the purposes of this subparagraph for pricing in the first quarter of 1961, the bracket equivalent to the price in the previous quarter shall be considered to be "99.0 to 101.0".

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

CLASS I PRICE SCHEDULE
[Price per hundredweight]

Formula index	1st Quarter (January, February, March)	2d Quarter (April, May, June)	3d Quarter (July, August, September)	4th Quarter (October, November, December)
At least but less than—				
80.0-82.9	4.44	4.64	4.44	4.84
83.0-85.9	4.64	4.24	4.64	5.04
86.0-88.9	4.84	4.44	4.84	5.24
87.9-89.4	5.04	4.64	5.04	5.44
91.4-93.4	5.24	4.84	5.24	5.64
96.3-97.2	5.44	5.04	5.44	5.84
98.0-101.0	5.64	5.24	5.64	6.04
102.9-104.8	5.84	5.44	5.84	6.24
106.6-108.6	6.04	5.64	6.04	6.44
110.4-112.4	6.24	5.84	6.24	6.64
114.3-116.3	6.44	6.04	6.44	6.84
118.0-120.0				

[1] If the formula index is more than 120.0 or less than 80.0 this table shall be extended at the same rate as the increase or decrease in the preceding bracket.

(3) If the annual level of the price for any calendar quarter (the price indicated for the first and third quarters for the bracket in which the formula index computed pursuant to subparagraph (1) falls) adjusted to a price for milk of 3.5 percent butterfat content (using the Class I butterfat differential computed for the second month preceding the quarter, pursuant to § 1010.51) is greater than $2.45 over the simple average of prices of selected Midwestern condenseries (identified in subparagraph (1) of this paragraph) as reported by the United States Department of Agriculture for the 12-month period ending with the second month preceding the quarter for milk of 3.5 percent, the Class I price for such quarter shall be adjusted downward (in multiples of 20 cents) to a price so adjusted which will be within such $2.45 variance.

(4) For each month of any calendar quarter the Class I price shall be 20 cents more per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are less than 129 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents more if the percentage of such receipts to such disposition is less than 126: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year plus 80 cents.

(5) For each month of any calendar quarter the Class I price shall be 20 cents less per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are more than 139 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents less if the percentage of such receipts to such disposition is more than 142: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year less 80 cents.

§ 1010.50 [Amendment]

3. Delete § 1010.50(b)(1) and substitute therefor the following:

(b) (1) *Butterfat.* Add all market quotations (using the midpoint of any weekly range as one quotation) of prices per 40-quart can of fresh sweet cream of bottling quality of 40 percent butterfat content, not including prices for cream carrying special municipal approvals, reported at Philadelphia for each week ending within the month by the United States Department of Agriculture, divide by the number of quotations, subtract $2.00 and divide by 9.19: *Provided*, That such butterfat value shall not be less than 3.7 times 120 percent of the average of the daily wholesale selling price for Grade A (92-score) butter at New York as reported by the United States Department of Agriculture for the month for which payment is to be made, less 18.0 cents.

§ 1010.51 [Deletion]

4. Delete § 1010.51 and substitute therefor the following:

§ 1010.51 Butterfat differential to handlers.

For milk containing more or less than 3.7 percent butterfat, the class prices for the month, calculated pursuant to § 1010.50, shall be increased or decreased, respectively, for each one-tenth of 1.0 percent variation in butterfat content by the amount calculated pursuant to § 1010.50(b)(1) divided by 37 and rounded to the nearest one-tenth cent.

5. Delete "4.0 percent" in §§ 1010.50 and 1010.71 (b) and (d), and substitute therefor "3.7 percent".

§ 1010.81 [Deletion]

6. Delete § 1010.81 and substitute therefor the following:

§ 1010.81 Butterfat differential to producers.

The applicable uniform prices to be paid each producer pursuant to § 1010.80 shall be increased or decreased, for each one-tenth of 1.0 percent which the average butterfat content of his milk is above or below 3.7 percent, respectively, at a rate determined by dividing by 37 the butterfat value computed pursuant to § 1010.50(b)(1) and rounded to the nearest full cent.

[F.R. Doc. 60-11766; Filed, Dec. 19, 1960; 8:52 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Glasurit-Werke M. Winkelmann, Aktien-Gesellschaft, Hamburg, Germany, proposing the issuance of a regulation to provide for the safe use of a sealing compound for caps and screw-covers of glass containers, consisting of mixtures of polyvinyl chloride, alkyl sulfonic ester of phenol and cresol, di-(2-ethylhexyl) phthalate, epoxidised soybean oil, titanium dioxide, aluminum silicate, acetyl tributyl citrate, stearic acid ester of 2-ethyl hexanol, and modified paraffin.

Dated: December 13, 1960.

[SEAL] WINTON B. RANKIN,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-11732; Filed, Dec. 19, 1960; 8:47 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

MONTANA

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 9, 1960.

The United States Forest Service, Department of Agriculture, has filed an application, Serial Number Montana-040004 for the withdrawal of the lands described below, from location and entry under the general mining laws, subject to existing valid claims. The applicant desires the land for administrative sites, public service sites, recreation areas, or for other public purposes as set forth specifically with regard to each area or description.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 1245 North 29th Street, Billings, Montana.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

PRINCIPAL MERIDIAN MONTANA

HELENA NATIONAL FOREST

Deep Creek Campground

T. 7 N., R. 4 E.,
Sec. 26, S½SE¼SW¼.
Total area 20 acres.

Grassy Mountain Winter Sports Area

T. 7 N., R. 5 E.,
Sec. 21, E½NW¼, W½NE¼, N½NE¼SW¼, N½NW¼SE¼.
Total area 200 acres.

Ontaria Campground

T. 8 N., R. 6 W.,
Sec. 17, W½NW¼SW¼, NE¼SE¼SE¼;
Sec. 18, E½NE¼SE¼, NE¼SE¼SE¼.
Total area 60 acres.

Davis Creek Recreation Area

T. 13 N., R. 7 W.,
Sec. 17, S½SW¼NE¼NW¼, SE¼NE¼NW¼, SW¼NW¼NE¼, SE¼NW¼NE¼, SW¼SW¼NE¼NE¼, N½NW¼SE¼NE¼.
Total area 42.5 acres.

Cannon Recreation Area

T. 13 N., R. 8 W.,
Sec. 16, N½SW¼NW¼SW¼, NW¼SE¼NW¼SW¼.
Total area 7.5 acres.

Copper Creek Recreation Area

T. 15 N., R. 8 W.
Sec. 4, E½SW¼, W½W½, SE¼;
Sec. 9, N½N½NE¼NW¼, NW¼NW¼NW¼NE¼.
Total area 132.5 acres.

Huckleberry Recreation Area

T. 15 N., R. 8 W.,
Sec. 10, S½NE¼SW¼NW¼, SE¼SW¼NW¼, W½SW¼SE¼NW¼, N½NE¼NW¼SW¼, NW¼NE¼SW¼, SW¼NE¼NE¼SW¼, E½SW¼NE¼SW¼, W½SE¼NE¼SW¼.
Total area 57.5 acres.

Kinnikinnik Recreation Area

T. 15 N., R. 8 W.,
Sec. 15, S½SW¼NW¼NE¼, NW¼SW¼NE¼, SW¼NE¼SW¼NE¼, E½SW¼SW¼NE¼, SE¼SW¼NE¼, E½NW¼SE¼, SW¼SW¼NE¼SE¼, NE¼SW¼SE¼, E½NW¼SW¼SE¼, NW¼SE¼SE¼, N½NE¼SW¼SE¼SE¼.
Total area 81.25 acres.

Lower Copper Creek Recreation Area

T. 15 N., R. 8 W.,
Sec. 26, E½NE¼NE¼NW¼, W½NW¼NW¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NE¼, SW¼SE¼NW¼NE¼, NW¼SW¼NE¼, W½NE¼SW¼NE¼, SE¼NE¼SW¼NE¼, N½S½SW¼NE¼, S½N½SE¼NE¼, N½SE¼SE¼NE¼, SE¼SE¼NE¼.
Total area 77.5 acres.

Total of areas described in this order aggregates 668.75 acres.

J. R. PENNY,
Supervisor.

[F.R. Doc. 60-11762; Filed, Dec. 19, 1960; 8:51 a.m.]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[AA 643.3-A]

"MOSKVITCH" AUTOMOBILES FROM THE U.S.S.R.

Determination of No Sales at Less Than Fair Value

DECEMBER 9, 1960.

A complaint was received that "Moskvitch" automobiles from the U.S.S.R. were being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that "Moskvitch" automobiles from the U.S.S.R. are not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

Statement of reasons. Importations have been limited to a few models used for display purposes. The importer has stated that he does not plan future importations.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11727; Filed, Dec. 19, 1960; 8:47 a.m.]

[AA 643.3-A]

SHOEBOARD FROM THE UNITED KINGDOM

Determination of No Sales at Less Than Fair Value

DECEMBER 9, 1960.

A complaint was received that shoeboard from the United Kingdom was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that shoeboard from the United Kingdom is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. Certain types of the shoeboard exported to the United States are identical to shoeboard sold for home consumption. As to these types, a comparison was made between purchase price and home market price. Other types were sold only for export to the United States and were not sold for home consumption or for export to countries other than the United States. As to the latter types, comparison was made between purchase price and constructed value. The comparison disclosed no sales for export to the United States at less than home market price or constructed value.

In calculating purchase price, deductions were made for shipping charges, ocean freight, United States duty, and, where involved, inland freight in the United States, agent's commission, and cash discount.

In calculating home market price, an addition was made for the difference in the cost of export packing.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11728; Filed, Dec. 19, 1960; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Bureau of the Census

SURVEYS IN MANUFACTURING AREA

Notice of Determination To Continue Surveys

In conformity with the Act of Congress approved August 31, 1954, 13 U.S.C. 181,

and due notice having been published November 11, 1960 (25 F.R. 10781), pursuant to said Act, I have determined that the usual annual data to be derived from the surveys listed below are needed, as in former years, to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry and are not publicly available from nongovernmental or other governmental sources.

Report forms in most instances furnishing data on shipments and/or production and in some instances on stocks, unfilled orders, orders booked, consumption, etc., will be required of all establishments engaged in the production of the items covered by the following list of surveys with the exception of the lumber production and stocks survey which will be conducted on a sample basis. The surveys have been arranged under major group headings shown in the revised Standard Industrial Classification Manual (1957 edition) promulgated by the Bureau of the Budget for the use of Federal statistical agencies.

Major Group 20—Food and Kindred Products

Salad dressings.

Major Group 22—Textile Mill Products

Stocks of wool (as of Jan. 1, 1961).
Cotton and synthetic woven goods finished.
Broad woven fabrics, blends and mixtures.
Knit cloth.
Woolen and worsted machinery activity.
Yarn production.

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Gloves and mittens.
Apparel.
Brassieres, corsets and allied garments.
Sheets, pillowcases and towels.

Major Group 24—Lumber and Wood Products, Except Furniture

Softwood plywood.
Softwood veneer.
Red Cedar shingles.
Lumber.

Major Group 26—Paper and Allied Products

Paper and board-detailed grade.

Major Group 28—Chemicals and Allied Products

Sulfuric acid.
Compressed and liquefied gases.
Inorganic chemicals.

Major Group 32—Stone, Clay and Glass

Pressed and blown glassware.

Major Group 33—Primary Metal Industries

Steel mill products.

Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery and Transportation Equipment

Aluminum foil, converted.
Steel power boilers.
Heating and cooking equipment.
Mechanical stokers.

Major Group 35—Machinery, Except Electrical

Internal combustion engines.
Tractors.
Farm machines and equipment.
Vending machines.
Refrigeration equipment.
Office, computing and accounting machines.

Major Group 36—Electrical Machinery Equipment, and Supplies

Radios, television, and phonographs.

The following list of surveys represents annual counterparts of monthly, quarterly, and semi-annual surveys and will cover only those establishments which are not canvassed or do not report in the more frequent survey. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly, quarterly, and semi-annual reports except for Construction Machinery which will additionally call for data on shipments of power cranes and shovels, concrete mixers, and attachments for contractors' off-highway type tractors.

Major Group 20—Food and Kindred Products

Flour milling products.
Confectionery products.

Major Group 22—Textile Mill Products

Man-made fiber, silk, woolen and worsted fabrics.
Finishing plant report—broad woven fabrics.
Piece goods inventories and orders.
Broad woven goods (cotton, wool, silk and synthetic).
Consumption of wool and other fibers, and production of tops and noils.

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood plywood (for sale).

Major Group 25—Furniture and Fixtures

Mattresses and bedsprings.

Major Group 26—Paper and Allied Products

Pulp, paper, and board.
Consumers of wood pulp.
Converted flexible packaging products.

Major Group 28—Chemicals and Allied Products

Superphosphates.
Paint, varnish, and lacquer.

Major Group 29—Petroleum Refining and Related Industries

Asphalt and tar roofing and siding products.

Major Group 31—Leather and Leather Products

Shoes and slippers.

Major Group 32—Stone, Clay and Glass

Glass containers.
Refractories.
Clay construction products.

Major Group 33—Primary Metal Industries

Nonferrous castings.

Major Group 34—Fabricated Metal Products, Except Ordnance, Machinery and Transportation Equipment

Plumbing fixtures.
Steel shipping barrels, drums and pails.
Commercial and home canning closures.
Metal cans.

Major Group 35—Machinery, Except Electrical Machinery

Farm pumps.
Fans, blowers, and unit heaters.

Major Group 36—Electrical Machinery, Equipment, and Supplies

Electric lamps.
Fluorescent lamp ballasts.

Major Group 37—Transportation Equipment

Complete aircraft and aircraft engines.
Backlog of orders for aircraft companies.
Aircraft propellers.

Also, the Annual Survey of Manufactures will be conducted similarly as in the past and will call for general statistical data such as employment, payroll, man-hours, capital expenditures, cost of materials consumed, etc., in addition to information on value of products shipped and quantity data for selected classes of products. This survey, while conducted on a sample basis, will cover all manufacturing industries.

A survey of Research and Development Costs will also be conducted again as an annual counterpart to the more detailed survey collected and compiled by the Bureau of the Census for the National Science Foundation. The data to be obtained by the Census under its mandatory authority will be limited to total research and development costs of work performed by the company, total cost of research and development work performed for the Federal Government, and, for comparative purposes, total net sales and receipts, and total employment of the company. As for all counterpart type surveys there will be no duplication since firms that furnish the equivalent data as part of the more detailed voluntary survey conducted for the National Science Foundation will not be asked to file the separate Census questionnaire.

The report forms will be furnished to firms included in these surveys and additional copies are available on request to the Director, Bureau of the Census, Washington 25, D.C.

I have, therefore, directed that annual surveys be conducted for the purpose of collecting the data hereinabove described.

ROBERT W. BURGESS,
Director, Bureau of the Census.

[F.R. Doc. 60-11739; Filed, Dec. 19, 1960; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13338, 13870; FCC 60-1478]

DIXIE RADIO, INC., AND BOWYER, HARRY LLEWELLYN, JR.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Dixie Radio, Inc., Brunswick, Georgia, requests: 790 kc, 500 w, DA, Day, Docket No. 13338, File No. BP-13854; Harry Llewellyn Bowyer, Jr., Brunswick, Georgia, requests: 790 kc, 500 w, Day, Docket No. 13870, File No. BP-12507; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that, except as indicated by the issues specified below, the above named applicants are legally, technically, financially, and otherwise qualified to construct and operate its instant proposal but that Harry Llewellyn Bowyer, Jr., may not be financially qualified; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated June 16, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices, and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that, Harry Llewellyn Bowyer, Jr., the applicant in BP-12507, plans to secure the cash needed to finance the proposed station through a bank loan and has submitted a loan commitment for $30,000, but that the terms of repayment and security have not been shown as required by Section III, paragraph 4(h) of the application form, and;

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the instant applicants and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposals would interfere with the existing stations below, or any other existing broadcast stations, and if so, the nature and extent of such interference, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

Proposal and existing station

BP-12507 WWBD, Bamberg, S.C.
790 kc, 1 kw, Day.
WLBE, Leesburg, Fla.
790 kc, 1 kw, 5 kw-LS, DA-N, U.

BP-13854 WLBE, Leesburg, Fla.
790 kc, 1 kw, 5 kw-LS, DA-N, U.

4. To determine whether the interference received by each instant proposal from any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

5. To determine, in order to establish the financial qualifications of Harry Llewellyn Bowyer, Jr., the terms of repayment and security to be given by him on the bank loan with which he proposes to finance his proposal herein.

6. To determine, on a comparative basis, which of the instant proposals would better serve the public interest, convenience and necessity in light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate its proposed station.

(b) The proposals of each of the applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the said applications.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues which if either of the instant applications should be granted

It is further ordered, That Bamberg County Broadcasting Corporation and WLBE, Inc., licensee of Stations WWBD and WLBE, respectively, are made parties to the proceeding.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11745; Filed, Dec. 19, 1960; 8:49 a.m.]

[Docket Nos. 13882, 13883; FCC 60-1486]

EUGENE BROADCASTERS AND W. GORDON ALLEN

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Diana Crocker Redington, William H. Crocker II, Thomas J. Davis, Jr., and Robert Sherman d/b as Eugene Broadcasters (a Joint Venture) Eugene, Oregon, request 1320 kc, 1 kw, Day, Docket No. 13882, File No. BP-12954; W. Gordon Allen, Eugene, Oregon, requests 1320 kc, 1 kw, Day, Docket No. 13883, File No. BP-13214; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated August 18, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that, the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, on a comparative basis, which of the instant proposals would better serve the public interest, convenience and necessity in the light of the evidence adduced pursuant to the foregoing issues and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each having a bearing on the appli-

cant's ability to own and operate its proposed station.

(b) The proposals of each of the applicants with respect to the management and operation of the proposed station.

(c) The programming service proposed in each of the said applications.

2. To determine, in the light of the evidence adduced pursuant to the foregoing issues which of the instant applications should be granted.

It is further ordered, That, in the event of a grant of the application of Eugene Broadcasters (File No. BP-12954), the construction permit shall contain a condition that the permittee shall be responsible for the installation and adjustment of suitable filter circuits, or any other equipment that may be necessary to prevent deleterious re-radiation or cross-modulation effects that may result between the proposed operation and Station KERG (1280 kc, 1 kw, 5 kw-LS, DA-N, U) Eugene, Oregon. In addition, the construction permit shall contain another condition that the permittee shall submit sufficient field intensity measurement data made on Station KERG before and after construction of the authorized antenna tower, to establish clearly that the construction has not seriously affected the radiation patterns of KERG.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11749; Filed, Dec. 19, 1960; 8:49 a.m.]

[Docket Nos. 13879-13881; FCC 60-1485]

FORT HAMILTON BROADCASTING CO. (WMOH) ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of: the Fort Hamilton Broadcasting Company (WMOH) Hamilton, Ohio, has: 1450 kc, 250 w, U, requests; 1450 kc, 250 w, 1 kw-LS, U, Docket No. 13879, File No. BP-12969; Lafayette Broadcasting, Inc. (WASK), Lafayette, Indiana, has: 1450 kc, 250 w, U, requests: 1450 kc, 250 w, 1 kw-LS, U, Docket No. 13880, File No. BP-13252; Indiana Broadcasting Corporation (WANE), Fort Wayne, Indiana, has: 1450 kc, 250 w, U, requests: 1450 kc, 250 w, 500 w-LS, U, Docket No. 13881, File No. BP-13768; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated September 12, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Stations WMOH, WASK and WANE and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposals, as listed below, would involve objectionable interference with the following existing stations and proposals with which the given applicant was not timely filed, or any other existing standard broadcast stations, and if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations:

Proposal and existing station or proposal

BP-12869 (WMOH): WANE, Fort Wayne, Ind. 1450 kc, 250 w, U, Class IV. WASK, Lafayette, Ind. 1450 kc, 250 w, U, Class IV. BP-10824, Jeffersonville, Ind. 1450 kc, 250 w, U, Class IV.

BP-13252 (WASK): WANE. WAOV, Vincennes, Ind. 1450 kc, 250 w, U, Class IV. WMOH, Hamilton, Ohio. 1450 kc, 250 w, U. WCVS, Springfield, Ill. 1450 kc, 250 w, U, Class IV. WHFC, Cicero, Ill. 1450 kc, 250 w, U, Class IV. BP-12655 (WHFC). 1450 kc, 250 w, 1 kw-LS, U. BP-13161 (WCVS). 1450 kc, 250 w, 1 kw-LS, U.

BP-13768 (WANE): WASK. WIBM, Jackson, Mich. 1450 kc, 250 w, U, Class IV. WMOH. WPGW, Portland, Ind. 1440 kc, 500 w, DA-D, Class III. BP-12349 (WIBM). 1450 kc, 250 w, 1 kw-LS, U, Class IV.

4. To determine, in the light of Section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That, the following named licensees of the stations indicated are made parties to the proceeding with respect to their existing operations:

Licensee and Station

Vincennes Sun Co., WAOV, Vincennes, Ind.
WPFA, Radio, Inc., WCVS, Springfield, Ill.
WHFC, Inc., WHFC, Cicero, Ill.
Booth Broadcasting Co., WIBM, Jackson, Mich.
Glenn West, WPGW, Portland, Ind.
Indiana Broadcasting Corp., WANE, Fort Wayne, Ind.
Lafayette Broadcasting, Inc., WASK, Lafayette, Ind.
The Fort Hamilton Broadcasting Co., WMOH, Hamilton, Ohio.

and that the following are made parties to the proceeding with respect to their proposed operations:

Applicants and Proposal

Thomas E. Jones and Keith L. Reising d/b as Northside Broadcasting Co., BP-10824, Jeffersonville, Ind.
WHFC, Incorporated, BP-12655 (WHFC), Cicero, Ill.
WPFA Radio, Inc., BP-13161 (WCVS), Springfield, Ill.
Booth Broadcasting Co., BP-12349 (WIBM), Jackson, Mich.

It is further ordered, That, in the event of a grant of any of the instant proposals, such grants shall contain the condition that permittee shall accept such interference as may be imposed by other existing Class IV stations in the event they are subsequently authorized to increase power to 1000 watts.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11751; Filed, Dec. 19, 1960; 8:50 a.m.]

[Docket No. 13874 etc.; FCC 60-1481]

FRANKLIN BROADCASTING CO., INC. (KMAR) ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re application of Franklin Broadcasting Co., Inc. (KMAR), Winnsboro, Louisiana, has: 1570 kc, 500 w, Day, requests: 1570 kc, 1 kw, Day, Docket No. 13874, File No. BP-12937; John Anthony Lazarone and Irving Ward-Steinman d/b as Leesville Broadcasting Company (KLLA), Leesville, Louisiana, has: 1570 kc, 250 w, Day, requests: 1570 kc, 1 kw, Day, Docket No. 13875, File No. BP-13165; Yam Broadcasting Company, Incorporated, Opelousas, Louisiana, requests: 1570 kc, 250 w, Day, Docket No. 13876, File No. BP-13864.

As a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated August 30, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that, by letters dated June 8, 1960, the applicants in BP-12937 (KMAR) and BP-13165 (KLLA) agree to accept any interference that may result between their respective proposals, and jointly petition for a waiver of § 3.28(c) of the Commission's rules, such agreement being contingent upon both applications receiving favorable consideration; but that said agreement cannot be considered valid until matters relating to § 3.28(c)(3) are adjudicated; and,

It further appearing that, by letter dated December 7, 1959, the licensee of Station KLLA, Leesville, Louisiana, protests the interference that may result to both its existing operation and its proposal (BP-13165) by the proposal of Yam Broadcasting Company, Incorporated (BP-13864); and

It further appearing that, by letter dated July 12, 1960, the Air Coordinating Committee, Regional Airspace Subcommittee disapproved the tower site proposal of the applicant in BP-13864 because of failure to respond to earlier correspondence advising of objections to said site; and

It further appearing that after consideration of the foregoing and the applicant's replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below:

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the applicant in BP-13864 and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Stations KMAR and KLLA and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the instant proposals, as listed below, would involve objectionable interference with the stations similarly listed, or any other existing standard broadcast stations, and if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

Proposal and existing station

BP-12397 (KMAR): KLLA, Leesville, La. 1570 kc, 250 w., Day, II.
BP-13165 (KLLA): KMAR, Winnsboro, La. 1570 kc, 500 w, Day, II.
BP-13864: KLLA, Leesville, La.

5. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of §3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

6. To determine whether the antenna system proposed by the applicant in BP-13864 would constitute a hazard to air navigation.

7. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would best provide a fair, efficient and equitable distribution of radio service.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That, Franklin Broadcasting Co., Inc., and Leesville Broadcasting Company, licensees of Station KMAR and KLLA, are made parties to the proceeding with respect to their existing operations.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11750; Filed, Dec. 19, 1960; 8:49 a.m.]

[Docket Nos. 13673, 13674; FCC 60M-2006]

HENNEPIN BROADCASTING ASSOCIATES AND ROBERT E. SMITH

Order Scheduling Hearing

In re applications of Albert S. Tedesco and Patricia W. Tedesco, d/b as Hennepin Broadcasting Associates, Minneapolis, Minnesota, Docket No. 13673, File No. BP-12416; Robert E. Smith, River Falls, Wisconsin, Docket No. 13674, File No. BP-13339; for construction permits.

The Hearing Examiner having under consideration (1) his order released November 21, 1960 (FCC 60M-1981) rescheduling the commencement of hearing in the above-entitled proceeding to December 12, 1960; (2) a public notice of the Commission released December 7, 1960 (Mimeo. 97638) indicating that by Memorandum Opinion and Order it had granted a petition by applicant Hennepin Broadcasting Associates to enlarge the issues herein to include determination of the financial and other qualifications of applicant Smith (the said Memorandum Opinion not having become presently available for public distribution); (3) the fact that applicant Hennepin's petition for enlargement has been on file since August 8, 1960; (4) the fact that on December 12, 1960, there was a heavy snowstorm in Washington, D.C. necessitating the closing of Federal Office buildings except for essential personnel; and (5) discussions held off the record at a conference of counsel for applicants Smith and Hennepin and the Commission's Broadcast Bureau at the Hearing Examiner's office December 13, 1960, relative to postponement of the hearing in view of the circumstances outlined in items (1) through (4) above;[1]

It appearing that at the conference held at the Examiner's office December 13 counsel for Smith stated that he proposed to take depositions as part of his direct case under the new issues added by the Commission and that this would require realistically that the hearing be postponed until early in February since the depositions would have to be taken during the early part of January and allowance would have to be made for transcribing and transmitting them to Washington, D.C.;

It appearing further that all counsel agreed to the reasonableness of the dates to be prescribed hereinafter and that the Examiner made it clear, and repeats once again herein, (1) that it is expected there will be no further delays in the commencement and progress of the hearing; (2) that if depositions are not received at the Commission's offices by the date herein prescribed applicant Smith will run a definite risk of being defaulted in the event their late receipt would operate to impede the progress of the hearing; and (3) that it is expected that every effort will be made during the time limits herein afforded to forestall further delays for the purpose of getting possible rebuttal evidence into the record;[2]

It is ordered, This 13th day of December 1960, that the hearing, cancelled by virtue of the snowstorm mentioned above, is hereby rescheduled to commence Monday, February 13, 1961, at the Commission's offices, Washington, D.C.; and

It is ordered further, That all exhibit material to be offered as part of either applicant's direct case (including rebuttal engineering not already exchanged, if any) is to be exchanged among the parties, with copies to the examiner, not later than February 3, 1961, and that the deadline date for receipt of depositions at the Commission's offices is also established as February 3.

Released: December 14, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11752; Filed, Dec. 19, 1960; 8:50 a.m.]

[1] It is also noted that by order released December 9, 1960 (FCC 60M-2005) the Chief Hearing Examiner dismissed with prejudice a third application consolidated in this proceeding, that of Crystal Broadcasting Company, and that this action likewise alters the complexion of this proceeding from that contemplated originally at the time pre-hearing conferences were held.

[2] While counsel agreed that as of the moment no further prehearing conference need be held in this case, it is expected that if it subsequently appears a useful purpose may be served thereby, e.g., in order to place on the record stipulations which would have the effect of shortening the hearing, any of the parties may request the scheduling of such conference informally.

[Docket Nos. 13872, 13873; FCC 60-1479]

L. M. HUGHEY (WTWB) AND SUGARLAND BROADCASTING CO.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of: L. M. Hughey (WTWB), Auburndale, Florida, has: 1570 kc, 1 kw, Day, requests: 1570 kc, 5 kw, Day, Docket No. 13872, File No. BP-11777; Sugarland Broadcasting Company, Okeechobee, Florida, requests: 1570 kc, 1 kw, Day, Docket No. 13873, File No. BP-12513; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that, except as indicated by the issues specified below, each of the applicants herein is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated September 14, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that, the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing that, pursuant to the aforementioned section 309(b) letter, L. M. Hughey was notified by reference to Commission's Public Notice dated June 18, 1957, that his application requesting an increase in daytime power from 1000 watts to 5000 watts on a Mexican Class I-A clear channel, although accepted, would be held in a pending status until ratification of the United States/Mexican Agreement which would permit such operation by American stations; that as of the date of this Order, however, the Mexican Government has not ratified such Agreement; and

It further appearing that, after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the proposal of Sugarland Broadcasting Company and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WTWB and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether interference received from the proposal of L. M. Hughey would affect more than ten percent of the population within the normally protected primary service area of the instant proposal of Sugarland Broadcasting Company, in contravention of § 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said section.

5. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient and equitable distribution of radio service.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues which of the instant applications should be granted.

It is further ordered, That, if the proposal of L. M. Hughey is favored, it will be held in hearing status without final action until ratification and entry into force of the U.S./Mexican Agreement, 1957 (Public Notice 46545, June 18, 1957) and, in the event that the reasons for designating said application for hearing are removed before the hearing proceeding is concluded, the application will be removed from hearing status and held without further action pending ratification and entry into force of the U.S. Mexican Agreement, 1957.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11753; Filed, Dec. 19, 1960; 8:50 a.m.]

[Docket Nos. 13884-13886; FCC 60-1489]

"JET" BROADCASTING CO., INC. (WJET) ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of The "JET" Broadcasting Co., Inc. (WJET), Erie, Pennsylvania, has: 1400 kc, 250 w, U, requests: 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13884, File No. BP-12188; WBNY, Incorporated (WBNY), Buffalo, New York, has: 1400 kc, 250 w, U, requests: 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13885, File No. BP-13285; Lake Shore Broadcasting Company, Inc. (WDOE), Dunkirk, New York, has: 1410 kc, 500 w, DA-N, U, requests: 1410 kc, 500 w, 1 kw-LS, DA-N, U, Docket No. 13886, File No. BP-13300; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated August 12, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing, that, Lake Shore Broadcasting Co., Inc., licensee of Station WDOE, requests a waiver of § 3.28(c) of the Commission's rules; and

It further appearing that in a letter and supplemental engineering affidavit received August 29, 1960, in support of a request for waiver of § 3.188(d) of the Commission's rules, WBNY, Incorporated, licensee of Station WBNY, contends that to provide satisfactory nighttime service to the City of Buffalo, an antenna site would have to be in the central business area, which would require a rooftop site, or be located in a residential area close to the center of the city. The applicant further states that the present centralized location allows much better nighttime interference-free coverage of the city, and that the use of separate sites for day and night operation would place an unnecessary burden on the station. However, it has not been determined whether circumstances warrant such a waiver; and

It further appearing that by amendment received September 8, 1960, which amendment contained engineering data of WJET indicating that the total maximum interference which the instant proposal would receive, even though the proposals of WDOE and WBNY were both granted, would involve 11,070 persons or 5.11 percent of the population within the proposed 0.5 mv/m service area, thereby complying with § 3.28(c)(3) of the Commission's rules; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to § 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Stations WDOE, WBNY, and WJET, and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposal of WJET would cause objectionable interference to Stations WBNY, Buffalo, New York and WDOE, Dunkirk, New York, or any other existing standard broadcast stations, and if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether the instant proposal of WDOE would cause objectionable interference to Stations WBNY, Buffalo, New York and WJET, Erie, Pennsylvania, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the instant proposal of WBNY would cause objectionable interference to Stations WDOE, Dunkirk, New York and WJET, Erie, Pennsylvania, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

6. To determine whether the interference received by the proposal of Station WDOE from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

7. To determine whether the proposed operations of WJET and WBNY would be in contravention of § 3.188(d) of the Commission rules with particular regard to their proposals to operate with rooftop antennas and, if so, whether circumstances exist which would warrant a waiver of said section.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

It is further ordered, That The Jet Broadcasting Co., Inc., WBNY, Incorporated, and Lake Shore Broadcasting Company, Inc., licensees of Stations WJET, WBNY, and WDOE, respectively, are made parties to the proceeding as to their existing operations.

It is further ordered, That, in the event of a grant of either the WBNY or the WJET proposals, such grant(s) shall contain the condition that permittee shall accept such interference as may be imposed by other existing Class IV stations in the event they are subsequently authorized to increase power to 1000 watts.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11754; Filed, Dec. 19, 1960; 8:50 a.m.]

[Docket Nos. 13891-13895; FCC 60-1491]

JOHN LAURINO ET AL.

Order Designating Applications for Consolidating Hearing on Stated Issues

In re applications of: John Laurino, Waynesboro, Virginia, requests 970 kc, 500 w, Day, Docket No. 13891, File No. BP-13428; Radio Danville, Incorporated (WDTI), Danville, Virginia, has 970 kc, 500 w, Day, requests 970 kc, 1 kw, Day, Docket No. 13892, File No. BP-13618; Music Productions, Incorporated, Waynesboro, Virginia, requests 970 kc, 500 w, Day, Docket No. 13893, File No. BP-13714; James J. Williams, Waynesboro, Virginia, requests 970 kc, 500 w, Day, Docket No. 13894, File No. BP-13746; Samuel J. Cole and J. R. Mims, Sr., d/b as Blue Ridge Broadcasters, Luray, Virginia, requests 970 kc, 500 w, Day, Docket No. 13895, File No. BP-13753; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, the instant applicants are legally, technically, and otherwise qualified; that Radio Danville, Incorporated is financially qualified; but that, John Laurino, Music Productions, Incorporated, James J. Williams and Samuel J. Cole and J. R. Mims, Sr., d/b as, Blue Ridge Broadcasters may not be financially qualified to construct and operate their instant proposals; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated April 7, 1960, and incorporated herein by reference, notified the instant applicants and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues as hereinafter specified; and in which the applicants stated that they would appear at a hearing on the instant applications; and

It further appearing, that, by the above-mentioned letter of April 7, 1960, John Laurino was notified that it did not appear that he had the necessary financial ability to construct and operate his instant proposal and in addition, to supply the funds necessary to meet his partnership commitment in the application for Chester, Virginia, (BP-13752); that the said letter further requested information regarding a purported bank loan of $10,000 for use in the Chester application and whether or not this amount was included in his showing of cash and liquid assets available; that in his reply to this letter, Mr. Laurino filed an amendment to his proposal which showed only cash or identifiable liquid assets available in the amount of $16,800; listed $25,000 as the market value of bonds and securities, but failed to show that they were readily convertible to cash and failed to give any further information in regard to the $10,000 loan for the Chester proposal; and therefore, in light of the fact that Mr. Laurino failed to show that his $25,000 in bonds and securities were readily marketable, that a valid $10,000 loan commitment was outstanding with respect to the Chester proposal, and that the loan, if outstanding was not included in the $16,800 cash and liquid assets shown in the aforementioned amendment, it cannot be determined at this time that Mr. Laurino is financially qualified; and

It further appearing, that, Music Productions, Incorporated was notified by letter of April 7, 1960, that its deferred credit agreement was unacceptable as submitted and that its principal stockholder, Robert Rogers, failed to show current and liquid assets sufficient to meet his $30,000 loan commitment to the applicant; by amendment dated May 17, 1960, the instant applicant submitted a new deferred credit agreement showing a net credit of $12,450 and a purported balance sheet of Mr. Rogers which did not clearly set forth sufficient cash or liquid assets to meet his loan commitment to the applicant; that even if Mr. Rogers had demonstrated his ability to meet the loan commitment it could not presently be determined that the applicant is financially qualified, inasmuch as, the total cash which would then have been available to the applicant amounts to only $42,954 whereas Music Production's capital requirements to construct and operate its proposal for a reasonable period of time is approximately $44,500; and

It further appearing, that by the above-mentioned letter of April 7, 1960, James J. Williams was notified that his balance sheet failed to reveal sufficient cash or liquid assets to construct and operate, for a reasonable period of time, the instant proposal and his other proposal (BP-11148), which is presently in hearing; and that the said Mr. Williams has failed to file any additional information in response to the said Commission letter; and

It further appearing, that, the partnership of Samuel J. Cole and J. R. Mims, Sr., d/b as Blue Ridge Broadcasters was notified by the said letter of April 7, 1960, that they had not shown sufficient cash or liquid assets to construct and operate their proposal; that in reply to the said letter additional data was submitted which shows that Mr. Cole has sufficient cash or liquid assets to meet his 75 percent partnership commitment; but that the said reply failed to show that Mr. Mims had sufficient cash or liquid assets to meet his 25 percent partnership commitment; and

It further appearing, that, by the said letter of April 7, 1960, Music Productions, Incorporated was apprised that section 2, Article V of its bylaws provides that the President must be selected from among the directors, and since section II, Table I of the application form indicated that the President was not a director, an explanation was requested; that the applicant responded by amending its application thus making the President the fourth director; however, section 1, Article iii provides for a total of only three directors; and

It further appearing that by letter received April 29, 1960, Radio Danville, Incorporated (WDTI) informed the Commission that it would accept a grant conditioned upon acceptance of interference from whichever of the three Waynesboro applications that were granted; and that WDTI would not cause interference to the WPET proposal (BP-11742), however, no interference study was submitted; and therefore WPET, Inc. will be made a party to the instant proceeding with respect to its proposed operation; and

It further appearing that the Times-World Corporation (WDBJ), by letter received April 25, 1960, requested a hearing with regard to the WDTI application (BP-13618) on the ground that objectionable interference would be caused to its existing operation; and

It further appearing that the Commission is of the opinion that a hearing is necessary with regard to the WDTI application because of interference to Station WDBJ; and

It further appearing that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the above-captioned new proposals and the availability of other primary service to such areas and populations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WDTI and the availability of other primary service to such areas and populations.

3. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

4. To determine whether the instant proposal of Station WDTI would cause objectionable interference to Station WDBJ, Roanoke, Virginia and BP-11742 (WPET), Greensboro, North Carolina, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

5. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

6. To determine, in order to establish the financial qualifications of the applicant John Laurino, whether he has a bank loan of $10,000 for use in his Chester, Virginia proposal. In the event it is determined that such a loan is available to Mr. Laurino, whether it was excluded as part of his cash and liquid asset showing of $16,800 with respect to the instant proposal; and whether the bonds and other securities listed by Mr. Laurino with a market value of $25,000 are readily marketable.

7. To determine whether Music Productions, Incorporated, and James J. Williams are financially qualified to construct and operate their proposed stations.

8. To determine, in order to establish the financial qualifications of the partnership of Samuel J. Cole and J. R. Mims, Sr., d/b as Blue Ridge Broadcasters, whether J. R. Mims, Sr., d/b has sufficient cash or liquid assets to meet his 25 percent partnership commitment.

9. To determine whether the number of directors composing the Board of Directors of Music Productions, Inc., is in accordance with its bylaws.

10. To determine in the light of section 307(b) of the Communications Act of 1934, as amended, whether the proposal for Danville, Virginia or Luray, Virginia, or one of the proposals for Waynesboro, Virginia would best provide a fair, efficient and equitable distribution of radio service.

11. To determine, in the event it is concluded pursuant to the foregoing issue that one of the proposals for Waynesboro, Virginia, should be favored, which of the proposals of John Laurino, Music Productions, Inc., or James J. Williams would best serve the public interest, convenience and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant differences between the said applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed standard broadcast station.

(b) The proposal of each with respect to the management and operation of the proposed station.

(c) The programming services proposed in each of the said applications.

12. To determine, in the light of the evidence adduced pusuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That the Times-World Corp., Licensee of Station WDBJ, Roanoke, Virginia, is made a party to the proceeding with respect to its existing operation and that WPET, Inc. licensee of station WPET, Greensboro, North Carolina, is made a party with respect to its proposed operation (File No. BP-11742).

It is further ordered, That, to avail themselves of the opportunity to be heard, each of the instant applicants and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11755; Filed, Dec. 19, 1960; 8:50 a.m.]

[Docket Nos. 13848, 13849; FCC 60M-2033]

MARTIN THEATRES OF GEORGIA, INC. (W T V M) AND COLUMBUS BROADCASTING CO., INC. (WRBL-TV)

Order Scheduling Prehearing Conference

In re applications of Martin Theatres of Georgia, Inc. (WTVM), Columbus, Georgia, Docket No. 13848, File No. BMPCT-5490; Columbus Broadcasting Company, Inc. (WRBL-TV), Columbus, Georgia, Docket No. 13849, File No. BMPCT-5491, for modification of construction permits.

The Hearing Examiner having under consideration a joint motion for continuance filed November 23, 1960, on behalf of the above applicants requesting that the date of the evidentiary hearing be continued from December 20, 1960, to January 26, 1961, and that a prehearing conference be fixed for a date in the new year not later than January 9, 1961; and

It appearing that the reason for the requested continuance is the fact that both applicants are presently devoting their energies and attention to the problems being encountered in a change-over from prior facilities to operation on new authorized frequencies and the joint use of a single antenna supporting structure and that additional time will be needed to prepare for the hearing; and

It further appearing that all counsel involved, including counsel for the Broadcast Bureau, have consented to a grant of this motion and to a waiver of the provisions of § 1.43 of the Commission's rules in order to permit its immediate consideration and good cause for the requested extension having been shown;

It is ordered, This the 29th day of November 1960, that the joint motion for continuance is granted and the date of the evidentiary hearing is countinued from December 20, 1960, to January 26, 1961; and

It is further ordered, That a prehearing conference, pursuant to § 1.111 of the Commission's rules, will be held on Monday, January 9, 1961, beginning at 10:00 a.m. in the offices of the Commission, Washington, D.C.

Released: December 1, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11756; Filed, Dec. 19, 1960; 8:50 a.m.]

[Docket Nos. 13010 etc.; FCC 60M-2095]

MID-AMERICA BROADCASTING SYSTEM, INC., ET AL.

Order Continuing Hearing Conference

In re applications of Mid-America Broadcasting System, Inc., Highland Park, Illinois, Docket No. 13010, File No. BP-11689; et al., Docket Nos. 13014, 13016, 13017, 13018, 13019, 13020, 13021, 13022, 13023, 13024, 13025, 13026, 13027, 13028, 13029, 13030, 13031, 13032, 13033, 13034, 13035, 13036, 13037, 13038, 13039, 13040, 13041, 13042, 13043, 13044, 13045, 13046, 13047, 13048, 13049, 13050, 13051, 13052, 13053, 13058, 13060, 13061, 13641, 13642, 13643, 13644, 13645, 13646, 13647, 13648; for construction permits.

As will appear in the transcript, because of the snowstorm, *It is ordered*, This 13th day of December, 1960, that the further prehearing conference of group I scheduled for yesterday, is continued to Tuesday, December 20, 1960, 10 a.m., in the offices of the Commission, Washington, D.C.

Released: December 14, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11757; Filed, Dec. 19, 1960; 8:50 a.m.]

[Docket No. 13896; FCC 60-1492]

SAWNEE BROADCASTING CO.

Order Designating Application for Hearing on Stated Issues

In re application of John T. Pittard, tr/as Sawnee Broadcasting Company, Cumming, Georgia, requests 1410 kc, 1 kw, DA-D, Docket No. 13896, File No. BP-13268; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described application;

It appearing, that, except as indicated by the issues specified below, the instant applicant is legally, technically, financially, and otherwise qualified to construct and operate the instant proposal; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated October 25, 1960, and incorporated herein by reference, notified the applicant, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of the application would serve the public interest, convenience and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the applicant filed a timely reply to the aforementioned letter, which reply has not, however, entirely eliminated the grounds and reasons precluding a grant of the application and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing, that, after consideration of the foregoing and the applicant's reply, the Commission is still unable to make the statutory finding that a grant of the application would serve the public interest, convenience, and necessity; and is of the opinion that the application must be designated for hearing on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the subject proposal and the availability of other primary service to such areas and populations.

2. To determine whether interference received from Station WLAQ, Rome, Georgia, would affect more than ten percent of the population within the normally protected primary service area of the instant proposal in contravention of § 3.28(c)(3) of the Commission rules, and, if so, whether circumstances exist which would warrant a waiver of said Section.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That, to avail himself of the opportunity to be heard, the applicant herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11758; Filed, Dec. 19, 1960; 8:50 a.m.]

[Docket Nos. 13867-13869; FCC 60-1474]

SPENCER BROADCASTING CO. ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Spencer Broadcasting Company, Spencer, West Virginia, requests 1400 kc, 250 w, U, Docket No. 13867, File No. BP-12886; WSTV, Inc. (WBOY), Clarksburg, West Virginia, has 1400 kc, 250 w, U, requests 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13868, File No. BP-13116; Community Radio, Inc., Spencer, West Virginia, requests 1400 kc, 250 w, 1 kw-LS, U, Docket No. 13869, File No. BP-14102; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, each applicant herein is legally, technically, financially, and otherwise qualified to construct and operate its instant proposal; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated August 29, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing, that Spencer Broadcasting Company is financially qualified except for the fact that it has failed to furnish verified copies of its stock subscription agreements as required by section III, paragraph 4(c), of the application Form 301 and as requested by Commission letter of August 29, 1960; and

It further appearing, that after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to Section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine the areas and populations which would receive primary service from BP-12886 and BP-14102 and the availability of other primary service to such areas and populations.

(2) To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WBOY and the availability of other primary service to such areas and populations.

(3) To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

(4) To determine whether the instant proposals of Community Radio, Inc., and of Spencer Broadcasting Company would involve objectionable interference with Station WBOY, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

(5) To determine whether the instant proposal of WSTV, Inc. (Station WBOY) would involve objectionable interference with Stations WKWK and WJAC, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

(6) To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c)(3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said section.

(7) To determine whether Spencer Broadcasting Company is financially qualified to construct and operate its proposed station by reason of the fact that it has failed to submit verified copies of its stock subscription agreements as required by section III of FCC Form 301.

(8) To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, whether the proposal for Clarksburg, West Virginia or one of the proposals for Spencer, West Virginia would better provide a fair, efficient and equitable distribution of radio service.

(9) To determine, in the event it is concluded pursuant to the foregoing issue that one of the proposals for Spencer, West Virginia should be favored, which of the proposals of Spencer Broadcasting Company or Community Radio, Inc. would better serve the public interest, convenience and necessity in the light of the evidence adduced under the issues herein and the record made with respect to the significant differences between the said applicants as to:

(a) The background and experience of each having a bearing on the applicant's ability to own and operate the proposed standard broadcast station.

(b) The proposal of each with respect to the management and operation of the proposed station.

(c) The programming services proposed in each of the said applications.

(10) To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the instant applications should be granted.

It is further ordered, That WSTV, Inc., licensee of Station WBOY, Clarksburg, West Virginia, is made a party to the proceeding with respect to its existing operation.

It is further ordered, That Community Broadcasting, Inc., and WJAC, Incorporated, licensees of Stations WKWK, Wheeling, West Virginia and WJAC, Johnstown, Pennsylvania, respectively, are made parties to the proceeding.

It is further ordered, That, in the event of a grant of either the Clarksburg proposal or the proposal of Community Radio, Inc., or both, permittee(s) shall accept such interference as may be imposed by other existing Class IV stations in the event they are subsequently authorized to increase power to 1000 watts.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11759; Filed, Dec. 19, 1960; 8:51 a.m.]

[Docket No. 13414; FCC 60M-2099]

WDUL TELEVISION CORP. (WHYZ-TV)

Order Scheduling Hearing

In re application of WDUL Television Corp. (WHYZ-TV), Duluth, Minnesota, Docket No. 13414, File No. BMPCT-5375; for modification of construction permit.

It is ordered, This 13th day of December 1960, that, by agreement of all counsel, instead of a conference on December 22, 1960, as previously scheduled (Tr. 2231), a hearing session will be held.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11760; Filed, Dec. 19, 1960; 8:51 a.m.]

[Docket No. 13796 etc.; FCC 60M-2100]

WESTERN BROADCASTING CO. ET AL.

Order Continuing Hearing

In re application of David P. Pinkston and Leroy Elmore, d/b as Western Broadcasting Company, Odessa, Texas, Docket No. 13796, File No. BP-12329; W. J. Harpole, Canyon, Texas, Docket No. 13797, File No. BP-12335; R. L. McAlister, Odessa, Texas, Docket No. 13803, File No. BP-13058; for construction permits.

A prehearing conference in the above-entitled proceeding having been held on December 9, 1960, and it appearing that certain agreements were reached therein by the participating parties which properly should be formalized in an order;

It is ordered, This 13th day of December 1960, as follows:

(1) The direct cases of the applicants shall be presented by written, sworn exhibits;

(2) There will be a preliminary exchange of the proposed exhibits of the applicants (with copies to be supplied to Bureau counsel) on or before January 13, 1961.

(3) Each of the applicants shall exchange its proposed exhibits, in final form, with all other parties herein (and also supply copies to the Hearing Examiner) on or before January 27, 1961.

(4) Notification as to those witnesses for the applicants who are to be present for cross-examination at the hearing, shall be given by January 30, 1961; and

(5) The hearing heretofore scheduled to commence on January 11, 1961, is continued to February 1, 1961, at 10:00 a.m., in the offices of the Commission, Washington, D.C.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11761; Filed, Dec. 19, 1960; 8:51 a.m.]

[Docket Nos. 13861-13862; FCC 60M-2098]

ALERT

Order Scheduling Prehearing Conference

In re applications of Gordon Evans, d/b as Alert, 1145 Bishop Street, Honolulu, Hawaii, for construction permit to establish a one-way signaling common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA218), Docket No. 13861, File No. 2796-C2-P-60; for construction permit to establish a new two-way common carrier station in the Domestic Public Land Mobile Radio Service in Honolulu, Hawaii (KUA219), Docket No. 13862, File No. 2797-C2-P-60.

On the Hearing Examiner's own motion: *It is ordered*, This 13th day of December 1960, pursuant to 47 CFR 1.111 that the parties or their counsel in the above-entitled proceeding are directed to appear for a prehearing conference at the offices of the Commission, Washington, D.C., at 2:00 p.m. on December 22, 1960.

In order to conserve time counsel are requested to confer beforehand with a view to reaching advance agreement upon such routine details as the manner of presentation, dates for exchange of exhibits and such other dates as may be deemed necessary. In view of the design of the prehearing conference procedure to encourage the formulation of agreements by the parties looking towards the elimination of unessentials, so that hearing may proceed with proper dispatch, it is requested that the parties

[1] Commissioner King dissenting.

or their counsel attend this conference prepared fully to discuss—and to agree upon—such matters as will conduce materially to the attainment of this objective.

Released: December 14, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11742; Filed, Dec. 19, 1960; 8:48 a.m.]

[Docket No. 13877; FCC 60-1482]

AUBURN BROADCASTING CO., INC. (WAUD)

Order Designating Application for Hearing on Stated Issues

In re application of Auburn Broadcasting Company, Incorporated (WAUD), Auburn, Alabama, Docket No. 13877, File No. BP-13077; Has: 1230 kc, 250 w, U, Requests: 1230 kc, 250 w, 1 kw-LS, U, for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described application;

It appearing, that, except as indicated by the issues specified below, the instant applicant is legally, technically, financially, and otherwise qualified to construct and operate the instant proposal; and

It further appearing that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated September 1, 1960, and incorporated herein by reference, notified the applicant, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of the application would serve the public interest, convenience and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing that the applicant filed a timely reply to the aforementioned letter, which reply has not, however, entirely eliminated the grounds and reasons precluding a grant of the application and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing, that, in data filed May 13, 1959, applicant in the instant proposal indicates that a mutual agreement exists to accept interference that may result from a grant of the instant proposal and the proposal of WLAG, Lagrange, Georgia (File No. BP-12244), both requesting power increases for Class IV stations; and that, in view thereof, the WLAG proposal is not further considered herein; and

It further appearing, that, the instant applicant has not indicated the extent of interference that would be caused to the existing operation of WNUZ, Talladega, Alabama by the instant proposal; that a study indicates that substantial interference may be caused to WNUZ; and that WNUZ is a Class IV station, but has no application on file for an increase in power; and that by letter dated September 13, 1960, WNUZ stated that they would appear in hearing with regard to the instant proposal; and

It further appearing, that, after consideration of the foregoing and the applicant's reply, the Commission is still unable to make the statutory finding that a grant of the application would serve the public interest, convenience, and necessity; and is of the opinion that the application must be designated for hearing on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WAUD and the availability of other primary service to such areas and populations.

2. To determine whether the instant proposal of Station WAUD would involve objectionable interference with Station WNUZ, Talladega, Alabama, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That Radio Alabama, Incorporated, licensee of Station WNUZ, is made a party to the proceeding.

It is further ordered, That, in the event of a grant of the instant proposal, such grant shall contain a condition that the permittee shall accept such interference that may be imposed upon it by other existing Class IV stations in the event that they are subsequently authorized to increase power to 1000 watts; and

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicant and party respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11743; Filed, Dec. 19, 1960; 8:49 a.m.]

[Docket Nos. 13887-13890; FCC 60-1490]

CAPITOL BROADCASTING CORP., INC. (WKXL) ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Capitol Broadcasting Corporation, Inc. (WKXL), Concord, New Hampshire, Docket No. 13887, File No. BP-12712, Has: 1450 kc, 250 w, U, Requests: 1450 kc, 250 w, 1 kw-LS, U; Tri-State Area Broadcasting Corporation (WTSA), Brattleboro, Vermont, Docket No. 13888, File No. BP-13126, Has: 1450 kc, 250 w, U, Requests: 1450 kc, 250 w, 1 kw-LS, U; WMAS, Incorporated (WMAS), Springfield, Massachusetts, Docket No. 13889, File No. BP-13264, Has: 1450 kc, 250 w, U, Requests: 1450 kc, 250 w, 1 kw-LS, U; Normandy Broadcasting Corporation (WWSC), Glens Falls, New York, Docket No. 13890, File No. BP-13274; Has: 1450 kc, 250 w, U, Requests: 1450 kc, 250 w, 1 kw-LS, U; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, the instant applicants are legally, technically, financially, and otherwise qualified to construct and operate their instant proposals; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated May 24, 1960, and incorporated herein by reference, notified the instant applicants, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing, that, by the above-mentioned letter of the Commission, applicants in BP-13237 (WKAL), Rome, New York, and BP-13274, (WWSC), Glens Falls, New York, were notified that mutual interference would be involved between their proposed operations; that applicant in BP-13237 requested dismissal of its application by letter dated June 13, 1960, and indicated that interference would be caused to the existing operation of WKAL by BP-13274 and therefore requested to be made a party respondent with respect to the WWSC proposal; that the WKAL proposal was dismissed June 15, 1960; that staff study indicates that no interference should be caused to WKAL by the WWSC proposal; therefore WKAL is not to be a party respondent herein; and

It further appearing, that, by the above-mentioned letter of the Commission, applicants in BP-12512, WWRI, West Warwick, Rhode Island, and BP-13264, WMAS, Springfield, Massachusetts, were notified that mutual interference would result from their proposed operations; that by letter dated September 12, 1960, WMAS and WWRI have agreed to accept any mutual interference which may result in the event of favorable action by the Commission upon their respective applications, and that the WWRI proposal was granted September 5, 1960 subject to the condition, inter alia, that it accept interference from WMAS, and that, therefore, the WWRI proposal was not consolidated herein; and

It further appearing, that, after consideration of the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operations of the instant applicants and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the following proposals would involve objectionable interference with the existing stations indicated below, or any other existing standard broadcast stations, and if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations:

Proposal and Existing Stations

BP-12712	WTSA, Brattleboro, Vt. 1450 kc, 250 w, U, Class IV.
BP-13126	WMAS, Springfield, Mass. 1450 kc, 250 w, U, Class I. WWSC, Glens Falls, N.Y. 1450 kc, 250 w, U, Class IV. WKXL, Concord, N.H. 1450 kc, 250 w, U, Class IV.
BP-13264	WNAB, Bridgeport, Conn. 1450 kc, 250 w, U, Class IV. WKIP, Poughkeepsie, N.Y. 1450 kc, 250 w, U, Class IV. WTSA, Brattleboro, Vt. 1450 kc, 250 w, U, Class IV.
BP-13274	WTSA, Brattleboro, Vt. 1450 kc, 250 w, U, Class IV.

4. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28(c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said Section.

5. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the instant applications should be granted.

It is further ordered, That, Capitol Broadcasting Corporation, Inc., Tri-State Area Broadcasting Corporation, WMAS, Inc., Normandy Broadcasting Corporation, Dutchess County Broadcasting Corporation, and WNAB, Inc., licensees of Stations WKXL, WTSA, WMAS, WWSC, WKIP, and WNAB, respectively, are made parties to the proceeding with respect to their existing operations.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11744; Filed, Dec. 19, 1960; 8:49 a.m.]

[Docket No. 13878; FCC 60-1483]

CHEROKEE COUNTY RADIO STATION

Order Designating Application for Hearing on Stated Issues

In re application of Mac M. Thomas and Ruby Jo Clotfelter d/b as Cherokee County Radio Station, Centre, Alabama, docket No. 13878, file No. BP-13084; requests: 980 kc, 250 w, Day, for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described application;

It appearing, that, except as indicated by the issues specified below, the instant applicant is legally, technically, financially, and otherwise qualified to construct and operate the instant proposal; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated August 12, 1960, and incorporated herein by reference, notified the applicant, and any other known parties in interest, of the grounds and reasons for the Commission's inability to make a finding that a grant of the application would serve the public interest, convenience and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the applicant filed a timely reply to the aforementioned letter, which reply has not, however, entirely eliminated the grounds and reasons precluding a grant of the application and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing, that, by amendment filed October 10, 1960, the instant applicant has indicated that the interference to its proposal would be excessive with respect to the provisions of § 3.28 (c) of the Commission's rules and has requested waiver of this section of the rules in support of which it was stated that the city of Centre, Alabama, would thus have its first radio station, however, no data has been submitted to show the extent of such interference; and

It further appearing, that, after consideration of the foregoing and the applicant's reply, the Commission is still unable to make the statutory finding that a grant of the application would serve the public interest, convenience, and necessity; and is of the opinion that the application must be designated for hearing on the issues specified below.

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant application is designated for hearing, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the areas and populations which would receive primary service from the instant proposal and the availability of other primary service to such areas and populations.

(2) To determine whether interference received from WNOX, Knoxville, Tennessee, would affect more than ten percent of the population within the normally protected primary service area of the instant proposal of the applicant herein, in contravention of § 3.28(c) (3) of the Commission rules, and, if so,

whether circumstances exist which would warrant a waiver of said section.

(3) To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the instant application would serve the public interest, convenience and necessity.

It is further ordered, That, to avail itself of the opportunity to be heard, the instant applicant, pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11745; Filed, Dec. 19, 1960; 8:49 a.m.]

[Docket Nos. 12710, 12748; FCC 60M-2093]

COMMODITY NEWS SERVICES, INC., ET AL.

Order Continuing Hearing Conference

In the matter of Commodity News Services, Inc., Complainant, v. the Western Union Telegraph Company, Defendant, Docket No. 12710, in the matter of the Board of Trade of the City of Chicago, Complainant, v. the Western Union Telegraph Company, Defendant, Docket No. 12748.

It is ordered, This 13th day of December 1960, that the prehearing conference in the above-entitled matter now scheduled for December 14, 1960 be and it hereby is postponed to a date to be subsequently announced by order.

Released: December 14, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11746; Filed, Dec. 19, 1960; 8:49 a.m.]

[Docket Nos. 13865-13866; FCC 60-1472]

ARTHUR A. DETERS AND COLLEGE RADIO

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Arthur A. Deters, Greenfield, Massachusetts, Docket No. 13865, File No. BP-13046, requests 1430 kc, 500 w, Day; Augustine L. Cavallaro, Jr., tr/as College Radio, Amherst, Massachusetts, Docket No. 13866, File No. BP-14179, requests 1430 kc, 5 kw, DA, Day; for construction permits.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 7th day of December 1960;

The Commission having under consideration the above-captioned and described applications;

It appearing, that, except as indicated by the issues specified below, each of the instant applicants is legally, technically, and otherwise qualified to construct and operate its instant proposal; that Augustine L. Cavallaro, Jr., is financially qualified; and that Arthur A. Deters, the applicant in BP-13046 may not be financially qualified; and

It further appearing, that the application of Augustine L. Cavallaro, Jr. (BP-14179) was not timely filed with respect to the proposal of WMAS, Incorporated (BP-13264); that interference would result to the Cavallaro proposal from the simultaneous operation of the proposals but that, for the foregoing reasons, WMAS, Incorporated, is not made a party respondent herein;

It further appearing, that, Arthur A. Deters has not indicated that securities to be employed in financing the proposed station are listed on major exchanges, and that the terms of payment for mortgages and collateral loans have not been shown; and

It further appearing, that Augustine L. Cavallaro, Jr., has submitted measurement data purporting to show that no interference should exist between the Amherst proposal and station WHIL, Medford, Massachusetts, but that a question still obtains as to whether interference will be involved with WHIL; that WHIL has requested to be made a party to any hearing on the Amherst proposal, and that in view thereof WHIL is made a party respondent herein; and

It further appearing, that, pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission, in a letter dated September 1, 1960, and incorporated herein by reference, notified the instant applicant, and any other known parties in interest, to the grounds and reasons for the Commission's inability to make a finding that a grant of any one of the applications would serve the public interest, convenience, and necessity; and that a copy of the aforementioned letter is available for public inspection at the Commission's offices; and

It further appearing, that the instant applicants filed timely replies to the aforementioned letter, which replies have not, however, entirely eliminated the grounds and reasons precluding a grant of the said applications and requiring an evidentiary hearing on the particular issues hereinafter specified; and

It further appearing, that after consideration to the foregoing and the applicants' replies, the Commission is still unable to make the statutory finding that a grant of the applications would serve the public interest, convenience, and necessity; and is of the opinion that the applications must be designated for hearing in a consolidated proceeding on the issues specified below;

It is ordered, That, pursuant to section 309(b) of the Communications Act of 1934, as amended, the instant applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and population which would receive primary service from the proposals of Arthur A. Deters and Augustine L. Cavallaro, Jr., and the availability of other primary service to such areas and populations.

2. To determine the nature and extent of the interference, if any, that each of the instant proposals would cause to and receive from each other and all other existing standard broadcast stations, the areas and populations affected thereby, and the availability of other primary service to the areas and populations affected by interference from any of the instant proposals.

3. To determine whether the instant proposal of Augustine L. Cavallaro, Jr., would involve objectionable interference with Station WHIL, Medford, Massachusetts, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

4. To determine whether the interference received by each instant proposal from any of the other proposals herein and any existing stations would affect more than ten percent of the population within its normally protected primary service area in contravention of § 3.28 (c) (3) of the Commission rules and, if so, whether circumstances exist which would warrant a waiver of said Section.

5. To determine whether Arthur A. Deters, the applicant in BP-13046 is financially qualified to construct and operate his proposed stations.

6. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the instant proposals would better provide a fair, efficient, and equitable distribution of radio service.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues which if either of the instant applications should be granted.

It is further ordered, That Conant Broadcasting Company, Inc., licensee of Station WHIL, Medford, Massachusetts, is made a party to the proceeding;

It is further ordered, That, in the event of a grant of the application of Arthur A. Deters, BP-13046, the permittee shall be responsible for the installation and adjustment of suitable filter circuits or other equipment which may be necessary to prevent objectionable re-radiation or cross-modulation with Station WHAI, Greenfield, Massachusetts.

It is further ordered, That, to avail themselves of the opportunity to be heard, each of the instant applicants and Conant Broadcasting Company, Inc., pursuant to § 1.140 of the Commission rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That, the issues in the above-captioned proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding, and upon sufficient allegations of fact in support thereof, by the addition of the following issue: To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11747; Filed, Dec. 19, 1960; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 15, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36776: *Soda ash from Louisiana and Texas to Tennessee points.* Filed by Southwestern Freight Bureau, Agent (No. B-7937), for interested rail carriers. Rates on soda ash (other than modified soda ash), in bulk or in bulk in bags, barrels, boxes or pails, in carloads, from Lake Charles and West Lake Charles, La., also Corpus Christi and Freeport, Tex., to Capleville, Forsythe and Memphis, Tenn.

Grounds for relief: Market competition.

Tariff: Supplements 483 and 22 to Southwestern Freight Bureau tariffs I.C.C. 4087 and 4370, respectively.

By the Commission.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60-11729; Filed, Dec. 19, 1960; 8:47 a.m.]

[Notice 424]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 15, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63708. By order of December 9, 1960, the Transfer Board approved the transfer to Harry Earl Newlon, Jr., doing business as Newlon's Transfer, 3251 North Washington Boulevard, Arlington, Va., of the operating rights authorized to Richard E. Smith, doing business as Curles Movers, 717 Munsey Building, Baltimore, Md., in Certificate No. MC 45663, authorizing the transportation, over irregular routes, of household goods, between Washington, D.C., Annapolis, Md., and points in Maryland and Virginia within 30 miles of Washington, D.C., between Washington, D.C., Annapolis, Md., and points in Maryland and Virginia within 20 miles of Washington, D.C., on the one hand, and, on the other, points in Connecticut, Delaware, Florida, Georgia, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and West Virginia, between Washington, D.C., on the one hand, and, on the other, points in Illinois and Kentucky, between Annapolis, Md., Washington, D.C., and points within 20 miles of Washington, D.C., on the one hand, and, on the other, points in Ohio, and between Washington, D.C., on the one hand, and, on the other, points in Maryland and Virginia within 125 miles of Washington, D.C.

No. MC-FC 63757. By order of December 9, 1960, the Transfer Board approved the transfer to Dan Kusic Trucking Co., Weirton, W. Va., of Permit No. MC 1239, issued June 21, 1949, to Daniel Kusic, doing business as Dan Kusic Trucking Company, Weirton, W. Va., authorizing the transportation of: Iron and steel products, from Weirton, W. Va., to points in Ohio, Pennsylvania and New York. Herbert Baker, 50 West Broad Street, Columbus 15, Ohio, for applicants.

No. MC-FC 63775. By order of December 9, 1960, the Transfer Board approved the transfer to Ivan W. Werner and William R. Douglas, doing business as Pawnee City Transfer, Pawnee City, Nebraska, of Certificate No. MC 99464 Sub 2, issued January 5, 1959, in the name of Henry G. Frear, doing business as Pawnee Transfer, Humbolt, Nebraska, authorizing the transportation of general commodities, excluding household goods, commodities in bulk, and various specified commodities, over regular routes, between Pawnee City, Nebr., and Lincoln, Nebr., serving all intermediate points and the off-route points of DuBois, Steinauer, and Humbolt, Nebr.; between Pawnee City, Nebr., and Omaha, Nebr., serving all intermediate points and the off-route point of Steinauer, Nebr.; between Pawnee City, Nebr., and Omaha, Nebr., serving the intermediate point of Humbolt, Nebr. J. Max Harding, IBM Building, 605 South 12th Street, P.O. Box 2041, Lincoln 8, Nebr., for applicants.

No. MC-FC 63780. By order of December 7, 1960, the Transfer Board approved the transfer to McKinlay Transport Limited, Toronto, Ontario, Canada, of that portion of the operating rights authorized to The E. W. Lancaster Company Limited, Ontario, Canada, in Certificate No. MC 286, issued December 16, 1940, authorizing the transportation, over irregular routes, of general commodities, excluding household goods, commodities in bulk, and other specified commodities, between the boundary of the United States and Canada at Detroit, Mich., on the one hand, and, on the other, Detroit, Mich., and points in Michigan within 8 miles of Detroit, and the entire operating rights authorized in Certificates Nos. MC 286 Sub 4 and MC 286 Sub 5, issued November 17, 1955, and December 5, 1960, respectively, authorizing the transportation, over irregular routes, of general commodities, excluding household goods, commodities in bulk, and other specified commodities, between the United States-Canada International Boundary Line at Detroit, Mich., on the one hand, and, on the other, Gibraltar, Mich., and service to the site of the plant of the Kelsey-Hayes Company, located at the intersection of North Line Road and Huron River Drive, Romulus Township, Wayne County, Mich., as an off-route point in connection with authorized operations to and from Detroit.

No. MC-FC 63792. By order of December 7, 1960, the Transfer Board approved the transfer to Fisher-Gilder and Bord Motor Express, Inc., Youngstown, Ohio, of Certificate in No. MC 14288, issued May 22, 1941, to The Fisher-Gilder Cartage & Storage Company, a corporation, Youngstown, Ohio, authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between points in Ohio, on the one hand, and, on the other, points in Pennsylvania and West Virginia; household goods, over irregular routes, between points in Ohio, on the one hand, and, on the other, points in Illinois, Indiana, Michigan, New Jersey, New York, Ohio, Pennsylvania, West Virginia, and the District of Columbia. James H. Nacey, Society National Bank Building, Cleveland 14, Ohio, for applicants.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60-11730; Filed, Dec. 19, 1960; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 10997]

HAWAIIAN COMMON FARES CASE

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on January 17, 1961, at 10:00 a.m., Hawaiian standard time, Senate Chambers, Iolani Palace, Honolulu, Hawaii, before Chief Examiner Francis W. Brown.

Dated at Washington, D.C., December 15, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11740; Filed, Dec. 19, 1960; 8:48 a.m.]

[Dockets 11622, 11624]

INTERCONTINENTAL U.S., INC.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-numbered dockets is assigned to be held on January 9, 1961, at 10:00 a.m., e.s.t., Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Paul N. Pfeiffer.

Dated at Washington, D.C., December 15, 1960.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F.R. Doc. 60-11741; Filed, Dec. 19, 1960; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3926]

MISSISSIPPI POWER & LIGHT CO.

Notice of Filing of Application-Declaration Regarding Exchange of Utility Assets With Nonaffiliate

DECEMBER 13, 1960.

Notice is hereby given that Mississippi Power & Light Company ("Mississippi"), a public-utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed with this Commission an application-declaration, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), regarding a proposal to exchange certain utility assets with North Central Mississippi Electric Power Association ("North Central"), a nonaffiliated Rural Electrification Administration financed cooperative; and has designated sections 9 and 12(d) of the Act and Rule 44 promulgated thereunder as applicable to the proposed transactions.

All interested persons are referred to the declaration on file at the office of the Commission for a statement of the proposed transactions, which are summarized as follows:

Mississippi proposes to transfer to North Central all of Mississippi's electric distribution facilities and two office buildings located in Marshall County and in approximately 105 sq. miles of an adjacent area in the eastern part of De Soto County, Mississippi. The property consists of (a) approximately 323 miles of distribution system having an estimated original cost of $992,000, serving 2,599 customers, and with annual revenue of about $300,000, (b) one 44 Kv substation having an original cost of $43,000, and (c) two office buildings located in the towns of Byhalia and Olive Branch, Mississippi, having an original cost of $83,000. In exchange and as consideration for such property, North Central will transfer to Mississippi (1) 289 miles of distribution system, having an estimated original cost of $550,000, serving approximately 950 customers, and with annual revenue of approximately $66,000 (computed at Mississippi's rates), located in the western part of De Soto County and in Tate County, Mississippi, and (2) an office building located in Coldwater, Mississippi, having an estimated original cost of $16,000; and in addition North Central will pay Mississippi approximately $820,000 in cash.

It is stated that both Mississippi and North Central now serve parts of the areas, that their facilities in part parallel or duplicate each other in said areas, and that the proposed exchange of utility assets is for the purpose of delineating the respective service areas to permit one or the other party to serve the entire area, as reallocated, and to avoid the duplication of the service facilities therein.

The application-declaration further states that the Mississippi Public Service Commission has jurisdiction with respect to the proposed transactions in connection with the petition for a certificate of public convenience and necessity, that appropriate applications have been made to that Commission, and that no other State or Federal commission, except this Commission, has jurisdiction over such transactions.

It is represented that the accounting entries by Mississippi with respect to the proposed acquisition and disposition will be made in accordance with and subject to the requirements of the Uniform System of Accounts of the Federal Power Commission, which system of accounts requires that within six months from the date of acquisition or disposition of properties the proposed journal entries giving effect to the transactions and reflecting the original cost of the properties must be submitted to that Commission for approval.

The fees and expenses to be incurred by Mississippi in connection with the proposed transactions are estimated at $5,500, consisting of Mississippi counsel fees of $2,500, New York counsel fees of $2,000, and miscellaneous expenses of $1,000.

Notice is further given that any interested person may not later than December 28, 1960, request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law which he seeks to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date the Commission may grant the application and permit the declaration to become effective, as filed or as it may be amended, pursuant to the provisions of Rule 23 promulgated under the Act; or the Commission may grant exemption from its rules and regulations, as provided by Rules 20(a) and 100 thereof, or take such other action as it deems appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R Doc. 60-11734; Filed, Dec. 19, 1960; 8:48 a.m.]

[File No. 812-1326]

NATIONAL INVESTORS CORP.

Notice of Filing of Application Under Section 6(c) for Order Exempting From Section 22(d) Sale by Open-End Company of Its Shares at Other Than the Public Offering Price in Exchange for Assets of Private Investment Company

DECEMBER 13, 1960.

Notice is hereby given that National Investors Corporation ("National"), a registered open-end investment company, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting from the provisions of section 22(d) of the Act the proposed issuance of its shares at net asset value for substantially all of the cash and securities of The Andrew-Lawrence Corporation ("Andrew").

Shares of National, a Maryland corporation, are offered to the public on a continuous basis at net asset value plus varying sales charges dependent on the amount purchased. As of September 27, 1960, the net assets of National amounted to $156,591,122.

Andrew, a New Jersey corporation, is a personal holding company with two stockholders which engages in the business of investing and reinvesting its funds since 1956 and prior to that date engaged in the manufacture and sale of painters' cutlery. Andrew is exempt from registration under the Act by reason of the provisions of section 3(c)(1) thereof. Pursuant to an agreement between National and Andrew, substantially all of the cash and securities of Andrew, with a total value of $520,266 as of September 27, 1960, will be transfered to National in exchange for shares of stock of National. The shares acquired by Andrew are to be distributed immediately to its shareholders, who intend to take such shares for investment with no present intention of distribution or redemption. The number of shares of National to be delivered to Andrew will be determined by dividing the net asset value per share of National in effect at the closing time into the value of the Andrew assets to be exchanged (with certain adjustments as set forth below).

Since the exchange will be tax free for Andrew and its shareholders, National's cost basis for tax purposes on the assets acquired from Andrew will be the same as for Andrew, rather than the price actually paid by National for the assets. Of the assets to be acquired from Andrew, National intends to retain in its portfolio, subject to changes in investment conditions and considerations, securities having a value as of September 27, 1960, of $224,750, including unrealized appreciation of $203,767. National also will acquire from Andrew cash or cash items in the amount of $123,732 as of September 27, 1960. Other securities to be acquired from Andrew will be sold by National after acquisition. As of September 27, 1960, the market value of these securities was $171,784 and the unrealized capital gain thereon was $32,378. As of September 27, 1960, National had unrealized appreciation of $55,713,102 and undistributed realized gains of $4,415,152, of which approximately $185,079 and $14,667, respectively, would have become applicable to the shares of National issued to Andrew if the proposed acquisition of Andrew's assets had occurred on this date.

Because National will acquire securities from Andrew at a tax-cost basis less than the price actually paid therefor, their sale after acquisition will result in artificial capital gains and consequent tax liability thereon to the present shareholders of National and with respect to the assets of Andrew that National will retain there will result a potential tax liability to the present shareholders of National by reason of an increase in the net unrealized appreciation applicable to their shares. An adjustment, which takes into account the tax consequences of the exchange, is to be made in the value of the Andrew assets in accordance with the following formula:

(1) In respect of the securities of Andrew that National presently intends to sell and the resulting artificial capital gain thereon, there shall be determined the difference between net unrealized taxable capital gain on said securities and the portion of the realized but undistributed taxable long-term capital gain of National allocable to the aggregate shares of National to be issued to Andrew.

(2) In respect of the securities of Andrew that National presently intends to hold following acquisition, there shall be determined the difference between net unrealized taxable capital gain on said securities and the portion of National's unrealized appreciation applicable to the aggregate shares of National to be issued to Andrew determined on a pro forma basis giving effect to the acquisition of the assets of Andrew.

(3) The amount computed under (1) shall be increased by the amount, if positive, or decreased by 50 percent of the amount, if negative, computed under (2), and 12½ percent of the resulting amount ($37,048 as of September 27, 1960), which is the adjustment for excess unrealized appreciation of Andrew shall be applied to reduce the value of the assets of Andrew to be acquired. If the valuation under the agreement had taken place on September 27, 1960, the adjustment to the market value of the assets of Andrew to be acquired would have amounted to $4,631.

The rate of 12½ percent applied to the excess unrealized appreciation of Andrew is used as an estimated measure of the average tax rate payable on capital gains by National shareholders.

Applicant points out that the proposed acquisition is in the best interests of its shareholders because the resulting increase in its assets will tend to reduce per share expenses, since it is furnished investment research and administrative facilities and services at cost.

The application recites that the terms of the entire transaction were arrived at through arm's length bargaining between National and Andrew. The application further states that there is no affiliation or relationship of any kind between the officers and directors of National and the officers, directors, and stockholders of Andrew.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current offering price described in the prospectus, with certain exceptions not applicable here. Under the terms of the Agreement, however, the shares of National are to be issued to Andrew at a price other than the public offering price stated in the prospectus, which lists a sales charge of 1.8 percent for sales of $500,000 or over.

Section 6(c) of the Act authorizes the Commission by order upon application to exempt, conditionally or unconditionally, any transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 27, 1960 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11735; Filed, Dec. 19, 1960; 8:48 a.m.]

[File No. 70-3922]

PENNSYLVANIA POWER CO.

Notice of Proposed Issuance of $878,000 Principal Amount of First Mortgage Bond for Sinking Fund Purpose

DECEMBER 13, 1960.

Notice is hereby given that Pennsylvania Power Company ("Pennsylvania"), a public-utility subsidiary of Ohio Edison Company, a registered holding company, has filed with this Commission a declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act as applicable to the proposed transactions.

All interested persons are referred to the declaration on file at the office of the Commission for a statement of the transactions therein proposed which are summarized as follows:

In connection with satisfying the sinking fund requirements of its indenture, Pennsylvania will issue $878,000 principal amount of its First Mortgage Bonds, 3¼ percent Series due 1982, under its Mortgage Indenture dated November 1, 1945, as amended and supplemented, to The First National City Bank of New York, as trustee ("Trustee"). The bonds will be authenticated by the Trustee and delivered to Pennsylvania on the basis of unfunded net property additions and will be surrendered to the Trustee for cancellation in consideration of the return by the Trustee to Pennsylvania, from the mortgage sinking fund, of a like amount of cash under the sinking fund provisions of the mortgage, in 1960, 1961, and 1962.

Pennsylvania proposes to include the released cash in its general funds in partial reimbursement for moneys expended for new construction.

The fees, commissions and expenses incident to the proposed issuance of bonds are estimated at $2,050 of which $1,500 is to be paid to the Trustee.

It is stated that the proposed issue and use of the bonds is subject to the jurisdiction of the Pennsylvania Public Utility Commission and that such Commission's order is to be supplied by amendment; and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 28, 1960, request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date the declaration; as filed or as it may be hereafter amended, may be permitted to become effective as provided in Rule 23 of the rules and regulations promulgated under the Act; or the Commission may exempt such transactions as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate under the circumstances.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11736; Filed, Dec. 19, 1960; 8:48 a.m.]

[File No. 812-1358]

VIRGINIA CAPITAL CORP.

Notice of Filing of Application Regarding Investment Arrangement by Registered Company and Affiliates

DECEMBER 13, 1960.

Notice is hereby given that Virginia Capital Corporation ("Virginia Capital"), a Virginia corporation, and a closed-end, non-diversified investment company registered under the Investment Company Act of 1940 ("Act") which company is also a small business investment company licensed as such under the Small Business Investment Act of 1958 ("SBIA") has filed an application pursuant to section 17(d) of the Act and Rule 17d-1 of the general rules and regulations thereunder ("Rules") for an order granting said application in respect of a proposed arrangement for the purchase of securities by Virginia Capital on a basis which will not be different from or less advantageous than that of certain affiliated persons of Virginia Capital who will also purchase some of such securities.

The application states that Virginia Capital plans to purchase from E. G. G. Co. Inc. (whose name is to be changed to include the word "Newcomb" and which is hereinafter referred to as Newcomb), approximately $200,000 principal amount, out of a total issue of $300,000, of Newcomb 8 percent Subordinate Notes with attached warrants for the purchase of Newcomb stock ("Notes") at the price of 100 percent of principal amount. Certain persons affiliated with Virginia Capital, including Robert H. Pratt, its president, Arthur S. Brinkley, Jr., its vice-president and treasurer, W. Gibson Harris, its Secretary and General Counsel (all of whom are members of Virginia Capital's executive committee), Robert Haskins, a director, and Dover Corporation ("Dover"), which owns about 19 percent of the outstanding common stock of Virginia Capital, may purchase up to 100 percent of the approximately $100,000 balance of said $300,000 issue of Notes at 100 percent of principal amount. The application also states that all purchases of Notes by affiliates of Virginia Capital will be on a basis which shall not be different from or more advantageous to the purchaser than that on which Virginia Capital will purchase the Notes.

Newcomb, which has not commenced doing business, was organized by Lawrence L. Roberts, Jr. and Edward G. Green, for the purpose of acquiring all of the outstanding capital stock of James F. Newcomb Company, Inc. ("Old Newcomb"), a commercial printing company whose plant is located in New York City. Messrs. Roberts and Green will each acquire 50 percent of the common stock of Newcomb to be outstanding initially. The application states that Mr. Green is a brother-in-law of Robert H. Pratt, president of Virginia Capital; that Pratt has no financial interest, direct or indirect, in Newcomb; and that neither Green nor Roberts has any financial interest, direct or indirect, in Virginia Capital. On the basis of the foregoing representations, neither Green nor Roberts is an affiliate of Virginia Capital.

The application states that the plan for financing the acquisition by Newcomb of the stock of Old Newcomb was formulated by Eastman-Dillon, Union Securities & Co. ("Eastman-Dillon"), and that Eastman-Dillon brought the proposal for the sale of Notes to the attention of J. C. Wheat & Co. before Mr. Pratt was connected with Virginia Capital. The partners of J. C. Wheat own a large proportion of the stock of Dover, and Mr. James C. Wheat, Jr., the senior partner of J. C. Wheat & Co., is chairman of the board of directors of Virginia Capital and a member of its executive committee and is also president and a director of Dover Corporation and the owner of 20.3 percent of its common stock.

The application states that J. C. Wheat & Co. brought the proposal regarding the Notes to the attention of Virginia Capital entirely independent of Mr. Pratt's connection with the latter company.

J. C. Wheat & Co. will receive from Eastman-Dillon a 3 percent commission for its services in placing that part of the $300,000 principal amount of Notes which will not be purchased by Virginia Capital. The application states that J. C. Wheat will not receive any commission with respect to the Notes purchased by Virginia Capital.

The application states that pursuant to the provisions of the SBIA, Virginia Capital, as a small business investment company, is prohibited from investing in any one small business concern an amount which is more than 20 percent of Virginia Capital's combined capital and surplus unless prior approval is obtained from the Small Business Administration; that a $200,000 investment will be about 21.7 percent of its combined capital and surplus, and that the necessary approval to the purchase of $200,000 principal amount of Notes has been obtained from the Small Business Administration.

The application does not indicate that any affiliate of Virginia Capital will participate in the business of Newcomb, or in financing of Newcomb except as stated above.

Section 17(d) of the Act and Rule 17d-1 taken together provide, among other things, that it shall be unlawful, with certain exceptions not applicable here, for an affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, to participate in, or effect any transaction in connection with any joint arrangement in which any such registered company is a participant unless an application regarding such arrangement has been granted by the Commission, and that, in passing upon such an application, the Commission will consider whether the participation of such registered company in such arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Since affiliated persons of Virginia Capital will participate in the financing of Newcomb in the manner noted above, the arrangement is subject to the provisions of section 17(d) and Rule 17d-1.

Notice is further given that any interested person may, not later than December 22, 1960, at 5:30 p.m., e.s.t., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11737; Filed, Dec. 19, 1960; 8:48 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. RI61-270—RI61-274]

WOLFSON OIL CO. ET AL.

Order Providing for Hearings On and Suspension of Proposed Changes in Rates [1] and Allowing Increased Rates To Become Effective Subject to Refund

DECEMBER 9, 1960.

Wolfson Oil Company (Operator), et al., Docket No. RI61-270; Ada Oil Company (Operator), et al., Docket No. RI61-271; Pan American Petroleum Corporation, Docket No. RI61-272; Mendota Oil Company, Docket No. RI61-273; Socony Mobile Oil Company, Inc., Docket No. RI61-274.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date [1] unless suspended	Date suspended until—	Cents per Mcf [2] Rate in effect	Cents per Mcf [2] Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI61-270	Reuben I. Wolfson & Sam Wolfson d/b/a Wolfson Oil Co. (Operator), et al., c/o Patrick A. Flynn, Attorney, P.O. Box 913, Midland, Tex.	2	2	El Paso Natural Gas Co. (North Skaggs-Drinkard Field, Lea County, N. Mex.).	$24,246	11-9-60	1-1-61	6-1-61	10.5406	12.5500	----------
RI61-271	Ada Oil Co. (Operator), et al., P.O. Box 844, Houston 1, Tex.	7	3	Louis Crouch (Fort Stockton Field, Pecos County, Tex.).	5,206	11-9-60	12-1-60	5-1-61	8.6	11.0	----------
RI61-272	Pan American Petroleum Corp., P.O. Box 591, Tulsa 2, Okla.	161	2	Natural Gas P/L Co. of America (South Forgan Field, Beaver County, Okla.).	161	11-10-60	12-11-60	5-11-61	15.5	16.5	----------
RI61-273	Mendota Oil Co., 736 Mendota Street, Saint Paul, Minn.	8	12	El Paso Natural Gas Co. and Hunt Oil Co. (Jack Herbert Field, Upton County, Tex.).	[3] (496)	11-9-60	12-10-60	12-11-60	15.70625	13.66236	RI60-314
RI61-274	Socony Mobil Oil Co., Inc., P.O. Box 900, Dallas 21, Tex.	54	8	Panhandle Eastern P/L Co. (Panhandle Field, Moore and Hutchinson Counties, Tex.).	80,851	11-10-60	12-11-60	12-12-60	6.10206	7.86624	----------

[1] The proposed effective dates are the first day after the required thirty days' notice or, if later, the date requested by respondent.
[2] The pressure base is 14.65 psia.
[3] Rate decrease due to transfer of Windham "C" No. 1 well from high to low pressure system.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), public hearings shall be held upon the dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Supplement No. 8 to Socony Mobil Oil Co., Inc.'s FPC Gas Rate Schedule No. 54 (proposing a redetermined rate increase based on a contract interpretation which is questionable and should be determined after hearing) shall be effective (with only the Louisiana severance tax reimbursement portion of Socony's increased rates effective subject to refund) as of December 12, 1960 and Supplement No. 12 to Mendota Oil Company's FPC Gas Rate Schedule No. 8 (proposing a rate decrease due to transfer of a well from high to low pressure system) shall be effective as of December 11, 1960: *Provided, however,* That within 20 days from the date of the issuance of this order, Socony and Mendota shall file under Docket Nos. RI61-274 and RI61-273 respectively, with the Secretary of the Commission their agreements and undertakings to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder. The agreements and undertakings shall be signed by a responsible officer of the corporation accompanied by proper authorization from the Board of Directors and by a certificate showing service of copies upon all purchasers under the rate schedule involved. Unless Socony or Mendota is advised to the contrary within 15 days after the filing of such agreement and undertaking, their agreement and undertaking shall be deemed to have been accepted.

(E) Notice of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 23, 1961.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 60-11718; Filed, Dec. 19, 1960; 8:46 a.m.]

[Docket No. G-18444]

TEXAS GAS TRANSMISSION CORP.

Order Reconvening Hearing

DECEMBER 13, 1960.

On July 20, 1959, a hearing was opened in the above-entitled matter pursuant to notice of application and order fixing date of hearing at that time. The Presiding Examiner after opening the said hearing granted a motion of Staff Counsel to postpone the said hearing subject to the order of the Commission.

At the time of the said postponement of this hearing the Public Service Commission of Indiana had on file a notice of intervention. On November 21, 1960, the said intervener filed notice of withdrawal of its intervention.

The Commission finds:

(1) No protests or petitions to intervene in this matter are on file with the Commission.

(2) The matter is ready for further proceeding upon the application.

The Commission orders: The hearing in the above-entitled matter which was opened on July 20, 1959, and on that day recessed until ordered by the Commission is hereby ordered to resume on December 22, 1960, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., at 9:30 a.m. e.s.t.

By the Commission.

JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 60-11717; Filed, Dec. 19, 1960; 8:46 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 524 (24 F.R. 9274) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued

under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Blue Bell, Inc., Lenoir, N.C.; effective 12-1-60 to 11-30-61 (boys' and girls' dungarees, ladies' and girls' sportswear).

Canton Manufacturing Co., 307 South Second Avenue, Canton, Ill.; effective 12-8-60 to 12-7-61 (men's and boys' cotton work pants).

Corman and Wasserman, Inc., 1220 Curtain Avenue, Baltimore, Md.; effective 12-3-60 to 12-2-61 (men's trousers).

Dublin Garment Co., Dublin, Ga.; effective 12-10-60 to 12-9-61 (men's and boys' sport shirts).

Ely & Walker Co., Division of Burlington Industries, Inc., Yazoo City, Miss.; effective 12-2-60 to 12-1-61; workers engaged in the production of men's and boys' woven pajamas.

Fashionality Blouses, Ware Shoals, S.C.; effective 12-1-60 to 8-23-61 (replacement certificate) (ladies' blouses).

The Hercules Trouser Co., Hillsboro, Ohio; effective 12-1-60 to 11-30-61 (men's and boys' single pants).

The Hercules Trouser Co., Manchester, Ohio; effective 12-1-60 to 11-30-61 (men's and boys' single pants).

Hickman Garment Co., Hickman, Ky.; effective 12-2-60 to 12-1-61 (jackets).

Madill Manufacturing Co., Inc., Madill, Okla.; effective 12-5-60 to 12-4-61 (men's dress slacks).

Mammoth Cave Garment Co., Cave City, Ky.; effective 12-11-60 to 12-10-61 (men's and boys' dungarees).

Mayflower Manufacturing Co., Inc., 460-506 North Main Ave., Scranton, Pa.; effective 12-12-60 to 12-11-61 (boys' and students' trousers).

Mount Vernon Textile Manufacturing Co., Inc., 743 Fairfield Road, Mount Vernon, Ill.; effective 12-1-60 to 11-30-61 (ladies' dresses).

New Bloomfield Dress Co., 221 West Market Street, Newport, Pa.; effective 12-1-60 to 11-30-61 (ladies' dresses).

Phillips-Van Heusen Corp., Brinkley, Ark.; effective 12-2-60 to 12-1-61 (dress shirts).

Pittston Apparel Co., East & Tompkins Streets, Pittston, Pa.; effective 12-8-60 to 12-7-61 (Brassieres, girdles).

Ridgely Manufacturing Co., Ridgely, Tenn.; effective 12-2-60 to 12-1-61 (outerwear).

Salemburg Manufacturing Co., Salemburg, N.C.; effective 12-1-60 to 11-30-61 (ladies' cotton dresses).

Samsons Manufacturing Corp., 525 East Fifth Street, Washington, N.C.; effective 12-10-60 to 12-9-61 (men's sport shirts).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Blue Bell, Inc., Warsaw, Ind.; effective 12-9-60 to 12-8-61; 10 learners (men's and boys' dungarees).

Kilgore Manufacturing Co., 400 South Longview, Kilgore, Tex.; effective 12-1-60 to 11-30-61; 10 learners. No learners may be employed in the production of separate skirts or suits under this certificate (women's dresses, blouses and slacks).

Lorch Manufacturing Co., West, Tex.; effective 12-1-60 to 11-30-61; 10 learners. Learners may not be employed at special minimum wage rates in the production of separate skirts (ladies' and misses' dresses, blouses, jackets, shorts).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

M. T. Co., Spartanburg Highway, Hendersonville, N.C.; effective 12-5-60 to 6-4-61; 25 learners (women's and children's sportswear).

Nelly Don, Inc., Fulton, Mo.; effective 12-5-60 to 6-4-61; 50 learners (women's dresses).

Nelly Don, Inc., Nevada, Mo.; effective 12-2-60 to 6-1-61; 50 learners (women's dresses).

Ridgely Manufacturing Co., Ridgely, Tenn.; effective 12-2-60 to 6-1-61; 20 learners (outerwear).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.60 to 522.66, as amended).

The Boss Manufacturing Co., 400-6 Seneca St., Leavenworth, Kans.; effective 12-6-60 to 12-5-61; 10 learners for normal labor turnover purposes (work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.44, as amended).

Craftsman Finishers, Inc., 108 Buffalo St., Concord, N.C.; effective 11-28-60 to 5-27-61; 25 learners for plant expansion purposes (full-fashioned, seamless).

Wigwam Mills, Inc., Sheboygan, Wis.; effective 12-5-60 to 12-4-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Ashland Knitting Mills, Inc., Front and Chestnut Streets, Ashland, Pa.; effective 12-1-60 to 11-30-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (underwear).

Cluett, Peabody and Co., Inc., Gilbert, Minn.; effective 12-17-60 to 12-16-61; 5 learners for normal labor turnover purposes (underwear).

Dothan Manufacturing Co., Dothan, Ala.; effective 12-1-60 to 11-30-61; 5 percent of the total number of factory production workers for normal labor turnover purposes (men's pajamas and shorts).

Ely & Walker Co., Division of Burlington Industries, Inc., Yazoo City, Miss.; effective 12-2-60 to 12-1-61; 5 learners for normal labor turnover purposes engaged in the production of men's and boys' woven shorts only.

Shoe Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.50 to 522.55, as amended).

Rex Shoe Co., Inc., 1950 Wyoming Avenue, Exeter, Pa.; effective 12-10-60 to 12-9-61; 10 percent of the total number of factory production workers for normal labor turnover purposes (ladies' leather and fabric shoes and slippers).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C., this 8th day of December 1960.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 60-11722; Filed, Dec. 19, 1960 8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

PROCLAMATIONS:
Oct. 3, 1905 — 12915
Dec. 7, 1907 — 12915
Feb. 10, 1909 — 12915
Dec. 10, 1910 — 12915
Oct. 18, 1912 — 12915
2935 — 12501
3382 — 12587

EXECUTIVE ORDERS:
Oct. 20, 1916 — 12887
June 8, 1926 — 12887
3797-A — 12412, 12599
6260 — 12281
9941 — 12429
10896 — 12281
10897 — 12429
10898 — 12429
10899 — 12729

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 — 12501
Letter, Nov. 16, 1960 — 12501

5 CFR

2 — 12285
6 — 12393, 12547, 12588, 12733, 12869
30 — 12733

6 CFR

331 — 12994
421 — 12282, 12283

7 CFR

33 — 12430
51 — 12941
319 — 12809
718 — 12588
722 — 12393, 12403, 12809, 12812, 12987
730 — 12503
733 — 12650
845 — 12285
871 — 12547
903 — 12504
905—908 — 12504
911—913 — 12504
914 — 12405, 12650, 12812, 12941
916—919 — 12504
921 — 12504
923—925 — 12504
928—932 — 12504
933 — 12405–12407, 12504, 12987
935 — 12504
941—942 — 12504
943 — 12504, 12813
944 — 12504, 12987
946—948 — 12504
949 — 12504, 12941
952 — 12504
953 — 12407, 12430, 12651, 12948
954 — 12504
955 — 12949
956 — 12504
963 — 12504
965—968 — 12504
970 — 12894
971—972 — 12504
974—978 — 12504
980 — 12504
982 — 12504
985—988 — 12504
989 — 12813
991 — 12504
994—995 — 12504

7 CFR—Continued

998 — 12504
1000 — 12504
1002 — 12504
1004—1005 — 12504
1006—1009 — 12504
1010 — 12994
1011—1014 — 12504
1016 — 12504
1018 — 12504, 12588
1023—1024 — 12504
1031 — 12505, 12651, 12652
1032 — 12828

PROPOSED RULES:
51 — 12298, 12299
812 — 12712
901 — 12742
923 — 12558
936 — 12465
938 — 12752
949 — 12606
961 — 13001
965 — 12466
989 — 12476
1010 — 13001
1012 — 12558
1032 — 12712, 12752
1033 — 12606

8 CFR

211 — 12290

9 CFR

72 — 12548
74 — 12995
94 — 12831

PROPOSED RULES:
83 — 12571

10 CFR

30 — 12730
70 — 12730

PROPOSED RULES:
25 — 12753
115 — 12367

12 CFR

PROPOSED RULES:
206 — 12479

13 CFR

PROPOSED RULES:
107 — 12754

14 CFR

41 — 12908
49 — 12352
225 — 12589
243 — 12908
293 — 12908
298 — 12909
300 — 12430
302 — 12432, 12933
414 — 12589
506 — 12505
507 — 12352, 12433, 12549, 12829, 12995
514 — 12433, 12995
600 — 12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734, 12933, 12934
601 — 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997
602 — 12288, 12552, 12678, 12831, 12997
608 — 12678, 12679, 12734, 12830, 12934, 12997

14 CFR—Continued

609 — 12353, 12735, 12935
612 — 12410
1501 — 12434

PROPOSED RULES:
41 — 12299
43 — 12524
221 — 12913
302 — 12477
507 — 12477, 12478, 12571, 12844
600 — 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914
601 — 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952.
608 — 12479, 12846
626 — 12952

15 CFR

203 — 12590
371 — 12734

16 CFR

13 — 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998

17 CFR

230 — 12912

18 CFR

104 — 12763
105 — 12961
154 — 12653

19 CFR

PROPOSED RULES:
8 — 12681

21 CFR

1 — 12592
5 — 12288
120 — 12288, 12506
121 — 12412, 12595, 12731, 12831, 13006
130 — 12592
146 — 12506, 12596, 12732
146c — 12289

PROPOSED RULES:
27 — 12372
120 — 12374, 12571
121 — 12299, 12477, 12839, 12840, 13008

22 CFR

46 — 12289

25 CFR

171 — 12408

PROPOSED RULES:
52 — 12518
176 — 12299

26 (1939) CFR

16 — 12442
17 — 12443
29 — 12339
39 — 12339
40 — 12340

PROPOSED RULES:
81 — 13001

26 (1954) CFR

1 — 12340, 12345, 12654
18 — 12340
19 — 12654
31 — 13031

26 (1954) CFR—Continued Page

48 12669
170 12732
PROPOSED RULES:
1 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001
20 13001
25 12707
31 12835
48 12362, 13001
170 12710
197 12362
250 12511

28 CFR

21 12290

29 CFR

PROPOSED RULES:
604 12950
606 12950
713 12950

31 CFR

54 12345

32 CFR

505 12869
570 12869
750 12870
753 12879
805 12291
888 12999
1001 12999
1002 13000
1003 13000
1004 13000
1006 13000
1007 13000
1008 12444
1009 12446
1010 12449, 13000
1012 12449
1013 12449, 13000
1016 12450, 12456
1030 12451
1052 12456, 13000
1053 12456
1054 12458, 13000
1055 12462
1057 12462, 13000
1059 12462
1619 12291

32A CFR Page

OIA (CH. X):
OI Reg. 1 12999

33 CFR

202 12393
203 12740
207 12740

38 CFR

3 12463

39 CFR

27 12348
168 12884

41 CFR

3-75 12502, 12596
5-1 12553
50-201 12553
50-202 12553
PROPOSED RULES:
50-202 12363, 12522

42 CFR

1 12292

43 CFR

76 12597, 12949
181 12679
192 12352
257 12679
PROPOSED RULES:
259 12606
PUBLIC LAND ORDERS:
82 12412, 12599
797 12413
1124 12885
1253 12481
1621 12599
1965 12599
2209 12412
2210 12413
2211 12413
2212 12597
2213 12597
2214 12598
2215 12599
2216 12599
2217 12885
2218 12885
2219 12886
2220 12887
2221 12887
2222 12887

45 CFR Page

601—620 12600
PROPOSED RULES:
301 12840
306 12840
307 12841
308 12842
309 12843
311 12844

46 CFR

24 12554
30 12554
56 12554
70 12555
90 12555
110 12556
111 12555
136 12555
171 12555
308 12348

47 CFR

1 12358, 12600, 12602, 12603, 12605
4 12680
5 12359
9 12359
10 12359
11 12359
12 12358
16 12359
19 12359
21 12359, 12603, 12605
PROPOSED RULES:
1 12624, 12898
3 12371, 12624, 12626, 12627, 12899
7 12951
8 12951

49 CFR

91 12506
122 12506
171 12888
PROPOSED RULES:
71-78 12420
197 12420

50 CFR

32 12555, 12888
33 12507, 12556, 12557, 12888
PROPOSED RULES:
14 12741
41 13001

PART II

FEDERAL REGISTER

VOLUME 25 NUMBER 246

Washington, Tuesday, December 20, 1960

Employment Taxes; Applicable on and After January 1, 1955

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER C—EMPLOYMENT TAXES

[T.D. 6516]

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Republication of Regulations

All Employment Tax Regulations published before December 1, 1960, under Title 26, Part 31, of the Code of Federal Regulations, pursuant to the Internal Revenue Code of 1954, are hereby republished for the purpose of making certain editorial changes, including corrections of form, style, and internal references.

Subpart A—Introduction

Sec.
31.0–1 Introduction.
31.0–2 General definitions and use of terms.
31.0–3 Scope of regulations.
31.0–4 Extent to which the regulations in this part supersede prior regulations.

Subpart B—Federal Insurance Contributions Act (Chapter 21, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

31.3101 Statutory provisions; rate of tax.
31.3101–1 Measure of employee tax.
31.3101–2 Rates and computation of employee tax.
31.3101–3 When employee tax attaches.
31.3102 Statutory provisions; deduction of tax from wages.
31.3102–1 Collection of, and liability for, employee tax.
31.3102–2 Manner and time of payment of employee tax.

TAX ON EMPLOYERS

31.3111 Statutory provisions; rate of tax.
31.3111–1 Measure of employer tax.
31.3111–2 Rates and computation of employer tax.
31.3111–3 When employer tax attaches.
31.3111–4 Liability for employer tax.
31.3111–5 Manner and time of payment of employer tax.
31.3112 Statutory provisions; instrumentalities of the United States.
31.3112–1 Instrumentalities of the United States specifically exempted from the employer tax.

GENERAL PROVISIONS

Sec.
31.3121 (a) Statutory provisions; definitions; wages.
31.3121 (a)–1 Wages.
31.3121 (a)–2 Wages; when paid and received.
31.3121 (a) (1) Statutory provisions; definitions; wages; $4,200 limitation.
31.3121 (a) (1)–1 $4,200 limitation.
31.3121 (a) (2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3121 (a) (2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3121 (a) (3) Statutory provisions; definitions; wages; retirement payments.
31.3121 (a) (3)–1 Retirement payments.
31.3121 (a) (4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3121 (a) (4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3121 (a) (5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3121 (a) (5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3121 (a) (6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.
31.3121 (a) (6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.
31.3121 (a) (7) Statutory provisions; definitions; wages; payments for service not in the course of the employer's trade or business or for domestic service.
31.3121 (a) (7)–1 Payments for services not in the course of employer's trade or business or for domestic service.
31.3121 (a) (8) Statutory provisions; definitions; wages; payments for agricultural labor.
31.3121 (a) (8)–1 Payments for agricultural labor.
31.3121 (a) (9) Statutory provisions; definitions; wages; payments to stand-by employees.
31.3121 (a) (9)–1 Payments to stand-by employees.
31.3121 (a) (10) Statutory provisions; definitions; wages; payments to certain home workers.
31.3121 (a) (10)–1 Payments to certain home workers.
31.3121 (b) Statutory provisions; definitions; employment.
31.3121 (b)–1 Employment; services to which the regulations in this subpart apply.
31.3121 (b)–2 Employment; services performed before 1955.
31.3121 (b)–3 Employment; services performed after 1954.
31.3121 (b)–4 Employment; excepted services in general.
31.3121 (b) (1) Statutory provisions; definitions; employment; agricultural services.
31.3121 (b) (1)–1 Services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers.
31.3121 (b) (2) Statutory provisions; definitions; employment; domestic service performed by students for certain college organizations.
31.3121 (b) (2)–1 Domestic service performed by students for certain college organizations.
31.3121 (b) (3) Statutory provisions; definitions; employment; family employment.
31.3121 (b) (3)–1 Family employment.
31.3121 (b) (4) Statutory provisions; definitions; employment; services performed on or in connection with a non-American vessel or aircraft.
31.3121 (b) (4)–1 Services performed on or in connection with a non-American vessel or aircraft.
31.3121 (b) (5) Statutory provisions; definitions; employment; services in employ of an instrumentality of the United States specifically exempted from the employer tax.
31.3121 (b) (5)–1 Services in employ of an instrumentality of the United States specifically exempted from the employer tax.
31.3121 (b) (6) Statutory provisions; definitions; employment; services in employ of United States or instrumentality thereof.
31.3121 (b) (6)–1 Services in employ of United States or instrumentality thereof.
31.3121 (b) (7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.
31.3121 (b) (7)–1 Services in employ of States or their political subdivisions or instrumentalities.
31.3121 (b) (8) Statutory provisions; definitions; employment; services performed by a minister of a church or a member of a religious order; services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.
31.3121 (b) (8)–1 Services performed by a minister of a church or a member of a religious order.
31.3121 (b) (8)–2 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.
31.3121 (b) (9) Statutory provisions; definitions; employment; services performed by an employee or an employee representative as defined in section 3231.
31.3121 (b) (9)–1 Railroad industry; services performed by an employee or an employee representative as defined in section 3231.
31.3121 (b) (10) Statutory provisions; definitions; employment; services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax; services performed in the employ of a school, college, or university by certain students.
31.3121 (b) (10)–1 Services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax.
31.3121 (b) (10)–2 Services performed in the employ of a school, college, or university by certain students.
31.3121 (b) (11) Statutory provisions; definitions; employment; services in the employ of a foreign government.
31.3121 (b) (11)–1 Services in the employ of a foreign government.
31.3121 (b) (12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.
31.3121 (b) (12)–1 Services in employ of wholly owned instrumentality of foreign government.
31.3121 (b) (13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.
31.3121 (b) (13)–1 Services of student nurse or hospital intern.
31.3121 (b) (14) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.
31.3121 (b) (14)–1 Services in delivery or distribution of newspapers, shopping news, or magazines.
31.3121 (b) (15) Statutory provisions; definitions; employment; services in employ of international organization.
31.3121 (b) (15)–1 Services in employ of international organization.
31.3121 (c) Statutory provisions; definitions; included and excluded services.
31.3121 (c)–1 Included and excluded services.
31.3121 (d) Statutory provisions; definitions; employee.
31.3121 (d)–1 Who are employees.
31.3121 (d)–2 Who are employers.
31.3121 (e) Statutory provisions; definitions; State, United States, and citizen.
31.3121 (e)–1 State, United States, and citizen.
31.3121 (f) Statutory provisions; definitions; American vessel and aircraft.
31.3121 (f)–1 American vessel and aircraft.
31.3121 (g) Statutory provisions; definitions; agricultural labor.
31.3121 (g)–1 Agricultural labor.
31.3121 (h) Statutory provisions; definitions; American employer.
31.3121 (h)–1 American employer.
31.3121 (i) Statutory provisions; definitions; computation of wages in certain cases.
31.3121 (i)–1 Computation to nearest dollar of cash remuneration for domestic service.
31.3121 (j) Statutory provisions; definitions; covered transportation service.
31.3121 (j)–1 Covered transportation service.
31.3121 (k) Statutory provisions; definitions; waiver of exemption by religious, charitable, and certain other organizations.
31.3121 (k)–1 Waiver of exemption from taxes.
31.3121 (l) Statutory provisions; definitions; agreements entered into by domestic corporations with respect to foreign subsidiaries.
31.3121 (l)–1 Agreements entered into by domestic corporations with respect to foreign subsidiaries.
31.3122 Statutory provisions; Federal service.
31.3123 Statutory provisions; deductions as constructive payments.
31.3123–1 Deductions by an employer from remuneration of an employee.
31.3124 Statutory provisions; estimate of revenue reduction.
31.3125 Statutory provisions; short title.

Subpart C—Railroad Retirement Tax Act (Chapter 22, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

31.3201 Statutory provisions; rate of tax.
31.3201–1 Measure of employee tax.
31.3201–2 Rate and computation of employee tax.
31.3202 Statutory provisions; deduction of tax from compensation.
31.3202–1 Collection of, and liability for, employee tax.

TAX ON EMPLOYEE REPRESENTATIVES

31.3211 Statutory provisions; rate of tax.
31.3211–1 Measure of employee representative tax.
31.3211–2 Rate and computation of employee representative tax.
31.3212 Statutory provisions; determination of compensation.
31.3212–1 Determination of compensation.

TAX ON EMPLOYERS

31.3221 Statutory provisions; rate of tax.
31.3221–1 Measure of employer tax.
31.3221–2 Rate and computation of employer tax.

GENERAL PROVISIONS

31.3231(a) Statutory provisions; definitions; employer.
31.3231(a)–1 Who are employers.
31.3231(b) Statutory provisions; definitions; employee.
31.3231(b)–1 Who are employees.
31.3231(c) Statutory provisions; definitions; employee representative.
31.3231(c)–1 Who are employee representatives.
31.3231(d) Statutory provisions; definitions; service.
31.3231(d)–1 Service.
31.3231(e) Statutory provisions; definitions; compensation.
31.3231(e)–1 Compensation.
31.3231(f) Statutory provisions; definitions; company.
31.3231(g) Statutory provisions; definitions; carrier.
31.3232 Statutory provisions; court jurisdiction.
31.3233 Statutory provisions; short title.

Subpart D—Federal Unemployment Tax Act (Chapter 23, Internal Revenue Code of 1954)

31.3301 Statutory provisions; rate of tax.
31.3301–1 Persons liable for tax.
31.3301–2 Measure of tax.
31.3301–3 Rate and computation of tax.
31.3301–4 When wages are paid.
31.3302 (a) Statutory provisions; credits against tax; contributions to State unemployment funds.
31.3302 (a)–1 Credit against tax for contributions paid.
31.3302 (a)–2 Refund of State contributions.
31.3302 (a)–3 Proof of credit under section 3302 (a).
31.3302 (b) Statutory provisions; credits against tax; additional credit.
31.3302 (b)–1 Additional credit against tax.
31.3302 (b)–2 Proof of additional credit under section 3302 (b).
31.3302 (c) Statutory provisions; credits against tax; limit on total credits.
31.3302 (c)–1 Limit on total credits.
31.3303 Statutory provisions; conditions of additional credit allowance.
31.3304 Statutory provisions; approval of State laws.
31.3305 Statutory provisions; applicability of State law.
31.3306 (a) Statutory provisions; definitions; employer.
31.3306 (a)–1 Who are employers.
31.3306 (b) Statutory provisions; definitions; wages.
31.3306 (b)–1 Wages.
31.3306 (b) (1) Statutory provisions; definitions; wages; $3,000 limitation.
31.3306 (b) (1)–1 $3,000 limitation.
31.3306 (b) (2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3306 (b) (2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.
31.3306 (b) (3) Statutory provisions; definitions; wages; retirement payments.
31.3306 (b) (3)–1 Retirement payments.
31.3306 (b) (4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3306 (b) (4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.
31.3306 (b) (5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3306 (b) (5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3306 (b) (6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.
31.3306 (b) (6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.
31.3306 (b) (7) Statutory provisions; definitions; wages; payments other than in cash for service not in the course of the employer's trade or business.
31.3306 (b) (7)–1 Payments other than in cash for service not in the course of employer's trade or business.
31.3306 (b) (8) Statutory provisions; definitions; wages; payments to stand-by employees.
31.3306 (b) (8)–1 Payments to stand-by employees.
31.3306 (c) Statutory provisions; definitions; employment.
31.3306 (c)–1 Employment; services performed before 1955.
31.3306 (c)–2 Employment; services performed after 1954.
31.3306 (c)–3 Employment; excepted services in general.
31.3306 (c) (1) Statutory provisions; definitions; employment; agricultural labor.
31.3306 (c) (1)–1 Agricultural labor.
31.3306 (c) (2) Statutory provisions; definitions; employment; domestic service.
31.3306 (c) (2)–1 Domestic service.
31.3306 (c) (3) Statutory provisions; definitions; employment; services not in the course of the employer's trade or business.
31.3306 (c) (3)–1 Services not in the course of employer's trade or business.
31.3306 (c) (4) Statutory provisions; definitions; employment; services on or in connection with a non-American vessel.
31.3306 (c) (4)–1 Services on or in connection with a non-American vessel.
31.3306 (c) (5) Statutory provisions; definitions; employment; family employment.
31.3306 (c) (5)–1 Family employment.
31.3306 (c) (6) Statutory provisions; definitions; employment; services in employ of United States Government or instrumentality thereof.
31.3306 (c) (6)–1 Services in employ of United States or instrumentality thereof.
31.3306 (c) (7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.
31.3306 (c) (7)–1 Services in employ of States or their political subdivisions or instrumentalities.
31.3306 (c) (8) Statutory provisions; definitions; employment; services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.
31.3306 (c) (8)–1 Services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.
31.3306 (c) (9) Statutory provisions; definitions; employment; services performed by an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act.
31.3306 (c) (9)–1 Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.
31.3306 (c) (10) (A) Statutory provisions; definitions; employment; services in employ of certain organization exempt from income tax.
31.3306 (c) (10) (A)–1 Services in employ of certain organizations exempt from income tax.
31.3306 (c) (10) (B) Statutory provisions; definitions; employment; services in employ of agricultural or horticultural organization exempt from income tax.
31.3306 (c) (10) (B)–1 Services in employ of agricultural or horticultural organization exempt from income tax.
31.3306 (c) (10) (C) Statutory provisions; definitions; employment; services in employ of voluntary employees' beneficiary association.
31.3306 (c) (10) (C)–1 Services in employ of voluntary employees' beneficiary association.
31.3306 (c) (10) (D) Statutory provisions; definitions; employment; services in employ of Federal employees' beneficiary association.
31.3306 (c) (10) (D)–1 Services in employ of Federal employees' beneficiary association.

Sec.
31.3306 (c) (10) (E) Statutory provisions; definitions; employment; services of student in employ of school, college, or university not exempt from income tax.
31.3306 (c) (10) (E)-1 Services of student in employ of school, college, or university not exempt from income tax.
31.3306 (c) (11) Statutory provisions; definitions; employment; services in employ of foreign government.
31.3306 (c) (11)-1 Services in employ of foreign government.
31.3306 (c) (12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.
31.3306 (c) (12)-1 Services in employ of wholly owned instrumentality of foreign government.
31.3306 (c) (13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.
31.3306 (c) (13)-1 Services of student nurse or hospital intern.
31.3306 (c) (14) Statutory provisions; definitions; employment; services of insurance agent or solicitor.
31.3306 (c) (14)-1 Services of insurance agent or solicitor.
31.3306 (c) (15) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.
31.3306 (c) (15)-1 Services in delivery or distribution of newspapers, shopping news, or magazines.
31.3306 (c) (16) Statutory provisions; definitions; employment; services in employ of international organization.
31.3306 (c) (16)-1 Services in employ of international organization.
31.3306 (c) (17) Statutory provisions; definitions; employment; fishing services.
31.3306 (c) (17)-1 Fishing services.
31.3306 (d) Statutory provisions; definitions; included and excluded services.
31.3306 (d)-1 Included and excluded services.
31.3306 (e) Statutory provisions; definitions; State agency.
31.3306 (f) Statutory provisions; definitions; unemployment fund.
31.3306 (g) Statutory provisions; definitions; contributions.
31.3306 (h) Statutory provisions; definitions; compensation.
31.3306 (i) Statutory provisions; definitions; employee.
31.3306 (i)-1 Who are employees.
31.3306 (j) Statutory provisions; definitions; State.
31.3306 (k) Statutory provisions; definitions; agricultural labor.
31.3306 (k)-1 Agricultural labor.
31.3306 (l) Statutory provisions; definitions; certain employees of Bonneville Power Administrator.
Sec.
31.3306 (m) Statutory provisions; definitions; American vessel.
31.3306 (m)-1 American vessel.
31.3306 (n) Statutory provisions; definitions; vessels operated by general agents of United States.
31.3306 (n)-1 Services on American vessel whose business is conducted by general agent of Secretary of Commerce.
31.3307 Statutory provisions; deductions as constructive payments.
31.3307-1 Deductions by an employer from remuneration of an employee.
31.3308 Statutory provisions; short title.

Subpart E—Collection of Income Tax at Source on Wages (Chapter 24, Internal Revenue Code of 1954)

31.3401 (a) Statutory provisions; definitions; wages.
31.3401 (a)-1 Wages.
31.3401 (a)-2 Exclusions from wages.
31.3401 (a) (1) Statutory provisions; definitions; wages; certain remuneration of members of the Armed Forces.
31.3401 (a) (1)-1 Remuneration of members of the Armed Forces of the United States for active service in combat zone or while hospitalized as a result of such service.
31.3401 (a) (2) Statutory provisions; definitions; wages; remuneration paid for agricultural labor.
31.3401 (a) (2)-1 Agricultural labor.
31.3401 (a) (3) Statutory provisions; definitions; wages; remuneration paid for domestic service.
31.3401 (a) (3)-1 Remuneration for domestic service.
31.3401 (a) (4) Statutory provisions; definitions; wages; cash remuneration for service not in the course of employer's trade or business.
31.3401 (a) (4)-1 Cash remuneration for service not in the course of employer's trade or business.
31.3401 (a) (5) Statutory provisions; definitions; wages; remuneration for services for foreign government or international organization.
31.3401 (a) (5)-1 Remuneration for services for foreign government or international organization.
31.3401 (a) (6) Statutory provisions; definitions; wages; remuneration for services of certain nonresident alien individuals.
31.3401 (a) (6)-1 Remuneration for services of certain nonresident alien individuals.
31.3401 (a) (7) Statutory provisions; definitions; wages; remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave at frequent intervals.
31.3401 (a) (7)-1 Remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.
Sec.
31.3401 (a) (8) (A) Statutory provisions; definitions; wages; remuneration paid for services performed by citizens outside the United States.
31.3401 (a) (8) (A)-1 Remuneration for services performed outside the United States by citizens of the United States.
31.3401 (a) (8) (B) Statutory provisions; definitions; wages; remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.
31.3401 (a) (8) (B)-1 Remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.
31.3401 (a) (8) (C) Statutory provisions; definitions; wages; remuneration for services performed in Puerto Rico by citizen of the United States.
31.3401 (a) (8) (C)-1 Remuneration for services performed in Puerto Rico by citizen of the United States.
31.3401 (a) (9) Statutory provisions; definitions; wages; remuneration for services performed by a minister of a church or a member of a religious order.
31.3401 (a) (9)-1 Remuneration for services performed by a minister of a church or a member of a religious order.
31.3401 (a) (10) Statutory provisions; definitions; wages; remuneration for services in the delivery or distribution of newspapers, shopping news, or magazines.
31.3401 (a) (10)-1 Remuneration for services in delivery or distribution of newspapers, shopping news, or magazines.
31.3401 (a) (11) Statutory provisions; definitions; wages; remuneration other than in cash for services not in the course of employer's trade or business.
31.3401 (a) (11)-1 Remuneration other than in cash for service not in the course of employer's trade or business.
31.3401 (a) (12) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3401 (a) (12)-1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.
31.3401 (b) Statutory provisions; definitions; payroll period.
31.3401 (b)-1 Payroll period.
31.3401 (c) Statutory provisions; definitions; employee.
31.3401 (c)-1 Employee.
31.3401 (d) Statutory provisions; definitions; employer.
31.3401 (d)-1 Employer.
31.3401 (e) Statutory provisions; definitions; number of withholding exemptions claimed.
31.3401 (e)-1 Number of withholding exemptions claimed.
Sec.
31.3402 (a) Statutory provisions; income tax collected at source; requirement of withholding.
31.3402 (a)-1 Requirement of withholding.
31.3402 (b) Statutory provisions; income tax collected at source; percentage method of withholding.
31.3402 (b)-1 Percentage method of withholding.
31.3402 (c) Statutory provisions; income tax collected at source; wage bracket withholding.
31.3402 (c)-1 Wage bracket withholding.
31.3402 (d) Statutory provisions; income tax collected at source; tax paid by recipient.
31.3402 (d)-1 Failure to withhold.
31.3402 (e) Statutory provisions; income tax collected at source; included and excluded wages.
31.3402 (e)-1 Included and excluded wages.
31.3402 (f) (1) Statutory provisions; income tax collected at source; withholding exemptions.
31.3402 (f) (1)-1 Withholding exemptions.
31.3402 (f) (2) Statutory provisions; income tax collected at source; withholding exemptions; exemption certificates.
31.3402 (f) (2)-1 Withholding exemption certificates.
31.3402 (f) (3) Statutory provisions; income tax collected at source; withholding exemptions; when exemption certificate takes effect.
31.3402 (f) (3)-1 When withholding exemption certificate takes effect.
31.3402 (f) (4) Statutory provisions; income tax collected at source; withholding exemptions; period during which exemption certificate remains in effect.
31.3402 (f) (4)-1 Period during which withholding exemption certificate remains in effect.
31.3402 (f) (5) Statutory provisions; income tax collected at source; withholding exemptions; form and contents of exemption certificate.
31.3402 (f) (5)-1 Form and contents of withholding exemption certificate.
31.3402 (g) Statutory provisions; income tax collected at source; overlapping pay periods, and payment by agent or fiduciary.
31.3402 (g)-1 Supplemental wage payments.
31.3402 (g)-2 Wages paid for payroll period of more than one year.
31.3402 (g)-3 Wages paid through an agent, fiduciary, or other person on behalf of two or more employers.
31.3402 (h) Statutory provisions; income tax collected at source; withholding on basis of average wages.
31.3402 (h)-1 Withholding on basis of average wages.

Sec.
31.3402 (i) Statutory provisions; income tax collected at source; additional withholding.
31.3402 (i)-1 Additional withholding.
31.3402 (j) Statutory provisions; income tax collected at source; noncash remuneration to retail commission salesman.
31.3402 (j)-1 Remuneration other than in cash for service performed by retail commission salesman.
31.3403 Statutory provisions; liability for tax.
31.3403-1 Liability for tax.
31.3404 Statutory provisions; return and payment by governmental employer.
31.3404-1 Return and payment by governmental employer.

Subpart F—General Provisions Relating to Employment Taxes (Chapter 25, Internal Revenue Code of 1954)

31.3501 Statutory provisions; collection and payment of taxes.
31.3502 Statutory provisions; nondeductibility of taxes in computing taxable income.
31.3502-1 Nondeductibility of taxes in computing taxable income.
31.3503 Statutory provisions; erroneous payments.
31.3503-1 Tax under chapter 21 or 22 paid under wrong chapter.
31.3504 Statutory provisions; acts to be performed by agents.
31.3504-1 Acts to be performed by agents.

Subpart G—Administrative Provisions of Special Application to Employment Taxes (Selected Provisions of Subtitle F, Internal Revenue Code of 1954)

31.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.
31.6001-1 Records in general.
31.6001-2 Additional records under Federal Insurance Contributions Act.
31.6001-3 Additional records under Railroad Retirement Tax Act.
31.6001-4 Additional records under Federal Unemployment Tax Act.
31.6001-5 Additional records in connection with collection of income tax at source on wages.
31.6001-6 Notice by district director requiring returns, statements, or the keeping of records.
31.6011(a) Statutory provisions; general requirement of return, statement, or list; general rule.
31.6011(a)-1 Returns under Federal Insurance Contributions Act.
31.6011(a)-2 Returns under Railroad Retirement Tax Act.
31.6011(a)-3 Returns under Federal Unemployment Tax Act.
Sec.
31.6011(a)-4 Returns of income tax withheld from wages.
31.6011(a)-5 Monthly returns.
31.6011(a)-6 Final returns.
31.6011(a)-7 Execution of returns.
31.6011(b) Statutory provisions; identification of taxpayer.
31.6011(b)-1 Employers' identification numbers.
31.6011(b)-2 Employees' account numbers.
31.6051 Statutory provisions; receipts for employees.
31.6051-1 Statements for employees.
31.6061 Statutory provisions; signing of returns and other documents.
31.6061-1 Signing of returns.
31.6065(a) Statutory provisions; verification of returns.
31.6065(a)-1 Verification of returns or other documents.
31.6071(a) Statutory provisions; time for filing returns and other documents.
31.6071(a)-1 Time for filing returns and other documents.
31.6081(a) Statutory provisions; extension of time for filing returns.
31.6081(a)-1 Extensions of time for filing returns and other documents.
31.6091 Statutory provisions; place for filing returns.
31.6091-1 Place for filing returns.
31.6101 Statutory provisions; period covered by returns or other documents.
31.6101-1 Period covered by returns.
31.6151 Statutory provisions; time and place for paying tax shown on returns.
31.6151-1 Time for paying tax.
31.6161(a)(1) Statutory provisions; extension of time for paying tax.
31.6161(a)(1)-1 Extensions of time for paying tax.
31.6205 Statutory provisions; special rules applicable to certain employment taxes.
31.6205-1 Adjustments of underpayments.
31.6302(b) Statutory provisions; mode or time of collection; discretionary method.
31.6302(b)-1 Method of collection.
31.6302(c) Statutory provisions; mode or time of collection; use of Government depositaries.
31.6302(c)-1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.
31.6302(c)-2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.
31.6302(c)-3 Cross references.
31.6402(a) Statutory provisions; authority to make credits or refunds.
31.6402(a)-1 Credits or refunds.
31.6402(a)-2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.
31.6402(a)-3 Refund of Federal unemployment tax.
Sec.
31.6404(a) Statutory provisions; abatements.
31.6404(a)-1 Abatements.
31.6413(a) Statutory provisions; special rules applicable to certain employment taxes; adjustment of tax.
31.6413(a)-1 Repayment by employer of tax erroneously collected from employee.
31.6413(a)-2 Adjustment of overpayments.
31.6413(b) Statutory provisions; special rules applicable to certain employment taxes; overpayments of certain employment taxes.
31.6413(b)-1 Overpayments of certain employment taxes.
31.6413(c) Statutory provisions; special rules applicable to certain employment taxes; special refunds.
31.6413(c)-1 Special refunds.
31.6413(d) Statutory provisions; special rules applicable to certain employment taxes; refund or credit of Federal unemployment tax.
31.6414 Statutory provisions; income tax withheld.
31.6414-1 Credit or refund of income tax withheld from wages.
31.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.
31.6674-1 Penalties for fraudulent statement or failure to furnish statement.
31.7805 Statutory provisions; rules and regulations.
31.7805-1 Promulgation of regulations.

AUTHORITY: §§ 31.0-1 to 31.7805-1 issued under sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805.

Subpart A—Introduction

§ 31.0-1 Introduction.

(a) *In general.* The regulations in this part relate to the employment taxes imposed by subtitle C (chapters 21 to 25, inclusive) of the Internal Revenue Code of 1954, as amended. References in the regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to the Federal Insurance Contributions Act, the Railroad Retirement Tax Act, and the Federal Unemployment Tax Act are references to chapters 21, 22, and 23, respectively, of the Code. References to sections of law are references to sections of the Internal Revenue Code unless otherwise indicated.

(b) *Division of regulations.* The regulations in this part are divided into 7 subparts. Subpart A contains provisions relating to general definitions and use of terms, the division and scope of the regulations in this part, and the extent to which the regulations in this part supersede prior regulations relating to employment taxes. Subpart B relates to the taxes under the Federal Insurance Contributions Act. Subpart C relates to the taxes under the Railroad Retirement Tax Act. Subpart D relates to the tax under the Federal Unemployment Tax Act. Subpart E relates to the collection of income tax at source on wages under chapter 24 of the Code. Subpart F relates to the provisions of chapter 25 of the Code which are applicable in respect of the taxes imposed by chapters 21 to 24, inclusive, of the Code. Subpart G relates to selected provisions of subtitle F of the Code, relating to procedure and administration, which have special application in respect of the taxes imposed by subtitle C of the Code. Inasmuch as these regulations constitute Part 31 of Title 26 of the Code of Federal Regulations, each section of the regulations is preceded by a section symbol and 31 followed by a decimal point (§ 31.). Sections of law or references thereto are preceded by "Sec." or the word "section".

§ 31.0-2 General definitions and use of terms.

(a) *In general.* As used in the regulations in this part, unless otherwise expressly indicated—

(1) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(2) The Internal Revenue Code of 1954 means the act approved August 16, 1954 (26 U.S.C.), entitled "An act to revise the internal revenue laws of the United States", as amended.

(3) The Internal Revenue Code of 1939 means the act approved February 10, 1939 (53 Stat., Part 1), as amended.

(4) The Social Security Act means the act approved August 14, 1935 (42 U.S.C. c. 7), as amended.

(5) (i) The Social Security Amendments of 1954 means the act approved September 1, 1954 (68 Stat. 1052), as amended.

(ii) The Social Security Amendments of 1956 means the act approved August 1, 1956 (70 Stat. 807, as amended).

(6) The Social Security Administration means the Social Security Administration of the Department of Health,

Education, and Welfare. (See the Statement of Organization and Delegations of Authority of the Department of Health, Education, and Welfare (20 F. R. 1996).)

(7) District director means district director of internal revenue. The term also includes the Director of International Operations in all cases where the authority to perform the functions which may be performed by a district director has been delegated to the Director of International Operations.

(8) Person includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture or other unincorporated organization or group, through or by means of which any business, financial operation, or venture is carried on. It includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(9) Calendar quarter means a period of 3 calendar months ending on March 31, June 30, September 30, or December 31.

(10) Account number means the identifying number of an employee assigned, as the case may be, under the Internal Revenue Code of 1954, under subchapter A of chapter 9 of the Internal Revenue Code of 1939, or under title VIII of the Social Security Act.

(11) Identification number means the identifying number of an employer assigned, as the case may be, under the Internal Revenue Code of 1954, under subchapter A or D of chapter 9 of the Internal Revenue Code of 1939, or under title VIII of the Social Security Act.

(12) Regulations 90 means the regulations approved February 17, 1936 (26 CFR (1939) Part 400), as amended, relating to the excise tax on employers under title IX of the Social Security Act, and such regulations as made applicable to subchapter C of chapter 9 and other provisions of the Internal Revenue Code of 1939 by Treasury Decision 4885, approved February 11, 1939 (26 CFR (1939) 1943 Cum. Supp., p. 5876), together with any amendments to such regulations as so made applicable to the Internal Revenue Code of 1939.

(13) Regulations 91 means the regulations approved November 9, 1936 (26 CFR (1939) Part 401), as amended, relating to the employees' tax and the employers' tax under title VIII of the Social Security Act, and such regulations as made applicable to subchapter A of chapter 9 and other provisions of the Internal Revenue Code of 1939 by Treasury Decision 4885, approved February 11, 1939 (26 CFR (1939) 1943 Cum. Supp., p. 5876), together with any amendments to such regulations as so made applicable to the Internal Revenue Code of 1939.

(14) Regulations 106 means the regulations approved February 24, 1940 (26 CFR (1939) Part 402), as amended, relating to the employees' tax and the employers' tax under the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code of 1939) with respect to the period after 1939 and before 1951.

(15) Regulations 107 means the regulations approved September 12, 1940 (26 CFR (1939) Part 403), as amended, relating to the excise tax on employers under the Federal Unemployment Tax Act (subchapter C of chapter 9 of the Internal Revenue Code of 1939) with respect to the period after 1939 and before 1955.

(16) Regulations 114 means the regulations approved December 30, 1948 (26 CFR (1939) Part 411), as amended, relating to the employers' tax, employees' tax, and employee representatives' tax under the Railroad Retirement Tax Act (subchapter B of chapter 9 of the Internal Revenue Code of 1939) with respect to compensation paid after 1948 for services rendered after 1946 and before 1955.

(17) Regulations 120 means the regulations approved December 22, 1953 (26 CFR (1939) Part 406), as amended, relating to collection of income tax at source on wages under subchapter D of chapter 9 of the Internal Revenue Code of 1939 with respect to the period after 1953 and before 1955.

(18) Regulations 128 means the regulations approved December 6, 1951 (26 CFR (1939) Part 408), as amended, relating to the employee tax and the employer tax under the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code of 1939) with respect to the period after 1950 and before 1955.

(19) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience and shall be given no legal effect.

(b) *Subpart B.* As used in Subpart B of this part, unless otherwise expressly indicated—

(1) Act means the Federal Insurance Contributions Act.

(2) Taxes means the employee tax and the employer tax, as respectively defined in this paragraph.

(3) Employee tax means the tax imposed by section 3101 of the Code.

(4) Employer tax means the tax imposed by section 3111 of the Code.

(c) *Subpart C.* As used in Subpart C of this part, unless otherwise expressly indicated—

(1) Act means the Railroad Retirement Tax Act.

(2) Railway Labor Act means the act approved May 20, 1926 (45 U.S.C. c. 8), as amended.

(3) Railroad Retirement Act of 1937 means the act approved June 24, 1937 (45 U.S.C. 228a and following), as amended.

(4) Railroad Retirement Board means the board established pursuant to section 10 of the Railroad Retirement Act of 1937 (45 U.S.C. 228j).

(5) Tax means the employee tax, the employee representative tax, or the employer tax, as respectively defined in this paragraph.

(6) Employee tax means the tax imposed by section 3201 of the Code.

(7) Employee representative tax means the tax imposed by section 3211 of the Code.

(8) Employer tax means the tax imposed by section 3221 of the Code.

(d) *Subpart D.* As used in Subpart D of this part, unless otherwise expressly indicated:

(1) Act means the Federal Unemployment Tax Act.

(2) Railroad Unemployment Insurance Act means the act approved June 25, 1938 (45 U.S.C. c. 11), as amended.

(3) Tax means the tax imposed by section 3301 of the Code.

(e) *Subpart E.* As used in Subpart E of this part, unless otherwise expressly indicated, tax means the tax required to be deducted and withheld from wages under section 3402 of the Code.

§ 31.0–3 Scope of regulations.

(a) *Subpart B.* The regulations in Subpart B of this part relate to the imposition of the employee tax and the employer tax under the Federal Insurance Contributions Act with respect to wages paid and received after 1954 for employment performed after 1936. In addition to employment in the case of remuneration therefor paid and received after 1954, the regulations in Subpart B of this part relate also to employment performed after 1954 in the case of remuneration therefor paid and received before 1955. The regulations in Subpart B of this part include provisions relating to the definition of terms applicable in the determination of the taxes under the Federal Insurance Contributions Act, such as "employee", "wages", and "employment". The provisions of Subpart B of this part relating to the definition of "employment" are applicable also, to the extent provided in § 31.3121 (b)–2, to services performed before 1955 the remuneration for which is paid after 1954. (For prior regulations on similar subject matter, see 26 CFR (1939) Part 408 (Regulations 128).)

(b) *Subpart C.* The regulations in Subpart C of this part relate to the imposition of the employee tax, the employee representative tax, and the employer tax under the Railroad Retirement Tax Act with respect to compensation paid after 1954, for services rendered after such date. The regulations in Subpart C of this part include provisions relating to the definition of terms applicable in the determination of the taxes under the Railroad Retirement Tax Act, such as "employee", "employee representative", "employer", and "compensation". (For prior regulations on similar subject matter, see 26 CFR (1939) Part 411 (Regulations 114).)

(c) *Subpart D.* The regulations in Subpart D of this part relate to the imposition on employers of the excise tax under the Federal Unemployment Tax Act for the calendar year 1955 and subsequent calendar years with respect to wages paid after 1954 for employment performed after 1938. In addition to employment in the case of remuneration therefor paid after 1954, the regulations in Subpart D of this part relate also to employment performed after 1954 in the case of remuneration therefor paid before 1955. The regulations in Subpart D of this part include provisions relating to the definition of terms applicable in the determination of the tax under the Federal Unemployment Tax Act, such as "employee", "wages", "employment", and "wages". The regulations in Subpart D of this part also include provisions relating to the credits against the Federal tax for State contributions. (For prior regulations on similar subject matter, see 26 CFR (1939) Part 403 (Regulations 107).)

(d) *Subpart E.* The regulations in Subpart E of this part relate to the withholding under chapter 24 of the Code of income tax at source on wages paid after 1954, regardless of when such wages were earned. The regulations in Subpart E of this part include provisions relating to the definition of terms applicable in the determination of the tax under chapter 24 of the Code, such as "employee", "employer", and "wages". (For prior regulations on similar subject matter, see 26 CFR (1939) Part 406 (Regulations 120).)

(e) *Subpart F.* The regulations in Subpart F of this part deal with the general provisions contained in chapter 25 of the Code, which relate to the employment taxes imposed by chapters 21 to 24, inclusive, of the Code. (For prior regulations on the subject matter of section 3503, see 26 CFR (1939) 411.802 and 408.803 (Regulations 114 and 128, respectively). For prior regulations on the subject matter of section 3504, see 26 CFR (1939) 406.807 and 408.906 (Regulations 120 and 128, respectively).)

(f) *Subpart G.* The regulations in Subpart G of this part, which are prescribed under selected provisions of subtitle F of the Code, relate to the procedural and administrative requirements in respect of records, returns, deposits, payments, and related matters applicable to the employment taxes imposed by subtitle C (chapters 21 to 25, inclusive) of the Code. In addition, the provisions of Subpart G of this part relate to adjustments and to claims for refund, credit, or abatement, made after 1954, in connection with the employment taxes imposed by subtitle C of the Internal Revenue Code of 1954, by chapter 9 of the Internal Revenue Code of 1939, or by the corresponding provisions of prior law, but not to any adjustment reported, or credit taken, in whole or in part on any return or supplemental return filed on or before July 31, 1960. The provisions of Subpart G of this part also relate to deposits of taxes imposed by subchapter B of chapter 9 of the 1939 Code or by corresponding provisions of prior law with respect to compensation paid after 1954 for services rendered before 1955. For other administrative provisions which have application to the employment taxes imposed by subtitle C of the Code, see Part 301 of this chapter (Regulations on Procedure and Administration). (The administrative and procedural regulations applicable with respect to a particular employment tax for a prior period were combined with the substantive regulations relating to such tax for such period. For the regulations applicable to the respective taxes for prior periods, see paragraphs (a), (b), (c), and (d) of this section.)

§ 31.0–4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, supersede 26 CFR (1939) Parts 403, 406, 408, and 411 (Regulations 107, 120, 128, and 114, respectively). The Regulations on Monthly Returns and Payment of Employment Taxes (23 F.R. 5006) are also superseded.

Subpart B—Federal Insurance Contributions Act (Chapter 21, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

§ 31.3101 Statutory provisions; rate of tax.

SEC. 3101. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121 (a)) received by him with respect to employment (as defined in section 3121 (b))—

(1) With respect to wages received during the calendar years 1955 to 1959, both inclusive, the rate shall be 2 percent;

(2) With respect to wages received during the calendar years 1960 to 1964, both inclusive, the rate shall be 2½ percent;

(3) With respect to wages received during the calendar years 1965 to 1969, both inclusive, the rate shall be 3 percent;

(4) With respect to wages received during the calendar years 1970 to 1974, both inclusive, the rate shall be 3½ percent;

(5) With respect to wages received after December 31, 1974, the rate shall be 4 percent.

[Sec. 3101 as amended by sec. 208 (b), Social Security Amendments 1954]

§ 31.3101–1 Measure of employee tax.

The employee tax is measured by the amount of wages received after 1954 with respect to employment after 1936. See §§ 31.3121 (a)–1 to 31.3121 (a) (10)–1, inclusive, relating to wages; and §§ 31.3121 (b)–1 to 31.3121 (b) (15)–1, inclusive, relating to employment. For provisions relating to the time of receipt of wages, see § 31.3121 (a)–2.

§ 31.3101–2 Rates and computation of employee tax.

(a) The rates of employee tax applicable for the respective calendar years are as follows:

	Percent
For the calendar years 1955 to 1959, both inclusive	2
For the calendar years 1960 to 1964, both inclusive	2½
For the calendar years 1965 to 1969, both inclusive	3
For the calendar years 1970 to 1974, both inclusive	3½
For the calendar year 1975 and subsequent calendar years	4

(b) The employee tax is computed by applying to the wages received by the employee the rate in effect at the time such wages are received.

Example. In 1953 employee A performed for employer X services which constituted employment (see § 31.3121 (b)–2). In 1955, A receives from X $1,000 as remuneration for such services. The tax is payable at the 2 percent rate in effect for the calendar year 1955 (the year in which the wages are received) and not at the 1½ percent rate which was in effect for the calendar year 1953 (the year in which the services were performed).

§ 31.3101–3 When employee tax attaches.

The employee tax attaches at the time that the wages are received by the employee. For provisions relating to the time of such receipt, see § 31.3121(a)–2.

§ 31.3102 Statutory provisions; deduction of tax from wages.

SEC. 3102. *Deduction of tax from wages*—(a) *Requirement.* The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar quarter pays to an employee cash remuneration to which paragraph (7) (B) or (C) or (10) of section 3121 (a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar quarter is less than $50; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8) (B) of section 3121 (a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100.

(b) *Indemnification of employer.* Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

[Sec. 3102 as amended by sec. 205 A, Social Security Amendments 1954]

§ 31.3102–1 Collection of, and liability for, employee tax.

(a) The employer shall collect from each of his employees the employee tax with respect to wages for employment performed for the employer by the employee. The employer shall make the collection by deducting or causing to be deducted the amount of the employee tax from such wages as and when paid. (For provisions relating to the time of such payment, see § 31.3121(a)–2.) The employer is required to collect the tax, notwithstanding the wages are paid in something other than money, and to pay over the tax in money. (As to the exclusion from wages of remuneration paid in any medium other than cash for certain types of services, see § 31.3121(a) (7)–1, relating to such remuneration paid for service not in the course of the employer's trade or business or for domestic service in a private home of the employer; and § 31.3121 (a) (8)–1, relating to such remuneration paid for agricultural labor.)

(b) The employer may deduct amounts equivalent to employee tax from payments to an employee of cash remuneration to which the sections referred to in this paragraph are applicable prior to the time that the sum of such payments equals:

(1) $50 in the calendar quarter, for service not in the course of the employer's trade or business, to which § 31.3121 (a) (7)–1 is applicable; or

(2) $50 in the calendar quarter, for domestic service in a private home of the employer, to which § 31.3121 (a) (7)–1 is applicable; or

(3) $100 in the calendar year, for agricultural labor, to which § 31.3121 (a) (8)–1 is applicable; or

(4) $50 in the calendar quarter, for service performed as a home worker, to which § 31.3121 (a) (10)–1 is applicable. At such time as the sum of the cash payments in the calendar quarter or the calendar year, as the case may be, for a type of service referred to in this paragraph equals or exceeds the amount specified, the employer is required to collect from the employee any amount of employee tax not previously deducted. If an employer pays cash remuneration to an employee for two or more of the types of service referred to in this paragraph, the provisions of this paragraph are to be applied separately to the amount of remuneration attributable to each type of service. For provisions relating to the repayment to an employee, or other disposition, of amounts deducted from an employee's remuneration in excess of the correct amount of employee tax, see § 31.6413(a)–1. The application of this paragraph may be illustrated by the following examples:

Example (1). In the calendar year 1955 employer X makes several payments of cash remuneration to employee A for agricultural labor which constitutes employment. In January employer X makes his first payment of such cash remuneration to employee A in the amount of $10. X deducts 20 cents (2 percent of $10) as an amount equivalent to employee tax. In June X makes his second payment of cash remuneration to A in the amount of $50. X does not deduct from this payment an amount equivalent to employee tax. In October X makes his third payment of cash remuneration to A in the amount of $40. This amount brings the sum of such payments in 1955 to $100, and X is now required to collect employee tax from A. The amount of employee tax applicable to the $100 so paid is $2 (2 percent of $100). Inasmuch as X previously deducted 20 cents in January 1955, X is required to deduct $1.80 ($2 minus 20 cents) from the $40 paid in October 1955.

Example (2). Assume the same facts as in example (1), and assume further that employer X deducted $1.80 from the October payment to employee A. In November 1955, X makes his next payment of cash remuneration to A in the amount of $10. X is required to deduct 20 cents (2 percent of $10) from such payment.

(c) In collecting employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. The employer is liable for the employee tax with respect to all wages paid by him to each of his employees whether or not it is collected from the employee. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him the employee also is liable for the employee tax with respect to all the wages received by him. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. The employer is indemnified against the claims and demands of any person for the amount of any payment of such tax made by the employer to the district director.

§ 31.3102–2 Manner and time of payment of employee tax.

The employee tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part.

Tax on Employers

§ 31.3111 Statutory provisions; rate of tax.

Sec. 3111. *Rate of tax.* In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121 (a)) paid by him with respect to employment (as defined in section 3121 (b))—

(1) With respect to wages paid during the calendar years 1955 to 1959, both inclusive, the rate shall be 2 percent;

(2) With respect to wages paid during the calendar years 1960 to 1964, both inclusive, the rate shall be 2½ percent;

(3) With respect to wages paid during the calendar years 1965 to 1969, both inclusive, the rate shall be 3 percent;

(4) With respect to wages paid during the calendar years 1970 to 1974, both inclusive, the rate shall be 3½ percent;

(5) With respect to wages paid after December 31, 1974, the rate shall be 4 percent. [Sec. 3111 as amended by sec. 208 (c), Social Security Amendments 1954]

§ 31.3111–1 Measure of employer tax.

The employer tax is measured by the amount of wages paid after 1954 with respect to employment after 1936. See §§ 31.3121 (a)–1 to 31.3121 (a) (10)–1, inclusive, relating to wages, and §§ 31.3121 (b)–1 to 31.3121 (b) (15)–1, inclusive, relating to employment. For provisions relating to time of payment of wages, see § 31.3121 (a)–2.

§ 31.3111–2 Rates and computation of employer tax.

(a) The rates of employer tax applicable for the respective calendar years are as follows:

	Percent
For the calendar years 1956 to 1959, both inclusive	2
For the calendar years 1960 to 1964, both inclusive	2½
For the calendar years 1965 to 1969, both inclusive	3
For the calendar years 1970 to 1974, both inclusive	3½
For the calendar year 1975 and subsequent calendar years	4

(b) The employer tax is computed by applying to the wages paid by the employer the rate in effect at the time such wages are paid.

§ 31.3111–3 When employer tax attaches.

The employer tax attaches at the time that the wages are paid by the employer. For provisions relating to the time of such payment, see § 31.3121(a)–2.

§ 31.3111–4 Liability for employer tax.

The employer is liable for the employer tax with respect to the wages paid to his employees for employment performed for him.

§ 31.3111–5 Manner and time of payment of employer tax.

The employer tax is payable to the district director in the manner and at the time prescribed in Subpart G of the regulations in this part.

§ 31.3112 Statutory provisions; instrumentalities of the United States.

Sec. 3112. *Instrumentalities of the United States.* Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

§ 31.3112–1 Instrumentalities of the United States specifically exempted from the employer tax.

Section 3112 makes ineffectual as to the employer tax imposed by section 3111 those provisions of law which grant to an instrumentality of the United States an exemption from taxation, unless such provisions grant a specific exemption from the tax imposed by section 3111 by an express reference to such section or the corresponding section of prior law (section 1410 of the Internal Revenue Code of 1939). Thus, the general exemptions from Federal taxation granted by various statutes to certain instrumentalities of the United States without specific reference to the tax imposed by section 3111 or by section 1410 of the 1939 Code are rendered inoperative insofar as such exemptions relate to the tax imposed by section 3111. For provisions relating to the exception from employment of services performed in the employ of an instrumentality of the United States specifically exempted from the employer tax, see § 31.3121 (b) (5)–1. For provisions relating to services performed for an instrumentality exempt on December 31, 1950, from the employer tax, see paragraph (c) of § 31.3121 (b) (6)–1.

General Provisions

§ 31.3121(a) Statutory provisions; definitions; wages.

Sec. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

§ 31.3121(a)–1 Wages.

(a) Whether remuneration paid after 1954 for employment performed after 1936 constitutes wages is determined under section 3121(a). This section and §§ 31.3121(a)(1)–1 to 31.3121(a)(10)–1, inclusive (relating to the statutory exclusions from wages), apply with respect only to remuneration paid after 1954 for employment performed after 1936. Whether remuneration paid after 1936 and before 1940 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 401 (Regulations 91). Whether remuneration paid after 1939 and before 1951 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 402 (Regulations 106).

Whether remuneration paid after 1950 and before 1955 for employment performed after 1936 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 408 (Regulations 128).

(b) The term "wages" means all remuneration for employment unless specifically excepted under section 3121 (a) (see §§ 31.3121 (a) (1)–1 to 31.3121 (a) (10)–1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions on sales or on insurance premiums, are wages if paid as compensation for employment.

(d) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(e) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment. See, however, §§ 31.3121 (a) (7)–1, 31.3121 (a) (8)–1, and 31.3121 (a) (10)–1, relating to the treatment of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business and for domestic service in a private home of the employer, for agricultural labor, and for services performed by certain home workers, respectively.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges", however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(h) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(i) Remuneration for employment, unless such remuneration is specifically excepted under section 3121 (a) or paragraph (j) of this section, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

Example. A is employed by B during the month of January 1955 in employment and is entitled to receive remuneration of $100 for the services performed for B, the employer, during the month. A leaves the employ of B at the close of business on January 31, 1955. On February 15, 1955 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in January. The $100 is wages and the taxes are payable with respect thereto.

(j) In addition to the exclusions specified in §§ 31.3121 (a) (1)–1 to 31.3121 (a) (10)–1, inclusive, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 3121 (b) (see §§ 31.3121 (b)–1 to 31.3121 (b) (15)–1, inclusive) and which are not deemed to be employment under section 3121 (c) (see § 31.3121 (c)–1).

(2) Remuneration for services which are deemed not to be employment under section 3121 (c) (see § 31.3121 (c)–1).

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

§ 31.3121 (a)–2 Wages; when paid and received.

(a) In general, wages are received by an employee at the time that they are paid by the employer to the employee. Wages are paid by an employer at the time that they are actually or constructively paid unless under paragraph (c) of this section they are deemed to be subsequently paid.

(b) Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3123–1.

(c) (1) The first $50 of cash remuneration paid, either actually or constructively, by an employer to an employee in a calendar quarter for—

(i) Service to which § 31.3121 (a) (7)–1 is applicable (service not in the course of the employer's trade or business and domestic service in a private home of the employer); or

(ii) Service to which § 31.3121 (a) (10)–1 is applicable (service performed by certain home workers),

shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar quarter that the sum of such cash payments made within such quarter is at least $50.

(2) The first $100 of cash remuneration paid, either actually or constructively, by an employer to an employee in a calendar year for agricultural labor to which § 31.3121 (a) (8)–1 is applicable shall be deemed to be paid by the employer to the employee at the first moment of time in such calendar year that the sum of such cash payments made within such year is at least $100.

(3) If an employer pays cash remuneration to an employee for two or more of the types of service referred to in this paragraph, the provisions of this paragraph are to be applied separately to the amount of remuneration attributable to each type of service.

§ 31.3121(a)(1) Statutory provisions; definitions; wages; $4,200 limitation.

Sec. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $4,200 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $4,200 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

[Sec. 3121 (a) (1) as amended by sec. 204 (a) Social Security Amendments 1954]

§ 31.3121(a)(1)–1 $4,200 limitation.

(a) *In general.* (1) The term "wages" does not include that part of the remuneration paid within any calendar year after 1954 by an employer to an employee which exceeds the first $4,200 of remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3121 (a)–1 or §§ 31.3121 (a) (2)–1 to 31.3121 (a) (10)–1, inclusive) paid within such calendar year by such employer to such employee for employment performed for him at any time after 1936.

(2) The $4,200 limitation applies only if the remuneration received during any one calendar year by an employee from the same employer for employment performed after 1936 exceeds $4,200. The limitation in such case relates to the amount of remuneration received during any one calendar year for employment after 1936 and not to the amount of remuneration for employment performed in any one calendar year.

Example. Employee A, in 1955, receives $3,500 from employer B on account of $4,000 due him for employment performed in 1955. In 1956 A receives from employer B the balance of $500 due him for employment performed in the prior year (1955), and thereafter in 1956 also receives $4,000 for employment performed in 1956 for employer B. The $3,500 received in 1955 is subject to the taxes in 1955. The balance of $500 received in 1956 for employment during 1955 is subject to the taxes in 1956, as is also the first $3,700 paid of the $4,000 for employment during 1956 (this $500 for 1955 employment added to the first $3,700 paid for 1956 employment constitutes the maximum wages which could be received by A in 1956 from any one employer). The final $300 received by A from B in 1956 is not included as wages and is not subject to the taxes.

(3) If during a calendar year the employee receives remuneration from more than one employer, the limitation of wages to the first $4,200 of remuneration received applies, not to the aggregate remuneration received from all employers with respect to employment performed after 1936, but instead to the remuneration received during such calendar year from each employer with respect to employment performed after 1936. In such case the first $4,200 received during the calendar year from each employer constitutes wages and is subject to the taxes, even though, under section 6413 (c), the employee may be entitled to a special credit or refund of any amount of employee tax deducted from his wages which exceeds the employee tax with respect to the first $4,200 of wages received during the calendar year from all employers. In this connection and in connection with the two examples immediately following, see § 31.6413 (c)–1, relating to special credits or refunds of employee tax on wages over $4,200. In connection with the application of the $4,200 limitation on wages in the case of remuneration paid for services performed in the employ of the United States or a wholly owned instrumentality thereof, see § 31.3122. In connection with the application of the $4,200 limitation, see also paragraph (b) of this section, relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor.

Example (1). During 1955 employee C receives from employer D a salary of $700 a month for employment performed for D during the first 7 months of 1955, or total remuneration of $4,900. At the end of the sixth month C has received $4,200 from employer D, and only that part of his total remuneration from D constitutes wages subject to the taxes. The $700 received by employee C from employer D in the seventh month is not included as wages and is not subject to the taxes. At the end of the seventh month C leaves the employ of D and enters the employ of E. C receives remuneration of $840 a month from employer E in each of the remaining 5 months of 1955, or total remuneration of $4,200 from employer E. The entire $4,200 received by C from employer E constitutes wages and is subject to the taxes. Thus, the first $4,200 received from employer D and the entire $4,200 received from employer E constitute wages.

Example (2). During the calendar year 1955 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation and during such year receives a salary of $4,200 from each corporation. Each $4,200 received by F from each of the Corporations X, Y, and Z (whether or not such corporations are related) constitutes wages and is subject to the taxes.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the $4,200 limitation set forth in paragraph (a) of this section, any remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3121 (a)–1 or §§ 31.3121 (a) (2)–1 to 31.3121 (a) (10)–1, inclusive) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor.

(2) The wages paid, or considered as having been paid, by a predecessor to an employee shall, for purposes of the $4,200 limitation, be treated as having been paid to such employee by a successor, if:

(i) The successor during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor;

(ii) Such employee was employed in the trade or business of the predecessor immediately prior to the acquisition and is employed by the successor in his trade or business immediately after the acquisition; and

(iii) Such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

(3) The method of acquisition of the property is immaterial. The acquisition may occur as a consequence of a corporate merger or consolidation, the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

(4) Substantially all the property used in a separate unit of a trade or business may consist of substantially all the property used in the performance of an essential operation of the trade or business, or it may consist of substantially all the property used in a relatively self-sustaining entity which forms a part of the trade or business.

Example (1). The M Corporation which is engaged in the manufacture of automobiles, including the manufacture of automobile engines, discontinues the manufacture of the engines and transfers all the property used in such manufacturing operation to the N Company. The N Company is considered to have acquired a separate unit of the trade or business of the M Corporation, namely, its engine manufacturing unit.

Example (2). The R Corporation which is engaged in the operation of a chain of grocery stores transfers one of such stores to the S Company. The S Company is considered to have acquired a separate unit of the trade or business of the R Corporation.

(5) A successor may receive credit for wages paid to an employee by a predecessor only if immediately prior to the acquisition the employee was employed by the predecessor in his trade or business which was acquired by the successor and if immediately after the acquisition such employee is employed by the successor in his trade or business (whether or not in the same trade or business in which the acquired property is used). If the acquisition involves only a separate unit of a trade or business of the predecessor, the employee need not have been employed by the predecessor in that unit provided he was employed in the trade or business of which the acquired unit was a part.

Example. The Y Corporation in 1955 acquires all the property of the X Manufacturing Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. The X Company has in 1955 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $2,500 of wages to A. The Y Corporation in 1955 pays to A remuneration with respect to employment of $2,500. Only $1,700 of the remuneration paid by the Y Corporation is considered to be wages. For purposes of the $4,200 limitation, the Y Corporation is credited with the $2,500 paid to A by the X Company. If, in the same calendar year, the property is acquired by the Z Company from the Y Corporation and A immediately after the acquisition is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $4,200 limitation as having also been paid by the Y Corporation).

(6) Where a corporation described in section 501 (c) (3) which is exempt from income tax under section 501 (a) has in effect a certificate filed pursuant to section 3121 (k), or pursuant to section 1426 (l) of the Internal Revenue Code of 1939, waiving its exemption from the taxes imposed by the Act, the activity in which such corporation is engaged is considered to be its trade or business for the purpose of determining whether the transferred property was used in the trade or business of the predecessor and for the purpose of determining whether the employment by the predecessor and the successor of an individual whose services were retained by the successor constitute employment in a trade or business. Thus, if a charitable or religious organization, subject to the taxes by virtue of its certificate, acquires all the property of another such organization likewise subject to the taxes and retains the services of employees of the predecessor, wages paid to such employees by the predecessor in the year of the acquisition (and prior to such acquisition) will be attributed to the successor for purposes of the $4,200 limitation.

§ 31.3121(a)(2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death.

§ 31.3121(a)(2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

(a) The term "wages" does not include the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(1) An employee's retirement,

(2) Sickness or accident disability of an employee or any of his dependents,

(3) Medical or hospitalization expenses in connection with sickness or accident disability of an employee or any of his dependents, or

(4) Death of an employee or any of his dependents.

(b) The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items. Payments for any one or more of such items under a plan or system established by an employer solely for the dependents of his employees are not within this exclusion from wages.

(c) Dependents of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

(d) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

§ 31.3121(a)(3) Statutory provisions; definitions; wages; retirement payments.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

§ 31.3121(a)(3)–1 Retirement payments.

The term "wages" does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

§ 31.3121(a)(4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

§ 31.3121(a)(4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.

The term "wages" does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of 6 calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

§ 31.3121(a)(5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(5) Any payment made to, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 (a) (3), (4), (5), and (6);

§ 31.3121(a)(5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.

The term "wages" does not include—

(a) Any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6); or

(b) Any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6).

A payment made to an employee of a trust described in section 401 (a) which is exempt from tax under section 501 (a) for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exclusion from wages.

§ 31.3121(a)(6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(6) The payment by an employer (without deduction from the remuneration of the employee)—

(A) Of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

(B) Of any payment required from an employee under a State unemployment compensation law;

§ 31.3121(a)(6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.

The term "wages" does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

§ 31.3121(a)(7) Statutory provisions; definitions; wages; payments for service not in the course of the employer's trade or business or for domestic service.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(7) (A) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "domestic service in a private home of the employer" does not include service described in subsection (g) (5);

(C) Cash remuneration paid by an employer in any calendar quarter to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g) (5);

[Sec. 3121 (a) (7) as amended by sec. 204 (b) (1), (2), Social Security Amendments 1954]

§ 31.3121(a)(7)–1 Payments for services not in the course of employer's trade or business or for domestic service.

(a) *Meaning of terms*—(1) *Services not in the course of employer's trade or business.* The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Such term does not include services performed for a corporation. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home of the employer. See paragraph (f) of § 31.3121 (g)–1 for provisions relating to services not in the course of the employer's trade or business performed on a farm operated for profit.

(2) *Domestic service in a private home of the employer.* Services of a household nature performed by an employee in or about a private home of the person by whom he is employed constitute domestic service in a private home of the employer. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home. In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. The term "domestic service in a private home of the employer" does not include the services enumerated above unless such services are performed in or about a private home of the employer. Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's home, are not included within the term "domestic service in a private home of the employer". As used in this section, the term does not include domestic service in a private home of the employer performed on a farm operated for profit or service not in the course of the employer's trade or business. See paragraph (f) § 31.3121 (g)–1 for provisions relating to domestic service in a private home of the employer performed on a farm operated for profit.

(b) *Payments other than in cash.* The term "wages" does not include remuneration paid in any medium other than cash (1) for service not in the course of the employer's trade or business, or (2) for domestic service in a private home of the employer. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, for service not in the course of the employer's trade or business or for domestic service in a private home of the employer does not constitute wages.

(c) *Cash payments.* (1) The term "wages" does not include cash remuneration paid by an employer in any calendar quarter after 1954 to an employee for—

(i) Domestic service in a private home of the employer, or

(ii) Service not in the course of the employer's trade or business,

unless the cash remuneration paid in such quarter by the employer to the employee for such service is $50 or more.

(2) The test relating to cash remuneration of $50 or more is based on the remuneration paid in a calendar quarter rather than on the remuneration earned during a calendar quarter. It is immaterial whether the remuneration was earned before 1955 or after 1954.

Example. In the calendar quarter ending March 31, 1955, employer X pays employee A cash remuneration of $50 for service not in the course of X's trade or business. Such remuneration constitutes wages subject to the taxes even though $10 thereof represents payment for such service performed by A for X in December 1954.

In determining whether $50 or more has been paid either for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration from an employer in a calendar quarter for both types of services the $50 cash-remuneration test is to be applied separately to each type of service. If an employee receives cash remuneration from more than one employer in a calendar quarter for domestic service in a private home of the employer or for service not in the course of the employer's trade or business, the $50 cash-remuneration test is to be applied separately to the remuneration received from each employer. See § 31.3102–1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for the services described in this section; § 31.3121 (a)–2, relating to time of payment of wages for such services; and § 31.3121 (l)–1, relating to computation to the nearest dollar of any payment of cash remuneration for domestic service in a private home of the employer.

§ 31.3121(a)(8) Statutory provisions; definitions; wages; payments for agricultural labor.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(8) (A) Remuneration paid in any medium other than cash for agricultural labor;

(B) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor, if the cash remuneration paid in such year by the employer to the employee for such labor is less than $100;

[Sec. 3121 (a) (8) as amended by sec. 204 (b) (3), Social Security Amendments 1954]

§ 31.3121(a)(8)–1 Payments for agricultural labor.

(a) *Scope of this section.* For purposes of the regulations in this section, the term "agricultural labor" means, except as otherwise expressly indicated, only such agricultural labor (see § 31.3121(g)–1) as constitutes employment or is deemed to constitute employment by reason of the rules relating to included and excluded services contained in section 3121(c) (see § 31.3121(c)–1) or the corresponding section of prior law.

(b) *Payments other than in cash.* The term "wages" does not include remuneration paid in any medium other than cash for agricultural labor. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, clothing, car tokens, transportation passes or tickets, farm products, or other goods or commodities, for agricultural labor does not constitute wages.

(c) *Cash payments.* (1) The term "wages" does not include cash remuneration paid by an employer in any calendar year after 1954 to an employee for agricultural labor unless the cash remuneration paid in such year by the employer to the employee for such labor is $100 or more. If an employee receives cash remuneration from an employer both for services which constitute agricultural labor and for services which do not constitute agricultural labor, only the amount of such remuneration which is attributable to agricultural labor shall be included in determining whether the cash-remuneration test is met.

Example. Employer X operates a store and also is engaged in farming operations. Employee A, who regularly performs services for X in connection with the operation of the store, works on X's farm when additional help is required for the farm activities. In the calendar year 1955, X pays A $90 in cash for agricultural labor performed on X's farm and $1,500 for services performed in connection with the operation of the store. Since only $90 in cash remuneration is paid by X to A in the calendar year 1955 for agricultural labor, the cash-remuneration test is not met and the $90 so paid to A does not constitute wages subject to the taxes.

(2) The test relating to cash remuneration of $100 or more is based on the remuneration paid in a calendar year rather than on the remuneration earned during a calendar year. It is immaterial whether the remuneration was earned before 1955 or after 1954.

Example. Employer X pays cash remuneration of $100 in the calendar year 1955 to employee A for agricultural labor. Such remuneration constitutes wages even though $10 of such amount represents payment for agricultural labor performed by A for X in December 1954.

(3) If the services performed by an employee for his employer in any pay period include both agricultural labor and other services and either the agricultural labor or the other services are excepted from employment under any of the numbered paragraphs of section 3121 (b), the rules in § 31.3121 (c)–1, relating to included and excluded services, must be applied to the services performed in such pay period. Thus, any cash remuneration paid for agricultural labor which is performed in the pay period and which is deemed to be employment under the included-excluded rules must be taken into account in determining whether the cash remuneration paid to the employee for agricultural labor meets the $100 cash-remuneration test.

Example. Employer X, who is engaged in farm operations and also in the harvesting of crude gum (oleoresin) from living trees, employs A to perform services in connection with both types of operations. X pays A cash remuneration of $135 in the calendar year 1955 in 3 equal monthly payments of $45 each for such services. A spends more than one-half of his time in the first monthly pay period in harvesting crude gum and more than one-half of his time in the second and third pay periods in cultivating the soil. While both types of services performed by A for X constitute agricultural labor as defined in section 3121 (g), A's services in connection with the cultivation of the soil constitute employment and his services in connection with the harvesting of crude gum are excepted from employment under section 3121 (b) (1) (see paragraph (a) of § 31.3121 (b) (1)–1. By application of the rules relating to included and excluded services, none of A's services in the first pay period are deemed to constitute employment and the $45 paid for his services in such pay period is disregarded for purposes of the $100 cash-remuneration test. Although all of A's services in the second and third pay periods are deemed to constitute employment by application of the included-excluded rules, the $90 paid by X to A for his services in such periods does not constitute wages subject to the taxes since the total cash remuneration paid to A by X in the calendar year for agricultural labor which constitutes or is deemed to constitute employment is less than $100.

(4) In determining whether $100 or more has been paid to an employee for agricultural labor, only cash remuneration for such labor shall be taken into account. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, clothing, car tokens, transportation passes or tickets, farm products, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met. If an employee receives cash remuneration in any one calendar year from more than one employer for agricultural labor, the $100 cash-remuneration test is to be applied with respect to the remuneration received by the employee from each employer in such calendar year for such labor. See § 31.3102–1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for agricultural labor, and § 31.3121 (a)–2, relating to the time of payment of wages for agricultural labor.

§ 31.3121(a)(9) Statutory provisions; definitions; wages; payments to stand-by employees.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(9) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made; or

§ 31.3121(a)(9)–1 Payments to stand-by employees.

The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee after the calendar month in which the employee attains age 65, if—

(a) Such employee does no work (other than being subject to call for the performance of work) for such employer in the period for which such payment is made; and

(b) The employer-employee relationship exists between the employer and employee throughout the period for which such payment is made.

Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages. For example, if employee A, who attained the age of 65 in January 1955, is employed by the X Company on a stand-by basis and is paid $200 by the X Company for being subject to call during the month of February 1955 and an additional $25 for work performed for the X Company on one day in February 1955, then none of the $225 is excluded from wages under this exception.

§ 31.3121(a)(10) Statutory provisions; definitions; wages; payments to certain home workers.

SEC. 3121. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(10) Remuneration paid by an employer in any calendar quarter to an employee for service described in subsection (d) (3) (C) (relating to home workers), if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50.

§ 31.3121(a)(10)–1 Payments to certain home workers.

(a) The term "wages" does not include remuneration paid by an employer in any calendar quarter to an employee—

(1) For services performed after 1954 as a home worker who is an employee by reason of the provisions of section 3121 (d) (3) (C) (see paragraph (d) of § 31.3121(d)–1), or

(2) For services performed after 1950 and before 1955 as a home worker who is an employee by reason of the provisions of section 1426 (d) (3) (C) of the Internal Revenue Code of 1939,

unless the cash remuneration paid in such quarter by the employer to the employee for such services is $50 or more. The test relating to cash remuneration of $50 or more is based on remuneration paid in a calendar quarter rather than on remuneration earned during a calendar quarter. If $50 or more of cash remuneration is paid in a particular calendar quarter, it is immaterial whether the $50 is in payment for services performed during the quarter of payment or during any other quarter.

(b) The application of paragraph (a) of this section may be illustrated by the following examples:

Example (1). A, a home worker, performs services for X, a manufacturer, in 1954 and 1955. In the performance of the home work A is an employee both in 1954 (by reason of section 1426 (d) (3) (C) of the 1939 Code) and in 1955 (by reason of section 3121 (d) (3) (C)). In March 1955, A returns to X articles made by A at home from materials received by A from X in 1954. X pays A cash remuneration of $50 for such work when the

finished articles are delivered. The $50 includes $10 which represents remuneration for home work performed by A in 1954. The entire $50 is subject to the taxes.

Example (2). Assume that the same transactions occur, but that A is not subject in 1954 to licensing requirements under the laws of the State in which the home work is performed. A, therefore, does not perform home work in 1954 as an employee of X by reason of section 1426 (d) (3) (C) of the 1939 Code, and the $10 paid in 1955 for such work is not remuneration for employment. The remaining $40 for the home work performed in 1955 is remuneration for employment, but is excluded from wages by application of the $50 cash-remuneration test.

(c) In the event an employee receives remuneration in any one calendar quarter from more than one employer for services performed as a home worker of the character described in paragraph (a) of this section, the regulations in this section are to be applied with respect to the remuneration received by the employee from each employer in such calendar quarter for such services. This exclusion from wages has no application to remuneration paid for services performed as a home worker who is an employee under either section 3121 (d) (2) (see paragraph (c) of § 31.3121(d)–1) or section 1426 (d) (2) of the 1939 Code, relating to common law employees.

(d) Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as clothing, car tokens, transportation passes or tickets, or other goods or commodities, is disregarded in determining whether the $50 cash-remuneration test is met. If the cash remuneration paid in any calendar quarter by an employer to an employee for services performed as a home worker of the character described in paragraph (a) of this section is $50 or more, then no remuneration, whether in cash or in any medium other than cash, paid by the employer to the employee in such calendar quarter for such services is excluded from wages under this exception.

(e) For provisions relating to whether a home worker is an employee under section 1426 (d) (3) (C) of the 1939 Code, see § 408.204 of Regulations 128; 26 CFR (1939) Part 408. See also § 31.3102–1, relating to deduction of employee tax or amounts equivalent to the tax from cash payments for services performed as a home worker of the character described in paragraph (a) of this section, and § 31.3121(a)–2, relating to the time of payment of wages for such services.

§ 31.3121(b) Statutory provisions; definitions; employment.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means any service performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that, in the case of service performed after 1954, such term shall not include—

• • • • • •

[SEC. 205. *Amendments to definition of employment* [Social Security Amendments of 1954]. (a) Section 3121 (b) (1) of the Internal Revenue Code of 1954 is amended to read as follows:

(1) (A) Service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550 § 3; 12 U. S. C. 1141j));

(B) Service performed by foreign agricultural workers (i) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (65 Stat. 119; 7 U. S. C. 1461–1468), or (ii) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies on a temporary basis to perform agricultural labor;

(b) Section 3121 (b) of the Internal Revenue Code of 1954 is amended by striking out paragraph (3) and redesignating paragraphs (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14), and any references thereto contained in such code, as paragraphs (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13), respectively.

• • • • • •

(f) • • • The amendments made by subsections (a) and (b) shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954.]

§ 31.3121(b)–1 Employment; services to which the regulations in this subpart apply.

(a) The provisions of the regulations in this subpart relating to the term "employment" apply with respect to services performed after 1954. Certain provisions also apply with respect to services performed before 1955 for which the remuneration is paid after 1954 (see paragraph (b) of § 31.3121(b)–2). For provisions relating generally to services performed before 1955, see paragraph (a) of § 31.3121 (b)–2. For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 31.3121 (c)–1. For provisions relating to who are employees and who are employers, see §§ 31.3121 (d)–1 and 31.3121 (d)–2, respectively.

(b) The taxes apply with respect to remuneration paid after 1954 for services performed before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3121 (a)–1 to 31.3121 (a) (10)–1, relating to wages.

§ 31.3121(b)–2 Employment; services performed before 1955.

(a) *General rule.* (1) Subject to the provisions of paragraph (b) of this section:

(i) Services performed after 1936 and before 1955 which were employment under the applicable law in effect before 1955 constitute employment under section 3121 (b).

(ii) Services performed after 1936 and before 1955 which were not employment under the applicable law in effect before 1955 do not constitute employment under section 3121 (b).

(2) Except as provided in paragraph (b) of this section, determination of whether services performed before 1955 constitute employment shall be made in accordance with the applicable provisions of law in effect before 1955 and of the regulations thereunder. The regulations applicable in determining whether services performed after 1936 and before 1955 constitute employment are as follows:

(i) Services performed after 1936 and before 1940—26 CFR (1939) Part 401 (Regulations 91).

(ii) Services performed after 1939 and before 1951—26 CFR (1939) Part 402 (Regulations 106).

(iii) Services performed after 1950 and before 1955—26 CFR (1939) Part 408 (Regulations 128).

(b) *Certain services performed before 1955 the remuneration for which is paid after 1954.* (1) Services of the following character performed before 1955, for which remuneration is paid after 1954, constitute employment under section 3121 (b):

(i) Agricultural labor, as defined in section 3121 (g) (see § 31.3121 (g)–1), other than services of the character described in section 3121 (b) (1) (relating to services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers), which, at the time performed, constituted employment under section 1426 (b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426 (b) (1) of such Code, as in effect at the time the services were performed.

(ii) Services not in the course of the employers' trade or business (see paragraph (a) (1) of § 31.3121 (a) (7)–1) which, at the time performed, constituted employment under section 1426 (b) of the 1939 Code, or would have constituted employment except for the provisions of section 1426 (b) (3) of such Code, as in effect at the time the services were performed.

(2) Services of the character described in section 3121 (b) (1) (B) (see paragraphs (b) and (c) of § 31.3121(b) (1)–1, relating to services performed by certain foreign agricultural workers), which were performed before 1955 and the remuneration for which is paid after 1954, do not constitute employment under section 3121 (b), irrespective of whether they constituted employment under section 1426 (b) of the 1939 Code, as in effect at the time the services were performed.

(3) This paragraph has no application to services performed before 1955 and the remuneration for which was paid before 1955.

§ 31.3121(b)–3 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined in accordance with the provisions of section 3121(b).

(b) *Services performed within the United States.* Services performed after 1954 within the United States, that is, within any of the several States, the District of Columbia, the Territory of Alaska or Hawaii, the Virgin Islands, or Puerto Rico, by an employee for his employer, unless specifically excepted by section 3121 (b), constitute employment. The place where the contract of service is entered into and the residence of the employee or of the employer are immaterial. The citizenship of the employee or of the employer also is immaterial except to the extent provided in any specific exception from employment. Thus, the employee and the employer may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States*—(1) *In general.* Except as provided in subparagraphs (2) and (3) of this paragraph, services performed outside the United States, that is, outside the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico, do not constitute employment.

(2) *On or in connection with an American vessel or American aircraft.* (i) Services performed after 1954 by an employee for an employer "on or in connection with" an American vessel or American aircraft outside the United States (that is, the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico) constitute employment if:

(*a*) The employee is also employed "on and in connection with" such vessel or aircraft when outside the United States; and

(*b*) The services are performed under a contract of service, between the employee and the employer, which is entered into within the United States; or during the performance of the contract under which the services are performed and while the employee is employed on the vessel or aircraft it touches at a port within the United States; and

(*c*) The services are not excepted under section 3121 (b).

(ii) An employee performs services on and in connection with the vessel or aircraft if he performs services on such vessel or aircraft which are also in connection with the vessel or aircraft. Services performed on the vessel by employees as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Similarly, services performed on the aircraft by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(iii) If services are performed by an employee "on and in connection with" an American vessel or American aircraft when outside the United States and the conditions listed in subdivision (i) (b) and (c) of this subparagraph are met, then the services of that employee performed on or in connection with the vessel or aircraft constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(iv) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which and while the employee is employed on the vessel or aircraft it does not touch at a port within the United States, do not constitute employment under this subparagraph, notwithstanding services performed by other members of the crew or other employees on or in connection with the vessel or aircraft may constitute employment.

(v) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. An aircraft includes every description of craft, or other contrivance, used as a means of transportation through the air. In the case of an aircraft, the term "port" means an airport. An airport means an area on land or water used regularly by aircraft for receiving or discharging passengers or cargo. For definitions of "American vessel" and "American aircraft", see § 31.3121 (f)–1.

(vi) With respect to services performed outside the United States on or in connection with an American vessel or American aircraft, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the employer is material only in case it has a bearing in determining whether a vessel is an American vessel.

(3) *By a citizen of the United States as an employee for an American employer.* Services performed after 1954 outside the United States by a citizen of the United States as an employee for an American employer constitute employment provided the services are not specifically excepted under section 3121 (b). For definitions of "citizen of the United States" and "American employer", see §§ 31.3121 (e)–1 and 31.3121 (h)–1, respectively.

(4) *By a citizen of the United States as an employee for a foreign subsidiary corporation.* For provisions relating to the extension of the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act to certain services not constituting employment which are performed outside the United States by citizens of the United States in the employ of a foreign subsidiary of a domestic corporation, see section 3121(1) and Part 36 of this chapter (Regulations Relating to Contract Coverage of Employees of Foreign Subsidiaries).

§ 31.3121(b)–4 Employment; excepted services in general.

(a) Services performed after 1954 by an employee for an employer do not constitute employment for purposes of the taxes if they are specifically excepted from employment under any of the numbered paragraphs of section 3121(b). Services so excepted do not constitute employment for purposes of the taxes even though they are performed within the United States, or are performed outside the United States on or in connection with an American vessel or American aircraft, or are performed outside the United States by a citizen of the United States for an American employer.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services in an excepted class rendered by the employee.

Example. A is an individual who is employed part time by B to perform services which are specifically excepted from employment under one of the numbered paragraphs of section 3121 (b). A is also employed by C part time to perform services which constitute employment. While no tax liability is incurred with respect to A's remuneration for services performed in the employ of B (the services being excepted from employment), the exception does not embrace the services performed by A in the employ of C (which constitute employment) and the taxes attach with respect to the wages (see § 31.3121 (a)–1) for such services.

(c) For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3121 (c)–1.

§ 31.3121(b)(1) Statutory provisions; definitions; employment; agricultural services.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

(1) (A) Service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550 § 3; 12 U. S. C. 1141j);

(B) Service performed by foreign agricultural workers (i) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (65 Stat. 119; 7 U. S. C. 1461–1468), or (ii) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West

Indies on a temporary basis to perform agricultural labor;

[Sec. 3121 (b) (1), as amended, effective with respect to services (performed after 1954 or before 1955) the remuneration for which is paid after 1954, by sec. 205 (a), Social Security Amendments 1954]

SEC. 15. *Miscellaneous provisions* [*Agricultural Marketing Act*]. • • •

(g) As used in this Act, the term "agricultural commodity" includes • • • crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [42 Stat. 1435; 7 U. S. C. 92 (c), (h)].

SEC. 2. [*The Naval Stores Act.*] That, when used in this Act—

• • • • •

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

• • • • •

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

• • • • •

SEC. 501. [*Title V, Agricultural Act of 1949.*] For the purpose of assisting in such production of agricultural commodities and products as the Secretary of Agriculture deems necessary, by supplying agricultural workers from the Republic of Mexico (pursuant to arrangements between the United States and the Republic of Mexico), the Secretary of Labor is authorized—

(1) To recruit such workers (including any such workers who have resided in the United States for the preceding five years, or who are temporarily in the United States under legal entry);

• • • • •

(5) To assist such workers and employers in negotiating contracts for agricultural employment (such workers being free to accept or decline agricultural employment with any eligible employer and to choose the type of agricultural employment they desire, and eligible employers being free to offer agricultural employment to any workers of their choice not under contract to other employers);

• • • • •

SEC. 507. [*Title V, Agricultural Act of 1949.*] For the purposes of this title—

(1) The term "agricultural employment" includes services or activities included within the provisions of section 3 (f) of the Fair Labor Standards Act of 1938, as amended [52 Stat. 1060; 29 U. S. C. 203 (f)], or section 1426 (h) of the Internal Revenue Code as amended [section 3121 (g) of the Internal Revenue Code of 1954], horticultural employment, cotton ginning, compressing and storing, crushing of oil seeds, and the packing, canning, freezing, drying, or other processing of perishable or seasonable agricultural products.

• • • • •

SEC. 509. [*Title V, Agricultural Act of 1949.*] No workers will be made available under this title for employment after June 30, 1959.

[Sec. 509 as amended by Act of Aug. 9, 1955, 69 Stat. 615]

SEC. 3. *Definitions* [*Fair Labor Standards Act of 1938*]. As used in this Act—

• • • • •

(f) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities (including commodities defined as agricultural commodities in section 15 (g) of the Agricultural Marketing Act, as amended), the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

• • • • •

§ 31.3121(b)(1)–1 Services performed in connection with the production or harvesting of certain oleoresinous products and services performed by certain foreign agricultural workers.

(a) Services performed in connection with the production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum, are excepted from employment. However, the services to which this paragraph relates constitute agricultural labor as defined in section 3121(g) (see paragraph (d) of § 31.3121 (g)–1). Thus, any cash remuneration paid for such services, to the extent that the services are deemed to constitute employment by reason of the rules relating to included and excluded services contained in section 3121(c) (see § 31.-3121(c)–1), is taken into account in applying the test prescribed in section 3121(a)(8)(B) for determining whether cash remuneration paid for agricultural labor constitutes wages (see paragraph (c) of § 31.3121(a)(8)–1).

(b) Services performed by foreign agricultural workers from the Republic of Mexico under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, are excepted from employment. Contracts entered into pursuant to the provisions of such title V may provide for the performance only of services which constitute "agricultural employment". The term "agricultural employment" includes certain services which do not constitute "agricultural labor" as that term is defined in section 3121 (g) (see § 31.3121 (g)–1). For purposes of title V of the Agricultural Act of 1949, as amended, the term "agricultural employment" includes services or activities included within the provisions of section 3 (f) of the Fair Labor Standards Act of 1938, as amended, or section 3121 (g) of the Internal Revenue Code, horticultural employment, cotton ginning, compressing and storing, crushing of oil seeds, and the packing, canning, freezing, drying, or other processing of perishable or seasonable agricultural products.

(c) Services performed by a foreign agricultural worker lawfully admitted to the United States from the Bahamas, Jamaica, or the other British West Indies, on a temporary basis to perform agricultural labor are excepted from employment.

(d) See paragraph (b) of § 31.3121 (b)–2 for provisions relating to the status of services of the character to which this section applies which were performed before 1955 and the remuneration for which is paid after 1954.

§ 31.3121(b)(2) Statutory provisions; definitions; employment; domestic service performed by students for certain college organizations.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

§ 31.3121(b)(2)–1 Domestic service performed by students for certain college organizations.

(a) Services of a household nature performed in or about the club rooms or house of a local college club, or in or about the club rooms or house of a local chapter of a college fraternity or sorority, by a student who is enrolled and regularly attending classes at a school, college, or university are excepted from employment. For purposes of this exception, the statutory tests are the type of services performed by the employee, the character of the place where the services are performed, and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(b) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed therein are not within the exception.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(e) Services of a household nature are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

(f) For provisions relating to domestic service in a private home of the employer, see § 31.3121 (a) (7)–1.

§ 31.3121(b)(3) Statutory provisions; definitions; employment; family employment.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(3) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

[Sec. 3121 (b) (4), Internal Revenue Code 1954 redesignated paragraph (3) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(3)–1 Family employment.

(a) Certain services are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a) (3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

(c) Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

§ 31.3121(b)(4) Statutory provisions; definitions; employment; services performed on or in connection with a non-American vessel or aircraft.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer.

[Sec. 3121 (b) (5), Internal Revenue Code 1954, as amended and redesignated paragraph (4) by section 205 (b), (c), Social Security Amendments 1954]

§ 31.3121(b)(4)–1 Services performed on or in connection with a non-American vessel or aircraft.

(a) Services performed within the United States by an employee for an employer "on or in connection with" a vessel not an American vessel, or "on or in connection with" an aircraft not an American aircraft, are excepted from employment if—

(1) The employee is employed by such employer "on and in connection with" such vessel or aircraft when outside the United States, and

(2) (i) The employee is not a citizen of the United States, or (ii) the employer is not an American employer.

(b) An employee performs services on and in connection with the vessel or aircraft if he performs services on the vessel or aircraft when outside the United States which are also in connection with the vessel or aircraft. Services performed on the vessel outside the United States by employees as officers or members of the crew, or by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Similarly, services performed on the aircraft outside the United States by employees as officers or members of the crew of the aircraft are performed on and in connection with such aircraft. Services may be performed on the vessel or aircraft, however, which have no connection with it, as in the case of services performed by an employee while on the vessel or aircraft merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel or aircraft but also to services connected with the vessel or aircraft which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) Services performed within the United States on or in connection with a non-American vessel or aircraft for an employer by an employee who is not a citizen of the United States are excepted from employment, irrespective of whether the employer is or is not an American employer, provided the employee also is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Services performed within the United States on or in connection with a non-American vessel or aircraft by an employee for an employer who is not an American employer also are excepted from employment, irrespective of whether the employee is or is not a citizen of the United States, provided the employee also is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Services performed within the United States on or in connection with a non-American vessel or aircraft for an American employer by an employee who is a citizen of the United States are not excepted from employment under section 3121 (b) (4), irrespective of whether the employee is employed by such employer on and in connection with the vessel or aircraft when outside the United States. Further, section 3121 (b) (4) does not except from employment services performed within the United States for an employer, whether or not an American employer, on or in connection with a non-American vessel or aircraft by an employee, whether or not a citizen of the United States, who is not also employed by such employer on and in connection with the vessel or aircraft when outside the United States.

(e) Services performed outside the United States on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, by a citizen of the United States as an employee for an American employer are not excepted from employment under section 3121 (b) (4), irrespective of whether the employee is employed on and in connection with such vessel or aircraft when outside the United States. Services performed outside the United States on or in connection with a vessel not an American vessel or on or in connection with an aircraft not an American aircraft, either by an employee who is not a citizen of the United States or for an employer who is not an American employer, do not, in any event, constitute employment. See paragraph (c) of § 31.3121 (b)–3, relating to services performed outside the United States which constitute employment.

(f) See paragraph (c) (2) (v) of § 31.3121 (b)–3 for definitions of "vessel" and "aircraft", § 31.3121 (f)–1, for definitions of "American vessel" and "American aircraft", § 31.3121 (e)–1, for definition of "citizen of the United States", and § 31.3121 (h)–1, for definition of "American employer".

§ 31.3121(b)(5) Statutory provisions; definitions; employment; services in employ of an instrumentality of the United States specifically exempted from the employer tax.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(5) Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

[Sec. 3121 (b) (6), Internal Revenue Code 1954, redesignated paragraph (5) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(5)–1 Services in employ of an instrumentality of the United States specifically exempted from the employer tax.

Services performed in the employ of an instrumentality of the United States are excepted from employment if such instrumentality is exempt from the employer tax imposed by section 3111 by virtue of any other provision of law which specifically refers to such section 3111 or the corresponding section of prior law (section 1410 of the Internal Revenue Code of 1939) in granting exemption from the employer tax. This exception does not operate to exclude from employment services performed in the employ of an instrumentality of the United States unless the Congress has granted to such instrumentality a specific exemption from the tax imposed by section 3111 or the corresponding section of prior law. For provisions which make general exemp-

tions from Federal taxation ineffectual as to the employer tax imposed by section 3111, see § 31.3112–1. For other exceptions from employment applicable with respect to services performed in the employ of an instrumentality of the United States, see § 31.3121 (b) (6)–1.

§ 31.3121(b)(6) Statutory provisions; definitions; employment; services in employ of United States or instrumentality thereof.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

(6) (A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) Service performed in the employ of a corporation which is wholly owned by the United States;

(ii) Service performed in the employ of a national farm loan association, a production credit association, a Federal Reserve Bank, or a Federal Credit Union;

(iii) Service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

(iv) Service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) Service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) As the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) In the legislative branch;

(iii) In a penal institution of the United States by an inmate thereof;

(iv) By any individual as an employee included under section 2 of the Act of August 4, 1947 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government; 5 U. S. C., sec. 1052);

(v) By any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

(vi) By any individual to whom the Civil Service Retirement Act of 1930 does not apply because such individual is subject to another retirement system;

[Sec. 3121 (b) (7), Internal Revenue Code 1954, as amended and redesignated paragraph (6) by sec. 205 (b), (d), Social Security Amendments 1954]

§ 31.3121(b)(6)–1 Services in employ of United States or instrumentality thereof.

(a) *In general.* This section relates to services performed in the employ of the United States Government or in the employ of an instrumentality of the United States. Particular services which are not excepted from employment under one rule set forth in this section may nevertheless be excepted under another rule set forth in this section or under § 31.3121 (b) (5)–1, relating to services in the employ of an instrumentality of the United States specifically exempted from the employer tax. Moreover, services performed in the employ of the United States or of any instrumentality thereof which are not excepted from employment under paragraph (5) or (6) of section 3121 (b) may nevertheless be excepted under some other paragraph of such section. For provisions relating generally to the application of the taxes in the case of services performed in the employ of the United States or a wholly owned instrumentality thereof, see § 31.3122.

(b) *Services covered under a retirement system established by a law of the United States.* Services performed in the employ of the United States or in the employ of any instrumentality thereof are excepted from employment under section 3121 (b) (6) (A) if such services are covered under a law enacted by the Congress of the United States which specifically provides for the establishment of a retirement system for employees of the United States or of such instrumentality. Determinations as to whether services are covered by a retirement system of the requisite character are to be made as of the time such services are performed. Services of an employee who has an option to have his services covered under a retirement system are not covered under such retirement system unless and until he exercises such option. The test is whether particular services performed by an employee are covered by a retirement system of the requisite character rather than whether the position in which such services are performed is covered by such retirement system.

(c) *Services performed for an instrumentality not subject to employer tax on December 31, 1950, and covered under a retirement system established by such instrumentality.* (1) Subject to the provisions of subparagraph (4) of this paragraph, services performed in the employ of an instrumentality of the United States are excepted from employment under section 3121 (b) (6) (B) if—

(i) The particular instrumentality was not subject on December 31, 1950, to the employer tax imposed by section 1410 of the Internal Revenue Code of 1939, and

(ii) The services are covered by a retirement system established by such instrumentality.

(2) If the particular instrumentality was not in existence on December 31, 1950, but is created thereafter under a law which was in effect on December 31, 1950, services performed in the employ of such instrumentality are excepted from employment (unless otherwise provided in subparagraph (4) of this paragraph) if—

(i) The instrumentality had it been in existence on December 31, 1950, would not have been subject on that date to the employer tax imposed by section 1410 of the Internal Revenue Code of 1939, and

(ii) The services are covered by a retirement system established by such instrumentality.

It is immaterial, for purposes of this exception, whether the exemption from the employer tax on December 31, 1950, resulted, or would have resulted, from a tax exemption as such in effect on December 31, 1950, or from the provisions of section 1426 (b) (6) of the Internal Revenue Code of 1939 in effect on that date, relating to the exception from employment of services performed in the employ of certain instrumentalities of the United States.

(3) Determinations as to whether services performed in the employ of an instrumentality referred to in subparagraph (1) or (2) of this paragraph are covered by a retirement system established by such instrumentality are to be made as of the time such services are performed. Services of an employee who has an option to have his services covered under a retirement system established by the instrumentality are not covered under such retirement system unless and until he exercises such option. The test is whether particular services performed by an employee are covered by a retirement system established by the instrumentality rather than whether the position in which such services are performed is covered by such retirement system.

(4) The exception from employment provided in section 3121 (b) (6) (B) has no application with respect to any of the following classes of services:

(i) Services performed in the employ of a corporation which is wholly owned by the United States;

(ii) Services performed in the employ of a national farm loan association, a production credit association, a Federal Reserve Bank, or a Federal Credit Union;

(iii) Services performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

(iv) Services performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department, or

(v) Services performed by a civilian employee, not compensated from funds

appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard.

(d) *Special classes of services.* The following classes of services performed either in the employ of the United States or in the employ of any instrumentality thereof are excepted from employment under section 3121 (b) (6) (C):

(1) Services performed as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner, of or to the Congress of the United States;

(2) Services performed in the legislative branch of the United States Government;

(3) Services performed in a penal institution of the United States by an inmate thereof;

(4) Services performed by student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, or student occupational therapists, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by any department, agency, or instrumentality of the United States Government, or by certain other student employees described in section 2 of the act of August 4, 1947 (5 U. S. C. 1052);

(5) Services performed by an individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; and

(6) Services performed by an individual to whom the Civil Service Retirement Act does not apply because he is, with respect to such services, subject to another retirement system, established either by a law of the United States or by the agency or instrumentality of the United States for which such services are performed.

§ 31.3121(b)(7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(7) Service (other than service which, under subsection (j), constitutes covered transportation service) performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions;

[Sec. 3121 (b) (8), Internal Revenue Code 1954, redesignated paragraph (7) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.

Services, other than covered transportation service as defined in section 3121(j), performed in the employ of any State, or of any political subdivision thereof, are excepted from employment. Services, other than covered transportation service, performed in the employ of an instrumentality of one or more States or political subdivisions thereof are excepted from employment if the instrumentality is wholly owned by one or more of the foregoing. The term "State" includes the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico (see § 31.3121 (e)–1). For provisions relating to service which constitutes covered transportation service, see § 31.3121 (j)–1.

§ 31.3121(b)(8) Statutory provisions; definitions; employment; services performed by a minister of a church or a member of a religious order; services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(8) (A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(B) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501 (c) (3) which is exempt from income tax under section 501 (a), but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to subsection (k) (or the corresponding subsection of prior law), is in effect if such service is performed by an employee—

(i) Whose signature appears on the list filed by such organization under subsection (k) (or the corresponding subsection of prior law), or

(ii) Who became an employee of such organization after the calendar quarter in which the certificate was filed;

[Sec. 3121 (b) (9), Internal Revenue Code 1954, redesignated paragraph (8) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(8)–1 Services performed by a minister of a church or a member of a religious order.

(a) *In general.* Services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, are excepted from employment. For provisions relating to the election available to certain ministers and members of religious orders to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to certain services performed by them, see Part 1 of this chapter (Income Tax Regulations).

(b) *Service by a minister in the exercise of his ministry.* Except as provided in paragraph (c) (3) of this section, service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his ministry:

(1) Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his church or church denomination.

(2) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

(3) (i) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged to perform service as chaplain at N University. M devotes his entire time to performing his duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his ministry.

(4) (i) If a minister is performing service for an organization which is operated as an integral agency, of a religous organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (2) of this paragraph) is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. He performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his ministry.

(5) (i) If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by

him, even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is assigned by *X*, the religious body constituting his church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his ministry.

(c) *Service by a minister not in the exercise of his ministry.* (1) Section 3121 (b) (8) (A) does not except from employment service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his ministry.

(2) (i) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the service performed by him in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his ministry. See, however, subparagraph (3) of this paragraph.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by N University to teach history and mathematics. He performs no other service for N although from time to time he performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious organization. M is not performing the service for N pursuant to an assignment or designation by his ecclesiastical superiors. The service performed by M for N University is not in the exercise of his ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his ministry.

(3) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his ministry for purposes of the taxes, even though such service may involve the ministration of sacerdotal function or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his capacity as such, and not by a minister in the exercise of his ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his ministry.

(d) *Service in the exercise of duties required by a religious order.* Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

§ 31.3121(b)(8)–2 Services in employ of religious, charitable, educational, or certain other organizations exempt from income tax.

(a) Services performed by an employee in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a) are excepted from employment. However, this exception does not apply to services with respect to which a certificate, filed pursuant to section 3121 (k), or section 1426(l) of the Internal Revenue Code of 1939, is in effect. For provisions relating to the services with respect to which such a certificate is in effect, see § 31.3121(k)–1.

(b) For provisions relating to exemption from income tax of an organization described in section 501(c)(3), see Part 1 of this chapter (Income Tax Regulations). For provisions relating to waiver by an organization of its exemption from the taxes imposed by sections 3101 and 3111, see § 31.3121 (k)–1. See also § 31.3121 (b) (8)–1, relating to services performed by a minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; § 31.3121 (b) (10)–2, relating to services performed in the employ of a school, college, or university by certain students; and § 31.3121 (b) (13)–1, relating to services performed by certain student nurses and hospital interns.

§ 31.3121(b)(9) Statutory provisions; definitions; employment; services performed by an employee or an employee representative as defined in section 3231.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(9) Service performed by an individual as an employee or employee representative as defined in section 3231;

[Sec. 3121 (b) (10), Internal Revenue Code 1954, redesignated paragraph (9) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(9)–1 Railroad industry; services performed by an employee or an employee representative as defined in section 3231.

Services performed by an individual as an "employee" or as an "employee representative", as those terms are defined in section 3231, are excepted from employment. For definitions of employee and employee representatives, see §§ 31.3231(b)–1 and 31.3231(c)–1.

§ 31.3121(b)(10) Statutory provisions; definitions; employment; services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax; services performed in the employ of a school, college, or university by certain students.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521, if the remuneration for such service is less than $50;

(B) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

[Sec. 3121 (b) (11), Internal Revenue Code 1954, redesignated paragraph (10) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(10)–1 Services for remuneration of less than $50 for calendar quarter in the employ of certain organizations exempt from income tax.

(a) Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 are excepted from employment, if the remuneration for the services is less than $50. The test relating to remuneration of $50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter. For provisions relating to exemption from income tax under section 501(a) or 521, see Part 1 of this chapter (Income Tax Regulations).

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (8). X has two paid employees, A, who serves exclusively as recording secretary for the lodge, and B, who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter is less than $50, all of such services are excepted, and the taxes do not attach with respect to any of the remuneration for such services. Since the remuneration for the services performed by B during such quarter, however, is not less than $50, none of such services are excepted, and the taxes attach with respect to all of the remuneration for such services (that is, $180) as and when paid.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns a total of $60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than $50. The taxes attach with respect to all of the remuneration for services performed during the second quarter (that is, $60) as and when paid.

Example (3). The facts are the same as in example (1), above, except that A earns $120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter is less than $50. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year is not less than $50, the services during that quarter are not excepted, and the taxes attach with respect to that portion of the remuneration attributable to his services in that quarter.

§ 31.3121(b)(10)–2 Services performed in the employ of a school, college, or university by certain students.

(a) Services performed in the employ of a school, college, or university (whether or not such organization is exempt from income tax) are excepted from employment, if the services are performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

(b) For purposes of this exception, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services performed by the employee, and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed, and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(c) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(e) For provisions relating to domestic service performed by a student in a local college club, or local chapter of a college fraternity or sorority, see § 31.3121 (b) (2)–1.

§ 31.3121(b)(11) Statutory provisions; definitions; employment; services in the employ of a foreign government.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

[Sec. 3121 (b) (12), Internal Revenue Code 1954, redesignated paragraph (11) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(11)–1 Services in the employ of a foreign government.

(a) Services performed by an employee in the employ of a foreign government are excepted from employment. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.

§ 31.3121(b)(12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

[Sec. 3121 (b) (13), Internal Revenue Code 1954, redesignated paragraph (12) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(12)–1 Services in employ of wholly owned instrumentality of foreign government.

(a) Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted from employment. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, if—

(1) The instrumentality is wholly owned by the foreign government;

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial.

§ 31.3121(b)(13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • •

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

[Sec. 3121 (b) (14), Internal Revenue Code 1954, redesignated paragraph (13) by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(b)(13)–1 Services of student nurse or hospital intern.

(a) Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted from employment, if the student nurse is enrolled and regularly attending classes in a nurses' training school and such nurses' training school is chartered or approved pursuant to State law.

(b) Services performed as an intern (as distinguished from a resident doctor), in the employ of a hospital are excepted from employment, if the intern has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

§ 31.3121(b)(14) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed

after 1954 • • •; except that • • • such term shall not include—

• • • • • •

(14) (A) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back; or

[Sec. 3121 (b) (16), Internal Revenue Code 1954, redesignated paragraph (14) by sec. 205 (e), Social Security Amendments 1954]

§ 31.3121(b)(14)–1 Services in delivery or distribution of newspapers, shopping news, or magazines.

(a) *Services of individuals under age 18.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, are excepted from employment. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted from employment. The services are excepted irrespective of the form or method of compensation. Incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(b) *Services of individuals of any age.* Services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, are excepted from employment. The services are excepted whether or not the employee is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the services are excepted without regard to the age of the employee. Services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer are not within the exception. However, incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, are considered to be within the exception.

§ 31.3121(b)(15) Statutory provisions; definitions; employment; services in employ of international organization.

SEC. 3121. *Definitions.* • • •

(b) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed after 1954 • • •; except that • • • such term shall not include—

• • • • • •

(15) Service performed in the employ of an international organization.

[Sec. 3121 (b) (17), Internal Revenue Code 1954, redesignated paragraph (15) by sec. 205 (e), Social Security Amendments 1954]

§ 31.3121(b)(15)–1 Services in employ of international organization.

(a) Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U.S.C. 288), services performed in the employ of an international organization as defined in section 7701(a)(18) are excepted from employment.

(b) (1) Section 7701 (a) (18) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

• • • • • •

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

(2) Section 1 of the International Organizations Immunities Act provides as follows:

SEC. 1. [*International Organizations Immunities Act.*] For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3121(c) Statutory provisions; definitions; included and excluded services.

SEC. 3121. *Definitions.* • • •

(c) *Included and excluded service.* For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b) (9).

[Sec. 3121 (c) as amended by sec. 205 (b), Social Security Amendments 1954]

§ 31.3121(c)–1 Included and excluded services.

(a) If a portion of the services performed by an employee for an employer during a pay period constitutes employment, and the remainder does not constitute employment, all the services performed by the employee for the employer during the period shall for purposes of the taxes be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 3121 (b) constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

(c) If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

(d) The application of the provisions of paragraphs (a), (b), and (c) of this section may be illustrated by the following example:

Example. Employer B, who is engaged in the operation of a store and also in the harvesting of crude gum (oleoresin) from living trees, employs A to perform services in connection with both operations. A's services in connection with the harvesting of crude gum do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours in harvesting the crude gum and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment. During another month A works 75 hours in harvesting crude gum and 120 hours in the store. All of A's services during the month are deemed to be

employment, since one-half or more of his services during the month constitutes employment.

(e) For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the employer. Thus, if the periods for which payments of remuneration are made to the employee by the employer are of uniform duration, each such period constitutes a "pay period". If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is ordinarily made to the employee by the employer, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or if, instead, that employee is sent on a trip by such employer and receives at the end of the third week a single remuneration payment for three weeks' services, the "pay period" is still the calendar week.

(f) If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the employer, such period is deemed to be a "pay period" for purposes of this section.

(g) The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the employer if the periods for which such employer makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee", or (2) with respect to any services performed by the employee for the employer if the period for which a payment of remuneration is ordinarily made to the employee by such employer exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the employer during a pay period if any of such service is excepted by section 3121 (b) (9) (see § 31.3121 (b) (9)–1).

(h) If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed in this section are not applicable, the taxes attach with respect to such services as constitute employment as defined in section 3121 (b).

§ 31.3121(d) Statutory provisions; definitions; employee.

SEC. 3121. *Definitions.* • • •

(d) *Employee.* For purposes of this chapter, the term "employee" means—

(1) Any officer of a corporation; or

(2) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) Any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) As a full-time life insurance salesman;

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

[Sec. 3121 (d) as amended by sec. 206, Social Security Amendments 1954]

§ 31.3121(d)–1 Who are employees.

(a) *In general.* (1) Whether an individual is an employee with respect to services performed after 1954 is determined in accordance with section 3121 (d). This section of the regulations applies with respect only to services performed after 1954. Whether an individual is an employee with respect to services performed after 1936 and before 1940 shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 401 (Regulations 91). Whether an individual is an employee with respect to services performed after 1939 and before 1951 shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 402 (Regulations 106). Whether an individual is an employee with respect to services performed after 1950 and before 1955 shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 408 (Regulations 128).

(2) Section 3121 (d) contains three separate and independent tests for determining who are employees. Paragraphs (b), (c), and (d) of this section relate to the respective tests. Paragraph (b) relates to the test for determining whether an officer of a corporation is an employee of the corporation. Paragraph (c) relates to the test for determining whether an individual is an employee under the usual common law rules. Paragraph (d) relates to the test for determining which individuals in certain occupational groups who are not employees under the usual common law rules are included as employees. If an individual is an employee under any one of the tests, he is to be considered an employee for purposes of the regulations in this subpart whether or not he is an employee under any of the other tests.

(3) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(4) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees.

(5) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment (see § 31.3121 (b)–3).

(b) *Corporate officers.* Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(c) *Common law employees.* (1) Every individual is an employee if under the usual common law rules the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.

(2) Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee under the usual common law rules. Individuals such as physicians, lawyers, dentists,

veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees. If an individual enters into an agreement with another person pursuant to which such individual undertakes to produce a crop or livestock on land owned or leased by such other person and pursuant to which (i) the crop or livestock produced by such individual or the proceeds thereof are to be divided between such individual and such other person, and (ii) the amount of such individual's share depends on the amount of the crop or livestock produced, such individual is, with respect to such undertaking, an independent contractor and not an employee.

(3) Whether the relationship of employer and employee exists under the usual common law rules will in doubtful cases be determined upon an examination of the particular facts of each case.

(d) *Special classes of employees.* (1) In addition to individuals who are employees under paragraph (b) or (c) of this section, other individuals are employees if they perform services for remuneration under certain prescribed circumstances in the following occupational groups:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for his principal;

(ii) As a full-time life insurance salesman;

(iii) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(iv) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(2) In order for an individual to be an employee under this paragraph, the individual must perform services in an occupation falling within one of the enumerated groups. If the individual does not perform services in one of the designated occupational groups, he is not an employee under this paragraph. An individual who is not an employee under this paragraph may nevertheless be an employee under paragraph (b) or (c) of this section. The language used to designate the respective occupational groups relates to fields of endeavor in which particular designations are not necessarily in universal use with respect to the same service. The designations are addressed to the actual services without regard to any technical or colloquial labels which may be attached to such services. Thus, a determination whether services fall within one of the designated occupational groups depends upon the facts of the particular situation.

(3) The factual situations set forth below are illustrative of some of the individuals falling within each of the above enumerated occupational groups. The illustrative factual situations are as follows:

(i) *Agent-driver or commission-driver.* This occupational group includes agent-drivers or commission-drivers who are engaged in distributing meat or meat products, vegetables or vegetable products, fruit or fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services for their principals. An agent-driver or commission-driver includes an individual who operates his own truck or the truck of the person for whom he performs services, serves customers designated by such person as well as those solicited on his own, and whose compensation is a commission on his sales or the difference between the price he charges his customers and the price he pays to such person for the product or service.

(ii) *Full-time life insurance salesman.* An individual whose entire or principal business activity is devoted to the solicitation of life insurance or annuity contracts, or both, primarily for one life insurance company is a full-time life insurance salesman. Such a salesman ordinarily uses the office space provided by the company or its general agent, and stenographic assistance, telephone facilities, forms, rate books, and advertising materials are usually made available to him without cost. An individual who is engaged in the general insurance business under a contract or contracts of service which do not contemplate that the individual's principal business activity will be the solicitation of life insurance or annuity contracts, or both, for one company, or any individual who devotes only part time to the solicitation of life insurance contracts, including annuity contracts, and is principally engaged in other endeavors, is not a full-time life insurance salesman.

(iii) *Home workers.* This occupational group includes a worker who performs services off the premises of the person for whom the services are performed, according to specifications furnished by such person, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him. For provisions relating to the determination of wages in the case of a home worker to whom this subdivision is applicable, see § 31.3121 (a) (10)–1.

(iv) *Traveling or city salesman.* (*a*) This occupational group includes a city or traveling salesman who is engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person or persons) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. An agent-driver or commission-driver is not within this occupational group. City or traveling salesmen who sell to retailers or to the others specified, operate off the premises of their principals, and are generally compensated on a commission basis, are within this occupational group. Such salesmen are generally not controlled as to the details of their services or the means by which they cover their territories, but in the ordinary case they are expected to call on regular customers with a fair degree of regularity.

(*b*) In order for a city or traveling salesman to be included within this occupational group, his entire or principal business activity must be devoted to the solicitation of orders for one principal. Thus, the multiple-line salesman generally is not within this occupational group. However, if the salesman solicits orders primarily for one principal, he is not excluded from this occupational group solely because of side-line sales activities on behalf of one or more other persons. In such a case, the salesman is within this occupational group only with respect to the services performed for the person for whom he primarily solicits orders and not with respect to the services performed for such other persons. The following examples illustrate the application of the foregoing provisions:

Example (1). Salesman A's principal business activity is the solicitation of orders from retail pharmacies on behalf of the X Wholesale Drug Company. A also occasionally solicits orders for drugs on behalf of the Y and Z Companies. A is within this occupational group with respect to his services for the X Company but not with respect to his services for either the Y Company or the Z Company.

Example (2). Salesman B's principal business activity is the solicitation of orders from retail hardware stores on behalf of the R Tool Company and the S Cooking Utensil Company. B regularly solicits orders on behalf of both companies. B is not within this occupational group with respect to the services performed for either the R Company or the S Company.

Example (3). Salesman C's principal business activity is the house-to-house solicitation of orders on behalf of the T Brush Company. C occasionally solicits such orders from retail stores and restaurants. C is not within this occupational group.

(4) (i) The fact that an individual falls within one of the enumerated occupational groups, however, does not make such individual an employee under this paragraph unless (*a*) the contract of service contemplates that substantially all the services to which the contract relates in the particular designated occupation are to be performed personally by such individual, (*b*) such individual has no substantial investment in the facilities used in connection with the performance of such services (other than in facilities for transportation) and (*c*) such services are part of a continuing relationship with the person for whom the services are performed and are not in the nature of a single transaction.

(ii) The term "contract of service", as used in this paragraph, means an arrangement, formal or informal, under which the particular services are performed. The requirement that the contract of service shall contemplate that substantially all the services to which the contract relates in the particular designated occupation are to be performed personally by the individual means that it is not contemplated that any material part of the services to which the contract relates in such occupation will be delegated to any other person by the individual who undertakes under the contract to perform such services.

(iii) The facilities to which reference is made in this paragraph include equipment and premises available for the work or enterprise as distinguished from education, training, and experience, but do not include such tools, instruments, equipment, or clothing, as are commonly or frequently provided by employees. An investment in an automobile by an individual which is used primarily for his own transportation in connection with the performance of services for another person has no significance under this paragraph, since such investment is comparable to outlays for transportation by an individual performing similar services who does not own an automobile. Moreover, the investment in facilities for the transportation of the goods or commodities to which the services relate is to be excluded in determining the investment in a particular case. If an individual has a substantial investment in facilities of the requisite character, he is not an employee within the meaning of this paragraph, since a substantial investment of the requisite character standing alone is sufficient to exclude the individual from the employee concept under this paragraph.

(iv) If the services are not performed as part of a continuing relationship with the person for whom the services are performed, but are in the nature of a single transaction, the individual performing such services is not an employee of such person within the meaning of this paragraph. The fact that the services are not performed on consecutive workdays does not indicate that the services are not performed as part of a continuing relationship.

§ 31.3121(d)–2 Who are employers.

(a) Every person is an employer if he employs one or more employees. Neither the number of employees employed nor the period during which any such employee is employed is material for the purpose of determining whether the person for whom the services are performed is an employer.

(b) An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group, or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(c) Although a person may be an employer under this section, services performed in his employ may be of such a nature, or performed under such circumstances, as not to constitute employment (see § 31.3121 (b)–3).

§ 31.3121(e) Statutory provisions; definitions; State, United States, and citizen.

SEC. 3121. *Definitions.* • • •

(e) *State, United States, and citizen.* For purposes of this chapter—

(1) *State.* The term "State" includes Alaska, Hawaii, the District of Columbia, Puerto Rico, and the Virgin Islands.

(2) *United States.* The term "United States" when used in a geographical sense includes Puerto Rico and the Virgin Islands.

An individual who is a citizen of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

§ 31.3121(e)–1 State, United States, and citizen.

For purposes of the regulations in this subpart, the terms defined in section 3121(e) have the meanings so assigned to them. When used in the regulations in this subpart, the term "United States", when used in a geographical sense, means the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico. The term "citizen of the United States" includes a citizen of the Virgin Islands or of Puerto Rico.

§ 31.3121(f) Statutory provisions; definitions; American vessel and aircraft.

SEC. 3121. *Definitions.* • • •

(f) *American vessel and aircraft.* For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

§ 31.3121(f)–1 American vessel and aircraft.

(a) The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia, the Territory of Alaska or Hawaii, the Virgin Islands, or Puerto Rico). As used herein, a citizen of the United States includes a citizen of the Virgin Islands or of Puerto Rico.

(b) The term "American aircraft" means any aircraft registered under the laws of the United States.

(c) For provisions relating to services performed outside the United States on or in connection with an American vessel or American aircraft, see paragraph (c) (2) of § 31.3121 (b)–3.

§ 31.3121(g) Statutory provisions; definitions; agricultural labor.

SEC. 3121. *Definitions.* • • •

(g) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, sec. 3; 12 U. S. C. 1141j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) The provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

SEC. 15. *Miscellaneous provisions* [*Agricultural Marketing Act*]. • • •

(g) As used in this Act, the term "agricultural commodity" includes • • • crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [42 Stat. 1435; 7 U. S. C. 92 (c), (h)].

SEC. 2. [*The Naval Stores Act.*] That, when used in this Act—

* * * * *

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

* * * * *

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

* * * * *

§ 31.3121(g)–1 Agricultural labor.

(a) *In general.* (1) The term "agricultural labor" as defined in section 3121(g) includes services of the character described in paragraphs (b), (c), (d), (e), and (f) of this section. In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(2) The term "farm" as used in the regulations in this subpart includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(3) For provisions relating to the exceptions from employment provided with respect to services performed in connection with the production or harvesting of certain oleoresinous products and to services performed by certain foreign agricultural workers, see § 31.3121 (b)(1)–1. For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for agricultural labor and to the test for determining whether cash remuneration paid for agricultural labor constitutes wages, see § 31.3121 (a) (8)–1.

(b) *Services described in section 3121 (g) (1).* (1) Services performed on a farm by an employee of any person in connection with any of the following activities constitute agricultural labor:

(i) The cultivation of the soil;

(ii) The raising, shearing, feeding caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(iii) The raising or harvesting of any other agricultural or horticultural commodity.

(2) Services performed in connection with the production or harvesting of maple sap, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry constitute agricultural labor only if such services are performed on a farm. Thus, services performed in connection with the operation of a hatchery, if not operated as part of a poultry or other farm, do not constitute agricultural labor.

(c) *Services described in section 3121 (g) (2).* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms constitute agricultural labor, provided the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in subparagraph (1) (i) of this paragraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, the term "agricultural labor" does not include services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties.

(d) *Services described in section 3121 (g) (3).* Services performed by an employee in the employ of any person in connection with any of the following operations constitute agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying or storing water for farming purposes; or

(3) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 3121 (g) (4).* (1) Services performed by an employee in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity constitute agricultural labor if:

(i) Such services are performed by the employee in the employ of an operator of a farm or in the employ of a group of operators of farms (other than a cooperative organization);

(ii) Such services are performed with respect to the commodity in its unmanufactured state; and

(iii) Such operator produced more than one-half of the commodity with respect to which such services are performed during the pay period, or such group of operators produced all of the commodity with respect to which such services are performed during the pay period.

(2) The term "operator of a farm" as used in this paragraph means an owner, tenant, or other person, in possession of a farm and engaged in the operation of such farm.

(3) The services described in this paragraph do not constitute agricultural labor if performed in the employ of a cooperative organization. The term "organization" includes corporations, joint-stock companies, and associations which are treated as corporations pursuant to section 7701 (a) (3) of the Internal Revenue Code. For purposes of this paragraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which the services involved are performed.

(4) Processing services which change the commodity from its raw or natural state do not constitute agricultural labor. For example, the extraction of juices from fruits or vegetables is a processing operation which changes the character of the fruits or vegetables from their raw or natural state and, therefore, does not constitute agricultural labor. Likewise, services performed in the processing of maple sap into maple sirup or maple sugar do not constitute agricultural labor. On the other hand, services rendered in the cutting and drying of fruits or vegetables are processing operations which do not change the character of the fruits or vegetables and, therefore, constitute agricultural labor, if the other requisite conditions are met. Services performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation do not constitute agricultural labor.

(5) The term "commodity" refers to a single agricultural or horticultural product, for example, all apples are to be treated as a single commodity, while apples and peaches are to be treated as two separate commodities. The services with respect to each such commodity are to be considered separately in determining whether the condition set forth in subparagraph (1) (iii) of this paragraph has been satisfied. The portion of the commodity produced by an operator or group of operators with respect to which the services described in this paragraph are performed by a particular employee shall be determined on the basis of the pay period in which such services were performed by such employee.

(6) The services described in this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in this paragraph must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be

within the provisions of paragraph (c) of this section.

(f) *Services described in section 3121 (g) (5).* (1) Services not in the course of the employers' trade or business (see paragraph (a) (1) of § 31.3121 (a) (7)–1) or domestic service in a private home of the employer (see paragraph (a) (2) of § 31.3121(a)(7)–1) constitutes agricultural labor if such services are performed on a farm operated for profit. The determination whether remuneration for such services performed on a farm operated for profit constitutes wages is to be made under § 31.3121 (a) (8)–1 rather than under § 31.3121 (a) (7)–1.

(2) Generally, a farm is not operated for profit if it is occupied by the employer primarily for residential purposes, or is used primarily for the pleasure of the employer or his family such as for the entertainment of guests or as a hobby of the employer or his family.

§ 31.3121(h) Statutory provisions; definitions; American employer.

SEC. 3121. *Definitions.* * * *

(h) *American employer.* For purposes of this chapter, the term "American employer" means an employer which is—

(1) The United States or any instrumentality thereof,

(2) An individual who is a resident of the United States,

(3) A partnership, if two-thirds or more of the partners are residents of the United States,

(4) A trust, if all of the trustees are residents of the United States, or

(5) A corporation organized under the laws of the United States or of any State.

§ 31.3121(h)–1 American employer.

(a) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) an individual who is a resident of the United States (that is, the several States, the District of Columbia, the Territories of Alaska and Hawaii, the Virgin Islands, and Puerto Rico), (3) a partnership, if two-thirds or more of the partners are residents of the United States, (4) a trust, if all of the trustees are residents of the United States, or (5) a corporation organized under the laws of the United States or of any State (including the District of Columbia, the Territory of Alaska or Hawaii, the Virgin Islands, or Puerto Rico).

(b) For provisions relating to services performed outside the United States by a citizen of the United States as an employee for an American employer, see paragraph (c) (3) of § 31.3121 (b)–3 and paragraph (e) of § 31.3121 (b) (4)–1.

§ 31.3121(i) Statutory provisions; definitions; computation of wages in certain cases.

SEC. 3121. *Definitions.* * * *

(i) *Computation of wages in certain cases.* For purposes of this chapter, in the case of domestic service described in subsection (a) (7) (B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a) (7) (B).

§ 31.3121(i)–1 Computation to nearest dollar of cash remuneration for domestic service.

An employer may, for purposes of the act, elect to compute to the nearest dollar any payment of cash remuneration for domestic service described in section 3121(a)(7)(B) (see § 31.3121(a)(7)–1) which is more or less than a whole-dollar amount. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to one dollar. For example, any amount actually paid between $4.50 and $5.49, inclusive, may be treated as $5 for purposes of the taxes imposed by the act. If an employer elects this method of computation with respect to any payment of cash remuneration made in a calendar quarter for domestic service in his private home, he must use the same method in computing each payment of cash remuneration of more or less than a whole-dollar amount made to each of his employees in such calendar quarter for domestic service in his private home. Moreover, if an employer elects this method of computation with respect to payments of the prescribed character made in any calendar quarter, the amount of each payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of the act. Thus, the amount of cash payments so computed to the nearest dollar shall be used for purposes of determining whether such payments constitute wages; for purposes of applying the employee and employer tax rates to the wage payments; for purposes of any required record keeping; and for purposes of reporting and paying the employee tax and employer tax with respect to such wage payments.

§ 31.3121(j) Statutory provisions; definitions; covered transportation service.

SEC. 3121. *Definitions.* * * *

(j) *Covered transportation service.* For purposes of this chapter—

(1) *Existing transportation systems—General rule.* Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) *Existing transportation systems—Cases in which no transportation employees, or only certain employees, are covered.* Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) Any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) No part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) Became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) Prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) *Transportation systems acquired after 1950.* All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) *Definitions.* For purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of—

(i) A State,

(ii) One or more political subdivisions of a State, or

(iii) A State and one or more of its political subdivisions.

§ 31.3121(j)–1 Covered transportation service.

(a) *Transportation systems acquired in whole or in part after 1936 and before 1951*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, all service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system constitutes covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and before 1951. For purposes of this subparagraph, it is immaterial whether any part of the transportation system was acquired before 1937 or after 1950, whether the employee was hired before, during, or after 1950, or whether the employee had been employed by the employer from whom the State or political subdivision acquired its transportation system or any part thereof.

(2) *General retirement system protected by State constitution.* Except as provided in subparagraph (3) of this paragraph, service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system acquired in whole or in part from private ownership after 1936 and before 1951 does not constitute covered transportation service, if substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which are protected from diminution or impairment under the State constitution by reason of an express provision, dealing specifically with retirement systems established by the State or political subdivisions of the State, which forbids such diminution or impairment.

(3) *Additions to certain transportation systems by acquisition after 1950.* This subparagraph is applicable only in case of an acquisition after 1950 from private ownership of an addition to an existing public transportation system which was acquired in whole or in part by a State or political subdivision thereof from private ownership after 1936 and before 1951 and then only in case service for such existing transportation system did not constitute covered transportation service by reason of the provisions of subparagraph (2) of this paragraph. Service in connection with the operation of such transportation system (including any additions acquired after 1950) constitutes covered transportation service commencing with the first day of the third calendar quarter following the calendar quarter in which the addition to the existing transportation system was acquired, if such service is performed by an employee who became an employee of the State or political subdivision in connection with and at the time of its acquisition from private ownership of such addition and who before the acquisition of such addition rendered service in employment in connection with the operation of the addition so acquired by such State or political subdivision. However, service performed by such employee in connection with the operation of the transportation system does not constitute covered transportation service if, on the first day of the third calendar quarter following the calendar quarter in which the addition was acquired, such service is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees who became employees of the State or political subdivision in connection with and at the time of its acquisition of such addition.

(b) *Transportation systems in operation on December 31, 1950, no part of which was acquired after 1936 and before 1951*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, no service performed in the employ of a State or a political subdivision thereof in connection with its operation of a public transportation system constitutes covered transportation service if no part of such transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and before 1951.

(2) *Additions acquired after 1950.* This subparagraph is applicable only in case of an acquisition after 1950 from private ownership of an addition to an existing public transportation system which was operated by a State or political subdivision on December 31, 1950, but no part of which was acquired from private ownership after 1936 and before 1951. Service in connection with the operation of such transportation system (including any additions acquired after 1950) constitutes covered transportation service commencing with the first day of the third calendar quarter following the calendar quarter in which the addition to the existing transportation system was acquired, if such service is performed by an employee who became an employee of the State or political subdivision in connection with and at the time of its acquisition from private ownership of such addition and who before the acquisition of such addition rendered service in employment in connection with the operation of the addition so acquired by such State or political subdivision. However, service performed by such employee in connection with the operation of the transportation system does not constitute covered transportation service if, on the first day of the third calendar quarter following the calendar quarter in which the addition was acquired, such service is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees who became employees of the State or political subdivision in connection with and at the time of its acquisition of such addition.

(c) *Transportation systems acquired after 1950.* All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system constitutes covered transportation service if the transportation system was not operated by the State or political subdivision before 1951 and, at the time of its first acquisition after 1950 from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(d) *Definitions.* For purposes of this section:

(1) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term does not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(2) A transportation system or a part thereof is considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or an acquired part thereof constituted employment under the act or under subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement entered into pursuant to section 218 of the Social Security Act (42 U.S.C. 418), and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(3) The term "political subdivision" includes an instrumentality of a State, of one or more political subdivisions of a State, or of a State and one or more of its political subdivisions.

(4) The term "employment" includes service covered by an agreement entered into pursuant to section 218 of the Social Security Act.

§ 31.3121(k) Statutory provisions; definitions; waiver of exemption by religious, charitable, and certain other organizations.

SEC. 3121. *Definitions.* • • •

(k) *Exemption of religious, charitable, and certain other organizations*—(1) *Waiver of exemption by organization.* An organization described in section 501 (c) (3) which is exempt from income tax under section 501 (a) may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees and that at least two-thirds of its employees concur in the filing of the certificate. Such certificate may be filed only if it is accompanied by a list containing the signature, address, and social security account number (if any) of each employee who concurs in the filing of the certificate. Such list may be amended at any time prior to the expiration of the twenty-fourth month following the first calendar quarter for which the certificate is in effect, by filing with the prescribed official a supplemental list or lists containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate. The list and any supplemental list shall be filed in such form and manner as may be prescribed by regulations made under this chapter. The certificate shall be in effect (for purposes of subsection (b) (8) (B) and for purposes of section 210 (a) (8) (B) of the Social Security Act) for the period beginning with the first day following the close of the calendar quarter in which such certificate is filed, except that, in the case of service performed by an individual whose name appears on a supplemental list filed after the first month following the first calendar quarter for which the certificate is in effect, the certificate shall be in effect, for purposes of such subsection (b) (8) and for purposes of section 210 (a) (8) of the Social Security Act, only with respect to service performed by such individual after the calendar quarter in which such supplemental list is filed. The period for which a certificate filed pursuant to this subsection or the corresponding subsection of prior law is effective may be terminated by the organization, effective at the end of a calendar quarter, upon giving 2 years' advance notice in writing, but only if, at the time of the receipt of such notice, the certificate has been in effect for a period of not less than 8 years. The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner, and with such official, as may be prescribed by regulations made under this chapter.

(2) *Termination of waiver period by Secretary or his delegate.* If the Secretary or his delegate finds that any organization which filed a certificate pursuant to this subsection or the corresponding subsection of prior law has failed to comply substantially with the requirements applicable with respect to the taxes imposed by this chapter or the corresponding provisions of prior law or is no longer able to comply with the requirements applicable with respect to the taxes imposed by this chapter, the Secretary or his delegate shall give such organization not less than 60 days' advance notice in writing that the period covered by such certificate will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the organization. No notice of termination or of revocation thereof shall be given under this paragraph to an organization without the prior concurrence of the Secretary of Health, Education, and Welfare.

(3) *No renewal of waiver.* In the event the period covered by a certificate filed pursuant to this subsection or the corresponding subsection of prior law is terminated by the organization, no certificate may again be filed by such organization pursuant to this subsection.

[Sec. 3121 (k) as amended by secs. 205 (b), 207, and 402, Social Security Amendments 1954]

§ 31.3121(k)–1 Waiver of exemption from taxes.

(a) *Who may waive exemption.* Any organization described in section 501 (c) (3) which is exempt from income tax under section 501 (a) may waive its exemption from the taxes imposed by sections 3101 and 3111 by filing a certificate on Form SS–15, provided that at least two-thirds of the employees of the organization concur in the filing of the certificate. The organization must be exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (3) for the taxable year in which the certificate is filed; otherwise, the Form SS–15 filed by the organization is void. A certificate in effect under section 1426 (l) of the Internal Revenue Code of 1939 on December 31, 1954, continues in effect under, and is subject to the provisions of, section 3121 (k). If the period covered by a certificate filed under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, is terminated by the organization, a certificate may not thereafter be filed by the organization under section 3121 (k).

(b) *Execution and filing of waiver.* (1) The certificate on Form SS–15 shall be filed with the district director for the internal revenue district in which is located the principal office or principal place of business in the United States of the organization. The organization shall certify in the certificate that it desires to have the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act extended to services performed by its employees and that at least two-thirds of its employees, determined on the basis of the facts existing as of the date the certificate is filed, concur in the filing of the certificate. All individuals who are employees of the organization within the meaning of section 3121 (d) (see § 31.3121 (d)–1) shall be included in determining whether two-thirds of the employees of the organization concur in the filing of the certificate; except that there shall not be included (i) those employees who at the time of the filing of the certificate are performing for such organization services only of the character specified in paragraphs (8) (A), (10) (B), and (13) of section 3121 (b) (see §§ 31.3121 (b) (8)–1, 31.3121 (b) (10)–2, and 31.3121 (b) (13)–1, respectively), and (ii) those alien employees who at the time of the filing of the certificate are performing services for such organization under an arrangement which provides for the performance only of services outside the United States not on or in connection with an American vessel or American aircraft. As used in this subparagraph, the term "alien employee" does not include an employee who is a citizen of Puerto Rico or of the Virgin Islands, and the term "United States" includes Puerto Rico and the Virgin Islands.

(2) A certificate may be filed under section 3121 (k) only if it is accompanied by a list on Form SS–15a, containing the signature, address, and social security account number, if any, of each employee who concurs in the filing of the certificate. (For provisions relating to account numbers, see the regulations under section 6011 (b) in Subpart G of the regulations in this part.) The list on Form SS–15a accompanying a certificate filed under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, may be amended, at any time before the expiration of the twenty-fourth month following the first calendar quarter for which the certificate is in effect, by filing a supplemental list or lists on Form SS–15a Supplement, containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate.

(c) *Effect of waiver.* (1) A certificate filed by an organization under the provisions of section 3121 (k) shall be in effect, for the period beginning with the first day following the close of the calendar quarter in which the certificate is filed, with respect to services performed in its employ by any employee:

(i) Whose signature appears on the list on Form SS–15a filed with the certificate on Form SS–15, or on a supplemental list on Form SS–15a Supplement filed before the expiration of the fourth calendar month following the calendar quarter in which the certificate is filed.

(ii) Who became an employee of the organization after the calendar quarter in which the certificate is filed.

In no case, however, shall a certificate filed under the provisions of section 3121 (k) be in effect with respect to services performed in the employ of the organization before January 1, 1955. A certificate is not terminated if the organization loses its exemption under section 501 (a) as an organization of the character described in section 501 (c) (3), but continues effective with respect to any subsequent periods during which the organization is so exempt.

(2) If a list accompanying a certificate filed by an organization under the provisions of section 3121 (k), or under the provisions of section 1426 (l) of the Internal Revenue Code of 1939, is amended under the provisions of section 3121 (k) by the filing of a supplemental list on Form SS–15a Supplement after the expiration of the fourth calendar month, following the calendar quarter in which the certificate was filed, the certificate shall be in effect with respect to services performed in the employ of the organization by an individual whose signature appears on such supplemental list—

(i) In the period beginning with the first day following the close of the calendar quarter in which such supplemental list is filed, if such supplemental list is filed on or after October 1, 1954, or

(ii) On and after January 1, 1955, if such supplemental list is filed in the month of September 1954.

(3) Services performed in the employ of an organization which has duly filed a certificate under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, by any employee (i) whose signature appears on the list filed by the organization on Form SS–15a or on Form SS–15a Supplement, or (ii) who becomes an employee of the organization after the calendar quarter in which the certificate is filed, are not excepted from employment under section 3121 (b) (8) (B) during the period for which the certificate is in effect with respect to such services. Thus, the taxes imposed by sections 3101 and 3111 will apply to wages paid by the organization for services performed, on and after the first day following the close of the calendar quarter in which the certificate is filed (but not earlier than January 1, 1955), by each employee whose signature appears on the Form SS–15a accompanying the certificate or on any supplemental list or lists on Form SS–15a Supplement filed before the expiration of the fourth calendar month following the calendar quarter in which the certificate was filed. Such taxes will also apply immediately with respect to wages paid

by the organization to any individual who enters the employ of the organization on or after the first day following the close of the calendar quarter in which the certificate is filed. In the case of an employee whose signature appears on a supplemental list filed after the expiration of the fourth calendar month following the calendar quarter in which a certificate was filed either under section 3121 (k), or under section 1426 (l) of the Internal Revenue Code of 1939, the taxes imposed by sections 3101 and 3111 apply only with respect to wages paid to such individual for services performed after the calendar quarter in which the supplemental list is filed, but in no case earlier than January 1, 1955. A former employee of the organization who is rehired on or after the first day following the close of the calendar quarter in which the certificate was filed shall be considered to have entered the employ of the organization after such calendar quarter, regardless of whether or not such individual concurred in the filing of the certificate.

(d) *Termination of waiver by organization.* (1) The period for which a certificate filed pursuant to section 3121 (k), or pursuant to section 1426 (l) of the Internal Revenue Code of 1939, is in effect may be terminated by the organization upon giving to the district director with whom the organization is filing returns 2 years' advance notice in writing of its desire to terminate the effect of the certificate at the end of a specified calendar quarter, but only if, at the time of the receipt of such notice by the district director, the certificate has been in effect for a period of not less than 8 years. The notice of termination shall be signed by the president or other principal officer of the organization. Such notice shall be dated and shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the organization, (iii) the district director with whom the certificate was filed, (iv) the date on which the certificate became effective, and (v) the date on which the certificate is to be terminated. No particular form is prescribed for the notice of termination.

(2) In computing the effective period which must precede the date of receipt of the notice of termination, there shall be disregarded any period or periods as to which the organization was not exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (3) or under section 101 (6) of the Internal Revenue Code of 1939.

(3) The notice of termination may be revoked by the organization by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. The notice of revocation shall be filed with the district director with whom the notice of termination was filed. The notice of revocation shall be signed by the president or other principal officer of the organization. Such notice shall be dated and shall show (i) the title of the officer signing the notice, (ii) the name, address, and identification number of the organization, and (iii) the date of the notice of termination to be revoked. No particular form is prescribed for the notice of revocation.

(e) *Termination of waiver by Commissioner.* (1) The period for which a certificate filed pursuant to section 3121 (k), or pursuant to section 1426 (l) of the Internal Revenue Code of 1939, is in effect may be terminated by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, upon a finding by the Commissioner that the organization has failed to comply substantially with the requirements applicable with respect to the taxes imposed by the act (or the corresponding provisions of prior law) or is no longer able to comply therewith. The Commissioner shall give the organization not less than 60 days' advance notice in writing that the period covered by the certificate will terminate at the end of the calendar quarter specified in the notice of termination.

(2) The notice of termination may be revoked by the Commissioner, with the prior concurrence of the Secretary of Health, Education, and Welfare, by giving written notice of revocation to the organization before the close of the calendar quarter specified in the notice of termination.

§ 31.3121(l) Statutory provisions; definitions; agreements entered into by domestic corporations with respect to foreign subsidiaries.

SEC. 3121. *Definitions.* * * *

(l) *Agreements entered into by domestic corporations with respect to foreign subsidiaries*—(1) *Agreement with respect to certain employees of foreign subsidiaries.* The Secretary or his delegate shall, at the request of any domestic corporation, enter into an agreement (in such form and manner as may be prescribed by the Secretary or his delegate) with any such corporation which desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any one or more of its foreign subsidiaries (as defined in paragraph (8)) by all employees who are citizens of the United States, except that the agreement shall not be applicable to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign subsidiary of such domestic corporation. Such agreement shall be applicable with respect to citizens of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign subsidiary specified in the agreement. Such agreement shall provide—

(A) That the domestic corporation shall pay to the Secretary or his delegate, at such time or times as the Secretary or his delegate may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) That the domestic corporation will comply with such regulations relating to payments and reports as the Secretary or his delegate may prescribe to carry out the purposes of this subsection.

(2) *Effective period of agreement.* An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement, but in no case prior to January 1, 1955; except that in case such agreement is amended to include the services performed for any other subsidiary and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other subsidiary only after the calendar quarter in which such amendment is executed.

(3) *Termination of period by a domestic corporation.* The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated with respect to any one or more of its foreign subsidiaries by the domestic corporation, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the domestic corporation by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign corporation shall terminate at the end of any calendar quarter in which the foreign corporation, at any time in such quarter, ceases to be a foreign subsidiary as defined in paragraph (8).

(4) *Termination of period by Secretary.* If the Secretary or his delegate finds that any domestic corporation which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary or his delegate shall give such domestic corporation not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the domestic corporation. No notice of termination or of revocation thereof shall be given under this paragraph to a domestic corporation without the prior concurrence of the Secretary of Health, Education, and Welfare.

(5) *No renewal of agreement.* If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the domestic corporation pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary or his delegate pursuant to paragraph (4), the domestic corporation may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign subsidiary, such agreement may not thereafter be amended so as again to make it applicable with respect to such subsidiary.

(6) *Deposits in trust funds.* For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

(A) Paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) As is reported to the Secretary or his delegate pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

(7) *Overpayments and underpayments.* (A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary or his delegate.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary or his delegate, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary or his delegate within two years from the time such overpayment was made.

(8) *Definition of foreign subsidiary.* For purposes of this subsection and section 210 (a) of the Social Security Act, a foreign subsidiary of a domestic corporation is—

(A) A foreign corporation not less than 20 percent of the voting stock of which is owned by such domestic corporation; or

(B) A foreign corporation more than 50 percent of the voting stock of which is owned by the foreign corporation described in subparagraph (A).

(9) *Domestic corporation as separate entity.* Each domestic corporation which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413 (c) (2) (C), relating to special refunds in the case of employees of certain foreign corporations, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(10) *Regulations.* Regulations of the Secretary or his delegate to carry out the purposes of this subsection shall be designed to make the requirements imposed on domestic corporations with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

[Sec. 3121 (l) as added by sec. 209, Social Security Amendments 1954; amended by secs. 103(j) and 201(j), Social Security Amendments 1956; sec. 69 Technical Amendments Act of 1958 (72 Stat. 1659)]

§ 31.3121(l)–1 Agreements entered into by domestic corporations with respect to foreign subsidiaries.

For provisions relating to the extension of the Federal old-age, survivors, and disability insurance system established by title II of the Social Security Act to certain services performed outside the United States by citizens of the United States in the employ of a foreign subsidiary of a domestic corporation, see the Regulations Relating to Contract Coverage of Employees of Foreign Subsidiaries (Part 36 of this chapter).

§ 31.3122 Statutory provisions; Federal service.

SEC. 3122. *Federal service.* In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, the determination whether an individual has performed service which constitutes employment as defined in section 3121 (b), the determination of the amount of remuneration for such service which constitutes wages as defined in section 3121 (a), and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the $4,200 limitation in section 3121 (a) (1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121 (a) (1). The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this subsection [section] shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this subsection [section] the Secretary shall be deemed to be the head of such instrumentality.

[Sec. 3122 as amended by secs. 202 (c) and 203, Social Security Amendments 1954]

§ 31.3123 Statutory provisions; deductions as constructive payments.

SEC. 3123. *Deductions as constructive payments.* Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

§ 31.3123–1 Deductions by an employer from remuneration of an employee.

Any amount deducted by an employer from the remuneration of an employee is considered to be part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress or the law of any State requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

§ 31.3124 Statutory provisions; estimate of revenue reduction.

SEC. 3124. *Estimate of revenue reduction.* The Secretary or his delegate at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121 (b) (9) and shall include such estimate in his annual report.

[Sec. 3124 as amended by sec. 205 (b), Social Security Amendments 1954]

§ 31.3125 Statutory provisions; short title.

SEC. 3125. *Short title.* This chapter may be cited as the "Federal Insurance Contributions Act."

Subpart C—Railroad Retirement Tax Act (Chapter 22, Internal Revenue Code of 1954)

TAX ON EMPLOYEES

§ 31.3201 Statutory provisions; rate of tax.

SEC. 3201. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of every employee a tax equal to 6¼ percent of so much of the compensation paid to such employee after December 31, 1954, for services rendered by him after such date as is not in excess of $350 for any calendar month.

[Sec. 3201 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3201–1 Measure of employee tax.

The employee tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee to one or more employers, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 to the employee for services rendered during any one calendar month after 1954. For provisions relating to compensation, see § 31.3231 (e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax, see paragraph (a) (4) and (5) of § 31.3231 (e)–1.

§ 31.3201–2 Rate and computation of employee tax.

The rate of the employee tax is 6¼ percent. The employee tax is computed by multiplying the amount of the employee's compensation with respect to which the employee tax is imposed by 6¼ percent.

§ 31.3202 Statutory provisions; deduction of tax from compensation.

SEC. 3202. *Deduction of tax from compensation*—(a) *Requirement.* The tax imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after December 31, 1954, by more than one employer for services rendered during any calendar month after 1954 and the aggregate of such compensation is in excess of $350, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion

of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1954, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $350, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1954, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month.

(b) *Indemnification of employer.* Every employer required under subsection (a) to deduct the tax shall be made liable for the payment of such tax and shall not be liable to any person for the amount of any such payment.

[Sec. 3202 as amended by sec. 206 (a), Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3202–1 Collection of, and liability for, employee tax.

(a) *Collection; general rule.* The employer shall collect from each of his employees the employee tax imposed with respect to the compensation of the employee by deducting or causing to be deducted the amount of such tax from the compensation subject to the tax as and when such compensation is paid. As to the measure of the employee tax, see § 31.3201–1.

(b) *Collection; aggregate monthly compensation in excess of $350 paid by two or more employers.* (1) If an employee is paid compensation after 1954 by two or more employers for services rendered during any one calendar month after 1954, and if the aggregate compensation paid to such employee after 1954 by all employers for services rendered during such month is in excess of $350, the employee tax to be deducted by each employer from the compensation as and when paid by him to the employee shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1), each employer shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all employers for that month. See example (1) in subparagraph (2) of this paragraph.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such subordinate unit to the employee for the month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after 1954 to the employee by the employer other than a subordinate unit equals or exceeds $350 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after 1954 to such employee for that month, and the employer other than a subordinate unit shall deduct the employee tax with respect to $350 of compensation paid by him after 1954 to such employee for that month. See example (2) in subparagraph (2) of this paragraph.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by the employers other than a subordinate unit equals or exceeds $350 for the month, then no employee tax shall be deducted by any such subordinate unit from the compensation paid by it after 1954 to such employee for that month, and each employer other than a subordinate unit shall deduct the employee tax with respect to that proportion of $350 of compensation which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all such employers other than a subordinate unit for that month. See example (3) in subparagraph (2) of this paragraph.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate unit is less than $350 for the month, then each employer other than the subordinate unit shall deduct the employee tax with respect to the full amount of compensation paid by him after 1954 to such employee for that month, and the subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to the remainder of $350 of compensation less the total compensation paid after 1954 to such employee for that month by all other employers. See example (4) in subparagraph (2) of this paragraph.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate units is less than $350 for the month, then each employer other than the subordinate units shall deduct the employee tax with respect to the full amount of compensation paid by him after 1954 to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employee tax with respect to that proportion of the remainder of $350 of compensation less the total compensation paid after 1954 to such employee for the month by all employers other than the subordinate units which the compensation paid after 1954 by such subordinate unit to the employee for that month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month. See example (5) in subparagraph (2) of this paragraph.

See paragraph (a) (4) and (5) of § 31.3231 (e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employee tax.

(2) The application of certain of the principles stated in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A, an employee, renders services during January 1955 for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $100 by X, $100 by Y, and $300 by Z, or an aggregate of $500 for the month. In such case X pays one-fifth of A's aggregate compensation for the month, Y pays one-fifth, and Z pays three-fifths. X and Y, therefore, are each required to deduct the employee tax with respect to one-fifth of $350, or $70, and Z is required to deduct the employee tax with respect to three-fifths of $350, or $210.

Example (2). A, an employee, renders services during January 1955 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $350 by X, $50 by Y, and $25 by Z. Since the compensation paid A for the month by X equals $350, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month; and X is required to deduct the employee tax with respect to the full $350 paid by him to A for the month.

Example (3). A, an employee, renders services during January 1955 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $200 by W and $300 by X, or an aggregate of $500 for the month, and compensation of $50 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $350, neither Y nor Z is required to deduct any employee tax from the compensation paid by him to A for the month. Of the aggregate compensation of $500 paid A for the month by W and X, W pays two-fifths and X pays three-fifths. W, therefore, is required to deduct the employee tax with respect to two-fifths of $350, or $140, and X is required to deduct the employee tax with respect to three-fifths of $350, or $210.

Example (4). A, an employee, renders services during January 1955 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $250 by X and $200 by Y. In such case X is required to deduct the employee tax with respect to the full $250 paid by him to A for the month; and Y is required to deduct the employee tax only with respect to $100 ($350 minus $250 paid by X).

Example (5). A, an employee, renders services during January 1955 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $190 by W, $100 by X, $50 by Y, and $100 by Z. In such case W and X are each required to deduct the employee tax with respect to the full amount paid to A for the month, that is, W with respect to $190 and X with respect to $100; and Y and Z are required to deduct the employee tax with respect to their proportionate share of $60 ($350 minus $290 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is required to deduct the employee tax with respect to one-third of $60, or $20, and Z is required to deduct the employee tax with respect to two-thirds of $60, or $40.

(c) *Undercollections or overcollections.* Any undercollection or overcollection of employee tax resulting from the employer's inability to determine, at the time compensation is paid, the correct amount of compensation with respect to which the deduction should be made shall be corrected in accordance with the provisions of Subpart G of the regulations in this part relating to adjustments, credits, refunds, and abatements.

(d) *When fractional part of cent may be disregarded.* In collecting the employee tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(e) *Employer's liability.* The employer is liable for the employee tax with respect to compensation paid by him, whether or not collected from the employee. If the employer deducts less than the correct amount of employee tax or fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him, the employee is also liable for the employee tax. Any employee tax collected by or on behalf of an employer is a special fund in trust for the United States. See section 7501. An employer is not liable to any person for the amount of the employee tax deducted by him and paid to the district director.

Tax on Employee Representatives

§ 31.3211 Statutory provisions; rate of tax.

Sec. 3211. *Rate of tax.* In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to 12½ percent of so much of the compensation, paid to such employee representative after December 31, 1954, for services rendered by him after such date as is not in excess of $350 for any calendar month.

[Sec. 3211 as amended by sec. 206 (a), Act of Aug. 31, 1954 (Pub. Law 746, 83rd Cong., 68 Stat. 1040)]

§ 31.3211–1 Measure of employee representative tax.

(a) *General rule.* Except as provided in paragraph (b) of this section, the employee representative tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid to an individual for services rendered as an employee representative, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 to the employee representative for services rendered during any one calendar month after 1954. See § 31.3231 (e)–1, relating to compensation.

(b) *Aggregate monthly compensation in excess of $350 as employee representative and employee.* (1) If during any one calendar month after 1954 an individual renders services as an employee representative and as an employee and the total compensation paid after 1954 to the individual for services rendered during such month as an employee representative and as an employee exceeds $350, the measure of the employee representative tax for such month shall be $350 minus the compensation paid after 1954 to such individual for services rendered by him during the month as an employee.

(2) The application of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. A renders services as an employee representative during January 1955 for which he is paid in the month or thereafter $100. During January 1955 A also renders services as an employee for one or more employers and receives during the month or thereafter compensation of $300. Inasmuch as A's total compensation for services rendered during January 1955 as an employee representative and as an employee exceeds $350 ($300 plus $100), the measure of the employee representative tax is $350 minus $300 (A's compensation for services rendered as an employee), or $50.

§ 31.3211–2 Rate and computation of employee representative tax.

The rate of the employee representative tax is 12½ percent. The employee representative tax is computed by multiplying the amount of the employee representative's compensation with respect to which the employee representative tax is imposed by 12½ percent.

§ 31.3212 Statutory provisions; determination of compensation.

Sec. 3212. *Determination of compensation.* The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 3231 (a).

§ 31.3212–1 Determination of compensation.

See § 31.3231(e)–1 for regulations applicable to compensation.

Tax on Employers

§ 31.3221 Statutory provisions; rate of tax.

Sec. 3221. *Rate of tax.* In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to 6¼ percent of so much of the compensation paid by such employer after December 31, 1954, for services rendered to him after December 31, 1954, as is, with respect to any employee for any calendar month, not in excess of $350; except that if an employee is paid compensation after December 31, 1954, by more than one employer for services rendered during any calendar month after 1954, the tax imposed by this section shall apply to not more than $350 of the aggregate compensation paid to such employee by all such employers after December 31, 1954, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1954, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $350, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1954, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1954, to such employee for services rendered during such month.

[Sec. 3221 as amended by sec. 206 (a), Act of Aug. 31, 1954 (Pub. Law 746, 83rd Cong., 68 Stat. 1040)]

§ 31.3221–1 Measure of employer tax.

(a) *General rule.* Except as provided in paragraph (b) of this section, the employer tax with respect to compensation paid after 1954 for services rendered after 1954 is measured by the amount of such compensation paid by an employer to his employees, excluding, however, the amount of compensation in excess of $350 which is paid after 1954 by the employer to any employee for services rendered during any one calendar month after 1954. For provisions relating to compensation, see § 31.3231 (e)–1. For provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax, see paragraph (a) (4) and (5) of § 31.3231 (e)–1.

(b) *Aggregate monthly compensation in excess of $350 paid by two or more employers.* (1) If an employee is paid compensation after 1954 by two or more employers for services rendered during any one calendar month after 1954, and if the aggregate compensation paid to such employee after 1954 by all employers for services rendered during such month is in excess of $350, the measure of the employer tax of each employer with respect to the compensation paid by him after 1954 to the employee for the month shall be determined as follows:

(i) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1), the measure of the employer tax of each employer shall be that proportion of $350 which the compensation paid after 1954 by such employer to the employee for the

month bears to the total compensation paid after 1954 to such employee by all employers for that month.

(ii) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employer tax of each subordinate unit shall be that proportion of $350 which the compensation paid after 1954 by such subordinate unit to the employee for the month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

(iii) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after 1954 to the employee by the employer other than a subordinate unit equals or exceeds $350 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after 1954 to such employee for that month, and the measure of the employer tax of the employer other than a subordinate unit with respect to the compensation paid by him after 1954 to such employee for that month shall be $350.

(iv) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by the employers other than a subordinate unit equals or exceeds $350 for the month, then no subordinate unit shall be liable for any employer tax with respect to the compensation paid by it after 1954 to such employee for that month, and the measure of the employer tax of each employer other than a subordinate unit shall be that proportion of $350 which the compensation paid after 1954 by such employer to the employee for the month bears to the total compensation paid after 1954 to such employee by all such employers other than a subordinate unit for that month.

(v) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate unit is less than $350 for the month, then the measure of the employer tax of each employer other than the subordinate unit shall be the full amount of compensation paid by him after 1954 to such employee for that month, and the measure of the employer tax of the subordinate unit of a national railway-labor-organization employer shall be the remainder of $350 less the total compensation paid after 1954 to such employee for that month by all other employers.

(vi) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer, and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after 1954 to the employee by all employers other than the subordinate units is less than $350 for the month, then the measure of the employer tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after 1954 to such employee for that month, and the measure of the employer tax of each subordinate unit of a national railway-labor-organization employer shall be that proportion of the remainder of $350 less the total compensation paid after 1954 to such employee for the month by all employers other than the subordinate units which the compensation paid after 1954 by such subordinate unit to the employee for that month bears to the total compensation paid after 1954 to such employee by all such subordinate units for that month.

See paragraph (a) (4) and (5) of § 31.3231 (e)–1 for provisions relating to the circumstances under which certain compensation is to be disregarded for the purpose of determining the employer tax.

(2) For illustrations of the application of certain of the principles in subparagraph (1) of this paragraph, see the examples, illustrating the analogous principles with respect to the deduction of employee tax, set forth in paragraph (b) (2) of § 31.3202–1.

(c) *Underpayments or overpayments.* Any underpayment or overpayment of employer tax resulting from the employer's inability to determine, at the time such tax is paid, the correct amount of compensation with respect to which the tax should be paid shall be corrected in accordance with the provisions of Subpart G of the regulations in this part relating to adjustments, credits, refunds, and abatements.

§ 31.3221–2 Rate and computation of employer tax.

The rate of employer tax is 6¼ percent. The employer tax is computed by multiplying the amount of the compensation with respect to which the employer tax is imposed by 6¼ percent.

GENERAL PROVISIONS

§ 31.3231(a) Statutory provisions; definitions; employer.

SEC. 3231. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Secretary or his delegate, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (44 Stat. 577; 45 U. S. C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

§ 31.3231(a)–1 Who are employers.

(a) Each of the following persons is an employer within the meaning of the act:

(1) Any carrier, that is, any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

(2) Any company—

(i) Which is directly or indirectly owned or controlled by one or more employers as defined in subparagraph (1) of this paragraph, or under common control therewith, and

(ii) Which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with—

(*a*) The transportation of passengers or property by railroad, or

(*b*) The receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(3) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in subparagraph (1) or (2) of this paragraph;

(4) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers as defined in subparagraph (1), (2) or (3) of this paragraph and engaged in the performance of services in connection with or incidental to railroad transportation;

(5) Any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act; and

(6) Any subordinate unit of a national railway-labor-organization employer, that is, any State or National legislative committee, general committee, insurance department, or local lodge or division, of an employer as defined in subparagraph (5) of this paragraph, established pursuant to the constitution and bylaws of such employer.

(b) As used in paragraph (a) (2) of this section, the term "controlled" includes direct or indirect control, whether legally enforceable and however exercisable or exercised. The control may be by means of stock ownership, or by agreements, licenses, or any other devices which insure that the operation of the company is in the interest of one or more carriers. It is the reality of the control, however, which is decisive, not its form nor the mode of its exercise.

(c) The term "employer" does not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation which is operated by any other motive power.

(d) The term "employer" does not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities for such mining or supplying of coal, or in any of such activities.

§ 31.3231(b) Statutory provisions; definitions; employee.

SEC. 3231. *Definitions.* • • •

(b) *Employee.* For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) He was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) He was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) Before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) Solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) Solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) If he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) He was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights; except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (50 Stat. 312; 45 U. S. C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

§ 31.3231(b)–1 Who are employees.

(a) *In general.* (1) An individual who is in the service of one or more employers for compensation is an employee within the meaning of the act. (For definitions of the terms "employer", "service", and "compensation", see subsections (a), (d), and (e), respectively, of section 3231.) An individual is in the service of an employer, with respect to services rendered for compensation, if—

(i) He is subject to the continuing authority of the employer to supervise and direct the manner in which he renders such services; or

(ii) He is rendering professional or technical services and is integrated into the staff of the employer; or

(iii) He is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations.

(2) In order that an individual may be in the service of an employer within the meaning of subparagraph (1) (i) of this paragraph, it is not necessary that the employer actually direct or control the manner in which the services are rendered; it is sufficient if the employer has the right to do so. The right of an employer to discharge an individual is also an important factor indicating that the individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services. Other factors indicating that an individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services are the furnishing of tools and the furnishing of a place to work by the employer to the individual who renders the services.

(3) In general, if an individual is subject to the control or direction of an employer merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not, as to such services, in the service of an employer within the meaning of subparagraph (1) (i) of this paragraph. However, an individual performing services as an independent contractor may be, as to such services, in the service of an employer within the meaning of subparagraph (1) (ii) or (iii) of this paragraph.

(4) Whether or not an individual is an employee will be determined upon an examination of the particular facts of the case.

(5) If an individual is an employee, it is of no consequence that he is designated as a partner, coadventurer, agent, independent contractor, or otherwise, or that he performs services on a part-time basis.

(6) No distinction is made between classes or grades of employees. Thus, superintendents, managers, and other supervisory personnel are employees within the meaning of the act. An officer of an employer is an employee, but a director as such is not.

(7) In determining whether an individual is an employee with respect to services rendered within the United States, the citizenship or residence of the individual, or the place where the contract of service was entered into, is immaterial.

(8) If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which does not conduct the principal part of its business within the United States, such individual shall be deemed to be in the service of such employer only to the extent that he performs services for it in the United States. Thus, with respect to services rendered for such employer outside the United States, such individual is not in the service of an employer.

(9) If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which conducts the principal part of its business within the United States, he is in the service of such employer whether his services are rendered within or without the United States. In the case of an individual, not a citizen or resident of the United States, rendering services in a place outside the United States to an employer which is required under the laws applicable in such place to employ, in whole or in part, citizens or residents thereof, such individual shall not be deemed to be in the service of an employer with respect to services so rendered.

(10) The term "employee" does not include any individual while he is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(b) *Employees of local lodges or divisions of railway-labor-organization em-*

ployers. (1) An individual is in the service of a local lodge or division of a railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1) only if—

(i) All, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or

(ii) The headquarters of such local lodge or division is located in the United States.

(2) (i) An individual in the service of a local lodge or division is not an employee within the meaning of the act unless he was, on or after August 29, 1935, in the service of a carrier (see § 31.3231 (g) for definition of carrier) or he was, on August 29, 1935, in the "employment relation" to a carrier.

(ii) An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (*a*) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or (*b*) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (*c*) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (*1*) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (*2*) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (*3*) if he was so called he was solely for such reason unable to render service in six calendar months as provided in (*b*) of this subdivision; or (*d*) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights. However, an individual shall not be deemed to have been in the employment relation to a carrier on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not, with respect to any service in such payroll period, in the service of an employer (see paragraph (a) of this section).

(c) *Employees of general committees of railway-labor-organization employers.* An individual is in the service of a general committee of a railway-labor-organization employer (see paragraph (a) (6) of § 31.3231 (a)–1) only if—

(1) He is representing a local lodge or division described in paragraph (b) (1) of this section; or

(2) All, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or

(3) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer. In such case, if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only a part of his remuneration for such service shall be regarded as compensation. The part of his remuneration regarded as compensation shall be in the same proportion to his total remuneration as the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable. However, no part of his remuneration for such service shall be regarded as compensation if the application of such mileage formula, or such other formula as the Railroad Retirement Board may have prescribed, would result in his compensation for the service being less than 10 percent of his remuneration for such service.

§ 31.3231(c) Statutory provisions; definitions; employee representative.

SEC. 3231. *Definitions.* • • •

(c) *Employee representative.* For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (44 Stat. 577; 45 U. S. C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

§ 31.3231(c)–1 Who are employee representatives.

(a) An employee representative within the meaning of the act is—

(1) Any officer or official representative of a railway labor organization which is not included as an employer under section 3231 (a) who—

(i) Was in the service of an employer either before or after June 29, 1937, and

(ii) Is duly authorized and designated to represent employees in accordance with the Railway Labor Act.

For railway labor organizations which are employers under section 3231 (a), see paragraph (a) (5) and (6) of § 31.3231 (a)–1.

(2) Any individual who is regularly assigned to or regularly employed by an employee representative, as defined in subparagraph (1) of this paragraph, in connection with the duties of such employee representative's office.

(b) In determining whether an individual is an employee representative, his citizenship or residence is material only insofar as those factors may affect the determination of whether he was "in the service of an employer" (see paragraph (a) of § 31.3231 (b)–1).

§ 31.3231(d) Statutory provisions; definitions; service.

SEC. 3231. *Definitions.* • • •

(d) *Service.* For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) He is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) He renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) All, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) The headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) He is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) All, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 (50 Stat. 308; 45 U. S. C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such

service, no part of such remuneration shall be regarded as compensation;

Provided, however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

§ 31.3231(d)–1 Service.

See § 31.3231(b)–1 for regulations relating to the term "in the service of an employer."

§ 31.3231(e) Statutory provisions; definitions; compensation.

SEC. 3231. *Definitions.* • • •

(e) *Compensation.* For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201. Compensation which is earned during the period for which the Secretary or his delegate shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

[Sec. 3231(e) as amended by sec. 206(b), Act of Aug. 31, 1954 (Pub. Law 746, 83d Cong., 68 Stat. 1040)]

§ 31.3231(e)–1 Compensation.

(a) *Definition.* (1) The term "compensation" means all remuneration in money, or in something which may be used in lieu of money (for example, scrip and merchandise orders), which is earned by an individual for services rendered as an employee to one or more employers or as an employee representative. A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by such individual as an employee of the employer. Likewise, a payment made by an employee organization to an employee representative through the organization's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such.

(2) The term "compensation" is not confined to amounts earned or paid for active service, but includes amounts earned or paid for an identifiable period during which the employee is absent from the active service of the employer and, in the case of an employee representative, amounts earned or paid for an identifiable period during which the employee representative is absent from the active service of the employee organization.

(3) The term "compensation" does not include tips or the voluntary payment by an employer of the employee tax without the deduction of such tax from the remuneration of the employee.

(4) If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than $3, such amount shall be disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221.

(5) Compensation for service as a delegate to a national or international convention of a railway-labor-organization employer shall be disregarded for purposes of determining the employee tax under section 3201 and the employer tax under section 3221 if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act of 1937.

(6) For special provisions relating to the compensation of certain general chairmen or assistant general chairmen of a general committee of a railway-labor-organization employer, see paragraph (c) (3) of § 31.3231 (b)–1.

(b) *Items included as compensation.* The following items are included in compensation with respect to employees and in analogous situations with respect to employee representatives:

(1) Salaries, wages, commissions, fees, bonuses, and any other remuneration in money or in something which may be used in lieu of money. The name by which remuneration is designated, the amount, and the basis upon which it is paid are immaterial. It may be paid upon the basis of piece-work, a percentage of profits, or on a daily, hourly, weekly, monthly, annual, or other basis.

(2) Sick pay, vacation allowances, or back pay upon reinstatement after wrongful discharge.

(3) Amounts paid to an employee for an identifiable period of absence from the active service of the employer on account of personal injury. If a payment is made to an employee with respect to a personal injury and includes pay for an identifiable period of absence from active service, the total payment shall be deemed to be paid for such period of absence from active service unless, at the time of payment, a part of such payment is specifically apportioned to factors other than absence from active service, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for such period of absence from active service.

(4) Amounts paid to an employee for loss of earnings during an identifiable period as the result of the displacement of the employee to a less remunerative position or occupation.

(5) Amounts paid as allowance or reimbursement for traveling or other expenses incurred in the business of the employer to the extent of the excess of such amounts, if any, over such expenses actually incurred and accounted for by the employee to the employer.

(6) Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee, if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not compensation, if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(7) Amounts deducted from the compensation of an employee, including the amount of the employee tax deducted pursuant to section 3202, constitute compensation paid to the employee.

(8) Payments made by an employer into a stock bonus, pension, or profit-sharing fund, if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract for services requires such payment as part of the remuneration. Whether or not under other circumstances such payments constitute compensation depends upon the particular facts of each case.

(c) *When compensation is earned.* Compensation is earned when an employee, or employee representative, as such, performs services for which he is paid or for which there is a present or future obligation to pay, regardless of the time at which payment is made or is to be made. Remuneration paid for any period of absence from active service shall be deemed to have been earned in the month in which such absence from service occurred. A payment made by an employer or employee organization to

an individual through the payroll of the employer or employee organization shall be presumed, in the absence of evidence to the contrary, to be for services rendered by such individual in the period covered by the payroll and, thus, to have been earned in such period.

(d) *When compensation is paid.* Compensation is deemed to be paid—

(1) When it is actually paid; or

(2) When it is constructively paid, that is, credited to the account of or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and made available to him so that it may be drawn upon at any time and its payment brought within his own control and disposition; or

(3) Within the period for which a return of tax is required to be made, if the compensation was earned during such period and is payable during the calendar month following such period. For provisions relating to periods for which a return of tax is required, see § 31.6011(a)–2. See also paragraph (c) of this section, relating to when compensation is earned.

Example (1). During September 1955 (which falls in a period for which a return of tax is required to be made), A is employed by employer X at a monthly salary of $200, one-half of which is payable on the 25th of the month in which the services are performed and the other half on the 10th of the following month. Thus on October 10, A is paid $100 which was earned during September. That $100 is deemed to have been paid to A in September and should be included in X's return filed for the period in which September falls.

Example (2). During September 1955 (which falls in a period for which a return of tax is required to be made), A is employed by employer X on the basis of a 6-day week at a weekly salary of $60 payable on Saturday of each week. Thus on Saturday, October 1, 1955, A is paid $60 for services performed during the week September 26, 1955, to October 1, 1955, inclusive. In such case five-sixths of that amount or $50 is deemed to have been paid in September and should be included in X's return filed for the period in which September falls. The balance of A's salary for that week ($10) should be included in the return filed for the period in which October 1955 falls. But see paragraph (a)(2) of § 31.6011(a)–2 relating to returns of employers required by State law to pay compensation on a weekly basis.

§ 31.3231(f) Statutory provisions; definitions; company.

SEC. 3231. *Definitions.* • • •

(f) *Company.* For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

§ 31.3231(g) Statutory provisions; definitions; carrier.

SEC. 3231. *Definitions.* • • •

(g) *Carrier.* For purposes of this chapter, the term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U. S. C., chapter 1).

§ 31.3232 Statutory provisions; court jurisdiction.

SEC. 3232. *Court jurisdiction.* The several district courts of the United States shall have jurisdiction to entertain an application by the Attorney General on behalf of the Secretary or his delegate to compel an employee or other person residing within the jurisdiction of the court or an employer subject to service of process within its jurisdiction to comply with any obligations imposed on such employee, employer, or other person under the provisions of this chapter. The jurisdiction herein specifically conferred upon such Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by such courts to entertain civil actions, whether legal or equitable in nature, in aid of the enforcement of rights or obligations arising under the provisions of this chapter.

§ 31.3233 Statutory provisions; short title.

SEC. 3233. *Short title.* This chapter may be cited as the "Railroad Retirement Tax Act."

Subpart D—Federal Unemployment Tax Act (Chapter 23, Internal Revenue Code of 1954)

§ 31.3301 Statutory provisions; rate of tax.

SEC. 3301. *Rate of tax.* There is hereby imposed on every employer (as defined in section 3306 (a)) for the calendar year 1955 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 percent of the total wages (as defined in section 3306 (b)) paid by him during the calendar year with respect to employment (as defined in section 3306 (c)) after December 31, 1938.

§ 31.3301–1 Persons liable for tax.

Every person who is an employer as defined in section 3306(a) (see § 31.3306 (a)–1) is liable for the tax. Even if an employer is not subject to any State unemployment compensation law, he is nevertheless liable for the tax. However, if he is subject to such a State law, he may be entitled to certain credits against the tax (see §§ 31.3302 (a)–1 to 31.3302 (c)–1, inclusive). For provisions relating to payment of the tax, see Subpart G of the regulations in this part.

§ 31.3301–2 Measure of tax.

The tax for any calendar year is measured by the amount of wages paid by the employer during such year with respect to employment after December 31, 1938. (See §§ 31.3306(c)–1 to 31.3306(c)(17)–1, inclusive, relating to employment, and §§ 31.3306 (b)–1 to 31.3306 (b) (8)–1, inclusive, relating to wages.)

§ 31.3301–3 Rate and computation of tax.

The rate of tax is 3 percent. The tax is computed by applying the 3 percent rate to the wages paid during the calendar year with respect to employment after December 31, 1938.

§ 31.3301–4 When wages are paid.

Wages are paid when actually or constructively paid. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition. See § 31.6011(a)–3, relating to the return on which wages are to be reported.

§ 31.3302(a) Statutory provisions; credits against tax; contributions to State unemployment funds.

SEC. 3302. *Credits against tax*—(a) *Contributions to State unemployment funds.* (1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 3304.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

§ 31.3302(a)–1 Credit against tax for contributions paid.

(a) *In general.* Subject to the provisions of paragraphs (b) and (c) of this section and to the provisions of § 31.3302(c)–1, the taxpayer may credit against the tax for any taxable year the total amount of contributions paid by him into an unemployment fund maintained during such year under a State law which has been found by the Secretary of Labor to contain the provisions specified in section 3304 (a); *Provided, however,* That no credit may be taken for contributions under a State law if such State has not been duly certified for the calendar year to the Secretary of the Treasury by the Secretary of Labor. The contributions may be credited against the tax whether or not they are paid with respect to employment as defined in section 3306 (c). For provisions relating to additional credit against the tax, see § 31.3302 (b)–1.

(b) *Limitation on the taxable year with respect to which contributions are allowable.* In order to be allowable as credit against the tax for any taxable year, the contributions must have been paid with respect to such year.

Example (1). Under the unemployment compensation law of State X, employer M is required to report in his contribution return for the quarter ending December 31, 1955, all remuneration payable for services rendered in such quarter. A portion of such remuneration is not paid to his employees until February 1, 1956. On January 20, 1956, M pays to the State the total amount of contributions due with respect to all remuneration so required to be reported. Such contributions, including those with respect to the remuneration paid on February 1, 1956, may be included in computing the credit against the tax for the calendar year 1955. This is true even though the remuneration paid on February 1, 1956 (if it constitutes "wages") is required to be reported in the Federal return for 1956 and not in the Federal return for 1955.

Example (2). Under the unemployment compensation law of State Y, employer N is required to include in his contribution return for the quarter ending December 31, 1955, certain remuneration paid on December 30, 1955, to an employee for services to be rendered after December 31. On January 20, 1956, N pays to the State the total amount of contributions due with respect to all remuneration required to be reported on the contribution return. Such contributions, including those with respect to the remuneration paid on December 30, 1955, may be included in computing the credit against the tax for the calendar year 1955.

(c) *Limitation on amount of credit allowable based on time when contributions are paid*—(1) *In general.* The amount of credit allowable for contributions paid into a State unemployment fund depends in part on the time of payment of such contributions. Although contributions paid at any time may be credited against the tax (subject to the limitations referred to in subparagraphs (2) and (3) of this paragraph), no refund or credit of the tax based on credit for contributions paid will be allowed unless the contributions are paid prior to the expiration of the period of limitations applicable to refund or credit of the tax. For general provisions relating to the limitation period and to refunds, credits and abatements of the tax, see respectively §§ 301.6511(a)–1, 301.6402–2 and 301.6404–1 of this chapter (Regulations on Procedure and Administration).

(2) *Amount of credit allowable when contributions are paid on or before last day for filing return.* Contributions paid into a State unemployment fund on or before the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount equal to such contributions, but not, however, to exceed the limit on total credits prescribed in section 3302 (c). (See § 31.3302 (c)–1.) For provisions relating to the time for filing the return see § 31.6071(a)–1 in Subpart G of this part.

(3) *Amount of credit allowable when contributions are paid after last day for filing return.* Contributions paid into a State unemployment fund after the last day upon which the Federal return for the taxable year is required to be filed may be credited against the tax in an amount not to exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid into a State unemployment fund on or before such last day. However, see subparagraph (4) of this paragraph relating to the payment of contributions to the wrong State. For general provisions relating to refunds, credits, and abatements of the tax, see §§ 301.6402–2 and 301.6404–1 of this chapter (Regulations on Procedure and Administration).

Example (1). The Federal return of the M Company for the calendar year 1955 discloses a total tax of $12,000. The company is liable for total State contributions of $8,000 for such year. The due date of the company's Federal return is January 31, 1956, no extension of time for filing the return having been granted. The contributions are not paid until February 1, 1956. If the contributions had been paid on or before January 31, 1956, the entire amount could have been credited against the tax (such amount not exceeding 90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, 1956, the M Company is entitled to a credit of 90 percent of the amount of the contributions ($8,000), or $7,200, the net liability for Federal tax being $4,800 ($12,000 minus $7,200).

Example (2). The facts are the same as in example (1), except that the M Company is liable for and pays total State contributions of $12,000, instead of $8,000. If the contributions had been paid on or before January 31, 1956, the amount allowable as credit would have been $10,800 (90 percent of the Federal tax of $12,000). Since the contributions were paid after January 31, 1956, the M Company is entitled to a credit of 90 percent of $10,800, or $9,720, the net liability for Federal tax being $2,280 ($12,000 minus $9,720).

Example (3). The Federal return of the R Company for the calendar year 1955 discloses a total tax of $10,000. The company is liable for total State contributions of $9,000 for such year. The due date of the company's Federal return is January 31, 1956, no extension of time for filing the return having been granted. The R Company pays $8,000 of the total State contributions on or before such date, and the remaining $1,000 on February 1, 1956. If the $1,000 had been paid on or before January 31, 1956, that amount could have been credited against the tax (such amount plus the $8,000 paid on or before January 31, 1956, not exceeding 90 percent of the Federal tax of $10,000). Since the $1,000 was paid after January 31, 1956, the R Company is entitled to a credit of 90 percent of this amount or $900, plus the credit of $8,000 allowable for the contributions paid on or before January 31, 1956. The net liability for Federal tax is thus $1,100 ($10,000 minus $8,900).

(4) *Amount of credit allowable when contributions are paid to wrong State.* Contributions for the taxable year paid into a State unemployment fund which are required under the unemployment compensation law of that State, but which are paid with respect to remuneration on the basis of which the taxpayer had, prior to such payment, erroneously paid an amount as contributions under another unemployment compensation law, shall be deemed for purposes of the credit to have been paid at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions for such taxable year with respect to services subject to such other law, the payment into the proper fund shall be deemed for purposes of credit to have been made on the date the Federal return for such year was actually filed by the taxpayer under § 31.6011 (a)–3.

Example. Employer N, whose Federal return for the calendar year 1955 discloses a total tax of $1,000, employs individuals in State X and State Y during the calendar year 1955. N assumes in good faith that the services of his employees are covered by the unemployment compensation law of State Y, and pays as contributions to State Y the amount of $900 based upon the remuneration of the employees. All of the services were in fact covered by the unemployment compensation law of State X, and none by the law of State Y. The payment to State Y was made on January 31, 1956. When the error was discovered thereafter, N paid to State X contributions in the amount of $900 based upon such remuneration. Since the contributions were paid to State Y on January 31, 1956, the contributions to State X are, for purposes of the credit, deemed to have been paid on such date. N is entitled to a credit of $900 against the Federal tax of $1,000, the net liability for Federal tax being $100 ($1,000 minus $900).

§ 31.3302(a)–2 Refund of State contributions.

If, subsequent to the filing of the return, a refund is made by a State to the taxpayer of any part of his contribution credited against the tax, the taxpayer is required to advise the district director of the date and amount of such refund and the reason therefor, and to pay the tax, if any, due as a result of such refund, together with interest from the date when the tax was due.

§31.3302(a)–3 Proof of credit under section 3302(a).

Credit against the tax for any calendar year for contributions paid into State unemployment funds shall not be allowed unless there is submitted to the district director:

(a) A certificate of the proper officer of each State (the laws of which required the contributions to be paid) showing, for the taxpayer:

(1) The total amount of contributions required to be paid under the State law with respect to such calendar year (exclusive of penalties and interest) which was actually paid on or before the date the Federal return is required to be filed; and

(2) The amounts and dates of such required payments (exclusive of penalties and interest) actually paid after the date the Federal return is required to be filed.

(b) A statement by the taxpayer that no part of any payment made by him into a State unemployment fund for such calendar year, which is claimed as a credit against the tax, was deducted or is to be deducted from the remuneration of individuals in his employ. Such statement shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(c) Such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the credit provided for under section 3302 (a).

§ 31.3302(b) Statutory provisions; credits against tax; additional credit.

SEC. 3302. *Credits against tax.* • • •

(b) *Additional credit.* In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

§ 31.3302(b)–1 Additional credit against tax.

(a) *In general.* In addition to the credit against the tax allowable for contributions actually paid to State unemployment funds (see § 31.3302 (a)–1), the taxpayer may be entitled to a credit under section 3302 (b). This additional credit is allowable to the taxpayer with respect to the amount of contributions which he is relieved from paying to an unemployment fund under the provisions of a State law which have been certified for the taxable year as provided in section 3303. Generally, an additional credit is available to an employer, if under the provisions of a State law which have been so certified he is permitted to pay contributions to such State for the taxable year, or portion thereof, at a rate which is both lower than the highest rate applied under such law in such year and lower than 2.7 percent. No additional credit is allowable except with respect to a State law certified by the Secretary of Labor for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified).

(b) *Method of computing amount of additional credit allowable with respect to a State law*—(1) *Certification of a State law as a whole.* In ascertaining the additional credit for any taxable year with respect to a particular State law which the Secretary of Labor certifies as a whole to the Secretary of the Treasury in accordance with the provisions of section 3303, the taxpayer must first compute the following amounts:

(i) The amount of contributions (whether or not with respect to employment as defined in section 3306 (c)) which the taxpayer would have been required to pay under the State law for such year if throughout the year he had been subject to the highest rate applied under such law in such year, or to a rate of 2.7 percent, whichever rate is lower.

(ii) The amount of contributions (whether or not with respect to employment as defined in section 3306 (c)) he was required to pay under the State law with respect to such year, whether or not paid.

The amount computed under subdivision (ii) of this subparagraph should then be subtracted from the amount computed under subdivision (i) of this subparagraph and the result will be the additional credit for the taxable year with respect to the law of that State.

Example. A employs individuals only in State X during the calendar year 1955. The unemployment compensation law of State X has been certified in its entirety to the Secretary of the Treasury by the Secretary of Labor for such year. The highest rate applied in such year under such State law to any taxpayer is 3 percent. However, A has obtained a rate of 1 percent under the law of such State and is required to pay his entire year's contributions at that rate. The amount of remuneration of A's employees subject to contributions under such State law is $25,000. The amount of wages paid by A during that year with respect to employment under the Federal law likewise is $25,000, the Federal tax at the 3 percent rate being $750. A's additional credit under section 3302 (b) is $425, computed as follows:

Remuneration subject to contributions	$25,000
Contributions at 2.7 percent rate	675
Less:	
Contributions required to be paid at 1 percent rate	250
Additional credit to A	425

Since the 2.7 percent rate is less than the highest rate applied (3 percent), the 2.7 percent rate is used in computing the amount ($675) from which the amount of contributions required to be paid at the 1 percent rate ($250) is deducted in order to ascertain the additional credit ($425).

(2) *Certification with respect to particular provisions of a State law.* If the Secretary of Labor makes a certification to the Secretary of the Treasury with respect to particular provisions of a State law for any taxable year pursuant to section 3303, the additional credit of the taxpayer for such year with respect to such law shall be computed in such manner as the Commissioner shall determine.

(c) *Amount of additional credit allowable to taxpayer with respect to more than one State law.* If the taxpayer is entitled to additional credit with respect to more than one State law in any taxable year, the additional credit allowable with respect to each State law shall be computed separately (in accordance with paragraph (b) of this section) and the total additional credit allowable against the tax for such year shall be the aggregate of the additional credits allowable with respect to such State laws. For limitation on total credits, see § 31.3302 (c)–1.

§ 31.3302(b)–2 Proof of additional credit under section 3302(b).

Additional credit under section 3302(b) shall not be allowed against the tax for any calendar year unless there is submitted—

(a) To the Commissioner a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing the highest rate of contributions applied under the State law in such calendar year to any person having individuals in his employ; and

(b) To the district director a certificate of the proper officer of each State (with respect to the law of which the additional credit is claimed) showing for the taxpayer—

(1) The total remuneration with respect to which contributions were required to be paid by the taxpayer under the State law with respect to such calendar year; and

(2) The rate of contributions applied to the taxpayer under the State law with respect to such calendar year.

If under the law of such State different rates of contributions were applied to the taxpayer during particular periods of such calendar year, the certificate shall set forth the information called for in subparagraphs (1) and (2) of this paragraph with respect to each such period.

(c) Such other or additional proof as the Commissioner or the district director may deem necessary to establish the right to the additional credit provided for under section 3302 (b).

§ 31.3302(c) Statutory provisions; credits against tax; limit on total credits.

SEC. 3302. *Credits against tax.* • • •

(c) *Limit on total credits.* (1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, and if any balance of such advance or advances has not been returned to the Federal unemployment account as provided in that title before December 1 of the taxable year, then the total credits (after other reductions under this section) otherwise allowable under this section for such taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) In the case of a taxable year beginning with the fourth consecutive January 1 on which such a balance of unreturned advances existed, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of unreturned advances existed, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

For purposes of this paragraph, wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

§ 31.3302(c)–1 Limit on total credits.

(a) *Ninety percent limitation on credits against tax.* The aggregate of the credit under section 3302 (a) and the additional credit under section 3302 (b) shall not exceed 90 percent of the tax against which credit is taken.

(b) *Reduction of amount of total credit otherwise allowable.* (1) Section 3302 (c) (2) provides for a reduction, under certain circumstances, of the amount of the total credits allowable under section 3302 (a), (b), and (c) (1). If any balance of an advance or advances made under title XII of the Social Security Act to the unemployment account of a State remains unpaid on January 1 of 4 consecutive taxable years, the total credits which would be allowable under section

3302 (without regard to the provisions of section 3302 (c) (2)) to a taxpayer subject to the unemployment compensation law of such State shall be reduced for the taxable year beginning with the fourth consecutive January 1, unless prior to December 1 of that taxable year the total amount of any advance or advances made to the account of such State has been fully repaid. The reduction in the total credits allowable under section 3302 (without regard to the provisions of section 3302 (c) (2)) for the taxable year beginning with the fourth consecutive January 1 shall be 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State. In the case of any succeeding taxable year beginning with a consecutive January 1 on which such a balance of an unreturned advance or advances exists, the total credits which would be allowable (without regard to the provisions of section 3302 (c) (2)) shall be reduced unless prior to December 1 of such succeeding taxable year the total amount of any advance or advances made to the account of the State has been fully repaid. The reduction for each such succeeding taxable year beginning with a consecutive January 1 on which such a balance exists shall be a percentage of the tax imposed by section 3301 with respect to the wages paid by the taxpayer during such succeeding taxable year which are attributable to such State. The percentage reduction for any such succeeding taxable year shall be the percentage reduction for the immediately preceding taxable year plus 5 percent.

(2) The computation of the percentage reduction referred to in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). If an advance is made, under title XII of the Social Security Act, to the unemployment account of State X in 1955 and if such advance is not fully returned before December 1, 1959, a balance of an advance will remain unreturned on January 1 of each of 4 consecutive taxable years (1956 through 1959), and will remain unreturned on December 1, 1959. In such event, the total credits which would be allowable under section 3302 (without regard to section 3302 (c) (2)) will be reduced for the taxable year 1959 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State X. The reduction will be 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1959 which are attributable to State X.

Example (2). If an advance made in 1955 to the unemployment account of State Y is fully returned in 1956 but an advance made to the account of such State in 1956 is not fully returned before December 1, 1959, a reduction of 5 percent (as in example (1)) will be imposed for the taxable year 1959 because a balance of advances will remain unreturned on January 1 of each of 4 consecutive taxable years (1956 through 1959) and will remain unreturned on December 1, 1959. If such a balance also exists on January 1, 1960, and all advances made before December 1, 1960, to the unemployment account of State Y are not fully returned before December 1, 1960, the total credits will be reduced for the taxable year 1960. The reduction in the total credits for the taxable year 1960 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State Y will be 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1960 which are attributable to State Y. If such a balance also exists on January 1, 1961, and if all advances made before December 1, 1961, to the unemployment account of State Y are not fully returned before December 1, 1961, the total credits will be reduced for the taxable year 1961. The reduction in the total credits for the taxable year 1961 in the case of any taxpayer who during such year is subject to the unemployment compensation law of State Y will be 15 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during 1961 which are attributable to State Y.

(3) For purposes of section 3302 (c) (2), wages are attributable to a particular State if they are subject to the unemployment compensation law of the State. If wages are not subject to the unemployment compensation law of any State, the determination as to whether such wages, or any portion thereof, are attributable to the particular State with respect to which the reduction in total credits is imposed shall be made in accordance with rules prescribed by the Commissioner.

§ 31.3303 Statutory provisions; conditions of additional credit allowance.

SEC. 3303. *Conditions of additional credit allowance*—(a) *State standards.* A taxpayer shall be allowed an additional credit under section 3302 (b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) No reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) The guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) The balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) Such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) No reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) Compensation has been payable from such account throughout the year preceding the computation date, and

(B) The balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) The balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) Such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis, the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date.

[Sec. 3303 (a) as amended by sec. 2, Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1130)]

(b) *Certification by the Secretary of Labor with respect to additional credit allowance.* (1) On December 31 in each taxable year, the Secretary of Labor shall certify to the Secretary the law of each State (certified with respect to such year by the Secretary of Labor as provided in section 3304) with respect to which he finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on December 31 of such taxable year, certify to the Secretary only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

(c) *Definitions.* As used in this section—

(1) *Reserve account.* The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) *Pooled fund.* The term "pooled fund" means an unemployment fund or any part

thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) *Partially pooled account.* The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) *Guaranteed employment account.* The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) Guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) Gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) *Year.* The term "year" means any 12 consecutive calendar months.

(6) *Balance.* The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) *Computation date.* The term "computation date" means the date, occuring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) *Reduced rate.* The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) *Voluntary contributions.* A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

§ 31.3304 Statutory provisions; approval of State laws.

SEC. 3304. *Approval of State laws*—(a) *Requirements.* The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) All compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) No compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) All money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305 (b)) immediately upon such receipt be paid over to the Secretary to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (49 Stat. 640; 52 Stat. 1104, 1105; 42 U. S. C. 1104);

(4) All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(A) An amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) The amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) All the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) *Notification.* The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) *Certification.* On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision and such finding has become effective. Such finding shall become effective on the 90th day after the governor of the State has been notified thereof, unless the State has before such 90th day so amended its law that it will comply substantially with the Secretary of Labor's interpretation of the provision of subsection (a), in which event such finding shall not become effective. No finding of a failure to comply substantially with the provision in State law specified in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided for under the laws of the State.

(d) *Notice of Noncertification.* If, at any time during the taxable year, the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

§ 31.3305 Statutory provisions; applicability of State law.

SEC. 3305. *Applicability of State law*—(a) *Interstate and foreign commerce.* No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) *Federal instrumentalities in general.* The legislature of any State may require any instrumentality of the United States (except such as are (1) wholly owned by the United States, or (2) exempt from the tax imposed by section 3301 by virtue of any other provision of law), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), and as modified by subsection (c)) to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk, and (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event said State is not certified by the Secretary of Labor under section 3304 with respect to such year.

(c) *National banks.* Nothing contained in section 5240 of the Revised Statutes, as amended (12 U. S. C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause

an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) *Federal property.* No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

(e) *Bonneville Power Administrator.* [Repealed, effective with respect to services performed after 1954, by sec. 4 (c), Act of Sept. 1, 1954, 68 Stat. 1135]

(f) *American vessels.* The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) *Vessels operated by general agents of United States.* The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

(1) Owned by or bareboat chartered to the United States, and

(2) Whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States not wholly owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) *Requirement by State of contributions.* Any State may, as to service performed on or after July 1, 1953, and on account of which contributions are made pursuant to subsection (g)—

(1) Require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) Require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) *General agent as legal entity.* Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

§ 31.3306(a) Statutory provisions; definitions; employer.

SEC. 3306. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 4 or more.

[Sec. 3306 (a) as amended by sec. 1, Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1130), effective with respect to services performed after December 31, 1955. With respect to services performed before 1956, sec. 3306(a), as set forth below, is applicable.

SEC. 3306. *Definitions*—(a) *Employer.* For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 8 or more.]

§ 31.3306(a)–1 Who are employers.

(a) *Definition*—(1) *For 1956 and subsequent calendar years.* Every person who employs 4 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during any calendar year after 1955, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(2) *For calendar year 1955.* Every person who employs 8 or more employees in employment (within the meaning of section 3306 (c) and (d)) on a total of 20 or more calendar days during the calendar year 1955, each such day being in a different calendar week, is with respect to such year an employer subject to the tax.

(3) *General agents of the Secretary of Commerce.* For provisions relating to the circumstances under which an employee who performs services as an officer or member of the crew of an American vessel (i) which is owned by or bareboat chartered to the United States and (ii) whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than for the United States, see § 31.3306 (n)–1.

(b) The several weeks in each of which occurs a day on which the prescribed number of employees are employed need not be consecutive weeks. It is not necessary that the employees so employed be the same individuals; they may be different individuals on each day. Neither is it necessary that the prescribed number of employees be employed at the same moment of time or for any particular length of time or on any particular basis of compensation. It is sufficient if the total number of employees employed during the 24 hours of a calendar day is 4 or more (8 or more for the calendar year 1955).

(c) In determining whether a person employs a sufficient number of employees to be an employer subject to the tax, each employee is counted with respect to services which constitute employment as defined in section 3306 (c) (see § 31.3306 (c)–2). No employee is counted with respect to services which do not constitute employment as so defined. See, however, paragraph (d) of this section.

(d) The provisions of paragraph (c) of this section are subject to the provisions of section 3306 (d), relating to services which do not constitute employment but which are deemed to be employment, and relating to services which constitute employment but which are deemed not to be employment (see § 31.3306 (d)–1). For example, if the services of an employee during a pay period are deemed to be employment under section 3306 (d), even though a portion thereof does not constitute employment under section 3306 (c), the employee is counted with respect to all services during the pay period. On the other hand, if the services of an employee during a pay period are deemed not to be employment, even though a portion thereof constitutes employment, the employee is not counted with respect to any services during the pay period.

§ 31.3306(b) Statutory provisions; definitions; wages.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

§ 31.3306(b)–1 Wages.

(a) *Applicable law and regulations*—(1) *Remuneration paid after 1954.* Whether remuneration paid after 1954 for employment performed after 1938 constitutes wages is determined under section 3306(b). Accordingly, only remuneration paid after 1954 for employment performed after 1938 is covered by this section of the regulations and by the sections relating to the statutory exclusions from wages (§§ 31.3306(b)(1)–1 to 31.3306 (b) (8)–1).

(2) *Remuneration paid after 1939 and before 1955.* Whether remuneration paid after 1939 and before 1955 for employment performed after 1938 constitutes wages shall be determined in accordance with the applicable provisions of law and of 26 CFR (1939) Part 403 (Regulations 107).

(3) *Remuneration paid in 1939.* Whether remuneration paid in 1939 for employment performed after 1938 constitutes wages shall be determined in

accordance with the applicable provisions of law and of 26 CFR (1939) Part 400 (Regulations 90).

(b) The term "wages" means all remuneration for employment unless specifically excepted under section 3306 (b) (see §§ 31.3306 (b) (1)–1 to 31.3306 (b) (8)–1, inclusive) or paragraph (j) of this section.

(c) The name by which the remuneration for employment is designated is immaterial. Thus, salaries, fees, bonuses, and commissions are wages if paid as compensation for employment.

(d) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework or a percentage of profits; and it may be paid hourly, daily, weekly, monthly, or annually.

(e) Except in the case of remuneration paid for services not in the course of the employer's trade or business (see § 31.3306 (b) (7)–1), the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, goods, lodging, food, or clothing. Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment.

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges", however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

(g) Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(h) Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(i) Remuneration paid by an employer to an individual for employment, unless such remuneration is specifically excepted under section 3306 (b), constitutes wages even though at the time paid the individual is no longer an employee.

Example. A is employed by B, an employer, during the month of June 1955 in employment and is entitled to receive remuneration of $100 for the services performed for B during the month. A leaves the employ of B at the close of business on June 30, 1955. On July 15, 1955 (when A is no longer an employee of B), B pays A the remuneration of $100 which was earned for the services performed in June. The $100 is wages, and the tax is payable with respect thereto.

(j) In addition to the exclusions specified in §§ 31.3306 (b) (1)–1 to 31.3306 (b) (8)–1, inclusive, the following types of payments are excluded from wages:

(1) Remuneration for services which do not constitute employment under section 3306 (c) (§§ 31.3306 (c) (1)–1 to 31.3306 (c) (17)–1, inclusive).

(2) Remuneration for services which are deemed not to be employment under section 3306 (d) (§ 31.3306 (d)–1).

(3) Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer.

(k) For provisions relating to the treatment of deductions from remuneration as payments of remuneration, see § 31.3307–1.

§ 31.3306(b)(1) Statutory provisions; definitions; wages; $3,000 limitation.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) That part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

§ 31.3306(b)(1)–1 $3,000 limitation.

(a) *In general.* (1) The term "wages" does not include that part of the remuneration paid within any calendar year by an employer to an employee which exceeds the first $3,000 of remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3306 (b)–1 or §§ 31.3306 (b) (2)–1 to 31.3306 (b) (8)–1, inclusive), paid within such calendar year by such employer to such employee for employment performed for him at any time after 1938.

(2) The $3,000 limitation applies only if the remuneration paid during any one calendar year by an employer to the same employee for employment performed after 1938 exceeds $3,000. The limitation in such case relates to the amount of remuneration paid during any one calendar year for employment after 1938 and not to the amount of remuneration for employment performed in any one calendar year.

Example. Employer B, in 1955, pays employee A $2,500 on account of $3,000 due him for employment performed in 1955. In 1956 employer B pays employee A the balance of $500 due him for employment performed in the prior year (1955), and thereafter in 1956 also pays A $3,000 for employment performed in 1956. The $2,500 paid in 1955 is subject to tax in 1955. The balance of $500 paid in 1956 for employment during 1955 is subject to tax in 1956, as is also the first $2,500 paid of the $3,000 for employment during 1956 (this $500 for 1955 employment added to the first $2,500 paid for 1956 employment constitutes the maximum wages subject to the tax which could be paid in 1956 by B to A). The final $500 paid by B to A in 1956 is not included as wages and is not subject to the tax.

(3) If during a calendar year an employee is paid remuneration by more than one employer, the limitation of wages to the first $3,000 of remuneration paid applies, not to the aggregate remuneration paid by all employers with respect to employment performed after 1938, but instead to the remuneration paid during such calendar year by each employer with respect to employment performed after 1938. In such case the first $3,000 paid during the calendar year by each employer constitutes wages and is subject to the tax. In connection with the application of the $3,000 limitation, see also paragraph (b) of this section relating to the circumstances under which wages paid by a predecessor employer are deemed to be paid by his successor.

Example (1). During 1955 employer D pays to employee C a salary of $600 a month for employment performed for D during the first seven months of 1955, or total remuneration of $4,200. At the end of the fifth month C has been paid $3,000 by employer D, and only that part of his total remuneration from D constitutes wages subject to the tax. The $600 paid to employee C by employer D in the sixth month, and the like amount paid in the seventh month, are not included as wages and are not subject to the tax. At the end of the seventh month C leaves the employ of D and enters the employ of E. Employer E pays to C remuneration of $600 a month in each of the remaining five months of 1955, or total remuneration of $3,000. The entire $3,000 paid by E to employee C constitutes wages and is subject to the tax. Thus, the first $3,000 paid by employer D and the entire $3,000 paid by employer E constitute wages.

Example (2). During the calendar year 1955 F is simultaneously an officer (an employee) of the X Corporation, the Y Corporation, and the Z Corporation, each such corporation being an employer for such year. During such year F is paid a salary of $3,000 by each corporation. Each $3,000 paid to F by each of the corporations, X, Y, and Z (whether or not such corporations are related), constitutes wages and is subject to the tax.

(b) *Wages paid by predecessor attributed to successor.* (1) If an employer (hereinafter referred to as a successor)

during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and if immediately after the acquisition the successor employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for purposes of the application of the $3,000 limitation set forth in paragraph (a) of this section, any remuneration (exclusive of remuneration excepted from wages in accordance with paragraph (j) of § 31.3306 (b)–1 or §§ 31.3306 (b) (2)–1 to 31.3306 (b) (8)–1, inclusive), with respect to employment paid (or considered under this provision as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor. Wages paid by a predecessor shall not be considered as having been paid by the successor unless both the predecessor and the successor are employers as defined in section 3306 (a) for the calendar year in which the acquisition occurs (see § 31.3306 (a)–1, relating to who are employers).

(2) The wages paid, or considered as having been paid, by a predecessor to an employee shall, for purposes of the $3,000 limitation, be treated as having been paid to such employee by a successor, if:

(i) The successor during a calendar year acquired substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of the predecessor;

(ii) Such employee was employed in the trade or business of the predecessor immediately prior to the acquisition and is employed by the successor in his trade or business immediately after the acquisition; and

(iii) Such wages were paid during the calendar year in which the acquisition occurred and prior to such acquisition.

(3) The method of acquisition of the property is immaterial. The acquisition may occur as a consequence of a corporate merger or consolidation, the incorporation of a business by a sole proprietor or a partnership, the continuance without interruption of the business of a previously existing partnership by a new partnership or by a sole proprietor, or a purchase or any other transaction whereby substantially all the property used in a trade or business, or used in a separate unit of a trade or business, of one employer is acquired by another employer.

(4) Substantially all the property used in a separate unit of a trade or business may consist of substantially all the property used in the performance of an essential operation of the trade or business, or it may consist of substantially all the property used in a relatively self-sustaining entity which forms a part of the trade or business.

Example (1). The M Corporation which is engaged in the manufacture of automobiles, including the manufacture of automobile engines, discontinues the manufacture of the engines and transfers all the property used in such manufacturing operations to the N Company. The N Company is considered to have acquired a separate unit of the trade or business of the M Corporation, namely, its engine manufacturing unit.

Example (2). The R Corporation which is engaged in the operation of a chain of grocery stores transfers one of such stores to the S Company. The S Company is considered to have acquired a separate unit of the trade or business of the R Corporation.

(5) A successor may receive credit for wages paid to an employee by a predecessor only if immediately prior to the acquisition the employee was employed by the predecessor in his trade or business which was acquired by the successor and if immediately after the acquisition such employee is employed by the successor in his trade or business (whether or not in the same trade or business in which the acquired property is used). If the acquisition involves only a separate unit of a trade or business of the predecessor, the employee need not have been employed by the predecessor in that unit provided he was employed in the trade or business of which the acquired unit was a part.

Example. The Y Corporation in 1955 acquires all the property of the X Manufacturing Company and immediately after the acquisition employs in its trade or business employee A, who, immediately prior to the acquisition, was employed by the X Company. Both the Y Corporation and the X Company are employers, as defined in the Act, for the calendar year 1955. The X Company has in 1955 (the calendar year in which the acquisition occurs) and prior to the acquisition paid $2,000 of wages to A. The Y Corporation in 1955 pays to A remuneration with respect to employment of $2,000. Only $1,000 of such remuneration is considered to be wages. For purposes of the $3,000 limitation, the Y Corporation is credited with the $2,000 paid to A by the X Company. If, in the same calendar year, the property is acquired from the Y Corporation by the Z Company, an employer for such year, and A immediately after the the acquisition is employed by the Z Company in its trade or business, no part of the remuneration paid to A by the Z Company in the year of the acquisition will be considered to be wages. The Z Company will be credited with the remuneration paid to A by the Y Corporation and also with the wages paid to A by the X Company (considered for purposes of the application of the $3,000 limitation as having also been paid by the Y Corporation).

§ 31.3306(b)(2) Statutory provisions; definitions; wages; payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical or hospitalization expenses in connection with sickness or accident disability, or

(D) Death;

§ 31.3306(b)(2)–1 Payments under employers' plans on account of retirement, sickness or accident disability, medical or hospitalization expenses, or death.

(a) The term "wages" does not include the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of:

(1) An employee's retirement,

(2) Sickness or accident disability of an employee or any of his dependents,

(3) Medical or hospitalization expenses in connection with sickness or accident disability of an employee or any of his dependents, or

(4) Death of an employee or any of his dependents.

(b) The plan or system established by an employer need not provide for payments on account of all of the specified items, but such plan or system may provide for any one or more of such items. Payments for any one or more of such items under a plan or system established by an employer solely for the dependents of his employees are not within this exclusion from wages.

(c) Dependents of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

(d) It is immaterial for purposes of this exclusion whether the amount or possibility of such benefit payments is taken into consideration in fixing the amount of an employee's remuneration or whether such payments are required, expressly or impliedly, by the contract of service.

§ 31.3306(b)(3) Statutory provisions; definitions; wages; retirement payments.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(3) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

§ 31.3306(b)(3)–1 Retirement payments.

The term "wages" does not include any payment made by an employer to an employee (including any amount paid by an employer for insurance or

annuities, or into a fund, to provide for any such payment) on account of the employee's retirement. Thus, payments made to an employee on account of his retirement are excluded from wages under this exception even though not made under a plan or system.

§ 31.3306(b)(4) Statutory provisions; definitions; wages; payments on account of sickness or accident disability, or medical or hospitalization expenses.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(4) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

§ 31.3306(b)(4)–1 Payments on account of sickness or accident disability, or medical or hospitalization expenses.

The term "wages" does not include any payment made by an employer to, or on behalf of, an employee on account of the employee's sickness or accident disability or the medical or hospitalization expenses in connection with the employee's sickness or accident disability, if such payment is made after the expiration of 6 calendar months following the last calendar month in which such employee worked for such employer. Such payments are excluded from wages under this exception even though not made under a plan or system. If the employee does not actually perform services for the employer during the requisite period, the existence of the employer-employee relationship during that period is immaterial.

§ 31.3306(b)(5) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(5) Any payment made to, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 (a) (3), (4), (5), and (6);

§ 31.3306(b)(5)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.

The term "wages" does not include—

(a) Any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6); or

(b) Any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6).

A payment made to an employee of a trust described in section 401 (a) which is exempt from tax under section 501 (a) for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exclusion from wages.

§ 31.3306(b)(6) Statutory provisions; definitions; wages; payment by employer of employee tax under section 3101 or employee contributions under a State law.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(6) The payment by an employer (without deduction from the remuneration of the employee)—

(A) Of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

(B) Of any payment required from an employee under a State unemployment compensation law;

§ 31.3306(b)(6)–1 Payment by an employer of employee tax under section 3101 or employee contributions under a State law.

The term "wages" does not include any payment by an employer (without deduction from the remuneration of, or other reimbursement from, the employee) of either (a) the employee tax imposed by section 3101 or the corresponding section of prior law, or (b) any payment required from an employee under a State unemployment compensation law.

§ 31.3306(b)(7) Statutory provisions; definitions; wages; payments other than in cash for service not in the course of the employer's trade or business.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(7) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

§ 31.3306(b)(7)–1 Payments other than in cash for service not in the course of employer's trade or business.

The term "wages" does not include remuneration paid in any medium other than cash for service not in the course of the employer's trade or business. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for service not in the course of the employer's trade or business does not constitute wages. Remuneration paid in any medium other than cash for other types of services does not come within this exclusion from wages. For provisions relating to the circumstances under which service not in the course of the employer's trade or business does not constitute employment, see § 31.3306 (c) (3)–1.

§ 31.3306(b)(8) Statutory provisions; definitions; wages; payments to stand-by employees.

SEC. 3306. *Definitions.* • • •

(b) *Wages.* For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

• • • • •

(8) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made.

§ 31.3306(b)(8)–1 Payments to stand-by employees.

The term "wages" does not include any payment (other than vacation or sick pay) made by an employer to an employee after the calendar month in which the employee attains age 65, if—

(a) Such employee does no work (other than being subject to call for the performance of work) for such employer in the period for which such payment is made; and

(b) The employer-employee relationship exists between the employer and employee throughout the period for which such payment is made.

Vacation or sick pay is not within this exclusion from wages. If the employee does any work for the employer in the period for which the payment is made, no remuneration paid by such employer to such employee with respect to such period is within this exclusion from wages. For example, if employee A, who attained the age of 65 in January 1955, is employed by the X Company on a stand-by basis and is paid $200 by the X Company for being subject to call during the month of February 1955 and an additional $25 for work performed for the X Company on one day in February 1955, then none of the $225 is excluded from wages under this exception.

§ 31.3306(c) Statutory provisions; definitions; employment.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel under a contract of service which is entered into within the United States or during the performance of which the vessel touches at a port in the United States, if the employee is employed on and in connection with such vessel when outside the United States, except—

§ 31.3306(c)–1 Employment; services performed before 1955.

(a) Services performed after 1938 and before 1955 constitute employment under section 3306(c) if such services were employment under the law applicable to the period in which they were performed.

(b) The tax applies with respect to remuneration paid by an employer after 1954 for services performed after 1938 and before 1955, as well as for services performed after 1954, to the extent that the remuneration and services constitute wages and employment. See §§ 31.3306 (b)–1 to 31.3306 (b) (8)–1, inclusive, relating to wages.

(c) Determination of whether services performed after 1938 and before 1955 constitute employment shall be made in accordance with the provisions of law applicable to the period in which they were performed and of the regulations thereunder. The regulations applicable in determining whether services performed after 1938 and before 1955 constitute employment are as follows:

(1) Services performed in 1939—26 CFR (1939) Part 400 (Regulations 90).

(2) Services performed after 1939 and before 1955—26 CFR (1939) Part 403 (Regulations 107).

§ 31.3306(c)–2 Employment; services performed after 1954.

(a) *In general.* Whether services performed after 1954 constitute employment is determined under section 3306(c). This section, and §§ 31.3306(c)–3 to 31.3306(c)(17)–1, inclusive, apply with respect only to services performed after 1954. (For provisions relating to the circumstances under which services which do not constitute employment are nevertheless deemed to be employment, and relating to the circumstances under which services which constitute employment are nevertheless deemed not to be employment, see § 31.3306(d)–1. For provisions relating to services performed before 1955, see § 31.3306(c)–1.)

(b) *Services performed within the United States.* (1) Services performed after 1954 within the United States, that is, within any of the several States, the District of Columbia, or the Territory of Alaska or Hawaii, by an employee for the person employing him, unless specifically excepted by section 3306 (c), constitute employment. Services performed outside the United States, that is, outside the several States, the District of Columbia, and the Territories of Alaska and Hawaii (except certain services performed on or in connection with an American vessel—see paragraph (c) of this section), do not constitute employment.

(2) With respect to services performed within the United States, the place where the contract of service is entered into and the citizenship or residence of the employee or of the person employing him are immaterial. Thus, the employee and the person employing him may be citizens and residents of a foreign country and the contract of service may be entered into in a foreign country, and yet, if the employee under such contract actually performs services within the United States, there may be to that extent employment.

(c) *Services performed outside the United States.* (1) Services performed after 1954 by an employee for the person employing him "on or in connection with" an American vessel outside the United States constitute employment provided—

(i) The employee is also employed "on and in connection with" such vessel when outside the United States; and

(ii) The services are performed under a contract of service, between the employee and the person employing him, which is entered into within the United States, or during the performance of which the vessel touches at a port within the United States; and

(iii) The services are not excepted under section 3306 (c). (See particularly § 31.3306 (c) (17)–1, relating to fishing.)

(2) An employee performs services on and in connection with the vessel if he performs services on the vessel which are also in connection with the vessel. Services performed on the vessel as officers or members of the crew, or as employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(3) If services are performed by an employee "on and in connection with" an American vessel when outside the United States and the conditions in subparagraph (1) (ii) and (iii) of this paragraph are met, then the services of that employee performed on or in connection with the vessel constitute employment. The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(4) Services performed by a member of the crew or other employee whose contract of service is not entered into within the United States, and during the performance of which the vessel does not touch at a port within the United States, do not constitute employment, notwithstanding services performed by other members of the crew or other employees on or in connection with the vessel may constitute employment.

(5) A vessel includes every description of watercraft, or other contrivance, used as a means of transportation on water. It does not include any type of aircraft.

(6) For definition of the term "American vessel", see § 31.3306 (m)–1.

(7) With respect to services performed outside the United States, the citizenship or residence of the employee is immaterial, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether a vessel is an American vessel.

§ 31.3306(c)–3 Employment; excepted services in general.

(a) Services performed after 1954 by an employee for the person employing him do not constitute employment for purposes of the tax if they are specifically excepted by any of the numbered paragraphs of section 3306(c). Services so excepted do not constitute employment for purposes of the tax even though they are performed within the United States or are performed outside the United States on or in connection with an American vessel. For provisions relating to the circumstances under which services which are excepted are nevertheless deemed to be employment, and relating to the circumstances under which services which are not excepted are nevertheless deemed not to be employment, see § 31.3306 (d)–1.

(b) The exception attaches to the services performed by the employee and not to the employee as an individual; that is, the exception applies only to the services rendered by the employee in an excepted class.

Example. A is an individual who is employed part time by B to perform services which constitute "agricultural labor" (see § 31.3306 (k)–1). A is also employed by C part time to perform services as a grocery clerk in a store owned by him. While A's services which constitute "agricultural labor" are excepted, the exception does not embrace the services performed by A as a grocery clerk in the employ of C and the latter services are not excepted from employment.

(c) This section, §§ 31.3306 (c) (1)–1 to 31.3306 (c) (17)–1, inclusive (relating to the several classes of excepted services), and § 31.3306 (d)–1 (relating to included and excluded services) apply with respect to services performed after 1954. For provisions relating to services performed before 1955, see § 31.3306 (c)–1.

§ 31.3306(c)(1) Statutory provisions; definitions; employment; agricultural labor.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

(1) Agricultural labor (as defined in subsection (k));

§ 31.3306(c)(1)–1 Agricultural labor.

Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 3306 (k) are excepted from employment. For provisions relating to the definition of the term "agricultural labor", see § 31.3306 (k)–1.

§ 31.3306(c)(2) Statutory provisions; definitions; employment; domestic service.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

§ 31.3306(c)(2)–1 Domestic service.

(a) *In a private home.* (1) Services of a household nature performed by an employee in or about a private home of the person by whom he is employed are excepted from employment. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home and the services performed therein are not excepted.

(2) In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobile for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed are excepted from employment. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the services performed therein are not within the exception.

(2) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Services not excepted.* Services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, are not within the exception. Services of a household nature are not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs, hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

§ 31.3306(c)(3) Statutory provisions; definitions; employment; services not in the course of the employer's trade or business.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(3) Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) Such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

§ 31.3306(c)(3)–1 Services not in the course of employer's trade or business.

(a) Services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter are excepted from employment unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is $50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both subparagraphs (1) and (2) of this paragraph are met, the services are excepted from employment.

(b) The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. Services performed for a corporation do not come within the exception.

(c) The test relating to cash remuneration of $50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthermore, in determining whether $50 or more has been paid for services not in the course of the employer's trade or business, only cash remuneration for such services shall be taken into account. The term "cash remuneration" includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

(d) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

(1) Such individual performs services not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or

(2) Such individual was regularly employed (as determined under subparagraph (1) of this paragraph) by such employer in the performance of services not in the course of the employer's trade or business during the preceding calendar quarter (including the last calendar quarter of 1954).

(e) In determining whether an employee has performed services not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

(1) Any day or portion thereof on which the employee actually performs such services; and

(2) Any day or portion thereof on which the employee does not perform services of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such services, such as a day on which the employee is sick or on vacation.

An employee who on a particular day reports for work and, at the direction of his employer, holds himself in readiness to perform services not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such services on that day. For purposes of this exception, a day is a period of 24 hours commencing at midnight and ending at midnight.

(f) For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see § 31.3306 (b)(7)–1.

§ 31.3306(c)(4) Statutory provisions; definitions; employment; services on or in connection with a non-American vessel.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(4) Service performed on or in connection with a vessel not an American vessel by an employee, if the employee is employed on and in connection with such vessel when outside the United States;

§ 31.3306(c)(4)–1 Services on or in connection with a non-American vessel.

(a) In order for services performed within the United States "on or in connection with" a vessel not an American vessel to be excepted from employment under section 3306 (c) (4), the services must be performed by an employee who is also employed "on and in connection with" the vessel when outside the United States.

(b) An employee performs services on and in connection with the vessel if he performs services on the vessel when

outside the United States which are also in connection with the vessel. Services performed on the vessel outside the United States by employees as officers or members of the crew, or by employees of concessionaires, of the vessel, for example, are performed under such circumstances, since such services are also connected with the vessel. Services may be performed on the vessel, however, which have no connection with it, as in the case of services performed by an employee while on the vessel merely as a passenger in the general sense. For example, the services of a buyer in the employ of a department store while he is a passenger on a vessel are not in connection with the vessel.

(c) The expression "on or in connection with" refers not only to services performed on the vessel but also to services connected with the vessel which are not actually performed on it (for example, shore services performed as officers or members of the crew, or as employees of concessionaires, of the vessel).

(d) The citizenship or residence of the employee and the place where the contract of service is entered into are immaterial for purposes of this exception, and the citizenship or residence of the person employing him is material only in case it has a bearing in determining whether the vessel is an American vessel. For definitions of the terms "vessel" and "American vessel", see paragraph (c) (5) of § 31.3306 (c)–2 and § 31.3306 (m)–1, respectively.

(e) Since the only services performed outside the United States which constitute employment are those described in section 3306(c) and paragraph (c) of § 31.3306(c)–2 (relating to services performed outside the United States on or in connection with an American vessel), services performed outside the United States on or in connection with a vessel not an American vessel do not constitute employment in any event.

§ 31.3306(c)(5) Statutory provisions; definitions; employment; family employment.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(5) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

§ 31.3306(c)(5)–1 Family employment.

(a) Certain services are excepted from employment because of the existence of a family relationship between the employee and the individual employing him. The exceptions are as follows:

(1) Services performed by an individual in the employ of his or her spouse;

(2) Services performed by a father or mother in the employ of his or her son or daughter; and

(3) Services performed by a son or daughter under the age of 21 in the employ of his or her father or mother.

(b) Under paragraph (a) (1) and (2) of this section, the exception is conditioned solely upon the family relationship between the employee and the individual employing him. Under paragraph (a) (3) of this section, in addition to the family relationship, there is a further requirement that the son or daughter shall be under the age of 21, and the exception continues only during the time that such son or daughter is under the age of 21.

(c) Services performed in the employ of a corporation are not within the exception. Services performed in the employ of a partnership are not within the exception unless the requisite family relationship exists between the employee and each of the partners comprising the partnership.

§ 31.3306(c)(6) Statutory provisions; definitions; employment; services in employ of United States Government or instrumentality thereof.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(6) Service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) Wholly owned by the United States, or

(B) Exempt from the tax imposed by section 3301 by virtue of any other provision of law;

§ 31.3306(c)(6)–1 Services in employ of United States or instrumentality thereof.

(a) Services performed in the employ of the United States Government, except as provided in section 3306 (n) (see § 31.3306 (n)–1), are excepted from employment. Services performed in the employ of an instrumentality of the United States are also excepted if the instrumentality is either wholly owned by the United States or exempt from the tax imposed by section 3301 by virtue of any other provision of law.

(b) Services performed in the employ of an instrumentality of the United States which is neither wholly owned by the United States nor exempt from the tax imposed by section 3301 by virtue of any other provision of law are not within the exception. For example, services performed in the employ of a national bank or a State member bank of the Federal Reserve System are not within the exception.

§ 31.3306(c)(7) Statutory provisions; definitions; employment; services in employ of States or their political subdivisions or instrumentalities.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

§ 31.3306(c)(7)–1 Services in employ of States or their political subdivisions or instrumentalities.

(a) Services performed in the employ of any State, or of any political subdivision thereof, are excepted from employment. Services performed in the employ of one or more States or political subdivisions thereof are excepted if the instrumentality is wholly owned by one or more of the foregoing. Services performed in the employ of an instrumentality of one or more of the several States or political subdivisions thereof which is not wholly owned by one or more of the foregoing are excepted only to the extent that the instrumentality is with respect to such services immune under the Constitution of the United States from the tax imposed by section 3301.

(b) The term "State" includes the District of Columbia and the Territories of Alaska and Hawaii. (See § 31.3306 (j).)

§ 31.3306(c)(8) Statutory provisions; definitions; employment; services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

§ 31.3306(c)(8)–1 Services in employ of religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety.

Services performed by an employee in the employ of an organization described in section 3306(c)(8), that is, a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, are excepted from employment. Any organization which is an organization of a type described in section 501 (c) (3) and which—

(a) Is exempt from income tax under section 501 (a), or

(b) Has been denied exemption from income tax under section 501 (a) by reason of the provisions of section 503 or

504, relating to prohibited transactions and to accumulations out of income, respectively,

is an organization of a type described in section 3306 (c) (8). An organization which would be an organization of a type described in section 501 (c) (3) except for those provisions of section 501 (c) (3) which are not contained in section 3306 (c) (8) (provisions relating to participation or intervention in a political campaign on behalf of a candidate for public office) is also an organization of a type described in section 3306 (c) (8). For provisions relating to organizations of the types described in section 501 (c) (3) and their status as exempt or nonexempt for income tax purposes, see the provisions of §§ 1.501(a)–1 and 1.501 (c)(3)–1 of this chapter (Income Tax Regulations).

§ 31.3306(c)(9) Statutory provisions; definitions; employment; services performed by an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(9) Service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (52 Stat. 1094, 1095; 45 U. S. C. 351);

§ 31.3306(c)(9)–1 Railroad industry; services performed by an employee or an employee representative under the Railroad Unemployment Insurance Act.

(a) Services performed by an individual as an "employee" or as an "employee representative", as those terms are defined in section 1 of the Railroad Unemployment Insurance Act, as amended, are excepted from employment.

(b) Section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351), as amended, provides, in part, as follows:

For the purposes of this Act, except when used in amending the provisions of other Acts—

(a) The term "employer" means any carrier (as defined in subsection (b) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies, and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(c) The term "company" includes corporations, associations, and joint-stock companies.

(d) The term "employee" (except when used in phrases establishing a different meaning) means any individual who is or has been (1) in the service of one or more employers for compensation, or (11) an employee representative. The term "employee" shall include an employee of a local lodge or division defined as an employer in section 1 (a) only if he was in the service of a carrier on or after August 29, 1935. The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(e) An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case the Board may prescribe such other formula as it finds to be equitable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof.

(f) The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term employer as defined in section 1 (a) who before or after August 29, 1935, was in the service of an employer as defined in section 1 (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

• • • • •

(l) The term "compensation" means any form of money remuneration, including pay for time lost but excluding tips, paid for services rendered as an employee to one or more employers, or as an employee representative: *Provided, however,* That in computing the compensation paid to any employee with respect to any calendar month before July 1, 1954, no part of any compensation in excess of $300 shall be recognized, and with respect to any calendar month after June 30, 1954, no part of any compensation in excess of $350 shall be recognized. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. Compensation earned in any calendar month before 1947 shall be deemed paid in such month regardless of whether or when payment will have been in fact made, and compensation earned in any calendar year after 1946 but paid after the end of such calendar year shall be deemed to be compensation paid in the calendar year in which it will have been earned if it is so reported by the employer before February 1 of the next succeeding calendar year or, if the employee establishes, subject to the provisions of section 8, the period during which such compensation will have been earned.

• • • • •

(r) The term "Board" means the Railroad Retirement Board.

(s) The term "United States", when used in a geographical sense, means the States, Alaska, Hawaii, and the District of Columbia.

• • • • •

[Sec. 1, Railroad Unemployment Insurance Act, as amended by secs. 1 and 2, Act of June 20, 1939, 53 Stat. 845; secs. 1 and 3, Act of Aug. 13, 1940, 54 Stat. 785, 786; sec. 15, Act of Apr. 8, 1942, 56 Stat. 210; secs. 1 and 2, Act of July 31, 1946, 60 Stat. 722; sec. 302, Act of Aug. 31, 1954, 68 Stat. 1040]

§ 31.3306(c)(10)(A) Statutory provisions; definitions; employment; services in employ of certain organization exempt from income tax.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521, if—

(i) The remuneration for such service is less than $50, or

(ii) Such service is in connection with the collection of dues or premiums for a fraternal beneficiary society, order, or association, and is performed away from the home office, or is ritualistic service in connection with any such society, order, or association, or

(iii) Such service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university;

§ 31.3306(c)(10)(A)–1 Services in employ of certain organizations exempt from income tax.

(a) *In general.* (1) This section deals with the exception from employment of certain services performed in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521. (See the provisions of §§ 1.401–1, 1.501(a)–1, and 1.521–1 of this chapter (Income Tax Regulations.) If the services meet the tests set forth in paragraph (b), (c), or (d) of this section, such services are excepted.

(2) See also § 31.3306 (c) (8)–1 for provisions relating to the exception of services performed in the employ of a religious, charitable, scientific, literary, or educational organization, community chest, or organization testing for public safety; § 31.3306 (c) (10) (B)–1 for provisions relating to the exception of services performed in the employ of an agricultural or horticultural organization; § 31.3306 (c) (10) (C)–1 for provisions relating to the exception of services performed in the employ of a voluntary employees' beneficiary association; and § 31.3306 (c) (10) (D)–1 for provisions relating to the exception of services performed in the employ of a Federal employees' beneficiary association.

(b) *Remuneration less than $50 for calendar quarter.* Services performed by an employee in a calendar quarter in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 are excepted from employment, if the remuneration for the services is less than $50. The test relating to remuneration of $50 is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. The exception applies separately with respect to each organization for which the employee renders services in a calendar quarter. The type of services performed by the employee and the place where the services are performed are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the amount of the remuneration for services performed by the employee in the calendar quarter.

Example (1). X is a local lodge of a fraternal organization and is exempt from income tax under section 501 (a) as an organization of the character described in section 501 (c) (8). X has a number of paid employees, among them being A who serves exclusively as recording secretary for the lodge, and B who performs services for the lodge as janitor of its clubhouse. For services performed during the first calendar quarter of 1955 (that is, January 1, 1955, through March 31, 1955, both dates inclusive) A earns a total of $30. For services performed during the same calendar quarter B earns $180. Since the remuneration for the services performed by A during such quarter is less than $50, all of such services are excepted. Thus, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer (see § 31.3306 (a)–1). Even though it is subsequently determined that X is an employer, A's remuneration of $30 for services performed during the first calendar quarter of such year is not subject to tax. B's services, however, are not excepted during such quarter since the remuneration therefor is not less than $50. Thus, B is counted as an employee in employment during all of such quarter for purposes of determining whether the X organization is an employer. If it is determined that the X organization is an employer, B's remuneration of $180 for services performed during the first calendar quarter is included in computing the tax.

Example (2). The facts are the same as in example (1), above, except that on April 1, 1955, A's salary is increased and, for services performed during the calendar quarter beginning on that date (that is, April 1, 1955, through June 30, 1955, both dates inclusive), A earns $60. Although all of the services performed by A during the first quarter were excepted, none of A's services performed during the second quarter are excepted since the remuneration for such services is not less than $50. A, therefore, is counted as an employee in employment during all of the second quarter for the purpose of determining whether the X organization is an employer. If it is determined that the X organization is an employer, A's remuneration of $60 for services performed during the second calendar quarter is included in computing the tax.

Example (3). The facts are the same as in example (1), above, except that A earns $120 for services performed during the year 1955, and such amount is paid to him in a lump sum at the end of the year. The services performed by A in any calendar quarter during the year are excepted if the portion of the $120 attributable to services performed in that quarter is less than $50. In such case, A is not counted as an employee in employment on any of the days during such quarter for purposes of determining whether the X organization is an employer. If, however, the portion of the $120 attributable to services performed in any calendar quarter during the year is not less than $50, the services during that quarter are not excepted. In the latter case, A is counted as an employee in employment during all of such quarter and, if the X organization is determined to be an employer, that portion of the $120 attributable to services performed in such quarter is included in computing the tax.

(c) *Collection of dues or premiums for fraternal beneficiary societies, and ritualistic services in connection with such societies.* The following services performed by an employee in the employ of a fraternal beneficiary society, order, or association exempt from income tax under section 501 (a) are excepted from employment:

(1) Services performed away from the home office of such a society, order, or association in connection with the collection of dues or premiums for such society, order, or association; and

(2) Ritualistic services (wherever performed) in connection with such a society, order, or association.

For purposes of this paragraph the amount of the remuneration for services performed by the employee in the calendar quarter is immaterial; the statutory tests are the character of the organization in whose employ the services are performed, the type of services, and, in the case of collection of dues or premiums, the place where the services are performed.

(d) *Students employed by organizations exempt from income tax.* (1) Services performed in the employ of an organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521 by a student who is enrolled and is regularly attending classes at a school, college, or university, are excepted from employment. For purposes of this paragraph, the amount of remuneration for services performed by the employee in the calendar quarter, the type of services, and the place where such services are performed are immaterial; the statutory tests are the character of the organization in whose employ the services are performed and the status of the employee as a student enrolled and regularly attending classes at a school, college, or university.

(2) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense. For provisions relating to services performed by a student enrolled and regularly attending classes at a school, college, or university not exempt from income tax in the employ of such school, college, or university, see § 31.3306 (c) (10) (E)–1.

§ 31.3306(c)(10)(B) Statutory provisions; definitions; employment; services in employ of agricultural or horticultural organization exempt from income tax.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (B) Service performed in the employ of an agricultural or horticultural organization described in section 501 (c) (5) which is exempt from tax under section 501 (a);

§ 31.3306(c)(10)(B)–1 Services in employ of agricultural or horticultural organization exempt from income tax.

(a) Services performed by an employee in the employ of an agricultural or horticultural organization which is described in section 501(c)(5) and the regulations thereunder and which is exempt from income tax under section 501(a) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)(C) Statutory provisions; definitions; employment; services in employ of voluntary employees' beneficiary association.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (C) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if—

(i) No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and

(ii) 85 percent or more of the income consists of amounts collected from members for the sole purpose of making such payments and meeting expenses;

§ 31.3306(c)(10)(C)–1 Services in employ of voluntary employees' beneficiary association.

(a) Services performed by an employee in the employ of an organization of the character described in section 3306(c)(10)(C) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)(D) Statutory provisions; definitions; employment; services in employ of Federal employees' beneficiary association.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (D) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if—

(i) Admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and

(ii) No part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual;

§ 31.3306(c)(10)(D)–1 Services in employ of Federal employees' beneficiary association.

(a) Services performed by an employee in the employ of an organization of the character described in section 3306(c)(10)(D) are excepted from employment.

(b) For purposes of this exception, the type of services performed by the employee, the amount of remuneration for such services, and the place where such services are performed are immaterial; the statutory test is the character of the organization in whose employ the services are performed.

§ 31.3306(c)(10)(E) Statutory provisions; definitions; employment; services of student in employ of school, college, or university not exempt from income tax.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(10) (E) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 (a), if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

§ 31.3306(c)(10)(E)–1 Services of student in employ of school, college, or university not exempt from income tax.

(a) Services performed by a student in the employ of a school, college, or university not exempt from income tax under section 501 (a) are excepted from employment, if the student is enrolled and is regularly attending classes at such school, college, or university.

(b) For purposes of this section, the type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are immaterial; the statutory tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university in the employ of which he performs the services.

(c) The status of the employee as a student performing the services shall be determined on the basis of the relationship of such employee with the organization for which the services are performed. An employee who performs services in the employ of a school, college, or university as an incident to and for the purpose of pursuing a course of study at such school, college, or university has the status of a student in the performance of such services.

(d) The term "school, college, or university" within the meaning of this exception is to be taken in its commonly or generally accepted sense.

(e) For provisions relating to services performed by a student in the employ of an organization exempt from income tax, see paragraph (d) of § 31.3306 (c) (10) (A)–1.

§ 31.3306(c)(11) Statutory provisions; definitions; employment; services in employ of foreign government.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

§ 31.3306 (c) (11)–1 Services in employ of foreign government.

(a) Services performed by an employee in the employ of a foreign government are excepted from employment. The exception includes not only services performed by ambassadors, ministers, and other diplomatic officers and employees but also services performed as a consular or other officer or employee of a foreign government, or as a nondiplomatic representative thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial. It is also immaterial whether the foreign government grants an equivalent exemption with respect to similar services performed in the foreign country by citizens of the United States.

§ 31.3306(c)(12) Statutory provisions; definitions; employment; services in employ of wholly owned instrumentality of foreign government.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

§ 31.3306(c)(12)–1 Services in employ of wholly owned instrumentality of foreign government.

(a) Services performed by an employee in the employ of certain instrumentalities of a foreign government are excepted from employment. The exception includes all services performed in the employ of an instrumentality of the government of a foreign country, if—

(1) The instrumentality is wholly owned by the foreign government;

(2) The services are of a character similar to those performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(3) The Secretary of State certifies to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to services performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

(b) For purposes of this exception, the citizenship or residence of the employee is immaterial.

§ 31.3306(c)(13) Statutory provisions; definitions; employment; services of student nurse or hospital intern.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

§ 31.3306(c)(13)–1 Services of student nurse or hospital intern.

(a) Services performed as a student nurse in the employ of a hospital or a nurses' training school are excepted from employment, if the student nurse is enrolled and regularly attending classes in a nurses' training school and such nurses' training school is chartered or approved pursuant to State law.

(b) Services performed as an intern (as distinguished from a resident doctor) in the employ of a hospital are excepted from employment, if the intern has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

§ 31.3306(c)(14) Statutory provisions; definitions; employment; services of insurance agent or solicitor.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(14) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

§ 31.3306(c)(14)–1 Services of insurance agent or solicitor.

(a) Services performed for a person by an employee as an insurance agent or insurance solicitor are excepted from employment, if all such services performed for such person by such individual are performed for remuneration solely by way of commission.

(b) If all or any part of the remuneration of an employee for services performed as an insurance agent or insurance solicitor for a person is a salary, none of his services performed as an insurance agent or insurance solicitor for such person are excepted from employment, and his total remuneration (for example, salary, or salary and commissions) for such services is included for purposes of computing the tax.

§ 31.3306(c)(15) Statutory provisions; definitions; employment; services in delivery or distribution of newspapers, shopping news, or magazines.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(15) (A) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

§ 31.3306(c)(15)–1 Services in delivery or distribution of newspapers, shopping news, or magazines.

(a) *Services of individuals under age 18.* Services performed by an employee under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, are excepted from employment. Thus, the services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, are excepted. The services are excepted irrespective of the form or method of compensation. Incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, are considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(b) *Services of individuals of any age.* Services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, are excepted from employment. The services are excepted whether or not the employee is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the services are excepted without regard to the age of the employee. Services performed other than at the time of sale to the ultimate consumer are not within the exception. Thus, the services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer are not within the exception. However, incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, are considered to be within the exception.

§ 31.3306(c)(16) Statutory provisions; definitions; employment; services in employ of international organization.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • •

(16) Service performed in the employ of an international organization; or

§ 31.3306(c)(16)–1 Services in employ of international organization.

(a) Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U.S.C. 288), services performed in the employ of an international organization as defined in section 7701(a)(18) are excepted from employment.

(b)(1) Section 7701 (a) (18) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

• • • • •

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

(2) Section 1 of the International Organizations Immunities Act provides as follows:

SEC. 1. [*International Organizations Immunities Act.*] For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through ap-

propriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3306(c)(17) Statutory provisions; definitions; employment; fishing services.

SEC. 3306. *Definitions.* • • •

(c) *Employment.* For purposes of this chapter, the term "employment" means • • • any service, of whatever nature, performed • • • by an employee for the person employing him • • • except—

• • • • • •

(17) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) Service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States).

§ 31.3306(c)(17)–1 Fishing services.

(a) *In general.* Subject to the limitations prescribed in paragraphs (b) and (c) of this section, services described in this paragraph are excepted from employment. Services performed by an individual in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shell-fish (for example, oysters, clams, and mussels), crustacea (for example, lobsters, crabs, and shrimps), sponges, seaweeds, or other aquatic forms of animal and vegetable life are excepted. The exception extends to services performed as an officer or member of the crew of a vessel while the vessel is engaged in any such activity whether or not the officer or member of the crew is himself so engaged. In the case of an individual who is engaged in any such activity in the employ of any person, the services performed, by such individual in the employ of such person, as an ordinary incident to any such activity are also excepted. Similarly, for example, the shore services of an officer or member of the crew of a vessel engaged in any such activity are excepted if such services are an ordinary incident to any such activity. Services performed as an ordinary incident to any such activity may include, for example, services performed in such cleaning, icing, and packing of fish as are necessary for the immediate preservation of the catch.

(b) *Salmon and halibut fishing.* Services performed in connection with the catching or taking of salmon or halibut, for commercial purposes, are not within the exception. Thus, neither the services of an officer or member of the crew of a vessel (irrespective of its tonnage) which is engaged in the catching or taking of salmon or halibut, for commercial purposes, nor the services of any other individual in connection with such activity, are within the exception.

(c) *Vessels of more than 10 net tons.* Services described in paragraph (a) of this section performed on or in connection with a vessel of more than 10 net tons are not within the exception. For purposes of the exception, the tonnage of the vessel shall be determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

§ 31.3306(d) Statutory provisions; definitions; included and excluded services.

SEC. 3306. *Definitions.* • • •

(d) *Included and excluded service.* For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c) (9).

§ 31.3306(d)–1 Included and excluded services.

(a) If a portion of the services performed by an employee for the person employing him during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which under section 3306 (c) constitute employment, and the time during which he performs services which under such section do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then all the services of that employee for that person in that pay period shall be deemed to be employment.

(c) If less than one-half of the employee's time in the employ of a particular person in a pay period is spent in performing services which constitute employment, then none of the services of that employee for that person in that pay period shall be deemed to be employment.

(d) The application of the provisions of paragraphs (a), (b), and (c) of this section may be illustrated by the following examples:

Example (1). Employer B, who operates a farm and a store, employs A to perform services in connection with both operations. A's services on the farm are such that they are excepted as agricultural labor and do not constitute employment, and his services in the store constitute employment. He is paid at the end of each month. During a particular month A works 120 hours on the farm and 80 hours in the store. None of A's services during the month are deemed to be employment, since less than one-half of his services during the month constitutes employment. During another month A works 75 hours on the farm and 120 hours in the store. All of A's services during the month are deemed to be employment, since one-half or more of his services during the month constitutes employment.

Example (2). Employee C is employed as a maid by D, a medical doctor, whose home and office are located in the same building. C's services in the home are excepted as domestic service and do not constitute employment, and her services in the office constitute employment. She is paid each week. During a particular week C works 20 hours in the home and 20 hours in the office. All of C's services during that week are deemed to be employment, since one-half or more of her services during the week constitutes employment. During another week C works 22 hours in the home and 15 hours in the office. None of C's services during that week are deemed to be employment, since less than one-half of her services during the week constitutes employment.

(e) For purposes of this section, a "pay period" is the period (of not more than 31 consecutive calendar days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. Thus, if the periods for which payments of remuneration are made to the employee by such person are of uniform duration, each such period constitutes a "pay period". If, however, the periods occasionally vary in duration, the "pay period" is the period for which a payment of remuneration is ordinarily made to the employee by such person, even though that period does not coincide with the actual period for which a particular payment of remuneration is made. For example, if a person ordinarily pays a particular employee for each calendar week at the end of the week, but the employee receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the "pay period" is still the calendar week; or if, instead, that employee is sent on a trip by such person and receives at the end of the third week a single remuneration payment for 3 weeks' services, the "pay period" is still the calendar week.

(f) If there is only one period (and such period does not exceed 31 consecutive calendar days) for which a payment of remuneration is made to the employee by the person employing him, such period is deemed to be a "pay period" for purposes of this section.

(g) The rules set forth in this section do not apply (1) with respect to any services performed by the employee for the person employing him if the periods for which such person makes payments of remuneration to the employee vary to the extent that there is no period "for which a payment of remuneration is ordinarily made to the employee", or (2) with respect to any services performed by the employee for the person employing him if the period for which a payment of remuneration is ordinarily made to the employee by such person exceeds 31 consecutive calendar days, or (3) with respect to any service performed by the employee for the person employing him during a pay period if any of such service is excepted by section 3306 (c) (9) (see § 31.3306 (c) (9)–1).

(h) If during any period for which a person makes a payment of remuneration to an employee only a portion of the employee's services constitutes employment, but the rules prescribed in this section are not applicable, the tax attaches with respect to such services as constitute employment as defined in section 3306 (c) (provided such person is an employer as defined in section 3306 (a) and § 31.3306 (a)–1).

§ 31.3306(e) Statutory provisions; definitions; State agency.

SEC. 3306. *Definitions.* • • •

(e) *State agency.* For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

§ 31.3306(f) Statutory provisions; definitions; unemployment fund.

SEC. 3306. *Definitions.* • • •

(f) *Unemployment fund.* For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (49 Stat. 640; 52 Stat. 1104, 1108; 42 U. S. C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(1) An amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) The amounts specified by section 903 (c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

§ 31.3306(g) Statutory provisions; definitions; contributions.

SEC. 3306. *Definitions.* • • •

(g) *Contributions.* For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

§ 31.3306(h) Statutory provisions; definitions; compensation.

SEC. 3306. *Definitions.* • • •

(h) *Compensation.* For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

§ 31.3306(i) Statutory provisions; definitions; employee.

SEC. 3306. *Definitions.* • • •

(i) *Employee.* For purposes of this chapter, the term "employee" includes an officer of a corporation, but such term does not include—

(1) Any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or

(2) Any individual (except an officer of a corporation) who is not an employee under such common law rules.

§ 31.3306(i)–1 Who are employees.

(a) Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.. (The word "employer" as used in this section only, notwithstanding the provisions of § 31.3306 (a)–1, includes a person who employs one or more employees.)

(b) Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not as to such services an employee. Individuals such as physicians, lawyers, dentists, veterinarians, construction contractors, public stenographers, and auctioneers, engaged in the pursuit of an independent trade, business, or profession, in which they offer their services to the public, are independent contractors and not employees.

(c) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(d) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(e) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is considered not to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(f) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, as not to constitute employment (see § 31.3306 (c)–2).

§ 31.3306(j) Statutory provisions; definitions; State.

SEC. 3306. *Definitions.* • • •

(j) *State.* For purposes of this chapter, the term "State" includes Alaska, Hawaii, and the District of Columbia.

§ 31.3306(k) Statutory provisions; definitions; agricultural labor.

SEC. 3306. *Definitions.* • • •

(k) *Agricultural labor.* For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, § 3; 12 U. S. C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or

to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

SEC. 15. *Miscellaneous provisions* [*Agricultural Marketing Act*]. • • •

(g) As used in this Act, the term "agricultural commodity" includes • • • crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923 [42 Stat. 1435; 7 U. S. C. 92 (c), (h)].

SEC. 2. [The Naval Stores Act.] That, when used in this act—

• • • • • •

(c) "Gum spirits of turpentine" means spirits of turpentine made from gum (oleoresin) from a living tree.

• • • • • •

(h) "Gum rosin" means rosin remaining after the distillation of gum spirits of turpentine.

§ 31.3306(k)–1 Agricultural labor.

(a) *In general.* (1) Services performed by an employee for the person employing him which constitute "agricultural labor" as defined in section 3306 (k) are excepted from employment by reason of section 3306 (c) (1). See § 31.3306 (c) (1)–1. The term "agricultural labor" as defined in section 3306 (k) includes services of the character described in paragraphs (b), (c), (d), and (e) of this section. In general, however, the term does not include services performed in connection with forestry, lumbering, or landscaping.

(2) The term "farm" as used in this subpart includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures used primarily for other purposes (for example, display, storage, and fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(b) *Services described in section 3306 (k) (1).* Services performed on a farm by an employee of any person in connection with any of the following activities constitute agricultural labor:

(1) The cultivation of the soil;

(2) The raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, fur-bearing animals, or wildlife; or

(3) The raising or harvesting of any other agricultural or horticultural commodity.

(c) *Services described in section 3306 (k) (2).* (1) The following services performed by an employee in the employ of the owner or tenant or other operator of one or more farms constitute agricultural labor, if the major part of such services is performed on a farm:

(i) Services performed in connection with the operation, management, conservation, improvement, or maintenance of any of such farms or its tools or equipment; or

(ii) Services performed in salvaging timber, or clearing land of brush and other debris, left by a hurricane.

(2) The services described in subparagraph (1) (i) of this paragraph may include, for example, services performed by carpenters, painters, mechanics, farm supervisors, irrigation engineers, bookkeepers, and other skilled or semiskilled workers, which contribute in any way to the conduct of the farm or farms, as such, operated by the person employing them, as distinguished from any other enterprise in which such person may be engaged.

(3) Since the services described in this paragraph must be performed in the employ of the owner or tenant or other operator of the farm, services performed by employees of a commercial painting concern, for example, which contracts with a farmer to renovate his farm properties, do not constitute agricultural labor.

(d) *Services described in section 3306 (k) (3).* Services performed by an employee in the employ of any person in connection with any of the following operations constitute agricultural labor without regard to the place where such services are performed:

(1) The ginning of cotton;

(2) The hatching of poultry;

(3) The raising or harvesting of mushrooms;

(4) The operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying or storing water for farming purposes;

(5) The production or harvesting of maple sap or the processing of maple sap into maple sirup or maple sugar (but not the subsequent blending or other processing of such sirup or sugar with other products); or

(6) The production or harvesting of crude gum (oleoresin) from a living tree or the processing of such crude gum into gum spirits of turpentine and gum rosin, provided such processing is carried on by the original producer of such crude gum.

(e) *Services described in section 3306 (k) (4).* (1) (i) Services performed by an employee in the employ of a farmer or a farmers' cooperative organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of any agricultural or horticultural commodity, other than fruits and vegetables (see subparagraph (2) of this paragraph), produced by such farmer or farmer-members of such organization or group of farmers constitute agricultural labor, if such services are performed as an incident to ordinary farming operations.

(ii) Generally services are performed "as an incident to ordinary farming operations" within the meaning of this paragraph if they are services of the character ordinarily performed by the employees of a farmer or of a farmers' cooperative organization or group as a prerequisite to the marketing, in its unmanufactured state, of any agricultural or horticultural commodity produced by such farmer or by the members of such farmers' organization or group. Services performed by employees of such farmer or farmers' organization or group in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of commodities produced by persons other than such farmer or members of such farmers' organization or group are not performed "as an incident to ordinary farming operations".

(2) Services performed by an employee in the employ of any person in the handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of fruits and vegetables, whether or not of a perishable nature, constitute agricultural labor, if such services are performed as an incident to the preparation of such fruits and vegetables for market. For example, if services in the sorting, grading, or storing of fruits, or in the cleaning of beans, are performed as an incident to their preparation for market, such services may constitute agricultural labor, whether performed in the employ of a farmer, a farmers' cooperative, or a commercial handler of such commodities.

(3) The services described in subparagraphs (1) and (2) of this paragraph do not include services performed in connection with commercial canning or commercial freezing or in connection with any commodity after its delivery to a terminal market for distribution for consumption. Moreover, since the services described in such subparagraphs must be rendered in the actual handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, of the commodity, such services do not, for example, include services performed as stenographers, bookkeepers, clerks, and other office employees, even though such services may be in connection with such activities. However, to the extent that the services of such individuals are performed in the employ of the owner or tenant or other operator of a farm and are rendered in major part on a farm, they may be within the provisions of paragraph (c) of this section.

§ 31.3306(l) Statutory provisions; definitions; certain employees of Bonneville Power Administrator.

SEC. 3306. *Definitions.* • • •

(l) *Certain employees of Bonneville Power Administrator.*

[Repealed, effective with respect to services performed after 1954, by sec. 4 (c), Act of Sept. 1, 1954 (Pub. Law 767, 83d Cong., 68 Stat. 1135)]

§ 31.3306(m) Statutory provisions; definitions; American vessel.

SEC. 3306. *Definitions.* • • •

(m) *American vessel.* For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

§ 31.3306(m)–1 American vessel.

The term "American vessel" means any vessel which is documented (that is, registered, enrolled, or licensed) or numbered in conformity with the laws of the United States. It also includes any vessel which is neither documented nor numbered under the laws of the United States, nor documented under the laws of any foreign country, if the crew of such vessel is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State (including the District of Columbia or the Territory of Alaska or Hawaii). For provisions relating to services performed outside the United States on or in connection with an American vessel, see paragraph (c) of § 31.3306 (c)–2.

§ 31.3306(n) Statutory provisions; definitions; vessels operated by general agents of United States.

SEC. 3306. *Definitions.* • • •

(n) *Vessels operated by general agents of United States.* Notwithstanding the provisions of subsection (c) (6), service performed on or after July 1, 1953, by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) Owned by or bareboat chartered to the United States and

(2) Whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

§ 31.3306(n)–1 Services on American vessel whose business is conducted by general agent of Secretary of Commerce.

(a) Section 3306(n) and this section of the regulations apply with respect only to services performed by an officer or member of the crew of an American vessel (1) which is owned by or bareboat chartered to the United States, and (2) whose business is conducted by a general agent of the Secretary of Commerce. Whether services performed by such an officer or member of a crew under the above conditions constitute employment is determined under section 3306 (c) and (n), but without regard to section 3306 (c) (6). See § 31.3306 (c) (6)–1, relating to services performed in the employ of the United States and instrumentalities thereof. If, without regard to section 3306 (c) (6), such services constitute employment, they are not excepted from employment by reason of the fact that they are performed on or in connection with an American vessel which is owned by or bareboat chartered to the United States and whose business is conducted by a general agent of the Secretary of Commerce, that is, such services are not excepted from employment by section 3306 (c) (6). For provisions relating to services performed within the United States and services performed outside the United States which constitute employment, see § 31.3306 (c)–2.

(b) The expression "officer or member of the crew" includes the master or officer in charge of the vessel, however designated, and every individual, subject to his authority, serving on board and contributing in any way to the operation and welfare of the vessel. Thus, the expression includes, for example, the master, mates, pilots, pursers, surgeons, stewards, engineers, firemen, cooks, clerks, carpenters, and deck hands.

(c) An employee of the United States who performs services as an officer or member of the crew of an American vessel which is owned by or bareboat chartered to the United States and whose business is conducted by a general agent of the Secretary of Commerce shall be deemed, under section 3306 (n), to be performing services for such general agent rather than for the United States. Any such general agent of the Secretary of Commerce is considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account. Each such general agent who in his capacity as such qualifies as an employer under section 3306 (a) is with respect to each calendar year for which he so qualifies subject to the tax imposed by section 3301, and to all the requirements imposed upon an employer as defined in section 3306 (a) by the regulations in this part, with respect to services which constitute employment by reason of section 3306 (n) and this section of the regulations.

Subpart E—Collection of Income Tax at Source on Wages (Chapter 24, Internal Revenue Code of 1954)

§ 31.3401(a) Statutory provisions; definitions; wages.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

§ 31.3401(a)–1 Wages.

(a) *In general.* (1) The term "wages" means all remuneration for services performed by an employee for his employer unless specifically excepted under section 3401(a) or excepted under section 3402(e). See §§ 31.3401(a) to 31.3401(a)(12)–1, inclusive, and § 31.3402 (e)–1.

(2) The name by which the remuneration for services is designated is immaterial. Thus, salaries, fees, bonuses, commissions on sales or on insurance premiums, pensions, and retired pay are wages within the meaning of the statute if paid as compensation for services performed by the employee for his employer.

(3) The basis upon which the remuneration is paid is immaterial in determining whether the remuneration constitutes wages. Thus, it may be paid on the basis of piecework, or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.

(4) Generally the medium in which the remuneration is paid is also immaterial. It may be paid in cash or in something other than cash, as for example, stocks, bonds, or other forms of property. (See, however, § 31.3401 (a) (11)–1, relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business.) If services are paid for in a medium other than cash, the fair market value of the thing taken in payment is the amount to be included as wages. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be presumed to be the fair value of the remuneration received. If a corporation transfers to its employees its own stock as remuneration for services rendered by the employee, the amount of such remunera-

§ 31.3307 Statutory provisions; deductions as constructive payments.

SEC. 3307. *Deductions as constructive payments.* Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

§ 31.3307–1 Deductions by an employer from remuneration of an employee.

Any amount deducted by an employer from the remuneration of an employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress or the law of any State requires or permits such deductions and the payment of the amount thereof to the United States, a State, or any political subdivision thereof.

§ 31.3308 Statutory provisions; short title.

SEC. 3308. *Short title.* This chapter may be cited as the "Federal Unemployment Tax Act."

tion is the fair market value of the stock at the time of the transfer.

(5) Remuneration for services, unless such remuneration is specifically excepted by the statute, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

Example. A is employed by R during the month of January 1955 and is entitled to receive remuneration of $100 for the services performed for R, the employer, during the month. A leaves the employ of R at the close of business on January 31, 1955. On February 15, 1955 (when A is no longer an employee of R), R pays A the remuneration of $100 which was earned for the services performed in January. The $100 is wages within the meaning of the statute.

(b) *Certain specific items*—(1) *Pensions and retirement pay.* (i) In general, pensions and retired pay are wages subject to withholding. However, no withholding is required with respect to amounts paid to an employee upon retirement which are taxable as annuities under the provisions of section 72 or 403. So-called pensions awarded by one to whom no services have been rendered are mere gifts or gratuities and do not constitute wages. Those payments of pensions or other benefits by the Federal Government under Title 38 of the United States Code which are excluded from gross income are not wages subject to withholding.

(ii) Retirement pay for service in the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service is subject to withholding unless such pay is excluded from gross income under section 104 (a) (4), or is taxable as an annuity under the provisions of section 72. Where such retirement pay (not excluded from gross income under section 104 (a) (4) and not taxable as an annuity under the provisions of section 72) is paid to a nonresident alien individual, withholding is required only in the case of such amounts paid to a nonresident alien individual who is a resident of Puerto Rico.

(2) *Traveling and other expenses.* Amounts paid specifically—either as advances or reimbursements—for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment.

(3) *Vacation allowances.* Amounts of so-called "vacation allowances" paid to an employee constitute wages. Thus, the salary of an employee on vacation, paid notwithstanding his absence from work, constitutes wages.

(4) *Dismissal payments.* Any payments made by an employer to an employee on account of dismissal, that is, involuntary separation from the service of the employer, constitute wages regardless of whether the employer is legally bound by contract, statute, or otherwise to make such payments.

(5) *Deductions by employer from remuneration of an employee.* Any amount deducted by an employer from the remuneration of an employee is considered to be a part of the employee's remuneration and is considered to be paid to the employee as remuneration at the time that the deduction is made. It is immaterial that any act of Congress, or the law of any State or of Puerto Rico, requires or permits such deductions and the payment of the amounts thereof to the United States, a State, a Territory, Puerto Rico, or the District of Columbia, or any political subdivision of any one or more of the foregoing.

(6) *Payment by an employer of employee's tax, or employee's contributions under a State law.* The term "wages" includes the amount paid by an employer on behalf of an employee (without deduction from the remuneration of, or other reimbursement from, the employee) on account of any payment required from an employee under a State unemployment compensation law, or on account of any tax imposed upon the employee by any taxing authority, including the taxes imposed by sections 3101 and 3201.

(7) *Remuneration for services as employee of nonresident alien individual or foreign entity.* The term "wages" includes remuneration for services performed by a citizen or resident of the United States as an employee of a nonresident alien individual, foreign partnership, or foreign corporation whether or not such alien individual or foreign entity is engaged in trade or business within the United States. Any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States), is subject to all the provisions of law and regulations applicable with respect to an employer. See § 31.3401 (d)–1, relating to the term "employer", and § 31.3401 (a) (8) (C)–1, relating to remuneration paid for services performed by a citizen of the United States in Puerto Rico.

(8) *Amounts paid under wage continuation plans*—(i) *Amounts paid before January 1, 1956*—(a) *Amounts paid by employer for whom services are performed.* (1) Withholding is not required upon amounts paid before January 1, 1956, to an employee by his employer under a wage continuation plan for a period during which the employee is absent from work on account of personal injuries or sickness, if such amounts are excludable from the gross income of the employee under section 105 (d) and the records maintained by the employer in accordance with the provisions of sections 6001 and 6051 and the provisions thereunder in Subpart G of the regulations in this part—

(*i*) Separately show the amounts of such payments and distinguish such amounts from all other payments, and

(*ii*) Establish the facts necessary to show that the employee is entitled to the exclusion provided by section 105 (d), either by means of a written statement from the employee as to the injury, illness, or hospitalization, or by any other information which the employer believes to be accurate and which he is willing to accept for purposes of payments under the wage continuation plan.

(2) For the purpose of section 6051 and the regulations thereunder, relating to the requirement of receipts for employees, amounts paid before January 1, 1956, which are excludable from gross income under the provisions of section 105 (d) shall be included in the total wages required to be shown on Form W–2. The amount of any such wages on which the employer, in reliance on section 105 (d), does not withhold must be shown separately, and properly identified, on Form W–2 in such manner that it may be read on each copy of the form.

(3) See sections 6001 and 6051 and the provisions thereunder in Subpart G of the regulations in this part for rules with respect to the records which must be maintained in connection with wage continuation payments and for rules with respect to the statements which must be furnished an employee in connection with wage continuation payments, respectively. See also section 105 and § 1.105–4 of this chapter (Income Tax Regulations).

(*b*) *Amounts paid by person other than employer for whom services are performed.* Withholding is not required upon any amounts paid before January 1, 1956, to an employee for a period during which the employee is absent from work on account of personal injuries or sickness, whether or not such amounts are excludable from the gross income of the employee, if such amounts are paid through accident or health insurance or under an accident or health plan by a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 3401 (d) (1). For example, no withholding is required in connection with accident or health benefits paid by an insurance company under an accident or health policy, by a separate trust under an accident or health plan, or by a State agency from a sickness and disability fund maintained under State law.

(ii) *Amounts paid after December 31, 1955*—(*a*) *In general.* The term "wage continuation payment", as used in this subdivision, means any payment to an employee which is made after December 31, 1955, under a wage continuation plan (as defined in paragraph (a) (2) (i) of § 1.105–4 and § 1.105–5 of this chapter (Income Tax Regulations)) for a period of absence from work on account of personal injuries or sickness, to the extent such payment is attributable to contributions made by the employer which were not includible in the employee's gross income or is paid by the employer. Any such payment, whether or not excluded from the gross income of the employee under section 105(d), constitutes "wages" (unless specifically excepted under any of the numbered paragraphs of section 3401(a) or under section 3402(e)) and withholding thereon is required except as provided in (*b*) and (*c*) of this subdivision.

(*c*) *Amounts paid by person other than the employer for whom services are performed.* No tax shall be withheld upon any wage continuation payment made to an employee by or on behalf of a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 3401 (d) (1). For example, no tax shall be withheld with respect to wage continuation payments made on behalf of an employer by an insurance company under an accident or health policy, by a separate trust under an accident or health plan, or by a State agency from a sickness and disability fund maintained under State law.

(*d*) *Cross references.* See sections 6001 and 6051 and the regulations thereunder for rules with respect to the records which must be maintained in connection with wage continuation payments and for rules with respect to the statements which must be furnished an employee in connection with wage continuation payments, respectively. See also section 105 and § 1.105–4 of this chapter (Income Tax Regulations).

(9) *Value of meals and lodging.* The value of any meals or lodging furnished to an employee by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee. See § 1.119–1 of this chapter (Income Tax Regulations).

(10) *Facilities or privileges.* Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as wages subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees.

(11) *Tips or gratuities.* Tips or gratuities paid directly to an employee by a customer of an employer, and not accounted for by the employee to the employer, are not subject to withholding.

(12) *Remuneration for services performed by permanent resident of Virgin Islands*—(i) *Exemption from withholding.* No tax shall be withheld for the United States under chapter 24 from a payment of wages by an employer, including the United States or any agency thereof, to an employee if at the time of payment it is reasonable to believe that the employee will be required to satisfy his income tax obligations with respect to such wages under section 28 (a) of the Revised Organic Act of the Virgin Islands (68 Stat. 508). That section provides that all persons whose permanent residence is in the Virgin Islands "shall satisfy their income tax obligations under applicable taxing statutes of the United States by paying their tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands".

(ii) *Claiming exemption.* If the employee furnishes to the employer a statement in duplicate that he expects to satisfy his income tax obligations under section 28 (a) of the Revised Organic Act of the Virgin Islands with respect to all wages subsequently to be paid to him by the employer during the taxable year to which the statement relates, the employer may, in the absence of information to the contrary, rely on such statement as establishing reasonable belief that the employee will so satisfy his income tax obligations. The employee's statement shall identify the taxable year to which it relates, and both the original and the duplicate copy thereof shall be signed and dated by the employee.

(iii) *Disposition of statement.* The original of the statement shall be retained by the employer. The duplicate copy of the statement shall be sent by the employer to the Director of International Operations, Washington 25, D. C., on or before the last day of the calendar year in which the employer receives the statement from the employee.

(iv) *Applicability of subparagraph.* This subparagraph has no application with respect to any payment of remuneration which is not subject to withholding by reason of any other provision of the regulations in this subpart.

§ 31.3401(a)–2 Exclusions from wages.

(a) *In general.* (1) The term "wages" does not include any remuneration for services performed by an employee for his employer which is specifically excepted from wages under section 3401 (a) (see paragraph (b) of this section and §§ 31.3401 (a) (1)–1 to 31.3401 (a) (12)–1, inclusive).

(2) The exception attaches to the remuneration for services performed by an employee and not to the employee as an individual; that is, the exception applies only to the remuneration in an excepted category.

Example. A is an individual who is employed part time by B to perform domestic service in his home (see § 31.3401 (a) (3)–1). A is also employed by C part time to perform services as a clerk in a department store owned by him. While no withholding is required with respect to A's remuneration for services performed in the employ of B (the remuneration being excluded from wages), the exception does not embrace the remuneration for services performed by A in the employ of C and withholding is required with respect to the wages for such services.

(3) For provisions relating to the circumstances under which remuneration which is excepted is nevertheless deemed to be wages, and relating to the circumstances under which remuneration which is not excepted is nevertheless deemed not to be wages, see § 31.3402 (e)–1.

(b) *Fees paid a public official.* (1) Authorized fees paid to public officials such as notaries public, clerks of courts, sheriffs, etc., for services rendered in the performance of their official duties are excepted from wages and hence are not subject to withholding. However, salaries paid such officials by the Government, or by a Government agency or instrumentality, are subject to withholding.

(2) Amounts paid to precinct workers for services performed at election booths in State, county, and municipal elections and fees paid to jurors and witnesses are in the nature of fees paid to public officials and therefore are not subject to withholding.

§ 31.3401(a)(1) Statutory provisions; definitions; wages; certain remuneration of members of the Armed Forces.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

(1) For active service as a member of the Armed Forces of the United States performed in a month for which such member is entitled to the benefits of section 112; or

§ 31.3401 (a) (1)–1 Remuneration of members of the Armed Forces of the United States for active service in combat zone or while hospitalized as a result of such service.

Remuneration paid for active service as a member of the Armed Forces of the United States performed in a month during any part of which such member served in a combat zone (as determined under section 112) or is hospitalized at any place as a result of wounds, disease, or injury incurred while serving in such a combat zone is excepted from wages and is, therefore, not subject to withholding. The exception with respect to

hospitalization is applicable, however, only if during all of such month there are combatant activities in some combat zone (as determined under section 112). See § 1.112–1 of this chapter (Income Tax Regulations).

§ 31.3401(a)(2) Statutory provisions; definitions; wages; remuneration paid for agricultural labor.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(2) For agricultural labor (as defined in section 3121 (g)); or

§ 31.3401(a)(2)–1 Agricultural labor.

The term "wages" does not include remuneration for services which constitute agricultural labor as defined in section 3121 (g). For regulations relating to the definition of the term "agricultural labor", see § 31.3121(g)–1.

§ 31.3401(a)(3) Statutory provisions; definitions; wages; remuneration paid for domestic service.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(3) For domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; or

§ 31.3401(a)(3)–1 Remuneration for domestic service.

(a) *In a private home.* (1) Remuneration paid for services of a household nature performed by an employee in or about a private home of the person by whom he is employed is excepted from wages and hence is not subject to withholding. A private home is a fixed place of abode of an individual or family. A separate and distinct dwelling unit maintained by an individual in an apartment house, hotel, or other similar establishment may constitute a private home. If a dwelling house is used primarily as a boarding or lodging house for the purpose of supplying board or lodging to the public as a business enterprise, it is not a private home, and the remuneration paid for services performed therein is not within the exception.

(2) In general, services of a household nature in or about a private home include services performed by cooks, waiters, butlers, housekeepers, governesses, maids, valets, baby sitters, janitors, laundresses, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use.

(b) *In a local college club or local chapter of a college fraternity or sorority.* (1) Remuneration paid for services of a household nature performed by an employee in or about the club rooms or house of a local college club or of a local chapter of a college fraternity or sorority by which he is employed is excepted from wages and hence is not subject to withholding. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter. If the club rooms or house of a local college club or local chapter of a college fraternity or sorority is used primarily for the purpose of supplying board or lodging to students or the public as a business enterprise, the remuneration paid for services performed therein is not within the exception.

(2) In general, services of a household nature in or about the club rooms or house of a local college club or local chapter of a college fraternity or sorority include services rendered by cooks, waiters, butlers, maids, janitors, laundresses, furnacemen, handymen, gardeners, housekeepers, and housemothers.

(c) *Remuneration not excepted.* Remuneration paid for services not of a household nature, such as services performed as a private secretary, tutor, or librarian, even though performed in the employer's private home or in a local college club or local chapter of a college fraternity or sorority, is not within the exception. Remuneration paid for services of a household nature is not within the exception if performed in or about rooming or lodging houses, boarding houses, clubs (except local college clubs), hotels, hospitals, eleemosynary institutions, or commercial offices or establishments.

§ 31.3401(a)(4) Statutory provisions; definitions; wages; cash remuneration for service not in the course of employer's trade or business.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(4) For service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(B) Such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter; or

§ 31.3401(a)(4)–1 Cash remuneration for service not in the course of employer's trade or business.

(a) Cash remuneration paid for services not in the course of the employer's trade or business performed by an employee for an employer in a calendar quarter is excepted from wages and hence is not subject to withholding unless—

(1) The cash remuneration paid for such services performed by the employee for the employer in the calendar quarter is $50 or more; and

(2) Such employee is regularly employed in the calendar quarter by such employer to perform such services.

Unless the tests set forth in both subparagraphs (1) and (2) of this paragraph are met, cash remuneration for service not in the course of the employer's trade or business is excluded from wages. (For provisions relating to the exclusion from wages of remuneration paid in any medium other than cash for services not in the course of the employer's trade or business, see § 31.3401 (a) (11)–1.)

(b) The term "services not in the course of the employer's trade or business" includes services that do not promote or advance the trade or business of the employer. As used in this section, the term does not include service not in the course of the employer's trade or business performed on a farm operated for profit or domestic service in a private home, local college club, or local chapter of a college fraternity or sorority. Accordingly, this exception does not apply with respect to remuneration which is excepted from wages under section 3401 (a) (2) or section 3401 (a) (3) (see §§ 31.3401 (a) (2)–1 and 31.3401 (a) (3)–1, respectively). Remuneration paid for service performed for a corporation does not come within the exception.

(c) The test relating to cash remuneration of $50 or more is based on the remuneration earned during a calendar quarter rather than on the remuneration paid in a calendar quarter. However, for purposes of determining whether the test is met, it is also required that the remuneration be paid, although it is immaterial when the remuneration is paid. Furthermore, in determining whether $50 or more has been paid for service not in the course of the employer's trade or business, only cash remuneration for such service shall be taken into account. The term "cash remuneration" includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining whether the cash-remuneration test is met.

(d) For purposes of this exception, an individual is deemed to be regularly employed by an employer during a calendar quarter only if—

(1) Such individual performs service not in the course of the employer's trade or business for such employer for some portion of the day on at least 24 days (whether or not consecutive) during such calendar quarter; or

(2) Such individual was regularly employed (as determined under subparagraph (1) of this paragraph) by such employer in the performance of service not in the course of the employer's trade or business during the preceding calendar quarter.

(e) In determining whether an employee has performed service not in the course of the employer's trade or business on at least 24 days during a calendar quarter, there shall be counted as one day—

(1) Any day or portion thereof on which the employee actually performs such service; and

(2) Any day or portion thereof on which the employee does not perform service of the prescribed character but with respect to which cash remuneration is paid or payable to the employee for such service, such as a day on which the employee is sick or on vacation.

An employee who on a particular day reports for work and, at the direction of his employer, holds himself in readiness to perform service not in the course of the employer's trade or business shall be considered to be engaged in the actual performance of such service on that day. For purposes of this exception, a day is a continuous period of 24 hours commencing at midnight and ending at midnight.

§ 31.3401(a)(5) Statutory provisions; definitions; wages; remuneration for services for foreign government or international organization.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(5) For services by a citizen or resident of the United States for a foreign government or an international organization; or

§ 31.3401(a)(5)–1 Remuneration for services for foreign government or international organization.

(a) *Services for foreign government.* (1) Remuneration paid for services performed as an employee of a foreign government is excepted from wages and hence is not subject to withholding. The exception includes not only remuneration paid for services performed by ambassadors, ministers, and other diplomatic officers and employees but also remuneration paid for services performed as a consular or other officer or employee of a foreign government or as a nondiplomatic representative of such a government. However, the exception does not include remuneration for services performed for a corporation created or organized in the United States or under the laws of the United States or any State (including the District of Columbia or the Territory of Alaska or Hawaii) or of Puerto Rico even though such corporation is wholly owned by such a government.

(2) The citizenship or residence of the employee and the place where the services are performed are immaterial for purposes of the exception.

(b) *Services for international organization.* (1) Subject to the provisions of section 1 of the International Organizations Immunities Act (22 U.S.C. 288), remuneration paid for services performed within or without the United States by an employee for an international organization as defined in section 7701 (a) (18) is excepted from wages and hence is not subject to withholding. The term "employee" as used in the preceding sentence includes not only an employee who is a citizen or resident of the United States but also an employee who is a nonresident alien individual. The term "employee" also includes an officer. An organization designated by the President through appropriate Executive order as entitled to enjoy the privileges, exemptions, and immunities provided in the International Organizations Immunities Act may enjoy the benefits of the exclusion from wages with respect to remuneration paid for services performed for such organization prior to the date of the issuance of such Executive order, if (i) the Executive order does not provide otherwise and (ii) the organization is a public international organization in which the United States participates, pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation for such participation, at the time such services are performed.

(2) Section 7701 (a) (18) provides as follows:

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

• • • • •

(18) *International organization.* The term "international organization" means a public international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U. S. C. 288–288f).

(3) Section 1 of the International Organizations Immunities Act provides as follows:

SECTION 1. [*International Organizations Immunities Act.*] For the purposes of this title [International Organizations Immunities Act], the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

§ 31.3401(a)(6) Statutory provisions; definitions; wages; remuneration for services of certain nonresident alien individuals.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(6) For services performed by a nonresident alien individual, other than—

(A) A resident of a contiguous country who enters and leaves the United States at frequent intervals; or

(B) A resident of Puerto Rico if such services are performed as an employee of the United States or any agency thereof; or

§ 31.3401(a)(6)–1 Remuneration for services of certain nonresident alien individuals.

(a) Except in the case of certain nonresident alien individuals who are residents of Canada, Mexico, or Puerto Rico, remuneration for services performed by nonresident alien individuals does not constitute wages subject to withholding under section 3402. For withholding of income tax on remuneration paid for services performed within the United States in the case of nonresident alien individuals generally, see § 1.1441–1 and following of this chapter (Income Tax Regulations).

(b) Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who enter and leave the United States at frequent intervals is not excepted from wages under section 3401 (a) (6). See, however, § 31.3401 (a) (7)–1, relating to remuneration paid to such nonresident alien individuals when engaged in transportation service.

(c) Remuneration paid to a nonresident alien individual for services performed in Puerto Rico for an employer (other than the United States or any agency thereof) is excepted from wages and hence is not subject to withholding, even though such alien individual is a resident of Puerto Rico at the time when such services are performed. Wages paid for services performed by a nonresident alien individual who is a resident of Puerto Rico are subject to withholding if such services are performed as an employee of the United States or any agency thereof. The place of performance of such services is immaterial, provided such alien individual is a resident of Puerto Rico at the time of performance of the services. Wages representing retirement pay for service in the Armed Forces of the United States, the Coast and Geodetic Survey, or the Public Health Service are subject to withholding, under the limitations specified in paragraph (b) (1) (ii) of § 31.3401 (a)–1, in the case of an alien resident of Puerto Rico.

§ 31.3401(a)(7) Statutory provisions; definitions; wages; remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(7) For such services, performed by a nonresident alien individual who is a resident of a contiguous country and who enters and leaves the United States at frequent intervals, as may be designated by regulations prescribed by the Secretary or his delegate; or

§ 31.3401(a)(7)–1 Remuneration for services performed by nonresident alien individuals who are residents of a contiguous country and who enter and leave the United States at frequent intervals.

(a) *Transportation service.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their duties in transportation service between points in the United States and points in a contiguous country, enter and leave the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. This exception applies to personnel engaged in railroad, bus, ferry, steamboat, and aircraft services and applies whether the employer is a domestic or foreign entity. Thus, the remuneration of a nonresident alien individual who is a resident of Canada and an employee of a domestic railroad, for services as a member of the crew of a train operating between points in Canada and points in the United States, is not subject to withholding under section 3402.

(b) *Service on international projects.* Remuneration paid to nonresident aliens who are residents of a contiguous country (Canada or Mexico) and who, in the performance of their duties in connection with the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge traversed by or traversing the boundary between the United States and Canada or the boundary between the United States and Mexico, as the case may be, enter and leave the United States at frequent intervals, is excepted from wages and hence is not subject to withholding. Thus, the remuneration of a nonresident alien individual who is a resident of Canada, for services as an employee in connection with the construction, maintenance, or operation of the Saint Lawrence Seaway and who, in the performance of such services, enters and leaves the United States at frequent intervals, is not subject to withholding under section 3402.

(c) *Limitation on application of section.* The exception provided by this section has no application to the remuneration of a resident of Canada or of Mexico who is employed wholly within the United States as, for example, where such a resident is employed to perform service at a fixed point or points in the United States, such as a factory, store, office, or designated area or areas within the United States, and who commutes from his home in Canada or Mexico in the pursuit of his employment within the United States.

(d) *Certificate required.* In order for the exception to apply, the nonresident alien employee must furnish his employer a statement setting forth the employee's name and address and certifying (1) that he is not a citizen of the United States, (2) that he is a resident of Canada or Mexico, as the case may be, and (3) the approximate period of time during which he has had such status. Such statement shall be dated, shall be signed by the employee, and shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. No particular form is prescribed for this statement.

§ 31.3401(a)(8)(A) Statutory provisions; definitions; wages; remuneration paid for services performed by citizens outside the United States.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(8) (A) For services for an employer (other than the United States or any agency thereof)—

(i) Performed by a citizen of the United States if, at the time of the payment of such remuneration, it is reasonable to believe that such remuneration will be excluded from gross income under section 911; or

(ii) Performed in a foreign country or in a possession of the United States by such a citizen if, at the time of the payment of such remuneration, the employer is required by the law of any foreign country or possession of the United States to withhold income tax upon such remuneration; or

[Sec. 3401(a)(8) as amended by Act of Aug. 9, 1955 (Pub. Law 321, 84th Cong., 69 Stat. 617)]

§ 31.3401(a)(8)(A)–1 Remuneration for services performed outside the United States by citizens of the United States.

(a) *Remuneration excluded from gross income under section 911*—(1) *Resident of a foreign country.* (i) Remuneration paid for services performed outside the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of payment it is reasonable to believe that such remuneration will be excluded from gross income under the provisions of section 911 (a) (1). The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the remuneration is excludable from gross income under the provisions of section 911 (a) (1).

(ii) If an individual citizen of the United States establishes to the satisfaction of the district director that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received by such individual from sources without the United States (except amounts paid by the United States or any agency thereof) are excluded from gross income under the provisions of section 911 (a) (1), provided that such amounts constitute earned income, as defined in section 911 (b), which is attributable to such uninterrupted period. See § 1.911–1 of this chapter (Income Tax Regulations).

(iii) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that remuneration for services performed outside the United States during the taxable year, or applicable portion thereof, will be excluded from gross income under the provisions of section 911 (a) (1) for each taxable year in respect of which the employee properly executes and furnishes in duplicate to the employer a statement in the following form:

Statement for claiming benefits of Section 911 (a) (1) for calendar year _____ or fiscal year beginning _____ and ending _____.

(A) My name is _____. My present address is _____. I am employed by _____.

(B) My last address in the United States was _____. The internal revenue district in which I filed my last income tax return is _____.

(C) I _____ file my income tax return
(Do or do not)
on the calendar-year basis.

(D) I file my income tax return on the basis of the fiscal year beginning _____, 19__, and ending _____, 19__.

(E) I am a citizen of the United States.

(F) I have been a bona fide resident of the following foreign country or countries, namely, _____, for an uninterrupted period which began on _____, 19__.

(G) I expect to remain a bona fide resident of a foreign country or countries from the date of this statement until the end of the taxable year in respect of which this statement is executed.

(H) On the basis of the facts in my case I have good reason to believe that, with respect to the above period of foreign residence falling within the taxable year, I will satisfy the bona fide foreign-residence requirement prescribed by section 911 (a) (1) of the Internal Revenue Code of 1954.

(I) I understand that any exemption from withholding of tax permitted by reason of the furnishing of this statement is not a determination by the district director of internal revenue that any remuneration paid to me for any services performed during the taxable year is excludable from gross income under the provisions of section 911 (a) (1).

I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct.

_____
(Signature of taxpayer)

Date: _____, 19__.

(iv) If the employer was entitled to presume for the two consecutive taxable years immediately preceding an employee's current taxable year that such employee's remuneration for services performed outside the United States during such preceding taxable years would be excluded from gross income under the provisions of section 911 (a) (1) (or section 116 (a) (1) of the Internal Revenue Code of 1939), he may, if such employee is residing in a foreign country on the first day of such current taxable year, presume that, in the absence of cause for a reasonable belief to the contrary, the remuneration for services performed outside the United States during such current taxable year will be excluded from gross income under the provisions of section 911 (a) (1) without obtaining from the employee the statement prescribed in subdivision (iii) of this subparagraph.

(2) *Physical presence in a foreign country.* (i) Remuneration paid for services performed outside the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of payment it is reasonable to believe that such remuneration will be excluded from gross income under the provisions of section 911 (a) (2). The reasonable belief contemplated by the statute may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the remuneration is excludable from gross income under the provisions of section 911 (a) (2), provided that such amounts constitute earned income, as defined in section 911 (b), which is attributable to such period. However, the total amount so excluded from gross income under the provisions of such section may not exceed $20,000 for each taxable year if the 18-month period includes the entire taxable year. If the 18-month period does not include the entire taxable year, the amount excluded from gross income under such section for such taxable year may not exceed an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year. See § 1.911–1 of this chapter (Income Tax Regulations).

(ii) If an individual citizen of the United States is present in a foreign country or countries during at least 510 full days during any period of 18 consecutive months, amounts received by such individual from sources without the United States (except amounts paid by the United States or any agency thereof) are excluded from gross income under the provisions of section 911 (a) (2), provided that such amounts constitute earned income, as defined in section 911 (b), which is attributable to such period. However, the total amount so excluded from gross income under the provisions of such section may not exceed $20,000 for each taxable year if the 18-month period includes the entire taxable year. If the 18-month period does not include the entire taxable year, the amount excluded from gross income under such section for such taxable year may not exceed an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year. See § 1.911–1 of this chapter (Income Tax Regulations).

(iii) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that remuneration for services performed outside the United States during the taxable year, or applicable portion thereof, will be excluded from gross income under the provisions of section 911 (a) (2) for each taxable year in respect of which the employee properly executes and furnishes in duplicate to the employer a statement in the form set forth below. The presumption shall not apply after the total payments made during the taxable year of the employee equal $20,000 or such lesser amount as may be allowable under section 911 (a) (2) on the basis of the facts shown in such statement.

Statement for claiming benefits of Section 911 (a) (2) for calendar year _____ or fiscal year beginning _____ and ending _____.

(A) My name is _____. My present address is _____. I am employed by _____.

(B) My last address in the United States was _____. The internal revenue district in which I filed my last income tax return is _____.

(C) I _____ file my income tax return on the calendar-year basis.
(Do or do not)

(D) I file my income tax return on the basis of the fiscal year beginning _____, 19__, and ending _____, 19__.

(E) I am a citizen of the United States.

(F) Except for occasional absences which have not disqualified me for the benefit of section 911 (a) (2) of the Internal Revenue Code of 1954, I have been present in the following foreign country or countries, namely _____, during the period of time which began on _____, 19__.

(G) I expect to be present in a foreign country or countries, except for occasional absences not disqualifying me for the benefit of section 911 (a) (2), from the date of this statement until the end of the taxable year in respect of which this statement is executed, or, if not for such period, from the date of this statement until the following date within such taxable year, namely, _____, 19__.

(H) On the basis of the facts in my case I have good reason to believe that, with respect to the above period of presence in a foreign country or countries falling within the taxable year, I will satisfy the 510 full-day requirement prescribed by section 911 (a) (2).

(I) In the event I become disqualified for the exclusion provided by section 911 (a) (2) in respect of all or part of the above period of presence in a foreign country or countries falling within the taxable year, I will immediately notify my employer, giving sufficient facts to indicate the part, if any, of such period falling within such year in respect of which I am qualified for such exclusion.

(J) I understand that any exemption from withholding of tax permitted by reason of the furnishing of this statement is not a determination by the district director of internal revenue that any remuneration paid to me for any services performed during the taxable year is excludable from gross income under the provisions of section 911 (a) (2).

I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct.

_____
(Signature of taxpayer)

Date: _____, 19__.

(3) *Disposition of statements for claiming benefits of section 911.* The original of each statement furnished to the employer pursuant to subparagraph (1) (iii) or (2) (iii) of this paragraph shall be transmitted to the district director with the employer's return filed pursuant to the provisions of Subpart G of the regulations in this part for the tax-return period in which such statement is received by the employer. The duplicate copy of each such statement shall be retained by the employer.

(b) *Remuneration subject to withholding of income tax under law of a foreign country or a possession of the United States.* (1) Remuneration paid for services performed in a foreign country or in a possession of the United States for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if at the time of the payment of such remuneration the employer is required by the law of any foreign country or of any possession of the United States to withhold income tax upon such remuneration. This paragraph, insofar as it relates to remuneration paid for services performed in a possession of the United States, applies only with respect to remuneration paid on or after August 9, 1955.

(2) Remuneration is not exempt from withholding under this paragraph if the employer is not required by the law of a foreign country or of a possession of the United States to withhold income tax upon such remuneration. Mere agreements between the employer and the employee whereby the estimated income tax of a foreign country or of a possession of the United States is withheld from the remuneration in anticipation of actual liability under the law of such country or possession will not suffice.

(3) The exemption from withholding provided by this paragraph does not apply by reason of withholding of income tax pursuant to the law of a territory of the United States, of a political subdivision of a possession of the United States, or of a political subdivision of a foreign state.

(4) For provisions relating to remuneration for services performed by a permanent resident of the Virgin Islands, see paragraph (b) (12) of § 31.3401 (a)–1.

(c) *Limitation on application of section.* This section has no application to the remuneration paid to a citizen of the United States for services performed outside the United States as an employee of the United States or any agency thereof.

§ 31.3401(a)(8)(B) Statutory provisions; definitions; wages; remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(8) (B) For services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services; or

§ 31.3401(a)(8)(B)–1 Remuneration for services performed in possession of the United States (other than Puerto Rico) by citizen of the United States.

(a) Remuneration paid for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico) does not constitute wages and hence is not subject to withholding, if it is reasonable to believe that at least 80 percent of the remuneration to be paid to the employee by such employer during the calendar year will be for such services. The reasonable belief contemplated by section 3401 (a) (8) (B) may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that at least 80 percent of the remuneration paid by the employer to the employee during the calendar year was for services performed within such a possession of the United States.

(b) This section has no application to remuneration paid to a citizen of the United States for services performed in any possession of the United States as an

employee of the United States or any agency thereof.

(c) For provisions relating to remuneration for services performed by a permanent resident of the Virgin Islands, see paragraph (b) (12) of § 31.3401 (a)–1.

§ 31.3401(a)(8)(C) Statutory provisions; definitions; wages; remuneration for services performed in Puerto Rico by citizen of the United States.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(8) (C) For services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within Puerto Rico, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico; or

§ 31.3401(a)(8)(C)–1 Remuneration for services performed in Puerto Rico by citizen of the United States.

(a) Remuneration paid for services performed within Puerto Rico for an employer (other than the United States or any agency thereof) by a citizen of the United States does not constitute wages and hence is not subject to withholding, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of Puerto Rico. The reasonable belief contemplated by section 3401 (a) (8) (C) may be based upon any evidence reasonably sufficient to induce such belief, even though such evidence may be insufficient upon closer examination by the district director or the courts finally to establish that the employee was a bona fide resident of Puerto Rico for the entire calendar year.

(b) The employer may, in the absence of cause for a reasonable belief to the contrary, presume that an employee will be a bona fide resident of Puerto Rico during the entire calendar year—

(1) Unless the employee is known by the employer to have maintained his abode at a place outside Puerto Rico at some time during the current or the preceding calendar year; or

(2) In any case where the employee files with the employer a statement (containing a declaration under the penalties of perjury that such statement is true to the best of the employee's knowledge and belief) that such employee has at all times during the current calendar year been a bona fide resident of Puerto Rico and that he intends to remain a bona fide resident of Puerto Rico during the entire remaining portion of such current calendar year.

(c) This section has no application to remuneration paid to a citizen of the United States for services performed in Puerto Rico as an employee of the United States or any agency thereof.

§ 31.3401(a)(9) Statutory provisions; definitions; wages; remuneration for services performed by a minister of a church or a member of a religious order.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(9) For services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

§ 31.3401(a)(9)–1 Remuneration for services performed by a minister of a church or a member of a religious order.

(a) *In general.* Remuneration paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, or by a member of a religious order in the exercise of duties required by such order, is excepted from wages and hence is not subject to withholding.

(b) *Service by a minister in the exercise of his ministry.* Except as provided in paragraph (c) (3) of this section, service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations), under the authority of a religious body constituting a church or church denomination. The following rules are applicable in determining whether services performed by a minister are performed in the exercise of his ministry:

(1) Whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his church or church denomination.

(2) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization. Any religious organization is deemed to be under the authority of a religious body constituting a church or church denomination if it is organized and dedicated to carrying out the tenets and principles of a faith in accordance with either the requirements or sanctions governing the creation of institutions of the faith. The term "religious organization" has the same meaning and application as is given to the term for income tax purposes.

(3) (i) If a minister is performing service in the conduct of religious worship or the ministration of sacerdotal functions, such service is in the exercise of his ministry whether or not it is performed for a religious organization.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged to perform service as chaplain at N University. M devotes his entire time to performing his duties as chaplain which include the conduct of religious worship, offering spiritual counsel to the university students, and teaching a class in religion. M is performing service in the exercise of his ministry.

(4) (i) If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the ministration of sacerdotal functions, or in the control, conduct, and maintenance of such organization (see subparagraph (2) of this paragraph) is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by the N Religious Board to serve as director of one of its departments. He performs no other service. The N Religious Board is an integral agency of O, a religious organization operating under the authority of a religious body constituting a church denomination. M is performing service in the exercise of his ministry.

(5) (i) If a minister, pursuant to an assignment or designation by a religious body constituting his church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him, even though such service may not involve the conduct of religious worship or the ministration of sacerdotal functions, is in the exercise of his ministry.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is assigned by X, the religious body constituting his church, to perform advisory service to Y Company in connection with the publication of a book dealing with the history of M's church denomination. Y is neither a religious organization nor operated as an integral agency of a religious organization. M performs no other service for X or Y. M is performing service in the exercise of his ministry.

(c) *Service by a minister not in the exercise of his ministry.* (1) Section 3401 (a) (9) does not except from wages remuneration for service performed by a duly ordained, commissioned, or licensed minister of a church which is not in the exercise of his ministry.

(2) (i) If a minister is performing service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization and the service is not performed pursuant to an assignment or designation by his ecclesiastical superiors, then only the service performed by him in the conduct of religious worship or the ministration of sacerdotal functions is in the exercise of his ministry. See, however, subparagraph (3) of this paragraph.

(ii) The rule in subdivision (i) of this subparagraph may be illustrated by the following example:

Example. M, a duly ordained minister, is engaged by N University to teach history and mathematics. He performs no other service for N although from time to time he performs marriages and conducts funerals for relatives and friends. N University is neither a religious organization nor operated as an integral agency of a religious

organization. M is not performing the service for N pursuant to an assignment or designation by his ecclesiastical superiors. The service performed by M for N University is not in the exercise of his ministry. However, service performed by M in performing marriages and conducting funerals is in the exercise of his ministry.

(3) Service performed by a duly ordained, commissioned, or licensed minister of a church as an employee of the United States, or a State, Territory, or possession of the United States, or the District of Columbia, or a foreign government, or a political subdivision of any of the foregoing, is not considered to be in the exercise of his ministry for purposes of the collection of income tax at source on wages, even though such service may involve the ministration of sacerdotal functions or the conduct of religious worship. Thus, for example, service performed by an individual as a chaplain in the Armed Forces of the United States is considered to be performed by a commissioned officer in his capacity as such, and not by a minister in the exercise of his ministry. Similarly, service performed by an employee of a State as a chaplain in a State prison is considered to be performed by a civil servant of the State and not by a minister in the exercise of his ministry.

(d) *Service in the exercise of duties required by a religious order.* Service performed by a member of a religious order in the exercise of duties required by such order includes all duties required of the member by the order. The nature or extent of such service is immaterial so long as it is a service which he is directed or required to perform by his ecclesiastical superiors.

§ 31.3401(a)(10) Statutory provisions; definitions; wages; remuneration for services in the delivery or distribution of newspapers, shopping news, or magazines.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(10) (A) For services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(B) For services performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such services, or is entitled to be credited with the unsold newspapers or magazines turned back; or

§ 31.3401(a)(10)–1 Remuneration for services in delivery or distribution of newspapers, shopping news, or magazines.

(a) *Services of individuals under age 18.* Remuneration for services performed by an employee under the age of 18 in the delivery or distribution of newspapers, or shopping news, not including delivery or distribution (as, for example, by a regional distributor) to any point for subsequent delivery or distribution, is excepted from wages and hence is not subject to withholding. Thus, remuneration for services performed by an employee under the age of 18 in making house-to-house delivery or sale of newspapers or shopping news, including handbills and other similar types of advertising material, is excepted from wages. The remuneration is excepted irrespective of the form or method thereof. Remuneration for incidental services by the employee who makes the house-to-house delivery, such as services in assembling newspapers, is considered to be within the exception. The exception continues only during the time that the employee is under the age of 18.

(b) *Services of individuals of any age.* Remuneration for services performed by an employee in, and at the time of, the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his remuneration being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, is excepted from wages and hence is not subject to withholding. The remuneration is excepted whether or not the employee is guaranteed a minimum amount of remuneration, or is entitled to be credited with the unsold newspapers or magazines turned back. Moreover, the remuneration is excepted without regard to the age of the employee. Remuneration for services performed other than at the time of sale to the ultimate consumer is not within the exception. Thus, remuneration for services of a regional distributor which are antecedent to but not immediately part of the sale to the ultimate consumer is not within the exception. However, remuneration for incidental services by the employee who makes the sale to the ultimate consumer, such as services in assembling newspapers or in taking newspapers or magazines to the place of sale, is considered to be within the exception.

§ 31.3401(a)(11) Statutory provisions; definitions; wages; remuneration other than in cash for services not in the course of employer's trade or business.

SEC. 3401. *Definition*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(11) For services not in the course of the employer's trade or business, to the extent paid in any medium other than cash; or

§ 31.3401(a)(11)–1 Remuneration other than in cash for service not in the course of employer's trade or business.

(a) Remuneration paid in any medium other than cash for services not in the course of the employer's trade or business is excepted from wages and hence is not subject to withholding. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any medium other than cash, such as lodging, food, or other goods or commodities, for services not in the course of the employer's trade or business does not constitute wages. Remuneration paid in any medium other than cash for other types of services does not come within this exception from wages. For provisions relating to cash remuneration for service not in the course of employer's trade or business, see § 31.3401(a) (4)–1.

(b) As used in this section, the term "services not in the course of the employer's trade or business" has the same meaning as when used in § 31.3401 (a) (4)–1.

§ 31.3401(a)(12) Statutory provisions; definitions; wages; payments from or to certain tax-exempt trusts or under or to certain annuity plans.

SEC. 3401. *Definitions*—(a) *Wages.* For purposes of this chapter, the term "wages" means all remuneration • • • for services performed by an employee for his employer • • •; except that such term shall not include remuneration paid—

• • • • •

(12) To, or on behalf of, an employee or his beneficiary—

(A) From or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or

(B) Under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 (a) (3), (4), (5), and (6).

§ 31.3401(a)(12)–1 Payments from or to certain tax-exempt trusts or under or to certain annuity plans.

The term "wages" does not include—

(a) Any payment made by an employer, on behalf of an employee or his beneficiary, into a trust or annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6); or

(b) Any payment made to, or on behalf of, an employee or his beneficiary from a trust or under an annuity plan, if at the time of such payment the trust is exempt from tax under section 501 (a) as an organization described in section 401 (a) or the annuity plan meets the requirements of section 401 (a) (3), (4), (5), and (6).

A payment made to an employee of a trust described in section 401 (a) which is exempt from tax under section 501 (a) for services rendered as an employee of such trust and not as a beneficiary of the trust is not within this exception from wages.

§ 31.3401(b) Statutory provisions; definitions; payroll period.

SEC. 3401. *Definitions.* • • •

(b) *Payroll period.* For purposes of this chapter, the term "payroll period" means a period for which a payment of wages is ordinarily made to the employee by his employer, and the term "miscellaneous payroll

period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

§ 31.3401(b)–1 Payroll period.

(a) The term "payroll period" means the period of service for which a payment of wages is ordinarily made to an employee by his employer. It is immaterial that the wages are not always paid at regular intervals. For example, if an employer ordinarily pays a particular employee for each calendar week at the end of the week, but if for some reason the employee in a given week receives a payment in the middle of the week for the portion of the week already elapsed and receives the remainder at the end of the week, the payroll period is still the calendar week; or if, instead, that employee is sent on a 3-week trip by his employer and receives at the end of the trip a single wage payment for three weeks' services, the payroll period is still the calendar week, and the wage payment shall be treated as though it were three separate weekly wage payments.

(b) For the purpose of section 3402, an employee can have but one payroll period with respect to wages paid by any one employer. Thus, if an employee is paid a regular wage for a weekly payroll period and in addition thereto is paid supplemental wages (for example, bonuses) determined with respect to a different period, the payroll period is the weekly payroll period. For computation of tax on supplemental wage payments, see § 31.3402 (g)–1.

(c) The term "miscellaneous payroll period" means a payroll period other than a daily, weekly, biweekly, semimonthly, monthly, quarterly, semiannual, or annual payroll period.

§ 31.3401(c) Statutory provisions; definitions; employee.

SEC. 3401. *Definitions.* • • •

(c) *Employee.* For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

§ 31.3401(c)–1 Employee.

(a) The term "employee" includes every individual performing services if the relationship between him and the person for whom he performs such services is the legal relationship of employer and employee. The term includes officers and employees, whether elected or appointed, of the United States, a State, Territory, Puerto Rico, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing.

(b) Generally the relationship of employer and employee exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is not an employee.

(c) Generally, physicians, lawyers, dentists, veterinarians, contractors, subcontractors, public stenographers, auctioneers, and others who follow an independent trade, business, or profession, in which they offer their services to the public, are not employees.

(d) Whether the relationship of employer and employee exists will in doubtful cases be determined upon an examination of the particular facts of each case.

(e) If the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, coadventurer, agent, independent contractor, or the like.

(f) All classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to receive, directly or indirectly, any remuneration is not considered to be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.

(g) Although an individual may be an employee under this section, his services may be of such a nature, or performed under such circumstances, that the remuneration paid for such services does not constitute wages within the meaning of section 3401 (a).

§ 31.3401(d) Statutory provisions; definitions; employer.

SEC. 3401. *Definitions.* • • •

(d) *Employer.* For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that—

(1) If the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) In the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person.

§ 31.3401(d)–1 Employer.

(a) The term "employer" means any person for whom an individual performs or performed any service, of whatever nature, as the employee of such person.

(b) It is not necessary that the services be continuing at the time the wages are paid in order that the status of employer exist. Thus, for purposes of withholding, a person for whom an individual has performed past services for which he is still receiving wages from such person is an "employer."

(c) An employer may be an individual, a corporation, a partnership, a trust, an estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization, group or entity. A trust or estate, rather than the fiduciary acting for or on behalf of the trust or estate, is generally the employer.

(d) The term "employer" embraces not only individuals and organizations engaged in trade or business, but organizations exempt from income tax, such as religious and charitable organizations, educational institutions, clubs, social organizations and societies, as well as the governments of the United States, the States, Territories, Puerto Rico, and the District of Columbia, including their agencies, instrumentalities, and political subdivisions.

(e) The term "employer" also means (except for the purpose of the definition of "wages") any person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States (including Puerto Rico as if a part of the United States).

(f) If the person for whom the services are or were performed does not have legal control of the payment of the wages for such services, the term "employer" means (except for the purpose of the definition of "wages") the person having such control. For example, where wages, such as certain types of pensions or retired pay, are paid by a trust and the person for whom the services were performed has no legal control over the payment of such wages, the trust is the "employer."

(g) It is a basic purpose to centralize in the employer the responsibility for withholding, returning, and paying the tax, and for furnishing the statements required under section 6051 and § 31.6051–1. The two special definitions of the term "employer" in paragraphs (e) and (f) of this section are designed solely to meet unusual situations. They are not intended as a departure from the basic purpose.

§ 31.3401(e) Statutory provisions; definitions; number of withholding exemptions claimed.

SEC. 3401. *Definitions.* • • •

(e) *Number of withholding exemptions claimed.* For purposes of this chapter, the term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402 (f), or in effect under the corresponding section of prior law, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero.

§ 31.3401(e)–1 Number of withholding exemptions claimed.

(a) The term "number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under section 3402 (f) of the Internal Revenue Code of 1954 or in effect under section 1622(h) of the Internal Revenue Code of 1939. If no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero. The number of withholding exemptions claimed must be taken into account in determining the amount of tax to be deducted and withheld under section 3402, whether the employer computes the tax in accordance with the provisions of subsection (a) or subsection (c) of section 3402.

(b) The employer is not required to ascertain whether or not the number of withholding exemptions claimed is greater than the number of withholding exemptions to which the employee is entitled. If, however, the employer has reason to believe that the number of withholding exemptions claimed by an employee is greater than the number to which such employee is entitled, the district director should be so advised.

(c) As to the number of withholding exemptions to which an employee is entitled, see § 31.3402 (f) (1)–1.

§ 31.3402(a) Statutory provisions: income tax collected at source; requirement of withholding.

SEC. 3402. *Income tax collected at source—*

(a) *Requirement of withholding.* Every employer making payment of wages shall deduct and withhold upon such wages (except as provided in subsection (j)) a tax equal to 18 percent of the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in subsection (b) (1).

[Sec. 3402(a) as amended by sec. 2(a), Act of Aug. 9, 1955 (Pub. Law 306, 84th Cong., 69 Stat. 605)]

§ 31.3402(a)–1 Requirement of withholding.

(a) Section 3402 provides alternative methods, at the election of the employer, for use in computing the income tax to be collected at source on wages. Under the percentage method of withholding (see § 31.3402 (b)–1), the employer is required to deduct and withhold a tax computed in accordance with the provisions of section 3402 (a). Under the wage bracket method of withholding (see § 31.3402 (c)–1), the employer is required to deduct and withhold a tax determined in accordance with the tables provided in section 3402 (c). The employer may elect to use the percentage method in the case of one group of employees and the wage bracket method in the case of another group of employees.

(b) The employer is required to collect the tax by deducting and withholding the amount thereof from the employee's wages as and when paid, either actually or constructively. Wages are constructively paid when they are credited to the account of or set apart for an employee so that they may be drawn upon by him at any time although not then actually reduced to possession. To constitute payment in such a case, the wages must be credited to or set apart for the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to him so that they may be drawn upon at any time, and their payment brought within his own control and disposition.

(c) Except as provided in section 3402 (j) (see § 31.3402 (j)–1, relating to noncash remuneration paid to retail commission salesmen), an employer is required to deduct and withhold the tax notwithstanding the wages are paid in something other than money (for example, wages paid in stocks or bonds; see § 31.3401 (a)–1) and to pay over the tax in money. If wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment in money.

(d) For provisions relating to the circumstances under which tax is not required to be deducted and withheld from certain wage payments, see paragraph (b) (8) of § 31.3401 (a)–1 relating to amounts paid under wage continuation plans.

(e) As a matter of business administration, certain of the mechanical details of the withholding process may be handled by representatives of the employer. Thus, in the case of an employer having branch offices, the branch manager or other representative may actually, as a matter of internal administration, withhold the tax or prepare the statements required under section 6051. Nevertheless, the legal responsibility for withholding, paying, and returning the tax and furnishing such statements rests with the employer. For provisions relating to statements under section 6051, see § 31.6051–1.

(f) The amount of any tax withheld and collected by the employer is a special fund in trust for the United States. See section 7501.

§ 31.3402(b) Statutory provisions; income tax collected at source; percentage method of withholding.

SEC. 3402. *Income tax collected at source.* • • • (b) *Percentage method of withholding.* (1) The table referred to in subsection (a) is as follows:

PERCENTAGE METHOD WITHHOLDING TABLE

Payroll period:	Amount of one withholding exemption
Weekly	$13.00
Biweekly	26.00
Semimonthly	28.00
Monthly	56.00
Quarterly	167.00
Semiannual	333.00
Annual	667.00
Daily or miscellaneous (per day of such period)	1.80

(2) If wages are paid with respect to a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowed for a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary or his delegate, under regulations prescribed by him, may authorize an employer, in computing the tax required to be deducted and withheld, to use the excess of the aggregate of the wages paid to the employee during the calendar week over the withholding exemption allowed by this subsection for a weekly payroll period.

(5) In determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

§ 31.3402(b)–1 Percentage method of withholding.

(a) *In general.* (1) The percentage method of computing the amount of tax to be withheld makes use of the percentage method withholding table contained in section 3402(b)(1). This table shows with respect to each of the designated payroll periods the amount allowable for one withholding exemption. The amount of the withholding exemption allowable with respect to a particular payroll period depends upon the number of withholding exemptions claimed. The term "payroll period" is defined in section 3401 (b) (see § 31.3401 (b)–1). The term "number of withholding exemptions claimed" is defined in section 3401 (e) (see § 31.3401 (e)–1).

(2) The steps in computing the tax under the percentage method of withholding are summarized as follows:

Step 1. Determine the amount of one withholding exemption for the particular payroll period from the percentage method withholding table.

Step 2. Multiply the amount determined in Step 1 by the number of exemptions claimed by the employee.

Step 3. Subtract the amount determined in Step 2 from the employee's wages.

Step 4. Multiply the difference by the applicable percentage figure under section 3402 (a) (see § 31.3402 (a)).

The result is the amount of tax to be withheld.

Example. During a period in which the rate under the percentage method of withholding is 18 percent, an employee has a weekly payroll period, for which he is paid $75, and has in effect a withholding exemption certificate claiming three withholding

exemptions. His employer, using the percentage method, computes the tax to be withheld as follows:

Step 1:	
Amount of one withholding exemption	$13.00
Step 2:	
Multiplied by number of exemptions claimed on Form W-4	×3
Total withholding exemption	39.00
Step 3:	
Total wage payment	$75.00
Less amount determined in Step 2	39.00
Balance subject to tax	36.00
Step 4:	
Tax to be withheld (balance multiplied by 0.18)	6.48

(3) For provisions relating to the treatment of wages paid under wage continuation plans and wages paid other than in cash to retail commission salesmen, see paragraph (b) (8) of § 31.3401 (a)–1 and § 31.3402 (j)–1, respectively.

(b) *Established payroll periods, other than daily or miscellaneous, as shown in percentage method withholding table.* The amount of one withholding exemption, allowable with respect to each of the established payroll periods contained in the percentage method withholding table, is determined by reference to the line applicable to such payroll period and without reference to the time the employee is actually engaged in the performance of services during such payroll period.

Example (1). During 1955 employee C has a semimonthly payroll period. The number of withholding exemptions claimed by C is two. C's wages are determined at the rate of $1.20 per hour. During a certain payroll period he works only 40 hours and earns $48. Although C worked only 40 hours during the semimonthly payroll period, the applicable withholding exemption is $26, and the amount of two withholding exemptions, or $56, is allowable. Since the amount of the wages paid for the semimonthly payroll period is less than the amount allowed for two withholding exemptions for such period, the employer is not required to withhold any tax.

Example (2). During 1955 employee D has a weekly payroll period. The number of withholding exemptions claimed by D is two. D's wages are determined at the rate of $1.20 per hour. During a certain payroll period D works 30 hours and earns $36. Although D worked only 30 hours during the weekly payroll period, the applicable withholding exemption is $13, and the amount of two withholding exemptions, or $26, is allowable. The balance of $10 is subject to withholding.

(c) *Periods to which the daily or miscellaneous withholding exemption is applicable*—(1) *In general.* The percentage method withholding table shows for a daily or miscellaneous payroll period the amount of one withholding exemption allowable with respect to one day. For the purpose of determining the amount of tax to be withheld with respect to wages paid for a particular miscellaneous payroll period (see paragraph (c) of § 31.3401 (b)–1), the amount of one withholding exemption shown in the table for one day of such period and the wages paid for the period must be placed on a comparable basis. The amount of tax to be withheld may be determined by either of the following methods:

(i) Under the first method the following steps are taken:

Step 1. Multiply the amount shown in the percentage method withholding table as applicable per day of a miscellaneous payroll period by the number of days (including Sundays and holidays) in such period.

Step 2. Multiply the amount determined in Step 1 by the number of withholding exemptions claimed by the employee.

Step 3. Subtract the amount determined in Step 2 from the employee's wages.

Step 4. Multiply the difference by the applicable percentage figure under section 3402 (a) (see § 31.3402 (a)).

(ii) Under the second method the following steps are taken:

Step 1. Divide the wages paid to the employee for the period by the number of days (including Sundays and holidays) in the period.

Step 2. Multiply the amount shown in the percentage method withholding table as applicable per day of a miscellaneous payroll period by the number of withholding exemptions claimed by the employee.

Step 3. Subtract the amount determined in Step 2 from the amount determined in Step 1.

Step 4. Multiply the difference by the applicable percentage figure under section 3402 (a) (see § 31.3402 (a)).

Step 5. Multiply the amount determined in Step 4 by the number of days (including Sundays and holidays) in the period.

(2) *Period not a payroll period.* If wages are paid for a period which is not a payroll period, the withholding exemption allowable with respect to each payment of such wages shall be the exemption allowable for a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) in the period with respect to which such wages are paid.

Example. During 1955 an individual is hired by a contractor to perform services in connection with a building project. The number of withholding exemptions claimed by such individual is two. Wages are fixed at the rate of $9 per day, to be paid upon completion of the project. The project is completed during 1955 in 12 consecutive days, at the end of which period the individual is paid wages of $90 for 10 days' services performed during the period. For the purpose of computing the tax the amount of the withholding exemption allowable for the 12-day period is $43.20 (12×(2×$1.80)). Tax is required to be withheld with respect to $46.80 ($90 minus $43.20).

(3) *Wages paid without regard to any period.* In the case of wages paid to an employee without regard to any particular period, as, for example, commissions paid to a salesman upon completion of a sale, the withholding exemption is measured by the number of days (including Sundays and holidays) which have elapsed, beginning with the latest of the following days:

(i) The first day after the last payment of wages to such employee by such employer in the calendar year, or

(ii) The date on which such individual's employment with such employer began in the calendar year, or

(iii) January 1 of such calendar year, and ending with (and including) the date on which such wages are paid.

Example. On April 2, 1955, A is employed by the X Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1955, A receives a commission of $300. Again, on June 16, 1955, A receives a commission of $400. The amount of the withholding exemption with respect to the commission paid on May 21 is $90 ($1.80×50). With respect to the commission paid on June 16, the amount of the withholding exemption is $46.80 ($1.80×26).

(d) *Period or elapsed time less than one week.* (1) It is the general rule that if wages are paid for a payroll period or other period of less than one week, the withholding exemption allowable shall be the exemption allowable for a daily payroll period, or a miscellaneous payroll period containing the same number of days (including Sundays and holidays) as the payroll period or other period for which such wages are paid. The same rule is applicable in the case of wages paid without regard to a payroll period or other period, where the elapsed time as determined in accordance with the rule prescribed in paragraph (c) of this section is less than 1 week.

Example (1). During 1955 an employee having a daily payroll period is paid wages of $12 per day. The number of withholding exemptions claimed by such employee is one. The amount of each such daily wage payment subject to withholding is $10.20 ($12.00–$1.80).

Example (2). During 1955 an employee works for a certain employer on four consecutive days, for which he is paid wages of $36. The number of withholding exemptions claimed by the employee is two. The amount of the withholding exemption allowable is $14.40 (4×$3.60).

(2) Under certain conditions, if the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, at his election, compute the tax to be withheld as if the aggregate of the wages paid to the employee during the calendar week were paid for a weekly payroll period. Such election may be made by the employer only if he is the only employer for whom the employee works for wages during the calendar week. Any employer electing to compute the tax upon the excess of the wages paid during the calendar week over the weekly exemption must secure a statement in writing from the employee, stating that he works for wages for such employer only, and that if he should thereafter secure additional employment for wages, he will within 10 days after the beginning of such additional employment, notify such employer of that fact. Such statement shall be signed by the employee and shall contain or be verified by a written declaration that it is made under the penalties of perjury. No particular form is prescribed for the statement.

Example. During 1955 an employee works for a certain employer on four consecutive days, for which he is paid wages of $36. The number of withholding exemptions claimed by the employee is two. The employer elects to use the weekly withholding exemption after securing the proper statement from the employee. In such case, the amount of the withholding exemption allowable is $26 (2×$13).

(3) If such employee secures additional employment for wages, the daily or miscellaneous exemption will take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the thirtieth day following the date on which such employee notifies such employer that he has secured additional employment for wages. After the daily or miscellaneous exemption takes effect the employer may not thereafter use the weekly exemption in computing the amount of tax to be withheld from the wages of such employee.

(4) As used in this paragraph the term "calendar week" means a period of 7 consecutive days beginning with Sunday and ending with Saturday.

(e) ***Rounding off of wage payment.*** In determining the amount to be deducted and withheld under the percentage method, the last digit of the wage amount may, at the election of the employer, be reduced to zero, or the wage amount may, at the election of the employer, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1.00. Thus, if the weekly wage is $45.37, the employer may, in determining the amount of tax to be deducted and withheld, determine the tax on the basis of a wage payment of $45.30 or on the basis of a wage payment of $45. If the weekly wage is $45.50, the employer may determine the tax to be deducted and withheld on the basis of a wage payment of $46.

§ 31.3402(c) Statutory provisions; income tax collected at source; wage bracket withholding.

SEC. 3402. *Income tax collected at source.* • • • (c) *Wage bracket withholding.* (1) At the election of the employer with respect to any employee, the employer shall deduct and withhold upon the wages paid to such employee a tax determined in accordance with the following tables, which shall be in lieu of the tax required to be deducted and withheld under subsection (a):

If the payroll period with respect to an employee is weekly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$13	18% of excess	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$13	$14	$2.40	.10	0	0	0	0	0	0	0	0	0
$14	$15	2.60	.30	0	0	0	0	0	0	0	0	0
$15	$16	2.80	.50	0	0	0	0	0	0	0	0	0
$16	$17	3.00	.70	0	0	0	0	0	0	0	0	0
$17	$18	3.20	.80	0	0	0	0	0	0	0	0	0
$18	$19	3.30	1.00	0	0	0	0	0	0	0	0	0
$19	$20	3.50	1.20	0	0	0	0	0	0	0	0	0
$20	$21	3.70	1.40	0	0	0	0	0	0	0	0	0
$21	$22	3.90	1.60	0	0	0	0	0	0	0	0	0
$22	$23	4.10	1.70	0	0	0	0	0	0	0	0	0
$23	$24	4.20	1.90	0	0	0	0	0	0	0	0	0
$24	$25	4.40	2.10	0	0	0	0	0	0	0	0	0
$25	$26	4.60	2.30	0	0	0	0	0	0	0	0	0
$26	$27	4.80	2.50	.20	0	0	0	0	0	0	0	0
$27	$28	5.00	2.60	.30	0	0	0	0	0	0	0	0
$28	$29	5.10	2.80	.50	0	0	0	0	0	0	0	0
$29	$30	5.30	3.00	.70	0	0	0	0	0	0	0	0
$30	$31	5.50	3.20	.90	0	0	0	0	0	0	0	0
$31	$32	$5.70	$3.40	$1.10	$0	$0	$0	$0	$0	$0	$0	$0
$32	$33	5.90	3.50	1.20	0	0	0	0	0	0	0	0
$33	$34	6.00	3.70	1.40	0	0	0	0	0	0	0	0
$34	$35	6.20	3.90	1.60	0	0	0	0	0	0	0	0
$35	$36	6.40	4.10	1.80	0	0	0	0	0	0	0	0
$36	$37	6.60	4.30	2.00	0	0	0	0	0	0	0	0
$37	$38	6.80	4.40	2.10	0	0	0	0	0	0	0	0
$38	$39	6.90	4.60	2.30	0	0	0	0	0	0	0	0
$39	$40	7.10	4.80	2.50	.20	0	0	0	0	0	0	0
$40	$41	7.30	5.00	2.70	.40	0	0	0	0	0	0	0
$41	$42	7.50	5.20	2.90	.50	0	0	0	0	0	0	0
$42	$43	7.70	5.30	3.00	.70	0	0	0	0	0	0	0
$43	$44	7.80	5.50	3.20	.90	0	0	0	0	0	0	0
$44	$45	8.00	5.70	3.40	1.10	0	0	0	0	0	0	0
$45	$46	8.20	5.90	3.60	1.30	0	0	0	0	0	0	0
$46	$47	8.40	6.10	3.80	1.40	0	0	0	0	0	0	0
$47	$48	8.60	6.20	3.90	1.60	0	0	0	0	0	0	0
$48	$49	8.70	6.40	4.10	1.80	0	0	0	0	0	0	0
$49	$50	8.90	6.60	4.30	2.00	0	0	0	0	0	0	0
$50	$51	9.10	6.80	4.50	2.20	0	0	0	0	0	0	0
$51	$52	9.30	7.00	4.70	2.30	0	0	0	0	0	0	0
$52	$53	9.50	7.10	4.80	2.50	.20	0	0	0	0	0	0
$53	$54	9.60	7.30	5.00	2.70	.40	0	0	0	0	0	0
$54	$55	9.80	7.50	5.20	2.90	.60	0	0	0	0	0	0
$55	$56	10.00	7.70	5.40	3.10	.80	0	0	0	0	0	0
$56	$57	10.20	7.90	5.60	3.20	.90	0	0	0	0	0	0
$57	$58	10.40	8.00	5.70	3.40	1.10	0	0	0	0	0	0
$58	$59	10.50	8.20	5.90	3.60	1.30	0	0	0	0	0	0
$59	$60	10.70	8.40	6.10	3.80	1.50	0	0	0	0	0	0
$60	$62	11.00	8.70	6.40	4.10	1.70	0	0	0	0	0	0
$62	$64	11.30	9.00	6.70	4.40	2.10	0	0	0	0	0	0
$64	$66	11.70	9.40	7.10	4.80	2.50	.20	0	0	0	0	0
$66	$68	12.10	9.80	7.40	5.10	2.80	.50	0	0	0	0	0
$68	$70	12.40	10.10	7.80	5.50	3.20	.90	0	0	0	0	0
$70	$72	12.80	10.50	8.20	5.90	3.50	1.20	0	0	0	0	0
$72	$74	13.10	10.80	8.50	6.20	3.90	1.60	0	0	0	0	0
$74	$76	13.50	11.20	8.90	6.60	4.30	2.00	0	0	0	0	0
$76	$78	13.90	11.60	9.20	6.90	4.60	2.30	0	0	0	0	0
$78	$80	14.20	11.90	9.60	7.30	5.00	2.70	.40	0	0	0	0
$80	$82	14.60	12.30	10.00	7.70	5.30	3.00	.70	0	0	0	0
$82	$84	14.90	12.60	10.30	8.00	5.70	3.40	1.10	0	0	0	0
$84	$86	15.30	13.00	10.70	8.40	6.10	3.80	1.50	0	0	0	0
$86	$88	15.70	13.40	11.00	8.70	6.40	4.10	1.80	0	0	0	0
$88	$90	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0	0	0	0
$90	$92	16.40	14.10	11.80	9.50	7.10	4.80	2.50	.20	0	0	0
$92	$94	16.70	14.40	12.10	9.80	7.50	5.20	2.90	.60	0	0	0
$94	$96	17.10	14.80	12.50	10.20	7.90	5.60	3.30	.90	0	0	0
$96	$98	17.50	15.20	12.80	10.50	8.20	5.90	3.60	1.30	0	0	0
$98	$100	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70	0	0	0
$100	$105	18.50	16.10	13.80	11.50	9.20	6.90	4.60	2.30	0	0	0
$105	$110	19.40	17.00	14.70	12.40	10.10	7.80	5.50	3.20	.90	0	0
$110	$115	20.30	17.90	15.60	13.30	11.00	8.70	6.40	4.10	1.80	0	0
$115	$120	21.20	18.80	16.50	14.20	11.90	9.60	7.30	5.00	2.70	.40	0
$120	$125	22.10	19.70	17.40	15.10	12.80	10.50	8.20	5.90	3.60	1.30	0
$125	$130	23.00	20.60	18.30	16.00	13.70	11.40	9.10	6.80	4.50	2.20	0
$130	$135	23.90	21.50	19.20	16.90	14.60	12.30	10.00	7.70	5.40	3.10	.80
$135	$140	24.80	22.40	20.10	17.80	15.50	13.20	10.90	8.60	6.30	4.00	1.70
$140	$145	25.70	23.30	21.00	18.70	16.40	14.10	11.80	9.50	7.20	4.90	2.60
$145	$150	26.60	24.20	21.90	19.60	17.30	15.00	12.70	10.40	8.10	5.80	3.50
$150	$160	27.90	25.60	23.30	21.00	18.70	16.40	14.10	11.70	9.40	7.10	4.80
$160	$170	29.70	27.40	25.10	22.80	20.50	18.20	15.90	13.50	11.20	8.90	6.60
$170	$180	31.50	29.20	26.90	24.60	22.80	20.00	17.70	15.30	13.00	10.70	8.40
$180	$190	33.30	31.00	28.70	26.40	24.10	21.80	19.50	17.10	14.80	12.50	10.20
$190	$200	35.10	32.80	30.50	28.20	25.90	23.60	21.30	18.90	16.60	14.30	12.00
		18 percent of the excess over $200 plus—										
$200 and over		36.00	33.70	31.40	29.10	26.80	24.50	22.20	19.80	17.50	15.20	12.90

If the payroll period with respect to an employee is biweekly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$26	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$26	$28	$4.90	.20	0	0	0	0	0	0	0	0	0
$28	$30	5.20	.60	0	0	0	0	0	0	0	0	0
$30	$32	5.60	1.00	0	0	0	0	0	0	0	0	0
$32	$34	5.90	1.30	0	0	0	0	0	0	0	0	0
$34	$36	6.30	1.70	0	0	0	0	0	0	0	0	0
$36	$38	6.70	2.00	0	0	0	0	0	0	0	0	0
$38	$40	7.00	2.40	0	0	0	0	0	0	0	0	0
$40	$42	7.40	2.80	0	0	0	0	0	0	0	0	0
$42	$44	7.70	3.10	0	0	0	0	0	0	0	0	0
$44	$46	8.10	3.50	0	0	0	0	0	0	0	0	0
$46	$48	8.50	3.80	0	0	0	0	0	0	0	0	0
$48	$50	8.80	4.20	0	0	0	0	0	0	0	0	0
$50	$52	9.20	4.60	0	0	0	0	0	0	0	0	0
$52	$54	9.50	4.90	.30	0	0	0	0	0	0	0	0
$54	$56	9.90	5.30	.70	0	0	0	0	0	0	0	0
$56	$58	10.30	5.60	1.00	0	0	0	0	0	0	0	0
$58	$60	10.60	6.00	1.40	0	0	0	0	0	0	0	0
$60	$62	11.00	6.40	1.70	0	0	0	0	0	0	0	0
$62	$64	11.30	6.70	2.10	0	0	0	0	0	0	0	0
$64	$66	11.70	7.10	2.50	0	0	0	0	0	0	0	0
$66	$68	12.10	7.40	2.80	0	0	0	0	0	0	0	0
$68	$70	12.40	7.80	3.20	0	0	0	0	0	0	0	0
$70	$72	12.80	8.20	3.50	0	0	0	0	0	0	0	0
$72	$74	13.10	8.50	3.90	0	0	0	0	0	0	0	0
$74	$76	13.50	8.90	4.30	0	0	0	0	0	0	0	0
$76	$78	13.90	9.20	4.60	0	0	0	0	0	0	0	0
$78	$80	14.20	9.60	5.00	.40	0	0	0	0	0	0	0
$80	$82	14.60	10.00	5.30	.70	0	0	0	0	0	0	0
$82	$84	14.90	10.30	5.70	1.10	0	0	0	0	0	0	0
$84	$86	15.30	10.70	6.10	1.50	0	0	0	0	0	0	0
$86	$88	15.70	11.00	6.40	1.80	0	0	0	0	0	0	0
$88	$90	16.00	11.40	6.80	2.20	0	0	0	0	0	0	0
$90	$92	16.40	11.80	7.10	2.50	0	0	0	0	0	0	0
$92	$94	16.70	12.10	7.50	2.90	0	0	0	0	0	0	0
$94	$96	17.10	12.50	7.90	3.30	0	0	0	0	0	0	0
$96	$98	17.50	12.80	8.20	3.60	0	0	0	0	0	0	0
$98	$100	17.80	13.20	8.60	4.00	0	0	0	0	0	0	0
$100	$102	18.20	13.60	8.90	4.30	0	0	0	0	0	0	0
$102	$104	18.50	13.90	9.30	4.70	.10	0	0	0	0	0	0
$104	$106	18.90	14.30	9.70	5.10	.40	0	0	0	0	0	0
$106	$108	19.30	14.60	10.00	5.40	.80	0	0	0	0	0	0
$108	$110	19.60	15.00	10.40	5.80	1.20	0	0	0	0	0	0
$110	$112	20.00	15.40	10.70	6.10	1.50	0	0	0	0	0	0
$112	$114	20.30	15.70	11.10	6.50	1.90	0	0	0	0	0	0
$114	$116	20.70	16.10	11.50	6.90	2.20	0	0	0	0	0	0
$116	$118	21.10	16.40	11.80	7.20	2.60	0	0	0	0	0	0
$118	$120	21.40	16.80	12.20	7.60	3.00	0	0	0	0	0	0
$120	$124	22.00	17.30	12.70	8.10	3.50	0	0	0	0	0	0
$124	$128	22.70	18.10	13.40	8.80	4.20	0	0	0	0	0	0
$128	$132	23.40	18.80	14.20	9.60	4.90	.30	0	0	0	0	0
$132	$136	24.10	19.50	14.90	10.20	5.70	1.00	0	0	0	0	0
$136	$140	24.80	20.20	15.60	11.00	6.40	1.80	0	0	0	0	0
$140	$144	25.60	20.90	16.30	11.70	7.10	2.50	0	0	0	0	0
$144	$148	26.30	21.70	17.00	12.40	7.80	3.20	0	0	0	0	0
$148	$152	27.00	22.40	17.80	13.20	8.50	3.90	0	0	0	0	0
$152	$156	27.70	23.10	18.50	13.90	9.30	4.60	0	0	0	0	0
$156	$160	28.40	23.80	19.20	14.60	10.00	5.40	.70	0	0	0	0
$160	$164	29.20	24.50	19.90	15.30	10.70	6.10	1.50	0	0	0	0
$164	$168	29.90	25.30	20.60	16.00	11.40	6.80	2.20	0	0	0	0
$168	$172	30.60	26.00	21.40	16.80	12.10	7.50	2.90	0	0	0	0
$172	$176	31.30	26.70	22.10	17.50	12.90	8.20	3.60	0	0	0	0
$176	$180	32.00	27.40	22.80	18.20	13.60	9.00	4.30	0	0	0	0
$180	$184	32.80	28.10	23.50	18.90	14.30	9.70	5.10	.50	0	0	0
$184	$188	33.50	28.90	24.20	19.60	15.00	10.40	5.80	1.20	0	0	0
$188	$192	34.20	29.60	25.00	20.40	15.70	11.10	6.50	1.90	0	0	0
$192	$196	34.90	30.30	25.70	21.10	16.50	11.80	7.20	2.60	0	0	0
$196	$200	35.60	31.00	26.40	21.80	17.20	12.60	7.90	3.30	0	0	0
$200	$210	36.90	32.30	27.70	22.10	18.40	13.80	9.20	4.60	0	0	0
$210	$220	38.70	34.10	29.50	24.90	20.20	15.60	11.00	6.40	1.80	0	0
$220	$230	40.50	35.90	31.30	26.70	22.00	17.40	12.80	8.20	3.60	0	0
$230	$240	42.30	37.70	33.10	28.50	23.80	19.20	14.60	10.00	5.40	.80	0
$240	$250	44.10	39.50	34.90	30.30	25.60	21.00	16.40	11.80	7.20	2.60	0
$250	$260	45.90	41.30	36.70	32.10	27.40	22.80	18.20	13.60	9.00	4.40	0
$260	$270	47.70	43.10	38.80	33.90	29.20	24.60	20.00	15.40	10.80	6.20	1.60
$270	$280	$49.50	$44.90	$40.80	$35.70	$31.00	$26.40	$21.80	$17.20	$12.60	$8.00	$3.30
$280	$290	51.30	46.70	42.10	37.50	32.80	28.20	23.60	19.00	14.40	9.80	5.10
$290	$300	53.10	48.50	43.90	39.30	34.60	30.00	25.40	20.80	16.20	11.60	6.90
$300	$320	55.80	51.20	46.60	42.00	37.30	32.70	28.10	23.50	18.90	14.30	9.60
$320	$340	59.40	54.80	50.20	45.60	40.90	36.30	31.70	27.10	22.50	17.90	13.30
$340	$360	63.00	58.40	53.80	49.20	44.50	39.90	35.30	30.70	26.10	21.50	16.90
$360	$380	66.60	62.00	57.40	52.80	48.10	43.50	38.90	34.30	29.70	25.10	20.40
$380	$400	70.20	65.60	61.00	56.40	51.70	47.10	42.50	37.90	33.30	28.70	24.00
		15 percent of the excess over $400 plus—										
$400 and over		72.00	67.40	62.80	58.20	53.50	48.90	44.30	39.70	35.10	30.50	25.90

If the payroll period with respect to an employee is semimonthly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$28	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$28	$30	$5.20	.20	0	0	0	0	0	0	0	0	0
$30	$32	5.60	.60	0	0	0	0	0	0	0	0	0
$32	$34	5.90	.90	0	0	0	0	0	0	0	0	0
$34	$36	6.30	1.30	0	0	0	0	0	0	0	0	0
$36	$38	6.70	1.70	0	0	0	0	0	0	0	0	0
$38	$40	7.00	2.00	0	0	0	0	0	0	0	0	0
$40	$42	7.40	2.40	0	0	0	0	0	0	0	0	0
$42	$44	7.70	2.70	0	0	0	0	0	0	0	0	0
$44	$46	8.10	3.10	0	0	0	0	0	0	0	0	0
$46	$48	8.50	3.50	0	0	0	0	0	0	0	0	0
$48	$50	8.80	3.80	0	0	0	0	0	0	0	0	0
$50	$52	9.20	4.20	0	0	0	0	0	0	0	0	0
$52	$54	9.50	4.50	0	0	0	0	0	0	0	0	0
$54	$56	9.90	4.90	0	0	0	0	0	0	0	0	0
$56	$58	10.30	5.30	.30	0	0	0	0	0	0	0	0
$58	$60	10.60	5.60	.60	0	0	0	0	0	0	0	0
$60	$62	11.00	6.00	1.00	0	0	0	0	0	0	0	0
$62	$64	11.30	6.30	1.30	0	0	0	0	0	0	0	0
$64	$66	11.70	6.70	1.70	0	0	0	0	0	0	0	0
$66	$68	12.10	7.10	2.10	0	0	0	0	0	0	0	0
$68	$70	12.40	7.40	2.40	0	0	0	0	0	0	0	0
$70	$72	12.80	7.80	2.80	0	0	0	0	0	0	0	0
$72	$74	13.10	8.10	3.10	0	0	0	0	0	0	0	0
$74	$76	13.50	8.50	3.50	0	0	0	0	0	0	0	0
$76	$78	13.90	8.90	3.90	0	0	0	0	0	0	0	0
$78	$80	14.20	9.20	4.20	0	0	0	0	0	0	0	0
$80	$82	14.60	9.60	4.60	0	0	0	0	0	0	0	0
$82	$84	14.90	9.90	4.90	0	0	0	0	0	0	0	0
$84	$86	15.30	10.30	5.30	.30	0	0	0	0	0	0	0
$86	$88	15.70	10.70	5.70	.70	0	0	0	0	0	0	0
$88	$90	16.00	11.00	6.00	1.00	0	0	0	0	0	0	0
$90	$92	16.40	11.40	6.40	1.40	0	0	0	0	0	0	0
$92	$94	16.70	11.70	6.70	1.70	0	0	0	0	0	0	0
$94	$96	17.10	12.10	7.10	2.10	0	0	0	0	0	0	0
$96	$98	17.50	12.50	7.50	2.50	0	0	0	0	0	0	0
$98	$100	17.80	12.80	7.80	2.80	0	0	0	0	0	0	0
$100	$102	18.20	13.20	8.20	3.20	0	0	0	0	0	0	0
$102	$104	18.50	13.50	8.50	3.50	0	0	0	0	0	0	0
$104	$106	18.90	13.90	8.90	3.90	0	0	0	0	0	0	0
$106	$108	19.30	14.30	9.30	4.30	0	0	0	0	0	0	0
$108	$110	19.60	14.60	9.60	4.60	0	0	0	0	0	0	0
$110	$112	20.00	15.00	10.00	5.00	0	0	0	0	0	0	0
$112	$114	20.30	15.30	10.30	5.30	.30	0	0	0	0	0	0
$114	$116	20.70	15.70	10.70	5.70	.70	0	0	0	0	0	0
$116	$118	21.10	16.10	11.10	6.10	1.10	0	0	0	0	0	0
$118	$120	21.40	16.40	11.40	6.40	1.40	0	0	0	0	0	0
$120	$124	22.00	17.00	12.00	7.00	2.00	0	0	0	0	0	0

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$120	$124	$22.00	$12.00	$2.00	$0	$0	$0	$0	$0	$0	$0	$0
$124	$128	22.70	12.70	2.70	0	0	0	0	0	0	0	0
$128	$132	23.40	13.40	3.40	0	0	0	0	0	0	0	0
$132	$136	24.10	14.10	4.10	0	0	0	0	0	0	0	0
$136	$140	24.80	14.80	4.80	0	0	0	0	0	0	0	0
$140	$144	25.60	15.60	5.60	0	0	0	0	0	0	0	0
$144	$148	26.30	16.30	6.30	0	0	0	0	0	0	0	0
$148	$152	27.00	17.00	7.00	0	0	0	0	0	0	0	0
$152	$156	27.70	17.70	7.70	0	0	0	0	0	0	0	0
$156	$160	28.40	18.40	8.40	0	0	0	0	0	0	0	0
$160	$164	29.20	19.20	9.20	0	0	0	0	0	0	0	0
$164	$168	29.90	19.90	9.90	0	0	0	0	0	0	0	0
$168	$172	30.60	20.60	10.60	.60	0	0	0	0	0	0	0
$172	$176	31.30	21.30	11.30	1.30	0	0	0	0	0	0	0
$176	$180	32.00	22.00	12.00	2.00	0	0	0	0	0	0	0
$180	$184	32.80	22.80	12.80	2.80	0	0	0	0	0	0	0
$184	$188	33.50	23.50	13.50	3.50	0	0	0	0	0	0	0
$188	$192	34.20	24.20	14.20	4.20	0	0	0	0	0	0	0
$192	$196	34.90	24.90	14.90	4.90	0	0	0	0	0	0	0
$196	$200	35.60	25.60	15.60	5.60	0	0	0	0	0	0	0
$200	$204	36.40	26.40	16.40	6.40	0	0	0	0	0	0	0
$204	$208	37.10	27.10	17.10	7.10	0	0	0	0	0	0	0
$208	$212	37.80	27.80	17.80	7.80	0	0	0	0	0	0	0
$212	$216	38.50	28.50	18.50	8.50	0	0	0	0	0	0	0
$216	$220	39.20	29.20	19.20	9.20	0	0	0	0	0	0	0
$220	$224	40.00	30.00	20.00	10.00	0	0	0	0	0	0	0
$224	$228	40.70	30.70	20.70	10.70	.70	0	0	0	0	0	0
$228	$232	41.40	31.40	21.40	11.40	1.40	0	0	0	0	0	0
$232	$236	42.10	32.10	22.10	12.10	2.10	0	0	0	0	0	0
$236	$240	42.80	32.80	22.80	12.80	2.80	0	0	0	0	0	0
$240	$248	43.90	33.90	23.90	13.90	3.90	0	0	0	0	0	0
$248	$256	45.40	35.40	25.40	15.40	5.40	0	0	0	0	0	0
$256	$264	46.80	36.80	26.80	16.80	6.80	0	0	0	0	0	0
$264	$272	48.20	38.20	28.20	18.20	8.20	0	0	0	0	0	0
$272	$280	49.70	39.70	29.70	19.70	9.70	0	0	0	0	0	0
$280	$288	51.10	41.10	31.10	21.10	11.10	1.10	0	0	0	0	0
$288	$296	52.60	42.60	32.60	22.60	12.60	2.60	0	0	0	0	0
$296	$304	54.00	44.00	34.00	24.00	14.00	4.00	0	0	0	0	0
$304	$312	55.40	45.40	35.40	25.40	15.40	5.40	0	0	0	0	0
$312	$320	56.90	46.90	36.90	26.90	16.90	6.90	0	0	0	0	0
$320	$328	58.30	48.30	38.30	28.30	18.30	8.30	0	0	0	0	0
$328	$336	59.80	49.80	39.80	29.80	19.80	9.80	0	0	0	0	0
$336	$344	61.20	51.20	41.20	31.20	21.20	11.20	1.20	0	0	0	0
$344	$352	62.60	52.60	42.60	32.60	22.60	12.60	2.60	0	0	0	0
$352	$360	64.10	54.10	44.10	34.10	24.10	14.10	4.10	0	0	0	0
$360	$368	65.50	55.50	45.50	35.50	25.50	15.50	5.50	0	0	0	0
$368	$376	67.00	57.00	47.00	37.00	27.00	17.00	7.00	0	0	0	0
$376	$384	68.40	58.40	48.40	38.40	28.40	18.40	8.40	0	0	0	0
$384	$392	69.80	59.80	49.80	39.80	29.80	19.80	9.80	0	0	0	0
$392	$400	71.30	61.30	51.30	41.30	31.30	21.30	11.30	1.30	0	0	0
$400	$420	73.80	63.80	53.80	43.80	33.80	23.80	13.80	3.80	0	0	0
$420	$440	77.40	67.40	57.40	47.40	37.40	27.40	17.40	7.40	0	0	0
$440	$460	81.00	71.00	61.00	51.00	41.00	31.00	21.00	11.00	1.00	0	0
$460	$480	84.60	74.60	64.60	54.60	44.60	34.60	24.60	14.60	4.60	0	0
$480	$500	88.20	78.20	68.20	58.20	48.20	38.20	28.20	18.20	8.20	0	0
$500	$520	91.80	81.80	71.80	61.80	51.80	41.80	31.80	21.80	11.80	1.80	0
$520	$540	95.40	85.40	75.40	65.40	55.40	45.40	35.40	25.40	15.40	5.40	0
$540	$560	99.00	89.00	79.00	69.00	59.00	49.00	39.00	29.00	19.00	9.00	0
$560	$580	102.60	92.60	82.60	72.60	62.60	52.60	42.60	32.60	22.60	12.60	2.60
$580	$600	106.20	96.20	86.20	76.20	66.20	56.20	46.20	36.20	26.20	16.20	6.20
$600	$640	111.60	101.60	91.60	81.60	71.60	61.60	51.60	41.60	31.60	21.60	11.60
$640	$680	118.80	108.80	98.80	88.80	78.80	68.80	58.80	48.80	38.80	28.80	18.80
$680	$720	126.00	116.00	106.00	96.00	86.00	76.00	66.00	56.00	46.00	36.00	26.00
$720	$760	133.20	123.20	113.20	103.20	93.20	83.20	73.20	63.20	53.20	43.20	33.20
$760	$800	140.40	130.40	120.40	110.40	100.40	90.40	80.40	70.40	60.40	50.40	40.40
$800	$840	147.60	137.60	127.60	117.60	107.60	97.60	87.60	77.60	67.60	57.60	47.60
$840	$880	154.80	144.80	134.80	124.80	114.80	104.80	94.80	84.80	74.80	64.80	54.80
$880	$920	162.00	152.00	142.00	132.00	122.00	112.00	102.00	92.00	82.00	72.00	62.00
$920	$960	169.20	159.20	149.20	139.20	129.20	119.20	109.20	99.20	89.20	79.20	69.20
$960	$1,000	176.40	166.40	156.40	146.40	136.40	126.40	116.40	106.40	96.40	86.40	76.40
		18 percent of the excess over $1,000 plus—										
$1,000 and over		180.00	170.00	160.00	150.00	140.00	130.00	120.00	110.00	100.00	90.00	80.00

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$56	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$56	$60	$10.40	.40	0	0	0	0	0	0	0	0	0
$60	$64	11.20	1.20	0	0	0	0	0	0	0	0	0
$64	$68	11.90	1.90	0	0	0	0	0	0	0	0	0
$68	$72	12.60	2.60	0	0	0	0	0	0	0	0	0
$72	$76	13.30	3.30	0	0	0	0	0	0	0	0	0
$76	$80	14.00	4.00	0	0	0	0	0	0	0	0	0
$80	$84	14.80	4.80	0	0	0	0	0	0	0	0	0
$84	$88	15.50	5.50	0	0	0	0	0	0	0	0	0
$88	$92	16.20	6.20	0	0	0	0	0	0	0	0	0
$92	$96	16.90	6.90	0	0	0	0	0	0	0	0	0
$96	$100	17.60	7.60	0	0	0	0	0	0	0	0	0
$100	$104	18.40	8.40	0	0	0	0	0	0	0	0	0
$104	$108	19.10	9.10	0	0	0	0	0	0	0	0	0
$108	$112	19.80	9.80	0	0	0	0	0	0	0	0	0
$112	$116	20.50	10.50	.50	0	0	0	0	0	0	0	0
$116	$120	21.20	11.20	1.20	0	0	0	0	0	0	0	0

If the payroll period with respect to an employee is monthly—

And the wages are—		And the number of withholding exemptions claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10 or more
		The amount of tax to be withheld shall be—										
$0	$56	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$56	$60	$10.40	.40	0	0	0	0	0	0	0	0	0
$60	$64	11.20	1.20	0	0	0	0	0	0	0	0	0
$64	$68	11.90	1.90	0	0	0	0	0	0	0	0	0
$68	$72	12.60	2.60	0	0	0	0	0	0	0	0	0
$72	$76	13.30	3.30	0	0	0	0	0	0	0	0	0
$76	$80	14.00	4.00	0	0	0	0	0	0	0	0	0
$80	$84	14.80	4.80	0	0	0	0	0	0	0	0	0
$84	$88	15.50	5.50	0	0	0	0	0	0	0	0	0
$88	$92	16.20	6.20	0	0	0	0	0	0	0	0	0
$92	$96	16.90	6.90	0	0	0	0	0	0	0	0	0
$96	$100	17.60	7.60	0	0	0	0	0	0	0	0	0
$100	$104	18.40	8.40	0	0	0	0	0	0	0	0	0
$104	$108	19.10	9.10	0	0	0	0	0	0	0	0	0
$108	$112	19.80	9.80	0	0	0	0	0	0	0	0	0
$112	$116	20.50	10.50	.50	0	0	0	0	0	0	0	0
$116	$120	21.20	11.20	1.20	0	0	0	0	0	0	0	0

If the payroll period with respect to an employee is a daily payroll period or a miscellaneous payroll period—

And the wages divided by the number of days in such period are—		And the number of withholding exemptions claimed is—										
		0	1	2	3	4	5	6	7	8	9	10 or more
At least—	But less than—	The amount of tax to be withheld shall be the following amount multiplied by the number of days in such period—										
$0	$2.00	18% of wages	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
$2.00	$2.25	$0.40	.05	0	0	0	0	0	0	0	0	0
$2.25	$2.50	.45	.10	0	0	0	0	0	0	0	0	0
$2.50	$2.75	.45	.15	0	0	0	0	0	0	0	0	0
$2.75	$3.00	.50	.20	0	0	0	0	0	0	0	0	0
$3.00	$3.25	.55	.25	0	0	0	0	0	0	0	0	0
$3.25	$3.50	.60	.30	0	0	0	0	0	0	0	0	0
$3.50	$3.75	.65	.30	0	0	0	0	0	0	0	0	0
$3.75	$4.00	.70	.35	.05	0	0	0	0	0	0	0	0
$4.00	$4.25	.75	.40	.10	0	0	0	0	0	0	0	0
$4.25	$4.50	.80	.45	.15	0	0	0	0	0	0	0	0
$4.50	$4.75	.85	.50	.15	0	0	0	0	0	0	0	0
$4.75	$5.00	.90	.55	.20	0	0	0	0	0	0	0	0
$5.00	$5.25	.90	.60	.25	0	0	0	0	0	0	0	0
$5.25	$5.50	.95	.65	.30	0	0	0	0	0	0	0	0
$5.50	$5.75	1.00	.70	.35	.05	0	0	0	0	0	0	0
$5.75	$6.00	1.05	.75	.40	.05	0	0	0	0	0	0	0
$6.00	$6.25	1.10	.75	.45	.10	0	0	0	0	0	0	0
$6.25	$6.50	1.15	.80	.50	.15	0	0	0	0	0	0	0
$6.50	$6.75	1.20	.85	.55	.20	0	0	0	0	0	0	0
$6.75	$7.00	1.25	.90	.60	.25	0	0	0	0	0	0	0
$7.00	$7.25	1.30	.95	.60	.30	0	0	0	0	0	0	0
$7.25	$7.50	1.35	1.00	.65	.35	0	0	0	0	0	0	0
$7.50	$7.75	1.35	1.05	.70	.40	.05	0	0	0	0	0	0
$7.75	$8.00	1.40	1.10	.75	.45	.10	0	0	0	0	0	0
$8.00	$8.25	1.45	1.15	.80	.50	.15	0	0	0	0	0	0
$8.25	$8.50	1.50	1.20	.85	.50	.20	0	0	0	0	0	0
$8.50	$8.75	1.55	1.20	.90	.55	.25	0	0	0	0	0	0
$8.75	$9.00	1.60	1.25	.95	.60	.30	0	0	0	0	0	0
$9.00	$9.25	1.65	1.30	1.00	.65	.35	0	0	0	0	0	0
$9.25	$9.50	1.70	1.35	1.05	.70	.35	.05	0	0	0	0	0
$9.50	$9.75	1.75	1.40	1.05	.75	.40	.10	0	0	0	0	0
$9.75	$10.00	1.80	1.45	1.10	.80	.45	.15	0	0	0	0	0
$10.00	$10.50	1.85	1.50	1.20	.85	.55	.20	0	0	0	0	0
$10.50	$11.00	1.95	1.60	1.30	.95	.60	.30	0	0	0	0	0
$11.00	$11.50	2.05	1.70	1.35	1.05	.70	.40	.05	0	0	0	0
$11.50	$12.00	2.10	1.80	1.45	1.15	.80	.45	.15	0	0	0	0
$12.00	$12.50	2.20	1.90	1.55	1.20	.90	.55	.25	0	0	0	0
$12.50	$13.00	2.30	1.95	1.65	1.30	1.00	.65	.30	0	0	0	0
$13.00	$13.50	2.40	2.05	1.75	1.40	1.05	.75	.40	.10	0	0	0
$13.50	$14.00	2.50	2.15	1.80	1.50	1.15	.85	.50	.15	0	0	0
$14.00	$14.50	2.55	2.25	1.90	1.60	1.25	.90	.60	.25	0	0	0
$14.50	$15.00	2.65	2.35	2.00	1.65	1.35	1.00	.70	.35	0	0	0
$15.00	$15.50	2.75	2.40	2.10	1.75	1.45	1.10	.75	.45	.10	0	0
$15.50	$16.00	2.85	2.50	2.20	1.85	1.50	1.20	.85	.55	.20	0	0
$16.00	$16.50	2.95	2.60	2.25	1.95	1.60	1.30	.95	.60	.30	0	0
$16.50	$17.00	3.00	2.70	2.35	2.05	1.70	1.35	1.05	.70	.40	.05	0
$17.00	$17.50	3.10	2.80	2.45	2.10	1.80	1.45	1.15	.80	.45	.15	0
$17.50	$18.00	3.20	2.85	2.55	2.20	1.90	1.55	1.20	.90	.55	.25	0
$18.00	$18.50	3.30	2.95	2.65	2.30	1.95	1.65	1.30	1.00	.65	.35	0
$18.50	$19.00	3.40	3.05	2.70	2.40	2.05	1.75	1.40	1.05	.75	.40	.10
$19.00	$19.50	3.45	3.15	2.80	2.50	2.15	1.80	1.50	1.15	.85	.50	.20
$19.50	$20.00	3.55	3.25	2.90	2.55	2.25	1.90	1.60	1.25	.90	.60	.25
$20.00	$21.00	3.70	3.35	3.05	2.70	2.35	2.05	1.70	1.40	1.05	.75	.40
$21.00	$22.00	3.85	3.55	3.20	2.90	2.55	2.25	1.90	1.55	1.25	.90	.60
$22.00	$23.00	4.05	3.70	3.40	3.05	2.75	2.40	2.10	1.75	1.40	1.10	.75
$23.00	$24.00	4.25	3.90	3.55	3.25	2.90	2.60	2.25	1.95	1.60	1.25	.95
$24.00	$25.00	4.40	4.10	3.75	3.40	3.10	2.75	2.45	2.10	1.80	1.45	1.10
$25.00	$26.00	4.60	4.25	3.95	3.60	3.25	2.95	2.60	2.30	1.95	1.65	1.30
$26.00	$27.00	4.75	4.45	4.10	3.80	3.45	3.15	2.80	2.45	2.15	1.80	1.50
$27.00	$28.00	4.95	4.60	4.30	3.95	3.65	3.30	3.00	2.65	2.30	2.00	1.65
$28.00	$29.00	5.15	4.80	4.45	4.15	3.80	3.50	3.15	2.85	2.50	2.15	1.85
$29.00	$30.00	5.30	5.00	4.65	4.30	4.00	3.65	3.35	3.00	2.70	2.35	2.00
		18 percent of the excess over $30 plus—										
$30.00 and over		5.40	5.05	4.75	4.40	4.10	3.75	3.45	3.10	2.75	2.45	2.10

(2) If wages are paid with respect to a period which is not a payroll period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days in the period with respect to which such wages are paid.

(3) In any case in which wages are paid by an employer without regard to any payroll period or other period, the amount to be deducted and withheld shall be that applicable in the case of a miscellaneous payroll period containing a number of days equal to the number of days (including Sundays and holidays) which have elapsed since the date of the last payment of such wages by such employer during the calendar year, or the date of commencement of employment with such employer during such year, or January 1 of such year, whichever is the later.

(4) In any case in which the period, or the time described in paragraph (3), in respect of any wages is less than one week, the Secretary or his delegate, under regulations prescribed by him, may authorize an employer to determine the amount to be deducted and withheld under the tables applicable in the case of a weekly payroll period, in which case the aggregate of the wages paid to the employee during the calendar week shall be considered the weekly wages.

(5) If the wages exceed the highest wage bracket, in determining the amount to be deducted and withheld under this subsection, the wages may, at the election of the employer, be computed to the nearest dollar.

§ 31.3402(c)–1 Wage bracket withholding.

(a) *In general.* (1) The employer may elect to use the wage bracket method provided in section 3402 (c) instead of the percentage method with respect to any employee. The tax computed under the wage bracket method shall be in lieu of the tax required to be deducted and withheld under section 3402 (a). Wage bracket withholding tables for weekly, biweekly, semimonthly, monthly, and daily or miscellaneous payroll periods are contained in section 3402 (c).

(2) For provisions relating to the treatment of wages paid under wage continuation plans and wages paid other than in cash to retail commission salesmen, see paragraph (b) (8) of § 31.3401 (a)–1 and § 31.3402 (j)–1, respectively.

(b) *Established payroll periods, other than daily or miscellaneous, covered by wage bracket withholding tables.* The wage bracket withholding tables contained in section 3402 (c) for established payroll periods other than daily or miscellaneous should be used in determining the tax to be withheld for any such period without reference to the time the employee is actually engaged in the performance of services during such payroll period.

Example (1). During 1955 employee C has a semimonthly payroll period. The number of withholding exemptions claimed by C is two. During a certain payroll period C works only 40 hours and earns $48. Although C worked only 40 hours during the semimonthly payroll period, the wage bracket withholding table for a semimonthly payroll period should be used in determining the tax to be withheld. Under this table it will be found that no tax is required to be withheld from a wage payment of $48 when two withholding exemptions are claimed.

Example (2). During 1955 employee D has a weekly payroll period. The number of withholding exemptions claimed by D is two. D's wages are determined at the rate of $1.20 per hour. During a certain payroll period D works 30 hours and earns $36. Although D worked only 30 hours during the weekly payroll period, the wage bracket withholding table for a weekly payroll period should be used in determining the tax to be withheld. Under this table it will be found that $2.00 is the amount of tax to be withheld from a wage payment of $36 when two withholding exemptions are claimed.

(c) *Periods to which the table for a daily or miscellaneous payroll period is applicable*—(1) *In general.* The table applicable to a daily or miscellaneous payroll period shows the tax on the amount of wages for one day. Where the withholding is computed under the rules applicable to a miscellaneous payroll period, the wages and the amounts shown in the table must be placed on a comparable basis. This may be accomplished by reducing the wages paid for the period to a daily basis by dividing the total wages by the number of days (including Sundays and holidays) in the period. The amount of the tax shown in the table as the tax required to be withheld from the wages, as so reduced to a daily basis, should then be multiplied by the number of days (including Sundays and holidays) in the period.

(2) *Period not a payroll period.* If wages are paid for a period which is not a payroll period, the amount to be deducted and withheld under the wage bracket method shall be the amount applicable in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) in the period with respect to which such wages are paid.

Example. During 1955, an individual is hired by a contractor to perform services in connection with a construction project. The number of withholding exemptions claimed by the individual is two. Wages are fixed at the rate of $9 per day, to be paid upon completion of the project. The project is completed during 1955 in 12 days, at the end of which period the individual is paid wages of $90 for ten days' services performed during the period. Under the wage bracket method the amount to be deducted and withheld from such wages is determined by dividing the amount of the wages ($90) by the number of days in the period (12), the result being $7.50. The amount of tax required to be withheld is determined under the table applicable to a miscellaneous payroll period. Under this table the tax required to be withheld is $8.40 (12×$0.70).

(3) *Wages paid without regard to any period.* If wages are paid to an employee without regard to any particular period, as, for example, commissions paid to a salesman upon consummation of a sale, the amount of tax to be deducted and withheld shall be determined in the same manner as in the case of a miscellaneous payroll period containing a number of days (including Sundays and holidays) equal to the number of days (including Sundays and holidays) which have elapsed, beginning with the latest of the following days:

(i) The first day after the last payment of wages to such employee by such employer in the calendar year, or

(ii) The date on which such individual's employment with such employer began in the calendar year, or

(iii) January 1 of such calendar year, and ending with (and including) the date on which such wages are paid.

Example. On April 2, 1955, A is employed by the X Real Estate Co. to sell real estate on a commission basis, commissions to be paid only upon consummation of sales. The number of withholding exemptions claimed by A is one. On May 21, 1955, A receives a commission of $300. Again, on June 16, 1955, A receives a commission of $400. Under the wage bracket method, the amount of tax to be deducted and withheld in respect of the commission paid on May 21, is $37.50, which amount is obtained by multiplying $0.75 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least $6 but less than $6.25 a day) by 50 (number of days elapsed); and the amount of tax to be withheld with respect to the commission paid on June 16 is $62.40, which amount is obtained by multiplying $2.40 (tax under wage bracket table for a daily or miscellaneous payroll period where wages are at least $15 but less than $15.50 a day) by 26 (number of days elapsed).

(d) *Period or elapsed time less than one week.* (1) It is the general rule that if wages are paid for a payroll period or other period of less than one week, the tax to be deducted and withheld under the wage bracket method shall be the amount computed for a daily payroll period, or for a miscellaneous payroll period containing the same number of days (including Sundays and holidays) as the payroll period, or other period, for which such wages are paid. In the case of wages paid without regard to any period, if the elapsed time computed as provided in paragraph (c) of this section is less than 1 week, the same rule is applicable.

Example (1). During 1955 an employee having a daily payroll period is paid wages of $7 per day. The number of withholding exemptions claimed by the employee is one. Under the table applicable to a daily payroll period, the amount of tax to be deducted and withheld from each such payment of wages is $0.95.

Example (2). During 1955 an individual is employed for four days, for which he is paid wages of $36. The number of withholding exemptions claimed by him is two. The amount of tax to be deducted and withheld under the wage bracket method is $4.00 (4×$1.00).

(2) If the payroll period, other period, or elapsed time where wages are paid without regard to any period, is less than one week, the employer may, under certain conditions, elect to deduct and withhold the tax determined by the application of the wage table for a weekly payroll period to the aggregate of the wages paid to the employee during the calendar week. The election to use the weekly wage table in such cases is subject to the limitations and conditions prescribed in paragraph (d) of § 31.3402 (b)–1 with respect to employers using the percentage method in similar cases.

(3) As used in this paragraph the term "calendar week" means a period of seven consecutive days beginning with Sunday and ending with Saturday.

(e) *Rounding off of wage payment.* In determining the amount to be deducted and withheld under the wage bracket method the wages may, at the election of the employer, be computed to the nearest dollar, provided such wages are in excess of the highest wage bracket of the applicable table. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1.00. Thus, if the payroll period of an employee is weekly and the wage payment of such employee is $255.49, the employer may compute the tax on the excess over $200 as if the excess were $55 instead of $55.49. If the weekly wage payment is $255.50, the employer may, in computing the tax, consider the excess over $200 to be $56 instead of $55.50.

§ 31.3402(d) Statutory provisions; income tax collected at source; tax paid by recipient.

SEC. 3402. *Income tax collected at surce.*

• • •

(d) *Tax paid by recipient.* If the employer, in violation of the provisions of this chapter, fails to deduct and withhold the tax under this chapter, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer; but this subsection shall in no case relieve the employer from liability for any penalties or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

§ 31.3402(d)–1 Failure to withhold.

If the employer in violation of the provisions of section 3402 fails to deduct and withhold the tax, and thereafter the income tax against which the tax under section 3402 may be credited is paid, the tax under section 3402 shall not be collected from the employer. Such payment does not, however, operate to relieve the employer from liability for penalties or additions to the tax applicable in respect of such failure to deduct and withhold. The employer will not be relieved of his liability for payment of the tax required to be withheld unless he can show that the tax against which the tax under section 3402 may be credited has been paid. See § 31.3403–1, relating to liability for tax.

§ 31.3402(e) Statutory provisions; income tax collected at source; included and excluded wages.

SEC. 3402. *Income tax collected at source.*

• • •

(e) *Included and excluded wages.* If the remuneration paid by an employer to an employee for services performed during one-half or more of any payroll period of not more than 31 consecutive days constitutes wages, all the remuneration paid by such employer to such employee for such period shall be deemed to be wages; but if the remuneration paid by an employer to an employee for services performed during more than one-half of any such payroll period does not constitute wages, then none of the remuneration paid by such employer to such employee for such period shall be deemed to be wages.

§ 31.3402(e)–1 Included and excluded wages.

(a) If a portion of the remuneration paid by an employer to his employee for services performed during a payroll period of not more than 31 consecutive days constitutes wages, and the remainder does not constitute wages, all the remuneration paid the employee for services performed during such period shall for purposes of withholding be treated alike, that is, either all included as wages or all excluded. The time during which the employee performs services, the remuneration for which under section 3401 (a) constitutes wages, and the time during which he performs services, the remuneration for which under such section does not constitute wages, determine whether all the remuneration for services performed during the payroll period shall be deemed to be included or excluded.

(b) If one-half or more of the employee's time in the employ of a particular employer in a payroll period is spent in performing services the remuneration for which constitutes wages, then all the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

(c) If less than one-half of the employee's time in the employ of a particular employer in a payroll period is spent in performing services the remuneration for which constitutes wages, then none of the remuneration paid the employee for services performed in that payroll period shall be deemed to be wages.

(d) The application of the provisions of paragraphs (a), (b), and (c) of this section may be illustrated by the following examples:

Example (1). Employer B, who operates a store and a farm, employs A to perform services in connection with both operations. The remuneration paid A for services on the farm is excepted as remuneration for agricultural labor, and the remuneration for services performed in the store constitutes wages. Employee A is paid on a monthly basis. During a particular month, A works 120 hours on the farm and 80 hours in the store. None of the remuneration paid by B to A for services performed during the month is deemed to be wages, since the remuneration paid for less than one-half of the services performed during the month constitutes wages. During another month A works 75 hours on the farm and 120 hours in the store. All of the remuneration paid by B to A for services performed during the month is deemed to be wages since the remuneration paid for one-half or more of the services performed during the month constitutes wages.

Example (2). Employee C is employed as a maid by D, a physician, whose home and office are located in the same building. The remuneration paid C for services in the home is excepted as remuneration for domestic service, and the remuneration paid for her services in the office constitutes wages. C is paid on a weekly basis. During a particular week C works 20 hours in the home and 20 hours in the office. All of the remuneration paid by D to C for services performed during that week is deemed to be wages, since the remuneration paid for one-half or more of the services performed during the week constitutes wages. During another week C works 22 hours in the home and 15 hours in the office. None of the remuneration paid by D to C for services performed during that week is deemed to be wages, since the remuneration paid for less than one-half of the services performed during the week constitutes wages.

(e) The rules set forth in this section do not apply (1) with respect to any remuneration paid for services performed by an employee for his employer if the periods for which remuneration is paid by the employer vary to the extent that there is no period which constitutes a payroll period within the meaning of section 3401 (b) (see § 31.3401 (b)–1), or (2) with respect to any remuneration paid for services performed by an employee for his employer if the payroll period for which remuneration is paid exceeds 31 consecutive days. In any such case withholding is required with respect to that portion of such remuneration which constitutes wages.

§ 31.3402(f)(1) Statutory provisions; income tax collected at source; withholding exemptions.

SEC. 3402. *Income tax collected at source.*
• • •

(f) *Withholding exemptions*—(1) *In general.* An employee receiving wages shall on any day be entitled to the following withholding exemptions:

(A) An exemption for himself;

(B) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (c) (1) (relating to old age) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(C) One additional exemption for himself if, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (d) (1) (relating to the blind) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit;

(D) If the employee is married, any exemption to which his spouse is entitled, or would be entitled if such spouse were an employee receiving wages, under subparagraph (A), (B), or (C), but only if such spouse does not have in effect a withholding exemption certificate claiming such exemption; and

(E) An exemption for each individual with respect to whom, on the basis of facts existing at the beginning of such day, there may reasonably be expected to be allowable an exemption under section 151 (e) for the taxable year under subtitle A in respect of which amounts deducted and withheld under this chapter in the calendar year in which such day falls are allowed as a credit.

§31.3402(f)(1)–1 Withholding exemptions.

(a) *In general.* (1) An employee receiving wages shall on any day be entitled to withholding exemptions as provided in section 3402 (f) (1). In order to receive the benefit of such exemptions, the employee must file with his employer a withholding exemption certificate as provided in section 3402 (f) (2). See § 31.3402 (f) (2)–1.

(2) The number of exemptions to which an employee is entitled on any day depends upon his status as single or married, upon his status as to old age and blindness, upon the number of his dependents, and, if married, upon the number of exemptions claimed by his spouse.

(b) *Withholding exemptions to which an employee is entitled in respect of himself.* An employee is entitled to one withholding exemption for himself. An employee shall on any day be entitled to an additional withholding exemption for himself if he will have attained the age of 65 before the close of his taxable year which begins in, or with, the calendar year in which such day falls. If the employee is blind, he may claim an additional withholding exemption for blindness. For purposes of claiming a withholding exemption for blindness, an individual shall be considered blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. For definition of the term "blindness", see section 151 (d) (3).

(c) *Withholding exemptions to which an employee is entitled in respect of his spouse.* (1) A married employee, whose spouse is an employee receiving wages, is entitled to claim any withholding exemption to which his spouse is entitled under paragraph (b) of this section, unless the spouse has in effect a withholding exemption certificate claiming such withholding exemption. A married employee, whose spouse is not an employee receiving wages, is entitled to claim any withholding exemption to which his spouse would be entitled under paragraph (b) of this section if the spouse were an employee receiving wages.

Example (1). Assume that both the husband and wife have attained the age of 65 and are employees receiving wages. Each spouse is entitled under paragraph (b) of this section to claim 2 withholding exemptions in respect of himself or herself. Either spouse may claim, in addition to the withholding exemptions to which he or she is entitled in respect of himself or herself, any withholding exemption to which the other spouse is entitled under such paragraph (b) but does not claim on a withholding exemption certificate.

Example (2). Assume the same facts as in Example (1) except that only the husband is an employee receiving wages. The husband is entitled to claim 4 withholding exemptions, that is, the 2 withholding exemptions to which he is entitled in respect of himself and the 2 withholding exemptions to which his spouse would be entitled under paragraph (b) of this section if she were an employee receiving wages.

(2) In determining the number of withholding exemptions to which an employee is entitled for himself and his spouse on any day, the employee's status as a single person or a married person and, if married, whether a withholding exemption is claimed by his spouse shall be determined as of such day. However, in the case of an employee whose spouse dies in the taxable year of the employee which begins in, or with, the calendar year in which the spouse dies, any withholding exemption which would be allowable to the employee in respect of such spouse, if living and not an employee receiving wages, may be claimed by the employee for that portion of the calendar year which occurs after his spouse's death. For provisions applicable in the case of an employee whose taxable year is not a calendar year, and whose spouse dies in that portion of the calendar year which precedes the first day of the taxable year of the employee which begins in the calendar year, see paragraph (b) of § 31.3402 (f) (2)–1.

(d) *Withholding exemptions to which an employee is entitled in respect of dependents.* Subject to the limitations stated in this paragraph, an employee shall be entitled on any day to a withholding exemption for each individual who may reasonably be expected to be his dependent for his taxable year beginning in, or with, the calendar year in which such day falls. For purposes of the withholding exemption for an individual who may reasonably be expected to be a dependent, the following rules shall apply:

(1) The determination that an individual may or may not reasonably be expected to be a dependent shall be made on the basis of facts existing at the beginning of the day for which a withholding exemption for such individual is to be claimed. The individual in respect of whom an exemption is claimed by an employee must, on the day in question, be in existence and be within one of the categories listed in section 152 (a), which defines the term "dependent". However, a withholding exemption for a dependent who dies continues for the portion of the calendar year which occurs after the dependent's death, except that, in the case of an employee whose taxable year is not a calendar year, the withholding exemption does not continue for a dependent, within the meaning of section 152 (a) (9) or (10), whose death occurs before the first day of the employee's taxable year beginning in the calendar year of death.

(2) The determination that an individual may or may not reasonably be expected to be a dependent shall be made for the taxable year of the employee in respect of which amounts deducted and withheld in the calendar year in which the day in question falls are allowed as a credit. In general, amounts deducted and withheld during any calendar year are allowed as a credit against the tax imposed by chapter 1 of the Code for the taxable year which begins in, or with, such calendar year. Thus, in order for an employee to be able to claim for a calendar year a withholding exemption with respect to a particular individual as a dependent there must be a reasonable expectation that the employee will be allowed an exemption with respect to such individual under section 151 (e) for his taxable year which begins in, or with, such calendar year.

(3) For the employee to be entitled on any day of the calendar year to a withholding exemption for an individual as a dependent, such individual must on such day—

(i) Be an individual referred to in one of the numbered paragraphs in section 152 (a),

(ii) Reasonably be expected to receive over one-half of his support, within the meaning of section 152, from the employee in the calendar year, and

(iii) Either (*a*) reasonably be expected to receive less than $600 of gross income in the calendar year or (*b*) be a child (son, stepson, daughter, stepdaughter, adopted son, or adopted daughter) of the employee who (*1*) will not have attained the age of 19 at the close of the calendar year or (*2*) is a student as defined in section 151.

(4) An employee is not entitled to claim a withholding exemption for an individual otherwise reasonably expected to be a dependent of the employee if such individual is not a citizen of the United States, unless such individual (i) is at any time during the calendar year a resident of the United States, Canada, Mexico, the Canal Zone, or the Republic of Panama, or (ii) is a child of the employee born to him, or legally adopted by him, in the Philippine Islands before January 1, 1956, and the child is a resident of the Republic of the Philippines, and the employee was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him.

§ 31.3402(f)(2) Statutory provisions; income tax collected at source; withholding exemptions; exemption certificates.

SEC. 3402. *Income tax collected at source.*
• • •

(f) *Withholding exemptions*—• • •

(2) *Exemption certificates*—(A) *On commencement of employment.* On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled.

(B) *Change of status.* If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by the employee on the withholding exemption certificate then in effect with respect to him, the employee shall within 10 days thereafter furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day. If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is greater than the number of withholding exemptions claimed, the employee may furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which shall in no event exceed the number to which he is entitled on such day.

(C) *Change of status which affects next calendar year.* If on any day during the calendar year the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled at the beginning of his next taxable year under subtitle A is different from the number to which the employee is entitled on such day, the employee shall, in such cases and at such times as the Secretary or his delegate may by regulations prescribe, furnish the employer with a withholding exemption certificate relating to the number of withholding exemptions which he claims with respect to such next taxable year, which shall in no event exceed the number to which he will be, or may reasonably be expected to be, so entitled.

§ 31.3402(f)(2)–1 Withholding exemption certificates.

(a) *On commencement of employment.* On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed withholding exemption certificate relating to the number of withholding exemptions which he claims, which shall in no event exceed the number to which he is entitled. For form and contents of such certificate, see § 31.3402 (f) (5)–1. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as claiming no withholding exemptions.

(b) *Change in exemptions which affects calendar year.* (1) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is less than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employee must within 10 days after the change occurs furnish the employer with a new withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which must in no event exceed the number to which he is entitled on such day. The number of withholding exemptions to which an employee is entitled decreases, for example, for any one of the following reasons:

(i) The employee's wife (or husband) for whom the employee has been claiming a withholding exemption (*a*) is divorced or legally separated from the employee, or (*b*) claims her (or his) own withholding exemption on a separate certificate.

(ii) In the case of an employee whose taxable year is not a calendar year, the employee's wife (or husband) for whom the employee has been claiming a withholding exemption dies in that portion of the calendar year which precedes the first day of the taxable year of the employee which begins in the calendar year in which the spouse dies.

(iii) The employee finds that no exemption for his taxable year which begins in, or with, the current calendar year will be allowable to him under section 151 (e) in respect of an individual claimed as a dependent on the employee's withholding exemption certificate.

(2) If, on any day during the calendar year, the number of withholding exemptions to which the employee is entitled is more than the number of withholding exemptions claimed by him on the withholding exemption certificate then in effect, the employee may furnish the employer with a new withholding exemption certificate on which the employee must in no event claim more than the number of withholding exemptions to which he is entitled on such day.

(c) *Change in exemptions which affects next calendar year.* (1) If, on any day during the calendar year, the number of exemptions to which the employee will be, or may reasonably be expected to be, entitled under section 151 for his taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall be applicable:

(i) If such number is less than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect on such day, the employee must, on or before December 1 of the year in which the change occurs, unless such change occurs in December, furnish his employer with a new withholding exemption certificate reflecting the decrease in the number of withholding exemptions. If the change occurs in December, the new certificate must be furnished within 10 days after the change occurs. The number of exemptions to which an employee is entitled for his taxable year which begins in, or with, the next calendar year decreases, for example, for any of the following reasons:

(*a*) The spouse or a dependent of the employee dies.

(*b*) The employee finds that it is not reasonable to expect that an individual claimed as a dependent on the employee's withholding exemption certificate will qualify as a dependent of the employee for such taxable year.

(ii) If such number is greater than the number of withholding exemptions claimed by the employee on a withholding exemption certificate in effect on such day, the employee may, on or before December 1 of the year in which such change occurs, unless such change

occurs in December, furnish his employer with a new withholding exemption certificate reflecting the increase in the number of withholding exemptions. If the change occurs in December, the certificate may be furnished on or after the date on which the change occurs.

(2) Before December 1 of each year, every employer should request each of his employees to file a new withholding extemption certificate for the ensuing calendar year, in the event of change in the employee's exemption status since the filing of his latest certificate.

§ 31.3402(f)(3) Statutory provisions; income tax collected at source; withholding exemptions; when exemption certificate takes effect.

SEC. 3402. *Income tax collected at source.* • • •

(f) *Withholding exemptions*—• • •

(3) *When certificate takes effect*—(A) *First certificate furnished.* A withholding exemption certificate furnished the employer in cases in which no previous such certificate is in effect shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(B) *Furnished to take place of existing certificate.* A withholding exemption certificate furnished the employer in cases in which a previous such certificate is in effect shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days from the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished; but a certificate furnished pursuant to paragraph (2) (C) shall not take effect, and may not be made effective, with respect to any payment of wages made in the calendar year in which the certificate is furnished. For purposes of this subparagraph the term "status determination date" means January 1 and July 1 of each year.

§ 31.3402(f)(3)–1 When withholding exemption certificate takes effect.

(a) A withholding exemption certificate furnished the employer in any case in which no previous withholding exemption certificate is in effect with such employer, shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished.

(b) A withholding exemption certificate furnished the employer in any case in which a previous withholding exemption certificate is in effect with such employer shall, except as hereinafter provided, take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished. However, at the election of the employer, except as hereinafter provided, such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished and before such status determination date.

(c) A withholding exemption certificate furnished the employer pursuant to section 3402 (f) (2) (C) (see paragraph (c) of § 31.3402 (f) (2)–1) which effects a change for the next calendar year, shall not take effect, and may not be made effective, with respect to the calendar year in which the certificate is furnished.

(d) For purposes of this section the term "status determination date" means January 1 and July 1 of each year.

§ 31.3402(f)(4) Statutory provisions; income tax collected at source; withholding exemptions; period during which exemption certificate remains in effect.

SEC. 3402. *Income tax collected at source.* • • •

(f) *Withholding exemptions*—• • •

(4) *Period during which certificate remains in effect.* A withholding exemption certificate which takes effect under this subsection, or which on December 31, 1954, was in effect under the corresponding subsection of prior law, shall continue in effect with respect to the employer until another such certificate takes effect under this subsection.

§ 31.3402(f)(4)–1 Period during which withholding exemption certificate remains in effect.

A withholding exemption certificate which takes effect under section 3402(f) of the Internal Revenue Code of 1954, or which on December 31, 1954, was in effect under section 1622(h) of the Internal Revenue Code of 1939, shall continue in effect with respect to the employee until another withholding exemption certificate takes effect under section 3402 (f).

§ 31.3402(f)(5) Statutory provisions; income tax collected at source; withholding exemptions; form and contents of exemption certificate.

SEC. 3402. *Income tax collected at source.* • • •

(f) *Withholding exemptions*—• • •

(5) *Form and contents of certificate.* Withholding exemption certificates shall be in such form and contain such information as the Secretary or his delegate may by regulations prescribe.

§ 31.3402(f)(5)–1 Form and contents of withholding exemption certificate.

Form W–4 is the form prescribed for the withholding exemption certificate required to be filed under section 3402 (f) (2). See § 31.3402 (f) (2)–1. A withholding exemption certificate on Form W–4 shall be prepared in accordance with the instructions and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Blank copies of Form W–4 will be supplied employers upon request to the district director. In lieu of the prescribed form of certificate, employers may prepare and use a form the provisions of which are identical with those of the prescribed form.

§ 31.3402(g) Statutory provisions; income tax collected at source; overlapping pay periods, and payment by agent or fiduciary.

SEC. 3402. *Income tax collected at source.* • • •

(g) *Overlapping pay periods, and payment by agent or fiduciary.* If a payment of wages is made to an employee by an employer—

(1) With respect to a payroll period or other period, any part of which is included in a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(2) Without regard to any payroll period or other period, but on or prior to the expiration of a payroll period or other period with respect to which wages are also paid to such employee by such employer, or

(3) With respect to a period beginning in one and ending in another calendar year, or

(4) Through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays, the wages payable by another employer to such employee, the manner of withholding and the amount to be deducted and withheld under this chapter shall be determined in accordance with regulations prescribed by the Secretary or his delegate under which the withholding exemption allowed to the employee in any calendar year shall approximate the withholding exemption allowable with respect to an annual payroll period.

§ 31.3402(g)–1 Supplemental wage payments.

(a) *In general.* (1) An employee's remuneration may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period, or without regard to a particular period. When such supplemental wages are paid (whether or not at the same time as the regular wages) the amount of the tax required to be withheld under section 3402 (a) (the percentage method) or under section 3402 (c) (the wage bracket method) shall be determined in accordance with this paragraph or paragraph (b) of this section.

(2) The supplemental wages, if paid concurrently with wages for a payroll period, shall be aggregated with the wages paid for such payroll period. If not paid concurrently, the supplemental wages shall be aggregated with the wages paid or to be paid within the same calendar year for the last preceding payroll period or for the current payroll period. The amount of tax to be withheld shall be determined as if the aggregate of the supplemental wages and the regular wages constituted a single wage payment for the regular payroll period.

Example (1). A is employed as a salesman at a monthly salary of $100 plus commissions on sales made during the month. The number of withholding exemptions claimed is one. During January 1955 A earns $275 in commissions, which together with the salary of $100 is paid on February 10, 1955. Under the wage bracket method the amount of the tax required to be withheld is shown in the table applicable to a monthly payroll period. Under this table it will be found that the amount of tax required to be withheld is $57.00.

Example (2). B is employed at a salary of $3,000 per annum paid semimonthly on the 15th day and the last day of each month, plus a bonus and commission determined at the end of each 3-month period. The number of withholding exemptions claimed is four. The bonus and commissioh for the 3-month period ending on March 31, 1955, amount to $250, which is paid on April 10, 1955. Under the wage bracket method, the amount of tax required to be withheld on the aggregate of the bonus of $250 and the last preceding semimonthly wage payment of $125, or $375, is $46.60. Since tax in the amount of $2.70 was withheld on the semimonthly wage payment of $125, the amount to be withheld on April 10, 1955, is $43.90.

If, however, supplemental wages are paid and tax has been withheld from the employee's regular wages, the employer may determine the tax to be withheld from supplemental wages by using the applicable rate under section 3402 (a) without allowance for exemption and without reference to any regular payment of wages.

(3) For provisions relating to the treatment of wages paid other than in cash to retail commission salesmen, see § 31.3402 (j)–1.

(b) *Special rule where aggregate withholding exemption exceeds wages paid.* (1) If supplemental wages are paid to an employee during a calendar year for a period which involves two or more consecutive payroll periods, for which other wages also are paid during such calendar year, and the aggregate of such other wages is less than the aggregate of the amounts determined under the table provided in section 3402 (b) (1) as the withholding exemptions applicable for such payroll periods, the amount of the tax required to be withheld on the supplemental wages shall be computed as follows:

Step 1. Determine an average wage for each of such payroll periods by dividing the sum of the supplemental wages and the wages paid for such payroll periods by the number of such payroll periods.

Step 2. Determine a tax for each payroll period as if the amount of the average wage constituted the wages paid for such payroll period.

Step 3. From the sum of the amounts of tax determined in Step 2 subtract the total amount of tax withheld, or to be withheld, from the wages, other than the supplemental wages, for such payroll periods. The remainder, if any, shall constitute the amount of the tax to be withheld upon the supplemental wages.

Example. An employee has a weekly payroll period ending on Saturday of each week, the wages for which are paid on Friday of the succeeding week. On the 10th day of each month he is paid a bonus based upon production during the payroll periods for which wages were paid in the preceding month. The employee is paid a weekly wage of $64 on each of the five Fridays occurring in April 1955. On May 10, 1955, the employee is paid a bonus of $125 based upon production during the five payroll periods covered by the wages paid in April. On the date of payment of the bonus, the employee, who is married and has three children, has a withholding exemption certificate in effect claiming five withholding exemptions. The amount of the tax to be withheld from the bonus paid on May 10, 1955, is computed as follows:

Wages paid in April 1955 for 5 payroll periods (5×$64)	$320.00
Bonus paid May 10, 1955	125.00
Aggregate of wages and bonus	445.00
Average wage per payroll period ($445÷5)	$89.00
Computation of tax under percentage method: Withholding exemptions (5×$13)	65.00
Remainder subject to tax	24.00
Tax on average wage for 1 week (18 percent of $24)	$4.32
Tax on average wage for 5 weeks	$21.60
Less: Tax previously withheld on weekly wage payments of $64	None
Tax to be withheld on supplemental wages	21.60
Computation of tax under wage bracket method:	
Tax on $89 wage under weekly wage table ($4.50 per week for 5 weeks)	$22.50
Less: Tax previously withheld on weekly wage payments of $64 ($0.20 per week for 5 weeks)	1.00
Tax to be withheld on supplemental wages	21.50

(2) The rules prescribed in this paragraph shall, at the election of the employer, be applied in lieu of the rules prescribed in paragraph (a) of this section except that this paragraph shall not be applicable in any case in which the payroll period of the employee is less than one week.

(c) *Vacation allowances.* Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the rules applicable with respect to supplemental wage payments shall apply to such vacation allowance.

§ 31.3402(g)–2 Wages paid for payroll period of more than one year.

If wages are paid to an employee for a payroll period of more than one year, for the purpose of determining the amount of tax required to be deducted and withheld in respect of such wages—

(a) Under the percentage method, the amount of the tax shall be determined as if such payroll period constituted an annual payroll period, and

(b) Under the wage bracket method, the amount of the tax shall be determined as if such payroll period constituted a miscellaneous payroll period of 365 days.

§ 31.3402(g)–3 Wages paid through an agent, fiduciary, or other person on behalf of two or more employers.

(a) If a payment of wages is made to an employee by an employer through an agent, fiduciary, or other person who also has the control, receipt, custody, or disposal of, or pays the wages payable by another employer to such employee, the amount of the tax required to be withheld on each wage payment made through such agent, fiduciary, or person shall, whether the wages are paid separately on behalf of each employer or paid in a lump sum on behalf of all such employers, be determined upon the aggregate amount of such wage payment or payments in the same manner as if such aggregate amount had been paid by one employer. Hence, under either the percentage method or the wage bracket method the tax shall be determined upon the aggregate amount of the wage payment.

(b) In any such case, each employer shall be liable for the return and payment of a pro rata portion of the tax so determined, such portion to be determined in the ratio which the amount contributed by the particular employer bears to the aggregate of such wages.

(c) For example, three companies maintain a central management agency which carries on the administrative work of the several companies. The central agency organization consists of a staff of clerks, bookkeepers, stenographers, etc., who are the common employees of the three companies. The expenses of the central agency, including wages paid to the foregoing employees, are borne by the several companies in certain agreed proportions. Company X pays 45 percent, Company Y pays 35 percent and Company Z pays 20 percent of such expenses. The amount of the tax required to be withheld on the wages paid to persons employed in the central agency should be determined in accordance with the provisions of this section. In such event, Company X is liable as an employer for the return and payment of 45 percent of the tax required to be withheld, Company Y is liable for the return and payment of 35 percent of the tax and Company Z is liable for the return and payment of 20 percent of the tax. (See § 31.3504–1, relating to acts to be performed by agents.)

§ 31.3402(h) Statutory provisions; income tax collected at source; withholding on basis of average wages.

SEC. 3402. *Income tax collected at source.* • • •

(h) *Withholding on basis of average wages.* The Secretary or his delegate may, under regulations prescribed by him, authorize employers—

(1) To estimate the wages which will be paid to any employee in any quarter of the calendar year,

(2) To determine the amount to be deducted and withheld upon each payment of wages to such employee during such quarter as if the appropriate average of the wages so estimated constituted the actual wages paid, and

(3) To deduct and withhold upon any payment of wages to such employee during such quarter such amount as may be necessary to adjust the amount actually deducted and withheld upon the wages of such employee during such quarter to the amount required to be deducted and withheld during such quarter without regard to this subsection.

§ 31.3402(h)–1 Withholding on basis of average wages.

The Commissioner may authorize the employer to withhold the tax under section 3402 on the basis of the employee's average estimated wages, with necessary adjustments, for any quarter. Before using such method the employer must receive authorization from the Commissioner. Applications to use such method must be accompanied by evidence establishing the need for the use of such method.

§ 31.3402(i) Statutory provisions; income tax collected at source; additional withholding.

SEC. 3402. *Income tax collected at source.* • • •

(i) *Additional withholding.* The Secretary or his delegate is authorized by regulations to provide, under such conditions and to such extent as he deems proper, for withholding in addition to that otherwise required under this section in cases in which the employer and the employee agree (in

such form as the Secretary or his delegate may by regulations prescribe) to such additional withholding. Such additional withholding shall for all purposes be considered tax required to be deducted and withheld under this chapter.

§ 31.3402(i)–1 Additional withholding.

(a) In addition to the tax required to be deducted and withheld in accordance with the provisions of section 3402, the employer and employee may agree that an additional amount shall be withheld from the employee's wages. The agreement shall be in writing and shall be in such form as the employer may prescribe. The agreement shall be effective for such period as the employer and employee mutually agree upon. However, unless the agreement provides for an earlier termination, either the employer or the employee, by furnishing a written notice to the other, may terminate the agreement effective with respect to the first payment of wages made on or after the first "status determination date" (January 1 and July 1 of each year) which occurs at least 30 days after the date on which such notice is furnished.

(b) The amount deducted and withheld pursuant to an agreement between the employer and employee shall be considered as tax required to be deducted and withheld under section 3402. All provisions of law and regulations applicable with respect to the tax required to be deducted and withheld under section 3402 shall be applicable with respect to any amount deducted and withheld pursuant to the agreement.

§ 31.3402(j) Statutory provisions; income tax collected at source; noncash remuneration to retail commission salesman.

SEC. 3402 *Income tax collected at source.* • • •

(j) *Noncash remuneration to retail commission salesman.* In the case of remuneration paid in any medium other than cash for services performed by an individual as a retail salesman for a person, where the service performed by such individual for such person is ordinarily performed for remuneration solely by way of cash commission an employer shall not be required to deduct or withhold any tax under this subchapter [chapter] with respect to such remuneration, provided that such employer files with the Secretary or his delegate such information with respect to such remuneration as the Secretary or his delegate may by regulation prescribe.

[Sec. 3402(j) as added by sec. 2(b), Act of Aug. 9, 1955 (Pub. Law 306, 84th Cong., 69 Stat. 606)]

§ 31.3402(j)–1 Remuneration other than in cash for service performed by retail commission salesman.

(a) *In general.* (1) An employer, in computing the amount to be deducted and withheld as tax in accordance with section 3402, may, at his election, disregard any wages paid, after August 9, 1955, in a medium other than cash for services performed for him by an employee if (i) the noncash remuneration is paid for services performed by the employee as a retail commission salesman and (ii) the employer ordinarily pays the employee remuneration solely by way of cash commissions for services performed by him as a retail commission salesman.

(2) Section 3402 (j) and this section are not applicable with respect to noncash wages paid to a retail commission salesman for services performed by him in a capacity other than as such a salesman. Such sections are not applicable with respect to noncash wages paid by an employer to an employee for services performed as a retail commission salesman if the employer ordinarily pays the employee remuneration other than by way of cash commissions for such services. Thus, noncash remuneration may not be disregarded in computing the amount to be deducted and withheld in a case where the employee, for services performed as a retail commission salesman, is paid both a salary and cash commissions on sales, or is ordinarily paid in something other than cash (stocks, bonds, or other forms of property) notwithstanding that the amount of remuneration paid to the employee is measured by sales.

(b) *Retail commission salesman.* For purposes of section 3402 (j) and this section, the term "retail commission salesman" includes an employee who is engaged in the solicitation of orders at retail, that is, from the ultimate consumer, for merchandise or other products offered for sale by his employer. The term does not include an employee salesman engaged in the solicitation on behalf of his employer of orders from wholesalers, retailers, or others, for merchandise for resale. However, if the salesman solicits orders for more than one principal, he is not excluded from the term solely because he solicits orders from wholesalers or retailers on behalf of one or more principals. In such case the salesman may be a retail commission salesman with respect to services performed for one or more principals and not with respect to services performed for his other principals.

(c) *Noncash remuneration.* The term "noncash remuneration" includes remuneration paid in any medium other than cash, such as goods or commodities, stocks, bonds, or other forms of property. The term does not include checks or other monetary media of exchange.

(d) *Cross reference.* For provisions relating to records required to be kept and statements which must be furnished an employee with respect to wage payments, see sections 6001 and 6051 and the regulations thereunder in Subpart G of this part.

§ 31.3403 Statutory provisions; liability for tax.

SEC. 3403. *Liability for tax.* The employer shall be liable for the payment of the tax required to be deducted and withheld under this chapter, and shall not be liable to any person for the amount of any such payment.

§ 31.3403–1 Liability for tax.

Every employer required to deduct and withhold the tax under section 3402 from the wages of an employee is liable for the payment of such tax whether or not it is collected from the employee by the employer. If, for example, the employer deducts less than the correct amount of tax, or if he fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. See, however, § 31.3402 (d)–1. The employer is relieved of liability to any other person for the amount of any such tax withheld and paid to the district director or deposited with a duly designated depositary of the United States.

§ 31.3404 Statutory provisions; return and payment by governmental employer.

SEC. 3404. *Return and payment by governmental employer.* If the employer is the United States, or a State, Territory, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages may be made by any officer or employee of the United States, or of such State, Territory, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.

§ 31.3404–1 Return and payment by governmental employer.

If the United States, or a State, Territory, Puerto Rico, or a political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, is an employer required to deduct and withhold tax under chapter 24, the return of the amount deducted and withheld as such tax may be made by the officer or employee having control of the payment of the wages or other officer or employee appropriately designated for that purpose. (For provisions relating to the execution and filing of returns, see Subpart G of the regulations in this part.)

Subpart F—General Provisions Relating to Employment Taxes (Chapter 25, Internal Revenue Code of 1954)

§ 31.3501 Statutory provisions; collection and payment of taxes.

SEC. 3501. *Collection and payment of taxes.* The taxes imposed by this subtitle shall be collected by the Secretary or his delegate and shall be paid into the Treasury of the United States as internal-revenue collections.

§ 31.3502 Statutory provisions; nondeductibility of taxes in computing taxable income.

SEC. 3502. *Nondeductibility of taxes in computing taxable income.* (a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

§ 31.3502–1 Nondeductibility of taxes in computing taxable income.

For provisions relating to the nondeductibility, in computing taxable income under subtitle A, of the taxes imposed by sections 3101, 3201, and 3211, and of the tax deducted and withheld under chapter 24, see § 1.164–2 of this chapter (Income Tax Regulations). For provisions relating to the credit allowable to the recipient of the income in respect of the tax

deducted and withheld under chapter 24, see § 1.31–1 of this chapter (Income Tax Regulations).

§ 31.3503 Statutory provisions; erroneous payments.

SEC. 3503. *Erroneous payments.* Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

§ 31.3503–1 Tax under chapter 21 or 22 paid under wrong chapter.

If, for any period, an amount is paid as tax—

(a) Under chapter 21 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 22 or corresponding provisions of prior law, or

(b) Under chapter 22 or corresponding provisions of prior law by a person who is not liable for tax for such period under such chapter or prior law, but who is liable for tax for such period under chapter 21 or corresponding provisions of prior law,

the amount so paid shall be credited against the tax for which such person is liable and the balance, if any, shall be refunded. Each claim for refund or credit under this section shall be made on Form 843 and in accordance with § 31.6402(a)–2 and the applicable provisions of section 6402(a) and the regulations thereunder in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 31.3504 Statutory provisions; acts to be performed by agents.

SEC. 3504. *Acts to be performed by agents.* In case a fiduciary, agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary or his delegate, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary or his delegate may specify. Except as may be otherwise prescribed by the Secretary or his delegate, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

[Sec. 3504 as amended by sec. 71, Technical Amendments Act 1958 (72 Stat. 1660)]

§ 31.3504–1 Acts to be performed by agents.

(a) *In general.* In the event wages as defined in chapter 21 or 24 of the Internal Revenue Code of 1954, or compensation as defined in chapter 22 of such Code, of an employee or group of employees, employed by one or more employers, is paid by a fiduciary, agent, or other person, or if such fiduciary, agent, or other person has the control, receipt, custody, or disposal of such wages or compensation, the district director may, subject to such terms and conditions as he deems proper, authorize such fiduciary, agent, or other person to perform such acts as are required of such employer or employers under those provisions of the Internal Revenue Code of 1954 and the regulations thereunder which have application, for purposes of the taxes imposed by such chapter or chapters, in respect of such wages or compensation. If the fiduciary, agent, or other person is authorized by the district director to perform such acts, all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to employers in respect of such acts shall be applicable to such fiduciary, agent, or other person. However, each employer for whom such fiduciary, agent, or other person performs such acts shall remain subject to all provisions of law (including penalties) and of the regulations prescribed in pursuance of law applicable to an employer in respect of such acts. Any application for authorization to perform such acts, signed by such fiduciary, agent, or other person, shall be filed with the district director with whom the fiduciary, agent, or other person will, upon approval of such application, file returns in accordance with such authorization.

(b) *Prior authorizations continued.* An authorization in effect under section 1632 of the Internal Revenue Code of 1939 on December 31, 1954, continues in effect under section 3504 and is subject to the provisions of paragraph (a) of this section.

Subpart G—Administrative Provisions of Special Application to Employment Taxes (Selected Provisions of Subtitle F, Internal Revenue Code of 1954)

§ 31.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 31.6001–1 Records in general.

(a) *Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable the district director to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of his records.

(c) *Records of claimants.* Any person (including an employee) who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and by §§ 31.6001–2 to 31.6001–5, inclusive, which relate to the claim.

(d) *Records of employees.* While not mandatory (except in the case of claims), it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he performs services as an employee, the dates of beginning and termination of such services, the information with respect to himself which is required by the regulations in this subpart to be kept by employers, and the statements furnished in accordance with the provisions of § 31.6051–1.

(e) *Place and period for keeping records.* (1) All records required by the regulations in this part shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers, and shall at all times be available for inspection by such officers.

(2) Except as otherwise provided in the following sentence, every person required by the regulations in this part to keep records in respect of a tax (whether or not such person incurs liability for such tax) shall maintain such records for at least four years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is the later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least four years after the date the claim is filed.

(f) *Cross reference.* See §§ 31.6001–2 to 31.6001–5, inclusive, for additional records required with respect to the Federal Insurance Contributions Act, the Railroad Retirement Tax Act, the Federal Unemployment Tax Act, and the collection of income tax at source on wages, respectively.

§ 31.6001–2 Additional records under Federal Insurance Contributions Act.

(a) *In general.* (1) Every employer liable for tax under the Federal Insurance Contributions Act shall keep records of all remuneration, whether in cash or in a medium other than cash, paid to his employees after 1954 for services (other than agricultural labor which constitutes or is deemed to constitute employment, domestic service in a private home of the employer, or service not in the course of the employer's trade or business) performed for him after 1936. Such records shall show with respect to each employee receiving such remuneration—

(i) The name, address, and account number of the employee and such additional information with respect to the employee as is required by paragraph

(c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(ii) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(iii) The amount of each such remuneration payment which constitutes wages subject to tax. See §§ 31.3121(a)–1 to 31.3121(a)(10)–1, inclusive.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected. See paragraph (b) of § 31.3102–1 for provisions relating to collection of amounts equivalent to employee tax.

(v) If the total remuneration payment (subdivision (ii) of this subparagraph) and the amount thereof which is taxable (subdivision (iii) of this subparagraph) are not equal, the reason therefor.

(2) Every employer shall keep records of the details of each adjustment or settlement of taxes under the Federal Insurance Contributions Act made pursuant to the regulations in this part. The employer shall keep as a part of his records a copy of each statement furnished pursuant to paragraph (c) of § 31.6011(a)–1.

(b) *Agricultural labor, domestic service, and service not in the course of employer's trade or business.* (1) Every employer who pays cash remuneration after 1954 for the performance for him after 1950 of agricultural labor which constitutes or is deemed to constitute employment, of domestic service in a private home of the employer not on a farm operated for profit, or of service not in the course of his trade or business shall keep records of all such cash remuneration with respect to which he incurs, or expects to incur, liability for the taxes imposed by the Federal Insurance Contributions Act, or with respect to which amounts equivalent to employee tax are deducted pursuant to section 3102(a). See §§ 31.3101–3, 31.3111–3, and 31.3121(a)–2 for provisions relating, respectively, to the liability for employee tax which is incurred when wages are received, the liability for employer tax which is incurred when wages are paid, and the time when wages are paid and received. Such records shall show with respect to each employee receiving such cash remuneration—

(i) The name of the employee.

(ii) The account number of each employee to whom wages for such services are paid within the meaning of § 31.3121(a)–2, and such additional information as is required by paragraph (c) of § 31.6011(b)–2 when the employee does not advise the employer what his account number and name are as shown on an account number card issued to the employee by the Social Security Administration.

(iii) The amount of such cash remuneration paid to the employee (including any sum withheld therefrom as tax or for any other reason) for agricultural labor which constitutes or is deemed to constitute employment, for domestic service in a private home of the employer not on a farm operated for profit, or for service not in the course of the employer's trade or business; the calendar month in which such cash remuneration was paid; and the character of the services for which such cash remuneration was paid. When the employer incurs liability for the taxes imposed by the Federal Insurance Contributions Act with respect to any such cash remuneration which he did not previously expect would be subject to the taxes, the amount of any such cash remuneration not previously made a matter of record shall be determined by the employer to the best of his knowledge and belief.

(iv) The amount of employee tax, or any amount equivalent to employee tax, collected with respect to such cash remuneration and the calendar month in which collected. See paragraph (b) of § 31.3102–1 for provisions relating to collection of amounts equivalent to employee tax.

(v) To the extent material to a determination of tax liability, the number of days during each calendar year after 1956 on which agricultural labor which constitutes or is deemed to constitute employment is performed by the employee for cash remuneration computed on a time basis.

(2) Every person to whom a "crew leader", as that term is defined in section 3121(o), furnishes individuals for the performance of agricultural labor after December 31, 1958, shall keep records of the name; permanent mailing address, or if none, present address; and identification number, if any, of such "crew leader".

§ 31.6001–3 Additional records under Railroad Retirement Tax Act.

(a) *Records of employers.* (1) Every employer liable for tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money), other than tips, paid to his employees after 1954 for services rendered to him (including "time lost") after 1954. Such records shall show with respect to each employee—

(i) The name and address of the employee.

(ii) The total amount and date of each payment of remuneration to the employee (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(iii) The amount of such remuneration payment with respect to which the tax is imposed.

(iv) The amount of employee tax collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

(v) If the total payment of remuneration (subdivision (ii) of this subparagraph) and the amount thereof with respect to which the tax is imposed (subdivision (iii) of this subparagraph) are not equal, the reason therefor.

(2) The employer shall keep records of the details of each adjustment or settlement of taxes under the Railroad Retirement Tax Act made pursuant to the regulations in this part.

(b) *Records of employee representatives.* Every individual liable for employee representative tax under the Railroad Retirement Tax Act shall keep records of all remuneration (whether in money or in something which may be used in lieu of money) paid to him after 1954 for services rendered (including "time lost") by him as an employee representative after 1954. Such records shall show—

(1) The name and address of each employee organization employing him.

(2) The total amount and date of each payment of remuneration for services rendered as an employee representative (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment.

(3) The amount of such remuneration payment with respect to which the employee representative tax is imposed.

(4) If the total payment of remuneration (subparagraph (2) of this paragraph) and the amount thereof with respect to which the employee representative tax is imposed (subparagraph (3) of this paragraph) are not equal, the reason therefor.

§ 31.6001–4 Additional records under Federal Unemployment Tax Act.

(a) *Records of employers.* Every employer liable for tax under the Federal Unemployment Tax Act for any calendar year shall, with respect to each such year, keep such records as are necessary to establish—

(1) The total amount of remuneration (including any sum withheld therefrom as tax or for any other reason) paid to his employees during the calendar year for services performed after 1938.

(2) The amount of such remuneration which constitutes wages subject to the tax. See § 31.3306(b)–1 through § 31.3306(b)(8)–1.

(3) The amount of contributions paid by him into each State unemployment fund, with respect to services subject to the law of such State, showing separately (i) payments made and neither deducted nor to be deducted from the remuneration of his employees, and (ii) payments made and deducted or to be deducted from the remuneration of his employees.

(4) The information required to be shown on the prescribed return and the extent to which the employer is liable for the tax.

(5) If the total remuneration paid (subparagraph (1) of this paragraph) and the amount thereof which is subject to the tax (subparagraph (2) of this paragraph) are not equal, the reason therefor.

(6) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which each employee performed services not in the course of the employer's trade or business, and the amount of cash remuneration paid at any time for such services performed within such quarter. See § 31.3306(c)(3)–1.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business. See § 31.3306(b)(7)–1.

(b) *Records of persons who are not employers.* Any person who employs individuals in employment (see § 31.3306(c)–2 through § 31.3306(c)(17)–1 during any calendar year but who considers that he is not an employer subject to the tax (see § 31.3306(a)–1) shall, with respect to each such year, be prepared to establish by proper records (including, where necessary, records of the number of employees employed each day) that he is not an employer subject to the tax.

§ 31.6001–5 Additional records in connection with collection of income tax at source on wages.

(a) Every employer required under section 3402 to deduct and withhold income tax upon the wages of employees shall keep records of all remuneration paid to such employees. Such records shall show with respect to each employee—

(1) The name and address of the employee.

(2) The total amount and date of each payment of remuneration (including any sum withheld therefrom as tax or for any other reason) and the period of services covered by such payment.

(3) The amount of such remuneration payment which constitutes wages subject to withholding.

(4) The amount of tax collected with respect to such remuneration payment, and, if collected at a time other than the time such payment was made, the date collected.

(5) If the total remuneration payment (subparagraph (2) of this paragraph) and the amount thereof which is taxable (subparagraph (3) of this paragraph) are not equal, the reason therefor.

(6) Copies of any statements furnished by the employee pursuant to paragraph (b)(12) of § 31.3401(a)–1 (relating to permanent residents of the Virgin Islands).

(7) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(7)–1 (relating to nonresident alien individuals who are residents of a contiguous country).

(8) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(A)–1 (relating to residence or physical presence in a foreign country).

(9) Copies of any statements furnished by the employee pursuant to § 31.3401(a)(8)(C)–1 (relating to citizens resident in Puerto Rico).

(10) The fair market value and date of each payment of noncash remuneration, made to an employee after August 9, 1955, for services performed as a retail commission salesman, with respect to which no income tax is withheld by reason of § 31.3402(j)–1.

(11) With respect to payments made in 1955 under a wage continuation plan (as defined in paragraph (a)(2)(i) of § 1.105–4 and §1.105–5 of this chapter (Income Tax Regulations)), the records required to be kept in respect of such payments are those prescribed under paragraph (b)(8)(i) of § 31.3401(a)–1.

(12) In the case of the employer for whom services are performed, with respect to payments made directly by him after December 31, 1955, under a wage continuation plan (as defined in paragraph (a)(2)(i) of § 1.105–4 and § 1.105–5 of this chapter (Income Tax Regulations))—

(i) The beginning and ending dates of each period of absence from work for which any such payment was made; and

(ii) Sufficient information to establish the amount and weekly rate of each such payment.

(13) The withholding exemption certificates (Form W–4) filed with the employer by the employee.

(14) The agreement, if any, between the employer and the employee for the withholding of additional amounts of tax pursuant to § 31.3402(i)–1.

(15) To the extent material to a determination of tax liability, the dates, in each calendar quarter, on which the employee performed services not in the course of the employer's trade or business, and the amount of cash remuneration paid at any time for such services performed within such quarter. See § 31.3401(a)(4)–1.

The term "remuneration," as used in this paragraph, includes all payments whether in cash or in a medium other than cash, except that the term does not include payments in a medium other than cash for services not in the course of the employer's trade or business. See § 31.3401(a)(11)–1.

(b) The employer shall keep records of the details of each adjustment or settlement of income tax withheld under section 3402 made pursuant to the regulations in this part.

§ 31.6001–6 Notice by district director requiring returns, statements, or the keeping of records.

The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for any of the taxes to which the regulations in this part have application.

§ 31.6011(a) Statutory provisions; general requirement of return, statement, or list; general rule.

SEC. 6011. *General requirement of return, statement, or list*—(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

§ 31.6011(a)–1 Returns under Federal Insurance Contributions Act.

(a) *Requirement*—(1) *In general.* Except as otherwise provided in § 31.6011(a)–5, every employer required to make a return under the Federal Insurance Contributions Act, as in effect prior to 1955, for the calendar quarter ended December 31, 1954, in respect of wages other than wages for agricultural labor, shall make a return for each subsequent calendar quarter (whether or not wages are paid in such quarter) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–5, every employer not required to make a return for the calendar quarter ended December 31, 1954, shall make a return for the first calendar quarter thereafter in which he pays wages, other than wages for agricultural labor, subject to the taxes imposed by the Federal Insurance Contributions Act as in effect after 1954, and shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in subparagraphs (3) and (4) of this paragraph, Form 941 is the form prescribed for making the return required by this subparagraph. Such return shall not include wages for agricultural labor required to be reported on any return prescribed by subparagraph (2) of this paragraph.

(2) *Employers of agricultural workers*—(i) *Quarterly returns for 1955.* Every employer who, at any time before October 1 of the calendar year 1955, incurs liability of $100 or more for the taxes imposed by the Federal Insurance Contributions Act with respect to wages paid in such year for agricultural labor shall make a return—

(*a*) For the first calendar quarter of such year if the liability for such taxes incurred in such quarter is $100 or more,

(*b*) For the period consisting of the first and second calendar quarters of such year if the liability for such taxes incurred in those quarters totals $100 or more, except that such return shall be made only for the second calendar quarter if a return was required under (*a*) of this subdivision and if the liability for such taxes incurred in the second calendar quarter is $100 or more, and

(*c*) For the period consisting of the first, second, and third calendar quarters of such year if the liability for such taxes incurred in those quarters totals $100 or more, except that such return shall be made (*1*) only for the period consisting of the second and third calendar quarters if a return was required under (*a*) of this subdivision but not under (*b*) of this subdivision, and if the total liability for such taxes incurred in the second and third calendar quarters totals $100 or more; or (*2*) only for the third calendar quarter if a return was required under (*b*) of this subdivision, and if the liability for such taxes incurred in the third calendar quarter is $100 or more.

Form 943A is the form prescribed for making the return required by this subdivision, except that, if the return is required to be filed with the office of the United States Internal Revenue Service in Puerto Rico, the return shall be made on Form 943A–PR if the Internal Revenue Service furnishes Form 943A–PR to the employer for use in lieu of Form 943A (see § 31.6091–1).

(ii) *Annual returns for 1955 and subsequent years.* Every employer who pays wages after 1954 for agricultural labor with respect to which taxes are imposed by the Federal Insurance Contributions Act shall make a return for the first calendar year in which he pays such wages and for each calendar year thereafter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form 943 is the form prescribed for making the annual return required by this subdivision, except that, if the return is required to be filed with the office of the United States Internal Revenue Service in Puerto Rico, the return shall be made on Form 943PR if the Internal Revenue Service furnishes Form 943PR to the employer for use in lieu of Form 943 (see § 31.6091–1).

(3) *Employers of domestic workers.* Form 942 is the form prescribed for use by every employer in making a return as required under subparagraph (1) of this paragraph in respect of wages, as defined in the Federal Insurance Contributions Act, paid by him in any calendar quarter for domestic service in a private home of the employer not on a farm operated for profit. If, however, the employer is required under subparagraph (1) of this paragraph to make a return on Form 941 for such calendar quarter, such employer, at his election, may—

(i) Report all wages on Form 941, or

(ii) Report on Form 942 the wages for domestic service in a private home of the employer not on a farm operated for profit and omit such wages from the return on Form 941.

An employer entitled to make the election referred to in the preceding sentence who has chosen one method shall not change to the other method without first notifying the district director with whom he is required to file his returns that he will thereafter use such other method. See, however, § 31.6011(a)–6, relating to final returns on Form 941. The provisions of this subparagraph shall not apply to any employer required to file the return prescribed under subparagraph (1) of this paragraph with the office of the United States Internal Revenue Service in Puerto Rico (see § 31.6091–1).

(4) *Employers in Puerto Rico or the Virgin Islands.* Form 941PR is the form prescribed for use in making the return required under subparagraph (1) of this paragraph in the case of every employer who is required to file such return with the office of the United States Internal Revenue Service in Puerto Rico, except that the return shall be made on Form 941VI if the Internal Revenue Service furnishes Form 941VI to the employer for use in lieu of Form 941PR. However, Form 941 is the form prescribed for making such return in the case of every such employer who is required pursuant to § 31.6011(a)–4 to make a return of income tax withheld from wages.

(b) *When to report wages.* Wages with respect to which taxes are imposed by the Federal Insurance Contributions Act shall be reported in the return of such taxes required under this section or § 31.6011(a)–5 for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period. However, if such wages are deemed to be paid in a later return period, they shall be reported only in the return for such later period. See § 31.3121(a)–2 relating to the time when wages are paid or deemed to be paid.

(c) *Correction of returns or schedules.* If in a return required under this section or § 31.6011(a)–5, or in any other manner, the employer fails to report, or incorrectly reports, to the district director, the name, account number, or wages of an employee, the employer shall furnish to the district director a written statement fully explaining the omission or error; except that such statement is not required by this paragraph if correction of the omission or error is made in connection with a supplemental return, adjustment, credit, refund, or abatement. The employer shall include in such statement his identification number (except that an identification number need not be included if the omission or error is with respect to information required to be reported on a return on Form 942), each return period for which the data were omitted or for which the incorrect data were furnished, the data incorrectly reported for each period, and the data which should have been reported. A copy of such statement shall be retained by the employer as a part of his records under § 31.6001–2. No particular form is prescribed for making such statement, but if printed forms are desired, the district director will supply copies of Form 941c or Form 941c PR, whichever is appropriate, upon request.

(d) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–2 Returns under Railroad Retirement Tax Act.

(a) *Requirement*—(1) *Employers.* Every employer shall make a return for the first calendar quarter after 1954 within which compensation taxable under the Railroad Retirement Tax Act is paid to his employee or employees for services rendered after 1954, and for each subsequent calendar quarter (whether or not taxable compensation is paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form CT–1 is the form prescribed for making the return required under this subparagraph. One original and a duplicate of each return on Form CT–1 shall be filed with the district director.

(2) *Employee representatives.* Every employee representative shall make a return for the first calendar quarter after 1954 within which he is paid taxable compensation for services rendered after 1954 as an employee representative, and for each subsequent calendar quarter (whether or not he is paid taxable compensation therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form CT–2 is the form prescribed for making the return required under this subparagraph. One original and a duplicate of each return on Form CT–2 shall be filed with the district director.

(b) *When to report compensation*—(1) *In general.* Except as otherwise provided in subparagraph (2) of this paragraph, compensation taxable under the Railroad Retirement Tax Act shall be reported in the return required under this section for the period in which it is deemed, under paragraph (d) of § 31.3231(e)–1 to be paid, unless under such section the compensation may be deemed to be paid in more than one return period, in which case it shall be reported only in the return for the first return period in which it is deemed to be paid.

(2) *Returns of employers required by State law to pay compensation on weekly basis*—(i) *In general.* If any employer is required by the laws of any State to pay compensation weekly, the return of tax with respect to such compensation may, at the election of such employer, cover all payroll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a)(1) of this section. This provision shall not apply, however, to any payroll week which falls in two calendar years. Any employer who elects to file a return as provided in this subparagraph shall notify the district director in writing of such election and shall include therein a statement setting forth the facts which entitle him to make the election. Such notice shall be in duplicate and shall be attached to the original and duplicate of the return for the first period to which such election applies. Any election so made shall be binding upon the employer with respect to all returns subsequently made by him until the district director authorizes or directs the employer to make a return on a different basis. For the purpose of determining the time when compensation is deemed to be paid in accordance with paragraph (d) of § 31.3231(e)–1 and of determining the due date of a return in accordance with paragraph (b) of § 31.6071(a)–1, the calendar month following the period covered by the return of an employer making such election is the same calendar month which would be determinative for such purposes if the employer had not made the election.

(ii) *Prior elections.* An election made by an employer, pursuant to the provisions of 26 CFR (1939) 410.501(b) (Regulations 100) or of 26 CFR (1939) 411.601 (b), (Regulations 114), which is in force and effect at the time the employer makes his first return under this section shall satisfy the requirements of subdivision (i) of this subparagraph with respect to the making of an election and shall be binding upon the employer with respect to all returns made by him under this section until the district director authorizes or directs the employer to make a return on a different basis.

(iii) *Example.* Employer X is required by State law to pay his employees within 6 days after the compensation is earned. In compliance with the State law, employer X, for services rendered to him for the payroll week of June 27 to July 2, 1955, pays his employees on the last-named date, June 1955 is the last month of a period for which a return of tax is required by paragraph (a)(1) of this section. Employer X may elect to include in the return required by paragraph (a)(1) of this section for the period April 1 to June 30, 1955, the compensation paid to his employees for the payroll week of June 27 to July 2, 1955, inclusive, although the compensation for July 1 and 2 falls within another period for which a return is required by paragraph (a)(1) of this section. If, in this example, the payroll week ended on July 5, 1955, the compensation paid for the payroll week of June 29 to July 5 would be included in the return period in which July falls although the compensation earned for June 29 and 30 fell in a prior return period under the general rule.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–3 Returns under Federal Unemployment Tax Act.

(a) *Requirement.* Every person shall make a return of tax under the Federal Unemployment Tax Act for each calendar year with respect to which he is an employer as defined in § 31.3306(a)–1. Form 940 is the form prescribed for use in making the return.

(b) *When to report wages.* Wages taxable under the Federal Unemployment Tax Act shall be reported in the return required under this section for the return period in which they are actually paid unless they were constructively paid in a prior return period, in which case such wages shall be reported only in the return for such prior period.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–4 Returns of income tax withheld from wages.

(a) *In general.* Except as otherwise provided in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 1622 of the Internal Revenue Code of 1939 for the calendar quarter ended December 31, 1954, shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in § 31.6011(a)–5, every person not required to make a return for the calendar quarter ended December 31, 1954, shall make a return of income tax withheld from wages pursuant to section 3402 for the first calendar quarter thereafter in which he is required to deduct and withhold such tax and for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)–6. Form 941 is the form prescribed for making the return required under this paragraph.

(b) *District director's copies of Form W–2.* (1) Every employer who is required under paragraph (a) of this section to make a return of income tax withheld from wages for a period ending December 31, or for any period for which such return is made as a final return, shall submit as part of such return the district director's copy of each withholding statement on Form W–2 required under § 31.6051–1 to be furnished by the employer with respect to wages paid during the calendar year. For the penalty provided in case of each failure to file Form W–2, see paragraph (a) of § 301.6652–1 of this chapter (Regulations on Procedure and Administration).

(2) The copies of withholding statements for the current calendar year transmitted with the return required under paragraph (a) of this section shall be accompanied by an information statement on Form W–3. This subparagraph has no application to any return filed under this section in 1955.

(3) The copies of withholding statements for the current calendar year transmitted with the return shall be accompanied by a list (preferably in the form of an adding machine tape) of the amounts of income tax withheld shown on such statements. If an employer's total payroll is made up on the basis of a number of separate units or establishments, the statements may be assembled accordingly and a separate list or tape submitted for each unit. In such case, a summary list or tape should be submitted, the total of which will agree with the corresponding entry to be made on Form W–3. If the number of statements is large, they may be forwarded in packages of convenient size. When this is done, the packages should be identified with the name of the employer and consecutively numbered, and Form W–3 should be placed in package No. 1. The number of packages should be indicated immediately after the employer's name on Form W–3. The return, Form 941, and remittance in cases of this kind should be submitted in the usual manner, accompanied by a brief statement that the district director's copies of Form W–2 and Form W–3 are in separate packages.

(4) The district director's copies of corrected Forms W–2 for a prior calendar year shall be submitted to the district director on or before the date fixed for filing the employer's return of income tax withheld from wages for the period ending December 31 of the year in which the correction is made, or for any period in such year for which the return is made as a final return. Such copies of corrected Forms W–2 shall be accompanied by a statement explaining the corrections and, if submitted with the employer's return for such period ending December 31 or with such final return, shall be assembled separately from the district director's copies of Forms W–2 for the current calendar year (see subparagraph (1) of this paragraph).

(5) For provisions relating to extensions of time for filing the district director's copies of Form W–2 and Form W–3, see paragraph (a)(3) of § 31.6081(a)–1.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071 (a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–5 Monthly returns.

(a) *In general*—(1) *Requirement.* The provisions of this section are applicable in respect of the taxes reportable on Form 941, Form 941PR, or Form 941VI pursuant to § 31.6011(a)–1 or § 31.6011 (a)–4. An employer who is required by § 31.6011(a)–1 or § 31.6011(a)–4 to make quarterly returns on any such form shall, in lieu of making such quarterly returns, make returns of such taxes in accordance with the provisions of this section if he is so notified in writing by the district director. The district director may so notify any employer (i) who, by reason of notification as provided in § 301.7512–1 of this chapter (Regulations on Procedure and Administration), is required to comply with the provisions of such § 301.7512–1, or (ii) who has failed to (*a*) make any such return on Form 941, Form 941PR, or Form 941VI, (*b*) pay tax reportable on any such form, or (*c*) deposit any such tax as required under the provisions of § 31.6302(c)–1. Every employer so notified by the district director shall make a return for the calendar month in which the notice is received and for each calendar month thereafter (whether or not wages are paid in any such month) until he has filed a final return or is required to make quarterly returns pursuant to notification as provided in subparagraph (2) of this paragraph. However, if the notice provided for in this subparagraph is received after the close of the first calendar month of a calendar quarter, the first return under this section shall be made for the period beginning with the first day of such quarter and ending with the last day of the month in which the notice is received. Each return required under this section shall be made on the form prescribed for making the return which would otherwise be required of the employer under the provisions of § 31.6011 (a)–1 or § 31.6011(a)–4, except that, if some other form is furnished by the district director for use in lieu of such prescribed form, the return shall be made on such other form.

(2) *Termination of requirement.* The district director, in his discretion, may notify the employer in writing that he shall discontinue the filing of monthly returns under this section. If the employer is so notified, the last month for which a return shall be made under this section is the last month of the calendar quarter in which such notice of discontinuance is received. Thereafter, the employer shall make quarterly returns in accordance with the provisions of § 31.6011(a)–1 or § 31.6011(a)–4.

(b) *Information returns or statements*—(1) *Federal Insurance Contributions Act.* Every employer who is required under paragraph (a) of this section to make a return of tax under the Federal Insurance Contributions Act for any period within a calendar quarter

shall make an information return for such calendar quarter. Such return shall be made on Schedule A of Form 941, or the equivalent schedule of Form 941PR or Form 941VI, except that, if some other form or schedule is furnished by the district director for the purpose of making such return, the return shall be made on such other form or schedule. The information reported on such return shall include, with respect to each employee to whom the employer pays wages as defined in the Federal Insurance Contributions Act, the account number of the employee, the employee's name, the total amount of wages paid by the employer to the employee during the calendar quarter, and such other information as may be called for on the form provided for making such return.

(2) *Income tax withheld from wages.* (i) Every employer who is required under paragraph (a) of this section to make a return of income tax withheld from wages for a period ending December 31, or for any period for which such return is made as a final return, shall make an information statement for the calendar year which includes such period. Such information statement shall be made on Form W–3, except that, if some other form is furnished by the district director for use in lieu of Form W–3, the information statement shall be made on such other form. The information statement shall be accompanied by the district director's copy of each withholding statement on Form W–2 required under § 31.6051–1 to be furnished by the employer with respect to wages paid during the calendar year. The provisions of paragraph (b)(3) of § 31.6011(a)–4 shall be applicable in respect of such withholding statements. For provisions relating to the submission of the district director's copies of corrected Forms W–2 for a prior year, see paragraph (b)(4) of § 31.6011(a)–4. For the penalty provided in case of each failure to file Form W–2, see the provisions of paragraph (a) of § 301.6652–1 of this chapter (Regulations on Procedure and Administration).

(ii) For provisions relating to extensions of time for filing the district director's copies of Form W–2 and Form W–3, or such other form as may be furnished for use in lieu of Form W–3, see paragraph (a)(3) of § 31.6081(a)–1.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages.* An employer who is required to make a return on a particular form pursuant to § 31.6011(a)–1, § 31.6011(a)–4, or § 31.6011(a)–5, and who in any return period ceases to pay wages in respect of which he is required to make a return on such form, shall make such return for such period as a final return. Each return made as a final return shall be marked "Final return" by the person filing the return. Every such person filing a final return (other than a final return on Form 942 or Form 943) shall furnish information showing the date of the last payment of wages, as defined in section 3121(a) or section 3401(a). An employer (other than an employer making returns on Form 942) who has only temporarily ceased to pay wages, because of seasonal activities or for other reasons, shall not make a final return but shall continue to file returns. If (i) for any return period an employer makes a final return on a particular form, and (ii) after the close of such period the employer pays wages, as defined in section 3121(a) or section 3401(a), in respect of which the same or a different return form is prescribed, such employer shall make returns on the appropriate return form. For example, if an employer who has filed a final return on Form 941 pays wages only for domestic service in his private home not on a farm operated for profit, the employer is required to make returns on Form 942 in respect of such wages.

(2) *Railroad Retirement Tax Act*—(i) *Form CT–1.* An employer required to make returns on Form CT–1 who in any calendar quarter ceases to pay taxable compensation shall make the return on Form CT–1 for such quarter as a final return. Such return shall be marked "Final return" by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employer who has only temporarily ceased to pay taxable compensation shall continue to file returns on Form CT–1.

(ii) *Form CT–2.* An employee representative required to make returns on Form CT–2 who in any calendar quarter ceases to be paid taxable compensation for services as an employee representative shall make the return on Form CT–2 for such quarter as a final return. Such return shall be marked "Final return" by the person filing the return, and such person shall furnish information showing the date of the last payment of taxable compensation. An employee representative who only temporarily ceases to be paid taxable compensation for services as an employee representative shall continue to file returns on Form CT–2.

(3) *Federal Unemployment Tax Act.* An employer required to make a return on Form 940 for a calendar year in which he ceases to be an employer, as defined in § 31.3306(a)–1, because of the discontinuance, sale, or other transfer of his business, shall make such return as a final return. Such return shall be marked "Final return" by the person filing the return.

(b) *Statement to accompany final return.* There shall be executed as a part of each final return, except in the case of a final return on Form 942, a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping such records, and, if the business of an employer has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or other transfer took place. If no such sale or transfer occurred or the employer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement. Such statement shall include any information required by this section as to the date of the last payment of wages or compensation. If the statement is executed as a part of a final return on Form CT–1 or Form CT–2, such statement shall be furnished in duplicate.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns, see §§ 31.6071(a)–1 and 31.6091–1, respectively.

§ 31.6011(a)–7 Execution of returns.

(a) *In general.* Each return required under the regulations in this part, together with any prescribed copies or supporting data, shall be filled in and disposed of in accordance with the forms, instructions, and regulations applicable thereto. The return shall be carefully prepared so as fully and accurately to set forth the data required to be furnished therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the regulations in this part. The return may be made by an agent in the name of the person required to make the return if an acceptable power of attorney is filed with the district director and if such return includes all taxes required to be reported by such person on such return for the period covered by the return. Only one return on any one prescribed form for a return period shall be filed by or for a taxpayer. Any supplemental return made on such form in accordance with § 31.6205–1 shall constitute a part of the return which it supplements. Consolidated returns of two or more employers are not permitted, as for example, returns of a parent and a subsidiary corporation. For provisions relating to the filing of returns of the taxes imposed by the Federal Insurance Contributions Act and of income tax withheld under section 3402 in the case of governmental employers, see § 31.3122 and § 31.3404–1.

(b) *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be regularly furnished taxpayers by district directors. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. Taxpayers not supplied with the proper forms should make application therefor to the district director in ample time to have their returns prepared, verified, and filed with the district director on or before the due date. See §§ 31.6071(a)–1 and 31.6091–1, relating, respectively, to the time and place for filing returns. In the absence of a prescribed return form, a statement made by a taxpayer disclosing the aggregate amount of wages or compensation reportable on such form for the period in respect of which a return is required and the amount of taxes due may be accepted as a tentative return. If filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided

that without unnecessary delay such tentative return is supplemented by a return made on the proper form. For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

(c) *Signing and verification.* For provisions relating to the signing of returns, see § 31.6061–1. For provisions relating to the verifying of returns, see § 31.6065(a)–1.

§ 31.6011(b) Statutory provisions; identification of taxpayer.

SEC. 6011. *General requirement of return, statement, or list.* • • •

(b) *Identification of taxpayer.* The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

§ 31.6011(b)–1 Employers' identification numbers.

(a) *Requirement of application*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, every employer who on or after January 1, 1955, has in his employ one or more individuals in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such date has neither secured an identification number nor made application therefor, shall make an application on Form SS–4 for an identification number. Each application, together with any supplementary statement, shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Copies of Form SS–4 may be obtained from any district director, or any district office of the Social Security Administration. The application shall be filed with the district director with whom the employer will file returns of the taxes imposed by the Federal Insurance Contributions Act, or with the nearest district office of the Social Security Administration. Each application shall be signed by (i) the individual, if the employer is an individual; (ii) the president, vice president, or other principal officer, if the employer is a corporation; (iii) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization; or (iv) the fiduciary, if the employer is a trust or estate. An identification number will be assigned to the employer in due course upon the basis of information reported on the application required under this section.

(2) *Exception.* An employer, other than an employer who is required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico, who has in his employ only employees who are engaged exclusively in the performance of domestic service in his private home not on a farm operated for profit (see § 31.3121(a)(7)–1) is not required to apply for an identification number.

(3) *Time for filing Form SS–4.* The application for an identification number shall be filed on or before the seventh day after the date on which the first payment of wages, as defined in the Federal Insurance Contributions Act, is made by the employer. For provisions relating to the time when wages are paid, see § 31.3121(a)–2.

(b) *Employers who are assigned identification numbers without application.* An identification number will be assigned by a district director in the case of (1) an employer who is required to make returns of the taxes imposed by the Federal Insurance Contributions Act but who by reason of the provisions of paragraph (a)(2) of this section is not required to apply for an identification number, and (2) an employer who is required to make returns of income tax withheld from wages pursuant to section 3402 but who is not required to make returns of the taxes imposed by the Federal Insurance Contributions Act.

(c) *Crew leaders.* Any person who, as a crew leader within the meaning of section 3121(o), furnishes individuals to perform agricultural labor for another person shall, on or before the first date on which he furnishes such individuals to perform such labor for such other person, advise such other person of his name; permanent mailing address, or if none, present address; and identification number, if any.

(d) *Use of identification number.* The identification number assigned to an employer (other than a household employer referred to in paragraph (a)(2) of this section) shall be shown in the employer's records, returns, statements for employees, depositary receipts, and claims to the extent required by the applicable forms, regulations, and instructions.

§ 31.6011(b)–2 Employees' account numbers.

(a) *Requirement of application*—(1) *In general.* Every employee who on or after January 1, 1955, is in employment for wages subject to the taxes imposed by the Federal Insurance Contributions Act, but who prior to such date has neither secured an account number nor made application therefor, shall make an application on Form SS–5 for an account number. Each application shall be prepared in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. Such employee shall file the application with any district office of the Social Security Administration or, if the employee is not working within the United States, with the district office of the Social Security Administration at Baltimore, Maryland. Copies of Form SS–5 may be obtained from any district office of the Social Security Administration or from any district director. An account number will be assigned to the employee by the Social Security Administration in due course upon the basis of information reported on the application required under this section. A card showing the name and account number of an employee to whom an account number has been assigned will be furnished to the employee by the Social Security Administration.

(2) *Time for filing Form SS–5.* The application shall be filed on or before the seventh day after the date on which the employee first performs employment for wages, unless the employee leaves the employ of his employer before such seventh day, in which case the application shall be filed on or before the date on which the employee leaves the employ of his employer.

(3) *Changes and corrections.* Any employee may have his account number changed at any time by applying to a district office of the Social Security Administration and showing good reasons for a change. With that exception, only one account number will be assigned to an employee. Any employee whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS–5, should report such change or correction to a district office of the Social Security Administration. Copies of the form for making such reports may be obtained from any district office of the Administration.

(b) *Duties of employee with respect to his account number*—(1) *Information to be furnished to employer.* An employee shall, on the day on which he enters the employ of any employer for wages, comply with the provisions of subdivision (i), (ii), (iii), or (iv) of this subparagraph, except that, if the employee's services for the employer consist solely of agricultural labor, domestic service in a private home of the employer not on a farm operated for profit, or service not in the course of the employer's trade or business, the employee shall comply with such provisions on the first day on which wages are paid to him by such employer, within the meaning of § 31.3121(a)–2:

(i) *Employee who has account number card.* If the employee has been issued an account number card by the Social Security Administration and has the card available, the employee shall show it to the employer.

(ii) *Employee who has number but card not available.* If the employee does not have available the account number card issued to him by the Social Security Administration but knows what his account number is, and what his name is, exactly as shown on such card, the employee shall advise the employer of such number and name. Care must be exercised that the employer is correctly advised of such number and name.

(iii) *Employee who has receipt acknowledging application.* If the employee does not have an account number card but has available a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received, the employee shall show such receipt to the employer.

(iv) *Employee who is unable to furnish number or receipt.* If an employee is unable to comply with the requirement of subdivision (i), (ii), or (iii) of this subparagraph, the employee shall furnish to the employer a statement in writing, signed by the employee, setting forth the date of the statement, the employee's full name, present address, date and place of birth, father's full

name, mother's full name before marriage, and the employee's sex, including a statement as to whether the employee has previously filed an application on Form SS–5 and, if so, the date and place of such filing. The information required by this subdivision shall be furnished on Form SS–5, if a copy of Form SS–5 is available. The furnishing of such a Form SS–5 or other statement by the employee to the employer does not relieve the employee of his obligation to make an application on Form SS–5 and file it with a district office of the Social Security Administration as required by paragraph (a) of this section. The foregoing provisions of this subdivision are not applicable to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. However, such employee shall advise the employer of his full name and present address.

For provisions relating to the duties of an employer when furnished the information required by subdivision (i), (ii), (iii), or (iv) of this subparagraph, see paragraph (c) of this section.

(2) *Additional information to be furnished by employee to employer.* Every employee who, on the day on which he is required to comply with subdivision (i), (ii), (iii), or (iv) of subparagraph (1) of this paragraph, has an account number card but for any reason does not show such card to the employer on such day shall promptly thereafter show the card to the employer. An employee who does not have an account number card on such day shall, upon receipt of an account number card from the Social Security Administration, promptly show such card to the employer, if he is still in the employ of that employer. If the employee has left the employ of the employer when the employee receives an account number card from the Social Security Administration, he shall promptly advise the employer of his account number and name exactly as shown on such card. The account number originally assigned to an employee (or the number as changed in accordance with paragraph (a)(3) of this section) shall be used by the employee as required by this paragraph even though he enters the employ of other employers.

(c) *Duties of employer with respect to employees' account numbers.*—(1) *Employee who shows account number.* Upon being shown the account number card issued to an employee by the Social Security Administration, the employer shall enter the account number and name, exactly as shown on the card, in the employer's records, returns, statements for employees, and claims to the extent required by the applicable forms, regulations, and instructions.

(2) *Employee who does not show account number card.* With respect to an employee who, on the day on which he is required to comply with subdivision (i), (ii), (iii), or (iv) of paragraph (b)(1) of this section, does not show the employer an account number card issued to the employee by the Social Security Administration, the employer shall request such employee to show him such card. If the card is not shown, the employer shall comply with the applicable provisions of subdivision (i), (ii), (iii), (iv), or (v) of this subparagraph:

(i) *Employee who has not applied for account number.* If the employee has not been assigned an account number and has not made application therefor with a district office of the Social Security Administration, the employer shall inform the employee of his duties under this section.

(ii) *Employee who has account number.* If the employee advises the employer of his number and name as shown on his account number card, as provided in paragraph (b)(1)(ii) of this section, the employer shall enter such number and name in his records.

(iii) *Employee who has receipt for application.* If the employee shows the employer, as provided in paragraph (b)(1)(iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter in his records with respect to such employee the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office. The receipt shall be retained by the employee.

(iv) *Employee who furnishes Form SS–5 or statement.* If the employee furnishes information to the employer as provided in paragraph (b)(1)(iv) of this section, the employer shall retain such information for use as provided in subparagraph (3)(ii) of this paragraph.

(v) *Household or agricultural employees.* If the employee advises the employer of his full name and present address in accordance with those provisions of paragraph (b)(1)(iv) of this section which are applicable in the case of employees engaged exclusively in the performance of domestic service in a private home of the employer not on a farm operated for profit, or agricultural labor, the employer shall enter such name and address in his records.

(3) *Account number unknown when return is filed.* In any case in which the employee's account number is for any reason unknown to the employer at the time the employer's return is filed for any return period with respect to which the employer is required to report the wages paid to such employee—

(i) *If employee has shown receipt for application.* If the employee has shown to the employer, as provided in paragraph (b)(1)(iii) of this section, a receipt issued to him by an office of the Social Security Administration acknowledging that an application for an account number has been received from the employee, the employer shall enter on the return, with the entry with respect to the employee, the name and address of the employee exactly as shown on the receipt, the expiration date of the receipt, and the address of the issuing office.

(ii) *If employee furnished Form SS–5 or statement.* If the employee has furnished information to the employer as provided in paragraph (b)(1)(iv) of this section, the employer shall prepare a copy of the Form SS–5 or statement furnished by the employee and attach the copy to the return.

(iii) *If employee did not furnish receipt, Form SS–5, or statement.* If neither subdivision (i) nor (ii) of this subparagraph is applicable, the employer shall, except as provided in subparagraph (4) of this paragraph, attach to the return a Form SS–5 or statement, signed by the employer, setting forth as fully and clearly as practicable the employee's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the employee's sex, and a statement as to whether an application for an account number has previously been filed by the employee and, if so, the date and place of such filing. The employer shall also insert in such Form SS–5 or statement an explanation of why he has not secured from the employee the information referred to in paragraph (b)(1)(iv) of this section, and shall insert the word "Employer" as part of his signature.

(4) *Household or agricultural employees.* The provisions of subparagraph (3)(iii) of this paragraph are not applicable with respect to an employee engaged exclusively in the performance of domestic service in a private home of his employer not on a farm operated for profit, or in the performance of agricultural labor, if the services are performed for an employer other than an employer required to file returns of the taxes imposed by the Federal Insurance Contributions Act with the office of the United States Internal Revenue Service in Puerto Rico. If any such employee has not furnished to the employer the information required by paragraph (b)(1)(i), (ii), or (iii) of this section prior to the time the employer's return is filed for any return period with respect to which the employer is required to report wages paid to such employee, the employer shall enter the word "Unknown" in the account number column of the return and (i) file with the return a statement showing the employee's full name and present or last known address, or (ii) enter such address on the return form immediately below the name of the employee.

(5) *Where to obtain Form SS–5.* Employers may obtain copies of Form SS–5 from any district office of the Social Security Administration or from any district director.

(6) *Prospective employees.* While not mandatory, it is suggested that the employer advise any prospective employee who does not have an account number of the requirements of paragraphs (a) and (b) of this section.

§ 31.6051 Statutory provisions; receipts for employees.

SEC. 6051. *Receipts for employees.*—(a) *Requirement.* Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(1) The name of such person,

(2) The name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) The total amount of wages as defined in section 3401(a),

(4) The total amount deducted and withheld as tax under section 3402,

(5) The total amount of wages as defined in section 3121(a), and

(6) The total amount deducted and withheld as tax under section 3101.

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2).

(b) *Special rule as to compensation of members of Armed Forces.* In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) *Additional requirements.* The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe.

(d) *Statements to constitute information returns.* A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary or his delegate shall, when required by such regulations, be filed with the Secretary or his delegate.

[Sec. 6051 as amended by sec. 412, Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 879)]

§ 31.6051–1 Statements for employees.

(a) *Requirement if wages are subject to withholding of income tax.*—(1) *General rule.* (i) Every employer, as defined in section 3401(d), required to deduct and withhold from an employee a tax under section 3402, or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee, in respect of the remuneration paid by such employer to such employee during the calendar year, the tax return copy and the employee's copy of a statement on Form W–2. For example, if the wage bracket method of withholding provided in section 3402(c)(1) is used, a statement on Form W–2 must be furnished to each employee whose wages during any payroll period are equal to or in excess of the smallest wage from which tax must be withheld in the case of an employee claiming one exemption. If the percentage method is used, a statement on Form W–2 must be furnished to each employee whose wages during any payroll period are in excess of one withholding exemption for such payroll period as shown in the percentage method withholding table contained in section 3402(b)(1). Each statement on Form W–2 shall show the following:

(a) The name, address, and identification number of the employer,

(b) The name and address of the employee, and, if wages as defined in section 3121(a) have been paid, his social security account number,

(c) The total amount of wages as defined in section 3401(a),

(d) The total amount deducted and withheld as tax under section 3402,

(e) The total amount of wages as defined in section 3121(a), and

(f) The total amount of employee tax under section 3101 deducted and withheld (increased by any adjustment in the calendar year for overcollection, or decreased by any adjustment in such year for undercollection, of such tax during any prior year).

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this subparagraph.

(ii) Payments made in 1955 under a wage continuation plan shall be reported on Form W–2 to the extent, and in the manner, provided in paragraph (b)(8)(i) of § 31.3401(a)–1.

(iii) In the case of statements furnished by the employer for whom services are performed, with respect to wages paid after December 31, 1955, "the total amount of wages as defined in section 3401(a)", as used in section 6051(a)(3), shall include all payments made directly by such employer under a wage continuation plan which constitute wages in accordance with paragraph (b)(8)(ii)(*a*) of § 31.3401(a)–1, without regard to whether tax has been withheld on such amounts.

(iv) Form W–2 is not required in respect of any wage continuation payment made to an employee by or on behalf of a person who is not the employer for whom the employee performs services but who is regarded as an employer under section 3401(d)(1). See paragraph (b)(8) of § 31.3401(a)–1.

(v) In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, "wages as defined in section 3121(a)", as used in section 6051(a)(2) and (5), shall be determined in accordance with section 3121(i)(2) and section 3122.

(2) *Statements for members of the Armed Forces of the United States.* Section 6051(b) contains certain special provisions which are applicable in the case of members of the Armed Forces of the United States in active service. In such case, Form W–2 shall be furnished to each such member of the Armed Forces if any tax has been withheld under section 3402 during the calendar year from the remuneration of such member or if any of the remuneration paid during the calendar year for such active service is includible under chapter 1 of the Code in the gross income of such member. Form W–2, in the case of such member, shall show, as "the total amount of wages as defined in section 3401(a)", as used in section 6051(a)(3), the amount of the remuneration paid during the calendar year which is not excluded under chapter 1 from the gross income of such member, whether or not such remuneration constitutes wages as defined in section 3401(a) and whether or not paid for such active service.

(3) *Undelivered Forms W–2.* The tax return copy and the employee's copy of each withholding statement on Form W–2 for the calendar year which the employer is required to furnish to the employee and which after reasonable effort he is unable to deliver to the employee shall be transmitted to the district director with the return on Form 941 filed by the employer for the return period ending June 30 in the next succeeding calendar year or with the employer's final return if filed for a period ending on an earlier date. Thus, the undelivered copies of Forms W–2 ordinarily will be transmitted to the district director on or before July 31 or August 10 of the year following that for which they were issued, depending upon when the return for such return period is required to be filed. In the case of an employer having branch offices, the undelivered copies of Forms W–2 held in such branch offices may be transmitted by the employer with such return or, at the option of the employer, may be transmitted by the branch office directly to the district director for the internal revenue district in which the branch office is located. Such direct transmittal by branch offices shall be made at the time prescribed for the filing of the employer's return for the return period ending June 30 in the calendar year following that for which the Forms W–2 were issued or at the time of the filing of the employer's final return if filed for a period ending on an earlier date. The provisions of this subparagraph are also applicable with respect to any undelivered corrected statements issued for a prior calendar year.

(b) *Requirement if wages are not subject to withholding of income tax.*—(1) *General rule.* If during the calendar year an employer pays to an employee wages subject to the employee tax imposed by section 3101, and the employer is not required by paragraph (a) of this section to furnish to such employee a statement on Form W–2 for such calendar year, the employer shall, in accordance with the provisions of this paragraph, furnish a written statement to

the employee with respect to such wages. Such statement shall be in a form suitable for retention by the employee and shall show, with respect to the wages paid by the employer to the employee during the calendar year for employment after 1936, the following:

(i) The name and address of the employer,

(ii) The name, address, and social security account number of the employee,

(iii) The total amount of wages as defined in section 3121(a), and

(iv) The total amount of employee tax deducted and withheld from such wages (increased by any adjustment in such year for overcollection, or decreased by any adjustment in such year for undercollection, of employee tax during any prior year).

See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this paragraph.

(2) *Uniformed services.* In the case of remuneration paid for service described in section 3121(m), relating to service in the uniformed services, performed after 1956, "wages as defined in section 3121(a)", as used in section 6051(a)(5), shall be determined in accordance with section 3121(i)(2) and section 3122.

(3) *Form of statement.* No particular form is prescribed for the statement required by this paragraph. For the convenience of employers in complying with the requirements of this paragraph, copies of a form of statement, Form SS–14, will be furnished by district directors upon request.

(c) *Correction of statements*—(1) *Federal Insurance Contributions Act.* If (i) the amount of employee tax under section 3101 deducted and withheld in the calendar year from the wages, as defined in section 3121(a), paid during such year was less or greater than the tax imposed by section 3101 on such wages by reason of the adjustment in such year of an overcollection or undercollection of the tax in any prior year, or (ii) regardless of the reason for the error or the method of its correction, the amount of wages as defined in section 3121(a), or tax under section 3101, entered on a statement furnished pursuant to this section to an employee for a prior year was incorrect, a corrected statement for such prior year reflecting the adjustment or the correct data shall be furnished to the employee. Such statement shall be marked "Corrected by Employer".

(2) *Income tax withholding.* A corrected statement on Form W–2 shall be furnished to the employee with respect to a prior calendar year (i) to show the correct amount of wages, as defined in section 3401(a), paid during the prior calendar year if the amount of such wages entered on a statement furnished to the employee for such prior year is incorrect, or (ii) to show the amount actually deducted and withheld as tax under section 3402 if such amount is less or greater than the amount entered as tax withheld on the statement furnished the employee for such prior year. Such statement shall be marked "Corrected by Employer".

(3) *Cross reference.* For provisions relating to the disposition of the district director's copy of a corrected Form W–2, see paragraph (b)(4) of § 31.6011(a)–4.

(d) *Time for furnishing statements*—(1) *In general.* Each statement required by this section for a calendar year and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of wages is made. For provisions relating to the filing of the district director's copies of Form W–2, see paragraph (b) of § 31.6011(a)–4.

(2) *Extensions of time.* (i) For good cause shown upon written application by an employer, the district director may grant an extension of time not exceeding 30 days in which to furnish to employees the statements required by this section. Each application for an extension of time under this subdivision shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer files his returns; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the date prescribed in subparagraph (1) of this paragraph for furnishing the statements required by this section. In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth a reason for a signature other than the employer's and the relationship existing between the employer and the signer. For provisions relating to extensions of time for filing the district director's copies of Form W–2, see paragraph (a)(3) of § 31.6081(a)–1.

(ii) An extension of time, not exceeding 30 days, within which to furnish any statement required by this section upon termination of employment is hereby granted to any employer with respect to any employee whose employment is terminated during the calendar year. In the case of intermittent or interrupted employment where there is reasonable expectation on the part of both employer and employee of further employment, there is no requirement that a written statement be immediately furnished the employee; but when such expectation ceases to exist, the statement must be furnished within 30 days from that time.

(3) *Cross references.* For provisions relating to the penalties provided for the willful furnishing of a false or fraudulent statement, or for the willful failure to furnish a statement, see § 31.6674–1 and section 7204.

§ 31.6061 Statutory provisions; signing of returns and other documents.

SEC. 6061. *Signing of returns and other documents.* * * * any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

§ 31.6061–1 Signing of returns.

Each return required under the regulations in this subpart shall, if signature is called for by the form or instructions relating to the return, be signed by (a) the individual, if the person required to make the return is an individual; (b) the president, vice president, or other principal officer, if the person required to make the return is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the return is a partnership or other unincorporated organization; or (d) the fiduciary, if the person required to make the return is a trust or estate. The return may be signed for the taxpayer by an agent who is duly authorized in accordance with § 31.6011(a)–7 to make such return.

§ 31.6065(a) Statutory provisions; verification of returns.

SEC. 6065. *Verification of returns*—(a) *Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§ 31.6065(a)–1 Verification of returns or other documents.

If a return, statement, or other document made under the regulations in this part is required by the regulations contained in this part, or the form and instructions issued with respect to such return, statement, or other document, to contain or be verified by a written declaration that it is made under the penalties of perjury, such return, statement, or other document shall be so verified by the person signing it.

§ 31.6071(a) Statutory provisions; time for filing returns and other documents.

SEC. 6071. *Time for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages*—(1) *Quarterly or annual returns.* Each return required to be made under § 31.6011(a)–1, in respect of the taxes imposed by the Federal Insurance Contributions Act, or required to be made under § 31.6011(a)–4, in respect of income tax withheld, shall be filed on or before the last day of the first calendar month following the period for which it is made. However, any such return may be filed on or before the tenth day of the second calendar month following such period if such return is accompanied by depositary receipts, Form 450, showing timely deposits in full payment of such taxes due for such period. For the purpose of the preceding sentence, a deposit which is not required to be made within such return period may be made on or before the last day of the first calendar month following the close of such period, and the timeliness of the deposit for any month will be determined by the earliest date stamped on the validated Form 450 by an authorized commercial bank or by a Federal Reserve bank.

(2) *Monthly tax returns.* Each return in respect of the taxes imposed by the Federal Insurance Contributions Act or of income tax withheld which is required to be made under paragraph (a) of § 31.6011(a)–5 shall be filed on or before the fifteenth day of the first calendar month following the period for which it is made.

(3) *Information returns or statements*—(i) *Federal Insurance Contributions Act.* Each information return in respect of wages as defined in the Federal Insurance Contributions Act which is required to be made under paragraph (b)(1) of § 31.6011(a)–5 shall be filed on or before the fifteenth day following the calendar quarter for which it is made, except that, if a tax return under paragraph (a) of § 31.6011(a)–5 is made as a final return for a period ending prior to the last day of a calendar quarter, the information return shall be filed on or before the fifteenth day of the first calendar month following the period for which the tax return is filed.

(ii) *Income tax withheld from wages.* Each information statement in respect of income tax withheld from wages which is required to be made under paragraph (b)(2) of § 31.6011(a)–5 shall be filed on or before January 31 following the calendar year for which it is made, except that, if a tax return under paragraph (a) of § 31.6011(a)–5 is filed as a final return for a period ending prior to December 31, the information statement shall be filed on or before the last day of the first calendar month following the period for which the tax return is filed.

(b) *Railroad Retirement Tax Act.* Each return of the taxes imposed by the Railroad Retirement Tax Act required to be made under § 31.6011(a)–2 shall be filed on or before the last day of the second calendar month following the period for which it is made.

(c) *Federal Unemployment Tax Act.* Each return of the tax imposed by the Federal Unemployment Tax Act required to be made under § 31.6011(a)–3 shall be filed on or before the last day of the first calendar month following the period for which it is made.

(d) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(e) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see the provisions of § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

(f) *Cross reference.* For extensions of time for filing returns and other documents, see § 31.6081(a)–1.

§ 31.6081(a) Statutory provisions; extension of time for filing returns.

SEC. 6081. *Extension of time for filing returns*—(a) *General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

§ 31.6081(a)–1 Extensions of time for filing returns and other documents.

(a) *Federal Insurance Contributions Act; income tax withheld from wages; and Railroad Retirement Tax Act*—(1) *In general.* Except as otherwise provided in subparagraphs (2) and (3) of this paragraph, no extension of time for filing any return or other document required in respect of the Federal Insurance Contributions Act, income tax withheld from wages, or the Railroad Retirement Tax Act will be granted.

(2) *Information returns of employers required to file monthly returns of tax under the Federal Insurance Contributions Act.* The district director may, upon application of the employer, grant an extension of time in which to file any information return required under paragraph (b)(1) of § 31.6011(a)–5. Such extension of time shall not extend beyond the last day of the calendar month in which occurs the due date prescribed in paragraph (a)(3)(i) of § 31.6071(a)–1 for filing the information return. Each application for an extension of time for filing an information return shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the return; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the due date prescribed in paragraph (a)(3)(i) of § 31.6071(a)–1 for filing the information return.

(3) *Information statements of employers required to file returns of income tax withheld from wages.* For good cause shown upon application by an employer, the district director may grant an extension of time not exceeding 30 days in which to file (i) the district director's copies of Form W–2 pursuant to paragraph (b)(1) of § 31.6011(a)–4 or paragraph (b)(2) of § 31.6011(a)–5, and (ii) Form W–3 pursuant to paragraph (b)(2) of § 31.6011(a)–4 or paragraph (b)(2) of § 31.6011(a)–5, or such other form as may be furnished pursuant to paragraph (b)(2) of § 31.6011(a)–5 for use in lieu of Form W–3. Each application for an extension of time under this subparagraph shall be made in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the Forms W–2 and Form W–3, or such other form as may be furnished for use in lieu thereof, and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the date on which the employer is required to file the Forms W–2 and Form W–3, or such other form as may be furnished for use in lieu thereof, without regard to this subparagraph.

(b) *Federal Unemployment Tax Act.* The district director may, upon application of the employer, grant a reasonable extension of time (not to exceed 90 days) in which to file any return required in respect of the Federal Unemployment Tax Act. Any application for an extension of time for filing the return shall be in writing, properly signed by the employer or his duly authorized agent; shall be addressed to the district director with whom the employer will file the return; and shall contain a full recital of the reasons for requesting the extension, to aid the district director in determining the period of the extension, if any, which will be granted. Such a request in the form of a letter to the district director will suffice as an application. The application shall be filed on or before the due date prescribed in paragraph (c) of § 31.6071(a)–1 for filing the return, or on or before the date prescribed for filing the return in any prior extension granted. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part thereof.

(c) *Duly authorized agent.* In any case in which an employer is unable, by reason of illness, absence, or other good cause, to sign a request for an extension, any person standing in close personal or business relationship to the employer may sign the request on his behalf, and shall be considered as a duly authorized agent for this purpose, provided the request sets forth the reasons for a signature other than the employer's and the relationship existing between the employer and the signer.

§ 31.6091 Statutory provisions; place for filing returns.

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Individuals.* Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

(3) *Corporations.* Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

* * * * *

(4) *Exceptional cases.* Notwithstanding paragraph (1), (2) * * * of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

§ 31.6091–1 Place for filing returns.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of such person. If such person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director at Baltimore, Maryland, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Return of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D.C., unless the principal place of business or legal residence of such person, or the principal place of business or principal office or agency of such corporation, is located in the Virgin Islands or Puerto Rico, in which case the return shall be filed with the Revenue Service Representative, United States Internal Revenue Service, Santurce, Puerto Rico.

(d) *Exceptional cases—(1) Permission to file in district other than required district.* The Commissioner may permit the filing of any return required to be made under the regulations in this subpart in any internal revenue district, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and paragraphs (a), (b), and (c) of this section.

(2) *Returns of officers and employees of the Internal Revenue Service.* The Commissioner may require any officer or employee of the Internal Revenue Service to file any return required of him under the regulations in this subpart in any internal revenue district selected by the Commissioner, notwithstanding the provisions of paragraphs (1) and (2) of section 6091(b) and paragraphs (a), (b), and (c) of this section.

§ 31.6101 Statutory provisions; period covered by returns or other documents.

SEC. 6101. *Period covered by returns or other documents.* When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

§ 31.6101–1 Period covered by returns.

The period covered by any return required under the regulations in this subpart shall be as provided in those provisions of the regulations under which the return is required to be made. See § 31.6011(a)–1, relating to returns of taxes under the Federal Insurance Contributions Act; § 31.6011(a)–2, relating to returns of taxes under the Railroad Retirement Tax Act; § 31.6011(a)–3, relating to returns of tax under the Federal Unemployment Tax Act; § 31.6011(a)–4, relating to returns of income tax withheld under section 3402; and § 31.6011(a)–5, relating to monthly returns of taxes under the Federal Insurance Contributions Act and of income tax withheld under section 3402.

§ 31.6151 Statutory provisions; time and place for paying tax shown on returns.

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Exceptions.* * * *

(2) *Use of Government depositaries.* For authority of the Secretary or his delegate to require payments to Government depositaries, see section 6302(c).

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 31.6151–1 Time for paying tax.

(a) *In general.* The tax required to be reported on each tax return required under this subpart is due and payable to the district director at the time prescribed in § 31.6071(a)–1 for filing such return. See the applicable sections of 26 CFR Part 301 (Regulations on Procedure and Administration), for provisions relating to interest on underpayments, additions to tax, and penalties.

(b) *Use of Government depositaries.* For provisions relating to the use of Federal Reserve banks and authorized commercial banks in depositing the taxes, see §§ 31.6302(c)–1 and 31.6302(c)–2.

§ 31.6161(a)(1) Statutory provisions; extension of time for paying tax.

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

§ 31.6161(a)(1)–1 Extensions of time for paying tax.

No extension of time will be granted for payment of any of the taxes to which the regulations in this part have application.

§ 31.6205 Statutory provisions; special rules applicable to certain employment taxes.

SEC. 6205. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(b) *Underpayments.* If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 31.6205–1 Adjustments of underpayments.

(a) *In general.* (1) An employer who makes, or has made, an undercollection or underpayment of—

(i) Employee tax under section 3101, employer tax under section 3111, or the employee or employer tax under corresponding provisions of prior law,

(ii) Employee tax under section 3201, employer tax under section 3221, or the employee or employer tax under corresponding provisions of prior law, or

(iii) Income tax required under section 3402 to be withheld,

with respect to any payment of wages or compensation, shall correct such error as provided in this section. Such correction shall constitute an adjustment without interest to the extent provided in paragraph (b) or (c) of this section.

(2) Every correction under this section of an underpayment of tax with respect to a payment of wages or compensation shall be made on the return form which is prescribed for use, at the time the correction is made, in reporting tax which corresponds to the tax underpaid.

(3) Every return or supplemental return on which an underpayment is corrected pursuant to this section must have securely attached as a part thereof a statement explaining the correction, designating the return period in which the error was ascertained and the return period to which the error relates, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return.

(4) For purposes of this section, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(5) If a correction is made under this section with respect to the erroneous reporting on a return, or omission from a return, under the Federal Insurance Contributions Act, as in effect prior to or on and after January 1, 1955, of an amount of wages required to be shown on the return as a separate item in respect of a particular employee, the statement referred to in subparagraph (3) of this paragraph shall include the following information:

(i) The name and account number of each employee whose wages were erroneously reported or omitted from such return,

(ii) The period for which such wages were required to be reported on such return,

(iii) The amount, if any, of wages actually reported on such return for each such employee, and

(iv) The amount of wages which should have been reported on such return for each such employee.

No particular form is prescribed for furnishing the information required by this subparagraph, but if printed forms are desired, the district director will supply Form 941c or Form 941c PR, whichever is appropriate, upon request.

(6) No underpayment shall be reported pursuant to this section after receipt from the district director of notice and demand for payment thereof based upon an assessment, but the amount shall be paid in accordance with such notice and demand.

(7) For provisions relating to correction of erroneous statements furnished to employees in respect of wages subject to withholding of income tax under section 3402, and of wages under the Federal Insurance Contributions Act, see paragraph (c) of § 31.6051–1.

(b) *Federal Insurance Contributions Act and Railroad Retirement Tax Act*—(1) *Undercollection ascertained before return is filed.* If no employee tax or less than the correct amount of employee tax is deducted from any payment to an employee of wages, as defined in the Federal Insurance Contributions Act, or compensation as defined in the Railroad Retirement Tax Act, and the error is ascertained before the filing of the return on which the employee tax with respect to such wages or compensation is required to be reported, the employer shall nevertheless report on such return and pay to the district director the correct amount of such employee tax. However, the reporting and payment by the employer of the correct amount of such tax in accordance with this subparagraph do not constitute an adjustment.

(2) *Underpayment ascertained after return is filed.* (i) If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either such tax with respect to any payment to an employee of wages as defined in the Federal Insurance Contributions Act or corresponding provisions of prior law, or compensation as defined in the Railroad Retirement Tax Act or corresponding provisions of prior law, is reported on such return and paid to the district director, the employer shall adjust the underpayment (*a*) by reporting the additional amount due by reason of the underpayment as an adjustment on a return filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained, or (*b*) by reporting such additional amount on a supplemental return for the return period in which such payment of wages or compensation is made. The reporting of such underpayment on a supplemental return constitutes an adjustment within the meaning of this section only when the supplemental return is filed on or before the last day on which the return is required to be filed for the return period in which the error is ascertained. The amount of each underpayment adjusted in accordance with this subdivision shall be paid to the district director, without interest, at the time fixed for reporting the adjustment. If an adjustment is reported pursuant to this subdivision, but the amount thereof is not paid when due, interest thereafter accrues (see section 6601).

(ii) If a return is filed, and if no employee tax, no employer tax, or less than the correct amount of either such tax with respect to a payment to an employee of wages or compensation is reported on such return and paid to the district director, and such underpayment is not reported as an adjustment within the time prescribed by subdivision (i) of this subparagraph, the amount of such underpayment shall be (*a*) reported on the employer's next return, or (*b*) reported immediately on a supplemental return. For interest accruing on amounts so reported, see section 6601 and corresponding provisions of prior law.

(3) *Deductions from employees.* If an employer collects no employee tax or less than the correct amount of employee tax from an employee with respect to a payment of wages as defined in the Federal Insurance Contributions Act or corresponding provisions of prior law, or compensation as defined in the Railroad Retirement Tax Act or corresponding provisions of prior law, the employer shall collect the amount of the undercollection by deducting such amount from remuneration of the employee, if any, under his control after he ascertains the error. Such deductions may be made even though the remuneration, for any reason, does not constitute wages or compensation. The amount of an undercollection of employee tax from an employee shall be reported and paid, as provided in subparagraph (1) or (2) of this paragraph, whether or not the undercollection is corrected by a deduction made as prescribed in the foregoing provisions of this subparagraph. If such a deduction is not made, the obligation of the employee to the employer with respect to the undercollection is a matter for settlement between the employee and the employer. If any employer makes an erroneous collection of employee tax from two or more of his employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employee tax from one employee may not be used to offset an undercollection of such tax from another employee.

(c) *Income tax required to be withheld from wages*—(1) *Undercollection ascertained before return is filed.* If no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages is deducted from wages paid to an employee in any return period, and if the error is ascertained before the return is filed for the period in which such wages are paid, the employer shall nevertheless report on such return the correct amount of the tax required to be withheld. However, the reporting and payment by an employer of tax in accordance with this subparagraph do not constitute an adjustment.

(2) *Underpayment ascertained after return is filed.* (i) If a return is filed for a return period, and if no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages paid to an employee in such period, is reported on a return and paid to the district director, the employer shall (*a*) report the additional amount due by reason of the underpayment on a return for any return period in the calendar year in which the wages were paid, or (*b*) report such additional amount on a supplemental return for the return period in which such wages were paid. Such reporting constitutes an adjustment within the meaning of this section only if the return or supplemental return on which the underpayment is reported is filed on or before the last day on which the return is required to be filed for the return period in which the error was ascertained.

(ii) If a return is filed for a return period, and if no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages paid to an employee in such period is reported on such return and paid to the district director, and such underpayment is not reported as an adjustment within the time prescribed by subdivision (i) of this subparagraph, the amount of such underpayment shall be (*a*) reported on the employer's next return, if such next return is for any return period in the calendar year in which the wages were paid, or (*b*) reported immediately on a supplemental return.

(3) *Payment of amounts reported as undercollections or underpayments.* (i) For provisions relating to the employer's liability for an underpayment of tax

unless he can show that the income tax against which the tax under section 3402 may be credited has been paid, see § 31.3402(d)–1.

(ii) Except as provided in § 31.3402 (d)–1, any amount reported as an adjustment within the meaning of this paragraph shall be paid to the district director, without interest, at the time fixed for reporting the adjustment.

(iii) For interest accruing on amounts which are not paid when due, see section 6601.

(4) *Deductions from employee.* If no income tax, or less than the correct amount of income tax, required under section 3402 to be withheld from wages is deducted from wages paid to an employee in a calendar year, the employer shall collect the amount of the undercollection on or before the last day of such year by deducting such amount from remuneration of the employee, if any, under his control. Such deductions may be made even though the remuneration, for any reason, does not constitute wages. Any undercollection in a calendar year not corrected by a deduction made pursuant to the foregoing provisions of this subparagraph is a matter for settlement between the employee and the employer within such calendar year. For provisions relating to the employer's liability for the tax, whether or not he collects it from the employee, see § 31.3403–1.

§ 31.6302(b) Statutory provisions; mode or time of collection; discretionary method.

SEC. 6302. *Mode or time of collection.* • • •

(b) *Discretionary method.* Whether or not the method of collecting any tax imposed by chapters 21, 31, 32, 33, section 4481 of chapter 36, sections 4501(a) or 4511 of chapter 37, or sections 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax.

[Sec. 6302(b) as amended by sec. 206(b), Highway Revenue Act 1956 (70 Stat. 391)]

§ 31.6302(b)–1 Method of collection.

For provisions relating to collection by means of returns of the taxes imposed by chapter 21 (Federal Insurance Contributions Act), see §§ 31.6011(a)–1 and 31.6011(a)–5.

§ 31.6302(c) Statutory provisions; mode or time of collection; use of Government depositaries.

SEC. 6302. *Mode or time of collection.* • • •

(c) *Use of Government depositaries.* The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

§ 31.6302(c)–1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement*—(1) *In general.* Except as provided in paragraph (b) of this section, if during any calendar month, other than the last month of a calendar quarter, the aggregate amount of—

(i) The employee tax withheld under section 3102,

(ii) The employer tax for such month under section 3111, and

(iii) The income tax withheld under section 3402,

exclusive of taxes with respect to wages for agricultural labor or for domestic service in a private home of the employer, exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(2) *Employers of agricultural workers*—(i) *Requirement for 1955.* If during any calendar month, other than the last month of a calendar quarter, in 1955 the aggregate amount of—

(*a*) The employee tax withheld under section 3102 with respect to wages for agricultural labor, and

(*b*) The employer tax under section 3111 for such month with respect to wages for agricultural labor,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(ii) *Requirement for 1956 and subsequent years.* Except as provided in paragraph (b) of this section, if during any calendar month other than December, in any calendar year after 1955, the aggregate amount of—

(*a*) The employee tax withheld under section 3102 during such month with respect to wages for agricultural labor, plus any such employee tax which was previously withheld in the same calendar year with respect to such wages but which was neither deposited nor required to be deposited on or before the last day of such month, and

(*b*) The employer tax under section 3111 for such month with respect to wages for agricultural labor, plus any such employer tax, which was neither deposited nor required to be deposited on or before the last day of such month, for any prior month of the same calendar year with respect to wages for agricultural labor,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank.

(3) *Depositary receipts.* Any deposit required to be made by an employer under subparagraph (1) of this paragraph shall be made separately from any deposit required to be made by him under subparagraph (2) of this paragraph. However, an employer required to make deposits under subparagraph (1) or subparagraph (2) may make one, or more than one, remittance of the amount required by such subparagraph to be deposited for a calendar month. Each such remittance shall be accompanied by a Federal Depositary Receipt (Form 450) which shall be prepared in accordance with the instructions applicable thereto. The employer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return for the period with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated, and shall pay to the district director the balance, if any, of the taxes due for such period. An amount of tax which is not required to be deposited may nevertheless be deposited if the employer so desires. If a deposit is made for the last month of a return period, the employer shall make it in ample time (whether before, on, or after the fifteenth day of the succeeding month) to enable the Federal Reserve bank to return the validated receipt to the employer so that it can be attached to and filed with the employer's return.

(4) *Procurement of prescribed forms.* Initially, Form 450, Federal Depositary Receipt, will so far as possible be furnished the employer by the district director. An employer not supplied with the proper form should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in this paragraph. Thereafter, a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of his identification number. The employer's identification number and name, as entered on each depositary receipt, shall be the same as they are required to be shown on the return to be filed with the district director. The address of the employer, as entered on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

(b) *Monthly returns.* The provisions of this section are not applicable with respect to taxes for the month in which the employer receives notice from the district director that returns are required under § 31.6011(a)–5, or for any subsequent month for which such a return is required.

§ 31.6302(c)–2 Use of Government depositaries in connection with employee and employer taxes under Railroad Retirement Tax Act.

(a) *Requirement.* If during any calendar month the aggregate amount of—

(1) The employee tax withheld under section 3202 or under corresponding provisions of prior law, and

(2) The employer tax for such month under section 3221 or under corresponding provisions of prior law,

exceeds $100 in the case of an employer, such employer shall deposit such aggregate amount within 15 days after the close of such calendar month with a Federal Reserve bank, except that the deposit for the last month of a return period shall be made on or before the last day of the first month following such period. If a portion of the taxes for a calendar month is reportable under § 31.6011(a)–2 on the return on Form CT–1 for the return period immediately preceding such month, the employer is required to deposit such portion in the same manner as if it were for the last calendar month in such return period.

(b) *Depositary receipts.* The employer may make one, or more than one, remittance of the amounts required by paragraph (a) of this section to be deposited for a calendar month. Each such remittance shall be accompanied by a Railroad Retirement Depositary Receipt (Form 515), which shall be prepared in accordance with the instructions applicable thereto. The employer shall forward such remittance, together with such depositary receipt, to a Federal Reserve bank or, at his election, to a commercial bank authorized in accordance with Treasury Department Circular No. 848 to accept remittances of the taxes for transmission to a Federal Reserve bank. After the Federal Reserve bank has validated the depositary receipt, such depositary receipt will be returned to the employer. Every employer making deposits pursuant to this section shall attach to his return for the period with respect to which such deposits are made, in part or in full payment of the taxes shown thereon, depositary receipts so validated and shall pay to the district director the balance, if any, of the taxes due for such period. If the aggregate amount of the taxes deposited, as shown on the depositary receipt or receipts attached to such return, is in excess of the taxes shown on such return, a credit or refund may be obtained; and in the event the excess is applied as a credit against taxes reported by the employer on a return on Form CT–1 for a subsequent return period, the employer shall reduce the amount of the deposit otherwise required under paragraph (a) of this section for one of the months of such subsequent return period by the amount of such credit.

(c) *Procurement of prescribed form.* Initially, Form 515, Railroad Retirement Depositary Receipt, will so far as possible be furnished the employer by the district director. An employer not supplied with the proper form should make application therefor to the district director in ample time to have such form available for use in making his initial deposit within the time prescribed in paragraph (a) of this section. Thereafter, a blank form will be sent to the employer by the Federal Reserve bank when returning the validated depositary receipt. An employer may secure additional forms from a Federal Reserve bank by applying therefor and advising the bank of the identification number to be shown on his depositary receipts. The identification number, as entered on each depositary receipt, shall be the same as the identification number assigned to the employer pursuant to § 31.6011(b)–1. The address of the employer, as entered on each depositary receipt, should be the address to which the receipt should be returned following validation by the Federal Reserve bank.

§ 31.6302(c)–3 Cross references.

(a) *Failure to deposit.* For provisions relating to the penalty for failure to make a deposit within the prescribed time, see the provisions of § 301.6656–1 of this chapter (Regulations on Procedure and Administration).

(b) *Saturday, Sunday, or legal holiday.* For provisions relating to the time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday, see the provisions of § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

§ 31.6402(a) Statutory provisions; authority to make credits or refunds.

SEC. 6402. *Authority to make credits or refunds*—(a) *General rule.* In the case of any overpayment, the Secretary or his delegate, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall refund any balance to such person.

§ 31.6402(a)–1 Credits or refunds.

(a) *In general.* For regulations under section 6402 of special application to credits or refunds of employment taxes, see §§ 31.6402(a)–2, 31.6402(a)–3, and 31.6414–1. For regulations under section 6402 of general application to credits or refunds, see §§ 301.6402–1 and 301.6402–2 of this chapter (Regulations on Procedure and Administration). For provisions relating to credits of employment taxes which constitute adjustments without interest, see §§ 31.6413(a)–1 and 31.6413(a)–2.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6402(a)–2 Credit or refund of tax under Federal Insurance Contributions Act or Railroad Retirement Tax Act.

(a) *Claim by person who paid tax to district director*—(1) *In general.* Any person who pays to the district director more than the correct amount of—

(i) Employee tax under section 3101, or employer tax under section 3111, of the Federal Insurance Contributions Act,

(ii) Employee tax under section 3201, employee representative tax under section 3211, or employer tax under section 3221, of the Railroad Retirement Tax Act,

(iii) Any such tax under a corresponding provision of prior law, or

(iv) Interest, addition to the tax, additional amount, or penalty with respect to any such tax,

may file a claim for refund of the overpayment (except to the extent that the overpayment must be credited pursuant to § 31.3503–1, or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402–2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return filed by the person making the claim. The return on which the credit is claimed must be on a form which is prescribed for use, at the time of the claim, in reporting tax which corresponds to the tax overpaid. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, designating the return period in which the error was ascertained, and setting forth such other information as may be required by the regulations in this subpart and by the instructions relating to the return. No refund or credit of employee tax under the Federal Insurance Contributions Act shall be allowed if for any reason (for example, an overcollection of employee tax having been inadvertently included by the employee in computing a special refund—see § 31.6413(c)–1) the employee has taken the amount of such tax into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected.

(2) *Statements supporting employers' claims for employee tax.* (i) Every claim filed by an employer for refund or credit of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, collected from an employee shall include a statement that the employer has repaid the tax to such employee or has secured the written consent of such employee to allowance of the refund or credit. The employer shall retain as part of his records the written receipt of the employee showing the date and amount of the repayment, or the written consent of the employee, whichever is used in support of the claim.

(ii) Every claim filed by an employer for refund or credit of employee tax under section 3101, or a corresponding provision of prior law, collected from an employee in a calendar year prior to the year in which the credit or refund is claimed, also shall include a statement that the employer has obtained from the employee a written statement (*a*) that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (*b*) that the employee will not claim refund or credit of such amount. The employer shall retain the employee's written statement as part of the employer's records.

(b) *Claim by employee*—(1) *In general.* If more than the correct amount of employee tax under section 3101 or

section 3201, or a corresponding provision of prior law, is collected by an employer from an employee and paid to the district director, the employee may file a claim for refund of the overpayment if (i) the employee does not receive reimbursement in any manner from the employer and does not authorize the employer to file a claim and receive refund or credit, (ii) the overcollection cannot be corrected under § 31.3503–1, and (iii) in the case of employee tax under section 3101 or a corresponding provision of prior law, the employee has not taken the overcollection into account in claiming a credit against, or refund of, his income tax, or if so, such claim has been rejected. See § 31.6413(c)–1.

(2) *Statements supporting employee's claim.* (i) Each employee who makes a claim under subparagraph (1) of this paragraph shall submit with such claim a statement setting forth (*a*) the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, and (*b*) the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employee tax paid by such employer to the district director. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer.

(ii) Each individual who makes a claim under subparagraph (1) of this paragraph for refund of employee tax under section 3101, or a corresponding provision of prior law, also shall submit with such claim a statement setting forth whether the individual has taken the amount of the overcollection into account in claiming a credit against, or refund of, his income tax, and the amount, if any, so claimed (see § 31.6413(c)–1).

(c) *Statements to accompany employers' and employees' claims under the Federal Insurance Contributions Act.* Whenever a claim for credit or refund of employee tax under section 3101, employer tax under section 3111, or either such tax under a corresponding provision of prior law, is made with respect to remuneration which was erroneously reported on a return or schedule as wages paid to an employee, such claim shall include a statement showing (1) the identification number of the employer, if he was required to make application therefor, (2) the name and account number of such employee, (3) the period covered by such return or schedule, (4) the amount of remuneration actually reported as wages for such employee, and (5) the amount of wages which should have been reported for such employee. No particular form is prescribed for making such statement, but if printed forms are desired, the district director will supply copies of Form 941c or Form 941c PR, whichever is appropriate, upon request.

§ 31.6402(a)–3 Refund of Federal unemployment tax.

Any person who pays to the district director more than the correct amount of—

(a) Tax under section 3301 of the Federal Unemployment Tax Act or a corresponding provision of prior law, or

(b) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment, in the manner and subject to the conditions stated in § 301.6402–2 of this chapter (Regulations on Procedure and Administration). See § 31.6413(d) and the corresponding section of prior law for provisions which bar the allowance or payment of interest on the amount of any refund based on credit allowable for contributions paid under the unemployment compensation law of a State.

§ 31.6404(a) Statutory provisions; abatements.

SEC. 6404. *Abatements*—(a) *General rule.* The Secretary or his delegate is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which—

(1) Is excessive in amount, or

(2) Is assessed after the expiration of the period of limitation properly applicable thereto, or

(3) Is erroneously or illegally assessed.

§ 31.6404(a)–1 Abatements.

For regulations under section 6404 of general application to the abatement of taxes, see § 301.6404–1 of this chapter (Regulations on Procedure and Administration). Every claim filed by an employer for abatement of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, shall be made in the manner and subject to the conditions stated in paragraphs (a) (2) and (c) of § 31.6402(a)–2, as if the claim for abatement were a claim for refund.

§ 31.6413(a) Statutory provisions; special rules applicable to certain employment taxes; adjustment of tax.

SEC. 6413. *Special rules applicable to certain employment taxes*—(a) *Adjustment of tax*—(1) *General rule.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulations prescribe.

(2) *United States as employer.* For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

§ 31.6413(a)–1 Repayment by employer of tax erroneously collected from employee.

(a) *Before employer files return*—(1) *Employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* (i) If an employer—

(*a*) During any return period collects from an employee more than the correct amount of tax under section 3101 or section 3201, or a corresponding provision of prior law,

(*b*) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director, and

(*c*) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as provided in subdivision (i) of this subparagraph shall be reported and paid to the district director with the return for the return period in which the overcollection was made. Such return shall be accompanied by a statement explaining the overcollection, setting forth the account number (if known) and name of the individual from whom the overcollection was made, and showing the total amount overcollected from and not repaid to the individual. If the employer is not required to make a return for such period, the employer nevertheless shall furnish to the district director a statement as described in the preceding sentence, on or before the date fixed for filing a return for such period, and shall pay the amount of the overcollection with such statement.

(2) *Income tax withheld from wages.* (i) If an employer—

(*a*) During any return period collects from an employee more than the correct amount of tax under section 3402,

(*b*) Repays the amount of the overcollection to the employee before the return for such period is filed with the district director and before the end of the calendar year in which the overcollection was made, and

(*c*) Obtains and keeps as part of his records the written receipt of the employee showing the date and amount of the repayment,

the employer shall not report on any return or pay to the district director the amount of the overcollection.

(ii) Any overcollection not repaid to and receipted for by the employee as provided in subdivision (i) of this subparagraph shall be reported and paid to the district director with the return for the return period in which the overcollection was made.

(b) *After employer files return*—(1) *Employee tax under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act.* (i) If an employer collects from any employee and pays to the district director more than the correct amount of employee tax under section 3101 or section 3201, or a corresponding provision of prior law, and if the error is ascertained within the applicable period of limitation on credit or refund, the employer shall repay or reimburse the employee in the amount thereof prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of such limitation period. This subparagraph has no application in any case in which an overcollection is made the subject of a claim by the employer for refund or credit, and the employer elects to secure the written consent of the employee to the allowance of the refund or credit under the procedure provided in paragraph (a)(2)(i) of § 31.6402(a)–2.

(ii) If the amount of an overcollection is repaid to an employee, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. If, in any calendar year, an employer repays or reimburses an employee in the amount of an overcollection of employee tax under section 3101, or a corresponding provision of prior law, which was collected from the employee in a prior calendar year, the employer shall obtain from the employee and keep as part of his records a written statement (*a*) that the employee has not claimed refund or credit of the amount of the overcollection, or if so, such claim has been rejected, and (*b*) that the employee will not claim refund or credit of such amount. See § 31.6413(c)–1.

(iii) If the employer does not repay the employee the amount overcollected, the employer shall reimburse the employee by applying the amount of the overcollection against the employee tax which attaches to wages or compensation paid to the employee prior to the expiration of the return period following the return period in which the error is ascertained and prior to the expiration of the applicable period of limitation on credit or refund. If the amount of the overcollection exceeds the amount so applied against such employee tax, the excess amount shall be repaid to the employee as required by this subparagraph.

(iv) For purposes of this subparagraph, an error is ascertained when the employer has sufficient knowledge of the error to be able to correct it.

(v) For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

(2) *Income tax withheld from wages.* (i) If, in any return period in a calendar year, an employer collects from any employee more than the correct amount of tax under section 3402, and the employer pays the amount of such overcollection to the district director, the employer may repay or reimburse the employee in the amount thereof in any subsequent return period in such calendar year.

(ii) If the amount of the overcollection is repaid to the employee, the employer shall obtain and keep as part of his records the written receipt of the employee, showing the date and amount of the repayment. If the employer does not repay the amount of the overcollection, the employer may reimburse the employee by applying the amount of the overcollection against the tax under section 3402 which otherwise would be required to be withheld from wages paid by the employer to the employee in the calendar year in which the overcollection is made.

§ 31.6413(a)–2 Adjustment of overpayments.

(a) *Taxes under the Federal Insurance Contributions Act or the Railroad Retirement Tax Act*—(1) *Employee tax.* After an employer repays or reimburses an employee in the amount of an overcollection, as provided in paragraph (b)(1) of § 31.6413(a)–1, the employer may claim credit for such amount in the manner, and subject to the conditions, stated in § 31.6402(a)–2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on a return for a period ending on or before the last day of the return period following the return period in which the error was ascertained. No credit or adjustment in respect of an overpayment shall be entered on a return after the filing of a claim for refund of such overpayment.

(2) *Employer tax.* If an employer pays more than the correct amount of employer tax under section 3111 or section 3221, or a corresponding provision of prior law, the employer may claim credit for the amount of the overpayment in the manner, and subject to the conditions, stated in § 31.6402(a)–2. Such credit shall constitute an adjustment, without interest, if the amount thereof is entered on the same return on which the employer adjusts, pursuant to subparagraph (1) of this paragraph, a corresponding overpayment of employee tax.

(b) *Income tax withheld from wages.* If, pursuant to paragraph (b)(2) of § 31.6413(a)–1, an employer repays or reimburses an employee in the amount of an overcollection of tax under section 3402, the employer may adjust the overcollection, without interest, by entering the amount thereof as a deduction on a return of tax under section 3402, filed by the employer for any return period in the calendar year in which the employer repays or reimburses the employee. The return on which the adjustment is entered as a deduction shall have attached thereto a statement explaining the adjustment, designating the return period in which the error occurred, and setting forth such other information as is required by the regulations in this subpart and by the instructions relating to the return.

§ 31.6413(b) Statutory provisions; special rules applicable to certain employment taxes; overpayments of certain employment taxes.

SEC. 6413. *Special rules applicable to certain employment taxes.* • • •

(b) *Overpayments of certain employment taxes.* If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

§ 31.6413(b)–1 Overpayments of certain employment taxes.

For provisions relating to the adjustment of overpayments of tax imposed by section 3101, 3111, 3201, 3221, or 3402, see § 31.6413(a)–2. For provisions relating to refunds of tax imposed by section 3101, 3111, 3201, or 3221, see §§ 31.6402(a)–1 and 31.6402(a)–2. For provisions relating to refunds of tax imposed by section 3402, see §§ 31.6402(a)–1 and 31.6414–1.

§ 31.6413(c) Statutory provisions; special rules applicable to certain employment taxes; special refunds.

SEC. 6413. *Special rules applicable to certain employment taxes.* • • •

(c) *Special refunds*—(1) *In general.* If by reason of an employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed $3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed $4,200, or (B) during any calendar year after the calendar year 1958, the wages received by him during such year exceed $4,800, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first $4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first $4,800 of such wages received in such calendar year after 1958.

(2) *Applicability in case of Federal and State employees and employees of certain foreign corporations*—(A) *Federal employees.* In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed $3,600 for the calendar year 1951, 1952, 1953, or 1954, $4,200 for the calendar year 1955, 1956, 1957, or 1958, or $4,800 for any calendar year after 1958, determined by each such head or agent as constituting wages paid to an employee.

(B) *State employees.* For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes

a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) *Employees of certain foreign corporations.* For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(l) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); the term "tax" or "tax imposed by section 3101", includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121 (l) has been paid to the Secretary or his delegate.

[Sec. 6413(c) as amended by sec. 202(a)(1), Social Security Amendments 1954 (68 Stat. 1089); sec. 402(d), Social Security Amendments 1958 (72 Stat. 1043)]

§ 31.6413(c)–1 Special refunds.

(a) *Who may make claims*—(1) *In general.* (i) If, during any calendar year after 1954 and before 1959, an employee receives wages, as defined in section 3121(a), in excess of $4,200 from two or more employers, or if during any calendar year after 1958, an employee receives wages, as defined in section 3121(a), in excess of $4,800 from two or more employers, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed by section 3101 with respect to such wages and deducted therefrom (whether or not paid to the district director) exceeds the employee tax with respect to the first $4,200 or $4,800, whichever is appropriate, of such wages. If the employee is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) he may obtain the benefit of the special refund only by claiming credit as provided in § 1.31–2 of this chapter (Income Tax Regulations).

(ii) The application of this subparagraph may be illustrated by the following examples:

Example (1). Employee A in the calendar year 1959 receives taxable wages in the amount of $3,000 from each of his employers, B, C, and D, for services performed during such year (or at any time after 1936), or a total of $9,000. Employee tax (computed at 2½ percent, the employee tax rate in effect in 1959) is deducted from A's wages in the amount of $75 by B and $75 by C, or a total of $150. Employer D pays employee tax in the amount of $75 to the district director without deducting such tax from A's wages. The employee tax with respect to the first $4,800 of such wages is $120. A is entitled to a special refund of $30 ($150 minus $120). The $3,000 of wages received from employer D and the $75 of employee tax paid with respect thereto have no bearing in computing A's special refund since such tax was not deducted from his wages.

Example (2). Employee E in the calendar year 1959 performs services for employers F and G, for which E is entitled to wages of $4,800 from each employer, or a total of $9,600. On account of such services, E in 1958 received an advance payment of $600 of wages from F; and in 1959, receives wages in the amount of $4,200 from F and $4,800 from G. Employee tax was deducted as follows: In 1958, $13.50 ($600×2¼%, the employee tax rate in effect in 1958) by employer F; and in 1959, $105 ($4,200×2½%, the employee tax rate in effect in 1959) by employer F, and $120 ($4,800×2½%) by employer G. Thus, E in the calendar year 1959 received $9,000 in wages, from which $225 of employee tax was deducted. The amount of employee tax with respect to the first $4,800 of such wages received in 1959 is $120. E is entitled to a special refund of $105 ($225 minus $120). The $600 advance of wages received in 1958 from F, and the $13.50 of employee tax with respect thereto, have no bearing in computing E's special refund for 1959, because the wages were not received in 1959. Such amounts could not form the basis for a special refund unless E during 1958 received from F and at least one more employer wages totaling more than $4,200.

(2) *Federal employees.* For purposes of special refunds of employee tax, each head of a Federal agency or of a wholly-owned instrumentality of the United States who makes a return pursuant to section 3122 (and each agent designated by a head of a Federal agency or instrumentality who makes a return pursuant to such section) is considered a separate employer. For such purposes, the term "wages" includes the amount which each such head (or agent) determines to constitute wages paid an employee, but not in excess of $4,200 paid in any calendar year after 1954 and before 1959, or $4,800 paid in any calendar year after 1958. For example, if wages received by an employee during any calendar year after 1958 are reportable by two or more agents of one or more Federal agencies and the amount of such wages is in excess of $4,800, the employee shall be entitled to a special refund of the amount, if any, by which the employee tax imposed with respect to such wages and deducted therefrom exceeds the employee tax with respect to the first $4,800 of such wages. Moreover, if an employee receives wages during any calendar year from an agency or wholly-owned instrumentality of the United States and from one or more other employers, either private or governmental, the total amount of such wages shall be taken into account for purposes of the special refund provisions.

(3) *State employees.* For purposes of special refunds of employee tax, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act, relating to voluntary agreements for coverage of employees of State and local governments, as would be wages if such services constituted employment (see § 31.3121(a)–1, relating to wages); the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; and the term "tax" or "tax imposed by section 3101" includes an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of subparagraph (1) of this paragraph are applicable whether or not any amount deducted from an employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid pursuant to such agreement. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by States, political subdivisions, or instrumentalities by reason of agreements made under section 218 of the Social Security Act. Moreover, if during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages from one or more other employers, either private or governmental, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions.

(4) *Employees of certain foreign corporations.* For purposes of special refunds of employee tax, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(l), relating to agreements for coverage of employees of certain foreign corporations, as would be wages if such services constituted employment (see § 31.3121(a)–1, relating to wages); the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(l); and the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement entered into pursuant to section 3121(l), an amount equivalent to the employee tax which would be imposed by section 3101 if such services constituted employment. The provisions of subparagraph (1) of this paragraph are applicable whether or not any amount deducted from the employee's remuneration by reason of such agreement has been paid to the district director. Thus, the special refund provisions are applicable to amounts equivalent to employee tax deducted from employees' remuneration by reason of agreements made under section 3121(l). A domestic corporation which enters into an agreement pursuant to section 3121(l) shall, for purposes of this paragraph, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as an employer employing individuals on its own account (see section 3121(l)(9)). If during any calendar year an employee receives remuneration for services covered by such an agreement and during the same calendar year receives wages for services in employment, the total amount of such remuneration and wages shall be taken into account for purposes of the special refund provisions. For provisions relating to agreements entered into under section 3121(l), see the regulations in Part 36 of this chapter (Regulations on Contract Coverage of Employees of Foreign Subsidiaries).

(b) *Claims for special refund*—(1) *In general.* An employee who is entitled to a special refund under section 6413(c) may claim such refund under the provisions of this section only if the employee is not entitled to claim the amount thereof as a credit against income tax as provided in § 1.31–2 of this chapter (Income Tax Regulations). Each claim under this section shall be made with respect to wages received within one calendar year (regardless of the year or years after 1936 during which the services were performed for which such wages are received), and shall be filed after the close of such year.

(2) *Form of claim.* Each claim for special refund under this section shall be made on Form 843, in accordance with the regulations in this subpart and the instructions relating to such form. The claim shall be filed with the district director for the internal revenue district in which the employee resides or, if the employee does not reside in any internal revenue district, with the District Director at Baltimore, Maryland. However, in the case of an employee who does not reside in any internal revenue district and who is outside the United States, the claim shall be filed with the Director of International Operations, United States Internal Revenue Service, Washington 25, D.C., unless the employee resides in Puerto Rico or the Virgin Islands, in which case the claim shall be filed with the office of the Revenue Service Representative, United States Internal Revenue Service, Santurce, Puerto Rico. The claim shall include the employee's account number and the following information with respect to each employer from whom he received wages during the calendar year: (i) The name and address of such employer, (ii) the amount of wages received during the calendar year to which the claim relates, and (iii) the amount of employee tax collected by the employer from the employee with respect to such wages. Other information may be required but should be submitted only upon request.

(3) *Period of limitation.* For the period of limitation upon special refund of employee tax imposed by section 3101, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration).

§ 31.6413(d) Statutory provisions; special rules applicable to certain employment taxes; refund or credit of Federal unemployment tax.

SEC. 6413. *Special rules applicable to certain employment taxes.* * * *

(d) *Refund or credit of Federal unemployment tax.* Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

§ 31.6414 Statutory provisions; income tax withheld.

SEC. 6414. *Income tax withheld.* In the case of an overpayment of tax imposed by chapter 24, * * * refund or credit shall be made to the employer * * * only to the extent that the amount of such overpayment was not deducted and withheld by the employer * * *.

§ 31.6414–1 Credit or refund of income tax withheld from wages.

(a) *In general.* Any employer who pays to the district director more than the correct amount of—

(1) Tax under section 3402 or a corresponding provision of prior law, or

(2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for refund of the overpayment or may claim credit for such overpayment, in the manner and subject to the conditions stated in this section and § 301.6402–2 of this chapter (Regulations on Procedure and Administration). If credit is claimed pursuant to this section, the amount thereof shall be claimed by entering such amount as a deduction on a return of tax under section 3402 filed by the employer. If credit is taken pursuant to this section, a claim on Form 843 is not required, but the return on which the credit is claimed shall have attached as a part thereof a statement, which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit, and showing such other information as is required by the regulations in this subpart and by the instructions relating to the return. No refund or credit to the employer shall be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)–1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

§ 31.6674 Statutory provisions; fraudulent statement or failure to furnish statement to employee.

SEC. 6674. *Fraudulent statement or failure to furnish statement to employee.* In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of $50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

§ 31.6674–1 Penalties for fraudulent statement or failure to furnish statement.

Any person required to furnish a statement to an employee under the provisions of section 6051 is subject to a civil penalty for willful failure to furnish such statement in the manner, at the time, and showing the information required under such section or § 31.6051–1, or for willfully furnishing a false or fraudulent statement to an employee. The penalty for each such violation is $50, which shall be assessed and collected in the same manner as the tax imposed on employers under the Federal Insurance Contributions Act. See section 7204 for criminal penalty.

§ 31.7805 Statutory provisions; rules and regulations.

SEC. 7805. *Rules and regulations*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 31.7805–1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 31.0–3 of Subpart A of the regulations in this part relating to the scope of the regulations.)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 13, 1960.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

[F.R. Doc. 60–11692; Filed, Dec. 19, 1960; 8:45 a.m.]

Part II begins on page 13161

THE UNIVERSITY OF MICHIGAN
DEC 28 1960
MAIN READING ROOM

Pages 13129–13208

PART I

FEDERAL REGISTER

VOLUME 25 NUMBER 247

Washington, Wednesday, December 21, 1960

Contents

THE PRESIDENT

Proclamation
Determination of Cuban sugar quota to supplement Proclamation No. 3355 ---- 13131

EXECUTIVE AGENCIES

Agricultural Marketing Service
PROPOSED RULE MAKING:
Handling of lemons grown in California and Arizona; expenses and fixing rate of assessment for 1960–61 fiscal year ---- 13141
Lettuce grown in Lower Rio Grande Valley in South Texas; limitation of shipments ---- 13142

Agricultural Research Service
RULES AND REGULATIONS:
Scabies in sheep; interstate movement ---- 13132

Agriculture Department
See Agricultural Marketing Service; Agricultural Research Service; Commodity Credit Corporation; Soil Conservation Service.

Atomic Energy Commission
NOTICES:
Ohio State University; notice of proposed issuance of facility license ---- 13144

Civil Service Commission
RULES AND REGULATIONS:
Exceptions from the competitive service; Defense Department and Navy Department ---- 13132

Commerce Department
NOTICES:
Weiss, Frederick A., Jr.; statement of changes in financial interests ---- 13144

Commodity Credit Corporation
PROPOSED RULE MAKING:
Excess acreage; determination and adjustment ---- 13142

Federal Power Commission
NOTICES:
Puget Sound Power and Light Company; Baker River Project; notice of land withdrawal, Washington ---- 13145
Hearings, etc.:
El Paso Natural Gas Co., et al ---- 13145
Otter Tail Power Co ---- 13145
Sunray Mid-Continent Oil Co., et al ---- 13146
RULES AND REGULATIONS:
Uniform system of accounts for Class C natural gas companies (*see* Part II of this issue) ---- 13161

Federal Reserve System
NOTICES:
Firstamerica Corp.; notice of receipt of application; correction ---- 13147

Federal Trade Commission
RULES AND REGULATIONS:
Premier Knitting Co., Inc., et al.; prohibited trade practices ---- 13133

Fish and Wildlife Service
RULES AND REGULATIONS:
Sport fishing:
Chautauqua National Wildlife Refuge, Illinois ---- 13138
Crab Orchard National Wildlife Refuge, Illinois ---- 13139
Necedah National Wildlife Refuge, Wisconsin ---- 13139

Interior Department
See also Fish and Wildlife Service; Land Management Bureau.
NOTICES:
Imports of residual fuel oil to be used as fuel; Districts I–IV; adjustment in maximum level ---- 13144

Internal Revenue Service
PROPOSED RULE MAKING:
Income tax; taxable years beginning after December 31, 1953 ---- 13140
RULES AND REGULATIONS:
Excise taxes; miscellaneous amendments ---- 13133
Notice of qualification as executor or receiver ---- 13137
Regulatory taxes on narcotic drugs ---- 13135

Interstate Commerce Commission
NOTICES:
Fourth section applications for relief ---- 13147
Motor carrier alternate route deviation notices ---- 13147
Motor carrier applications and certain other proceedings ---- 13148
Motor carrier transfer proceedings ---- 13147

Land Management Bureau
RULES AND REGULATIONS:
Washington; public land order ---- 13138

Securities and Exchange Commission
NOTICES:
Peoples Natural Gas Co. and Consolidated Natural Gas Co.; notice of hearing on certain described issues ---- 13156

Small Business Administration
NOTICES:
Delegations relating to financial assistance and administrative functions, Dallas Regional Office:
Chief, Loan Administration Section ---- 13157
Chief, Loan Liquidation Section ---- 13158
Chief, Loan Processing Section ---- 13157

(Continued on next page)

Soil Conservation Service

RULES AND REGULATIONS:
Great Plains Conservation Program; filing of application for cost-share payments 13132

State Department

RULES AND REGULATIONS:
Additional compensation in foreign areas; designation of differential posts 13132
Advice to foreign governments; revocation of part 13138

Treasury Department

See Internal Revenue Service.

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

PROCLAMATIONS:
3355 (supplemented by Proc. 3383) 13131
3383 13131

5 CFR

6 13132
325 13132

7 CFR

601 13132

PROPOSED RULES:
718 13142
953 13141
1094 13142

9 CFR

74 13132

16 CFR

13 13133

18 CFR

204 (see Part II of this issue) 13161

22 CFR

8 13138

26 (1954) CFR

41 13133
44 13133
46 13133
49 13133
151 13135
301 13137

PROPOSED RULES:
1 13140

43 CFR

PUBLIC LAND ORDERS:
261 (revoked in part by PLO 2223) 13138
1273 (revoked in part by PLO 2223) 13138
2223 13138

50 CFR

33 (3 documents) 13138, 13139

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953	$6.75
1954	7.25
1955	6.75
1956	7.25
1957	6.75
1958	8.25
1959	7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3383

DETERMINATION OF CUBAN SUGAR QUOTA TO SUPPLEMENT PROCLAMATION NO. 3355 [1]

By the President of the United States of America

A Proclamation

WHEREAS section 408(b)(1) of the Sugar Act of 1948, as amended by the act of July 6, 1960 (Public Law 86-592; 74 Stat. 330), provides that the President shall determine, notwithstanding any other provision of title II of the Sugar Act of 1948, as amended, the quota for Cuba for the balance of the calendar year 1960 and for the three-month period ending March 31, 1961, in such amount or amounts as he shall find from time to time to be in the national interest, and further provides that in no event shall such quota exceed such amount as would be provided for Cuba under the terms of title II of the Sugar Act of 1948, as amended, in the absence of section 408(b); and

WHEREAS section 408(b)(1) of the Sugar Act of 1948, as amended, further provides that determinations made by the President thereunder shall become effective immediately upon publication in the FEDERAL REGISTER; and

WHEREAS section 408(b)(2) and section 408(b)(3) of the Sugar Act of 1948, as amended, authorize the President, subject to certain requirements, to cause or permit to be brought or imported into or marketed in the United States a quantity of sugar not in excess of the amount by which the quotas which would be established for Cuba under the terms of title II of such act exceed the quotas established for Cuba by the President pursuant to section 408(b) of the act; and

WHEREAS, by Proclamation No. 3355 of July 6, 1960, the President determined the quota for Cuba for the balance of the calendar year 1960; and

WHEREAS, pursuant to section 408(b)(1) of the Sugar Act of 1948, as amended, I find it to be in the national interest that the amount of the quotas for sugar and for liquid sugar for Cuba under the Sugar Act of 1948, as amended, for the three-month period ending March 31, 1961, should be zero:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by section 408(b) of the Sugar Act of 1948, as amended, and section 301 of title 3 of the United States Code, and as President of the United States:

1. Do hereby determine that in the national interest the amount of the quotas for sugar and for liquid sugar for Cuba pursuant to the Sugar Act of 1948, as amended, for the three-month period ending March 31, 1961, shall be zero; and

2. Do hereby continue the delegation to the Secretary of Agriculture of the authority vested in the President by section 408(b)(2) and section 408(b)(3) of the Sugar Act of 1948, as amended, such authority to be continued to be exercised with the concurrence of the Secretary of State.

This proclamation shall become effective immediately upon publication in the FEDERAL REGISTER.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this sixteenth day of December in the year of our Lord nineteen hundred and sixty, and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER

By the President:

DOUGLAS DILLON,
Acting Secretary of State.

[F.R. Doc. 60-11849; Filed, Dec. 19, 1960; 4:02 p.m.]

[1] 25 F.R. 6414.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Defense; Department of the Navy

Effective upon publication in the FEDERAL REGISTER, subparagraphs (2) and (3) of § 6.104(b) and subparagraph (5) of § 6.106(a) are amended as set out below.

§ 6.104 Department of Defense.

* * * * *

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* * * *

(2) Positions in the Attache Systems overseas, including positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

§ 6.106 Department of the Navy.

(a) *General* * * *

(5) Two positions of teachers in the indigenous schools at Chichi Jima, Bonin-Volcano Islands.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] MARY V. WENZEL,
Executive Assistant to the Commissioners.

[F.R. Doc. 60-11796; Filed, Dec. 20, 1960; 8:48 a.m.]

Chapter III—Foreign and Territorial Compensation, Department of State

[Dept. Reg. 108.452]

PART 325—ADDITIONAL COMPENSATION IN FOREIGN AREAS

Designation of Differential Posts

Section 325.15, *Designation of differential posts* is amended as follows, effective on the dates indicated:

1. Effective as of the beginning of the first pay period following December 10, 1960, paragraph (a) is amended by the deletion of the following:

Brazil, all posts in states and territories of Acre, Amapa, Amazonas, Goias (except Goiania and Brasilia), Guapore, Maranhao, Mato Grosso, Para, Piaui, and Rio Branco.
Congo, Republic of (including Ruanda-Urundi), all posts.
Firuzkuh, Iran.
Khaneh, Iran.
Manjil, Iran.

2. Effective as of the beginning of the first pay period following December 10, 1960, paragraph (b) is amended by the deletion of the following:

Iran, all posts except Ajabshahr, Chehel-Dokhtar, Dezful, Firuzkuh, Isfahan, Kabutarahang, Kerman, Khaneh, Kushi, Manjil, Marand, Naudeh, Rehneh, Rezaiyeh, Sanandaj, Sari, Shahabad, Shiraz, Tehran, and Zirab.

3. Effective as of the beginning of the first pay period following December 10, 1960, paragraph (d) is amended by the deletion of the following:

Goiania, Brazil.

4. Effective November 20, 1960, paragraph (a) is amended by the addition of the following:

Niamey, Niger.
Ougadougou, Upper Volta.

5. Effective as of the beginning of the first pay period following December 10, 1960, paragraph (a) is amended by the addition of the following:

Brazil, all posts in states and territories of Acre, Amapa, Amazonas, Goias (except Brasilia), Guapore, Maranhao, Mato Grosso, Para, Piaui, and Rio Branco.
Congo, Republic of the, all posts.
Cotonou, Dahomey.
Kharga, United Arab Republic.
Ruanda-Urundi, all posts.

6. Effective as of the beginning of the first pay period following December 10, 1960, paragraph (b) is amended by the addition of the following:

Iran, all posts except Ajabshahr, Chehel-Dokhtar, Dezful, Isfahan, Kabutarahang, Kerman, Kushi, Marand, Naudeh, Rehneh, Rezaiyeh, Sanandaj, Sari, Shahabad, Shiraz, Tehran and Zirab.

(Secs. 102, 401, E.O. 10000, 13 F.R. 5453, 3 CFR, 1948 Supp., E.O. 10623, E.O. 10636, 20 F.R. 5297, 7025, 3 CFR, 1955 Supp.)

Dated: November 28, 1960.

For the Secretary of State.

LANE DWINELL,
Assistant Secretary.

[F.R. Doc. 60-11782; Filed, Dec. 20, 1960; 8:47 a.m.]

Title 7—AGRICULTURE

Chapter VI—Soil Conservation Service

PART 601—GREAT PLAINS CONSERVATION PROGRAM

Provisions for Filing Application for Cost-Share Payments

The regulations governing the Great Plains Conservation Program, 22 F.R. 6851, as amended, are hereby further amended as provided herein.

Section 601.16 is amended to read as follows:

§ 601.16 Manner and time of cost-share payments.

Cost-share payments shall be paid to the producer after he has carried out an identifiable unit of his plan of operations and arrangements therefor shall be made by the Soil Conservation Service State office. Payments shall be made as soon as practicable after the identifiable unit is carried out and the extent of performance has been established. It shall be the responsibility of the producer eligible for cost-share payments to establish his claim to such payments. Cost-share payments for identifiable units carried out under the program will be made only upon application submitted on the form prescribed by the Administrator, SCS, to the designated SCS technician. Such application shall be filed by June 30 of the year following the calendar year in which the identifiable unit was carried out, except that with respect to any application filed after such date the Administrator, SCS, may authorize cost-share payments to be made upon such application if in his judgment such action is warranted by the circumstances of the particular case. The authority of the Administrator to authorize such payments shall not be delegated. Application for cost-share payments shall specify the proportions of each producer's contribution to the carrying out of each identifiable unit. Cost-share payments will be made for the identifiable units carried out in the program year as shown on the time schedule of land use and treatment unless otherwise provided for by modification of the contract.

(Sec. 4, 49 Stat. 164, as amended, 16 U.S.C. 590d)

Done at Washington, D.C., this 15th day of December 1960.

[SEAL] C. M. FERGUSON,
Assistant Secretary.

[F.R. Doc. 60-11784; Filed, Dec. 20, 1960; 8:47 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 74—SCABIES IN SHEEP

Interstate Movement

Pursuant to the provisions of sections 1 and 3 of the Act of March 3, 1905, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 111–113, 117, 120, 121, 123, 125), §§ 74.2 and 74.3 of Part 74, Subchapter C, Chapter I, Title 9, Code of Federal Regulations, as amended, are hereby amended in the following respects:

1. Subparagraph (2) of paragraph (a) of § 74.2 is amended to read:

(2) That portion of South Dakota west of the Missouri River:

2. Paragraph (b) of § 74.3 is deleted.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1, 3, 33 Stat. 1264, as amended, 1265, as amended; 21 U.S.C. 111–113, 117, 120, 121, 123, 125. Interpret or apply secs. 6, 7, 23 Stat. 32, as amended, secs. 2, 4, 33 Stat. 1264, as amended, 1265, as amended; 21 U.S.C. 115, 117, 124, 126. 19 F.R. 74, as amended)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment adds Butte County in South Dakota to the free areas and deletes such County from the quarantined areas, as sheep scabies are not known to exist in such County. Hereafter, the restrictions pertaining to the interstate movement of sheep from, into, and through quarantined areas as contained in 9 CFR Part 74, as amended, will not apply to this County. However, the restrictions in said Part 74 pertaining to the interstate movement of sheep into free areas will apply thereto.

The amendment relieves certain restrictions presently imposed and must be made effective immediately to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and the amendment may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 16th day of December 1960.

M. R. CLARKSON,
Acting Administrator, Agricultural Research Service.

[F.R. Doc. 60-11804; Filed, Dec. 20, 1960; 8:49 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7366 o.]

PART 13—PROHIBITED TRADE PRACTICES

Premier Knitting Co., Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1255 *Manufacture or preparation.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Premier Knitting Co., Inc., et al., New York, N.Y., Docket 7366, October 20, 1960]

In the Matter of Premier Knitting Co., Inc., a Corporation, and Arnold A. Saltzman, Sanford Forster, and Irving Saltzman, Individually and as Officers of Said Corporation, and Universal Dye Works, Incorporated, a Corporation, and Joseph B. Schmitz, Fred C. Oshell, Catherine C. Conver, and Lily M. Schmitz, Individually and as Officers of Said Corporation

Order requiring New York City distributors to cease representing falsely on attached tags or labels that their orlon sweaters would not pill.

As to respondents Universal Dye Works, Inc., and Joseph Schmitz, Jr., the proceeding was disposed of by a consent order on July 4, 1959 (24 F.R. 6046, July 29, 1959).

The order to cease and desist is as follows:

It is ordered, That respondents Premier Knitting Co., Inc., a corporation, and its officers, and Arnold A. Saltzman individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of women's orlon sweaters or any other similar orlon product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Representing, directly or by implication, that their orlon sweaters or any other similar orlon product will not pill.

It is further ordered, That the complaint herein, insofar as it relates to respondents Sanford Forster and Irving Saltzman individually, be, and it hereby is, dismissed.

By "Final Order", report of compliance was required as follows:

It is ordered, That respondents, Premier Knitting Co., Inc., and Arnold A. Saltzman, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision.

Issued: October 20, 1960.

By the Commission, Commissioner Tait not participating.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-11776; Filed, Dec. 20, 1960; 8:46 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 6518]

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

PART 44—TAXES ON WAGERING; EFFECTIVE JANUARY 1, 1955

PART 46—REGULATIONS RELATING TO MISCELLANEOUS EXCISE TAXES PAYABLE BY RETURN

PART 49—FACILITIES AND SERVICES EXCISE TAXES

Miscellaneous Amendments to Various Excise Tax Regulations

In order to conform (1) the regulations relating to the excise tax on the use of certain highway motor vehicles, (2) the regulations relating to the taxes on wagering, (3) the regulations relating to miscellaneous excise taxes payable by return, and (4) the regulations relating to facilities and services taxes, to the appropriate sections of the Alaska Omnibus Act (73 Stat. 146), the Hawaii Omnibus Act (74 Stat. 416), Act of April 22, 1960 (Public Law 86-432, 74 Stat. 73), Act of July 6, 1960 (Public Law 86-592, 74 Stat. 330), and the Public Debt and Tax Rate Extension Act of 1960 (74 Stat. 290), such regulations are amended as follows:

PARAGRAPH 1. Paragraph (a) of § 41.4482(c)-1 is amended to read as follows:

§ 41.4482(c)-1 Definition of State, year, and use.

(a) *State.* The term "State", as used in the regulations in this part, means any one of the several States, the Territories of Alaska and Hawaii prior to their admission into the Union as States, or the District of Columbia.

PAR. 2. Section 41.7701 is amended by revising section 7701(a)(9), and by adding an historical note, to read as follows:

§ 41.7701 Statutory provisions; definitions.

SEC. 7701 *Definitions.* (a) * * *

(9) *United States.* The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

* * * * *

[Sec. 7701 as amended by sec. 22(g), Alaska Omnibus Act (73 Stat. 146); sec. 18(1), Hawaii Omnibus Act (74 Stat. 416)]

PAR. 3. Section 44.7701 is amended by revising section 7701(a)(9) and section 7701(a)(10), and by adding an historical note, to read as follows:

§ 44.7701 Statutory provisions; definitions.

SEC. 7701 *Definitions.* (a) * * *

(9) *United States.* The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

* * * * *

[Sec. 7701 as amended by sec. 22 (g) and (h), Alaska Omnibus Act (73 Stat. 146, 147); sec. 18 (1) and (j), Hawaii Omnibus Act (74 Stat. 416)]

PAR. 4. Section 46.4501 is amended by revising section 4501(c), and the historical note, to read as follows:

§ 46.4501 Statutory provisions; imposition of tax.

SEC. 4501 *Imposition of tax—* * * *

(c) *Termination of tax.* No tax shall be imposed under this subchapter on the manufacture, use, or importation of sugar or articles composed in chief value of sugar after September 30, 1961. Notwithstanding the provisions of subsection (a) or (b), no tax shall be imposed under this subchapter with respect to unsold sugar held by a manufacturer on September 30, 1961, or with respect to sugar or articles composed in chief

value of sugar held in customs custody or control on such date.

[Sec. 4501 as amended by sec. 19, Act of May 28, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221); sec. 162(b), Excise Tax Technical Changes Act 1958 (72 Stat. 1306); sec. 2, Act of July 6, 1960 (Pub. Law 86-592, 74 Stat. 330)]

PAR. 5. Section 46.4502 is amended by revising section 4502(5), and the historical note, to read as follows:

§ 46.4502 Statutory provisions; definitions.

SEC. 4502 *Definitions.* For the purposes of this subchapter—

* * * * *

(5) *United States.* The term "United States" shall be deemed to include the States, the District of Columbia, and Puerto Rico.

[Sec. 4502 as amended by sec. 20, Act of May 29, 1956 (Pub. Law 545, 84th Cong., 70 Stat. 221); sec. 22(c), Alaska Omnibus Act (73 Stat. 146); sec. 18(f), Hawaii Omnibus Act (74 Stat. 416)]

PAR. 6. Section 46.4511 is amended by striking all the material which follows section 4511 and inserting in lieu thereof the following:

§ 46.4511 Statutory provisions; imposition of tax.

SEC. 4511 *Imposition of tax*—* * *

Section 3 of the Act of August 30, 1957 (Public Law 85-235, 71 Stat. 516)

The tax imposed under section 4511(a) of the Internal Revenue Code of 1954 shall not apply with respect to the first domestic processing of coconut oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of such oil, fatty acids, or salts, during the period beginning with the first day of the first month which begins more than ten days after the date of the enactment of this Act and ending with the close of June 30, 1963.

[Sec. 3 as amended by Act of April 22, 1960 (Pub. Law 86-432, 74 Stat. 73)]

Act of May 29, 1959 (Public Law 86-37, 73 Stat. 64)

The tax imposed under section 4511(a) of the Internal Revenue Code of 1954 shall not apply with respect to the first domestic processing of palm oil, palm-kernel oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of one or more of such oils, fatty acids, or salts, during the period beginning with the first day of the first month which begins more than 10 days after the date of the enactment of this Act and ending with the close of June 30, 1963.

[Act of May 29, 1959, as amended by Act of April 22, 1960 (Pub. Law 86-432, 74 Stat. 73)]

PAR. 7. Paragraph (a)(2) of § 46.4511-1 is amended to read as follows:

§ 46.4511-1 Imposition of tax on coconut and palm oil.

(a) *Nature and rate of tax.* * * *

(2) *Suspension of tax*—(i) *Coconut oil.* Pursuant to the provisions of section 3 of the Act of August 30, 1957 (Public Law 85-235, 71 Stat. 516), as amended, the tax imposed by section 4511(a) with respect to the first domestic processing of coconut oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of such oil, fatty acids, or salts, during the period beginning October 1, 1957, and ending with the close of June 30, 1963.

(ii) *Palm oil.* Pursuant to the provisions of the Act of May 29, 1959 (Public Law 86-37, 73 Stat. 64), as amended, the tax imposed by section 4511(a) with respect to the first domestic processing of palm oil, palm-kernel oil, fatty acids derived therefrom, or salts thereof, or of any combination or mixture solely because such combination or mixture contains a substantial quantity of one or more of such oils, fatty acids, or salts does not apply during the period beginning July 1, 1959, and ending with the close of June 30, 1963.

PAR. 8. Section 46.7701 is amended by revising section 7701(a)(9) and section 7701(a)(10), and by adding an historical note, to read as follows:

§ 46.7701 Statutory provisions; definitions.

SEC. 7701 *Definitions.* (a) * * *

(9) *United States.* The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

* * * * * *

[Sec. 7701 as amended by sec. 22 (g) and (h), Alaska Omnibus Act (73 Stat. 146, 147); sec. 18 (i) and (j), Hawaii Omnibus Act (74 Stat. 416)]

PAR. 9. Section 49.4261 is amended by revising section 4261(a) (1) and (2), section 4261(b) (1) and (2), section 4261 (c) (1) and (2), and the historical note, to read as follows:

§ 49.4261 Statutory provisions; imposition of tax; amounts paid within the United States; amounts paid outside the United States; seats, berths, etc.; by whom paid.

SEC. 4261 *Imposition of tax*—(a) *Amounts paid within the United States.* * * *

(1) 10 percent of the amount so paid before July 1, 1961; or

(2) 5 percent of the amount so paid on or after July 1, 1961.

(b) *Amounts paid outside the United States.* * * *

(1) 10 percent of the amount so paid before July 1, 1961; or

(2) 5 percent of the amount so paid on or after July 1, 1961.

(c) *Seats, berths, etc.* * * *

(1) 10 percent of the amount so paid before July 1, 1961; or

(2) 5 percent of the amount so paid on or after July 1, 1961.

* * * * *

[Sec. 4261 as amended and in effect Jan. 1, 1959, and as further amended by sec. 4, Tax Rate Extension Act 1959 (73 Stat. 158); sec. 202(a)(3), Public Debt and Tax Rate Extension Act 1960 (74 Stat. 290)]

PAR. 10. Paragraph (a) of § 49.4261-2 is amended to read as follows:

§ 49.4261-2 Rate and application of tax.

(a) *Rate of tax.* Tax is imposed under section 4261 upon the amount paid for taxable transportation at the rate applicable on the date on which payment for the transportation is made as specified below:

(1) With respect to amounts paid before July 1, 1961	10 percent
(2) With respect to amounts paid on or after July 1, 1961	5 percent

For purposes of determining the applicable rate of tax, it is immaterial that the taxable transportation begins or ends before, on, or after July 1, 1961. For the rate and application of tax with respect to amounts paid for seating or sleeping accommodations in connection with taxable transportation, see § 49.4261-9.

PAR. 11. Paragraph (b) (1) and (2) of § 49.4261-9 is amended to read as follows:

§ 49.4261-9 Seats and berths; rate and application of tax.

* * * * *

(b) *Rate of tax.* * * *

(1) With respect to amounts paid before July 1, 1961	10 percent
(2) With respect to amounts paid on or after July 1, 1961	5 percent

PAR. 12. Section 49.4262(c) is amended by revising section 4262(c)(1), and the historical note, to read as follows:

§ 49.4262(c) Statutory provisions; definitions; continental United States; 225-mile zone.

SEC. 4262 *Definition of taxable transportation*—* * *

(c) *Definitions.* * * *

(1) *Continental United States.* The term "continental United States" means the District of Columbia and the States other than Alaska and Hawaii.

* * * * *

[Sec. 4262(c) as added and in effect Jan. 1, 1959, and as further amended by sec. 22(b), Alaska Omnibus Act (73 Stat. 146); sec. 18 (a), Hawaii Omnibus Act (74 Stat. 416)]

Because this Treasury decision makes only clarifying and technical changes, it is hereby found unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 15, 1960.

FRED C. SCRIBNER, JR.,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11792; Filed, Dec. 20, 1960; 8:48 a.m.]

[T.D. 59]

PART 151—REGULATORY TAXES ON NARCOTIC DRUGS

Miscellaneous Amendments

On November 9, 1960, notice of proposed rule making with respect to regulations issued under sections 4702 and 4731 of the Internal Revenue Code of 1954, as amended, relating to exempt narcotic preparations and to definitions was published in the FEDERAL REGISTER (25 F.R. 10702). After consideration of all such relevant matters as were presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the following change: § 151.427 is amended by changing the term "25 ounces", appearing in the first sentence, to read "one kilogram".

In addition, paragraph 9 of this Treasury Decision adds a new section, § 151.428 *Exempt narcotic pharmaceutical preparations*, for the purpose of listing the pharmaceutical preparations found by the Commissioner of Narcotics to be exempt from some of the requirements of the Federal narcotic laws and regulations, and designated as Class "X" products and Class "M" products.

Because the addition of § 151.428 is merely for the listing of exempt narcotic preparations as so determined by the Commissioner of Narcotics, it is hereby found that it is unnecessary to issue this Treasury Decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946 or subject to the effective date limitation of section 4(c) of that Act.

Effective date. This Treasury Decision shall become effective January 1, 1961.

[SEAL] H. J. ANSLINGER,
Commissioner of Narcotics.

Approved: December 15, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

1. A sentence is added to paragraph (a) of § 151.11 and paragraph (b) of § 151.11 is amended in its entirety as set forth below:

§ 151.11 Definitions.

As used in this part:

(a) * * * However, the term "narcotic", "narcotics", or "narcotic drugs" shall not include decocainized coca leaves or extracts of coca leaves, if such extracts do not contain cocaine or ecgonine.

(b) The term "exempt preparations" means the pharmaceutical preparations found by the Commissioner of Narcotics to possess qualifications for exception as set forth in § 151.422.

2. Section 151.421 *Extent of exemption* is revised to read as follows:

§ 151.421 Preparations of no addictive or minor addictive quality.

(a) Section 4702(a) of the Internal Revenue Code of 1954, has been amended by section 4(c) of the Narcotics Manufacturing Act of 1960, to permit the Commissioner of Narcotics to exempt, subject to such conditions as he may impose, pharmaceutical preparations of no addictive quality or of minor addictive quality from the requirements contained in Part I of Subchapter A of Chapter 39, Internal Revenue Code of 1954, as amended (other than the requirements contained in sections 4721, 4722, 4724(a) and 4732 of the Internal Revenue Code of 1954, as amended, which sections are concerned generally with the imposition of tax, registration and maintenance of records and statements and filing of returns). The Commissioner of Narcotics may also exempt such pharmaceutical preparations from the requirements imposed by section 6 of the Act entitled "An Act to prohibit the importation and use of opium for other than medicinal purposes", approved February 9, 1909, as amended by section 15 of the Narcotics Manufacturing Act of 1960 (21 U.S.C. 182, as amended) which section is concerned with the prohibitions and exceptions to exportation of narcotic drugs.

(b) An exemption of a pharmaceutical preparation will be granted where such exemption would be consistent with any obligation undertaken by the United States pursuant to the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, concluded at Geneva, July 13, 1931, as amended by the Protocols of 1946 and 1948. These agreements are designed to limit the manufacture of narcotic drugs to the world's legitimate requirements for medical and scientific purposes and to regulate their distribution for such purposes. No exemption of a pharmaceutical preparation will be granted unless the Commissioner of Narcotics, after giving due notice in the FEDERAL REGISTER and opportunity for a hearing, determines that such an exemption would be consistent with the public health, safety and welfare.

3. Section 151.422 *Standards of exemption* is revised to read as follows:

§ 151.422 Special exemptions.

(a) *Generally.* Any pharmaceutical preparation containing a narcotic drug (as defined in section 4731 of the Internal Revenue Code of 1954, as amended), combined with other active or inactive ingredients, shall be treated as a drug with an addiction-forming or addiction-sustaining liability, unless the Commissioner of Narcotics finds that the pharmaceutical preparation either does not possess an addiction-forming or an addiction-sustaining liability, or does not possess a liability sufficient to warrant imposition of all of the requirements of Part I of Subchapter A of Chapter 39 of the Internal Revenue Code of 1954, as amended, and also finds that the preparation does not permit the recovery of an addiction-forming or an addiction-sustaining narcotic drug with such relative technical simplicity and degree of yield as to create a risk of improper use. Prior to making such finding, the Commissioner either upon his own motion or upon the application of an interested party, shall give consideration to the report and recommendations of the advisory committee, referred to in section 4(c)(4) of the Narcotics Manufacturing Act of 1960, and § 151.423.

(b) *Preparations classified as Class "X" products.* Any pharmaceutical preparation determined by the Commissioner, after consideration of the report and recommendations of an advisory committee (as set forth in § 151.423):

(1) To possess such slight addiction-forming or addiction-sustaining liability as to create little risk of improper use, but possessing a greater risk of improper use than those preparations classified as Class "M" products, and

(2) Not to permit the recovery of a narcotic drug having such liability with such relative technical simplicity and degree of yield as to create a risk of improper use,

will be known as a Class "X" product, the label on the containers of which shall have superimposed thereon the symbol "X".

(c) *Preparations classified as Class "M" products.* Any pharmaceutical preparation determined by the Commissioner, after consideration of the report and recommendation of an advisory committee (as set forth in § 151.423):

(1) To possess no addiction-forming or addiction-sustaining liability, or to possess such slight addiction-forming or addiction-sustaining liability as to create less risk of improper use than those preparations classified as Class "X" products, and

(2) Not to permit the recovery of a narcotic drug having such liability with such relative technical simplicity and degree of yield as to create a risk of improper use,

will be known as a Class "M" product, the label on the containers of which shall have superimposed thereon the symbol "M".

4. Section 151.423 *Restrictions on dispositions* is revised to read as follows:

§ 151.423 Granting of special exemptions.

(a) Whenever the Commissioner of Narcotics shall, on his own motion, determine that there may exist reasonable evidence that a pharmaceutical preparation possesses qualifications for exemption, as set forth in § 151.422, or whenever an interested party makes an application for a finding that a pharmaceutical preparation be exempt, the Commissioner shall thereupon appoint an advisory committee of experts, which, as soon as practicable thereafter, after independent study of the material submitted to it by the Commissioner and other data available to it, shall certify a report and recommendation to the Commissioner with respect to the pharmaceutical preparation involved. This advisory committee shall include:

(1) One or more members selected by the Commissioner;

(2) One member selected by the Surgeon General of the United States Public Health Service;

(3) One member selected by the Commissioner of the United States Food and Drug Administration; and

(4) One member selected by the interested party making the application, if any.

(b) Any person who applies for an exemption pursuant to § 151.422 shall, as a condition to any consideration of his application by the Commissioner, submit to the Commissioner all the technical and scientific data in his possession, which data tend to prove that such pharmaceutical preparation meets the conditions prescribed as necessary for the granting of exemptions under § 151.422.

(c) When the Commissioner grants an exemption under § 151.422 with respect to a pharmaceutical preparation, it shall be incumbent upon the manufacturer of such exempt preparation that as a condition to the retention of exempt status, such manufacturer be obligated to notify the Commissioner, forthwith, of any discovery by the manufacturer of any technique which will yield with relative technical simplicity recovery of a drug with addiction liability.

5. Section 151.424 *Dispositions to dealers* is revised to read as follows:

§ 151.424 Conditions of exemption for Class "X" products.

(a) *To be sold as a medicine only.* A pharmaceutical preparation determined by the Commissioner of Narcotics to conform to the standards set forth in § 151.422 as a Class "X" product shall be exempt from stamp tax (§ 151.121) and the requirements pertaining to taxable narcotics only to the extent that it is manufactured, sold, distributed, given away, dispensed or possessed as a medicine and not for the purpose of evading the provisions of Subparts A and C of Part I of Subchapter A of Chapter 39 of the Internal Revenue Code of 1954, as amended.

(b) *Records required.* (1) Every manufacturer, producer, compounder or vendor (including dispensing physicians) of such Class "X" preparations shall record all sales, exchanges, gifts or other dispositions, the entries to be made at the time of delivery. The requirement that such records be maintained as herein provided is absolute, independent and not merely a condition precedent to securing exemption granted under section 4702(a) of the Internal Revenue Code of 1954, as amended (§ 151.423), to manufacturers, producers, compounders or vendors (including dispensing physicians), of exempt preparations. Such records shall be preserved for a period of not less than two years and shall be kept in such a way as to be readily accessible to inspection by any duly authorized officer or employee of the Treasury Department and the State, territorial, district, municipal or insular officers named in section 4773 of the Internal Revenue Code of 1954, as amended.

(2) Separate records shall be kept of disposition to registrants and disposition to consumers. The record of disposition to registrants shall show the name, address and registry number of the registrant to whom disposed, the name and quantity of the preparation and the date upon which delivery to the registrant, his agent or carrier is made. The record of disposition to consumers shall show the name of the recipient, his address, the name and quantity of the preparation, and the date of delivery.

(3) Any person required to keep records pursuant to this paragraph and failing to do so is guilty of a violation of law and liable to the penalties provided for violation of the provision of law relating to narcotic drugs.

(4) The following form shall be used for keeping the records required by this paragraph, but printed forms will not be furnished by the Government.

FORM OF RECORD OF DISPOSITION TO REGISTRANTS

Date	Registration number of recipient	Name of recipient	Address	Name of preparation	Quantity

FORM OF RECORD OF DISPOSITION TO CONSUMERS

Date	Name of recipient	Address	Name of preparation	Quantity

(5) In the case of manufacturers of or dealers in preparations classified as Class "X" products who are also registered as manufacturers of or dealers in taxable drugs in Class I or II, the requirement of this section as to records of dispositions to registrants shall be deemed to be complied with, if all such dispositions are evidenced by vouchers or invoices containing all the required information and such vouchers or invoices are maintained for a period of not less than two years and made readily available for inspection upon request.

(6) As to records required in the case of registrants supplying preparations classified as Class "X" products to consumers pursuant to prescriptions issued by registered physicians, the requirement of this paragraph as to records of disposition to consumers shall be deemed to be complied with if each such prescription shows the name and address of the recipient, the name and quantity of the preparation, and the date of filling, and the prescriptions are kept on the narcotic prescription file.

(c) *Registration required.* Every person possessing or dispensing a pharmaceutical preparation conforming to the standards set forth in § 151.422 as a Class "X" product shall register as required in section 4722 of the Internal Revenue Code of 1954, as amended. If he is not otherwise required to pay a tax under section 4721 of the Internal Revenue Code of 1954, as amended, he shall pay, as provided in Subpart C of Part I of Subchapter A of Chapter 39 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4721 et seq.), a special tax of $1.00 for each year, or fractional part thereof, in which he is engaged in such occupation, to the District Director of the Internal Revenue Service of the district in which he carries on such occupation.

6. Section 151.425 *Dispositions to customers* is revised to read as follows:

§ 151.425 Conditions for exemption for Class "M" products.

(a) *To be sold as a medicine only.* A pharmaceutical preparation determined by the Commissioner of Narcotics to conform to the standards set forth in § 151.422 as a Class "M" product shall be exempt from stamp tax (§ 151.121) and the requirements pertaining to taxable narcotics only to the extent that it is manufactured, sold, distributed, given away, dispensed or possessed as a medicine and not for the purpose of evading the provisions of Subparts A and C of Part I of Subchapter A of Chapter 39 of the Internal Revenue Code of 1954, as amended.

(b) *Records not required.* Records of disposition of Class "M" products shall not be required. Manufacturers of Class "M" products shall maintain such records and render such returns as provided in § 151.427.

(c) *Registration required.* Every person possessing or dispensing a pharmaceutical preparation conforming to the standards set forth in § 151.422 as a Class "M" product shall register as required in section 4722 of the Internal Revenue Code of 1954, as amended. If he is not otherwise required to pay a tax under section 4721 of the Internal Revenue Code of 1954, as amended, he shall pay, as provided in Subpart C of Part I of Subchapter A of Chapter 39 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4721 et seq.), a special tax of $1.00 for each year, or fractional part thereof, in which he is engaged in such occupation, to the District Director of the Internal Revenue Service of the district in which he carries on such occupation.

7. Section 151.426 *Records required* is revised to read as follows:

§ 151.426 Withdrawal of exemption.

General. If the Commissioner of Narcotics shall, after giving due notice and an opportunity for a hearing, determine that a pharmaceutical preparation, originally excepted from the application of this Act, does in fact possess a degree of addiction liability or permits recovery of a narcotic drug having a degree of addiction liability that results in abusive use of this preparation, the Commissioner may withdraw his original determination and revoke any previously given exception in whole or in part. The Commissioner shall cause to be published in the FEDERAL REGISTER any such determination and the pharmaceutical preparation shall thereupon cease to be an exempt preparation.

8. Section 151.427 *Manufacturers' returns required* is revised to read as follows:

§ 151.427 Manufacturers' returns required.

General. Each person registered in Class V as a manufacturer of preparations classified as Class "X" or Class "M" products, who uses more than one kilogram of narcotics of all kinds in such manufacture in one year, unless also registered as a manufacturer of taxable narcotic drugs shall render quarterly a return on Form 802 (manufacturers registered in Class I shall continue to use Form 810c). The return shall contain a statement of all the purchases of each kind of taxable narcotics during the period beginning with the first day of the year and continuing through the last day of the quarter for which the return is made. The return shall also show a complete accounting for the quarter for (a) taxable narcotics purchased, used in production, and on hand, and (b) preparations classified as Class "X" or Class "M" products produced, disposed of, and on hand. Such return shall be filed with the District Director of the Internal Revenue Service for the district in which the business is located on or before the fifteenth day of April, July, October, and January, for the three-month period ending on the last day of March, June, September, and December, respectively. The District Director shall forward the return to the Commissioner of Narcotics in the same manner as other narcotic returns.

9. A new § 151.428 *Exempt narcotic pharmaceutical preparations* listing such preparations found by the Commissioner of Narcotics (25 F.R. 12756), is added to read as follows:

§ 151.428 Exempt narcotic pharmaceutical preparations.

(a) *Pharmaceutical preparations designated as Class "X" products.* (1) Pharmaceutical preparations containing not more than 129.6 mgs. (2 grs.) opium per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

(2) Pharmaceutical preparations containing not more than 16.2 mgs. (¼ gr.) morphine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

(3) Pharmaceutical preparations containing not more than 64.8 mgs. (1 gr.) codeine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

(4) Pharmaceutical preparations containing not more than 32.4 mgs. (½ gr.) dihydrocodeine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.);

(5) Pharmaceutical preparations containing not more than 16.2 mgs. (¼ gr.) ethylmorphine, or any of its salts, per 29.5729 cc (1 fl. oz.) or per 28.3 Gms. (1 av. oz.).

Each preparation mentioned in subparagraphs (1), (2), (3), (4) and (5) of this paragraph shall in addition contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

(6) Pharmaceutical preparations in solid form containing not more than 2.5 mgs. diphenoxylate and not less than 25 micrograms atropine sulfate per dosage unit.

(b) *Pharmaceutical preparations designated as Class "M" products.*

(1) Pharmaceutical preparations containing noscapine, or any of its salts;

(2) Pharmaceutical preparations containing papaverine, or any of its salts;

(3) Pharmaceutical preparations containing narceine, or any of its salts;

(4) Pharmaceutical preparations containing cotarnine, or any of its salts.

Each preparation mentioned in 1, 2, 3, and 4 shall not be limited by quantity of the narcotic drug, but the preparation shall contain active or inactive non-narcotic ingredients of the type used in medicinal preparations.

(26 U.S.C. 4702(a), 4731(a), as amended by sec. 4, Pub. Law 86-429 (74 Stat. 57), sec. 17, Pub. Law 86-429 (74 Stat. 67))

[F.R. Doc. 60-11795; Filed, Dec. 20, 1960; 8:48 a.m.]

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

[T.D. 6517]

PART 301—PROCEDURE AND ADMINISTRATION

Notice of Qualification as Executor or Receiver

On October 8, 1960, notice of proposed rule making with respect to regulations under section 6036 of the Internal Revenue Code of 1954, relating to notice of qualification as executor or receiver, was published in the FEDERAL REGISTER (25 F.R. 9682). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted. These regulations are applicable with respect to taxes imposed by the Internal Revenue Code of 1954.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 15, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

§ 301.6036 Statutory provisions; notice of qualification as executor or receiver.

SEC. 6036. *Notice of qualification as executor or receiver.* Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, and every executor (as defined in section 2203), shall give notice of his qualification as such to the Secretary or his delegate in such manner and at such time as may be required by regulations of the Secretary or his delegate. The Secretary or his delegate may by regulation provide such exemptions from the requirements of this section as the Secretary or his delegate deems proper.

§ 301.6036-1 Notice required of executor or of receiver or other like fiduciary.

(a) *Receivers and other like fiduciaries*—(1) *Bankruptcy proceedings.* The receiver or the trustee in bankruptcy, the debtor in possession, or other person, designated as in control of the assets of a debtor in any bankruptcy proceeding by order of the court in which such proceeding is pending, shall, on, or within 10 days of, the date of his appointment or authorization to act, give notice thereof in writing to the district director for the internal revenue district in which such debtor is or was required to make returns. Notice under this subparagraph shall not be required if, prior to, on, or within 10 days of, the date of such appointment or authorization to act, any notice regarding such proceeding has been given under any provision of the Bankruptcy Act (Title 11 of the United States Code) to the Secretary or other proper officer of the Treasury Department.

(2) *Proceedings other than bankruptcy.* A receiver in a receivership proceeding or a similar fiduciary in any proceeding (including a fiduciary in aid of foreclosure), designated by order of any court of the United States or of any State or Territory or of the District of Columbia as in control of all or substantially all the assets of a debtor or other party to such proceeding shall, on, or within 10 days of, the date of his appointment or authorization to act, give notice thereof in writing to the district director for the internal revenue district in which the debtor, or such other party, is or was required to make returns. Moreover, any fiduciary in aid of foreclosure not appointed by order of any such court, if he takes possession of all or substantially all the assets of the debtor, shall, on, or within 10 days of, the date of his taking possession, give notice thereof in writing to such district director.

(3) *Assignment for benefit of creditors.* An assignee for the benefit of a creditor or creditors shall, on, or within 10 days of, the date of an assignment, give notice thereof in writing to the district director for the internal revenue district in which the debtor is or was required to make returns. For purposes of this subparagraph, an assignee for the benefit of creditors shall be any person who, by authority of law, by the order of any court, by oral or written agreement, or in any other manner acquires control or possession of or title to all or substantially all the assets of a debtor, and who under such acquisition is authorized to use, reassign, sell, or in any manner dispose of such assets so that the proceeds from the use, sale, or other disposition may be paid to or may inure directly or indirectly to the benefit of a creditor or creditors of such debtor.

(4) *Contents of notice*—(i) *Bankruptcy and other proceedings.* The written notice required under subparagraph (1) or (2) of this paragraph shall contain:

(a) The name and address of the person making such notice and the date of his appointment or of his taking posses-

sion of the assets of the debtor or other person whose assets are controlled,

(b) The name and address of the debtor or other person whose assets are controlled, and

(c) In the case of a court proceeding:

(1) The name and location of the court in which the proceedings are pending,

(2) The date on which such proceedings were instituted,

(3) The number under which such proceedings are docketed, and

(4) When possible, the date, time, and place of any hearing, meeting of creditors, or other scheduled action with respect to such proceedings.

(ii) *Assignment for benefit of creditors.* The written notice required under subparagraph (3) of this paragraph shall contain:

(a) The name and address of, and the date the asset or assets were assigned to, the assignee,

(b) The name and address of the debtor whose assets were assigned,

(c) A brief description of the assets assigned,

(d) An explanation of the action expected to be taken with respect to such assets, and

(e) When possible, the date, time, and place of any hearing, meeting of creditors, sale, or other scheduled action with respect to such assets.

(b) *Executors, administrators, and persons in possession of property of decedent.* For provisions relating to requirement of preliminary notice in the case of estate taxes by executor, administrator, or person in possession of property of decedent, see § 20.6036–1 of this chapter (Estate Tax Regulations).

(c) *Notice of fiduciary relationship.* When a notice is required under § 301.6903–1 of a person acting in a fiduciary capacity and is also required of such person under this section, notice given in accordance with the provisions of this section shall be considered as complying with both sections.

(d) *Suspension of period on assessment.* For suspension of the running of the period of limitations on the making of assessments from the date a proceeding is instituted to a date 30 days after receipt of notice from a fiduciary in any proceeding under the Bankruptcy Act or from a receiver in any other court proceeding, see section 6872 and § 301.6872–1.

(e) *Applicability.* The provisions of this section shall apply to those persons referred to in this section whose appointments, authorizations, or assignments occur on or after December 21, 1960.

(f) *Cross references.* (1) For criminal penalty for willful failure to supply information, see section 7203.

(2) For criminal penalties for willfully making false or fraudulent statements, see sections 7206 and 7207.

(3) For time for performance of acts where the last day falls on a Saturday, Sunday, or legal holiday, see section 7503 and § 301.7503–1.

(68A Stat. 917; 26 U.S.C. 7805)

[F.R. Doc. 60–11791; Filed, Dec. 20, 1960; 8:48 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Dept. Reg. 108.453]

PART 3—ADVICE TO FOREIGN GOVERNMENTS

Revocation of Part

Pursuant to the authority contained in 5 U.S.C. 151c, the regulations in 22 CFR Part 3 are hereby revoked effective upon publication in the FEDERAL REGISTER.

Dated: December 6, 1960.

For the Secretary of State.

[SEAL] LANE DWINELL,
Assistant Secretary for Administration.

[F.R. Doc. 60–11789; Filed, Dec. 20, 1960; 8:47 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2223]

[Washington 02642]

WASHINGTON

Partly Revoking Public Land Order Nos. 261 and 1273

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Public Land Order No. 261 of January 24, 1945, and No. 1273 of March 14, 1956, reserving lands for use of the War Department and the Atomic Energy Commission, respectively, are hereby revoked so far as they affect the following-described lands:

WILLAMETTE MERIDIAN

T. 13 N., R. 23 E.,
Secs. 2 and 3, those portions of two unplatted islands in the Columbia River;
Sec. 12, S½S½.
T. 13 N., R. 24 E.,
Sec. 18, N½NE¼, SE¼NE¼, and NE¼SE¼.

Aggregating approximately 335 acres.

2. All the lands in T. 13 N., R. 23 E. are withdrawn for power purposes.

3. Subject to any existing valid rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands in T. 13 N., R. 24 E., are hereby opened to filing applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Until 10:00 a.m. on June 15, 1961, the State of Washington shall have a preferred right of application to select the lands in section 18 in accordance with and subject to the provisions of subsection (c) of section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852), and the regulations in 43 CFR.

(2) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(3) All valid applications and selections under the nonmineral public land laws other than from the State, presented prior to 10:00 a.m. on January 19, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands will be open to location under the United States mining laws, beginning at 10:00 a.m. on June 15, 1961, those lands in power withdrawals being so opened subject to the provisions of the Act of August 11, 1955 (69 Stat. 681; 30 U.S.C. 621).

4. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Spokane, Washington.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 14, 1960.

[F.R. Doc. 60–11780; Filed, Dec. 20, 1960; 8:46 a.m.]

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Chautauqua National Wildlife Refuge, Illinois

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ILLINOIS

CHAUTAUQUA NATIONAL WILDLIFE REFUGE

Sport fishing on the Chautauqua National Wildlife Refuge, Illinois, is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: From 4:00 a.m. to 9:00 p.m., Central Standard Time, each day during the periods from January 1 through March 14, 1961, in the open area of Lake Chautauqua; from January 1 through September 30, 1961, in the open area of Liverpool Lake; from March 15 through September 30, 1961, in all waters of Lake Chautauqua; and from October 1 through December 31, 1961, in designated waters of Lake Chautauqua.

(c) Daily creel limits: Unlimited numbers of all species of fish, except largemouth and smallmouth bass, for which the daily creel limit is 10 of each species.

(d) Methods of fishing:

(1) The use of boats, including boats powered by motors not to exceed six (6) horsepower, is permitted in the waters of Lake Chautauqua. The use of boats and motors, without limitation on horsepower rating of motors, is permitted in the waters of Liverpool Lake and the refuge borrow ditch adjacent to the main dike outside of Lake Chautauqua. Illinois Boat Registration and Safety Act regulations must be adhered to.

(2) The use of seines or other devices for taking minnows or other bait is prohibited.

(3) Sport fishing with pole and line, bank pole and line, throwline, trot line, or buoyed ganging devices not exceeding fifty (50) hooks in the aggregate is permitted. Trot lines shall be tagged with a weatherproof tag indicating owner's name and permanent address. Trot lines may be attended by the owner or members of his immediate family only.

(4) The use of live boxes is prohibited, except that owners of cottages on the lake may utilize them.

(5) Boats, equipment and other fishing gear may be hauled or taken across dikes only at pull-overs designated by suitable posting by the refuge officer in charge.

(6) No person shall enter upon, cross over, or fish from any dike, water control structure, or shoreline within the refuge except as follows: Sport fishing shall be permitted from that part of the main dike that extends for approximately 700 feet easterly from the inlet gate to the main shore at Boatyard No. 3, and from the shoreline within a distance of 660 feet at each of the established boatyards; these areas are delineated by suitable posting by the refuge officer in charge.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted areas which are described as follows:

(1) From January 1 through March 14, 1961—in Lake Chautauqua an area approximately one-eighth (⅛) of a mile wide adjacent to the east shore between refuge headquarters and the north dike.

(2) From January 1 through September 30, 1961—in the waters of Liverpool Lake and the refuge borrow ditch adjacent to the main dike outside of Lake Chautauqua.

(3) From March 15 to September 30, 1961—in all waters of Lake Chautauqua.

(4) From October 1 to December 31, 1961—in those waters of Lake Chautauqua within a one-eighth (⅛) mile radius of the established boatyards. Collectively, these areas comprise 3,700 acres and 82 percent of the total refuge. In the event that all or portions of these waters become concentration areas for waterfowl, fishing may be temporarily suspended and closed areas will be clearly posted.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) Entry and travel shall be restricted to areas designated and posted by the refuge officer in charge.

(3) A Federal permit is not required to enter the public fishing area.

(4) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 13, 1960.

[F.R. Doc. 60–11777; Filed, Dec. 20, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Crab Orchard National Wildlife Refuge, Illinois

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Sport fishing on the Crab Orchard National Wildlife Refuge, Illinois, is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Sport fishing in Areas I and III is permitted at all times during the period January 1, 1961 through December 31, 1961. Sport fishing in Area II is permitted in daylight hours only during the period March 15, 1961 through September 30, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 8,600 acres and 20 percent of the total refuge and which is described as follows:

All waters of the Crab Orchard National Wildlife Refuge. Maps which show the locations of Areas I, II and III, referred to in (b) above, are available at the refuge office and from the Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis 8, Minnesota.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) The use of boats is permitted, except no boat having a motor larger than six (6) horsepower is permitted on Little Grassy Lake and no motors are permitted on Devils Kitchen Lake.

(3) A Federal permit is not required to enter the public fishing area.

(4) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 13, 1960.

[F.R. Doc. 60–11778; Filed, Dec. 20, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Necedah National Wildlife Refuge, Wisconsin

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

WISCONSIN

NECEDAH NATIONAL WILDLIFE REFUGE

Sport fishing on the Necedah National Wildlife Refuge, Wisconsin is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period from January 1 through February 28, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Bait—minnows or other bait may not be obtained on the refuge.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 1,500 acres and four percent of the total refuge and which is described as follows:

Those waters in Section 1, T. 19 N., R. 2 E. and Sections 4, 5 and 6, T. 19 N., R. 3 E., lying within the main dike of the Sprague-Mather pool.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through February 28, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 13, 1960.

[F.R. Doc. 60–11779; Filed, Dec. 20, 1960; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The regulations under section 180 of the Internal Revenue Code of 1954, relating to expenditures by farmers for fertilizer, lime, etc., set forth in paragraph 1 are hereby prescribed, effective for taxable years beginning after December 31, 1959.

The Income Tax Regulations (26 CFR Part 1) are amended as set forth in paragraphs 2, 3, 4, 5, and 6 to conform to the rules relating to expenditures by farmers for fertilizer, lime, etc., prescribed under section 180.

PARAGRAPH 1. The following regulations are hereby prescribed under section 180 of the Internal Revenue Code of 1954:

§ 1.180 Statutory provisions; expenditures by farmers for fertilizer, etc.

SEC. 180 *Expenditures by farmers for fertilizer, etc.*—(a) *In general.* A taxpayer engaged in the business of farming may elect to treat as expenses which are not chargeable to capital account expenditures (otherwise chargeable to capital account) which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, or for the application of such materials to such land. The expenditures so treated shall be allowed as a deduction.

(b) *Land used in farming.* For purposes of subsection (a), the term "land used in farming" means land used (before or simultaneously with the expenditures described in subsection (a)) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock.

(c) *Election.* The election under subsection (a) for any taxable year shall be made within the time prescribed by law (including extensions thereof) for filing the return for such taxable year. Such election shall be made in such manner as the Secretary or his delegate may by regulations prescribe. Such election may not be revoked except with the consent of the Secretary or his delegate.

[Sec. 180 as added by sec. 6, Act of Sept. 14, 1960 (Pub. Law 86-779, 74 Stat. 1001)]

§ 1.180-1 Expenditures by farmers for fertilizer, etc.

(a) *In general.* A taxpayer engaged in the business of farming may elect, for any taxable year beginning after December 31, 1959, to treat as deductible expenses those expenditures otherwise chargeable to capital account which are paid or incurred by him during the taxable year for the purchase or acquisition of fertilizer, lime, ground limestone, marl, or other materials to enrich, neutralize, or condition land used in farming, and those expenditures otherwise chargeable to capital account paid or incurred for the application of such items and materials to such land. No election is required to be made for those expenditures which are not capital in nature. Section 180, § 1.180-2, and this section are not applicable to those expenses which are deductible under section 162 and the regulations thereunder or which are subject to the method described in section 175 and the regulations thereunder.

(b) *Land used in farming.* For purposes of section 180(a) and of paragraph (a) of this section, the term "land used in farming" means land used (before or simultaneously with the expenditures described in such section and such paragraph) by the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. See section 180(b). Expenditures for the initial preparation of land never previously used for farming purposes by the taxpayer or his tenant (although chargeable to capital account) are not subject to the election. The principles stated in §§ 1.175-3 and 1.175-4 are equally applicable under this section in determining whether the taxpayer is engaged in the business of farming and whether the land is used in farming.

§ 1.180-2 Time and manner of making election and revocation.

(a) *Election.* The claiming of a deduction on the taxpayer's return for an amount to which section 180 applies for amounts (otherwise chargeable to capital account) expended for fertilizer, lime, etc., shall constitute an election under section 180 and paragraph (a) of § 1.180-1. Such election shall be effective only for the taxable year for which the deduction is claimed.

(b) *Revocation.* Once the election is made for any taxable year such election may not be revoked without the consent of the district director for the district in which the taxpayer's return is required to be filed. Such requests for consent shall be in writing and signed by the taxpayer or his authorized representative and shall set forth—

(1) The name and address of the taxpayer;

(2) The taxable year to which the revocation of the election is to apply;

(3) The amount of expenditures paid or incurred during the taxable year, or portions thereof (where applicable), previously taken as a deduction on the return in respect of which the revocation of the election is to be applicable; and

(4) The reasons for the request to revoke the election.

PAR. 2. Section 1.162-12 is amended to read as follows:

§ 1.162-12 Expenses of farmers.

A farmer who operates a farm for profit is entitled to deduct from gross income as necessary expenses all amounts actually expended in the carrying on of the business of farming. The cost of ordinary tools of short life or small cost, such as hand tools, including shovels, rakes, etc., may be deducted. The purchase of feed and other costs connected with raising livestock may be treated as expense deductions insofar as such costs represent actual outlay, but not including the value of farm produce grown upon the farm or the labor of the taxpayer. Where a farmer is engaged in producing crops which take more than a year from the time of planting to the process of gathering and disposal, expenses deducted may, with the consent of the Commissioner (see section 446 and the regulations thereunder), be determined upon the crop method, and such deductions must be taken in the taxable year in which the gross income from the crop has been realized. If a farmer does not compute income upon the crop method, the cost of seeds and young plants which are purchased for further development and cultivation prior to sale in later years may be deducted as an expense for the year of purchase, provided the farmer follows a consistent practice of deducting such costs as an expense from year to year. The preceding sentence does not apply to the cost of seeds and young plants connected with the planting of timber. See section 611 and the regulations thereunder. The cost of farm machinery, equipment, and farm buildings represents a capital investment and is not an allowable deduction as an item of expense. Amounts expended in the development of farms, orchards, and ranches prior to the time when the productive state is reached may be regarded as investments of capital. For the treatment of soil and water conservation expenditures as expenses which are not chargeable to capital account, see section 175 and the regulations thereunder. For taxable years beginning after December 31, 1959, in the case of expenditures paid or incurred by farmers for fertilizer, lime, etc., see section 180 and the regulations thereunder. Amounts expended in purchasing work, breeding, or dairy animals are regarded as investments of capital, and shall be depreciated unless such animals are included in an inventory in accordance with § 1.61-4. The purchase price of an automobile, even when wholly used in carrying on farming operations, is not deductible, but is regarded as an investment of capital. The cost of gasoline, repairs, and upkeep of an automobile if used wholly in the business of farming is deductible as an expense; if used partly for business purposes and partly for the pleasure or convenience of the taxpayer or his family, such cost may be apportioned according to the extent of the use for purposes of business and pleasure or convenience, and only the proportion of such cost justly attributable to business purposes is deductible as a necessary expense. If a farm is operated for recreation or pleasure and not on a commercial basis, and if the expenses incurred in connection with the farm are in excess of the receipts therefrom, the entire receipts from the sale of farm products may be ignored in rendering a return of income, and the expenses incurred, being regarded as personal expenses, will not constitute allowable deductions. (See § 1.61-4, and paragraph (b) of § 1.167(a)-6, and sections 165 and 270 and the regulations thereunder.)

PAR. 3. Paragraphs (b) (1) and (2) of § 1.175-2 are amended to read as follows:

§ 1.175-2 Definition of soil and water conservation expenditures.

* * * * * * *

(b) *Expenditures not subject to section 175 treatment.* (1) The method described in section 175 applies only to expenditures for nondepreciable items. Accordingly, a taxpayer may not deduct expenditures for the purchase, construction, installation, or improvement of structures, appliances, or facilities subject to the allowance for depreciation. Thus, the method does not apply to depreciable nonearthen items such as those made of masonry or concrete (see section 167). For example, expenditures in respect of depreciable property include those for materials, supplies, wages, fuel, hauling, and dirt moving for making structures such as tanks, reservoirs, pipes, conduits, canals, dams, wells, or pumps composed of masonry, concrete, tile, metal, or wood. However, the method applies to expenditures for earthen items which are not subject to a depreciation allowance. For example, expenditures for earthen terraces and dams which are nondepreciable are deductible under section 175. For taxable years beginning after December 31, 1959, in the case of expenditures paid or incurred by farmers for fertilizer, lime, etc., for purposes other than soil or water conservation, see section 180 and the regulations thereunder.

(2) The method does not apply to expenses deductible apart from section 175. Adoption of the method is not necessary in order to deduct such expenses in full without limitation. Thus, the method does not apply to interest (deductible under section 163), nor to taxes (deductible under section 164). It does not apply to expenses for the repair of completed soil or water conservation structures, such as costs of annual removal of sediment from a drainage ditch. It does not apply to expenditures paid or incurred primarily to produce an agricultural crop even though they incidentally conserve soil. Thus, the cost of fertilizing (the effectiveness of which does not last beyond one year) used to produce hay is deductible without adoption of the method prescribed in section 175. For taxable years beginning after December 31, 1959, in the case of expenditures paid or incurred by farmers for fertilizer, lime, etc., for purposes other than soil or water conservation, see section 180 and the regulations thereunder. However, the method would apply to expenses incurred to produce vegetation primarily to conserve soil or water or to prevent erosion. Thus, for example, the method would apply to such expenditures as the cost of dirt moving, lime, fertilizer, seed and planting stock used in gulley stabilization, or in stabilizing severely eroded areas, in order to obtain a soil binding stand of vegetation on raw or infertile land.

PAR. 4. In § 1.263(a), section 263(a)(1) is amended by revising subparagraphs (B) and (C), adding subparagraph (D), and adding a historical note to the section. As amended § 1.263(a) reads as follows:

§ 1.263(a) Statutory provisions; capital expenditures; general rule.

SEC. 263 *Capital expenditures*—(a) *General rule.* No deduction shall be allowed for—

(1) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate. This paragraph shall not apply to—

(A) Expenditures for the development of mines or deposits deductible under section 616,

(B) Research and experimental expenditures deductible under section 174,

(C) Soil and water conservation expenditures deductible under section 175, or

(D) Expenditures by farmers for fertilizer, etc., deductible under section 180.

* * * * * * *

[Sec. 263 as amended by sec. 6, Act of Sept. 14, 1960 (Pub. Law 86-779, 74 Stat. 1001)]

PAR. 5. Paragraph (c) of § 1.263(a)-1 is amended by revising subparagraphs (2) and (3) and by adding a subparagraph (4). These added and revised provisions read as follows:

§ 1.263(a)-1 Capital expenditures; in general.

* * * * * * *

(c) The provisions of paragraph (a)(1) of this section shall not apply to expenditures deductible under—

* * * * * * *

(2) Section 174 and §§ 1.174-1 through 1.174-4, relating to research and experimentation,

(3) Section 175 and §§ 1.175-1 through 1.175-6, relating to soil and water conservation, and

(4) Section 180 and §§ 1.180-1 and 1.180-2, relating to expenditures by farmers for fertilizer, lime, etc.

PAR. 6. Paragraph (b) of section 1.263(a)-3 is amended by redesignating subparagraphs (5) through (8) as (6) through (9) and by adding a subparagraph (5). These added and redesignated provisions read as follows:

§ 1.263(a)-3 Election to deduct or capitalize certain expenditures.

* * * * * * *

(b) The sections referred to in paragraph (a) of this section include:

* * * * * * *

(5) Section 180 (expenditures by farmers for fertilizer, lime, etc.).

(6) Section 248 (organizational expenditures of a corporation).

(7) Section 266 (carrying charges).

(8) Section 615 (exploration expenditures).

(9) Section 616 (development expenditures).

[F.R. Doc. 60-11794; Filed, Dec. 20, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 953]

HANDLING OF LEMONS GROWN IN THE STATES OF CALIFORNIA AND ARIZONA

Notice of Proposed Rule Making With Respect to Expenses and Fixing of Rate of Assessment for 1960-61 Fiscal Year

Consideration is being given to the following proposals submitted by the Lemon Administrative Committee, established pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer the terms and provisions thereof: (1) That the Secretary of Agriculture find that expenses not to exceed $217,620 will be necessarily incurred during the fiscal year ending October 31, 1961, for the maintenance and functioning of the committee established under the aforesaid amended marketing agreement and order, and (2) that the

Secretary of Agriculture fix, as the pro rata share of such expenses which each handler who first handles lemons shall pay in accordance with the aforesaid amended marketing agreement and order during the aforesaid fiscal year, the rate of assessment at one and one half cents ($0.0150) per carton of lemons, or an equivalent quantity of lemons, handled by him as the first handler thereof during said fiscal year.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file same with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Room 2077, South Building, Washington 25, D.C., not later than the close of business on the 10th day after the publication of this notice in the FEDERAL REGISTER. All documents should be filed in quadruplicate.

Terms used herein shall have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 16, 1960.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11803; Filed, Dec. 20, 1960; 8:49 a.m.]

[7 CFR Part 1034]

LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Limitation of Shipments

Notice is hereby given that the Secretary of Agriculture is considering the issuance of the limitation of shipments regulation, as hereinafter set forth, which was recommended by the South Texas Lettuce Committee, established pursuant to Marketing Agreement No. 144 and Marketing Order No. 134 (7 CFR Part 1034; 25 F.R. 12227) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Consideration will be given to any data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than five days following publication of this notice in the FEDERAL REGISTER. The proposals are as follows:

§ 1034.301 Limitation of shipments.

No person shall package lettuce on any Sunday during the period beginning on January 8, 1961, through March 26, 1961, inclusive. During the period January 2, 1961, through March 31, 1961, no person shall handle any lot of lettuce grown in the production area unless it meets the grade requirements of paragraph (a), one of the sizing and pack requirements of paragraph (b), and the container requirements of paragraph (c), or unless such lettuce is handled in accordance with the provisions of paragraphs (d), (e), (f), and (g), of this section.

(a) *Grade.* 70 percent U.S. No. 1, or better grade, not to exceed an average of 5 percent decay in any lot.

(b) *Sizing and pack.* Only lettuce that meets one of the following sizing and pack requirements may be handled:

(1) 18 heads per container;

(2) 24 heads per container; or

(3) 30 heads per container.

(c) *Container.* Lettuce may be handled only if packed in one of the following containers.

(1) A carton with inside dimensions of 10 inches x 14¼ inches x 21⁹⁄₁₆ inches (designated as carrier container No. 7303);

(2) A carton with inside dimensions of 9¾ inches x 14 inches x 21 inches (designated as carrier container No. 7306).

(d) *Minimum quantities.* Any person may handle up to but not to exceed 5 cartons or 250 pounds of lettuce a day without regard to the requirements of this section or to the inspection and assessment requirements of this part, but this exception shall not apply to any portion of a shipment of over 5 cartons or 250 pounds of lettuce.

(e) *Special purpose shipments.* The requirements of paragraphs (a), (b), and (c), of this section, and the inspection and assessment requirements of this part, shall not be applicable to lettuce handled for the following special purposes:

(1) Relief or charity;

(2) Experimental purposes; and

(3) Export to Mexico.

(f) *Safeguards.* (1) Each handler of lettuce which does not meet the requirements of paragraphs (a), (b), and (c) of this section, and which is handled pursuant to paragraph (e) of this section for relief or charity or experimental purposes shall, prior to handling, apply for and obtain a Certificate of Privilege from the committee which shall require the handler to furnish such reports and documents as the committee may require showing that the lettuce was handled for the purpose specified in the Certificate of Privilege.

(2) Each person who sells or otherwise handles lettuce which does not meet the requirements of paragraphs (a), (b), and (c) of this section, and which is handled pursuant to paragraph (e) of this section for export to Mexico, shall maintain the following records with respect to such lettuce:

(i) Name and address of the purchaser,

(ii) Quantity involved in each sale,

(iii) Date of sale, and,

(iv) Identification of the vehicle of the purchaser or trucker by make, model, and license number.

(g) *Inspection.* (1) No handler shall handle any lettuce for which an inspection certificate is required unless an appropriate inspection certificate has been issued with respect thereto.

(2) No handler shall transport or cause the transportation of any shipment of lettuce by motor vehicle for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which valid inspection certificates are applicable and a copy of such inspection certificate or committee document, upon request, is surrendered to authorities designated by the committee.

(3) For purpose of operation under this part each required inspection certificate or form required by the committee as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate or the date shown on the document.

(h) *Definitions.* The term "U.S. No. 1" shall have the same meaning as set forth in the U.S. Standards for lettuce (§§ 51.2510 to 51.2514 of this title), including the tolerances set forth therein. All other terms used in this section shall have the same meaning as when used in this part (Marketing Order No. 134).

Dated: December 16, 1960.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11802; Filed, Dec. 20, 1960; 8:49 a.m.]

Commodity Stabilization Service

[7 CFR Part 718]

DETERMINATION OF ACREAGE AND PERFORMANCE

Notice of Proposed Rule Making

Pursuant to the authority contained in sections 374 and 375 of the Agricultural Adjustment Act of 1938, section 401 of the Agricultural Adjustment Act of 1949, section 403 of the Sugar Act of 1948, and section 124 of the Soil Bank Act, an amendment to the regulations governing the determination of acreage and compliance with the provisions of programs carried out under the above-mentioned acts is proposed as follows:

Section 718.13(a) (24 F.R. 4223, 25 F.R. 7237, and 25 F.R. 12166) would be amended to read as follows:

§ 718.13 Determination and adjustment of excess acreage.

(a)(1) *General.* If the farm operator or other producer on the farm elects to dispose of excess acreage or otherwise adjusts a previously determined acreage in accordance with applicable regulations, the farm shall be revisited for the purpose of determining the adjusted acreage under the conditions prescribed in this section. Unless the requirements for the measurement of the adjusted acreage are met by the farm operator or other producer on the farm, the acreage as officially determined prior to such adjustment shall be considered as the acreage of the commodity on the farm in determining whether the applicable farm allotment has been exceeded. When the producer must pay the cost of determining the adjusted acreage, the amount required shall be as determined by the county committee with the approval of the State committee.

(2) *Peanuts.* When the total acreage planted to peanuts as determined for the farm is in excess of the effective farm allotment and the producer elects to adjust the acreage or when a revisit is required to measure an acreage which was estimated on the initial visit, the farm shall be revisited to determine the adjusted acreage if the farm operator or other producer on the farm files a timely request for such service and pays the cost of determining the adjusted acreage: *Provided, however,* That a farm visit to determine the final peanut acreage is not required when the initial acreage report shows that the total acreage planted to peanuts on the farm will be used for hogging purposes.

(3) *Wheat.* When the total acreage of wheat determined for the farm is in excess of the allotment and the producer elects to adjust the acreage by disposition or when a revisit is required to measure an acreage which was estimated on the initial visit or to reclassify an acreage previously determined, the farm shall be revisited if the farm operator or other producer on the farm files a request for the service by the date specified on the notice of excess acreage and pays the cost of the farm visit: *Provided, however,* That a revisit will be made at the expense of the ASC county office if the farm is determined to be in excess solely because of an acreage of volunteer wheat: *And provided further,* That a visit to the farm to determine the final wheat acreage is not required when:

(i) The total acreage of wheat on the farm was reported for use as a wheat cover crop, or

(ii) The acreage of wheat exceeds the allotment but is not in excess of 15 acres and the producer does not request a determination of an adjusted acreage.

(4) *Allotment crops other than wheat and peanuts.* If the measured acreage of any allotment crop other than wheat or peanuts is in excess of the allotment established for the farm and the producer elects to adjust the acreage by disposition, the farm will be revisited to determine the adjusted acreage if the farm operator or other producer on the farm files a timely request for such service and pays the cost of determining the adjusted acreage.

(5) *Other soil bank base crop acreages.* If the producer elects to adjust the acreage of other soil bank base crops by disposition or reclassification, the farm shall be revisited to determine the adjusted acreage if the farm operator or other producer on the farm files a timely request for the service and pays the cost of determining the adjusted acreage. In any case where a cover crop has been approved for a designated reserve area, the disposition of the cover crop shall be determined at the expense of the ASC county office.

It is proposed that the provisions of this amendment become effective beginning with the determination of acreage and performance of 1961 crops other than wheat and beginning with the determination of acreage and performance for the 1962 crop of wheat.

Prior to the issuance of this amendment, consideration will be given to data, views, and recommendations pertaining thereto which are submitted in writing to the Director, Performance Division, Commodity Stabilization Service, United States Department of Agriculture, Washington 25, D.C. All written submissions must be postmarked no later than 30 days after the date this notice is published in the FEDERAL REGISTER in order to be eligible for consideration.

Issued at Washington, D.C., this 15th day of December 1960.

CLARENCE D. PALMBY,
Acting Administrator, Commodity Stabilization Service.

[F.R. Doc. 60–11783; Filed, Dec. 20, 1960; 8:47 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Office of the Secretary

IMPORTS OF RESIDUAL FUEL OIL TO BE USED AS FUEL; DISTRICTS I–IV

Adjustment in Maximum Level

DECEMBER 17, 1960.

Pursuant to paragraph (e) section 2 of Presidential Proclamation 3279, as amended, the maximum level of imports into Districts I–IV of residual fuel oil to be used as fuel shall be 458,478 barrels daily for the allocation period October 1, 1960, through December 31, 1960. This action constitutes an adjustment upward of the maximum level (415,000 barrels daily) now in effect in those Districts. Neither the present level nor the adjusted level includes residual fuel oil withdrawn from bonded warehouse for ships' supplies or for exportation.

ELMER F. BENNETT,
Acting Secretary of the Interior.

[F.R. Doc. 60–11839; Filed, Dec. 20, 1960; 8:50 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

FREDERICK A. WEISS, JR.

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months:

A. Deletions: None.
B. Additions: None.

This statement is made as of December 7, 1960.

FREDERICK A. WEISS, JR.

DECEMBER 7, 1960.

[F.R. Doc. 60–11790; Filed, Dec. 20, 1960; 8:47 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–150]

OHIO STATE UNIVERSITY

Notice of Proposed Issuance of Facility License

Please take notice that, unless within fifteen days after the filing of this notice with the Office of the Federal Register a request for a formal hearing is filed with the United States Atomic Energy Commission by the licensee or an intervener as provided by the Commission's rules of practice (Title 10, CFR, Ch. 1, Part 2), the Commission proposes to issue to The Ohio State University a facility license substantially as set forth below authorizing the possession and operation on the University's campus in Columbus, Ohio of a pool-type nuclear reactor at power levels up to 10 kilowatts (thermal). Prior to issuance of the license the reactor will be inspected by representatives of the Commission to determine whether it has been constructed in accordance with the provisions of Construction Permit No. CPRR–49. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street NW., Washington, D.C.

For further details see (1) the application submitted by The Ohio State University and amendments thereto, and (2) a hazards analysis prepared by the hazards evaluation staff of the Division of Licensing and Regulation, both on file at the AEC's Public Document Room. A copy of item (2) above may be obtained at the AEC's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Maryland this 15th day of December 1960.

For the Atomic Energy Commission.

H. L. KIRK,
Deputy Director, Division of Licensing & Regulation.

PROPOSED FACILITY LICENSE

1. This license applies to the pool-type nuclear reactor (hereinafter referred to as "the reactor") which is owned by The Ohio State University and located on The Ohio State University's campus in Columbus, Ohio, and described in The Ohio State University's application for license dated October 30, 1959, and amendments thereto dated December 9, 1959, February 29, 1960, July 29, 1960, September 27, 1960, and November 8, 1960 (hereinafter collectively referred to as "the application"), and authorized for construction by Construction Permit No. CPRR–49 issued to The Ohio State University.

2. Pursuant to the Atomic Energy Act of 1954, as amended (hereinafter referred to as "the Act") and having considered the record in this matter, the Atomic Energy Commission (hereinafter referred to as "the Commission") finds that:

A. The reactor has been constructed in conformity with Construction Permit No. CPRR–49 and will operate in conformity with the application and in conformity with the Act and the rules and regulations of the Commission;

B. There is reasonable assurance that the reactor can be operated at the designated location without endangering the health and safety of the public;

C. The Ohio State University is technically and financially qualified to operate the reactor, to assume financial responsibility for payment of Commission charges for special nuclear material and to undertake and carry out the proposed activities in accordance with the Commission's regulations;

D. The possession and operation of the reactor and the receipt, possession and use of the special nuclear material in the manner proposed in the application will not be inimical to the common defense and security or to the health and safety of the public; and

E. The Ohio State University is a nonprofit educational institution and will use the reactor for conduct of educational activities. The Ohio State University is therefore exempt from the financial protection requirement of subsection 170a. of the Act.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses The Ohio State University:

A. Pursuant to section 104.c. of the Act and Title 10, CFR, Ch. 1, Part 50, "Licensing of Production and Utilization Facilities", to possess and operate the reactor as a utilization facility at the designated location in Columbus, Ohio, in accordance with the procedures and limitations described in the application and this license;

B. Pursuant to the Act and Title 10, CFR, Ch. 1, Part 70, "Special Nuclear Material", to receive, possess and use in connection with operation of the reactor 80 grams of plutonium contained in plutonium-beryllium neutron sources and up to 7.5 kilograms of contained uranium 235; and

C. Pursuant to the Act and Title 10, CFR, Ch. 1, Part 30, "Licensing of Byproduct Material", to possess but not to separate such byproduct material as may be produced by operation of the reactor.

4. This license shall be deemed to contain and be subject to the conditions specified in § 50.54 of Part 50 and § 70.32 of Part 70, Title 10, Ch. 1, CFR, and to be subject to all applicable provisions of the Act, and to the rules and regulations and orders of the Commission, now or hereafter in effect, and to the additional conditions specified below:

A. The Ohio State University shall not operate the reactor at power levels in excess of 10 kilowatts (thermal) without prior written authorization from the Commission.

B. No experiment which is not of the type described in the "Preliminary Report and Hazards Analysis—Nuclear Training Reactor" dated September, 1959, shall be conducted in the reactor without prior written authorization from the Commission.

C. In addition to those otherwise required under this license and applicable regulations, The Ohio State University shall keep the following records:

1. Reactor operating records, including power levels.

2. Records of in-pile irradiations.

3. Records showing radioactivity released or discharged into the air or water beyond the effective control of The Ohio State University as measured at the point of such release or discharge.

4. Records of emergency reactor scrams, including reasons for emergency shutdowns.

D. The Ohio State University shall immediately report to the Commission in writing any indication or occurrence of a possible unsafe condition relating to the operation of the reactor.

5. Pursuant to § 50.60 of the regulations in Title 10, CFR, Ch. 1, Part 50, the Commission has:

A. Allocated, in Construction Permit No. CPRR–49, to The Ohio State University for use in connection with operation of the reactor, 3400 grams of uranium 235 contained in fully enriched uranium and 80 grams of plutonium contained in encapsulated plutonium-beryllium neutron sources, and

B. Hereby allocates an additional 3900 grams of contained uranium 235 to be used in a fission plate in connection with the operation of the reactor.

6. This license is effective as of the date of issuance and shall expire at midnight February 3, 1965.

Date of Issuance:

For the Atomic Energy Commission.

[F.R. Doc. 60–11768; Filed, Dec. 20, 1960; 8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket No. G–16235 etc.]

EL PASO NATURAL GAS CO. ET AL.

Order Severing Proceedings and Granting Applications

DECEMBER 14, 1960.

El Paso Natural Gas Company, Docket No. G–16235; Pacific Northwest Pipeline Corporation, Docket Nos. G–16236 and G–16237; Colorado Interstate Gas Company, Docket No. G–16904; Plateau Natural Gas Company, Docket No. G–18280; Pueblo Gas and Fuel Company, Docket No. G–19216; Public Service Company of Colorado, Docket No. G–19225.

Docket Nos. G–18280, G–19216, and G–19225 herein involve applications under section 7(a) of the Natural Gas Act for orders directing Colorado Interstate Gas Company to establish and maintain physical connection of its transportation facilities with facilities which the applicants propose to construct and to deliver and sell to such applicants the following volumes:

Applicants and communities to be served	Peak day requirements—Mcf @ 14.73 psia		
	1960	1961	1962
Plateau Natural Gas Co.—Black Forest area	348	527	767
Pueblo Gas and Fuel Co.—North Avondale, Boone, South Avondale	87.8	219.8	369.4
Public Service Co. of Colorado—Valley Country Club area	460	710	950

These applications were previously consolidated with the other proceedings in Docket No. G–16235, et al., listed in the caption hereof. In his initial decision issued in the consolidated proceeding on July 15, 1960, the presiding examiner found that the service proposed in these applications under section 7(a) is necessary and desirable in the public interest. We agree. The evidence adduced by the applicants sufficiently supports the conclusion that there is a public need for, and a public benefit to be derived from, natural gas service in the communities concerned; that the proposed projects can be adequately financed; that they are economically feasible; and that granting these applications will not impair Colorado's ability to render adequate service to its existing customers. The volumes requested are very small in relation to Colorado's total sales. No exceptions were filed with regard to the examiner's findings that these applications should be granted.

We also conclude from the record that these small projects are not related to nor dependent on the outcome of the main proceedings in Docket No. G–16235, et al., and should be severed therefrom and granted on their own merits without further delay. This action will not, however, affect the status of these applicants as interveners in the proceedings in Docket No. G–16235.

The Commission finds:

(1) The applicants in Docket Nos. G–18280, G–19216, and G–19225 are persons engaged or legally authorized to engage in the local distribution of natural gas to the public.

(2) It is necessary and desirable in the public interest that the Commission, by order, direct Colorado Interstate Gas Company to establish physical connection of its transportation facilities with those of each of the applicants in Docket Nos. G–18280, G–19216, and G–19225 and to sell and deliver natural gas to such applicants as requested in their respective applications, subject to the conditions of this order.

(3) The ability of Colorado Interstate Gas Company to render adequate service to its customers will not be impaired and no undue burden will be placed on it by reason of the requirement that it render the service requested by these applicants, nor will it be compelled to enlarge its transportation facilities.

The Commission orders:

(A) The proceedings in Docket Nos. G–18280, G–19216, and G–19225 are severed from the consolidated proceedings in Docket No. G–16235, et al.

(B) Colorado Interstate Gas Company is directed to establish and maintain physical connection of its transportation facilities with the facilities to be constructed by Plateau Natural Gas Company, Pueblo Gas and Fuel Company, and Public Service Company of Colorado, and to deliver and sell to these applicants natural gas as requested in their respective applications, under Colorado's appropriate rate schedules on file with the Commission.

(C) Colorado shall report to the Commission in writing and under oath the date of commencement of service to each of these applicants.

(D) Each of these applicants shall be prepared to receive service from Colorado as directed herein within one year from the date of issuance of this order.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–11770; Filed, Dec. 20, 1960; 8:45 a.m.]

[Docket No. E–6972]

OTTER TAIL POWER CO.

Notice of Application

DECEMBER 14, 1960.

Take notice that on December 5, 1960, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Otter Tail Power Company ("Applicant"), a corporation organized under the laws of the State of Minnesota and doing business in the States of Minnesota, North Dakota and South Dakota, with its principal business office at Fergus Falls, Minnesota, seeking an order authorizing the issuance of $7,000,000 in principal amount of First Mortgage Bonds __% Series due 1991. The First Mortgage Bonds are to be dated February 1, 1961, and will mature February 1, 1991, and will carry interest at such rate as may be determined by competitive bidding, payable semi-annually on February 1 and August 1 of each year. Said First Mortgage Bonds will be of a series created pursuant to the provisions of Applicant's Indenture of Mortgage as heretofore supplemented and as revised by a Twenty-first Supplemental Indenture thereto and as supplemented by a Twenty-fourth Supplemental Indenture. In connection with the issuance and sale of the First Mortgage Bonds there will be a cash sinking fund of one percent per annum with the first sinking fund payment being made on December 1, 1962. Applicant states that the First Mortgage Bonds will be issued and sold for the purpose of securing funds with which to repay short-term bank loans incurred in 1959 and 1960 for payment of the expense of Applicant's construction program and funds with which to defray a portion of the expense of such construction program in 1961 and subsequent years.

Any person desiring to be heard or to make any protests with reference to said application should on or before the 30th day of December 1960, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–11771; Filed, Dec. 20, 1960; 8:45 a.m.]

[Project No. 2150]

PUGET SOUND POWER AND LIGHT CO. AND BAKER RIVER PROJECT

Notice of Land Withdrawal

DECEMBER 15, 1960.

Conformable to the provisions of section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the lands hereinafter described, insofar as title thereto remains in the United States, are included in power Project No. 2150 for which completed application for license (Major) was filed October 5, 1960 by Puget Sound Power and Light Company. Under said section 24 all lands of the United States lying within the boundaries of the project, as delimited on the maps filed in support of application for this project, are from said date of filing reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress.

WILLAMETTE MERIDIAN, WASHINGTON

UPPER BAKER RIVER DEVELOPMENT

T. 37 N., R. 8 E.,
Sec. 25: unsurveyed S½;
Sec. 36: unsurveyed NE¼, N½NW¼, NE¼SE¼.
T. 37 N., R. 9 E.,
Sec. 1: N½NW¼;
Sec. 2: Lots 1, 2, 3;
Sec. 3: Lots 2, 3, 4;
Sec. 4: Lots 1 to 12 inclusive, SW¼NE¼, S½NW¼;
Sec. 5: Lots 1 to 7 inclusive, S½N½, SW¼, NW¼SE¼;
Sec. 6: Lot 1, SE¼NE¼;
Sec. 7: SE¼SE¼;
Sec. 8: Lots 1 to 8 inclusive, W½;
Sec. 17: Lots 1, 2, 4, 5, 7, 8, 9, NW¼NW¼, NW¼SW¼, NE¼SE¼;
Sec. 18: N½NE¼, SW¼NE¼, E½W½, SE¼;
Sec. 19: E½;
Sec. 20: Lots 1 to 8 inclusive, NW¼NE¼, unsurveyed Schaddlers Island;
Sec. 29: Lots 1, 2, 3, 4, N½SW¼, SW¼SW¼;
Sec. 30: Lots 1, 5, 6, 7, 8, 11, SE¼NW¼;
Sec. 31: Lots 1, 6, 7, 8, 9, NE¼SE¼, S½SE¼;
Sec. 32: W½NW¼.
T. 38 N., R. 9 E.,
Sec. 25: S½SW¼, NE¼SE¼, S½SE¼;
Sec. 26: SE¼SE¼;
Sec. 32: S½SE¼;
Sec. 33: Lots 1, 2, W½SW¼, SE¼SW¼, W½SE¼;
Sec. 34: Lots 1 to 5 inclusive;
Sec. 35: Lots 1 to 9 inclusive, NW¼NE¼, SE¼SW¼, S½SE¼;
Sec. 36: Lots 1 to 8 inclusive, SW¼, NW¼SE¼.
T. 38 N., R. 10 E.,
Sec. 30: unsurveyed S½SW¼;
Sec. 31: unsurveyed N½NW¼.

LOWER BAKER RIVER DEVELOPMENT

T. 37 N., R. 8 E.,
Sec. 36: unsurveyed SE¼.

The area of United States land reserved by the filing of application for this project is approximately 4,211.96 acres, all within the Mount Baker National Forest, of which approximately 388.60 acres are lands which have been reconveyed to the United States subject to flowage rights to the licensee. Of the aforesaid total area approximately 3,273.28 acres have been previously withdrawn for power under Project No. 777 or Power Site Classification No. 207.

Copies of maps, Exhibits J and K consolidated (FPC No. 2150-52), "K" sheets 1, 2 and 3 (FPC Nos. 2150-26, 27 and 55 respectively), of the Upper Baker River Development; Exhibits J sheets 1 and 2 (FPC No. 2150–50 and 51) "K" sheets 1 and 1A (FPC No. 2150–53 and 54), "K" sheets 2, 3 and 4 (FPC Nos. 2150–9, 10 and 11 respectively), "K" sheet 5 (FPC No. 2150-49) of the Lower Baker River Development, all filed in the Commission October 5, 1960, except map Nos. 2150–49 which was filed April 11, 1960, have been transmitted to the Bureau of Land Management, Forest Service, Geological Survey.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–11772; Filed, Dec. 20, 1960; 8:45 a.m.]

[Docket Nos. RI61–275—RI61–280]

SUNRAY MID-CONTINENT OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

DECEMBER 13, 1960.

Sunray Mid-Continent Oil Company, Docket No. RI61-275; Sun Oil Company, Docket No. RI61–276; Dixilyn Drilling Corporation (Operator), et al., Docket No. RI61–277; Louis Crouch, Docket No. RI61–278; Slick Oil Corporation, Docket No. RI61–279; Sid W. Richardson, Docket No. RI61–280.

The above-named respondents have tendered for filing proposed changes in presently-effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date [1] unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in Docket Nos.
RI61–275	Sunray Mid-Continent Oil Co., P.O. Box 2039, Tulsa 2, Okla.	82	6	Tennessee Gas Trans. Co. (North Agua Dulce Field, Nueces County, Tex.).	$31,194	11–14–60	12–15–60	5–15–61	[2] 12.12268	17.24347	----------
RI61–276	Sun Oil Co., 1608 Walnut Street, Philadelphia 3, Pa.	63	10	United Gas Pipe Line Co. (East Gibson Field, Terrebonne Parish, La.).	15,102	11–15–60	1–1–61	6–1–61	[3] 20.25	22.25	G–17717
RI61–277	Dixilyn Drilling Corp. (Operator) et al., P.O. Box 2427, Odessa, Tex.	1	1	El Paso Natural Gas Co. (Jack Herbert Field, Upton County, Tex.).	16,525	11–18–60	1–1–61	6–1–61	[3] 10.61418	15.70925	----------
RI61–278	Louis Crouch, P.O. Box 687, Lockhart, Tex.	1	1	El Paso Natural Gas Co. (Fort Stockton Field, Pecos County, Tex.).	48,000	11–18–60	1–1–61	6–1–61	{ [3] 10.0 [3] 11.0	15.0 16.0	---------- ----------
RI61–279	Slick Oil Corp., 1030 Bank of the Southwest Building, Houston 2, Tex.	1	4	United Gas Pipe Line Co. (Maxie Field, Forrest Lamar, and Pearl River Counties, Miss.).	563	11–18–60	12–19–60	5–19–61	[3] 20.0	23.0	----------
RI61–280	Sid W. Richardson, Fort Worth National Bank Building, Fort Worth, Tex.	4 4	---------- 1	Southern Natural Gas Co. (Gwinville Field, Jefferson Davis and Simpson Counties, Miss.).	240,041	11–21–60 11–21–60	12–22–60	5–22–61	[4] 7.3286	---------- 20.0	---------- ----------

[1] The proposed effective dates are the first day after the required thirty days' notice or, if later, the date requested by respondent.
[2] The pressure base is 14.65 psia.
[3] The pressure base is 15.025 psia.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements and rate schedule be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon the dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed increased rates and charges contained in the above-designated supplements and rate schedule.

(B) Pending hearings and decisions thereon, the above-designated supplements and rate schedule are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the rate schedule nor supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 23, 1961.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60–11773; Filed, Dec. 20, 1960; 8:45 a.m.]

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

FEDERAL RESERVE SYSTEM

FIRSTAMERICA CORP.

Notice of Receipt of Application; Correction

In F.R. Doc. 60–11259, appearing at page 12382 of the issue for Friday, December 2, 1960, the address given for the proposed First Western Bank and Trust Company is corrected to read "Los Angeles, California".

[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F.R. Doc. 60–11775; Filed, Dec. 20, 1960; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 16, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36777: *Class rates—Erie & St. Lawrence Corporation.* Filed by Erie & St. Lawrence Corporation (No. 2), for interested carriers. Rates on various commodities moving on class rates, loaded in trailers and transported over water, joint motor-water, water-motor, motor-water-motor, motor-water-rail and water-rail routes of applicant motor and rail carrier and Erie & St. Lawrence Corporation, between points in Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, on the one hand, and points in Florida, on the other.

Grounds for relief: All-rail, joint rail-water, water-rail, and rail-water-rail competition.

Tariff: Supplement 4 to Erie & St. Lawrence Corporation tariff I.C.C. 13.

FSA No. 36779: *Liquefied petroleum gas from southwestern and mid-continent territories.* Filed by Southwestern Freight Bureau, Agent (No. B–7934), for interested rail carriers. Rates on liquefied petroleum gas, in packages, in carloads, from points in southwestern and mid-continent territories, to points in southwestern, western trunk-line, official (including Illinois) and southern territories.

Grounds for relief: Commodity rate relationship.

Tariffs: Supplement 302 to Southwestern Freight Bureau tariff I.C.C. 4086, and other schedules named in the application.

AGGREGATE OF INTERMEDIATES

FSA No. 36778: *Passenger fares in the United States.* Filed by E. B. Padrick, Agent (No. 4), for interested rail carriers. Involving basic coach fares for the transportation of persons, between points in the United States.

Grounds for relief: Maintenance of through one-factor fares in excess of lower combinations of intermediate fares, due to the method of disposition of fractions in proposed increased fares.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60–11785; Filed, Dec. 20, 1960; 8:47 a.m.]

[Notice 425]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 16, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 63437. By order of December 13, 1960, Division 4, Acting as an Appellate Division, approved the transfer to Harold M. Felty, Pine Grove, Pa., of the operating rights authorized to Norman W. Balthaser, doing business as N. W. Balthaser, Hamburg, Pa., in Certificate No. MC 21547, authorizing the transportation, over irregular routes, of lumber, fertilizer, feed, agricultural pulverized limestone, and brick, from and to specified points in Pennsylvania, New Jersey, Delaware, New York, and Maryland. Robert J. Stewart, 11 East Market Street, York, Pennsylvania, for applicants.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60–11788; Filed, Dec. 20, 1960; 8:47 a.m.]

[Notice 148]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

DECEMBER 15, 1960.

The following letter-notices of proposals to operate over deviation routes for operating convenience only with service at no intermediate points have been filed with the Interstate Commerce Commission, under the Commission's deviation rules revised, 1957 (49 CFR 211.1(c)(8)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 211.1(d)(4)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 211.1(e)) at any time but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's deviation rules revised, 1957, will be numbered consecutively for convenience in identification and protests if any should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 15473 (Deviation No. 1), BEST TRUCK LINES INC., 321 North Main Street, Ottawa, Kans., filed December 7, 1960. Attorney Henry B. Vess, Jr., 216 East Tenth Street, Kansas City 6, Mo. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Ottawa, Kans., over U.S. Highway 59 to junction Interstate Highway 70 (Kansas Turnpike) thence over Interstate Highway 70 to Kansas City, Mo., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Ottawa over Interstate Highway 35 (U. S. Highway 50) to Kansas City, and return over the same route.

No. MC 104004 (Deviation No. 14), ASSOCIATED TRANSPORT INC., 380 Madison Avenue, New York 17, N.Y., filed December 7, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Scranton, Pa., over Interstate Highway 81 to Binghampton, N.Y., and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Scranton and Binghampton over U.S. Highway 11.

No. MC 104004 (Deviation No. 15), ASSOCIATED TRANSPORT INC., 380 Madison Avenue, New York 17, N.Y., filed December 7, 1960. Carrier proposes to operate as a *common carrier*, by motor vehicle of *general commodities*, with certain exceptions, over a deviation route as follows: From Syracuse, N.Y. over Interstate Highway 81 to Watertown, N.Y. and return over the same route, for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodities between Syracuse and Watertown over U.S. Highway 11.

No. MC 104004 (Deviation No. 16), ASSOCIATED TRANSPORT INC., 380 Madison Avenue, New York 17, N.Y., filed December 7, 1960. Carrier proposes to operate as a common carrier, by motor vehicle of general commodities, with certain exceptions, over a deviation route as follows: From Hartford, Conn., over Interstate Highway 91 to Springfield, Mass., and return over the same route for operating convenience only, serving no intermediate points. The notice indicates that the carrier is presently authorized to transport the same commodi-

ties between Hartford and Springfield over U.S. Highways 5 and 5A.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11786; Filed, Dec. 20, 1960; 8:47 a.m.]

[Notice 355]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 16, 1960.

The following publications are governed by the Interstate Commerce Commission's general rules of practice including special rules (49 CFR 1.241) governing notice of filing of applications by motor carriers of property or passengers or brokers under sections 206, 209 and 211 of the Interstate Commerce Act and certain other proceedings with respect thereto.

All hearings and pre-hearing conferences will be called at 9:30 a.m., United States standard time, unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 730 (Sub No. 188), filed December 5, 1960. Applicant: PACIFIC INTERMOUNTAIN EXPRESS CO., a corporation, 1417 Clay Street, Oakland, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, in bulk, in tank vehicles, from Barstow, Calif. and Las Vegas, Nev., and points within 10 miles theheof, to points in California, Nevada, Utah and Arizona, and *rejected and contaminated shipments of the same products* from the specified destination territory to the described origin areas and to points in Los Angeles, Ventura and Orange Counties, Calif.

HEARING: January 18, 1961, at the Federal Building, Los Angeles, Calif., before Examiner F. Roy Linn.

No. MC 1124 (Sub No. 172), filed November 7, 1960. Applicant: HERRIN TRANSPORTATION COMPANY, 2301 McKinney Avenue, Houston 3, Tex. Applicant's attorney: Leroy Hallman, First National Bank Building, Dallas 2, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, and commodities requiring special equipment, between Alexandria, La., and Opelousas, La., from Alexandria over U.S. Highway 71 to junction Louisiana Highway 10 at Lebeau, La., thence over Louisiana Highway 10 to junction U.S. Highway 167, approximately 4 miles north of Opelousas; thence over U.S. Highway 167 to Opelousas, serving no intermediate points, as an alternate route for operating convenience only, in connection with applicant's presently authorized regular route operations between Alexandria and Opelousas, La.

HEARING: February 6, 1961, at the Louisiana Public Service Commission, Baton Rouge, La., before Joint Board No. 164, or, if the Joint Board waives its right to participate, before Examiner James H. Gaffney.

No. MC 23976 (Sub No. 13), filed November 22, 1960. Applicant: BEND-PORTLAND TRUCK SERVICE, INC., 5940 North Basin Street, Portland 17, Oreg. Applicant's attorney: John M. Hickson, Failing Building, Portland, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except Classes A and B explosives, household goods as defined by the Commission, liquid chemicals, and bulk petroleum products in tank vehicles, from Madras, Oreg. to the site of the Round Butte Dam on the Deschutes River in Oregon, and *rejected shipments* of the above-specified commodities, on return.

HEARING: February 15, 1961, at the Interstate Commerce Commission Hearing Room 410, SW. 10th Avenue, Portland, Oreg., before Joint Board No. 172, or, if the Joint Board waives its right to participate, before Examiner Charles J. Murphy.

No. MC 52657 (Sub No. 605), filed December 12, 1960. Applicant: ARCO AUTO CARRIERS, INC., 7530 South Western Avenue, Chicago 20, Ill. Applicant's attorney: G. W. Stephens, 121 West Doty Street, Madison, Wis. Authority sought to operate as a *common carrier*, by motor vehicle, over *irregular routes*, transporting: (A) *Three-wheeled motor vehicles*, from points in Trumbull County, Ohio, to points in the United States, including the District of Columbia and Alaska, except Hawaii, and (B) return of *three-wheeled motor vehicles*, from points in the United States, including the District of Columbia and Alaska, except Hawaii, to Trumbull County, Ohio. RESTRICTION: Return shipments restricted to three-wheeled motor vehicles that were manufactured or assembled at Trumbull County, Ohio and returned because of rejection, damage, repairs, conversion or further research development.

HEARING: January 18, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Hugh M. Nicholson.

No. MC 64932 (Sub No. 284), filed December 5, 1960. Applicant: ROGERS CARTAGE CO., a corporation, 1934 South Wentworth Avenue, Chicago, Ill. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products, coal tar products*, and *chemicals*, in bulk, in tank vehicles, from Marshall, Ill. and points within five (5) miles thereof, to points in the United States east of U.S. Highway 85.

HEARING: January 18, 1961, at Room 852 U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner John L. York.

No. MC 73165 (Sub No. 165), filed November 16, 1960. Applicant: EAGLE MOTOR LINES, INC., P.O. Box 1348, Birmingham, Ala. Applicant's attorney: Donald L. Morris, 325-29 Frank Nelson Building, Birmingham 3, Ala. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Calcium chloride*, in bulk and in bags, whether palletized or unpalletized; from Ludington, Mich., and points within a radius of 10 miles thereof, to points in Alabama, and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, on return.

HEARING: February 7, 1961, at the Hotel Thomas Jefferson, Birmingham, Ala., before Examiner James I. Carr.

No. MC 85465 (Sub No. 3), filed December 8, 1960. Applicant: WEST NEBRASKA EXPRESS, INC., 709 Mill Drive, Scottsbluff, Nebr. Applicant's attorney: Russell E. Lovell, 2112 Broadway, P.O. Box 419, Scottsbluff, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except commodities in bulk, and commodities requiring special equipment, between Denver, Colo. and Sidney, Nebr.: (1) from Denver, Colo. over U.S. Highway 6 to Sterling, Colo., thence over U.S. Highway 138 to junction Colorado Highway 113, thence over Colorado Highway 113 to the Colorado-Nebraska State line, thence over Nebraska Highway 19 to Sidney, Nebr., and return over the same route, serving the intermediate point of Sterling, Colo.

NOTE: Service at Sterling, Colo. to be restricted to traffic moving to and from Sterling and points in Nebraska.

(2) From Sidney, Nebr. over U.S. Highway 30 to Pine Bluffs, Wyo., and return over the same route, serving the intermediate points of Ordville, Potter, Dix, Kimball and Bushnell, Nebr., and the off-route points of Gurley and Harrisburg, Nebr.

NOTE: Sidney, Nebr. to be point of joinder with applicant's present authority in MC 85465.

(3) From Pine Bluffs, Wyo. over U.S. Highway 30 to Cheyenne, Wyo., thence over U.S. Highway 85 or U.S. Highway 87 to Denver, Colo., and return over the same route, serving no intermediate points, as an alternate route for operating convenience only in connection with the above regular route operations.

NOTE: Common control may be involved.

HEARING: January 18, 1961, at the New Customs House, Denver, Colo., before Joint Board No. 198.

No. MC 95627 (Sub No. 31), filed November 30, 1960. Applicant: NELMS MOTOR LINE, INC., P.O. Box 912, Suffolk, Va. Applicant's attorney: Dale C. Dillon, 1825 Jefferson Place NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat by-products* and *articles distributed by meat-packing houses*, as defined in Appendix I to *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *foods requiring refrigeration in transit*; between points in Virginia, on the one hand, and, on the other, points in Kentucky.

HEARING: January 23, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner James O'D Moran.

No. MC 104004 (Sub No. 155) filed December 9, 1960. Applicant: ASSOCIATED TRANSPORT, INC., 380 Madison Avenue, New York 17, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Rome, Ga. and Plainville, Ga.: from Rome over Georgia Highway 53 to junction unnumbered highway (approximately five miles northeast of Shannon, Ga.), thence over unnumbered highway to Plainville, and return over the same route, serving no intermediate points.

HEARING: January 23, 1961, at the Georgia Public Service Commission, 244 Washington Street SW., Atlanta, Ga., before Joint Board No. 101.

No. MC 104960 (Sub No. 27), filed September 23, 1960. Applicant: MOTOR FUEL CARRIERS, INC., 404 Elm Avenue, P.O. Box 2288, Panama City, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum, petroleum products and petroleum by-products*, in bulk, in tank vehicles, from the terminal site of the Bay Petroleum Corporation, located in Bay County, Fla., to points in Alabama, and *rejected shipments*, on return.

HEARING: January 31, 1961, at the Florida Railroad Commission, Tallahassee, Fla., before Joint Board No. 98, or, if the Joint Board waives its right to participate, before Examiner James I. Carr.

No. MC 107107 (Sub No. 157), filed November 25, 1960. Applicant: ALTERMAN TRANSPORT LINES, INC., P.O. Box 65, Allapattah Station, Miami 42, Fla. Applicant's attorney: Frank B. Hand, Jr., 522 Transportation Building, Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods;* from Columbus, Ga., to points in Virginia, Maryland, the District of Columbia, Pennsylvania, Delaware, New York, New Jersey, Ohio, Michigan, Indiana, Kentucky, West Virginia, Tennessee, Illinois, Wisconsin, Minnesota, Iowa, Missouri, Alabama, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Nebraska, South Dakota, Florida, Massachusetts, Rhode Island, Connecticut, Maine, New Hampshire, Vermont, and North Dakota.

HEARING: February 9, 1961, at 680 West Peachtree Street NW., Atlanta, Ga., before Examiner James I. Carr.

No. MC 108453 (Sub No. 21) (CLARIFICATION), filed October 20, 1960, published FEDERAL REGISTER, issue of November 30, 1960. Applicant: G & A TRUCK LINE, INC., White Pigeon, Mich. Applicants attorney: John P. Boeschenstein, Hackley Bank Building, Muskegon, Mich. Authority sought to operate as a *common or contract carrier*, by motor vehicle, over irregular routes, transporting: *Scrap paper* and *waste paper*, from Chicago, Ill., and Kalamazoo, Mich.

NOTE: A proceeding has been instituted under section 212(c) in No. MC 108453 (Sub No. 20) to determine whether applicant's status is that of a common or contract carrier.

NOTE: The purpose of this republication is to advise that applicant does not intend to transport paper and paper products.

HEARING: Remains as assigned, February 9, 1961, in Room 215, Federal Building, Lansing, Mich., before Joint Board No. 73.

No. MC 111677 (Sub No. 3), filed November 23, 1960. Applicant: BELLIPANNI BROTHERS, INC., Highway 82, Indianola, Miss. Applicant's attorney: Roger L. Tuttle, Indianola, Miss. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick and structural tile*, between Macon, Miss., and points within 10 miles thereof, on the one hand, and, on the other points in Mississippi, Louisiana, Arkansas, Tennessee, Alabama, Georgia, and Florida.

HEARING: February 15, 1961, at the Robert E. Lee Hotel, Jackson, Miss., before Examiner James H. Gaffney.

No. MC 112520 (Sub No. 53), filed November 3, 1960. Applicant: McKENZIE TANK LINES, INC., New Quincy Road, Tallahassee, Fla. Applicant's attorney: Sol H. Proctor, 1730 Lynch Building, Jacksonville 2, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas*, in bulk, in tank vehicles, (a) from Terminals on the Trans Southern Pipe line in Alabama to points in Alabama and Georgia. (b) From Terminals on the Trans Southern Pipe line in Georgia to points in Alabama, Florida, Georgia, South Carolina and Tennessee. (c) From Terminals on the Trans Southern Pipe line in South Carolina to points in Georgia, North Carolina and South Carolina. (d) From Terminals on the Trans Southern Pipe line in North Carolina to points in Georgia, North Carolina, and South Carolina.

HEARING: January 30, 1961, at the Florida Railroad Commission, Tallahassee, Fla., before Examiner James I. Carr.

No. MC 113779 (Sub No. 135), filed October 28, 1960. Applicant: YORK INTERSTATE TRUCKING, INC., 9020 LaPorte Expressway, P.O. Box 12385, Houston 17, Tex. Applicant's attorney: Dale Woodall (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid* and *dry grain products*, in bulk, in specialized equipment, from Corpus Christi, Tex., to points in Arkansas, Louisiana, New Mexico, and Oklahoma.

HEARING: January 23, 1961, at the Federal Office Building, Franklin and Fannin Streets, Houston, Tex., before Examiner Walter R. Lee.

No. MC 113855 (Sub No. 46) filed October 13, 1960. Applicant: INTERNATIONAL TRANSPORT, INC., Highway 52 South, Rochester, Minn. Applicant's attorney: Franklin J. Van Osdel, First National Bank Building, Fargo, N. Dak. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which because of size or weight, require the use of special equipment or special handling, and *attachments and parts* of the commodities, the transportation of which because of size or weight, require the use of special equipment or special handling, between points in Pennsylvania, Ohio, Indiana, Michigan, Illinois and Iowa, on the one hand, and, on the other, points in Montana, Idaho, Oregon, Washington, and Alaska.

HEARING: January 31, 1961, at the Davenport Hotel, Spokane, Wash., before Examiner Charles J. Murphy.

No. MC 114098 (Sub No. 13), filed November 7, 1960. Applicant: LOWTHER TRUCKING COMPANY, 521 Penman Street, Charlotte, N.C. Applicant's attorney: Frank A. Graham, Jr., 707 Security Federal Building, Columbia 1, S.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Conduit* and *pipe*, and *fittings and attachments for conduit and pipe;* from Glendale, W. Va. and Landisville, N.J., to points in Arkansas, Oklahoma and Texas, and *exempt agricultural commodities*, on return.

HEARING: February 15, 1960, at the U.S. Court Rooms, Charlotte, N.C., before Examiner James I. Carr.

No. MC 114098 (Sub No. 14), filed November 14, 1960. Applicant: LOWTHER TRUCKING COMPANY, a corporation, 521 Penman Street, Charlotte, N.C. Applicant's attorney: Frank A. Graham, 707 Security Federal Building, Columbia 1, S.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Conduits, pipe and fittings*, cast iron or steel, with or without cement or composition lining or coating, with or without prepared joints, on flat-bed semi-trailers; from Charlotte, N.C., to points in Pennsylvania and Connecticut.

HEARING: February 14, 1960, at the U.S. Court Rooms, Charlotte, N.C., before Examiner James I. Carr.

No. MC 114328 (Sub No. 3), filed November 14, 1960. Applicant: CLACKAMAS TRUCKING CO., a corporation, P.O. Box 127, Clackamas, Oreg. Applicant's attorney: John M. Hickson, Failing Building, Portland, Oreg. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives, blasting agents, supplies and materials* used in connection with Classes A and B explosives, and *exempt Agricultural commodities and rejected shipments*, between the plant site of the Atlas Powder Company in or near Atlas, Mo., on the one hand, and, on the other, points in Oregon and Washington.

HEARING: February 14, 1960, at the Interstate Commerce Hearing Room 410, SW. 10th Avenue, Portland, Oreg., before Examiner Charles J. Murphy.

No. MC 114486 (Sub-No. 5), filed September 12, 1960. Applicant: AUTREY F. JAMES, doing business as A. F. JAMES TRUCK LINE, 2902 Lester Street, Tex-

arkana, Tex. Applicant's attorney: Mr. H. V. Eskelin, P.O. Box 2028, Kansas City, Mo. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Salt and salt products* and/or (2) *salt compounds and pepper*, in packages, in mixed truckloads of package salt, from Jefferson Island, La., and points within ten miles thereof, and Weeks Island, La., and points in Arkansas, Kansas, Oklahoma and Texas, and *empty containers or other such incidental facilities* (not specified), used in transporting the commodities specified above, on return.

HEARING: February 3, 1961, at the Washington Youree Hotel, Shreveport, La., before Examiner James H. Gaffney.

No. MC 115162 (Sub No. 67), filed October 13, 1960. Applicant: WALTER POOLE, doing business as POOLE TRUCK LINE, Evergreen, Ala. Applicant's attorney: Hugh R. Williams, 2284 West Fairview Avenue, P.O. Box 869, Montgomery 2, Ala. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Furniture finishing paint materials*, consisting of varnish, base coat, sealers, thinners and finishing inks, from Louisville, Ky., to Frisco City, Ala. (2) *Furniture drawer pulls and metal screws*, from Evansville, Ind., to Frisco City, Ala.

HEARING: February 2, 1961, at the U.S. Court Rooms, Montgomery, Ala., before Examiner James I. Carr.

No. MC 115215 (Sub No. 2), filed October 13, 1960. Applicant: NEW TRUCK LINES, INC., 500 West Hampton Springs Road, Perry, Fla. Applicant's attorney: Sol H. Proctor, 1730 Lynch Building, Jacksonville 2, Fla. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bottle carrying crates*, from points in Taylor County, Fla., to points in Georgia, North Carolina, South Carolina and Virginia.

HEARING: January 31, 1961, at the Florida Railroad Commission, Tallahassee, Fla., before Examiner James I. Carr.

No. MC 115517 (Sub-No. 3), filed October 17, 1960. Applicant: A. R. LOWDER, doing business as B & L TRUCKING COMPANY, Route No. 4, Albemarle, N.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, except veneer and plywood, (1) from points in Virginia, North Carolina, West Virginia and Georgia to points in Stanly County, N.C. and (2) from points in Stanly County, N.C. to points in Virginia, New Jersey and Florida.

HEARING: February 13, 1961, at the U.S. Court Rooms, Charlotte, N.C., before Examiner James I. Carr.

No. MC 115517 (Sub-No. 4), filed October 17, 1960. Applicant: A. R. LOWDER, doing business as B & L TRUCKING COMPANY, Route No. 4, Albemarle, N.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, from points in Virginia, North Carolina, South Carolina and Georgia to points in North Carolina.

HEARING: February 14, 1961, at the U.S. Court Rooms, Charlotte, N.C., before Examiner James I. Carr.

No. MC 115841 (Sub No. 72), filed September 2, 1960. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 1215 Bankhead Highway West, P.O. Box 2169, Birmingham, Ala. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared foods*, in vehicles equipped with mechanical refrigeration, from Nashville, Tenn., to points in Alabama, Louisiana, Mississippi, Kentucky, and Virginia.

HEARING: February 6, 1961, at the Hotel Thomas Jefferson, Birmingham, Ala., before Examiner James I. Carr.

No. MC 116300 (Sub No. 4), filed November 28, 1960. Applicant: NANCE AND COLLUMS, INC., P.O. Box 211, East Monticello Street, Brookhaven, Miss. Applicant's attorney: Harold D. Miller, Jr., Suite 700 Petroleum Building, P.O. Box 141, Jackson, Miss. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pressure treated lumber*, from the site of the Gulf Wood Preserving Corporation, at or near Lake Charles, La., to points in Texas and Oklahoma.

HEARING: February 16, 1961, at the Robert E. Lee Hotel, Jackson, Miss., before Examiner James H. Gaffney.

No. MC 117109 (Sub No. 6), filed June 13, 1960. Applicant: SYKES TRANSPORT COMPANY, Ironton, Mo. Applicant's attorney: Robert H. Levy, 39 South LaSalle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fibreboard, wallboard, hardboard, mouldings* and *fasteners*, from Laurel, Miss., to points in Illinois, Indiana, Michigan, Ohio, Minnesota, Missouri, Kentucky, Pennsylvania, and New York.

HEARING: February 10, 1961, at the Robert E. Lee Hotel, Jackson, Miss., before Examiner James H. Gaffney.

No. MC 117439 (Sub No. 6), filed November 7, 1960. Applicant: BULK TRANSPORT, INC., 1007 Louisiana National Bank Building, Baton Rouge, La. Applicant's attorney: Harold R. Ainsworth, 2307 American Bank Building, New Orleans 12, La. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime*; from New Orleans, La. and points in St. Landry Parish, La., to points in Arkansas, Mississippi and Texas, and *rejected shipments*, on return.

HEARING: February 8, 1961, at the Federal Office Building, 600 South Street, New Orleans, La., before Examiner James H. Gaffney.

No. MC 117439 (Sub No. 7), filed November 18, 1960. Applicant: BULK TRANSPORT, INC., 1007 Louisiana National Bank Building, Baton Rouge, La. Applicant's attorney: Harold R. Ainsworth, 2307 American Bank Building, New Orleans 12, La. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, and in bags, from points in Calcasieu Parish, La., to (1) points in Texas on and east of U.S. Highway 75; (2) points in Galveston, Montgomery, Walker and Harris Counties, Tex., on and west of U.S. Highway 75; and (3) points in Austin, Brazoria, Brazos, Burleson, Colorado, Fort Bend, Grimes, Jackson, Matagorda, Waller, Washington and Wharton Counties, Tex., and *rejected shipments* of cement, on return.

HEARING: February 9, 1961, at the Federal Office Building, 600 South Street, New Orleans, La., before Joint Board No. 32, or, if the Joint Board waives its right to participate, before Examiner James H. Gaffney.

No. MC 117836 (Sub No. 1), filed December 2, 1960. Applicant: H. J. NOLL, 6706 Avenue E, Houston 11, Tex. Applicant's attorney: Joe G. Fender, 314 Melrose Building, Houston 2, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas; from* Galveston, Tex., to points in Texas, Colorado, New Mexico, Nebraska, Kansas, Oklahoma, Iowa, Missouri, and Arkansas.

HEARING: January 23, 1961, at the Federal Office Building, Franklin and Fannin Street, Houston, Tex., before Examiner Walter R. Lee.

No. MC 118917 (Sub No. 1), filed December 1, 1960. Applicant: AGRICULTURAL DELIVERY SERVICE, INC., 689 Reynolds Road, Lakeland, Fla. Applicant's attorney: David C. Venable, Perpetual Building, 1111 E Street NW., Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *dicalcium phosphate*, in bags, from Bonnie, Fla. to points in Georgia and Alabama; (2) *dicalcium phosphate*, in bulk, from Bonnie, Fla. to points in New Jersey, Pennsylvania, Virginia and Those points in New York on and south of New York Highway 7; and (3) *dicalcium phosphate*, in bags, and in bulk, from Bonnie, Fla. to points in Arizona, Michigan, Minnesota, Nebraska, North Carolina, South Dakota, Utah, Wisconsin, and those points in New York north of New York Highway 7.

HEARING: January 20, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner William E. Messer.

No. MC 118898 (Sub No. 3), filed July 27, 1960. Applicant: T. P. TRUCKING COMPANY, INC., 1489 Grady Avenue, Yazoo City, Miss. Applicant's attorney: Rubel L. Phillips, 829 Deposit Guaranty Bank Building, P.O. Box 961, Jackson, Miss. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Manufactured fertilizer*, dry, in bulk and in packages, from Yazoo City, Miss., to points in Tennessee, Alabama, and Arkansas.

HEARING: February 15, 1961, at the Robert E. Lee Hotel, Jackson, Miss., before Examiner James H. Gaffney.

No. MC 199676, (CORRECTION), field April 18, 1960, published in the FEDERAL REGISTER, issue of November 23, 1960. Applicant: MERRIDITH JOE NASH, doing business as ALAMO RECOVERY BUREAU, 2723 South Flores, San Antonio, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Repossessed automobiles*, in driveaway or towaway service, between points in the United States, excluding Alaska and Hawaii.

NOTE: Applicant describes the repossessed automobiles as used automobiles only for person or company which repossessed said automobiles. The purpose of this republication is to show that applicant does not desire to perform any truck-away service as noted in previous publication.

HEARING: Remains as assigned January 26, 1961, at The Hilton Hotel, San Antonio, Tex., before Examiner Walter R. Lee.

No. MC 119835 (Sub No. 4), filed October 31, 1960. Applicant: READY MIX CONCRETE COMPANY, LTD., a corporation, Carolina and Mariposa Streets, San Francisco, Calif. Applicant's representative: Pete H. Dawson, 1261 Drake Avenue, P.O. Box 1107, Burlingame, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in hopper-type tank vehicles, from Permanenta, Calif., to points in Klamath and Lake Counties, Oreg.

HEARING: February 13, 1961, at the Interstate Commerce Commission Hearing Room, 410 SW. 10th Avenue, Portland, Oreg., before Joint Board No. 11, or, if the Joint Board waives its right to participate, before Examiner Charles J. Murphy.

No. MC 119976, filed August 8, 1960. Applicant: SIDNEY T. WHITE, doing business as WHITE HEAVY HAULERS, P.O. Box 3212 West Jackson Station, Jackson, Miss. Applicant's attorney: Phineas Stevens, Suite 700 Petroleum Building, P.O. Box 141, Jackson, Miss. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, because of size or weight, requires the use of special equipment or handling, and of *related machinery parts*, and *related contractor's materials and supplies* when their transportation is incidental to the transportation by applicant of commodities which, by reason of size or weight, require special equipment, EXCEPT the following: Machinery, equipment, materials and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, and machinery, materials, equipment and supplies used in or in connection with, the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up thereof; between points in Mississippi, on the one hand, and, on the other hand, points in Alabama, Arkansas, Louisiana, and Tennessee.

HEARING: February 13, 1961, at the Robert E. Lee Hotel, Jackson, Miss., before Examiner James H. Gaffney.

No. MC 119984, filed August 11, 1960. Applicant: CLIFTON MITCHELL GRIBBIN, 105 North Madelia Street, Spokane, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wooden cabinets*, between Spokane, Wash. and points in Montana and Oregon, and (2) *wrecked and disabled automobiles*, between points in Montana and Spokane, Wash.

HEARING: January 30, 1961, at the Davenport Hotel, Spokane, Wash., before Examiner Charles J. Murphy.

No. MC 123118, filed October 7, 1960. Applicant: RAY KIYOHARA, TERRY MANNARI AND SIEME KURIBAYASHI, doing business as S. T. PRODUCE, P.O. Box 206, Kent, King County, Wash. Applicant's attorney: William Q. Marshall, Central Building, Seattle 4, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, shingles, shakes, trim* and *natural wood products*, from points in Washington and ports of entry on the International Boundary line between the United States and Canada at or near Eastport, Idaho and Blaine, Wash., to points in California, and *exempt commodities*, on return.

HEARING: February 10, 1961, at the Federal Office Building, Seattle, Wash., before Examiner Charles J. Murphy.

No. MC 123171 (CORRECTION), filed October 28, 1960, published in the FEDERAL REGISTER, issue of December 14, 1960. Applicant: MECCA & SON TRUCKING CORP., 25 Fairmount Avenue, Jersey City, N.J. Applicant's attorney: August W. Heckman, 880 Bergen Avenue, Jersey City 6, N.J. Previous publication gave applicant's docket number as MC 12371, in error. The correct number is No. MC 123171 as shown above.

HEARING: Remains as assigned February 13, 1961, at 346 Broadway, New York, N.Y., before Examiner Abraham J. Essrick.

No. MC 123240, filed November 28, 1960. Applicant: CROWN TRUCK LINES, INC., 3811 Broadway, Macon, Ga. Applicant's attorney: T. Baldwin Martin, 503 First National Bank Building, Macon, Ga. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick and terra cotta tile, fire brick and fire clay, molded cement blocks and building materials, clay filler for insecticides* and *other commodities requiring clay fillers, fabricated steel beams and parts* for buildings, bridges, and other types of construction, from Macon, Ga. to points in Florida, Alabama, Tennessee, North Carolina and South Carolina, and *empty containers or other such incidental facilities* (not specified) used in transporting the above-described commodities, and *rejected materials*, on return.

NOTE: Applicant states the proposed service shall be performed under a contract or contracts with Cherokee Brick and Tile Company, Dobson Stone Works, Bibb Steel & Supply Company, and Stevens Fire Brick Co.

HEARING: February 10, 1961, at 680 West Peachtree Street, NW., Atlanta, Ga., before Examiner James I. Carr.

No. MC 123242, filed November 28, 1960. Applicant: MISSOURI LUMBER TRANSPORTS, INC., 407 Maple Street, Arcadia, Mo. Applicant's attorney: Joseph R. Nacy, 117 West High Street, Jefferson City, Mo. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* and *wooden pallets;* (1) from points in Missouri on and east and south of a line beginning at the Missouri-Arkansas State line, near Gainesville, Mo., and extending along Missouri Highway 5 to junction U.S. Highway 66 near Lebanon, Mo., thence along U.S. Highway 66 to the Missouri-Illinois State line, at the Mississippi River; and points in Tennessee on and west of a line beginning at the Tennessee-Alabama State line, near Elkmont Springs, Tenn., and along U.S. Highway 31 to Nashville, Tenn., thence along U.S. Highway 41 to the Tennessee-Kentucky State line near Guthrie, Ky.; and points in Kentucky on and west of a line beginning at the Kentucky-Tennessee State line, near Guthrie, Ky., and extending along U.S. Highway 41 to the Kentucky-Indiana State line at the Ohio River, to points in Illinois, Indiana, and Wisconsin, and (2) from points in Illinois on and south of a line beginning at the Illinois-Indiana State line, near Raven, Ill., and extending along U.S. Highway 36 to the Illinois-Missouri State line at the Mississippi River, to points in Missouri, Indiana, and Wisconsin.

HEARING: January 13, 1961, at the U.S. Court House and Custom House, 1114 Market Street, St. Louis, Mo., before Examiner C. Evans Brooks.

No. MC 123251, filed November 30, 1960. Applicant: EAST-WEST TRANSPORT, LTD., 570 Nairn Avenue, Winnipeg, Manitoba, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and those contaminating to other lading, between points on the International Boundary line between the United States and Canada and the ports of entry at Blaine and Oroville, Wash., Eastport, Idaho, Sweet Grass and Raymond, Mont., Portal and Pembina, N. Dak., Noyes, Minn., Sault Ste. Marie, Fort Huron and Detroit, Mich.

HEARING: February 9, 1961, at the Federal Office Building, Seattle, Wash., before Examiner Charles J. Murphy.

No. MC 123252, filed December 1, 1960. Applicant: DOMINICK FARACI, doing business as BRUNSWICK FUEL OIL CO., 836 Ridgewood Avenue, North Brunswick, N.J. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Used crankcase oil (waste)*, in bulk, by tank trailer; from Astoria, Long Island, N.Y., to Morganville, N.J., Barryville (Narrowsburg), N.Y., Nassau and Glenmont, N.Y.

HEARING: January 23, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Charles J. Murphy.

APPLICATIONS FOR WHICH HANDLING WITHOUT ORAL HEARING IS REQUESTED

MOTOR CARRIERS OF PROPERTY

No. MC 66562 (Sub No. 1755), filed December 2, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Applicant's attorney: William H. Marx, General Attorney, Railway Express Agency Law Department (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between East St. Louis, Ill. and Chester, Ill.: from East St. Louis over Illinois Highway 3 to junction Illinois Highway 154, thence over Illinois Highway 154 to Sparta, thence over Illinois Highway 43 to junction Illinois Highway 150, thence over Illinois Highway 150 to Chester, and return over the same route, serving the intermediate points of Columbia, Waterloo, Red Bud, Baldwin and Sparta, Ill.; also from Chester, Ill. to East St. Louis, Ill. over Illinois Highway 3, as an alternate route for operating convenience only. RESTRICTIONS: The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of air or rail express service of applicant. The shipments transported by applicant shall be limited to those moving on a through bill of lading or express service of applicant.

No. MC 66562 (Sub No. 1759), filed December 7, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, Principal Office: 219 East 42d Street, New York 17, N.Y. Local Office: Express Annex, Union Terminal, Kansas City, Mo. Applicant's attorneys: Slovacek & Galliani, Suite 2800, Randolph Tower, 188 West Randolph Street, Chicago 1, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between DeSoto, Mo. and Fredericktown, Mo.: from DeSoto over Missouri Highway 21-A, to junction Missouri Highway 110, thence over Missouri Highway 110 to junction U.S. Highway 67, thence over U.S. Highway 67 to junction Missouri Highway 47, thence over Missouri Highway 47 to Bonne Terre, thence return over Missouri Highway 47 to junction U.S. Highway 67, thence over U.S. Highway 67 to junction Missouri Highway 32, thence over Missouri Highway 32 to junction Missouri Highway 8, thence over Missouri Highway 8 to junction U.S. Highway 67, thence over U.S. Highway 67 to Fredericktown, and return over the same route, serving the intermediate points of Bonne Terre, Desloge, Flat River and Farmington, Mo. RESTRICTION: The service to be performed by applicant shall be limited to that which is auxiliary to or supplemental of air or rail express service of applicant. The shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt, covering, in addition to the motor carrier movements by applicant, an immediately prior or an immediately subsequent movement by air or rail.

No. MC 66562 (Sub No. 1761) filed December 9, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Applicant's attorney: Robert C. Boozer, 1220 Citizens and Southern National Bank Building, Atlanta 3, Ga. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service, between Mobile, Ala. and Wagarville, Ala.: from Mobile over U.S. Highway 45 to junction Alabama Highway 17, thence over Alabama Highway 17 to Chatom, Ala., thence over U.S. Highway 84 to Wagarville, and return over the same route, serving the intermediate points of Citronelle and Chatom. RESTRICTIONS: (1) The service to be performed by applicant shall be limited to service which is auxiliary or supplemental to air or rail express service of applicant. (2) Shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt, covering, in addition to a motor carrier movement by applicant, an immediately prior or an immediately subsequent movement by air or rail. (3) Such further specific conditions as the Commission in the future may find necessary to impose in order to restrict applicant's operations to service which is auxiliary or supplemental to air or rail express service of applicant.

No. MC 102616 (Sub No. 695), filed December 6, 1960. Applicant: COASTAL TANK LINES, INC., 501 Grantley Road, York, Pa. Applicant's attorney: Harold G. Hernly, 1624 Eye Street NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry commodities*, excluding cement, in bulk, in tank or hopper type vehicles, between Baltimore, Md., Bound Brook, Edgewater, Elizabeth, Haledon, Passaic and Whippany, N.J., Johnsonburg, Newell, Philadelphia and Sunbury, Pa., and Claymont, Del., on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, New York, Pennsylvania and the District of Columbia.

No. MC 115943 (Sub No. 1), filed December 5, 1960. Applicant: WILLIE JOHN TAYLOR, Jasper, Ark. Applicant's attorney: Joe D. Villines, Harrison, Ark. Authority sought to operate as a *contract carrier*, by motor vehicle, over regular routes, transporting: *Sacked feed*, from Springfield, Mo. to Harrison, Ark.; from Springfield, Mo. over U.S. Highway 65 to Harrison, Ark., serving no intermediate points; or from Springfield, Mo. over U.S. Highway 160 to junction U.S. Highway 65, thence over U.S. Highway 65 to Harrison, Ark., serving no intermediate points.

NOTE: Applicant states the proposed service shall be performed for Boone County Farmers Co-op only.

No. MC 117125 (Sub No. 2), filed December 7, 1960. Applicant: REMPEL-TRAIL TRANSPORTATION, LTD., 8503 118th Avenue, Edmonton, Alberta, Canada. Applicant's attorney: Ferris A. Albers, Paulson Building, Longview, Wash. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals* in bulk *consisting of a mineral oil called "Conditioner A,"* from Oakland, Calif. to ports of entry on the International Boundary line between the United States and Canada at Blaine and Sumas, Wash., and Eastport, Idaho.

NOTE: Applicant states the proposed transportation shall be limited to destination points within the Province of Alberta, Canada.

No. MC 123244, filed November 25, 1960. Applicant: LLOYD OZUM, Route No. 2, Winona, Minn. Applicant's attorney: W. P. Knowles, New Richmond, Wis. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Packaged bakery goods*, from Winona, Minn. to points in Illinois, Iowa and Wisconsin, and *empty containers or other such incidental facilities* (not specified) used in transporting the above-described commodities, *bakery supplies and rejected, damaged or unsold bakery goods* for the Federal Bakery Company of Winona, Inc., on return.

No. MC 123264, filed December 7, 1960 Applicant: ADAMS AUTO SALES, INC., 11th and Main Streets, Lewiston, Idaho. Applicant's attorney: John H. Bengtson, Weisberber Building, Lewiston, Idaho. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, disabled, repossessed or stolen motor vehicles*, (1) between Lewiston, Idaho, on the one hand, and, on the other, points in Spokane, Whitman, Garfield, Asotin, Columbia, Walla Walla, Franklin, Adams and Lincoln Counties, Wash. and points in Wallowa, Umatilla, Morrow, Grant and Baker Counties, Oreg. and (2) between Spokane, Wash., on the one hand, and, on the other, points in Wallowa, Umatilla, Morrow, Grant and Baker, Oreg., and points in Nez Perce, Latah, Benewah, Lewis, Clearwater, Idaho, and Valley, Idaho.

No. MC 123265, filed December 7, 1960. Applicant: SANTRY TRUCKING COMPANY, 11552 SW., Barbur Boulevard, Portland 23, Oreg. Applicant's attorney: George R. LaBissoniere, 333 Central Building, Seattle 4, Wash. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, malt beverage containers and cartons, bottle openers*, and *advertising matter*, from Olympia, Wash. to points in California, and *Brewer's yeast and brewery products, empty containers, rejected or spoiled malt beverages, hops in bales, Brewer's brewery ingredient materials and supplies unspecified*, on return.

No. MC 123279, filed December 13, 1960. Applicant: THE BERRODIN TRANSPORT, INC., 2430 South Main Street, Akron 19, Ohio. Applicant's representative: John R. Meeks, 607 Copley Road, Akron 20, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic vinyl film;* from Fremont, Ohio, to New York, N.Y., Newark, N.J., Philadelphia, Pa., and Chicago, Ill., and (2) *materials used to brace and support shipments;* from New York, N.Y., Newark, N.J., Philadelphia, Pa., and Chicago, Ill., to Fremont, Ohio. (3) *Materials used in the mixing of rubber stocks*, and *empty skids;* from Wabash, Ind., to Fremont, Ohio, and (4) *compounded rubber*, on skids; from Fremont, Ohio, to Wabash, Ind. (5) *Plastic, rubber, plastic and rubber products*, and *supplies* and *machinery* used in the manufacture of such commodities; between Fremont, Ohio, on the one hand, and, on the other, Milwaukee, Wis., and points in Massachusetts, New Jersey, New York, and Pennsylvania.

NOTE: Applicant has pending in MC-66906 (Sub No. 4), application for conversion to common carrier authority.

MOTOR CARRIERS OF PASSENGERS

No. MC 1501 (Sub No. 216), filed December 5, 1960. Applicant: THE GREYHOUND CORPORATION, Room 1500, 140 South Dearborn Street, Chicago 3, Ill. Applicant's attorney: Peter K. Nevitt, The Greyhound Corporation (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, in seasonal operations between December 1 and March 31, inclusive, of each year, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in special operations, consisting of round trip ski tours, beginning and ending at Chicago, Ill., and extending to Lake Delton, Wis.; Mt. Telemark, near Cable, Wis.; Mont Ripley, near Houghton, Mich.; Porcupine Mountain, 17 miles west of Ontonagon, Mich.; Mt. Zion, near Ironwood, Mich.; Indianhead Mountain, nine miles east of Ironwood, Mich.; Mt. Joy, Wakefield, Mich.; Mt. Kimberly, 11 miles north of Marenisco, Mich.; Crystalla Ski Hill at Crystal Falls, Mich.; Pine Mountain, near Iron Mountain, Mich.; Ishpeming Winter Sports Park, near Ishpeming, Mich.; Cliffs Ridge Ski Resort, near Marquette, Mich.; and Gladstone Ski Park, three miles northwest of Gladstone, Mich.

APPLICATION FOR BROKERAGE LICENSE

MOTOR CARRIERS OF PASSENGERS

No. MC 12666 (Sub No. 1), filed December 7, 1960. Applicant: F. W. VAN ZILE POPULAR TOURS, INC., 3 East Avenue, Caledonia, N.Y. Applicant's representative: Raymond A. Richards, 35 Curtice Park, P.O. Box 25, Webster, N.Y. For a license as a *broker* (BMC 5) at Rochester, N.Y., in arranging for transportation in interstate or foreign commerce, by motor vehicle, of *Individual, as well as groups of passengers and their baggage*, in round-trip tours, beginning and ending at points in New York, New Jersey and Pennsylvania and extending to points in the United States.

NOTE: Applicant states it is presently authorized to operate as a licensed broker at Caledonia, N.Y. and the purpose of this application is to permit operations to be conducted at Rochester, N.Y. as an additional office, and its intention is to offer services to the public similar to that now provided at Caledonia, N.Y.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5, GOVERNED BY SPECIAL RULE 1.240 TO THE EXTENT APPLICABLE

No. MC 37391 (Sub No. 4), filed November 23, 1960. Applicant: BALBONI EXPRESS CO., a corporation, 655 Pleasant Street, Norwood, Mass. Applicant's attorney: Mary E. Kelley, 10 Tremont Street, Boston 8, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading; (1) between Providence, R.I. and Stamford, Conn., from Providence over Rhode Island Highway 3 to its junction with Connecticut Highway 84, thence over Connecticut Highway 84 to its junction with U.S. Highway 1, at or near New London, Conn., thence over U.S. Highway 1 to Stamford, and return over the same route, serving no intermediate points, and (2) between Providence, R.I. and New York, N.Y., from Providence over U.S. Highway 2 to East Greenwich, R.I., thence over U.S. Highway 95 to Connecticut Throughway, thence over Connecticut Throughway to Connecticut-New York State line, thence over New York Throughway to New York, N.Y., serving no intermediate points, *or in the alternative*, for conversion of applicant's regular route authority between Stamford, Conn. and New York, N.Y. (MC-37391 Sub 2), to irregular route authority.

NOTE: Applicant states it presently holds authority to serve such intermediate points in connections with (1) and (2) above, in irregular route service as authorized in its Certificate MC-37391, and regular route service between Stamford, Conn. and New York under its Sub 2 authority. (The application is directly related to MC-F-7712, published in the FEDERAL REGISTER, issue of November 23, 1960.)

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carrier of property or passengers under section 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240.)

MOTOR CARRIERS OF PROPERTY

No. MC-F 7630 (NORWALK TRUCK LINES, INC.—PURCHASE—ROYAL TRANSIT, INC.) published in the August 24, 1960 issue of the FEDERAL REGISTER on page 8128. Amendment filed December 7, 1960 to show joinder of CHARLES W. HOKE, 180 Milan Road, Norwalk, Ohio, J. OTIS FORD, 180 Milan Road, Norwalk, Ohio, JOHN W. CHRISTENSEN, 8 East Long Street, Columbus 15, Ohio, EWING T. BOLES, 51 North High Street, Columbus 15, Ohio, and EDGAR S. NOLAND, 51 North High Street, Columbus 15, Ohio, as the persons controlling vendee.

No. MC-F 7729. Authority sought for merger into STRICKLAND MOTOR FREIGHT LINES, INC., P.O. Box 5689, 2917 Gulden Lane, Dallas, Texas (a Connecticut Corporation), of the operating rights and property of STRICKLAND MOTOR FREIGHT LINES, INC., P.O. Box 5689, 2917 Gulden Lane, Dallas, Texas (a Missouri Corporation), and for acquisition by L. R. STRICKLAND, also of the same address, of control of such rights and property through the transaction. Applicant's Attorney: W. T. Brunson, 419 Northwest Sixth Street, Oklahoma City 2, Okla. Operating rights sought to be merged: *general commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier* over regular routes, between St. Louis, Mo., and Newark, N.J., serving the intermediate points of Chicago, Ill., Cleveland, Ohio, and New York, N.Y.; and certain points in Illinois, Ohio and New York, between Philadelphia, Pa., and Beach Haven and Barnegat City, N.J., serving all intermediate and certain off-route points; *general commodities*, excepting among others, commodities of unusual value, Class A and B explosives, commodities requiring special equipment, and those injurious or contaminating to other lading, over regular routes, between New York, N.Y., and Atlantic City, N.J., serving intermediate and off-route points in New Jersey and New York: *general commodities*, excepting among others, household goods, and commodities in bulk, over irregular routes, from New York, N.Y. to Newburgh and Middletown, N.Y. and between points in New Jersey, on the one hand, and, on the other, New York: *household goods*, as defined by the Commission, between points in New Jersey on the one hand, and, on the other, points in New York and Pennsylvania. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-7730. Authority sought for purchase by TOSE, INC., 25 West Fourth St., Bridgeport, Pa., of the operating rights of THEODORE C. POHLIG, doing business as PAULSBORO MOTOR EXPRESS, 632 Beacon Ave., Paulsboro, N.J., and for acquisition by LOUIS TOSE, also of Bridgeport, Pa., of control of such rights through the purchase. Applicants' attorney: Desmond J. McTighe, 11 East Airy St., Norristown, Pa. Operating rights sought to be transferred: *General commodities*, except those of unusual value, and except dangerous explosives, liquors, household goods (when trans-

ported as a separate and distinct service in connection with so-called "household movings"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier*, over a regular route, between Philadelphia, Pa., and Penns Grove, N.J., serving all intermediate points between Westville, N.J., and Penns Grove, not including Westville. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New York, New Jersey, Maryland, Delaware, Virginia and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–7731. Authority sought (1) for purchase by FURNITURE EXPRESS, INC., Fluvanna Road, R.D. #1, Jamestown, N.Y., of the operating rights in the name of G. HERMAN EKBERG, doing business as EKBERG TRUCKING AND STORAGE, 20 Winson St., Jamestown, N.Y., and of which E. WALDE PETERSON (WILDA PETERSON MILLER, OSCAR T. JOHNSON, AND WILLIAM L. WRIGHT, EXECUTORS, represent that they are the benefical owners), mailing address: c/o WILLIAM L. WRIGHT, Attorney, Fenton Building, Jamestown, N.Y.; and (2) for acquisition by GEORGE E. RINDOSH, 19 Emory Drive, Jamestown, N.Y., of control of such rights through the purchase. Applicants' attorneys: Johnson, Peterson, Tener & Anderson, Bank of Jamestown Bldg., Jamestown, N.Y. Operating rights sought to be transferred: *Household goods*, as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, as a *common carrier* over irregular routes between points and places in Warren County, Pa., and those in Chautauqua and Cattaraugus Counties, N.Y., on the one hand, and, on the other, points and places in New York, Pennsylvania, and those in New Jersey: *new furniture*, from Warren and Youngsville, Pa., and points and places in Chautauqua and Cattaraugus Counties, N.Y., to New York and Buffalo, N.Y., Camden, N.J., and points and places in Pennsylvania: *damaged or defective shipments* of new furniture, from the above-specified destination points and places to the described origin points and places: *new furniture*, uncrated, from Buffalo, N.Y., to points and places in Ohio, Pennsylvania, and West Virginia; from Medina, N.Y. to points and places in Missouri, New Jersey, Pennsylvania, Virginia, and West Virginia; from Jamestown, N.Y., to points and places in Missouri, Virginia and West Virginia; *rejected or returned shipments* of new furniture, uncrated, from the above specified destination points and places to the above-designated origin points. Vendee is authorized to operate as a *common carrier* in New York, Pennsylvania, New Jersey, Ohio, Maryland Illinois, Indiana, Wisconsin, Michigan, Delaware, Virginia and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F 7732. Authority sought for merger into NU-CAR CARRIERS, INC., Front and Pennell Streets, Chester, Pa., of the operating rights and property of UNIVERSITY OVERLAND EXPRESS, INC., Front and Pennell Streets, Chester, Pa., and for acquisition by LESTER J. LISHON, SR., EMMA E. LISHON, MINTZ, LEVEN & COHN, DEXTER LISHON AND PHYLLIS L. BURLEY, TRUSTEES under separate trusts for L. J. LISHON, JR., PHYLLIS L. BURLEY, DEXTER LISHON, PAULINA L. COWEN and EMMA E. LISHON, all of 50 Federal St., Boston, Mass., of control of such rights and property through the transaction. Applicants' Attorney: Harry C. Ames, Jr., 529 Transportation Building, Washington 6, D.C. Operating rights sought to be merged: *Automobiles, trucks*, and *automobiles and truck bodies, cabs* and *chassis*, in initial movements, in truckaway and driveaway service, as a *common carrier* over irregular routes, from Mahwah, N.J., to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, West Virginia, Tennessee, Ohio, and the District of Columbia: *new passenger automobiles* and *new passenger automobile chassis*, in initial movements, from Somerville, Mass., to points in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Delaware, Louisiana, Maryland, Michigan, Mississippi, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin, and the District of Columbia: *passenger automobiles, trucks, passenger automobile chassis*, and *truck chassis*, in initial movements, from Mahwah, N.J., to St. Louis, Mo., and points in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, and Wisconsin: *new automobiles, new trucks* and *new chassis*, restricted to initial movements, from places of manufacture and assembly in Somerville, Mass., to points and places in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New Jersey, and New York: *automobiles, trucks*, and *chassis*, new, used, or unfinished, restricted to secondary movements, between points and places named or described above. Vendee is authorized to operate as a *common carrier* in the 48 States and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F 7733. Authority sought for merger into BUCKINGHAM FREIGHT LINES, 900 East Omaha, Rapid City, S.D., of the operating rights and property of UNITED TRUCK LINES, INC., E. 915 Springfield Avenue, Spokane 2, Wash., and for acquisition by JOHN MANLOWE, E. 915 Springfield Avenue, Spokane 2, Wash., of control of such rights and property through the transaction. Applicants' Attorney: Marion F. Jones, 526 Denham Building, Denver 2, Colorado. Operating rights sought to be merged: *general commodities*, excepting, among others, commodities in bulk, but not excepting household goods, as a *common carrier*, over regular routes, between Tacoma, Wash., and Prosser, Wash., serving all intermediate points between Tacoma and Teanaway, Wash., and certain off-route points; between Seattle, Wash., and North Bend, Wash., excluding intermediate points; between Seattle and Tacoma, Wash., and Spokane, Wash., serving intermediate points of Cle Elum and Ellensburg, Wash., restricted to westbound traffic only; and off-route points within three miles of Seattle and those within three miles of Spokane, not authorized between Seattle and Tacoma; between Seattle, Wash., and North Bend, Wash.; to and from certain points in Richland, Handford, and White Bluffs, Wash., between Aberdeen, Wash., and Hoquiam, Wash.; *general commodities*, excepting, among others, household goods and commodities in bulk, to and from the site of the U.S. Army Air Corps Supply and Maintenance Depot and certain off-route points; between Portland, Oreg., and Spokane, Wash., and certain intermediate points, restricting the movement of empty equipment only. Between Spokane, Wash., and Missoula, Mont., serving no intermediate points; between Spokane, Wash., and points and places in Washington within 15 miles of Spokane; between Spokane, Wash., and Boise, Idaho, serving all intermediate points between, and certain off-route points; *general commodities*, including mining machinery, between Spokane, Wash., on the one hand, and, on the other, points and places in Idaho and Montana; *household goods*, between points and places in Idaho, on the one hand, and, on the other, points and places in Montana and certain points in Idaho, between Portland, Oregon and Bellingham, Wash., and certain intermediate points; *general commodities*, with the above noted exceptions, to and from certain military installations in Washington and off-route points between Tacoma, Seattle, and Spokane, Wash., and between Portland, Oreg., and Spokane, Wash., serving certain intermediate and off-route points; between Mt. Vernon, Wash., and Sedro Woodley, Wash., and certain intermediate and off-route points; between Mt. Vernon, Wash., and Bellingham, Wash., serving all intermediate points; between Anacortes, Wash., and Stanwood, Wash., serving all intermediate points and certain off-route points; between Yakima, Wash., and Mary's Corner, Wash.; between Spokane, Wash., and Great Falls, Mont., serving all intermediate points east of Mullan, Idaho, restricted against transportation of traffic originating at or destined to Spokane; between Bellingham, Wash., and the boundary of the United States and Canada, certain intermediate and off-route points; between Pasco, Wash., and Lewiston, Idaho, as alternate routes for operating convenience only, serving no intermediate points, subject to the restriction against the transportation of traffic moving to, from, or through points beyond New Meadows, Idaho; between Missoula, Mont., and Billings, Mont., serving no intermediate points; between Billings, Mont., and Great Falls, Mont., serving all intermediate points and certain off-route points; between Portland, Oreg., and Pasco, Wash., serving certain intermediate points; between Missoula, Mont., and Coram, Mont., serving certain intermediate and off-route points; between Troutdale, Oreg., and Dobson, Oreg.; *meats* and *meat products*, from Yakima, Wash., to Portland, Oreg., serving Toppenish, Wash., only; between Bellingham, Wash., and Blaine, Wash., serving no intermediate points, restricted to shipments originating at or destined to points in Canada. *General commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes between Boise, Idaho and Lucky Peak Dam, Idaho, and Points and places within seven miles of Lucky Peak Dam; *chemicals and radioactive materials*, from Hanford, Wash., to Arco, Idaho; *empty containers*, for chemicals and radioactive materials, from Arco, Idaho to Hanford, Wash., subject to the restriction that no through shipments shall be transported by the carrier between the points herein authorized to be served, on the one hand, and, on the other, points authorized to be served under authority now held by it, under a combination of such authorities; *agricultural commodities* and *supplies and equipment* used in connection with the preparation of agricultural commodities for market, between Portland, Oreg., on the one hand, and, on the other, points within five miles of and including Brooks, Hillsboro, Cornelius, and Forest Grove, Oreg., respectively; *household goods*, between Blaine, Wash., and ports of entry in Washington at the boundary of the United States and Canada; *fresh and frozen fish*, including shell fish, from the boundary of the United States and Canada, near Point Roberts, Wash., to Point Roberts, Wash., *general commodities*, except petroleum products, in bulk, between certain points in Oregon and points in Idaho; *household goods, lumber, cement, seed, building materials and supplies, farm machinery*, and *agricultural commodities*, between points in Oregon and Idaho, on the one hand, and, on the other, certain points in Idaho; *apples*, from points and places in Spokane, Lincoln, Grant, and Chelan Counties, Wash., to Seattle, Tacoma and Everett, Wash.; *paper*, from Millwood, Wash., to Seattle, Tacoma, and Everett, Wash.; *beans and peas*, from Spokane, Wash., to Seattle, Tacoma, Everett, Carnation, and Wenatchee, Wash., *candy and sugar*, from Spokane, Wash., to Yakima and Wenatchee, Wash., *cement* and *lime*, from Orofino, Idaho to points and places in Idaho and Washington; *petroleum products*, in containers, from Pullman, Wash., to points and places in Idaho; *building material* and *solid fuel*, between Orofino, Idaho, on the one hand, and, on the other, points and places in Spokane, Asotin, and Whitman Counties in Wash., points in Idaho, and those in Ravalli County Mont.; *vegetables, fresh fruits, feed, grain*, and *hay*, between points and places in Idaho, on the one hand, and, on the other points and places in Washington. Vendee is authorized to operate as a *common carrier* in Minnesota, South Dakota, Nebraska, Iowa, Wyoming, Colorado, North Dakota, Montana, Illinois, Wisconsin, Utah, Oregon, Washington, Missouri, Idaho, Kansas, and California. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–7734. Authority sought for purchase by LEWIS W. McCURDY and MARGARET J. McCURDY, doing business as McCURDY'S TRUCKING COMPANY, 571 Unity St., Latrobe, Pa., of a portion of the operating rights of REED LINES, INC., 210 N. Clinton St., Defiance, Ohio. Applicants' attorney: Paul F. Sullivan, 1821 Jefferson Place, NW., Washington 6, D.C. Operating rights sought to be transferred: Such commodities as are dealt in by wholesale hardware supply houses, restricted to shipments moving from, to, or between, wholesale hardware supply houses, warehouses, or other facilities of such houses, as a *common carrier*, over irregular routes, between Pittsburgh, Pa., on the one hand, and, on the other, points in Ohio. Vendee is authorized to operate as a *common carrier* in Wisconsin, Pennsylvania and Indiana, and as a *contract carrier* in Ohio, Indiana, Michigan, Pennsylvania, Maryland and Delaware. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–7735. Authority sought for purchase by KARN'S MOVING, INC., Maple and Poplar Streets, Hazelton, Pa., of a portion of the operating rights of KARN'S TRANSFER, INC., 345 West Elm Street, Hazelton, Pa., and for acquisition by CHRIST N. KARN, 345 West Elm Street, Hazelton, Pa., of control of such rights through the purchase. Applicants' attorney: Robert H. Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Operating rights sought to be transferred: *Household goods*, as a *common carrier*, over irregular routes, between Hazelton, Pa., and points within 35 miles of Hazelton on the one hand, and, on the other, points in Massachusetts, Connecticut, New York, New Jersey, Ohio, Delaware, Maryland, Rhode Island, West Virginia, Virginia, North Carolina, and the District of Columbia. Vendee holds no authority from this Commission. However, its controlling stockholder, CHRIST N. KARN is the sole stockholder of KARN'S TRANSFER, INC., the vendor herein. Application has been filed for temporary authority under section 210a(b).

No. MC–F 7736. Authority sought for purchase by ASSOCIATED STORAGE & VAN, INC., 1102 South Adams, Marion, Ind., of the operating rights of MILT McDOWELL (MARY MARGARET HENRY, ADMINISTRATRIX) AND CHARLES A. McDOWELL (SAM McCLAIN, EXECUTOR), doing business as McDOWELL & SON, 1102 South Adams, Marion, Ind., and for acquisition by SAM McCLAIN, 1201 South McClure St., Marion, Ind., of control of such rights through the purchase. Applicant's Attorney: James D. Collins, 802 Board of Trade Building, Indianapolis, Ind. Operating rights sought to be transferred: *Household goods*, as a *common carrier* over irregular routes, between Marion, Ind., and points and places within 30 miles thereof, on the one hand, and, on the other, points and places in Ohio, Illinois, Iowa, New York, Maryland, West Virginia, Michigan, Minnesota, New Jersey, Kentucky, Wyoming, Missouri, Texas, Oklahoma, Montana, and Pennsylvania. Vendee holds no authority from this Commission. However, its controlling stockholder, SAM McCLAIN, is affiliated with McCLAIN DRAY LINE, INC., Marion, Ind., which is authorized to operate as a *common carrier* in Illinois and Indiana. Application has not been filed for temporary authority under section 210a(b).

No. MC–F 7737. Authority sought for purchase by GEORGE W. BROWN, INC., 1475 East 222d Street, New York 69, N.Y., of the operating rights of WELSH EXPRESS, INC., 66 Vernon St., Springfield, Mass., and for acquisition by GEORGE W. BROWN, 1475 East 222d St., New York 69, N.Y., of control of such rights through the purchase. Applicant's Attorneys: Patrick A. Doyle, 31 Elm St., Springfield 3, Mass., and William D. Traub, 10 East 40th St., New York 16, N.Y. Operating rights sought to be transferred: Operating rights described in Certificates Nos. MC–52566 and MC–52566 Sub 3, by order of the Temporary Authorities Board, dated November 8, 1960, to be revoked effective 45 days from the date of said order; *Materials, supplies, machinery, and equipment* usual in building operations, as a *common carrier*, over irregular routes, between Westfield, Mass., and points within 25 miles thereof, on the one hand, and, on the other, points in Rhode Island, Connecticut and New York: *paper* and *paper products*, between Springfield, Mass., and points in Massachusetts within 10 miles of Springfield, on the one hand, and, on the other, points in Connecticut and Rhode Island, those in Cheshire County, N.H., and those in Albany, Columbia, Dutchess, Fulton, Greene, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, and Washington Counties, N.Y. Vendee is authorized to operate as a *common carrier* in New York, Pennsylvania, New Jersey, Virginia, Maryland, Massachusetts, Connecticut, Rhode Island, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F 7738. Authority sought for purchase by NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Fort Wayne, Ind., of a portion of the operating rights and certain property of RICHARD F. McCABE, doing business as McCABE MOVING & STORAGE CO., 3149 NE., Sandy Boulevard, Portland 12, Oregon. Applicants' Attorneys: Earl V. White, 2130 SW., Fifth Avenue, Portland 1, Oregon, and Martin Weissert, P.O. Box 988, Fort Wayne, Ind. Operating rights sought to be transferred: *New and used office and store fixtures and furniture*, as a *common carrier*, over irregular routes, between points and places within five miles of Portland, Oreg., including Portland, on the one hand, and, on the other, points and places in Washington: *new furniture* and *store fixtures*, uncrated, from Portland, Oreg., to points and places in California, Montana, and Idaho; *new furniture*, uncrated, between points in Oregon, on the one hand, and, on the other, points in Washington.

Vendee is authorized to operate as a *common carrier* in the 48 states and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F 7739. Authority sought for purchase by COOPER'S EXPRESS, INC., 620 Essex St., Lawrence, Mass., of a portion of the operating rights of FERGUSON MOTOR TRANSPORTATION, INC., (JOEL J. STEIGER, RECEIVER), 152 Market St., Paterson 1, N.J., and for acquisition by MARGARET M. COOPER, 77 Ames St., Lawrence, Mass., of control of such rights through the purchase. Applicant's Attorneys: George A. Olsen, 69 Tonnele Ave., Jersey City 6, N.J., and Joel J. Steiger, 152 Market St., Paterson 1, N.J. Operating rights sought to be transferred: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier* over irregular routes, between Jersey City, N.J., and points and places in New Jersey within 20 miles of Jersey City, on the one hand, and, on the other, New York, N.Y.: *metal tubing*, from Wallington, N.J., to Poughkeepsie, N.Y.: *steel bars*, from Newark, N.J., to Farmingdale and Sag Harbor, Long Island, N.Y.: *returned, rejected, or refused shipments of the above-specified Commodities*, from the above-specified destination points to Wallington and Newark, N.J. Vendee is authorized to operate as a *common carrier* in Massachusetts, New York, Connecticut, New Hampshire, Rhode Island, Maine, Delaware, Maryland, Ohio, Michigan, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F 7740. Authority sought for purchase by PITTSBURGH & NEW ENGLAND TRUCKING CO., 211 Washington Ave., Dravosburg, Pa., of a portion of the operating rights of GREENLEAF MOTOR EXPRESS, INC., 606 State Ave., Ashtabula, Ohio, and for acquisition by FREDERICK T. HILLER, also of Dravosburg, Pa., of control of such rights through the purchase. Applicants' attorneys: George, Greek, King & McMahon, 44 East Broad St., Columbus 15, Ohio. Operating rights sought to be transferred: *General commodities*, excepting, among others, household goods, and commodities in bulk, as a *common carrier* over irregular routes, between Ashtabula, Ohio, and points within 15 miles thereof, on the one hand, and, on the other, points in the Philadelphia, Pa., Commercial Zone, as defined by the Commission. From Ashtabula, Ohio, and points within 15 miles thereof, to points in Connecticut, Massachusetts, and Rhode Island, and to Auburn, Binghamton, Cortland, Elmira, Endicott, Geneva, Ithaca, Johnson City, Oneonta, Oswego, Rochester, Rome, Schenectady, Syracuse, and Utica, N.Y., and points in New York south of a line extending from Glens Falls to a point in the New York-Vermont State line due east of Glens Falls, and on and east of a line extending from Glens Falls along U.S. Highway 9 to Albany, N.Y., and thence along U.S. Highway 9 to New York, N.Y., and to points in the New York, N.Y., Commercial Zone, as defined by the Commission. Vendee is authorized to operate as a *common carrier* in New York, Massachusetts, New Jersey, Rhode Island, Connecticut, Pennsylvania, Ohio and West Virginia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F 7741. Authority sought for control by COLONIAL MOTOR FREIGHT LINE, INCORPORATED, East College Drive, High Point, N.C., of WILKINSON TRUCKING COMPANY, INC., 214 W. Tremont, Charlotte, N.C., and for acquisition by R. L. HONBARRIER, also of High Point, N.C., of control of WILKINSON TRUCKING COMPANY, INC., through the acquisition by COLONIAL MOTOR FREIGHT LINE, INCORPORATED. Applicants' attorney: Francis W. McInerny, Macleay, Lynch & Macdonald, 1625 K Street, NW., Washington 6, D.C. Operating rights sought to be controlled: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier* over irregular routes, between Charlotte, N.C., and points within one mile of Charlotte, on the one hand, and, on the other, points in that part of North Carolina, South Carolina, Georgia, and Tennessee, within 150 miles of Charlotte, N.C. COLONIAL MOTOR FREIGHT LINE, INCORPORATED is authorized to operate as a *common carrier* in North Carolina, Maryland, Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-11787; Filed, Dec. 20, 1960; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3923]

PEOPLES NATURAL GAS CO. AND CONSOLIDATED NATURAL GAS CO.

Notice of Proposed Issuance and Sale of Shares of Capital Stock by Registered Holding Company to a Non-Affiliate, Acquisition by Subsidiary of the Assets and Assumption of the Liabilities of Such Non-Affiliate, Intra-System Issuance, Sale and Acquisition of Capital Stock

DECEMBER 14, 1960.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and one of its gas utility subsidiaries, The Peoples Natural Gas Company ("Peoples"), have filed with this Commission a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a), 6(b), 7, 9(a), 10, and 12(f) of the Act as applicable to the proposed transactions. All interested persons are referred to said joint application-declaration for a statement of the proposed transactions which are summarized below.

Pursuant to an Agreement and Plan of Reorganization dated July 29, 1960 ("Plan") between Consolidated, Peoples and a non-affiliate, The Union Heat and Light Company ("Union"), the latter proposes to sell and Peoples proposes to acquire all of the assets and assume all the liabilities of Union after which Union will liquidate and dissolve.

Union, a Pennsylvania corporation, is a comparatively small gas utility company whose operations and business are conducted entirely in the State of Pennsylvania. It furnishes natural gas service to the public in portions of the counties of Lawrence, Mercer, Venango and Butler, Pennsylvania, the principal communities served being Grove City and Slippery Rock. As of December 31, 1959, Union served natural gas to 7,032 consumers consisting of 6,345 residential, 590 commercial and 97 industrial. Its present gas supply is obtained from two non-affiliated gas utility companies under separate gas purchase contracts that are terminable on January 1, 1965 and on May 25, 1980. Union has 4,441 shares of capital stock, par value of $50 per share, outstanding of which 4,436 shares are held by Oil City National Bank (Oil City, Pennsylvania) and others, as Trustees, and the remaining 5 shares are held directly by one of the beneficiaries of the trust.

Peoples, a Pennsylvania corporation, is a wholly owned gas utility subsidiary of Consolidated. It owns property for the production, gathering, transmission, storage and distribution of natural gas and renders natural gas service to approximately 262,000 consumers in Pittsburgh, Pennsylvania and in other communities located in 13 counties in Pennsylvania.

The counties in which Union distributes natural gas are within the franchise area which Peoples is authorized to serve. Communities served by Union in the southern part of its service area are within eight miles of communities served by Peoples, and those served by Union in the northern part of its service area are within twelve miles of the pipeline facilities owned and operated by Lake Shore Pipe Line Company, an affiliate of Peoples.

The filing states that as it becomes necessary for Union to supplement or replace its existing gas supply, Peoples will construct transmission lines to interconnect its system with that of Union, thus assuring Union's customers a firm, long-term supply of gas from more varied sources and under more flexible delivery schedules. Such eventual interconnection is expected to result in a reduction of purchased gas costs. In addition, Peoples will be in a better position, than would Union, to raise funds required for future additions and improvements.

Upon consummation of the proposed transfer, Peoples will continue the nature and character of service now being rendered by Union and will adopt Union's rates for such service.

To effectuate the foregoing plan, Consolidated proposes to issue and sell to Union 23,000 shares of Consolidated's capital stock, par value $10 per share. For purposes of the plan these shares were valued at $45 per share or an aggregate value of $1,035,000. The shares of Consolidated stock will be distributed by Union to its stockholders and Union will dissolve. Peoples proposes to acquire all the assets of Union and assume all its liabilities including bank notes which, at September 30, 1960, amounted to $88,050. In this connection Peoples proposes to issue and sell, and Consolidated proposes to acquire, 10,350 shares of Peoples' capital stock, par value $100 per share, or an aggregate par value of $1,035,000.

The estimated fees and expenses to be incurred in connection with the proposed transactions aggregate $18,170 and consist of State and Federal taxes of $4,170, legal and other expenses incident to the transfer of Union's assets and dissolution in the amount of $5,000, finder's fee of $7,500 and miscellaneous expenses of $1,500.

The Pennsylvania Public Utility Commission has authorized the acquisition by Peoples of the gas properties and rights of Union, the exercise by Peoples of the right to furnish natural gas service in the area presently served by Union, the issuance by Peoples of the shares of its capital stock and the dissolution of Union. It is represented that no other State commission and no Federal commission, other than this Commission has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than December 28, 1960, request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said joint application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date the joint application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11761; Filed, Dec. 20, 1960; 8:46 a.m.]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30-X-21]

CHIEF, LOAN PROCESSING SECTION

Delegation Relating to Financial Assistance and Administrative Functions

I. Pursuant to the authority delegated to the Chief, Financial Assistance Division by Delegation of Authority 30-X-1 (Revision 2) (25 F.R. 4939), there is hereby redelegated to the Chief, Loan Processing Section, Dallas Regional Office, Small Business Administration, the authority:

A. *Financial assistance.* 1. To cancel, reinstate, modify and amend authorizations for business or disaster loans.

2. To extend the disbursement period on all loan authorizations or undisbursed portions of loans.

3. To approve service charges by participating bank not to exceed 2 percent per annum on the outstanding balance in connection with construction loans and loans involving accounts receivable and inventory financing.

4. To take the following actions in the Administration of fisheries' loans:

(a) Amend loan authorizations;

(b) Extend the period of disbursement of loans of $50,000 or less for a period not to exceed four months;

(c) Amend the hull insurance provision of any authorization issued prior to September 3, 1958, for a loan of $20,000 or less;

(d) Cancel loan authorizations prior to disbursement upon the written request of the applicant.

B. *Administration.* To approve annual and sick leave, except advanced annual and sick leave, for employees under his supervision.

C. *Correspondence.* To sign all nonpolicymaking correspondence, except Congressional correspondence, relating to the loan processing functions.

II. The authority delegated in subsections I. A. and B. may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Chief, Loan Processing Section.

Effective date: November 28, 1960.

A. W. BUCHEK, *Chief, Financial Assistance Division, Dallas Regional Office.*

[F.R. Doc. 60-11798; Filed, Dec. 20, 1960; 8:49 a.m.]

[Delegation of Authority 30-X-22]

CHIEF, LOAN ADMINISTRATION SECTION

Delegation Relating to Financial Assistance and Administrative Functions

I. Pursuant to the authority delegated to the Chief, Financial Assistance Division by Delegation of Authority 30-X-1 (Revision 2) (25 F.R. 4939), there is hereby redelegated to the Chief, Loan Administration Section, Dallas Regional Office, Small Business Administration, the authority:

A. *Financial assistance.* 1. To approve amendments and modifications of loan authorizations for loans that have been fully disbursed.

2. To take all necessary action in connection with the servicing, administration and collection of partially or fully disbursed loans.

3. Administer current fisheries' loans and those loans delinquent not more than 60 days within the same authority exercised with respect to SBA loans, except execute satisfactions, releases or partial release of Preferred Ship Mortgages, or other mortgages, deeds of trust, etc., securing fisheries' loans, or to postpone or change payments due or to endorse checks in payment of insurance claims when said checks are not being paid to the Government as a payment on a fishery loan.

B. *Administration.* To approve annual and sick leave, except advanced annual and sick leave, for employees under his supervision.

C. *Correspondence.* To sign all nonpolicymaking correspondence originating in the Loan Administration Section, except Congressional correspondence, correspondence with the Washington office and branch offices, and letters to borrowers or guarantors containing any threat of legal action.

II. The authority delegated in subsections I. A. and B. may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Chief, Loan Administration Section.

Effective date: November 28, 1960.

A. W. BUCHEK, *Chief, Financial Assistance Division, Dallas Regional Office.*

[F.R. Doc. 60-11799; Filed, Dec. 20, 1960; 8:49 a.m.]

[Delegation of Authority 30-X-23]

CHIEF, LOAN LIQUIDATION SECTION

Delegation Relating to Financial Assistance and Administrative Functions

I. Pursuant to the authority delegated to the Chief, Financial Assistance Division by Delegation of Authority 30-X-1 (Revision 2) (25 F.R. 4939), there is hereby redelegated to the Chief, Loan Liquidation Section, Dallas Regional Office, Small Business Administration, the authority:

A. *Financial assistance.* To take all necessary action in connection with the liquidation of partially or fully disbursed loans, other obligations and acquired property.

B. *Administration.* To approve annual and sick leave, except advanced annual and sick leave, for employees under his supervision.

C. *Correspondence.* To sign all nonpolicymaking correspondence originating in the Loan Liquidation Section, except Congressional correspondence, correspondence with the Washington office and branch offices, and letters to borrowers or guarantors containing any threat of legal actions.

II. The authority delegated in subsections I. A. and B. may not be redelegated.

III. All authority delegated herein may be exercised by any SBA employee designated as Acting Chief, Loan Liquidation Section.

Effective date: November 28, 1960.

A. W. BUCHEK,
Chief, Financial Assistance Division, Dallas Regional Office.

[F.R. Doc. 60-11800; Filed, Dec. 20, 1960; 8:49 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

PROCLAMATIONS:
Oct. 3, 1905 — 12915
Dec. 7, 1907 — 12915
Feb. 10, 1909 — 12915
Dec. 10, 1910 — 12915
Oct. 18, 1912 — 12915
2935 — 12501
3355 — 13131
3382 — 12587
3383 — 13131

EXECUTIVE ORDERS:
Oct. 20, 1916 — 12887
June 8, 1926 — 12887
3797-A — 12412, 12599
6260 — 12281
9941 — 12429
10896 — 12281
10897 — 12429
10898 — 12429
10899 — 12729

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 — 12501
Letter, Nov. 16, 1960 — 12501

5 CFR

2 — 12285
6 — 12393, 12547, 12588, 12735, 12869, 13132
30 — 12733
325 — 13132

6 CFR

331 — 12994
421 — 12282, 12283

7 CFR

33 — 12430
51 — 12941
319 — 12809
601 — 13132
718 — 12588
722 — 12393, 12403, 12809, 12812, 12987
730 — 12503
833 — 12650
845 — 12285
871 — 12547
903 — 12504
905—908 — 12504
911—913 — 12504
914 — 12405, 12650, 12812, 12941
916—919 — 12504
921 — 12504
923—925 — 12504

7 CFR—Continued

Page

928—932 — 12504
933 — 12405-12407, 12504, 12987
935 — 12504
941—942 — 12504
943 — 12504, 12813
944 — 12504, 12987
946—948 — 12504
949 — 12504, 12941
952 — 12504
953 — 12407, 12430, 12651, 12948
954 — 12504
955 — 12949
956 — 12504
963 — 12504
965—968 — 12504
970 — 12994
971—972 — 12504
974—978 — 12504
980 — 12504
982 — 12504
985—988 — 12504
989 — 12813
991 — 12504
994—995 — 12504
998 — 12504
1000 — 12504
1002 — 12504
1004—1005 — 12504
1008—1009 — 12504
1010 — 12994
1011—1014 — 12504
1016 — 12504
1018 — 12504, 12588
1023—1024 — 12504
1031 — 12505, 12651, 12652
1032 — 12828

PROPOSED RULES:
51 — 12298, 12299
718 — 13142
812 — 12712
901 — 12742
923 — 12558
936 — 12465
938 — 12752
949 — 12606
953 — 13141
961 — 13001
965 — 12466
989 — 12476
1010 — 13001
1012 — 12558
1032 — 12712, 12752
1033 — 12606
1034 — 13142

8 CFR

Page

211 — 12290

9 CFR

72 — 12548
74 — 12995, 13132
94 — 12831

PROPOSED RULES:
83 — 12571

10 CFR

30 — 12730
70 — 12730

PROPOSED RULES:
25 — 12753
115 — 12367

12 CFR

PROPOSED RULES:
206 — 12479

13 CFR

PROPOSED RULES:
107 — 12754

14 CFR

41 — 12908
49 — 12352
225 — 12589
243 — 12908
293 — 12908
298 — 12909
300 — 12430
302 — 12432, 12933
414 — 12589
506 — 12505
507 — 12352, 12433, 12549, 12829, 12995
514 — 12433, 12995
600 — 12285-12287, 12408, 12410, 12549-12551, 12589, 12676, 12734, 12933, 12934
601 — 12287, 12409, 12410, 12549-12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997
602 — 12288, 12552, 12678, 12831, 12997
608 — 12678, 12679, 12734, 12830, 12934, 12997
609 — 12353, 12735, 12935
612 — 12410
1501 — 12434

PROPOSED RULES:
41 — 12299
43 — 12524
221 — 12913
302 — 12477
507 — 12477, 12478, 12571, 12844

14 CFR—Continued

Page

PROPOSED RULES—Continued
600 — 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914
601 — 12328, 12329, 12478, 12479, 12524, 12525, 12572-12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952.
608 — 12479, 12846
626 — 12952

15 CFR

203 — 12590
371 — 12734

16 CFR

13 — 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133

17 CFR

230 — 12912

18 CFR

104 — 12763
105 — 12961
154 — 12653
204 — 13161

19 CFR

PROPOSED RULES:
8 — 12681

21 CFR

1 — 12592
8 — 12288
120 — 12288, 12506
121 — 12412, 12595, 12731, 12831, 13008
130 — 12592
146 — 12506, 12596, 12732
146c — 12289

PROPOSED RULES:
27 — 12372
120 — 12374, 12571
121 — 12299, 12477, 12839, 12840, 13008

22 CFR

3 — 13138
46 — 12289

25 CFR

171 — 12408

PROPOSED RULES:
52 — 12518
176 — 12299

26 (1939) CFR

16 — 12442
17 — 12443
29 — 12339
39 — 12339
40 — 12340

PROPOSED RULES:
81 — 13001

26 (1954) CFR

1 — 12340, 12345, 12654
18 — 12340
19 — 12654
31 — 13031
41 — 13133
44 — 13133
46 — 13133
48 — 12689
49 — 13133
151 — 13135
170 — 12732
301 — 13137

PROPOSED RULES:
1 — 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140

26 (1954) CFR—Continued

Page

PROPOSED RULES—Continued
20 — 13001
25 — 12707
31 — 12835
48 — 12362, 13001
170 — 12710
197 — 12362
250 — 12511

28 CFR

21 — 12290

29 CFR

PROPOSED RULES:
604 — 12950
606 — 12950
713 — 12950

31 CFR

54 — 12345

32 CFR

505 — 12869
570 — 12869
750 — 12870
753 — 12879
805 — 12291
888 — 12999
1001 — 12999
1002 — 13000
1003 — 13000
1004 — 13000
1006 — 13000
1007 — 13000
1008 — 12444
1009 — 12446
1010 — 12449, 13000
1012 — 12449
1013 — 12449, 13000
1016 — 12450, 12456
1030 — 12451
1052 — 12456, 13000
1053 — 12456
1054 — 12458, 13000
1055 — 12462
1057 — 12462, 13000
1059 — 12462
1619 — 12291

32A CFR

OIA (CH. X):
OI Reg. 1 — 12999

33 CFR

202 — 12393
203 — 12740
207 — 12740

38 CFR

3 — 12463

39 CFR

27 — 12348
168 — 12884

41 CFR

3-75 — 12502, 12596
5-1 — 12553
50-201 — 12553
50-202 — 12553

PROPOSED RULES:
50-202 — 12363, 12522

42 CFR

1 — 12292

43 CFR

76 — 12597, 12949
181 — 12679
192 — 12352
257 — 12679

PROPOSED RULES:
259 — 12606

43 CFR—Continued

Page

PUBLIC LAND ORDERS:
82 — 12412, 12599
261 — 13138
797 — 12413
1124 — 12885
1253 — 12481
1273 — 13138
1621 — 12599
1965 — 12599
2209 — 12412
2210 — 12413
2211 — 12413
2212 — 12597
2213 — 12597
2214 — 12598
2215 — 12599
2216 — 12599
2217 — 12885
2218 — 12885
2219 — 12886
2220 — 12887
2221 — 12887
2222 — 12887
2223 — 13138

45 CFR

601—620 — 12600

PROPOSED RULES:
301 — 12840
306 — 12840
307 — 12841
308 — 12842
309 — 12843
311 — 12844

46 CFR

24 — 12554
30 — 12554
56 — 12554
70 — 12555
90 — 12555
110 — 12555
111 — 12555
136 — 12555
171 — 12555
308 — 12348

47 CFR

1 — 12358, 12600, 12602, 12603, 12605
4 — 12680
5 — 12359
9 — 12359
10 — 12359
11 — 12359
12 — 12358
16 — 12359
19 — 12359
21 — 12359, 12603, 12605

PROPOSED RULES:
1 — 12624, 12898
3 — 12371, 12624, 12626, 12627, 12899
7 — 12951
8 — 12951

49 CFR

91 — 12506
122 — 12506
171 — 12888

PROPOSED RULES:
71-78 — 12420
197 — 12420

50 CFR

32 — 12555, 12888
33 — 12507, 12556, 12557, 12888, 13138, 13139

PROPOSED RULES:
14 — 12741
41 — 13001

Pages 13161–13208
PART II

THE NATIONAL ARCHIVES
LITTERA SCRIPTA MANET
1934
OF THE UNITED STATES

FEDERAL REGISTER

VOLUME 25 NUMBER 247

Washington, Wednesday, December 21, 1960

Uniform System of Accounts for Class C Natural Gas Companies

Important developments in the natural gas industry since the adoption of the Uniform System of Accounts effective January 1, 1940, and the experience of the Commission over the past 20 years indicated the need for a revision of the System of Accounts. Accordingly, this proceeding was commenced by Notice of Proposed Rulemaking served upon interested parties, including State and Federal regulatory agencies, and by publication in the FEDERAL REGISTER on August 17, 1960 (25 F.R. 7918). Copies of the proposed revised System of Accounts were served and published as a part of that general notice, as heretofore noted.

The revisions of the Commission's System of Accounts, as then proposed are prescribed hereinafter as a part of the Commission's Uniform System of Accounts to become effective January 1, 1961.

Heretofore, the Commission has not had a separately issued Uniform System of Accounts for Class C Natural Gas Companies, as such. The accounting requirements presently effective for small utilities (Class C and Class D), consist of an abridgement of the accounts for large natural gas companies by means of account charts appearing as Appendix II of the pamphlet version of the Uniform System of Accounts. In these account charts, the condensed accounts applicable to the small utilities are indicated by bracketing related account titles applicable to Class A and Class B utilities. The result is that small utilities have had to work with an inordinate amount of textual materials designed for larger utilities. An objective of the System of Accounts, prescribed hereinafter is to relieve small utilities from that burden. It is believed that the revised System of Accounts provides these smaller utilities with a simplified System of Accounts appropriate for the magnitude of their operations. The revised System of Accounts prescribed herein reflects the basic principles found in this Commission's recently issued revised Uniform System of Accounts Prescribed for Class A and Class B Natural Gas Companies Subject to the Provisions of the Natural Gas Act, Docket No. R-174. The revised System of Accounts introduces the following important improvements in this Com-

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

SUBCHAPTER F—ACCOUNTS, NATURAL GAS ACT

[Order No. 227; Docket No. R-156]

PART 204—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS C NATURAL GAS COMPANIES

This Commission has under consideration in this proceeding the revision of Part 204—Application of Uniform System of Accounts to Class C and Class D Natural Gas Companies of Subchapter F—Accounts, Natural Gas Act, of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations (CFR), to prescribe a revised Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class C). That revised System of Accounts, as set forth in the attachment to the Notice of Proposed Rulemaking in this docket (25 F.R. 7919–7953) is prescribed hereinafter to become effective January 1, 1961.

Part 204, §§ 204.1 through 204.8 of said Title and Code correspond to, and appear at pages 179–200 of the Commission's pamphlet publication of its Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, effective January 1, 1940, revised to January 1, 1954,[1] as amended by Order No. 203, issued May 29, 1958 (23 F.R. 4164, June 12, 1958). That System of Accounts, as revised and prescribed hereinafter, follows the numbering system (accounts, instructions, definitions, etc.) used in the Notice of Proposed Rulemaking referred to above.

[1] The Uniform System of Accounts effective January 1, 1940 was prescribed by Commission Order No. 69 dated November 3, 1939 (4 F.R. 4764, December 5, 1939); and was contained in the codification and reissuance of the Commission's general rules promulgated by Commission Order No. 141, December 11, 1947, effective January 1, 1948 (13 F.R. 8461).

mission's small utility accounting requirements:

a. New size classifications for gas utilities;

b. Simple plant and expense classifications for manufactured gas;

c. Certain necessary new accounts;

d. New arrangement of balance sheet and certain other accounts to make them more informative;

e. A reduced number of expense account classifications, mainly but not entirely, by the discontinuance of segregations of numerous functional accounts as to labor and other expenses;

f. Expanded items lists of account texts and clearer description of such items according to their functional nature, to facilitate use and consistency of respective account classifications; and

g. Restatements of the accounting aspects of certain accounting interpretations issued in the past.

In recommending the form of revised System of Accounts accompanying the Notice of Proposed Rulemaking in this proceeding, the staff of this Commission correlated its activities with the activities of the National Association of Railroad and Utility Commissioners (NARUC) which has recently prepared a form of NARUC Uniform System of Accounts for Class C gas utilities. This was done to promote continued consistency and uniformity of approach to the common problems with which the two accounting systems are concerned; and to assure a minimum amount of deviation where the two accounting systems do differ. The staff's activities in this regard were undertaken mainly with the Committee on Statistics and Accounts of the NARUC.

The aforesaid Notice of Proposed Rulemaking provided for the submission of data, views, comments, or protests in writing not later than September 19, 1960. To date no such data, views, comments, or protests have been received.

The Commission recognizes that some burden and expense will have to be borne by the accounting and reporting parties affected in connection with the transition from the present to the revised System of Accounts. However, the Commission is of the opinion that the physical burden and monetary cost of the change over is of minor importance when viewed in relation to the immediate and future benefits to be derived from the revised System of Accounts, as prescribed herein.

For the convenience of all parties concerned, Appendix A set forth below correlates the account titles of the Commission's Uniform System of Accounts applicable to Class C Natural Gas Companies, effective January 1, 1940, with the revised System of Accounts prescribed herein effective January 1, 1961. Being a schematic presentation only, and of a very general nature, nothing contained therein shall be construed as in any way modifying the general or specific account titles, texts, and instructions of either of the Systems of Accounts.

Also, it should be noted that for the period of time required for the preparation and publication of the revised System of Accounts prescribed herein in pamphlet form, the revised System of Accounts (18 CFR Part 204) will be available in the printed form set forth below as Appendix B.

The Commission finds:

(1) In view of the foregoing, and upon consideration of all relevant matters presented, it is necessary and appropriate for the purposes of the Natural Gas Act, that the proposed revised System of Accounts as set forth in the Notice of Proposed Rulemaking (25 F.R. 7919–7953), be adopted and promulgated as this Commission's revised Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class C), effective January 1, 1961, all in the manner as hereinafter provided.

(2) Good cause exists for the adoption of the revised System of Accounts set forth herein to be effective as of January 1, 1961.

The Commission, acting pursuant to the Natural Gas Act, as amended, particularly sections 8(a), 10, and 16 (15 U.S.C. 717g, 717i, and 717o) orders:

(A) Effective January 1, 1961, Part 204, Subchapter F—Accounts, Natural Gas Act, of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations is amended to read as set forth in Appendix B below.

(B) Effective January 1, 1961, all Class C Natural Gas Companies under the Natural Gas Act shall keep their accounts in the manner set forth in the revised System of Accounts appearing in Appendix B below.

(C) The Secretary of the Commission shall cause prompt publication of this order.

Issued: December 21, 1960.

By the Commission.

[SEAL] J. H. GUTRIDE, *Secretary.*

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Gas plant:			
Gas plant in service, leased to others, and held for future use.	1100.1	101	Gas plant in service.
		104	Gas plant leased to others.
		105	Gas plant held for future use.
Construction work in progress	1100.3	107	Construction work in progress—gas.
Gas plant acquisition adjustments	1100.5	114	Gas plant acquisition adjustments.
Gas plant in process of reclassification	1100.6	103	Gas plant in process of reclassification.
Gas plant adjustments	1107	116	Other gas plant adjustments.
Other utility plant	1108	118	Other utility plant.
2. Investment and Fund Accounts			*2. Other Property and Investments*
Other physical property	1110	121	Nonutility property.
Miscellaneous investments and special funds	1114	124	Other investments.
		125	Special funds.
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	1120	131	Cash and working funds.
Temporary cash investments	1123	132	Temporary cash investments
Notes and accounts receivable	1124	141	Notes receivable.
		142	Customer accounts receivable.
		143	Other accounts receivable.
Receivables from associated companies	1126	145	Notes receivable from associated companies.
		146	Accounts receivable from associated companies.
Materials and supplies	1131	150	Materials and supplies.
Prepayments	1132	165	Prepayments.
Miscellaneous current and accrued assets	1133	170	Other current and accrued assets.
Gas stored underground	1134	164	Gas stored underground.
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	1140	181	Unamortized debt discount and expense.
Extraordinary property losses	1141	182	Extraordinary property losses.
Miscellaneous deferred debits	1146	183	Other deferred debits.
5. Capital Stock Discount and Expense			
Discount on capital stock	1150	213	Discount on capital stock.
Capital stock expense	1151	214	Capital stock expense.
6. Reacquired Securities			
Reacquired securities	1152	217	Reacquired capital stock.
		221	Bonds.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. I, 1940	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Gas plant in service	101	1100.1	Gas plant in service, leased to others, and held for future use.
Gas plant purchased or sold	102	1391	Gas plant purchased.
		1392	Gas plant sold.
Gas plant in process of reclassification	103	1100.6	Gas plant in process of reclassification.
Gas plant leased to others	104	1100.1	Gas plant in service, leased to others, and held for future use.
Gas plant held for future use	105		
Construction work in progress—gas	107	1100.3	Construction work in progress.
Accumulated provision for depreciation, depletion and amortization of gas plant.	110	1250	Reserve for depreciation and amortization of gas plant.
		1251	Reserve for amortization of other limited-term gas investments.
Gas plant acquisition adjustments	114	1100.5	Gas plant acquisition adjustments.
		1252	Reserve for amortization of gas plant acquisition adjustments.
Other gas plant adjustments	116	1107	Gas plant adjustments.
Other utility plant	118	1108	Other utility plant.
Accumulated provision for depreciation and amortization of other utility plant.	119	1253	Reserve for depreciation and amortization of other property.
2. Other Property and Investments			*2. Investment and Fund Accounts*
Nonutility property	121	1110	Other physical property.
Accumulated provision for depreciation and amortization of nonutility property.	122	1253	Reserve for depreciation and amortization of other property.
Other investments	124	1114	Miscellaneous investments and special funds.
Special funds	125		
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	131	1120	Cash and working funds.
Temporary cash investments	132	1123	Temporary cash investments.
Notes receivable	141	1221	Notes receivable discounted.
Customer accounts receivable	142	1124	Notes and accounts receivable.
Other accounts receivable	143		
Accumulated provision for uncollectible accounts—credit.	144	1254	Reserve for uncollectible accounts.
Notes receivable from associated companies	145	1126	Receivables from associated companies.
Accounts receivable from associated companies	146		
Materials and supplies	150	1131	Materials and supplies.
Gas stored underground	164	1134	Gas stored underground.
Prepayments	165	1132	Prepayments.
Other current and accrued assets	170	1133	Miscellaneous current and accrued assets.
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	181	1140	Unamortized debt discount and expense.
Extraordinary property losses	182	1141	Extraordinary property losses.
Other deferred debits	183	1146	Miscellaneous deferred debits.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
7. Capital Stock			*5. Proprietary Capital*
Common capital stock	1200	201	Common capital stock.
Preferred capital stock	1201	204	Preferred capital stock.
Stock liabilities for conversion	1202	207	Other paid-in capital.
Premiums and assessments on capital stock	1203		
Capital stock subscribed	1204		
Installments received on capital stock	1205	212	Installments received on capital stock.
8. Long-term Debt			*6. Long-term Debt*
Bonds	1210	221	Bonds.
Receivers' certificates	1211	224	Other long-term debt.
Advances from associated companies	1212	223	Advances from associated companies.
Miscellaneous long-term debt	1213	224	Other long-term debt.
9. Current and Accrued Liabilities			*7. Current and Accrued Liabilities*
Notes and accounts payable	1220	231	Notes payable.
		232	Accounts payable.
Notes receivable discounted	1221	141	Notes receivable (see note).
Payables to associated companies	1223	233	Notes payable to associated companies.
		234	Accounts payable to associated companies.
Dividends declared	1224	238	Other current and accrued liabilities.
Matured long-term debt	1225		
Matured interest	1226		
Customers' deposits	1227	235	Customer deposits.
Taxes accrued	1228	236	Taxes accrued.
Interest accrued	1229	237	Interest accrued.
Other current and accrued liabilities	1230	238	Other current and accrued liabilities.
10. Deferred Credits			*8. Deferred Credits*
Unamortized premium on debt	1240	251	Unamortized premium on debt.
Customers' advances for construction	1241	252	Customer advances for construction.
Other deferred credits	1242	253	Other deferred credits.
11. Reserves			*9. Operating Reserves*
Reserve for depreciation and amortization of gas plant.	1250	110	Accumulated provision for depreciation, depletion and amortization of gas plant.
Reserve for amortization of other limited-term gas investments.	1251		
Reserve for amortization of gas plant acquisition adjustments.	1252	114	Gas plant acquisition adjustments.
Reserve for depreciation and amortization of other property.	1253	119	Accumulated provision for depreciation and amortization of other utility plant.
		122	Accumulated provision for depreciation and amortization of nonutility property.
Reserve for uncollectible accounts	1254	144	Accumulated provision for uncollectible accounts—credit.
Miscellaneous reserves	1258	261	Property insurance reserve.
		262	Injuries and damages reserve.
		263	Pensions and benefits reserve.
		265	Miscellaneous operating reserves.
12. Contributions in Aid of Construction			*10. Contributions in Aid of Construction*
Contributions in aid of construction	1265	271	Contributions in aid of construction.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
5. Proprietary Capital			*7. Capital Stock*
Common capital stock	201	1200	Common capital stock.
Preferred capital stock	204	1201	Preferred capital stock.
Other paid-in capital	207	1202	Stock liability for conversion.
		1203	Premiums and assessments on capital stock.
		1204	Capital stock subscribed.
		1270	Capital surplus.
Installments received on capital stock	212	1205	Installments received on capital stock.
Discount on capital stock	213	1150	Discount on capital stock.
Capital stock expense	214	1151	Capital stock expense.
Appropriated earned surplus	215	1271	Earned surplus.
Unappropriated earned surplus	216		
Reacquired capital stock	217	1152	Reacquired securities.
6. Long-term Debt			*8. Long-term Debt*
Bonds	221	1210	Bonds.
		1152	Reacquired securities.
Advances from associated companies	223	1212	Advances from associated companies.
Other long-term debt	224	1211	Receivers' certificates.
		1213	Miscellaneous long-term debt.
7. Current and Accrued Liabilities			*9. Current and Accrued Liabilities*
Notes payable	231	1220	Notes and accounts payable.
Accounts payable	232		
Notes payable to associated companies	233	1223	Payables to associated companies.
Accounts payable to associated companies	234		
Customer deposits	235	1227	Customers' deposits.
Taxes accrued	236	1228	Taxes accrued.
Interest accrued	237	1229	Interest accrued.
		1224	Dividends declared.
Other current and accrued liabilities	238	1225	Matured long-term debt.
		1226	Matured interest.
		1230	Other current and accrued liabilities.
8. Deferred Credits			*10. Deferred Credits*
Unamortized premium on debt	251	1240	Unamortized premium on debt.
Customer advances for construction	252	1241	Customers' advances for construction.
Other deferred credits	253	1242	Other deferred credits.
9. Operating Reserves			*11. Reserves*
Property insurance reserve	261	1258	Miscellaneous reserves.
Injuries and damages reserve	262		
Pensions and benefits reserve	263		
Miscellaneous operating reserves	265		
10. Contributions in Aid of Construction			*12. Contributions in Aid of Construction*
Contributions in aid of construction	271	1265	Contributions in aid of construction.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.
13. Accumulated Deferred Taxes on Income			*11. Accumulated Deferred Income Taxes*
Accumulated deferred taxes on income—accelerated amortization.	1266.1	281	Accumulated deferred income taxes—accelerated amortization.
Accumulated deferred taxes on income—liberalized depreciation.	1266.2	282	Accumulated deferred income taxes—liberalized depreciation.
Accumulated deferred taxes on income—other	1266.3	283	Accumulated deferred income taxes—other.
14. Surplus			
Capital surplus	1270	207	Other paid-in capital.
Earned surplus	1271	215	Appropriated earned surplus.
		216	Unappropriated earned surplus.
GAS PLANT ACCOUNTS			GAS PLANT ACCOUNTS
1. Intangible Plant			*1. Intangible Plant*
Organization	1301	301	Organization.
Franchises and consents	1302	302	Franchises and consents.
Miscellaneous intangible plant	1303	303	Miscellaneous intangible plant.
2. Production Plant			*2. Production Plant*
A. Manufactured Gas Production Plant			*A. Manufactured Gas Production Plant*
Land and land rights	1311	304	Land and land rights.
Structures and improvements	1312	305	Structures and improvements.
Boiler plant equipment	1313	306	Boiler plant equipment.
Other power equipment	1314	307	Other power equipment.
Benches and retorts	1315	313	Generating equipment—other processes.
Coke ovens	1316	308	Coke ovens.
Producer gas equipment	1317	309	Producer gas equipment.
Water gas generating equipment	1318	310	Water gas generating equipment.
Liquefied petroleum gas equipment	1319	311	Liquefied petroleum gas equipment.
Other gas generating equipment	1320	312	Oil gas generating equipment.
		313	Generating equipment—other processes.
Coal, coke, and ash handling equipment	1321	314	Coal, coke, and ash handling equipment.
Gas reforming equipment	1322	316	Other reforming equipment.
Purification equipment	1323	317	Purification equipment.
Residual refining	1324	318	Residual refining equipment.
Gas mixing equipment	1325	319	Gas mixing equipment.
Other production equipment	1326	320	Other equipment.
B.1 Natural Gas Production and Gathering Plant			*B.1 Natural Gas Production and Gathering Plant.*
Natural gas producing lands and leaseholds	1330.1	325.1	Producing lands.
		325.2	Producing leaseholds.
Natural gas rights	1330.3	325.3	Gas rights.
		325.4	Rights-of-way.
Other land and land rights	1330.5	325.5	Other land and land rights.
Production system structures	1331	326	Gas well structures.
		327	Field compressor station structures.
		328	Field measuring and regulating station structures.
		329	Other structures.
Producing gas wells	1332	330	Producing gas wells—well construction.
		331	Producing gas wells—well equipment.
Field lines	1333.1	332	Field lines.
Field compressor station equipment	1333.2	333	Field compressor station equipment.
Field measuring and regulating station equipment.	1333.3	334	Field measuring and regulating station equipment.
Drilling and cleaning equipment	1334	335	Drilling and cleaning equipment.
Purification equipment	1335	336	Purification equipment.
Other production and gathering equipment	1336	337	Other equipment.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.
11. Accumulated Deferred Income Taxes			*13. Accumulated Deferred Taxes on Income*
Accumulated deferred income taxes—accelerated amortization.	281	1266.1	Accumulated deferred taxes on income—accelerated amortization.
Accumulated deferred income taxes—liberalized depreciation.	282	1266.2	Accumulated deferred taxes on income—liberalized depreciation.
Accumulated deferred income taxes—other	283	1266.3	Accumulated deferred taxes on income—other.
GAS PLANT ACCOUNTS			GAS PLANT ACCOUNTS
1. Intangible Plant			*1. Intangible Plant*
Organization	301	1301	Organization.
Franchises and consents	302	1302	Franchises and consents.
Miscellaneous intangible plant	303	1303	Miscellaneous intangible plant.
2. Production Plant			*2. Production Plant*
A. Manufactured Gas Production Plant			*A. Manufactured Gas Production Plant*
Land and land rights	304	1311	Land and land rights.
Structures and improvements	305	1312	Structures and improvements.
Boiler plant equipment	306	1313	Boiler plant equipment.
Other power equipment	307	1314	Other power equipment.
Coke ovens	308	1316	Coke ovens.
Producer gas equipment	309	1317	Producer gas equipment.
Water gas generating equipment	310	1318	Water gas generating equipment.
Liquefied petroleum gas equipment	311	1319	Liquefied petroleum gas equipment.
Oil gas generating equipment	312	1320	Other gas generating equipment.
Generating equipment—other processes	313	1315	Benches and retorts.
		1320	Other gas generating equipment.
Coal, coke, and ash handling equipment	314	1321	Coal, coke, and ash handling equipment.
Catalytic cracking equipment	315	----	New account.
Other reforming equipment	316	1322	Gas reforming equipment.
Purification equipment	317	1323	Purification equipment.
Residual refining equipment	318	1324	Residual refining equipment.
Gas mixing equipment	319	1325	Gas mixing equipment.
Other equipment	320	1326	Other production equipment.
B.1 Natural Gas Production and Gathering Plant			*B.1 Natural Gas Production and Gathering Plant*
Producing lands	325.1	1330.1	Natural gas producing lands and leaseholds.
Producing leaseholds	325.2		
Gas rights	325.3	1330.3	Natural gas rights.
Rights-of-way	325.4		
Other land and land rights	325.5	1330.5	Other land and land rights.
Gas well structures	326	1331	Production system structures.
Field compressor station structures	327		
Field measuring and regulating station structures.	328		
Other structures	329		
Producing gas wells—well construction	330	1332	Producing gas wells.
Producing gas wells—well equipment	331		
Field lines	332	1331.1	Field lines.
Field compressor station equipment	333	1333.2	Field compressor station equipment.
Field measuring and regulating station equipment.	334	1333.3	Field measuring and regulating station equipment.
Drilling and cleaning equipment	335	1334	Drilling and cleaning equipment.
Purification equipment	336	1335	Purification equipment.
Other equipment	337	1336	Other production and gathering equipment.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
2. Production Plant—Continued			*2. Production Plant*—Continued
B.2 Products Extraction Plant			*B.2 Products Extraction Plant*
Land and land rights	1337.1	340	Land and land rights.
Structures and improvements	1337.2	341	Structures and improvements.
		342	Extraction and refining equipment.
		343	Pipe lines.
Products extraction and refining equipment	1337.3	344	Extracted products storage equipment.
		345	Compressor equipment.
		346	Gas measuring and regulating equipment.
		347	Other equipment.
3. Storage Plant			*3. Storage Plant*
A. Underground Storage Plant			*A. Underground Storage Plant*
		350.1	Land.
		350.2	Leaseholds.
Land and land rights	1341	350.3	Storage rights.
		350.4	Rights-of-way.
		350.5	Gas rights.
Structures and improvements	1342	351	Structures and improvements.
Storage gas wells	1343.1	352	Wells.
Underground storage lines	1343.3	353	Lines.
		354	Compressor station equipment.
Underground storage pumping and regulating equipment.	1343.4	355	Measuring and regulating equipment.
		356	Purification equipment.
Other underground storage equipment	1343.6	357	Other equipment.
B. Local Storage Plant			*B. Local Storage Plant*
Land and land rights	1345	360	Land and land rights.
Structures and improvements	1346	361	Structures and improvements.
Gas holders	1347	362	Gas holders.
Other local gas storage equipment	1349	363	Other equipment.
4. Transmission Plant			*4. Transmission Plant*
Land and land rights	1351	365.1	Land and land rights.
Structures and improvements	1352	366	Structures and improvements.
Mains	1353	367	Mains.
		368	Compressor station equipment.
Pumping and regulating equipment	1354	369	Measuring and regulating station equipment.
Other transmission system equipment	1355	371	Other equipment.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
2. Production Plant—Continued			*2. Production Plant*—Continued
B.2 Products Extraction Plant			*B.2 Products Extraction Plant*
Land and land rights	340	1337.1	Land and land rights.
Structures and improvements	341	1337.2	Structures and improvements.
Extraction and refining equipment	342		
Pipe lines	343		
Extracted products storage equipment	344	1337.3	Products extraction and refining equipment.
Compressor equipment	345		
Gas measuring and regulating equipment	346		
Other equipment	347		
3. Storage Plant			*3. Storage Plant*
A. Underground Storage Plant			*A. Underground Storage Plant*
Land	350.1		
Leaseholds	350.2		
Storage rights	350.3	1341	Land and land rights.
Rights-of-way	350.4		
Gas rights	350.5		
Structures and improvements	351	1342	Structures and improvements.
Wells	352	1343.1	Storage gas wells.
Lines	353	1343.3	Underground storage lines.
Compressor station equipment	354		
Measuring and regulating equipment	355	1343.4	Underground storage pumping and regulating equipment.
Purification equipment	356		
Other equipment	357	1343.6	Other underground storage equipment.
B. Local Storage Plant			*B. Local Storage Plant*
Land and land rights	360	1345	Land and land rights.
Structures and improvements	361	1346	Structures and improvements.
Gas holders	362	1347	Gas holders.
Other equipment	363	1349	Other local gas storage equipment.
4. Transmission Plant			*4. Transmission Plant*
Land and land rights	365.1	1351	Land and land rights.
Rights-of-way	365.2		New account.
Structures and improvements	366	1352	Structures and improvements.
Mains	367	1353	Mains.
Compressor station equipment	368	1354	Pumping and regulating equipment.
Measuring and regulating station equipment	369		
Communication equipment	370		New account.
Other equipment	371	1355	Other transmission system equipment.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
5. Distribution Plant			*5. Distribution Plant*
A. City Gate and Main Line Industrial Measuring and Regulating Station Plant			
Land and land rights	1356.1	374	Land and land rights.
Structures and improvements	1356.2	375	Structures and improvements.
Measuring and regulating station equipment	1356.3	379	Measuring and regulating station equipment—city gate check stations.
B. General Distribution System Plant			
Land and land rights	1357	374	Land and land rights.
Structures and improvements	1358	375	Structures and improvements.
Mains	1359	376	Mains.
		377	Compressor station equipment.
Pumping and regulating equipment	1360	378	Measuring and regulating station equipment—general.
Services	1361	380	Services.
		381	Meters.
		382	Meter installations.
Meters and regulators	1362	383	House regulators.
		384	House regulator installations.
		385	Industrial measuring and regulating station equipment.
Other property on customers' premises	1366	386	Other property on customers' premises.
Other distribution equipment	1368	387	Other equipment.
6. General Plant			*6. General Plant*
Land and land rights	1370	389	Land and land rights.
Structures and improvements	1371	390	Structures and improvements.
Office furniture and equipment	1372	391	Office furniture and equipment.
Transportation equipment	1373	392	Transportation equipment.
Stores equipment	1374	393	Stores equipment.
Shop equipment	1375	394	Tools, shop, and garage equipment.
Laboratory equipment	1376	395	Laboratory equipment.
Tools and work equipment	1377	394	Tools, shop, and garage equipment.
Communication equipment	1378	397	Communication equipment.
Miscellaneous equipment	1379	398	Miscellaneous equipment.
Other tangible property	1390	399	Other tangible property.
Gas plant purchased	1391	102	Gas plant purchased or sold.
Gas plant sold	1392		
EARNED SURPLUS ACCOUNTS			EARNED SURPLUS
Credits:			
Earned surplus (at beginning of period)	1271	216	Unappropriated earned surplus (at beginning of period).
Credit balance transferred from income account	1400	433	Balance transferred from income.
Miscellaneous credits to surplus	1401	434	Miscellaneous credits to surplus.
Debits:			
Debit balance transferred from income account	1410	433	Balance transferred from income.
Dividend appropriations—preferred stock	1411	437	Dividends declared—preferred stock.
Dividend appropriations—common stock	1412	438	Dividends declared—common stock.
Miscellaneous reservations of surplus	1413	436	Appropriations of surplus.
Miscellaneous debits to surplus	1414	435	Miscellaneous debits to surplus.
Earned surplus (at end of period)	1271	216	Unappropriated earned surplus (at end of period).

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
5. Distribution Plant			*5. Distribution Plant*
Land and land rights	374	1356.1	Land and land rights.
		1357	Land and land rights.
Structures and improvements	375	1356.2	Structures and improvements.
		1358	Structures and improvements.
Mains	376	1359	Mains.
Compressor station equipment	377	1360	Pumping and regulating equipment.
Measuring and regulating station equipment—general.	378		
Measuring and regulating station equipment—city gate check stations.	379	1356.3	Measuring and regulating station equipment.
Services	380	1361	Services.
Meters	381		
Meter installations	382	1362	Meters and regulators.
House regulators	383		
House regulator installations	384		
Industrial measuring and regulating station equipment.	385	1366	Other property on customers' premises.
Other property on customers' premises	386		
Other equipment	387	1368	Other distribution equipment.
6. General Plant			*6. General Plant*
Land and land rights	389	1370	Land and land rights.
Structures and improvements	390	1371	Structures and improvements.
Office furniture and equipment	391	1372	Office furniture and equipment.
Transportation equipment	392	1373	Transportation equipment.
Stores equipment	393	1374	Stores equipment.
Tools, shop and garage equipment	394	1375	Shop equipment.
		1377	Tools and work equipment.
Laboratory equipment	395	1376	Laboratory equipment.
Power operated equipment	396		New account.
Communication equipment	397	1378	Communication equipment.
Miscellaneous equipment	398	1379	Miscellaneous equipment.
Other tangible property	399	1390	Other tangible property.
(In the system of accounts effective Jan. 1, 1961, the earned surplus accounts are included with the income accounts. See below.)			

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
INCOME ACCOUNTS			INCOME ACCOUNTS
1. Utility Income			*1. Utility Operating Income*
Operating revennes	1501	400	Operating revenues.
Operating revenue deductions:			Operating expenses:
Operating expenses	1502	401	Operation expense.
		402	Maintenance expense.
Depreciation	1503.1	403	Depreciation and depletion expense.
Amortization and depletion of producing natural gas land and land rights.	1503.2		
Amortization of other limited-term gas investments.	1504	404	Amortization of limited-term gas plant.
Amortization of gas plant acquisition adjustments.	1505	406	Amortization of gas plant acquisition adjustments.
Property losses chargeable to operations	1506	407.1	Amortization of property losses.
Taxes	1507	408	Taxes other than income taxes.
		409	Income taxes.
Provisions for deferred Federal income taxes	1507A	410	Provision for deferred income taxes.
Taxes on income deferred in prior years—credit	1507B	411	Income taxes deferred in prior years—credit.
Income from gas plant leased to others:	1508	412, 413	Income from gas plant leased to others.
Revennes from gas plant leased to others	1508.1	412	Revenues from gas plant leased to others.
Expenses of gas plant leased to others	1508.2	413	Expenses of gas plant leased to others.
Other utility operating income	1509	414	Other utility operating income.
2. Other Income			*2. Other Income*
Income from merchandising, jobbing, and contract work.	1520	415, 416	Income from merchandising, jobbing and contract work.
Revenues from merchandising, jobbing, and contract work.	1520.1	415	Revenues from merchandising, jobbing, and contract work.
Costs and expenses of merchandising, jobbing, and contract work.	1520.2	416	Costs and expenses of merchandising, jobbing, and contract work.
Income from nonutility operations	1521	417	Income from nonutility operations.
Revenues from lease of other physical property	1522	418	Nonoperating rental income.
Dividend revenues	1523	419	Interest and dividend income.
Interest revenues	1524		
Revenues from sinking and other funds	1525		
Miscellaneous nonoperating revenue	1526	421	Miscellaneous nonoperating income.
Nonoperating revenue deductions	1527	----	Deleted.
3. Income Deductions			*3. Miscellaneous Income Deductions*
			4. Interest Charges
Interest on long-term debt	1530	427	Interest on long-term debt.
Amortization of debt discount and expense	1531	428	Amortization of debt discount and expense.
Amortization of premium on debt—credit	1532	429	Amortization of premium on debt—credit.
Taxes assumed on interest	1533	431	Other interest expense.
Interest on debt to associated companies	1534	430	Interest on debt to associated companies.
Other interest charges	1535	431	Other interest expense.
Interest charged to construction—credit	1536	432	Interest charged to construction—credit.
Miscellaneous amortization	1537	425	Miscellaneous amortization.
Miscellaneous income deductions	1538	426	Other income deductions.
4. Disposition of Net Income			
Miscellaneous reservations of net income	1540	----	Deleted.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
INCOME ACCOUNTS			INCOME ACCOUNTS
1. Utility Operating Income			*1. Utility Income*
Operating revenues	400	1501	Operating revenues.
Operating expenses:			Operating revenue deductions:
Operation expense	401	1502	Operating expenses.
Maintenance expense	402		
Depreciation and depletion expense	403	1503.1	Depreciation.
		1503.2	Amortization and depletion of producing natural gas land and land rights.
Amortization of limited-term gas plant	404	1504	Amortization of other limited-term gas investments.
Amortization of other gas plant	405		New account.
Amortization of gas plant acquisition adjustments.	406	1505	Amortization of gas plant acquisition adjustments.
Amortization of property losses	407.1	1506	Property losses chargeable to operations.
Amortization of conversion expenses	407.2		New account.
Taxes other than income taxes	408	1507	Taxes.
Income taxes	409		
Provision for deferred income taxes	410	1507A	Provisions for deferred Federal income taxes.
Income taxes deferred in prior years—credit	411	1507B	Taxes on income deferred in prior years—credit.
Income from gas plant leased to others:	412, 413	1508	Income from gas plant leased to others:
Revenues from gas plant leased to others	412	1508.1	Revenues from gas plant leased to others.
Expenses of gas plant leased to others	413	1508.2	Expenses of gas plant leased to others.
Other utility operating income	414	1509	Other utility operating income.
2. Other Income			*2. Other Income*
Income from merchandising, jobbing, and contract work.	415, 416	1520	Income from merchandising, jobbing, and contract work.
Revenues from merchandising, jobbing, and contract work.	415	1520.1	Revenues from merchandising, jobbing, and contract work.
Costs and expenses of merchandising, jobbing, and contract work.	416	1520.2	Costs and expenses of merchandising, jobbing and contract work.
Income from nonutility operations	417	1521	Income from nonutility operations.
Nonoperating rental income	418	1522	Revenues from lease of other physical property.
Interest and dividend income	419	1523	Dividend revenues.
		1524	Interest revenues.
		1525	Revenues from sinking and other funds.
Miscellaneous nonoperating income	421	1526	Miscellaneous nonoperating revenues.
3. Miscellaneous Income Deductions			*3. Income Deductions*
Miscellaneous amortization	425	1537	Miscellaneous amotization.
Other income deductions	426	1538	Miscellaneous income deductions.
4. Interest Charges			
Interest on long-term debt	427	1530	Interest on long-term debt.
Amortization of debt discount and expense	428	1531	Amortization of debt discount and expense.
Amortization of premium on debt—credit	429	1532	Amortization of premium on debt—credit.
Interest on debt to associated companies	430	1534	Interest on debt to associated companies.
Other interest expense	431	1533	Taxes assumed on interest.
		1535	Other interest charges.
Interest charged to construction—credit	432	1536	Interest charged to construction—credit.
5. Earned Surplus			*Earned Surplus Accounts*
Unappropriated earned surplus (at beginning of period).	216	1271	Earned surplus (at beginning of period).
Balance transferred from income	433	1400	Credit balance transferred from income accounts.
		1410	Debit balance transferred from income account.
Miscellaneous credits to surplus	434	1401	Miscellaneous credits to surplus.
Miscellaneous debits to surplus	435	1414	Miscellaneous debits to surplus.
Appropriations of surplus	436	1413	Miscellaneous reservations of surplus.
Dividends declared—preferred stock	437	1411	Dividend appropriations—preferred stock.
Dividends declared—common stock	438	1412	Dividend appropriations—common stock.
Unappropriated earned surplus (at end of period)	216	1271	Earned surplus (at end of period).

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS
1. Gas Service Revenues			*1. Sales of Gas*
Residential sales	1600	480	Residential sales.
Commerical sales	1602.1	481	Commerical and industrial sales.
Industrial sales	1602.2		
Public street and highway lighting	1603	----	Deleted.
Other sales to public authorities	1604	----	Deleted.
Sales to other gas utilities	1605	483	Sales for resale.
Interdepartmental sales	1607	484	Interdepartmental sales.
Other sales	1608	----	Deleted.
2. Other Gas Revenues			*2. Other Operating Revenues*
Rent from gas property	1610	493	Rent from gas property.
Interdepartmental rents	1611	494	Interdepartmental rents.
Customers' forfeited discounts and penalties	1612	487	Forfeited discounts.
Servicing of customers installations	1614	488	Miscellaneous service revenues.
Revenue from transportation of gas of others	1615	489	Revenues from transportation of gas of others.
Sales of products extracted from natural gas	1616	490	Sales of products extracted from natural gas.
Revenues from natural gas processed by others	1617	491	Revenues from natural gas processed by others.
Incidental gasoline sales	1618.1	492	Incidental gasoline and oil sales.
Incidental oil sales	1618.2		
Miscellaneous gas revenues	1619	495	Other gas revenues.
OPERATING EXPENSE ACCOUNTS			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS
1. Production Expenses			*1. Manufactured Gas Production*
A. Manufactured Gas Production			
Operation:			Operation:
Operation supervision and engineering	1701	700	Operation supervision and labor.
Operation labor	1702		
Boiler fuel	1708	701	Fuel.
Water	1709	703	Operation supplies and expenses.
Fuel under retorts	1710	701	Fuel.
Fuel under coke ovens	1711		
Producer gas fuel	1712		
Fuel for liquefied petroleum gas processes	1713		
Coal carbonized in retorts	1714.1	702	Raw materials.
Coal carbonized in coke ovens	1714.2		
Water gas generator fuel	1715		
Oil for water gas	1716		
Gas enricher	1717		
Liquefied petroleum gas	1718		
Oil for oil gas	1719		
Raw materials for other gas processes	1720		
Purification supplies	1721	703	Operation supplies and expenses.
Miscellaneous works expenses	1722	----	(Various, see accounts effective Jan. 1, 1961.)
Maintenance:			Maintenance:
Maintenance supervision and engineering	1723	706	Maintenance of production plant.
Maintenance of structures and improvements	1724		
Maintenance of production plant equipment	1725		
Miscellaneous:			
Power from other sources	1728	703	Operation supplies and expenses.
Rents	1729	705	Rents.
Residuals produced—credit	1730.1	705	Residuals produced—credits.
Residuals expenses	1730.2		
Joint expenses—debit	1731.1	----	Deleted.
Joint expenses—credit	1731.2	----	Deleted.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS
1. Sales of Gas			*1. Gas Service Revenues*
Residential sales	480	1600	Residential sales.
Commercial and industrial sales	481	1602.1	Commercial sales.
		1602.2	Industrial sales.
Sales for resale	483	1605	Sales to other gas utilities.
Interdepartmental sales	484	1607	Interdepartmental sales.
2. Other Operating Revenues			*2. Other Gas Revenues*
Forfeited discounts	487	1612	Customers' forfeited discounts and penalties.
Miscellaneous service revenues	488	1614	Servicing of customers' installations.
Revenues from transportation of gas of others	489	1615	Revenue from transportation of gas of others.
Sales of products extracted from natural gas	490	1616	Sales of products extracted from natural gas.
Revenues from natural gas processed by others	491	1617	Revenues from natural gas processed by others.
Incidental gasoline and oil sales	492	1618.1	Incidental gasoline sales.
		1618.2	Incidental oil sales.
Rent from gas property	493	1610	Rent from gas property.
Interdepartmental rents	494	1611	Interdepartmental rents.
Other gas revenues	495	1619	Miscellaneous gas revenues.
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS			OPERATING EXPENSE ACCOUNTS
1. Manufactured Gas Production			*A. Manufactured Gas Production*
Operation:			Operation:
Operation supervision and labor	700	1701	Operation supervision and engineering.
		1702	Operation labor.
Fuel	701	1708	Boiler fuel.
		1710	Fuel under retorts.
		1711	Fuel under coke ovens.
		1712	Producers gas fuel.
		1713	Fuel for liquefied petroleum gas processes.
Raw materials	702	1714.1	Coal carbonized in retort.
		1714.2	Coal carbonized in coke ovens.
		1715	Water gas generator fuel.
		1716	Oil for water gas.
		1717	Gas enricher.
		1718	Liquefied petroleum gas.
		1719	Oil for oil gas.
		1720	Raw materials for other gas processes.
Operation supplies and expenses	703	1709	Water.
		1721	Purification supplies.
		1728	Power from other sources.
Residuals produced—credit	704	1730.1	Residuals produced—credit.
		1730.2	Residuals expenses.
Rents	705	1729	Rents.
Maintenance:			Maintenance:
Maintenance of production plant	706	1723	Maintenance supervision and engineering.
		1724	Maintenance of structures and improvements.
		1725	Maintenance of production plant equipment.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.
B1. Natural Gas Production and Gathering			*1. Natural Gas Production and Gathering*
Operation:			Operation:
Operation supervision and engineering	1733.1	710	Operation supervision and labor.
Operation labor	1733.2		
Operating supplies and expenses	1733.3	711	Compressor station fuel and power.
Production maps and records	1733.4	713	Other supplies and expenses.
Maintenance:			Maintenance:
Maintenance supervision and engineering	1734.1	----	(Various, see following accounts.)
Maintenance of structures and improvements	1734.2	719	Maintenance of other plant.
Maintenance of wells, lines, and equipment	1734.4	716	Maintenance of gas wells.
		717	Maintenance of field lines.
		719	Maintenance of other plant.
Miscellaneous:			
Gas well royalties	1735.1	714	Gas well royalties.
Natural gas rents	1735.2	715	Rents.
Joint expenses—debit	1735.3	----	Deleted.
Joint expenses—credit	1735.4	----	Deleted.
B2. Products Extraction			
Operation:			
Operation supervision and engineering	1736.1	712	Extracted products supplies and expenses (see note in account explanation).
Operation labor	1736.2		
Gas shrinkage and fuel	1736.3		
Operating supplies and expenses	1736.6		
Maintenance:			
Maintenance supervision and engineering	1737.1	718	Maintenance of products extraction plant.
Maintenance of products extraction plant	1737.2		
Miscellaneous:			
Products purchased for sale	1738.1	712	Extracted products supplies and expenses (see note in account explanation).
Miscellaneous products extraction expenses	1738.2		
Joint expenses—debit	1738.7	----	Deleted.
Joint expenses—credit	1738.8	----	Deleted.
B3. Exploration and Development			*3. Exploration and Development*
Delay rentals	1739.1	720	Delay rentals.
Nonproductive well drilling	1739.2	721	Nonproductive well drilling.
Abandoned leases	1739.3	722	Abandoned leases.
Other exploration costs	1739.4	723	Other exploration.
C. Other Gas Supply Expenses			*4. Other Gas Supply Expenses*
Operation:			Operation:
Purchased gas	1745	730	Natural gas purchases.
		731	Other gas purchases.
Purchased gas expenses	1746	732	Purchased gas expenses.
Gas withdrawn from underground storage—debit.	1747.1	733	Gas withdrawn from underground storage—debit.
Gas delivered to underground storage—credit	1747.2	734	Gas delivered to underground storage—credit.
Gas used in utility operations—credit	1748	735	Gas used in utility operations—credit.
Other gas supply expenses	1749	736	Other gas supply expenses.
Joint expenses—debit	1750	----	Deleted.
Joint expenses—credit	1751	----	Deleted.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
1. Natural Gas Production and Gathering			*B1. Natural Gas Production and Gathering*
Operation:			Operation:
Operation supervision and labor	710	1733.1	Operation supervision and engineering.
		1733.2	Operating labor.
Compressor station fuel and power	711	1733.4	Production maps and records.
		1733.3	Operating supplies and expenses.
Extracted products supplies and expenses (see note in account explanation).	712	1736.1	Operation supervision and engineering.
		1736.2	Operation labor.
		1736.3	Gas shrinkage and fuel.
		1736.6	Operating supplies and expenses.
		1738.1	Products purchased for resale.
		1738.2	Miscellaneous products extraction expenses.
Other supplies and expenses	713	1733.1	Operation supervision and engineering.
		1733.3	Operating supplies and expenses.
		1733.4	Production maps and records.
		1734.1	Maintenance supervision and engineering.
Gas well royalties	714	1735.1	Gas well royalties.
Rents	715	1735.2	Natural gas rents.
Maintenance:			Maintenance;
Maintenance of gas wells	716	1734.4	Maintenance of wells, lines, and equipment.
Maintenance of field lines	717		
Maintenance of products extraction plant	718	1737.1	Maintenance supervision and engineering.
		1737.2	Maintenance of products extraction plant.
Maintenance of other plant	719	1734.2	Maintenance of structures and improvements.
		1734.4	Maintenance of wells, lines and equipment.
3. Exploration and Development			*B3. Exploration and Development*
Delay rentals	720	1739.1	Delay rentals.
Nonproductive well drilling	721	1739.2	Nonproductive well drilling.
Abandoned leases	722	1739.3	Abandoned leases.
Other exploration	723	1739.4	Other exploration costs.
4. Other Gas Supply Expenses			*C. Other Gas Supply Expenses*
Operation:			Operation:
Natural gas purchases	730	1745	Purchased gas.
Other gas purchases	731		
Purchased gas expenses	732	1746	Purchased gas expenses.
Gas withdrawn from underground storage—debit.	733	1747.1	Gas withdrawn from underground storage—debit.
Gas delivered to underground storage—credit	734	1747.2	Gas delivered to underground storage—credit.
Gas used in utility operations—credit	735	1748	Gas used in utility operations—credit.
Other gas supply expenses	736	1749	Other gas supply expenses.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.
2. Storage Expenses			*5. Storage Expenses*
A. Underground Storage			
Operation:			
Operation supervision and engineering	1755.1	740	Operation supervision and labor.
Operation labor	1755.2		
Operation supplies and expenses	1755.3	742	Operation supplies and expenses.
Nonoperative storage well drilling	1755.4		
Storage maps and records	1755.5	740	Operation supervision and labor.
Maintenance:			
Maintenance supervision and engineering	1756.1	745	Maintenance of wells.
Maintenance of structures and improvements	1756.2	746	Maintenance of other underground storage plant.
Maintenance of storage wells, lines, and equipment.	1756.3		
Miscellaneous:			
Underground gas storage rents	1757.1	743	Storage well royalties.
Joint expenses—debit	1757.2	----	Deleted.
Joint expenses—credit	1757.3	----	Deleted.
B. Local Storage			
Operation:			
Operation supervision and engineering	1758.1	740	Operation supervision and labor.
Operation labor	1758.2		
Operation supplies and expenses	1758.3	742	Operation supplies and expenses.
Maintenance:			
Maintenance supervision and engineering	1758.4	747	Maintenance of local storage plant.
Maintenance of structures and improvements	1758.5		
Maintenance of local storage equipment	1758.6		
Miscellaneous:			
Local storage rents	1758.9	744	Rents.
Joint expenses—debit	1758.10	----	Deleted.
Joint expenses—credit	1758.11	----	Deleted.
3. Transmission Expenses			*6. Transmission Expenses*
Operation:			Operation:
Operation supervision and engineering	1759.1	750	Operation supervision and labor.
System operation	1759.2	751	Compressor station fuel and power.
		752	Operation supplies and expenses.
Maintenance:			Maintenance:
		755	Maintenance of mains.
System maintenance	1760	756	Maintenance of compressor station equipment.
		757	Maintenance of other plant.
Miscellaneous:			
Rents	1761.1	754	Rents.
Transmission and compression of gas by others	1761.2	753	Transmission and compression of gas by others.
Joint expenses—debit	1761.3	----	Deleted.
Joint expenses—credit	1761.4	----	Deleted.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
5. Storage Expenses			*2. Storage Expenses*
Operation:			Operation:
Operation supervision and labor	740	1755.1	Operation supervision and engineering.
		1755.2	Operation labor.
		1755.5	Storage maps and records.
		1758.1	Operation supervision and engineering.
		1758.2	Operation labor.
Gas losses	741	----	New account.
		1755.3	Operation supplies and expenses.
Operation supplies and expenses	742	1755.4	Nonoperative storage well drilling.
		1758.3	Operation supplies and expenses.
Storage well royalties	743	1757.1	Underground gas storage rents.
Rents	744	1758.9	Local storage rents.
Maintenance:			Maintenance:
Maintenance of wells	745	1756.1	Maintenance supervision and engineering.
Maintenance of other underground storage plant.	746	1756.2	Maintenance of structures and improvements.
		1756.3	Maintenance of storage wells, lines and equipment.
		1758.4	Maintenance supervision and engineering.
Maintenance of local storage plant	747	1758.5	Maintenance of structures and improvements.
		1758.6	Maintenance of local storage equipment.
6. Transmission Expenses			*3. Transmission Expenses*
Operation:			Operation:
Operation supervision and labor	750	1759.1	Operation supervision and engineering.
Compressor station fuel and power	751	1759.2	System operation.
Operation supplies and expenses	752		
Transmission and compression of gas by others	753	1761.2	Transmission and compression of gas by others.
Rents	754	1761.1	Rents.
Maintenance:			Maintenance:
Maintenance of mains	755	1760	System maintenance.
Maintenance of compressor station equipment	756		
Maintenance of other plant	757		

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.
4. Distribution Expenses			*7. Distribution Expenses*
A. City Gas and Main Line Industrial Measuring and Regulating Station Expenses			
Operation:			
Operation of city gate and main line industrial measuring and regulating stations	1764.1	760 761 762	Supervision. Mains and services labor. Mains and services supplies and expenses.
Maintenance:			
Maintenance of city gate and main line industrial measuring and regulating stations	1764.4	767 768 769	Maintenance of lines. Maintenance of meters and house regulators. Maintenance of other plant.
Miscellaneous:			
Rents	1764.7	766	Rents.
Joint expenses—debit	1764.8	----	Deleted.
Joint expenses—credit	1764.9	----	Deleted.
B. General Distribution Expenses			
Operation:			
Operation supervision and office expenses	1765	760	Supervision.
Operation of distribution lines	1767	761 762	Mains and services labor. Mains and services supplies and expenses.
Operation of meters	1768	763	Meter and house regulator expenses.
Operation of industrial measuring and regulating stations	1769.1	764	Customer installations expenses.
Services on customers' premises	1769.2		
Operation of other distribution equipment	1770	765	Miscellaneous distribution expenses.
Maintenance:			
Maintenance supervision and engineering	1771	767 768 769	Maintenance of lines. Maintenance of meters and house regulators. Maintenance of other plant.
Maintenance of structures and improvements	1772	769	Maintenance of other plant.
Maintenance of distribution lines	1773	767	Maintenance of lines.
Maintenance of other distribution equipment	1774	768 769	Maintenance of meters and house regulators. Maintenance of other plant.
Miscellaneous:			
Rents	1776	766	Rents.
Joint expenses—debit	1777.1	----	Deleted.
Joint expenses—credit	1777.2	----	Deleted.
5. Customers' Accounting and Collecting Expenses			*8. Customer Accounts Expenses*
Operation:			Operation:
Meter reading, accounting, and collecting	1779	901 902 903	Meter reading labor. Accounting and collecting labor. Supplies and expenses.
Uncollectible accounts	1783	904	Uncollectible accounts.
Rents	1784	----	Deleted.
6. Sales Promotion Expenses			*9. Sales Expenses*
Sales promotion expenses	1785	910	Sales expenses.
Rents	1788	----	Deleted.
Merchandising, jobbing, and contract work	1789	914 915	Revenues from merchandising, jobbing, and contract work. Costs and expenses of merchandising, jobbing, and contract work.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
7. Distribution Expenses			*4. Distribution Expenses*
Operation:			Operation:
Supervision	760	1764.1 1765	Operation of city gate and main line industrial measuring and regulating stations. Operation supervision and office expenses.
Mains and services labor	761	1764.1	Operation of city gate and main line industrial measuring and regulating stations.
Mains and services supplies and expenses	762	1767	Operation of distribution lines.
Meter and house regulator expenses	763	1768	Operation of meters.
Customer installations expenses	764	1769.1 1769.2	Operation of industrial measuring and regulating stations. Services on customers' premises.
Miscellaneous distribution expenses	765	1770	Operation of other distribution equipment.
Rents	766	1764.7 1776	Rents. Rents.
Maintenance:			Maintenance:
Maintenance of lines	767	1764.4	Maintenance of city gate and main line industrial measuring and regulating stations.
Maintenance of meters and house regulators	768	1771	Maintenance supervision and engineering.
Maintenance of other plant	769	1772	Maintenance of structures and improvements.
		1773	Maintenance of distribution lines.
		1774	Maintenance of other distribution equipment.
8. Customer Accounts Expenses			*5. Customers' Accounting and Collecting Expenses*
Operation:			Operation:
Meter reading labor	901		
Accounting and collecting labor	902	1779	Meter reading, accounting and collecting.
Supplies and expenses	903		
Uncollectible accounts	904	1783	Uncollectible accounts.
9. Sales Expenses			*6. Sales Promotion Expenses*
Operation:			Operation:
Sales expenses	910	1785	Sales promotion expenses.
Revenues from merchandising, jobbing, and contract work.	914	1789	Merchandising, jobbing, and contract work.
Costs and expenses of merchandising, jobbing, and contract work.	915		

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.
7. Administrative and General Expenses			*10. Administrative and General Expenses*
General office salaries	1790	920	Administrative and general salaries.
General office supplies and expenses	1793	921	Office supplies and other expenses.
Management and supervision fees and expenses	1794	923	Outside services employed.
Special legal services	1796		
Regulatory commission expenses	1797	928	Regulatory commission expenses.
Insurance	1798	924	Property insurance.
Injuries and damages	1799	925	Injuries and damages.
Other general expenses	1800	926 930	Employee pension and benefit. Miscellaneous general expenses.
Maintenance of general property	1802	935	Maintenance of general plant.
Rents	1803	931	Rents.
Franchise requirements	1805	927	Franchise requirements.
Duplicate miscellaneous charges—credit	1806	929	Duplicate charges—credit.
Administrative and general expenses transferred—credit.	1807	922	Administrative expenses transferred—credit.
Joint expenses—debit	1808	----	Deleted.
Joint expenses—credit	1809	----	Deleted.
Clearing Accounts			
Charges by associated companies—clearing	1901	----	Deleted. See account 183.
Stores expenses—clearing	1902	----	Deleted. See account 183.
Transportation expenses—clearing	1903	933	Transportation expenses. (May be used as a clearing account.)

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
10. Administrative and General Expenses			*7. Administrative and General Expenses*
Administrative and general salaries	920	1790	General office salaries.
Office supplies and other expenses	921	1793	General office supplies and expenses.
Administrative expenses transferred—credit	922	1807	Administrative and general expenses transferred—credit.
Outside services employed	923	1794 1796	Management and supervision fees and expenses. Special legal services.
Property insurance	924	1798	Insurance.
Injuries and damages	925	1799	Injuries and damages.
Employee pensions and benefits	926	1800	Other general expenses.
Franchise requirements	927	1805	Franchise requirements.
Regulatory commission expenses	928	1797	Regulatory commission expenses.
Duplicate charges—credit	929	1806	Duplicate miscellaneous charges—credit.
Miscellaneous general expenses	930	1800	Other general expenses.
Rents	931	1803	Rents.
Transportation expenses (may be used as a clearing account).	933	1903	Transportation expenses—clearing.
Maintenance of general plant	935	1802	Maintenance of general property.

APPENDIX B—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS C)

Definitions

When used in this system of accounts:

1. "Accounts" means the accounts prescribed in this system of accounts.

2. "Actually issued," as applied to securities issued or assumed by the utility, means those which have been sold to bona fide purchasers for a valuable consideration, those issued as dividends on stock and those which have been issued in accordance with contractual requirements direct to trustees of sinking funds.

3. "Actually outstanding," as applied to securities issued or assumed by the utility, means those which have been actually issued and are neither retired nor held by or for the utility; provided, however, that securities held by trustees shall be considered as actually outstanding.

4. "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

5. A. "Associated companies" means companies or persons that, directly or indirectly, through one or more intermediaries, control, or are controlled by, or are under common control with, the accounting company.

B. "Control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or voting of securities, common directors, officers, or stockholders, voting trusts, holding trust, associated companies, contract or any other direct or indirect means.

6. "Book cost" means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, depletion, amortization, or for other purposes.

7. "Commission" means the Federal Power Commission.

8. "Cost" means the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common stock in a merger or a pooling of interest, the value of such consideration shall be determined on a cash basis.

9. "Cost of removal" means the cost of demolishing, dismantling, tearing down or otherwise removing gas plant, including the cost of transportation and handling incidental thereto.

10. "Debt expense" means all expenses in connection with the issuance and initial sale of evidences of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; cost of engraving and printing bonds and certificates of indebtedness; fees paid trustees; specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

11a. "Depletion," as applied to natural gas producing land and land rights, means the loss in service value incurred in connection with the exhaustion of the natural resource in the course of service.

11b. "Depreciation," as applied to depreciable gas plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of gas plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities, and, in the case of natural gas companies, the exhaustion of natural resources.

12. "Discount" as applied to the securities issued or assumed by the utility, means the excess of the par (stated value of no-par stocks) or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

13. "Investment advances" means advances, represented by notes or by book accounts only, with respect to which it is mutually agreed or intended between the creditor and debtor that they shall be settled by the issuance of securities or shall not be subject to current settlement.

14. "Minor items of property" means the associated parts or items of which retirement units are composed.

15. "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

16. "Natural gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

17. "Net salvage value" means the salvage value of property retired less the cost of removal.

18. "Nominally issued," as applied to securities issued or assumed by the utility, means those which have been signed, certified, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special fund of the utility, but which have not been sold, or issued direct to trustees of sinking funds in accordance with contractual requirements.

19. "Nominally outstanding," as applied to securities issued or assumed by the utility, means those which, after being actually issued, have been reacquired by or for the utility under circumstances which require them to be considered as held alive and not retired: *Provided, however,* That securities held by trustees shall be considered as actually outstanding.

20. "Original cost," as applied to gas plant, means the cost of such property to the person first devoting it to public service.

21. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or any organized group of persons, whether incorporated or not, or any receiver or trustee.

22. "Premium," as applied to securities issued or assumed by the utility, means the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no-par stocks) or face value and interest or dividends accrued at the date of sale.

23. "Property retired," as applied to gas plant, means property which has been removed, sold, abandoned, destroyed, or which for any cause has been withdrawn from service.

24. "Replacing" or "replacement," when not otherwise indicated in the context, means the construction or installation of gas plant in place of property retired, together with the removal of the property retired.

25. "Retirement units" means those items of gas plant which, when retired, with or without replacement, are accounted for by crediting the book cost thereof to the gas plant account in which included.

26. "Salvage value" means the amount received for property retired, less any expenses incurred in connection with the sale or in preparing the property for sale; or, if retained, the amount at which the material recoverable is chargeable to materials and supplies, or other appropriate account.

27. "Service life" means the time between the date gas plant is includible in gas plant in service, or gas plant leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, then service life should be measured in terms of the appropriate unit of production.

28. "Service value" means the difference between original cost and net salvage value of gas plant.

29. "Utility," as used herein and when not otherwise indicated in the context, means any natural gas company to which this system of accounts is applicable.

General Instructions

1. *Classification of Utilities.*

A. For the purpose of applying systems of accounts prescribed by the Commission, natural gas companies are divided into four classes, as follows:

Class A. Natural gas companies having annual gas operating revenues of $2,500,000 or more.

Class B. Natural gas companies having annual gas operating revenues of $1,000,000 or more but less than $2,500,000.

Class C. Natural gas companies having annual gas operating revenues of $150,000 or more but less than $1,000,000.

Class D. Natural gas companies having annual gas operating revenues of $25,000 or more but less than $150,000.

B. This system of accounts applies to Class C utilities. Those applicable to Classes A and B and to Class D utilities are issued separately.

C. The class to which any utility belongs shall originally be determined by the average of its annual gas operating revenues for the last three consecutive years. Subsequent changes in classification shall be made when the annual gas operating revenues for each of the three immediately preceding years shall exceed the upper limit, or be less than the lower limit, of the annual gas operating revenues of the classification previously applicable to the utility.

D. Any utility may, at its option, adopt the system of accounts prescribed by the Commission for any larger class of utilities.

2. *Records.*

A. Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

B. The books and records referred to herein include not only accounting records in a limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction.

C. No utility shall destroy any such books or records unless the destruction thereof is permitted by rules and regulations of the Commission.

D. In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subdivisions of any account, may be kept, provided the integrity of the prescribed accounts is not impaired.

E. All amounts included in the accounts prescribed herein for gas plant and operating expenses shall be just and reasonable and any payments or accruals for by the utility in excess of just and reasonable charges shall be included in account 426, Other Income Deductions.

F. The arrangement or sequence of the accounts prescribed herein shall not be controlling as to the arrangement or sequence in report forms which may be prescribed by the Commission.

3. *Numbering System.*

A. The account numbering plan used herein consists of a system of three-digit whole numbers as follows:

100–199	Assets and other debits.
200–299	Liabilities and other credits.
300–399	Plant accounts.
400–439	Income accounts.
480–499	Revenue accounts.
700–799	Production, transmission and distribution expenses.
900–949	Customer accounts, sales and general administrative expenses.

B. In certain instances, numbers have been skipped in order to allow for possible later expansion or to permit better coordination with the numbering system for other utility departments.

C. The numbers prefixed to account titles are to be considered as part of the titles. Each utility, however, may adopt for its own purposes a different system of account numbers (See also general instruction 2D) provided that the numbers herein prescribed shall appear in the descriptive headings of the ledger accounts and in the various sources of original entry; however, if a utility uses a different group of account numbers and it is not practicable to show the prescribed account numbers in the various sources of original entry, such reference to the prescribed account numbers may be omitted from the various sources of original entry. Moreover, each utility using different account numbers for its own purposes shall keep readily available a list of such account numbers which it uses and a reconciliation of such account numbers with the account numbers provided herein. It is intended that the utility's records shall be so kept as to permit ready analysis by prescribed accounts (by direct reference to sources of original entry to the extent practicable) and to permit preparation of financial and operating statements directly from such records at the end of each accounting period according to the prescribed accounts.

4. *Accounting Period.*

Each utility in Class C shall keep its books on a monthly basis so that for each accounting period all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility. Each utility shall close its books at the end of each calendar year unless otherwise authorized by the Commission.

5. *Submittal of Questions.*

To maintain uniformity of accounting, utilities shall submit questions of doubtful interpretation to the Commission for consideration and decision.

6. *Item Lists.*

Lists of "items" appearing in the texts of the accounts or elsewhere herein are for the purpose of more clearly indicating the application of the prescribed accounting. The lists are intended to be representative, but not exhaustive. The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts.

7. *Accounting To Be on Accrual Basis.*

A. The utility is required to keep its accounts on the accrual basis. This requires the inclusion in its accounts of all known transactions of appreciable amount which affect the accounts. If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

B. When payments are made in advance for items such as insurance, rents, taxes, or interest, the amount applicable to future periods shall be charged to account 165, Prepayments, and spread over the periods to which applicable by credits to account 165, and charges to the accounts appropriate for the expenditure.

8. *Distribution of Pay and Expenses of Employees.*

The charges to gas plant, operating expense and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

9. *Payroll Distribution.*

Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, gas operating functions (production, storage, transmission, distribution, etc.) and nonutility operations.

10. *Operating Reserves.*

Accretions to operating reserve accounts made by charges to operating expenses shall not exceed a reasonable provision for the expense. Material balances in such reserve accounts shall not be diverted from the purpose for which provided unless the permission of the Commission is first obtained.

11. *Accounting for Other Departments.*

If the utility also operates other utility departments, such as electric, water, etc., it shall keep such accounts for the other departments as may be prescribed by proper authority and in the absence of prescribed accounts, it shall keep such accounts as are proper or necesary to reflect the results of operating each such department. It is not intended that proprietary and similar accounts which apply to the utility as a whole shall be departmentalized.

12. *Gas Well Records.*

Each utility with natural gas operations shall maintain operating or accounting records for each well showing (a) acreage on which drilled, (b) dates of drilling period, (c) cost of drilling, (d) depth of well, (e) particulars and depth of each stratum drilled through, (f) geological formation from which gas is obtained, (g) initial rock pressure and open flow capacity, (h) sizes of casing used and lengths of each size, (i) total cost of well as recorded in gas plant accounts, (j) date well abandoned, for wells once productive, (k) date transferred to underground storage plant, for wells converted to storage use, and (l) date drilling discontinued, for wells determined to be nonproductive. The foregoing data, as appropriate, shall also be maintained for each subsequent change in the depth of each well.

Gas Plant Instructions

1. *Gas Plant To Be Recorded at Cost.*

A. All amounts included in the accounts for gas plant acquired as an operating unit or system, except as otherwise provided in the texts of the intangible plant accounts, shall be stated at the cost incurred by the person who first devoted the property to utility service. All other gas plant shall be included in the accounts at the cost incurred by the utility. Where the term "cost" is used in the detailed plant accounts, it shall have the meaning stated in this paragraph.

B. When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis. (See, however, definition 8.) In the entry recording such transaction, the actual consideration shall be described with sufficient particularity to identify it. The utility shall be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration if other than cash.

C. When property is purchased under a plan involving deferred payments, no charge shall be made to the gas plant accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

D. Gas plant contributed to the utility or constructed by it from contributions to it of cash or its equivalent shall be charged to the gas plant accounts at cost of construction, estimated if not known. There shall be credited to the accounts for accumulated depreciation, depletion and amortization the estimated amount of depreciation and amortization applicable to the property at the time of its contribution to the utility. The difference between the amounts included in the gas plant accounts and the accumulated depreciation, depletion and amortization shall be credited to account 271, Contributions in Aid of Construction.

2. *Components of Construction Cost.*

The cost of construction of property chargeable to the gas plant accounts shall include, where applicable, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and permits, special machine service, interest during construction and such portion of general engineering, administrative salaries and expenses, insurance, taxes and other analogous items as may be properly includible in construction costs.

3. *Overhead Construction Costs.*

A. All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit, both direct and overhead, shall be deducted from the plant accounts at the time the property is retired.

B. As far as practicable, the determination of payroll charges includible in construction overheads shall be based on timecard distributions thereof. Where this procedure is impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities to the end that only such overhead costs as have a definite relation to construction shall be capitalized. The addition to direct construction costs of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.

4. *Gas Plant Purchased or Sold.*

A. When gas plant constituting an operating unit or system is acquired by purchase, merger, consolidation, liquidation, or otherwise, after the effective date of this system of accounts, the costs of acquisition, including expenses incidental thereto properly includible in utility plant, shall be charged to account 102, Gas Plant Purchased or Sold.

B. The accounting for the acquisition shall then be completed as follows:

(1) The original cost of plant, estimated if not known, shall be credited to account 102, Gas Plant Purchased or Sold, and concurrently charged to the appropriate utility plant in service accounts and to account 104, Gas Plant Leased to Others, account 105, Gas Plant Held for Future Use, and account 107, Construction Work in Progress—Gas, as appropriate.

(2) The depreciation, depletion and amortization applicable to the original cost of the properties purchased, shall be charged to account 102, Gas Plant Purchased or Sold, and concurrently credited to the account for accumulated provision for depreciation, depletion and amortization.

(3) The cost to the utility of any property includible in account 121, Nonutility Property, shall be transferred thereto.

(4) The amount of contributions in aid of construction applicable to the property acquired shall be charged to account 102, Gas Plant Purchased or Sold, and concurrently credited to account 271, Contributions in Aid of Construction, unless otherwise authorized by the Commission.

(5) The amount remaining in account 102, Gas Plant Purchased or Sold, shall then be closed to account 114, Gas Plant Acquisition Adjustments.

C. If property acquired in the purchase of an operating unit or system is in such physical condition when acquired that it is necessary substantially to rehabilitate it in order to bring the property up to the standards of the utility, the cost of such work, except replacements, shall be accounted for as a part of the purchase price of the property.

D. When any property acquired as an operating unit or system includes duplicate or other plant which will be retired by the accounting utility in the reconstruction of the acquired property or its consolidation with previously owned property, the proposed accounting for such property shall be presented to the Commission.

E. In connection with the acquisition of gas plant constituting an operating unit or system, the utility shall procure, if possible, all existing records relating to the property acquired, or certified copies thereof, and shall preserve such records in conformity with regulations or practices governing the preservation of records of its own construction.

F. When gas plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate gas plant accounts, including amounts carried in account 114, Gas Plant Acquisition Adjustments, and the amounts (estimated if not known) carried with respect thereto in the accounts for accumulated provision for depreciation, depletion, and amortization and in account 252, Customer Advances for Construction, and account 271, Contributions in Aid of Construction, shall be charged to such accounts and the contra entries made to account 102, Gas Plant Purchased or Sold. Unless otherwise ordered by the Commission, the difference, if any, between (a) the net amount of debits and credits and (b) the consideration received for the property (less commissions and other expenses of making the sale) shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus. (See account 102, Gas Plant Purchased or Sold.)

NOTE: In cases where existing utilities merge or consolidate because of financial or operating reasons or statutory requirements rather than as a means of transferring title of purchased properties to a new owner, the accounts of the constituent utilities, with the approval of the Commission, may be combined. In the event original cost has not been determined, the resulting utility shall proceed to determine such cost as outlined herein.

5. *Expenditures on Leased Property.*

A. The cost of substantial initial improvements (including repairs, rearrangements, additions and betterments) made in the course of preparing for utility service property leased for a period of more than one year, and the cost of subsequent substantial additions, replacements, or betterments to such property, shall be charged to the gas plant account appropriate for the class of property leased. If the service life of the improvements is terminable by action of the lease, the cost, less net salvage, of the improvements shall be spread over the life of the lease by charges to account 404, Amortization of Limited-Term Gas Plant. However, if the service life is not terminated by action of the lease but by depreciation proper, the cost of the improvements, less net salvage, shall be accounted for as depreciable plant.

B. If improvements made to property leased for a period of more than one year are of relatively minor cost, or if the lease is for a period of not more than one year, the cost of the improvements shall be charged to the account in which the rent is included, either directly or by amortization thereof.

6. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, rights of way, natural gas rights, and other like interests in land.

B. Where special assessments for public improvements provide for deferred payments, the full amount of the assessments shall be charged to the appropriate land account and the unpaid balance shall be carried in an appropriate liability account. Interest on unpaid balances shall be charged to the appropriate interest account. If any part of the cost of public improvements is included in the general tax levy, the amount thereof shall be charged to the appropriate tax account.

C. The net profit from the sale of timber, cord wood, or other property acquired with rights of way or other lands shall be credited to the appropriate land and land rights or clearing land account. Where land is held for a considerable period of time and timber on the land at the time of purchase increases in value, the net profit (after giving effect to the cost of the timber) from the sales of timber or its products shall be credited to account 421, Miscellaneous Nonoperating Income.

D. Separate entries shall be made for the acquisition, transfer or retirement of each parcel of land, and each land right (except rights of way for distribution lines), or water right, having a life of more than one year. A record shall be maintained showing the nature of ownership, full legal description, area, map reference, purpose for which used, city, county, and tax district in which situated, from whom purchased or to whom sold, payment given or received, other costs, contract date and number, date of recording of deed, and book and page of record. Entries transferring or retiring land or land rights shall refer to the original entry recording its acquisition.

E. Any difference between the amount received from the sale of land or land rights, less agents' commissions and other costs incident to the sale, and the book cost of such land or rights, shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate, unless a reserve therefor has been authorized and provided. Appropriate adjustments of the accounts shall be made with respect to any structures or improvements located on land sold.

F. The cost of buildings and other improvements (other than public improvements) shall not be included in the land accounts. If at the time of acquisition of an interest in land such interest extends to buildings or other improvements (other than public improvements), which are then devoted to utility operations, the land and improvements shall be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking shall be charged and the salvage credited to the account in which the cost of the land is recorded.

G. When the purchase of land for gas operations requires the purchase of more land than needed for such purposes, the charge to the specific land account shall be based upon the cost of the land purchased, less the fair market value of that portion of the land which is not to be used in utility operations. The portion of the cost measured by the fair market value of the land not to be used shall be included in account 105, Gas Plant Held for Future Use, or account 121, Nonutility Property, as appropriate. Regarding land and land rights held for the production of natural gas, account 101, Gas Plant in Service shall include (1) the cost of lands owned in fee upon which producing natural gas wells are located or land owned in fee which are being drained through the operation by the utility of wells on the other land, and (2) the first cost of lands held under lease upon which the utility pays royalties for the natural gas obtained therefrom. The cost of all other land and land rights held for the production of natural gas under a definite plan for such use shall be included in account 105, Gas Plant Held for Future Use.

NOTE: In addition to the accounting records prescribed herein, supplemental records of land and land rights held for future use shall be kept in such manner as to permit the segregation within a reasonable time of the land and land rights constituting (1) productive but nonproducing fields, (2) unproven or undeveloped fields, and (3) storage fields, and to show the following data with respect to each natural gas lease, regardless of the accounting treatment accorded the lease costs: (a) name of lessor, (b) location of leasehold and number of other identification assigned thereto, (c) date and period of lease agreement, (d) first cost of lease including details of the elements of such cost, (e) annual rental provisions, (f) date and cost of drilling, (g) date gas determined to exist, (h) date of completion of first well drilled by the utility in each pool of gas, (i) royalty provisions, (j) amortization and depletion provisions, and (k) date of abandonment of lease.

H. Provision shall be made for amortizing amounts carried in the accounts for limited-term interests in land, so as to apportion equitably the cost of each interest over the life thereof. For the purposes of amortization of natural gas rights, separate intersts in land which comprise an interest in a production area may be grouped to form a depletion unit. (See account 403, Depreciation and Depletion Expense, and account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Plant, for the accounting for depletion of producing natural gas lands and land rights. See also account 722, Abandoned Leases, for the accounting for abandonments of natural gas leases which have never been productive.)

I. The items of cost to be included in the accounts for land and land rights are as follows:

1. Bulkheads, buried, not requiring maintenance or replacement.
2. Cost, first, of acquisition including mortgages and other liens assumed (but not subsequent interest thereon).
3. Clearing (first cost) the land of brush, trees, and debris.
4. Condemnation proceedings, including court and counsel costs.
5. Consents and abutting damages, payment for.
6. Conveyancers' and notaries' fees.
7. Fees, commissions, and salaries to brokers, agents and others in connection with the acquisition of the land or land rights.
8. Grading the land, except when directly occasioned by the building of a structure.
9. Leases, cost of voiding upon purchase to secure possession of land.
10. Removing, relocating, or reconstructing property of others such as buildings, highways, railroads, bridges, cemeteries, churches, telephone and power lines, etc., in order to acquire quiet possession.
11. Retaining walls unless identified with structures.
12. Special assessments levied by public authorities for public improvements on the basis of benefits for new roads, new bridges, new sewers, new curbing, new pavements, and other public improvements, but not taxes levied to provide for the maintenance of such improvements.
13. Surveys in connection with the acquisition, but not amounts paid for topographical surveys and maps where such costs are attributable to structures or plant equipment erected or to be erected or installed on such land.
14. Taxes assumed, accrued to date of transfer of title.
15. Title, examining, clearing, insuring and registering in connection with the acquisition and defending against claims relating to the period prior to the acquisition.
16. Appraisals prior to closing title.
17. Cost of dealing with distributees or legatees residing outside of the State or county, such as recording power of attorney, recording will or exemplification of will, recording satisfaction of State tax.
18. Filing satisfaction of mortgage.
19. Documentary stamps.
20. Photographs of property at acquisition.
21. Fees and expenses incurred in the acquisition of water rights and grants.
22. Cost of fill to extend bulkhead line over land under water, where riparian rights are held, which is not occasioned by the erection of a structure.
23. Sidewalks and curbs constructed by the utility on public property.
24. Labor and expenses in connection with securing rights of way, where performed by company employees and company agents.

7. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land.

B. The cost of specially provided foundations not intended to outlast the machinery or apparatus for which provided, and the cost of angle irons, castings, etc., installed at the base of any item of equipment, shall be charged to the same account as the cost of the machinery, apparatus, or equipment.

C. Minor buildings and structures shall be considered a part of the facility in connection with which constructed or operated and the cost thereof accounted for accordingly when the nature of the structure and facility indicates the correctness of such accounting.

D. Where furnaces and boilers are used primarily for furnishing steam for some particular department and only incidentally for furnishing steam for heating a building and operating the equipment therein, the entire cost of such furnaces and boilers shall be charged to the appropriate plant account, and no part to the building account.

E. The cost of disposing of materials excavated in connection with construction of structures shall be considered as a part of the cost of such work, except as follows: (a) When such material is used for filling, the cost of loading, hauling, and dumping shall be equitably apportioned between the work in connection with which the removal occurs and the work in connection with which the material is used; (b) When such material is sold, the net amount realized from such sales shall be credited to the work in connection with which the removal occurs. If the amount realized from the sale of excavated materials exceeds the removal costs and the costs in connection with the sale, the excess shall be credited to the land account in which the site is carried.

F. Lighting or other fixtures temporarily attached to buildings for purposes of display or demonstration shall not be included in the cost of the building but in the appropriate equipment account.

G. The items of cost to be included in the accounts for structures and improvements are as follows:

1. Architects' plans and specifications including supervision.
2. Athletic field structures and improvements.
3. Boilers, furnaces, piping, wiring, fixtures, and machinery for heating, lighting, signaling, ventilating, and air conditioning systems, plumbing, vacuum cleaning systems, incinerator and smoke pipe, flues, etc.
4. Bulkheads, including dredging, riprap fill, piling, decking, concrete, fenders, etc., when exposed and subject to maintenance and replacement.
5. Coal bins and bunkers.
6. Commissions and fees to brokers, agents, architects and others.
7. Conduit (not to be removed) with its contents.
8. Damages to abutting property during construction.
9. Drainage and sewerage systems.
10. Elevators, cranes, hoists, etc., and the machinery for operating them.
11. Excavation, including shoring, bracing, bridging, refill, and disposal of excess excavated material, cofferdams around foundation, pumping water from cofferdam during construction, test borings.
12. Fences and fence curbs (not including protective fences isolating items of equipment, which shall be charged to the appropriate equipment account).
13. Fire protection systems when forming a part of a structure.
14. Foundations and piers for machinery, constructed as a permanent part of a building or other item listed herein.
15. Grading and clearing when directly occasioned by the building of a structure.
16. Intrasite communication system, poles, pole fixtures, wires and cables.
17. Landscaping, lawns, shrubbery, etc.
18. Leases, voiding upon purchase to secure possession of structures.
19. Leased property, expenditures on.
20. Lighting fixtures and outside lighting system.
21. Painting, first cost.
22. Permanent paving, concrete, brick, flagstone, asphalt, etc., within the property lines.
23. Permits and privileges.
24. Platforms, railings and gratings when constructed as a part of a structure.
25. Retaining walls except when identified with land.
26. Roadways, railroads, bridges, and trestles intrasite, except railroads provided for in equipment accounts.
27. Sidewalks, culverts, curbs and streets constructed by the utility on its property.
28. Stacks—brick, steel, or concrete, when set on foundation forming part of general foundation and steel work of a building.
29. Storage facilities constituting a part of a building.
30. Subways, areaways, and tunnels, directly connected to and forming part of a structure.
31. Tanks, constructed as part of a building or as a distinct structural unit.
32. Temporary shanties and other facilities used during construction (net cost).
33. Tunnels, intake and discharge, when constructed as part of a structure, including sluice gates, and those constructed to house mains.
34. Vaults constructed as part of a building.
35. Water basins or reservoirs.
36. Wharves.

NOTE: Structures and Improvements accounts shall be credited with the cost of coal bunkers, stacks, foundations, subways, tunnels, etc., the use of which has terminated with the removal of the equipment with which they are associated even though they have not been physically removed.

8. *Equipment.*

A. The cost of equipment chargeable to the gas plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate.

B. Exclude from equipment accounts hand and other portable tools, which are likely to be lost or stolen or which have relatively small value (for example, $50 or less) or short life, unless the correctness of the accounting therefor as gas plant is verified by current inventories. Special tools acquired and included in the purchase price of equipment shall be included in the appropriate plant account. Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as production, transmission, distribution, etc., or in "stores," shall be charged to the plant account appropriate for their use.

C. The equipment accounts shall include angle irons and similar items which are installed at the base of an item of equipment, but piers and foundations which are designed to be as permanent as the buildings which house the equipment, or which are constructed as a part of the building and which cannot be removed without cutting into the walls, ceilings or floors or without in some way impairing the building, shall be included in the building accounts.

D. The equipment accounts shall include the necessary costs of testing or running a plant or part thereof during an experimental or test period prior to becoming available for service. The utility shall furnish the Commission with full particulars of and justification for any test or experimental run extending beyond a period of thirty days.

E. The cost of efficiency or other tests made subsequent to the date equipment becomes available for service shall be charged to the appropriate expense accounts, except that tests to determine whether equipment meets the specifications and requirements as to efficiency, performance, etc., guaranteed by manufacturers, made after operations have commenced and within the period specified in the agreement or contract of purchase, may be charged to the appropriate gas plant account.

9. *Additions and Requirements of Gas Plant.*

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of gas plant, all property shall be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall use such list of retirement units as is in use by it at the effective date hereof or as may be prescribed by the Commission, with the option, however, of using smaller units, provided the utility's practice in this respect is consistent.

B. The addition and retirement of retirement units shall be accounted for as follows:

(1) When a retirement unit is added to gas plant, the cost thereof shall be added to the appropriate gas plant account, except that when units are acquired in the acquisition of any gas plant constituting an operating system, they shall be accounted for as provided in gas plant instruction 4.

(2) When a retirement unit is retired from gas plant, with or without replacement, the book cost thereof shall be credited to the gas plant account in which it is included, determined in the manner set forth in paragraph D, below. If the retirement unit is of a depreciable class, the book cost of the unit retired and credited to gas plant shall be charged to the accumulated provision for depreciation applicable to such property. The cost of removal and the salvage shall be charged or credited, as appropriate, to such depreciation account.

C. The addition and retirement of minor items of property shall be accounted for as follows:

(1) When a minor item of property which did not previously exist is added to plant, the cost thereof shall be accounted for in the same manner as for the addition of a retirement unit, as set forth in paragraph B(1), above, if a substantial addition results, otherwise the charge shall be to the appropriate maintenance expense account.

(2) When a minor item of property is retired and not replaced, the book cost thereof shall be credited to the gas plant account in which it is included; and, in the event the minor item is a part of depreciable plant, the account for accumulated provision for depreciation shall be charged with the book cost and cost of removal and credited with the salvage. If, however, the book cost of the minor item retired and not replaced has been or will be accounted for by its inclusion in the retirement unit of which it is a part when such unit is retired, no separate credit to the property account is required when such minor item is retired.

(3) When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement shall be charged to the maintenance account appropriate for the item, except that if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment shall be charged to the appropriate gas plant account.

D. The book cost of gas plant retired shall be the amount at which such property is included in the utility plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done, it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units required.

E. The book cost of land retired shall be credited to the appropriate land account. If the land is sold, the difference between the book cost (less any accumulated provision for depreciation, depletion or amoritization therefor which has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate. If the land is not used in utility service but is retained by the utility, the book cost shall be charged to account 105, Gas Plant Held for Future Use, or account 121, Nonutility Property, as appropriate.

F. The book cost less net salvage of gas plant retired shall be charged in its entirety to account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Plant. Any amounts which, by approval or order of the Commission, are charged to account 182, Extraordinary Property Losses, shall be credited to account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Plant.

10. *Transfers of Property.*

When property is transferred from one gas plant account to another, from one utility department to another, such as from gas to electric, from one operating division or area to another, to or from Gas Plant in Service, Gas Plant Leased to Others, Gas Plant Held for Future Use, and Nonutility Property, the transfer shall be recorded by transferring the original cost thereof from one account, department, or location to the other. Any related amounts carried in the accounts for accumulated provision for depreciation, depletion or amortization shall be transferred in accordance with the segregation of such accounts.

11. *Common Utility Plant.*

A. If the utility is engaged in more than one utility service such as electric, gas, and water, and any of its utility plant is used in common for several utility services or for other purposes to such an extent and in such a manner that it is impracticable to segregate it by utility services currently in the accounts, such property, with the approval of the Commission, may be designated and classified as "common utility plant."

B. The book amount of utility plant designated as common plant shall be included in account 118, Other Utility Plant, and if applicable in part to gas department, shall be segregated and accounted for in subaccounts as gas plant is accounted for in accounts 101 to 107, inclusive, and gas plant adjustments in account 116; any amounts classifiable as common plant acquisition adjustments or common plant adjustments shall be subject to disposition as provided in paragraph C and B of accounts 114 and 116, respectively, for amounts classified in those accounts. The original cost of common utility plant in service shall be classified according to detailed utility plant accounts appropriate for the property.

C. The utility shall be prepared to show at any time and to report to the Commission annually, or more frequently, if required, and by utility plant accounts (301 to 399) the following: (1) the book cost of common utility plant, (2) the allocation of such cost to the respective departments using the common utility plant, and (3) the basis of the allocation.

D. The accumulated provision for depreciation and amortization of the utility shall be segregated so as to show the amount applicable to the property classified as common utility plant.

E. The expenses of operation, maintenance, rents, depreciation, and amortization of common utility plant shall be recorded in the accounts prescribed herein, but designated as common expenses, and the allocation of such expenses to the departments using the common utility plant shall be supported in such manner as to reflect readily the basis of allocation used.

12. *Transmission and Distribution Plant.*

For the purposes of this system of accounts:

A. "Transmission System" means the land, structures, mains, valves, meters, boosters, regulators, tanks, compressors and their driving units and appurtenances, and other equipment used primarily for transmitting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas, to one or more distribution areas. The transmission system begins at the outlet side of the valve at the connection to the last equipment in a manufactured gas plant, the connection to gathering lines or delivery point of purchased gas, and includes the equipment at such connection that is used to bring the gas to transmission pressure, and ends at the inlet side of the equipment which meters or regulates the entry of gas into the distribution system or into a storage area. It does not include storage land, structures or equipment. Pipe line companies, however, shall include city gate and main line industrial measuring and regulating stations in the transmission function, except that where pipe line companies measure deliveries of gas to their own distribution systems they shall have the option, if consistently observed, of including such stations either in the transmission or distribution function for the purposes of this system of accounts.

B. "Distribution System" means the mains which are provided primarily for distributing gas within a distribution area, together with land, structures, valves, regulators, services and measuring devices, including the mains for transportation of gas from production plants or points of receipt located within such distribution area to other points therein. The distribution system begins at the inlet side of the equipment which meters or regulates the entry of gas into the distribution system and ends with and includes property on the customer's premises. It does not include storage land, structures, or equipment.

C. "Distribution Area" as used herein means a metropolitan area or other urban area comprising one or more adjacent or nearby cities, villages or unincorporated areas, including developed areas contiguous to main highways.

Operating Expense Instructions

1. *Maintenance.*

A. The cost of maintenance chargeable to the various operating expense and clearing accounts includes labor, materials, overheads and other expenses incurred in maintenance work. A list of work operations applicable generally to utility plant is included hereunder. Other work operations applicable to specific classes of plant are listed in functional maintenance expense accounts.

B. Materials recovered in connection with the maintenance of property shall be credited to the same account to which the maintenance cost was charged.

C. If the book cost of any property is carried in account 102, Gas Plant Purchased or Sold, the cost of maintaining such property shall be charged to the accounts for maintenance of property of the same class and use, the book cost of which is carried in other gas plant in service accounts. Maintenance of property leased from others shall be treated as provided in operating expense instruction 2.

ITEMS

1. Direct field supervision of maintenance.
2. Inspecting, testing, and reporting on condition of plant specifically to determine the need for repairs, replacements, rearrangements and changes and inspecting and testing the adequacy of repairs which have been made.
3. Work performed specifically for the purpose of preventing failure, restoring serviceability or maintaining life of plant.
4. Rearranging and changing the location of plant not retired.
5. Repairing for reuse materials recovered from plant.

6. Testing for, locating and clearing trouble.

7. Net cost of installing, maintaining, and removing temporary facilities to prevent interruptions in service.

8. Replacing or adding minor items of plant which do not constitute a retirement unit. (See gas plant instruction 9.)

2. *Rents.*

A. The rent expense accounts provided under the several functional groups of expense accounts shall include all rents, including taxes paid by the lessee on leased property, for property used in utility operations, except (1) minor amounts paid for occasional or infrequent use of any property or equipment and all amounts paid for use of equipment that, if owned, would be includible in plant accounts 391 to 398, inclusive, which shall be treated as an expense item and included in the appropriate functional account and (2) rents which are chargeable to clearing accounts, and distributed therefrom to the appropriate account. If rents cover property used for more than one function, such as production and transmission, or by more than one department, the rents shall be apportioned to the appropriate rent expense or clearing accounts of each department on an actual, or, if necessary, an estimated basis.

B. When a portion of property or equipment rented from others for use in connection with utility operations is subleased, the revenue derived from such subleasing shall be credited to the rent revenue account in operating revenues; provided, however, that in case the rent was charged to a clearing account, amounts received from subleasing the property shall be credited to such clearing account.

C. The cost, when incurred by the lessee, of operating and maintaining leased property, shall be charged to the accounts appropriate for the expense if the property were owned.

D. The cost incurred by the lessee of additions and replacements to gas plant leased from others shall be accounted for as provided in gas plant instruction 5.

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

1. Utility Plant

101 Gas plant in service.
102 Gas plant purchased or sold.
103 Gas plant in process of reclassification.
104 Gas plant leased to others.
105 Gas plant held for future use.
107 Construction work in progress—Gas.
110 Accumulated provision for depreciation, depletion, and amortization of gas plant.
114 Gas plant acquisition adjustments.
116 Other gas plant adjustments.
118 Other utility plant.
119 Accumulated provision for depreciation and amortization of other utility plant.

2. Other Property and Investments

121 Nonutility property.
122 Accumulated provision for depreciation and amortization of nonutility property.
124 Other investments.
125 Special funds.

3. Current and Accrued Assets

131 Cash and working funds.
132 Temporary cash investments.
141 Notes receivable.
142 Customer accounts receivable.
143 Other accounts receivable.
144 Accumulated provision for uncollectible accounts—Cr.
145 Notes receivable from associated companies.
146 Accounts receivable from associated companies.
150 Materials and supplies.
164 Gas stored underground.
165 Prepayments.
170 Other current and accrued assets.

4. Deferred Debits

181 Unamortized debt discount and expense.
182 Extraordinary property losses.
183 Other deferred debits.

LIABILITIES AND OTHER CREDITS

5. Proprietary Capital

201 Common capital stock.
204 Preferred capital stock.
207 Other paid-in capital.
212 Installments received on capital stock.
213 Discount on capital stock.
214 Capital stock expense.
215 Appropriated earned surplus.
216 Unappropriated earned surplus.
217 Reacquired capital stock.

6. Long-Term Debt

221 Bonds.
223 Advances from associated companies.
224 Other long-term debt.

7. Current and Accrued Liabilities

231 Notes payable.
232 Accounts payable.
233 Notes payable to associated companies.
234 Accounts payable to associated companies.
235 Customer deposits.
236 Taxes accrued.
237 Interest accrued.
238 Other current and accrued liabilities.

8. Deferred Credits

251 Unamortized premium on debt.
252 Customer advances for construction.
253 Other deferred credits.

9. Operating Reserves

261 Property insurance reserve.
262 Injuries and damages reserve.
263 Pensions and benefits reserve.
265 Miscellaneous operating reserves.

10. Contributions in Aid of Construction

271 Contributions in aid of construction.

11. Accumulated Deferred Income Taxes

281 Accumulated deferred income taxes—Accelerated amortization.
282 Accumulated deferred income taxes—Liberalized depreciation.
283 Accumulated deferred income taxes—Other.

Balance Sheet Accounts

1. Utility Plant

101 Gas plant in service.

A. This account shall include the original cost of gas plant, included in the plant accounts prescribed herein, owned and used by the utility in its gas operations, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees.

B. The cost of additions to and betterments of property leased from others, which are includible in this account, shall be maintained in subdivisions separate and distinct from those relating to owned property. (See gas plant instruction 5.)

102 Gas plant purchased or sold.

A. This account shall be charged with the cost of gas plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and shall be credited with the selling price of like property transferred to others pending the distribution to appropriate accounts in accordance with gas plant instruction 4.

B. Within six months from the date of acquisition or sale of property recorded herein, there shall be filed with the Commission the proposed journal entries to clear from this account the amounts recorded herein.

103 Gas plant in process of reclassification.

A. This account shall include temporarily the balance of gas plant as of the effective date of the prior system of accounts, which has not yet been reclassified as of the effective date of this system of accounts. The detail or primary accounts in support of this account employed prior to such date shall be continued pending reclassification into the gas plant accounts herein prescribed (301–399), but shall not be used for additions, betterments, or new construction.

B. No charges other than as provided in paragraph A, above, shall be made to this account, but retirements of such unclassified gas plant shall be credited hereto and to the supporting (old) fixed capital accounts until the reclassification shall have been accomplished.

104 Gas plant leased to others.

A. This account shall include the original cost of gas plant owned by the utility, but leased to others as operating units or systems, where the lessee has exclusive possession.

B. The property included in this account shall be classified according to the detailed accounts (301–399) prescribed for gas plant in service, and this account shall be maintained in such detail as though the property were used by the owner in its utility operations.

105 Gas plant held for future use.

A. This account shall include the original cost of property owned and held for future use in gas service under a definite plan for such use. There shall be included herein property acquired but never used by the utility in gas service, but held for such service in the future under a definite plan, and property previously used by the utility in utility service, but retired from such service and held pending its reuse in the future, under a definite plan, in gas service. This includes land and land rights held to insure a future supply of natural gas.

B. The property included in this account shall be classified according to the detailed accounts (301–399) prescribed for gas plant in service and the account shall be maintained in such detail as though the property were in service.

Note A: Materials and supplies, meters and transformers held in reserve, or normal spare capacity of plant in service shall not be included in this account.

Note B: Include in this account natural gas wells shut in after construction which have not been connected with the line; also, natural gas wells which have been connected with the line but which are shut in for any reason excepting seasonal excess capacity or governmental proration requirements or for repairs.

107 Construction work in progress—Gas.

This account shall include the total of the balances of work orders for utility plant in process of construction but not ready for service at the date of the balance sheet.

110 Accumulated provision for depreciation, depletion and amortization of gas plant.

A. This account shall be credited with the following:

(1) Amounts charged to account 403, Depreciation and Depletion Expense, to account 404, Amortization of Limited-Term Gas Plant, to account 405, Amortization of Other Gas Plant, to account 413, Expenses of Gas Plant Leased to Others, to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work, or to clearing accounts for currently accruing depreciation, depletion, and amortization.

(2) Amounts charged to account 435, Miscellaneous Debits to Surplus, for past accrued depreciation, depletion or amortization.

(3) Amounts of depreciation, depletion or amortization applicable to gas properties acquired as operating units or systems. (See gas plant instruction 4.)

(4) Amounts chargeable to account 182, Extraordinary Property Losses, when authorized by the Commission.

(5) Amounts of depreciation applicable to gas plant donated to the utility.

B. At the time of retirement of gas plant, this account shall be charged with the book cost of the property retired and the cost of removal, and shall be credited with the salvage value and any other amounts recovered, such as insurance. When retirements, cost of removal and salvage are entered originally in retirement work orders, the net total of such work orders may be included in a separate subaccount hereunder. Upon completion of the work order, the proper distribution to subdivisions of this account shall be made as provided in the following paragraph.

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for depreciation. The account shall be subdivided to show the amount, applicable to Gas Plant in Service, Gas Plant Leased to Others, and Gas Plant Held for Future Use. These subsidiary records shall show the current credits and debits to this account in sufficient detail to show separately for each subdivision, (1) the amount of accrual for depreciation or amortization, (2) the book cost of property retired, (3) cost of removal, (4) salvage and (5) other items, including recoveries from insurance. The utility also shall maintain subsidiary records in accordance with these provisions for accumulated depletion and amortization provisions for natural gas lands and land rights in service.

D. When transfers of plant made from one gas plant account to another, or from or to nonutility property, the accounting shall be as provided in gas plant instruction 10.

E. The utility is restricted in its use of the accumulated provision for depreciation, depletion and amortization to the purposes set forth above. It shall not transfer any portion of this account to surplus or make any other use thereof without authorization by the Commission.

114 Gas plant acquisition adjustments.

A. This account shall include the difference between (a) the cost to the accounting utility of gas plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated if not known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated provision for depreciation, depletion and amortization and contributions in aid of construction with respect to such property.

B. With respect to acquisitions after the effective date of this system of accounts, this account shall be subdivided so as to show the amounts included herein for each property acquisition and to gas plant in service, gas plant held for future use and gas plant leased to others. (See gas plant instruction 4.)

C. The amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct.

116 Other gas plant adjustments.

A. This account shall include the difference between the original cost, estimated if not known, and the book cost of gas plant to the extent that such difference is not properly includible in account 114, Gas Plant Acquisition Adjustments.

B. Amounts included in this account shall be classified in such manner as to show the origin of each amount and shall be disposed of as the Commission may approve or direct.

Note: The provisions of this account shall not be construed as approving or authorizing the recording of appreciation of gas plant.

118 Other utility plant.

This account shall include the balance in accounts for utility plant, other than gas plant, such as electric, railway, etc.

119 Accumulated provision for depreciation and amortization of other utility plant.

This account shall include the accumulated provision for depreciation and amortization applicable to utility property other than gas plant.

2. Other Property and Investments

121 Nonutility property.

A. This account shall include the book cost of land, structures, equipment or other tangible or intangible property owned by the utility, but not used in utility service and not properly includible in account 105, Gas Plant Held for Future Use.

B. This account shall be subdivided so as to show the amount of property used in operations which are nonutility in character but nevertheless constitute a distinct operating activity of the company (such as operation of an ice department where such activity is not classed as a utility) and the amount of miscellaneous property not used in operations. The records in support of each subaccount shall be maintained so as to show an appropriate classification of the property.

122 Accumulated provision for depreciation and amortization of nonutility property.

This account shall include the accumulated provision for depreciation and amortization applicable to nonutility property.

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by other companies, investment advances to such companies, and any investments not accounted for elsewhere. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See account 419, Interest and Dividend Income.)

B. The cost of capital stock of the utility reacquired by it under a definite plan for resale pursuant to authorization by the Board of Directors may, if permitted by statutes, be included in a separate subdivision of this account. (See also account 207, Other Paid-in Capital, and account 217, Reacquired Capital Stock.)

C. The records shall be maintained in such manner as to show the amount of each investment and the investment advances to each person.

Note A: Securities owned and pledged shall be included in this account, but securities held in special deposits or in special funds shall be included in appropriate deposit or fund accounts. A complete record of securities pledged shall be maintained.

Note B: Securities held as temporary cash investments shall not be included in this account.

Note C: The utility may write down the cost of any security in recognition of a decline in the value thereof. Securities shall be written off or written down to a nominal value if there be no reasonable prospect of substantial value. Fluctuations in market value shall not be recorded but a permanent impairment in the value of securities shall be recognized in the accounts. When securities are written off or written down, the amount of the adjustment shall be charged to account 435, Miscellaneous Debits to Surplus, or to an appropriate account for provisions for loss in value established as a separate subdivision of this account.

125 Special funds.

This account shall include the amount of cash and book cost of investments

which have been segregated in special funds for bond retirements, property additions and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. A separate account, with appropriate title, shall be kept for each fund.

NOTE: Amounts deposited with a trustee under the terms of an irrevocable trust agreement for pensions or other employees' benefits shall not be included in this account.

3. CURRENT AND ACCRUED ASSETS

Current and accrued assets are cash, those assets which are readily convertible into cash or are held for current use in operations or construction, current claims against others, payment of which is reasonably assured, and amounts accruing to the utility which are subject to current settlement, except such items for which accounts other than those designated as current and accrued assets are made therefor. There shall not be included in the group of accounts designated as current and accrued assets any item, the amount or collectibility of which is not reasonably assured, unless an adequate provision for possible loss has been provided. Items of current character but of doubtful value may be written down and for record purposes carried in these accounts at nominal value.

131 Cash and working funds.

This account shall include the amount of cash on hand and in banks and cash advanced to officers, agents, employees, and others as petty cash or working funds. Special cash deposits for payment of interest, dividends or other special purposes shall be included in this account in separate subdivisions which shall specify the purpose for which each such special deposit is made.

NOTE: Special deposits for more than one year, which are not offset by current liabilities, shall not be charged to this account but to account 125, Special Funds.

132 Temporary cash investments.

A. This account shall include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

B. This account shall be so maintained as to show separately temporary cash investments in securities of associated companies and of others. Records shall be kept of any pledged investments.

141 Notes receivable.

This account shall include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable and similar evidences (except interest coupons) of money due on demand or within one year from the date of issue, excepting, however, notes receivable from associated companies. (See account 132, Temporary Cash Investments, and account 145, Notes Receivable from Associated Companies.)

NOTE: The face amount of notes receivable, discounted, sold, or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

142 Customer accounts receivable.

A. This account shall include amounts due from customers for utility service, and for merchandising, jobbing and contract work. This account shall not include amounts due from associated companies.

B. This account shall be maintained so as to permit ready segregation of the amounts due for merchandising, jobbing and contract work.

143 Other accounts receivable.

A. This account shall include amounts due the utility upon open accounts, other than amounts due from associated companies and from customers for utility services and merchandising, jobbing and contract work.

B. This account shall be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees, but the account shall not include amounts advanced to officers or others as working funds. (See account 131, Cash and Working Funds.)

144 Accumulated provision for uncollectible accounts—Cr.

A. This account shall be credited with amounts provided for losses on accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. Concurrent charges shall be made to account 904, Uncollectible Accounts, for amounts applicable to utility operations, and to corresponding accounts for other operations. Records shall be maintained so as to show the write-offs of accounts receivable for each utility department.

B. This account shall be subdivided to show the provision applicable to the following classes of accounts receivable:

Utility Customers.
Merchandising, Jobbing and Contract Work.
Officers and Employees.
Other.

NOTE A: Accretions to this account shall not be made in excess of a reasonable provision against losses of the character provided for.

NOTE B: If provisions for uncollectible notes receivable or for uncollectible receivables from associated companies are necessary, separate subaccounts therefor shall be established under the account in which the receivable is carried.

145 Notes receivable from associated companies.

146 Accounts receivable from associated companies.

A. These accounts shall include notes and drafts upon which associated companies are liable, and which mature and are expected to be paid in full not later than one year from date of issue, together with any interest thereon, and debit balances subject to current settlement in open accounts with associated companies. Items which do not bear a specified due date but which have been carried for more than twelve months and items which are not paid within twelve months from due date shall be transferred to account 124, Other Investments.

NOTE A: On the balance sheet, accounts receivable from an associated company may be set off against accounts payable to the same company.

NOTE B: The face amount of notes receivable discounted, sold or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

150 Materials and supplies.

A. This account shall include the cost of fuel on hand and unapplied materials and supplies (except meters and house regulators). It shall include also the book cost of materials recovered in connection with construction, maintenance or the retirement of property, such materials being credited to construction, maintenance, or accumulated depreciation provision, respectively, and included herein as follows:

(1) Reusable materials consisting of large individual items shall be included in this account at original cost, estimated if not known. The cost of repairing such items shall be charged to the maintenance account appropriate for the previous use.

(2) Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the final abandonment or sale thereof) cannot be ascertained without undue refinement in accounting, shall be included in this account at current prices new for such items. The cost of repairing such items shall be charged to the appropriate expense account as indicated by previous use.

(3) Scrap and nonusable materials included in this account shall be carried at the estimated net amount realized therefrom. The difference between the amounts realized for scrap and nonusable materials sold and the net amount at which the materials were carried in this account, as far as practicable shall be adjusted to the accounts credited when the materials were charged to this account.

B. Materials and supplies issued shall be credited hereto and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative average, first-in-first-out, or such other method of inventory accounting as conforms with accepted accounting standards consistently applied.

C. Inventories of materials, supplies, fuel, etc., shall be taken at least annually and the necessary adjustments shall be made to bring this account into agreement with the actual inventories. In effecting the adjustments, large differences which can be assigned to important classes of materials shall be equitably adjusted among the accounts to which such classes of materials have been charged since the previous inventory. Other differences shall be equitably apportioned among the accounts to which materials have been charged.

ITEMS

1. Invoice price of materials less cash or other discounts.
2. Freight, switching or other transportation charges when practicable to include as part of the cost of particular materials to which they relate.
3. Customs duties and excise taxes.
4. Costs of inspection and special tests prior to acceptance.
5. Insurance and other directly assignable charges.

NOTE A: Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be charged to a stores expense clearing account and distributed therefrom to the appropriate account.

NOTE B: When materials and supplies are purchased for immediate use, they need not be carried through this account but may be charged directly to the appropriate gas plant or expense account.

164 Gas stored underground.

A. This account shall include the cost of gas purchased or produced by the utility which is stored in depleted or partially depleted gas or oil fields, or other underground reservoirs, and held for use in meeting service requirements of the utility's customers.

B. Gas stored during the year shall be priced at cost according to generally accepted methods of cost determination consistently applied from year to year. Transmission expenses for facilities of the utility used in moving the gas to the storage area and expenses of storage facilities shall not be included in the inventory of gas except as may be authorized or directed by the Commission.

C. Withdrawals of gas may be priced according to the first-in-first-out, last-in-first-out, or weighted average cost method, in connection with which a "base stock" may be employed provided the method adopted by the utility is used consistently from year to year and the inventory records are maintained in accordance therewith. Approval of the Commission must be obtained for any other pricing method, or change in the pricing method adopted by the utility.

D. Amounts debited to this account for gas placed in storage shall be credited to account 734, Gas Delivered to Underground Storage—Credit. Amounts credited to this account for gas withdrawn from storage shall be debited to account 733, Gas Withdrawn from Underground Storage—Debit.

E. Adjustments for inventory losses due to cumulative inaccuracies of gas measurements, or from other causes, shall be charged to account 741, Gas Losses. In the operation of storage projects the utility shall maintain such procedures of verification as will disclose and result in prompt accounting recognition of significant losses.

NOTE A: The utility at balance sheet dates shall reduce this account by such significant amount as does not represent a current asset according to conventional rules of current asset classification. Such reduction shall be offset by a special account, Gas Stored Underground—Noncurrent, to be reported in the balance sheet among other accounts under the caption for utility plant.

NOTE B: If with respect to any storage reservoir, the utility determines that a portion of the stored gas included in this account will not eventually be fully recovered, it may submit for consideration of the Commission, a plan to create a reserve to provide for such anticipated gas losses.

165 Prepayments.

A. This account shall include the amount of rents, taxes, insurance, interest and like disbursements made in advance of the period to which they apply. As the periods covered by such prepayments expire, credit this account and charge the proper operating expense or other account with the amount applicable to the period.

B. This account shall be kept or supported in such manner as to disclose the amount of each class of prepayments.

170 Other current and accrued assets.

This account shall include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included herein.

4. DEFERRED DEBITS

181 Unamortized debt discount and expense.

A. This account shall include the total of the unamortized balance of discount and expense for all classes of long-term debt.

B. The discount and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be charged to account 428, Amortization of Debt Discount and Expense. The utility may, however, accelerate the writing off of discount and expense where the amounts are insignificant.

182 Extraordinary property losses.

A. When authorized or directed by the Commission, this account shall include extraordinary losses on property abandoned or otherwise retired from service which are not provided for by the accumulated provision for depreciation or amortization and which could not reasonably have been foreseen and provided for, and extraordinary losses, such as unforeseen damages to property, which could not reasonably have been anticipated and which are not covered by insurance or other provisions.

B. The entire cost, less net salvage, of depreciable property retired shall be charged to accumulated provision for depreciation. If all, or a portion of the loss is to be included in this account, the accumulated provision for depreciation shall then be credited and this account charged with the amount properly chargeable hereto.

C. Application to the Commission for permission to use this account shall be accompanied by a statement giving a complete explanation with respect to the items which it is proposed to include herein, the period over which, and the accounts to which it is proposed to write off the charges, and other pertinent information.

183 Other deferred debits.

A. This account shall include the following classes of items:

(1) Expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of projects under contemplation. If construction results, this account shall be credited with the amount applicable thereto and the appropriate plant accounts shall be charged with an amount which does not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to plant. If the work is abandoned, the charge shall be to account 435, Miscellaneous Debits to Surplus, or to the appropriate operating expense accounts.

(2) Expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of acquiring land and land rights to provide a future supply of natural gas. If such land or land rights are acquired, this account shall be credited and the appropriate gas plant account (see gas plant instruction 6G) charged with the amount of expenditures related to such acquisition. Such preliminary survey and investigation charges transferred to gas plant shall not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to gas plant. If the project is abandoned, the expenditures related thereto shall be charged to account 723, Other Exploration.

(3) Undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein relate to a future period.

(4) Balances representing expenditures for work in progress other than on utility plant. This includes jobbing and contract work in progress.

(5) Other debit balances, the proper final disposition of which is uncertain, and unusual or extraordinary expenses, not included in other accounts, which are in process of being written off.

B. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit included herein. The records supporting entries for preliminary natural gas surveys and investigations shall be so kept that the utility can furnish, for each investigation, complete information as to identification and location of the territory investigated, the number or other identification assigned to the land tract or leasehold acquired, and the nature and respective amounts of the charges.

LIABILITIES AND OTHER CREDITS

5. PROPRIETARY CAPITAL

201 Common capital stock.

204 Preferred capital stock.

A. These accounts shall include the par value or the stated value of stock without par value if such stock has a stated value, and if not, the cash value of the consideration received for such nonpar stock, of each class of capital stock actually issued, including the par or stated value of such capital stock in account 124, Other Investments, and account 217, Reacquired Capital Stock.

B. When the actual cash value of the consideration received is more or less than the par or stated value of any stock having a par or stated value, the difference shall be credited or debited, as the case may be, to the premium or discount account for the particular class and series.

C. When capital stock is retired, these accounts shall be charged with the amount at which such stock is carried herein.

D. A separate ledger account, with a descriptive title, shall be maintained for each class and series of stock. The supporting records shall show the shares nominally issued, actually issued, and nominally outstanding.

NOTE: When a levy or assessment, except a call for payment on subscriptions, is made against holders of capital stock, the amount collected upon such levy or assessment shall be credited to account 207, Other Paid-In Capital; provided, however, that the credit shall be made to account 213, Discount on Capital Stock, to the extent of any remaining balance of discount on the issue of stock.

207 Other paid-in capital.

This account shall include the balance of all other credits for paid-in capital not includible in the capital stock accounts, and shall be kept so as to show the source of the credits includible herein.

ITEMS

1. Premium received on original issues of capital stock.
2. Donations received from stockholders or reduction of debt of the utility, and the cash value of other assets received as a donation.
3. Reduction in par or stated value of capital stock.
4. Gain on resale or cancellation of reacquired capital stock.
5. Miscellaneous paid-in capital.

NOTE: Premium on capital stock shall not be set off against expenses. Further, a premium received on an issue of a certain class or series of stock shall not be set off against expense of another issue of the same class or series.

212 Installments received on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock the amount of installments received on capital stock on a partial or installment payment plan for subscribers who are not bound by legally enforceable subscription contracts.

B. As subscriptions are paid in full and certificates issued, this account shall be charged and the appropriate capital stock account credited with the par or stated value of such stock. Any discount or premium on an original issue shall be included in the appropriate discount or premium account.

213 Discount on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock all discount on the original issuance and sale of capital stock, including additional capital stock of a particular class or series as well as first issues.

B. When capital stock which has been actually issued is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-In Capital: *Provided, however,* That the amount shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that it exceeds the balance in account 207.

C. The utility may amortize the balance in this account by systematic charges to account 425, Miscellaneous Amortization, or it may write off capital stock discount in whole or in part to account 435, Miscellaneous Debits to Surplus.

214 Capital stock expense.

A. This account shall include in a separate subdivision for each class and series of stock all commissions and expenses incurred in connection with the original issuance and sale of capital stock, including additional capital stock of a particular class or series as well as first issues. Expenses applicable to capital stock shall not be deducted from premium on capital stock.

B. When capital stock which has been actually issued by the utility is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-In Capital, to the extent of gains on resale or cancellation of reacquired stock includible therein: *Provided, however,* That the amount shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that it exceeds the balance in account 207, from such source.

C. The utility may amortize the balance in this account by systematic charges to account 425, Miscellaneous Amortization, or it may write off capital stock expense in whole or in part by charges to account 435, Miscellaneous Debits to Surplus.

NOTE: Expenses in connection with the reacquisition or resale of the utility's capital stock shall not be included herein.

215 Appropriated earned surplus.

This account shall include the amount of earned surplus which has been appropriated or set aside for specific purposes. Separate subaccounts shall be maintained under such titles as will designate the purpose for which each appropriation was made.

216 Unappropriated earned surplus.

This account shall include the balance, either debit or credit, of unappropriated surplus arising from earnings. It shall not include items includible in any subaccount of account 207, Other Paid-In Capital.

217 Reacquired capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock, the cost of capital stock actually issued by the utility and reacquired by it and not retired or canceled, except, however, stock which is held by trustees in sinking or other funds.

B. When reacquired capital stock is retired or canceled, the difference between its cost, including commissions and expenses paid in connection with the reacquisition, and its par or stated value plus any premium and less any discount and expenses applicable to the shares retired, shall be debited or credited, as appropriate, to account 207, Other Paid-In Capital, provided, however, that debits shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that they exceed the balance of gains on resale or cancellation of reacquired stock included in account 207.

C. When reacquired capital stock is resold by the utility, the difference between the amount received on the resale of the stock, less expenses incurred in the resale, and the cost of the stock included in this account shall be accounted for as outlined in paragraph B.

NOTE A: See account 124, Other Investments, for permissive accounting treatment of stock reacquired under a definite plan for resale.

NOTE B: The accounting for reacquired stock shall be as prescribed herein unless otherwise specifically required by statute.

6. LONG-TERM DEBT

221 Bonds.

A. Separate accounts shall be maintained hereunder for unmatured bonds of each class and series. Each such account shall be subdivided so as to show, (1) the face value of the actually issued and unmatured bonds, which have not been retired or canceled; also, the face value of such bonds issued by others, the payment of which has been assumed by the utility, (2) the face value of bonds actually issued or assumed by the utility and reacquired by it, not paid, retired, or canceled. The account for reacquired debt shall not include securities which are held by trustees in sinking or other funds.

B. When bonds are reacquired, the difference between face value, adjusted for unamortized discount, expense or premium and the amount paid upon reacquisition, shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate.

223 Advances from associated companies.

A. This account shall include the face value of notes payable to associated companies and the amount of open book accounts representing advances from associated companies. It does not include notes and open accounts representing indebtedness subject to current settlement which are includible in account 233, Notes Payable to Associated Companies, or account 234, Accounts Payable to Associated Companies.

B. The records supporting the entries to this account shall be so kept that the utility can furnish complete information concerning each note and open account.

224 Other long-term debt.

A. This account shall include, until maturity, all long-term debt not otherwise provided for. This covers such items as receivers' certificates, real estate mortgages executed or assumed, assessments for public improvements, notes and unsecured certificates of indebtedness not owned by associated companies, receipts outstanding for long-term debt and other obligations maturing more than one year from date of issue or assumption.

B. Separate accounts shall be maintained for each class of obligation, and records shall be maintained to show for each class all details as to date of obligation, date of maturity, interest dates and rates, security for the obligation, etc.

NOTE: Miscellaneous long-term debt reacquired shall be accounted for in accordance with the procedure set forth in account 221, Bonds.

7. CURRENT AND ACCRUED LIABILITIES

Current and accrued liabilities are those obligations which have either matured or which become due within one year from the date thereof; except, however, bonds, receivers' certificates and similar obligations which shall be classified as long-term debt until date of maturity; accrued taxes, such as income taxes, which shall be classified as accrued liabilities even though payable more than one year from date; compensation awards, which shall be classified as current liabilities regardless of date due; and minor amounts payable in installments which may be classified as current liabilities. If a liability is due more than one year from date of issuance or assumption by the utility, it shall be credited to a long-term debt account appropriate for the transaction, except, however, the current liabilities previously mentioned.

231 Notes payable.

This account shall include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding one year from date of issue, to other than associated companies.

232 Accounts payable.

This account shall include all amounts payable by the utility within one year, which are not provided for in other accounts.

233 Notes payable to associated companies.

234 Accounts payable to associated companies.

These accounts shall include amounts owing to associated companies on notes, drafts, acceptances, or other similar evidences of indebtedness, and open accounts payable on demand or not more than one year from date of issue or creation.

NOTE: Exclude from these accounts notes and accounts which are includible in account 223, Advances from Associated Companies.

235 Customer deposits.

This account shall include all amounts deposited with the utility by customers as security for the payment of bills.

236 Taxes accrued.

A. This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet, shall be shown under account 165, Prepayments.

B. If accruals for taxes are found to be insufficient or excessive, correction therefor shall be made through current tax accruals. However, if such corrections are so large as to seriously distort current expenses, they shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate.

C. Accruals for taxes shall be based upon the net amount payable after credit for any discounts and shall not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds shall be credited to account 419, Interest and Dividend Income, and interest paid on deficiencies shall be charged to account 431, Other Interest Expense.

D. The records supporting the entries to this account shall be kept so as to show for each class of taxes, the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

237 Interest accrued.

This account shall include the amount of interest accrued but not matured on all liabilities of the utility not including, however, interest which is added to the principal of the debt on which incurred. Supporting records shall be maintained so as to show the amount of interest accrued on each obligation.

238 Other current and accrued liabilities.

This account shall include the amount of all other current and accrued liabilities not provided for elsewhere appropriately designated and supported so as to show the nature of each liability.

ITEMS

1. Dividends declared but not paid.
2. Matured long-term debt.
3. Matured interest.
4. Taxes collected through pay roll deductions or otherwise pending transmittal to the proper taxing authority.

8. DEFERRED CREDITS

251 Unamortized premium on debt.

A. This account shall include the total of the unamortized balance of premium and expense for all classes of long-term debt, including receivers' certificates.

B. The premium and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be credited to account 429, Amortization of Premium on Debt—Credit.

252 Customer advances for construction.

This account shall include advances by customers for construction which are to be refunded either wholly or in part. When a customer is refunded the entire amount to which he is entitled, according to the agreement or rule under which the advance was made, the balance, if any, remaining in this account shall be credited to account 271, Contributions in Aid of Construction.

253 Other deferred credits.

This account shall include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

9. OPERATING RESERVES

261 Property insurance reserve.

A. This account shall include amounts reserved by the utility for self-insurance against losses through accident, fire, flood, or other hazards to its own property or property leased from others. A schedule of risks covered by this reserve shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered by self-insurance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

262 Injuries and damages reserve.

A. This account shall be credited with amounts charged to account 925, Injuries and Damages, or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others, and for damages to property neither owned nor held under lease by the utility.

B. When liability for any injury or damage is admitted by the utility either voluntarily or because of the decision of a court or other lawful authority, such as a workmen's compensation board, the admitted liability shall be charged to this account and credited to the appropriate liability account. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

NOTE: Recoveries or reimbursements for losses charged to this account shall be credited hereto; the cost of repairs to property of others if provided for herein, shall be charged to this account.

263 Pensions and benefits reserve.

A. This account shall include provisions made by the utility and amounts contributed by employees for pensions, accident and death benefits, savings, relief, hospital and other provident purposes, where the funds represented by the reserve are included in the assets of the utility either in general or in segregated fund accounts.

B. Amounts paid by the utility for the purposes for which this reserve is established shall be charged hereto.

C. A separate account shall be kept for each kind of reserve included herein.

NOTE: If employee pension or benefit plan funds are not included among the assets of the utility but are held by outside trustees, payments into such funds, or accruals therefor, shall not be included in this account.

265 Miscellaneous operating reserves.

A. This account shall include all operating reserves maintained by the utility which are not provided for elsewhere.

B. This account shall be maintained in such manner as to show the amount of each separate reserve and the nature and amounts of the debits and credits thereto.

NOTE: This account includes only such reserves as may be created for operating purposes and does not include any reservations of income the credits for which should be carried in account 215, Appropriated Earned Surplus.

10. CONTRIBUTIONS IN AID OF CONSTRUCTION

271 Contributions in aid of construction.

A. This account shall include donations or contributions in cash, services, or property from states, municipalities or other governmental agencies, individuals, and others for construction purposes.

B. The credits to this account shall not be transferred to earned surplus or to any other account without the approval of the Commission.

C. The records supporting the entries to this account shall be so kept that the utility can furnish information as to the purpose of each donation, the conditions, if any, upon which it was made, the amount of donations from (a) states, (b) municipalities, (c) customers, and (d) others, and the amount applicable to each utility department.

NOTE: There shall not be included in this account advances for construction which are ultimately to be repaid wholly or in part. (See account 252, Customer Advances for Construction.)

11. ACCUMULATED DEFERRED INCOME TAXES

NOTE A: The text of accounts below are designed primarily to cover deferrals of Federal income taxes arising under provisions of the Internal Revenue Code of 1954 but the accounts are also applicable to deferrals of State taxes on income.

NOTE B: Natural Gas Companies which, in addition to a gas utility department, have another utility department, electric, water, etc., and which have deferred taxes on income with respect thereto shall classify such deferrals in the accounts provided below under subdivisions for each utility department.

281 Accumulated deferred income taxes—Accelerated amortization.

A. This account shall be credited and account 410, Provision for Deferred Income Taxes, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the use of accelerated (5-year) amortization of certified defense facilities in computing such taxes, as permitted by Section 168 of the Internal Revenue Code of 1954 (Section 124A of previous Internal Revenue Code), as compared to the depreciation (deduction) otherwise appropriate and allowable for tax purposes according to the straight line or other nonaccelerated depreciation method and appropriate estimated useful life for such property.

B. This account shall be debited and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of the use in prior year of accelerated (5-year) amoritization of certified defense facilities instead of nonaccelerated depreciation otherwise appropriate for income tax purposes, and deferral of taxes in such prior years as described in paragraph A, above. Such debit to this account and credit to account 411 shall, in general, represent the effect on taxes payable for the current year of the unavailability of a depreciation deduction for tax purposes, or a reduced amount, with respect to any depreciable property for which accelerated amortization was used in prior years, as compared to the depreciation deduction otherwise available and appropriate for such property, considering its estimated useful life; according to the depreciation method ordinarily used by the utility for similar property in computing depreciation for tax purposes by a nonaccelerated or nonliberalized depreciation method.

C. Records with respect to entries to this account, as described above, and the account balance, shall be so maintained as to show the factors of calculation and the separate amounts applicable to the facilities of each certification or authorization of accelerated amortization for tax purposes.

D. The use of this account and the accounting described above are not mandatory for any utility which, in accordance with a consistent policy, elects not to follow deferred tax accounting even though accelerated amortization is used in computing taxes on income. If, however, deferred tax accounting is initiated with respect to any certified defense facility, the accounting shall not be suspended or discontinued on the property covered by that certificate, without approval of the Commission.

E. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in this account or any portion thereof to surplus or make any use thereof except as provided in the text of this account without prior approval of the Commission. Any remaining balance of accumulated deferred taxes with respect to any certified defense facility for which deferred tax accounting has been followed shall, upon expiration of the estimated useful life of the facility on which deferred tax calculations were based, or upon retirement from service of such facility or predominant part thereof, be credited to account 411, Income Taxes Deferred in Prior Years—Credit, or otherwise be applied as the Commission may authorize or direct.

282 Accumulated deferred income taxes—Liberalized depreciation.

A. This account shall be credited and account 410, Provision for Deferred Income Taxes shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the use of liberalized depreciation in computing such taxes, as permitted by Section 167 of the Internal Revenue Code of 1954, as compared to the depreciation deduction otherwise appropriate and allowable for tax purposes for similar property of the same estimated useful life according to the straight line or other nonliberalized method of depreciation.

B. This account shall be debited and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of the use in prior years of liberalized depreciation for income tax purposes, and deferral of taxes in such prior years as described in paragraph A above. Such debit to this account and credit to account 411, shall, in general, represent the effect on taxes payable for the current year of the smaller amount of depreciation permitted for tax purposes for the current year with respect to any depreciable property for which liberalized depreciation was used in prior years, as compared to the depreciation deduction otherwise appropriate and available for similar property of the same estimated useful life according to the straight line or other nonliberalized depreciation method ordinarily used by the utility in computing depreciation for tax purposes.

C. Records with respect to entries to this account, as described above, and account balance, shall be so maintained as to show the factors of calculation and the separate amounts applicable to the plant additions of each vintage year for each class, group, or unit as to which different liberalized depreciation methods and estimated useful lives have been used. The underlying calculations to segregate and associate deferred tax amounts with the respective vintage years may be based on reasonable methods of approximation, if necessary, consistently applied.

D. The use of this account and the accounting described above are not mandatory for any utility, which in accordance with a consistent policy, elects not to follow deferred tax accounting even though liberalized depreciation is used in computing taxes on income. If, however, deferred tax accounting is initiated with respect to any property, such accounting shall not be discontinued on that property without approval of the Commission.

E. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in the account or any portion thereof to surplus or make any use thereof except as provided in the text of this account without prior approval of the Commission. Any remaining deferred tax reserve balance with respect to any year's plant additions or subdivisions thereof for which liberalized depreciation accounting has been followed or, upon retirement from service of such property or predominant portion thereof, or upon expiration of the estimated useful life on which the depreciation calculations for tax purposes are based, shall be credited to account 411, Income Taxes Deferred in Prior Years—Credit, or otherwise applied as the Commission may authorize or direct.

283 Accumulated deferred income taxes—Other.

A. This account, when its use has been authorized by the Commission for specific types of tax deferrals, shall be credited and account 410, Provision for Deferred Taxes on Income, shall be debited with an amount equal to that by which taxes on income payable for the year are lower because of the current use of deductions other than accelerated amortization or liberalized depreciation in the computation of income taxes, which deductions for general accounting purposes will not be fully reflected in the utility's determination of annual net income until subsequent years.

B. This account when its use has been authorized by the Commission, shall be debited and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with an amount equal to that by which taxes on income payable for the year are greater because of deferral of taxes on income in previous years, as provided by paragraph A, above, because of difference in timing for tax purposes of particular income deductions from that recognized by the utility for general accounting purposes, other than with respect to accelerated amortization or liberalized depreciation. Such debit to this account and credit to account 411 shall, in general, represent the effect on taxes payable in the current year of the smaller deduction permitted for tax purposes as compared to the amount recognized in the utility's general accounts with respect to the item or class of items for which deferred tax accounting by the utility was authorized by the Commission.

C. Records with respect to entries to this account, as described above, and the account balance, shall be so maintained as to show the factors of calculation with respect to each annual amount of the item or class of items, other than accelerated amortization or liberalized depreciation, for which tax deferral accounting by the utility is authorized by the Commission.

D. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in the accounts or any portion thereof to surplus or make any use thereof except as provided in the text of this account, without prior approval of the Commission. Any remaining deferred tax account balance with respect to an amount for any prior year's tax deferral, the amortization of which or other recognition in the utility's income accounts has been completed, or other disposition made, shall be credited to account 411, Income Taxes Deferred in Prior Years—Credit, or otherwise disposed of as the Commission may authorize or direct.

NOTE: In determining appropriate use of this account as a basis of request to the Commission for authorization of its use, consideration shall be given to the relative importance of the amount involved, and to other items in the utility's accounts where "prepaid tax accounting" may be appropriate, such as situations (a) where the time of taking a deduction in computing taxes on income is such that the tax deduction must be delayed or applied to a series of future years as opposed to earlier recognition of such item in determination of income in the general accounts of the utility, or (b) where inclusion of an income item is required for tax purposes but is to be recognized in whole or in part in the utility's income accounts of a subsequent year or years.

Gas Plant Accounts

1. INTANGIBLE PLANT

301 Organization.
302 Franchises and consents.
303 Miscellaneous intangible plant.

2. PRODUCTION PLANT

A. MANUFACTURED GAS PRODUCTION PLANT

304 Land and land rights.
305 Structures and improvements.
306 Boiler plant equipment.
307 Other power equipment.
308 Coke ovens.
309 Producer gas equipment.
310 Water gas generating equipment.
311 Liquefied petroleum gas equipment.
312 Oil gas generating equipment.
313 Generating equipment—other processes.
314 Coal, coke, and ash handling equipment.
315 Catalytic cracking equipment.
316 Other reforming equipment.
317 Purification equipment.
318 Residual refining equipment.
319 Gas mixing equipment.
320 Other equipment.

B. NATURAL GAS PRODUCTION PLANT

B 1. NATURAL GAS PRODUCTION AND GATHERING PLANT

325.1 Producing lands.
325.2 Producing leaseholds.
325.3 Gas rights.
325.4 Rights-of-way.
325.5 Other land and land rights.
326 Gas well structures.
327 Field compressor station structures.
328 Field measuring and regulating station structures.
329 Other structures.
330 Producing gas wells—Well construction.
331 Producing gas wells—Well equipment.
332 Field lines.
333 Field compressor station equipment.
334 Field measuring and regulating station equipment.
335 Drilling and cleaning equipment.
336 Purification equipment.
337 Other equipment.

B 2. PRODUCTS EXTRACTION PLANT

340 Land and land rights.
341 Structures and improvements.
342 Extraction and refining equipment.
343 Pipe lines.
344 Extracted products storage equipment.
345 Compressor equipment.
346 Gas measuring and regulating equipment.
347 Other equipment.

3. STORAGE PLANT

A. UNDERGROUND STORAGE PLANT

350.1 Land.
350.2 Leaseholds.
350.3 Storage rights.
350.4 Rights-of-way.
350.5 Gas rights.
351 Structures and improvements.
352 Wells.
353 Lines.
354 Compressor station equipment.
355 Measuring and regulating equipment.
356 Purification equipment.
357 Other equipment.

B. LOCAL STORAGE PLANT

360 Land and land rights.
361 Structures and improvements.
362 Gas holders.
363 Other equipment.

4. TRANSMISSION PLANT

365.1 Land and land rights.
365.2 Rights-of-way.
366 Structures and improvements.
367 Mains.
368 Compressor station equipment.
369 Measuring and regulating station equipment.
370 Communication equipment.
371 Other equipment.

5. DISTRIBUTION PLANT

374 Land and land rights.
375 Structures and improvements.
376 Mains.
377 Compressor station equipment.
378 Measuring and regulating station equipment—General.
379 Measuring and regulating station equipment—City gate check stations.
380 Services.
381 Meters.
382 Meter installations.
383 House regulators.
384 House regulator installations.
385 Industrial measuring and regulating station equipment.
386 Other property on customers' premises.
387 Other equipment.

6. GENERAL PLANT

389 Land and land rights.
390 Structures and improvements.
391 Office furniture and equipment.
392 Transportation equipment.
393 Stores equipment.
394 Tools, shop and garage equipment.
395 Laboratory equipment.
396 Power operated equipment.
397 Communication equipment.
398 Miscellaneous equipment.
399 Other tangible property.

Gas Plant Accounts

1. INTANGIBLE PLANT

301 Organization.

This account shall include all fees paid to Federal or State governments for the privilege of incorporation and expenditures incident to organizing the corporation, partnership, or other enterprises and putting it into readiness to do business.

ITEMS

1. Cost of obtaining certificates authorizing an enterprise to engage in the public utility business.
2. Fees and expenses for incorporation.
3. Fees and expenses for mergers or consolidations.
4. Office expenses incident to organizing the utility.
5. Stock and minute books and corporate seal.

NOTE A: This account shall not include any discounts upon securities issued or assumed; nor shall it include any costs incident to negotiating loans, selling bonds or other evidences of debt, or expenses in connection with the authorization, issuance, or sale of capital stock.

NOTE B: Exclude from this account and include in the appropriate expense account the cost of preparing and filing papers in connection with the extension of the term of incorporation unless the first organization costs have been written off. When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included herein or in similar accounts in the

books of the companies concerned shall be excluded from this account.

302 Franchises and consents.

A. This account shall include amounts paid to the Federal Government, to a State or to a political subdivision thereof in consideration for franchises, consents, or certificates, running in perpetuity or for a specified term of more than one year, together with necessary and reasonable expenses incident to procuring such franchises, consents, or certificates of permission and approval, including expenses of organizing and merging separate corporations, where statutes require, solely for the purpose of acquiring franchises.

B. If a franchise, consent, or certificate is acquired by assignment, the charge to this account in respect thereof shall not exceed the amount paid therefor by the utility to the assignor, nor shall it exceed the amount paid by the original grantee, plus the expense of acquisition to such grantee. Any excess of the amount actually paid by the utility over the amount above specified shall be charged to account 435, Miscellaneous Debits to Surplus.

C. When any franchise has expired, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or to account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Plant, as appropriate.

D. Records supporting this account shall be kept so as to show separately the book cost of each franchise or consent.

NOTE: Annual or other periodic payments under franchises shall not be included herein but in the appropriate operating expense account.

303 Miscellaneous intangible plant.

A. This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of the utility's gas operations and not specifically chargeable to any other account.

B. When any item included in this account is retired or expires, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Plant, as appropriate.

C. This account shall be maintained in such a manner that the utility can furnish full information with respect to the amounts included herein.

2. PRODUCTION PLANT

A. MANUFACTURED GAS PRODUCTION PLANT

304 Land and land rights.

This account shall include the cost of land and land rights used in connection with manufactured gas production. (See gas plant instruction 6.)

305 Structures and improvements.

This account shall include the cost of structures and improvements used in connection with manufactured gas production. (See gas plant instruction 7.)

NOTE: Include relief holders in this account.

306 Boiler plant equipment.

This account shall include the cost installed of furnaces, boilers, steam and feed water piping, boiler apparatus, and accessories used in the production of steam at gas production plants.

ITEMS

1. Accumulators.
2. Air preheaters, including fans and drives, and ducts not part of building.
3. Ash disposal equipment, including sluiceways not part of a building, pumps and piping, crane, ash bucket conveyor and drives, ash cars, etc.
4. Belt conveyors, including drives.
5. Blast gate valves.
6. Blow-down tanks and piping.
7. Boilers, including valves attached thereto, casings, safety valves, soot blowers, soot hoppers, superheaters, and feed water regulators.
8. Cinder and dust catcher system, including mechanical and electric types.
9. Coal and coke handling equipment, including hoppers, lorries, etc., used wholly for boilers.
10. Combustion control system, including all apparatus installed for the regulation and control of the supply of fuel or air to boilers.
11. Control apparatus.
12. Cranes, hoists, etc., wholly identified with apparatus listed herein.
13. Desuperheaters, and reducing valves.
14. Draft apparatus, including forced, induced, and other draft systems, with blowers, fans, and ducts not part of building.
15. Economizers.
16. Emergency lighting systems, not part of building, keep-a-lite systems, etc.
17. Emergency signal systems, in connection with boiler operation.
18. Feed water heaters, including primary and stage.
19. Flues, uptakes, and breeching, whether or not stacks are included in this account.
20. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
21. Furnaces.
22. Gas firing system, including gas lines, burners, etc., for gas fired boilers.
23. Injectors.
24. Mechanical stoker and feeding systems, clinker grinders, including drives.
25. Meters, gauges, recording instruments, etc.
26. Oil burning equipment, including tanks, heaters, pumps with drives, burner equipment, piping, and conditioning apparatus.
27. Painting, first cost.
28. Panels, control (for operating apparatus listed herein).
29. Piping system, steam header and exhaust header, including accessory pipe hangers, steam traps, etc., make-up water, feed water, drip, blow-off, water pipe lines used for steam plant, and valve control system.
30. Platforms, railings, steps, gratings, etc., appurtenant to apparatus listed herein.
31. Pulverizing equipment.
32. Pumps and driving units, for feed water, heater condensate, condenser water, and drip.
33. Stacks—brick, steel, and concrete, when set on separate foundations independent of substructure or superstructure of building.
34. Steam reheaters.
35. Steelwork, especially constructed for apparatus listed herein.
36. Tanks, including surge, weighing, return, blow-off, feed water storage.
37. Tar burning equipment for utilization of tar as boiler fuel, including tanks, pumps, burner equipment, piping, etc.
38. Waste heat boilers and accessories—stack valve and stack irrespective of location.
39. Water treatment system, including purifiers, setting tanks, filters, chemical mixing and dosing apparatus, etc.

NOTE A: This account shall not include boilers or steam pipes whose primary purpose is the heating of buildings.

NOTE B: When the system for supplying boiler or condenser water is elaborate, as when it includes a dam, reservoir, canal, or pipe line, the cost shall not be charged to this account but to a special subdivision of account 305, Structures and Improvements—Manufactured Gas.

307 Other power equipment.

A. This account shall include the cost installed of electric generating and accessory equipment used for supplying electricity in gas production plants.

B. This account shall also include the cost installed of miscellaneous power equipment at gas production plants which is not included in any other account.

ITEMS

1. Acid proofing of battery rooms.
2. Air duct runs in battery rooms.
3. Air pump, steamjet.
4. Batteries for control and general station use.
5. Belts, pulleys, hangers, shafts, and countershafts.
6. Cables between generators and switchboards.
7. Cabinets, control.
8. Compartments, including busses, connections and items permanently attached.
9. Enclosure equipment not an integral part of building.
10. Engines, including steam rotary or reciprocating, steam turbines, and internal combustion engines.
11. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
12. Generators, A.C. or D.C., including excitation system.
13. Ground connections, for main station ground.
14. Lightning arresters.
15. Motor generators, frequency changers, and converters.
16. Overhead power lines, including poles, crossarms, insulators, conductors, etc.
17. Panels, control, including supports and instruments.
18. Piping applicable to apparatus listed herein.
19. Reactors.
20. Rectifiers.
21. Safety equipment, including rubber mats, remote closing devices, glove cabinets.
22. Switchboards, including frames, panels, meters, and instruments.
23. Switching equipment, including oil circuit breakers, disconnecting switches, and connections.
24. Synchronous converters.
25. Transformers, including transformer platforms.
26. Underground conduit system, including manholes and conductors.

NOTE: When any unit of equipment listed herein is wholly used to furnish power to equipment included in another single account, its cost shall be included in such account.

308 Coke ovens.

This account shall include the cost installed of coke ovens used for the production of gas.

ITEMS

1. Apparatus for placing coal in ovens.
2. Bins, if not part of a building.
3. Cabinets, control.
4. Calorimeters.
5. Cars, quenching.
6. Charging lorry.
7. Clay mixers.
8. Coke guide.
9. Coke and pusher benches.
10. Collecting mains.
11. Control apparatus.
12. Conveyor, flight.
13. Cover lifting machinery.
14. Door handling machine.
15. Door luting machine.
16. Driving units for coke oven machinery.
17. Enclosures for machinery.
18. Engines, when not an integral part of the driven equipment.
19. Firing equipment.
20. Flues, uptakes, and breeching.
21. Foundations.
22. Fuel handling equipment used exclusively for coal to be carbonized in ovens.
23. Fuel systems under ovens.
24. Hot coke wharves.
25. Hot coke cars.
26. Instruments or meters, electrical.
27. Locomotives.
28. Mud mill.
29. Motor control equipment.
30. Ovens.
31. Panel, control.
32. Piping, including ascension pipes, hydraulic main, liquor flushing decanter tank, liquor pump, and return line to hydraulic main.
33. Pushers, including tracks and driving equipment.
34. Quenching station including structure, tank, well, piping, etc.
35. Quenching towers, piping, etc.
36. Regenerator, from bottom of oven floor tile to battery foundation.
37. Reversing machine, with enclosure.
38. Scale, platform.
39. Signal system.
40. Skip hoist.
41. Stacks.
42. Steel and iron work supports, platforms, stairways, etc.
43. Switches and switchboards.

309 Producer gas equipment.

This account shall include the cost installed of equipment used for the production of producer gas.

ITEMS

1. Ash handling equipment, used exclusively for producers.
2. Blast apparatus, including blowers, driving units, and blast mains.
3. Control apparatus.
4. Coolers and scrubbers.
5. Driving apparatus for producers.
6. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
7. Fuel handling equipment, used exclusively for producers.
8. Humidifiers.
9. Piping—air, steam (commencing at steam header), water (inside of building), and producer gas (up to outlet of final piece of apparatus in building).
10. Producer boosters, including driving units.
11. Producers.
12. Water separators.

310 Water gas generating equipment.

This account shall include the cost installed of equipment used in the generation of water gas.

ITEMS

1. Automatic operation equipment.
2. Back-run installations.
3. Blast equipment, including blowers and driving units, piping and supports.
4. Bridge, coal shed to generator house.
5. Carburetors.
6. Charging equipment, fuel.
7. Circulating water pumps.
8. Concrete or brick pits, including cover, not part of building.
9. Control apparatus.
10. Conveyors.
11. Dust collectors.
12. Enclosures for equipment (barriers, fire walls, guards, housings, screens, etc.).
13. Flow meters.
14. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
15. Fuel handling equipment used exclusively for fuel for this account.
16. Gauges, indicating and recording.
17. Generators.
18. Hot valves.
19. Hydraulic operation equipment.
20. Instruments and meters, electrical.
21. Oil handling and storage apparatus used solely for water gas apparatus (tanks, pumps and oil lines, oil heaters, manholes, valve pits, regulators, strainers, etc.).
22. Oil spray.
23. Operating floors and supports, stairways, etc.
24. Piling under foundations.
25. Piping and valves—steam (commencing at steam header), tar (to decanter), water (inside of building), and gas (up to outlet of final pieces of apparatus in building).
26. Pressure regulators.
27. Scales, when used in connection with items in this account.
28. Seal pots.
29. Superheaters and superheater stacks.
30. Tanks, hydraulic pressure.
31. Valve operating mechanisms.
32. Wash boxes.

311 Liquefied petroleum gas equipment.

A. This account shall include the cost installed of equipment used for the production of gas from petroleum derivatives, such as propane, butane, or gasoline.

B. Subdivisions of this account shall be maintained for each producing process for which this account is provided. A separate subaccount shall be maintained also for bottling equipment included herein.

ITEMS

1. Blowers.
2. Boilers.
3. Calorimixer.
4. Carbureting equipment.
5. Compression equipment.
6. Controller.
7. Control apparatus.
8. Enclosures and protective fences.
9. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
10. Heat exchanger.
11. Gauges and instruments.
12. Mixing or proportioning equipment.
13. Motors, not an integral part of driven equipment.
14. Odorizing equipment.
15. Oil separator.
16. Piping—steam (commencing at steam header), water (inside of building), oil (from supply tank), and gas (up to outlet of final piece of apparatus in building).
17. Pits.
18. Prime movers.
19. Pumps, including driving units.
20. Regulator.
21. Stairs, platforms, and ladders.
22. Storage equipment, tanks, etc.
23. Superheater.
24. Traps.
25. Valves—regulating and check.
26. Vaporizing equipment.

312 Oil gas generating equipment.

This account shall include the cost installed of equipment used for generating oil gas.

ITEMS

1. Air blast equipment, including blowers and driving units, piping and supports.
2. Air inlet louvres and filters.
3. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
4. Generating equipment, including automatic cycle controls, generators, operating floor, superheaters and wash boxes.
5. Instruments and instrument boards, complete with signal lights and thermo couples and including gauge board, pressure gauges and pyrometers.
6. Meters and regulators, such as air flow meter, generator oil meter, steam flow meter and steam regulator.
7. Piping and valves, air, steam (commencing at steam header), water (inside building) and oil gas (up to outlet of final piece of apparatus in building).
8. Pumps, hydraulic and oil.
9. Tanks, hydraulic accumulator, hydraulic return, oil and steam accumulator.

313 Generating equipment—Other processes.

This account shall include, with subdivisions for each type of gas produced, the cost installed of generating equipment which is not included in any of the foregoing accounts, such as benches and retorts for the production of coal gas, equipment used for generating acetylene gas, etc.

ITEMS

As to coal gas production equipment:
1. Benches.
2. Charging and drawing machines.
3. Control apparatus.
4. Equipment for steaming retorts.
5. Flues, uptakes and breeching, whether or not stacks are included in this account.
6. Foundations.
7. Fuel handling equipment used exclusively for retorts, including weight lorries, tracks, etc., and grinders, breakers and screens located in retort house.
8. Fuel system under retorts, including built-in producers.
9. Piping, including ascension pipes, hydraulic main, liquor flushing decanter tank, liquor pump, and return line to hydraulic main.
10. Primary atmospheric condensers.
11. Retorts.
12. Stacks—brick, steel, and concrete when set on separate foundations independent of substructure or superstructure of buildings, including lightning arresters.

314 Coal, coke, and ash handling equipment.

This account shall include the cost installed of structures or equipment used for the transportation, storage, washing, and treatment of coal, coke, and ashes, when used for general gas plant operations.

ITEMS

1. Bins—mixing, refuse, storage, etc.
2. Boom operating mechanism.
3. Breaker equipment.
4. Bridges, bridge track, and machinery.
5. Bucket conveyors and supports.
6. Capstan.
7. Cars.
8. Chutes.
9. Circuit breakers.

10. Coal loaders.
11. Coal preparation machinery, including washing and drying equipment.
12. Conduit, electrical.
13. Conveyors and supports.
14. Crane, caterpillar.
15. Driving apparatus for equipment listed herein.
16. Elevators.
17. Enclosure equipment.
18. Engines, not an integral part of driven equipment.
19. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
20. Gravity swing unloader.
21. Hoppers.
22. Instruments or meters, electrical.
23. Ladders, fixed.
24. Loading towers and equipment.
25. Locomotives.
26. Motor generators used only for equipment in this account.
27. Panel, control.
28. Pits.
29. Pulverizing equipment.
30. Railroad sidings and yard tracks.
31. Sampling equipment.
32. Scales.
33. Screens.
34. Sheds and fencing.
35. Shuttle boom.
36. Signal system equipment.
37. Silo.
38. Skip hoist.
39. Stairs, railings, etc.
40. Transfer cars and trucks.
41. Treatles.
42. Turntable.
43. Unloaders.
44. Weighometer.

315 Catalytic cracking equipment.

This account shall include the cost installed of equipment used for producing gas by the catalytic cracking process.

ITEMS

1. Caloric meters.
2. Catalytic furnace, including catalyst and foundation.
3. Combustion air blowers.
4. Compressors, air.
5. Control equipment.
6. Cooling coils, including foundations.
7. Cooling towers, including foundations.
8. Enclosures.
9. Fractionalising units.
10. Piping and valves.
11. Preheaters.
12. Pressure regulators.
13. Proportioning controls.
14. Tanks.
15. Vaporisers.

316 Other reforming equipment.

This account shall include the cost installed of equipment, other than catalytic cracking equipment, used primarily for reforming gas with resultant changes in its chemical composition and calorific value.

ITEMS

1. Blast equipment, including blowers and driving units, piping, and supports.
2. Control apparatus.
3. Foundations and settings, specially constructed for and not intended to outlast the apparatus for which provided.
4. Fuel and ash handling equipment, used wholly in reforming gas.
5. Oil gas apparatus, used for reforming gas.
6. Piping—steam (commencing at steam header), water (inside of building), and gas (up to outlet of final piece of apparatus in building).
7. Pumps and driving units.
8. Purifiers for gas to be reformed.
9. Regulators.
10. Water gas generators, used primarily for reforming gas.

317 Purification equipment.

This account shall include the cost installed of apparatus used for the removal of impurities from gas and apparatus for conditioning gas, including pumps, wells, and other accessory apparatus.

ITEMS

1. Blowers for revivifying.
2. Blowers for activators.
3. Condensers and washer coolers.
4. Control apparatus—conduit, cable, cabinets, switchboards, etc.
5. Crane or cover lifting equipment, not part of the structure.
6. Dehydrators.
7. Engines, not an integral part of driven equipment.
8. Foundations and settings, specially constructed for and not intended to outlast the equipment for which provided.
9. Instruments and meters, electric.
10. Lubricators.
11. Naphthalene and light oil scrubbers.
12. Other accessory equipment such as coolers, spray ponds, pumps, platforms, railings, stairs.
13. Oxide elevators and pits, platforms, tables, and trenches.
14. Piping—air, steam, water, gas, condensate, liquor, tar, etc. from inlet valve of first piece of apparatus to outlet valve of final piece of apparatus (or, in building, from entrance to building to exit from building).
15. Precipitators.
16. Purifiers—iron oxide or liquid, including first filling.
17. Recording gauges and thermometers.
18. Revivifying air ducts.
19. Saturator with auxiliary equipment.
20. Scrubbers.
21. Seal and drip pots.
22. Signal system identified with equipment herein.
23. Sulphur removal apparatus.
24. Tar extractors and Cottrell precipitators.
25. Tar pumps and tanks.
26. Track runs for cranes and hoists.
27. Wash boxes.
28. Water meters, for cooling water.

318 Residual refining equipment.

This account shall include the cost installed of apparatus used in refining and handling of residuals except where the apparatus is necessary for the operation of property included in account 317, Purification Equipment.

ITEMS

1. Ammonia stills, condensers, saturators, etc.
2. Apparatus for removal of residuals from purifier liquids.
3. Coke filter.
4. Coke handling and storage facilities, used solely for coke held for sale.
5. Condensers.
6. Control apparatus.
7. Coolers.
8. Decanters.
9. Foundations specially constructed for and not intended to outlast the apparatus for which provided.
10. Gauges.
11. Heating equipment for apparatus included in this account.
12. Instruments.
13. Light oil stills, washers, etc.
14. Piping and pumps.
15. Platforms, stairs, and ladders.
16. Separators.
17. Storage tanks.
18. Supports.
19. Tar dehydrators, stills, etc.

319 Gas mixing equipment.

This account shall include the cost installed of equipment used for mixing manufactured and natural gas, or the mixing of other gases incident to delivery of such mixed gases to the distribution system.

ITEMS

1. Alcohol units.
2. Automatic mixing controls.
3. Btu adjustor.
4. Calorimeter.
5. Calorimixer.
6. Compressor.
7. Gas heater.
8. Gas scrubber (air filter, dust cleaner).
9. Gauges and instruments.
10. Meters.
11. Mixing chambers.
12. Odorizing equipment.
13. Oil pump units.
14. Panel and control equipment.
15. Piping and valves.
16. Regulators, pressure and ratio.
17. Safety alarm equipment.

320 Other equipment.

This account shall include the cost installed of equipment used in the production of gas, when not assignable to any of the foregoing accounts.

ITEMS

1. Cabinet, control.
2. Compressed air system.
3. Fire hose carts.
4. First aid room equipment.
5. Foamite system.
6. Foundations and settings specially constructed for and not intended to outlast the apparatus for which provided.
7. Gasoline pumps.
8. Hand pumps.
9. Machine shop equipment, such as lathes, pipe cutting and threading machines, vise grinders, power saw, shop motors, shafting and belting, drill press, shapers, milling machines, planes, etc.
10. Odorizing equipment.
11. Office furniture and equipment.
12. Oil foggers.
13. Panel, control.
14. Piping—yard, when not includible in other accounts.
15. Pits.
16. Platforms.
17. Portable scaffolds, ladders, etc.
18. Power shovels.
19. Production laboratory equipment.
20. Scales, not associated with other equipment.
21. Special signal equipment.
22. Tractors for general plant use.
23. Works exhauster including driving unit and governor.
24. Works station meters, including gauges, piping and accessories.

B. Natural Gas Production Plant

B 1. Natural Gas Production and Gathering Plant

325.1 Producing lands.

This account shall include the cost of lands held in fee on which producing natural gas wells are located, and lands held in fee which are being drained of natural gas through the operation by the utility of wells on other land. (See gas plant instruction 6–G.)

325.2 Producing leaseholds.

A. This account shall include the cost of acquiring leaseholds on which the utility pays royalties for natural gas obtained therefrom. (See gas plant instruction 6–G.)

B. Exclude from this account rents paid periodically for rights obtained under leases. Exclude also from this account the cost of leaseholds which terminate in one year or less after they become effective.

325.3 Gas rights.

This account shall include the cost of natural gas rights used in producing natural gas, whereby the utility obtains ownership in gas underlying land not owned or leased by the utility. It does not provide for gas rights which are leased and which are properly chargeable to account 325.2, Producing Leaseholds.

325.4 Rights-of-way.

This account shall include the cost of all interests in land which terminate more than one year after they become effective and on which are located gathering pipe lines, telephone pole lines, and like property used in connection with the production of natural gas.

325.5 Other land and land rights.

This account shall include the cost of land and land rights used in connection with the production of natural gas, when not properly assignable to any of the foregoing accounts.

326 Gas well structures.

This account shall include the cost of well structures and improvements used in connection with the housing of permanent bailers and other equipment necessary to keep the wells in operation. (See gas plant instruction 7.)

327 Field compressor station structures.

This account shall include the cost of structures and improvements used in connection with the housing of compressor station equipment used to raise the pressure of natural gas before it is conveyed to the terminus of the field lines. (See gas plant instruction 7.)

328 Field measuring and regulating station structures.

This account shall include the cost of structures and improvements used in connection with the housing of meters, regulators, and appurtenant appliances for measuring and regulating natural gas before the point where it enters the transmission or distribution system. (See gas plant instruction 7.)

329 Other structures.

This account shall include the cost of structures and improvements used in connection with natural gas production and gathering not provided for elsewhere. (See gas plant instruction 7.)

330 Producing gas wells—Well construction.

This account shall include the cost of drilling producing gas wells.

ITEMS

1. Clearing well site.
2. Hauling, erecting, dismantling, and removing boilers, portable engines, derricks, rigs, and other equipment and tools used in drilling.
3. Drilling contractors' charges.
4. Drive pipe.
5. Fuel or power.
6. Labor.
7. Rent of drilling equipment.
8. Water used in drilling, obtained either by driving wells, piping from springs or streams, or by purchase.
9. Hauling well equipment.
10. Shooting, fracturing, acidizing.

331 Producing gas wells—Well equipment.

This account shall include the cost of equipment in producing gas wells.

ITEMS

1. Bailing equipment.
2. Boilers and drives permanently connected.
3. Casing.
4. Derrick.
5. Fence, when solely an enclosure for equipment.
6. Fittings, including shut-in valves, bradenheads and casing heads.
7. Packing.
8. Tank, oil or water, etc.
9. Tubing.

332 Field lines.

This account shall include the cost installed of field lines used in conveying natural gas from the wells to the point where it enters the transmission or distribution system.

ITEMS

1. Gathering lines, including pipe, valves, fittings, and supports.
2. Cathodic protection equipment.
3. Creek crossings, suspension bridges and other special construction.
4. Line drips and separators.

333 Field compressor station equipment.

This account shall include the cost installed of compressor station equipment and associated appliances used to raise the pressure of natural gas before it is conveyed to the terminus of the field lines.

ITEMS

1. Boiler plant, coal handling and ash handling equipment for steam powered compressor station.
2. Compressed air system equipment.
3. Compressor equipment and driving units, including auxiliaries, foundations, guard rails and enclosures, etc.
4. Electric system equipment, including generating equipment and driving units, power wiring, transformers, regulators, battery equipment, switchboard, etc.
5. Fire fighting equipment.
6. Gas lines and equipment, including fuel supply lines, cooling tower and pond and associated equipment, dehydrators, fuel gas mixers, special pipe bends and connections, and associated scrubbers, separators, tanks, gauges and instruments.
7. Laboratory and testing equipment.
8. Lubricating oil system, including centrifuge, filter, tanks, purifier, and lubricating oil piping, etc.
9. Office furniture and fixtures and general equipment such as heating boilers, steel lockers, first-aid equipment, gasoline dispensing equipment, lawn mowers, incinerators, etc.
10. Shop tools and equipment.
11. Water supply and circulation system, including water well, tank, water piping, cooling tower, spray fence, and water treatment equipment, etc., but not including water system equipment solely for domestic and general use.

334 Field measuring and regulating station equipment.

This account shall include the cost installed of meters, gauges, and other equipment used in measuring and regulating natural gas collected in field lines before the point where it enters the transmission or distribution system.

ITEMS

1. Automatic control equipment.
2. Boilers, heaters, etc.
3. Foundations, pits, etc.
4. Gas cleaners, scrubbers, separtors, dehydrators, etc.
5. Gauges and instruments, including piping, fittings, wiring, etc., and panel boards.
6. Headers.
7. Meters, orifice or positive, including piping and connections.
8. Oil fogging equipment.
9. Odorizing equipment.
10. Regulators or governors, including controls and instruments.
11. Structures of a minor nature or portable type.

335 Drilling and cleaning equipment.

This account shall include the cost of implements and equipment used in drilling and cleaning natural gas wells.

ITEMS

1. Bailers.
2. Bits and other drilling tools.
3. Boilers.
4. Derricks.
5. Drilling cables.
6. Drilling machines.
7. Engines.
8. Motors.
9. Pulling machines.
10. Pumps.
11. Rigs.
12. Tanks.

336 Purification equipment.

This account shall include the cost installed of apparatus used for the removal of impurities from gas and apparatus for conditioning gas.

ITEMS

1. Condensers and washer coolers.
2. Dehydrators.
3. Foundations and settings, specially constructed for and not intended to outlast the equipment for which provided.
4. Other accessory equipment, such as coolers, spray ponds, pumps, platforms, railings, stairs.
5. Piping, from inlet valve of first piece of apparatus to outlet valve of final piece of apparatus (or, in building, from entrance to building to exit from building).
6. Scrubbers.
7. Sulphur removal apparatus.
8. Water supply system.

NOTE: In general this account shall include all dehydrators located in or adjacent to production areas which are used to remove water and other stray liquids from gas produced by the utility or purchased in or adjacent to production areas. In some instances such dehydrators may be located some distance from the production sources of the gas. Where, however, the utility has no production and gathering facilities with respect to any of the gas passing through the dehydrators, such as at the purchase point at the head of a transmission pipe line company, the dehydrators may be included in account 368, Compressor Station Equipment, or account 367, Mains, whichever is the most practicable and reasonable under the circumstances. Dehydrators

which are an adjunct to products extraction operations shall be included in account 342, Extraction and Refining Equipment. Dehydrators used in connection with underground gas storage operations shall be included in account 356, Purification Equipment.

337 Other equipment.

This account shall include the cost installed of equipment used in the production and gathering of natural gas, when not assignable to any of the foregoing accounts.

ITEMS

1. Calorimeter.
2. Control installation.
3. Crane.
4. Laboratory equipment.
5. Odorizing unit.
6. Office furniture and equipment.
7. Oil fogger.

B 2. PRODUCTS EXTRACTION PLANT

340 Land and land rights.

This account shall include the cost of land and land rights used in connection with the processing of natural gas for removal of gasoline, butane, propane, or other salable products. (See gas plant instruction 6.)

341 Structures and improvements.

This account shall include the cost of structures and improvements used in connection with the processing of natural gas for removal of gasoline, butane, propane, or other salable products. (See gas plant instruction 7.)

342 Extraction and refining equipment.

This account shall include the cost installed of equipment used for the extraction from natural gas of gasoline, butane, propane, or other salable products and for the refining of such products.

ITEMS

1. Boiler plant equipment, including boiler, boiler setting, heat exchangers, etc.
2. Compressed air system, including air compressor, air storage tank, etc.
3. Cooling equipment such as coolers, cooling tower and accessories for gas, extracted products, etc.
4. Cranes, trolleys, and hoists.
5. Electrical system, including generator and driving unit, power lines, transformers, switchboard, yard lighting system, etc.
6. Extraction and refining equipment, such as absorbers, reabsorbers, stills dephlegmators, fractionating towers, stabilizing columns, control apparatus.
7. Foundations and structural supports for equipment items not intended to outlast the equipment for which provided.
8. Fuel regulating and measuring equipment.
9. Gasoline blending equipment including dye pot, eductor pumps, lead storage tanks, weighing device, etc.
10. Gauges and instruments.
11. Loading racks and associated other equipment.
12. Lubricating oil system.
13. Pumps of various types, such as boiler feed water pumps, loading and transfer pumps, drip still pumps, oil pumps, skimmer basin pumps, etc.
14. Tanks of various types such as accumulator and dewatering tanks, separator tanks, gasoline feed tanks, compressed air tanks, oil surge tanks, etc., except tanks classifiable as storage equipment, account 344.
15. Water supply system including water well, water tank and supports, water softener or purification apparatus, traveling water screen and drive.
16. Yard piping, gas, water, steam, compressed air, fuel, vapor, extracted products, including headers, valves, etc., but not including off-site lines includible in account 343, Pipe Lines.

343 Pipe lines.

This account shall include the cost installed of gas and liquids pipe lines used in connection with the processing of natural gas for the removal of gasoline, butane, propane, or other salable products, exclusive of runs of pipe appropriately includible in other equipment accounts, embracing principally off-site gas, gasoline gathering, and loading lines not includible as yard piping in account 342, Extraction and Refining Equipment.

ITEMS

1. Gas lines, off-site, relating solely to extraction operations.
2. Gasoline gathering lines connecting with off-site sources.
3. Gathering line drips.
4. Instruments, indicating and recording.
5. Loading lines connecting with remote off-site loading racks or storage facilities.
6. Pumps and driving units.

344 Extracted products storage equipment.

This account shall include the cost installed of storage tanks and associated equipment used in the storing, prior to sale, of gasoline, butane, propane, and other salable products extracted from natural gas.

ITEMS

1. Foundations.
2. Instruments.
3. Regulators.
4. Storage tanks for partially or fully processed products.
5. Valves.

345 Compressor equipment.

This account shall include the cost installed of compressor equipment and associated appliances used in connection with the receipt, processing, and return of natural gas processed for removal of gasoline, butane, propane, or other salable products.

ITEMS

(See account 333 for items.)

346 Gas measuring and regulating equipment.

This account shall include the cost installed of meters, gauges, and other equipment used in measuring or regulating natural gas received and/or returned from processing for removal of gasoline, butane, propane, or other salable products.

ITEMS

1. Automatic control equipment.
2. Boilers, heaters, etc.
3. Foundations, pits, etc.
4. Gas cleaners, scrubbers, separators, dehydrators, etc.
5. Gauges and instruments, including piping, fittings, wiring, etc., and panel boards.
6. Headers.
7. Meters, orifice or positive, including piping and connections.
8. Oil fogging equipment.
9. Odorizing equipment.
10. Regulators or governors, including controls and instruments.
11. Structures of a minor nature or portable type.

347 Other equipment.

This acount shall include the cost installed of equipment used in processing natural gas and refining gasoline, butane, propane, and other salable products extracted from natural gas, when not assignable to any of the foregoing accounts.

ITEMS

1. Fire fighting equipment.
2. Laboratory and testing equipment.
3. Miscellaneous equipment, such as first-aid cabinet, gasoline dispensing pump, heating boiler, incinerator, lawn mower, warehouse truck.
4. Office furniture and equipment.
5. Shop tools and equipment.

3. STORAGE PLANT

A. UNDERGROUND STORAGE PLANT

350.1 Land.

This account shall include the cost of lands held in fee on which underground storage wells are located, and other lands held in fee within an area utilized for the underground storage of gas. (See gas plant instruction 6–G.)

350.2 Leaseholds.

A. This account shall include the cost of acquiring leaseholds on lands within an area of underground gas storage operations. (See gas plant instruction 6–G.)

B. Exclude from this account rents paid periodically for rights obtained under leases.

350.3 Storage rights.

A. This account shall include the cost of rights obtained from others for use of lands for the underground storage of gas.

B. Exclude from this account rents or other charges paid periodically for use of lands for underground gas storage purposes.

350.4 Rights-of-way.

This account shall include the cost of all interests in land which do not terminate until more than one year after they become effective and on which are located underground storage lines, telephone pole lines, and like property used in connection with underground gas storage operations.

350.5 Gas rights.

This account shall include the cost of natural gas rights whereby the utility obtains ownership in gas underlying land within an underground gas storage area but not owned or leased by the utility. It does not provide for gas rights which are leased and which are properly chargeable to account 350.2, Leaseholds.

351 Structures and improvements.

A. This account shall include the cost in place of structures and improvements used wholly or predominantly in connection with underground storage of natural gas. (See gas plant instruction 7.)

B. This account shall be subdivided as follows:

351.1 Well structures.
351.2 Compressor station structures.
351.3 Measuring and regulating station structures.
351.4 Other structures.

352 Wells.

This account shall include the drilling cost of wells used for injection and withdrawal of gas from underground storage projects, including wells kept open and used for observation.

ITEMS

Drilling:
1. Clearing well site.
2. Hauling, erecting, dismantling, and removing boilers, portable engines, derricks, rigs, and other equipment and tools used in drilling.
3. Drilling contractors' charges.
4. Drive pipe.
5. Fuel or power.
6. Labor.
7. Rent of drilling equipment.
8. Water used in drilling, obtained either by driving wells, piping from springs or streams, or by purchase.
9. Hauling well equipment.
10. Shooting, fracturing, acidizing.

Equipment:
11. Bailing equipment.
12. Boilers and drives permanently connected.
13. Casing.
14. Derrick.
15. Fence, when solely an enclosure for equipment.
16. Fittings, including shut-in valves, bradenheads and casing heads.
17. Packing.
18. Tank, oil or water, etc.
19. Tubing.

353 Lines.

This account shall include the cost installed of gas pipe lines used wholly or predominantly for conveying gas from point of connection with transmission or field lines to underground storage wells and from underground storage wells to the point where the gas enters the transmission or distribution system.

ITEMS

1. Cathodic protection equipment.
2. Creek crossings, suspension bridges and other special construction.
3. Lines, including pipe, valves, fittings, and supports.
4. Line drips and separators.

354 Compressor station equipment.

This account shall include the cost installed of compressor station equipment used wholly or predominantly for the purpose of raising the pressure of gas for delivery to underground storage or to raise the pressure of gas withdrawn from underground storage for delivery to the transmission or distribution system.

ITEMS

1. Boiler plant, coal handling and ash handling equipment for steam powered compressor station.
2. Compressed air system equipment.
3. Compressor equipment and driving units, including auxiliaries, foundations, guardrails and enclosures, etc.
4. Electric system equipment, including generating equipment and driving units, power wiring, transformers, regulators, battery equipment, switchboard, etc.
5. Fire fighting equipment.
6. Gas lines and equipment, including fuel supply lines, cooling tower and pond and associated equipment, dehydrators, fuel gas mixers, special pipe bends and connections, and associated scrubbers, separators, tanks, gauges and instruments.
7. Laboratory and testing equipment.
8. Lubricating oil system, including centrifuge, filter. tanks, purifier, and lubricating oil piping, etc.
9. Office furniture and fixtures and general equipment such as steel lockers, first-aid equipment, gasoline dispensing equipment, lawn mowers, incinerators, etc.
10. Shop tools and equipment.
11. Water supply and circulation system, including water well, tank, water piping, cooling tower, spray fence, and water treatment equipment, etc., but not including water system equipment solely for domestic and general use.

355 Measuring and regulating equipment.

This account shall include the cost installed of equipment used wholly or predominantly for the purpose of measuring and regulating deliveries of gas to underground storage and withdrawals of gas from underground storage.

ITEMS

1. Automatic control equipment.
2. Boilers, heaters, etc.
3. Foundations, pits, etc.
4. Gas cleaners, scrubbers, separators, dehydrators, etc.
5. Gauges and instruments, including piping, fittings, wiring, etc., and panel boards.
6. Headers.
7. Meters, orifice or positive, including piping and connections.
8. Oil fogging equipment.
9. Odorizing equipment.
10. Regulators or governors, including controls and instruments.
11. Structures of a minor nature or portable type.

356 Purification equipment.

This account shall include the cost installed of apparatus used wholly or predominantly for the removal of impurities from and the conditioning of, gas delivered to or removed from underground storage fields.

ITEMS

1. Condensers and washer coolers.
2. Dehydrators.
3. Foundations and settings, specially constructed for and not intended to outlast the equipment for which provided.
4. Other accessory equipment, such as coolers, spray ponds, pumps, platforms, railings, stairs.
5. Piping, from inlet valve of first piece of apparatus to outlet valve of final piece of apparatus (or, in building, from entrance to building to exit from building).
6. Scrubbers.
7. Sulphur removal apparatus.
8. Water supply system.

357 Other equipment.

This account shall include the cost installed of equipment used wholly or predominantly in connection with underground storage of gas, when not assignable to any of the foregoing accounts.

ITEMS

1. Calorimeter.
2. Control installation.
3. Crane.
4. Odorizing unit.
5. Office furniture and equipment.
6. Oil fogger.

B. LOCAL STORAGE PLANT

360 Land and land rights.

This account shall include the cost of land and land rights used in connection with local storage of gas in holders within or adjacent to distribution areas. (See gas plant instruction 6.)

361 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with local storage of gas within or adjacent to distribution areas. (See gas plant instruction 7.)

362 Gas holders.

This account shall include the cost installed of holders and associated appliances used in the storage of gas above ground, or in underground receptacles installed for local storage purposes.

ITEMS

1. Alarm systems.
2. Buried piping, tanks or other underground construction for gas storage.
3. Flood and fire control equipment.
4. Foundations.
5. Holder pistons.
6. Holders—waterless, including elevators, tar apparatus, and inlet and outlet connections.
7. Holders—waterseal, including oil skimmer, heating equipment, drips, and inlet and outlet connections.
8. Hortonspheres and high pressure tanks, including inlet and outlet connections, access equipment, etc.
9. Lighting.
10. Pumps.
11. Ventilating equipment.
12. Walkways.

NOTE A: If the utility stores gas by the liquefaction process the holders for such liquids, whether above or below ground, shall be included in a separate subaccount hereunder.

NOTE B: Relief holders used in connection with manufactured gas operations shall be included in account 305, Structures and Improvements.

363 Other equipment.

This account shall include the cost installed of other equipment used in connection with the storage of gas within or adjacent to distribution areas.

ITEMS

1. Complete inlet and outlet connections.
2. Compressor.
3. Foundation.
4. Gauges and instruments.
5. Regulating apparatus.

4. TRANSMISSION PLANT

365.1 Land and land rights.

This account shall include the cost of land and land rights except rights-of-way used in connection with transmission operations. (See gas plant instruction 6.)

365.2 Rights-of-way.

This account shall include the cost of rights-of-way used in connection with transmission operations. (See gas plant instruction 6.)

366. Structures and improvements.

A. This account shall include the cost in place of structures and improvements

used in connection with transmission operations. (See gas plant instruction 7.)

B. This account shall be subdivided as follows:

366.1 Compressor Station Structures.
366.2 Measuring and Regulating Station Structures.
366.3 Other Structures.

367 Mains.

A. This account shall include the cost installed of transmission system mains.

B. The records supporting this account shall be so kept as to show separately the cost of mains of different sizes and types and of each tunnel, bridge, or river crossing.

ITEMS

1. Anti-freeze lubricating equipment.
2. Automatic valve operating mechanisms, including pressure tanks, etc.
3. By-pass assembly.
4. Caissons, tunnels, trestles, etc., for submarine mains.
5. Cathodic protection equipment.
6. Drip lines and pots.
7. Excavation, including shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
8. Foundations.
9. Gas cleaners, scrubbers, etc. when not part of compressor station or measuring and regulating equipment.
10. Leak clamps. (See gas plant instruction 9–C (1).)
11. Linewalkers' bridges.
12. Manholes.
13. Municipal inspection.
14. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
15. Permits.
16. Pipe coating.
17. Pipe and fittings.
18. Pipe laying.
19. Pipe supports.
20. Protection of street openings.
21. River, highway, and railroad crossings, including revetments, pipe anchors, etc.
22. Valves.
23. Welding.

368 Compressor station equipment.

This account shall include the cost installed of compressor station equipment and associated appliances used in connection with transmission operations.

ITEMS

1. Boiler plant, coal handling and ash handling equipment for steam powered compressor station.
2. Compressed air system equipment.
3. Compressor equipment and driving units, including auxiliaries, foundations, guard rails and enclosures, etc.
4. Electric system equipment, including generating equipment and driving units, power wiring, transformers, regulators, battery equipment, switchboard, etc.
5. Fire fighting equipment.
6. Gas lines and equipment, including fuel supply lines, cooling tower and pond and associated equipment, dehydrators, fuel gas mixers, special pipe bends and connections, and associated scrubbers, separators, tanks, gauges and instruments.
7. Laboratory and testing equipment.
8. Lubricating oil system including centrifuge, filter, tanks, purifier, and lubricating oil piping, etc.
9. Office furniture and fixtures and general equipment such as steel lockers, first-aid equipment, gasoline dispensing equipment, lawn mowers, incinerators, etc.
10. Shop tools and equipment.
11. Water supply and circulation system, including water well, tank, water piping, cooling tower, spray fence, and water treatment equipment, etc., but not including water system equipment solely for domestic and general use.

369 Measuring and regulating station equipment.

This account shall include the cost installed of meters, gauges, and other equipment used in measuring or regulating gas in connection with transmission system operations.

ITEMS

1. Automatic control equipment.
2. Boilers, heaters, etc.
3. Foundations, pits, etc.
4. Gas cleaners, scrubbers, separators, dehydrators, etc.
5. Gauges and instruments, including piping, fittings, wiring, etc., and panel boards.
6. Headers.
7. Meters, orifice or positive, including piping and connections.
8. Oil fogging equipment.
9. Odorizing equipment.
10. Regulators or governors, including controls and instruments.
11. Structures of a minor nature or portable type.

NOTE: Pipe line companies shall include in the transmission functional classification city gate and main line industrial measuring and regulating stations, except that where pipe line companies measure deliveries of gas at entry points to their own distribution systems, they shall have the option, if consistently observed, of including such stations either in the transmission or distribution function for the purposes of this system of accounts.

370 Communication equipment.

This account shall include the cost installed of radio, telephone, microwave, and other equipment used wholly or predominantly in connection with the operation and maintenance of the gas transmission system. (See also account 397, Communication Equipment.)

ITEMS

1. Carrier terminal equipment including repeaters, power supply equipment, transmitting and receiving sets.
2. Microwave equipment, including power supply equipment, transmitters, amplifiers, paraboloids, towers, reflectors, receiving equipment, etc.
3. Radio equipment, fixed and mobile, including antenna, power equipment, transmitters and receivers, and portable receiver-transmitter units.
4. Telephone equipment including switchboards, power and testing equipment, conductors, pole lines, etc.

371 Other equipment.

This account shall include the cost installed of equipment used in transmission system operations, when not assignable to any of the foregoing accounts.

5. DISTRIBUTION PLANT

374 Land and land rights.

This account shall include the cost of land and land rights used in connection with distribution operations. (See gas plant instruction 6.)

375 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with distribution operations. (See gas plant instruction 7.)

376 Mains.

A. This account shall include the cost installed of distribution system mains.

B. The records supporting this account shall be so kept as to show separately the cost of mains of different sizes and types and of each tunnel, bridge, or river crossing.

ITEMS

1. Caissons, tunnels, trestles, etc. for submarine mains.
2. Clamps, leak (bell and spigot) when installed at time of construction; when clamps are installed subsequent to construction, the accounting shall be in accordance with gas plant instruction 9, paragraph (C) 1.
3. Drip lines and pots.
4. Electrolysis tests, in connection with new construction.
5. Excavation, including shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
6. Hauling, unloading, and stringing pipe.
7. Lamping and watching new construction.
8. Municipal inspection.
9. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
10. Permits.
11. Pipe coating.
12. Pipe and fittings.
13. Pipe laying.
14. Pipe supports.
15. Protection of street openings.
16. Relocating city storm and sanitary sewers, catch basins, etc., or protecting same in connection with new construction.
17. Replacement of municipal drains and culverts in connection with new construction.
18. Roadway boxes.
19. Shifting excavated material due to traffic conditions in connection with new construction.
20. Sleeves and couplings.
21. Special crossovers, bridges and foundations for special construction.
22. Surveying and staking lines.
23. Valves where not installed in pits including manholes or pits not associated with pumping or regulating equipment.
24. Welding.
25. Wood blocking.

377 Compressor station equipment.

This account shall include the cost installed of compressor station equipment and associated appliances used in connection with distribution system operations.

ITEMS

1. Boiler plant, coal handling and ash handling equipment for steam compressor station.
2. Compressed air system equipment.
3. Compressor equipment and driving units, including auxiliaries, foundations, guard rails and enclosures, etc.
4. Electric system equipment, including generating equipment and driving units, power wiring, transformers, regulators, battery equipment, switchboard, etc.
5. Fire fighting equipment.
6. Gas lines and equipment, including fuel supply lines, cooling tower and pond and associated equipment, dehydrators, fuel gas mixers, special pipe bends and connections, and associated scrubbers, separators, tanks, gauges and instruments.
7. Laboratory and testing equipment.
8. Lubricating oil system, including centrifuge, filter, tanks, purifier, and lubricating oil piping, etc.
9. Office furniture and fixtures and general equipment such as steel lockers, first-aid equipment, gasoline dispensing equipment, lawn mowers, incinerators, etc.
10. Shop tools and equipment.
11. Water supply and circulation system, including water well, tank, water piping, cooling tower, spray fence, and water treatment equipment, etc., but not including water system equipment solely for domestic and general use.

378 Measuring and regulating station equipment—general.

This account shall include the cost installed of meters, gauges, and other equipment used in measuring and regulating gas in connection with distribution system operations other than the measurements of gas deliveries to customers.

ITEMS

1. Automatic control equipment.
2. Boilers, heaters, etc.
3. Foundations, pits, etc.
4. Gas Cleaners, scrubbers, separators, dehydrators, etc.
5. Gauges and instruments, including piping, fittings, wiring, etc., and panel boards.
6. Headers.
7. Meters, orifice, or positive, including piping and connections.
8. Oil fogging equipment.
9. Odorizing equipment.
10. Regulators or governors, including controls and instruments.
11. Structures of a minor nature or portable type.

NOTE: By-passes outside governor pits are includible in account 376, Mains.

379 Measuring and regulating station equipment—city gate check stations.

This account shall include the cost installed of meters, gauges, and other equipment used in measuring and regulating the receipt of gas at entry points to distribution systems.

NOTE: Pipe line companies shall include in the transmission functional classification city gate and main line industrial measuring and regulating stations, except that where pipe line companies measure deliveries of gas at entry points to their own distribution systems, they shall have the option, if consistently observed, of including such stations either in the transmission or distribution function for the purposes of this system of accounts.

ITEMS

(See account 378 for items.)

380 Services.

A. This account shall include the cost installed of service pipes and accessories leading to the customers' premises.

B. A complete service begins with the connection on the main and extends to but does not include the connection with the customer's meter. A stub service extends from the main to the property line, or the curb stop.

C. Services which have been used but have become inactive shall be retired from utility plant in service immediately if there is no prospect for reuse, and, in any event, shall be retired by the end of the second year following that during which the service became inactive unless reused in the interim.

ITEMS

1. Curb valves and curb boxes.
2. Excavation, including shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
3. Landscaping, including lawns, shrubbery, shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
4. Municipal inspection.
5. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
6. Permits.
7. Pipe and fittings, including saddle, T, or other fitting on street main.
8. Pipe coating.
9. Pipe laying.
10. Protection of street openings.
11. Service drips.
12. Service valves, at head of service, when installed or furnished by the utility.

NOTE: When a customer pays all or a part of the cost of the service and such cost is properly includible in this account, the amount borne or contributed by the customer shall be credited to account 271, Contributions in Aid of Construction.

381 Meters.

A. This account shall include the cost installed of meters or devices and appurtenances thereto, for use in measuring gas delivered to users, whether actually in service or held in reserve.

B. When a meter is permanently retired from service, the installed cost included herein shall be credited to this account.

C. The records of meters shall be so kept that the utility can furnish information as to the number of meters of each type and capacity in service and in reserve as well as the location of each meter.

ITEMS

1. Meters, including badging and initial testing.
Meter installations:
2. Cocks.
3. Labor.
4. Locks.
5. Meter bars.
6. Pipe and fittings.
7. Seals.
8. Shelves.
9. Swivels and bushings.
10. Transportation.

NOTE A: At the option of the utility, costs of meter installations may be accounted for separately from the cost of meters in accordance with the provisions of account 382, Meter Installations. The practice of the utility, however, shall be consistent from year to year and throughout the utility's system.

NOTE B: The cost of removing and resetting meters shall be charged to account 763, Meter and House Regulator Expenses.

382 Meter installations.

A. This account shall include the cost of labor and materials used, and expenses incurred in connection with the original installation of customer meters.

B. When a meter installation is permanently retired from service, the cost thereof shall be credited to this account.

ITEMS

1. Cocks.
2. Locks.
3. Labor.
4. Meter bars.
5. Pipe and fittings.
6. Seals.
7. Shelves.
8. Swivels and bushings.
9. Transportation.

NOTE: At the option of the utility, meter installations may be accounted for as part of the cost installed of meters, in accordance with the provisions of account 381, Meters. The practice of the utility, however, shall be consistent from year to year and throughout the utility's system.

383 House regulators.

A. This account shall include the cost installed of house regulators when actually in service or held in reserve.

B. When a house regulator is permanently retired from service, the installed cost thereof shall be credited to this account.

ITEMS

1. House regulator.
House regulator installations:
2. Cocks.
3. Labor.
4. Locks.
5. Pipe and fittings.
6. Regulator vents.
7. Swivels and bushings.
8. Transportation.

NOTE: At the option of the utility, costs of house regulator installations may be accounted for separately from the cost of house regulators in accordance with the provisions of account 384, House Regulator Installations. The practice of the utility, however, shall be consistent from year to year and throughout the utility's system.

384 House regulator installations.

A. This account shall include the cost of labor and materials used and expenses incurred in connection with the original installation of house regulators.

B. When a house regulator installation is permanently retired from service, the cost thereof shall be credited to this account.

ITEMS

1. Cocks.
2. Labor.
3. Locks.
4. Pipe and fittings.
5. Regulator vents.
6. Swivels and bushings.
7. Transportation.

NOTE: At the option of the utility, house regulator installations may be accounted for as part of the cost installed of house regulators in accordance with the provisions of account 383, House Regulators. The practice, however, shall be consistent from year to year and throughout the utility's system.

385 Industrial measuring and regulating station equipment.

This account shall include the cost of special and expensive installations of measuring and regulating station equipment, located on the distribution system, serving large industrial customers.

ITEMS

(See account 378 for items.)

NOTE A: Do not include in this account measuring and regulating station equipment serving main line industrial customers. (See account 369.)

NOTE B: By-passes outside of governor pits are includible in account 376, Mains.

386 Other property on customers' premises.

This account shall include the cost, including first setting and connecting,

of equipment' owned by the utility installed on customer premises which is not includible in other accounts.

387 Other equipment.

This account shall include the cost installed of all other distribution system equipment not provided for in the foregoing accounts, including street lighting equipment.

ITEMS

1. Carbon monoxide tester and indicator.
2. Explosimeters.
3. Fire extinguisher.
4. Gas masks.
5. Lockers.
6. Portable pump.
7. Recording gauges.
8. Street lighting equipment.
9. Test meters.
10. Watchmen's clocks.

6. GENERAL PLANT

389 Land and land rights.

This account shall include the cost of land and land rights used for utility purposes, the cost of which is not properly includible in other land and land rights accounts. (See gas plant instruction 6.)

390 Structures and improvements.

This account shall include the cost in place of structures and improvements used for utility purposes, the cost of which is not properly includible in other structures and improvements accounts. (See gas plant instruction 7.)

391 Office furniture and equipment.

This account shall include the cost of office furniture and equipment owned by the utility and devoted to utility service, and not permanently attached to buildings, except the cost of such furniture and equipment which the utility elects to assign to other plant accounts on a functional basis.

ITEMS

1. Book cases and shelves.
2. Desks, chairs, and desk equipment.
3. Drafting-room equipment.
4. Filing, storage, and other cabinets.
5. Floor covering.
6. Library and library equipment.
7. Mechanical office equipment such as accounting machines, typewriters, etc.
8. Safes.
9. Tables.

392 Transportation equipment.

This account shall include the cost of transportation vehicles used for utility purposes.

ITEMS

1. Airplanes.
2. Automobiles.
3. Bicycles.
4. Electrical vehicles.
5. Motor trucks.
6. Motorcycles.
7. Repair cars or trucks.
8. Tractors and trailers.
9. Other transportation vehicles.

393 Stores equipment.

This account shall include the cost of equipment used for the receiving, shipping, handling and storage of materials and supplies.

ITEMS

1. Chain falls.
2. Counters.
3. Cranes (portable).
4. Elevating and stacking equipment (portable).
5. Hoists.
6. Lockers.
7. Scales.
8. Shelving.
9. Storage bins.
10. Trucks, hand and power driven.
11. Wheelbarrows.

394 Tools, shop, and garage equipment.

This account shall include the cost of tools, implements, and equipment used in construction, repair work, general shops and garages and not specifically provided for or includible in other accounts.

ITEMS

1. Air compressors.
2. Anvils.
3. Automobile repair shop equipment.
4. Battery charging equipment.
5. Belts, shafts and countershafts.
6. Boilers.
7. Cable pulling equipment.
8. Concrete mixers.
9. Derricks.
10. Drill presses.
11. Electric equipment.
12. Engines.
13. Forges.
14. Foundations and settings specially constructed for equipment in this account and not expected to outlast the equipment for which provided.
15. Furnaces.
16. Gas producers.
17. Gasoline pumps, oil pumps, and storage tanks.
18. Greasing tools and equipment.
19. Hoists.
20. Ladders.
21. Lathes.
22. Machine tools.
23. Motor driven tools.
24. Motors.
25. Pipe threading and cutting tools.
26. Pneumatic tools.
27. Pumps.
28. Riveters.
29. Smithing equipment.
30. Tool racks.
31. Vises.
32. Welding apparatus.
33. Work benches.

395 Laboratory equipment.

This account shall include the cost installed of laboratory equipment used for general laboratory purposes and not specially provided for or includible in other departmental or functional plant accounts.

ITEMS

1. Balances and scales.
2. Barometers.
3. Calorimeters—bomb, flow, recording types, etc.
4. Electric furnaces.
5. Gas burning equipment.
6. Gauges.
7. Glassware, beakers, burettes, etc.
8. Humidity testing apparatus.
9. Laboratory hoods.
10. Laboratory tables and cabinets.
11. Muffles.
12. Oil analysis apparatus.
13. Piping.
14. Specific gravity apparatus.
15. Standard bottles for meter prover testing.
16. Stills.
17. Sulphur and ammonia apparatus.
18. Tar analysis apparatus.
19. Thermometers—indicating and recording.
20. Any other item of equipment for testing gas, fuel, flue gas, water, residuals, etc.

396 Power operated equipment.

This account shall include the cost of power operated equipment used in construction or repair work exclusive of equipment includible in other accounts; it shall include, also, the tools and accessories acquired for use with such equipment and the vehicle on which such equipment is mounted.

ITEMS

1. Air compressors, including driving unit and vehicle.
2. Back filling machines.
3. Boring machine.
4. Bulldozers.
5. Cranes and hoists.
6. Diggers.
7. Engines.
8. Pile drivers.
9. Pipe cleaning machine.
10. Pipe coating or wrapping machines.
11. Tractors—crawler type.
12. Trenchers.
13. Other power operated equipment.

NOTE: It is intended that this account include only such large units as are generally self-propelled or mounted on movable equipment.

397 Communication equipment.

This account shall include the cost installed of telephone, telegraph and wireless equipment for general use in connection with the utility's gas operations. (See account 370 for communication equipment used wholly or predominantly in connection with operation and maintenance of the transmission system.)

ITEMS

1. Carrier terminal equipment including repeaters, power supply equipment, transmitting and receiving sets.
2. Microwave equipment, including power supply equipment, transmitters, amplifiers, paraboloids, towers, reflectors, receiving equipment, etc.
3. Radio equipment, fixed and mobile, including antenna, power equipment, transmitters and receivers, and portable receiver-transmitter units.
4. Telephone equipment including switchboards, power and testing equipment, conductors, pole lines, etc.

398 Miscellaneous equipment.

This account shall include the cost of equipment, apparatus, etc., used and useful in gas operations, which is not includible in any other account.

ITEMS

1. Hospital and infirmary equipment.
2. Kitchen equipment.
3. Operator's cottage furnishings.
4. Radios.
5. Recreation equipment.
6. Restaurant equipment.
7. Soda fountains.
8. Other miscellaneous equipment.

NOTE: Miscellaneous equipment of the nature indicated above wherever practicable shall be assigned to the utility plant accounts on a functional basis.

399 Other tangible property.

This account shall include the cost of tangible utility plant not provided for elsewhere.

Income Accounts

1. UTILITY OPERATING INCOME

400	Operating revenues.
	Operating expenses:
401	Operation expense.
402	Maintenance expense.
403	Depreciation and depletion expense.
404	Amortization of limited-term gas plant.
405	Amortization of other gas plant.
406	Amortization of gas plant acquisition adjustments.
407.1	Amortization of property losses.
407.2	Amortization of conversion expenses.
408	Taxes other than income taxes.
409	Income taxes.
410	Provision for deferred income taxes.
411	Income taxes deferred in prior years-credit.
	TOTAL OPERATING EXPENSES
	Operating income.
412, 413	Income from gas plant leased to others.
414	Other utility operating income.
	Total operating income.

2. OTHER INCOME

415, 416	Income from merchandising, jobbing, and contract work.
417	Income from nonutility operations.
418	Nonoperating rental income.
419	Interest and dividend income.
421	Miscellaneous nonoperating income.
	Total other income.
	Total income.

3. MISCELLANEOUS INCOME DEDUCTIONS

425	Miscellaneous amortization.
426	Other income deductions.
	Total income deductions.
	Income before interest charges.

4. INTEREST CHARGES

427	Interest on long-term debt.
428	Amortization of debt discount and expense.
429	Amortization of premium on debt—Cr.
430	Interest on debt to associated companies.
431	Other interest expense.
432	Interest charged to construction—Cr.
	Total interest charges.
	Net income.

5. EARNED SURPLUS

216	Unappropriated earned surplus (at beginning of period).
433	Balance transferred from income.
434	Miscellaneous credits to surplus.
435	Miscellaneous debits to surplus.
436	Appropriations of surplus.
	Net addition to earned surplus.
437	Dividends declared—Preferred stock.
438	Dividends declared—Common stock.
216	Unappropriated earned surplus (at end of period).

Income Accounts

1. UTILITY OPERATING INCOME

400 Operating revenues.

There shall be shown under this caption the total amount included in the gas operating revenue accounts provided herein.

401 Operation expense.

There shall be shown under this caption the total amount included in the gas operation expense accounts provided herein.

402 Maintenance expense.

There shall be shown under this caption the total amount included in the gas maintenance expense accounts provided herein.

403 Depreciation and depletion expense.

A. This account shall include the amount of depreciation expense for all classes of depreciable gas plant in service except such depreciation expense as is chargeable to clearing accounts or to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work. It shall also include depletion and amortization expense with respect to producing natural gas lands and land rights.

B. The utility shall keep such records of property and property retirements as will reflect the service life of property which has been retired, and also such records as will reflect the percentage of salvage and cost of removal for property retired.

C. The charges to this account for amortization and depletion of producing natural gas land and land rights shall be made in such manner as to distribute the cost of producing natural gas land and land rights over the period of their benefit to the utility, based upon the exhaustion of the natural gas deposits recoverable from such land and land rights.

NOTE A: Depreciation expense applicable to property included in account 104, Gas Plant Leased to Others, shall be charged to account 413, Expenses of Gas Plant Leased to Others.

NOTE B: Depreciation expense applicable to transportation equipment, shop equipment, tools, work equipment, power operated equipment, and other general equipment may be charged to clearing accounts as necessary, in order to obtain a proper distribution of expenses between construction and operation.

404 Amortization of limited-term gas plant.

This account shall include amortization charges applicable to amounts included in the gas plant accounts for limited-term franchises, licenses, patent rights, limited-term interests in land other than land rights held for the production of natural gas, and expenditures on leased property where the service life of the improvements is terminable by action of the lease. The charges to this account shall be such as to distribute the book cost of each investment as evenly as may be over the period of its benefit to the utility. (See account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Plant.)

405 Amortization of other gas plant.

A. When authorized by the Commission, this account shall include charges for amortization of intangible or other gas plant in service which does not have a definite or terminable life and which is not subject to charges for depreciation expense.

B. This account shall be supported in such detail as to show the amortization applicable to each investment being amortized, together with the book cost of the investment and the period over which it is being written off.

406 Amortization of gas plant acquisition adjustments.

This account shall be debited or credited, as the case may be, with amounts includible in operating expenses, pursuant to approval or order of the Commission, for the purpose of providing for the extinguishment of the amount in account 114, Gas Plant Acquisition Adjustments.

407.1 Amortization of property losses.

This account shall be charged with amounts credited to account 182, Extraordinary Property Losses, when the Commission has authorized the amount in the latter account to be amortized by charges to gas operating expenses.

407.2 Amortization of conversion expenses.

This account shall be charged with amortization of amounts authorized by the Commission to be included in account 183, Other Deferred Debits, for expenses incurred in the conversion of distribution plant from manufactured gas service to natural gas service.

408 Taxes other than income taxes.

A. This account shall include the amount of ad valorem, gross revenue or gross receipts taxes, state unemployment insurance, franchise taxes, federal excise taxes, social security taxes, and all other taxes assessed by federal, state, county, municipal, or other local governmental authorities, which are properly chargeable to gas operations, except income taxes.

B. This account shall be charged with the amount of taxes which is applicable thereto, with concurrent credits to account 236, Taxes Accrued, or account 165, Prepayments, as appropriate. When it is not possible to determine the exact amount of taxes, the amount shall be estimated and adjustments made in current accruals as the actual tax levies become known.

C. The charges to this account shall be made or supported so as to show the amount of each tax and the basis upon which each charge is made. In the case of a utility rendering more than one utility service, taxes of the kind includible in this account shall be assigned directly to the utility department the operation of which gave rise to the tax in so far as practicable. Where the tax is not attributable to a specific utility department, it shall be distributed among the utility departments or nonutility operations on an equitable basis.

NOTE A: Taxes applicable to nonutility property or investments including taxes on net income derived therefrom shall be charged to the account in which the income from the property or investments is included.

NOTE B: Special assessments for street and similar improvements shall be included in the appropriate utility plant or nonutility property account.

NOTE C: Taxes specifically applicable to construction shall be included in the cost of construction.

NOTE D: Taxes assumed by the utility on property leased from others for use in utility operations shall be charged to the appropriate rent expense or clearing account.

NOTE E: Gasoline and other sales taxes shall be charged as far as practicable to the same account as the materials on which the tax is levied.

NOTE F: Social Security and other forms of so-called pay roll taxes shall be distributed

to utility departments and to nonutility functions on a basis related to pay roll. Amounts applicable to construction shall be charged to the appropriate plant account.

409 Income taxes.

A. This account shall include the amount of state and federal taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals shall be made to account 236, Taxes Accrued, and as the exact amount of taxes becomes known, the current tax accruals shall be adjusted accordingly so that this account, as nearly as can be ascertained, shall include the actual taxes payable which are chargeable to utility operations.

B. The accruals for income taxes shall be apportioned among utility departments and nonutility operations so that, as nearly as practicable, each tax shall be included in the expenses of the utility department or nonutility operation the income from which gave rise to the tax.

NOTE A: Taxes assumed by the utility on interest shall be charged to account 431, Other Interest Expense.

NOTE B: Income taxes on income from gas plant leased to others shall be charged to account 413, Expenses of Gas Plant Leased to Others.

NOTE C: Where statutes or regulatory practices require that the profits or losses of merchandising, jobbing and contract work shall not be considered in arriving at rates to be charged for utility service, income taxes on income from merchandising, jobbing and contract work shall be charged to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

NOTE D: Income taxes on nonutility income shall be charged to the account in which the income is included. If the amount of nonutility income is relatively small, the allocation of income taxes thereto may be made annually.

NOTE E: Interest on tax refunds or deficiencies shall not be included in this account but in account 419, Interest and Dividend Income, or account 431, Other Interest Expense, as appropriate.

410 Provision for deferred income taxes.

This account shall be debited, and Accumulated Deferred Income Taxes shall be credited with an amount equal to any deferral of taxes on income as provided by the texts of accounts 281, 282, and 283. There shall not be netted against entries required to be made to this account any credit amounts appropriately includible in account 411, Income Taxes Deferred in Prior Years—Credit.

411 Income taxes deferred in prior years—Credit.

This account shall be credited and Accumulated Deferred Income Taxes debited with an amount equal to the portion of taxes on income payable for the year that is attributable to a deferral of taxes on income in a prior year, in accordance with the plan of deferred tax accounting provided by the texts of accounts 281, 282, and 283. There shall not be netted against entries required to be made to this account any debit amounts appropriately includible in account 410, Provision for Deferred Income Taxes.

412 Revenues from gas plant leased to others.

413 Expenses of gas plant leased to others.

A. These accounts shall include, respectively, revenues from gas property constituting a distinct operating unit or system leased by the utility to others, and which property is properly includible in account 104, Gas Plant Leased to Others, and the expenses attributable to such property.

B. The detail of expenses shall be kept or supported so as to show separately the following:

Operation.
Maintenance.
Rents.
Depreciation and Depletion.
Amortization.
Taxes Other Than Income Taxes.
Income Taxes.

414 Other utility operating income.

A. This account shall include the revenues received and expenses incurred in connection with the operations of utility plant, the book cost of which is included in account 118, Other Utility Plant.

B. The expenses shall include every element of cost incurred in such operations, including depreciation, rents, taxes, and insurance.

2. OTHER INCOME

415 Revenues from merchandising, jobbing and contract work.

416 Costs and expenses of merchandising, jobbing and contract work.

A. These accounts shall include, respectively, all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission, and all expenses incurred in such activities.

B. Records in support of these accounts shall be so kept as to permit ready summarization of revenues, costs and expenses by such major items as are feasible.

NOTE: Revenues and expenses of merchandising, jobbing and contract work shall be reported in these accounts, if a state regulatory body having jurisdiction over the utility requires the net income to be reported as other income; but the amount shall be reported in accounts 914, Revenues from Merchandising, Jobbing and Contract Work, and 915, Costs and Expenses of Merchandising, Jobbing and Contract Work, if such regulatory body requires the net income to be reported as an operating income or expense item. In the absence of a requirement by a state regulatory body, the utility may use these accounts or accounts 914 and 915 at its option, in which case the practice of the utility must be consistent.

ITEMS

Account 415:
1. Revenues from sale of merchandise and from jobbing and contract work.
2. Discounts and allowances made in settlement of bills for merchandise and jobbing work.

Account 416:
Labor—
1. Canvassing and demonstrating appliances in homes and other places for the purpose of selling appliances.
2. Demonstrating and selling activities in sales rooms.
3. Installing appliances on customer premises where such work is done only for purchasers of appliances from the utility.
4. Installing piping or other property work, on a jobbing or contract basis.
5. Preparing advertising materials for appliance sales purposes.
6. Receiving and handling customer orders for merchandise or for jobbing services.
7. Cleaning and tidying sales rooms.
8. Maintaining displays and equipment used in merchandising.
9. Arranging merchandise in sales rooms and decorating display windows.
10. Reconditioning repossessed appliances.
11. Bookkeeping and other clerical work in connection with merchandise and jobbing activities.
12. Supervising merchandise and jobbing operations.

Materials and Expenses—
13. Advertising in newspapers, periodicals, radio, television, etc.
14. Cost of merchandise sold and of materials used in jobbing work.
15. Stores expenses on merchandise and jobbing stocks.
16. Fees and expenses of advertising and commercial artists' agencies.
17. Printing booklets, dodgers, and other advertising data.
18. Premiums given as inducement to buy appliances.
19. Light, heat, and power.
20. Depreciation on equipment used primarily for merchandise and jobbing operations.
21. Rent of sales rooms or of equipment.
22. Transportation expense in delivery and pick-up of appliances by utility's facilities or by others.
23. Stationery and office supplies and expenses.
24. Taxes directly assignable to merchandise and jobbing operations including income taxes on net income derived therefrom.
25. Losses from uncollectible merchandise and jobbing accounts.

417 Income from nonutility operations.

A. This account shall include revenues and expenses applicable to operations which are nonutility in character but nevertheless constitute a distinct operating activity of the enterprise as a whole, such as the operation of an ice department where applicable statutes do not define such operation as a utility, or the operation of a servicing organization for furnishing supervision, management, engineering, and similar services to others.

B. The expenses shall include all elements of costs incurred in such operations, and the accounts shall be maintained so as to permit ready summarization as follows:

Operation.
Maintenance.
Rents.
Depreciation.
Amortization.
Taxes other than income taxes.
Income taxes.

418 Nonoperating rental income.

A. This account shall include all rent revenues and related expenses of land, buildings, or other property included in account 121, Nonutility Property, which is not used in operations covered by account 417.

B. The expenses shall include all elements of costs incurred in the ownership and rental of the property and the accounts shall be maintained so as to permit ready summarization as follows:

Operation.
Maintenance.
Rents.
Depreciation.
Amortization.
Taxes other than income taxes.
Income taxes.

419 Interest and dividend income.

A. This account shall include interest revenues on securities, loans, notes, advances, special deposits, tax refunds and all other interest-bearing assets, and dividends on stocks of other companies, whether the securities on which the interest and dividends are received are carried as investments or included in sinking or other special fund accounts.

B. If any interest or dividends are required to be retained in a special fund and the fund is represented by a reserve, the amount of such accretion to the fund shall concurrently be credited to the appropriate reserve account and charged to account 436, Appropriations of Surplus.

C. This account may include the pro rata amount necessary to extinguish (during the interval between the date of acquisition and the date of maturity) the difference between the cost to the utility and the face value of interest-bearing securities. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried.

D. Where significant in amount, expenses, including operating taxes and income taxes, applicable to security investments and to interest and dividend revenues thereon, shall be charged hereto.

NOTE: Interest accrued, the payment of which is not reasonably assured, dividends receivable which have not been declared or guaranteed, and interest or dividends upon reacquired securities issued or assumed by the utility shall not be credited to this account.

421 Miscellaneous nonoperating income.

This account shall include all revenue and expense items properly includible in the income account and not provided for elsewhere.

ITEMS

1. Profit on sale of timber. (See gas plant instruction 6, C.)
2. Profits from operations of others realized by the utility under contracts.

3. MISCELLANEOUS INCOME DEDUCTIONS

425 Miscellaneous amortization.

This account shall include amortization charges not includible in other accounts which are properly deductible in determining the income of the utility before interest charges. Charges includible herein, if significant in amount, must be in accordance with an orderly and systematic amortization program. Similar charges made irregularly without a definite program, or which are dependent upon the amount of net income shall be charged to account 435, Miscellaneous Debits to Surplus.

ITEMS

1. Amortization of utility plant acquisition adjustments, or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by the Commission.
2. Amortization of amounts in account 182, Extraordinary Property Losses, when not authorized to be included in utility operating expenses by the Commission.
3. Amortization of capital stock discount or expenses when in accordance with a systematic amortization program.

426 Other income deductions.

This account shall include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

ITEMS

1. Donations for charitable, social or community welfare purposes.
2. Life insurance of officers and employees where utility is beneficiary (net premiums less increase in cash surrender value of policies).
3. Penalties or fines for violation of statutes pertaining to regulation.

NOTE: The classification of expenses as nonoperating and their inclusion in this account is for accounting purposes. It does not preclude Commission consideration of proof to the contrary for ratemaking or other purposes.

4. INTEREST CHARGES

427 Interest on long-term debt.

A. This account shall include the amount of interest on outstanding long-term debt issued or assumed by the utility, the liability for which is included in account 221, Bonds, or account 224, Other Long-Term Debt.

B. This account shall be so kept or supported as to show the interest accruals on each class and series of long-term debt.

NOTE: This account shall not include interest on nominally issued or nominally outstanding long-term debt, including securities assumed.

428 Amortization of debt discount and expense.

A. This account shall include the amortization of unamortized debt discount and expense on outstanding long-term debt. Amounts charged to this account shall be credited concurrently to account 181, Unamortized Debt Discount and Expense.

B. This account shall be so kept or supported as to show the debt discount and expense on each class and series of long-term debt.

429 Amortization of premium on debt—Cr.

A. This account shall include the amortization of unamortized net premium on outstanding long-term debt. Amounts credited to this account shall be charged concurrently to account 251, Unamortized Premium on Debt.

B. This account shall be so kept or supported as to show the premium on each class and series of long-term debt.

430 Interest on debt to associated companies.

A. This account shall include the interest accrued on amounts included in account 223, Advances from Associated Companies, and on all other obligations to associated companies.

B. The records supporting the entries to this account shall be so kept as to show to whom the interest is to be paid, the period covered by the accrual, the rate of interest and the principal amount of the advances or other obligations on which the interest is accrued.

431 Other interest expense.

This account shall include all interest charges not provided for elsewhere.

ITEMS

1. Interest on notes payable on demand or maturing a year or less from the date and on open accounts, except notes and accounts with associated companies.
2. Interest on customers' deposits.
3. Interest on claims and judgments, tax assessments, assessments for public improvements past due.
4. Income and other taxes levied upon bondholders of utility and assumed by it.

432 Interest charged to construction—Cr.

This account shall include concurrent credits for interest charged to construction based upon the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate upon other funds when so used. No interest shall be capitalized on plant which is completed and ready for service.

5. EARNED SURPLUS

433 Balance transferred from income.

This account shall include the net credit or debit transferred from income for the year.

434 Miscellaneous credits to surplus.

This account shall include credits affecting earned surplus not provided for elsewhere. If an amount otherwise required by the uniform system of accounts to be credited to this account is not significant with respect to net income determination for the year, it may be credited to the appropriate nonoperating income account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

ITEMS

1. Delayed credits.
2. Profit on reacquisition and resale or retirement of utility's debt securities.
3. Profit on sale of property or investments.

435 Miscellaneous debits to surplus.

This account shall include amounts chargeable to earned surplus but not provided for elsewhere. If an amount otherwise required by the uniform sys-

tem of accounts to be charged to this account is not significant with respect to net income determination for the year, it may be charged to the appropriate non-operating income deduction account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

ITEMS

1. Decline in value of investments.
2. Delayed debits.
3. Loss on reacquisition and resale or retirement of utility's debt securities.
4. Provision for past accrued depreciation not provided for.
5. Long-term debt discount or expense written off.
6. Loss on sale of property or investments.
7. Write-off of utility plant acquisition adjustments or of intangibles when not done under an orderly systematic program indicating the propriety of inclusion of the annual charges in account 425, Miscellaneous Amortization.
8. Preliminary survey and investigation expenses on abandoned projects.
9. Income taxes, both state and federal, occasioned by items included in account 434, Miscellaneous Credits to Surplus.
10. Charges from retirement or resale of reacquired capital stock.

436 Appropriations of surplus.

This account shall include appropriations of earned surplus for purposes not provided for elsewhere.

ITEMS

1. Appropriations of income required under terms of mortgages, orders of courts, contract or other agreements.
2. Appropriations of income required by action of regulatory authorities.
3. Miscellaneous appropriations of income made at option of utility for specified purposes.

437 Dividends declared—Preferred stock.

A. This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding preferred or prior lien capital stock issued by the utility.

B. Dividends shall be segregated for each class and series of preferred stock as to those payable in cash, stock and other forms. If not payable in cash, the medium of payment shall be described with sufficient particularity to identify it.

438 Dividends declared—Common stock.

A. This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding common capital stock issued by the utility.

B. Dividends shall be segregated for each class of common stock as to those payable in cash, stock and other forms. If not payable in cash, the medium of payment shall be described with sufficient particularity to identify it.

Operating Revenue Accounts

1. SALES OF GAS

480 Residential sales.
481 Commercial and industrial sales.
483 Sales for resale.
484 Interdepartmental sales.

2. OTHER OPERATING REVENUES

487 Forfeited discounts.
488 Miscellaneous service revenues.
489 Revenues from transportation of gas of others.
490 Sales of products extracted from natural gas.
491 Revenues from natural gas processed by others.
492 Incidental gasoline and oil sales.
493 Rent from gas property.
494 Interdepartmental rents.
495 Other gas revenues.

Operating Revenue Accounts

1. SALES OF GAS

480 Residential sales.

A. This account shall include the net billing for gas supplied for residential or domestic purposes.

B. Records shall be maintained so that the quantity of gas sold and the revenues received under each rate schedule shall be readily available.

NOTE: When gas supplied through a single meter is used for both residential and commercial purposes, the total revenue shall be included in this account or account 481, Commercial and Industrial Sales, according to the rate schedule which is applied. If the same rate schedules are applicable to both residential and commercial service, classification shall be according to principal use.

481 Commercial and industrial sales.

A. This account shall include the net billing for gas supplied to commercial and industrial customers.

B. Records shall be maintained so that the quantity of gas sold and revenue received under each rate schedule shall be readily available.

NOTE: When gas supplied through a single meter is used for both commercial and residential purposes, the total revenue shall be included in this account or in account 480, Residential Sales, according to the rate schedule which is applied. If the same rate schedules are applicable to both residential and commercial service, classification shall be according to principal use.

483 Sales for resale.

A. This account shall include the net billing for gas supplied to other gas utilities or to public authorities for resale purposes.

B. Records shall be maintained so that there shall be readily available the revenues for each customer under each revenue schedule and the billing determinants, as applicable, i.e., volume of gas (actual and billing), contract demand, maximum actual demand, billing demand, and Btu adjustment factor.

NOTE: Revenues from gas supplied to other public utilities for use by them and not for distribution, shall be included in Account 481, Commercial and Industrial Sales, unless supplied under the same contract as and not readily separable from revenues includible in this account.

484 Interdepartmental sales.

A. This account shall include amounts charged by the gas department at tariff or other specified rates for gas supplied by it to other utility departments.

B. Records shall be maintained so that the quantity of gas supplied each other department and the charge made therefor shall be readily available.

2. OTHER OPERATING REVENUES

487 Forfeited discounts.

This account shall include the amount of discounts forfeited or additional charges imposed because of the failure of customers to pay gas bills on or before a specified date.

488 Miscellaneous service revenues.

This account shall include revenues from all miscellaneous services and charges billed to customers which are not specifically provided for in other accounts.

ITEMS

1. Fees for changing, connecting, or disconnecting service.
2. Profit on maintenance of appliances, piping, gas firing and other utilization facilities, or other installations on customers' premises.
3. Net credit or debit (cost less net salvage and less payment from customers) on closing work orders for plant installed for temporary service of less than one year.
4. Recovery of expenses in connection with gas diversion cases. (Billing for the gas consumed shall be included in the appropriate gas revenue account.)
5. Services performed for other gas companies for testing and adjusting meters, changing charts, etc.

489 Revenues from transportation of gas of others.

This account shall include revenues from transporting gas for other companies through the production, transmission, and distribution lines, or compressor stations of the utility.

490 Sales of products extracted from natural gas.

A. This account shall include revenues from sales of gasoline, butane, propane, and other products extracted from natural gas, net of allowances, adjustments, and discounts, including sales of similar products purchased for resale.

B. Records shall be maintained so that the quantity, sales price, and revenues for each type of product sold to each purchaser shall be readily available.

491 Revenues from natural gas processed by others.

A. This account shall include revenues from royalties and permits, or other bases of settlement, for permission granted others to remove products from natural gas of the utility.

B. The records supporting this account shall be so maintained that full information concerning determination of the revenues will be readily available concerning each processor of gas of the utility, including as applicable (a) the Mcf of gas and approximate average Btu content thereof per cubic foot delivered to such other party for processing, (b) the Mcf of gas and approximate average Btu content thereof per cubic foot of gas received back from the processor, (c) the field, general production area, or other source of the gas processed, (d) Mcf of gas used for processing fuel, etc., which is chargeable to the utility, (e) total gallons of each product recovered by the processor and the utility's share thereof, (f) the revenues accruing to the utility, and (g) the basis of determination of the revenues accruing to the utility. Such records shall be maintained even though no revenues are derived from the processor.

492 Incidental gasoline and oil sales.

This account shall include revenues from natural gas gasoline produced direct from gas wells or recovered from drips or obtained in connection with purification or dehydration processes, and revenues from oil obtained from wells which produce oil and gas, the investment in which is carried in account 330, Producing Gas Wells—Well Construction, and 331, Producing Gas Wells—Well Equipment.

493 Rent from gas property.

A. This account shall include rents received for the use by others of land, buildings, and other property devoted to gas operations by the utility.

B. When property owned by the utility is operated jointly with others under a definite arrangement for sharing the actual expenses among the parties to the arrangement, any amount received by the utility for interest or return or in reimbursement of taxes or depreciation on the property shall be credited to this account.

NOTE: Do not include rent from property constituting an operating unit or system in this account. (See account 412, Revenues from Gas Plant Leased to Others.)

494 Interdepartmental rents.

This account shall include credits for rental charges made against other departments of the utility. In the case of property operated under a definite arrangement to allocate actual costs among the departments using the property, any allowance to the gas department for interest or return and depreciation and taxes shall be credited to this account.

495 Other gas revenues.

This account shall include revenues derived from gas operations not includible in any of the foregoing accounts.

ITEMS

1. Commission on sale or distribution of gas of others when sold under rates filed by such others.
2. Compensation for minor or incidental services provided for others such as customer billing, engineering, etc.
3. Profit or loss on sale of material and supplies not ordinarily purchased for resale and not handled through merchandising and jobbing accounts.
4. Sales of steam, water, or electricity, including sales or transfers to other departments of the utility.
5. Service charges for storing gas of others.
6. Miscellaneous royalties received.
7. Revenues from dehydration and other processing of gas of others, except products extraction where products are received as compensation and sales of such are includible in account 490, Sales of Products Extracted from Natural Gas, and except compression of gas of others, revenues from which are includible in account 489, Revenues from Transportation of Gas of Others.

Operation and Maintenance Expense Accounts

1. MANUFACTURED GAS PRODUCTION

OPERATION

700 Operation supervision and labor.
701 Fuel.
702 Raw materials.
703 Operation supplies and expenses.
704 Residuals produced—Credit.
705 Rents.

MAINTENANCE

706 Maintenance of production plant.

2. NATURAL GAS PRODUCTION AND GATHERING

OPERATION

710 Operation supervision and labor.
711 Compressor station fuel and power.
712 Extracted products supplies and expenses.
713 Other supplies and expenses.
714 Gas well royalties.
715 Rents.

MAINTENANCE

716 Maintenance of gas wells.
717 Maintenance of field lines.
718 Maintenance of products extraction plant.
719 Maintenance of other plant.

3. EXPLORATION AND DEVELOPMENT

OPERATION

720 Delay rentals.
721 Nonproductive well drilling.
722 Abandoned leases.
723 Other exploration.

4. OTHER GAS SUPPLY EXPENSES

OPERATION

730 Natural gas purchases.
731 Other gas purchases.
732 Purchased gas expenses.
733 Gas withdrawn from underground storage—Dr.
734 Gas delivered to underground storage—Cr.
735 Gas used in utility operations—Cr.
736 Other gas supply expenses.

5. STORAGE EXPENSES

OPERATION

740 Operation supervision and labor.
741 Gas losses.
742 Operation supplies and expenses.
743 Storage well royalties.
744 Rents.

MAINTENANCE

745 Maintenance of wells.
746 Maintenance of other underground storage plant.
747 Maintenance of local storage plant.

6. TRANSMISSION EXPENSES

OPERATION

750 Operation supervision and labor.
751 Compressor station fuel and power.
752 Operation supplies and expenses.
753 Transmission and compression of gas by others.
754 Rents.

MAINTENANCE

755 Maintenance of mains.
756 Maintenance of compressor station equipment.
757 Maintenance of other plant.

7. DISTRIBUTION EXPENSES

OPERATION

760 Supervision.
761 Mains and services labor.
762 Mains and services supplies and expenses.
763 Meter and house regulator expenses.
764 Customer installations expenses.
765 Miscellaneous distribution expenses.
766 Rents.

MAINTENANCE

767 Maintenance of lines.
768 Maintenance of meters and house regulators.
769 Maintenance of other plant.

8. CUSTOMER ACCOUNTS EXPENSES

OPERATION

901 Meter reading labor.
902 Accounting and collecting labor.
903 Supplies and expenses.
904 Uncollectible accounts.

9. SALES EXPENSES

OPERATION

910 Sales expenses.
914 Revenues from merchandising, jobbing and contract work.
915 Costs and expenses of merchandising, jobbing and contract work.

10. ADMINISTRATIVE AND GENERAL EXPENSES

920 Administrative and general salaries.
921 Office supplies and other expenses.
922 Administrative expenses transferred—Cr.
923 Outside services employed.
924 Property insurance.
925 Injuries and damages.
926 Employee pensions and benefits.
927 Franchise requirements.
928 Regulatory commission expenses.
929 Duplicate charges—Cr.
930 Miscellaneous general expenses.
931 Rents.
933 Transportation expenses.

MAINTENANCE

935 Maintenance of general plant.

Operation and Maintenance Expense Accounts

1. MANUFACTURED GAS PRODUCTION

700 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of manufactured gas production plants.

ITEMS

1. Supervising.
2. Operating or attending equipment and controls including boiler plant, power equipment, and other auxiliaries.
3. Cleaning, lubricating, and oiling equipment and auxiliaries.
4. Loading and unloading and other handling of coal, coke, other fuels, raw materials, residuals, waste materials, etc.
5. Observing, testing, checking and adjusting meters, gauges, and other instruments and equipment.
6. Keeping plant logs and other records and preparing reports on plant operation.
7. Cleaning boiler room, other buildings, and yards.
8. Repacking glands and replacing gauge glasses and other similar work if work is of a minor nature and performed by regular operating crews. Where work is of a major character, such as that performed on high pressure boilers, the work shall be considered maintenance.
9. Testing water, etc.
10. Janitor, messenger, watchmen, and similar services.

11. Clerical and stenographic work at plant.

701 Fuel.

A. This account shall include the cost, delivered alongside works, of coal, oil, gas, or other fuel used in manufactured gas processes, and for making steam or generating electricity. It shall also include the net cost of, or the amount realized from, the disposal of ashes. (See account 150, Materials and Supplies.)

B. Records shall be maintained to show the quantity and cost of each type of fuel used.

702 Raw materials.

A. This account shall include the cost, delivered alongside works, of coal, oil, liquefied petroleum gas, gas enricher, and other materials used as raw materials in the manufacture of gas, including raw materials for manufacture of gas by reforming. (See account 150, Materials and Supplies.)

B. Records shall be maintained to show the quantity and cost of each type of raw material used.

703 Operation supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in manufactured gas production operations not includible in any of the foregoing accounts.

ITEMS

1. Lubricants, packing, waste, etc.
2. Water purchased.
3. Water purification supplies and expenses.
4. Tools, hand.
5. Gas purification supplies and expenses.
6. Oil for oil fogging process.
7. Royalties for purification process, etc.
8. Building service, communication service, transportation.

704 Residuals produced—Credit.

A. This account shall be credited and account 150, Materials and Supplies, debited monthly with the estimated value of residuals and other by-products obtained in connection with the production of manufactured gas, whether intended for sale or for use in operations.

B. If the net amount realized from the sale of residuals is greater or less than the amount at which they were originally credited hereto, an adjusting entry shall be made crediting or debiting this account and charging or crediting account 150, Materials and Supplies, with the difference.

705 Rents.

This account shall include rents for property of others used, occupied, or operated in connection with manufactured gas production operations. (See operating expense instruction 2.)

706 Maintenance of production plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of manufactured gas production plant the book cost of which is includible in plant accounts 305 to 320, inclusive. (See operating expense instruction 1.)

2. NATURAL GAS PRODUCTION AND GATHERING

710 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of gas wells, lines, compressors and other equipment of the natural gas production and gathering system including miscellaneous labor such as care of grounds, building service, and general clerical and stenographic work at field offices.

ITEMS

1. Supervising.
2. Geological activities in connection with gas production.
3. Rights-of-way activities and supervision, not in connection with construction or retirement work or storage.
4. Gas well labor: turning wells on and off, bailing, swabbing, blowing wells, etc.
5. Preparing and maintaining production maps and land records, including surveys.
6. Gas depletion and gas reserve studies.
7. Field line labor: patrolling, attending and lubricating valves and other equipment, blowing and cleaning lines and drips, taking line pressures, etc.
8. Field compressor station labor: operating, attending, lubricating and servicing equipment, recording pressures, replacing charts, etc.
9. Measuring and regulating labor: recording pressures, changing charts, calculating gas volumes except for purchased gas and sales, adjusting and calibrating measuring equipment, taking gas samples and testing gas, inspecting and pumping drips, dewatering manholes and pits, etc.
10. Purification labor: attending and servicing purification apparatus, emptying, cleaning and refilling purifier boxes, unloading and storing glycol, etc.
11. Inspecting and testing equipment, not specifically to determine necessity for repairs or replacement of parts.
12. Lubricating equipment, valves, etc.
13. Hauling operating employees, materials, supplies, etc.
14. Moving equipment, minor structures, etc., not in connection with construction, retirement, or maintenance work.
15. Keeping log and other operating records, preparing reports of operations, etc.
16. Cleaning structures, cutting grass and weeds, and minor grading around stations.
17. Cleaning debris, cutting grass and weeds on rights-of-way.
18. Cleaning and repairing tools.
19. Building and repairing gate boxes, foot bridges, stiles, tool boxes, etc.
20. Janitor, watchmen, and messenger services.
21. Clerical and stenographic work.

711 Compressor station fuel and power.

A. This account shall include the cost of gas, coal, oil, or other fuel, or electricity, used for the operation of field compressor stations.

B. Records shall be maintained to show the quantity of each type of fuel consumed or electricity used at each compressor station, and the cost of such fuel or power.

NOTE: The cost of fuel, except gas, shall be charged initially to account 150, Materials and Supplies, and cleared to this account on the basis of fuel used.

712 Extracted products supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in operation of plants for the extraction of salable products from natural gas.

NOTE: If the products extraction operations of the utility are other than a relatively minor part of the utility's natural gas business, the utility shall use the accounts for products extraction expenses of the Uniform System of Accounts for Classes A and B Gas Utilities with the respective accounts prescribed therein identified as subaccounts to this account.

713 Other supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in producing and gathering natural gas not includible in any of the foregoing accounts.

ITEMS

1. Scrubber oil.
2. Gas, gasoline, and oil, in pumping, bailing, heating, and swabbing.
3. Well swabs.
4. Lumber, nails, and other materials used for upkeep of fences, making signs, etc.
5. Material for upkeep of roads, etc.
6. Hand tools.
7. Lubricants, wiping rags, waste, etc.
8. Gas used in field line operations.
9. Charts and printed forms.
10. Gauge glasses.
11. Water tests and treatment by other than employees.
12. Gas purifying supplies.
13. Geological and gas reserve services by others than employees in connection with gas production.
14. Office supplies, stationery, drafting materials, etc.
15. Janitor, washroom, landscaping, first aid supplies, etc.
16. Employees' transportation and travel expense.
17. Freight, express, parcel post, trucking, and other transportation.
18. Utility services: light, water, telephone.

714 Gas well royalties.

A. This account shall include royalties paid for natural gas produced by the utility from wells on land owned by others.

B. Records supporting the entries to this account shall be so kept that the utility can furnish the name of the parties to each contract involving royalties, the terms of each contract, the location of the property involved, the method of determining the royalties, and the amounts payable.

715 Rents.

This account shall include rents for property of others used, occupied or operated in connection with the production and gathering of natural gas, other than rentals on land and land rights held for the supply of natural gas. (See operating expense instruction 2.)

NOTE: See account 720, Delay Rentals, for rentals paid on lands held for the purpose of obtaining a supply of gas in the future.

716 Maintenance of gas wells.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of gas wells and equipment the book cost of which is includible in accounts 330, Producing Gas Wells—Well Construction, and 331, Producing Gas Wells—Well Equipment. (See operating expense instruction 1.)

717 Maintenance of field lines.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of field lines the book cost of which is includible in account 332, Field Lines. (See operating expense instruction 1.)

ITEMS

1. Electrolysis and leak inspections (not routine).
2. Installing and removing temporary lines, when necessitated by maintenance.
3. Lamping and watching while making repairs.
4. Lowering and changing location of portion of lines, when the same pipe is used.
5. Protecting lines from fires, floods, land slides, etc.
6. Rocking creek crossings.

718 Maintenance of products extraction plant.

This account shall include the cost of labor, materials and supplies used and expenses incurred in the maintenance of plant the book cost of which is includible in accounts 341 to 347, inclusive. (See operating expense instruction 1.)

719 Maintenance of other plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of plant the book cost of which is includible in natural gas production and gathering plant, except accounts 330, 331, and 332. (See operating expense instruction 1.)

3. EXPLORATION AND DEVELOPMENT EXPENSES

720 Delay rentals.

A. This account shall be charged with the amount of rents paid periodically on natural gas lands in order to hold natural gas land and land rights for the purpose of obtaining a supply of gas in the future.

B. Include also in this account the cost of obtaining natural gas leases for a period of one year or less.

C. Records supporting this account shall be so kept that the utility can furnish complete details of the charges made for each natural gas leasehold. (See note to gas plant instruction 6–G.)

721 Nonproductive well drilling.

This account shall include the net cost of drilling nonproductive wells.

NOTE: Records in support of the charges to this account shall conform, as appropriate, to General Instruction 12, Gas Well Records.

722 Abandoned leases.

This account shall be charged with losses on abandonment of natural gas leases included in account 105, Gas Plant Held for Future Use, which have never been productive, unless otherwise authorized or directed by the Commission. (See account 182.)

723 Other exploration.

This account shall be charged with the cost of abandoned projects on which preliminary expenditures were made for the purpose of determining the feasibility of acquiring acreage to provide a future supply of natural gas. (See account 183, Other Deferred Debits.)

4. OTHER GAS SUPPLY EXPENSES

730 Natural gas purchases.

A. This account shall include the cost at point of receipt by the utility of natural gas purchased for resale.

B. The records supporting this account shall be so maintained that there shall be readily available for each vendor and each point of receipt, the quantity of gas, basis of charges, and the amount paid for the gas.

731 Other gas purchases.

A. This account shall include the cost, at point of receipt by the utility, of manufactured gas, refinery gas, or any gas other than natural gas, or other than any mixed gas in which the natural gas is an important portion of the mixture.

B. The records supporting this account shall be so maintained that there shall be readily available for each vendor and each point of receipt, the kind and quantity of gas, Btu content, basis of the charges, and the amount paid for the gas.

732 Purchased gas expenses.

A. This account shall include expenses incurred directly in connection with the purchase of gas for resale.

B. The utility shall not include as purchased gas expense, segregated or apportioned expenses of operating and maintaining gathering system plant whether such plant is devoted solely or partially to purchases of gas, except that the utility shall include the cost of turning on and off purchase gas wells and operating measuring stations devoted exclusively to measuring purchased gas.

C. In general, it is intended that this account include only the expenses directly related to purchased gas, including the expenses of computing volumes of gas purchased, and special items directly related to gas purchases which are not includible in other accounts.

733 Gas withdrawn from underground storage—Debit.

A. This account shall include debits for the cost of gas withdrawn from underground storage during the year. Contra credits for entries to this account shall be made to account 164, Gas Stored Underground.

B. Withdrawal of gas from storage shall not be netted against deliveries to storage. (See account 734.)

NOTE: Adjustments for gas inventory losses due to cumulative inaccuracies in gas measurement, or from other causes, shall be entered in account 741, Gas Losses. If, however, any adjustment is substantial and related predominantly to prior years, it shall be charged to account 435, Miscellaneous Debits to Surplus.

734 Gas delivered to underground storage—Credit.

A. This account shall include credits for the cost of gas delivered to underground storage during the year. Contra debits for entries to this account shall be made to account 164, Gas Stored Underground.

B. Deliveries of gas to storage shall not be netted against withdrawals from storage. (See account 733.)

735 Gas used in utility operations—Credit.

This account shall include concurrent credits for charges which are made to operating expenses or other accounts of the gas department for gas from the common system supply used for compressor station fuel or other purposes. (See account 484, Interdepartmental Sales, for gas supplied to departments other than the gas utility department.)

736 Other gas supply expenses.

This account shall include the cost of labor and materials used and expenses incurred in connection with gas supply functions not provided for in any of the above accounts.

5. STORAGE EXPENSES

740 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of storage facilities including underground storage gas wells, lines, compressors and other equipment of the underground storage system, and the labor and expense of preparing and maintaining storage maps and land records.

ITEMS

1. Operation of local storage facilities.
2. Operation of underground storage system. (See account 710.)

741 Gas losses.

This account shall include the amounts of inventory adjustments representing the cost of gas lost or unaccounted for in underground storage operations due to cumulative inaccuracies of gas measurements or other causes. If, however, any adjustment is substantial and relates predominantly to prior years, it shall be charged to account 435, Miscellaneous Debits to Surplus.

742 Operation supplies and expenses.

This account shall include the cost of supplies used and expense incurred in connection with storage operating functions not provided for in any of the above accounts, including power and fuel for compressor stations used in underground storage operations.

ITEMS

1. Supplies used in operation of local storage facilities.
2. Supplies used in operation of underground storage system. (See account 713.)

743 Storage well royalties.

A. This account shall include royalties, rents, and other payments includible in operating expenses for gas wells and gas land acreage located within and comprising underground storage projects of the utility. (See operating expense instruction 2.)

B. The records supporting this account shall be so maintained that information will be readily available for each storage project, names of the parties to each contract, basis of the charges, and location of wells to which the royalties or rents of each contract relate.

744 Rents.

This account shall include rents for property of others used in connection with the storage of gas, other than rents and royalties paid with respect to storage wells and gas lands utilized for the holding of gas in underground storage. (See operating expense instruction 2.)

745 Maintenance of wells.

This account shall include the cost of labor, materials used and expenses incurred in maintenance of gas wells and equipment the book cost of which is includible in account 352, Wells. (See operating expense instruction 1.)

746 Maintenance of other underground storage plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of plant the book cost of which is includible in accounts 351 to 357, inclusive, except account 352. (See operating expense instruction 1.)

747 Maintenance of local storage plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of plant the book cost of which is includible in accounts 361 to 363, inclusive. (See operating expense instruction 2.)

6. Transmission Expenses

750 Operation supervision and labor.

This account shall include the cost of supervision and labor in the operation of lines, compressor stations, and other equipment of the transmission system.

Items

1. Load dispatching labor.
2. Transmission communication system labor.
3. Compressor station labor.
4. Mains labor.
5. Measuring and regulating station labor.
6. Miscellaneous labor.

751 Compressor station fuel and power.

A. This account shall include the cost of gas, or other fuel or electricity, used for the operation of transmission compressor stations.

B. Records shall be maintained to show the Mcf of gas or quantity of each other type of fuel consumed or electricity used at each compressor station, and the cost of such fuel or power.

752 Operation supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in connection with transmission system operating functions not provided for in any of the above accounts.

Items

1. Consultants' fees and expenses.
2. Payments to others for transmission communications services.
3. Telephone batteries, radio tubes, radio crystals, etc.
4. Scrubber oil.
5. Charts and printed forms.
6. Gauge glasses.
7. Water treatment chemicals.
8. Water tests and treatment other than by employees.
9. Line markers and warning signs.
10. Lumber, nails, etc., used in building and repairing gate boxes, foot bridges, stiles, etc.
11. Lubricants, wiping rags, waste, etc.
12. Hand tools.
13. Freight, express, parcel post, trucking and other transportation.
14. Employees' transportation and travel expenses.
15. Janitor and washroom supplies, first aid supplies, etc.
16. Utility services; light, water, telephone.

753 Transmission and compression of gas by others.

A. This account shall include amounts paid to others for the transmission and compression of gas of the utility.

B. Records supporting this account shall be so maintained that there shall be readily available for each agreement, name of other party, Mcf of gas delivered to the other party for transmission or compression and the Mcf of gas received back by the utility after transmission or compression, points of delivery to and receipt of gas from other party, amount and basis of charges for the transmission or compression service.

Note: If in connection with any gas delivered to another for transmission or compression such other party also processes the gas for extraction of gasoline or other salable products, credits attributable to the products so extracted shall be made to account 491, Revenues from Natural Gas Processed by Others, to the end that amounts recorded in this account shall only be charges for transportation or compression service.

754 Rents.

This account shall include rents for property of others used, occupied or operated in connection with the operation of the transmission system. Include herein rentals paid for regulator sites, railroad crossings, rights-of-way, annual payments to governmental bodies and others for use of public or private lands, and reservations for rights-of-way. (See operating expense instruction 2.)

755 Maintenance of mains.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of mains, the book cost of which is includible in account 367, Mains. (See operating expense instruction 1.)

Items

1. Supervising.
2. Electrolysis and leak inspections.
3. Installing and removing temporary lines, when necessitated by maintenance.
4. Lamping and watching while making repairs.
5. Lowering and changing location of lines, when the same pipe is used.
6. Protecting lines from fires, floods, land slides, etc.
7. Rocking creek crossings.

756 Maintenance of compressor station equipment.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of equipment, the book cost of which is includible in account 368, Compressor Station Equipment. (See operating expense instruction 1.)

757 Maintenance of other plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of structures and equipment, the book cost of which is includible in accounts 366, 369, 370, and 371. (See operating expense instruction 2.)

7. Distribution Expenses

760 Supervision.

This account shall include the cost of labor and expenses incurred in the general supervision and direction of distribution system operations. Direct supervision of specific activities such as main operations, removing and resetting meters, etc., shall be charged to the appropriate account.

761 Mains and services labor.

This account shall include the cost of labor incurred in operating distribution system mains and services and related equipment.

Items

1. Mains and services labor.
2. Pumping station labor.
3. Measuring and regulating station labor.

762 Mains and services supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in operating distribution system mains and services and related equipment.

Items

1. Line markers and warning signs.
2. Lumber, nails, etc., used in building and repairing gate boxes, etc.
3. Charts and printed forms.
4. Scrubber oil.
5. Hand tools.
6. Lubricants, wiping rags, waste, etc.
7. Oil for fogging.
8. Lubricants, wiping rags, waste.
9. Freight, express, parcel post, trucking and other transportation.

763 Meter and house regulator expenses.

This account shall include the cost of labor, materials used and expenses incurred in connection with removing, resetting, changing, testing, and servicing customer meters and house regulators.

Items

Labor:
1. Removing, reinstalling, and changing or exchanging customer meters and house regulators.
2. Turning on and shutting off meters, except for failures of customers to pay bills.
3. Clerical work on meter history and associated equipment record cards, test cards, and reports.
4. Handling and recording meters and house regulators for stock.
5. Inspecting and testing meters and house regulators.
6. Inspecting and adjusting testing equipment.
7. Driving trucks used in meter operations.

Materials and expenses:
8. Meter locks and seals.
9. Lubricants, wiping rags, waste, etc.
10. Freight, express, parcel post, trucking, and other transportation.
11. Utility services: light, water, telephone, heating.
12. Office supplies, stationery and printing.
13. Employees' transportation expenses.
14. Janitor, washroom, first aid supplies, etc.

Note: The cost of the first setting of a meter or house regulator shall be charged to account 382, Meter Installations, or account 384, House Regulator Installations, as appropriate.

764 Customer installations expenses.

A. This account shall include the cost of labor, materials used and expenses incurred in work on customer premises other than expenses includible in account 763, including the cost of servicing customer-owned appliances when the cost of such work is borne by the utility.

B. Damage to customer equipment by employees of the utility whether incidental to the work or the result of negligence, shall be charged to the job on which the employee was engaged at the time of damage.

Items

Labor:
1. Investigating and correcting pressure difficulties, leaks, or stoppages in customer-owned piping.
2. Inspecting new installations to determine that the customers' equipment and piping are properly installed and connected.
3. Consolidating meter installations, without change of size, due to elimination of separate meters for different service classifications.
4. Gas load surveys including the incidental preparations and replacement of meters.
5. Installing demand or test meters.
6. Inspecting, cleaning, repairing, and adjusting customer-owned appliances for domestic, industrial, or commercial use, including house heating furnaces and other space heating appliances, hotel and restaurant appliances.

Materials and Expenses:
7. Lubricants, wiping rags, waste, etc.
8. Replacement parts for appliances.
9. Janitor, washroom, first aid supplies, etc.
10. Employees' transportation and travel expenses.
11. Utility services: light, water, telephone.

Note: Amounts billed customers for any work, the cost of which is charged to this account, shall be credited to this account. Any excess over costs resulting therefrom shall be transferred to account 488, Miscellaneous Service Revenues.

765 Miscellaneous distribution expenses.

This account shall include the cost of labor, materials used and expenses incurred, general distribution office work, preparation and maintenance of distribution maps and records, and other expenses not provided for elsewhere, including expenses of operating any street lighting systems.

766 Rents.

This account shall include rents for property of others used, occupied or operated in connection with the operation of the distribution system. Include herein rentals paid for regulator sites, railroad crossings, rights-of-way, annual payments to governmental bodies and others for use of public or private lands, and reservations for rights-of-way. (See operating expense instruction 2.)

767 Maintenance of lines.

This account shall include the cost of labor, materials and supplies used and expenses incurred in the maintenance of plant the book cost of which is includible in accounts 376, 377, 378, 379, 380, and 385. (See operating expense instruction 1.)

Items

Mains:
1. Trenching, backfilling, and breaking and restoring pavement in connection with the installation of leak or reinforcing clamps.
2. Work performed as the result of municipal improvements such as street widening, sewers, etc., where the gas mains are not retired.
3. Municipal inspections relating to maintenance work.
4. Other work of the following character:
a. Locating leaks incident to maintenance.
b. Cutting off mains without replacement. (Minor cuts not retired.)
c. Repairing broken mains, leaking joints, leaking drip riser, etc.
d. Bringing main valve box, main drip riser box, valve test pipe box, or pressure pipe roadway box up to grade.
e. Cleaning, repainting, coating, and wrapping exposed mains.
f. Repacking main valves.
g. Lowering and changing location of mains.
h. Trenching, backfilling, cutting-in or removal of pipe not retired in connection with the installation of leak clamps, valves, or drips.
i. Restoration of permanent pavement in connection with work chargeable to maintenance.
j. Emergency stand-by time associated with maintenance.
k. Repairing sewers, drains, walls, etc., when damaged by maintenance work.
l. Making electrolysis tests to maintain life of plant.
m. Repairing property of others damaged by maintenance work.

Compressor station equipment: (See operating expense instruction 1.)

Measuring and regulating station equipment: (See operating expense instruction 1.)

Services:
5. Testing pipe for leaks, stoppage, or other trouble and making necessary repairs.
6. Reporting on the condition of gas services to determine the need for repairs.
7. Rearranging and changing the location of services not retired.
8. Repairing service valves for reuse.
9. Lowering and raising curb boxes to grade.
10. Replacing less than a complete service, when not retired.
11. Installing fittings, valves, drips, frost protection devices, or replacing similar items on existing services.
12. Cutting and replacing pavement, pavement base and sidewalks in connection with maintenance work.
13. Restoring condition of services damaged by fire, storm, leakage, flood, accident, or other casualties.
14. Repairing property of others damaged by maintenance work.
15. Transferring services in connection with the installation of new mains.
16. Installing, maintaining, and removing temporary facilities to prevent the interruption of service.
17. Converting low pressure gas distribution service to medium or high pressure service.
18. Relocating and rerouting gas service temporarily during alterations of buildings.
19. Performing work resulting from municipal improvements, such as street widening, sewers, etc.
20. Replacing service valve box or drip riser box.
21. Installing, removing or replacing service valve, drip pot, or drip riser.
22. Repacking service valve.

768 Maintenance of meters and house regulators.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of meters and house regulators, the book cost of which is includible in accounts 381, Meters, and 383, House Regulators. (See operating expense instruction 1.)

Items

1. Inspecting and testing meters and house regulators on customers' premises or in shops in connection with repairs.
2. Cleaning, repairing, and painting meters, house regulators, and accessories and equipment.
3. Repairing testing equipment.
4. Rebuilding and overhauling meters without changing their rated capacities.
5. Resealing house regulators with mercury, replacing diaphragms, springs and other defective or work parts.
6. Replacing or adding any item not constituting a retirement unit.

769 Maintenance of other plant.

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of structures, and all other distribution system plant not provided for elsewhere, the book cost of which is includible in accounts 375, 386, and 387. (See operating expense instruction 1.)

Items

1. Work of similar character to that listed in other distribution maintenance accounts.
2. Maintenance of office furniture and equipment used by distribution system department.

8. Customer Accounts Expense

901 Meter reading labor.

This account shall include the cost of labor incurred in reading customer meters and determining consumption when performed by employees engaged in reading meters.

Items

Labor:
1. Addressing forms for obtaining meter readings by mail.
2. Changing and collecting meter charts used for billing purposes.
3. Checking meter seals, etc., when performed by meter readers and the work represents a minor activity incidental to regular meter reading routine.
4. Meter reading—small consumption, and obtaining load information for billing purposes. (Exclude and charge to account 763, Meter and House Regulator Expenses, or to account 902, Accounting and Collecting Labor, as applicable, the cost of obtaining meter readings, first and final, if incidental to the operation of removing or resetting, sealing or locking, and disconnecting, or reconnecting meters.)
5. Measuring gas—large consumption, including reading meters, changing charts, calculating charts, estimating lost meter registrations, determining specific gravity, etc., for billing purposes.
6. Computing consumption from meter reader's book or from reports by mail when done by employees engaged in reading meters.
7. Collecting from prepayment meters when incidental to meter reading.
8. Maintaining record of customers' keys.
9. Computing estimated or average consumption when performed by employees engaged in reading meters.

902 Accounting and collecting labor.

This account shall include the cost of labor in work on customer applications, contracts, orders, credit investigations, billing and accounting, collections and complaints.

Items

1. Receiving, preparing, recording and handling routine orders for service, disconnec-

tions, transfers or meter tests initiated by the customer, excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by such orders.

2. Investigating customers' credit and keeping records pertaining thereto, including records of uncollectible accounts written off.

3. Receiving, refunding or applying customer deposits and maintaining customer deposit, line extension, and other miscellaneous records.

4. Checking consumption shown by meter readers' reports where incidental to preparation of billing data.

5. Preparing address plates and addressing bills and delinquent notices.

6. Preparing billing data.

7. Operating billing and bookkeeping machines.

8. Verifying billing records with contracts or rate schedules.

9. Preparing bills for delivery, and mailing or delivering bills.

10. Collecting revenues, including collection from prepayment meters unless incidental to meter reading operations.

11. Balancing collections, preparing collections for deposit, and preparing cash reports.

12. Posting collections and other credits or charges to customer accounts and extending unpaid balances.

13. Balancing customer accounts and controls.

14. Preparing, mailing, or delivering delinquent notices and preparing reports of delinquent accounts.

15. Final meter reading of delinquent accounts when done by collectors incidental to regular activities.

16. Disconnecting and reconnecting services because of nonpayment of bills.

17. Receiving, recording, and handling of inquiries, complaints, and request for investigations from customers, including preparation of necessary orders, but excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by such orders.

18. Statistical and tabulating work on customer accounts and revenues, but not including special analyses for sales department, rate department, or other general purposes, unless incidental to regular customer accounting routines.

19. Preparing and periodically rewriting meter reading sheets.

20. Determining consumption and computing estimated or average consumption when performed by employees other than those engaged in reading meters.

NOTE: The cost of work on meter history and meter location records is chargeable to account 763, Meter and House Regulator Expenses.

903 Supplies and expenses.

This account shall include the cost of materials used and expenses incurred in meter reading and the handling of customer accounts.

ITEMS

1. Badges, lamps and uniforms.
2. Meter charts, meter books and binders and forms for recording readings, but not the cost of preparation.
3. Address plates and supplies.
4. Cash overages and shortages when written off.
5. Commissions or fees to others for collecting.
6. Payments to credit organizations for investigations and reports.
7. Postage.
8. Transportation of customer bills and meter books under centralized billing procedure.
9. Bank charges, exchange, and other fees for cashing and depositing customers' checks.
10. Forms for recording orders for services, removals, etc.
11. Rent of mechanical equipment.
12. Transportation, meals and incidental expenses.
13. Communication service.
14. Miscellaneous office supplies and expenses and stationery and printing.

904 Uncollectible accounts.

This account shall be charged with amounts sufficient to provide for losses from uncollectible utility revenues. Concurrent credits shall be made to account 144, Accumulated Provision for Uncollectible Accounts—Cr. Losses from uncollectible accounts shall be charged to account 144.

9. SALES EXPENSES

910 Sales expenses.

This account shall include the cost of labor and expenses incurred for the purpose of promoting the sale of gas, other than merchandising, jobbing, or contract work activities.

ITEMS

1. Advertising.
2. Demonstrating uses of utility service.
3. Home service activities.
4. Solicitation of new business.

914 Revenues from merchandising, jobbing and contract work.

915 Costs and expenses of merchandising, jobbing and contract work.

A. These accounts shall include, respectively, all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission and all expenses incurred in such activities.

B. Records in support of these accounts shall be so kept as to permit ready summarization of revenues, costs and expenses by such major items as are feasible.

NOTE: Revenues and expenses of merchandising, jobbing, and contract work shall be reported in this account, if a state regulatory body having jurisdiction over the utility requires such income to be reported as an operating expense item; but the revenues and expenses shall be reported in accounts 415 and 416, if such regulatory body requires such income to be reported as nonoperating income. In the absence of a requirement by a state regulatory body, the utility may use these accounts or accounts 415 and 416, at its option, in which case the practice of the utility must be consistent.

ITEMS

Account 914

1. Revenues from sale of merchandising and from jobbing and contract work.
2. Discounts and allowances made in settlement of bills for merchandise and jobbing work.

Account 915

Labor:

1. Canvassing and demonstrating appliances in homes and other places for the purpose of selling appliances.
2. Demonstrating and selling activities in sales rooms.
3. Installing appliances on customer premises where such work is done only for purchasers of appliances from the utility.
4. Installing piping, or other property work on a jobbing or contract basis.
5. Preparing advertising materials for appliances sales purposes.
6. Receiving and handling customer orders for merchandise or for jobbing services.
7. Cleaning and tidying sales rooms.
8. Maintaining displays and equipment used in merchandising.
9. Arranging merchandise in sales rooms and decorating display windows.
10. Reconditioning repossessed appliances.
11. Bookkeeping and other clerical work in connection with merchandise and jobbing activities.
12. Supervising merchandise and jobbing operations.

Materials and Expenses:

13. Advertising in newspapers, periodicals, radio, television, etc.
14. Cost of merchandise sold and of materials used in jobbing work.
15. Stores expense on merchandise and jobbing stocks.
16. Fees and expenses of advertising and commercial artists' agencies.
17. Printing booklets, dodgers, and other advertising data.
18. Premiums given as inducement to buy appliances.
19. Light, heat and power.
20. Rent of sales rooms or of equipment.
21. Transportation expense in delivery and pick-up of appliances by utility's facilities or by others.
22. Stationery and office supplies and expenses.
23. Taxes directly assignable to merchandise and jobbing operations.
24. Losses from uncollectible merchandise and jobbing accounts.

10. ADMINISTRATIVE AND GENERAL EXPENSES

920 Administrative and general salaries.

A. This account shall include the compensation (salaries, bonuses, and other consideration for services, but not including directors' fees) of officers, executives, and other employees of the utility properly chargeable to utility operations and not chargeable directly to a particular operation function.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

921 Office supplies and expenses.

A. This account shall include office supplies and expenses incurred in connection with the general administration of the utility's operations which are assignable to specific administrative or general departments and are not specifically provided for in other accounts. This includes the expenses of the various administrative and general departments, the salaries and wages of which are includible in account 920.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

NOTE: Office expenses which are clearly applicable to any group of operating expenses other than the administrative and general group shall be included in the appropriate account in such group. Further, general expenses which apply to the utility as a whole rather than to a particular administrative function shall be included in account 930, Miscellaneous General Expenses.

ITEMS

1. Automobile service, including charges through clearing account.
2. Bank messenger and service charges.
3. Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax services, etc.
4. Building service expenses for customer accounts, sales, and administrative and general purposes.
5. Communication service expenses.
6. Cost of individual items of office equipment used by general departments which are of small value or short life.
7. Membership fees and dues in trade, technical, and professional associations paid by utility for employees. (Company memberships are includible in account 930.)
8. Office supplies and expenses.
9. Payment of court costs, witness fees, and other expenses of legal department.
10. Postage, printing, and stationery.
11. Meals, traveling and incidental expenses.

922 Administrative expenses transferred—Cr.

This account shall be credited with administrative expenses recorded in account 920, and 921 which are transferred to construction costs or to nonutility accounts. (See utility plant instruction 3.)

923 Outside services employed.

A. This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operating function or to other accounts. It shall include, also, the pay and expenses of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered an employee of the utility.

B. This account shall be so maintained as to permit ready summarization according to the nature of service and the person furnishing the same.

ITEMS

1. Fees, pay and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc.
2. Supervision fees and expenses paid under contracts for general management services.

NOTE: Do not include inspection and brokerage fees and commissions chargeable to other accounts or fees and expenses in connection with security issues which are includible in the expenses of issuing securities.

924 Property insurance.

A. This account shall include the cost of insurance or reserve accruals to protect the utility against losses and damages to owned or leased property used in its utility operations.

B. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

C. Records shall be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies shall be credited to the accounts to which the insurance premiums were charged.

ITEMS

1. Premiums payable to insurance companies, for fire, storm, burglary, explosion, lightning, fidelity, riot, and similar insurance.
2. Amounts credited to account 261, Property Insurance Reserve for similar protection.
3. Special costs incurred in procuring insurance.
4. Insurance inspection service.
5. Insurance counsel, brokerage fees, and expenses.

NOTE A: The cost of insurance or reserve accruals capitalized shall be charged to construction either directly or by transfer to construction work orders from this account.

NOTE B: The cost of insurance or reserve accruals for the following classes of property shall be charged as indicated:

(1) Materials and supplies and stores equipment to stores expenses or to appropriate materials account.

(2) Transportation and garage equipment, to account 933, Transportation Expenses.

(3) Gas plant leased to others, to account 413, Expenses of Gas Plant Leased to Others.

(4) Nonutility property, to the appropriate nonutility income account.

(5) Merchandise and jobbing property, to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work, or account 915, as appropriate.

925 Injuries and damages.

A. This account shall include the cost of insurance or reserve accruals to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims.

B. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries and damages and insurance dividends or refunds shall be credited to this account.

ITEMS

1. Premiums payable to insurance companies for protection against claims from injuries and damages by employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to account 262, Injuries and Damages Reserve for similar protection.
2. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.
3. Fees and expenses of claim investigators.
4. Payment of awards to claimants for court costs and attorneys' services.
5. Medical and hospital service and expenses for employees as the result of occupational injuries, or resulting from claims of others.
6. Compensation payments under workmens' compensation laws.
7. Compensation paid while incapacitated as the result of occupational injuries. (See Note A.)
8. Cost of safety, accident prevention and similar educational activities.

NOTE A: Payments to or in behalf of employees for accident or death benefits, hospital expenses, medical supplies or for salaries while incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, shall be charged to account 926, Employee Pensions and Benefits. (See also Note B of account 926.)

NOTE B: The cost of injuries and damages or reserve accruals capitalized shall be charged to construction directly or by transfer to construction work orders from this account.

NOTE C: Exclude herefrom the time and expenses of employees (except those engaged in injuries and damages activities) spent in attendance at safety and accident prevention educational meetings, if occurring during the regular work period.

NOTE D: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in injuries and damages activities may be included in accounts 920 and 921 as appropriate.

926 Employee pensions and benefits.

A. This account shall include pensions paid to or on behalf of retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for this purpose, when the utility has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes, and payments for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses incurred in medical, education or recreational activities for the benefit of employees.

B. The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

C. There shall be credited to this account the portion of pensions and benefits expense which is applicable to nonutility operations or which is charged to construction unless such amounts are distributed directly to the account involved and are not included herein in the first instance.

ITEMS

1. Payment of pensions under a nonaccrual or nonfunded basis.
2. Accruals for or payments to pension funds or to insurance companies for pension purposes.
3. Group and life insurance premiums (credit dividends received).
4. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.
5. Payments for accident, sickness, hospital, and death benefits or insurance.
6. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, or in excess of statutory awards.
7. Expenses in connection with educational and recreational activities for the benefit of employees.

NOTE A: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in accounts 920 and 921, as appropriate.

NOTE B: Salaries paid to employees during periods of nonoccupational sickness may be charged to the appropriate labor account rather than to employee benefits.

927 Franchise requirements.

A. This account shall include payments to municipal or other governmental

administrative functions of the utility. (See operating expense instruction 2.)

935 Maintenance of general plant.

A. This account shall include the cost of labor, materials used and expenses incurred in the operation and maintenance of general transportation equipment of the utility.

B. This account may be used as a clearing account in which event the charges hereto shall be cleared by apportionment to the appropriate operating expense, gas plant, or other accounts on a basis which will distribute the expenses equitably. Credits to this account shall be made in such detail as to permit ready analysis.

Items

1. Supervision.
2. Building service.
3. Care of grounds, including snow removal, cutting grass, etc.
4. Utility services.
5. Depreciation of transportation equipment.
6. Fuel and lubricants for vehicles (including sales and excise taxes thereon.)
7. Insurance on garage equipment and transportation equipment, including public liability and property damage.
8. Maintenance of transportation and garage equipment.
9. Compensation of drivers, mechanics, clerks, and other garage employees.
10. Rent of garage buildings and grounds, vehicles or equipment.
11. Replacement of tires, tubes, batteries, etc.
12. Direct taxes, licenses, and permits.
13. Miscellaneous garage supplies, tools, and equipment.
14. Miscellaneous office supplies and expenses, printing, and stationery.
15. Transportation, meals, and incidental expenses.

Note A: The pay of employees driving trucks or other transportation equipment incidental to their regular occupation, shall not be included herein but charged directly to the appropriate expense or other account.

Note B: Transportation expenses applicable to construction shall not be included in operating expenses.

935 Maintenance of general plant.

A. This account shall include the cost assignable to customer accounts, sales and administrative and general functions of labor, materials used and expenses incurred in the maintenance of property, the book cost of which is includible in account 390, Structures and Improvements, account 391, Office Furniture and Equipment, and other general equipment accounts (not including transportation equipment). (See operating expense instruction 1.)

B. Maintenance expenses on office furniture and equipment used elsewhere than in general commercial and sales offices shall be charged to the following accounts:

Manufactured gas production	Account 706.
Natural gas production and gathering	Account 719.
Storage	Account 746 or 747.
Transmission	Account 757.
Distribution	Account 769.
Merchandise and jobbing	Account 416 or 916.
Garages, shops, etc.	Appropriate general expense or clearing account.

Note: Maintenance of plant included in other general equipment accounts shall be included herein unless charged to clearing accounts or to the particular functional maintenance expense accounts indicated by the use of the equipment.

[F.R. Doc. 60-11733; Filed, Dec. 20, 1960; 8:45 a.m.]

authorities, and the cost of materials, supplies and services furnished such authorities without reimbursement in compliance with franchise, ordinance, or similar requirements; provided, however, that the utility may charge to this account at regular tariff rates, instead of cost, gas service furnished without charge under provisions of franchises.

B. When no direct outlay is involved, concurrent credit for such charges shall be made to account 929, Duplicate Charges—Cr.

C. The account shall be maintained so as to readily reflect the amounts of cash outlays, utility service supplied without charge, and other items furnished without charge.

Note A: Franchise taxes shall not be charged to this account but to account 408, Taxes Other Than Income Taxes.

Note B: Any amount paid as initial consideration for a franchise running for more than one year shall be charged to account 302, Franchises and Consents.

928 Regulatory commission expenses.

A. This account shall include all expenses (except pay of regular employees only incidentally engaged in such work) properly includible in utility operating expenses, incurred by the utility in connection with formal cases before regulatory commissions or other regulatory bodies, or cases in which such a body is a party, including payments made to a regulatory commission for fees assessed against the utility for pay and expenses of such commission, its officers, agents, and employees.

B. Amounts of regulatory commission expenses which by approval or direction of the Commission are to be spread over future periods shall be charged to account 183, Other Deferred Debits, and amortized by charges to this account.

C. The utility shall be prepared to show the cost of each formal case.

Items

1. Salaries, fees, retainers, and expenses of counsel, solicitors, attorneys, accountants, engineers, clerks, attendants, witnesses, and others engaged in the prosecution of, or defense against petitions or complaints presented to regulatory bodies, or in the valuation of property owned or used by the utility in connection with such cases.
2. Office supplies and expenses, payments to public service or other regulatory commissions, stationery and printing, traveling expenses, and other expenses incurred directly in connection with formal cases before regulatory commissions.

Note A: Include from this account and include in other appropriate operating expense accounts, expenses incurred in the improvement of service, additional inspection, or rendering reports, which are made necessary by the rules and regulations, or order, of regulatory bodies.

Note B: Do not include in this account amounts includible in account 302, Franchises and Consents, account 181, Unamortized Debt Discount and Expense, or account 214, Capital Stock Expense.

929 Duplicate charges—Cr.

This account shall include concurrent credits for charges which may be made to operating expenses or to other accounts for the use of gas service from its own supply. Include, also, offsetting credits for any other charges made to operating expenses for which there is no direct money outlay.

930 Miscellaneous general expenses.

This account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.

Items

Labor:
1. Miscellaneous labor not elsewhere provided for.

Expenses:
2. Industry association dues for company membership.
3. Contributions for conventions and meetings of the industry.
4. Experimental and general research work for the industry.
5. Communication service not chargeable to other accounts.
6. Trustee, registrar, and transfer agent fees and expenses.
7. Stockholders meeting expenses.
8. Dividend and other financial notices.
9. Printing and mailing dividend checks.
10. Directors' fees and expenses.
11. Publishing and distributing annual reports to stockholders.
12. Institutional or goodwill advertising.
13. Public notices of financial, operating, and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.

931 Rents.

This account shall include rents properly includible in utility operating expenses for the property of others used, occupied or operated in connection with the customer accounts, sales, and general

Part II begins on page 13325.

THE UNIVERSITY OF MICHIGAN
DEC 23 1960
MAIN READING ROOM

Pages 13209–13617

PART I

FEDERAL REGISTER

VOLUME 25 NUMBER 248

Washington, Thursday, December 22, 1960

Contents

Agricultural Marketing Service
PROPOSED RULE MAKING:
Milk in Colorado Springs-Pueblo marketing area; decision on proposed amendments to tentative agreement and order 13239

Agriculture Department
See Agricultural Marketing Service; Commodity Stabilization Service.

Atomic Energy Commission
NOTICES:
Curators of University of Missouri, School of Mines and Metallurgy; extension of completion date 13247

Civil Aeronautics Board
NOTICES:
Hearings, etc.:
Aerovias Nacionales de Colombia, S.A 13247
Wheeling-New York nonstop case 13247

Commerce Department
See also National Bureau of Standards.
NOTICES:
Zahn, Lawrence H.; changes in financial interests 13247

Committee for Reciprocity Information
NOTICES:
Bicycles and spring clothespins; intended revocation regarding U.S. concessions 13248

Commodity Stabilization Service
RULES AND REGULATIONS:
Continental sugar requirements for 1961 and quotas for 3-month period ending March 31, 1961 13211

Customs Bureau
RULES AND REGULATIONS:
Customs duties; republication of rules (*see* Part II of this issue) 13325

Education Office
RULES AND REGULATIONS:
National Defense Foreign Language Fellowships 13230

Federal Aviation Agency
PROPOSED RULE MAKING:
Federal airway and associated control areas; alteration 13244
Federal airway segment, associated control areas and reporting points, revocation; and alteration of control area extension 13244
RULES AND REGULATIONS:
Airworthiness directive; Lockheed 188 aircraft 13212
Coded jet route; modification 13213
Minimum en route IFR altitudes; miscellaneous alterations 13213
Restricted area; revocation 13213

Federal Communications Commission
NOTICES:
Hearings, etc.:
Consolidated Broadcasting Industries, Inc., et al 13249
Doniphan Telephone Co. et al 13249
Empire Communications Co. and Telephone Answering Service 13249
Middle Tennessee Broadcasting Co. (WKRM) et al 13249
Triangle Publications, Inc. (WNHC) 13250
PROPOSED RULE MAKING:
Frequencies; separation, availability, and allocation; extension of time for filing comments 13244
RULES AND REGULATIONS:
Practice and procedure, and land stations in maritime service 13230
Radio broadcast services; Class IV broadcast stations; power increase to more than 250 watts 13230
Shipboard stations in maritime services:
Interim ship station licensing procedure to include ship radar stations 13233
Operating procedures and station records of ship radiotelephone stations in 1600–3500 kc band 13232

Federal Reserve System
NOTICES:
Montana Shares, Inc.; request for determination and order for hearing 13250

Federal Trade Commission
PROPOSED RULE MAKING:
Pleasure boat industry; trade practice rules; hearing, etc 13245

Fish and Wildlife Service
RULES AND REGULATIONS:
Wildlife refuge areas; special regulations, sport fishing:
Arizona and California:
Havasu Lake 13235
Imperial 13235
Colorado; Monte Vista 13236
Georgia; Okefenokee 13236
Kansas; Kirwin 13235
Nevada; Ruby Lake 13237
New Mexico:
Bitter Lake 13234
Bosque del Apache 13234
Oklahoma:
Salt Plains 13237
Tishomingo 13237
Wichita Mountains 13238
Texas:
Buffalo Lake 13234
Hagerman 13235
Muleshoe 13236
Utah; Bear River 13234
Wyoming:
National Elk Refuge 13236
Pathfinder 13237

(Continued on next page)

Food and Drug Administration
RULES AND REGULATIONS:
Food additives, human consumption; castor oil in protective coatings of food tablets 13217

General Services Administration
RULES AND REGULATIONS:
Public contracts; contingent fees .. 13217

Health, Education, and Welfare Department
See Education Office; Food and Drug Administration.

Indian Affairs Bureau
PROPOSED RULE MAKING:
Traders on Navajo, Zuni, and Hopi reservations 13239

Interdepartmental Committee on Trade Agreements
NOTICES:
Bicycles and spring clothespins; intended revocation regarding U.S. concessions 13248

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau.
NOTICES:
Colorado River Indian Reservation, Arizona; ordinance legalizing introduction, sale, or possession of intoxicants 13247

Interstate Commerce Commission
NOTICES:
Motor carrier transfer proceedings 13251

Labor Department
RULES AND REGULATIONS:
Federal Tort Claims Act; property loss or damage; and personal injury or death 13228

Land Management Bureau
NOTICES:
Oregon; proposed withdrawal and reservation of lands 13247
RULES AND REGULATIONS:
California; public land orders (2 documents) 13229

National Bureau of Standards
RULES AND REGULATIONS:
Radiation physics; test fees 13215

Post Office Department
RULES AND REGULATIONS:
Money orders, nonpostal stamps and bonds, postal savings, and general information; miscellaneous amendments 13218

Securities and Exchange Commission
NOTICES:
Mississippi Power Co.; proposed acquisition of common stock .. 13251
PROPOSED RULE MAKING:
Security holdings and transactions; rules and forms for reports 13245

Small Business Administration
NOTICES:
Unitized Industries, Inc.; small business pool 13252

Tariff Commission
NOTICES:
Bicycles and spring clothespins; hearings, etc 13248

Treasury Department
See Customs Bureau.

Veterans Administration
RULES AND REGULATIONS:
Education of Korean conflict veterans; miscellaneous amendments 13229

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR
EXECUTIVE ORDERS:
Feb. 26, 1852 (revoked in part by PLO 2224) 13229

7 CFR
811 13211
PROPOSED RULES:
994 13239

14 CFR
507 13212
602 13213
608 13213
610 13213
PROPOSED RULES:
600 (2 documents) 13244
601 (2 documents) 13244

15 CFR
204 13215

16 CFR
PROPOSED RULES:
56 13245

17 CFR
PROPOSED RULES:
240 13245
249 13245
250 13245
259 13245
270 13245
274 13245

19 CFR
1—57 (see Part II of this issue) ... 13325

21 CFR
121 13217

25 CFR
PROPOSED RULES:
252 13239

29 CFR
2 13228

38 CFR
21 13229

39 CFR
4 13218
61 13218
62 13223
63 13224

41 CFR
5–1 13217

43 CFR
PUBLIC LAND ORDERS:
2224 13229
2225 13229

45 CFR
145 13230
146 13230

47 CFR
1 13230
3 13230
7 13230
8 (2 documents) 13232, 13233
PROPOSED RULES:
2 13244
9 13244
10 13244
11 13244
16 13244
19 13244
21 13244

50 CFR
33 (17 documents) 13234–13238

Rules and Regulations

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Three-Month Period Ending March 31, 1961

Basis and purpose. The purpose of Sugar Regulation 811 is to determine, pursuant to section 201 of the Sugar Act of 1948, as amended, and as further amended by Public Law 86–592, approved July 6, 1960 (hereafter called the "act"), the amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1961 and to establish sugar quotas for the three-month period ending March 31, 1961, for the supplying areas except Cuba in terms of short tons of sugar, raw value. By Proclamation No. 3383, the President of the United States, acting pursuant to the provisions of section 408(b) of the act, determined that the sugar quota for Cuba should be zero. This regulation establishes quotas for the three-month period ending March 31, 1961, for domestic areas and for foreign countries other than Cuba pursuant to the provisions of section 202 of the act and also establishes for domestic areas and foreign countries other than Cuba the amounts of certain quotas that may be filled by direct-consumption sugar pursuant to section 207 of the act. Further, this regulation establishes liquid sugar quotas pursuant to section 208.

Section 201 of the act directs the Secretary to determine for each calendar year the amount of sugar needed to meet the requirements of consumers in the continental United States and to revise such determination during the calendar year whenever he deems it necessary. The section sets forth criteria to guide the Secretary in his determinations and states that such determination shall be made so as to protect the welfare of consumers and of those engaged in the domestic sugar industry by providing such supply of sugar as will be consumed at prices which will not be excessive to consumers and which will fairly and equitably maintain and protect the welfare of the domestic sugar industry.

Accordingly, it is essential to obtain a steady flow of sugar supplies to achieve the statutory objectives. Cuba has been our principal source of sugar supplies. No importations from this source have been authorized under Presidential Proclamation 3383 during the three-month period ending March 31, 1961. Supplies not obtained from Cuba must be obtained from many other areas. Under these circumstances there will be a shift and diversification of sources of supply. Furthermore, the determination of the amount of sugar needed to meet the requirements of consumers in the continental United States for the 1961 calendar year must be made with due recognition that, under the present provisions of the act, quotas may be established only for the three-month period ending March 31, 1961, and that such quotas form the basis for supplying the sugar needed to meet the objectives of the act during such period. Taking into consideration the statutory criteria, a sugar requirements determination of 10,000,000 tons is necessary to provide, during the three-month period ending March 31, 1961, such supply of sugar as will be consumed at prices which will not be excessive to consumers and which will fairly and equitably maintain and protect the welfare of the domestic sugar industry.

The determination made herein has been based insofar as is required in section 201 of the act, on official statistics of the Department of Agriculture and statistics published by other agencies of the Federal Government.

Sugar quotas, the amounts thereof that may be filled by direct-consumption sugar, and liquid sugar quotas for the three-month period ending March 31, 1961, are established by applying the procedures prescribed and the levels specified in sections 202, 207 and 208 of the act and dividing the result obtained in each instance by four.

Section 411 of the act provides for the issuance of regulations to carry out Article 7 of the International Sugar Agreement. Article 7 requires limiting the total importations from nonparticipating countries as a group to the total quantity imported from such countries in any one of the years 1951, 1952 or 1953. All of the countries for which quotas are established hereunder are now members of the International Sugar Agreement. The maximum quantity of sugar imported in any one of the years 1951, 1952, or 1953 from countries currently not participating in the International Sugar Agreement was 21 short tons, raw value, in 1952. Accordingly, the quantity of sugar which may be authorized for importation pursuant to sections 211 and 212 of the act from nonparticipating countries has been limited to 21 short tons, raw value.

Pursuant to the act, during December 1960 the Secretary of Agriculture is required to determine sugar requirements for the calendar year 1961 and establish quotas for the three-month period ending March 31, 1961. Since the sugar quotas for some areas are relatively small, it is possible for some areas to exceed their quotas within a few days after the beginning of the quota year. Therefore, it is imperative that these regulations become effective January 1, 1961.

Also, to assure an orderly and adequate flow of sugar throughout the three-month period ending March 31, 1961, including the early days of January 1961, the persons who purchase and import sugar for continental United States consumption must make arrangements sufficiently in advance of the beginning of the year, not only to permit the physical movement of the sugar from the various countries and areas of origin to the United States, which requires from 1 to 7 weeks, but also to permit contracting for purchase of the sugar, contracting for ocean freight loading time and other related arrangements.

It is necessary that the persons who import sugar know the exact amounts of the quotas for the three-month period ending March 31, 1961, in order to make such arrangements in conformity therewith.

It is therefore essential that the exact amounts of the quotas to be effective January 1, 1961, be established immediately so that persons who sell, purchase and import sugar will have adequate foreknowledge to permit these necessary arrangements for purchase and shipment of sugar and provide for an orderly flow of sugar in the early days of the year and throughout the three-month period. Accordingly, it is hereby found and determined that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is impracticable and contrary to the public interest and this regulation shall become effective on January 1, 1961.

Sec.
811.1 Sugar requirements, 1961.
811.2 Quotas for domestic areas.
811.3 Quotas for foreign countries.
811.4 (Reserved).
811.5 (Reserved).
811.6 Liquid sugar quotas for foreign countries.
811.7 Applicability of quotas.
811.8 Restrictions on importations and marketings within quotas.
811.9 International Sugar Agreement import limitations.

AUTHORITY: §§ 811.1 to 811.9 issued under sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interpret or apply secs. 201, 202, 204, 207, 208, 209, 210, 212 and 411; 61 Stat. 923, as amended, 924, as amended, 926, as amended, 927, as amended, 928, as amended, 929, as amended, 933, as amended; 7 U.S.C. 1111, 1112, 1114, 1117, 1118, 1120, 1122. P.L. 86–592, approved July 6, 1960.

§ 811.1 Sugar requirements, 1961.

The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1961 is hereby determined to be 10,000,000 short tons, raw value.

§ 811.2 Quotas for domestic areas.

(a) For the three-month period ending March 31, 1961, quotas for sugar to

be brought into or marketed for consumption in the continental United States from domestic areas are established in Column (1) and the amounts of such quotas for offshore domestic areas that may be filled by direct-consumption sugar are established in Column (2), as follows:

Area	8short tons, raw value	
	Quotas	Direct-consumption limits
Domestic beet sugar	644,449	No limit
Mainland cane sugar	167,531	No limit
Hawaii	303,853	8,554
Puerto Rico	317,716	27,076
Virgin Islands	4,332	0

(b) Of the quantity established in paragraph (a) of this section for Puerto Rico which may be filled by direct-consumption sugar, 31,508 short tons, raw value, may be filled only by sugar principally of crystalline structure.

§ 811.3 Quotas for foreign countries.

For the three-month period ending March 31, 1961, quotas for sugar to be imported into the continental United States for consumption therein from foreign countries are established in Column (1) and the amount of each such quota that may be filled by direct-consumption sugar is established in Column (2), as follows:

Country	8short tons, raw value	
	Quotas (1)	Direct-consumption limits (2)
Republic of the Philippines	245,000	14,960
Peru	30,377	2,724
Dominican Republic	27,789	2,429
Mexico	23,852	4,411
Nicaragua	4,368	2,900
Haiti	2,067	1,750
Netherlands	1,037	1,037
China	995	995
Panama	995	995
Costa Rica	992	992
Canada	158	158
United Kingdom	129	129
Belgium	45	45
British Guiana	21	21
Hong Kong	1	1
All other countries	0	0

§ 811.4 [Reserved]

§ 811.5 [Reserved]

§ 811.6 Liquid sugar quotas for foreign countries.

For the three-month period ending March 31, 1961, quotas for liquid sugar to be imported into the continental United States for consumption therein are hereby established as follows:

Country:	*Liquid sugar, wine gallons 72 percent total sugar content*
Dominican Republic	207,724
British West Indies	75,000
Other foreign countries	0

§ 811.7 Applicability of quotas.

The provisions of §§ 811.1 to 811.6 shall apply to all sugar and liquid sugar brought or imported into or marketed in the continental United States during the three-month period ending March 31, 1961, except as provided in secs. 211 and 212 of the act and Part 819 of this chapter and subject to the provisions of the regulations in this chapter, which prescribe the time, manner, and conditions under which quotas are filled by the marketing or importation of sugar.

§ 811.8 Restrictions on importations and marketings within quotas.

With respect to any sugar or liquid sugar which is subject to the provisions of §§ 811.1 to 811.6 as provided in § 811.7, or is subject to Presidential Proclamation 3383, all persons are prohibited during the three-month period ending March 31, 1961, from bringing or importing into or marketing in the continental United States any of such sugar or liquid sugar in excess of or after the applicable quota has been filled, or any of such sugar or liquid sugar as direct-consumption sugar after the direct-consumption portion of the applicable quota has been filled.

§ 811.9 International Sugar Agreement import limitations.

To give effect to Article 7 of the International Sugar Agreement, the total quantity of sugar which may be authorized for importation pursuant to secs. 211 and 212 of the act from all nonparticipating countries is limited to 21 short tons, raw value.

Issued at Washington, D.C., this 16th day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

[F.R. Doc. 60-11841; Filed, Dec. 21, 1960; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 604; Amdt. 236]

PART 507—AIRWORTHINESS DIRECTIVES

Lockheed 188 Aircraft

Amendment 227, 25 F.R. 11063, effective November 22, 1960, required repetitive inspection every 450 hours' time in service of the elevator counterweight installation on Lockheed 188 aircraft as a result of severe vibration incidents in flight. Investigations have now revealed that the elevator viscous damper diaphragm was ruptured. When this part was replaced, the vibration was eliminated. Accordingly, Amendment 227 is being superseded to require in addition to the current 450-hour elevator counterweight repetitive inspection, inspection at specified intervals of the elevator booster control valve viscous damper diaphragm, and instructions for rework which eliminates the necessity for the special inspections.

In the interest of safety notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

LOCKHEED. Applies to all 188 Series aircraft. Compliance required as indicated.

(a) Within the next 150 hours' time in service commencing on November 22, 1960, unless already accomplished within the last 300 hours' time in service, inspect the elevator counterweight installation, Lockheed Drawing No. 829912, at airplane center line for evidence of free play as follows: with elevator blocked at extreme down position apply up and down force to balance weight Lockheed P/N 827020-1, and measure total movement of balance weight due to cumulative free play in joints of balance arm linkage. If movement of balance weight due to cumulative free play in system exceeds one-eighth inch inspect each joint in balance arm linkage and reduce the free play by bolt and/or part replacement at one or more of these joints so as to reduce total free play movement of the balance weight to one-sixteenth inch or less prior to further flight. This inspection must be repeated every 450 hours' time in service. When provisions of paragraph (c)(1) are accomplished, this special inspection may be discontinued.

(b) Within the next 300 hours' time in service, unless already accomplished within the last 700 hours' time in service, and following any occurrence of in-flight elevator or control column oscillations, inspect the elevator booster control valve viscous damper diaphragm, Lockheed P/N 813612-1 for evidence of rupture. See Lockheed Electra (Model 188) Overhaul Manual Section 27-1-10 Page 1 for information on evidence of rupture. If such evidence is found the airplane shall not be returned to service until the diaphragm is replaced with a new part, or compliance with paragraph (c)(2) below has been accomplished. This inspection must be repeated at periods not to exceed 1,000 hours' time in service until the provisions of paragraph (c)(2) below have been accomplished.

(c) The following must be accomplished within the next 1,000 hours' time in service.

(1) Install a spring-loaded cartridge, Lockheed P/N 840404-1, in the elevator counterweight linkage in the manner described by Lockheed Service Bulletin 88/SB-524.

(2) Replace the elevator boost control valve viscous damper, Lockheed P/N 813608-3, with an orifice type damper, Lockheed P/N 492508-3, in accordance with Lockheed Service Bulletin No. 88/SB-524.

(3) Rework the elevator booster assembly in accordance with Lockheed Service Bulletin No. 88/SB-524 to incorporate an orifice valve assembly, Lockheed P/N 804551-1, and modify the booster piston rod end installation to incorporate two retaining washers, Lockheed P/N 839756-1, in accordance with Lockheed Service Bulletin No. 88/SB-498.

(FAA approved Lockheed Service Bulletins 88/SB-498 and 88/SB-524, Lockheed Electra operating information letter No. 13 dated November 1, 1960, Lockheed Alert Bulletin No. 524 dated December 1, 1960, cover portions of this subject.)

This supersedes Amendment 227, 25 F.R. 11063.

This amendment shall become effective December 22, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 15, 1960.

OSCAR BAKKE,
Director, Bureau of Flight Standards.

[F.R. Doc. 60-11807; Filed, Dec. 21, 1960; 8:45 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-WA-211]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Route

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8831) stating that the Federal Aviation Agency proposed a modification to § 602.505 of the regulations of the Administrator so as to realign VOR/VORTAC jet route No. 5 from Los Angeles, Calif., to Seattle, Wash.

As stated in the notice, J-5-V would be designated from the Los Angeles VOR via the intersection of the Palmdale, Calif., VOR 291° and the Bakersfield, Calif., VORTAC 149° True radials; the Bakersfield VORTAC; Reno, Nev., VOR; Lakeview, Ore., VORTAC; The Dalles, Ore., VORTAC; intersection of The Dalles VORTAC 352° and the Seattle VORTAC 124° True radials; to the Seattle VORTAC.

The Air Transport Association of America endorsed the proposal. The Department of the Air Force stated that they had no objections to the Proposal if radar advisory service will be provided. This service will be provided on J-5-V.

The Department of the Navy stated that they are negotiating with the State of Oregon for property in the vicinity of Wagontire, Ore. (Lat. 42°48'30" N., Long. 120°06'00" W.) to be used for high and low altitude bombing operations. They further state that if this property is acquired a request will be submitted for a restricted area. If, in the future, the Department of the Navy submits a formal proposal for designation of a restricted area in the Wagontire area, consideration will then be given to any conflict that may exist between the proposed restricted area and any established jet routes.

No other comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated herein and in the notice, § 602.505 (14 CFR 602.505) is amended to read:

§ 602.505 VOR/VORTAC jet route No. 5 (Los Angeles, Calif., to Seattle, Wash.).

From Los Angeles, Calif., VOR via the INT of the Palmdale, Calif., VOR 291° True and the Bakersfield, Calif., VORTAC 149° True radials; Bakersfield VORTAC; Reno, Nev., VOR; Lakeview, Oreg., VORTAC; The Dalles, Oreg., VORTAC; INT of The Dalles VORTAC 352° True and the Seattle, Wash., VORTAC 124° True radials; to the Seattle VORTAC.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 15, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11808; Filed, Dec. 21, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-275]

PART 608—RESTRICTED AREAS

Revocation

The purpose of this amendment to Part 608 of the regulations of the Administrator is to revoke the Port Angeles, Wash., Restricted Area (R-407) (Bellingham Chart).

The Port Angeles Restricted Area is the portion of the Albert Head, British Columbia, Canada, Danger Area which falls within the territorial limits of the United States. The Canadian Government has advised the Federal Aviation Agency that this danger area has been reduced in size and is now contained within the territorial limits of Canada. Therefore, R-407 is being revoked herein, as this assignment of airspace is unjustified and revocation thereof is in the public interest.

Since this amendment reduces a burden on the public, compliance with the notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 12582), the following action is taken:

In § 608.55 *Washington*, the Port Angeles, Wash., Restricted Area (R-407) (Bellingham Chart) (23 F.R. 8589) is revoked.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 15, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11809; Filed, Dec. 21, 1960; 8:45 a.m.]

(Reg. Docket No. 603; Amdt. 69)

PART 610—MINIMUM EN ROUTE IFR ALTITUDES

Miscellaneous Alterations

The minimum en route IFR altitudes appearing hereinafter have been coordinated with interested members of the industry in the regions concerned insofar as practicable. The altitudes are adopted without delay in order to provide for safety in air commerce. Pursuant to authority delegated to me by the Administrator (24 F.R. 5662), I find that a situation exists requiring immediate action in the interest of safety, that notice and public procedure hereon are impracticable, and that good cause exists for making this amendment effective on less than thirty days notice. Part 610 is amended as follows:

Section 610.101 *Amber Federal airway 1* is amended to read in part:

From Fresno, Calif. LFR; to Copper INT, Calif.; MEA 5,000.

Section 610.201 *Red Federal airway 1* is added to read:

From Sitka, Alaska, LFR; to Port Alexander INT, Alaska; MEA 5,600.
From Port Alexander INT, Alaska; to Cape Decision, Alaska, LF/RBN; MEA 7,000.
From Cape Decision, Alaska, LF/RBN; to Guard Islands, Alaska, LF/RBN; MEA 7,000.
From Guard Islands, Alaska, LF/RBN; to Annette Island, Alaska, LFR; MEA 4,700.

Section 610.206 *Red Federal airway 6* is deleted.

Section 610.211 *Red Federal airway 11* is deleted.

Section 610.213 *Red Federal airway 13* is deleted.

Section 610.222 *Red Federal airway 22* is deleted.

Section 610.221 *Red Federal airway 21* is deleted.

Section 610.277 *Red Federal airway 77* is amended to delete:

From Tappahannock, Va., LFR; to Dover (AFB), Del., LF/RBN; MEA 1,500.

Section 610.277 *Red Federal airway 77* is amended by adding:

From Tappahannock, Va., LFR; to Coles Point INT, Md; MEA 1,500.

Section 610.288 *Red Federal airway 88* is deleted.

Section 610.619 *Blue Federal airway 19* is amended to read:

From Key West, Fla., LFR; to Perrine, Fla., LF/RBN; MEA 1,300.
From Perrine, Fla., LF/RBN; to Melbourne, Fla., LFR; MEA 1,200.

Section 610.675 *Blue Federal airway 75* is deleted.

Section 610.1001 *Direct routes—U.S.* is amended by adding:

From Victoria, Tex., VOR; to Bayside INT, Tex.; MEA 1,500.
From Royston, Ga., VOR; to Int. Greenwood, S.C., VOR 061 M rad & Royston VOR 087 M rad.; MEA 4,000.

Section 610.1001 *Direct routes—U.S.* is amended to delete:

From Cannon (AFB), N. Mex., LF/RBN; to *Field INT, N. Mex.; MEA 7,000. *11,500—MRA.

Section 610.6003 *VOR Federal airway 3* is amended to read in part:

From Engle INT, Fla.; to Rancho INT, Fla.; MEA 1,200.
From Bangor, Maine, VOR; to Houlton, Maine, VOR; MEA 2,000.

Section 610.6004 *VOR Federal airway 4* is amended to read in part:

From Elkins, W. Va., VOR; to Kessel, W. Va., VOR; MEA 6,100.
From Kessel, W. Va., VOR; to Front Royal, Va., VOR; MEA 4,900.

Section 610.6005 *VOR Federal airway 5* is amended to read in part:

From Dixie INT, Ga., via E alter.; to *Baxley INT, Ga., via E alter.; MEA **6,000. *6,000—MRA. **1,400—MOCA.

Section 610.6006 *VOR Federal airway 6* is amended to read in part:

From Sacramento, Calif., VORTAC; to Folsom INT, Calif.; MEA 3,000.

From Folsom INT, Calif.; to *Coloma INT, Calif.; northeastbound, MEA 9,500; southwestbound, MEA 5,000. *9,500—MCA Coloma INT, northeastbound.

From Coloma INT, Calif.; to Lake Tahoe, Calif., VOR; MEA 11,000.

From *Lake Tahoe, Calif., VOR; to **Reno, Nev., VOR; MEA 13,000. 12,000—MCA Lake Tahoe VOR, northeastbound. **12,000—MCA Reno VOR, southwestbound.

From Sacramento, Calif., VORTAC via N alter.; to Newcastle INT, Calif., via N alter.; MEA 3,500.

From *Newcastle INT, Calif., via N alter.; to Blue Canyon INT, Calif., via N alter.; southwestbound, MEA 7,000; northeastbound, MEA 11,000. *7,500—MCA Newcastle INT, northeastbound.

From Blue Canyon INT, Calif., via N alter.; to Reno, Nev., VOR via N alter.; MEA 11,000.

Section 610.6006 *VOR Federal airway 6* is amended by adding:

From Reno, Nev., VOR via S alter.; to Fallon, Nev., VOR via S alter.; MEA 9,500.

From Fallon, Nev., VOR via S alter.; to Lovelock, Nev., VORTAC via S alter.; MEA 8,000.

Section 610.6007 *VOR Federal airway 7* is amended to read in part:

From *Hammock INT, Fla.; to Ft. Myers, Fla., VOR; MEA 1,200. *2,000—MRA.

From Ft. Myers, Fla., VOR; to Lakeland, Fla., VOR; MEA *2,000. *1,300—MOCA.

Section 610.6011 *VOR Federal airway 11* is amended to read in part:

From Scotland, Ind., VORTAC via E alter.; to Brooklyn INT, Ind., via E alter., MEA 2,200.

From Brooklyn INT, Ind., via E alter.; to Indianapolis, Ind., VORTAC via E alter.; MEA 2,000.

Section 610.6012 *VOR Federal airway 12* is amended to read in part:

From *Cornville INT, Ariz., via S alter.; to **Winslow, Ariz., VORTAC via S alter.; MEA ***13,000. *13,000—MCA Cornville INT, eastbound. **8,500—MEA Winslow VORTAC, southwestbound. ***11,000—MOCA.

Section 610.6013 *VOR Federal airway 13* is amended by adding:

From Texarkana, Ark., VORTAC; to Page, Okla., VOR; MEA 3,900.

From Page, Okla., VOR; to *Hacket INT, Ark., MEA 3,900. *4,200—MRA.

From Hacket INT, Ark.; to Ft. Smith, Ark., VORTAC; MEA 3,900.

From Page, Okla., VOR via W alter.; to Ft. Smith, Ark., VORTAC via W alter.; MEA 3,900.

Section 610.6014 *VOR Federal airway 14* is amended to read in part:

From Tulsa, Okla., VORTAC; to *Adair INT, Okla.; MEA **2,200. *2,600—MRA. **2,000—MOCA.

From Adair INT, Okla.; to *Grand Lake INT, Okla.; MEA 2,500. *3,000—MRA.

From Grand Lake INT, Okla.; to Neosho, Mo., VOR; MEA 2,500.

From Tulsa, Okla., VORTAC via N alter.; to Vinita INT, Okla., via N alter.; MEA *2,600. *2,000—MOCA.

From Vinita INT, Okla., via N alter.; to *Wyandotte INT, Okla., via N alter.; MEA **2,600. *3,200—MRA. **2,200—MOCA.

From Wyandotte INT, Okla., via N alter.; to Neosho, Mo., VOR via N alter.; MEA *2,600. *2,500—MOCA.

From Pryor INT, Okla., via S alter.; to Neosho, Mo., VOR via S alter.; MEA 2,500.

Section 610.6015 *VOR Federal airway 15* is amended to read in part:

From Pryor INT, Okla., to Neosho, Mo., VOR; MEA 2,500.

From Dallas, Tex., VOR via W alter.; to *Gainesville INT, Tex., via W alter.; MEA **2,500. *2,500—MRA. **2,100—MOCA.

Section 610.6016 *VOR Federal airway 16* is amended to read in part:

From Tucson, Ariz., VORTAC via S alter.; to Geronimo INT, Ariz., via S alter.; southeastbound, MEA 8,000; northwestbound, MEA 7,000.

From *Geronimo INT, Ariz., via S alter.; to Mescal INT, Ariz., via S alter.; southeastbound, 9,500; northwestbound, 7,000. *8,500—MCA Geronimo INT, southeastbound.

Section 610.6018 *VOR Federal airway 18* is amended to read in part:

From Moundsville INT, Ala.; to Abernant INT, Ala.; MEA 1,800.

Section 610.6019 *VOR Federal airway 19* is amended to read in part:

From Socorro, N. Mex., VORTAC via W alter.; to Ohmar INT, N. Mex., via W alter.; MEA 9,300.

From Ohmar INT, N. Mex., via W alter.; to Albuquerque, N. Mex., VORTAC via W alter.; MEA 9,000.

From *Lewistown, Mont., VOR; to **Belt INT, Mont.; MEA 9,000. *9,500—MCA Lewistown VOR, southeastbound. **11,000—MRA.

From Belt INT, Mont.; to *Great Falls, Mont., VOR; MEA 9,000. *6,800—MCA Great Falls VOR, eastbound.

Section 610.6020 *VOR Federal airway 20* is amended to read in part:

From Corpus Christi, Tex., VORTAC; to Palacios, Tex., VOR; MEA 1,500.

From Laredo, Tex., VOR; to *Duval INT, Tex.; MEA 1,900. *3,000—MRA.

From Greensboro, N.C., VOR; to Reid INT, N.C.; MEA 2,500.

From Reid INT, N.C.; to So. Boston, Va., VOR; MEA 2,300.

Section 610.6021 *VOR Federal airway 21* is amended to read in part:

From Wolf Creek INT, Mont.; to *Cascade INT, Mont.; MEA 8,500. *9,000—MRA.

From Cascade INT, Mont.; to *Great Falls, Mont., VOR; southwestbound, MEA 8,500; northeastbound, MEA 5,500. *6,600—MCA Great Falls VOR, southwestbound.

Section 610.6029 *VOR Federal airway 29* is amended to read in part:

From Salisbury, Md., VOR; to Ridgely INT, Md.; MEA *2,500. *1,700—MOCA.

From Ridgely INT, Md.; to Kenton, Del., VOR; MEA 1,500.

From Kenton, Del., VOR; to New Castle, Del., VORTAC; MEA 1,600.

From New Castle, Del., VORTAC; to West Chester, Pa., VORTAC; MEA 1,800.

Section 610.6029 *VOR Federal airway 29* is amended to delete:

From Chincoteague, Md., VOR; to Salisbury, Md., VOR; MEA 1,500.

Section 610.6029 *VOR Federal airway 29* is amended by adding:

From Snow Hill, Md., VOR; to Salisbury, Md., VOR; MEA 1,500.

Section 610.635 *VOR Federal airway 35* is amended to read in part:

From Tallahassee, Fla., VOR; to *Calvary INT, Ga.; MEA 2,200. *2,500—MRA.

From Calvary INT, Ga.; to *Camilla INT, Ga.; MEA *2,000. *2,200—MRA. **1,600—MOCA.

From Camilla INT, Ga.; to Albany, Ga., VOR; MEA *2,000. *1,600—MOCA.

Section 610.6039 *VOR Federal airway 39* is amended to read in part:

From Augusta, Maine, VOR; to Millinocket, Maine, VOR; MEA 3,500.

Section 610.6045 *VOR Federal airway 45* is amended to read in part:

From New Bern, N.C., VOR; to Kinston, N.C., VOR; MEA 2,000.

From Raleigh, N.C., VOR via E alter.; to Reid INT, N.C., via E alter.; MEA 2,300.

From Reid INT, N.C., via E alter.; to Greensboro, N.C., VOR via E alter.; MEA 2,500.

Section 610.6055 *VOR Federal airway 55* is amended to read in part:

From Muskegon, Mich., VORTAC; to *Pentwater INT, Mich.; MEA **4,000. *4,000—MRA. **2,100—MOCA.

Section 610.6066 *VOR Federal airway 66* is amended to read in part:

From Tucson, Ariz., VOR; to Geronimo INT, Ariz.; southeastbound; MEA 8,000; northwestbound; MEA 7,000.

From *Geronimo INT, Ariz., to Mescal INT, Ariz.; southeast bound, MEA 9,500; northwest bound, MEA 7,000. *8,500—MCA Geronimo INT, southeast bound.

Section 610.6068 *VOR Federal airway 68* is amended to read in part:

From Junction, Tex. VOR, to *Comfort INT, Tex., MEA **3,600. *5,700—MRA. **3,400—MOCA.

Section 610.6070 *VOR Federal airway 70* is amended to read in part:

From Corpus Christi, Tex., VORTAC; to Palacios, Tex., VOR; MEA 1,500.

Section 610.6072 *VOR Federal airway 72* is amended to read in part:

From Youngstown, Ohio, VOR; to Hadley INT, Pa.; MEA 2,500.

Section 610.6074 *VOR Federal airway 74* is amended to delete:

From Ft. Smith, Ark., VOR; to *Paris INT, Ark.; MEA 3,000. *6,000—MRA.

From Paris INT, Ark.; to *Roland INT, Ark.; MEA **4,700. *8,000—MRA. **3,200—MOCA.

From Roland INT, Ark.; to City INT, Ark.; MEA *4,700. *3,200—MOCA.

From City INT, Ark.; to Little Rock, Ark., VOR; MEA 1,900.

Section 610.6074 *VOR Federal airway 74* is amended by adding:

From Ft. Smith, Ark., VORTAC; to Little Rock, Ark., VORTAC; MEA 3,800.

From Ft. Smith, Ark., VORTAC; via N alter.; to *Roland INT, Ark., via N alter.; MEA 3,300. *8,000—MEA.

From Roland INT, Ark., via N alter.; to Little Rock, Ark., VORTAC via N alter.; MEA 3,300.

Section 610.6097 *VOR Federal airway 97* is amended to read in part:

From Tallahasee, Fla., VOR; to *Calvary INT, Fla.; MEA 2,200. *2,500—MRA.

From Calvary INT, Fla.; to *Camilla INT, Ga.; MEA *2,000. *2,200—MRA. **1,600—MOCA.

From Camilla INT, Ga.; to Albany, Ga., VOR; MEA *2,000. *1,600—MOCA.

Section 610.6110 *VOR Federal airway 110* is deleted.

Section 610.6119 *VOR Federal airway 119* is amended to read in part:

From London, Ky., VOR; to Newcombe, Ky., VOR; MEA 2,700.

From Newcombe, Ky., VOR; to Henderson, W. Va., VOR; MEA 2,500.

Section 610.6120 *VOR Federal airway 120* is amended to read in part:

From Miles City, Mont., VOR; to Dupree, S. Dak., VOR; MEA *9,500. *6,000—MOCA.

From *Great Falls, Mont., VOR; to **Belt INT, Mont.; MEA 9,000. *6,800—MCA Great Falls VOR, eastbound. **11,000—MRA.

From Belt INT, Mont.; to Lewistown, Mont., VOR; MEA 9,000.

Section 610.6139 *VOR Federal airway 139* is amended by adding:

From Cape Charles, Va., VORTAC; to Snow Hill, Md., VOR; MEA 1,300.

From Snow Hill, Md., VOR; to Sea Isle, N.J., VOR; MEA 1,600.

Section 610.6144 *VOR Federal airway 144* is amended to read in part:

From Morgantown, W. Va., VORTAC; to Kessel, W. Va., VOR; MEA 5,000.

From Kessel, W. Va., VOR; to Linden, Va., VOR; MEA 5,000.

From Linden, Va., VOR; to Springfield INT, Va.; MEA 4,000.

From Springfield INT, Va.; to Washington, D.C., VOR; MEA 1,800.

Section 610.6148 *VOR Federal airway 148* is amended to read in part:

From Hayes Center, Nebr., VOR; to North Platte, Nebr., VOR; MEA 4,200.

Section 610.6155 *VOR Federal airway 155* is amended to read in part:

From Blythewood INT, S.C.; to Chesterfield, S.C., VOR; MEA *2,000. *1,700—MOCA.

Section 610.6157 *VOR Federal airway 157* is amended to read in part:

From Bunker INT, Fla., via W alter.; to LaBelle, Fla., VOR via W alter.; MEA 1,200.

From LaBelle, Fla., VOR; to Lakeland, Fla., VOR; MEA 1,500.

Section 610.6166 *VOR Federal airway 166* is amended by adding:

From Parkersburg, W. Va., VOR; to Clarksburg, W. Va., VOR; MEA 3,000.

From Clarksburg, W. Va., VOR; to Kessel, W. Va., VOR; MEA 6,000.

From Kessel, W. Va., VOR; to Martinsburg, W. Va., VOR; MEA 4,000.

Section 610.6212 *VOR Federal airway 212* is amended to delete:

From Williams, Calif., VOR; to Wheatland INT, Calif.; MEA 4,000.

From Wheatland INT, Calif.; to Auburn INT, Calif., eastbound, MEA 7,000; westbound, MEA 4,000.

From Auburn INT, Calif.; to Coloma INT, Calif., eastbound, MEA 7,000; westbound, MEA 6,000.

From *Coloma INT, Calif.; to Tahoe INT, Calif., northeastbound, MEA 13,000; southwestbound, MEA 9,500. *9,500—MCA Coloma INT, northeastbound.

From Tahoe INT, Calif.; to *Reno, Nev., VOR; MEA 13,000. *12,000—MCA Reno VOR, southwestbound.

Section 610.6213 *VOR Federal airway 213* is amended by adding:

From Tappahannock INT, Va.; to Patuxent, Md., VOR; MEA 1,500.

From Patuxent, Md., VOR; to Kenton, Del., VORTAC; MEA 1,500.

Section 610.6227 *VOR Federal airway 227* is amended to read in part:

From Paragon INT, Ind.; to Brooklyn INT, Ind.; MEA 2,200.

From Brooklyn INT, Ind.; to Indianapolis, Ind., VORTAC; MEA 2,000.

Section 610.6239 *VOR Federal airway 239* is amended to read:

From Sea Isle, N.J., VOR; to Woodstown, N.J., VOR; MEA 1,600.

From Woodstown, N.J., VOR; to Darby INT, Pa.; MEA 1,600.

Section 610.6257 *VOR Federal airway 257* is amended to read in part:

From Wolf Creek INT, Mont.; to *Cascade INT, Mont.; MEA 6,500. *9,000—MRA.

From Cascade INT, Mont.; to *Great Falls, Mont., VOR, southwestbound, MEA 8,500; northeastbound, MEA 5,500. *6,600—MCA Great Falls VOR, southwestbound.

Section 610.6259 *VOR Federal airway 259* is amended to read in part:

From Ft. Mill, N.C., VOR; to Maiden INT, N.C.; MEA 3,000.

Section 610.6268 *VOR Federal airway 268* is amended by adding:

From Baltimore, Md., VOR; to Price INT, Md.; MEA 1,500.

From Price INT, Md.; to Salisbury, Md., VOR; MEA *2,500. *1,700—MOCA.

Section 610.6271 *VOR Federal airway 271* is amended to read:

From Kenton, Del., VOR; to Woodstown, N.J., VOR; MEA 1,500.

From Woodstown, N.J., VOR; to West Chester, Pa., VORTAC; MEA 1,800.

Section 610.6289 *VOR Federal airway 289* is amended by adding:

From Texarkana, Ark., VORTAC; to *Greenwood INT, Ark.; MEA 3,800. *4,000—MRA.

From Greenwood INT, Ark.; to Fort Smith, Ark., VORTAC; MEA *3,800. *3,600—MOCA.

Section 610.6293 *VOR Federal airway 293* is amended to read in part:

From W. Palm Beach, Fla., VOR via W alter.; to *Clewiston INT, Fla., via W alter.; MEA 1,300. *1,700—MRA.

From Clewiston INT, Fla., via W alter.; to LaBelle, Fla., VOR via W alter.; MEA 1,200.

Section 610.6295 *VOR Federal airway 295* is amended to read in part:

From Orlando, Fla., VOR; to Center Hill INT, Fla.; MEA 1,700.

Section 610.6427 *VOR Federal airway 427* is amended by adding:

From Kent INT, Ohio; to Berea INT, Ohio; MEA 3,000.

Section 610.6471 *VOR Federal airway 471* is amended to read in part:

From Bangor, Maine, VOR; to Millinocket, Maine, VOR; MEA 2,300.

Section 610.6494 *VOR Federal airway 494* is added to read:

From Sacramento, Calif., VORTAC; to Newcastle INT, Calif.; MEA 3,500.

From *Newcastle INT, Calif.; to Auburn INT, Calif., southwest bound, MEA 7,000; northeast bound, MEA 11,000. *11,000—MCA Newcastle INT, northeast bound.

From Auburn INT, Calif.; to Lake Tahoe, Calif., VOR; MEA 11,000.

From Lake Tahoe, Calif., VOR; to *Virginia City INT, Nev.; MEA 12,000. *11,000—MCA Virginia City INT, westbound.

From Virginia City INT, Nev.; to *Fallon, Nev., VOR; MEA 10,000. *9,000—MCA Fallon VOR, southwest bound.

From Fallon, Nev., VOR; to Mt. Moses, Nev., VOR; MEA 11,000.

From Mt. Moses, Nev., VOR; to Elko, Nev., VORTAC; MEA 12,000.

Section 610.6610 *VOR Federal airway 1510* is amended to read in part:

From Superior INT, Colo.; to *Denver, Colo., VOR; westbound, MEA 16,000; eastbound, MEA 10,000. *12,000—MCA Denver VOR, westbound.

Section 610.6622 *VOR Federal airway 1522* is amended to read in part:

From Greensboro, N.C., VOR; to Reid INT, N.C.; MEA 2,500.

From Reid INT, N.C.; to So. Boston, Va., VOR; MEA 2,300.

Section 610.6629 *VOR Federal airway 1529* is amended to read in part:

From Dickinson, N. Dak., VOR; to Pembina, N. Dak., LFR; MEA *13,000. *4,100—MOCA.

(Secs. 313(a), 307(c), 72 Stat. 752, 749; 49 U.S.C. 1354(a), 1348(c))

These rules shall become effective January 12, 1961.

Issued in Washington, D.C. on December 15, 1960.

GEORGE C. PRILL,
Acting Director,
Bureau of Flight Standards.

[F.R. Doc. 60-11797; Filed, Dec. 21, 1960; 8:45 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter II—National Bureau of Standards, Department of Commerce

SUBCHAPTER A—TEST FEE SCHEDULES

PART 204—RADIATION PHYSICS

In accordance with the provisions of section 4 (a) and (c) of the Administrative Procedure Act, it has been found that notice and hearing on these schedules of fees are unnecessary for the reason that such procedures, because of the nature of these rules, serve no useful purpose. This revision is effective from January 3, 1961.

1. Part 204 is revised to read as follows:

RADIOACTIVITY

Sec.
204.201 Calibration of gamma-emitting radioactive samples.
204.202 Calibration of alpha emission rate of sources.

RADIOLOGICAL EQUIPMENT—GAMMA-RAY SOURCES

204.501 X-ray protective materials.
204.502 X-ray and gamma-ray instruments.
204.503 Gamma-ray sources.

NEUTRON PHYSICS

204.701 Neutron sources.
204.702 Neutron instruments.
204.703 Neutron irradiation of foils.

AUTHORITY: §§ 204.201 to 204.703 issued under sec. 9, 31 Stat. 1450, as amended; 15 U.S.C. 277. Interprets or applies sec. 7, 70 Stat. 959; 15 U.S.C. 275a.

RADIOACTIVITY

§ 204.201 Calibration of gamma-emitting radioactive samples.

Item	Description	Fee
204.201a	Calibration of gamma-emitting radioactive samples that conform to the physical, chemical and activity level specifications for measurement in the National Bureau of Standards gamma ionization chamber	$36.00

(1) 100-300 micrograms radium, calibrated in terms of micrograms of radium content measured relative to the National Radium Standard. See sec. 204.504-1, 2, 3, 4, 5ii for pertinent information.

(2) Chemically stable solutions of the following nuclides can be measured:

i. 50-100 microcuries of sodium-22, sodium-24, scandium-46, cobalt-60.

ii. 150-300 microcuries of iron-59, iodine-131, tantalum-182, gold-198, mercury-203, strontium-85, niobium-95, cesium-137/barium-137.

iii. 300-600 microcuries of potassium-42.

Solution should be 5 ml in volume and flame-sealed in a glass vial or ampoule of O.D. 16.0±0.5 mm, wall thickness approximately 0.5 mm. New postal regulations, effective May 20, 1958 (see 23 F.R. 2221, Apr. 4, 1958) permit the mailing of nuclides listed in the activity range specified.

(3) Requests for these tests should be submitted with full details for consideration.

§ 204.202 Calibration of alpha emission rate of sources.

Item	Description	Fee
204.202a	Calibration of alpha emission rate of sources submitted for test	$37.00

RADIOLOGICAL EQUIPMENT—GAMMA-RAY SOURCES

§ 204.501 X-ray protective materials.

Item	Description	Fee
204.501a	Determination of opacity of one sample—ionization method	$26.00
204.501b	Determination of opacity of each additional sample—ionization method	10.00
204.501c	Determination of opacity of one sample—radiographic method	27.00
204.501d	Determination of opacity of each additional sample—radiographic method	11.00
204.501s	For special opacity tests of protective materials not covered by the above schedule, fees will be charged dependent upon the nature of the test.	

§ 204.502 X-ray and gamma-ray instruments.

Item	Description	Fee
204.502a	Calibration of one X-ray dose-indicating instrument of one range, in international roentgens for lightly or moderately filtered X-rays of one half-value layer from the following selections	$40.00

Lightly Filtered X-Rays

Kv cp	Approx. inherent filter (mm)	Added filter (mm)	Approx. half-value layer (mm)	Instrument max. range from zero (r)
20	2.0 Be	0	0.08 Al	250
20	2.0 Be	0.5 Al	0.23 Al	25
30	2.0 Be	0.5 Al	0.35 Al	25
50	2.0 Be	1.0 Al	0.87 Al	25
75	2.0 Be	1.5 Al	1.6 Al	25
100	2.0 Be	2.0 Al	2.5 Al	25

Moderately Filtered X-Rays

Kv cp	Approx. inherent filter (mm)	Added filter (mm)		Approx. half-value layer (mm)	Instrument max. range from zero (r)
		Cu	Al		
60	4 Al	0	0	0.09 Cu	25
75	4 Al	0	0	0.11 Cu	100
100	4 Al	0	1.0	0.20 Cu	100
150	4 Al	0.25	1.0	0.66 Cu	100
200	4 Al	0.5	1.0	1.2 Cu	100
250	4 Al	1.0	1.0	2.1 Cu	100
250	4 Al	3.2	1.0	3.2 Cu	25

Kv cp	Approx. inherent filter (mm)	Added filter (mm)				Approx. effective energy (kev)	Max. dose (r)	Range from zero dose rate (r/min)
		Pb	Sn	Cu	Al			
50	4 Al	0.12	0	0	0	40	1	0.1
100	4 Al	0.53	0	0	0	70	2	0.2
150	4 Al	0	1.5	4.0	0	120	2	0.2
200	4 Al	0.7	4.0	0.6	0	170	2	0.2
250	4 Al	2.7	1.0	0.6	0	215	2	0.2

Calibration of radiation beam within ±2 percent.

Item	Description	Fee
204.502d	Calibration of each additional X-ray instrument, of the same dose or dose-rate range, for heavily filtered X-rays of one effective energy as selected under 204.502c, not requiring a change in setup and when the instruments are submitted at the same time	$20.00
204.502e	Calibration of one instrument in international roentgens for cobalt-60 gamma rays	35.00
	(a) Dose-rate-indicating instrument for dose rates ranging from 0.01 to 15 r/min; or	
	(b) Dose-indicating-instruments of ranges 0-0.1 r to 0-25 r.	
204.502f	Calibration of radiation beam within about ±2 percent.	
	Calibration of each additional instrument having the same dose or dose-rate range for cobalt-60 gamma rays, as under 204.502e, when the instruments are submitted at the same time	14.00
204.502z	Calibration of one X-ray or gamma-ray instrument, dose or dose-rate-indicating, in international roentgens: (1) calibrations of higher accuracy than that routinely furnished; or (2) calibrations on X-rays of energies other than those listed under 204.502 a, c, or e; or (3) calibrations requiring a special setup or special procedures. Fees will be charged dependent upon the nature of the test.	
	NOTE: Only a limited number of special calibrations can be undertaken and requests for such should be submitted with full details for consideration.	

Calibration of radiation beam within ±2 percent.

Item	Description	Fee
204.502b	Calibration of each additional X-ray dose-indicating instrument of the same range and for the same half-value-layer of lightly or moderately filtered X-rays as selected under 204.502a and not requiring a change in setup	$15.00
204.502c	Calibration of one X-ray instrument, either dose or dose-rate indicating, in international roentgens for heavily filtered X-rays of one effective energy from the following selections	50.00

(1) *Financial responsibility.* The Bureau assumes no responsibility for loss or damage to radioactive preparations while in its possession. The risk should be covered by insurance.

(2) *Period of measurement.* Approximately 10 days are required for measurement of these radioactive preparations.

(3) *Preparation of specimens.* Radioactive preparations submitted for test must be carefully sealed so that there can be no escape of any radioactive material including any gaseous decay products. The preparations, shielding and packaging must be free of contamination. Contaminated or leaking preparations cannot be measured and may cause considerable loss of time and damage to laboratory facilities. Preparations must have been sealed for a sufficient time to be substantially in radioactive equilibrium with their decay products when these contribute to the gamma emission. (At least 30 days for radium)

(4) *Packaging for shipment.* Regulations of the Interstate Commerce Commission regarding the shipment of radioactive substances by rail must be complied with. These regulations are enforceable by law and prospective shippers of these substances need to be familiar with them. Copies of the regulations can be obtained from the Interstate Commerce Commission, Washington 25, D.C.

§ 204.503 Gamma-ray sources.

(a) Radioactive preparations submitted to the Bureau for test are subject to the following conditions:

(5) *Type of measurements.* (i) Radium is calibrated in terms of milligrams of radium content measured relative to the National Radium Standard. Cobalt-60 is calibrated in terms of dose rate, milliroentgens per hour at one meter, based upon comparison with derived standards of Cobalt. Application may be made for other measurements of gamma emitters.

(ii) Postal regulations prohibit mailing radioactive materials which require a cautions label under ICC regulations. This effectively prohibits placing radioactive preparations in the mail.

Item	Description	Fee
204.503a	Gamma-ray measurement of radioactive preparations. Measurement to ±0.7 percent for radium; and to ±3 percent for cobalt-60: 0.5 to 15 mg radium or encapsulated cobalt-60 having gamma rays 0.5 to 15 mrhm (milliroentgens per hour at one meter)	$15.00
204.503b	15+ to 100 mg radium or encapsulated cobalt-60 having gamma rays 15+ to 100 mrhm (milliroentgens per hour at one meter)	23.00
204.503c	100+ to 250 mg radium or encapsulated cobalt-60 having gamma rays 100+ to 200 mrhm (milliroentgens per hour at one meter)	33.00
204.503d	For measurements in groups not exceeding 10 preparations, double the fee for preparations of same content as the total content of the group.	
204.503e	For handling and examination of a shipment containing contaminated or leaking preparations the fee will be the same as for measurements of a preparation having a content equal to the total nominal radioactive content of the shipment.	
204.503z	For special tests not covered by the above schedule, fees will be charged dependent upon the nature of the test. As only a limited number of special tests can be carried out, prior arrangements must be made including submission of full details concerning the required test.	

NEUTRON PHYSICS

§ 204.701 Neutron sources.

Item	Description	Fee
204.701a	Determination of ratio of neutron emission rate of unknown source to primary standard in $MnSO_4$ bath or graphite column	$365.00

§ 204.702 Neutron instruments.

Item	Description	Fee
204.702a	Calibration of a set (one to three) of thermal neutron dosimeters	$74.00

§ 204.703 Neuron irradiation of foils.

Item	Description	Fee
204.703a	Activation of a set (one to four) of foils in the NBS standard thermal neutron flux geometry	$56.00

A. V. ASTIN,
Director.

[F.R. Doc. 60-11843; Filed, Dec. 21, 1960; 8:51 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

CASTOR OIL IN PROTECTIVE COATINGS OF FOOD ADDITIVES

The Commissioner of Food and Drugs, having evaluated the data submitted in a petition by Mead Johnson and Company, Evansville 21, Indiana, and other relevant material (including the fact that the proposed use is self-limiting) has concluded that the following regulation should issue in conformity with section 409 of the Federal Food, Drug, and Cosmetic Act, with respect to the food additive castor oil as an ingredient of protective coatings for tablets used as food. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), subpart D (21 CFR Part 121) of the food additive regulations is amended by adding thereto the following new section:

§ 121.1028 Castor oil.

The food additive castor oil may be safely used, in accordance with good manufacturing practice, as a component of protective coatings for vitamin and mineral tablets used for food, provided the additive meets the specifications prescribed in United States Pharmacopeia XVI.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)).

Dated: December 15, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11846; Filed, Dec. 21, 1960; 8:51 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 5—General Services Administration

PART 5-1—GENERAL

Subpart 5-1.5—Contingent Fees

Part 5-1 is amended by adding new Subpart 5-1.5—Contingent Fees, to read as follows:

Sec.
5-1.508 Enforcement.
5-1.508-1 Failure or refusal to furnish representation and agreement.
5-1.508-2 Failure or refusal to furnish Standard Form 119.

AUTHORITY: §§ 5-1.508 to 5-1.508-2 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 5-1.508 Enforcement.

When the representation required by § 1-1.505 is in the affirmative, each indicated successful bidder or proposed contractor shall be required to submit a completed Standard Form 119 in triplicate. (References in this § 5-1.508 to the Compliance Division shall mean the regional representative or the Central Office of the Compliance Division, as appropriate.)

§ 5-1.508-1 Failure or refusal to furnish representation and agreement.

The name of each indicated successful bidder or proposed contractor who fails or refuses to furnish the representation and agreement after opportunity therefor has been afforded, shall be submitted, with a statement of the pertinent circumstances, to the Compliance Division for such further action as may be appropriate.

§ 5-1.508-2 Failure or refusal to furnish Standard Form 119.

The name of each indicated successful bidder or proposed contractor who fails or refuses to furnish a completed Standard Form 119 (or a statement in lieu thereof as provided in § 1-1.507-2) shall be submitted, together with pertinent information, to the Compliance Division for appropriate action. If the contract has been awarded or offer accepted, consideration shall be given to the feasibility of terminating the contract, the future eligibility as a bidder or contractor of the concern in question, or other appropriate action.

Effective date. These regulations are effective immediately.

Dated: December 15, 1960.

FRANKLIN FLOETE,
Administrator.

[F.R. Doc. 60-11844; Filed, Dec. 21, 1960; 8:51 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

MISCELLANEOUS AMENDMENTS TO CHAPTER

The regulations of the Post Office Department are amended as follows:

SUBCHAPTER A—INFORMATION

PART 4—INFORMATION ON POSTAL MATTERS

In § 4.3 *Privilege matter*, paragraph (f) is amended to correct the cross reference therein. As so amended, paragraph (f) reads as follows:

§ 4.3 Privilege matter.

* * * * *

(f) Records regarding postal savings accounts, except as provided in § 63.3(c) of this chapter.

NOTE: The corresponding Postal Manual section is 114.3f.

(R.S. 161, as amended, secs. 501, 5212, Pub. Law 86-682 (74 Stat. 580, 683); 5 U.S.C. 22, 39 U.S.C. 501, 5212)

Subchapter G—Non Mail Services, which includes Parts 61, 62 and 63, as amended by Federal Register Document 60-1647, 25 F.R. 1616-1617, Federal Register Document 60-3354, 25 F.R. 3171-3173, and by Federal Register Document 60-5068, 25 F.R. 4991-4992, is further amended to augment, reorganize and more clearly state the regulations regarding money orders, nonpostal bonds and stamps, and postal savings. As so amended, Subchapter G reads as follows:

SUBCHAPTER G—NON MAIL SERVICES

PART 61—MONEY ORDERS

Sec.

61.1 Issuance of domestic money orders.
61.2 Issuance of international money orders.
61.3 Cashing money orders.
61.4 Receipt and protection of blank money orders.
61.5 Inquiries.
61.6 Nonpostal money orders.

AUTHORITY: §§ 61.1 to 61.6 issued under R.S. 161, as amended, secs. 501, 506, 5101-5105, Pub. Law 86-682 (74 Stat. 580, 581, 680, 681); 5 U.S.C. 22, 39 U.S.C. 501, 506, 5101-5105.

§ 61.1 Issuance of domestic money orders.

(a) *Where sold.* Patrons may buy domestic money orders at all post offices, branches, and stations in the United States and its possessions, except for certain offices in Alaska. Money order facilities are also provided for members of the Armed Forces of the United States. Special procedures for rural patrons are explained in § 61.1(e).

(b) *Amounts, fees, payments*—(1) *Money order amounts.* Patrons should ask the clerk to issue a money order for the desired amount. The maximum amount for a single money order is $100. There is no limitation on the number of orders that may be purchased at one time, except when the Department may impose temporary restrictions.

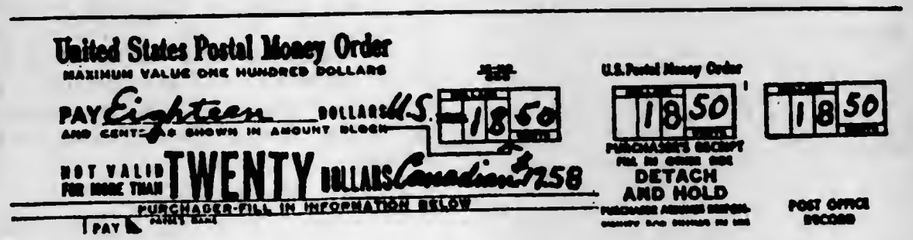
(2) *Money order fees.*

Amount of money order	Amount of fee	
	Domestic	International
$0.01 to $5	$0.15	$0.30
$5.01 to $10	.20	.40
$10.01 to $100	.30	.60

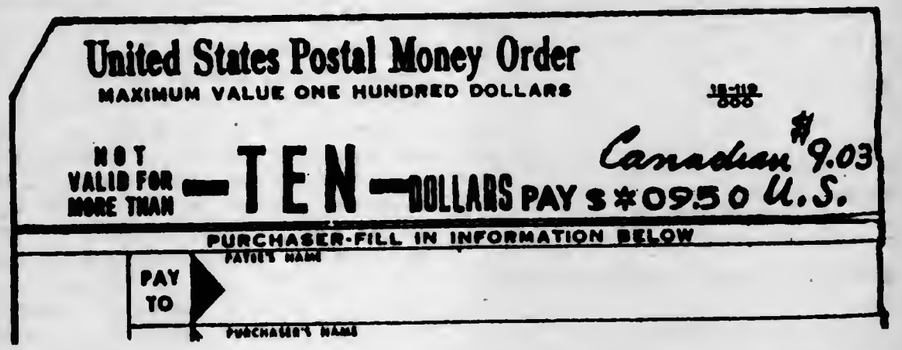
(3) *Paying for money orders.* Money orders must be paid for in American money. Postmasters may accept, at their own risk, from a person whose endorsement is acceptable, a Federal Government check in payment for a money order.

(c) *Putting amount, dating stamp, and initials on money order*—(1) *Amount.* The employee who issues the money order shall enter the amount, as follows:

(i) *Manual method.* Use post office ball point pen and write the whole dollar amount in words on the "pay" line and the dollar and cents amount in figures in the "amount" block and draw two lines through unused "dollar" blocks. Enter control stamp for the same or next higher amount after the words "not valid for more than". The following illustration also shows the proper manner of issuing order for payment in Canada.



(ii) *Machine method.* Use machine to enter amount in figures, preceded by the $ sign and asterisk, if less than $100, to the right of word "pay". Affix control stamp for the same or next higher amount after the words "not valid for more than". The following illustration also shows the proper method for issuing order for payment in Canada.



(2) *Dating stamp and initials.* The employee who issues the money order shall put the post office dating stamp and his initials, in ink, in the spaces provided on form.

(d) *Completion of money order by purchaser.* After receiving cash for the order and fee, the postal clerk shall remove the post office record stub, partially detach purchaser's receipt stub, give the order and receipt to patron, and remind him of necessity to complete information on the order. The purchaser must fill in the following information on the money order:

(1) *Name of payee and name and address of purchaser.* The patron must fill in his name and address as purchaser and the name of the person to whom it is to be paid. He should do this promptly to protect his rights in the event the order is lost. Money orders may be payable:

(i) To purchaser, if desired.

(ii) To only one firm or person, by complete name. Don't put the name "Smith" for an individual. But "Smiths" may be used if it is the name of a company or firm.

(iii) To payees (the persons to whom payable) by their official titles. For example: Cashier, First National Bank; Superintendent of Insurance, New York State; Director of Internal Revenue, Baltimore.

(iv) To persons who have adopted a name in a religious order, such as Sister Theresa, or Brother Joseph.

(2) *Identifying data.* The purchaser should add his insurance policy number or other identification data to insure proper credit. Designate government agencies directly, as: Director of Internal Revenue; Superintendent of Documents; Veterans Administration.

(e) *Issuance to Rural Patrons*—(1) *Application Form.* Rural patrons must obtain an application from the carrier. The purchaser will be given a numbered receipt when he returns the completed application form with the money. If the carrier cannot give the correct change in payment, he will meet the purchaser on his next trip. Money must never be deposited in a rural box. When carriers do find money in a box with a completed

application, Form 6001, "Application for domestic money order", they will take it to their post office for issue of the money order. Carriers will deliver the money orders with receipts attached, to patrons on their next regular trip. The postmaster shall keep applications in a separate file, in money order number sequence.

(2) *Requesting the mailing of order to payee.* If the purchaser wants the money order mailed to the payee the carrier will do so if he is furnished a stamped addressed envelope. No extra charge is made for this service.

(3) *Form 6387 for rural carriers.* Postmasters will furnish rural carriers Form 6387, "Receipt of Carrier to Purchaser and Certificate of Postmaster for Issue of Money Order", for the purpose of transacting money order business. These transactions shall be conducted in accordance with instructions on the back of the book cover of Form 6387.

(f) *Spoiled or lost money orders*—(1) *Spoiled when being issued*—(i) *Issuance of new order.* The purchaser must make sure that the money order received agrees with the amount requested. When a money order is returned after it has been issued and made a matter of record, a new one will be issued. If the post office was at fault, no fee will be charged for the new one. Should the purchaser spoil an order in completing it, no charge will be made for a new one if the purchaser returns it to the post office on the same day it was issued.

(ii) *Disposition of spoiled order.* Postal employees shall treat money order forms that are defective by misprint or mutilation or spoiled when being issued as follows:

(*a*) Stamp or write boldly "Not Issued" across the amount block on the order. Detach and destroy purchaser's receipt. First- and second-class offices must submit these money orders with Form 6125, "Statement of Accountability Money Order Business"; Form 6125-A, "Money Order Group Report"; or Form 6126, "Statement of Accountability Money Order Business". Third- and fourth-class offices must enter "Not Issued" opposite the serial number on Form 1846, "Quarterly List of Money Orders Issued", or Form 1846-A, "List of Money Orders Issued", and submit the spoiled orders with the form.

(*b*) Stamp or write "Not Issued" across the amount block of the post office record (money order stub).

(2) *Lost or damaged orders*—(i) *Application for duplicate order.* (*a*) A money order that is lost will be replaced without charge by the Post Office Department provided it had been completed by the purchaser to show his name and address and the name of the intended payee. The owner—purchaser, payee, or endorsee—should make application through his local postmaster, using Form 6401, "Inquiry as to Payment of Money Order."

(*b*) Patrons must wait 60 days after date of issue of original money order before filing Form 6401, "Inquiry as to Payment of Money Order", except for mutilated orders or for orders void by too many endorsements.

(*c*) The post office shall put the following endorsement on the purchasers receipt before returning the receipt to him:

Form 6401 (date).

(ii) *Issuance of duplicate order.* (*a*) A duplicate money order will be issued in accordance with the wishes of the purchaser-applicant without the consent of the payee or endorsee.

(*b*) The post office shall send the mutilated or void order to the Money Order Center where duplicates are issued. A duplicate money order will be issued if the original order is not in the paid files at the Money Order Center; it will show the serial number of the original order and the amount as entered on Form 6401. When a record of the amount of the original order is not available at the Money Order Center, the center will issue the duplicate based on information shown on Form 6401 and will send the order to the post office of issue of the original order for verification. In such cases, Form 787, "Duplicate Money Order Transmittal Letter," accompanies the duplicate money order; it describes the verification required and the disposition of the order. The employee performing the verification will initial the duplicate if both the serial number and the amount are in agreement with the post office record (stub).

(iii) *Orders recovered after duplicate issued.* When a duplicate order has been issued, the postal employee shall write "Canceled-Duplicate Issued" on the original order and send it to the Money Order Center. If the postal employee does not know whether a duplicate was actually issued, he shall send the recovered order with Form 6401, "Inquiry as to Payment of Money Order."

(iv) *Payment of duplicate orders.* A duplicate money order is payable only to the payee named thereon or to his endorsee.

§ 61.2 Issuance of international money orders.

(a) *Where sold.* International money orders may be purchased at almost all first-class post offices. Some second-, third-, and fourth-class post offices have been designated to provide this service. International money orders will be issued to addressees in those countries that have agreed with the United States to conduct such business.

(b) *Application.* (1) For the following countries, the domestic money order form is used and there is no application form:

Antigua.	Dominica.
Bahamas.	Grenada.
Barbados.	Jamaica.
Bermuda.	Montserrat.
British Honduras.	Nevis.
British Virgin Islands.	Saint Kitts.
Canada.	Saint Lucia.
Canal Zone.	Saint Vincent.
Cuba.	Tobago.
	Trinidad.

(2) For all countries and localities listed in paragraphs (f) and (g) of this section, the international money order form is used and application must be made on Form 6701. In some cases, the order is written in foreign currency. In most cases, the amount is written in United States dollars and converted into foreign currency in the country where payable.

(3) Purchasers must use Form 6083, "Supplemental International Money Order Advice", written in the foreign language, when they send money orders payable in Greece, Lebanon, Syria, Yugoslavia, and Japan.

(4) When the international money order form is used, purchasers will be given a receipt. The postmaster will arrange for sending the order abroad, as prescribed in paragraph (c)(2)(iii) of this section.

(5) Purchasers must state the following details in their application regarding the payee: Full name, exact address, name of city, town, or village; name of the canton, department, or district as the case may be. If the payee is a woman, state whether single, married, or a widow.

(c) *Preparation of orders*—(1) *When domestic form is used.* Postal employees shall handle in the same manner as for domestic orders. For Canada, the amount on the order must be expressed in both U.S. and Canadian money. Consult the current conversion table. Put the amount received in U.S. money in the "figure" block and write "U.S." before it. Write the Canadian amount under the figure blocks and put "Canadian" before it.

(2) *When international form is used.* Postal employees shall complete the transaction the same way as for a domestic money order, with these exceptions:

(i) Print all particulars of the application on the order, including office of payment, if known.

(ii) Enter amount in U.S. money. If patron requests foreign equivalent of an order payable in one of the following countries, consult Form 6749a, "Conversion Tables for Use in International Money Order Business", and enter that amount also: British Guiana, Great Britain and Northern Ireland, Ireland, New Zealand, Union of South Africa, Belgium, Denmark, France, Luxemburg, Netherlands, Norway, Surinam, Sweden, Switzerland and Tunis.

(iii) Give receipt to patron, and send order to the proper U.S. exchange office. When necessary, also attach any required foreign language advices, Form 6083, "Supplemental International Money Order Advice". (See paragraph (b)(3) of this section.

(d) *Refunds.* The amounts of orders sent on the international form may not be repaid here until authorized by the foreign postal department. Form 6759, "Application for Authority for Repayment of International Money Orders", shall be sent to the proper U.S. exchange

office when purchaser requests repayment on U.S. issued orders.

(e) *Lost redeemed orders.* The postmaster shall report the facts concerning lost redeemed orders (an order certified to the United States by a foreign country and redeemed in the United States) to the proper U.S. exchange office.

(f) *Countries where service is available on direct exchange basis.* Direct exchange of international money orders is conducted between the United States exchange office and the foreign exchange office of the places named in the following table:

U.S. Exchange Office	*Foreign country*
Dallas 21, Tex.----	Mexico.
San Francisco 2, Calif.	China, Republic of (Formosa).
	Commonwealth of Australia:
	New South Wales.
	Queensland.
	South Australia.
	Tasmania.
	Victoria.
	Western Australia.
	Japan.
	New Zealand.
	Philippines.
	Ryukyu Islands.
New York 1, N.Y.	Argentina.
	Austria.
	Belgium.
	British Guiana.
	Chile.
	Colombia.
	Costa Rica.
	Czechoslovakia (except Province of Ruthenia).
	Denmark.
	Egypt (United Arab Republic).
	Finland.
	France.
	Germany:[1]
	Great Britain and Northern Ireland.
	Greece.
	Guatemala.
	Hungary.
	Iceland.
	Ireland.
	Italy.
	Lebanon.
	Luxemburg.
	Netherlands.
	Norway.
	Peru.
	Poland.
	Salvador.
	Surinam.
	Sweden.
	Switzerland.
	Syria.[2]
	Tunis.
	Union of South Africa.
	United Arab Republic (Egyptian Territory).
	Uruguay.
	Vatican City.
	Yugoslavia.

[1] *Money order service is in effect with the American, British, and French zones of Germany and the western sector of Berlin only.*

[2] *Syria comprises Aleppo, Damascus, Hiphrates, Hama, Hauran Homs, Jebel Druse, Jesireh, and Latakia.*

(g) *Countries where service is available on indirect exchange basis.* (Orders are paid in the designated country through an intermediary country which reserves the right to deduct a fee for the service.)

Country or Locality	*Basis: Through intermediary of—*
Aden	Great Britain.
Including Kamaran Island.	
Aegean Island (See Dodecanese Islands)	Greece.
Aitutaki, Cook Islands	New Zealand.
Algeria	France.
Andaman Islands	Great Britain.
Aruba (Netherlands Antilles)	Netherlands.
Azores[1]	Great Britain.
Baluchistan (See Pakistan)	Great Britain.
Basutoland	Union of South Africa.
Bechuanaland, British	Union of South Africa.
Bechuanaland Protectorate	Union of South Africa.
Bonaire (Netherlands Antilles)	Netherlands.
Borneo, North	Great Britain.
British Bechuanaland	Union of South Africa.
British Cameroons	Great Britain.
Bamenda, Buea, Kumba, Mamfe, Tiko, Victoria.	
British Somaliland (See Somaliland Protectorate)	Great Britain.
Burma	Great Britain.
Cameroun, Republic of	France.
Cameroons, British	Great Britain.
Bamenda, Buea, Kumba, Mamfe, Tiko, Victoria.	
Central African Republic (Oubangui-Chari)	France.
Ceylon	Great Britain.
Chad, Republic of (Tchad)	France.
Chios (Dodecanese Islands)	Greece.
Comoro Islands	France.
Congo, Republic of (Moyen'Middle' Congo)	France.
Cook Islands	New Zealand.
Aitutaki, Rarotonga.	
Corsica	France.
Cos (Dodecanese Islands)	Greece.
Crete	Greece.
Curacao (Netherlands Antilles)	Netherlands.
Cyprus	Great Britain.
Famagusta, Kyrenia, Larnaca, Lefka, Lefkara, Lefkonika, Limassol, Morphou, Nicosia, Paphos, Pedhoulas, Pedhoulas, Platres, Polis, Troodos, Yialousa. (Pedhoulas, Platres and Troodos are summer offices only.)	
Dahomey, Republic of	France.
Dodecanese Islands	Greece.
Astypalaia, Kalymnos (Calino, Calymnos), Karpathos (Scarpento), Kasos, Kastellorizon, Cos, Leros (Lero), Nisyros (Nisiro), Patmos, Rhodes (Rodi), and Symi	
Ellice Islands	New South Wales.
Falkland Islands	Great Britain.
Stanley	
Fanning Island	New Zealand.
Faroe Islands	Denmark.
Fiji Islands	Great Britain.
French Cameroon (See Cameroun, State of)	France.
French Equatorial Africa (See Central African Republic, Chad, Congo and Gabon Republic)	France.
French Guiana	France.
French Oceania (See Polynesia)	France.
French Sudan (See Soudanese Republic)	France.
French Togoland (See Togo)	France.
French West Africa (See Dahomey, Soudanese Republic, Ivory Coast, Mauritania, Niger, Senegal, Upper Volta).	France.
Friendly Islands (or Tonga Islands)	New South Wales.
Gabon Republic	France.
Gambia	Great Britain.
Barre (paid through Bathurst), Base, Bathurst, Cape St. Mary (paid through Bathurst), Georgetown, Kunta-Ur, Macarthy Island (paid through Georgetown).	
Ghana	Great Britain.
Gibraltar	Great Britain.
Gilbert and Ellice Islands Colony	New South Wales.
Guadeloupe	France.
India	Great Britain.
Iraq[1]	Great Britain.
Islamic Republic (See Mauritania)	Great Britain.
Ivory Coast, Republic of	France.
Kalymnos (Dodecanese Islands)	Greece.
Kamaran Island (Aden)	Great Britain.
Karpathos (Dodecanese Islands)	Greece.
Kenya	Great Britain.
Leros (Dodecanese Islands)	Greece.
Lesbos (Dodecanese Islands)	Greece.
Liechtenstein, Principality of	Switzerland.

[1] *The maximum amount which may be sent on any one day by the same purchaser is £40.*

Country or Locality	*Basis: Through intermediary of—*
Madagascar (Malagasy Republic)	France.
Madeira Islands[1]	Great Britain.
Makatea (Polynesia)	France.
Malagasy Republic (See Madagascar)	France.
Malaya (Federation of) and Singapore	Great Britain.
Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang (including Providence of Wellesley), Perak, Perlis, Selangor and Trengganau and Singapore.	
Malta	Great Britain.
Birkirkara, Notabile, Siggieui, Sliema, Valletta, Victoria (Gozo).	
Martinique	France.
Mauritania (Islamic Republic)	France.
Mauritius	Great Britain.
Middle Congo (See Congo, Republic of)	France.
(Same as Moyen Congo.)	
Monaco	France.
Morocco	France.
Mozambique (Portuguese East Africa)	Union of South Africa.
Nauru Island	New South Wales.
Netherlands Antilles (or Netherlands West Indies)	Netherlands.
Aruba, Bonaire, Curacao, Saba, St. Eustatius and St. Martin (southern part of island).	
Netherlands West Indies (See Netherlands Antilles)	Netherlands.
New Caledonia	France.
New Guinea, Territory of	New South Wales.
New Hebrides	New South Wales.
Nicobar Islands	Great Britain.
Niger, Republic of	France.
Nigeria	Great Britain.
Nissyros (Dodecanese Islands)	Greece.
Niue or Savage Island	New Zealand.
Norfolk Island	New South Wales.
North Borneo	Great Britain.
Northern Rhodesia	Union of South Africa.
Nyasaland	Great Britain.
Oceania, French (See Polynesia)	France.
Oubanghi-Chari (See Central African Republic)	France.
Pakistan (including Baluchistan)	Great Britain.
Papeete, Tahiti	France.
Papua (Territory of)	New South Wales.
Penrhyn Island	New Zealand.
Persian Gulf Ports	Great Britain.
Polynesia, French	France.
Makatea, Raiatea, Society Islands, Tahiti.	
Portugal[1]	Great Britain.
Portuguese East Africa (Mozambique)	Union of South Africa.
Protectorate of Somaliland	Great Britain.
Raiatea, Polynesia	France.
Rarotonga (Cook Islands)	New Zealand.
Reunion Island	France.
Rhodes (Dodecanese Islands)	Greece.
Rhodesia (Northern and Southern)	Union of South Africa.
Rogrigues, Island of	Great Britain.
Saar	Germany.
Saba (Netherlands Antilles)	Netherlands.
Saint Eustatius (Netherlands Antilles)	Netherlands.
Saint Helena	Great Britain.
Saint Martin (Netherlands Antilles)	Netherlands.
Saint Pierre and Miquelon	France.
Samoa (Western)	New Zealand.
Samoa (Dodecanese Islands)	Greece.
San Marion, Republic of	Italy.
Sarawak	Great Britain.
Savage Islands (Niue)	New Zealand.
Senegal, Republic of	France.
Seychelles Islands	Great Britain.
Sierra Leone	Great Britain.
Bauya, Blama, Bo, Bonthe, Cline Town, Daru Freetown, Hangha, Kabala, Kailahun, Kambia, Kenema, Lunsar, Magburaka (Makump) Makeni, Mano, Moyamba, Pendembu, Port Loko, Punjehun, Rotifunk, Segbwema, Sembehun, Sumbuya, Waterloo.	
Singapore	Great Britain.
Society Islands, French Polynesia	France.
Solomon Islands	New South Wales.
Somaliland Protectorate	Great Britain.
Berbera, Borama, Burao, Erigavo, Hargeisa, Lasanod, Sheikh (paid at Berbara or Burao), Zeilah.	
Soudanese Republic	France.
Southern Rhodesia	Union of South Africa.
Southwest Africa	Union of South Africa.
Sudan, French (See Soudanese Republic)	France.
Swaziland	Union of South Africa.
Tahiti (French Polynesia)	France.
Tanganyika	Great Britain.
Tchad (See Chad Republic)	France.
Togo	France.
Anécho, Atakpamé, Lomé, Palimé.	
Tonga Islands (or Friendly Islands)	New South Wales.
Uganda	Great Britain.
Arua, Bombo, Busambatia, Butiaba, Entebbe, Fort Portal, Gulu, Hoima, Iganga, Jinja, Kabale, Kaberamaido, Kakira, Kaliro, Kampala, Kamuli, Kitgum, Lira, Lugazi, Masaka, Masindi, Mbale, Mbarara, Mubende, Nanasagali, Ngora, Soroti, Tororo.	
Upper Volta	France.
Western Samoa	New Zealand.
Zanzibar	Great Britain.

[1] *The maximum amount which may be sent on any one day by the same purchaser is £40.*

§ 61.3 **Cashing money orders.**

(a) *Period of validity.* No money order shall be paid after 20 years from the last day of the month of original issue. Card money orders issued within this period may be paid. However, claim for a paper money order should be made on Form 6401, "Inquiry as to Payment of Money Order," accompanied by the order, if available.

(b) *Where to cash.* (1) A card money order may be cashed at any post office or bank. The local postmaster may be consulted to obtain payment of an old style paper money order.

(2) Rural carriers will cash money orders for rural patrons. Money orders must be endorsed in his presence. No fee or compensation is required for this service.

(3) Money orders issued at military post offices are payable only at military post offices and United States military banking facilities, or at post offices or banks located in the United States, its possessions or Territories, and countries with which the United States transacts domestic-international money order business. If the remitter or payee of a money order issued at a military post office transfers ownership by endorsement to another, the endorsee must cash the money order at either a military post office, a United States military banking facility, or a post office located in the United States, its possessions, or Territories.

(c) *Signature requirements*—(1) *Acceptance of signature.* The paying post office may accept any signature of the payee, purchaser, or endorsee that is not different from the name given on the order.

(2) *Signature by mark.* Patrons who cannot write must use a mark. Marks

(usually X) must be witnessed by someone who is not a post office employee.

(3) *Signature by firms, organizations, and their representatives.* All money orders payable to a business firm, an organization, society, institution, or government agency must be signed in the name of the organization by a representative authorized to do so. It may be necessary for such authority to be presented and filed. The representative must also sign with his own name and organizational title. If drawn in favor of an official by name and presented by a successor, the latter must sign as follows: "William Jones, treasurer, successor to George Thompson".

(4) *Use of titles.* Use of such titles as "Dr., Rev., Prof., Madam, Mrs., M.D., or D.D.S.", are not required in signing a money order for payment, whether or not such title is used on the face of the money order.

(5) *Stamped signatures.* A stamped signature is acceptable as an endorsement on a money order when drawn in favor of a firm, corporation, association, society, or individual, provided the money order is presented to a bank for payment. A post office will accept stamped signatures, provided an agreement is filed in advance regarding the responsibility for the correctness of such payments.

(d) *Payment of orders to other than payee*—(1) *Transfer of money order*—(i) *By purchaser or payee.* The payee or purchaser of a money order may endorse it to any other person or firm.

(ii) *On power of attorney.* A person with power of attorney may cash money orders in behalf of the payee who gave him that authority. The power of attorney must be filed at the office of payment.

(iii) *On separate written order.* A payee may file a separate written order with the post office authorizing payment to another person. The person must be designated by name as the one to receive payment.

(2) *Upon assignment.* When a payee, such as an individual or firm, makes an assignment, and intends that money orders be paid to the assigned person, he must file a power of attorney or a written order in the post office. The person designated to receive payment must receipt the money order and indicate below his signature the capacity in which he acts.

(3) *On death of payee.* A money order belonging to a deceased owner may be paid to the executor or administrator of the estate appointed by the court. A certified copy of the appointment as executor or administrator must be filed with the local postmaster. Payments will be made in accordance with the laws of the State of which the deceased was a resident.

(4) *To a concern no longer in business.* Money orders will be paid to the legal representative of a firm, association, or company that has ceased to exist.

(5) *To a committee or a guardian.* Money orders will not be issued or paid to a ward when declared incompetent by a court. They will be paid only to the committee, guardian, or other duly authorized person.

(6) *To minors.* A money order payable to a minor may be paid to the father or mother as natural guardian unless prohibited by court order.

(e) *When orders will not be paid*—(1) *When there is a second endorsement.* A money order with more than one endorsement is invalid. Consult the local post office for proper procedure to obtain a duplicate.

(2) *When there is a question on a C.O.D. parcel.* No payment will be made when a money order has been issued in return for a COD parcel, and is presented by the addressee (purchaser) and the money order has not been endorsed by the payee (shipper) or the payee has not expressly authorized payment to the purchaser by written approval.

(f) *Examination of the order.* The postal employee shall examine the order to see that:

(1) It is *not* a form reported stolen. If it is, he shall try to delay the person; immediately notify local police, nearest postal inspector, or postal inspector in charge; and hold order for instructions.

(2) It is properly stamped and drawn by the issuing office. Machine-issued orders are payable in the amount imprinted by the machine and for no more than the amount stamped between the words "Not valid for more than" and the word "pay."

(3) It does not bear any alterations or erasures.

(4) It is presented by the payee, endorsee, or purchaser. (A duplicate money order is payable only if presented by the payee or by his endorsee.) Money orders may be accepted from responsible individuals or business firms bearing rubber-stamp endorsements provided a specimen of the form of endorsement to be so used is filed with the postmaster over the signature of the individual, or an authorized officer of the company, accepting responsibility for the payment of orders so endorsed.

If in doubt as to particulars on a domestic order, Form 6006, "Application for Separate Advice of Money Order," shall be sent to the issuing postmaster for verification.

(g) *Identification of payee.* Payees must be able to prove their identity if they want their money orders cashed. Social security cards are not acceptable. Drivers permits, military identification cards, or other credentials showing signature of bearer and having serial numbers or other indicia which can be traced to the holder are helpful in identification. The owner must sign the money order in the presence of the postal employee. The postal employee shall compare signature with identification, if possible; shall enter the license or serial number or other details of the identification required; and shall initial the back of the order. This will aid in apprehending persons attempting forgery or other wrong payment. If the postal employee has exercised proper care under the circumstances, the Department will recommend that he be relieved of financial responsibility in cases of wrong payment. This procedure must be followed carefully in the case of endorsed money orders, as they might bear a forged endorsement and be in the hands of the wrong person.

(h) *Disposition of paid orders.* The postal employee shall put the office dating stamp and his initials on the back of the money orders paid and handle them as postal funds. When a patron regularly presents a large number of money orders for payment, write to Bureau of Finance, Division of Postal Funds, for special instructions on handling.

(i) *Wrong Payment*—(1) *Through error only.* If a money order intended for one person or firm is paid to another through error and without fraudulent intent and both parties live in the same city, the postal employee may recover the amount from the one wrongly paid and deliver it to the other. If impractical to settle in this manner, he shall report the case to the Money Order Center for adjustment.

(2) *Through alleged fraud.* When improper payment is alleged, the postal employee shall send Form 6065 "Request for Photo Copies of Money Order," to the Money Order Center. If the claimant denies proper payment after examination of the photostat, he must complete Form 6337, "Affidavit Relative to Alleged Wrong Payment of a Money Order." The postal employee shall send the completed Form 6337 with the photostat of the paid order to the postal inspector in charge.

§ 61.4 Receipt and protection of blank money orders.

(a) *Receipt.* Issuing employees must check the serial numbers of forms when received. When a form is missing, record the serial number on a memorandum slip and place it in sequence in the post office stub file and report the facts to the Money Order Center.

(b) *Protection.* Money order forms must be under protection of a lock when not in use. They must be given the best protection possible at night and when the office is closed. Where practicable, office dating stamps and money order control stamps should be placed in a locked receptacle when the office is closed. At sale window, keep blank money orders and rubber stamps out of reach of possible sneak thieves. Report any stolen money-order forms immediately by telegraph or telephone to the postal inspector in charge and give the serial numbers of the stolen forms.

§ 61.5 Inquiries.

(a) *Who may receive information.* Information about money order transactions may be given to purchaser, payee, or endorsee, or their agent, or to a representative of the Department. Compliance with requests from others must be authorized by the Department. (See §§ 4.3 and 4.4 of this chapter.)

(b) *Inquiries regarding payment.* Postal employees shall handle as follows:

(1) *Orders issued on domestic form.* Send Form 6401 to the Money Order Center. Do not accept until 60 days after the issue date of the money order.

(2) *Orders issued on international form.* Send Form 6684, "Inquiry Concerning International Money Order Issued in the United States," to the proper U.S. exchange office for order issued in the United States. When reply is received from the exchange office, enter the required information on Form 6860 "Reply to Inquiry Concerning Payment of International Money Order," and forward it to the patron.

(3) *Orders issued by other countries.* Send all correspondence regarding duplicates, wrong payments, under- and over-payments, and requests for photostats of money orders issued in countries with which business is conducted on the domestic-international basis to the International Accounts Section, Division of Accounting, Washington 25, D.C.

§ 61.6 Nonpostal money orders.

(a) Postmasters and employees shall not sell nonpostal money orders, checks, or similar instruments for the transmission of money.

(b) Contract and rural stations shall not sell nonpostal money orders, checks, or similar instruments for the transmission of money, unless specially authorized by the Assistant Postmaster General, Bureau of Finance.

NOTE: The corresponding Postal Manual part is 171.

PART 62—NONPOSTAL STAMPS AND BONDS

Sec.
62.1 Documentary internal revenue stamps.
62.2 Migratory-bird hunting stamps.
62.3 United States savings stamps.
62.4 United States savings bonds.

AUTHORITY: §§ 62.1 to 62.4 issued under R.S. 161, as amended, sec. 2, 48 Stat. 451, as amended; secs. 1, 501, Pub. Law 86-682 (74 Stat. 578, 580); 5 U.S.C. 22, 16 U.S.C. 718b, 39 U.S.C. 1, 501.

§ 62.1 Documentary internal revenue stamps.

(a) *Where sold.* Documentary internal revenue stamps are sold at all first- and second-class post offices, and at third- and fourth-class offices located in county seats. Sign 35, notifying the public of the availability of these stamps, shall be posted in the lobby.

(b) *Use of stamps.* These stamps are sold for the payment of taxes on the following documents:

(1) Issuance of capital stock and certificates of indebtedness of a corporation.

(2) Sales or transfers of capital stock and certificates of indebtedness of a corporation.

(3) Real estate conveyances, deeds, etc.

(4) Steamship passage tickets.

(5) Policies by foreign insurers.

Postal employees must not advise or instruct purchasers of documentary internal revenue stamps on matters relating to the administration of the law, other than that they are for the payment of taxes on these documents.

(c) *Denominations available.* Documentary internal revenue stamps are available in the following denominations:

Form	Denominations
Blocks of 25 or sheets of 100	1, 2, 3, 4, 5, 8, and 10 cents.
Single or in sheets of 100	20, 25, 40, 50, 55, and 80 cents; 1, 1.10, 1.65, 2, 2.20, 2.75, 3, 3.30, 4, 5, 10, and 20 dollars.
Single or in books of 40	30, 50, 60, and 100 dollars.
Single or in books of 8	$500.
Single or in books of 4	$1,000.

(d) *Accounting for stamps.* Stubs to which stamps of $30 denomination and over are attached shall not be completed. Stubs shall be destroyed after all stamps in a book are sold. Money from sales shall be treated as postal funds.

§ 62.2 Migratory-bird hunting stamps.

(a) *Where sold.* Migratory-bird hunting stamps are sold at all first- and second-class post offices, and at certain designated third- and fourth-class offices where there is a demand for them. A current migratory-bird poster shall be displayed in the lobby.

(b) *Price.* Migratory-bird hunting stamps cost $3 each.

(c) *Instructions on administration of the law.* Postal employees must not instruct purchasers of migratory-bird hunting stamps on matters relating to the administration of the law. Refer them to the Fish and Wildlife Service, Washington 25, D.C., or to the local game warden.

(d) *Redemption from Public.* Stamps shall not be redeemed from the public except unsold stamps returned, within 30 days after close of season, from persons regularly engaged in retailing hunting or fishing equipment or from persons authorized to sell State or county hunting or fishing licenses. Stamps validated by signature or stamps that appear to have been removed from a hunting license or identification card shall not be accepted.

Accounting for stamps. (1) Receipt to evidence payment shall not be issued if no stamps are available.

(2) Money from sales shall be treated as postal funds.

(3) Refunds shall be made from postal funds, and redeemed stock shall be treated as nonsalable.

§ 62.3 United States savings stamps.

(a) *Availability.* United States savings stamps may be purchased at any post office where there is a demand for them. Postmasters sell savings stamps to business houses, schools, institutions, or other organizations that desire to purchase them for resale. Postmasters will furnish savings stamps for schools without prepayment, on a consignment or a fixed-credit basis, to selected volunteer workers who shall be established as Treasury savings stamp agents. These agents will be qualified by State directors of the United States Savings Bonds Division of the Treasury Department. Detailed information and the name and address of State directors may be obtain from postmasters.

(b) *Denominations.* Savings stamps are furnished in sheets in denominations of 10, 25, and 50 cents, and $1 and $5. The 10-cent and 25-cent stamps are also available bound in books. Books of fifty 10-cent savings stamps sell for $5; "gift books" of ten 25-cent stamps for $2.50; and "gift books" of twenty 25-cent stamps for $5. Stamps in these books are not detached and sold separately, but they must be detached and affixed in an album before they may be redeemed at a post office.

(c) *Savings-stamp albums.* Savings stamps will not be redeemed until stuck in an album of the appropriate denomination. Savings-stamp albums may be obtained for each denomination free from the postmaster.

(d) *Payment for stamps by purchaser.* If payment is made by check, delivery of stamps may be delayed until check has cleared. Postal employees shall dispose of funds received in payment of stamps as postal funds.

(e) *Redemption from public.* (1) *Payment to bearer.* Savings stamps are transferable, and are payable to bearer at any post office if affixed to albums or on cards designed for the purpose. Postal savings stamps formerly sold shall also be redeemed if mounted in an album or on cards. Savings stamps will be redeemed for cash if presented by banks and other institutions that have accepted them in payment for United States savings bonds. Payment shall be made out of postal funds.

(2) *Cancellation of redeemed stamps.* Postal employees shall enter the value of savings stamps in each album on the back cover of the album near the top and place a clear impression of the post office dating stamp nearby. They shall cancel redeemed stamps promptly after acceptance. The stamps shall not be defaced or mutilated.

(3) *Disposition of redeemed stamps.* Postal employees shall submit redeemed savings stamps to main office with Form 1412, "Daily Cash Report", where used.

(f) *Mutilated stamps.* (1) The postmaster will accept at face value any savings stamp that has been torn, burned, or badly mutilated, when one or more fragments can be identified as constituting clearly more than one half of the same stamp. If the fragment or fragments are not so identifiable, the owner should send them (with the entire album, if the stamp had been stuck in an album before it was mutilated) to the Treasurer of the United States, Washington 25, D.C.

(2) If stamps have adhered to each other so that they cannot be separated and their value determined (which can usually be done by soaking the stamps in warm water), the owner should forward them to the Treasurer of the United States.

§ 62.4 United States savings bonds.

(a) *Availability.* The Post Office Department acts as agent of the Treasury Department for the sale of Series E United States savings bonds at post offices in communities where no banks sell the bonds or where there are no other issuing agents. Savings bonds are available in the following denominations:

Denomination	Purchase price	Maturity value (7 years, 9 months after date of issue)
Q	$18.75	$25
L	37.50	50
C	75.00	100
E	150.00	200
D	375.00	500
M	750.00	1,000

(b) *Application for bonds.* "Application for U.S. Savings Bonds", Form 920, is supplied by the postmaster. The purchaser must state on the form, by denomination, the number of bonds applied for, the total amount of the purchase, and the name and address to be inscribed on the face of the bond. Form 920 may also be used in applying for bonds by mail to a Federal Reserve bank or to the Treasury Department.

(c) *Acceptance of funds.* Funds shall be accepted the same as for money orders. (See § 61.1(b)(3) of this chapter.) If the postal employee does not want to accept a check, he shall advise the patron that a check will be accepted by the Treasury Department or a Federal Reserve bank in the purchase of bonds by mail. If a check is accepted and it fails to clear, the purchaser must either make the check good or return the bond. If neither the money nor the bond can be recovered, the post office shall notify the regional controller. No money may be accepted for bonds unless they are available for immediate delivery. Funds received shall be treated as postal funds.

(d) *Issuance of bonds*—(1) *Accepting applications.* The postal employee shall check Form 920, "Application for United States Savings Bonds", to see that inscription requested is in a form authorized by the latest edition of Treasury Department Circular 530 (circular may be obtained from the regional controller); write serial number of issued bond on Form 920; initial; and file alphabetically.

(2) *Filling out bonds.* The postal employee shall:

(i) Issue bonds in the names of individuals only, as follows:

(a) One person: John A. Jones.

(b) Two persons—coownership form: "John A. Jones or Mrs. Ellen S. Jones".

(c) Two persons—beneficiary form: "John A. Jones, payable on death to Miss Mary L. Jones". Payable on death may be abbreviated as p.o.d.

(ii) Use a typewriter if available and fill out the bond and stub in one operation.

(iii) Enter the full names on the bond and stub. Men's names may be preceded by any applicable title. Women's names must be preceded by Mrs. or Miss. A married woman's own given name must be used, not that of her husband.

(iv) Enter the full address of the owner on the bond. The address of the coowner or beneficiary is not necessary.

(v) Enter the month and year in the upper right corner of both the bond and the stub. Stamp the date of issue with the post office dating stamp in the circles provided on the bond and its stub.

(vi) Be sure that all entries are legible and exactly the same on the bond and its stub.

(vii) Detach stub from bond. Deliver bond to purchaser and retain stub for submission by postmaster with his accounting period bond report.

(3) *Errors on bonds.* (i) If an error is discovered on a bond after it is issued, it should be returned to the postmaster for correction. If returned during the accounting period of issue, and if the error was made by the postmaster, he shall spoil the bond and stub, write the name of the office on them, and issue a new bond in its stead. He shall correct his records if necessary.

(ii) If an error is discovered after the accounting period of issue, or if the error was not the fault of the postmaster, the postmaster shall prepare a receipt for the bond in triplicate; give a copy to the owner; keep a copy; and send the original with the bond to the regional controller for reissue. The reissued bond will be mailed direct to the owner.

(4) *Errors on stubs.* If an error is on the stub only and the bond is correct, or if an inscription needs explaining (as when a feminine owner's given name is one generally accepted as masculine), an explanation shall be made on the stub. The postmaster or a designated supervisory official must initial the notation. If the address or date is omitted from a stub, the postmaster must find out from the purchaser whether the bond is complete and, if the bond is complete, insert the missing data on the stub. If the bond is not complete, the address or date must be filled in on the bond and stub. The addition shall not be initialed.

(e) *Undeliverable bonds.* Bonds issued and mailed by other agents, which are undeliverable by mail, shall be handled in the following manner:

(1) Bond shall be forwarded to the addressee if change of address is on file. If no change of address is on file or if addressee is deceased, bonds shall be returned to issuing agent without further action.

(2) Bonds that cannot be delivered or returned to issuing agent and unclaimed bonds found loose in the mail shall be held for 60 days. After 60 days, they shall be sent to the Treasury Department, Division of Loans and Currency, 536 South Clark Street, Chicago 5, Ill.

(f) *Examination of stock of bonds*—Clerks who issue bonds shall check each bond and stub to see that the denomination and serial number agree. If the stubs are attached to the wrong bonds, they must be reassembled so that the two parts of each assembly agree. The postmaster shall hold bonds that cannot be reassembled, report the discrepancy to the regional controller, and await instructions.

(g) *Certification for payment*—(1) *What to certify.* Postmasters shall not cash savings bonds but will certify them for payment if sufficient identification is furnished and if the bonds are to be forwarded by the owner to a Federal Reserve bank or to the Treasurer of the United States for payment. The certification may be made on the bond itself or on a detached request for payment, Treasury Department Form TD 1522. Bonds that are to be presented to banks or trust companies for payment shall not be certified.

(2) *How to certify.* The certifying officer must require positive identification that the person presenting the bond is the person whose name is inscribed on the bond and must be sure there is no alteration or erasure on the bond. If the registered owner signs by mark, his mark must be witnessed by at least one disinterested person besides the certifying officer. All certificates must be in the name and title of the postmaster, followed by the certifying officer's signature and official title. The specially designated clerk or carrier must sign as "designated clerk" or "designated carrier".

(3) *Who may certify.* The following persons may certify to requests for payment on bonds: postmaster; assistant postmaster; any postal inspector; supervisor; or clerk temporarily in charge of the office, branch, or station; or any clerk or carrier specially designated by the postmaster.

(i) *Payroll savings plan*—(1) *Object.* The plan permits employees of the Postal Service to authorize withholding of salary deductions for the purchase of savings bonds. The availability of the payroll savings plan shall be made known to all employees.

(2) *Authorization.* Treasury Department Form 2254, "Authorization for Purchase of United States Savings Bonds", shall be used by employees who wish to authorize deductions from pay each pay period. The form shall be completed in detail by the employee and forwarded by the Postmaster or other official to the regional controller. The minimum deduction is $3.75 each payday. Larger allotments in multiples of $1.25 may be made.

(3) *Issuance of bond.* The regional controller will issue bond and deliver to purchaser when deductions are sufficient to pay for it. If 5 or more deductions are necessary and the bond is of the $50 or higher denomination, the issue date will be shown as the month in which one-half of the purchase price was accumulated.

(4) *Changes in authorization.* Form 1476, "Notice of Change—Authorization for Purchase of U.S. Savings Bonds", shall be used by an employee to authorize any change desired in deductions or bonds. The completed form shall be forwarded by the postmaster or other official to the regional controller.

(5) *Refund of deductions.* The regional controller will refund withheld deductions insufficient to purchase a bond if the employee is separated from the service or cancels his withholding authorization.

NOTE. The corresponding Postal Manual part is 172.

PART 63—POSTAL SAVINGS

Sec.
63.1 Purpose.
63.2 Opening accounts.
63.3 Ownership and privacy of accounts.
63.4 Deposits.
63.5 Making withdrawals.
63.6 Inactive accounts.
63.7 Distribution of blank certificates.
63.8 Depositors' lost, stolen, or destroyed certificates.
63.9 Office records and records of depositors' accounts.

AUTHORITY: §§ 63.1 to 63.9 issued under R.S. 161, as amended, secs. 501, 5201–5224, Pub. Law 86–682 (74 Stat. 580, 682–685); 5 U.S.C. 22, 39 U.S.C. 501, 5201–5224.

§ 63.1 Purpose.

The Postal Savings System was established to provide facilities for the deposit of savings at interest with the security of the United States Government for repayment. The Postmaster General selects and designates post offices that are to be postal savings depositories.

§ 63.2 Opening accounts.

(a) *Who may open*—(1) *Individuals.* Any person 10 years of age or over may open a postal savings account in his or her own name. Accounts are opened in the names of individuals only. No person is permitted by law to have more than one postal savings account at the same time in his own right. A married woman may open an account in her own name, and free from any control or interference by her husband. Joint accounts may not be opened nor may a beneficiary be named.

(2) *Officials in charge of bankrupt funds.* Officers and agents in charge of bankrupt funds may deposit them without limit in postal savings depositories in cases where local banks are unable or unwilling to give the required security.

(b) *How to open an account*—(1) *In person or by representative.* (i) To open an account, the applicant should apply in person at a depository post office. If, because of infirmity or for other reason, an applicant is unable to appear in person, he may apply through a representative.

(ii) The depositor shall fill out Form PS 600, "Record of Postal Savings Account," using his complete name, as "John B. Jones" or "Mrs. Mary A. Jones," or the depositor's representative shall take Form PS 600 to the depositor to fill out and return. The postal clerk shall check Form PS 600 for completeness and legibility, and have it signed in his presence if depositor applies in person. If patron's copy is not satisfactory, the clerk must prepare a Form PS 600 in proper form. Accounts shall be numbered consecutively. The depositor or the representative shall be given Form PS 301, "Certificate Envelope," and at large offices, Form PS 301–A, "Depositor's Numerical Reference Card."

(2) *By mail.* (i) In a community where there is no postal savings depository, an application to open an account may be submitted by mail to a depository post office. The money to be deposited must accompany the application, preferably by money orders, but if in cash by registered mail. The depository postmaster will issue certificates in the amount requested and mail them to the applicant.

(ii) The applicant shall complete Form PS 300–B, "Application to Open an Account by Mail." If applicant appears at a nondepository office, the postmaster shall get Form PS 300–B from the most convenient depository office. The postmaster shall certify to the identity of the applicant on the form and tell the applicant to send the completed form and the deposit, in multiples of $5, by money order or check to the depository office. Depository office shall open the account, write the name of the originating office in place of signature on Form PS 600, attach Form PS 300–B to Form PS 600, and issue and mail the certificates to the depositor. If Form PS 300–B is incorrectly filled out, the depository office will send it and the certificates to originating postmaster for correction by the depositor. The originating postmaster shall return Form PS 300–B to the depository office when corrected and then deliver the certificates to the depositor.

(3) *By agent for bankrupt organization.* Accounts may be opened in the name of a bankrupt corporation, association, or individual and certificates may be issued if the agent or officer gives the post office a statement that local banks will not give the required security for bankruptcy funds.

(c) *Identification data and signature.* Information for identifying the holder when the certificates are presented for payment must be furnished. Fingerprints may be required. When the applicant usually signs his given name or names by initials, his full name must be written on the form and the application signed twice, first using the full name and then the initials or initial in the manner in which the account is to be maintained and certificates issued.

(d) *Record of accounts*—(1) *Form.* When an account is opened, a card record is established, a number assigned the account, and the record maintained as the official record of the account at the office where opened.

(2) *Name.* The applicant's name is entered on the account card in the manner in which the account is to be maintained and certificates issued.

(3) *Change in name.* A woman who marries after opening an account, or a depositor whose name is changed by court order, should so inform the postmaster and present all outstanding postal savings certificates to him. The depositor will be required to sign the new name on the record of the account, and the postmaster will annotate the certificates to show the new name. Until the depositor presents his or her certificates for proper notation, the postmaster, if aware of the change of name by marriage or by court order, will receive no further deposits for the account nor make any partial or interest payments but will make full payment to close the account if satisfied as to the depositor's identity.

(4) *Entries.* The amount of each deposit, the amount of each withdrawal and the balance on deposit are entered on the record.

§ 63.3 Ownership and privacy of accounts.

(a) *Claims.* When there is any dispute as to ownership, or a claim by other than the depositor is made for payment of a postal savings account, the postmaster will withhold payment of withdrawals from the account involved pending instructions from the Post Office Department in Washington.

(b) *Ownership.* The determination of any court of competent jurisdiction, unless appealed, is accepted as conclusive of title to postal savings account, and payment in accordance with such determination operates as a full and complete discharge of the United States from any further claim. An authenticated copy of the court determination must be submitted to the post office.

(c) *Privacy of accounts.* Postmasters and postal employees shall not disclose the name of any postal savings depositor nor give any information concerning a particular account to any person other than the depositor himself without specific authority, except that the balance on deposit may be given in the following circumstances:

(1) When a depositor is deceased or has been adjudged mentally incompetent, the information may be furnished to the duly appointed legal representative or next of kin.

(2) On the request of any State or county supervisor of old-age or unemployment assistance established pursuant to the Social Security Act of August 14, 1935, as amended, if the supervisor states he believes the applicant may have a postal savings account.

(3) When an applicant for relief has given written permission to representatives of relief agencies not connected with the Social Security Act of August 14, 1935, as amended, if the relief supervisor states he believes the applicant may have a postal savings account.

(4) On request of an Internal Revenue agent investigating a tax deficiency, if the agent has reason to believe the person may have a postal savings account.

§ 63.4 Deposits.

(a) *Amount*—(1) *Individual deposits.* Deposits must be made in multiples of $5.

(2) *Maximum balance.* The maximum balance permitted, exclusive of accrued interest, is $2,500, except for deposits of bankruptcy funds, where there is no limit.

(b) *Interest*—(1) *Rate.* Interest is payable at 2 percent per year.

(2) *Start.* Deposits begin to earn interest on the first day of the month following the date of deposit.

(3) *Compound interest.* Interest is compounded annually on whole dollar amounts on certificates issued on or after September 1, 1954.

(4) *Simple interest.* Certificates surrendered between annual periods, or for periods of less than 1 year, earn simple interest computed quarterly. Deposits made before September 1, 1954, earn simple interest until the certificates are surrendered or exchanged.

(5) *Collection.* The interest that accrues during any quarter is payable on or after the first day of the next quarter and may be collected by surrendering the certificate at the office of issue. However, the interest date for the certificate

evidencing the redeposit will be the first day of the following month.

(6) *Taxation.* Interest credited to postal savings accounts on moneys deposited on and after March 1, 1941, is not exempt from Federal income taxes, but interest credited to postal savings accounts on moneys deposited prior to March 1, 1941, is wholly exempt from Federal income tax.

(c) *Acceptance of funds.* Funds shall be accepted the same as for money orders. (See § 61.1(b)(3) of this chapter.) A temporary stop payment notice shall be put on depositor's account card if a check is accepted. The depositor must return the certificates if the check fails to clear. Uncanceled savings stamps or old series postal savings stamps may be accepted. Funds shall be treated as postal funds.

(d) *Issuance of certificates*—(1) *As evidence of deposits.* Nontransferable and nonnegotiable certificates of deposit, in fixed denominations of $5, $10, $20, $50, $100, $200, $500, $1,000, and $2,500, are issued as evidence of deposits. Certificates as delivered to depositors when issued, and postmasters are not authorized to accept them after issue for safekeeping. The postal clerk shall:

(i) Verify account of individual kept on Form PS 600. Then enter depositor's name and account number on the certificate, and stamp the certificates with special postal savings stamp.

(ii) Issue certificates in consecutive numbers.

(iii) Record account number and date of issue on certificate book cover, and initial.

(2) *Errors on certificates.* If an error is found in a certificate after delivery to the depositor, the certificate should be returned to the issuing postmaster. The postmaster shall proceed as follows to correct errors on certificates:

(i) *Discovered during accounting period of issue.* Stamp certificates spoiled and write spoiled on cover page of certificate book opposite its serial number. Write the serial number of spoiled certificates on the daily Form 713 or Form 708, "Postal Savings Certificate Transactions Daily Summary" and on accounting period Form 704, or 714, "Postal Savings Certificate Transactions." Correct records if necessary. Send spoiled certificates with Forms 704 or 714 to the regional controller at the end of each accounting period.

(ii) *Discovered after accounting period of issue.* Make a receipt in duplicate, Form PS 305, "Depositor's Receipt for Certificates Surrendered Without Payment." (The supply of this form must be kept by the postmaster or a designated employee and delivered to the window in quantities estimated as a week's supply. Before being turned over to the window, the forms must be numbered in duplicate.) Give the original to the depositor, and file the copy with the depositor's card. Send the certificate and explanation of error to the regional controller. The regional controller will issue a new certificate with original serial number or correct the certificate and return it. Exchange the new or corrected certificate for the receipt held by the depositor. Correct the entries on the depositor's account, Form PS 600, if necessary. Match the receipt Form PS 305 returned by the depositor with the copy held with the depositor's card. Staple the two copies together, and hold both Forms PS 305 until audit by the station examiner of postal inspector.

§ 63.5 Making withdrawals.

(a) *On demand at office of issue.* All or any part of funds deposited at the office of issue may be withdrawn on demand. Immediate payment will be made, unless the amount is large and the postmaster has to obtain the necessary funds. If a withdrawal is made within 1 month from the date of issue as shown on the certificate, a service charge of 20 cents will be made for each certificate regardless of denomination.

(b) *In person.* The certificates will be paid at the office of issue if the postmaster is satisfied as to the identity of the holder. The postmaster must—

(1) Identify the depositor with the information shown on his account Form PS 600. Compare fingerprints if equipment is available.

(2) Compute interest and enter the amount due on certificate. (Use monthly interest tables, Schedule 100–B for 1939 or earlier series, and Schedule 100–C for 1954 series.)

(3) Have the depositor sign the certificates in the postmaster's presence.

(4) If the certificate is less than 1 month old, collect a 20-cent service charge and stick a 20-cent postage stamp near the right border, just above the word "thereon".

(5) Pay from postal funds, or use Treasury (symbol 0001) check where authorized.

(6) If any payment is questioned, give the depositor a receipt on Form PS 305 for the certificates, and send the account, certificates, and a statement to the regional controller.

(c) *Through a representative*—(1) *Designated on Form 304.* When personal appearance is not possible, the holder of the account may designate a representative to make a withdrawal. When it has been shown to the postmaster's satisfaction that the holder cannot appear in person, the postmaster will give the representative Form 304, "Authorization to Pay Postal Savings Through a Depositor's Representative", for the depositor to fill out and sign. When the executed order and endorsed certificates are presented to the postmaster, he shall compare signature and other identification data on Form 304 with that on the Form PS 600; satisfy himself as to the identity of the applicant and of the representative and that the depositor wishes to withdraw funds; and complete transaction as stated in paragraph (b) of this section.

(2) *Powers of attorney.* Powers of attorney will be accepted only when executed by members of the Armed Forces of the United States serving abroad and must be accompanied with a statement from the attorney-in-fact that the depositor is still living and is stationed outside the United States. The papers will be submitted by the postmaster to the Department for approval and no payment will be made until he has received approval.

(d) *By mail.* Withdrawals may be made by mail, using Form 315, "Depositor's Application to Withdraw Postal Savings by Mail", which will be furnished by the postmaster. A postmaster must witness the signing of the Form 315. The depositor must mail Form 315 and the signed certificates to the office where his account is held (depository office). If the postmaster at the depository office is satisfied as to the applicant's identity, he will follow directions and instructions on Form 315, pay by check or money order, and send payment by registered mail, if requested, to the depositor—deducting any money order or registry fees. The depository office will file Form 315 with the depositor's account card, Form PS 600.

(e) *Withdrawal of bankruptcy funds.* Certificates must be endorsed by the depositing officer or agent (or his successor, whose appointment must be evidenced by a court order), and in addition may be countersigned by another individual in his representative court capacity if it is the requirement of the referee having jurisdiction over the funds in question.

(f) *By nonresident aliens*—(1) *Definition.* A nonresident alien is a depositor who sends an application for withdrawal from a location outside of the continental United States, or its possessions or military establishments. Withdrawal may be made by mail or through a representative. See paragraphs (c) and (d) of this section.

(2) *Interest on deposits.* The interest on deposits made after March 1, 1941, is subject to withholding tax if the postmaster does not have information that the depositor is a citizen of the United States.

(3) *Method of payment.* Instructions on Form 304 or 315 shall be followed. A Treasury check, drawn to the order of the Board of Trustees, Postal Savings System, for the full amount of principal and interest due, shall be sent to the Bureau of Finance (Postal Savings), together with a completed Form PS 320, "Letter Transmitting Postal Savings Payments by Mail," name and address of depositor and of representative, if any, and any new certificates. If no checking credit has been granted, the regional distributing postmaster should be asked to draw a check in favor of the Board of Trustees, Postal Savings System, and to send it to the Bureau of Finance (Postal Funds Division). The Bureau of Finance will deduct the tax and mail the payment to the depositor or representative.

(g) *By levy for deficiency in federal income tax*—(1) A postmaster served with notice of levy by Internal Revenue agent shall—

(1) Put stop payment on account and notify depositor in writing of the levy served and request surrender of all or sufficient number of certificates to satisfy tax deficiency. Have depositor endorse certificates. Pay Internal Revenue Service and obtain receipt. File receipt with Form PS 600. Pay depositor any amount due on certificates above the amount of the levy.

(2) If certificates are not surrendered as requested within 10 days from date notice was mailed, prepare Form PS 607, "Depositor's Application for New Postal Savings Certificates," for duplicates for all or sufficient number of certificates to effect payment of levy. Attach notice of levy to Form PS 607 and send to regional controller. Regional controller will reissue certificates and retain notice of levy firmly attached to Form PS 607 as authority for reissue.

(3) When duplicates are received from regional controller, pay by check drawn in favor of the Internal Revenue Service. Obtain a receipt in duplicate for total amount paid. Enter on the margin of each unindorsed certificate "Paid Internal Revenue. See receipt enclosed." Enclosed receipt will serve in lieu of endorsement on certificates. Issue and mail to the depositor a check for any funds due him on a certificate where part of the amount represented by the certificate was used in payment of the amount set forth in the levy. Enter on the margin of that certificate $_____ paid depositor by check No. _____. This will serve in lieu of a receipt.

(4) Treat paid certificates in usual manner. Annotate Form PS 600 to show that certificates were reissued and the purpose and that originals are void.

(h) *Deceased depositors*—(1) *Accounts of $20 or less.* A postmaster may, without specific authority, pay an account of $20 or less to the following upon presentation of proper evidence and written request by the applicant.

(i) Administrator or executor.

(ii) An entitled distributee or legatee on behalf of other distributees or legatees under a decree of distribution.

(iii) Surviving spouse, child, or parent, in the order named, or in the absence of any one of these, a brother or sister, if no administration on the depositor's estate has been asked for or granted.

(iv) The undertaker or other preferred creditor in the absence of administration or next of kin.

(2) *Accounts over $20*—(i) *To whom payable—(a) Accounts that do not require administration.* If a depositor dies intestate and the amount on deposit is $500 or less, or if the laws of the State in which the money is deposited provide either specifically or by court decision for the payment of a larger amount without administration, the next of kin, undertaker, person who paid the funeral expenses, or other preferred creditor may apply for payment.

(b) *Accounts that require administration.* When the amount on deposit is such that more than $500 will be available for distribution to heirs after allowing for payment of preferred claims, the amount due a deceased depositor in the final settlement of his account will be payable only to the legal representative appointed under the laws of the State in which the money is deposited, unless administration is not required by the State laws. Proper authority of the legal representative must be presented to the postmaster where the account is held.

(ii) *Authority for payment.* Certain large offices have been given specific authority by letter to pay accounts applied for by locally appointed administrators or executors. In all other cases at these offices and at all other offices, postmasters must report a depositor's death to the regional controller, using Form 1809, "Report of the Death or Incompetence of a Depositor", and await instructions before paying. All applications or legal papers that will be of assistance in settling the claim must be attached to the Form 1809. The following papers are necessary:

(a) When administration is required.

(1) A legal representative must submit a court order certifying his appointment within the past year.

(2) A person designated by the court to receive the account must submit Form 1680, "Application for Payment of the Postal Savings Deposits Standing to the Credit of a Deceased Depositor", with proper court order.

(b) When administration is not required.

(1) Claim by a beneficiary under a will must (if the distributable balance is less than $500 and the State does not require the will to be probated) be submitted on Form 1680 with receipts mentioned in Form 1680, a certified copy of the will, and a Form 134, "Release", by each of the beneficiaries and/or entitled next of kin.

(2) Claim by one of the next of kin entitled by law to share in the estate, or by the person who paid the funeral expenses, must be submitted on Form 1680 if depositor dies without a will and not more than $500 will be available for distribution after allowing for payment of preferred claims. (Some States permit payment of a larger amount without administration.)

(3) Claim by undertaker or other preferred creditor must be submitted on Form 1672, "Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor", with itemized statement of services rendered and a certification of claim by a responsible heir on Form PS 115–A, "Certification of Bill from Undertaker". The undertaker's receipted bill must be submitted if claimant is other than undertaker.

(4) Claim by foreign consular officer must be submitted on Form PS 112, "Application of Consular Officer for Payment of the Balance Remaining to the Credit of a Deceased Depositor", if the depositor is a United States resident, dies without a will, and is survived by alien heirs residing in a foreign country who are entitled to all or part of the amount of deposit.

(3) *Payment.* The signature of the payee(s) must be obtained on each certificate and on a receipt for interest due, in the following form: "John Doe by Richard Roe" (executor, widower, guardian, or other proper title). The account must be paid in full. The office copy of Form 1809 must be completed to show the date of payment, and must be placed with the paid certificate. (Clips or staples must not be used.) The amount of payment for accounts of $20 or less shall be endorsed on the written request of the applicant, and the request shall be placed with the paid certificate. (Clips or staples must not be used.) The regional controller shall be advised if payment cannot be made.

(i) *Legally incompetent depositors.* (1) The amount on deposit for mentally disabled or other legally incompetent depositors, other than minors, will be payable to the guardian, committee, conservator, or other legally appointed representative on presentation of proper evidence of appointment. A court order directing guardian to collect account of a minor is required before payment may be made to the guardian. When the depositor has been judicially declared incompetent and no guardian or other legal representative has been appointed and the gross value of the incompetent's estate is sufficiently small, application for withdrawal may be made by a State official or a member of the family if permissible under the laws of the State where the account is held.

(2) Postmasters at all offices shall handle claims for payment of accounts of legally incompetent depositors as provided in paragraph (h)(2)(ii) and (h)(3) of this section.

§ 63.6 Inactive accounts.

The main post office stations, and branches shall review Forms PS 600 once each year for inactive accounts and proceed as follows:

(a) Pull out accounts that have been inactive for 10 years. Turn them over to a supervisory official or designated employee to be kept separate from active accounts. The official or designated employee must keep a control record of all accounts turned over to him. When a transaction occurs in an inactive account, return the account to the active files.

(b) Report accounts inactive or unclaimed for 20 years to the regional controller, and await instructions. Count the 20 years from date of last transaction or date of depositor's reply to an inquiry on Form PS 159 (now obsolete) whichever is later.

§ 63.7 Distribution of blank certificates.

(a) *To window clerks.* Ordinarily not more than one book of blank certificates of each denomination should be furnished at one time for use at a window. On delivery of certificates to him, a window clerk must count the individual certificates and examine them for sequence of serial numbers, and agreement with the inclusive numbers on the cover.

(b) *To stations and branches.* Stations and branches should not have more than a month's supply of certificates on hand. They must order certificates from the main office on Form PS 325, "Request for Postal Savings Certificates".

§ 63.8 Depositor's lost, stolen, or destroyed certificates.

(a) *Report to postmaster.* A depositor should advise the postmaster at the office where his account is held when any of his certificates are lost, stolen, destroyed, or improperly withheld. The

postmaster will furnish the depositor with a Form PS 607, "Depositor's Application for New Postal Savings Certificates". If approved, new certificates showing the same information as the originals, but marked "Reissued", will be issued. If a certificate is found after it has been reissued, it must be given to the depository postmaster.

(b) *Application for replacement.* Form PS 607, "Depositor's Application for New Postal Savings Certificates", shall be prepared if depositor knows certificate cannot be recovered, following instructions on the form. If depositor is uncertain as to what happened to his certificates, he should be asked to search again and return in 10 days to fill out Form PS 607. (Exception may be made when delay will cause depositor hardship.) The serial numbers of the certificates should be verified against those on Form PS 600. Depositors must not be asked to apply for reissue of certificates to determine if the account record is correct. Any difference between item 39 of the postal savings records and the total of the Forms PS 600 should be shown on Form PS 607.

(c) *Replacement.* The regional controller may prepare replacement certificates and forward them to the postmaster. The postmaster shall verify all entries on the new certificates, deliver to depositor, and return to regional controller any with discrepancies. He shall record reissue by writing "R" in red next to the serial number of the original entry on Form PS 600. (Use "Remarks" column on old-style Form PS 600.) Where there is sufficient staff, the postmaster must not delegate custody of reissued certificates to a clerk who issues postal savings certificates or is responsible for maintenance of postal savings accounts and records.

(d) *Disposition of recovered and undeliverable certificates.* The postmaster shall mark recovered original certificate "Canceled", enter the date; send it to the regional controller with explanation; and return undeliverable replacement certificates to the regional controller for safekeeping.

§ 63.9 Office records and records of depositor's accounts.

(a) *Recording deposits.* The postmaster shall record deposits and post new balance on Form PS 600. The serial numbers of certificates issued shall be recorded on Form 713, "Postal Savings Certificate Transactions Daily Report", where this form is used.

(b) *Recording withdrawals.* Withdrawals shall be posted on Form PS 600, showing date of transaction "paid" in "Certificate Numbers" column, total amount of principal in "Transaction Amount" column, and the balance in "New Balance" column. The transaction must be dated opposite original issue of certificate in "Date Paid" column. The paying clerk must initial in "By" column. Certificates must be stamped "paid" with special paid date stamp and initialed. A report shall be made on Form 713 or Form 708 and the paid certificates shall be sent to postmaster daily. The postmaster must send the paid certificates with Form 704 or Form 714 to the regional controller office each accounting period.

(c) *Verifying records of accounts.* The postmaster shall verify records of accounts as follows:

(1) *Daily verification.* Do not file Forms PS 600 which have been withdrawn in the day's business until the issues, payments, and extensions have been verified by adding separately the issues and payments recorded for the day and the balance to the credit of depositors before and after entry of the day's business. Check the total of the issues and total of payments against the issues and payments as recorded in Form 708 or Form 713.

(2) *Six-months' verification.* Verify the balance in item 39 of Form 704 or 714 with the total of the balances on the depositors' Forms PS 600 every 6 months. If the totals do not agree, check addition or subtraction on depositor's cards. If no error is found, check the entries on the cards with the records of certificates issued and paid. Place a dummy account card, Form PS 600, in the front of the file, on which enter the amount of the difference (circling the amount if the total of the balances of the Forms PS 600 is in excess of the amount in item 39 of the Form 704 or 714.) Report to the regional controller for additional instructions only when an unusual situation arises.

(d) *Filing and closing accounts.* The postmaster shall file and close accounts as follows:

(1) *Filing.* File the Forms PS 600 numerically by account numbers. Maintain an alphabetical cross-index card file (if many accounts) showing the depositor's name and account number.

(2) *Closing.* Mark the depositor's Form PS 600 "Account Closed" when all certificates issued to a depositor have been paid. Place in a separate file with other closed accounts in numerical order. Do not use the number of a closed account in opening a new account.

(e) *Correcting errors on records.* The postmaster shall correct errors as follows:

(1) Draw a line through an erroneous entry and initial. (Do not make the original entry illegible.) Make the correct entry on the line below or by interlining immediately above the erroneous entry.

(2) Advise the regional controller office if an error is discovered after the accounting period report has been submitted which in any way affects the accuracy of the report.

(f) *Reporting loss of records.* The postmaster shall report promptly to the regional controller any loss or major damage of postal savings records by fire, burglary, or any other cause.

NOTE. The corresponding Postal Manual part is 173.

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 60-11863; Filed, Dec. 21, 1960; 8:53 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 2—GENERAL REGULATIONS

Federal Tort Claims Act; Property Loss or Damage, and Personal Injury or Death

On September 20, 1960, an amendment of 29 CFR 2.8 was published in the FEDERAL REGISTER (25 F.R. 9003) in order to reflect recent statutory changes raising the jurisdictional amount of claims that may be settled administratively under the Federal Tort Claims Act. Through inadvertance, the amendment was not broadened at that time to reflect the current statute of limitations of two years under the Federal Tort Claims Act (28 U.S.C. 2401(b)). Section 2.8 of Title 29, Code of Federal Regulations is hereby amended to show that two-year period.

As so amended, 29 CFR 2.8 reads as follows:

§ 2.8 Claims under the Federal Tort Claims Act for loss of or damage to property or for personal injury or death.

Pursuant to 28 U.S.C. 2672, any claim under the Federal Tort Claims Act for loss of or damage to property or on account of personal injury or death, in an amount of $2,500 or less, caused by the negligent or wrongful act or omission of any employee of the Department of Labor while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred may be presented in writing to the Solicitor of Labor, United States Department of Labor, Washington 25, D.C., or to any regional or branch office of the Solicitor, by the claimant in his own right or through an attorney at any time within 2 years after such claim has accrued. If the claim is presented through an attorney, such presentation should be accompanied by duly authenticated powers of attorney. Each claim presented should include a sworn detailed statement of the facts and such affidavits, vouchers, bills, and other documents as the claimant deems appropriate for the proper determination of his claim. If, after investigation, the Solicitor determines on the basis of all the evidence that compensation is due the claimant under the Federal Tort Claims Act, the amount so found, together with such reasonable attorney's fees as may be allowed, will be paid by the Secretary of Labor.

(R.S. 161, 5 U.S.C. 22. Interpret or apply 28 U.S.C. 2672)

This amendment shall become effective immediately upon publication in the FEDERAL REGISTER. Public procedure and delay in effective date are found to be unnecessary, because the amendment reflects only existing law.

Signed at Washington, D.C., this 16th day of December 1960.

JAMES L. O'CONNELL,
Acting Secretary of Labor.

[F.R. Doc. 60-11835; Filed, Dec. 21, 1960; 8:49 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Education of Korean Conflict Veterans Under 38 U.S.C. Ch. 33

MISCELLANEOUS AMENDMENTS

1. In § 21.2030, paragraph (f)(2) is amended and paragraph (g) is added to read as follows:

§ 21.2030 Selection of program.

* * * * * * *

(f) *Study in a foreign country.* * * *

(2) Where the Chief Benefits Director finds that a veteran's enrollment in a program in a foreign institution would be against his best interests or the best interests of the Government of the United States, his application for the program will be denied or if he has commenced the program under the law his training in the foreign institution will be discontinued. (38 U.S.C. 1620)

(g) *Instruction by television*—(1) *Open circuit television.* An approved program may be pursued in part by open circuit television under the following conditions:

(i) The veteran is enrolled as a resident student in a program leading to a standard college degree,

(ii) The subjects taken by television are integral parts of his degree program, and

(iii) The major portion of the credit hours on which payments are based is offered through conventional classroom and/or laboratory sessions.

(*a*) In no instance may a veteran include in his program during any one semester or quarter more than 6 credit hours of open circuit telecast instruction for the purpose of computing the rate of education and training allowance. For example, a veteran may pursue 6 or more credit hours during any one quarter or semester through regular classroom and/or laboratory instruction and 6 credit hours by open circuit telecast for a full-time resident training load.

(2) *Closed circuit television.* Instruction offered through the medium of closed circuit television which requires regular classroom attendance is not subject to the limitations in subparagraph (1) of this paragraph respecting open circuit television, and is otherwise to be recognized to the same extent as regular classroom and/or laboratory instruction.

2. In § 21.2066(d), subparagraph (6) is added to read as follows:

§ 21.2066 Measurement of full- or part-time courses.

* * * * * * *

(d) *Institutional undergraduate course recognized for credit toward a standard college degree; credit-hour basis.* * * *

(6) A veteran enrolled as a resident student in an institution of higher learning may pursue a portion of his program by open circuit television as provided in § 21.2030(g)(1). Any combination of regular classroom and/or laboratory instruction and instruction by open circuit television may be accepted for measuring full-time, three-fourths time, one-half time, or less than one-half time resident training provided a major portion of the credit hours on which payment is based is pursued through regular classroom instruction and not more than 6 credit hours of open circuit telecast instruction are included in the combination. For example, a veteran may pursue 8 or more credit hours during any one quarter or semester through regular classroom and/or laboratory instruction and 6 credit hours by open circuit telecast for a full-time resident training load.

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective December 22, 1960.

[SEAL] A. H. MONK,
Associate Deputy Administrator.

[F.R. Doc. 60-11845; Filed, Dec. 21, 1960; 8:51 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2224]

[Los Angeles 0167930]

CALIFORNIA

Withdrawing Lands for Use of Office of Saline Water; Partly Revoking the Executive Order of February 26, 1852

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to any valid existing rights, the following described public lands comprising a portion of the Fort Rosecrans Military Reservation and the Naval Fuel Depot at Point Loma are hereby withdrawn from all forms of disposition under the public land laws, including the mining and the mineral leasing laws and disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604), as amended, and reserved under jurisdiction of the Secretary of the Interior for use by the Office of Saline Water for construction of a sea water distilling plant as provided by the Joint Resolution of September 2, 1958 (72 Stat. 1706):

All that portion of "Fort Rosecrans Military Reservation and the Naval Fuel Depot," located within Point Loma in the County of San Diego, State of California, as shown on Miscellaneous Map No. 129, filed in the Office of the County Recorder of said County, April 16, 1934, more particularly described as follows:

Beginning at a point on the Southerly boundary line of the Cabrillo National Monument as described in Presidential Proclamation No. 8273 of February 2, 1959, which said point bears South 60°21'52" West, 360.26 feet from Old Lighthouse as shown on said Miscellaneous Map No. 129, the coordinates of which said Old Lighthouse are South 28,687.80 and West 16,850.10 (Old Town Coordinate Grid System) said point of beginning being shown on City of San Diego Engineer's drawing 8722-D and identified thereon as "Station 1", having coordinates of South 28,865.94 and West 17,168.23 (Old Town Coordinate Grid System); thence South 0°28'33" East, 410.00 feet; thence South 8°09'35" East, 356.67 feet; thence South 8°20'11" East, 1116.07 feet to a point shown on City of San Diego Engineer's drawing 8722-D and identified thereon as "G" and having coordinates of South 30,743.16 and West 17,044.25 (Old Town Coordinate Grid System); thence North 82°28'52" West, 848.21 feet to a point shown on City of San Diego Engineer's drawing 8722-D and identified thereon as "F" and having coordinates of South 30,632.17 and West 17,885.17 (Old Town Coordinate Grid System); thence North 82°28'52" West on a prolongation of the aforementioned line to an intersection with the ordinary high water mark of the Pacific Ocean; thence Northerly along said ordinary high water mark to an intersection with the Southerly boundary line of the Cabrillo National Monument which said boundary line bears South 89°31'35" West from the point of beginning; thence North 89°31'35" East along said Southerly boundary to a point shown on City of San Diego Engineer's drawing 8722-D and identified thereon as "E" and having coordinates of South 28,873.45 and West 18,071.55 (Old Town Coordinate Grid System); thence North 89°31'35" East, 908.35 feet along said boundary line of the Cabrillo National Monument to the point of beginning.

The above described area contains 42.85 acres, more or less.

Basis of bearings: Southerly boundary line of Cabrillo National Monument; i.e. North 89°31'35" East (Old Town Coordinate Grid System).

2. The Executive order of February 26, 1852, reserving lands for military purposes is hereby revoked so far as it affects the lands described in paragraph 1 of this order.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 16, 1960.

[F.R. Doc. 60-11831; Filed, Dec. 21, 1960; 8:48 a.m.]

[Public Land Order 2225]

CALIFORNIA

Withdrawing Lands for Reclamation Purposes

By virtue of the authority contained in section 3 of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

1. Subject to valid existing rights, the following-described lands in California are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, and reserved for use of the Bureau of Reclamation, Department of the Interior, for reclamation purposes, as indicated:

MOUNT DIABLO MERIDIAN

a. Sacramento 058168, Auburn Dam and Reservoir Project, American River Division, Central Valley Project.
T. 12 N., R. 8 E.,
Sec. 25, W½NW¼, S½SE¼NW¼, excepting therefrom that portion lying within the boundaries of Mineral Survey No. 6091.
T. 13 N., R. 9 E.,
Sec. 10, E½SE¼NE¼;
Sec. 31, lot 4.
T. 14 N., R. 9 E.,
Sec. 36, lots 18, 19, 23, 25, and 29.
T. 13 N., R. 10 E.,
Sec 28, N½NE¼;
Sec. 30, lots 9 and 10.
T. 14 N., R. 10 E.,
Sec. 30, the unpatented portion of lot 6 (the approximate southeast quarter of said lot).
(570.99 acres)
b. Sacramento 058127, Trinity River Division, Central Valley Project.
T. 35 N., R. 7 W.,
Sec. 2, SE¼.
T. 36 N., R. 7 W.,
Sec. 1, NE¼SW¼NE¼ and W½SE¼SW¼NE¼.
T. 37 N., R. 7 W.,
Sec. 36, S½NW¼ and SW¼.
T. 33 N., R. 8 W.,
Sec. 17, NW¼NW¼, SW¼NW¼ and W½SE¼NW¼;
Sec. 18, NE¼SE¼NE¼ and E½NE¼NW¼;
Sec. 19, S½NW¼NE¼.
T. 34 N., R. 8 W.,
Sec. 6, lots 6, 7, and E½SW¼.
T. 35 N., R. 8 W.,
Sec. 16, W½NE¼ and NE¼SW¼;
Sec. 27, SE¼SW¼;
Sec. 34, NW¼SW¼.
(968.29 acres)
c. Sacramento 054809, Washoe Project.
T. 18 N., R. 16 E.,
Sec. 36, NE¼.
T. 19 N., R. 16 E.,
Sec. 26, S½SW¼NW¼.
T. 10 N., R. 20 E.,
Sec. 1, lots 1, 2, N½W½ of lot 3, W½W½ of lot 5, W½ of lot 10, and lots 11 to 16, inclusive;
Sec. 2, lot 7.
T. 11 N., R. 20 E.,
Sec. 25, lot 5;
Sec. 26, that portion of Tract 51 in the State of California, lots 15, 16, and 19, NE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 34, SE¼NE¼, NE¼SW¼, SW¼SW¼, and SE¼;
Sec. 35, lots 1, 2, 4, 5, and 6, NE¼NE¼, W½W½, SE¼NW¼, and NE¼SW¼;
Sec. 36, lots 8, 15, and 16.
T. 10 N., R. 21 E.,
Sec. 6, lots 3 and 4.
(1,920 acres)

The areas described, including public domain, nonpublic, and national forest lands total in the aggregate 3,459.28 acres.

2. The withdrawal made by this order shall attach to the following-described nonpublic lands, which are a part of the lands described in paragraph 1c, hereof, upon acquisition by the United States of title thereto or any interest therein:

MOUNT DIABLO MERIDIAN

T. 18 N., R. 16 E.,
Sec. 36, NE¼.
T. 11 N., R. 20 E.,
Sec. 36, lot 8.

The areas described aggregate 199.74 acres.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 16, 1960.

[F.R. Doc. 60–11832; Filed, Dec. 21, 1960; 8:48 a.m.]

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 146—NATIONAL DEFENSE FOREIGN LANGUAGE FELLOWSHIPS

Part 145 of Chapter I of Title 45 of the Code of Federal Regulations (25 F.R. 3258, April 15, 1960) entitled "National Defense Foreign Language Fellowships" and § 145.1 thereof are hereby redesignated Part 146 and §146.1 respectively.

Except for the renumbering hereby accomplished, this part as previously published remains unaltered.

(Secs. 601, 1001; 72 Stat. 1593, 1602; 20 U.S.C. 511, 581)

Dated: December 8, 1960.

Approved: December 15, 1960.

[SEAL] L. G. DERTHICK,
U.S. Commissioner of Education.

[F.R. Doc. 60–11847; Filed, Dec. 21, 1960; 8:51 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

PART 1—PRACTICE AND PROCEDURE

PART 7—STATIONS ON LAND IN THE MARITIME SERVICES

Miscellaneous Amendments

The Commission having under consideration the desirability of making certain editorial changes in Parts 1 and 7 of its rules;

It appearing that the amendments adopted herein are for the purpose of correcting references and conforming various provisions of the rules with other, related rule provisions; and

It further appearing that the amendments adopted herein are editorial in nature and, therefore, compliance with the public notice, procedural, and effective date provisions of section 4 of the Administrative Procedure Act is not required; and

It further appearing that the amendments adopted herein are issued pursuant to the authority contained in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and section 0.341(a) of the Commission's Statement of Organization, Delegations of Authority and Other Information;

It is ordered, This 16th day of December 1960, that effective January 23, 1961, Parts 1 and 7 of the Commission's rules are amended as set forth below.

Released: December 19, 1960.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

A. Part 1, Practice and Procedure, is amended as follows:

1. Section 1.502(c) is amended to read as follows:

§ 1.502 Where applications are to be filed.

* * * * * *

(c) Formal applications for ship station licenses for use of radiotelephone or radar transmitting apparatus or both and applications for modification of such licenses shall, when accompanied by requests for interim ship station licenses, be filed in accordance with § 8.35 of this chapter and presented in person by applicants or their agents at the nearest field office of the Commission as shown in section 0.49 (a) and (b) of the Commission's Statement of Organization, Delegations of Authority, and Other Information, or at the Commission's main office in Washington, D.C. Applications for renewal of ship station licenses are not subject to the provisions of this paragraph.

B. Part 7, Stations on Land in the Maritime Services, is amended as follows:

1. Section 7.2(o) is amended to read as follows:

§ 7.2 General.

* * * * * *

(o) *Radio district.* A prescribed geographic area within the United States which, for the purpose of official inspection of radio stations in behalf of the Commission, is under the jurisdiction of a Commission engineer-in-charge whose official address and specific area of inspection associated therewith are designated by section 0.49 of the Commission's Statement of Organization, Delegations of Authority, and Other Information.

[F.R. Doc. 60–11851; Filed, Dec. 21, 1960; 8:52 a.m.]

[Docket No. 13756; FCC 60–1516]

PART 3—RADIO BROADCAST SERVICES

Class IV Broadcast Stations Power Increase to More Than 250 Watts

1. The Commission has under consideration its notice of proposed rule making (FCC 60–968), adopted July 27, 1960, and released in this proceeding on August 2, 1960. The Commission proposed therein to amend § 3.28(c) of the rules which presently provides that a Class II, III or IV standard broadcast station may be assigned to a channel, even though it receives interference, if (1) no objectionable interference is caused to existing stations, or, if so, the need for the new service outweighs the need for the service lost; (2) primary service will be provided to the community in which the station is located; and (3) the interference received does not affect more than 10 percent of the population in the proposed station's normally protected primary service area. The amendment proposed would exempt existing Class IV stations applying for daytime power increases in excess of 250 watts from the 10 percent limitation on interference specified in subparagraph (3) of § 3.28(c). It was not proposed to extend the exemption to any proposals for new Class IV stations.

2. Over 100 comments were received on this proposal, and all, except three, urged its adoption. The supporting comments were from the Community Broadcasters Association, Inc., whose membership consists of Class IV standard broadcast stations (currently numbering 90), and from approximately 180 licensees of Class IV standard broadcast stations. Silliman, Moffet and Rohrer, a consulting engineering firm at Washington, D.C., also filed individual comments supporting the proposed amendment. The opposing comments were filed by J. G. Rountree a consulting engineer at Austin, Texas, Ward Broadcasting Co., an applicant for a Class IV 250 watt standard broadcast station at Sonora, Texas (File No. BP–13026), and William G. Ball of Mansfield, Ohio. Joint reply comments were filed by Southeastern Ohio Broadcasting System, Inc., licensee of Class IV standard broadcast Station WHIZ at Zanesville, Ohio, and by The Zanesville Publishing Company, licensee of Class IV standard broadcast Station WTAP at Parkersburg, West Virginia. Their reply comments, while favoring the proposed amendment to § 3.28(c)(3) of the rules, also request rule making looking toward another change in Class IV allocation policy. The proposal is discussed in paragraph 12 herein.

3. The Commission raised the daytime power ceiling for Class IV standard broadcast stations, with certain restrictions, in May of 1958 in Docket No. 12064 from the then 250 watts maximum to 1 kilowatt (17 RR 1541). The objective was to improve opportunities for such stations to provide an effective local daytime service in the face of hindrances occasioned by the increasingly higher degrees of local man-made noise levels from population and industrial growth, the expansion in the size of communities, and increased competition resulting from the growth of the standard broadcast service and the advent of television. We concluded at that time that this new 1 kilowatt daytime power ceiling, administered on a selective case-by-case basis, and utilizing directional antennas, if necessary, to protect the normally protected contours of other stations, represented the maximum, although not the absolute, solution practicable in light of all domestic and foreign considerations to the problems of the Class IV local radio service. It was our opinion that relaxation of the power ceiling on local channel stations to this extent would bring more effective and new daytime radio service to sizeable segments of the public and benefit Class IV stations to the maximum practicable degree. On April 13, 1959, we took further action in Docket No. 12064 to permit processing and final action on applications of Class IV AM stations for power increases in excess of 250 watts daytime in all areas except within 62 miles of the common U.S./Mexican border or within an area south of 28 degrees north latitude and between 80 and 82 degrees west longitude in the State of Florida.

4. In administering this new policy with respect to Class IV stations, we have become convinced that an additional change in allocation policy with respect to them is desirable to enable and encourage a greater number of Class IV stations to increase daytime power to 1 kilowatt and thereby make possible a fuller realization of the benefits to the nationwide Class IV local radio service and the public from the raise in the daytime power ceiling. That change, under consideration in this proceeding, would amend § 3.28(c)(3) to obviate the necessity of considering whether the amount of interference received by existing Class IV stations proposing daytime power in excess of 250 watts would violate the 10 percent population criterion of the rule.

5. As of August 22, 1960, only 76 of the 987 existing Class IV stations had obtained authorization to operate with daytime power of 1 kilowatt, and 4 had obtained authorizations to operate with daytime power of 500 watts. A total of 439 applications were pending for daytime power increases in excess of 250 watts by existing Class IV stations and 4 for like daytime power by applicants for new Class IV stations. Most of the pending applications are now in hearing or will require designation for hearing in groups ranging from a few to many applications because of interlocking co-channel and adjacent channel interference problems. The great majority of these applications present conflicts with § 3.28(c)(3) of the rules because of interference in excess of the 10 percent contemplated by the rule within their proposed normally protected contours, due primarily to the impact of other Class IV applications for power increases. For example, in one large multi-party Class IV proceeding noted in the comments, there were originally 60 applications consolidated for hearing, and all but three of the 60 involved § 3.28(c)(3) question.

6. Section 3.28(c) of the Commission's rules now provides a condition under which the Commission may grant an application notwithstanding interference to the proposed operation in excess of that otherwise permitted.[1] Under this condition the Commission may grant if the otherwise prohibited interference does not exceed 10 percent of the population included within the normally protected contour. We believe that this condition should be extended with respect to the daytime operation of Class IV stations with power in excess of 250 watts so as to not preclude operation with power over 250 watts even though substantially more than 10 percent of the population within the normally protected contour may be subject to interference.

7. It is clear, in any group of 250 watt Class IV stations, that a uniform mutual power increase of any nature will not create interference to any station in any area served with the lower power but may and probably will result in mutual interference within the new service areas. Generally the population within the interference area of the new service area will exceed the 10 percent figure now permitted under § 3.28(c). The net result of the uniform mutual increase in power will be, however, to increase the population within the service area of each station, and to increase the signal intensity over the area previously served with the lower power without resulting in interference to any area previously served with the lower power.

8. These considerations, stressed in the supporting comments convince us that it is sound allocation policy and in the public interest to extend the conditions under which interference to a proposed Class IV operation involving power in excess of 250 watts may be permitted. An additional consideration, also consonant with the public interest, and urged by those supporting the proposal, is that removing this factor in the consideration of applications of existing Class IV stations for power increases above 250 watts will eliminate one of the obstacles to expeditious action on such applications both at the processing and hearing stage and result in significant savings in time and expense to both the Commission and applicants.

9. The opposing comments of J. G. Rountree and Ward Broadcasting Company regard it unfair to applicants for new Class IV stations to hold them to the requirements of the 10 percent rule if existing Class IV stations seeking daytime power in excess of 250 watts, with which they may have interference conflicts, would not be bound. A number of the comments supporting the proposal urge, however, that there is no unfairness since the 10 percent population criterion for interference received controlled the assignment of all existing stations when originally authorized at a 250 watt maximum daytime power. On consideration, we deem it desirable that all Class IV proposals be considered by the same criterion for interference received, whether they are for new stations or for changes in existing stations. The amendment adopted herein provides that compliance with § 3.28(c) by new Class IV stations proposing power in excess of 250 watts shall concern only that area which exists within the equivalent 250 watt, 0.5 mv/m contour of the proposed station.

10. In opposing the subject proposal, Mr. Ball of Mansfield, Ohio, assumes that it would enable Class IV stations to increase daytime power up to 1 kw regardless of the interference caused by the increase. This is not the case, since the change in § 3.28(c)(3) under consideration and which we are adopting

[1] See §§ 3.182(a)(4) and 1.382(v).

applies only to interference received by Class IV stations.

11. Mr. Rountree also contends that if the 10 percent rule is a good allocation tool, a large category of standard broadcast stations should not be exempted therefrom. On the other hand, he urges that if it is not a good rule, and he claims that it is not, the rule should be deleted in its entirety and each case considered on its individual merits. Even though the 10 percent rule may have operated to preclude new stations in outlying areas in some instances, as Mr. Rountree claims, we are of the view that it has been for many years and still is a desirable allocation tool to delineate an effective utilization of an available frequency and to give both the Commission and interested parties a reasonable standard to rely upon. There are factors, however, which apply peculiarly to Class IV stations seeking power in excess of 250 watts which, in our opinion, justify excepting them as a group from the 10 percent population criterion. Unlike other classes of standard broadcast stations, Class IV stations are almost universally non-directional, nearly all operate with the same power and are applying for equal power increases. Under such conditions, neighboring Class IV stations on local channels may generally increase power beyond 250 watts without interference resulting within their existing primary service areas, and obtain the substantial benefits of increased signal strength within existing areas, and a net expansion of primary service, even though population in the new service areas may be subject to interference in excess of that which may be permitted under § 3.28(c)(3). Conditions conducive to a comparable general result do not exist on other than the local channels, and we adhere to the view that it is necessary to retain the 10 percent population criterion for delineating the requisite minimum of interference-free service to be provided within the normally protected contours of stations of other classes to insure efficient use of broadcast frequencies.

12. The reply comments of Southeastern Ohio Broadcasting System, Inc., and The Zanesville Publishing Company urge rule making on another proposal affecting Class IV stations and assignments. The proposal looks toward an amendment to the rules which would require that the normally protected daytime service area contour (0.5 mv/m) of Class IV stations be determined on the basis of 250 watts with regard to other Class IV stations regardless of whether greater power is utilized. Also, these parties propose that the interfering daytime signal of Class IV stations be calculated with respect to each other on the basis of 250 watts regardless of whether greater power is utilized. We are not prepared at this point to act upon additional revisions of the rules governing Class IV stations but are continuing to study other possible improvements.[2] Consideration will be given to the foregoing proposal in the course of that study.

13. Authority for the adoption of the amendment herein is contained in sections 4(i) and 303 (f), (h), and (r) and 307(b) of the Communications Act of 1934, as amended.

14. In view of the foregoing: *It is ordered*, That, effective January 23, 1961, § 3.28(c) of the Commission's rules and regulations is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 303, 307, 48 Stat. 1082, 1083; 47 U.S.C. 303, 307)

Adopted: December 14, 1960.

Released: December 19, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Subparagraph (3) of § 3.28(c) is amended; as amended, paragraph (c) reads as follows:

§ 3.28 Assignment of stations to channels.

* * * * *

(c) Upon showing that a need exists, a Class II, III, or IV station may be assigned to a channel available for such class, even though interference will be received within its normally protected contour; *Provided:* (1) no objectionable interference will be caused by the proposed station to existing stations or that if interference will be caused, the need for the proposed service outweighs the need for the service which will be lost by reason of such interference; and (2) primary service will be provided to the community in which the proposed station is to be located; and (3) the interference received does not affect more than 10 percent of the population in the proposed station's normally protected primary service area; however, in the event that the nighttime interference received by a proposed Class II or III station would exceed this amount, then an assignment may be made if the proposed station would provide either a standard broadcast nighttime facility to a community not having such a facility or if 25 percent or more of the nighttime primary service area of the proposed station is without primary nighttime service. Further, proviso (3) of this paragraph shall not apply to existing Class IV stations on local channels applying for an increase in power above 250 watts, nor to new Class IV stations proposing power in excess of 250 watts with respect to population in the primary service area outside the equivalent 250 watt, 0.5 mv/m contour.

[F.R. Doc. 60-11852; Filed, Dec. 21, 1960; 8:52 a.m.]

[Docket No. 13523; FCC 60-1522]

PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Operating Procedures and Station Records of Ship Radiotelephone Stations in the 1600–3500 kc Band

1. On May 19, 1960, the Commission released a notice of proposed rule making concerning the use of the calling frequency 2182 kc; duration of communications on frequencies 2003, 2638, 2738, and 2830 kc; and simplification of log keeping records for certain specified stations. The National Party Boat Owners Alliance, Inc., and Captain D. Stewart MacGregor had filed petitions requesting certain changes in the Commission's Rules pertaining to operating procedures of ship radio stations licensed in the 2–3 Mc band. The original date for filing comments herein, June 27, 1960, was extended to September 27, 1960, pursuant to a request of The American Waterways Operators, Inc. (hereinafter referred to as AWO). Subsequent to the closing date of September 27, 1960, the Commission accepted the comments of October 7, 1960, of AWO and ordered that comments in reply to those submitted by AWO could be filed on or before November 3, 1960. The time for filing comments has expired. The notice of rule making was published in the FEDERAL REGISTER on May 24, 1960 (25 F.R. 4560).

2. Comments in this proceeding were filed by The Pacific Telephone and Telegraph Company (hereinafter referred to as PT & T), Lake Carriers' Association, Mr. Fred R. Place, Southern California Marine Radio Council, and AWO. The Southern California Marine Radio Council and Mr. Place supported the Commission's proposal. The Lake Carriers' Association gave general approval to the Commission's proposal and submitted supporting statements in connection with the proposal to permit calls on the working frequencies under the conditions laid down by the Commission and the proposal to simplify the log keeping requirements.

3. The basic position of AWO is that the Commission should amend its Rules substantially as proposed, and requests that the rules be made applicable to vessels operating under both the Western River rules and the Inland rules of the United States Coast Guard. With respect to the latter request, it is observed that the proposed rules apply to ship stations generally and it is believed that the vessels operating under the Western and Inland rules would, as a matter of course, be encompassed within them. Although the AWO states the Rules should be amended substantially as proposed, AWO suggests the use of 2182 kc be limited to distress, safety, and urgent calls only and that the use of the frequency for calling and answering be abolished. The use of 2182 kc for distress and calling, and the reasons for such usage, were discussed in the Commission's proposal. The Commission believes that these reasons are still valid and accordingly the AWO suggestion will not be adopted. AWO gave its full support to the proposal to reduce the time limits on communications, to increase the interval before communication could again be attempted, and to the Commission's proposal to simplify the log keeping requirements. AWO suggested that the Commission's staff meet with its Electronic Committee prior to finalizing the notice. However, such a meeting does not appear to be necessary or appropriate.

4. In its comments, PT & T stated that they felt that the proposed rule changes would be advantageous to operators of ship stations using their services. PT & T, however, recommended that ship stations in the Puget Sound and contiguous waters in the Strait of Juan de Fuca, Strait of Georgia and Haro Strait be exempted from the log-keeping requirement if there are no international agreements to the contrary. The Commission believes that further consideration should be given to the entire matter of log-keeping requirements. Further, it is deemed desirable to retain the present provisions of § 8.368(a)(6) until after action has been taken by the Commission to implement the radio regulations adopted at Geneva (1959). Accordingly, that portion of the National Party Boat Owners Alliance, Inc., petition relating to log-keeping requirements, the PT & T comments on that question, and that portion of the Commission's proposal in this docket are held in abeyance. Section 8.366(b)(2) and (f)(1) is herein finalized as proposed, except for editorial changes.

5. In view of the foregoing, the Commission believes that the public interest will be served by adopting § 8.366 (b)(2) and (f)(1) substantially as proposed.

6. *It is ordered*, This 14th day of December 1960, That pursuant to the authority contained in section 303(f)(g) and (r) of the Communications Act of 1934, as amended, Part 8 of the Commission's rules is amended as set forth below, effective January 23, 1961.

7. *It is further ordered*, That the petition for rule amendments of Captain D. Stewart MacGregor, 47 Robbins Avenue, Babylon, New York, is granted insofar as it is consistent with the rules herein adopted and is denied in all other respects.

8. *It is further ordered*, That the petition for rule amendments (RM-97) of the National Party Boat Owners Alliance, Inc., 129 Ocean Avenue, Bayshore, Long Island, New York is granted insofar as it is consistent with the rules herein adopted; is held pending with respect to the request concerning log-keeping requirements; and is denied in all other respects.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: December 19, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Part 8 is amended as follows:

In § 8.366, the caption of paragraph (b), and the texts of sub-paragraphs (b)(2) and (f)(1) are amended to read as follows:

§ 8.366 General radiotelephone operating procedure.

* * * * *

(b) *Frequency for calling.* * * *

(2) Except when other operating procedure is used to expedite safety communication, ship stations, before transmitting on the intership working frequencies 2638, 2738, or 2830 kc, shall first establish communication with other ship stations by call and reply on the frequency 2182 kc: *Provided*, That calls may be initiated on an intership working frequency when it is known that the called vessel maintains a simultaneous listening watch on such working frequency and on 2182 kc.

(f) *Shared use of 2003, 2638, 2738, and 2830 kc.*

(1) Any one exchange of communications between any two ship stations on the intership working frequencies 2003, 2638, 2738 or 2830 kc or between a ship station and a limited coast station on 2738 or 2830 kc, shall not exceed 3 minutes in duration after the two stations have established contact by calling and answering. Subsequent to such exchange of communications, 2003, 2638, 2738, or 2830 kc shall not be used again for communication between the same two stations until 10 minutes have elapsed: *Provided*, That this requirement shall in no way limit or delay the transmission of distress or emergency communications or communications relating to the safe navigation of a vessel.

[F.R. Doc. 60-11853; Filed, Dec. 21, 1960; 8:52 a.m.]

[Docket No. 13815; FCC 60-1521]

PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Interim Ship Station Licensing Procedure To Include Ship Radar Stations

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 14th day of December 1960;

The Commission having under consideration the above-captioned matter; and

It appearing that in accordance with the requirements of section 4 (a) and (b) of the Administrative Procedure Act, notice of proposed rule making in this matter, which made provision for the submission of written comments by interested parties, was published in the FEDERAL REGISTER on October 6, 1960 (25 F.R. 9611), and the period for filing comments has now expired; and

It further appearing that no comments or objections were received; and

It further appearing that the public interest, convenience, and necessity will be served by the amendment herein ordered, the authority for which is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended;

It is ordered, That effective January 23, 1961, Part 8 of the Commission's rules is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: December 19, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

A. Part 8 is amended as follows:

1. Section 8.35 (a) and (b) are amended to read as follows:

§ 8.35 Request for interim ship station license.

(a) A formal application for ship station license, or for modification of existing license including modification to cover replacement of radiotelephone transmitting apparatus and/or radar (but not including renewal of station license), to authorize the use of telephony and/or radar on board a vessel when accompanied by a request for an interim ship station license, shall be filed in accordance with § 8.36 and presented in person by the applicant or his agent at the nearest Field Engineering Office of the Commission or at the Commission's main office in Washington, D.C.

(b) Such application as prescribed in paragraph (a) of this section may be filed, without regard to the filing time specified in §§ 8.24(b) and 8.33 whenever need arises for necessary authority to use a ship station for telephony and/or radar under the limitations of an interim ship station license on board any vessel pending action by the Commission at Washington, D.C., on the related formal application for regular license or modification of license.

2. Section 8.64 is amended to read as follows:

§ 8.64 Interim ship station license.

Upon request made in accordance with § 8.35, an interim ship station license may be granted by the Commission at its main office in Washington, D.C., or at any of its Engineering Field Offices to authorize the use of a ship station for telephony and/or radar in conformity with the conditions and limitations of §§ 8.369 and 8.405(a) for an interim period of six months pending action by the Commission at Washington, D.C., on the related formal application for regular ship station license or modification of license filed as prescribed by §§ 8.35 and 8.36. Unless otherwise directed by the Commission in exceptional circumstances, an interim ship station license shall not be renewed and the authority conferred by such license may be terminated without hearing, at any time prior to its normal expiration date if, in the discretion of the Commission, the need for such action arises.

3. In § 8.369, the introductory text of paragraph (a) is amended to read:

§ 8.369 Operation under interim ship station license.

(a) The use and operation of a ship radiotelephone station under the authority conferred by an interim ship station license shall be subject to and in accordance with all applicable rules of the Commission: *Provided*, That the class of station, the use of frequencies, the class of emission, and the transmitting equipment shall be limited at all times under such license to the authorization hereinafter designated:

4. Section 8.405 is amended by adding a new paragraph (a) thereto as follows:

[2] Among the measures under study are those suggested by Community Broadcasters Association, Inc., in a petition filed October 26, 1960 (File No. RM-209).

§ 8.405 Special provisions applicable to ship-radar stations.

(a) A ship radar station may be operated under an interim ship station license. The use and operation of a radar station on board ship under the authority conferred by an interim ship station license shall be subject to and in accordance with all applicable rules of the Commission.

[F.R. Doc. 60-11854; Filed, Dec. 21, 1960; 8:52 a.m.]

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Bear River Migratory Bird Refuge, Utah

The following special regulation is issued:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

UTAH

BEAR RIVER MIGRATORY BIRD REFUGE

Sport fishing on the Bear River Migratory Bird Refuge, Utah, is permissable only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing: as prescribed by State regulations.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 10 acres and .01 percent of the total refuge and which is described as follows:

The south bank of Bear River (road side) above the river control gates and from either side of Bear River for a distance of 150 yards below the control gates.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) Permission is required to enter the public fishing area by registering at the Refuge Office.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11827; Filed, Dec. 21, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Bitter Lake National Wildlife Refuge, New Mexico

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEW MEXICO

BITTER LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Bitter Lake National Wildlife Refuge, New Mexico, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: May 30 through October 15, 1961.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Boats—no boats or floating devices are permitted.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 945 acres and 4 percent of the total refuge and which is described as follows:

All waters within the refuge in Units 3, 5, 6, 7, 15 and 16.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective May 30, 1961, through October 15, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11819; Filed, Dec. 21, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Bosque del Apache National Wildlife Refuge, New Mexico

The following special regulation is issued:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEW MEXICO

BOSQUE DEL APACHE NATIONAL WILDLIFE REFUGE

Sport fishing on the Bosque del Apache National Wildlife Refuge, New Mexico, is permissable only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: May 30 to October 15, 1961. Fishing hours as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Boats—use of boats or other floating devices is prohibited.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 4,300 acres and 8 percent of the total refuge and which is described as follows:

All waters of the Bosque del Apache National Wildlife Refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective May 30, 1961, through October 15, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11818; Filed, Dec. 21, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Buffalo Lake National Wildlife Refuge, Texas

The following special regulation is issued:

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

TEXAS

BUFFALO LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Buffalo Lake National Wildlife Refuge, Texas, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: Entire lake—April 1–September 30, 1961. All waters lying north of a diagonal line from the northwest corner to the southwest corner of Survey 117—January 1 through December 31, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing.

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 2,358 acres and 37 percent of the total refuge and which is described as follows:

Buffalo Lake—in its entirety.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A permit is required to enter the public fishing area. Permits are issued by the concessionaire located on the area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11824; Filed, Dec. 21, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Hagerman National Wildlife Refuge, Texas

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

TEXAS

HAGERMAN NATIONAL WILDLIFE REFUGE

Sport fishing on the Hagerman National Wildlife Refuge, Texas, is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: April 1 through September 30, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 2,900 acres and 25 percent of the total refuge and which is described as follows:

All waters within the refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective April 1, 1961, through September 30, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11825; Filed, Dec. 21, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Havasu Lake National Wildlife Refuge, Arizona and California

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ARIZONA AND CALIFORNIA

HAVASU LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Havasu Lake National Wildlife Refuge, Arizona and California, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations of Arizona and California.

(b) Open season: January 1 through December 31, 1961.

(c) Daily creel limits: as prescribed by State regulations of Arizona and California.

(d) Methods of fishing:

(1) Bait and tackle—as prescribed by State regulations of Arizona and California.

(2) Licenses required—State fishing licenses and special stamps as stipulated in each State's regulations are required.

(3) All other applicable California and Arizona fishing regulations apply.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 22,860 acres and 50 percent of the total refuge and which is described as follows:

All of the waters of the Havasu Lake National Wildlife Refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11813; Filed, Dec. 21, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Imperial National Wildlife Refuge, Arizona and California

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Sport fishing on the Imperial National Wildlife Refuge, Arizona and California, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations of Arizona and California.

(b) Open season: January 1 through December 31, 1961.

(c) Daily creel limits: as prescribed by State regulations of Arizona and California.

(d) Methods of fishing:

(1) Bait and tackle—as prescribed by State regulations of Arizona and California.

(2) Licenses required—State fishing licenses and special stamps as stipulated in each State's regulations are required.

(3) All other applicable California and Arizona fishing regulations apply.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 8,100 acres and 16 percent of the total refuge and which is described as follows:

All of the water areas of the Imperial National Wildlife Refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11814; Filed, Dec. 21, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Kirwin National Wildlife Management Area, Kansas

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

KANSAS

KIRWIN NATIONAL WILDLIFE MANAGEMENT AREA

Sport fishing on the Kirwin National Wildlife Management Area, Kansas, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing: as prescribed by State regulations.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 5,000 acres and 50 percent of the total refuge and which is described as follows:

Kirwin Reservoir in its entirety.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11817; Filed, Dec. 21, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Muleshoe National Wildlife Refuge, Texas

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

TEXAS

MULESHOE NATIONAL WILDLIFE REFUGE

Sport fishing on the Muleshoe National Wildlife Refuge, Texas, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: Daylight hours—May 30 through September 30, 1961.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing:

(1) As prescribed by State regulations.

(2) Use of boats and other floating devices is prohibited.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 40 acres and .007 percent of the total refuge and which is described as follows:

Upper Goose Lake in its entirety.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective May 30, 1961, through September 30, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11826; Filed, Dec. 21, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Monte Vista National Wildlife Refuge, Colorado

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

COLORADO

MONTE VISTA NATIONAL WILDLIFE REFUGE

Sport fishing on the Monte Vista National Wildlife Refuge, Colorado, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: July 4 through October 31, 1961, during fishing hours as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Boats—use of boats or other floating devices is prohibited.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 7 acres and .004 percent of the total refuge and which is described as follows:

The "Kids Pond" located in the extreme SW¼NW¼ of Sec. 10, T 37 N, R 8 E.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective July 4, 1961, through October 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11815; Filed, Dec. 21, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

National Elk Refuge, Wyoming

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

WYOMING

NATIONAL ELK REFUGE

Sport fishing on the National Elk Refuge, Wyoming, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: The Gros Ventre River and its tributaries as prescribed by regulations. Flat Creek — August 1 through September 30, 1961 only. Fishing hours as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Boats—the use of boats or other floating devices is prohibited.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 327 acres and 1.3 percent of the total refuge and which is described as follows:

The waters of the Gros Ventre River within the refuge, including its tributary streams, in Secs. 16, 17 and 18, T 42 N, R 115 W, and Flat Creek from the east-west center line of the SE¼ of Sec. 15, T 41 N, R 116 W upstream to the refuge boundary at the east line of Sec. 34, T 42 N, R 115 W.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11828; Filed, Dec. 21, 1960; 8:48 a.m.]

PART 33—SPORT FISHING

Okefenokee National Wildlife Refuge, Georgia

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

GEORGIA

OKEFENOKEE NATIONAL WILDLIFE REFUGE

Sport fishing on the Okefenokee National Wildlife Refuge, Georgia is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State laws and regulations.

(b) Open season: Daylight hours only in compliance with State laws.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle: As prescribed by State regulations.

(2) Bait: Live bait shall not be used for fishing and no minnows shall be taken for bait in any of the waters of the refuge.

(3) Boats and motors: Boats without motors and boats with motors no larger than 10 horsepower may be used in the designated fishing areas.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area, which comprises approximately 825 acres and .25 percent of the total refuge and which is described as follows:

All designated public use areas involving Durdin Lake, Bluff Lake, Suwannee Canal from Camp Cornelia to Billy's Lake including the north prong boat run to Floyd Island, boat run from Suwannee Canal to Buzzard's Roost Lake including Cooter Lake, Monkey Lake, and Gannet Lake, Suwannee River from refuge boundary to Billy's Lake, Billy's Lake, refuge waters of boat run from Suwannee River to Pine Island, boat run from Billy's Lake to and including Minnie's Lake and Big Water Lake and boat run from Sapling Prairie to and including Dinner Pond.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective through December 31, 1961.

(4) Persons entering refuge from main access points must register with the respective concessionaire.

(5) Appropriate State licenses must be exhibited at the request of any authorized Federal or State officer.

(6) Fishing on designated areas may be closed by the refuge officer in charge during periods of wildlife concentrations if necessary to provide adequate protection.

(7) Fishing in non-designated areas is permitted only when entry is authorized by Federal permit issued by officer in charge.

W. L. TOWNS,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 12, 1960.

[F.R. Doc. 60-11816; Filed, Dec. 21, 1960; 8:46 a.m.]

PART 33—SPORT FISHING

Ruby Lake National Wildlife Refuge, Nevada

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEVADA

RUBY LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Ruby Lake National Wildlife Refuge, Nevada, is permissible only under the following conditions:

(a) Species permitted to be taken: all species.

(b) Open season: Elko County—January 15, 1961, through October 1, 1961. White Pine County—January 1, 1961, through December 31, 1961.

(c) Daily creel limits: as prescribed by State regulations.

(d) Method of fishing:

1. Tackle: as prescribed by State regulations.

2. Bait: as prescribed by State regulations.

3. Boats: No boats will be permitted in the area north of the south dike. Air thrust boats with motors of more than 5 horsepower prohibited. Boats with motors may be used for fishing south of the south dike from June 15, 1961 to end of fishing season.

(e) Description of areas open to fishing: Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 500 acres and approximately 1 percent of the total refuge and which is described as follows:

All waters in the refuge except west bank of the collection ditch in the area between Bressman Cabin and Passey Springhole.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

LEO L. LAYTHE,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 12, 1960.

[F.R. Doc. 60-11820; Filed, Dec. 21, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Pathfinder National Wildlife Refuge, Wyoming

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

WYOMING

PATHFINDER NATIONAL WILDLIFE REFUGE

Sport fishing on the Pathfinder National Wildlife Refuge, Wyoming, is permissable only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing: as prescribed by State regulations.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 16,500 acres and 35 percent of the total refuge and which is described as follows:

All of the Pathfinder Reservoir waters within the refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11829; Filed, Dec. 21, 1960; 8:48 a.m.]

PART 33—SPORT FISHING

Salt Plains National Wildlife Refuge, Oklahoma

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

OKLAHOMA

SALT PLAINS NATIONAL WILDLIFE REFUGE

Sport fishing on the Salt Plains National Wildlife Refuge, Oklahoma, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: April 15 through October 15, 1961—in that portion of Great Salt Plains Lake south of the south lines of Secs. 3, 4, 5 and 6, T 26 N, R 9 W; except year-long fishing is permitted in the waters of Secs. 10 and 15, T 26 N, R 9 W; and fishing is permitted from February 1 through October 15, 1961 in Sand Creek from the south right-of-way line of Highway 11 north through Secs. 18 and 7, T 27 N, R 9 W to the north boundary of the refuge. Fishing hours as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing: as prescribed by State regulations.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 7,700 acres and 24 percent of the total refuge and which is described as follows:

That portion of the Salt Plains Reservoir lying south of the south section line of Secs. 3, 4, 5 and 6, and Sand Creek from the south right-of-way line of Highway 11 north through Secs. 18 and 7, T 27 N, R 9 W to the north boundary of the refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11821; Filed, Dec. 21, 1960; 8:47]

PART 33—SPORT FISHING

Tishomingo National Wildlife Refuge, Oklahoma

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

OKLAHOMA

TISHOMINGO NATIONAL WILDLIFE REFUGE

Sport fishing on the Tishomingo National Wildlife Refuge, Oklahoma, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: Year-long east of the north-south center line of Secs. 19, 30 and 31, T 4 S, R 7 E and in Rock Creek, Polecat Creek, Bell Creek, Big Sandy Creek, Dicks Pond and the Goose Pen Pond. All other portions of the refuge open April 1 through September 30, 1961. Fishing hours as prescribed by State regulations.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing: as prescribed by State regulations.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 10,000 acres and 62 percent of the total refuge and which is described as follows:

All of the waters of Lake Texoma and contiguous small ponds within the boundaries of the refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11822; Filed, Dec. 21, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Wichita Mountains Wildlife Refuge, Oklahoma

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

OKLAHOMA

WICHITA MOUNTAINS WILDLIFE REFUGE

Sport fishing on the Wichita Mountains Wildlife Refuge, Oklahoma, is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season: as prescribed by State regulations on all waters within the recreational areas open to the general public.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing:

(1) Tackle—as prescribed by State regulations.

(2) Boats—the use of boats or other floating devices in all lakes except Lake Elmer Thomas is prohibited.

(e) Description of areas open to fishing:

Fishing is permitted in accordance with (a) above on the posted area which comprises approximately 900 acres and 1.5 percent of the total refuge and which is described as follows:

All of the water areas located within the recreational use portion of the Wichita Mountains Wildlife Refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961, through December 31, 1961.

Dated: December 14, 1960.

JOHN C. GATLIN,
Regional Director, Bureau of Sport Fisheries and Wildlife.

[F.R. Doc. 60-11823; Filed, Dec. 21, 1960; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 252]

TRADERS ON NAVAJO, ZUNI, AND HOPI RESERVATIONS

Amusement Companies

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by sec. 5, 19 Stat. 200, sec. 1, 31 Stat. 1066, as amended (25 U.S.C. 261, 262), it is proposed to amend 25 CFR 252.27a as set forth below. The purpose of this amendment is to eliminate the need for a tribe annually to request a waiver by the Secretary of the Interior of the § 252.27a in order for a carnival company retained by the tribe under contract to provide facilities for tribal amusement and recreational programs.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Bureau of Indian Affairs, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

Section 252.27a is amended to read as follows:

§ 252.27a Amusement companies.

(a) All carnival companies, circuses, theatrical companies, all persons, firms or companies conducting or operating portable dance pavilions, mechanical devices such as ferris wheels, carousels, or other devices for carrying passengers, and all persons operating games of skill, shall be considered traders and shall be required to obtain a license and to pay such fee as may be prescribed by the superintendent in charge of the jurisdiction, based on the number and class of devices or units to be operated (not less than $5.00 nor more than $25.00 per unit); and shall post a surety bond in an amount not exceeding $10,000 and a personal injury and property damage liability bond of not less than $500.00 nor more than $20,000 as may be required by the superintendent.

(b) The provisions of this section do not apply where a contract between the tribe and the amusement company provides for the payment of a fee to the tribe and for the protection of the public against personal injury and property damage in the amounts specified in paragraph (a) of this section.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 16, 1960.

[F.R. Doc. 60-11830; Filed, Dec. 21, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 994]

[Docket No. AO-300-A1]

MILK IN COLORADO SPRINGS-PUEBLO MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Colorado Springs, Colorado, on June 21-22, 1960, pursuant to notice thereof issued on May 31, 1960 (25 F.R. 4919).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Agricultural Marketing Service, on October 27, 1960 (25 F.R. 10459; Doc. 60-10217) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of the hearing relate to:

1. The Class I price;
2. The Class II price;
3. Pool plant requirements and clarification of plant definitions;
4. Classification of milk transferred or diverted to nonpool plants;
5. Limitations on diversions;
6. Location adjustments to producers;
7. Administrative charges to partially regulated handlers; and
8. Allocation of packaged sour cream received from plants where it has been classified and priced as Class I under another Federal order.

Separate consideration was given earlier to the Class I price issue in order to provide a Class I price provision in the order beyond its expiration date of July 1960. A recommended decision on the matter was issued July 7, 1960 (25 F.R. 6483), a final decision on July 18, 1960 (25 F.R. 6926), and an order amending the order on July 29, 1960 (25 F.R. 7203).

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. The provisions for pricing Class II milk should not be changed.

Class II milk under the Colorado Springs-Pueblo order includes all skim milk and butterfat used in the production of nonfluid dairy products, skim dumped, livestock feed and allowable plant losses. Since the inception of the order, Class II milk has been priced at the higher of the average paying prices of selected Wisconsin and Michigan condenseries or a butter-powder formula price. For the months of March through July, 20 cents is deducted from this price.

While proposals to review the Class II pricing provisions were made in the notice of hearing by Colorado producers' cooperatives and five handlers, the only testimony in favor of a change was offered by a Utah producers' cooperative, Cache Valley Dairy Association, which proposed elimination of the 20-cent reduction in the March-July period.

Except for the production of ice cream and cottage cheese by certain distributors in the market, the nearest manufacturing facilities available to producers for receiving milk that cannot be used by the distributing plants for fluid sales are located in Larkspur, Fort Collins, Johnstown, and Brush, Colorado, which are 30, 126, 108, and 158 miles, respectively, from the El Paso County Courthouse in Colorado Springs. The producer associations representing Colorado producers allege that handlers in the market are reluctant to accept any milk from producers in excess of their plant requirements. As a result, these associations have been required to handle the disposition of substantial amounts of milk during the flush season by transporting such milk to the distant manufacturing plants. Costs of transporting such reserve milk supplies to the manufacturing plants are borne by the associations at rates varying from 30 to 75 cents per hundredweight, depending upon distance and volume handled. The 20-cent reduction in the Class II price during the flush months of March through July recognizes the fact that during this period substantial quantities of milk must be moved to the distant nonpool plants for manufacture.

While it is probably true that milk for manufacturing use delivered to the Cache Valley Dairy Association plant in Smithfield, Utah, has a value equal to the basic formula price in all months of the year, it is practicable to deliver only a small portion of the present production for the Colorado Springs-Pueblo market to this plant. There is no evidence to indicate that the level of the Class II price in the market has encouraged handlers to expand their manufacturing facilities or to seek additional supplies of milk for manufacturing use. In view of the limited experience under the order to date, no change should be made in the Class II price structure at this time.

2. The pool plant definition should be revised.

The present order defines a distributing pool plant as one in which fluid milk products are pasteurized or packaged and from which 20 percent or more of the total Class I sales are made on routes in the marketing area. A supply pool plant is defined as a plant from which during the month not less than 40 percent of its dairy farm supply of Grade A

milk is moved to distributing pool plants. Any supply plant which qualifies as a pool plant in each of the months of September through February of any year is a pool plant for the following months of March through August unless written request for nonpool status is furnished in advance to the market administrator.

One producer association proposed that shipping requirements for supply pool plants be 50 percent of receipts during August through January and be 30 percent during other months. Several associations supported a requirement that distributing pool plants have 50 percent or more Class I utilization of approved receipts.

The purpose of pool plant requirements is to distinguish which plants are associated with the market to the extent that they should participate in the marketwide pool.

Under the present distributing pool plant requirements, the Class I sales of a plant might constitute only a small proportion of the milk received from producers, with the major portion designed for manufacturing use. However, all of the milk could be pooled. Plants could also be qualified as supply pool plants by making deliveries to such plants whether or not the milk was needed or used for Class I purposes. To distinguish those plants primarily engaged in processing and distribution of fluid milk from plants that must qualify for pool status on the basis of bulk shipments to the market, it should be required that 50 percent or more of the receipts of Grade A milk be disposed of as Class I milk if such plant is to qualify as a distributing pool plant. The present requirement that 20 percent of such Class I disposition be on routes in the marketing area should also apply.

No change should be made in the percentage of its receipts of Grade A milk that a supply plant must ship to a distributing pool plant to qualify for pool plant status. The 40 percent shipping requirement presently provided in the order has apparently operated satisfactorily. The only plant that has qualified as a supply plant has been that of the Pueblo Dairymen's Cooperative, Inc., which has a long and close association with the market. There is no evidence that any other supply plant has made substantial shipments to pool distributing plants without achieving pool plant status.

No seasonal variation should be made in the shipping requirement for supply plants. While distributing plants need a smaller proportion of the receipts of supply plants in the spring when production is relatively high than they do in the fall when milk production is relatively low, such seasonal variations are accommodated adequately in the present provision that permits the automatic pooling of milk of any supply plant during the months of March through August if such plant qualified as a pool plant during the previous months of September through February.

A distributing pool plant should be defined as a plant (1) in which fluid milk products are pasteurized or packaged, (2) from which an amount equal to 50 percent or more of receipts of Grade A milk from dairy farmers and from other pool plants is disposed of as Class I milk, and (3) from which 20 percent or more of the total Class I sales are on routes in the marketing area. A supply pool plant should be any plant from which during the month not less than 40 percent of its dairy farm supply of Grade A milk is moved to a distributing pool plant(s). Any supply plant which has qualified as a pool plant in each of the months of September through February in any year should be a pool plant for each of the following months of March through August unless written request for nonpool plant status for any such month(s) is furnished in advance to the market administrator. Any supply plant withdrawn from pool plant status may only be reinstated for any month in which it fulfills the requirements of shipping not less than 40 percent of its receipts of Grade A milk from producers to a distributing pool plant(s).

Proposals to define "distribution point" and "plant" should not be adopted. The most significant effect of such proposals would have been to insure that reloading operations, wherein milk is transferred from one road vehicle to another, could under no circumstances be considered a part of the operation of a plant located at the point at which such reloading takes place. Where milk is picked up at the farm in small pick-up tanks and transferred to a transport tanker at a plant location, all factors concerning such movements must be considered in determining whether it should be treated as a delivery direct from the farm or through the intermediate plant at which the transfer was made. The proposed definition would not provide an adequate basis for this determination.

3. The area within which milk may be disposed of to nonpool plants as Class II milk should include Cache and Weber Counties, Utah. The condition under which Class II utilization in nonpool plants may be established should be modified.

The present order provides that if a fluid milk product in bulk form is transferred or diverted to a nonpool plant located more than 200 miles from the El Paso County Courthouse in Colorado Springs, it is automatically classified as Class I milk. Within the 200-mile limit such transfers may be Class II milk if it can be shown that an equivalent volume has been manufactured into Class II products.

Milk of 30–40 dairy farmers whose farms are located in northern Utah has been priced under the Colorado Springs-Pueblo order since January 1960 as milk of producers delivering to a pool plant in Denver which was supplying the Fort Carson military installation. There are milk manufacturing facilities in Cache and Weber Counties, Utah, to which milk of these producers could be diverted for Class II use when not needed for Class I use. Under present provisions of the order, such diversion can only be as Class I milk. Provisions should be made for diversion as Class II milk, under the conditions and limitations hereafter discussed, to plants in these counties.

Nonpool plants in Cache and Weber Counties, Utah, to which diversion may be made, have receipts of Grade A milk, manufacturing grade milk and farm separated cream. Under the classification provisions as presently applicable to transfers or diversions within the 200-mile limit and which would apply in Cache and Weber Counties with their inclusion in the surplus disposal area, use of an equivalent volume of milk as Class II milk at a nonpool plant would result in the pool milk transferred or diverted being priced as Class II milk. The provision should be modified so that the pool milk will share in any Class I utilization in excess of receipts of Grade A milk from farmers regularly supplying the plant. If transfers have been made from more than one pool plant or from plants regulated by other orders, the available Class I utilization should be prorated.

4. The producer definition should be revised and provision made for limiting diversion of producer milk to nonpool plants.

Under the present definition in the order, a producer means any person, other than a producer-handler, who produces milk in compliance with fluid milk product requirements of a duly constituted health authority having jurisdiction within the marketing area, and whose milk is received at a pool plant or is diverted to a nonpool plant for the account of a handler. Milk so diverted is deemed to have been received by the diverting handler at the plant from which it was diverted.

Several proposals were discussed at the hearing which would either require specific association with the market to achieve producer status or limit the conditions under which a dairy farmer could retain status as a producer when his milk was diverted to a nonpool plant.

The Cache Valley Dairy Association, representing northern Utah producers, proposed that no dairy farmer who qualifies as a producer under another order should be a producer under the Colorado Springs-Pueblo order in the same month. Two Colorado associations supported a proposal that producer status be restricted to those dairy farmers whose milk production was received at a pool plant for 16 days or more in the month. By brief they also asked that producer status be denied a dairy farmer if any of his milk was received at a nonpool plant except by diversion. A diversion limit of 12 days' production in the months of August through March was advocated by the Cache Valley association. The Colorado associations proposed a 15-day limitation in all months.

Erratic changes in producer numbers since the effective date of the order indicate a need for more definite requirements of association with the market for producer status. Associations representing producers in the Great Basin and Western Colorado markets also represent producers supplying the Colorado Springs-Pueblo market. In the recommended decision it was provided that a dairy farmer who qualifies as a producer under another order during the month should not be a producer under Order

No. 94. In view of the exceptions received from Colorado cooperatives, this provision has been modified to accord producer milk status to receipts at pool plants direct from the farms of such producers except when the milk delivered to Colorado Springs-Pueblo plants retains producer milk status (as by diversion) under the other order.

With respect to limitation of diversion, the needs of the market can best be served if during each month of the year a producer's milk may not be diverted to a nonpool plant for more days of production than it is received at a pool plant. To deny producer status to any dairy farmer whose milk was received at a nonpool plant except by diversion as suggested by brief might unduly limit access to the market.

The health authorities in compliance with whose requirements a dairy farmer must produce Grade A milk to be considered a producer should not be restricted to those having jurisdiction in the marketing area. The requirement that a producer must deliver milk to a pool plant each month under the diversion limitations herein provided, together with the performance requirements for pool plant status, make this requirement superfluous. While present provisions have been administered to recognize reciprocal inspection arrangements, the order language should be clarified to avoid possible conflict in interpretation.

Changes in the producer definition are included to carry out the conditions set forth in another part of this decision with respect to application of location adjustments to diverted milk.

5. Location adjustments should apply with respect to producer milk diverted to nonpool plants. Location adjustments should not apply at plants less than 200 miles from Colorado Springs.

The provision that milk may be classified as Class II milk when diverted to points in Cache and Weber Counties, Utah, more than 500 miles from the marketing area, raises an issue as to the application of location adjustments to the producer price at which producers should share in the pool when milk ordinarily delivered to a plant in or near the marketing area is diverted to nonpool plants near such producers' farms. Present provisions of the order treat milk diverted to nonpool plants as if received at the location of the pool plant from which diverted. Thus, without some change, Utah producers would receive the marketing area price for milk diverted to Utah plants without incurring the costs of transporting the milk to the vicinity of the marketing area.

The Cache Valley Dairy Association proposed that a special producer location adjustment of approximately 30 cents per hundredweight apply in such cases, but proposed no revision in other rates of location adjustment to handlers or to producers. The rates provided in the order (13.5 cents for the first 80–90 miles, plus 1.5 cents for each additional 10 miles) represent a rate of approximately 90 cents per hundredweight at points in Cache and Weber Counties.

In support of this proposal it was claimed that the Cache Valley association had devised a particularly economical method of transporting milk for their members. It was not shown, however, that rates representative of the claimed cost were used in returning to producers the Colorado Springs-Pueblo blend prices. Instead such producers have had their returns blended on an f.o.b. Utah basis with other association members supplying the Great Basin market or unregulated markets.

The location of producers' farms in relation to nonpool manufacturing plants is such that there is no saving in transportation costs when producers presently supplying the market from farms in Colorado and western Kansas have their milk diverted to nonpool plants. There is rather an increase in cost which has been borne by the associations representing these producers. All manufacturing plants to which diversion of such producers' milk has been made are within 200 miles of Colorado Springs. There is, on the other hand, a substantial saving in mileage when milk of the Utah producers is diverted to plants in the area added to the surplus manufacturing area.

Utah producers and Colorado producers were in agreement that producers should, under present circumstances, receive the uniform order price without location deduction when their milk is diverted to nonpool plants within 200 miles of Colorado Springs and that a location adjustment should apply when milk is diverted to more distant plants. The rate of such adjustment was the sole issue between them, Colorado producers advocating that such adjustment be at the regular rates now specified in the order and Utah producers advocating the special rate discussed heretofore.

Rates of location adjustment and the area and milk to which they apply should be uniform, when applied either to receipts at pool plants or diversions to nonpool plants. Present rates of location adjustment represent normal hauling rates and should not be changed on the basis of the limited exception shown on this record. Milk diverted to nonpool plants should be priced at the location of the nonpool plant to which diverted. The area within which no location adjustments apply should, however, be enlarged to include points up to 200 miles from Colorado Springs, with present rates applicable at more distant plants. There are presently no supply or distribution plants associated with the market that are located more than 80 but less than 200 miles from Colorado Springs. As stated earlier in this decision, a number of nonpool manufacturing plants to which milk is diverted are located in the 80–200 mile zone. This change will permit producers who incur additional hauling costs when their milk is diverted to these plants to continue to receive the f.o.b. market price without affecting the costs of any handler.

Use of a 200-mile radius rather than one of 80 miles makes it unnecessary to continue to have mileages measured from the nearer of Colorado Springs, Pueblo or Walsenburg. It is provided that location adjustments be determined by distance from Colorado Springs, the principal population center of the market.

6. No change should be made in the obligation incurred by a nonpool handler to either the pool or to the administrative fund when such handler disposes of fluid milk products on routes in the marketing area.

The handler operating a nonpool plant has the option of paying a compensatory payment together with an administrative assessment on that milk disposed of in the marketing area, or paying any differences between the amount paid dairy farmers by such handler and the net class use value of their milk at order prices, together with administrative assessment on all such handler's milk whether or not disposed of in the market.

A handler operating a nonpool plant under the Colorado Springs-Pueblo order proposed several changes to this provision in the hearing notice, but at the hearing supported only a lower rate of administrative assessment for nonpool handlers electing the payment comparison option for accounting to the pool.

The aggregate volume of Class I in-area sales by three nonpool plants distributing Class I milk in the Colorado Springs-Pueblo marketing area is approximately 10 percent of the total Class I sales made in the area by all handlers. Payments by these three plants for the administrative costs of the order amount to approximately 53 percent of the total. The proponent handler contended that such payments to the administrative fund are disproportionate to the volume of Class I milk distributed in the area by the nonpool plants and that fully regulated plants, more directly affected by the order, should pay a larger portion of the cost of market administration than those plants that are only partially regulated.

The proportion of in-area sales made by a handler to that of all other handlers in the market does not provide a sufficient basis for altering the rate of assessment. Regardless of the proportionate amount of Class I milk disposed of by a handler in the marketing area, the market administrator must verify receipts and utilization of all milk in a nonpool handler's plant to establish the amount of obligation under the payment comparison option provided and, therefore, all such milk should be subject to the expense of administration. Such verification includes the checking of weights and butterfat tests of receipts from dairy farmers and of products sold as well as an audit of books and records. Fully regulated plants may also have a substantial proportion of out-of-area sales and yet be assessed administrative expenses on their entire receipts.

A handler may elect the option of making payment to the pool at the difference between the Class I and Class II price with respect to only fluid milk product sales made in the marketing area. This option requires that the handler of the nonpool plant pay administrative expenses only on the volume of in-area Class I milk sales, since the

need for verification will then be confined to that volume.

There is no basis for making any change in the rate of administrative assessments as presently provided in the order.

7. Sour cream manufactured from milk subject to the pricing and pooling provisions of Order No. 41 for the Chicago marketing area should be allocated directly to Class I at pool plants under the Colorado Springs-Pueblo order when such cream is received, handled and distributed in the same consumer or institutional size packages in which it was received.

A proposal to this effect was included in the hearing notice. The proposal was supported in a modified version by a Colorado Springs-Pueblo handler who planned to receive packaged sour cream from the National Cheese Company of Chicago, Illinois (a handler under the Chicago order) for distribution in the Colorado Springs-Pueblo marketing area commencing July 1960. Three producer associations of the Colorado Springs-Pueblo market opposed the modified proposal. Sour cream sales in the market at the time of the hearing, which were regularly supplied from milk of local producers, represented less than one percent of total Class I market usage.

Present provisions of this order give priority for all Class I utilization to producer milk. Receipts of sour cream priced and pooled under Order No. 41 would be allocated to Class II to the extent possible under the Colorado Springs-Pueblo order. While all cream products under the Chicago order are classified as Class II under the accounting and pricing system of the Chicago order, this class is the equivalent of the Class I classification and pricing under the accounting system of the Colorado Springs-Pueblo order.

Inasmuch as the Class I price in the Colorado Springs-Pueblo marketing area will be generally aligned with prices under other Federal orders, there is little chance that handlers in the Chicago market can achieve a substantial competitive advantage with respect to sales of packaged sour cream in this area over handlers under this order. The seasonal and daily reserves necessary to supply the exact quantities of packaged sour cream will be generally carried by the Chicago producers. Yet, under the current provisions of the Colorado Springs-Pueblo order, the seasonal and daily excess of producer milk in the market would be assigned to Class I to the extent of any receipts of packaged sour cream from the Chicago market.

Receipts of sour cream priced as Class II under Order No. 41 and disposed of in the same consumer or institutional size packages as received should be allocated to the Class I utilization of the receiving handler. Such allocation should be provided only when sour cream is not processed or packaged in the plant during the month. While the Colorado Springs-Pueblo handler proposed a provision applicable to all packaged fluid milk products and receipts from all orders, all testimony was directed to the allocation of packaged sour cream priced under Order No. 41. No basis exists to provide for movement of other products or from other orders.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Colorado Springs-Pueblo Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Colorado Springs-Pueblo Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of October 1960 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order regulating the handling of milk in the Colorado Springs-Pueblo marketing area, is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Issued at Washington, D.C., this 16th day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

Order[1] amending the order regulating the handling of milk in the Colorado Springs-Pueblo marketing area

§ 994.0 **Findings and determinations.**

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Colorado Springs-Pueblo marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Colorado Springs-Pueblo marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

1. Delete § 994.7 and substitute therefor the following:

§ 994.7 **Pool plant.**

A "pool plant" shall be any plant meeting the conditions of paragraph (a) or (b) of this section except the plant of a handler exempted in § 994.60 or § 994.61:

(a) Any plant, hereinafter referred to as a "distributing pool plant", (1) in which fluid milk products are pasteurized or packaged, (2) from which an amount equal to 50 percent or more of receipts of Grade A milk from dairy farmers and from other pool plants is disposed of as Class I milk, and (3) from which 20 percent or more of the total Class I sales are on routes in the marketing area; and

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month not less than 40 percent of its dairy farm supply of Grade A milk is moved to a distributing pool plant(s). Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant for each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

§ 994.9 [Amendment]

2. In § 994.9 delete the following sentence: "Such milk shall be considered as having been received by such cooperative association at the plant from which it was diverted."

3. Delete § 994.10 and substitute therefor the following:

§ 994.10 **Producer.**

"Producer" means any person, other than a producer-handler (or a dairy farmer with respect to milk delivered to a pool plant which qualifies as producer milk under another Federal milk order) who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is:

(a) Received at a pool plant; or

(b) Diverted from a pool plant to a nonpool plant for the account of the handler operating the pool plant or of a cooperative association, subject to the following limitations and conditions:

(1) The days of production of such person for which milk is diverted during the month may not exceed the days of production for which milk is received at a pool plant, otherwise such person will not be considered a producer with respect to any milk diverted;

(2) For purposes of the requirements of § 994.7, milk diverted for the account of the operator of a pool plant shall be included in the receipts of the pool plant from which diverted; and

(3) For purposes of location adjustments pursuant to § 994.81, milk diverted to a nonpool plant shall be considered to have been received at the location of the nonpool plant to which diverted.

§ 994.44 [Amendment]

4. Delete § 994.44(c) and substitute therefor the following:

(c) Class I milk, if transferred or diverted as a fluid milk product in bulk to a nonpool plant located more than 200 miles, by the shortest highway distance as determined by the market administrator, from the El Paso County Courthouse, but not located in Cache or Weber Counties, Utah.

5. Delete § 994.44(e) and substitute therefor the following:

(e) Class I milk, if transferred or diverted as a fluid milk product in bulk to a nonpool plant located not more than 200 miles, by the shortest highway distance as determined by the market administrator, from the El Paso County Courthouse, or located in Cache or Weber Counties, Utah, unless the following conditions are met:

(1) The transferring handler claims Class II utilization in his report submitted pursuant to § 994.30;

(2) The operator of the nonpool plant maintains books and records showing receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) Class I utilization in the nonpool plant does not exceed the receipts of skim milk and butterfat in Grade A milk from dairy farmers. If Class I utilization exceeds such receipts, the skim milk and butterfat so transferred or diverted shall be Class I to the extent of a pro rata share of total receipts at the nonpool plant from all pool plants and from plants fully subject to other orders that are claimed as Class II utilization or as a class other than Class I under another order; and

(4) If any skim milk or butterfat is transferred to a second nonpool plant under this paragraph, the same conditions of audit, classification and allocation shall apply.

§ 994.46 [Amendment]

6. Delete § 994.46(a)(3) and substitute therefor the following:

(3) Subtract the pounds of skim milk in fluid milk products received from plants regulated under another order issued pursuant to the Act, as specified:

(i) If sour cream was not processed or packaged in the pool plant during the month, subtract from the pounds of skim milk in Class I milk the pounds of skim milk in sour cream packaged in consumer or institutional size packages, classified and priced as Class II milk pursuant to Order No. 41, regulating the handling of milk in Chicago, Illinois, marketing area (Part 941 of this chapter), disposed of in the same packages as received; and

(ii) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the remaining pounds of skim milk in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the Act.

7. Delete § 994.52 and substitute therefor the following:

§ 994.52 **Location differentials to handlers.**

For milk which is received from producers at a plant located more than 200 miles by the shortest highway distance, as determined by the market administrator, from the El Paso County Courthouse in Colorado Springs, and which is classified as Class I milk the prices computed pursuant to § 994.51(a) shall be reduced by 31.5 cents if such plant is located more than 200 miles but not more than 210 miles from such Courthouse and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 210 miles: *Provided*, That for the purpose of calculating such differential transfers between pool plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds the receipts from producers at such plant, such assignment to transferor plants to be made first to plants at which no differential credit is applicable and then in the sequence beginning with the plant at which the lowest location differential credit would apply.

8. Delete § 994.81 and substitute therefor the following:

§ 994.81 **Location differential to producers.**

For milk which is received at a plant located more than 200 miles but not more than 210 miles by shortest highway distance, as determined by the market administrator, from the El Paso County Courthouse in Colorado Springs, there should be deducted 31.5 cents per hundredweight and an additional 1.5 cents shall be deducted for each 10 miles or fraction thereof that such distance exceeds 210 miles.

[F.R. Doc. 60-11840; Filed, Dec. 21, 1960; 8:50 a.m.]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-141]

FEDERAL AIRWAYS AND CONTROL AREAS

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6031 and 601.-6031 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 31 extends in part from Selinsgrove, Pa., via Williamsport, Pa., to Elmira, N.Y. The Federal Aviation Agency has under consideration alteration of this segment of Victor 31 by designating a west alternate and associated control areas from the Selinsgrove VORTAC via the intersection of the Selinsgrove VORTAC 342° and the Elmira VOR 187° True radials, to the Elmira VOR. The designation of this west alternate would provide a by-pass route west of the Williamsport terminal area for aircraft operating between Elmira and Harrisburg, Pa. Also, it would provide an additional north and south bound route for simultaneous use by aircraft departing the Williamsport-Lycoming County, Pa., Airport, while arrival aircraft are conducting prescribed instrument approach procedures utilizing the Williamsport L/MF radio range and VOR.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 16, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11810; Filed, Dec. 21, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-FW-99]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation of Segments of Federal Airway, Associated Control Areas, Reporting Points, Alteration of Control Area Extension

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.107, 601.107, 601.4107 and 601.1072 of the regulations of the Administrator, the substance of which is stated below.

Amber Federal airway No. 7 presently extends in part from Miami, Fla., to Daytona Beach, Fla., and from Florence, S.C., to Richmond, Va. The Federal Aviation Agency is considering revoking these segments of Amber 7. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Miami to Daytona Beach is adequately served by VOR Federal airway No. 3, and the route from Florence to Richmond is adequately served by a combination of VOR Federal airways No. 3, 155 and 157. Therefore, it appears that the retention of these airway segments is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke the segments of Amber 7 from Miami to Daytona Beach and from Florence to Richmond. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with these segments of Amber 7. Any proposals to discontinue one or more of these aids would be processed in accordance with current Agency procedures.

Concurrently with this action, § 601.-107 relating to associated control areas and § 601.4107 relating to reporting points would be amended to conform with the modified airway. In addition, the reference to Amber 7 as the east boundary and Red Federal airway No. 16 as the south boundary in the description of the Sumter, S.C., control area extension (§ 601.1072) would be deleted. VOR Federal airway No. 3 would be substituted for the east boundary and VOR Federal airway No. 56 would be substituted for the south boundary. This action would not alter the presently designated size of this control area extension.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 15, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11811; Filed, Dec. 21, 1960; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 9, 10, 11, 16, 19, 21]

[Docket No. 13847]

FREQUENCIES

Separation, Availability, and Allocation; Order Extending Time for Filing Comments

In the matter of Amendments of Parts 10, 11, 16, and 19 of the Commission's rules to reduce the separation between the assignable frequencies in the 450-470 Mc band; amendment of Parts 2, 9, 10, 11, 16, 19 and 21 of the Commission's rules to reallocate frequencies in the 460-470 Mc band and to make additional frequencies available for assignment in the 450-470 Mc band; amendment of Parts 10, 11, and 16 of the Commission's rules to prohibit the use of frequencies in the 450-470 Mc band by fixed stations other than control stations used for the secondary control of mobile relay stations.

The Commission has before it a petition filed by the Electronic Industries Association on December 9, 1960, requesting a 90 day extension, from February 3, 1961 to May 3, 1961, of the date for filing comments in the above entitled proceeding;

It appearing that in support of its request, the petitioner states that it desires to conduct extensive field surveys through its member companies to obtain necessary empirical data on which recommendations could be made to the Commission, and that these field surveys would require more time than the Commission has allowed for the submission of statements, particularly in view of the problem of delay that might result from inclement weather at many of the test sites during the winter months; and

It further appearing that in light of the considerations advanced by the petitioner, an extension of the comment period would be in the public interest;

It is ordered, This 16th day of December 1960, pursuant to sections 0.258(c), 0.291(b)(4), 0.322(b)(2) of the Commission's Statement of Delegations of Authority, that the above-described request of the Electronic Industries Association is granted, and that the time for filing original comments by all parties is extended from February 3, 1961 to May 3, 1961, and the time for filing reply comments to May 15, 1961.

Released: December 16, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11855; Filed, Dec. 21, 1960; 8:52 a.m.]

FEDERAL TRADE COMMISSION

[16 CFR Part 56]

[File No. 21-533]

TRADE PRACTICE RULES FOR PLEASURE BOAT INDUSTRY

Notice of Hearing and of Opportunity To Present Views, Suggestions or Objections

Opportunity is hereby extended by the Federal Trade Commission to any and all persons, firms, corporations, organizations, or other parties affected by or having an interest in the proposed trade practice rules for the Pleasure Boat Industry, to present to the Commission their views concerning said rules including such pertinent information, suggestions or objections as they may desire to submit, and to be heard in the premises. For this purpose they may obtain copies of the proposed rules upon request to the Commission. Such views, information, suggestions, or objections may be submitted by letter, memorandum, brief, or other communication, to be filed with the Commission not later than January 17, 1961. Opportunity to be heard orally will be afforded at the hearing beginning at 9:30 a.m., e.s.t., on Tuesday, January 17, 1961, in the South America Meeting Room, First Mezzanine, New York Coliseum, 20 West 60th Street, New York, N.Y., to any such persons, firms, corporations, organizations, or other parties who desire to appear and be heard. After due consideration of all matters presented in writing or orally the Commission will proceed to final action on the proposed rules.

The industry for which trade practice rules are sought to be established through this proceeding consists of persons, firms, corporations, and organizations engaged in the manufacture, sale or distribution of pleasure boats. Products of the industry consist of pleasure boats of all types (row boats, motor boats, sail boats, etc.), the length of which does not exceed 65 feet, and equipment therefor, such as, engines, propellers, rigging and tanks, which are installed on such boats when the boats are sold or offered for sale. Such equipment, when not installed on pleasure boats is not to be considered a product of the industry for which the following rules are proposed.

These proceedings were instituted pursuant to industry application and have for their purpose the establishment of a comprehensive set of trade practice rules directed to the maintenance of fair competitive conditions in the industry and to the elimination and prevention of such acts and practices as are deemed violative of statutes administered by the Federal Trade Commission. A general trade practice conference for the industry was held in Chicago, Illinois, at which a draft of suggested rules prepared by a member of the staff of the Commission's Division of Trade Practice Conferences with the cooperation of representatives of the industry, was considered and discussed. The announced hearing constitutes a further step in the proceedings.

Issued: December 20, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 60-11879; Filed, Dec. 21, 1960; 8:53 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 240, 249, 250, 270]

CERTAIN RULES AND FORMS WITH RESPECT TO REPORTING SECURITY HOLDINGS AND TRANSACTIONS

Notice of Proposed Rule Making

DECEMBER 12, 1960.

This release announces the proposed revision of certain rules and forms with respect to reporting security holdings and transactions, as follows:

1. Amendments to §§ 240.16a-1, 240.-16a-3, 240.16a-6 and 240.16a-7 under the Securities Exchange Act of 1934.

2. Adoption of a new rule § 250.72 under the Public Utility Holding Company Act of 1935.

3. Rescission of §§ 270.30f-2 and 270.-30f-3 and amending § 270.30f-1 under the Investment Company Act of 1940.

4. The revision and consolidation of seven forms namely, §§ 249.104, 249.105, 249.106 under the Securities Exchange Act of 1934; §§ 259.217a and 259.217b under the Public Utility Holding Company Act of 1935, and §§ 274.202 and 274.203 under the Investment Company Act of 1940, to be consolidated into two forms §§ 249.103 and 249.104.[1]

Section 16(a) of the Securities Exchange Act requires every person who is a direct or indirect beneficial owner of more than 10 percent of any class of equity securities (other than exempted securities) which is registered on a national securities exchange, or who is a director or officer of the issuer of such securities, to file with the Commission and the exchange a statement disclosing his ownership of the issuer's equity securities. This information must be kept current by filing subsequent statements for any month in which a change in his ownership occurs. Similar statements are required by section 17(a) of the Public Utility Holding Company Act of officers and directors of public utility holding companies and by section 30(f) of the Investment Company Act of officers, directors, principal security holders, members of advisory boards and investment advisers or affiliated persons of investment advisers, of registered closed-end investment companies.

At the present time, separate forms are prescribed for statements under each of the statutes referred to: Forms 4, 5 and 6 under the Securities Exchange Act of 1934; Forms U-17-1 and U-17-2 under the Public Utility Holding Company Act of 1935; and Forms N-30F-1 and N-30F-2 under the Investment Company Act of 1940. The Commission has under consideration the revision and consolidation of these seven forms into two forms, Forms 3 and 4, which would be used, respectively, for the filing of initial statements of beneficial ownership of securities and statements of changes in such beneficial ownership under all three of these statutes. Drafts of proposed Forms 3 and 4 are attached hereto.

In connection with the revision of the forms referred to above, the Commission also has under consideration the following changes, largely technical in nature, in the related rules under the three statutes. The Commission is deferring until a later date consideration of certain additional changes in the rules under section 16(a) of the Securities Exchange Act of 1934.

I. Sections 240.16a-1, 240.16a-3, 240.-16a-6, 240.16a-7 (Rules 16a-1, 16a-3, 16a-6 and 16a-7) under the Securities Exchange Act of 1934 would be amended to read as follows:

§ 240.16a-1 **Filing of statements.**

(a) Initial statements of beneficial ownership of equity securities required by section 16(a) of the Act shall be filed on Form 3. Statements of changes in such beneficial ownership required by that section shall be filed on Form 4. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) A person who is already filing statements pursuant to section 16(a) of the Act need not file an additional initial statement on Form 3 when an additional class of equity securities of the same issuer becomes listed and registered on

[1] Forms filed as part of original document.

a national securities exchange or when he assumes another or an additional relationship to the issuer, e.g., when an officer becomes a director.

(c) Any issuer which has equity securities listed on more than one national securities exchange may designate one such exchange as the only exchange with which reports, pursuant to section 16(a) of the Act need be filed. Such designation shall be made in writing and shall be filed with the Commission and with each national securities exchange on which any equity security of the issuer is listed. After the filing of such designation the securities of such issuer shall be exempted with respect to the filing of statements pursuant to section 16(a) of the Act with any exchange other than the designated exchange.

§ 240.16a–3 Certain persons and transactions subject to section 16(a).

The following provisions shall apply for the purpose of section 16(a) of the Act:

(a) For the purpose of determining who is required to file statements pursuant to section 16(a), the term "person" as defined in section 2(a)(9) of the Act includes any group or syndicate the members of which are acting in concert with respect to the acquisition, disposition, holding or voting of equity securities of an issuer.

(b) The acquisition or disposition of any transferable option, put, call, spread or straddle shall be deemed such a change in the beneficial ownership of the security to which such privilege relates as to require the filing of a statement reflecting the acquisition or disposition of such privilege. Nothing in this paragraph, however, shall exempt any person from filing the statements required upon the exercise of such option, put, call, spread or straddle.

§ 240.16a–6 Securities held by a corporation or business trust.

(a) No statements need be filed with respect to the indirect interest of any person in the ownership of, or transactions in, any security held by any corporation or business trust unless (1) such indirect interest is evidenced by securities which are convertible into the securities held by such corporation or trust, or (2) more than 10 percent of the voting securities of such corporation or trust is beneficially owned by such person directly or indirectly.

(b) For the purpose of this rule, a "business trust" means a trust which is principally engaged in a business other than the holding of securities of other issuers.

§ 240.16a–7 Statements filed under more than one act.

Any person required to file a statement under both section 16(a) of the Act and section 17(a) of the Public Utility Holding Company Act of 1935 or section 30(f) of the Investment Company Act of 1940 may file a single statement containing the required information which will be deemed to be filed under both Acts. To comply with the requirement of section 16(a), where applicable, that statements be filed with national securities exchanges, a duplicate original of such statement shall be filed with such exchanges or with the exchange designated pursuant to § 16a–1(c).

II. The following new rule would be adopted under the Public Utility Holding Company Act of 1935:

§ 250.72 Filing of statements pursuant to section 17(a).

(a) Initial statements of beneficial ownership of securities required by section 17(a) of the Act shall be filed on Form 3. Statements of changes in such beneficial ownership required by that section shall be filed on Form 4. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) The rules under section 16(a) of the Securities Exchange Act of 1934 shall apply to statements filed pursuant to paragraph (a) to the extent that such rules are pertinent.

III. Sections 270.30f–1, 270.30f–3 (Rules 30f–2 and 30f–3) under the Investment Company Act of 1940 would be rescinded and Rule 30f–1 would be amended to read as follows:

§ 270.30f–1 Filing of statements pursuant to section 30(f).

(a) Initial statements of beneficial ownership of outstanding securities required by section 30(f) of the Act shall be filed on Form 3. Statements of changes in such beneficial ownership required by that section shall be filed on Form 4. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) The rules under section 16(a) of the Securities Exchange Act of 1934 shall apply to statements filed pursuant to paragraph (a) of this section to the extent that such rules are pertinent.

(c) No statements need be filed pursuant to section 30(f) of the Act by an affiliated person of an investment adviser in his capacity as such if such person is solely an employee, other than an officer, of such investment adviser.

All interested persons are invited to submit their views and comments on the above proposals, in writing, to the Securities and Exchange Commission, Washington 25, D.C., on or before January 16, 1961. All communications received by the Commission in regard to such proposals will be considered available for public inspection.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

DECEMBER 9, 1960.

[F.R. Doc. 60–11837; Filed, Dec. 21, 1960; 8:49 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[No. 60–4]

OREGON

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 13, 1960.

The Department of Agriculture has filed an application, Serial Number Oregon 09944, for the withdrawal of the lands described below, subject to valid existing rights, from all forms of appropriation under the public land laws, including grazing leases or permits, mineral leases, and location of mining claims under the general mining laws, but excepting disposal of materials under the Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended.

The applicant desires the land for the United States Forest Service to protect the Dale Ranger Station Administrative Site.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 809 NE. Sixth Avenue, Portland 12, Oregon.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary of the Interior on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

WILLAMETTE MERIDIAN, OREGON

T. 6 S., R. 31 E.
Sec. 36: S½S½SW¼SW¼—approximately 10 acres.

ELTON M. HATTAN, *Acting State Supervisor.*

[F.R. Doc. 60–11833; Filed, Dec. 21, 1960; 8:48 a.m.]

Office of the Secretary

COLORADO RIVER INDIAN RESERVATION, ARIZ.

Ordinance Legalizing Introduction, Sale or Possession of Intoxicants

Pursuant to the act of August 15, 1953 (Public Law 277, 83d Congress, 1st Session), I certify that the following ordinance relating to the application of Federal Indian liquor laws on the Colorado River Indian Reservation, located in the State of Arizona was duly adopted September 20, 1960, by the Colorado River Tribes which have jurisdiction over the Area of Indian country included in the Ordinance:

Be it enacted by the Tribal Council of the Colorado River Indian Tribes pursuant to the authority contained in the Constitution of the Colorado River Indian Tribes of the Colorado River Reservation, Arizona and California, approved by the Secretary of the United States Department of Interior on August 13, 1937, and in accordance with the laws of the United States (18 USC 1161), the Colorado River Indian Tribes and other persons including corporations, partnerships, associations and natural persons are hereby authorized to introduce, sell and possess alcoholic beverages on that portion of the Colorado River Indian Reservation located in the State of Arizona: *Provided*, That introduction for sale and sales by persons other than the Colorado River Indian Tribes shall be first specifically licensed by the Colorado River Indian Tribal Council and such sales shall be subject to such taxes and license fees as may be from time to time imposed by said Council: *And, provided, further*, That such licenses shall be issued by said Council only after authorization by the members of the Colorado River Indian Tribes at an election held pursuant to the referendum provisions of the Tribal Constitution.

GEORGE W. ABBOTT, *Assistant Secretary of the Interior.*

DECEMBER 16, 1960.

[F.R. Doc. 60–11834; Filed, Dec. 21, 1960; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11934]

AEROVIAS NACIONALES DE COLOMBIA, S.A.

Notice of Hearing

In the matter of the application of Aerovias Nacionales de Colombia, S.A., for an amendment of its foreign air carrier permit authorizing it to engage in foreign air transportation with respect to persons, property, and mail between a point or points in Colombia, an intermediate point in Panama City, Panama (Tocumen), an intermediate point in Jamaica, B.W.I., and the co-terminal points Miami, Florida and New York, New York.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on January 16, 1961, at 10:00 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner John A. Cannon.

Dated at Washington, D.C., December 16, 1960.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F.R. Doc. 60–11861; Filed, Dec. 21, 1960; 8:53 a.m.]

[Docket 9934]

WHEELING-NEW YORK NONSTOP CASE

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument, limited to the issues raised by the petitions for reconsideration to Order E–16000, is assigned to be heard on January 11, 1961, at 10:00 a.m., e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before the Board.

Dated at Washington, D.C., December 19, 1960.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F.R. Doc. 60–11862; Filed, Dec. 21, 1960; 8:53 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

LAWRENCE H. ZAHN

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: No Deletions.
B. Additions: Ken Addison Mines,, American Foreign Power, Arvin Industries.

This statement is made as of December 3, 1960.

LAWRENCE H. ZAHN.

DECEMBER 7, 1960.

[F.R. Doc. 60–11828; Filed, Dec. 21, 1960; 8:50 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–123]

CURATORS OF THE UNIVERSITY OF MISSOURI; SCHOOL OF MINES AND METALLURGY

Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an order extending to June 30, 1961, the latest completion date specified in Construction Permit No. CPRR–44 for the construction of the 10-kilowatt pool-type nuclear reactor to be located on the University's campus in Rolla, Missouri.

Copies of the Commission's order and of the application of The Curators of

The University of Missouri are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 15th day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing & Regulations.

[F.R. Doc. 60-11806; Filed, Dec. 21, 1960; 8:45 a.m.]

INTERDEPARTMENTAL COMMITTEE ON TRADE AGREEMENTS

BICYCLES AND SPRING CLOTHESPINS

Notice of Intention To Invoke Article XXVIII of the General Agreement on Tariffs and Trade With Respect to United States Concessions

Pursuant to section 4 of the Trade Agreements Act, approved June 12, 1934, as amended (48 Stat. 945, ch. 474; 65 Stat. 73, ch. 141), and to paragraph 4 of Executive Order 10082 of October 5, 1949, as amended (3 CFR, 1949–1953 Comp., pp. 281, 355), notice is hereby given by the Interdepartmental Committee on Trade Agreements of intention of the United States to invoke Article XXVIII of the General Agreement on Tariffs and Trade with a view to the withdrawal or modification of item 371 in Part I of Schedule XX (1947) to the General Agreement on Tariffs and Trade (61 Stat. (pt. 5) A1213) and in item 412 in Part I of Schedule XX to Annecy Protocol to the General Agreement on Tariffs and Trade (64 Stat. (pt. 3) B322).

Such invocation of Article XXVIII is intended to result in rates equal to those provided for in Proclamation No. 3108 of August 18, 1955 and Proclamation No. 3211 of November 9, 1957, the validity of which has been brought into question by the decision of the United States Court of Customs and Patent Appeals in United States v. Schmidt Pritchard and Company (C.A.D. 750). There is annexed hereto a list of articles imported into the United States to be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions or continuance of existing customs or excise treatment in the negotiations for which notice is given above.

Pursuant to section 4 of the Trade Agreements Act, as amended, and paragraph 5 of Executive Order 10082 of October 5, 1949, as amended, information and views as to any aspect of the proposals announced in this notice may be submitted to the Committee for Reciprocity Information in accordance with the announcement[1] of this date issued by that Committee. Any matters appropriate to be considered in connection with the negotiations proposed above may be presented.

Public hearings in connection with the "peril point" investigations of the United States Tariff Commission in connection with the articles included in the annexed list, pursuant to section 3 of the Trade Agreements Extension Act of 1951, as amended, are the subject of an announcement[2] of this date issued by that Commission.

By direction of the Interdepartmental Committee on Trade Agreements this 21st day of December 1960.

JOHN A. BIRCH,
Chairman, Interdepartmental
Committee on Trade Agreements.

[F.R. Doc. 60-11935; Filed, Dec. 21, 1960; 11:49 a.m.]

COMMITTEE FOR RECIPROCITY INFORMATION

BICYCLES AND SPRING CLOTHESPINS

Notice of Intention To Invoke Article XXVIII of the General Agreement on Tariffs and Trade With Respect to United States Concessions

Submission of information to the Committee for Reciprocity Information.

Closing date for submission of written statements January 9, 1961.

The Interdepartmental Committee on Trade Agreements has issued on this day a notice[1] of intention to invoke Article XXVIII of the General Agreement on Tariffs and Trade with respect to the United States tariff concessions in item 371 in Part I of Schedule XX (1947) to the General Agreement on Tariffs and Trade and in item 412 in Part I of Schedule XX to the Annecy Protocol to the General Agreement on Tariffs and Trade. Annexed to the notice of the Interdepartmental Committee on Trade Agreements is a list of articles imported into the United States to be considered in connection with the proposed action.

Pursuant to paragraph 5 of Executive Order 10082 of October 5, 1949, as amended (3 CFR, 1949–1953 Comp., pp. 281, 355), the Committee for Reciprocity Information hereby gives notice that written statements in regard to the proposed action shall be submitted to the Committee for Reciprocity Information not later than January 9, 1961. Such communications shall be addressed to "Committee for Reciprocity Information, Tariff Commission Building, Washington 25, D.C." Fifteen copies of written statements, either typed, printed, or duplicated, shall be submitted, of which one copy shall be sworn to.

By direction of the Committee for Reciprocity Information this 21st day of December 1960.

JOSEPH E. TALBOT,
Chairman, Committee for
Reciprocity Information.

[F.R. Doc. 60-11936; Filed, Dec. 21, 1960; 11:49 a.m.]

TARIFF COMMISSION

[3-10]

BICYCLES AND SPRING CLOTHESPINS

Notice of Investigation and Date of Hearings

The Interdepartmental Committee on Trade Agreements has issued public notice[1] of the intention of this Government to invoke Article XXVIII of the General Agreement on Tariffs and Trade with a view to the withdrawal or modification of the tariff concessions granted by the United States in the General Agreement on Tariffs and Trade on Bicycles and Spring Clothespins. On December 21, 1960, the Commission received a request from the President to make a "peril point" investigation and report with respect to these products under section 3 of the Trade Agreements Extension Act of 1951, as amended. The products concerned are described as follows:

Tariff Act of 1930, paragraph and Description of Products
371 Bicycles with or without tires, having wheels in diameter (measured to the outer circumference of the tire):
Over 25 inches:
If weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 1⅝ inches.
Other.
Over 19 but not over 25 inches.
Not over 19 inches.
412 Spring clothespins.

Investigation instituted. Pursuant to said section 3 of the Trade Agreements Extension Act of 1951, the United States Tariff Commission has instituted an investigation with respect to the above-described products.

Purpose of investigation. The purpose of the investigation is to obtain the facts necessary to enable the Tariff Commission to formulate findings (known as "peril point" findings) for inclusion in a report to the President with respect to the above-described articles as to (1) the limit to which the modification of duties and other import restrictions, imposition of additional import restrictions, or specific continuance of existing customs or excise treatment may be extended in order to carry out the purpose of section 350 of the Tariff Act of 1930, as amended (Trade Agreements Act), without causing or threatening serious injury to the domestic industry producing like or directly competitive articles, and (2) if increases in duties or additional import restrictions are required to avoid serious injury to the domestic industry producing like or directly competitive articles, the minimum increases in duties or additional import restrictions required.

Public hearing. A public hearing in connection with this investigation will be held on Saturday, January 7, 1961, in the Hearing Room, Tariff Commission Building, 8th and E Streets NW., Washington, D.C. Testimony will be taken on bicycles at the morning session, beginning at 10:00 a.m.; testimony on spring clothespins will be taken at the afternoon session, beginning at 2:00 p.m. Interested parties desiring to appear and present oral testimony should notify the Secretary of the Commission in writing by January 4, 1961.

Written statements in lieu of appearance at hearing. Interested parties may present their information and views through the submission of written statements in lieu of appearances at the public hearing. Such statements must be under oath and will be given the same consideration as oral testimony presented at the hearing, and, except for information submitted and accepted in confidence, will be made available for inspection by interested parties. Twenty copies of written statements shall be submitted, only one of which need be sworn to. Such statements should be submitted as early as possible, but not later than Saturday, January 7, 1961.

No separate hearings before the Committee for Reciprocity Information. The Committee for Reciprocity Information has announced that no separate hearings with regard to the proposed action will be held by that Committee, but information and views may be submitted in writing to that Committee not later than January 6, 1961. Oral testimony and written statements of interested parties received by the Tariff Commission in connection with this investigation will be made available by the Tariff Commission to the Committee for Reciprocity Information.

Issued: December 22, 1960.

By direction of the Commission:

DONN N. BENT,
Secretary.

[F.R. Doc. 60-11937; Filed, Dec. 21, 1960; 11:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13065 etc.; FCC 60M-2104]

CONSOLIDATED BROADCASTING INDUSTRIES, INC., ET AL.

Order Continuing Hearing

In re applications of Consolidated Broadcasting Industries, Inc., Natick, Massachusetts, Docket No. 13065, File No. BP-11677; Charles A. Bell, George J. Helmer III, Wayne H. Lewis and Edward Bleier, d/b as Newton Broadcasting Company, Newton, Massachusetts, Docket No. 13067, File No. BP-12884; Transcript Press, Inc., Dedham, Massachusetts, Docket No. 13068, File No. BP-12901; for construction permits.

The Hearing Examiner having under consideration informal agreement of parties regarding continuance of hearing;

It is ordered, This 13th day of December 1960, that the hearing herein, now scheduled for December 21, 1960, is continued to January 13, 1961, at 10:00 a.m.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11856; Filed, Dec. 21, 1960; 8:52 a.m.]

[Docket No. 13778; FCC 60M-2106]

DONIPHAN TELEPHONE CO. ET AL.

Order Continuing Hearing

In the matter of Doniphan Telephone Company, Petitioner, v. American Telephone and Telegraph Company and Southwestern Bell Telephone Company, Respondents, Docket No. 13778.

Pursuant to agreements reached at the prehearing conference held December 13, 1960, the evidentiary hearing in the above-entitled proceeding is continued from Monday, January 23, 1961, to Monday, March 6, 1961.

It is so ordered, This the 13th day of December 1960.

Released: December 15, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11857; Filed, Dec. 21, 1960; 8:53 a.m.]

[Docket Nos. 13692-13693; FCC 60M-2125]

EMPIRE COMMUNICATIONS CO. AND TELEPHONE ANSWERING SERVICE

Order Continuing Hearing

In re applications of Leslie F. Smith, Jr., d/b as Empire Communications Company, Docket No. 13692, File Nos. 2233-C2-P-59, 2234-C1-P-59,. for construction permits to establish a new two-way communication service in the Domestic Public Land Mobile Radio Service at Salem, Oregon; Vincent W. Elliott, d/b as Telephone Answering Service, Docket No. 13693, File Nos. 2639-C2-P-59, 1530-C1-P/L-60, for construction permits to establish a new two-way communication service in the Domestic Public Land Mobile Radio Service at Salem, Oregon.

The Hearing Examiner having under consideration the desirability of establishing a new date for hearing;

It appearing that the date for commencement of hearing was originally set for December 13 by the Statement and Order Governing Hearing dated November 14, 1960, and that this original date was subsequently continued to December 20, 1960; and

It further appearing that Vincent W. Elliott, one of the parties, did not appear at the prehearing conference nor exchange exhibits in accordance with the Statement and Order Governing Hearing but has written to the Secretary of the Commission under date of December 6, 1960, indicating that he had not seen the Statement and Order Governing Hearing; and

It further appearing that these circumstances are likely to create ambiguities in the minds of the parties as to whether witnesses should appear on December 20 so that a change in this date is desirable in the interest of orderly procedure;

It is ordered, This 16th day of December 1960, on the Hearing Examiner's own motion that the hearing scheduled for December 20, 1960, is continued to January 5, 1961.

Released: December 19, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11858; Filed, Dec. 21, 1960; 8:53 a.m.]

[Docket Nos. 13830-13836; FCC 60M-2126]

MIDDLE TENNESSEE BROADCASTING CO. (WKRM) ET AL.

Order Scheduling Hearing

In re applications of the Middle Tennessee Broadcasting Company (WKRM), Columbia, Tennessee, Docket No. 13830, File No. BP-12393; WBAC, Inc. (WBAC), Cleveland, Tennessee, Docket No. 13831, File No. BP-12478; Florence Broadcasting Company, Incorporated (WJOI), Florence, Alabama, Docket No. 13832, File No. BP-12838; Cullman Broadcasting Company, Incorporated (WKUL), Cullman, Alabama, Docket No. 13833, File No. BP-13149; Radio Greeneville, Inc. (WGRV), Greeneville, Tennessee, Docket No. 13834, File No. BP-13167; WKGN, Inc. (WKGN), Knoxville, Tennessee, Docket No. 13835, File No. BP-13485; Franklin County Radio and Broadcasting Company, Inc. (WCDT), Winchester, Tennessee, Docket No. 13836, File No. BP-13677; for construction permits.

To formalize the agreements and rulings made on the record at a prehearing conference held on December 13, 1960, in the above-entitled proceeding concerning the future conduct of this proceeding: *It is ordered,* This 15th day of December 1960, that:

Exhibits shall be exchanged on February 16, 1961;

Further prehearing conference and notification of witnesses will be held March 9, 1961; and

Formal hearing will be held on March 28, 1961.

Released: December 19, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11859; Filed, Dec. 21, 1960; 8:53 a.m.]

[1] See F.R. Doc. 60-11936, *infra.*

[1] See F.R. Doc. 60-11935, *supra.*

[2] See F.R. Doc. 60-11937, *infra.*

[Docket No. 13711 etc.; FCC 60M-2120]

TRIANGLE PUBLICATIONS, INC. (WNHC) ET AL.

Order Re Procedural Dates

In re applications of Triangle Publications, Inc. (WNHC), Radio and Television Division, New Haven, Connecticut, Docket No. 13711, File No. BP-12107; et al., Docket Nos. 13713, 13715-13716, 13718-13719, 13722, 13724-13727, 13730, 13732, 13734; for construction permits.

The Hearing Examiner having under consideration (1) a "Joint Petition for Severance of Applications to New Group and Request for Extension of Hearing Date," filed in the above-entitled proceeding on December 1, 1960 by Independent Broadcasting Company, Inc. (WHAT), WRAW, Inc. (WRAW), WBRE Radio, Inc. (WBRE), and Mid-Atlantic Broadcasting Company (WMID); (2) a similar "Petition for Severance of Application and For Postponement of Hearing Date" filed by Community Broadcasting Corporation (WALL) on December 6, 1960; and (3) the proceedings during a prehearing conference in the above-entitled case held December 14, 1960;

It appearing that during the December 14 prehearing conference the Examiner ruled, all parties having agreed, that the applicants in this proceeding should be divided into two groups (A and B) as prescribed hereinafter, for hearing purposes;[1] that Group A is to comprise all applicants which now have pending for full Commission action petitions for reconsideration and grant without hearing and Group B all the remaining applicants which have no such pleadings pending; that the hearing on the Group A applications should be continued without date pending determination by the Commission of the outstanding petitions (in order to conserve hearing time and unnecessary double work by Commission personnel); that the Examiner's ruling on this matter during the prehearing conference should be included in a formal order for administrative convenience; that the parties filing the petitions referenced in items (1) and (2) above have made it clear on the record during the prehearing conference that the relief granted by this ruling constituted the entire relief they were requesting in their pleadings (the text of the petitions having been ambiguously phrased so as to convey the impression that these parties were also asking the full Commission to sever their applications from the present proceeding); consequently, that the Examiner's ruling renders moot items (1) and (2) above;

It appearing further, that a motion made on the record during the prehearing conference that the hearing on non-engineering matters with respect to the three Princeton, New Jersey, applicants be rescheduled to commence January 4, 1961 rather than January 3 was granted by the Examiner and that this ruling, too, ought to be formalized by order;

It is ordered, This 14th day of December 1960, that the applications be and hereby are divided into the following two groups for hearing purposes:

GROUP A

E. Anthony & Sons, Inc. (WNBH) (BP-12425)
Greylock Broadcasting Co. (WBRK) (BP-13056)
Community Broadcasting Corporation (WALL) (BP-12532)
WBRE Radio, Inc. (WBRE) (BP-12340)
WRAW, Inc. (WRAW) (BP-12251)
Independence Broadcasting Company, Inc. (WHAT) (BP-12177)
Mid-Atlantic Broadcasting Company (WMID) (BP-12922)

GROUP B

Triangle Publications, Inc. (WNHC) (BP-12107)
Norwalk Broadcasting Company, Incorporated (WNLK) (BP-1344)
WKAP, Inc. (WKAP) (BP-13473)
Rodio Radio (BP-13426)
Greater Princeton Broadcasting Company (BP-12412)
The New Jersey Broadcasting Company (BP-12829)
Nassau Broadcasting Company (BP-13064)

It is ordered further, That the hearing on the Group A applications is hereby continued indefinitely and that the hearing as to engineering and section 307(b) matters on the Group B applicants will commence, as previously scheduled, at 10:00 a.m., Monday, December 19, 1960, at the Commission's Offices, Washington, D.C.;

It is ordered further, That the hearing with respect to non-engineering, non-307(b) matters affecting applicants Greater Princeton New Jersey and Nassau (requesting broadcast facilities at Princeton, New Jersey) is hereby rescheduled to commence at 10:00 a.m., Wednesday, January 4, 1961, at the Commission's Offices, Washington, D.C., instead of on January 3;

It is ordered further, That the joint petition, item (1) above, and the petition by Community Broadcasting Corporation, item (2) are hereby dismissed as moot.

Released: December 16, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11860; Filed, Dec. 21, 1960; 8:53 a.m.]

[1] It may be noted that the applications which are the subject of this proceeding formerly comprised Group 3 of a larger proceeding involving twenty-six applicants. However, by memorandum opinion and order released December 8, 1960 (FCC 60-1415) the Group 1 and Group 2 applications were severed from the proceeding involving the Group 3 applications. Consequently, inasmuch as the present proceeding no longer has any connection with the proceeding on Groups 1 and 2 the designation "Group 3" to denote the applications involved herein may be dropped.

FEDERAL RESERVE SYSTEM

MONTANA SHARES, INC.

Notice of Request for Determination and Order for Hearing Thereon

Notice is hereby given that request has been made to the Board of Governors of the Federal Reserve System, pursuant to section 4(c)(6) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) and section 5(b) of the Board's Regulation Y (12 CFR 222.5(b)) by Montana Shares Incorporated, Havre, Montana, a bank holding company, for a determination by said Board that the activities of its subsidiaries, Montana Agencies and Liberty Corporation, are of the kind described in the aforementioned sections of the Act and the Regulation so as to make it unnecessary for the prohibitions of section 4 of the Act with respect to ownership of shares in nonbanking organizations to apply.

Inasmuch as section 4(c)(6) of the Act requires that any determination pursuant thereto be made by the Board after due notice and hearing and on the basis of the record made at such hearing,

It is hereby ordered, That pursuant to section 4(c)(6) of the Bank Holding Company Act of 1956 and in accordance with sections 5(b) and 7(a) of the Board's Regulation Y (12 CFR 222.5(b), 222.7(a)), a hearing with respect to this matter be held commencing on January 24, 1961, at 10:00 a.m., at the offices of the Federal Reserve Bank of Minneapolis, Minneapolis, Minnesota, before a duly selected hearing officer, such hearing to be conducted in accordance with the Rules of Practice for Formal Hearings of the Board of Governors of the Federal Reserve System (12 CFR Part 263). The right is reserved to the Board or such hearing officer to designate any other date or place for such hearing or any part thereof which may be determined to be necessary or appropriate for the convenience of the parties. The Board's rules of practice for formal hearings provide, in part, that "All such hearings shall be private and shall be attended only by respondents and their representatives or counsel, representatives of the Board, witnesses, and other persons having an official interest in the proceedings: *Provided, however*, That on the written request of one or more respondents or counsel for the Board, or on its own motion, the Board, when not prohibited by law, may permit other persons to attend or may order the hearing to be public."

Any person desiring to give testimony in this proceeding should file with the Secretary, Board of Governors of the Federal Reserve System, Washington 25, D.C., on or before January 16, 1961, a written request containing a statement of the nature of the petitioner's interest in the proceeding, and a summary of the matters concerning which said petitioner wishes to give testimony. Such request will be presented to the hearing officer, and persons submitting requests will be notified of the hearing officer's decision.

Dated at Washington, D.C., this 16th day of December 1960.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 60-11812; Filed, Dec. 21, 1960; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 426]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 19, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-63685. By order of December 14, 1960, the Transfer Board approved the transfer to A Quality Coal & Hauling Co., Inc., St. Louis, Mo., of Corrected Permit No. MC 36704, issued August 12, 1942, to Ely Rulens, doing business as A Quality Coal & Hauling, St. Louis, Mo., authorizing the transportation of coal, over irregular routes, from points in Illinois within 25 miles of East St. Louis, Ill., to St. Louis, Mo., and points in St. Louis County, Mo. Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis 1, Mo., for applicants.

No. MC-FC 63767. By order of December 14, 1960, The Transfer Board approved the transfer to Burl R. Place and C. LeRoy Place, a partnership, doing business as Place Brothers, Rutland, Iowa, of Certificate in No. MC 119895 Sub 2, issued November 25, 1960, to Intercity Express, Inc., Fort Dodge, Iowa, authorizing, the transportation of: Fertilizer, from Humboldt, Iowa, to points in Minnesota, with exceptions, and fertilizer, other than liquid from Humboldt, Iowa, to points in Minnesota. William A. Landau, P.O. Box 1634, Des Moines, Iowa.

No. MC-FC 63794. By order of December 15, 1960, The Transfer Board approved the transfer to Goodwin & Company, Inc., Allston, Mass., of the operating rights authorized to Harry C. Goodwin and Genio D. Arciprete, a partnership, doing business as Goodwin & Company, Allston, Mass., in Permits Nos. MC 48880 and MC 48880 Sub 6, issued July 13, 1955 and March 11, 1958, respectively, authorizing the transportation, over irregular routes, of iron, and steel products, from Boston and Cambridge, Mass., and points within 10 miles of Boston and Cambridge to points in Massachusetts, Rhode Island, those in a described portion of Connecticut and a described portion of New Hampshire, iron and steel products, from Boston and Cambridge, Mass., and points within 10 miles of Boston and Cambridge to points in a described portion of Connecticut. Steel floor arches and accessories, from points in Massachusetts, Rhode Island, Connecticut, and New Hampshire to Boston and Cambridge, Mass., iron and steel culverts, plain, or coated or paved on one or both sides, from Somerville, Mass., to points in Vermont, iron and steel articles, from Boston and Cambridge, Mass., and points within 10 miles of each to points in New Hampshire and points in a described portion of Vermont, and aluminum products, from the site of Joseph T. Ryerson & Son, Inc., plant or warehouse at Allston, Mass., to points in Massachusetts, Rhode Island, Connecticut, New Hampshire, and in a described portion of Vermont. George C. O'Brien, 33 Broad St., Boston 9, Mass., for applicants.

No. MC-FC 63798. By order of December 14, 1960, The Transfer Board approved the transfer to George Ford, Jr., doing business as Gravois Coal Company, St. Louis, Mo., of Certificate No. MC 36762, issued April 2, 1957, to George Ford, Jr., Lillie C. Ford and George Ford, Sr., a partnership, doing business as Gravois Coal Company, St. Louis, Mo., authorizing the transportation of: Coal, from points in Illinois within 50 miles of East St. Louis, Ill., to St. Louis, Mo. A. A. Marshall, 305 Buder Bldg., St. Louis 1, Mo., for applicants.

No. MC-FC 63805. By order of December 14, 1960, The Transfer Board approved the transfer to Edwin N. Madsen, R.F.D. #2, Exira, Iowa, of Certificate in No. MC 103925, issued April 8, 1960 to Wendell A. Larsen, Elk Horn, Iowa, authorizing the transportation of: General commodities over regular routes, excluding household goods, commodities in bulk, and other specified commodities from Omaha, Nebr., to Fiscus, Iowa; from Omaha to Council Bluffs, Iowa, and return to Fiscus, Iowa, to Omaha, Nebr., and return; feed, lumber and agricultural machinery from Omaha, Nebr., to Exira, Iowa; dry and liquid feeds, in containers, and wire fencing and fencing posts or fencing materials over irregular routes from Omaha, Nebr., to Elk Horn, Iowa, and points within 10 miles of Elk Horn; and livestock, between Fiscus, Iowa, and points within 15 miles of Fiscus, on the one hand, and, on the other, points in Nebraska except Omaha, St. Joseph and Kansas City, Mo., and Kansas City, Kans.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60-11848; Filed, Dec. 21, 1960; 8:52 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3924]

MISSISSIPPI POWER CO.

Notice of Proposed Acquisition of Common Stock of Business Development Corporation

DECEMBER 14, 1960.

Notice is hereby given that Mississippi Power Company ("Mississippi Power"), a public-utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 9(c)(3) thereof as applicable to the proposed transaction. All interested persons are referred to said application for a statement of the proposed transaction which is summarized below.

Mississippi Power proposes to subscribe for and acquire not in excess of 5,500 shares of the $10 par value Common Stock of Mississippi Business and Industrial Development Corporation ("Development Corporation") at the subscription price of $10 per share, or for a total consideration of not to exceed $55,000.

The application states that Development Corporation was incorporated in the State of Mississippi on May 6, 1960, under the provisions of "The Mississippi Business Development Corporation Act." This corporation is currently in the process of organization and of raising its capital and other working funds. The purposes of Development Corporation are set forth specifically in the State act. They may be briefly summarized as follows: to promote and assist, through loans, investments, or other business transactions, the location of new business and industry and the expansion or rehabilitation of existing industry in the State of Mississippi. Development Corporation has the authority to issue 1,000,000 shares of $10 par value Common Stock. The Common Stock has the right to one vote per share in the election of a Board of Directors. Initially, Development Corporation will issue approximately one million dollars ($1,000,000) of $10 par value Common Stock. Of this amount, approximately five hundred thousand dollars ($500,000) will be subscribed by utility companies, including telephone, gas, electric, and transportation companies. The other half million dollars in capital stock will be sold to business and industry and the general public. It is anticipated that electric and gas companies will purchase stock in the approximate amount of $0.50 per customer served.

The application also states that Mississippi Power will not exercise control over Development Corporation or its activities. The 5,500 shares of Common Stock proposed to be acquired by Mississippi Power will represent approximately ½ of 1 percent of the total authorized amount of such stock, although it will represent 5.5 percent of the amount of Common Stock proposed to be initially outstanding. At no time will Mississippi Power's investment exceed 5.5 percent of the outstanding amount of such stock. Development Corporation presently has 12 directors, which is the maximum permitted by its charter. The President of Mississippi Power has been elected a director of Development Corporation.

Development Corporation is empowered to borrow money from participating financial institutions ("Members") on a pro rata basis as needs for additional resources occur. When the corporation borrows money from Members, a Board of Members will assume an equal and

joint power with the directors in the affairs of the corporation. As long as any of such indebtedness is outstanding, the direction of the corporation shall, under the charter, be vested in an Executive Committee elected jointly by the Board of Directors and the Board of Members. (In the absence of such borrowings, the Board of Directors will have exclusive direction of the affairs of the corporation.) It is anticipated that Development Corporation will normally be directed by the seven member Executive Committee, composed of three members elected by the Board of Directors, three members elected by the Board of Members, and one member elected by the other six.

To facilitate investment in Development Corporation, section 7(1) of the State law under which it was organized exempts such subscription from the approval of any regulatory authority of the State of Mississippi; however, it is understood that the State Public Service Commission proposes to issue an order stating that any amounts so invested in Development Corporation will be made a part of the rate base of regulated companies which participate in the enterprise.

The application states that Mississippi Power is engaged, within the southeastern portion of the State of Mississippi, in the generation and purchase of electric energy and its distribution and sale at retail in 137 communities in 23 of the State's 82 counties, as well as in rural areas. As of the end of 1959, it served approximately 110,000 retail customers. The company believes that both it and its customers will benefit from its subscription to and acquisition of Common Stock of Development Corporation, as proposed, and that such transaction will be in the public interest.

The fees, commissions, and expenses to be paid or incurred, directly or indirectly, in connection with the proposed transaction, all of which are to be paid by Mississippi Power, are estimated by it not to exceed $1,000, of which it is estimated that the fee of counsel, Messrs. Winthrop, Stimson, Putnam & Roberts, will not exceed $500. The application states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 28, 1960, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11836; Filed, Dec. 21, 1960; 8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

UNITIZED INDUSTRIES, INC.

Request To Operate as a Small Business Defense Production Pool, and Request to Certain Companies to Participate in the Operations of Such Pool

Pursuant to section 11 of the Small Business Act (85-536), and section 1 of Executive Order 10493, dated October 15, 1953, the Administrator of the Small Business Administration, after consultation with the Chairman of the Federal Trade Commission and the Attorney General of the United States has found that the voluntary agreement and proposed joint program of the Unitized Industries, Inc. to operate as a small business defense production pool is in the public interest as contributing to the national defense, and will further the objectives of the Small Business Act.

Having also received the approval of the Attorney General of the United States as required by section 11 of the Small Business Act, the Administrator of Small Business Administration has approved the voluntary agreement and proposed joint program of Unitized Industries, Inc. and has requested it to act in accordance with this agreement and proposed program as a small business defense production pool.

In accordance with the requirements of section 11 of the Small Business Act, there is set forth herewith a copy of the aforesaid request.

REQUEST TO UNITIZED INDUSTRIES, INC.

P.O. Box 9064, Houston, Tex.

Following consultation with the Attorney General of the United States and the Chairman of the Federal Trade Commission, I find that the voluntary agreement and proposed joint program of Unitized Industries, Inc., to operate as a small business defense production pool is in the public interest as contributing to the national defense and will further the objectives of the Small Business Act.

Having also received the approval of the Attorney General of the United States as required by section 11 of the Small Business Act, I, in accordance with this section, approve your voluntary agreement and proposed joint program and request the Pool to act in accordance with said agreement and proposed joint program as a defense production pool.

The immunity from the prohibitions of the antitrust laws, or the Federal Trade Commission Act of the United States, as granted by Section 11 of the Small Business Act, will cease upon withdrawal by the Attorney General of the United States or myself of the above findings, approval or request.

The approval by the Attorney General of the United States is limited to activities engaged in between the pool and its members and does not extend to subcontracting with nonmembers. This should not be interpreted, however, as meaning that such subcontracting would necessarily be in violation of the antitrust laws.

Please inform me as to whether the pool will act in accordance with my request.

Sincerely yours,

PHILIP MCCALLUM, *Administrator.*

REQUEST TO MEMBERS OF UNITIZED INDUSTRIES, INC.

Following consultation with the Attorney General of the United States and the Chairman of the Federal Trade Commission, I find that the voluntary agreement and proposed joint program of Unitized Industries, Inc., to operate as a small business defense production pool is in the public interest as contributing to the national defense and will further the objectives of the Small Business Act.

Having also received the approval of the Attorney General of the United States as required by Section 11 of the Small Business Act, I, in accordance with this section, approve your voluntary agreement and proposed joint program and request the Pool to act in accordance with said agreement and proposed joint program as a defense production pool.

The immunity from the prohibitions of the antitrust laws, or the Federal Trade Commission Act of the United States, as granted by Section 11 of the Small Business Act, will cease upon withdrawal by the Attorney General of the United States or myself of the above findings, approval or request.

The approval by the Attorney General of the United States is limited to activities engaged in between the pool and its members and does not extend to subcontracting with nonmembers. This should not be interpreted, however, as meaning that such subcontracting would necessarily be in violation of the antitrust laws.

Please inform me as to whether you will become a member of and participate in the joint program of the pool.

Sincerely yours,

PHILIP MCCALLUM, *Administrator.*

The immunity from the prohibitions of the antitrust laws of the Federal Trade Commission Act as granted by section 11 of the Small Business Act, will cease upon withdrawal by the Attorney General of the United States or the Administrator of the Small Business Administration of the above findings, approval or request.

The above letter was sent to the following companies:

Bayou Industries, Inc., 1101 Holland, Galena Park, Texas.

Lidell Engineering Company, 100 Linden Place, Houston, Texas.

Port Houston Manufacturing Corp., 2405 Avenue K, Galena Park, Texas.

The Lidell Engineering Company decided not to participate in the pool's operations. The other two companies accepted the request to participate.

Dated: December 14, 1960.

PHILIP MCCALLUM, *Administrator.*

[F.R. Doc. 60-11838; Filed, Dec. 21, 1960; 8:50 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

	Page
PROCLAMATIONS:	
Oct. 3, 1905	12915
Dec. 7, 1907	12915
Feb. 10, 1909	12915
Dec. 10, 1910	12915
Oct. 18, 1912	12915
2935	12501
3355	13131
3382	12587
3383	13131
EXECUTIVE ORDERS:	
Feb. 26, 1852	13229
Oct. 20, 1916	12887
June 8, 1926	12887
3797-A	12412, 12599
6260	12281
9941	12429
10896	12281
10897	12429
10898	12429
10899	12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Letter, Jan. 17, 1953	12501
Letter, Nov. 16, 1960	12501

5 CFR

2	12285
6	12393, 12547, 12588, 12733, 12869, 13132
30	12733
325	13132

6 CFR

331	12994
421	12282, 12283

7 CFR

33	12430
51	12941
319	12809
601	13132
718	12588
722	12393, 12403, 12809, 12812, 12987
730	12503
811	13211
833	12650
845	12285
871	12547
903	12504
905—908	12504
911—913	12504
914	12405, 12650, 12812, 12941
916—919	12504
921	12504
923—925	12504
928—932	12504
933	12405-12407, 12504, 12987
935	12504
941—942	12504
943	12504, 12813
944	12504, 12987
946—948	12504
949	12504, 12941
952	12504
953	12407, 12430, 12651, 12948
954	12504
955	12949
956	12504
963	12504
965—968	12504
970	12994
971—972	12504
974—978	12504
980	12504
982	12504
985—988	12504
989	12813
991	12504
994—995	12504
998	12504
1000	12504
1002	12504
1004—1005	12504
1008—1009	12504
1010	12994
1011—1014	12504
1016	12504
1018	12504, 12588
1023—1024	12504
1031	12505, 12651, 12652
1032	12828
PROPOSED RULES:	
51	12298, 12299
718	13142
812	12712
901	12742
923	12558
936	12485
938	12752
949	12606
953	13141
961	13001
965	12466
989	12476
994	13239
1010	13001
1012	12558
1032	12712, 12752
1033	12606
1034	13142

8 CFR

211	12290

9 CFR

72	12548
74	12995, 13132
94	12831
PROPOSED RULES:	
83	12571

10 CFR

30	12730
70	12730
PROPOSED RULES:	
25	12753
115	12367

12 CFR

PROPOSED RULES:	
206	12479

13 CFR

PROPOSED RULES:	
107	12754

14 CFR

41	12908
49	12352
225	12589
243	12908
293	12908
298	12909
300	12430
302	12432, 12933
414	12589
506	12505
507	12352, 12433, 12549, 12829, 12995, 13212
514	12433, 12995
600	12285-12287, 12408, 12410, 12549-12551, 12589, 12676, 12734, 12933, 12934
601	12287, 12409, 12410, 12549-12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997
602	12288, 12552, 12678, 12831, 12997, 13213
608	12678, 12679, 12734, 12830, 12934, 12997, 13213
609	12353, 12735, 12935
610	13213
612	12410
1501	12434
PROPOSED RULES:	
41	12299
43	12524
221	12913
302	12477
507	12477, 12478, 12571, 12844
600	12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244
601	12328, 12329, 12478, 12479, 12524, 12525, 12572-12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952, 13244.
608	12479, 12846
626	12952

15 CFR

203	12590
204	13215
371	12734

16 CFR

13	12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133
PROPOSED RULES:	
56	13245

17 CFR

230	12912
PROPOSED RULES:	
240	13245
249	13245
250	13245
259	13245
270	13245
274	13245

18 CFR

104	12763
105	12961
154	12653
204	13161

19 CFR

1—57	13325
PROPOSED RULES:	
8	12681

21 CFR

1	12592
8	12288
120	12288, 12506
121	12412, 12595, 12731, 12831, 13008, 13217

joint power with the directors in the affairs of the corporation. As long as any of such indebtedness is outstanding, the direction of the corporation shall, under the charter, be vested in an Executive Committee elected jointly by the Board of Directors and the Board of Members. (In the absence of such borrowings, the Board of Directors will have exclusive direction of the affairs of the corporation.) It is anticipated that Development Corporation will normally be directed by the seven member Executive Committee, composed of three members elected by the Board of Directors, three members elected by the Board of Members, and one member elected by the other six.

To facilitate investment in Development Corporation, section 7(1) of the State law under which it was organized exempts such subscription from the approval of any regulatory authority of the State of Mississippi; however, it is understood that the State Public Service Commission proposes to issue an order stating that any amounts so invested in Development Corporation will be made a part of the rate base of regulated companies which participate in the enterprise.

The application states that Mississippi Power is engaged, within the southeastern portion of the State of Mississippi, in the generation and purchase of electric energy and its distribution and sale at retail in 137 communities in 23 of the State's 82 counties, as well as in rural areas. As of the end of 1959, it served approximately 110,000 retail customers. The company believes that both it and its customers will benefit from its subscription to and acquisition of Common Stock of Development Corporation, as proposed, and that such transaction will be in the public interest.

The fees, commissions, and expenses to be paid or incurred, directly or indirectly, in connection with the proposed transaction, all of which are to be paid by Mississippi Power, are estimated by it not to exceed $1,000, of which it is estimated that the fee of counsel, Messrs. Winthrop, Stimson, Putnam & Roberts, will not exceed $500. The application states that no State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 28, 1960, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11836; Filed, Dec. 21, 1960; 8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

UNITIZED INDUSTRIES, INC.

Request To Operate as a Small Business Defense Production Pool, and Request to Certain Companies to Participate in the Operations of Such Pool

Pursuant to section 11 of the Small Business Act (85-536), and section 1 of Executive Order 10493, dated October 15, 1953, the Administrator of the Small Business Administration, after consultation with the Chairman of the Federal Trade Commission and the Attorney General of the United States has found that the voluntary agreement and proposed joint program of the Unitized Industries, Inc. to operate as a small business defense production pool is in the public interest as contributing to the national defense, and will further the objectives of the Small Business Act.

Having also received the approval of the Attorney General of the United States as required by section 11 of the Small Business Act, the Administrator of Small Business Administration has approved the voluntary agreement and proposed joint program of Unitized Industries, Inc. and has requested it to act in accordance with this agreement and proposed program as a small business defense production pool.

In accordance with the requirements of section 11 of the Small Business Act, there is set forth herewith a copy of the aforesaid request.

REQUEST TO UNITIZED INDUSTRIES, INC.

P.O. Box 9064, Houston, Tex.

Following consultation with the Attorney General of the United States and the Chairman of the Federal Trade Commission, I find that the voluntary agreement and proposed joint program of Unitized Industries, Inc., to operate as a small business defense production pool is in the public interest as contributing to the national defense and will further the objectives of the Small Business Act.

Having also received the approval of the Attorney General of the United States as required by section 11 of the Small Business Act, I, in accordance with this section, approve your voluntary agreement and proposed joint program and request the Pool to act in accordance with said agreement and proposed joint program as a defense production pool.

The immunity from the prohibitions of the antitrust laws, or the Federal Trade Commission Act of the United States, as granted by Section 11 of the Small Business Act, will cease upon withdrawal by the Attorney General of the United States or myself of the above findings, approval or request.

The approval by the Attorney General of the United States is limited to activities engaged in between the pool and its members and does not extend to subcontracting with nonmembers. This should not be interpreted, however, as meaning that such subcontracting would necessarily be in violation of the antitrust laws.

Please inform me as to whether the pool will act in accordance with my request.

Sincerely yours,

PHILIP MCCALLUM, *Administrator.*

REQUEST TO MEMBERS OF UNITIZED INDUSTRIES, INC.

Following consultation with the Attorney General of the United States and the Chairman of the Federal Trade Commission, I find that the voluntary agreement and proposed joint program of Unitized Industries, Inc., to operate as a small business defense production pool is in the public interest as contributing to the national defense and will further the objectives of the Small Business Act.

Having also received the approval of the Attorney General of the United States as required by Section 11 of the Small Business Act, I, in accordance with this section, approve your voluntary agreement and proposed joint program and request the Pool to act in accordance with said agreement and proposed joint program as a defense production pool.

The immunity from the prohibitions of the antitrust laws, or the Federal Trade Commission Act of the United States, as granted by Section 11 of the Small Business Act, will cease upon withdrawal by the Attorney General of the United States or myself of the above findings, approval or request.

The approval by the Attorney General of the United States is limited to activities engaged in between the pool and its members and does not extend to subcontracting with nonmembers. This should not be interpreted, however, as meaning that such subcontracting would necessarily be in violation of the antitrust laws.

Please inform me as to whether you will become a member of and participate in the joint program of the pool.

Sincerely yours,

PHILIP MCCALLUM, *Administrator.*

The immunity from the prohibitions of the antitrust laws of the Federal Trade Commission Act as granted by section 11 of the Small Business Act, will cease upon withdrawal by the Attorney General of the United States or the Administrator of the Small Business Administration of the above findings, approval or request.

The above letter was sent to the following companies:

Bayou Industries, Inc., 1101 Holland, Galena Park, Texas.

Lidell Engineering Company, 100 Linden Place, Houston, Texas.

Port Houston Manufacturing Corp., 2405 Avenue K, Galena Park, Texas.

The Lidell Engineering Company decided not to participate in the pool's operations. The other two companies accepted the request to participate.

Dated: December 14, 1960.

PHILIP MCCALLUM, *Administrator.*

[F.R. Doc. 60-11838; Filed, Dec. 21, 1960; 8:50 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

PROCLAMATIONS: Page
Oct. 3, 1905 12915
Dec. 7, 1907 12915
Feb. 10, 1909 12915
Dec. 10, 1910 12915
Oct. 18, 1912 12915
2935 12501
3355 13131
3382 12587
3383 13131
EXECUTIVE ORDERS:
Feb. 26, 1852 13229
Oct. 20, 1916 12887
June 8, 1926 12887
3797-A 12412, 12599
6260 12281
9941 12429
10896 12281
10897 12429
10898 12429
10899 12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
Letter, Jan. 17, 1953 12501
Letter, Nov. 16, 1960 12501

5 CFR

2 12285
6 12393, 12547, 12588, 12733, 12869, 13132
30 12733
325 13132

6 CFR

331 12994
421 12282, 12283

7 CFR

33 12430
51 12941
319 12809
601 13132
718 12588
722 12393, 12403, 12809, 12812, 12987
730 12503
811 13211
833 12650
845 12285
871 12547
903 12504
905—908 12504
911—913 12504
914 12405, 12650, 12812, 12941
916—919 12504
921 12504
923—925 12504
928—932 12504
933 12405-12407, 12504, 12987
935 12504
941—942 12504
943 12504, 12813
944 12504, 12987
946—948 12504
949 12504, 12941
952 12504
953 12407, 12430, 12651, 12948
954 12504
955 12949
956 12504
963 12504
965—968 12504
970 12994
971—972 12504
974—978 12504
980 12504
982 12504
985—988 12504
989 12813
991 12504
994—995 12504
998 12504
1000 12504
1002 12504
1004—1005 12504
1008—1009 12504
1010 12994
1011—1014 12504
1016 12504
1018 12504, 12588
1023—1024 12504
1031 12505, 12651, 12652
1032 12828
PROPOSED RULES:
51 12298, 12299
718 13142
812 12712
901 12742
923 12558
936 12485
938 12752
949 12606
953 13141
961 13001
965 12466
989 12476
994 13239
1010 13001
1012 12558
1032 12712, 12752
1033 12606
1034 13142

8 CFR

211 12290

9 CFR

72 12548
74 12995, 13132
94 12831
PROPOSED RULES:
83 12571

10 CFR

30 12730
70 12730
PROPOSED RULES:
25 12753
115 12367

12 CFR

PROPOSED RULES:
206 12479

13 CFR

PROPOSED RULES:
107 12754

14 CFR

41 12908
49 12352
225 12589
243 12908
293 12908
298 12909
300 12430
302 12432, 12933
414 12589
506 12505
507 12352, 12433, 12549, 12829, 12995, 13212
514 12433, 12995
600 12285-12287, 12408, 12410, 12549-12551, 12589, 12676, 12734, 12933, 12934
601 12287, 12409, 12410, 12549-12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997
602 12288, 12552, 12678, 12831, 12997, 13213
608 12678, 12679, 12734, 12830, 12934, 12997, 13213
609 12353, 12735, 12935
610 13213
612 12410
1501 12434
PROPOSED RULES:
41 12299
43 12524
221 12913
302 12477
507 12477, 12478, 12571, 12844
600 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244
601 12328, 12329, 12478, 12479, 12524, 12525, 12572-12574, 12822, 12623, 12711, 12712, 12845, 12914, 12952, 13244.
608 12479, 12846
626 12952

15 CFR

203 12590
204 13215
371 12734

16 CFR

13 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133
PROPOSED RULES:
56 13245

17 CFR

230 12912
PROPOSED RULES:
240 13245
249 13245
250 13245
259 13245
270 13245
274 13245

18 CFR

104 12763
105 12961
154 12653
204 13161

19 CFR

1—57 13325
PROPOSED RULES:
8 12681

21 CFR

1 12592
8 12288
120 12288, 12506
121 12412, 12595, 12731, 12831, 13008, 13217

21 CFR—Continued

	Page
130	12592
146	12506, 12596, 12732
146c	12289
PROPOSED RULES:	
27	12372
120	12374, 12571
121	12299, 12477, 12839, 12840, 13008

22 CFR

3	13138
46	12289

25 CFR

171	12408
PROPOSED RULES:	
52	12518
176	12299
252	13239

26 (1939) CFR

16	12442
17	12443
29	12339
39	12339
40	12340
PROPOSED RULES:	
81	13001

26 (1954) CFR

1	12340, 12345, 12654
18	12340
19	12654
31	13031
41	13133
44	13133
48	13133
48	12669
49	13133
151	13135
170	12732
301	13137
PROPOSED RULES:	
1	12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140
20	13001
25	12707
31	12835
48	12362, 13001
170	12710
197	12362
250	12511

28 CFR

21	12290

29 CFR

2	13228
PROPOSED RULES:	
604	12950
606	12950
713	12950

31 CFR

54	12345

32 CFR

505	12869
570	12869
750	12870
753	12879
805	12291
888	12999
1001	12999
1002	13000
1003	13000

32 CFR—Continued

	Page
1004	13000
1006	13000
1007	13000
1008	12444
1009	12446
1010	12449, 13000
1012	12449
1013	12449, 13000
1016	12450, 12456
1030	12451
1052	12456, 13000
1053	12456
1054	12458, 13000
1055	12462
1057	12462, 13000
1059	12462
1619	12291

32A CFR

OIA (CH. X):	
OI Reg. 1	12999

33 CFR

202	12393
203	12740
207	12740

38 CFR

3	12463
21	13229

39 CFR

4	13218
27	12348
61	13218
62	13223
63	13224
168	12884

41 CFR

3–75	12502, 12596
5–1	12553, 13217
50–201	12553
50–202	12553
PROPOSED RULES:	
50–202	12363, 12522

42 CFR

1	12292

43 CFR

76	12597, 12949
181	12679
192	12352
257	12679
PROPOSED RULES:	
259	12606
PUBLIC LAND ORDERS:	
82	12412, 12599
261	13138
797	12413
1124	12885
1253	12481
1273	13138
1621	12599
1965	12599
2209	12412
2210	12413
2211	12413
2212	12597
2213	12597
2214	12598
2215	12599
2216	12599
2217	12885
2218	12885
2219	12886

43 CFR—Continued

	Page
PUBLIC LAND ORDERS—Continued	
2220	12887
2221	12887
2222	12887
2223	13138
2224	13229
2225	13229

45 CFR

145	13230
146	13230
601—620	12600
PROPOSED RULES:	
301	12840
306	12840
307	12841
308	12842
309	12843
311	12844

46 CFR

24	12554
30	12554
56	12554
70	12555
90	12555
110	12555
111	12555
136	12555
171	12555
308	12348

47 CFR

1	12358, 12600, 12602, 12603, 12605, 13230
3	13230
4	12680
5	12359
7	13230
8	13232, 13233
9	12359
10	12359
11	12359
12	12358
16	12359
19	12359
21	12359, 12603, 12605
PROPOSED RULES:	
1	12624, 12898
2	13244
3	12371, 12624, 12626, 12627, 12899
7	12951
8	12951
9	13244
10	13244
11	13244
16	13244
19	13244
21	13244

49 CFR

91	12506
122	12506
171	12888
PROPOSED RULES:	
71–78	12420
197	12420

50 CFR

32	12555, 12888
33	12507, 12556, 12557, 12888, 13138, 13139, 13234–13238
PROPOSED RULES:	
14	12741
41	13001

THE UNIVERSITY OF MICHIGAN
DEC 28 1960

THE UNIVERSITY OF MICHIGAN
DEC 28 1960
MAIN READING ROOM

Pages 13325–13617

PART II

FEDERAL REGISTER

VOLUME 25 NUMBER 248

Washington, Thursday, December 22, 1960

Customs Bureau Regulations

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

REPUBLICATION OF CHAPTER

Chapter I of Title 19, because of the numerous amendments, is reprinted in its entirety for convenient reference. All amendments which have been published in the FEDERAL REGISTER through November 15, 1960, and which are currently effective, have been incorporated in this reprint.

This reprint was prepared by the Office of the Federal Register with the concurrence of the Commissioner of Customs.

Part
1 Customs districts and ports, and stations.
2 Measurement of vessels.
3 Documentation of vessels.
4 Vessels in foreign and domestic trades.
5 Customs relations with contiguous foreign territory.
6 Air commerce regulations.
7 Customs relations with insular possessions and Guantanamo Bay Naval Station.
8 Liability for duties; entry of imported merchandise.
9 Importations by mail.
10 Articles conditionally free, subject to a reduced rate, etc.
11 Packing and stamping; marking; trademarks and trade names; copyrights.
12 Special classes of merchandise.
13 Examination and measurement of certain products.
14 Appraisement.
15 Relief from duties on merchandise lost, stolen, destroyed, injured, abandoned, or short-shipped.
16 Liquidation of duties.
17 Protests and reappraisements.
18 Transportation in bond and merchandise in transit.
19 Customs warehouses and control of merchandise therein.
20 Disposition of unclaimed and abandoned merchandise.
21 Cartage and lighterage.
22 Drawback.
23 Enforcement of customs and navigation laws.
24 Customs financial and accounting procedure.
25 Customs bonds.
26 Disclosure of information.
30 Foreign-trade zones.
31 Customhouse brokers.
32 Trade Fairs.
54 Certain importations temporarily free of duty.
56 Extensions of time pursuant to Proclamation of the President under section 318, Tariff Act of 1930.
57 Refund of import tax on manufactured sugar.

PART 1—CUSTOMS DISTRICTS, PORTS AND STATIONS

Sec.
1.1 Customs collection districts and ports.
1.2 Customs stations; requirements for transaction of customs business at places other than ports of entry.
1.3 Customs offices in foreign countries.
1.4 Assignment of districts to comptrollers of customs.
1.5 Customs agency districts.
1.6 Headquarters of appraisers of merchandise.
1.7 Customs laboratories.
1.8 Hours of business.
1.9 Customs seal.

AUTHORITY: §§ 1.1 to 1.9 issued under R.S. 161, 251, sec. 624, 46 Stat. 759; 5 U.S.C. 22, 19 U.S.C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 1.1 Customs collection districts and ports.

(a) A customs collection district is the geographical area under the customs jurisdiction of a collector of customs.

(b) The terms "port" and "port of entry," as used in the regulations in this part, refer to any place designated by Executive order of the President,[1] by order of the Secretary of the Treasury,[2] or by act of Congress, at which a customs officer is assigned with authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws.

(c) There are 46 customs collection districts of the United States.[3] The following is an alphabetical list of customs collection districts with their numbers and with a list of the ports in each district. The first-named port in each district (in capital letters) is the headquarters port, and the asterisk preceding the name of a port indicates that marine documents may be issued at such port.[4] The districts and ports were created by the President's message of March 3, 1913, by which he communicated to Congress his reorganization of the Customs Service pursuant to the act of August 24, 1912 (Secs. 1, 2, 3, 44 Stat. 1381, as amended, 1382; 5 U. S. C. 281–281b), except that certain changes in such organization have been made by subsequent orders of the President or the Secretary of the Treasury. In the following list the orders issued since March 3, 1913, that affect existing districts or ports are cited in parentheses following the name of the district or port affected.

[1] "The President is authorized from time to time, as the exigencies of the service may require, to rearrange, by consolidation or otherwise, the several customs-collection districts and to discontinue ports of entry by abolishing the same or establishing others in their stead: *Provided*, That the whole number of customs-collection districts, ports of entry, or either of them, shall at no time be made to exceed those established and authorized as on August 1, 1914, except as the same may thereafter be provided by law • • •." (Sec. 1, 38 Stat. 623, as amended; 19 U. S. C. 2)

By virtue of the authority vested in him by section 1 of the act of August 8, 1950 (64 Stat. 419), the President, by Executive Order 10289, dated September 17, 1951 (3 CFR, 1951 Supp., p. 469), delegated to the Secretary of the Treasury the authority theretofore vested in the President by section 1 of the act of August 1, 1914, as amended (19 U. S. C. 2), (1) to rearrange, by consolidation or otherwise, the several customs-collection districts, (2) to discontinue ports of entry by abolishing the same or establishing others in their stead, and (3) to change from time to time the location of the headquarters in any customs-collection district as the needs of the service may require.

[2] This does not include the customs collection district of the Virgin Islands which, although under the jurisdiction of the Secretary of the Treasury, has its own customs laws. (See sec. 36, 40 Stat. 1816; 48 U. S. C. 1406)

[3] In addition to the customs collection districts listed which are within the customs territory of the United States, there is the customs collection district of the Virgin Islands (No. 51), the headquarters port of which is Charlotte Amalie, St. Thomas, and the subports of which are Cruz Bay, Coral Bay, Christiansted, and Frederiksted.

[4] Marine documents may be issued at Charlotte Amalie, St. Thomas, headquarters port of the customs collection district of the Virgin Islands (No. 51); at Washington, N. C., a customs station in the customs collection district of North Carolina (No. 16); and at Biloxi, Miss., a customs station in the customs collection district of Mobile (No. 10). Marine documents may also be issued at The New York (No. 10). marine documents may continue to be issued at that port.

District No.	Name of district	Area of district	Ports of entry
31	Alaska	The State of Alaska	*JUNEAU. Cordova (E. O. 10042, Mar. 10, 1949; 14 F. R. 1145). Fairbanks (E. O. 8024, Mar. 9, 1939; 4 F. R. 1191). *Ketchikan (including territory described in T. D. 49726). Pelican (E. O. 10238, Apr. 27, 1951; 16 F. R. 3877). Petersburg (E. O. 4132, Jan. 24, 1925). Sand Point (T. D. 53514). *Sitka (E. O. 4517, Oct. 2, 1926). Skagway. *Wrangell. Kodiak, Alaska (T.D. 55306). NOGALES (E. O. 9932, Sept. 26, 1945; 8 F. R. 13058). Douglas (E. O. 9932, Sept. 26, 1945; 8 F. R. 13058). Naco. San Luis (E. O. 9932, Apr. 9, 1960).
9	Buffalo	The counties of Niagara, Erie, Cattaraugus, and Chautauqua in the State of New York.	Seneca (E. O. 8608, Apr. 22, 1941). Lakeville (E. O. 8604, Dec. 31, 1940; 6 F. R. 13) (E. O. 10066, Dec. 5, 1948; 14 F. R. 7287). *BUFFALO, New York (including territory described in T. D. 54967). Niagara Falls (including Lewiston) (E. O. 8630, Apr. 7, 1939).
20	Chicago (E. O. 8236, Aug. 24, 1936; 1 F. R. 1721) (E. O. 9387, Feb. 1, 1943; 8 F. R. 1679) (E. O. 9931, Mar. 15, 1945; 10 F. R. 2961).	The State of Illinois lying north of 39° north latitude, that part of the State of Indiana north of 41° north latitude, the State of Iowa and the State of Nebraska.	*CHICAGO, ILL. (including territory described in T. D. 54137). *Peoria, Ill. *Omaha, Nebr. (including territory described in E. O. 9387, Feb. 1, 1943; 8 F. R. 1679).
47	Colorado (E. O. 9931, Mar. 15, 1945, 10 F. R. 2961).	The State of Colorado and the State of Wyoming	DENVER.
6	Connecticut	The State of Connecticut	*BRIDGEPORT *Hartford. *New Haven. *New London (including municipality of Groton) (E. O. 10289, Apr. 2, 1951; 16 F. R. 3027).
34	Dakota	The State of North and South Dakota and the county of Kitson in the State of Minnesota.	*PEMBINA, N. DAK. (E. O. 8635, Apr. 18, 1939). Ambrose, N. Dak. Antler, N. Dak. Carbury, N. Dak. (E. O. 5127, June 17, 1929). Crosby, N. Dak. Dunseith, N. Dak. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Fortuna, N. Dak. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Hannah, N. Dak. Hansboro, N. Dak. Maida, N. Dak. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Neche, N. Dak. Noonan, N. Dak. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Northgate, N. Dak. Noyes, Minn. (E. O. 8635, Apr. 18, 1939) Portal, N. Dak. Sarles, N. Dak. Sherwood, N. Dak. St. John, N. Dak. (E. O. 8635, Apr. 18, 1939). Walhalla, N. Dak. Westhope, N. Dak. (E. O. 4226, June 1, 1925). *DULUTH, MINN., and SUPERIOR, WIS. (including West Superior).
36	Duluth and Superior	The State of Minnesota, except the county of Kitson, lying north of 46° north latitude, the State of Wisconsin lying north of said latitude, and the island of Isle Royale in the State of Michigan.	Ashland, Wis. Baudette, Minn. (E. O. 4422, Apr. 19, 1926). International Falls-Ranier, Minn. (T. D. 53788). Pigeon River Bridge, Minn. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Pine Creek, Minn. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Roseau, Minn. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Warroad, Minn.
24	El Paso (E. O. 2702, Sept. 7, 1917)	That part of the State of Texas lying west of the Pecos River.	EL PASO, TEX. (T. D. 54166, T. D. 54407). Fabens, Tex. (E. O. 4800, May 1, 1928). Presidio, Tex. (E. O. 2702, Sept. 7, 1917).

District No.	Name of district	Area of district	Ports of entry
18	Florida	The State of Florida, the north bank of the St. Marys River, and the city of St. Marys, Ga.	*TAMPA (including Port Tampa and Port Tampa City; T. D. 53514). *Apalachicola. Bocagrande. Carrabelle (E. O. 7508, Dec. 11, 1936; 1 F. R. 2149). *Fernandina Beach (including St. Marys, Ga.) (T. D. 53083, June 27, 1962; 17 F. R. 5962). *Jacksonville (including territory described in T. D. 54476). *Key West (including territory described in T. D. 53994). *Miami (including territory described in T. D. 53514). Panama City (E. O. 3919, Nov. 1, 1923). *Pensacola. Port Everglades (E. O. 5770, Dec. 31, 1931) (including territory described in T. D. 53514). Port St. Joe (E. O. 7818, Feb. 17, 1938; 3 F. R. 503). *St. Augustine. St. Petersburg (E. O. 7928, July 14, 1938; 3 F. R. 1749 including territory described in T. D. 53994). *West Palm Beach (E. O. 4324, Oct. 15, 1925) (T. D. 52408, Feb. 13, 1950; 15 F. R. 861) (including territory described in T. D. 53514).
22	Galveston (E. O. 2702, Sept. 7, 1917) (E. O. 8268, Nov. 22, 1939; 4 F. R. 4691).	That part of the State of Texas lying east of 97° west longitude, except territory, embraced in district 21 (Sabine). Also those portions of the counties of Dallas, Aransas, and Refugio, lying west of 97° west longitude and the counties of Tarrant, San Patricio, and Nueces, State of Texas.	*GALVESTON (including Port Bolivar and Texas City). *Corpus Christi (E. O. 8268, Nov. 22, 1939; 4 F. R. 4691). Dallas. Freeport (E. O. 7632, June 15, 1937; 2 F. R. 1042). *Houston (including territory described in T. D. 54409).
17	Georgia	The State of Georgia, except the north shore of the St. Marys River and the city of St. Marys, Ga.	*SAVANNAH (including territory described in E. O. 8367, Mar. 5, 1940; 5 F. R. 985). Atlanta. *Brunswick.
23	Hawaii	The State of Hawaii	*HONOLULU (T. D. 53514). Hilo. Kahului.
40	Indiana	The State of Indiana lying south of 41° north latitude	Port Allen (E. O. 4385, Feb. 25, 1926). INDIANAPOLIS. *Evansville.
42	Kentucky	The State of Kentucky	Lawrenceburg (including Greendale) (E. O. 6634, Mar. 7, 1934). *LOUISVILLE.
26	Laredo (E. O. 8268, Nov. 22, 1939; 4 F. R. 4691).	That part of the State of Texas lying west of 97° west longitude and east of the Pecos River except the territory included in district 22 (Galveston).	LAREDO. *Brownsville, Texas (including territory described in T.D. 54900) Del Rio. Eagle Pass. Hidalgo. Rio Grande City. Roma. San Antonio
27	Los Angeles (E. O. 3220, Feb. 2, 1920) (E. O. 3779, Jan. 26, 1923) (E. O. 4543, Nov. 13, 1926).	That part of the State of California lying south of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, except the counties of San Diego and Imperial.	*LOS ANGELES (including San Pedro, Wilmington, and Long Beach and the territory described in T. D. 53033) (E. O. 4343, Nov. 16, 1926) (T. D. 53033, June 27, 1942; 17 F. R. 5962); (also, including ter.itory described in T. D. 54524). Port San Luis.
1	Maine and New Hampshire (E. O. 4709, Aug. 19, 1927).	The State of Maine and the State of New Hampshire except the county of Coos.	*PORTLAND, MAINE (including territory described in E. O. 9297, Feb. 1, 1943; 8 F. R. 1479). *Bangor, Maine (including Brewer, Maine) (E. O. 9297, Feb. 1, 1943; 8 F. R. 1479). *Bar Harbor, Maine (including Mt. Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, and Winter Harbor) (E. O. 4872, Jan 27, 1927). *Bath, Maine (including Booth Bay and Wiscasset) (E. O. 4356, Dec. 15, 1925). *Belfast, Maine (including Searsport) (E. O. 6754, June 28, 1934). Bridgewater, Maine (E. O. 8079, Apr. 4, 1939; 4 F. R. 1475). *Calais, Maine (including townships of Calais, Robbinston, and Baring (E. O. 6284, Sept. 13, 1933). *Eastport, Maine (including Lubec and Cutler) (E. O. 4296, Aug. 26, 1925). Fort Fairfield, Maine. Fort Kent, Maine. Houlton, Maine (E. O. 4155, Feb. 14, 1925). Jackman, Maine (including the townships of Jackman, Sandy Bay, Bald Mountain, Holeb, Attean, Lowelltown, Dennistown, and Moose River) (T. D. 54683). *Jonesport, Maine (including the towns (townships) of Beals, Jonesboro, Roque Bluffs, and Machiasport) (E. O. 4296, Aug. 26, 1925, E. O. 8695, Feb. 25, 1941). Limestone, Maine. Madawaska, Maine. *Portsmouth, N. H. (including Kittery, Maine). *Rockland, Maine. Van Buren, Maine. Vanceboro, Maine.
13	Maryland (E. O. 3234, Feb. 27, 1920).	The State of Maryland and the District of Columbia	*BALTIMORE, MD. (including territory described in T.D. 55020). *Annapolis, Md. *Cambridge, Md. (E. O. 3888, Aug. 13, 1923). *Crisfield, Md. *Washington, D. C.
4	Massachusetts	The State of Massachusetts	*BOSTON (including Cambridge, Chelsea, Medford, Everett, Quincy, Somerville, Braintree, Weymouth and Hingham, and waters adjacent thereto) (E. O. 3847, May 16, 1923) (E. O. 5096, Apr. 19 1929). *Fall River (including territory described in T. D. 54476). *Gloucester. Lawrence (including the township of North Andover, County of Essex) (E. O. 6444, Sept. 16, 1930) (E. O. 10082, Dec. 3, 1949; 14 F. R. 7287). *New Bedford. *Plymouth. *Salem (including Beverly, Marblehead, Lynn, and Peabody) (E. O. 9207, July 29, 1942). Springfield. Worcester.

District No.	Name of district	Area of district	Ports of entry
38	Michigan	The State of Michigan except the island of Isle Royale and the city of Menominee, Mich.	*DETROIT (including territory described in E. O. 9073, Feb. 25, 1942; 7 F. R. 1566; and T. D. 53726). *Muskegon (E. O. 8315, Dec. 22, 1939; 4 F. R. 4941). *Port Huron (including territory described in T. D. 53576). Saginaw-Bay City (T. D. 53726). *Sault Ste. Marie. South Haven (E. O. 7632, June 15, 1937; 2 F. R. 1042).
35	Minnesota	The State of Minnesota lying south of 46° north latitude	*MINNEAPOLIS (E. O. 4296, Aug. 26 1925), including the territory described in T. D. 53033 (T. D. 53033, June 27, 1962; 17 F. R. 5962). St. Paul (E. O. 4296, Aug. 26, 1925) (E. O. 7564, Feb. 27, 1937; 2 F. R. 462).
19	Mobile	The State of Alabama and that part of the State of Mississippi lying south of 31° north latitude.	*MOBILE, ALA. (including that portion of Blakeley Island lying south of the Cochrane Bridge and west of the Cochrane Bridge Causeway; Pinto Island; and the area comprising the Brokley Air Field) (E. O. 10042, Mar. 10, 1949; 14 F. R. 1155). Birmingham, Ala. *Gulfport, Miss. Pascagoula, Miss.
28	Montana and Idaho	The States of Montana and Idaho	*GREAT FALLS, MONT. Del Bonita, Mont. (E. O. 7947, Aug. 9, 1938; 3 F. R. 1955). Eastport, Idaho. Morgan, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Opheim, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Piegan, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Porthill, Idaho. Raymond, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Roosville, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Scobey, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Sweetgrass, Mont. Turner, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Whitetail, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042). Whitlash, Mont. (E. O. 7632, June 15, 1937; 2 F. R. 1042).
30	New Mexico (T. D. 54166)	The State of New Mexico	Columbus, N. Mex.
20	New Orleans	The State of Louisiana except the parishes of Cameron and Calcasieu, and that part of the State of Mississippi lying north of 31° north latitude.	Morgan City, La. (including territory described in T. D. 54682). *NEW ORLEANS, LA. (including territory described in E. O. 5120, May 20, 1929). *Baton Rouge, La. (E. O. 5903, Jan. 13, 1933) (including territory described in T. D. 53514 and T. D. 54381).
10	New York	That part of the State of New York not expressly included in the districts of Buffalo, Rochester, and St. Lawrence, and also the counties of Sussex, Passaic, Hudson, Bergen, Essex, Union, Middlesex, and Monmouth in the State of New Jersey.	*NEW YORK, N. Y. (including territory described in E. O. 4305, Apr. 15, 1926) (T. D. 53786). *Albany, N. Y. *Perth Amboy, N. J.
15	North Carolina	The State of North Carolina	*WILMINGTON (including townships of Northwest, Wilmington, and Cape Fear and that portion of the Township of Masonboro, County of New Hanover, lying west of 77°55', west longitude) (E. O. 7761, Dec. 3, 1937; 2 F. R. 2579) (E. O. 10042, Mar. 10, 1949; 14 F. R. 1155). *Beaufort. Durham (E. O. 4876, May 3, 1928) (E. O. 9433, Apr. 6, 1944. 9 F. R. 3761). *Elizabeth City. Elkin (E. O. 10042, Mar. 10, 1949; 14 F. R. 1155). Morehead City (E. O. 7462, Oct. 30, 1936; 1 F. R. 1708). Reidsville (E. O. 5159, July 18 1930) (E. O. 9433, Apr. 1944, 9 R. F. 3761). Winston-Salem (E. O. 2366, Apr. 24, 1916).
41	Ohio	The State of Ohio, and the county of Erie in the State of Pennsylvania.	*CLEVELAND, OHIO (including territory described in T. D. 54734). Akron, Ohio (E. O. 4597, Feb. 28, 1927). Ashtabula, Ohio. *Cincinnati, Ohio. Columbus, Ohio. Conneaut, Ohio. Dayton, Ohio. *Erie, Pa. *Sandusky, Ohio. *Toledo, Ohio (including territory described in T. D. 54137).
29	Oregon (E. O. 2307, Feb. 7, 1916)	The State of Oregon and that part of the State of Washington which embraces the waters of the Columbia River and the north bank of the said river west of 119° west longitude.	*PORTLAND, OREG. (including territory described in E. O. 3280, Jan. 24, 1921, E. O. 5193, Sept. 14, 1929, and the territory described in T. D. 53033) (T. D. 53033, June 27, 1962; 17 F. R. 5962). *Astoria, Oreg. (E. O. 5193, Sept. 14, 1929). Longview, Wash. (E. O. 4956, Aug. 31, 1928) (including territory described in E. O. 5193, Sept. 14, 1929, and T. D. 53514). *Coos Bay (E. O. 4094, Oct. 28, 1924) (E. O. 5193, Sept. 14. 1929) (E. O. 5445, Sept. 16, 1930) (E. O. 9533, Mar. 23, 1945, 10 F. R. 3173). Newport, Oreg.
11	Philadelphia	That part of the State of Pennsylvania lying east of 79° west longitude, the State of Delaware, and that part of the State of New Jersey not included in district 10 (New York).	*PHILADELPHIA, PA. (including Camden and Gloucester City, N. J., and territory described in E. O. 7840, Mar. 18, 1938; 3 F. R. 667 T. D. 53736 and T. D. 54302). Chester, Pa. (E. O. 7706, Sept. 11, 1937; 2 F. R. 1848). *Wilmington, Del. (E. O. 4496, Aug. 12, 1926) (including territory described in T. D. 54202).
12	Pittsburgh	The State of West Virginia and that part of the State of Pennsylvania lying west of 79° west longitude, except the county of Erie.	*PITTSBURGH, PA.
49	Puerto Rico	The Territory of Puerto Rico	*SAN JUAN (including territory described in T. D. 54017). Aguadilla. Fajardo. Guanica. Humacao Jobos (E.O. 9162, May 13, 1942). *Mayaguez (T. D. 52975, Apr. 15, 1952; 17 F. R. 3580). *Ponce (T. D. 52975, Apr. 15, 1952; 17 F. R. 3580) (including territory described in T. D. 54017).

1959

District No.	Name of district	Area of district	Ports of entry
5	Rhode Island	The State of Rhode Island	•PROVIDENCE.
6	Rochester (E.O. 8444, Oct. 1, 1940).	The counties of Oswego, Oneida, Onondaga, Cayuga, Seneca, Wayne, Broome, Tompkins, Chenango, Madison, Cortland, Hamilton, Schuyler, Chemung, Herkimer, Monroe, Ontario, Livingston, Yates, Steuben, Orleans, Genesee, Wyoming, Allegany, and Tioga in the State of New York.	•NEWPORT. •ROCHESTER. •Oswego. Sodus Point. Syracuse. Utica.
21	Sabine (E.O. 5366, July 9, 1930)	That part of the State of Texas from Sabine Pass north along State line to north boundary line of Shelby County; west to Neches River; down western shore of said river to north boundary of Jefferson County; westerly along said boundary to east boundary of Liberty County; south to Gulf; also the parishes of Cameron and Calcasieu in the State of Louisiana.	•PORT ARTHUR, TEX. (including territory described in T. D. 54137). •Beaumont, Tex. (E. O. 4502, Sept. 1, 1926) (including territory described in T. D. 54137). •Lake Charles, La. (E. O. 6475, Nov. 3, 1930) (including territory described in T. D. 54137).
25	San Diego (E. O. 4779, Jan. 26, 1928) (E. O. 850, May 22, 1909).	The counties of San Diego and Imperial in the State of California.	Orange, Tex. (E. O. 7486, Nov. 14, 1936; 1 F. R. 1867) (including territory described in T. D. 54137). Sabine, Tex. (including territory described in T. D. 54137). •SAN DIEGO (T. D. 54741). Andrade (E. O. 4780, Dec. 13, 1927).
26	San Francisco (E. O. 4448, Nov. 13, 1926) (E. O. 5324, Jan. 22, 1930; 5 F. R. 271).	That part of the State of California lying north of the northern boundaries of the counties of San Luis Obispo, Kern, and San Bernardino, and the States of Utah and Nevada.	Calexico. Tecate (E. O. 4780, Dec. 13, 1927). •SAN FRANCISCO-OAKLAND, CALIF. (including all points on San Francisco Bay, all points on San Pablo Bay, Carquinez Strait, and Suisun Bay, and all points on the San Joaquin River in Contra Costa County, State of California, as far as Antioch Bridge) (E. O. 10042, Mar. 10, 1949; 14 F. R. 1155 and T. D. 53738). •Eureka, Calif. Note: Collector of customs located at San Francisco.
16	South Carolina	The State of South Carolina	•CHARLESTON (including territory described in T. D. 53994). •GEORGETOWN. •GEORGETOWN.
7	St. Lawrence	The counties of Clinton, Essex, Franklin, St. Lawrence, Jefferson, and Lewis in the State of New York.	•OGDENSBURG. Alexandria Bay (including the township of Alexandria, County of Jefferson, and that portion of the township of Orleans, County of Jefferson, lying north of 44°18' north latitude) (E. O. 10042, Mar. 10, 1949; 14 F. R. 1155). •Cape Vincent. Champlain. Chateaugay. Clayton. Fort Covington. Malone. Mooers. Morristown. Massena (T.D. 54834). •Rouses Point. Waddington.
45	St. Louis (E. O. 3878, June 27, 1923)	The States of Missouri, Kansas, and Oklahoma, and that part of the State of Illinois lying south of 39° north latitude.	•ST. LOUIS, MO. (including East St. Louis, Ill.). •Kansas City, Mo. (including Kansas City, Kans., and North Kansas City, Mo.) (E. O. 8528, Aug. 27, 1940). St. Joseph, Mo. •MEMPHIS, TENN.
43	Tennessee (E. O. 3878, June 27, 1923)	The States of Tennessee and Arkansas	•Chattanooga, Tenn. •Nashville, Tenn.
2	Vermont (E. O. 4709, Aug. 19, 1927)	The State of Vermont and the county of Coos in the State of New Hampshire.	ST. ALBANS, VT. (including township of St. Albans and Swanton) (E. O. 3925, Nov. 13, 1923) (E.O. 7682, June 14, 1937; 2 F. R. 1042). Beebe Falls, Vt. •Burlington, Vt. (including the town of South Burlington) (T. D. 54077). Derby Line, Vt. Highgate Springs, Vt. (including township of Highgate) (E. O. 7682, June 14, 1937; 2 F. R. 1042). Island Pond, Vt. Newport, Vt. North Troy, Vt. Richford, Vt.
14	Virginia (E. O. 3224, Feb. 27, 1920)	The State of Virginia	•NORFOLK and •NEWPORT NEWS (including the waters and shores of Hampton Roads). •Alexandria. •Cape Charles City. Petersburg. •Reedville. Richmond.
20	Washington (E.O. 2307, Feb. 7, 1916).	The State of Washington except that part which embraces the waters of the Columbia River and the north bank of the said river west of 119° west longitude.	•SEATTLE (including territory described in T. D. 53670). •Aberdeen. Anacortes (including territory described in T. D. 53661). •Bellingham (including territory described in T. D. 53788). Blaine (E. O. 5534, Apr. 13, 1932). Danville. Everett. Ferry. Friday Harbor (E. O. 9433, Apr. 6, 1944, 9 F. R. 3761). Laurier. Lyndon (E. O. 7682, June 15, 1937; 2 F. R. 1042). Metaline Falls (E. O. 7682, June 15, 1937; 2 F. R. 1042). Neah Bay (E. O. 10088, Dec. 8, 1949; 14 F. R. 7287). Nighthawk. Northport. Olympia (E. O. 4780, Dec. 13, 1927). Oroville (E. O. 5206, Oct. 11, 1930). •Port Angeles. •Port Townsend. South Bend-Raymond (T. D. 53576). Spokane. Sumas. •Tacoma.
27	Wisconsin	The State of Wisconsin lying south of 46° north latitude, and the city of Menominee, Mich.	•MILWAUKEE. Green Bay (including the townships of Ashwaubenon, Allouez, Preble, and Howard, and the city of De Pere) (T. D. 54807). Manitowoc. Marinette (including Menominee, Mich.). Racine (including the city of Kenosha and the townships of Mt. Pleasant and Somers). (T.D. 54894). Sheboygan.

(Sec. 1, 57 Stat. 494, sec. 1, 58 Stat. 628, as amended, sec. 7, 70 Stat. 940; 19 U. S. C. 2 and note)

§ 1.2 **Customs stations; requirements for transaction of customs business at places other than ports of entry.**

(a) Places, other than ports of entry, at which customs officers or employees are stationed under the authority contained in article IX of the President's message referred to in § 1.1[5] to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the customs and navigation laws shall be known as customs stations.

(b) A vessel shall not be entered or cleared at a customs station, or other place that is not a port of entry, unless entry or clearance is authorized by the collector of customs for the district in which such station or place is located pursuant to the provisions of section 447, Tariff Act of 1930.[6] Such authorization shall be granted by the collector or assistant collector only upon the condition that the vessel will be under such customs supervision as he may deem to be necessary; that compliance will be had with all applicable customs and navigation laws and regulations; that the salary and expenses of the customs officer for such time as is required to be devoted to entry and clearance work, together with any expense incurred by such officer in connection with the entry or delivery of merchandise, shall be reimbursed to the Government as provided in paragraph (c) of this section; and that the collector or assistant collector shall be notified in advance of the arrival of the vessel concerned.

(c) The salary and expenses of a customs officer or employee stationed at or sent to a customs station or other place which is not a port of entry for service in connection with the entry or clearance of a vessel shall be reimbursed to the Government by the owner, master, or agent of the vessel. Except as otherwise provided for in this part, the expenses, including any per diem allowed in lieu of subsistence, but not the salary, of such customs officer or employee for service in connection with the entry or delivery of merchandise shall be reimbursed to the Government by the interested persons.

(d) The customs stations,[7] and the ports of entry having supervision thereof, are listed below:

District No.	Customs station	Port of entry having supervision
1	Bucksport, Maine	Belfast.
	Coburn Gore, Maine	Jackman.
	Hamlin, Maine	Van Buren.
2	Alburg Springs, Vt	Alburg.
	Beebe Plaine, Vt	Derby Line.
	Canaan, Vt	Beecher Falls.
	East Richford, Vt	Richford.
	Morses Line, Vt	Do.
	Norton, Vt	Island Pond.
	Pittsburg, N.H	Beecher Falls.
	West Berkshire, Vt	Richford.
4	Provincetown, Mass	Plymouth.
7	Cannons Corners, N. Y	Mooers.
	Churubusco, N. Y	Chateaugay.
	Hogansburg, N. Y	Rooseveltown.
	Jamieson's Line, N. Y	Malone.
	Trout River, N. Y	Do.
11	Atlantic City, N. J	Philadelphia.
	Lewes, Del	Do.
	Port Norris, N. J	Do.
	Tuckerton, N. J	Do.
15	Washington, N. C	Wilmington.
19	Biloxi, Miss	Mobile.
20	Gramercy, La	New Orleans.
23	Falcon Dam, Tex	Roma.
	Los Ebanos, Tex	Hidalgo.
	Progreso, Tex	Hidalgo.
	San Ygnacio, Tex	Laredo.
24	Marathon, Tex	El Paso.
25	Campo, Calif	Tecate.
26	Lochiel, Ariz. (Mail: Nogales).	Nogales.
27	Port Hueneme, Calif	Los Angeles.
28	Monterey, Calif	San Francisco.
30	Point Roberts, Wash	Blaine.
31	Anchorage, Alaska	Juneau.
	Annette Island, Alaska	Ketchikan.
	Eagle, Alaska	Fairbanks.
	Fort Yukon, Alaska	Do.
	Haines, Alaska	Skagway.
	Hyder, Alaska	Ketchikan.
	Tok, Alaska	Fairbanks.
33	Havre, Mont	Great Falls.
34	Grand Forks, N. Dak	Pembina.
	Lancaster, Minn	Noyes.
36	Crane Lake, Minn	Duluth.
	Ely, Minn	Do.
	Oak Island, Minn	Warroad.
38	Algonac, Mich	Port Huron.
	Alpena, Mich	Saginaw.
	Detour, Mich	Sault Ste. Marie.
	Escanaba, Mich	Do.
	Grand Haven, Mich	Muskegon.
	Houghton, Mich	Sault Ste. Marie.
	Marine City, Mich	Port Huron.
	Marquette, Mich	Sault Ste. Marie.
	Roberts Landing, Mich. (Mail: Route 1, Algonac, Mich.)	Port Huron.
	St. Clair, Mich	Port Huron.
41	Fairport, Ohio	Cleveland.
	Huron, Ohio	Sandusky.
	Lorain, Ohio	Cleveland.
	Marblehead-Lakeside, Ohio	Sandusky.
	Put-in-Bay, Ohio	Do.
80	Antelope Wells, N. Mex. (Mail: Hachita, N. Mex.).	Columbus.

(President's Message of March 3, 1913; T. D. 33249.)

§ 1.3 **Customs offices in foreign countries.**

There are listed below the places in foreign countries where United States customs officers are stationed, the customs districts under which they function, and the comptrollers of customs having jurisdiction over such district:

Customs office	Customs district having supervision	Comptroller having supervision
St. John, New Brunswick (winter).	Maine and New Hampshire.	Boston, Mass.
Montreal, Quebec	Vermont	Do.
Toronto, Ontario	Buffalo	New York, N.Y.
Kindley Field, Bermuda.	New York	New York, N.Y.
Nassau, Bahama Islands.	Florida	Baltimore, Md.
Vancouver, British Columbia.	Washington	San Francisco, Calif.
Prince Rupert, British Columbia.	Alaska	Do.
Winnipeg, Manitoba.	Dakota	Chicago, Ill.

(R.S. 161, as amended, 251, sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 5 U.S.C. 22, 19 U.S.C. 1, 2, 66)

§ 1.4 **Assignment of districts to comptrollers of customs.**

Customs districts are assigned to comptrollers of customs as follows:

Comptroller of customs, Boston, Mass.—
- No. 1. Maine and New Hampshire.
- No. 2. Vermont.
- No. 4. Massachusetts.
- No. 5. Rhode Island.

Comptroller of customs, New York, N.Y.—
- No. 6 Connecticut.
- No. 7. St. Lawrence.
- No. 8. Rochester.
- No. 9. Buffalo.
- No. 10. New York.
- No. 49. Puerto Rico.
- No. 51. Virgin Islands.

Comptroller of customs, Philadelphia, Pa.—
- No. 11. Philadelphia.
- No. 12. Pittsburgh.
- No. 38. Michigan.
- No. 40. Indiana.
- No. 41. Ohio.
- No. 42. Kentucky.
- No. 43. Tennessee.

Comptroller of customs, Baltimore, Md.—
- No. 13. Maryland.
- No. 14. Virginia.
- No. 15. North Carolina.
- No. 16. South Carolina.
- No. 17. Georgia.
- No. 18. Florida.

Comptroller of customs, New Orleans, La.—
- No. 19. Mobile.
- No. 20. New Orleans.
- No. 21. Sabine.
- No. 22. Galveston.
- No. 23. Laredo.
- No. 24. El Paso.
- No. 26. Arizona.
- No. 50. New Mexico.

Comptroller of customs, San Francisco, Calif.—
- No. 25. San Diego.
- No. 27. Los Angeles.
- No. 28. San Francisco.
- No. 29. Oregon.

[5] "Merchandise shall not be entered or delivered from customs custody elsewhere than at one of the ports of entry hereinbefore designated except at the expense of the parties in interest, upon express authority from the Secretary of the Treasury and under conditions to be prescribed by him. When it shall be made to appear to the Secretary of the Treasury that the interests of commerce or the protection of the revenue so require, he may cause to be stationed at places in the various collection districts, though not named as ports of entry, officers or employees of the customs with authority to enter and clear vessels, to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws." (Art. IX, President's message of March 3, 1913; T. D. 33249)

[6] "It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, That upon good cause therefor being shown, the Secretary of the Treasury may permit entry of any vessel to be made at a place other than a port of entry designated by him, under such conditions as he shall prescribe: *And provided further*, that any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unloading such cargo, under the supervision of customs officers if the collector shall consider the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest." (Sec. 447, 46 Stat. 714, as amended; 19 U. S. C. 1447)

[7] Customs stations designated for a temporary period only and designations made to provide customs facilities where a need exists because of certain large-scale activities, such as lumbering operations, are not listed. These designations change from time to time. Current information as to such stations in any of the collection districts may be obtained from the collector of customs for such district.

Comptroller of customs, San Francisco, Calif.—Continued
No. 30. Washington.
No. 31. Alaska.
No. 32. Hawaii.
Comptroller of customs, Chicago, Ill.—
No. 33. Montana and Idaho.
No. 34. Dakota.
Comptroller of customs, Chicago, Ill.—Con.
No. 35. Minnesota.
No. 36. Duluth and Superior.
No. 37. Wisconsin.
No. 39. Chicago.
No. 45. St. Louis.
No. 47. Colorado.

§ 1.5 Customs agency districts.

The customs agency districts and their respective headquarters are as follows:

No.	Headquarters at—	Area (customs collection districts and foreign countries)
1	Boston, Mass.	1 (Maine and New Hampshire), 2 (Vermont), 4 (Massachusetts), 5 (Rhode Island), 6 (Connecticut).
2	New York, N. Y.	7 (St. Lawrence), 8 (Rochester), 9 (Buffalo), 10 (New York).
5	Baltimore, Md.	11 (Philadelphia), 12 (Pittsburgh), 13 (Maryland), 14 (Virginia), 15 (North Carolina).
6	Miami, Fla.	16 (South Carolina), 17 (Georgia), 18 (Florida), 49 (Puerto Rico), 51 (Virgin Islands), the Republic of Cuba, the Republic of Haiti, the Dominican Republic.
7	New Orleans, La.	19 (Mobile), 20 (New Orleans), 43 (Tennessee), 45 (St. Louis, that part comprising the State of Oklahoma).
9	Chicago, Ill.	34 (Dakota), 35 (Minnesota), 36 (Duluth and Superior), 37 (Wisconsin), 38 (Michigan), 39 (Chicago), 40 (Indiana) 41 (Ohio), 42 (Kentucky), 45 (St. Louis, except the State of Oklahoma), 46 (Omaha), 47 (Colorado), except the State of Wyoming.
10	Laredo, Tex.	21 (Sabine), 22 (Galveston), 23 (Laredo), 24 (El Paso), 50 (New Mexico).
14	Los Angeles, Calif.	25 (San Diego), 27 (Los Angeles), 28 (San Francisco), 32 (Hawaii), 26 (Arizona).
15	Seattle, Wash.	29 (Oregon), 30 (Washington), 31 (Alaska), 33 (Montana and Idaho), 47 (Colorado, that part comprising the State of Wyoming).
16	Rome, Italy.	Europe, Africa, and the Near East.
18	Tokyo, Japan.	Japan, Hong Kong, British Crown Colony, Republic of the Philippines, Republic of Korea and Okinawa.
19	Montreal, P. Q., Canada.	Dominion of Canada.
20	Mexico, D. F., Mexico.	Republic of Mexico.

§ 1.6 Headquarters of appraisers of merchandise.

The locations of the headquarters of the appraisers of merchandise for the customs collection districts are as follows:

District No.	Name of district	Location of headquarters	Address of appraiser of merchandise
31	Alaska	Juneau, Alaska	(1).
26	Arizona	Nogales, Ariz.	Terrace Ave and International St.; P. O. Box 1788.
9	Buffalo	Buffalo 3, N. Y.	243 Washington St.
39	Chicago	Chicago 7, Ill.	610 South Canal St.
47	Colorado	Denver, Colo.	(1).
6	Connecticut	Bridgeport 9, Conn.	120 Middle St.
34	Dakota	Pembina, N. Dak.	(1).
36	Duluth and Superior	Duluth, Minn.	(1).
24	El Paso	El Paso, Tex.	400 Myrtle Ave.
18	Florida	Miami 37, Fla.	149 N. E. 20th Ter.
22	Galveston	Houston 11, Tex.	7300 Wingate St.
17	Georgia	Savannah, Ga.	Bay and Bull Sts.
32	Hawaii	Honolulu 17, T. H.	850 Iwilei Rd.
40	Indiana	Indianapolis, Ind.	(1).
42	Kentucky	Louisville, Ky.	(1).
23	Laredo	Laredo, Tex.	Convent Ave. and Zaragosa St.; P. O. Box 1359.
27	Los Angeles	Los Angeles 13, Calif.	531 Mateo St.
1	Maine and New Hampshire	Portland, Maine	(1).
13	Maryland	Baltimore 2, Md.	103 S. Gay St.
4	Massachusetts	Boston 10, Mass.	408 Atlantic Ave.
38	Detroit	Detroit 26, Mich.	100 W. Larned St.
35	Minnesota	Minneapolis 1, Minn.	115 U. S. Court House
19	Mobile	Mobile, Ala.	(1).
33	Montana and Idaho	Great Falls, Mont.	(1).
50	New Mexico	Columbus, N. Mex.	(1).
20	New Orleans	New Orleans 16, La.	423 Canal St.
10	New York	New York 14, N. Y.	201 Varick St.[2]
15	North Carolina	Wilmington, N. C.	(1).
41	Ohio	Cleveland 14, Ohio	215 Superior Ave. NE.
29	Oregon	Portland 9, Oreg.	220 N. W. 8th Ave.

[1] The appraiser of merchandise is under the jurisdiction of the collector of customs and is located at the same address as collector. Correspondence for the appraiser shall be sent to the collector—"Attention: Appraiser of Merchandise."

District No.	Name of district	Location of headquarters	Address of appraiser of merchandise
11	Philadelphia	Philadelphia 6, Pa.	2d and Chestnut Sts.
12	Pittsburgh	Pittsburgh 19, Pa.	639-9 New Federal Bldg.
49	Puerto Rico	San Juan 22, P. R.	Deposito St., Marina; P. O. Box 4712.
5	Rhode Island	Providence 3, R. I.	Weybosset St.
8	Rochester	Rochester 14, N. Y.	20 Church St.
21	Sabine	Port Arthur, Tex.	(1).
25	San Diego	San Diego 1, Calif.	325 W. "F" St.
28	San Francisco	San Francisco 11, Calif.	630 Sansome St.
16	South Carolina	Charleston, S. C.	(1).
7	St. Lawrence	Rouses Point	Route 9-B.
45	St. Louis	St. Louis 1, Mo.	12th and Market Sts.
43	Tennessee	Memphis, Tenn.	(1).
3	Vermont	St. Albans, Vt.	84-90 South Main St.
14	Virginia	Norfolk 7, Va.	1129 Boissevain Ave.
30	Washington	Seattle 4, Wash.	47 Federal Office Bldg.
37	Wisconsin	Milwaukee 2, Wis.	626 E. Michigan St.

[1] The appraiser of merchandise is under the jurisdiction of the collector of customs and is located at the same address as collector. Correspondence for the appraiser shall be sent to the collector—"Attention: Appraiser of Merchandise."
[2] U. S. Appraiser of Merchandise, New York, N. Y.

§ 1.7 Customs laboratories.

The addresses of the several customs laboratories and the customs collection districts served thereby are as follows:

Address	Customs collection districts
408 Atlantic Ave., Boston, Mass.	1, 2, 4, and 5.
201 Varick St., New York, N.Y.	6, 7, 8, 9, 10, 49, and 51.
Branch Laboratory: Customhouse, San Juan, Puerto Rico.	
Customhouse, Philadelphia, Pa.	11, 12, and 41.
103 South Gay St., Baltimore, Md.	13, 14, 15, 42, and 43.
Customhouse, Savannah, Ga.	16, 17, and 18.
Customhouse, New Orleans, La.	19, 20, 21, 22, and 23.
531 Mateo St., Los Angeles, Calif.	24, 25, 26, 27, and 50.
630 Sansome St., San Francisco, Calif.	28, 29, 30, 31, 32, 33, and 47.
Customhouse, Chicago, Ill.	34, 35, 36, 37, 38, 39, 40 and 45.

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended; 19 U.S.C. 1, 2)

§ 1.8 Hours of business.

(a) Except as specified in paragraphs (b)–(g) of this section, each customs office shall be open for the transaction of general customs business between the hours of 8:30 a.m. and 5 p.m. on all days of the year except Saturdays, Sundays, and national holidays.[1]

(b) Different but equivalent hours shall be observed if a difference is required for the maintenance of adequate service because of local conditions, is approved by the Commissioner of Customs, and a notice of the hours of business is prominently displayed at the principal entrance and in each public room of the customs office.

[1] The national holidays are January 1, February 22, May 30, July 4, the first Monday in September, November 11, the fourth Thursday in November, and December 25. If a holiday falls on Sunday, the following day will be observed. (E.O. No. 10358, June 9, 1952.) Other days may be designated as national holidays by Executive order of the President.

(c) At each port or station where there is no full-time customs employee, the hours during which the customs office will be open for the transaction of general customs business shall be fixed by the collector of customs concerned with the approval of the Commissioner of Customs, and notice thereof shall be displayed prominently at the principal entrance of the office.

(d) Each customs office shall be open for the transaction of general customs business on all state and local holidays occurring on days other than Saturdays, Sundays, and national holidays. If a state or local holiday interferes with the performance of work in a customs office by any customs employee or employees, the principal field officer may request approval of the Commissioner of Customs to excuse such employees from duty without charge to leave.

(e) Customs services required to be performed outside a customs office shall be furnished between the hours of 8 a. m. and 5 p. m. (or between the corresponding hours at ports where different but equivalent hours are required for the maintenance of adequate service and are approved by the Commissioner of Customs) on all days when the customs office is open for the transaction of general customs business. In accordance with such instructions as the Commissioner of Customs shall have issued from time to time and upon reasonable advance notice to the principal local officer concerned, such services may be furnished between the same hours on Saturdays.

(f) Where there is a regularly recurring need for customs services outside the above prescribed hours, and the volume and duration of the required services are uniformly such as to require, of themselves or in immediately consecutive combination with other essential customs activities of the port, the full time of one or more customs employees, the necessary number of regular tours of duty to furnish such services on all days of the year except Sundays and national holidays may be established with the approval of the Commissioner of Customs.

(g) Customs services shall be furnished private interests otherwise than as specified in this section only in accordance with the provisions of § 24.16 of this chapter.

§ 1.9 Customs seal.

(a) The customs seal of the United States, consisting of the national arms within a circle according to the design furnished by the Treasury Department, shall be impressed upon all official documents requiring the impress of a seal.

(b) The impress of the seal is not necessary on documents passing within the Customs Service. The seal shall be impressed on marine documents, and on landing certificates, certificates of weight, gauge, or measure, and similar classes of documents for outside interests.

(c) The official seal shall not be used in the manner of a notary seal to indicate authority to administer oaths.

No. 246—Part II——2

PART 2—MEASUREMENT OF VESSELS

Sec.
2.0 Effective date.
2.1 Authority of Commissioner.
2.2 Officials authorized to admeasure vessels.
2.3 Purpose for which measurements are taken.
2.4 Register ton.
2.5 Gross register tonnage.
2.6 Net register tonnage.
2.7 The marine document.
2.8 Application for measurement.
2.9 Drawings.
2.10 Measurements to be taken at an early stage.
2.11 Uniform system required.
2.13 Measuring instruments.
2.14 Stem.
2.15 Stern.
2.16 Masts.
2.17 Ceiling, cargo battens, etc.
2.18 Register length.
2.19 Register breadth.
2.20 Register depth.
2.21 Upper deck to the hull.
2.22 Enumerating the decks.
2.23 Register height.
2.24 Round of beam.
2.25 Pitch of beam.
2.26 Tonnage deck.
2.27 Tonnage length.
2.28 Depth of a transverse section.
2.29 Tonnage depths.
2.30 Tonnage breadths.
2.31 Measuring the tonnage length.
2.32 Divisions of tonnage length.
2.33 Transfer of location of sections to keelson.
2.34 Transverse areas, rule for finding.
2.35 Breaks in double bottom.
2.36 Vessels having side tanks may be measured in parts.
2.37 Outside shaft tunnel.
2.38 Square end vessels having head blocks.
2.39 Between decks.
2.40 Superstructures.
2.41 Hatchways.
2.42 Record of exempted spaces.
2.43 Enclosed spaces exempted from inclusion in gross tonnage.
2.44 Passenger cabins.
2.45 Open superstructures on or above the upper deck.
2.46 Open shelter deck space.
2.47 An open structure on small craft.
2.48 Open vessels.
2.49 Deductions from gross tonnage.
2.50 Navigation spaces.
2.51 Engine room.
2.52 Spaces included in engine room.
2.53 Length of engine room.
2.54 Boilers and engine in same compartment.
2.55 Engine room measured in parts.
2.56 Rule for measuring engine room.
2.57 Engine room in small boats.
2.58 Deduction for propelling power.
2.59 Light and air spaces.
2.60 Verification of calculations, diagram of areas, and certification of results.
2.60a Marking net tonnage and official number on vessel.
2.61 Appendix to certificate of registry.
2.62 Measurement of Government vessels.
2.63 Foreign vessels.
2.64 Adjustment and correction of tonnage.
2.65 Figures.
2.66 Conversion tables.
2.67 Table A of common intervals when tonnage depth is 16 feet or less.
2.68 Table B of common intervals when tonnage depth exceeds 16 feet.
2.69 Definitions of enclosures on or above the upper deck.
2.70 Definitions of items of deduction.
2.71 Definitions of structural terms, etc.
2.72 Suez and Panama Canal certificates.

AUTHORITY: §§ 2.0 to 2.72 issued under R. S. 161, 4153, as amended, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, sec. 4, 28 Stat. 743, as amended; 5 U. S. C. 22, 46 U. S. C. 2, 3, 77, 79.

§ 2.0 Effective date.

The regulations in this part are not retroactive, i.e., they do not apply to vessels the keels of which were laid prior to the date the rules in this part become effective. The regulations in this part become effective March 1, 1940.

§ 2.1 Authority of Commissioner.

(a) The Commissioner of Customs is charged with the supervision of the laws relating to the admeasurement of vessels, and on all questions of interpretation growing out of the execution of the laws relating to this subject his decision is final.

(b) The Commissioner of Customs shall, in the following sections, be referred to as the Commissioner.

(c) Doubts arising in the minds of the admeasurers concerning decks to the hull, enclosures on or above the upper deck, shelter decks, method of procedure, etc., shall be submitted to the Commissioner for his decision, and shall be accompanied by blueprints or sketches of the spaces in question giving all the facts bearing on same.

§ 2.2 Officials authorized to admeasure vessels.

(a) Before any vessel shall be registered, enrolled, or licensed she shall be measured by an officer of the customs at the port or place where she may be.

(b) A vessel is not to be measured unless she is required by law to be registered, enrolled or licensed, or otherwise specially provided for.

§ 2.3 Purpose for which measurements are taken.

(a) Tonnage measurements are taken for the purpose of ascertaining the internal capacity of measurable spaces.

(b) All measurements are to be taken in feet and fractions of feet, and all fractions of feet shall be expressed in decimals.

§ 2.4 Register ton.

A register ton is a volume of 100 cubic feet.

§ 2.5 Gross register tonnage.

(a) The gross tonnage referred to in the following sections is the gross register tonnage; that is, the gross tonnage exclusive of all permissible exempted spaces.

(b) The gross register tonnage of a vessel shall consist of the sum of the following items:

(c) The cubical capacity below the tonnage deck, excluding exemptible water ballast spaces within the measureable portion of the vessel;

(d) The cubical capacity of each between deck space above the tonnage deck;

(e) The cubical capacity of the permanent closed-in spaces on the upper deck available for cargo or stores, or for the accommodation of passengers and/or crew;

(f) All permanent closed-in spaces situated elsewhere available for cargo or stores, or for the accommodation of the crew, or for the charts, except cabins or staterooms for passengers constructed entirely above the first deck which is not a deck to the hull;

(g) The excess of hatchways.

§ 2.6 Net register tonnage.

(a) The tonnage of a vessel remaining after the authorized deductions have been made from the gross register tonnage shall be deemed the net register tonnage.

(b) In ascertaining the net tonnage no space may be deducted unless it has previously been included in the gross tonnage and certified, showing the purpose for which used.

§ 2.7 The marine document.

The marine document of every vessel shall show the date and place of build; the register length, breadth, depth, and, in vessels of more than two decks, the height of the upper deck to the hull above the tonnage deck; the number of decks and masts; build as to her stem and stern; capacity under the tonnage deck, that of the between decks, and also separately, permanently enclosed spaces on or above the upper deck to the hull available for cargo or stores or for the accommodation of passengers (provisionally) or crew, and the omitted spaces, whether open or closed in, on, above, or below the upper deck; the gross tonnage; items of deduction; and net tonnage.

§ 2.8 Application for measurement.

The builder of a new vessel required to be admeasured, or the person having supervision of changes and/or alterations affecting a vessel's register tonnage, is obliged to make application for admeasurement or tonnage adjustment as the case may be, in writing, to the collector of customs of the district in which the vessel is located. Such application shall be made before cargo or ballast is taken on, and in case of a new vessel, before boilers or engine is installed or compartments partitioned off.

§ 2.9 Drawings.

(a) *Plans to be filed.* In order to facilitate admeasurement, there shall be furnished by the vessel's builder or owner to the collector of customs for the district in which the vessel will be admeasured, either with the application for admeasurement or a reasonable period before admeasurement is scheduled to commence, blueprints or drawings of the following:

(1) A drawing of the cross section in which is shown the construction of the double bottom, if there be one;

(2) An inboard view of the longitudinal section, showing the double bottom, its use or uses, if existing, otherwise the floors, the compartments for water ballast, other than the double bottom, the decks, the superstructures, hatchways, etc.;

(3) Deck plans showing the arrangement and uses of different compartments and deductible spaces;

(4) Drawings showing the arrangement of the engine, boiler, and fuel compartments; and

(5) A tonnage plan showing half breadths of the sections at the points of division of the tonnage length of the vessel into a certain number of equal parts in accordance with the rules for the measurement of spaces under the tonnage deck. The scale or scales of these drawings are to be indicated thereon.

The collector of customs is to be advised of any subsequent changes in the vessel and furnished copies of the corrected plans, or a statement of such changes.

If there are no blueprints or drawings available and if the collector is satisfied that it is impracticable to require such plans to be prepared and made available, considering the size and nature of the vessel as well as the cost and time involved, the vessel shall be measured without requiring their production.

(b) *Sketches.* When blueprints or drawings are not produced, necessary rough sketches may be made during the course of admeasurement showing the inboard profile, the midship cross-section, the hull and deck arrangements, and related matters, recording any necessary dimensions and showing details of important features such as the depth of side and bottom frames or floor timbers; the dimensions, location, and use of structures and hull spaces; and the thickness of the inner and outer skin. Such rough sketches shall be retained and filed with the other admeasurement papers. The rough sketches made shall not be redrawn to scale unless the admeasurer is satisfied that such action is necessary to insure that accurate dimensions have been lifted, to avoid the necessity for readmeasurement, or to insure against a claim of error which may reasonably be expected to be made in a particular case by the owner or agent.

§ 2.10 Measurements to be taken at an early stage.

Admeasurement should begin as soon as the vessel is sufficiently advanced in construction to permit its being done, usually when the decks are laid, the hold cleared of encumbrances to admit the required depths and breadths being properly taken; before the engine and boilers are installed and accommodations are partitioned off.

§ 2.11 Uniform system required.

(a) The following directions are given showing the progressive steps to be followed in the process of admeasurement. It is important not only that the rules be followed, but that required measurements be taken and calculations made in a uniform and correct manner that one general system may prevail throughout the service respecting this subject.

(b) Measurements taken aboard are to be recorded in the "Memorandum of Dimensions" known as Form 1413.

§ 2.13 Measuring instruments.

(a) The measurements should be made with a waterproof tape, graduated into feet and tenths of a foot, and as nearly inelastic as possible.

(b) Sliding rods which are of three sizes: One 3 feet long for taking depths from 3 to 5.8 feet; another 6 feet long for taking depths from 6 to 11 feet, or, with the extension piece attached, to 16 feet; and a third one 11 feet long for taking depths from 11 to 21 feet, or, with the extension piece attached, to 26 feet. The movable or index rod in each has an arrow index traversing a decimal scale on the fixed rod. Greater depths may be taken by inserting into the ends of the index rods, an extension piece, provided with sockets for this purpose one or more joints of lift rods described below:

The fixed rod is graduated in feet (in red) and tenths and half-tenths (in black), and when the ends of the rods are well together the arrow on the index rod points to the figure indicating the constant length of the fixed rod, and as the index rod is moved up the arrow indicates the length from the upper end thereof to the lower end of the fixed rod. Bear in mind, however, that when you use any of the attachments referred to above you must add to the reading on the fixed rod the net length of the attachment used; e. g., if the 6-foot rod is extended to its limit, 11 feet, which is reached when the arrow on the index rod is fair with the upper end of the fixed rod, and the extension piece is attached, which is done by slipping the bands on the lower end of it over the upper end of the index rod until the upper edge of the upper band is fair with the upper end of the index rod, and by fastening (on the groove side of the index rod) with set screws in the said bands, the length will not be 11 feet, as shown by the reading, but 16 feet, the reading plus the increment due to the attachment (11 feet+5 feet). This increment may be further increased by inserting into the end of the extension piece one or more joints of lift rods, each of which is about 3.95 feet when adjusted.

At the station of the area to be measured in single-deck vessels the rod is to be placed on the ceiling, or floor beam or timber when no ceiling is present, alongside the keelson or line of the keel, perpendicular or square thereto, and also parallel to the middle longitudinal plane of the ship, and forced up firmly under the deck and fixed in such position by the set screws; from the depths thus found take one-third of the round or one-half of the pitch of beam to get the depth of the area.

The depth of an area taken as above is to be divided into the required number of equal parts. (See § 2.29 (d).) With the rod fixed in position as above, set off on it from its lower end one of these equal parts, or common interval between the breadths, using white or other colored chalk or material that will make a visible mark, which gives the position of the first breadth above the bottom breadth, and from this when the rod is taken down the positions of the remaining breadths are to be set off at the said common interval.

The positions of all the breadths being thus severally marked on the rod, it is then to be set up again and firmly fixed or held in position, and the breadths may be readily and correctly measured by means of the tape held at right angles across the rod at each of the positions marked thereon.

In measuring vessels with more than one deck, where the second deck from the bottom is the tonnage deck, it will be necessary to use two of these rods in combination, one directly over the other, one in the hold under the first deck, as directed for single-deck vessels, and the other in the space between this deck and the tonnage deck. In this combination the tonnage depth is found by adding together the two depths and the thickness of the deck between the rods and deducting from this combined depth one-third of the round or one-half pitch of beam; then proceed as before directed.

(c) A 2-foot rule with a hinge is required for taking the rake of the bow and stern and for other purposes.

(d) A carpenter's square will be found useful for setting the sliding rod perpendicular to the keelson.

(e) For taking the breadths in the hold which are beyond the reach of the measuring officers two lift rods will be needed, each about 8 feet long (made by joining two sections), one having a pulley at the end over which the tape may be drawn when the rods are held in position and the other an attachment for holding the ring at the end of the tape.

(f) For transferring the location of the stations or ordinates of the transverse sections from the deck to the keelson, and sometimes, for finding registered breadth, a plumb line and bob are needed.

(g) For measuring laden vessels for Panama or Suez Canal tonnage certificates, a girting galvanized chain of an approved make is required.

§ 2.14 Stem.

A vessel's stem is to be described according to its contour; i.e., straight, raked, curved or square.

§ 2.15 Stern.

Describe the stern according to its shape at the after end below the upper deck or line of same, as round, elliptical, square or sharp.

§ 2.16 Masts.

In addition to what are commonly known as masts, spars set up at the center line of the bridging at the top of king-posts of certain vessels for signals and wireless antennae, etc., are to be considered as masts. The number of king-posts and derrick posts, etc., independent of the supported masts are to be separately stated after the number of said masts; e. g., "Two masts and eight king-posts," or as the case may be.

§ 2.17 Ceiling, cargo battens, etc.

(a) *Ceiling.* Ceiling hereafter referred to is considered the permanent planking fitted directly on the inboard side of the frames, or floors, or the top of the double bottom. The maximum allowance for ceiling is 3 inches on the bottom and 3 inches on each side. When ceiling is found to be less than 3 inches thick, allow the actual thickness thereof; that is, take dimensions to the face of the ceiling so found. Depths and breadths shall not be decreased due to grounds supporting ceiling nor shall allowance be made for ceiling on the under side of deck beams.

(b) *False ceiling.* In small vessels with "false ceiling" in a portion of their cabins, in their holds, or forming a part of their seats or lockers, etc., therein, and which stands off from their frames—that is, not fitted to them as ordinary ceiling—take the breadths through the said "false ceiling" to the inner faces of the vessel's frames, deducting therefrom the thickness of the "false ceiling" on each side. If, however, there is a ceiling fitted on the frames in addition to the "false ceiling," take the breadths to the ceiling on the frames, making no allowance for the "false ceiling."

(c) *Cargo battens, insulation.* Paragraph (a) of this section applies to cargo battens (spar ceiling) and refrigeration insulation.

§ 2.18 Register length.

(a) The length measured on the tonnage deck, from the fore part of the outer planking (where it is rabbeted) on the side of the stem of wooden vessels, or fore end of lap of outer plating of steel or iron vessels, to the after side of the main sternpost, shall be accounted the vessel's register length. (See Figures 2 and 3 (§ 2.65).)

(b) In the case of screw vessels with no sternpost, take the length to the forward side of the rudder-stock or line of same extended through the deck.

(c) The register length of scows and barges, with a square bow and stern sloping up from the bottom to the deck, and with neither stem nor sternpost, is to be taken on the deck from the extreme point of the hull at the bow to the extreme point of the hull at the stern; that is, the over-all length of the hull, not including guards or rubbing strakes, is to be considered the register length of such vessel.

§ 2.19 Register breadth.

(a) A measure from the outboard face of the outer skin on one side to the same point opposite, taken at or below the upper deck and at the widest part of the hull is the register breadth. (See Figure 4 (§ 2.65).)

(b) A practical method for finding the register breadth is, to add twice the sum of the depth of the vessel's side frames and thickness of outer skin, plus an allowance for thickness of ceiling, insulation or cargo battens if fitted, to the greatest tonnage breadth.

§ 2.20 Register depth.

(a) The register depth is taken at the middle of the tonnage length from the under side of the tonnage deck, or line of same, down to the top of the floors at the side of the keelson; or to the ordinary floor timbers or plates when fitted; or to the inner bottom plating (tank top) of a cellular double bottom; as the case may be, in a direction perpendicular to the keel.

(b) Should ceiling be fitted on the above mentioned bottom members, the register depth shall be measured to the top of same and to this dimension shall be added the height of grounds, battens or other type of support for the ceiling. (See Figures 4 and 5 (§ 2.65).)

(c) If the vessel is measured in parts, as explained later, the register depth is taken at one-half the tonnage length of the vessel.

§ 2.21 Upper deck to the hull.

The uppermost complete deck, which extends from stem to stern and from side to side at all points of its length and below which there are no openings through the hull as required in shelter deck spaces and also having its hatchways or other openings provided with means for closing them against the action of the sea and weather upon the space below enclosed by the sides of the vessel, making the said space a fit place for the stowage of general cargo, is to be considered the upper deck to the hull.

§ 2.22 Enumerating the decks.

In enumerating the number of decks, only those which are without such openings as exempt the spaces beneath from being included in the tonnage under the upper deck are to be considered. Other decks, if any, containing such openings as exempt the spaces beneath from inclusion in tonnage should be separately described after the number of decks proper; e. g., "Two decks and shelter deck," or as the case may be. Partial decks, forward or aft, such as orlop decks, are not considered as decks.

§ 2.23 Register height.

If the vessel has three or more decks to the hull, then the height from the top of the tonnage deck planking and/or plating to the under side of the planking and/or plating of the uppermost deck shall be deemed the register height of the uppermost deck above the tonnage deck.

§ 2.24 Round of beam.

(a) The round of beam (camber) is the perpendicular distance down from the crown of the under side of the tonnage-deck plank or plating at the center to a line stretched athwart the vessel from end to end of the top of the beam and is to be ascertained at every place where it is to be used in the measurement. (See Figures 6 and 16 (§ 2.65).)

(b) The round of beam of the tonnage-deck, which must be known before taking the tonnage length, as well as before measuring the depths of the tonnage sections, may be taken either at the under side of the deck by stretching a small line tightly from end to end at the top of the beam, which will show the round or camber of the beam at the center; or it may be taken, if more convenient, at the upper side of the deck by stretching a line tightly across, held at equal heights from the deck at each side of the vessel, so as just to touch the crown of the deck at the middle line; then the distance from the deck to the line at the vessel's sides gives the round of beam. (See Figure 6 (§ 2.65).) It is necessary to take the round of beam at each point of division of the length except when the vessel has a flat deck or one practically so. In lieu of the above methods, it may be ascertained on the basis of one-fourth of an inch to the foot of beam at each section in iron or steel vessels of the usual camber of beam. This method is more accurate and easier of application than the others.

(c) When the round of beam is 0.15 foot or less, it may be ignored.

§ 2.25 Pitch of beam.

(a) In vessels whose tonnage deck has a pitch instead of a round from its side at the shell plating to its center, find the height of the pitch of the beam at each tonnage section. It may be done in any practical manner.

(b) The height of the pitch of the beam is the perpendicular distance from the apex at the under side of the tonnage deck plank or plating at the center of the deck down to a straight line from end to end of the top of the beam. (See Figure 7 (§ 2.65).)

§ 2.26 Tonnage deck.

(a) The tonnage deck is the upper deck to the hull in vessels having not more than two decks, and the second deck from the keel in vessels having more than two decks.

(b) If the tonnage deck consists of several partial decks extending with breaks from stem to stern, and if the partial decks are at different heights, the line of the lowest deck will be taken as the tonnage deck, and the headroom above such line under the higher deck or decks will be measured as a break.

(c) Engine and boiler casings, peak tanks and cofferdams are not considered as breaking the continuity of a deck. (See Figures 8 and 9 (§ 2.65).)

§ 2.27 Tonnage length.

The tonnage length is the longitudinal distance on the under side of the tonnage deck, or line of same from a point where the line of the inboard faces of the side frames, or ceiling thereon if any, intersects the side of the stem, to a point aft on the inboard face of the stern timber or cant frame, or ceiling if fitted thereon. (See Figures 10 and 11 (§ 2.65).)

§ 2.28 Depth of a transverse section.

(a) *Depth.* The depth of a tonnage section is a measurement taken at its proper point of division of the tonnage length, from a point at a distance below the tonnage deck equal to one-third of the round or one-half of the pitch of the beam, down to the upper side of the floor timbers or floor plates; or bottom floors alongside the keelson; or longitudinals; or the tank top of a cellular double bottom, as the case may be.

(b) *Ceiling.* If ceiling is fitted on the bottom floor members, depths of transverse sections terminate on the upper face of the ceiling of average thickness. (See Figure 4 (§ 2.65).) For tonnage depths where ceiling is fitted on tank top, see Figure 5 (§ 2.65).

(c) *Raised platform.* In vessels with a raised platform in the bottom and no ceiling fitted on the bottom frame members, the depths are to be taken down through the platform to the upper side of the floor timbers or floor plates as described above, deducting therefrom the thickness of the ceiling of the platform in question.

(d) *Depths in way of interruptions to tonnage deck.* Should depths of transverse sections fall where the tonnage deck is interrupted, due to a break, hatches, etc., then depths are taken from the line of continuation of the tonnage deck.

(e) *Rise of double bottom.* In vessels having a double bottom the tank top of which, in way of tonnage sections, rises from the center line to the wings, the tonnage depth of each section will terminate at one-half height of the dead rise. (See Figure 12 (§ 2.65).)

(f) *Fall of double bottom.* In vessels having a double bottom the tank top of which, in way of tonnage sections, has a straight fall from the center line to the wings the tonnage depth of each section will terminate at one-half height of fall. (See Figure 13 (§ 2.65).)

§ 2.29 Tonnage depths.

(a) *The tonnage depth.* The depth generally referred to as "the tonnage depth" is located at the middle point of division of the tonnage length and is found in a manner similar to the other depths of transverse sections.

(b) *Tonnage depth in a vessel measured in parts.* Should a vessel be required to be measured in parts, and each part measured as a separate unit; then a tonnage depth shall be found for each part or unit at one-half its tonnage length. (See Figure 14 (§ 2.65).)

(c) *Tonnage depth is the first depth measured.* The tonnage depth governs the number of parts into which it and all the remaining depths of the part in which said depth is located, is divided.

(d) *Divisions of tonnage depth.* If the tonnage depth at the middle of the tonnage length of the vessel or part of same does not exceed 16 feet, divide each depth into 4 equal parts; but if the depth at the middle of said length exceeds 16 feet, divide each depth into 6 equal parts.

(e) *Intervals.* The common intervals between the points of division of depths, also one-third common intervals are to be carried to the nearest hundredth of a foot.

(f) *Purpose for dividing tonnage depths.* Depths are divided to indicate points at which tonnage breadths are to be measured.

§ 2.30 Tonnage breadths.

(a) *Breadths.* An inside horizontal breadth is to be measured at each point of division of the depth marked on the sliding rods placed in position as directed in § 2.13(b) and also at the upper and lower points of the depth. Extend each measurement to the inboard face of the ordinary frames, or line of same, or inboard face of ceiling, or battens, or insulation of average thickness if fitted. (See Figure 15 (§ 2.65).) Care must be taken that the sections shall be parallel to each other and at right angles to the axis of the vessel.

(b) *Upper breadth.* In finding the upper breadth of each transverse section make no allowance for the excess of the deck-beam shelves, etc., over the permissible thickness of ceiling, if any, thereunder.

Referring to Figure 16 (§ 2.65), observe that after the deck is laid the upper breadth (represented by the line U B) passes through the deck on each side. Hence, it is impossible to take it at its true position. In such cases take it on the deck, allowing within the extended line of frames the thickness of the ceiling if any on the frames under deck, as shown by line T B in the figure.

Owing to deck-beam shelves or other obstructions, it can be more conveniently and accurately taken here than under the deck, and, besides it will be only a few inches from its true position. In vessels which have upright sides the said breadth so taken will be correct, but in the case of vessels with inclining sides the necessary allowance must be made for the deviation of the sides from the upright in the few inches above the true position of the said breadth.

(c) *Bottom breadths.* Bottom breadths are taken only so far as the flat of the floor extends. (See B B, Figures 4 and 5; Figure 15; and B B, Figures 17 and 18 (§ 2.65).)

When bottom frames rise immediately from the keelson, or combined keel and keelson, and bona fide floor timbers or floor plates are not fitted, bottom breadths are equal to the breadth of keelson, or combined keel and keelson as the case may be. (See B B, Figure 19 (§ 2.65).)

The bottom breadths of transverse sections of vessels of longitudinal construction falling in the hold where there is no double bottom and where there is a dead rise of the bottom out to the sides of the vessel may be considered to be equal to that part of the bottom plating not affected by dead rise.

(d) *Bottom breadths in case of rise or fall of double bottom.* Bottom breadths falling in way of a double bottom the top of which rises or falls from the midship longitudinal plane to the wings are measured from and to the inboard end of the frame brackets (or ceiling thereon if fitted), connecting the double bottom with the frames. (See B B, Figures 12 and 13 (§ 2.65).)

§ 2.31 Measuring the tonnage length.

(a) The cubic capacity of the space below the tonnage deck is determined by use of the tonnage length together with the areas of a prescribed

number of transverse sections as hereinafter described.

(b) To determine the extreme points of the tonnage length as indicated by § 2.27 and T L in Figures 10 and 11 (§ 2.65), observe the following:

(1) *Vertical bow and stern.* In vessels having a vertical bow, also a vertical stern, both above and below the tonnage deck, measure horizontally the depth of frames, also the thickness of ceiling thereon if any, at the extreme forward and after ends immediately under the tonnage deck. Mark these measurements on the upper side of the tonnage deck, from the outer shell and in the direction in which the frames were measured. Then draw through the points thus obtained, lines parallel to the shell. The forward and after points of intersection of these lines indicate the points from and to which the tonnage length is to be measured.

(2) *Raked bow or stern.* In the case of vessels having a raked bow or stern at the level of the tonnage deck, the extreme points of the tonnage length are, when practicable, to be determined at the under side of the tonnage deck. The distance from these points to a hatch coaming, bulkhead, etc., should be measured and transferred to the upper side of the tonnage deck as indicated in Figure 20 (§ 2.65).

(c) Should it be impracticable to determine the extreme points of the tonnage length at the under side of the tonnage deck, and should the thickness of this deck be considerable, as in the case of a wooden deck, the rake of the bow or stern within the thickness of the deck is to be taken into account. This is done after having first proceeded as indicated in paragraph (b) (1) of this section by measuring the thickness of the tonnage deck and determining by means of a hinged rule, or any other instrument for finding angles under similar circumstances, the angle of the rake which the bow or the stern forms with the tonnage deck. Transfer thereafter this angle on the deck by drawing the lines A B C shown in Figure 21 (§ 2.65), A B represents the upper side of tonnage deck and B C the after side of the stem or the inside of the shell at the stern, as the case may be. The perpendicular B D represents the thickness of the tonnage deck. The points T, L, in Figures 10 and 11 (§ 2.65) marked on the upper side of the tonnage deck are then to be moved forward at the stern or aft at the stem, as the case may be, for a distance equal to D E, representing the rake within the thickness of the deck.

(d) It should be borne in mind that the condition for applying the method of setting out the angles on the upper side of the tonnage deck is that the stem or stern have the same angle of rake above and immediately below the tonnage deck. If the angle of rake at or immediately below the tonnage deck is a different one, then this last angle must be used.

(e) Should a vessel as referred to in paragraph (b) (2) of this section have a square bow or stern, it will be necessary to make a correction for camber where such exists. This is done by increasing the thickness of the deck B D in Figure 21 (§ 2.65) by one-third of the round or one-half of the pitch of beam at the extreme point of the tonnage length.

§ 2.32 Divisions of tonnage length.

(a) The tonnage length is to be divided into an even number of equal parts as required by the following table, according to the class in such table to which the vessel belongs:

Class	Tonnage length	Divisions
1	50 ft. or less	6
2	Above 50 ft., not exceeding 100 ft	8
3	Above 100 ft., not exceeding 150 ft	10
4	Above 150 ft., not exceeding 200 ft	12
5	Above 200 ft., not exceeding 250 ft	14
6	Above 250 ft	16

(b) The points of division of the tonnage length, also each end of the length indicate the common intervals at which a depth is measured.

Intervals and one-third intervals are to be carried to the nearest thousandth of a foot.

§ 2.33 Transfer of location of sections to keelson.

(a) The tonnage length having been ascertained and the number of sections to be measured and the interval between them determined, a line is then to be extended down the main hatchway, at the middle line of the vessel, in a perpendicular direction.

(b) The distance of the midship tonnage section is then to be set off from this line in the same direction on the keelson, which gives the position of the midship section on the keelson, and the positions of the other sections are obtained on the keelson by setting off forward and abaft the midship section the common interval between sections as already determined.

The position of the midship tonnage section may be determined by any other practical means.

§ 2.34 Transverse areas, rule for finding.

(a) Assuming the tonnage length exceeds 250 feet requiring that it be divided into 16 equal parts, and the tonnage depth at the middle of the tonnage length exceeds 16 feet, requiring it to be divided into 6 equal parts:

(1) Measure the depth at each of the 15 points of division of the length as required, also at the extreme forward point (Section 1) and at the extreme after point (Section 17) of the length. (See Figure 22 (§ 2.65).)

(2) The extreme points of the length at the bow and stern, though described as being the positions of the first and last areas, do not in vessels of usual form yield any area for practical purposes. Therefore, in the computation for tonnage, where the first and last sections yield no areas, a cipher must be employed in their places. In vessels of unusual form, as, for instance, in barges or other craft in which the bow and stern are upright, with breadth also at those places, sections at the extreme points of the length will yield areas; in which cases such areas must be measured and used in the computation.

(3) Then measure the inside horizontal breadth at each of the five points of division of the depth, also at the upper and lower points of the depth.

(4) Number the breadths from above, numbering the upper breadth 1 and so on down to the lowest or seventh.

(5) Multiply the second, fourth and sixth by 4, and the odd numbered breadths by 2, except the first and last which are multiplied by 1.

(6) Add these products together.

(7) Multiply the sum thus obtained by one-third of the common interval between the breadths, and the product shall be deemed the transverse area.

(8) This process will be repeated for every section.

(b) Having thus ascertained the transverse area at each point of division of the length of the vessel, also at each end of the length if they yield areas, as required above, proceed to ascertain the register tonnage of the vessel in the following manner:

(1) Number the areas successively 1, 2, 3, etc., No. 1 being at the extreme limit of the length at the bow and the last number at the extreme limit of the length at the stern.

(2) Then multiply the second and every even numbered area by 4 and the third and every odd numbered area by 2, except the first and last which are multiplied by 1.

(3) Add these products together and multiply the sum thus obtained by one-third of the common interval between the areas, and the product will be the contents in cubic feet of the spaces under the tonnage deck.

(4) Divide this product by 100, and the quotient, being the tonnage under the tonnage deck shall be deemed the register tonnage of the vessel, subject to the additions hereinafter mentioned.

(c) In every case when finding the capacity under tonnage deck, or a part thereof; whether the length be divided according to the table into 6 or 16 parts, as in classes 1 and 6, or in 2 or 4 parts as provided for in § 2.35 (a) and the depths into 4 or 6 parts, thus requiring 5 or 7 breadths respectively to be taken; the above formula shall be used; i. e., even numbered breadths shall be multiplied by 4, and odd numbered ones by 2 except the first and last which are multiplied by 1. Similarly when running areas through the multipliers, the even numbered ones shall be multiplied by 4 and odd numbered ones by 2, except the first and last, which are multiplied by 1.

§ 2.35 Breaks in double bottom.

(a) The tonnage length of a vessel having a break exceeding one-half of a foot in height, or a number of such breaks in the line of her double bottom, is to be divided into longitudinal parts establishing transverse vertical planes at such breaks. The length of each such part so found is then to be divided into a number of equal parts according to the class in the above table to which it belongs, just as if it were the length of a separate vessel: *Provided*, That such parts as are 20 feet or under in length may be divided into 2 equal parts, and those above 20 feet and not exceeding 40 feet in length may be divided into 4

equal parts instead of into 6, as indicated in the table in § 2.32 (a).

(b) When a vessel is required to be measured in parts, and each part measured as a separate vessel, the sum of the tonnages of the several parts is the capacity under the tonnage deck.

§ 2.36 Vessels having side tanks may be measured in parts.

Vessels having side tanks extending above the floor line or double bottom, and through which tanks tonnage breadths normally pass, may be measured in parts. The length of the first part will extend aft to the line of the forward bulkheads of the side tanks. (See Figures 23 and 24 (§ 2.65).) The length of the second part is equal to the length of side tanks, and the depths extend, at proper intervals under the tonnage deck, down to athwartship lines forming continuation of the side tank tops. (See Figure 25 (§ 2.65).) The third length immediately below the second part should equal that of the second. The breadths are taken between the inboard faces of the side tank bulkheads, and depths from athwartship lines forming continuation of the side tank tops. The fourth part will extend from a line athwart the after bulkhead of side tanks to a point aft where tonnage lengths usually terminate. Measure separately a side tank, the tonnage of which is to be doubled, assuming both tanks are identical as they usually are; then the sum of the tonnage of the several parts thus found shall be deemed the capacity under tonnage deck.

§ 2.37 Outside shaft tunnel.

To find the under deck tonnage of a vessel having an outside shaft tunnel, the shape of a section of which is usually the segment of a circle, measure the portion of the tunnel space included by the process of measurement in the under deck tonnage and subtract it therefrom. (See Figure 26 (§ 2.65).)

Divide the length of such tunnel into a convenient number of equal parts, then find an area at the points of division of the length, also at the ends, if the end ones yield an area, by the following formula:

$$\text{AREA} = \frac{2h}{3}(c)$$

c = chord of the segment of a circle.
h = height of segment (from chord to crown of arc).

Having found the required areas, proceed in the manner provided for using the areas as ordinates in determining under deck tonnage, finding the sum of even numbered areas multiplied by 4; the odd numbered areas multiplied by 2, except the first and last which are multiplied by 1. Then multiply the sum so found by one-third common interval between sections. The result divided by 100 gives the tonnage of the tunnel to be subtracted from the under deck tonnage found by ignoring initially the projection of the crown of the tunnel into the hold.

§ 2.38 Square end vessels having head blocks.

(a) In the case of vessels with square ends having head blocks extending from the deck to the bottom longitudinals on the rake of the bottom, the termini of the tonnage length will be at the inboard face of said block, and the area of the first and last section will equal the area of the inboard face of said block. (See Figure 27 (§ 2.65).)

(b) Should the head blocks extend inboard of the inboard face of the end frames (see Figures 28 and 29 (§ 2.65)), or should the head plates be excessive (see Figure 30 (§ 2.65)), consider the termini of the tonnage length to be at points inboard from the ends of the vessel, equal in distance to the thickness of the shell plating, depth of side frame, plus ceiling if fitted. Rubbing strakes to be excluded.

§ 2.39 Between decks.

(a) If the vessel has a third deck, the tonnage of the space between it and the tonnage deck shall be ascertained as follows:

(1) Measure the inside length of the space at the middle of its height, from the ceiling at the side of the stem to the ceiling on the midship stern timber; or, if there is no ceiling take the length from a point forward where a continuation of the lines of inboard faces of the side frames intersect the center line of the vessel aft to the inboard face of the midship stern timber. Divide the length into the same number of equal parts into which the length of the tonnage deck is divided.

(2) Measure also at the middle of its height the inside breadth of the space at each of the points of division of the length, the breadth at the stem, and the breadth at the stern (if round, as in the case of poops of similar form). Number the breadths successively 1, 2, 3, etc., commencing at the stem.

(3) Multiply the second and all other even numbered breadths by 4 and the odd-numbered breadths by 2, except the first and last which are multiplied by 1. Multiply the sum of these products by one-third of the common interval between the points at which the breadths were taken; the result will give, in superficial feet, the horizontal area at the mean height of such space.

(4) Multiply the mean horizontal area by the average height taken between the planks of the two decks and the product will be the cubical contents of the space; which, divided by 100 shall be deemed the tonnage to be included among the items comprising the vessel's gross tonnage.

(b) If the vessel has more than three decks, the tonnage of each of the between decks above the tonnage deck shall be severally ascertained in the manner above described and shall be added as items comprising the vessel's gross tonnage.

§ 2.40 Superstructures.

(a) *Permanent erections.* Permanent erections; i.e., forecastle, bridge, poop, break, etc., on or above the upper deck, shall be measured tier by tier, and, exclusive of closed-in exemptible spaces, and open spaces, shall be included in the gross tonnage.

(b) *Length.* Measure at half height the mean length of such a space along its center longitudinal line, from and to the line of the inboard faces of the frames, or stiffeners, or ceiling if fitted. Divide the length into an even number of equal parts the common intervals of which shall be most nearly equal to that of the parts into which the tonnage length was divided. (See Figure 31 (§ 2.65).)

(c) *Breadths.* Measure at the middle of its height the inside breadths; namely, one at each end and one at each point of division of the length, numbering them successively 1, 2, 3, etc., the number one breadth being at the extreme forward end of the length.

(d) *Round-end erections.* If the after end of an ordinary poop or a house is in the form of a continuous arc of a curve, its breadth at the extreme after end of its length shall be one-half of the preceding breadth. If the after end of such a poop or house is in the form of an arc of a curve which is broken at its extreme after end by a decided flat, its breadth at the extreme after end of its length shall be two-thirds of the preceding breadth. (See Figures 32 and 33 (§ 2.65).)

(e) *Round-end erections.* If the forward end of a house is in the form of a continuous arc of a curve, its breadth at the extreme forward end of its length shall be one-half of the succeeding breadth. If the forward end of such a house is in the form of an arc of a curve which is broken at its extreme forward end by a decided flat, its breadth at the extreme forward end of its length shall be two-thirds of the succeeding breadth.

(f) *Multipliers.* Multiply the even numbered breadths by 4, and the odd numbered ones by 2, except the first and last which are multiplied by 1.

(g) *Horizontal area.* Multiply the sum of the products by one-third of the common interval between the points at which the breadths were taken; the result will give the horizontal area at the mean height of such space.

(h) *Height.* Multiply the mean horizontal area by the average height measured between the decks, or the extended line of same. (See B and C in Figure 9 (§ 2.65).) Divide the product by 100 and the quotient shall be deemed the tonnage of such space.

(i) *Superstructures having breaks.* Superstructures having breaks in their covering deck or side lines shall be measured in parts. (See Figure 34 (§ 2.65).)

(j) *Superstructures on small craft.* Superstructures on small craft shall be measured similar to the method for finding the gross tonnage of larger structures. When a superstructure is erected over a cut-away portion of the tonnage deck, the height of such superstructure is to be taken from the under side of its covering deck to a line of continuation of the tonnage deck. Should there be no camber to the tonnage deck, allow for same, in the covering deck of the erection if it exceeds 0.15 foot. After subtracting the tonnage of exemptible spaces in the superstructure, the remainder shall be listed under a name describing the erection, among the items comprising the gross tonnage.

(k) *Height of a turtleback.* The mean height of a superstructure referred to as a "turtleback" may be found by taking a height at each point of division of its length, at the after terminal of its length, and at one-third common interval abaft the forward end of the length. The sum of the heights so taken, divided by the number of heights, will give a sufficiently accurate mean height.

§ 2.41 Hatchways.

The cubical contents of the hatchways shall be obtained by multiplying the length and breadth together and the product by the mean depth taken from the top of the beam to the under side of the hatch cover. From the aggregate tonnage of the hatchways there shall be deducted one-half of 1 percent of the gross tonnage of the vessel exclusive of the tonnage of the hatchways, and the remainder only shall be added to the said gross tonnage as excess hatchways.

The hatchways referred to are the ones out in the open or in open spaces on the upper deck to the hull and on closed-in deck erections. Hatchways on between decks and on the deck of open erections are not to be measured and included in the aggregate of hatchways from which the statutory deduction is to be made. The total hatchways on between decks and on the portion of the decks within closed-in erections on the upper deck to the hull are automatically included in the between-deck spaces and in the said erections by the process of measurement; and, of course, the hatchways on decks of open erections are not to be considered, serving as they do spaces not entering into the tonnage of the vessel.

§ 2.42 Record of exempted spaces.

The tonnage measurement of all spaces on or above the upper deck that the measurer has not included in the gross tonnage of the vessel must be recorded in detail on Form 1410, "Tonnage admeasurement," which, when forwarded to the Bureau for examination and appropriate action must be accompanied by suitable plans or sketches drawn to scale, or a complete explanation for the proper consideration of the exemption of such spaces.

§ 2.43 Enclosed spaces exempted from inclusion in gross tonnage.

The following closed-in spaces situated on or above the upper deck shall not be included in the gross tonnage provided they are reasonable in extent, adapted and used exclusively for the purposes outlined:

(a) *Companions.* Companions and booby-hatches serving as a protection for companionways (stairways or ladderways) leading to spaces below, whether such spaces are exempted or not. (See a, b, c and d in Figure 35 (§ 2.65).)

(b) *Galleys.* Spaces fitted with ranges or ovens (bakeries), without regard to the category of the persons they serve.

(c) *Light and air.* Spaces forming part of the propelling machinery space, or serving for the admission of light and air to such machinery shall be exempt under the heading of light and air. When no part of the propelling machinery extends below the upper deck, the space occupied by same is exemptible in its entirety together with such fuel bunkers as are located on or above the upper deck. Where fuel bunkers or tanks are located wholly or in part below the upper deck the space so occupied below the upper deck is not deductible.

(d) *Light and air on small boats.* (1) A house of reasonable size, into which the propelling machinery projects above the deck line, or a similar house used exclusively for light and air over such machinery on small boats is exempted, in its entirety, as light and air.

(2) A compartment of reasonable size, bulkheaded off and similarly used, located in a house serving other purposes is likewise so treated.

(3) When propelling machinery and/or light and air space, not bulkheaded off, is in a house serving other purposes, the actual length and breadth of the engine plus 2 feet each side and each end for working space, if such space is available, projecting up into the house becomes the length and breadth of exempted light and air, exclusive of such part as may be decked over and available for other purposes.

(4) If bunks, galley, supplies, etc., are located in the hull abreast the engine and under a house open to same, as described in preceding paragraph, and the 2-foot allowance for working space on each side of the engine base overlaps working space at galley, or as the case may be, allow one-half the actual breadth on each side the engine, which breadths plus the actual engine breadth projecting up into the house becomes the permissible breadth of light and air exemption.

(e) *Machinery spaces.* (1) Spaces occupied by machinery other than propelling machinery.

(2) The spaces occupied by dredging machinery on the upper deck of dredging vessels which are not self propelled but which are required to be documented are to be exempted. No allowance is to be made for spaces occupied by such machinery below the upper deck.

(f) *Skylights.* Skylights and domes affording ventilation and light to the erection thereunder, except skylights over propelling machinery. None of the space below the covering deck of such erection shall be exempted from inclusion in tonnage unless an opening is left in the deck of the superstructure immediately under such skylight or dome to give ventilation and light to spaces below such deck line. (See exempted skylight and a, b, c and d in Figure 36 (§ 2.65).) For the treatment of skylights over propelling machinery, see paragraph (c) of this section.

(g) *Special exempted water-ballast spaces.* (1) Any space other than the double-bottom space adapted only for water ballast, certified by the collector not to be available for the carriage of cargo (other than ballast water for use for underwater drilling, mining, and related purposes, including production), stores, supplies, or fuel, shall be deducted from the gross tonnage as measured to get gross register tonnage.

(2) Adaptation for water ballast consists of having the space or spaces properly constructed and tested as ballast tanks; that the pumps, pipes, etc., for filling and emptying such tanks must be of suitable dimensions, connected to the ballast system, and completely independent of the cargo, fuel oil, feed or domestic water pumping apparatus. Access shall be only through oval or circular manholes, whose greatest diameter must not exceed 2 feet in the watertight deck. Where a hatch exists over a space now to be used for the carriage of water ballast, plating shall be fitted and riveted or welded to form a watertight cover and a manhole as above described may be fitted in this cover plate. Such manholes, except when fitted on the weather deck, may be provided with a coaming not exceeding 6 inches in height. If these spaces are found being used for purposes other than water ballast, they are to be added to the gross tonnage of the vessel, and so included until such changes have been made as will definitely preclude their use for purposes other than for water ballast.

(h) *Water closets.* Any public room or compartment, if of reasonable size, fitted with hopper or hoppers, is, for admeasurement purposes, a water closet. This definition includes a room or a compartment designated as a toilet, fitted with urinal, or urinals, shower bath or shower baths, in addition to the hopper or hoppers. A crew water closet is considered public if it serves more than one member of the crew.

(i) *Wheelhouse.* The space for sheltering the man or men at the wheel. If the space is a combined wheelhouse and chart room, only such space as is necessary for the proper steering of the vessel shall be exempted. Should the space be partly above and partly below the upper deck, such part above the line of continuation of said deck is exemptible.

§ 2.44 Passenger cabins.

(a) Passenger cabins and staterooms immediately on the upper deck to the hull, permanently closed-in and fitted up for permanent use of passengers, are to be included in the gross tonnage. They will be exempted only when they have no berthing accommodations and have only temporary arrangements to protect passengers on short voyages from rain and the shipment of seas, constituting sheltered spaces under cover and open to the weather; that is, not enclosed.

(b) Cabins and staterooms when assigned for use of passengers only, constructed entirely above the first deck which is not a complete deck to the hull (see § 2.21), may be exempted from inclusion in tonnage. In the case of Army transports, colliers, supply ships, hospital ships, etc., the term "passengers" shall include all officers, enlisted men, and other persons who are not assigned to ship's duties and not entered on the ship's articles, and no deductions for spaces occupied by such persons shall be made; nor are cabins and staterooms occupied by them when situated on a deck not a deck to the hull to be included in gross tonnage.

(c) For admeasurement purposes a cabin is defined as an apartment of a vessel, or the portion of the apartment that is assigned for the exclusive use of passengers. A cabin may consist of staterooms, bathrooms, toilets, libraries,

writing rooms, lounges, dining rooms, saloons, smoking rooms, play rooms, etc., individually or collectively. The following spaces—smoking room, lounge, foyer, library, and similar public spaces, with or without a stateroom—would, for instance, be considered cabins. In short, any passenger stateroom or public space reserved entirely for the use of passengers is to be considered as coming under the meaning of the word "cabin".

(d) A passenger stateroom is defined as an apartment, or one of the units of an apartment on a vessel, intended primarily to afford sleeping and/or other accommodations for passengers traveling alone or together.

§ 2.45 Open superstructures on or above the upper deck.

(a) *Treatment.* Nothing shall be added to the gross tonnage for any sheltered space on or above the upper deck which is under cover and open to the weather; that is, not enclosed.

(b) *Determination as to inclusion in gross tonnage.* In deciding whether or not superstructures are permanent closed-in spaces and should be included in tonnage, the measurer should have regard to the character and structural condition of such erections.

(c) *Tonnage openings.* A forecastle, bridge, poop, or any other permanent superstructure on or above the upper deck to the hull, with one or more openings in its sides or ends, not fitted with doors or other permanently attached means (except as provided for below) of closing them, shall be exempted from inclusion in gross tonnage if the opening or openings are in conformity with the following provisions:

(1) *Two 3 x 4 foot tonnage openings.* When there are in one of the end bulkheads, two tonnage openings, each 3 feet wide by 4 feet high in the clear, one on each side of the center line of the end bulkhead.

(2) *One 4 x 5 foot tonnage opening.* When there is in one of the end bulkheads, as near as is practicable to the center line of the space, one tonnage opening at least 4 feet wide by 5 feet high in the clear, or its equivalent. An equivalent opening is considered to be one of at least 20 square feet in the clear, resulting from a breadth in excess of 4 feet and a height of not less than 3 feet.

(d) *Intermediate bulkheads.* If the space is subdivided by intermediate bulkheads, such bulkheads shall have an opening or openings of the same dimensions as prescribed above.

(e) *Coamings.* If coamings are fitted to tonnage openings, their height must not exceed 2 feet at any part.

(f) *Permissible temporary closures for exterior bulkhead tonnage openings.* Tonnage openings prescribed for the above-mentioned superstructures may be temporarily closed by shifting boards dropped into channel sections at the sides of such openings, or by plates or boards held in place by hook bolts, spaced not less than 1 foot apart, fitting over the stiffener bar at the sides, top, and bottom of such openings, or by a plate or boards held in place by bolts and cross pieces so arranged as not to be held in place by cleats or other attachments to, or bolts through the bulkhead. (See Figures 37 to 43, inclusive (§ 2.65).) Cover plates, etc., must fay against the bulkheads.

(g) *Battening, gaskets, etc.* In no case is the use of battening, caulking, or gaskets of any material permitted.

(h) *Permanent fixtures.* Cleats, stud bolts, hinges attached to, or bolts in bulkheads at the edges of tonnage openings are prohibited as they are considered to be part of the means, in conjunction with the plate or boards, of closing the tonnage opening.

(i) *Closures for interior bulkhead tonnage openings.* The same temporary means of closing, except by plates, the tonnage openings in interior bulkheads are permitted.

(j) *Enclosure within an open space.* An enclosure within an exempted space must be treated according to its use.

§ 2.46 Open shelter deck space.

(a) No space between the upper and shelter decks of a vessel shall be exempted from inclusion in gross tonnage as open shelter deck space unless there is in that shelter deck a permanent middle-line tonnage opening which, except as provided in this paragraph, is at least 4 feet long in the clear and at least as wide, in the clear, as the after cargo hatch on that deck. If any such opening is less than the minimum size in the clear specified in this paragraph solely because one or more corners of that opening are rounded, that space shall be exempted, upon compliance with all applicable provisions of this section, in any case in which the radius of curvature of each such corner is not greater than 9 inches, or in any case in which a greater radius of curvature is required in writing by the United States Coast Guard or by a recognized classification society. In the latter case, a copy of that written requirement shall be filed in the office of the collector of customs by whom the vessel is admeasured.

(b) *Position of middle line tonnage opening.* The distance between the after edge of this tonnage opening and the aft side of the sternpost must not be less than one-twentieth the register length of the vessel, or if the tonnage opening is forward, its fore side must not be less than one-fifth the register length of the vessel from the stem.

(c) *Coamings.* The coamings of the middle line tonnage opening must not exceed 12 inches extreme mean height above the deck, including the beading, etc., at the top for confining the hatch covers. If any such opening is guarded by rails or stanchions they shall be so arranged that they may not be used to secure or assist in securing a cover over that opening.

(d) *Cover.* (1) When portable wood covers are fitted they may be held in place by lashings fitted to the under side of the covers; lashings may be of hemp, manila or other similar material.

(2) When a metal cover is used, it may be held in place by hook bolts spaced not less than 18 inches apart, passing through the cover plate and hooked over angle stiffeners or flanges fitted on the outside of the coamings; i. e., the bolts must not pass through the stiffeners or flanges on the coaming, nor must there be any other attachments on the coaming for fastening the cover.

(e) *Opening not to be enclosed.* The middle line tonnage opening in a shelter deck must not be within a superstructure of any type.

(f) *Tonnage openings in shelter deck space.* When the permanent deck opening is situated aft, there must be at least two openings, each 3 feet wide by 4 feet high in the clear, in each of the transverse bulkheads within the shelter deck space forward of said deck opening; or should the deck opening be forward, the same requirements apply to transverse bulkheads abaft such forward deck opening.

(g) *Coamings.* Coamings, if fitted, must not exceed 2 feet in height at any part.

(h) *Temporary closure.* Excluding plates, the same temporary means of closing tonnage openings in the bulkheads of the well under the middle line tonnage opening in the shelter deck and in the intermediate bulkheads, if any, in the shelter deck space are permitted as described in § 2.45 (f).

(i) *Well under middle line tonnage opening.* The well under the middle line tonnage opening (in the shelter deck) must have a minimum length of 4 feet throughout its entire breadth and height, and shall be kept clear at all times.

(j) *Scuppers.* A scupper, having a 5-inch minimum inside diameter, fitted with a screw down non-return valve geared to and operated from the shelter deck, must be fitted on each side of the upper deck in way of the permanent middle line tonnage opening in the shelter deck. (See Figure 44 (§ 2.65).)

(k) *Means for closing.* All openings in the upper deck to the hull must be provided with proper means for closing and battening down.

(l) *Closed-in spaces.* Any closed-in space within an open shelter deck space shall be treated according to its usage.

§ 2.47 An open structure on small craft.

(a) A house on a small craft is considered open to the weather and exempted from inclusion in tonnage provided the after end of such house is entirely open, from the under side of its roof beam down to a coaming not exceeding 3 inches in height, if there be a coaming, otherwise to the deck or line of same; and open in an athwartship direction from and to the inboard face of the end side stiffeners. (See Figures 45 and 46 (§ 2.65).) Closed-in spaces within an open erection will be treated according to their usage.

(b) Such an opening may be guarded by wire mesh screens and/or temporarily closed by canvas secured at the top and lashed down or buttoned in place at the sides and bottom.

§ 2.48 Open vessels.

(a) In ascertaining the tonnage of open vessels the upper edge of the upper strake shall form the boundary line of measurement, and a tonnage depth shall

be taken from a line athwart the upper edge of said strake, at each point of division and each end of the tonnage length.

(b) An open vessel is one of any length without a deck, or with only a partial deck or partial decks, the total length of which is less than one-half her tonnage length.

(c) Further, a vessel having a tonnage length of less than 50 feet and a partial deck of any length or a single full length deck, which, in either case, lies more than one-sixth of the midship depth below the line of the upper edge of the upper strake to the usual point in the hold for taking the register depth, shall, for admeasurement purposes, be deemed an open vessel unless it has a mechanically refrigerated hold or holds.

§ 2.49 Deductions from gross tonnage.

(a) *General.* To ascertain the net tonnage, the tonnage of the following spaces meeting certain requirements shall be deducted from the gross tonnage.

(b) *Requirements.* No space shall be deducted unless it has been included previously in the vessel's gross tonnage; is reasonable in extent for the purpose to which it is appropriated; and is certified by marking as prescribed in paragraph (c) of this section showing that it is used exclusively for such purpose.

(c) *Marking.* The following markings are required by paragraph (b) of this section: For each space appropriated exclusively for the use of the master, including the master's bathroom, bedroom, dressing room, observation room, office, reception room, sitting room and water closet— "Certified for the Accommodation of Master"; for each space appropriated exclusively as a bedroom for the use of crew members, including officers other than the master—"Certified to Accommodate _____ Seamen"; and for other deductible spaces—"Certified _____," inserting the appropriate designation such as—"Boatswain's Stores," "Chart House," "Dynamos," "Galley," "Hospital," "Messroom," "Office of Chief Engineer," "Pump Room," "Radio," "Steering Gear," "W. C." The following abbreviations may be used: "Cert. Accom. Master," "Cert. Accom. _____ Seamen," "Cert. Boatswain's Stores," "Cert. Chart House," "Cert W. C." or "Cert. _____," inserting the space designation. The marking shall at all times be embossed, center-punched, or otherwise permanently cut in metal, and painted over with oil paint in a light color on a dark background, or a dark color on a light background, or carved or branded at least three-eighths of an inch in wood over the doorway, on the inside of the deductible space. Roman letters and Arabic numerals at least one-half of an inch in height shall be used and shall be readily legible at all times. If desired, the marking may be made on a plate of metal (but not of other material) permanently fastened in place by means of welding, riveting, or lock-type screws.

(d) *Crew spaces.* The tonnages of the spaces or compartments exclusively occupied by and appropriated to the use of the officers and crew of the vessel including:

Bathrooms. A bathroom is a compartment or a room containing (1) a bath tub, or (2) a bath tub and a water closet, or (3) a shower bath or showers without a water closet regardless of its location.
Clothes drying room.
Drinking water filtration or distilling plant below deck.
Hospital.
Crew mess rooms.
Officers' mess rooms.
Office of chief engineer.
Oil skin locker.
Pantry.
Recreation room.
Shower baths.
Sleeping rooms.
Smoking room.
Water closets, private. A private water closet is defined as one intended to serve not more than one member of the crew, whose stateroom or bedroom affords the only means of entrance thereto and is treated as part of the room served by it. Other water closets are considered to be public water closets for admeasurement purposes.
Water closets, public—below the upper deck.
Passageways and companionways serving the above spaces.

But none of these spaces when used by the passengers on a passenger vessel are to be deducted nor is the clerk's, purser's or paymaster's office deductible.

(e) *Nondeductible spaces on deductible passageway.* Lockers of less than 2 tons each, containing medicine, linen, mops, etc., for the free use of the crew; the ship's office, also spare rooms, not exceeding two in number and used as required by a pilot, customs officer, reserve engineer, a company official or employee shall not invalidate the deduction of a passageway serving as sole access to their location.

(f) *Master's cabin.* Any space exclusively for the use of the master. This space includes sleeping room, dressing room, bathroom, office, and passageways serving the master's accommodations.

(g) *Measuring deductible spaces.* Deducted spaces, rectangular in shape, are to be measured by taking the product of the three dimensions, but when bounded by curved surfaces conforming to the sides of the vessel below the tonnage deck exceeding 15 feet in length, they are to be measured according to the formula on the back of Form 1410 for measuring peak tanks. When the space is less than 15 feet in length it may be measured by any practical method.

(h) *Platforms.* (1) When there is a platform, not more than 1 foot above the top of the bottom frames, to give a flat surface at the bottom of deductible spaces, and the space between the platform and said frames is not used for the stowage of gear, stores, etc., or for any other purpose, take depths of transverse sections to the top of the bottom frames and find areas as in the case of transverse sections for finding the tonnage below the tonnage deck. (See Figure 47 (§ 2.65).) P represents the platform 1 foot above the top of the bottom frames. A, B, and C are the positions of the sections. The forward section A, being sharp, yields no area.

(2) When the platform is more than a foot above the bottom frames, then find the areas only of the portion of the sections above the platform. (See Figure 48 (§ 2.65).)

(3) The depth of deducted spaces extending from the top to bottom of a deck erection may be taken between the same points as the depths used in finding the tonnage of the erection. In other words, if the erection was measured before the deck covering, if any, was laid and the ceiling or paneling, if any, overhead was fitted, and depths were taken from the underside of the covering planks or plating of the deck over as required by the law and regulations to the deck beneath, the deck covering and overhead ceiling are to be disregarded in obtaining depths of the various deducted spaces. In determining the number of men that may be berthed in a space the act of March 4, 1915, (38 Stat. 1165; 46 U. S. C. 660–1) is to govern.

(i) *Spaces in the between decks, etc.* Deducted spaces in the between decks or erections on or above the upper deck having curved sides are to be measured according to § 2.40.

§ 2.50 Navigation spaces.

(a) *Spaces used exclusively for navigation.* Spaces used exclusively for maneuvering or navigating the ship shall be deducted from the gross tonnage to the extent of what is considered reasonable. When the steering gear, anchor gear, helm, etc., are situated within a room unnecessarily large for the purpose, or are not partitioned off at all, a 2-foot allowance on every side of the apparatus may be made for working space. The height to be allowed should, as a rule, be the mean height of the between deck space.

(b) *Anchor gear.* The spaces below, occupied by anchor gear, include the capstan, windlass, and chain locker. When the fore peak is used exclusively as the chain locker, it is to be measured in the manner prescribed for measuring fore peak tanks when used for water ballast.

(c) *Boatswain's stores.* (1) Subject to the restrictions stated below, any space exclusively appropriated to and used for keeping the boatswain's stores may be deducted.

(2) The allowance for boatswain's stores shall be 1 percent of the gross tonnage in vessels of 100 gross tons and over, but this allowance shall in no case exceed 100 tons. In the case of vessels of less than 100 gross tons this deduction shall not exceed 1 ton.

(d) *Chart room.* (1) The space for keeping the charts, nautical instruments and for plotting the course. When the space is a combined wheel and chart room, such part as is not exempted as wheelhouse shall be deducted.

(2) In small vessels requiring the use of navigation charts, and where the cabin or saloon is the only space available for filing or use of such charts, one-half of the cabin or saloon, may be allowed for this purpose provided the allowance does not exceed 1½ tons.

(e) *Donkey engine and boiler.* (1) The space occupied by a donkey engine and boiler, if situated within the boundary of the engine room or the casing above it, and if the donkey engine is used as an auxiliary in connection with the main machinery for propelling the vessel and this space forms part of the actual

engine room it shall not be subject to a separate allowance.

(2) When the donkey engine and/or boiler is in a house above the upper deck and not used in connection with the main propelling machinery as described above, the space thus occupied is an exemption and therefore must not be included in the gross tonnage of the vessel.

(3) In all other cases the space occupied by the donkey engine and boiler, if same are connected with the main pumps (except cargo pumps) of the vessel, is to be allowed as a deduction from the gross tonnage, if reasonable in extent. It must be certified in the same manner as other deductible spaces.

(f) *Dynamo spaces.* The space or spaces when reasonable in extent, occupied by dynamos, switchboards and apparatus necessary for the operation of same, when located below the upper deck shall be deducted regardless of the service for which the dynamo or dynamos are used.

(g) *Pump room.* A pump room or space below the upper deck containing the pumps of the vessel which are used solely for handling ballast, feed water, water for cleansing purposes, and for freeing the ship of water entering her hold, etc., shall be deducted as pump room. A pump room or space below the upper deck containing pumps primarily used for handling cargo, as in the case of bulk-oil carriers, shall not be deducted. The portion of either of the above pump spaces above the upper deck is exemptible as machinery space.

(h) *Radio house.* The space set apart for sending and receiving wireless messages.

(i) *Storage of sails.* In the case of a vessel propelled wholly by sails, any space not exceeding 2½ percent of the gross tonnage of the vessel when such space is used exclusively for storage of sails.

§ 2.51 Engine room.

(a) *Engine room must be measured.* Notwithstanding the ratable allowance for propelling power for which the act of March 2, 1895 (28 Stat. 741; 46 U.S.C. 77) provides, it is necessary to measure the engine room, regardless of size, in order to ascertain whether the allowance to be deducted for propelling power shall be regulated by a percentage of the gross tonnage or by the actual tonnage of the engine room ascertained by measurement.

(b) *Spaces included in engine room must be in gross tonnage.* No space shall be included in the tonnage of the engine room unless it has first been included in the vessel's gross tonnage.

(c) *Deductions from engine room.* Conversely the spaces occupied by cabins, storerooms, etc., and any space not used in connection with propelling the vessel but included in the tonnage of the engine room through process of measurement must be subtracted therefrom.

§ 2.52 Spaces included in engine room.

The space occupied by the engine room is to be understood to include not only that occupied by the engine room itself but also the space occupied by the boiler room, together with the spaces strictly required for the working of the engines and boilers, and consisting of the following items:

(a) *Space below the crown.* The crown or top of the main space of the actual engine room, from which the depths of the main space are to be taken, will either be at the under side of a deck or, if the side bulkheads are sloping, at the point or height at which the slope terminates. (See Figures 49 and 50 (§ 2.65).)

(b) *Space between crown and upper deck.* Space between the crown and the upper deck framed in for the machinery or for admission of light and air thereto.

(c) *Space above upper deck.* Space similarly framed in above the upper deck when permitted under paragraph (i), act of March 2, 1895 (28 Stat. 741; 46 U. S. C. 77).

(d) *Shaft tunnels, etc.* The shaft tunnel or tunnels and the thrust block recess.

(e) *Escape shaft.* The trunked ladderway leading from the after end of the shaft tunnel to the deck, provided that it is no larger than is necessary for the purpose of access to and escape from the shaft tunnel. The part of an escape shaft above the upper deck line, also the companion sheltering the escape shaft, is accorded the treatment of light and air space.

(f) *Fuel oil transfer pump.* (1) When the fuel oil transfer pump is located in a separate space, this space, if reasonable in size, may be considered propelling machinery space provided said pump is not used for bunkering the vessel.

(2) Should such pump perform the dual service of handling both ballast and transferring fuel oil to the settling tanks, one-half the space may be credited to propelling machinery space.

(g) *Settling tanks.* (1) Fuel oil settling tanks used solely for rendering crude oil fit for consumption in the main boilers are considered as part of the propelling machinery space.

(2) The permissible allowance for settling tanks is based on a 4 days' supply under full steam, which allowance must not exceed 1 percent of the vessel's gross tonnage.

(h) *Engineers' stores and workshops.* The engineers' stores, and/or workshops are regarded as part of the engine room, up to three-quarters of 1 percent of the gross tonnage, if in the engine room, open to same, or separated therefrom only by a screen bulkhead and located below the upper deck.

§ 2.53 Length of engine room.

(1) As a rule, the length of the engine room extends from the bulkhead forward of the boilers to the one aft of the engines; but if these bulkheads limit a space considered excessive in length for the proper working of the boilers and engines, then that length only which is requisite for containing and operating the boilers and machinery, is to be allowed, with the addition of such length as is necessary for the stoking or working of the fires when the furnaces are in a fore-and-aft direction.

(2) No such additional length is, however, required when the boilers are placed with the furnaces athwartship. The clear central space allowed between the boilers when the stoking is athwartship should be sufficient for this purpose. The point to which the after boundary of the length of the engine room is to be measured should be such as to provide sufficient space for the safe operation of the engine.

(3) The measurer should allow such length between the engines and boilers as may appear to him necessary for the safe working of the machinery.

§ 2.54 Boilers and engine in same compartment.

The boilers and engine are considered to be in the same compartment when there is a transverse bulkhead, screen or otherwise, through which the boilers project into the engine space, and where there is only sufficient space between the boilers and engine for the safe working of the machinery.

§ 2.55 Engine room measured in parts.

If the boilers and engine are entirely in separate rooms, or if there is a break or breaks in the bottom or side lines of the propelling machinery space resulting from a break or breaks in the double bottom or varying height of floors thereunder, or from side bunkers or other spaces not considered propelling machinery spaces, measure each room separately as a whole or in parts, according to the number of breaks in its bottom or side lines, and the sum of the several results shall be deemed to be the tonnage of the said spaces.

§ 2.56 Rule for measuring engine room.

(a) *Space in hold amidship.* When the propelling machinery (boilers and engine) space is in the hold amidship, and without a break in its bottom or side lines, measure its length between the foremost and aftermost bulkheads or limits of its length, excluding such parts, if any, not actually occupied by or required for the proper working of the machinery. Divide the length by 2 and measure 3 depths of the space, one at each end and one at the middle of the length, taking the depths from the crown, or line of same, to the ceiling on the bottom frames or floor timbers, or to the inner plating (tank top) of the double bottom in the case of a steel vessel. Measure also a breadth at each end and at the middle of the length, the said breadths to be taken at one-half their respective heights. Find the product of the length, mean breadth and mean depth, which product divide by 100 and the result shall be deemed the tonnage of the main space below the crown.

(b) *Spaces between the crown and upper deck.* Find the cubical contents of the space or spaces, if any, between the crown aforesaid and the upper deck, or line of same, which are framed in for the propelling machinery or admission of light and air thereto, by multiplying together the length, breadth and depth thereof. Divide the product by 100; add the quotient to the tonnage of the space below the crown and the result shall, subject to the provisions hereinafter contained, be deemed the tonnage of the space.

(c) *Engine room in after end.* When the propelling machinery space is located in the after end of the hold of a vessel and extends from side to side of same and has a continuous bottom line, divide its length into such an even number of parts as will give a common interval most nearly equal to that used in finding the tonnage of the hold in that part of the vessel; then proceed to find its contends by the use of areas of transverse sections taken at each end and at each point of division of its length. In other words, measure it by the same method as was used for finding the tonnage of that part of the hold in which it lies.

(d) *Shaft tunnel and thrust recess.* (1) In the case of screw propelled vessels in which the top of the shaft tunnel is flat, the tonnage of such tunnel shall be ascertained by dividing the product of its length, breadth and depth by 100.

(2) In like manner find the tonnage of the thrust recess or entrance to the shaft tunnel.

(3) If the space abaft the shaft tunnel extends from side to side of the vessel, find its tonnage by using the formula for measuring peak tanks. (See Figures 47 and 48 (§ 2.65).)

(e) *Round top shaft tunnel.* When the top of the tunnel is practically semicircular in shape, find the area of a transverse section in two parts; first the lower part from the bottom of the trunk up to where the curve begins by multiplying the breadth by the applicable height, and then the semicircular part by taking half the area of a circle whose diameter equals the breadth of the tunnel. Multiply the sum of the two areas by the length and divide the product by 100. (See Figure 51 (§ 2.65), wherein B and H equal the breadth and height, respectively, of the lower part, and r equals the radius of the semicircular top.)

(f) *Shaft space and thrust recess not cased.* (1) When the shaft is not enclosed by a tunnel, the following rules should be observed in the case of a vessel with a single screw. The thrust-block space should be of such length and breadth as will permit of the proper care of the thrust-block and the height should not exceed 7 feet. The shaft space allowed should be of the dimensions of the usual tunnel suitable for the vessel and the height of this space should not exceed 6 feet.

(2) When the vessel is a twin screw and the space aft of the engines is open from side to side, the space should not be included in the engine room measurement for a greater height than 6 feet mean, and any space therein appropriated for stores or for any purposes other than the propelling machinery should be subtracted from the space to be included in the engine room.

§ 2.57 Engine room in small boats.

(a) *When not bulkheaded off.* In the case of a motorboat not having an engine room bulkheaded off from the rest of the hold, allow as engine space the space occupied by the engine and sufficient space on each side and end of it—say, about 2 feet—to permit the operator to handle it safely and efficiently; if sufficient space does not exist for such allowance then allow whatever space there is. Fuel tanks are not to be included in the said engine space.

(b) *When bulkheaded off.* If the engine room is bulkheaded off from the rest of the hold and is larger than is strictly required for safe and efficient handling of the engine, limit the engine space according to the said requirements and as indicated in paragraph (a) of this section.

(c) *Engine on a bed.* If the engine sits on a bed located on the vessel's bottom timbers, take depths when measuring the propelling machinery space from the under side of the deck, or line of same down to the top of the bottom frames or floor timbers as the case may be, or to the ceiling thereon when fitted.

(d) *Boxed-in engine.* (1) When the portion of the engine extending above a cockpit platform is boxed in such boxed-in portion is considered to be all of the space available for the installation and operation of the engine above the line of said platform in that part of the vessel.

(2) In the case of a wholly boxed-in engine in the hold of a motorboat, the tonnage of the boxed-in space, plus the shaft, engine auxiliaries, etc., that may be outside the boxing is considered the propelling machinery space.

(3) The above restrictions may invalidate light and air exemption when the boxing does not extend above the line of the upper deck. However, when such boxing does extend above said deck line, the height of light and air exemption is from the upper deck line to the under side of the top of the boxing.

§ 2.58 Deduction for propelling power.

In the case of a vessel propelled by steam or other power, a deduction shall be made for the propelling machinery space according to the percentage ratio between the actual tonnage of such space and the vessel's gross tonnage, calculated as follows:

For vessels propelled by screw in whole or in part:

13 percent or less: Deduct 32/13 times the tonnage of the actual propelling machinery space; or, in the case of a vessel the construction of which was commenced on or before June 4, 1956, if the owner so elects, deduct 1¾ times the tonnage of the actual propelling machinery space.

Above 13 percent, below 20 percent: Deduct 32 percent of the gross tonnage.

20 percent or more: Deduct 32 percent of the gross tonnage or 1¾ times the tonnage of the actual propelling machinery space, whichever the owner elects.

For vessels propelled by paddle-wheel in whole or in part:

20 percent or less: Deduct 37/20 times the tonnage of the actual propelling machinery space; or, in the case of a vessel the construction of which was commenced on or before June 4, 1956, if the owner so elects, deduct 1⅛ times the tonnage of the actual propelling machinery space.

Above 20 percent, below 30 percent: Deduct 37 percent of the gross tonnage.

30 percent or more: Deduct 37 percent of the gross tonnage or 1⅛ times the tonnage of the actual propelling machinery space, whichever the owner elects.

§ 2.59 Light and air spaces.

(a) *Application for allowance.* On a request in writing by the owner of a vessel to the collector of customs of the district in which the vessel is located, the tonnage of such portion of the space or spaces above the crown of the engine room and above the line of the upper deck as is framed in for the machinery, or for the admission of light and air, and not required to be included in the gross tonnage, shall for the purpose of ascertaining the tonnage of the space occupied by the propelling machinery, be added to the said machinery space; but it shall then be included in the gross tonnage. Such space or spaces must be reasonable in extent, safe, and seaworthy and cannot be used for any purpose other than the machinery or for the admission of light and air to the propelling machinery space of the vessel.

(b) *Reasonable in extent.* In construing the words "reasonable in extent" the measurer should note that the length should not exceed the length of the propelling machinery space, and if any portion is plated over, the length of such part must be deducted from the full length and whatever the breadth of the casing may be, the breadth allowed must not exceed one-half the extreme inside midship breadth of the vessel.

(c) *Purpose for including light and air spaces.* The purpose of adding a part of the framed-in light and air spaces (above the crown of the boiler and engine room and above the upper deck) of a vessel to her machinery space below the upper deck is to entitle the vessel to a greater deduction for propelling power, and consequently obtain a smaller net tonnage than would otherwise result. To get this benefit, it does not always require the addition of the total of such light and air spaces. In such cases only such portion need be added as hereinafter explained.

(d) *Rule for computing addible light and air space.* Below is given a simple rule for finding the amount of light and air space or spaces required to be added to the gross tonnage and also to the propelling machinery space of a mechanically propelled vessel to entitle her to 32 percent of her gross tonnage for propelling-power deduction when granted by the collector upon request of her owner or owners:

Find 13.1 percent of the gross tonnage inclusive of excess hatchways. Find the difference between this percent and the tonnage of the propelling machinery space below the upper deck to the hull. Increase this difference by 15 percent of itself, which gives approximately the

amount of light and air space or spaces to be added to the gross tonnage defined above, and also to the propelling machinery space below said upper deck. The gross register tonnage in such a case is the gross tonnage as defined above, plus light and air addition, less one-half of 1 percent of said light and air addition, which one-half percent is additional allowance for excess hatchways due to addition of light and air to gross tonnage.

EXAMPLE

Gross tonnage, exclusive of light and air and hatchways	5,675.95
Excess of hatchways (based on the above)	67.37
Gross tonnage, inclusive of excess hatchways and exclusive of light and air	5,743.32
13.1 percent of 5,743.32	752.37
Machinery space below the upper deck to the hull	680.55
Difference	71.82
15 percent of difference	10.77
Difference plus 15 percent of itself (amount of light and air to be added to gross tonnage and machinery space)	82.59
Gross tonnage, inclusive of light and air and excess of hatchways	5,825.91
Additional exemption for hatchways; account of light and air addition equals one-half of 1 percent of 82.59 − 82.59/200	.41
Gross registered tonnage	5,825.50
Proof:	
13.1 percent of 5,825.50	763.14
680.55 plus 82.59	763.14

§ 2.60 Verification of calculations, diagram of areas, and certification of results.

(a) *Calculations to be verified and diagram of areas made.* Calculations must be verified at least twice and a diagram of half breadths for areas made. (See Figures 52 and 53 (§ 2.65).)

(b) *Certification of results.* The deductions having been made from the gross tonnage and the remainder or net tonnage having been properly marked on the main beam, the surveyor or measuring officer will certify the result to the collector on Form 1322.

§ 2.60a Marking net tonnage and official number on vessel.

(a) The official number of a vessel, preceded by the abbreviation "NO.", and the net tonnage, preceded by the word "NET", shall be marked in a conspicuous place on her main beam at the expense of the owner or master, in Arabic numerals of the block type at least three inches in height, when the size of the main beam will permit. If the main beam is of wood, it shall be carved or branded in figures not less than three-eighths of an inch in depth. If the main beam is of iron or other metal, the official number and net tonnage shall be outlined by punch marks and painted over with oil paint in a light color on a dark background or a dark color on a light background.

(b) The beam at the forward end of the largest hatch on the weather deck which is generally located forward of amidships shall be considered the main beam for the purposes of these regulations. In the case of a vessel which does not have a hatch on the weather deck, any structural member which is integral to the hull may be considered the main beam.

(c) The official number awarded to a vessel shall pertain only to that vessel. If a vessel, having once received an official number, is rebuilt or redocumented, the number originally awarded shall be retained.

§ 2.61 Appendix to certificate of registry.

(a) When a vessel of the United States carries passengers to a foreign port or ports the collector of customs will issue to each such vessel admeasured in his district a "Special Appendix to Certificate of Registry of American Passenger Vessels" (Form 1265–A), showing the tonnage of passenger spaces on a deck not a deck to the hull and exempted from inclusion in tonnage by the regulations in this part.

(b) The same requirement applies to vessels operating from his district not previously furnished such an appendix.

(c) At the end of each quarter, the collector must report to this Bureau the official number and name of every vessel in his district to which such appendix has been issued during that period.

§ 2.62 Measurement of Government vessels.

When the tonnage of Government colliers, transports, supply ships, repair ships, etc., is requested this tonnage shall be ascertained in accordance with the rules in this part, but the following requirements will be waived: The marking of the vessel's name and home port, official number (none required), and net tonnage; the requirements as to size and conditions of crew space, and the certifications of deducted spaces on the beam over the doorway. The plate over the door designating its use is sufficient for such certifications.

§ 2.63 Foreign vessels.

A similar mode of measurement having been adopted by Belgium, Denmark, Esthonia, Finland, France, Free City of Danzig, Germany, Great Britain, Iceland, Israel, Italy, Japan, Latvia, Liberia, the Netherlands, Norway, Panama, Poland, Portugal, Russia, Spain, Sweden, Venezuela, and Yugoslavia, and the like courtesy having been extended to vessels of the United States, it is directed that merchant vessels of these countries, the registers of which indicate their gross and net tonnage under their present laws, shall be taken in the ports of the United States to be of the tonnage so expressed in their documents. Vessels of foreign countries other than the aforesaid are to be measured according to the laws of the United States.

§ 2.64 Adjustment and correction of tonnage.

(a) The tonnage shown in the document of a vessel of the United States shall not be changed except as provided in this section.

(b) If there has been a change of structure or use of space that affects tonnage, application for adjustment of such tonnage shall be made as provided in § 2.8. If the owner claims that the tonnage shown in the vessel's document is erroneous, he shall make application in writing to the collector of customs of the district in which the vessel is located for adjustment of such tonnage. Any application for adjustment of tonnage shall be accompanied by appropriate drawings as required by § 2.9 and by a precise statement of the changes made or assignments of error.

(1) The collector shall not readmeasure unaltered spaces or spaces for which no error is claimed, but shall use the figures shown on the latest record of tonnage admeasurement (Form 1410 or Form 1410–A) unless there is an obvious error thereon. If the vessel was previously admeasured at a port other than the port at which application for adjustment of tonnage is made, the latest record of tonnage admeasurement shall be forwarded to the collector at the latter port upon his request. Such record shall be returned without alteration after a final decision has been reached.

(2) The collector shall make such admeasurement as is necessary to determine the proper tonnage of the vessel. Where the tonnage is found to be different from that shown in the vessel's document, he shall prepare a new record of admeasurement.

(3) If the change of tonnage is due to a change in structure or use of space, the outstanding document shall be surrendered in accordance with the provisions of law and regulations applicable to the surrender of documents. Any document thereafter issued shall show the adjusted tonnage.

(4) If the application for adjustment of tonnage is based on a claim of error, the application and all papers referred to in subparagraphs (1) and (2) of this paragraph shall be forwarded to the Commissioner of Customs. The Commissioner will review the application and advise the collector of his decision.

(c) If an error in the tonnage shown on the document is detected by a collector he shall proceed as though the owner had made application to him for adjustment of tonnage because of the error.

(d) If there is an obvious typographical error in the tonnage shown on the document, the collector shall make the necessary correction.

§ 2.65 Figures.

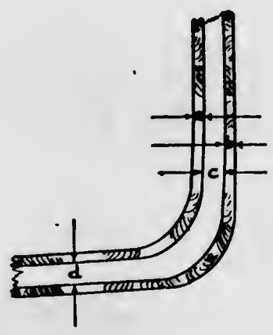


FIGURE 1.

a: THICKNESS OF CEILING
b: THICKNESS OF OUTER PLANKING
c: DEPTH OF SIDE FRAMES
d: DEPTH OF BOTTOM FRAMES OR FLOORS

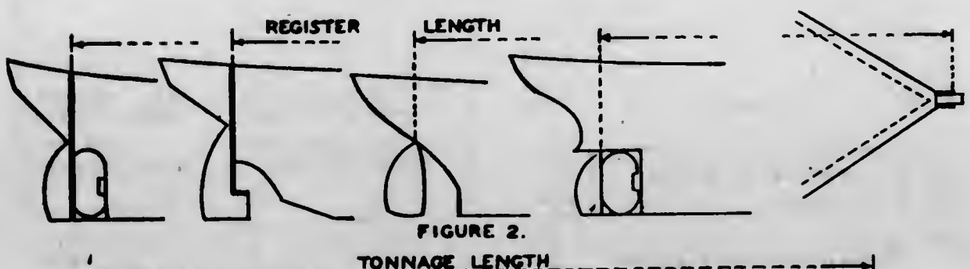


FIGURE 2.

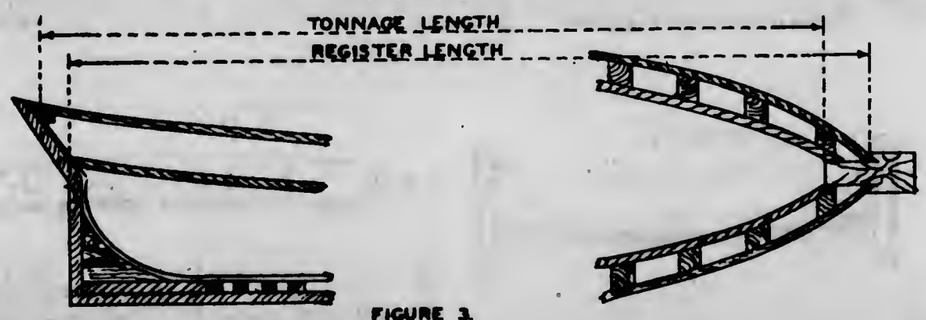


FIGURE 3.

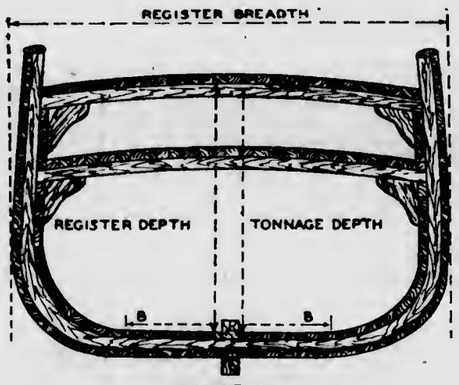


FIGURE 4.

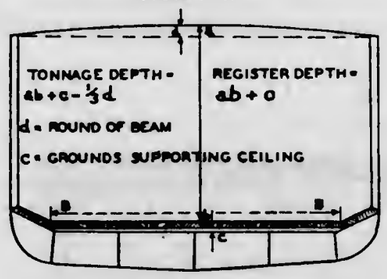


FIGURE 5.

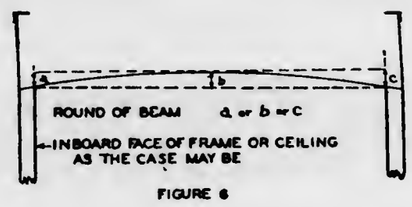


FIGURE 6

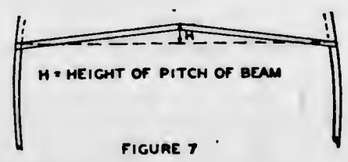


FIGURE 7

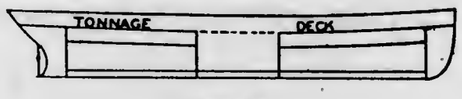


FIGURE 8



FIGURE 9

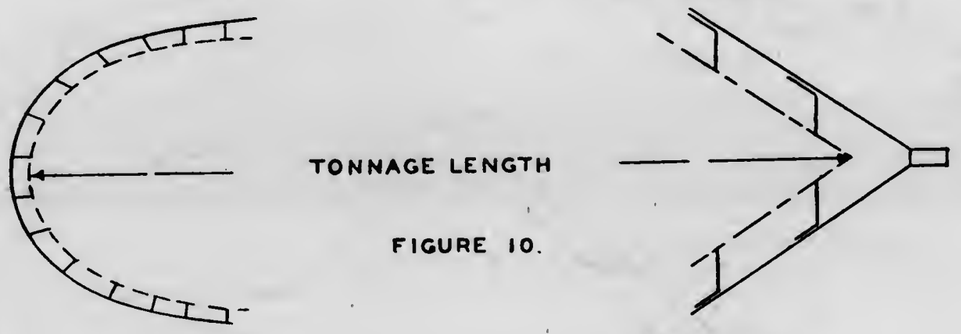


FIGURE 10.

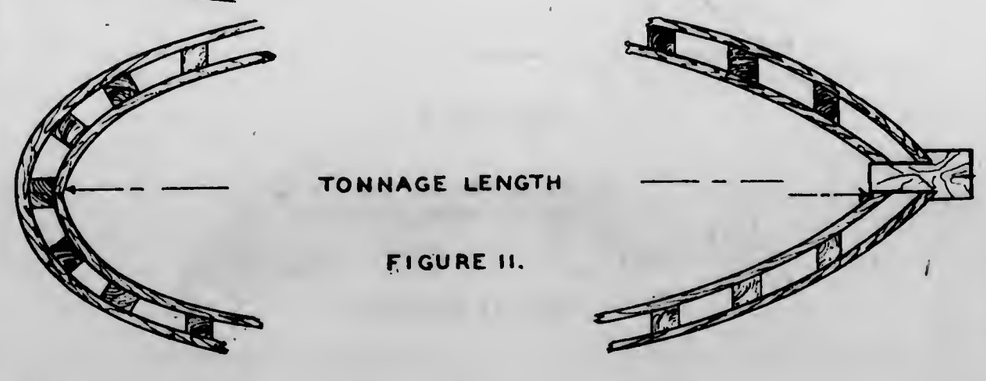


FIGURE 11.

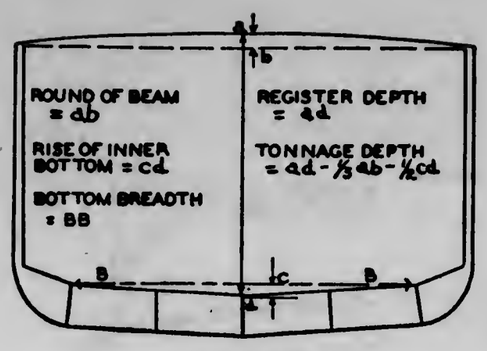


FIGURE 12.

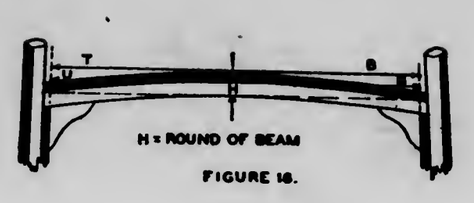


FIGURE 16.

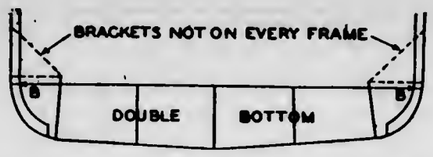


FIGURE 17.

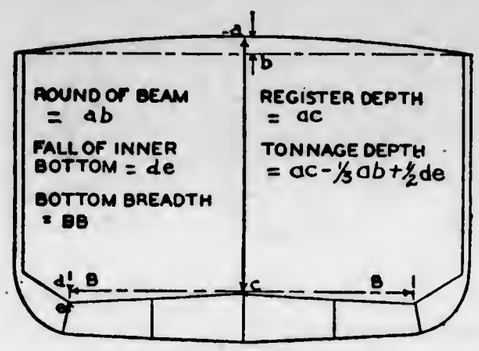


FIGURE 13.

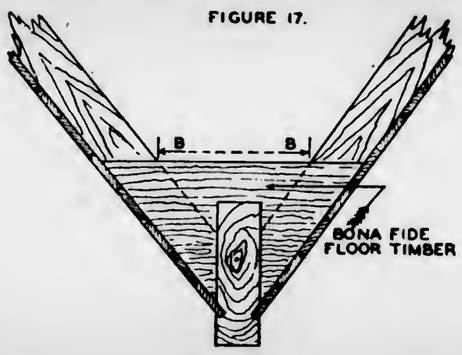


FIGURE 18.

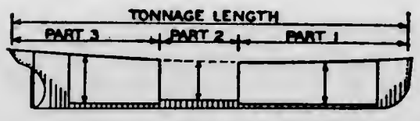


FIGURE 14.

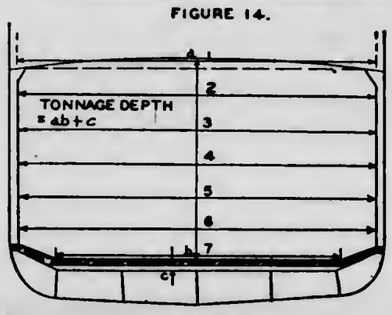


FIGURE 15.

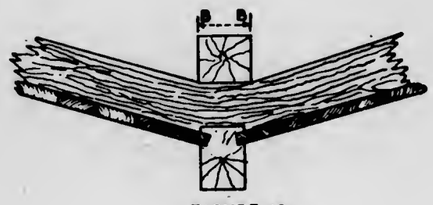


FIGURE 19.

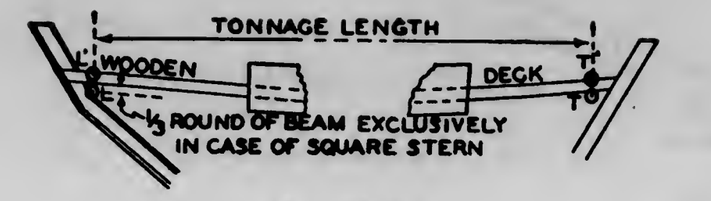


FIGURE 20.

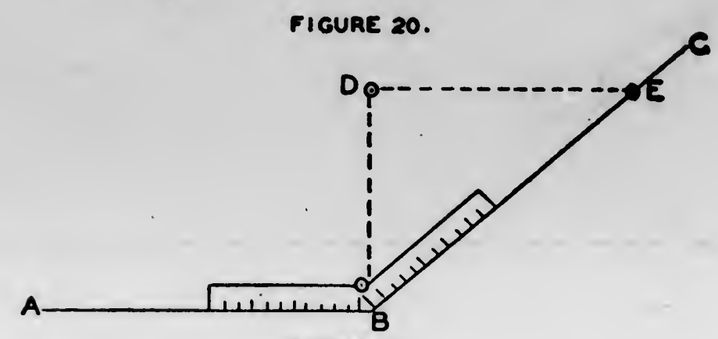


FIGURE 21.

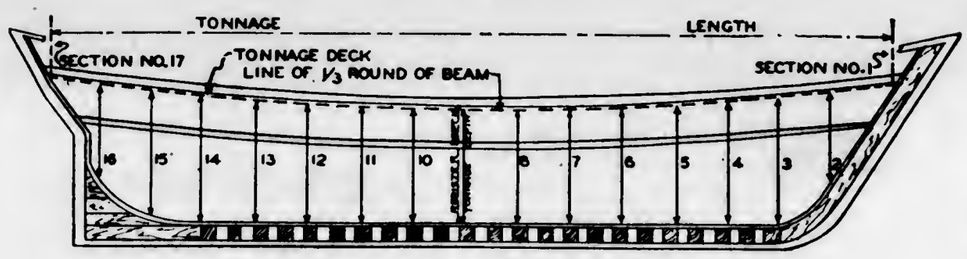


FIGURE 22

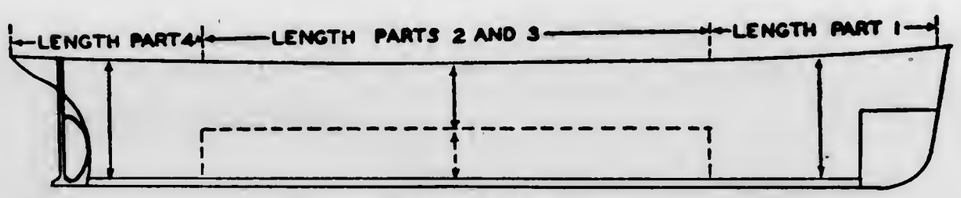


FIGURE 23.

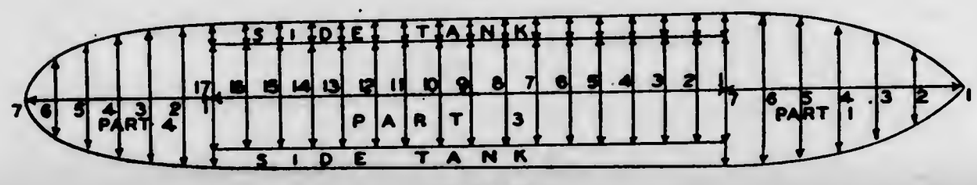


FIGURE 24.

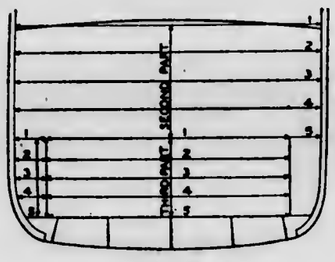


FIGURE 25

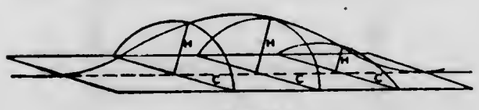


FIGURE 26

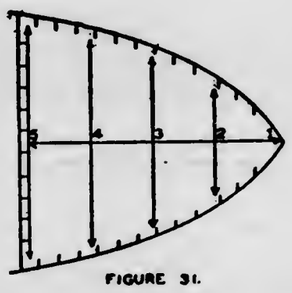


FIGURE 31.

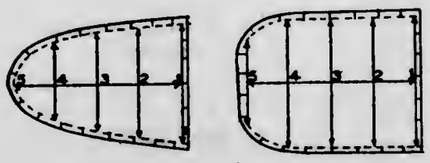


FIGURE 32.

FIGURE 33.

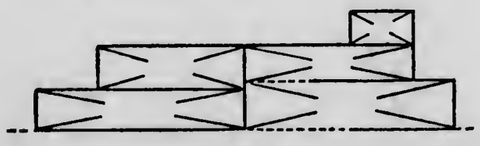


FIGURE 34.

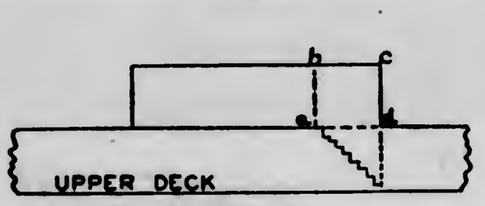


FIGURE 35.

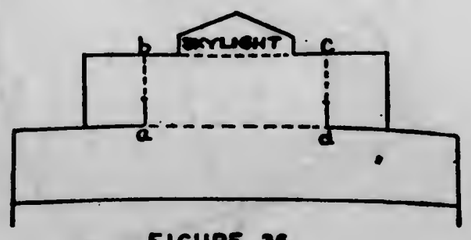


FIGURE 36.

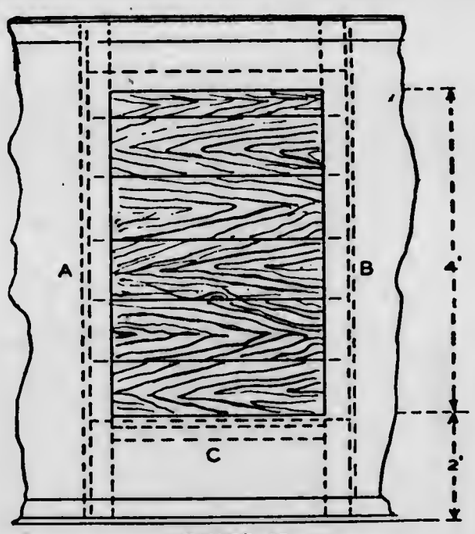


FIGURE 37.

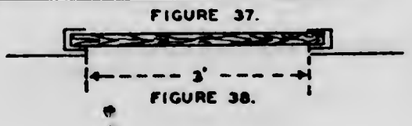


FIGURE 38.

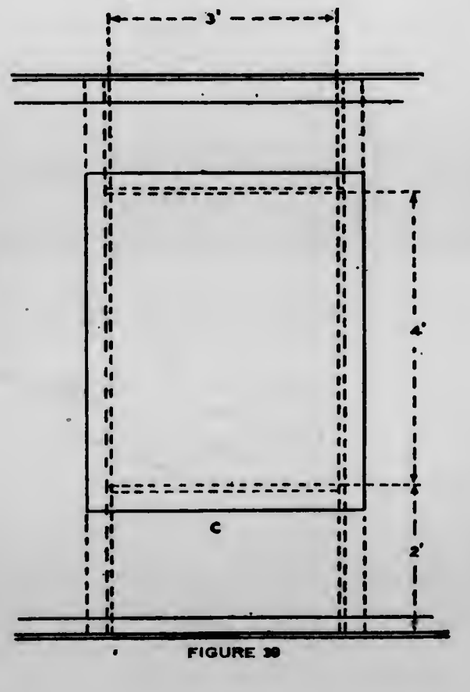


FIGURE 39

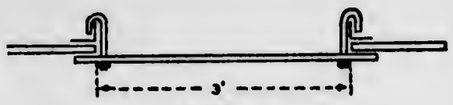


FIGURE 40

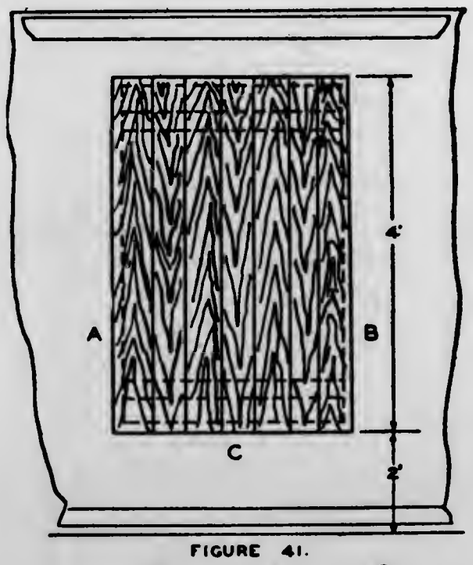


FIGURE 41.

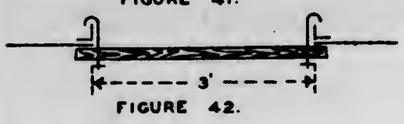


FIGURE 42.

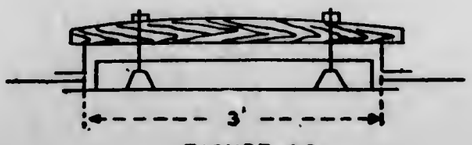


FIGURE 43.

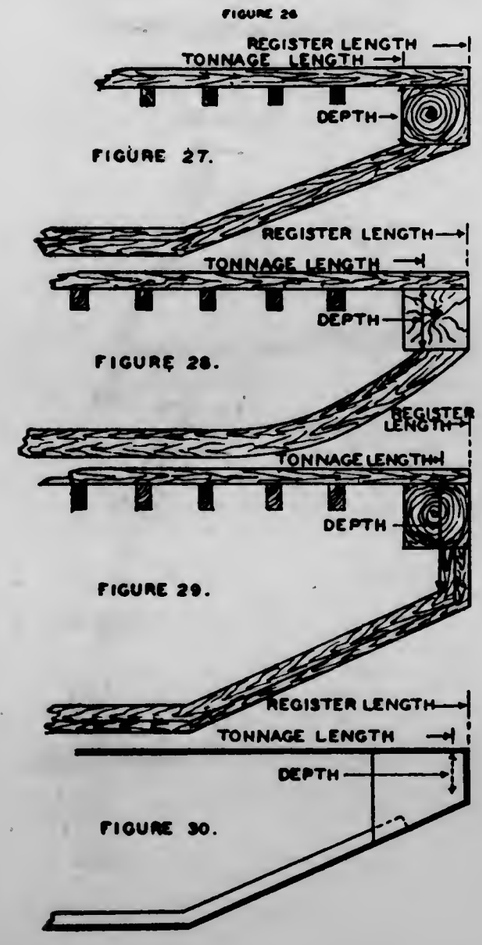


FIGURE 27.

FIGURE 28.

FIGURE 29.

FIGURE 30.

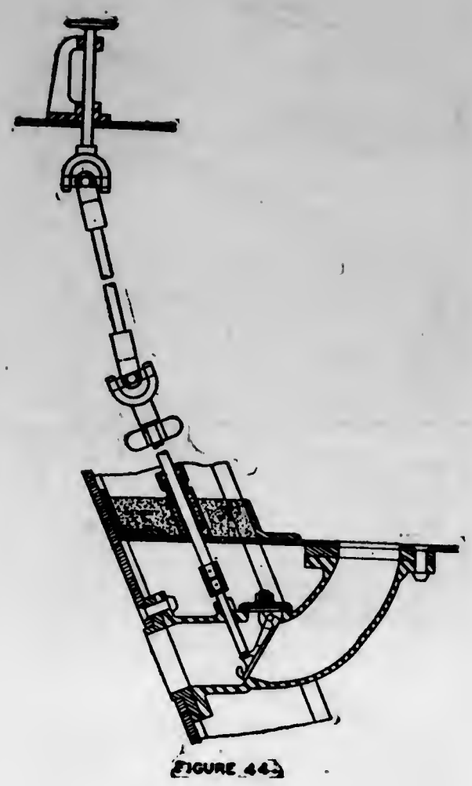


FIGURE 44.

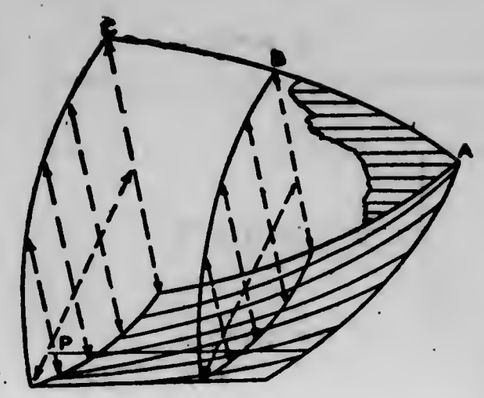


FIGURE 47.

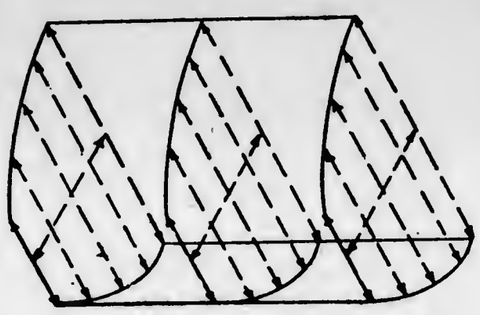


FIGURE 48.

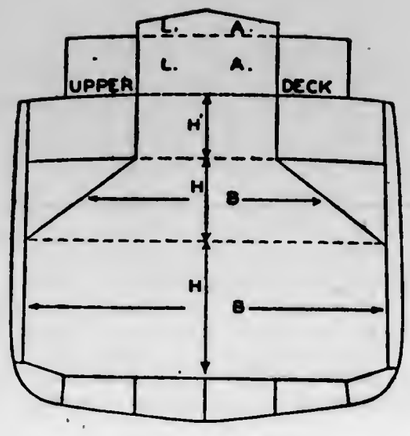


FIGURE 50.

H + H = HEIGHT OF MAIN SPACE
H' = HEIGHT TWEEN CROWN & UPPER DK.
B = BREADTH
L. A. = LIGHT AND AIR SPACE ABOVE UPPER DK.

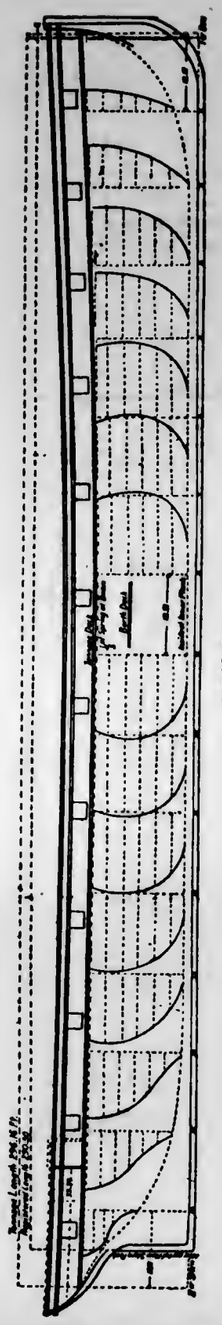


FIGURE 52.

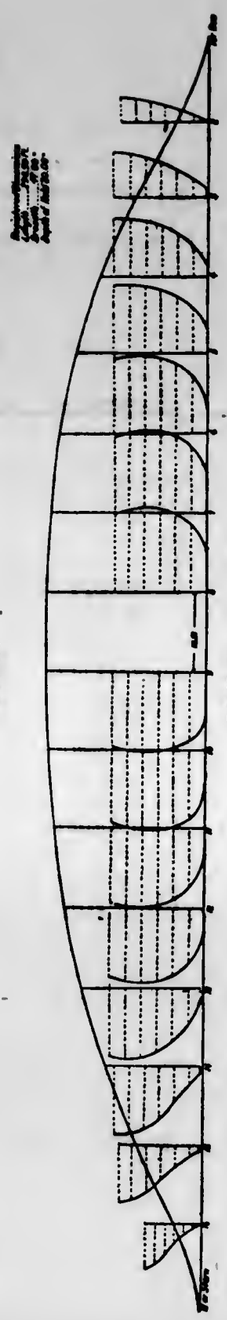


FIGURE 53.

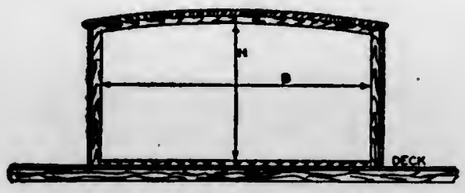


FIGURE 45.

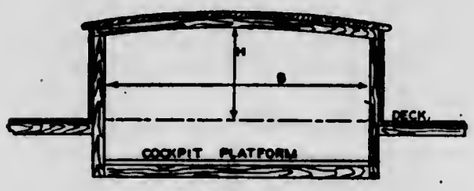


FIGURE 46.

H= HEIGHT OF OPENING
B = BREADTH OF OPENING

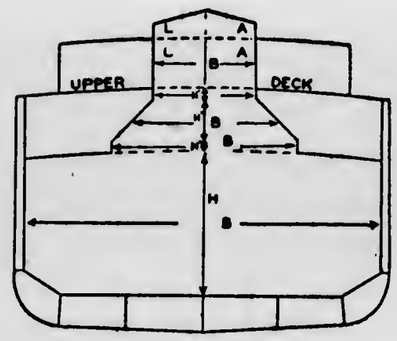


FIGURE 49.

H = HEIGHT OF MAIN SPACE
H' + H' + H' = HEIGHT BETWEEN CROWN AND UPPER DECK
L. A. = LIGHT AND AIR SPACE ABOVE UPPER DECK
B = BREADTH

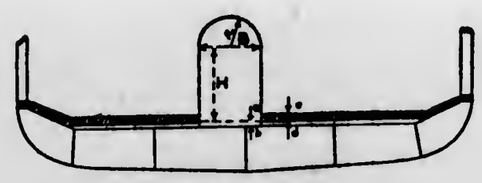


FIGURE 51.

ab = cd = THICKNESS OF CEILING

§ 2.66 Conversion tables.

(a) For finding the decimal equivalent of inches and for converting tons into cubic meters, and vice versa, the following tables will be found useful:

DECIMAL EQUIVALENT OF INCHES

	Equivalents in decimals of a foot
11 inches	0.92
10 inches	.83
9 inches	.75
8 inches	.67
7 inches	.58
6 inches	.50
5 inches	.42
4 inches	.33
3 inches	.25
2 inches	.17
1 inch	.08
¾ inch	.06
½ inch	.04
¼ inch	.02

REDUCTION OF TONS TO CUBIC METERS

	Meters
1 ton	2.83
2 tons	5.66
3 tons	8.49
4 tons	11.32
5 tons	14.15
6 tons	16.98
7 tons	19.81
8 tons	22.64
9 tons	25.47
10 tons	28.30
11 tons	31.13
12 tons	33.96
13 tons	36.79
14 tons	39.62
15 tons	42.45
16 tons	45.28
17 tons	48.11
18 tons	50.94
19 tons	53.77
20 tons	56.60
21 tons	59.43
22 tons	62.26
23 tons	65.09
24 tons	67.92
25 tons	70.75
26 tons	73.58
27 tons	76.41
28 tons	79.24
29 tons	82.07
30 tons	84.90
31 tons	87.73
32 tons	90.56
33 tons	93.39
34 tons	96.22
35 tons	99.05
36 tons	101.88
37 tons	104.71
38 tons	107.54
39 tons	110.37
40 tons	113.20

REDUCTION OF TONS TO CUBIC METERS—Con.

	Meters
41 tons	116.03
42 tons	118.86
43 tons	121.69
44 tons	124.52
45 tons	127.35
46 tons	130.18
47 tons	133.01
48 tons	135.84
49 tons	138.67
50 tons	141.50
51 tons	144.33
52 tons	147.16
53 tons	149.99
54 tons	152.82
55 tons	155.65
56 tons	158.48
57 tons	161.31
58 tons	164.14
59 tons	166.97
60 tons	169.80
61 tons	172.63
62 tons	175.46
63 tons	178.29
64 tons	181.12
65 tons	183.95
66 tons	186.78
67 tons	189.61
68 tons	192.44
69 tons	195.27
70 tons	198.10
71 tons	200.93
72 tons	203.76
73 tons	206.59
74 tons	209.42
75 tons	212.25
76 tons	215.08
77 tons	217.91
78 tons	220.74
79 tons	223.57
80 tons	226.40
81 tons	229.23
82 tons	232.06
83 tons	234.89
84 tons	237.72
85 tons	240.55
86 tons	243.38
87 tons	246.21
88 tons	249.04
89 tons	251.87
90 tons	254.70
91 tons	257.53
92 tons	260.36
93 tons	263.19
94 tons	266.02
95 tons	268.85
96 tons	271.68
97 tons	274.51
98 tons	277.34
99 tons	280.17
100 tons	283.00

(b) To reduce cubic meters to tons divide the number of cubic meters in question by 2.83, or multiply it by the factor 0.353.

§ 2.67 Table A of common intervals when tonnage depth is 16 feet or less.

TABLE A

Showing in feet the common interval and ⅓ common intervals between tonnage breadths, corresponding to different tonnage depths, when the tonnage depth at the middle of the tonnage length does not exceed 16 feet.

Tonnage depth	Common interval between breadths	⅓ common interval between breadths
2.00	0.500	0.17
2.05	.512	.17
2.10	.525	.18
2.15	.537	.18
2.20	.550	.18
2.25	.562	.19
2.30	.575	.19
2.35	.587	.20
2.40	.600	.20
2.45	.612	.20
2.50	.625	.21
2.55	.637	.21
2.60	.650	.22
2.65	.662	.22
2.70	.675	.23
2.75	.687	.23
2.80	.700	.23
2.85	.712	.24
2.90	.725	.24
2.95	.737	.25
3.00	.750	.25
3.05	.762	.25
3.10	.775	.26
3.15	.787	.26
3.20	.800	.27
3.25	.812	.27
3.30	.825	.28
3.35	.837	.28
3.40	.850	.28
3.45	.862	.29
3.50	.875	.29
3.55	.887	.30
3.60	.900	.30
3.65	.912	.30
3.70	.925	.31
3.75	.937	.31
3.80	.950	.32
3.85	.962	.32
3.90	.975	.33
3.95	.987	.33
4.00	1.000	.33
4.05	1.012	.34
4.10	1.025	.34
4.15	1.037	.35
4.20	1.050	.35
4.25	1.062	.35
4.30	1.075	.36
4.35	1.087	.36
4.40	1.100	.37
4.45	1.112	.37
4.50	1.125	.37
4.55	1.137	.38
4.60	1.150	.38
4.65	1.162	.39
4.70	1.175	.39
4.75	1.187	.40
4.80	1.200	.40
4.85	1.212	.40
4.90	1.225	.41
4.95	1.237	.41
5.00	1.250	.42
5.05	1.262	.42
5.10	1.275	0.43
5.15	1.287	.43
5.20	1.300	.43
5.25	1.312	.44
5.30	1.325	.44
5.35	1.337	.45
5.40	1.350	.45
5.45	1.362	.45
5.50	1.375	.46
5.55	1.387	.46
5.60	1.400	.47
5.65	1.412	.47
5.70	1.425	.48
5.75	1.437	.48
5.80	1.450	.48
5.85	1.462	.49
5.90	1.475	.49
5.95	1.487	.50
6.00	1.500	.50
6.05	1.512	.50
6.10	1.525	.51
6.15	1.537	.51
6.20	1.550	.52
6.25	1.562	.52
6.30	1.575	.53
6.35	1.587	.53
6.40	1.600	.53
6.45	1.612	.54
6.50	1.625	.54
6.55	1.637	.55
6.60	1.650	.55
6.65	1.662	.55
6.70	1.675	.56
6.75	1.687	.56
6.80	1.700	.57
6.85	1.712	.57
6.90	1.725	.58
6.95	1.737	.58
7.00	1.750	.58
7.05	1.762	.59
7.10	1.775	.59
7.15	1.787	.60
7.20	1.800	.60
7.25	1.812	.60
7.30	1.825	.61
7.35	1.837	.61
7.40	1.850	.62
7.45	1.862	.62
7.50	1.875	.62
7.55	1.887	.63
7.60	1.900	.63
7.65	1.912	.64
7.70	1.925	.64
7.75	1.937	.65
7.80	1.950	.65
7.85	1.962	.65
7.90	1.975	.66
7.95	1.987	.66
8.00	2.000	.67
8.05	2.012	.67
8.10	2.025	.68
8.15	2.037	.68
8.20	2.050	.68
8.25	2.062	.69
8.30	2.075	.69
8.35	2.087	.70
8.40	2.100	.70
8.45	2.112	.70
8.50	2.125	.71
8.55	2.137	.71
8.60	2.150	.72
8.65	2.162	.72
8.70	2.175	.73
8.75	2.187	.73
8.80	2.200	.73
8.85	2.212	.74

Tonnage depth	Common interval between breadths	½ common interval between breadths
8.00	2.225	0.74
8.05	2.237	.75
9.00	2.250	.75
9.05	2.262	.75
9.10	2.275	.76
9.15	2.287	.76
9.20	2.300	.77
9.25	2.312	.77
9.30	2.325	.78
9.35	2.337	.78
9.40	2.350	.78
9.45	2.362	.79
9.50	2.375	.79
9.55	2.387	.80
9.60	2.400	.80
9.65	2.412	.80
9.70	2.425	.81
9.75	2.437	.81
9.80	2.450	.82
9.85	2.462	.82
9.90	2.475	.83
9.95	2.487	.83
10.00	2.500	.83
10.05	2.512	.84
10.10	2.525	.84
10.15	2.537	.85
10.20	2.550	.85
10.25	2.562	.85
10.30	2.575	.86
10.35	2.587	.86
10.40	2.600	.87
10.45	2.612	.87
10.50	2.625	.88
10.55	2.637	.88
10.60	2.650	.88
10.65	2.662	.89
10.70	2.675	.89
10.75	2.687	.90
10.80	2.700	.90
10.85	2.712	.90
10.90	2.725	.91
10.95	2.737	.91
11.00	2.750	.92
11.05	2.762	.92
11.10	2.775	.93
11.15	2.787	.93
11.20	2.800	.93
11.25	2.812	.94
11.30	2.825	.94
11.35	2.837	.95
11.40	2.850	.95
11.45	2.862	.95
11.50	2.875	.96
11.55	2.887	.96
11.60	2.900	.97
11.65	2.912	.97
11.70	2.925	.98
11.75	2.937	.98
11.80	2.950	.98
11.85	2.962	.99
11.90	2.975	.99
11.95	2.987	1.00
12.00	3.000	1.00
12.05	3.012	1.00
12.10	3.025	1.01
12.15	3.037	1.01
12.20	3.050	1.02
12.25	3.062	1.02
12.30	3.075	1.03
12.35	3.087	1.03
12.40	3.100	1.03
12.45	3.112	1.04
12.50	3.125	1.04
12.55	3.137	1.05
12.60	3.150	1.05
12.65	3.162	1.05
12.70	3.175	1.06
12.75	3.187	1.06
12.80	3.200	1.07
12.85	3.212	1.07
12.90	3.225	1.08
12.95	3.237	1.08
13.00	3.250	1.08
13.05	3.262	1.09
13.10	3.275	1.09
13.15	3.287	1.10
13.20	3.300	1.10
13.25	3.312	1.10
13.30	3.325	1.11
13.35	3.337	1.11
13.40	3.350	1.12
13.45	3.362	1.12
13.50	3.375	1.13
13.55	3.387	1.13
13.60	3.400	1.13
13.65	3.412	1.14
13.70	3.425	1.14
13.75	3.437	1.15
13.80	3.450	1.15
13.85	3.462	1.15
13.90	3.475	1.16
13.95	3.487	1.16
14.00	3.500	1.17
14.05	3.512	1.17
14.10	3.525	1.18
14.15	3.537	1.18
14.20	3.550	1.18
14.25	3.562	1.19
14.30	3.575	1.19
14.35	3.587	1.20
14.40	3.600	1.20
14.45	3.612	1.20
14.50	3.625	1.21
14.55	3.637	1.21
14.60	3.650	1.22
14.65	3.662	1.22
14.70	3.675	1.23
14.75	3.687	1.23
14.80	3.700	1.23
14.85	3.712	1.24
14.90	3.725	1.24
14.95	3.737	1.25
15.00	3.750	1.25
15.05	3.762	1.25
15.10	3.775	1.26
15.15	3.787	1.26
15.20	3.800	1.27
15.25	3.812	1.27
15.30	3.825	1.28
15.35	3.837	1.28
15.40	3.850	1.29
15.45	3.862	1.29
15.50	3.875	1.30
15.55	3.887	1.30
15.60	3.900	1.30
15.65	3.912	1.31
15.70	3.925	1.31
15.75	3.937	1.31
15.80	3.950	1.32
15.85	3.962	1.32
15.90	3.975	1.33
15.95	3.987	1.33
16.00	4.000	1.33
16.05	4.012	1.34
16.10	4.025	1.34
16.15	4.037	1.34
16.20	4.050	1.35
16.25	4.062	1.35
16.30	4.075	1.36
16.35	4.087	1.36
16.40	4.100	1.37
16.45	4.112	1.37
16.50	4.125	1.38
16.55	4.137	1.38
16.60	4.150	1.38
16.65	4.162	1.39
16.70	4.175	1.39
16.75	4.187	1.40
16.80	4.200	1.40
16.85	4.212	1.40
16.90	4.225	1.41
16.95	4.237	1.41
17.00	4.250	1.42
17.05	4.262	1.42
17.10	4.275	1.43
17.15	4.287	1.43
17.20	4.300	1.43
17.25	4.312	1.44
17.30	4.325	1.44
17.35	4.337	1.45
17.40	4.350	1.45
17.45	4.362	1.45
17.50	4.375	1.46
17.55	4.387	1.46
17.60	4.400	1.47
17.65	4.412	1.47
17.70	4.425	1.48
17.75	4.437	1.48
17.80	4.450	1.48
17.85	4.462	1.49
17.90	4.475	1.49
17.95	4.487	1.50
18.00	4.500	1.50
18.05	4.512	1.50
18.10	4.525	1.51
18.15	4.537	1.51
18.20	4.550	1.52
18.25	4.562	1.52
18.30	4.575	1.53
18.35	4.587	1.53
18.40	4.600	1.53
18.45	4.612	1.54
18.50	4.625	1.54
18.55	4.637	1.55
18.60	4.650	1.55
18.65	4.662	1.55
18.70	4.675	1.56
18.75	4.687	1.56
18.80	4.700	1.57
18.85	4.712	1.57
18.90	4.725	1.58
18.95	4.737	1.58
19.00	4.750	1.58
19.05	4.762	1.59
19.10	4.775	1.59
19.15	4.787	1.60
19.20	4.800	1.60
19.25	4.812	1.60
19.30	4.825	1.61
19.35	4.837	1.61
19.40	4.850	1.62
19.45	4.862	1.62
19.50	4.875	1.63
19.55	4.887	1.63
19.60	4.900	1.63
19.65	4.912	1.64
19.70	4.925	1.64
19.75	4.937	1.65
19.80	4.950	1.65
19.85	4.962	1.65
19.90	4.975	1.66
19.95	4.987	1.66
20.00	5.000	1.67
20.05	5.012	1.67
20.10	5.025	1.68
20.15	5.037	1.68
20.20	5.050	1.68
20.25	5.062	1.69
20.30	5.075	1.69
20.35	5.087	1.69
20.40	5.100	1.70
20.45	5.112	1.70
20.50	5.126	1.71
20.55	5.137	1.71
20.60	5.150	1.72
20.65	5.162	1.72
20.70	5.175	1.73
20.75	5.187	1.73
20.80	5.200	1.73
20.85	5.212	1.74
20.90	5.225	1.74
20.95	5.237	1.75
21.00	5.250	1.75
21.05	5.262	1.75
21.10	5.275	1.76
21.15	5.287	1.76
21.20	5.300	1.77
21.25	5.312	1.77
21.30	5.325	1.78
21.35	5.337	1.78
21.40	5.350	1.78
21.45	5.362	1.79
21.50	5.375	1.79
21.55	5.387	1.80
21.60	5.400	1.80
21.65	5.412	1.80
21.70	5.425	1.81
21.75	5.437	1.81
21.80	5.450	1.82
21.85	5.462	1.82
21.90	5.475	1.83
21.95	5.487	1.83
22.00	5.500	1.83
22.05	5.512	1.84
22.10	5.525	1.84
22.15	5.537	1.85
22.20	5.550	1.85
22.25	5.562	1.85
22.30	5.575	1.86
22.35	5.587	1.86
22.40	5.600	1.87
22.45	5.612	1.87
22.50	5.625	1.88
22.55	5.637	1.88
22.60	5.650	1.88
22.65	5.662	1.89
22.70	5.675	1.89
22.75	5.687	1.90
22.80	5.700	1.90
22.85	5.712	1.90
22.90	5.725	1.91
22.95	5.737	1.91
23.00	5.750	1.92
23.05	5.762	1.92
23.10	5.775	1.93
23.15	5.787	1.93
23.20	5.800	1.93
23.25	5.812	1.94
23.30	5.825	1.94
23.35	5.837	1.95
23.40	5.850	1.95
23.45	5.862	1.95
23.50	5.875	1.96
23.55	5.887	1.96
23.60	5.900	1.97
23.65	5.912	1.97
23.70	5.925	1.98
23.75	5.937	1.98
23.80	5.950	1.98
23.85	5.962	1.99
23.90	5.975	1.99
23.95	5.987	2.00
24.00	6.000	2.00
24.05	6.012	2.00

Tonnage depth	Common interval between breadths	⅓ common interval between breadths
24.10	6.025	2.01
24.15	6.037	2.01
24.20	6.050	2.02
24.25	6.062	2.02
24.30	6.075	2.03
24.35	6.087	2.03
24.40	6.100	2.03
24.45	6.112	2.04
24.50	6.125	2.04
24.55	6.137	2.05
24.60	6.150	2.05
24.65	6.162	2.05
24.70	6.175	2.06
24.75	6.187	2.06
24.80	6.200	2.07
24.85	6.212	2.07
24.90	6.225	2.08
24.95	6.237	2.08
25.00	6.250	2.08
25.05	6.262	2.09
25.10	6.275	2.09
25.15	6.287	2.10
25.20	6.300	2.10
25.25	6.312	2.10
25.30	6.325	2.11
25.35	6.337	2.11
25.40	6.350	2.12
25.45	6.362	2.12
25.50	6.375	2.13
25.55	6.387	2.13
25.60	6.400	2.13
25.65	6.412	2.14
25.70	6.425	2.14
25.75	6.437	2.15
25.80	6.450	2.15
25.85	6.462	2.15
25.90	6.475	2.16
25.95	6.487	2.16

§ 2.68 Table B of common intervals when tonnage depth exceeds 16 feet.

Table B

Showing in feet the common interval and ⅓ common interval between tonnage breadths, corresponding to different tonnage depths, when the tonnage depth at the middle of the tonnage length exceeds 16 feet.

Tonnage depth	Common interval between breadths	⅓ common interval between breadths
14.00	2.333	0.78
14.05	2.341	.78
14.10	2.350	.78
14.15	2.358	.79
14.20	2.366	.79
14.25	2.375	.79
14.30	2.383	.79
14.35	2.391	.80
14.40	2.400	.80
14.45	2.408	.80
14.50	2.416	.81
14.55	2.425	.81
14.60	2.433	.81
14.65	2.441	.81
14.70	2.450	.82
14.75	2.458	.82
14.80	2.466	.82
14.85	2.475	.83
14.90	2.483	.83
14.95	2.491	.83
15.00	2.500	0.83
15.05	2.508	.84
15.10	2.516	.84
15.15	2.525	.84
15.20	2.533	.84
15.25	2.541	.85
15.30	2.550	.85
15.35	2.558	.85
15.40	2.566	.86
15.45	2.575	.86
15.50	2.583	.86
15.55	2.591	.86
15.60	2.600	.87
15.65	2.608	.87
15.70	2.616	.87
15.75	2.625	.88
15.80	2.633	.88
15.85	2.641	.88
15.90	2.650	.88
15.95	2.658	.89
16.00	2.666	.89
16.05	2.675	.89
16.10	2.683	.89
16.15	2.691	.90
16.20	2.700	.90
16.25	2.708	.90
16.30	2.716	.91
16.35	2.725	.91
16.40	2.733	.91
16.45	2.741	.91
16.50	2.750	.92
16.55	2.758	.92
16.60	2.766	.92
16.65	2.775	.93
16.70	2.783	.93
16.75	2.791	.93
16.80	2.800	.93
16.85	2.808	.94
16.90	2.816	.94
16.95	2.825	.94
17.00	2.833	.94
17.05	2.841	.95
17.10	2.850	.95
17.15	2.858	.95
17.20	2.866	.96
17.25	2.875	.96
17.30	2.883	.96
17.35	2.891	.96
17.40	2.900	.97
17.45	2.908	.97
17.50	2.916	.97
17.55	2.925	.96
17.60	2.933	.96
17.65	2.941	.96
17.70	2.950	.98
17.75	2.958	.99
17.80	2.966	.99
17.85	2.975	.99
17.90	2.983	.99
17.95	2.991	1.00
18.00	3.000	1.00
18.05	3.008	1.00
18.10	3.016	1.01
18.15	3.025	1.01
18.20	3.033	1.01
18.25	3.041	1.01
18.30	3.050	1.02
18.35	3.058	1.02
18.40	3.066	1.02
18.45	3.075	1.03
18.50	3.083	1.03
18.55	3.091	1.03
18.60	3.100	1.03
18.65	3.108	1.03
18.70	3.116	1.04
18.75	3.125	1.04
18.80	3.133	1.04
18.85	3.141	1.05
18.90	3.150	1.05
18.95	3.158	1.05
19.00	3.166	1.06
19.05	3.175	1.06
19.10	3.183	1.06
19.15	3.191	1.06
19.20	3.200	1.07
19.25	3.208	1.07
19.30	3.216	1.07
19.35	3.225	1.08
19.40	3.233	1.08
19.45	3.241	1.08
19.50	3.250	1.08
19.55	3.258	1.09
19.60	3.266	1.09
19.65	3.275	1.09
19.70	3.283	1.09
19.75	3.291	1.10
19.80	3.300	1.10
19.85	3.308	1.10
19.90	3.316	1.11
19.95	3.325	1.11
20.00	3.333	1.11
20.05	3.341	1.11
20.10	3.350	1.12
20.15	3.358	1.12
20.20	3.366	1.12
20.25	3.375	1.13
20.30	3.383	1.13
20.35	3.391	1.13
20.40	3.400	1.13
20.45	3.408	1.14
20.50	3.416	1.14
20.55	3.425	1.14
20.60	3.433	1.14
20.65	3.441	1.15
20.70	3.450	1.15
20.75	3.458	1.15
20.80	3.466	1.16
20.85	3.475	1.16
20.90	3.483	1.16
20.95	3.491	1.16
21.00	3.500	1.17
21.05	3.508	1.17
21.10	3.516	1.17
21.15	3.525	1.18
21.20	3.533	1.18
21.25	3.541	1.18
21.30	3.550	1.18
21.35	3.558	1.19
21.40	3.566	1.19
21.45	3.575	1.19
21.50	3.583	1.19
21.55	3.591	1.20
21.60	3.600	1.20
21.65	3.608	1.20
21.70	3.616	1.21
21.75	3.625	1.21
21.80	3.633	1.21
21.85	3.641	1.21
21.90	3.650	1.22
21.95	3.658	1.22
22.00	3.666	1.22
22.05	3.675	1.23
22.10	3.683	1.23
22.15	3.691	1.23
22.20	3.700	1.23
22.25	3.708	1.24
22.30	3.716	1.24
22.35	3.725	1.24
22.40	3.733	1.24
22.45	3.741	1.25
22.50	3.750	1.25
22.55	3.758	1.25
22.60	3.766	1.26
22.65	3.775	1.26
22.70	3.783	1.26
22.75	3.791	1.26
22.80	3.800	1.27
22.85	3.808	1.27
22.90	3.816	1.27
22.95	3.825	1.28
23.00	3.833	1.28
23.05	3.841	1.28
23.10	3.850	1.28
23.15	3.858	1.29
23.20	3.866	1.29
23.25	3.875	1.29
23.30	3.883	1.29
23.35	3.891	1.30
23.40	3.900	1.30
23.45	3.908	1.30
23.50	3.916	1.31
23.55	3.925	1.31
23.60	3.933	1.31
23.65	3.941	1.31
23.70	3.950	1.32
23.75	3.958	1.32
23.80	3.966	1.32
23.85	3.975	1.33
23.90	3.983	1.33
23.95	3.991	1.33
24.00	4.000	1.33
24.05	4.008	1.34
24.10	4.016	1.34
24.15	4.025	1.34
24.20	4.033	1.34
24.25	4.041	1.35
24.30	4.050	1.35
24.35	4.058	1.35
24.40	4.066	1.36
24.45	4.075	1.36
24.50	4.083	1.36
24.55	4.091	1.36
24.60	4.100	1.37
24.65	4.108	1.37
24.70	4.116	1.37
24.75	4.125	1.38
24.80	4.133	1.38
24.85	4.141	1.38
24.90	4.150	1.38
24.95	4.158	1.39
25.00	4.166	1.39
25.05	4.175	1.39
25.10	4.183	1.40
25.15	4.191	1.40
25.20	4.200	1.40
25.25	4.208	1.40
25.30	4.216	1.41
25.35	4.225	1.41
25.40	4.233	1.41
25.45	4.241	1.41
25.50	4.250	1.42
25.55	4.258	1.42
25.60	4.266	1.42
25.65	4.275	1.43
25.70	4.283	1.43
25.75	4.291	1.43
25.80	4.300	1.43
25.85	4.308	1.44
25.90	4.316	1.44
25.95	4.325	1.44
26.00	4.333	1.44
26.05	4.341	1.45
26.10	4.350	1.45
26.15	4.358	1.45
26.20	4.366	1.46
26.25	4.375	1.46
26.30	4.383	1.46
26.35	4.391	1.46
26.40	4.400	1.47

Tonnage depth	Common interval between breadths	½ common interval between breadths
26.45	4.408	1.47
26.50	4.416	1.47
26.55	4.425	1.48
26.60	4.433	1.48
26.65	4.441	1.48
26.70	4.450	1.48
26.75	4.458	1.49
26.80	4.466	1.49
26.85	4.475	1.49
26.90	4.483	1.49
26.95	4.491	1.50
27.00	4.500	1.50
27.05	4.508	1.50
27.10	4.516	1.51
27.15	4.525	1.51
27.20	4.533	1.51
27.25	4.541	1.51
27.30	4.550	1.52
27.35	4.558	1.52
27.40	4.566	1.52
27.45	4.575	1.53
27.50	4.583	1.53
27.55	4.591	1.53
27.60	4.600	1.53
27.65	4.608	1.54
27.70	4.616	1.54
27.75	4.625	1.54
27.80	4.633	1.54
27.85	4.641	1.55
27.90	4.650	1.55
27.95	4.658	1.55
28.00	4.666	1.56
28.05	4.675	1.56
28.10	4.683	1.56
28.15	4.691	1.56
28.20	4.700	1.57
28.25	4.708	1.57
28.30	4.716	1.57
28.35	4.725	1.58
28.40	4.733	1.58
28.45	4.741	1.58
28.50	4.750	1.58
28.55	4.758	1.59
28.60	4.766	1.59
28.65	4.775	1.59
28.70	4.783	1.59
28.75	4.791	1.60
28.80	4.800	1.60
28.85	4.808	1.60
28.90	4.816	1.61
28.95	4.825	1.61
29.00	4.833	1.61
29.05	4.841	1.61
29.10	4.850	1.62
29.15	4.858	1.62
29.20	4.866	1.62
29.25	4.875	1.63
29.30	4.883	1.63
29.35	4.891	1.63
29.40	4.900	1.63
29.45	4.908	1.64
29.50	4.916	1.64
29.55	4.925	1.64
29.60	4.933	1.64
29.65	4.941	1.65
29.70	4.950	1.65
29.75	4.958	1.65
29.80	4.966	1.66
29.85	4.975	1.66
29.90	4.983	1.66
29.95	4.991	1.66
30.00	5.000	1.67
30.05	5.008	1.67
30.10	5.016	1.67
30.15	5.025	1.68
30.20	5.033	1.68
30.25	5.041	1.68
30.30	5.050	1.68
30.35	5.058	1.69
30.40	5.066	1.69
30.45	5.075	1.69
30.50	5.083	1.69
30.55	5.091	1.70
30.60	5.100	1.70
30.65	5.108	1.70
30.70	5.116	1.71
30.75	5.125	1.71
30.80	5.133	1.71
30.85	5.141	1.71
30.90	5.150	1.72
30.95	5.158	1.72
31.00	5.166	1.72
31.05	5.175	1.73
31.10	5.183	1.73
31.15	5.191	1.73
31.20	5.200	1.73
31.25	5.208	1.74
31.30	5.216	1.74
31.35	5.225	1.74
31.40	5.233	1.74
31.45	5.241	1.75
31.50	5.250	1.75
31.55	5.258	1.75
31.60	5.266	1.76
31.65	5.275	1.76
31.70	5.283	1.76
31.75	5.291	1.76
31.80	5.300	1.77
31.85	5.308	1.77
31.90	5.316	1.77
31.95	5.326	1.78
32.00	5.333	1.78
32.05	5.341	1.78
32.10	5.350	1.78
32.15	5.358	1.79
32.20	5.366	1.79
32.25	5.375	1.79
32.30	5.383	1.79
32.35	5.391	1.80
32.40	5.400	1.80
32.45	5.408	1.80
32.50	5.416	1.81
32.55	5.425	1.81
32.60	5.433	1.81
32.65	5.441	1.81
32.70	5.450	1.82
32.75	5.458	1.82
32.80	5.466	1.82
32.85	5.475	1.83
32.90	5.483	1.83
32.95	5.491	1.83
33.00	5.500	1.83
33.05	5.508	1.84
33.10	5.516	1.84
33.15	5.525	1.84
33.20	5.533	1.84
33.25	5.541	1.85
33.30	5.550	1.85
33.35	5.558	1.85
33.40	5.566	1.86
33.45	5.575	1.86
33.50	5.583	1.86
33.55	5.591	1.86
33.60	5.600	1.87
33.65	5.608	1.87
33.70	5.616	1.87
33.75	5.625	1.88
33.80	5.633	1.88
33.85	5.641	1.88
33.90	5.650	1.88
33.95	5.658	1.89
34.00	5.666	1.89
34.05	5.675	1.89
34.10	5.683	1.89
34.15	5.691	1.90
34.20	5.700	1.90
34.25	5.708	1.90
34.30	5.716	1.91
34.35	5.725	1.91
34.40	5.733	1.91
34.45	5.741	1.91
34.50	5.750	1.92
34.55	5.758	1.92
34.60	5.766	1.92
34.65	5.775	1.93
34.70	5.783	1.93
34.75	5.791	1.93
34.80	5.800	1.93
34.85	5.808	1.94
34.90	5.816	1.94
34.95	5.825	1.94
35.00	5.833	1.94
35.05	5.841	1.95
35.10	5.850	1.95
35.15	5.858	1.96
35.20	5.866	1.96
35.25	5.875	1.96
35.30	5.883	1.96
35.35	5.891	1.96
35.40	5.900	1.97
35.45	5.908	1.97
35.50	5.916	1.97
35.55	5.925	1.98
35.60	5.933	1.98
35.65	5.941	1.98
35.70	5.950	1.98
35.75	5.958	1.99
35.80	5.966	1.99
35.85	5.975	1.99
35.90	5.983	1.99
35.95	5.991	2.00
36.00	6.000	2.00
36.05	6.008	2.00
36.10	6.016	2.01
36.15	6.025	2.01
36.20	6.033	2.01
36.25	6.041	2.01
36.30	6.050	2.02
36.35	6.058	2.02
36.40	6.066	2.02
36.45	6.075	2.03
36.50	6.083	2.03
36.55	6.091	2.03
36.60	6.100	2.03
36.65	6.108	2.04
36.70	6.116	2.04
36.75	6.125	2.04
36.80	6.133	2.04
36.85	6.141	2.05
36.90	6.150	2.05
36.95	6.158	2.05
37.00	6.166	2.06
37.05	6.175	2.06
37.10	6.183	2.06
37.15	6.191	2.06
37.20	6.200	2.07
37.25	6.208	2.07
37.30	6.216	2.07
37.35	6.225	2.08
37.40	6.233	2.08
37.45	6.241	2.08
37.50	6.250	2.08
37.55	6.258	2.09
37.60	6.266	2.09
37.65	6.275	2.09
37.70	6.283	2.09
37.75	6.291	2.10
37.80	6.300	2.10
37.85	6.308	2.10
37.90	6.316	2.11
37.95	6.325	2.11
38.00	6.333	2.11
38.05	6.341	2.11
38.10	6.350	2.12
38.15	6.358	2.12
38.20	6.366	2.12
38.25	6.375	2.13
38.30	6.383	2.13
38.35	6.391	2.13
38.40	6.400	2.13
38.45	6.408	2.14
38.50	6.416	2.14
38.55	6.425	2.14
38.60	6.433	2.14
38.65	6.441	2.15
38.70	6.450	2.15
38.75	6.458	2.15
38.80	6.466	2.16
38.85	6.475	2.16
38.90	6.483	2.16
38.95	6.491	2.16
39.00	6.500	2.17
39.05	6.508	2.17
39.10	6.516	2.17
39.15	6.525	2.18
39.20	6.533	2.18
39.25	6.541	2.18
39.30	6.550	2.18
39.35	6.558	2.19
39.40	6.566	2.19
39.45	6.575	2.19
39.50	6.583	2.19
39.55	6.591	2.20
39.60	6.600	2.20
39.65	6.608	2.20
39.70	6.616	2.21
39.75	6.625	2.21
39.80	6.633	2.21
39.85	6.641	2.21
39.90	6.650	2.22
39.95	6.658	2.22
40.00	6.666	2.22
40.05	6.675	2.23
40.10	6.683	2.23
40.15	6.691	2.23
40.20	6.700	2.23
40.25	6.708	2.24
40.30	6.716	2.24
40.35	6.725	2.24
40.40	6.733	2.24
40.45	6.741	2.25
40.50	6.750	2.25
40.55	6.758	2.25
40.60	6.766	2.25
40.65	6.775	2.26
40.70	6.783	2.26
40.75	6.791	2.27
40.80	6.800	2.27
40.85	6.808	2.27
40.90	6.816	2.27
40.95	6.825	2.28
41.00	6.833	2.28
41.05	6.841	2.28
41.10	6.850	2.28
41.15	6.858	2.29
41.20	6.866	2.29
41.25	6.875	2.29
41.30	6.883	2.29
41.35	6.891	2.30
41.40	6.900	2.30
41.45	6.908	2.30
41.50	6.916	2.31
41.55	6.925	2.31
41.60	6.933	2.31
41.65	6.941	2.31
41.70	6.950	2.32
41.75	6.958	2.32
41.80	6.966	2.32
41.85	6.975	2.33
41.90	6.983	2.33
41.95	6.991	2.33
42.00	7.000	2.33
42.05	7.008	2.34
42.10	7.016	2.34
42.15	7.025	2.34
42.20	7.033	2.34
42.25	7.041	2.35
42.30	7.050	2.35
42.35	7.058	2.35
42.40	7.066	2.36
42.45	7.075	2.36
42.50	7.083	2.36
42.55	7.091	2.36
42.60	7.100	2.37
42.65	7.108	2.37
42.70	7.116	2.37
42.75	7.125	2.38
42.80	7.133	2.38
42.85	7.141	2.38
42.90	7.150	2.38
42.95	7.158	2.39
43.00	7.166	2.39
43.05	7.175	2.39
43.10	7.183	2.39
43.15	7.191	2.40
43.20	7.200	2.40
43.25	7.208	2.40
43.30	7.216	2.41
43.35	7.225	2.41
43.40	7.233	2.41
43.45	7.241	2.41
43.50	7.250	2.42
43.55	7.258	2.42
43.60	7.266	2.42
43.65	7.275	2.43
43.70	7.283	2.43
43.75	7.291	2.43
43.80	7.300	2.43
43.85	7.308	2.44
43.90	7.316	2.44
43.95	7.325	2.44
44.00	7.333	2.44
44.05	7.341	2.45
44.10	7.350	2.45
44.15	7.358	2.45
44.20	7.366	2.46
44.25	7.375	2.46
44.30	7.383	2.46
44.35	7.391	2.46
44.40	7.400	2.47
44.45	7.408	2.47
44.50	7.416	2.47
44.55	7.425	2.48
44.60	7.433	2.48
44.65	7.441	2.48
44.70	7.450	2.48
44.75	7.458	2.49
44.80	7.466	2.49
44.85	7.475	2.49
44.90	7.483	2.49
44.95	7.491	2.50
45.00	7.500	2.50
45.05	7.508	2.50
45.10	7.516	2.51
45.15	7.525	2.51
45.20	7.533	2.51
45.25	7.541	2.51
45.30	7.550	2.52
45.35	7.558	2.52
45.40	7.566	2.52
45.45	7.575	2.53
45.50	7.583	2.53
45.55	7.591	2.53
45.60	7.600	2.53
45.65	7.608	2.54
45.70	7.616	2.54
45.75	7.625	2.54
45.80	7.633	2.54
45.85	7.641	2.55
45.90	7.650	2.55
45.95	7.658	2.55

§ 2.69 Definitions of enclosures on or above the upper deck.

Break. A break is the space above the line of the under side of the upper deck when that deck is cut off and continued at a higher elevation. The height of a break is the distance from the said line to the under side of the break deck.

Bridge. A decked erection usually from 6 to 8 feet in height and of undefined length, fitted about amidships and extending from side to side over the upper deck of a vessel.

Chart house. A house, room or space designated for the purpose of navigation in connection with the stowage and use of charts and navigating instruments necessary to the plotting of the course of the vessel.

Deck house (formerly called roundhouse). An erection on or above the upper deck but not extending from side to side of the vessel, as is the case with a bridge, a forecastle, a poop, or raised quarter-deck. For descriptive purposes on vessel documents, spaces not extending from side to side of the vessel, such as cabin trunks, and closed-in spaces over the holds of motorboats, etc., may be classed as deck houses.

Excess hatchways. The difference between one-half of 1 percent of the gross tonnage exclusive of hatchways and the aggregate tonnage of the hatchways.

Forecastle. A structure on and located at the extreme forward end of the upper deck and having its sides completely enclosed by a continuation upward of the vessel's outer skin.

Light and air spaces. The portion of the spaces within the casings around the boiler and engine hatches and above the upper deck to the hull of a vessel when used for admission of light and air to the boilers or machinery below.

Poop. A structure on and located at the extreme after end of the upper deck and having its sides completely enclosed by a continuation upward of the vessel's outer skin.

Radio house or space. A structure or space in which the radio apparatus is installed and which may or may not provide accommodations for the operator or operators when off duty.

Side house. A small house at the side of the upper, forecastle, bridge, or poop deck, etc., of a vessel.

Superstructure. Any superstructure the breadth of which (at all points throughout its length) is approximately equivalent to the breadth of the upper deck, and the side frames of which are entirely independent of the main frames of the vessel. This definition is not applicable to forecastle, bridge, or poop.

§ 2.70 Definitions of items of deduction.

Anchor gear. The space below deck occupied by chains or cables, machinery, etc., for handling the anchor.

Boatswain's stores. The spaces for storing paints, oils, blocks, hawsers, rigging, deck gear, etc., in charge of the boatswain and for daily use on the vessel.

Chart house. (See definition in § 2.69.)

Crew spaces. The space appropriated exclusively to the use of the crew of a vessel, except such spaces as the engineer's workshop, carpenter shop, plumber shop, butcher shop, etc., whereever situated. The total of all crew-space deductions will be shown on vessel's documents under the head of "Crew space."

Master's cabin. A space for the exclusive use of the master, consisting of sleeping room, bathroom, dressing room, office, and passageways serving his accommodations.

Radio house. (See definition in § 2.69.)

Steering gear. The space below deck occupied by machinery, fittings, etc., for operating the steering gear.

Storage of sails. The space in a vessel propelled wholly by sails used exclusively for storing the same, subject to the limitation of 2½ percent of the vessel's gross tonnage.

§ 2.71 Definitions of structural terms, etc.

After perpendicular. A vertical straight line at the after edge of the rudder post.

Athwart; athwartship. In a transverse direction; from side to side at right angles to the fore and aft center line of a vessel.

Batten. A board several inches in breadth, usually fitted on the side frames in holds and between decks of vessels instead of ceiling.

Beam. An athwart member supporting a portion of a deck. Also the breadth of the vessel.

Between decks. For measurement purposes it is the space between the second and third and third and fourth decks, etc., the decks being numbered from below.

Body plan. A drawing consisting of a pair of half transverse elevations or end views of a vessel, both having a common vertical middle line, so that the right-hand side represents the vessel as seen from ahead and the left-hand side as seen from astern. On the body plan appear the forms of the various cross sections. The curvature of the rail and deck lines at the sides, and with the water lines, buttock lines, and diagonal lines indicated as straight lines.

Booby hatch. A small companion fitted with a sliding top.

Break in double bottom. The point where the line of the inner bottom is broken by being either raised or lowered from the normal line of same.

Bulkhead. Bulkheads are partitions by which compartments, etc., are formed, or the hold of a vessel is divided.

Bulwark. A term applied to the strake of shell plating or the side planking above the weather deck and usually extends between the forecastle and the bridge or the bridge and the poop.

Ceiling. The covering of wood planking on the inboard face of a vessel's side frames, bottom frames, floor timbers, and sometimes on the under side of deck beams.

Cellular double bottom. A term applied when the double bottom is divided into numerous compartments by the floors and longitudinals.

Coaming. The vertical boundary around a hatch, skylight, etc., the "sill" below a tonnage opening in a bulkhead.

Cockpit. A space at the bottom of which is a platform sunk below the line of the upper deck on small craft.

Companion. A small structure sheltering a deck opening affording entrance to a companionway.

Companionway. A stairway or ladderway leading to a space above or below.

Covering board. A plank or a strake of planking fitted horizontally on top of frame heads at the line of weather deck.

Crown. A term sometimes used to denote the round up or camber of a deck.

Deck hook. A wooden hook or knee on the level of deck beams on which the extreme forward ends of deck planks rest and to which they are fastened. On iron or steel vessels, a plate connecting the extreme ends of deck stringer plates.

Depth of frame. The depth of a bottom frame is its perpendicular height. (See d, Figure 1 (§ 2.65)). The depth of a side frame is the athwart distance between its inboard and outboard face.

Double bottom. Compartments at bottom of ship between inner and outer bottom plating, used for ballast tanks, water, fuel oil, etc.

Fidley hatch. Hatch around smokestack and uptake.

Flange. Portion of a plate or shape at, or nearly at right angles to main portion.

Flare. A spreading outward and upward.

Floor or floor timber. The lowermost piece of timber connecting the main frames, notched to fit over the keel or keelson and extending the full depth of the frames to which it is fastened. In an iron or steel vessel a plate placed vertically in the bottom, extending from bilge to bilge, in way of each frame, to which it (the frame) is connected. In double bottoms of the usual construction it extends from the outer to the inner bottom thereof.

Frame. One of the numerous transverse (longitudinal in Isherwood-type vessels) "ribs" that form the framing of a vessel.

Frame bracket. A plate connecting a side frame to the margin plate.

Freeing port. An opening in the bulwark or shell plating between the shelter and upper decks for discharging large quantities of water which may be shipped.

General arrangement plans. Plans showing the various quarters, spaces and compartments into which a vessel is usually divided.

Gudgeon. Fittings on the sternpost to take the rudder pintles.

Gunwale. A term applied to the line where an upper deck stringer intersects the shell.

Hatchway. An aperture in a vessel's deck through which cargo is laden or discharged; in common practice the term "hatch" is also applied.

Hold. For admeasurement purposes, that portion of the vessel below the tonnage deck.

Horn timber. The center line frame in the stern of a wooden vessel, extending aft from the sternpost.

Inboard profile. Drawing of a vessel cut vertically through its longitudinal center line, showing its forward and after perpendiculars, line of deck at center and side, height of decks, tanks, height of bottom frames or floors and their spacing, assignment of various spaces, machinery, etc.

Inner bottom. Plating forming the upper boundary of the double bottom. Also called the tank top.

Keel. In wooden and composite vessels it is composed of pieces of timber and extends from stem to sternpost and is the bottom member of the vessel's structure. In iron or steel vessels it consists of long bars fitted vertically or of plates fitted horizontally at the middle line.

Keelson. In wooden vessels the keelson is composed (like the keel) of various pieces of timber placed on the bottom frames directly over and in line with the keel and extending all fore and aft. In iron or steel vessels the middle-line keelson is the keelson at the center line, directly over the keel.

Length between perpendiculars. The length of a vessel measured from the forward edge of the stem where it intersects the load water line to the after perpendicular.

Length over all. The length of a vessel measured from the foremost part of the stem to the aftermost point of the stern.

Limber strake. The fore and aft plank of bottom ceiling laid next to the keelson.

Longitudinal framing. A system of construction in which, in conjunction with deep web frames, the main frames are run fore and aft instead of athwartships.

Longitudinal. A fore and aft vertical member running parallel, or nearly parallel, to the center vertical keel through the double bottom.

Main rail. Rail fitted on the upper edge of bulwark plating, or upon the stanchions surrounding an upper deck.

Margin plate. The outer boundary of the inner bottom, connecting it to the shell plating at the bilge.

Midship cross section. A drawing of a vessel cut athwartship at about midlength, showing moulded depth, moulded breadth, round or pitch of beam, depth of side and bottom frames, floors, etc.

Orlop deck. The lowest partial deck.

Outboard. Away from the center line, towards the side of the vessel.

Pintle. Fitting or pin on the rudder which turns in a gudgeon.

Planking. A term applied to wood decks and to the outside planking of wood or composite vessels.

Plating. The plates of the shell, decks, bulkheads, etc.

Quadrant. A casting, forging or built-up frame in the shape of a sector of a circle attached to the rudder stock and through which the steering gear leads turn the rudder.

Rabbet. A groove or channel cut in a piece of timber to take the edge of a plank, or the ends of a number of planks.

Rake of the bow. The inclination of the line of the stem from the forward perpendicular.

Rake of the stern timber. Its (stern timber) inclination from the after perpendicular.

Reverse frame. An angle bar or other shape riveted to the top of floors and/or the inner edge of a transverse frame to reinforce it.

Rudder post. See sternpost.

Rudder stock. The main piece of the rudder frame, to which the pintles are connected and to the upper end of which the quadrant or tiller is fitted.

Samson post. A heavy vertical post that supports cargo booms.

Scantlings. Dimensions of various members that are used in the construction of a vessel.

Scupper. A round or oval aperture usually fitted in decks for the purpose of drainage.

Settling tanks. Oil tanks used for separating entrained water from the oil. The oil is allowed to stand for a time, to permit the water to settle at the bottom when it is drained or pumped off.

Shaft tunnel. Enclosed alley-way around propeller shaft.

Shelf. A fore and aft timber fitted to the frames and forming a support for the ends of the deck beams.

Shell plating. The plates forming the outer skin of the hull.

Sheer. The amount by which the height of the weather deck at the forward and after perpendiculars exceeds this height at the mid-perpendicular.

Skin. A term usually applied to the outside planking or plating.

Skylight. A built-up frame of wood or metal having glass lights fitted in the top and installed over a deck opening for the purpose of furnishing light and air to the spaces below.

Stem. In the case of wooden vessels, it is the heavy piece of timber at which the outside planking terminates at the forward end of the hull. In iron or steel vessels it is the heavy piece of iron or steel extending from the keel to above the uppermost weather deck, and forming the extreme fore end of a vessel.

Stern. The after end of a vessel.

Sternpost (main). In wooden vessels, the piece of timber extending from the after end of the keel to the uppermost deck and to which the rudder braces are fixed to receive the pintles by which the rudder is hung. In iron or steel sailing vessels, paddle and twin-screw steamers, the heavy forging or casting of iron or steel extending from the after end of the keel (to which it is scarfed) to an appropriate distance within the hull; in single screw steamers, the after part of the stern frame.

Stiffener. An angle bar, T-bar, channel bar, etc., used to stiffen plating of the bulkhead, etc.

Strake. A fore and aft continuous course or row of shell or other plating or planking.

Tank top. Plating forming the top of a double bottom. The inner bottom.

Transom. A floor plate extending across the vessel at the forward side of the sternpost and attached thereto.

Transverse framing. Athwartship and vertical members forming the vessel's framing. Opposite to the longitudinal system of framing.

Tumble home. An inboard sloping of the vessel's side. (The opposite to flare.)

Web frame. Members built of plates and angles, spaced at required intervals, and fitted in lieu of main frames for the purpose of local strengthening.

Wheelhouse (or pilot house). The house in which a steering wheel is located for the steering and navigation of the vessel.

§ 2.72 Suez and Panama Canal certificates.

Suez Canal special tonnage certificates and also Panama Canal tonnage certificates will be issued, upon application, by collectors of customs to American shipowners requiring them for ships which will use the said canals. Collectors of customs will also issue such tonnage certificates to public vessels of the United States requiring them.

PART 3—DOCUMENTATION OF VESSELS

GENERAL

Sec.
3.1 General definitions.
3.2 Vessels entitled to documents.
3.3 Provisional registers.
3.4 Yachts entitled to documents.
3.5 Vessels exempt from documentation.
3.6 Marine documents; kinds of.
3.7 Marine documents; execution of.
3.8 Marine documents; new.
3.9 Marine documents to include dimensions and tonnage.
3.10 Registers.
3.11 Enrollment and license; coasting trade and fisheries.
3.12 Builder's certificates.
3.13 Official number and signal letters.
3.14 Evidence as to marking of official number, net tonnage, name, and hailing port.
3.16 Name and hailing port on documented vessel.
3.17 Home port; definition; change of.
3.18 Forms of oath of owner and master for documentation.
3.19 Citizenship; documentation.
3.20 Evidence of citizenship of owners and officers.
3.21 Execution of oaths for documentation.
3.21a Execution of oaths by a parent or subsidiary corporation.
3.22 Issue and record of marine documents.
3.23 Permanent documentation of vessel absent from home port.
3.24 Change of master.
3.25 Renewal of license.
3.26 Surrender of permanent documents.
3.27 Surrender of temporary documents.
3.28 Rebuilt and new vessels.
3.29 Change of build or rig.
3.30 Exchange of documents.
3.31 Loss of marine document.
3.32 Sale or transfer of vessel; change in membership of owning partnership.
3.33 Recording of bills of sale and mortgages.
3.34 Issue of temporary document upon sale.
3.35 Sale abroad.
3.36 Sale or charter to an alien.
3.37 Preferred mortgages.
3.38 Record and endorsement of preferred mortgages and related instruments.
3.39 Certificate of ownership.
3.40 Frontier enrollment and license.
3.41 Transfer from frontier enrollment and license.
3.42 Registry of foreign-built vessels.
3.43 Documentation of American-built foreign-flag vessels.
3.44 Foreign-built yachts.
3.45 Certificate of protection.
3.46 Recorded vessels.
3.47 Record of American-built vessels owned by aliens.
3.48 Certificates of record.
3.49 Prizes and forfeited vessels.
3.50 Inspection of marine documents.
3.51 Change of name of documented vessel.
3.52 Fee for change of vessel's name.
3.53 Yacht privileges and obligations.
3.54 Vessels to be inspected before documentation.
3.55 Citizenship of masters of documented vessels.
3.56 Revocation or denial of document.
3.57 Report of laid-up vessels.

DOCUMENTATION OF VESSELS UNDER THE ACT OF AUGUST 9, 1954

3.60 Vessels entitled to documents.
3.61 Provisional register.
3.62 Marine documents; classes; period of validity.
3.63 Marine documents; execution of.
3.64 Marine documents to include dimensions and tonnage.
3.65 Application for official number and signal letters.
3.66 Designation of home port.
3.67 Coastwise permit.
3.68 Marking of official number and net tonnage.
3.69 Home port; change of.
3.70 Master's oath for enrollment and license.
3.71 Change of master.
3.72 Issue, record, and surrender of documents.
3.73 Renewal of document.
3.74 Exchange of documents.

REGISTRATION OF PRIVATE CODE SIGNALS, HOUSE FLAGS, AND FUNNEL MARKS

3.80 Application for registration of rockets, lights, or other similar code signals, house flags, or funnel marks.
3.81 Registration of rockets, lights, or other similar signals, house flags, or funnel marks.
3.82 Fee for registering a house flag or funnel mark, or both.
Appendix

AUTHORITY: §§ 3.1 to 3.82 issued under R. S. 161, sec. 624, 46 Stat. 759, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended; 5 U. S. C. 22, 19 U. S. C. 1624, 46 U. S. C. 2, 3. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

GENERAL

§ 3.1 General definitions.

For the purposes of this part and Part 4 of this chapter:

(a) The word "vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft.

(b) The term "vessel of the United States" means any vessel documented under the laws of the United States.

(c) The term "documented" means registered, enrolled, and licensed, or licensed under the laws of the United States, whether permanently or temporarily.

(d) The term "marine document" includes registry, enrollment and license, and license.

(e) The term "port of documentation" means the home port of a vessel. It does not include a port in which a temporary document is issued.

(f) The term "mortgagee," in the case of a mortgage involving a trust deed and a bond issue thereunder, means the trustee designated in such deed.

(g) The term "noncontiguous territory of the United States" includes Alaska and all the island Territories and possessions of the United States, but does not include the Canal Zone.

(h) The term "parent corporation" means a corporation incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, which controls, directly or indirectly, at least 50 percent of the voting stock of a corporation which is a citizen of the United States as defined in § 3.19(a)(4) and for which there is on file with the proper collector of customs a valid and current certificate under oath as required by § 3.21a.

(i) The term "subsidiary corporation" means a corporation incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, not less than 50 percent of the voting stock of which is controlled, directly or indirectly, by a corporation which is a citizen of the United States as defined in § 3.19(a)(4) or by a parent corporation of any such corporation and for which there is on file with the proper collector of customs a valid and current certificate under oath as required by § 3.21a.

(Sec. 27A, 72 Stat. 1736; 46 U.S.C. 883–1)

§ 3.2 Vessels entitled to documents.

(a) A vessel of 20 net tons or more may be registered or enrolled and licensed. A vessel of 5 net tons or more but less than 20 net tons may be licensed (except vessels subject to the provisions of paragraph (b) of this section) or registered.

(b) Any vessel of 5 net tons or more which is to be documented for navigating the waters of the northern, northeastern, or northwestern frontiers otherwise than by sea shall be granted a frontier enrollment and license, customs Form 1273, except that a vessel used exclusively as a pleasure vessel on those waters may be granted an enrollment and license as a yacht, customs Form 1290, if entitled to be so documented in accordance with the provisions of § 3.4. (See § 3.40.)

(c) The following classes of vessels are entitled to receive documents under existing laws:

Class 1. Any vessel built in the United States and wholly owned by a citizen.[1] A vessel of this class owned by a corporation which is qualified as a citizen of the United States under the definition contained in § 3.19(a)(4) may be documented for use in the coastwise trade within the limitations specified in the Act of September 2, 1958 (46 U.S.C. 883–1), if it is a non-self-propelled vessel or a self-propelled vessel of less than 500 gross tons (see also § 3.19(e)).

Class 2. Any vessel purchased from the Maritime Administration or War Shipping Administration by a citizen. (See § 3.42.)

Class 3. Any vessel built in the United States in whole or in part for the account of one who is not a citizen and then recorded, which thereafter becomes wholly owned by a citizen and has never before been documented. (See § 3.47.)

Class 4. Any vessel captured by a citizen in a war to which the United States is a party, which has been lawfully condemned as a prize and is wholly owned by a citizen.

Class 5. Any vessel which has been judicially forfeited for a breach of the laws of the United States when wholly owned by a citizen. This includes a foreign-built vessel, but does not include any vessel not otherwise entitled to documents which has been sold under a decree of admiralty for debt or seamen's wages.

Class 6. Any vessel built in the United States and sold by the Government to a citizen. A foreign-built vessel bought or chartered by the Government is entitled to documentation if sold to a citizen and the requirements for class 9 are met.

[1] For the meaning of the word "citizen" in this section, see § 3.19.

Class 7. Any vessel authorized by special act of Congress to be documented.

Class 8. Any vessel wrecked on a coast of the United States or its possessions or in adjacent waters when purchased by a citizen and repaired in a shipyard in the United States or its possessions, provided it be proved to the satisfaction of the Commissioner of Customs, through a board of three appraisers appointed by him if necessary, that the repairs put upon such vessel are equal to three times the appraised salved value of the vessel. The expense of such appraisal shall be borne by the owner of the vessel. If any of the material facts sworn to or represented by the owner, or at his instance, to obtain a document for such vessel is not true, the vessel is liable to forfeiture.

Class 9. Any seagoing vessel, whether steam or sail, wherever built, wholly owned by a citizen. A foreign-built vessel of this class shall engage only in trade with foreign countries or the islands of Guam, Tutuila, Wake, Midway, or Kingman Reef. It shall not engage in the coastwise trade, except as specified in sections 18 and 22, Merchant Marine Act, 1920, as amended, nor in the American fisheries. (See § 3.42.)

(d) The appropriate one of the following notations shall be made on the register of any vessel owned by a corporation which is established as a citizen of the United States under the definition contained in § 3.19(a)(3) or § 3.19(b), except when such register is required by any other provision of this part to bear an endorsement prohibiting the vessel from engaging in the coastwise trade:

(1) "Less than 75 percent of the interest in the corporation owning this vessel is owned by citizens of the United States. It shall not engage in the coastwise trade"; or

(2) "75 percent of the interest in the corporation owning this vessel is owned by citizens of the United States. It may engage in the coastwise trade so long as so owned and no longer."

(e) The following notation shall be made on the enrollment and license or license of any non-self-propelled vessel or any self-propelled vessel of less than 500 gross tons owned by a corporation which is established as a citizen of the United States under the definition contained in § 3.19(a)(4):

As amended by the Act of September 2, 1958 (46 U.S.C. 883–1). This vessel may engage in the coastwise trade, within the limitations specified in the Act, so long as so owned and no longer. It shall not engage in the fisheries and is not authorized to be documented for nor to engage in the foreign trade.

(f) No vessel of classes 1 through 8 above which has acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in or documented under the laws of the United States, and which has thereafter been sold or transferred foreign in whole or in part or placed under foreign registry (§ 3.43) or which, if of more than 500 gross tons, has been rebuilt outside the United States, its territories (not including trust territories), or its possessions after July 13, 1956, or which being of more than 500 gross tons, has been so rebuilt under a contract entered into on or before that date if the work of rebuilding was not commenced within 6 months after July 14, 1956 (§ 3.28),[2] shall have the right thereafter to engage in the coastwise trade. No document shall be issued to such a vessel for the coastwise trade and any document which may be issued for any other trade or employment shall bear the following notation:

As amended by section 27 of the Merchant Marine Act of June 5, 1920, as amended. This vessel shall not engage in the coastwise trade. (R.S. 4132, as amended, sec. 22, 41 Stat. 997, R.S. 4136, as amended, 4214, as amended, secs. 2, 9, 39 Stat. 729, as amended, 780, as amended, sec. 27, 41 Stat. 999, as amended, * * * * [Sec. 1.] section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., 1952 edition, title 46, sec. 883), is further amended by inserting the following new proviso at the end of the first proviso thereof: *"Provided further,* That no vessel of more than five hundred gross tons which has acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt outside the United States, its Territories (not including trust territories), or its possessions shall have the right thereafter to engage in the coastwise trade." * * *

Sec. 4. This act shall be effective from the date of enactment hereof: *Provided, however,* That no vessel shall be deemed to have lost its coastwise privileges hereunder if it is rebuilt under a contract entered into before such date of enactment and if the work of rebuilding is commenced not later than six months after such date of enactment. (Secs. 1 and 4 of the act of July 14, 1956 (secs. 1, 4, 70 Stat. 544; T. D. 54178; 46 U. S. C. 883).)

secs. 2, 3, 70 Stat. 544, 72 Stat. 1736; 46 U.S.C. 11, 13, 14, 103, 802, 808, 883, 883a, 883b, 883–1).

§ 3.3 Provisional registers.

(a) Consular officers of the United States and such other persons as may be designated by the President for the purpose[4] are authorized to issue a provisional certificate of registry to any vessel abroad which has been purchased by a citizen, as defined in § 3.19, and which at the time of such purchase is not documented as a vessel of the United States.

(b) Such provisional certificate shall entitle the vessel to the privileges of a vessel of the United States in trade with foreign countries or with the islands of Guam and Tutuila until the expiration of 6 months from the date thereof, or until 10 days after the vessel's arrival in a port of the United States, whichever first happens, and no longer. On arrival at a port of the United States, the vessel shall become subject to the laws relating to officers, inspection, and measurement.

(c) When a bill of sale covering such transfer is presented to an American consular officer:

(1) Satisfactory evidence shall be produced to establish that the transfer of registry has the approval of the foreign government concerned.

(2) The bill of sale shall be filed with him.

(3) The vendee shall submit a certificate as to the bona fides of the transfer of title and the citizenship of the vendee which the consul shall file with the bill of sale.

(4) If the vendor or his duly authorized representative be present, he shall also sign the certificate.

(5) The consular officer will investigate the circumstances surrounding the sale of the vessel and then communicate by dispatch, or by cable at the expense of the applicant, with the Commissioner of Customs through the Department of State, setting forth the results of his investigation; pertinent data regarding the vessel, such as its name, former nationality, rig, and gross and net tonnages; that the bill of sale and certificate of bona fides have been filed with him, giving the names of the vendor and vendee; whether the proposal to have the vessel placed under American registry has the approval of the foreign government concerned, or, if such approval is not required, stating that fact; his opinion as to whether the transfer was made in good faith; and whether it is intended that the vessel will be navigated to the United States on a voyage expected to terminate before the expiration date of the provisional register to be issued.

(6) On receipt of such a communication, if the transfer appears to be in good faith and the documentation of the vessel is not contrary to the policy of this Government, the Commissioner of Customs will award signal letters to the vessel and, through the usual channels, will promptly authorize the State Department to instruct the consular officer to issue a provisional certificate, customs Form 1266–A, to the vessel. The State Department will then cable, at the expense of the parties concerned, instructions and data for the issue of the provisional register.

(d) When bills of sale covering such transfers are presented to persons designated by the President for the purpose of issuing provisional certificates of registry, the procedure outlined in paragraph (c) of this section shall be followed. Communications in such cases shall be made through the appropriate departments.

(e) If bills of sale covering such transfers are presented to a collector of customs, the procedure outlined in paragraph (c) (1), (2), (3), (4), and (5) of this section shall be followed, except that the collector shall communicate directly with the Commissioner of Customs. Thereafter, if the transfer appears to be in good faith and it is not contrary to the policy of this Government, the Commissioner of Customs will award signal letters to the vessel and, through the usual channels, will promptly request the State Department to authorize the appropriate consular officer to issue a provisional certificate to the vessel. The State Department will then cable, at the expense of the parties concerned, instructions and data for the issue of the provisional register. No provisional certificate of registry shall be issued in any case unless authorized by the Commissioner of Customs.

(f) A duplicate provisional certificate, customs Form 1266–A, shall be forwarded as soon as practicable in every case by the issuing officer through the usual channels to the Commissioner of Customs.

(g) No provisional certificate shall be issued to any vessel abroad which at the time of its transfer to a citizen of the United States was documented as a vessel of the United States. Such a vessel is entitled to all the privileges and benefits of a vessel of the United States for the period allowed by R. S. 4166 (46 U. S. C. 35).

(Sec. 1, 38 Stat. 1193, as amended; 46 U.S.C. 12)

§ 3.4 Yachts entitled to documents.

(a) Any vessel, other than one navigating the waters of the northern, northeastern, or northwestern frontiers otherwise than by sea, may be licensed as a yacht if under 20 but not under 5 net tons and used exclusively as a pleasure vessel, and if otherwise entitled to be documented.

(b) Any vessel may be enrolled and licensed as a yacht if used exclusively as a pleasure vessel and otherwise entitled to be documented, provided it is of 5 net tons or over in the case of a vessel navigating the waters of the northern, northeastern, or northwestern frontiers otherwise than by sea, or 20 net tons or over in any other case.

(R. S. 4214, as amended; 46 U. S. C. 103)

§ 3.5 Vessels exempt from documentation.

(a) The following classes of vessels are exempt from documentation:

(1) Boats or lighters not masted, or masted but not decked, used in the harbor of any town or city, and not carrying passengers.

(2) Canal boats, barges, or other boats used in whole or in part on canals or on the internal waters of a State, without sail or internal motive power of their own, not engaged in trade with contiguous foreign territory, and not carrying passengers.

(3) Barges or boats without sail or internal motive power of their own plying in whole or in part on inland rivers or lakes of the United States, not engaged in trade with contiguous foreign territory, and not carrying passengers.

(4) Vessels plying upon waters which are wholly within the limits of a State and which have no outlet into a river or lake on which commerce with foreign nations or among the States can be carried on.

(5) Vessels of less than 5 net tons.

(b) All other vessels engaged in trade between ports in the United States or engaged in the fisheries, if not registered, shall be enrolled and licensed, or licensed, or will be liable to a penalty of $30 on every arrival, unless the vessel has not been within a customs district since the expiration of the license.

(c) No vessel exempt from documentation under the provisions of paragraph (a) (1), (2), (3), or (5) of this section and owned by a corporation which is a citizen of the United States as defined in § 3.19(a)(4) shall be operated in trade on the navigable waters of the United States unless there is on file with the collector of customs for the district in which the vessel business of the owner is conducted a valid and current certificate under oath on customs Form 1260 as required by § 3.21(f).

(Sec. 7, 24 Stat. 81, as amended, 21 Stat. 44, R.S. 4385, 18 Stat. 31, 72 Stat. 1736; 46 U.S.C. 319, 332, 335, 336, 883–1)

§ 3.6 Marine documents; kinds of.

(a) Marine documents are of two descriptions, (1) permanent, granted to vessels at their home ports[5] and (2) temporary, granted to vessels at ports other than their home ports.[5a]

(b) A register or enrollment shall be valid until a contingency arises requiring its surrender. (See §§ 3.26, 3.27.) A license shall be valid for one year only, but may be renewed or changed at any time during the year for which it is granted. Care shall be taken that only one license, and for one employment, be granted to a vessel for the same period, except that a license may be granted for the "coasting trade and mackerel fisheries."

(c) No enrollment and license or license shall be considered in force longer than the vessel to which it is granted is

[4] The captains of the ports of Cristobal and Balboa, Canal Zone, were designated by Executive Order No. 10351, dated May 15, 1952 (17 F. R. 4517).

[5] Under the "Seattle plan," which is in force in a number of customs districts, a vessel having its home port within the customs collection district may secure a permanent document at any other port in the same district at which marine documents are issued.

[5a] The ports at which marine documents may be issued are indicated in § 1.1 of this chapter.

owned as stated in the document, nor shall it be valid if the description of the vessel is changed, nor if the vessel engages in any business or employment other than that for which the document was granted.

(R.S. 4138, 4191, 4315, as amended, 4324, 4327; 46 U.S.C. 16, 62, 255, 266, 269)

§ 3.7 Marine documents; execution of.

All marine documents shall be signed and sealed by the collector before being issued.

(R. S. 4157, as amended, 4158, as amended; 46 U.S.C. 27, 28)

§ 3.8 Marine documents; new.

When a new marine document is issued[1] in lieu of one surrendered, such new document shall in every case cite the previous document by number, date, and port of issue, carry any notation of the authority for redocumentation or of the existence of unsatisfied preferred mortgage appearing on the surrendered document, and give the cause of surrender of the old document. A certificate of the builder shall not be required, nor shall a certificate of admeasurement be required unless some change of tonnage has taken place since the time of the previous documentation. (See §§ 3.26, 3.27 and 3.30.)

§ 3.9 Marine documents to include dimensions and tonnage.

The marine document of every vessel shall express her length, breadth, and depth; the number of decks and masts; the tonnage under the tonnage deck; the tonnage of the poop or other enclosed space above the deck; the gross tonnage; each deduction made from the gross tonnage; and the net or register tonnage. In appropriate cases it shall also show the height under the third or spar deck and the tonnage on the between decks above the tonnage deck.

(R.S. 4150, 4153, as amended; 46 U.S.C. 74, 77)

§ 3.10 Registers.

Vessels of the United States engaged in the foreign trade shall be registered, except as provided for in § 3.40 with respect to vessels on the northern, northeastern, and northwestern frontiers. Vessels engaged in domestic trade only, other than vessels owned by citizens of the United States as defined in § 3.19 (a) (4) and documented or to be documented under the Act of September 2, 1958 (46 U.S.C. 883–1), may be registered. (See § 3.30.)

(R.S. 4132, as amended, sec. 22, 41, Stat. 997, sec. 27A, 72 Stat. 1736; 46 U.S.C. 11, 13, 883–1)

§ 3.11 Enrollment and license; coasting trade and fisheries.

(a) When employed in the coasting trade and fisheries, a vessel of 20 net tons or over shall be enrolled and licensed and a vessel of 5 net tons or over but less than 20 net tons shall be licensed, unless such vessel is registered. (See § 3.10.)

(b) A vessel engaged exclusively in the cod fishery shall be licensed for that fishery. A vessel engaged in whaling shall be licensed for the whale fishery. A vessel engaged in taking fish of any other description shall be licensed for the mackerel fishery. A vessel which engages in both the coasting trade and fishing (other than whaling) may be licensed for the "coasting trade and mackerel fishery." A vessel engaged in taking out fishing parties is not a fishing vessel and shall be licensed for the coasting trade unless it intends to proceed to a foreign port, in which case a certificate of registry is required. (See § 3.10. See § 3.40 for vessels on the Great Lakes.)

(c) The trade expressed in the body of a document is controlling and may not be limited or expanded by the statement of service in the space provided therefor.

(d) An enrolled and licensed vessel may engage in trade with the Canal Zone or Guantanamo Bay Naval Station.

(R. S. 4311, as amended, 4321, as amended, sec. 7, 24 Stat. 81, as amended; 46 U. S. C. 251, 263, 319)

§ 3.12 Builder's certificates.

(a) In order to document a vessel of class 1, 2, 6, or 7, built in the United States and not before documented, the owner shall produce to the collector a certificate on customs Form 1261 from the builder under whose direction the vessel was built that she was so built, stating the place and time of building, the person or persons for whom built, number of decks and masts, length, breadth, depth, tonnage, and such other particulars as are usually descriptive of a vessel. This certificate shall be sufficient to authorize the removal of a new vessel, if in ballast only, from the district where she was built to another district in the same or an adjoining State where the owner or owners actually reside.

(b) When for any cause it is found impracticable to obtain the certificate of the builder, other competent evidence establishing the particulars and facts required to be certified by him may be accepted with the approval of the Commissioner of Customs.

(c) The place of build is where the hull was built. The time of build is the year of completion. Both shall appear in all marine documents.

(R.S. 4147; 46 U.S.C. 24)

§ 3.13 Official number and signal letters.

(a) Every documented vessel shall have an official number[2] awarded by the Commissioner of Customs. Application therefor shall be made on customs Form 1320 by the owner or his agent through the collector of customs. When the application is filed with the collector at the port designated as the home port of the vessel, the application shall be in triplicate. When the application is filed with the collector at any port other than the home port of the vessel, the application shall be in quadruplicate. The name or names of any former owner or owners shall be stated on the application. If there was no former owner, that fact shall be stated. In the case of corporate ownership, the application shall be signed in the corporate name by the president, secretary, or a specially authorized officer of the corporation, or by an authorized agent. In the case of a partnership, the partnership name shall be signed by one of the partners, or by a duly authorized agent; the name of each of the partners shall be stated but the proportionate interest of each in the partnership business shall not be stated. In the case of individual ownership by two or more persons, the application shall be signed by all the owners, by a duly authorized agent, or by one of the owners as managing owner, provided there is filed with the collector a written authorization for him to act in that capacity signed by the owners of a majority interest in the vessel; in every case, the name of each owner shall be stated. In every case the capacity in which the person signs, whether as owner, managing owner, agent, etc., shall be clearly stated below his signature. If a signature is by mark, it shall be witnessed by two persons, or acknowledged. Any acknowledgment valid under the law of the state where made may be accepted. No customs officer or employee is authorized by section 486, Tariff Act of 1930, to take such acknowledgments.

(b) Each application for an official number shall be accompanied by a designation of home port on customs Form 1319.

(c) When an application for an official number is filed with the collector at the port designated as the home port of the vessel, the original and one copy of customs Form 1320 shall be forwarded to the Bureau. When an application for an official number is filed with the collector at any port other than the home port of the vessel the original and two copies of the application shall be forwarded to the Bureau. When an official number is awarded, the Bureau will return the original to the collector from whom it was received. The collector shall make a notation of the official number awarded on the retained copy of the application and shall deliver the original to the applicant. When the application for official number is filed with the collector at any port other than the home port of the vessel, and an official number is awarded to the vessel, a copy of the notice of award will also be forwarded by the Bureau to the collector at the home port together with a copy of the application.

(d) Any seagoing vessel of 100 tons or over, in addition to an official number, may have signal letters awarded. Application therefor shall be made by the owner or his agent through a collector of

[1] The penalty for neglecting to surrender a document when required by law is the forfeiture of all privileges and benefits of a vessel of the United States. (R. S. 4169; 46 U. S. C. 38)

[2] "The Secretary of the Treasury shall have power, under such regulations as he shall prescribe, to establish and provide a system of numbering vessels so registered, enrolled and licensed; and each vessel so numbered shall have her number deeply carved or otherwise permanently marked on her main beam; and if at any time she shall cease to be so marked, such vessel shall be liable to a fine of $30 on every arrival in a port of the United States if she have not her proper official number legally carved or permanently marked." (46 U. S. C. 45)

customs on the application for official number, customs Form 1320, or, if the application is made subsequent to the filing of an application for an official number, by a letter transmitted through the collector of customs. Signal letters will not be forwarded to a seagoing vessel of less than 100 tons except upon special authorization by the Commissioner of Customs.

(e) A new application for the award of signal letters to a vessel of the United States shall not be required by reason of any change in status or ownership of such vessel or by reason of the redocumentation of such vessel after a period during which it has been out of documentation. The award of such letters shall not be canceled except upon special authorization of the Commissioner of Customs.

(f) The Bureau will give consideration to granting a special authorization for the cancellation of the award of signal letters upon application by or on behalf of a person having a permit issued by the Federal Communications Commission for the construction or operation of a broadcast station or the operation of a ship station who desires to use such letters in connection with the operation of such station if the vessel to which such letters are awarded is no longer documented as a vessel of the United States, and if, in the case of an application relating to a ship station, the vessel has not been so documented for a period of not less than 10 years. Such application shall be submitted to the Commissioner of Customs in writing and shall state (1) the name and address of the permittee, (2) the date of the granting of such permit, (3) the type of station to which such permit has been granted, (4) the letters desired, and (5) the name and official number of the vessel to which such letters are awarded, if known to the applicant.

(R.S. 4177, as amended; 46 U.S.C. 45)

§ 3.14 Evidence as to marking of official number, net tonnage, name, and hailing port.

(a) Except as provided for in § 3.51(k), marine documents shall not be issued until proper evidence is produced that the official number and net tonnage have been properly marked upon the vessel's main beam, that her name has been properly marked upon both sides of her bow, and that her name and hailing port have been properly marked upon her stern, or in the case of a yacht that her name and hailing port have been properly marked on the hull. (See § 2.60a of this chapter.)

(b) The evidence of proper marking required by the preceding paragraph shall be a certificate by a customs officer on customs Form 1322. If the vessel is at a place not readily accessible to a customs officer, the owner or his agent shall certify as to the proper marking; but as soon as she arrives at a place accessible to a customs officer, a certificate on customs Form 1322 shall be required.

(Sec. 4, 28 Stat. 743, as amended; 46 U.S.C. 79)

§ 3.16 Name and hailing port on documented vessel.

(a) The name of every documented vessel (yachts excepted) shall be marked in full upon each bow and upon the stern, and the hailing port shall also be marked in full upon the stern. These names shall be painted, carved, or gilded in Roman letters in a light color on a dark ground or in a dark color on a light ground, and shall be distinctly visible. The letters shall not be less than 4 inches high. Every steam vessel of the United States shall, in addition, have her name conspicuously placed in distinct, plain letters not less than 6 inches high on each outer side of the pilot house, if it has one, and if the vessel has side wheels, also on the outer side of each wheel house.

(b) On a so-called "double-ender" vessel the required names shall be placed on the parts corresponding to the bow and stern. If either the bow or stern, or both, of any such or other vessel does not afford sufficient space for marking the required name or names, or if the name marked in such a place would be obscured or concealed while the vessel is in operation (for example, by a fender), the names shall be placed on an appropriate adjacent part.

(c) The name of a scow, barge, or other vessel "scow-built" or with square bow may be marked on the bow instead of the side when such marking would be speedily obliterated by chafing against other vessels, piles, or rocks.

(d) The hailing port to be marked on the stern may be either the port where the vessel is permanently documented, or the place in the same district where the vessel was built or where one or more of the owners reside.

(e) Every documented yacht shall have its name and hailing port placed on some conspicuous part of its hull.

(R. S. 4178, as amended, sec. 21, 23 Stat. 58, R. S. 4214, as amended, 4495; 46 U. S. C. 46, 47, 103, 493)

§ 3.17 Home port; definition; change of.

(a) A vessel's home port[3] is that port where marine documents may be issued to vessels (see § 1.1 (c) of this chapter) which has been fixed and determined by the owner with the approval of the collector, assistant collector, or deputy collector in charge of marine work at the port designated or at the port where a temporary document is to be issued to the vessel. It is the port at which the vessel's permanent documents are issued.

(b) Before a marine document is issued to a vessel never before documented or to a documented or previously documented vessel when there has been some change in ownership in whole or in part or when a change in home port is desired, the owner of the vessel shall submit his designation of home port for the vessel on customs Form 1319, signed as provided for in § 3.13 (a), to the office of the collector of customs for the port designated or the port where a temporary document is to be issued. When the designation is filed with the collector at the port designated as home port, it shall be filed in duplicate; when filed at a port where a temporary document is to be issued, it shall be filed in triplicate. If the home port so designated is different from the last previous home port of the vessel, the owner shall also request the collector at the previous home port to forward to the collector at the designated port an abstract of title on customs Form 1332, or on customs Forms 1332 and 1332–A (see § 3.33 (l)).

(c) If an owner desires that the home port be elsewhere than the port at or nearest the place in the same customs collection district where the vessel business of the owner is conducted, he shall submit with his designation of home port a detailed statement setting forth the reasons.

(d) Whenever an owner submits a designation of home port to a collector, the collector shall examine the instruments transferring title to the vessel and the abstract of title on customs Form 1332 or customs Forms 1332 and 1332–A, if any, and satisfy himself that the home port has in fact been designated by the owner of the vessel or some person authorized to act for him.

(e) Any designation presented shall be forwarded to the Bureau for recommendation before approval and before the issuance of any document under such designation if:

(1) A port or place is designated which is other than the port at or nearest the place in the same customs collection district where the vessel business of the owner is conducted;

(2) The vessel is of foreign build and has not been previously documented as a vessel of the United States;

(3) The vessel has been transferred to an alien in whole or in part or has been placed under foreign registry after having been built in the United States or after having been documented as a vessel of the United States;

(4) Title has passed by operation of law before the first documentation as a vessel of the United States or since the date of acquisition of title by the last owner of record, whether by court order, by appointment of a trustee in bankruptcy, or otherwise.

(5) The vessel is owned by a corporation which is qualified as a citizen of the United States only under the definition contained in § 3.19(a)(4).

(f) After favorable recommendation by the Bureau if required, the collector, assistant collector, or deputy collector in charge of marine work for the port at which a designation is filed in accordance with paragraph (a) of this section

[3] "For the purposes of the navigation laws of the United States * * *, every vessel of the United States shall have a 'home port' in the United States, including Alaska, Hawaii, and Puerto Rico, which port the owner of such vessel, subject to the approval of the Secretary of the Treasury, shall specifically fix and determine, and subject to such approval may from time to time change. Such home port shall be shown in the register, enrollment, and license, or license of such vessel, which documents, respectively, are referred to as the vessel's document. The home port shown in the document of any vessel of the United States in force on February 16, 1925, shall be deemed to have been fixed and determined in accordance with the provisions hereof. * * *" (46 U. S. C. 18)

may approve that designation provided recordable instruments covering each sale, gift, or conveyance (including a conveyance in trust), if any, since the date of acquisition of title by the last owner of record are presented with the designation. After favorable recommendation by the Bureau if required, the collector or assistant collector for the district in which any such designation is filed may waive the requirements for production of recordable instruments of conveyances and may approve that designation if he is satisfied that it is impracticable to furnish any such instrument and that the owner has legal title to the vessel.

(g) If the designation of home port is approved as provided for in paragraph (f) of this section, the collector shall forward a duplicate copy of the designation to the Bureau. If the designation is so approved at a port other than the home port, the collector shall also forward the triplicate copy of the designation to the collector at the home port.

(h) In every case in which a favorable recommendation by the Bureau is required before an approval may be granted under paragraph (f) of this section, the collector shall forward a copy of the designation to the Bureau, together with any evidence of title submitted, any necessary statement of the facts and circumstances, and a statement as to whether or not the collector is of the opinion that the applicant has legal title to the vessel. In addition, any statement required by paragraph (c) of this section shall be forwarded. The papers so forwarded will be returned by the Bureau, with its recommendation, for processing by the field officer concerned.

(i) No officer or employee designated to grant approvals of designations of home ports shall approve, nor shall any collector forward to the Bureau for review, any such designation unless it appears that the vessel will be documented as a vessel of the United States substantially simultaneously with the approval of the designation by any such officer or employee after any necessary review. When a designation has been approved and the vessel is not so documented, the approval granted shall be cancelled. The collector, in subsequently transmitting a copy of a new designation by the same owner for review or in forwarding a copy of a designation approved by him, shall indicate in his remarks the date of the previous approval and that it was cancelled because of failure to document the vessel.

(R. S. 4141, sec. 1, 43 Stat. 947, as amended; 46 U. S. C. 17, 18)

§ 3.18 Forms of oath of owner and master for documentation.

(a) Prior to the documentation or redocumentation of any vessel, except in case of redocumentation of a vessel at a port other than the home port upon change in trade or loss of marine document or when the renewal spaces are filled, there shall be filed an oath of ownership on customs Form 1258 if the vessel is owned by an individual, partnership, unincorporated company, association, or the United States; or on customs Form 1259 or 1260, whichever is applicable, if the vessel is owned by a corporation.

(b) If any such vessel falls within class 4, 5, 6, or 7 of § 3.2, there shall be inserted immediately after footnote 1 of customs Form 1258 or immediately after footnote 4 of customs Form 1259 the appropriate one of the following clauses:

(1) For class 4—

On the _____ day of _____, 19__, captured in war by a citizen (or citizens) of the United States and lawfully condemned as prize by a decree, sentence, or judgment of the _____ court of _____ an authenticated copy of which I now produce.

(2) For class 5—

Adjudged to be forfeited, for a breach of the laws of the United States, by a decree, sentence, or judgment of the _____ court of _____, an authenticated copy of which I now produce.

(3) For class 6—

Formerly the _____, purchased from the United States (or from an officer, naming him and his office).

(4) For class 7—

Authorized to be documented by act of Congress and by the Commissioner of Customs by letter under date of _____, an authenticated copy of which I now produce.

(c) The master's oath required for the license or enrollment and license of a vessel shall be executed in the space provided therefor on customs Form 1258, 1259, or 1260. If the vessel is to be registered and the master is within the district where the registry is to be made, the master's oath shall be on Form 1258 or 1259. Such form of oath shall not be used for a renewal of license under paragraph (d) of this section.

(d) The master's oath for the renewal of a license shall be executed on customs Form 1260. Except when the vessel is at its home port, such an oath shall be taken for the renewal of the license even though it may be necessary to issue a new document because all renewal spaces are filled on the former document.

(R.S. 3114, as amended, 3115, as amended, 4142, 4139, as amended, 4159, 4161, 4214, as amended, 4312, 4314, as amended, 4320, as amended, 4325, as amended, 4328, as amended, 4330, 72 Stat. 1736; 19 U.S.C. 257, 258, 46 U.S.C. 19, 20, 29, 31, 103, 252, 254, 262, 267, 270, 272, 883–1)

§ 3.19 Citizenship; documentation.

(a) Whenever used in this part, the word "citizen" includes the plural as well as the singular. Unless the context requires a different meaning, it means:

(1) In the case of an individual, a native-born, derivative, or naturalized citizen of the United States;

(2) In the case of a partnership, unincorporated company, or association, one whose members are all citizens of the United States;

(3) In the case of a corporation, one which is incorporated under the laws of the United States, or of any State thereof, of which the president or other chief executive officer and the chairman of the board of directors are citizens of the United States, so long as no more of its directors than a minority of the number necessary to constitute a quorum shall be noncitizens.

(4) In the case of a corporation owning and operating a non-self-propelled vessel, or a self-propelled vessel of less than 500 gross tons, or in the case of a corporation which seeks to qualify as a citizen under the Act of September 2, 1958 (46 U.S.C. 883–1), for any purpose under the Act, one which is incorporated under the laws of the United States, or any State, Territory, District, or possession thereof provided that (i) a majority of the officers and directors of such corporation are citizens of the United States; (ii) not less than 90 percent of the employees of such corporation are residents of the United States; (iii) such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any Territory, District, or possession thereof; (iv) the aggregate book value of the vessels owned by such corporation does not exceed 10 percent of the assets of such corporation; and (v) such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 percent of the raw materials used or sold in its operations, and provided further that a certificate under oath on customs Form 1260 as prescribed in § 3.21 is filed with the collector of customs concerned as provided therein, if any, or if none, with the Commissioner of Customs, together with the required certificate as to the organization of the corporation and the names of all officers and directors of the corporation, showing the home address and citizenship of each.[9a]

[9a] • • • • Notwithstanding any other provision of law, a corporation incorporated under the laws of the United States or any State, Territory, District, or possession thereof, shall be deemed to be a citizen of the United States for the purposes of and within the meaning of that term as used in sections 9 and 37 of the Shipping Act, 1916, as amended (46 U.S.C. 808, 835), section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. 883), Revised Statutes, section 4370 (46 U.S.C. 316), and the laws relating to the documentation of vessels, if it is established by a certificate filed with the Secretary of the Treasury as hereinafter provided, that—

(a) A majority of the officers and directors of such corporation are citizens of the United States;

(b) Not less than 90 per centum of the employees of such corporation are residents of the United States;

(c) Such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any Territory, District, or possession thereof;

(d) The aggregate book value of the vessels owned by such corporation does not exceed 10 per centum of the aggregate book value of the assets of such corporation; and

(e) Such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 per centum of the raw materials used or sold in its operations

but no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including Territories, Districts, and possessions thereof, embraced within the coastwise laws, except as a service for a parent or subsidiary corporation and except when such vessel is under demise or bareboat charter at prevailing rates for use otherwise than in the domestic noncontiguous trades from

(b) A vessel, although owned and documented by a corporation which is a citizen as defined in paragraph (a) (3) of this section, shall not engage in the coastwise trade unless 75 percent of the interest in the corporation is owned by citizens as specified in section 2 of the Shipping Act, 1916, as amended.[10]

any such corporation to a common or contract carrier subject to part 3 of the Interstate Commerce Act, as amended, which otherwise qualifies as a citizen under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

As used herein (1), the term "parent" means a corporation which controls, directly or indirectly, at least 50 per centum of the voting stock of such corporation, and (2), the term "subsidiary" means a corporation not less than 50 per centum of the voting stock of which is controlled, directly or indirectly, by such corporation or its parent, but no corporation shall be deemed to be a "parent" or "subsidiary" hereunder unless it is incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, and there has been filed with the Secretary of the Treasury a certificate as hereinafter provided.

Vessels built in the United States and owned by a corporation meeting the conditions hereof which are non-self-propelled or which, if self-propelled, are of less than five hundred gross tons shall be entitled to documentation under the laws of the United States, and except as restricted by this section, shall be entitled to engage in the coastwise trade and, together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States.

A corporation seeking hereunder to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States shall file with the Secretary of the Treasury of the United States a certificate under oath, in such form and at such times as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such corporation complies with the conditions of this section above set forth. A "parent" or "subsidiary" of such corporation shall likewise file with the Secretary of the Treasury a certificate under oath, in such form and at such time as may be prescribed by him, executed by its duly authorised officer or agent, establishing that such "parent" or "subsidiary" complies with the conditions of this section above set forth, before such corporation may transport any merchandise or passengers for such parent or subsidiary. If any material matter of fact alleged in any such certificate which, within the knowledge of the party so swearing is not true, there shall be a forfeiture of the vessel (or the value thereof) documented or operated hereunder in respect to which the oath shall have been made. If any vessel shall transport merchandise for hire in violation of this section, such merchandise shall be forfeited to the United States. If any vessel shall transport passengers for hire in violation of this section, such vessel shall be subject to a penalty of $200 for each passenger so transported. Any penalty or forfeiture incurred under this section may be remitted or mitigated by the Secretary of the Treasury under the provisions of section 7 of Title 46, United States Code.

Any corporation which has filed a certificate with the Secretary of the Treasury as provided for herein shall cease to be qualified under this section if there is any change in its status whereby it no longer meets the conditions above set forth, and any documents theretofore issued to it, pursuant to the provisions of this section, shall be forthwith surrendered by it to the Secretary of the Treasury. (46 U.S.C. 883–1)

[10] "(a) Within the meaning of this chapter no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president or other chief executive officer and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

"(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States or (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) A vessel, although owned by a corporation which is not a citizen as defined in section 2 of Shipping Act, 1916, as amended, may be documented as a vessel of the United States if the sale or transfer to the corporation was not in violation of section 9 or 37 of the Shipping Act, 1916, as amended (46 U. S. C. 808, 835), and if the corporation is a citizen as defined in paragraph (a) (3) of this section.

(d) A vessel, although owned by a partnership or association which is a citizen as defined in section 2 of the Shipping Act, 1916, as amended, shall not be documented as a vessel of the United States unless the owner is also a citizen as defined in paragraph (a) (2) of this section.

(e) A corporation which qualifies as a citizen as defined in paragraph (a) (4) of this section is not thereby precluded from qualifying as a citizen under any other applicable definition and vessels which it owns or operates shall be entitled to be documented as vessels of the United States under any other provision of this part upon compliance with all applicable requirements.

(R.S. 4132, as amended, 4131, as amended, secs. 2, 9, 39 Stat. 729, as amended, 730, as amended, sec. 4, 40 Stat. 901, as amended, 72 Stat. 1736; 46 U.S.C. 11, 221, 802, 808, 835, 883–1)

§ 3.20 Evidence of citizenship of owners and officers.

(a) In addition to any oath, certificate, or declaration of citizenship specified, the collector of customs may require the production of such further evidence as may be necessary to satisfy him that the person is a citizen of the United States. The proper notation of the evidence produced shall be made on the papers retained in the collector's office, such as the number, date, and office of issue of an officer's license, seaman's passport, or citizen's passport, or the same data as to a birth or naturalization certificate, a continuous discharge book, or a certificate of identification, etc. The collector shall reject any evidence believed by him to be unauthentic.

(b) As evidence of his citizenship, a naturalized citizen shall be required in every case to present a certificate of his naturalization. A derivative citizen shall be required to present either a certificate of naturalization of either parent through whom he derived his own citizenship, together with a birth certificate or other evidence satisfactorily establishing that he was under 21 years of age at the time of his parent's naturalization, or a certificate of derivative citizenship. The usually acceptable evidence of citizenship for other persons is described below in the order of desirability.

(1) A birth certificate or certified copy.

(2) A baptismal certificate or parish record made within 1 year after birth.

(3) A certificate of a practicing physician that he attended the birth and that he has a record in his possession showing the date on which it occurred.

(4) A State Department passport.

(5) An active commission in the United States Navy, Marine Corps, Coast Guard, or reserve component thereof.

(6) An active commission in the United States Army or a reserve component thereof issued prior to May 26, 1942.

(7) A license as master, mate, engineer, or pilot issued by the Coast Guard, or a license as master, mate, engineer, or pilot issued by the former Bureau of Marine Inspection and Navigation when such license shows on the back thereof that satisfactory evidence of citizenship of the holder was produced at the time of the issuance of such license.

(8) A certificate of registry as staff officer.

(9) A continuous discharge book or certificate of identification issued by the

upon or permitted to be exercised by any person who is not a citizen of the United States.

"(c) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States." (46 U. S. C. 802)

Coast Guard which shows that the holder is an American citizen, or a continuous discharge book or certificate of identification issued by the former Bureau of Marine Inspection and Navigation which shows the holder is an American citizen, provided the records of that Bureau (now maintained by the Coast Guard) indicate that the holder of such continuous discharge book or certificate of identification has produced satisfactory evidence of his citizenship.

(10) A delayed certificate of birth. If an applicant claiming to be a citizen of the United States submits a delayed certificate of birth which has been issued in accordance with the procedure outlined in the Manual of Uniform Procedure for the Delayed Registration of Births [12] and recites on its face the evidence upon which it has been granted, it may be accepted as prima facie evidence of citizenship in the absence of any collateral facts indicating fraud in its procurement. In order to receive consideration as a delayed certificate of birth, the certificate shall have been issued strictly in accordance with the provisions of the manual above referred to. Any delayed birth certificate not so issued shall be given consideration but shall not necessarily be considered prima facie evidence of citizenship.

(11) If none of the foregoing requirements can be met by the applicant, he shall make a statement to that effect, and, in an attempt to establish citizenship, he may submit for consideration data of the following character:

(i) Report of the Census Bureau showing the earliest record of age or birth available.[13] Request for such information shall be addressed to the Director of the Census, Washington 25, D. C. In making such request, definite information must be furnished the Census Bureau as to the place of residence when the first census was taken after birth of the applicant, giving the name of the street and number of the house, or the names of the cross streets between which the house was located if residing in a city; or the name of the town, township, precinct, magisterial district, militia district, beat or election district, if residing in the country; also the names of parents, or the names of other persons with whom residing on the date specified.

(ii) Declarations of fact by parents or relatives; declarations by two or more responsible citizens of the United States stating facts of which they have knowledge tending to establish the applicant's citizenship; school records; immigration records; or insurance policies.

(R.S. 4142, 4144, 4313; 46 U.S.C. 19, 22, 253)

§ 3.21 Execution of oaths for documentation, for operation of certain vessels exempt from documentation, and for qualification of certain corporations as citizens of the United States.

(a) If the vessel be owned by one individual, the oath shall be taken by him or by his duly authorized agent.

(b) If the vessel be owned by several individuals or a firm or unincorporated company, the oath shall be taken by the managing owner or a member of the firm who shall specify the names and places of abode of, and except in the case of a partnership the proportions of the vessel owned by, each of the others, and shall certify to their citizenship.

(c) If the vessel be owned by a corporation, the oath shall be taken by its president, its secretary, or by any other officer or agent thereof duly authorized by a writing under the corporate seal to act in its behalf. Such officer or agent shall also furnish a certificate as to the organization of the corporation and the names of its president or other chief executive officer, chairman of its board of directors, and directors, showing the home address and citizenship of each and the number of directors necessary to constitute a quorum, including a quotation of the pertinent portion of the articles of incorporation, bylaws, or other corporate papers relating to the matter of a quorum. If the corporate owner is qualified as a citizen of the United States under the definition contained in § 3.19 (a)(4), the oath shall be on customs Form 1260 and the accompanying certificate shall include information as to the names, home address, and citizenship of all officers and directors.

(d) In all cases where there is more than one owner, the proportions owned by each shall be stated in the oath.

(e) The oath of the owner or of the master required for documentation may be taken before a collector of customs or before any officer authorized by the laws of a state to administer oaths generally. If the oath is not taken before the collector, it may be mailed to him.

(f) A corporation which meets the qualification requirements of § 3.19(a)(4) as a citizen of the United States and which seeks to operate in trade a vessel owned by such corporation and exempt from documentation under § 3.5 shall file in duplicate with the collector of customs for the district in which the vessel business of the owner is conducted a certificate under oath on customs Form 1260 by its president, its secretary, or by any officer or agent thereof duly authorized by a writing under the corporate seal to act in its behalf. Such officer or agent shall also furnish in duplicate a certificate as to the organization of the corporation and the names of all officers and directors of the corporation, showing the home address and citizenship of each.

(g) A corporation which meets the qualification requirements of § 3.19(a)(4) as a citizen of the United States and which seeks to qualify under the Act of September 2, 1958 (46 U.S.C. 883–1), for any purpose other than as outlined in paragraph (f) hereof shall file in duplicate with the Commissioner of Customs a certificate under oath on customs Form 1260, appropriately modified to omit reference to any vessel, by the corporation's president, its secretary, or by any other officer or agent thereof duly authorized in writing under the corporate seal to act in its behalf. Such officer or agent shall also furnish in duplicate a certificate as to the organization of the corporation and the names of all officers and directors of the corporation, showing the home address and citizenship of each, and shall state in duplicate in writing the reasons for desiring to qualify under the Act and the reasons why qualification is not sought under paragraph (c) or (f) of this section.

(h) If any change occurs in any corporation after the filing of a certificate under oath and the other papers required under paragraph (f) or (g) of this section whereby the corporation is no longer entitled to be deemed a citizen of the United States as defined in § 3.19(a)(4), the corporation shall cause a report of such change to be made in writing in duplicate to the office where the previous certificate under oath was filed.

(i) Upon the filing of a certificate under oath and the other papers required under paragraph (f) or (g) of this section, the collector of customs or the Commissioner of Customs shall furnish the corporation, through its officer or agent, a certificate of filing of such oath on customs Form 1262 which shall be valid for a period of 3 years from the date of its issuance unless there first occurs a change in corporate status requiring a report under paragraph (h) of this section. On or before the date of expiration of the validity of such certificate, a new oath on customs Form 1260 and the other papers required by paragraph (f) or (g) of this section shall be filed with the appropriate officer.

(j) The duplicate copy of the oath and other papers required by paragraphs (f) and (h) of this section and a copy of any certificate issued by the collector under paragraph (i) of this section shall be forwarded promptly to the Commissioner of Customs, who will cause notice of the contents thereof to be given to all collectors of customs concerned. The Commissioner will also give similar notice of the contents of any oath filed with him under paragraph (g) of this section.

(Sec. 1, 61 Stat. 633, as amended, 44 Stat. 830, R.S. 4138, 4142, 4139, as amended, 4143, 4144, 4163, 4314, as amended, 4320, as amended, 72 Stat. 1736; 1 U.S.C. 1, 5 U.S.C. 92a, 46 U.S.C. 16, 19–22, 33, 254, 262, 883–1)

§ 3.21a Execution of oaths by a parent or subsidiary corporation.

(a) A parent or subsidiary corporation as defined in § 3.1 (h) and (i) shall file a certificate under oath on customs Form 1263 executed by its duly authorized officer or agent establishing the facts respecting the citizenship of such parent or subsidiary corporation before any vessel owned by a corporation as defined in §3.19(a)(4) shall transport any merchandise or passengers for such parent or subsidiary corporation, whether the transporting vessel is documented as a vessel under the laws of the United States or is exempt from the requirements for documentation under § 3.5(c) or otherwise.

(b) The certificate under oath required under paragraph (a) of this section shall be filed in duplicate with the collector of customs at the vessel's home

[12] This manual was issued by the Department of Commerce on July 16, 1941, and is filed with the Office of the Federal Register.

[13] Census records are available for the following years: 1860, 1870, 1880, 1900, 1910, 1920, 1930, and 1940. Records for 1890 are not available.

port if the vessel is documented as a vessel of the United States or, if not so documented, with the collector of customs for the district in which the vessel business of the owner is conducted. Such officer or agent shall also furnish in duplicate a certificate as to the organization of the corporation and the names of all officers and directors of the corporation, showing the home address and citizenship of each.

(c) When there is any change in the status of a parent or subsidiary corporation which is a citizen of the United States whereby such corporation shall cease to be qualified as a citizen, such corporation shall cause a report of such change to be made in writing in duplicate to the collector of customs at the port where the previous certificate under oath was filed.

(d) The duplicate copy of the oath and other papers required by this section shall be forwarded promptly to the Commissioner of Customs, who will cause notice of the contents thereof to be given to all collectors of customs concerned.

(72 Stat. 1736; 46 U.S.C. 883–1)

§ 3.22 Issue and record of marine documents.

(a) An exact copy of each marine document issued by a collector of customs shall be placed in a permanent record kept for that purpose and a proper index made thereof on customs Form 1241 (on customs Form 2112 at the port of New York).

(b) At the time application is made for a new document, any former document of the vessel shall be surrendered to the collector to whom the application is made, unless the former document has been lost, mutilated, destroyed, or unintentionally mislaid. (See § 3.31.)

(c) On proof that any vessel has been sold or transferred by process of law and that her former owner has retained the marine document, the collector at the vessel's home port may grant a new document and shall not refuse to issue such a document merely because the last document is retained by the former owner. In any such case, the new owner shall not be required to produce and surrender the former document, but the issuance of the new document does not remove the liability of the holder of the former document for failure to surrender it.

(d) Upon any change in the address of an owner as shown upon a marine document, a prompt report, giving both the old and the new addresses, shall be made to the collector of customs at the vessel's home port and the marine document shall be presented for amendment of the address to any collector of customs at the first opportunity.

(e) No document shall be issued to any vessel prior to the receipt by the collector of the approval of the designation of the home port by or on behalf of the owner in whose name the document is to be issued.

(f) When a document is issued to a vessel on the Great Lakes, it shall be delivered by the collector in a special envelope, customs Form 1503. When a document is issued to a vessel elsewhere than on the Great Lakes, it shall be delivered in a special envelope, customs Form 1502. In the case of the issuance of any document other than a register or an enrollment and license on customs Form 1276, the date upon which the license for the vessel will expire shall be noted plainly on the face of the envelope.

(R.S. 4141, sec. 1, 43 Stat. 947, R.S. 4155, as amended, 4164, as amended, 4176, 4314, as amended, 4319, as amended, 4329, as amended; 46 U.S.C. 17, 18, 25, 34, 44, 254, 259, 271)

§ 3.23 Permanent documentation of vessel absent from home port.

(a) A permanent document may be issued to any vessel absent from her home port upon application to the collector for the home port through the office of the collector at the port where the vessel shall be. In such case, all requirements which would be applicable if the vessel were at her home port shall be met at the port where she is before the application is forwarded, except that the owner's and master's oaths may be executed at the home port.

(b) The collector through whom application was made shall forward a certificate on customs Form 1301 to the collector at the vessel's home port, who shall issue a permanent document and deliver the document either directly or through the collector through whom the application was received.

(Sec. 486, 46 Stat. 725, as amended, R. S. 4328, as amended; 19 U. S. C. 1486, 46 U. S. C. 270)

§ 3.24 Change of master.[14]

(a) When the master of any documented vessel, except a licensed ferryboat or yacht, is changed, the owner or the new master shall report the change to the collector at the port where the change takes place, or where the vessel first arrives thereafter, and produce to him the documents and file with him a declaration properly executed on customs Form 1311. The collector shall then endorse upon the document the name of the new master.

(b) If the declaration on Form 1311 is mailed to the collector, it shall be accompanied by the vessel's outstanding marine document.

(c) Every application for the endorsement of the names of one or two alternate masters on the license of a vessel in addition to the name of the master already endorsed on the license shall be filed with the collector of customs at the home port of the vessel and shall contain a statement of the condition of employment of the vessel. The endorsement of the names of one or two alternate masters upon the license shall be authorized by the collector or an employee in his office properly designated to grant such authorization whenever that officer or employee, after examining the application, deems the condition of employment of the vessel warrants such action. Under no circumstances shall the endorsement of the names of more than two alternate masters upon the license be authorized. The same declarations shall be required of such alternate masters as are required in the case of other masters.

(d) In the case of a vessel on whose license there are endorsed the names of more than one master, the master actually in charge of the vessel shall assume all the duties and responsibilities imposed by any statute upon masters of vessels and is subject to the liabilities provided by any law against masters of vessels during any period in which he is in charge of the vessel.

(e) If two or more vessels are owned by or under the complete control and management of the same person, association, corporation, etc., and are navigated within the limits of the harbor of any town or city, the name of the owner, if an individual, or of some responsible person acting for the owner, may be endorsed as master on the licenses of all such vessels although the person whose name is so endorsed may not be actually employed on any of the vessels. The same declaration shall be required of such persons as is required in the case of other masters. Any person whose name is so endorsed is subject to the liabilities provided by any law against masters of vessels.

(f) The name of the owner, if an individual, or of some responsible person acting for the owner, may be endorsed as master on the license of any unrigged vessel, except one which is required by law to have on board a certificate of inspection and which is required by that certificate to be manned, although the person whose name is so endorsed may not be actually employed on that vessel. The same declaration shall be required of such persons as is required in the case of other masters. Any person whose name is so endorsed is subject to the liabilities provided by any law against the masters of vessels.

(g) The name of the owner, if an individual, or of some responsible person acting for the owner, may be endorsed as master on the license of any vessel engaged in towing from any port or place embraced within the coastwise laws of the United States to any other such port or place plying in whole or in part on inland rivers, canals, waterways, sounds, gulfs, lakes, and harbors, not carrying passengers nor proceeding directly or indirectly to any foreign port or place or to any port or place in noncontiguous territory of the United States, although the person whose name is so endorsed may not be actually employed on that vessel. The same declaration shall be required of such persons as is required in the case of other masters. Any person whose name is so endorsed is subject to the liabilities provided by any law against the masters of vessels.

(R.S. 4171, as amended, 4335, as amended, sec. 486, 46 Stat. 725, as amended; 19 U.S.C. 1486, 46 U.S.C. 40, 276)

[14] "Any person or body corporate having more than one-half ownership of any vessel shall have the same power to remove a master, who is also part owner of such vessel, as such majority owners have to remove a master not an owner. This section shall not apply where there is a valid written agreement subsisting, by virtue of which such master would be entitled to possession." (46 U. S. C. 227)

§ 3.25 Renewal of license.

(a) A permanent or temporary license shall be presented within 3 days (exclusive of any day on which the customhouse is not open for marine business) after its expiration, to the collector of the district where the vessel may then be, or if the vessel is then at sea, within 3 days after her first arrival within any district. A temporary license shall be surrendered within 10 days after the arrival of a vessel at her home port and shall not be renewed at that port.

(b) If a license is presented for renewal at any time within 30 calendar days prior to the date of expiration shown thereon, it may be renewed for a period of 1 year from that date of expiration.

(c) A license may be renewed at any port, whether a port of documentation or not.

(d) When a license is presented for renewal, the master shall make oath in the form prescribed by § 3.18 (d).

(e) When a license for a vessel on the Great Lakes is renewed, it shall be redelivered by the collector in a special envelope, customs Form 1503. When a license is renewed for a vessel elsewhere than on the Great Lakes, it shall be redelivered in a special envelope, customs Form 1502. In either case, the date upon which the license for the vessel will expire shall be noted plainly on the face of the envelope and any previous notation of a date of expiration shall be deleted.

(f) The collector at the home port of a licensed or enrolled and licensed vessel shall transmit a notice of the date upon which the license will expire and the form of oath to be executed by the master on customs Form 1280 to the last-known address of the owner of the vessel not more than 40 days prior to its expiration nor less than 21 days prior thereto. Neither the failure of a collector to transmit such notice and form of oath nor the fact that the master did not receive it shall be deemed to excuse the master from the penalty or penalties provided by law.

(R.S. 4325, as amended, 4326, 4327, 4498, as amended; 46 U.S.C. 267–269, 496)

§ 3.26 Surrender of permanent documents.

(a) The marine document shall be surrendered when a vessel is sold or transferred in whole or in part; when the owner of the whole or any part of a vessel dies; when a vessel has been lost, abandoned, dismantled, or taken by an enemy, or otherwise prevented from returning to the United States; when a vessel is burned or broken up; when a vessel is altered in form by being lengthened, shortened, or built upon, or is changed from one denomination to another by a change in the method of rigging or fitting; when the tonnage of a vessel is changed for any reason; when a vessel is altered so that it is no longer of the description set forth in its document; when a vessel changes from one employment to another; when a vessel is placed under foreign registry or flag; when a vessel changes her name; when the home port of a vessel is changed; when a president or secretary whose name appears on the document of a vessel owned by a corporation dies, is removed, or resigns; when a trustee is appointed upon bankruptcy of the owner of the whole or any part of a vessel; when a partnership owning an interest in a vessel is terminated or when there is any change in the membership of such partnership without dissolution of the firm; and when there is any change in the status of a corporation which is a citizen of the United States as defined in § 3.19(a) (4) whereby such corporation shall cease to be qualified as a citizen thereunder.

The approval of the Maritime Administration of the surrender of the document of a vessel covered by a preferred mortgage shall be obtained, except as specified in note 19, § 3.30 (a) or in the case of the forfeiture of the vessel or its sale by the order of any court of the United States or any foreign country.

(b) If any documented vessel is lost, destroyed, or abandoned, the owner shall immediately report the fact to the collector of customs at the home port of the vessel.

(c) A document need not be surrendered because the engine of the vessel is changed, if there is no change in the rig, dimensions, or tonnage of the vessel, nor because of a change in the service of the vessel, when there is no change in trade, nor in the number of persons in its crew. In such a case, a notation of the change shall be made on the document by a collector of customs and initialed by him.

(d) A document need not be surrendered because of the appointment of a guardian or committee for the owner of the whole or any part of the vessel, nor because of the appointment of a receiver, either in bankruptcy or in equity, of the assets of the owner of the whole or any part of the vessel.

(e) When a document is surrendered incident to the sale or other transfer of a vessel to an alien, if such transfer has been approved by the Maritime Administration in accordance with the requirements of law, the following certificate shall be issued by the collector of customs concerned upon the presentation of the bill of sale or other evidence covering the transfer:

I, ----------, collector of customs for the port of ----------, State of ----------, United States of America, do hereby certify that ---------- No. ------, issued at ---------- on ---------- to the ----------, official number ------, was this day surrendered at this port upon the transfer of the vessel to a subject of ----------, which transfer was authorized by the Maritime Administration under its Transfer Order No. MA ------, dated -------.

As witness my hand this ------ day of ----------, 19----.

(Signed) ----------
Collector of Customs

(R.S. 4146, as amended, 4160, 4170, as amended, 4322, 4325, as amended, 72 Stat. 1736, sec. 30, subsec. 0, 41 Stat. 1004, sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 23, 30, 39, 264, 267, 883–1, 961, 1114)

§ 3.27 Surrender of temporary documents.

(a) Every document granted by the collector at a port other than the home port shall be temporary.[18]

(b) Every temporary document shall be surrendered to the collector within 10 days after the arrival of the vessel at her home port and whenever the surrender of a permanent document is required.

(c) The term "arrival" in the preceding paragraph means the voluntary arrival of the vessel in the regular course of her employment.

(d) The approval of the Maritime Administration of the surrender of the document of a vessel covered by a preferred mortgage shall be obtained, except as specified in note 19, § 3.30 (a).

(R. S. 4146, as amended, 4160, 4162, 4168, 4170, as amended, 4325, sec. 30, subsec. O, 41 Stat. 1004, sec. 204, 49 Stat. 1987, as amended; 46 U. S. C. 23, 30, 33, 37, 39, 267, 961, 1114)

§ 3.28 Rebuilt and new vessels.

(a) A vessel may be deemed to be a new vessel in a case in which it has been built entirely of new materials or in a case in which it has been built in whole or in part of old materials taken from another vessel provided no considerable part of the old material used has been left undisturbed or intact without being taken up, refitted, and reset. A vessel may be deemed to have been rebuilt if any considerable part of the hull in its intact condition without having been broken up is built upon or substantially altered.

(b) When a new vessel is constructed in whole or in part of material taken from an old vessel; when an existing vessel is rebuilt; when, in the case of a vessel of more than 500 gross tons, the vessel has been so altered in a foreign shipyard as to lose its privileges as a vessel of the United States (§ 3.29 (a)) or has otherwise been so altered in such a yard as to give rise to a reasonable belief that the vessel may have been rebuilt; or when it is desired, in the case of an unrigged wooden vessel, other than a foreign-built vessel (class 9), that a notation be made in the publication, Merchant Vessels of the United States, as to rebuilding, the owner of the vessel shall submit through the collector at the port where the vessel then is or next arrives thereafter to the Commissioner of Customs a certificate of specifications outlining the work performed on the vessel and describing the extent to which old materials used were taken up, refitted, and reset, or, the extent to which parts of the old hull in its intact condition were used or built upon. The certificate shall be accompanied by accurate sketches or blueprints illustrating the extent of the work performed when such sketches or blueprints are available. Such certificates shall also be accompanied by a certificate of the builder, which shall be on customs Form 1261 if the vessel is claimed to be new. In the case of an unrigged wooden vessel, the shipbuilder, in addition to certifying that the vessel is rebuilt and the date of completion and place of such rebuilding, shall certify that the vessel is sound and free from rotten or doted wood in its structural parts; that it is properly fastened and calked; and that it is as good as new in strength and seaworthiness. The Commissioner of Customs shall decide whether or not the vessel is to be considered to be new or rebuilt and, if either, that decision shall be reflected on the vessel's marine document.

(c) A rebuilt vessel shall retain its name and official number and the date and place of rebuild shall be noted on its marine document. Upon a finding under this section that a vessel is new, an application shall be submitted for the award of an official number and all other requirements applicable in the case of any new vessel shall be met before a marine document is issued.

(d) No vessel of more than 500 gross tons which has been rebuilt within the meaning of this section outside the United States, its territories (not including trust territories), or its possessions, after July 13, 1956, or which has been so rebuilt under a contract entered into on or before that date if the work of rebuilding was commenced later than 6 months after July 14, 1956, shall be documented for nor engage in the coastwise trade.

(R.S. 4155, as amended, 4179, 37 Stat. 189; R.S. 4319, as amended, sec. 27, 41 Stat. 999, as amended, secs. 2, 3, 70 Stat. 544; 46 U.S.C. 25, 50, 63, 259, 883, 883a, 883b)

§ 3.29 Change of build or rig.

(a) When a documented vessel is altered in form or tonnage by being lengthened, shortened, or built upon, or changed from one denomination to another by a change in rig or fitting, the vessel shall cease to be deemed a vessel of the United States unless she is documented anew. Every such alteration of a vessel of more than 500 gross tons which is effected in a foreign shipyard shall be reported to the collector of customs at the port where the vessel first arrives in the United States in accordance with the provisions of § 3.28(b) and the master shall submit the statement required by § 4.7 of this chapter.

(b) When there is a change in the means of propulsion of a vessel [18] as from steam engine to gas engine or any other alteration which may change the description, the marine document of the vessel shall be surrendered.

(R.S. 4170, as amended; 46 U.S.C. 39)

§ 3.30 Exchange of documents.

(a) Any enrolled and licensed or licensed vessel, other than a vessel documented under the Act of September 2, 1958 (46 U.S.C. 883–1), may be registered upon the surrender [19] of her document to a collector of customs. Except as specified in paragraph (b) of this section, any registered vessel may likewise be enrolled and licensed or licensed.

(b) Neither enrollment nor license for the coasting trade or for the coasting trade and mackerel fishery shall be granted to a vessel prohibited by law from engaging in the coastwise trade. (See §§ 3.2, 3.28, 3.42, and 3.43. Neither enrollment nor license for the fisheries or for the coasting trade and mackerel fishery shall be granted to a vessel prohibited by law from engaging in the American fisheries. (See §§ 3.2 and 3.42.) Neither enrollment and license nor license shall be granted to any vessel having on board merchandise brought from a foreign port until such merchandise shall have been wholly unladen and the duties paid or secured.

(c) No registered vessel shall be permitted to exchange her document unless the collector to whom application is made is satisfied by an affidavit of the owner or master that all equipments purchased and repairs made abroad within the year immediately preceding such application have been duly accounted for and the duties accruing thereon have been paid. If the master gives this affidavit, it shall be executed on customs Form 1304.

(d) No vessel shall be permitted to exchange her marine document at a port other than the home port until the master has applied for the new marine document and has filed his affidavit that the ownership remains as stated in the document to be surrendered. Such affidavit shall be executed on customs Form 1304, which may be modified in appropriate cases by deletion of the matter pertaining to foreign equipment or repairs. If the exchange of documents is made at the home port, the oaths required by § 3.18 shall be filed.

(R.S. 3114, as amended, 3115, as amended, 4322, 4323, as amended, 4337, 72 Stat. 1736, sec. 30, subsec. 0, 41 Stat. 1004, sec. 204, 49 Stat. 1987, as amended, 19 U.S.C. 257, 258, 46 U.S.C. 264, 265, 278, 883–1, 961, 1114)

§ 3.31 Loss of marine document.

When the marine document of any vessel is lost, mutilated, destroyed, or mislaid, the master certifies such fact on customs Form 1305, and the oaths required by § 3.18 are filed at the port of first arrival if that port is the vessel's home port, or the affidavit required by § 3.30 (d) is filed at any other port of first arrival, the collector shall issue a new document, which shall recite the fact that it replaces the one lost, mutilated, destroyed, or mislaid. A document is held to be lost when it is wrongfully withheld from the possession of the owner.[20]

(Sec. 486, 46 Stat. 725, as amended, R. S. 4160, 4326; 19 U. S. C. 1486, 46 U. S. C. 36, 268)

§ 3.32 Sale or transfer of vessel; change in membership of owning partnership.

(a) Except as stated in § 3.35, when a documented vessel is sold or transferred in whole or in part to a citizen,[21] such vessel shall not be deemed a vessel of the United States until documented anew.

(b) In the case of the sale, gift, or conveyance (including conveyance in trust) of the whole or any part of such vessel, a written instrument in the nature of a bill of sale, which may be on customs Form 1340, 1342, 1344, 1346, or 1356, and which shall recite in full the marine document last granted to the vessel before the execution of the instrument, shall be filed with the collector of customs before a new document is granted.

(c) When the owner of the whole or any part of such a vessel dies and there is an administration of his estate, an authenticated copy of the letters of appointment of the personal representative of the deceased owner shall be filed with the collector of customs before a new document is granted to that personal representative or to any of his successors in interest. In such a case, before a new document for a vessel is granted to one who acquires an interest therein as the beneficiary under a will, to the person succeeding to the interest of the deceased owner in case of intestacy, or to any successor in interest of either of them, an authenticated copy of the decree of distribution shall be filed with the collector of customs. The filing of an authenticated copy of the certificate of death or of the will of the deceased owner shall not be required.

(d) In case of the death intestate of the owner of the whole or any part of such a vessel, if there is no administration of his estate the collector shall forward to the Bureau a statement of all the facts and circumstances and, except as provided for in paragraph (e) of this section, an authenticated copy of the certificate of death of the owner, together with any documentary evidence in support of the claim of title presented to him, before a new document is granted to the next of kin of the deceased owner or to his successors in interest.

(e) If it is impossible to obtain an authenticated copy of the certificate of

[18] When a vessel's engine is changed but there is no change in the type of motive power, no redocumentation is required unless the installation of the new engine changes the admeasured tonnage of the vessel.

[19] The requirement of subsection O(a) of the Ship Mortgage Act, 1920 (46 U.S.C. 961 (a)), that the document of a vessel covered by a preferred mortgage may not be surrendered without the approval of the Maritime Administration and the mortgagee, does not apply to (1) a renewal of license, including a case in which the former document is replaced by reason of the fact that all renewal spaces are filled; (2) a change of document incident to a change of trade where the ownership and home port remain the same; (3) a change to a permanent document on arrival of a vessel at its home port under a temporary document; or (4) the replacement or renewal of a lost, mislaid, or mutilated document where the ownership and home port remain the same. A document may be deemed to be mutilated when it has been partially burned, torn, soiled, or otherwise defaced so as to be unsuitable for the purpose for which it was issued.

[20] All questions of what constitutes a wrongful withholding shall be referred to the Commissioner of Customs for determination.

[21] Unless the consent of the Maritime Administration is first obtained, no vessel of the United States may be sold or chartered in whole or in part to any person who is not a citizen or to any corporation, partnership, or association which is not a citizen as defined in section 2 of the Shipping Act, 1916, as amended. (46 U. S. C. 802)

death of the deceased owner of the whole or any part of such a vessel for filing with the collector as required by paragraph (d) of this section, other evidence of death of such deceased owner shall be filed with the collector in lieu thereof.

(f) In case of the sale or conveyance of the whole or any part of such a vessel by a guardian or committee of the owner thereof, an authenticated copy of the letters of guardianship and of the court order, if any, authorizing the transfer of title shall be filed with the collector of customs before a new document is granted.

(g) In case of the appointment of a trustee in bankruptcy of the assets of the owner of the whole or any part of such a vessel, an authenticated copy of the order of the referee or court appointing him as such shall be filed with the collector of customs before a new document is granted.

(h) The certificates, letters, decrees, orders, and other evidence of title referred to in paragraphs (c), (d), (e), (f), and (g) of this section shall not be required to recite a marine document of the vessel concerned.

(i) In the case of the termination of a partnership owning an interest in a vessel because of the addition of a new member, the withdrawal of an old, or both, the death or bankruptcy of a partner, or for any other reason, a written instrument in the nature of a bill of sale, as provided for in paragraph (b) of this section, shall be filed with the collector of customs before a new document is granted.

(j) In the case of a change in membership of a partnership owning an interest in a vessel without dissolution of the firm, there shall be filed with the collector of customs evidence satisfactory to him that there has been no such dissolution and a certificate as to the change which has occurred signed by one or more of the members of the partnership as so changed before a new document is granted.

(R. S. 4170, as amended, 4312, sec. 9, 39 Stat. 730, as amended; 46 U. S. C. 39, 252, 808)

§ 3.33 Recording of bills of sale and mortgages.

(a) When any bill of sale, mortgage, hypothecation, or conveyance of any interest in any vessel is presented to a collector of customs to be recorded,[23] the vendee, mortgagee, pledgee, or transferee shall file with the collector the oath required by section 40, Shipping Act, 1916 (46 U. S. C. 838). The oath of a corporation shall be signed by its president, secretary, or treasurer, or any other official thereof duly authorized by such corporation to execute any such declaration.

[23] "(a) No sale, conveyance, or mortgage which, at the time such sale, conveyance, or mortgage is made, includes a vessel of the United States, or any portion thereof, as the whole or any part of the property sold, conveyed, or mortgaged shall be valid, in respect to such vessel, against any person other than the grantor or mortgagor, his heir or devisee, and a person having actual notice thereof, until such bill of sale, conveyance, or mortgage is recorded in the office of the collector of customs of the port of documentation of such vessel, as provided in subdivision (b) of this section.

"(b) Such collector of customs shall record bills of sale, conveyances, and mortgages delivered to him, in the order of their reception, in books to be kept for that purpose and indexed to show—

"(1) The name of the vessel;

"(2) The names of the parties to the sale, conveyance, or mortgage;

"(3) The time and date of reception of the instrument;

"(4) The interest in the vessel so sold conveyed, or mortgaged; and

"(5) The amount and date of maturity of the mortgage." (46 U. S. C. 921)

"(a) No bill of sale, conveyance, or mortgage shall be recorded unless it states the interest of the grantor or mortgagor in the vessel, and the interest so sold, conveyed, or mortgaged.

"(b) No bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge thereof, shall be recorded unless previously acknowledged before a notary public or other officer authorized by a law of the United States, or of a State, Territory, District, or possession thereof, to take acknowledgment of deeds.

"(c) In case of a change in the port of documentation of a vessel of the United States, no bill of sale, conveyance, or mortgage shall be recorded at the new port of documentation unless there is furnished to the collector of customs of such port, together with the copy of the bill of sale, conveyance, or mortgage to be recorded, a certified copy of the record of the vessel at the former port of documentation furnished by the collector of such port. The collector of customs at the new port of documentation is authorized and directed to record such certified copy. • • •" (46 U. S. C. 926)

(b) No such instrument shall be accepted for recording prior to the receipt by the collector of the approval of the designation of the home port; nor unless the vessel affected is documented as a vessel of the United States or will be so documented substantially simultaneously with the recording of the instrument. If there has been more than one change in ownership of any interest in a vessel and the vessel has not been documented by the intermediate owners, all unrecorded bills of sale which are executed in the form and manner prescribed by this section may be recorded upon documentation of the vessel. No mortgage shall be accepted for recording unless the vessel which it covers was documented as a vessel of the United States at the time the mortgage was made. Any mortgage presented for recording may be on customs Form 1348.

(c) No such instrument shall be valid against any person other than the vendor, mortgagor, pledgor, grantor, the heirs or devisees of any of the foregoing, or a person having actual notice thereof, unless the instrument has been recorded in the office of the collector of customs at the home port of the vessel. If the instrument covers more than one vessel, it shall be recorded at the home port of each vessel and indexed under the name of each vessel whose home port is the port of recordation. The collector shall record all such instruments and certificates of discharge of mortgages in the order of their receipt in books to be kept for that purpose and hereafter indexed on customs Form 1332, continued if necessary on customs Form 1332–A, to show (1) the name of the vessel, (2) the names of the parties to the instrument, (3) the kind and date of the instrument, (4) the interest transferred, mortgaged or discharged, (5) the date, hour, and minute the instrument was received, (6) the book in which the instrument is recorded, (7) the number assigned to the instrument, (8) in the case of a bill of sale or conveyance, the consideration stated in the instrument, and (9) in the case of a mortgage or certificate of discharge of mortgage, the amount and date of maturity of the mortgage.

(d) Each such instrument shall recite the interest of the grantor or mortgagor in the vessel, the names of the persons to whom the interest has been transferred or mortgaged, and the interest transferred or mortgaged to each. A bill of sale or conveyance shall also recite in full the last marine document of the vessel. A mortgage, whether ordinary or preferred, may, but need not necessarily, recite in full the last marine document of the vessel; if such marine document is not recited, the vessel shall be described by rig, name, official number, and gross tonnage.

(e) The collector shall index on customs Form 1332, continued if necessary on customs Form 1332–A, all decrees of distribution of estates of deceased owners, all orders of referees or courts appointing trustees in bankruptcy, and all orders of courts of record having the effect of transferring any interest in a vessel or discharging a mortgage or lien to show (1) the name of the vessel, (2) the name of the former owner, (3) the name of the new owner, (4) the interest transferred or lien discharged, (5) the name of the court, (6) the title of the case, and (7) the date of the order.

(f) No certificate of death of the owner of any interest in a vessel, letters of appointment of the personal representative of a deceased owner, decree of distribution of the estate of a deceased owner, will of a deceased owner, letters of guardianship appointing a guardian or committee of an owner, order of a referee or court appointing a trustee in bankruptcy of the assets of an owner, nor court order authorizing the transfer of title of any interest in a vessel shall be recorded unless incorporated in a bill of sale, mortgage, hypothecation, or conveyance of an interest in a vessel of the United States.

(g) No bill of sale, conveyance, mortgage, release from mortgage, satisfaction or discharge of mortgage, assignment of mortgage, or certificate of discharge of lien shall be recorded unless previously acknowledged. Any acknowledgment valid under the laws of the State where made may be accepted. No customs officer or employee is authorized by section 486, Tariff Act of 1930, to take such acknowledgments.

(h) Each certificate of discharge of mortgage presented for recording shall be on the customs Form 1363 or in a substantially similar form.

(i) Each bill of sale, mortgage, hypothecation, conveyance, release, satisfaction, assignment or notice of claim of lien shall be endorsed by the collector to show the port of recordation, the exact

day, hour, and minute it was received for recordation, the book in which it was recorded, and the number assigned to the instrument.

(j) When an instrument other than a preferred mortgage or assignment of a preferred mortgage (see § 3.38) is to be recorded, the original and one copy shall be presented to the collector, who shall retain the copy for his files.

(k) Any abstract of title of a vessel furnished by the collector of customs at the home port of the vessel shall be on customs Form 1332, continued if necessary on customs Form 1332–A, and shall include any entry respecting each instrument required to be indexed under the regulations contained in this part, including a notice of claim of lien (§ 3.38 (h)).

(l) When the home port of a vessel is changed, whether or not any change in title occurs, the collector of customs at the old home port, upon request of the owner of the vessel, shall forward in duplicate to the collector at the new home port an abstract of title of the vessel, which shall bear at the end thereof the following endorsement:

I certify that the foregoing, which is issued in accordance with the provisions of § 3.33 (l), Customs Regulations, incident to a change in home port, is a true abstract of title of the vessel described above, as appears by the records of this office.

_____, *Deputy Collector.*

Port_____
Date_____

(m) The collector at the new home port of a vessel shall record the abstract of title of the vessel forwarded to him in accordance with paragraph (l) of this section, and no bill of sale, mortgage, hypothecation, conveyance, release, satisfaction, assignment, notice of claim of lien, court order conveying title or other instrument shall be recorded at the new home port until such abstract has been received and recorded.

(n) When an abstract of title of a vessel is forwarded to the collector at the new home port of a vessel in accordance with paragraph (l) of this section, the following endorsement shall be made in the index after the last entry for that vessel, and thereafter no instrument for such vessel shall be recorded at the old home port and no entry shall be made in the index with respect to any decree of distribution or order appointing a trustee in bankruptcy:

An abstract of title of the vessel described above was forwarded to the collector of customs at _____ on this date in accordance with the provisions of § 3.33 (l) of the Customs Regulations.

_____, *Deputy Collector.*

Date_____

(o) Whenever requested, the collector of customs at the home port of any vessel shall furnish to any person an abstract of title of that vessel, which shall bear at the end thereof the following endorsement:

I hereby certify that the foregoing, which is issued in accordance with the provisions of § 3.33 (o) of the Customs Regulations, and which is not for record, is a true abstract of title of the vessel described above, as appears by the records of this office.

_____, *Deputy Collector.*

Port_____
Date_____

(p) No abstract of title of any vessel issued in accordance with paragraph (o) of this section shall be recorded by any collector of customs, nor shall any endorsement be made in the index when such an abstract is furnished to any person.

(Sec. 40, 40 Stat. 902, as amended, sec. 30, subsecs. C, H, 41 Stat. 1000, 1002, sec. 2, 43 Stat. 948; 46 U.S.C. 838, 921, 926, 1012)

§ 3.34 Issue of temporary document upon sale.

(a) When a vessel entitled to be documented changes ownership and is in a port other than the home port designated by the new owner, a temporary document may be issued by the collector at the port where she is.

(b) If application is made to the collector at the home port designated by the new owner and all requirements of law are complied with except the issuance of the document, he shall authorize the collector at the port where the vessel then is to issue a temporary document to the vessel.

(c) If application is made to the collector at the port where the vessel then is, the same proceedings shall be had as are required by law at the vessel's home port, except that the bill of sale shall not be recorded at the port where the vessel is. If the bill of sale is presented to the collector at the port where the temporary document is issued, it shall be noted on his record and then forwarded to the collector at the home port designated by the new owner. The recording fees shall be collected by the issuing collector and forwarded with the bill of sale to the collector at such home port.

(d) The bill of sale shall be recorded by the collector at the home port designated by the new owner, but only after that collector has received from the collector at the former home port and recorded the abstract of title of the vessel as required by § 3.33 (m).

(e) The temporary document shall be surrendered within 10 days after the arrival of the vessel within the district to which she belongs.

(R. S. 4159, 4160, sec. 30, subsecs. C, H, W, 41 Stat. 1000, 1002, 1006, as amended, sec. 2, 43 Stat. 948; 46 U. S. C. 29, 30, 921, 926, 983, 1012)

§ 3.35 Sale abroad.

A documented vessel which has been sold or transferred in whole or in part to a citizen while such vessel is outside the limits of the United States shall be entitled on her first arrival thereafter to all the privileges of a vessel of the United States if a new document is obtained within 5 days after she arrives at the first port in the United States.

(R.S. 4166, sec. 434, 46 Stat. 711, as amended; 19 U.S.C. 1434, 46 U.S.C. 35)

§ 3.36 Sale or charter to an alien.

(a) When a documented vessel is sold in whole or in part, even in trust or confidence, to one who is not a citizen, its document shall be delivered (1) within 7 days after the sale to the collector at the port where the vessel is, if it is in the United States, or (2) within 8 days after the first arrival of the master in the United States to the collector at the port of his first arrival, if the vessel is at sea or not in the United States at the time of sale.[24]

(b) The master and all watch officers of a documented vessel chartered to one who is not a citizen[24] shall be citizens.

(R. S. 4146, as amended, 4172, sec. 9, 39 Stat. 730, as amended; 46 U. S. C. 23, 41, 808)

§ 3.37 Preferred mortgages.

(a) For the purposes of these regulations a "preferred mortgage" is one which meets the requirements of subsection D of the Ship Mortgage Act.[24]

[24] See footnote 21, § 3.32.

[24] "(a) A valid mortgage which, at the time it is made, includes the whole of any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel, of less than two hundred gross tons), shall, in addition, have in respect to such vessel and as of the date of the compliance with all the provisions of this subdivision, the preferred status given by the provisions of section 953 of this title, if—

"(1) The mortgage is endorsed upon the vessel's documents in accordance with the provisions of this section;

"(2) The mortgage is recorded as provided in section 921 of this title, together with the time and date when the mortgage is so endorsed;

"(3) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel;

"(4) The mortgage does not stipulate that the mortgagee waives the preferred status thereof; and

"(5) The mortgagee is a citizen of the United States and for the purposes of this section the Reconstruction Finance Corporation shall, in addition to those designated in sections 888 and 802 of this title, be deemed a citizen of the United States.

"(b) Any mortgage which complies in respect to any vessel with the conditions enumerated in this section is hereafter in this chapter called a 'preferred mortgage' as to such vessel.

"(c) There shall be indorsed upon the documents of a vessel covered by a preferred mortgage—

"(1) The names of the mortgagor and mortgagee;

"(2) The time and date the indorsement is made;

"(3) The amount and date of maturity of the mortgage; and

"(4) Any amount required to be indorsed by the provisions of subdivision (e) or (f) of this section.

"(d) Such indorsement shall be made (1) by the collector of customs of the port of documentation of the mortgaged vessel, or (2) by the collector of customs of any port in which the vessel is found, if such collector is directed to make the indorsement by the collector of customs of the port of documentation; and no clearance shall be issued to the vessel until such indorsement is made. The collector of customs of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such indorsement shall be transferred to and in-

(b) A preferred mortgage may not be placed upon any vessel which is not a documented vessel, nor upon any vessel of less than 200 gross tons which is a towboat (including tugs and other vessels used for towing), barge, scow, lighter, car float, canal boat, or tank vessel. It may cover more than one vessel, but may not be limited to a part of any vessel.

(c) A mortgage which includes property other than a vessel or vessels may not acquire a preferred status unless it provides for the separate discharge of such other property.

(d) A preferred or ordinary mortgage may be placed on a vessel already covered by a preferred or ordinary mortgage.

(Sec. 30, subsec. D, 41 Stat. 1000, as amended; 46 U.S.C. 922)

§ 3.38 Record and endorsement of preferred mortgages and related instruments.

(a) Every preferred mortgage presented for recording shall be accompanied by three identical copies and, in the case of a blanket mortgage, one additional identical copy for each vessel in excess of one covered by the mortgage. All copies except one, which shall be inserted by the collector in his record of preferred mortgages, shall be certified by the collector and delivered to the mortgagor [30] after the record has been made. The original shall be returned to the mortgagee and a receipt obtained.

(b) The affidavit of the mortgagor required by subsection D (a) (3), of the Ship Mortgage Act, 1920,[31] if not included in the mortgage, shall be presented with each preferred mortgage submitted for recording and shall be retained by the collector.[32] Any acknowledgment of such affidavit valid under the laws of the State where made may be accepted.

(c) No vessel covered by a preferred mortgage shall be granted clearance at any port until the preferred mortgage endorsement required by subsection D (c) of the Ship Mortgage Act, 1920,[33] has been placed on her marine document.

(d) In addition to the matters required by § 3.33 (c), the collector shall note on the index on customs Form 1332, continued if necessary on customs Form 1332–A, the day, hour, and minute that (1) the proposed mortgage endorsement is placed on the marine document, and (2) such notation was made on the index.

(e) When a marine document bearing a preferred mortgage endorsement is surrendered [34] and a new document is issued before the mortgage is satisfied or the vessel released, the endorsement shall be placed on the new document.

(f) For the purposes of this section and the related statutes, an assignment of a preferred mortgage shall be regarded in all respects as a new preferred mortgage.

(g) A notice of claim of lien upon a vessel shall be recorded only if the vessel is covered by a preferred mortgage and if the notice has been acknowledged.[35] Any acknowledgment valid under the laws of the State where made may be accepted. No customs officer or employee is authorized by section 486, Tariff Act of 1930, or Customs Delegation Order No. 2 (T. D. 53195, 18 F. R. 832), to take such acknowledgments.

(h) Each notice of claim of lien and certificate of discharge of lien presented to a collector shall be recorded in a book to be kept for that purpose and indexed on customs Form 1332, continued if necessary on customs Form 1332–A.

(i) When a preferred mortgage has been discharged in whole or in part and a certificate of such discharge has been filed with the collector of customs at the home port of any vessel covered by the discharge, the collector at the home port, or the collector at the port where the vessel is, at the direction of the collector at the home port, shall endorse the fact of such discharge upon the document of the vessel. No clearance shall be granted to such vessel until such endorsement has been made.[36]

(Sec. 30, subsecs. C, D, E, G, H, O, W, 41 Stat. 1000, as amended, 1001, 1002, 1004, as amended, 1006; 46 U. S. C. 921–923, 925, 926, 961, 983)

§ 3.39 Certificate of ownership.

The certificate of ownership provided for in subsection I of the Ship Mortgage Act, 1920,[37] shall be executed on customs Form 1330.

(Sec. 30, subsecs. I, W, 41 Stat. 1002, 1006; 46 U.S.C. 927, 983)

§ 3.40 Frontier enrollment and license.

(a) Vessels under frontier enrollment and license [38] may engage in foreign or coastwise trade or the fisheries in waters covered by the license.

(b) In similar cases frontier enrollments shall bear the same endorsements as are placed on registers. When the endorsement required by § 3.2 (c), class 1, or by § 3.2 (d) (1) is placed on a frontier enrollment and license, the word "Coasting" in the license shall be deleted, and the word "Fisheries" inserted in lieu thereof. When the endorsement required by § 3.2(e) is placed on a frontier enrollment and license, the words "and Foreign" in the license shall be deleted.

(c) A foreign-built vessel which is owned by a citizen but which was not so owned and documented prior to February 1, 1920, or which was not owned by

[30] "The collector of customs upon the recording of a preferred mortgage shall deliver two certified copies thereof to the mortgagor who shall place, and use due diligence to retain, one copy on board the mortgaged vessel and cause such copy and the documents of the vessel to be exhibited by the master to any person having business with the vessel, which may give rise to a maritime lien upon the vessel or to the sale, conveyance, or mortgage thereof. The master of the vessel shall, upon the request of any such person, exhibit to him the documents of the vessel and the copy of any preferred mortgage of the vessel placed on board thereof." (46 U. S. C. 923)

[31] See footnote 24, § 3.37 (a).

[32] The collector of customs has no duty to ascertain whether there is any encumbrance on a vessel for which a preferred mortgage is presented to him for recording.

[33] See footnote 24, §3.37 (a).

[34] See footnote 19, § 3.30 (a).

[35] "The collector of customs of the port of documentation shall, upon the request of any person, record notice of his claim of a lien upon a vessel covered by a preferred mortgage, together with the nature, date of creation, and amount of the lien, and the name and address of the person. Any person who has caused notice of his claim of lien to be so recorded shall, upon a discharge in whole or in part of the indebtedness, forthwith file with the collector of customs a certificate of such discharge. The collector of customs shall thereupon record the certificate." (46 U. S. C. 925 (a))

[36] "The mortgagor, upon a discharge in whole or in part of the mortgage indebtedness, shall forthwith file with the collector of customs for the port of documentation of the vessel, a certificate of such discharge. Such collector of customs shall thereupon record the certificate. In case of a vessel covered by a preferred mortgage, the collector of customs at the port of documentation shall (1) indorse upon the documents of the vessel, or direct the collector of customs at any port in which the vessel is found, to so indorse, the fact of such discharge, and (2) shall deny clearance to the vessel until such indorsement is made." (46 U. S. C. 925 (b))

[37] "Each collector of customs shall permit records made under the provisions of this chapter to be inspected during office hours, under such reasonable regulations as the collector may establish. Upon the request of any person the collector of customs shall furnish him from the records of the collector's office (1) a certificate setting forth the names of the owners of any vessel, the interest held by each owner, and the material facts as to any bill of sale or conveyance of, any mortgage covering, or any lien or other incumbrance upon, a specified vessel, (2) a certified copy of any bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge in respect to such vessel, or (3) a certified copy as required by subdivision (c) of section 926 of this title. * * *." (46 U. S. C. 927)

See § 4.98 of this chapter for fees to be collected.

[38] "Any vessel of the United States, navigating the waters on the northern, northeastern, and northwestern frontiers, otherwise than by sea shall be enrolled and licensed in such form as other vessels; such enrollment and license shall authorize any such vessel to be employed either in the coasting or foreign trade on such frontiers, and no certificate of registry shall be required for vessels so employed. Such vessel shall be, in every other respect, liable to the regulations and penalties relating to registered and licensed vessels." (46 U. S. C. 258)

dorsed upon the new document by the collector of customs.

"(e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be indorsed upon the documents of the vessel.

"(f) If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of the mortgage indebtedness, the amount of such portion of such payment shall be indorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the United States in a suit in rem in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of the vessel bears to the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage." (46 U. S. C. 922)

the United States on June 5, 1920, shall not be granted a frontier enrollment and license, but shall be registered. (See § 3.42 (f).)

(d) A yacht of less than 20 net tons enrolled and licensed to navigate the waters of the northern, northeastern, and northwestern frontiers otherwise than by sea shall not be required to surrender its enrollment and license and obtain a license when proceeding to ports in the United States, its Territories, or possessions, whether by sea or otherwise.

(R.S. 4318, as amended, 4321, as amended, 72 Stat. 1736; 46 U.S.C. 258, 263, 883–1)

§ 3.41 Transfer from frontier enrollment and license.

(a) Except as stated in § 3.40(d), when a vessel under frontier enrollment and license is to proceed to sea, directly or by way of an intermediate port, the vessel shall be required to surrender the frontier document. It may be issued a register if bound on a foreign voyage partly by sea, unless it is a vessel owned by a corporation which is a citizen of the United States as defined in § 3.19(a) (4) (see §§ 3.2(e) and 3.10), or, if qualified, may be issued an enrollment and license when proceeding from one United States port to another by way of the St. Lawrence River and the sea without touching at any foreign port. A vessel under frontier enrollment and license may retain that document when proceeding by way of the Hudson River to any United States port without going to sea.

(b) The collector at a seaport may issue a frontier enrollment and license.

(R.S. 251, 4318, as amended, sec. 27A, 72 Stat. 1736; 19 U.S.C. 66, 46 U.S.C. 258, 883–1)

§ 3.42 Registry of foreign-built vessels.

(a) The application on customs Form 1320 for an official number for a foreign-built vessel (class 9) shall state, in addition to the information therein required, the name of the former owner.

(b) In lieu of the builder's certificate required for a vessel built in the United States, the application shall be accompanied by a photostatic or certified copy of the vessel's foreign register and of its foreign measurement certificate, if there be one, together with a duly authenticated translation of any such evidence that may be written in a foreign language. Satisfactory evidence shall be produced to establish that the transfer of registry has the approval of the foreign government concerned. If the vessel was built for the applicant and never under foreign registry, the builder's certificate shall be produced but no approval of a foreign government shall be required. If the vessel was not built for the applicant, satisfactory evidence of ownership shall be produced as in the case of a vessel built in the United States. There shall also be produced a certificate of the merchant marine officer in charge that the vessel is safe to carry dry and perishable cargo, and if the vessel is required to possess a certificate of inspection,[39] it shall be produced.

(c) The applicant shall submit a certificate stating that:

(1) The transfer of the vessel conveyed complete and unconditional title and ownership to the purchaser;

(2) There is no agreement or understanding reserving to the vendor, or to any person who is not a citizen, any interest in the vessel or its operation, or any right of control thereof;

(3) The transfer is intended to be permanent and not temporary, no right to repurchase the vessel is reserved to the vendor, and there is no understanding for its retransfer:

(4) The transfer was not made during a voyage of the vessel or while it was in a blockaded port; and

(5) The transfer was not made to avoid the consequences to which a vessel of a belligerent is exposed.

(d) The papers filed in connection with the application for documentation in accordance with the requirements of this section and any other pertinent information shall be forwarded to the Commissioner of Customs for consideration before the granting of a document to the vessel. Except as otherwise provided for in this section, the usual requirements for registry shall be complied with.

(e) No foreign-built vessel owned and documented prior to February 1, 1920, by a citizen nor one owned by the United States on June 5, 1920, and sold to and owned by a citizen shall engage in the American fisheries, but it is otherwise unlimited as to documents and trade so long as it continues in such ownership. When a marine document is issued to such a vessel, the following notation shall be made thereon:

As amended by section 5 of the Panama Canal Act and by the act of August 18, 1914, and sections 22, 27, and 38 of the Merchant Marine Act of June 5, 1920, as amended. This vessel shall not engage in the American fisheries.

If the vessel is owned by a corporation which is a citizen of the United States as defined in § 3.19(a)(3) or § 3.19(b), the notation required by § 3.2(d) shall also be made on the document.

(f) A foreign-built vessel which is owned by a citizen, but which was not so owned and documented on February 1, 1920, or which was not owned by the United States on June 5, 1920, is limited to the foreign trade. A foreign-built vessel admitted to American registry and thereafter sold foreign in whole or in part or placed under foreign registry is limited, upon afterward becoming the property of a citizen, to the foreign trade. When a register is issued to a vessel of either such class, the following notation shall be made thereon:

As amended by section 5 of the Panama Canal Act, by the act of August 18, 1914, by section 27 of the Merchant Marine Act of June 5, 1920, as amended, and by the act of May 24, 1938, entitling the vessel to engage only in trade with foreign countries or the islands of Guam, Tutuila, Wake, Midway, and Kingman Reef. This vessel shall not engage in the coastwise trade or the American fisheries.

(g) A foreign-built vessel which has been purchased from the Maritime Administration of the War Shipping Administration by a citizen shall not engage in the American fisheries, but it is otherwise unlimited as to documents and trade so long as it continues in such ownership. When a marine document is issued to such a vessel, the following notation shall be made thereon:

As amended by section 9 of the Shipping Act, 1916, as amended. This vessel shall not engage in the American fisheries.

If the vessel is owned by a corporation, the notation required by § 3.2 (d) shall also be made on the document.

(R.S. 4132, as amended, sec. 22, 41 Stat. 997, secs. 2, 9, 39 Stat. 729, as amended, 730, as amended, sec. 27, 41 Stat. 999, as amended, 72 Stat. 1736; 46 U.S.C. 11, 13, 802, 808, 883, 883–1)

§ 3.43 Documentation of American-built foreign-flag vessels.

(a) In the case of an American-built foreign-flag vessel which has never been documented as a vessel of the United States, a builder's certificate shall be produced unless a certificate of record has been issued to the vessel previously. A certificate of admeasurement shall also be produced unless a certificate of record has been issued and the tonnage of the vessel has not since been changed. Application for an official number shall be made in accordance with 3.42(a).

(b) In the case of an American-built foreign-flag vessel which was documented as a vessel of the United States before being placed under foreign flag, the production of a builder's certificate shall not be required, nor shall the production of a certificate of admeasurement unless the tonnage of the vessel has been changed. The official number originally awarded to the vessel shall be retained and the vessel shall be documented in the name under which it was last documented as a vessel of the United States.

(c) The application for documentation shall be accompanied by a photostatic or certified copy of the vessel's foreign register and foreign measurement certificate, if there be one, together with a duly authenticated translation of any such document that may be written in a foreign language. Satisfactory evidence shall be produced to establish that the transfer of registry has the approval of the foreign government concerned. If the vessel was not built for the applicant, satisfactory evidence of ownership shall be presented as in the case of a vessel of the United States.

(d) The applicant shall submit a certificate as required by § 3.42 (c).

(e) The papers filed in connection with the application for documentation in accordance with the requirements of this section and any other pertinent information shall be forwarded to the Commissioner of Customs for consideration before the granting of a document to the vessel. Except as otherwise provided for in this section, the usual requirements for registry shall be complied with.

(f) In appropriate cases, the notation required under § 3.2(f) shall be endorsed on a document issued under this section.

(R.S. 4132, as amended, sec. 27, 41 Stat. 999, as amended; 46 U.S.C. 11, 883)

§ 3.44 Foreign-built yachts.

Any foreign-built yacht purchased by a citizen of the United States may be

[39] See § 3.54.

documented upon compliance with all the requirements set forth in § 3.42. The collector of customs may then issue to any such yacht owned by a citizen a consolidated certificate of enrollment and yacht license on customs Form 1290 or, except upon the Great Lakes, a license of yacht under 20 tons on customs Form 1288. Any document issued to such a yacht shall have written across its face the legend, "This vessel shall not engage in the coastwise trade or the American fisheries."

(R.S. 4132, as amended, 4214, as amended; 46 U.S.C. 11, 103)

§ 3.45 Certificate of protection.

Any foreign-built undocumented yacht owned by a citizen is entitled to legal protection as property of a citizen.[34] The collector may issue to any such vessel a certificate that the bill of sale has been filed in his office and that it is valid in form and substance. This certificate shall be in substantially the following form:

FOREIGN-BUILT AMERICAN-OWNED YACHT

I, ----------, collector of customs for the port of ----------, State of ----------, United States of sale, bearing date of ----------, 19----, of the ----------
(Class and name)
net tonnage, sold and transferred by ----------, of ----------, in ---------- to ---------- of ----------, State of ----------, United States of America, is in form and substance valid and effective in law; that it has been filed in this office; and that the said ---------- is a citizen of the
(Purchaser)
United States.

----------, 19--,

Collector of Customs

(R.S. 4190; 46 U.S.C. 61)

§ 3.46 Recorded vessels.

In the documentation of a recorded vessel (class 3), no builder's certificate shall be required. No admeasurement certificate shall be required unless the vessel has been altered since the certificate of record was issued.

§ 3.47 Record of American-built vessels owned by aliens.

(a) A vessel built in the United States, never before documented, and belonging wholly or in part to an alien may be granted a certificate of record on customs Form 1316. Such a vessel may be documented as a vessel of the United States if transferred to a citizen.

(b) Before a certificate of record is issued, a builder's certificate on customs Form 1261 and a certificate of admeasurement on customs Form 1414 shall be filed with the collector.

(c) Whenever the master or name of a recorded vessel is changed, the collector at the port where the vessel is, or the collector at the port where the vessel next arrives if it is at sea or in a foreign port, shall endorse such change upon the certificate of record on the written application of one or more of the owners.

(R.S. 4132, as amended, 4180, 4181, 4182, as amended, 4183, as amended; 46 U.S.C. 11, 54, 55, 56, 73)

§ 3.48 Certificates of record.

Certificates of record shall be consecutively numbered. An exact copy of each certificate shall be placed in a permanent record kept for that purpose and a proper index made thereof on customs Form 1241 appropriately modified (on customs Form 2112 at New York). When a recorded vessel is documented, the certificate of record shall be surrendered, canceled, and forwarded to the Commissioner of Customs and the collector at the port of issue shall be notified.

§ 3.49 Prizes and forfeited vessels.

If application is made for documentation of a vessel of class 4 or 5, all the requirements relating to documentation, except the filing of a builder's certificate shall be complied with, and the collector shall be furnished with a properly authenticated copy of the decree of condemnation and the proof of the applicant's ownership.

(R.S. 4132, as amended; 46 U.S.C. 11)

§ 3.50 Inspection of marine documents.

Whenever a vessel of the United States is in commission, its marine document shall be on board, shall be accessible to the master or other person in charge or command, and shall be produced to any customs officer upon demand,[37] except when the document is in the custody of the collector for some required official purpose, or except in the case of a vessel within the purview of § 3.24 (e) and (f).

(R.S. 4335, as amended, 4336, as amended; 46 U.S.C. 276, 277)

§ 3.51 Change of name of documented vessel.

(a) The name of a documented vessel (including any documented yacht) shall not be changed except with the consent and approval of the collector, assistant collector, or deputy collector in charge of marine work for the vessel's home port.[38]

(b) Each application for change of name shall be executed on customs Form 1323 by the owner or owners of the vessel and shall be submitted in duplicate to the deputy collector at the vessel's home port.

(c) In applicable cases there shall be filed with the deputy collector: (1) The consent of the mortgagee or other beneficiary under each lien, mortgage, or other encumbrance of record at the vessel's home port, and (2) a certified copy of any approval of the Maritime Administration required by subsection 0(a), Ship Mortgage Act, 1920.[38a]

(d) If the application is approved, the approving officer shall so indicate by a note in the appropriate space provided on customs Form 1323, deliver the original to the applicant, and retain the duplicate in the records of his office. If the application is disapproved, the applicant shall be notified in writing.

(e) The applicant shall cause notice of the order for the change of name to be published in some daily or weekly newspaper of general circulation at or nearest to the home port of the vessel in at least four consecutive issues. The notice shall be in the following form:

Notice is hereby given that an order dated ---------- has been issued by the undersigned authorizing the name of the
---------- ----------
(Rig) (Name)
official number ------, owned by ----------, of which ---------- is the home port, to be changed to ----------

----
(Signature and title)

(Port)

(f) No document shall be issued to the vessel in the new name until the applicant has paid the fee prescribed by § 3.52 [38b] and, except as specified in paragraph (g) of this section, until he has complied with paragraph (e) of this section and has furnished to the deputy collector at the vessel's home port (1) a declaration of publication signed by a proper representative of the newspaper in which the order for the change of name was published setting forth the wording of the order, the dates of publication, and the payment of the cost of advertising, or (2) a copy of each of the four consecutive issues of the newspaper in which the order appeared, together with a receipt for the payment of the cost of advertising.

(g) Documentation of the vessel in the new name shall not be withheld until notice of the order for the change has been published as required by paragraph (e) of this section, if the deputy collector at the vessel's home port is satisfied that the contract for publication has been entered into and he has been furnished with a receipt for the payment of the cost thereof, but the applicant shall within a reasonable time after publication furnish to the deputy collector the evidence prescribed in paragraph (f) (1) or (2) of this section.

(h) The cost of advertising and of procuring any evidence required by this section shall be paid by the applicant.

(i) The order for change of name shall be effective only if the vessel is documented in the new name within a period of 6 months from the date of the order.

(j) If there is a change in ownership of a vessel and the new owner applies for a change of name of the vessel, his designation of home port shall be in the name under which the vessel was last documented. A designation of home port shall not be required to be submitted merely by reason of a change of name.

(k) A vessel which is to be redocumented after being out of documentation shall be redocumented only under the name and official number in which it was last documented. However, if an application for a change in name is submitted simultaneously with an application for the redocumentation of such a vessel and the vessel is then marked with a name other than that under which it was last documented, and if the change in name is approved, the approving officer may issue the document in the old name and immediately issue the further document incident to the change in name without requiring that the vessel be marked with the name under which it was previously documented.

(l) Whenever any vessel documented or formerly documented as a vessel of the United States has been sold or transferred in whole or in part, or altered in tonnage, description, or rig, that vessel shall be documented anew only under the name in which it was last documented. However, if an application for change of name is submitted simultaneously, if the vessel is then marked with a name other than that in which it was last documented, and if the change in name is approved, the vessel may be documented anew without requiring the former name to be marked, provided the vessel is forthwith documented in the new name and provided that that name is then correctly marked on the vessel in compliance with the applicable requirements.

(R.S. 4170, as amended, 4179, secs. 1-3, 41 Stat. 436, as amended, 437, as amended; 46 U.S.C. 39, 50-53)

NOTE: Treasury Decision 53530, 19 F. R. 4405, July 17, 1954, provides as follows:

The International Regulations for Preventing Collisions at Sea, which came into force on January 1, 1954, prescribe in Rule 31 that the signal of distress for ships with a radiotelephone is the spoken word "MAYDAY."

Notice is hereby given that, for obvious reasons, the Bureau as a matter of policy will not approve the use of a name, either in connection with an original documentation or an application for change of name of a documented vessel which is actually or phonetically identical with, or so similar as to be confused with, the international radiotelephone distress signal "MAYDAY."

This action coincides with a similar precautionary measure taken by Great Britain.

§ 3.52 Fee for change of vessel's name.

When a change in the name of a vessel is approved, the following fees shall be paid by the owners of vessels to collectors of customs: for a vessel of 99 gross tons or under, $10; for a vessel of 100 gross tons or up to and including 499 gross tons, $25; for a vessel of 500 gross tons or up to and including 999 gross tons, $50; for a vessel of 1,000 gross tons or up to and including 4,999 gross tons, $75; for a vessel of 5,000 gross tons or over, $100.

(Sec. 3, 41 Stat. 437; 46 U.S.C. 53)

§ 3.53 Yacht privileges and obligations.

(a) A vessel documented at a yacht shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. A vessel which is so documented and which is not engaged in any trade nor in any way violating the customs or navigation laws of the United States may proceed from port to port in the United States or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the United States, provided it has not visited a hovering vessel.

(b) Upon the application of the owner on customs Form 1250, submitted through a collector of customs, a commission may be issued by the Commissioner of Customs to any vessel licensed or enrolled and licensed as a yacht, belonging to a regularly organized and incorporated yacht club, to identify such yacht and its owner during a foreign voyage. This commission is a token of credit to any United States official and to the authorities of any foreign power for the privileges enjoyed under it.

(c) On the return to the United States of any yacht so commissioned, such commission shall be surrendered to the customs officer to whom the required report of arrival is made.

(d) A cruising license [39] may be issued to a yacht of a foreign country only if it has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are allowed to arrive at and depart from ports in such foreign country and to cruise in the waters of such ports without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes, or charges for cruising licenses. It has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are granted such privileges in the following countries:

Argentina.	Greece.
Bahama Islands.	Honduras.
Canada.	Jamaica.
Cuba.	Liberia.
Great Britain.	Netherlands.

(e) In order to obtain a cruising license for a yacht of any country listed in paragraph (d) of this section there shall be filed with the collector an application therefor executed by the yacht owner which shall set forth his address, and identify the vessel by flag, rig, name, and such other matters as are usually descriptive of a vessel. The application shall also include a description of the waters in which the yacht will cruise, and a statement of the probable time it will remain in such waters. Upon approval of the application, the collector of customs will issue a cruising license in the form prescribed by paragraph (f) of this section permitting the yacht, for a stated period not to exceed 6 months, to arrive at and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entry and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. The license shall be granted subject to the condition that the vessel shall not engage in trade or violate the laws of the United States in any respect. The master shall comply with section 433 of the Tariff Act of 1930 upon the vessel's arrival at every port or place within the United States.

(f) Cruising licenses shall be in the following form:

[34] "No document certifying or proving any vessel to be the property of a citizen of the United States shall be issued, except to vessels duly registered or enrolled and licensed as vessels of the United States, or to vessels which shall be wholly owned by citizens of the United States, and furnished with or entitled to customhouse documents." (46 U. S. C. 61)

[37] "Any officer concerned in the collection of the revenue may at all times inspect the register or enrollment or license of any vessel or any document in lieu thereof; and if the master or other person in charge or command of any such vessel shall not exhibit the same, when required by such officer, unless the vessel is one which by regulation of the Secretary of the Treasury is not required to have its register or enrollment or license or document in lieu thereof on board, such master or person in charge or command shall be liable to a penalty of $100, unless the failure to do so is willful, in which case he shall be liable to a penalty of $1,000 and to a fine of not more than $1,000 or imprisonment for not more than one year, or both." (46 U. S. C. 277.)

[38] "The Secretary of the Treasury shall be empowered to change the names of vessels of the United States on application of the owner or owners of such vessels when in his judgment there shall be sufficient cause for so doing." (46 U. S. C. 51. Sec. 102, Reorg. Plan No. 3 of 1946, 3 CFR, 1946 Supp., Ch. IV)

"No master, owner, or agent of any vessel of the United States shall in any way change the name of such vessel, or by any device, advertisement, or contrivance deceive or attempt to deceive the public, or any officer or agent of the United States, or of any State, or any corporation or agent thereof, or any person or persons, as to the true name or character of such vessel, on pain of the forfeiture of such vessel." (46 U. S. C. 50)

[38a] The requirement of subsection O (a) of the Ship Mortgage Act, 1920 (46 U. S. C. 961 (a)), that the document of a vessel covered by a preferred mortgage may not be surrendered without the approval of the Maritime Administration and the mortgagee applies to the surrender of the document of such a vessel for the purpose of changing its name.

[38b] The fee is due upon approval of the application whether or not the vessel is documented in the new name.

[39] "Whenever it shall be made to appear to the satisfaction of the President of the United States that yachts used and employed exclusively as pleasure vessels and belonging to any resident of the United States are allowed to arrive at and depart from any foreign port and to cruise in the waters of such port without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes or charges for cruising licenses, the Commissioner of Customs may authorize and direct the customs authorities at the various ports of entry of the United States to allow yachts from such foreign port used and employed exclusively as pleasure vessels to arrive at and depart from any port of the United States and to cruise in waters of the United States without the payment of any charges for entering or clearing, dues, duty per ton, or tonnage taxes, but the Commissioner of Customs may, in his discretion, direct that such foreign yachts shall be required to obtain licenses to cruise, in a form prescribed by him, before they shall be allowed under the provisions of this section to cruise in waters of the United States. Such licenses shall be issued without cost to such yachts and shall prescribe such limitations as to length of time, direction, and place of cruising and action, and such other particulars as the Commissioner of Customs may deem proper." (46 U. S. C. 104. Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

The Secretary of the Treasury was designated by section 1 of Executive Order 10289 (3 CFR, 1951 Supp., ch. II) to perform the function of the President to make determinations necessary as a prerequisite to the extension of reciprocal privileges under the above-quoted statute.

LICENSE TO CRUISE IN THE WATERS OF THE UNITED STATES

To Collectors of Customs:

For a period of _____ from _____ the _____
(Date) (Flag) (Rig)
yacht _____ belonging to
(Name)
_____ of _____,
(Owner's name) (Address)
shall be permitted to arrive at and depart from the United States and to cruise in the waters of the customs collection district of _____
(Name of district or districts)
without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entry and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money.

This license is granted subject to the condition that the yacht named herein shall not engage in trade or violate the laws of the United States in any respect. Upon arrival at each port or place in the United States, the master shall report the fact of arrival to the customs officer at the nearest customhouse. Such report shall be made within 24 hours, exclusive of any day on which the customhouse is not open for marine business.

Issued this _____ day of _____, 19____.

_____
Deputy Collector

(g) A foreign-flag yacht which is not in possession of a cruising license shall be required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States.

(R.S. 4197, as amended, 4214, as amended, 4217, as amended, 4367, 4368, sec. 4, 28 Stat. 625, sec. 5, 35 Stat. 425, as amended, secs. 433, 434, 435, 441, 46 Stat. 711, as amended, 712, as amended; 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. 91, 103, 104, 105, 107, 313, 314)

§ 3.54 Vessels to be inspected before documentation.

The following vessels shall undergo inspection by the proper officers and receive certificates of inspection before marine documents are issued to them:

(a) Every steam vessel over 65 feet in length, and every steam-propelled tugboat or towboat of any length, except public vessels of the United States, but including vessels owned or operated by the Maritime Administration or any corporation organized or controlled by it.

(b) Every vessel above 15 gross tons carrying freight for hire and every vessel of above 15 gross tons and in excess of 65 feet in length carrying passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha or electric motors. A motor vessel of 15 gross tons plus a fraction of a ton is considered to be over 15 gross tons.

(c) Every ferryboat, canal boat, yacht, or other small vessel of like character over 65 feet in length and propelled by steam.

(d) Every sail vessel over 700 tons carrying passengers for hire.

(e) Every seagoing barge of 100 gross tons or over.

(f) Every other vessel over 100 gross tons carrying passengers for hire.

(g) Every seagoing vessel of 300 gross tons and over propelled in whole or in part by an internal-combustion engine, except those engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industry.

(h) Every passenger-carrying vessel of a class set forth in paragraphs (a), (b), or (c) of this section, when navigated on Irondequoit Bay, N. Y.

(i) Every vessel, regardless of tonnage, size, or means of propulsion, whether self-propelled or not, and whether carrying freight or passengers for hire or not, that shall have on board any inflammable liquid cargo in bulk, except public vessels owned by the United States and not engaged in commercial service.

(j) Every vessel carrying more than six passengers, except public vessels of the United States, but including vessels owned or operated by the Maritime Administration or any corporation organized or controlled by it, which is:

(1) Propelled in whole or in part by steam or by any form of mechanical or electrical power and is of 15 gross tons or less; or,

(2) Propelled in whole or in part by steam or any form of mechanical or electrical power and is of more than 15 gross tons and less than 100 gross tons and not more than 65 feet in length measured from end to end over the deck excluding sheer; or,

(3) Propelled by sail and is of 700 gross tons or less; or,

(4) Non-self-propelled and is of 100 gross tons or less.

(R.S. 4498, as amended, 46 U.S.C. 406)

§ 3.55 Citizenship of masters of documented vessels.

Every vessel of the United States shall be commanded by a citizen or surrender her document.

(R.S. 4131, as amended; 46 U.S.C. 221)

§ 3.56 Revocation or denial of document.

(a) Before revoking the document of a vessel which is being, or is intended to be, used illegally,[40] the collector of customs shall present charges to the owner of the vessel and give such owner a reasonable time to reply; except that, if the evidence is practically conclusive and immediate action is necessary, the collector shall forthwith revoke the document, subject to an appeal by the owner to the Commissioner of Customs.

(b) Any appeal from a revocation or denial of document by a collector shall be in writing. It shall be filed in triplicate with the collector, who shall retain one copy in his office. The owner may submit with his appeal corroborative evidence in the form of written statements from persons having actual knowledge of the facts, and, if pertinent, a detailed description and blueprints of the vessel. Such evidence, with two copies of the owner's appeal, shall be promptly forwarded to the Commissioner of Customs, together with the collector's report, which shall present in detail the facts and evidence supporting his action and any additional comments he desires to make regarding any facts not before him at the time of his original action.

(Sec. 4, 49 Stat. 519 as amended; 19 U.S.C. 1704)

[40] "Subject to appeal to the Secretary of the Treasury and under such regulations as he may prescribe, whenever the collector of customs of the district in which any vessel is, or is sought to be, registered, enrolled, licensed, or numbered, is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fittings, of any vessel or the nature of any repairs made thereon, it is apparent to such collector that such vessel has been built or adapted for the purpose of smuggling merchandise, the said collector shall revoke the registry, enrollment, license, or number of said vessel or refuse the same if application be made therefor, as the case may be. Such collector and all persons acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section." (19 U. S. C. 1704)

§ 3.57 Report of laid-up vessels.

Each collector shall submit to the Commissioner of Customs a report of all vessels of the United States laid up in his district on December 31 of each year.

DOCUMENTATION OF VESSELS UNDER THE ACT OF AUGUST 9, 1954

§ 3.60 Vessels entitled to documents.

(a) Any vessel (except a vessel constructed under the provisions of the Merchant Marine Act, 1936, as amended), not documented under the laws of the United States, which is acquired by or made available to the Secretary of Commerce, may be documented under the act of August 9, 1954.[41]

(b) Vessels registered pursuant to this section shall not engage in the coastwise trade unless in possession of a valid unexpired permit to engage in that trade issued by the Secretary of Commerce under authority of section 3(c) of the act of August 9, 1954.

(c) Any vessel which is entitled under the provisions of paragraph (a) of this section to be registered may be enrolled and licensed if 20 net tons or over, or, if under 20 net tons, licensed for the coasting trade under the act of August 9, 1954, provided a valid unexpired permit to engage in the coastwise trade issued by the Secretary of Commerce under the authority of section 3(c) of the act of August 9, 1954, is filed with the collector of customs to whom application for enrollment and license or license is made.

[41] It is not necessary that the name and hailing port be marked prior to documentation on a vessel to be documented under §§ 3.60 to 3.74.

A vessel may be documented under such sections although no certificate of inspection has been issued or filed with the collector.

The master and watch officers of a vessel documented under such sections shall be citizens of the United States, except in those cases where that requirement of law is waived as provided for in section 3 (b) of the act of August 9, 1954.

No. 249—Part II——7

§ 3.61 Provisional register.

(a) Subject to prior authorization by the Commissioner of Customs in each case, a consular officer of the United States, or the captain of the Port of Cristobal or Balboa, C.Z., may issue a provisional register to a vessel abroad which has been acquired by or made available to the Secretary of Commerce.

(b) A copy of every provisional register issued under this section shall be forwarded immediately by the issuing officer through the usual channels to the Commissioner of Customs.

(c) Such provisional register shall entitle the vessel to the privilege of a vessel of the United States in trade with foreign countries, American Samoa, or the Island of Guam, until the expiration of 6 months from the date thereof, until 10 days after the vessel's arrival at a port in the United States, or until the effective date of an order of the Commissioner of Customs requiring its surrender, whichever may happen first, and no longer.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.62 Marine documents; classes; period of validity.

(a) Marine documents issued under the act of August 9, 1954, shall consist of registers, enrollments and licenses, and licenses.

(b) All marine documents (except provisional registers) issued under the act of August 9, 1954, shall be permanent, whether granted to vessles at their home ports or at ports other than their home ports.

(c) Every marine document issued under the act of August 9, 1954, shall be valid until the effective date of an order of the Commissioner of Customs requiring its surrender, unless sooner terminated as provided for in any of the provisions of §§ 3.60 to 3.74.

(d) Any document issued under the act of August 9, 1954, shall be valid only so long as the vessel to which it is granted is owned as, and of the description, stated therein.

(e) Any enrollment and license or license issued under the act of August 9, 1954, shall be valid only so long as the permit issued to the vessel by the Secretary of Commerce remains in force.

(f) Any document issued under the act of August 9, 1954, shall be surrendered at any time that such surrender may be ordered by the Commissioner of Customs. No vessel, the surrender of the documents of which has been so ordered, shall have, after the effective date specified in such order, the status of the vessel of the United States unless documented anew.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.63 Marine documents; execution of.

All marine documents issued under the act of August 9, 1954, shall be executed as prescribed in § 3.7.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.64 Marine documents to include dimensions and tonnage.

Every marine document issued to a vessel under the act of August 9, 1954, shall, whenever possible express the data specified in § 3.9.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.65 Application for official number and signal letters.

(a) Application for an official number for a vessel to be documented under the act of August 9, 1954, shall be made in triplicate by the Secretary of Commerce and delivered to the Commissioner of Customs directly or through the collector of customs at the home port, or through the collector of customs at the port at which the Secretary of Commerce intends to document the vessel. The application may contain a request that signal letters be awarded and shall show the following on its face or on an attachment when suitable spaces are not provided on the form for such information:

(1) That the United States represented by the Secretary of Commerce is the owner of the vessel.

(2) That the vessel is not documented under the laws of the United States.

(3) That it has been acquired by or made available to the Secretary, as the case may be.

(4) That it has not been constructed under the provisions of the Merchant Marine Act, 1936, as amended.

(5) The material of which the hull is constructed.

(6) The date and place of build of the vessel, if possible.

(7) The matters required by § 3.64 to be shown on the document.

(b) Official numbers issued to such vessels shall be prefaced by the letters MA. The issuance shall be as provided for in § 3.13 (c).

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.66 Designation of home port.

Prior to documentation, the approval of the Commissioner of Customs of the designation of home port shall be obtained by the Secretary of Commerce. The designation shall be made by the Secretary of Commerce in triplicate on customs Form 1319 and delivered to the Commissioner of Customs directly or through the collector of customs at the home port so designated, or through the collector of customs at the port at which the Secretary of Commerce intends to document the vessel.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.67 Coastwise permit.

Before an enrollment and license or license may be issued under the act of August 9, 1954, there shall be filed with the collector at the port at which the document is to issue a valid unexpired permit in duplicate issued by the Secretary of Commerce under authority of section 3(c) of the act of August 9, 1954, authorizing the vessel to engage in the coastwise trade.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.68 Marking of official number and net tonnage.

The official number and the net tonnage of every vessel documented under authority of the act of August 9, 1954, shall be marked upon the main beam. Such marking shall not, however, be required prior to the issue of a document to the vessel.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.69 Home port; change of.

If the Secretary of Commerce desires to change the home port of a vessel documented under the act of August 9, 1954, application shall be made for the approval of the new home port in the manner prescribed in § 3.66.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.70 Master's oath for enrollment and license.[42]

(a) Prior to the granting or renewing of the enrollment and license or license of any vessel under the act of August 9, 1954, the master shall swear that such license shall not be used for any other vessel or for any other employment than the coasting trade, or in any manner whereby the revenue of the United States may be defrauded.

(b) This oath may be taken before any officer authorized by law to administer oaths generally and may be mailed to the collector together with the enrollment and license or license, whereupon action shall be taken as if the oath had been administered by the collector.

(Sec. 3, 68 Stat. 675, 50 U.S.C. 198)

§ 3.71 Change of master.

When the master of any vessel documented under the act of August 9, 1954, is changed, the new master shall report the change to the collector at the port where the change takes place or where the vessel shall first arrive after the change, and shall produce to the collector the vessel's document and make oath that he is the new master of the vessel. The collector shall then endorse upon the document the name of the new master.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.72 Issue, record, and surrender of documents.

(a) The provisions of §§ 3.22 (a) and (b) and 3.26 shall apply with respect to documents issued under the act of August 9, 1954.

(b) No enrollment and license or license shall be issued for a longer period than is authorized by the permit referred to in § 3.67.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.73 Renewal of document.

A document granted to any vessel under the act of August 9, 1954, shall be presented to the collector of the port at which the vessel may be at the time of its expiration within 3 days after that time, or if the vessel be at sea at that time, within 3 days after her first arrival at a port of the United States. Such a

[42] No master's oath is required for the issuance of a register under the act of August 9, 1954.

document may be renewed by the collector of customs upon the request of the master or the Secretary of Commerce if at the time of such request the documentation of the vessel is not prohibited by the act of August 9, 1954, by any order of the Commissioner of Customs issued under authority of that act requiring surrender of the vessel's document, or by any provision of the regulations in this part.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

§ 3.74 Exchange of documents.

(a) Any vessel enrolled and licensed or licensed under the act of August 9, 1954, may be registered.

(b) Any vessel registered under the act of August 9, 1954, may be enrolled and licensed or licensed for the coasting trade if a permit in duplicate issued by the Secretary of Commerce under section 3 (c) of the act of August 9, 1954, authorizing a vessel to engage in the coastwise trade is filed with the collector of customs.

(Sec. 3, 68 Stat. 675; 50 U.S.C. 198)

REGISTRATION OF PRIVATE CODE SIGNALS, HOUSE FLAGS, AND FUNNEL MARKS

§ 3.80 Application for registration of rockets, lights, or other similar code signals, house flags, or funnel marks.

(a) Application for the registration of private code signals by rockets, lights, or other similar means shall be submitted in duplicate through the office of a collector of customs to the Commissioner of Customs by the owner of the vessel or vessels by which they are to be used. The application shall describe in detail the signals which it is desired to use and shall state the purpose for which they will be used.

(b) Application for the registration of a house flag or funnel mark, or both, shall be submitted in duplicate through the office of a collector of customs to the Commissioner of Customs by the owner of the vessel or vessels on which they are to be used. The application for registration of a house flag shall describe such flag in detail, giving the colors, shape, and proportionate dimensions of the fly, field, union, or canton, and any insignia, markings, or stripes thereon in relation to the length of the hoist. Funnel marks shall be described in detail giving the colors to be used, the position of any insignia, markings, or stripes with relation to the top or collar of the funnel, the size of such insignia, markings, or stripes in relation to the diameter of the funnel, and the color of the remainder of the funnel. In addition there shall be submitted three replica drawings of the house flag or funnel, or both, drawn to scale, in the colors to be used, in ink, watercolor, oil pigments, or other permanent colors, and not exceeding 6 by 4 inches in size.

(Sec. 7, 35 Stat. 426, as amended; 46 U. S. C. 49)

§ 3.81 Registration of rockets, lights, or other similar signals, house flags, or funnel marks.

(a) Except as stated in paragraph (b) of this section, upon the filing of an application duly executed in accordance with § 3.80, the Commissioner of Customs will register private code signals by rockets, lights, or other similar means, house flags, and funnel marks, and will cause a description of such signals, flags, or funnel marks to be filed with the Division of the Federal Register, together with one replica drawing of the house flag or funnel mark, or both.

(b) The Commissioner will refuse to register any signals which in his opinion cannot easily be distinguished from signals of distress, signals for pilots, or signals prescribed by laws for preventing collisions. The Commissioner will also refuse to register any signal, flag, or funnel mark which is identical or nearly identical with one previously registered.

(c) Applicants will be notified of the action of the Commissioner through the office of the collector transmitting the application.

(Sec. 7, 35 Stat. 426, as amended; 46 U.S.C. 49)

§ 3.82 Fee for registering a house flag or funnel mark, or both.

A fee of $25, designated as fee number 11 in § 4.98 of this chapter, shall be paid upon the registration of a house flag or funnel mark, or both, and each application for such registration filed with a collector of customs shall be accompanied by a remittance in that amount.

(Sec. 7, 35 Stat. 426, as amended, sec. 501, 65 Stat. 290; 46 U.S.C. 49, 5 U.S.C. 140)

APPENDIX

NOTE: The substance of customs Forms 1260, 1262, and 1263 prescribed in §§ 3.18, 3.19, 3.21, and 3.21a is reproduced below. Until such time as printed copies of such forms are available, typewritten or other reproduced copies may be used.

Customs Form 1260

TREASURY DEPARTMENT
BUREAU OF CUSTOMS

OATH ON LICENSE OR ENROLLMENT AND LICENSE, FOR OPERATION OF UNDOCUMENTED VESSEL, OR FOR QUALIFICATON OF CORPORATION AS A CITIZEN OF THE UNITED STATES UNDER THE ACT OF SEPTEMBER 2, 1958 (46 U.S.C. 883–1)

Vessel: [1]
Rig _____
(Scow, barge, oil screw, etc.)
Name _____
Official No.[2] _____
Home Port [2] _____
Year of build _____
Place of build _____
Service _____
(Freight, towing, etc.)
Gross [2] _____
Net [2] _____
Length _____
Horsepower _____
Corporation:
Name _____
Address [3] _____
State where incorporated _____
Affiant:
Name _____
Address _____
Company _____
Title or capacity [4] _____

I, the affiant named above, swear that the information which I have given, including that respecting the vessel and the corporation, is, to the best of my knowledge and belief, true, complete, and correct; that the corporation named is the sole owner of the vessel named and described above;

That no subject or citizen of any foreign prince or state, is directly or indirectly, by way of trust, confidence, or otherwise, interested in the vessel, or in the profits or issues thereof; [5]

That a majority of the officers and directors of such corporation are citizens of the United States, as shown by the attached listing incorporated in and made a part of this oath which truly and correctly names all such officers and directors, giving the home address and citizenship of each; that not less than 90 percent of the employees of such corporation are residents of the United States; that such corporation is engaged primarily in a manufacturing or mineral industry in the United States or in a Territory, District, or possession thereof; that the aggregate book value of the vessels owned by such corporation does not exceed 10 percent of the aggregate book value of the assets of such corporation; that such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 percent of the raw materials used or sold in its operations; [6]

That all equipments or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in any foreign country upon said vessel within the year immediately preceding the date of this application, have been duly reported and accounted for under the provisions of sections 257 and 258, title 19, and section 272, title 46, United States Code, and the duties thereon have been duly paid.

[7] _____
_____

Subscribed and sworn to before me on the day and year shown.

_____
(Notary Public or Deputy Collector of Customs)
Date _____

* * * * *

MASTER'S OATH ON REGISTRY, LICENSE, OR ENROLLMENT AND LICENSE

I, _____,
_____
(Street and No., city and State)
master of the _____,
(Rig) (Name of vessel)
Official No. _____ swear that I am a citizen of the United States, having been born in _____
(City)
_____
(State or country)

on _____,[8] _____
and naturalized before the [8] _____
(Name of court)
for _____
(District, county, or State)
on _____,[8] ____, having been issued Naturalization Certificate No. _____; and I also swear that the license granted to the said vessel shall not be used for any other vessel or for any other employment than the coasting trade or in any trade or business whereby the revenue of the United States may be defrauded.

_____
(Master)

Subscribed and sworn to before me this _____ day of _____, 19__.

_____
(Deputy Collector of Customs)

Customs Form 1262

TREASURY DEPARTMENT
BUREAU OF CUSTOMS

CERTIFICATE OF COMPLIANCE WITH THE PROVISIONS OF THE ACT OF SEPTEMBER 2, 1958 (46 U.S.C. 883–1)

Port or Place _____
Date _____
Name of vessel _____ Rig _____
Name of corporation _____
Address _____
State of incorporation _____

The corporation named and identified above has on this date complied with the provisions of § 3.21, Customs Regulations, by filing the corporate certificate under oath required under the Act of September 2, 1958 (46 U.S.C. 883–1), and is hereby authorized to operate the undocumented vessel named herein, if any, in the coastwise trade subject to the limitations of the Act. This certificate and any authorization granted hereunder expire three years from the date shown above unless there first occurs a change in corporate status requiring a report under § 3.21 cited above.

(Signature) _____
(Title) _____

* * * * *

OATH OF PARENT OR SUBSIDIARY CORPORATION ACT OF SEPTEMBER 2, 1958 (46 U.S.C. 883–1)

Port _____
Date _____
Individual affiant's name _____
Address _____
Capacity or title _____
Corporate name (parent)[1] (subsidiary) _____
_____
Address _____
State of incorporation of parent or subsidiary _____
_____
Name of associated corporation _____
Address _____
State of incorporation of associated corporation _____

I, the affiant named above, swear that the corporation first named herein is the (parent)[1] (subsidiary)[2] of the associated corporation named; that I am the duly authorized officer or agent of such corporation; that the associated corporation named has previously established that it is a citizen of the United States within the meaning of the Act of September 2, 1958 (46 U.S.C. 883–1), having filed a certificate under oath to that effect with the collector of customs concerned; that a majority of the officers and directors of the said parent or subsidiary corporation are citizens of the United States, as shown by the attached listing incorporated in and made a part of this oath which truly and correctly names all such officers and directors, giving the home address and citizenship of each; that not less than 90 percent of the employees of such parent or subsidiary corporation are residents of the United States; that such parent or subsidiary corporation is engaged primarily in a manufacturing or mineral industry in the United States or in a Territory, District, or possession thereof; that the aggregate book value of the vessels owned by such parent or subsidiary corporation does not exceed 10 percent of the aggregate book value of the assets of such corporation; and that such parent or subsidiary corporation purchases or produces in the United States, its Territories, or possessions not less than 75 percent of the raw materials used or sold in its operations.

Signed _____

Subscribed and sworn to before me on the day and year shown.

_____
(Notary Public or Deputy Collector of Customs)
Date _____

[1] The portion of the form requiring vessel identification shall be struck out when the affiant's oath is filed merely to qualify as a citizen under the Act and not as an owner and operator.

[2] Do not complete this blank in the case of an undocumented vessel.

[3] Show address where vessel business of owner or operator is conducted; when corporation is qualifying under Act other than as owner or operator of vessel, show place of principal business.

[4] Show the capacity in which the affiant is acting for the owning corporation, as "President," "Secretary," "Specially authorized officer," or "Agent" as the case may be.

[5] "Interest" as used herein does not refer to the ownership of stock of the corporation owning the vessel or to control of the corporation by way of voting or other direct or indirect means but rather refers to ownership of the vessel itself. Strike out this clause in the case of a licensed vessel of less than 20 net tons.

[6] Attach the required list of the names of all officers and directors of the corporation, giving the home address and citizenship of each.

[7] The officer or agent of the corporation subscribing to this oath, if other than the president or secretary, shall present a written instrument attested by the corporate seal, authorizing him to act in this behalf.

[8] Strike out portion relating to naturalization if native-born citizen.

[1] The term "parent corporation" for the purposes of this oath means a corporation incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, which controls, directly or indirectly, at least 50 percent of the voting stock of a corporation which is a citizen of the United States as defined in section 3.19 (a)(4) of the Customs Regulations and the Act of September 2, 1958 (46 U.S.C. 883–1). Strike out the inapplicable term.

[2] The term "subsidiary corporation" for the purposes of this oath means a corporation incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, not less than 50 percent of the voting stock of which is controlled, directly or indirectly, by a corporation which is a citizen of the United States as defined in § 3.19(a)(4) of the Customs Regulations and the Act of September 2, 1958 (46 U.S.C. 883–1) or by a parent corporation of any such corporation. Strike out the inapplicable term.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

ARRIVAL AND ENTRY OF VESSELS

Sec.
4.1 Boarding of vessels; cutter and dock passes.
4.2 Reports of arrival of vessels.
4.3 Vessels required to enter.
4.4 Canal Zone; arrival and entry from.
4.5 Government vessels.
4.6 Departure or unlading before report or entry.
4.7 Inward foreign manifest; production on demand; contents and form.
4.8 Preliminary entry.
4.9 Formal entry.
4.10 Request for overtime services.
4.11 Sealing of stores.
4.12 Correction of manifest.
4.13 Alcoholic liquors on vessels of not over 500 tons.
4.14 Equipment and repairs to American vessels.
4.15 Fishing vessels touching and trading at foreign places.
4.16 Entry and clearance on board vessels.
4.17 Vessels from discriminating countries.

TONNAGE TAX AND LIGHT MONEY

4.20 Tonnage taxes.
4.21 Exemptions from tonnage taxes.
4.22 Exemptions from special tonnage taxes.
4.23 Certificate of payment.
4.24 Application for refund of tonnage tax.

LANDING AND DELIVERY OF CARGO

4.30 Permits and special licenses for unlading and lading.
4.31 Unlading or transshipment due to casualty.
4.32 Vessels in distress; landing of cargo.
4.33 Diversion of cargo.
4.34 Prematurely discharged, overcarried, and undelivered cargo.
4.35 Unlading outside port of entry.
4.36 Delayed discharge of cargo.
4.37 Lay order; general order.
4.38 Release of cargo.
4.39 Stores and equipment of vessels and crews' effects; unlading or lading and retention on board.
4.40 Equipment, etc., from wrecked or dismantled vessels.
4.41 Cargo of wrecked vessel.

PASSENGERS ON VESSELS

4.50 Passenger lists.
4.51 Examination of vessels with steerage passengers.
4.52 Deaths of passengers.

FOREIGN CLEARANCES

4.60 Vessels required to clear.
4.61 Requirements for clearance.
4.62 Accounting for inward cargo.
4.63 Outward foreign manifest; shippers' export declarations.
4.64 Documentation.
4.65 Verification of nationality and tonnage.
4.66 Verification of inspection.
4.67 Closed ports or places.
4.68 Crew; passengers.
4.69 Shipping articles and enforcement of Seamen's Act.
4.70 Pratique.
4.71 Inspection of vessels carrying livestock.
4.72 Inspection of meat, meat-food products, and inedible fats.
4.73 Neutrality; exportation of arms and munitions.
4.74 Transportation orders.
4.75 Incomplete manifest; incomplete export declarations; bond.

COASTWISE PROCEDURE

4.80 Vessels entitled to engage in coastwise trade.
4.81 Reports of arrivals and departures in coastwise trade.
4.82 Touching at foreign port while in coastwise trade.
4.83 Trade between United States ports on the Great Lakes and other ports of the United States.
4.84 Trade with noncontiguous territory.
4.85 Vessels with residue cargo for domestic ports.
4.86 Intercoastal residue-cargo procedure; optional ports.
4.87 Vessels proceeding foreign via domestic ports.
4.88 Vessels with residue cargo for foreign ports.
4.89 Vessels in foreign trade proceeding via domestic ports and touching at intermediate foreign ports.
4.90 Simultaneous vessel transactions.
4.91 Diversion of vessel; transshipment of cargo.
4.92 Towing.

GENERAL

4.95 Records of entry and clearance of vessels.
4.96 Fisheries.
4.97 Salvage vessels.
4.98 Navigation fees.

AUTHORITY: §§ 4.1 to 4.98 issued under R. S. 161, 251, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624, 46 U. S. C. 2, 3. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

NOTE 1: By T.D. 528886, 16 F.R. 12763, Dec. 20, 1951, the Commissioner of Customs waived compliance with the provisions of the navigation laws administered by the Bureau of Customs to the extent necessary to permit the operation of vessels requisitioned by the United States for emergency evacuation.

NOTE 2: By Treasury Decision 53449, 19 F. R. 1420, Mar. 13, 1954, the Commissioner

of Customs waived compliance with the navigation laws relating to clearances of vessels to the extent necessary to permit:

(1) The clearance for an unnamed destination of any vessel owned by, Government-allocated to, or chartered by the Military Sea Transportation Service of the Department of Defense, other than those used on berth-term (shipping contract or Government bill-of-lading) arrangements, which is certified by the Commander of the Military Sea Transportation Service or his duly authorized representative as (a) in ballast or laden only with Department of Defense cargo, or (b) having on board passengers, each of whom is either a member of the Armed Forces or a civilian noncombatant employed by, serving with, or accompanying the Armed Forces of the United States;

(2) The clearance of any vessel with Department of Defense cargo on the basis of a manifest which describes that cargo only as "---------- of Department of
(Approximate quantity)
Defense cargo."

NOTE 3: By Treasury Decision 53892, 20 F. R. 6792, Sept. 15, 1955, the Commissioner of Customs waived compliance with sections 289, 292, 316, and 883, title 46, United States Code, to the extent necessary to permit any dredge, tug, scow, barge, or other vessel of Canadian registry or flag, whether or not Canadian-built, to be employed in dredging, towing, the transportation of merchandise or passengers, or any combination of such activities, in spoil disposal operations or channel excavations for power purposes and in connection with the construction of the Iroquois Control Dam as a part of the St. Lawrence Power Project in territorial waters of the United States within the general areas (1) between points opposite Prescott, Ontario, and Doran Island and (2) between points opposite the powerhouse structure and the eastern end of Cornwall Island.

NOTE 4: By Treasury Decision 54230, 21 F. R. 8355, Nov. 1, 1956, the Commissioner of Customs waived compliance with sections 289, 292, 316, and 883, title 46, United States Code, to the extent necessary to permit any dredge, tug, scow, barge, or other vessel of Canadian registry or flag, whether or not Canadian-built, to be employed in dredging, towing, the transportation of merchandise or passengers, or any combination of such activities, in connection with the construction of the proposed high level Cornwall South Channel Bridge of the St. Lawrence Seaway Navigation Project in the general area of Massena and Rooseveltown, New York.

ARRIVAL AND ENTRY OF VESSELS

§ 4.1 Boarding of vessels; cutter and dock passes.

(a) When any vessel which might have on board any article subject to customs treatment comes within the limits of any port of entry or within customs waters, customs officers may board the vessel to inspect its manifest and other documents and papers and to examine, inspect, and search the vessel and the persons and articles on board.[1]

(b) Every vessel arriving within a customs collection district directly from a point outside the customs territory of the United States shall be boarded and shall be subject to such supervision while in port as the collector deems necessary. When he deems it desirable, the collector may detail customs officers to remain on board a vessel to secure the enforcement of this part. Except as provided in paragraph (a) of this section, boarding of a vessel arriving from another port in the United States with residue cargo, passengers, or baggage on board shall not be required unless preliminary entry is requested.

(c) No person, with or without the consent of the master, except a pilot, officer of the customs or Coast Guard, immigration officer, health officer, agent of the vessel, or consular officer, shall go on board or, except for the purpose of reporting the arrival of the vessel as required by law, leave any vessel arriving from outside the customs territory of the United States without permission of the collector of customs or the customs officer in charge until such vessel has been properly inspected by the customs, and brought to the dock or anchorage at which cargo is to be laden or unladen and until all passengers and their baggage have been landed from the vessel;[2] nor shall the master of any vessel authorize the boarding or leaving of the vessel by any person in violation of this paragraph. Every person permitted to go on board shall be subject to customs and quarantine regulations.

(d) A collector of customs, in his discretion may issue a cutter pass on customs Form 3093 to permit the holder to board an incoming vessel after it has been inspected by the quarantine authorities and taken in charge by an officer of the customs, as follows: (1) To persons on official business; (2) to news reporters, newspaper photographers, photographers of established motion-picture companies, and broadcasters of established radio broadcasting companies; and (3) in cases of special exigency in which the collector is satisfied as to the urgent need for the boarding and that its allowance will not result in undue interference with the performance of official business.

(e) No person in charge of a tugboat, rowboat, or other vessel shall bring such conveyance alongside an incoming vessel heretofore described and put on board thereof any person, except as authorized by law or regulations.

(f) Upon application on customs Form 3137 or in other suitable manner, a collector may, in his discretion, issue a pass on customs Form 3095 to go on the dock to meet persons arriving from abroad.

(g) Term cutter and dock passes, for a period of not to exceed one year, may be issued in the discretion of the collector, to persons on official business and to duly accredited news reporters and newspaper photographers. Passes are not transferrable and shall be forfeited upon presentation by others than those to whom issued.

§ 4.2 Reports of arrival of vessels.

(a) The report of arrival required by section 433, Tariff Act of 1930,[3] shall be made by any means of communication to the collector of customs or to a customs officer assigned to board the vessel.

(b) For the purposes of this part, the time of arrival of a vessel shall be that time when she first comes to rest, whether at anchor or at a dock, in any harbor within the customs territory of the United States.

(c) **In the case of a vessel described in section 441 (3), Tariff Act of 1930, as amended,[4] the report of articles subject to entry shall be made in accordance with the provisions of § 10.19 of this chapter to the customs officer assigned to board the vessel. (See § 4.1 (c).)**

(d) In the case of vessels described in section 441 (4), Tariff Act of 1930, as amended,[4] the report may be filed by either the master, owner, or agent, and shall be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel shall be considered one in distress and any person bringing it into port may report its arrival.

(e) The report of baggage and merchandise on a vessel within the purview of section 441 (2), Tariff Act of 1930, as amended,[4] shall be made as provided for in that section and shall be in addition to the required report of arrival.

(Secs. 433, 441, 486, 46 Stat. 711, 712, as amended, 725, as amended; 19 U.S.C. 1433, 1441, 1486)

§ 4.3 Vessels required to enter.

(a) Except as specified in section 441, Tariff Act of 1930, as amended,[5] every American vessel arriving in the United States from a foreign port or place and every foreign vessel[6] arriving at a port in the United States from another such port or from a foreign port or place shall make entry[7] at the customhouse within 48 hours after arrival.[8]

(b) For the purposes of this part the time of departure of a vessel shall be that time when she gets under way on her outward voyage and proceeds on the voyage without thereafter coming to rest in the harbor from which she is going.

(R.S. 2793, as amended, secs. 434, 435, 441, 46 Stat. 711, as amended, 712, as amended; 19 U.S.C. 288, 1434, 1435, 1441, 46 U.S.C. 111)

§ 4.4 Canal Zone; arrival and entry from.

For the purposes of the laws relating to reports of arrival and entry of vessels, the Canal Zone shall be regarded as foreign territory. Vessels which merely transit the Canal Zone without transacting any business there shall not be required to report their arrival or to enter because of such transit.

§ 4.5 Government vessels.

(a) No report of arrival or entry shall be required for any vessel owned by, or under the complete control and management of, the United States or any of its agencies, if such vessel (1) is manned wholly by members of the armed forces of the United States or by personnel in the civil service of the United States and (2) is transporting only property of the United States or passengers traveling on official business of the United States, or is in ballast. However, the master or commander of each such vessel arriving from abroad shall file a declaration as

---

[1] "Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters * * * and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance." (19 U. S. C. 1581 (a))

"If the master of any vessel shall obstruct or hinder, or shall intentionally cause any obstruction or hindrance to any officer in lawfully going on board such vessel, for the purpose of carrying into effect any of the revenue or navigation laws of the United States, he shall for every such offense be liable to a penalty of not more than $2,000 nor less than $500." (R. S. 3068, sec. 307, 49 Stat. 528)

[2] "It shall not be lawful for the master of any such steamship or other vessel,* not in distress, after the arrival of the vessel within any collection district of the United States, to allow any person or persons, except a pilot, officer of the customs, or health officer, agents of the vessel, and consuls, to come on board of the vessel, or to leave the vessel, until the vessel has been taken in charge by an officer of the customs, nor, after charge so taken, without leave of such officer, until all the passengers, with their baggage, have been duly landed from the vessel. * * *" (46 U. S. C. 158)

"The Secretary of the Treasury is authorized and directed to prescribe from time to time and enforce regulations governing the boarding of vessels arriving at the seaports of the United States, before such vessels have been properly inspected and placed in security, and for that purpose to employ any of the officers of that department. Each person violating such regulations shall be subject to a penalty of not more than $100 or imprisonment not to exceed six months, or both, in the discretion of the court. This section shall be construed as supplementary to section 158 and section 708 of this title." (46 U. S. C. 163. Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

"Whoever, not being in the United States service, and not being duly authorized by law for the purpose, goes on board any vessel about to arrive at the place of her destination, before her actual arrival, and before she has been completely moored, shall be fined not more than $200 or imprisoned not more than six months, or both.

"The master of such vessel may take any such person into custody, and deliver him up forthwith to any law enforcement officer, to be by him taken before any committing magistrate, to be dealt with according to law." (18 U. S. C. 2279)

"If, within twenty-four hours after the arrival of any vessel at any port in the United States, any person, then being on board such vessel, solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such vessel any effects of any seaman, except under his personal direction, and with the permission of the master, he shall, for every such offense, be punishable by a fine of not more than $50, or by imprisonment for not more than three months. This section shall apply to vessels of the United States engaged in the foreign trade and to foreign vessels." (46 U.S.C. 709)

* A vessel from a noncontiguous foreign place carrying steerage passengers.

[3] "Within twenty-four hours after the arrival of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, at any port or place within the United States at which such vessel shall come to, the master shall, unless otherwise provided by law, report the arrival of the vessel at the nearest customhouse, under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, sec. 433; 19 U. S. C. 1433, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

"* * * For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place." (Tariff Act of 1930, sec. 401 (n), as amended; 19 U. S. C. 1432a)

"The term 'hovering vessel' means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue * * *." (Tariff Act of 1930, sec. 401 (n), as amended; 19 U. S. C. 1401 (n))

"Every master who fails to make the report or entry provided for in section 433, 434, or 435 of this Act shall, for each offense, be liable to a fine of not more than $1,000 and, if the vessel have, or be discovered to have had, on board any merchandise (sea stores excepted), the importation of which into the United States is prohibited, or any spirits, wines, or other alcoholic liquors, such master shall be subject to an additional fine of not more than $2,000 or to imprisonment for not more than one year, or to both such fine and imprisonment. * * *" (Tariff Act of 1930, sec. 436, as amended; 19 U. S. C. 1436)

"Report of the arrival of a vessel of less than 5 net tons in the United States from a contiguous country otherwise than by sea is not required by section 433, Tariff Act of 1930. For the reporting requirements applicable with respect to such vessels, see § 5.1 of this chapter."

[4] See footnote 5 to § 4.3.

[5] "The following vessels shall not be required to make entry at the customhouse:

"(1) Vessels of war and public vessels employed for the conveyance of letters and dispatches and not permitted by the laws of the nations to which they belong to be employed in the transportation of passengers or merchandise in trade;

"(2) Passenger vessels making three trips or oftener a week between a port of the United States and a foreign port, or vessels used exclusively as ferryboats, carrying passengers, baggage, or merchandise: *Provided*, That the master of any such vessel shall be required to report such baggage and merchandise to the collector within twenty-four hours after arrival;

"(3) Licensed yachts or undocumented American pleasure vessels not engaged in trade nor in any way violating the customs or navigation laws of the United States and not having visited any hovering vessel: *Provided*, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the collector within twenty-four hours after arrival."

"(4) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the collector the hour and date of arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

"(5) Tugs enrolled and licensed to engage in the foreign and coasting trade in the northern, northeastern, and northwestern frontiers when towing vessels which are required by law to enter and clear." (Tariff Act of 1930, sec. 441, as amended. 19 U. S. C. 1441)

[6] "Vessels used exclusively as ferryboats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law." (46 U. S. C. 110)

"Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from entrance and clearance fees while such service triweekly or oftener is maintained." (46 U. S. C. 112)

[7] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of the Treasury may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seaman by mutual consent, or engage any seaman to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U. S. C. 288)

[8] No entry is required for a vessel of less than 5 net tons which arrives in the United States from a contiguous country otherwise than by sea. For the reporting requirements applicable with respect to such vessels, see § 5.1 of this chapter.

[9] Every undocumented vessel of 5 net tons or over owned by an alien, whether or not such alien is a resident of the United States, is a foreign vessel.

[10] "Whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or purser of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: *Provided*, That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels." (46 U. S. C. 91a)

"* * * Every master who presents a forged, altered, or false document or paper on making entry of a vessel as required by section 434 or 435 of this Act, knowing the same to be forged, altered or false and without revealing the fact, shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $50 or to imprisonment for not more than two years, or to both such fine and imprisonment." (Tariff Act of 1930, sec. 436, as amended; 19 U. S. C. 1436)

[11] See § 4.2 (b).

provided for in § 10.24 of this chapter and, if any cargo or passengers are on board, a manifest, in duplicate, which shall include any cargo and a list of any passengers and their baggage, specifying the number and description of the pieces of baggage belonging to each passenger. The original of each manifest required under this paragraph shall be filed with the collector within 48 hours after the arrival of the vessel. The other copy shall be made available for use by the discharging inspector at the pier.

(b) The arrival of every vessel owned or controlled and manned as described in paragraph (a) of this section but transporting other property or passengers, and every vessel so owned or controlled but not so manned, whether in ballast or transporting cargo or passengers, shall be reported in accordance with § 4.2 and the vessel shall be entered in accordance with § 4.9.

(c) Every vessel owned by, or under the complete control and management of, any foreign nation shall be exempt from or subject to the laws relating to report of arrival and entry under the same conditions as a vessel owned or controlled by the United States.

(Sec. 441(1), 46 Stat. 712; 19 U.S.C. 1441(1))

§ 4.6 Departure or unlading before report or entry.

(a) The provisions of section 585 Tariff Act of 1930, as amended,[12] apply to foreign as well as American vessels, but shall not be applied to a vessel merely passing through waters within the limits of a collection district in the ordinary course of her voyage.

(b) The "limits of any collection district" as used herein are those defined by § 1.1 of this chapter, including the marginal waters to the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries.

(Sec. 585, 46 Stat. 749, as amended; 19 U.S.C. 1585)

§ 4.7 Inward foreign manifest; production on demand; contents and form.

(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest, as required by section 431, Tariff Act of 1930.[14] The manifest shall be legible and complete on customs Form 7527–A, except that a collector of customs is authorized to permit the use of customs Form 7527–B in his district, in lieu of customs Form 7527–A, to such extent as customs Form 7527–B will meet his requirements. The original and one copy of the manifest shall be ready for production on demand.[15] In addition, there shall be at least two other copies except when only one is required for local customs purposes, but a reasonable time shall be allowed by the boarding officer for the preparation of the additional copy or copies. If the manifest is in a foreign language, a translation shall be furnished with the original and with each copy.

(b) (1) The master shall deliver the original and one copy of the manifest to the boarding officer.[16] The original manifest shall list all the inward foreign cargo on board, regardless of the port of discharge, whereas the other copy is required to list only the cargo manifested for the port in question. The preceding sentence does not refer to sea or ships' stores or crews' purchases or curios.

(2) The master of a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or intended to be employed in such trade, at each port of first arrival from a foreign country shall declare on customs Form 3415 any equipment, repair part, or material purchased for the vessel, or any expense for repairs incurred, in a foreign country,[16a] within the purview of section 466, Tariff Act of 1930, as amended. If no equipment has been purchased or repairs made, a declaration to that effect shall be made on customs Form 3415. If the vessel is of more than 500 gross tons, the declaration shall include a statement that no work in the nature of an alteration or rebuilding within the meaning of the Act of July 14, 1956 (70 Stat. 544), has been effected in any foreign port or place which has not been reported. The declaration shall be ready for production on demand and for inspection by the boarding officer, and shall be presented with the original manifest when formal entry of the vessel is made.

(3) The master of every American vessel of more than 500 gross tons which is rebuilt outside the United States, its territories (not including trust territories), or its possessions shall upon the first entry of the vessel at a port of the United States thereafter report the facts and circumstances of the rebuilding of the vessel to the collector of customs at the port of entry. The report shall be accompanied by the papers required under § 3.28 of this chapter. If any such papers are not available at the time such report is made, they shall be produced to the collector concerned as soon thereafter as may be practicable but if they are not presented within 30 days, and if the delay is not explained to the satisfaction of the collector, appropriate penalty action shall be taken charging violations of the provisions of the act of July 14, 1956 (70 Stat. 544).[16c]

---

[12] "If any vessel or vehicle from a foreign port or place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this chapter, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of $5,000, and the person in charge of such vehicle shall be liable to a penalty of $500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States." (Tariff Act of 1930, sec. 585, as amended, 19 U. S. C. 1585)

[14] "The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

"First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: *Provided*, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo 'for orders,' and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

"Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.

"Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag.

"Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

"Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

"Sixth. An account of the sea stores and ship's stores on board of the vessel." (Tariff Act of 1930, sec. 431; 19 U. S. C. 1431)

[15] "The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the back of the original manifest to the inspection thereof and return the same to the master or other person in charge." (Tariff Act of 1930, sec. 583; 19 U. S. C. 1583)

"Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, * * *; *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, * * *, said penalties shall not be incurred. * * *" (Tariff Act of 1930, sec. 584, as amended; 19 U. S. C. 1584)

[16] "Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to such employee as the Secretary of the Treasury shall designate, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to such employee designated by the Secretary a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or deliver such copy of the manifest or correction thereof shall be liable to a penalty of not more than $500." (Tariff Act of 1930, sec. 439, as amended; 19 U. S. C. 1439)

[16b] See footnote 26, § 4.14 (a).

[16c] * * * [Sec. 1] section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., 1952 edition, title 46, sec. 883), is further amended by inserting the following new proviso at the end of the first proviso thereof: "*Provided further*, That no vessel of more than five hundred gross tons which has acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt outside the United States, its Territories (not including trust territories), or its possessions shall have the right thereafter to engage in the coastwise trade."

Sec. 2. If any vessel of more than five hundred gross tons documented under the laws of the United States, or last documented under such laws, is rebuilt outside the United States, its Territories (not including trust territories), or its possessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury upon the first arrival of the vessel thereafter at a port within the customs territory of the United States in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of $200. Any penalty or forfeiture incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes of the United States, as amended (U. S. C., 1952 edition, title 46, sec. 7).

Sec. 3. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this act.

Sec. 4. This act shall be effective from the date of enactment hereof: *Provided, however*, That no vessel shall be deemed to have lost its coastwise privileges hereunder if it is rebuilt under a contract entered into before such date of enactment and if the work of rebuilding is commenced not later than six months after such date of enactment. (Secs. 1–4, Act of July 14, 1956 (Secs. 1–4, 70 Stat. 544; T. D. 54178; 46 U. S. C. 883, 883a, 883b).)

(c) The list of passengers required by the fifth subparagraph of section 431(a), Tariff Act of 1930, as amended, and the list of the crew shall be on customs and immigration Form I–418 or on a substantially similar form, except that where no steerage passengers are aboard upon arrival, the listing of the passengers may be in the form of a vessel "souvenir list," or similar list, in which the names of the passengers are listed alphabetically by class (first-class, cabin, etc.) and to which the following oath of the master is attached:

MASTER'S OATH TO THE PASSENGER LIST

I, _____, Master of the _____,
(Nationality, name and official number of carrier)
do solemnly swear that the names of all passengers taken on board at _____,
(Name of ports of embarkation)
are contained in the attached list(s) showing _____ passengers, none of whom are
(Number)
steerage passengers (46 U.S.C. 151–163); that concerning each, the information recorded is correct, and that customs baggage declarations on customs Form 6063, 6063–B or 6064 or on DD Form 1252, have been or will be simultaneously herewith filed as required by law and regulation with the proper customs officer.

_____
(Master)

Subscribed and sworn to before me at _____ on _____.

The passenger and crew list shall be presented in duplicate as a part of the manifest to the customs officer who boards the vessel. No such passenger or crew list, nor a copy of either, shall be required in the case of a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connecting or tributary waters.[16a]

(d) The manifest shall separately specify articles to be retained aboard at sea or ship's stores, as required by section 432, Tariff Act of 1930.[17] Less than whole packages of sea or ship's stores may be described as "sundry small and broken stores."

(e) All articles on board the vessel acquired abroad by officers and members of the crew, except such articles as are exclusively for use on the voyage or which have been duly cleared through customs in the United States, shall be specified in the list of sea stores in the following form:

Name of officer or member of crew	Crew declaration No.	Description of articles	Cost or value

Upon the delivery to customs of this list of articles acquired abroad by officers and members of the crew, the master of the vessel shall have shown thereon opposite the name of each officer and crew member who intends to land articles in the United States for which written declaration and entry are required (see § 23.4(a) of this chapter) the number of the declaration and entry on customs Form 5123 which the officer or crew member shall have prepared and signed (see § 10.22 (a) and (b) of this chapter).

(Sec. 27, 41 Stat. 999, as amended, secs. 431, 439, 465, 581, 583, 46 Stat. 710, as amended, 712, as amended, 718, 747, as amended, 748; secs. 2, 3, 70 Stat. 544; 46 U.S.C. 883, 19 U.S.C. 1431, 1439, 1465, 1581, 1583, 46 U.S.C. 883a, 883b)

§ 4.8 Preliminary entry.

If it is desired that any vessel having on board inward foreign cargo, passengers, or baggage shall discharge or take on cargo, passengers, or baggage before the vessel has been entered, preliminary entry shall be made by compliance with § 4.30 and execution by the master on customs Form 3255 of a certificate in lieu of the oath or affirmation prescribed by section 448(a), Tariff Act of 1930.[18]

§ 4.9 Formal entry.

(a) The formal entry of a vessel of the United States shall be in accordance with section 434, Tariff Act of 1930.[19] The required oath shall be on customs Form 3251. Such entry of a foreign vessel shall be in accordance with section 435, Tariff Act of 1930.[20]

(b) Upon the entry of an American vessel, the master shall present to the collector, in addition to the passenger and crew lists required under § 4.7 (c), the certified copy of the crew list on customs and immigration Form I–418 obtained, in accordance with the provisions of § 4.68 (a), upon the last previous clearance outward from the United States. The master shall deposit his register or frontier enrollment with the collector before or at the time of entry. The collector may give the master a certificate of deposit on customs Form 1370. If the collector gives the master such a certifi-

---

[16a] "Notwithstanding any provision of law to the contrary, no collector of customs shall require a master or owner of a vessel arriving, otherwise than by sea, at a port or place in the United States on the Great Lakes, or their connecting or tributary waters, from a port or place in the Dominion of Canada to furnish a list of passengers on board such vessel." (60 Stat. 882)

[17] "The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, or if any such articles, whether shown on the manifest or not are landed without a permit therefor issued by the collector, all such articles omitted from the manifest or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles." (Tariff Act of 1930, sec. 432; 19 U. S. C. 1432)

[18] "* * * the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act. * * *" (Tariff Act of 1930, sec. 448 (a); 19 U.S.C. 1448(a))

[19] "Except as otherwise provided by law, and under such regulations as the Secretary of the Treasury may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the collector the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 431 of this Act." (Tariff Act of 1930, sec. 434, as amended; 19 U. S. C. 1434)

[20] "The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him: *Provided*, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers of vessels entering the ports of such nations." (Tariff Act of 1930, sec. 435; 19 U. S. C. 1435)

cate, it shall be exchanged for the vessel's document upon clearance of the vessel, or upon its departure if clearance is not required.

(c) The master of any foreign vessel shall exhibit his register to the collector on or before the entry of the vessel. After the net tonnage has been noted, the master may deliver it to the consul of the nation to which such vessel belongs, in which event he shall file with the collector the certificate required by section 435 of the tariff act. If not delivered to the consul, the register shall be deposited in the customhouse.[21]

(d) The master of every vessel required to make entry shall present on entry the pratique required by the pertinent regulations of the United States Public Health Service (42 CFR Chapter I) and shall pay all required fees and penalties incurred.

(e) The master, licensed deck officer, or purser may appear in person at the customhouse to enter the vessel or the required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(R.S. 4576, as amended, secs. 434, 435, 46 Stat. 711, as amended, sec. 366, 58 Stat. 705; 19 U.S.C. 1434, 1435, 42 U.S.C. 269, 46 U.S.C. 677)

§ 4.10 Request for overtime services.

Request for overtime services in connection with the entry or clearance of a vessel, including the boarding of a vessel for the purpose of preliminary entry,[22] if made at the time the application for a permit to unlade or lade is filed, may be on customs Form 3171 in the space provided therefor, otherwise the request for overtime services shall be on customs Form 3853. Such request for overtime services must specify the nature of the services desired and the exact times when they will be needed, unless arrangements are made locally so that the proper customs officer will be seasonably notified during official hours in advance of the rendering of the services as to the nature of services desired and the exact times that they will be needed. Such request shall not be approved unless the required cash deposit or bond on customs Form 7567 or 7569 shall have been received.

(Secs. 448, 451, 46 Stat. 714, 715, as amended; 19 U.S.C. 1448, 1451)

§ 4.11 Sealing of stores.

Upon the arrival of a vessel from a foreign port, or a vessel engaged in the foreign trade from a domestic port, sea stores and ship's stores not required for immediate use or consumption on board while the vessel is in port and articles acquired abroad by officers and members of the crew, for which no permit to land has been issued, shall be placed under seal, unless the customs officer is of the opinion that the circumstances do not require such action. Customs inspectors in charge of the vessel, from time to time, as in their judgment the necessity of the case requires, may issue stores from under seal for consumption on board the vessel by its passengers and crew. (See § 4.39.)

§ 4.12 Correction of manifest.

(a) If the inward foreign manifest is shown by the inspector's report on customs Form 5931 or otherwise to be incorrect, it shall be corrected promptly. Collectors of customs shall, by such means as they may deem appropriate, notify masters or agents of vessels of shortages or overages in cargoes which require the filing of shortage certificates or post entries.

(b) If any manifested merchandise is not found on board,[23] the manifest shall be corrected by filing with the collector a certificate on customs Form 3249.

(c) If there is on board any merchandise, including bulk merchandise and baggage, which is not included in, or does not agree with, the manifest,[24] the manifest shall be corrected by the execution of a post entry in original only on customs Form 3257, which shall be filed with the collector.

(d) A correction in the manifest shall not be required in the case of bulk merchandise if the collector is satisfied that the difference between the manifested quantity and the quantity unladen, whether the difference constitutes an overage or a shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason. A correction in the manifest shall not be required because of discrepancies between marks or numbers on packages of merchandise and the marks or numbers for the same packages as shown on the manifest of the importing vessel when the quantities and description of the merchandise in such packages are correctly given.

(e) If the discrepancy is not explained to the satisfaction of the collector, the penalties prescribed by section 584, Tariff Act of 1930, as amended, shall be imposed. For the purpose of assessing such penalties the value of the merchandise is that defined in § 23.12 of this chapter. The fact that the master or owner had no knowledge that the discrepancy existed does not relieve him from the penalty.

(Secs. 440, 584, 46 Stat. 712, as amended, 748, as amended; 19 U.S.C. 1440, 1584)

§ 4.13 Alcoholic liquors on vessels of not over 500 tons.[25]

(a) When a vessel of not over 500 net tons which arrives from any foreign port

---

[21] "It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section 435 of this Act until such master shall produce to him a clearance in due form from the collector of the port where such vessel has been entered. Any consul offending against the provisions of this section shall be liable to a fine of not more than $5,000." (Tariff Act of 1930, sec. 438; 19 U. S. C. 1438)

[22] Except as provided in section 441 of this Act (relating to vessels not required to enter), no merchandise, passengers, or baggage shall be unladen from any vessel or vehicle arriving from a foreign port or place until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued by the collector: *Provided*, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act. After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. * * *." (Tariff Act of 1930, section 448(a); 19 U.S.C. 1448(a))

[23] "* * * If any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle shall be subject to a penalty of $500: *Provided*, That if the collector shall be satisfied that the manifest * * * is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. * * *." (Tariff Act of 1930, sec. 584, as amended; 19 U. S. C. 1584)

[24] "If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500." (Tariff Act of 1930, sec. 440, as amended; 19 U. S. C. 1440)

[25] "In addition to any other requirement of law, every vessel, not exceeding five hundred net tons, from a foreign port or place, or which has visited a hovering vessel, shall carry a certificate for the importation into the United States of any spirits, wines, or other alcoholic liquors on board thereof (sea stores excepted), destined to the United States, said certificate to be issued by a consular officer of the United States or other authorized person pursuant to such regulations as the Secretary of State and the Secretary of the Treasury may jointly prescribe. Any spirits, wines, or other alcoholic liquors (sea stores excepted) found, or discovered to have been, upon any such vessel at any place in the United States, or within the customs waters, without said certificate on board, which are not shown to have a bona fide destination without the United States, shall be seized and forfeited and, in the case of any such merchandise so destined to a foreign port or place, a bond shall be required in double the amount of the duties to which such merchandise would be subject if imported into the United States, conditioned upon the delivery of said merchandise at such foreign port or place as may be certified by a consular officer of the United States or otherwise as provided in said regulations: *Provided*, That if the collector shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or

or place or from a visit to a hovering vessel has on board any alcoholic liquors, other than sea stores, destined to the United States, a certificate on foreign service, Form 149 for the importation of such liquors shall be delivered to the boarding officer with the inward foreign manifest.

(b) When any shipment of spirits, wines, or other alcoholic liquors found on board a vessel not exceeding 500 net tons is shown to have a bona fide destination outside the United States, the master shall furnish a landing bond on customs Form 7593 (see T.D. 47886) with an authorized corporate surety unless the shipment is accompanied by a certificate on foreign service Form 149.

(c) The condition of the landing bond shall be satisfied by the delivery to the collector of customs within 6 months from the date of the bond of a landing certificate or certificates of a revenue officer of the country of destination showing that all the alcoholic liquors have been landed at their foreign destination.

(Sec. 7, 49 Stat. 520; 19 U.S.C. 1707)

§ 4.14 Equipment and repairs to American vessels.

(a) The master's declaration on customs Form 3415 required by § 4.7(b)(2), covering equipment, repair parts, or material acquired, or expense for repairs incurred, in a foreign country,[26] within the purview of section 466, Tariff Act of 1930, as amended,[27] shall be filed, whether or not the items, or any of them, may be exempt from entry as stated in paragraph (b)(1) of this section.

(b) Entry on customs Form 7535 shall be made for such equipment or repairs and estimated duties deposited or a bond on customs Form 7567 or 7569 given therefor before the vessel shall be allowed clearance, except that—

(1) No entry or bond shall be required with respect to items which the collector is satisfied are clearly within the purview of R.S. 3115 (3), as amended, and

(2) Vessels owned by the United States, although subject to the provisions of section 466, Tariff Act of 1930, as amended, shall be allowed to proceed without such deposit of duties or filing of a bond, if operated by the Maritime Administration or other agency of the United States or if operated under an agreement providing that such an agency shall pay duties accruing under such section 466. Vessels owned by the United States and operated by private parties who are liable by agreement for duties accruing under section 466 shall be treated in all respects the same as privately owned vessels.

(c) The master shall file with the entry receipts showing the costs of items enumerated in the said section 466. If, however, it is impracticable to produce such receipts at the time of entry, liquidation of the entry shall be suspended pending the furnishing of a complete account of the items liable to duty. In such cases the collector shall cause an examination of such equipment or repairs to be made by a representative of the appraiser's office, if possible, in order to verify the cost declared on entry. If the cost of the equipment or repairs, as shown by the complete account when filed, differs from that declared on entry, the collector may permit the entry to be amended accordingly.

(d) When the entry has been completed by the filing of proper evidence of cost and no application for relief as provided for in paragraph (e) of this section, has been filed within the time authorized or, if filed, has been finally acted upon, or the collector is informed that no such application will be filed, the entry shall be liquidated.

(e) An application for relief may be filed with the collector of customs alleging (1) that an item covered by the entry is not within the class of items liable to duty under section 3114, Revised Statutes, as amended, (2) that such item is within the provisions of section 3115, Revised Statues, as amended, or (3) both of the foregoing. To insure consideration in liquidation of the entry, the application shall be filed within 90 days from the date of the entry and, unless the collector is definitely advised that no application will be filed, the liquidation shall be suspended for that period of time to afford an opportunity for such filing. In meritorious cases the collector may authorize a further suspension of 90 days upon written request therefor. Inasmuch as an unprotested liquidation, insofar as it relates to the classification of items for the purposes of section 3114, Revised Statutes, is final at the expiration of 60 days, a subsequent application in regard to such classification cannot be considered in the absence of a timely protest.

(f) When relief is claimed under subdivision (1) of section 3115, Revised Statutes, as amended, there shall be submitted to the collector of customs a certificate of the master together with itemized bills covering the cost of the repairs made or equipment purchased, abstracts of the vessel's log, and a certificate of the proper officer when the repairs were made in order to obtain a certificate of seaworthiness, all of which shall be in duplicate if the vessel is owned or operated by the Maritime Administration, or a similar agency of the United States. This certificate of the master shall set out fully the following information:

(1) The nature of the casualty or stress of weather encountered;

(2) When and where the casualty or stress of weather occurred;

(3) The damage done by the casualty or stress of weather;

(4) The port where the repairs were made or the equipment secured; and

(5) A statement of the master of the vessel as to whether or not the repairs or equipments were required to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

(g) When relief is claimed under subdivision (2) or (3) of section 3115, Revised Statutes, as amended, a certificate of the master shall be submitted to the

---

mislaid without fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred nor shall such bond be required. * * *." (19 U.S.C. 1707)

[26] The Canal Zone and the Virgin Islands are not "foreign countries" within the meaning of sec. 466, Tariff Act of 1930, and equipment, repair parts, or materials there purchased or repairs there made on a vessel of the United States are not dutiable.

[27] "The equipments, or any part thereof including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coastline trade, or a vessel intended to be employed in such trade, shall on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country; and if the owner or master of such vessel shall willfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited. For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

"Sec. 3115. If the owner or master of such vessel furnishes good and sufficient evidence—

"(1) That such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty to put into such foreign port and purchase such equipments or make such repairs, to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination; or

"(2) That such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or

"(3) That such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this and the preceding sections, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited." (Tariff Act of 1930, sec. 466, as amended, 19 U. S. C. 257, 288)

Collector of Customs, accompanied by the evidence in support of the claim.

(h) The evidence referred to in paragraphs (f) and (g) of this section, or offered in support of an application filed under paragraph (e) (1) of this section, shall be furnished to the collector of customs within 90 days after an application is filed. If such evidence is not received within the 90-day period the entry shall be liquidated without regard to the application unless the collector of customs shall have approved an extension of such period.

(i) The master shall certify as true copies or originals, as the case may be, one copy of each repair bill, abstract of the vessel's log, report of survey, and other documents submitted in support of the application for relief. If a document is written in a foreign language, it shall be accompanied by a translation certified to be accurate.

(j) The authority under section 3115 of the Revised Statutes, as amended, to remit or refund duties is delegated to the several collectors of customs and their successors in office. When the evidence referred to in paragraphs (f), (g), or (h) of this section has been received and examined by the collector of customs he shall notify the owner or operator of the vessel, or other party in interest, of his decision, but if any doubt exists the case shall first be referred to the Bureau for advice. Thirty days after the date of such notice the collector shall proceed to liquidate the entry unless within that period the owner or operator of the vessel, or other party in interest, shall file a petition as provided for in paragraph (k) of this section.

(k) The owner or operator of the vessel involved, or other party in interest, may file with the collector of customs a petition addressed to the Commissioner of Customs for a review of the collector's decision on an application claiming relief under section 3115, Revised Statutes, as amended, (paragraph (e) (2) or (3) of this section). Such petition shall be filed in duplicate within 30 days from the date of the notice of the collector's decision, shall completely identify the case, and shall set forth in detail the exceptions to the collector's decision. When such a petition has been filed, the collector shall immediately transmit both copies thereof and the entire file to the Bureau, together with any comments he may desire to submit. When the Bureau's decision has been received the entry shall be liquidated in accordance therewith.

(R.S. 3114, as amended, 3115, as amended, sec. 498, 46 Stat. 726, as amended; 19 U.S.C. 257, 258, 1498)

§ 4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel enrolled and licensed or licensed to engage in the fisheries shall touch and trade at a foreign port or place, the master shall obtain from a collector of customs a permit on customs Form 1379 to touch and trade.[34]

(b) Upon the arrival of a vessel enrolled and licensed or licensed for the fisheries which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port.

(c) If a vessel which has been granted a permit to touch and trade arrives at a port in the United States, whether or not the vessel has touched at a foreign port or place, such permit shall forthwith be surrendered to the collector of customs.

(d) No permit to touch and trade shall be issued to a vessel enrolled and licensed or licensed for the coasting trade and mackerel fishery which is departing on a foreign voyage to engage exclusively in a trade other than the fisheries. For such a voyage the vessel shall be registered and the master shall obtain clearance for the foreign port or place.

(R.S. 4364, 4365; 46 U.S.C. 310, 311)

§ 4.16 Entry and clearance on board vessels.

(a) A master, owner, or agent of a vessel described in the act of June 16, 1937,[35] who desires that arrival may be reported, entry made, and clearance obtained on board the vessel shall file with the collector an application on customs Form 3853 and a bond on customs Form 7567 in such penal sum as the collector deems sufficient but not less than $1,000, or the usual term bond on customs Form 7569.

(b) If the application is approved, the collector of customs or such deputy collector of customs as may be designated by him shall receive the report of arrival and the entry of the vessel and grant it clearance on board the vessel.

(c) For the purposes of the said act the term "at night" shall include the hours from 5 p. m. of one day to 8 a. m. of the following day, and the term "holiday" shall include only national holidays.

(50 Stat. 303; 19 U.S.C. 1435b)

§ 4.17 Vessels from discriminating countries.

The prohibition against imports in, and the penalty of forfeiture of, certain vessels from countries which discriminate against American vessels provided for in subsections 2 and 3 of paragraph J, section IV, Tariff Act of 1913, as amended by the act of March 4, 1915 (19 U.S.C. 130, 131), shall be enforced only in pursuance of specific instructions issued and published from time to time by the Secretary of the Treasury or such other officer as the Secretary may designate. (See also §§ 4.20(c) and 16.19 of this chapter.)

Tonnage Tax and Light Money

§ 4.20 Tonnage taxes.

(a) Except as specified in § 4.21, a regular tonnage tax or duty[36] of 2 cents per net ton, not to exceed in the aggregate 10 cents per net ton in any 1 year, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, Newfoundland, or the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River), and regular tonnage tax of 6 cents per net ton, not to exceed 30 cents per net ton per annum, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. In determining the port of origin of a voyage to the United States and the rate of tonnage tax, the following shall be used as a guide:

(1) When the vessel has proceeded in ballast from a port to which the 6-cent rate is applicable to a port to which the 2-cent rate applies and there has laden cargo or taken passengers, tonnage tax upon entry in the United States shall be assessed at the 2-cent rate.

(2) The same rate shall be applied in a case in which the vessel has transported cargo or passengers from a 6-cent port to a 2-cent port when all such cargo or passengers have been unladen or discharged at the 2-cent port, without regard to whether the vessel thereafter has proceeded to the United States in ballast or with cargo or passengers laden or taken on board at the 2-cent port.

(3) The 6-cent rate shall be applied when the vessel proceeds from a 2-cent port to a 6-cent port en route to the United States under circumstances similar to subparagraph (1) or (2) of this paragraph.

(4) If the vessel arrives in the United States with cargo or passengers taken at two or more ports to which different rates are applicable, tonnage tax shall be collected at the higher rate.

(b) The tonnage year shall be computed from the date of the first entry of the vessel concerned, without regard to the rate of the payment made at that entry, and shall expire on the day preceding the corresponding date of the following year.[37]

(c) A vessel shall also be subject on every entry from a foreign port or place, whether or not regular tonnage tax is payable on the particular entry, to the payment of a special tonnage tax[38] and to the payment of light money[39] at the rates and under the circumstances specified in the following table:

Classes of vessels	Rate per net ton: Regular tax	Special tax	Light money
Vessels of the United States:			
1. Under provisional register, without regard to citizenship of officers	$0.02 or $0.06		
2. All others:			
(i) If all the officers are citizens	.02 or .06		
(ii) If any officer is not a citizen	.02 or .06	[1] $0.50	[1] $0.50
Undocumented vessels which are owned by citizens [2]	.02 or .06	.50	[2] .50
Vessels of Philippine registry, owned by citizens of the Philippine Islands			
Foreign vessels:			
1. Of nations whose vessels are exempted from special tax or light money	.02 or .06		
2. Entering from a foreign port or place where vessels of the United States are not ordinarily permitted to enter and trade	.02 or .06	[4] 2.00	[4] .50
3. All others:			
(i) Built in the United States	.02 or .06	.30	.50
(ii) Not built in the United States	.02 or .06	.50	.50

[1] This does not apply on the first arrival of a vessel in a port of the United States from a foreign or intercoastal voyage if all the officers who are not citizens are below the grade of master and are filling vacancies which occurred on the voyage.

[2] The special tax and light money do not apply if the vessel is documented as a vessel of the United States before leaving the port.

[3] This does not apply if the vessel is under a certificate of protection and the owner or master files with the collector the oath required by 46 U. S. C. 129. An unrecorded bill of sale is not such a document as will exempt a vessel from the payment of light money under 46 U. S. C. 128, and the recording of such bill of sale after the arrival of the vessel is not sufficient to relieve it from the payment of the tax.

[4] This is to be collected on each entry of a vessel from such a port or place.

(d) Tonnage tax shall be imposed upon a vessel even though she enters a port of the United States only for orders.

(e) The fact that a vessel passes through the Canal Zone does not affect the rate of tonnage tax otherwise applicable to the vessel.

(f) For the purpose of computing tonnage tax, the net tonnage of a vessel stated in the vessel's marine document shall be accepted unless (1) such statement is manifestly wrong, in which case the net tonnage shall be estimated, pending admeasurement of the vessel, or the tonnage reported for her by any recognized classification society may be accepted, or (2) an appendix is attached to the marine document showing a net tonnage ascertained under the so-called "British rules" or the rules of any foreign country which have been accepted as substantially in accord with the rules of the United States, in which case the tonnage so shown may be accepted and the date the appendix was issued shall be noted on the tonnage tax certificate, customs Form 1002, and on the master's oath, customs Form 3251.

(g) The decision of the Commissioner of Customs is final on any question of interpretation relating to the collection of tonnage tax or to the refund of such tax when collected erroneously or illegally, and any question of doubt shall be referred to him for instructions.

(R.S. 4153, as amended, secs. 2, 4, 28 Stat. 743, as amended, R.S. 4154, as amended, 4219, as amended, 4225, as amended, 4131, as amended; 46 U.S.C. 77, 78, 79, 81, 121, 128, 221)

§ 4.21 Exemptions from tonnage taxes.

(a) Tonnage taxes and light money shall be suspended in whole or in part whenever the President by proclamation shall so direct.

(b) A vessel shall not be liable to the payment of tonnage tax or light money merely because—

(1) It comes into port for bunkers (including water), sea stores, or ship's stores; transacts no other business in the port; and departs within 24 hours after its arrival.

(2) It arrives in distress, even though required to enter.

(3) It is brought into port by orders of United States naval authorities and transacts no business while in port other than the taking on of bunkers, sea stores, or ship's stores.

(4) It is a vessel of war or other vessel which is owned by, or under the complete control and management of the United States or the government of a foreign country, and which is not carrying passengers or merchandise in trade or, if in ballast, which is not ar-

---

[33] "Whenever any vessel, licensed for carrying on the fisheries, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port." (46 U.S.C. 310)

"Whenever a vessel, licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of $500, without having such permission as is directed by section 310 of this title, such vessel together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture." (46 U.S.C. 311; see also 46 U.S.C. 325)

If such a vessel puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage, it is not considered to have touched and traded there.

[34] "In order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the United States at which such vessel is required by law to report arrival and make entry and from which it is required to obtain a clearance, the collector of customs, or any deputy collector of customs designated by him, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed by the Secretary of the Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: *Provided*, That bond, as prescribed in section 1451 of this title, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to lading or unlading at night or on Sunday or a holiday." (19 U.S.C. 1435b. Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

[35] "Upon vessels which shall be entered in the United States from any foreign port or place there shall be paid duties as follows: On vessels built within the United States but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the United States, at the rate of fifty cents per ton, and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of fifty cents per ton.

"A tonnage duty of 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year, is imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West India Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering on the Caribbean Sea, or Newfoundland, and a duty of 6 cents per ton, not to exceed 30 cents per ton per annum, is imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port, not, however, to include vessels in distress or not engaged in trade.

"Upon every vessel not of the United States, which shall be entered in one district from another district, having on board goods, wares, or merchandise taken in one district to be delivered in another district, duties shall be paid at the rate of 50 cents per ton: *Provided*, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States. On all foreign vessels which shall be entered in the United States from any foreign port or place, to and with which vessels of the United States are not ordinarily permitted to enter and trade, there shall be paid a duty at the rate of $2 per ton; and none of the duties on tonnage above-mentioned shall be levied on the vessels of any foreign nation if the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished. Any rights or privileges acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels shall not be impaired; and any vessel any officer of which shall not be a citizen of the United States shall pay a tax of 50 cents per ton." (46 U. S. C. 121)

[36] There may be five payments at the maximum (6-cent) and five at the minimum (2-cent) rate during a tonnage year, so that the maximum assessment of tonnage duty may amount to 40 cents per net ton for the tonnage year of a vessel engaged in alternating trade.

[37] See footnote 36.

[38] "A duty of 50 cents per ton, to be denominated 'light money', shall be levied and collected on all vessels not of the United States which may enter the ports of the United States. Such light money shall be levied and collected in the same manner and under the same regulations as the tonnage duties: *Provided*, That no such duty shall be required where a vessel owned by citizens of the United States, but not a vessel of the United States, after entering an American port, shall, before leaving the same, be registered as a vessel of the United States." (46 U. S. C. 128)

riving from a foreign port during the usual course of its employment as a vessel engaged in trade.

(5) It is a yacht or other pleasure vessel not carrying passengers or merchandise in trade.

(6) It is engaged exclusively in scientific activities.

(7) It is engaged exclusively in laying or repairing cables.

(8) It is engaged in whaling or other fisheries, even though it may have entered a foreign port for fuel or supplies, if it did not carry passengers or merchandise in trade.

(9) It is a passenger vessel making three trips or more a week between a port of the United States and a foreign port.

(10) It is used exclusively as a ferry boat, including a car ferry.

(11) It is a tug under frontier enrollment and license, when towing vessels which are required to make entry.

(12) It is a vessel under frontier enrollment and license which has touched at an intermediate foreign port or ports during a coastwise voyage.

(13) It enters otherwise than by sea from a foreign port at which tonnage or lighthouse dues or equivalent taxes are not imposed on vessels of the United States.[44]

(14) It is owned by a citizen of the Philippine Islands and is documented by the Philippine Government.

(15) It is a vessel entering directly from the Virgin Islands (U. S.), the Canal Zone, American Samoa, the islands of Guam, Wake, Midway, Canton, or Kingman Reef, or Guantanamo Bay Naval Station.

(16) It is a vessel making regular daily trips between any port of the United States and any port in Canada wholly upon interior waters not navigable to the ocean, except that such a vessel shall pay tonnage taxes upon her first arrival in each calendar year.

(Sec. 441, 46 Stat. 712, as amended, R.S. 4214, as amended, R.S. 4220, 2793, as amended, 2792, as amended, 4221, 4225, as amended, 4226, sec. 1, 39 Stat. 286, 36 Stat. 234, R.S. 4227; 19 U.S.C. 1441, 46 U.S.C. 103, 122–125, 128–130, 132, 135)

§ 4.22 Exemptions from special tonnage taxes.

Vessels of the following nations are exempted by treaties, Presidential proclamations, or orders of the Secretary of the Treasury from the payment of any higher tonnage duties than are applicable to vessels of the United States and are exempted from the payment of light money:

Argentina.	Ireland (Eire).
Australia.	Israel.
Belgium.	Italy.
Bolivia.	Japan.
Brazil.	Korea.
Burma.	Latvia.
Canada.	Lebanon.
Chile.	Liberia.
China.	Mexico.
Colombia.	Morocco.
Costa Rica.	Muscat (Oman).
Cuba.	Netherlands.
Denmark.	New Zealand.
Dominican Republic.	Nicaragua.
Ecuador.	Norway.
Egypt.	Pakistan.
El Salvador.	Palestine.
Estonia.	Panama.
Ethiopia.	Paraguay.
Fiji.	Peru.
Finland.	Poland.
France.	Portugal.
German Federal Republic.	Saudi Arabia.
Ghana.	Spain.
Great Britain.	Sweden.
Greece.	Switzerland.
Greenland.	Thailand.
Guatemala.	Turkey.
Haiti.	Union of South Africa.
Honduras.	Union of Soviet Socialist Republics.
Iceland.	Uruguay.
India.	Venezuela.
Iran.	Yugoslavia.
Iraq.	

(R.S. 4219, as amended, 4225, as amended, 4228, as amended; 46 U.S.C. 121, 128, 141)

§ 4.23 Certificate of payment.

Upon each payment of tonnage tax or light money, the collector of customs shall give to the master of the vessel a certificate on customs Form 1002. This certificate shall constitute the official evidence of such payment and shall be presented upon each entry during the tonnage year in order to establish the date of commencement of the tonnage year and to insure against overpayment. In the absence of such certificate, evidence of payment of tonnage tax shall be obtained from the collector of customs to whom the payment was made.

[T. D. 54232, 21 F. R. 8394, Nov. 2, 1956]

§ 4.24 Application for refund of tonnage tax.

(a) Each application for the refund of tonnage tax or light money[45] shall be submitted to the collector of customs to whom the payment was made. After verification of the pertinent facts asserted in the claim, the application shall be forwarded for decision, with any necessary report or recommendation, to the Commissioner of Customs.

(b) The application shall be a direct request for the refund of a definite sum, showing concisely the reasons therefor, the nationality, rig, and name of the vessel, and the date, place, and amount of each payment for which refund is asked. When the application for refund is based upon a claim that more than five payments of regular tax at either the 2-cent or the 6-cent rate have been made during a tonnage year, the application shall be supported by a statement from the collector at the port where the application is submitted and from the collector at each port at which any claimed payment was made verifying the facts and showing in each case whether refunds have been authorized. The application shall include a certificate by the owner or by the owner's agent that payment of tonnage tax at the applicable rate has been or will be made for each entry of the vessel on a voyage on which that rate is applicable before the end of the current tonnage year, exclusive of any payment which has been refunded or which may be refunded as a result of such application. A protest against a payment shall not be accepted as an application for its refund.

(c) The application shall be made within 1 year from date of the payment.

(d) The collector of customs to whom payment was made shall make any refund authorized by the Commissioner of Customs. The records of payment of tonnage tax shall be clearly noted to show each refund authorized.

Landing and Delivery of Cargo

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 5.2 of this chapter and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288[55] no passengers,[56]

[44] "Vessels entering otherwise than by sea from a foreign port at which tonnage or lighthouse dues or other equivalent tax or taxes are not imposed on vessels of the United States shall be exempt from the tonnage duty of 2 cents per ton, not to exceed in the aggregate 10 cents per ton in any one year." (46 U. S. C. 132) This statute applies to a vessel arriving in the United States on a voyage otherwise than by sea from a port in the province of Ontario, Canada, only.

[45] "Whenever any fine, penalty, forfeiture, exaction, or charge arising under the laws relating to vessels or seamen has been paid to any collector of customs, or Coast Guard official, or consular officer, and application has been made within one year from such payment for the refunding or remission of the same, the Commandant of the Coast Guard or the Secretary of the Treasury, as the case may be, if on investigation he finds that such fine, penalty, forfeiture, exaction, or charge was illegally, improperly, or excessively imposed, shall have the power, either before or after the same has been covered into the Treasury, to refund so much of such fine, penalty, forfeiture, exaction, or charge as he may think proper, from any moneys in the Treasury not otherwise appropriated." (46 U. S. C. 8)

[55] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessels shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Commissioner of Customs may prescribe, notwithstanding any other provision of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U.S.C. 288)

[56] "If any passenger is unladen from any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, shall each be liable to a penalty of $500 for each such passenger so unladen." (Tariff Act of 1930, sec. 454; 19 U. S. C. 1454)

cargo,[57] baggage,[57] or other article [58] shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the customs territory of the United States and no cargo, baggage, or other article shall be laden [59] on a vessel destined to a port or place outside the customs territory of the United States, if customs supervision of such lading is required,[61] until the collector shall have issued a permit or special license therefor on customs Form 3171.

(b) Application for such a permit or special license shall be made by the master, owner, or agent of the vessel on customs Form 3171, and shall indicate the type of operations desired. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance.

(c) No unlading [60] or lading [61] requiring customs supervision shall be done at night or on a Sunday or holiday unless the application on customs Form 3171 is supplemented by a request of the master, owner, or agent of the vessel for overtime services of customs officers and the request is approved by the collector. Such approval, together with the permit, shall constitute a special license. The request for overtime services of customs officers, if made at the time the application to unlade or lade is filed, may be on customs Form 3171 in the space provided therefor, but if made thereafter, shall be on customs Form 3853. Such request for overtime services must specify the nature of the services desired and the exact times when they will be needed, unless arrangements are made locally so that the proper customs officer will be seasonably notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times that they will be needed. Such request shall not be approved unless the required cash deposit or bond [62] on customs Form 7567 or 7569 shall have been received, except that, when a carrier has on file a bond on customs Form 3587, no further bond shall be required solely by reason of the unlading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. If a request for overtime services is limited as set forth in paragraph (b) of this section appropriate words such as "to enter and unlade", or "to lade and clear", shall be used in the request. Separate bonds shall be required if overtime services are requested by different principals.

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival. The permit or special license shall not become effective until the master shall have made preliminary or formal entry or, in the case of vessels not required to enter, the master shall have reported the arrival of the vessel.

(e) Stevedoring companies and others concerned in lading or unlading merchandise, or in removing or otherwise securing it, shall ascertain that the applicable preliminary customs requirements have been complied with before commencing such operations, since performance in the absence of such compliance renders them severally liable to the penalties prescribed in section 453, Tariff Act of 1930,[63] even though they may not be responsible for taking the action necessary to secure compliance.

(f) A special license on customs Form 3851 running for any period up to 1 month and in multiples of months thereafter but not to exceed 1 year nor longer than the period of the supporting bond may be granted to a carrier operating passenger vessels making three or more trips a week between a port in the United States and a foreign port, or to an owner or agent of vessels employed in the fisheries or used as ferryboats, including car ferries, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage in the case of any or all of such vessels at night or on a Sunday or holiday when customs supervision is required. The application for such a special license shall be on customs Form 3851 supplemented by a request on customs Form 3853 for overtime services of customs officers. Such request for overtime services must show the exact times when overtime services will be needed unless arrangements are made so that the proper customs officer will be seasonably notified during official hours in advance of the services requested as to the exact times that the services will be needed. The special license shall not be granted unless the required bond on customs Form 3587, 7567, or 7569 shall have been filed.

(g) The collector may also issue a permit running for any period up to 1 month, and in multiples of months thereafter but not to exceed 1 year, to unlade or lade vessels specified in paragraph (f) of this section during official hours. Customs Form 3851 (modified) shall be used for such purpose.

(h) A special license for the unlading or lading of a vessel at night shall be re-

[57] "* * * After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the matter of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by the collector as provided in section 484, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made." (Tariff Act of 1930, sec. 448 (a); 19 U. S. C. 1448 (a))

[58] "Vessels arriving in the United States from foreign ports may retain on board, without the payment of duty, all coal and other fuel, supplies, ships' stores, sea stores, and the legitimate equipment of such vessels. Any such supplies, ships' stores, sea stores, or equipment landed and delivered from such vessel shall be considered and treated as imported merchandise: *Provided*, That bunker coal, bunker oil, ships' stores, sea stores, or the legitimate equipment of vessels belonging to regular lines plying between foreign ports and the United States, which are delayed in port for any cause, may be transferred under a permit by the collector and under customs supervision from the vessel so delayed to another vessel of the same line and owner, and engaged in the foreign trade, without the payment of duty thereon." (Tariff Act of 1930, sec. 446; 19 U. S. C. 1446)

The provisions of section 446, Tariff Act of 1930, do not apply to vessels of less than 5 net tons. (T. D. 45431)

[59] "If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture." (Tariff Act of 1930, section 453; 19 U. S. C. 1453)

[60] "No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel or vehicle on Sunday, a holiday, or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, section 450; 19 U. S. C. 1450)

The term "at night" includes the hours from 5 p. m. of any day to 8 a. m. of the following day.

[61] "No merchandise or baggage entered for transportation under bond or for exportation with the benefit of drawback, or other merchandise or baggage required to be laden under customs supervision, shall be laden on any vessel or vehicle at night or on Sunday or a holiday, except under special license therefor to be issued by the collector under the same conditions and limitations as pertain to the unlading of imported merchandise or merchandise being transported in bond." (Tariff Act of 1930, sec. 452, 19 U. S. C. 1452)

[62] "Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the act of February 13, 1911, as amended (U. S. C., 1952 edition, title 19, sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. * * *" (Tariff Act of 1930, section 451, as amended, 19 U.S.C. 1451)

fused by the collector if the character of the merchandise or the conditions or facilities at the place of unlading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unlading or lading on a Sunday or holiday be granted except on the ground of commercial necessity.

(i) The collector shall not issue a permit to unlade cargo or equipment of vessels arriving directly or indirectly from any port or place outside the customs territory of the United States, except on compliance with one or more of the following conditions:

(1) The merchandise shall have been duly entered and permits issued; or

(2) A vessel bond on customs Form 7567 or 7569 shall have been given; or

(3) The merchandise is to be discharged into the custody of the collector of customs as provided for in section 490 (b), Tariff Act of 1930.[65]

(j) Bonds are not required under this section for vessels owned by the United States and operated for its account.

(k) In the case of vessels of 5 net tons or over which are used exclusively as pleasure vessels and which arrive from any country, the collector in his discretion and under such conditions as he deems advisable may allow the required application for unlading passengers and baggage to be made orally, and may authorize his inspectors to grant oral permission for unlading at any time, and to grant requests on Form 3853 for overtime services.

(R.S. 2793, as amended, secs. 446, 448, 450–454, 490, 46 Stat. 713, 714, 715, as amended, 716, 726; 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490)

§ 4.31 Unlading or transshipment due to casualty.

(a) When any cargo or stores of a vessel have been unladen or transshipped at any place in the United States or its customs waters other than a port of entry because of accident, stress of weather, or other necessity, no penalty shall be imposed under section 453 [66] or 586 (a),[66] Tariff Act of 1930, if due notice is given to the collector of customs at the port at which the vessel thereafter first arrives and satisfactory proof is submitted to him as provided for in section 586 (f), Tariff Act of 1930, as amended.[66] The collector may accept the certificates of the master and two or more officers or members of the crew of the vessel, of whom the person next to the master in command shall be one, as proof that the unlading or transshipment was necessary by reason of unavoidable cause.

(b) The collector may then permit entry of the vessel and its cargo and permit the unlading of the cargo in such place in his district as he may deem proper. Unless its transportation has been in violation of the coastwise laws, the cargo may be cleared through customs at the port where it is discharged or forwarded to the port of original destination under an entry for immediate transportation or for transportation and exportation, as the case may be. All regulations shall apply in such cases as if the unlading and delivery took place at the port of original destination.

(Secs. 453, 586, 46 Stat. 716, 749, as amended; 19 U.S.C. 1453, 1586)

§ 4.32 Vessels in distress; landing of cargo.

(a) When a vessel from a foreign port arrives in distress at a port other than that to which it is destined, a permit to land merchandise or baggage may be issued if such action is necessary. Merchandise and baggage so unladen shall be taken into customs custody and, if it has not been transported in violation of the coastwise laws, may be entered and disposed of in the same manner as any other imported merchandise or may be reladen without entry to be carried to its destination on the vessel from which it was unladen, subject only to charges for storage and safekeeping.

(b) A bond on customs Form 7567 shall be given in an amount to be determined by the collector to insure the proper disposition of the cargo, whether such cargo be dutiable or free.

(Sec. 449, 46 Stat. 714; 19 U.S.C. 1449)

§ 4.33 Diversion of cargo.

(a) If an emergency exists at the port of destination and authority under section 449, Tariff Act of 1930,[67] is desired for a collector to permit a vessel which has entered with imported merchandise or baggage shown by the manifest to be destined to his port to proceed to another port of entry in accordance with the residue-cargo bond procedure, the owner or the agent of the vessel shall make written application for such authorization stating the reasons and agreeing to hold the collector and the Government harmless for such diversion.

(b) Merchandise and baggage unladen at the second port under these circumstances may be (1) entered in the same manner as other imported merchandise and baggage, (2) treated as unclaimed, or (3) reladen without entry for transportation to its original destination.

(c) The inward foreign manifest of a vessel may be changed at any time following entry of the vessel to substitute domestic ports for either other domestic or foreign ports as ports of discharge of the merchandise shown on the inward foreign manifest. A written application for the diversion shall be made by the master, owner, or agent of the vessel to the collector of the port where the vessel is located, after entry of the vessel at that port. An amended manifest under oath covering the merchandise which it is desired to divert shall be furnished in support of the application. The amended manifest shall be filed in such number of copies as the collector may require for local customs purposes. The certified traveling manifest shall not be altered or added to in any way by the master or agent. When an application to divert to another port for discharge is approved by a collector for an intermediate port, he shall securely attach an approved copy of the application and a copy of the amended manifest to the traveling manifest and shall send one copy of the amended manifest to the collector at the port where the vessel's bond was filed.

---

[65] "At the request of the consignee of any merchandise, or of the owner or master of the vessel, or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the collector after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made." (Tariff Act of 1930, section 490 (b); 19 U. S. C. 1490 (b))

[66] "If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture." (Tariff Act of 1930, sec. 453; 19 U. S. C. 1453)

[66] "The master of any vessel from a foreign port or place who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than $1,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited." (Tariff Act of 1930, sec. 586 (a), as amended; 19 U. S. C. 1586 (a))

[66] "Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify the collector of the district within which such unlading or transshipment has occurred, or the collector within the district at which such vessel shall first arrive thereafter, and shall furnish proof that such unlading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if the collector is satisfied that the unlading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred." (Tariff Act of 1930, sec. 586 (f), as amended, 19 U. S. C. 1586 (f))

[67] "Except as provided in sections 442 and 447 of this Act (relating to residue cargo and to bulk cargo, respectively), merchandise and baggage imported in any vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the collector of such port issues a permit for the unlading of such merchandise or baggage, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be treated as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination." (Tariff Act of 1930, sec. 449; 19 U. S. C. 1449)

(d) If, as the result of a strike or other emergency at a United States port for which inward foreign cargo is manifested, it is desired to retain the cargo on board the vessel for discharge at a foreign port but with the purpose of having the goods returned to the United States, an application to amend the vessel's manifest under a procedure like that described in paragraph (c) of this section, except to substitute a foreign for the domestic port named as the port of discharge, may be made by the master, owner, or agent of the vessel. If the application is approved, it shall thereafter be handled in the same manner as an application filed under paragraph (c) of this section. However, before approving the application, the collector is authorized to require such bond as he deems necessary to insure that export control laws and regulations are not circumvented.

(Sec. 449, 46 Stat. 714; 19 U.S.C. 1449)

§ 4.34 Prematurely discharged, overcarried, and undelivered cargo.

(a) On written application of the owner or agent of a vessel, the collector may permit inward foreign cargo remaining on the dock, which was prematurely landed and left behind by the importing vessel, to be reladen on board the next available vessel of the same line on which it may be forwarded to the destination shown on the inward foreign manifest of the first vessel, provided the importing vessel actually entered the port of destination of the prematurely landed cargo. Unless so forwarded within 30 days from the date of landing, such cargo shall be appropriately entered for customs clearance or for forwarding in bond; otherwise, it shall be sent to general order as unclaimed.

(b) The collector may permit merchandise not landed at destination and overcarried to another domestic port through error or on account of an emergency to be returned in the importing vessel, or in another vessel of the same line, to the destination shown on the inward foreign manifest of the importing vessel, provided that vessel actually entered the port of such destination.[67a]

(c) Cargo so stowed as to be inaccessible upon arrival at destination may be retained on board, carried forward to another domestic port or ports, and returned to the port of destination in the importing vessel or in another vessel of the same line in the same manner as other overcarried cargo.

(d) When it is desired that prematurely landed or overcarried cargo be forwarded to destination by the importing vessel or by another vessel of the same line in accordance with paragraph (a), (b), or (c) of this section, an application therefor shall be filed with the local collector by the owner or agent of the vessel. Such application shall be supported by a manifest of the cargo in such number of copies as the collector may require under a residue cargo procedure as hereinafter described. Whenever practicable, the application shall be made on the face of the manifest below the description of the merchandise, if there is sufficient space therefor. The manifest shall specify the vessel on which the cargo was imported even though the forwarding to destination is by another vessel of the same line. The application shall be stamped and signed to show its approval.

(e) One copy of the manifest shall be certified by customs for use as a separate traveling manifest for the prematurely landed or overcarried cargo being forwarded as residue cargo, whether or not the forwarding vessel is also carrying other residue cargo. If application for forwarding to destination is made on the manifest, the new substitute traveling manifest shall be stamped to show the approval of the application thereon or if the application is on a separate document a copy thereof stamped to show its approval shall be attached to the substitute traveling manifest. A separate certificate on customs Form 3221 shall be attached to each such traveling manifest. An appropriate cross-reference shall be made on customs Form 3221 to show whether any other traveling manifest is being carried forward on the same vessel.

(f) A certificate (Customs Form 3221) signed by the collector and bearing notations suitably identifying the cargo as prematurely landed or overcarried cargo shall be attached to the substitute traveling manifest. The Form 3221 shall state the ports of departure and dates of sailing of the importing vessel. The permit to proceed, customs Form 1385, issued to the vessel transporting to destination the prematurely landed or overcarried cargo shall make reference to the nature of such cargo, identifying it with the importing vessel.

(g) A vessel with such prematurely landed or overcarried cargo on board shall comply upon arrival at each intermediate port and at destination with all the requirements of this part relating to foreign residue cargo for domestic ports. When such prematurely landed or overcarried cargo arrives at the port of destination under an approved application and substitute traveling manifest, the collector shall check to see whether the cargo covered by the application and substitute traveling manifest was included in the manifest filed on the original entry of the importing vessel at the first port of entry in the United States, to determine whether a post entry to the original manifest is required. The substitute traveling manifest, carried forward from port to port by the oncarrying vessel, shall be finally surrendered at the port where the last portion of the prematurely landed or overcarried cargo is discharged.

(h) Merchandise shipped from a domestic port, but undelivered at the foreign destination and brought back, shall be manifested as "Undelivered—To be returned to original foreign destination," if such return is intended. The collector may issue a permit to retain such merchandise on board, or he may, upon written application of the steamship company issue a permit on customs Form 7500–A allowing such merchandise to be transferred to another vessel for return to the original foreign destination. No charge shall be made against the vessel bond. The items shall be remanifested outward and an explanatory reference of the attending circumstances and compliance with export requirements noted.

§ 4.35 Unlading outside port of entry.

(a) Upon written application from the interested party, the collector of customs concerned, if he considers it necessary, may permit any vessel laden with merchandise in bulk to proceed, after entry, to any place outside the port where the vessel entered which such collector may designate for the purpose of unlading such cargo.[68]

(b) In such case a deposit of a sum sufficient to reimburse the Government for the compensation, travel, and subsistence expenses of the officers detailed to supervise the unlading and delivery of the cargo may be required by the collector.

(Sec. 447, 46 Stat. 714; 19 U.S.C. 1447)

§ 4.36 Delayed discharge of cargo.

(a) When pursuant to section 457, Tariff Act of 1930,[69] customs officers are placed on a vessel which has retained merchandise on board more than 25 days after the date of the vessel's arrival, their compensation and subsistence expenses shall be reimbursed to the Government by the owner or master.

(b) The compensation of all customs officers and employees assigned to supervise the discharge of a cargo within the purview of section 458, Tariff Act of 1930,[70] after the expiration of 25 days

---

[67a] See § 8.4 (h) of this chapter for the conditions under which such merchandise and goods removed from a port of intended entry under these or certain other circumstances may subsequently be cleared under a consumption entry which had been filed therefor before the merchandise was removed from the port of intended entry.

[68] "It shall be unlawful • • • to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, • • • That any vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if the collector shall consider the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest." (Tariff Act of 1930, sec. 447; 19 U. S. C. 1447)

[69] "Whenever any merchandise remains on board any vessel or vehicle from a foreign port more than twenty-five days after the date on which report of said vessel or vehicle was made, the collector may take possession of such merchandise and cause the same to be unladen at the expense and risk of the owners thereof, or may place one or more inspectors or other customs officers on board of said vessel or vehicle to protect the revenue. The compensation and expenses of any such inspector or customs officer for subsistence while on board of such vessel or vehicle shall be reimbursed to the Government by the owner or master of such vessel or vehicle." (Tariff Act of 1930, sec. 457; 19 U. S. C. 1457)

[70] "The limitation of time for unlading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs offi-

after the date of the vessel's entry shall be reimbursed to the Government by the owner or master of the vessel.

(c) When a cargo within the purview of the proviso to the first subdivision of section 431, Tariff Act of 1930 [71] is manifested "for orders" upon the arrival of the vessel, no amendment of the manifest to show another port of discharge shall be permitted after 15 days after the date of the vessel's arrival, except as provided for in § 4.33.

(d) All reimbursements payable in accordance with this section shall be paid or secured to the collector before clearance is granted to the vessel.

(R.S. 4206, secs. 431, 457, 458, 46 Stat. 710, as amended, 716, 717; 19 U.S.C. 1431, 1457, 1458, 46 U.S.C. 100)

§ 4.37 Lay order; general order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain on the wharf or pier until 5 p.m. on the fifth working day after the day the vessel was entered.[72] At the expiration of such period, any merchandise or baggage so remaining shall be deposited in the public stores or a general-order warehouse, except that, at the written request of the owner, agent, or master of the vessel, filed in duplicate on customs Form 3189, and at the risk of the owner of the vessel, the collector may issue a lay order allowing such merchandise or baggage to remain on the wharf or pier properly protected for a further period, which shall be specified in the order. The application for an initial lay order to allow the merchandise to remain on the wharf or pier beyond the fifth working day may be included, if the collector approves, in the space provided therefor in the application made on customs Form 3171 for a permit to lade or unlade.

(b) All merchandise or baggage unladen from a vessel for which no permit has been received before expiration of the original 5-day period, or extension thereof, shall be sent to the public stores or a general-order warehouse and held as unclaimed at the risk and expense of the consignee or owner.[73]

(c) Merchandise unladen after the expiration of the 25-day period prescribed in section 457, Tariff Act of 1930, for which no customs permit has been presented to the discharging inspector, shall be sent forthwith by the collector to the public stores or a general-order warehouse and stored at the expense and risk of the owner of such merchandise.[74]

(d) Merchandise taken into the custoday of the collector pursuant to section 490 (b), Tariff Act of 1930,[74] shall be sent to the public stores or a general-order warehouse after 1 day after the day the vessel was entered, to be held there at the risk and expense of the owner.

(e) Any merchandise which is apt to decrease in weight after importation shall be weighed before it is deposited in the public stores or a general-order warehouse.

(Secs. 448, 457, 490, 46 Stat. 714, 716, 726; 19 U.S.C. 1448, 1457, 1490)

§ 4.38 Release of cargo.

(a) No imported merchandise shall be released from customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the collector only after the merchandise has been entered and, except as provided for in § 8.28(c) or § 8.59 of this chapter, the duties thereon, if any, have been estimated and paid.

(b) When packages of merchandise bear marks or numbers which differ from those appearing on the manifest of the importing vessel for the same packages and the importer or a receiving bonded carrier, with the concurrence of the importing carrier, makes application for their release under such marks or numbers, either for consumption or for transportation in bond under an entry filed therefor at the port of discharge from the importing vessel, the collector may approve the application upon condition (1) that the contents of the packages be identified with an invoice or transportation entry as set forth below and (2) that the applicant furnish at his own expense any bonded cartage or lighterage service which the granting of the application may require. The application shall be in writing in such number of copies as may be required for local customs purposes. Before permitting delivery of packages under such an application, the collector shall cause such examination thereof to be made as will reasonably identify the contents with the invoice filed with the consumption entry. If the merchandise is entered for transportation in bond without the filing of an invoice, such examination shall be made as will reasonably identify the contents of the packages with the transportation entry.

(Secs. 448, 505, 46 Stat. 714, 732; 19 U.S.C. 1448, 1505)

§ 4.39 Stores and equipment of vessels and crews' effects; unlading or lading and retention on board.

(a) The provisions of § 4.30 relating to unlading under a permit on customs Form 3171 are applicable to the unlading of articles, other than cargo or baggage, which have been laden on a vessel outside the customs territory of the United States, regardless of the trade in which the vessel may be engaged at the time of unlading, except that such provisions do not apply to such articles which have already been entered.

(b) Any articles other than cargo or baggage landed for delivery for consumption in the United States shall be treated in the same manner as other imported articles.[75] A notation as to the landing of such articles, together with the number of the entry made therefor, shall be made on the vessel's store list, but such notation shall not subject the articles to the requirement of being included in a post entry to the manifest.

(c) Bags or dunnage constituting equipment of a vessel may be landed temporarily and reladen on such vessel under customs supervision without entry.

(d) Articles claimed to be sea or ships' stores which are in excess of the reasonable requirements of the vessel on which they are found shall be treated as cargo of such vessel.

(e) Under section 446, Tariff Act of 1930, collectors may permit narcotic drugs, except smoking opium, in reasonable quantities and properly listed as medical stores to remain on board vessels if satisfied that such drugs are adequately safeguarded and used only as medical supplies.

(f) Application for permission to transfer bunkers, stores, or equipment

cers whose services are required in connection with the unlading shall, for every day consumed in unlading in excess of twenty-five (25) days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel." (Tariff Act of 1930, sec. 458; 19 U. S. C. 1458)

[71] "• • • the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo 'for orders,' and within 15 days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered. • • •" (Tariff Act of 1930, sec. 431; 19 U. S. C. 1431)

[72] "• • • After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (h) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the enry of the vessel or report of the vehicle, unless a longer time is granted by the collector, as provided in section 484, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage until entry thereof is made." (Tariff Act of 1930, sec. 448 (a); 19 U. S. C. 1448 (a))

[73] "Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the collector, entry of such merchandise cannot be made for want of proper documents or other cause, or whenever the collector believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production." (Tariff Act of 1930, sec. 490 (a); 19 U. S. C. 1490 (a))

[74] See footnote 63, § 4.30.

[75] See footnote 58, § 4.30.

as provided for in the proviso to section 446, Tariff Act of 1930, shall be made and the permit therefor granted on customs Form 3171.

(Secs. 432, 446, 46 Stat. 710, 713; 19 U.S.C. 1432, 1446)

§ 4.40 Equipment, etc., from wrecked or dismantled vessels.

Ship's or sea stores, supplies, and equipment of a vessel wrecked either in the waters of the United States or outside such waters, on being recovered and brought into a United States port, and like articles landed from a vessel dismantled in a United States port shall be subject to the same customs treatment as would apply if the articles were landed from a vessel arriving in the ordinary course of trade. Parts of the hull and fittings recovered from a vessel which arrived in the United States in the course of navigation and was wrecked in the waters of the United States or was dismantled in this country are free of duties and import taxes, but if such articles are recovered from vessels outside the waters of the United States and brought into a United States port, they shall be treated as imported merchandise.

(Sec. 446, 46 Stat. 713; 19 U.S.C. 1446)

§ 4.41 Cargo of wrecked vessel.

(a) Any cargo landed from a vessel wrecked in the waters of the United States or on the high seas shall be subject at the port of entry to the same entry requirements and privileges as the cargo of a vessel regularly arriving in the foreign trade. In lieu of an inward foreign manifest to cover such cargo, the owner, underwriter (if the merchandise has been abandoned to him), or the salvor of the merchandise shall make written application for permission to enter the wrecked cargo, and any such applicant shall be regarded as the consignee of the merchandise for customs purposes."

(b) All such merchandise shall be taken into possession by the collector of the port in which it shall first arrive and be retained in his custody pending entry. If it is not entered by the person entitled to make entry, or is not disposed of pursuant to court order, it shall be subject to sale as unclaimed merchandise.

(c) If such merchandise is from a vessel which has been sunk in waters of the United States for 2 years or more and has been abandoned by the owner, any person who has salvaged the cargo shall be permitted to enter the merchandise in the district in which the vessel was wrecked free of duty upon the facts being established to the satisfaction of the collector at the port of entry." Any other such merchandise is subject to the same tariff classification as like merchandise regularly imported in the ordinary course of trade.

(d) If the merchandise is libeled for salvage,[77] the collector shall notify the United States attorney of the claim of the United States for duties, and request him to intervene for such duties.

(Secs. 310, 483, 46 Stat. 690, 721; 19 U.S.C. 1310, 1483)

PASSENGERS ON VESSELS

§ 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the United States from foreign territory and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connecting or tributary waters,[78] shall submit a passenger and crew list as required by § 4.7 (c). If the vessel is arriving from noncontiguous foreign territory and is carrying steerage passengers, the additional information respecting such passengers required by customs and immigration Form I–418 shall be included therein.

(b) A passenger within the meaning of this part, except § 4.51, is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business. (Sec. 9, 22 Stat. 189, as amended, sec. 431, 46 Stat. 710, as amended; 19 U.S.C. 1431, 46 U.S.C. 158)

§ 4.51 Examination of vessels with steerage passengers.

The collector (the surveyor at New York) of the port at which any vessel carrying steerage passengers arrives from noncontiguous foreign territory shall direct an officer to make an examination of the vessel and to admeasure the compartments or spaces occupied by passengers [85] other than cabin passengers during the voyage for the purpose of enforcing the Passenger Act of 1882 (46 U.S.C. 151–162). Such admeasurement shall be made in the manner provided by law for admeasuring vessels for tonnage. Such officer shall compare the number of passengers found on board with the list of passengers furnished on customs and immigration Form I–418 by the master to the collector and shall make a report on customs Form 1462 in duplicate to the collector (through the surveyor at New York) who shall forward one copy to the Commissioner of Customs.

(Sec. 11, 22 Stat. 190, as amended; 46 U.S.C. 160)

§ 4.52 Deaths of passengers.

The penalty of $50 provided for in section 10 of the Passenger Act of 1882 (46 U.S.C. 159) shall be imposed upon the master or agent of every vessel bringing steerage passengers from noncontiguous foreign territory unless there is paid to the collector, within 24 hours after the entry of the vessel, $10 for every death by natural disease which occurred on board the vessel among such passengers over 8 years of age during the voyage and prior to the arrival of the vessel within the collection district.

(Sec. 10, 22 Stat. 190; 46 U.S.C. 159)

FOREIGN CLEARANCES

§ 4.60 Vessels required to clear.

(a) Except as otherwise povided for in this section, every vessel bound for a foreign port or ports shall be cleared [90] for a definite port or ports in the order of its itinerary, but an application to clear for a port or place for orders, that is, for instructions to masters as to destination of the vessel, may be accepted if the vessel is in ballast or if any cargo on board is to be discharged in a port of the same country as the port for which clearance is sought.

(b) The following vessels are not required to clear:

(1) A licensed yacht or undocumented American pleasure vessel not engaged in trade nor in any way violating the customs or navigation laws of the United States.[90]

[76] "• • • The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees. • • •" (Tariff Act of 1930, sec. 483; 19 U. S. C. 1483)

[77] "Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, sec. 310; 19 U. S. C. 1310)

[77] Salvors have an uncertain interest in the goods salved, dependent upon the decree of a competent tribunal, and have a presumptive right without such decree to possession of merchandise salved by them from abandoned wrecks. The salvors are entitled in either case to make entry of derelict or wrecked goods.

[78] "Notwithstanding any provision of law to the contrary, no collector of customs shall require a master or owner of a vessel arriving, otherwise than by sea, at a port or place in the United States on the Great Lakes, or their connecting or tributary waters, from a port or place in the Dominion of Canada to furnish a list of passengers on board such vessel." (60 Stat. 882)

[85] For the purposes of this section and the Passenger Act of 1882, the term "passenger" has the meaning stated in § 4.50 (b), except that it does not include any person under 1 year of age nor any person picked up at sea, and two children between 1 and 8 years of age shall be counted as one passenger.

[90] "The master or person having the charge or command of any vessel bound to a foreign port shall deliver to the collector of the district from which such vessel is about to depart a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo, but without specifying the particulars thereof in the clearance, unless required by the master or other person having the charge or command of such vessel so to do. If any vessel bound to a foreign port (other than a licensed yacht or an undocumented American pleasure vessel not engaged in any trade nor in any way violating the customs or navigation laws of the United States) departs from any port or place in the United States without a clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person having the charge or command of such vessel shall be liable to a penalty of not more than $1,000 or less than $500, or if the

(2) Any vessel under frontier enrollment and license which during a voyage on the Great Lakes will touch at a foreign port only for taking on bunker fuel.[91] (See § 4.62.)

(3) A vessel exempted from entry by section 441, Tariff Act of 1930.[92] (See § 4.5.)

(4) A vessel of less than 5 net tons which departs from the United States to proceed to a contiguous country otherwise than by sea.

---

cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (sea stores excepted), a penalty of not more than $5,000 nor less than $1,000 for each offense, and the vessel shall be detained in any port of the United States until the said penalty is paid or secured: * * *" (46 U. S. C. 91)

"Whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or purser of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: *Provided*, That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels." (46 U. S. C. 91a) (For clearance via domestic ports, see § 4.87.)

[91] "Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees, as if from or to foreign ports; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of the Treasury may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel." (19 U. S. C. 288.)

[92] See footnote 5, § 4.3.

(c) For the purposes of the laws relating to clearance of vessels, the Canal Zone is foreign territory. The certificate of clearance on customs Form 1378 shall be modified by striking out "to a foreign port" and substituting "to the Canal Zone." Vessels which will merely transit the Canal Zone without transacting any business there shall not be required to be cleared because of such transit. A vessel under enrollment and license or license is permitted to trade with the Canal Zone.

(d) In the event that departure is delayed beyond the second day after clearance, the delay shall be reported within 72 hours after clearance to the collector who shall note the fact of detention on the certificate of clearance and on the official record of clearance. When the proposed voyage is canceled after clearance, the reason therefor shall be reported in writing within 24 hours after such cancellation and the certificate of clearance and related papers shall be surrendered.

(e) No vessel shall be cleared for the high seas.[93]

(R.S. 2793, as amended, 4197, as amended; 19 U.S.C. 288, 46 U.S.C. 91, 111, 123)

§ 4.61 Requirements for clearance.

(a) Application for clearance for a vessel intending to depart for a foreign port shall be made orally by or on behalf of the master at the customhouse. The master, licensed deck officer, or purser may appear in person to clear the vessel or the required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master. Clearance shall be granted on customs Form 1378.

(b) Before clearance is granted to a vessel bound to a foreign port the collector shall verify compliance with the requirements in respect of the following matters which are more fully stated in the provisions of law or of this part indicated in the list:

(1) Accounting for inward cargo (§ 4.62).
(2) Outward foreign manifests; shippers' export declarations (§ 4.63).
(3) Documentation (§ 4.64).
(4) Verification of nationality and tonnage (§ 4.65).
(5) Verification of inspection (§ 4.66).
(6) Inspection under State laws.[94]
(7) Closed ports or places (§ 4.67).
(8) Crew; passengers (§ 4.68).
(9) Shipping articles and enforcement of Seamen's Act (§ 4.69).
(10) Medicine and slop chests.[95]
(11) Load line regulations.[96]
(12) Carriage of United States securities, etc.[97]
(13) Carriage of mail.[98]
(14) Pratique (§ 4.70).
(15) Inspection of vessels carrying livestock (§ 4.71).
(16) Inspection of meat, meat-food products, and inedible fats (§ 4.72).
(17) Tobacco seed and plants.[99]
(18) Neutrality; exportation of arms and munitions (§ 4.73).
(19) Payment of State and Federal fees.[100]
(20) Orders restricting shipping (§ 4.74).

---

[93] Collectors may permit vessels to proceed to sea to adjust compasses, try out new machinery, clean tanks, etc., without requiring formal clearance.

[94] The collectors and other officers of the customs shall pay due regard to the inspection laws of the States in which they may respectively act, in such manner that no vessel having on board goods liable to inspection shall be cleared until the master, or other proper person, shall have produced such certificate that all such goods have been duly inspected, as the laws of the respective States may require to be produced to collectors or other officers of the customs." (46 U. S. C. 97)

[95] See 46 U. S. C. 666, 669, 670, and 671.

[96] See 46 U. S. C. ch. 2A and the Coast Guard Load Line Regulations.

[97] "All vessels belonging to citizens of the United States, and bound from any port in the United States to any other port therein, or to any foreign port, or from any foreign port to any port in the United States shall, before clearance, receive on board all such bullion, coin, United States notes and bonds and other securities, as the Government of the United States or any department thereof, or any minister, consul, vice consul, or other agent of the United States abroad, shall offer, and shall securely convey and promptly deliver the same to the proper authorities or consignees, on arriving at the port of destination; and shall receive for such service such reasonable compensation as may be allowed to other carriers in the ordinary transactions of business." (46 U. S. C. 98)

[98] See § 4.63 (b), 18 U. S. C. 1724, and 39 U. S. C. 496.

[99] "It shall be unlawful to export any tobacco seed and/or live tobacco plants from the United States or any Territory subject to the jurisdiction thereof, to any foreign country, port, or place, unless such exportation and/or transportation is in pursuance of a written permit granted by the Secretary of Agriculture. Such permit shall be granted by the Secretary only upon application therefor and after proof satisfactory to him that such seed or plants are to be used for experimental purposes only." (7 U. S. C. 516)

[100] "Previous to a clearance being granted to any vessel, outward bound, the legal fees which shall have accrued on such vessel shall be paid at the offices where such fees are respectively payable; and receipts for the same shall be produced to the collector or other officer whose duty it may be to grant clearances, before a clearance is granted." (46 U. S. C. 100)

[101] "It shall be unlawful for any vessel belonging to or operating under the jurisdiction of any foreign state to use the flag of the United States thereon, or to make use of any distinctive signs or markings, indicating that the same is an American vessel." (22 U. S. C. 454a)

(c) A new vessel built in the United States for foreign account shall be cleared under a certificate of record, customs Form 1316, in lieu of a marine document.

(d) Clearance shall not be granted to any foreign vessel using the flag of the United States or any distinctive signs or markings indicating that the vessel is an American vessel.[101]

§ 4.62 Accounting for inward cargo.

Inward cargo discrepancies shall be accounted for and adjusted by correction of the manifest, but the vessel may be cleared and the adjustment deferred if the discharging officer's report has not been received. (See § 4.12.)

§ 4.63 Outward foreign manifest; shippers' export declarations.

(a) No vessel shall be cleared for a foreign port unless there has been filed with the collector a manifest on customs Form 1374 covering the complete lading of the vessel, together with such export declarations as are required by pertinent regulations of the Bureau of the Census, Department of Commerce, or unless the vessel is cleared on the basis of a pro forma manifest (customs Form 1375) as provided for in § 4.75.

(b) The list of cargo may be shown on bills of lading attached to the manifest, provided the manifest is completely executed on customs Form 1374, except for particulars as to cargo; and provided also that the bills of lading are securely attached to that form in such manner as to constitute one document; that they are incorporated by suitable reference on the face of the form, such as "Cargo as per bills of lading attached"; and that there is shown on the face of each bill the information required by customs Form 1374 for the cargo covered by that bill.

(c) For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the outward manifest or bill of lading attached to the manifest and made a part thereof in accordance with paragraph (b) of this section shall clearly show for such shipment the number, date, and class of such customs entry or withdrawal (i. e., T. & E., Wd. T. & E., I. E., Wd. Ex., or Wd. T., as applicable) and the name of the port where the entry or withdrawal was filed if other than the port where the merchandise is laden for exportation.

(d) The master's oath on customs Form 1374 shall be properly executed before the manifest is accepted.

(R.S. 4197, as amended, 4200, as amended, 4198, 4199, 48 Stat. 663; 46 U.S.C. 91–94)

§ 4.64 Documentation.

No clearance shall be granted to any vessel of the United States bound to a foreign port or place [102] unless it is under register or frontier enrollment and license.

(R.S. 4337; 46 U.S.C. 278)

§ 4.65 Verification of nationality and tonnage.

The nationality and tonnage of a vessel shall be verified by examination of its marine document. If such examination discloses that insufficient tonnage tax was collected on entry of the vessel, no clearance shall be granted until the deficiency is paid.

§ 4.66 Verification of inspection.

(a) No clearance shall be granted unless the collector is satisfied that a proper certificate of inspection is in force and the vessel is in compliance with such certificate, if the vessel is:

(1) A vessel of the United States required to be inspected, as specified in § 3.54 of this chapter;

(2) A foreign vessel carrying passengers from the United States; or

(3) A foreign sea-going motor vessel of 300 gross tons or over carrying passengers from the United States.

(b) In the case of vessels of foreign nations which are signatories of the International Convention for the Safety of Life at Sea, 1948, an unexpired safety certificate issued or recognized under the authority of that Convention may be accepted in lieu of a certificate of inspection.

(R.S. 4496; 46 U.S.C. 494)

§ 4.67 Closed ports or places.

No foreign vessel shall be granted a clearance or permit to proceed to any port or place from which such vessels are excluded by orders or regulations of the United States Navy Department except with the prior approval of that Department.

§ 4.68 Crew; passengers.

(a) No vessel to which R.S. 4573 applies shall be granted final clearance for a foreign port or a whaling voyage until a crew list is presented to the collector in duplicate on customs and immigration Form I–418. The collector shall certify the duplicate copy and return it to the master.

(b) No vessel shall be granted a clearance while it has on board any citizen of the United States except in accordance with the rules and regulations prescribed by the Secretary of State pursuant to Proclamation 2523 issued by the President on November 14, 1941 (3 CFR, 1943 Cum. Supp.).

(R.S. 4573; 46 U.S.C. 674)

§ 4.69 Shipping articles and enforcement of Seamen's Act.

No vessel of the United States bound for a foreign port outside the British North American possessions, the West Indies, and Mexico shall be granted final clearance until there has been presented to the collector at the port of final departure the shipping articles of the vessel executed before a shipping commissioner on coast guard Form 705, 705–A, or 705–B; nor shall any vessel, bound for a foreign port, be granted final clearance until the collector is satisfied that there has been full compliance with the pertinent requirements of sections 11 and 13 of the Seamen's Act of March 4, 1915 (46 U.S.C. 599, 672), and the coast guard regulations issued thereunder, relating to allotments of wages, the language test, and the crew.

§ 4.70 Pratique.

No clearance shall be granted to a vessel subject to the foreign quarantine regulations of the Public Health Service unless it has been issued a certificate of free pratique or has been remanded to another port in the United States.

§ 4.71 Inspection of vessels carrying livestock.

A proper notice of inspection by the Bureau of Animal Industry, Department of Agriculture, shall be filed before the clearance of a vessel carrying horses, mules, asses, cattle, sheep, swine, or goats.

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) No clearance shall be granted to any vessel carrying meat or meat-food products, as defined and classified by the Meat Inspection Division, Department of Agriculture, until there have been filed with the collector such copies of export certificates concerning such meat or meat-food products as are required by the pertinent regulations of the Meat Inspection Division, Department of Agriculture (9 CFR, Parts 24 and 29).

(b) No clearance shall be granted to any vessel carrying tallow, stearin, oleo oil, or other rendered fat derived from cattle, sheep, swine, or goats for export from the United States, which has not been inspected, passed, and marked by the United States Department of Agriculture, unless the collector is furnished with a certificate by the exporter that the article is inedible.

§ 4.73 Neutrality; exportation of arms and munitions.

(a) Clearance shall not be granted to any vessel if the collector has reason to believe that her departure or intended voyage would be in violation of any provision of the Neutrality Act of 1939 or other neutrality law of the United States,[104] or of any regulation or instruction issued pursuant to any such law.

(b) The collector shall refuse clearance for and detain any vessel manifestly built for warlike purposes and about to depart from the United States with a cargo consisting principally of arms and munitions of war [105] when the number of men intending to sail or other circumstances render it probable that the vessel is intended to commit hostilities against the subjects, citizens, or property or any foreign country with which the United States is at peace, until the decision of the President thereon is received, or until the owners shall have given bond or security in double the value of the vessel and its cargo that she will not be so employed.

(c) A collector shall promptly communicate all the facts to the Bureau if he learns while the United States is at peace that any vessel of a belligerent power which has arrived as a merchant vessel is altering, or will attempt to alter, her status as a merchant vessel so as to become an armed vessel or an auxiliary to armed vessels of a foreign power.

(d) If a collector has reason to believe during the existence of a war to which the United States is not a party that any vessel in his district is about to carry arms, munitions, supplies, dispatches, information, or men to any warship or tender or supply ship of a belligerent nation, he shall withhold the clearance of such vessel and report the facts promptly to the Bureau.

§ 4.74 Transportation orders.

Clearance shall not be granted to any vessel if the collector has reason to believe that her departure or intended voyage would be in violation of any provision of any transportation order, regulation, or restriction issued under authority of the Defense Production Act of 1950 (50 U.S.C. App. 2061–2066).

(R.S. 4197, as amended, 4200, as amended; 46 U.S.C. 91, 92)

§ 4.75 Incomplete manifest; incomplete export declarations; bond.

(a) If a master desiring to clear his vessel for a foreign port does not have available for filing with the collector a complete cargo manifest [106] or all required

---

[102] A vessel of the United States may be cleared for Guantanamo Bay Naval Station or the Canal Zone under enrollment and license or license.

[104] See 18 U. S. C. 961–967 and 22 U. S. C. 441–457.

[105] Clearance for vessel shall not be denied for the sole reason that her cargo contains contraband of war.

[106] "* * * *Provided*, That in order that the commerce of the United States may move with expedition and without undue delay, the Secretary of the Treasury is hereby au-

shippers' export declarations,[107] the collector may accept in lieu thereof a proforma manifest on customs Form 1375 if there is on file in his office a bond on customs Form 7567 or 7569 executed by the vessel owner or some other person as attorney in fact of the vessel owner.

thorized to make regulations permitting the master of any vessel taking on cargo for a foreign port or for a port in noncontiguous territory belonging to the United States to file a manifest as hereinbefore provided, and if the manifest be not a complete manifest and it so appears upon such manifest, the collector of customs may grant clearance to the vessel in the case of an incomplete manifest, taking from the owner of the vessel, who may act in the premises by a duly authorized attorney in fact, a bond with security approved by the collector of customs, in the penal sum of $1,000, conditioned that the master or someone for him will file a completed outward manifest not later than the fourth business day after the clearance of the vessel. In the event that the said complete outward manifest be not filed as required by the provisions of this section and the regulations made by the Secretary of the Treasury in pursuance hereof, then a penalty of $50 for each day's delinquency beyond the allowed period of four days for filing the completed manifest shall be exacted, and if the completed manifest be not filed within the three days following the four-day period, then for each succeeding day of delinquency a penalty of $100 shall be exacted. Suit may be instituted in the name of the United States against the principal and surety on the bond for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond." (46 U. S. C. 91)

[107] "* * * *Provided*, That in order that the commerce of the United States may move with expedition and without undue delay, the Secretary of the Treasury is hereby authorized to make regulations permitting the clearance of a vessel having on board cargo destined to a foreign port or to a port in noncontiguous territory belonging to the United States, before delivery to the collector of customs of shippers' manifests or export declarations of the cargo laden on board, upon receipt by the collector of a bond with security approved by him in the penal sum of $1,000, conditioned that the complete shippers' manifests or export declarations of all cargo laden aboard such vessel shall be filed with him not later than the fourth business day after the clearance of the vessel. In the event that all of the shippers' manifests or export declarations are not filed as required by the provisions of this section and the regulations made by the Secretary of the Treasury in pursuance hereof, then a penalty of $50 for each day's delinquency beyond the allowed period of four days for filing all of the shippers' manifests or export declarations shall be exacted, and if all of the shippers' manifests or export declarations are not filed within the three days following the four-day period, then for each succeeding day of delinquency, a penalty of $100 shall be exacted. Suit may be instituted in the name of the United States against the principal and surety on the bond for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond." (46 U. S. C. 92)

(b) Not later than the fourth business day after clearance[108] from each port in the vessel's itinerary, the master, or the vessel's agent on behalf of the master, shall deliver to the collector at each such port a complete manifest (customs Form 1374) of the cargo laden at such port together with duplicate copies of all required shippers' export declarations for such cargo. The oath of the master or agent on customs Form 1374 shall be properly executed before acceptance. See § 4.63 (b) as to the preparation of outward manifests.

(c) During any period covered by a finding by the President under section 1 of the act of June 15, 1917, as amended (50 U. S. C. 191), that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States, no vessel shall be cleared for a foreign port until a complete outward foreign manifest and all required export declarations have been filed with the collector, unless clearance in accordance with paragraphs (a) and (b) of this section is authorized by the Commissioner of Customs.

(R.S. 4197, as amended, 4200, as amended; 46 U.S.C. 91, 92)

CROSS REFERENCE: For authorization of clearances in accordance with § 4.75 (a) and (b) pursuant to § 4.75(c), see T.D. 52676 (16 F.R. 1961) and T.D. 55259 (25 F.R. 10782).

COASTWISE PROCEDURE

§ 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, unless it is:

(1) Owned by a citizen, as defined in § 3.19 (a) and (b) of this chapter, and is so documented under the laws of the United States as to permit it to engage in the coastwise trade; or

(2) Owned by a citizen, as defined in § 3.19 (a) and (b) of this chapter, is exempt from documentation,[109] and is entitled to or, except for its tonnage, would be entitled to be enrolled and licensed or licensed for the coastwise trade; or

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be enrolled and licensed or licensed for the coastwise trade. (See § 3.19 (d) of this chapter.)

(b) Any vessel of the United States, whether or not entitled under paragraph (a) of this section to engage in the coastwise trade, and any foreign vessel may proceed between points in the United States embraced within the coastwise laws to discharge cargo or passengers laden at a foreign port, to lade cargo or passenger for a foreign port, or in ballast. Cargo laden at a foreign port may be retained on board during such movements.

(c) No vessel owned by a corporation which is a citizen of the United States as defined in § 3.19(a)(4) of this chapter shall be used in any trade other than the coastwise trade and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to be enrolled and licensed or licensed for the coastwise trade. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or subsidiary corporation as defined in § 3.1 (h) or (i) of this chapter or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to part III of the Interstate Commerce Act, as amended (49 U.S.C. 901–923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

(R.S. 4311, as amended, sec. 2, 39 Stat. 729, as amended, sec. 27, 41 Stat. 999, as amended, 72 Stat. 1736; 46 U.S.C. 251, 802, 883, 883–1)

[108] The statutory grace period of 4 days for filing the complete manifest and missing export declarations begins to run on the first day (exclusive of any day on which the customhouse is not open for marine business) following the date on which clearance is granted.

[109] "No merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by section 13 or 808 of this title: * * * *Provided further*, That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Inter-State Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further*, That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the United States Maritime Commission shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: * * *." (46 U. S. C. 883)

"If any merchandise is laden at any port or placed in the United States upon any vessel belonging wholly or in part to a subject of a foreign country, and is taken thence to a foreign port or place to be reladen and reshipped to any other port in the United States, either by the same or by another vessel, foreign or American, with intent to evade the provisions relating to the transportation of merchandise from one port or place of the United States to another port or place of the United States in a vessel belonging wholly or in part to a subject of any foreign power, the merchandise shall, on its arrival at such last-named port or place, be seized and forfeited to the United States, and the vessel shall pay a tonnage duty of 50 cents per net ton." (Tariff Act of 1930, sec. 588; 19 U. S. C. 1588)

(See § 3.5 of this chapter for vessels exempt from documentation.)

§ 4.81 Reports of arrivals and departures in coastwise trade.

(a) No vessel which is enrolled and licensed or licensed for the coastwise trade, registered, or owned by a citizen and exempt from documentation, and which is in ballast or laden only with domestic products or passengers being carried only between points in the United States shall be required to report arrival or to enter when coming into one port of the United States from any other such port, except as provided in §§ 4.83 and 4.84, nor to obtain a clearance or permit to proceed when going from one port in the United States to any other such port except a port in noncontiguous territory.[111]

(b) When the facts are as above stated except that the vessel is carrying bonded merchandise, the master shall report its arrival as provided for in § 4.2.

(c) The master of a registered vessel operating within the purview of this section shall deposit the vessel's register with the collector upon arrival at each port in the United States. The register shall be carefully examined to determine whether the vessel is entitled to engage in the coastwise trade, and shall be returned to the master upon the departure of the vessel.

(d) The traveling crew purchase manifest (curio list) referred to in § 4.85 (b), (c), and (e) shall be deposited with the collector upon arrival at each port in the United States and finally surrendered to the boarding officer or collector at the port where the vessel first departs directly for a foreign port.

(e) Before any foreign vessel shall depart in ballast from any port in the United States for any other such port, the master shall apply to the collector for a permit to proceed and file his declaration in duplicate on customs Form 1385 (subdivision (1) (e)). When the collector grants the permit on subdivision 2 of Form 1385, the duplicate copy of the form shall be returned to the master. The traveling crew purchase manifest (curio list) shall be placed in a sealed envelope addressed to the customs boarding officer at the next domestic port of call and returned to the master for delivery. Within 24 hours after arrival at the second port in the United States, the master shall report his arrival to the collector and shall make entry within 48 hours by filing with the collector the permit to proceed with his declaration executed on subdivision 3 of the form, a list in duplicate of all unentered articles acquired abroad by the officers and members of the crew of the vessel which are still on board and of the stores remaining on board, and the document of the vessel. The traveling crew purchase manifest (curio list) returned by the prior port of call to the master shall be delivered by him to the boarding officer.

(f) The master, licensed deck officer, or purser who enters or clears a vessel under the provisions of this section or of §§ 4.82, 4.84, 4.85, 4.87, 4.89, or 4.91 may appear in person at the customhouse for that purpose or the required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(R. S. 4132, as amended, 4311, as amended, 4367, 4368, sec. 27, 41 Stat. 999, as amended, secs. 433, 439, 442, 443, 444, 486, 46 Stat. 711, as amended, 712, as amended, 713, 725, as amended; 19 U. S. C. 1433, 1439, 1442, 1443, 1444, 1486, 46 U. S. C. 11, 251, 313, 314, 883)

§ 4.82 Touching at foreign port while in coastwise trade.

(a) A vessel under unlimited register or frontier enrollment and license which, during a voyage between ports in the United States, touches at one or more foreign ports and there discharges or takes on merchandise, passengers, baggage, or mail[112] shall obtain a permit to proceed or clearance at each port of lading in the United States for the foreign port or ports at which it is intended to touch. The outward foreign manifest shall show only the cargo for foreign destination. (See §§ 4.61 and 4.87.)

(b) The master shall also present to the collector a coastwise manifest in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the United States. It shall describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The collector shall certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry and manifest, customs Form 7512, shall not be shown on the coastwise manifest.

(c) Upon arrival from the foreign port or ports at the subsequent port in the United States, a report of arrival and entry of the vessel shall be made, and tonnage taxes shall be paid unless the vessel is under a frontier enrollment and license. The master shall present inward foreign manifests in accordance with § 4.7 and the certified copies of the coastwise manifest.

(d) All merchandise on the vessel upon its arrival at the subsequent port in the United States is subject to such customs examination and treatment as may be necessary to protect the revenue. Any article on board which is not identified to the satisfaction of the collector, by the coastwise manifest or otherwise, as part of the coastwise cargo, shall be treated as imported merchandise.[113]

(R.S. 2793, as amended, 3126, 3127, 4318, as amended; 19 U.S.C. 293, 294, 46 U.S.C. 123, 258)

§ 4.83 Trade between United States ports on the Great Lakes and other ports of the United States.

(a) If a vessel proceeding from or to a port of the United States on the Great Lakes to or from any other port of the United States via the St. Lawrence River (see § 3.41 of this chapter) is intended to touch at any foreign port and does so touch, it will be subject to the usual requirements for manifesting, clearing, report of arrival, entry, payment of fees for entry and clearance, and tonnage taxes.

(b) A vessel in the coastwise trade only, which is proceeding from or to a port of the United States on the Great Lakes via the Hudson River and otherwise than by sea, may operate under enrollment and license or frontier enrollment and license and shall not be subject to the requirements for clearance, report of arrival, or entry.

(R. S. 4197, as amended, 4200, as amended, 32 Stat. 172, as amended, R. S. 2793, as amended, 4318, as amended; 46 U. S. C. 91, 92, 95, 111, 123, 258)

§ 4.84 Trade with noncontiguous territory.

(a) No vessel shall depart from a port in noncontiguous territory of the United States for any other port in such territory or for any port in the continental United States, nor from any port in the continental United States for any port in such territory, until a clearance for the vessel has been granted, except that clearance is not required for a vessel departing from a port in Alaska or Hawaii for any port in any noncontiguous territory of the United States or in the continental United States or for a vessel departing from a port in any such territory or in the continental United States for a port in Alaska or Hawaii.[114] Such clearance shall be granted in accordance with the applicable provisions of § 4.61, except that the customs Form 1378 shall be modified by

[111] See § 4.84.

[112] "Any vessel, on being duly registered in pursuance of the laws of the United States, may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers and their baggage, and letters, and mails. All such vessels shall be furnished by the collectors of the ports at which they shall take in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages, by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed." (19 U. S. C. 293)

[113] "Any foreign merchandise taken in at one port of the United States to be conveyed in registered vessels to any other port within the same, either under the provisions relating to warehouses, or under the laws regulating the transportation coastwise of merchandise entitled to drawback, as well as any merchandise not entitled to drawback, but on which the import duties chargeable by law shall have been duly paid, shall not become subject to any import duty by reason of the vessel in which they may arrive having touched at a foreign port during the voyage." (19 U. S. C. 294)

[114] For clearance via domestic ports, see § 4.87.

striking out "to a foreign port" and substituting "to noncontiguous territory of the United States" or "to the United States," as the case may be, unless the vessel is simultaneously engaged in one or more of the transactions listed in § 4.90 (a) (2), (4), (5), and (6). In the latter case clearance shall be granted only on customs Form 1385. (See § 4.90 (b).)

(b) The master of every foreign vessel arriving at any port in the United States or its noncontiguous territory from any port in such territory to which the coastwise laws do not apply, or arriving at any port in noncontiguous territory of the United States to which the coastwise laws do not apply from any port embraced within the coastwise laws, shall report its arrival within 24 hours and make entry for the vessel within 48 hours after its arrival.

(c) The master of a vessel of the United States arriving at any port within the customs territory of the United States from any port in noncontiguous territory outside its customs territory shall report its arrival within 24 hours and shall prepare, produce, and file manifests in the form and manner and at the times specified in §§ 4.7 and 4.9 but shall not be required to make entry. If such a vessel proceeds to subsequent ports in the United States, the master shall prepare, produce, and file manifests in the form and manner and at the times specified in § 4.85, but no permit to proceed shall be required. No cargo shall be unladen from any such vessel until manifests have been filed and a permit to unlade has been issued in accordance with the procedure outlined in § 4.30.

(d) No vessel shall bring guano to the United States from a guano island appertaining to the United States (see 48 U.S.C. 1411), unless such vessel is entitled to engage in the coastwise trade.

(e) No vessel owned by a corporation which is a citizen of the United States as defined in § 3.19(a)(4) of this chapter shall be granted any clearance under this paragraph in trade with noncontiguous territory or the Canal Zone while under demise or bareboat charter from such corporation.

(R.S. 4197, as amended, 4200, as amended, 32 Stat. 172, 72 Stat. 1736; 46 U.S.C. 91, 92, 95, 883–1)

§ 4.85 Vessels with residue cargo for domestic ports.

(a) Any foreign vessel or vessel of the United States under register or frontier enrollment and license, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port provided a vessel bond (customs Form 7567 and 7569) in a suitable amount is on file with the collector at the port of first entry.[115]

(b) Before a vessel proceeds from one domestic port to another with cargo or passengers on board as described in the preceding paragraph, the master shall present to the collector at such port of departure an application in triplicate on customs Form 1385 with subdivision 1 properly executed as an application for a permit to proceed to the next port of call. Each application shall be accompanied by customs Form 3221, Certificate on Vessel Proceeding to Another Port With Foreign Cargo, in duplicate (in triplicate at the first port on the opposite coast when the optional port of delivery procedure provided for by § 4.86 has been followed), with the information called for by the form shown thereon in conformity with the data shown on the oath filed at the first port of entry by the master on customs Form 3251 (see § 4.9 (a)). However, at subsequent ports of departure, the required certificate on customs Form 3221 may bear the following notation in lieu of showing foreign ports and dates of departure therefrom:

For foreign ports and dates of departure therefrom, see attached Form 3221 issued at ----------, the first domestic port of entry. These movements shall be recorded as foreign transactions.

Upon the execution of subdivision 2 of Form 1385 as a permit to proceed, the second and third copies thereof shall be returned to the master for filing at the next domestic port of call. There shall also be returned to the master the vessel's document, if on deposit and a copy of the complete inward foreign manifest of the vessel certified at the first port of entry (referred to hereinafter as the traveling manifest),[116] to which shall be attached one of the copies of each certificate on Form 3221, signed by the collector at the port of issuance. If no inward foreign cargo or passengers are to be discharged at the next port of call, that fact shall be indicated on customs Forms 1385 and 3221 by inserting after the name of the port to which the vessel is to proceed the phrase to "load only" in parentheses. The name of that port will not appear in section (a) of subdivision 1 of Form 1385 or in the list of ports for which cargo or passengers are destined in the body of Form 3221. The part of the traveling manifest, which covers articles acquired abroad by the officers and members of the crew (curio list), together with the unused crew declarations prepared for such articles, shall be placed in a sealed envelope addressed to the customs boarding officer at the next port of call and given to the master of the vessel for delivery.

(c) Upon the arrival of a vessel at the next and each succeeding domestic port with inward foreign cargo or passengers still on board, the master shall report arrival and shall make entry within 24 hours. To make such entry subdivision 3 of customs Form 1385 received by the master on clearance from the preceding port shall be completely executed by him and both copies thereof presented to the collector. The master shall also present to the collector the master's oath on customs Form 3251, the traveling manifest with the certificates on Form 3221 signed by the collectors at the preceding ports,[117] a manifest (in such number of copies as may be required for local customs purposes) of any cargo or passengers on board manifested for discharge at that port (referred to hereinafter as an abstract manifest), or a "pro forma" manifest if no inward foreign cargo or passengers are to be discharged at that port, and lists in duplicate of all unentered articles acquired abroad by the officers and members of the crew which are still on board and of the stores remaining on board. The traveling crew purchase manifest (curio list), together with the crew declarations, furnished by the prior port of call to the master shall be delivered by him to the boarding officer. In the case of a vessel arriving at the first port on the coast with cargo manifested on the opposite coast as being for optional ports of delivery as provided for by § 4.86, a manifest in original only of all inward foreign cargo remaining on board with the ports of actual intended discharge designated shall be furnished by the master on entering his vessel. The traveling manifest shall serve the purpose of a copy of an abstract manifest at the port where it is finally surrendered. The abstract or "pro forma" manifest shall be ready for presentation to the customs boarding officer upon the arrival of the vessel at the port. The "pro forma" manifest shall be on customs Form 7527–A or B bearing the following legend:

Vessel on an inward foreign voyage with residue cargo for ----------. No cargo or passengers for discharge at this port.

No additional vessel bond on customs Form 7567 or 7569 need be filed at subsequent ports of entry.

(d) If any error or omission in the preparation of the Form 3221 is discovered after clearance of the vessel from the port of first arrival, it shall be corrected by the master or agent of the vessel by filing a supplemental oath on customs Form 3251 with the collector at the port where the error or omission is first discovered. That collector shall notify the collector at any preceding port of the correction and forward the supplemental oath to the collector at the port of first arrival.

(e) The original traveling manifest, together with the signed certificates on customs Form 3221 which were attached thereto at preceding domestic ports of call, shall be finally surrendered to the collector at the port of final discharge in the United States of inward foreign cargo for which a substitute traveling manifest has not been issued under § 4.34 (e) for retention in the collector's files, unless residue foreign cargo remains on board for discharge at a foreign port or ports, in which case the original traveling manifest shall be so surrendered to the collector at the final port of departure from the United States with any such cargo on board, regardless of whether the vessel proceeds to an intermediate foreign port under § 4.89. The traveling crew purchase manifest (curio list) shall be finally surrendered to the boarding officer or collector at the port where the vessel first departs directly for a foreign port.

(Sec. 439, 442, 443, 444, 623, 46 Stat. 712 as amended, 713, 759, as amended; 19 U.S.C. 1439, 1442, 1443, 1444, 1623)

§ 4.86 Intercoastal residue-cargo procedure; optional ports.

(a) When a vessel arrives at an Atlantic or Pacific coast port from a foreign port with cargo for delivery at optional ports on the opposite coast and the master, owner, or agent is unable at that time to designate the specific port or ports of discharge, the manifest filed on entry shall show all such optional ports of discharge. The traveling manifest shall show all the optional ports of delivery. Upon arrival at the first port on the opposite coast, the privilege of optional port of delivery expires and the master, owner, or agent shall then designate the port or ports where the residue cargo is to be discharged as required by section 431, Tariff Act of 1930. For this purpose, a manifest in original only of all inward foreign cargo remaining on board with the ports of actual intended discharge designated shall be furnished by the master along with the other documents required on entry of his vessel. The traveling manifest shall be amended to show the designated ports of discharge and shall be used to verify the abstract manifests surrendered at subsequent ports.

(b) On clearance from the first and each succeeding port on the second coast, the certificate on customs Form 3221 shall show the actual ports of discharge as determined at the first port.

(c) The names of the ports of destination, as designated at the first port of arrival on the second coast, shall be reported to the collector at the port of first arrival on the first coast by endrosement on a certified copy of the complete inward foreign manifest which shall be forwarded by the agent of the vessel.

(Secs. 442, 443, 444, 46 Stat. 713; 19 U.S.C. 1442, 1443, 1444)

§ 4.87 Vessels proceeding foreign via domestic ports.

(a) Any foreign vessel or vessel of the United States under register or frontier enrollment and license may proceed from port to port in the United States to lade cargo or passengers for foreign ports.

(b) When applying for a clearance upon the first and each succeeding port of lading, from the United States, the master of the vessel shall present to the collector a manifest on customs Form 1374 of all the cargo laden for export at that port. It shall indicate clearly all previous ports of lading.

(c) The application for permit to proceed shall be submitted in duplicate on customs Form 1385 with subdivision 1 completely executed. Upon compliance with the applicable provisions of § 4.61 of these regulations, the collector shall execute subdivision 2 of Form 1385 and return one copy to the master, together with the vessel's document if on deposit. The traveling crew purchase manifest (curio list), together with any unused crew declarations, shall be placed in a sealed envelope addressed to the customs boarding officer at the next domestic port of call and returned to the master of the vessel for delivery.

(d) On arrival at the next and each succeeding domestic port, the master shall report arrival within 24 hours. He shall also make entry within 48 hours by presenting the vessel's document, the permit to proceed on customs Form 1385 received by him upon clearance from the last port, and duplicate lists of all unentered articles acquired abroad by the officers and crew of the vessel which are still retained on board and of the stores on board. Subdivision 3 of the Form 1385 shall be completely executed upon delivery to the collector. The traveling crew purchase manifest (curio list) together with any unused crew declarations returned by the prior port of call to the master shall be delivered by him to the boarding officer.

(e) Clearance shall be granted at the final port of departure from the United States in accordance with § 4.61.

(f) If a complete manifest or all required export declarations are not available for filing at any port, clearance on customs Form 1385 (Form 1378 at the last port) may be garnted in accordance with § 4.75, subject to the limitation in paragraph (c) of that section.

(g) When the procedure outlined in paragraph (f) of this section is followed at any port, the owner or agent of the vessel shall deliver to the collector at that port within 4 business days after the vessel's clearance from that port[118] a manifest on customs Form 1374 and the export declarations to cover the cargo laden for export at that port.

(R. S. 4197, as amended, 4200, as amended, 4367, 4368, secs. 433, 435, 437, 439, 442, 443, 444, 46 Stat. 711, as amended, 712, as amended, 713; 19 U. S. C. 1433, 1435, 1437, 1439, 1442, 1443, 1444, 46 U. S. C. 91, 92, 313, 314)

§ 4.88 Vessels with residue cargo for foreign ports.

(a) Any foreign vessel or vessel of the United States under register or frontier enrollment and license which arrives at a port in the United States from a foreign port shall not be required to unlade any merchandise manifested for a foreign destination provided a vessel bond (customs Form 7567 or 7569) in a suitable amount is on file with the collector at the port of first entry.[119]

(b) The collector shall designate the items of such merchandise, if any, for which foreign landing certificates[120] will be required.

(c) If the vessel clears directly foreign from the first port of arrival, the outward foreign manifest shall describe each item of the cargo from a foreign port which has been retained on board.

(d) If the vessel is proceeding to other ports in the United States with foreign residue cargo on board manifested for discharge at a foreign port or ports, a procedure like that set forth in § 4.85 shall be followed with respect thereto.

(Secs. 442, 622, 623, 46 Stat. 713, 759, as amended; 19 U.S.C. 1442, 1622, 1623)

§ 4.89 Vessels in foreign trade proceeding via domestic ports and touching at intermediate foreign ports.

(a) A vessel proceeding from port to port in the United States in accordance with §§ 4.85, 4.86, or 4.87 may touch at an intermediate foreign port or ports to lade or discharge cargo or passengers. In such a case the vessel shall obtain clearance from the last port of departure in the intermediate foreign port or ports at the United States before proceeding to which it is intended to touch. The outward foreign manifest shall show the cargo for such foreign destination.

(b) The master shall also present to the collector the manifest or manifests required by §§ 4.85, 4.86, or 4.87, and obtain a permit to proceed to the next port in the United States at which the vessel will touch.

(c) Upon arrival at the next port in the United States after touching at a foreign port or ports a report of arrival and entry shall be made. The inward foreign manifest shall list the cargo laden at the intermediate foreign port or ports.

(d) The master shall also present to the collector the permit to proceed and the manifests from the last previous port

[115] "• • • Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unlading thereof." (Tariff Act of 1930, sec. 442; 19 U. S. C. 1442)

[116] "Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the collector a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board." (Tariff Act of 1930, sec. 443; 19 U. S. C. 1443)

"If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the collector at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than $500." (Tariff Act of 1930, sec. 445; 19 U. S. C. 1445)

[117] "Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the collector at such port and shall produce the permit issued by the collector at the port of first arrival, together with the certified copy of his manifest." (Tariff Act of 1930, sec. 444; 19 U. S. C. 1444)

[118] See footnotes 106 and 107.

[119] "Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this Act, proceed to such foreign port of destination with the cargo so destined therefor, without unlading the same and without the payment of duty thereon. • • •" (Tariff Act of 1930, sec. 442; 19 U. S. C. 1442)

[120] "The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue." (Tariff Act of 1930, sec. 622; 19 U. S. C. 1622)

in the United States as provided for in §§ 4.85, 4.86, or 4.87.

§ 4.90 Simultaneous vessel transactions.

(a) A vessel may proceed from port to port in the United States for the purpose of engaging in two or more of the following transactions simultaneously,[121] subject to the limitations hereafter mentioned in this section and the conditions stated in the sections indicated in the list:

(1) Coastwise trade (§ 4.80).
(2) Touching at a foreign port while in coastwise trade (§ 4.82).
(3) Trade with noncontiguous territory of the United States (§ 4.84).
(4) Carriage of residue cargo or passengers from foreign ports (§§ 4.85–4.86).
(5) Carriage of cargo or passengers laden for foreign ports (§ 4.87).
(6) Carriage of residue cargo for foreign ports (§ 4.88).

(b) When a vessel is engaged simultaneously in two or more such transactions, the master shall indicate each type of transaction in which the vessel is engaged in his application for clearance on subdivision 1 of customs Form 1385. The master shall conform simultaneously to all requirements of these regulations with respect to each transaction in which the vessel is engaged.

(c) A foreign vessel is not authorized by this section to engage in the coastwise trade, including trade with noncontinguous territory embraced within the coastwise laws.

(d) A vessel of the United States may engage in transactions (2), (4), (5), or (6) only if under register or frontier enrollment and license. Such a vessel shall not engage in transactions (1) or (3) unless permitted by its register or frontier enrollment and license so to do.

(e) When one vessel bond on customs Form 7567 or 7569 is filed at any port and applicable to the current voyage of the vessel, it shall cover all simultaneous transactions engaged in on that voyage and no other like bond need be filed.

[121] For the purposes of this part, an inward foreign voyage is completed at the port of final discharge of inbound passengers or cargo, and an outward foreign voyage begins at the port where cargo or passengers are first laden for carriage to a foreign destination.

§ 4.91 Diversion of vessel; transshipment of cargo.

(a) If any vessel cleared from one port in the United States for another such port as provided for in §§ 4.81(e), 4.85, 4.87, or 4.88 is, while en route, diverted to a port in the United States other than the one specified in the permit to proceed, customs Form 1385,[122] the owner or agent of the vessel immediately shall give notice of the diversion to the collector who granted the permit, informing him of the new destination of the vessel and requesting him to notify the collector at the latter port. Such notification by the collector shall constitute an amendment of the clearance (permit) previously granted, shall authorize the vessel to proceed to the new destination, and shall be filed by the collector at the latter port with the Form 1385 submitted on entry of the vessel.

(b) If any vessel cleared from a port in the United States for a foreign port as provided for in § 4.60 is diverted, while en route, to a port in the United States other than that from which it was cleared, the owner or agent of the vessel immediately shall give notice of the diversion to the collector who granted the clearance, informing him of the new destination of the vessel and requesting him to notify the collector at the latter port. Such notification by the collector shall constitute a permit to proceed coastwise, and shall authorize the vessel to proceed to the new destination. On arrival at the new destination, the master shall report arrival within 24 hours. He shall also make entry within 48 hours by presenting (1) the vessel's document, (2) the foreign clearance on Form 1378 granted by the collector at the port of departure, (3) a certificate that when the vessel was cleared from the last previous port in the United States there were on board cargo and/or passengers for the ports named in the foreign clearance certificate only and that additional cargo or passengers (have) (have not) been taken on board or discharged since such clearance was granted (specifying the particulars if any passengers or cargo were taken on board or discharged), (4) a list in duplicate of all unentered articles acquired abroad by the officers and crew of the vessel which are still retained on board, and (5) a list in duplicate of the stores on board.

[122] See § 4.33.

(c) In a case of necessity, a collector may grant an application on customs Form 3171 of the owner or agent of an established line for permission to transship [123] all cargo and passengers from one vessel of the United States to another such vessel under customs supervision, if the first vessel is transporting residue cargo for domestic or foreign ports or is on an outward foreign voyage or a voyage to noncontiguous territory of the United States, and is following the procedure prescribed in §§ 4.85, 4.87, or 4.88. When inward foreign cargo or passengers are so transshipped to another vessel, a separate traveling manifest with a separate certificate on customs Form 3221 attached shall be used for the transshipped cargo or passengers, whether or not the forwarding vessel is also carrying other residue cargo or passengers. An appropriate cross reference shall be made on customs Form 3221 to show whether any other traveling manifest is being carried forward on the same vessel.

§ 4.92 Towing.

The prohibition against the use of foreign vessels in towing operations [124] shall be enforced with respect to such operations between any points embraced within the coastwise laws.

(R.S. 4370, as amended; 46 U.S.C. 316)

[123] See § 4.31.

[124] "It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of registry, a certificate of enrollment, or a license, issued pursuant to this title, or a certificate of award of number issued pursuant to section 288 of this title, to tow any vessel other than a vessel of foreign registry, or a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbor of such places. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $250 nor more than $1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of $50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit." (46 U. S. C. 316 (a))

"Any foreign railroad company or corporation, whose road enters the United States by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country: *Provided*, That except as authorized by section 883 of this title, such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same." (46 U. S. C. 316 (c))

"Every undocumented vessel, operated in whole or in part by machinery owned in the United States and found on the navigable waters thereof, except public vessels, and vessels not exceeding sixteen feet in length measured from end to end over the deck excluding sheer, temporarily equipped with detachable motors, shall be numbered. * * *" (46 U. S. C. 288)

(See § 3.19 (a) of this chapter).

GENERAL

§ 4.95 Records of entry and clearance of vessels.

Permanent records shall be prepared at each customhouse of all entries of vessels on customs Form 1400 and of all clearances and permits to proceed on customs Form 1401.[125] When the number of transactions is small, such records may be prepared on the short forms (customs Forms 1400–A and 1401–A). Whenever a vessel is diverted, as provided for in § 4.91 (a) or (b), customs Form 1401 or 1401–A shall be amended to show the new destination. These records shall be open to public inspection.

[125] For regulations of the Bureau of the Census relating to statistics from these records, see 15 CFR Part 30.

§ 4.96 Fisheries.

(a) As used in this section:

(1) The term "convention vessel" means a Canadian fishing vessel which, at the time of its arrival in the United States, is engaged only in the North Pacific halibut fishery and which is therefore entitled to the privileges provided for by the Halibut Fishing Vessels Convention between the United States and Canada signed at Ottawa on March 24, 1950 (T. D. 52862);

(2) The term "nonconvention fishing vessel" means any vessel other than a convention vessel which is employed in whole or in part in fishing at the time of its arrival in the United States and

(i) Which is documented under the laws of a foreign country,

(ii) Which is undocumented, of 5 net tons or over, and owned in whole or in part by a person other than a citizen of the United States, or

(iii) Which is undocumented, of less than 5 net tons, and owned in whole or in part by a person who is neither a citizen nor a resident of the United States;

(3) The term "nonconvention cargo vessel" means any vessel which is not employed in fishing at the time of its arrival in the United States, but which is engaged in whole or in part in the transportation of fish or fish products [125a] and

(i) Which is documented under the laws of a foreign country or

(ii) Which is undocumented and owned by a person other than a citizen of the United States; and

(4) The term "fishing" means the planting, cultivation, or taking of fish, shell fish, marine animals, pearls, shells, or marine vegetation, or the transportation of any of those marine products to the United States by the taking vessel or another vessel under the complete control and management of a common owner or bareboat charterer.

[125a] "* * * Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products." (46 U. S. C. 251)

(b) Except as provided for in paragraph (d), (e), or (g) of this section, no vessel employed in fishing, other than a vessel of the United States or a vessel of less than 5 net tons owned in the United States, shall come into a port or place in the United States.[125b]

(c) A vessel of the United States to be employed in fishing may be enrolled and licensed, or licensed, depending upon its size, or registered. If registered, the vessel must be entitled to be licensed or enrolled and licensed for the fisheries. (See §§ 3.2 and 3.42 of this chapter.)

(d) A convention vessel may come into a port of entry on the Pacific coast of the United States, including Alaska, to land its catch of halibut and incidentally-caught sable fish, or to secure supplies, equipment, or repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under § 1.2 (b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A convention vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from the United States.

(e) A nonconvention fishing vessel may come into a port of entry in the United States or, if granted permission under § 1.2 (b) of this chapter, into a place other than a port of entry for the purpose of securing supplies, equipment, or repairs, but shall not land its catch. A nonconvention fishing vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(f) A nonconvention cargo vessel, although not prohibited by by law from coming into the United States, shall not be permitted to land in the United States its catch of fish taken on the high seas or any fish or fish products taken on board on the high seas from a vessel employed in fishing or in the processing of fish or fish products, but may land fish taken on board at any place other than the high seas upon compliance with the usual requirements. Before any such fish may be landed the master shall satisfy the collector that the fish were not taken on board on the high seas by presenting declarations of the master and two or more officers or members of the crew of the vessel, of whom the person next in authority to the master shall be one, or other evidence acceptable to the collector which establishes the place of lading to his satisfaction.

(g) A convention vessel, a nonconvention fishing vessel, or a nonconvention cargo vessel which arrives in the United States in distress shall be subject to the usual requirements applicable to foreign vessels arriving in distress. While in the United States, supplies, equipment, or repairs may be secured, but, except as specified in the next sentence, fish shall not be landed unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the collector that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage, in which event the collector may allow the vessel, upon compliance with all applicable requirements, to land, transship, or otherwise dispose of its catch. Nothing herein shall prevent a convention vessel arriving in distress from landing its catch of halibut and incidentally-caught sable fish at a port of entry on the Pacific coast, including Alaska, upon compliance with normal customs procedures, nor prevent a foreign cargo vessel arriving in distress from landing, upon compliance with normal customs procedures, its cargo of fish taken on board at any place not on the high seas.

(h) A registered vessel may be cleared for a whaling voyage [125c] under the same terms and conditions as though it were enrolled and licensed for the whale fishery.

(R. S. 4132, as amended, 4311, as amended, 4339; 46 U. S. C. 11, 251, 280)

§ 4.97 Salvage vessels.

(a) Only a vessel of the United States, a numbered motorboat owned by a citizen,[132] or a vessel operating within the purview of paragraph (d) or (e) of this section, shall engage in any salvage operation in territorial waters of the United States unless an application addressed to the Commissioner of Customs to use another specified vessel in a completely described operation has been granted.[133]

(b) Upon receipt of such an application, the Commissioner of Customs will cause an investigation to be made immediately to determine whether a suitable vessel of the United States or a suitable numbered motorboat owned by a citizen is available for the operation. If he finds that no such vessel is available and that the facts otherwise warrant

[125b] "Vessels of twenty tons and upward, enrolled in pursuance of sections 251–255, 258, 259, 262–280, 293, 306–316, 318, 321–330 and 333–335 of this title, and having a license in force, or vessels of less than twenty tons, which, although not enrolled, have a license in force, as required by such sections, and no others, shall be deemed vessels of the United States entitled to the privileges of vessels employed in the coasting trade or fisheries. * * *" (46 U. S. C. 251)

[125c] "All vessels which may clear with registers for the purpose of engaging in the whale fishery shall be deemed to have lawful and sufficient papers for such voyages, securing the privileges and rights of registered vessels, and the privileges and exemptions of vessels enrolled and licensed for the fisheries." (46 U. S. C. 280)

[132] See § 3.19 (a) of this chapter.

[133] "No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this title: *Provided, however*, That if, on investigation, the Secretary of the Treasury is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to section 288 of this title, is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use." (46 U. S. C. 316 (d))

"Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by Article II of the treaty between the United States and Great Britain 'concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage' signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the United States and Mexico 'to facilitate assistance to and salvage of vessels in territorial waters,' signed at Mexico City, June 13, 1935 (49 Stat. 3359)." (46 U. S. C. 316 (e))

favorable action, he will grant the application.

(c) If the application is granted, the applicant shall make a full report of the operation as soon as possible to the collector of customs at the port nearest the place where the operation was conducted.

(d) A Canadian vessel may engage in salvage operations on any vessel in any territorial waters of the United States in which Canadian vessels are permitted to conduct such operations by article II of the treaty between the United States and Great Britain signed on May 18, 1908,[134] or by section 725, title 46, United States Code.[135] If any such vessel engages in a salvage operation in territorial waters of the United States, the owner or master of the vessel shall make a full report of the operation as soon as possible to the collector of customs at the port nearest the place where the operation was conducted.

(e) A Mexican vessel may engage in a salvage operation on a Mexican vessel in any territorial waters of the United States in which Mexican vessels are permitted to conduct such operations by the treaty between the United States and Mexico signed on June 13, 1935.[136]

(R.S. 4370, as amended; 46 U.S.C. 316)

§ 4.98 Navigation fees.

(a) The table of navigation fees required to be posted in customs offices[137] shall be on customs Form 1010. The respective fees shall be designated in correspondence and reports by numbers as follows:

Fee No. and service

1 Entry of vessel, including American, from foreign port (19 U. S. C. 58):
   (a) Less than 100 net tons.
   (b) 100 net tons and over.
2 Clearance of vessel, including American, to foreign port (19 U. S. C. 58):
   (a) Less than 100 net tons.
   (b) 100 net tons and over.
3 Issuing permit to foreign vessel to proceed from district to district, and receiving the manifest (46 U. S. C. 329, 330).
4 Receiving manifest of foreign vessel on arrival from another district and granting a permit to unlade (46 U. S. C. 329, 330).
5 Receiving post entry (19 U. S C 58, 46 U S. C. 330).
6 Changing name of vessel (46 U. S. C. 53):
   (a) Less than 100 gross tons.
   (b) 100 and not exceeding 499 gross tons.
   (c) 500 and not exceeding 999 gross tons.
   (d) 1,000 and not exceeding 4,999 gross tons.
   (e) 5,000 gross tons and over.
7 (a) Recording bill of sale, conveyance, mortgage, or assignment of mortgage; or
   (b) Furnishing certified copy of any bill of sale, conveyance, mortgage, assignment of mortgage, notice of claim of lien, or certificate of discharge in respect to such vessel; or
   (c) Furnishing certified copy of record at former home port; or
   (d) Furnishing certificate setting forth names of owners, the interest held by each owner, material facts in each bill of sale, conveyance, mortgage, assignment of mortgage, lien, or encumbrance; or
   (e) Furnishing certificate that there are no liens or encumbrances (46 U. S. C. 927).
8 Receiving official bond not otherwise provided for (19 U. S. C. 58).
9 Certifying payment of tonnage tax and certifying admeasurement, both for foreign vessels only (19 U. S. C. 58).
10 Furnishing copy of official document, including marine document, certified outward foreign manifest, and others not elsewhere enumerated (19 U. S. C. 58).
11 Registering a house flag or funnel mark, or both (5 U. S. C. 140; T. D 53385).

(b) Fee 1 shall be collected at the first port of entry only. It shall not be collected from a vessel entering directly from a port in noncontiguous territory of the United States nor from one entering at a port on the northern, northeastern, or northwestern frontier otherwise than by sea.

(c) Fee 2 shall be collected at the final port of departure from the United States. It shall be collected from a yacht or public vessel which obtains a clearance, but shall not be collected from a vessel clearing directly for a port in noncontiguous territory of the United States nor from one clearing from a port on the northern, northeastern, or northwestern frontier otherwise than by sea. It shall be collected only upon the first clearance each year of a vessel making regular daily trips between a port of the United States and a port in Canada wholly upon interior waters not navigable to the ocean.

(d) Fee 3 shall be collected for granting a permit to a foreign vessel to proceed to another customs district, but not for a permit to proceed to a port in the same district. It shall be collected from a foreign vessel clearing directly for a port in noncontiguous territory of the United States outside its customs territory. This fee shall not be collected in the case of a foreign vessel proceeding on a voyage by sea from one district in the United States to another such district via a foreign port. Only one fee shall be collected in case of simultaneous vessel transactions.

(e) Fee 4 shall be collected for receiving the manifest of a foreign vessel arriving from another customs district, but not arriving from a port in the same district. It shall be collected from a foreign vessel entering directly from a port in noncontiguous territory of the United States outside its customs territory. This fee shall not be collected in the case of a foreign vessel which arrives in one district in the United States from another such district on a voyage by sea via a foreign port. Only one fee shall be collected in case of simultaneous vessel transactions.

(f) Fee 6 shall be collected when the application is approved.

(g) In computing the amounts to be collected under Fee 7:

(1) The word "folio" shall mean 100 words, counting each figure as a word (44 U. S. C. 326). No charge shall be made for fractions of a folio.

(2) When any instrument presented is not on an appropriate customs form, the number of folios shall be computed under the pertinent one of the following formulas:

(i) Except as specified in subdivision (iii) of this subparagraph, if the instrument is of less than 20 pages, the total number of lines shall be determined; the number of words in 10 percent of the lines of each size and style of writing or printing (handwritten, pica typewritten, elite typewritten, printed, etc.; full measure, indented, etc.) shall be counted, using lines of average length; the average number of words per line of each size and style of writing or printing shall be multiplied by the total number of lines of such size and style in order to arrive at the total number of words; and that total shall be divided by 100 in order to ascertain the total number of folios.

(ii) Except as specified in subdivision (iii) of this subparagraph, if the instrument is of 20 pages or more, the number of words on a representative sample of pages (10 percent of the total, using pages of average width and length) shall be counted; the average number of words per page shall be multiplied by the number of pages in order to arrive at the total number of words; and that total shall be divided by 100 in order to ascertain the total number of folios.

(iii) If any such instrument contains a recitation or copy of a marine document of a vessel, whether reproduced by photostatic process or otherwise, the number of folios in such recitation or copy shall not be determined as specified in subdivision (i) or (ii) of this subparagraph, but instead each such recitation or copy shall be deemed to contain 5 folios. The number of folios contained in such recitation or copies, determined in accordance with this subdivision, shall be added to the number of folios contained in the remainder of such instrument, ascertained in accordance with subdivision (i) or (ii) of this subparagraph, as the case may be, and the sum shall be the total number of folios in that instrument.

(3) When any instrument presented is on one of the following customs forms and contains only such written matter as is customarily used and necessary to complete and fill in the blanks on the form or when it contains such matter and other written matter interpolated or appended of less than 200 words, the number of folios in the instrument shall be deemed to be in accordance with the following schedule:

(i) Bill of sale of vessel on customs Form 1340, 1342, 1344, 1346, or 1356: 10 folios.

(ii) Mortgage of vessel on customs Form 1348—If marine document is not recited: 15 folios. If marine document is recited: 20 folios.

(iii) General Index or Abstract of Title on customs Form 1332: 5 folios.

(iv) General Index or Abstract of Title—Continuation Sheet on customs Form 1332–A: 1 folio for each two instruments noted thereon.

(v) Certificate of Ownership on customs Form 1330: 5 folios.

(4) When any such instrument is prepared on a customs form and contains such written matter as is customarily used and necessary to complete and fill in the blanks on the form and other written matter interpolated or appended of 200 or more words, the number of folios in the instrument shall be computed on the basis of the above schedule for the printed forms, plus an additional amount for all the written matter other than such as is used and necessary to complete and fill in the blanks on the form in the customary manner, which amount shall be computed as though that portion of the instrument were not on a customs form.

(5) The number of folios in a certified copy of any instrument furnished under Fee 7, Service (b), shall be computed in the same manner as in the case of the original, except that the number of folios in a certificate of discharge on customs Form 1363 shall be deemed to be 5, unless the form contains interpolated or appended written matter of 200 or more words in addition to such written matter as is customarily used and necessary to complete and fill in the blanks on the form, in which case the fee shall be computed on the basis of a charge for 3 folios for the printed form, plus an additional amount for all the written matter other than such as is used and necessary to complete and fill in the blanks on the form in the customary manner, which amount shall be computed as though that portion of the instrument were not on a customs form.

(h) Fee 7 applies only to services covered by the Ship Mortgage Act, 1920 (46 U. S. C. 921 (b), 923, 926 (c), and 927), all of which are included in the descriptions opposite that fee number in the table set forth in paragraph (a) of this section. It shall not be collected for a duplicate certified copy of the record at the former home port issued in accordance with § 3.33 (l) of this chapter.

(i) Fee 8 is collected principally from vessels in the Alaska trade.

(j) Fee 9 shall be collected from foreign vessels only.

(k) Fee 10 shall be collected for each copy of any official document, whether certified or not, furnished to any person other than a Government officer.

PART 5—CUSTOMS RELATIONS WITH CONTIGUOUS FOREIGN TERRITORY

Sec.
5.1 Imports from contiguous countries; manifests; report of arrival.
5.2 Vessels and vehicles; unlading and lading; permits; overtime services.
5.3 Vessels under frontier enrollment and license; repairs and equipment; sea and saloon stores and supplies.
5.4 Inspection of baggage from contiguous foreign country.
5.5 Examination of baggage in foreign territory.
5.6 Merchandise arriving from a contiguous foreign country in sealed vessels or vehicles.
5.7 Supplies on international trains.
5.8 Merchandise in transit between ports in the United States through contiguous foreign territory; procedure at port of exit or lading on vessel.
5.9 Transshipment; storage; feeding and watering livestock in Canada.
5.10 Diversion or delay in foreign territory; procedure and treatment at port of reentry or discharge from vessel.
5.11 Merchandise in transit through the United States between ports of Canada or Mexico; procedure.
5.12 Locomotives; railroad equipment; when entry required.
5.13 Stolen automobiles, trailers, and airplanes returned to United States; entry not required.
5.14 Grain from Canada to be ground and returned; exemption from duty.
5.15 Buildings on boundary; merchandise deposited therein.

AUTHORITY: §§ 5.1 to 5.15 issued under R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 5.1 Imports from contiguous countries; manifests; report of arrival.

(a) The master or person in charge of every vessel of less than 5 net tons which is carrying baggage or other merchandise and arrives in the United States from a contiguous country otherwise than by sea[1] and the person in charge of every vehicle which arrives in the United States from a contiguous country, whether or not carrying merchandise, shall report arrival to the collector. Baggage and other merchandise carried in either such case shall be listed on a manifest as provided for by paragraph (b) of this section, which shall be filed with the collector when the arrival is reported.[2] A vessel of less than 5 net tons arriving in the United States from a contiguous country otherwise than by sea is not subject to the provisions of sections 433, 434, 435, or 448 (a), Tariff Act of 1930, and no report of the arrival of such a vessel is required if it is not carrying any baggage or other merchandise.

(b) Except as otherwise specifically provided for in this paragraph or as may be specially authorized by the Bureau, the manifest shall be filed in original only. It shall be certified by the master of the vessel or person in charge of the vehicle. Customs Form 7533–A shall be used to manifest baggage arriving in baggage cars. When the procedure for the use of sticker labels in lieu of sealing and special manifesting, authorized by § 5.5 (d) is followed, the total number of pieces of baggage examined and passed in foreign territory by the United States customs officer who will release them upon arrival in the United States may be shown on customs Form 7533–A in lieu of filling in the first four columns of such form. Customs Form 5119 or 5119–A may be used in lieu of other forms of customs manifest when the value of the

---

[134] "The High Contracting Parties agree that vessels and wrecking appliances, either from the United States or from the Dominion of Canada, may salve any property wrecked and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends, and, in Lake Ontario, Lake Erie, Lake St. Clair, Lake Huron, and Lake Superior, and in the Rivers Niagara, Detroit, St. Clair, and Ste. Marie, and the Canals at Sault Ste. Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of thirty miles from the International Boundary on such Coasts.

"It is further agreed that such reciprocal wrecking and salvage privileges shall include all necessary towing incident thereto, and that nothing in the Customs, Coasting or other laws or regulations of either country shall restrict in any manner the salving operations of such vessels or wrecking appliances.

"Vessels from either country employed in salving in the waters of the other shall, as soon as practicable afterwards, make full report at the nearest custom house of the country in whose waters such salving takes place." (35 Stat. 2036)

[135] "Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to the Dominion of Canada.

"This section shall be construed to apply to the canal and improvement of the waters between Lake Erie and Lake Huron, and to the waters of the Saint Mary's River and Canal: * * *." (46 U. S. C. 725)

The waters of Lake Michigan are not contiguous to the Dominion of Canada within the meaning of this statute.

[136] "The High Contracting Parties agree that vessels and rescue apparatus, public or private, of either country, may aid or assist vessels of their own nationality, including the passengers and crews thereof, which may be disabled or in distress on the shores or within the territorial waters of the other country within a radius of seven hundred and twenty nautical miles of the intersection of the International Boundary Line and the coast of the Pacific Ocean, or within a radius of two hundred nautical miles of the intersection of the International Boundary Line and the coast of the Gulf of Mexico." (49 Stat. 3360)

[137] "Every collector, comptroller, and surveyor shall cause to be affixed, and constantly kept in some public and conspicuous place of his office, a fair table of the rates of fees * * * demandable by law, and shall give a receipt for the fees received by him, specifying the particulars whenever required so to do; and for every failure so to do, he shall be liable to a penalty of $100, recoverable to the use of the informer." (19 U. S. C. 59)

[1] For the reporting, entry, and clearance requirements applicable to vessels of less than 5 net tons which arrive in the United States from, or depart for, a contiguous country by sea, and to vessels of 5 net tons or over, whether arriving or departing by sea or otherwise, see §§ 4.2, 4.3, and 4.60 of this chapter.

[2] "The master of any vessel of less than five net tons carrying merchandise and the person in charge of any vehicle arriving in the United States from contiguous country, shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which such vessel or vehicle shall cross the boundary line or shall enter the territorial waters of the United States, and if such vessel or vehicle have on board any merchandise, shall produce to such customs officer a manifest as required by law, and no such vessel or vehicle shall proceed farther inland nor shall discharge or land any merchandise, passengers, or baggage without receiving a permit therefor from such customs officer. Any person importing or bringing merchandise into the United States from a contiguous country otherwise than in a vessel or vehicles shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which he shall cross the boundary line and shall present such merchandise to such customs officer for inspection." (Tariff Act of 1930, sec. 459, as amended; 19 U. S. C. 1459)

merchandise does not exceed $250. Customs Form 7523 also may be used in lieu of other forms of customs manifests for merchandise which is entered on that form. In all other cases, except as provided for by paragraph (c) of this section and § 5.11 (c), the manifest required from a vehicle, or from a vessel of less than 5 net tons arriving in the United States from a contiguous country otherwise than by sea, shall be on customs Form 7533, except that when baggage arrives in the United States in the actual possession of a traveler, his declaration therefor shall be accepted in lieu of a manifest. For manifesting required in the case of any vessel which is required to make entry, see § 4.7 (a) of this chapter. If a shipment not exceeding $250 in value is unconditionally free of duty and not subject to quota or to internal-revenue tax and arrives on a vessel which is required to enter, the inward foreign manifest of the merchandise, if presented in duplicate, may be used as an entry therefor, if no merchandise for a different entrant is listed on the same page of the manifest, and if the importer notes on the manifest the country of exportation of the merchandise, its value, and the provision of law under which free entry is claimed and furnishes evidence of the right to make entry as required by § 8.6 of this chapter. Merchandise imported by a person otherwise than in a vessel or vehicle need not be covered by a manifest, but the importer shall report his arrival, present such merchandise for inspection, and make entry therefor, if required, in accordance with the applicable laws and regulations.

(c) When all the merchandise arriving on one vessel or vehicle is entered immediately upon arrival either under a single immediate transportation entry or a single transportation and exportation or direct exportation entry, the copy of customs Form 7512 to be retained at the port of first arrival may be adapted for use as a combined inward foreign manifest and in-bond transportation or direct exportation entry. When Customs Form 7512 is to be so used, the foreign port of lading and the name of the shipper shall be shown thereon in every case and a certificate in the following form shall be executed by the master of the vessel or the person in charge of the vehicle:

This entry correctly covers all the merchandise on the vessel or vehicle, of which I am the master or person in charge, when it first arrived in the United States. If any error in the quantity, kind of articles, or other details, is discovered, I will immediately report the correct information to the collector of customs.

The above prescribed form of certificate may be legibly stamped on the form or on a separate paper securely attached thereto.

(d) The penalty of $100 for failure to report and the penalty of $100 for proceeding inland without a permit, imposed by section 460, Tariff Act of 1930, as amended,[3] apply in every case where a vehicle is involved whether or not the vehicle is carrying merchandise, passengers, or baggage. Such penalties apply with respect to vessels of less than 5 net tons only when such vessels are carrying merchandise or baggage.

(Secs. 459, 460, 498 (a), 46 Stat. 717, as amended, 728, as amended; 19 U. S. C. 1459, 1460, 1498 (a)).

[3] "The master of any vessel or the person in charge of any vehicle who fails to report arrival in the United States as required by the preceding section, or if so reporting proceeds further inland without a permit from the proper customs officer, shall be subject to a penalty of $100 for each offense. If any merchandise is imported or brought into the United States in any vessel or vehicle, or by any person otherwise than in a vessel or vehicle, from a contiguous country, which vessel, vehicle, or merchandise is not so reported to the proper customs officers; or if the master of such vessel or the person in charge of such vehicle fails to file a manifest for the merchandise carried therein, or discharges or lands such merchandise without a permit; such merchandise and the vessel or vehicle, if any, in which it was imported or brought into the United States shall be subject to forfeiture; and the master of such vessel or the person in charge of such vehicle, or the person importing or bringing in merchandise otherwise than in a vessel or vehicle, shall, in addition to any other penalty, be liable to a penalty equal to the value of the merchandise which was not reported, or not included in the manifest, or which was discharged or landed without a permit. If any vessel or vehicle not so reported carries any passenger; or if any passenger is discharged or landed from any such vessel or vehicle before it is so reported, or after such report but without a permit; the master of the vessel or the person in charge of the vehicle shall, in addition to any other penalty, be liable to a penalty of $500 for each passenger so carried, discharged, or landed." (Tariff Act of 1930, sec. 460, as amended; 19 U. S. C. 1460)

[3a] For the requirements with respect to the unlading or lading of vessels not within the purview of this section, see § 4.30 of this chapter.

§ 5.2 **Vessels and vehicles; unlading and lading; permits; overtime services.**[3a]

(a) No passenger or merchandise (including baggage) shall be landed or discharged at any time from any vessel of less than 5 net tons which arrives from a contiguous country, by sea or otherwise, or from a vehicle which arrives from such a country, until permission therefor has been granted by the customs officer to whom the arrival of the vessel or vehicle has been duly reported. The collector may require that the permission and an application therefor be in writing on customs Form 3851, appropriately modified for the purpose. The foregoing requirement shall not apply to the unlading of passengers from any such vessel arriving from a contiguous country otherwise than by sea when such vessel is not carrying baggage or other merchandise.

(b) No lading of merchandise requiring customs supervision on any vessel or vehicle departing for a contiguous country by any route, and no unlading of any passenger or merchandise (including baggage) from any vessel of less than 5 net tons or vehicle arriving from a contiguous country by any route, shall be done at night or on a Sunday or holiday until the collector has granted an application for a special license therefor and a request on customs Form 3853 for any reimbursable overtime services required to be performed by customs employees. The foregoing requirement shall not apply to the unlading of passengers from any such vessel arriving from a contiguous country otherwise than by sea when such vessel is not carrying baggage or other merchandise. The application for the license shall be in writing on customs Form 3851, except that in the case of vessels of less than 5 net tons and vehicles not engaged in the carriage of persons or property for hire, the collector in his discretion and under such conditions as he deems advisable may allow the application to be made orally. In the cases of the vessels and vehicles last mentioned, the collector may authorize his customs inspectors to grant oral permission for unlading at night or on a Sunday or holiday, and to grant requests on Form 3853 for overtime services.

(c) A request for reimbursable overtime services shall not be approved under the provisions of the preceding paragraph unless the required cash deposit or bond on customs Form 7567, 7569, or 7597 shall have been received, except that, when a carrier has on file a bond on customs Form 3587, no further bond shall be required of such carrier solely by reason of the unlading or lading at night or on a Sunday or holiday of merchandise (including baggage) covered by an entry for transportation in bond.

(d) A permit or special license required by this section may be issued on a term basis in the manner and under such of the conditions prescribed in § 4.30 (f) or (g) of this chapter as are applicable.

(Secs. 448, 450—454, 459, 46 Stat. 714, 715, as amended, 716, 717, as amended; 19 U. S. C. 1448, 1450, 1451, 1452, 1453, 1454, 1459)

§ 5.3 **Vessels under frontier enrollment and license; repairs and equipment; sea and saloon stores and supplies.**

(a) The statement of the cost of repairs made or equipment taken on board a vessel in contiguous foreign territory, required to be filed by section 465, Tariff Act of 1930,[4] shall be submitted by the master on customs Form 3415. If no equipment has been purchased or repairs made, a declaration to that effect shall be made on customs Form 3415. Equipment purchased and repairs made in a foreign country are subject to duty, but such duty may be remitted under certain conditions. (See §§ 4.7(b)(2) and 4.14 of this chapter.)

[4] "The master of any vessel of the United States documented to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers shall, upon arrival from a foreign contiguous territory, file with the manifest of such vessel a detailed list of all samples or other merchandise purchased in such foreign country for use or sale on such vessel, and also a statement of the cost of all repairs to and all equipment taken on board such vessel. • • • If any such supplies, merchandise, repairs, or equipment shall not be reported, the master, • • • or other person having charge of such vessel • • • shall be liable to a fine of not less than $100 and not more than $500, or to imprisonment for not more than two years, or both." (Tariff Act of 1930, sec. 465; 19 U. S. C. 1465)

(b) The master shall also certify to the collector that any supplies listed as "sea stores" are intended for the exclusive use of the vessel. If the quantities thereof are excessive, duties shall be paid on the excess.

(c) Supplies listed as "saloon stores," intended for sale on board the vessel, are dutiable and shall be entered as merchandise.

(Sec. 465, 46 Stat. 718; 19 U. S. C. 1465)

§ 5.4 **Inspection of baggage from contiguous foreign country.**

Customs officers shall not open baggage for the purpose of making the inspection required by section 461, Tariff Act of 1930,[5] but shall detain such baggage until its owner or his agent opens or refuses to open it. If the owner or his agent refuses to open the baggage, it shall be opened and examined in accordance with the provisions of section 462, Tariff Act of 1930,[6] unless a request is received from the owner or his agent to make other proper disposition thereof.[7] Customs officers shall not unlock a vehicle or a compartment thereof for the purpose of examining baggage unless the owner or operator refuses to unlock such vehicle or compartment.

(Secs. 461, 462, 46 Stat. 717, 718; 19 U.S.C. 1461, 1462)

§ 5.5 **Examination of baggage in foreign territory.**

(a) United States customs officers stationed in foreign territory for that purpose may examine baggage being forwarded under baggage check, by express or in chartered cars of persons destined to the United States who have made proper declaration therefor, when requested to do so by such persons, but, except as to baggage being forwarded under baggage check, such examination shall not be made of baggage containing articles for which the $200 or $300 exemption is claimed under paragraph 1798, Tariff Act of 1930, as amended. Upon completion of the examination, a special green cardboard manifest not less than 2½ by 4½ inches in size supplied by the carrier shall be completed and attached under customs supervision to each piece of baggage by wire or cord and the baggage placed in the custody of the carrier. The special green manifest shall be in substantially the following form:

UNITED STATES CUSTOMS

SPECIAL BAGGAGE MANIFEST

CARRIER'S BAGGAGEMAN: Destroy this tag if owner has access to baggage before arrival in United States.

Check No. ------

Baggage examined and passed at ----------
(Office)

(Date)

(U.S. Customs Officer)

(b) In lieu of attaching a special manifest to each piece as set forth in paragraph (a) of this section, such baggage may be laden in cars or compartments sealed with United States customs in-transit blue Tyden seals. The sealed cars or compartments shall be accompanied by a sheet manifest prepared in duplicate in the following form:

UNITED STATES CUSTOMS

SPECIAL MANIFEST OF BAGGAGE FORWARDED IN SEALED CAR OR COMPARTMENT

This baggage is in transit from ---------- to ---------- in the United States.

Car No. --------

Check No.	Destination	Passenger's name	Number declared for	Exemption allowed

The above-described baggage has been examined carefully and passed by me; its lading and the sealing of the car or compartment have been done under my personal supervision; and no goods of any kind subject to duty are contained in such baggage except that on which proper exemption has been allowed.

Date---------- ----------
U. S. Customs Officer

(c) One copy of this manifest shall be given to the railroad employee in charge of the baggage for delivery by him to the customs officer at the port of first arrival in the United States.

(d) In lieu of the procedure set forth in paragraphs (a) and (b) of this section, sticker labels other than official baggage stamps may be affixed to baggage examined and passed in foreign territory if the baggage is to be released in the United States by the same officer who examined and passed it in the foreign country. Such sticker labels shall bear suitable wording showing that the baggage has been passed by the United States customs.

(e) The removal of the special tag manifest or the customs car or compartment seal described in paragraphs (a) and (b) of this section may be done only by a customs officer. The tag manifest or any customs seal on the car or compartment shall be removed by the customs officer who boards the train at the port of first arrival in the United States. If the officer finds the special tag manifest, sticker label, or customs car or compartment seal missing or not intact (except as provided for in § 18.3(c) of this chapter), or for any other reason believes that the baggage has been tampered with en route to the United States, he shall detain it for examination.

(f) If the baggage is to re-enter contiguous foreign territory before it reaches the final port of entry into the United States, the tag manifest or the seal or seals shall be removed by the customs officer at the first port of entry in the United States after the last transit through foreign territory.

(g) No baggage containing dutiable merchandise in excess of that on which an exemption may be allowed shall be passed in foreign territory.

§ 5.6 **Merchandise arriving from a contiguous foreign country in sealed vessels or vehicles.**

Merchandise arriving from a contiguous foreign country, which is not to be unladen at the port of first arrival, may be transported to destination in sealed vessels or vehicles without inspection at the port of first arrival, subject to the conditions set forth in sections 463 and 464, Tariff Act of 1930,[8] and §§ 18.29–18.31 of this chapter.

(Sec. 463, 46 Stat. 718; 19 U. S. C. 1463)

§ 5.7 **Supplies on international trains.**

(a) Articles subject to internal-revenue tax and other merchandise acquired

[5] "All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladen in the presence of and be inspected by a customs officer at the first port of entry at which the same shall arrive; and such officer may require the owner, or his agent, or other person having charge or possession of any trunk, traveling bag, sack, valise, or other container or of any closed vehicle, to open the same for inspection, or to furnish a key or other means for opening the same." (Tariff Act of 1930, sec. 461; 19 U. S. C. 1461)

[6] "If such owner, agent, or other person shall fail to comply with his demand, the officer shall retain such trunk, traveling bag, sack, valise, or other container or closed vehicle, and open the same, and, as soon thereafter as may be practicable, examine the contents, and if any article subject to duty or any article the importation of which is prohibited is found therein, the whole contents and the container or vehicle shall be subject to forfeiture." (Tariff Act of 1930, sec. 462; 19 U.S.C. 1462)

[7] For procedure relative to the examination of uninspected baggage, form of declaration, exemption, and forwarding baggage in bond, see §§ 10.16–10.30 of this chapter.

[8] "To avoid unnecessary inspection of merchandise imported from a contiguous country at the first port of arrival, the master of the vessel or the person in charge of the vehicle in which such merchandise is imported may apply to the customs officer of the United States stationed in the place from which such merchandise is shipped, and such officer may seal such vessel or vehicle. Any vessel or vehicle so sealed may proceed with such merchandise to the port of destination under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, sec. 463; 19 U. S. C. 1463)

"If the master of such vessel or the person in charge of any such vehicle fails to proceed with reasonable promptness to the port of destination and to deliver such vessel or vehicle to the proper officers of the customs, or fails to proceed in accordance with such regulations of the Secretary of the Treasury, or unlades such merchandise or any part thereof at other than such port of destination, or disposes of any such merchandise by sale or otherwise, he shall be guilty of a felony and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than five years, or both; and any such vessel or vehicle, with its contents, shall be subject to forfeiture." (Tariff Act of 1930, sec. 464; 19 U. S. C. 1464)

in a foreign country constituting supplies of dining, observation, or buffet cars attached to international trains passing and repassing the boundary line, for which the train crew elects not to file an inventory, as provided for in paragraph (b) of this section, shall be subject to duty and tax unless locked or sealed in a separate compartment or locker upon arrival at the frontier port of the United States and the lock or seal remains unbroken until the final departure of the train from the United States at the frontier port.

(b) Supplies acquired abroad and not required to have internal-revenue stamps affixed thereto before release for consumption may be used in the United States if covered by an inventory furnished in duplicate to the proper customs officer at the time of arrival in the United States.[9] The correctness of the inventory shall be sworn to by the person in charge of the railroad car. The inventory shall consist of an itemized list showing in parallel columns the kind and quantity of each class of supplies on hand in the car upon its arrival in the United States and the quantity used in the United States.

(c) The customs officer shall certify both copies of the inventory, retain the original, and return the other copy to the person in charge of the car.

(d) Upon arrival of the railroad car at the port of exit on its return to the foreign country, the copy of the inventory which was returned by the customs officer at the port of arrival to the person in charge of the car shall be submitted to the proper customs officer after being completed by filling in the column showing the quantity of each item used in the United States and resworn to by the person in charge of the car.

[9] "* * * The conductor or person in charge of any railway car arriving from a contiguous country shall file with the manifest of such car a detailed list of all supplies or other merchandise purchased in such foreign country for use in the United States. If any such supplies, merchandise, repairs, or equipment shall not be reported, the master, conductor, or other person having charge of such vessel or vehicle shall be liable to a fine of not less than $100 and not more than $500, or to imprisonment for not more than two years, or both." (Tariff Act of 1930, sec. 465; 19 U. S. C. 1465)

(e) Entries must be filed and duties paid at the port of exit on the quantities of inventoried supplies consumed in the United States.

(f) Supplies purchased in the United States shall be passed free of duty without inventory or entry.

(Sec. 465, 46 Stat. 718; 19 U. S. C. 1465)

§ 5.8 Merchandise in transit between ports in the United States through contiguous foreign territory; procedure at port of exit or lading on vessel.

(a) In accordance with the provisions of section 554, Tariff Act of 1930,[10] merchandise may be transported from one port to another in the United States through Canada or Mexico without being subject to treatment as an importation when returned to the United States, upon compliance with the regulations in this section and in §§ 5.9 and 5.10.

(b) The merchandise shall be transported in sealed conveyances or compartments unless (1) it is in less-than-load or compartment lots, in which case the packages may be forwarded without being corded and sealed, or (2) it consists of live animals to be transported in accordance with paragraph (c) of this section, or (3) its treatment in the same manner as less-than-load or compartment lots is authorized by the Bureau. The merchandise shall be covered by manifests conforming to such requirements as to color, size, form, and content as the Commissioner of Customs may specify for particular types of transactions. If the Commissioner has not promulgated applicable specifications, the manifest forms shall be printed on yellow paper, approximately 5¾ by 6½ inches in size, and shall correspond to the following example in which geographical designations have been inserted solely for the purpose of illustration:

[10] "With the consent of the proper authorities, imported merchandise, in bond or duty-paid, and products and manufactures of the United States may be transported from one port to another in the United States through contiguous countries, under such regulations as the Secretary of the Treasury shall prescribe, unless such transportation is in violation of section 4347 of the Revised Statutes, as amended, section 27 of the Merchant Marine Act, 1920, or section 588 of this Act." (Tariff Act of 1930, sec. 554; 19 U. S. C. 1554)

Name of carrier

U. S. CUSTOMS IN-TRANSIT MANIFEST

Car No. and Initials:

Port of Exit:
Buffalo, N. Y. (Fort Erie, Ont.)

Description of articles:

Port of Reentry:

Port Huron, Mich.	☐
Sarnia, Ontario	☐
Niagara Falls, N. Y.	☐
Niagara Falls, Ontario	☐
Detroit, Mich.	☐
Windsor, Ontario	☐
St. Albans, Vt	☐
Lacolle, Quebec	☐
	☐
	☐

Agent of carrier

U. S. Customs

Date

I certify that above car number and initials are correct and that customs seals are intact and locked.

Inspector

It will be noted that the name of the port of exit is followed by the name of the foreign port of entry and that the names of the ports of reentry are followed by the names of the foreign ports of exit. The names of the foreign ports may be omitted. In the case of a conveyance other than a railroad car, the conveyance shall be identified in a suitable manner, as by the name and rig of a vessel, in the place provided for car number and initials, and the inspector's certificate shall be modified appropriately.

(c) Live animals which can be identified by specific description in the manifest may be transported in the care of an attendant or customs inspector at the expense of the parties in interest in conveyances or compartments not secured with customs seals.

(d) The information contained in the in-transit manifest shall correspond with the information contained in the waybill accompanying the conveyance.

(e) Each manifest shall be presented by the carrier to the customs officer at the port of exit of the conveyance or at the port of lading of the vessel, as the case may be. When the merchandise is to be transshipped under customs supervision in foreign territory, an additional copy of the manifest shall be so presented by the carrier for each place of transshipment. In lieu of any improvised record of the transaction, an extra copy of the manifest may be required in any case provided it serves an essential administrative purpose. In the case of mixed ladings, that is ladings made up of several shipments, the description shall be "miscellaneous shipments." When such ladings are to be transshipped in foreign territory and the transshipment may involve the breaking up or consolidation of such mixed ladings, the manifest for the conveyance shall be on a long form, preferably 8 by 10½ inches, instead of on the short form prescribed in paragraph (b) of this section, and as to each shipment in the conveyance shall show, in addition to the information required on the short form, the name of the consignee, the final destination, the marks and numbers of the packages, and the number of packages.

(f) Before the departure from the United States of an in-transit railroad train, the carrier concerned shall furnish to the customs inspector at the port of exit a train sheet, otherwise known as a consist, bridge sheet, or trip sheet, listing each car of the train and specifically indicating the in-transit cars.

(g) It shall be the duty of the carrier to affix blue in-transit seals to all openings of conveyances and compartments containing in-transit merchandise, except that on the Canadian border yellow in-transit seals shall be affixed to sealable carload or truckload shipments of in-transit merchandise, whether or not the cars or trucks are already sealed with United States customs red in-bond seals, and except that in all other instances conveyances or compartments already secured by United States customs red in-bond seals may go forward without having blue or yellow in-transit seals affixed thereto and without in-transit manifests. The collector may relieve the carrier of the responsibility of affixing in-transit seals by notifying it in writing that customs inspectors will assume it. The conveyance shall not proceed until after the customs inspector has finished the inspection.

(h) The original manifest shall accompany the merchandise and the additional copies required when transshipment is involved shall be mailed by the customs officer to the customs officers stationed at the places of transshipment. When by reason of the carrier's schedule or other condition it is probable that the additional copy of the manifest if sent by mail will not reach the customs officer at the place of transshipment prior to the arrival of the merchandise, it may be given to the conductor, master, aircraft commander, or driver, as the case may be, in a sealed envelope for delivery to such customs officer.

(Sec. 554, 46 Stat. 743; 19 U. S. C. 1554)

§ 5.9 Transshipment; storage; feeding and watering livestock in Canada.

(a) Merchandise in transit may be transshipped in foreign territory from one conveyance to another under the supervision of a customs officer, who shall also supervise the sealing of the conveyances or compartments to which the merchandise is transshipped, note his action on both the additional copy of the manifest received by him in accordance with § 5.8(h) and on the conductor's, master's, aircraft commander's, or driver's copy, and return the latter to the conductor, master, aircraft commander, or driver to accompany the merchandise.

(b) When the transshipment involves the breaking up of the in-transit contents of a conveyance or compartment, and the circumstances are such as to require separate manifests for articles previously covered by a single manifest, the customs officer supervising the transshipment shall take up the carrier's copy of the manifest and require the carrier to prepare a new manifest, in duplicate, for each conveyance to which the merchandise is transshipped. If there is to be a further transshipment, an additional copy of each new manifest shall be presented for mailing by the customs officer to the customs officer at the point of further transshipment, or be forwarded in a sealed envelope in care of the conductor, master, aircraft commander, or driver as provided for in § 5.8(h). After supervising the transshipment and sealing of the conveyances or compartments to which the merchandise is transshipped, the customs officer shall sign or initial the new manifests and return the originals of such new manifests to the carrier to accompany the merchandise. If the transshipping results in mixed ladings, except when the lading is into a vessel, the long form of manifest, referred to in § 5.8 (e), shall be used.

(c) Live animals in sealed conveyances or compartments may be fed and watered in Canada under the supervision of United States or Canadian customs officers.

(d) When merchandise under in-transit manifests is to be stored in foreign territory awaiting transshipment, the customs officer at the place of transshipment shall check the merchandise into a storehouse, where it shall remain under customs locks or seals until transshipment is effected under custom supervision.

(Sec 554, 46 Stat. 743; 19 U. S. C. 1554)

§ 5.10 Diversion or delay in foreign territory; procedure and treatment at port of reentry or discharge from vessel.

(a) In cases where in-transit cars are diverted, cut out of a train for any reason, or unusually delayed, the railroad superintendent at the point of such diversion, cut-out, or delay shall immediately notify the proper customs officer at the port of reentry by telegraph.

(b) When customs entry is made in Canada or Mexico for merchandise which left the United States is in an in-transit status, the carrier shall send the in-transit seals and manifests to the ports where the manifests were first filed with customs, with an endorsement by the carriers' agent on each manifest showing that the merchandise was so entered.

(c) On arrival of an in-transit shipment at the first port in the United States after transportation through foreign territory, the carrier shall present to the customs officer for each loaded conveyance a manifest or manifests, signed or initialed by a customs officer at the port of exit, or the port of lading in the case of a vessel, or the place of transshipment when the merchandise has been transshipped in foreign territory; and in the case of a railroad train the conductor shall also present a train sheet showing the initials, car numbers, and port of exit of each car in the train. In the case of mixed ladings under § 5.8 (e), the waybills shall be available at the port of return or discharge for use by customs officers for necessary checking purposes.

(d) Upon the arrival at a port of entry of a vessel carrying in-transit merchandise, the master's copies of the in-transit or in-bond manifests covering the merchandise given final customs release at that port shall be retained by customs at that port and the manifests, if any, covering merchandise to be discharged at subsequent ports of arrival shall be returned to the master of the vessel for surrender to customs at the next port, and so on as the vessel proceeds from port to port.

(e) In-bond seals shall be broken only by a customs officer or by a person acting under the direction of a customs officer. In-transit seals may be broken by any carrier's employee, or by the consignee at any time or place after the merchandise under such seals has been released by customs upon return to the United States.

(f) Merchandise which shall have left the United States under in-transit seals but which shall have been transshipped in foreign territory without United States customs supervision shall, upon return to the United States, be treated in the same manner as other merchandise arriving from Canada or Mexico, as the case may be. Similar treatment shall be accorded the merchandise if the inspector finds any of the seals applied to the conveyance or compartment at the port of exit are unlocked or missing. If any cases of substitution of merchandise are found, the merchandise shall be detained and the facts reported to the Bureau.

(g) No in-transit merchandise arriving at ports in the United States shall be released until proper manifests are received, except that it may be treated as originating in Canada or Mexico, as the case may be.

(h) No inward foreign manifests are required for merchandise returned to the United States as an in-transit movement under the regulations in this part.

(Sec. 554, 46 Stat. 743; 19 U. S. C. 1554)

§ 5.11 Merchandise in transit through the United States between ports of Canada or Mexico; procedure.

(a) Subject to the applicable provisions of paragraphs (b) and (c), whenever merchandise (including baggage) arrives at a frontier port from Mexico or Canada in transit through the United States to the same country from which it arrived, the same procedure shall be followed as that prescribed for merchandise in transit through the United States to other foreign countries (§§ 18.14 and 18.20–18.24 of this chapter), except that, only four copies of customs Form 7512 or 7520 shall be required, and except that, when the route is such that the train and cars will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on customs Form 7512 or 7520 may be used. One copy of customs Form 7512 or 7520 shall be delivered to the conductor, master, or person in charge to accompany the conveyance and be delivered to the collector at destination for his record.

(b) When sealable carload or truckload shipments of merchandise arrive at Canadian frontier ports for in-transit movement through the United States in bond and return to Canada, bright green intransit seals will be placed on the cars or trucks and the sealing thereof verified by Canadian customs officers before the cars or trucks depart from Canada. No other in-transit seals shall be required to be placed on such cars or trucks before their movement in bond through the United States provided the seals placed on the cars or trucks in Canada are found to be locked and properly attached. In-transit manifest forms of the kind referred to in § 5.8 (b) may be used in lieu of customs Form 7512 or 7520, as the case may be, for such sealed carload shipments of in-transit merchandise. In-transit manifest forms so used in lieu of customs Form 7512 or 7520 shall be serially numbered in a separate series of numbers.

(c) A commercial traveler arriving at a Canadian frontier port with his samples which are to be transported in his own automobile through the United States to another port in Canada without being displayed in the United States, may present the samples, if the outer containers can be effectively sealed, to a

Canadian customs officer at the port of departure from Canada for cording and sealing with uncolored automatic metal in-transit seals. As a condition for such cording and sealing, the traveler will be required to furnish to the Canadian customs officer a list, in duplicate, of all the articles in the containers with the approximate values of the articles shown. Such list will bear the traveler's name and address. Upon the arrival of the commercial traveler in the United States with his samples effectively corded and sealed as set forth above, and upon presentation to the United States customs officer of the original list of samples properly authenticated by the Canadian customs officer, the samples may be transported through the United States without disturbing the cords and seals and without further sealing of the samples in the United States. Bonded common carrier facilities are not considered to be reasonably available to a commercial traveler under the above described circumstances and, therefore, he may be permitted to transport his samples in his own automobile, subject to the conditions of § 18.20 (b) of this chapter. The traveler shall be required to execute and file customs Form 7520, in triplicate, at the port of his arrival in the United States as an in-transit manifest covering the movement to the port of exit from the United States of any portion of his samples which is not released from customs custody. In preparing customs Form 7520 for commercial travelers' samples, descriptions, quantities, and values may be shown thereon by merely noting "Commercial Samples", the number of the corded and sealed containers, and the approximate total value of the samples.

(d) When all the merchandise arriving on one vehicle is to move in transit through the United States in the importing vehicle in a continuing movement, the copy of customs Form 7512 to be retained at the port of first arrival may be prepared to permit its use as a combined inward foreign and in-bond manifest. When customs Form 7512 is to be used in this manner, the foreign port of lading shall be shown and a certificate in the following form shall be executed by the person in charge of the vehicle:

I, the undersigned, certify that this transportation entry and manifest contains, to the best of my knowledge and belief, a just and true account of all the goods, wares, and merchandise, including packages of every kind and nature whatsoever, which constituted the lading of the vehicle named herein when it first arrived within the limits of the United States, and that I have been, since the arrival of the said vehicle within the United States, the person in charge of said vehicle and that no packages whatsoever, nor any goods, wares, or merchandise, have been in any way removed from said vehicle since its arrival within the United States.

And I further certify that, if I shall hereafter discover or know of any error, discrepancy, or omission in this entry and manifest, I will immediately and without delay make due report thereof to the collector of the district to whom this report is now delivered.

Dated _____

Signature _____

The above prescribed form of certificate, which can be put on a rubber stamp approximately 2" x 5" in size, may be legibly stamped on the form or on a separate paper securely fastened thereto.

(Sec. 553, 46 Stat. 742, as amended; 19 U. S. C. 1553)

§ 5.12 Locomotives; railroad equipment; when entry required.[10a]

(a) Foreign locomotives or other foreign railroad equipment in use on a continuous route crossing the boundary into the United States shall be admitted without entry or the payment of duty to proceed to and return from the end of the run; that is, in the case of locomotives, the last place to which the locomotive takes the inbound train by a continuous haul, and, in the case of other equipment, the place of complete unloading. Unless formally entered and cleared through customs in the United States, such locomotives or other equipment shall not be used on the inward trip otherwise than in connection with the continuous run, which includes switching of cars of a train that it has hauled into the United States. On the return trip, the locomotives may be used only in connection with through trains crossing the boundary, including the switching to make up such trains, but the other equipment may be used in such trains or for such local traffic as is reasonably incidental to its economical and prompt return to the country from which it entered the United States. Empty foreign railroad cars shall enter the United States without formal entry to be loaded only if the passengers or goods are to be transported directly to or through the country from which the cars entered the United States. Customs officers shall seize any locomotive or other railroad equipment used in violation of this regulation as being imported contrary to law.

(b) Domestic locomotives or other domestic railroad equipment,[11] upon which repairs have been made in a foreign country shall be subject, upon reentry into the United States, to a duty upon the value of the repairs at the rate at which the locomotive or other equipment would be dutiable if imported, but no such duty shall be assessed by reason of repairs required to restore any such article to the condition in which it last left the United States. A report of the first arrival in the United States of such equipment after it has been repaired in a foreign country shall be made promptly, in writing, to the United States Customs at the port of entry, such report to state the time and place of arrival.

(Sec. 14, 67 Stat. 516; 19 U. S. C. 1322)

§ 5.13 Stolen automobiles, trailers, and airplanes returned to United States; entry not required.

Collectors of customs shall admit from Mexico, under the provisions of Executive Order 7965, dated August 29, 1938, 3 CFR, 1943 Cum. Supp., without entry and without the payment of duty, alleged stolen or embezzled motor vehicles, trailers, airplanes, or component parts of any of them, if accompanied by a letter from the United States Embassy in Mexico City stating that such Embassy is satisfied from information furnished it that the property, which must be adequately described in the letter for identification purposes, is stolen property being returned to the United States under the provisions of the convention between the United States and Mexico concluded October 6, 1936.

§ 5.14 Grain from Canada to be ground and returned; exemption from duty.

(a) When grain is brought into the United States by Canadian farmers to be ground and returned under the provisions of section 193, Title 19, United States Code,[12] and the mill at which such grain is to be ground is not located at a port of entry, a deposit of the duties on such grain shall be taken, such deposit to be refunded upon receipt of certificate by the owner of the mill that the said grain has been received at the mill and of evidence satisfactory to the collector that the product of the grinding thereof, less any toll, has been returned to Canada.

(b) A statement from the owners of the mill, showing that they are citizens of the United States, shall be filed with the collector. An account shall be kept by the miller in a proper register to be open to inspection by any customs officer, showing the name of the farmer bringing any such grain to the mill, the nature of the grain, the dates of its receipt by him and of its delivery, the quantity received at the mill, the quantity of ground products delivered to the farmer, and the quantity of grain taken as tolls for grinding. The miller shall produce a statement of such quantities at the end of each month to the collector, and shall then enter the grain received as tolls and pay the duties due thereon.

(c) Duties shall be paid on any grain, or manufactures thereof, not removed from the mill for transportation to Canada within 1 month from the date of its receipt by the miller. Such grain may be mixed, provided the entire product of the grinding be returned to Canada with the exception of the tolls and other portions on which duty has been paid.

(22 Stat. 402; 19 U. S. C. 193)

§ 5.15 Buildings on boundary; merchandise deposited therein.

When any merchandise on which the duty has not been paid or which was imported contrary to law is found in any building upon or within 10 feet of the boundary line between the United States and any foreign country, such merchandise shall be seized and the building or that portion thereof which is within the United States shall be taken down or removed.[13]

(Sec. 595, 46 Stat. 752; 19 U.S.C. 1595)

[10a] "(a) Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury." (Tariff Act of 1930, sec. 322(a), as amended; 19 U.S.C. 1322(a))

[11] For the purpose of this section, locomotives or other railroad equipment manufactured in, or regularly imported into, the United States, and not subsequently cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of the return of the equipment to the United States, shall be considered "domestic." Other railroad equipment shall be considered "foreign."

[12] "Grain brought into the United States in wagons or other ordinary road vehicles, by farmers residing in the Dominion of Canada, to be ground by mills owned by citizens of the United States, shall not be deemed to be imported or liable to import duties. Such grains shall be brought into the United States under such regulations as the Treasury Department may prescribe to prevent fraud and evasion, and shall be returned as in like manner provided by such regulations. Entry shall be made of and duties paid upon all such grain as shall be taken or received by mill owners as tolls for such grinding, under like regulations provided by the Treasury Department." (19 U. S. C. 198)

[13] "If any collector of customs or other officer or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States commissioner, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise: *Provided*, That if any such house, store, or other building, or place in which such merchandise shall be found, is upon or within 10 feet of the boundary line between the United States and a foreign country, such portion thereof as is within the United States may forthwith be taken down or removed." (Tariff Act of 1930, sec. 595 (a); 19 U.S.C. 1595 (a))

"Whoever receives or deposits any merchandise in any building upon the boundary line between the United States and any foreign country, or carries any merchandise through the same, in violation of law, shall be fined not more than $5,000 or imprisoned not more than two years, or both." (18 U.S.C. 547)

PART 6—AIR COMMERCE REGULATIONS

Sec.

6.1 Scope and definitions.
6.2 Landing requirements.
6.3 Entry and clearance.
6.4 Entry of aircraft of scheduled airlines.
6.5 Clearance of aircraft of scheduled airlines.
6.6 Documents; form.
6.7 Documents for entry.
6.8 Documents for clearance.
6.9 Residue cargo.
6.10 General provisions.
6.11 Penalties.
6.12 International airports; regulations.
6.13 List of international airports.
6.15 Transportation in bond and merchandise in transit.
6.16 Certificate of lading for exportation.

AUTHORITY: §§ 6.1 to 6.16 issued under R.S. 161, as amended, 251, secs. 431, 624, 46 Stat. 710, as amended, 759, secs. 904, 1109, 72 Stat. 787, 799; 5 U.S.C. 22, 19 U.S.C. 66, 1624, 49 U.S.C. 1474, 1509. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

CROSS REFERENCE: For Air Commerce Regulations issued by the Surgeon General of the Public Health Service, Department of Health, Education, and Welfare *see* 42 CFR 71.501 to 71.506.

§ 6.1 Scope and definitions.

(a) The regulations in this part shall not be applicable in the islands of Guam, Midway, American Samoa, Wake, Kingman Reef, and Johnston Island, the Virgin Islands and other insular possessions not specified herein.

(b) The term "United States" when used in a geographical sense means the territory comprising the several States, Territories, possessions, and the District of Columbia, including the territorial waters thereof and the overlying air space, but shall not include the Canal Zone.

(c) The term "area" shall mean any one of the following parts of the United States:

(1) The mainland.
(2) Alaska.
(3) Hawaii.
(4) Puerto Rico.

(d) The term "aircraft" means civil aircraft, that is, any aircraft not used exclusively in the governmental service of the United States or a foreign country, and includes any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(e) The term "aircraft commander" means the person serving on the aircraft having charge or command of its operation and navigation.

(f) The term "scheduled airline" means any individual, partnership, corporation, or association engaged in air transportation upon regular schedules to, over, or away from the United States, or from area to area, and holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity issued by the Civil Aeronautics Board.

(g) The term "authorized person" (authorized agent of an owner or operator) means any person who by written authority, satisfactory to the collector of customs, has been designated to act for and in the place of an owner or operator of a scheduled airline or who by power of attorney has been authorized to act for and in the place of an owner or operator of a nonscheduled airline.

(h) The term "international airport" means any airport designated by the Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the United States from any place outside thereof and for the merchandise carried on such aircraft, by the Attorney General as a port of entry for aliens arriving on such aircraft, and by the Secretary of Health, Education, and Welfare as a place for quarantine inspection.

§ 6.2 Landing requirements.

(a) *Place of landing.* Every aircraft coming into any area from any place outside thereof shall land in such area unless exempted from this requirement by the Administrator of the Federal Aviation Agency, Washington 25, D.C. The first landing shall be at an international airport unless permission to land elsewhere shall first be granted by the Bureau of Customs, in cases of aircraft operated by scheduled airlines, and in all other cases by the collector or other customs officer in charge at the port of entry or customs station nearest the intended place of first landing. When the Bureau of Customs grants permission to land elsewhere than at an international airport, the Bureau shall immediately notify the heads of the Public Health Service, the Immigration and Naturalization Service, and of any other agency likely to be concerned with the landing, and, when a collector or other customs officer grants such per-

mission, he shall immediately notify the principal local officer of each such agency. In cases where such permission is given, the owner, operator, or person in charge of the aircraft shall pay the additional expenses, if any, incurred in inspecting the aircraft, passengers, employees, and merchandise, including baggage, carried therein. When such permission is granted to a scheduled airline to land aircraft operating on a schedule, no inspection charge shall be made except for overtime service performed by customs officers.

(b) *Advance notice of arrival.* (1) Before an aircraft comes into any area from any place outside the United States, for security reasons, and in order to avoid the penalties provided for in § 6.11, a timely notice of intended flight must be furnished, either by or at the request of the commander of the aircraft, to the collector or other customs officer in charge at or nearest the intended place of first landing in such area. That officer shall notify the officers in charge of the other Government services. When, by reason such as departure from a remote place, dependable facilities for giving notice are not available, a landing shall be made at a place where the necessary facilities do exist before coming into any area from any place outside the United States. However, radio equipment of the plane may be used if this will result in the giving of adequate and timely notice. Advance notice shall not be required in the case of aircraft of a scheduled airline arriving in accordance with a regular schedule filed with the collector of customs for the district in which the place of first landing is situated. If, upon landing in any area, the aircraft commander finds that the Government officers have not arrived, the aircraft commander must hold the aircraft and any merchandise, including baggage, thereon intact, and keep the passengers and crew members in a segregated place until the inspection officers are available.

(2) Each notice of an intended flight shall specify the type of aircraft, the registration marks thereon, the name of the aircraft commander, the place of last departure, the international airport or other place at which landing has been authorized, number of alien passengers, number of citizen passengers, and the estimated time of arrival; and shall be sent so as to be received in sufficient time to enable the officers designated to inspect the aircraft to reach the international airport or such other place of first landing prior to the arrival of the aircraft.

(c) *Permission to discharge or depart.* No aircraft arriving in the United States from any place outside thereof, or in an area from another area carrying residue foreign cargo (see § 6.9) shall depart from the place of landing, or discharge any passengers or merchandise, including baggage, without receiving permission from the customs officers in charge.

(d) *Permit to proceed; foreign aircraft.* (1) Aircraft are subject to customs entry when brought in for repairs or when otherwise treated as imported articles. Before an aircraft which is not treated as an imported article, which is registered in a foreign country, and which arrives in the United States carrying passengers for hire or merchandise is ferried (proceeds in ballast) from the airport of first arrival to one or more airports in the United States, its commander shall obtain from the collector of customs at the airport of first arrival a permit on customs Form 4449 allowing the aircraft to proceed from airport to airport in the United States, which shall be retained on board such aircraft while in the United States. At each airport visited, the customs officer there, or, if there is none, the airport manager, shall make an endorsement on the back of such permit showing the name of the airport, date and time of arrival, date and time of departure, and purpose of the visit. The permit shall be surrendered to the collector of customs at the port of final clearance for a foreign destination, who shall satisfy himself prior to the issuance of clearance that the aircraft received proper customs treatment while in this country. The permit shall then be returned to the collector of customs at the port of issue.

(2) A copy of the permit shall be retained by the collector at the port where issued. If within 60 days after the issuance of such permit the said collector does not receive a report of the outward clearance of the aircraft covered thereby, the matter shall be reported to the supervising customs agent for investigation.

(3) Civil aircraft registered in the United States and arriving from a foreign country with passengers carried for hire or merchandise, after proper customs treatment of all such passengers and merchandise, may be allowed to proceed upon their identity being established.

(e) *Monthly and annual requests for overtime services and licenses to unlade and lade.* A special license on customs Form 3851 running for any period up to 1 month and in multiples of months thereafter, but not to exceed 1 year nor longer than the period of the supporting bond, may be granted to a scheduled airline to unlade passengers or merchandise, including baggage, or to lade merchandise, including baggage, in the case of any or all of its planes at night or on a Sunday or holiday when customs supervision is required. The application for such a special license shall be on customs Form 3851 and shall be supplemented by a request on customs Form 3853 (modified) for overtime services of customs officers. Such request for overtime services must show the exact times when overtime services will be needed unless arrangements are made so that the proper customs officer will be notified during official hours in advance of the services requested as to the exact times that the services will be needed. The special license shall not be granted until the required bond on customs Form 3587, 7567, or 7569 shall have been filed.

(f) *Monthly and annual permits to unlade and lade.* The collector may also issue a permit running for any period up to 1 month and in multiples of months thereafter, but not to exceed 1 year, to unlade or lade during official hours any or all of the planes of a scheduled airline. Customs Form 3851 shall be used for such purpose.

(g) *Emergency or forced landing.* Should an emergency or forced landing be made by an aircraft coming into the United States from any place outside thereof, or into any area from any other area, or while traveling from airport to airport in the United States under a permit to proceed (see § 6.9 (b)), the aircraft commander shall not allow any merchandise, baggage, passengers or crew members not previously cleared by customs or other applicable Government agency to be removed or to depart from the landing place without permission of a customs officer, unless such removal or departure is necessary for purposes of safety, communication with customs authorities, or the preservation of life, health or property. As soon as practicable, the aircraft commander, or a member of the crew in charge, or the owner of the aircraft, shall communicate with the customs officer at the intended place of first landing or at the nearest international airport or other customs port of entry in that area and make a full report of the circumstances of the flight and of the emergency or forced landing. Mail carried as such may be removed from such aircraft upon making an emergency or forced landing, but if so removed shall be delivered at once to a responsible officer or employee of the Postal Service.

§ 6.3 Entry and clearance.

(a) Aircraft coming into any area from any place outside the United States shall be entered in such area if landing is made therein and if carrying passengers for hire or commercial cargo (see § 6.7). Aircraft proceeding from one area into another shall be entered in the latter area if landing is made therein and if carrying residue cargo. Aircraft not required to enter under this paragraph are subject to other customs requirements (see § 6.2).

(b) Entry shall be made by the aircraft commander, or by any other authorized agent of the owner or operator of the aircraft (hereinafter referred to as an authorized person),[1] at the international airport at which the first landing is made in the area. If, pursuant to § 6.2 (a), the first landing occurs at a place not an international airport, entry shall be made at the nearest international airport or customs port of entry, unless some other place is designated for that purpose.

(c) Aircraft departing for any area for foreign territory, or to take aboard or discharge persons or merchandise

[1] Section 431, Tariff Act of 1930, as amended (19 U. S. C. 1431): "(b) Whenever a manifest of articles or persons on board an aircraft is required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treasury may prescribe. If any irregularity of omission or commission occurs in any way in respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity."

anywhere outside the United States, or departing from any area for another area carrying merchandise destined to or through Puerto Rico or residue cargo shall be cleared (see § 6.8) in the area from which departing. Clearance is not required of aircraft not carrying passengers for hire or merchandise, but such aircraft are subject to certain requirements under the export and import licensing regulations of the Department of State relating to international traffic in arms.[2]

(d) The clearance shall be obtained by the aircraft commander or an authorized person at the customs port of entry (whether or not an international airport) at or near the place of last take-off from the area, unless some other place is designated for that purpose by the collector of customs.

(e) This section shall not apply to the entry of aircraft of scheduled airlines complying with the terms of § 6.4 nor to the clearance of such aircraft complying with the terms of § 6.5, nor to the clearance of any aircraft holding a permit issued by the Secretary of Commerce authorizing departure without clearance.

§ 6.4 Entry of aircraft of scheduled airlines.

(a) Aircraft operated by scheduled airlines coming into any area from any place outside the United States shall be entered in the area of first landing.

(b) Aircraft operated by scheduled airlines coming from one area into another area shall be entered therein if carrying residue cargo (§ 6.9).

(c) Entry required by this section in an area shall be made at the place of landing provided for under § 6.2.

§ 6.5 Clearance of aircraft of scheduled airlines.

(a) Aircraft operated by scheduled airlines departing for any place outside the United States may clear from the area of departure, but clearance shall be mandatory only during any period covered by a proclamation of the President that a state of war exists between foreign nations, or the aircraft is—

(1) Beginning a flight in that area; or

(2) Carrying from that area merchandise which must be listed in its general clearance declaration (§ 6.8).

(b) Aircraft operated by scheduled airlines departing from any area for another area shall clear in the area from which departing if carrying merchandise destined to or through Puerto Rico or residue foreign cargo.

(c) Clearance required by this section may be obtained by the aircraft commander or an authorized person at the customs port of entry (whether or not an international airport) at or nearest each place at which merchandise or passengers, or both, are taken aboard for discharge beyond the area. In such case the clearance shall be limited to the passengers and merchandise taken aboard at such place. Otherwise the clearance shall be obtained at the customs port of entry (whether or not an international airport) at or nearest the place of last take-off in the area unless some other place for clearance is designated by the collector of customs.

§ 6.6 Documents; form.

(a) The forms described in §§ 6.7 and 6.8 shall be the primary documents required for entry and clearance of aircraft. The forms shall be approximately but not to exceed 8½" wide and 14" long and shall be on white bond paper that will not discolor or become brittle within 20 years. If these forms are dittoed or if the entries on them are to be dittoed, the paper must be substance 40, 17" x 22", 1,000-sheet basis; if printed or typewritten, at least 25 percent rag, substance 26, 17" x 22", 1,000-sheet basis. These forms and the entries thereon must be dittoed, typewritten, or printed in the English language, with ink or dye that will not fade or "feather" within 20 years. The forms to be used for the entry and clearance of the aircraft, passengers, crew members, and merchandise carried thereon shall be forms approved by the Commissioner of Customs.

(b) The forms described in §§ 6.7 and 6.8 may be obtained from collectors of customs upon payment by the owner or operator of the aircraft. These forms may be printed or dittoed by private parties, provided the forms so printed or dittoed conform to the official forms currently in use, with respect to size, wording arrangement, style and size of type, and paper specifications. A small quantity of each of the forms shall be set aside by collectors of customs for free distribution and official use.

§ 6.7 Documents for entry.

(a) At the time any aircraft arriving from outside the United States lands in any area in which entry is required by § 6.3 or 6.4, the aircraft commander or an authorized person shall deliver a general declaration on customs Form 7507 in accordance with this section but the total number of crew members shall be shown on the general declaration. If an aircraft arrives in an area from another area, the documents specified in § 6.9 (b) shall be delivered.

(b) A general declaration shall contain or have attached thereto the following information:

(1) A crew manifest. This manifest is not required if the aircraft is arriving directly on a trip which originated in Canada but the total number of crew members shall be shown on the general declaration. A crew purchase list shall not be required if crew declarations on customs Form 5123, when required by paragraph (g) of this section, are securely attached to the general declaration and the following statement is included on the general declaration:

Crew purchases as per crew declarations attached.

Articles entered by crew members not required to file crew declarations shall be shown opposite the name of the crew member on the general declaration or on a separate list attached thereto.

(2) The total number of passengers shall be shown on the face of the general declaration.

(NOTE: No passenger manifest is required for customs purposes. For Immigration and Naturalization Service passenger manifest requirements, see 8 CFR Part 231.)

(3) A cargo manifest. The cargo manifest on the general declaration, properly executed and having airway bills or consignment notes attached, will be acceptable if it bears a notation such as "Express as per airway bills attached" and shows the airway bill or consignment note numbers, if any. If the airway bills or consignment notes are not attached to the general declaration or to the separate form of cargo manifest, the full information indicated in the cargo manifest on the general declaration shall be furnished. Customs Form 5119 may be used in lieu of the cargo manifest if the baggage or other merchandise consists of a single shipment and does not exceed $250 in value. Customs Form 7523 also may be used in lieu of other forms of cargo manifests for merchandise in a single shipment which is entered on that form. Except as to any arms, ammunition, or implements of war on board which require a license issued by the Secretary of State, no cargo manifest or store list shall be required for merchandise, including baggage, arriving from a foreign country and departing for the same or another foreign country on the same through flight, although any such document on board may be inspected if necessary. (For rule applicable to arrival in an area from another area, see § 6.8 (e).) Aircraft of scheduled airlines shall not be required to file a separate store list for domestic supplies and equipment or for fuel, if the following statement is included on the general declaration or attached cargo manifest:

Domestic supplies and equipment and fuel for immediate flight only, except as noted.

Alcoholic beverages, tobacco or tobacco products, and bonded or foreign merchandise arriving as stores, or any equipment consisting of arms, ammunition, or implements of war on board which requires a license issued by the Secretary of State, shall be shown on the general declaration, or attached cargo manifest, or on a separate list attached thereto.

(4) Unaccompanied baggage arriving in the United States under a check number from any foreign country by air shall be shown on the air cargo manifest under the following headings:

Check No.	Description of package	Where from	Destination

On the right of the foregoing information, two blank columns, one headed "Name of examining officer" and on the right thereof another column headed "Disposition" shall be provided on the air cargo manifest for use of customs officers. Unaccompanied unchecked baggage arriving as air express or air freight shall be manifested as other air express or freight.

[2] Information regarding requirements relating to the licensing for export and import of articles defined as arms, ammunition, and implements of war may be obtained at any customhouse.

(5) Such other information and statements as are indicated on the general declaration form.

(c) One copy of the general declaration and one copy of each attached manifest shall be delivered by the aircraft commander or an authorized person immediately to the customs officer in charge at the airport or other place of arrival.

(d) The provisions of section 466, Tariff Act of 1930, as amended (19 U. S. C. 257, 258), are applicable to any aircraft of United States registry engaged in trade and arriving in the United States, as defined in section 401 (k), Tariff Act of 1930, as amended (19 U. S. C. 1401 (k)), whether from a contiguous or noncontiguous foreign country, and a notation as to any equipment installed on, or repairs made to, any such aircraft in a foreign country shall be made in the aircraft journey log book, which shall set forth a general description of the equipment or repairs and a statement of any necessity therefor. The aircraft commander or an authorized person, on the first subsequent arrival of the aircraft in the United States, shall exhibit the journey log book to the customs officer at the place of arrival. A declaration on customs Form 3415, to the effect that no equipment was purchased, or repairs made, in a foreign country, shall not be required in any case for any such aircraft. Except as specified hereafter in this paragraph, any such equipment purchased or repairs made shall be subject to entry and deposit of duty as prescribed by § 4.14 of this chapter, but the following may be added to the entry in lieu of the filing of customs Form 3415:

This entry contains a complete account of the equipment purchased for and the repairs made to the within-mentioned aircraft during the flight covered hereby, together with the cost of such equipment and the expenses of such repairs (including the cost of installation of equipment and the cost of repair parts and material used). Application is hereby made for the ascertainment of the amount of duty due under section 466, Tariff Act of 1930, as amended.

(e) The filing of customs Form 3415 and entry and deposit of duty for equipment purchased for or repairs made to an aircraft belonging to a scheduled airline or to an air carrier generally authorized to operate contract passenger or cargo flights and operating between the United States and foreign territory shall not be required if (1) such equipment or repairs were made necessary by reason of stress of weather or other casualty occurring since the aircraft last left the United States and were required to secure the safety and airworthiness of the aircraft in accordance with Federal Aviation Agency regulations to enable the aircraft to continue its flight; or such equipment installed and materials used in making the repairs were of the growth, produce, or manufacture of the United States and the work incident to such installation or repairs was performed by the regular crew of the aircraft or by residents of the United States, (2) the following statement is included on the general declaration or attached cargo manifest:

Entry for equipment purchased or repairs made to this aircraft while in a foreign country not required under section 6.7 (e) of the Customs Regulations.

and (3) the collector is satisfied from an inspection of the journey log book and such further investigation as he may deem necessary that the facts with respect to the installation of the equipment and making of repairs were as set forth in subparagraph (1) of this paragraph.

(f) The provisions of section 446, Tariff Act of 1930 (19 U. S. C. 1446), relating to supplies and stores retained on board, shall be applicable to aircraft arriving in the United States from any foreign port or place.

(g) Crew baggage declarations required by § 10.22 (b) of this chapter shall be filed by the officers and members of the crew of aircraft arriving from contiguous or noncontiguous foreign territory. A crew member may be permitted to make an oral declaration and entry if all articles he has to declare, in addition to articles for which no entry is required in accordance with § 23.4 (c) of this chapter, may be admitted free of duty under section 321 (a) (2) (B) of the Tariff Act of 1930, as amended. Written declarations may be required in any case if necessary to effect prompt and orderly clearance of crew members and their effects or if deemed necessary to protect the revenue.

(h) The provisions of sections 440[a] and 584,[b] Tariff Act of 1930, as amended, relating respectively to post entry for correction of a manifest and penalties for falsity or lack of manifest, are applicable to aircraft arriving in the United States with merchandise or unaccompanied baggage. If the inward foreign manifest is incorrect, it shall be corrected promptly. Post entry to correct a manifest to include merchandise or unaccompanied baggage which is not included in, or does not agree with, the original manifest may be made on customs Form 3257 or on a separate copy of the cargo manifest form which has been marked or stamped "Post Entry" and signed by the aircraft commander or an authorized person. Correction of a manifest to delete merchandise and unaccompanied baggage which is shortshipped, and is not on board the aircraft at the time of arrival may be made by submission of a certificate of cargo shortshipped on customs Form 3249 or on a separate copy of a manifest form signed by the aircraft commander or an authorized person, which shall list the merchandise not found, together with reasons for the shortage, and shall include the following statement:

The following merchandise or unaccompanied baggage described has not been landed at any port in the United States and was not found for the reasons stated.

§ 6.8 Documents for clearance.

(a) At the time of the departure of any aircraft from any area from which clearance is required by § 6.3 or § 6.5, the aircraft commander or an authorized person shall deliver to the customs officer in charge shipper's export declarations on Commerce Form 7525–V for all cargo on the aircraft (also for the aircraft itself if it is being exported from the United States for foreign account), and a general declaration in accordance with this section. The foregoing documents may be filed pro forma if the aircraft is departing from the United States and prior to departure a proper bond is given, in which case the completed documents are to be delivered pursuant to the bond not later than the fourth day after departure: *Provided*, That, during any period covered by a proclamation of the President that a state of war exists between foreign nations, no aircraft shall be cleared for a foreign destination until the shipper's export declarations have been filed with the customs officer in charge.[3]

(b) The general declaration shall be on the same form as is required by § 6.7. Any cargo manifest delivered with the general declaration shall also be on the same forms as are required by § 6.7.

(c) When the aircraft is departing from the United States, the general declaration required by this section shall be prepared in duplicate, with a single copy of each cargo manifest. For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the outward manifest or the airway bill or consignment note attached to the manifest and made a part thereof shall clearly show for such shipment the number, date, and class of such customs entry or withdrawal (i. e. T. & E., Wd. T. & E., I. E., Wd. Ex., or Wd. T., as applicable) and the name of the port where the entry or withdrawal was filed if other than the port where the merchandise is laden for exportation. One copy of the general declaration and each air cargo manifest shall be delivered by the aircraft commander or an authorized person to the customs officer in charge to be retained by him as a record of outward clearance.

(d) One copy of the general declaration for departure from the United States shall constitute a clearance certificate when endorsed by the customs officer in charge to show that clearance is granted.

(e) One extra copy of the general declaration and one copy of the air cargo manifest shall be prepared if the aircraft is carrying merchandise other than residue cargo between the mainland and Puerto Rico. Such declaration and manifest shall be delivered to the customs officer in the area from which the aircraft is departing and shall be retained by him. If the aircraft is carrying residue cargo, a copy of the general declaration retained on board at the time of departure must have the endorsement of the customs officer in the area from which the aircraft is departing that permit to proceed is granted. (For residue cargo see § 6.9.)

§ 6.9 Residue cargo.[4]

(a) Aircraft arriving in the United States with cargo on board shown by the manifest to be destined to other ports in the same or in some other areas of the United States or outside the United States may be permitted to proceed with such cargo from port to port in the United States or to a foreign country for the unlading thereof under the procedure prescribed in paragraph (b) of this section, upon the giving of a bond on customs Form 7567 or 7569. When an aircraft arriving from outside the United States has on board no cargo and immediate clearance is requested, it may be permitted to proceed if a bond on customs Form 7567 or 7569 is on file covering such aircraft.

(b) When applying for clearance from the airport or place of first entry in the United States, the aircraft commander or an authorized person shall present to the collector (1) one copy[5] of a general declaration and one copy of each manifest[6] forming a part thereof (referred to hereinafter as abstract general declarations and manifests), covering all foreign residue cargo not yet cleared by customs or other interested governmental agency and manifested or destined for discharge at other domestic or foreign airports and of all crew members, and (2) one certified copy of the original complete general declaration which was filed upon the arrival of the aircraft at such airport or place, and of the manifests forming a part thereof[7] required on entry of aircraft from noncontiguous foreign territory (referred to hereinafter as the traveling general declaration and manifest). If clearance is in order a permit to proceed from one airport to another, which may be stamped, mimeographed, or printed on the abstract general declaration or on a separate sheet of paper attached thereto, shall be dated and signed by the appropriate customs officer at the airport of clearance. The documents presented by the aircraft commander or authorized person when applying for clearance shall be delivered to the aircraft commander, together with the permit to proceed, for deposit at the next international airport. The permit to proceed and a related declaration of the aircraft commander or an authorized person, to be executed on entry at a following airport, shall be substantially as follows:

PERMIT TO PROCEED FROM ONE AIRPORT TO ANOTHER

Airport of Departure _____
Date _____
Permission is hereby given aircraft _____ to proceed to _____.
(Next international airport)

The aircraft, which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifests. Bond was given at the initial international airport for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed.

Number of crew members not cleared by Public Health for: Quarantine _____; medical examination of aliens _____.

Number of passengers not cleared by Public Health for: Quarantine _____; medical examination of aliens _____.

Number of crew members not cleared by Customs _____.

Number of passengers not cleared by Customs _____.

Number of pieces of cargo not cleared _____.

_____
Customs officer (title)

DECLARATION ON ENTRY OF AIRCRAFT AT FOLLOWING AIRPORT

Airport of Arrival _____
Date _____

I, _____, commander or authorized representative of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of _____, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the manifests attached hereto.

Title _____

(c) Upon arrival of the aircraft at the next airport (except when such airport is the last domestic port of discharge), the aircraft commander or an authorized person shall make entry by presenting the abstract general declaration and manifest and the traveling general declaration and manifest, together with the permit to proceed, to the customs officer after the declaration at the bottom of the permit to proceed has been properly executed. The declarations and entries of crew members (customs Form 5123) who leave the aircraft at that airport with their purchases shall be detached from the traveling manifest and retained at that port. Upon departure from the second airport of arrival with foreign residue cargo, passengers, or crew members and their purchases not yet cleared by customs or other interested governmental agency, the procedure shall be the same as at the airport of first arrival, except that no new traveling general declaration and manifest shall be prepared, but the traveling general declaration and manifest as certified at the first international airport shall be delivered to the aircraft commander for deposit at the next airport of entry.

(d) The same procedure as above set forth shall be followed at any subsequent airport (except the last domestic port of discharge) to which the aircraft may proceed with foreign residue cargo, passengers, or crew members and their purchases not yet cleared by customs or other interested governmental agency. At the last domestic port of discharge no abstract manifest shall be required, and the traveling general declaration with one copy of each cargo manifest forming a part thereof shall be used for entering the aircraft, and shall be retained at such port.

(e) The provisions of this section shall be applicable to aircraft arriving in the United States from either contiguous or noncontiguous foreign territory. Except as specified in this section, the customs requirements applicable to residue vessel cargo (see § 4.85 of this chapter) shall apply to residue aircraft cargo.

§ 6.10 General provisions.

Except as otherwise provided for in this part, aircraft arriving from contiguous foreign territory and the persons and merchandise, including baggage, carried thereon shall be subject to the customs laws and regulations applicable to vehicles arriving from contiguous foreign territory; and aircraft and the passengers and merchandise, including baggage, carried thereon, arriving from any other place, shall be subject to the customs laws and regulations applicable to vessels so arriving, insofar as such laws and regulations are applicable to aircraft.

§ 6.11 Penalties.

Any person violating any customs requirements prescribed in this part or any provision of the customs laws or regulations made applicable to aircraft

[a] "If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do shall be liable to a penalty of $500." (Tariff Act of 1930. Sec. 440, as amended; 19 U. S. C. 1440.)

[b] "• • • if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle shall be subject to a penalty of $500: Provided, That if the collector shall be satisfied that the manifest • • • is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. • • •." (Tariff Act of 1930, sec. 584, as amended; 19 U. S. C. 1584.)

[3] For export of aircraft, see 22 CFR Part 121 et seq.

[4] "• • • Any vessel arriving from a foreign port or place having on board merchandise shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to port or from district to district for the unlading thereof." (19 U. S. C. 1442.)

"Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the collector a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board." (19 U. S. C. 1443.)

"Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the collector at such port and shall produce the permit issued by the collector at the port of first arrival together with the certified copy of his manifest." (19 U. S. C. 1444.)

[5] Other copies of abstract manifests may be required by other interested governmental agencies.

[6] Includes air bills or consignment notes used as manifests.

[7] If crew purchases are not listed on abstract manifests but references are made thereon to the declarations and entries of crew members (customs Form 5123) on which the articles are listed, the declaration and entries of the crew members who have not yet left the aircraft with their purchases shall be attached to the traveling manifest.

by § 6.10 shall be subject to a civil penalty of $500, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the customs laws. Such penalty and forfeiture may be remitted or mitigated in accordance with the provisions of §§ 23.23 to 23.25 of this chapter.

§ 6.12 International airports; regulations.

(a) International airports will be designated after due investigation to establish the fact that a sufficient need exists in any particular district or area to justify such designation and to determine the airport best suited for such purpose.

(b) A specific airport will be designated in each case, rather than a general area or district which may include several airports.

(c) The designation as an international airport may be withdrawn if it is found that the volume of business clearing through the port does not justify maintenance of inspection equipment and personnel, if proper facilities are not provided and maintained by the airport, if the rules and regulations of the Federal Government are not complied with, or if it is found that some other location would be more advantageous.

(d) International airports shall be municipal airports, unless particular conditions which prevail warrant a departure from this requirement.

(e) Each international airport shall provide without cost to the Government suitable office and other space for the exclusive use of Federal officials connected with the port. A suitable surfaced loading area shall be provided by each airport at a convenient location with respect to such office space. Such loading area shall be reserved for the use of aircraft entering or clearing through the airport.

(f) International airports shall be open to all aircraft for entry and clearance purposes and no charge shall be made for the use of said airports for such purposes. However, in any case where an international airport authorizes any such aircraft to use such airport for the taking on or discharging of passengers or cargo, or as a base for other commercial operations or for private operations, this paragraph shall not be interpreted to mean that charges may not be made for such commercial or private use of such airport.

(g) All aircraft entering or clearing through an international airport shall receive the required servicing by airport personnel promptly and in the order of arrival or preparation for departure without discrimination. The charges made for such servicing shall in no case exceed the schedule of charges prevailing at the airport in question. A copy of said schedule of charges shall be posted in a conspicuous place at the office space provided for the use of Federal officials connected with the port.

(h) International airports shall adopt and enforce observance of such requirements for the operation of airports, including airport rules, as may be prescribed or recommended by the Federal Aviation Agency.

(i) Requirements in addition to all the foregoing may be imposed at a particular airport as the needs of the district or area to be served by the airport may demand.

§ 6.13 List of international airports.[8]

The following is a list of international airports of entry designated by the Secretary of the Treasury without time limit:

Location and Name
Akron, Ohio, Municipal Airport.
Albany, N. Y., Municipal Field.
Baudette, Minn., Baudette Municipal Airport.
Bellingham, Wash., Bellingham Airport.
Brownsville, Tex., Rio Grande Valley International Airport.
Buffalo, N.Y., Greater Buffalo International Airport.
Burlington, Vt., Burlington Municipal Airport.
Calexico, Calif., Calexico Municipal Airport.
Caribou, Maine, Caribou Municipal Airport.
Chicago, Illinois, The Chicago Midway Airport.
Cleveland, Ohio, Cleveland Hopkins Airport.
Cut Bank, Mont., Cut Bank Airport.
Detroit, Mich., Detroit Municipal Airport and Detroit Metropolitan Wayne County Airport.
Douglas, Ariz., Bisbee-Douglas Airport.
Duluth, Minn., Duluth Municipal airport and Sky Harbor Airport.
Eagle Pass, Tex., Eagle Pass Airport.
El Paso, Tex., El Paso International Airport.
Fort Lauderdale, Fla., Broward County Airport.
Friday Harbor, Wash., Friday Harbor.
Grand Forks, N. Dak., Grand Forks Municipal Airport.
Great Falls, Mont., Great Falls International Airport.
Havre, Mont., Havre-Hill County Airport.
International Falls, Minn., International Falls Municipal Airport.
Juneau, Alaska, Juneau Airport (seaplane base only) and C. A. A. Field.
Ketchikan, Alaska, Ketchikan Airport (seaplane base only).
Key West, Fla., Meacham Field.
Laredo, Tex., Laredo Municipal Airport.
Malone, N. Y., Malone-Dufort Airport.
Massena, N. Y., Massena Airport.
McAllen, Tex., Miller International Airport.
Miami, Fla., Chalks Flying Service Seaplane Base and Miami International Airport.
Minot, North Dakota, Minot International Airport.
Nogales, Ariz., Nogales International Airport.
Ogdensburg, N. Y., Ogdensburg Harbor and Ogdensburg Municipal Airport.
Oroville, Wash., Dorothy Scott Municipal Airport and Dorothy Scott Seaplane Base.
Pembina, N. Dak., Fort Pembina Airport.
Portal, N. Dak., Portal Airport.
Port Huron, Mich., St. Clair County Airport.
Port Townsend, Wash., Port Townsend Airport.
Put-in-Bay, Ohio, Put-in-Bay Airport.
Rochester, N. Y., Rochester Municipal Airport.
Rouses Point, N. Y., Rouses Point Seaplane Base.
San Diego, Calif., San Diego Municipal Airport (Lindbergh Field).
Sandusky, Ohio, John G. Hinde Airport.
Sault Ste. Marie, Mich., Sault Ste. Marie Airport.
Seattle, Wash., Boeing Municipal Air Field and Lake Union.
Spokane, Wash., Felts Field.
Tampa, Fla., Tampa International Airport.
Watertown, N. Y., Watertown Municipal Airport.
West Palm Beach, Fla., Palm Beach International Airport.
Wrangell, Alaska, Wrangell Seaplane Base.

§ 6.15 Transportation in bond and merchandise in transit.

(a) The regulations in this section apply only to the transportation in bond of merchandise arriving in United States customs territory by aircraft and entered for immediate transportation without appraisement or for transportation and exportation by aircraft. Except as provided for herein, the regulations[9] applicable to transportation in bond and merchandise in transit shall apply to transportation of merchandise in bond by aircraft.

(b) *Procedure at port of origin.* (1) Customs Form 7512 shall be used as a combined entry and manifest. These forms shall be filed in quintuple and all copies shall be signed by the agent of the carrier.

(2) When merchandise is entered for immediate transportation without appraisement, two copies of the combined entry and manifest shall be delivered to the carrier to accompany the merchandise to the port of destination. When merchandise is entered for transportation and exportation, one copy of the combined entry and manifest shall be delivered to the carrier to accompany the merchandise to the port of destination.

(3) All such merchandise delivered to a bonded air carrier for transportation in bond shall be receipted for by an agent of the carrier and no supervision of the lading of the merchandise on the transporting aircraft shall be required.

(4) Merchandise covered by a single combined entry and manifest may be forwarded to destination on one aircraft or on more than one aircraft, and a separate manifest for each aircraft shall not be required if the entire shipment is forwarded within a single 24-hour period. When a portion of a shipment is forwarded on an aircraft departing more than 24 hours after the first portion of the shipment was forwarded, the original combined entry and manifest copy or copies accompanying the first portion of the shipment shall be endorsed to indicate that the remainder of the shipment will follow by separate aircraft, and a single manifest shall be prepared for each portion of the shipment which follows by separate aircraft and used as a notice of arrival at the port of destination.

(5) Merchandise forwarded in bond under the regulations in this part may be transshipped at an intermediate port to one or more aircraft of the same line without customs supervision and notice of such transshipment shall not be required. When merchandise covered by a single combined entry and manifest is transshipped to more than one aircraft the procedure specified in subparagraph (4) of this paragraph, shall be followed.

(6) The sealing of aircraft or compartments of aircraft carrying in-bond merchandise, or the cording and sealing of in-bond packages carried by aircraft, shall not be required. However, the carrier shall furnish and attach to each in-bond package the warning label prescribed by § 18.4 (e) of this chapter.

(c) *Procedure at the port of destination.* On arrival of an in-bond shipment at the port of destination, the aircraft commander, or an authorized person, shall deliver one copy of the combined entry and manifest which accompanied the shipment, or the copy of the manifest prepared for each portion of a shipment forwarded by separate aircraft which departed more than 24 hours after the first portion of the shipment, to the collector at that port as a notice of arrival. One copy of the entry and manifest which accompanied merchandise forwarded under an entry for immediate transportation without appraisement shall be delivered by the carrier to the consignee to be used in making entry. This copy may be endorsed as provided for by § 8.6 (e) of this chapter and used as a carrier's certificate.

§ 6.16 Certificate of lading for exportation.

The certificate of lading for exportation on customs Form 7512 or customs Form 7520 shall be executed at the place where the aircraft clearance covering such merchandise is obtained. In any case where the aircraft clearance is obtained at a place other than the place of last take-off from United States customs territory, as provided for by § 6.5 (c), the aircraft commander or an authorized person shall at each place of subsequent landing in United States customs territory prior to foreign departure (a) immediately report arrival with merchandise on board destined to be exported from bond to the customs officer at that place and (b) surrender the clearance certificate received at the place where such merchandise was taken on board to the customs officer to be retained until departure.[10]

[8] "(b) The Secretary of the Treasury is authorized to (1) designate places in the United States as ports of entry for civil aircraft arriving in the United States from any place outside thereof and for merchandise carried on such aircraft, (2) detail to ports of entry for civil aircraft such officers and employees of the customs service as he may deem necessary, and to confer or impose upon any officer or employee of the United States stationed at any such port of entry (with the consent of the head of the Government department or other agency under whose jurisdiction the officer or employee is serving) any of the powers, privileges, or duties conferred or imposed upon officers or employees of the customs service, and (3) by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of the customs laws to such extent and upon such conditions as he deems necessary.

"(c) The Secretary of the Treasury is authorized by regulation to provide for the application to civil aircraft of the laws and regulations relating to the entry and clearance of vessels to such extent and upon such conditions as he deems necessary." (49 U.S.C. 1509(b), (c).)

[9] See Part 18 of this chapter.

[10] "If any merchandise entered or withdrawn for exportation without payment of duties thereon, * * *, is relanded at any place in the United States without entry having been made, such merchandise shall be considered as having been imported in the United States contrary to law, and each person concerned shall be fined not more than $5,000 or imprisoned not more than 2 years, or both; and such merchandise shall be forfeited." (18 U. S. C. 544.)

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION[1]

Sec.
7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.
7.8 Insular possessions of the United States other than Puerto Rico.
7.11 Guantanamo Bay Naval Station.

AUTHORITY: §§ 7.1 to 7.11 issued under R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.

(a) When spirits and wines are withdrawn from a bonded manufacturing warehouse for shipment in bond to Puerto Rico pursuant to section 311, Tariff Act of 1930, as amended,[2] the warehouse withdrawal shall contain on the face thereof a statement of the kind and quantity of all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines. The duty assessed on the imported merchandise and containers so used, and their classification and value, shall be shown on the withdrawal in accordance with § 8.34 of this chapter. If no imported merchandise or containers have been used, the warehouse withdrawal shall bear an endorsement to that effect. (See § 22.26 of this chapter.)

(b) The spirits and wines shall be forwarded in accordance with the general provisions of the regulations governing the transportation of merchandise in bond, Part 18 of this chapter.

(c) A regular entry shall be made for all foreign-grown coffee shipped to Puerto Rico from the United States, but special customs invoices shall not be required for such shipments.[3]

(Secs. 311, 319, 484 (a), 46 Stat. 691, as amended, 696, 722, as amended; 19 U. S. C. 1311, 1319, 1484 (a))

§ 7.8 Insular possessions of the United States other than Puerto Rico.

(a) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $25 are sought to be admitted free of duty under the provisions of section 301, Tariff Act of 1930, as amended, relating to certain articles produced in such insular possessions,[4]

[1] "All laws affecting imports of articles, goods, wares, and merchandise from foreign countries shall apply to articles, goods, wares, and merchandise and persons coming from the Canal Zone, Isthmus of Panama, and seeking entry into any State or Territory of the United States or the District of Columbia." (33 Stat. 843; 19 U. S. C. 126)

The customs administration of the said Canal Zone is under the jurisdiction of the Governor of the Panama Canal. (T. D.'s 26163, 28815, 30254, 30448, 39402, C. D. 530)

For the treaty between the United States and the Republic of Panama see 33 Stat. 2234.

[2] " * * * Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U. S. C. 1311)

[3] Section 319, Tariff Act of 1930, authorizes the Legislature of Puerto Rico to impose a duty on coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States, and the Legislature of Puerto Rico has imposed such a duty.

[4] "There shall be levied, collected, and paid upon all articles coming into the United States from any of its insular possessions, except Puerto Rico, the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries; except that all articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of

there shall be filed in connection with the entry a certificate of origin covering articles shipped from insular possessions (except Puerto Rico) to the United States, customs Form 3229, signed by the chief or assistant chief customs officer at the port of shipment,[15] showing that such merchandise is the growth or product of such possession, or manufactured or produced in such possession, from materials the growth, product, or manufacture of any such possession or of the United States, or of both, which do not contain foreign materials to the value of more than 50 per centum of their total value. Such certificate shall not be required for any shipment valued at $25 or less.

(b) When articles coming directly into the United States from an insular possession, other than Puerto Rico, in a shipment valued over $25 are sought to be admitted free of duty under the provisions of section 301, Tariff Act of 1930, as amended, relating to certain articles returned to the United States,[16] there shall be filed in connection with the entry the following evidence:

(1) A certificate, customs Form 4467, of the collector of customs at the port from which the merchandise was shipped from the United States, except that no such certificate shall be required if the collector is satisfied by reason of the nature of the articles or otherwise that no drawback of duties or refund or remission of taxes was allowed on the merchandise by reason of such shipment. This certificate shall be issued on application of the importer, or of the collector at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the merchandise was shipped from the port at which entry is made and the fact of shipment appears on the records of the customhouse, the fact of return shall be noted on such record but the filing of the certificate on Form 4467 shall not be required.

(2) A declaration of the shipper in the insular possession in the following form:

I, _____ of _____, do hereby declare that to the best of my knowledge and belief the articles identified below were sent directly from the United States on _____, 19____, to _____, of _____, on the _____ (Insular possession), and that the _____ (Name of carrier), articles remained in said insular possession until shipped by me directly to the United States via the _____ (Name of carrier) on _____, 19____.

Marks	Numbers	Quantity	Description	Value

Dated at _____, this ____ day of _____, 19__.

_____ (Shipper)

Such certificate and declaration shall not be required for shipments valued at $25 or less, or in any case where the collector is satisfied by reason of the nature of the articles or otherwise that they were shipped directly to the insular possession and were returned therefrom by direct shipment, and that no drawback of duties or refund or remission of taxes was allowed when the articles were shipped from the United States.

(c) When merchandise, excluding any shipments valued at $25 or less, arrives unaccompanied by a certificate of origin or a declaration of the shipper, or when any other document necessary to complete entry is lacking, a bond for the production thereof may be taken on customs Form 7551, 7553, or other appropriate form, except that a bond for production of a bill of lading shall be taken on customs Form 7581.

(d) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 per centum, a comparison shall be made between the actual purchase price of the foreign materials (excluding any material which at the time such article is entered, or withdrawn from warehouse, for consumption in the United States, may be imported into the United States from a foreign country, other than Cuba or the Philippine Republic, free of duty), plus the cost of transportation to such insular possession (but excluding duties and taxes, if any, assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the United States determined in accordance with section 402, Tariff Act of 1930, as amended, of the article brought into the United States.

(e) A special customs invoice shall be required in connection with each shipment of dutiable merchandise valued over $500 unless the shipment would have been exempt from the requirement of a special customs invoice under § 8.15 of this chapter if it had been imported from a foreign country, or when the shipment is covered by a certificate of origin provided for in paragraph (a) of this section.

(f) Merchandise may be withdrawn from bonded warehouse under section 557, Tariff Act of 1930, as amended, for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the Island of Guam, without payment of duty, or with refund of duty if the duties have been paid thereon, in like manner as for exportation to foreign countries. No drawback may be allowed under section 313, Tariff Act of 1930, as amended, on articles manufactured or produced in the United States and shipped to any insular possession. No drawback of internal-revenue tax is allowable under section 313 of the Tariff Act on articles manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands, Kingman Reef, or Johnston Island. (See § 22.22 of this chapter.)

(Secs. 309, 313, 482 (f), 557, 46 Stat. 690, as amended, 693, as amended, 720, as amended, 744, as amended, sec. 301, 68 Stat. 1139; 19 U. S. C. 1301a, 1309, 1313, 1482 (f), 1557)

§ 7.11 Guantanamo Bay Naval Station.

Articles of foreign origin may enter the area (both land and water) of the Guantanamo Bay Naval Station free of duty, but such articles shall be subject to duty upon their subsequent entry into the United States.

the United States, or of both, which do not contain foreign materials to the value of more than 50 per centum of their total value, coming into the United States directly from any such possession, * * * shall be admitted free of duty upon compliance with such regulations as to proof of origin as may be prescribed by the Secretary of the Treasury. In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 50 per centum, no material shall be considered foreign which, at the time such article is entered, or withdrawn from warehouse, in the United States for consumption, may be imported into the United States from a foreign country, other than Cuba or the Philippine Republic, free of duty." (Sec. 301, Tariff Act of 1930, as amended.)

[15] Guam, Wake Island, Midway Islands, Kingman Reef, Johnston Island and American Samoa are American territory, but not within the customs territory of the United States. Importations into those islands are not governed by the Tariff Act of 1930 or these customs regulations. The customs administration of American Samoa is under the jurisdiction of the Department of the Interior (Office of Territories). The customs administration of Wake Island is under the jurisdiction of the Department of Commerce (Civil Aeronautics Administration). The customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. The customs administration of Guam is under the Government of Guam. A certificate signed by the Commander at the Johnston Island Air Force Base, or his assistant, shall be acceptable as proof of origin. Kingman Reef is understood to be uninhabited.

[16] "* * * all articles previously imported into the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which are shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which it is being returned by direct shipment, shall be admitted free of duty upon compliance with such regulations as to proof of origin as may be prescribed by the Secretary of the Treasury." (Sec. 301, Tariff Act of 1930, as amended)

PART 8—LIABILITY FOR DUTIES; ENTRY OF IMPORTED MERCHANDISE

No. 248—Part II——12

LIABILITY FOR DUTIES

Sec.
8.1 Liability of importer for duties.
8.2 Reimportation; liability for duties on.

ENTRY

8.3 Entry required; exceptions.
8.4 Preliminary examination of entry papers; making entry or withdrawal; applicable rate of duty; date of importation.
8.5 Examination of merchandise before entry for consumption or warehouse.
8.6 Evidence of right to make entry, legal representative of consignee; nonresident consignee; foreign corporation; underwriters and salvors.
8.7 Disposition of bill of lading or carrier's certificate.
8.8 Requirements on entry.
8.9 Entry without required invoice.
8.11 Invoice to be for single shipment; extracts from invoices.
8.12 Invoices for installment shipments arriving within a period of 7 days; entry.
8.13 Contents of invoices; incomplete invoices; general requirements supplemented.
8.15 Special customs invoices required; exceptions.
8.16 Entered value; importers may add to or deduct from the invoice value.
8.18 Declaration on entry.
8.19 Powers of attorney.
8.20 Incomplete entry; bonds for the production of documents.
8.21 Estimation of duties; classification.
8.22 Designation of merchandise to be examined.
8.23 Release of merchandise.
8.24 Release of merchandise in customs custody after liquidation; merchandise refused by consignee.
8.25 Liens for freight, charges, or contribution in general average.
8.26 Recall of merchandise released from customs custody; requests of appraiser for additional packages or quantities.

ENTRY FOR CONSUMPTION

8.27 Form of entry.
8.28 Release under bond; deposit of estimated duties; permit.
8.29 Release of packages.

ENTRY FOR WAREHOUSE

8.30 Form and contents; articles entitled to entry.
8.31 Estimation of duties; bond.
8.32 Liability of importers and sureties.

ENTRY FOR REWAREHOUSE

Sec.
8.33 Procedure.
8.34 Value and classification; protest.

COMBINED ENTRY FOR REWAREHOUSE AND WITHDRAWAL FOR CONSUMPTION

8.35 Form; procedure.

EXPORTATION UNDER WAREHOUSE WITHDRAWAL FOR TRANSPORTATION

8.36 Procedure.

WITHDRAWAL AT ORIGINAL OR SECONDARY PORT FOR CONSUMPTION

8.37 Withdrawal; form and contents.
8.38 Withdrawal; when completed.
8.39 Withdrawal by transferee.
8.40 Withdrawals before and after liquidation.

WITHDRAWAL AT ORIGINAL OR SECONDARY PORT FOR EXPORTATION

8.41 Form and contents; goods not laden.
8.43 Weight, gauge, or measure.
8.45 Parcel-post packages.

ORES; CRUDE COPPER-BEARING MATERIALS; CRUDE METALS

8.46 Entry and sampling of ores and crude metals not for smelting in bond.
8.47 Entry and sampling of crude copper-bearing materials not for smelting or refining in bond.
8.48 Sampling and assaying.

ENTRY FOR EXPORTATION, ENTRY BY APPRAISEMENT, INFORMAL ENTRIES, AND PACKED PACKAGES

8.49 Entry for exportation; exportation of rejected merchandise.
8.50 Entry by appraisement.
8.51 Informal entries.
8.51a Entry of certain shipments of unconditionally or conditionally free merchandise.
8.52 Packed packages; marking; entry; when entry not required.

LANDING AND DELIVERY OF ARTICLES FOR WHICH IMMEDIATE DELIVERY IS NECESSARY

8.59 Application; entry; procedure.

AUTHORITY: §§ 8.1 to 8.59 issued under R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

LIABILITY FOR DUTIES

§ 8.1 Liability of importer for duties.

(a) Unless otherwise specially provided for by law, duties accrue upon imported merchandise on arrival of the importing vessel within a customs port with intent then and there to unlade, or at the time of arrival within the limits of the United States if the merchandise arrives otherwise than by vessel.

(b) Unless relieved by law or regulations, the liability for duties, both regular and additional, attaching on importation constitutes a personal debt due from the importer to the United States which can be discharged only by payment in full of all duties legally accruing. It may be enforced notwithstanding the fact that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customhouse without such payment. It also constitutes a lien upon the merchandise imported which may be enforced while such merchandise is in the custody or subject to the control of the United States.

(c) In case of the importer's death or insolvency, the Government's claim against his estate for unpaid duties has priority over obligations to creditors other than the United States.[1]

(d) The States and their instrumentalities are entitled to no constitutional exemption from the payment of customs duties.

§ 8.2 Reimportation; liability for duties on.

Dutiable merchandise imported and afterwards exported, although duty thereon may have been paid on the first importation, is liable to duty on every subsequent importation into the United States; but this does not apply to:

(a) Personal and household effects taken abroad by a resident of the United States and brought back on his return to this country (see § 10.17(a) of this chapter);

(b) Professional books, implements, instruments, and tools of trade, occupation, or employment taken abroad by any individual and brought back on his return to this country (see § 10.15 of this chapter);

(c) Automobiles and other vehicles taken abroad for noncommercial use (see § 10.42 of this chapter);

(d) Steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, or other substantial outer containers exported from the United States empty and returned as usual containers or coverings of merchandise, or exported filled with products of the United States and returned empty or as the usual containers or coverings of merchandise (see § 10.7 (b), (c), (d), and (e) of this chapter);

(e) Articles exported from the United States for repairs or alterations, which may be returned upon the payment of duty on the value of the repairs or alterations at the rate or rates which would otherwise apply to the articles in their repaired or altered conditions (see § 10.8 of this chapter);

(f) Articles exported for exhibition under certain conditions (see §§ 10.66 and 10.67 of this chapter);

(g) Domestic animals taken abroad for temporary pasturage purposes and returned within 8 months (see § 10.74 of this chapter);

(h) Articles exported under lease to a foreign manufacturer (see § 10.108 of this chapter); or

(i) Any other reimported articles the free entry of which is specifically provided for.

ENTRY

§ 8.3 Entry required; exceptions.

(a) Entry, as required by section 484(a), Tariff Act of 1930, as amended,[2]

[1] "Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed." (31 U. S. C. 191)

"Every executor, administrator, or assignee, or other person, who pays, * * * any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate * * * for the debts so due to the United States, or for so much thereof as may remain due and unpaid." (31 U. S. C. 192)

[2] "Except as provided in sections 490, 498, 552, and 553 and in subdivision (j) of section 336 of this Act, and in subdivisions (h) and (i) of this section, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the customhouse with-

shall be made of every importation, whether free or dutiable and regardless of value, unless the importation is specifically exempted by statute or regulations from the requirement that it be entered. (See paragraphs (b) and (c) of this section, and §§ 8.52, 9.3(b), and 9.6 of this chapter.)

(b) The collector shall pass free of duty and internal-revenue tax, and without the preparation of an entry, any importation having a value not exceeding $1, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. (See § 10.21 (i) of this chapter.)

(c) The collector shall pass free of duty and internal-revenue tax, and without the preparation of an entry, any article sent as a bona fide gift from a person in a foreign country to a person in the United States, provided the aggregate value of such articles received by one person on one day does not exceed $10. An article is "sent" for purposes of this paragraph if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

(d) Customs officers shall be further guided as follows in determining whether an article or parcel shall be exempted from duty or tax under this section:

(1) A "bona fide gift" for purposes of section 321 (a) (2) (A), Tariff Act of 1930, as amended, is an article formerly owned by a donor (may be a commercial firm) who gave it outright in its entirety to a donee without compensation or promise of compensation. It does not include articles acquired by purchase, barter, promissory exchange, or similar transaction, nor does it include articles said to be "given" in conjunction with a purchase, barter, promissory exchange, or similar transaction, such as a so-called "bonus article."

(2) A parcel addressed to a person in the United States from an individual in a foreign country which contains a gift should be clearly marked on the outside to indicate that it contains a gift. Such marking is not conclusive evidence of a gift nor is the absence of such marking conclusive evidence that an article is not a gift. Ordinarily an article not exceeding $10 in value sent from a person in a foreign country to a person in the United States will be recognizable as a gift from the nature of the article and the obvious facts surrounding the shipment.

(3) A parcel addressed to a person in the United States from a business firm in a foreign country would ordinarily not contain a gift from a donor in the foreign country. When such a parcel in fact contains an article entitled to free entry under section 321 (a) (2) (A), the parcel should be clearly marked to indicate that it contains such a gift and a statement to this effect should be enclosed in the parcel.

(4) Consolidated shipments addressed to one consignee shall be treated for purposes of this section as one importation.

(5) No alcoholic beverage, perfume containing alcohol (except where the aggregate value of all merchandise contained in the shipment does not exceed $1), or tobacco product shall be exempted from the payment of duty and tax under this section.

(6) The exemptions provided for in section 321, Tariff Act of 1930, as amended, are not to be allowed in respect of any shipment containing one or more gifts having an aggregate value in excess of $10. For example, an article ordinarily subject to an ad valorem rate of duty but sent as a gift, if valued at $11, would be subject to a duty based upon its full value rather than a value of $1.

(Secs. 484(a), 498, 505, 46 Stat. 722, as amended, 728, as amended, 732, sec. 7, 52 Stat. 1081, as amended; 19 U.S.C. 1321, 1484(a), 1498, 1505)

§ 8.4 Preliminary examination of entry papers; making entry or withdrawal; applicable rate of duty; date of importation.

(a) Formal entry papers may be presented at the customhouse for preliminary examination within such period of time prior to the arrival of the merchandise within the limits of the port where the merchandise is to be entered as may be fixed by the collector of customs. The entry papers shall not be considered to be "deposited" or "accepted", nor shall the merchandise covered thereby be considered to be entered within the meaning of the law or regulations applicable to the entry of the merchandise, until after the arrival of the merchandise within the limits of the port of entry and the subsequent deposit of estimated duties or subsequent official determination that no deposit is required. After presentation of such entry papers and before entry of the merchandise, the importer shall not be permitted to pay the duties and taxes, if any are estimated to be due, and shall not be permitted to know about, or to have access to, any paper which would disclose what packages will be designated for examination, but he may recall the entry papers at any time during this period, in which case the collector shall destroy the summary sheet, permit, and any other document on which the designation of examination packages is indicated. Except at the port of New York, such entry papers shall not be numbered or dated prior to entry of the merchandise; at New York they may be numbered but shall not be dated. The foregoing provisions shall not be applicable to merchandise which is to be released under the immediate delivery procedure (see § 8.59), merchandise subject to a quantitative or tariff-rate quota, merchandise which is to be entered at a customs station, or any merchandise to be covered by an informal entry.

(b) Except as provided for hereinafter in this paragraph, no entry or withdrawal form shall be presented to a customs entry officer at any time when the customhouse is not open for the general transaction of business. With respect to merchandise for which the rate of duty changes each year on fixed dates, when the last day upon which such merchandise may be entered at a lower rate of duty falls on a Saturday, Sunday, or legal holiday, an entry or withdrawal for consumption may be accepted on such day provided the entry or withdrawal is tendered at a time when overtime services of the customs officers concerned are reimbursable and the person desiring to make the entry or withdrawal has applied for overtime services in accordance with § 24.16 of this chapter. When the last day upon which the merchandise may be entered or withdrawn at the lower rate of duty falls on a day when customs offices are open for the general transaction of business, an entry or withdrawal for consumption on such day may be accepted and processed after 5 p. m., provided the person desiring to make the entry or withdrawal has applied for overtime services in accordance with § 24.16 of this chapter.

(c) Except in the case of merchandise subject to a quantitative or tariff-rate quota, collectors are authorized to accept an entry for consumption or for warehousing for the entire quantity of merchandise covered by an entry for immediate transportation after the arrival of any part of such quantity at the port of destination or such other place as may be authorized in accordance with § 18.11 (c) of this chapter.[a]

(d) Entry is made under an appraisement entry (customs Form 7500), a formal consumption entry (customs Form 7501), a combined entry for rewarehouse and withdrawal for consumption (customs Form 7519), or an informal entry (customs Form 5119 or 5119–A) when the specified form is properly executed and deposited, together with any related documents required by any provision of these regulations to be filed with such form at the time of entry, at the port or station with the customs officer designated to receive such entry papers and any duties or taxes required to be paid at the time of making such entry have been deposited with the customs officer designated to receive such monies. The rate or rates of duty applicable to merchandise entered under any such entry shall be the rate or rates in effect when the making of the entry as stated above is completed, except as provided for in section

[a] "(f) * * * in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 552 of this act may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury." (Tariff Act of 1930, sec. 484 (f), as amended, 19 U. S. C. 1484 (f))

in five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the collector authorizes in writing a longer time." (Tariff Act of 1930, sec. 484 (a), as amended; 19 U. S. C. 1484 (a))

315 (a) (2), Tariff Act of 1930, as amended.[aa]

(e) Entry is made under an informal mail entry (customs Form 3419, 3420, or 3421) when the preparation of the entry by a customs employee is completed. (See § 9.3 (d) of this chapter.)

(f) Entry is made under a warehouse entry (customs Form 7502) when the specified form is properly executed and deposited, together with any related documents required by any provision of these regulations to be filed with such form at the time of entry, with the customs officer designated to receive such entry papers.

(g) A withdrawal from warehouse for consumption, the process preparatory for the issuance of a permit for the release of the merchandise to or upon the order of the warehouse proprietor, is made when customs Form 7505 is properly executed and deposited, together with any related documents required by any provision of these regulations to be filed with such form at the time of withdrawal, with the customs officer designated to receive the withdrawal and any duties or taxes required to be paid at the time of withdrawal have been deposited with the customs officer designated to receive such monies. The rate or rates of duty applicable to merchandise withdrawn from warehouse for consumption shall be the rate or rates in effect when the making of the withdrawal as stated above is completed.[aa] Unless all acts required by this paragraph and section 315(a) of the Tariff Act of 1930, as amended, including the deposit of required duties and taxes, are completed before the expiration of 60 days from the date of deposit of customs Form 7505, such form and any related papers shall be deemed abandoned.

(h) If merchandise which has been entered for consumption as stated in paragraph (d) of this section is thereafter, and before release from continuous customs custody, removed from the port or place of intended release under any of the circumstances specified in section 315 (b), Tariff Act of 1930, as amended,[ab] and is returned to such port or place within the 90-day period specified in such section 315 (b), such merchandise shall be subject to duty at the rate or rates in effect when the merchandise was entered as above stated, provided the merchandise is identified with the original entry by the usual customs examination and any documentary evidence as to its movement between its removal and return which the collector may reasonably require. If the original entry has not been liquidated and the consignee at the time of original importation and at the time of return is the same person, the merchandise may be cleared through customs under the original entry; otherwise a new entry shall be required.

(i) In the case of articles imported by vessel, the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade shall be deemed the date of importation of those articles as to which there is such intent to unlade. In the case of articles imported otherwise than by vessel, the date on which the articles arrive within the limits of the United States shall be deemed the date of importation.

(Secs. 315, 484 (f), 46 Stat. 695, as amended, 723, as amended; 19 U. S. C. 1315, 1484 (f))

§ 8.5 Examination of merchandise before entry for consumption or warehouse.

(a) Unless an examination is required for the exclusive benefit of the United States or is permitted in accordance with paragraph (b) of this section, no imported merchandise shall be opened, examined, or inspected until it has been entered under some form of an entry for consumption or warehouse.

(b) As a bona fide incident to exportation or further transportation, merchandise entered or withdrawn for transportation in bond to another port or place in the United States or for exportation may, upon written application by the consignee or his agent be permitted by the collector to be examined,[4] sampled, weighed, or subjected to an operation not constituting a manufacture required by reason of an emergency, under conditions set forth in subparagraphs (2) to (5) of this paragraph. Under the same conditions, transshipment of such merchandise involving the breaking of customs Tyden seals by or under the immediate supervision of a customs officer at a place other than the port of destination or departure from the United States may be permitted. Merchandise entered or withdrawn as prescribed above may be subjected to any other operation not constituting a manufacture if neither the protection of the revenue nor the proper conduct of customs business requires it to be done in a customs bonded warehouse and the following conditions are met:

(1) A special application by the consignee or his agent is submitted to the Bureau of Customs with the recommendation of the collector concerned and is approved by the Bureau;

(2) The operation permitted is executed under customs supervision;

(3) The application is supported by a legitimate business reason for the request;

(4) If the merchandise is in possession or joint possession of a carrier, the concurrence of the carrier is obtained; and

(5) The Government is reimbursed for the compensation, computed in accordance with § 19.5 (b) of this chapter, and other expenses of the customs officer or employee supervising the action permitted.

An application to examine merchandise, whether or not covered by an entry or withdrawal for transportation in bond or for exportation, may be granted under the conditions set forth in subparagraphs (2), (4), and (5) of this paragraph when (i) an importer has been unable to obtain the necessary documents or information to make the desired entry and such examination is required to obtain information for the preparation of a pro forma invoice to be used in making the entry, or (ii) examination of perishable merchandise is desired solely for the purpose of determining its condition. An application to sample coal-tar products (see § 14.5(a) of this chapter) before their entry under some form of an entry for consumption or warehouse may also be granted under the conditions of subparagraphs (2), (4), and (5) of this paragraph. The provisions of this paragraph are applicable to quota merchandise of a kind which may neither be entered for warehouse nor for consumption because of the fulfillment of the quota.

(c) Properly authorized employees of the Customs Service, the Food and Drug Administration, the Agricultural Research Service, the Public Health Service, or other agency of the United States may take samples of unladen merchandise for which entry has not been filed. In no case shall any official action be taken on any such samples until entry has been filed.

(d) Prior to the filing of a proper entry, no information concerning the designation of packages for examination shall be given to or be accessible to any importer, broker, or other person who is not a customs officer necessarily concerned with such designation, except as provided for in § 8.59 (c), relating to

[aa] "(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this Act or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury, except that—

* * * * * *

"(2) Any article which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation under section 552 of this Act, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the collector under section 490 of this Act, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation." (Tariff Act of 1930, sec. 315 (a), as amended; 19 U. S. C. 1315 (a).)

[ab] "(b) Any article which has been entered for consumption but which, before release from customs custody, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury." (Tariff Act of 1930, sec. 315 (b), as amended; 19 U. S. C. 1315 (b))

[4] The privilege of inspection of perishable merchandise is not limited to one inspection and there is no objection to incidental display to prospective buyers during the inspection. (See B. C. L. 2066.)

merchandise released under immediate delivery permits.

§ 8.6 Evidence of right to make entry; legal representative of consignee; nonresident consignee; foreign corportation; underwriters and salvors.

(a) The holder of a bill of lading, properly endorsed when endorsement is required under the law, shall have the right to make entry.[5] However, the consignee named in a nonnegotiable bill of lading may not by endorsing it vest in someone else a right to make entry. A shipping receipt or other document presented in lieu of a bill of lading shall not be accepted as authority for making entry unless bearing a certificate of the carrier in accordance with subsection (h) or (i) of section 484, Tariff Act of 1930,[6] or unless entry is made by the actual consignee in person or in his name by a duly authorized agent.

(b) When merchandise is not imported by a common carrier, possession of the merchandise at the time of arrival in the United States shall be deemed sufficient evidence of the right to make entry.

(c) Entry shall not be made on an extract from a bill of lading, unless such extract is certified to be genuine by the carrier bringing the merchandise to the port at which entry is made. Collectors of customs shall not certify extracts from bills of lading.

(d) Separate entries may be made for consolidated shipments upon compliance with the following requirements:

(1) The consignee of a consolidated shipment covering merchandise for various ultimate consignees who desire to make separate entries shall deposit with the collector the original bill of lading, the certified duplicate bill of lading, the carrier's certificate, or the shipping receipt if no bill of lading has been issued, covering the entire shipment, and such document shall be permanently retained by the collector.

(2) If a bill of lading is filed, it shall contain the following endorsement signed by the consignee named therein:

As the within-described merchandise belongs to various ultimate consignees who desire to make separate entries therefor, the undersigned consignee thereof hereby expressly waives the right granted by section 484 (j), Tariff Act of 1930, to have this bill of lading returned.

(3) Except when an authority to make entry for a portion of a consolidated shipment is executed on the entry form in the space provided therefor, at the time of depositing such bill of lading, or other document, the consignee named therein shall produce a certificate prepared and signed by him for each portion of the shipment for which separate entry is desired. The certificate shall be in the following form:

Collection district No.------
Port of------
------ 19--

AUTHORITY TO MAKE ENTRY

Of merchandise imported at------ on ------ 19--, per------, from------ shipped by------, consigned to------, endorsed to------, covered by* ------ dated------ 19--, at------, on file with the collector of customs at------.

*Insert "bill of lading," "certified duplicate bill of lading," "carrier's certificate," or "shipping receipt."

Marks	Numbers	Description

We / I }------, the consignee in the above-mentioned document covering merchandise for various ultimate consignees, hereby authorize ------ or order to make customs entry for the above-described merchandise.

Consignee

(4) When a certificate on a separate document as described in subparagraph (3) is presented, it shall be compared with the supporting document and after being initialed by the entry clerk shall be returned to the consignee for transmittal to the person who will make entry. When an entry is received having executed thereon in the space provided therefor an authority to make entry for a portion of a consolidated shipment, such authority shall be compared with the supporting document.

(5) The authority to make entry carried by such certificate may be transferred by endorsement.

(e) When a carrier's certificate is used in making entry pursuant to the provisions of section 484 (h), Tariff Act of 1930, it shall be executed on customs Form 7529, unless it is included in the official entry form or unless in appropriate cases an endorsement, in substantially the form set forth below, to serve as a combined carrier's certificate and release order with one signature, is rubber-stamped or typewritten on a copy of the bill of lading, on a copy of the airway bill, or on another document containing the required descriptive information (see § 8.23 (a)).

Date------

The undersigned carrier, to whom or upon whose order the articles described herein or in the attached document must be released, hereby certifies that the consignee named in this document is the owner or consignee of such articles within the purview of section 484 (h), Tariff Act of 1930. In accordance with the provisions of section 484 (j), Tariff Act of 1930, authority is hereby given to release the articles covered by the aforementioned statement to such consignee.

(Name of carrier)

(Agent)

(f) A collector may accept a blanket carrier's certificate, customs Form 7529, appropriately modified, from a carrier for any or all shipments which will arrive in its conveyances at the port during a period specified in the certificate.

(g) When entry is made on a certified duplicate bill of lading, the certificate thereon shall be substantially in the following form:

DUPLICATE BILL OF LADING CERTIFICATE

------ 19--

The undersigned carrier, bringing the within-described merchandise to this port, hereby certifies that this signed copy of the bill of lading is genuine and may be used for the purpose of making customs entry as provided for in section 484 (1) of the tariff act.

(Name of carrier)

(Agent)

(h) When a bond is given for the production of a bill of lading, it shall be on customs Form 7581 and shall run in favor of the collector personally and as collector of customs. When the collector is in doubt as to the propriety of accepting entry on a bond for the production of a bill of lading, he shall request authority to do so from the Bureau.

(i) Inasmuch as the provisions of section 484 (c) of the tariff act do not apply in the case of entries made under subsection (h) or (i), no bond for the production of a carrier's certificate or certified duplicate bill of lading shall be taken; but when a bond is given for the production of a bill of lading, such bond may be considered as satisfied upon the production of a proper carrier's certificate or certified duplicate bill of lading, but shall not be canceled.

(j) The executor or administrator of the estate of a deceased consignee, the receiver or other legal representative of an insolvent consignee, or the representative appointed in any action or proceeding at law to act for a consignee shall not be permitted to make entry unless he shall produce a duly endorsed bill of lading, a carrier's certificate, or a duplicate bill of lading, executed in accordance with subsection (h) or (i) of section 484 of the tariff act, showing him to be the consignee for customs purposes.

(k) A nonresident consignee has the right to make entry but the bond, customs Form 7551, 7553, or other appropriate form, when required, shall have a resident corporate surety thereon.

(l) A foreign corporation shall not enter merchandise for consumption unless it has, in the state where the port of entry is located, a resident agent authorized to accept service of process against such corporation and files a bond with a resident corporate surety to secure the payment of any increased and additional duties which may be found due.

(m) Underwriters of abandoned merchandise or salvors of merchandise saved from a wreck who are unable to produce a bill of lading, certified duplicate bill of lading, or carrier's certificate shall produce evidence satisfactory to the collector of their right to act.[7]

(Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484)

§ 8.7 Disposition of bill of lading or carrier's certificate.

(a) When the return of the bill of lading to the person making the entry, as required by the provisions of section 484(j), Tariff Act of 1930,[8] is requested, the collector shall take a receipt therefor, which shall set forth such of the data contained in the bill of lading as will completely identify it and enable the comptroller to verify the production of proper evidence of the right to make entry. The receipt shall also show any freight charges and weights that appear on the bill of lading. If the original bill of lading is necessary to obtain a carrier's certificate or duplicate bill of lading from the carrier, such exchange shall be made before the entry is filed.

(b) When a carrier's certificate or duplicate bill of lading is used in making entry, it shall be retained by the collector as evidence that the person making entry is authorized to do so.

(Sec. 484, 46 Stat. 722, as amended; 19 U. S. C. 1484)

§ 8.8 Requirements on entry.

(a) Entries shall be legibly prepared on a typewriter or with ink, indelible pencil, or other permanent medium. All entry papers and documents required shall be on the appropriate forms prescribed by the regulations and shall clearly set forth, with respect to the merchandise covered thereby, all information for which spaces are provided on such forms.[9] With respect to each invoice covered by the entry, the following shall be shown separately: the quantity of each class of merchandise; the claimed rate or rates of duty for each class of merchandise; and, except in the case of entry by appraisement, the aggregate of the entered value for each classification. The description of the merchandise shall be in terms of the tariff act in accordance with "United States Import Duties Annotated for Statistical Reporting", or in more specific terms which indicate clearly the tariff classification claimed by the importer.[10]

(b) For each invoice of dutiable, taxable, or conditionally free merchandise covered by the entry and in a conspicuous place among the entry data related to such invoice, there shall be shown the gross amount of such invoice, the deduction of the aggregate amount of any nondutiable charges included in such amount, the further deduction of the aggregate of any deductions from invoice values to make entered values, and the addition of the aggregate of any dutiable charges not included in the gross amount of the invoice and of any other additions to invoice values to make entered values, so that the final amount in the summary computation represents the aggregate of the entered values of all the merchandise on each invoice covered by the entry. For each invoice of merchandise that is unconditionally free of duty and tax, it will be sufficient if the entry data related to such invoice include the entered value, without details of the computation such as are specified for invoices of dutiable, taxable, or conditionally free merchandise.

(c) When required by the collector as a memorandum entry record for purposes of local administration, a copy of customs Form 5101 shall be prepared and presented by the importer with each formal or appraisement entry, except those covering shipments declared to be for more than one actual owner.

(d) Each entry when presented shall be accompanied by customs Form 6417, the face of which shall be prepared by the importer as a carbon copy of the entry and shall show the information required under paragraphs (a) and (b) of this section, except that in the case of an importation entitled to immediate delivery under § 10.104(a) of this chapter, no customs Form 6417 shall be required or accepted by the collector of customs.

(e) If entry is made by or for the account of one who has purchased the goods while they were in transit from the point of exportation to the point of entry, a statement showing the price paid for each item by such purchaser must be presented at the time of entry.

(f) Consolidated shipments to one consignee for various ultimate consignees and the several enclosures of a packed package may be covered by separate entries upon compliance with the provisions of §§ 8.6 (d) and 8.52, respectively.

(g) If the collector is satisfied that there will be no prejudice to the revenue or to the efficient conduct of customs business, separate entries may be accepted for portions of all the merchandise arriving on one vessel or vehicle and consigned to one consignee,[11] as prescribed in § 8.6 (d), and also when:

(1) The consignee desires to enter such portions under different forms of entry, for transportation to different ports of entry, or for warehousing in separate warehouses;

(2) Appraisements are being withheld upon merchandise of the class or kind constituting a portion for which a separate entry is tendered;

(3) The several portions for which separate entries are tendered are covered by separate bills of lading;

---

[5] For the purposes of this title—
"(1) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof. * * *" (Tariff Act of 1930, sec. 483; 19 U. S. C. 1483)
"The consignee shall produce the bill of lading at the time of making entry, except that—
"(1) If the collector is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to the collector may be accepted in lieu thereof;
"(2) The collector is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to the collector, in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve the collector of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making the collector a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and
"(3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (h) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively)." (Tariff Act of 1930, sec. 484 (c); 19 U. S. C. 1484 (c))

[6] "(h) Entry on Carrier's Certificate.—Any person certified by the carrier bringing the merchandise to the port at which entry is to be made to be the owner or consignee of the merchandise, or an agent of such owner or consignee, may make entry thereof, either in person or by an authorized agent, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 483.
"(i) Entry on Duplicate Bill of Lading.—Any person may, upon the production of a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made, make entry for the merchandise in respect of which such bill of lading is issued, in the manner and subject to the requirements prescribed in this section (or in regulations promulgated hereunder) in the case of a consignee within the meaning of paragraph (1) of section 483, except that such person shall make such entry in his own name." (Tariff Act of 1930, sec. 484 (h) and (i); 19 U. S. C. 1484 (h) (i))
"For the purposes of this title—
* * * * *
"(2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of section 484 (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof." (Tariff Act of 1930, sec. 483; 19 U. S. C. 1483)

[7] "For the purposes of this title—
"* * * The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees * * *" (Tariff Act of 1930, sec. 483; 19 U. S. C. 1483)

[8] "* * * The collector shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. * * *" (Tariff Act of 1930, sec. 484 (j); 19 U. S. C. 1484 (j))

[9] "Such entry shall be signed by the consignee, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisement, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder." (Tariff Act of 1930, sec. 484 (d); 19 U. S. C. 1484 (d))

[10] "The Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the United States Tariff Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States, and as a part of the entry there shall be attached thereto or included therein an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and the value of the total quantity of each kind of article." (Tariff Act of 1930, sec. 484 (e); 19 U. S. C. 1484 (e))

[11] "* * * All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe; * * *" (Tariff Act of 1930, sec. 484 (f), as amended; 19 U. S. C. 1484 (f))

(4) The consignment consists of different classes of merchandise to be examined by different appraising officers;

(5) The consignment consists of merchandise subject to entry under bonds given to assure accounting for final disposition;

(6) The merchandise for which a separate entry is tendered comprises one or more importations which arrived under a consolidated immediate transportation without appraisement entry (see § 18.11 (h) of this chapter); or

(7) A special application is submitted to the Bureau of Customs with the recommendation of the collector concerned and is approved by the Bureau.

(h) When separate entries are made under the preceding paragraphs, the entries shall be presented simultaneously when practicable. A separate consignee's declaration shall be filed for each entry and, except when a portion of the merchandise is entered under section 308, Tariff Act of 1930, as amended, each entry shall cover whole packages or not less than 1 ton of merchandise in bulk.

(i) When separate entries are made under paragraph (e) of this section for merchandise covered by a single bill of lading, compliance with § 8.6 (d) shall be required, except that the endorsement on the bill of lading shall read as follows:

As portions of the within-described merchandise will be covered by separate entries, the undersigned consignee expressly waives the right granted by section 484 (j), Tariff Act of 1930, to have this bill of lading returned.

(Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484)

§ 8.9 Entry without required invoice.

If an invoice required under § 8.15 is not available in proper form at the time of entry, the entry shall be accepted only if—

(a) The collector is satisfied that the failure to produce the required invoice is due to a cause beyond the control of the person for whom the entry is tendered;

(b) Such person or his agent makes a written declaration that he is unable to produce such invoice and (1) files therewith a seller's or shipper's invoice, or (2) if no seller's or shipper's invoice is available, files therewith a statement of the value, or the price paid, in the form of an invoice; and

(c) Such person or his agent gives a bond on customs Form 7551 or 7553, or other appropriate form, for the production of the required invoice within 6 months from the date of entry of the merchandise.[12]

(Sec. 484(b), 46 Stat. 722, as amended; 19 U.S.C. 1484(b))

§ 8.11 Invoice to be for single shipment; extracts from invoices.

(a) Except as provided for in § 8.12, a customs invoice shall not represent more than one distinct shipment of merchandise by one consignor to one consignee by one vessel or conveyance. If by reason of accident or short shipment a portion of the quantity covered by one invoice fails to arrive, or if for any other reason only a portion of the quantity covered by one invoice is entered under one entry, an extract from the special customs or commercial invoice used in connection with the first entry, covering the quantity to be entered under another entry, may be used in connection with the subsequent entry of any portion of the merchandise not cleared under the first entry. However, an extract from the invoice filed with the first entry for consumption from a foreign-trade zone of a portion of the merchandise shown on the invoice will not be required for any subsequent entry for consumption from that zone at the same port of a portion of the merchandise covered by such invoice, if a pro forma invoice is filed and identifies the entry first made and the invoice then filed.

(b) When portions of a single shipment requiring a special customs or commercial invoice are entered at different ports, the importer may request the collector for the port where the invoice is on file or, if a certified extract or extracts of such invoice have been issued, the collector for the port where an extract was last issued, to prepare and certify an extract of the invoice or an extract of the extract of the invoice, as the case may be. The certified extract shall be delivered to the importer by the collector after the official seal is affixed thereto. The certified extract shall show all the invoice data for all merchandise covered by the invoice or extract but not included in the entry made at the port of certification. An extract from a special customs or commercial invoice presented within the bonded period may be accepted to cancel the bond given for the production of a certified or commercial invoice. In cases where a portion of a shipment is entered at the first port on a pro forma invoice, entries at each subsequent port shall be made by means of a new pro forma invoice for only the merchandise entered. An extract from an invoice shall be identified thereon in substantially the following form:

Extract from {special customs / commercial} Invoice No.---
---------- dated ----------, filed at
---------- with ----------
(Port)
entry No. ---------- dated ----------,
covering {purchased / consigned} goods for use at the port
of ----------.
Certified correct ----------, 19--.

Consignee

Collector of Customs

The extract shall be prepared in duplicate and the duplicate shall be attached to the original invoice or to the last prior extract.

(c) Bona fide installment shipments may be covered by one invoice in accordance with § 8.12 and any bona fide installment valued at not more than $250 may be entered on an informal entry in accordance with § 8.51. The consolidation of separate shipments in one invoice or the splitting up of an importation into small lots, each valued at not more than $500, to avoid special customs invoice requirements shall not be permitted.

§ 8.12 Invoices for installment shipments arriving within a period of 7 days; entry.

(a) Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period of not to exceed 7 consecutive days.

(b) If the required invoice is not filed with the first entry of the installment series, a pro forma invoice shall be filed with each entry made before the required invoice is produced and a bond shall be given, or charge against a term bond made, for the production of the required invoice. Liquidated damages will accrue in the case of each entry if more than 6 months expires without the production of an invoice for such entry.

(c) The invoice shall be prepared in the manner provided for in section 481 (a), Tariff Act of 1930, and § 8.13, and, when practicable, shall show the quantities, values, and other invoice data with respect to each installment and the date of shipment of each installment and shall give the car number or other identification of the importing conveyance in which it was shipped.

(d) In regard to the application of the informal entry procedure to installment shipments, see § 8.51.

§ 8.13 Contents of invoices; incomplete invoices; general requirements supplemented.

(a) Every special customs invoice of merchandise to be imported into the United States shall set forth the information required by section 481 (a), Tariff Act of 1930.[13]

(b) Every special customs invoice of imported merchandise shipped to a person in the United States by a person other than the manufacturer and otherwise than pursuant to a purchase or agreement to purchase shall set forth the information required by section 481(b) of the tariff act.[14]

(c) In the case of merchandise valued at over $500, the collector shall reject special customs invoices or commercial invoices for commodities not requiring special customs invoices which are not executed in accordance with the regulations in this part, but entry may be made on a pro forma invoice containing sufficient data for classification and appraisement purposes and a bond taken for the production of a correct special customs or commercial invoice, as the case may be.

(d) When any of the component materials of an imported article affects its classification or appraisement, the invoice shall set forth an analysis of the article or the formula under which it was manufactured or produced, stating the component materials contained in the article and the percentage of each, if such percentage is known.

(e) Whenever it shall be determined by the appraising officer that information as to the cost of production or constructed value is necessary in the appraisement of any class or kind of merchandise, the importer shall be notified by the appraiser and thereafter invoices covering shipments of such merchandise shall contain a verified statement by the manufacturer or producer as to the cost of production or constructed value,[15] as defined in section 402a(f) or 402(d), Tariff Act of 1930, as amended.

(f) All invoices shall set forth in detail, with respect to each class or kind of merchandise covered thereby, every discount from list or other base price which has been or may be allowed in fixing each purchase price or value set forth therein.

(g) If the invoice or entry does not disclose the weight, gauge, or measure of merchandise required to be weighed, gauged, or measured in order to ascertain the duties thereon, the consignee shall pay the expense of weighing, gauging, or measuring prior to the release of the merchandise from customs custody.[15a]

(h) Under section 481(a)(10) of the tariff act, additional information shall be furnished on special customs or commercial invoices of certain classes of merchandise in accordance with the requirements set forth in the following Treasury Decisions or sections of this chapter.

Merchandise	Treasury decisions or sections of regulations
Beads	50088.
Boots, shoes, or other footwear (including athletic or sporting boots and shoes), wholly or in part of leather.	51029.
Braids, plaits, laces, and willow sheets or squares covered by item 1504 (a), Swiss trade agreement (T. D. 48093), and braids and bandings covered by the first item 1529 (a) of such agreement.	49501, 52020, 52114.
Church bells	42177.
Copper, articles duitable under Tariff Act of 1930 and containing 4 per centum or more by weight of (including copper in alloy), except articles provided for in par. 316, 380, 381, or 387.	45878, 50158, 51726, 52298, 52740, 53204.
Copper-bearing ores and concentrates and other articles taxable under IRC, sec. 4541.	45878, 50158, 51726, 52298, 52740, 53204, 55148.
Cotton fabrics classifiable under par. 903, 904, 905, 918, or 924, Tariff Act of 1930.	49803.
Cotton, raw	§ 18.17 of this chapter.
Cotton waste	50044.
Dyes, colors, stains, color acids, color bases, color lakes, leuco-compounds, indoxyl, and indoxyl compounds.	53593, 53688.
Earthenware or crockeryware composed of a nonvitrified absorbent body (including white granite and semiporcelain earthenware and cream-colored ware, stoneware, and terra cotta, but not including common brown, gray, red, or yellow earthenware), embossed or plain, common salt-glazed stoneware; stoneware or earthenware crucibles; Rockingham earthenware; china, porcelain, or other vitrified wares, composed of a vitrified nonabsorbent body which when broken shows a vitrified, vitreous, semivitrified, or semivitreous fracture; and bisque or parian wares.	53236.
Fish or fish livers imported in airtight containers	50724.
Flax, hemp, and ramie fabrics and articles classifiable under par. 1009, 1010, 1011, 1013, 1014, or 1016, and tablecloths, table scarves, and table doilies classifiable under par. 1023, Tariff Act of 1930.	50083.
Fur products and furs	53064.
Glass mirrors framed, measuring over 144 square inches in size.	53231.
Glassware commercially known as plated or cased glass, and articles of every description, not specially provided for, composed wholly or in chief value of glass, blown or partly blown in the mold or otherwise, or colored, cut, engraved, etched, frosted, gilded, ground (except such grinding as is necessary for fitting stoppers or for purposes other than ornamentation), painted, printed in any manner, sand-blasted, silvered, stained, or decorated or ornamented in any manner; all the foregoing when imported in sets.	53079.
Grain or grain and screenings	51284.
Hats, bonnets, and hoods provided for in par. 1504 (b) (1) or (2), Tariff Act of 1930.	52114.
Iron or steel, articles of, provided for in any paragraph enumerated in par. 305, Tariff Act of 1930, and the aluminum and alloys containing aluminum provided for in par. 302 (j) or 374 of the tariff act, except the coils, plates, sheets, bars, rods, circles, disks, blanks, strips, rectangles, and squares specified in the last-mentioned paragraph.	53092.
Iron oxide	49989, 50107.
Jewelry	51676.
Lumber (including sawed timber) planed or dressed on one or more sides.	50493, 51604, 51906.

[12] "The Secretary of the Treasury shall provide by regulation for the production of a certified invoice with respect to such merchandise as he deems advisable and for the terms and conditions under which such merchandise may be permitted entry under the provisions of this section without the production of a certified invoice." (Tariff Act of 1930, sec. 484 (b), as amended; 19 U. S. C. 1484 (b))

[13] "All invoices of merchandise to be imported into the United States shall set forth—

"(1) The port of entry to which the merchandise is destined;

"(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

"(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

"(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

"(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

"(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

"(7) The kind of currency, whether gold, silver, or paper;

"(8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;

"(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; and

"(10) Any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise that the Secretary of the Treasury may require." (Tariff Act of 1930, sec. 481 (a); 19 U. S. C. 1481 (a))

[14] "If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper." (Tariff Act of 1930, sec. 481 (b); 19 U. S. C. 1481 (b))

[15] "Under such regulations as the Secretary of the Treasury may prescribe, the collector or the appraiser may require a verified statement from the manufacturer or producer showing the cost of production of the imported merchandise, when necessary to the appraisement of such merchandise." (Tariff Act of 1930, sec. 484(g); 19 U.S.C. 1484(g))

[15a] "In all cases in which the invoice or entry does not state the weight, quantity, or measure of the merchandise, the expense of ascertaining the same shall be collected from the consignee before its release from customs custody." (Tariff Act of 1930, sec. 494; 19 U.S.C. 1494)

Merchandise	*Treasury decisions or sections of regulations*
Lumber, Northern white pine (pinus strobus), and Norway pine (pinus resinosa), for which exemption is claimed under sec. 4553, I. R. C., from the import tax prescribed by sec. 4551, I. R. C.	49643, (8), 51906, 52620, 53846, § 10.109 (a).
Machine parts	51616.
Madeira embroideries	49988.
Manufactures of cotton	54380, June 24, 1957.
Matting, articles made from (other than pile mats and pile floor coverings) wholly or in chief value of coca fiber or rattan.	49858.
Metal, articles wholly or in chief value of, provided for under par. 339 or 397, Tariff Act of 1930.	49901.
Needlework tapestries composed of cotton canvas embroidered with wool yarn.	50369.
News-reel films	44703, 44938.
Oils, or products of such oils, upon which an import tax is imposed by IRC, sec. 4561, 4571, or 4581.	49640, 55148.
Paper and paper products (other than books, newspapers, and periodicals which are not fashion periodicals) bearing printing of any kind, whether or not the printing was done by a lithographic process.	53056.
Screenings or scalpings of grain or seeds	51096, CD 823, TD 51010 (2), CIE 80/44.
Sugar in liquid form, and articles composed in part of beet or cane sugar.	49400.
Sugar, manufactured, articles containing 10 percent or more by weight of, as defined in IRC, sec. 4502(3).	49867, 50106, 55148.
Textile fiber products	55085.
Tobacco	44854, 45871, 50520.
Toys	49859, 50107, 52160.
Watch movements, and time-keeping, time-measuring, or time-indicating mechanisms, devices, and instruments	54286, Jan. 15, 1957.
Wool products, except wool products made more than 20 years before importation, and carpets, rugs, mats, and upholsteries.	50388, 51019, 52267.
Wool and hair	§ 13.12 of this chapter.

On customs invoices of merchandise imported from a country having a currency for which two or more rates of exchange have been certified by the Federal Reserve Bank of New York pursuant to section 522 of the Tariff Act of 1930, except merchandise unconditionally free of duty or subject only to a specific rate of duty not depending on value, there shall be shown the exchange rate or rates used in converting the United States dollars received for such merchandise into the foreign currency and the percentage of each rate if two or more rates are used. If a rate or combination of rates different from the rate or combination of rates used in payment for the merchandise was used in payment of costs, charges, or expenses, the rate or combination of rates used in payment of such costs, charges, and expenses shall be stated separately. Where the dollars have not been converted at the time the invoice is prepared that fact shall be stated on the invoice, in which case the invoice shall also state the rate or combination of rates at which the dollars will be converted or shall state that it is not known what rate or rates will be used, as the case may be.

(i) When more than one invoice is included in the same entry, all invoices shall bear the entry number and shall be numbered consecutively, beginning with number 1.

(j) If the invoice or invoices filed with an entry are made out on more than two sheets of paper, each sheet shall be legibly numbered by the importer on the bottom of its face. The numbering shall begin with number 1 for the first sheet of the first invoice and continue in a single series of numbers through all the sheets of all the invoices attached to one summary sheet.

(Secs. 1 (pars. 28(f), 602), 481, 484, 46 Stat. 595, as amended, 681, 719, 722, as amended; 19 U.S.C. 1001 (pars. 28(f), 602), 1481, 1484)

§ 8.15 Special customs invoices required; exceptions.

(a) Pursuant to the provisions of section 484(b), Tariff Act of 1930, as amended,[18] a special customs invoice is hereby required to be produced in connection with each entry (see § 8.9) of imported merchandise, if such merchandise is not provided for in paragraph (c) or (d) of this section and is:

(1) Imported in pursuance of a purchase or agreement to purchase and has an aggregate purchase price, including all expenses incident to placing the goods in condition, packed ready for shipment to the United States, over $500, as determined by the collector, or

(2) Imported otherwise than in pursuance of a purchase or agreement to purchase and has an aggregate value over $500, as determined in accordance with § 14.3 of this chapter,

and if such merchandise is:

(i) Subject to an ad valorem rate of duty or to a rate of duty dependent in any manner upon its value;

(ii) Conditionally free of duty and subject to a rate of duty dependent on value if the free entry conditions are not met, but a special customs invoice shall not be required for such merchandise and any obligation for the production of such an invoice shall be canceled if all free entry documents and evidence required to establish the exemption from duty are produced at the time of entry or within the time prescribed for their later production by the pertinent regulations; or

(iii) Subject by reason of a national emergency to an import permit requirement of which the Bureau has issued a notice.

(b) For all imported merchandise for which a special customs invoice is not required under the preceding paragraph and which is not provided for in the following paragraph, a commercial invoice prepared in the manner customary for commercial transactions involving articles such as are offered for entry and containing any special data required by § 8.13 (h) shall be produced at the time of entry or within 6 months thereafter (see § 8.9). In lieu of a required commercial invoice, the collector in his discretion may accept a copy thereof made otherwise than by a photostatic process and bearing a declaration of the foreign seller or shipper, or of the importer, that it is a true copy, or a photostatic copy of the required invoice without such a declaration.

(c) No special customs or commercial invoice, or bond for the production of either shall be required in connection with the entry of articles listed hereafter in this paragraph, unless such an invoice is available otherwise than by reason of a customs requirement, but the consignee or owner in each case shall furnish any invoice, memorandum invoice, or bill pertaining to the goods which may be in his possession or available to him or, if no such invoice or bill is available, he shall furnish a pro forma invoice containing an adequate description of the articles, a statement of the quantity thereof, and a statement of their cost or value. The articles subject to the foregoing requirements are as follows:

(1) Articles having an aggregate value, as specified in the first two numbered subdivisions of paragraph (a) of this section, of $500 or less.

(2) Articles not intended for sale in their imported condition or in any other form and not brought in on commission for any person other than the importer, if the aggregate value determined in accordance with § 14.3 of this chapter does not exceed $1,000.

(3) Articles for which an appraisement entry is accepted in accordance with § 8.50.

(4) Articles accompanying a person arriving in the United States and articles declared by such a person upon his arrival as not accompanying him but imported or to be imported in connection with his arrival; all the foregoing which are not intended for sale or any commercial use and are not brought in on commission for any person not included in the declaration.

(5) Household and personal effects of all kinds provided for in paragraph 1632, 1739, 1747, or 1798, Tariff Act of 1930, as amended.

(6) Aircraft, automobiles and other vehicles, boats, horses, and the usual equipment of any of the foregoing, if taken abroad by the owner or his agent for noncommercial use and returned by or for the account of such owner in accordance with the provisions of § 10.42 of this chapter.

[18] See footnote 12, § 8.9.

(7) Articles sent by persons in foreign countries as gifts to persons in the United States.

(8) Articles entitled to free entry under paragraph 1615 or 1815, Tariff Act of 1930, as amended, or under sections 194 and 195, title 19, United States Code, if the applicable regulations are complied with. (See §§ 10.1 (a), 10.2 (a), 10.66, 10.67, and 25.16 of this chapter.)

(9) Articles returned to the United States after having been exported for repairs or alterations under paragraph 1615 (g), Tariff Act of 1930, as amended.

(10) Articles shipped aboard, not delivered to the consignee, and returned to the United States.

(11) Articles exported from continuous customs custody within 6 months after the date of entry.

(12) Articles consigned to, or entered in the name of, any agency of the United States Government.

(13) Currency and coins, if brought into the United States as mediums of exchange.

(14) Postage and revenue stamps, canceled or uncanceled, and government stamped envelopes or post cards bearing no printing other than the official imprint thereon.

(15) Articles provided for in section 465 or 466, Tariff Act of 1930.

(16) Articles imported as supplies, stores, or equipment of the importing carrier and subsequently made subject to entry pursuant to section 446, Tariff Act of 1930.

(17) Ballast (not including cargo used for ballast) landed from a vessel and delivered for consumption.

(18) Articles from the Virgin Islands, if covered by the certificate of origin provided for in § 7.9 (a) of this chapter; articles from Guam, Wake Island, Midway Islands, Kingman Reef, or American Samoa, if covered by the certificate provided for in §7.8 of this chapter; and articles from the Swan Islands, if covered by the evidence provided for in § 7.10 of this chapter.

(19) Articles accorded free entry as "Philippine articles". See § 16.26 of this chapter.

(20) Articles, whether privileged or nonprivileged, resulting from manipulation or manufacture in a foreign-trade zone.

(21) Archeological articles for exhibition and not for sale, if imported by an institution established for the encouragement of the arts, science, or education.

(22) Corpses.

(23) Screenings contained in bulk importations of grain or seeds.

(24) Articles accorded free entry under paragraph 1631, Tariff Act of 1930.

(25) Public documents accorded free entry under paragraph 1629, Tariff Act of 1930.

(26) Articles entered under paragraph 1607 or 1809, or section 308, Tariff Act of 1930, as amended, except as provided for in the last sentence of § 10.36 (a) of this chapter.

(27) Articles accorded free entry under section 196a, title 19, United States Code.

(28) Racing pigeons.

(29) Rubber, crude.

(30) The following articles when unconditionally free of duty or subject only to a specific rate of duty not depending on value:

(i) Fertilizer and fertilizer materials.

(ii) Fish, shellfish, and fish and shellfish products such as shells, bones, cuttlefish bones, eggs, livers, sounds, fins, skins, tails, cuttings, and waste, but not including fish or fish livers in air-tight containers.

(iii) Flower bulbs.

(iv) Fruits and vegetables in their natural state.

(v) Newspapers and newsreel films.

(vi) Pulpwood.

(31) Crude petroleum and liquid derivatives of crude petroleum which are not subject to a rate of duty based upon or regulated in any manner by value, imported by pipeline or in bulk.

(d) No special customs invoice or commercial invoice shall be required for articles with respect to which it shall be established to the satisfaction of the collector that the importer cannot by reason of conditions beyond his control furnish a complete and accurate invoice, if the importer files with the entry any invoice or invoices received from the seller or shipper, a statement pointing out in exact detail the inaccuracies, omissions, or other defects in such invoice or invoices, and an executed pro forma invoice as required by the collector, and furnishes any other information required by the collector or appraiser for purposes of examination, classification, and appraisement of the merchandise. The entry bond shall be liable for the production of a correct invoice, which liability shall be deemed satisfied upon full compliance with the conditions herein prescribed.

(Secs. 481, 484, 498, 623, 46 Stat. 719, 722, as amended, 728, as amended, 759, as amended; 19 U.S.C. 1481, 1484, 1498, 1623)

§ 8.16 Entered value; importers may add to or deduct from the invoice value.

The person making entry shall show in clear detail on the invoice or on a statement attached thereto each addition to or deduction from the invoice value of merchandise under section 487, Tariff Act of 1930, as amended,[19] together with the item to which it refers, indicating the entered unit value. He shall likewise show the computation in detail of the aggregate amount of all the additions or deductions made by the importer to make the aggregate entered value.

(Sec. 487, 46 Stat. 725, as amended; 19 U.S.C. 1487)

§ 8.18 Declaration on entry.

(a) The consignee in whose name an entry is made under the provisions of section 484, Tariff Act of 1930, as amended, shall execute the declaration applicable to the circumstances of the particular case in accordance with section 485(a) of that act,[21] except that the declaration need not be under oath.

(b) In the case of successive importations of books, magazines, newspapers, and periodicals within the purview of section 485(b) of the tariff act,[22] one declaration filed at the time of the arrival of the first importation will be sufficient.

(c) When entry is made by an agent,[23] he shall execute on the entry form, as agent, the declaration of the consignee applicable to the person for whom he acts as agent. An agent shall not execute the declaration of a nominal consignee unless he is acting as agent for a nominal consignee. If the agent has

[19] "The consignee or his agent may, under such regulations as the Secretary of the Treasury may prescribe, at the time entry is made, make in the entry such additions to or deductions from the cost or value given in the invoice as, in his opinion, may raise or lower the same to the value of such merchandise." (Tariff Act of 1930, sec. 487, as amended; 19 U.S.C. 1487)

[21] "Every consignee making an entry under the provisions of section 484 of this Act shall make and file therewith, in a form to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

"(1) Whether the merchandise is imported in pursuance of a purchase or an agreement to purchase or whether it is imported otherwise than in pursuance of a purchase or agreement to purchase;

"(2) That the prices set forth in the invoice are true, in the case of merchandise purchased or agreed to be purchased; or in the case of merchandise secured otherwise than by purchase or agreement to purchase, that the statements in such invoice as to value or price are true to the best of his knowledge and belief;

"(3) That all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and

"(4) That he will produce at once to the collector any invoice, paper, letter, document, or information received showing that any such prices or statements are not true or correct." (Tariff Act of 1930, sec. 485(a); 19 U.S.C. 1485(a))

"The Secretary of the Treasury shall prescribe separate forms for the declaration in the case of merchandise which is imported in pursuance of a purchase or agreement to purchase and merchandise which is imported otherwise than in pursuance of a purchase or agreement to purchase." (Tariff Act of 1930, sec. 485(e); 19 U.S.C. 1485(e))

[22] "The Secretary of the Treasury is authorized to prescribe regulations for one declaration in the case of books, magazines, newspapers, and periodicals published and imported in successive parts, numbers, or volumes, and entitled to free entry." (Tariff Act of 1930, sec. 485(b); 19 U.S.C. 1485(b))

[23] The agent referred to in sec. 485 (c), Tariff Act of 1930, is a person acting under written authority from the consignee who makes entry in the name of the consignee. A nominal consignee who makes entry in his own name is not an agent within the purview of such sec. 485 (c).

In view of the specific provision in sec. 485 (f) of the tariff act, as amended, that when the merchandise is consigned to an individual, a partnership, or a corporation the consignee's declaration may be made by any person who has knowledge of the facts and who is specifically authorized by such individual, a member of the partnership, or an officer of such corporation to make such declaration, the person who executes the declaration on behalf of the individual, partnership, or corporation is not considered to be an agent within the purview of sec. 485 (c) and is not required by sec. 485 (c) to produce, or give bond to produce, any further declaration.

duly authorized agent. A nonresident owner's declaration shall not be accepted knowledge of the facts and is authorized under a proper power of attorney to execute the declaration of the principal (consignee), no further declaration of the consignee shall be required; otherwise a declaration of the consignee on customs Form 3347–A shall be produced with the entry or a charge for the production of such declaration made against the appropriate entry bond.[24] No separate bond of the agent shall be required.

(d) A consignee in whose name an entry is made who desires under the provisions of section 485 (d), Tariff Act of 1930,[25] to be relieved from direct liability for the payment of increased and additional duties shall file a declaration of the actual owner of the merchandise on customs Form 3347. If the consignee desires to be relieved also from the liability for the payment of such duties voluntarily assumed by him in the single-entry bond which he filed in connection with the entry or in his term bond against which the entry was charged, he shall file with the collector of customs within 90 days from the date of entry a superseding bond on customs Form 7601 of the actual owner whose declaration on customs Form 3347 has been filed in accordance with section 485 (d) and the regulations in this part. The filing of the owner's declaration and of the superseding bond by the nominal consignee is optional and no bond shall be required for the production of either. Neither the owner's declaration nor the superseding bond shall be accepted unless filed by the nominal consignee or his

[24] "In the event that an entry is made by an agent under the provisions of section 484 of this Act and such agent is not in possession of such declaration of the consignee, such agent shall give a bond to produce such declaration." (Tariff Act of 1930, sec. 485 (c); 19 U. S. C. 1485 (d))

[25] "A consignee shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of a consignee." (Tariff Act of 1930, sec. 485 (d); 19 U. S. C. 1485 (d)

as a compliance with section 485 (d) unless there is filed therewith a bond of such owner on customs Form 7551 or 7553, with a resident corporate surety thereon.

(Sec. 485, 486, 46 Stat. 724, as amended, 725, as amended; 19 U.S.C. 1485, 1486)

§ 8.19 Powers of attorney.

(a) A power of attorney may be executed for the transaction of a specified part or for all the customs business of the principal, except that a separate power of attorney on customs Form 5295 or 5295–A shall be required for filing protests.[26] Customs Form 5291 may be used by individuals and customs Form 5293 by corporations for giving powers of attorney to transact customs business. If a customs power of attorney is not on a prescribed customs form, it shall be either a general power of attorney with unlimited authority [26a] or a limited power of attorney as explicit in its terms as is the prescribed customs form and executed in the same manner as the prescribed form. If for the execution of sealed instruments, it shall be under seal. A customs power of attorney to a minor shall not be accepted. A customs power of attorney executed under authority of another power of attorney shall be accepted if the grantor of the original power of attorney is a nonresident and if such original power contains express authority from the principal for the appointment of a subagent or subagents. Customs powers of attorney of residents shall be without power of substitution except for the purpose of executing shippers' export declarations. A subagent so appointed cannot delegate his authority. A customs power of attorney executed in favor of a licensed customhouse broker may specify that the power of attorney is granted to the customhouse broker to act through any of its licensed officers or any employee specifically authorized to act for such customhouse broker by power of attorney filed by the customhouse broker with the collector of customs.

(b) An individual, other than a married woman, may execute a power of attorney to sign as surety on customs bonds. If the power is limited to bonds of one or several importers, such importers shall be named. Such power shall have attached a justification of the donor in a specified amount.

(c) A trustee may execute a power of attorney for the transaction of customs business incident to the trusteeship.

(d) One member of a partnership may execute a power of attorney in the name of the partnership for the transaction of all its customs business, except the execution of sealed instruments. Such power shall recite the names of all members of the partnership and shall be limited to a period of not more than 2 years from the date of receipt of the power by the collector. When a new firm is formed by a change of membership, no power of attorney filed by the antecedent firm shall thereafter be recognized for any customs purpose. A customs power of attorney given by a partnership for the execution of sealed instruments shall be signed and sealed by each partner.

(e) A power of attorney shall not be required when the person signing customs documents on behalf of a resident corporation is known to the collector to be the president, vice president, treasurer, or secretary of the corporation. When a power of attorney is required for a resident corporation, it shall be executed by a person duly authorized for such purpose, and a certificate of the secretary, assistant secretary, or other corporate officer, but not the person executing the power, showing the authority of such officer or person to execute the power of attorney shall be executed under seal as follows:

CERTIFICATE

I, _____, certify that I am the _____ of _____, organized under the laws of the State of _____; that _____, who signed this power of attorney on behalf of the donor, is the _____ of the said corporation; and that said power of attorney was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body as the same appears in a resolution of the Board of Directors passed at a regular meeting held on the _____ day of _____, now in my possession or custody. I further certify that the resolution is in accordance with the articles of incorporation and by-laws of said corporation.

In witness whereof, I have hereunto set my hand and affixed the seal of said corporation, at the City of _____ this _____ day of _____, 19____.

A power of attorney executed by a nonresident corporation shall be supported by the following documents which, except the certificate of incorporation, shall be certified as correct by the secretary of the corporation under its corporate seal: (1) a certificate from the proper public officer of the country showing the legal existence of the corporation, (2) a copy of that portion of the charter or articles of incorporation which shows the scope of the business of the corporation and the governing body thereof, (3) if the authority of the grantor is derived from the charter or articles of incorporation, there shall be filed also a copy of that portion thereof which contains such authority or, if the authority of the grantor is derived from the governing body, there shall be filed a copy of the by-laws or other document which authorizes the governing body to designate others to appoint agents or attorneys, together with a copy of the resolution, minutes, or other document by which the governing body conferred the authority on the grantor.

(f) No declaration executed by the attorney in fact of a corporation shall be accepted unless his power of attorney specifically authorizes him to make such a declaration.

(g) A power of attorney filed by one who is not a resident of the United States shall not be accepted unless the agent designated thereby is a resident of the United States and is authorized to accept service of process against such nonresident.

[26] See § 17.2 of this chapter.

[26a] The following is an example of an acceptable general power of attorney with unlimited authority:

Know all men by these presents, that _____,
(Name of principal)
_____
(State legal designation, such as corporation, individual, etc.)
residing at _____
and doing business under the laws of the State of _____
hereby appoints _____
_____
(Name, legal designation, and address)
as a true and lawful agent and attorney of the principal named above with full power and authority to do and perform every lawful act and thing the said agent and attorney may deem requisite and necessary to be done for and on behalf of the said principal without limitation of any kind as fully as said principal could do if present and acting, and hereby ratify and confirm all that said agent and attorney shall lawfully do or cause to be done by virtue of these presents until and including _____, or until notice
(Date)
of revocation in writing is duly given before that date.

_____
(Principal's name)

(h) When a power of attorney which is not limited to acts transacted at a specified port has ben filed and it is desired to use it at another port, the collector at the port where it is filed, upon request of the collector at the other port or upon request from the person, firm, or corporation which executed the power, shall forward a certified copy thereof to the collector at the second port. Any expense in connection with the preparation of such documents shall be borne by the parties in interest.

(i) Unless a power of attorney specifies that it authorizes the donee to act thereunder in all customs collection districts, the number of each district in which the donee is authorized to act thereunder shall be stated. The donor shall file a power of attorney in a sufficient number of copies for distribution to each district in which the donee is to act. The collector of customs with whom a power of attorney is filed, irrespective of whether his district is named therein, shall approve it, if it is in the correct form and the provisions of this section are complied with, and forward any copies intended for other districts to the districts in which the donee is to act.

(j) An individual (but not a partnership, association, or corporation) who is not a regular importer may appoint a relative as his agent for customs purposes by executing a power of attorney applicable to a single non-commercial shipment by writing, printing, or stamping and subscribing on the invoice, or a separate paper attached thereto, the following statement:

_____ of _____
Name Address
is hereby authorized to execute, as an agent who has knowledge of the facts, pursuant to the provisions of section 485 (f), Tariff Act of 1930, as amended, the consignee's and owner's declarations provided for in section 485 (a) and (d), Tariff Act of 1930, and to enter on my behalf or for my account the goods described in the attached invoice which contains a true and complete statement of the facts concerning this shipment.

Date _____, 19___.
Signature of importer _____
Address _____

(k) For the purposes of this section "resident" shall mean an individual who resides within, or a partnership, one or more of whose partners reside within, the customs territory of the United States or the Virgin Islands, or a corporation incorporated in any State, Territory, or possession within the customs territory of the United States or in the Virgin Islands.

(Secs. 484, 624, 46 Stat. 722, as amended, 759; 19 U.S.C. 1484, 1624)

§ 8.20 Incomplete entry; bonds for the production of documents.

Unless otherwise prescribed in the regulations in this part, a bond may be given on the appropriate form for the production of any required document which is not available at the time of entry.

(Sec. 490, 46 Stat. 726; 19 U.S.C. 1490)

§ 8.21 Estimation of duties; classification.

(a) When the entry is filed, the classification and values stated therein shall be compared with the description and values in the invoice and the proper amount of duties estimated by the customs officer designated to accept entries.

(b) The rates of duty at which the entry is passed and the appropriate paragraphs shall be noted by the importer with black ink in the left-hand margin of the invoice.

(Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484)

§ 8.22 Designation of merchandise to be examined.

(a) Pursuant to section 499, Tariff Act of 1930, as amended,[27] the collector shall designate in the appropriate spaces on customs Form 6417 and with respect to each invoice, the packages to be examined and the place where the examination is to be made if elsewhere than at the public stores. The designation of packages for examination shall be by marks and numbers or, whether or not the packages bear marks and numbers, by minimum percentages of packages or quantities, as may be determined by the collector. He shall also indicate the examination packages on the permit and, if he deems it necessary, on the entry. The order for examination on customs Form 6417 shall be signed by the collector, the assistant collector, a deputy collector, or a customs officer officially acting as such. If the merchandise is bulky, inflammable, explosive, or dangerous, the collector shall direct examination on the wharf or at any other suitable place, subject to the approval of the appraiser. When merchandise is to be gauged, measured, or weighed, the collector shall so indicate on the invoice, the permit, and, if he deems it necessary, on the entry. As to the designation for examination of merchandise to be released under immediate delivery permits, see § 8.59(c).

(b) When a portion of a zone lot of nonprivileged foreign merchandise, covered by one invoice, the contents and value of packages of which are uniform or the merchandise is identical as to character and value although differing as to quantity and aggregate value per package, has been entered and packages or quantities thereof have been designated for examination for customs purposes, the collector with the concurrence of the appraiser may, if they consider an examination unnecessary, permit subsequent entries for consumption from such zone lot of merchandise to be made by the same importer at the same port of entry on the basis of the first examination. Each subsequent entry of a portion of such a zone lot of merchandise shall identify the first consumption entry made by the importer of a portion of the lot.

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

§ 8.23 Release of merchandise.

(a) The release order issued by the carrier under the provisions of section 484 (j), Tariff Act of 1930,[28] shall be executed on customs Form 7529 if a carrier's certificate is used in making entry, unless it is included in the official entry form or unless a combined carrier's certificate and release order as described in § 8.6 (e) has been furnished. When a certified duplicate bill of lading is used for entry purposes under the provisions of section 484 (i), Tariff Act of 1930, the carrier's release order may be endorsed thereon and shall be in substantially the following form:

In accordance with the provisions of section 484 (j), Tariff Act of 1930, authority is hereby given to release the articles covered by this certified duplicate bill of lading to:
_____
_____

[27] "Imported merchandise, required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not be delivered from customs custody, except under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce, until it has been inspected, examined, or appraised and is reported by the appraiser to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States. The collector shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise and shall order such packages or quantities to be sent to the public stores or other places for such purpose. Not less than one package of every invoice and not less than one package of every ten packages of merchandise, shall be so designated unless the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that the examination of a less proportion of packages will amply protect the revenue and by special regulation or instruction, the application of which may be restricted to one or more individual ports or to one or more importations or one or more classes of merchandise, permit a less number of packages to be examined. All such special regulations or instructions shall be published in the weekly Treasury Decisions within fifteen days after issuance and before the liquidation of any entries affected thereby. The collector or the appraiser may require such additional packages or quantities as either of them may deem necessary. If any package is found by the appraiser to contain any article not specified in the invoice and he reports to the collector that in his opinion such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package in which such article is found shall be liable to seizure, but if the appraiser reports that no such fraudulent intent is apparent then the value of said article shall be added to the entry and the duties thereon paid accordingly. If a deficiency is found in quantity, weight, or measure in the examination of any package, report thereof shall be made to the collector, who shall make allowance therefor in the liquidation of duties • • •." (Tariff Act of 1930, sec. 499, as amended; 19 U. S. C. 1499)

[28] Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. • • •." (Tariff Act of 1930, sec. 484 (j); 19 U. S. C. 1484 (j))

This order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing.

(2) "For transfer to the bonded carrier designated in the transportation entry," if the merchandise is entered for transportation in bond.

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation.

(b) A release order from the proprietor of a bonded warehouse covering merchandise therein shall be substantially in the same form.

(c) The merchandise may be released to the person named in the bill of lading in the absence of a specific release order from the carrier, provided the carrier concerned shall have filed a blanket order authorizing release to the consignee in such cases.

(d) The release order at the bottom of customs Form 7529 may be modified and executed to make it a blanket release order for the shipments covered by a blanket carrier's certificate as provided for by § 8.6 (f).

(Sec. 484, 46 Stat. 722, as amended; 19 U. S. C. 1484)

§ 8.24 Release of merchandise in customs custody after liquidation; merchandise refused by consignee.

(a) No merchandise remaining in customs custody after liquidation of the entry shall be released until the full amount of liquidated duties has been paid. When duties are unpaid, the collector shall not permit one importation to pass out of his custody with a view of holding a lien upon a subsequent importation.

(b) Merchandise consigned to anyone without his authority and refused by him shall be treated as unclaimed.

§ 8.25 Liens for freight, charges, or contribution in general average.

(a) A notice filed with the collector pursuant to section 564, Tariff Act of 1930,[29] of lien for freight, charges, or contribution in general average[30] shall be on customs Form 3485, signed by the authorized agent of the carrier and certified by him.

(b) When the cargo of a vessel is subject to contribution in general average, a preliminary notice thereof may be filed with the collector and individual notices of lien filed thereafter. Upon receipt of a preliminary notice, the collector shall withhold release of any merchandise imported in the vessel for 2 days (exclusive of Sunday and holidays) after such merchandise is taken into customs custody, unless proof is submitted that the claim for contribution in general average has been paid or secured.

(c) A notice of lien upon goods entered for immediate transportation shall be filed by the carrier with the collector of customs at destination.

(d) No notice of lien against goods shall be accepted by the collector after their forefeiture under any provision of law; nor after they are sold pursuant to section 491 or 559, Tariff Act of 1930, as amended; nor after customs release; nor, in the case of goods abandoned to the Government under section 506 (1) or 563 (b), Tariff Act of 1930, as amended, after the receipt and acceptance of the notice of abandonment. Any notice of lien received thereafter shall be returned with a statement thereon as to the reason for rejection. The acceptance of any notice of lien shall not in any manner affect the order of disposition and accounting for the proceeds of sales of forfeited and abandoned property provided for in §§ 15.6, 20.6, and 23.20 of this chapter.

(e) The collector shall not adjudicate any dispute respecting the validity of any lien, but when the amount of such lien depends upon the quantity or weight of merchandise actually landed, the collector shall hold the lien satisfied upon the payment of an amount computed upon the basis of the report made by the United States appraiser, weigher, or gauger.

(f) When any doubt exists as to the validity of a lien filed with the collector, he may exact a bond of indemnity to save him harmless from any personal liability which may result from withholding the release of the goods.

(g) Proof that the lien has been satisfied or discharged shall consist of a written release or receipt signed by the claimant and filed with the collector, showing payment of the claim in full.

(Sec. 564, 46 Stat. 747; 19 U.S.C. 1564)

§ 8.26 Recall of merchandise released from customs custody; requests of appraiser for additional packages or quantities.

(a) If at any time after entry the collector determines, either from the appraiser's report or otherwise, that any merchandise contained in an importation is for any reason not entitled to admission into the commerce of the United States, he shall promptly demand the return to customs custody of any such merchandise which has been released. The demand for the return of the merchandise shall be by letter, or on customs Form 3483 or other appropriate form.

(b) If the appraiser desires additional packages or quantities of merchandise for the purpose of examination, inspection, or appraisement, he shall notify the importer on customs Form 3483 to deliver them to the appraiser's stores or other place designated by him. If the request of the appraiser is not promptly complied with, he shall request the collector to make a demand under the appropriate bond for the return of the merchandise to customs custody.

(c) At any time before the appraiser's report of appraisement the collector may demand the return to customs custody of such additional packages or quantities of merchandise as the appraiser may desire, pursuant to section 499, Tariff Act of 1930, as amended, and paragraph (b) of this section, for the purpose of examination, inspection, or appraisement. The demand shall be by letter or on customs Form 3483 or other appropriate form. The collector may also demand the return to customs custody of any merchandise for the purpose of requiring it to be marked pursuant to the provisions of paragraph 367 or 368, or section 304, Tariff Act of 1930, as amended. The demand for this purpose shall be on customs Form 4647, not later than 20 days after the appraiser's report of appraisement.

(d) The demand for redelivery to customs custody for any purpose specified in this section shall be made on the actual owner, and not on the nominal consignee, if the latter has filed a superseding bond of the actual owner on customs Form 7601 before the date of a proper demand hereunder for redelivery for the purpose specified.

(e) The demand or notification shall be prepared in duplicate and the retained copy, with the date of mailing or delivery noted thereon, shall be made part of the entry record.

(Secs. 499, 505, 623, 46 Stat. 728, as amended, 732, 759, as amended; 19 U.S.C. 1499, 1505, 1623)

ENTRY FOR CONSUMPTION

§ 8.27 Form of entry.

Entry for consumption shall be made on customs Form 7501. Such entries shall be numbered in two separate series, one for dutiable consumption entries and the other for free consumption entries. The dutiable entries shall be made in triplicate, except that entries covering stainless steel table flatware and manufactures of cotton shall be in quintuple. Free entries shall be made in duplicate.

(Sec. 484, 46 Stat. 722, as amended; 19 U. S. C. 1484)

[29] "Whenever a collector of customs shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom." (Tariff Act of 1930, sec. 564; 19 U. S. C. 1564)

[30] The term "freight" means the carrier's charge for the transportation of the goods from the place of shipment in the foreign country to final destination in the United States. The term "charges" means the charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to destination in the United States, but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods. "General average" means the liability to contribution of the owners of a cargo which arises when a sacrifice of a part of such cargo has been made for the preservation of the residue or when money is expended to preserve the whole. It only arises from actions impelled by necessity.

§ 8.28 Release under bond; deposit of estimated duties; permit.

(a) When the importer desires the release from customs custody of any part of the merchandise before (1) the full amount of duties, including dumping or other special duties and charges, due thereon or the right to free entry has been ascertained by liquidation of the entry, (2) the right of such merchandise to admission into the United States has been determined by the proper officer, or (3) any document relating thereto required by law or regulations has been furnished, he shall, except as hereinafter indicated, file a bond on customs Form 7551, 7553, or other appropriate form, at the time of entry or prior to such release.[31] Such a bond shall not be required when all the merchandise in an importation has remained in customs custody at the public stores or on the wharf or other place in charge of a customs officer until it has been inspected, examined, and appraised, and has been found to comply with all laws and regulations governing its admission into the commerce of the United States, and until there have been produced all documents for the production of which a bond is required by law or regulations if not filed at time of entry.

(b) The estimated duties, if any, having been deposited as required by section 505, Tariff Act of 1930,[32] and the bond filed, a permit on customs Form 7501-A shall be issued and delivered to the importer or his agent, to be by him sent to the inspector in charge of the merchandise, who shall release to or upon the order of the carrier that part of the merchandise not designated for examination: *Provided*, That the collector may authorize the appraiser to permit an examiner to release both examined and unexamined packages in a shipment examined by such officer at a place not in charge of a customs officer, when this can be done without any real interference with the performance of the examiner's regular duties.

(c) Estimated duties need not be deposited when a shipment is entered, or withdrawn from warehouse, for consumption by a United States Government department or agency, or an authorized representative thereof. In such case a stipulation in the following form shall be furnished in lieu of any bond provided for in Part 25 of this chapter:

I, ----------, ----------, a duly authorized representative of the ----------
(Title) (Name of United States Government department or agency)

stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and of all other laws and regulations, relating to ---------- entry No. ----, of ----------, will be observed and complied with in all respects.
(Type of entry) (Date)

(Signature)

After liquidation of the entry, the collector shall bill the proper department or agency on Standard Form 1080 for any duties or charges due the Government.

(Secs. 484, 505, 623, 46 Stat. 722, as amended, 732, 759, as amended; 19 U. S. C. 1484, 1505, 1623)

§ 8.29 Release of packages.

(a) Merchandise which has not been designated for examination shall be released from customs custody in accordance with the provisions of § 8.28.

(b) Merchandise designated for examination may be released after examination has been completed if it has been found to be truly and correctly invoiced, is entitled to admission into the commerce of the United States, and its release is not precluded by any law or regulation. The collector may designate an appraising officer to effect the release of examined packages. See § 8.28(b).

(c) If the examiner believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties in the shipment exceeds $15, he shall promptly notify the importer of record on every shipment on customs Form 5555, specifying the nature of the difference on the notice. The report of appraisement shall not be withheld unless in the judgment of the appraiser there are compelling reasons that would warrant such action.

(d) If either the nominal consignee (importer of record) or the actual owner whose declaration and superseding bond have been filed in accordance with § 8.18 (d) desires, he may estimate, on the basis of information contained in the entry papers or obtainable from the examiner, the probable amount of unpaid duties or taxes which will be found due on the entire shipment and deposit them in whole or in part with the collector. The deposit shall be tendered in writing by the importer of record or the actual owner in the following form in the number of copies required for the purposes of local administration.

Date ----------

To the Collector of Customs.

Tender is hereby voluntarily made of $-------- as a supplemental deposit of estimated duties and taxes on ---------- entry No. ------, dated ----------, in the name of ----------. Please provide an official receipt.

(Importer of record) or (Actual owner)

(Street address)

---------- ----------
(City) (State)

An official receipt shall be given for the deposit.

(Secs. 499, 505, 623, 46 Stat. 728, as amended, 732, 759, as amended; 19 U. S. C. 1499, 1505, 1623)

ENTRY FOR WAREHOUSE

§ 8.30 Form and contents; articles entitled to entry.[33]

(a) Entry for warehousing shall be made in duplicate on customs Form 7502 except that in the case of stainless steel table flatware and manufactures of cotton, it shall be in quintuple. The collector may require an extra copy or copies of customs Form 7502-A (Warehouse or Rewarehouse Permit) to be furnished for use in connection with the delivery of the merchandise to the bonded warehouse designated on the entry.

(b) The importer shall designate upon the entry the bonded warehouse in which he desires his merchandise deposited and the bonded cartman or lighterman by whom he wishes the goods transferred.

(c) Dangerous and highly inflammable merchandise, though not classified as explosive, shall not be entered for warehouse without the written consent of the insurance company insuring the warehouse in which the merchandise is to be stored.

(d) The procedure to be followed in connection with the preparation and filing of the entry, making notations on invoices, the preparation of customs Form 6417, the designation of examination packages, and the appraisement of the merchandise shall be the same as that prescribed for a consumption entry, except that, when packages which are not uniform in contents, quantities, values, or rates of duties or taxes are grouped together as one item on an entry, a specification sheet or sheets (original only) shall be furnished with the entry, listing separately opposite the identification mark or number of each package the quantity of each class of merchandise therein, the entered value of each class, and the rate or rates of duty or taxes claimed therefor, unless one withdrawal is to be filed for all the merchandise covered by the entry.

(e) A warehouse entry may be substituted for a consumption entry covering merchandise which has remained in continuous customs custody. In such a case, the superseded consumption entry shall be liquidated for refund of any estimated duties deposited without awaiting liquidation of the warehouse entry. All copies of the warehouse entry shall bear the following notation:

This entry is in substitution of consumption entry No, ------, dated ----------, 19----.

[31] "Imported merchandise, required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not be delivered from customs custody, except under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce, until it has been inspected, examined, or appraised and is reported by the appraiser to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States. * * *" (Tariff Act of 1930, sec. 499, as amended; 19 U. S. C. 1499)

[32] "The consignee shall deposit with the collector, at the time of making entry, unless the merchandise is entered for warehouse or transportation, or under bond, the amount of duty estimated to be payable thereon. * * *" (Tariff Act of 1930, sec. 505; 19 U. S. C. 1505)

[33] Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. * * *" (Tariff Act of 1930, sec. 557 (a), as amended; 19 U. S. C. 1557 (a))

(f) Conditionally free merchandise, the right of which to free entry has not been established because of the absence of required documents or other cause, may be entered for warehouse and be withdrawn under the appropriate provision of law within the 3-year warehousing period.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 8.31 Estimation of duties; bond.

(a) After the duty has been estimated upon the warehouse entry, the collector shall require a bond on customs Form 7555, or other appropriate form, unless there is on file a general term bond of the consignee.

(b) The bond having been executed, the goods, except such as may be designated for examination, shall be sent to the bonded warehouse.

(Secs. 557, 623, 46 Stat. 744, as amended, 759, as amended; 19 U.S.C. 1557, 1623)

§ 8.32 Liability of importers and sureties.

(a) The importer of goods entered for warehousing is liable for the payment of increased duties not only as principal on the warehouse entry bond but also by reason of his personal liability as consignee. Under the first condition of the warehouse entry bond, the sureties on the bond shall be held liable for the payment of duties and customs charges not paid by the principal on the bond, whether such duties and charges are finally ascertained before the merchandise is withdrawn from customs custody or thereafter.

(b) Upon the transfer of the right to withdraw goods from a bonded warehouse, as provided for in section 557 (b), Tariff Act of 1930, as amended (see § 8.39), the transferor and his sureties shall be relieved from all undischarged liability for the payment of duties, taxes imposed upon or by reason of importation, charges, and exaction with respect to the merchandise the subject of the transfer, but shall remain bound by all other obligations of the bond filed by the transferor which are not assumed in the bond filed by the transferee.

(c) There shall be no abatement or allowance of duties on account of damage, loss, or deterioration of the merchandise while in warehouse, except as provided for by statute.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

ENTRY FOR REWAREHOUSE

§ 8.33 Procedure.

(a) After arrival of the merchandise and receipt of the mail copy of the warehouse withdrawal for transportation, customs Form 7512, at the port of destination, the merchandise may be entered for rewarehouse by the consignee named in the withdrawal. The entry shall be on customs Form 7502 and shall be filed in duplicate. The collector may require an extra copy or copies of customs Form 7502–A (Warehouse or Rewarehouse Permit) to be furnished for use in connection with the delivery of the merchandise to the bonded warehouse designated on the entry. Separate shipments consigned to the same consignee and received under separate withdrawals for transportation shall not be combined in one rewarehouse entry unless the warehouse withdrawals are from the same original warehouse entry. If the merchandise is not entered before the expiration of 5 days after its arrival, it shall be sent to the general-order warehouse but shall not be sold or otherwise disposed of as unclaimed until the expiration of the original warehouse entry bond period.

(b) No declaration is required on entry. Any examination necessary for identification of the merchandise, determination of shortages, or other purposes shall be made.

(c) When a bond on customs Form 7555 or other appropriate form shall have been given, a permit may be issued on customs Form 7502–A for sending the merchandise to the bonded warehouse designated on the entry. No entry bond shall be required if the merchandise is entered by the consignee named in the original warehouse entry bond filed at the original port of entry or if it is entered by a transferee whose right to withdraw the merchandise has been established in accordance with § 8.39.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 8.34 Value and classification; protest.

(a) Except in the cases provided for in § 16.10(h) of this chapter, the duties determined at the port where the original warehouse entry was filed shall be the duties chargeable under the rewarehouse entry or entry for rewarehouse and withdrawal for consumption.

(b) A protest may be filed at the port of destination against a liquidation made at that port under § 16.10 (h) of this chapter or against the refusal of the collector at that port to liquidate pursuant to § 16.10 (h) of this chapter.

(Secs. 514, 557, 46 Stat. 734, 744, as amended; 19 U.S.C. 1514, 1557)

COMBINED ENTRY FOR REWAREHOUSE AND WITHDRAWAL FOR CONSUMPTION

§ 8.35 Form; procedure.

(a) If the consignee of merchandise withdrawn from warehouse for transportation desires to pay duty and obtain possession of the goods immediately on arrival at destination, a combined entry for rewarehouse and withdrawal for consumption shall be made on customs Form 7519 in quadruplicate, one copy to be used as the permit.

(b) In such a case no rewarehouse entry bond shall be required if the merchandise is entered by the consignee named in the original warehouse entry bond filed at the port of original entry for warehousing, or by a transferee whose right to withdraw the merchandise has been established in accordance with § 8.39. Upon payment of the duties and any taxes in the amounts certified on the withdrawal for transportation to be payable, the collector shall issue a permit for release on customs Form 7519.

(c) No declaration is required on the combined entry. Any examination necessary for identification of the merchandise, determination of shortages, or other purposes shall be made.

(Secs. 484, 557, 46 Stat. 722, as amended, 744, as amended; 19 U.S.C. 1484, 1557)

EXPORTATION UNDER WAREHOUSE WITHDRAWAL FOR TRANSPORTATION

§ 8.36 Procedure.

A consignee of merchandise withdrawn from warehouse for transportation who desires to export the shipment on arrival at destination shall so advise the collector at destination in writing. The collector shall thereupon make a proper notation on the entry and manifest and permit the exportation of the merchandise under customs supervision. The subsequent procedure shall be the same as that prescribed for warehouse or rewarehouse withdrawals for transportation and exportation.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

WITHDRAWAL AT ORIGINAL OR SECONDARY PORT FOR CONSUMPTION

§ 8.37 Withdrawal; form and contents.

(a) Withdrawals for consumption of merchandise in bonded warehouses shall be filed in triplicate on customs Form 7505 (in quadruplicate at the port of New York).[34] No new declaration of the consignee or agent is required, but if a nominal consignee has produced a valid owner's declaration in accordance with section 485(d), Tariff Act of 1930, the withdrawal shall be made only by the owner of the merchandise. The withdrawal shall show the number of the bond, the marks and numbers of the packages withdrawn, the carrier and date of importation, the description, quantity, rates of duty, separate value of each package, and total dutiable value of the merchandise, and shall be signed by the person making the withdrawal, except that in the case of merchandise in packages which are uniform in kind, quantity, value, and duty the number of each package to be withdrawn need not be shown on the withdrawal if the lowest and the highest numbers in the number series of such packages are shown. In the case of stainless steel table flatware or articles manufactured from cotton, the description shall reflect any correction thereof reported after the filing of the warehouse entry.

(b) Each withdrawal filed shall have indicated thereon, preferably in the top margin toward the right-hand corner, a summary statement of the account to which it is related. The statement shall indicate (1) the quantity (i. e., number of outer containers, or tons, etc.) in the warehouse account before the withdrawal, (2) the amount included on the particular withdrawal, and (3) the quantity remaining in warehouse after the withdrawal. The quantity in each

[34] "* * * Such merchandise may be withdrawn, at any time within three years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; * * *." (Tariff Act of 1930, sec. 557, as amended; 19 U. S. C. 1557)

instance aforementioned, although it may include a group of varied units, such as boxes, cases, or cartons, and may consist of more than one commodity, such as distilled spirits, chinaware, etc., may be shown as a cumulative total. When all or a portion of an original lot is transferred to a new owner, withdrawals by the transferee shall show only the quantity transferred, the quantity withdrawn by the transferee, and the transferred quantity remaining in warehouse. In such case, the quantity retained by the original importer and the quantity transferred shall be treated as separate accounts. (See § 8.39.)

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 8.38 Withdrawal; when completed.

When the duties and other charges have been paid, a permit on customs Form 7505–A shall be issued and delivered to the person making the warehouse withdrawal. When the permit is presented to the customs warehouse officer, he shall release the merchandise to or upon the order of the proprietor of the warehouse in accordance with § 19.6 of this chapter, unless the person making the withdrawal requests, by endorsement on the permit, that release be withheld subject to the provisions of § 20.3(c) of this chapter until he shall have presented to the customs warehouse officer an order to release on customs Form 7505–B. If partial release is desired, the order may cover only part of the merchandise specified in the permit, but not less than an entire package, or, if in bulk, 1 ton in weight. Proprietors may be permitted to make copies of permits and orders to release.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 8.39 Withdrawal by transferee.

(a) Except as provided for in paragraph (c) of this section or in § 10.60(b) or 18.16(a) of this chapter, a transfer of the right to withdraw merchandise entered for warehousing[35] shall be established by an endorsement made in the space provided therefor on customs Form 7505, authorizing the withdrawal by a designated transferee, and the deposit of the endorsed document, properly executed in all respects, together with a bond of the designated transferee on customs Form 7555 or other appropriate form, with the customs officer designated to receive such document and bond. Such endorsement shall be made by the person primarily liable, immediately before the endorsed document is so deposited, for duties on the merchandise the subject of the transfer, i. e., the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such a person. The transferee's bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions.

(b) The endorsed Form 7505 and transferee's bond may be deposited by either the transferor or the transferee.

(c) If the transferor desires to do so, he may endorse Form 7505 to authorize the right to withdraw the merchandise specified thereon but leave the space for the name of the transferee blank. A holder of a Form 7505 so endorsed and otherwise fully executed may insert his own name in the blank space in the endorsement, deposit such form with his transferee's bond in the customhouse, and thereby establish his right to withdraw the merchandise.

(d) At any time within the warehousing period after compliance with paragraph (a) or (c) of this section, or concurrently with such compliance, a transferee may withdraw all or any part of the merchandise covered by the transfer by filing any authorized kind of withdrawal from warehouse in proper form and otherwise complying with the law and regulations pertinent to the kind of withdrawal filed. Each withdrawal of any type filed by the transferee shall contain a summary statement thereon indicating the quantity on hand in the transferee's name before the withdrawal, the amount withdrawn on the particular withdrawal, and the quantity remaining in the warehouse to the credit of the transferee, if any. (See § 8.37.)

(e) The right of a transferee to withdraw the merchandise may not be revoked by the transferor, but may be retransferred by the transferee.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 8.40 Withdrawals before and after liquidation.

(a) Merchandise may be withdrawn for consumption before liquidation of the warehouse entry upon payment of the estimated duties, and after liquidation upon payment of the liquidated duties.

(b) If there is a difference of $3 or more between the total estimated duties deposited and the total liquidated duties accruing on merchandise withdrawn for consumption before the liquidation or reliquidation of the warehouse entry, a notice shall be issued promptly on customs Form 5107 or customs Form 5269, as the case may be, and such difference shall be collected or refunded.

(c) In the computation of duty on a warehouse withdrawal, ad valorem rates shall be applied to the value in even dollars, fractional parts of a dollar less than 50 cents being disregarded and 50 cents or more being considered as $1. If the rate of duty upon the goods withdrawn is specific and $1 or less per unit, fractional quantities of less than one-half shall be disregarded, and one-half or more shall be treated as a whole unit. If the specific rate is more than $1 per unit, duty shall be assessed upon the exact quantity and the fractional part thereof, if any, expressed in the form of a decimal extended to two places. Any necessary adjustment shall be made on the final withdrawal by increasing or decreasing the amount to be collected to bring the aggregate payments into balance with the amount due as indicated by the liquidation of the warehouse or rewarehouse entry.

(Secs. 557, 562, 46 Stat. 744, as amended, 745, as amended; 19 U.S.C. 1557, 1562)

WITHDRAWAL AT ORIGINAL OR SECONDARY PORT FOR EXPORTATION

§ 8.41 Form and contents; goods not laden.

(a) Merchandise may be withdrawn from warehouse at original and secondary ports for exportation in accordance with § 18.19 of this chapter.[36]

[35] "(b) The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury and upon the filing by the transferee of a bond in such amount and containing such conditions as the Secretary of the Treasury shall prescribe. The bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions. Such transfers shall be irrevocable, shall relieve the transferor from all customs liability with respect to obligations assumed by the transferee under the bond herein provided for, and shall confer upon the transferee all rights to the privileges provided for in this section and in sections 562 and 563 of this Act which were vested in the transferor prior to the transfer. The transferee shall also have the right to receive all lawful refunds of moneys paid by him to the United States with respect to the merchandise the subject of the transfer, but shall have no right to file any protest under section 514 of this Act except as to decisions with respect to his rights under subsection (c) of this section or under section 562 or 563 of this Act or against a decision as to the rate or amount of duty, tax, charge, or exaction when such rate or amount has been changed by statute or proclamation on or after the date of the transfer. The transferee shall have no right to file an appeal for reappraisement under section 501 of this Act, except when subsequent to the transfer and before a withdrawal for consumption has been deposited for the merchandise, it has been changed in condition pursuant to the provisions of section 562 or 311 of this Act in a manner which necessitates that it be appraised in its changed condition in order that the correct amount of duties may be assessed. No new or separate liquidation, reliquidation, or determination shall be made in the name of, or on behalf of, a transferee, except with regard to any matter which may arise under subsection (c) of this section or section 562 or 563 of this Act when the transferee has invoked either of these sections, and in the case of a statuory or proclaimed change in the rate of duty, tax, charge, or exaction applicable to the merchandise the subject of the transfer and effective on or after the date of the transfer. A transferee may further transfer the right to withdraw merchandise, subject to the provisions of this subsection relating to original transfers." (Tariff Act of 1930, sec. 557 (b), as amended; 19 U. S. C. 1557 (b))

Section 21 (b), Customs Simplification Act of 1953 (67 Stat. 520), provides that the above-quoted provisions of section 557 (b), Tariff Act of 1930, shall be effective with respect to merchandise entered after August 8, 1953, and to merchandise which was entered before that date and is the subject of a transfer within the purview of the amended section 557 (b) and made after August 8, 1953.

[36] "Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers,

(b) If exported by other than the original importer, the same authority shall be required as in case of withdrawal for consumption. The exportation shall be made under the original marks of importation. Port marks may be added by authority of the collector and under the supervision of a customs officer. The original and the port marks shall appear in all customs papers pertaining to the exportation.

(c) Goods withdrawn for exportation but not laden shall be sent to general order unless other disposition is directed by the collector.

(d) Withdrawals for transportation and exportation may be converted to withdrawals for consumption upon request to the collector of customs at the port of origin.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 8.43 Weight, gauge, or measure.

(a) Merchandise in bulk and packaged articles which are customarily bought and sold by weight, gauge, or measure may be withdrawn for exportation or transportation only at the actual quantities ascertained at the time of original entry for warehouse, except as otherwise provided for by law.

(b) In any case the collector may require a special report of weight, gauge, or measure of the merchandise being exported if he deems it necessary.

(Secs. 557, 562, 46 Stat. 744, as amended, 745, as amended; 19 U.S.C. 1557, 1562)

§ 8.45 Parcel-post packages.

Merchandise in bonded warehouse may be withdrawn for exportation by mail in accordance with the provisions of § 9.11 of this chapter.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

ORES; CRUDE COPPER-BEARING MATERIALS; CRUDE METALS

§ 8.46 Entry and sampling of ores and crude metals not for smelting in bond.

(a) When ores or crude metals are entered for consumption or warehousing at the port of first arrival, they shall be sampled for assay and moisture purposes in accordance with commercial methods under the supervision of customs officers, as provided for in § 8.48. An extra copy of the entry shall be filed at the time of entry for use by the collector in reporting for statistical purposes any changes in entered quantities and values. They shall be transported under bond to the place of sampling if proper sampling facilities are not available at the port of entry.

(b) The sampling and weighing of ores or crude metals at any place other than the port of entry shall be at the expense of the parties in interest.

§ 8.47 Entry and sampling of crude copper-bearing materials not for smelting or refining in bond.

With respect to the entry under I.R.C. section 4541 or 4542 of crude copper-bearing materials to be smelted, refined, or smelted and refined, but not in bond, and of copper-bearing ores and concentrates not for smelting or refining in bond, the procedure outlined in § 8.46 shall be followed. This procedure shall be followed also when the material is not imported primarily for the recovery of metal. If metallurgical losses are to be claimed, there shall be filed in connection with the entry the statement provided for in § 19.28(d) of this chapter and such allowances shall be determined in the manner provided for in § 19.28.

(53 Stat. 415; 26 U. S. C. 3425)

§ 8.48 Sampling and assaying.

(a) In the calculation of the dutiable quantity of imported ore or similar material, the sample used for the moisture test shall be representative of the importation at the time the importation is weighed for customs purposes. The percentage of moisture shall be determined in accordance with commercial methods by the customs chemist or, if the merchandise is in a bonded smelting or refining warehouse, by the customs chemist or customs warehouse officer. The commercial settlement test for moisture may be used as the basis for duty assessment in appropriate cases. See paragraph (f) of this section.

(b) Representative commercial assay samples taken under customs supervision shall be selected by the customs officer for assay by the customs laboratory. When a shipment is made up of a number of lots a composite sample of the shipment shall be drawn for assay, provided composite sampling is feasible and assays of the individual lots are not required for tariff classification or other customs purpose. The composite sample shall consist of proportional parts by weight of the prepared sample drawn from the various lots represented and shall be thoroughly mixed.

(c) Where the procedure outlined in paragraphs (a) and (b) of this section cannot be followed, the importer shall be required to furnish a verified commercial moisture sample and prepared assay sample certified to be representative of the importation at the time the importation was weighed for customs purposes. The samples shall be in appropriate containers, properly labeled, and shall be accompanied by a statement including entry number, lots represented, kind of ore, date and place where sampling occurred, and the name and address of the sampling concern. The samples shall be forwarded promptly to the customs laboratory for analysis.

(d) Where no commercial samples have been taken, the customs officer shall take and send to the customs laboratory representative samples from different parts of the importation.

(e) A suitable place or container shall be provided for the safekeeping of all customs samples under Government lock or seal.

(f) Customs officers may secure from the importer a certified copy of the commercial settlement test for moisture. This result shall be transmitted with the commercial moisture sample to the customs laboratory where it shall be compared with the result shown by the customs moisture test. If the two results are not in substantial agreement, the chief chemist of the customs laboratory shall review his test. The import entries shall be liquidated on the basis of the result shown by the customs moisture test, except that the settlement moisture test shall be the basis of duty assessment if, in the opinion of the chief chemist, the settlement and customs tests differ with respect to the percentage of moisture contained in the importation at the time of weighing by no more than is to be expected between qualified laboratories and provided further that the use of such commercial moisture test will not require a different tariff classification or rate of duty than is indicated by the customs test.

(g) Customs officers may secure from the importer a certified copy of the commercial settlement assay results which shall be transmitted with the commercial sample to the customs laboratory, where it shall be compared with the results shown by the customs assay. If the two results are not in substantial agreement, the chief chemist of the customs laboratory shall review his assay. The import entries shall be liquidated on the basis of the results shown by the customs assay, except that the settlement assay shall be the basis of duty assessment if, in the opinion of the chief chemist, the settlement and customs assays differ with respect to the percentage of dutiable metal content by no more than is to be expected between qualified laboratories and provided further that the use of such commercial assay will not require a different tariff classification or rate of duty than is indicated by the customs assay.

(h) When the ores or crude metals assayed are of a class or kind which is ordinarily smelted or converted, the collector, in the liquidation of the entry, shall make a deduction of one and one-half units for lead and one and one-third units for copper from the lead content and copper content, respectively, as reported by the laboratory, if such deductions are ordinarily provided for in the contracts and settlement papers under which such ores and crude metals are bought and sold.

(Secs. 312, 624, 46 Stat. 692, 759; 19 U. S. C. 1312, 1624)

may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at any time within three years from the date of importation. * * * for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island or the Island of Guam, without the payment of duties thereon * * *: *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed three years from the date of importation * * *." (Tariff Act of 1930, sec. 557(a), as amended; 19 U.S.C. 1557(a))

ENTRY FOR EXPORTATION, ENTRY BY APPRAISEMENT, INFORMAL ENTRIES, AND PACKED PACKAGES

§ 8.49 Entry for exportation; exportation of rejected merchandise.

(a) Merchandise in customs custody for which entry has not been completed and merchandise which has remained in continuous customs custody and is covered by an unliquidated consumption entry may be exported under the procedure outlined in §§ 18.25–18.27 of this chapter with refund of any estimated duties paid.

(b) If merchandise has been regularly entered or withdrawn for consumption in good faith and is thereafter found to be prohibited entry under any law of the United States, it may be exported under customs supervision in accordance with §§ 18.25 and 18.26 of this chapter with refund of any duties that have been paid.[35] (See § 15.5 of this chapter.)

(c) When merchandise to be exported from continuous customs custody is covered by a liquidated consumption entry under which duties have been assessed, the drawback procedure prescribed in §§ 22.27–22.30 of this chapter shall be followed.

(Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558)

§ 8.50 Entry by appraisement.

(a) Application for an entry by appraisement shall be made in triplicate on customs Form 7500.

(b) An application for an entry by appraisement may be approved by the collector without securing the approval of the Commissioner's office for articles described in section 498 (a), (2), (3), (4), (5), (7), or (8), Tariff Act of 1930.[36] As the value of articles of the following descriptions cannot be declared, an application for an entry by appraisement for any such articles pursuant to section 498 (a) (10),[36] Tariff Act of 1930, may be approved by the collector without the approval of the Commissioner's office:

(1) Articles which are second-hand;

(2) Articles which have become deteriorated or damaged before importation otherwise than as specified in section 498 (a) (2);

(3) Articles which are not the subject of a commercial transaction; and

(4) So-called overages or dock accumulations which cannot be identified with any particular shipment.

Entry by appraisement for articles not provided for above shall be allowed only with the approval of the Commissioner's office. Each request for such approval shall be filed in triplicate with the collector and shall state in detail the reasons for the request for entry by appraisement.

(c) An application for an entry by appraisement shall not be approved after the merchandise has been appraised or released from customs custody, nor for damaged merchandise when the damage occurs after importation.

(d) The consignee or owner shall in all cases furnish any bills or statements of cost relating to the articles which may be in his possession and a declaration that he has no other information as to the value of the articles and is unable to obtain such information or to determine the value of the articles for the purpose of making formal entry thereof.

(e) After submission, if acceptable, the application, together with any bills or statements relating to the cost or value of the merchandise, shall be forwarded to the appraiser, who shall report the result of his appraisement and his advisory classification of the merchandise thereon and return it with its attachments to the collector. Duties shall be assessed in accordance with the values reported by the appraiser; but the importer may substitute an entry for warehouse at any time within 1 year from the date of importation, provided the merchandise has remained in continuous customs custody.

(f) Any additional expense for cartage, storage, or labor occasioned by reason of an entry by appraisement shall be borne by the importer.

(Sec. 498, 46 Stat. 728, as amended; 19 U. S. C. 1498)

§ 8.51 Informal entries.[37]

(a) Merchandise not exceeding $250 in value, unless falling within the provisions of § 8.50, may be entered on a customs Form 5119 or 5119–A. The nonserially-numbered customs Form 5119 or 5119–A may be prepared by importers or their agents or by customs officers when it can be presented to a customs cashier or acting cashier for payment of duties and taxes and for numbering of the entry before the merchandise is examined by a customs officer. The serially-numbered customs Form 5119 or 5119–A must be prepared by customs officers when the merchandise is to be cleared at a time or place where there is no customs cashier or acting cashier. Each informal entry shall contain an adequate description of the merchandise and the number of the paragraph under which the merchandise is classified. This form may also be used for the entry of household or personal effects or tools of trade entitled to free entry under paragraph 1632, 1747, or 1798, Tariff Act of 1930, as amended, but any such articles imported in the baggage of their owner shall ordinarily be included in his baggage declaration. This form may also be used for the entry of (1) books or other articles imported by a society, institution, school, or library and classifiable under paragraph 1631, Tariff Act of 1930, as amended; (2) effects not exceeding $250 in value of citizens of the United States dying abroad; and (3) household and personal effects as described in section 498(a)(4) of the Tariff Act of 1930, as amended, when entered under paragraph 1615(g)(1) of the Tariff Act of 1930, as amended, and the value of the repairs or alterations thereto does not exceed $250. An informal entry may be prepared for any installment, not exceeding $250 in value, of a shipment arriving at different times and in such case need not be considered in connection with invoice requirements for the balance of the series or otherwise as an installment shipment within the purview of § 8.12.

(b) The estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a customs officer, whether at the custom-

[35] "(a) No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

* * * * *

"(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe: * * *." (Tariff Act of 1930, sec. 558 (a), as amended; 19 U. S. C. 1558 (a))

[36] "(a) *Authorized for certain merchandise.* The Secretary of the Treasury is authorized to prescribe the rules and regulations for the declaration and entry of—

* * * * *

"(2) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;

"(3) Merchandise recovered from a wrecked or stranded vessel;

"(4) Household effects used abroad and personnel effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

"(5) Articles sent by persons in foreign countries as gifts to persons in the United States;

* * * * *

"(7) Tools of trade of a person arriving in the United States;

"(8) Personal effects of citizens of the United States who have died in a foreign country;

* * * * *

"(10) Merchandise in the opinion of the Secretary of the Treasury the value thereof cannot be declared; * * *

* * * * *

"(b) *Application of general provisions.* The Secretary of the Treasury is authorized to include in such rules and regulations any of the provisions of section 484 or 485 of this Act, (relating, respectively, to entry and to declaration of merchandise generally)." (Tariff Act of 1930, sec. 498; 19 U. S. C. 1498)

[37] "(a) * * * The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

"(1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $250, as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions;

* * * * *

"(4) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

* * * * *

"(7) Tools of trade of a person arriving in the United States;

* * * * *

"(11) Merchandise within the provisions of paragraph 1631 of this Act.

"(b) * * * The Secretary of the Treasury is authorized to include in such rules and regulations any of the provisions of section 484 or 485 of this Act (relating, respectively, to entry and to declaration of merchandise generally)." (Tariff Act of 1930, sec. 498, as amended; 19 U.S.C. 1498)

house or elsewhere. If upon examination of the merchandise further duties or taxes are found due, they shall be deposited before release of the goods by customs. When the entry is presented elsewhere than where the merchandise is examined, the permit copy shall be delivered through proper channels to the customs officer who will examine the merchandise.

(c) The collector may, when he deems it necessary for the protection of the revenue, require a formal entry, customs Form 7501, for any such merchandise. Individual shipments for the same consignee, when such shipments are valued at $250 or less, may be consolidated on customs Form 7501.

(d) No special customs invoice is required but, in the case of merchandise imported pursuant to a purchase or agreement to purchase or intended for sale, the consignee shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

(e) The collector may, in his discretion, require any merchandise entered in accordance with this section to be regularly examined and appraised.

(Sec. 498(a), 46 Stat. 728, as amended; 19 U.S.C. 1498(a))

§ 8.51a Entry of certain shipments of unconditionally or conditionally free merchandise.

A shipment not exceeding $250 in value which is (a) unconditionally free of duty and not subject to any quota or internal-revenue tax, or (b) conditionally free and all conditions for free entry are met at the time of entry, may be released upon examination and identification by a customs officer and the filing by the importer of customs Form 7523, in duplicate, supported by evidence of the right to make entry; *Provided*, That this procedure shall not be followed in the case of American goods returned for the entry of which customs Form 3311 has been prescribed by § 10.1, returning residents' purchases for the clearance of which customs Form 3351 or 3419 has been prescribed by §§ 9.10 and 10.20 of this chapter, or effects and tools of trade released under customs Form 3297 or 3299 without other entry in accordance with § 10.20 of this chapter.

(Sec. 498(a), 46 Stat. 728, as amended; 19 U.S.C. 1498(a))

§ 8.52 Packed packages; marking; entry; when entry not required.

(a) Packed packages, which may be separately entered under the provisions of section 484(f), Tariff Act of 1930, as amended,[43] and § 8.8 (f), shall be marked to indicate that they are packed packages.

(b) Entire packed packages, or one or more of the enclosures thereof, may be entered on any form of formal or informal entry applicable thereto. No entry is required for parcels contained in packed packages where the individual parcel contains merchandise unconditionally free of duty and not exceeding $250 in value.

(Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484)

LANDING AND DELIVERY OF ARTICLES FOR WHICH IMMEDIATE DELIVERY IS NECESSARY

§ 8.59 Application; entry; procedure.

(a) "Articles, the immediate delivery of which is necessary," for which special permits for delivery are authorized by section 448 (b), Tariff Act of 1930,[44] shall be construed to include, in addition to perishable articles, any other articles in connection with which it is definitely established that delay in securing release would occasion unusual loss or inconvenience to the importer or to the carrier bringing the merchandise to the port. The term "formal entry" in the said section 448 (b) means the process of making entry and does not specify a kind of entry.

(b) Special permits for the delivery of articles of a class referred to in paragraph (a) of this section prior to entry shall be granted only in cases where the collector of customs shall be satisfied that such delivery can be permitted with safety to the revenue.

(c) Applications for special permits for the delivery of imported articles prior to entry therefor shall be made in duplicate on customs Form 3461 and shall be supported by evidence satisfactory to the collector of the right of the applicant to make entry for the articles with respect to which the application is filed. Designations and orders for examination of merchandise to be released under immediate delivery permits may be made before the arrival of the merchandise by the collector, the assistant collector, a deputy collector, or a customs officer officially acting as one of the foregoing. Such designations and orders shall be made in the space provided therefor on the special permit, customs Form 3461, when possible, and the designations may be by minimum percentages of packages or quantities which shall be examined, unless the collector shall be of the opinion that the proper protection of the revenue requires packages to be otherwise designated for examination. Information as to particular packages designated for examination, when less than the total number of packages in the shipment, shall not be given or be accessible to anyone, other than the customs officers necessarily concerned prior to the arrival of the merchandise within the limits of the port. If the collector is satisfied that the conditions warrant such action, a special permit may be granted to cover the delivery prior to entry of a class or classes of articles particularly described in the application for such permit and imported during a period not to exceed 1 year. In such case the fact of release of the merchandise, together with such supplemental information as may be necessary to identify the shipment and determine its quantity and value, shall be noted on the manifest and initialed by the customs officer who releases the merchandise.

(d) No permit for the delivery of imported articles prior to entry being made therefor shall be issued until there has been filed in connection with the application for such delivery a single entry bond on customs Form 7551, with approved corporate surety; or a term bond on customs Form 7553, with approved corporate surety (see § 25.4 (a) (9) and (10) of this chapter as to amounts of such bonds). When the transaction involves articles of a kind which is subject to a tariff-rate quota and such articles are released at a time when the pertinent quota is filled, the full rate or rates shall be used in computing the estimated duties and taxes for the purpose of determining the amount of the single-entry bond. The term bond may be filed in connection with a single application to cover several importations during a period of not more than 1 year, or in connection with several applications to be filed during a period of not more than 1 year. A general term bond on customs Form 7595 is also applicable to the landing and delivery of articles for which immediate delivery is necessary.

(e) If there is available sufficient information as to the quantities and values of the merchandise for a proper estimation of the duties and any taxes which will be payable, there may be deposited with the application for a special permit all the papers, including an entry bond, in proper form for making entry for consumption in accordance with § 8.4 (d), but no deposit of duties or taxes shall be permitted for the shipment until such time as entry could be made therefor in accordance with § 8.4.

(f) In the case of articles of a class referred to in paragraph (a) of this section, arriving from Canada or Mexico when the customhouse is closed and destined to places other than the port of arrival, the application and the evidence of the right to make entry may be submitted to the chief customs officer on duty and a special permit may be issued for their release, provided the person making application has on file in the customhouse a special term bond as described in paragraph (d) of this section.

(g) Except as otherwise prescribed in this chapter, entry shall be made including deposit of estimated duties and taxes, within 2 days after the day on which the articles are released under a special permit. When the importer or his agent furnishes in writing a satisfactory explanation of his inability to make entry and deposit within 2 days after the day of release, the collector may extend the period for not to exceed 2 additional days. In computing the period within which entry and deposit must be made, including any authorized extension, the day of release, Saturday, Sunday, and holiday shall be excluded. Notwithstanding the foregoing, the time within which entries (including deposit of estimated duties and taxes) shall be filed covering articles of a kind which is subject to a tariff-rate quota which are released under a special permit at a time when the pertinent quota is filled shall expire in any event not later than midnight on the last day before the applicable quota again opens and no extension beyond such midnight shall be granted. Each formal consumption entry, except where the collector has approved the use of a consolidated report on the summary sheet (customs Form 6417) in lieu of the reports on customs Form 7501–A, or informal entry for merchandise released under a term immediate delivery permit shall be accompanied by an entry permit on customs Form 7501–A, 5119, or 5119–A, as applicable, for execution by customs officers on the permit of the reports of action. Such consolidated report, which may be printed or rubber stamped in the space on the summary sheet normally used to designate examination packages, shall read substantially as follows:

I certify that the merchandise covered by this entry has been (1) examined or sampled, (2) weighed, gauged, or measured or stamped as directed, or invoiced ☐ or entered ☐ quantities accepted (check one box, if applicable) and (3) released under immediate delivery permit No. _____ on _____ (Date) and that it was in apparent good order, except as noted below:

If no exceptions, note ("None")

(Inspector-Acting Examiner)

Unless needed by customs for noting the entry number on the manifest, no entry permit on customs Form 7501–A, 5119, or 5119–A is required to accompany an entry for merchandise released under an immediate delivery permit (customs Form 3461) for a single importation. Upon request, the local collector of customs will advise whether an entry permit is required.

(h) Entry under paragraph (g) of this section shall not be required for prohibited articles (1) which are exported or destroyed within the period for entry specified in paragraph (g) of this section, or (2) for which entry for exportation or application to destroy is made during such period provided such prohibited articles are promptly exported or destroyed. The conditions governing the exportation or destruction of prohibited articles covered by entries for consumption with remission or refund of duty under section 558 (a) (2) of the Tariff Act of 1930, as amended, and the regulations thereunder shall apply to such exportation or destruction. Direct export or transportation and exportation entries made for prohibited articles for which no formal or informal entry for consumption is filed shall have conspicuously stamped or imprinted thereon the legend: Prohibited Merchandise; No Other Entry Filed.

(i) If entry, when required, is not timely made the collector shall make an immediate demand for liquidated damages in the entire amount of the bond in the case of a single-entry bond. When the transaction has been charged against a term bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single immediate delivery and consumption entry bond. Unless prompt action is taken looking to the settlement of the claim, the collector shall discontinue allowing immediate delivery of articles imported by or for the account of the person in default.

(j) When liquidated damages have been assessed for failure to file a timely entry for merchandise not subject to a quota which has been released under a special permit and the importer files an application for relief, the collector may cancel such liquidated damages upon the payment of $10, if he is satisfied that the delay in filing the entry was not due to willful negligence and was occasioned by circumstances reasonbly beyond the control of the parties.

(k) Except in the case of articles entered in accordance with § 8.51, the collector shall give timely notice of the arrival of the vessel or vehicle to the appraiser, who shall promptly detail an officer to examine the merchandise, except that when the vessel or vehicle arrives at night or on a Sunday or holiday, and the articles consist of fruits, vegetables, or other merchandise which it is practicable to appraise by means of samples, the discharging inspector shall take samples in such manner and in such quantities as the appraiser may direct and retain them for examination on the next business day. The discharging inspector shall not release the merchandise to the carrier until it has been examined or adequate samples have been taken when appraisement is to be made by sample. Examination and release of merchandise under the special delivery provisions of this section shall not be made unless there is first furnished to the examining officer an invoice, waybill, or other satisfactory document setting forth an adequate description of the merchandise and the quantitites thereof, together with the values or approximate values thereof when the latter information is needed in connection with the examination. If an annual special delivery permit is involved, the invoice, or other document so presented to the examining officer shall also have shown thereon, when possible, the special delivery permit number, to facilitate the identification of the importation with the permit.

(l) In all other respects the procedure shall be the same as in the case of other imported merchandise.

(Secs. 448, 558, 46 Stat. 714, 744, as amended; 19 U.S.C. 1448, 1558)

[43] "* * * One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the Treasury may prescribe. * * *." (Tariff Act of 1930, sec. 484 (f), as amended; 19 U. S. C. 1484 (f))

[44] "The Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary." (Tariff Act of 1930, sec. 448 (b); 19 U. S. C. 1448 (b))

PART 9—IMPORTATIONS BY MAIL

Sec.
9.1 Customs declarations and invoices.
9.2 Treatment of mail importations at offices of first receipt and at offices of examination.
9.3 Mail entries.
9.4 Formal entry of mail importations.
9.5 Sealed mail parcels to bear label or endorsement.
9.6 Importations not over $1 in value; gifts.
9.7 Parcels for the United States Government; merchandise in diplomatic pouches; parcels marked for copyright; books, engravings, etc., for the United States.
9.8 Cigars, cigarettes, and manufactured tobacco; oleomargarine; and playing cards.
9.9 Merchandise conditionally free.
9.10 Dissatisfied addressees; delivery under a resident's $200 or $300 exemption; undelivered dutiable parcels.
9.11 Exportation by mail; plant material.
9.12 Prohibited and restricted mail importations; seizure under the customs laws.

AUTHORITY: §§ 9.1 to 9.12 issued under R.S. 161, 251, sec. 624, 46 Stat. 759; 5 U.S.C. 22, 19 U.S.C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 9.1 Customs declarations and invoices.

(a) A customs declaration on the form provided by the foreign mailing office, giving an accurate description and the value of the contents, shall be securely attached to at least one package of each parcel-post shipment. Each commercial shipment by parcel post shall also be accompanied by a commercial invoice. In case the shipment consists of more than one package, the invoice shall be placed in the package to which the postal form of customs declaration is attached, and such package shall be marked "Invoice enclosed." There shall be enclosed with the contents of every mail parcel containing merchandise dispatched otherwise than by parcel post an invoice in the case of commercial shipments, or a statement of value in the case of merchandise not purchased nor consigned for sale, giving an accurate description and the value of the merchandise. If it is impracticable to enclose the invoice or statement, it shall be securely attached to the outside of the parcel.

(b) When the aggregate value of a mail shipment exceeds $500, the accompanying invoice is subject to the same requirements as invoices covering similar shipments imported otherwise than in the mails. When a special customs invoice accompanies a mail shipment, no other invoice or statement of value is required.

(Secs. 481, 482, 485, 498, 46 Stat. 719, 720, as amended, 724, as amended; 728, as amended; 19 U.S.C. 1481, 1482, 1485, 1498)

CROSS REFERENCE: For exception to the requirements of this section with regard to customs invoices in the shipment of bona fide gifts under Public Law No. 790 (50 U. S. C. App. 846, 847), see § 54.3 (e) of this chapter.

§ 9.2 Treatment of mail importations at offices of first receipt and at offices of examination.

(a) Parcels of all classes of mail believed to contain articles liable to customs duty received at post offices other than New York, Chicago, San Francisco, or Seattle,[2] and such parcels received at exchange post offices at the four ports mentioned for delivery within their respective distribution districts as shown in the special distribution scheme,[3] shall be given customs treatment at the ports where received.

(b) All parcels, including those subject to formal entry, for delivery at points outside the distribution districts of the four exchange post offices named in paragraph (a) of this section, and received at such offices, shall be left in the custody of the postmaster, without customs examination, for redispatch to other distributing post offices in accordance with the special distribution scheme. Upon receipt at the distributing post offices, the dispatches shall be opened in the presence of customs officers and the mail given customs treatment.

§ 9.3 Mail entries.

(a) In the case of importation in the mails not exceeding $250 in value, customs officers shall prepare and attach the proper entry form and return the shipment to the postal authorities for delivery and collection of duty.[4]

(b) No mail or other entry shall be issued for any shipment in the mails which is: (1) Unconditionally free of duty and does not exceed $250 in value; or (2) accompanied by a properly completed customs Form 3351, Release for Unaccompanied Tourist Shipment. In the case of articles which are unquestionably the growth, produce, or manufacture of the United States, and which have not been advanced in value or improved in condition, if the collector is satisfied from the character thereof or otherwise that they are free of duty under paragraph 1615, Tariff Act of 1930, as amended, and if the total value of the articles of American origin contained in the shipment does not exceed $250, no mail or other entry shall be issued and no declaration of the owner, importer, or agent on customs Form 3311 shall be required.

(c) Books or other articles imported in the mails by a society, institution, school, or library and classifiable under paragraph 1631, Tariff Act of 1930, may be cleared through customs under an informal mail entry, regardless of value.

(d) The rate or rates of duty applicable to any article released under an informal mail entry (customs Form 3419, or 3421) shall be the rate or rates in effect when the preparation of such entry is completed by a customs employee for transmittal with the article to the addressee.[4a]

(Secs. 201 (par. 1615), 315, 498 (a), 46 Stat. 674, as amended, 695, as amended, 728, as amended; 19 U. S. C. 1201 (par. 1615), 1315, 1498(a))

§ 9.4 Formal entry of mail importations.

Formal entry at the customhouse shall be required for every importation in the mails which exceeds $250 in value, except as provided for in § 9.3 (c) or 10.20(b)(4) of this chapter. When a mail shipment is examined and found to be subject to formal entry, the addressee or consignee shall be notified on customs Form 3509 of the arrival of the shipment and of the port at which entry is to be made. When a shipment is addressed to a point which is not a customs port or station, the port of entry specified in the notice shall be the port nearest the office of destination of the shipment. Single shipments not exceeding $250 in value, if mailed abroad at different times (as shown by the declaration or other mailing indicia), shall not be combined for the purpose of requiring formal customs entry, even though they reach customs at the same or approximately the same time, unless there was a splitting of shipments in order to avoid the payment of the lawful customs duty. The collector may require formal entry of mail shipments regardless of value, if in his opinion such entry is necessary to protect the revenue.

(Sec. 484, 46 Stat. 722, as amended; 19 U. S. C. 1484)

§ 9.5 Sealed mail parcels to bear label or endorsement.

(a) The importation of merchandise in sealed parcels (other than parcel post) shall be permitted if the sealed letter or other sealed parcel bears on the address side thereof the label, Form C 1, provided for by the Universal Postal Convention or the endorsement "May be opened for customs purposes before delivery to the addressee," or words of similar purport definitely waiving the privacy of the seal and indicating that the parcel may be opened by customs officers without recourse to the addressee.[5]

(b) When a sealed envelope or other parcel (other than parcel post) believed to contain merchandise is not endorsed or labeled as required, the postmaster will detain it in his custody and request the addressee to furnish written authority for a customs officer to open the parcel in the presence of a representative of the postmaster. If the addressee does not furnish such written authority within 30 days after the date of notice by the postmaster or within such further time as may be allowed, the parcel will be treated as undeliverable mail matter. If the parcel, upon being opened under proper written authority, is found to contain merchandise free of internal-revenue tax and free of duty either because unconditionally free or because the aggregate value of the shipment is not more than $1 and the expense and inconvenience of collecting the duty accruing thereon would be disproportionate to the amount of such duty, the parcel may be delivered to the addressee without the collection of any fine on account of the article not having been endorsed or labeled in accordance with paragraph (a) of this section.

(c) Except as provided for in paragraph (b) of this section, if a sealed letter or other parcel not endorsed or labeled as required by paragraph (a) of this section is found to contain merchandise subject to duty (including conditionally free merchandise) or subject to internal-revenue tax, the merchandise is subject to seizure and forfeiture as having been imported contrary to law. Under the authority contained in section 618, Tariff Act of 1930, any forfeiture so incurred is hereby mitigated to an amount equal to 10 percent of the loss of revenue which was or might have been sustained, provided there is no evidence indicating to the collector that failure to label or endorse the parcel was due to willful negligence or to an intent to defraud the revenue. If there is any such evidence, or if for any other reason the collector believes that it would not be in the interest of the United States to grant this relief, the matter shall be reported to the Bureau of Customs for instructions. When the shipment does not exceed $250 in value, customs Form 3421 shall be used for the entry of the merchandise and the duty, any internal-revenue tax, and the amount of the mitigated forfeiture shall be entered as separate items thereon. If a parcel for which a mail fine entry has been issued in accordance with the foregoing provision is undeliverable, it will be returned to the collector of customs at the port where the mail entry was issued, for disposition in accordance with § 9.12 (d) relating to articles subject to seizure. The addressee or sender may file a petition with the collector of customs at the port where the mail fine entry was issued for relief from the forfeiture incurred and for the release of the seized merchandise to the addressee or sender.

(Sec. 1, 62 Stat. 716, sec. 618, 46 Stat. 757; 18 U.S.C. 545, 19 U.S.C. 1618)

§ 9.6 Importations not over $1 in value; gifts.

(a) Customs officers shall pass free of duty and internal-revenue tax, without issuing a mail entry therefor, any parcel containing articles the aggregate value of which is not over $1, unless they have reason to believe that the parcel is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with a provision of law or regulation.[6]

(b) Customs officers shall pass free of duty and internal-revenue tax, without issuing a mail entry therefor, parcels containing bona fide gifts from persons in foreign countries to persons in the United States, provided the aggregate value of such articles received by one person on one day does not exceed $10.

(c) The provisions of § 8.3 (d) of this chapter are also applicable to this section.

(Sec. 7, 52 Stat. 1081, as amended; 19 U.S.C. 1321)

§ 9.7 Parcels for the United States Government; merchandise in diplomatic pouches; parcels marked for copyright; books, engravings, etc., for the United States.

(a) Parcels addressed to offices or officials of the United States Government, believed to contain only official documents, shall be forwarded immediately to the addressees. Such parcels, when known or believed to contain merchandise, shall be treated in the same manner as similar parcels for other addressees.

(b) Books, engravings, and other articles enumerated in paragraph 1628, Tariff Act of 1930, which are imported by mail and addressed to the Library of Congress or any department or agency of the Government, shall be forwarded for delivery without the assessment of duty, if the collector is satisfied they are entitled to free entry under such paragraph 1628.

(c) Parcels marked for copyright, addressed to the Library of Congress, to the Copyright Office, or to the office of the Register of Copyrights, Washington 25, D. C., may be passed free of duty and promptly forwarded to destination.

(d) No merchandise of any character may be forwarded in diplomatic or other official pouches.[7]

§ 9.8 Cigars, cigarettes, and manufactured tobacco; oleomargarine; and playing cards.

(a) In the case of mail entries for playing cards or oleomargarine required to have internal revenue stamps affixed customs officers shall sign and attach to the entries internal revenue Form 923 (order for stamps-imported manufactures), after such completion as is directed thereon, and customs Form 3473. When the parcel is addressed for delivery at the post office where it is examined and customs Form 3473 is not required to insure the taking of the action described thereon, Form 3473 need not be prepared. The postmaster will furnish the addressee with internal revenue Form 923. The addressee will be required to secure the necessary internal revenue stamps and affix them to the immediate packages of the merchandise before the parcel will be delivered to him.

(1) When playing cards imported by mail bear the required internal revenue stamps affixed in a foreign country as provided for in regulations of the Internal Revenue Service (26 CFR (1939) 1956 Supp., 305.19), they may be treated the same as any importation by mail subject only to duty.

(2) The internal revenue tax on tobacco products (cigars, cigarettes, manufactured tobacco) valued not in excess of $250 imported by mail shall be paid on the basis of a return made on the mail entry. When used for this purpose the mail entry shall state the kind of tobacco product, quantity of each kind, and shall show the tax (by class in the case of cigars and cigarettes) and duty separately for each kind. The tax and duty will be collected by the postal service at the time of delivery of the shipment and a copy of the entry (return) will be given to the importer as a receipt for the duty and tax paid. Mail shipments of tobacco products, except those for the personal consumption of an importer or for disposition as his bona fide gift, are subject to compliance with the package and mark requirements under regulations of the Internal Revenue Service before release to the importer.

(b) When appropriate, the immediate packages of the merchandise shall be stamped by customs officers before the shipment is released for delivery.

(c) United States customs duty and internal-revenue tax on mail shipments of cigars for informal entry, dispatched to the United States under the provisions of the parcel-post convention with Cuba, effective September 1, 1930, may, at the option of the sender, be prepaid at Miami or Tampa, Fla., upon condition:

(1) That all such mail shipments of cigars from Cuba be sent in mail sacks addressed to the postmaster at Miami

---

[2] Dutiable packages addressed to persons on commercial vessels in harbor bound for a foreign port are subject to duty unless remailed to a foreign destination or otherwise exported under customs supervision. (T. D. 38287 (3))

[3] Copies of the special distribution scheme will be furnished to collectors of customs and will be available for inspection by the public at the collectors' offices.

[4] "• • • The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

"(1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $250, as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions;

• • • • •

"(11) Merchandise within the provisions of paragraph 1631 of this Act." (Tariff Act of 1930, sec. 498 (a), as amended; 19 U. S. C. 1498 (a))

[4a] "(a) • • • (1) any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed; • • •." (Tariff Act of 1930, sec. 315 (a) (1), as amended; 19 U. S. C. 1315 (a) (1))

[5] Parcels imported under the provisions of the parcel-post conventions between the United States and foreign countries need not be labeled or endorsed since under the terms of these conventions such parcels, if sealed, may be opened by customs officers, immediately upon receipt and resealed with official seals after examination.

[6] "(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

• • • • •

"(2) Admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate value of articles imported by one person on one day and exempted from the payment of duty shall not exceed—

"(A) $10 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States, or

• • • • •

"(C) $1 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefits of this subdivision (2)." (Tariff Act of 1930, sec. 321 (a), as amended; 19 U. S. C. 1321 (a))

[7] The regulations contained in § 10.30 of this chapter, which govern the free entry of articles for diplomatic and consular officers and other representatives of foreign countries, are applicable in the case of mail articles.

or Tampa for customs examination at either of those ports;

(2) That the Cuban sender will authorize, in writing, his representative at Miami or Tampa to prepay the customs duty and internal-revenue tax on each mail parcel before it is returned to the postmaster for delivery or dispatch to destination; and

(3) That each parcel, before dispatch to the United States, be plainly stamped "Customs duty and internal-revenue tax on this parcel to be paid at Miami (or Tampa) Fla."

(d) For each prepaid shipment the customs officer shall prepare customs Form 3419 in quadruplicate. Two copies shall be signed by the collector or the deputy collector and the sender's representative. One of these copies shall be given to the representative as a receipt for the duty and tax paid.

(e) Each prepaid parcel shall be legibly stamped on the addressed side "U.S. customs duty and internal-revenue tax prepaid at Miami (or Tampa), Fla." followed by the mail entry number and the initials of two customs employees certifying to the appraisal of the merchandise and the collection of the duty and internal-revenue tax.

§ 9.9 Merchandise conditionally free.

(a) When the contents of a parcel may be conditionally free under the tariff act, the attached blank form of declaration for free entry shall be properly executed and returned to the postal authorities by the addressee in order to obtain free entry.

(b) When an institution files evidence to show that it is entitled to import books, music, and other merchandise free of duty under paragraph 1631, Tariff Act of 1930, the name of such institution shall be placed on a free list, to be kept by the collector for that purpose, if the institution agrees in writing to notify the collector in the event goods not for the sole use of the institution arrive addressed to the institution. A mail importation of such merchandise, regardless of value, addressed directly to such an institution shall be passed free of duty without requiring compliance with paragraph (a) of this section and without issuing a mail entry.

(c) A conditionally free shipment from any United States insular possession, except Puerto Rico, valued over $25 but not over $250, when accompanied by the documentary evidence required by § 7.8 of this chapter, and any such shipment valued at $25 or less, may be passed without issuance of a mail entry if the collector is satisfied that the merchandise is entitled to free entry. In the case of each such shipment valued over $250, formal entry shall be required and the provisions of Parts 7 and 8 of this chapter shall be followed.

§ 9.10 Dissatisfied addressees; delivery under a resident's $200 or $300 exemption; undelivered dutiable parcels.

(a) Except as provided in paragraph (c) of this section, if the addressee of a shipment covered by a mail entry is dissatisfied with the amount assessed, he may (1) elect to pay the amount, take delivery of the shipment and petition the collector of customs to reliquidate the entry; or (2) refuse to accept the shipment and provide the postmaster with a written statement of his objections. In the latter case, the postmaster shall forward the addressee's protest to the customs office that issued the entry, accompanied by such invoices or other evidence submitted by the addressee, and retain custody of the shipment until advice is received from the issuing customs office as to the disposition to be made.

(b) If the collector of customs is satisfied that the protest of an addressee of a mail shipment against the amounts assessed is valid, the collector may reclassify the merchandise or amend the value, even though the merchandise has been delivered to the addressee. A mail entry may be reliquidated to allow a claim of the addressee after the expiration of 60 days after liquidation only if a protest has been filed in the form and manner prescribed in section 514, Tariff Act of 1930, or if the claim is allowable under section 520 (c) (2), Tariff Act of 1930, as amended.[*]

(c) Postmasters and military mail personnel may release shipments covered by mail entries claimed to be free of duty under tourist exemptions without the payment of duty upon presentation of a declaration on customs Form 3351 executed by the addressee. If the addressee cannot produce a customs Form 3351, the shipment may be released without the collection of duty upon the execution by the addressee of the declaration printed on the reverse side of the duplicate copy of the mail entry.

(d) If for any reason an undelivered parcel known or supposed to be dutiable is not returned to the country of origin, it will be delivered to the proper customs officer for disposition under the customs laws and regulations governing seized or unclaimed merchandise.

(Sec. 514, 46 Stat. 734; 19 U.S.C. 1514)

§ 9.11 Exportation by mail; plant material.

(a) Articles imported into the United States from foreign countries may be exported in the registered or ordinary mails, or in registered, insured, or ordinary parcel post, without the payment of duties that may have accrued thereon if the articles have remained continuously in the custody of the Government (customs or postal authorities), and the packages containing such articles are inspected and mailed under customs supervision. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter. Export entries or withdrawals for exportation, as the case may be, shall be filed for such articles except those imported by mail (1) which are unclaimed or refused and are returned by the Post Office Department to the country of origin as undeliverable mail or (2) for which a formal entry has not been filed and which are remailed from continuous customs or postal custody to Canada. See §§ 8.45 and 22.27 of this chapter; and as to articles released from continuous Government custody for which return to customs custody is appropriate prior to exportation, see §§ 10.8, 10.17, 10.38, and 22.33 of this chapter.

(b) Shipments of plant material may be imported by mail free of duty for immediate exportation by mail subject to the following regulations, which have been approved by the Department of Agriculture and the Post Office Department:

(1) Each shipment shall be dispatched in the mails from abroad, accompanied by a yellow and green special mail tag bearing the serial number of the permit for entry for immediate exportation or immediate transportation and exportation, issued by the United States Department of Agriculture, and also the postal form of customs declaration.

(2) Upon arrival, the shipment shall be detained by or redispatched to the postmaster at Washington, D.C., Brownsville, Texas, Hoboken, New Jersey, Honolulu, Hawaii, Laredo, Texas, Miami, Florida, San Francisco, California, San Juan, Puerto Rico, San Pedro, California, or Seattle, Washington, as may be appropriate, according to the address on the green and yellow tag, and there submitted to the customs officer and the Federal quarantine inspector. The merchandise shall under no circumstances be permitted to enter the commerce of the United States.

(3) After inspection by the customs and quarantine officers, and with their approval, the addressee or his authorized agent shall repack and readdress the mail parcel under customs supervision; affix to the parcel the necessary postage; and comply with other mailing requirements, after which the parcel shall be delivered to the postmaster for exportation by mail pursuant to paragraph (a) of this section. The contents of the original parcel may be subdivided and exported in separate parcels in like manner.

(4) It will not be necessary to issue a customs mail entry nor to require formal entry of the shipments.

(5) The mail shipments referred to shall be accorded special handling only at the points specified in subparagraph (2) of this paragraph.

(6) The foregoing procedure shall not affect the movement of plant material in the international mails in transit through the United States.

§ 9.12 Prohibited and restricted mail importations; seizure under the customs laws.

(a) Each mail shipment of admissible arms, implements of war, or other nonexplosive munitions of war designated in the United States Munitions List (22 CFR, Parts 121–128), issued pursuant to section 414 of the Mutual Security Act of 1954 (22 U. S. C. 1934), shall be detained by customs until an import license from the Secretary of State has been submitted for such shipment. Likewise, a shipment of firearms, as that term is defined in the National Firearms Act, as amended (26 U.S.C. 5848), shall be detained by customs until an import permit from the Commissioner of Internal Revenue has been submitted by the addressee. If the import license or the import permit is found to be in proper form, the mail parcel shall be endorsed by customs to show that it is entitled to entry and released to the postmaster for delivery or dispatch to destination in the mails, subject to any duties that may accrue and to other customs requirements applicable thereto. Pistols, revolvers, and other firearms capable of being concealed on the person are nonmailable, with certain exceptions (18 U.S.C. 1715), and when received in the mails such nonmailable articles are subject to seizure and forfeiture under the customs laws.

(b) Plants and plant products, including seeds and bulbs of all kinds, may be imported into the United States only under the conditions set forth in the Plant Quarantine Act, amendments thereto, and regulations thereunder. All such articles shall be submitted through customs officials to plant quarantine inspectors of the United States Department of Agriculture for fulfillment of the requirements of the law.

(c) Certain viruses, serums, toxins, and other biological products as well as organisms and vectors are subject to import restrictions (see §§ 12.17—12.23 of this chapter). In all cases mail shipments of such products shall be submitted to customs representatives who shall communicate with the addressees and determine whether such importations are in compliance with the law and regulations.

(d) All mail shipments containing articles, except lottery matter and contraceptive literature which are prohibited importation and all mail shipments containing articles subject to seizure as being imported or brought into the United States in any manner contrary to law shall be immediately taken and held by customs officers for appropriate treatment under the customs laws. All mail parcels which are known or believed to contain merchandise and of which the addressee refuses to take delivery, or for which the addressee declines to make formal entry when requested by the customs officer in cases where the appraised value exceeds the value shown in the declaration or invoice, will be delivered to customs officers for treatment under the customs laws upon production to the postmaster concerned of satisfactory evidence of fraudulent intent on the part of any of the persons mentioned in this paragraph. In all cases where articles are seized by customs officers, notice shall be given by customs officers to the addressee of that fact and the reason therefor.

(e) Mail parcels of all classes, sealed or unsealed, which upon inspection or examination are found to contain or are supposed to contain lottery matter prohibited importation under section 305, Tariff Act of 1930, or enclosures pertaining thereto, will be retained by the postal service, or shall be delivered to that service by the Customs Service, for disposition under the Postal Laws and Regulations. If such a parcel is found to contain other merchandise, the parcel shall be held by, or delivered to, the Customs Service for appropriate treatment under the customs laws and regulations. Mail parcels which upon inspection or examination are found to contain contraceptive literature will be retained by the postal service, or shall be delivered to that service by the customs service, for disposition under the Postal Laws and Regulations. If the postal service shall determine in any case that it is proper to release contraceptive literature to an addressee, such literature before delivery to the addressee will be turned over to the nearest customs officer located at a post office for treatment by customs in the same manner as other articles imported in the mails.

(Sec. 305, 46 Stat. 688, as amended; 19 U.S.C. 1305)

[*] Liquidation of mail entries are subject to protest as in the case of formal entries. Importations in the mails are not subject to appeal for reappraisement unless formal entry has been made.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

ARTICLES EXPORTED AND RETURNED

Sec.
10.1 Domestic products; requirements on entry.
10.2 Waiver of evidence.
10.3 Drawback; internal-revenue tax.
10.4 Internal-revenue marks; erasure.
10.5 Shooks and staves; cloth boards; collector's account.
10.6 Certificates of foreign shipper and box maker.
10.7 Drums, quicksilver flasks, etc.
10.8 Articles exported for repairs, alterations, or processing.
10.9 Books bound abroad.
10.10 News-reel films.

HOUSEHOLD EFFECTS

10.11 Declaration.
10.12 Use abroad.

IMMIGRANTS' TEAMS

10.13 Immigrants' teams; free entry.

EFFECTS OF CITIZENS DYING ABROAD; TOOLS OF TRADE

10.14 Effects of citizens dying abroad; procedure.
10.15 Tools of trade.

PASSENGERS' BAGGAGE

10.16 Status of passengers.
10.17 Exemptions for returning residents.
10.18 Exemptions for nonresidents.
10.19 Declaration and entry.
10.20 Unaccompanied shipments.
10.21 Examination procedure; collection of duties and taxes.
10.22 Crews' effects.
10.23 Vessels transiting the Panama Canal; treatment of passengers' baggage and crews' effects.
10.24 Government vessels.
10.25 Army and Navy transports; baggage brought in.
10.26 Household and personal effects of Army, Navy, and Marine Corps personnel and of civilian employees of the Panama Canal.
10.27 Unclaimed and unaccompanied baggage.
10.28 Registration of valuable effects.

DIPLOMATIC AND CONSULAR OFFICERS

10.29 Baggage.
10.30 Importations for resident representatives of foreign governments.

PUBLIC INTERNATIONAL ORGANIZATIONS

10.30a Organizations included.
10.30b Baggage of, and importations for, certain representatives of the United Nations, of specialized agencies of the United Nations, and of the Organization of American States.

FREE ENTRY: FOREIGN MILITARY PERSONNEL AND MEMBERS OF THEIR IMMEDIATE FAMILIES

Sec.
10.30c Articles for the use of foreign military personnel and their immediate families.

TEMPORARY IMPORTATIONS UNDER BOND

10.31 Entry; bond.
10.33 Theatrical effects.
10.34 Articles brought by professional artists, lecturers, or scientists.
10.35 Models of women's wearing apparel.
10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.
10.37 Extension of bonds.
10.38 Exportation.
10.39 Cancellation of bonds.
10.40 Refund of cash deposits.

INTERNATIONAL TRAFFIC

10.41 Instruments; exceptions.
10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic.
10.42 Automobiles and other vehicles, boats, teams, and saddle horses taken abroad.

ARTICLES FOR INSTITUTIONS

10.43 Requirements on entry.
10.44 Declaration of dealer or agent; certificate of delivery; stipulation.
10.45 Serial publications; list of publications.
10.46 Articles for the United States.

WORKS OF ART

10.47 Statuary and casts of sculpture.
10.48 Original paintings, engravings, drawings, sculpture, etc.
10.49 Articles for exhibition; requirements on entry.
10.50 Works of American artists.
10.51 Articles for institutions.
10.52 Stained or painted glass windows for houses of worship.
10.53 Artistic antiquities.
10.54 Gobelin and other hand-woven tapestries.
10.55 Ethnographic objects.

VEGETABLE OILS

10.56 Vegetable oils, denaturing; release.

POTATOES, CORN, OR MAIZE

10.57 Certified seed potatoes, and seed corn or maize.

BOLTING CLOTHS

10.58 Bolting cloths; marking.

WITHDRAWAL OF SUPPLIES AND EQUIPMENT FOR VESSELS

10.59 Exemption from customs duties and internal-revenue tax.
10.60 Forms of withdrawals; bond.

Sec.
10.61 Withdrawal permit; lading; stores log.
10.62 Bunker oil.
10.63 Vessels withdrawn from trade or diverted to nonprivileged trade; landing of bonded supplies and stores.
10.64 Crediting or cancellation of bonds.
10.65 Tobacco products.

ARTICLES EXPORTED FOR EXHIBITION, ETC.

10.66 Articles exported for temporary exhibition and returned; procedure on entry.
10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

THEATRICAL EFFECTS, MOTION-PICTURE FILMS, AND COMMERCIAL TRAVELERS' SAMPLES

10.68 Procedure.
10.69 Samples to Great Britain and Ireland under reciprocal agreement.

ANIMALS AND BIRDS

10.70 Purebred animals for breeding purposes; declaration; certificate.
10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.
10.72 Horses and mules for immediate slaughter.
10.73 Cows for dairy purposes.
10.74 Animals straying or driven across boundary for pasturage; offspring.
10.75 Wild animals and birds; zoological collections.
10.76 Game animals and birds.
10.77 Skins bearing wool or hair as fur skins.

PRODUCTS OF AMERICAN FISHERIES

10.78 Entry.
10.79 Proof; import tax.

SALT FOR CURING FISH

10.80 Remission of duty; withdrawal; bond.
10.81 Use in any district.
10.82 Proof of use.
10.83 Bond; cancellation; extension.

LEATHER, HIDES, AND SKINS

10.84 Leather for use in the manufacture of footwear.
10.85 Leather to be used in the manufacture of harness or saddlery.
10.86 Hides and skins of the India water buffalo to be used in the manufacture of rawhide articles.
10.87 Leather to be used in the manufacture of footballs, basketball, soccer balls, or medicine balls.

PATNA RICE

10.88 Patna rice to be used in the manufacture of canned soups.

MOTION-PICTURE FILMS, MASTER RECORDS, AND METAL MATRICES

10.89 Motion-picture films exposed abroad by American producers.
10.90 Master records and metal matrices.

WOOLS AND HAIR OF THE CAMEL FOR USE IN MANUFACTURING FLOOR COVERINGS AND OTHER ARTICLES

Sec.
10.91 Importation under paragraph 1101; entry or withdrawal under bond.
10.92 Bond; form; penalty.
10.93 Records of receipt of wool or hair.
10.94 Manufacturing records.
10.95 Records and reports of enumerated articles of wool or hair delivered; transfer certificates.
10.96 Reports of use or transfer for use in violation of bond.
10.97 Duties, exportation or destruction.

FLUXING MATERIAL

10.98 Copper-bearing fluxing material.

ETHYL ALCOHOL

10.99 Importation of ethyl alcohol for nonbeverage purposes.

RAPESEED OIL

10.100 Rapeseed oil to be used in the manufacture of rubber substitutes or lubricating oil.

LIMESTONE

10.101 Limestone to be used in the manufacture of fertilizer.

BAUXITE, CALCINED

10.102 Bauxite, calcined, to be used in the manufacture of firebrick or other refractories.

UNITED STATES GOVERNMENT IMPORTATIONS

10.103 Entry, examination, and tariff status.
10.104 Importations by a military department, the General Services Administration, and the Atomic Energy Commission.
10.105 American goods returned.

WHEAT

10.106 Wheat, unfit for human consumption; other wheat.

RESCUE AND RELIEF WORK

10.107 Equipment and supplies; admission

PRODUCTS EXPORTED UNDER LEASE AND REIMPORTED

10.108 Entry of reimported articles exported under lease.

WESTERN WHITE SPRUCE—ENGLEMAN SPRUCE

10.109 Western white spruce; Engelman spruce.

STRATEGIC MATERIALS OBTAINED BY BARTER OR EXCHANGE

10.110 Strategic materials acquired as a result of barter or exchange of agricultural commodities or products.

WOOLEN TEXTILES

Sec.
10.111 Woolen textiles imported to be used in the manufacture of apparel for members of religious orders.

LATE FILING OF FREE ENTRY DOCUMENTS

10.112 Filing free entry documents after entry.

PUMICE STONE

10.113 Pumice stone to be used in the manufacture of concrete masonry products, such as building blocks, bricks, tiles, and similar forms.

AUTHORITY: §§10.1 to 10.113 issued under R.S. 161, 251, sec. 624, 46 Stat. 759; 5 U.S.C. 22, 19 U.S.C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

ARTICLES EXPORTED AND RETURNED

§ 10.1 Domestic products; requirements on entry.

(a) Except as otherwise provided for in this section or in §10.2, the following documents shall be filed in connection with the entry of articles claimed to be free of duty under paragraph 1615, Tariff Act of 1930, as amended:[1]

(1) A declaration by the foreign shipper in substantially the following form, if the value of the returned articles exceeds $500:

I, _____, declare that the articles herein specified are, to the best of my knowledge and belief, the growth, produce, or manufacture of the United States; that they were exported from the United States, from the port of _____ on or about _____, 19__; that they are returned without having been advanced in value or improved in condition by any process of manufacture or other means.

Marks	Number	Quantity	Description	Value, U. S. Coin

_____ (Signature)

_____ (Capacity)

_____ (Date)

_____ (Address)

(2) A declaration of the owner, importer, consignee, or agent on customs Form 3311.

(3) A certificate, customs Form 4467, of the collector of customs at the port from which the merchandise was exported from the United States, except that no such certificate shall be required if the articles are unquestionably products of the United States which have not been advanced in value or improved in condition while abroad and the collector is satisfied by reason of the nature of the articles or otherwise that no drawback of duties or refund or remission of taxes was allowed when the articles were exported from the United States. Such certificate shall show whether drawback was claimed or paid on the merchandise covered by the certificate and, if any was paid, the amount thereof. This certificate shall be issued on application of the importer, or of the collector at the importer's request, and shall be mailed by the issuing officer directly to the port at which it is to be used. If the merchandise has been exported from the port at which entry is made and the fact of exportation appears on the records of the customhouse, the fact of reimportation shall be noted on such export record but the filing of the certificate on Form 4467 shall not be required.

(b) If, in any case where the appraising officer's report does not show definitely that merchandise the value of which exceeds $500 is of domestic origin, customs Form 3311 has not been executed by the owner or ultimate consignee, the collector may require the execution of such form by the owner or ultimate consignee. In such a case Form 3311 shall be filed within 3 months after the date of the demand therefor upon the person in whose name the entry was filed. If the owner or ultimate consignee is a corporation, such form may be signed by the president, vice president, secretary, or treasurer of the corporation, or it may be signed by any employee or agent of the corporation who holds a power of attorney executed under the conditions outlined in § 8.19 of this chapter and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts. In the case of articles which are unquestionably the growth, produce, or manufacture of the United States and which have not been advanced in value or improved in condition, if the collector is satisfied from the character thereof or otherwise that they are free of duty under paragraph 1615, Tariff Act of 1930, as amended, and if the total value of the articles of American origin contained in the shipment does not exceed $250, the execution of customs Form 3311 shall not be required therefor, except when used as an entry under paragraph (d), (e), or (f) of this section.

(c) In the case of motion-picture films exposed abroad, free entry shall not be allowed under paragraph 1615 (c), as amended, unless the requirements set forth above are met and the collector is satisfied by a declaration of the importer and such other evidence as the collector shall deem necessary that the films are not to be used for commercial purposes. Such motion-picture films, when imported in passengers' baggage, may be passed free of duty without compliance with the requirements of this section if the collector is satisfied that the films were manufactured in the United States and are not to be used for commercial purposes.

(d) In the case of aircraft and parts and equipment therefor which are returned to the United States by or for the account of an aircraft owner or operator and are intended for use in his or its own aircraft operations, either within or outside the United States and with or without alteration or other change in condition in this country, entry thereof may be made under paragraph 1615 (a) on customs Form 3311, executed by the importer and supported by proper evidence of the right to make the entry, but without the other documents described in this section and without the giving of a bond to produce any of them, when there is no question that the articles are of domestic origin and it satisfactorily appears that they have not been improved in condition or advanced in value while abroad and that no drawback has been or will be paid on them. In such a case, the entrant shall show on customs Form 3311 after the words "returned to" the name and address of the aircraft owner or operator by whom or for whose account the articles were returned. The entrant shall also show on Form 3311 the name of the importing conveyance, the date of its arrival, the values of the articles, and that they are intended for use in the aircraft owner's or operator's own aircraft operations.

(e) Entry of nonconsumable stores and equipment of a vessel may be made under paragraph 1615 (a) on customs Form 3311, in duplicate, executed by the importer and supported by proper evidence of the right to make entry when there is no question that the articles are of domestic origin, and it satisfactorily appears that they have not been improved in condition or advanced in value while abroad; that no customs drawback has been or will be paid on them, and that duty is not payable thereon because of an internal-revenue tax. No declaration of a foreign shipper and no certificate of exportation is required in connection with an entry on customs Form 3311. In satisfying himself that no customs drawback was allowed on the articles in connection with their removal from the United States, the customs officer may accept the written declaration of the master or other person having knowledge of the facts showing that the articles left this country on a vessel of the United States or a vessel operated by the United States Government as stores or equipment thereof and that they were not landed in a foreign country except for any needed repairs, adjustments, or refilling and return to the vessel from which landed or for transshipment to another vessel as stores or equipment thereof. Such declaration may be made on the reverse side of the entry on customs Form 3311. The entrant shall show on customs Form 3311 the name of the importing vessel, the date of its arrival, and the values of the articles.

(f) When the total value of articles of claimed American origin contained in any shipment does not exceed $250 and the articles are found to be unquestionably of domestic origin and do not appear to have been advanced in value or improved in condition while abroad and no quota is involved, free entry thereof may be made under paragraph 1615 (a) on customs Form 3311, executed by the importer and filed in duplicate, without regard to the requirement of a certificate of exportation or evidence of similar purport, unless the customs officer has reason to believe that customs drawback or exemption from internal-revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The entrant shall show on customs Form 3311 the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the values of the articles. The entrant shall also produce evidence of his right to make entry. If the customs officer is not entirely certain as to the domestic origin of articles entered under this paragraph by a nominal consignee, the actual owner or ultimate consignee thereof may be required to execute a customs Form 3311.

(Par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U. S. C. 1201, par. 1615)

§ 10.2 Waiver of evidence.

(a) The collector may waive the declaration of the foreign shipper provided for in § 10.1(a)(1) if he is satisfied by the production of other evidence as to the existence of all the facts upon which the entry of the merchandise under paragraph 1615, Tariff Act of 1930, as amended, is dependent.

(b) No evidence relative to the conditions of paragraph 1615 shall be required in the case of articles of domestic manufacture in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty unless such articles would be dutiable if not of domestic manufacture under special provisions of the Tariff Act of 1930, such as paragraphs 217, 328, and 408.

(c) A certificate from the master of a vessel showing that articles of domestic production are returned in the same vessel without having been unladen may be accepted in lieu of a declaration of the foreign shipper.

(Par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U.S.C. 1201, par. 1615)

§ 10.3 Drawback; internal-revenue tax.

(a) Except as prescribed in § 10.1 (f) or in paragraph (c) of this section, no free entry shall be allowed under paragraph 1615, Tariff Act of 1930, as amended, in the final liquidation of an entry unless the collector is satisfied by the certificate of exportation or other evidence or information that no drawback was allowed in connection with the exportation from the United States, and unless no internal-revenue tax is imposed on the importation of like articles not

[1] "(a) Articles, the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means; • • •

"(b) Steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, and other substantial outer containers of domestic or foreign manufacture, exported empty and returned as usual containers or coverings of merchandise, or exported filled with products of the United States and returned empty or as the usual containers or coverings of merchandise, including shooks and staves produced in the United States when returned as boxes or barrels in use as the usual containers of merchandise.

"(c) Photographic dry plates and films of the manufacture of the United States (except moving-picture films to be used for commercial purposes), exposed abroad, whether developed or not.

"(d) Photographic films light struck or otherwise damaged, or worn out, so as to be unsuitable for any other purposes than the recovery of the constituent materials, provided the basic films are of the manufacture of the United States.

"(e) The foregoing provisions of this paragraph shall not apply to—

"(1) Any article upon which an allowance of drawback has been made under section 313 of this Act or a corresponding provision of a prior tariff act, unless such article is in use at the time of importation as the usual container or covering of merchandise not subject to an ad valorem rate of duty.

"(2) Any article of a kind with respect to the importation of which an internal-revenue tax is imposed at the time such article is entered for consumption or withdrawn from warehouse for consumption, unless such article was subject to an internal-revenue tax imposed upon production or importation at the time of its exportation from the United States and it shall be proved that such tax was paid before exportation and not refunded;

"(3) Any article (A) manufactured or produced in the United States in a customs bonded warehouse or under section 308(1) of this Act, and (B) exported under any provision of law; or

"(4) Any article made dutiable under the provision of paragraph 1606 (c) of this Act.

• • • • •

"(h) The allowance of total or partial exemption from duty under any provision of this paragraph shall be subject to such regulations as to proof of identity and compliance with the conditions of this paragraph as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, par. 1615, as amended; 19 U. S. C. 1201, par. 1615)

previously exported from the United States or, if such tax is being imposed at the time of entry for consumption or withdrawal from warehouse for consumption, the collector is satisfied that an internal-revenue tax on production or importation was paid in respect of the imported article before it was exported from the United States and was not refunded.[2] Except as provided for in § 10.1 (f), when it is impracticable, because of the destruction of customs records or other circumstances, to determine whether drawback was allowed, or the amount of drawback allowed, with respect to an article established to be a returned product of the United States which has not been advanced in value or improved in condition while abroad, there shall be assessed on the returned article an amount of duty determined as follows: (1) If there is any likelihood that drawback was allowable on the exportation of like articles at any time when the imported article may have been exported from the United States, the estimated amount of any drawback which would have been allowable if duty had been paid on any foreign merchandise likely to have been used in the manufacture of the returned article at the rate or rates applicable to such foreign merchandise on the date of importation of the returned article (see paragraph (b) of this section) and (2) if there is any likelihood that a refund or remission of tax was allowed on the exportation of the returned article, the amount of any internal-revenue tax which would be payable at the time of importation if the returned article were wholly of foreign origin, but in no such case shall there be assessed more than an amount equal to the duty and tax that would apply if the returned article were wholly of foreign origin and originally imported. (See § 10.7(a).) Except as provided for in § 10.1(f), if the imported article is of a kind which would be subject to an internal-revenue tax if of foreign origin and payment of an internal-revenue tax before exportation without refund thereof is not established, duty shall be assessed on the imported article in an amount equal to the internal-revenue tax imposed at the time of entry for consumption or withdrawal from warehouse for consumption on like articles of foreign origin, plus the amount of any drawback allowed on the exportation of the article from the United States; but if no drawback was allowed, the duty equal to internal-revenue tax shall be the total duty to be assessed. If an allowance of drawback on the exportation from the United States of the imported article is established, duty shall be assessed in an amount equal to such drawback, plus an amount equal to any internal-revenue tax which may be assessable in accordance with this paragraph; but in no case shall duty equal to drawback, or to drawback and internal-revenue tax, be assessed in an amount in excess of the ordinary customs duty and internal-revenue tax applicable to like articles of foreign origin. In any case, where payment of internal-revenue tax before exportation without refund thereof is established, no duty equal to an internal-revenue tax currently in force shall be assessed.

(b) In the absence of satisfactory evidence as to the nonallowance of drawback or the amount thereof allowed on the following articles of American manufacture or production, duty shall be assessed thereon in the amounts respectively indicated, the amount shown in each case being considered the fair average amount of drawback allowed on such articles:

Article	Duty assessment
Drums, metal (when not exempt from duty in accordance with sec. 10.3 (c)).	24 cents each.
Hosiery, nylon	45 cents per dozen.
Lead compound, tetraethyl	$0.006 per pound.
Lithopone	$0.00143 per pound.
Oxide, zinc	$0.0065 per pound.
Piece goods, cotton:	
Bleached	$0.02675 per square yard.
Dyed	$0.02888 per square yard.
Printed	$0.02697 per square yard.
Piece goods, nylon: Dyed	$0.24320 per square yard.
Piece goods, rayon:	
Printed	$0.04070 per square yard.
Other than printed (white, piece dyed or yarn dyed)	$0.07089 per square yard.
Tallow, refined, inedible	$0.007 per pound.

(c) The following articles shall be admitted free of duty, even though exported from the United States with benefit of drawback:

(1) Any article of a kind which would be admitted free of duty otherwise than under paragraph 1615 if of foreign origin;

(2) Steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, and other substantial outer containers of domestic manufacture exported empty or filled with products of the United States, including shooks and staves when returned as boxes or barrels; all the foregoing when in use at the time of importation as the usual containers of merchandise not subject to an ad valorem rate of duty;

(3) Any article provided for in paragraph 1615 (f), Tariff Act of 1930, as amended, with respect to which the collector of customs has determined that the collection of duty under such paragraph 1615 (f) would involve an expense and inconvenience to the Government disproportionate to the probable amount of such duty; and

(4) Other articles of domestic manufacture which are in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty, and which have not been advanced in value or improved in condition while abroad by any process of manufacture or other means.[3]

(d) Articles manufactured or produced in the United States in a customs bonded warehouse and exported shall be subject on reimportation to a duty equal to the total duty and internal-revenue tax, if any, imposed at the time of entry for consumption or withdrawal from warehouse for consumption with respect to the importation of like articles not previously exported from the United States.

(e) Animals straying across the border or driven across the border for pasturage purposes or for feeding to improve them for the market and not returned within 8 months are excluded from free entry as domestic products returned.

(Par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U. S. C. 1201, par. 1615)

[2] "Upon the entry for consumption or withdrawal from warehouse for consumption of any article previously exported, which is excepted from free entry under this paragraph by the foregoing subparagraph ( ) [see note 1] and is not otherwise exempted from the payment of duty, there shall be levied, collected, and paid thereon, in lieu of any other duty or tax, a duty equal to the total duty and internal-revenue tax, if any, then imposed with respect to the importation of like articles not previously exported from the United States, but in no case in excess of the sum of customs drawback, if any, proved to have been allowed upon the exportation of such article from the United States plus the amount of the internal-revenue tax, if any, imposed at the time such article is entered for consumption or withdrawn from warehouse for consumption upon the importation of like articles not previously exported from the United States. Manufactured tobacco subject to duty hereunder shall be retained in customs custody until internal-revenue stamps in payment of any part of the legal duties measured by a rate or amount of internal-revenue tax shall have been placed thereon. When because of the destruction of customs records or for other cause it is impracticable to establish whether drawback was allowed, or to determine the amount of drawback allowed, on a reimported article excepted under subparagraph (e), there shall be assessed thereon an amount of duty equal to the estimated drawback and internal-revenue tax which would be allowable or refundable if the imported merchandise used in the manufacture or production of the reimported article were dutiable or taxable at the rate applicable to such merchandise on the date of importation, but in no case more than the duty and tax that would apply if the article were originally imported. In order to facilitate the ascertainment and collection of the duty provided for in this subparagraph, the Secretary of the Treasury is authorized to ascertain and specify the amounts of duty equal to drawback or internal-revenue tax which shall be applied to articles or classes or kinds of articles, and to exempt from the assessment of duty articles or classes or kinds of articles excepted under subparagraph (e) with respect to which the collection of such duty involves expense and inconvenience to the Government which is disproportionate to the probable amount of such duty." (Tariff Act of 1930, par. 1615 (f), as amended; 19 U.S.C. 1201, par. 1615(f).)

[3] Filling, sealing, and labeling are held to advance the value of the contents rather than that of the container.

§ 10.4 Internal-revenue marks; erasure.

Internal-revenue brands or marks on casks or other containers previously exported from the United States must be erased at the importer's expense under customs supervision before their delivery from customs custody.

(Par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U. S. C. 1201, par. 1615) [13 F. R. 7961, Dec. 18, 1948]

§ 10.5 Shooks and staves; cloth boards; collector's account.

(a) Shooks and staves produced in the United States and returned in the form of complete boxes or barrels in use as the usual containers of merchandise are exempt from any duties imposed by the tariff laws upon similar containers made of foreign shooks or staves, provided their identity is established under the regulations in this part.

(b) The term "shook" embraces only shooks which at the time of exportation from this country are ready to be assembled into boxes or barrels without further cutting to size; except that box shooks may be exported in double lengths and cut abroad. The number of boxes made from such shooks which may be imported into this country free of duty cannot exceed the number of complete sets of shooks exported.

(c) Boxes imported filled with any fruit specified in paragraph 408, Tariff Act of 1930, and with the sides, tops, and bottoms consisting of fruit-box shooks exported from the United States may be entered or withdrawn upon the payment of duty at one-half the rate imposed on similar boxes of entirely foreign origin.[4] Proof as to the identity of such shooks shall be made under the regulations in this part.

(d) An exporter of shooks or staves in respect of which free entry or a reduction in duty is to be claimed when returned as boxes or barrels shall file with the collector of customs at the port of exportation, at least 6 hours before the lading of the articles on the exporting vessel, a notice of intent to export, customs Form 4481. Such shooks or staves shall be inspected and laden on board the exporting vessel under customs supervision.

(e) A certificate of exportation, customs Form 4479, describing the shooks and staves in the manner set forth in the notice of intent to export, shall be issued by the collector in triplicate after verification from the manifest of the exporting vessel and the return of the lading officer. The certificate shall show the number of bundles of shooks and staves exported, the number of shooks of each size, and the number of superficial feet of lumber contained in each shipment. The original certificate shall be forwarded by the collector to the consignee. The duplicate copy shall be given to the exported and the triplicate copy shall be retained.

(f) Whenever boxes or barrels alleged to have been manufactured from American shooks or staves are shipped to the United States from a person abroad other than the one to whom they were exported from the United States, the importer shall be required to obtain from the foreign consignee to whom the shooks or staves were originally exported from this country the certificate or certificates, customs Form 4479, covering the exportation of the shooks or staves from the United States, or an extract therefrom signed by such consignee, showing the number of shooks or staves covered by such certificate or certificates, together with the number of superficial feet of such shooks or staves. Such Form 4479, or extract therefrom, shall be filed by the importer in connection with the entry of the boxes or barrels.

(g) Accounts shall be kept by the collector of customs at the port of exportation of the shooks and staves as to each exportation thereof and as to the returns thereof in boves, barrels, etc. Notifications of such returns shall be given to the port of exportation by the collector at the port of importation. When returns in the form of boxes, barrels, etc. entirely accont for the shooks and staves exported as shown on the appropriate customs Form 4479, the collector maintaining the account shall so inform the collector making inquiry about the merchandise being imported and alleged to contain shooks or staves covered by the particular exportation.

(h) A record of cloth boards of domestic manufacture exported [5] to be wrapped with foreign textiles shall be kept by collectors of customs in a similar manner as for shooks and staves. If such boards are advanced in value or improved in condition while abroad, free entry shall be denied on importation.

(Par. 408, sec. 1, 46 Stat. 630, par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U. S. C. 1001, par. 408, 1201, par. 1615)

§ 10.6 Certificates of foreign shipper and box maker.

(a) A foreign shipper desiring to export to the United States boxes or barrels alleged to have been made from American shooks shall execute and send with the invoice covering the merchandise contained in such boxes or barrels a certificate of the foreign shipper, stating that the boxes or barrels were made from American shooks or staves, and identifying the latter with the certificate covering their exportation from the United States. This foreign shipper's certificate shall be in the following form:

I, _____, of_____, do hereby certify that to the best of my knowledge and belief the boxes and (or) barrels mentioned in (the annexed invoice)* (invoice No. _____, of_____, 19__)* are made (wholly)* (except for the ends and partitions)* of shooks (or staves) of the manufacture of the United States, as stated in the accompanying certificate of _____, box maker; that the shooks (or staves) were exported from_____, per S. S._____, on_____, 19__, and that the said boxes (or barrels) (will be)* (have been)* filled with _____, covered by the above-mentioned invoice, and (will be)* (have been)* shipped to the port of_____ in the United States, per S. S._____, sailing from _____, on _____, 19__.

Dated at _____ this _____ day of _____, 19__.

_____
(Shipper)

*Cross out inapplicable words.

[5] Cloth boards of domestic manufacture are conditionally free of duty under par. 1615, Tariff Act of 1930. See footnote 1 of this part.

Number of boxes or barrels	Dimensions	Number of shooks or staves used and size thereof	Number of superficial feet used

Dated at _____, this _____ day of _____, 19__.

_____
(Box maker)

(b) There shall be annexed to the certificate of the foreign shipper, on the same or a separate form, a certificate of the box maker, stating that the boxes or barrels were made from American shooks or staves and showing the number of boxes or barrels in the shipment, the dimensions of each, and number of shooks or staves of each size, together with the number of superficial feet of lumber used. This certificate shall be in the following form:

I, _____, of_____, do hereby certify that the boxes and (or) barrels mentioned in the annexed certificate of foreign shipper were made by me (wholly)* (except for the ends and partitions)* from shooks (or staves) of the manufacture of the United States as follows:

*Cross out inapplicable words.

(c) If a claim accompanied by an appropriately modified customs Form 3311 is made by the importer at the time of filing the entry for an exemption from duty on account of boxes or barrels made from American shooks or staves, the certificate of the foreign shipper with the annexed certificate of the box maker may be accepted if produced at any time prior to the liquidation of the entry. Upon receipt, from the collector at the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request, within 15 days of the date of the collector's notice to him of any disallowance, for referral of the question to the Commissioner of Customs for review.

(Par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U.S.C. 1201, par. 1615)

[4] "Boxes, barrels, and other articles containing oranges, lemons, limes, grapefruit, shaddocks or pomelos, 25 per centum ad valorem: *Provided*, That the thin wood, so-called, comprising the sides, tops, and bottoms of fruit boxes of the growth or manufacture of the United States exported as fruit-box shooks, may be reimported in completed form, filled with fruit, by the payment of duty at one-half the rate imposed on similar boxes of entirely foreign growth and manufacture; but proof of the identity of such shooks shall be made under regulations to be prescribed by the Secretary of the Treasury." (Tariff Act of 1930 par. 408; 19 U. S. C. 1001, par. 408)

§ 10.7 Drums, quicksilver flasks, etc.

(a) Except as provided for in § 10.2(b), steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, and other substantial outer containers of domestic manufacture shall be entered under the general regulations governing the free entry of domestic products exported and returned. If the record evidence of exportation is not produced, the collector may accept other satisfactory evidence of allowance or nonallowance of drawback.

(b) Steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, and other substantial outer containers of foreign manufacture, if actually exported from the United States empty and returned as usual containers of coverings of merchandise, or exported filled with products of the United States and returned empty or as the usual containers or coverings of merchandise, shall be exempt from duty if (1) exported in accordance with the regulations contained in § 10.5 (d) and (e), except that the notice of intent shall be on customs Form 4481 and the certificate of exportation issued by the collector of customs on customs Form 4479, and (2) there are filed in connection with the entry a declaration of the importer on customs Form 3289 and a certificate of the foreign shipper in the form prescribed by paragraph (c) of this section. Such articles must be permanently and indelibly marked for identification prior to exportation from the United States.

(c) The certificate to be furnished by the foreign shipper for the use of the collector at the port of entry shall be in the following form:

I, _____, of_____ do hereby certify that to the best of my knowledge and belief the (steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, and other substantial outer containers)* mentioned in (the annexed invoice) (invoice No. _____ of_____, 19__)* are of the manufacture of _____ and were exported from the United States at the port of_____, per S. S. _____ on _____ 19__ (empty _____) (filled with _____),* and that the same are being returned to the United States (empty _____) (filled with_____).*

_____
(Shipper)

* Cross out inapplicable words.

(d) The collector, after verification of the foreign shipper's certificate with the records of the collector at the port of exportation in this country, shall allow free entry to the extent the basis for such allowance is verified. The procedure in the last two sentences of § 10.6 (c) shall be applicable.

(e) If claim for exemption from duty for foreign steel boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, or other substantial outer containers is made at the time of entry, the certificate of the foreign shipper may be accepted if produced at any time prior to the liquidation of the entry.

(Par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U. S. C. 1201, par. 1615)

§ 10.8 Articles exported for repairs, alterations, or processing.

(a) For the purposes of paragraph 1615(g)(1), Tariff Act of 1930, as amended,[6] the term "repairs or alterations" shall be held to mean restoration, change, addition, renovation, cleaning, or other treatment which does not destroy the identity of the article exported or create a new or different article.

(b) Three conditions are required under paragraph 1615 (g) (2), Tariff Act of 1930, as amended: [6]

(1) The article sent abroad for further processing must be an article of metal (except precious metal) manufactured in the United States, or manufactured abroad and subjected to a process of manufacture in the United States.

(2) The article must be subjected to a further processing abroad; and

(3) The returned article must be one which is to be subjected to further processing after return to the United States.

(c) Articles may not be entered under the provisions of subparagraph (g) of paragraph 1615, Tariff Act of 1930, as amended, if they come within the meaning of subdivision (3) of that subparagraph.[6]

(d) Before the exportation of any article to be subject on return to the United States to duty on the value [6] of repairs, alterations, or processing effected abroad, as provided for in paragraph 1615 (g), Tariff Act of 1930, as amended, a declaration and application shall be filed in duplicate on customs Form 4455 by the owner or exporter with the collector of customs or appraiser of merchandise at a time before the departure of the exporting conveyance which will permit an examination of the article.

(e) In the case of articles of metal (except precious metal) which may be claimed dutiable on the value of processing under paragraph 1615 (g) (2), Tariff Act of 1930, as amended, a statement shall be included on the reverse side of customs Form 4455 by the exporter or owner substantially as follows:

The articles described in this certificate were manufactured in the United States by _____; or if of foreign (Name and address) origin, were subjected to _____ (Show processes of _____ manufacture, such as, molding, machining, _____ in the United States by casting, etc.)

_____
(Name and address)

The articles in their changed condition will be returned for further processing by _____
(Name and address, if known)

(f) The applicant shall be notified on customs Form 4455 of the place to which he shall deliver the articles for examination. All expense in connection with the delivery of the articles, cording, sealing, marking, and transfer to the exporting conveyance shall be borne by the exporter. The exportation of the articles shall be under customs supervision, except in the case of exportation by mail of any article identifiable by the manufacturer's mark or number. A photograph or other means of identification shall be furnished when required by the customs examining officer.

(g) When the report of the customs officer showing the examination of the articles and their lading on the exporting conveyance or delivery for mailing has been endorsed on the Form 4455 covering the articles, the duplicate copy of such form shall be delivered to the exporter, and the original shall be filed in the collector's office.

(h) When articles other than those exported by mail or parcel post are examined and registered at one port and exported for repairs, alterations, or processing through another port, they shall be forwarded to the port of exportation under a transportation and exportation entry.

(i) There shall be filed in connection with an entry covering articles entered under the provisions of paragraph 1615 (g) (1) or (2), Tariff Act of 1930, as amended, a statement of the person who performed such repairs, alterations, or processing in substantially the following form:

_____
(Place and date)

I, _____, declare that the articles herein specified are to the best of my knowledge and belief the articles which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19____, from _____; (Name and address of owner or exporter in the United States)

that they were received by me (us) for the sole purpose of being repaired, altered, or processed; that only the repairs, alterations, or processing described below were effected by me (us); that the full cost or (when no charge is made) fair market value of such repairs, alterations, or processing and the value of the articles after repair, alteration, or processing are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs, alterations, or processing	Full cost or (when no charge is made) fair market value of repairs, alterations, or processing	Total value of articles after repairs, alterations, or processing

_____ _____
(Date) (Signature)

_____ _____
(Address) (Capacity)

(j) There shall be filed in connection with the entry the certificate of registration (customs Form 4455) and a declaration made by the consignee, owner, or an agent having knowledge of the facts that the articles entered in their repaired, altered, or processed condition are the same articles covered by the certificate of registration. This declaration shall also show that the full cost or (when no charge is made) fair market value of the repairs, alterations, or processing is correctly stated in the entry. Where articles of metal (not including any precious metal) are claimed to be subject to the provisions of paragraph 1615 (g) (2), Tariff Act of 1930, as amended, there shall be included a concise statement as to the nature of the processing performed outside the United States immediately prior to the current importation and as to the processing to be performed thereafter in the United States, showing the name and address of the processor who will do the subsequent processing.

(k) In any case where an imported article was exported for repairs, alterations, or processing without compliance with the registration requirements of this section, the collector may waive such evidence if he is satisfied that the returned merchandise is entitled to entry under paragraph 1615 (g) (1) or (2), and that the failure to comply with the registration requirements was due to inadvertence, mistake, or inexperience, and not to negligence or bad faith.

(l) Collectors shall require at the time of entry a deposit of estimated duties based upon the full cost or fair market value, as the case may be, of the repairs, alterations, or processing. The cost or fair market value, as the case may be, of the repairs, alterations, or processing outside the United States which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under paragraph 1615 (g), as amended, shall be limited to the cost or value of the repairs, alterations, or processing actually performed abroad and shall not include any of the expenses incurred in this country, whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs, alterations or processing abroad or otherwise.

(Par. 1615, sec. 201, 46 Stat. 674, as amended; 19 U. S. C. 1201, par. 1615)

§ 10.9 Books bound abroad.

The provisions of § 10.8 with respect to articles exported for repairs or alterations shall be applicable in the case of books of domestic manufacture which have been advanced in value or improved in condition abroad and returned to the United States.[7]

(Par. 1410; sec. 1, 46 Stat. 656; 19 U.S.C. 1001, par. 1410)

§ 10.10 News-reel films.

Where free entry is claimed for news-reel films under the provisions of paragraph 1726, Tariff Act of 1930,[8] there shall be furnished in connection with the entry a statement of the cameraman, shipper, or other person having knowledge of the facts, identifying the films with the invoice and stating that the basic films are to the best of his knowledge and belief the manufacture of the United States and that they have been exposed abroad and are shipped for use as news reel. There shall also be required in connection with the entry the written declaration of the importer to the effect that he believes the films entered by him are the ones covered by the statement above referred to and that they are for use as news reel. The invoice shall state the footage and title of each subject.

(Par. 1726; sec. 201, 46 Stat. 679; as amended; 19 U.S.C. 1201, par. 1726)

HOUSEHOLD EFFECTS

§ 10.11 Declaration.

(a) When household effects [9] are claimed to be free of duty under paragraph 1632, Tariff Act of 1930 [10] a declaration of the owner on customs Form 3297 in the case of a returning resident of the United States, or customs Form 3299 in any other case, shall be required to support the claim for free duty.

(b) If it is impracticable to produce such declaration at the time of entry, the consignee may give a bond on customs Form 7551 or 7553 for the production of the owner's declaration within 6 months.

(Par. 1632, sec. 201, 46 Stat. 675; 19 U. S. C. 1201, par. 1632)

§ 10.12 Use abroad.

(a) In order to obtain free entry for household effects under the provisions of paragraph 1632, Tariff Act of 1930, the required use of the effects abroad for 1 year must be proven to the satisfaction of the collector,[11] who may, in his discretion, require evidence other than the declaration of the applicant.

(b) Household effects used abroad not less than 1 year by a family of which the importer was a resident member for not less than 1 year during such period of use may be passed free of duty, whether or not the importer owned the effects at the time of such use.

(c) The free entry of household effects under paragraph 1632 shall be allowed to residents of the United States as well as to nonresidents.

(Par. 1632, sec. 201, 46 Stat. 675; 19 U. S. C. 1201, par. 1632)

---

[6] "(g) (1) Any article exported from the United States for repairs or alterations may be returned upon the payment of a duty upon the value of the repairs or alterations at the rate or rates which would apply to the article itself in its repaired or altered condition if not within the purview of this subparagraph (g).

"(2) If—

"(A) any article of metal (except precious metal) manufactured in the United States or subjected to a process of manufacture in the United States is exported for further processing; and

"(B) the exported article as processed outside the United States, or the article which results from the processing outside the United States, as the case may be, is returned to the United States for further processing,

then such article may be returned upon the payment of a duty upon the value of such processing outside the United States at the rate or rates which would apply to such article itself if it were not within the purview of this subparagraph (g).

"(3) This subparagraph (g) shall not apply to any article exported—

"(A) from bonded warehouse or from continuous customs custody elsewhere than bonded warehouse with remission, abatement, or refund of duty;

"(B) with benefit of drawback through substitution or otherwise;

"(C) for the purpose of complying with any law of the United States or regulation of any Federal agency requiring exportation; or

"(D) After manufacture or production in the United States under section 308(1) of this Act.

"(4) For the purposes of this subparagraph (g), the value of repairs, alterations, or processing outside the United States shall be considered to be—

"(A) the cost to the importer of such repairs, alterations, or processing; or

"(B) if no charge is made, the value of such repairs, alterations, or processing,

as set out in the invoice and entry papers; except that, if the Secretary of the Treasury concludes that the amount so set out does not represent a reasonable cost or fair value, as the case may be, then the value of the repairs, alterations, or processing shall be determined in accordance with section 402 of this Act. No appraisement of the imported article in its repaired, altered, or processed condition shall be required unless necessary to a determination of the rate or rates of duty applicable to such article.

"(h) The allowance of total or partial exemption from duty under any provision of this paragraph shall be subject to such regulations as to proof of identity and compliance with the conditions of this paragraph as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, par. 1615 (g), (h), as amended; 19 U. S. C. 1201, par. 1615 (g), (h))

[7] "* * * exported books of domestic manufacture, when returned to the United States after having been advanced in value or improved in condition by any process of manufacture or other means, shall, under rules and regulations prescribed by the Secretary of the Treasury, be dutiable only on the cost of materials added and labor performed in a foreign country; * * *." (Tariff Act of 1930, par. 1410; 19 U.S.C. 1001, par. 1410)

[8] "* * * undeveloped negative moving picture film of American manufacture exposed abroad for silent sound news reel; * * *." (Tariff Act of 1930, par. 1726 (free list); 19 U.S.C. 1201, par. 1726)

[9] The free entry of household effects under par. 1632 is limited to such as are similar to books, libraries, furniture, carpets, paintings, tableware, and other usual household furnishings. Automobiles, horses, carriages, sleighs, boats, and similar articles, and wines, provisions, and other consumable supplies do not constitute similiar household effects within the meaning of par. 1632. Articles such as office safes and office furniture used abroad in business pursuits are not entitled to free entry as household effects.

[10] "Books, libraries, usual and reasonable furniture, and similar household effects of persons or families from foreign countries if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale." (Tariff Act of 1930, par. 1632 (free list); 19 U. S. C. 1201, part 1632)

[11] The year of use need not immediately precede the time of importation nor need it be continuous.

As a general rule, household effects arriving more than 10 years after the last arrival of the importer in the United States from the country in which the effects were used should not be admitted free under par. 1632. If, however, the collector is satisfied from the importer's explanation that the effects were unavoidably detained beyond the 10-year period he may admit them to free entry upon the filing of a declaration on customs Form 3297 in the case of a returning resident of the United States or customs Form 3299 in any other case. In no case shall free entry be allowed under par. 1632 when a period of 25 years or more has elapsed since the last arrival of the importer in the United States from the country in which the effects were used. (T. D.'s 38668, 40174, 41985)

Immigrants' Teams

§ 10.13 Immigrants' teams; free entry.

(a) An immigrant claiming free entry of a team or vehicle[12] under paragraph 1607 (a), Tariff Act of 1930, as amended,[13] shall file in connection with the entry a declaration on customs Form 3299, stating the number and kind of animals, wagons, and other articles used by him for the purpose of emigration and that they are actually owned by him and have been in actual use by him abroad and are not intended for sale.

(b) Formal entry shall be required for such teams, vehicles, and effects valued at more than $250.

(c) Horses and vehicles owned by immigrants and used by them for the transportation of themselves and their baggage to a railway station, then shipped to the United States and again used by such immigrants to reach their destination, are entitled to entry free of duty.

(Par. 1607, sec. 201, 46 Stat. 673, as amended; 19 U.S.C. 1201, par. 1607)

Effects of Citizens Dying Abroad; Tools of Trade

§ 10.14 Effects of citizens dying abroad; procedure.

(a) Articles claimed to be free of duty under paragraph 1739, Tariff Act of 1930,[14] as the effects of citizens of the United States dying abroad[15] shall be entered in accordance with the provisions of § 8.50 of this chapter or if not exceeding $250 in value, entry may be permitted under § 8.51.

(b) The collector shall require in connection with the entry the written statement of a person having knowledge of the facts or otherwise satisfy himself as to the citizenship of the deceased owner of the effects at the time of his death.

(Par. 1739, sec. 201, 46 Stat. 680; 19 U.S.C. 1201, par. 1739)

§ 10.15 Tools of trade.

When professional books, implements, instruments, or tools of trade, occupation, or employment are claimed to be free of duty under paragraph 1747, Tariff Act of 1930,[16] or under paragraph 1798 (a), Tariff Act of 1930, as amended,[18] a declaration of the emigrant or returning individual shall be required to support the claim for free entry. The declaration shall be on customs Form 3299 if the declarant is an emigrant or nonresident returning from abroad, and on customs Form 3297 if the declarant is a returning resident of the United States, except that, as to any such articles claimed to be free of duty under paragraph 1798 (a), an oral declaration of the returning individual may be accepted in lieu of a written declaration.

(Sec. 201 (pars. 1747, 1798), 46 Stat. 680, as amended, 683, as amended; 19 U.S.C. 1201 (pars. 1747, 1798))

Passengers' Baggage[20]

§ 10.16 Status of passengers.

(a) Persons arriving from foreign countries shall be divided into two classes for customs purposes: (1) Residents of the United States returning from abroad, and (2) all other persons, hereinafter referred to as nonresidents.

(b) Citizens of the United States, or persons who have formerly resided in the United States, shall be deemed to be residents thereof returning from abroad within the meaning of paragraph 1798, Tariff Act of 1930, as amended, in the absence of satisfactory evidence that they have established a home elsewhere. The residence of a wife shall be deemed to be that of her husband unless satisfactory evidence is presented that the wife has established a separate residence elsewhere. The residence of a minor child shall be presumed to be that of his parents.

(c) Any person arriving in the United States who is not a resident of the United States or who, though a resident of the United States, is not returning from abroad shall be treated for the purposes of the regulations in this part as a nonresident.

(Par. 1798, sec. 201, 46 Stat. 683, as amended, sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1201 (par. 1798), 1498)

§ 10.17 Exemptions for returning residents.

(a) *Personal and household effects taken abroad.* Each returning resident is entitled under paragraph 1798 (c) (1) and (f), Tariff Act of 1930, as amended,[21] to bring in free of duty and internal-revenue tax all personal and household effects which he took abroad. If any such effect has been advanced in value or improved in condition while abroad by repairs (including cleaning) not merely incidental to wear or use while abroad, or by alterations (including additions) which did not change the identity of the article, the cost or value of such repairs or alterations is subject to duty, unless all or part of such cost or value is covered by an allowance of the $200 or $300 exemption hereinafter mentioned. An effect taken abroad and there changed into a different article is dutiable at its full value when returned to the United States, unless covered in whole or in part by some provision for free entry.

(b) *Articles acquired abroad.* Subject to the limitations and conditions hereinafter stated, each returning resident is entitled under paragraph 1798 (c) (2) and (f), as amended[22] to bring in free of duty and internal-revenue tax

---

[12] Only such vehicles as are drawn by animals are entitled to free entry under par. 1607, Tariff Act of 1930. Automobiles are excluded from the privilege. (T. D. 31706)

[13] "(a) Teams of animals, including their harness and tackle, and the wagons or other vehicles actually owned by persons emigrating from foreign countries to the United States with their families, and in actual use for the purpose of such emigration, under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, par. 1607, as amended (free list); 19 U. S. C. 1201, par. 1607)

[14] "Personal effects, not merchandise, of citizens of the United States dying in foreign countries." (Tariff Act of 1930, par. 1739 (free list); 19 U. S. C. 1201, par. 1739)

[15] The term "personal effects," as used in par. 1739, Tariff Act of 1930, embraces all articles of personality not merchandise, and includes household effects. (T. D. 22622) Free entry is allowed under this paragraph only if the title to the effects is in the estate of the deceased citizen at the time of importation. (T. D. 42917 (2))

[16] "Professional books, implements, instruments, and tools of trade, occupation, or employment in the actual possession of persons emigrating to the United States owned and used by them abroad; but this exemption shall not be construed to include machinery or other articles imported for use in any manufacturing establishment, or for any other person or persons, or for sale, nor shall it be construed to include theatrical scenery, properties, and apparel." (Tariff Act of 1930, 1747 (free list); 19 U. S. C. 1201, par. 1741)

The privilege of free entry granted by par. 1747, Tariff Act of 1930, applies whether the articles accompany the emigrant or are imported subsequent to his arrival, provided they were owned and used by him and in his possession abroad.

[18] "(a) Professional books, implements, instruments, and tools of trade, occupation, or employment, when imported by or for the account of any person arriving in the United States by whom or for whose account they were taken abroad." (Tariff Act of 1930, par. 1798 (a), as amended (free list); 19 U. S. C. 1201, par. 1798 (a))

The articles need not actually accompany the traveler upon his departure from the United States, but if they did not it must be clearly established that the shipment of the articles was in connection with his departure from this country.

[20] "The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of— • • •

"(6) Articles carried on the person or contained in the baggage of a person arriving in the United States; • • •." (Tariff Act of 1930, sec. 498 (a); 19 U. S. C. 1498 (a))

[21] "(c) In the case of any person arriving in the United States who is a returning resident thereof—

"(1) All personal and household effects taken abroad by him or for his account and brought back by him or for his account; • • •

• • • • • •

"(f) All articles exempted by this paragraph from the payment of duty shall be exempt also from the payment of any internal-revenue tax imposed upon or by reason of importation." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

[22] "(c) In the case of any person arriving in the United States who is a returning resident thereof—

• • • • • •

"(2) Articles (including not more than one wine gallon of alcoholic beverages and not more than 100 cigars) acquired abroad as an incident of the journey from which he is returning, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury, up to but not exceeding in aggregate value—

"(A) $200, if such person arrives from a contiguous country which maintains a free zone or free port (see subparagraph (d) [footnote 24, sec. 10.17 (g)]), or arrives from any other country after having remained beyond the territorial limits of the United States for a period of not less than forty-eight hours, and in either case has not claimed an exemption under this subdivision (A) within the thirty days immediately preceding his arrival; and

"(B) $300 in addition, if such person has remained beyond the territorial limits of the United States for a period of not less than twelve days and has not claimed an exemption under this subdivision (B) within the six months immediately preceding his arrival.

• • • • • •

"(f) All articles exempted by this paragraph from the payment of duty shall be exempt also from the payment of any internal-revenue tax imposed upon or by reason of importation." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

up to but not exceeding $200, and in appropriate cases up to but not exceeding an additional $300, in value of articles for his personal or household use which were purchased or otherwise acquired abroad by him merely as an incident of the foreign journey from which he is returning. These exemptions do not apply to articles intended for sale or acquired on commission, i. e., for the account of another person, with or without compensation for the service rendered.

(c) *Gifts.* An article acquired abroad by a returning resident and imported by him to be disposed of after importation as his bona fide gift is for the personal use of the importer. Articles forwarded to a donee by a donor who is abroad are not imported by or for the account of the donor and are not allowed any exemption to which he may become entitled. (See § 8.3 (c) of this chapter as to gift shipments valued not over $10.)

(d) *Tobacco products, alcoholic beverages, and foodstuffs.* Cigarettes, manufactured tobacco, and foodstuffs may be included in the exemptions to which a returning resident is entitled, but not more than 100 cigars nor an aggregate of over 1 wine gallon of alcoholic beverages may be included in such exemptions. If a returning resident is entitled to both the $200 and the $300 exemptions, any cigars or alcoholic beverages entitled to exemption shall be included in the $200 exemption. If the resident is not entitled to the $200 exemption (by reason of having claimed that exemption within the 30 days immediately preceding his arrival) but is entitled to the $300 exemption, not more than the above-stated quantities of cigars and alcoholic beverages may be allowed free entry under the $300 exemption if the resident did not claim exemption for any such articles under the last exemption he received under paragraph 1798 (c) (2) (A). The maximum of 1 wine gallon of alcoholic beverages may include more than one kind of beverage.

(e) *Cumulation of $200 and $300 exemptions.* (1) When all the applicable conditions of each exemption are met, both the $200 and $300 exemptions may be allowed to one person on one return. Moreover, the $300 exemption may be allowed when its conditions are satisfied and when it is in addition to an allowance under the $200 exemption within the preceding 30-day period.

(2) In each case in which both exemptions are allowed on one return, the declarant may designate accompanied or unaccompanied goods listed on his declaration which would not be entitled to application of the $300 exemption (alcoholic beverages and cigars) for allowance of the $200 exemption. Subject to this exception, in each such case the $200 exemption shall be applied first[23] and to the value of the articles subject to the highest rates, and the additional $300 exemption shall be applied to the value of articles subject to the next highest rates, including any amount in excess of $200 pertaining to articles covered in part by the $200 exemption. This rule shall be applied to articles accompanying the returning resident and the same rule shall be applied separately to each unaccompanied shipment covered by his declaration. If an internal-revenue tax is applicable, it shall be combined with the duty in determining which rates are highest.

(f) *Family grouping of exemptions.* Each member of a family is entitled to the $200 or $300 exemption, or both, subject to the conditions prescribed in paragraph 1798, as amended. Articles belonging to one person cannot be included in the $200 or $300 exemption of another person, except that when members of a family residing in one household travel together on their return to the United States, the $200 or $300 exemption, or both, to which the several members of the family may be entitled may be grouped and allowed without regard to which member is the owner of any of the articles. A grouped exemption shall not include any exemption for a family member not entitled to it in his own right, nor shall a grouped exemption be applied to any property of such a member. The term "members of a family residing in one household," as used herein, shall include all persons, regardless of age, related by blood, marriage, or adoption, who lived together in one household at their last permanent residence and who intend to live together in one household after their return to the United States. No exemption allowable to a resident servant accompanying the family shall be included in the family grouping.

(g) *Length of stay abroad.* In the case of articles acquired elsewhere than in Mexico, the $200 exemption shall not be allowed unless the returning resident has remained beyond the territorial limits of the United States for a period of not less than 48 hours. With respect to articles acquired in Mexico, the $200 exemption may be allowed without regard to the length of time the returning resident has remained outside the territorial limits of the United States, unless the resident returns through a port as to which there is in effect a special regulation or instruction requiring that the returning resident, in order to obtain the benefit of the $200 exemption for such articles, shall have remained beyond the territorial limits of the United States for such period, not to exceed 24 hours, as shall be specified in the special regulation or instruction.[24] The $300 exemption shall not be allowed unless the returning resident has remained outside the territorial limits of the United States for a period of not less than 12 days.

(h) *Frequency of allowances.* (1) The $200 exemption shall not be granted to a returning resident who has taken advantage of such exemption within the 30-day period immediately preceding his return to the United States, and the $300 exemption shall not be granted to a returning resident who has taken advantage of such $300 exemption within the 6-month period immediately preceding his return to the United States.[25] The date of the returning resident's latest prior arrival on which he declared articles for allowance of the $200 or $300 exemption shall be deemed the date he took advantage of the applicable exemption, notwithstanding that articles admitted under either exemption may have arrived before or after such latest arrival.

(2) A returning resident who has received a total exemption of less than $200 under the $200 exemption, or a total exemption of less than $300 under the $300 exemption, in connection with his return from one journey is not entitled to apply the remainder of either amount to articles acquired abroad on any previous or subsequent journey. Articles acquired on one journey and left in a foreign country cannot be allowed any exemption accruing upon the importer's return from a subsequent journey.

(i) *Computation of time requirements.* (1) The 24-hour or 48-hour period a returning resident must have been abroad to be entitled to the $200 exemption shall be computed exactly. For example, a resident leaving United States territory at 1:30 p. m. on June 1 would complete the 24-hour period at 1:30 p. m. on June 2 and the 48-hour period at 1:30 p. m. on June 3.

(2) The 12-day period a returning resident must have remained outside United States territory to be entitled to the $300 exemption shall be computed by excluding the day of arrival and counting the day of departure as a full day, irrespective of the time of either day at which the traveler crossed the land border or 3-mile limit at sea. Thus, a resident departing from such territory at 1:30 p. m. on June 1 would meet the 12-day require-

---

[23] When the $200 exemption has been so applied, another claim for the $200 exemption within the following 30 days cannot be allowed. See § 23.5 (c) of this chapter.

[24] "(d) In the case of persons arriving from a contiguous country which maintains a free zone or free port, if the Secretary of the Treasury deems it necessary in the public interest and to facilitate enforcement of the requirement that the exemption shall apply only to articles acquired as an incident of the foreign journey, he shall prescribe by regulation or instruction, the application of which may be restricted to one or more ports of entry, that the [$200] exemption authorized by subdivision (2) (A) of subparagraph (c) shall be allowed only to residents who have remained beyond the territorial limits of the United States for not less than a specified period, not to exceed twenty-four hours, and after the expiration of ninety days after the date of such regulation or instruction allowance of the said exemption shall be subject to the limitations so prescribed." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

The 24-hour limitation is now applicable only at ports in customs collection district No. 25, which includes all ports of entry in southern California below Los Angeles. (T. D. 49925)

[25] See footnote 22, appended to § 10.17 (b).

ment if he remained abroad until any time after midnight of June 12.

(3) The 30-day period immediately preceding the resident's return shall be computed by excluding the day of arrival and counting backward 30 days. In the case of an arrival on May 28, the resident would not be entitled to the $200 exemption if he had taken advantage of such exemption on or after the last preceding April 28.

(4) The 6-month period immediately preceding the resident's return shall be computed by excluding the day of arrival and counting backward 6 months. In the case of an arrival on July 28, the resident would not be entitled to the $300 exemption if he had taken advantage of such exemption on or after the last preceding January 28.

(j) *Arrival incidental to further foreign travel.* A resident who enters the United States merely as an incident of foreign travel and will continue his foreign travel before finally returning to the United States from the continuous trip shall not be required to clear through customs any articles he has acquired, or had repaired or altered, while abroad. Such articles may be left in customs custody, shipped in bond, or exported directly from customs custody in order that the resident may declare them, and possibly other later acquired articles, upon his final return to the United States from the continuous trip. If, however, the traveler fails to advise the customs officer of the incidental character of such an entry or for other reason declares any articles for allowance of the $200 or $300 exemption, such declaration will start the running of the respective period or periods during which a further allowance cannot be granted.

(k) *Unaccompanied articles.* It is not necessary that articles accompany a resident at the time of his return to the United States to be within the $200 or $300 exemption. See § 10.20 (b). However, customs officers shall apply the exemptions only to articles before them for examination, and the application of an exemption to unaccompanied articles shall be finally determined only after they have been imported and the importer has performed the acts required of him for their customs clearance. If any allowance of the $200 or $300 exemption is to be claimed in respect of any articles not cleared at the time of a resident's return, whether such articles have already arrived, will arrive later, or are being shipped in bond to another port, they must be declared in writing to a customs officer. Such declaration of articles accompanying the resident shall be made at the time of the resident's return to the United States. A declaration for articles not accompanying the resident on his return should be made by him in writing at the time and place of his return, but if satisfactory reasons are given to the collector for failure to so declare such articles, a written declaration may be accepted, either at the port of clearance of the article or at the port of the resident's return, for such articles within one year after the return. An application to make such supplemental declaration shall be accompanied by any invoices, receipts, and any other available pertinent data to aid the collector in determining whether the articles were acquired abroad by the claimant as an incident of a journey made by him and are for his personal or household use. The supplemental declaration shall be made on customs Form 6059, 6063 or 6064, as the case may be, appropriately modified.

(l) *Replacements.* An article furnished by a foreign supplier to replace a like article of comparable value previously exempted from duty under paragraph 1798 (c), Tariff Act of 1930, as amended, shall be allowed free entry if the article previously exempted is found by the importer to be unsatisfactory and is returned to customs custody and exported under customs supervision at the expense of the importer within 60 days after its importation.[25a] In any case where the importer has failed to return the unsatisfactory article to customs custody for supervision of exportation, the collector may allow free entry of the replacement article if he is satisfied that the unsatisfactory article was timely exported and that the failure to return it to customs custody was due to inadvertence or lack of experience in customs matters and was without willful intent to avoid customs supervision. The requirement that the original article be exported under customs supervision does not apply when a duplicate article is furnished by a foreign supplier as a replacement for an article declared for entry under the $200 or $300 exemption and found by the customs inspector or other examining officer to be so damaged as to constitute a nonimportation (§ 15.10 of this chapter). In such a case the duplicate replacement shall be considered to have been acquired abroad for the purposes of the $200 or $300 exemption provision, provided no charge is made to the importer for such article.

(m) *Sale.* An article brought in under the $200 exemption and subsequently sold is not dutiable or subject to forfeiture by reason of the sale thereof, if the returning resident actually acquired and imported the article for his bona fide household or personal use and not for sale. If any article admitted free of duty under the $300 exemption is sold within 3 years after the date of its importation without prior payment to a collector of customs of the duty which would have been payable at the time of entry if the article had been entered without the benefit of paragraph 1798 (c) (2) (B), Tariff Act of 1930, as amended, such article, or its value (to be recovered from the importer), shall be subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent shall not be a basis for any liability for duty or forfeiture under paragraph 1798(g), Tariff Act of 1930, as amended.[26]

(n) *Rented automobiles.* Under the provisions of paragraph 1798(h), Tariff Act of 1930, as amended,[26a] an automobile rented by a resident of the United States while abroad may, without the payment of duty, be brought into the United States for a temporary period not to exceed 30 days by or on behalf of such resident for the transportation of such resident, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the automobile. No entry or security for exportation shall be required. A touring certificate, customs Form 4447 properly modified, will be issued to or on behalf of the returning resident. Recrossings of the border incidental to the trip and for the purposes of said paragraph 1798(h) of the tariff act may be permitted during the effective period of the touring certificate provided the certificate is presented to the customs officer at the port of each departure from and re-entry into the United States. The touring certificate shall be finally surrendered to the customs officer at the port of last departure of the automobile for return aboard.

(Sec. 201, par. 1798, 46 Stat. 683, as amended; 19 U.S.C. 1201, par. 1798)

§ 10.18 Exemptions for nonresidents.

(a) *Personal effects.* A nonresident (including any resident who is not returning), regardless of age, arriving in the United States is entitled under paragraph 1798 (b) (1), Tariff Act of 1930, as amended,[27] to entry free of duty and internal-revenue tax for his wearing apparel, articles of personal adornment, toilet articles, and similar personal effects. This exemption applies only to articles which were actually owned by the nonresident and in his possession abroad at the time of, or prior to, his departure for the United States and which are appropriate for his own personal use and intended only for such use and not for any other person nor for sale. "Similar personal effects" include all articles intended and appropriate for the personal use of the nonresident while traveling, such as hunting and fishing equipment, wheelchairs for invalids or crippled persons, pet and hunting dogs, and the like. Articles to be given by the importer to another person are not free under paragraph 1798 (b) (1).

(b) *Vehicles.* Nonresidents are entitled under paragraph 1798 (b) (2), Tariff Act of 1930, as amended,[28] to entry free of duty and internal-revenue tax for automobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation, and the usual equipment accompanying the foregoing, if imported in connection with the arrival of the nonresident and to be used in the United States only for the transportation of such nonresident, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the conveyance.

(c) *Articles carried through the United States.*[28a] A nonresident who is in transit to a place outside United States customs territory may take with him through the United States for carriage to such place, without the payment of duty or internal-revenue tax, articles not exceeding $200 in aggregate value which are not entitled to free entry under paragraph (a) of this section.

(d) *Sale.* If any jewelry or similar articles of personal adornment having a value of $300 or more which have been exempted from duty under paragraph 1798(b) (1), Tariff Act of 1930, as amended, are sold within 3 years after the date of importation, or if any article which has been exempted from duty under paragraph 1798(b) (2), Tariff Act of 1930, as amended, is sold within 1 year after the date of importation, without prior payment to a collector of customs of the duty which would have been payable at the time of entry if the article had been entered without the benefit of the said paragraph 1798(b) (1) or (2), such article, or its value (to be recovered from the importer) shall be subject to forfeiture in accordance with the provisions of paragraph 1798(g), Tariff Act of 1930, as amended.[28b] A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not a basis for any liability for duty or forfeiture under such provisions.

(e) *Tobacco products and alcoholic beverages.* Fifty cigars, or 300 cigarettes, or 3 pounds of manufactured tobacco, and not exceeding 1 quart of alcoholic beverages, when brought in by an adult nonresident and not to be given to another person nor for sale or other commercial use, may be passed free of duty and internal-revenue tax. The exemption for tobacco products may be applied proportionately; for example, to 25 cigars and 150 cigarettes, or to 25 cigars, 50 cigarettes, and 1 pound of manufactured tobacco. The exemption for alcoholic beverages may be applied to more than one kind but not to an aggregate of more than 1 quart for one person.

(Sec. 201, par. 1798, 46 Stat. 683, as amended; 19 U.S.C. 1201, par. 1798)

§ 10.19 Declaration and entry.

(a) *Declaration required.* All articles brought into the United States by any individual shall be declared to a customs officer. The declaration may be made to a customs officer at the port of first arrival in the United States or on a train or ferry en route to the United States on which such an officer is assigned for that purpose. The declaration may be submitted to a United States customs officer stationed in a foreign country for that purpose if one is available and all the articles presented to him for inspection and clearance are within allowable exemptions.

(b) *Oral declarations.* Each arriving nonresident may make only an oral declaration if all the articles he has to declare are entitled to free entry under paragraph 1798 (b) or are being admitted free of duty under section 321 (a) (2) (B), Tariff Act of 1930, as amended, and each returning resident may make only an oral declaration if (1) he has no article in his possession on which duty or internal-revenue tax is collectible, (2) all articles for which any exemption is to be claimed in connection with his arrival accompany him at the time of his arrival and none is forwarded in bond, and (3) the aggregate of the value of all articles acquired abroad by him and of the cost or value of alterations and dutiable repairs made abroad to personal or household effects taken out and brought back by him (see § 10.17 (a)) does not exceed $200; except that written declarations may be required generally or in respect of particular types of traffic if necessary at any seaport or airport to effect prompt and orderly clearance of passengers and their effects, and may be required in particular cases at any port if deemed necessary to protect the revenue.

(c) *Written declarations.* (1) Unless an oral declaration is accepted under paragraph (b) of this section, the declaration required by paragraph (a) of this section shall be in writing and in a form approved by the Commissioner of Customs. Effects of a nonresident entitled to free entry under paragraph 1798 (b), as amended, and effects of a returning resident entitled to free entry under paragraph 1798 (a) or (c) (1), (other than automobiles and other vehicles of residents returning from noncontiguous countries) need not be itemized in written declarations.

(2) Written declarations for passengers arriving by sea shall be executed fully and deposited with the purser of the vessel not later than the day before the vessel will arrive in port.

(d) *Acknowledgment.* Each written declaration shall be acknowledged by the declarant before the customs officer who examines the baggage covered by the declaration.

(e) *Amendment.* (1) If, before examination of a passenger's baggage has begun, the fact that any article has not been declared is brought by the passenger to the attention of the examining officer, the passenger shall be permitted to add such article to his declaration.

(2) If, after examination of the baggage has begun but before any undeclared article is found, the passenger advises the examining officer that he has such article and the examining officer is satisfied that there was no fraudulent intent, the passenger shall be permitted to add the articles to his declaration.

(3) Under no circumstances shall a passenger be permitted to add any undeclared article to his declaration after such article has been discovered by the examining officer.

[25a] "(e) Any article imported to replace a like article of comparable value previously exempted from duty under subdivision (c) of this paragraph shall be allowed free entry if the article previously exempted shall have been exported, under such supervision as the Secretary may prescribe, within sixty days after its importation because it was found by the importer to be unsatisfactory." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

[26] "(g) If • • • any article which has been exempted from duty under subdivision (2) (B) of subparagraph (c) is sold within three years after the date of importation • • • without prior payment to the United States of the duty which would have been payable at the time of entry if the article had been entered without the benefit of this paragraph, such article, or its value (to be recovered from the importer), shall be subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent shall not be subject to the provisions of this subparagraph." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

[26a] (h) Automobiles rented by any resident of the United States while abroad may be imported into the United States by or on behalf of such resident for the transportation of such resident, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the automobile without payment of duty, for such temporary periods as the Secretary of the Treasury by regulation may prescribe. Any automobile exempted from duty under this subparagraph which is used otherwise than for a purpose herein expressed or is not returned abroad within the time and manner as the Secretary may prescribe by regulation, or the value of such automobile (to be recovered from the importer), shall be subject to forfeiture to the United States. (Tariff Act of 1930, par. 1798, as amended (free list); 19 U.S.C. 1201 (par. 1798))

[27] "(b) In the case of any person arriving in the United States who is not a returning resident thereof—

"(1) Wearing apparel, articles of personal adornment, toilet articles, and similar personal effects; all the foregoing, if actually owned by and in the possession of such person abroad at the time of or prior to his departure for the United States, and if appropriate for his own personal use and intended only for such use and not for any other person nor for sale; • • •." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

[28] "(b) In the case of any person arriving in the United States who is not a returning resident thereof—

• • • • •

"(2) Automobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation, and the usual equipment accompanying the foregoing; any of the foregoing imported in connection with the arrival of such person and to be used in the United States only for the transportation of such person, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the conveyance; • • •." Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

[28a] "(b) In the case of any person arriving in the United States who is not a returning resident thereof—

• • • • •

"(3) Not exceeding $200 in value of articles accompanying such a person who is in transit to a place outside United States customs territory and who will take the articles with him to such place." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

[28b] "(g) If any jewelry or similar articles of personal adornment having a value of $300 or more which have been exempted from duty under subdivision (1) of subparagraph (b) • • • is sold within three years after the date of importation, or if any article which has been exempted from duty under subdivision (2) of subparagraph (b) is sold within one year after the date of importation, without prior payment to the United States of the duty which would have been payable at the time of entry if the article had been entered without the benefit of this paragraph, such article, or its value (to be recovered from the importer), shall be subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent shall not be subject to the provisions of this subparagraph." (Tariff Act of 1930, par. 1798, as amended (free list); 19 U. S. C. 1201 (par. 1798))

(f) *Value.* Opposite the description of each article required to be declared specifically in a written declaration the passenger shall state the price actually paid for the article, or its fair value if it was acquired otherwise than by purchase. A statement of price shall be in the currency of purchase or its equivalent in United States currency, and a statement of value shall be in the currency of the country in which the article was acquired or in United States currency. Due adjustment shall be made by the appropriate customs officer whenever the purchase price or value declared differs from the correct customs value, whether by reason of depreciation due to wear and use or for any other reason.

(g) *Family declarations.* One of a group of passengers who are members of the same family may declare for the entire group if all have the same residence status. Servants accompanying a family group shall not be included in the family declaration.

(h) *Merchandise.* Articles not personal in character, or which are intended for sale or are brought in on commission for another person, may be included in the baggage declaration of a resident or nonresident under the conditions specified in § 10.21 (e). If not so included, regular entry shall be required.

(i) *Regular entry.* Subject to any applicable exemption from entry requirements, articles imported as baggage but not passed under a baggage declaration or under the procedure provided for in § 10.20 shall be entered in the same manner as a cargo importation of like goods. In making regular entry for articles imported in baggage, the value of articles entitled to free entry under paragraph 1798 (a) or (c) (1), as amended, shall be disregarded in determining whether formal or informal entry is required.

(j) *Examination in foreign territory.* (1) The baggage of returning residents may be examined at places in foreign territory where United States customs offices have been established for that purpose (see § 1.3 of this chapter). When the baggage of a returning resident is examined at such a place, and the resident will return to the United States via train or ferry, the declaration, after completion and presentation to the customs office, shall be returned to the declarant for surrender to the customs officer on the train or ferry, or to the customs officer at the port of return, in order that such customs officer may determine what exemption, if any, has already been allowed. When the baggage of a passenger traveling by air is examined in foreign territory, the baggage declaration shall be surrendered to the customs officer at the airport of departure for the United States prior to boarding the aircraft.

(2) When a declarant, whose baggage has been examined and passed in foreign territory in accordance with subparagraph (1) of this paragraph, subsequently acquires additional articles before he returns to the United States, the customs officer to whom the declaration is surrendered as provided for in subparagraph (1) of this paragraph may permit the amendment of that declaration to include articles not previously declared.

(Sec. 498, 46 Stat. 728, as amended; 19 U. S. C. 1498)

§ 10.20 Unaccompanied shipments.

(a) *Effects and tools of trade.* When effects claimed to be free of duty under paragraph 1798 (a), (b) or (c) (1), Tariff Act of 1930, as amended, do not accompany the importer on his arrival in the United States or are forwarded in bond, a declaration of the importer on customs Form 3299 in the case of a nonresident, or on customs Form 3297 in the case of a returning resident, shall be required to support the claim for free entry, except that as to effects which are free of duty under paragraph 1798 (a) or (c) (1), as amended, an oral declaration of the importer may be accepted in lieu of a written declaration on Form 3297. If the collector is satisfied that an entry would serve no good purpose, none need be required, but evidence of ownership for customs purposes, such as a carrier's certificate or properly endorsed bill of lading, shall be required in connection with the declaration. Such exemption from entry may also be applied with respect to household effects or tools of trade entitled to free entry (see §§ 10.11 and 10.15 respectively) which are unaccompanied or forwarded in bond.

(b) *Articles acquired abroad by returning resident.* (1) The declaration of a returning resident shall be in writing if it covers articles which do not accompany him, or which are to be shipped in bond to another port for clearance, and such articles are entitled to free entry under the $200 or $300 exemption. Effects of the returning resident entitled to free entry under paragraph 1798 (a) or (c) (1), as amended, (other than automobiles and other vehicles of residents returning from noncontiguous countries) need not be itemized in written declarations.

(2) Customs Form 3351 shall be issued to the returning resident for each shipment of declared articles not accompanying the resident upon arrival or to be shipped in bond to another port for clearance and for which a claim for free entry, in whole or in part, is likely to be made under the $200 or $300 exemption.

(3) Customs Form 3351 shall not be issued to a returning resident who has used his entire allowable exemption upon arrival, except for the replacement of an article to be exchanged as provided for in paragraph (c) of this section.

(4) Unaccompanied shipments, except those containing prohibited or restricted merchandise, shall be released free of duty immediately after examination upon the presentation of properly completed customs Form 3351 by the consignee or his agent, or if the shipment or shipping papers are accompanied by a release on customs Form 3351, except that the collector may withhold release of the shipment until the claim for exemption is verified.

(5) In any case where the importer of a shipment arriving otherwise than by mail, claims any part of a shipment duty free under the $200 or $300 exemption, but is unable to produce a release on customs Form 3351, he shall be issued a customs Form 3351; upon completion of this form, the shipment shall be treated in the manner set forth in subparagraph (4) of this paragraph. Such shipments covered by mail entries shall be treated as set forth in § 9.10 (c) of this chapter.

(6) All claims for exemptions on customs Form 3351 and on the reverse side of duplicate copies of mail entries shall be subject to verification in the manner prescribed by the Commissioner of Customs. When the collector finds that a false claim for exemption has been made with intent to defraud the revenue, he shall take action under section 592 of the Tariff Act of 1930, in accordance with § 23.6 of this chapter.

(7) No application of the $200 or $300 exemption to an unaccompanied or bonded shipment shall be allowed in any case until the collector at the port of clearance is satisfied that the articles for which the exemption is claimed were acquired by the claimant while abroad in accordance with the pertinent provisions of paragraph 1798, Tariff Act of 1930, as amended.

(c) *Replacements.* When any article declared by a returning resident is to be replaced under the provisions of § 10.17 (1), a release on customs Form 3351 shall be issued to the importer with appropriate instructions as to its use.

(Secs. 201 (par. 1798), 498, 46 Stat. 683, as amended, 728, as amended; 19 U.S.C. 1201 (par. 1798), 1498)

§ 10.21 Examination procedure; collection of duties and taxes.

(a) Customs officers shall not open baggage or other containers for the purpose of examination.[m] Any such baggage or other container which is not opened by the owner or his agent for examination and any vehicle with a locked compartment which the person in charge refuses to open shall be treated as unclaimed.

(b) The inspector who examines the baggage of any person arriving in the United States, including inspectors on trains or ferries, may examine and pass, without limitation as to value, all articles in such baggage or otherwise accompanying such person which are personal or household effects of such person and are free of duty under paragraph 1632, 1747, or 1798 of the Tariff Act of 1930, as amended, or under § 10.42, and paintings and other articles classifiable under paragraph 1807, Tariff Act of 1930, and works of art which are the production of American artists temporarily residing abroad, provided for in paragraph 1810, Tariff Act of 1930, when accompanying the person who produced them, upon compliance with § 10.48 or § 10.50, as the case may be. The inspector may examine, determine the dutiable value of, collect duty on, and pass articles accompanying the arriving person which are for his personal or household use but are subject to duty, including articles imported by a nonresident to be disposed of by him as bona fide gifts. No special customs invoice shall be required for articles passed under this paragraph.

(c) The inspector may also examine, determine the customs value of, collect any duty due on, and pass articles properly listed on the baggage declaration which are not personal or household effects of the declarant, provided the aggregate customs value of such articles is not more than $250.

(d) In determining dutiable value under paragraph (b) or (c) of this section, the inspector shall apply the principles of section 402 or 402a, Tariff Act of 1930, as amended, and shall not regard the declared price or value as conclusive. He shall give due consideration to the condition of the articles at the time of importation, but he shall not make any allowance for wear and use in excess of 25 percent of the declared price or value of a worn or used article. A passenger who desires to claim a larger allowance may arrange for formal entry and appraisement of his goods.

(e) Articles not described in paragraph (b) of this section, having an aggregate value over $250 but not over $500, may be entered and cleared on a baggage declaration at the place of their arrival with a passenger, provided the articles are accompanied by a proper invoice if one is required, and provided it is practicable to make the required formal appraisement at that place. If the foregoing requirements are not satisfied, or if the value of such articles is over $500, regular entry shall be required.

(f) Whenever the customs officer deems it advisable, or at the request of the passenger, any or all of a passenger's baggage may be sent to the appraiser's store for examination of reexamination, in which case a receipt for such baggage shall be given on customs Form 6051.

(g) Passengers dissatisfied with the assessment of duty on their baggage may demand a reexamination, provided the articles have not been removed from customs custody.

(h) If reappraisement by the United States Customs Court is desired, the passenger must arrange for regular entry and formal appraisement of the articles in controversy, and thereafter make written application for reappraisement to the collector of customs within 30 days after the formal appraisement.

(i) The exemption from duty and internal-revenue tax contemplated by section 321(a)(2)(B), Tariff Act of 1930, as amended,[n] may be applied to any articles accompanying, and for the personal or household use (not including any business or commercial use of any kind) of, any person arriving in the United States who is not entitled to any exemption under paragraph 1798(c)(2), Tariff Act of 1930, as amended, except that such exemption under section 321(a)(2)(B) shall not be applied to any article subject to internal-revenue tax other than cigarettes not in excess of 50, cigars not in excess of 10, manufactured tobacco not in excess of ½ pound, alcoholic beverages not in excess of 4 ounces, or alcoholic perfumery not in excess of 4 ounces, and except that such exemption under section 321(a)(2)(B) shall not be applied to any article subject to internal-revenue tax in addition to any exemption allowed such articles under § 23.4 of this chapter. Family grouping of this $10 exemption shall not be allowed. If any article accompanying a person is subject to duty or tax by reason of these limitations, no articles accompanying such person shall be exempted from duty or tax under this paragraph.

(j) When duties are collected on articles in a passenger's baggage and the declaration is on customs Form 6064, the coupon receipt attached to the form shall be given to the passenger. When the declaration is on customs Form 6059 or 6063, a receipt on customs Form 5103 shall be issued.

(k) Tea for personal use in one or more packages weighing not more than 5 pounds each, when imported in a passenger's baggage, may be delivered without examination for purity under 21 U. S. C. 41–50 and without payment of the examination fee prescribed in 21 U. S. C. 46a.

(l) The internal-revenue tax on taxable tobacco products in passengers' baggage shall be paid to customs, using the customs entry form as a return. Any such return shall show the kind, the quantity, and the tax (by class in the case of cigars and cigarettes) on such tobacco products separately from the statement of duty. Unless for the personal consumption of the importer or disposition as his bona fide gift, tobacco products are subject to compliance with the package and mark requirements in the regulations of the Internal Revenue Service.

(m) Alcoholic beverages found in passengers' baggage shall be released without the placing of strip stamps on the bottles, provided it appears from the baggage declaration or otherwise that the liquors are for personal use and not for sale or other commercial purposes. The internal-revenue tax, however, shall be collected on all wines and liquors in excess of the quantity entitled to exemption as specified in § 10.17 (d), § 10.18 (e) or paragraph (i) of this section.

(Sec. 201 (par. 1798), 46 Stat. 688, as amended, sec. 7, 52 Stat. 1081, as amended, sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1201 (par. 1798), 1321, 1498)

§ 10.22 Crews' effects.

(a) An officer or seaman arriving on a vessel from a foreign port shall be considered a returning resident of the United States for the purpose of paragraph 1798, Tariff Act of 1930, as amended, and §§ 10.17 to 10.21: *Provided,* He is a resident and (1) leaves the vessel without intention of reshipping on a vessel touching at foreign ports, or (2) remains on or transships to a vessel which is to proceed to another port of the United States in a movement in which entry of the vessel will not be required. An officer or seaman arriving on a vessel from a foreign port who is treated as a nonresident shall be regarded as arriving in the United States whenever the conditions specified in subparagraphs (1) and (2) of this paragraph are met.

(b) Articles on board a vessel in the possession of or owned by any officer or member of the crew of the vessel, which are to be landed in the United States and for which written declaration and entry are required, shall be described and declared on a Declaration and Entry of Crew Member for Imported Articles, customs Form 5123, or other form approved by the Commissioner of Customs, upon the arrival of the vessel in the United States. Articles in the possession of or owned by officers or members of the crew and of a character for which entry must be made when they are brought into the United States shall be entered only at the port where the articles are to be landed, except that if any officer or crew member remains on a vessel which is to proceed on a movement described in paragraph (a) (2) of this section, entry shall be made at the port where such movement begins. Any duties and taxes found due shall be collected as in the case of arriving passengers. Articles belonging to an officer or seaman may be transferred from one vessel to another in the foreign trade under the supervision of customs officers, by a bonded cartman if necessary, without entry, declaration, or assessment of duty.

(c) Any such articles which are required to be manifested and are not manifested shall be subject to forfeiture and the master shall be subjected to a penalty equal to the value thereof, as provided for in section 584, Tariff Act of 1930, as amended. If any such articles are landed without a permit, the penalties provided for in section 453, Tariff Act of 1930, will accrue. (See § 23.4 of this chapter.)

(Secs. 498, 584, 46 Stat. 728, as amended, 748, as amended; 19 U.S.C. 1498, 1584)

---

[m] "All merchandise and baggage imported or brought in from any contiguous country, except as otherwise provided by law or by regulations of the Secretary of the Treasury, shall be unladen in the presence of and be inspected by a customs officer at the first port of entry at which the same shall arrive; and such officer may require the owner, or his agent, or other person having charge or possession of any trunk, traveling bag, sack, valise, or other container, or of any closed vehicle, to open the same for inspection, or to furnish a key or other means for opening the same." (Tariff Act of 1930, sec. 461; 19 U. S. C. 1461)

[n] "(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

• • • • •

"(2) Admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate value of articles imported by one person on one day and exempted from the payment of duty shall not exceed—

• • • • •

"(B) $10 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty or tax under paragraph 1798 (c) (2) of this Act, • • •." (Tariff Act of 1930, sec. 321, as amended; 19 U. S. C. 1321)

§ 10.23 Vessels transiting the Panama Canal; treatment of passengers' baggage and crews' effects.

Passengers' baggage and effects and purchases of officers and members of the crew landed in the United States from vessels which have transited the Panama Canal are subject to customs examination and treatment in the same manner as arrivals from a foreign country and a permit to unlade shall be obtained in such cases or the penalties provided for in section 453, Tariff Act of 1930, will be incurred.

(Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

§ 10.24 Government vessels.

(a) Immediately upon the arrival of any vessel operated directly by the United States or any agency thereof from a foreign port, the commanding officer shall file with the collector of customs information as to dutiable articles acquired abroad in the following form:

UNITED STATES NAVY CUSTOMS DECLARATION

U. S. S. _____
Port of arrival_____
To the collector of customs:

Herewith is submitted a list of articles acquired in foreign countries by me and the respective officers and members of the crew under my command, which list is correct to the best of my knowledge and belief.

Owner	Rank	Description of articles	Cost or value

Date _____, 19_____.
(Name)_____,
(Rank)_____,
Commanding Officer.

The listed articles shall be segregated until formally passed by the customs. If there are no articles to be listed, the statement "Nothing to declare" shall suffice.

(b) No baggage declarations shall be required, but the articles listed shall otherwise be examined and passed in the same manner as the baggage on passenger vessels.

(Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

§ 10.25 Army and Navy transports; baggage brought in.

(a) Commissioned officers and enlisted personnel of the armed forces of the United States engaged in the operation of an Army or Navy transport, enlisted men carried as passengers, and civilian officers and crew members, shall not be required to execute baggage declarations, but all articles acquired abroad by them must be listed on the manifest of the vessel. Written baggage declarations shall be required of all cabin passengers.

(b) Passengers on transports shall be granted the applicable exemptions from duty provided for in paragraph 1798, Tariff Act of 1930, as amended, and commissioned officers and enlisted personnel of the armed forces of the United States engaged in the operation of the vessel shall be accorded the same privilege. Civilian officers and crew members shall be subject to the provisions of § 10.22 with respect to exemption from duty.

(c) Baggage on transports shall be examined at the port where landed in the same manner as baggage on commercial vessels.

(Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

§ 10.26 Household and personal effects of Army, Navy, and Marine Corps personnel and of civilian employees of the Panama Canal.

(a) A member of the armed forces of the United States or a civilian employee of the Panama Canal Company or Canal Zone Government returning to the United States is ordinarily classifiable for customs purposes under the provisions of paragraph 1798, Tariff Act of 1930, as amended, as a returning resident of the United States, and such person shall be classified as a nonresident only if satisfactory evidence is available to show that the person has established a home elsewhere.

((b) Effects of the persons mentioned in paragraph (a) of this section shipped to the United States otherwise than as baggage from points in the Canal Zone, the Virgin Islands, the island of Guam, or American Samoa, where customs officials are stationed, shall be passed free of duty without examination upon arrival of the shipment in this country: *Provided*, That (1) the effects have been corded and sealed immediately after an examination made by a principal customs officer at the place of shipment; (2) the cords and seals are intact at the time of importation; and (3) there are filed at the port of entry a declaration of the owner and a certificate of the examining customs officer, both indicating that the packages corded and sealed contain nothing but articles of the classes entitled to free entry under paragraph 1615 or 1632, Tariff Act of 1930, as amended. Returning residents may also include in the corded and sealed packages articles classifiable under paragraph 1798 (a) or (c) (1), Tariff Act of 1930, as amended. Citizens of the United States who are employed in a civilian capacity by the Panama Canal and who are not returning residents may include in the corded and sealed packages articles classifiable under paragraph 1798 (a), (b) (1), or (b) (2), as amended. The declaration of the owner may be accepted as an entry for any effects passed free under this paragraph when supported by evidence of the right to make entry.

(c) The declaration of the owner shall contain a statement as to his residence and the certificate of examination shall contain or be supported by detailed inventories of the contents of the packages covered by the declaration and certificate, certified by the examining customs officer to be correct in every particular. Both the declaration and the certificate shall be executed in triplicate, the original to accompany the shipment to the United States, the duplicate to be retained by the shipper of the merchandise, and the triplicate to be forwarded by mail to the collector of customs at the port in the United States where the shipment will be imported.

(d) Effects of members of the armed forces of the United States who are returning to this country from points abroad where no customs officer under the jurisdiction of the United States is stationed may be examined abroad under the procedure outlined above, the examination to be made by the senior officer of the post, excluding the owner of the effects except where only one officer is stationed. Upon the arrival of such shipments consigned to an official representative of the armed forces and the receipt of the required certificates of inspection and declaration of the owner, the packages shall be delivered to the consignee under cord and seal in order to eliminate storage and other charges, but not finally released until an entry has been filed and the goods actually have been examined by a customs officer of the port of entry. Examination in these cases shall be made at armed forces storehouses and, if items are found which are not classifiable under paragraph 1615, 1632, or paragraph 1798 (a) or (c) (1), Tariff Act of 1930, as amended, the consignment shall again be corded and sealed and left in the custody of the official representative of the armed forces pending the payment of any duties applicable thereto.

(e) For the purpose of completing the collectors' records, the fact of arrival of armed forces personnel taking advantage of the provisions of this section shall be certified to the collector of the port through which their effects have been imported by the proper representative of the service to which the owners of the effects belong.

(f) Nothing in this section shall be construed to preclude the examination and detention of any importation if a customs officer having proper jurisdiction deems such action advisable in the interest of the revenue.

(Pars. 1615, 1632, 1798, secs. 201, 498, 46 Stat. 674, as amended, 675, 683, as amended, 728, as amended; 19 U.S.C. 1201 (pars. 1615, 1632, 1798), 1498)

§ 10.27 Unclaimed and unaccompanied baggage.

Articles in passengers' baggage on which duties due are not paid and baggage not claimed within a reasonable time shall be treated as unclaimed and sent to general order. All baggage on board a vessel not accompanying a passenger and the marks or addresses thereof shall be listed on the last sheet of the passenger manifest under the caption "Unaccompanied baggage."

(Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

§ 10.28 Registration of valuable effects.

(a) Any person who intends to take valuable effects of foreign origin or plumage abroad may make an application, before his departure from the United States, to a collector of customs or appraiser of merchandise on customs Form 4455 in duplicate for the registration of such articles to facilitate their identification on return. The applicant shall be notified on the Form 4455 of the place to which the articles shall be delivered for examination. After the articles have been examined and the certificate on the Form 4455 has been executed, the duplicate copy of the form shall be delivered to the applicant for use on return, and the original shall be filed in the collector's office. The applicant's copy of the form shall be presented to the customs officer who handles the clearance of the articles when they are returned to the United States if any question then arises as to the duty-free or admissible status of the articles.

(b) In the case of resident seamen and airmen who make recurrent voyages while pursuing their occupation, customs Form 4457 may be issued, in lieu of customs Form 4455, to cover cameras and photographic equipment, binoculars, sextants, radios, and other valuable effects of foreign origin. This certificate shall be effective for a period of 2 years from the date of its issuance.

(c) Resident travelers who make frequent trips abroad may permanently register cameras, binoculars, and other articles of foreign origin which bear permanent identification numbers or markings. Customs Form 4457, properly conformed, shall be used for this purpose.

(Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

DIPLOMATIC AND CONSULAR OFFICERS

§ 10.29 Baggage.

(a) Upon application to the Department of State and appropriate instructions from the Treasury Department in each instance, the privilege of admission free of duty without entry shall be extended to the baggage and effects of the following representatives of foreign governments and their families, suites, and servants, provided the governments which they represent grant reciprocal privileges to American officials of like grade accredited thereto or en route to or from other countries to which accredited.

(1) Ambassadors, ministers, and chargés d'affaires; secretaries, counselors and naval, military, and other attachés of embassies and legations; high commissioners, consular officers, and trade representatives; all the foregoing who are accredited to this Government or are en route to or from other countries to which accredited; and

(2) Other high officials of foreign governments and such distinguished foreign visitors as may be designated by the Department of State.

(b) In the absence of special authorization therefor from the Department prior to the arrival of representatives of foreign governments enumerated in paragraph (a) (1) of this section, the privilege may be extended to their baggage and effects upon presentation of their credentials or other proof of their identity.

(c) Foreign ambassadors, ministers, chargés d'affaires; secretaries, counselors, and naval, military, and other attachés of foreign embassies and legations shall not be detained or inconvenienced, and their baggage effects shall remain inviolate. Every proper means shall be afforded them to facilitate their passage through ports of the United States.

(d) The privilege of admission free of duty without entry of their baggage and effects may also be extended to representatives of this Government of the classes enumerated in paragraph (a) (1) of this section, including Treasury attachés and Treasury representatives, together with their families and servants, returning from their missions abroad, upon the production of their credentials; and to other high officials of this Government returning from special missions abroad, upon application therefor direct to the Treasury Department by the heads of the respective branches of the Government with which they are connected and the issuance of appropriate instructions. The free entry authorized hereunder shall not extend to alcoholic beverages, with respect to which the persons enumerated in this paragraph shall receive no other exemption from duty and internal-revenue tax than is allowed returning residents of the United States in accordance with § 10.17 (d).

(e) If by accident or unavoidable delay in shipment the baggage or other effects of a person of any class mentioned in this section shall arrive after him, such baggage or effects may be passed free of duty, under the conditions specified above, upon satisfactory proof of ownership.

(f) The accompanied personal baggage of diplomatic couriers of foreign countries shall be accorded customs privileges and immunities extended to foreign personnel of diplomatic rank under paragraph (e), except in cases provided for by special instructions from the Commissioner of Customs.

(Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

§ 10.30 Importations for resident representatives of foreign governments.

(a) Costumes, regalia, and other articles, including office supplies and equipment, for the official use of members and attachés of foreign embassies and legations, consular officers, and other representatives of foreign governments, may be admitted free of duty, provided the country which any such person represents accords like privileges to corresponding officials of the United States. Articles for the official use of representatives of foreign governments not listed in a Treasury Decision[32] shall be admitted free of duty only upon the receipt of instructions from the Department, which will be issued only when application therefor is made through the Department of State.

(b) Packages bearing the official seal of a foreign government with which the United States has diplomatic relations, accompanied by certificates under such seal to the effect that they contain only official communications or documents may be admitted free of duty without customs examination.

(c) The privilege of importing free of duty articles for their personal or family use may be granted to (1) members and attachés of foreign embassies and legations, and (2) other representatives and employees of foreign governments to whom the privilege is accorded under special agreements between the United States and the countries which they represent,[32] but in either case the privilege may be granted only upon the Department's instructions in each instance which will be issued only upon the request of the Department of State.

(d) No entry is required for shipments admitted free of duty under this section.

(Sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

[32] Information concerning countries whose governments accord such reciprocal privileges is published in T. D. 52847, and T. D. 53233.

[32] Notices regarding the special agreements are published in the Treasury Decisions.

PUBLIC INTERNATIONAL ORGANIZATIONS

§ 10.30a Organizations included.

(a) The President, by virtue of the authority vested in him by section 1 of The International Organizations Immunities Act of December 29, 1945 (22 U. S. C. 288) [32a] has designated certain organizations as public international organizations entitled to the free entry privileges of that statute. The following is a list of the public international organizations currently entitled to such free entry privileges and the Executive orders by which they were designated:

Organization	Executive Order	Date
Caribbean Commission	10025	Dec. 30, 1948
Food and Agriculture Organization	9698	Feb. 19, 1946
Inter-American Defense Board	10228	Mar. 26, 1951
Inter American Institute of Agricultural Sciences	9751	July 11, 1946
Inter-American Statistical Institute	9751	Do.
Intergovernmental Maritime Consultative Organization	10795	Dec. 13, 1958
International Atomic Energy Agency	10727	Aug. 31, 1957

[32a] "For the purposes of this title, the term 'international organization' means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title." (Sec. 1, 59 Stat. 669; 22 U. S. C. 288)

Organization	Executive order	Date
International Bank for Reconstruction and Development [35b]	9751	July 11, 1946
International Civil Aviation Organization	9863	May 31, 1947
International Cotton Advisory Committee	9911	Dec. 19, 1947
International Finance Corporation	10680	Oct. 2, 1956
International Hydrographic Bureau	10769	May 29, 1958
International Joint Commission-United States and Canada	9972	June 25, 1948
International Labor Organization	9698	Feb. 19, 1946
International Monetary Fund [35b]	9751	July 11, 1946
International Refugee Organization (Successor to Preparatory Commission for the International Refugee Organization)	9887	Aug. 22, 1947
International Telecommunication Union	9863	May 31, 1947
International Wheat Advisory Committee (International Wheat Council)	9823	Jan. 24, 1947
Organization for European Economic Cooperation	10133	June 27, 1950
Organization of American States	10533	June 3, 1954
Pan American Sanitary Bureau	9751	July 11, 1946
Pan American Union	10533	June 3, 1954
Provisional Intergovernmental Committee for the Movement of Migrants from Europe (not known as the Intergovernmental Committee for European Migration)	10335	Mar. 28, 1952
South Pacific Commission	10086	Nov. 25, 1949
United Nations	9698	Feb. 19, 1946
United Nations Educational, Scientific, and Cultural Organization	9863	May 31, 1947
Universal Postal Union	10727	Aug. 31, 1957
World Health Organization	10025	Dec. 30, 1948
World Meteorological Organization	10676	Sept. 1, 1956

(b) Pursuant to sections 2 (d) and 3 [35c] of the act, property of the organizations named in paragraph (a) of this section and the baggage and effects of the alien officers and employees thereof, of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives, shall be admitted free of duties and internal-revenue taxes imposed upon or by reason of importation, but such exemption shall be granted only upon the receipt in each instance of the Department's instructions which will be issued only upon the request of the Department of State.

(c) The term "baggage and effects" as used in section 3 of the act includes all articles which were in the possession abroad, and are being imported in connection with the arrival, of a person entitled to the benefits of the act and which are intended for his bona fide personal or household use, but does not include articles imported as an accommodation to others or for sale or other commercial use.

(d) All articles accorded free entry under the act shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930, as amended, and the regulations thereunder.

(e) No invoices shall be required for articles accorded free entry under the act.

(f) Any customs bond which may be required from one of the organizations named in paragraph (a) of this section in connection with the importation or entry of merchandise into, or the exportation of merchandise from, the United States may be accepted without surety.

(g) The provisions of the act are applicable, insofar as duties and internal-revenue taxes imposed upon or by reason of importation are concerned, only with respect to articles entered, or withdrawn from warehouse, for consumption on and after December 29, 1945.

(Sec. 498, 46 Stat. 728, as amended, sec. 3, 59 Stat. 669; 19 U.S.C. 1498, 22 U.S.C. 288b)

[35b] Customs exemptions have also been prescribed for the International Monetary Fund and the International Bank for Reconstruction and Development in 59 Stat. 512; 22 U. S. C. 286 et seq.

[35c] "Insofar as concerns customs duties and internal-revenue taxes imposed upon or by reason of importation, and the procedures in connection therewith; the registration of foreign agents; and the treatment of official communications, the privileges, exemptions, and immunities to which international organizations shall be entitled shall be those accorded under similar circumstances to foreign governments." (Sec. 2 (d), 59 Stat. 669; 22 U. S. C. 288a (d))

"Pursuant to regulations prescribed by the Commissioner of Customs with the approval of the Secretary of the Treasury, the baggage and effects of alien officers and employees of international organizations, or of aliens designated by foreign governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives shall be admitted (when imported in connection with the arrival of the owner) free of customs duties and free of internal-revenue taxes imposed upon or by reason of importation." (Sec. 3, 59 Stat. 669; 22 U. S. C. 288b)

§ 10.30b Baggage of, and importations for, certain representatives of the United Nations, of specialized agencies of the United Nations, and of the Organization of American States.

(a) The privilege of admission free of duty and internal-revenue tax without entry or examination may be extended to the baggage and effects of (1) every person designated by a United Nations Member nation as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary, (2) such resident members of their staffs as may be agreed upon between the Secretary-General of the United Nations, the Government of the United States, and the Government of the United Nations Member concerned, (3) every person designated by a United Nations Member of a specialized United Nations agency as its principal resident representative, with the rank of ambassador or minister plenipotentiary, at the headquarters of such agency in the United States, (4) such other principal resident representatives of United Nations Members to a specialized United Nations agency and such resident members of the staffs of representatives to a specialized United Nations agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States, and the Government of the United Nations Member concerned, (5) any person designated by a Member of the Organization of American States as its representative or interim representative on the council of the Organization of American States, and (6) all other permanent members of the Delegation of a Member of the Organization of American States regarding whom there is agreement for that purpose between the Government of the Member State concerned, the Secretary-General of the Organization of American States, and the Government of the United States of America.

(b) The privilege of importing without entry and free of duty and internal-revenue tax articles for their personal or family use may be granted to persons of the classes enumerated in paragraph (a) of this section.

(c) In the absence of a special authorization from the Department prior to arrival of persons of the classes enumerated in paragraph (a) of this section, the privilege of admission free of duty and internal-revenue tax without entry or examination may be extended to their baggage and effects upon presentation of their credentials or other proof of their identity.

(d) Only the alien representatives and the alien members of staffs enumerated in paragraph (a) of this section shall be entitled to the privileges and immunities provided for by this section.

(Art. V, sec. 15, 61 Stat. 762, ch. 628, 66 Stat. 516, sec. 498, 46 Stat. 728, as amended; 19 U.S.C. 1498)

Free Entry; Foreign Military Personnel and Members of Their Immediate Families [35e]

§ 10.30c Articles for the use of foreign military personnel and their immediate families.

(a) Pursuant to section 196a Title 19, United States Code, collectors of customs shall accord entry free of all duties and internal-revenue taxes imposed upon or by reason of importation, and of all customs charges and exactions to articles entered, or withdrawn from warehouse, for consumption on or after August 28, 1949, for the official use of any person who is on duty in the United States, its Territories, or possessions as a member of the armed forces of any foreign country, or for the personal use of any such person or of any member of his immediate family.

(b) If any question arises as to the status of the importer under the said section 196a or whether articles entered thereunder are for official use or personal use, the collector shall report the available facts to the Bureau of Customs and await instructions.

(c) The entry requirements prescribed in the Tariff Act of 1930, as amended, and the regulations thereunder are applicable to articles for which free entry is claimed under the said section 196a.

(d) No invoices shall be required for articles accorded free entry under the said section 196a.

(Sec. 1, 63 Stat. 666; 19 U.S.C. 196a)

Temporary Importations Under Bond

§ 10.31 Entry; bond.

(a) Entry of articles brought into the United States temporarily and claimed to be exempt from duty under section 308, Tariff Act of 1930, as amended,[36] shall be made on customs Form 7501, except that, when § 10.36 is applicable or the aggregate value of the articles is not over $250, the form prescribed for the informal entry of importations by mail, in baggage, or other, as the case may be, may be used. When entry is made on customs Form 7501, it shall be in original only except in the case of entries under subdivision (1) of section 308, in which case a duplicate copy shall be required for statistical purposes. In addition to the data usually shown on a regular consumption entry, there shall be set forth on each temporary importation bond entry (1) the subdivision of section 308 under which entry is claimed, (2) a statement of the use to be made of the articles in sufficient detail to enable the collector to determine whether they are entitled to entry as claimed, and (3) a declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

(b) The collector, if he is satisfied as to the importer's identity and good faith, may admit a vehicle or craft brought in by a nonresident to take part in a race or other specific contest for which no money purse is awarded, under the provisions of section 308 (5), Tariff Act of 1930, as amended, without formal entry or security for exportation. In such cases the collector shall issue to the importer a certificate on customs Form 4447, which shall be delivered with the article covered thereby to the customs officer at the port of exit at the time of departure. If at the time of arrival it appears that the article is likely to remain in the United States beyond 90 days, formal entry and bond shall be taken.

(c) When any article has been admitted without formal entry or security for exportation and the importer thereafter desires to prolong his stay beyond 90 days, an entry covering the article and security for its exportation shall be accepted at any port where the article may be presented for examination. Whenever an entry is substituted under the provisions of this paragraph for a certificate on customs Form 4447, the time during which the imported article may remain in the United States under the entry shall be computed from the date of original arrival in the United States and the article shall be appraised according to its value at the time of such arrival.

(d) In the case of a foreign-owned automobile or motorcycle, the registration of which is required by the country of ownership, the importer shall present a certificate of registration or other satisfactory evidence of ownership.

(e) Articles entered under bond for exportation may be withdrawn for consumption upon payment of the duties and taxes thereon and compliance with the applicable laws and regulations of the Treasury Department and other Government departments.

(f) Articles entered under bond for exportation may be transferred to another port for exportation under bond in accordance with § 10.41.

(g) Articles entered under bond for exportation may be destroyed under customs supervision at the port of importation or at the port of exportation, or at any other port to which they may be transported under bond for destruction, in lieu of exportation, with the consent of the collector of customs at the port of importation.

(h) Articles entered under bond for exportation may be abandoned to the Government in accordance with § 10.39.

(i) Articles entered under bond for exportation may be delivered to a bonded warehouse for storage pending exportation in accordance with § 10.32.

(j) Articles entered under bond for exportation may be delivered to a bonded manufacturing warehouse for manufacture in accordance with § 10.33.

(k) Articles entered under bond for exportation may be delivered to a bonded warehouse for repacking in accordance with § 10.34.

(l) Articles entered under bond for exportation may be delivered to a bonded warehouse for smelting and refining in accordance with § 10.35.

(m) Articles entered under bond for exportation may be delivered to a bonded warehouse for manipulation in accordance with § 10.36.

(n) Articles entered under bond for exportation may be delivered to a bonded warehouse for examination, sampling, or testing in accordance with § 10.37.

(o) Articles entered under bond for exportation may be delivered to a bonded warehouse for exhibition in accordance with § 10.38.

(p) Articles entered under bond for exportation may be delivered to a bonded warehouse for the assembling of articles in accordance with § 10.40.

(q) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.41.

(r) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.42.

(s) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.43.

(t) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.44.

(u) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.45.

(v) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.46.

(w) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.47.

(x) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.48.

(y) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.49.

(z) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.50.

(aa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.51.

(bb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.52.

(cc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.53.

(dd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.54.

(ee) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.55.

(ff) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.56.

(gg) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.57.

(hh) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.58.

(ii) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.59.

(jj) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.60.

(kk) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.61.

(ll) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.62.

(mm) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.63.

(nn) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.64.

(oo) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.65.

(pp) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.66.

(qq) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.67.

(rr) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.68.

(ss) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.69.

(tt) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.70.

(uu) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.71.

(vv) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.72.

(ww) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.73.

(xx) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.74.

(yy) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.75.

(zz) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.76.

(aaa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.77.

(bbb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.78.

(ccc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.79.

(ddd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.80.

(eee) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.81.

(fff) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.82.

(ggg) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.83.

(hhh) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.84.

(iii) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.85.

(jjj) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.86.

(kkk) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.87.

(lll) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.88.

(mmm) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.89.

(nnn) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.90.

(ooo) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.91.

(ppp) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.92.

(qqq) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.93.

(rrr) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.94.

(sss) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.95.

(ttt) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.96.

(uuu) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.97.

(vvv) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.98.

(www) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.99.

(xxx) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.100.

(yyy) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.101.

(zzz) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.102.

(aaaa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.103.

(bbbb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.104.

(cccc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.105.

(dddd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.106.

(eeee) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.107.

(ffff) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.108.

(gggg) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.109.

(hhhh) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.110.

(iiii) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.111.

(jjjj) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.112.

(kkkk) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.113.

(llll) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.114.

(mmmm) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.115.

(nnnn) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.116.

(oooo) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.117.

(pppp) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.118.

(qqqq) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.119.

(rrrr) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.120.

(ssss) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.121.

(tttt) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.122.

(uuuu) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.123.

(vvvv) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.124.

(wwww) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.125.

(xxxx) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.126.

(yyyy) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.127.

(zzzz) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.128.

(aaaaa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.129.

(bbbbb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.130.

(ccccc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.131.

(ddddd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.132.

(eeeee) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.133.

(fffff) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.134.

(ggggg) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.135.

(hhhhh) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.136.

(iiiii) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.137.

(jjjjj) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.138.

(kkkkk) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.139.

(lllll) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.140.

(mmmmm) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.141.

(nnnnn) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.142.

(ooooo) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.143.

(ppppp) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.144.

(qqqqq) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.145.

(rrrrr) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.146.

(sssss) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.147.

(ttttt) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.148.

(uuuuu) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.149.

(vvvvv) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.150.

(wwwww) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.151.

(xxxxx) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.152.

(yyyyy) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.153.

(zzzzz) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.154.

(aaaaaa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.155.

(bbbbbb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.156.

(cccccc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.157.

(dddddd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.158.

(eeeeee) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.159.

(ffffff) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.160.

(gggggg) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.161.

(hhhhhh) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.162.

(iiiiii) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.163.

(jjjjjj) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.164.

(kkkkkk) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.165.

(llllll) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.166.

(mmmmmm) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.167.

(nnnnnn) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.168.

(oooooo) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.169.

(pppppp) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.170.

(qqqqqq) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.171.

(rrrrrr) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.172.

(ssssss) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.173.

(tttttt) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.174.

(uuuuuu) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.175.

(vvvvvv) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.176.

(wwwwww) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.177.

(xxxxxx) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.178.

(yyyyyy) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.179.

(zzzzzz) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.180.

(aaaaaaa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.181.

(bbbbbbb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.182.

(ccccccc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.183.

(ddddddd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.184.

(eeeeeee) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.185.

(fffffff) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.186.

(ggggggg) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.187.

(hhhhhhh) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.188.

(iiiiiii) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.189.

(jjjjjjj) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.190.

(kkkkkkk) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.191.

(lllllll) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.192.

(mmmmmmm) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.193.

(nnnnnnn) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.194.

(ooooooo) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.195.

(ppppppp) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.196.

(qqqqqqq) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.197.

(rrrrrrr) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.198.

(sssssss) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.199.

(ttttttt) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.200.

(uuuuuuu) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.201.

(vvvvvvv) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.202.

(wwwwwww) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.203.

(xxxxxxx) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.204.

(yyyyyyy) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.205.

(zzzzzzz) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.206.

(aaaaaaaa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.207.

(bbbbbbbb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.208.

(cccccccc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.209.

(dddddddd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.210.

(eeeeeeee) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.211.

(ffffffff) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.212.

(gggggggg) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.213.

(hhhhhhhh) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.214.

(iiiiiiii) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.215.

(jjjjjjjj) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.216.

(kkkkkkkk) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.217.

(llllllll) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.218.

(mmmmmmmm) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.219.

(nnnnnnnn) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.220.

(oooooooo) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.221.

(pppppppp) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.222.

(qqqqqqqq) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.223.

(rrrrrrrr) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.224.

(ssssssss) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.225.

(tttttttt) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.226.

(uuuuuuuu) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.227.

(vvvvvvvv) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.228.

(wwwwwwww) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.229.

(xxxxxxxx) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.230.

(yyyyyyyy) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.231.

(zzzzzzzz) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.232.

(aaaaaaaaa) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.233.

(bbbbbbbbb) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.234.

(ccccccccc) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.235.

(ddddddddd) Articles entered under bond for exportation may be delivered to a bonded warehouse for the purpose of being manufactured in bond in accordance with § 10.236.

(eeeeeeeee) Articles entered under bond for exportation may be delivered to

tion card therefor may be taken up in lieu of the issuance of customs Form 4447, if the owner so desires, provided the collector is satisfied that the article concerned will leave the United States via the same route within 90 days.

(e) The entry or invoice shall describe each article in detail and set forth any marks or numbers thereon or other distinguishing features thereof, together with the value of each item. When practicable and necessary, the articles shall be marked by the examining officer so as to enable the customs officer at the port of exportation to identify the articles at the time of exportation.

(f) A bond shall be given on customs Form 7563 in an amount equal to one and one-quarter times the duties which it is estimated would accrue had all the articles covered by the entry been entered under an ordinary consumption entry. A term bond on customs Form 7563–A, may also be given. Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under section 308(3) or 308(9) of the Tariff Act of 1930, as amended, without formal entry, as provided for in § 10.36, or the amount of the bond taken under any subdivision of section 308 is less than $25, the bond shall be without surety or cash deposit and the bond form shall be modified to so indicate.

(g) Claim for free entry under such section 308 may be made for articles of any character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from customs custody, but the 1-year period shall be computed from the date of importation. In the case of articles covered by an informal mail entry, such a claim may be made within a reasonable time either before or after the articles have been released from customs custody.

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall be liquidated free of duty, but at the time of such liquidation the amount of duties which would have accrued if the bond had not been given shall be ascertained and noted on the entry for use in connection with the consideration of any petition for relief from the payment of liquidated damages.

(Sec. 308, 46 Stat. 690, as amended; 19 U. S. C. 1308)

§ 10.33 Theatrical effects.*

(a) In connection with the entry under bond of theatrical scenery, property, and apparel, a declaration of the manager or proprietor shall be required on customs Form 3325 in addition to the requirements of § 10.31.

(b) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties.

(c) The term "theatrical scenery, properties, and apparel" shall not be construed to include motion-picture films.

(Sec. 308, 46 Stat. 690, as amended; 19 U.S.C. 1308)

§ 10.34 Articles brought by professional artists, lecturers, or scientists.

In connection with the entry of works of art and other articles provided for in section 308(12), Tariff Act of 1930, as amended, brought in by professional artists, lecturers, or scientists, a declaration on customs Form 3333 shall be required in addition to the requirements of § 10.31.

(Sec. 308, 46 Stat. 690, as amended; 19 U.S.C. 1308)

§ 10.35 Models of women's wearing apparel.

(a) Models of women's wearing apparel admitted under section 308(2), Tariff Act of 1930, shall not be removed from the importer's establishment for reproducing, copying, painting, sketching, or for any other use by others, nor be used in the importer's establishment for such purposes except by the importer or his employees.

(b) The importer shall file in connection with the entry a declaration stating, in addition to his name and business address, that he is a manufacturer; that the articles are imported solely as models for use in his own establishment and will be so used; that they are not imported for sale or for sale on approval; and that they will not be removed from such establishment for reproducing, copying, painting, or sketching by others, nor used in his establishment for such purposes except by him or his employees.

(c) Invoices covering models of women's wearing apparel entered under section 308 (2) or (3) shall state the kind and color of the principal material from which the apparel is made, and shall contain a description of the lining and the trimming, stating whether composed of fur, lace, embroidery, or other material. Invoices shall also contain a statement as to how the trimming is applied, that is, whether on the cuffs, collar, sleeves, or elsewhere, and the total value of each completed garment or article.

(d) Models of women's wearing apparel entered under section 308 (2) or (3) shall be marked for identification by means of a cord and lead or tin seal, the cord to be run through the article and all trimming thereon, where necessary, in such manner as to prevent the removal of the cord and seal without cutting the cord or injuring the article. A tag shall be attached to the cord, upon which shall be stated the name of the port at which the article was imported, the entry number, name of importer, and the number of the bond.

(Sec. 308 (2), (3), 46 Stat. 690, as amended; 19 U.S.C. 1308 (2), (3))

§ 10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.

(a) Samples accompanying a commercial traveler who presents an adequate descriptive list or a special customs invoice and professional equipment and tools of trade imported in his baggage for his own use by a nonresident sojourning temporarily in the United States may be entered on the importer's baggage declaration in lieu of formal entry and examination and may be passed under section 308 (3) or 308 (9), Tariff Act of 1930, as amended, at the place of arrival in the same manner as other passengers' baggage. The examination may be made by an inspector who is qualified, in the opinion of the collector, to determine the amount of the bond required by § 10.31 (c) to be filed in support of the entry. If the articles are a commercial traveler's samples and exceed $500 in value, a special customs invoice or a descriptive list shall be furnished.

(b) When the proprietor or manager of a theatrical exhibition arriving from abroad who has entered his scenery, properties, and apparel under section 308 (11) of the Tariff Act of 1930, as amended, contemplates side trips to a contiguous country with the exhibition within the period of the bond, including any lawful extension, a copy of the entry covering the effects and a copy of a descriptive list of such effects or invoice furnished by him may be certified by the examining officer and returned to the proprietor or manager for use in registering the effects with the customs officers at the port of exit, and in clearing them through customs on his return. Cancelation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the theatrical effects are finally taken out of the United States before the expiration of the bond period, including any lawful extension. Similar treatment may be accorded articles entered under other subdivisions of section 308 of the tariff act, as amended, upon approval by the Bureau.

(c) When a commercial traveler contemplates side trips to a contiguous country within the period of the bond, including any lawful extension, a copy of his baggage declaration and a copy of the descriptive list or special customs invoice furnished by him may be certified by the examining officer and returned to the traveler for use in registering the samples with customs officers at the port of exit, and in clearing them through customs upon his return. Cancelation of the bond shall be effected by exportation in accordance with the provisions of § 10.38 at the time the samples are finally taken out of the United States before the expiration of the bond period, including any lawful extension.

(d) The privilege of clearance of commercial travelers' samples or professional equipment or tools of trade imported for his own use by a nonresident sojourning temporarily in the United States on a baggage declaration under bond without surety or cash deposit shall not be accorded to a commercial traveler or such nonresident who, through fraud or culpable negligence, has failed to comply with the provisions of such a bond in connection with a prior arrival. Such a commercial traveler or nonresident shall be required to file a formal entry under section 308 (3) or 308 (9), Tariff Act of 1930, as amended with a bond supported by a surety or cash deposit in lieu of surety.

(Secs. 308, 498, 46 Stat. 690, as amended, 728, as amended; 19 U.S.C. 1308, 1498)

§ 10.37 Extension of bonds.

A bond given to assure the exportation of a temporary importation entered under section 308, Tariff Act of 1930, as amended, may be extended for not more than two further periods of 1 year each, or such shorter period as may be appropriate, by the collector of customs at the port where the entry was filed, upon written application to such collector on customs Form 3173, provided the articles have not been exported or duly destroyed before the receipt of the application by the collector, and provided liquidated damages have not been assessed under the bond before such receipt.

(Sec. 308, 46 Stat. 690, as amended; 19 U. S. C. 1308)

§ 10.38 Exportation.

(a) Articles entered under a temporary importation bond may be exported at the port of entry or at another port and shall be delivered by the importer for examination at the appraiser's store or at such other place as the collector may designate. An application on customs Form 3495 shall be filed with the collector a sufficient length of time in advance of exportation to permit their examination, and the articles shall be identified as the same articles which were imported. The applicant shall be notified on customs Form 3497 where the articles are to be sent for identification.

(b) All expenses in connection with the delivery of the articles for examination, the cording and sealing of such articles, and their transfer for exportation shall be paid by the parties in interest.

(c) If exportation is to be made at a port other than the one at which the merchandise was entered, the application on customs Form 3495 shall be filed in duplicate. There shall also be filed with the application a certified copy of the import entry or a certified copy of the invoice used on entry.

(d) If the goods are examined at one port and are to be exported at another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. In such cases customs Form 3495 shall be filed in duplicate.

(e) If the articles are to be exported by mail or parcel post, the package containing the articles must be mailed under customs supervision after examination. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter.

(Sec. 308, 46 Stat. 690, as amended; 19 U. S. C. 1308)

§ 10.39 Cancellation of bonds.

(a) Bonds taken pursuant to section 308, Tariff Act of 1930, as amended, may be canceled in the manner prescribed in § 25.15 of this chapter. In the case of articles entered under section 308 (4), Tariff Act of 1930, as amended, which are destroyed because of their use for the purpose of importation, the bond shall not be canceled unless there is submitted to the collector a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the collector is satisfied that the articles were so destroyed as articles of commerce within the bond period (including any lawful extension). Bonds covering articles entered under other provisions of law shall not be canceled upon proof of destruction, except as provided for in paragraph (c) of this section, unless the articles are destroyed under customs supervision in accordance with section 557, Tariff Act of 1930, as amended, and § 15.4 of this chapter.

(b) Where exportation has been made at a port other than the port of entry, the bond may be canceled upon the certificate of lading received from the port of exportation, showing that such exportation was made within the bond period. In addition, the collector may require the production of a landing certificate signed by a revenue officer of the country to which the merchandise is exported.

(c) When articles entered temporarily free of duty under bond are destroyed within the bond period by death, accidental fire, or other casualty, application for relief from liability under the bond shall be made to the Bureau of Customs. The application shall be accompanied by a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the destruction of the articles.

(d) If any article entered under section 308, Tariff Act of 1930, as amended, has not been exported or destroyed in accordance with the regulations in this part within the bond period (including any lawful extension), the collector shall make a demand in writing under the bond for the payment of liquidated damages equal to the entire amount of the bond, except that if the entry covering the articles is charged against a term bond the demand shall be limited to an amount equal to one and one-quarter times the estimated duties applicable to such entry. The written demand shall include a statement that a written application for relief from the payment of the full liquidated damages may be filed with the collector within 60 days after the date of the demand.

(e) If there has been default with respect to all the articles covered by the bond and a written application for relief is timely filed, it shall be transmitted to the Bureau with a full report of the facts, unless it is allowed by the collector in whole or in part in accordance with this regulation. If the full amount of liquidated damages demanded does not exceed $20,000 and the collector is satisfied that the importation was properly entered under section 308, and that there was no intent to defraud the revenue or delay the payment of duty, the collector may cancel the liability for the payment of liquidated damages as follows:

(1) If evidence is furnished which satisfies the collector that the article would have been entitled to free entry as domestic products exported and returned had the evidence been furnished at the time of entry, without the collection of liquidated damages.

(2) If the article has been exported or destroyed under customs supervision but not within the bond period, upon the payment of such lesser amount as the collector may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the collector is satisfied that the delay in exportation or destruction was for the benefit of the United States or was occasioned wholly by circumstances reasonably beyond the control of the parties concerned and which could not have been anticipated by a reasonably prudent person.

(3) If the article was exported or destroyed within the bond period but not under customs supervision and satisfactory documentary evidence of actual exportation, such as a foreign landing certificate, or of death or other complete destruction, such as a veterinarian's certificate or certificates of two disinterested witnesses, are furnished together with a complete explanation by the applicant of the failure to obtain customs supervision, upon the payment of such lesser amount as the collector may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the collector is satisfied that the merchandise was destroyed under circumstances which precluded any arrangement to obtain customs supervision.

(4) Upon the payment of an amount equal to one and one-quarter times the duties which would have accrued on the articles had they been entered under an ordinary consumption entry, if such amount is determined to be less than the full amount of the bond.

(f) If there has been compliance with the terms of the bond with respect to part of but not all the articles covered thereby and a written application for relief is filed, and if that part of the liability for liquidated damages which represents one and one-quarter times the duty on the articles in respect of which there has been a default does not exceed $20,000, the collector may cancel the total liability for payment of liquidated damages in any amount upon the payment of an amount equal to one and one-quarter times the duty on the articles in respect of which the default occurred or, under the circumstances enumerated in subparagraphs (1), (2), or (3) of paragraph (e) of this section, upon payment of such lesser amount as the collector may deem appropriate, provided the collector is satisfied that the importation was properly entered under section 308 and that there was no intent to defraud the revenue or delay the payment of duty.

(g) If the applicant is not satisfied with a collector's action under this section and submits a supplemental application, both the original and the supplemental applications shall be transmitted to the Bureau with a full report on the case.

(Sec. 308, 623, 46 Stat. 690, as amended, 759, as amended; 19 U.S.C. 1308, 1623)

* For regulations relating to return without formal entry of theatrical effects taken from the United States, see § 10.68.

§ 10.40 Refund of cash deposits.

(a) When a cash deposit is made in lieu of surety, it shall be refunded to the person in whose name the entry is made upon exportation in compliance with § 10.38.

(b) If any article entered under section 308, Tariff Act of 1930, as amended, is not exported or destroyed within the bond period (including any lawful extension), the collector shall notify the importer in writing that the entire cash deposit will be transferred to the regular account as liquidated damages unless a written application for relief from the payment of the full liquidated damages is filed with the collector within 60 days after the date of the notice. If such an application is timely filed, the transfer of the cash deposit to the regular account as liquidated damages shall be deferred pending the decision of the Bureau or, in appropriate cases, the collector of customs on the application.

INTERNATIONAL TRAFFIC [37]

§ 10.41 Instruments; exceptions.

(a) Locomotives and other railroad equipment used in international traffic shall be subject to the treatment provided for in § 5.12 of this chapter.

(b) Foreign-owned trucks, busses, and taxicabs arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, but not to engage in any local traffic in the United States (except that a vehicle in use on a regular scheduled trip in international traffic may carry merchandise or passengers between points in the United States when such carriage is directly incidental to the international schedule, and a foreign-owned truck trailer may carry merchandise between points in the United States on the return trip to the country from which it entered the United States under the same conditions as are prescribed for "other equipment" in § 5.12 (a) of this chapter), may be admitted without written entry or the payment of duty. In the case of any such vehicle not in use on a regularly scheduled trip, the collector may require that the registration card for the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the collector may take other appropriate measures to assure the proper use and departure of the vehicle.

(c) Foreign-owned aircraft arriving in the United States shall be subject to the treatment provided for in Part 6 of this chapter, unless entered under the provisions of § 10.31 or of paragraph (d) of this section.

(d) Any foreign-owned vehicle, aircraft, or undocumented boat brought into the United States for the purpose of carrying merchandise or passengers between points in the United States for hire or as an element of a commercial transaction, except as stated in the parenthetical matter in paragraph (b) of this section, is subject to treatment as an importation of merchandise from a foreign country and a regular entry therefor shall be made. Any such vehicle, aircraft, or boat so used without a proper entry having been made shall be subject to forfeiture under section 592, Tariff Act of 1930.

(e) Materials and equipment for use in building a bridge or tunnel over or under water between the United States and a foreign country shall be admitted without entry or the payment of duty provided the material is for installation in the bridge or tunnel proper, and not in the approaches on land at the United States end of the bridge or tunnel. All articles admitted under this paragraph shall be subject to customs supervision at the expense of the builder until exported or installed.

(f) Material for the maintenance or repair of international cables under the high seas, if requiring storage in special tanks for preservation, may be placed in tanks specially bonded for the purpose and withdrawn therefrom for high-seas installation without the payment of duty and without limitation of the storage period to the usual 3-year warehousing period. International cables laid under the territorial waters of the United States but not brought on shore in the United States shall be admitted without entry or the payment of duty. With respect to international cables laid under the territorial waters of the United States but brought on shore in the United States, only that part of the cable in the United States between the point of entry into the territorial waters of the United States and the first point of support on land in the United States shall be admitted without the payment of duty.

(g) Vehicles and undocumented boats of foreign origin which are used for commercial purposes between adjoining or neighboring communities of the United States and a contiguous foreign country, such as delivery, peddlers', and service trucks, wagons, or boats, are subject to duty on first arrival, but may thereafter be admitted without entry or the payment of duty so long as they are continuously employed in international traffic.

(Sec. 14, 67 Stat. 516; 19 U.S.C. 1322)

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic.

(a) Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and similar instruments arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic are hereby designated as "instruments of international traffic" within the meaning of section 322(a), Tariff Act of 1930, as amended. Such instruments may be released without entry or the payment of duty, subject to the provisions of this section.

(b) No article which by law is dutiable whether "filled or unfilled" or whether "full or empty," such as the cylindrical and tubular tanks or vessels provided for in paragraph 328 of the tariff act, is designated as an instrument of international traffic under this section.

(c) The instruments of international traffic designated in paragraph (a) of this section may be released in accordance with the provisions of that paragraph only after the applicant for such release has filed a bond with a collector of customs on customs Form 7587.[38] When the application for release is made at a port other than that at which the bond is on file, a certified copy of the bond shall be filed at the port at which release is requested.

(d) If an instrument released under this section is diverted to point to point local traffic within the United States, or if the instrument is otherwise withdrawn in the United States from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties.

(e) The person who filed the application for release under paragraph (a) of this section shall promptly (1) notify a collector of customs at a port of entry in the United States as defined in section 401(k), Tariff Act of 1930, as amended, of such diversion or withdrawal, (2) file with the collector of customs notified a consumption entry for the instrument, and (3) pay all duties due on the instrument at the rate or rates in effect and in its condition on the date of such diversion or withdrawal.

(f) Except as provided in paragraph (h) of this section, no part of this section precludes (1) the use of an instrument in picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the point of destination of its imported cargo or (2) such use during the return of the instrument from such point of destination to an exterior port of departure, when such point to point traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic. Such use does not constitute a diversion to unpermitted point to point local traffic within the United States or a withdrawal of an instrument in the United States from its use as an instrument of international traffic under this section.

(g) For failure promptly to report the diversion or withdrawal or promptly to make the required entry and pay the duties due, the applicant shall be liable for the payment of liquidated damages equal to the domestic value of the instrument established in accordance with section 606, Tariff Act of 1930.

(h) Nothing in this section shall be deemed to affect the treatment of articles covered herein under the coastwise laws of the United States, with particular reference to section 883, title 46, United States Code.

(Sec. 14, 67 Stat. 516, Sec. 623, 46 Stat. 759, as amended; 19 U.S.C. 1322, 1623)

[37] "(a) Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury." (Sec. 322, Tariff Act of 1930, as amended; 19 U. S. C. 1322)

[38] Filed as part of the original document.

§ 10.42 Automobiles and other vehicles, boats, teams, and saddle horses taken abroad.

(a) Automobiles, aircraft, and other vehicles, boats, teams, and saddle horses of domestic origin, or of foreign origin if duty-paid, together with their accessories, taken abroad by the owner or his agent for noncommercial use and returned for the account of such owner shall be admitted without the payment of duty, except as provided for in paragraph (b) of this section, upon being satisfactorily identified.

(b) Repairs made abroad to such articles if incidental to use abroad are not subject to duty, but repairs not incidental to use abroad and alterations and additions made abroad shall be assessed with duty upon their value at the rate at which the article itself would be dutiable if imported. Accessories acquired abroad are dutiable as if separately imported.

(c) Upon the request of the owner or his agent, the collector of customs shall cause any such article to be examined before it is taken abroad and issue a certificate of registration therefor on customs Form 4455. On the return of the article, such certificate may be accepted as satisfactory identification for the purpose of admitting the article free of duty, whether the article is covered by a baggage declaration or by a regular entry, provided the article agrees with the description contained in the certificate. The State registration card for an automobile, the certificate of registration issued by the Department of Commerce for an aircraft, or the yacht license or motorboat identification certificate for a pleasure boat may be accepted under the same conditions as, and in lieu of, customs Form 4455 and be given the same force and effect.

(d) Regular entry or entry on a baggage declaration shall be required if the owner or his agent is unable to produce a proper registration card or certificate covering the article, or if duty is to be collected, or if a claim for free entry under the $200 or $300 returning resident's exemption with respect to the articles is to be made. The value of any repairs, alterations, additions, or accessories for which free entry under the $200 or $300 exemption will be claimed shall be included in a returning resident's baggage declaration, whether or not the article accompanies the resident at the time of his return to the United States.

(e) The collector shall admit, under the provisions of the convention between the United States and Mexico and regulations thereunder, without entry and without the payment of duty, stolen or embezzled motor vehicles, trailers, airplanes, or component parts of any of them, only in cases where they are accompanied by a letter from the United States Embassy in Mexico City stating that such Embassy is satisfied from information furnished it that the property, which must be adequately described in the letter for identification purposes, is stolen property being returned to the United States under the provisions of the said convention and regulations.

(f) Trucks, busses, and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall be admitted free of duty without entry on their return to the United States upon their identity being established by State registration cards. However, such vehicles taken abroad for commercial use between points in a foreign country otherwise than in the course of a regularly scheduled trip in international traffic shall be considered to have been exported and must be regularly entered on return. Trucks, busses, and taxicabs in use on regularly scheduled trips in international traffic, which regular trips may include the incidental carrying of merchandise or passengers for hire between points in a foreign country or between points in this country, shall be admitted without entry and without the payment of duty.

(g) Domestic truck, busses, and taxicabs upon which repairs have been made in a foreign country shall be subject upon reentry into the United States to a duty upon the value of the repairs at the rate at which the vehicles or other equipment would be dutiable if imported, but no such duty shall be assessed by reason of repairs required to restore any such article to the condition in which it last left the United States, by reason of "running" repairs required for the immediate safety of transportation or by reason of repairs which are incidental to the regular use of the vehicle in international traffic. For the purpose of this paragraph, trucks, busses, and taxicabs and their equipment manufactured in, or regularly imported into, the United States, and not subsequently cleared through foreign customs into another country, nor use in foreign local traffic otherwise than as an incident of the return of the equipment to the United States, shall be considered "domestic." A report of the first arrival in the United States of such trucks, busses, and taxicabs after they have been repaired in a foreign country shall be made promptly, in writing, to the United States Customs at the port of entry, such report to state the time and place of arrival and the nature and value of the repairs.

(Sec. 201 (par. 1615), 46 Stat. 674, as amended, sec. 14, 67 Stat. 516; 19 U. S. C. 1201 (par. 1615), 1322)

ARTICLES FOR INSTITUTIONS

§ 10.43 Requirements on entry.

(a) The importer of articles claimed to be exempt from duty under paragraph 1631,[39] 1773,[40] or 1817,[40a] Tariff Act of 1930, or under the provision in paragraph 1774,[40b] Tariff Act of 1930, for articles imported by order of an institution, shall file, as evidence that such articles are entitled to free entry, a declaration on customs Form 3321 of an executive officer or other authorized representative of the institution for which the articles are imported. In the case of articles claimed to be free under paragraph 1817, a declaration of a responsible officer of the importing society or institution that the substantial equivalent of the imported article is not manufactured in the United States shall also be furnished.

(b) The collector may require a copy of the charter or other evidence of the character of the institution for which the articles are imported, and may also require the production of the original of any order given by such society or institution to any importing agent or dealer for such articles.

(c) In the case of articles claimed to be free under paragraph 1720, Tariff Act of 1930, as amended,[40c] the collector may

[39] "Any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or any college, academy, school, or seminary of learning in the United States, or any State or public library, may import free of duty any book, map, music, engraving, photograph, etching, lithographic print, or chart, for its own use or for the encouragement of the fine arts, and not for sale, under such rules and regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, par. 1631 (free list); 19 U. S. C. 1201, par. 1631)

[40] "• • • regalia and gems, where specially imported in good faith for the use and by order of any society incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or for the use and by order of any college, academy, school, seminary of learning, orphan asylum, or public hospital in the United States, or any State or public library, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe; but the term 'regalia' as herein used shall be held to embrace only such insignia of rank or office or emblems as may be worn upon the person or borne in the hand during public exercises of the society or institution, and shall not include articles of furniture or fixtures, or of regular wearing apparel, nor personal property of individuals." (Tariff Act of 1930, par. 1773 (free list); 19 U. S. C. 1201, par. 1773)

[40a] "Any society or institution incorporated or established solely for educational, religious, or charitable purposes may import free of duty any textile machine or machinery, or part thereof, for its own use in the instruction of students and not for sale or for any commercial use, under such rules and regulations as the Secretary of the Treasury may prescribe: *Provided*, That free entry hereunder shall be conditioned upon the presentation to the collector of customs of an affidavit of a responsible officer of the importing society or institution that the substantial equivalent of the imported article is not manufactured in the United States." (Tariff Act of 1930, as amended, par. 1817 (free list); 19 U. S. C. 1201, par. 1817)

[40b] "Altars, pulpits, communion tables, baptismal fonts, shrines, or parts of any of the foregoing, and statuary (except casts of plaster of paris, or of compositions of paper or papier-mâché), imported in good faith for the use of, either by order of or for presentation (without charge) to, any corporation or association organized and operated exclusively for religious purposes." (Tariff Act of 1930, par. 1774 (free list); 19 U. S. C. 1201 par. 1774)

[40c] "Models of inventions and of other improvements in the arts, to be used exclusively as models, or exclusively as exhibits in exhibitions at any college, academy, school, or seminary of learning, any society or institution established for the encouragement of the arts, science, or education, or any association of such organizations." (Tariff Act of 1930, as amended, par. 1720 (free list); 19 U.S.C. 1201, par. 1720)

require a declaration as to the use to be made of the articles, and in the case of articles for use exclusively as exhibits in exhibitions, a copy of the charter or other evidence of the character of the institution at which the articles are to be exhibited.

(Secs. 201 (pars. 1631, 1720, 1773, 1774, 1817), 486, 46 Stat. 672, as amended, 725, as amended; 19 U.S.C. 1201 (pars. 1631, 1720, 1773, 1774, 1817), 1486)

§ 10.44 Declaration of dealer or agent; certificate of delivery; stipulation.

(a) When such articles are imported through a dealer, his declaration and that of the importer shall be filed on customs Form 3321.

(b) Such declarations shall be filed at the time of entry, and bonds shall not be accepted for their subsequent production. However, when it is impracticable to produce at the time of entry the declaration of the institution for which the importation is made, the importer may deposit the estimated duties and stipulate to produce such declaration within 6 months if he files a written statement at the time of entry showing why the declaration of the institution cannot be produced. (See § 25.16 (c) of this chapter). When neither the declaration nor the statement is filed at the time of entry the collector nevertheless may grant free entry to imported articles under the applicable provision of the tariff act when there are subsequently filed in connection with the entry a declaration on customs Form 3321 and the original order of the society or institution establishing the applicability of the exemption from duty, with a written statement setting forth a reasonable explanation for the failure to file the declaration or statement at the time of entry.

(c) Customs Form 3337, signed by an executive officer or other authorized representative of the institution, shall be filed within 6 months from the date of entry unless (1) the importation is consigned to the institution, (2) the receipt of the articles is acknowledged by the institution on customs Form 3321, or (3) examination of the articles on the premises of the institution is approved under § 14.2 of this chapter.

(Sec. 201 (pars. 1631, 1773, 1774, 1817), 46 Stat. 672, as amended; 19 U. S. C. 1201 (pars. 1631, 1773, 1774, 1817))

§ 10.45 Serial publications; list of publications.

One declaration may be made for books or other publications issued serially and imported in installments. A list shall be filed with the declaration on entry of the first importation of the publication, which list shall be signed by the importer immediately below the last-mentioned article in such list. Subsequent installments may be admitted free upon declaration of the importer that they are included in the list already filed.

(Sec. 485(b), 46 Stat. 724, pars. 1631, 1773, sec. 201, 46 Stat. 675, 681; 19 U.S.C. 1485 (b), 1201, pars. 1631, 1773)

§ 10.46 Articles for the United States.

Pursuant to paragraph 1628, Tariff Act of 1930,[41] books, engravings, and other articles therein enumerated, which are imported by authority or for the use of the United States or for the use of the Library of Congress, shall be admitted free of duty upon compliance with §§ 10.43–10.45, or upon the written request of the head of the bureau or executive department concerned.

(Pars. 1628, sec. 201, 46 Stat. 675, as amended; 19 U.S.C. 1201, par. 1628)

WORKS OF ART

§ 10.47 Statutory and casts of sculpture.

(a) Pursuant to paragraph 1773, Tariff Act of 1930,[42] statuary and casts of sculpture for use as models or for art educational purposes only shall be admitted free of duty if reported by the appraising officer to be statuary or casts of sculpture, and if the collector of customs is satisfied that they are actually imported for the purposes above mentioned.

(b) The importer shall file in connection with the entry a declaration of the ultimate consignee on customs Form 3307.

(Par. 1773, sec. 201, 46 Stat. 681; 19 U.S.C. 1201, par. 1773)

§ 10.48 Original paintings, engravings, drawings, sculpture, etc.

(a) Invoices covering works of art claimed to be free of duty under paragraph 1807, Tariff Act of 1930, as amended,[43] shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the appraiser is satisfied that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry:

(1) A declaration in the following form by the artist who produced the article, showing whether it is original, or, in the case of sculpture, the original work or model or one of the first ten castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, ----------, do hereby declare that I am the painter or producer of certain works of art, viz:----------
----
----
covered by the annexed invoice dated ----------; that the said paintings, pastels, mosaics, drawings and/or sketches are originals; that the said sculptures or statuary are the original works or models or one of the first ten castings, replicas, or reproductions made from the sculptor's original work or model; and that the said etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(2) A declaration of the seller or shipper giving the information specified in subparagraph (1) of this paragraph, if it be shown that it is impossible to produce the declaration of the artist.

(3) A declaration of the importer on customs Form 3307.

(c) The declaration of the artist, or the declaration of the seller or shipper in lieu thereof, may be waived upon a satisfactory showing that it is impossible to produce either, but the declaration of the importer shall be required in all cases.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the collector.

(e) In the case of articles claimed to be free under paragraph 1807(b), the collector may require proof of the character of the article, including, when necessary, certificates from curators or other recognized authorities on art, that the imported article represents some school, kind, or medium of the free fine arts.

(Sec. 201 (par. 1807), 46 Stat. 684, as amended; 19 U.S.C. 1201 (par. 1807))

§ 10.49 Articles for exhibition; requirements on entry.

(a) There shall be filed in connection with the entry of works of art and other articles claimed to be free of duty under paragraph 1809, Tariff Act of 1930, as amended,[44] a declaration by a qualified officer of the institution on customs Form 3325, and a bond on customs Form 7565. Claim for free entry under paragraph 1809 may be made for articles of the character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from customs custody.

(b) The collector may require a copy of the charter or other evidence of the character of the institution for which the articles are imported, and may also require the production of the original of any order given by such society or institution to any importing agent or dealer for such articles.

(c) Articles entered under paragraph 1809 of the tariff act may be transferred from one institution to another upon an application in writing in the case of each transfer describing the articles and stating the name of the institution to which transfer is to be made, provided the sureties to the bond assent in writing under seal or a new bond is filed. No entry or withdrawal shall be required for such a transfer.

(d) If any of the articles accorded free entry under paragraph 1809 shall be sold, offered or exposed for sale, transferred, or used in any manner contrary to the provisions of the regulations in this part, within 5 years after the date of entry under such paragraph, the amount of the duties shall be collected immediately by the collector of customs at the port of entry and deposited as duties. If the articles are exported or destroyed under customs supervision within such 5-year period, the liability under the bond shall be treated as terminated.

(Par. 1809, sec. 201, 46 Stat. 684, as amended; 19 U.S.C. 1201, par. 1809)

§ 10.50 Works of American artists.

When works of art produced by American artists residing temporarily abroad are claimed to be free of duty under paragraph 1810, Tariff Act of 1930,[45] the importer shall file a declaration of the artist which shall be on or attached to the invoice and shall state:

I, ----------, do hereby declare that I am a citizen of the United States of America, and by profession ----------; (Artist or sculptor) that my place of residence in the United States is ----------; that I departed from the United States of America on or about ----------, 19--, to take up my temporary residence at ----------; and that I have not given up, and that it is not my intention to give up, my residence in the United States, and I intend to return ultimately to the United States. I further declare that the ---------- described (Briefly identify the works of art) in the invoice herewith were produced by me during my temporary residence abroad at ----------, during the year 19--.

The declaration may be made by the artist on customs Form 3307.

(Par. 1810, sec. 201, 46 Stat. 685; 19 U. S. C. 1201, par. 1810)

§ 10.51 Articles for institutions.

When articles for institutions are claimed to be free of duty under the provisions in paragraph 1774 or 1810, Tariff Act of 1930,[46] for articles imported for presentation to institutions, there shall be filed, in connection with the entry of such articles, a declaration on customs Form 3331 showing that the articles were expressly imported for presentation to the institution named in the entry, together with letters of presentation and acceptance from the donors and donees, respectively.

(Sec. 201 (pars. 1774, 1810), 46 Stat. 682, as amended, 685; 19 U. S. C. 1201 (pars. 1774, 1810))

§ 10.52 Stained or painted glass windows for houses of worship.

(a) When stained or painted glass windows or window glass which are works of art valued at $15 or more per square foot are claimed to be free of duty under paragraph 1810, Tariff Act of 1930,[47] the importer shall file in connection with the entry a declaration on customs Form 3321, declaring that the importation is a work of art made for use in a house of worship.

(b) Customs Form 3337 shall be filed in connection with the entry unless (1) the importation is consigned to the institution, (2) the receipt of the articles is acknowledged by the institution on customs Form 3321, or (3) examination of the articles on the premises of the institution is approved under § 14.2 of this chapter.

(Par. 1810, sec. 201, 46 Stat. 685; 19 U. S. C. 1201, par. 1810)

§ 10.53 Artistic antiquities.

(a) Regardless of the value of the articles, the invoice filed in connection with the entry of artistic antiquities and other articles provided for in paragraph

[41] "Books, engravings, photographs, etchings, bound or unbound, maps and charts imported by authority or for the use of the United States or for the use of the Library of Congress; sound recordings imported by the Department of State for use in the program authorized by the United States Information and Educational Exchange Act of 1948." (Tariff Act of 1930, par. 1628, as amended (free list); 19 U.S.C. 1201, par. 1628)

[42] "Statuary and casts of sculpture for use as models or for art educational purposes only; * * *." (Tariff Act of 1930, par. 1773 (free list); 19 U.S.C. 1201, par. 1773)

[43] "(a) Original paintings in oil, mineral, water, vitreous enamel, or other colors, pastels, original mosaics, original drawings and sketches in pen, ink, pencil, or watercolors, or works of the free fine arts in any other media including applied paper and other materials, manufactured or otherwise, such as are used on collages, artists' proof etchings unbound, and engravings and woodcuts unbound, lithographs or prints made by other hand transfer processes unbound, original sculptures or statuary; but the terms 'sculpture' and 'statuary' as used in this paragraph shall be understood to include professional productions of sculptors only, whether in round or in relief, in bronze, marble, stone, terra cotta, ivory, wood, metal, or other materials, or whether cut, carved, or otherwise wrought by hand from the solid block or mass of marble, stone, alabaster, or from metal, or other material, or cast in bronze or other metal or substance, or from wax or plaster, or constructed from any material or made in any form as the professional productions of sculptors only, and the term 'original', as used in this paragraph to modify the words 'sculptures' and 'statuary', shall be understood to include the original work or model and not more than ten castings, replicas, or reproductions made from the sculptor's original work or model, with or without a change in scale and regardless of whether or not the sculptor is alive at the time the castings, replicas, or reproductions are completed. The terms 'painting', 'mosaic', 'drawing', 'work of the free fine arts', 'sketch', 'sculpture', and 'statuary' as used in this paragraph, shall not be understood to include any articles of utility or for industrial use, nor such as are made wholly or in part by stenciling or any other mechanical process; and the terms 'etchings', 'engravings', and 'woodcuts', 'lithographs', or 'prints made by other hand transfer processes', as used in this paragraph, shall be understood to include only such as are printed by hand from plates, stones, or blocks etched, drawn, or engraved with hand tools and not such as are printed from plates, stones, or blocks etched, drawn, or engraved by photochemical or other mechanical processes.

"(b) Original works of the free fine arts, not provided for in subparagraph (a), subject to such regulations as the Secretary of the Treasury may prescribe as to proof that the article imported represents some school, kind, or medium of the free fine arts. The term 'original works of the free fine arts' as used herein shall not be understood to include any article of utility or for industrial use." (Tariff Act of 1930, par. 1807, as amended (free list); 19 U.S.C. 1201, par. 1807.)

[44] "(a) Works of art, collections in illustration of the progress of the arts, sciences, agriculture, or manufactures, photographs, works in terra cotta, parian, pottery, or porcelain, antiquities and artistic copies thereof in metal or other material, imported in good faith for exhibition purposes within the territorial limits of the United States by any State or by any society or institution established for the encouragement of the arts, science, agriculture, or education, or for a municipal corporation, and all like articles imported in good faith by any society or association, or for a municipal corporation, for the purpose of erecting a public monument, and not intended for sale nor for any other purpose than herein expressed; but bond shall be given, under such rules and regulations as the Secretary of the Treasury may prescribe, for the payment of lawful duties which may accrue should any of the articles aforesaid be sold, transferred, or used contrary to this paragraph within five years after the date of entry hereunder and such articles shall be subject at any time within such five-year period to examination and inspection by the proper officers of the customs: *Provided*, That the privileges of this subparagraph (a) shall not be allowed to associations or corporations engaged in or connected with business of a private or commercial character.

"(b) In connection with the entry of works of art and other articles claimed to be free of duty under this paragraph, surety on bonds may be waived in the discretion of the Secretary of the Treasury.

"(c) Articles entered under this paragraph may be transferred, subject to such regulations as the Secretary of the Treasury may prescribe, from an organization specified in subparagraph (a) to another such organization or temporarily to a commercial gallery or other premises for exhibition and not for sale." (Tariff Act of 1930, par. 1809, as amended, (free list); 19 U.S.C. 1201, par. 1809.)

[45] "Works of art, productions of American artists residing temporarily abroad * * * but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, par. 1810 (free list); 19 U. S. C. 1201, par. 18.0)

[46] "PAR. 1774. Altars, pulpits, communion tables, baptismal fonts, shrines, mosaics, or parts of any of the foregoing, and statuary (except casts of plaster of paris, or of compositions of paper or papier-mâché), imported in good faith for the use of, either by order of or for presentation (without charge) to, any corporation or association organized and operated exclusively for religious purposes."

"PAR. 1810. * * * other works of art, including pictorial paintings on glass, imported expressly for presentation to a national institution or to any State or municipal corporation or incorporated religious society, college, or other public institution. * * * and excluding any article, in whole or in part, molded, cast, or mechanically wrought from metal within twenty years prior to importation; but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, pars. 1774, 1810 (free list); 19 U. S. C. 1201, pars. 1774, 1810)

[47] "* * * stained or painted window glass or stained or painted glass windows which are works of art when imported to be used in houses of worship valued at $15 or more per square foot, * * * but such exemption shall be subject to such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, par. 1810 (free list); U. S. C. 1201, par. 1810)

1811, Tariff Act of 1930,[48] as amended, shall contain a declaration by the actual foreign vendor if the merchandise is shipped in pursuance of a purchase or agreement to purchase, or by the foreign owner if the merchandise is shipped otherwise than in pursuance of a purchase or agreement to purchase, showing the name and address of the person from whom the articles were acquired by him, the date when so acquired, and, if possible, the place and approximate date of production. A declaration executed on the invoice by an agent competent to verify the value and the statements set forth in the invoice may be accepted as a sufficient compliance with this section. The declaration may be waived by the collector in any case in which he is satisfied that failure to produce it is not due to any lack of diligence or good faith on the part of the importer and that the information is not required for any purpose in connection with the classification and appraisement of the articles, provided the declaration of the owner in this country or of the person in this country importing otherwise than in pursuance of a purchase or agreement to purchase, required by paragraph (b) of this section, is supplemented by a statement of such owner or person, giving all the facts within his knowledge tending to show how long the articles have been in existence and where they were produced.

(b) A declaration on customs Form 3307, executed by (1) the owner in this country, (2) the person in this country importing otherwise than in pursuance of a purchase or agreement to purchase, or (3) a duly authorized agent or attorney of either of the foregoing who has knowledge of the pertinent facts shall also be filed in connection with the entry.

(c) Articles brought in as passenger's baggage and entitled to entry under the passenger's declaration and entry which are claimed to be entitled to free entry as artistic antiquities may be admitted free of duty upon the execution by the passenger of a declaration on Form 3307, provided the passenger is the owner of the articles and they are not for sale or other commercial use, and provided the collector, after examination by the appraising officer, is satisfied that the articles are artistic and of the requisite age.

(d) Artistic antiquities, if of the age prescribed by paragraph 1811, shall be admitted free of duty though repaired or renovated. If, however, an artistic antiquity has been repaired with a substantial amount of additional material, without changing the original form or shape, or enhancing its artistic quality, the original and added portions shall be appraised and reported as separate entities and the basis for such report shall be plainly indicated on the invoice by the appraiser. In such cases duty shall be assessed on the portion added. If the repairs consist of an addition to an article of an artistic or other feature which changes it substantially from the article originally produced, or if the antique portion has otherwise been so changed as to lose its identity as the article which was in existence prior to the time prescribed in paragraph 1811, the entire article shall be excluded from free entry under paragraph 1811.

(e) Furniture claimed to be free of duty under paragraph 1811, except picture frames classifiable under subparagraph (a) of that paragraph, as amended, may be entered for consumption only at the ports of Baltimore, Md., Boston, Mass., Chicago, Ill., Honolulu, Hawaii, Los Angeles, Calif., New Orleans, La., New York, N.Y., Philadelphia, Pa., San Francisco, Calif., and Seattle, Wash.[49] However, such furniture may be entered at any port for transportation in bond to one of the ports named herein, or to any authorized place of deposit outside one of those ports, for examination and release, as contemplated by section 484(f), Tariff Act of 1930, as amended, if the port of entry designated in the transportation entry is one at which furniture may be entered for consumption and there is a compliance with the procedure prescribed by § 18.11(c) of this chapter.

(f) A claim for the free entry of an article under paragraph 1811 on the basis of antiquity may be made on the entry, or filed after entry at any time prior to liquidation of the entry, provided the article has not been released from customs custody or it has been found upon examination before such release to be described in paragraph 1811.

(g) In the case of furniture previously entered at a port not designated for the entry of antique furniture, a claim for free entry under paragraph 1811 shall not be considered after the appraiser has made his report in the case of articles not imported for sale, or after the examination of the articles for the purpose of appraisement or classification has begun in the case of articles imported for sale. If such a claim is made before that time at such port, the entry shall be canceled and, if the importer does not enter the articles for exportation or for shipment in bond to a port designated for the entry of antique furniture, the articles shall be treated as unclaimed.

(h) The additional duty of 25 percent imposed by section 489, Tariff Act of 1930,[50] as amended, shall apply to any article which is imported for sale and claimed, either at the time of entry or at a later date, to be free of duty under paragraph 1811 if such article is later found to be unauthentic in respect of the antiquity claimed as a basis for such free entry, unless the claim under paragraph 1811 is withdrawn in writing before the examination of the article for the purpose of appraisement or classification has begun.

(i) The 25 percent additional duty provided for in section 489 of the tariff act shall not be assessed if the importer establishes by evidence satisfactory to the collector that the article was not imported for sale. In the case of any article imported in a passenger's baggage, the collector may accept the statement of the passenger that the article was not imported for sale if he is satisfied of the truth of such statement.

(Sec. 489, 46 Stat. 725, as amended, par. 1811, sec. 201, 46 Stat. 685; 19 U. S. C. 1489, 1201, par. 1811)

§ 10.54 Gobelin and other hand-woven tapestries.

(a) Pursuant to paragraph 1812, Tariff Act of 1930, as amended,[51] Gobelin tapestries produced in the Manufacture Nationale des Gobelins factories at Paris and Beauvais under the direction and control of the French Government, and other hand-woven tapestries, shall be accorded free entry if of a kind fit only for use as wall hangings, and valued at not less than $20 per square foot.

(b) A certificate executed by the manager or other responsible employee of the Gobelin or other factory or producer establishing the character of the article shall accompany the invoice. If the absence of such a certificate is satisfactorily explained, other evidence establishing the necessary facts may be accepted.

(Sec. 201 (par. 1812), 46 Stat. 685, as amended; 19 U.S.C. 1201 (par. 1812))

§ 10.55 Ethnographic objects.

Claim for free entry as ethnographic objects made in traditional aboriginal styles and made at least fifty years prior to their date of entry, under paragraph 1811(c), Tariff Act of 1930, as amended,[52] shall be supported by a declaration of a person having knowledge of the facts as to the character and origin of the objects, the fact of their having been produced at least fifty years prior to their date of entry, and a statement of the sources of the information upon which such declaration is based.

(Sec. 201 (par. 1811), 46 Stat. 685; 19 U.S.C. 1201 (par. 1811))

VEGETABLE OILS

§ 10.56 Vegetable oils, denaturing; release.

(a) Olive, palm-kernel, rapeseed, sunflower, and sesame oil shall be admitted free of duty under the provisions of paragraph 1732, Tariff Act of 1930,[53] if denatured abroad or under customs supervision after importation but before release from customs custody, at the request and expense of the importer, by a formula prescribed by the Bureau, or if by their method of production abroad they are rendered unfit for use as food or for any but mechanical or manufacturing purposes.

(b) Each cask or package of oil claimed to have been before importation denatured or otherwise rendered unfit for use as food or for any but mechanical or manufacturing purposes shall be sampled and tested by an appraising officer.

(c) The following formulas are prescribed:

To 100 gallons of the oil to be denatured add any of the following substances:

(1) Three gallons of rosin oil, preferably second or third runs.

(2) Three gallons of refined, destructively distilled, wood turpentine, boiling not lower than 160° C.

(3) One hundred fluid ounces of lavender oil.

(4) One-fourth gallon of pyridin.

(5) One-half gallon of creosote.

(6) Four gallons of aniline oil.

(7) Six gallons of dark-colored oleic acid.

(8) Six ounces of oleoresin capsicum.

(9) Not less than 2 gallons of pine tar.

(10) One hundred ounces of linalool.

(11) One hundred ounces of HO oil.

(12) One-third ounce of brucine alkaloid dissolved in a solution composed of two parts by volume of alcohol and four parts by volume of rosemary oil, steam-distilled pine oil, or synthetic pine oil, or other suitable essential or distilled oil.

(13) One gallon of sulphuric (66° B.) acid, and the mixture allowed to stand at least 24 hours before being released.

(14) One hundred ounces of a mixture of two parts by weight of terpineol and one part by weight of phenyl acetic aldehyde.

(15) One and one-half gallons of heavy coal-tar naphtha conforming to the following specifications:

Specific gravity at 15.5° C.: 0.915 to 0.950.
Distillation: 10 percent not lower than 160° C.; 70 percent at 199° to 201° C.; 95 percent not higher than 260° C.
Flash point: Not less than 38° C.
Free from separated moisture and dirt.

(16) One and one-half gallons of special heavy coal-tar naphtha of the following specifications:

Specific gravity at 15.5° C.: 0.880 to 0.970.
Distillation: Not over 10 percent at 160° C.; 90 percent not higher than 20 ° C.
Flash point: Not less than 38° C.
Free from separated moisture and dirt.

(17) Two gallons of special mineral denaturing oil of the following specifications:

Initial boiling point: Not lower than 205° C.
Flash point (open cup): Not lower than 75° C.
Specific gravity at 15.5° C.: Not lower than 0.819.
This special mineral denaturing oil must be easily recognizable by its pronounced and unmistakably disagreeable taste and odor when present in the vegetable oil to be denatured in the proportion of two parts of the mineral oil to 100 parts of the vegetable oil.

(18) One gallon of a petroleum oil oxidation product meeting the following specifications:

The denaturant upon distillation shall yield not less than 20 percent and not more than 60 percent, by volume, below 200° C.
Ten cubic centimeters of the denaturant with 15 cubic centimeters of Schiff-Elvove reagent (Journal of Industrial and Engineering Chemistry, June 1921, p. 543) must show decided violet color within 30 seconds after addition and agitation.
The iodine numbers (Hanns) shall be not less than 35.

(19) One hundred fluid ounces of steam-distilled pine oil or synthetic pine oil.

(20) One hundred ounces of Oil Bois de Rose Brazil.

(21) Proprietary mixtures of essential oils and synthetic perfume material approved by the Commissioner of Customs.

(d) The Bureau will from time to time prescribe additional formulas, and will consider any formula for special denaturing that may be submitted.

(e) The collector may, if he deems it advisable, require an importer requesting permission to use any authorized denaturant to submit to the appraiser an adequate sample of such denaturant, in order that the appraiser may report to the collector whether or not such denaturant is suitable for rendering the oil unfit for use as food or for any but mechanical or manufacturing purposes.

(f) No such oil shall be released free of duty until the appraiser shall have made a special report that it has been properly denatured and the owner or consignee shall have filed with the collector a declaration on customs Form 3339.

(Par. 1732, sec. 201, 46 Stat. 680; 19 U. S. C. 1201, par. 1732)

POTATOES, CORN, OR MAIZE

§ 10.57 Certified seed potatoes, and seed corn or maize.

Claim for classification as seed potatoes under paragraph 771, Tariff Act of 1930, as modified (T.D. 51802), or as seed corn or maize under paragraph 724, Tariff Act of 1930, as modified (T.D. 52739), shall be made at the time of entry. Such classification shall be allowed only if the articles are white or Irish potatoes, or maize or corn, imported in containers and if, at the time of importation, there is firmly affixed to each container an official tag supplied by the government of the country in which the contents were grown, or an agency of such government. The tag shall bear a certificate to the effect that the specified contents of the container were grown, and have been approved, especially for use as seed. The tag shall also bear a number or other symbol identifying the potatoes or corn in the container with an inspection record of the foreign government or its agency on the basis of which the certificate was issued.

BOLTING CLOTHS

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under paragraph 1626, Tariff Act of 1930,[55] the cloth shall be indelibly marked from selvage to selvage at intervals of not more than 4 inches with the words "bolting cloth expressly for milling purposes" in block letters 3 inches in height. Such cloth shall be allowed free entry only under the following conditions:

(1) Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or of dry materials mixed with water, if the water is merely a carrying medium.

(2) If an importer is a manufacturer of mills or machines for any process described above, or conducts a business wherein any act or process described above, constitutes an activity, he shall file with the collector of customs in connection with the entry a certificate that he is such a manufacturer or conducts such a business and that such bolting cloths are imported expressly for milling purposes.

(3) If bolting cloths are imported by an agent in fulfillment of an accepted order, the importer shall file with the collector of customs in connection with the entry a certificate showing the name of the actual purchaser of such bolting cloths and that such purchaser is a manufacturer or conducts a business as described, or conducts a business for the purpose of supplying such manufacturers and businesses.

---

[48] "(a) Works of art (except rugs and carpets made after the year 1700), collections in illustration of the progress of the arts, works in bronze, marble, terra cotta, parian, pottery, or porcelain, artistic antiquities, and objects of art of ornamental character or educational value which shall have been produced prior to the year 1830, subject to such regulations as to proof of antiquity as the Secretary of the Treasury may prescribe. Picture frames classifiable under this subparagraph may be entered at any port of entry.

"(b) Violins, violas, violoncellos, and double basses, of all sizes, made in the year 1800 or prior year.

"(c) Ethnographic objects made in traditional aboriginal styles and made at least fifty years prior to their date of entry, subject to such regulations as to proof of antiquity as the Secretary of the Treasury shall prescribe." (Tariff Act of 1930, par. 1811, as amended (free list); 19 U.S.C. 1201, par. 1811)

[49] "• • • Furniture described in paragraph 1811 shall enter the United States at ports which shall be designated by the Secretary of the Treasury for this purpose. • • •" (Tariff Act of 1930, sec. 489; 19 U. S. C. 1489)

[50] "• • • If any article described in paragraph 1811 and imported for sale is rejected as unauthentic in respect to the antiquity claimed as a basis for free entry, there shall be imposed, collected, and paid on such article, unless exported under customs supervision, a duty of 25 per centum of the value of such article in addition to any other duty imposed by law upon such article." (Tariff Act of 1930, sec. 489; 19 U. S. C. 1489)

"Furniture" within the meaning of section 489, Tariff Act of 1930, is defined as "movable articles of convenience or decoration designed for use in furnishing a house, apartment, place of business or of accommodation." This definition embraces most articles claimed to be free of duty as artistic antiquities. (See T. D. 44165)

[51] "Gobelin and other hand-woven tapestries fit only for use as wall hangings, and valued at not less than $20 per square foot." (Tariff Act of 1930, par. 1812, as amended, (free list); 19 U.S.C. 1201, par. 1812)

[52] "(c) Ethnographic objects made in traditional aboriginal styles and made at least fifty years prior to their date of entry, subject to such regulations as to proof of antiquity as the Secretary of the Treasury shall prescribe." (Tariff Act of 1930, as amended, par. 1811(c) (free list))

[53] "• • • olive, palm-kernel, rapeseed, sunflower, and sesame oil, rendered unfit for use as food or for any but mechanical or manufacturing purposes, by such means as shall be satisfactory to the Secretary of the Treasury and under regulations to be prescribed by him; • • •." (Tariff Act of 1930, par. 1732 (free list); 19 U. S. C. 1201, part 1732)

[55] "Bolting cloths composed of silk, imported expressly for milling purposes, and so permanently marked as not to be available for any other use." Tariff Act of 1930, par. 1626 (free list); 19 U. S. C. 1201, par. 1626)

(4) If bolting cloths are imported for stock, the importer shall file with the collector of customs in connection with the entry a certificate to the effect that he imports such bolting cloths expressly for the purpose of supplying manufacturers and businesses as described, or of supplying other firms who in turn supply manufacturers and businesses as described.

(b) Bolting cloths not marked in the manner above indicated at the time of importation may be so marked by the importers in public stores under the supervision of customs officers.

(Par. 1626, sec. 201, 46 Stat. 675; 19 U. S. C. 1201, par. 1626)

WITHDRAWAL OF SUPPLIES AND EQUIPMENT FOR VESSELS

§ 10.59 Exemption from customs duties and internal-revenue tax.[56]

(a) A vessel shall not be considered to be actually engaged in the foreign trade, or in trade between the Atlantic and Pacific ports of the United States, or between the United States and its possessions, as the case may be, for the purpose of withdrawing supplies free of duty and internal-revenue tax pursuant to section 309(a), Tariff Act of 1930, as amended, unless it is:

(1) Operating on a regular schedule in a class of trade which entitles it to the privilege;

(2) Actually transporting passengers or merchandise to or from a foreign port, a port on the opposite coast of the United States, or between a port in a possession of the United States and a port in the United States or in another of its possessions;

(3) Departing in ballast (without cargo or passengers) from one port for another, domestic or foreign, for the purpose of lading passengers or cargo at the port of destination for carriage in a class of trade specified in section 309 (a), Tariff Act of 1930, as amended, for which class of trade the vessel is suitable and substantially ready for service with necessary fittings, outfit, and equipment already installed on its departure in ballast, and from which it is not diverted prior to carriage of passengers or cargo in such trade. A written declaration of the owner or agent of the vessel may be required in connection with the withdrawal, certifying to the vessel's suitableness and substantial readiness with necessary fittings, outfit, and equipment already installed on its departure in ballast for service in a class of trade specified in section 309 and agreeing to notify the collector if it is laid up or diverted from such class of trade prior to the carriage of cargo or passengers in such trade.

(b) A withdrawal of articles may not be made under section 309, Tariff Act of 1930, as amended, for use on a trial or test trip of a vessel preparatory to its actually engaging in trades.

(c) The classes of articles which may be withdrawn as provided for by section 309, Tariff Act of 1930, as amended, and I. R. C. sec 3451 include the containers in which the articles are withdrawn and laden even though for tariff purposes the containers are classifiable separately from their contents, except unusual containers within the purview of section 504, Tariff Act of 1930.

(d) For the purpose of allowing the privileges of section 309, Tariff Act of 1930, as amended, to aircraft as provided for therein, an aircraft shall be deemed to be a vessel within the meaning of each provision of this section and of §§ 10.60–10.64 which may be applied to aircraft.

(e) Vessels of the United States documented to engage in the fisheries and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309 of the Tariff Act of 1930, as amended, if the collector is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax. Such withdrawal shall be permitted only after the approval by the collector of a special written application, in duplicate, on customs Form 5125, of the withdrawer, supported by a bond on customs Form 7603 executed by the withdrawer. Such application shall be filed with customs Form 7506 or 7512,[57] as the case may be. The original application, after approval, shall be stamped with the withdrawal number and date thereof and shall be returned to the withdrawer for use as prescribed below. Approval of each such application shall be subject to the condition that the original shall be presented thereafter by the withdrawer or the vessel's master to the collector within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the articles until the collector is satisfied that all of them have been consumed on board, or landed under customs supervision, and takes up the authorization. The approval shall be subject to the further conditions that any such withdrawn article remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the collector for the port or place of arrival shall deem necessary and that failure to comply with the conditions upon which a conditionally free withdrawal is approved shall subject the total quantity of withdrawn articles to the assessment and collection of an amount equal to the duties and taxes that would have been assessed on the entire quantity of supplies withdrawn had such supplies been regularly entered, or withdrawn, for consumption.

(Sec. 309(a), 46 Stat. 690, as amended; 19 U.S.C. 1309(a))

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on customs Form 7506. Each withdrawal shall contain the statement prescribed for withdrawals in § 8.37(b) of this chapter. Withdrawals from continuous customs custody elsewhere than in a bonded warehouse shall be made on customs Form 7512, except as provided

[56] "(a) *Exemption from duties and taxes.* Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

"(1) For supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions; or

"(2) For supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign vessels is permitted; or

"(3) For supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

* * * * *

"(c) *Articles removed in, or returned to, the United States.* Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 317 of this Act and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

"(d) *Reciprocal privileges.* The privileges granted by this section and section 317 of this Act in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 317 shall not apply thereafter in respect of aircraft registered in that foreign country." (Tariff Act of 1930, sec. 309, as amended; 19 U. S. C. 1309)

[57] Exemption from internal-revenue tax on distilled spirits, alcohol, wines, and beer removed from any internal-revenue bonded warehouse, industrial alcohol premises, bonded wine cellar, or brewery; and drawback on taxpaid distilled spirits or wines removed from an export storage room, or on taxpaid beer removed from a brewery (or place of storage elsewhere), for use as supplies on vessels under section 309, Tariff Act of 1930, as amended, are governed by regulations of the Internal Revenue Service.

for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59 (a) (3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

(b) If the withdrawal is made by other than the principal on the warehouse or rewarehouse entry, as the case may be, the assent of such principal shall be endorsed on the withdrawal, unless the principal has otherwise authorized such withdrawal in writing.

(c) A bond on customs Form 7561 or other appropriate form shall be taken when the withdrawal from warehouse is made by a person other than the principal on the warehouse or rewarehouse entry, as provided for in paragraph (b) of this section.

(d) When the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading. Three copies of the manifest on customs Form 7512, in addition to six copies of the withdrawal on customs Form 7506, shall be required. The procedure shall be the same as that prescribed in § 18.19 (b) of this chapter (the six copies of customs Form 7506 taking the place of the entry copies of customs Form 7512).

(e) No bond shall be required in the case of war vessels.

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous customs custody elsewhere than in a bonded warehouse for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed, except that the bond required shall be on customs Form 7557, 7559, or 7595. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in § 18.26 of this chapter shall be followed, except that the withdrawal when filed shall be supported by a bond on customs Form 7557, 7559, or 7595. There shall be such examination of the articles as may be necessary to satisfy the collector that they are subject to the privileges of section 309, Tariff Act of 1930, as amended, or I. R. C. section 3451, as the case may be, and that the value and quantity declared for them are correct.

(g) A withdrawal under § 10.59 (e) shall be supported by a bond on customs Form 7603 in lieu of any other bond.

(h) If a request is made for permission to transfer supplies or stores from one vessel to another which would be entitled to withdraw them free of duty and tax under section 309 or 317, Tariff Act of 1930, as amended, or section 3451 of the Internal Revenue Code, the collector in his discretion may permit the articles to be so transferred under customs supervision under a permit on customs Form 3171 in lieu of a formal withdrawal under the pertinent statute. In such a case, the pertinent statute shall be indicated by an endorsement made on the permit by the collector. If the vessel to which vessel supplies are transferred is in a class of trade in which it is not required to enter, the customs inspector supervising the transfer shall make a suitable notation of the transfer in the stores log of the vessel to which transfer is made, unless it appears that the articles were previously laden in the United States free of duty and tax for supplies or sea stores on a vessel in a class of trade in which it was not required to enter and a customs officer was not required to make a notation in a stores log of the vessel.

(Sec. 309, 46 Stat. 690, as amended; 19 U. S. C. 1309)

§ 10.61 Withdrawal permit; lading; stores log.

(a) Upon the filing of the withdrawal and the execution of the bond, when required, the collector shall issue a permit on customs Form 7506 or 7512.

(b) Upon the lading on a vessel of supplies, equipment, or repair articles withdrawn from bond for which a declaration is required under § 10.64, they shall be entered by a representative of the vessel in a special bound stores log book of the vessel in ink or indelible pencil. The stores log shall be kept on board available for customs inspection and use at any time and shall contain the following information with respect to each withdrawal: Port where laden; date of lading; withdrawal number; quantity and description. Except when the procedure prescribed by § 10.62 is followed, after the supplies have been so entered in the vessel's stores log, the customs officer who supervised the lading thereof shall place his name and title after the entry in the log.

(Sec. 309(a), 46 Stat. 690, as amended; 19 U.S.C. 1309(a))

§ 10.62 Bunker oil.

(a) When fuel oil is withdrawn under section 309, Tariff Act of 1930, as amended, or section 3451, Internal Revenue Code, for delivery by barge or lighter to the vessel on which it is to be used, sealing of the transporting vessel, the issuance of a lighterage ticket or other document to cover the transportation for delivery, and immediate customs supervision of the transfer of the oil from the delivering vessel to the vessel on which it is to be used may be dispensed with if the person making the withdrawal undertakes to file with the customs warehouse officer in charge of the bonded tank from which the oil is to be withdrawn the following:

(1) A legible receipt signed by the master or person in charge of the delivering vessel, showing—

(i) The respective quantities of (*a*) bonded fuel oil and (*b*) domestic fuel oil on the delivering vessel at the time the oil covered by the current withdrawal is laden on such vessel;

(ii) The quantity of oil laden on the delivering vessel from the bonded tank under the withdrawal;

(iii) The date the oil was laden on his vessel; and

(iv) The quantity of the oil remaining on his vessel after delivery to the vessel on which the oil is to be used.

(2) A legible copy of the receipt given to the master or person in charge of the delivering vessel by the receiving officer of the vessel on which the oil is to be used, showing—

(i) The number of the warehouse entry covering the oil;

(ii) The number of the vessel supply withdrawal covering the oil;

(iii) The number or other identification of the sales order for the oil;

(iv) The identification number of the delivering vessel;

(v) The name and location of the vessel to which the oil was delivered for use;

(vi) The quantity of oil delivered to such vessel;

(vii) The date of delivery to such vessel; and

(viii) The signature and title of the officer receiving the oil on such vessel.

(b) When the procedure prescribed in paragraph (a) of this section is followed, representatives of the Commissioner of Customs will from time to time verify various withdrawals against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of the oil.

(Sec. 309 (a), 46 Stat. 690, as amended; 19 U.S.C. 1309(a))

§ 10.63 Vessels withdrawn from trade or diverted to nonprivileged trade; landing of bonded supplies and stores.

(a) If an American-flag vessel which has taken on board supplies or stores free of duty or tax is subsequently withdrawn from trade or is diverted to a class of trade which does not entitle it to the free withdrawal privilege, the withdrawal from trade or diversion shall be reported by the parties in interest to the collector at each port where any such supplies or stores were withdrawn in order that duty and tax may be collected under the bond on any unused bonded supplies or stores remaining on board. The foregoing report shall show the kind and quantities, if any, of the in-bound supplies or stores which were consumed while the vessel was laid up and out of trade or otherwise in a status which did not entitle it to use the supplies or stores without payment of duty or tax thereon.

(b) In any case in which it is desired to land in the United States articles covered by a conditionally free withdrawal, the master shall make application for a permit to land such articles under customs supervision. Except when transfer to another vessel entitled to the free withdrawal privilege is permitted under the original vessel supply withdrawal, the articles landed shall be treated as imported merchandise under section 309 (c), Tariff Act of 1930. Such unloading into customs custody shall be regarded as satisfying any bond obligation assumed in connection with the with-

drawal of such articles as vessel supplies or stores.

(Sec. 309(a), 46 Stat. 690, as amended; 19 U.S.C. 1309(a))

§ 10.64 Crediting or cancellation of bonds.

(a) The warehouse or rewarehouse entry bond or the bond provided for in § 10.60 (c) or (f) covering articles withdrawn for use as supplies, equipment, or repair articles of a vessel may be credited or canceled in respect of such articles if a proper declaration as prescribed below is filed with the collector at the port of withdrawal within 6 months after the date of withdrawal. Such declaration shall not be required as a condition for crediting or canceling the bond as to articles which after lading are treated as imported under section 309 (c), Tariff Act of 1930, as amended, or which are used on a vessel while it is engaged in a class of trade in which it is required to enter, unless it proceeds in ballast from the port where the articles are laden to another port to lade passengers or cargo. The 6 months' period for the production of the declaration when required may be extended as provided for in § 25.18 of this chapter. The declaration shall be executed by one of the following who has knowledge of the facts:

(1) The operations manager or port captain for the vessel on which the articles are used but not a representative of the supplier.

(2) The master or other officer of the vessel on which the articles are used.

In the case of an American-flag vessel, the declaration shall be in substantially the following form:

I, _____,
Operations Manager, Port Captain, Master, or other officer
of the vessel _____, declare that I have knowledge of the facts set forth herein, and that, during the period any of the articles covered by withdrawal No. _____, filed at _____
(Name of port)
(as listed in the vessel's stores log of supplies withdrawn from bond) remained on board unused, the said vessel was engaged in the business or trade checked below:

1. Fisheries.
2. Whaling.
3. Trade between Atlantic and Pacific ports of the United States.
4. Trade between the United States and any of its possessions.
5. Foreign trade.

[1] I further declare that the vessel proceeded in ballast to the port of _____
Name of port
to lade cargo or passengers, that the vessel was suitable for service in the class of trade checked above with fittings, outfit, and equipment for such trade already installed when the vessel so departed in ballast, and that upon arrival it proceeded to engage in the carriage of cargo or passengers in such trade, except as stated below:

_____
(If no exception, note "None")

_____
(Name and title)

[1] This statement to be included if the articles were laden on a vessel which proceeded in ballast from the port of lading to another port.

In the case of a foreign vessel, the declaration shall be in substantially the following form:

I, _____
(Operations manager, port captain, master, or other officer)
of the vessel _____, declare that I have knowledge of the facts set forth herein, and that upon the lading of the articles covered by withdrawal No. _____, filed at _____, (as listed
(Name of port)
in the vessel's stores log of supplies, equipment, or repair articles withdrawn from bond) the vessel then proceeded in ballast to lade cargo or passengers; that the vessel was suitable for service in the class of trade checked below with fittings, outfit, and equipment for such trade already installed when the vessel so departed in ballast; and that upon arrival it proceeded to engage in the carriage of cargo or passengers in such trade, except as stated below:

_____
(If no exception, note "None")

1. Foreign trade.
2. Fisheries.
3. Whaling.
4. Trade between the united States and any of its possessions when such trade is not prohibited by coastwise laws.

_____
(Name and title)

(b) A declaration as to the intended business or trade of a vessel may, in the discretion of the collector, be accepted in lieu of a declaration prescribed in paragraph (a) of this section when the amount of duty or tax, or both, involved in a single lading is less than $100.

(Sec. 309, 46 Stat. 690, as amended; 19 U. S. C. 1309)

§ 10.65 Tobacco products.

(a) Imported manufactured tobacco, cigars, and cigarettes in bonded warehouse or otherwise in customs custody, and such articles manufactured with the use of imported materials in a bonded manufacturing warehouse of class 6, may be withdrawn under section 317, Tariff Act of 1930, as amended,[59] for consumption beginning beyond the 3-mile limit or international boundary, as the case may be, (1) on vessels actually engaged in the foreign, intercoastal, or noncontiguous territory trade within the purview of § 10.59(a); (2) on vessels departing from the port where the withdrawal is made directly for a foreign port, a port on the opposite coast, or a port in one of the possessions of the United States; or (3) on vessels of war or other governmental activity.

(b) The privilege shall not be granted to vessels stationed in American waters for an indefinite period without sailing schedules.

(c) With the following additions and exceptions, the same procedure shall be followed as in the case of withdrawals under section 309 (a), Tariff Act of 1930, as amended.

(1) No bond shall be required in the case of vessels operated by the United States Government.

(2) When a shipping case containing tobacco products is made up of a number of units, each in a separate package, such units may be withdrawn separately, provided each unit is marked and numbered for identification and contains not less than 250 cigars or 1,000 cigarettes, or 5 pounds of manufactured tobacco. In the case of imported tobacco products so packed, only one unit from each shipping case shall be opened for examination, unless the appraiser shall deem it necessary for the protection of the revenue to examine a greater quantity.[60]

(3) When all the units in such shipping case are not to be withdrawn at the same time or for use on the same vessel, a blanket withdrawal may be filed for the entire case in lieu of a separate withdrawal for each unit. In such event, the withdrawal shall be retained by the customs warehouse officer until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time during which the merchandise remains in bonded warehouse does not exceed 3 years. The bond on customs Form 7561 or other appropriate form, when required, shall be filed at the time of or prior to the removal of any of the merchandise from the warehouse for delivery to the vessel on which it is to be used.

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and shall be inventoried at least once each month. If, at the time of any such inventory, any merchandise is missing and not properly accounted for, duties shall be paid thereon before any further withdrawals are permitted.

(5) The declaration of use, when required, shall include a statement that consumption of the articles covered by the withdrawal did not begin until the withdrawing vessel or aircraft had proceeded beyond the 3-mile limit or the international boundary.

(Sec. 317, 46 Stat. 696, as amended; 19 U. S. C. 1317)

ARTICLES EXPORTED FOR EXHIBITION, ETC.

§ 10.66 Articles exported for temporary exhibition and returned; procedure on entry.

(a) In connection with the entry of articles, including livestock or other animals, exported for temporary exhibition and returned and claimed to be exempt from duty under 19 U.S.C. 194 [61] or 19 U.S.C. 195,[62] there shall be filed:

(1) A certificate of exportation, customs Form 4467;

(2) A declaration by the foreign shipper, irrespective of the value of the shipment, stating:

I, _____, do hereby declare that the merchandise herein described was imported from the United States, and that it was sent to _____ for temporary use at the Exhibition entitled _____, held at _____ on _____, 19__.

_____
(Date and place of signing)

_____
(Signature of exporter or authorized agent)

(3) A declaration of the importer on customs Form 3329 for articles of either domestic or foreign origin; and

(4) In the case of animals of foreign origin taken aboard for exhibition in connection with a circus or menagerie, the inventory required by 19 U. S. C. 195.

(b) If it is shown to be impracticable to produce the certificate of exportation required under paragraph (a) (1) of this section, the collector may accept other satisfactory evidence of exportation, or may take a bond to secure the production of such certificate or other evidence. A bond shall also be taken to secure the production of the foreign shipper's declaration required by paragraph (a) (2) of this section if it is not filed at the time of entry.

(c) If, prior to the exportation of articles claimed to be exempt from duty under 19 U. S. C. 194 or 19 U. S. C. 195, an application on customs Form 4455 (accompanied by an appropriate inventory, when required by law or by the collector or appraiser) was filed with a declaration thereon that any right to drawback of customs duties with respect to that shipment was waived, and that any internal-revenue tax due has been paid and no refund thereof will be sought, and the merchandise was identified, registered, and exported in accordance with the regulations set forth in § 10.8 (d), (f), (g), and (h) governing the exportation of articles sent abroad for repairs, such articles may be returned free of duty without formal entry, without regard to the requirements of paragraphs (a) and (b) of this section, upon the filing of said duplicate customs Form 4455 (with accompanying inventory, if one was required), and a declaration of the importer on customs Form 3329.

(29 Stat. 122, 30 Stat. 1372; 19 U.S.C. 194, 195)

§ 10.67 Articles exported for scientific or educational purposes and returned; precedure on entry.

(a) In connection with each entry of articles exported for scientific or educational purposes and returned under paragraph 1815, Tariff Act of 1930, as amended,[63] the following shall be required, irrespective of the value of the shipment:

(1) A certificate of exportation, customs Form 4467;

(2) A declaration by the foreign shipper in the same form as that prescribed in § 10.66 (a) (2) but stating that such articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

(3) A declaration of the ultimate consignee in substantially the following form:

District No. ____, Port of _____,
Collector's Office, _____, 19____.

I, _____, declare that the several articles described in the annexed entry are, to the best of my knowledge and belief, the identical articles exported from the United States on the _____ day of _____, 19____, by _____
(Actual shipper)
address _____, for the account of _____, address _____; that they are returned to _____, address _____, for the account of _____, address _____; that the said articles were exported solely for temporary scientific or educational purposes and for no other use abroad than for exhibition, examination, or experimentation; that they are being returned without having been changed in condition in any manner, except by reason of their bona fide use as follows:

_____
(Describe change in condition)

_____

_____
(Ultimate consignee)

(b) If it is shown to be impracticable to produce the certificate of exportation required by paragraph (a) (1) of this section, the collector may accept other satisfactory evidence of exportation. The collector may take a bond to secure the subsequent production of any of the evidence or documents required by paragraph (a) of this section which are not available at the time of entry.

(c) If, prior to the exportation of articles claimed to be exempt from duty under paragraph 1815, Tariff Act of 1930, as amended, an application on customs Form 4455 (accompanied by an appropriate inventory when, in the discretion of the collector or appraiser, such inventory is deemed necessary) was filed and the merchandise was identified, registered, and exported in accordance with the regulations set forth in § 10.8 (d), (f), (g), and (h) governing the exportation of articles sent abroad for repairs, such articles may be returned for the account of the exporter free of duty without formal entry, without regard to the requirements of paragraphs (a) and (b) of this section, upon the filing of the duplicate customs Form 4455 (with accompanying inventory, if one was required), and a declaration of the ultimate consignee in substantially the form set forth in paragraph (a) (3) of this section.

(Par. 1815, sec. 201, 46 Stat. 672, as amended; 19 U.S.C. 1201, par. 1815)

THEATRICAL EFFECTS, MOTION-PICTURE FILMS, AND COMMERCIAL TRAVELERS' SAMPLES

§ 10.68 Procedure.

(a) Theatrical scenery, properties, and effects, motion-picture films, and commercial travelers' samples, of domestic or foreign origin, taken abroad may be returned without formal entry: *Provided*, That prior to exportation of such articles an application on customs Form 4455 was filed and the merchandise was identified as set forth in § 10.8, governing the exportation of articles sent abroad for repairs. When articles other than those exported by mail or parcel post are examined and registered at one port and exported through another port, they shall be forwarded to the port of exportation under a transportation and exportation entry, as prescribed in § 10.38(d). In the case of commercial travelers' samples taken abroad for temporary use, collectors, in their discretion, may waive examination at the time of exportation.

(b) When any such articles are to be returned to the United States from a contiguous foreign country in which a United States customs officer is stationed, the articles may be presented to such officer with the duplicate copy of the application for examination and comparison with the descriptive list. Upon completion of such examination, the packages containing the articles shall be corded and sealed or forwarded in cars sealed by customs officers and shall be manifested in the same manner as personal baggage. Articles so treated shall be released upon arrival in the United

[59] "(a) The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal-revenue laws of the United States, as defined by section 3448 of the Revised Statutes, shall be deemed exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such articles without payment of duty or internal-revenue tax.

"(b) The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of any vessel or aircraft described in subdivision (2) or (3) of section 309 (a) of this Act, or for use as ground equipment for any such aircraft, shall be deemed an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax. With respect to merchandise for use as ground equipment, such shipment or delivery shall not be deemed an exportation within the meaning of the internal-revenue laws relating to taxes other than those imposed upon or by reason of importation." (Tariff Act of 1930, sec. 317, as amended; 19 U. S. C. 1317)

"The internal revenue laws imposing taxes on tobacco, snuff, cigars, or cigarettes shall be held to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same be within a collection district or not." (26 U. S. C. 2197 (a))

[60] Imported tobacco products on which the duty or internal-revenue tax has been paid may not be withdrawn under section 317, Tariff Act of 1930, as amended, with a drawback of such duty or internal-revenue tax.

[61] "Whenever any article or articles or livestock shall be sent out of the United States for temporary use or exhibition at any public exposition, fair, or conference, held in a foreign country, such articles shall be entitled to be returned to the United States, under such regulations as may be prescribed by the Secretary of the Treasury, without the payment of customs duty, whether they shall be of domestic or of foreign production: *Provided*, That the articles of foreign production have once paid duty in the United States and no drawback has been allowed thereon, and if any domestic articles are subject to internal-revenue tax, such tax shall be proved to have been paid before exportation and not refunded." (19 U. S. C. 194)

[62] "The privilege of free entry conferred by section 194 of this title shall apply to wild and other animals of foreign origin taken abroad temporarily for exhibition in connection with any circus or menagerie, subject, however, to the conditions and limitations prescribed in said section. The provision of this section shall apply only in such cases as those of foreign-born animals taken abroad, and inventories of which are filed prior to their leaving the country with the collector of customs at the port of their departure." (30 Stat. 1372; 19 U. S. C. 195)

[63] "Articles, when returned after having been loaned and exported for use temporarily abroad solely for exhibition, examination, or experimentation, for scientific or educational purposes, if imported by or for the account of the person who exported them from the United States, and not for sale, subject to such regulations as the Secretary of the Treasury shall prescribe." (Tariff Act of 1930 par. 1815 (free list), as amended; 19 U. S. C. 1201, par. 1815)

States and removal of the seals by customs officers.

(c) When commercial travelers' samples consisting of raw cotton are taken to and returned from Canada, the application on customs Form 4455 shall be executed in triplicate, two copies thereof to be returned to the traveler for surrender to the customs officer on the return of the samples from Canada.

§ 10.69 Samples to Great Britain and Ireland under reciprocal agreement.

Descriptive lists of samples taken to Great Britain and Ireland by commercial travelers of the United States under the joint declarations of December 3 and 8, 1910 (State Department treaty series 552), shall be required in triplicate, verified by the affidavit of the commercial traveler before a customs officer, and shall show that the samples are for use as models or patterns for the purpose of obtaining orders and not for sale and that the lists contain a full description of the articles. One copy shall be retained and the others shall be delivered to the commercial traveler—one for the identification of the samples on their return to the United States and one for the use of the foreign customs authorities. The latter copy must have been attested by a consular officer of the country concerned in the United States.

ANIMALS AND BIRDS

CROSS REFERENCE: For regulations with respect to recognition of breeds and purebred animals see 9 CFR Part 151.

§ 10.70 Purebred animals for breeding purposes; declaration; certificate.

(a) There shall be filed in connection with the entry of purebred animals for breeding purposes under paragraph 1606, Tariff Act of 1930,[64] a declaration on customs Form 3327 showing that the importer is a citizen of the United States and that the animals are imported specially for breeding purposes.[65]

(b) No claim for free entry shall be allowed in liquidation of the entry until the collector of customs has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed. Importers are required by regulations of the Department of Agriculture to make application for a certificate of pure breeding directly to the Animal Inspection and Quarantine Division of Agricultural Research Service of that Department on A.H. or I&Q Form 105, accompanied by an affidavit on A.H. or I&Q Form 283. The regulations of the Department of Agriculture prescribing the requirements for the issuance of certificates of pure breeding provide that all animals imported under such regulations must be accompanied to the United States customs port of first arrival by certificates of pedigree and transfers of ownership in order that identification may be accomplished, and that, if such animals are moved from such port prior to the presentation of such certificates and transfers, such action shall constitute a waiver of any further claim to certification under such regulations.

(c) The regulations of the Department of Agriculture prescribing the requirements for the issuance of certificates of pure breeding covering animals entered under paragraph 1606 require an examination for the purpose of determining identity by a Federal inspector at the port of arrival of the animals. In the cases of cats and dogs arriving at Canadian border ports, customs officers and employees are hereby authorized and directed to make the examination required by such regulations of the Department of Agriculture. Customs officers and employees are also authorized and directed to make such examinations at the ports of New York and Boston, provided the dog or cat is brought into the United States by a passenger. At all airports, customs officers shall make the examination of dogs and cats, whether or not accompanied by the owners, if there is no inspector of the Department of Agriculture stationed there or on duty at the time of arrival.

(Secs. 201 (par. 1606), 486, 46 Stat. 672, as amended, 725, as amended; 19 U. S. C. 1201 (par. 1606), 1486)

§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.

(a) When the pedigree certificate and evidence of transfer of ownership have been presented in accordance with the regulations of the Department of Agriculture mentioned in § 10.70(b), the animal may be released from customs custody upon the furnishing by the importer of a bond on customs Form 7551 or 7553 for the production within 6 months of the declaration required by § 10.70(a) (if such declaration cannot be filed at the time of entry) and a certificate of pure breeding. (See § 25.16(c) of this chapter.)

(b) Such bond shall be canceled only upon the production of the required evidence or on payment of duties.

(c) In cases where the pedigree certificate and evidence of transfer of ownership have been presented in accordance with the regulations of the Department of Agriculture, the importer, if he so elects, may, in lieu of giving a bond, deposit estimated duties and file a stipulation with the collector within 10 days after the date of entry to produce the declaration and certificate of pure breeding within 6 months from the date of entry, whereupon the liquidation of the entry shall be suspended. (See § 25.16 (c) of this chapter.)

(d) If the pedigree certificate and evidence of transfer of ownership were not presented in accordance with such regulations of the Department of Agriculture, a deposit of estimated duties, in addition to the regular entry bond, shall be required.

(Secs. 201 (par. 1606), 486, 46 Stat. 672, as amended, 725, as amended; 19 U. S. C. 1201 (par. 1606), 1486)

§ 10.72 Horses and mules for immediate slaughter.

Horses or mules claimed to be entitled to free entry under paragraph 1695, Tariff Act of 1930,[66] shall be admitted free of duty upon the submission of a declaration in connection with the entry stating that the animals are being imported solely for slaughter, provided the collector is satisfied from an examination of the animals and such other investigation as he deems necessary that no other use is intended.

(Par. 1695, sec. 201, 46 Stat. 678; 19 U.S.C. 1201, par. 1695)

§ 10.73 Cows for dairy purposes.

Claim for the reduced rate of duty on cows for dairy purposes under paragraph 701, Tariff Act of 1930, as modified pursuant to the General Agreement on Tariffs and Trade,[67] shall be made at the time of entry. There shall be filed in connection with the entry a certificate of the ultimate consignee that the animals were imported in good faith for dairy purposes and that they have actually been delivered to a dairy, farm, or other place suitable for dairy operations, the address of which shall be stated. If the ultimate consignee is not the importer of record, the latter also shall file a certificate executed by himself that the animals are being imported in good faith for dairy purposes.

Tariff Act of 1930, paragraph	Description of products	Rate of duty
701	Cattle weighing less than 200 pounds each or 700 pounds or more each: *Provided*, That not more than 200,000 head of cattle weighing less than 200 pounds each entered in the 12-month period beginning Apr. 1 in any year, and not more than 400,000 head of cattle weighing 700 pounds or more each (other than cows imported specially for dairy purposes) entered in any such period, but not more than 120,000 head of such cattle weighing 700 pounds or more each entered in any 3-month period beginning Apr. 1, July 1, Oct. 1, or Jan. 1 within any such 12-month period, shall be dutiable at 1½ cents per pound; and any of the foregoing cattle not subject to that rate of duty shall be dutiable at (Second proviso obsolete.)	1½¢ per lb 2½¢ per lb.

§ 10.74 Animals straying or driven across boundary for pasturage; offspring.

(a) When domestic animals for which free entry is to be claimed under paragraph 1606 (c), Tariff Act of 1930,[68] are driven across the boundary for pasturage purposes, the owner shall file with the collector of customs a descriptive list stating the number of animals, their sex, age, and marks or brands, together with a written statement that the animals therein described are being taken abroad for temporary pasturage purposes only.

(b) Upon the return of such animals within 8 months, entry shall be required and there shall be filed in connection therewith a declaration in the following form:

I, _____, do solemnly declare that I am a resident of _____; that the animals now being returned to the United States are _____ (Number) of the identical animals described in the list filed with the collector of customs at the port of _____ on the _____ day of _____, 19____; and that _____ (Number) of their offspring accompany said animals.

(c) Animals which have strayed across the boundary line may be returned under the above-mentioned provision of law, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required: *Provided*, That the owner of any such animal shall report its return to the nearest customs officer and hold it for such inspection and treatment as may be deemed necessary by a representative of the Agricultural Research Service of the Department of Agriculture and any such animal found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to section 545, Title 18, United States Code.

(Par. 1606 (c), sec. 201, 46 Stat. 673; 19 U.S.C. 1201, par. 1606(c))

§ 10.75 Wild animals and birds; zoological collections.

When wild animals or birds are claimed to be free of duty under paragraph 1607(b), Tariff Act of 1930,[69] there shall be filed in connection with the entry a declaration of the ultimate consignee on customs Form 3321, showing that the animals or birds were specially imported pursuant to negotiations conducted prior to importation for the delivery of animals or birds of a named species meeting agreed specifications of reasonable particularity and that they are intended at the time of importation for public exhibition in a collection maintained for scientific or educational purposes and not for sale or for use in connection with any enterprise conducted for profit. The fact that an animal or bird may have been sent on approval shall not preclude free entry under paragraph 1607 (b) when it is actually accepted as a part of the zoological collection and so exhibited.

(Par. 1607, sec. 201, 46 Stat. 673, as amended; 19 U.S.C. 1201, par. 1607)

§ 10.76 Game animals and birds.

(a) The following classes of live game animals and birds may be admitted free of duty for stocking purposes under the provisions of paragraph 1682, Tariff Act of 1930,[70] without reference to the Bureau of Customs, if the requirements of the Fish and Wildlife Service, Department of the Interior, have been complied with.

ANIMALS

1. Cervidae, commonly known as deer and elk.
2. Leporidae, commonly known as rabbits.
3. Sciuridae, commonly known as squirrels.

BIRDS

1. Anatidae, commonly known as ducks and geese.
2. Gallinae, commonly known as turkeys, grouse, pheasants, partridges, and quail.
3. Otididae, commonly known as bustards.
4. Tinamidae, commonly known as tinamous.

(b) Application for the free entry of other live animals or birds under paragraph 1682 shall be referred to the Bureau of Customs for consideration. Animals imported for fur-farming purposes shall not be admitted free of duty under that paragraph.

(c) There shall be filed in connection with the entry a declaration by the importer or his agent on customs Form 3313. If the declaration is signed by an officer of the Federal Government or a State government, or by a person who shall present to the collector an order for the shipment given him by the Federal or State government, a statement as to the place of delivery shall not be required.

(d) Game animals and birds killed in foreign countries by residents of the United States, if not imported for sale or other commercial purposes, may be admitted free of duty without entry, if the person has no merchandise requiring a written declaration upon the filing of a declaration on customs Form 3315. No bond or cash deposit to insure the destruction or exportation of the plumage of such birds shall be required.

(Par. 1682, sec. 201, 46 Stat. 678; 19 U. S. C. 1201, par. 1682)

§ 10.77 Skins bearing wool or hair as fur skins.

(a) The following types of skins bearing wool or hair of a kind described in paragraph 1101 or 1102, Tariff Act of 1930, as amended, may be classified as fur skins under paragraph 1681, Tariff Act of 1930,[71] without special supporting evidence:

LAMBSKIN

Astrakhan.	Chinese.
Bagdad.	Indian.
Bessarabian.	Karakul.
Bombay.	Krimmer.
Broadtail.	Moire.
Caracul.	Mosul.
Chekiang.	Multan.
Persian.	Southwest African.
Salzfells.	Tsining.
Shiraz.	

OTHER SKINS

Guanaquito.

(b) If any skins, other than those named in paragraph (a) of this section, bearing wool or hair of a kind described in paragraph 1101 or 1102, Tariff Act of 1930, as amended, are claimed to be more specifically provided for as fur skins in paragraph 1681 of that act, the importer shall file in connection with the entry a declaration that the skins are to be used for no other purpose than as fur skins, and free entry shall be dependent upon a report or the appraiser that no substantial part of the wool or hair on the skins can economically be removed otherwise than as an unsought residue and used or disposed of in competition with pulled or clipped wool, and that they are suitable for use, without removing the wool or hair from the skins, in the manufacture or trimming of clothing, driving gloves,

---

[64] "(a) Any animal imported by a citizen of the United States specially for breeding purposes shall be admitted free, whether intended to be used by the importer himself or for sale for such purposes, except black or silver foxes: *Provided*, That no such animal shall be admitted free unless pure bred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed: *Provided further*, That the certificate of such record and pedigree of such animal shall be produced and submitted to the Department of Agriculture, duly authenticated by the proper custodian of such book of record, together with an affidavit of the owner, agent, or importer that the animal imported is the identical animal described in said certificate of record and pedigree. The Secretary of Agriculture may prescribe such regulations as may be required for determining the purity of breeding and the identity of such animal: *And provided further*, That the collectors of customs shall require a certificate from the Department of Agriculture stating that such animal is pure bred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed.

"(b) The Secretary of the Treasury may prescribe such additional regulations as may be required for the strict enforcement of this provision." (Tariff Act of 1930, par. 1606 (a), (b) (free list); 19 U. S. C. 1201, par. 1606 (a), (b))

[65] The fact that such animals may be used incidentally for driving or working purposes will not exclude them from free entry if they are imported primarily for breeding purposes.

[66] "Horses or mules imported for immediate slaughter." (Tariff Act of 1930, par. 1695 (free list); 19 U. S. C. 1201, par. 1695)

[67] Item 701, General Agreement on Tariffs and Trade (T. D. 51802):

Tariff Act of 1930, paragraph	Description of products	Rate of duty
701	Cattle weighing less than 200 pounds each or 700 pounds or more each: *Provided*, That not more than 200,000 head of cattle weighing less than 200 pounds each entered in the 12-month period beginning Apr. 1 in any year, and not more than 400,000 head of cattle weighing 700 pounds or more each (other than cows imported specially for dairy purposes) entered in any such period, but not more than 120,000 head of such cattle weighing 700 pounds or more each entered in any 3-month period beginning Apr. 1, July 1, Oct. 1, or Jan. 1 within any such 12-month period, shall be dutiable at 1½ cents per pound; and any of the foregoing cattle not subject to that rate of duty shall be dutiable at (Second proviso obsolete.)	1½¢ per lb 2½¢ per lb.

[68] "* * * Horses, mules, asses, cattle, sheep, and other domestic animals straying across the boundary line into any foreign country or driven across such boundary line by the owner for temporary pasturage purposes only, together with their offspring, shall be dutiable unless brought back to the United States within eight months, in which case they shall be free of duty, under regulations to be prescribed by the Secretary of the Treasury: * * *." (Tariff Act of 1930, par. 1606 (c) (free list); 19 U. S. C. 1201, par. 1606)

[69] "(b) Wild animals and birds intended for exhibition in zoological collections for scientific or educational purposes, and not for sale or profit." (Tariff Act of 1930, par. 1607 (b) (free list); 19 U. S. C. 1201, par. 1607 (b))

[70] "Live game animals and birds, imported for stocking purposes, and game animals and birds killed in foreign countries by residents of the United States and imported by them for noncommercial purposes; under such regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe." (Tariff Act of 1930, par. 1682 (free list); 19 U. S. C. 1201)

[71] "Furs and fur skins, not specially provided for, undressed." (Tariff Act of 1930, par. 1681 (free list), 19 U. S. C. 1201)

or other articles in which the imported skins will be used as furs.

(Par. 1681, sec. 201, 46 Stat. 677; 19 U. S. C. 1201, par. 1681)

PRODUCTS OF AMERICAN FISHERIES

§ 10.78 Entry.

(a) Except as prescribed in § 10.79(d), no entry shall be required for fish or other marine products taken on the high seas by vessels of the United States or by residents of the United States in undocumented vessels owned in the United States when such fish or other products are brought into port by the taking vessel.

(b) An American fishery, within the meaning of paragraph 1730 (a), Tariff Act of 1930, is defined as a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof.

(c) The employment of citizens of a foreign country by an American fishery is permissible but the purchase by an American fishery of fish or other marine products taken by citizens of a foreign country on the high seas or in foreign waters will subject such fish or other marine products to treatment as foreign merchandise.

(d) Products of an American fishery shall be entitled to free entry although prepared, preserved, or otherwise changed in condition, provided the work is done at sea by the master or crew of the fishery or by persons employed by and under the supervision of the master or owner of the fishery. Fish (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish) the product of an American fishery landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen, and with fins removed, shall be entitled to free entry, whether or not such processing is done by the American fishery. Products of an American fishery prepared or preserved on the treaty coasts of Newfoundland, Magdalen Islands, or Labrador, as such coasts are defined in the Convention of 1818 between the United States and Great Britain, shall be entitled to free entry only if the preparation or preservation is done by an American fishery.[72]

(Par. 1730 (a), sec. 201, 46 Stat. 679; 19 U.S.C. 1201, par. 1730(a))

§ 10.79 Proof; import tax.

(a) When products of American fisheries claimed to be free of duty under paragraph 1730(a), Tariff Act of 1930, are imported by the taking vessel, or are shipped to the United States by the master, owner, or agent of the taking vessel otherwise than in the taking vessel, a declaration, customs Form 3295, of the master of the taking vessel, verified by at least two members of the crew, shall be required in connection with the entry. Additional proof may be required if doubt exists. If any of the products have been landed or transshipped in a foreign country, there shall also be filed in connection with the entry an additional statement as to what, if any, change has been made in the condition of the fish or other marine products since their taking and where such change occurred. If the products are fresh or frozen fillets, fresh or frozen fish steaks, or fresh or frozen slices of fish substantially free of bone (including any of the foregoing divided into sections) which have been processed in a foreign country or its territorial waters, a further statement shall be made in connection with the entry as to the residence status of all persons whose labor was used in the processing of such products.

(b) If fish or other marine products are shipped to the United States by one in a foreign country who has purchased them from the master, owner, or agent of the taking vessel, the declaration on customs Form 3295 shall be executed by the master and two members of the crew of the American fishing vessel for the entire quantity discharged at the foreign port and shall be filed in connection with the entry together with a declaration of the purchaser or his agent. Such declaration of the purchaser or agent shall be attached to the invoice and be in the following form:

I, _____, agent of the _____ _____ at the port of _____, do hereby declare that _____ did receive from the following-named American fishing vessels _____ pounds of _____ and _____ pounds of _____ and that _____ pounds thereof in _____ cases went forward in _____ consigned to _____ (Carrier) at _____, and that the above products have not been changed in condition after taking except as shown below:

Vessel and registry	Article	Pounds received	Date received	Pounds shipped	Number of cases	Nature of change in condition, place where so changed, residence of laborers. (See Note.)

Dated _____

_____ (Agent for)

NOTE: Insert in this column the name of country or, if the processing was done on board a vessel outside the territorial waters of any country, the name and registry of the vessel and its location at the time the processing occurred. If fish fillets, steaks, or slices are involved, insert also a statement as to the residence of all laborers engaged in the processing.

(c) If whale oil (except sperm oil), fish oil (except cod oil, cod-liver oil, and halibut-liver oil), or marine-animal oil of any kind, whether or not such whale, fish, or marine-animal oil be refined, sulphonated, sulphated, hydrogenated, or otherwise processed, or fatty acids derived from any of the foregoing, entered for consumption or withdrawn from warehouse for consumption is claimed to be free under I.R.C. section 4562 of the import tax provided for in I.R.C. section 4561[73] as a product of American fisheries, there shall be filed in connection with the entry, in addition to the documents required by paragraph (a) of this section a declaration of the master of the

[72] "All products of American fisheries (including fish, shellfish, and other marine animals, and spermaceti, whale, fish, and other marine animal oils), which have not been landed in a foreign country or which, if so landed, have been landed solely for transshipment without change in condition: *Provided*, That fish the product of American fisheries (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish) landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen, and with fins removed, shall be exempt from duty: *Provided further*, That products of American fisheries, prepared or preserved by an American fishery, on the treaty coasts of Newfoundland, Magdalen Islands, and Labrador, as such coasts are defined in the Convention of 1818 between the United States and Great Britain, shall be exempt from duty." (Tariff Act of 1930, par. 1730 (a) (free list); 19 U. S. C. 1201, par. 1730 (a))

"Wherever, in the statutes of the United States or in the rulings, regulations, or interpretations of various administrative bureaus and agencies of the United States there appears or may appear the term 'products of American fisheries' said term shall not include fresh or frozen fish fillets, fresh or frozen fish steaks, or fresh or frozen slices of fish substantially free of bone (including any of the foregoing divided into sections), produced in a foreign country or its territorial waters, in whole or in part with the use of the labor of persons who are not residents of the United States." (1 U. S. C. 6)

[73] "In addition to any other tax or duty imposed by law, there is hereby imposed upon the following articles imported into the United States, unless treaty provisions of the United States otherwise provide, a tax of 3 cents per pound, to be paid by the importer:

Whale oil (except sperm oil).

Fish oil (except cod oil, cod-liver oil, and halibut liver oil).

Marine animal oil.

Tallow.

Inedible animal oils.

Inedible animal fats.

Inedible animal greases.

Fatty acids derived from any of the foregoing, and salts of any of the foregoing; all the foregoing, whether or not refined, sulphonated, sulphated, hydrogenated, or otherwise processed."

(Sec. 4561, I.R.C.)

"Whale oil (except sperm oil), fish oil, or marine animal oil of any kind (whether or not refined, sulphonated, sulphated, hydrogenated or otherwise processed), or fatty acids derived therefrom, shall be admitted to entry free from the tax provided in section 4561 provided that such oil was produced on vessels of the United States or in the United States or its possessions, from whales, fish, or marine animals or parts thereof taken and captured by vessels of the United States." (Sec. 4562, I.R.C.)

American fishery giving the names of the vessels which took and captured the whales, fish, or marine animals from which such oil or fatty acids were produced and stating whether such vessels at the time of taking the whales, fish, or marine animals were documented under the laws of the United States. No vessel shall be considered to be the taking vessel within the meaning of this section unless the whales, fish, or marine animals from which the oil or fatty acids were produced were taken and captured directly by such vessel with the use of no other boats than those carried as its regular equipment.

(d) No whale, fish, or marine-animal oil of a class or kind for which a rate of import tax is provided in I. R. C. section 4561 shall be admitted without entry, notwithstanding the provisions of § 10.78 (a).

(e) If entry free of the import tax imposed by I.R.C. section 4561 is claimed for any whale, fish, or marine-animal oil or fatty acid derived therefrom because of its production in the United States, the case shall be submitted to the Bureau for decision.

(f) For the purposes of paragraph (e) of this section and I.R.C. sections 4561, 4571, 4581, and 4582, the term "United States" when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia (I.R.C. sec. 7701 (a)(9)). In view of the provisions of I.R.C. section 4601(3), the tax prescribed in I.R.C. section 4561 shall apply to the oils and fatty acids enumerated in such section 4561 which are produced in any possession of the United States, even though such oils or fatty acids were produced from whales, fish, or marine animals taken by vessels of the United States.

(Par. 1730 (a), sec. 201, 46 Stat. 679, 53 Stat. 268; 19 U. S. C. 1201, par. 1730 (a), 26 U. S. C. 2494)

SALT FOR CURING FISH

§ 10.80 Remission of duty; withdrawal; bond.

Pursuant to section 313(e), Tariff Act of 1930,[74] imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on customs Form 7506. Each withdrawal shall contain the statement prescribed for withdrawals in § 8.37(b) of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on customs Form 7561 or other appropriate form for the production of proof of proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be issued on customs Form 7506.

(Sec. 313 (e), (1), 46 Stat. 694, as amended; 19 U.S.C. 1313 (e), (1))

§ 10.81 Use in any district.

(a) Salt withdrawn under bond for use in curing fish on the shores of navigable waters may be used for such purpose in any district, but the evidence of use in such cases shall be submitted through the collector of customs for the district where the salt was used.

(b) If desired, salt to be used in curing fish on shore in another district than that in which it is warehoused in bond may be withdrawn under a transportation entry and shipped in bond to a port in the district in which it is to be used, at which port it may be entered on customs Form 7519 with customs Form 7506 attached to show withdrawal of the salt for use in curing fish. Thereupon, and upon the filing of a bond on customs Form 7561 or other appropriate form when necessary, such salt may be used without being sent to a bonded warehouse or public store. In such a case the proof of use shall be filed at the latter port.

(Sec. 313 (e), (1), 46 Stat. 694, as amended; 19 U.S.C. 1313 (e), (1))

§ 10.82 Proof of use.

(a) Proof that the salt withdrawn for use in curing fish has been so used shall be as follows:

(1) The certificate, customs Form 3751, of the person making the withdrawal that the salt has been actually used in curing fish taken by vessels of the United States licensed to engaged in the fisheries or in curing fish on the shores of navigable waters of the United States, giving the names of the vessels, tonnage, names of masters, the approximate quantity of fish cured thereby, and the locality in the district where cured if cured on shore;

(2) The certificate of the master, customs Form 3745, and of at least one other person employed on board any vessel during any voyage on which it is claimed that any part of the salt so withdrawn for curing fish was used that the salt delivered to the vessel by the person making the withdrawal was actually used in curing fish taken by such vessel; and

(3) The certificates, customs Form 3753, of at least two persons actually employed in curing fish on shore (if two or more were so employed) if any part of such salt was so used, stating the quantity of salt used in curing fish on shore and where cured, that it was used in curing fish taken by American fishermen, and the approximate quantity of fish cured.

(b) If the person making the withdrawal is actually employed in curing the fish on shore, the certificate, customs Form 3751, of one other person so employed will be sufficient.

(Sec. 313 (e), (1), 46 Stat. 694, as amended; 19 U.S.C. 1313 (e), (1))

§ 10.83 Bond; cancellation; extension.

(a) The proofs required by § 10.82 shall be presented to the collector holding the bond before the first day of January next after the date of withdrawal, and if it shall appear to his satisfaction that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the collector may cancel the bond, but in his discretion he may first require additional evidence in corroboration of the proof produced.

(b) On application of the person making the withdrawal, the period of the bond may be extended 1 year so as to allow the salt to be used during the time of extension in curing fish with the same privileges as if used during the original period.

(Sec. 313 (e), (1), 46 Stat. 694, as amended; 19 U.S.C. 1313 (e), (1))

LEATHER, HIDES, AND SKINS

§ 10.84 Leather for use in the manufacture of footwear.

(a) Leather of a kind entitled under paragraph 1530(c), Tariff Act of 1930,[75] as modified, to a reduced rate of duty if used in the manufacture of footwear may be entered, or withdrawn from warehouse, for consumption upon payment of duty at the reduced rate if the person making the entry or withdrawal files therewith his declaration that the leather was imported to be used in the manufacture of footwear and the collector is satisfied that the importer of the leather had the declared intention at the time of importation. Liquidation of the entry covering the leather shall be suspended until proof of use is furnished or the time allowed for the production thereof has expired.

(b) Within 3 years from the date of entry (in the case of warehouse entries as well as consumption entries) the importer shall submit in duplicate a certificate of the superintendent or manager of the manufacturing plant that the leather has actually been used in the manufacture of boots, shoes, or other footwear. A blanket certificate covering all purchases of leather from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the leather which he sold to such manufacturer during such period. The latter statement shall be based on adequate and carefully kept records of the importer, which shall be open at all

[74] "Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted." (Tariff Act of 1930, sec. 313 (e); 19 U. S. C. 1313 (e))

[75] "Leather (except leather provided for in subparagraph (d) of this paragraph), made from hides or skins of animals (including fish, reptiles, and birds, but not including cattle of the bovine species), in the rough, in the white, crust, or russet, partly finished, or finished, 25 per centum ad valorem; vegetable-tanned rough leather made from goat or sheep skins (including those commercially known as India-tanned goat or sheep skins), 10 per centum ad valorem; any of the foregoing if imported to be used in the manufacture of boots, shoes, or footwear, or cut or wholly or partly manufactured into uppers, vamps, or any forms or shapes suitable for conversion into boots, shoes, or footwear, 10 per centum ad valorem." (Tariff Act of 1930, par. 1530 (c); 19 U. S. C. 1001, par. 1530 (c))

times to inspection by employees of the Customs Service and which shall be retained for a period of 3 years from the date of liquidation of the entry.

(c) Upon satisfactory proof of use of the leather in the manufacture of boots, shoes, or other footwear, the entries shall be liquidated with duty at the lower rate. When such proof of use is not filed within 3 years from the date of the entry or any extension of the period of the bond (see § 25.18 (b) of this chapter), the entry shall be liquidated at the higher rate applicable under paragraph 1530 (c).

(Par. 1530 (c), (g), sec. 1, 46 Stat. 666, 667; 19 U.S.C. 1001, par. 1530 (c), (g))

§ 10.85 Leather to be used in the manufacture of harness or saddlery.

Leather to be used in the manufacture of harness or saddlery may be released on deposit of estimated duty at the rate provided for in paragraph 1530 (b) (3), Tariff Act of 1930,[76] as modified, in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84) except that the proof of use shall show that the leather was used in the manufacture of harness or saddlery and the other documents required shall be modified accordingly.

(Par. 1530 (b) (3), (g), sec. 1, 46 Stat. 666, 667; 19 U. S. C. 1001, par. 1530 (b) (3), (g))

§ 10.86 Hides and skins of the India water buffalo to be used in the manufacture of rawhide articles.

Pursuant to paragraph 1691, Tariff Act of 1930,[77] hides and skins of the India water buffalo imported to be used in the manufacture of rawhide articles may be released without the deposit of duty in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84), except that the proof of use shall show that the merchandise was used in the manufacture of rawhide articles and the other documents required shall be modified accordingly.

(Par. 1691, sec. 201, 46 Stat. 678; 19 U.S.C. 1201, par. 1691)

§ 10.87 Leather to be used in the manufacture of footballs, basketballs, soccer balls, or medicine balls.[78]

If, at the time of importation, leather of the character ordinarily used in the manufacture of footballs, basketballs, soccer balls, or medicine balls is not intended for the manufacture of such balls, it may be released upon the deposit of duty at the rate applicable to leather not intended for such use, in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84), except that the declaration filed on entry shall state that the leather is not to be used in the manufacture of footballs, basketballs, soccer balls, or medicine balls and the proof of use shall show that it was used in the manufacture of articles other than such balls, or was exported or destroyed, and the other documents required shall be modified accordingly.

(Par. 1530 (b) (6), (g), sec. 1, 46 Stat. 666, 667; 19 U.S.C. 1001, par. 1530 (b) (6), (g))

PATNA RICE

§ 10.88 Patna rice to be used in the manufacture of canned soups.

Pursuant to paragraph 1752, Tariff Act of 1930,[79] patna rice cleaned for use in the manufacture of canned soups may be released without the deposit of duty in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84), except that the proof of use shall show that the rice was used in the manufacture of canned soups, and the other documents required shall be modified accordingly.

(Par. 1752, sec. 201, 46 Stat. 681; 19 U.S.C. 1201, par. 1752)

MOTION-PICTURE FILMS, MASTER RECORDS, AND METAL MATRICES

§ 10.89 Motion-picture films exposed abroad by American producers.

(a) Estimated duties at the appropriate rate under paragraph 1551, Tariff Act of 1930, as modified, shall be collected on the entry of motion-picture films claimed to be dutiable at the rate of 1 cent per linear foot (or 0.8 cent, if exposed in Cuba) under the second proviso to that paragraph,[80] and there shall be filed in connection with the entry a certificate in substantially the following form:

I, _____, certify that I am an American producer of motion-picture films operating temporarily in a foreign country and that the ____ feet of films imported by me ex S. S. _____ on _____ were taken from the United States in the S. S. _____ on _____ and exposed by me in _____, for use in the picture (Country) entitled _____.

Dated _____ _____

(b) Within 6 months from the date of entry there shall be filed with the collector a certificate of the American producer in substantially the following form:

I, _____, certify that the _____ feet of motion-picture films imported by me ex S. S. _____ on _____ were used in connection with the production of the picture entitled _____.

I further certify that the number of feet of film in the completed picture is _____, of which _____ feet were made in the United States and _____ feet represent the _____ feet of films exposed in _____ and imported as above stated. (Country)

Dated _____ _____

(c) The collector, in his discretion, may extend the 6-month period during which such certificate may be furnished and he may refer the claim to a customs agent for investigation if he deems it desirable. Liquidation shall be suspended during the period allowed for the production of the certificate and pending the receipt of any required report of a customs agent. If, after comparing the number of feet of film exposed abroad and found in the completed picture with the total number of feet in the completed picture, it appears that 60 percent or more of the completed picture was made in the United States and the other conditions of the proviso are met, the entry shall be liquidated with duty at the appropriate rate on the total number of feet exposed abroad.

(Par. 1551, sec. 1, 46 Stat. 670, as amended; 19 U.S.C. 1001, par. 1551)

§ 10.90 Master records and metal matrices.

(a) An importer desiring to avail himself of the privilege of importing master records, or metal matrices obtained therefrom, under paragraph 1797, Tariff Act of 1930,[81] shall file an application with the Bureau. If the application has not been approved when the merchandise involved is imported, liquidation of the entry covering the importation shall be suspended until advice is received from the Bureau of the action taken in the matter.

(b) The importer (and the manufacturer, if the two are not identical) shall prepare a statement and agreement describing (1) the use to be made of the records or matrices, (2) the means adopted to identify them and the products manufactured with their use, and

[76] "Leather (except leather provided for in subparagraph (d) of this paragraph), made from hides or skins of cattle of the bovine species: * * *

"(3) leather to be used in the manufacture of harness or saddlery, 12½ per centum ad valorem;" (Tariff Act of 1930, par. 1530 (b) (3); 19 U. S. C. 1001, par. 1530 (b) (3))

Pursuant to trade agreements with Canada and the United Kingdom, the rate of duty has been modified to 10 percent ad valorem. Canadian Trade Agreement (T. D. 49752), schedule II, item 1530 (b); United Kingdom Trade Agreement. (T. D. 49753), schedule IV, item 1530 (b).

[77] "Hides and skins of the India water buffalo imported to be used in the manufacture of rawhide articles." (Tariff Act of 1930, par. 1691 (free list); 19 U. S. C. 1201, par. 1691)

[78] "Leather (except leather provided for in subparagraph (d) of this paragraph), made from hides or skins of cattle of the bovine species: * * *

"(6) leather to be used in the manufacture of footballs, basketballs, soccer balls, or medicine balls, 20 per centum ad valorem;" (Tariff Act of 1930, par 1530 (b) (6); 19 U. S. C. 1001, par. 1530 (b) (6))

The rate as modified pursuant to the trade agreement with the United Kingdom is 15 percent ad valorem, schedule IV, 1530 (b) (6) (T. D. 49753)

[79] "Patna rice cleaned for use in the manufacture of canned soups." (Tariff Act of 1930, par. 1752 (free list); 19 U. S. C. 1201, par. 1752)

[80] "* * * *Provided*, That upon the importation of photographic and motion-picture films or film negatives taken from the United States and exposed in a foreign country by an American producer of motion pictures operating temporarily in said foreign country in the course of production of a picture 60 per centum or more of which is made in the United States the duty shall be 1 cent per linear foot and the Secretary of the Treasury shall prescribe such rules and regulations as may be necessary for the entry of such films or film negatives under this proviso." (Tariff Act of 1930, par. 1551; 19 U. S. C. 1001)

[81] "Disks of soft wax, commonly known as master records, or metal matrices obtained therefrom, for use in the manufacture of sound records for export purposes." (Tariff Act of 1930, par. 1797 (free list); 19 U. S. C. 1201, par. 1797)

(3) the accounts kept, and agreeing (i) that the plant and accounts shall be open to the inspection of customs officers at all reasonable times, and (ii) that the importer will notify the collector at the port where the records or matrices were imported and pay promptly an amount equal to the duties ordinarily collectible thereon in the event he uses or intends to use them in the United States otherwise than in the manufacture of sound records for export purposes.

(c) Consumption entries covering importations under paragraph 1797 shall be filed at a port in the customs district in which the factory where the articles will be used is located.

(d) There shall be filed in connection with each such entry a declaration of the importer setting forth his name and business address; that he is an exporter of sound records; that the master records or metal matrices are imported for use in the manufacture by or for him of sound records for export purposes; and that sound records produced therefrom will not be used or sold for use in the United States.

(e) The invoice filed with the entry shall contain or be supported by a detailed statement of the cost of production, in the country where made, of each master record or metal matrix covered thereby.

(f) A bond on customs Form 7563 shall be filed in connection with each entry. Such bond shall contain an added condition that the principal shall export all the sound records made with the use of imported master records, or metal matrices obtained from master records, covered by the entry and that the principal shall not sell, expose for sale, or use any of the said articles contrary to law and the regulations issued thereunder; or in default thereof that the obligors shall pay an amount equal to the lawful duties which would have accrued on the merchandise.

(g) If and when the application is approved, entries already filed and future entries shall be liquidated in due course without the assessment of duty, but liability on bonds given with the entries shall be discontinued with respect to any article covered thereby only upon payment of liquidated damages in an amount equal to the duties which would have accrued had the master records or metal matrices been imported for use otherwise than in the manufacture of sound records for export purposes, or upon satisfactory proof that the master records or metal matrices obtained therefrom have been exported or destroyed under customs supervision, and that all sound records made with the use of such articles have been exported.

(Par. 1797, sec. 201, 46 Stat. 683; 19 U. S. C. 1201, par. 1797)

WOOLS AND HAIR OF THE CAMEL FOR USE IN MANUFACTURING FLOOR COVERINGS AND OTHER ARTICLES

§ 10.91 Importation under paragraph 1101; entry or withdrawal under bond.

(a) Wool or hair of the camel[82] imported for use in the manufacture of any of the articles enumerated in paragraph 1101(b), Tariff Act of 1930, as amended,[83] may be entered on customs Form 7501 and immediately released under bond or may be entered for warehouse on customs Form 7502 and remain in bonded warehouse under the ordinary warehouse bond until appropriately withdrawn or otherwise disposed of in accordance with law. The withdrawal shall contain the statement prescribed for withdrawals in § 8.37(b) of this chapter.

(b) When entry is made on customs Form 7501, it shall have endorsed thereon the following notation: "Above merchandise entered under bond for use in the manufacture of _____ (floor coverings, press cloth, papermaker's felts, camel's-hair belting, knit or felt boots, or heavy fulled lumbermen's socks) under the provisions of paragraph 1101(b), Tariff Act of 1930, as amended." The endorsement shall be signed by the obligor on the bond. When the merchandise is entered for warehouse, withdrawals for use in the manufacture of the articles enumerated shall be made on customs Form 7506 in the name of the obligor on the bond.

(c) Such wool or hair which has been released from custody shall not be restored to a customs status from which it could thereafter be entered or withdrawn under the provisions of paragraph 1101 (b), Tariff Act of 1930, as amended.

(Par. 1101, sec. 1, 46 Stat. 646, as amended; 19 U.S.C. 1001, par. 1101)

§ 10.92 Bond; form; penalty.

(a) At the time of making entry for consumption or withdrawal from warehouse of the wool or hair there shall be filed a single entry bond on customs Form 7547, unless the transaction is charged against a term bond on customs Form 7549 or other appropriate form. The penalty of the single entry bond shall be in the amount equal to the value of the wool or hair, as set forth in the entry, plus double the estimated duties, as determined at the time of entry. The penalty of the term bond shall be $10,000, or such larger amount as the collector of customs deems necessary to the protection of the revenue.[84]

(b) A single entry or term bond shall be filed by each manufacturer, processor, or dealer entering or withdrawing the wool or hair under bond or receiving it by transfer under bond in its imported or other form.[85]

(c) Only one term bond shall be required from each manufacturer, processor, or dealer. If wool or hair is entered or withdrawn at any port other than that at which the original term bond is filed, a certified copy of such bond shall be filed at such other port.

(d) The collector of customs may cancel liquidated damages not in excess of $20,000 incurred under a bond mentioned in this section upon payment of less than the full amount, or without the payment of any amount if no loss of revenue is involved, as he may deem appropriate under the law and in view of the circumstances.

(Par. 1101, sec. 1, 46 Stat. 646, as amended; 19 U.S.C. 1001, par. 1101)

§ 10.93 Records of receipt of wool or hair.

(a) Each manufacturer, processor, or dealer who enters or withdraws wool or hair under bond, or who receives wool or hair by transfer under bond, shall keep records which will show:

(1) In the case of entry or withdrawal, the quantity, entered clean content, identity, and description of the wool or hair entered or withdrawn under bond; and

(2) In the case of receipt by transfer, the quantity, description, and date of transfer certificate (see § 10.95 (d)) of the wool or hair received by transfer under bond, and the name and address of the transferor from whom received.

(b) Every lot of wool or hair entered or withdrawn under bond, or received by transfer under bond, shall be marked or stored until put into process in such manner as to insure the identification of the lot with the entry, withdrawal, or transfer certificate.

(Par. 1101, sec. 1, 46 Stat. 646, as amended; 19 U.S.C. 1001, par. 1101)

§ 10.94 Manufacturing records.

(a) Each manufacturer or processor shall keep the records specified in this section with respect to products and substances resulting wholly or in part from bonded wool or hair. Such records may be kept by manufacturing lot or by period

[82] Except with reference to entry or withdrawal, the term "wool or hair" means wool or hair in its imported or any other form, that is, wool or hair which has been entered or withdrawn under the provisions of par. 1101 (b), Tariff Act of 1930, as amended, and any product or substance composed wholly or in part of, and resulting from any processing of, such wool or hair under bond, but does not include articles made from such wool or hair and enumerated in such par. 1101 (b).

[83] "Any of the foregoing may be entered or withdrawn from warehouse without the payment of duty by a manufacturer, processor, or dealer upon the filing of a bond to insure that any wool or hair entered or withdrawn thereunder shall be used only in the manufacture of press cloth, papermaker's felts, camel's hair belting, knit or felt boots, heavy fulled lumbermen's socks, rugs, carpets, or any other floor covering. * * * The Secretary of the Treasury is authorized to prescribe such regulations, and the form conditions, and amounts of such bonds as may be necessary to carry into effect the provisions of this subparagraph." (Tariff Act of 1930, par. 1101(b) as amended; 19 U.S.C. 1001, par. 1101(b))

[84] "* * * A manufacturer, processor, or dealer may be relieved of liability under his bond with respect to any wool or hair so entered or withdrawn which is transferred in its imported or any other form to another manufacturer, processor, or dealer who has filed a bond to insure that the merchandise so transferred shall be used only in the manufacture of the above-enumerated articles. * * *" (Tariff Act of 1930, par. 1101 (b), as amended; 19 U. S. C. 1001, par 1101 (b))

[85] Wool or hair is transferred under bond whenever it is transferred from the custody of one manufacturer, processor, or dealer to the custody of another manufacturer, processor, or dealer, whether the transferor or transferee is the owner of the merchandise or has received or is to receive such merchandise to be processed for the account of another.

of manufacture of not to exceed 6 months, and shall show:

(1) The date or inclusive dates of the processing of each manufacturing lot or the inclusive dates of each period of manufacture;

(2) The quantity, identity, and description of the wool or hair not previously processed by the reporting manufacturer or processor put into process in the lot or during the period;

(3) The quantity and description of all intermediate products, stocks in process, and wastes (including noils) not described in the preceding subparagraph which are put into process in the lot or during the period; [88]

(4) The quantity and description of the final products resulting from the processing by the manufacturer or processor; the quantity by weight of the wool or hair contained therein; and

(5) The quantity of any wastes (including noils) incurred which remain on hand upon completion of the manufacturing lot or period of manufacture. Such wastes shall be accounted for under the following designations:

Noils.

Soft (including all wastes, except noils, burr wastes, card strippings, and sweepings, produced after the scouring of the wool or hair and before the spinning operation).

Hard (including all wastes, except sweepings, produced in and after the spinning operation but before completion of the weaving operation or, in the case of the manufacture of article enumerated in par. 11101 (b), Tariff Act of 1930, as amended, which are not woven, before the completion of the enumerated article).

Fly (including all wastes other than noils and hard and soft wastes as above specified).

White soft wastes and white threads shall be accounted for separately.

(6) The records of each manufacturer or processor shall contain a detailed inventory of all wool and hair on hand at the close of each abstract period or at the completion of each manufacturing lot.

(b) When the manufacturer of any enumerated articles spins the yarns used in the manufacture thereof, he shall also keep records showing the quantity and description of all the yarns so spun.

(c) When a bonded manufacturer or processor has not manufactured or processed any bonded wool or hair for a period of 6 months since his last report, he shall promptly so advise the collector of customs.

(d) Within 3 months after the completion of each lot or period of manufacture, the manufacturer or processor shall submit to the collector of customs where his original bond is on file an abstract of his records of manufacture showing the data provided for heretofore in this section.

(e) Each such abstract shall bear the following certificate of an authorized officer or member of the firm:

I, ----------, certify that this document is a true and correct abstract of our records of manufacture; that such records have been kept in the manner prescribed by § 10.94, Customs Regulations.

All wastes reported herein as resulting from operations in our plant resulted in the usual course of manufacture of articles enumerated in paragraph 1101 (b), Tariff Act of 1930, as amended, except as follows:

All wool or hair delivered from our plant during the period covered by this abstract, under a transfer certificate or otherwise, has been listed herein.

Dated----------.

(Title)

(f) In the case of preliminary processors, such as pullers, sorters, washers, scourers, and carbonizers, transfer certificates on customs Form 7531–A covering wool or hair processed and transferred by them may be accepted by the collector as abstracts of the manufacturing records if the certificate (1) shows that the quantity of wool or hair transferred is the entire quantity of product obtained by the transferor from a particular lot of wool or hair received by him for processing, (2) contains, with respect to such lot, an abstract of the data provided for in paragraph (a) of this section, and (3) is supported by the certificate prescribed in paragraph (e) of this section.

(Par. 1101, sec. 1, 46 Stat. 646, as amended; 19 U.S.C. 1001, par. 1101)

§ 10.95 Records and reports of enumerated articles of wool or hair delivered; transfer certificates.

(a) Each manufacturer, processor, or dealer shall keep records showing the quantity, description, and wool or hair content of all wool or hair (including samples) and enumerated articles delivered from his premises pursuant to transfer under bond, purchase, consignment, or otherwise. Such records shall also show the date of delivery from the premises and the name and address of the transferee, purchaser, consignee, or other person to whom delivery is made. The records shall show also the exact designation under which any wool or hair was transferred, sold, consigned, or otherwise delivered and (except as to transfers under bond) the price paid or agreed to be paid, or, if there has been no sale or contract of sale, the price that the manufacturer, processor, or dealer would have received or was willing to receive for the wool or hair if sold in the ordinary course of trade. Every delivery within the purview of this paragraph, except of enumerated articles, shall be shown on the abstract prescribed in § 10.94(d).

(b) Within 30 days after the delivery of wool or hair from the premises, otherwise than under a transfer certificate provided for in paragraph (d) of this section, the manufacturer, processor, or dealer making such delivery shall file a declaration with the collector of customs in whose district his original bond is filed, showing the quantity and description of merchandise delivered, the date of delivery, and the name and address of the person to whom delivered. The declaration shall show the particulars as to price specified in paragraph (a) of this section, whether representative samples have been retained, whether the merchandise resulted in the usual course of manufacture of enumerated articles, and whether such merchandise could have been used (with or without further preparation) in the manufacture of enumerated articles.

(c) The manufacturer, processor, or dealer shall retain for customs inspection a representative sample of not less than one pound of each kind of merchandise for which a report is required by § 10.96 (a) or (b). Such sample shall be properly identified in his records with the report covering such merchandise and shall be available for inspection by proper officers of the Government at all reasonable times for a period of 3 months after its delivery.

(d) Wool or hair transferred by one bonded manufacturer, processor, or dealer to another manufacturer, processor, or dealer shall be covered by a transfer certificate on customs Form 7531–A. When the transfer is made by a dealer, such certificate shall be filed within 30 days after the date of the transfer and when the transfer is made by a manufacturer or processor, it shall be filed within the period allowed for the filing of the abstract on which the transfer is required to be reported. When the original bonds of both the transferor and transferee are on file in the office of one collector of customs, the transfer of certificate shall be filed with that officer in duplicate. When the original bond of the transferee is on file in another customs district, the transfer certificate shall be filed in triplicate. The transferor shall not be relieved from liability under his bond until the transferred wool or hair has been charged against the bond of the transferee.

(e) The establishments of bonded manufacturers, processors, and dealers, and the originals of all books and records kept by such manufacturers, processors, and dealers relating to bonded wool or hair shall be available at all reasonable times for inspection by proper officers of the Government.

(f) All records required to be kept by manufacturers, processors, and dealers relating to bonded wool or hair shall be retained for a period of 3 years after the imported wool or hair has been used in the manufacture of the articles enumerated in paragraph 1101 (b), Tariff Act of 1930, as amended. Where the wool or hair has been charged against the bond of a transferee, the records of the transferor shall be retained for a period of 3 years from the date of the transfer.

(Par. 1101, sec. 1, 46 Stat. 646, as amended; 19 U. S. C. 1001, par. 1101)

§ 10.96 Reports of use or transfer for use in violation of bond.

(a) When a bonded manufacturer or processor uses any bonded wool or hair otherwise than in the manufacture of the articles enumerated in paragraph 1101(b), Tariff Act of 1930, as amended, or in preparation for such manufacture, he shall, within 30 days after such use, make a report thereof to the collector of customs in whose district his original bond is filed, showing the quantity and description of the wool or hair so used, the use to which it has been put, the date of such use, whether such wool or hair resulted in the usual course of manufacture of the enumerated articles, and whether it could have been used in the usual course of manufacture of such articles.[87]

(b) A manufacturer, processor, or dealer shall likewise report to such collector of customs within 30 days any transfer of bonded wool or hair for use otherwise than in the manufacture of the enumerated articles. The report shall show the quantity and description of the wool or hair, the date of transfer, the name and address of the transferee, and, if known, the specific use to which the wool or hair is to be put. Such a report of a manufacturer or processor shall state whether the wool or hair resulted in the usual course of manufacture of the enumerated articles and whether it could have been used in the manufacture of such articles.

(c) Whether merchandise has resulted in the usual course of manufacture shall be determined with respect to the bona fide and normal operations of the plant at which the merchandise resulted. Merchandise resulting in the usual course of manufacture which cannot be used (with or without further preparation) in the usual course of the manufacture of enumerated articles shall be the quantity of the merchandise resulting in the usual course of manufacture in excess of the quantity thereof which is used in the bona fide and normal operations at the plant at which it resulted. In determining, for the above-mentioned purposes, whether operations are bona fide and normal, consideration may be given to the conditions at the plant and in the industry as a whole.

(Par. 1101, sec. 1, 46 Stat. 646, as amended; 19 U.S.C. 1001, par. 1101)

§ 10.97 Duties, exportation or destruction.

(a) All wool or hair in its imported form used or transferred for use otherwise than in the manufacture of the enumerated articles shall be assessed with duty in accordance with paragraph 1101(b), Tariff Act of 1930, as amended.[88] As to merchandise resulting from the use of the imported wool or hair in the usual course of manufacture of the enumerated articles and which is used or transferred for use otherwise than in the manufacture of the enumerated articles, no duty shall be assessed unless such merchandise can be used (with or without further preparation) in ordinary commercial practice in the usual course of manufacture of such enumerated articles, except in the case of white soft wastes, white thread, and noils which shall be dutiable at seven-eighths of the regular duties when they are used or transferred for use otherwise than in the manufacture of the enumerated articles, irrespective of whether they can be used (with or without further preparation) in the manufacture of such enumerated articles. Wastes and other merchandise which have not resulted in the usual course of manufacture of the enumerated articles are dutiable when used or transferred for use otherwise than in the manufacture of the enumerated articles, irrespective of whether they could have been used with or without further preparation.

(b) Wool or hair, except wool or hair in its imported form, shall be credited against the covering bond if exported or destroyed under customs supervision.

(Par. 1101, sec. 1, 46 Stat. 646, as amended; 19 U.S.C. 1001, par. 1101)

FLUXING MATERIAL

§ 10.98 Copper-bearing fluxing material.

(a) For the purpose of this section, ores of concentrates usable as a flux or sulphur reagent, mentioned in the provision for such ores in I.R.C. sections 4541 and 4542,[89] shall include only ores or concentrates having a copper content of not more than 15 percent based upon the assay, with a deduction of 1.3 units.

(b) For the purpose of administering this provision of law, the tax year shall begin June 21 of each year and end June 20 of the succeeding year.

(c) There shall be filed in connection with the entry of such copper-bearing ores or concentrates, either for consumption or warehouse, a declaration of the importer that the material is to be used for fluxing purposes only. In the case of a consumption entry, the estimated tax shall be deposited at the time of entry. Liquidation of entries shall be suspended pending proof of use for fluxing purposes as hereinafter provided.

(d) Samples of the material shall be taken in accordance with the commercial method in effect at the plant if to be used in a bonded smelting warehouse, or in accordance with § 8.48 of this chapter if entered for consumption, and the copper content thereof shall be determined by the Government chemist in accordance with the assay from which a deduction of 1.3 units shall be made by the collector in the liquidation of the entry.

(e) The management of the smelting or converting plant shall file with the deputy collector at Perth Amboy, N. J., a statement based on its records of operation for each quarterly period showing for each furnace or converter the total quantity of material charged during each month or part thereof of each quarter, the total quantity of material used for fluxing purposes, and the quantity of imported ores or concentrates used for fluxing purposes for which free entry was claimed under the above-mentioned provision, together with the copper content of such imported ores or concentrates computed in accordance with the net Government assay. If the quantity of ores or concentrates used for fluxing purposes in any furnace or converter during any month or part thereof of any quarter is in excess of 25 percent of the charge of such furnace or converter, the quarterly statement shall be accompanied by an explanation of the necessity for using such quantity for fluxing purposes.

(53 Stat. 415; 26 U.S.C. 3425)

ETHYL ALCOHOL

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.[90]

(a) If claim is made by an importer other than the United States or a gov-

---

[88] This applies only to materials carried over from a previous lot or period and does not require the keeping of records of materials which are put back into process in the same lot or period in which they resulted.

[87] "• • • Every manufacturer, processor, or dealer who has given a bond pursuant to the provisions of this subparagraph shall report any use or transfer of merchandise in violation of the terms of his bond, within thirty days after such use or transfer, to the collector of customs in whose district the bond is filed; and for failure to so report, such manufacturer, processor, or dealer shall be liable to a penalty equal to the value of the merchandise so used or transferred at the time and place of such use or transfer. Such penalty shall be in addition to the duties above provided for. • • •" (Tariff Act of 1930, par. 1101 (b), as amended; 19 U. S. C. 1001, par. 1101 (b))

[88] "• • • If any wool or hair so entered, withdrawn, or transferred under bond is used or transferred for use in its imported or any other form in any manner otherwise than in the manufacture of the articles enumerated above, there shall be levied, collected, and paid on the merchandise so used or transferred in violation of the bond the regular duties which would apply to such merchandise if imported in its condition at the time of such use or transfer. Such duties shall be paid by the manufacturer, processor, or dealer whose bond is charged with the wool or hair at the time of such use or transfer; but such duties shall not be levied or collected on any merchandise (except white soft wastes, white threads and noils, which shall be dutiable at seven-eighths of such regular duties when used or transferred for use otherwise than in the manufacture of the enumerated articles) resulting in the usual course of manufacture of such enumerated manufactured articles which cannot be used (with or without further preparation) in the usual course of the manufacture of such enumerated articles, or which is exported or destroyed. When any wool or hair which has been entered or withdrawn under bond as provided for in this subparagraph is used or transferred for use, in its imported or any other form, otherwise than in the manufacture of the above-enumerated articles and prior to such use or transfer there shall have been combined or mixed with such wool or hair any other merchandise, the whole or the combination or mixture shall be presumed to be composed of wool or hair entered or withdrawn under bond, as provided for in this subparagraph, unless the manufacturer, processor, or dealer liable for the payment of the duties shall establish the quantity of bonded wool or hair in such combination or mixture. • • •" (Tariff Act of 1930, par. 1101 (b), as amended; 19 U. S. C. 1001, par. 1101 (b))

[89] "(b) Copper usable as flux, etc.—Ores or concentrates usable as a flux or sulphur reagent in copper smelting and/or converting and having a copper content of not more than 15 percent, when imported for fluxing purposes, shall be admitted free of the tax imposed by section 4541 in an aggregate amount of not to exceed in any one year 15,000 tons of copper content." (I.R.C. 4542(b).)

[90] "*Imported distilled spirits.* Imported distilled spirits of 185 degrees or more of proof (or spirits of any proof imported for any purpose incident to the requirements of the national defense) may, under such regulations as the Secretary or his delegate shall prescribe, be withdrawn from customs custody, and transferred to the bonded premises

ernmental agency thereof for the classification of ethyl alcohol of 185 degrees or more of proof under the last clause of paragraph 4 of the Tariff Act of 1930,[71] there shall be filed in connection with the entry a declaration of the importer that the alcohol is to be used for nonbeverage purposes only.

(1) Such alcohol shall be released by customs upon deposit of estimated duty, if any, and without payment of the internal revenue tax only when there has been received an application on Internal Revenue Form 2609 by the proprietor of the distilled spirits plant approved by the appropriate internal revenue officer covering the transfer under internal revenue bond of the alcohol to the bonded premises of the proprietor's plant for nonbeverage use.

(2) Prior to release of such alcohol from customs custody, Internal Revenue Form 236 shall be prepared by the customs officer in the manner and number of copies prescribed in 26 CFR 251.173. When shipments are in tank cars or trucks, the details of th gauge of each tank car or truck shall be reported separately. In the case of barrels, drums, or similar portable containers, the details of the gauge shall be shown on Internal Revenue Form 2630, in triplicate. The customs officer shall also note on Form 236 the rate of customs duty paid and the rate of customs duty which would have been applicable had such alcohol been imported for beverage purposes.[72] Upon compliance with customs entry requirements and completion of the appropriate Internal Revenue forms, the customs officer shall release the alcohol for transfer to the distilled spirits plant. The customs officer shall distribute and retain copies of the Internal Revenue forms as prescribed in 26 CFR 251.173.

(3) Before a shipment in a tank car or tank truck is released, all openings affording access to the alcohol shall be sealed by a customs officer with customs seals in such manner as will prevent unauthorized removal of the alcohol.

(4) When the distilled spirits plant is equipped with suitable dock facilities, the alcohol may, subject to all requirements of the customs laws and regulations, be transferred by pipeline from the importing vessel or barge through weighing tanks or other suitable measuring tanks into locked empty storage tanks on the bonded premises of the distilled spirits plant, or directly into locked storage tanks on such premises provided such storage tanks are equipped with suitable measuring devices for correctly indicating the actual contents and the outlets thereof are locked. In all such cases of pipeline transfers, the alcohol shall be transferred under customs supervision, gauged immediately by a customs officer, and thereupon released for deposit in the distilled spirits plant. The details of the gauge shall be reported for internal revenue on Form 236 and distribution of such form shall be made as prescribed in subparagraph (2) of this paragraph.

(b) If ethyl alcohol is to be withdrawn from customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of § 8.28(c) of this chapter, there shall be filed with the collector of customs an appropriate permit on Internal Revenue Form 1444 which may also cover future withdrawals at that port pursuant to appropriate entry in each case. The alcohol shall be gauged by a customs officer, who shall prepare a report of gauge on Internal Revenue Form 2629, in triplicate, and may then be released for shipment to the United States or governmental agency thereof named in the permit, Form 1444. The customs officer shall make the appropriate notation on Form 1444 as to the withdrawal, shall state on each copy of Form 2629 the permit number of the Form 1444 involved, shall retain the original of the Form 2629 with the permit on Form 1444, and shall forward one copy of Form 2629 to the governmental agency involved and one copy to the director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C.

(c) The foregoing provisions are not applicable with respect to withdrawal free of tax on the entry of such articles from the Virgin Islands. Provisions for the release free of tax of distilled spirits, denatured distilled spirits, and products containing denatured spirits produced and withdrawn in the Virgin Islands are found in Subpart O of Part 250, Internal Revenue Regulations (26 CFR Part 250, Subpart O).

(d) Upon the completion of the applicable procedure outlined above, the entry shall be liquidated with the assessment of duty at the appropriate rate, if any, and without the assessment of internal revenue tax.

RAPESEED OIL

§ 10.100 Rapeseed oil to be used in the manufacture of rubber substitutes or lubricating oil.

Pursuant to I.R.C. section 4572, rapeseed oil imported to be used in the manufacture of rubber substitutes or lubricating oil may be released without the deposit of tax in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84), except that the proof of use shall include a description of the processing in sufficient detail to enable the collector to determine whether the rapeseed oil under consideration has been used in the manufacture of rubber substitutes or lubricating oil, and the other documents required shall be modified accordingly.

(53 Stat. 267; 26 U.S.C. 2491(f))

LIMESTONE

§ 10.101 Limestone to be used in the manufacture of fertilizer.

Pursuant to paragraph 1685, Tariff Act of 1930, as amended,[73] crude, crushed, or broken limestone when imported to be used in the manufacture of fertilizer, may be released without the deposit of duty in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84), except that the proof of use shall show that the limestone was used in the manufacture of fertilizer and the other documents required shall be modified accordingly.

(Par. 1685, sec. 201, 46 Stat. 678, as amended; 19 U.S.C. 1201, par. 1685)

BAUXITE, CALCINED

§ 10.102 Bauxite, calcined, to be used in the manufacture of firebrick or other refractories.

Calcined bauxite, when imported to be used in the manufacture of firebrick or other refractories, may be released upon the deposit of estimated duties at the rate specified therefor in paragraph 207, Tariff Act of 1930, as amended,[74] in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84), except that the proof of use shall show that the calcined bauxite was used in the manufacture of firebrick or other refractories, and the other documents required shall be modified accordingly.

(Par. 207, sec. 1, 46 Stat. 602, as amended; 19 U.S.C. 1001, par. 207)

---

of a distilled spirits plant, for nonbeverage use, without payment of the internal revenue tax imposed on imported distilled spirits by section 5001. Such spirits may be redistilled or denatured and may, without redistillation or denaturation, be withdrawn for any purpose authorized by this chapter, in the same manner as domestic distilled spirits." (Sec. 5232, Internal Revenue Code of 1954; 26 U.S.C. 5232)

"*Withdrawal of distilled spirits from Customs custody free of tax for use of the United States.* Distilled spirits may be withdrawn free of tax from customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes, under such regulations as may be prescribed by the Secretary or his delegate." (Sec. 5313, Internal Revenue Code of 1954; 26 U.S.C. 5313)

[71] "Alcohol: * * * ethyl for nonbeverage purposes only, * * *." (Tariff Act of 1930, par. 4; 19 U. S. C. 1001, par. 4)

[72] "* * * other spirits manufactured or distilled from grain or other materials, * * *." (Tariff Act of 1930, par. 802; 19 U.S.C. 1001, par. 802)

[73] "Guano; basic slag (ground or unground); manures; limestone, crude, crushed, or broken, when imported to be used in the manufacture of fertilizer; and (notwithstanding any other provision of this Act) those grades of substances used chiefly for fertilizers, or chiefly as an ingredient in the manufacture of fertilizers." (Tariff Act of 1930, par. 1685, as amended (free list); 19 U.S.C. 1201, par. 1685)

[74] "That paragraph 207 of the Tariff Act of 1930 is hereby amended by inserting immediately before the words 'fuller's earth' the following: 'bauxite, calcined, when imported to be used in the manufacture of firebrick, or other refractories, under such regulations as the Secretary of the Treasury shall prescribe, $1 per ton:" (Tariff Act of 1930, par. 207, as amended; 19 U. S. C. 1001, par. 207)

UNITED STATES GOVERNMENT IMPORTATIONS

§ 10.103 Entry, examination, and tariff status.

Except as otherwise provided for in §§ 8.8(d), 8.15(c)(12), 8.28(c) of this chapter, 10.104, 10.105, or elsewhere in these regulations, importations made by or for the account of any agency or office of the United States Government are subject to the usual customs entry and examination requirements, and, in the absence of express exemptions from duty, such as are contained in paragraph 1628 or other free list provision of the Tariff Act of 1930, as amended,[75] the Act of August 10, 1956 (10 U.S.C. 2383),[76] section 602(d)(6) of the Act of June 30, 1949, as amended (40 U.S.C. 474(6)),[77] and section 161(1), Atomic Energy Act of 1954 (42 U.S.C. 2201(1)),[78] such importations are also subject to duty.

§ 10.104 Importations by a military department, the General Services Administration, and the Atomic Energy Commission.

(a) Shipments consigned to a military department, the General Services Administration, the Atomic Energy Commission, or other party acting for the Atomic Energy Commission, or to an officer or official of any such agency in his official capacity, shall be regarded for purposes of this regulation as shipments the immediate delivery of which is necessary within the purview of section 448(b), Tariff Act of 1930. Such shipments may be released upon the filing of immediate delivery applications on customs Form 3461 as set forth in § 8.59 of this chapter. Such applications may be granted to cover a specified period of not more than 1 year and in such cases may be limited to shipments in special categories, such as shipments as to which the collector shall be notified that free entry will be claimed.

(b) Before the release of a shipment under an immediate delivery permit, evidence of the right of the applicant to make entry for the articles shall be furnished the collector in accordance with the provisions of § 8.6 of this chapter. A blanket carrier's certificate and release order on customs Form 7529 may be accepted by a collector for all shipments for the same consignee which may be brought to a port by a carrier during any period stated on the form. No bond shall be required in support of an immediate delivery application provided for in this section if a stipulation in substantially the form set forth in § 8.28 (c) of this chapter is filed with the collector of customs in connection with the application. No invoice or other declaration of the shipper shall be required for shipments for which free entry is allowed in accordance with this section.

(c) (1) Collectors may admit articles free of duty under the Act of August 10, 1956 (10 U.S.C. 2383), only upon receipt of a certificate executed by a duly authorized officer or civilian official of the appropriate department in the following form:

I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (name of the military department), and it is accordingly requested that such material be admitted free of duty pursuant to the Act of August 10, 1956 (10 U.S.C. 2383).

(Name)

(Title), who has been designated to execute free-entry certificates for the above-named department.

(Grade) (Organization)

(2) Collectors may admit articles free under section 602 (d) (6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 474 (6)), only upon the receipt of a certificate executed by a duly designated official of the General Services Administration in the following form:

Pursuant to section 502 (d) (6) of the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 474 (6)), I hereby certify that the above-described materials are strategic and critical materials procured under the Strategic and Critical Materials Stock Piling Act (50 U. S. C. 98b).

(Name)

(Title), General Services Administration, who has been duly authorized to execute the above certificate.

(3) Collectors may admit materials free under section 161 (1), Atomic Energy Act of 1954 (42 U. S. C. 2201 (1)), only upon receipt from the Atomic Energy Commission of a certificate specifically identifying the shipment of such materials and executed in the following form by a duly authorized official of the Atomic Energy Commission.

I certify to the Secretary of the Treasury that the above-described materials are source materials purchased abroad, the admittance of which is necessary in the interest of the common defense and security, in accordance with section 161 (1) of the Atomic Energy Act of 1954 (42 U. S. C. 2201 (1)).

(Name)

(Title, who has been authorized to execute free-entry certificates for the Atomic Energy Commission)

(4) The above certificates may be printed, stamped, or typewritten on the customs entry or withdrawal, customs Form 7501 or 7506, or on a separate paper attached to the entry or withdrawal provided the certification is clearly and unmistakably identified with the material covered by the entry or withdrawal.

(d) Shipments for which free entry has been or will be claimed under one of the statutes mentioned in paragraph (c) of this section shall be released after only such examination as is necessary to identify them.

(e) All materials for which free entry is claimed under one of the statutes mentioned in paragraph (c) of this section shall be entered, or withdrawn from warehouse, for consumption in the name of the Government department whose representative executes the certificate set forth in the said paragraph (c) of this section, unless exemption from this requirement is specifically authorized by the Bureau.

(f) If proper entries for consumption for importations released under this regulation are not filed within a reasonable time, appropriate steps shall be taken to insure the prompt filing of such entries.

(70A Stat. 137, sec. 448(b), 46 Stat. 714, sec. 602(d)(6), 63 Stat. 402, sec. 161(1), 68 Stat. 950; 10 U.S.C. 2383, 19 U.S.C. 1448(b), 40 U.S.C. 474(6), 42 U.S.C. 2201(1))

§ 10.105 American goods returned.

(a) Articles entered, or withdrawn from warehouse, for consumption in the name of an agency or office of the United States Government may be admitted free of duty under paragraph 1615 (a), Tariff Act of 1930, as amended, upon the filing of a certificate in the following form in lieu of the documents provided for in § 10.1 (a):

I certify that the articles covered by this entry for which free entry is claimed under paragraph 1615 (a), Tariff Act of 1930, as amended, are the growth, produce, or manufacture of the United States, and have been returned to the United States without having been advanced in value or improved in condition by any process of manufacture or other means, and that no drawback has been or will be claimed on such articles.

(Name)

(Title) (Service)

(b) When articles claimed to be free under paragraph 1615 (a) and others claimed to be free under any of the statutes mentioned in § 10.104 (c) are intermingled in a single shipment in a manner which precludes separation for the purpose of making claims for free entry under the separate categories, all the articles may be covered by a combined certificate which follows the requirements of § 10.104 (c) and paragraph (a) of this section.

(70A Stat. 137, sec. 201 (par. 1615), 46 Stat. 674, as amended, sec. 602(d)(6), 63 Stat. 402, sec. 161(1), 68 Stat. 950; 10 U.S.C. 2383, 19 U.S.C. 1201 (par. 1615), 40 U.S.C. 474(6), 42 U.S.C. 2201(1))

---

[75] See § 10.46.

[76] "The Secretary of a military department may make emergency purchases of war material abroad. Material so purchased shall be admitted free of duty." (10 U.S.C. 2383)

[77] "Nothing in this chapter * * * shall impair or affect any authority of * * * (6) the Secretary of the Defense * * * and the Secretaries of the Army, Navy, and Air Force with respect to the administration of the Strategic and Critical Materials Stock Piling Act, and provided that any imported materials which the authorized procuring agency shall certify to the Commissioner of Customs to be strategic and critical materials procured under said Act may be entered, or withdrawn from warehouse free of duty; * * *." (40 U.S.C. 474(6))

[78] "In the performance of its function the Commission is authorized to—

* * * * *

"(1) secure the admittance free of duty into the United States of purchases made abroad of source materials, upon certification to the Secretary of the Treasury that such entry is necessary in the interest of the common defense and security;" (42 U. S. C. 2201 (1)).

WHEAT

§ 10.106 Wheat, unfit for human consumption; other wheat.

(a) There shall be filed in connection with each entry covering wheat entered under paragraph 729, Tariff Act of 1930, as modified, as "wheat, unfit for human consumption," a declaration of the importer setting out whether any part of the importation is to be used with or without blending with other wheat in the manufacture of products for human consumption. If it is declared that no part of the shipment is to be so used, a further declaration shall be made stating the use to which the wheat is to be put. When it is shown by the declaration that the wheat is to be used in the manufacture of products for human consumption, it shall be classified as "wheat" under the provisions of paragraph 729, as modified. However, when the declaration states that the wheat is to be used otherwise than in the manufacture of products for human consumption, the procedure outlined in T. D. 47577 shall be followed, and in the absence of other controlling factors, the wheat shall be classified as "wheat, unfit for human consumption" under the provisions of paragraph 729, as modified, if it contains 30 per centum or more of damaged kernels.

(Par. 729, sec. 1, 46 Stat. 634; 19 U. S. C. 1001, par. 729)

NOTE: Treasury Decision 53309, 18 F. R. 4705, Aug. 8, 1953, provides as follows:

The declaration required by § 10.106 may be made by the actual importer or by a nominal consignee having actual knowledge of the facts.

The use of wheat in the manufacture of a product for human consumption within the meaning of § 10.106 includes use in the manufacture of ethyl alcohol, monosodium glutamate, edible flour, or edible starch.

RESCUE AND RELIEF WORK

§ 10.107 Equipment and supplies; admission.

(a) There shall be admitted without entry and without the payment of duty or any tax imposed upon or by reason of importation of any article described in section 322(b), Tariff Act of 1930, as amended,[98] subject to compliance with the following conditions:

(1) Before importation or as soon thereafter as possible, and in every case before the expiration of 10 days after importation, a report shall be made to the nearest customs officer by the person in charge of sending the article from the foreign country, or by the person for whose account it was brought into the United States, stating the character, quantity, destination, and use to be made of the article.

(2) If practicable, the article shall be exported under customs supervision. In any other case a report shall be made by the person in charge of the exportation as soon as possible after exportation to the customs officer to whom the arrival was reported, stating the character, quantity, and circumstances of the exportation.

(b) In the case of each article admitted under paragraph (a) of this section, the collector of customs shall satisfy himself as to whether the article was exported within a reasonable time, or that it has been properly expended or destroyed. If an article is so far destroyed in connection with a use contemplated for it by section 322 (b) that it has only a salvage value, it shall not be required to be exported.

(c) Any article admitted under paragraph (a) of this section which is used in the United States otherwise than for a purpose contemplated for it by section 322 (b), or which is not exported within 90 days after its arrival in the United States, or within such longer time as may be specially authorized by the collector of customs or the Bureau, shall be seized and forfeited to the United States.

(Sec. 14, 67 Stat. 516; 19 U. S. C. 1322 (b))

PRODUCTS EXPORTED UNDER LEASE AND REIMPORTED

§ 10.108 Entry of reimported articles exported under lease.

(a) Free entry shall be accorded under paragraph 1615(a), Tariff Act of 1930, as amended,[99] whenever it is established to the satisfaction of the collector of customs that the article for which free entry is claimed was duty paid on a previous importation, is being reimported without having been advanced in value or improved in condition by any process of manufacture or other means, was exported from the United States under a lease to a foreign manufacturer, and is being reimported by or for the account of the person who previously imported it into, and exported it from, the United States.

(b) There shall be filed in connection with the entry a statement specifying the port at which duty was previously paid on the article and the number and date of the previous entry; the date of exportation to the lessee abroad; the number and date of the export declaration; and the designation of the vessel or other carrier on which the article was exported. If such information is not filed at the time of entry, a bond as provided for in § 8.28 (a) of this chapter shall be taken for its production.

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interprets or applies sec. 201 (par. 1615), 46 Stat. 674, as amended; 19 U.S.C. 1201 (par. 1615))

WESTERN WHITE SPRUCE—ENGELMANN SPRUCE

§ 10.109 Western white spruce; Engelmann spruce.

(a) There shall be filed in connection with each entry of lumber claimed to be exempt as Western white spruce or Engelmann spruce under the provisions of section 4553, I.R.C.,[101] from the import tax imposed by section 4551,[102] a declaration of the shipper or other person having knowledge of the facts in the following form:

I, having knowledge of the facts, declare that insofar as claim for exemption from the import tax imposed by section 4551, Internal Revenue Code of 1954, is concerned, the shipment of lumber contained in car number(s) ---------- covered by the invoice of ----------, dated ----------,
(Seller or consignor)
consists of lumber generally bought, sold, and described in the United States, as stated below, (1) as Western white spruce, (2) as Engelmann spruce, or (3) consists of both such lumbers. So far as the shipment consists of lumber cut from stands subjected to lumbering operations on May 28, 1938, and claimed to be Western white spruce free of import tax under section 4553, Internal Revenue Code of 1954, it is lumber of a kind which as of that date was generally bought, sold, and described in the United States as Western white spruce. Any part of the shipment consisting of lumber cut from stands not yet subjected to lumbering operations on May 28, 1938, and claimed to be Western white spruce free of import tax under section 4553, Internal Revenue Code of 1954, is lumber of a kind which from the commencement of lumbering operations in the stands in which it was cut has been generally bought, sold, and described in the United States as Western white spruce and possesses the character of the lumber which on May 28, 1938, was generally bought, sold, and described in the United States as Western white spruce. Insofar as the shipment consists of lumber claimed to be Engelmann spruce free of import tax under section 4556, Internal Revenue Code of 1954, it is lumber of a kind which as of September 27, 1950, was generally bought, sold, and described in the United States as Engelmann spruce.

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interprets or applies sec. 481, 46 Stat. 719, secs. 4551, 4553, 68A Stat. 542; 19 U. S. C. 1461, 26 U. S. C. 4551, 4553)

STRATEGIC MATERIALS OBTAINED BY BARTER OR EXCHANGE

§ 10.110 Strategic materials acquired as a result of barter or exchange of agricultural commodities or products.

(a) Upon notification by the Commodity Credit Corporation, or by another government agency designated by the Commodity Credit Corporation to act for it, of the name of an importer who has contracted with the Commodity Credit Corporation to barter or exchange agricultural products for strategic materials, and a description identifying a shipment to be made in compliance with such a contract, the collector shall accept an entry covering such shipment for the account of the importer claiming exemption from duty under section 206 (b) of the Agricultural Act of 1956 (7 U. S. C. 1856 (b)).[103] Upon submission to the collector of a certificate executed in the following form, the entry shall be liquidated free of duty under authority of 7 U. S. C. 1856 (b):

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Free entry under the provisions of section 206 (b) of the Agricultural Act of 1956 (7 U. S. C. 1856 (b)) is claimed.

(Name)

(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to establish the right to exemption from duty.

(b) When the certification set forth in paragraph (a) of this section is not on a copy of the entry form, it must clearly and unmistakably identify the material covered by the entry.

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interprets or applies sec. 206(b), 70 Stat. 200; 7 U.S.C. 1856(b))

WOOLEN TEXTILES

§ 10.111 Woolen textiles imported to be used in the manufacture of apparel for members of religious orders.

(a) Serges, weighing not over 6 ounces per square yard, and nun's veiling and other woven fabrics, weighing not over 4 ounces per square yard; all the foregoing wholly or in chief value of wool of the sheep, valued at over $4 per pound, in solid colors, imported to be used in the manufacture of apparel for members of religious orders, entered, or withdrawn from warehouse, for consumption after the annual quota on certain wool fabrics classifiable under paragraphs 1108 and 1109 (a), Tariff Act of 1930, has been filled may be released on deposit of estimated duties at the rate the ad valorem part of which is 30 percent, as provided for in the President's Proclamation No. 3160 of September 28, 1956 (3 CFR, 1956 Supp., TD 54212), as amended by the President's Proclamation No. 3225 of March 7, 1958 (3 CFR, 1958 Supp., TD 54550), if there is filed with the entry or the withdrawal a declaration of a person having knowledge of the facts that the fabrics were imported to be used in the manufacture of apparel for members of religious orders. Liquidation of the entry covering the fabrics shall be suspended until the proof of use provided for in paragraph (b) of this section is furnished or the time allowed for the production thereof has expired.

(b) Within 1 year from the date of the entry (in case of warehouse entries as well as consumption entries) or any extension of that period as hereinafter provided for, the importer shall furnish proof of use satisfactory to the collector that the imported fabrics have been used in the manufacture of apparel for members of religious orders. The collector may, upon written application of the importer before the expiration of the initial or any extended period, extend the period for further periods of 1 year each, but not to exceed 5 years from the date of entry.

(c) When proof of use is not furnished within the 1 year period or any extension thereof provided for in paragraph (b) of this section, the entry shall be liquidated at the rate the ad valorem part of which is 45 percent, as provided for in the President's Proclamation No. 3160 of September 28, 1956, as amended.

(R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Interprets or applies sec. 1 (pars. 1108, 1109), 46 Stat. 648; 19 U.S.C. 1001 (pars. 1108, 1109))

LATE FILING OF FREE ENTRY DOCUMENTS

§ 10.112 Filing free entry documents after entry.

Whenever a document, form, or statement required by regulations in this part to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final.

PUMICE STONE

§ 10.113 Pumice stone to be used in the manufacture of concrete masonry products, such as building blocks, bricks, tiles, and similar forms.

(a) Pumice stone, when entered, or withdrawn from warehouse, for consumption, after October 21, 1959, to be used in the manufacture of concrete masonry products, such as building blocks, bricks, tiles, and similar forms, may be released without the payment of duties, if there is filed with the entry or withdrawal a declaration of a person having knowledge of the facts that the pumice stone was imported to be used in the manufacture of concrete masonry products, such as building blocks, bricks, tiles, and similar forms. Liquidation of the entry covering the pumice stone shall be suspended until the proof of use provided for in paragraph (b) of this section is furnished or the time allowed for the production thereof has expired.

(b) Within 1 year from the date of the entry (in the case of warehouse entries as well as consumption entries) or any extension of that period as hereinafter provided for, the importer shall furnish proof of use satisfactory to the collector that the imported pumice stone has been used in the manufacture of concrete masonry products, such as building blocks, bricks, tiles, or similar forms. The collector may, upon written application of the importer before the expiration of the initial or any extended period, extend the period for further periods of 1 year each, but not to exceed 5 years from the date of entry.

(c) When proof of use is not furnished within the 1 year period or any extension thereof provided for in paragraph (b) hereof, the entry shall be liquidated with the assessment of duty at the appropriate rate, if any.

(Secs. 1, 2, 73 Stat. 596; 19 U.S.C. 1201 (par. 1823))

---

[98] "(b) The Secretary of the Treasury may provide by regulation or instruction for the admission, without entry and without the payment of any duty or tax imposed upon or by reason of importation, of

"(1) Aircraft, equipment, supplies, and spare parts for use in searches, rescues, investigations, repairs, and salvage in connection with accidental damage to aircraft;

"(2) Fire-fighting and rescue and relief equipment and supplies for emergent temporary use in connection with conflagrations; and

"(3) Rescue and relief equipment and supplies for emergent temporary use in connection with floods and other disasters.

Any articles admitted under the authority of this subsection and used otherwise than for a purpose herein expressed, or not exported in such time and manner as may be prescribed in the regulations or instructions herein authorized, shall be forfeited to the United States." (Tariff Act of 1930, sec. 322 (b), as amended; 19 U.S.C. 1322(b))

[99] "* * * and articles, previously imported, with respect to which the duty was paid upon such previous importation, if (1) reimported, without having been advanced in value or improved in condition by any process of manufacture or other means, after having been exported under lease to a foreign manufacturer, and (2) reimported by or for the account of the person who imported them into, and exported them from, the United States." (Tariff Act of 1930, par. 1615 (a), as amended, 19 U. S. C. 1201, par. 1615 (a).)

[100] "The tax imposed by section 4551 shall not apply to lumber of Northern white pine (pinus strobus), Norway pine (pinus resinosa), Western white spruce, and Engelmann spruce." (26 U. S. C. 4553)

[101] "In addition to any tax or duty imposed by law, there is hereby imposed upon the following articles imported into the United States, unless treaty provisions of the United States otherwise provide, a tax at the rates specified. * * *

"(1) *In General.* Lumber, rough or planed or dressed on one or more sides, except flooring made of maple (other than Japanese maple), birch, or beech, $3 per 1,000 feet, board measure. * * *" (26 U. S. C. 4551)

[102] "(a) Upon notification by the Commodity Credit Corporation, or by another government agency designated by the Commodity Credit Corporation to act for it, of the name of an importer who has contracted with the Commodity Credit Corporation to barter or exchange agricultural products for strategic materials, and a description identifying a shipment to be made in compliance with such a contract, the collector shall accept an entry covering such shipment for the account of the importer claiming exemption from duty under section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Upon submission to the collector of a certificate executed in the following form, the entry shall be liquidated free of duty under authority of section 303 (b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692(b)):

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Free entry under the provisions of section 303 (b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692(b)) is claimed.

(Name)

(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to establish the right to exemption from duty.

(b) Upon submission to the collector of a certificate executed in the following form, the entry shall be liquidated free of duty under authority of section 303 (b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692(b)):

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Free entry under the provisions of section 303 (b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692(b)) is claimed.

(Name)

(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to establish the right to exemption from duty.

(c) Upon notification by the Commodity Credit Corporation, or by another government agency designated by the Commodity Credit Corporation to act for it, of the name of an importer who has contracted with the Commodity Credit Corporation to barter or exchange agricultural products for strategic materials, and a description identifying a shipment to be made in compliance with such a contract, the collector shall accept an entry covering such shipment for the account of the importer claiming exemption from duty under section 206 (b) of the Agricultural Act of 1956 (7 U. S. C. 1856 (b)). Upon submission to the collector of a certificate executed in the following form, the entry shall be liquidated free of duty under authority of 7 U. S. C. 1856 (b):

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Free entry under the provisions of section 206 (b) of the Agricultural Act of 1956 (7 U. S. C. 1856 (b)) is claimed.

(Name)

(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to establish the right to exemption from duty.

(d) Upon notification by the Commodity Credit Corporation, or by another government agency designated by the Commodity Credit Corporation to act for it, of the name of an importer who has contracted with the Commodity Credit Corporation to barter or exchange agricultural products for strategic materials, and a description identifying a shipment to be made in compliance with such a contract, the collector shall accept an entry covering such shipment for the account of the importer claiming exemption from duty under section 550 (b) of the Trade Act of 1954 (19 U. S. C. 1551 (b)). Upon submission to the collector of a certificate executed in the following form, the entry shall be liquidated free of duty under authority of 19 U. S. C. 1551 (b):

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Free entry under the provisions of section 550 (b) of the Trade Act of 1954 (19 U. S. C. 1551 (b)) is claimed.

(Name)

(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to establish the right to exemption from duty.

(e) Upon notification by the Commodity Credit Corporation, or by another government agency designated by the Commodity Credit Corporation to act for it, of the name of an importer who has contracted with the Commodity Credit Corporation to barter or exchange agricultural products for strategic materials, and a description identifying a shipment to be made in compliance with such a contract, the collector shall accept an entry covering such shipment for the account of the importer claiming exemption from duty under section 204 (b) of the Agricultural Act of 1956 (7 U. S. C. 1854 (b)). Upon submission to the collector of a certificate executed in the following form, the entry shall be liquidated free of duty under authority of 7 U. S. C. 1854 (b):

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Free entry under the provisions of section 204 (b) of the Agricultural Act of 1956 (7 U. S. C. 1854 (b)) is claimed.

(Name)

(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to establish the right to exemption from duty.

(f) Upon notification by the Commodity Credit Corporation, or by another government agency designated by the Commodity Credit Corporation to act for it, of the name of an importer who has contracted with the Commodity Credit Corporation to barter or exchange agricultural products for strategic materials, and a description identifying a shipment to be made in compliance with such a contract, the collector shall accept an entry covering such shipment for the account of the importer claiming exemption from duty under section 32 of the Act of August 24, 1935 (7 U. S. C. 612c). Upon submission to the collector of a certificate executed in the following form, the entry shall be liquidated free of duty under authority of 7 U. S. C. 612c:

I hereby certify that the above described materials covered by this certificate are strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products as provided for in section 303 of the Agricultural Trade Development and Assistance Act of 1954 (7 U. S. C. 1692). Free entry under the provisions of section 32 of the Act of August 24, 1935 (7 U. S. C. 612c) is claimed.

(Name)

(Title)

Who has been designated by Commodity Credit Corporation, or other government agency, under authority from the Commodity Credit Corporation, to make claim for free entry, and to execute certifications necessary to establish the right to exemption from duty.

[103] "Strategic materials acquired by the Commodity Credit Corporation as a result of barter or exchange of agricultural commodities or products may be entered, or withdrawn from warehouse, free of duty." (7 U. S. C. 1856 (b)).

PART 11—PACKING AND STAMPING; MARKING, TRADE-MARKS AND TRADE NAMES; COPYRIGHTS

PACKING AND STAMPING

Sec.
11.1 Cigars, cigarettes, medicinal preparations, and perfumery.
11.2 Manufactured tobacco.
11.2a Release of tobacco materials to qualified manufacturers of tobacco products and dealers in tobacco material; also release of manufactured tobacco, cigars, and cigarettes to qualified manufacturers.
11.3 Cigarette papers and tubes.
11.4 Playing cards.
11.5 Oleomargarine.
11.6 Distilled spirits, wines, and malt liquors in casks and similar containers.
11.7 Distilled spirits and other alcoholic beverages imported in bottles and similar containers; regulations of the Internal Revenue Service.

MARKING

11.8 Marking of articles and containers to indicate name of country of origin.
11.9 Special marking on certain articles.
11.10 Exceptions to marking requirements.
11.11 Disposition of articles not properly marked.
11.12 Labeling of wool products to indicate fiber content.
11.12a Labeling of fur products to indicate composition.
11.12b Labeling textile fiber products.
11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

TRADE-MARKS AND TRADE NAMES

11.14 Trade-marks and trade names; prohibition of importation.
11.15 Trade-marks; recording; change of ownership; renewal.
11.16 Trade names; recording.
11.17 Detention; seizure; exportation; release.

COPYRIGHTS

11.18 False notice of copyright.
11.19 Recordation of copyrighted works.
11.20 Piratical copies.
11.21 United States manufacturing requirements; copies not produced in accordance with 17 U.S.C. 16.

AUTHORITY: §§ 11.1 to 11.21 issued under R.S. 161, 251, sec. 501, 65 Stat. 290, sec. 624, 46 Stat. 759; 5 U.S.C. 22, 140, 19 U.S.C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

PACKING AND STAMPING

§ 11.1 Cigars, cigarettes, medicinal preparations, and perfumery.

(a) All cigars and cigarettes imported into the United States, except importations by mail and in baggage, shall be placed in the public stores or in a designated bonded warehouse to remain until inspected, weighed, and repacked, if necessary, under the customs and internal-revenue laws. However, if the invoice and entry presented specify all of the information necessary for prompt determination of the estimated duty and tax on the packages of cigars and cigarettes covered thereby, the collector may permit designation of less than the entire importation for examination.

(b) After the cigars and cigarettes have been examined, weighed, and appraised, before release the inspecting officer shall verify that they are in properly constructed packages, conforming to the requirements of the regulations of the Internal Revenue Service, bearing a legible imprint or a securely affixed label stating the quantity, kind, and classification for tax purposes as required by such regulations. No cigars or cigarettes shall be released for consumption unless packed and marked as prescribed in such regulations.

(c) The immediate containers of all domestic cigars, cigarettes, medicinal preparations, and perfumery, which are returned to the United States and are subject to a duty equal to an internal-revenue tax, shall be stamped by the customs inspector with a rubber stamp bearing the legend "U.S. Customs—American Goods Returned—_____ Inspector." The inspector's initials shall appear in the space provided therefor. The packaging requirements set forth in paragraph (b) of this section apply to returned cigars and cigarettes of domestic origin.

§ 11.2 Manufactured tobacco.

(a) All manufactured tobacco, as defined in regulations of the Internal Revenue Service, shall be packed and marked as required by such regulations before release for consumption. If the invoice and entry presented for manufactured tobacco specify all of the information necessary for prompt determination of the estimated duty and tax on the manufactured tobacco covered thereby, the collector may permit designation of less than the entire importation for examination.

(b) In the case of returned American manufactured tobacco, the packages shall be marked or stamped by customs with the inscription "American goods returned."

§ 11.2a Release of tobacco materials to qualified manufacturers of tobacco products and dealers in tobacco material; also release of manufactured tobacco, cigars, and cigarettes to qualified manufacturers.

Tobacco materials may be released from customs custody, without the payment of internal-revenue tax, for delivery to a qualified dealer in tobacco materials, or to a qualified manufacturer of tobacco cigars, or cigarettes, under such dealer's or manufacturer's bond, solely for receipt into premises covered by bond. The collector of customs may permit such release upon the filing with him of a notice of release, Internal Revenue Form 2146, properly and completely executed by the dealer or manufacturer desiring release of the tobacco materials to him. Manufactured tobacco, cigars and cigarettes, may also be released from customs custody without payment of internal-revenue tax for delivery to a qualified manufacturer of such products, under the manufacturer's bond, solely for receipt into premises covered by such bond. The collector of customs may permit such release of tobacco products upon filing with him of a notice of release of imported tobacco products, Internal Revenue Form 2145, properly executed by the manufacturer concerned and properly endorsed by the appropriate assistant regional commissioner of internal revenue.

§ 11.3 Cigarette papers and tubes.

The procedure for the collection of internal-revenue tax on cigarette papers and tubes is prescribed in article 188 of Internal Revenue Regulations No. 8, revised November 1934 (26 CFR 140.189). Customs officers shall require importers of cigarette tubes to affix to each package of tubes the internal-revenue stamps prescribed in paragraph (d) of the said article 188 and cancel them before release from customs custody.[3]

[3] Internal-revenue stamps for imported cigarette tubes, playing cards, and oleomargarine will be sold to the owner or consignee of the merchandise by the district director of internal revenue of the district in which is located the office of the collector of customs where the customs entry is filed, upon requisition therefor an internal-revenue Form 923, duly executed by an authorized customs officer.

§ 11.4 Playing cards.

(a) Imported playing cards, not bearing stamps in payment of the tax affixed abroad in accordance with Internal Revenue Regulations (26 CFR (1939), 1956 Supp., 305.19), shall not be released for consumption until the required internal-revenue stamps have been affixed thereto and canceled by the importer in accordance with Internal Revenue Regulations No. 66 (26 CFR Part 305).[3] Imported playing cards bearing the required stamps affixed abroad may be treated the same as any importation subject only to duty.

(b) The immediate containers of reimported domestic playing cards which are subject to a duty equal to an internal-revenue tax shall be stamped by the customs inspector with a rubber hand stamp bearing the legend—"U. S. Customs—American goods returned _____ Inspector," to denote the payment of duty equal to the internal-revenue tax. The inspector's initials shall appear in the space provided therefor.

§ 11.5 Oleomargarine.

(a) All imported oleomargarine and imported articles suspected of being oleomargarine shall be detained by the collector of customs and the facts reported to the collector of internal revenue of the district, to whom such samples shall be furnished as may be requested.

(b) No imported oleomargarine shall be released for consumption until the proper internal-revenue stamps have been affixed and canceled by the importer as required by Internal Revenue Regulations No. 9 (26 CFR Part 310).[3]

§ 11.6 Distilled spirits, wines, and malt liquors in casks and similar containers.

All distilled spirits, wines, and malt liquors imported in pipes, hogsheads, tierces, barrels, casks, or other similar packages shall be stamped in accordance with 19 U.S.C. 467.[3] The provision in that section that such spirits, wines, and liquors shall be first placed in public store or bonded warehouse is construed as directory only and such merchandise, unless otherwise required to be sent to the public store, may, in the discretion of the collector, be inspected, gauged, marked, and stamped at the place of unlading or at another suitable place if, in the opinion of the collector such inspecting, gauging, marking, and stamping can be done with facility and effectiveness.

(Sec. 11, 20 Stat. 342; 19 U.S.C. 467)

§ 11.7 Distilled spirits and other alcoholic beverages imported in bottles and similar containers; regulations of the Internal Revenue Service.

The importation of distilled spirits and other alcoholic beverages in bottles and similar containers is subject to regulations of the Internal Revenue Service relating to strip stamps and other matters. (27 CFR Part 7, 26 CFR Parts 175, 225, and 251). Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations.

[3] "All distilled spirits, wines, and malt liquors, imported in pipes, hogsheads, tierces, barrels, casks, or other similar packages, shall be first placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected, marked, and branded by a United States customs-gauger, and a stamp affixed to each package, indicating the date and particulars of such inspection; and the Secretary of the Treasury is authorized to prescribe the form of, and provide, the requisite stamps, and to make all regulations which he may deem necessary and proper for carrying the foregoing requirements into effect. Any pipe, hogshead, tierce, barrel, cask, or other package withdrawn from public store or bonded warehouse purporting to contain imported liquor, found without having thereon the stamp hereby required shall be, with its contents, forfeited to the United States; * * *." (19 U. S. C. 467)

"Still wines, including ginger wine or ginger cordial, vermouth, and rice wine or sake, and similar beverages * * *: *Provided*, That any of the foregoing articles specified in this paragraph when imported containing more than 24 per centum of alcohol shall be classed as spirits * * *." (Par. 804, Tariff Act of 1930; 19 U. S. C. 1001, par. 804)

MARKING

§ 11.8 Marking of articles and containers to indicate name of country of origin.

(a) The term "country" as used in section 304, Tariff Act of 1930, as amended,[4] requiring the marking of articles to indicate the country of origin, shall be considered to mean the political entity known as a nation. Colonies, possessions, or protectorates, outside the boundaries of the mother country shall be considered separate countries. The name of any such colony, possession, or protectorate shall be considered acceptable marking, except when the Bureau finds that the name is not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin, or where the name appearing alone may cause confusion, deception, or mistake.[5]

(b) The marking required by such section 304 shall include the English name of the country of origin, unless other marking to indicate the English name of the country of origin is specifically authorized by the Bureau.[6] The adjectival form of the name of a country shall be accepted as a proper indication of the name of the country of origin of imported merchandise, provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. For example, such terms as "English walnuts" or "Brazil nuts" are unacceptable. Variant spellings which clearly indicate the English name of the country of origin, such as Brasil for Brazil and Italie for Italy, are acceptable. Abbreviations which unmistakably indicate the name of a country, such as "Gt. Britain" for "Great Britain" and "Br. N. Borneo" for "British North Borneo," are acceptable.

(c) The country of manufacture or production shall be considered the country of origin. Further work or material added to an article in another country must affect a substantial transformation in order to render such other country the "country of origin" within the meaning of this section.

(d) Subject to the exceptions specified in section 304 (a) (3), Tariff Act of 1930, as amended, each article classifiable under paragraph 354, 355, 357, 358, 359, 360, 361, or 1553 of that act shall be marked legibly and conspicuously to indicate its origin by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets. In the case of other classes of articles, the exact method of marking to meet the requirements of section 304, Tariff Act of 1930, as amended, is not specified in these regulations or elsewhere. When an article not classifiable under a paragraph specified above is required to be marked under section 304 to indicate its origin, any method of legible and conspicuous marking is acceptable which will remain on the article (or its container, when the container and not the article is required to be marked) until it reaches the ultimate purchaser. The marking must in all cases be legible and conspicuous and of a degree of permanency which will assure that in any reasonably foreseeable circumstance the marking, unless it is deliberately removed, will remain on the article (or its container) until it reaches the ultimate purchaser. For example, if chinaware is marked by means of paper sticker labels, the labels, legibly indicating the English name of the country of origin, must be affixed to the chinaware in a conspicuous place and so securely that unless deliberately removed they will remain on the chinaware while it is in storage or on display and until it is delivered to the purchaser at retail or other ultimate purchaser. Similarly, when tags are used, the tags, legibly indicating origin, must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser.

(e) If an imported article is to be used in the United States in the manufacture of an article having a name, character, or use differing from that of the imported article, the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc. (C. A. D. 98) will apply to such imported article. Under this principle, the manufacturer or processor in the United States who will convert or combine the imported article into the different article will be considered the "ultimate purchaser" [6a] of the imported article within the contemplation of section 304 (a), Tariff Act of 1930, as amended.

(f) Articles of foreign manufacture or production imported into any possession of the United States outside its customs territory (section 401 (k), Tariff Act of 1930, as amended) and reshipped to the United States are subject to all marking requirements applicable to like articles of foreign origin imported directly from a foreign country to the United States.

(g) When an imported article is of a kind which is usually combined with an-

[4] "Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. The Secretary of the Treasury may by regulations—

"(1) Determine the character of words and phrases or abbreviations thereof which shall be acceptable as indicating the country of origin and prescribe any reasonable method of marking, whether by printing, stenciling, stamping, branding, labeling, or by any other reasonable method, and a conspicuous place on the article (or container) where the marking shall appear; * * *." (Tariff Act of 1930, sec. 304 (a) as amended; 19 U. S. C. 1304 (a))

[5] In such cases, the Bureau will specify in decisions which will be published in the weekly Treasury Decisions the additional marking to be used in conjunction with the name of the colony, possession, or protectorate.

[6] Notices of acceptable markings other than the English name of the country of origin will be published from time to time in the Treasury Decisions.

[6a] It is not feasible to state who will be the "ultimate purchaser" in every circumstance. Broadly stated, an "ultimate purchaser" may be defined as the last person in the United States who will receive the article in the form in which it was imported. If an imported article will be used in manufacture, the manufacturer is the "ultimate purchaser." If an article is to be sold at retail in its imported form, the purchaser at retail is the "ultimate purchaser." A person who subjects an imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article, may be an "ultimate purchaser" in certain circumstances; but if the process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who purchases it after the processing, will be regarded as the "ultimate purchaser."

other article subsequent to importation but before delivery to an ultimate purchaser, and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined subsequent to importation. For example, bottles, drums, or other containers imported empty, to be filled in the United States, shall be marked with such words as "Bottle (or drum or container) made in (name of country)." Labels and similar articles so marked that the name of the country of origin of the article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as "Label made (or printed) in (name of country)" or words of similar import.[7] This paragraph shall not apply to articles of a kind which are ordinarily so substantially changed in this country that the articles in their changed condition become products of the United States. An article excepted from marking under § 11.10 is not within the scope of section 304 (a) (2), Tariff Act of 1930, as amended, and is not subject to the requirements of this paragraph.

(h) In the case of containers required to be marked in accordance with section 304 (b), Tariff Act of 1930, as amended,[8] the container to be marked shall be the outermost container in which the article ordinarily reaches the ultimate purchaser.

(i) If an article is excepted under § 11.10 from the marking requirements, its container shall be marked to indicate the country of origin of the contained article, unless the container is exempt from marking by reason of the second sentence of section 304 (b), Tariff Act of 1930, as amended, or because the container itself is within an exception covered by § 11.10. This requirement applies even though the excepted article is itself actually marked to indicate the country of its origin.

(j) Unusual containers within the purview of section 504, Tariff Act of 1930, shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents.

(k) The duty of 10 percent provided for in subsection (c) of section 304, Tariff Act of 1930, as amended,[9] accrues upon merchandise not legally marked, exported, or destroyed prior to the liquidation of the entry covering it and shall be assessed upon the dutiable value as defined in section 503, Tariff Act of 1930, as amended. The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake. When an article is to be exported or destroyed, or the article (or its container) is to be marked under customs supervision, under subsection (c) of such section 304, the identity of the imported article shall be established to the satisfaction of the collector.

(l) No article which has been repacked under § 19.8 of this chapter, manipulated under section 562, Tariff Act of 1930, as amended, or manipulated (but not manufactured) in a foreign-trade zone as provided for in § 30.12 of this chapter shall be withdrawn for consumption unless such article (or its container) is marked in accordance with the provisions of section 304, Tariff Act of 1930, as amended, at the time of withdrawal or transfer to customs territory,[10] except when the article and its container were exempt at the time of importation from marking by reason of § 11.10.

(m) The compensation of customs officers and employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with § 19.5 (b) of this chapter, except to the extent that such supervision is performed by a customs officer or employee in an overtime status, in which case the compensation with respect to the overtime shall be computed in accordance with § 24.16 of this chapter.[11] The time for which compensation is charged shall include all periods devoted to supervision and all periods during which such officers or employees are away from their regular posts of duty by reason of such assignment and for which compensation to such officers and employees is provided for by law. In formulating charges for expenses pertaining to such supervision, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by such officers and employees by reason of such supervision. If the aggregate amount of compensation and expenses with respect to a single assignment, computed as herein provided, is less than 50 cents, no charge shall be made with respect to such assignment. If the importations of more than one importer are concurrently supervised, the service rendered for each importer shall be regarded as a separate assignment, but the total amount of the compensation, and any expenses properly applicable to more than one importer, shall be equitably apportioned among the importers concerned.

(Sec. 304, 46 Stat. 687, as amended; 19 U.S.C. 1304)

§ 11.9 Special marking on certain articles.

(a) No article classifiable under paragraph 367 or 368, Tariff Act of 1930, shall be released for consumption until marked in exact conformity with the requirements thereof. If any article required to be marked under paragraph 367 or 368 is found not to be marked to indicate the country of origin, the 10 percent marking duty shall be assessed, unless such marking is accomplished or the merchandise is exported or destroyed under customs supervision prior to the liquidation of the entry, in accordance with the provisions of section 304 (c), Tariff Act of 1930, as amended.

(b) The name of the manufacturer or purchaser, which must appear on articles classifiable under such paragraph 367 or 368 and specified in subparagraph (b) or (g) of paragraph 367 or subparagraph (b) of paragraph 368, may be either the actual name of the manufacturer or purchaser or a duly registered trade name under which such manufacturer or purchaser carries on his business. A trade-mark shall not be accepted as meeting any such special marking requirement unless it includes the full name of the manufacturer or purchaser. The term "purchaser" as used in this paragraph means the purchaser in the United States by whom or for whose account the articles are imported.

§ 11.10 Exceptions to marking requirements.

(a) Articles within any specification in section 304(a)(3), Tariff Act of 1930, as amended,[12] are hereby excepted from the requirement of marking. The marking of the container of an article will reasonably indicate the origin of such article within the meaning of section 304(a)(3)(D) if the article is imported (or repacked under section 562, Tariff Act of 1930, as amended) in a container which will reach the ultimate purchaser in the United States unopened. An article which is to be processed in the United States by the importer or for his account shall not be considered to be within the specifications of section 304 (a) (3) (G) if there is a reasonable method of marking which will not be obliterated, destroyed, or permanently concealed by such processing. The exceptions under section 304 (a) (3) (J) are set forth in T. D. 49690, T. D. 49835, T. D. 49896, and T. D. 54167.

(b) The following articles and their containers are not subject to the marking requirements of section 304, as amended, or paragraph 367 or 368, Tariff Act of 1930:

(1) Articles entered or withdrawn for immediate exportation or for transportation and exportation;

(2) Products of American fisheries which are free of duty;

(3) Products of possessions of the United States.

(4) Products of the United States exported and returned;

(5) Articles exempt from duty under § 8.3 or 9.6 of this chapter.

(Sec. 304, 46 Stat. 687, as amended; 19 U. S. C. 1304)

§ 11.11 Disposition of articles not properly marked.

(a) The appraiser, acting for the collector, shall notify the importer on customs Form 4647 to arrange with the collector's office to properly mark the articles or containers found upon examination not to be legally marked, or to return the unexamined packages to customs custody for exportation, or destruction. Such marking, exportation, or destruction shall be at the expense of the importer and under customs supervision.[13]

(b) Articles (or containers) in examination packages may be marked in the appraiser's stores by the importer in accordance with the provisions of section 304, Tariff Act of 1930, as amended, or paragraph 367 or 368, Tariff Act of 1930. If it is impracticable to mark such articles (or containers) in the appraiser's stores, the merchandise may be turned over to the importer for proper marking upon the deposit of adequate security to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of customs supervision. If such merchandise is not exported, destroyed, or properly marked by the importer within a reasonable time, it shall be sent to general-order stores unless covered by a warehouse entry, and, if not exported within 1 year from the date of entry, shall be sold as abandoned merchandise upon the condition that it be marked by the purchaser under customs supervision or exported under such supervision.

(c) If in any case articles subject to marking, which have been released from customs custody, are not returned or properly marked within 30 days from the date of the requisition therefor, the collector shall demand payment of the liquidated damages incurred under the bond in an amount equal to the entered value of the articles not returned, plus any estimated duty thereon as determined at the time of entry. If payment is not made or an application for relief from such payment is not filed within the period prescribed in § 25.15 (e) of this chapter, the collector shall proceed in accordance with the provisions of that section. Any relief from the payment of the full liquidated damages incurred will be contingent upon the showing made concerning diligence and good faith shown by the importer in attempting to secure compliance with the marking requirements.

(d) If a written application for relief is timely filed, such application, together with a full report of the facts, shall be transmitted to the Bureau for decision, except that in cases involving only marking under section 304 of the tariff act, as amended, if the full amount of liquidated damages incurred for failure to redeliver does not exceed $20,000, collectors of customs are hereby authorized to cancel the liability incurred without the collection of liquidated damages, provided the marking duty due under that section of the tariff act has been deposited, and the collector is satisfied that the importer was not guilty of negligence or bad faith in permitting the not-properly-marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery.

(Secs. 304, 623, 46 Stat. 687, as amended, 759, as amended; 19 U.S.C. 1304, 1623)

§ 11.12 Labeling of wool products to indicate fiber content.

(a) Wool products imported into the United States, except those made more than 20 years prior to importation, and except carpets, rugs, mats, and upholsteries, shall have affixed thereto a stamp, tag, label, or other means of identification, as required by the Wool Products Labeling Act of 1939 (54 Stat. 1129; 15 U.S.C. 68 et seq) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR Part 300). The term "wool product" means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool.

(b) If imported wool products are not correctly labeled and the collector is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 11.8 (m).

(c) Packages of wool products subject to the provisions of this section which

---

[7] See sec. 304 (a) (2), Tariff Act of 1930, as amended; 19 U. S. C. 1304 (a) (2).

[8] "Whenever an article is excepted under subdivision (3) of subsection (a) of this section from the requirements of marking, the immediate container, if any, of such article, or such other container or containers of such article as may be prescribed by the Secretary of the Treasury, shall be marked in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of such article, subject to all provisions of this section, including the same exceptions as are applicable to articles under subdivision (3) of subsection (a). If articles are excepted from marking requirements under clause (F), (G), or (H) of subdivision (3) of subsection (a) of this section, their usual containers shall not be subject to the marking requirements of this section. Usual containers in use as such at the time of importation shall in no case be required to be marked to show the country of their own origin." (Tariff Act of 1930, sec. 304 (b), as amended; 19 U. S. C. 1304 (b))

[9] "If at the time of importation any article (or its container, as provided in subsection (b) hereof) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) hereof) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. * * *" (Tariff Act of 1930, sec. 304 (c), as amended; 19 U. S. C. 1304 (c))

[10] "No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (c) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law." (Tariff Act of 1930, sec. 304 (d), as amended; 19 U. S. C. 1304 (d))

[11] "* * * The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer." (Tariff Act of 1930, sec. 304 (c), as amended; 19 U. S. C. 1304 (c))

[12] "* * * The Secretary of the Treasury may by regulations—

* * * * * *

"(3) Authorize the exception of any article from the requirements of marking if—

"(A) Such article is incapable of being marked;

"(B) Such article cannot be marked prior to shipment to the United States without injury;

"(C) Such article cannot be marked prior to shipment to the United States, except at an expense economically prohibitive of its importation;

"(D) The marking of a container of such article will reasonably indicate the origin of such article;

"(E) Such article is a crude substance;

"(F) Such article is imported for use by the importer and is not intended for sale in its imported or any other form;

"(G) Such article is to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such article and in such manner that any mark contemplated by this section would necessarily be obliterated, destroyed, or permanently concealed;

"(H) An ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, must necessarily know the country of origin of such article even though it is not marked to indicate its origin;

"(I) Such article was produced more than twenty years prior to its importation into the United States;

"(J) Such article is of a class or kind with respect to which the Secretary of the Treasury has given notice by publication in the weekly Treasury Decisions within two years after July 1, 1937, that articles of such class or kind were imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin: *Provided*, That this subdivision (J) shall not apply after September 1, 1938, to sawed lumber and timbers, telephone, trolley, electric-light, and telegraph poles of wood, and bundles of shingles; but the President is authorized to suspend the effectiveness of this proviso if he finds such action required to carry out any trade agreement entered into under the authority of the Act of June 12, 1934 (U. S. C., 1934 edition, title 19, secs. 1351–1354), as extended; or

"(K) Such article cannot be marked after importation except at an expense which is economically prohibitive, and the failure to mark the article before importation was not due to any purpose of the importer, producer, seller, or shipper to avoid compliance with this section." (Tariff Act of 1930, sec. 304 (a) (3), as amended; 19 U. S. C. 1304 (a) (3))

[13] See footnotes 9 and 10.

are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry the usual customs single entry or term bond in such amount as is prescribed for such bonds in §§ 25.3 and 25.4 of this chapter.

(d) The collector of customs shall give written notice to the importer of any lack of compliance with the Wool Products Labeling Act of 1939 in respect of an importation of wool products, and pursuant to § 8.26 (a) of this chapter shall demand the immediate return of the involved products to customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to customs custody and the collector is not fully satisfied that they have been brought into compliance with the Wool Products Labeling Act of 1939, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate customs officer an application for cancelation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of the collector of customs, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from customs custody, and the case shall be reported to the Federal Trade Commission, Washington, D. C.

(Sec. 8, 54, Stat. 1132; 15 U.S.C. 68f)

§ 11.12a Labeling of fur products to indicate composition.

(a) Fur products imported into the United States shall have affixed thereto a label as required by section 4 of the Fur Products Labeling Act (15 U.S.C. 69b) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR 301.1–301.49). The term "fur product" means any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Federal Trade Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein.

(b) If imported fur products are not correctly labeled and the collector is satisfied that the error or omission involved no fraud or wilful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 11.8(m).

(c) Packages of fur products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry the usual customs single entry or term bond in such amount as is prescribed for such bonds in §§ 25.3 and 25.4 of this chapter.

(d) The collector of customs shall give written notice to the importer of any lack of compliance with the Fur Products Labeling Act in respect of an importation of fur products, and pursuant to § 8.26 (a) of this chapter shall demand the immediate return of the involved products to customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to customs custody and the collector is not fully satisfied that they have been brought into compliance with the Fur Products Labeling Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate customs officer an application for cancelation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancelation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of a collector of customs, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from customs custody, and the case shall be reported to the Federal Trade Commission, Washington 25, D. C.

(Sec. 6, 65 Stat. 178; 15 U.S.C. 69d)

§ 11.12b Labeling textile fiber products.

(a) Textile fiber products imported into the United States shall be labeled or marked in accordance with the Textile Fiber Products Identification Act (15 U.S.C. 70–70k) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR Part 303) unless exempt from marking or labeling under section 12 of the Act (15 U.S.C. 70j). An invoice or other paper, containing the specified information may be used in lieu of a label where the textile product is not in the form intended for sale, delivery to, or for use by the ultimate consumer. Rule 31 of the Federal Trade Commission (16 CFR 303.31).

(b) If imported fiber products are not correctly labeled and the collector is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reaosnable opportunity to label the merchandise under customs supervision to conform with the requirements of such Act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 11.8(m).

(c) Packages of fiber products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry the usual customs single entry or term bond in such amount as is prescribed for such bonds in § 25.4 of this chapter.

(d) The collector of customs shall give written notice to the importer of any lack of compliance with the Fiber Products Identification Act in respect of an importation of fiber products, and pursuant to § 8.26(a) of this chapter shall demand the immediate return of the involved products to customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to the preceding paragraph are not promptly returned to customs custody and the collector is not fully satisfied that they have been brought into compliance with the Fiber Products Identification Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any willful or flagrant violation of the Act with respect to the importation of articles comes to the attention of a collector of customs, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from customs custody, and the case shall be reported to the Federal Trade Commission, Washington 25, D.C.

(Sec. 501, 65 Stat. 290, secs. 2–12, 14, 72 Stat. 1717; 5 U.S.C. 140, 15 U.S.C. 70–70k)

§ 11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

(a) Articles which bear, or the containers of which bear, false designations of origin, or false descriptions or representations, including words or other symbols tending falsely to describe or represent the articles, are prohibited importation and shall be detained.[14]

[14] "It shall be unlawful for any person, firm, corporation, or association, being a manufacturer of or wholesale or retail dealer in gold or silver jewelry or gold ware, silver goods or silverware, * * * to import or export or cause to be imported into or exported from the United States for the purpose of selling or disposing of the same, * * * any article of merchandise manufactured after June 13, 1907, and made in whole or in part of gold or silver, or any alloy of either of said metals, and having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate that the gold or silver or alloy of either of said metals in such article is of a greater degree of fineness than the actual fineness or quality of such gold, silver, or alloy, according to the standards and subject to the qualifications set forth in sections 295 and 296." (15 U. S. C. 294; see also 15 U. S. C. 295–298)

"* * * no article of imported merchandise which * * * shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; * * *." (15 U. S. C. 1124)

"(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

"(b) Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized." (15 U. S. C. 1125)

The laws of the United States relating to patents, trade-marks, and copyrights have been extended to the Virgin Islands. (See 48 U.S.C. 1405q.)

(b) Articles made in whole or in part of gold or silver or alloys thereof imported for sale by manufacturers or dealers which are marked or labeled in a manner indicating a greater degree of fineness than the actual fineness of the gold or silver or alloys thereof, and any plated or filled articles so imported which are marked or labeled to indicate the fineness of the gold or silver and are not also marked or labeled to indicate the plated or filled condition or are marked or labeled with the word "sterling" or the word "coin", are prohibited importation and shall be detained, and the facts shall be reported to the United States attorney.

(c) Whenever any articles are detained in accordance with the foregoing provisions of this section, and the case of any articles detained under paragraph (b) of this section the United States attorney has indicated that he does not intend to prosecute, the articles shall be seized and forfeited in the usual manner, except that, upon the filing of a petition therefor by the importer prior to final disposition of the articles, the collector may release the articles upon the condition that the prohibited marking be removed or obliterated or that the articles and containers be properly marked to indicate their origin, contents, or condition, or may permit the articles to be exported or destroyed under customs supervision, and without expense to the Government.

(d) Articles forfeited for violation of section 294, 1124, or 1125, title 15 and section 545, title 18, U. S. Code, may be disposed of in accordance with the procedure applicable to other customs forfeitures, but may not be released from customs custody except upon the removal by and at the expense of the party in interest of the prohibited marking by reason of which the articles were seized.

(Secs 1–5, 34 Stat. 260–262, secs. 42, 43, 60 Stat. 440, 441, sec. 1, 62 Stat. 716, sec. 618, 46 Stat. 757; 15 U. S. C. 294–298, 1124, 1125, 18 U.S.C. 545, 19 U.S.C. 1618)

TRADE-MARKS AND TRADE NAMES

§ 11.14 Trade-marks and trade names; prohibition of importation.

(a) The importation of merchandise of foreign or domestic manufacture is prohibited if such merchandise bears a mark or name which copies or simulates a trade-mark or trade name recorded in the Treasury Department under the Trade-Mark Act of February 20, 1905, or the Trade-Mark Act of July 5, 1946, unless such merchandise is imported by or for the account of, or with the written consent of, the owner of the protected trade-mark or trade name.[15] The prohibition does not apply to articles to which a copying or simulating mark has been applied, if such mark is removed or completely obliterated before importation. See § 11.17(b).[16]

[15] "(a) It shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trade mark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent Office by a person domiciled in the United States, under the provisions of sections 81–109 of Title 15, and if a copy of the certificate of registration of such trade mark is filed with the Secretary of the Treasury, in the manner provided in section 106 of said Title 15, unless written consent of the owner of such trade mark is produced at the time of making entry.

"(b) Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.

"(c) Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade mark and shall be liable for the same damages and profits provided for wrongful use of a trade mark, under the provisions of sections 81–109 of Title 15." (19 U.S.C. 1526.)

[16] Registration on the supplemental register or under the act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations." (Sec. 28, 60 Stat. 436; 15 U.S.C. 1096)

(b) A mark or name (including a mark or name which is a genuine trade-mark or trade name in a foreign country) on an article of foreign manufacture identical with a trade-mark or trade name recorded under the trade-mark laws mentioned in paragraph (a) of this section, as well as a mark or name on an article of foreign or domestic manufacture counterfeiting such recorded trade-mark or trade name, or so resembling such recorded trade-mark or trade name as to be likely to cause confusion or mistake in the minds of the public or to deceive purchasers, shall be deemed to copy or simulate such name recorded under the above-mentioned trade-mark laws, as well as a mark or name on an article of foreign or domestic manufacture counterfeiting such recorded trade-mark or trade name, or so resembling such recorded trade-mark or trade name as to be likely to cause confusion or mistake in the minds of the public or to deceive purchasers, shall be deemed to copy or simulate such protected trade-mark or trade name. However, merchandise manufactured or sold in a foreign country under a trade-mark or trade name, which trade-mark is registered and recorded, or which trade name is recorded under the above-mentioned trade-mark laws, shall not be deemed to copy or simulate such United States trade-mark or trade name if such foreign trade-mark or trade name and such United States trade-mark or trade name are owned by the same person, partnership, association, or corporation.

(Sec. 42, 60 Stat. 440, sec. 526, 46 Stat. 741; 15 U.S.C. 1124, 19 U.S.C. 1526)

§ 11.15 Trade-marks; recording;[16] change of ownership; renewal.

(a) To record a trade-mark with the Treasury Department, an application, which may be in the form of a letter, shall be addressed to the Commissioner of Customs, Washington 25, D.C., stating the name, residence, and citizenship of the owner or owners (if a partnership, the citizenship of each partner; if a corporation or association, the country or State within which it was organized or created), the name of the locality in which the goods are manufactured, and the name and address of each foreign

person, partnership, association, or corporation using the trade-mark while acting as the principal or agent of the trade-mark owner. The application shall be accompanied by one certified copy of the original certificate of registration issued by the Commissioner of Patents in accordance with the Trade-Mark Act of February 20, 1905, or section 7 of the Trade-Mark Act of July 5, 1946, to which shall be attached one printed Patent Office facsimile of the statement and drawing covering the trade-mark; such of the documents mentioned in paragraph (b) or (c) of this section as may be required to show the ownership of the applicant, or renewal of the trade-mark; 500 uncertified facsimiles of the statement and drawing covering the trade-mark (which may be reproduced privately from a Patent Office facsimile) for distribution to all collectors of customs and appraisers of merchandise; and the fee of $75 prescribed by § 24.12 of this chapter. Checks or money orders in payment of the fee shall be made payable to the Head, Fiscal Section, Bureau of Customs.

(b) If ownership of a registered trade-mark is claimed by an applicant by virtue of an assignment of such trademark, the certification on the original certificate of registration required by paragraph (a) of this section must show the record title to be in the applicant. There shall be transmitted with the application for recording, in addition to the documents and information specified in paragraph (a) of this section, a statement as to the nature of the assignment, whether such assignment is qualified in any way, and whether or not the mark has been reassigned without recordation of the reassignment.

(c) If the application for recording is presented after the expiration of the period for which the certificate of registration or a renewal thereof was issued, the application shall be accompanied by a certified copy of a certificate of renewal from the United States Patent Office showing that the registration is in force. In order to continue to receive the protection of the trade-mark statutes with respect to imported merchandise, such a certified copy of each subsequent certificate of renewal shall be promptly filed with the Treasury Department.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 11.16 Trade names; recording.

To record the trade name (not a trade-mark) of a manufacturer or trader, an application, which may be in the form of a letter, shall be addressed to the Commissioner of Customs, Washington 25, D. C., stating the trade name, the name, residence, and citizenship of the owner or owners (if a partnership, the citizenship of each partner; if a corporation or association, the country or State within which it was organized or created), a description of the class or kind of merchandise to which the trade name is applied, the name of the locality in which the merchandise is manufactured and the name and address of each foreign person, partnership, association, or corporation using the trade name while acting as the principal or agent of the trade name owner. The application shall be accompanied by supporting evidence in the form of certificates by the owner or owners and by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts showing that the applicant has used the trade name in connection with the class or kind of merchandise described in the application for a specified period of time, that the trade name is not identical with, or confusingly similar to, any other trade name or registered trade-mark used in connection with merchandise of such class or kind, and that the applicant has the sole and exclusive right to the use of such trade name in connection with merchandise of such class or kind, and by the fee of $75 prescribed by § 24.12 of this chapter. Checks or money orders in payment of the fee shall be made payable to the Head, Fiscal Section, Bureau of Customs.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

§ 11.17 Detention; seizure; exportation; release.

(a) Merchandise which bears a mark or name copying or simulating a trade-mark or trade name entitled to the protection of section 27, Trade-Mark Act of February 20, 1905, or section 42, Trade-Mark Act of July 5, 1946,[19] if not imported by or for the account of, or with the appropriate written consent of, the owner of the United States trade-mark or trade name shall be detained for a period of 30 days from the date of notice to the importer that the merchandise is prohibited importation to permit the importer to secure the written consent of the owner of the trade-mark or trade name.

(b) Whenever merchandise is detained in accordance with paragraph (a) of this section and the importer indicates that he will not attempt to secure the written consent of the owner of the trade-mark or trade name to the importation of the merchandise, or such consent is not presented to the collector prior to the expiration of the 30-day period, the merchandise shall be seized and forfeited in the usual manner, except that, when a petition therefor is made by the importer prior to final disposition of the merchandise, the collector may release the merchandise upon the condition that the name, mark, or trade-mark be removed or obliterated prior to the release, or may permit the merchandise to be exported or destroyed under customs supervision and without expense to the Government. In the case of any such merchandise carried as baggage or otherwise by a person arriving in the United States, such petition may be made orally at the time of the customs examination and the collector may thereupon dispose of the merchandise under the above-mentioned conditions without a formal notice of detention or seizure.

(c) Merchandise forfeited for violation of any trade-mark law may be disposed of in accordance with the procedure applicable to other customs forfeitures, but only after removal or obliteration of the name, mark, or trade-mark by reason of which the goods were seized.

(d) If the violation is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation, the duty refunded as an erroneous collection, and the merchandise disposed of in accordance with the provisions of paragraphs (b) and (c) of this section.

(Sec. 42, 60 Stat. 440; 15 U.S.C. 1124)

[19] "That no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the provisions of this act or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark, issued in accordance with the provisions of this act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade-mark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer or customs." (Sec. 42, Public No. 489, 79th Cong. See similar provision in Trade-Mark Act of February 20, 1905, sec. 27; 15 U. S. C. 106.)

The laws of the United States relating to patents, trade-marks, and copyrights have been extended to the Virgin Islands. (See 48 U. S. C. 1405q.)

COPYRIGHTS

§ 11.18 False notice of copyright.

(a) The importation of books, periodicals, newspapers, music, moving-picture films, and other articles which bear a false notice of copyright—that is, words indicating that they have been copyrighted in the United States when they have not in fact been so copyrighted—is prohibited.[20]

(b) All articles bearing a false notice of copyright (except when imported in the mails) shall be seized and forfeited. Such articles imported in the mails shall be returned to the postmaster for return to the sender as nondeliverable.

(Sec. 1, 61 Stat. 652, as amended; 17 U. S. C. 106–109)

[20] "The importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited." (17 U. S. C. 106)

The laws of the United States relating to patents, trade-marks, and copyrights have been extended to the Virgin Islands. (See 48 U. S. C. 1405q.)

§ 11.19 Recordation of copyrighted works.

(a) A person whose copyright claim has been registered in accordance with the provisions of the Copyright Act of July 30, 1947, as amended (17 U.S.C. 1–32),[21] or a person who claims copyright protection under section 9 (c) of that act, as amended (17 U. S. C. 9 (c)),[21a] by virtue of the Universal Copyright Convention, and has not registered a copyright claim, may secure to himself customs protection against importation of piratical copies of the copyrighted work in the following manner:

(1) In the case of books and other printed works which may be readily identified by title and name of the author, the copyright proprietor, or any person claiming actual or potential injury by reason of actual or contemplated importations of copies of such works, shall file in the Office of the Director, Customs Information Exchange, 201 Varick Street, New York 14, New York, a certificate of registration issued by the Copyright Office or, if copyright is claimed under section 9 (c) by virtue of the Universal Copyright Convention and no registration has been made, a statement setting forth the citizenship and domicile of the author at the time of publication, the date and place of publication, and a description of the work, including its title and the name of the author. There shall also be filed an application in duplicate for recordation of the copyrighted work, accompanied by 1,000 notices in the form indicated below, printed in 11-point Roman type on plain white cards of medium weight, size 3 x 5 inches, for distribution to customs field officers throughout the United States, including Puerto Rico, the Virgin Islands, Hawaii, and Alaska, and the fee of $75 prescribed by § 24.12 of this chapter. Checks or money orders in payment of the fee shall be made payable to the Collector of Customs, New York, New York.

(Title of book or other printed work, and foreign title if different)

(Author)

(Citizenship of author at the time of publication)

(Domicile of Author at time of publication)

(Date of publication) (Place of publication)

Registration

Copyright claim registered ☐ No. ---

Copyright claimed under 17 U. S. C. 9 (c) and no claim registered ☐

(Name and address of copyright proprietor)

(2) In the case of copyrighted works not readily identifiable by title and author, application for recordation in the form of a letter shall be made to the Commissioner of Customs, Washington 25, D. C. Such application shall be accompanied by a certificate of registration issued by the Copyright Office, or, if copyright is claimed under section 9 (c) by virtue of the Universal Copyright Convention and no registration has been made, a statement setting forth the citizenship and domicile of the author at the time of publication, the date and place of publication, and a description of the work. There shall also be filed 500 photographic or other likenesses of the copyrighted work reproduced on paper 8 x 10½ inches in size, for distribution to all collectors of customs and appraisers of merchandise, accompanied by the fee of $75 prescribed by § 24.12 of this chapter. Checks or money orders in payment of the fee shall be made payable to the Head, Fiscal Section, Bureau of Customs.

(b) The following countries are parties to the Universal Copyright Convention:

Andorra, Cambodia, Chile, Costa Rica, France, German Federal Republic, Haiti, Holy See, Israel, Japan,[1] Laos, Luxembourg, Monaco, Pakistan, Spain, Switzerland, and United States of America.[2]

(Secs. 9, 109, 61 Stat. 655, as amended, 664; 17 U. S. C. 9, 109)

[1] Convention will come into force with respect to Japan April 28, 1956.

[2] Phillipines not included in list since there is a question whether it is presently a party. See Department of State Bulletin, Vol. XXXIV, No. 868, February 13, 1956, page 263, footnote 1.

§ 11.20 Piratical copies.

(a) Actual copies or substantial reproductions of legally copyrighted works produced and imported in contravention of the rights of the copyright proprietor shall be considered "piratical copies" within the meaning of the copyright act.

(b) Collectors shall not permit delivery of imported articles if representations are made that they are piratical copies and such representations are not denied by the importers, or if the collection in the event that it is held by the tor is satisfied that they do in fact constitute piratical copies.[22]

[21] "The Secretary of the Treasury and the Postmaster General are hereby empowered and required to make and enforce individually or jointly such rules and regulations as shall prevent the importation into the United States of articles prohibited importation by this title, and may require, as conditions precedent to exclusion of any work in which copyright is claimed, the copyright proprietor or any person claiming actual or potential injury by reason of actual or contemplated importations of copies of such work to file with the Post Office Department or the Treasury Department a certificate of the Register of Copyrights that the provisions of section 13 of this title have been fully complied with, and to give notice of such compliance to postmasters or to customs officers at the ports of entry in the United States in such form and accompanied by such exhibits as may be deemed necessary for the practical and efficient administration and enforcement of the provisions of sections 106 and 107 of this title." (17 U. S. C. 109)

[21a] (c) When the Universal Copyright Convention, signed at Geneva on September 6, 1952, shall be in force between the United States of America and the foreign state or nation of which such author is a citizen or subject, or in which the work was first published. Any work to which copyright is extended pursuant to this subsection shall be exempt from the following provisions of this title: (1) The requirement in section 1 (e) that a foreign state or nation must grant to United States citizens mechanical reproduction rights similar to those specified therein; (2) the obligatory deposit requirements of the first sentence of section 13; (3) the provisions of sections 14, 16, 17, and 18; (4) the import prohibitions of section 107, to the extent that they are related to the manufacturing requirements of section 16; and (5) the requirements of sections 19 and 20: *Provided, however,* That such exemptions shall apply only if from the time of first publication all the copies of the work published with the authority of the author or other copyright proprietor shall bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

Upon the coming into force of the Universal Copyright Convention in a foreign state or nation as hereinbefore provided, every book or periodical of a citizen or subject thereof in which ad interim copyright was subsisting on the effective date of said coming into force shall have copyright for twenty-eight years from the date of first publication abroad without the necessity of complying with the further formalities specified in section 23 of this title.

The provisions of this subsection shall not be extended to works of an author who is a citizen of, or domiciled in the United States of America regardless of place of first publication, or to works first published in the United States. (17 U. S. C. 9 (c))

[22] "During the existence of the American copyright in any book the importation into the United States of any piractical copies thereof or any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section 16 of this title, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section 16 is prohibited: *Provided, however,* That, except as regards piratical copies, such prohibition shall not apply:

"(a) To works in raised characters for the use of the blind;

"(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization.

"(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country.

"(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

"First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States.

"Second. When imported by the authority or for the use of the United States.

"Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes or for the encouragement of the fine arts, or for any college,

(c) If the collector is not satisfied that an imported article is a piratical copy, and the importer files a statement denying that it is in fact a piratical copy and alleging that the detention of the article will result in a material depreciation of its value or loss or damage to him, the article shall be admitted to entry, unless a written demand for its exclusion is filed by the copyright proprietor or other party in interest setting forth that the imported article is a piratical copy of an article legally copyrighted in the United States, and unless there is also filed with the collector a good and sufficient bond conditioned to hold the importer or owner of such article harmless from any loss or damage resulting from its detention in the event that it is held by the Bureau not to be prohibited from importation under section 106 of the copyright act.

(d) Upon the filing of such demand and bond, the collector shall detain the article and shall fix a time at which the parties in interest may submit evidence to substantiate their respective claims, which evidence shall be reduced to writing at the expense of the parties in interest. The burden of proof that any article is in fact a piratical copy shall be upon the party making such claim.

(e) If the article is held by the Bureau to be a piratical copy, its seizure and forfeiture will be directed in accordance with section 108 of the copyright act,[23] and the bond will be returned to the copyright proprietor; but if the article is not so held, the collector will be directed to release it and transmit the bond to the importer.

(Sec. 1, 61 Stat. 652; 17 U.S.C. 109)

§ 11.21 United States manufacturing requirements; copies not produced in accordance with 17 U.S.C. 16.[24]

(a) Copies of books or periodicals for which manufacture in the United States is required by 17 U.S.C. 16 may not be imported during the existence of the United States copyright, unless importation is permitted under 17 U. S. C. 107,[25] or unless protection was secured under 17 U. S. C. 9 (c) by virtue of the Universal Copyright Convention or an ad interim copyright was extended to the full term by the provisions of 17 U. S. C. 9 (c).

(b) Up to 1500 copies of a book or periodical covered by ad interim copyright, when imported pursuant to the quantitative exception in 17 U. S. C. 16, may be released upon compliance with usual customs requirements if there is presented in connection with the entry an "Import Statement" issued by the Register of Copyrights on Copyright Office Form C–100, and such copies are otherwise admissible. The reverse side of the statement shall be completely filled in by the customs officer concerned and mailed at once to the Register of Copyrights as directed in the form.

(c) When an ad interim copyright is extended to a full term copyright, as provided for in 17 U. S. C. 23, notice of such extension, together with the full-term registration number and the date thereof, shall be communicated by the copyright proprietor to the Commissioner of Customs, Washington 25, D. C., within 30 days after such date.

(Secs. 16, 109, 61 Stat. 657, as amended, 664; 17 U.S.C. 16, 109)

academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States.

"Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annual or limit the copyright protection secured by this title, and such unlawful use shall be deemed an infringement of copyright." (17 U.S.C. 107)

[23] "Any and all articles prohibited importation by this title which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however*, That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this title may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud." (17 U. S. C. 108)

[24] *Mechanical work to be done in United States.* Of the printed book or periodical specified in section 5, subsections (a) and (b), of this title, except the original text of a book or periodical of foreign origin in a language or languages other than English, the text of all copies accorded protection under this title, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine, or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photoengraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photoengraving process, and also to separate lithographs or photoengravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art: *Provided, however*, That said requirements shall not apply to works in raised characters for the use of the blind, or to books or periodicals of foreign origin in a language or languages other than English, or to works printed or produced in the United States by any other process than those above specified in this section, or to copies of books or periodicals, first published abroad in the English language, imported into the United States within five years after first publication in a foreign state or nation up to the number of fifteen hundred copies of each such book or periodical if said copies shall contain notice of copyright in accordance with sections 10, 19, and 20 of this title and if ad interim copyright in said work shall have been obtained pursuant to section 22 of this title prior to the importation into the United States of any copy except those permitted by the provisions of section 107 of this title: *Provided further*, That the provisions of this section shall not affect the right of importation under the provisions of section 107 of this title. (17 U. S. C. 16)

[25] "During the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with the manufacturing provisions specified in section 16 of this title, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photoengraving process not performed within the limits of the United States, in accordance with the provisions of section 16 is prohibited: *Provided, however*, That, except as regards piratical copies, such prohibition shall not apply:

"(a) To works in raised characters for the use of the blind;

"(b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization.

"(c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country.

"(d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

"First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States.

"Second. When imported by the authority or for the use of the United States.

"Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States.

"Fourth. When such books form parts of libraries or collections purchased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: *Provided*, That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annual or limit the copyright protection secured by this title, and such unlawful use shall be deemed an infringement of copyright." (17 U. S. C. 107)

PART 12—SPECIAL CLASSES OF MERCHANDISE

No. 249—Part II——21

FOODS, DRUGS, AND COSMETICS, ECONOMIC POISONS, AND CAUSTIC OR CORROSIVE SUBSTANCES

Sec.
12.1 Cooperation with certain agencies; joint regulations.
12.2 Shipper's declarations.
12.3 Release under bond.
12.4 Exportation.
12.5 Shipment to other ports.
12.6 Suspension of liquidation.

MILK AND CREAM

12.7 Permits required for importation.

MEAT AND MEAT-FOOD PRODUCTS

12.8 Inspection; bond; release.
12.9 Release for final delivery to consignee.

PLANTS AND PLANT PRODUCTS

12.10 Regulations and orders of the Department of Agriculture.
12.11 Requirements for entry and release.
12.12 Release under bond.
12.13 Unclaimed shipments.
12.14 Detention.
12.15 Disposition; refund of duty.

AGRICULTURAL AND VEGETABLE SEEDS

12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.

VIRUSES, SERUMS, AND TOXINS FOR TREATMENT OF DOMESTIC ANIMALS

12.17 Importation restricted.
12.18 Labels.
12.19 Detention; samples.
12.20 Disposition.

VIRUSES, SERUMS, TOXINS, ANTITOXINS, AND ANALOGOUS PRODUCTS FOR THE TREATMENT OF MAN

12.21 Licensed establishments.
12.22 Labels; samples.
12.23 Detention; examination; disposition.

DOMESTIC ANIMALS, ANIMAL PRODUCTS, AND ANIMAL FEEDING MATERIALS

12.24 Regulations of the Department of Agriculture.

WILD ANIMALS, BIRDS, AND INSECTS

12.26 Importations of wild animals or birds; certain species prohibited; permits required.
12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.
12.28 Importation of wild mammals and birds in violation of foreign law.
12.29 Plumage and eggs of wild birds.
12.30 Whaling.
12.31 Injurious insects.
12.32 Honeybees.
7 CFR Part 362.

TEA

12.33 Importation of tea; entry; examination for customs purposes.

WHITE PHOSPHORUS MATCHES

12.34 Importation prohibited; certificate of inspection; importer's declaration.
12.35 Exportation.

NARCOTIC DRUGS

12.36 Regulations of Bureau of Narcotics.

LIQUORS

12.37 Restricted importations.
12.38 Labeling requirements; packages.

UNFAIR COMPETITION

12.39 Exclusion from entry; entry under bond.

IMMORAL ARTICLES

12.40 Seizure; disposition of seized articles; reports to United States attorney.
12.41 Prohibited films.

MERCHANDISE PRODUCED BY CONVICT, FORCED, OR INDENTURED LABOR

12.42 Findings of Commissioner of Customs.
12.43 Proof of admissibility.
12.44 Disposition.
12.45 Transportation and marketing of prison-labor products.

COUNTERFEIT COINS, OBLIGATIONS, AND OTHER SECURITIES; ILLUSTRATIONS OR REPRODUCTIONS OF COINS OR STAMPS

12.48 Importation prohibited; exceptions to prohibition of importation; procedure.

MERCHANDISE SUBJECT TO QUOTA PROVISIONS

12.49 Proclamations establishing import quotas.
12.50 Quota priority.
12.51 Mail importations of merchandise for which an absolute quota has been established.

FUR-SEAL OR SEA-OTTER SKINS

12.60 Importation prohibited.
12.61 Fur-seal or sea-otter skins permitted entry.
12.62 Enforcement; duties of customs officers.
12.63 Seal-skin or sea-otter-skin waste.

AUTHORITY: §§ 12.1 to 12.63 issued under R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

CROSS REFERENCE: For joint regulations promulgated by the Secretary of the Treasury and the Secretary of Agriculture, with respect to importations of economic poisons and devices under the regulations for the enforcement of section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act, see

FOODS, DRUGS, AND COSMETICS, ECONOMIC POISONS, AND CAUSTIC OR CORROSIVE SUBSTANCES

§ 12.1 Cooperation with certain agencies; joint regulations.

(a) The importation into the United States of food, drugs, devices, and cosmetics, as defined in section 201 (f), (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act,[1] is governed by section 801 of said act and regulations issued under section 701(b) of said act.[2]

(b) The importation of insecticides and certain other economic poisons and devices is governed by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act of June 25, 1947 (7 U. S. C. Sup., 135h) and regulations issued thereunder.[3]

(c) The importation of dangerous caustic or corrosive substances, as defined in section 2 (a) of the Federal Caustic Poison Act,[4] is governed by section 5 of said act[5] and by regulations

[1] "(f) The term 'food' means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

"(g) The term 'drug' means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

"(h) The term 'device' (except when used in paragraph (n) of this section and in sections 331 (i), 343 (f), 352 (c), and 362 (c)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

"(i) The term 'cosmetic' means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap." (21 U. S. C. 321 (f), (g), (h), and (i))

[2] See Appendix XI, Customs Regulations of 1943.

[3] See Appendix XI, Customs Regulations of 1943. The classes of articles covered by the act are defined in section 2 of the act (7 U. S. C. 135).

[4] "The term 'dangerous caustic or corrosive substance' means:

"(1) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of 10 per centum or more;

"(2) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H_2SO_4) in a concentration of 10 per centum or more;

"(3) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO_3) in a concentration of 5 per centum or more;

"(4) Carbolic (C_6H_5OH), otherwise known as phenol, and any preparation containng carbolic acid in a concentration of 5 per centum or more;

"(5) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid ($H_2C_2O_4$) in a concentration of 10 per centum or more;

"(6) Any salt of oxalic acid and any preparation containing any such salt in a concentration of 10 per centum or more;

"(7) Acetic acid or any preparation containing free or chemically unneutralized acetic acid ($HC_2H_3O_2$) in a concentration of 20 per centum or more;

"(8) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield 10 per centum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime;

"(9) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of 10 per centum or more;

"(10) Sodium hydroxide and any preparation containng free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of 10 per centum or more;

"(11) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate ($AgNO_3$) in a concentration of 5 per centum or more; and

"(12) Ammonia water and any preparation containng free or chemically uncombined ammonia (NH_3), including ammonium hydroxide and 'hartshorn,' in a concentration of 5 per centum or more." (15 U. S. C. 402 (a))

[5] "(a) Whenever in the case of any dangerous caustic or corrosive substance being offered for importation the Secretary of Agriculture has reason to believe that such substance is being shipped in interstate or for-

prescribed by the Secretary of Health, Education, and Welfare (21 CFR 285.20–285.32).

(d) Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out the regulations referred to in paragraphs (a), (b), and (c) of this section.

§ 12.2 Shippers' declarations.

The regulations referred to in § 12.1 (b) require that each invoice of economic poisons and devices be accompanied by a prescribed declaration of the shipper.

§ 12.3 Release under bond.

No food, drug, device, cosmetic, economic poison or device, or dangerous caustic or corrosive substance shall be released to the consignee prior to the report of examination by the Department of Health, Education, and Welfare or the Department of Agriculture, as the case may be or a determination by the representatives of such agency or department that such examination is not necessary, except upon the giving of a bond on customs Form 7551, 7553, or other appropriate form containing a condition for the return to customs custody of the merchandise or any part thereof upon demand of the collector of customs at any time.

§ 12.4 Exportation.

Exportation of merchandise refused admission into the United States under the Federal Food, Drug, and Cosmetic Act, the Federal Insecticide, Fungicide, and Rodenticide Act, or the Federal Caustic Poison Act shall be under customs supervision in accordance with the regulations set forth in §§ 18.25 and 18.26 of this chapter.

§ 12.5 Shipment to other ports.

When imported merchandise subject to the provisions of the Federal Food, Drug, and Cosmetic Act, the Federal Insecticide, Fungicide and Rodenticide Act, or the Federal Caustic Poison Act is shipped to another port for reconditioning or exportation, such shipment shall be under a customs carrier's manifest, customs Form 7512, in the same manner as shipments in bond.

§ 12.6 Suspension of liquidation.

(a) The liquidation of each entry covering foods, drugs, devices, cosmetics, economic poisons or devices, or dangerous caustic or corrosive substances shall be suspended until it is determined whether admission of the merchandise into the United States is permitted under the law.

(b) In any case where the admission of such merchandise into the United States is refused and the merchandise is exported or destroyed under proper supervision, the merchandise is exempt from duty and any duties collected thereon shall be refunded. See §§ 8.49 (b) and 15.5 of this chapter.

(Sec. 558, 46 Stat. 744, as amended; 19 U. S. C. 1558)

Milk and Cream

§ 12.7 Permits required for importation.

(a) Under the act of February 15, 1927 (44 Stat. 1101; 21 U. S. C. 141–149), commonly known as the Federal Import Milk Act, the importation into the United States of milk and cream is prohibited unless the person by whom such milk or cream is shipped or transported into the United States holds a valid permit from the Department of Health, Education, and Welfare. Such permits become invalid at the end of one year unless applications for renewal are filed prior to the date of expiration.

(b) The regulations of the Department of Health, Education, and Welfare under the said act[1] require that each container of milk or cream shipped or transported into the United States by a permittee shall have firmly attached thereto a tag showing in clear and legible type the product (raw milk, pasteurized milk, raw cream, or pasteurized cream) the permit number and the name and address of the shipper; except that in case of unit shipments consisting of milk only or cream only under one permit number, each container need not be so marked if the vehicle of transportation is sealed and tagged with the above-mentioned tag. In such case the tag is required to show, in addition to the other required information, the number of containers and the contents of each. Customs officers shall not permit the importation of any milk or cream that is not tagged in accordance with such regulations.

Meat and Meat-Food Products

§ 12.8 Inspection; bond; release.

(a) All imported meat, meat-food products,[2] horse meat and horse meat-food products offered for entry into the United States are subject to the regulations prescribed by the Secretary of Agriculture under section 306, Tariff Act of 1930.[3] Such meat, meat-food products, horse meat and horse meat-food products shall not be released from customs custody prior to inspection by an inspector of the Meat Inspection Division, Agricultural Research Service, except when authority is given by such inspector for inspection at the importer's premises or other place not under customs supervision. In such case a bond for the return to customs custody of the merchandise shall be given by the consignee or agent on customs Form 7551, 7553, or other appropriate form, and the conveyances or packages in which such merchandise is removed to the place of examination shall be sealed or corded and sealed by a

---

eign commerce in violation of section 403 of this title, he shall give due notice and opportunity for hearing thereon to the owner or consignee and certify such fact to the Secretary of the Treasury, who shall thereupon (1) refuse admission and delivery to the consignee of such substance, or (2) deliver such substance to the consignee pending examination, hearing, and decision in the matter, on the execution of a penal bond to the amount of the full invoice value of such substance, together with the duty thereon, if any, and to the effect that on refusal to return such substance for any cause to the Secretary of the Treasury when demanded, for the purpose of excluding it from the country or for any other purpose, the consignee shall forfeit the full amount of the bond.

"(b) If, after proceeding in accordance with subdivision (a), the Secretary of Agriculture is satisfied that such substance being offered for importation was shipped in interstate or foreign commerce in violation of any provision of this chapter, he shall certify the fact to the Secretary of the Treasury, who shall thereupon notify the owner or consignee and cause the sale or other disposition of such substance refused admission and delivery or entered under bond, unless it is exported by the owner or consignee or labeled by him so as to conform to the law within three months from the date of such notice, under such regulations as the Secretary of the Treasury may prescribe. All charges for storage, cartage, or labor on any such substance refused admission or delivery or entered upon bond shall be paid by the owner or consignee. In default of such payment such charges shall constitute a lien against any future importations made by such owner or consignee." (15 U. S. C. 405)

[1] See Appendix XXI, Customs Regulations of 1943.

[2] The term "meat and meat-food products," for the purpose of this section, shall include any imported article of food or any imported article which enters or may enter into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of the carcass of any cattle, sheep, swine, or goat, if such portion is all or a considerable and definite portion of the article, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession.

[3] "(a) *Rinderpest and foot-and-mouth disease.* If the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country the importation into the United States * * * of fresh, chilled, or frozen beef, veal, mutton, lamb, or pork, from such foreign country, is prohibited.

"(b) *Meats unfit for human food.* No meat of any kind shall be imported into the United States unless such meat is healthful, wholesome, and fit for human food and contains no dye, chemical, preservative, or ingredient which renders such meat unhealthful, unwholesome, or unfit for human food, and unless such meat also complies with the rules and regulations made by the Secretary of Agriculture. All imported meats shall, after entry into the United States in compliance with such rules and regulations, be deemed and treated as domestic meats within the meaning of and subject to the provisions of the Act of June 30, 1906 (Thirty-fourth Statutes at Large, page 674), commonly called the 'Meat Inspection Amendment,' and the Act of June 30, 1906 (Thirty-fourth Statutes at Large, page 766) commonly called the 'Food and Drugs Act,' and acts amendatory of, supplementary to, or in substitution for such Acts.

"(c) *Regulations.* The Secretary of Agriculture is authorized to make rules and regulations to carry out the purposes of this section, and in such rules and regulations the Secretary of Agriculture may prescribe the terms and conditions for the destruction of all cattle, sheep, and other domestic ruminants, and swine, and of all meats, offered for entry and refused admission into the United States, unless such cattle, sheep, domestic ruminants, swine, or meats be exported by the consignee within the time fixed therefor in such rules and regulations." (Tariff Act of 1930, sec 306; 19 U. S. C. 1306)

See regulations in Appendices XII and XIII, Customs Regulations of 1943.

customs officer or an inspector of the Meat Inspection Division, Agricultural Research Service, with import-meat seals furnished by the Department of Agriculture unless bearing United States customs seals, or in the case of packages otherwise identified as provided for in this section. When cording is necessary for proper sealing, the cords shall be furnished and affixed by the importer or his agent. Import-meat seals or cords and seals may be broken only by a customs officer or inspector of the Meat Inspection Division, Agricultural Research Service.

In lieu of cording and sealing packages, the carrier or importer may furnish and attach to each package of product a warning notice on bright yellow paper, not less than 5 by 8 inches in size, containing the following legend in black type of a conspicuous size:

(Name of Truck Line or Carrier)

NOTICE

This package of meat or meat product must be delivered intact to an inspector of the Meat Inspection Division, U.S. Department of Agriculture.

WARNING

Failure to comply with these instructions will result in penalty action being taken against the holder of the Customs entry bond.

If the product is found to be acceptable upon inspection the package will be marked "U.S. Inspected and Passed" and this warning notice defaced.

(b) Liquidated damages assessed for breach of bonds taken under this section, if not in excess of $20,000, and if a written application for relief is filed, may be canceled by the collector of customs upon the payment of less than the full amount as he shall deem appropriate, or without the payment of any amount, as may be deemed appropriate, but the collector shall not act under this paragraph unless the officer in charge of the local office of the Meat Inspection Division, Agricultural Research Service, Department of Agriculture, is in full agreement with the proposed action. If there is no local inspector of the Meat Inspection Division, the collector shall not act unless he has obtained the full agreement of the Meat Inspection Division in Washington.

§ 12.9 Release for final delivery to consignee.

No meat, meat-food products, or animal casings shall be released for final delivery to the consignee until the collector of customs is advised by the Department of Agriculture, or its representative, that the merchandise is admissible.

Plants and Plant Products

§ 12.10 Regulations and orders of the Departure of Agriculture.

The importation into the United States of plants and plant products is subject to regulations and orders of the Department of Agriculture restricting or prohibiting the importation of such plants and plant products. Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations and orders of the Department of Agriculture and the provisions of law under which they are made.

(Secs. 1–9, 11, 37 Stat. 315, as amended, 316, 317, 318, as amended, 319, 37 Stat. 854; 7 U.S.C. 151–162)

§ 12.11 Requirements for entry and release.

(a) The importer or his representative shall submit to the collector at the port of first arrival, for each entry of plants or plant products requiring a plant quarantine permit, a notice of arrival for any type of entry except rewarehouse and informal mail entries. Such notice shall be on a form provided for the purpose by the Department of Agriculture. The collector at the port of arrival shall compare the notice of arrival which he receives from the importer or his representative with the shipping documents, certify its agreement therewith, and transmit it, together with any accompanying certificates or other documents pertaining to the sanitary status of the shipment, to the Department of Agriculture. The merchandise may not be moved, stored, or otherwise disposed of until the notice of arrival has been submitted and release for the intended purpose has been authorized by an inspector of the Plant Quarantine Division, Agricultural Research Service.

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Plant Quarantine Division and all customs requirements for the release of the merchandise have been met, the merchandise shall be forwarded under a special manifest (customs Form 7512) and in-bond labels or customs seals to the representative of the Plant Quarantine Division at the place at which the inspection or other treatment is to take place. No further release by the collector of customs shall be required.

§ 12.12 Release under bond.

Plants or plant products which require fumigation, disinfection, sterilization, or other treatment as a condition of entry may be released to the permittee for treatment at a plant approved by the Department of Agriculture upon the giving of a bond on customs Form 7551, 7553, or other appropriate form to insure that the merchandise is treated under the supervision and to the satisfaction of an inspector of the Department of Agriculture or returned to customs custody when demanded by the collector of customs.

§ 12.13 Unclaimed shipments.

(a) If plants or plant products enterable into the United States under the rules and regulations promulgated by the Secretary of Agriculture are unclaimed, they may be sold subject to the provisions of §§ 20.5 and 20.6 of this chapter to any person to whom a permit has been issued who can comply with the requirements of the regulations governing the material involved.

(b) Unclaimed plants and plant products not complying with the requirements mentioned in this section shall be destroyed, by burning or otherwise, under customs supervision.

§ 12.14 Detention.

(a) Collectors of customs shall refuse release of all plants or plant products with respect to which a notice of prohibition has been promulgated by the Secretary of Agriculture under any of the various quarantines. If an importer refuses to export a prohibited shipment immediately, the collector shall report the facts to the Plant Quarantine Division and the United States attorney and withhold delivery pending advice from that Bureau.

(b) In case of doubt as to whether any plant or plant product is prohibited, the collector shall detain it pending advice from the Department of Agriculture.

§ 12.15 Disposition; refund of duty.

Plants or plant products which are prohibited admission into the United States under Federal law or regulations and are exported or destroyed under proper supervision are exempt from duty and any duties collected thereon shall be refunded. (See §§ 8.49(b) and 15.5 of this chapter.)

(Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558)

Agricultural and Vegetable Seeds

§ 12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.

(a) The importation into the United States of agricultural and vegetable seeds and screenings thereof is governed by rules and regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Agriculture under section 402(b) of the Federal Seed Act of August 9, 1939.[4]

(b) Under the said joint rules and regulations, collectors of customs are required to draw samples of such seeds and screenings, forward them to the seed laboratories, and notify the owner or consignee that such samples have been drawn and that the shipment shall be held intact pending a decision of the Grain Division, Agricultural Marketing Service, in the matter.

(c) It is further provided in said joint rules and regulations that after samples have been drawn such seeds and screenings shall be admitted into the commerce of the United States only if they have been found to meet the requirements of the Federal Seed Act of August 9, 1939, and the said regulations, but if the containers bear sufficient marks of identification the collector of customs may release the shipment, pending examination and decision in the matter, upon the giving of a bond conditioned upon the return to customs custody of the seed or screenings or any part thereof upon demand of the collector of customs at any time. Such bond shall be on customs Form 7551, 7553, or other appropriate form, and shall be filed with the collector of customs who,

---

[4] See Appendix XIV, Customs Regulations of 1943.

in case of default, shall take appropriate action to effect the collection of the liquidated damages equal to the invoice value of the entire shipment plus the estimated duty thereof, if any.

(Sec. 402 (b), 53 Stat. 1285; 7 U. S. C. 1592(b))

VIRUSES, SERUMS, AND TOXINS FOR TREATMENT OF DOMESTIC ANIMALS

§ 12.17 Importation restricted.

The importation into the United States of viruses, serums, toxins, and analogous products for use in the treatment of domestic animals is prohibited[9a] unless the importer holds a permit from the Department of Agriculture covering the specific product. The collector of customs shall notify the Animal Inspection and Quarantine Division, Agricultural Research Service, Department of Agriculture, Washington, D.C., of the arrival of any such product, and detain it until he shall receive notice from that Department that a permit to import the shipment has been issued.

(37 Stat. 832, 833; 21 U. S. C. 151–158)

§ 12.18 Labels.

Each separate container of such virus, serum, toxin, or analogous product imported is required by the regulations of the Department of Agriculture to bear the true name of the product and the permit number assigned by the Department of Agriculture in the following form: "U.S. Veterinary Permit No. --------," or an abbreviation thereof authorized by the Animal Inspection and Quarantine Division, Agricultural Research Service. Each separate container also shall bear a serial number affixed by the manufacturer for identification of the product with the records of preparation thereof, together with a return date.

§ 12.19 Detention; samples.

(a) The collector of customs shall detain all shipments of such products for which no permit to import has been issued pending instructions from the Department of Agriculture.

(b) Samples shall be furnished to the Department of Agriculture upon its request, and the collector shall immediately notify the consignee of any such request.

[9a] See Appendix XVII, Customs Regulations of 1943.

§ 12.20 Disposition.

Viruses, serums, or toxins rejected by the Department of Agriculture shall be released by the collector to that Department for destruction, or exported under customs supervision at the expense of the importer if exportation is authorized by the Department of Agriculture.

VIRUSES, SERUMS, TOXINS, ANTITOXINS, AND ANALOGOUS PRODUCTS FOR THE TREATMENT OF MAN

§ 12.21 Licensed establishments.

The bringing into the United States for sale, barter, or exchange of any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention and cure of diseases of man is prohibited unless such virus, serum, toxin, antitoxin, or product has been propagated and prepared at an establishment holding an unsuspended and unrevoked license for such propagation.[10]

(Sec. 351, 58 Stat. 702; 42 U.S.C. 262)

§ 12.22 Labels; samples.

Each package of such products imported for sale, barter, or exchange shall be labeled or plainly marked with the name of the article, the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected to yield their specific results. Samples of the same lot or laboratory number shall accompany each importation for sale, barter, or exchange, and such samples shall be forwarded by the collector of customs to the National Institute of Health of the United States Public Health Service at Washington, D. C.

(Sec. 351, 58 Stat. 702; 42 U.S.C. 262)

§ 12.23 Detention; examination; disposition.

(a) Collectors of customs shall detain all importations of viruses, serums, toxins, antitoxins, and analogous products for the treatment of the diseases of man pending examination by the National Institute of Health, unless satisfied from evidence furnished at the time of entry, in the form of an affidavit or otherwise, that the products are not intended for sale, barter, or exchange.

[10] See Appendix XVII, Customs Regulations of 1943.

(b) If the shipment is imported for sale, barter, or exchange and is found by the National Institute of Health to be admissible, the collector shall release it upon receipt of a report from the Public Health Service that the article is admissible.

(c) If the Public Health Service reports that the article was found upon examination not to conform to the law and the regulations, the collector shall not release it but shall permit the exportation or destruction thereof under customs supervision at the option of the importer.

(Sec. 351, 58 Stat. 702; 42 U.S.C. 262)

DOMESTIC ANIMALS, ANIMAL PRODUCTS, AND ANIMAL FEEDING MATERIALS

§ 12.24 Regulations of the Department of Agriculture.

(a) The importation into the United States of domestic animals, animal products, and animal feeding materials is subject to inspection and quarantine regulations of the Department of Agriculture,[11] Customs officers and employees are authorized and directed to perform such functions as are necessary or proper on their part to carry out such regulations of the Department of Agriculture.

(b) Inspection by an inspector of the Animal Inspection and Quarantine Division, Agricultural Research Service, is required for all horses, cattle, sheep, other ruminants, and swine as a prerequisite to their entry from any foreign country. Orders listing the ports designated as quarantine stations for the inspection and quarantine of animals will be issued by the Secretary of Agriculture, with the approval of the Secretary of the Treasury, whenever conditions warrant.

(c) The entry of domestic animals may be made, but shall not be required, before the expiration of the quarantine period. Such animals, if not entered at the time of arrival, shall be considered as under general order while under quarantine and shall not be released except upon notice from the collector of customs that the importer has complied with all the requirements for entry.

[11] See Appendix XII, Customs Regulations of 1943, and BAI orders published from time to time in the weekly Treasury Decisions.

WILD ANIMALS, BIRDS, AND INSECTS

§ 12.26 Importations of wild animals or birds; certain species prohibited; permits required.

(a) The importation into the United States or any territory or district thereof of the mongoose (Herpestes auropunctatus), the so-called "flying foxes" or fruit bats (all species of Genus Pteropus), the English sparrow (Passer domesticus), the starling (Sturnus vulgaris), and such other birds and animals as the Secretary of the Interior may from time to time declare to be injurious to the interests of agriculture or horticulture, is prohibited.[12] If any such bird

[12] "(a) The importation into the United States or any Territory or district thereof, of the mongoose, the so-called 'flying foxes' or fruit bats, the English sparrow, the starling, and such other birds and animals as the Secretary of the Interior may declare to be injurious to the interests of agriculture or horticulture, is prohibited; and all such birds and animals shall, upon arrival at any port of the United States, be destroyed or returned at the expense of the owner. Nothing in this subsection shall restrict the importation of natural-history specimens for museums or scientific collections, or of certain cage birds, such as domesticated canaries, parrots, or such other birds as the Secretary of the Interior may designate. The Secretary of the Treasury may make regulations for carrying into effect the provisions of this section.

"(b) Whoever violates this section shall be fined not more than $500 or imprisoned not more than six months, or both.

"(c) The Secretary of the Treasury shall prescribe such requirements and issue such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions, and it shall be unlawful for any person, including any importer, knowingly to cause or permit any wild animal or bird to be transported to the United States, or any Territory or district thereof, under inhumane or unhealthful conditions or in violation of such requirements. In any criminal prosecution for violation of this subsection and in any administrative proceeding for the suspension of the issuance of further permits—

"(1) The condition of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and

"(2) The presence in such vessel or conveyance at such time of a substantial ratio

or animal is imported, release thereof to the importer shall be refused and immediate exportation or destruction shall be required. The species of birds and animals declared by the Secretary of the Interior to be injurious to agriculture or horticulture are published in 50 CFR 9.1.[12a]

(1) Bird species of the genus Acridotheres classified as (i) tristis (commonly known as Common Myna, Indian Myna, or Common Ceylon Myna); (ii) cristatellus (sometimes referred to as Acridotheres grandis or Acridotheres fuscus and commonly known as Chinese crested Myna, Siamese Yellow-billed Jungle Myna, Assam Yellow-billed Myna, Indian Jungle Myna, Jungle Myna, Malay Jungle Myna, and Buffalo Myna); (iii) gingianus (commonly known as Bank Myna); (iv) albocinctus (commonly known as Collared Myna) are prohibited importation under 50 CFR 9.1 (a), except for scientific purposes under permits issued by the Director, Fish and Wildlife Service, Department of the Interior, or for exhibition in public zoological parks.

(2) All other wild birds are prohibited importation under 50 CFR 9.1 (b), except:

(i) Game birds imported for propagating, stocking, or scientific purposes, or for exhibition in zoological parks.

(ii) Non-game birds (other than those listed in paragraph (a) (1) of this section) for scientific purposes, exhibition in public zoological parks, confinement in cages or otherwise, or for introduction by State or Territorial wildlife conservation agencies when such agencies have obtained written permission from the Director, Fish and Wildlife Service.

(3) European rabbits (Lepus cuniculus) and European hares (Lepus europaeus) are prohibited importation under 50 CFR 9.1 (c), unless imported for fur farming or other agricultural purposes or for scientific purposes and such animals are to be kept in confinement.

(4) If any of the birds or animals referred to in the preceding three subparagraphs are imported for the purposes permitted, the importer and, in the case of a zoological park, the director or other principal officer thereof, shall file a declaration with the collector of customs stating the purpose of the importation and, in the case of non-game birds, rabbits, and hares, that such birds and animals will be kept in confinement.

(b) No permit is required for the importation of live wild animals and birds, except as follows:

(1) Wild birds protected by the Migratory Bird Treaty Act (16 U. S. C. 703–711) and the regulations promulgated thereunder (50 CFR Part 6), may be imported from foreign countries for scientific, propagating, or other limited purposes only under permits issued by Fish and Wildlife Service, United States Department of the Interior, Washington 25, D. C. No such permit is required of State or municipal game farms or city parks to import live migratory waterfowl. Public museums, zoological parks and societies, and public scientific and educational institutions may import migratory birds without a permit. Such migratory birds, when imported from Mexico, must be accompanied by Mexican export permits (50 CFR 6.8).

(2) Game mammals (antelope, mountain sheep, deer, bears, peccaries, squirrels, rabbits, and hares), protected by the Migratory Bird Treaty Act (16 U. S. C. 703–711), when imported from Mexico, must be accompanied by Mexican export permits. (50 CFR 16.7 (b).)

(3) Wild ruminants (all animals which chew the cud, such as cattle, buffaloes, sheep, goats, deer antelopes, camels, llamas, and giraffes) and swine (various varieties of wild hogs), except from Canada and certain northern States of Mexico may be imported only under a permit from the Animal Inspection and Quarantine Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D.C. Such permits must be obtained before the animals are shipped from the country of exportation.[13] All wild ruminants and swine must be inspected at designated ports of entry by veterinarians of the Animal Inspection and Quarantine Division, Agricultural Research Service, United States Department of Agriculture.

(4) Psittacine birds, which include all birds commonly known as parrots, Amazons, African grays cockatoos, macaws, parrakeets, lovebirds, lories, lorikeets, and all other birds of the order Psittaciformes, when destined for a zoological park or medical research institution, or psittacine birds taken out of the United States but which are not admissable under paragraph (c) of this section, may be imported only under a permit from the Surgeon General (Division of Foreign Quarantine), United States Public Health Service, Department of Health, Education, and Welfare, Washington 25, D. C. Such permits must be obtained prior to importation.[13a]

(5) Ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, except from Canada, may be imported only under a permit from the Animal Inspection and Quarantine Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D.C.[13] Such permits must be obtained before the birds are shipped from the country of origin. Such birds from Canada must be accompanied by a certificate issued by a Canadian Government veterinarian. All such birds must be inspected at designated ports of entry by veterinarians of the Animal Inspection and Quarantine Division, Agricultural Research Service, United States Department of Agriculture.

(c) Parrots and all other birds of the order Psittaciformes, when not exceeding two in number, may be imported by the owner under certain conditions and upon compliance with the Foreign Quarantine Regulations of the United States Public Health Service.[13a] This provision also covers such birds taken out of the United States and returned to this country. However, a permit is necessary when three or more such birds are to be taken out of the United States and returned at a later date. A permit is also required in the case of one or two birds taken out of the country for subsequent return, if such birds were purchased within 4 months before their exportation. Such birds shall not be released until the Public Health regulations are complied with by the importer.

(d) Cats, dogs, and monkeys are subject to the Foreign Quarantine Regulations of the United States Public Health Service, Department of Health, Education, and Welfare, Washington, D. C.[13b] Such animals shall not be released until the Public Health regulations are complied with by the importer.

(e) If a shipment contains migratory birds for which a permit is required by the Fish and Wildlife Service of the Department of the Interior, and such permit is not at hand when the birds arrive, an examination thereof shall be made at once by the examiner and any duties estimated to be due shall be collected. A stipulation shall be filed with the collector within 24 hours of the entry to produce the necessary permit within 30 days from the date of entry, whereupon final liquidation shall be suspended until the permit is produced or the 30-day period expires. Meanwhile, the property may be released to the importer, consignee, or agent for proper care upon the giving of a bond conditioned upon the return of the birds to customs custody upon demand of the collector of customs at any time. Such bond shall be on customs Form 7551, 7553, or other appropriate form in an amount equal to the sum of the entered value plus any estimated duties and shall be filed with the collector of customs who, in the case of default, shall take appropriate action to effect the collection of liquidated damages equal to the entered value of the merchandise not returned plus any estimated duty thereon; or if the importer, consignee, or agent shall so elect, the property may be retained in customs custody at the expense of the importer pending the issuance of the permit.

(f) If the permit referred to in paragraph (e) of this section is refused by the Fish and Wildlife Service, or if the permit is not produced within the said 30 days, the collector shall promptly recall the property, if delivered under bond, and shall require its immediate exportation at the expense of the importer or consignee.

(g) In case of doubt as to whether the animals or birds belong to prohibited species, or of suspicion on the part of the officers of the customs that the species sought to be entered are pro-

of dead, crippled, diseased, or starving wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection." (18 U. S. C. 42)

[12a] See Appendix XXIII, Customs Regulations of 1943, quoting 50 CFR 9.1 and 9.2.

[13] See Appendix XII, Customs Regulations of 1943, quoting 9 CFR Part 92.

[13a] See Appendix XVIII, Customs Regulations of 1943, quoting 42 CFR 71.152, 71.153.

[13b] See Appendix XVIII, quoting 42 CFR 71.154, 71.155.

hibited animals or birds imported under other names, such animals or birds shall be retained in customs custody at the expense and risk of the importer pending the determination of the true nature of the species, to the satisfaction of the collector. Where there is doubt as to whether a shipment may contain species declared prohibited by the Secretary of the Interior under 18 U. S. C. 42 or migratory birds coming under the jurisdiction of his Department, such species shall be examined by a special inspector of the Department of the Interior. In case of refusal or neglect of the importer, consignee, or agent to have the identity so established, release of the importation shall be refused and immediate exportation required.

(h) All invoices of animals and birds shall specify the species covered thereby and the number of each species. In the event of the return to the collector of any importation under the bond given under paragraph (e) of this section, if the number and species of birds does not correspond with the description stated in the invoice and if no satisfactory explanation of any discrepancy is furnished, the bond shall be forfeited.

(i) The privilege of entry for immediate transportation granted by section 552, Tariff Act of 1930, shall not be allowed for animals or birds the importation of which is prohibited or which require permits issued prior to their importation or are subject to quarantine regulations at the port of first arrival or at a designated port (see paragraphs (a) and (b) of this section).

(j) Wild animals and birds shall be imported under humane and healthful conditions, due regard being given to the accommodations and facilities necessary for the species transported.

(k) When any customs officer has good reason to believe that wild animals or birds have been imported under inhumane or unhealthful conditions in violation of 18 U. S. C. 42, an immediate investigation shall be made to ascertain whether they have in fact been transported under such conditions. The investigation shall determine the provisions made on the vessel or other conveyance for the accommodation of the animals or birds, the suitability of the boxes, cages, stalls, etc., the space, ventilation, and protection from the elements accorded the animals or birds, the facilities for cleaning, feeding, watering, bedding, and such other services as may be required for the species imported. The investigation shall also determine the physical condition of such animals or birds and the ratio of dead, crippled, diseased, or starving animals or birds. If necessary, officers of the Animal Inspection and Quarantine Division, Agricultural Research Service, or Fish and Wildlife Service, or other officers or experts, may be called upon to assist customs officers in the matter.

(l) Unless the collector of customs is satisfied that the provisions of 18 U. S. C. 42 have not been violated, he shall report the matter to the United States attorney for appropriate action.

(Sec. 1, 62 Stat. 687, as amended; 18 U. S. C. 42)

§ 12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.

Certain statutory provisions prohibit or restrict the importation or exportation of wild animals or birds, or the dead bodies thereof, or the eggs or such birds, killed, captured, taken, transported, etc., contrary to law.[14] Customs officers shall perform all duties required of them under such laws.

§ 12.28 Importation of wild mammals and birds in violation of foreign law.

(a) No imported wild mammal or bird, or part or product thereof, shall be released from customs custody under bond or otherwise if the collector has knowledge of a foreign law or regulation that brings the importation within the purview of section 527 (a), Tariff Act of 1930,[15] unless it is accompanied by the required consular certificate or entitled to entry under the provisions of section 527 (c) of the tariff act.

(b) When the collector seizes articles for violation of such section 527, he shall proceed under the provisions of the tariff act applicable to seizure and forfeiture of merchandise valued at less than $2,500, except that perishable articles or canned-food articles shall be destroyed if the importer assents in writing to the forfeiture, or, if the importer does not assent to the forfeiture, such articles shall be sent to a cold-storage warehouse at the expense of the importer pending instructions from the Bureau as to their disposition.

(Sec. 527, 46 Stat. 741; 19 U. S. C. 1527)

NOTE: T. D. 50950, Oct. 23, 1943, 8 F. R. 14603, provides in part as follows:

The Bureau has ascertained from reliable sources of information that South American alpacas are domesticated, and not wild animals.

Accordingly, since section 527 of the Tariff Act of 1930 refers only to wild mammals and birds, T. D. 50260, as amended by T. D. 50329, is hereby further amended so as to exclude from its operation live alpacas from Bolivia.

§ 12.29 Plumage and eggs of wild birds.

(a) The provisions of paragraph 1518, Tariff Act of 1930, as amended,[16] relating to the plumage of any bird, apply to all such plumage, whether imported separately or upon the bird itself, except (1) the feathers of birds specifically excepted by said paragraph 1518, (2) plumage imported for scientific or educational purposes, (3) fully-manufactured artificial flies used for fishing, (4) plumage on game birds killed in foreign countries by residents of the United States and not imported for sale or other commercial purposes, and (5) plumage on live wild birds.

(b) The feathers or skins of certain birds may be imported for use in the manufacture of artificial flies used for fishing or for millinery purposes only under a permit issued by the Fish and Wildlife Service, United States Department of Interior, Washington 25, D. C.[16a] No feathers or skins of the species provided for by paragraph 1518 of the Tariff Act of 1930, as amended, shall be permitted to be entered, or withdrawn from warehouse, for consumption, unless the requisite permit is presented with the entry or withdrawal.

(c) The eggs of game birds may be entered for propagating purposes upon the filing of a declaration with the collector of customs that they are being imported for propagation and will be so used.[16a] The eggs of migratory birds may be imported for propagating purposes under permits issued by the Fish and Wildlife Service, United States Department of the Interior, Washington 25, D. C. Eggs of migratory birds may also be imported under permits issued by the Fish and Wildlife Service for scientific and other limited purposes. Public museums, zoological parks and societies, and public scientific and educational institutions may import the eggs of migratory birds without a permit. (See 50 CFR 10.8.) The eggs of certain game or migratory birds imported for hatching, such as ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, are subject to the regulations of the Animal Inspection and Quarantine Division, Agricultural Research Service, United States Department of Agriculture, Washington 25, D.C.[16b] Such regulations require that permits, except for eggs from Canada, must be obtained before the eggs are shipped from the country of origin and that all eggs shall be accompanied by a certificate issued by a government veterinarian of the country of origin and inspected at a designated port of entry.

(d) Upon the attempted importation of eggs of wild birds, the importation of which is prohibited by paragraph 1671, Tariff Act of 1930,[17] the eggs shall be seized and the importer accorded an opportunity to assent to forfeiture. In the event the importer refuses or fails to assent to the forfeiture of the prohibited eggs, the collector shall proceed to forfeit them under the provisions of the tariff act applicable to seizure and forfeiture of merchandise valued at less than $2,500.

(Pars. 1518, 1671, secs. 1, 201, 46 Stat. 661, as amended, 677; 19 U.S.C. 1001 (par. 1518), 1201 (par. 1671))

§ 12.30 Whaling.

The importation and exportation of whales or whale products taken or processed in violation of the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946,[17a] or of the Whaling Convention Act of 1949,[17b] or of any regulation issued under the said act,[17c] is unlawful. Customs officers and employees shall perform all functions required of them by the above-mentioned convention, law, and regulations.

§ 12.31 Injurious insects.

The importation in a live state of insects which are injurious to cultivated crops, including vegetables, field crops, bush fruits, and orchard, forest or shade trees, and of the eggs, pupae, or larvae of such insects, except for scientific purposes under regulations prescribed by the Secretary of Agriculture, is prohibited.[18]

---

[14] "Whoever delivers or knowingly receives for shipment, transportation, or carriage in interstate or foreign commerce, any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country, or captured, killed, taken, purchased, sold, or possessed contrary to any Act of Congress, or the law of any State, Territory, Possession, or foreign country, or subdivision thereof; or

"Whoever transports, brings, or conveys from any foreign country into the United States any wild animal or bird, or the dead body or part thereof, or the egg of any such bird captured, killed, taken, shipped, transported, or carried contrary to the law of such foreign country or subdivision thereof; or

"Whoever knowingly purchases or receives any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country or shipped, transported, carried, brought, or conveyed in violation of this section; or

"Whoever, having purchased or received any wild animal or bird, or the dead body or part thereof, or the egg of any such bird imported from any foreign country or shipped, transported, or carried in interstate commerce, makes any false record or account thereof; or

"Whoever imports from or exports to Mexico any game mammal, dead or alive, or parts or products thereof, except under permit or authorization of the Secretary of the Interior, in accordance with regulations issued by him and approved by the President—

"Shall be fined not more than $500 or imprisoned not more than six months, or both; and the wild animals or birds, or the dead bodies or parts thereof, or the eggs of such birds, shall be forfeited." (18 U. S. C. 43)

"Whoever ships, transports, carries, brings or conveys in interstate or foreign commerce any package containing wild animals or birds, or the dead bodies or parts thereof, without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee and with an accurate statement showing the contents by number and kind; or

"Whoever ships, transports, carries, brings or conveys in interstate commerce, any package containing migratory birds included in any convention to which the United States is a party, without marking, labeling, or tagging such package as prescribed in such conventions, or Act of Congress, or regulation thereunder; or

"Whoever ships, transports, carries, brings or conveys in interstate commerce any package containing furs, hides, or skins of wild animals without plainly marking, labeling, or tagging such package with the names and addresses of the shipper and consignee—

"Shall be fined not more than $500 or imprisoned not more than six months, or both; and the shipment shall be forfeited." (18 U. S. C. 44)

"Any employee authorized by the Secretary of the Interior to enforce sections 43 and 44 of this title, and any officer of the customs, may arrest any person violating said sections in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of said sections." (18 U. S. C. 3054)

"Any employee authorized by the Secretary of the Interior to enforce sections 43 and 44 of this title, and any officer of the customs, shall have authority to execute any warrant to search for and seize any property used or possessed in violation of said sections and property so seized shall be held by him or by the United States marshal pending disposition thereof by the court." (18 U. S. C. 3112)

[15] "(a) *Importation prohibited.* If the laws or regulations of any country, dependency, province, or other subdivision of government restrict the taking, killing, possession, or exportation to the United States, of any wild mammal or bird, alive or dead, or restrict the exportation to the United States of any part or product of any wild mammal or bird, whether raw or manufactured, no such mammal or bird, or part or product thereof, shall, after the expiration of ninety days after the enactment of this Act, be imported into the United States from such country, dependency, province, or other subdivision of government, directly or indirectly, unless accompanied by a certification of the United States consul, for the consular district in which is located the port or place from which such mammal or bird, or part or product thereof, was exported from such country, dependency, province, or other subdivision of government, that such mammal or bird, or part or product thereof, has not been acquired or exported in violation of the laws or regulations of such country, dependency, province, or other subdivision of government.

"(b) *Forfeiture.* Any mammal or bird, alive or dead, or any part or product thereof, whether raw or manufactured, imported into the United States in violation of the provisions of the preceding subdivision shall be subject to seizure and forfeiture under the customs laws. Any such article so forfeited may, in the discretion of the Secretary of the Treasury and under such regulations as he may prescribe, be placed with the departments or bureaus of the Federal or State Governments, or with societies or museums, for exhibition or scientific or educational purposes, or destroyed, or (except in the case of heads or horns of wild mammals) sold in the manner provided by law.

"(c) *Section not to apply in certain cases.* The provisions of this section shall not apply in the case of—

"(1) *Prohibited importations.* Articles, the importation of which is prohibited under the provisions of this Act, or of section 241 of the Criminal Code, or of any other law;

"(2) *Scientific or educational purposes.* Wild mammals or birds, alive or dead, or parts or products thereof, whether raw or manufactured, imported for scientific or educational purposes;

"(3) *Certain migratory game birds.* Migratory game birds (for which an open season is provided by the laws of the United States and any foreign country which is a party to a treaty with the United States, in effect on the date of importation, relating to the protection of such migratory game birds) brought into the United States by bona fide sportsmen returning from hunting trips in such country, if at the time of importation the possession of such birds is not prohibited by the laws of such country or of the United States." (Tariff Act of 1930, sec. 527; 19 U. S. C. 1527)

[16] "(b) Except as provided in paragraphs (c) and (d), the importation of the feathers or skin of any bird is hereby prohibited. Such prohibition shall apply to the feathers or skin of any bird—

(1) Whether raw or processed;

(2) Whether the whole plumage or skin or any part of either;

(3) Whether or not attached to a whole bird or any part thereof; and

(4) Whether or not forming part of another article.

"(c) Paragraph (b) shall not apply—

(1) In respect of any of the following birds (other than any such bird which, whether or not raised in captivity, is a wild bird): Chickens (including hens and roosters), turkeys, guinea fowl, geese, ducks, pigeons, ostriches, rheas, English ringnecked pheasants, and pea fowl;

(2) To any importation for scientific or educational purposes;

(3) To the importation of fully manufactured artificial flies used for fishing;

(4) To the importation of birds which are classifiable under paragraph 1682; and

(5) To the importation of live birds.

"(d) Notwithstanding paragraph (b), there may be entered, or withdrawn from warehouse, for consumption in each calendar year the following quotas of skins bearing feathers:

(1) For use in the manufacture of artificial flies used for fishing:

(A) Not more than 5,000 skins of grey jungle fowl (Gallus sonneratii), and (B) not more than 1,000 skins of mandarin duck (Dendronessa galericulata); and

(2) For use in the manufacture of artificial flies used for fishing, or for millinery purposes, not more than 45,000 skins, in the aggregate, of the following species of pheasant: Lady Amherst pheasant (Chrysolophus amherstiae), golden pheasant (Chrysolophus pictus), silver pheasant (Lophura nycthemera), Reeves pheasant (Syrmaticus reevesii), blue-eared pheasant (Crossoptilon auritum), and brown-eared pheasant (Crossoptilon mantchuricum). For the purposes of this subparagraph any part of a skin which has been severed shall be considered to be a whole skin.

"(e) No article specified in paragraph (d) shall be entered, or withdrawn from warehouse, for consumption except under a permit issued by the Secretary of the Interior. * * *

"(f) Any article of a kind the importation of which is prohibited or subjected to a quota by paragraphs (b), (c), and (d) and which is in the United States shall be presumed for the purposes of seizure and forfeiture to have been imported in violation of law and shall be seized and forfeited under the customs laws unless such presumption is satisfactorily rebutted; except that such presumption shall not apply to articles in actual use for personal adornment or for scientific or educational purposes. * * *." (Tariff Act of 1930, sec. 1, par. 1518; 19 U. S. C. 1001, par. 1518)

See 50 CFR, Part 10, for permit regulations of the Fish and Wildlife Service, Department of the Interior.

[16a] See Appendix XXIII, Customs Regulations of 1943, quoting 50 CFR 9.1 and 9.2.

[16b] See Appendix XII, Customs Regulations of 1943, quoting 9 CFR, Part 92.

[17] "* * * *Provided*, That the importation of eggs of wild birds is prohibited, except eggs of game birds imported for propagating purposes under regulations prescribed by the Secretary of Agriculture (now Secretary of Interior), and specimens imported for scientific collections." (Tariff Act of 1930, par. 1671 (free list); 19 U. S. C. 1201, par. 1671)

[17a] Publication No. 3383 Dept. of State, Whaling Convention.

[17b] 16 U. S. C. 916–916 (1).

[17c] Regulations of the International Whaling Commission are codified in 50 CFR, Part 351.

[18] "No railroad, steamboat, express, stage, or other transportation company shall knowingly transport from one State or Territory into any other State or Territory, or from the District of Columbia into a State or Territory, or from a State or Territory into the District of Columbia, or from a foreign country into the United States, the gypsy moth, brown-tail moth, leopard moth, plum curculio, hop plant louse, boll weevil, or any of them in a live state, or other insect in a live state which is notoriously injurious to cultivated crops, including vegetables, field crops, bush fruits, orchard trees, forest trees, or shade trees; or the eggs, pupae, or larvae of any insect injurious as aforesaid, except when shipped for scientific purposes under the regulations hereinafter provided for; nor shall any person remove from one State or Territory into another State or Territory, or

All packages containing live insects or their eggs, pupae, or larvae arriving from abroad, unless accompanied by a permit issued by the Department of Agriculture, shall be detained and submitted to the Plant Quarantine Branch, Agricultural Research Service of that Department for inspection and determination of their admissibility into the United States.

(Sec. 1, 33 Stat. 1269; 7 U.S.C. 141)

§ 12.32 Honeybees.

The importation into the United States of adult honeybees, except by the Department of Agriculture for experimental or scientific purposes, is prohibited,[19] unless such importation is from a country in respect of which the Secretary of Agriculture shall determine that no diseases dangerous to adult honeybees exist therein. The importation of adult honeybees that may be lawfully imported is governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury published in Treasury Decisions from time to time.

(Sec. 1, 42 Stat. 833; 7 U.S.C. 281)

---

from a foreign country into the United States, or from a State or Territory into the District of Columbia, or from the District of Columbia into any State or Territory, except for scientific purposes under the regulations hereinafter provided for, the gypsy moth, brown-tail moth, leopard moth, plum curculio, hop plant louse, boll weevil, or any of them in a live state, or other insects in a live state which is notoriously injurious to cultivated crops, including vegetables, field crops, bush fruits, orchard trees, forest trees, or shade trees; or the eggs, pupae, or larvae of any insect injurious as aforesaid." (7 U. S. C. 141)

[19] "In order to prevent the introduction and spread of diseases dangerous to the adult honeybee, the importation into the United States of the honeybee (Apis mellifica) in its adult stage is hereby prohibited, and all adult honeybees offered for import into the United States shall be destroyed if not immediately exported: *Provided*, That such adult honeybees may be imported into the United States for experimental or scientific purposes by the United States Department of Agriculture: *And provided further*, That such adult honeybees may be imported into the United States from countries in which the Secretary of Agriculture shall determine that no diseases dangerous to adult honeybees exist, under rules and regulations prescribed by the Secretary of the Treasury and the Secretary of Agriculture." (7 U. S. C. 281)

Tea

§ 12.33 Importation of tea; entry; examination for customs purposes.

(a) The importation of any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards prescribed by the Act of March 2, 1897, as amended (21 U.S.C. 41–50), is prohibited.[20] Customs officers and employees shall perform all duties required of them by the said act and regulations.

(b) The importation of tea is subject also to the provisions of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder. See §§ 12.2 to 12.6.

(c) All entries of tea shall be on regular forms, and the regular serial numbers for both bonds and entries shall be used.

(d) The collector may order such an examination of packages containing tea as will satisfy him that no dutiable goods are packed therein. For this purpose the customary designation shall be made of packages for examination in public stores.

(e) If the special customs invoice has not been received, the importer may use an additional copy of the chop list and release permit required by the regulations of the Department of Health, Education, and Welfare as a pro forma invoice, marking "Pro forma invoice" across the face thereof.

White Phosphorus Matches

§ 12.34 Importation prohibited; certificate of inspection; importer's declaration.

(a) The importation into the United States of white phosphorus matches is prohibited.[21]

---

[20] See Appendix XV, Customs Regulations of 1943.

[21] "White phosphorus matches, manufactured wholly or in part in any foreign country, shall not be entitled to entry at any of the ports of the United States, and the importation thereof is prohibited. All matches imported into the United States shall be accompanied by such certificate of official inspection by the government of the country in which such matches were manufactured as shall satisfy the Secretary [of the Treasury] that they are not white phosphorus matches. The Secretary [of the Treasury] is authorized and directed to prescribe such regulations as may be necessary for the enforcement of the provisions of this section." (26 U. S. C. 2654)

"For the purposes of this chapter the words 'white phosphorus' shall be understood to mean the common poisonous white or yellow phosphorus used in the manufacture of matches and not to include the nonpoisonous forms or the nonpoisonous compounds of white or yellow phosphorus." (26 U. S. C. 2650)

"• • • in accordance with section 10 of 'An Act to provide for a tax upon white phosphorus matches, and for other purposes,' approved April 9, 1912, white phosphorus matches manufactured wholly or in part in any foreign country shall not be entitled to enter at any of the ports of the United States, and the importation thereof is hereby prohibited: *Provided further*, That nothing in this Act contained shall be held to repeal or modify said Act to provide for a tax upon white phosphorus matches, and for other purposes, approved April 9, 1912." (Par. 1516; Tariff Act of 1930; 19 U. S. C. 1001)

(b) Invoices covering matches imported into the United States shall be accompanied by a certificate of official inspection of the Government of the country of manufacture in the following form:

CERTIFICATE OF OFFICIAL INSPECTION OF MATCHES

I, _____ (Name), do hereby certify that I am the _____ (Official title), according to the chemical analysis made by me the matches described below do not contain white or yellow phosphorus and that therefore they are not white phosphorus matches as defined in the Act of Congress of the United States of America approved April 9, 1912;

Number of case and mark	Description of matches	Name and address of manufacturer	Name of consignee and address, vessel, and date of shipment

_____
(Signature)

_____
(Official title)

(c) In the absence of such certificate, the matches shall be detained until a certificate is produced or the importer submits satisfactory evidence to show that the matches were not in fact manufactured with the use of poisonous white or yellow phosphorus.

(d) The production of the above certificate shall not be required on the entry of matches manufactured in countries which prohibit the use of white or yellow phosphorus in the manufacture of matches.

(e) At the time of filing an entry for imported matches, the importer shall make a declaration that to the best of his knowledge and belief no matches included in the invoice and entry are white phosphorus matches.

(Par. 1516, sec. 1, 46 Stat. 661, 53 Stat. 284, 285; 19 U. S. C. 1001, par. 1516, 26 U. S. C. 2650, 2654)

§ 12.35 Exportation.

(a) The exportation from the United States of white phosphorus matches is unlawful.[22]

(b) The shipper, owner, or agent of matches intended for exportation from the United States shall file with the collector at least 6 hours before such matches are laden for exportation a manifest, in duplicate, signed by the shipper, which shall state the date of exportation, the name of the exporting carrier, the marks and numbers of the packages, and the specific descriptions of the matches. There shall be attached to the manifest an affidavit of the shipper that no white phosphorus matches are included in the shipment.

(c) The collector may cause any matches offered for exportation to be opened and inspected. If any such matches are found to be white phosphorus matches, the collector shall detain them and report the facts to the Bureau for instructions.

(53 Stat. 286; 26 U.S.C. 2655)

Narcotic Drugs

§ 12.36 Regulations of Bureau of Narcotics.

The importation and exportation of narcotic drugs are governed by regulations of the Bureau of Narcotics.[23] Cus-

---

[22] "It shall be unlawful to export from the United States any white phosphorus matches. The Secretary [of the Treasury] shall have power to issue such regulations to customs officers as are necessary to the enforcement of this section." (26 U.S.C. 2655)

[23] See Appendix XVI, Customs Regulations of 1943.

toms officers and employees shall perform all duties imposed upon them by such regulations and the laws under which they are issued. Such regulations are in addition to, and not in lieu of, the customs, internal-revenue, and other pertinent laws and regulations.

Liquors

§ 12.37 Restricted importations.

(a) The basic permit requirements prescribed by the act of August 29, 1935 (27 U. S. C. 203),[24] shall not be deemed applicable when the collector is satisfied that the liquor is for personal use or for experimental purposes in the making of analyses, tests, or comparisons.

(b) The production of a basic permit shall not be required when spirits are withdrawn from warehouse under any form of withdrawal entry.

(c) Blending or rectifying of wines or distilled spirits in class 6 manufacturing warehouses, or the bottling of imported distilled spirits in class 8 manipulation warehouses, shall not be permitted unless the proprietor has obtained an appropriate permit from the Alcohol Tax Unit, Internal Revenue Service.

(Sec. 3, 49 Stat. 978, as amended; 27 U. S. C. 203)

§ 12.38 Labeling requirements; packages.

All packages of liquor not labeled as required by 18 U.S.C. 1263[25] and any vessel or vehicle, other than a common carrier, used in the transportation of such liquor shall be seized and disposed of in accordance with 18 U. S. C. 3615[26] (see § 23.25 (c) of this chapter).

(Sec. 1, 62 Stat. 840, 18 U.S.C. 3615)

Unfair Competition

§ 12.39 Exclusion from entry; entry under bond.

(a) No entry of merchandise with respect to which the President, under section 337, Tariff Act of 1936,[27] has found unfair methods of competition or unfair acts in the importation to exist shall be accepted. No entry of merchandise of which the President has requested the Secretary to forbid entry pending the completion of an investigation shall be accepted unless there is presented with such entry the special bond provided for in subdivision (f) of said section 337 or unless such other condition as the President may specify has been complied with.

(b) The bond to be used in connection with the release of merchandise pursuant to such section 337 (f) of the tariff act shall be in an amount equal to the domestic value defined in section 340, Tariff Act of 1930, as ascertained by the appraising officer, and shall be conditioned upon the exportation of the merchandise if it is finally determined that such merchandise should be excluded from entry into the United States.

(c) In the event the President directs the exclusion of merchandise which has been released under bond pursuant to the authority contained in section 337 (f), Tariff Act of 1930, the collector of customs shall notify each importer concerned to export the prohibited merchandise under customs supervision unless the entry of the merchandise is permitted under license and an appropriate license is presented. In lieu of exportation, the merchandise may be destroyed under customs supervision upon receipt of a written request of the importer. Unless any such prohibited merchandise which has been released under bond is exported or destroyed under customs supervision, or an appropriate license is presented within 30 days after notice is given the importer concerned, demand shall be made upon the principal and the sureties on the bond for payment of the penal sum thereof as liquidated damages. If the conditions of any bond taken in such a case have been met, or the President determines that the entry of the merchandise did not violate the provisions of section 337 of the tariff act, the bond shall be canceled.

(Sec. 337, 46 Stat. 703; 19 U. S. C. 1337)

Immoral Articles

§ 12.40 Seizure; disposition of seized articles; reports to United States attorney.

(a) Any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, seized under section 305, Tariff Act of 1930,[27] shall be

---

[24] "(a) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury—

• • • • •

"(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; • • •

"(b) It shall be unlawful, except pursuant to a basic permit issued under this chapter by the Secretary of the Treasury—

"(1) to engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; • • •

"• • • This section shall not apply to any agency of a State or political subdivision thereof or any officer or employee of any such agency, and no such agency or officer or employee shall be required to obtain a basic permit under this chapter." (27 U. S. C. 203)

[25] "Whoever knowingly ships into any place within the United States, any package of or package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such package is so labeled on the outside cover as to plainly show the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than $1,000 or imprisoned not more than one year, or both." (18 U. S. C. 1263)

"All liquor involved in any violation of sections 1261–1265 of this title, the containers of such liquor, and every vehicle or vessel used in the transportation thereof, shall be seized and forfeited and such property or its proceeds disposed of in accordance with the laws relating to seizures, forfeitures, and dispositions of property or proceeds, for violation of the internal-revenue laws." (18 U. S. C. 3615)

[26] "(a) *Unfair methods of competition declared unlawful.* Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are hereby declared unlawful, and when found by the President to exist shall be dealt with, in addition to any other provisions of law, as hereinafter provided.

• • • • • •

"(e) *Exclusion of articles from entry.* Whenever the existence of any such unfair method or act shall be established to the satisfaction of the President he shall direct that the articles concerned in such unfair methods or acts, imported by any person violating the provisions of this Act, shall be excluded from entry into the United States, and upon information of such action by the President, the Secretary of the Treasury shall, through the proper officers, refuse such entry. The decision of the President shall be conclusive.

"(f) *Entry under bond.* Whenever the President has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section but has not information sufficient to satisfy him thereof, the Secretary of the Treasury shall, upon his request in writing, forbid entry thereof until such investigation as the President may deem necessary shall be completed; except that such articles shall be entitled to entry under bond prescribed by the Secretary of the Treasury.

"(g) *Continuance of exclusion.* Any refusal of entry under this section shall continue in effect until the President shall find and instruct the Secretary of the Treasury that the conditions which led to such refusal of entry no longer exist. • • •." (Tariff Act of 1930, sec. 337; 19 U. S. C. 1337)

[27] "(a) *Prohibition of importation.*—All persons are prohibited from importing into the United States from any foreign country any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States, or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral, or any drug or medicine or any article whatever for the prevention of conception or for causing unlawful abortion, or any lottery ticket, or any printed paper that may be used as a lottery ticket, or any advertisement of any lottery. No such articles, whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the collector that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided: *Provided*, That the drugs hereinbefore mentioned, when imported in bulk and not put up for any of the purposes hereinbefore specified, are excepted from the operation of this subdivision: *Provided further*, That the Secretary of the Treasury may,

transmitted to the United States attorney for his consideration and action.

(b) Upon the seizure of articles or matter prohibited entry by section 305, Tariff Act of 1930 (with the exception of the matter described in paragraph (a) of this section), a notice of the seizure of such articles or matter shall be sent to the consignee or addressee.

(c) When articles of the class covered by paragraph (b) of this section are of small value and no criminal intent is apparent, a blank assent to forfeiture, customs Form 4609, shall be sent with the notice of seizure. Upon receipt of the assent to forfeiture duly executed, the articles shall be destroyed if not needed for official use and the case closed.

(d) In the case of a repeated offender or when the facts indicate that the importation was made deliberately with intent to evade the law, the facts and evidence shall be submitted to the United States attorney for consideration of prosecution of the offender as well as an action in rem under section 305 for condemnation of the articles.

(e) If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege so to do, a petition under section 618, Tariff Act of 1930, for the remission of the forfeiture and permission to export the seized merchandise, information concerning the seizure shall be submitted to the United States attorney in accordance with the provisions of the second paragraph of section 305 (a), Tariff Act of 1930, for the institution of condemnation proceedings.

(f) If seizure is made of books or other articles which do not contain obscene matter but contain information or advertisements relative to the prevention of conception or to means of causing abortion, the procedure outlined in paragraphs (b), (c), (d), and (e) of this section shall be followed.[28]

(g) In any case when a book is seized as being obscene and the importer declines to execute an assent to forfeiture on the ground that the book is a classic, or of recognized and established literary or scientific merit, a petition addressed to the Secretary of the Treasury with evidence to support the claim may be filed by the importer for release of the book. Mere unsupported statements or allegations will not be considered. If the ruling is favorable, release of such book shall be made only to the ultimate consignee.

(h) Whenever it clearly appears from information, instructions, advertisements enclosed with or appearing on any drug or medicine or its immediate or other container, or otherwise that such drug or medicine is intended for preventing conception or inducing abortion, such drug or medicine shall be detained or seized. The mere fact that it may be capable of contraceptive use is not conclusive on the question of intent.

(i) Contraceptive devices imported by or for a particular physician shall not be detained under the provisions of section 305, Tariff Act of 1930, if the collector of customs concerned is satisfied that the ultimate consignee is a reputable physician, and if there is filed with such collector a declaration of the ultimate consignee stating that the devices are to be used only to protect the health of his patients.

(j) When an importer contends that he may lawfully import contraceptive articles and the collector is not satisfied that the importation is within the purview of paragraph (i) of this section, he shall be advised to file with the collector a communication addressed to the Commissioner of Customs setting forth his claims in detail to be transmitted by the collector to the Bureau together with a full report of the facts. Pending the Bureau's decision in such cases, any article consigned to the claimant and believed by the collector to be prohibited from importation shall be detained but not seized.

(Sec. 305, 46 Stat. 688, as amended; 19 U. S. C. 1305)

§ 12.41 Prohibited films.

(a) Importers of films, shall certify on customs Form 3291 that the imported films contain no obscene or immoral matter, nor any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, nor any threat to take the life or inflict bodily harm upon any person in the United States. When imported films are claimed to be free of duty as American goods returned, this certification may be made on customs Form 3311 in the space designated "Remarks" in lieu of on Form 3291.

(b) Films exposed abroad by a foreign concern or individual shall be previewed by a qualified employee of the Customs Service before release. In case such films are imported as undeveloped negatives exposed abroad, the approximate number of feet shall be ascertained by weighing before they are allowed to be developed and printed and such film shall be previewed by a qualified employee of the Customs Service after having been developed and printed.

(c) Any objectionable film shall be detained pending instructions from the Bureau or a decision of the court as to its final disposition.

(Sec. 305, 46 Stat. 688, as amended; 19 U.S.C. 1305)

Merchandise Produced By Convict, Forced, or Indentured Labor

§ 12.42 Findings of Commissioner of Customs.

(a) If any appraiser or other principal customs officer has reason to believe that any class of merchandise which is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of the first sentence of section 307, Tariff Act of 1930,[29] he shall communicate his belief to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in paragraph (b) of this section, if in the possession of the appraiser or other officer or readily available to him.

(b) Any person outside the Customs Service who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States and, if the production is with the use of forced labor or indentured labor under penal sanctions, that merchandise of the same

[28] Section 305, Tariff Act of 1930, prohibits the importation of articles for the prevention of conception or causing abortion but does not prohibit the importation of articles containing information or advertisements relative thereto. Sections 1461 and 1462, title 18, United States Code, contain provisions which apply to information and advertisements on these subjects.

[29] "All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to enter at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

" 'Forced labor,' as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." (Tariff Act of 1930, sec. 307; 19 U. S. C. 1307.)

in his discretion, admit the so-called classics or books of recognized and established literary or scientific merit, but may, in his discretion, admit such classics or books only when imported for noncommercial purposes.

"Upon the appearance of any such book or matter at any customs office, the same shall be seized and held by the collector to await the judgment of the district court as hereinafter provided; and no protest shall be taken to the United States Customs Court from the decision of the collector. Upon the seizure of such book or matter the collector shall transmit information thereof to the district attorney of the district in which is situated the office at which such seizure has taken place, who shall institute proceedings in the district court for the forfeiture, confiscation, and destruction of the book or matter seized. Upon the adjudication that such book or matter thus seized is of the character the entry of which is by this section prohibited, it shall be ordered destroyed and shall be destroyed. Upon adjudication that such book or matter thus seized is not of the character the entry of which is by this section prohibited, it shall not be excluded from entry under the provisions of this section.

"In any such proceeding any party in interest may upon demand have the facts at issue determined by a jury and any party may have an appeal or the right of review as in the case of ordinary actions or suits. (Tariff Act of 1930, sec. 305; 19 U. S. C. 1305)

"Whoever, being an officer, agent, or employee of the United States, knowingly aids or abets any person engaged in any violation of any of the provisions of law prohibiting importing, advertising, dealing in, exhibiting, or sending or receiving by mail obscene or indecent publications or representations, or books, pamphlets, papers, writings, advertisements, circulars, prints, pictures, or drawings containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, or means for preventing conception or procuring abortion, or other articles of indecent or immoral use or tendency, shall be fined not more than $5,000 or imprisoned not more than ten years, or both." (18 U. S. C. 552)

class is being produced in the United States in such quantities as to meet the consumptive demands of the United States may communicate his belief to any appraiser or the Commissioner of Customs. Every such communication shall contain, or be accompanied by, (1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, and (3) all pertinent facts obtainable as to the production of the merchandise abroad. If the foreign merchandise is believed to be mined, produced, or manufactured with the use of forced labor or indentured labor under penal sanctions, such communication shall also contain (4) detailed information as to the production and consumption of the particular class of merchandise in the United States and the names and addresses of domestic producers likely to be interested in the matter.

(c) If any information filed with an appraiser pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information is found to comply with the requirements, it shall be transmitted by the appraiser within 10 days to the Commissioner of Customs, together with all pertinent additional information available to the appraiser.

(d) Upon receipt by the Commissioner of Customs of any communication submitted pursuant to paragraph (a) or (b) of this section and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

(e) If the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all collectors of customs accordingly and the collectors shall thereupon withhold release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation.

(f) If it is determined on the basis of the foregoing that the merchandise is subject to the provisions of the said section 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to that effect in a weekly issue of the Treasury Decisions and in the Federal Register.

(g) Any merchandise of a class specified in a finding made under paragraph (f) of this section, which is imported directly or indirectly from the locality specified in the finding and has not been released from customs custody before the date of publication of such finding in the Federal Register shall be considered and treated as an importation prohibited by section 307, Tariff Act of 1930, unless the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding.

(h) The following findings made under the authority of section 307, Tariff Act of 1930 are currently in effect with respect to the merchandise listed below:

Merchandise	Country	T. D.
Canned crabmeat	Union of Soviet Socialist Republics.	52655
Furniture, clothes hampers, and palm leaf bags.	Ciudad Victoria, Tamaulipas, Mexico.	53408, 54725

(Sec. 307, 46 Stat. 689; 19 U. S. C. 1307)

§ 12.43 Proof of admissibility.

(a) If an importer of any article detained under § 12.42 (e) or (g) desires to contend that the article was not mined, produced, or manufactured in any part with the use of a class of labor specified in section 307, Tariff Act of 1930, he shall submit to the Commissioner of Customs within 3 months after the date the article was imported a certificate of origin in the form set forth below, signed by the foreign seller or owner of the article. If the article was mined, produced, or manufactured wholly or in part in a country other than that from which it was exported to the United States, an additional certificate in such form and signed by the last owner or seller in such other country, substituting the facts of transportation from such other country for the statements with respect to shipment from the country of exportation, shall be so submitted.

Certificate of Origin

I, _____, foreign seller or owner of the merchandise hereinafter described, certify that such merchandise, consisting of _____ (Quantity) of _____ (Description) in _____ (Number and kind of packages) bearing the following marks and numbers _____ was mined, produced, or manufactured by _____ (Name) at or near _____, and was laden on board _____ (Carrier to the United States) at _____ (Place of lading) which departed from (Place of final departure from country of exportation) on _____ (Date); and that _____ (Class of labor specified in finding) was not employed in any stage of the mining, production, or manufacture of the merchandise or of any component thereof.

Dated _____

_____ (Signature)

(b) The importer shall also submit to the Commissioner of Customs within such 3-month period a statement of the ultimate consignee of the merchandise, showing in detail that he had made every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components, the full results of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components.

(c) If the certificate or certificates and statement specified in paragraphs (a) and (b) of this section are submitted within the time prescribed and the Commissioner finds that the merchandise is admissible, the collector of customs concerned will be advised to that effect, whereupon he shall release the merchandise upon compliance with the usual entry requirements.

(Sec. 307, 46 Stat. 689; 19 U. S. C. 1307)

§ 12.44 Disposition.

Merchandise detained pursuant to § 12.42 may be exported at any time before it is deemed to have been abandoned as hereinafter provided for. If it has not been exported within 3 months after the date of importation, the collector shall ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been so submitted, or if the Commissioner of Customs advises the collector that the proof furnished does not establish the admissibility of the merchandise, the collector shall promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the collector, the merchandise shall be deemed to have been abandoned and shall be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

(Sec. 307, 46 Stat. 689; 19 U. S. C. 1307)

§ 12.45 Transportation and marketing of prison-labor products.

If any apparent violation of section 1761 or 1762, title 18, United States Code,[30] with respect to any imported

directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

" 'Forced labor,' as herein used, shall mean all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." (Tariff Act of 1930, sec. 307; 19 U. S. C. 1307.)

[30] "(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"(b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal, District of Co-

article comes to the attention of a collector of customs, he shall detain the article and report the facts to the appropriate United States attorney. If the United States attorney advises the collector that action should be taken against the article, it shall be seized and held pending the receipt of further instructions from the United States attorney or the court.

COUNTERFEIT COINS, OBLIGATIONS, AND OTHER SECURITIES; ILLUSTRATIONS OR REPRODUCTIONS OF COINS OR STAMPS

§ 12.48 Importation prohibited; exceptions to prohibition of importation; procedure.

(a) In accordance with Chapter 25, Title 18, United States Code, any token, disk, or device in the likeness or similitude of any coin of the United States or of a foreign country; counterfeits of coins in circulation in the United States; counterfeited, forged, or altered obligations or other securities of the United States [21] or of any foreign government; or plates, dies, or other apparatus which may be used in making any of the foregoing, when brought into the United States, shall be seized, and delivered to the nearest representative of the United States Secret Service, together with a report of the facts, for appropriate disposition.

(b) In accordance with section 504 of title 18, United States Code, the printing, publishing, or importation or the making or importation of the necessary plates for such printing or publishing for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums) of black and white illustrations of canceled and uncanceled United States postage stamps shall be permitted.

(c) The importation (but not for advertising purposes except philatelic advertising) of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation shall be permitted.

(d) Printed matter of the character described in section 504, title 18, United States Code,[22] containing reproductions of postage or revenue stamps, executed in accordance with any exception stated in section 504, or colored reproductions of canceled foreign postage stamps may be admitted to entry. Printed matter containing illustrations or reproductions not executed in accordance with such exceptions shall be treated as prohibited importations. If no application for exportation or assent to forfeiture and destruction is received by the collector within 30 days from the date of notification to the importer that the articles are prohibited, the articles shall be reported to the United States attorney for forfeiture.

MERCHANDISE SUBJECT TO QUOTA PROVISIONS

§ 12.49 Proclamations establishing import quotas.

The provisions of Presidential proclamations establishing tariff-rate quotas [23] or absolute import quotas are published in the Treasury decisions.

§ 12.50 Quota priority.

(a) Merchandise shall not be regarded as entered for purposes of quota priority until an entry therefor has been filed in proper form. Except as otherwise provided for in § 8.59(g) of this chapter, consumption entries and withdrawals for consumption covering quota commodities shall be accepted only during the official office hours when the customhouse is fully staffed and open for the transaction of all customs business. A quota status will not attach to merchandise in any quota period by reason of the presentation of an entry or withdrawal in any prior period.

(b) Merchandise covered by a mail entry or other informal entry shall be regarded as presented for purposes of quota priority when all requirements have been met for the preparation of such an entry.

(c) Merchandise entered for warehouse for which a withdrawal for consumption has been made in the manner stated in § 8.4 (g) of this chapter prior to the opening of any quota period may not be accorded any quota benefit which may become effective after the time of such withdrawal, even though the permit of delivery for the withdrawn merchandise is not delivered to the customs warehouse officer until after the effective date of the quota benefit.

(d) When it is anticipated that entries or withdrawals, or both, covering quantities sufficient to fill a quota will be presented at the opening of the quota period, no entry for consumption or withdrawal for consumption shall be accepted before 12 noon eastern standard time at any port in the eastern standard time belt, 11 a. m. central standard time in the central standard time belt, 10 a. m. mountain standard time in the mountain standard time belt, or 9 a. m. Pacific standard time in the Pacific standard time belt. All importers who are present to file entries or withdrawals when the quota opens shall be given equal opportunity to do so and, if necessary, special arrangements shall be made so that all such entries may be presented at the exact moment of the opening of the quota. No importer shall be permitted to present entries or withdrawals for a quantity in excess of the quota quantity. All entries and withdrawals so presented in proper form shall be considered to have been presented simultaneously even though some time may be required for checking purposes.

(e) When any tariff-rate quota is nearing fulfillment, the exact date, hour, and minute of official acceptance shall be noted on each entry and withdrawal and reported to the Bureau. When any absolute quota is nearing fulfillment and it is necessary to secure Bureau approval before accepting entries or withdrawals thereunder, the time of presentation of each entry or withdrawal shall be reported to the Bureau.

(f) If quota-class merchandise is the subject of an application for release under an immediate delivery permit, the time of presentation of entry shall not precede the time when the importing carrier reaches the limits of the port where entry is to be made. See §§ 8.4 and 8.59 of this chapter.

(Sec. 1, 48 Stat. 943, as amended; 19 U. S. C. 1351)

§ 12.51 Mail importations of merchandise for which an absolute quota has been established.

The following procedure is prescribed for the handling of mail importations of any merchandise for which an absolute quota has been established:

(a) In the absence of other arrangements, when the addressee is located at another port of entry, the importation, regardless of the value, shall be returned to the postmaster for dispatch to the collector of customs in care of the postmaster at the port of destination with customs Form 3511. If the importation exceeds $250 in value, notice on customs Form 3509 to make formal entry shall be sent to the addressee.

(b) If, because of quota restrictions, an entire importation cannot be released at one time, the collector of customs at the port at which such merchandise is to be entered shall so inform the addressee. An Acknowledgment of Delivery by Post Office Department shall be sent to the addressee and he shall be advised that if he desires to secure release of a portion of the merchandise the acknowledgment must be signed by him and returned to the collector of customs. The remainder of the importation, or any portion thereof, shall be released from time to time as it becomes admissible under the quota. Such Acknowledgment of Delivery by Post Office shall be in the following form:

ACKNOWLEDGMENT OF DELIVERY BY POST OFFICE DEPARTMENT

In consideration of the fact that certain articles in a mail importation consisting of ---------- (state number) parcels, mailed to me by ---------- ---------- (name of sender) of ---------- ---------- (address), on ---------- (date of mailing), are subject to quota restrictions under which only a portion of such articles may be admitted to entry at one time, and that the Post Office Department permits no division of the importation before delivery thereof, and since I am desirous of receiving a portion of such articles as they become admissible to entry from time to time under the quota administered by the United States Customs, I hereby agree and acknowledge that delivery of the parcel or parcels to the United States Customs shall be regarded as delivery by the Post Office Department to me.

(Signature of Addressee)

This form may be mimeographed in the quantities needed.

(c) If, in any case, the sender of a mail article has indicated his agreement to the delivery of less than the entire importation at one time, an Acknowledgment of Delivery by Post Office Department need not be secured from the addressee.

(d) The collector may require a deposit of an amount sufficient to defray the expenses of repacking each portion of the merchandise for shipment by mail to the addressee as it becomes admissible to entry under the quota. The shipment shall be under Government frank without new postage. Unless a formal entry or entry by appraisement is required, a mail entry on customs Form 3419 shall be issued and forwarded with the parcel to the postmaster for delivery to the addressee and collection of any duties in the same manner as for any other mail article subject to customs treatment.

(e) If formal entry or entry by appraisement is required, and the addressee is not located in the city where such entry is to be filed, the notice to the addressee shall be accompanied by appropriate entry forms for execution and return to the collector of customs.

(f) If within a reasonable time, but not to exceed 30 days, the addressee fails to indicate to the collector of customs an intention to receive delivery of the articles or a portion thereof in accordance with the notice sent to him by the collector of customs, the importation shall be treated in the same manner as other undeliverable mail.

(g) When any such articles imported in the mails, subject to classification under paragraph 1798, Tariff Act of 1930, as amended, but subject to quota restrictions, are declared in writing by a resident of the United States upon his return to this country, and a certified copy of such declaration is on file or is presented, the same procedure shall be followed, except that the articles may be released for delivery by the postmaster without the requirement of any other entry under a quota allocation obtained from the Bureau, unless duty is assessable and is to be collected at the time of delivery by mail, in which case a mail entry shall be issued.

FUR-SEAL OR SEA-OTTER SKINS

§ 12.60 Importation prohibited.

The transportation, importation, sale, or possession of the skins of fur seals or sea otters is prohibited if such skins were taken contrary to the provisions of section 2 of the act of February 26, 1944 (58 Stat. 100–104) [24] or, in the case of such skins taken under the authority of the act or any fur-seal agreement, if the skins are not officially marked and certified as required by section 2 of the act. Section 16 [25] makes the act inapplicable to skins taken for scientific purposes under a special permit.

(Secs. 1–17, 58 Stat. 100, 101, as amended, 102–104; 16 U.S.C. 631a–631q)

§ 12.61 Fur-seal or sea-otter skins permitted entry.

(a) Fur-seal or sea-otter skins taken by Indians, Aleuts, or other aborigines under the authority of section 3 of the act,[26] fur-seal skins taken under the authority of the Canadian Government, and fur-seal skins taken on the Pribilof Islands and other specified areas under the authority of section 4 of the act [27]

---

[21] "The term 'obligations or other security of the United States' includes all bonds, certificates of indebtedness, national bank currency, Federal Reserve notes, Federal Reserve bank notes, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, issued under any act of Congress, and canceled United States stamps." (18 U. S. C. 8)

[22] Notwithstanding any other provision of this chapter, the following are permitted:

(1) the printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of black and white illustrations of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation for philatelic, numismatic, educational, historical or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Such illustrations, except those of stamps, shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of such obligation or security. The negatives and plates used in making the illustrations shall be destroyed after their final use for the purpose for which they were made.

(2) the making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or, corporation. No prints or other reproductions shall be made from such films or slides, except for the purpose of paragraph (1), without the permission of the Secretary of the Treasury. (18 U.S.C. 504.)

[23] Modified duty rates under tariff-rate quotas established pursuant to section 350 of the Tariff Act of 1930, as amended and extended, are not applicable to imports from the countries or areas listed on page 1 of United States Import Duties (1952), as amended.

[24] "It shall be unlawful, except as hereinafter provided, for any citizen or national of the United States, or person owing duty of obedience to the laws or treaties of the United States, or any vessel of the United States, or person belonging to or on such vessel, to engage in pelagic sealing or sea otter hunting in or on the waters of the North Pacific Ocean; or for any person or vessel to engage in sealing; or for any person or vessel to use any port or harbor or other place subject to the jurisdiction of the United States for any purpose connected in any way with the operation of pelagic sealing, sea otter hunting, or sealing; or for any person to transport, import, offer for sale, or have in possession at any port, place, or on any vessel subject to the jurisdiction of the United States, raw, dressed, or dyed skins of sea otters taken contrary to the provisions of this section or, where taken pursuant to section 3 of this Act, not officially marked and certified as having been so taken, or raw, dressed, or dyed skins of fur seals taken in or on the waters of the North Pacific Ocean or on lands subject to the jurisdiction of the United States, except seal skins which have been taken under the authority of this Act or under the authority of the respective parties to any fur-seal agreement and which have been officially marked and certified as having been so taken." (Sec. 2, 58 Stat. 101)

[25] "Nothing contained in this act shall apply to the killing, capturing, pursuing, transportation, importation, offering for sale, or possession of fur seals or sea otters, or the skins thereof, for scientific purposes under special permit issued therefor by the Secretary." (Sec. 16, 58 Stat. 104)

[26] "Indians, Aleuts, or other aborigines dwelling on the American coasts of the waters of the North Pacific Ocean shall be permitted to carry on pelagic sealing or sea otter hunting without the use of firearms from canoes or undecked boats, propelled wholly by paddles, oars, or sails, and not transported by or used in connection with other vessels, and manned by not more than five persons each, in the way heretofore practiced by said Indians, Aleuts, or other aborigines, and shall be permitted to dispose of the skins of fur seals or sea otters so taken as they see fit, but only after such skins have been officially marked and certified as provided in section 2 of this act. The exception made in this section shall not apply to Indians, Aleuts, or other aborigines in the employment of other persons or who shall engage in pelagic sealing or sea otter hunting under contract to deliver the skins to any person." (Sec. 3, 58 Stat. 101)

[27] "In order to continue the proper utilization of the fur-seal herd of the North Pacific Ocean and to carry out the purposes of this Act, the Secretary is authorized to permit sealing on the Pribilof and other islands and on the shores of waters subject to the jurisdiction of the United States, by officers and employees of the Fish and Wildlife Service designated by him and by the natives of the Territory of Alaska, and to adopt suitable regulations governing the same whenever he shall determine that such sealing is necessary or desirable and not inconsistent with preservation of the fur seals of the North Pacific Ocean. The Secretary is also authorized to permit pelagic sealing in the event of emergency circumstances by officers, employees and agents of the United States and by the natives of the Territory of Alaska under such conditions and for such periods as may be agreed upon by consultation between the Government of the United States and the Government of Canada in accord-

shall be admitted to entry if officially marked and certified as having been lawfully taken and if accompanied by a declaration of the shipper identifying the skins by marks and numbers as those covered by the official certificate.

(b) Fur-seal or sea-otter skins taken in waters or on land not specified in the act or in the fur-seal agreement with Canada [40] or other fur-seal agreement shall be admitted to entry upon the production of evidence satisfactory to the collector that they have been so taken.

(Secs. 1–17, 58 Stat. 100, 101, as amended, 102–104; 16 U.S.C. 631a–631q)

§ 12.62 Enforcement; duties of customs officers.

(a) In accordance with the authority contained in sections 10 and 12 [41] of the act, customs officers shall arrest or cause to be arrested persons violating the provisions of the act or of any regulation made pursuant thereto; shall search vessels when there is reasonable cause to believe that such vessels are subject to seizure under the act; shall seize any vessel used or employed or which it appears has been or is about to be used or employed in violation of the act or any regulation made pursuant thereto; and shall seize fur seals and sea otters, or the skins thereof, killed, captured, transported, imported, offered for sale, or possessed by any person contrary to the provisions of the act or of any regulation made pursuant thereto.

(b) All articles, including vessels and equipment, seized by customs officers for violation of the act shall be turned over to the nearest officer or agent of the Fish and Wildlife Service, Department of the Interior, for appropriate disposition under the act, receipts to be taken in duplicate therefor. One copy of each such receipt shall be transmitted to the Bureau with a detailed report of the facts in the particular case involved.

(Secs. 1–17, 58 Stat. 100, 101, as amended, 102–104; 16 U.S.C. 631a–631q)

§ 12.63 Seal-skin or sea-otter-skin waste.

Seal-skin or sea-otter-skin waste composed of small pieces not large enough to be sewed together and utilized as dressed fur shall not be subject to the requirements of the regulations in this part.

(Secs. 1–17, 58 Stat. 100, 101, as amended, 102–104; 16 U.S.C. 631a–631q)

---

ance with the provisions of article II of the Provisional Fur Seal Agreement of 1942." (Sec. 4, 58 Stat. 101)

[40] "The provisions of this Agreement shall apply to all waters of the Bering Sea and the Pacific Ocean, north of the thirtieth parallel of north latitude and east of the one hundred and eightieth meridian." (Art. I, Provisional Fur Seal Agreement of 1942 between the United States and Canada, E. A. S. 415, 58 Stat. 1379)

[41] "Any officer or employee of the Department of the Interior authorized by the Secretary, any naval or other officer designated by the President, any marshal or deputy marshal, any collector or deputy collector of customs, and any other person authorized by law to enforce the provisions of this act shall have power, without warrant, to arrest any person committing a violation of this act or any regulation made pursuant thereto in his presence or view, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; and shall have power, without warrant, to search any vessel within any of the territorial waters of the United States, or any vessel of the United States on the high seas, when he has reasonable cause to believe that such vessel is subject to seizure under this section. Any officer, employee, or other person authorized to enforce the provisions of this act shall have power to execute any warrant or process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this act; and shall have power with a search warrant to search any person, vessel, or place at any time. The judges of the courts established under the laws of the United States, and the United States commissioners, may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All fur seals and sea otters, or the skins thereof, killed, captured, transported, imported, offered for sale, or possessed contrary to the provisions of this act or of any regulation made pursuant thereto, and any vessel used or employed contrary to the provisions of this act or of any regulation made pursuant thereto, or which it reasonably appears has been or is about to be used or employed in or in aid of the performance of any act forbidden by the provisions of this act or of any regulation made pursuant thereto, together with its tackle, apparel, furniture, appurtenances, and cargo, may, whenever and wherever lawfully found, be seized by any such officer, employee, or other person." (Sec. 10, 58 Stat. 102)

* * * * *

"It shall be the duty of all collectors of customs to enforce the provisions of this act with respect to the importation of the skins of fur seal and sea otter." (Sec. 12, 58 Stat. 103)

PART 13—EXAMINATION AND MEASUREMENT OF CERTAIN PRODUCTS

SUGARS, SIRUPS, AND MOLASSES

Sec.
13.1 Raw sugar; estimated duties; allowance for moisture.
13.2 Weighing, gauging, and sampling.
13.3 Molasses in tank cars.
13.4 Molasses not for extraction of sugar nor for human consumption.
13.5 Gauging of molasses and sirups; storage tanks.
13.6 Taring of sugar containers.
13.7 Sugar closets.
13.8 Retests of sugar, molasses, and sirup.
13.9 Mixing classes of sugar.

PETROLEUM PRODUCTS

13.10 Importation of petroleum products in bulk.

WOOL AND HAIR

13.11 Definitions.
13.12 Invoices.
13.13 Entry; certificate of clean content; duties; sampling by importer.
13.14 Weighing, sampling, and laboratory testing for clean content.
13.15 Examination for clean content by non-laboratory method.
13.16 Grades of wool, standards, reconsideration of.

COTTON

13.17 Invoices.
13.18 Sampling and stapling.

AUTHORITY: §§ 13.1 to 13.18 issued under R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

SUGARS, SIRUPS, AND MOLASSES

§ 13.1 Raw sugar; estimated duties; allowance for moisture.

(a) Estimated duties shall be taken on raw sugar on the basis of not less than 96% polariscopic test,[1] unless the invoice shows that the sugar is of a lower grade than that of the ordinary commercial shipment.

(b) Inasmuch as the absorption of sea water or moisture reduces the polariscopic test of sugar, there shall be no allowance on account of increased weight of sugar importations due to unusual absorption of sea water or other moisture while on the voyage of importation. Any portion of the cargo claimed by the importer to have absorbed sea water or moisture on the voyage of importation shall be weighed, sampled, and tested separately. No such claim shall be considered if made after the sugar claimed to have been damaged has been weighed.

§ 13.2 Weighing, gauging, and sampling.

(a) Sugar and sugar products requiring either weighing or sampling shall be weighed or sampled at the time of unlading. When such merchandise requires both weighing and sampling, these operations shall be performed simultaneously. When dutiable sugar is to be imported in bulk, a full description of the facilities to be used in unlading the sugar shall be submitted to the Bureau as far as possible in advance of the date of importation, and special instructions will be issued as to the methods to be applied in weighing and sampling such sugar.

(b) All dutiable raw sugar shall be weighed without regard to mark. All such sugar in bags shall be conveyed to scales in drafts of uniform size or of a uniform number of bags. Trucks and slings, if weighed, shall be maintained at a uniform weight so that the tare may be accurately established.

(c) In order to permit the taking of a representative general sample, the packages shall be so placed in unlading that the sampler can readily obtain a sample from any package.

(d) No expense incidental to the unlading, transporting, handling, sorting, or arranging of sugar or molasses for convenient weighing, gauging, measuring, sampling, or marking shall be borne by the Government.

(e) Sugar transported from the place of original discharge before samples have been taken shall not be removed from the transporting conveyance until notice of the time of the proposed removal has been given by the inspector to the examiner or sampler in charge.

§ 13.3 Molasses in tank cars.

When molasses is imported in tank cars, the importer shall file with the collector a certificate showing whether there is any substantial difference either

---

[1] The expression "testing by the polariscope * * * sugar degrees" occurring in the tariff act is construed to mean the percentage of sucrose contained in the sugar as shown by direct polarimetric estimation.

in the total sugar [2] or the character of the molasses in the different cars.

§ 13.4 Molasses not for extraction of sugar nor for human consumption.

(a) Pursuant to the last sentence of paragraph 502, Tariff Act of 1930,[3] molasses not imported to be used commercially for the extraction of sugar for human consumption [4] may be released upon the deposit of estimated duties at the appropriate rate and liquidation of the covering entry shall be suspended until proof of use is furnished or the time allowed for the production thereof has expired, provided there is filed with the entry or withdrawal a declaration of the person making the entry or withdrawal that the molasses was not imported to be used commercially for the extraction of sugar or for human consumption and that it will not be so used.

(b) Within 3 years from the date of entry (in the case of warehouse entries as well as consumption entries) the importer shall submit a certificate of the superintendent or manager of the manufacturing plant stating the use to which the molasses has been put. If the collector is satisfied that the molasses has not been used in a manufacturing plant but was sold as molasses to the ultimate user, he may accept as proof of the nature of such use a certificate of the wholesaler or other person making the final sale of the product. Such certificate shall state the quantity sold and the purpose for which the seller understood the purchase to be made. All certificates as to use provided for in this paragraph shall identify the molasses with the related customs entry, shall show the number of gallons and the sugar content of the molasses used, and shall state affirmatively the particular use, or alternative uses, each of which is a use other than for human consumption or for the extraction of sugar. If the molasses has not been used in the United States, evidence of exportation or destruction satisfactory to the collector shall be furnished. Certificates as to use and certificates or other documents showing exportation or destruction shall be filed in duplicate and one copy shall be forwarded to the comptroller of customs.

(c) Upon satisfactory proof of use of the molasses for purposes other than for the extraction of sugar or for human consumption or of the exportation or destruction thereof, the entry may be liquidated at the appropriate rate under the last sentence of paragraph 502, Tariff Act of 1930, as modified. When such proof of use or other disposition of the molasses is not made within 3 years from the date of the entry, or the use shown does not warrant the classification claimed, the entry shall be liquidated at the higher rate applicable under the first sentence of such paragraph 502, as modified.

(d) Entries covering blackstrap molasses, as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration prescribed in paragraph (a) of this section without compliance with the special requirements of paragraph (b) of this section. For the purposes of the regulations in this part, blackstrap molasses is defined as "final" molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

$$\frac{\text{total sugars} \times 100}{\text{Brix}}$$

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than 7 percent indicates a blackstrap molasses within the meaning of the regulations in this part.

§ 13.5 Gauging of molasses and sirups; storage tanks.

(a) When molasses or sirup is imported in bulk in tank vessels and is to be pumped or discharged into storage tanks, before the discharging is permitted there shall be filed in the customhouse a certified copy of the plans and gauge table of the storage tank showing all inlets and outlets and stating accurately the capacity in United States gallons per inch of height of the tank from an indicated starting point.

(b) After the discharge is completed, all inlets to the tank shall be carefully sealed and the molasses or sirups left undisturbed for a period not to exceed 20 days to allow for settling before being gauged. When a request for immediate gauging is made in writing by the importer, it shall be allowed by the collector.

§ 13.6 Taring of sugar containers.

(a) In general, there shall be allowed a schedule tare of 2½ pounds per bag for sugar imported in standard bags. When sugar is in other containers, actual tare should be taken. When the collector has reason to doubt the applicability of the schedule tare, he shall verify such schedule tare by taking actual tare. A sugar bag having an area of 1,392 square inches when laid flat (29 inches in width by 48 inches in length) shall be the standard sugar bag for tare purposes. When the area of sugar bags varies by more than 2 percent from the standard area of 1,392 square inches, or the bag is not of the usual textile, the schedule tare shall be increased or diminished in proportion to the amount the area or the weight of the bag varies from that of the standard bag. When the bags bearing any mark differ in size, the tare allowed shall be based upon the average dimensions of the entire number of bags bearing such mark.

(b) If the importer files a written application representing that there is an excessive number of damaged bags in a given importation, giving the approximate percentage of the damaged and sound bags and requesting that actual tare be taken, the collector, if satisfied that the facts are as stated, shall determine the actual tare on the importation. Whenever the actual tare determined on any importation differs from the schedule tare by not more than 5 percent, the schedule tare shall be allowed on such importation. In the event that the actual tare differs from the schedule tare by more than 5 percent, the actual tare shall be the accepted tare.

§ 13.7 Sugar closets.

Sugar closets for samples shall be substantially built and secured by locks furnished by the Bureau. They shall be conveniently located as near as possible to the points of discharge they are intended to serve. They shall be provided by the owner of the premises on which they are located and shall be so situated that sugar, sirup, and molasses stored therein shall not be subjected to extremes of temperature or humidity.

§ 13.8 Retests of sugar, molasses, and sirup.

(a) When the test of the sugar has been determined, the appraiser shall immediately notify the importer on customs Form 6463 of the average test of the importation and also the quantity and test of each lot from which such average test is obtained. If the importer, within 2 official days after such notice has been sent to him by the appraiser, claims an error in the test so reported and requests a retest, such retest may be granted if, on evidence furnished, such claim shall appear to the appraiser to be well founded. Before granting a retest, the appraiser shall require the importer to furnish the settlement tests of the sugar in question, together with any information the appraiser may deem desirable relating to the samples and polarizations used in the settlement tests. In no instance shall a retest be granted when the difference between the appraiser's average test and the settlement test is less than 0.4° S.

(b) In case of retest, the polariscopic test shall be reported on the basis of the average of the test and the retest, unless it can be shown to the satisfaction of the appraiser that either the test or the retest is in error, in which event the test not in error shall be taken as the basis of the report.

(c) In the case of molasses and sirup, a retest shall be granted by the appraiser only when the information in his possession indicates a strong probability of an error. In general, the rules governing the granting of a retest shall be those given above, with the exception that the

---

[2] The expression "total sugars," occurring in the tariff act, is construed to mean the sum of the sucrose (clerget), the raffinose, and the reducing sugars.

[3] "* * * Molasses not imported to be commercially used for the extraction of sugar or for human consumption, three one-hundredths of 1 cent per pound of total sugars." (Tariff Act of 1930, par. 502; 19 U. S. C. 1001)

[4] For the purpose of the regulations in this part, the phrase "molasses not imported to be commercially used for the extraction of sugar, or for human consumption" is construed to include, in addition to molasses used in animal feed and other products not for human consumption, molasses utilized in the production of articles such as yeast, vinegar, alcohol, rum gin, or whisky, in such manner that fermentation or other chemical change alters its character and chemical composition so that molasses or sugar does not appear in the final product. The phrase does not include molasses used for the extraction of sugar or used either in its condition as imported or after undergoing purifying or blending processes, or both, for table purposes or as a sweetening, coloring, or flavoring agent in the production of articles for human consumption.

difference between the appraiser's test and the settlement test shall be shown to be not less than 2 percent total sugars.

§ 13.9 Mixing classes of sugar.

No regulations relative to the weighing, taring, sampling, classifying, and testing of imported sugar shall be so construed as to permit mixing together sugar of different classes, such as centrifugal, beet, molasses, or any sugar different in character from those mentioned, for the purpose of weighing, taring, sampling, or testing.

PETROLEUM PRODUCTS

§ 13.10 Importation of petroleum products in bulk.

(a) When petroleum products taxable under I.R.C. section 4521, are imported in bulk in tank vessels and are to be pumped or discharged into storage tanks, the plans of each tank showing all outlets and inlets and the gauge table for each tank showing its capacity in United States gallons per inch or fraction of an inch of height shall be filed at the customhouse. Such plans and tables shall be certified as correct by the proprietor of the tank. An inspector gauger shall verify the measurements and calibrations shown on the gauge table. One set of such plans and gauge tables thus certified and verified shall be kept on file at the plant of the oil company and shall be available at all times to customs officers. Another verified and certified set shall be filed in the customhouse for use in verifying the inspector's reports. The collector may require such additional sets of plans and gauge tables as he may deem necessary.

(b) On entry for a petroleum product in bulk, the importer shall show the API gravity at 60° Fahrenheit, and the group to which the product belongs, in accordance with the Petroleum Measurement Tables (American Edition), published by the American Society for Testing Materials (1952). The abridged table (Table No. 7) shall be used in the reduction of volume to 60° F. If the exact quantity cannot be determined in advance, entry may be made for "_____ United States gallons, more or less." The information required by this paragraph shall also be shown on the permit and summary sheet.

(c) Tanks for the storage of imported petroleum products in bulk may be bonded as warehouses of class 2 if to be used exclusively for the storage of petroleum products belonging or consigned to the proprietor or lessee of the tank. In addition to the documents and bonds required to be filed with the application, the certified plans and gauge tables mentioned above shall be filed.

(d) If a bonded tank is not empty at the time the first importation of bonded petroleum products is to be stored therein, the amount of "free" petroleum products in the tank shall be withdrawn by the proprietor as soon as possible. The request to withdraw shall be in the form of a letter and no formal withdrawal need be filed. "Free" or duty-paid petroleum products shall not thereafter be stored in the tank as long as the tank remains bonded.

(e) Warehouse withdrawals of petroleum products from bonded tanks shall show the API gravity at 60° Fahrenheit, the group to which the product belongs, and the designation of the tank from which it is to be withdrawn. Such withdrawals may be made for "_____ United States gallons, more or less."

(f) Allowance for excessive moisture or other impurities may be made in accordance with § 15.7 of this chapter, if it be established that the quantity of water in the importation is excessive and that the noncombustible elements are impurities not usually found in such merchandise.

(53 Stat. 414, 416; 26 U. S. C. 3420, 3422, 3431)

WOOL AND HAIR

§ 13.11 Definitions.

(a) For the purposes of §§ 13.11 to 13.16:

(1) The words "clean content" shall mean all that portion of the wool or hair which consists exclusively of wool or hair free of all vegetable and other foreign material, containing 12 percent by weight of moisture and 1½ percent by weight of material removable from the wool or hair by extraction with alcohol, and having an ash content not exceeding one-half of 1 percent by weight. "Clean content", as defined in this subparagraph, shall not include the quantity of any wool or hair fibers ordinarily lost during commercial cleaning operations.

(2) The words "percentage clean content" shall mean the clean content, as defined above, expressed as a percentage of the net weight of the wool.

(3) The word "owner" means an actual owner in whose name the entry is filed or whose declaration has been filed as provided for in section 485 (d), Tariff Act of 1930.

(4) The word "transferee" means a person who has acquired the right to withdraw merchandise in accordance with section 557 (b), Tariff Act of 1930, as amended.

(b) The words "clean yield" in paragraph 1101 (c) (2), Tariff Act of 1930, as amended, shall mean the clean content of the wool or hair.[8]

(Pars. 1101–1104, sec. 1, 46 Stat. 646, as amended, 647; 19 U. S. C. 1001, pars. 1101–1104)

§ 13.12 Invoices.

Invoices of wool or hair provided for in paragraph 1101 or 1102 of the Tariff Act of 1930, as amended, shall show the following detailed information in addition to other information required:

(a) Condition, that is, whether in the grease, washed, pulled, on the skin, scoured, carbonized, burr-picked, willowed, handshaken, or beaten;

(b) Whether free of vegetable matter, practically free, slightly burry, medium burry, heavy burry;

(c) Whether in the fleece, skirted, matchings, or sorted;

(d) Length, that is, whether super combing, ordinary combing, clothing, or filling;

(e) Country of origin, and, if possible, the province, section, or locality of production;

(f) If wool, the type symbol by which it is bought and sold in the country of origin and the grade of each lot covered by the invoice, specifying the standard or basis used, that is, whether United States Official Standards or the commercial term to designate grade in the country of shipment;

(g) Net weight of each lot of wool or hair covered by the invoice in the condition in which it is shipped, and the shipper's estimate of the clean content of each such lot by weight or by percentage.

(Pars. 1101–1104, secs. 1, 481, 46 Stat. 646, as amended, 647, 719; 19 U.S.C. 1001, pars. 1101–1104, 1481)

§ 13.13 Entry; certificate of clean content; duties; sampling by importer.

(a) Each entry covering wool or hair subject to duty under paragraph 1101 or 1102, Tariff Act of 1930, as amended,[9]

[8] "For the purpose of this schedule:

"(1) Wools and hair in the grease shall be considered such as are in their natural condition as shorn from the animal, and not cleansed otherwise than by shaking, willowing, or burr-picking;

"(2) Washed wools and hair shall be considered such as have been washed, with water only, on the animal's back or on the skin, and all wool and hair, not scoured, with a higher clean yield than 77 per centum shall be considered as washed;

"(3) Scoured wools and hair shall be considered such as have been otherwise cleansed (not including shaking, willowing, burr-picking, or carbonizing);

"(4) Sorted wools or hair, or matchings, shall be wools and hair (other than skirtings) wherein the identity of individual fleeces has been destroyed, except that skirted fleeces shall not be considered sorted wools or hair, or matchings, unless the backs have been removed; * * *." (Tariff Act of 1930, par. 1101 (c), as amended; 19 U. S. C. 1001, par. 1101 (c))

[9] "(a) Wools: Donskoi, Smyrna, Cordova, Valparaiso, Ecuadorean, Syrian, Aleppo, Georgian, Turkestan, Arabian, Bagdad, Persian, Sistan, East Indian, Thibetan, Chinese, Manchurian, Mongolian, Egyptian, Sudan, Cyprus, Sardinian, Pyrenean, Oporto, Iceland, Scotch Blackface, Black Spanish, Kerry, Haslock, and Welsh Mountain; similar wools without merino or English blood; all other wools of whatever blood or origin not finer than 40s; and hair of the camel; all the foregoing, in the grease or washed, 24 cents per pound of clean content; scoured, 27 cents per pound of clean content; on the skin, 22 cents per pound of clean content; sorted, or matchings, if not scoured, 25 cents per pound of clean content: *Provided*, That a tolerance of not more than 10 per centum of wools not finer than 44s may be allowed in each bale or package of wools imported as not finer than 40s. * * *." (Tariff Act of 1930, par. 1101 (a), as amended; 19 U. S. C. 1001, par. 1101 (a))

"(a) Wools, not specially provided for, not finer than 44s, in the grease or washed, 29 cents per pound of clean content; scoured, 32 cents per pound of clean content; on the skin, 27 cents per pound of clean content; sorted, or matchings, if not scoured, 30 cents per pound of clean content: *Provided*, That a tolerance of not more than 10 per centum of wools not finer than 46s may be allowed in each bale or package of wools imported as not finer than 44s.

"(b) Wools, not specially provided for, and hair of the Angora goat, Cashmere goat, alpaca, and other like animals, in the grease or washed, 34 cents per pound of clean content; scoured, 37 cents per pound of clean content; on the skin, 32 cents per pound of clean content; sorted, or matchings, if not scoured, 35 cents per pound of clean content." (Tariff Act of 1930, par. 1102; 19 U. S. C. 1001, par. 1102)

"If any bale or package contains wools, hairs, wool wastes, or wool waste material, subject to different rates of duty, the highest rate applicable to any part shall apply to the entire contents of such bale or package, except as provided in paragraphs 1101 and 1102." (Tariff Act of 1930, par. 1103; 19 U. S. C. 1001, par. 1103)

"The Secretary of the Treasury is hereby authorized and directed to prescribe methods and regulations for carrying out the provisions of this schedule relating to the duties on wool and hair. The Secretary of the Treasury is further authorized and directed to procure from the Secretary of Agriculture, and deposit in such customhouses and other places in the United States or elsewhere, as he may designate, sets of the Official Standards of the United States for grades of wool. He is further authorized to display, in the customhouses of the United States, or elsewhere, numbered, but not otherwise identifiable, samples of imported wool and hair, to which are attached data as to clean content and other pertinent facts, for the information of the trade and of customs officers." (Tariff Act of 1930, par. 1104; 19 U. S. C. 1001, par. 1104)

No. 248—Part II——23

shall show as to each lot of wool or hair covered thereby, in addition to other information required, the total estimated or actual net weight of the wool or hair in its condition as imported, its total estimated clean content in pounds, and the estimated percentage clean content. Two copies of each entry covering wool or hair classifiable under paragraph 1101, as amended, or paragraph 1102 shall be filed in addition to the copies otherwise required.

(b) Duties on wool or hair classifiable under paragraph 1101, as amended, or paragraph 1102 may be estimated at the time of entry on the basis of the clean content shown on the entry if the collector is satisfied that the revenue will be properly protected. Liquidated duties shall be determined on the basis of the appraiser's final report of clean content. Estimated and liquidated duties on wool or hair tested for clean content pursuant to the provisions of § 13.14, and withdrawn for consumption without a change in condition which affects the duties and in a quantity less than an entire sampling unit as defined in § 13.14 (a) (1) shall be determined on the basis of an appropriate adjustment of the estimated percentage clean content shown on the entry for the wool or hair included in each of the lots covered by the withdrawal. This adjustment shall be made by increasing or decreasing such estimated percentage clean content of each lot by the difference between the percentage clean content of the related sampling unit, as reported by the appraiser, and the weighted average percentage clean content for the sampling unit, as computed from the estimated percentages clean content and net weights shown on the entry for the lots included in the sampling unit.

(c) Pursuant to the provisions of sections 509 and 510, Tariff Act of 1930, either the collector or the appraiser may require, in connection with any or all lots of wool or hair included in the importation, that the owner or his representative file in duplicate a properly and fully executed certificate on customs Form 6449 after opportunity is given to inspect the importation. If in his judgment it will aid in a more accurate determination of the amount of duty, the appraiser or the collector shall direct the importer to furnish such additional information and documents pertaining to the lot or lots as may be necessary. The release of the wool or hair may be withheld until the certificate and any other required information are received by the officer who directed its production.

(d) The importer of record, the owner, or the transferee, as the case may be, may be permitted after entry to draw samples under customs supervision in reasonable quantities from the packages of wool or hair designated for examination, provided the bales or bags are properly repacked and repaired by such person. Any samples so withdrawn shall be weighed and a record showing the quantities thereof shall be made and filed with the related entry.

(e) Duty shall be assessed and collected on samples taken pursuant to the provisions of paragraph (d) of this section or §§ 13.14, 13.15, or 13.16, unless an exemption or remission is obtained by compliance with an applicable provision of the law or regulations. The duty shall be assessed upon the samples in accordance with their condition at the time of importation, except as provided for in section 562, Tariff Act of 1930, as amended. The collection of duty on the samples may be postponed when the importation concerned is not entered for consumption until the withdrawal of the merchandise from which the samples are taken, or until an application for the destruction or abandonment of such merchandise has been accepted pursuant to an appropriate provision of the law or regulations.

(Pars. 1101–1104, sec. 1, 46 Stat. 646, as amended, 647; 19 U. S. C. 1001, pars. 1101–1104)

§ 13.14 Weighing, sampling, and laboratory testing for clean content.

(a) When used in this section, the terms:

(1) "Sampling unit" means all the similar packages covered by one entry or withdrawal containing wool or hair of the same kind or same general condition and character, produced in the same country, packed in substantially the same manner, and entered as or found to be subject to the same rate of duty.

(2) "General sample" means the composite of the individual portions of wool or hair drawn from a sampling unit.

(b) The following shall be weighed, sampled, and tested for clean content, as prescribed in this section, unless such sampling or testing is not feasible: (1) All importations of wool or hair classifiable under the provisions of paragraph 1102, Tariff Act of 1930, except importations entered directly for manipulation under the provisions of section 562, Tariff Act of 1930, as amended, or for manufacture under the provisions of section 311, Tariff Act of 1930; (2) all imported wool or hair manipulated under the provisions of such section 562 and classifiable after manipulation under the provisions of such paragraph 1102; and (3) such other imported wool or hair as the collector may designate. When an original sampling unit has been weighed, sampled, and tested in accordance with this section and a part of such unit is covered by a transfer made pursuant to section 557 (b), Tariff Act of 1930, as amended, the percentages clean content of the part covered by the transfer and of the part not so covered shall be computed on the basis of the original customs weights and test, and the invoice data related to the respective parts. When part of such an original sampling unit is exported from continuous customs custody without having been manipulated as provided for in section 562, Tariff Act of 1930, as amended, the percentage clean content of the part not exported shall be determined, in the discretion of the collector of customs, either on the basis of a new determination by reweighing, resampling, and retesting, or by a computation as described in the preceding sentence, for either the exported or the remaining part.

(c) A general sample shall be taken from each sampling unit, unless it is not feasible to obtain a representative general sample of the wool or hair in a sampling unit or to test such a sample in accordance with the provisions of this section, in which case the clean content of the wool or hair in such sampling unit shall be estimated as provided for in § 13.15. At the request of the importer of record, the owner, or the transferee, as the case may be, two general samples may be taken from a sampling unit if the taking and testing of a second general sample is feasible. If two general samples are taken, one general sample shall be held for use in making a second test to determine the clean content of the wool or hair if such a test is requested in accordance with the provisions of paragraph (e) of this section, or if a second test is found desirable by the appraiser or the chief chemist.

(d) The clean content of all general samples taken in accordance with this section shall be determined by test in a customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean content. A report of the percentage clean content of each general sample as established by the test or a statement of the reason for not testing a general sample shall be forwarded to the appraiser. If the report is not received by the appraiser within 1 month after the date of entry, the clean content of the wool or hair shall be estimated as provided for in § 13.15 except that in the case of wool or hair received under an entry for immediate transportation, an estimate of clean content, as provided for in § 13.15 shall be made if the laboratory report of clean content is not received by the appraiser within 1 month from the date on which the last of the merchandise is received. However, the appraiser may withhold his finding of clean content until the laboratory report is received and predicate his finding on that report if so requested in

writing by the importer of record, the owner, or the transferee, as the case may be. An estimate of clean content shall be made pursuant to the provisions of this paragraph only when an adequate quantity of the wool or hair is available for examination.

(e) The appraiser shall promptly notify the importer of record, the owner, or the transferee, as the case may be, by mail of the percentage clean content found by him. If such person is dissatisfied with the appraiser's finding, he may file with the appraiser a written request in duplicate for another laboratory test for percentage clean content. Such request shall be filed within 14 calendar days after the date of mailing of the notice of the appraiser's finding of clean content and shall be supported by a certificate in duplicate on customs Form 6449 when such a certificate has not been filed previously. The request shall be granted if it appears to the appraiser to be made in good faith and if a second general sample, as provided for in paragraph (c) of this section is available for testing, or if all packages, or, in the opinion of the Bureau, an adequate number of the packages, represented by the general sample are available and in their original imported condition. The second test shall be made upon the second general sample, if such a sample is available. If the second general sample is not available, the packages shall be reweighed, resampled, and tested in accordance with the provisions of this section. All costs and expenses of such operations, exclusive of the compensation of customs officers, shall be borne by the person who requested the further test. Such person may be present during such resampling and testing. If he is dissatisfied with the results of the second laboratory test, or if a second laboratory test is not feasible, the wool or hair may be retested subject to the conditions and in the manner provided for in § 13.15 (c).

(f) Except as provided in paragraph (g) of this section, in the determination of the clean content of any general sample taken in accordance with this section, an allowance in weight shall be made for wool or hair fibers which it is estimated will be lost ordinarily during commercial cleaning operations. For each general sample the scoured yield of the imported wool or hair and the quantity of vegetable matter present in the general sample shall be ascertained. The weight of the vegetable matter shall be subtracted from the weight of the scoured yield, and the difference shall be considered the weight of the clean fibers present in the imported wool or hair. The allowance for the quantity of wool or hair fibers estimated to be lost ordinarily during commercial cleaning operations shall be computed by making a base allowance of five one-thousandths (0.005) of the ascertained weight of the clean fibers present in the imported wool or hair and an additional allowance of six-tenths (0.6) of a pound for each pound of ascertained vegetable matter: *Provided*, That the combined allowance for such estimated commercial cleaning loss of fibers shall not exceed 15 per centum of the ascertained weight of the clean wool or hair fibers.

(g) Notwithstanding any other provision of this section, an allowance equal to the actual irrecoverable loss in weight of wool or hair fibers resulting from commercial cleaning processes to which a particular sampling unit of wool or hair is subjected shall be made if the importer at the time of entry, or withdrawal from warehouse, for consumption notifies the collector of his intention to furnish evidence establishing such actual irrecoverable loss and produce such evidence within three years from the date of entry or withdrawal. In such cases (1) absolute segregation of such wool or hair shall be maintained until the importer has been notified by the collector that he has accepted evidence showing such actual irrecoverable loss; (2) such evidence shall not be based on samples or estimates, but shall include manufacturer's records showing in detail the actual irrecoverable losses, if any, in wool or hair fibers resulting from commercial cleaning processes to which the whole of the segregated wool or hair has been subjected; (3) such wool or hair and records relating thereto, which are pertinent in this connection, shall be kept available for such inspection as the collector may from time to time deem appropriate; (4) liquidation of the entry covering such wool or hair shall be suspended pending acceptance by the collector of evidence of actual irrecoverable loss, unless such evidence is not furnished within 3 years from the date of entry or withdrawal; and (5) if such evidence is not furnished within that time, it shall be presumed that no such loss has occurred and in those cases, no allowance for any loss of wool or hair fibers after importation shall be made in the determination of the clean content of the sampling unit, notwithstanding any other provision of this part: *Provided*, That as to wool or hair which has not been entered for warehouse an importer may abandon his intention to furnish evidence of actual irrecoverable losses by filing written notice of such abandonment with the collector within 60 days after entry. If such notice of abandonment is filed, the provisions of paragraph (f) of this section shall apply as if no notification under this paragraph had been filed.

(Pars. 1101–1104, sec. 1, 46 Stat. 646, as amended, 647; 19 U. S. C. 1001, pars. 1101–1104)

§ 13.15 Examination for clean content by nonlaboratory method.

(a) Importations of wool or hair classified under the provisions of paragraph 1101 or 1102, Tariff Act of 1930, as amended, including all imported wool or hair withdrawn for consumption after being manipulated under the provisions of section 562, Tariff Act of 1930, as amended, and classified under the provisions of paragraph 1101, as amended, or paragraph 1102 after such manipulation, when not tested under the provisions of § 13.14, shall be examined by the appropriate customs officer, who shall estimate and report the percentage clean content of each lot.

(b) The appraiser shall promptly notify the importer of record, the owner, or the transferee, as the case may be, by mail of the percentage clean content estimated by the appropriate customs officer. If such person is dissatisfied with the estimate and, within the time and under the conditions prescribed in § 13.14 (e), files a request for a new examination of the wool or hair and a reestimation of its percentage clean content, such request shall be granted, provided the request appears to the appraiser to be made in good faith. The aforementioned importer, owner, or transferee shall be given an opportunity to inspect those of the packages which are in dispute.

(c) If the person who requested reestimation of the percentage clean content is dissatisfied with such reestimation, he may, within 14 calendar days after the date of mailing of the notice of the appraiser's findings upon reexamination, file a written request that a test be made to determine the percentage clean content of the wool or hair. The appraiser shall then cause a representative quantity of the wool or hair in dispute to be selected and tested by a commercial method approved by the Bureau. The yield, as determined by such commercial test, shall be suitably adjusted to coincide with the definition of clean content in § 13.11 (a). Such test shall be made under the supervision and direction of the appraiser at an establishment approved by him, and the expense thereof, including the actual expense of travel and subsistence of customs officers but not their compensation, shall be paid by the person who requested the test.

(d) If the appraiser is not satisfied with the results of any test provided for in § 13.14 (e) or in paragraph (c) of this section, he may, within 14 calendar days after receiving the report of the results of such test, proceed to have another test made upon a suitable sample of the wool or hair at the expense of the Government. When the appraiser is proceeding to have another test made, he shall, within the 14-day period provided for in this paragraph, notify the importer of record, owner, or transferee, as the case may be, by mail of that fact. The appraiser shall base his final report of clean content upon a consideration of all of the tests and examinations made in connection with the wool or hair concerned.

(Pars. 1101–1104, sec. 1, 46 Stat. 646, as amended, 647; 19 U. S. C. 1001, pars. 1101–1104)

§ 13.16 Grades of wool, standards, reconsideration of.

The appraiser shall cause wool provided for in paragraph 1101 or 1102 of the Tariff Act of 1930, as amended, to be examined for grade.[7] If classification of the wool at the grade or grades determined on the basis of this examination will result in the assessment of duty at a rate higher than the rate provided for wool of the grade or grades stated in the entry, the appraiser

[7] "The standards for determining grades of wools shall be those which are established from time to time by the Secretary of Agriculture pursuant to law and which are in effect on the date of importation of the wools." (Tariff Act of 1930, par. 1101(c)(5), as amended, 19 U.S.C. 1001, par. 1101(c)(5).)

shall promptly notify, by mail, the importer of record, the owner, or the transferee, as the case may be. If such importer of record, owner, or transferee is dissatisfied with the appraiser's findings as to the grade or grades of the wool, he may, within 14 calendar days after the date of mailing of the notice of the appraiser's findings, file in duplicate a written request for another determination of grade or grades, stating the reason for the request. Notice of the appraiser's findings on the basis of the reexamination of the wool shall be mailed to the person who requested the reexamination.

(Pars. 1101–1104, sec. 1, 46 Stat. 646, as amended, 647; 19 U. S. C. 1001, pars. 1101–1104)

COTTON

§ 13.17 Invoices.

Invoices of cotton provided for in paragraph 783 or 1662, Tariff Act of 1930, as amended, shall show the following detailed information in addition to other required information:

(a) One of the following statements regardmg each lot of cotton covered by the invoice:

(1) This is harsh or rough cotton under ¾ inch in staple length.

(2) The staple length of this cotton is under 1⅛ inches. (This statement is not to be used if subparagraph (1) of this paragraph is applicable.)

(3) The staple length of this cotton is 1⅛ inches or more and under 1⅜ inches.

(4) This cotton is harsh or rough cotton (other than cotton of perished staple, grabbots, and cotton pickings), white in color, and has a staple length of 1$\frac{15}{32}$ inches or more and under 1⅜ inches.

(5) The staple length of this cotton is 1⅜ inches or more and under 1$\frac{11}{16}$ inches.

(6) The staple length of this cotton is 1$\frac{11}{16}$ inches or more.

(b) The name of the country of origin and, if practicable, the name of the province or other subdivision of the country of origin in which the cotton was grown.

(c) The variety of the cotton, such as Karnak, Gisha, Pima, Tanguis, etc.

(Sec. 481, 46 Stat. 719; 19 U. S. C. 1481)

§ 13.18 Sampling and stapling.

(a) For the purposes of this section and § 13.17, "staple length" means the length of the fibers in a particular quantity of cotton designated in terms expressing the measurement by the inch or fraction thereof of a representative portion of the quantity in accordance with the Official Cotton Standards of the United States for length of staple, as established by the Secretary of Agriculture.

(b) For determining the staple length of any lot of cotton for any customs purposes, samples of the lot shall be taken in accordance with commercial practice.

(c) The appraiser shall have one or more samples of each sampled bale of cotton stapled by a qualified examiner (including any employee of the Department of Agriculture properly designated by the Bureau for the purpose), and shall promptly transmit by mail to the person who would be liable for duties, if any are or might be payable, a notice of the results determined.

(d) If the person notified is dissatisfied with the appraiser's determination, he may file with the appraiser, within 14 calendar days after the date of mailing of the notice, a written request in duplicate for a redetermination of the staple length. Each such request shall include a statement of the claimed staple length for the cotton in question and a clear statement of the basis for the claim. The request shall be granted if it appears to the appraiser to be made in good faith. In making the redetermination of staple length, the appraiser may obtain an opinion of a board of cotton examiners of the United States Department of Agriculture, if he deems such action advisable. All expenses occasioned by any redetermination of staple length, exclusive of the compensation of customs officers, shall be reimbursed to the Government by the person requesting the redetermination.

(Par. 783, sec. 1, 46 Stat. 639, as amended; 19 U. S. C. 1001, par. 783)

PART 14—APPRAISEMENT

Sec.
14.1 Order of appraisement; designation of packages for examination.
14.2 Examination of merchandise; procedure.
14.3 Appraisement of merchandise; determination of value.
14.4 Furnishing information as to values.
14.5 Coal-tar products.

PROCEDURE UNDER ANTIDUMPING ACT

14.6 Suspected dumping.
14.7 Fair value.
14.8 Determination of fact or likelihood of sales at less than fair value; determination of injury; finding of dumping.
14.9 Action by the appraiser.
14.10 Release of merchandise; bond.
14.11 Conversion of currencies.
14.12 Modification or revocation of finding.
14.13 Publication of findings.

AUTHORITY: §§ 14.1 to 14.13 issued under R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 14.1 Order of appraisement; designation of packages for examination.

(a) The designation of packages or quantities of merchandise for examination shall be deemed an order of appraisement for the purposes of section 488, Tariff Act of 1930.[1]

(b) Not less than 1 package of every 10 packages of merchandise shall be designated by the collector to be examined for the purpose of appraisement, unless a special regulation permits a less number of packages to be examined.[2] Collectors of customs are specially authorized to designate for examination a less number of packages than one package of every ten packages, but not less than one package of every invoice, in the case of any merchandise which is (1) imported in packages the contents and values of which are uniform, or (2) imported in packages the contents of which are identical as to character although differing as to quantity and value per package.

(c) This section shall not be construed to preclude the examination of packages in addition to the minimum number hereby permitted to be examined if the collector or the appraiser shall deem it necessary that a greater number of packages be examined.

(Secs. 488, 499, 46 Stat. 725, 728, as amended; 19 U.S.C. 1488, 1499)

§ 14.2 Examination of merchandise; procedure.

(a) The appraiser shall cause to be examined all merchandise designated by the collector and such additional quantities, packages, or parts thereof as he may deem necessary.[3] Such mer-

[1] "The collector within whose district any merchandise is entered shall cause such merchandise to be appraised." (Tariff Act of 1930, sec. 488; 19 U. S. C. 1488)

[2] "• • • The collector shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise and shall order such packages or quantities to be sent to the public stores or other places for such purpose. Not less than one package of every ten packages of merchandise shall be so designated unless the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that the examination of a less proportion of packages will amply protect the revenue and by special regulation or instruction, the application of which may be restricted to one or more individual ports or to one or more importations or one or more classes of merchandise, permit a less number of packages to be examined. All such special regulations or instructions shall be published in the weekly Treasury Decisions within fifteen days after issuance and before the liquidation of any entries affected thereby. The collector or the appraiser may require such additional packages or quantities as either of them may deem necessary. • • •" (Tariff Act of 1930, sec. 499, as amended; 19 U. S. C. 1499)

[3] "It shall be the duty of the appraiser under such rules and regulations as the Secretary of the Treasury may prescribe—

"(1) To appraise the merchandise in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or cost of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding;

"(2) To ascertain the number of yards, parcels, or quantities of the merchandise ordered or designated for examination;

"(3) To ascertain whether the merchandise has been truly and correctly invoiced;

"(4) To describe the merchandise in order that the collector may determine the dutiable classification thereof; and

"(5) To report his decisions to the collector." (Tariff Act of 1930, sec. 500 (a); 19 U. S. C. 1500 (a))

"• • • If any package is found by the appraiser to contain any article not specified in the invoice and he reports to the collector

chandise shall be examined at the public stores, except as hereinafter provided for. With the consent of the appraiser, merchandise which cannot conveniently be examined at the public stores may be examined on the wharf, at the importer's premises, or at any other suitable place. Matches and other inflammable, explosive, or dangerous articles shall be examined at the importer's premises or other suitable place, but not at the public stores.

(b) When, upon the request of the importer, merchandise is examined elsewhere than at the public stores, or at a place other than a port of entry or a customs station at which a customs officer is permanently located, any additional expense, including actual expenses of travel and subsistence but not the salary of the examining officer, shall be paid by the importer, except that no collection need be made if the total amount chargeable against one importer for one day amounts to less than 50 cents. If the total amount chargeable amounts to 50 cents or more, but less than $1, a minimum charge of $1 shall be made.

(c) Before permitting the removal of merchandise for examination elsewhere than at the public stores, wharf, or other place in charge of a customs officer, the collector shall require the importer to execute a bond on customs Form 7551, 7553, or other appropriate form, containing a condition for the return of the merchandise if demand for return is made after its release from customs custody upon the completion of final examination for purposes of appraisement. The bond shall contain added conditions that the importer shall hold the merchandise at the place to which it has been removed for examination until it has been released from customs custody; that, if such merchandise has been corded and sealed, the cords and seals shall be kept intact until removed by customs officers; and that the importer shall transfer the merchandise at any time before such release to such place as the collector may direct.

(d) If the collector deems it necessary, the packages shall be corded and sealed by a customs officer before being removed from the place of unlading and a caution notice, customs Form 6087, shall be securely affixed thereto. The packages shall be opened only in the presence of a customs officer authorized to examine their contents, and the opening and closing of the packages shall be done by labor furnished by the importer.

(e) Upon application by the importer or owner, machinery, altars, shrines, and other articles which must be set up or assembled prior to examination may be examined and appraised at the mill, factory, or other suitable place after being set up or assembled. In all such cases a bond on customs Form 7551, 7553, or other appropriate form shall be taken; the collector also may require that a deposit be made of the estimated additional expense. The packages need not be corded and sealed, but the appraiser may make such preliminary examination as he deems necessary to identify the merchandise with the invoice. After the bond has been filed and any necessary preliminary examination has been made, the collector may permit the merchandise to be removed to the place at which it is to be set up or assembled for examination. Within 90 days after such removal, unless an extension has been applied for and granted by the collector, the importer shall notify the collector or appraiser that the machinery or other articles have been set up or assembled and are ready for examination, whereupon final examination shall be made and the appraisement completed.

(f) When merchandise covered by an immediate transportation entry has been authorized by the collector to be delivered to a place outside a port of entry, as provided for in § 18.11 (c) of this chapter, the provisions of paragraphs (a) to (e), inclusive, of this section shall be complied with to the same extent as would have been required if the merchandise had been delivered to the port of entry designated in the transportation entry and then authorized to be examined elsewhere than at the public stores, wharf, or other place where a customs officer is regularly stationed.

(g) When deemed sufficient for the purposes, samples of merchandise may be used for examination and appraisement. Representative samples shall be selected by a customs sampler or other authorized customs officer from the merchandise or packages designated by the collector for examination, and shall be properly marked to insure identification and retained as long as the appraiser shall deem necessary.

(h) If the appraiser requires samples from packages not designated for examination, he shall request the importer, on customs Form 6525, to submit them and execute the certificate on the reverse side of customs Form 6525.

(i) Tobacco examination districts and, in the case of each district, the tobacco examiner who shall have general supervision of the examination of all Cuban leaf tobacco imported in such district, are hereby designated as follows:

District No. 1. To include all the ports in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, North Carolina, and South Carolina, the District of Columbia, and the Island of Puerto Rico. The tobacco examiner stationed at the port of New York.

District No. 2. To include all the ports in the States of Florida, Georgia, Alabama, Mississippi, Louisiana, and Texas. The tobacco examiner stationed at the port of Tampa.

District No. 3. To include all the ports in the States of Ohio, Kentucky, Tennessee, Indiana, Illinois, Michigan, Wisconsin, Minnesota, Iowa, Missouri, Arkansas, Oklahoma, Kansas, Nebraska, North Dakota, South Dakota, Montana, Wyoming, and Colorado. The tobacco examiner stationed at the port of Chicago.

District No. 4. To include all the ports in the States of Washington, Oregon, California, Idaho, Nevada, Arizona, New Mexico, and Utah. The tobacco examiner stationed at the port of San Francisco.

(Secs. 488, 499, 46 Stat. 725, 728, as amended; 19 U.S.C. 1488, 1499)

§ 14.3 Appraisement of merchandise; determination of value.

(a) Except as otherwise herein provided for, the value of imported merchandise for appraisement purposes shall be determined in accordance with the provisions of new section 402, Tariff Act of 1930, added by section 2 (a) of the Customs Simplification Act of 1956.[4] The value of imported articles specified in the final list published pursuant to section 6(a) of that act [4a] shall be determined in accordance with the provisions of section 402a, Tariff Act of 1930, as redesignated and amended.[4b] With respect to any article described on the final list in terms of unit values, the unit value is to be computed in accordance with section

---

that in his opinion such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package in which such article is found shall be liable to seizure, but if the appraiser reports that no such fraudulent intent is apparent then the value of said article shall be added to the entry and the duties thereon paid accordingly. If a deficiency is found in quantity, weight, or measure in the examination of any package, report thereof shall be made to the collector, * * *." (Tariff Act of 1930, sec. 499, as amended; 19 U. S. C. 1499)

[4] (a) Basis—Except as otherwise specifically provided for in this act, the value of imported merchandise for the purposes of this act shall be—

(1) The export value, or

(2) If the export value cannot be determined satisfactorily, then the United States value, or

(3) If neither the export value nor the United States value can be determined satisfactorily, then the constructed value;

except that, in the case on an imported article subject to a rate of duty based on the American selling price of a domestic article, such value shall be—

(4) The American selling price of such domestic article.

(b) Export value. For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

(c) United States value. For the purposes of this section, the United States value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

(1) Any commission usually paid or agreed to be paid, or the addition for profit and general expenses usually made, in connection with sales in such market of imported merchandise of the same class or kind as the merchandise undergoing appraisement;

(2) The usual costs of transportation and insurance and other usual expenses incurred with respect to such or similar merchandise from the place of shipment to the place of delivery, not including any expense provided for in subdivision (1); and

(3) The ordinary customs duties and other Federal taxes currently payable on such or similar merchandise by reason of its importation, and any Federal excise taxes on, or measured by the value of, such or similar merchandise, for which vendors at wholesale in the United States are ordinarily liable.

If such or similar merchandise was not so sold or offered at the time of exportation of the merchandise undergoing appraisement, the United States value shall be determined, subject to the foregoing specifications of this subsection, from the price at which such or similar merchandise is so sold or offered at the earliest date after such time of exportation but before the expiration of ninety days after the importation of the merchandise undergoing appraisement.

(d) Constructed value. For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

(1) The cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisement which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) An amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and

(3) The cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

(e) American Selling Price. For the purposes of this section, the American selling price of any article produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the article in condition packed ready for delivery, at which such article is freely sold or, in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such article when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

(f) Definitions. For the purposes of this section—

(1) The term "freely sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) To all purchasers at wholesale, or

(B) In the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale.

(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise undergoing appraisement, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise undergoing appraisement.

(3) The term "purchasers at wholesale" means purchasers who buy in the usual wholesale quantities for industrial use or for resale otherwise than at retail; or, if there are no such purchasers, then all other purchasers for resale who buy in the usual wholesale quantities; or, if there are no purchasers in either of the foregoing categories, then all other purchasers who buy in the usual wholesale quantities.

(4) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which export value, United States value, or constructed value, as the case may be, can be satisfactorily determined:

(A) The merchandise undergoing appraisement and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise undergoing appraisement.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise undergoing appraisement.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise undergoing appraisement, (ii) like the merchandise undergoing appraisement in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise undergoing appraisement.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(5) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(g) Transactions Between Related Persons.

(1) For the purposes of subsection (c) (1) or (d), as the case may be, a transaction directly or indirectly between persons specified in any one of the subdivisions in paragraph (2) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then, for the purposes of subsection (d), the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subdivisions in paragraph (2).

(2) The persons referred to in paragraph (1) are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person. (Section 402, Tariff Act of 1930, as amended; 19 U. S. C. 1401a.)

[4a] Sec. 6. (a) The Secretary of the Treasury shall determine and make public a list of the articles which shall be valued in accordance with section 402a, Tariff Act of 1930, as amended by this act, as follows:

As soon as practicable after the enactment of this act the Secretary shall make public a preliminary list of the imported articles which he shall have determined, after such investigation as he deems necessary, would have been appraised in accordance with section 402 of the Tariff Act of 1930, as amended by this act, at average values for each article which are 95 (or less) per centum of the average values at which such article was actually appraised during the fiscal year 1954. If within sixty days after the publication of such preliminary list any manufacturer, producer, or wholesaler in the United States presents to the Secretary his reason for belief that any imported articles not specified in such list and like or similar to articles manufactured, produced, or sold at wholesale by him would have been appraised in accordance with such section 402 at average values which are 95 (or less) per centum of the average values at which they were or would have been appraised under section 402a, Tariff Act of 1930, as amended by this act, the Secretary shall cause such investigation of the matter to be made as he deems necessary. If in the opinion of the Secretary the reason for belief is substantiated by the investigation, the articles involved shall be added to the preliminary list and such list, including any additions so made thereto, shall be published as a final list. Every article so specified in the final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the date of publication of the final list shall be appraised in accordance with the provisions of section 402a, Tariff Act of 1930, as amended by this act. (Sec. 6 (a) 70 Stat. 948.)

[4b] "(a) BASIS. For the purposes of this Act the value of imported articles designated by the Secretary of the Treasury as provided for in section 6 (a) of the Customs Simplification Act of 1956 shall be—

"(1) The foreign value or the export value, whichever is higher;

"(2) If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;

"(3) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

"(4) In the case of an article with respect to which there is in effect under section 336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article.

* * * * *

"(c) *Foreign value.* The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States,

402a for the purpose of ascertaining whether the article undergoing appraisement is included on the list. If the value so computed brings the article within the scope of the value on the final list, such article must be appraised in accordance with section 402a and classified at the rate applicable to the appraised value. If the value so computed places the article outside the scope of the value on the final list, the article must be appraised in accordance with section 402 and classified at the rate applicable to the appraised value.

(b) The time of exportation referred to in section 402 and section 402a of the tariff act, as amended, is the date on which the merchandise actually leaves the country of exportation for the United States.[4] However, if the merchandise is not exported directly by water and no positive evidence is at hand as to the date of exportation, the date of the special customs or commercial invoice shall be considered to be the date of exportation unless the invoice appears to be dated after the date the merchandise actually left the country of exportation. If such invoice covers several individual bills of different dates, the latest of such dates, unless it appears to be later than the actual date of export, shall be considered to be the date of exportation. In the case of indirect shipments exported from one country through another, if the invoice is post dated, the date of the bill of lading may be considered to be the date of exportation in the absence of other evidence if the bill of lading was issued in the country of exportation. A bill of lading showing the date of shipment shall be accepted as evidence of the date of exportation, if such bill has been certified in accordance with the provisions of section 2904, Revised Statutes (19 U. S. C. 240).

(c) The appraiser shall determine the amount and dutiability of any costs, charges, and expenses which are incident to making the merchandise ready for shipment to this country within the meaning of sections 402 or 402a, Tariff Act of 1930, as amended.[5]

(d) Merchandise imported from one country,[7] being the growth, production, or manufacture of another country, shall be appraised at its value in the principal markets of the country from which it is immediately imported unless it appears by the invoice, bill of lading, or other evidence that the merchandise was destined for the United States at the time of original shipment, in which case it shall be appraised at its value in the principal markets of the country from which it was originally exported.

(e) The report of the appraiser as to value shall not be reconsidered or modified by him after the appraised invoice and report of appraisement has been lodged with the collector, but within 60 days thereafter an appeal for reappraisement may be filed by the collector if he believes the appraisement is incorrect.[8]

(f) Instructions for appraisement of merchandise in cases involving the conversion of foreign currencies for which two or more rates of exchange have been certified by the Federal Reserve Bank of New York are contained in § 16.4 of this chapter.

(Secs. 402, 488, 500, 46 Stat. 708, as amended, 714, 729, as amended, sec. 402, 70 Stat. 943; 19 U.S.C. 1401a, 1402, 1488, 1500)

§ 14.4 Furnishing information as to values.

The appraiser shall furnish to importers the latest information as to values in his possession, subject to the following conditions:

(a) Such information shall be given before appraisement only as provided for in § 8.29 (c) and (d) of this chapter, or in response to a specific oral or written request therefor by an importer or his representative, supported by an adequate reason for the request, and in no case shall be volunteered by a customs employee.

(b) The information shall be given only in regard to merchandise to be appraised by, or under the jurisdiction of, the appraiser who receives the request, and only after the merchandise has arrived at the port of entry or upon satisfactory evidence that it has been exported and is en route to the United States.

(c) Each request shall be accompanied by the latest information as to the values in question which the importer has or reasonably can obtain.

(d) Information shall be given only with an understanding and agreement in each case that the information is in no sense an appraisement and is not binding upon the appraiser's action when he appraises the goods.

(e) The appraiser shall not be required to reply to a written request for value information after a value for the merchandise has been declared on entry unless he has information indicating a probable appraised value different from such entered value.

§ 14.5 Coal-tar products.

(a) Subject to the conditions of § 8.5(b) of this chapter, prior to entry an importer shall be permitted to take samples under proper supervision from his own importation of articles dutiable under paragraph 27 or 28, Tariff Act of 1930.

(b) When an importer seeks information from the appraising officer prior to entry or formal entry is withheld for the importer's convenience as provided for in paragraph (e) of this section, the importer shall furnish to the appraising officer such relevant information as he may request.

(c) Importers may be furnished information as to the American selling price or United States value of coal-tar products upon compliance with the provisions of § 14.4.

(d) The appraiser at New York shall from time to time issue lists of coal-tar products which he believes to be competitive and noncompetitive within the contemplation of subparagraphs (c) and (d) of paragraph 27 or 28 of the tariff act,[9] and add articles thereto or remove articles therefrom as investigation shall justify. This list is advisory only and in no manner relieves appraising officers from the duty of independent appraisement required by law. The appraiser shall furnish copies of such lists and amendments thereof to the Customs Information Exchange for circulation among other appraising officers and the public upon request.

(e) The appraiser at New York, upon application of an importer having an invoice of an article not named on either the competitive or the noncompetitive list, shall proceed immediately to ascertain to which list the article belongs and, upon such ascertainment shall add the article to such list. The importer may withhold formal entry pending addition of the article to either list. The appraiser shall inform the importer of his action.

(f) When an imported article is of different strength from a similar competitive article manufactured or produced in the United States, the value of the imported article shall be adjusted in relation to the selling price of the domestic article in the proportion which the strength of the imported article bears to that of the domestic article.[10]

(g) When an article is a similar competitive article, the value of such article shall be that portion of the American selling price of the domestic article freely offered for sale which bears the same ratio to such price as the value of the domestic article not freely offered for sale has to the value of the article in the manufacture of which it is used.

(h) When the appraising officer shall be satisfied after investigation that a similar competitive domestic article is offered for sale at an arbitrary and unreasonable price not intended to secure bona fide sales and which does not secure bona fide sales, such price shall not be considered as the American selling price, and such officer shall use all reasonable ways and means to ascertain the price that the manufacturer, producer, or owner would have received, within the meaning of sections 402 (e) or 402a (g), Tariff Act of 1930, as amended.

(i) Where two or more domestic articles are considered similar to and competitive with an imported article, the American selling price of the domestic article which accomplishes results most nearly equal to those of the imported article shall be taken as the basis for the assessment of the ad valorem rate.[11]

(j) In the ascertainment of United States value, the allowances permitted under sections 402 (c) or 402a (e), Tariff Act of 1930, as amended, shall be made on the basis of the amounts of the factors enumerated therein which actually entered into the price at which such or similar imported merchandise was being sold in the principal market of the United States at the time of exportation, subject to the limitations as to profits, general expenses, or commission.

(k) Tests which are necessary in the appraisement of an imported coal-tar product shall be made under conditions approximating as closely as practicable the conditions in which the articles will be actually used in trade or manufacture.

(l) When a coal-tar product is found to be noncompetitive and no United States value can be ascertained, the article shall be appraised in accordance with section 402 (a) or section 402a (a), Tariff Act of 1930, as amended.

(m) Standards of strength for coal-tar products adopted by the Secretary of the Treasury will be published from time to time and such standards heretofore adopted and published shall continue in force until changed or revoked.[12]

39765	40596	41932	47836
40192	40623	42147	48361
40257	40653	42420	48541
40278	40922	42687	48814
40293	40947	42942	49137
40298	41017	43255	49353
40329	41061	43704	49671
40340	41089	44231	49790
40361	41139	44924	50001
40371	41162	45319	50094
40396	41224	45758	50199
40420	41313	46012	50333
40450	41380	46487	50431
40472	41513	46793	50556
40525	41656	47186	50691
40563	41756	47544	50806

(n) The Chief Chemist, Customs Laboratory, 201 Varick Street, New York, is hereby authorized to receive from domestic manufacturers samples of those coal-tar products they produce and offer and which are more specifically de-

---

at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

"(d) *Export value.* The export value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

"(e) *United States value.* The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale, for domestic consumption, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any had been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods.

"(f) *Cost of production.* For the purpose of this title the cost of production of imported merchandise shall be the sum of—

"(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

"(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;

"(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

"(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

"(g) *American selling price.* The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale for domestic consumption to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article." (Tariff Act of 1930, sec. 402a, as amended; 19 U. S. C. 1402)

[4] If the merchandise is shipped directly by water from the country of export, the date of the sailing of the vessel is the date of exportation. Since the act of exportation is not complete until the merchandise finally leaves the jurisdiction of the exporting country, if a vessel with merchandise on board sails from two or more ports, or more than once from the same port, of the exporting country, whether or not stopping on the intervening voyage at a port of another jurisdiction, or if the merchandise is transhipped in another jurisdiction and subsequently reenters the jurisdiction of the exporting country on another vessel, or if the merchandise is transshipped to another vessel in the same jurisdiction, the date the vessel on which the merchandise finally leaves the exporting country sails from the last port thereof is the date of exportation. When the merchandise is shipped from an interior country through the ports of another country or from a country contiguous to the United States, the date of exportation is the date on which the merchandise crosses the border of the country of exportation and passes beyond the control of the government of such country. These provisions apply also to merchandise shipped directly by air.

[5] Dutiable charges are such costs and other expenses as are incidental to placing the merchandise in condition, packed ready for shipment to the United States. Such charges must represent the actual cost and be confined solely to merchandise exported to the United States. Any expenses which enter into the value of the merchandise when sold in the ordinary course of trade for domestic consumption in the country of exportation are not charges but become a part of the value of the merchandise.

Nondutiable charges are such items of cost and expense as constitute no part of the value of the merchandise when sold in the ordinary course of trade in the country of exportation, and are no part of the expense of placing it in condition, packed ready for shipment to the United States.

[7] The term "country" is to be regarded for the purposes of this section as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control.

[8] See Tariff Act of 1930, sec. 501, as amended (19 U. S. C. 1501), relating to appeals for reappraisement by collector or importer.

[9] "(c) The ad valorem rates provided in this paragraph shall be based upon the American selling price of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem shall be based upon the United States value.

"(d) For the purposes of this paragraph any coal-tar product provided for in this Act shall be considered similar to or competitive with any imported coal-tar product which accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner." (Tariff Act of 1930, par. 27 (c), (d) and par. 28 (c), (d); 19 U. S. C. 1001, par 27 (c), (d) and par. 28 (c), (d))

[10] "(e) The specific duties provided for in this paragraph on colors, dyes, or strain, whether soluble or not in water, color acids, color bases, color lakes, leuco compounds, indoxyl, and indoxyl compounds, shall be based on standards of strength which shall be established by the Secretary of the Treasury, and upon all importations of such articles which exceed such standards of strength the specific duty shall be computed on the weight which the article would have if it were diluted to the standard strength, but in no case shall any such articles of whatever strength be subject to a less specific duty than that provided in subparagraph (a) or (b), as the case may be. • • •

"(h) In the enforcement of the foregoing provisions of this paragraph the Secretary of the Treasury shall adopt a standard of strength for each dye or other article which shall conform as nearly as practicable to the commercial strength in ordinary use in the United States prior to July 1, 1914. If a dye or other article has been introduced into commercial use since said date then the standard of strength for such dye or other article shall conform as nearly as practicable to the commercial strength in ordinary use. If a dye or other article was or is ordinarily used in more than one commercial strength, then the lowest commercial strength shall be adopted as the standard of strength for such dye or other article." (Tariff Act of 1930 par. 28 (e), (h); 19 U. S. C. 1001, par. 28 (e), (h))

[11] In determining the value of imported articles classifiable under par. 27 or 28 of the tariff act, the words "similar competitive articles" in subpar. (c) of such paragraphs shall not be construed as relating exclusively to domestic articles actually derived or obtained from coal tar. No domestic article otherwise within the scope of the quoted words shall be excluded therefrom because not derived from coal tar if such an article, if imported, would be subject to classification as a "coal-tar product" under par. 27, 28, or 1651 of the tariff act.

[12] The following Treasury Decisions contain standards of strength for coal-tar products to which U.S. Standard numbers have been assigned and which have been adopted by the Secretary of the Treasury, under par. 28, Tariff Act of 1922, and par. 28, Tariff Act of 1930:

scribed as a coal-tar color, dye, stain, color acid, color base, color lake, leuco-compound, or indoxyl or indoxyl compound. Each sample so received shall be accompanied by specifications setting forth all the information called for by Schedule A below. It is essential that the specifications accompanying the sample be set forth in the order and manner specified because the information will be used for comparison with similar data required on importations of foreign coal-tar products. The samples and specifications shall be examined and appropriately filed by the chief chemist. Samples and specifications shall be removed from, replaced, or added to the file as may be necessary. The chief chemist shall advise the appraiser at New York of those products removed from or added to the file. The appraiser shall from time to time prepare a list, identifying each such product by the invoice name and, if different, the trade name as described in items Nos. 1 and 2 of Schedule A. The color index number, item No. 8 of Schedule A, shall appear in the list opposite the name of the product. These lists, which are advisory only, shall be furnished to the Customs Information Exchange for circularization among other appraising officers and the public upon request. Other information in respect of the specifications shall be treated as confidential, except for the purpose for which they are submitted (sec § 26.4 (a) of this chapter).

SCHEDULE A

COAL-TAR COLORS, DYES, STAINS, COLOR ACIDS, COLOR, BASES, COLOR LAKES, LEUCO AND INDOXYL COMPOUNDS

1. Invoice name of product ----------
2. Trade name of product ----------
3. Name of manufacturer ----------
4. List other U. S. manufacturers and names under which sold, if known ----------
5. List foreign manufacturers and names under which sold, if known ----------
6. Percentage of active ingredient----------
7. Schultz number (if none, so state) ----
8. Colour index number (if none, so state)-
9. U. S. standard number (if none, so state)
10. Foreign prototype number (if none or unknown, so state) ----------
11. Method of application (state whether acid, basic, direct, direct and developed, mordant, mordant acid, neutral, oil, oil and spirit, printing, spirit soluble, vat (soluble), vat (insoluble), or other (describe); and state nature of pre-treatment or after-treatment, if any) ----------
12. Material to which applied (name the material or materials for which the color or dye is primarily designed).
    A. Fibrous Materials:
    (1) Natural: Cotton; Silk; Wool; Hemp; Flax (Linen); Jute; Ramie; Straw and Grass; Sisal; Other Animal or Vegetable Fibers.
    (2) Synthetic (including regenerated and modified cellulose): Acetate (Celanese, Acele, Koda); Rayon-Cuprammonium (Bemberg, Matesa); Viscose (Avisco, Delray); Polyamide (Nylon, Perlon); Acrylic (Dynel, Acrilan, Orlon); Vinylidene Chloride (Saran, Velon); Polyethylene (Wynene, Reevon); Polyester (Dacron, Terylene); Protein (Azlon, Lanital, Aralac); Glass; Other.
    B. Non-Fibrous Materials:
    Plastics; Leather; Paper; Cellophane; Photographic sensitizers, desensitizers, light filters and tinting film; Foodstuffs; Biological materials; Solutions, analytical; Oils, fats, and waxes; Soap; Gasoline; Paints, lacquers, stains, and inks; Smoke (signals); Aluminum; Earthenware; Other.
13. Chemical Classification: Acridine; Aminoketone; Anthraquinone; Azine; Azo, mono-; Azo, dis-; Azo, tris-; Azo, tetrakis-; Azo, poly-; Azo, metal complex; Azo, pigment; Azoic; Color acid; Color base; Color lake; Cyanine; Esters of leuco indigoid; Esters of leuco thioindigoid; Esters of leuco anthraquinone; Fluorescent; Hydroxyketone; Indamine; Indigoid; Indoaniline; Indophenol; Indoxyl; Indoxyl Compound; Ketol; Ketonimine; Lactone; Leuco Compound; Methane, diphenylnaphthyl-; Methane, triphenyl-; Methine, aza-; Methine, poly-; Nitro; Nitroso; Oxazine; Phthalocyanine; Quinoline; Quinonoid; Sulfur or sulfide; Thiazine; Thiazole; Thioindigoid; Xanthene; Other
    A. Describe the class or classes and subclass to which the product belongs.
    Example (1):
    Monoazo.
    Gamma-acid coupling.
    Example (2):
    Xanthen—Basic.
    Oxy-carboxy rhodamines.
    B. Give any other information which you consider may be helpful in classifying the product.
    Example (1):
    Insoluble azo dye on the fiber. Mixtures of stabilized diazo amino compounds and coupling components for preparation of the dye on the fiber.
    Example (2):
    Anthraquinone—Disperson type.
    Amino-oxy-anthraquinones.
14. If the product consists of a mixture of two or more active ingredients, the information required by the preceding numbered paragraphs shall be given for each active ingredient in the mixture, together with the proportion of each active ingredient in the mixture.
15. In addition to the above specifications, there shall be furnished a color pattern or card showing typical small specimens of the material to which the product has been applied with an indication of the strength and the method of application. However, in those cases where a suitable color card has been filed previously with the New York Customs Laboratory, or where a color card is not used commercially and it is not practical to submit one, it will be considered satisfactory to furnish a statement setting forth the date the previous pattern or card was filed and its identification number, or the reason why one is not submitted.

(o) Whenever a sample taken from an imported coal-tar product referred to in § 8.13 (h) of this chapter, is received in the customs laboratory for test to determine its comparability with any domestic coal-tar product, the file of domestic samples and specifications referred to in paragraph (n) of this section shall be searched. If after searching the file and making any necessary tests, no comparable domestic product is found, the chief chemist shall prepare and submit his laboratory report accordingly.

(Secs. 1 (pars. 27, 28), 402, 46 Stat. 592–594, as amended, 708, as amended, sec. 402, 70 Stat. 943; 19 U. S. C. 1001 (pars. 27, 28), 1401a, 1402)

PROCEDURE UNDER ANTIDUMPING ACT

§ 14.6 Suspected dumping.

(a) If any appraiser or other principal customs officer has knowledge of any grounds for a reason to believe or suspect that any merchandise is being, or is likely to be, imported into the United States at a purchase price or exporter's sales price less than the foreign market value (or, in the absence of such value, than the constructed value), as contemplated by section 201(b), Antidumping Act, 1921, as amended [14] (19 U.S.C. 160(b)), or at less than its "fair value" as that term is defined in § 14.7, he shall communicate his belief or suspicion promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as required in paragraph (b) of this section, if in the possession of the appraiser or other officer or readily available to him.

(b) Any person outside the Customs Service who has reason to believe or suspect that merchandise is being, or is likely to be, imported into the United States under such circumstances as to bring it within the purview of the Antidumping Act, 1921, as amended,[14a] may

[14] See footnote 14a.

[14a] SEC. 201. (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary") determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the United States Tariff Commission, and the said Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The said Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the said Commission. For the purposes of this subsection, the said Commission shall be deemed to have made an affirmative determination if the Commissioners of the said Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value), he shall forthwith publish notice of that fact in the FEDERAL REGISTER and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping has been raised by or presented to him or any person to whom authority under this section has been dele-

(Footnote 14a—Continued)
gated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the FEDERAL REGISTER, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative.

SEC. 202. (a) In the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary of the Treasury has made public a finding as provided for in section 201, entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of dumping was raised by or presented to the Secretary or any person to whom authority under section 201 has been delegated, and as to which no appraisement report has been made before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the constructed value) there shall be levied, collected, and paid, in addition to any other duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

(b) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the purchase price and the foreign market value (or that the fact that the purchase price is the same as the foreign market value) is wholly or partly due to—

(1) The fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale for exportation to the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) Other differences in circumstances of sale, or

(3) The fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor.

(c) In determining the foreign market value for the purposes of subsection (a), if it is established to the satisfaction of the Secretary or his delegate that the amount of any difference between the exporter's sales price and the foreign market value (or that the fact that the exporter's sales price is the same as the foreign market value) is wholly or partly due to—

(1) The fact that the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the United States in the ordinary course of trade, are less or are greater than the wholesale quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States),

(2) Other differences in circumstances of sale, or

(3) The fact that merchandise described in subdivision (C), (D), (E), or (F) of section 212(3) is used in determining foreign market value,

then due allowance shall be made therefor.

SEC. 203. That for the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

SEC. 204. That for the purpose of this title the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of

(Footnote 14a—Continued)
importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

SEC. 205. For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

SEC. 206. (a) For the purposes of this title, the constructed value of imported merchandise shall be the sum of—

(1) The cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business;

(2) An amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, except that (A) the amount for general expenses shall not be less than 10 per centum of the cost as defined in paragraph (1), and (B) the amount for profit shall not be less than 8 per centum of the sum of such general expenses and cost; and

(3) The cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise under consideration in condition, packed ready for shipment to the United States.

(b) For the purposes of this section, a transaction directly or indirectly between persons specified in any one of the paragraphs in subsection (c) of this section may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise under consideration. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified

(Footnote 14a—Continued)
in any one of the paragraphs in subsection (c).

(c) The persons referred to in subsection (b) are:

(1) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(2) Any officer or director of an organization and such organization;

(3) Partners;

(4) Employer and employee;

(5) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(6) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

SEC. 207. That for the purposes of this title the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such persons; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per centum or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per centum or more of such power or control in the business of the exporter, manufacturer, or producer.

SEC. 208. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales prices of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the said Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) that he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States; (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by this title upon such merchandise; and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.

SEC. 209. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no appraisement report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of constructed value to the contrary notwithstanding) and report to the collector the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title.

SEC. 210. That for the purposes of this title the determination of the appraiser or person acting as appraiser as to the foreign market value or the constructed value, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the United States Customs Court, and the Court of Customs and Patent Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law.

SEC. 211. That the special dumping duty imposed by this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

SEC. 212. For the purposes of this title—

(1) The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term "such or similar merchandise" means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(E) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.

(4) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

SEC. 213. That this title may be cited as the "Antidumping Act, 1921."

SEC. 406. That when used in Title II * * *—

The term "person" includes individuals, partnerships, corporations, and associations; and

The term "United States" includes all Territories and possessions subject to the jurisdiction of the United States, except the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone.

SEC. 407. That the Secretary shall make rules and regulations necessary for the enforcement of this Act. (Antidumping Act, 1921, as amended; 19 U.S.C. 160–173.)

communicate his belief or suspicion and the reasons therefor in writing to any appraiser of merchandise or the Commissioner of Customs. Every such communication shall contain or be accompanied by the following:

(1) A detailed description or sample of the merchandise; the name of the country from which it is being, or is likely to be, imported; and the ports or probable ports of importation into the United States. If no sample is furnished, the appraiser concerned in appropriate cases may call upon the person who furnished the information to furnish samples of the imported and competitive domestic articles, or either.

(2) Such detailed data as to values and prices as is reasonably available to the person furnishing the information and is relied upon by him to support his belief or suspicion, including information as to any differences between the foreign market value or constructed value and the import purchase price or exporter's sales price which may be accounted for by any difference in taxes, discounts, incidental costs such as those for packing or freight, or other items.

(3) Such information as is reasonably available to the person furnishing the information as to the total value and volume of domestic production of the merchandise in question.

(c) If any information filed with an appraiser or the Commissioner pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information filed with an appraiser is found to comply with the

requirements, it shall be transmitted by the appraiser within 10 days to the Commissioner of Customs, together with all pertinent additional information obtainable by the appraiser. Before making such transmittal, or as soon thereafter as possible, the appraiser shall make such inquiry regarding the matter among importers, domestic producers and distributors, or others as he may deem appropriate and report the results to the Commissioner together with his comments thereon.

(d) (1) Upon receipt pursuant to paragraph (a), (b), or (c) of this section of information in proper form, the Commissioner will proceed promptly to decide whether or not reasonable grounds exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value). To assist him in making such decision the Commissioner, in his discretion, may conduct a brief preliminary investigation into such matters, in addition to the invoice or other papers or information presented to him, as he may deem necessary.

(2) If the Commissioner decides, after such preliminary investigation, if any, that reasonable grounds do exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) he will thereafter proceed, by a full-scale investigation, or otherwise, to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 14.8(a).

(3) If the Commissioner decides, after such preliminary investigation, if any that reasonable grounds do not exist to believe or suspect that the merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value), he will thereafter

(i) Proceed, by a full-scale investigation, or otherwise to obtain such additional information, if any, as may be necessary to enable the Secretary to reach a determination as provided by § 14.8(a), or

(ii) Recommend to the Secretary that a full-scale investigation is not warranted by the facts of the case and that the case be closed by a finding of no sales at less than fair value.

(e) If the Commissioner determines pursuant to paragraph (d)(1) of this section, or in the course of an investigation under paragraph (d)(3)(i) of this section, that there are reasonable grounds to believe or suspect that any merchandise is being, or is likely to be, sold at less than its foreign market value (or, in the absence of such value, than its constructed value) under the Antidumping Act, he shall publish notice of that fact in the FEDERAL REGISTER, furnishing an adequate description of the merchandise and the name of each country of exportation, and shall advise all appraisers of his action and of the date when the question of dumping was raised by or presented to the Secretary or his delegate. Upon receipt of such advice, the appraisers shall proceed in accordance with the pertinent provisions of § 14.9.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

§ 14.7 Fair value.

(a) *Definition.*[15] For the purposes of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the fair value of imported merchandise shall be determined as follows:

(1) *Fair value based on price in country of exportation—the usual test.* Merchandise imported into the United States will ordinarily be considered to have been sold, or to be likely to be sold, at less than fair value if the purchase price or exporter's sales price (as defined in sections

[15] The definition of fair value does not in any way modify or affect definitions of foreign market value given in section 205 of the Antidumping Act, 1921, as amended (19 U.S.C. 164), or of constructed value given in section 206 (19 U.S.C. 165) or the application of a foreign market value (or, in the absence of such value, constructed value) as defined in the Antidumping Act, 1921, as amended, as a basis for determining whether or not to withhold appraisement under section 201(b) (19 U.S.C. 160(b)) or for imposition of duty under section 202 (19 U.S.C. 161).

An industry in the United States which considers that it is being injured by sales of merchandise at less than fair value will ordinarily have insufficient information on which to submit proof either of fair value as herein defined, or foreign market value or constructed value as defined in said sections 205 and 206 (19 U.S.C. 164 and 165). The

(Footnote 15—Continued)
industry may, however, submit, and appraisers will consider, such material as is available to it, including information indicating the market price for similar merchandise in the country of exportation and in any third countries in which merchandise of the producer complained of is known to be sold. Information submitted by an industry and information submitted by the foreign producer and others will be of value in assisting the Treasury to establish the basis for fair value, foreign market value, or constructed value.

Fair value is computed on the basis of sales for consumption in the country of exportation or for exportation otherwise than to the United States at or about the date of the purchase or agreement to purchase of the merchandise to be imported into the United States, or the date of exportation. However, in cases where it may be important to determine either the stability of the market or its trend, as well as to determine whether there has been a fictitious sale as described in § 14.7(b)(6) of these regulations, it will be helpful to the Secretary to have information as to sales made for consumption in the country of exportation or for exportation otherwise than to the United States over a significant period of time immediately preceding the date of purchase or agreement to purchase, or exportation.

EXAMPLES FOR PURPOSES OF ILLUSTRATION

A few examples of what would and what would not be considered sales at less than fair value are given below. Unless otherwise indicated, it is assumed that individual sales are in the same average quantities and that they are also made under the same circumstances of sale.

It must be understood that these examples of necessity oversimplify for purposes of illustration. Each actual case of alleged sales at less than fair value must be considered in the light of all relevant facts, and it may be seldom that cases will be presented for consideration which are as free of complications as are the cases cited in these examples. The tentative conclusions set forth below cannot, therefore, be considered as decisions which are binding upon the Secretary of the Treasury. They are in particular subject to the qualification that there may be other factors present, not here stated, or not sufficiently emphasized for the purposes of an actual case, which would lead to different or opposite results.

As is the case in respect of other laws administered in whole or in part by him, the Commissioner of Customs stands ready to answer specific inquiries arising under the Antidumping Act, 1921, as amended, which relate to contemplated transactions, to the best of his ability, notably those involving questions as to whether § 14.7(a) (1) or (2) of those regulations applies, and questions as to the method of computation which may be used in connection with § 14.7(b)(7) hereof.

Example 1. A foreign producer has made the following sales of a particular product over a representative period:

Sales for consumption in country of exportation	*Sales for exportation to countries other than the United States*	*Sales to the United States*
75,000 units @ $1.00	25,000 units @ $0.85	15,000 units @ $0.90

The quantity of sales of this product in the country of exportation, amounting to 75,000 units, is sufficiently large in relation to the total of 25,000 units sold for exportation to countries other than the United States to constitute an adequate basis for comparison with sales to the United States. (See § 14.7(a) (1) and (2) of these regulations.) The price for sale to the United States is less than the price in the country of exportation. The foreign producer is therefore selling in the United States at less than fair value.

Home market sales will form the basis of comparison whether or not they are restricted. This example concerns home market prices which are either free of restrictions or accompanied by restrictions that do not affect the value of the merchandise. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the home market price will be made. Third country prices, even though unrestricted, will not be resorted to in this set of circumstances.

Example 2. A foreign producer has made the following sales of a particular product:

Sales for consumption in country of exportation	*Sales for exportation to countries other than the United States*	*Sales to the United States*
25,000 units @ $0.95	75,000 units @ $0.90	15,000 units @ $0.90

The foreign producer can show that the quantity of sales of this product in the country of exportation, amounting to 25,000 units, is so small in relation to the total of 75,000 units sold for exportation to countries other than the United States, as to be an inadequate basis for comparison with sales to the United States. Determination of fair value will therefore be based on the selling price for exportation to countries other than the United States, pursuant to § 14.7(a)(2) of these regulations. In the absence of special circumstances, it would appear that the sales for exportation to the United States were not below fair value.

Third country sales will form the basis of comparison whether or not they are restricted. This example concerns third country sales which are either free of restrictions or accompanied by restrictions which do not affect the value of the merchandise. If there should be restrictions which affect the value of the merchandise, appropriate adjustment of the third country

203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)) is sold for consumption in the country of exportation on or about the date of purchase or agreement to purchase, of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(2) *Fair value based on sales for exportation to countries other than the United States.* If, however, it is demonstrated that during a representative period the quantity of such or similar merchandise sold for consumption in the country of exportation is so small, in relation to the quantity sold for exportation to countries other than the United States, as to be an inadequate basis for comparison, then merchandise imported into the United States will ordinarily be deemed to have been sold, and to be likely to be sold, at less than fair value if the purchase price or the exporter's sales price (as defined in sections 203 and 204, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162, 163)), as the case may be, is, or is likely to be, less than the price (as defined in section 205, after adjustment as provided for in section 202 of the Antidumping Act, 1921, as amended (19 U.S.C. 164, 161)), at which such or similar merchandise (as defined in section 212(3) of the Antidumping Act, 1921, as amended (19 U.S.C. 170a(3))) is sold for exportation to countries other than the United States on or about the date of purchase or agreement to purchase of the merchandise imported into the United States if purchase price applies, or on or about the date of exportation thereof if exporter's sales price applies.

(3) *Fair value based on constructed value.* If the information available is deemed by the Secretary insufficient or inadequate for a determination under subparagraph (1) or (2) of this paragraph, he will determine fair value on the basis of the constructed value as defined in section 206 of the Antidumping Act, 1921, as amended (19 U.S.C. 165).

(b) *Calculation of fair value.* In calculating fair value under section 201(a), Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), the following criteria shall be applicable:

(1) ***Quantities.*** In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for differences in quantities if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences. In determining the question of allowances for differences in quantity, consideration will be given, among other things, to the practice of the industry in the country of exportation with respect to affording in the home market (or third country markets, where sales to third countries are the basis for comparison) discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade. Where sales are not made in the home market (or third country markets, where applicable) in quantities comparable to the quantities sold in the United States, consideration may also be given to the practice of the industry in other countries (including the United States) with respect to affording discounts for quantity sales which are freely available to those who purchase in the ordinary course of trade.

(2) *Circumstances of sale.* (i) In comparing the purchase price or exporter's sales price, as the case may be, with the sales, or other criteria applicable, on which a determination of fair value is to be based, reasonable allowances will be made for bona fide differences in circumstances of sale if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences.

(ii) Differences in circumstances of sale for which such allowances will be made are limited, in general, to those circumstances which bear a reasonably direct relationship to the sales which are under consideration. Examples of differences in circumstances of sale for which reasonable allowances generally will be made are those involving differences in credit terms, guarantees, warranties, technical assistance, servicing, and assumption by a seller of a purchaser's advertising or other selling costs. Reasonable allowances will also generally be made for differences in commissions. Except in those instances where it is clearly established that the differences in circumstances of sale bear a reasonably direct relationship to the sales which are under consideration, allowances generally will not be made for differences in research and development costs, production costs, and advertising and other selling costs of a seller unless such costs are attributable to a later sale of merchandise by a purchaser; provided that reasonable allowances for selling expenses generally will be made in cases where a reasonable allowance is made for commissions in one of the markets under consideration and no commission is paid in the other market under consideration, the amount of such allowance being limited to the actual selling expense incurred in the one market or the total amount of the commission allowed in such other market, whichever is less.

(iii) In determining the amount of the reasonable allowances for any differences in circumstances of sale, the Secretary will be guided primarily by the effect of such differences upon the market value of the merchandise but, where appropriate, may also consider the cost of such differences to the seller, as contributing to an estimate of market value.

(3) *Similar merchandise.* In comparing the purchase price or exporter's sales price, as the case may be, with the selling price in the home market, or for exportation to countries other than the United States, in the case of similar merchandise described in subdivisions (C), (D), (E), or (F) of section 212(3), Antidumping Act, 1921, as amended (19 U.S.C. 170a(3)), due allowance shall be made for differences in cost of manufacture, if it is established to the satisfaction of the Secretary that the amount of any price differential is wholly or partly due to such differences.

(4) *Offering price.* In the determination of fair value, offers will be considered in the absence of sales.

(5) *Sales agency.* If such or similar merchandise is sold or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207 of the Antidumping Act, 1921, as amended (19 U.S.C. 166), the price at which such or similar merchandise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in the determination of fair value.

(6) *Fictitious sales.* In the determination of fair value, no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

(7) *Sales at varying prices.* Where the prices in the sales which are being examined for a determination of fair value vary (after allowances provided for in subparagraphs (1), (2), and (3) of this paragraph), determination of fair value will take into account the prices of a preponderance of the merchandise thus sold or weighted averages of the prices of the merchandise thus sold.

(8) *Quantities involved and differences in price.* Merchandise will not be deemed to have been sold at less than fair value unless the quantity involved in the sale or sales to the United States, or the difference between the purchase price or exporter's sales price, as the case may be, and the fair value, is more than insignificant.

(Sec. 407, 42 Stat. 18; 19 U.S.C. 173)

§ 14.8 Determination of fact or likelihood of sales at less than fair value; determination of injury; finding of dumping.

(a) Upon receipt from the Commissioner of Customs of the information referred to in § 14.6(d), the Secretary of the Treasury will proceed as promptly as possible to determine whether the merchandise in question is in fact being, or is likely to be, sold in the United States or elsewhere at less than its fair value. If the determination is affirmative, the Secretary will advise the United States Tariff Commission accordingly.

(b) If the Tariff Commission determines that there is, or is likely to be, the injury contemplated by the statute, the Secretary of the Treasury will make the finding contemplated by section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), with respect to the involved merchandise.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

§ 14.9 Action by the appraiser.

(a) Upon receipt of advice from the Commissioner of Customs pursuant to § 14.6(e), the appraiser shall withhold appraisement as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary of the Treasury or his delegate and shall notify the collector and importer immediately of each lot of merchandise with respect to which appraisement is so withheld. Upon advice of a finding made in accordance with § 14.8(b), the appraiser shall give immediate notice thereof to the collector and the importer when any shipment subject thereto is imported after the date of the finding and information is not on hand for completion of appraisement of such shipment. Customs Form 6459 shall be used to notify the collector and importer whenever appraisement is withheld under this paragraph.

(b) If, before a finding of dumping has been made, or before a case has been closed without a finding of dumping, the appraiser is satisfied by information furnished by the importer or otherwise that the purchase price or exporter's sales price, in respect of any shipment, is not less than foreign market value (or, in the absence of such value, than the constructed value), he shall so advise the Commissioner and request authorization to proceed with his appraisement of that shipment in the usual manner.

(c) If a finding of dumping has been made, the appraiser shall require the importer or his agent to file a certificate of the importer on the appropriate one of the following forms. A separate certificate shall be required for each shipment.

Form 1.

NONEXPORTER'S CERTIFICATE

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__

Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am not the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry. I further certify that the merchandise was purchased for importation by _____ on _____, 19__, and that the purchase price is _____.

(Signed) _____

Form 2.

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS KNOWN

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__

Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry; that the merchandise is sold or agreed to be sold at the price stated in the attached statement; and that, if any of such merchandise is actually sold at any price different from the price stated therefor in the attached statement, I will immediately notify the appraiser of all the circumstances.

The merchandise was acquired by me in the following manner:

_____

and has been sold or agreed to be sold to _____
(Name and address)

at _____.
(Price)

(Signed) _____

Form 3

EXPORTER'S CERTIFICATE WHEN SALES PRICE IS NOT KNOWN

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__

Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the merchandise covered by the aforesaid entry, and that I have no knowledge as to any price at which such merchandise will be sold in the United States. I hereby agree that I will keep a record of the sales and will furnish the appraiser within 30 days after the sale of any of such merchandise a statement of each selling price. I further agree that, if any of the merchandise has not been sold before the expiration of 6 months from the date of entry, I will so report to the appraiser upon such expiration date.

The merchandise was acquired by me in the following manner:

_____

(Signed) _____

Form 4

EXPORTER'S CERTIFICATE WHEN MERCHANDISE IS NOT, AND WILL NOT BE, SOLD

ANTIDUMPING ACT, 1921

Port of _____
Date _____, 19__

Re: Entry No. _____, dated _____, 19__.
Import carrier: _____. Arrived _____, 19__.

I certify that I am the exporter as defined in section 207, Antidumping Act, 1921, of the

(Footnote 15—Continued)
price will be made. Home market prices, even though unrestricted, will not be resorted to in this set of circumstances.

Example 3. A foreign producer has sold his merchandise for consumption in the country of exportation at or about the date of the sale or exportation to the United States at the following prices:

2,000 tons @ $32.80 ton.
1,000 tons @ $32.85 ton.
2,000 tons @ $33.00 ton.
1,000 tons @ $33.10 ton.

It is conceded that the price depends upon the bargaining of the parties rather than upon quantity purchased. Sales to the United States have been made by this supplier in the same average quantities at a uniform price of $32.90 per ton during the period. The difference in price between the producer's home market sales or any average thereof and his sales to the United States is so slight that it will not be regarded as more than insignificant unless unusual market conditions in the United States or the quantities involved as compared to United States production justify a contrary conclusion.

Example 4. A foreign producer makes all of his sales, other than those to the United States, for consumption in the country of exportation. The majority of the merchandise thus sold by him is sold at list prices, net. However, a discount of 5 percent is granted on sales of more than 500 tons. Sales to the United States are at list prices less 10 percent and have been in quantities of 10,000 tons or more. There have been no other sales by this producer in such quantities. However, if the 10 percent discount is determined to be reasonable in the particular trade under consideration for the quantities involved, and to be due to the differences in such quantities, it will be allowed in calculating home market price. Accordingly, the sales will not be considered to have been made at less than fair value.

The same result could obtain if the pricing pattern showed a differential because of quantity even though there were no list prices, or the list prices did not specify quantity discounts. This is shown in Example 5.

Example 5. A foreign producer has the following record of sales at or about the date of sale or exportation to the United States:

Sales for consumption in country of exportation	*Quantity for each sale*	*Sales to United States*	*Quantity for each sale*
200,000 lbs. @ $0.85	Units of 100 lbs.	100,000 lbs. @ $0.80	Units of 1,000 lbs.
100,000 lbs. @ $0.80	Units of 1,000 lbs.		

Although the preponderance of sales during the period (200,000 lbs.) was at a price of $0.85 as opposed to the United States price of $0.80, the lower United States price is justified on the ground that the home price pattern shows that to be the prevailing price for units of 1,000 pounds, which were the units involved in the United States sales. On the other hand, if the record of sales were to show 100,000 pounds sold for consumption in the country of exportation in units of 1,000 pounds at $0.85 instead of $0.80, the sales to the United States would be deemed to have been made at less than fair value.

Example 6. A foreign producer sells for consumption in the country of exportation at $12 a unit, regardless of quantities and regardless of whether the sales are to wholesalers or retailers. He sells to retail purchasers in the United States at $12 a unit and wholesale purchasers in the United States at $10 a unit, in each case regardless of quantities.

The circumstances in this case indicate that the foreign producer will be deemed to have been selling to wholesalers in the United States at less than fair value. Should, however, his record of sales for consumption in the country of exportation show that he sells, regardless of quantities, at $10 a unit to wholesalers and at $12 a unit to retailers, then, making allowances for the circumstances of sale, the sales in the United States will not be deemed to be sales at less than fair value.

Example 7. A foreign producer sells for consumption in the country of exportation at $105 a unit, delivered anywhere within the country of exportation. He has no f.o.b. factory price for home consumption. He sells to the United States f.o.b. factory for $100 a unit. Evidence indicates that it costs the producer on the average $0.50 a unit to deliver on home consumption sales.

Giving due consideration to the circumstances of sale, the sales to United States purchasers at $100 a unit will be deemed to be sales at less than fair value. Should the delivery cost on home consumption sales average $5 a unit instead of $0.50, the sales to United States purchasers at $100 a unit will not be deemed to be sales at less than fair value.

merchandise covered by the aforesaid entry, and that such merchandise has not been, and will not be, sold in the United States for the following reason: ----------

(Signed) ----------

(d) If an unqualified certificate on Form 4 is filed and the appraiser is satisfied that no evidence can be obtained to contradict it, he shall notify the collector promptly that the shipment will be appraised without regard to the Antidumping Act and proceed to appraise the merchandise in the usual manner.

(e) If the importer fails to file an appropriate certificate within 30 days following notification by the appraiser that a certificate is required under paragraph (c) of this section, the appraiser shall proceed upon the basis of the best information available.

(Secs. 201, 202, 208, 407, 42 Stat. 11, as amended, 14, 18; sec. 486, 46 Stat. 725, as amended; 19 U.S.C. 160, 161, 167, 173, 1486)

§ 14.10 Release of merchandise; bond.

(a) When the collector has received a notice of withheld appraisement provided for in § 14.9(a), or when he has been advised of a finding provided for in § 14.8(b), and so long as such notice or finding is in effect, he shall withhold release of any merchandise of a class or kind covered by such notice or finding which is then in his custody or is thereafter imported, unless an appropriate bond is filed or is on file, as specified hereafter in this section, or unless he is advised by the appraiser that the merchandise covered by a specified entry will be appraised without regard to the Antidumping Act.

(b) If the merchandise is of a class or kind covered by a notice of withheld appraisement provided for in § 14.9(a) or by a finding provided for in § 14.8(b), a single consumption entry bond covering the shipment, in addition to any other required bond, shall be furnished by the person making the entry or withdrawal, unless

(1) A bond is required under paragraph (c) of this section, or

(2) In cases in which there is no such requirement the collector is satisfied that the bond under which the entry was filed is sufficient. The penalty of any additional bond required under this paragraph shall be in such amount as will assure payment of any special duty that may accrue by reason of the Antidumping Act, but in no case less than $100.

(c) If the merchandise is of a class or kind covered by a finding provided for in § 14.8(b) and the importer or his agent has filed a certificate on Form 3 (§ 14.9(c)), the bond required by section 208 of the Antidumping Act, 1921, as amended (19 U.S.C. 167), shall be on customs Form 7591. In such case, a separate bond shall be required for each entry or withdrawal, and such bond shall be in addition to any other bond required by law or regulation. The record of sales required under the conditions of the bond on customs Form 7591 shall identify the entry covering the merchandise and show the name and address of each purchaser, each selling price, and the date of each sale. The penalty of such bond shall be in an amount equal to the estimated value of the merchandise covered by the finding.

(Secs. 208, 407, 42 Stat. 14, 18; 19 U.S.C. 167, 173)

§ 14.11 Conversion of currencies.

In determining the existence and amount of any difference between the purchase price or exporter's sales price and the foreign market value (or, in the absence of such value, the constructed value) for the purposes of § 14.7, or of 201(b) or 202(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b), 161(a)), any necessary conversion of a foreign currency into its equivalent in United States currency shall be made in accordance with the provisions of section 522, Tariff Act of 1930, as amended (31 U.S.C. 372) and § 16.4 of this chapter, (a) as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison, or (b) as of the date of exportation, if the exporter's sales price is an element of the comparison.

(Secs. 201, 202, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 161, 173)

§ 14.12 Modification or revocation of finding.

An application for the modification or revocation of any finding made as provided for in § 14.8(b) will receive due consideration if submitted in writing to the Commissioner of Customs together with detailed information concerning any change in circumstances or practice which has obtained for a substantial period of time, or other reasons, which the applicant believes will establish that the basis for the finding no longer exists with respect to all or any part of the merchandise covered thereby. Notice of intent to modify or revoke a finding will be published by the Secretary in the FEDERAL REGISTER. Comments received from interested parties within 30 days following date of publication will be given consideration.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

§ 14.13 Publication of findings.

(a) Each determination made in accordance with § 14.8(a), whether such determination is in the affirmative or in the negative, and each finding made in accordance with § 14.8(b), will be published in the FEDERAL REGISTER, together with a statement of the reasons therefor. Findings made in accordance with § 14.8 (b) will be published also in a weekly issue of the Treasury Decisions.

(b) The following findings of dumping are currently in effect:

Merchandise	Country	T.D.	Modified by—
Hardboard	Sweden	53567	54108 54199 55006 55019 55115 55213
Cast iron soil pipe, other than "American Pattern".	United Kingdom.	53934	----
Bicycles	Czechoslovakia.	55243	----

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

PART 15—RELIEF FROM DUTIES ON MERCHANDISE LOST, STOLEN, DESTROYED, INJURED, ABANDONED, OR SHORT-SHIPPED

Sec.

15.1 Casualty, loss or theft, abatement or refund of duty for; application; evidence; allowance.
15.2 Perishable merchandise condemned; allowance.
15.3 Abandonment of merchandise under section 506 (1), Tariff Act of 1930.
15.4 Abandonment or destruction of merchandise in bond.
15.5 Destruction of prohibited articles.
15.6 Disposition of abandoned merchandise and proceeds of sale.
15.7 Excessive moisture and other impurities; application for allowance; procedure.
15.8 Shortages; lost packages; deficiencies in contents of packages.
15.10 Articles damaged and worthless at the time of importation.

AUTHORITY: §§ 15.1 to 15.10 issued under R. S. 251, sec. 624, 46 Stat. 759; 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 15.1 Casualty, loss or theft, abatement or refund of duty for; application; evidence; allowance.[1]

(a) No abatement or refund will be made under section 563(a), Tariff Act of 1930, as amended,[2] unless the importer or his agent shall file within 30 days from the date of his discovery of the loss, theft, injury, or destruction an application in duplicate on customs Form 4315, and within 90 days from the said date the evidence of such loss, theft, injury, or destruction hereinafter required is submitted.

(b) The application and evidence shall be filed with the collector of customs at the port where the loss, theft, injury, or destruction occurred. In the case of total loss by fire or other casualty of merchandise while in transportation under bond, the application and evidence shall be filed at the port at which the transportation entry was made. In the case of partial destruction of or injury to such merchandise, the application and evidence shall be filed with the collector at the port of destination, unless the merchandise is returned to the port at which the transportation entry was made, in which case the application shall be filed at that port. In the case of partial destruction or injury, no application shall be entertained unless the appraiser shall have had an opportunity to examine the merchandise or the remainder thereof for the purpose of fixing the percentage of injury or destruction. Whether the duty involved is ad valorem, specific, or compound, the percentage of injury for the purpose of the allowance shall be determined by comparing the market value of comparable sound merchandise with the net salvage value of the injured merchandise computed on the basis of the market value of comparable injured merchandise, such comparison to be made as of the time and place of examination.

(c) In the case of alleged loss or theft while the merchandise is in the appraiser's stores, there shall be filed a declaration of the importer, owner, or ultimate consignee that he did not receive the merchandise and that to the best of his knowledge and belief it was lost or stolen as alleged in the application. In case the alleged loss or theft consisted of only a part of an examination package and was discovered after the release of the package from customs custody, the following evidence shall be submitted:

(1) A declaration of each cartman, lighterman, or other carrier handling the package between the appraiser's stores and the place of delivery, setting forth the condition of the package at the time of receipt and delivery by him and whether or not there was any abstraction of the merchandise while the package was in his possession.

(2) A declaration of the person who first received the package for the importer, owner, or consignee as to whether or not he examined the package at the time of receipt, and, if so, as to its condition at that time.

(3) A declaration of the person who opened the package after release from customs custody that the alleged missing merchandise was not found by him in the said package or elsewhere.

(d) In the case of injury or destruction by accidental fire or other casualty, the following evidence shall be submitted by the applicant:

(1) A declaration of the master of the vessel, the conductor or driver of the vehicle, the proprietor of the warehouse, or other person (except a customs officer) having charge of the merchandise at the time of the casualty, stating the time, place, and nature of such casualty; that the merchandise was on board the vessel or vehicle, in the warehouse, or otherwise in his charge, as the case may be, at the time of the casualty; and that it was totally destroyed and there is no probability of recovering or saving any part thereof, or that it was injured as the result of the casualty.

(2) The bill of lading, the entry, and the invoice covering the merchandise, or certified copies of the foregoing, unless such documents are already in the possession of the collector at the port where the claim is filed.

(3) A copy of the insurance appraiser's report, if any.

(e) When the application and evidence specified in this section have been received and examined by the collector of customs, he shall determine whether the desired abatement or refund shall be made and notify the applicant of his decision.

(f) The applicant may file with the collector of customs a petition addressed to the Commissioner of Customs for a review of the collector's decision. Such petition shall be filed in duplicate within 30 days from the date of the notice of the collector's decision, shall completely identify the case, and shall set forth in detail the objections to the collector's decision. When such a petition has been filed, the collector shall promptly transmit both copies thereof and the entire file to the Bureau, together with a full statement of his views. When the Bureau's decision has been received, the collector shall proceed in conformity therewith.

(g) The collector may waive the production of any of the evidence above required if the validity of the claim is otherwise established to his satisfaction.

(Sec. 563, 46 Stat. 746, as amended; 19 U. S. C. 1563)

§ 15.2 Perishable merchandise condemned; allowance.

When fruit or other perishable merchandise has been condemned within 10 days after landing,[3] and the notice has been filed pursuant to section 506(2),

[1] This procedure is not applicable in the case of merchandise missing or found worthless by the appraiser and so reported in his appraisement report. See §§ 15.8, 15.10, and 18.6 of this chapter.

[2] "In no case shall there be any abatement or allowance made in the duties for any injury, deterioration, loss, or damage sustained by any merchandise while remaining in customs custody, except that the Secretary of the Treasury is authorized, upon production of proof satisfactory to him of the loss or theft of any merchandise while in the appraiser's stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the appraiser's stores, or while in transportation under bond, or while in the custody of the officers of the customs, although not in bond, or while within the limits of any port of entry and before having been landed under the supervision of the officers of the customs, to abate or refund, as the case may be, the duties upon such merchandise, in whole or in part, and to pay any such refund out of any moneys in the Treasury not otherwise appropriated, and to cancel any warehouse bond or bonds, or enter satisfaction thereon in whole or in part, as the case may be, but no abatement or refund shall be made in respect of injury or destruction of any merchandise in bonded warehouse occuring after the expiration of three years from the date of importation. The decision of the Secretary of the Treasury as to the abatement or refund of the duties on any such merchandise shall be final and conclusive upon all persons.

"The Secretary of the Treasury is authorized to prescribe such regulations as he may deem necessary to carry out the provisions of this subdivision and he may by such regulations limit the time within which proof of loss, theft, injury, or destruction shall be submitted, and may provide for the abatement or refund of duties, as authorized herein, by collectors of customs in cases in which the amount of the abatement or refund claimed is less than $25 and in which the importer has agreed to abide by the decision of the collector. The decision of the collector in any such case shall be final and conclusive upon all persons.

"Any case pending before the United States Customs Court upon the effective date of this Act, under the provisions of section 563 of the Tariff Act of 1922, may, with the consent of the parties and the permission of the court, be transferred to the Secretary of the Treasury, or to the collector, for consideration and final determination in accordance with the provisions of this subdivision." (Tariff Act of 1930, sec. 563 (a) as amended; 19 U. S. C. 1563 (a))

[3] The date of landing in the case of merchandise forwarded in bond without appraisement is the date of arrival at the port of destination.

Tariff Act of 1930,[4] an investigation shall be conducted before an allowance may be made in the liquidation of the entry in order to determine whether the conditions of the statute have been satisfied. Such allowance shall be limited to perishable goods condemned by the health officers or authorities in the original package, unless segregation of the goods was under constant customs supervision at the importer's expense.

(Sec. 506(2), 46 Stat. 732; 19 U.S.C. 1506(2))

§ 15.3 Abandonment of merchandise under section 506(1), Tariff Act of 1930.

(a) A written notice of any abandonment under section 506 (1), Tariff Act of 1930,[5] shall be filed with the collector of customs at the port where the entry is filed within 30 days after the date of entry[6] or, in the case of examination packages, within 30 days after release, whether or not delivery is taken by the importer immediately after entry or release as the case may be.

(b) The party abandoning the merchandise shall identify it with that described in the invoice used in making entry to the satisfaction of the collector, who shall cause such examination thereof to be made as may be necessary to verify such identification. When repacking is necessary to segregate the abandoned merchandise from the remainder of the shipment, such repacking shall be done at the expense of the party in interest and under customs supervision.

(Sec. 506, 46 Stat. 732; 19 U. S. C. 1506)

§ 15.4 Abandonment or destruction of merchandise in bond.

(a) Applications for the abandonment or destruction of merchandise in bond pursuant to section 563(b) or 557(c), Tariff Act of 1930, as amended,[7] shall be filed with the collector by the consignee or his duly qualified representative on customs Form 3499, with the title modified to read "Application and Permit To Abandon (or Destroy) Goods in Bond." When an application is for permission to destroy, the proposed method of destruction shall be stated in the application and be subject to the approval of the collector. No application to abandon or destroy warehoused merchandise shall be approved unless concurred in by the warehouse proprietor.

(b) A person in whom the right to withdraw merchandise entered for warehousing is vested in accordance with § 8.39 or § 18.16 (a) of this chapter is entitled exclusively to the rights and privileges initially held by the consignee in respect of abandonment or destruction of such merchandise.

(c) When in the opinion of the collector the abandonment of merchandise under section 563 (b), Tariff Act of 1930, as amended, will involve any expense or cost to the Government, or the merchandise is worthless or unsalable, or cannot be sold for a sum sufficient to pay the expenses of sale, abandonment under such section 563 (b) shall not be permitted unless the applicant deposits a sum which in the opinion of the collector will be sufficient to save the Government harmless from any expense or cost resulting from such abandonment. The sum so advanced shall be placed in a special deposit account and expended to cover the cost of destruction or to meet any deficit should the merchandise be sold and the proceeds of sale be less than the expenses of such sale. After meeting such expenses or deficit, any balance remaining shall be refunded to the applicant. However, the applicant may elect to destroy such merchandise under customs supervision, pursuant to the provisions of section 557, Tariff Act of 1930, as amended.

(d) Where the conditions specified in paragraphs (a)–(c) of this section are met, collectors of customs may grant applications, but in any case where doubt exists the case shall be referred to the Bureau.

(Secs. 557 (c), 563 (b), 46 Stat. 744, as amended, 746; 19 U. S. C. 1557 (c), 1563 (b))

§ 15.5 Destruction of prohibited articles.

Merchandise regularly entered in good faith and denied admission into the United States by any Government agency after its release from customs custody, pursuant to a law or regulation in force on the date of entry or withdrawal, may be destroyed under government supervision. In such cases the destroyed merchandise is exempt from duty and any duties collected thereon shall be refunded.[8] (See § 8.49 (b) of this chapter.)

(Sec. 558 (a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

§ 15.6 Disposition of abandoned merchandise and proceeds of sale.

(a) The disposition of merchandise abandoned pursuant to section 506(1) or 563(b), Tariff Act of 1930, as amended, and not retained for official use, shall be governed by the regulations of the General Services Administration applicable to the Bureau of Customs. If the merchandise is cleared for sale, it shall be sold in accordance with the applicable provisions of Part 20 of this chapter, unless it is worthless or it shall appear probable that the expenses of sale will exceed the proceeds. If the merchandise is sold, no part of the proceeds shall be returned to the importer.

(b) If the merchandise or any part thereof is worthless or it appears probable that the expenses of its sale would exceed the proceeds, it shall be destroyed or otherwise disposed of as the collector may direct. No credit for abandonment of such merchandise shall be given unless a customs officer, who has satisfied himself as to the quantity of the abandoned portion of the shipment and as to the destruction or removal from the control of the applicant of the entire quantity of the goods covered by the collector's instructions as to disposition, shall certify on customs Form 4613 to those facts to avoid the possibility of any part of the same goods being made the subject of another application.

(Secs. 506 (1), 563 (b), 46 Stat. 732, 746; 19 U.S.C. 1506(1), 1563(b))

[4] Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

• • • • •

"(2) *Perishable merchandise, condemned.*—Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files with the collector written notice thereof, an invoiced description and the location thereof and the name of the vessel or vehicle in which imported." (Tariff Act of 1930, sec. 506 (2); 19 U. S. C. 1506 (2))

[5] "Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

"(1) *Abandonment within thirty days.*—Where the importer abandons to the United States within thirty days after entry in the case of merchandise not sent to the appraiser's stores for examination, or within thirty days after the release of the examination packages or quantities of merchandise in the case of merchandise sent to the appraiser's stores for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the collector directs unless the collector is satisfied that the merchandise is so far destroyed as to be nondeliverable." (Tariff Act of 1930, sec. 506 (1); 19 U. S. C. 1506 (1))

[6] The date of entry is the date the entry is made as stated in § 8.4 (d), (e), or (f) of this chapter.

[7] "Under such regulations as the Secretary of the Treasury may prescribe and subject to any conditions imposed thereby the consignee may at any time within three years from the date of original importation, abandon to the Government any merchandise in bonded warehouse, whereupon any duties on such merchandise may be remitted or refunded as the case may be, but any merchandise so abandoned shall not be less than an entire package and shall be abandoned in the original package without having been repacked while in a bonded warehouse (other than a bonded manipulating warehouse)." (Tariff Act of 1930, sec. 563 (b), as amended; 19 U. S. C. 1563 (b))

"Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded." (Tariff Act of 1930, sec. 557 (c), as amended; 19 U. S. C. 1557 (c))

[8] "No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

• • • • • •

"(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe; • • •." (Tariff Act of 1930, sec. 558 (a), as amended; 19 U. S. C. 1558 (a))

§ 15.7 Excessive moisture and other impurities; application for allowance; procedure.

(a) Application for an allowance for excessive moisture or other impurities under section 507, Tariff Act of 1930,[9] shall be made on customs Form 4317 and filed with the collector of customs within 10 days after the report of weight has been received by him.

(b) The collector shall cause such investigation to be made as may be necessary to determine whether or not the merchandise contains excessive moisture or other impurities not usually found in or upon such or similar merchandise, together with the amount thereof, and, if necessary, may refer the application to the appraiser for such determination.

(c) If the collector is satisfied from the reports received that the claim is valid, due allowance shall be made in the liquidation of the entry.

(Sec. 507, 46 Stat. 732; 19 U. S. C. 1507)

§ 15.8 Shortages; lost packages; deficiencies in contents of packages.

(a) Allowance shall be made in the assessment of duties for lost or missing merchandise included in the entry whenever it is established to the satisfaction of the collector of customs before the liquidation of the entry becomes final that the merchandise claimed to be lost or missing was not imported. The foregoing shall not apply in the case of merchandise arriving under an I. T. entry.[10]

(b) Allowance for deficiency in any package reported to the collector by the appraiser or other customs officer shall be made in the liquidation of the entry; but no customs officer except an appraiser or other customs officer making an examination contemplated by section 499, Tariff Act of 1930, as amended, shall report a supposed deficiency to the collector unless it is established to the satisfaction of the reporting officer that the merchandise was not imported.

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

§ 15.10 Articles damaged and worthless at the time of importation.

(a) When a shipment of nonperishable merchandise, or any portion thereof which shall have been segregated from the remainder of the shipment under customs supervision at the expense of the importer, is found by the appraising officer to be entirely without commercial value by reason of damage or deterioration and is so reported to the collector by the appraiser, an allowance in duties on such merchandise on the ground of nonimportation shall be made in the liquidation of the entry.

(b) A similar allowance may be made in the case of perishable merchandise in accordance with the following procedure and subject to the conditions set forth therein:

(1) An application for such allowance shall be filed with the collector on customs Form 4373, in duplicate, within 96 hours after the unlading of the merchandise and before any of the shipment involved has been removed from the pier pursuant to the entry permit.

(2) Should an application filed in accordance with subparagraph (1) of this paragraph be withdrawn, the merchandise involved shall thereafter be released only after a permit on customs Form 4381 has been issued by the collector.

(3) Allowance in duty shall be made in the liquidation of the entry on such of the merchandise covered by the application as is reported by the appraiser to be entirely without commercial value by reason of damage or deterioration.

[9] "The Secretary of the Treasury is hereby authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but in no case shall there by any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise." (Tariff Act of 1930, sec. 507; 19 U. S. C. 1507)

[10] See § 18.6 of this chapter.

PART 16—LIQUIDATION OF DUTIES

Sec.
16.1 Liquidation required.
16.2 Procedure; notice of liquidation.
16.3 Suspension of liquidation.
16.4 Conversion of currency.
16.5 Weight, gauge, or measure.
16.6 Tare.
16.7 Articles in examination packages not specified in the invoice.
16.9 Commingling of goods.
16.10 Change in classification or value; higher or lower rate; effective date.
16.10a Tariff classification of prospective imports.
16.11 Warehouse entries.
16.12 Appraisement, baggage, informal, and mail entries.
16.13 Errors, mistakes, and inadvertencies, correction of.
16.14 Limitation upon reliquidation.
16.15 Taxes; applicability of laws relating to customs duties.
16.16 Taxes on imported oils and other products.
16.18 Additional duties on articles not legally marked.
16.19 Discriminating duties.
16.20 Duties contingent upon foreign export duties, charges, or restrictions.
16.21 Dumping duty; notice to importer.
16.22 Method of computing dumping duty.
16.23 Cuban preference.
16.24 Countervailing duties.
16.25 Special duties on articles imported under agreements in restraint of trade.
16.26 Philippine trade.

AUTHORITY: §§ 16.1 to 16.26 issued under R.S. 161, 251, sec. 624, 46 Stat. 759; 5 U.S.C. 22, 19 U.S.C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 16.1 Liquidation required.[1]

All entries covering imported merchandise, except those for transportation in bond or for immediate exportation, shall be liquidated.[2]

(Sec. 505, 46 Stat. 732; 19 U.S.C. 1505)

§ 16.2 Procedure; notice of liquidation.

(a) In the computation of duty on entries, ad valorem rates shall be applied to the values in even dollars, fractional parts of a dollar less than 50 cents being disregarded and 50 cents or more being considered as $1, all merchandise in the same invoice subject to the same rate of duty to be treated as a unit. When necessary, fractional parts of a dollar, whether more or less than 50 cents, shall be dropped or taken up as whole dollars in order not to increase or decrease the total dutiable value of the invoice. If in such cases it is necessary to drop fractional parts of a dollar amounting to 50 cents or more, the lower fractions shall be dropped, and if it is necessary to take up as whole dollars fractional parts less than 50 cents, the larger fractions shall be taken. In the case of two equal fractions, the one subject to the lower rate of duty shall be dropped or taken up, as the case may be. In determining a rate of duty dependent upon value, fractional parts of a dollar shall be considered. Except as specified in paragraph (b) of this section, if a rate of duty is specific and $1 or less per unit, fractional quantities, if less than one-half, shall be disregarded, and if one-half or more shall be treated as a whole unit. Subject to the same exception, if a specific rate is more than $1 per unit, duty shall be assessed upon the exact quantity with any fraction part expressed in the form of a decimal extended to two places.

(b) In the computation of internal-revenue taxes on distilled spirits imported in barrels, kegs, or similar containers, the quantity shall be ascertained in accordance with the internal-revenue regulations. Where distilled spirits are imported in bottles, jugs, or similar containers, the internal-revenue taxes shall be collected on the exact quantity contained in each case or other outer container, fractional parts of a gallon being carried to three decimal places. The procedure for collecting internal-revenue taxes on wines shall be on the basis

[1] "The consignee shall deposit with the collector, at the time of making entry, unless the merchandise is entered for warehouse or transportation, or under bond, the amount of duty estimated to be payable thereon. Upon receipt of the appraiser's report and of the various reports of landing, weight, gauge, or measurement the collector shall ascertain, fix, and liquidate the rate and amount of duties to be paid on such merchandise as provided by law and shall give notice of such liquidation in the form and manner prescribed by the Secretary of the Treasury, and collect any increased or additional duties due or refund any excess of duties deposited as determined on such liquidation." (Tariff Act of 1930, sec. 505; 19 U.S.C. 1505.)

[2] The liquidation of an entry is the final computation or ascertainment of the duties accruing thereon. (See T.D.'s 31032, 35123, and 42313.)

of a wine gallon of liquid measure equivalent to 231 cubic inches and shall be paid proportionately on all fractional parts of a wine gallon; fractions of less than one-tenth gallon being converted to the nearest one-tenth gallon, and five-hundredths gallon being converted to the next full one-tenth gallon. Internal-revenue taxes on beer, ale, porter, stout, and other similar fermented beverages, including sake, of any name or description containing one-half of 1 per centum or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, shall be collected in accordance with I. R. C. section 5051 (a). In the computation of duties on alcoholic beverages provided for in Schedule 8, Tariff Act of 1930, which are also subject to internal-revenue taxes, the methods prescribed for the computation of internal-revenue taxes on such beverages shall be followed.

(c) When the amount of duty assessed by the collector in the liquidation of an entry (other than informal entry on customs Form 5119 or 5119–A, a mail entry on customs Form 3419 or 3420, or a baggage entry on customs Form 5123, 6059, or 6063) does not differ by so much as $3 from the total estimated duties, including any supplemental estimated duties, deposited, the liquidator shall endorse the entry "as entered" [3] over his initials in red ink. If there is a difference of $3 or more between the duties so assessed and the total estimated duties deposited, the liquidator shall make a new statement of duties over his initials in red ink. The same procedure shall be followed with respect to internal-revenue taxes, but the assessments of duties and internal-revenue taxes shall be separately stated when both accrue on the same entry. In the case of each informal, mail, or baggage entry excepted above, the amount or amounts of duties and taxes computed by a customs officer when the entry is prepared by, or filed with, him shall be the liquidated assessment by the collector. In the event of a reliquidation of a mail or baggage entry for any reason, the reliquidated duties shall be exactly assessed, if the importer so requests, even though the difference between the liquidated and reliquidated amounts is less than $3; otherwise, any difference under $3 shall be disregarded.

(d) After liquidation by the collector, formal entries, except free consumption entries liquidated "As Entered", shall be scheduled promptly on a bulletin notice of liquidation, customs Form 4333. Free consumption entries liquidated "As Entered" shall be scheduled promptly on a bulletin notice of liquidation, customs Form 4335. When free consumption entries in an unbroken series of numbers are liquidated free on the same day, the first and last entry numbers may be shown on the bulletin notice, e. g., "567/863," instead of listing every number in the unbroken series. For the notice of liquidations of appraisement, baggage, informal, and mail entries, see § 16.12. The bulletin notice of liquidation shall be posted as soon as possible in a conspicuous place in the customhouse for the information of importers or lodged at some other suitable place in the customhouse in such a manner that it can readily be located and consulted by all interested persons, who shall be directed to that place by a notice maintained in a conspicuous place in the customhouse stating where notices of liquidations of entries are to be found. The bulletin notice of liquidation shall be dated with the date of posting or, if not posted, with the date it is lodged in the above-described place for the information of importers. The entries for which the bulletin notice of liquidation has been prepared shall be stamped "Liquidated," with the date of liquidation, which shall be the same as the date of the bulletin notice of liquidation. Such stamping shall be deemed the legal evidence of liquidation.

(e) Warehouse withdrawals for consumption covering merchandise manipulated under section 562, Tariff Act of 1930, as amended, after liquidation of the warehouse entry, or byproducts and wastes withdrawn from class 6 warehouses, shall be liquidated and notice thereof on customs Form 4333 posted or lodged as specified in paragraph (d) of this section.

(f) Notices on customs Form 4333 of all liquidations of drawback entries or refusals to pay drawback claims shall be posted or lodged in the same manner as the notices of liquidation of import entries.

(g) The bulletin notice of liquidations, customs Form 4333 or 4335, shall be posted or lodged at the port of entry (or customs station, when the entries listed were filed at a customs station outside the limits of a port of entry).

(Sec. 505, 46 Stat. 732, sec. 321, 52 Stat. 1081, as amended; 19 U. S. C. 1321, 1505)

§ 16.3 Suspension of liquidation.

(a) The liquidation of entries involved in reappraisement or on which bonds are open for the production of documents affecting the rate of duty shall be suspended pending a final decision on the reappraisement or a performance or nonperformance under the bond.

(b) The liquidation of entries covering articles entered at a conditionally reduced rate under paragraph 502, 1530, or 1551, Tariff Act of 1930, or conditionally free of duty under paragraph 1691, or 1752, shall be suspended pending the production of the proof of use required by §§ 10.84 to 10.89 and 13.4 of this chapter. Upon the production of such proof, or upon failure to produce the proof within the required time, the entries shall be liquidated accordingly.

(c) Liquidation of each warehouse or rewarehouse entry covering any tariff-rate quota commodity shall be suspended until all such merchandise covered by the entry has been accounted for within the bonded period by withdrawal, abandonment, or destruction, or until the bonded period has expired if the merchandise has not been so accounted for before that time. When the entry is liquidated, such of the merchandise as has been withdrawn for transportation to another port shall be excluded from the liquidation. This same procedure shall be followed in the case of alcoholic beverages provided for in Schedule 8, Tariff Act of 1930, and subject to internal-revenue taxes, and in the case of wool or hair. The liability for duty or tax with respect to any such quota merchandise or alcoholic beverage which has been withdrawn for transportation and delivered into customs custody at the port of destination shall be determined by a liquidation of the rewarehouse entry made in the district where the merchandise is withdrawn for consumption or for exportation.

(Secs. 1 (pars. 813, 1101, 1104), 505, 46 Stat. 640, as amended, 646, as amended, 647, 732; 19 U.S.C. 1001 (pars. 813, 1101, 1104), 1505)

§ 16.4 Conversion of currency.

(a) In determining the percentage of variation between the rate proclaimed by the Secretary of the Treasury and the Federal reserve rate,[4] the difference between the two rates shall be divided by the Federal reserve rate.

[3] "(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

"(1) disregard a difference of less than $3 between the total estimated duties or taxes deposited, or the total duties or taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties or taxes actually accruing thereon; • • •." (Tariff Act of 1930, sec. 321, as amended; 19 U. S. C. 1321)

[4] "(b) *Proclaimed value basis of conversion.* For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this Act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary of the Treasury under the provisions of section 25 of such Act of August 27, 1894, as amended, for the quarter in which the merchandise was exported.

"(c) *Market rate when no proclamation.* (1) If no value has been proclaimed under subsection (a) for the quarter in which the merchandise was exported, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate at noon on the day of exportation, then conversion of the foreign currency involved shall be made—

"(A) At a value measured by such buying rate, or

"(B) If the Secretary of the Treasury shall by regulation so prescribe with respect to the particular foreign currency, at a value measured by the buying rate first certified under this subsection for a day in the quarter in which the day of exportation falls (but only if the buying rate at noon on the day of exportation does not vary by 5 per centum or more from such first-certified buying rate).

"(2) For the purposes of this subsection, the term "buying rate" means the buying rate in the New York market for cable transfers payable in the foreign currency so to be converted. Such rate shall be determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate, the Federal Reserve Bank of New York may, in its discretion—

"(A) Take into consideration the last ascertainable transactions and quotations,

(b) The date of exportation for currency conversion shall be fixed in accordance with § 14.3 of this chapter.

(c) Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the customs field officers will be so informed. In any case where for the purpose of the assessment and collection of duties it is necessary to determine the proper rate or rates for that currency for a date during the period of suspension of certification by the Federal Reserve Bank, appraisement shall be withheld and liquidation suspended. When certification is resumed by the Bank, the rate or rates certified will be published either in the Treasury Decisions or in Customs Information Exchange circulars. Currency information received from the Bank, or otherwise available, which might be helpful in calculating estimated duties and in appraisement and liquidation will be furnished to the customs field officers. For purposes of calculating estimated duties by the Bank, the rate or rates certified by the Bank, the collector shall use the rate or rates appearing to be applicable under the instructions in this section to the type of merchandise involved; and when it is not yet known what certified rate or rates are applicable or no rate has been certified, he shall use the highest rate or combination of rates (i. e., the rate or combination of rates showing the highest amount of United States money), certified or uncertified as the case may be, which could be applicable.

(d) For the currency of each foreign country listed at the end of this paragraph, there will be published in the Treasury Decisions, for the quarter beginning January 1, 1957, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter. The rate or rates of exchange to be used for customs purposes for any day of exportation within the quarter shall be the rate or rates so certified and published, unless the rate or rates certified by the Federal Reserve Bank for the day of exportation (1) vary by 5 per centum or more from such first certified and published rate or rates in which case notice of such variance and the rate or rates certified for such day shall be published in the Treasury Decisions and such rate or rates shall be used for customs purposes in connection with merchandise exported on such day; or (2) vary by less than 5 per centum from the proclaimed value in which case notice of such variance shall be published in the Treasury Decisions and the proclaimed value shall be used for customs purposes in connection with merchandise exported on such day.

Australia	Japan
Austria	Mexico
Belgium	Netherlands
British Malaysia	New Zealand
Canada	Norway
Ceylon	Portugal
Finland	Sweden
Germany	Switzerland
India	Union of South Africa
Ireland	United Kingdom
Italy	

(e) When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those rates will be published as provided in paragraphs (c) and (d) of this section. Thereafter when the appraiser and collector are in possession of sufficient information to apply the instructions in this section, they shall proceed, respectively, with the appraisement and liquidation in the case of any importation of merchandise exported on a date for which the Federal Reserve Bank of New York certifies such multiple rates, according to the following procedure:

(1) Except as prescribed in this section, no rate of exchange shall be used for customs purposes under this section other than a rate or rates certified by the Federal Reserve Bank of New York. If there is a proclaimed value of the currency involved which varies by less than 5 per cent from any certified rate otherwise applicable, such proclaimed value shall be used in lieu of such certified rate.

(2) Whenever appraisement is made in a multiple-rate currency, or the use of rates of exchange for a multiple-rate currency has been necessary in connection with the determination whether the foreign or export value is the higher, or the use of rates for a multiple-rate currency appears involved in any other manner in the process of appraisement or liquidation, the appraiser shall include in his report to the collector an advisory statement of his views as to what type of certified rate or combination of types of certified rates is applicable to the merchandise involved. If there is disagreement, which cannot be resolved locally, between the collector and appraiser as to what type of certified rate or combination of types of certified rates is applicable in a particular case, a detailed report shall be submitted to the Bureau so that appropriate instructions may be issued.

(3) For all purposes of appraisement and assessment of duties, the type of rate used for any value expressed in a currency for which two or more rates have been certified shall be the type of certified rate, designated by the Federal Reserve Bank of New York, which the appraiser or collector is satisfied, from information in his own files, information obtained and presented to him by the importer, or information obtained from other sources, is uniformly applicable under the laws and regulations of the country of exportation to the particular class of commodity on the date of exportation. In cases where two or more types of certified rates are uniformly applicable on a percentage basis, each type of certified rate shall be used for the percentage of the value to which it is applicable. The percentages used shall be those which reflect realistically the percentage for which each type of rate is uniformly applicable under the laws and regulations of the country of exportation on the date of exportation.

(4) If the appraiser or collector has credible information that the type of rate or combination of types of rates which would otherwise be applicable under subparagraph (3) of this paragraph was not required or permitted, as the case may be, under the laws and regulations of the country of exportation to be used uniformly during any period in connection with the payment for all merchandise of the type involved, appraisement shall be withheld and liquidation shall be suspended as to all merchandise of the type involved exported to the United States during the period involved.

(5) If the appraiser or collector has credible information that a type of rate or combination of types of rates not applicable to payment for the merchandise was required or permitted in payment of costs, charges, or expenses, the currency conversions for the exchange covering payment for the merchandise and for the exchange covering such costs, charges, or expenses shall be calculated separately. If the costs, charges, or expenses are dutiable, they shall be calculated according to the rules stated above in this section, and in the event that any type of rate uniformly applicable to payment of dutiable costs, charges, or expenses for merchandise of the type involved was a type of rate not certified by the Federal Reserve Bank, appraisement shall be withheld and liquidation suspended. In deducting nondutiable costs, charges, or expenses, the foreign exchange shall be at the rate or rates actually used in payment of such costs, charges, or expenses, whether or not certified by the Federal Reserve Bank.

(f) Whenever appraisement is withheld or liquidation suspended, under paragraph (e) (4) or (5) of this section, a detailed report shall be transmited immediately to the Board.

(Secs. 505, 522, 46 Stat. 732, 739, as amended; 19 U.S.C. 1505, 31 U.S.C. 372)

§ 16.5 Weight, gauge, or measure.

(a) If any merchandise covered by a warehouse entry has been cleaned, sorted, repacked, or otherwise changed in condition under section 562, Tariff Act of 1930, as amended, before liquidation of the warehouse entry, such entry shall be liquidated and withdrawals passed on the basis of the weight, gauge, or measure of such merchandise in its manipulated condition with an appropriate notation in the duty statement that the duties are assessed on the basis of the manipulated condition of the merchandise. If the covering entry is liquidated prior to any manipulation of the merchandise, each subsequent warehouse withdrawal of manipulated merchandise

"(B) If there is no market buying rate for such cable transfers, calculate such rate (i) from actual transactions and quotations in demand or time bills of exchange, or (ii) from the last ascertainable transactions and quotations outside the United States in or for exchange payable in United States currency or other currency.

"(3) For the purposes of this subsection, if the day of exportation is one on which banks are generally closed in New York City, then the buying rate at noon on the last preceding business day shall be considered the buying rate at noon on the day of exportation."

shall be liquidated on the basis of the condition, quantity, and weight of the merchandise at the time of withdrawal. (See § 16.2 (e))

(b) When the amount of duty is governed in any way by the net weight of the merchandise, liquidation may be made on the net weight shown on the invoice if it is impracticable to obtain actual net weight without injury to the goods.

(c) If weighable merchandise is subject to an ad valorem rate of duty, liquidation shall be made on the basis upon which appraisement was made, as indicated by the appraiser's report.

(d) Duties and internal-revenue taxes on imported alcoholic beverages provided for in Schedule 8, Tariff Act of 1930, and subject to internal-revenue taxes shall be collected only on the number of proof gallons (or wine gallons if below proof), and fractional parts thereof, entered or withdrawn for consumption.[7]

(Secs. 315, 500 (a), 505, 46 Stat. 695, as amended, 729, 732; 19 U. S. C. 1315, 1500 (a), 1505)

§ 16.6 Tare.

(a) The net weight of merchandise dutiable by net weight, or upon a value dependent on net weight,[8] shall be determined insofar as possible by deducting the actual or schedule tare from the gross weight. Actual tare may be determined on the basis of tests when the tares of the packages in a shipment are reasonably uniform.

(b) When the actual tare cannot reasonably be determined and no schedule tare is applicable, the invoice tare may be used in ascertaining the net weight of the merchandise.

(c) The following tares which, from experience, have proved to be the average weight of coverings of certain classes of merchandise shall be known as schedule tares and shall be applied, except as provided in paragraph (d) of this section:

Apple boxes. Eight pounds per box. This schedule tare includes the paper wrappers, if any, on the apples.

Cheese with inedible, but not readily removable, coverings. Asiago, Cremonese, Parmesan, Parmigiano, Reggiano, Reggianito, and Traboliano, 1 percent; Cotrone, Moliterno, Moliterno type, and Palmese, 2 percent; all others, 2½ percent.

China clay in so-called half-ton casks. Seventy-two pounds per cask.

Figs in skeleton cases. Actual tare for outer containers plus 13 percent of the gross weight of the inside wooden boxes and figs.

Fresh tomatoes. Four ounces per 100 paper wrappings.

Lemons and oranges. Ten ounces per box and 5 ounces per half box for paper wrappings, and actual tare for outer containers.

Ocher, dry, in casks. Eight percent of the gross weight; *in oil in casks:* 12 percent of the gross weight.

Sugar. (See § 13.6 of this chapter.)

Tobacco, leaf not stemmed. Thirteen pounds per bale; *Sumatra:* actual tare for outside coverings, plus 4¼ pounds for the inside matting and, if a certificate be attached to the consular invoice certifying that the bales contain paper wrappings and specifying whether light or heavy paper has been used, either 4 or 8 ounces for the paper wrapping according to the thickness of paper used.

(d) If the importer is not satisfied with the invoice tare or with the schedule tare, or if the collector is of the opinion that the invoice or schedule tare does not correctly represent the tare of the merchandise, or if the weigher has reason to believe that the invoice or schedule tare is greater than the real tare, the actual tare shall be ascertained and in so doing the weigher shall empty and weigh as many casks, boxes, and other coverings as he may deem necessary.

(e) When it is impracticable to ascertain the actual tare, the weigher shall state in his report what, in his judgment, constitutes a fair tare allowance.

(Sec. 507, 46 Stat. 732; 19 U.S.C. 1507)

§ 16.7 Articles in examination packages not specified in the invoice.

When any article not corresponding with the description given in the invoice is found by the appraiser and is reported to the collector in accordance with section 499, Tariff Act of 1930, as amended, duties shall be assessed on the goods actually found, and, if the discrepancy appears conclusively to be the result of a mistake and not of any intent to defraud, no proceedings for forfeiture shall be taken. When the entire shipment does not agree with the invoice and there is no evidence of any intent to defraud, a new entry shall be required and the estimated duty paid on the original entry shall be refunded on liquidation as in the case of a nonimportation.

(Secs. 499, 505, 555, 46 Stat. 728, as amended, 732, 743; 19 U. S. C. 1499, 1505, 1555)

§ 16.9 Commingling of goods.

(a) Commingled merchandise shall be assessed with duty at the highest rate or rates applicable to any one kind of merchandise included in the commingling, unless the quantity and value of each of the kinds so included can be readily ascertained by the usual method of customs examination or by one or more of the methods specified in section 508 (a), Tariff Act of 1930, as amended,[9] or unless the conditions specified in section 508 (b), (c), or (d), Tariff Act of 1930, as amended, are satisfied. Evidence specified in such section 508 (a) (3) shall be

---

[7] "Notwithstanding any other provision of this Act, the duties imposed on beverages in this schedule (Schedule 8, Tariff Act of 1930) which are subject also to internal-revenue taxes shall be imposed only on the quantities subject to such taxes." (Tariff Act of 1930, par. 813, as amended; 19 U. S. C. 1001, par. 813)

For application for refund of internal-revenue taxes paid on imported distilled spirits or wines in excess of the quantity actually withdrawn from warehouse for consumption, see § 24.36 of this chapter.

NOTE: The amended paragraph 813, Tariff Act of 1930, quoted in note 7 is effective as to merchandise entered, or withdrawn from warehouse, for consumption on or after June 9, 1948, and applies also to merchandise entered or withdrawn before that day with respect to which the liquidation of the entry or withdrawal, the exaction, or the decision as to dutiable quantity has not become final by reason of section 514, Tariff Act of 1930. (Pub. Law 612, 80th Cong.)

[8] "The Secretary of the Treasury is hereby authorized to prescribe and issue regulations for the ascertainment of tare upon imported merchandise, including the establishment of reasonable and just schedule tares therefor, but in no case shall there be any allowance for draft or for impurities, other than excessive moisture and impurities not usually found in or upon such or similar merchandise." (Tariff Act of 1930, sec. 507; 19 U. S. C. 1507)

[9] "(a) Whenever dutiable merchandise and merchandise which is free of duty or merchandise subject to different rates of duty are so packed together or mingled that the quantity or value of each class of such merchandise cannot be readily ascertained by the customs officers (without physical segregation of the shipment or the contents of any entire package thereof), by one or more of the following means: (1) Examination of a representative sample, (2) occasional verification of packing lists or other documents filed at the time of entry, or (3) evidence showing performance of commercial settlement tests generally accepted in the trade and filed in such time and manner as may be prescribed by regulations of the Secretary of the Treasury, and if the consignee or his agent shall not segregate the merchandise pursuant to subsection (b), then the whole of such merchandise shall be subject to the highest rate of duty applicable to any part thereof.

"(b) Every segregation of merchandise made pursuant to this section shall be accomplished by the consignee or his agent at the risk and expense of the consignee within thirty days after the date of personal delivery or mailing, by such employee as the Secretary of the Treasury shall designate, of written notice to the consignee that the merchandise is commingled, unless the Secretary authorizes in writing a longer time. Every such segregation shall be accomplished under customs supervision, and the compensation and expenses of the supervising customs officers shall be reimbursed to the Government by the consignee under such regulations as the Secretary of the Treasury may prescribe.

"(c) The foregoing provisions of this section shall not apply with respect to any part of a shipment if the consignee or his agent shall furnish, in such time and manner as may be prescribed by regulations of the Secretary of the Treasury, satisfactory proof (1) that such part (A) is commercially negligible, (B) is not capable of segregation without excessive cost, and (C) will not be segregated prior to its use in a manufacturing process or otherwise, and (2) that the commingling was not intended to avoid the payment of lawful duties or any part thereof. Any merchandise with respect to which such proof is furnished shall be considered for all customs purposes as a part of the merchandise, subject to the next lower rate of duty (including a free rate), with which it is commingled.

"(d) The foregoing provisions of this section shall not apply with respect to any shipment if the consignee or his agent shall furnish, in such time and manner as may be prescribed by regulations of the Secretary of the Treasury, satisfactory proof (1) that the value of the commingled merchandise is less than the aggregate value would be if the shipment were segregated; (2) that the shipment is not capable of segregation without excessive cost and will not be segregated prior to its use in a manufacturing process or otherwise; and (3) that the commingling was not intended to avoid the payment of lawful duties or any part thereof. Any merchandise with respect to which such proof is furnished shall be considered for all customs purposes to be dutiable at the rate (including a free rate) applicable to the material present in greater quantity than any other material." (Tariff Act of 1930, sec. 508, as amended; 19 U. S. C. 1508)

considered only if it is filed in the collector's office within 30 days after the date of delivery or mailing of the notice provided for in paragraph (b) of this section, except that the collector may extend such 30-day period for additional periods of 30 days each, but not beyond 6 months from the date of delivery or mailing of the notice, provided the importer or his agent makes written application for each extension and gives satisfactory reasons for its allowance.

(b) The collector shall give written notice to the consignee as promptly as possible after any commingling is discovered.

(c) If a consignee or his agent desires to avail himself of the privileges of such section 508 (c) or (d), he shall file with the collector within 30 days after the date of delivery or mailing of the notice provided for in paragraph (b) of this section documentary proof which will satisfy the collector that the merchandise is entitled to the lower rate of duty.

(Sec. 508, 46 Stat. 732, as amended; 19 U. S. C. 1508)

§ 16.10 Change in classification or value; higher or lower rate; effective date.

(a) If there is an established and uniform practice at the various ports, a change in classification resulting in a higher rate of duty, except as the result of a court decision, shall be made only upon the Bureau's instructions and shall be applicable only to merchandise entered for consumption after the expiration of 90 days after the date of the publication of the Bureau's instructions in the Treasury Decisions. In the case of merchandise entered for warehouse, such change shall apply to goods withdrawn for consumption after the expiration of such 90-day period, provided the warehouse entry is unliquidated or can be reliquidated within 60 days after the date of liquidation.[10]

(b) If there is not an established and uniform practice at the various ports, a change in classification resulting in a higher rate of duty shall be applicable immediately to all merchandise covered by unliquidated entries, whether for consumption or warehouse, and also to merchandise covered by liquidated warehouse entries if the merchandise has remained in warehouse after the date the change in classification is established, provided reliquidation can be completed within 60 days after the date of liquidation.

(c) A change in classification resulting in a lower rate of duty, except as the result of a court decision, shall be made only upon the Bureau's instructions or upon the receipt of a Customs Information Exchange report showing the higher classification to be clearly erroneous and contrary to the current practice at the various ports. A change to a lower rate of duty, when decided upon, shall be applicable to all unliquidated entries and to all protested entries involving the same issue which have not been forwarded to the United States Customs Court.

(d) The principles of decisions of the United States Customs Court or the United States Court of Customs and Patent Appeals favorable to the Government shall be applied to merchandise identical with that passed on by the court, if such merchandise is covered by unliquidated entries, whether for consumption or warehouse, or by liquidated warehouse entries which can be reliquidated within 60 days from the date of liquidation, provided that in the latter case the merchandise remains in warehouse after the date of the publication of the decision in the weekly Treasury Decisions.

(e) The principle of any such favorable decision shall be applied to merchandise, though not identical with the merchandise the subject of the court's decision, if its classification is affected by such principle, provided that it has been entered for consumption or withdrawn from warehouse for consumption after 30 days from the date of publication of the court's decision in the weekly Treasury Decisions, and that, in the case of liquidated warehouse entries, the reliquidation can be completed within 60 days from the date of liquidation.

(f) If the overruling of a protest is accompanied by a definite statement that a higher rate than that assessed by the collector was properly chargeable, such higher rate, when applicable, shall be made effective as to merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days from the date of the publication of the court's decision in the weekly Treasury Decisions, provided that, in the case of liquidated warehouse entries, reliquidation thereof can be completed within 60 days from the date of liquidation.

(g) Unless the Bureau otherwise directs, the principle of any decision of the United States Customs Court or the United States Court of Customs and Patent Appeals adverse to the Government shall be applied to unliquidated entries and protested entries which have not been forwarded to the Customs Court and in which the same issue is involved as soon as the time within which an application for a rehearing or review may be filed has expired without such application having been made.

(h) When a rate of duty or a rate of internal-revenue tax imposed upon or by reason of importation is changed by an act of Congress or by a proclamation of the President,[10a] the new rate shall be applied in accordance with the provisions of section 315 (a), Tariff Act of 1930, as amended,[11] subject in appropriate cases

---

[10] "(d) No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties." (Tariff Act of 1930, sec. 315 (d), as amended; 19 U. S. C. 1315 (d))

[10a] "(a) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in the present emergency in restoring the American standard of living, in overcoming domestic unemployment and the present economic depression, in increasing the purchasing power of the American public, and in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

"(1) To enter into foreign trade agreements with foreign governments or instrumentalities thereof; and

"(2) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder. No proclamation shall be made increasing or decreasing by more than 50 per centum any existing rate of duty or transferring any article between the dutiable and free lists. The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported directly, or indirectly: *Provided*, That the President may suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts or policies which in his opinion tend to defeat the purposes set forth in this section; and the proclaimed duties and other import restrictions shall be in effect from and after such time as is specified in the proclamation. The President may at any time terminate any such proclamation in whole or in part.

* * * * *

"(c) As used in this section, the term 'duties and other import restrictions' includes (1) rate and form of import duties and classification of articles, and (2) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports." (Tariff Act of 1930, sec. 350; 19 U. S. C. 1351)

"(c) *Proclamation by the President.* The President shall by proclamation approve the rates of duty and changes in classification and in basis of values specified in any report of the commission under this section, if in his judgment such rates of duty and changes are shown by such investigation of the commission to be necessary to equalize such differences in costs of production.

"(d) *Effective date of rates and changes.* Commencing thirty days after the date of any presidential proclamation of approval the increased or decreased rates of duty and changes in classification or in basis of value specified in the report of the commission shall take effect." (Tariff Act of 1930, sec. 336 (c) and (d); 19 U. S. C. 1336)

[11] "(a) Except as otherwise specially provided for, the rate or rates of duty imposed

to the provisions of subsection (b) of such section 315. Any reliquidation of duty or tax on merchandise covered by a rewarehouse entry which may be required by reason of a change in rate within the purview of this paragraph shall be made in the district in which the merchandise is held in customs custody on the effective date of the change.

(Secs. 315, 505, 46 Stat. 695, as amended, 732; 19 U.S.C. 1315, 1505)

§ 16.10a Tariff classification of prospective imports.

(a) Any prospective importer or foreign exporter may apply in writing to the Commissioner of Customs, Washington 25, D.C., for a ruling as to the tariff classification of any article which he intends to import into or ship to the United States in commercial quantities. The application shall contain a full description of each article. The application shall also give the following information, unless it is clear that it will be of no value in determining the tariff classification of the article: (1) The respective quantities and values of the component materials of which the article is composed; (2) information as to its chief use and commercial designation in the United States; and (3) any specifications, analyses, or other information deemed necessary to a tariff classification of the article. Whenever practicable, a sample of the article should be submitted with the application.

(b) If the Commissioner is satisfied (1) that the application is made in good faith by an importer or foreign exporter who is properly and directly concerned with the tariff classification of the article described; (2) that the information submitted or otherwise available is adequate for a considered decision; and (3) that the ruling applied for is not already covered by a controlling published decision, the Commissioner will rule on the tariff classification of the article. A copy of the decision will be mailed to the applicant. The decision will be published in the weekly Treasury Decisions if it will affect a substantial volume of imports or if it is for any other reason of sufficient importance to justify such publication.

(c) Any decision published pursuant to paragraph (b) of this section shall be deemed to establish a uniform practice within the meaning of section 315 (d), Tariff Act of 1930, as amended. The decision will not be changed by a further ruling of the Commissioner to impose higher duties on such an article unless the prior decision should prove to be clearly wrong. When it appears to the Commissioner that a correct interpretation of the law may require such a ruling, notice that the prior ruling is under review will be published in the FEDERAL REGISTER so that the parties in interest will have an opportunity to make such written submissions as they desire, within a period which will be specified in the notice, with respect to the correctness of the contemplated action. If after the consideration of such submissions as may be received the Commissioner issues a ruling imposing higher duties, it will be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the expiration of 90 days after the date of publication of such ruling in the weekly Treasury Decisions.[11a]

(d) The notice procedure outlined in paragraph (c) of this section will be applied also in any other case in which the Commissioner believes that a correct interpretation of the law may require the issuance of an administrative ruling imposing higher duties on an imported article than has been assessed under an established and uniform practice.

(Secs. 315, 502, 46 Stat. 695, as amended, 731; 19 U.S.C. 1315, 1502)

§ 16.11 Warehouse entries.

Warehouse entries shall be liquidated by single packages when necessary for the purpose of withdrawal.

(Sec. 505, 46 Stat. 732; 19 U. S. C. 1505)

§ 16.12 Appraisement, baggage, informal, and mail entries.

(a) After the liquidation of appraisement entries, a carbon copy of the schedule on customs Form 5171 or 5187 covering such entries shall be posted or lodged as the notice of liquidation, in the place and manner specified in § 16.2(d) for customs Form 4333, after a line has been drawn through the data relating to any entry listed thereon which has not been liquidated as entered. When any such entry is liquidated otherwise than as entered, or is liquidated after the copy of Form 5171 or 5187 on which it was scheduled has already been posted or lodged as a notice of liquidation, notice of the liquidation shall be posted or lodged on customs Form 4333. All such entries ready for liquidation during any one month may be liquidated on any convenient day during that month. The notice of liquidation shall be dated with the date of posting or lodging and the entries covered thereby shall be stamped "Liquidated," with the date of liquidation, which shall be the same as the notice of liquidation. Such stamping shall be deemed the legal evidence of liquidation.

(b) Except as otherwise provided in this paragraph, the effective date of liquidation of informal, mail, and baggage entries[11b] shall be:

(1) The date of payment by the importer of duties and any internal-revenue taxes thereon;

(2) The date of release by customs or the postmaster when the articles are released under such an entry free of duty and tax;

(3) The date a free entry is accepted for articles released under an immediate delivery permit under § 8.59 of this chapter.

When the proper rate or amount of duty cannot be determined at the time of entry because the articles are subject to a tariff rate quota, because of a missing document which, if for free entry, is not produced prior to the release of the articles to the importer, or because of any other reason, the printed notice of liquidation appearing on the receipt issued for any money collected on such entry shall be voided. When the tariff status of the articles either as dutiable or free is finally ascertained it shall be noted on the entry. The effective date of liquidation shall be the date of posting or lodging of the notice of liquidation as required in paragraph (c) of this section.

(c) Notice of liquidation is furnished under paragraph (b) (1) of this section by a suitable printed statement appearing on the receipt issued for duties and any internal-revenue taxes collected. No other notice of liquidation shall be given but notice of reliquidation of any such entry shall be given on customs Form 4333 posted or lodged in the place and manner specified in § 16.2 (d) except when a refund of the full amount of duties and internal-revenue taxes paid is due the importer. In such case, the notice of refund shall constitute the notice of reliquidation. The date of the notice of refund in such case shall be the same as the date of reliquidation. Notice of liquidation is furnished under paragraph (b) (2) of this section by release of the article free of duty and tax and under paragraph (b) (3) of this section by the acceptance of the entry. No further notice of the liquidation of such entries shall be given. When the proper rate or amount of duty cannot be determined at the time of entry un-

by or pursuant to this act or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury, except that—

"(1) Any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed; and

"(2) Any article which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation under section 552 of this act, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the collector under section 490 of this act, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation.

"(b) Any article which has been entered for consumption but which, before release from customs custody, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury." (Tariff Act of 1930, sec. 315 (a), (b), as amended; 19 U. S. C. 1315 (a), (b))

[11a] The procedure outlined in this paragraph is not applicable to changes required by statutory enactment, judicial decision, or Presidential proclamation.

[11b] Baggage entries include entries on customs Form 3351, on the duplicate copy of customs Form 3419, and on customs Forms 5128, 6059, 6063, and 6064.

der paragraph (b) of this section, notice of liquidation shall be given by scheduling the entry on customs Form 4333 or 4335, as applicable, and posting or lodging the form in the place and manner specified in § 16.2 (d) for formal entries. The form shall bear the date of such posting or lodging.

(Secs. 505, 514, 46 Stat. 732, 734; 19 U. S. C. 1505, 1514)

§ 16.13 Errors, mistakes and inadvertencies, correction of.

(a) Collectors of customs have broad responsibility and authority, independent of section 520(c)(1), Tariff Act of 1930, as amended, to take appropriate action to insure that the rate and amount of duty assessed on imported merchandise is correct and that the transaction is otherwise in accordance with law. Such action may be taken in connection with (1) the liquidation of an entry, (2) a voluntary reliquidation completed within 60 days after liquidation, (3) a voluntary correction of an exaction within 60 days after the exaction was made, (4) a reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change or adjustment is in order, or (5) the adjustment, pursuant to valid protest, of a transaction or decision which is neither a liquidation nor a reliquidation. The authority extends to errors in the construction of a law and to errors adverse to the Government as well as the importer. In exercising that authority collectors cannot consider errors in appraisement. The extent of the collector's authority with respect to appraisement errors is set forth in paragraphs (b) and (c) of this section.

(b) Pursuant to section 520(c)(1), Tariff Act of 1930, as amended, notwithstanding a valid protest was not filed, the collector may correct by reliquidation or other appropriate action a clerical error, mistake of fact, or other inadvertence in any entry, liquidation, appraisement (subject to paragraph (c) of this section), or other customs transaction if the error, mistake of fact, or other inadvertence:

(1) Does not amount to an error in the construction of a law;

(2) Is adverse to the importer;

(3) Is manifest from the record or established by documentary evidence; and

(4) Is brought to the attention of the Customs Service:

(i) Within 1 year after the date of entry, appraisement, or other transaction (including a liquidation, reliquidation, or exaction) if the error, mistake of fact or other inadvertence is in the entry, appraisement, or other transaction (including a liquidation, reliquidation, or exaction), or

(ii) Except in cases where the error is in liquidation, reliquidation, or exaction in which case subdivision (i) of this subparagraph shall apply, within 60 days after liquidation or exaction when the liquidation or exaction is made more than ten months after the date of entry, appraisement or other transaction.

(c) If the alleged error, mistake of fact or other inadvertence to be considered under paragraph (b) of this section is in an appraisement, the appraiser shall submit a report and recommendation to the collector. If the collector believes that action different from that recommended by the appraiser should be taken and the difference cannot be resolved locally, the matter shall be submitted to the Bureau for decision.

(Secs. 514, 520, 46 Stat. 734, 739, as amended; 19 U.S.C. 1514, 1520)

§ 16.14 Limitation upon reliquidation.

(a) In the absence of a protest, no entry shall be reliquidated after the expiration of the protest period, except as provided for in section 520(c), as amended, or section 521, Tariff Act of 1930,[12] or § 16.10(h).

(b) An error in the liquidation of an entry covering household or personal effects may be corrected by the collector of customs without reference to the Bureau, notwithstanding a timely protest was not filed, if an application for refund is filed with the collector within 1 year after the date of entry and no waiver of compliance with applicable regulations is involved other than a waiver which the collector has authority to grant.

(Secs. 514, 520, 521, 46 Stat. 734, 739, as amended; 19 U.S.C. 1514, 1520, 1521)

§ 16.15 Taxes; applicability of laws relating to customs duties.

(a) Import taxes imposed by I.R.C. sections 4501, 4521, 4531, 4541, 4551, 4561, 4571, and 4581 shall be construed to be customs duties subject to the limitations specified in I.R.C. sections 4504 and 4601 and in the liquidation of entries such taxes shall be treated in the same manner as duties imposed by the Tariff Act of 1930, as amended

(b) Provisions of law (including preferences and exemptions) relating only to customs duties shall not be applied to taxes or other charges which are not construed to be customs duties,[13] notwithstanding such taxes or charges may be collected on imported merchandise in customs custody by collectors of customs.

(Sec. 20, 52 Stat. 1087, 53 Stat. 268, 416, 428; 19 U. S. C. 1528, 26 U. S. C. 2494, 3431, 3500)

§ 16.16 Taxes on imported oils and other products.

(a) In the liquidation of an entry, taxes imposed by I.R.C. sections 4501, 4521, 4531, 4541, 4551, 4561, 4571, and 4581 shall be treated in the same manner as duties imposed by the Tariff Act of 1930, as amended.

(b) In the case of any article, merchandise, or combination subject to a tax under I.R.C. section 4581 not less than 10 percent of the quantity by weight of which consists of or is derived directly or indirectly from one or more of the products (except seeds) specified in the said section or in I.R.C. section 4511, the report of the appraising officer on the invoice shall indicate the percentage of the total net weight of the imported article which consists of or is derived directly or indirectly from each of the products above mentioned. If the facts for the assessment of duty cannot be determined from an examination of the imported article or from other available sources, the maximum tax likely to be due shall be collected and the liquidation of the entry suspended for a reasonable time to enable the importer to furnish the necessary information. If a claim shall be filed in connection with the entry that, in view of I.R.C. section 4582, an article or part thereof is not taxable under I.R.C. section 4561, 4571, or 4581, because such article or part thereof was derived directly or indirectly from a waste not named in I.R.C. section 4561, 4571, or 4581, the collector may require such additional evidence, in the form of affidavits or otherwise, as may be necessary and suitable to determine the facts on which the claim is based.

(53 Stat. 264, as amended, 267, 268; 26 U. S. C. 2470, 2490, 2491, 2492)

§ 16.18 Additional duties on articles not legally marked.

(a) The marking duty prescribed by section 304(c), Tariff Act of 1930, as amended,[15] shall be assessed upon the

[12] "Notwithstanding a valid protest was not filed, the Secretary of the Treasury may authorize a collector to reliquidate an entry to correct—

"(1) A clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, appraisement, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the customs service within one year after the date of entry, appraisement, or transaction, or within sixty days after liquidation or exaction when the liquidation or exaction is made more than ten months after the date of the entry, appraisement, or transaction; or

"(2) Any assessment of duty on household or personal effects in respect of which an application for refund has been filed, with such employee as the Secretary of the Treasury shall designate, within one year after the date of entry." (Tariff Act of 1930, sec. 520 (c), as amended; 19 U. S. C. 1520 (c))

"If the collector finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation." (Tariff Act of 1930, sec. 521; 19 U. S. C. 1521)

[13] "No tax or other charge imposed by or pursuant to any law of the United States shall be construed to be a customs duty for the purpose of any statute relating to the customs revenue, unless the law imposing such tax or charge designates it as a customs duty or contains a provision to the effect that it shall be treated as a duty imposed under the customs laws. * * *" (Tariff Act of 1930, sec. 528, as amended; 19 U. S. C. 1528)

[15] "If at the time of importation any article (or its container, as provided in subsection (b) hereof) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) hereof) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article

value as defined in section 503, Tariff Act of 1930.

(b) The liquidation of entries, other than warehouse entries, shall not be suspended merely because the merchandise covered thereby is reported to be not legally marked, but, upon special application by the importer, the liquidation may be deferred for a reasonable time to permit the marking, destruction, or exportation of the merchandise. Warehouse entries covering merchandise not legally marked shall not be liquidated prior to the withdrawal of the merchandise from warehouse for consumption, exportation, or destruction.

(Sec. 304, 46 Stat. 687, as amended; 19 U. S. C. 1304)

§ 16.19 Discriminating duties.

The discriminating duties provided for in subsection 1 of paragraph J, section IV, Tariff Act of 1913, as amended by the act of March 4, 1915 (19 U.S.C. 128, 131), and the discriminating duties and penalties provided for in section 338, Tariff Act of 1930, shall be imposed only in pursuance of specific instructions from the Commissioner of Customs.

§ 16.20 Duties contingent upon foreign export duties, charges, or restrictions.

Paragraph 1401, Tariff Act of 1930, provides in part for the imposition under certain conditions of additional duties on articles covered thereby. The assessment of these additional duties is dependent upon action by the President, and notice of such action, if taken, will be published in the weekly Treasury Decisions.

(Par. 1401, sec. 1, 46 Stat. 590; 19 U. S. C. 1001, par. 1401)

§ 16.21 Dumping duty; notice to importer.

(a) Special dumping duty shall be assessed on all importations of merchandise, whether dutiable or free, as to which the Secretary of the Treasury has made public a finding of dumping, entered or withdrawn from warehouse, for consumption, not more than 120 days before the question of dumping was raised by or presented to the Secretary or his delegate, provided the particular importation has not been appraised prior to the publication of such finding, and the appraiser reports that the purchase price or exporter's sales price is less than the foreign market value or constructed value, as the case may be.[16]

(b) Before dumping duty is assessed the collector shall notify the importer of the appraiser's report, as in the case of an advance in value. If the importer files an appeal for reappraisement, liquidation shall be suspended until the appeal for reappraisement is finally decided.

(c) If the necessary conditions are present, special dumping duty shall be assessed on samples imported for the purpose of taking orders and making sales in this country.

(Secs. 202, 209, 407, 42 Stat. 11, as amended, 15, 18; 19 U.S.C. 161, 168, 173)

§ 16.22 Method of computing dumping duty.

If it appears that the merchandise has been purchased by a person not the exporter within the meaning of section 207, Antidumping Act, 1921, as amended (19 U.S.C. 166), the special dumping duty shall equal the difference between the purchase price and the foreign market value on the date of purchase, or, if there is no foreign market value, between the purchase price and the constructed value, any foreign currency involved being converted into United States money as of the date of purchase or agreement to purchase. If it appears that the merchandise is imported by a person who is the exporter within the meaning of such section 207, the special dumping duty shall equal the difference between the exporter's sales price and the foreign market value on the date of exportation, or, if there is no foreign market value, between the exporter's sales price and the constructed value, any foreign currency involved being converted into United States money as of the date of exportation.

(Secs. 202, 207, 42 Stat. 11, as amended, 14, as amended; 19 U.S.C. 161, 166)

§ 16.23 Cuban preference.

(a) The total and partial exemptions from duty provided for in the trade agreement with the Republic of Cuba of October 30, 1947,[17] shall be deemed to apply only to direct shipments from Cuba and to shipments via other countries for which there is furnished proof that the merchandise was destined to the United States at the time of exportation from Cuba and also a certificate of the proper customs officer of each foreign country in which the merchandise was landed while en route to the United States showing continuous customs custody of the shipment while in such foreign country.

(b) No evidence of origin shall be required for any Cuban merchandise which is unconditionally free of duty. Special customs invoices shall be required for merchandise of Cuban origin embraced within the classes enumerated in § 8.15 (b) or (c) of this chapter, if the right of the merchandise to any total or partial exemption from duty is dependent upon its Cuban origin and the value of the shipment exceeds $500. In the case of every shipment of Cuban articles for which any total or partial exemption from duty is sought under the provisions of the Cuban Trade Agreement, except as stated in the next sentence, there shall be filed in connection with the entry, preferably on the invoice filed with the entry, a declaration of the shipper, or other person having actual knowledge of the facts, that the articles for which the exemption is sought are of the growth, produce, or manufacture of Cuba. Production of the declaration may be waived in connection with direct shipments claimed to be of Cuban origin, valued not over $250, in those cases where the collector is satisfied from the character of the articles or otherwise that they are in fact of Cuban origin.

(c) Duties assessed on imports on special occasions, such as marking duties (sec. 304, Tariff Act of 1930), internal-revenue taxes imposed on imported articles, and other special exactions (as distinguished from the ordinary customs duties such as are imposed under the provisions of the dutiable list of the tariff act and I.R.C. sections 4521, 4531, 4541, 4551, 4561, 4571, 4581 are not subject to any reduction under the trade agreement.

§ 16.24 Countervailing duties.

(a) Any appraiser or other principal customs officer who obtains any information that any bounty or grant is being paid or bestowed with respect to dutiable merchandise imported into the United States, so as to require action under section 303, Tariff Act of 1930,[18] shall communicate such information promptly to the Commissioner of Customs. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in paragraph (b) of this section, if in the possession of the appraiser or other officer or readily available to him.

(b) Any person outside the Customs Service who has reason to believe that any bounty or grant is being paid or bestowed with respect to dutiable merchandise imported into the United States may communicate his belief to any appraiser or the Commissioner of Customs. Every such communication shall contain, or be accompanied by, (1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, (3) all pertinent facts obtainable as to any bounty or grant being paid or bestowed with respect to such merchandise.

(c) If any information filed with an appraiser pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information is found to comply with the requirements, it shall be transmitted by the appraiser within 10 days to the Commissioner of Customs, together with all pertinent additional information available to the appraiser.

(d) Upon receipt by the Commissioner of Customs of any communication submitted pursuant to paragraph (a), (b), or (c), of this section and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

(e) If it is determined that the application of the said section 303 is required, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will issue a countervailing duty order describing the merchandise, designating the country or area in which it is produced or from which it is exported, and declaring the ascertained or estimated amount of the bounty or grant or a rule for calculating or estimating such amount.

(f) Each order issued pursuant to paragraph (e) of this section will be published in a weekly issue of Treasury Decisions and in the FEDERAL REGISTER. Orders or notices issued under section 303, Tariff Act of 1930, or a corresponding provision of a prior act, are currently in effect with respect to the merchandise listed below:

Country	Commodity	Treasury Decision	Action
Australia	Sugar content of certain articles	39541	Declared rate.
		54582	New rates.
		54719	New rates.
		54779	New rates.
		54881	New rates.
		55056	New rates.
		55175	New rates.
	Butter	42937	Bounties declared—Rates.
		43067	New rates.
		48551	New estimated rate.
	Fortified wines	51476	Bounties declared—Contingent rates.
Canada	Cheese, 93-94 score, from whole milk, cheddar, including "washed curd," types.	50093	Bounties declared—Rates.
	Cheese, 93-94 score, blue-vein, of Roquefort type.	53182	Bounties declared—Rates.
Cuba	Cordage	53534	Bounties declared—Rates.
		54650	T. D. 53534 modified.
		47896	Bounties declared—Rates.
Denmark	Butter	48734	Discontinued as to direct shipments.
Great Britain	Spirits	34466	Bounties declared—Rates.
		34752	Descriptions.
		34962	No bounty on rum.
		35089	Proof gallons.
		35510	Alcoholic perfumery.
		35668	Orange bitters.
		47826-7	Quantity for computing duty.
		52555	Bounty on plain spirits terminated.
	Silk and silk articles	42895	Bounties declared—Rates.
		43634	Bounties—Additional articles.
		44742	New rates.
		47475	New rates.
		53476	New rates and additional articles.
		55023	New rates and additional articles.
	Sugar	49355	Bounties declared—Rates.
		50108, 50127	New rates.
Ireland	Spirits	47753	Bounties declared—Rates.
		47826-7	Quantity for computing duty.
Spain	Almonds	54792	Bounties declared—Rate
		55184	Discontinued as to shipments exported on or after July 21, 1959.
Uruguay	Wool tops	53257	Bounties declared—Rates.
		53446	New rate.
		54798	Discontinued as to registered shipments—new rate.
		55044	Discontinued as to shipments exported on or after December 17, 1959.

§ 16.25 Special duties on articles imported under agreements in restraint of trade.

Whenever it appears that imported articles may be subject to the special duties provided for in section 802, act of Sept. 8, 1916, 15 U.S.C. 73,[19] the collector shall report the matter to the Commissioner of Customs and await instructions with respect to the imposition of such duties.

(Secs. 802, 803, 39 Stat. 799; 15 U. S. C. 73, 74)

§ 16.26 Philippine trade.

(a) The total or partial exemptions of "Philippine articles"[20] entered, or withdrawn from warehouse, for consumption during the period beginning January 1, 1956, which are authorized by the Philippine Trade Agreement Revision Act of 1955 and Presidential Proclamation of October 26, 1955, made pursuant thereto (T.D. 53965), apply to "Philippine articles" imported from any foreign country.

(b) No evidence of origin shall be required for any Philippine merchandise which is unconditionally free of duty.

(c) When any total or partial exemption from duty is claimed on the ground

---

a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. * * *" (Tariff Act of 1930, sec. 304 (c), as amended; 19 U. S. C. 1304 (c))

[16] See § 14.13 of this chapter.

For regulations regarding finding of dumping by the Secretary and procedure under the Antidumping Act, 1921, see §§ 14.6–14.13.

The fact that the importer has added on entry the difference between the purchase price or the exporter's sales price and the foreign market value or constructed value and the appraiser has approved the resulting entered value shall not prevent the assessment of the special dumping duty. However, a mere difference between the purchase price or exporter's sales price and the foreign market value or constructed value, without a finding by the Secretary of the Treasury, as above referred to, is not sufficient for the assessment of the special dumping duty.

[17] The operation of the Convention of Commercial Reciprocity between the United States and Cuba signed December 11, 1902 (T. D. 24836), and the operation of the trade agreement with Cuba of August 24, 1934 (T. D. 47232), as amended by the supplementary trade agreements of December 16, 1939 (T. D. 50050), and of December 23, 1941 (T. D. 50541), are suspended for such time as the United States and Cuba are both contracting parties to the General Agreement on Tariffs and Trade concluded at Geneva on October 30, 1947.

[18] "Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties." (Tariff Act of 1930, sec. 303; 19 U. S. C. 1303.)

[19] "If any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding, or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States." (15 U. S. C. 73)

[20] The term "Philippine articles" means articles which are products of the Philippines, but does not include any article produced with the use of materials imported into the Philippines which are products of any country other than the Philippines or the United States if the aggregate value of such imported materials when landed at the Philippine port of entry, exclusive of any landing cost and Philippine duty, was more than 20 per centum of the appraised customs value of the article imported into the United States (22 U.S.C. 1360(a)(4)).

that an importation consists of "Philippine articles," the claim shall be allowed only if it is established to the satisfaction of the collector of customs concerned. The collector may accept as satisfactory evidence that an article is "Philippine article" a certificate in the appropriate form specified in paragraph (d) of this section, subject to any verification he may deem necessary, or he may satisfy himself of such fact by other reasonable ways and means if, taking into consideration the kind and value of the goods and the circumstances of importation, he deems a certificate unnecessary.

(d) (1) When no material which is not the growth, product, or manufacture of the Philippines or of the United States was used at any stage in the production of the imported article, a certificate in the following form may be accepted as evidence that the commodity is a "Philippine article":

The product covered by the ----------

(Describe above the invoice, bill of lading, or other document or statement identifying the shipment)
annexed or appended to this certificate of Philippine origin at the time it was subscribed is the growth, product, or manufacture of the Philippines. No foreign materials (other than those which are of the growth, product, or manufacture of the United States) were used at any stage in the production of this product, i. e., either in its immediate production or in the production of any intermediate product used at any stage in the chain of production in the Philippines which resulted in this product.

(2) When any material which is not the growth, product, or manufacture of the Philippines or of the United States was used at any stage in the manufacture of the imported article, a certificate in the following form may be accepted as evidence that the commodity is nevertheless a "Philippine article":

The product covered by the ----------

(Describe above the invoice, bill of lading, or other document or statement identifying the shipment)
annexed or appended to this certificate of Philippine origin at the time it was subscribed is the product of the Philippines. There were used in its production in the Philippines ----
---
(Number of units and description)
of foreign materials (other than those which are of the growth, product, or manufacture of the United States), valued by the Philippine customs officers for the purpose of the Philippine customs laws at ----------
---
(Official Philippine customs value at the time of importation into the Philippines, in terms of pounds, yards, or other applicable unit)
plus, if not included in such unit value, ----------, the cost per unit of bringing such foreign materials to the Philippines.

(3) If the collector shall be satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in subparagraph (2) of this paragraph a certificate in the following form:

The product covered by the----------

(Describe above the invoice, bill of lading, or other document or statement identifying the shipment)
annexed or appended to this certificate of Philippine origin at the time it was subscribed is the product of the Philippines. There were or may have been used in its production in the Philippines foreign materials (other than those which are of the growth, product, or manufacture of the United States).

It is impracticable to ascertain the exact number of units of foreign material, if any, used in its production or the customs valuation of such material, but to the best of (my) (our) (its) knowledge and belief such foreign materials as were or may have been used would not exceed 20 per centum of the selling price or invoice value of the product covered by this certificate.

(4) If more than one kind of article is covered by a certificate provided for in subparagraphs (1), (2), or (3) of this paragraph, the required information shall be shown with respect to each kind. When more than one kind of material of other than Philippine or United States origin is used in the production of an article covered by such a certificate, the certificate shall state the number of units, description, and Philippine customs valuation per unit of each such kind of material.

(5) A certificate conforming to subparagraphs (1), (2), or (3) of this paragraph shall be accepted as evidence of the facts alleged therein only if (i) there is annexed thereto a copy of the commercial invoice or bill of lading covering the articles or other documentary matter which identifies the articles to which the certificate pertains, (ii) the certificate is signed by the manufacturer or producer of the articles to which it pertains, or by the person who exported the articles from the Philippines, and (iii) it clearly appears that such copy or other documentary matter was annexed to the certificate when it was signed.

(Secs. 2, 201–205, 214, 60 Stat. 141, 143, 144, 146; 22 U.S.C. 1251–1255, 1264, 1360)

PART 17—PROTESTS AND REAPPRAISEMENTS

PROTESTS

Sec.
17.1 Protest; form of.
17.2 Power of attorney to file protest.
17.3 Collector's review on protest; transmission of protests and samples to the United States Customs Court.
17.4 Decisions of United States Customs Court; appeals; reliquidation; refunds.
17.5 Stipulations.

REAPPRAISEMENT AND REVIEW

17.6 Notice of advance.
17.7 Appeal for reappraisement; form; samples; certification of documents.
17.8 Review of reappraisement decision; filing application for.

ANTIDUMPING PROTESTS AND APPEALS; AMERICAN PRODUCERS' APPEALS AND PROTESTS

17.9 Antidumping; protests and appeals; procedure.
17.11 American producers' appeals and protests; procedure.

AUTHORITY: §§ 17.1 to 17.11 issued under R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

PROTESTS

§ 17.1 Protest; form of.

(a) Protests (except protests by American manufacturers, producers, and wholesalers) filed against decisions of the collector shall be in the form and filed within the time prescribed by section 514, Tariff Act of 1930.[1]

(b) Each protest shall be in triplicate, addressed to the collector, and signed by the person protesting or his agent or attorney. Each protest shall show the address of the protestant and the address of his agent or attorney, if signed by one of these, the number and date of the entry, the name of the importing carrier, the date of importation, and the date of the liquidation of the entry, and it shall set forth distinctly and specifically with respect to each entry, payment, claim, decision, or refusal the reasons for the objection, stating the rate or rates of duty claimed to be applicable and the paragraph or section of the law, if any, under which relief is claimed.

(c) The date of liquidation for the purpose of computing the time for filing a protest under section 514, Tariff Act of 1930, shall be the date of posting or lodging a notice of the liquidation in accordance with § 16.2 (d) or § 16.12 (a) of this chapter, except that, in the case of baggage, informal, and mail entries, the date of liquidation shall be the date the liquidation becomes effective as determined in accordance with § 16.12(b) of this chapter.

(d) The date of the decision of the collector excluding any merchandise from entry or delivery under any provision of the customs revenue laws shall be the date of his written notice to the importer that entry or delivery will not be allowed. The action of the collector or other customs officer in seizing or directing the seizure of merchandise shall not constitute a notice of exclusion for the purpose of this paragraph.

(Sec. 514, 46 Stat. 734; 19 U.S.C. 1514)

§ 17.2 Power of attorney to file protest.

(a) Except as hereinafter provided in this paragraph, no protest signed by an agent or attorney shall be granted or denied by the collector unless there has been filed or is filed with the protest in the collector's office a power of attorney on customs Form 5295 or 5295–A or other form as explicit in its terms as is the prescribed customs form, authorizing such agent or attorney to make, sign, and file the protest. Such powers of attorney issued by a partnership shall be limited to a period not to exceed two years from the date of receipt thereof by the collector. All other powers of attorney may be granted for an unlimited period. Any power of attorney shall be subject to revocation at any time by written notice given to and received by the collector. When a protest is filed by an agent or attorney not named in a power of attorney as required by this section, it shall be numbered and stamped with the date of receipt in order to establish whether it was filed within the period prescribed by section 514, Tariff Act of 1930. All information customarily furnished to the United States Customs Court and the Assistant Attorney General in the case of a valid protest should be supplied in the usual manner in connection with the merits of the purported protest together with a request to the Assistant Attorney General to move the United States Customs Court to dismiss the purported protest because of the lack of timely authority of the agent or attorney to file the protest in behalf of the principal. The purported protest shall not be granted or denied by the collector but shall be transmitted, together with the entry and accompanying papers and all exhibits connected therewith, to the United States Customs Court, with a communication explaining to the court that the agent or attorney who filed the purported protest was not named in a power of attorney, and that the collector has not reviewed and modified or affirmed the protested decision as required by section 515, Tariff Act of 1930, for the reason that it has not been established that the protest was filed by a person authorized by section 514, Tariff Act of 1930.

(b) A partnership power of attorney to file protests may be executed by one member in the name of the partnership, provided the power recites the names of all the members. A corporate power of attorney to file protests shall be signed by a duly authorized officer or employee of the corporation and, if the collector is otherwise satisfied as to the authority of such corporate officer or employee to grant such power of attorney, compliance with the requirements of § 8.19(e) of this chapter may be waived with respect to such power.

(Secs. 514, 515, 46 Stat. 734; 19 U.S.C. 1514, 1515)

§ 17.3 Collector's review on protest; transmission of protests and samples to the United States Customs Court.

(a) The collector, after reviewing so much of his liquidation as is covered by the protest, may reliquidate the entry involved, assessing the duties believed by him at that time to be correct.[2]

(b) Samples shall not be required when the question involved is one of law which does not necessitate an inspection of the merchandise by the court, or when the merchandise is heavy, bulky, or otherwise of such character as to make the retention of samples impracticable. When no samples have been retained by the appraiser, they shall be furnished to the collector by the protestant in ap-

[1] "Except as provided in subdivision (b) of section 516 of this Act (relating to the protests by American manufacturers, producers, and wholesalers), all decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs laws, and his liquidation or reliquidation of any entry, or refusal to pay any claim for drawback or his refusal to reliquidate any entry for a clerical error discovered within one year after the date of entry, or within sixty days after liquidation or reliquidation when such liquidation or reliquidation is made more than ten months after the date of entry, shall, upon the expiration of sixty days after the date of such liquidation, reliquidation, decision, or refusal, be final and conclusive upon all persons (including the United States and any officer thereof), unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, as well in cases of merchandise entered in bond as for consumption, file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such liquidation." (Tariff Act of 1930, sec. 514, 19 U. S. C. 1514)

[2] "Upon the filing of such protest the collector shall within ninety days thereafter review his decision, and may modify the same in whole or in part and thereafter remit or refund any duties, charge, or exaction found to have been assessed or collected in excess, or pay any drawback found due, of which notice shall be given as in the case of the original liquidation, and against which protest may be filed within the same time and in the same manner and under the same conditions as against the original liquidation or decision. If the collector shall, upon such review, affirm his original decision, or if a protest shall be filed against his modification of any decision, and, in the case of merchandise entered for consumption, if all duties and charges shall be paid, then the collector shall forthwith transmit the entry and the accompanying papers, and all the exhibits connected herewith, to the United States Customs Court for due assignment and determination, as provided by law. Such determination shall be final and conclusive upon all persons, and the papers transmitted shall be returned, with the decision and judgment order thereon, to the collector, who shall take action accordingly, except in cases in which an appeal shall be filed in the United States Court of Customs and Patent Appeals within the time and in the manner provided by law." (Tariff Act of 1930, sec. 515; 19 U. S. C. 1515)

propriate cases and transmitted to the appraiser for verification. If samples are sent to the court at the importer's request, the transportation charges shall be paid by him. If samples are needed to sustain the Government's case, they shall be sent by mail, if possible, under Government frank; otherwise under Government bill of lading.

(Sec. 515, 46 Stat. 734; 19 U. S. C. 1515)

§ 17.4 Decisions of United States Customs Court; appeals; reliquidation; refunds.

(a) An entry which is the subject of a decision of the United States Customs Court shall be reliquidated in harmony with the judgment order thereon at the expiration of 60 days from the date of the decision, or 90 days in the case of entries covering merchandise imported into Alaska or the insular possessions of the United States, unless an appeal or motion for a rehearing is filed,[3] except that entries the subject of decisions of the court, which follow a decision of the Court of Customs and Patent Appeals involving the same issue, may ordinarily be reliquidated immediately upon receipt of the judgment orders from the United States Customs Court.

(b) An entry covering merchandise the subject of a decision of the Court of Customs and Patent Appeals shall be reliquidated only upon receipt of the judgment order from the United States Customs Court, but no such entry shall be liquidated pursuant to such order if an appeal is taken to the Supreme Court.[4]

(c) Refund of duties on reliquidation by reason of any ruling or decision of the Bureau, the United States Customs Court, or the United States Court of Customs and Patent Appeals shall be made in accordance with § 24.36 of this chapter.

(Sec. 515, 46 Stat. 734; 19 U. S. C. 1515)

§ 17.5 Stipulations.

(a) Each stipulation, whether following a decision of the Customs Court or the Court of Customs and Patent Appeals or embracing an agreed statement of facts, which is to be certified by a customs employee, shall be presented in triplicate to the office of the Assistant Attorney General, Civil Division, Customs section, 201 Varick Street, New York 14, N.Y., from which it will be forwarded for certification to the appraiser or collector for the district in which the related protest or appeal for reappraisement was filed. The said Customs Section will forward with the stipulation the pertinent entry papers and other documents.

(b) Each item or class of merchandise mentioned in the body of the stipulation shall be identified by a separate capital letter and by the initials of the certifying officer, but in no case shall the letter or symbol "X" be used for such identification purposes. The stipulation shall indicate that the merchandise is so marked on the invoice by a statement in substantially the following form:

It is hereby stipulated and agreed by and between counsel for the plaintiff and the Assistant Attorney General, attorney for the United States, that the merchandise_____, covered by the protests
(Give description)
enumerated in Schedule A, attached, and represented by the items marked "A," "B," "C," etc., on the invoice(s), and checked by _____
(The examiner will here insert his initials and his full name thereafter)
_____, assessed with duty at the rate of _____ under paragraph _____, Tariff Act of_____, as _____, is the same in all material respects as the merchandise passed upon in the case of_____
(Insert title and Abstract, T. D., C. D., or C. A. D. number)
and therein held dutiable at the rate of_____ _____ under paragraph_____ _____, Tariff Act of _____.

The conclusion of the stipulation shall contain a declaration that the protests are limited to the items of merchandise indicated by the examiner by means of a symbol letter and his initials, and abandoned as to any other merchandise mentioned in the protest. There shall also be a waiver of future amendment to the protests and a statement that "the protests are deemed submitted on this stipulation."

(c) At the end of each stipulation there shall be added a certificate in one of the following forms: [5]

(Form 1)

I have read the foregoing stipulation and am familiar with the merchandise covered by the decisions therein. I have personally passed the items covered by the foregoing stipulation and have seen samples of said items.

It is my opinion that the items covered by the stipulation are similar in all material respects to the merchandise covered by the test case, and I do so certify.

_____
(Signature of certifying officer.)
_____
(Title)
_____
(Date)
Approved:
_____
(Signature of reviewing officer.)
_____
(Title)

(Form 2)

I have read the stipulation and am familiar with the merchandise covered by the decision cited therein.

I am of the opinion that the merchandise covered by the stipulation, and which was passed upon by former Examiner _____ _____, who is now deceased (or is not available because _____ _____), is similar in all material respects to the merchandise covered by the test case.

I base my opinion upon the examination of the official records showing the practice of former Examiner _____ in advisorily classifying similar merchandise imported by this plaintiff, the inspection of samples where available, and my knowledge of the importer's line of merchandise obtained by my personal examination of current and past importations.

_____
(Signature of certifying officer.)
_____
(Title)
_____
(Date)
Approved:
_____
(Signature of reviewing officer.)
_____
(Title)

(d) If any protest number or entry number is to be deleted from a schedule of protest numbers or entry numbers attached to or embodied in a stipulation, a line shall be drawn through the number and the change shall be initialed by the attorney for the importer and the customs officers making and approving the certificate.

(e) No stipulation which does not conform to the requirements of these regulations, or with respect to which there is doubt, shall be certified unless it is approved by an authorized representative of the Assistant Attorney General's office.

[3] Any party to a proceeding before the Customs Court who is dissatisfied with the decision of such court as to the construction of the law and the facts respecting the classification of imported merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of such court, may, not later than sixty days after the entry of the decision, apply to the Court of Customs and Patent Appeals for a review of all questions of law and fact. In cases arising in the Territories and Possessions ninety days shall be allowed for making such application.

"The application shall be made by filing in the office of the clerk of the Court of Customs and Patent Appeals a concise statement of errors of law and fact complained of; and a copy of such statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the Court of Customs and Patent Appeals shall immediately order the Customs Court to transmit the record and evidence taken, together with a certified statement of the facts involved in the case and the decision thereon; and all the evidence taken by and before the Customs Court shall be competent evidence before the Court of Customs and Patent Appeals. The decision of the Court of Customs and Patent Appeals shall be final unless set aside or modified by the Supreme Court, and the case shall be remanded to the Customs Court for further proceedings to be taken in pursuance of such decision." (28 U. S. C. 2601)

[4] "The Court of Customs and Patent Appeals shall have jurisdiction to review by appeal final decision of the Customs Court in all cases as to the construction of the law and the facts respecting the classification of merchandise, the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of the Customs Court and as to the laws and regulations governing the collection of the customs revenues." (28 U. S. C. 1541)

"Cases in the Court of Customs and Patent Appeals may be reviewed by the Supreme Court by writ of certiorari." (28 U. S. C. 1256)

[5] Form 1 shall be used when the examiner who examined the merchandise is still in the Service and shall be executed by such officer. Form 2 shall be used when the examiner who examined the merchandise is no longer in the Service or is incapacitated. It shall be executed by the examiner to whom the examination of merchandise of the kind covered by the stipulation has been assigned officially.

REAPPRAISEMENT AND REVIEW

§ 17.6 Notice of advance.

The collector at the headquarters port, or the deputy collector in charge at any other port, shall promptly give notice of appraisement on customs Form 4301 when such notice is required by section 501, Tariff Act of 1930, as amended.[6] The notice shall be prepared in duplicate and the retained copy, with the date of mailing or delivery noted thereon, shall be securely attached to the invoice.

(Sec. 501, 46 Stat. 730, as amended; 19 U. S. C. 1501)

§ 17.7 Appeal for reappraisement; form; samples; certification of documents.

(a) When the collector appeals for reappraisement he shall use customs Form 4305 and at once forward a copy of the appeal to the consignee or his agent or attorney. Such appeal shall specify the particular items in the invoice affected if it does not apply to all.

(b) The appeal of a consignee or his agent shall be filed with the collector in triplicate.[7] Customs Form 4305 may be used for this purpose. The post office address of the consignee or his agent shall be set forth in each appeal.

(c) When an appeal for reappraisement by the collector or by the consignee or his agent has been completed, the collector shall transmit the invoices and all papers pertaining to reappraisement (except advance reports, customs Form 6445, and documentary evidence attached thereto) with customs Form 3085 to the United States Customs Court, 201 Varick Street, New York, N. Y.[8]

(d) When samples are sent to the court at the importer's request, the transportation charges shall be paid by him.

(e) The director of the Customs Information Exchange, New York, N. Y., the person authorized to act in that capacity during the absence or disability of the director, and any other official designated by the Commissioner of Customs, shall certify copies of official documents for the purpose set forth in section 2633, 28 U. S. Code.[8a]

(Sec. 1, 62 Stat. 980; 28 U.S.C. 2633)

§ 17.8 Review of reappraisement decision; filing application for.

Any application by or on behalf of the consignee for a review of a reappraisement decision shall be filed with collector in duplicate.[9] Customs Form 4307 may be used for this purpose.

(Sec. 1, 62 Stat. 981; 28 U.S.C. 2636)

ANTIDUMPING PROTESTS AND APPEALS; AMERICAN PRODUCERS' APPEALS AND PROTESTS

§ 17.9 Antidumping; protests and appeals; procedure.

(a) Appeals for reappraisement, applications for reviews of reappraisements, and protests relating to the Antidumping Act, 1921, shall be made in the same manner as appeals, applications for review, and protests relating to ordinary customs duties.[10]

(b) Notice of appraiser's reports which require the assessment of dumping duties shall be sent by the collector to the importer, consignee, or agent. (See § 17.6.)

(Sec. 210, 42 Stat. 15, as amended; 19 U. S. C. 169)

§ 17.11 American producers' appeals and protests; procedure.

(a) All complaints under section 516, Tariff Act of 1930, as amended,[11] and re-

[6] "The collector shall give written notice of appraisement to the consignee, his agent, or his attorney, if (1) the appraised value is higher than the entered value, or (2) a change in the classification of the merchandise results from the appraiser's determination of value, or (3) in any case, if the consignee, his agent, or his attorney requests such notice in writing before appraisement, setting forth a substantial reason for requesting the notice. * * *" (Tariff Act of 1930, sec. 501, as amended; 19 U. S. C. 1501)

[7] "* * * The decision of the appraiser, including all determinations entering into the same shall be final and conclusive upon all parties unless a written appeal for a reappraisement is filed with or mailed to the United States Customs Court by the collector within sixty days after the date of the appraiser's report, or filed by the consignee or his agent with the collector within thirty days after the date of personal delivery, or if mailed the date of mailing of written notice of appraisement to the consignee, his agent, or his attorney. * * *" (Tariff Act of 1930, sec. 501, as amended; 19 U. S. C. 1501)

"* * * A decision of the appraiser that foreign value, export value, or United States value can not be satisfactorily ascertained shall be subject to review in reappraisement proceedings under section 501; but in any such proceeding, an affidavit executed outside of the United States shall not be admitted in evidence if executed by any person who fails to permit a Treasury attaché to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise." (Tariff Act of 1930, sec. 402 (b); 19 U. S. C. 1402 (b))

[8] "* * * Every such appeal shall be transmitted with the entry and the accompanying papers by the collector to the United States Customs Court * * *." (Tariff Act of 1930, sec. 501 (a), as amended; 19 U. S. C. 1501 (a))

[8a] "In finding the value of merchandise, in reappraisement proceedings before a single judge of the Customs Court, affidavits and depositions of persons whose attendance cannot reasonably be had, price lists and catalogues, reports or depositions of consuls, customs agents, collectors, appraisers, assistant appraisers, examiners, and other officers of the Government may be admitted in evidence. Copies of official documents, when certified by an official duly authorized by the Secretary of the Treasury, may be admitted in evidence with the same force and effect as original documents. * * *" 28 U. S. C. 2633.

[9] "The Customs Court shall have exclusive jurisdiction of appeals for reappraisement and application for review of reappraisement of imported merchandise * * *." (28 U.S.C. 1582)

"In finding the value of merchandise, in reappraisement proceeding before a single judge of the Customs Court, affidavits and depositions of persons whose attendance cannot reasonably be had, price lists and catalogues, reports or depositions of consuls, customs agents, collectors, appraisers, assistant appraisers, examiners, and other officers of the Government may be admitted in evidence. Copies of official documents, when certified by an official duly authorized by the Secretary of the Treasury, may be admitted in evidence with the same force and effect as original documents.

"The value found by the appraiser shall be presumed to be the value of the merchandise. The burden shall rest upon the party who challenges its correctness to prove otherwise." (28 U.S.C. 2633)

"The judge assigned to hear an appeal for reappraisement of merchandise shall render his decision in writing, together with a statement of the reasons therefor and of the facts on which his decision is based." (28 U.S.C. 2635)

"(a) The decision of a single judge in a reappraisement proceeding shall be final and conclusive upon all parties unless within 30 days from the date it is filed with the collector of customs an application for its review is filed with or mailed to the Customs Court by the collector or other person authorized by the Secretary of the Treasury, and a copy of such application mailed to the consignee, or his agent or attorney, or filed by the consignee, or his agent or attorney, with the collector, by whom the same shall be forwarded forthwith to such court." (28 U.S.C. 2636(a))

"The decision of a division of the Customs Court, in any matter within its jurisdiction shall be the decisions of such court, and shall be final and conclusive upon all parties, unless a party to such proceeding takes an appeal to the Court of Customs and Patent Appeals within the time and manner provided in section 2601 of this title, but if the decision relates to a reappraisement of merchandise, such appeal to the Court of Customs and Patent Apeals shall be upon questions of law only." (28 U.S.C. 2637)

[10] "* * * the determination of the appraiser or person acting as appraiser as to the foreign market value or the cost of production, as the case may be, the purchase price and the exporter's sales price and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; * * * as in the case of appeals and protests relating to customs duties under existing law." (19 U. S. C. 169)

[11] "(a) *Value.* Whenever an American manufacturer, producer, or wholesaler believes that the appraised value of any imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him is too low, he may file with the Secretary of the Treasury a complaint setting forth the value at which he believes the merchandise should be appraised and the facts upon which he bases his belief. The Secretary shall thereupon transmit a copy of such complaint to the appraiser at each port of entry where the merchandise is usually imported. Until otherwise directed by the Secretary, the appraiser shall report each subsequent importation of the merchandise giving the entry number, the name of the importer, the appraised value, and his reasons for the appraisement. If the Secretary does not agree with the action of the appraiser, he shall instruct the collector to file an appeal for a reappraisement as provided in section 501 of this Act, and such manufacturer, producer, or wholesaler shall have the right to appear and to be heard as a party in interest under such rules as the United States Customs Court may prescribe. The Secretary shall notify such manufacturer, producer, or wholesaler of the action taken by such appraiser, giving the port of entry, the entry number, and the appraised value of such merchandise and the action he has taken thereon. If the appraiser advances the entered value of merchandise upon the information furnished by the American manufacturer, producer, or wholesaler, and an appeal is taken by the consignee, such manu-

quests for information as to classifications and rates of duty under subdivision (b) thereof, shall be submitted to the Commissioner of Customs in triplicate. Complaints may be filed by complainants themselves or by duly authorized attorneys or agents on their behalf. A complaint filed by a corporation shall be signed by an officer thereof, and a complaint filed by a copartnership shall be signed by a member thereof. The name of the complainant, his principal place of business, and the fact that he is an American manufacturer, producer, or wholesaler shall be shown. The complaint shall present in detail the information required by section 516, as amended; shall show the class or kind of merchandise manufactured, produced, or sold which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner to establish the similarity between the domestic and foreign merchandise; and shall contain such information as the complainant may have as to the port or ports at which such merchandise is being imported into the United States. The complaint shall be itemized as to each class or kind of merchandise involved.

(b) All information secured by the collector as to the character and description of merchandise of the kind covered by a complaint, entered after publication by the Commissioner of his decision as to the proper classification and rate of duty, and samples of such merchandise, shall be made available to the complainant upon application by him to the collector.

(c) Notice of the liquidation of the first of the entries to be liquidated, covering merchandise of a class or kind which would enable the complainant to present the issue desired, shall be given to the complainant by the collector, as required by section 516 (b), Tariff Act of 1930, as amended. If, upon examination of the information secured by the collector as to this entry and inspection of the sample, if any, the complainant believes and the collector agrees that the merchandise or the facts surrounding this importation are not sufficient to raise the issue involved in the complaint, the collector shall then give the complainant notice of the first liquidation thereafter of such an entry as will permit the framing of the issue covered by the complaint, and shall, under the same condition, continue to give such notices for so long as he is of the opinion that the complainant is sincere in his desire to protest.

(d) A complainant shall not be permitted in any case to inspect any documents or papers of the consignee or importer lodged in the customhouse, except upon instructions of the Commissioner.

(e) All appeals for reappraisement and protests filed under section 516, Tariff Act of 1930, as amended, shall be in triplicate.

(Sec. 516, 46 Stat. 735, as amended; 19 U.S.C. 1516)

---

facturer, producer, or wholesaler shall have the right to appear and to be heard as a party in interest, under such rules as the United States Customs Court may prescribe. If the American manufacturer, producer, or wholesaler is not satisfied with the action of the Secretary, or the action of the appraiser thereon, he may file, within thirty days after the date of the mailing of the Secretary's notice, an appeal for a reappraisement in the same manner and with the same effect as an appeal by a consignee under the provisions of section 501 of this Act.

"(b) *Classification.* The Secretary of the Treasury shall, upon written request by an American manufacturer, producer, or wholesaler, furnish the classification of, and the rate of duty, if any, imposed upon, designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If such manufacturer, producer, or wholesaler believes that the proper rate of duty is not being assessed, he may file a complaint with the Secretary, setting forth a description of the merchandise, the classification, and the rate or rates of duty he believes proper, and the reasons for his belief. If the Secretary decides that the classification of, or rate of duty assessed upon, the merchandise is not correct, he shall notify the collectors as to the proper classification and rate of duty and shall so inform the complainant, and such rate of duty shall be assessed upon all such merchandise entered for consumption or withdrawn from warehouse for consumption after thirty days after the date such notice to the collectors is published in the weekly Treasury Decisions. If the Secretary decides that the classification and rate of duty are correct, he shall so inform the complainant. If dissatisfied with the decision of the Secretary, the complainant may file with the Secretary, not later than thirty days after the date of such decision, notice that he desires to protest the classification of, or rate of duty assessed upon, the merchandise. Upon receipt of such notice from the complainant, the Secretary shall cause publication to be made of his decision as to the proper classification and rate of duty and of the complainant's desire to protest, and shall thereafter furnish the complainant with such information as to the entries and consignees of such merchandise, entered after the publication of the decision of the Secretary at the port of entry designated by the complainant in his notice of desire to protest, as will enable the complainant to protest the classification of, or rate of duty imposed upon, such merchandise in the liquidation of such an entry at such port. The Secretary shall direct the collector at such port to notify such complainant immediately when the first of such entries is liquidated. Within thirty days after the date of mailing to the complainant of notice of such liquidation, the complainant may file with the collector at such port a protest in writing setting forth a description of the merchandise and the classification and rate of duty he believes proper. Notwithstanding such protest is filed, merchandise of the character covered by the published decision of the Secretary, when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, rendered under the provisions of subsection (c) of this section, not in harmony with the published decision of the Secretary, shall be classified and the entries liquidated in accordance with such decision of the Secretary, and, except as otherwise provided in this Act, the liquidations of such entries shall be final and conclusive upon all parties. * * *

"(c) *Hearing and determination.* A copy of every appeal and every protest filed by an American manufacturer, producer, or wholesaler under the provisions of this section shall be mailed by the collector to the consignee or his agent within five days after the filing thereof, and such consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Customs Court. The collector shall transmit the entry and all papers and exhibits accompanying or connected therewith to the United States Customs Court for due assignment and determination of the proper value or of the proper classification and rate of duty." (Tariff Act of 1930, sec. 516, as amended; 19 U. S. C. 1516)

"In reappraisement or classification proceedings instituted under section 1516 of Title 19, an American manufacturer, producer, or wholesaler shall not have the right to inspect any documents or papers of the consignee or importer disclosing any information which the Customs Court or any judge or division thereof deems unnecessary or improper to be disclosed to him." (28 U. S. C. 2634 (b))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

GENERAL PROVISIONS

Sec.
18.1 Carriers; application to bond.
18.2 Receipt by carrier; manifest.
18.3 Transhipment; transfer by bonded cartman.
18.4 Sealing conveyances and compartments; labeling packages; warning cards.
18.5 Diversion.
18.6 Short shipments; shortages; entry and allowance.
18.7 Lading for exportation, verification of.
18.8 Liability of carrier for shortage, irregular delivery, or nondelivery; penalties.
18.9 Examination by inspectors of trunk line associations or agents of the Interstate Commerce Commission.
18.10 Kinds of entry.
18.10a Special manifest.

IMMEDIATE TRANSPORTATION WITHOUT APPRAISEMENT

18.11 Entry; classes of goods for which entry is authorized; form used.
18.12 Entry at port of destination.

SHIPMENT OF BAGGAGE IN BOND

18.13 Procedure; manifest.
18.14 Shipment of baggage in transit to foreign countries.
18.15 Domestic baggage and accompanied commercial travelers' samples through foreign territory.

WAREHOUSE AND REWAREHOUSE WITHDRAWALS FOR TRANSPORTATION

18.16 Forms of withdrawal; time.
18.17 Withdrawal procedure.
18.18 Forwarding procedure; procedure at destination.

WAREHOUSE WITHDRAWALS FOR EXPORTATION FOR TRANSPORTATION AND EXPORTATION

18.19 Procedure.

MERCHANDISE IN TRANSIT THROUGH THE UNITED STATES TO FOREIGN COUNTRIES

18.20 Entry procedure; forwarding.
18.21 Restricted and prohibited merchandise.
18.22 Procedure at port of exit.
18.23 Change of destination; change of entry.
18.24 Retention of goods on dock; splitting of shipments.

EXPORTATION FROM CUSTOMS CUSTODY OF MERCHANDISE UNENTERED OR COVERED BY AN UNLIQUIDATED CONSUMPTION ENTRY, OR MERCHANDISE DENIED ADMISSION BY THE GOVERNMENT

Sec.
18.25 Direct exportation.
18.26 Indirect exportation.
18.27 Port marks.

FINAL PORT OF EXPORTATION OF MERCHANDISE CROSSING CONTIGUOUS FOREIGN TERRITORY

18.28 Port of exportation; cancellation of charge against bond.

MERCHANDISE ARRIVING FROM A CONTIGUOUS COUNTRY IN SEALED VESSELS OR VEHICLES

18.29 Sealed shipment authorized.
18.30 Procedure; documents required.
18.31 Merchandise in less-than-carload lots.

AUTHORITY: §§ 18.1 to 18.31 issued under R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

GENERAL PROVISIONS

§ 18.1 Carriers; application to bond.

(a) Merchandise to be transported from one port to another in the United States in bond, except as provided for in paragraph (b) of this section, shall be delivered to a common carrier bonded for that purpose, but such merchandise may be transported with the use of the facilities of other bonded or nonbonded carriers.[1] For the purposes of this section, the term "common carrier" means a common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route or a freight forwarder as defined in section 402 of part IV of the Interstate Commerce Act, as amended (49 U. S. C. 1002 (a) (5).

(b) Pursuant to Public Resolution 108, of June 19, 1936,[2] and subject to compliance with all other applicable provisions of this part, the collector of customs at New York, upon the request of the party in interest, may permit merchandise entered and examined for customs purposes to be transported in bond between the ports named in the resolution by bonded cartmen or lightermen duly qualified in accordance with the provisions of Part 21 of this chapter, if the collector is satisfied that the transportation of such merchandise in this manner will not endanger the revenue.

(c) A common carrier desiring to receive merchandise for transportation in bond shall file with the collector of customs a bond on customs Form 3587 in a sum to be recommended by the collector, accompanied by the fee of $35 prescribed by § 24.12 of this chapter, a certified extract of its charter showing that it is authorized to engage in common carriage, and a statement that it is operating or intends to operate as a common carrier and that it undertakes to carry for such as choose to employ it and does not limit its carriage to specific individuals or firms. In addition to the foregoing a freight forwarder shall submit a certificate issued by the Interstate Commerce Commission showing that it is operating as a freight forwarder as defined in section 402 of part IV of the Interstate Commerce Act. The extract and statement need not be submitted in the case of railroad or steamship companies generally known to be engaged in common carriage.

(d) In the case of motor carrier bonds submitted for consideration, the following shall be filed in addition to the requirements mentioned above:

(1) A detailed description of the equipment to be used, showing whether the trucks are open or closed and whether they can be secured with customs seals, the number of trucks operated, and whether such trucks are owned or leased by the proposed bonded motor carrier, and, if leased, whether the trucks are operated by employees of the lessee or lessor.

(2) A list of the lines or routes over which the principal operates or will operate, setting out the cities or towns at which the trucks stop or lay over en route and where and in whose custody the trucks remain during such stops or layovers.

(3) A definite statement as to whether the principal transports merchandise according to schedule over each of the lines or routes named or performs carriage only when a shipment is secured for transportation.

(4) A detailed description of the terminal facilities employed by the principal at the points of origin and destination shown on the list of lines or routes.

(5) A statement showing that facilities are available for the segregation and safeguarding of the packages designated by the collector for examination from a particular shipment until such packages are called for by the public store cartman and removed to the public stores for examination.

(e) Canadian and Mexican common carriers by motor vehicles may be bonded for the transportation of merchandise between two ports in Canada or Mexico through the United States. (See § 5.11 of this chapter.)

(f) Common carrier bonds may be discontinued at any time by the Bureau or the collector of customs at the headquarters port where the bond is filed. Bonded carriers desiring to discontinue such bonds shall make application therefor to such collector.

(Sec. 551, 46 Stat. 742, as amended, 49 Stat. 1538; 19 U.S.C. 1551, 1551a)

§ 18.2 Receipt by carrier; manifest.

(a) When merchandise is delivered to a bonded carrier for transportation in bond, the carrier's receipt shall be given immediately to the lading inspector on the customs in-bond manifest covering the merchandise. The merchandise shall be laden on the convey-

---

[1] "Under such regulations and subject to such terms and conditions as the Secretary of the Treasury shall prescribe, any common carrier of merchandise owning or operating a railroad, steamship, or other transportation line or route for the transportation of merchandise in the United States, or any freight forwarder, as defined in section 402 of part IV of the Interstate Commerce Act (U. S. C., title 49, sec. 1002 (5)), upon application, may, in the discretion of the Secretary, be designated as a carrier of bonded merchandise for the final release of which from customs custody a permit has not been issued." (19 U. S. C. 1551)

[2] "The Secretary of the Treasury be, and he is hereby, authorized, when it appears to him to be in the interest of commerce, and notwithstanding any provision of law or regulation requiring that the transportation of imported merchandise be by a bonded common carrier, to permit such merchandise which has been entered and examined for customs purposes to be transported by bonded cartmen or bonded lightermen between the ports of New York, Newark, and Perth Amboy, which are all included in Customs Collection District Numbered 10 (New York): *Provided*, That this resolution shall not be construed to deprive any of the ports affected of its rights and privileges as a port of entry." (19 U. S. C. 1551a)

ance under the supervision of a customs officer, unless the transporting conveyance is not to be sealed with customs seals or the lading inspector accepts the check of the carrier as to the merchandise laden thereon.

(b) A manifest, customs Form 7512, containing a description of the merchandise shall be prepared by the carrier or shipper and signed by the agent of the carrier. Except as prescribed in § 5.11 of this chapter, relating to merchandise in transit through the United States between ports in contiguous foreign territory, a separate set shall be prepared for each entry and, if the consignment is contained in more than one conveyance, a separate set shall be prepared for each conveyance.

(c) The manifest shall be filed in duplicate and, after the goods have been laden and the carrier has receipted all copies, one copy shall be delivered to the conductor, master, or person in charge to accompany the conveyance and be delivered to the collector at destination for his record. An extra copy of customs Form 7512 may be required for use as a permit to the inspector or customs warehouse officer at the point where the merchandise is to be laden. When a copy of the carrier's manifest is lost or cannot be produced, a copy shall be made of whichever manifest is available.

(Sec. 551, 46 Stat. 742, as amended; 19 U. S. C. 1551)

§ 18.3 Transshipment;[3] transfer by bonded cartman.

(a) When bonded merchandise in one conveyance is to be transshipped under customs supervision to another single conveyance while en route to the port of destination or departure from the United States, the copy of the manifest on customs Form 7512 accompanying the merchandise to each such place of transshipment shall be surrendered to the collector of customs at that place for execution of a certificate of transfer thereon and for return to the carrier to accompany the merchandise to such port of destination or departure.

(b) When bonded merchandise is to be transshipped in accordance with paragraph (a) of this section into more than one conveyance, there shall be prepared by the carrier, agent of the shipper, or forwarder for each such conveyance on each transshipment one additional copy of the carrier's manifest on customs Form 7512 which accompanies the merchandise to that place. The Form 7512 which accompanies the shipment to the place of transshipment shall be surrendered to the collector of customs there. After the execution by the customs officer supervising the transshipment of a certificate of transfer on each such additional copy, it shall be delivered to the conductor, master, or person in charge of the conveyance in which the merchandise is forwarded, for delivery to the collector of customs at the port of destination or departure from the United States for his record.

(c) If it becomes necessary at any point in transit to remove the customs seals from a conveyance containing bonded merchandise for the purpose of transferring its contents to another conveyance or to gain access to the shipment because of casualty or other good reason, and it cannot be done under customs supervision because of the element of time involved or because there is no customs officer stationed at such point, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise, seal the conveyance in which the shipment goes forward, and make appropriate notation on the conductor's or master's copy of the manifest of his action, including the date, serial number of the new seals applied, and the reason therefor. This authorization shall not apply in any case not involving a real emergency.

(d) All transfers to or from the conveyance or warehouse of merchandise undergoing transportation in bond shall be made under the provisions of Part 21 and at the expense of the parties in interest, unless the carrier's bond is liable for the safekeeping and delivery of the merchandise while it is being transferred.

(Secs. 551, 565, 46 Stat. 742, as amended, 747; 19 U. S. C. 1551, 1565)

§ 18.4 Sealing conveyances and compartments; labeling packages; warning cards.

(a) Conveyances or compartments in which bonded merchandise is transported shall be sealed with red in-bond customs seals (except as otherwise provided for by § 5.11 (b) of this chapter) under customs supervision, except that when the compartment or conveyance cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges, or on the decks of vessels, or when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches, or in other similar circumstances, such sealing may be waived with the consent of the carrier and an appropriate notation of such waiver shall be made on the manifest. The Commissioner of Customs may authorize the waiver of sealing of conveyances or compartments in which bonded merchandise is transported in other cases when in his opinion the sealing thereof is unnecessary to protect the revenue or to prevent violations of the customs laws and regulations.

(b) Ports at which the facilities are insufficient to maintain continuous customs supervision over vessels arriving with bonded cargo while the bonded merchandise is not under customs seals shall permit the vessels to proceed to destination without further sealing and notation to this effect shall be made on the manifest.

(c) Merchandise not under bond may be transported in sealed conveyances or compartments containing bonded goods when destined for the same place or places beyond, but not when intended for intermediate places.

(d) The seals to be used in sealing conveyances, compartments, or packages are prescribed by the Department and may be obtained in accordance with § 24.13 of this chapter.

(e) Except as otherwise provided for in this paragraph, packages shipped in bond or by a carrier permitted to transport articles under the last sentence of section 553 of the tariff act, as amended, shall be corded and sealed or, in lieu thereof, the carriers shall furnish and attach to each such package a warning label on bright red paper, not less than 5 by 8 inches in size, containing the following legend in black type of a conspicuous size:

U. S. CUSTOMS

Transportation Entry No. _____.
From _____ To _____.
This package is under bond and must be delivered intact to the chief officer of the customs at _____.

WARNING

Two years' imprisonment or $5,000 fine or both, is the penalty for unlawful removal of this package or any of its contents.

Such cording and sealing or labeling of the packages so shipped is not required either when the packages are transported in a conveyance or compartment sealed with customs seals, or when the sealing of the conveyance or compartment in which the packages are transported is waived under paragraph (a) or (b) of this section. When the packages are shipped in a railroad car the sealing of which is practicable but which is not sealed because merchandise not being transported in bond is or may be carried in the same car, the packages being transported in bond shall be corded and sealed or labeled.

(f) The warning label, when used, shall be pasted securely on the package under customs supervision as close as practicable to the mark or number on the package. Additional labels may be required by the collector in such places on the package as he shall specify in any case where he is of the opinion that one is not adequate.

(g) When, in the case of crates and similar packages, it is impossible to attach the warning labels by pasting, bright red shipping tags of convenient size, large enough to be conspicuous and containing the same legend as the labels, shall be used in lieu of labels. Such tags shall be wired or otherwise securely fastened to the packages in such manner as not to injure the merchandise.

(h) Bonded carriers shall furnish and securely attach to the side doors of cars, to the doors of compartments, and on vehicles carrying bonded merchandise which are secured with customs seals, bright red cards, 8 by 10¼ inches in size, which shall be attached near such seals and on which shall be printed in large, clear, black letters the following:

United States Customs. Two years' imprisonment, or $5,000 fine, or both, is the penalty for the unlawful removal of United States customs seals on this car, vehicle, or compartment. United States customs officers only are authorized to break these seals.
Car or vessel _____
Number or name _____
From _____
To _____

NOTICE: The merchandise in this car, vehicle, or compartment shall be delivered to the chief officer of the customs at _____.

(Sec. 551, 46 Stat. 742, as amended; 19 U.S.C. 1551)

§ 18.5 Diversion.

(a) Collectors of customs at ports of first arrival may permit merchandise forwarded under any class of transportation entry to be diverted to any other port than the port named in the entry upon application of the consignee or agent. An application to divert made under this section shall be furnished in the number of copies required for the puposes of local administration.

(b) The collector at an intermediate port may permit merchandise in transit under bond under any class of transportation entry to be entered at his port for consumption, warehouse, exportation, further transportation in bond, or under any bond provision of the tariff laws.

(c) Merchandise received at the port of original destination under any class of transportation entry may be forwarded to another port or returned to the port of origin on the same transportation entry, unless the merchandise has been placed in general order in which case a new transportation entry shall be required.

(d) If it is desirable to split a shipment at a port of destination and to enter a portion for consumption or warehouse and forwarded the balance in bond, or to divert the entire shipment or a part thereof to more than one port, the collector at the port where such diversion takes place shall complete the original transaction, notify the port of origin, and require the filing of a new transportation entry or entries for the portion or portions forwarded.

(e) The diversion of shipments in bond which are subject on importation to restriction or prohibition under quarantines and regulations administered by the Bureau of Animal Industry or the Bureau of Entomology and Plant Quarantine shall be allowed only upon written permission or under regulations issued by the agency concerned.

(Secs. 551–553, 46 Stat. 742, as amended; 19 U. S. C. 1551–1553)

§ 18.6 Short shipments; shortages; entry and allowance.

(a) When there has been a short shipment and the short-shipped packages are subsequently received, they may be forwarded under a proper supplemental transportation entry bearing the original entry number or, if a new bill of lading has been issued therefor, under a new transportation entry.

(b) When there is a shortage of one or more packages or nondelivery of an entire shipment, and inquiry discloses that the merchandise has been delivered directly to the consignee, entry therefor may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity shall be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(c) If the merchandise cannot be recovered intact, as specified in paragraph (b) of this section, entry shall not be accepted and a copy of the collector's report on customs Form 3861, showing the amount of duty or any internal-revenue tax due, shall be sent to the initial carrier for its information, investigation, and report within 90 days.

(d) An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, shall be made in the liquidation of the entry.

(e) In the case of shipments arriving in the United States by rail or seatrain which are forwarded under customs in-bond seals under the provisions of § 5.11 of this chapter, and §§ 18.11, 18.20, or 18.29, a notation shall be made by the carrier or shipper on the in-bond manifest, customs Form 7512, to show whether the shipment was transferred to the car designated in the manifest or whether it was laden in the car in the foreign country, which shall be named.

(Sec. 551, 46 Stat. 742, as amended; 19 U.S.C. 1551)

§ 18.7 Lading for exportation, verification of.

(a) When merchandise (including baggage) covered by an entry or withdrawal for transportation and exportation is delivered to the exporting carrier at the port of destination, the delivering carrier's copy of the in-bond manifest shall be promptly delivered to the customs lading officer.

(b) The collector shall require only such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation as is reasonably necessary to satisfy him that the merchandise has been laden on the exporting conveyance.

(c) Whenever the circumstances warrant, and occasionally in any event, collectors shall request the Customs Agency Service to check export entries and withdrawals against the records of the exporting carriers. Such check or verification shall include an examination of the carrier's records of claims and settlement of export freight charges, and any other records which may relate to the transaction.

(Secs. 553, 557, 46 Stat. 742, as amended, 744, as amended, sec. 646, 67 Stat. 520; 19 U. S. C. 1553, 1557, 1646a)

§ 18.8 Liability of carrier for shortage, irregular delivery, or nondelivery; penalties.

(a) The initial bonded carrier shall be responsible for shortage, irregular delivery, or nondelivery at destination or port of exit of bonded merchandise, rereceived by it for carriage. When sealing is waived, any loss found to exist at destination shall be presumed to have occurred while the merchandise was in the possession of the carrier, unless conclusive evidence to the contrary is produced.

(b) Penalties imposed as liquidated damages under the common carrier's bond for shortage, failure to deliver, or irregular delivery shall be as follows:

(1) In the case of shortage, failure to deliver, or delivery direct to the consignee or other person of any merchandise free of duty, an amount equal to the value of the missing merchandise, not to exceed in any one shipment the sum of $25.

(2) In the case of shortages or failure to deliver merchandise subject to duty, an amount equal to the duties on the missing merchandise or, if the duties cannot be estimated promptly, an amount equal to 70 per centum of the value shown on the manifest.

(3) In the case of unauthorized delivery directly to the consignee or other person of merchandise subject to duty, an amount equal to one and one-quarter times the estimated duty thereon, or, if the duties cannot be estimated promptly, an amount equal to 70 per centum of the value shown on the manifest.

(c) In addition to the penalties described in paragraph (b) of this section, the carrier shall pay any internal-revenue taxes or other taxes accruing to the United States on the missing merchandise, together with all costs, charges, and expenses caused by the failure to make the required transportation, report, and delivery.

(d) In any case in which liquidated damages imposed in accordance with this section do not aggregate over $20,000 and the collector is satisfied by evidence submitted to him with an application for relief from the payment thereof that any shortage, irregular delivery, nondelivery, or any failure to obtain customs supervision was without any intent to evade any law or regulation, the collector may cancel such claim upon the payment of any lesser amount or without the payment of any amount, as he may deem appropriate under the law and in view of the circumstances.

(Sec. 551, 623, 46 Stat. 742, as amended, 759, as amended; 19 U.S.C. 1551, 1623)

§ 18.9 Examination by inspectors of trunk line associations or agents of the Interstate Commerce Commission.

(a) Upon presentation of proper credentials showing the applicant to be a representative of the Trunk Line Association, the Interstate Commerce Commission, the Joint Rate Inspection Bureau of Chicago, or the Southern Weighing and Inspection Bureau of Atlanta, inspectors of customs in charge shall permit such applicant to open and examine packages containing in-bond merchandise described in the manifest in general terms for the purpose of ascertaining whether the merchandise is properly classified under the interstate commerce laws.

(b) The opening and examination of such packages shall be without expense to the Customs Service or the owner of the goods and shall be done in the pres-

[3] For provisions for transshipment or unlading due to accident or other casualty, see § 4.31 of this chapter.

ence of a customs officer. The contents of the cases shall not be removed or disturbed further than is necessary to ascertain the character thereof. The customs officer shall require the packages to be securely closed, and shall note on the manifest the packages so inspected, the date, and by whom inspected.

(Sec. 551, 46 Stat. 742, as amended; 19 U.S.C. 1551)

§ 18.10 Kinds of entry.

(a) The following entries and withdrawals may be made for merchandise to be transported in bond:[4]

(1) Entry for immediate transportation without appraisement.

(2) Warehouse or rewarehouse withdrawal for transportation.

(3) Warehouse or rewarehouse withdrawal for exportation or for transportation and exportation.

(4) Entry for transportation and exportation.

(5) Entry for exportation.

(b) The copy of each entry or withdrawal made in any of the classes named in paragraph (a) of this section which is retained in the office of the forwarding collector shall be signed by the party making the entry or withdrawal. In the case of shipments to the Virgin Islands (U.S.) under paragraph (a), (3), (4), or (5) of this section, one additional copy of the entry or withdrawal on customs Form 7512 shall be filed and shall be mailed by the receiving collector to the collector of customs, Charlotte Amalie, St. Thomas, Virgin Islands (U.S.).

(Secs. 552, 553, 557, 46 Stat. 742, as amended, 744, as amended; 19 U.S.C. 1552, 1553, 1557)

§ 18.10a Special manifest.

Merchandise for which no other type of bonded movement is appropriate may be shipped in bond from one port to another when such shipment is authorized by the collector of customs having custody of the merchandise. For this purpose customs Form 7512 prepared in quadruplicate shall be used as a special manifest.

[4] Before shipping merchandise in bond to another port for the purpose of warehousing or rewarehousing, the shipper should ascertain whether warehouse facilities are available at the intended port of destination.

IMMEDIATE TRANSPORTATION WITHOUT APPRAISEMENT

§ 18.11 Entry; classes of goods for which entry is authorized; form used.

(a) Entry for immediate transportation without appraisement may be made under section 552, Tariff Act of 1930,[5] for merchandise in general-order warehouse at any time within 1 year from the date of importation.

(b) The carrier bringing the merchandise to the port of arrival, the carrier who is to accept the merchandise on its bond for transportation to the port of destination, or any person shown by the bill of lading or manifest, by a certificate of the importing carrier, or by any other document satisfactory to the collector to have a sufficient interest in the merchandise for that purpose may make entry for immediate transportation without appraisement.

(c) Before a shipment covered by an entry for immediate transportation or a manifest of baggage shipped in bond (other than baggage to be forwarded in bond to a customs station—see § 18.13 (a)), shall be allowed to be transported directly to a place of deposit outside a port of entry for examination and release as contemplated by section 484 (f), Tariff Act of 1930, as amended,[6] the consent of the collector and appraiser for the port of entry designated in the transportation entry or baggage manifest must first be secured. The importer must furnish such collector with a stipulation that, promptly upon the arrival of any part of the merchandise or baggage at the place of deposit, he will file an entry for the shipment at the port of entry designated in the transportation entry or baggage manifest and comply with the provisions of § 14.2 (f) of this chapter.

(d) Carload shipments of livestock shall not be entered for immediate transportation without appraisement unless they will arrive at destination before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route be such that the removal of the seals and the watering, feeding, and reloading of the stock may be done under customs supervision.

(e) Entries for immediate transportation without appraisement covering merchandise subject to detention of supervision by any Federal agency shall contain a sufficient description of the merchandise to enable the representative of the agency concerned to determine the contents of the shipment. Such merchandise covered by quarantines and regulations adminstered by the Bureau of Entomology and Plant Quarantine shall be forwarded under such entries only upon written permission of or under regulations issued by that Bureau.[7]

(f) One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder for immediate transportation without appraisement, provided all the merchandise covered by the invoice is entered simultaneously.

(g) Several importations may be consolidated in one immediate transportation without appraisement entry when the bills of lading or carrier's certificates name only one consignee at the port of first arrival.

(h) Customs Form 7512 shall be used as a combined entry, invoice, and manifest, and six copies shall be required at the port of origin. However, the collector at such port may require an extra copy or copies to be furnished for use in connection with the delivery of the merchandise to the bonded common carrier named in the entry. The merchandise shall be described on this form in such detail as to enable the collector to make an estimate of the duties due thereon. The collector may require evidence to satisfy him of the approximate correctness of the value or quantity stated in the entry. The value stated on entry at the port of first arrival is not binding on the ultimate consignee making entry at the port of destination.

(Secs. 484, 552, 46 Stat. 722, as amended, 742; 19 U.S.C. 1484, 1552)

§ 18.12 Entry at port of destination.

(a) Merchandise received under an immediate transportation without appraisement entry may be entered for transportation and exportation or for immediate exportation, or under any other form of entry, and shall be subject to all the conditions pertaining to merchandise entered at a port of first arrival if not more than 1 year has elapsed from the date of original importation. If more than 1 year has elapsed, only an entry for consumption shall be accepted. Such entry shall show the name of the port of first arrival, the transporting carrier, and the number of the immediate transportation entry. (See § 20.2 of this chapter.)

(b) The right to make entry at the port of destination shall be determined in accordance with the provisions of § 8.6 of this chapter.

(c) When a portion of a shipment is entered at the port of first arrival and the remainder is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in § 8.11 (b) of this chapter.

(d) All importations forwarded under immediate transportation without appraisement entries shall be held by the bonded carrier at the port of destination until released by the collector of customs.

(e) All the merchandise included in an immediate transportation without appraisement entry not entered within 5 days, exclusive of Sundays and holidays, after delivery of the manifest to the collector at the port of destination shall be treated as unclaimed unless the

[5] "Any merchandise, other than explosives and merchandise the importation of which is prohibited, arriving at a port of entry in the United States may be entered, under such rules and regulations as the Secretary of the Treasury may prescribe, for transportation in bond without appraisement to any other port of entry designated by the consignee, or his agent, and by such bonded carrier as he designates, there to be entered in accordance with the provisions of this Act." (Tariff Act of 1930, sec. 552; 19 U. S. C. 1552)

Special provisions concerning the shipment of baggage under this provision of law are contained in § 18.13.

[6] "* * * in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 552 of this Act may be accepted at the port of entry designated by the consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury." (Tariff Act of 1930, sec. 484 (f), as amended; 19 U. S. C. 1484 (f))

[7] For procedure as to merchandise subject to quarantine, disinfection, and special inspection, if not forwarded in bond, see Part 12 of this chapter.

collector, with the concurrence of the carrier, authorizes in writing a longer time.

(Secs. 484, 552, 46 Stat. 722, as amended, 742; 19 U.S.C. 1484, 1552)

SHIPMENT OF BAGGAGE IN BOND

§ 18.13 Procedure; manifest.

(a) Baggage may be forwarded in bond to another port of entry, or to a customs station listed in § 1.2 of this chapter, at the request of the passenger, the transportation company, or the agent of either, with the use of a baggage manifest described in paragraph (b) of this section without examination or assessment of duty at the port or station of first arrival. For this purpose, the carrier shall furnish cards of bright red cardboard not less than 2½ by 4 inches in size with the following printed text, for attachment (by wire or cord) to the baggage:

UNITED STATES CUSTOMS

Check No. _____
Baggage in bond:
Carrier _____
From _____

TO COLLECTOR OF CUSTOMS

At (destination) _____
This baggage must be delivered by carrier to the collector of customs at destination. Failure to do so renders the carrier liable to a fine.

(b) A customs manifest for baggage shipped in bond, customs Form 7520, shall be prepared in quadruplicate for each shipment. One copy shall be delivered to the carrier to accompany the baggage and shall be delivered by the carrier to the collector of customs at destination as a notice of arrival.

(c) Baggage arriving in bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under customs supervision, without examination and without being placed in bond, on a vessel proceeding to the opposite coast, provided the vessel will proceed to the opposite coast without stopping at any other port on the first coast.

(d) Checked baggage may be shipped in bond from places in contiguous foreign territory at which United States customs officers are stationed. The procedure shall be the same as though the shipment originated at a port of entry in the United States and no customs formalities shall be required at the place of actual first arrival in the United States, unless such place is the final destination.

(Secs. 498 (a), 552, 46 Stat. 728, as amended, 742; 19 U.S.C. 1498(a), 1552)

§ 18.14 Shipment of baggage in transit to foreign countries.

The baggage of any person in transit through the United States from one foreign country to another may be shipped over a bonded route for exportation. Such baggage shall be shipped under the regulations prescribed in § 18.13, except that the card or paster shall be printed on yellow paper and shall read "Baggage in bond for export." See § 5.11 of this chapter for the regulations applicable to baggage shipped in transit through the United States between points in Canada or Mexico.

(Secs. 498, 553, 46 Stat. 728, as amended, 742, as amended; 19 U.S.C. 1498, 1553)

§ 18.15 Domestic baggage and accompanied commercial travelers' samples through foreign territory.

(a) Upon the request of the carrier, a special manifest on white cardboard not less than 2½ x 4½ inches in size furnished by the carrier may be completed and attached by wire or cord, under customs supervision, to each piece of checked baggage of domestic origin transported from port to port in the United States via a foreign port or through foreign territory. This special manifest shall be in substantially the following form:

UNITED STATES CUSTOMS
IN-TRANSIT BAGGAGE MANIFEST

CARRIER'S BAGGAGEMAN: Destroy this tag if owner has access to baggage before its return to United States.

Check No. _____
This baggage is in transit from _____, (Port of exit)
through foreign territory to _____, (Port of entry)
in the United States.
This baggage laden for transportation as above stated.
Date _____
_____,
U.S. Customs Officer.

(b) The removal of the special tag manifest described in paragraph (a) of this section may be done only by a customs officer. The tag manifest shall be removed by the customs officer at the final port of re-entry into the United States. If the officer finds the special tag manifest missing or not intact or for any other reason believes that the baggage has been tampered with while outside the United States, he shall detain it for examination. Otherwise, it may be passed without examination.

(c) In lieu of attaching a special in-transit manifest to each piece as set forth in paragraph (a) of this section, the baggage may be forwarded in a car or compartment sealed with in-transit seals in harmony with § 5.8(g) of this chapter and manifested as in the case of other merchandise in transit through foreign territory.

(d) Except as otherwise provided for in paragraph (e) of this section the provisions of this section shall not apply to domestic hand baggage crossing foreign territory which, upon reentry into the United States, shall be examined in the same manner as baggage of foreign origin.

(e) If a commercial traveler arriving at a United States frontier port with his samples wishes to carry them in his own automobile through Canada to another place in the United States without displaying them in Canada and the outer containers of the samples may be readily and effectively corded and sealed, the containers may be corded and sealed with yellow automatic metal intransit seals by a United States customs officer upon compliance with the following conditions. The traveler shall furnish a list, in duplicate, of all the articles in the containers with the approximate values of the articles shown. The customs officer shall check the list with the articles and satisfy himself that the values shown for the articles appear to be approximately correct. The original of the list, signed by the customs officer over his title and showing that the articles on the list have been checked by the officer against those in the containers, shall be returned to the traveler for submission by him to the Canadian customs upon his arrival in Canada. The traveler shall also be required to execute and file customs Form 7533–B, in original only, at the port of his departure from the United States, as an intransit manifest covering the movement of the samples to the United States port through which the traveler will return to this country. After this form has been signed and dated by the customs officer, it shall be returned to the traveler for submission by him to the collector of customs at the United States port where the samples are returned to this country. In preparing customs Form 7533–B for commercial travelers' samples, descriptions and quantities may be shown thereon by merely noting "Commercial Samples" and the number of the corded and sealed containers. The traveler may be required to assist the customs officer in the cording and sealing.

(Sec. 554, 46 Stat. 743; 19 U.S.C. 1554)

WAREHOUSE AND REWAREHOUSE WITHDRAWALS FOR TRANSPORTATION

§ 18.16 Forms of withdrawal; time.

(a) Merchandise may be withdrawn from warehouse for transportation to another port of entry if withdrawal for consumption or exportation can be accomplished at the port of destination before the expiration of the warehousing period, including any lawful extension thereof. The withdrawal document in such a case shall be executed on customs Form 7512, seven copies of which shall be required at the port of origin. However, the collector at such port may require an extra copy or copies to be furnished for use in connection with the delivery of the merchandise to the bonded common carrier named in the withdrawal document. In the case of alcoholic beverages, two extra copies will be required for use in furnishing the duty statement to the collector at destination. A person in whom the right to withdraw the merchandise to be so transported has not previously been vested in accordance with § 8.39 of the chapter may make such withdrawal by (1) depositing a withdrawal for transportation on which is endorsed an assent to the withdrawal by the person in whom the right of withdrawal is then vested and (2) filing with such endorsed withdrawal the bond provided for in § 8.39 (a) of this chapter.

(b) All withdrawals for transportation shall show the original warehouse entry number, date of entry, and the port at which filed, and shall name a consignee at the port of destination or exportation. When the withdrawal is made from a rewarehouse entry, the

number and date of the rewarehouse entry, as well as the number and date of the original warehouse entry and the port at which the original warehouse entry was filed, shall be shown on such withdrawal. Each withdrawal for transportation shall contain the statement prescribed for withdrawals in § 8.37 (b) of this chapter.

(Sec. 557, 46 Stat. 744, as amended: 19 U. S. C. 1557)

§ 18.17 Withdrawal procedure.

(a) Merchandise may be withdrawn for transportation prior to liquidation of the warehouse entry. In such cases the transportation entry, customs Form 7512, shall show any ascertained weight, gauge, or measure, the entered value of the particular merchandise covered by the withdrawal, and the estimated duty.

(b) All or any part of the merchandise covered by a warehouse entry may be withdrawn for transportation without deposit in a bonded warehouse and before liquidation, and may be permitted to remain on the vessel or other vehicle or on the pier in a constructive warehouse status pending examination and appraisement. When any such merchandise not deposited in warehouse is not forwarded under the withdrawal for transportation on account of damage or other cause, the importer shall be required to withdraw such merchandise immediately for consumption or exportation, or designate a warehouse to which it may be sent, and, upon his failure to do so, it shall be treated as unclaimed.

(c) The duty on any samples withdrawn at the original port from a shipment covered by a withdrawal for transportation shall be collected at such port and a notation thereof made on the transportation entry. No separate invoice or extract from the original invoice shall be required to cover such samples.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 18.18 Forwarding procedure; procedure at destination.

(a) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond §§ 18.1–18.8.

(b) On arrival at destination, the merchandise may be entered for rewarehouse in accordance with §§ 8.33 and 8.34 of this chapter; for rewarehouse and withdrawal for consumption in accordance with § 8.35 of this chapter; or for exportation in accordance with § 8.36 of this chapter; or may be diverted to another port or returned to the port of origin in accordance with § 18.5 (c) and (d).

(c) The liquidation of the original warehouse entry shall be followed except in cases provided for in § 16.3 (c) or 16.10 (h) of this chapter in cases involving shortage, irregular delivery, or nondelivery under the warehouse withdrawal for transportation, and in cases where the collector at destination is of the opinion that circumstances make it inadvisable to follow such liquidation. When the merchandise has been withdrawn for consumption prior to the receipt of the notice of liquidation from the original port, differences of less than $3 between the estimated duty collected and the liquidated duty shall be disregarded. This procedure is likewise applicable to internal-revenue taxes.

(Sec. 7, 52 Stat. 1081, as amended, sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1321, 1557)

WAREHOUSE WITHDRAWALS FOR EXPORTATION OR FOR TRANSPORTATION AND EXPORTATION

§ 18.19 Procedure.

(a) *Direct exportation.* When merchandise is withdrawn from warehouse for direct exportation without transportation in bond to another port, an entry and manifest, Customs Form 7512, shall be filed in quintuple. However, the collector may require an extra copy or copies to be furnished for use in connection with the delivery of the merchandise to the carrier named in the withdrawal document.

(b) *Indirect exportation.* (1) When merchandise is withdrawn from warehouse for transportation and exportation, seven copies of Customs Form 7512 shall be required at the port of withdrawal. However, the collector may require an extra copy or copies to be furnished for use in connection with the delivery of the merchandise to the bonded common carrier named in the withdrawal document.

(2) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1–18.8.

(3) If any part of a shipment is not exported or when a shipment is divided at the port of exportation, extracts in duplicate from the manifest on file in the customhouse shall be made on Customs Form 7512 for each part, one copy to be sent to the discharging inspector and the other to the lading inspector to be used as a report of exportation. The splitting up for exportation of shipments arriving under warehouse withdrawals for transportation and exportation shall be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. The provisions of §§ 18.23 and 18.24 shall also be followed in applicable cases.

(c) *Withdrawal statement required.* Each withdrawal for exportation or withdrawal for transportation and exportation shall contain the summary statement prescribed for withdrawals in § 8.37 (b) of this chapter.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

MERCHANDISE IN TRANSIT THROUGH THE UNITED STATES TO FOREIGN COUNTRIES

§ 18.20 Entry procedure; forwarding.

(a) When an importation is entered for transportation through the United States and exportation to a foreign country,[8] except as provided for in § 5.11 of this chapter (relating to merchandise in transit through the United States between two points in contiguous foreign territory), six copies of Customs Form 7512 shall be required. However, the collector may require an extra copy or copies to be furnished for use in connection with the delivery of the merchandise to the bonded common carrier or other carrier named in the entry.

(b) In places where no bonded common-carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the collecter may permit entry in accordance with the procedure outlined in paragraph (a) of this section, if he is satisfied that the revenue will not be endangered thereby. The entries in such cases shall be under a separate series of numbers. A bond on customs Form 7557 in an amount equal to double the estimated duty shall be required when the collector deems such action necessary for the protection of the revenue. (See § 25.15 of this chapter for cancellation of export bonds.)

(c) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1–18.8. If the merchandise is not forwarded within 30 days from the date the entry is filed, the entry shall be canceled and the merchandise treated as unclaimed as of the date of original arrival.

(Sec. 553, 46 Stat. 742, as amended; 19 U. S. C. 1553)

§ 18.21 Restricted and prohibited merchandise.

(a) Merchandise subject upon importation to examination, disinfection, or further treatment under quarantines and Quarantine Division, Agricultural Research Service, Department of Agriculture, shall be released for transportation or exportation only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.)

(b) Narcotics and other articles prohibited admission into the commerce of the United States shall not be entered for transportation and exportation and any such merchandise offered for entry for that purpose shall be seized, except that exportation or transportation and exportation may be permitted upon written authority from the proper governmental agency and on compliance with the regulations of such agency.

(c) Articles in transit manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the collector that they are non-narcotic, shall be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the collector whether or not they are of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating whether narcotic or not, may be accepted by the collector to establish the character of such a shipment.

(Sec. 553, 46 Stat. 742, as amended; 19 U. S. C. 1553)

§ 18.22 Procedure at port of exit.

(a) If transfer is necessary, the procedure shall be as prescribed in § 18.3(d).

(b) Upon the arrival at the port of exit of express shipments of articles shown by the manifest, customs Form 7512, to be baggage and to be deliverable to the owner on board the exporting vessel, such articles may be transferred by the express company, without a permit from the collector and without the use of a transfer ticket or other customs formality, from its terminal to the exporting vessel for lading under customs supervision, if the express company is bonded as a common carrier and is responsible under its bond for the delivery of the articles to the customs officer in charge of the exporting vessel. The manifest shall show the name of the owner of the baggage and the name of the vessel on which he intends to sail.

(Sec. 553, 46 Stat. 742, as amended; 19 U. S. C. 1553)

§ 18.23 Change of destination; change of entry.

(a) The foreign destination of such merchandise may be changed by the parties in interest upon notice to the collector at the port of exit from the United States. The collector at the port of exit, in his discretion, may report the application for a change of foreign destination to the collector at the port of entry.

(b) Such merchandise may be entered for consumption or warehouse or under any other form of entry. If the merchandise is subject on importation to quarantine and regulations administered by the Bureau of Entomology and Plant Quarantine, it shall be entered for consumption or warehouse only upon written permission of, or under regulations issued by, that Bureau. (See §§ 12.10 to 12.15 of this chapter.)

(Sec. 553, 46 Stat. 742, as amended; 19 U. S. C. 1553)

§ 18.24 Retention of goods on dock; splitting of shipments.

Upon written application of a party in interest and the written consent of the owner of the dock, the collector, in his discretion, may allow in-transit merchandise to remain on the dock under the supervision of a customs officer without extra expense to the Government for any period not exceeding 90 days. Upon further application, additional extensions of 90 days or less, but not to exceed 1 year from the date of importation, may likewise be granted by the collector.[9] The splitting up of shipments for exportation shall be permitted only when the exportation of a shipment in its entirety is not possible by reason of the different destinations to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in other similar circumstances. The collector may take possession of the merchandise at any time.

(Sec. 553, 46 Stat. 742, as amended; 19 U. S. C. 1553)

EXPORTATION[10] FROM CUSTOMS CUSTODY OF MERCHANDISE UNENTERED OR COVERED BY AN UNLIQUIDATED CONSUMPTION ENTRY, OR MERCHANDISE DENIED ADMISSION BY THE GOVERNMENT

§ 18.25 Direct exportation.

(a) Except as otherwise provided for in § 9.11(a) of this chapter, relating to exportation by mail, when no entry has been made or completed for merchandise in customs custody, or when the merchandise is covered by an unliquidated consumption entry, or when merchandise which has been entered in good faith is found to be prohibited under any law of the United States, and such merchandise is to be exported directly without transportation to another port, an entry on customs Form 7512 shall be filed in quadruplicate. However, the collector may require an extra copy or copies to be furnished for use in connection with the delivery of the merchandise to the carrier named in the entry.

(b) An exportation bond on customs Form 7557, 7559, or other appropriate form shall be required with the entry, provided a consumption entry bond on customs Form 7551 or 7553 or other appropriate form was not previously given. (See also § 8.49 of this chapter.)

(c) If the merchandise has been landed or is transferred from one vessel to another and has not been entered for consumption or, in the case of goods entered for consumption and rejected, if the statistical copy of the consumption entry has not been sent to the New York Office, Foreign Trade Division, Bureau of the Census, customs Form 7513 shall be used as the export declaration.

(d) If the merchandise is exported in the importing vessel without landing, a representative of the exporting carrier who has knowledge of the facts shall certify that the merchandise entered for exportation was not discharged during the carrier's stay in port. A charge shall be made against the vessel term bond, customs Form 7569, if on file, or a vessel bond on customs Form 7567 shall be given as in the case of residue cargo for foreign ports.

(e) Gunpowder and other explosive substances, the deposit of which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in bond by sea, but shall be transferred directly from the importing to the exporting vessel.

§ 18.26 Indirect exportation.

(a) When merchandise of the character enumerated in § 18.25(a) is to be transported in bond to another port for exportation, it may be entered for transportation and exportation in accordance with the procedure in § 18.20. No bond on customs Form 7557 or 7559 shall be required as the common carrier's bond is sufficient to insure the safekeeping of the merchandise pending its exportation. In the case of merchandise prohibited entry by any Government agency, that fact shall be prominently noted on customs Form 7512 for the information of the collector at the port of exportation.

(b) The merchandise shall be forwarded in accordance with the general provisions for transportation in bond, §§ 18.1–18.8.

(c) If the merchandise is to be transferred after arrival at the selected port of exportation, the procedure prescribed in § 18.3 (d) shall be followed. The provisions of §§ 18.23 and 18.24 shall also be followed in applicable cases.

§ 18.27 Port marks.

Port marks may be added by authority of the collector and under the supervision of a customs officer. The original marks and the port marks shall appear in all papers pertaining to the exportation.

FINAL PORT OF EXPORTATION OF MERCHANDISE CROSSING CONTIGUOUS FOREIGN TERRITORY

§ 18.28 Port of exportation; cancellation of charge against bond.

Merchandise which leaves the United States at one frontier port, crosses contiguous foreign territory, and reenters the United States at another frontier port before final exportation to a contiguous country shall be treated as exported when it has passed through the last frontier port. This section shall control whether or not the merchandise to be exported is domestic or foreign and whether or not it is exported with benefit of drawback. The manifest, shipper's export declaration, and the notice of intent, if any, shall be filed at the last port of exit from the United States.

[8] "Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe, and any baggage or personal effects not containing merchandise the importation of which is prohibited arriving in the United States destined to a foreign country may, upon the request of the owner or carrier having the same in possession for transportation, be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duty, under such regulations as the Secretary of the Treasury may prescribe. In places where no bonded common-carrier facilities are reasonably available, such merchandise may be so transported otherwise than by a bonded common carrier under such regulations as the Secretary of the Treasury shall prescribe." (Tariff Act of 1930, sec. 553, as amended; 19 U. S. C. 1553)

[9] "Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for one year from the date of importation thereof, without all estimated duties and storage or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government • • •." (Tariff Act of 1930, sec. 491, as amended; 19 U. S. C. 1491)

[10] "If any merchandise entered or withdrawn for exportation without payment of the duties thereon, or with intent to obtain a drawback of the duties paid, or of any other allowances given by law on the exportation thereof, is relanded at any place in the United States without entry therefor having been made, the same shall be considered and treated as having been imported into the United States contrary to law, and all persons concerned therein and such merchandise shall be liable to the same penalties as are prescribed by section 593 of this Act." (Tariff Act of 1930, sec. 589; 19 U. S. C. 1589)

MERCHANDISE ARRIVING FROM A CONTIGUOUS COUNTRY IN SEALED VESSELS OR VEHICLES

§ 18.29 Sealed shipment authorized.

(a) Except to the extent that it is modified by §§ 18.30 and 18.31, the procedure in connection with merchandise arriving from a contiguous country in sealed vessels or vehicles under the provision of section 463, Tariff Act of 1930,[11] shall be the same as that applicable to similar classes of shipments entered at the port of first arrival for transportation in bond.

(b) Plants and plant products, unless specifically exempted from inspection by the Department of Agriculture, shall not be forwarded in sealed vessels or vehicles under the provisions of section 463 of the tariff act unless previously inspected and released by a representative of the Department of Agriculture. This restriction also applies to purebred animals for which free entry is to be claimed, which are required to be inspected at the border for identification purposes.

(Sec. 463, 46 Stat. 718; 19 U. S. C. 1463)

§ 18.30 Procedure; documents required.

(a) The master of the vessel or the person in charge of the vehicle shall present to the customs officer at the place of shipment a manifest on customs Form 7512, seven copies of which shall be required.

(b) The declaration of the "importer" on customs Form 7512 shall be executed by the shipper who shall sign it as shipper.

(c) Upon receipt of the manifest, the customs officer, after comparing the contents of the vessel or vehicle with the manifest, shall cause the said vessel or vehicle to be closed and sealed. The expense of sealing vessels and vehicles, exclusive of the compensation of the customs officer, shall be paid by the carrier.

(d) The customs officer shall deliver three copies of the manifest in a sealed envelope to the conductor or person in charge of the vessel or vehicle for transmittal to the collector of customs at the port of first arrival in the United States and shall deliver another copy to such conductor or person to accompany the shipment to destination.

(e) The carrier to whom the merchandise is released at the port of first arrival shall be bonded and the agent of such carrier shall execute the receipt on the collector's copy of the manifest.

(f) On arrival of the vessel or vehicle at the port of destination, the master of the vessel or person in charge of the vehicle shall deliver immediately the vessel or vehicle[12] and manifest covering the shipment to the collector of customs at the port.[13]

(Sec. 463, 46 Stat. 718; 19 U. S. C. 1463)

§ 18.31 Merchandise in less-than-carload lots.

Merchandise in less-than-carload lots originating at a point in a contiguous country at which there is a United States customs officer may be forwarded from that place under a manifest on customs Form 7512. The procedure to be followed shall be the same in all respects as that governing the forwarding of merchandise in sealed vessels or vehicles, except that the packages need not be sealed and the carrier shall furnish and attach to each package the warning labels required in the case of other bonded merchandise shipped in less-than-carload lots.

(Sec. 463, 46 Stat. 718; 19 U. S. C. 1463)

[11] "To avoid unnecessary inspection of merchandise imported from a contiguous country at the first port of arrival, the master of the vessel or the person in charge of the vehicle in which such merchandise is imported may apply to the customs officer of the United States stationed in the place from which such merchandise is shipped, and such officer may seal such vessel or vehicle. Any vessel or vehicle so sealed may proceed with such merchandise to the port of destination under such regulations as the Secretary of the Treasury may prescribe." (Tariff Act of 1930, sec. 463; 19 U. S. C. 1463)

[12] "If the master of such vessel or the person in charge of any such vehicle fails to proceed with reasonable promptness to the port of destination and to deliver such vessel or vehicle to the proper officers of the customs, or fails to proceed in accordance with such regulations of the Secretary of the Treasury, or unlades such merchandise or any part thereof at other than such port of destination, or disposes of any such merchandise by sale or otherwise, he shall be guilty of a felony and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than five years, or both; and any such vessel or vehicle, with its contents, shall be subject to forfeiture." (Tariff Act of 1930, sec. 464; 19 U. S. C. 1464)

[13] See § 5.1 of this chapter and notes.

PART 19—CUSTOMS WAREHOUSES AND CONTROL OF MERCHANDISE THEREIN

Sec.
19.1 Classes of customs warehouses.

GENERAL PROVISIONS

19.2 Application to bond; bond; renewal of.
19.3 Bonded warehouses; alterations; suspensions; discontinuance.
19.4 Offices; safety and sanitary requirements; supervision.
19.5 Customs warehouse officer; compensation of.
19.6 Permits; releases.
19.7 Expenses of labor and storage.
19.8 Examination of goods by importer; sampling; repacking; examination of merchandise by prospective purchasers.
19.9 Transfer to another warehouse.
19.10 Examination packages.

MANIPULATION IN BONDED WAREHOUSES AND ELSEWHERE

19.11 Manipulation in bonded warehouses and elsewhere.

ACCOUNTS

19.12 Certification of custom warehouse officer's reports.

MANUFACTURING WAREHOUSES

19.13 Requirements for establishment of warehouse.
19.14 Materials for use in manufacturing warehouse.
19.15 Withdrawal for exportation of articles manufactured in bond; waste or by-products for consumption.
19.16 Cigar-manufacturing warehouses.

SMELTING AND REFINING WAREHOUSES

19.17 Application to establish warehouse; bond.
19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.
19.19 Manufacturers' statements.
19.20 Withdrawal of products from bonded smelting or refining warehouses.
19.21 Smelting and refining in separate establishments.
19.22 Withdrawal of metal refined in part from imported crude metal and in part from crude metal produced from imported materials.
19.23 Withdrawal for exportation from one port to be credited on warehouse entry account at another port.
19.24 Theoretical transfer without physical shipment of metal producible.
19.25 Credit to be applied under various forms of withdrawals.
19.26 Certificates as to dutiable metals entirely lost.
19.27 Copper-bearing ores and concentrates and copper-bearing materials to be smelted or refined in bond.
19.28 Allowances for smelting and refining losses; dutiable zinc.

SPACE BONDED FOR THE STORAGE OF WHEAT

19.29 Sealing of bins or other bonded space.
19.30 Domestic wheat not to be allowed in bonded space.
19.31 Bulk wheat of different classes and grades not to be commingled in storage.
19.32 Wheat manipulation; reconditioning.
19.33 General order; transportation in bond.
19.34 Customs supervision.

AUTHORITY: §§ 19.1 to 19.34 issued under R.S. 161, 251, sec. 624, 46 Stat. 759; 5 U.S.C. 22, 19 U.S.C. 66, 1624. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 19.1 Classes of customs warehouses.

(a) Customs warehouses shall be designated according to the following classifications:

(1) *Class 1.* Premises owned or leased by the Government and used for the storage of merchandise undergoing examination by the appraiser, under seizure, or pending final release from customs custody.[1] Unclaimed merchandise stored in such premises shall be held under "general order."[2]

[1] "Any premises owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a 'public storage.'" (Tariff Act of 1930, sec. 561; 19 U. S. C. 1561)

[2] "The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise: *Provided*, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and accounted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No collector or other officer of the customs shall own, in whole or in part, any bonded warehouse or

When such premises are not sufficient or available for the storage of seized and unclaimed goods, such goods may be stored in a warehouse of class 3, 4, or 5. So far as such warehouses are used for this purpose, they shall be designated "bonded stores." If there are no warehouses of these classes available, the collector may, with the approval of the Bureau, rent suitable premises for the storage of seized and unclaimed goods.[3]

(2) *Class 2.* Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it shall be known as a private bonded warehouse.

(3) *Class 3.* Public bonded warehouses used exclusively for the storage of imported merchandise.

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the collector deems it necessary, the yards shall be enclosed by substantial fences with entrance and exit gates capable of being secured by customs locks. The inlets and outlets to tanks shall be secured by means of seals or customs locks in combination with steel chains.

(5) *Class 5.* Bonded bins or parts of buildings or of elevators to be used for the storage of grain. The bonded portions shall be effectively separated from the rest of the building.

(6) *Class 6.* Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal-revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.[4]

(7) *Class 7.* Warehouses bonded for smelting and refining imported ores and crude metals for exportation or domestic consumption.[5]

(8) *Class 8.* Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under customs

enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance." (Tariff Act of 1930, sec. 560; 19 U. S. C. 1560)

[3] "Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury [Commissioner of Customs] as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. * * *" (Tariff Act of 1930, sec. 555; 19 U. S. C. 1555)

[4] "All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: *Provided, further*, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them shall not be permitted in such manufacturing warehouses.

"Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

"No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days from the date of the enactment of this Act shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

"Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

"Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: *Provided*, That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under the Act of March 24, 1874, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such waste or by-products were imported from a foreign country: *Provided*, That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

"A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

"Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

"Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom: *Provided*, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

"The provisions of section 3433 of the Revised Statutes shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this Act and to the merchandise conveyed therein.

"Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided*, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further*, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier." (Tariff Act of 1930, sec. 311, as amended; 19 U. S. C. 1311)

[5] "The works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may, upon the giving of satisfactory bonds, be designated as bonded smelting warehouses. * * *" (Tariff Act of 1930, sec. 312; 19 U. S. C. 1312)

toms supervision and at the expense of the proprietor.[6]

(b) The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, or 7 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) When parts of buildings are used as customs bonded warehouses, the bonded and nonbonded portions thereof shall be effectively separated by partitions of substantial materials and construction erected in such a manner as to render it impossible to enter the premises in the absence of the customs warehouse officer without such violence as to make the entry easy of detection. So-called poultry wire, wood lattice or palings, plasterboard, beaverboard, or other materials of a light or flimsy nature, or materials of a substantial nature but which are insecurely installed are not acceptable for use as partitions. Where partitions consist of wire mesh or expanded metal panels, the wire shall be not less than No. 6 gauge (of a diameter of .192 inch) or equivalent cross sectional area with mesh openings not to exceed 2 inches in the larger dimension, and with the panel material riveted or welded into channel-iron or T-iron frames or secured with through hairpin bolts to 2 x 4 inch wood stud partition framing. Wood partitions shall be constructed of not less than 1-inch boards (dressed if desired) of uniform length between supports, nailed with not less than ten penny nails to not less than 2 x 4 inch stud framing and for additional security held in place by ⅛ x 1 inch metal cover-strips secured crosswise of the boards, preferably over the nailed ends, with carriage bolts through the boards and partition framing.

(Secs. 311, 312, 555, 556, 557, 560, 561, 562, 46 Stat. 691, as amended, 692, 743, 744, as amended, 745, as amended; 19 U. S. C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562)

GENERAL PROVISIONS

§ 19.2 Application to bond; bond; renewal of.

(a) An owner or lessee desiring to establish a bonded warehouse shall make written application to the collector, describing the premises, giving their location, and stating the class of warehouse and shall transmit therewith the fee of $50 prescribed by § 24.12 of this chapter. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse is to be operated only for the storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse is to be operated as a private bonded warehouse, the application shall also state the general character of the merchandise to be stored therein, with an estimate of the maximum duties and taxes which will be due on such merchandise at any one time.[7] All storage warehouses operated by one proprietor in the same customs district may be included in one bond.

(b) The application shall be accompanied by a certificate signed by the president or secretary of a board of fire underwriters, and at ports where no such board exists by an officer or agent of each of two or more insurance companies, stating that the building is a suitable warehouse and acceptable for fire-insurance purposes. The application shall also be accompanied by a blueprint showing measurements, openings, etc., of the building or space to be bonded. If the warehouse to be bonded is a tank, the blueprint shall show all outlets, inlets, and pipe lines and shall be certified as correct by the proprietor of the tank. A gauge table showing the capacity of the tank in United States gallons per inch or fraction of an inch of height, certified by the proprietor to be correct, shall accompany the application. When a part or parts of a building are to be used as the warehouse, there shall be given a detailed description of the materials and construction of all partitions. When the proprietor is the lessee of the premises covered by the application and bond, he shall furnish a stipulation concurred in by the sureties, agreeing that, prior to the expiration of the lease covering the premises without renewal thereof, he will (1) transfer any merchandise remaining in the bonded warehouse to an approved bonded warehouse, (2) pay all duties, charges, or exactions due on such merchandise, or (3) otherwise dispose of such merchandise in accordance with the customs laws and regulations.

(c) On approval of the application to bond a warehouse of class 2, 3, 4, 5, or 8, a bond shall be executed on customs Form 3581.[8]

(d) On approval of the application to bond a proprietor's manufacturing warehouse, class 6, a bond shall be executed in duplicate on customs Form 3583. In the case of a bonded smelting and refining warehouse, class 7, the bond shall be executed with the required number of copies and in the form prescribed in T. D. 50267, as amended by T. D. 52403. All documents referred to in paragraph (b) of this section as may relate to proprietor's warehouse bonds, class 6 or 7, shall be submitted in duplicate.

(e) Any proprietor of a bonded warehouse may be required on 10 days' notice from the collector to furnish a new proprietor's warehouse bond; and if he fails to do so, no more goods shall be sent to the warehouse and those therein shall be removed at the expense of such proprietor. A new bond is required if the bonded warehouse is substantially altered or rebuilt.

(Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556)

§ 19.3 Bonded warehouses; alterations; suspensions; discontinuance.

(a) Alterations in bonded warehouses, class 6 or 7, may be made by permission of the collector, unless they constitute a material change in the premises, in which case the approval of the Bureau is required. All alterations to warehouses of class 2, 3, 4, 5, or 8, or combinations thereof, may be made by permission of the collector without approval of the Bureau.

(b) The use of all or part of a bonded warehouse or bonded floor or space may be temporarily suspended by the collector on written application of the proprietor if there are no bonded goods in the area concerned. Upon the removal of all free goods, if any, the premises may again be used for the storage of bonded goods upon written application of the proprietor. In each case the collector of customs shall indicate his action by endorsement on the application. Rebonding will not be necessary.

(c) The Bureau may discontinue the bonded status of a warehouse at any time for reasonable cause. The collector may take similar action in the case of a warehouse of class 2, 3, 4, 5, or 8. When the proprietor desires to discontinue the bonded status of his warehouse, he shall make written application therefor to the collector. If the application is approved by the collector, he shall require all goods in such warehouse upon which the duty has not been paid to be transferred to another bonded warehouse without expense to the Government. The number of warehouses covered by a general bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires.

(Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556)

§ 19.4 Offices; safety and sanitary requirements; supervision.

(a) Suitable accommodations for the customs warehouse officer shall be provided by the proprietor of the warehouse. An office for the accommodation of the warehouseman may be allowed in the bonded premises if separated by a partition from the space used for the storage of bonded goods.

(b) Fires shall not be permitted in any warehouse, other than warehouses of classes 6, 7, and 8, except in the office of the customs warehouse officer and warehouseman. When lights are required, only safety lanterns or electric lights shall be used.

(c) All the doors and other entrances of bonded warehouses shall be secured by customs locks.

(d) In the case of merchandise subject to the Federal Food, Drug, and Cosmetic Act particular care shall be exercised by the warehouseman to keep the premises clean and free of rodents, insect infestation, trash, or other insanitary conditions.

(e) The character and extent of the customs supervision to be exercised in connection with any warehouse or transaction provided for in this part shall be in accordance with § 23.35 of this chapter.

(Secs. 555, 556, 46 Stat. 743; 19 U.S.C. 1555, 1556)

§ 19.5 Customs warehouse officer; compensation of.

(a) The collector shall, when necessary, designate one or more employees to act as customs warehouse officers of each bonded warehouse or public store.[9]

(b) The charge to be made for the services of a customs warehouse officer or a customs employee temporarily assigned to act as a customs warehouse officer at a bonded warehouse on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to $\frac{1}{1704}$ of the annual rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under section 301 of the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 921). The charge to be made for the services of a customs warehouse officer or a customs employee temporarily assigned to act as a customs warehouse officer at a bonded warehouse on a holiday or outside his established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945 as amended (5 U.S.C. 911, 922) or the customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed, and shall be not less than one hour for each visit with time after the first hour, excluding lunch periods, charged in multiples of one hour, fractional parts of an hour of less than 30 minutes being disregarded and those of 30 minutes or more being charged as one hour. In no case shall the charge be less than one dollar.

(c) The necessary transportation expenses and any authorized per diem expenses of a customs employee assigned to perform services at a warehouse at which he is not regularly assigned shall be reimbursed by the warehouse proprietor.

(d) When a customs officer is regularly assigned to duty at more than one warehouse, the charge for his compensation and transportation expenses in going from one bonded warehouse to another shall be equitably apportioned among the respective warehouse proprietors concerned. However, no charge shall be made for transportation expenses when a customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(e) Upon the failure of the warehousemen to pay such charges when due, or to comply with the laws and regulations applicable to bonded warehouses, the collector shall refuse entry of merchandise for such warehouse and report the facts to the Bureau.

(Secs. 201, 301, 302, 604, 59 Stat. 296, 298, as amended, 303, 304, as amended, sec. 603, 63 Stat. 965, as amended, secs. 203, 204, 65 Stat. 679, as amended, 681, sec. 5, 36 Stat. 901, as amended, secs. 451, 555, 556, 46 Stat. 715, as amended, 743; 5 U.S.C. 911, 921, 922, 944, 1113, 2062, 2063, 19 U.S.C. 267, 1451, 1555, 1556)

§ 19.6 Permits; releases.

(a) Upon the receipt of a permit signed by the collector, or other customs officer designated for such purpose, the customs warehouse officer shall release the merchandising covered thereby to the warehouse proprietor, unless the proprietor furnishes a delivery order authorizing release to some other person, in which case the merchandise shall be released to the person designated by the proprietor.[10] If the permit bears the endorsement provided for in § 8.38 of this chapter, release in accordance with the foregoing shall be withheld, subject to the provisions of § 20.3 (c) of this chapter, pending the lodging of an order to release on customs Form 7505–B.

(b) Before delivery is permitted, the permit shall be endorsed to show that storage, cartage, labor, and other charges due the Government have been paid.

(c) Merchandise covered by a notice of lien filed by the carrier shall not be released until the lien has been satisfied or discharged.[11]

(Secs. 484 (j), 555, 556, 46 Stat. 723, 743; 19 U.S.C. 1484(j), 1555, 1556)

§ 19.7 Expenses of labor and storage.

(a) All merchandise deposited in public stores or in bonded warehouses shall be held liable for the expenses of labor and storage chargeable thereon at the customary rates and for all other expenses accruing upon the goods.

(b) The rates of storage and labor shall be agreed upon between the importer and the warehouse proprietor, but in case of disagreement the collector may, with the consent of all parties in interest, determine the rates to be charged.

(c) Except in cases provided for by § 8.28 (c) of this chapter, when merchandise is stored in a public store under a warehouse entry, general order, or otherwise, the charges for storage due the Government shall be paid before the packages are delivered. The charges shall be based upon the existing bonded warehouse tariff of the port for storage and labor.

(Secs. 555, 556, 46 Stat. 743; 19 U. S. C. 1555, 1556)

§ 19.8 Examination of goods by importer; sampling; repacking; examination of merchandise by prospective purchasers.

Importers may, upon application approved by the collector on customs Form 3499 and under the supervision of the customs warehouse officer, examine, sample, and repack[12] or transfer mer-

---

[6] "Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the collector that it is necessary to the safety or preservation of the merchandise to repack or transfer the same: *Provided*, That upon permission therefor being granted by the Secretary of the Treasury, and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition. The basis for the assessment of duties on such merchandise so withdrawn for consumption shall be the adjusted final appraised value, and if the rate of duty is based upon or regulated in any manner by the value of the merchandise, such rate shall be based upon or regulated by such adjusted final appraised value. The scouring or carbonizing of wool shall not be considered a process of manufacture within the provisions of this section. Under such regulations as the Secretary of the Treasury shall prescribe imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse." (Tariff Act of 1930, sec. 562, as amended; 19 U. S. C. 1562)

[7] "If any merchandise is fraudulently concealed in, removed from, or repacked in any bonded warehouse, or if any marks or numbers placed upon packages deposited in such a warehouse be fraudulently altered, defaced, or obliterated, such merchandise and packages shall be subject to forfeiture, and all persons convicted of the fraudulent concealment, repacking, or removal of such merchandise, or of altering, defacing, or obliterating such marks and numbers thereon, and all persons aiding and abetting therein shall be liable to the same penalties as are imposed by section 593 of this Act." (Tariff Act of 1930, sec. 597; 19 U. S. C. 1597)

[8] "* * * Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury [Commissioner of Customs] to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. * * *" (Tariff Act of 1930, sec. 555; 19 U. S. C. 1555)

[9] "* * * Except as otherwise provided in this Act, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise store in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse." (Tariff Act of 1930, sec. 555; 19 U.S.C. 1555)

[10] "* * * merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. * * *" (Tariff Act of 1930, sec. 484 (j); 19 U. S. C. 1484 (j))

The Government will not compel a warehouseman to deliver bonded goods as the interest of the Government is in the collection of the duty on the merchandise or its exportation, and any question of infringement of private rights by the warehouseman must be left to the parties in interest.

[11] Imported goods in bonded warehouse are exempt from taxation or judicial process of any State or subdivision thereof. (See T. D. 50200)

[12] Repacking shall be considered a manipulation within the purview of sec. 562, Tariff Act of 1930, as amended.

chandise in bonded warehouse. Where there will be no interference with the orderly conduct of customs business and no danger to the revenue, prospective purchasers may be permitted to examine merchandise in bonded warehouses upon the written request of the owner, importer, consignee, or transferee.

(Secs. 555, 556, 562, 46 Stat. 743, 745, as amended; 19 U.S.C. 1555, 1556, 1562)

§ 19.9 Transfer to another warehouse.

(a) With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred under customs supervision and at the expense of the party requesting it from one bonded warehouse to another in the same port upon the written request of the importer or transferee to the collector, who shall issue an order for such transfer on customs Form 7500–A.[12]

(b) All charges shall be paid before goods are transferred from a warehouse of class 1.

(Secs. 555, 556, 46 Stat. 743; 19 U. S. C. 1555, 1556)

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the collector to the warehouse for delivery unless the warehouseman shall endorse on the duty-paid permit that the merchandise may be otherwise released.

(Secs. 555, 556, 46 Stat. 743; 19 U. S. C. 1555, 1556)

Manipulation in Bonded Warehouses and Elsewhere

§ 19.11 Manipulation in bonded warehouses and elsewhere.

(a) So far as applicable, the general provisions of the regulations governing warehouses bonded for the storage of imported merchandise shall apply to bonded manipulation warehouses and to other designated places of manipulation.[14]

(b) Merchandise to be manipulated under section 562, Tariff Act of 1930, as amended,[15] may be entered on customs Form 7502 and sent directly to a storage-manipulation warehouse.

(c) Merchandise entered for warehouse may be transferred to a storage-manipulation warehouse; or merchandise entered for storage-manipulation warehouse may be transferred after manipulation to the storage portion of the same warehouse, to another storage warehouse, or to a manufacturing warehouse of class 6.

(d) The application to manipulate, which shall be filed on customs Form 3499 with the collector having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the collector to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of section 562, Tariff Act of 1930, as amended. If the collector is satisfied that the merchandise is to be so manipulated, he may issue a permit on customs Form 3499, making any necessary modification in such form. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such section 562.

(e) No merchandise shall be manipulated elsewhere than in a bonded warehouse unless the merchandise has been regularly entered for consumption or warehouse and is of a class entitled to the warehousing privilege under section 557, Tariff Act of 1930, as amended.

(f) Upon compliance with the provisions of paragraph (d) of this section, manipulated merchandise may be further manipulated before withdrawal in cases where the collector is satisfied that this will not endanger the revenue or interfere with the efficient conduct of customs business. The merchandise remaining in the warehouse shall be properly repacked after each manipulation.

(g) Manipulated merchandise may be withdrawn under any form of withdrawal, but no withdrawal shall be accepted for less than an entire repacked package. Each type of withdrawal filed shall contain a summary statement indicating the quantity in the warehouse account after manipulation and immediately before the withdrawal, the quantity withdrawn on the particular withdrawal, and the quantity remaining in the warehouse after the withdrawal. When merchandise covered by a consumption entry is manipulated elsewhere than in a bonded warehouse and thereafter withdrawn for consumption, the withdrawal shall be on customs Form 7505 and shall be liquidated in accordance with § 16.2(e) of this chapter.

(Secs. 556, 562, 46 Stat. 743, 745, as amended; 19 U.S.C. 1556, 1562)

Accounts

§ 19.12 Certification of customs warehouse officer's reports.

Before transmittal to the collector, the customs warehouse officer's report of merchandise received, delivered, released, withdrawn, or transferred shall be certified by the proprietor of the warehouse to be correct.

(Sec. 556, 46 Stat. 743; 19 U.S.C. 1556)

Manufacturing Warehouses

§ 19.13 Requirements for establishment of warehouse.

(a) Buildings or parts of buildings and other enclosures may be designated as bonded manufacturing warehouses if the Bureau is satisfied that their location, construction, and arrangement afford adequate protection to the revenue.[16] Such warehouses shall be used solely and exclusively for the purpose for which they are bonded. The general provisions pertaining to warehouses for the storage of bonded merchandise shall, so far as relevant, apply to bonded manufacturing warehouses.

(b) Application for the establishment of such a warehouse shall be made to the collector of customs for the port where the premises are situated, setting forth the size, construction, and location of the premises, the manufacture proposed to be carried on, and the kinds of materials intended to be stored and used therein.

(c) The procedure outlined in § 19.2 with respect to the application to bond the premises and the execution of the bond shall be followed.

(d) A list of all articles intended to be manufactured in the warehouse shall be filed in duplicate with the collector of customs, who shall transmit one copy to the Bureau. Such list shall set forth the specific names under which the articles are to be exported and under which they will be known to the trade, and shall show the names of all the ingredients entering into the manufacture of such articles, with the quantities of such ingredients or materials as may be dutiable or taxable.[17]

(e) Proprietors of such warehouses are required to conform strictly to the formulas filed with the bond, or subsequently, and in no instance shall an article be permitted to be manufactured in or withdrawn from the warehouse which does not contain all the ingredients and in the quantities specified in the formula for the manufacture of such article, or which contains any ingredient not specified in the formula.

(f) Manufactured articles shall be marked with the trade name of the goods and may be marked, in addition, with the formulas and with such insignia or name as may be indicated or desired by the purchaser, if such additional marking will in no manner conflict with the requirements of the formula or present or create a false or misleading statement or impression.

(g) Each bonded manufacturing warehouse shall have a portion separated from the remainder of the premises and secured by customs locks to be used exclusively for the storage of all imported merchandise, domestic spirits, or other materials subject to internal-revenue tax transferred into such warehouse for manufacture. A like compartment shall be provided to be used exclusively for the storage of products manufactured in the warehouse. The premises shall be so secured as to prevent any person from having access thereto in the absence of the customs warehouse officer in charge, and the goods stored therein shall be so arranged as to give all practicable convenience to such officer in making the required examination or taking samples for analysis.

(Sec. 311, 46 Stat. 691, as amended; 19 U. S. C. 1311)

§ 19.14 Materials for use in manufacturing warehouse.

(a) Imported merchandise to be used in a bonded manufacturing warehouse shall be entered on customs Form 7521 at the port at which such warehouse is located. Such form shall be prepared in quintuple. If the merchandise is not to be taken immediately to the manufacturing warehouse, a warehouse or rewarehouse entry, as the case may be, shall be made and customs Form 7521 used as a combined withdrawal and entry for manufacturing warehouse. If the merchandise has been imported or entered for warehouse at another port, it may be forwarded to the port at which the manufacturing warehouse is located under an immediate transportation without appraisement entry or warehouse withdrawal for transportation, whichever is applicable.

(b) Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on customs Form 7571 in an amount equal to double the estimated duties shall be required unless a general bond on customs Form 3583 has been given.

(c) When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacture of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application shall be executed in duplicate in the following form, one copy to be filed with the collector and the other with the customs warehouse officer in charge of the warehouse:

APPLICATION TO RECEIVE FREE MATERIALS

Port of _____,
_____, 19___.

To the Collector of Customs:

Application is hereby made to receive into the bonded manufacturing warehouse known as _____, situated at _____, the following-described articles and materials:

Marks	Nos.	Description	Quantity	Value

_____
(Signature)

Port of _____, _____ 19_____.

To the customs warehouse officer in charge of the bonded manufacturing warehouse specified above:

The above-described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.

_____
Collector

(d) For the transfer of domestic spirits from an internal-revenue bonded warehouse to a bonded manufacturing warehouse, or for the transfer of domestic wines from internal-revenue bonded winery or bonded wine storeroom to a bonded manufacturing warehouse, a bond on customs Form 7571 shall be required unless the warehouse is covered by a bond on customs Form 3583.

(Sec. 311, 46 Stat. 691, as amended; 19 U. S. C. 1311)

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

(a) Except cigars manufactured in bond and supplies for vessels, no articles or materials received into a bonded manufacturing warehouse or articles manufactured therefrom shall be withdrawn or removed therefrom except for direct exportation or transportation and exportation in bond to a foreign country. The exportation or shipment shall in every case be under the supervision of a customs officer.[18]

(b) The coverings or containers of imported articles or materials, whether or not subject to duty apart from their contents, are not "articles or materials" within the meaning of section 311, Tariff Act of 1930, as amended, and need not be exported, but may be withdrawn from the warehouse for consumption under customs Form 7505 upon payment of the duties applicable to such coverings or containers in their condition as withdrawn.

(c) Labels, coverings, and empty containers imported to be used in putting up the manufactured articles, if subject to duty or tax, constitute "articles or materials" within the meaning of section 311, Tariff Act of 1930, as amended, but may be withdrawn for consumption upon payment of all applicable duties and taxes.

(d) When waste or a byproduct is withdrawn for consumption, customs Form 7505 shall be used, modified as necessary and describing in detail the waste or byproduct and the imported material from which it was produced. Such waste or byproduct shall be appraised at its wholesale value at the time of withdrawal in the principal markets of the country from which the material was imported, determined in accordance with the provisions of section 402, Tariff Act of 1930, as amended. Upon payment of the duty, the withdrawal permit shall be issued for delivery and a proper credit given upon the manufacturer's bond.

(e) Each withdrawal covering the items which are permitted to be withdrawn for consumption shall contain a summary statement thereon, showing for each class of merchandise the quantity on hand in the account, the quantity covered by the withdrawal presented, and the quantity remaining in the warehouse account, if any.

(f) The general procedure covering warehouse withdrawals for exportation shall be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse, except that in the case of flour each copy of customs Form 7512 shall bear the following legend:

Produced from wheat imported after September 15, 1930, without payment of duty thereon. Must not be exported to Cuba without permission from the collector at the port of withdrawal.[19]

(g) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exterior port under the provisions of section 311, Tariff Act of 1930, as amended,[20] for the sole

---

[12] "* * * merchandise may be withdrawn, at any time within three years from the date of importation, * * * for transfer to another bonded warehouse at the same port: * * *." (Tariff Act of 1930, sec. 557 (a), as amended; 19 U. S. C. 1557 (a))

[14] "* * * Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous customs custody may be manipulated in accordance with the provisions of this section under customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of customs business requires that such manipulation be done in a bonded warehouse." (Tariff Act of 1930, sec. 562, as amended; 19 U. S. C. 1562)

[15] "* * * upon permission therefor being granted by the Secretary of the Treasury [Commissioner of Customs], and under customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without payment of the duties, or for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in conditions. * * *." (Tariff Act of 1930, sec. 562, as amended; 19 U.S.C. 1562)

[16] "All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: *Provided*, That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U. S. C. 1311)

[17] "* * * Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury [Commissioner of Customs] a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein; * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

[18] "* * * Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U. S. C. 1311)

[19] "* * * No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days after the date of the enactment of this Act, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect to such flour in the country which it is to be exported. * * *" (Tariff Act of 1930, sec. 311, as amended; 19 U. S. C. 1311)

[20] "* * * Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom: * * *." (Tariff Act of 1930, sec. 311, as amended; 19 U. S. C. 1311)

purpose of immediate export or may be withdrawn pursuant to section 309 (a) of the tariff act, as amended, or I. R. C. section 3451. Such withdrawal shall be effected on customs Form 7512 as provided for in § 18.16 of this chapter. A rewarehouse entry shall be made at the exterior port in accordance with § 8.33 of this chapter supported by a bond on custom Form 7555 in an amount equal to the aggregate sum of double the estimated amount of ordinary customs duties on the merchandise (including any taxes imposed thereon which are required by law to be treated as duty imposed by the Tariff Act of 1930), plus the estimated amount of any other tax or taxes on the merchandise collectible by the collector of customs. The recital clause of such bond shall be modified to show that the merchandise is the product of a bonded manufacturing warehouse, class 6, and that it has been rewarehoused at the exterior port for the sole purpose of immediate export or withdrawal pursuant to section 309(a) of the tariff act, as amended, or I.R.C. section 3451. The following new condition shall be added to the bond: "And if said articles shall be exported or withdrawn in accordance with the provisions of section 311 or 309(a), Tariff Act of 1930, as amended, or in accordance with I.R.C. section 3451, in the manner prescribed by the regulations; or, in default thereof, if the obligors shall pay to the collector as liquidated damages an amount equal to the aggregate sum of double the duties assessable on such part of the shipment as shall not have been so exported or withdrawn, plus the amount of any internal-revenue tax assessable thereon".

(h) No merchandise manufactured in a bonded manufacturing warehouse may be withdrawn by a person other than the manufacturer either from the manufacturing warehouse or from a warehouse where the merchandise is stored awaiting direct exportation, unless an authorization of the manufacturer is endorsed on the face of the withdrawal, or the manufacturer previously and in writing has transferred the right of withdrawal.

(i) When spirits and wines are withdrawn for shipment to Puerto Rico under section 311, Tariff Act of 1930, as amended, the procedure outlined in § 7.1 of this chapter shall be followed.

(j) As proof of manufacture and exportation, the manufacturer shall file in the case of each transaction or period of manufacture a statement verified by the customs warehouse officer in charge of the warehouse, showing the date and number of the bond, the quantity and identity of the dutiable or taxable merchandise used, and the quantity and description of the articles into which it has been manufactured, together with the quantities of any byproducts and waste produced. In the case of articles manufacturer with the use of distilled spirits, the statement shall also be verified by the foreman or chemist of the factory and shall show the number of packages of spirits used, the marks and numbers, the number of wine, proof and taxable gallons, and the degree of proof.

(k) The same proofs of exportation shall be required as in the case of other warehouse withdrawals for exportation.

(l) When the fact of exportation of all the products has been established by such proofs and any byproducts and waste have been exported or released for consumption, the bond given by the manufacturer, or the charges against his general bond, shall be canceled.

(m) Shortage, irregular delivery, and nondelivery occurring with respect to merchandise withdrawn from bonded manufacturing warehouse while it is under transportation in bond shall be charged against the bonded carrier.

(Sec. 311, 46 Stat. 691, as amended; 19 U.S.C. 1311)

§ 19.16 Cigar-manufacturing warehouses.

(a) Tobacco to be used in the manufacture of cigars in bond under the provisions of section 311, Tariff Act of 1930, as amended,[21] shall be entered for warehouse but may be transferred directly from the importing vessel or from a bonded warehouse of class 2 or 3 into a bonded manufacturing warehouse of class 6 and stored in separate compartments therein under customs locks pending its withdrawal for use in the manufacture of cigars. Before any such tobacco may be transferred to the manufacturing department in such premises for use in the manufacture of cigars, it shall be withdrawn in original packages and duty paid thereon in the same manner and under the same regulations as govern the withdrawal of merchandise for consumption from warehouses of class 3.

(b) Cigars manufactured in a bonded warehouse for home consumption shall not be removed therefrom until customs stamps have been affixed to each package containing such cigars. Upon removal of cigars, the customs officer shall make appropriate entry in his records of the quantity and class of such cigars. Upon preparation of Form 2135 in accordance with 26 CFR 270.220 and 270.221, the proprietor shall present it to the customs officer for verification on the form that the quantities of cigars by class shown on such return as removed subject to tax are correct.

(c) A record of all tobacco received in a bonded manufacturing warehouse and delivered from storage compartments to the manufacturing department shall be kept on customs Form 5215.

(d) Cigars may be exported from a bonded manufacturing warehouse without payment of duty or internal-revenue tax under the laws and regulations governing the withdrawal of merchandise from other warehouses of class 6.

(e) Before removal of cigars from the bonded premises for consumption, there shall be affixed to each box thereof the stamp provided by the Government indicating their character according to the method of manufacture, origin of tobacco, place of manufacture, and that they were manufactured in bond. These stamps shall be sold to the manufacturer by the collector of customs. The manufacturer will be advised of the price by the collector of customs upon request.

(f) Before the removal of cigars from the bonded premises, the customs stamps shall be canceled in a legible manner by means of a rubber stamp or perforation showing the name of the manufacturer, the place where the factory is located, and the date of cancellation.

(g) Before removal from the bonded premises for consumption, each package of cigars must be marked by legibly imprinting or branding thereon or on a label securely affixed thereto the statement (for customs purposes) "Made in No. ------, customs bonded manufacturing warehouse, class 6", and (as required in regulations of the Internal Revenue Service) a statement of the quantity and classification or class designation (for large cigars) of the cigars contained therein.

(h) Proprietors of premises bonded for the manufacture of cigars may remove therefrom scraps, cuttings, and clippings of tobacco produced in the premises for transfer to cigar or tobacco manufacturers operating under the internal-revenue laws. Such proprietors shall keep a record of each transfer of scraps, cuttings, and clippings, and application for permission for such transfer shall be in the following form:

APPLICATION AND PERMIT FOR TRANSFER OF SCRAPS, CUTTINGS, AND CLIPPINGS

Port of ----------,
----------, 19-----.

The Collector of Customs,

SIR: Application is hereby made to transfer ---------- pounds of scraps, cuttings, and clippings of tobacco upon which duty has been paid from our bonded manufacturing warehouse, class 6, to ----------, factory No. ----------, district ----------, State of ----------.

Proprietor of Bonded Manufacturing Warehouse, Class 6

Port of ----------,
----------, 19-----.

The above application is hereby granted. The customs warehouse officer shall deliver the material stated and make his report below.

Collector

Port of ----------,
----------, 19-----.

I hereby certify that ---------- pounds of scraps, cuttings, and clippings of tobacco, upon which duty has been paid, have been delivered by me from the bonded manufacturing warehouse, class 6, of ---------- for transfer to ----------.

Customs warehouse officer

(Sec. 311, 46 Stat. 691, as amended, secs. 5723, 5752, 68A Stat. 713, 716; 19 U. S. C. 1311, 26 U. S. C. 5723, 5752)

[21] "* * * cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture. * * *" (Tariff Act of 1930, sec. 311, as amended; 19 U. S. C. 1311)

SMELTING AND REFINING WAREHOUSES

§ 19.17 Application to establish warehouse; bond.

(a) Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of ores and crude metals as provided for in section 312, Tariff Act of 1930,[22] shall be made by the manufacturer, through the collector of the district in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein.

(b) Upon 10 days' notice from the collector, the manufacturer shall be required to renew his bond and if he fails to do so no further permits shall be granted for removals from or transfers to his warehouse.

(c) At the request of the proprietor the bonded status of the warehouse may be discontinued at any time, provided the Bureau approves such discontinuance and the proprietor complies with directions of the collector with respect to such merchandise as may remain in the warehouse.

(d) Upon the importation at any seaboard or frontier port of the United States of ores or crude metals in any form intended for a bonded smelting or refining warehouse situated at some other port of entry, they may be forwarded under an immediate transportation without appraisement entry.

(e) Upon the arrival of imported ores or crude metals in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse is established, they shall be entered for warehouse. A bond on customs Form 7555 shall be filed with each warehouse entry unless a blanket smelting and refining bond in the form authorized in T. D. 50267, as amended by T. D. 52403, has been filed. The collector shall thereupon issue a permit to the inspector to send such ores or metals from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

(f) Bonded ores or metals shall be kept separate and distinct from nonbonded material until they have been sampled and weighed.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.

The allowance to be made for wastage in smelting or refining, or both, of imported ores and crude metals in any form shall be ascertained and fixed by the collector of customs for each smelting warehouse, for each refining warehouse, and for each combined smelting and refining warehouse. The full dutiable contents of such ores or crude metals, as ascertained by commercial assay made by the Government chemist, less the wastage allowance (including dutiable metals entirely lost in smelting or refining, or both), shall constitute the quantity of metal producible (metal subject to duty or import tax which is actually recovered) from such ores or crude metals, and the quantity which must be either exported, duty paid, or transferred to another bonded warehouse in order to secure the cancelation of the charge made against the proprietor's bond as shown by the warehouse or rewarehouse entry account. Upon the withdrawal for consumption of metal so smelted or refined, or both, duty shall be collected thereon without the allowance for wastage, except that provided for lead in copper, gold, tin, or silver ores and copper mattes, and for zinc in lead, tin, or copper ores entirely lost in smelting or refining, or both. However, duty-paid warehouse withdrawals for consumption may be filed with regard to metal which will be physically withdrawn in the form of smelted or refined products whether at the time of the filing of the withdrawal papers the dutiable metal covered by the bond charge being cancelled by the withdrawal is in the form of ores, concentrates, crude metals, or intermediate products. If the warehouse withdrawal for consumption covers a product which does not sustain the full wastage applicable (see § 19.22) prior to being physically released from customs custody, a proportionate part only of such wastage may be allowed. The warehouse withdrawal and delivery permit shall (1) describe the smelted or refined products to be withdrawn in terms of the condition in which they will be when released from customs custody upon presentation of the delivery permit; (2) state the estimated amount of the dutiable metal contained in the products; and (3) the warehouse withdrawal shall specify the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products covered by each withdrawal for consumption must be actually on hand at the plant at the time of filing the withdrawals; but neither the actual ability to withdraw smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal will be required as of the time of filing the withdrawal. However, duty-paid warehouse withdrawals for consumption may be filed with regard to metal which will be physically withdrawn in the form of smelted or refined products whether at the time of the filing of the withdrawal papers the dutiable metal covered by the bond charge being cancelled by the withdrawal is in the form of ores, concentrates, crude metals, or intermediate products. If the warehouse withdrawal for consumption covers a product which does not sustain the full wastage applicable (see § 19.22) prior to being physically released from customs custody, a proportionate part only of such wastage may be allowed. The warehouse withdrawal and delivery permit shall (1) describe the smelted or refined products to be withdrawn in terms of the condition in which they will be when released from customs custody upon presentation of the delivery permit; (2) state the estimated amount of the dutiable metal contained in the products; and (3) the warehouse withdrawal shall specify the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products covered by each withdrawal for consumption must be actually on hand at the plant at the time of filing the withdrawals; but neither the actual ability to withdraw smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal will be required as of the time of filing the withdrawal.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.19 Manufacturers' statements.

(a) Every manufacturer engaged in smelting or refining, or both, shall immediately notify the collector of the district in which his plant is located of any material change in the character of the ores or crude metals smelted or refined and of any change in the methods of smelting or refining, and shall file with the collector an annual statement not later than 60 days after the termination of the manufacturer's fiscal year. No specific form is prescribed in which such statement shall be prepared. As basic information, the statement shall show the quantities of ore and crude metal on hand at the beginning of the period, and the dutiable contents thereof;[23] quantities of ore and crude metal received during the period, and the dutiable contents thereof; total ore and crude metal to be accounted for, and the dutiable contents thereof; quantities of ore and crude

[22] "* * * Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without the payment of duties thereon, and there smelted or refined, or both, together with ores or crude metals of home or foreign production: *Provided*, That the bonds shall be charged with a sum equal in amount to the regular duties which would have been payable on such ores and crude metals if entered for consumption at the time of their importation, and the several charges against such bonds shall be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under section 1311 of this title of a quantity of the same kind of metal equal to the quantity of metal producible from the smelting or refining, or both, of the dutiable metal contained in such ores or crude metals, due allowance being made of the smelter wastage as ascertained from time to time by the Secretary of the Treasury: *Provided further*, That the said metal so producible, or any portion thereof, may be withdrawn for domestic consumption or transferred to a bonded customs warehouse and withdrawn therefrom and the several charges against the bonds canceled upon the payment of the duties chargeable against an equivalent amount of ores or crude metals from which said metal would be producible in their condition as imported: *Provided further*, That on the arrival of the ores and crude metals at such establishments they shall be sampled and assayed according to commercial methods under the supervision of Government officers: *Provided further*, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer: *Provided further*, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury: * * *" (Tariff Act of 1930, sec. 312; 19 U. S. C. 1312)

[23] By "dutiable contents" is meant the quantity of each metal of a kind subject to duty contained in the material treated.

metal on hand at the end of the period, and the dutiable contents thereof; and the quantities of ore and crude metal worked during the period, and the dutiable contents thereof. The statement of the quantity of ore and crude metal worked during the period shall show the quantity of foreign material and the quantity of domestic material put in process during the smelting operations. The statement shall contain such further information concerning the quantities and kinds of metals and intermediary products produced at the plant as will show the wastage sustained in the smelting and refining operation.

(b) Complete smelting and refining records shall be kept from which the annual statement shall be prepared. These records shall be retained for a period of 5 years from the date of the related annual statement, and shall be made available to the collector of customs for such verification of the manufacturer's statement as the collector shall deem advisable.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.20 Withdrawal of products from bonded smelting or refining warehouses.

(a) *For exportation.* The general procedure governing warehouse withdrawals for exportation shall be followed in the case of the withdrawal for exportation of metal producible from a bonded smelting or refining warehouse.

(b) *For transfer to another bonded warehouse.* (1) Withdrawal for transfer to another bonded warehouse shall be at the risk and expense of the applicant, and the general regulations governing the transfer of bonded merchandise from one warehouse to another or the transfer of imported materials from a bonded storage warehouse to a bonded manufacturing warehouse shall be followed so far as applicable.

(2) In the case of transportation to another port, the transportation entry shall show the quantity of metal withdrawn, the wastage applicable thereto, and the imported material from which such metal was produced, together with any dutiable metal charged on entry.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.21 Smelting and refining in separate establishments.

(a) If the operations of smelting and refining are not carried on in the same establishment, the smelted and unrefined products obtained from the smelting of imported materials in a bonded smelting warehouse may be removed therefrom for shipment to a bonded refining warehouse located at the same or another port under the general procedure for transfer from one bonded warehouse to another.

(b) When the transfer is to a bonded refining warehouse located at another port, the smelted and unrefined products or bullion obtained from the smelting of the imported material shall be weighed, sampled, and assayed before withdrawal, the sampling to be performed under Government supervision in accordance with the commercial practice in effect at the plant.

(c) The withdrawal for transportation shall show the gross weight of the smelted and unrefined products withdrawn, the weight of the dutiable metal contained therein, the wastage applicable thereto, and the duties properly chargeable on the withdrawn products as shown by the import entry, except the duties for which credit has been given for loss in smelting of zinc contained in lead, tin, or copper ores or lead contained in copper, gold, tin, or silver ores or copper mattes.

(d) The rewarehouse entry covering the smelted and unrefined products at the bonded refining warehouse to which they are transferred shall be made out in accordance with the weights and duties shown on the withdrawal for transportation.

(e) Upon withdrawal of the metal from the bonded refining warehouse for export, the warehouse account of the refining warehouse shall be credited with the amount of metal so withdrawn, plus the refining wastage prescribed for said refining warehouse, plus the smelting wastage prescribed for the bonded smelting warehouse in which the smelted and unrefined products were produced, together with the amount of any dutiable metals entirely lost in the smelting or refining, or both. However, when the metal is withdrawn for consumption, duty shall be collected on an amount of ore or crude metals in their condition as imported equivalent to that from which such metal would be producible. No allowance for either smelting or refining wastage shall be permitted, except that allowance shall be made for zinc in lead, tin, or copper ores, and lead in copper, gold, tin, or silver ores or copper mattes to the extent that such zinc or lead has actually been lost in smelting or refining, or both.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.22 Withdrawal of metal refined in part from imported crude metal and in part from crude metal produced from imported materials.

Upon withdrawal for exportation of metal from a bonded warehouse engaged in refining, or smelting and refining, part of which metal was obtained from imported crude metal and part from crude metal produced by smelting imported materials, the warehouse account shall be credited with the quantity of metal so withdrawn, plus (a) the refining wastage allowance prescribed for that establishment, and (b) the smelting wastage allowance prescribed for the establishment in which the imported materials were smelted, and (c) any dutiable metals shown on the warehouse entry or the rewarehouse entry filed at the first-mentioned warehouse which have been lost and are attributable to the exported product. However, upon withdrawal of such refined metal for consumption, no allowance shall be made for wastage except that allowance shall be made for zinc contained in lead, tin, or copper ores, and for lead contained in copper, gold, tin, or silver ores, or copper mattes when such zinc or lead has actually been lost in smelting or refining, or both.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.23 Withdrawal for exportation from one port to be credited on warehouse entry account at another port.

On exportation of metal in excess of that covered by open bonds under the last proviso to section 312, Tariff Act of 1930,[34] the general procedure governing warehouse withdrawals for exportation shall be followed. The proprietor of the plant from which the withdrawal is made shall prepare a sufficient number of copies of withdrawals on customs Form 7512, in addition to any other copies required by the regulations, to enable the collector of customs at the port of withdrawal to forward a copy to the collector of customs for each district where credit is to be applied and to each comptroller of customs concerned. Such withdrawals shall designate the plant or plants which are to receive the credit, shall specify the warehouse entry number or numbers to which the credit is to be applied, and shall state the quantity of metal producible which is to be applied to each warehouse entry specified, and when any of the credits specified represent the last withdrawal against a particular warehouse entry, the words "final withdrawal" shall be shown on the withdrawal. When two or more plants in a given collection district are designated to receive credit, sufficient copies of the withdrawals shall be prepared to cover each such plant and entry. If at the time of withdrawal the warehouse proprietor does not know the plants or warehouse entry numbers which are to be credited with the withdrawal, or the metallic content of the metal producible being exported, the preparation of the before-mentioned copies of customs Form 7512 may be postponed for a period of not longer than 30 days from the date of the movement of the metal producible from the plant. In such cases, a so-called memorandum withdrawal, in the number of copies provided for in § 18.19 of this chapter, may be used in the first instance for the purpose of obtaining the required customs record of the exportation of the metal producible under customs supervision. All memorandum withdrawals shall be conspicuously endorsed "Memorandum Withdrawal."

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.24 Theoretical transfer without physical shipment of metal producible.

(a) Transfer may be made from one port of entry to another by a withdrawal for transportation and rewarehouse ex-

[34] "* * * the several charges against the bonds of any smelting warehouse established under the provisions of this section may be canceled upon the exportation or transfer to a bonded manufacturing warehouse from any other bonded smelting warehouse established under this section of a quantity of the same kind of metal, in excess of that covered by open bonds, equal to the amount of metal producible from the smelting or refining, or both, of the dutiable metal contained in the imported ores and crude metals, due allowance being made of the smelter wastage as ascertained from time to time by the Secretary of the Treasury." (Tariff Act of 1930, sec. 312; 19 U.S.C. 1312)

ecuted in regular form without physical shipment of the metal, provided enough like metal (metal in ores, crude metals, or metals producible, including products partly smelted or refined) is on hand at the establishment to which the theoretical transfer is made to satisfy the new bond obligations.

(b) The wastage allowance established for the plant from which the original withdrawal for transportation was made shall be shown on the transfer withdrawal and set up as a part of the charge against the bond at the plant to which the metal was theoretically transferred. Such wastage shall govern and be the basis for allowance when metal is withdrawn from the plant where the theoretical rewarehousing was effected.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.25 Credit to be applied under various forms of withdrawals.

(a) The warehouse entry account of the plant designated in the withdrawal to receive credit for the exportation shall be credited with the following:

(1) The quantity of metal producible exported.

(2) The wastage in effect on the date of withdrawal at the plant receiving the credit.

(3) The proportion of any other dutiable metals in the importation being credited which were lost at the said plant in the production of a quantity of metal producible equal to that exported.

(b) If credit is being applied to a charge set up by a theoretical transfer under § 19.24 at the plant designated in the withdrawal to receive the credit, the wastages to be applied shall be those set up at such plant in connection with the theoretical transfer, irrespective of the date of the withdrawal.

(c) On the transfer of metal producible to a bonded storage warehouse, credit shall be applied at the plant designated in the withdrawal to receive the credit in the manner provided for in paragraph (a) of this section with respect to withdrawals for exportation. The charge so credited at the plant shall be set up on the warehouse entry account of the storage warehouse to which the metal producible has been transferred. In the case of the withdrawal of metal producible for transfer to a bonded manufacturing warehouse, credit shall be applied in the same manner at the plant designated in the withdrawal to receive the credit, but the charge set upon the warehouse entry account of the bonded manufacturing warehouse shall be limited to the quantity of metal producible transferred to such warehouse.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.26 Certificates as to dutiable metals entirely lost.

In the foregoing sections, where reference is made to allowance for dutiable metals entirely lost in smelting or refining, or both, such allowance shall be made only upon certificate of the manufacturer furnished with his annual statement that no such dutiable metals were recovered. The annual wastage allowance established by the collector shall be accepted as showing the recoverable lead in copper mattes or copper, gold, tin, or silver ores, and the blanket certificate of wastage showing the total destruction of zinc in lead, tin, or copper ores shall be accepted for the purpose of making allowances in assessments of duty.

(Sec. 312, 46 Stat. 692; 19 U.S.C. 1312)

§ 19.27 Copper-bearing ores and concentrates and copper-bearing materials to be smelted or refined in bond.

(a) Except as hereinafter prescribed, §§ 19.22–19.26 shall, so far as applicable, be followed with respect to importations in bond of copper-bearing materials classifiable under I.R.C. section 4541 or 4542 which are to be smelted or refined, or both.

(b) Samples of imported ores, concentrates, or other materials to be smelted or converted or refined shall be taken under customs supervision in accordance with the commercial method in effect at the plant and shall be forwarded to the customs laboratory for assay. In the case of material to be smelted or converted, a deduction of 1.3 units from the copper content shall be shown on the laboratory report and made by the collector in the liquidation of the entry, but in the case of material to be refined only, no deduction shall be made.

(c) When the assay of the customs laboratory differs materially from the plant assay, a copy of which shall be furnished to the collector, the collector, upon the request of the importer if the plant assay is lower than the customs assay, or on his own motion if the plant assay is higher, shall call upon the customs laboratory for a reassay.

(Sec. 312, 46 Stat. 692; 19 U. S. C. 1312)

§ 19.28 Allowances for smelting and refining losses; dutiable zinc.

(a) In the case of material to be smelted or converted, there shall be allowed a smelting loss of 7/10 of 1 percent of the net copper content of such material, as shown by the customs laboratory assay provided for in § 19.27 (b).

(b) In the case of material to be electrolytically refined, whether ready for such refining when imported or produced in a bonded smelting warehouse, there shall be allowed a refining loss of 4/10 of 1 percent of the net copper content of such material.

(c) In the case of material to be furnace or fire refined, whether ready for such refining when imported or produced in a bonded smelting warehouse, there shall be allowed a refining loss of 2/10 of 1 percent of the net copper content of such material.

(d) A statement shall be filed in connection with the entry showing whether such material is to be smelted or converted and electrolytically refined, smelted or converted and furnace refined, electrolytically refined, or furnace refined.

(e) The entry shall be liquidated in accordance with the net quantity of copper shown by the customs laboratory report, less the metallurgical losses.[35] The charge against the bond shall be the liquidated quantity of copper and may be canceled in any manner authorized under the general smelting and refining regulations, except that wastage allowances as provided for above shall be allowed on withdrawals for consumption.

(f) When the charge against the bond is to be canceled by the exportation or transfer to a bonded warehouse of the product of a smelting or converting operation, the quantity of such product

[35] Examples showing how the metallurgical losses are applied:

IMPORTED COPPER-BEARING MATERIAL TO BE SMELTED OR CONVERTED AND ELECTROLYTICALLY REFINED

Dry weight of material---pounds--	2,000
Government assay------percent--	30
Deduction of 1.3 units----------	1.3
Net copper assay--------percent--	28.7
Net copper content of material imported ----------pounds--	574
Less: Deduction for loss in smelting or converting operation, 7/10 of 1 percent----------	4.018
Copper content of product of smelting or converting operation ----------pounds--	569.982
Less: Deduction for loss in electrolytic refining operation, 4/10 of 1 percent----------	2.280
Liquidated quantity----pounds--	567.702

IMPORTED COPPER-BEARING MATERIAL TO BE SMELTED OR CONVERTED AND FURNACE REFINED

Dry weight of material---pounds--	2,000
Government assay------percent--	30
Deduction of 1.3 units----------	1.3
Net copper assay--------percent--	28.7
Net copper content of material imported ----------pounds--	574
Less: Deduction for loss in smelting or converting operation, 7/10 of 1 percent----------	4.018
Copper content of product from smelting or converting operation ----------pounds--	569.982
Less: Deduction for loss in furnace refining, 3/10 of 1 percent---	1.140
Liquidated quantity----pounds--	568.842

IMPORTED COPPER-BEARING MATERIAL TO BE ELECTROLYTICALLY REFINED ONLY

Dry weight of material---pounds--	2,000
Government assay------percent--	98
Net copper content of material imported ----------pounds--	1,960
Less: Deduction for loss in refining operation, 4/10 of 1 percent------	7.84
Liquidated quantity---pounds--	1,952.16

IMPORTED COPPER-BEARING MATERIAL TO BE FURNACE REFINED ONLY

Dry weight of material---pounds--	2,000
Government assay------percent--	98
Net copper content of material imported ----------	1,960
Less: Deduction for loss in refining operation 3/10 of 1 percent-------	3.92
Liquidated quantity----pounds--	1,956.08

which must be exported or transferred to a bonded warehouse to cancel the charge against the bond shall contain a quantity of copper equal to the liquidated quantity charged against the bond plus the refining loss.[*]

(g) If the assay shows zinc in gold or silver ores in addition to lead and copper and it is desired to transfer the lead and the copper to different bonded refining warehouses, separate transportation withdrawals shall be issued for the lead and the copper, and the transfer of the charges for the zinc duty shall be determined by prorating the zinc content of the ore to the lead and the copper contained therein in accordance with the ratios which the lead content and the copper contained therein in accordance with the ratios which the lead content and the copper content, respectively, bear to the combined lead and copper content. For example, if an importation of material has 1,000 pounds of copper, 500 pounds of lead, and 150 pounds of zinc subject to duty, the transportation withdrawal to the copper refinery shall show 1,000 pounds of copper and 100 pounds of zinc, and that to the lead refinery 500 pounds of lead and 50 pounds of zinc.

(53 Stat. 415; 26 U. S. C. 3425)

SPACE BONDED FOR THE STORAGE OF WHEAT

§ 19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by customs officers by affixing customs locks or customs tyden seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method as will effectively prevent the removal of the wheat from, or access to the wheat in, the bonded space except under customs supervision.

(Secs. 555, 556, 46 Stat. 743; 19 U. S. C. 1555, 1556)

§ 19.30 Domestic wheat not to be allowed in bonded space.

The presence of domestic wheat in space bonded for the storage of imported wheat shall not be permitted.

(Secs. 555, 556, 46 Stat. 743; 19 U. S. C. 1555, 1556)

§ 19.31 Bulk wheat of different classes and grades not to be commingled in storage.

All wheat shall be stored by class and grade according to the Official Grain Standards of the United States or the official standards of the Canadian Board of Grain Commissioners, in bins, compartments, or other enclosed spaces identified by clearly distinguishable insignia securely affixed thereto, so as to facilitate the maintenance of identity of the wheat. There shall be no mixing or commingling of different classes or grades of wheat in the same bin, battery of bins, or other bonded space. If the wheat is stored in bags or other transportation containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the wheat will not be lost while in storage, to permit easy access to all lots, and to facilitate inspecting, sampling, and the identification of each lot.

(Secs. 555, 556, 46 Stat. 743; 19 U. S. C. 1555, 1556)

CROSS REFERENCE: For regulations respecting Official Grain Standards of the United States, see 7 CFR, Part 26.

§ 19.32 Wheat manipulation; reconditioning.

(a) The mixing, blending, or commingling of imported wheat and domestic wheat, or of imported wheat of different classes and grades, as an incident of transportation or as an incident of exportation under transportation and exportation entries, direct export entries, or withdrawals for exportation shall not be permitted. Applications for permission to manipulate wheat under the provisions of section 562, Tariff Act of 1930, as amended, shall be approved only after the concurrence of all interested Federal agencies has been furnished by the applicant.

(b) Where it is found that elevating, screening, blowing, fumigating, or drying of the wheat is essential to keep it in condition, the proprietor of the warehouse shall submit an application in writing to the collector. All such operations shall be performed under customs supervision adequate to preclude unauthorized access to the wheat.

(Secs. 555, 556, 562, 46 Stat. 743, 745, as amended; 19 U. S. C. 1555, 1556, 1562)

§ 19.33 General order; transportation in bond.

The provisions of §§ 19.29 through 19.32 shall be applicable to those parts of any premises in which imported wheat is stored in a general-order status, or stored pending exportation under an entry for exportation or for transportation and exportation.

(Secs. 555, 556, 46 Stat. 743; 19 U. S. C. 1555, 1556)

§ 19.34 Customs supervision.

Collectors of customs shall exercise such supervision and control over the transactions covered by §§ 19.29 through 19.32 as will insure that there will be no unauthorized access to the imported wheat and no unauthorized mixing, blending, or commingling of such imported wheat. Importers, exporters, proprietors of customs bonded warehouses, bonded common carriers, and others handling imported wheat in continuous customs custody shall maintain such records as will enable customs officers to verify the handling to which the imported wheat has been subjected, and to establish whether there has been a proper accounting to customs for any increase in the quantity of the wheat or shortages resulting from shrinkage or other factors. These records shall be retained for a period of 2 years after the date of the transaction. Collectors of customs shall from time to time request the supervising customs agent for the district concerned to examine such records of importers, exporters, warehouse proprietors, bonded common carriers, and others handling such wheat in continuous customs custody as may be deemed necessary to ascertain whether there has been any failure to comply with the applicable customs laws and regulations.

(Sec. 556, 46 Stat. 743, sec. 646, 67 Stat. 520; 19 U. S. C. 1556, 1646a)

[*] Example:

Liquidated quantity of copper (charge against bond) pounds- 567.702

To cancel this charge there must be exported or transferred to a bonded warehouse products of smelting or converting operations containing 569.982 pounds copper by commercial assay; that is, 567.702 pounds plus 2.280 pounds refining loss, or 567.702 divided by 0.996 (100 percent less 4/10 of 1 percent).

PART 20—DISPOSITION OF UNCLAIMED AND ABANDONED MERCHANDISE

Sec.

20.1 Storage of unclaimed and abandoned merchandise.
20.2 Withdrawal from general order for entry.
20.3 Merchandise remaining in customs custody or in bonded warehouse beyond the time fixed by law.
20.4 Articles subject to internal-revenue tax.
20.5 Sale of unclaimed and abandoned merchandise.
20.6 Proceeds of sale; payment of charges and expenses; surplus; deficit.

AUTHORITY: §§ 20.1 to 20.6 issued under R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 20.1 Storage of unclaimed and abandoned merchandise.

(a) Unclaimed and abandoned merchandise,[1] including merchandise formally abandoned to the Government, shall be sent under a permit to a suitable warehouse of class 2, 3, 4, or 5 specially designated for the purpose by the collector (see § 19.1(a)(2), (3), (4), and (5) of this chapter), or to a public store.

(b) Whenever, pursuant to section 457 or 490, Tariff Act of 1930, the collector shall take possession of a cargo which is unclaimed and not unladen, he shall require, as a condition for granting a permit to discharge, that the vessel be removed at the expense of the owner to the wharf, pier, or other place most convenient to the general-order stores.

(c) Storage at the ordinary rates and all other expenses shall be paid by the owner or consignee of the merchandise upon entry thereof; but if the goods are sold, such charges shall be paid from the proceeds of sale to the extent that proceeds are available.

(Sec. 490, 46 Stat. 726; 19 U. S. C. 1490)

§ 20.2 Withdrawal from general order for entry.

(a) Merchandise in general order may be exported without examination or appraisement if the merchandise is delivered to the exporting carrier within 1 year from the date of importation. Such merchandise may be entered within 1 year from the date of importation for immediate transportation without appraisement to any port of entry designated by the consignee. Any imported merchandise, including merchandise entered for transportation, for which entry for consumption or warehouse or delivery to a carrier for exportation has not been completed prior to the expiration of 1 year from the date of original arrival shall be treated as abandoned. Entry for immediate transportation without appraisement shall be permitted after the expiration of the 1-year period only for the purpose of filing an entry for consumption at the port of destination.

(b) The withdrawal from general order of less than a single general-order lot shall not be permitted except as provided for in § 8.8 of this chapter.

(Sec. 490, 46 Stat. 726; 19 U. S. C. 1490)

§ 20.3 Merchandise remaining in customs custody or in bonded warehouse beyond the time fixed by law.

(a) If storage or other charges due the United States have not been paid on merchandise remaining in customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of 1 year from the date of importation in any other case, even though any duties due have been paid, such merchandise shall be sold as provided for in § 20.5 unless entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(b) Merchandise subject to sale (except merchandise abandoned under section 506 (1) or 563 (b), Tariff Act of 1930) may be entered or withdrawn for consumption at any time prior to sale upon payment of the duties, any internal-revenue tax, and all charges and expenses that may have accrued thereon. Such merchandise may not be exported without payment of duty nor entered for warehouse.[2]

(c) Duty paid merchandise for which a permit to release has been issued but which remains in warehouse beyond the bond period[3] shall be released to the warehouse proprietor. Free and duty-paid merchandise not entered for warehouse for which permits to release have been issued, remaining in bonded warehouse at the expiration of 1 year from the date of importation, shall be released to the warehouse proprietor.

(Secs. 491, 559, 46 Stat. 726, as amended, 744, as amended; 19 U. S. C. 1491, 1559)

§ 20.4 Articles subject to internal-revenue tax.

Articles subject to internal-revenue tax (except forfeited distilled spirits[4] and except voluntarily abandoned merchandise which has not been cleared by the General Services Administration) may be sold for domestic consumption, but only if they will bring an amount sufficient to pay the internal-revenue tax and, in the case of tobacco "articles" and "tobacco materials," as defined in 26 U.S.C. 5702 (j), (k),[5] only if they will bring an amount sufficient to pay the expenses of sale as well as the internal-revenue tax. If such articles cannot be sold for domestic consumption in accordance with the foregoing conditions, they shall be destroyed unless they can be advantageously sold for export from continuous customs custody or unless the Bureau has authorized other disposition to be made under the law.[6] Such articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

§ 20.5 Sale of unclaimed and abandoned merchandise.

(a) All unclaimed and abandoned merchandise shall be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the Commissioner of Customs. Regular sales of unclaimed and abandoned merchandise on hand and subject to sale shall be made

[1] "Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for one year from the date of importation thereof, without all estimated duties and storage or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised by the appraiser of merchandise and sold by the collector at public auction under such regulations as the Secretary of the Treasury shall prescribe. * * *" (Tariff Act of 1930, sec. 491, as amended; 19 U. S. C. 1491)

"Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse beyond three years from the date of importation, shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 493 of this Act, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. * * *" (Tariff Act of 1930, sec. 550, as amended; 19 U. S. C. 1559)

[2] "* * * Merchandise subject to sale hereunder or under section 559 of this Act may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, charges, and expenses nor may it be entered for warehouse. The computation of duties for the purposes of this section and sections 493 and 559 of this Act shall be at the rate or rates applicable at the time the merchandise becomes subject to sale." (Tariff Act of 1930, sec. 491, as amended; 19 U. S. C. 1491)

[3] "* * * Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond three years from the date of importation, shall be held to be no longer in the custody or control of the officers of the customs." (Tariff Act of 1930, sec. 559, as amended; 19 U. S. C. 1559)

[4] All distilled spirits, wine, and malt beverages forfeited, summarily or by order of court, under any law of the United States, shall be disposed of in accordance with the internal-revenue law and regulations.

[5] "(a) Manufactured tobacco.

"'Manufactured tobacco' means all tobacco, other than cigars and cigarettes, prepared, processed, manipulated, or packaged for consumption my smoking or for use in the mouth or nose. * * *." 26 U. S. C. 5702 (a).

"(j) Articles.

"'Articles' means manufactured tobacco, cigars, cigarettes, and cigarette papers and tubes.

"(k) Tobacco materials.

"'Tobacco materials' means tobacco in process, leaf tobacco, and tobacco scraps, cuttings, clippings, siftings, dust, stems, and waste." 26 U. S. C. 5702 (j), (k).

[6] Except as provided in section 3369 of the Revised Statutes, as amended (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal-revenue tax and which the collector shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction." (Tariff Act of 1930, sec. 492; 19 U. S. C. 1492)

once in every year, or more often at the discretion of the collector. Such sales may be conducted by the collector, any employee designated by him, or by a public auctioneer.

(b) Before unclaimed merchandise is offered for sale, it shall be appraised in accordance with section 402, Tariff Act of 1930, as amended.[5a] Such merchandise shall also be appraised at its actual domestic value in its condition at the time and place of examination, whether or not it has depreciated or appreciated in value since the date of exportation. The quantity of merchandise in each lot appraised shall be reported.

(c) Before drugs, insecticides, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture are advertised, they shall be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. If found not to comply with such requirements, they shall be forthwith destroyed.

(d) All merchandise at ports other than a headquarters port which becomes subject to sale, including explosives, perishable articles, and articles liable to depreciation, shall be promptly reported to the headquarters port for disposition. The collector, in his discretion, may sell such merchandise, as well as merchandise at the headquarters port which is subject to sale, at the headquarters port or at any other port within the district.

(e) Except as prescribed in paragraphs (f), (g), and (h) of this section, a brief notice of the time and place of sale shall be given for 3 successive weeks immediately preceding the sale in one newspaper of extensive circulation published at the port where the sale is to be held. The newspaper shall be selected by the collector and publication of the notice shall be authorized on the standard form provided for that purpose. Such notice shall designate the place where catalogs may be obtained and reasonable opportunity to inspect the merchandise shall be afforded prospective purchasers.

(f) Unclaimed explosives and other dangerous articles and fruit and other perishable articles shall be sold on 3 days' public notice.[6]

(g) Other unclaimed merchandise shall be sold at public auction upon public notice of not less than 6 nor more than 10 days, as the collector may determine, if, in the opinion of the collector, such merchandise, because of depreciation in value by reason of damage, leakage, or other cause, will sell for an amount insufficient to pay the duties, storage, and other charges if allowed to remain in general order for 1 year. Unclaimed merchandise remaining on the dock which, in the opinion of the collector, will not sell for enough to pay the cost of cartage and storage shall be sold in the same manner.[7]

(h) If the collector is satisfied that the proceeds of sale will not be sufficient to pay the expenses and duties, a written or printed notice of the sale in lieu of the advertisement shall be conspicuously posted in the customhouse, and, if deemed necessary, at some other proper place for the time above specified.

(i) The catalogs, if used, shall specify the marks, numbers, and description of packages, the description and quantities of their contents, the appraised value thereof and also the domestic value at the time and place of the examination of the merchandise. The catalogs shall be distributed at the sale and announcement made that the Government does not guarantee quality or value and that no allowance will be made for any deficiency found after sale.

(j) When the name and address of the consignee can be ascertained, notice of the date of sale shall be mailed to him. When unclaimed merchandise was consigned to order or for other reason the name of a consignee cannot be obtained, the collector, where practicable, shall notify the shipper or his representative or the agent of the carrier of the date when and place where the goods are to be sold.

(k) Merchandise offered for sale but not sold shall be included in the next regular sale of unclaimed and abandoned merchandise. If the collector is satisfied that such merchandise is unsalable or of no commercial value, it shall be destroyed.

(Secs. 491, 559, 46 Stat. 726, as amended 744, as amended; 19 U.S.C. 1491, 1559)

§ 20.6 Proceeds of sale; payment of charges and expenses; surplus; deficit.

(a) From the proceeds of sale of merchandise remaining in public stores or in bonded warehouse beyond the time fixed by law, the following charges shall be paid in the order named:

(1) Internal revenue taxes.

(2) Expenses of advertising and sale.

(3) Expenses of cartage, storage and labor. When the proceeds are insufficient to pay such charges fully, they shall be paid pro rata. (For merchandise entered for warehousing, see paragraph (b) of this section.)

(4) Duties.

(5) Any other charges due the United States in connection with the merchandise.

(6) Any sum due to satisfy a lien for freight, charges, or contributions in general average, of which due notice shall have been given in the manner prescribed by law.

(b) The expenses of cartage, storage, and labor for merchandise entered for warehousing shall be paid in the following order:

(1) When such merchandise was warehoused in public stores, expenses of storage and labor shall be paid after expenses of sale (prorated when proceeds are insufficient to pay them fully) and any cartage charges shall be paid last.

(2) When such merchandise was warehoused in a bonded warehouse, expenses of storage, cartage, and labor shall be paid last (prorated when proceeds are insufficient to pay them fully).

(c) The duties chargeable on any merchandise within the purview of this section shall be assessed on the appraised dutiable value at the rate of duty chargeable at the time the merchandise became subject to sale.[8]

(d) The duties of the auctioneer shall be confined to selling the merchandise and his charge for such service shall in no case exceed the commissions usual at the port. Such commissions shall be allowed only on the gross sum actually realized on the sale.

(e) Accounts for the auctioneer's charges and all other expenses of sale which may be properly chargeable on the merchandise shall be presented to the collector for payment within 10 days from the date of sale. Such expenses shall be apportioned pro rata on the amounts received for the different lots sold.

(f) If a claim of the owner of unclaimed merchandise for the surplus proceeds of sale is properly established in accordance with § 24.25 of this chapter, such proceeds of sale shall be paid to him pursuant to section 493, Tariff Act of 1930.[9] Any doubtful claim shall be forwarded to the Bureau with all pertinent documents and information available to the collector for the instructions of the Bureau or for reference by it to the General Accounting Office for direct settlement.

(g) Claims of the owner or consignee for the surplus proceeds of a sale made pursuant to section 559, Tariff Act of 1930, shall be paid in the manner and subject to the conditions stated in paragraph (f) of this section.

(h) If the proceeds of sale of merchandise in warehouse beyond 3 years are insufficient to pay the duties after payment of all charges having priority, the deficiency shall be collected under the warehouse entry bond, by suit if necessary.

(i) When the proceeds of sale of unclaimed merchandise are insufficient to pay the charges and duties, the consignee shall be liable for the deficiency unless the merchandise was shipped to him without his consent. If no entry for the merchandise has been filed and no other attempt to control the merchandise has been made, the merchandise shall be regarded as shipped to the consignee without his consent and no effort shall be made to collect any deficiency of duties or charges from such consignee.

(Secs. 491–493, 559, 46 Stat. 726, as amended, 727, 744, as amended; 19 U. S. C. 1491–1493, 1559)

[5a] "The function of determining values of unclaimed and abandoned merchandise in any case where the aggregate appraised value of the lot will not exceed $250 has been transferred from the appraiser to the collector. (T.D. 54430.)"

[6] When it is probable that entry will be made at an early date for unclaimed perishable merchandise, the collector may hold the merchandise for a reasonable time in a bonded cold-storage warehouse if one is available. (T. D. 37374 (18))

[7] "* * * All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, storage, and other charges, if permitted to remain in public store or bonded warehouse for a period of one year, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. * * *" (Tariff Act of 1930, sec. 491, as amended; 19 U. S. C. 1491)

[8] Household and personal effects of the character provided for in paragraph 1798, as amended, or paragraph 1632, Tariff Act of 1930, which belong to persons who have not arrived in this country before the effects become subject to sale are dutiable at the rates in effect when the effects become subject to sale, even though such persons arrive and make entry for the effects before they are sold.

[9] "The surplus of the proceeds of sales under section 491 of this Act, after the payment of storage charges, expenses, duties, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited by the collector in the Treasury of the United States, if claim therefor shall not be filed with the collector within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale." (Tariff Act of 1930, sec. 493; 19 U. S. C. 1493)

PART 21—CARTAGE AND LIGHTERAGE

Sec.
21.1 Licensing of cartmen and lightermen; marking of vehicles and lighters.
21.2 Employees' identification cards.
21.3 Classes of cartage.
21.4 Government cartage.
21.5 Importers' cartage.
21.6 Suspension or revocation of license of cartman or lighterman.
21.7 Supervision of cartage and lighterage.
21.8 Liability; reports of loss or damage.
21.9 Tickets for goods carted or lightered.
21.10 Inability to deliver merchandise.

AUTHORITY: §§ 21.1 to 21.10 issued under secs. 565, 624, 46 Stat. 747, 759; 19 U. S. C. 1565, 1624.

§ 21.1 Licensing of cartmen and lightermen; marking of vehicles and lighters.

(a) Except as provided for in § 18.3 (d) of this chapter and § 21.4(b), customs cartage and lighterage shall be done by cartmen and lightermen licensed by the collector or specifically authorized by the Commissioner of Customs for that purpose. Customhouse cartage and lighterage licenses, customs Form 3857, shall be issued by the collector of customs. Before such a license is issued, the cartman or lighterman shall be required to execute a bond on customs Form 3855 in an amount to be fixed by the collector[1] and pay the fee of $35 prescribed by § 24.12 of this chapter. The collector may appoint or license as a customs cartman or lighterman any common carrier who has executed and filed a carrier's bond, customs Form 3587. The license shall remain in force and effect as long as the required bond is considered sufficient or until the license is suspended or terminated. Before customhouse licenses are issued for bonded lighters or other such vessels, the vessel's marine documents, if any have been issued, shall be presented to the collector and such documents shall be returned by the collector following his examination thereof. The collector may require the applicant for a license to furnish a list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from customs, or a list of all such persons and their addresses. An applicant shall be required in each case to undertake to surrender promptly to the collector the identification cards of persons no longer employed by the applicant or give reasons satisfactory to the collector why such cards cannot be surrendered. The collector may also require an applicant to undertake to furnish, at such times and intervals as the collector deems necessary, a current list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from customs, or a list of all such persons and their addresses. A license shall be subject to suspension for failure to comply with the requirements of the two preceding sentences, or it may be revoked for sufficiently good cause.

(b) Any cartman licensed by the city or State authorities who produces evidence of good moral character and his city or State license may be licensed as a customhouse cartman.

(c) Every licensed vehicle used for customs cartage and every licensed barge, scow, or other lighter used for customs lighterage shall be conspicuously marked with the legend "Customhouse License No. _____" and the name of the person or firm to whom the license has been issued. The abbreviated legend "C.H.L. No._____" may be used if so desired.

(d) The markings prescribed by this section shall appear in letters and figures not less than 3 inches high and in the case of carts, trucks, drays, and other vehicles, such markings shall be placed on each side by painting directly onto the vehicle or by the attachment of signs bearing the required marking.

[1] "The cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the collector of customs and who shall give a bond in a penal sum to be fixed by such collector, for the protection of the Government against any loss of, or damage to, such merchandise while being so carted. The cartage of merchandise designated for examination at the appraiser's stores and of merchandise taken into custody by the collector as unclaimed shall be performed by such persons as may be designated, under contract or otherwise, by the Secretary of the Treasury, and under such regulations for the protection of the owners thereof and of the revenue as the Secretary of the Treasury shall prescribe." (Tariff Act of 1930, sec. 565; 19 U. S. C. 1565)

However, in the case of vehicles, if such marking is not found to be practicable by the collector, he may designate some other conspicuous place upon the vehicle where the number shall appear.

(e) These markings shall be removed upon termination of the license in accordance with the provisions of the bond, customs Form 3855, or the cartman or lighterman shall be liable for the payment of liquidated damages as provided for in such bond.

(f) Customs officers shall not deliver any bonded goods to vehicles or lighters which are not properly marked.

§ 21.2 Employees' identification cards.

When required for purposes of local administration, each licensed cartman or lighterman and each employee thereof who receives or transports imported merchandise which has not been released from customs shall possess an identification card, customs Form 3873, with his photograph securely affixed thereto with glue or other adhesive substance. The card shall also bear his signature in the space provided. Such identification card shall be issued by the collector only upon application on customs Form 3078 of the licensed cartman or lighterman. The application shall be filed personally at the customhouse by the person for whom the application for the identification card is made, together with a photograph (or two if required for purposes of local administration) of such person in addition to the one to be affixed to the application. If required for purposes of local administration, the fingerprints of such person shall be taken on customs Form 3872 and at the time of the filing of the application. The identification card shall become valid when the United States customs seal has been impressed thereon, which seal shall not be impressed until after the card has been otherwise completed. If required for purposes of local administration, the identification card shall be prepared in duplicate. The original, after having impressed thereon the customs seal, shall be presented to the person in whose name the card is issued and shall be in his possession at all times when he is engaged in receiving or transporting imported merchandise. The duplicate, when required, shall be retained as an office record. It shall be the responsibility of each person to whom an identification card is issued to protect it with an appropriate transparent cover so that the face and back of the card are visible without removing the cover. Whenever the employment of the holder of an identification card is changed to another licensed cartman or lighterman, the card, supported by an application in proper form, shall be submitted promptly to the collector so that the change may be made officially on the card and on the customhouse records. The collector may authorize such exceptions to the requirements of the preceding sentence as he deems necessary and advisable when the employment of the holder of an identification card is changed only temporarily to another licensed cartman or lighterman. The card shall be submitted promptly to the collector when there is a change of address of the holder. New cards shall be issued when necessary. Should an identification card be presented by a person other than the one to whom it was issued, such card shall be forthwith confiscated. The identification card shall be surrendered when the holder thereof leaves the employment of a licensed cartman or lighterman for employment of some other character. All outstanding identification cards issued to a licensed cartman or lighterman and to the employees thereof, shall be taken up by the collector upon the suspension or termination of the license of the cartman or lighterman. An identification card shall not be issued to any person whose employment in connection with the transportation of bonded merchandise will, in the judgment of the collector, endanger the revenue.

§ 21.3 Classes of cartage.

The cartage of merchandise in customs custody is of two kinds: "government cartage," which must be done by a licensed customhouse cartman under contract or other specific authority for that purpose (except as provided for in § 21.4 (b)), and "importers' cartage," which may be done by any licensed customhouse cartman.

§ 21.4 Government cartage.

(a) The cartage of packages designated for examination at the appraiser's stores shall be done by a cartman under contract or other specific authority for that purpose. Contracts for government cartage shall be let annually after invitations to bid have been mailed to at least 3 representative cartage companies and posted in public places. At least 30 days shall be allowed for submission of such bids. If the collector of customs deems it necessary, notice of the invitation to bid may be published in one or more local newspapers. Bids for such cartage shall be supported by bid bonds and shall be submitted to the collector who has solicited such bids. The contract will be let by the Commissioner of Customs on customs Form 3083 upon execution of the bond provided as a part of such contract in a sum to be fixed by the Commissioner for the faithful performance of the contract. Such contract cartman shall be licensed as a customhouse cartman. The cartage will be paid by the Government through the collector of customs for the district in which the service is rendered from the appropriation "Salaries and Expenses, Bureau of Customs."

(b) Merchandise designated for examination at an importer's premises or other place not in charge of a customs officer may be carted, lightered, or carried to any such place by the importer without a cartman's or lighterman's license, when in the judgment of the collector the revenue will not be endangered. Otherwise, such transfer shall be done by a licensed cartman, who shall be the contract cartman whenever practicable.

(c) Merchandise withdrawn from general order for regular entry shall be conveyed under such contract at the expense of the importer to the place designated by the collector for appraisement.

(d) Unclaimed merchandise shall be carted to the public stores or bonded warehouse by bonded cartmen designated by the Commissioner and under contract for that purpose. Bond on customs Form 3083, in a sum to be approved by the Commissioner, shall be required for the faithful performance of the work. The cost of such cartage shall be charged against the merchandise and collected prior to delivery under a regular entry or paid from the proceeds of sale.

(e) Seized merchandise shall be delivered to the custody of the collector by the most practicable means available to the seizing officer.

§ 21.5 Importers' cartage.

(a) Any licensed customhouse cartman may transfer merchandise at the expense of the importer or other party in interest from the importing vessel or other conveyance to bonded warehouse, from one vessel or conveyance to another, from one bonded warehouse to another, from the public stores to a bonded warehouse, from warehouse for transportation or for exportation, and from an internal-revenue warehouse for exportation under the internal-revenue laws without payment of tax.

(b) The collector may license any importer as a customhouse cartman for the purpose of carting his own imported merchandise.

(c) Importers and exporters shall designate on the entry and permit of bonded merchandise the bonded cartman or lighterman by whom they wish their merchandise to be conveyed and approval of such designation shall be indicated on the entry papers by the initials of the appropriate customs officer placed in close proximity to the designation.

(d) If an importer does not cart his merchandise or designate a licensed customhouse cartman for the purpose, it shall be carted by a public-store cartman authorized by contract or designated by the collector for that purpose, the cost thereof to be paid by the importer or owner of the merchandise before its release from customs custody.

(e) Nothing in this section shall apply to the cartage of examination packages to the place of examination, which shall be done only by the contract cartman, except as provided for in § 21.4 (b).

§ 21.6 Suspension or revocation of license of cartman or lighterman.

Inspectors or other customs officers may demand of any person claiming to be a customhouse cartman or lighterman, or employee thereof, his license or identification card for inspection. If it is not produced, or if the vehicle is not properly marked, or if the cartman or lighterman refuses or neglects to obey any proper order of the inspector or any customs order, rule, or regulation relative to the cartage or lighterage of merchandise, the collector may suspend or revoke the license of the cartman or lighterman chargeable with the offense. Such customs order or rule may include a requirement by the collector that customs licensed cartmen and lightermen shall make, keep, and promptly submit for customs inspection and examination upon request therefor such current written records relating to cartage and lighterage as may be needed for purposes of local customs administration.

§ 21.7 Supervision of cartage and lighterage.

(a) All licensed vehicles or lighters shall be subject to the control and direction of the officer having charge of the merchandise being carried.

(b) The vehicles or lighters designated for the purpose shall be present to take the merchandise when the customs officer in charge is ready to send it; otherwise, after waiting a reasonable time, such officer shall send the merchandise by any licensed vehicle or lighter available.

§ 21.8 Liability; reports of loss or damage.

(a) The cartman or lighterman conveying the merchandise shall be held liable under his bond for its prompt delivery in sound condition, or in no worse than the damaged condition noted on the cartage or lighterage ticket, customs Form 6043–A, Elliott Fisher ticket or customs Form 7502–A, 7506, or 7512, if damage is so noted. Any negligence or carelessness shall be cause for revocation of the license.

(b) Any loss or detention of bonded goods and any accident happening to a licensed vehicle or lighter while carrying them shall be immediately reported by the cartman or lighterman to the collector.

(c) The collector may cancel liquidated damages not in excess of $20,000 incurred under a cartman's bond or a lighterman's bond upon the payment of such lesser amount, or without the payment of any amount, as he may deem appropriate under the circumstances.

(Interprets or applies sec. 623, 46 Stat. 759, as amended; 19 U. S. C. 1623)

§ 21.9 Tickets for goods carted or lightered.

(a) When merchandise is carted or lightered and received in a bonded store or bonded warehouse, the representative of the proprietor shall check the goods against the ticket, customs Form 6043–A, or copy of warehouse or rewarehouse permits, customs Form 7502–A, used in lieu of a ticket, and countersign such ticket or copy of the permit. A receipt shall be taken for all goods delivered from public store or bonded store. Such receipt may be taken on the permit to release, customs Form 7500–B, on the appraiser's release ticket at the time delivery is made, or on customs Form 6043–C. Customs Form 6043–C may also be used as a receipt for goods delivered from customs custody in any other case where the collector deems such receipt necessary. In the case of withdrawals from bonded warehouse for consumption, the merchandise shall be released only to or upon the order of the proprietor of the warehouse who shall acknowledge such release on customs Forms 7505–A or 7505–B. If a receipt is taken on customs Form 6043–C for goods delivered from public store or bonded store, it shall be disposed of as if a receipt were taken on the permit to release, customs Form 7500–B, or on the appraiser's release ticket.

(b) The cartman or lighterman shall countersign the ticket, receipts, extra copy of warehouse or rewarehouse permit, or the copy of the entry or withdrawal document, used in lieu of a cartage or lighterage ticket for goods carted or lightered, customs Form 6043–A, 6043–C, 7502–A, 7506, or 7512, in the space provided as a receipt for the goods, noting any bad order or discrepancy. When available, the importing carrier's tally slip for the merchandise shall be attached to the cartage or lighterage ticket, customs Form 6043–A, or the copy of customs Form 7502–A, 7506, or 7512 used in lieu of a cartage or lighterage ticket, which accompanies the merchandise while it is being so carted or lightered in bond, for the use of customs officers only at destination.

§ 21.10 Inability to deliver merchandise.

If the warehouse is closed or the warehouseman refuses to receive the merchandise, it shall be returned to the sending inspector or deposited in the public store for safekeeping, unless otherwise ordered by the collector. The cartman shall notify such inspector of his inability to deliver the merchandise and the reason therefor. The inspector shall promptly report the facts to the collector (to the surveyor at New York) for instructions.

PART 22—DRAWBACK

ARTICLES MANUFACTURED OR PRODUCED WHOLLY OR IN PART FROM IMPORTED OR SUBSTITUTED MERCHANDISE

Sec.
22.1 Drawback allowance.
22.2 Canal Zone and Guantanamo Bay.
22.3 Application for establishment of drawback rate.
22.4 Identification of imported merchandise and ascertainment of quantities for allowance of drawback; establishment of drawback rates.
22.5 Identification of imported merchandise and ascertainment of quantities for allowance of drawback when substituted merchandise is used.
22.6 General drawback rates in effect; approval of drawback statements by collectors.
22.7 Notice of exportation.
22.8 Notice of exportation; mail shipments.
22.9 Notice of exportation; government shipments.
22.10 Numbering notices of exportation for mail or government shipments.
22.11 Amendment of notices of exportation.
22.12 Examination of merchandise.
22.13 Completion of drawback claims.
22.14 Certificates of importation and extracts.
22.15 Certificates of delivery of imported merchandise.
22.16 Certificates of manufacture and delivery; manufactured or partly manufactured articles.
22.17 Landing certificates.
22.18 Supplies for certain vessels and aircraft.
22.19 Meats cured with imported salt.
22.20 Liquidation of drawback entries.
22.21 To whom payable.

FLAVORING EXTRACTS AND MEDICINAL OR TOILET PREPARATIONS (INCLUDING PERFUMERY) MANUFACTURED FROM DOMESTIC TAX-PAID ALCOHOL

22.22 Drawback allowance.
22.23 Procedure.
22.24 Manufacturing record.
22.25 Internal Revenue certificates and extracts from such certificates.
22.26 Collector's statement of drawback due.

MERCHANDISE EXPORTED FROM CONTINUOUS CUSTOMS CUSTODY

22.27 Drawback allowed.
22.28 Continuous custody.
22.29 Entry and completion thereof.
22.30 Ascertainment of drawback.

REJECTED MERCHANDISE

22.31 Drawback allowance.
22.32 Drawback entry.
22.33 Return of merchandise to customs custody.
22.34 Acceptance of merchandise at importer's risk and expense; time limit for exportation.
22.35 Waiver of proof where the duty is less than $25.

MERCHANDISE TRANSFERRED TO A FOREIGN-TRADE ZONE FROM CUSTOMS TERRITORY

22.36 Drawback allowance.
22.37 Articles manufactured or produced in the United States.
22.38 Merchandise transferred to a foreign-trade zone from continuous customs custody.
22.39 Rejected merchandise.
22.40 To whom payable.

GENERAL REGULATIONS APPLICABLE TO ALL DRAWBACK CLAIMS

22.41 Duties subject to drawback.
22.42 Merchandise sold to United States Government.
22.43 Verification of drawback claims by Customs Agency Service.
22.44 Protests.
22.45 Signing of documents; powers of attorney.
22.46 Retention of records.

AUTHORITY: §§ 22.1 to 22.40 issued under secs. 313, 624, 46 Stat. 693, as amended, 759; 19 U. S. C. 1313, 1624. Interpret or apply sec. 3, 48 Stat. 999, as amended; 19 U.S.C. 81c. Additional authority is cited in parentheses following sections affected.

ARTICLES MANUFACTURED OR PRODUCED WHOLLY OR IN PART FROM IMPORTED OR SUBSTITUTED MERCHANDISE

§ 22.1 Drawback allowance.

Drawback of duties shall be allowed as provided for in section 313, Tariff Act of 1930, as amended,[1] on articles manufactured or produced in the United States wholly or in part with the use of

[1] "(a) *Articles made from imported merchandise.* Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation of flour or by-products produced from wheat imported after ninety days after the date of the enactment of this act. • • •

"(b) *substitution for drawback purposes.* If imported duty-paid merchandise and duty free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation of

imported or substituted merchandise, on meats cured with imported salt, and on vessels and aircraft built and equipped in the United States for foreign account and ownership,[1] subject to compliance with the regulations in this part.

any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported; but the total amount of drawback allowed upon the exportation of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

* * * * * *

"(f) *Exportation of meats cured with imported salt.* Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than $100.

"(g) *Materials for construction and equipment of vessels built for foreigners.* The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

"(h) *Time limitation on exportation.* No drawback shall be allowed under the provisions of this section unless the completed article is exported within five years after importation of the imported merchandise.

"(i) *Regulations.* Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 309(b) of this Act shall be filed and completed, and the designation of the person to whom any refund or payment of drawback shall be made.

"(j) *Source of payment.* Any drawback of duties that may be authorized under the provisions of this Act shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico." (Tariff Act of 1930, sec. 313, as amended; 19 U. S. C. 1313)

[1] Section 313 (g), Tariff Act of 1930, applies only to materials used in the original construction and equipment of the vessels or aircraft and not to materials used for alteration or repair. The term "foreign account and ownership" contemplates only vessels or aircraft built and equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft shall, when completed, be owned and operated under the flag of a foreign country.

[2] There is no authority of law for the allowance of drawback of customs duty on articles manufactured or produced in the United States and shipped to Alaska, Puerto Rico, Hawaii, the Virginia Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, the island of Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 22.2 Canal Zone and Guantanamo Bay.

The Panama Canal Zone and Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes.[2]

§ 22.3 Application for establishment of drawback rate.

(a) Each manufacturer or producer of articles intended for exportation with benefit of drawback (whether he is a primary, intermediate, or final manufacturer or producer of the articles, and whether or not the articles are of a character covered by a general drawback rate) shall make application prior to the exportation of such articles for the establishment of a rate of drawback. The application shall be made on customs Form 4477 or in a substantially similar form and shall be filed with the collector or deputy collector of customs in charge at any port of entry. When it is desired to export articles before an application in such form can be delivered in the regular course of the mails, a telegraphic application will be accepted, provided it shows the name of the manufacturer or producer, the name of the merchandise used, the name of the articles being exported, and the location of the factory at which the articles are manufactured or produced, and provided it is followed promptly by an application in the form prescribed herein.

(b) In the case of a vessel or aircraft on which drawback is to be claimed under section 313 (g), Tariff Act of 1930, the application prescribed in paragraph (a) of this section shall be made by the builder of the vessel or aircraft.

(c) The manufacturer or producer may abandon his application for the establishment of a rate of drawback by filing a written statement to that effect addressed to the collector or deputy collector of customs with whom the application was filed or to the investigating officer. An abandoned application may not be revived to give an earlier effective date to a rate of drawback established as the result of a subsequent application.

§ 22.4 Identification of imported merchandise and ascertainment of quantities for allowance of drawback; establishment of drawback rates.

(a) Each manufacturer or producer shall keep records which will establish, as to all articles manufactured or produced for exportation with benefit of drawback, the date or inclusive dates of manufacture or production, the quantity and identity of the imported duty-paid merchandise or of articles manufactured or produced under drawback regulations (referred to hereafter in this part as drawback products) used, the quantity and description of the articles manufactured or produced, and the quantity of waste incurred. If claim for waste is waived, the manufacturer or producer shall keep records which will establish the quantity and identity of the imported duty-paid merchandise or drawback products appearing in the articles manufactured or produced, in which case records need not be kept of either the quantity of waste incurred or of the quantity imported duty-paid merchandise or drawback products used, unless such records are necessary to enable the manufacturer or producer to establish the quantity of imported duty-paid merchandise or drawback products appearing in the articles. When the waste has a value and the manufacturer or producer has not limited his claims to the quantity of imported duty-paid merchandise or drawback, products appearing in the articles, the records shall show the factory value of the imported duty-paid merchandise or drawback products used and the factory value of the waste in order that in the liquidation of the drawback entry the quantity of imported duty-paid merchandise or drawback products used may be reduced by the quantity thereof which the value of the waste will replace. The records of the manufacturer or producer shall also show the quantity, if any, of duty-free or domestic merchandise used when such records are necessary to the determination of the quantity of imported duty-paid merchandise or drawback products used in the manufacture or production of the articles or appearing therein. In cases where two or more products result from the manipulation of the imported duty-paid merchandise, records shall be kept which will show the values of such products at the time of separation. An abstract of the records kept by the manufacturer or producer shall be filed with the drawback entry.

(b) The imported duty-paid merchandise or drawback products shall be stored in a manner which will enable the manufacturer or producer to determine, in conjunction with his storage records, the import entry, certificate of delivery, or certificate of manufacture and delivery number or numbers under which they were received, and to identify with respect to such import entry, certificate of delivery, or certificate of manufacture and delivery number or numbers the imported duty-paid merchandise or drawback products used in the manufacture or production of the articles, and to establish whether such articles were exported within 5 years after the importation of the duty-paid merchandise.

(c) The articles manufactured or produced shall be stored or marked in a manner which will preserve the identification established by means of the storage records and the records of manufacture or production.

(d) Each person required by §§ 22.15 and 22.16 (c) to certify to the delivery of imported merchandise or drawback products shall store such merchandise or products while they are in his possession and keep records which will enable him to show the quantity, identity, and description of such merchandise or products, the date on which they were received by him, the person from whom they were received, the date on which they were delivered by him to other persons, and the persons to whom such deliveries were made. These records shall be the basis of the certificates or endorsements required under § § 22.15 and 22.16 (c).

(e) Where it appears to the satisfaction of the Bureau, or of the collector in appropriate cases, that it is impracticable for the manufacturer or producer to keep records of all the information required for the determination of the drawback which may accrue to the products manufactured or produced by him, complementary records covering the information not available to the manufacturer or producer may be kept by the persons in the United States for whose account the products are manufactured or produced, and abstracts of such records shall be filed with the drawback entry.

(f) When identification is made against two or more lots of imported merchandise of different dutiable values or subject to different rates of duty, or against two or more lots of drawback products subject to different allowances of drawback, the drawback shall be based first upon the lot or lots of the lowest dutiable value, rate of duty, or drawback allowance, as the case may be, then upon the lot or lots of the next higher dutiable value, rate of duty, or drawback allowance, and so on from lower to higher until all the lots have been accounted for. The same principle shall apply in cases where the articles are commingled in storage after manufacture or production. If two or more lots of a fungible product are commingled in storage and quantities thereof are withdrawn for domestic consumption as well as for exportation with benefit of drawback, the withdrawals for domestic consumption shall be accounted for in the order in which the several lots of such product were placed in storage, exclusive of any lots in respect of which drawback has been allowed; and, in the case of the withdrawals for exportation, the drawback allowance thereon shall be based on the lot carrying the lowest allowance of drawback of any of the lots shown by the customs records to be unaccounted for at the time of withdrawal.

(g) The builder of a vessel or aircraft upon which drawback is to be claimed under section 313 (g), Tariff Act of 1930, shall keep the records provided for in this section so far as applicable. An abstract of such records shall be filed with the collector of customs at the headquarters port of the collection district in which the vessel or aircraft is built in ample time prior to the first departure of the vessel or aircraft from the United States to enable that officer to have the abstract verified by examination of the vessel or aircraft and the builder's records pertaining thereto.

(h) Each manufacturer or producer shall submit to the collector of customs at the port where his drawback entries will be filed a statement in duplicate describing the methods which he will follow and the records which he will keep for the purpose of establishing that the articles upon which drawback will be claimed have been manufactured or produced in the United States with the use of imported duty-paid merchandise within the meaning of section 313(a), Tariff Act of 1930, and that the records of identification, manufacture, or production, and storage prescribed in this section have been maintained. The statement shall be submitted to the collector through the supervising customs agent who assisted in its preparation. In the case of operations under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, the statement in triplicate shall be submitted through the supervising customs agent to the Commissioner of Customs. The statement shall contain an agreement to follow the methods and keep the records described therein with respect to all articles manufactured or produced for exportation with benefit of drawback. Provision for the use of duty-paid merchandise or drawback products, the manufacture or production af articles not specified in the application for the rate, or the use of factories not named therein may be included in the statement prepared as a result of such application.

(i) If drawback entries are to be liquidated at more than one headquarters port, two additional copies of the statement and of the investigating officer's report shall be required for each additional port. The procedure outlined in this and the preceding paragraph shall be followed, so far as applicable, when applications for amendments of drawback rates or supplemental statements or schedules or supplemental advisory schedules are filed in accordance with paragraph (o), (p), or (q) of this section.

(j) If the statement shows that the methods and records described therein enable the manufacturer or producer to comply with the law and regulations and if the facts developed by the investigation warrant such action, the collector in a case under section 313(a), Tariff Act of 1930, or the Bureau in a case under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, will issue the rate of drawback on the articles described in the statement, except that in cases under § 22.6 the procedure in paragraphs (a) and (b) of that section shall be followed. When the statement in a case under section 313 (a), Tariff Act of 1930, shows that entries are to be filed at more than one port, the collector at the port first listed shall issue the rate, if that action is warranted.

(k) Each person who keeps complementary records as provided for in paragraph (e) of this section shall file a statement describing such records in accordance with the procedure prescribed for manufacturers and producers in paragraph (h) of this section. Such statement shall be subject to the provisions of paragraphs (i) and (j) of this section.

(l) Drawback entries may be filed covering articles exported on or after the date on which the application for establishment of the drawback rate was received by the collector or deputy collector of customs, but such entries shall not be liquidated until the rate has been established or in cases under § 22.6 the statement has been approved.

(m) When the rate has been established or the statement approved under § 22.6, drawback may be allowed on articles manufactured or produced in accordance therewith and exported on or after the effective date named therein provided all pertinent regulations have been complied with.

(n) In no case shall drawback be allowed on articles which were exported before the date of receipt by the collector or deputy collector of the application which resulted in the preparation of the statement on which the rate or collector's letter of approval was based.

(o) When a manufacturer or producer in whose behalf a rate of drawback has been established desires to have his rate amended under section 313(a), Tariff Act of 1930, or to change his statement filed under § 22.6 to cover additional articles, to include additional factories, to permit the use of other kinds of imported duty-paid merchandise or drawback products, to provide for a different basis for the liquidation of the drawback entries, or to cover different methods of identification, manufacture, or other changes, he shall file an application therefor with the collector or deputy collector of customs. The supplemental statement prepared as a result of such application shall be submitted through the supervising customs agent who assisted in its preparation to the collector of customs at the port where drawback entries filed under the existing rate of drawback are liquidated who shall issue the amendment, if that action is warranted. If entries are liquidated at more than one port, the supplemental statement shall identify all such ports and the collector at the port first listed shall issue the amendment. The foregoing procedure shall also apply to applications for amendments under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, but the supplemental statement in such case shall be submitted through the supervising customs agent to the Commissioner of Customs, except as provided in subparagraph (1), of this paragraph. No drawback shall be allowed on articles exported before the date on which the application was received by the collector or deputy collector unless specifically authorized by the Bureau, or by the collector in cases within the provisions of § 22.6 or of this paragraph.

(1) Supplemental statements covering operations under section 313 (b), (d), or (g), Tariff Act of 1930, as amended, which are limited to (i) a change in location of the factory of the manufacturer or producer; (ii) an additional factory at which the methods followed and records maintained are the same as those at another factory operating under an existing drawback rate of the manufacturer or producer; (iii) a change in name of the manufacturer or producer; (iv) the succession by a sole proprietorship, partnership, or corporation to the drawback operations of a manufacturer or producer; or (v) any combination of the foregoing changes, shall be processed in the manner provided in this paragraph (o) for supplemental statements covering amendments under section 313(a), Tariff Act of 1930.

(p) When a rate of drawback provides that the drawback allowance shall be determined on the basis of a schedule filed by the manufacturer or producer showing the quantity of imported material used or appearing in each unit of finished articles, and the rate authorizes the filing of supplemental schedules showing changes in the quantity of imported materials used or ap-

pearing in each unit, or different styles or capacities of containers, such supplemental schedules shall be filed with the collector or deputy collector of customs. Drawback may be allowed on the articles covered by a supplemental schedule after it has been verified by an investigating officer and approved by the collector.

(q) In cases where the drawback allowance is determined on a quantity-used or appearing-in basis, collectors of customs may request, for the information of liquidating officers in addition to the information required to be filed with the drawback entry, a supplemental advisory schedule showing the quantity of importing merchandise used or appearing in each unit of finished articles. Such schedules shall be filed with the collector or deputy collector of customs. Drawback may be allowed on articles covered by a supplemental advisory schedule after it has been verified by an investigating officer and approved by the collector.

(R.S. 251; 19 U.S.C. 66)

§ 22.5 Identification of imported merchandise and ascertainment of quantities for allowance of drawback when substituted merchandise is used.

(a) Articles manufactured or produced in accordance with section 313(b), Tariff Act of 1930, as amended, shall be subject to the applicable provision of this part and the records of the manufacturer or producer shall show:

(1) The quantity, identity, kind, and quality of the duty-paid merchandise or of other articles manufactured or produced under drawback regulations (all of the foregoing hereinafter referred to as designated merchandise) designated as the basis for the allowance of drawback on the exported articles;

(2) That such designated merchandise was used in the manufacture or production of articles by the manufacturer or producer of the exported articles within 3 years after the date on which it was received by such manufacturer or producer;

(3) That the exported articles on which drawback is claimed were manufactured or produced either with the use of (i) the designated merchandise, (ii) other merchandise of the same kind and quality as the designated merchandise, or (iii) any combination of the foregoing;

(4) That the exported articles were manufactured or produced within 3 years after the date on which the designated merchandise was received by the manufacturer or producer of the exported articles;

(5) That duty-free or domestic merchandise of the same kind and quality as the designated merchandise was used by the manufacturer or producer of the exported articles within 3 years after the date on which the designated merchandise was received by such manufacturer or producer; and

(6) The quantity of merchandise of the same kind and quality as designated merchandise, used in the manufacture or production of the exported articles.

(b) When valuable wastes are incurred in manufacture or production and the manufacturer or producer has not limited his claims to the quantity of merchandise apearing in the articles manufactured or produced for exportation with benefit of drawback, the records shall show the quantity and value of the merchandise used in the manufacture or production of the articles and the quantity and value of the waste incurred in order that the deduction provided for in § 22.4(a) may be made in liquidation.

(c) Duty-paid merchandise or articles manufactured or produced under drawback regulations which have been used at one plant of a manufacturer or producer within 3 years after the date on which such material was received by such manufacturer or producer may be designated as the basis for the allowance of drawback on articles manufactured or produced in accordance with the regulations in this part at other plants of the same manufacturer or producer.

(d) Drawback shall be allowed although the exported articles are not of the same kind and quality as the articles which were manufactured or produced with the use of the designated merchandise, provided such exported articles were manufactured or produced with the use of merchandise of the same kind and quality as the designated merchandise.

§ 22.6 General drawback rates in effect; approval of drawback statements by collectors.

(a) *Drawback statements; filing and approval at one port.* Each manufacturer or producer of articles covered by a drawback rate in this section shall submit through the supervising customs agents to the collector of customs at the port where drawback entries will be filed a statement in duplicate describing the methods used in the manufacturing or production of the products involved and setting forth the records it agrees to keep for the purpose of complying with the drawback law and regulations and for providing all the data required for the proper liquidation of certificates of manufacture and drawback entries filed hereunder. If the statement shows that the methods and records described therein enable the manufacturer or producer to comply with the law and regulations and if the facts developed by the investigation so warrant, the collector shall approve the statement and promptly notify the applicant, in writing, of such action.

(b) *Drawback statements; filing and approval at more than one port.* In cases where the statement provides for the filing of drawback entries at two or more ports, the statement in duplicate shall be submitted through the supervising customs agents to the collector at each of the ports named. In such case the collector at the port first listed in the statement shall approve the statement, if that action is warranted and is concurred in by the collectors at the other ports named, and shall promptly notify the applicant, in writing, of such action.

(c) *Drawback statements; supplemental.* Supplemental statements covering changes in statements filed under this section shall be handled in accordance with the provisions of paragraphs (a) and (b) of this section.

(d) *Applicability of other drawback provisions to general rates.* The allowance of drawback on articles covered by a drawback rate in this section shall be subject to compliance with the applicable provisions of this part.

(e) *Bags and meat wrappers.* Drawback may be allowed on the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special regulations:

(1) Each lot of imported material received by a manufacturer shall be given a lot number and kept separate from other lots until used. The records of the manufacturer shall show, as to each manufacturing lot or period of manufacture, the quantity of material used from each import lot and the number of each kind and size of bags or meat wrappers obtained. A certificate of manufacture shall be filed covering each manufacturing lot or period of manufacture.

(2) All bags or meat wrappers manufactured for the account of the same exporter during a specified period may be designated as one manufacturing lot and covered by one certificate of manufacture and delivery. All exported bags or meat wrappers shall be identified by the exporter with the certificate of manufacture covering their manufacture.

(3) The drawback allowance shall not exceed 99 percent of the duty paid on the imported material appearing in the exported bags or meat wrappers, unless the manufacturer desires an allowance for waste and so specifies in his statement. In such cases the records of the manufacturer shall show, in addition to the above requirements, the value of the imported material, the quantity of waste incurred in the manufacture of each lot of bags or meat wrappers, or during each period of manufacture, and the value of such waste, if any; and in liquidation the quantity of imported material which may be used as the basis for the allowance of drawback shall be reduced by the quantity of imported material which the value of the waste will replace.

(f) *Sugar and sirups; substitution* Drawback may be allowed under the provisions of section 313 (b), Tariff Act of 1930, upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special regulations:

(1) The drawback allowance shall not exceed 99 percent of the duty paid on a quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained in the manner hereinafter set forth.

(2) The refined sugars and sirups shall have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 3 years after the date on which the designated sugar was received by the refiner, and shall have been exported within 5 years from the date of importation of the designated sugar.

(3) All granulated sugar testing by the polariscope 99.5° and over shall be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5° shall be deemed soft refined sugar. All "blackstrap," "unfiltered sirup," and "final molasses" shall be deemed sirup.

(4) The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) shall be of the same kind and quality as that used in the manufacture of the exported refined sugar or sirup and shall have been used within 3 years after the date on which it was received by the refiner. Duty-paid sugar which has been used at a plant of a refiner within 3 years after the date on which it was received by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

(5) For the purpose of distributing the drawback in accordance with the provisions of section 313, Tariff Act of 1930, relative values shall be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract shall be deemed the time of separation of the sugars and sirups covered by such abstract.

(6) The sucrose allowance per pound on hard refined (granulated) sugar established by the liquidation of an abstract shall be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

(7) The sucrose allowance per gallon on sirup established by the liquidation of an abstract shall be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special drawback rate.

(8) As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records shall show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, and the settlement polarization. Such records covering imported sugar shall show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

(9) The melt records shall show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

(10) There shall be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

(11) The sirup manufacture records shall show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels, and the refinery serial manufacture number.

(12) The refined sugar stock records shall show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each shall be shown.

(13) Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, shall be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records hereinbefore provided for and shown in the abstract from such records filed in the customhouse. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the collector of customs immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback shall be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers shall be marked with the marks which appeared on the original containers and a supplemental statement covering such repacking and remarking shall be filed with the collector. If sirups from more than one lot are stored in the same tank, the refinery records shall show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

(14) An abstract from the foregoing records covering manufacturing periods of not less than 28 nor more than 35 days, unless a different period shall have been authorized, shall be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract shall be filed by each refiner with the collector of customs at New York, except as to refineries located in California, Louisiana, Puerto Rico, or Hawaii, for which the abstracts shall be filed respectively with the collectors at San Francisco, New Orleans, San Juan, or Honolulu. The collectors at the ports mentioned shall liquidate the abstracts filed with them and shall keep full and complete records of the kinds and quantities of refined sugars and sirups entitled to drawback on exportation and, upon proper request, shall issue extracts therefrom for use at other ports where drawback entries are filed covering exportations made of such refined sugars and sirups, and shall debit such records with the quantities covered by such extracts. The abstracts filed by each refinery shall be consecutively numbered by the refiner, shall be signed by the head refiner or superintendent or his first assistant, and shall be in the following form:

Abstract from the refinery records of ----------, located at ----------, covering sugars melted and hard and soft refined sugars and sirups manufactured therefrom during the period from ---------- to ----------.

RAW STOCK RECORD

Refiner's raw lot No.	Import entry No.	Packages: No.	Packages: Kind	Pounds	Polarization	By whom imported or withdrawn	Date of importation	Date of receipt by refiner	Date of melt	Importing carrier	Country of origin
------	------	------	------	------	------	----------	------	------	------	----------	----------

MELT RECORD

Number of pounds in each lot melted: Lot No.	Number of pounds in each lot melted: Pounds	Polarization: Degrees	Polarization: Pounds sucrose
----------	----------	----------	----------

SIRUP STOCK RECORDS

Date of boiling	Refinery serial manufacture No.	Quantity of sirup in gallons	Pounds sucrose contained therein
----------	----------	----------	----------

REFINED SUGAR STOCK RECORD

Refinery serial production No.	Date of manufacture	Hard or soft refined	Polarization and No.	Net weight in pounds
----------	----------	----------	----------	----------

RECAPITULATION

Item 1. Sucrose in process at beginning of period---------- Pounds.
Item 2. Sucrose melted during period---------- Pounds.
Item 3. Sucrose in process at end of period---------- Do.
Item 4. Sucrose used in manufacture---------- Pounds
Item 5. Sucrose contained in manufacture---------- Do.
Item 1 plus item 2, minus item 3, should equal item 4.

I, ----------, the ---------- ------ refiner at the ---------- re-

finery of _____, located at _____, do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the refinery records, which have been kept in accordance with § 22.6 (f) of the customs regulations and which are at all times open to the inspection of officers of the customs.

Date _____

_____
(Signature)

(15) The refiner shall file with each abstract a statement, in the form prescribed, showing the average market values of the products specified in the abstract:

Market values of refined sugars and sirup for the period _____ to _____ covered by abstract No. _____:

Hard refined sugar (bulk)_____ Per pound.
Blackstrap or unfiltered sirup (bulk)_____ per gallon.
Soft refined sugar (bulk) No. 1__ Per pound.
Soft refined sugar (bulk) No. 2__ Do.
Soft refined sugar (bulk) No. 3__ Do.
Soft refined sugar (bulk) No. 4__ Do.
Soft refined sugar (bulk) No. 5__ Do.
Soft refined sugar (bulk) No. 6__ Do.
Soft refined sugar (bulk) No. 7__ Do.
Soft refined sugar (bulk) No. 8__ Do.
Soft refined sugar (bulk) No. 9__ Do.
Soft refined sugar (bulk) No. 10_ Do.
Soft refined sugar (bulk) No. 11_ Do.
Soft refined sugar (bulk) No. 12_ Do.
Soft refined sugar (bulk) No. 13_ Do.
Soft refined sugar (bulk) No. 14_ Do.
Soft refined sugar (bulk) No. 15_ Do.
Soft refined sugar (bulk) No. 16_ Per pound.
Miscellaneous _____

I, _____, _____
(Official capacity)
of the _____, do solemnly
(Refinery)
and truly declare that the values shown above are true to the best of my knowledge and belief, and can be verified by our records.

Date _____

_____
(Signature)

(16) At the end of each calendar month the refiner shall furnish to the collector of customs at the port where the abstract is filed a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

(17) In the liquidation of abstracts the following example shall be followed in determining the sucrose allowance to be applied to the various products:

EXAMPLE OF LIQUIDATION

	Pounds	Polarization	Pounds, sucrose
Stock in process at beginning of period	3,650,539	83.43	3,045,645
Raw sugar melted during period	73,186,789	96.65	70,735,032
Less stock in process at end of period	3,632,470	87.59	73,780,677 3,181,680
Sucrose actually used in manufacture			70,598,997

1 Manufacture	2 Polarization	3 Market value	4 Sucrose allowance per unit	5 Total sucrose allowance
	Degrees	*Per pound*	*Pounds*	*Pounds*
Hard refined sugar 63,192,240	100.00	$0.053	1.04051625	65,752,553
Soft refined:				
No. 1 14,903	98.12	.053	1.04051625	15,507
No. 2 11,060	97.48	.052	1.02088	11,299
No. 3 5,500	94.40	.0505	.991435	5,452
No. 4 4,500	93.84	.05	.981619	4,419
No. 5 19,900	90.67	.0495	.971803	19,334
No. 6 299,933	90.14	.049	.961987	288,539
No. 7 453,762	88.82	.0485	.952171	432,062
No. 8 1,887,936	87.86	.048	.942354	1,779,108
No. 9 342,591	87.56	.0475	.932538	319,477
No. 10 439,098	87.31	.047	.922722	451,301
No. 11 130,800	86.32	.0465	.912906	119,403
No. 12 210,100	86.41	.046	.90309	189,739
No. 13 174,622	91.19	.0455	.893273	155,985
No. 14 539,158	85.45	.0455	.893273	481,615
		Per gallon		
Sirup (gallons) 214,687	(1)	.136	2.67	573,214
Total				70,598,997

[1] 4 pounds per gallon.

Total market value of production (column 1 times column 3), $3,596,049.50. Sucrose used (70,598,997 pounds) divided by market value ($3,596,049.50) equals pounds sucrose allowable per $1 of market value, or 19,632,382 pounds sucrose; this factor multiplied by the market values in column 3 will produce the factors in column 4, which are the pounds of sucrose to be allowed per pound of sugar or gallon of sirup manufactured under this abstract, less 1 percent thereof. Quantities in column 1 multiplied by the quantities in column 4 should equal the quantities in column 5.

TEST FOR LOSS

Sucrose in manufacture (column 1 times column 2)_____ 66,077,389
Sucrose used in manufacture_____ 70,598,997 = 96.43% or 3.57% loss.

(18) The certificate of delivery shall be in the following form:

CERTIFICATE OF DELIVERY—SUGAR AND SIRUP

No. _____

Certificate of delivery of _____ manufactured by _____ under abstract No. _____ filed at the port of _____.

Description	Quantity	Polarization

DESIGNATION OF IMPORTED SUGAR

Import entry No.	By whom imported or withdrawn from warehouse	Name of importing carrier	When imported	Where imported	Quantity of raw sugar (pounds)	Polarization	Sucrose) (pounds

I, _____, the _____ of _____, located at _____, declare that the sugar (or sirup) described in the within certificate of delivery was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____ and was delivered to _____, 19____, and that no other certificate of delivery has been issued covering the above merchandise; that the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by officers of the customs. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup on_____.

Dated_____.

_____
(Signature)

(19) The drawback entry shall be in the following form:

Drawback Entry for Sugars and Sirups

UNITED STATES CUSTOMS SERVICE,

Port of _____, 19____.

Entry for drawback on sugars and sirups exported under notices of exportation, filed by _____, said notices and the merchandise covered thereby being particularly set forth below, together with the designation of imported raw sugar containing sucrose of the quantity used in the manufacture of such merchandise, based on the relative value of the refined sugars and sirups manufactured during the period covered by abstract No. ____ (customs No. ____) on file with the collector of customs at the port of _____. Drawback claimed under § 22.6 (f) of the customs regulations.

No. of notice of exportation	Exporting carrier	Date of clearance	Name of shipper	No. of packages	Quantity and description of exported merchandise

DESIGNATION OF IMPORTED SUGAR

No. of import entry	By whom imported or withdrawn from warehouse	Name of importing carrier	When imported	Where imported	Quantity sugar (pounds)	Polarization	Sucrose (pounds)	Certificate of delivery No.

I, _____, the_____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____; that the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by officers of the customs. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup during the period covered by abstract No. _____, customs No. _____, on file with the collector of customs at ____ _____.

I further declare that the sugar or sirup specified herein was delivered to the above-named shippers.

Dated_____.

_____
(Signature)

(20) The declaration of exportation required on customs Form 7575 shall be made a part of the drawback entry.

(21) When an extract from an abstract from refinery records is required for use at a port other than the port where the abstract is liquidated, the extract shall be in the following form:

Extract from Abstract from Refinery Records of Sugar or Sirup Intended for Exportation with Benefit of Drawback

UNITED STATES CUSTOMS SERVICE

District No. _____, Port of _____, Collector's Office, _____, 19____.

This is to certify that there is on record in this office an abstract from refinery record No. _____, customs No. _____, of _____, located at _____, covering the following-described merchandise manufactured during the period from _____, to _____, *for* which certificate of delivery No. _____ to _____ has been filed in this office.

Description	Quantity	Sucrose allowance per unit (1 percent to be deducted in duty statement on drawback entry)

SUGAR DESIGNATED BY THE REFINER AS THE BASIS FOR THE ALLOWANCE OF DRAWBACK

No. of import entry	By whom imported or withdrawn from warehouse	Name of importing carrier	When imported	Where imported	Quantity of sugar (pounds)	Polarization	Sucrose	Certificate of delivery

Date of receipt by refiner of above sugar _____.

Date of use by refiner of above sugar _____.

Date of delivery of refined sugar or sirup _____.

Delivered to _____,
Deputy Collector.

_____,
Comptroller.

To be used at the port of _____.

(22) In cases where the sugar designated on the certificate of delivery has been imported at the port where the extract is issued, the collector at that port shall issue a certificate of importation for the designated sugar on customs Form 5265 and forward it to the collector of customs at the port where the extract from the refinery abstract is to be used.

(g) *Linseed oil, linseed oil cake, and linseed oil meal.* Drawback may be allowed under the provisions of section 313 (a), Tariff Act of 1930, upon the exportation of linseed oil, linseed oil cake, and linseed oil meal, manufactured with the use of imported flaxseed, subject to the following special regulations:

(1) The mill zones hereinafter referred to embrace:

New York Mill Zone: Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York (except Buffalo), New Jersey, Pennsylvania (except Pittsburgh), Delaware, Maryland, and Rhode Island.

Buffalo Mill Zone: Buffalo, N. Y., Pittsburgh, Pa., West Virginia, Ohio, Indiana, Michigan, and Kentucky.

Chicago Mill Zone: Minnesota, South Dakota, Wisconsin, Illinois, Iowa, Nebraska, Missouri, and Kansas.

West Coast Mill Zone: Washington, Idaho, Oregon, California, Nevada, Utah, and Arizona.

(2) Except as provided for in subparagraph (3) of this paragraph, the manufacturing period (hereinafter referred to as the abstract period) of each crusher shall be coextensive with the withdrawal of one or more entire lots or cargoes of imported flaxseed, from the storage tanks and the manufacture into oil and cake of the flaxseed so withdrawn. A cut-off shall be made at the storage tanks after the withdrawal of one or more complete lots or cargoes, and all the seed from such lots or cargoes in process or contained in bins, screens, conveyors, cookers, presses, expellers, etc., shall be manufactured during the abstract period in order that there may be no overlapping of seed and product from one abstract period to another. If any seed withdrawn from the storage tanks during any abstract period is disposed of without being manufactured into the products specified in this paragraph, it shall be reported on the certificate of manufacture provided for in subparagraph (4) of this paragraph. The quantity of seed so withdrawn shall be stated according to its condition as imported.

(3) Should it become necessary for a crusher to terminate an abstract period before the complete withdrawal from the storage tanks of any lot or cargo of imported flaxseed contained therein, a cut-off shall be made at the storage tanks and the quantity of imported flaxseed remaining in the tanks after the cut-off shall be determined by weighing, gauging, or measuring under the supervision of a customs officer. Upon application to the collector of customs in whose district the plant of the crusher is located, a customs officer shall be assigned for this purpose. All flaxseed withdrawn from storage before the cut-off shall be manufactured into oil and cake or otherwise disposed of before a new abstract period is begun.

(4) At the conclusion of each abstract period during which a crusher manufactures oil, cake, or meal for exportation with benefit of drawback, such crusher shall file a certificate of manufacture, constituting an abstract of his manufacturing records, with the collector of customs at any one of the following ports: New York, N. Y.; Philadelphia, Pa.; Chicago, Ill.; Cleveland, Ohio; San Francisco, Calif.; or Seattle, Wash.

(5) Such certificate shall show the inclusive dates of manufacture; the quantity, identity, and value (if valuable wastes occur) of the imported flaxseed or screenings, scalpings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed shall not be estimated nor computed on the basis of the quantity of finished products obtained, but shall be determined by actually weighing the said flaxseed, screenings, scalpings, chaff, scourings, or other material; or, at the option of the crusher, the quantities of imported materials used may be determined from customs weights, as shown by the import entry covering such imported materials, and the Government weight certificate and certificate of analysis issued at the time of entry. The entire period covered by an abstract shall be deemed the time of separation of the oil and cake covered thereby.

(6) The drawback allowance shall not exceed 99 percent of the duty paid on the quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used in the manufacture of the exported products, less the quantity of such imported materials which the value of the waste will replace, as shown by the abstract of the manufacturing records provided for above.

(7) The drawback allowance shall be distributed to the oil and cake in accordance with their relative values at the time of separation, and the drawback allowance on the processed oil and on the oil meal shall be the drawback accruing to the raw oil and to the cake from which the processed oil and the meal, respectively, were produced.

(8) In order that the relative values may be determined for use as the bases for the distribution of the drawback to the several products as prescribed in section 313 (a), Tariff Act of 1930, each crusher operating under the provisions of this paragraph shall file with the col-

lector of customs, New York, N. Y., within 10 days after the 1st and 15th days of each month a statement in duplicate showing the quantity of oil in barrels of 375 pounds each and the quantity of cake or meal in tons of 2,000 pounds delivered each day from the mill during the preceding period (that is, 1st to 15th or 16th to the last day of the month) to points in the zone in which the mill is located. The total daily quantity and value of such products delivered with drawback not reserved by the crusher and the total daily quantity of such products delivered with drawback reserved by the crusher shall be stated separately. The value of oil shall be shown on the carload raw basis in barreled condition, that is, if the oil was processed, the processing differential shall be deducted, or, if it was delivered in tank wagons or tank cars, the barreling differential shall be added. The values of cake and meal shall be shown on the carload basis in bags. The values of oil cake, and meal, as outlined above, shall be reported on the basis of the invoices of sale, without deduction for the cost of containers and other charges.

(9) Upon receipt of the statements from the crushers concerned, the collector of customs at New York shall determine and declare the daily average values of the raw linseed oil and linseed cake manufactured by the crushers in each mill zone. Such daily average values shall be ascertained in the following manner:

(i) The total quantity of oil delivered on a certain day by all crushers in a given mill zone to points within that zone, with drawback not reserved by the crushers, divided into the amount of money received by the crushers for such oil (the quotient to be extended to 6 decimal places), less the amount deducted for the cost of packing and other charges incurred after separation, shall be the daily average value of such oil.

(ii) The total quantity of cake delivered on a certain day by all crushers in a given mill zone to points within that zone, with drawback not reserved by the crushers, divided into the amount of money received by the crushers for such cake (the quotient to be extended to 6 decimal places), less the amount deducted for the cost of packing and other charges incurred after separation, shall be the daily average value of such cake.

(iii) The total quantity of meal delivered on a certain day by all crushers in a given mill zone to points within that zone, with drawback not reserved by the crushers, divided into the amount of money received by the crushers for such meal (the quotient to be extended to 6 decimal places), less the amount deducted for the cost of packing, grinding, and other charges necessary to reduce such meal to a cake basis, shall be the daily average value of the cake from which such meal was ground.

(iv) The weighted average of the two values determined in accordance with subdivisions (ii) and (iii) of this subparagraph shall be the daily average value of the cake concerned.

(v) If no deliveries of oil, cake or meal are made to a point in the mill zone on a certain day, the last daily average value established by the collector at New York for that product shall be used as the value thereof for the day on which no deliveries were made.

(vi) The amount to be deducted from the delivered value of oil cake, or meal by the collector at New York to make relative value at the point of separation shall be an average amount for each zone obtained by averaging the cost of packing and other charges of all crushers within the zone concerned. In order that this deduction may be made, each crusher shall furnish the collector at New York, from time to time as the collector may request, a statement showing such costs and charges.

(10) After the close of each calendar month the collector at New York shall prepare for each mill zone a statement showing the daily average values of cake and oil ascertained as above, and shall transmit to the collectors at Philadelphia, Chicago, Cleveland, San Francisco, and Seattle copies of such statements as cover zones in which crushers who file abstracts at the respective ports are located.

(11) To ascertain the relative values of the cake and oil for the period covered by an abstract, the collector of customs concerned shall add the daily average values for his zone of cake and oil, respectively, as furnished by the collector at New York, for each day of the period covered by the abstract and shall divide the totals thus obtained by the number of such daily average values.

(12) Upon the application of any crusher operating under this paragraph, the collector of customs at any of the above-mentioned ports is authorized to advise such crusher of the daily average values of cake and oil established by the collector of customs at New York for the zone in which the crusher is located, and of the relative values of such products as determined for the period covered by an abstract filed by such crusher with the collector to whom application has been made.

(13) If a crusher desires to file his abstract at one of the above-enumerated ports not located within the mill zone in which his plant is situated, the daily average values of the oil and cake for the zone in which the plant of the crusher is situated shall be certified by the collector at New York to the collector at the port where such abstract is to be filed, on the request of such crusher; and the collector at such port shall ascertain the relative values of the products for the period covered by the abstract in the manner prescribed in subparagraph (11) of this paragraph.

(14) If the records of the manufacturer do not show the quantity of oil cake used in the manufacture of the exported oil meal and the quantity of oil meal obtained, the net weight of the oil meal exported shall be regarded in liquidation as the weight of the oil cake used in the manufacture thereof.

(15) If various tanks are used for the storage of imported flaxseed, the mill records shall show by a definite designation the tank or tanks in which each lot or cargo is stored.

(16) If raw or processed oil manufactured during different periods of manufacture is intermixed in storage, a record shall be maintained showing the quantity, identity, and kind of oil so intermixed. Identification shall be made in accordance with § 22.4 (f). If oil so intermixed is delivered to manufacturers who use the oil in the manufacture of articles to be exported, the certificate of delivery shall show the certificates of manufacture from which such oil may have originated.

(17) If linseed cake or meal is placed in storage, it shall be segregated by abstract periods or marked to show the period in which it was manufactured.

(h) *Piece goods.* Drawback may be allowed under the provisions of section 313 (a), Tariff Act of 1930, upon the exportation of bleached, mercerized, printed, dyed, or redyed piece goods manufactured or produced by any one or a combination of the foregoing processes with the use of imported or drawback woven piece goods, subject to the following special regulations:

(1) The records of the manufacturer or producer shall show, as to each lot of piece goods manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, and value of the imported or drawback piece goods used, the condition in which imported or received (whether in the gray, bleached, dyed, or mercerized), the working allowance specified in the contract under which they are received, the process or processes applied thereto, and the quantity and description of the piece goods obtained.

(2) The records also shall show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred.

(3) Further, the records shall show the quantity of rag waste incurred and its value. In instances where it is impracticable to account for the actual quantity of rag waste incurred, it shall be assumed in liquidation that such rag waste constituted 2 percent of the piece goods put into process.

(4) The piece goods manufactured or produced hereunder may also be subjected to one or more finishing processes.

(5) An abstract of the manufacturing or production records shall be filed with the drawback entry.

(6) The quantity of piece goods upon which drawback may be allowed shall be computed as follows: Deduct from the quantity of piece goods received the quantity of remnants and spoilage, if any, incurred, the proper allowance to be made for shrinkage or stretch, of any, occurring during manufacture or production. Reduce the remaining quantity by the quantity thereof which the value of the rag waste will replace. When necessary for the purposes of liquidation, the value of the imported or drawback piece goods used shall be furnished by the owner.

(7) The drawback allowance shall not exceed the duty paid, less 1 per centum thereof, on the net quantity of finished piece goods exported, determined as above, as shown by the abstract of the manufacturing or production records;

or, in the case of piece goods manufactured or produced hereunder with the use of drawback piece goods, the drawback accruing to such net quantity, as established by the abstract of the manufacturing or production records and the certificates of manufacture and delivery covering the drawback piece goods concerned.

(8) Drawback shall not be allowed hereunder when the process performed results only in the restoration of the articles to their condition at the time of importation.

(i) *Fur skins and fur skin articles.* Drawback may be allowed under the provisions of section 313 (a), Tariff Act of 1930, upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one or a combination of the foregoing processes with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special regulations:

(1) The records of the manufacturer or producer shall show, as to each lot of fur skins and fur skin articles manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, and description of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity and description of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

(2) An abstract of the manufacturing or production records shall be filed with the drawback entry.

(3) The drawback allowance shall not exceed the duty paid, less 1 per centum thereof, on the quantity of imported merchandise used in the manufacture or production of the exported articles, as shown by the abstract of the manufacturing or production records. The quantity of imported merchandise used shall be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of rejects and spoilage incurred, if any.

(4) Drawback shall not be allowed hereunder when the process performed results only in the restoration of the articles to their condition at the time of importation.

§ 22.7 Notice of exportation.

(a) A notice of exportation in triplicate,[4] on customs Form 7511, for each shipment of merchandise on which drawback is to be claimed shall be filed by the exporter or his agent with the collector of customs at the port at which the shipment is to be exported from the United States. Such notice shall show the name of the exporting vessel or other carrier, the number and kind of packages and their marks and numbers, the description of the merchandise and its weight (gross and net), gauge, measure, or number, the name of the exporter, and the name of the port where the drawback entry is to be filed. If the merchandise is to be exported in railroad cars, a notice of exportation shall be filed for each car.

(b) Except as provided for in §§ 22.8 and 22.9, the notice of exportation shall be filed with the shipper's export declaration, or, if filed subsequently, it shall be filed within 3 years after exportation and shall state the number, if any, and date of the shipper's export declaration. One shipper's export declaration may cover several notices of exportation. A notice of exportation not filed in the time and manner herein specified shall not be accepted unless its acceptance is specifically authorized by the Bureau.

(c) Upon receipt of the notice of exportation, the collector shall assign a number thereto which shall be stamped or endorsed on the original and each copy of the notice. If a number has been assigned to the corresponding shipper's export declaration, the same number shall be assigned to the notice of exportation. If a shipper's export declaration covers more than one notice of exportation, one of the notices shall be assigned the same number as that assigned to the shipper's export declaration; the remaining notices shall also be assigned the same number but each notice shall be further identified by the addition of an alphabetic designation beginning with the letter "A". However, if no number has been assigned to the shipper's export declaration, each notice of exportation shall be separately numbered. On one of the copies of the notice, the collector shall certify (1) as to the exportation of the merchandise as shown by the records of his office, and (2) as to the name of the exporter as shown by the shipper's export declaration covering the merchandise. The collector shall return such copy and one uncertified copy to the exporter, or to the person designated by the exporter, for subsequent filing with the drawback entry. Whenever the collector is unable to certify to the exportation of the merchandise covered by the notice of exportation, he shall return two copies of the notice to the exporter or to the person designated by the exporter, with a statement of the facts in the case.

(d) When drawback is to be claimed under section 313 (a), (b), or (g), Tariff Act of 1930, on an aircraft departing under its own power from the United States, or on merchandise exported by aircraft, the notice of exportation shall be filed in the manner prescribed herein at the port where the shipper's export declaration is filed.

(e) When merchandise is laden on a vessel for transshipment at a domestic port outside the continental United States,[5] the notice of exportation shall be filed with the collector of customs at the port where the merchandise was last transshipped for its foreign destination (the place where the shipper's export declaration is filed).

§ 22.8 Notice of exportation; mail shipments.

(a) If the merchandise on which drawback is to be claimed is to be exported by mail or parcel post, the notice of exportation shall be prepared in quadruplicate. Three copies shall be filed with the postmaster at the place of mailing, and the merchandise shall be delivered to the postmaster at the same time and mailed under his supervision. The fourth copy shall be retained by the exporter for subsequent filing with the drawback entry. Such notices shall be numbered by the exporter in accordance with § 22.10.

(b) Each package to be exported shall have stamped or written thereon a waiver of the right to withdraw the package from the mails, signed by the exporter, on customs Form 3413, or in a substantially similar form.

(c) After the packages have been mailed, the postmaster will execute his certificate on one of the copies of the notice of exportation and return such copy to the person who presented the notice, for subsequent filing with the drawback entry. One copy of the notice will be postmarked by the postmaster and mailed by him to the collector of customs at the port where the notice shows the drawback entry is to be filed, and the other copy will be retained by the postmaster as his record of the transaction.

§ 22.9 Notice of exportation; government shipments.

(a) In the case of a shipment by a department, branch, or agency of the United States Government, if no shipper's export declaration is required, the notice of exportation for such a shipment shall be prepared in quadruplicate, whether the drawback is to be claimed by such department, branch, or agency, or by the supplier of the merchandise. Three copies shall be filed by the exporter or his agent with the government officer in charge of transportation at the port of exportation. The fourth copy shall be retained by the exporter for subsequent filing with the drawback entry. Such notices shall be numbered by the exporter in accordance with § 22.10.

(b) The notice of exportation shall bear an endorsement in the following form, to be placed thereon by the exporter, for execution by the government transportation officer at the port of exportation:

CERTIFICATE OF EXPORTATION

This is to certify that the merchandise described herein was laden at the port of ----------, for ----------;
(foreign destination—actual or code)
that the exporting conveyance departed from the above-named port on ----------;
(Date)
and that ---------- was
(Name)
the actual shipper of the merchandise.

(Name)

(Rank, organization, title)

(Date)

[4] If the exporter desires, he may file an extra copy of the notice of exportation with the collector for numbering and return to him for use for reference or other purposes in pursuing his claim.

[5] Such as San Juan, P. R., or Honolulu, Hawaii.

(c) After the exporting vessel or other conveyance has departed, the government transportation officer at the port of exportation will execute his certificate on one of the copies of the notice of exportation and return such copy to the exporter, or to the person designated by the exporter, for subsequent filing with the drawback entry. One copy of the notice of exportation will also be signed by the government transportation officer to indicate its official status and mailed by him to the collector of customs at the port where the notice shows the drawback entry is to be filed, and the other copy will be retained by the government transportation officer as his record of the transaction.

§ 22.10 Numbering notices of exportation for mail or government shipments.

Notices of exportation covering government shipments or shipments by mail shall be given, for identification purposes, a number by the exporter in a series beginning with No. 1 for each 12-month period commencing on July 1 of each year. One series of numbers shall be used by each exporter to cover both types of shipments made by him.

§ 22.11 Amendment of notices of exportation.

At any time within the 3-year period prescribed for the completion of the drawback claim, a notice of exportation may be amended if the collector is satisfied as to the correctness of the amendment. Every application for amendment and its supporting evidence shall be in writing and submitted to the collector of customs at the port where the drawback entry is filed.

§ 22.12 Examination of merchandise.

The collector may examine any merchandise being exported with benefit of drawback if he is not satisfied as to the bona fides of the shipment.

§ 22.13 Completion of drawback claims.

(a) A drawback entry and certificate of manufacture shall be filed within 3 years after the date the articles are exported. Such entry and certificate shall be filed on customs Form 7575 except in cases covered by paragraph (c) or (e) of this section. If such entry and certificate are filed on customs Form 7575, such form shall be filed in duplicate; and, if the entry is filed on customs Form 7573, only one copy (the original) need be filed, provided that an additional copy of either form may be required by the collector of customs if he deems such additional copy necessary for administrative use in his office. The copy of the notice of exportation certified by the collector and one uncertified copy shall be filed with the entry. The certified copy of the notice of exportation shall show that the merchandise was shipped by the person making the drawback entry, or shall bear an endorsement of the person in whose name the merchandise was shipped, showing that the person making entry is authorized to make it and to receive the drawback. One entry may cover several shipments. All documents necessary to the liquidation of the entry, including those issued by one customs officer to another, shall be filed or applied for, as the case may require, within the 3-year period prescribed above, except that any required landing certificate shall be filed within the time prescribed in § 22.17 (c). Claims not completed within the 3-year period prescribed above shall be treated as abandoned and no extension will be granted, unless it is established that failure to complete the claim within 3 years was occasioned by action of a responsible customs officer.

(b) A statement in duplicate of the papers filed, showing the dates on which official documents were applied for, may be presented with the drawback entry. When such statement has been verified as to the papers filed, one copy shall be receipted and returned to the claimant and the other copy attached to the drawback entry. When a landing certificate is required, it shall be furnished prior to the liquidation of the entry.

(c) If certificates of manufacture are filed prior to the filing of the entry, they shall be referred to in the entry by the official number in lieu of the particulars of importation and manufacture. In such cases the entry shall be on customs Form 7573.

(d) If the drawback entry is filed at a port other than that at which the certificate of manufacture is on file, the collector at the port where the certificate is on file, after liquidation and at the request of the person filing the certificate or the person to whom such merchandise was delivered, as shown by said certificate, shall issue an extract therefrom on customs Form 4537 for use at the port where the entry is filed. Such extract shall be transmitted to the collector at the latter port and, for the purpose of identification, reference may be made thereto as in the case of an original certificate.

(e) When completely manufactured articles are purchased for exportation and the drawback is to be paid to the purchaser, the entry shall be on customs Form 7573 and be accompanied by a certificate of manufacture and delivery on customs Form 7577, if such a certificate is not already on file.

(f) In the case of a vessel, or aircraft upon which drawback is to be claimed under section 313 (g), Tariff Act of 1930, there shall be filed with the drawback entry a copy of the contract under which the vessel or aircraft was built or the pertinent part thereof showing that it was built for foreign account and ownership. In the case of a vessel, except a warship, there shall also be filed a certificate of clearance for the foreign port, if the vessel is cleared from a port other than that at which the entry is filed, and a certified copy of the registry certificate or, in lieu thereof, a certificate of the consul of the foreign nation to which the vessel belongs, showing that the said vessel has been documented under the flag of that country. In the case of warships, the certificates of clearance and foreign documentation shall not be required.

(g) A drawback entry may be corrected, or a timely supplemental entry filed, only when permission is granted by the collector. Corrections or amendments permitted must be certified by the appropriate parties.

§ 22.14 Certificates of importation and extracts.

(a) If the merchandise identified in the drawback entry or certificate of manufacture was not imported at a port within the customs collection district where the entry or certificate of manufacture is filed, the collector of customs of the district where the merchandise was imported shall upon application by the importer or the party to whom the delivery of such merchandise has been certified, issue to the collector at the port named a certificate of importation on customs Form 5265 bearing a notation showing the date on which the application for the issuance of the certificate was filed. Such application shall be made on customs Form 5263 or in a substantially similar form.

(b) If any portion of the merchandise covered by the certificate of importation is used in the manufacture of articles covered by a drawback entry or certificate of manufacture on file at a port other than that at which the certificate is on file, the collector holding the certificate, on written request, shall issue an extract on customs Form 5267 for use at such other port and transmit it to the collector at that port.

(c) In the case of articles manufactured with the use of metals withdrawn from a bonded smelting or refining establishment, the collector at the port of withdrawal shall issue, in lieu of certificates of importation, certificates showing the date of importation, date of withdrawal, name of person making the withdrawal, quantity and character of the metal, and rate and amount of duty paid.

(d) No certificate of importation shall be issued until the import entry covering the merchandise to be certified shall have been liquidated, the liquidated duties have been paid, and such liquidation shall have been made final by operation of law or by acceptance in writing by the importer. Such certificate and any extract therefrom shall show the name of the person to whom delivery has been certified and the date of delivery in case a certificate of delivery has been filed with the collector issuing such certificate or extract.

(e) When a certificate of manufacture covering bags or meat wrappers is filed showing transfer of the bags or meat wrappers after manufacture, the exporter may present an application addressed to the collector of customs at the port where the burlap or other textile material was imported, requesting the issuance of a certificate of importation, and the collector of customs at the port where the certificate of manufacture is filed shall indicate on the application, before forwarding it to the collector at the port of importation, that the proper certificate of delivery is endorsed on the certificate of manufacture to the person requesting the certificate of importation, thus obviating the necessity of filing further certificates of delivery with the collector of customs who issues the certificate of importation.

§ 22.15 Certificates of delivery of imported merchandise.

(a) When the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until there has been filed with the collector at the port where the drawback entry is filed a certificate of delivery in duplicate on customs Form 7543 or official evidence of the existence of such a certificate filed at another port, fully describing the merchandise delivered and tracing it from the custody of the importer to the custody of the manufacturer. Reference may be made to this certificate by the manufacturer in his certificate of manufacture in lieu of the particulars of importation, provided the certificate covers but one importation.

(b) If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be shown on the certificate of delivery by a certificate of the person through whose possession the merchandise passed.

(c) When the imported merchandise is covered by a consumption entry and the consignee named therein has declared another person to be the actual owner, such consignee shall be considered the importer for drawback purposes irrespective of whether an owner's declaration was filed in accordance with section 485 (d), Tariff Act of 1930, and a certificate of delivery from such consignee to the person to whom delivery was made shall be required.

(d) The person in whose name merchandise is withdrawn from bonded warehouse shall be considered the importer for drawback purposes, and certificates of delivery covering prior transfers of such merchandise while in bonded warehouse shall not be required.

§ 22.16 Certificates of manufacture and delivery; manufactured or partly manufactured articles.

(a) When the imported merchandise used has passed through some process of manufacture before delivery and the wholly or partly manufactured article is used in the manufacture of some other article for exportation, or when completely manufactured articles are purchased for exportation without further manipulation, a certificate of manufacture and delivery shall be filed on customs Form 7577. Such certificate shall be required whether the drawback is claimed by the exporter or has been reserved by the manufacturer.

(b) In drawback entries covering the exported articles, reference may be made to such certificates in lieu of stating the particulars of importation and manufacture, except when the article or merchandise has been further manipulated before exportation, in which event such additional manufacturing steps shall be covered by a proper certificate of manufacture.

(c) Any intermediate transfer of such manufactured articles shall be certified on the certificate of manufacture and delivery.

(d) If the drawback entry is filed at a port other than that at which the certificate of manufacture and delivery is on file, an extract may be issued on customs Form 4537.

§ 22.17 Landing certificates.

(a) A landing certificate shall be required (1) whenever the collector at the port of exportation or at the port where the drawback entry is filed shall have reason to believe that the shipment is not a bona fide exportation, (2) when the Bureau specifically directs that a landing certificate shall be produced, (3) when a landing certificate is otherwise required by law or regulation, and (4) for every aircraft which departs from the United States under its own power if drawback is claimed on the aircraft or any part thereof. Landing certificates for aircraft shall show the exact time of landing of the aircraft in the foreign country and describe the aircraft or parts thereof on which drawback is claimed in sufficient detail to enable the collector to identify them with the notice of exportation.

(b) Whenever a landing certificate is required, it shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that such country has no customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of unlading.

(c) When a landing certificate is specially required by the collector or the Bureau, but not otherwise, reasonable notice in writing of such requirement shall be given by the collector to the exporter or his agent. The landing certificate shall be filed within 1 year from the date of the notice unless an extension of such period is specifically authorized by the Bureau.

(d) When a landing certificate is required by the collector, other satisfactory evidence of the foreign landing may be accepted in lieu of the landing certificate.

(e) When a landing certificate is required and cannot be produced, an application for its waiver may be made to the Bureau through the collector within the time required for filing the certificate, accompanied by such evidence of exportation and landing abroad as may be available. Such application will be granted if the Bureau is satisfied by the evidence submitted that the merchandise has been exported.

§ 22.18 Supplies for certain vessels and aircraft.

(a) Drawback of duties and taxes shall be allowed on articles laden on certain vessels or aircraft as supplies or for use as equipment or in the maintenance or repair of certain foreign vessels or aircraft, as provided for in section 309, Tariff Act of 1930, as amended,[6] and I.R.C. section 3451[7] subject to the requirements of this section.

(b) The procedure prescribed in this part as to the filing of an application for a rate of drawback and other required documents shall be followed, so far as applicable, in filing claims for drawback under this section, except that notices of lading on customs Form 7515 shall be filed in lieu of notices of exportation on customs Form 7511.

---

[6] "(a) *Exemption from duties and taxes.* Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax—

"(1) For supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions; or

"(2) For supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign vessels is permitted; or

"(3) For supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

"(b) *Drawback.* Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, and articles of domestic manufacture or production, laden as supplies upon any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign vessel or aircraft, shall be considered to be exported within the meaning of the drawback provisions of this Act.

"(c) *Articles removed in, or returned to, the United States.* Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 317 of this Act and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

"(d) *Reciprocal privileges.* The privileges granted by this section and section 317 of this Act in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 317 shall not apply thereafter in respect of aircraft registered in that foreign country." (Tariff Act of 1930, sec. 309, as amended; 19 U. S. C. 1309)

[7] "Under regulations prescribed by the Commissioner, with the approval of the Secretary, no tax under this chapter shall be imposed upon any article sold for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, ves-

(c) A notice of lading on customs Form 7515 shall be filed in quadruplicate with the collector of customs at the port of lading. Such notice shall show the name of the vessel or identity of the aircraft on which the articles were, or are to be, laden, the number and kind of packages and their marks and numbers, the description of the articles and their weight (net), gauge, measure, or number, the name of the exporter, and the name of the port where the drawback entry is to be filed. The notice of the lading may be filed before or after lading of the articles but, if filed after lading, it shall be filed within 3 years after exportation and shall show the date of clearance or departure of the vessel or aircraft. The collector shall assign a number to each notice of lading. After numbering, one copy of the notice shall be returned to the exporter for delivery to the master or an authorized officer of the vessel or aircraft for certification thereon as to the receipt of the articles and the quantity laden. This copy shall be filed by the claimant with the drawback entry, except that, in cases where the notice of lading was filed after the lading of the articles, a separate receipt of the master or authorized officer of the vessel or aircraft may be filed with the drawback entry.

(d) After the vessel has cleared or obtained a permit to proceed, the collector at the port of lading shall execute his certification on one of the copies of the notice of lading and return it, with one uncertified copy, to the exporter, or the person designated by the exporter, for subsequent filing with the drawback entry. If the vessel is not required to clear or obtain a permit to proceed to another port, the collector shall return two copies of the notice to the exporter, or to the person designated by the exporter, with a statement of the facts in the case for subsequent filing with the drawback entry. In such cases, the collector at the port where the drawback entry is filed shall require the claimant to furnish an itinerary of the vessel for the immediate voyage to determine whether the vessel is engaged in a class of business or trade which warrants the allowance of drawback.

(e) Paragraphs (f) to (i), of this section, insofar as applicable, shall apply with respect to aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions and aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted.

(f) Upon the lading of supplies upon an American vessel, they shall be entered by a representative of the vessel in a special bound stores log book of the vessel in ink or indelible pencil. The stores log book shall be kept on board the vessel available for customs inspection and use at any time, and shall contain the following information with respect to such supplies: port where laden; date of lading; notice of lading number; quantity and description.

(g) In any case in which it is desired to land in the United States articles covered by a notice of lading, the master shall make application for a permit to land such articles under customs supervision. Except when transfer is made under the original notice of lading to another vessel entitled to the drawback privilege, the articles landed shall be treated as imported merchandise under section 309 (c), Tariff Act of 1930, as amended.

(h) If the supplies were laden on an American vessel, a declaration of the master or other officer of the vessel who has knowledge of the facts, showing the class of business or trade in which the vessel on which the articles were laden as supplies was engaged at the time of lading and whether the supplies were entered in the stores log book as required by paragraph (f) of this section, shall be furnished in support of the drawback entry. Such declaration may be executed on the copy of the "notice of lading" on which the master or other officer certifies as to the receipt and quantity of the articles laden, or be separately furnished, and shall be in substantially the following form :

I, _____ of the
(Master or other officer)
S. S. _____, declare that I have knowledge of the facts set forth herein; that certain articles covered by notice of lading No. _____, filed at the port of _____, which were laden on the above-named vessel at said port on _____, 19____, for use on board the vessel as supplies, _____entered in the stores log
(were or were not)
book; and that at the time of lading of the articles, said vessel was engaged in the business or trade checked below:

1. Fisheries.
2. Whaling.
3. Trade between Atlantic and Pacific ports of the United States.
4. Trade between the United States and any of its possessions.
5. Foreign trade.

_____
(Name and title)

(i) If the notice of lading is filed subsequent to the lading of the supplies on an American vessel or if the declaration required under paragraph (h) of this section does not show that the supplies were entered in the stores log book, drawback shall not be allowed until proof has been presented in the form of a certificate of the master, or other officer of the vessel on which the supplies were laden having knowledge of the facts, that the supplies have been used on board the vessel and that no portion thereof has been landed in the United States or any of its possessions.

(j) In the case of articles laden or installed on aircraft as equipment or claimed to have been used in the maintenance or repair of aircraft, the collector shall require such certificates or other evidence as will satisfy him concerning the facts.

(k) Drawback entries shall be filed on customs Form 7573 or 7575, as applicable, modified to read "lade" (or "use"), "laden" (or "used"), or "lading" (or "using") instead of "export," "exported," or "exporting," and the "Declaration of exportation" shall be amended to read as follows:

DECLARATION OF LADING OR USE

I, _____ (member of firm, officer representing corporation, agent, or attorney) of _____, do solemnly and truly declare that, according to the best of my knowledge and belief, the particulars of lading (or use) stated in this entry, the notices of lading, and receipts are correct, and that such merchandise is not to be relanded in the United States or any of its possessions, but is to be (has been) used on the vessels or aircraft herein for _____
_____
(State specifically, such as supplies, equipment, maintenance, or repair)
as specified in section 309, Tariff Act of 1930, as amended, or I. R. C. section 3451.
Dated_____

_____,
Shipper or agent.

(Sec. 309, 46 Stat. 690, as amended; 19 U. S. C. 1309)

§ 22.19 Meats cured with imported salt.

(a) All provisions of the regulations in this part relating to the allowance of drawback on articles manufactured with the use of imported merchandise, including the application for a rate of drawback and the filing of a statement, shall apply to the refund of duty on salt used in curing meats, except that the duty to be refunded is not subject to the retention of 1 percent and that no refund shall be made in an amount less than $100. Claims amounting to less than $100 shall be permitted to accumulate until the sum due reaches that amount.

(b) The prescribed forms shall be modified to show that the claim is being

sels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions. Articles manufactured or produced with the use of articles upon the importation of which tax has been paid under this chapter, if laden for use as supplies on such vessels, shall be held to be exported for the purposes of section 3430. The term 'vessels' as used in this section includes civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and the term 'vessels of war of the United States or of any foreign nation' includes aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof. The privileges granted under this section in respect of civil aircraft employed in foreign trade or trade between the United States and any of its possessions, in respect of aircraft registered in a foreign country, shall be allowed only if the Secretary of the Treasury has been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of the Treasury is advised by the Secretary of Commerce that he has found that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges granted under this section shall not apply thereafter in respect of civil aircraft registered in that foreign country and employed in foreign trade or trade between the United States and any of its possessions." (I. R. C. sec. 3451; 26 U. S. C. 3451)

Import taxes collected under I. R. C. secs. 4561, 4571, and 4581 are not subject to drawback under I.R.S. sec. 3451, but drawback of such taxes may be allowed under sec. 309 or 313, Tariff Act of 1930, as amended.

made for refund of duties paid on salt used in curing meats.

§ 22.20 Liquidation of drawback entries.

(a) No drawback on exported articles manufactured with the use of imported merchandise shall be allowed until the import entries covering such merchandise shall have been liquidated, the liquidated duties have been paid, and such liquidation shall have been made final by operation of law or by acceptance in writing by the importer.

(b) When the drawback claim has been completed by the filing of the entry, notices of exportation, and other documents required by the regulations in this part, the landing certificate has been produced where required, and clearance of the exporting conveyance has been established by the record of clearance in the case of direct exportation or by certificate in the case of exportation at another port, the collector shall ascertain the drawback due by reference to the records of importation and the drawback rate under which the drawback claimed is allowable.

(c) Import entries, certificates of importation, and extracts from such certificates shall constitute the records from which the amount of duty paid on the merchandise used shall be determined. In order to guard against errors of identification and overallowance, all merchandise identified in certificates of manufacture and drawback entries which have been liquidated and all merchandise covered by certificates of importation and extracts from such certificates shall be charged against the records of importation to which they respectively refer.

(d) The values to be used in computing the distribution of drawback where two or more products result from the manipulation of the imported merchandise, pursuant to section 313 (a), Tariff Act of 1930,[8] shall be market values unless the special regulations under which drawback is claimed provide otherwise.

(e) The amount of drawback due having been ascertained, the collector shall certify such amount for payment to the person making the entry or to the person to whom the maker on the face of the entry directs that such payment be made.

§ 22.21 To whom payable.

(a) The person named as exporter in the collector's certification on the notice of exportation shall be held to be the exporter and entitled to the drawback, unless the manufacturer or producer, on the sale or consignment of such articles, shall have reserved to himself the right to claim the drawback, in which case such manufacturer or producer may make entry for such drawback and it shall be paid to him upon the production of satisfactory evidence that such reservation was made with the knowledge and consent of the exporter.

(b) The drawback may alternatively be paid to the agent of the manufacturer, producer, or exporter, as the case may be, or to the person to whom such manufacturer, producer, exporter, or agent shall direct in writing that such drawback be paid.

FLAVORING EXTRACTS AND MEDICINAL OR TOILET PREPARATIONS (INCLUDING PERFUMERY) MANUFACTURED FROM DOMESTIC TAX-PAID ALCOHOL

§ 22.22 Drawback allowance.

(a) Upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic tax-paid alcohol, a drawback of the internal-revenue tax paid shall be allowed in accordance with the provisions of section 313 (d), Tariff Act of 1930, as amended.[9]

(b) Drawback of internal-revenue tax shall be allowed on such articles when shipped to the Virgin Islands, Puerto Rico, Guam, or American Samoa, in accordance with the provisions of I. R. C. section 7563.[10]

(c) The Panama Canal Zone shall be considered foreign territory for the purpose [11] of allowing drawback under this section.

(33 Stat. 843; 19 U.S.C. 126)

§ 22.23 Procedure.

(a) In the allowance of drawback of internal-revenue tax under the preceding section, the regulations in this part relating to the allowance of drawback on articles manufactured with the use of imported merchandise shall be followed so far as applicable and except as otherwise specified in this section and §§ 22.24, 22.25, and 22.26. The 3-year period for the completion of drawback claims prescribed in § 22.13 (a) shall be applicable to claims for drawback under section 313 (d), Tariff Act of 1930, as amended.

(b) The statement of the manufacturer shall set forth the quantity of domestic tax-paid alcohol contained in each of the various products covered thereby.

(c) The notice of exportation shall be filed on customs Form 7511. When it covers duty-paid imported merchandise, in addition to the tax-paid alcohol, two sets of drawback entries shall be filed, one set for customs drawback and the other for internal-revenue drawback.

(d) The following forms shall be used in lieu of the corresponding forms used in the case of articles manufactured with the use of imported merchandise:

Drawback entry, customs Form 7579.
Drawback entry and certificate of manufacture, customs Form 7583.
Certificate of manufacture and delivery, customs Form 7585.
Certificate of delivery of tax-paid alcohol, customs Form 7545.

(e) In the case of medicinal preparations and flavoring extracts there shall be filed with the drawback entry, or indorsed on the entry or certificate of manufacture, a declaration of the manufacturer showing whether claim has been, or will be, made by the manufacturer for domestic drawback allowable on the involved alcohol under the provisions of sections 5131, 5132, 5133, and 5134, Internal Revenue Code, as amended. If no claim has been or will be filed with the Internal Revenue Service for the domestic drawback, the manufacturer shall submit a statement, in duplicate, setting forth that fact to the Assistant Regional Commissioner of Internal Revenue, Alcohol and Tobacco Tax, for the region in which the manufacturer's factory is located. The statement shall show the quantity and description of the exported products, the identity of the alcohol used by serial number of package or tank car, the name and registry number of the warehouse from which the alcohol was withdrawn, the date of the withdrawal, the serial number of the tax-paid stamp or certificate, and the port where the drawback claim will be filed. The Assistant Regional Commissioner will verify the statement, forward the original of the document to the port designated, and retain the copy. Such declarations and statements shall not be required in the case of toilet preparations (including perfumery).

(f) In cases where the percentage of alcohol contained in a medicinal preparation, flavoring extract, or toilet preparation varies from the quantity of alcohol shown by a previously approved statement or schedule to be contained in the said exported product in an amount equal to more than 5 percent of the total volume of the product, the procedure set forth in § 22.4 (o) applicable to the amendment of rates of drawback to cover additional articles shall be followed. Changes of 5 percent, or less, of the volume of the product shall be reported to the collector of customs at the port where the drawback entries are liquidated, which officer may allow drawback on such articles without specific Bureau authorization.

§ 22.24 Manufacturing record.

The description of the alcohol required to be stated in the entry may be obtained from the package containing the tax-paid alcohol. There shall be kept by the manufacturer of the flavor-

[8] "• • • Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation." (Tariff Act of 1930, sec. 313 (a), as amended; 19 U. S. C. 1313 (a))

[9] "Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used. • • •." (Tariff Act of 1930, sec. 313 (d), as amended; 19 U. S. C. 1313 (d))

[10] "All provisions of law for the allowance of drawback of internal revenue tax on articles exported from the United States are, so far as applicable, extended to like articles upon which an internal revenue tax has been paid when shipped from the United States to Puerto Rico, the Virgin Islands, Guam, or American Samoa." (I.R.C. sec. 7653(c); 26 U.S.C. 7653(c).)

[11] "There is no authority of law for the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Alaska, Hawaii, Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

ing extracts or medicinal or toilet preparations on which drawback is claimed a record of all such preparations manufactured, the quantity of wastage, if any, and a full description of the alcohol. This record shall be open at all times to the inspection of customs officers.

§ 22.25 Internal Revenue certificates and extracts from such certificates.

(a) The drawback claimant or manufacturer shall submit an application in writing to the Assistant Regional Commissioner of Internal Revenue, Alcohol and Tobacco Tax, for the region in which the alcohol used in manufacture was withdrawn, for the issuance of a tax-paid certificate on internal-revenue Form 646 to the collector of customs with whom the drawback claim will be filed. The application shall state the quantity of alcohol in taxable gallons, the serial number of each package, the serial number of the stamp, the amount of tax paid on the alcohol, the name, registry number, and location of the warehouse, the date of withdrawal, the name of the manufacturer using the alcohol in producing the exported articles, the address of the manufacturer and of his manufacturing plant, and the port where the drawback claim will be filed. If the application is accompanied by customs Form 7545, showing any of such data, the data so shown need not be repeated in the application.

(b) When drawback is claimed on flavoring extracts or medicinal or toilet preparations manufactured with the use of rectified or redistilled alcohol, the certificate, internal-revenue Form 646, shall show, in addition to the data called for therein, the name of the rectifier, the quantity in wine gallons of rectified alcohol produced, the proof thereof, the quantity in proof gallons produced, the amount of tax paid, the date of withdrawal, and the serial numbers of the rectifier's stamps covering the alcohol.

(c) If a certification as to any portion of the alcohol described in a certificate on internal revenue Form 646 should be required for the liquidation of drawback entries filed at another port, the collector, on written application of the person who requested its issuance, shall transmit an extract from the certificate for use at such port. The extract shall be made on customs Form 4541 and shall show the Internal Revenue Service certificate number on the original certificate.

§ 22.26 Collector's statement of drawback due.

(a) When the drawback claim has been completed by the filing of the entry, notice of exportation, etc., as required by the regulations in this part, any required landing certificate has been produced, and clearance of the exporting conveyance has been established by the records of clearance in the case of direct exportation or by a certificate when the merchandise was exported at another port, the collector shall proceed to ascertain the amount of drawback due by reference to the certificate of manufacture and the drawback rate under which the drawback claimed is allowable.

(b) If the declaration required by § 22.23 (e) shows that claim has been, or will be, made for the domestic drawback referred to in that section, the allowance of drawback under the provisions of section 313 (d), Tariff Act of 1930, as amended, shall be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed. If the declaration and verified statement required by § 22.23(e) show that no claim has been, or will be, made by the manufacturer for the domestic drawback, the drawback allowed shall be the full amount of the tax paid on the alcohol used.

(c) The amount of drawback due having been ascertained, the collector shall, in accordance with § 22.20(e), certify such amount for payment.

(d) No deduction of 1 per centum shall be made in allowing drawback claims under section 313 (d), Tariff Act of 1930, as amended.

MERCHANDISE EXPORTED FROM CONTINUOUS CUSTOMS CUSTODY

§ 22.27 Drawback allowed.

(a) Merchandise on which the duties have been paid and which has remained continuously in bonded warehouse or otherwise in customs custody since importation may be entered or withdrawn at any time within 3 years after the date of importation for exportation or for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, and upon such exportation or shipment the duties shall be refunded in accordance with the provisions of section 557(a), Tariff Act of 1930, as amended.[12]

(b) The Panama Canal Zone and Guantanamo Bay Naval Station shall be considered foreign territory for the purpose of allowing drawback under this section.[13]

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 22.28 Continuous custody.

(a) No remission, abatement, refund, or drawback of duty shall be allowed on account of the exportation of any merchandise after its release from the custody of the Government, except as specified in section 558, Tariff Act of 1930, as amended.[14]

[12] "* * * Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within three years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded." (Tariff Act of 1930, sec. 557(a), as amended; 19 U.S.C. 1557(a))

[13] Imported merchandise which has remained continuously in bonded warehouse or otherwise in customs custody since importation is not entitled to drawback of duty when shipped to Alaska, Puerto Rico, Hawaii, Canton Island, Enderbury Island, or Palmyra Island.

[14] "(a) No remission, abatement, refund, or drawback of estimated or liquidated duty shall be allowed because of the exportation or destruction of any merchandise after its release from the custody of the Government, except in the following cases:

"(1) When articles are exported with respect to which a drawback of duties is expressly provided for by law;

"(2) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to a law of the United States and under such regulations as the Secretary of the Treasury may prescribe; and

* * * * * *

"(b) When articles are exported or destroyed under customs supervision after once having been released from customs custody, as provided for in subsection (c) of section 304 of this Act, such exportation or destruction shall not exempt such articles from the payment of duties other than the marking duty provided for in such subsection (c)." (Tariff Act of 1930, sec. 558, as amended; 19 U. S. C. 1558)

(b) Merchandise which has been released to an importer under the bond prescribed by § 8.28 of this chapter and returned to the appraiser's stores upon requisition of the collector, and merchandise released under a temporary importation bond as provided for in section 308, Tariff Act of 1930, as amended, shall not be deemed to have been in the continuous custody of customs officers.

(c) Merchandise which remains upon the wharf by permission of the collector shall be held to be in customs custody. This custody shall be deemed to cease when the permit has been accepted by the customs officer in charge, and there is nothing further to be done by him in the way of measuring, weighing, gauging, etc.

(d) In the case of merchandise entered for warehouse, customs custody shall be deemed to cease when the customs warehouse officer with whom a delivery permit has been lodged has released the merchandise to or upon the order of the proprietor of the warehouse, as provided for in §§ 8.38 and 19.6 of this chapter.

(e) Except as stated in paragraph (c) of this section, merchandise examined elsewhere than at the public stores in accordance with the provisions of § 14.2 of this chapter shall be considered released from customs custody when final examination for purposes of appraisement has been completed.

(Sec 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 22.29 Entry and completion thereof.

(a) At least 6 hours before the lading of any merchandise on which drawback is claimed, the importer or whomever he may designate in writing shall file with the collector an entry in duplicate on customs Form 7541.

(b) When the merchandise is to be transported to another port for exportation, the entry shall be filed in triplicate and shall name the transporting conveyence, the route, and the port of exit. One copy of the entry shall be certified by the collector and forwarded by him to the collector at the port of exit. The merchandise shall be transported by a bonded carrier in accordance with the regulations covering transportation in bond, and manifests shall be prepared and filed in the manner prescribed in § 18.19 of this chapter.

(c) The regulations in Part 18 as to supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed so far as applicable.

(d) In order to complete the drawback entry, a bill of lading issued by the proper representative of the exporting carrier and covering the merchandise described in the entry shall be filed within 2 years after the date the merchandise is exported. The bill of lading shall show that the merchandise was shipped by the person making the drawback entry, or shall bear an endorsement of the person in whose name the merchandise was shipped showing that the person making entry is authorized to make it and to receive the drawback. The terms of the bill of lading may limit and define its use by declaring it to be for customs purposes only and not negotiable. If a copy of the original bill of lading is filed, it shall bear the signature of the person issuing it.

(e) Neither a memorandum copy of the bill of lading issued by the transportation company nor a bill of lading bearing merely the initials of the representative of the transportation company shall be accepted in lieu of the bill of lading described above.

(f) Collectors of customs may issue on customs Form 4475 extracts from bills of lading filed with drawback entries.

(g) If the person making the drawback entry cannot produce the required bill of lading, he may submit in lieu thereof, through the collector to the Bureau, a statement showing the cause of failure with such evidence of exportation and of his right to make the drawback entry as may be obtainable.

(h) A landing certificate, when required, shall be filed within the time prescribed in § 22.17 (c).

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

§ 22.30 Ascertainment of drawback.

(a) When the drawback entry has been completed and the bill of lading filed, together with the landing certificate when required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the collector with whom such entry and proofs are lodged shall verify the facts of importation by reference to the records in his office and ascertain the amount of duty paid on the merchandise exported. The drawback found due shall be allowed in accordance with the regulations covering manufactured articles, but there shall be no deduction of 1 percent.

(b) No drawback shall be allowed until the import entry covering the merchandise shall have been liquidated, the liquidated duties have been paid, and such liquidation has been made final by operation of law or by acceptance in writing by the importer.

(Sec. 557, 46 Stat. 744, as amended; 19 U. S. C. 1557)

REJECTED MERCHANDISE

§ 22.31 Drawback allowance.

Upon the exportation of imported merchandise not conforming to sample or specifications or shipped without the consent of the consignee, the duties paid thereon, less 1 percent, shall be refunded as drawback in accordance with the provisions of section 313(c), Tariff Act of 1930,[15] as amended, subject to compliance with the regulations in §§ 22.32 to 22.35.

§ 22.32 Drawback entry.

(a) An importer of merchandise claimed not to conform to sample or specifications or to have been shipped to him without his consent, who desires to export such merchandise with benefit of drawback, shall file with the collector of customs at the port where the merchandise was entered or at any other port a drawback entry in duplicate on customs Form 7539, stating the quantity and description of the merchandise and identifying it with the import entry. The drawback entry shall also specify the place where the merchandise is to be deposited in customs custody. If the collector is of the opinion that the place specified is not suitable for the proper examination of the merchandise and any necessary repacking, he shall require the merchandise to be delivered to a suitable place at the expense of the applicant.

(b) Each drawback entry covering merchandise not conforming to sample or specifications or shipped without the consent of the consignee shall be executed in the name of the importer of record, unless another person has been named in the import entry as the actual owner and the declaration of such owner has been timely filed, in which case the drawback entry may be filed in the name of either such owner or the importer of record. If the goods are claimed to be not in accordance with sample or specifications, the drawback entry shall be accompanied by a copy of the order for the merchandise, copies of any preliminary correspondence, and the samples or specifications on which the merchandise was ordered, together with a certificate of the actual owner that the sample or specifications submitted are those on which the merchandise was ordered, showing in detail in what manner the merchandise does not conform to sample or specifications. If no written order was placed and no sample or specifications are available, a certificate of the actual owner setting forth the specifications of his order and the method by which they were communicated to the seller may be accepted. If the merchandise was shipped to the importer without his consent, a clear statement of that fact shall be submitted, together with all information in the possession of the importer as to the reason for the shipment. In doubtful cases the collector may decline to allow the claim unless there is produced corroboration by the shipper of the specifications or circumstances, or other evidence sufficient in the opinion of the collector to establish the claim. If the merchandise is returned to customs custody at a port other than at the port at which it was originally entered, and the drawback entry is to be filed at such other port, the collector of customs at that port shall request the collector of customs at the port where the merchandise was originally entered to furnish the date on which the merchandise was released from customs custody, a certified copy of the invoice, and a certificate of importation.

§ 22.33 Return of merchandise to customs custody.

(a) Upon receipt of the drawback entry, the collector shall assign a number thereto, by appropriate notation on all copies, approve the place of deposit of the merchandise specified by the person making the entry or designate another place if that one is not deemed suitable, and return the original to the entrant for presentation with the merchandise to the customs officer at the place of deposit. The merchandise shall be delivered into customs custody at such place within 90 days after the date on which it was originally released from customs custody unless, either before or after the return of the merchandise, a longer time is specially authorized by the Bureau, or by the collector under the authority of this paragraph. The collector, upon written application, may extend the period in those cases where he is satisfied that the importer has been or will be prevented by circumstances beyond his control from returning the merchandise within the 90-day period, and that the importer proposes to return, or has returned, the merchandise within a reasonable time. Applications for extension of time shall be filed with, and acted upon by, the collector of customs at the port where the drawback entry will be filed. If the merchandise is to be exported otherwise than by mail, one copy of the entry shall be returned to the entrant, for resubmission to the collector in accordance with paragraph (e) of this section. A receipt showing the fact and date of such delivery shall be furnished to the applicant if he requests it. If the report of the receiving officer shows that the merchandise was not returned to customs custody within the time required by law, the drawback shall be denied.

(b) If the merchandise is to be exported through the mails, it shall be deposited with the postmaster for delivery

[15] "Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties." (Tariff Act of 1930, sec. 313 (c), as amended; 19 U. S. C. 1313 (c))

to the collector of customs at the port where the merchandise was originally entered. The parcel in which the merchandise is packed shall be properly wrapped, stamped, and addressed for mailing to the foreign destination, and shall be enclosed in a wrapper addressed to the collector of customs at the port where such merchandise was originally entered. A waiver on customs Form 3413, or in a substantially similar form, of the right to withdraw the merchandise from the mails, signed by the exporter, shall be affixed, stamped, or written on both the inner and outer wrappers. The outside wrapper shall bear an appropriate notation to the effect that the contents are intended for examination and exportation under section 313 (c), Tariff Act of 1930, as amended. If the parcel is to be insured or registered to cover transportation from the port of original entry to the foreign destination, the exporter shall deposit with the collector of customs at such port the necessary funds to cover the charges for insurance or registry.

(c) The drawback entry, fully executed in duplicate on customs Form 7539, shall accompany or be mailed simultaneously with the parcel, unless such form is not available to the exporter, or unless the information necessary to complete the entry is not available at the time of mailing, in either of which cases the merchandise may be submitted without the entry to the postmaster for delivery to the collector of customs. When the returned merchandise is received by the collector without the related drawback entry, he shall immediately furnish the exporter with the proper number of copies of Form 7539 for prompt execution and return. The dates of the delivery of the merchandise from the post office on importation and the return thereto for exportation shall be considered the dates of release from and return to customs custody, respectively, within the meaning of section 313 (c), Tariff Act of 1930, as amended. Drawback shall be refused if the merchandise was not returned to custody within 90 days after its release therefrom, or within a longer period authorized by the Bureau or by the collector of customs pursuant to authority in paragraph (a) of this section.

(d) The applicant shall submit for the information of the collector of customs the parcel post or registered mail receipt or other evidence from the postmaster at the depositing office showing the date on which the merchandise was returned to the postmaster, together with evidence of the date of delivery of the incoming package from the post office.

(e) The entrant shall be advised of the approval of his entry and mailing of the merchandise or of the disapproval of his entry. If the entry has been approved and the merchandise is to be exported otherwise than by mail, the importer or whoever shall have been designated by the importer in writing shall file with the collector, at least 6 hours before lading of the merchandise, a copy of the entry with the name of the exporting carrier and the place of lading shown thereon and the exporter's declaration thereon fully executed. The export procedure and liquidation of the entry shall be the same, so far as applicable, as in the case of an exportation of merchandise from continuous customs custody with benefit of drawback. If the drawback is denied, the entrant shall advise the collector as to the disposition to be made of the merchandise.

(f) In order to complete the drawback entry, a bill of lading and a landing certificate, when required under § 22.17 (a), shall be filed in the manner and within the time prescribed in § 22.29 in the case of merchandise exported from continuous customs custody.

§ 22.34 Acceptance of merchandise at importer's risk and expense; time limit for exportation.

Merchandise returned to customs custody under section 313(c), Tariff Act of 1930, as amended, shall be accepted only at the risk and expense of the party in interest. If the merchandise is not exported within 90 days from the date of notification of approval of the drawback entry, it shall be treated as unclaimed, except that the 90-day period may be extended for not more than 90 days by the collector upon written request by the original applicant.

§ 22.35 Waiver of proof where the duty is less than $50.

With the exception of the drawback entry, the above provisions relative to proof of non-conformity to sample or specifications, or of shipment without the consent of the consignee, may be waived in whole or in part if the duty on the merchandise to be exported is less than $50 and the collector is otherwise satisfied that the claim is well founded.

Merchandise Transferred to a Foreign-Trade Zone From Customs Territory

§ 22.36 Drawback allowance.

(a) Drawback of duties and taxes shall be allowed on merchandise transferred to a foreign-trade zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage under the fourth proviso to section 3 of the act of June 18, 1934, as amended (19 U.S.C. 81c),[16] subject to compliance with §§ 22.37 to 22.40, inclusive.

(b) Such merchandise shall be given status as zone-restricted merchandise on proper application as prescribed in § 30.10 of this chapter.

§ 22.37 Articles manufactured or produced in the United States.

(a) The procedure prescribed in this part as to the filing of an application for a rate of drawback and other required documents shall be followed, so far as applicable, in filing claims for drawback under the fourth proviso to section 3 of the act of June 18, 1934, as amended (19 U. S. C. 81c), on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol, except that notices of transfer on customs Form 7513 shall be filed in lieu of notices of exportation on customs Form 7511.

(b) Notices of transfer on customs Form 7513 shall be filed in triplicate with the collector of customs at the port where the foreign-trade zone is located. Each notice shall show the number and location of the foreign-trade zone to which the articles are to be transferred, the number and kind of packages and their marks and numbers, the description of the articles and their weight (gross and net), gauge, measure, or number, the name of the transferor, and the name of the port where the drawback entry is to be filed.

(c) The notice of transfer shall be filed with the collector prior to the transfer of the articles to the zone, or within 3 years after receipt of the articles in the zone and, if filed after the transfer, shall state the foreign-trade zone lot number.

(d) The collector shall assign a number to each notice of transfer. After numbering, one copy of the notice shall be returned to the transferor for subsequent filing with the drawback entry. After the articles have been received in the zone, the customs officer at the zone shall certify on the copy of the notice of transfer received from the collector as to the receipt of the articles in the zone and forward the notice to the transferor, or the person designated by the transferor, for subsequent filing with the drawback entry. Prior to filing such certified copy with the drawback entry, the transferor shall obtain thereon the foreign-trade zone operator's certification as to the receipt of the articles in the zone.

[16] "* * * *Provided further*, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of:

"(a) The drawback, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

"(b) The statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

"Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615 (f) of section 1201 of this title: * * *" (19 U. S. C. 81c.)

(e) Drawback entries shall be filed on customs Forms 7573, 7575–A, 7575–B, 7579, or 7583, as applicable, modified to indicate that the merchandise was transferred to a foreign-trade zone and the "Declaration of Exportation" shall be amended to read as follows:

Declaration of Transfer to a Foreign-Trade Zone

I, _____
(Member of firm, officer representing corporation, agent, or attorney)

of _____,
declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and such merchandise was transferred to a foreign-trade zone for the sole purpose of exportation, destruction, or storage, and is not to be returned to customs territory of the United States for domestic consumption.

_____
(Transferor or agent)

Date _____

§ 22.38 Merchandise transferred to a foreign-trade zone from continuous customs custody.

(a) The procedure prescribed in §§ 22.27 to 22.30, inclusive, shall be followed, so far as applicable, in filing claims for drawback on merchandise transferred to a foreign-trade zone from continuous customs custody. Prior to the transfer of such merchandise, the importer, or a person designated in writing by the importer for the purpose, shall file with the collector an entry in duplicate on customs Form 7541. After the merchandise has been received in the zone, the customs officer at the zone shall certify on the copy of Form 7541 received from the collector as to the receipt of the merchandise in the zone and forward it to the transferor, or the person designated by the transferor, to obtain thereon the foreign-trade zone operator's certification as to the receipt of the articles in the zone, in lieu of the bill of lading required by § 22.29 (d), and resubmit the copy to the collector.

(b) Customs Form 7541 shall be modified to indicate that the merchandise is to be transferred to a foreign-trade zone and shall bear an endorsement in the following form, to be placed thereon by the transferor, for execution by the foreign-trade zone operator:

Receipt of Foreign-Trade Zone Operator

The merchandise described in this entry was received from _____ on _____, 19____, in Foreign-Trade Zone No. _____.
(City and State)

Exceptions: _____

_____
(Name of operator)

By _____
(Name and title)

The "Exporter's Declaration" on Form 7541 shall be amended to read as follows:

Transferor's Declaration

I, _____, one of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it is to be transferred to Foreign-Trade Zone No. _____, located at _____, for the
(City and State)
sole purpose of exportation, destruction, or storage, and is not to be returned to customs territory of the United States for domestic consumption. I further declare that, to the best of my knowledge and belief, this merchandise is the same in quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by way of drawback or otherwise.

_____
(Transferor)

Date _____

§ 22.39 Rejected merchandise.

(a) The procedure prescribed in §§ 22.31 to 22.35, inclusive, shall be followed, so far as applicable. The importer or a person designated in writing by the importer for the purpose shall file with the collector, prior to the transfer of any merchandise to a foreign-trade zone, an entry in duplicate on customs Form 7539. The procedure shall be the same, so far as applicable, as that governing the transfer of merchandise to a foreign-trade zone from continuous custody (§ 22.38).

(b) Customs Form 7539 shall be modified to indicate that the merchandise is to be transferred to a foreign-trade zone and shall bear an endorsement, to be executed by the foreign-trade zone operator, of a receipt as provided for in § 22.38 (b). The "Exporter's Declaration" on Form 7539 shall be amended to read as follows:

Transferor's Declaration

I, _____, one of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it is to be transferred to Foreign-Trade Zone No. ____, located at _____
(City and State)
_____, for the sole purpose of exportation, destruction, or storage, and is not to be returned to customs territory of the United States for domestic consumption. I further declare that, to the best of my knowledge and belief, the said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by way of drawback or otherwise.

_____
(Transferor)

Date _____

§ 22.40 To whom payable.

The person named in the foreign-trade zone operator's receipt on the notice of transfer or the drawback entry, as the case may be, shall be held to be the transferor. The drawback shall be paid to the transferor or to the person to whom the transferor shall direct in writing that such drawback be paid.

General Regulations Applicable to All Drawback Claims[17]

§ 22.41 Duties subject to drawback.

The duties subject to drawback include all ordinary customs duties, including import taxes assessed under sections 4521, 4531, 4541, 4551, 4561, 4571, and 4581, Internal Revenue Code; dumping duties assessed under the Antidumping Act, 1921; countervailing duties assessed under section 303, Tariff Act of 1930; and marking duties assessed under section 304 (c), Tariff Act of 1930, as amended.

§ 22.42 Merchandise sold to United States Government.

In connection with each drawback entry, except under section 313(c), Tariff Act of 1930, the claimant shall furnish a certificate showing whether or not the merchandise concerned was sold to any department, branch, or agency of the United States Government. If the merchandise was so sold, drawback shall be allowed only when claimed by the department, branch, or agency of the United States Government or when the entry is supported by a certificate signed by a proper officer of the department, branch, or agency concerned stating that the right to drawback was reserved by the supplier with the knowledge and consent of the said department, branch, or agency. A Government instrumentality operating with nonappropriated funds is not to be considered a Government agency within the meaning of this section.

§ 22.43 Verification of drawback claims by Customs Agency Service.

Collectors shall cause drawback documents to be referred to the Customs Agency Service for verification whenever such reference is believed to be required for orderly and efficient administration of the drawback law and regulations, and occasionally in any case. Such verification shall include an examination of not only the manufacturing records but also the sales and financial records relating to the transaction.

§ 22.44 Protests.

The decision of the collector of customs refusing to pay a drawback claim is final and conclusive upon all persons unless the person filing the drawback claim or his agent, within 60 days after but not before such decision, shall file a protest in writing with the collector in the manner required in the case of protests against the liquidation of import entries.

(Sec. 514, 46 Stat. 734; 19 U.S.C. 1514)

§ 22.45 Signing of documents; powers of attorney.

Powers of attorney, in accordance with § 8.19, of this chapter, shall be required

[17] "Whoever knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback, allowance, or refund of duties upon the exportation of merchandise, or knowingly or willfully makes or files any false affidavit, abstract, record, certificate, or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties, on the exportation of merchandise greater than that legally due thereon, shall be fined not more than $5,000 or imprisoned not more than two years, or both, and such merchandise or the value thereof shall be forfeited." (Pub. Law 772, 80th Cong.; 62 Stat. 683)

from persons signing the documents listed below in all cases where such person is not a member of the firm or is not the importer, manufacturer, or exporter, as the case may be. A power of attorney shall also be required when the person signing such a document for a corporation is not the president, vice president, treasurer, or secretary of the corporation.

Drawback entries.
Certificates of delivery.
Certificates of manufacture.
Abstracts of manufacturing records.
Statements of manufacturers or producers, supplemental statements, schedules, and supplemental schedules.
Statements of owners.
Endorsements of exporters on bills of lading or notices of exportation.
Authorization by manufacturer, producer, exporter, or agent to pay the drawback to another person.
Application of importer to export merchandise not conforming to sample or specifications.
Importers' acceptances of liquidations of import entries as final.
Protests.

§ 22.46 Retention of records.

All records required to be kept by the manufacturer or producer under this part of the regulations with respect to drawback claims, and records kept by others to complement the records of the manufacturer or producer, shall be retained for at least 3 years after payment of such claims.

PART 23—ENFORCEMENT OF CUSTOMS AND NAVIGATION LAWS

Sec.
23.1 Boarding of vessels or vehicles and inspection, examination, and search of persons, baggage, and merchandise discharged from vessels.
23.2 Licensing of vessels of less than 30 net tons.
23.3 Seizure of vessels, vehicles, aircraft, and other conveyances; penalties.
23.4 Articles landed by seamen.
23.5 Baggage of passengers from foreign countries.
23.6 Entry by false invoice, declaration, other document, or statement; forfeiture incurred; liability for duties unaffected.
23.8 Merchandise imported contrary to law.
23.9 Narcotic drugs and marihuana.
23.9a Narcotic addicts and violators; border crossings.
23.10 Maritime Administration vessels; exemption from penalty.
23.11 Seizures, who may make; search warrants.
23.12 Appraisement of property subject to forfeiture; determination of penalties measured by value.
23.13 Claims for seized property valued at not over $2,500 bond for costs.
23.14 Release on payment of appraised value.
23.16 Notice of seizure and sale; value not exceeding $2,500; advertisement.
23.17 Disposition of goods after summary forfeiture; value not exceeding $2,500.
23.18 Summary sale of seized property.
23.19 Transfer of forfeited property to other districts for sale; destruction of forfeited property.
23.20 Disposition of proceeds of sale.
23.21 Forfeiture by court decree; reports to United States attorneys.
23.22 Bonding of seized property; petition to the court.
23.23 Fines, penalties, and forfeitures; remission of.
23.24 Petitions for the remission or mitigation of fines, penalties, and forfeitures, and restoration of proceeds of sale.
23.25 Remission, mitigation, or cancellation by collectors.
23.26 Compromise of claims.
23.27 Claims for compensation to informers.
23.28 Inspection of importer's books, records, etc.
23.29 Examination of importer and others.
23.30 Bribery of customs officers and employees.
23.31 Export controls.
23.32 Pollution of coastal and navigable waters.
23.33 Identification cards.
23.34 Return of property stolen in Canada.
23.35 Customs supervision.

AUTHORITY: §§ 23.1 to 23.35 issued under R. S. 161, 251, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 23.1 Boarding of vessels or vehicles and inspection, examination, and search of persons, baggage, and merchandise discharged from vessels.

(a) For the purpose of examining the manifest or inspecting and searching the vessel or vehicle, any customs officer [1] at any time may go on board of:

(1) Any vessel at any place in the United States [2] or within the customs waters of the United States;

[1] "The term 'officer of the customs' means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service." (Tariff Act of 1930, sec. 401 (1), as amended; 19 U. S. C. 1401 (1))

"The keepers of Coast Guard stations and houses of refuge shall have the powers of inspectors of customs, but shall receive no additional compensation for duties performed as such: * * *" (14 U. S. C. 104)

[2] "Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial." (19 U. S. C. 482)

"The collector for the district in which any vessel or vehicle arrives from a foreign port

(2) Any American vessel on the high seas, when there is probable cause to believe that such vessel is violating or has violated the laws of the United States; or

(3) Any vessel within a customs-enforcement area,[3] but customs officers shall not board a foreign vessel upon the high seas in contravention of any treaty with a foreign government, or in the absence of a special arrangement with the foreign government concerned.

(b) Customs officers may search vessels for letters which may be on board or may have been conveyed contrary to law on board any vessel or on any post route, and shall seize such letters and deliver them to the nearest post office or detain them subject to orders of the postal authorities.

(c) If the collector believes that sufficient grounds exist to justify a search of any Army or Navy transport, the facts shall be reported to the commanding officer or master of such transport with a request that he cause a full search to be made and advise the collector of the result of such search. If, after the cargo has been discharged, passengers and their baggage landed, and the baggage of officers and crew members examined and passed, the collector believes that sufficient grounds exist to justify the continuance of customs supervision of the vessel, the commanding officer of the vessel shall be advised accordingly.

(d) A customs officer may stop any vehicle arriving in the United States from a foreign country for the purpose of examining the manifest or inspecting and searching the vehicle and may stop, search, and examine any vehicle or person within the limits of the United States on which or on whom he may have reasonable cause to believe there is merchandise subject to duty or which has been introduced into the United States contrary to law.

(e) Collectors of customs are hereby authorized to cause inspection, examination, and search to be made under section 467, Tariff Act of 1930, as amended [4] of persons, baggage, or merchandise discharged from vessels or vehicles in accordance with the provisions of this section.

(f) Customs officers may stop, search, and examine, as well without as within their districts, any vehicle, beast, or person, on which or whom they shall suspect there is merchandise which is subject to duty, or which has been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which they may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer finds any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he has reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

(g) Customs officers may board any vessel at any time for the purpose of preventing, by search or otherwise, the unlawful introduction into the United States of any merchandise, and may arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and may use all necessary force to seize or arrest the same.

(h) Customs officers may board any vessel at any time for the purpose of preventing, by search or otherwise, the unlawful introduction into the United States of any merchandise which is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, and may arrest any person who shall become liable to arrest, by virtue of any law respecting the revenue, as well without as within their respective districts, and may use all necessary force to seize or arrest the same.

(i) Any vessel, within or without the customs waters, from which any merchandise is being, or has been, unlawfully introduced into the United States by means of any boat belonging to, or owned, controlled, or managed in common with, said vessel, shall be deemed to be employed within the United States and, as such, subject to the provisions of this section.

(j) The provisions of this section shall not be construed to authorize or require any officer of the United States to enforce any law of the United States upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon said vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government." (Tariff Act of 1930, sec. 581, as amended; 19 U. S. C. 1581)

"Section 1. Transfer of Functions of Bureau of Marine Inspection and Navigation.

"As provided in Sections 2 and 3 of this order, there are transferred to the Bureau of Customs and the United States Coast Guard all functions of: the Bureau of Marine Inspection and Navigation, the office of the director thereof, the offices of supervising inspectors, principal traveling inspectors, traveling inspectors, local inspectors, assistant inspectors, shipping commissioners, deputy shipping commissioners, and the Board of Supervising Inspectors, the Boards of Local Inspectors, the Marine Casualty Investigation Board, the Marine Boards, and those functions of the Secretary of Commerce which pertain thereto.

"Section 2. Functions Transferred to Bureau of Customs.

"Those functions of the Bureau, Offices and Boards specified in Section 1, and of the Secretary of Commerce, pertaining to registry, enrollment, and licensing of vessels, including the issuance of commissions to yachts, the assignment of signal letters, and the preparation of all reports and publications in connection therewith; measurement of vessels, administration of tonnage duties, and collection of tolls; entrance and clearance of vessels and aircraft, regulation of vessels in the coasting and fishing trades, and limitation of the use of foreign vessels in waters under the jurisdiction of the United States; recording of sales, conveyances, and mortgages of vessels; protection of steerage passengers; all other functions of such Bureau, Offices and Boards which are now performed by the Bureau of Customs on behalf thereof; and the power to remit and mitigate fines, penalties and forfeitures incurred under the laws governing these functions, are transferred to the Commissioner of Customs, to be exercised by him under the direction and supervision of the Secretary of the Treasury." (Sec. 102, Reorg. Plan No. 3 of 1946; 3 CFR, 1946 Supp., Ch. IV)

[3] "Whenever a vessel from a foreign port or place or from a port or place in any Territory or possession of the United States arrives at a port or place in the United States or the Virgin Islands, whether directly or via another port or place in the United States or the Virgin Islands, the collector of customs for such port or place of arrival may, under such regulations as the Secretary of the

or place may put on board of such vessel or vehicle while within such district, and if necessary while going from one district to another, one or more inspectors or other customs officers to examine the cargo and contents of such vessel or vehicle and superintend the unlading thereof, and to perform such other duties as may be required by law or the customs regulations for the protection of the revenue. Such inspector or other customs officer may, if he shall deem the same necessary for the protection of the revenue, secure the hatches or other communications or outlets of such vessel or vehicle with customs seals or other proper fastenings while such vessel is not in the act of unlading and such fastenings shall not be removed without permission of the inspector or other customs officer. Such inspector or other customs officer may require any vessel or vehicle to discontinue or suspend unlading during the continuance of unfavorable weather or any conditions rendering the discharge of cargo dangerous or detrimental to the revenue. Any officer, owner, agent of the owner, or member of the crew of any such vessel who obstructs or hinders any such inspector or other customs officer in the performance of his duties, shall be liable to a penalty of not more than $500." (Tariff Act of 1930, sec. 455; 19 U. S. C. 1455)

"Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicles shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle shall be subject to a penalty of $500; *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. * * *" (Tariff Act of 1930, sec. 584; 19 U. S. C. 1584)

[3] "(a) Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act, or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof and any person, trunk, package or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.

"(b) Officers of the Department of Commerce and other persons authorized by such department may go on board of any vessel at any place in the United States or within the customs waters and hail, stop, and board such vessel in the enforcement of the navigation laws and arrest or, in case of escape or attempted escape, pursue and arrest any person engaged in the breach or violation of the navigation laws.

"(c) Any master of a vessel being examined as herein provided, who presents any forged, altered, or false document or paper to the examining officer, knowing the same to be forged, altered, or false and without revealing the fact shall, in addition to any forfeiture to which in consequence the vessel may be subject, be liable to a fine of not more than $5,000 nor less than $500.

"(d) Any vessel or vehicle which, at any authorized place, is directed to come to a stop by any officer of the customs, or is directed to come to a stop by signal made by any vessel employed in the service of the customs and displaying proper insignia, shall come to a stop, and upon failure to comply a vessel or vehicle so directed to come to a stop shall become subject to pursuit and the master, owner, operator, or person in charge thereof shall be liable to a penalty of not more than $5,000 nor less than $1,000."

"(e) If upon the examination of any vessel or vehicle it shall appear that a breach of the laws of the United States is being or has been committed so as to render such vessel or vehicle or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel or vehicle, liable to forfeiture or to secure any fine or penalty, the same shall be seized and any person who has engaged in such breach shall be arrested.

"(f) It shall be the duty of the several officers of the customs to seize and secure any vessel, vehicle, or merchandise which

chandise, even though such persons, baggage, or merchandise were inspected, examined, searched, or taken on board the vessel at another port in the United States or the Virgin Islands, if such action is deemed necessary or appropriate.

(Sec. 1, 62 Stat. 717, R. S. 3061, as amended, sec. 11, 52 Stat. 1083, secs. 1, 3–8, 49 Stat. 517, 518, 519, as amended, 520; 18 U. S. C. 546, 19 U.S.C. 482, 1467, 1701, 1703–1708)

§ 23.2 Licensing of vessels of less than 30 net tons.

(a) The application for a license to import merchandise in a vessel of less than 30 net tons in accordance with section 6, Anti-Smuggling Act of August 5, 1935,[8] shall be addressed to the Secretary of the Treasury and delivered to the collector of customs in the district in which are located the ports where foreign merchandise is to be imported in such vessel.

(b) The application shall contain the following information:

(1) Name of the vessel, rig, motive power, and home port.
(2) Name and address of the owner.
(3) Name and address of the master.
(4) Net tonnage of the vessel.
(5) Kind of merchandise to be imported.
(6) Country or countries of exportation.
(7) Ports of the United States where the merchandise will be imported.
(8) Whether the vessel will be used to transport and import merchandise from a hovering vessel.
(9) Kind of document under which the vessel is operating.

(c) If the collector finds that the applicant is a reputable person and that the revenue would not be jeopardized by the issuance of a license, he may issue the license for a period not to exceed 12 months, incorporating therein any special conditions he believes to be necessary or desirable, and deliver it to the licensee.

(d) The master or owner shall keep the license on board the vessel at all times and exhibit it upon demand of any duly authorized officer of the United States. This license is personal to the licensee and is not transferable.

(e) The Secretary of the Treasury or the collector of customs in whose office the license was issued may revoke the license if any of its terms have been wilfully or intentionally violated or for any other cause which may be considered prejudicial to the revenue or otherwise against the interest of the United States.

(Sec. 6, 49 Stat. 519; 19 U.S.C. 1706)

§ 23.3 Seizure of vessels, vehicles, aircraft, and other conveyances; penalties.

(a) If it shall appear to any officer authorized to board conveyances and make seizures that there has been a violation of a law of the United States whereby a vessel, vehicle, aircraft, or other conveyance, or any merchandise on board of or imported by such vessel, vehicle, aircraft, or other conveyance is liable to forfeiture, such officer shall seize the vessel, vehicle, aircraft, or other conveyance, or merchandise and arrest any person engaged in such violation.

(b) Every vessel, vehicle, animal, aircraft, or other thing which is being or has been used in, or to aid or facilitate, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being, or has been, introduced or attempted to be introduced into the United States contrary to law shall be seized and held subject to forfeiture,[9] and any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

(c) Unless specifically authorized by law, clearance of vessels within the common carrier exception of section 594, Tariff Act of 1930,[7] shall not be refused for the purpose of collecting a fine imposed upon the master or owner, unless either of them was a party to the illegal act. The Government's remedy in such cases is limited to an action against the master or owner.

(d) If a penalty is incurred under section 460, Tariff Act of 1930, as amended, by a person in charge of a vessel or vehicle and the vessel or vehicle is not subject to seizure, such vessel or vehicle may be held by the collector of customs under section 594, Tariff Act of 1930, until the penalty incurred by the person in charge has been settled.[6]

(Sec. 1, 62 Stat. 717, secs. 459, 460, 46 Stat. 717, as amended; secs. 1, 3–8, 49 Stat. 517, 518, 519, as amended, 520; 18 U. S. C. 546, 19 U.S.C. 1459, 1460, 1701, 1703–1708)

Treasury may prescribe and for the purpose of assuring compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unladen from such vessel, whether or not any or all such persons, baggage, or merchandise has previously been inspected, examined, or searched by officers of the customs." (Tariff Act of 1930, sec. 467, as amended; 19 U. S. C. 1467)

[8] "Except into the districts adjoining to the Dominion of Canada, or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port or place, or from any hovering vessel, in any vessel of less than thirty net tons burden without special license granted by the Secretary of the Treasury under such conditions as he may prescribe, nor in any other manner than by sea, except by aircraft duly licensed in accordance with law, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all such unlicensed vessels or aircraft and of the merchandise imported therein, landed or unladen in any manner. Marks, labels, brands, or stamp, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any such vessel or aircraft, shall be prima facie evidence of the foreign origin of such merchandise." (19 U. S. C. 1706)

[9] "(a) Except as specified in the proviso to section 594 of this act, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unlading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, shall be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment.

"(b) Every person who directs, assists financially or otherwise, or is in any way concerned in any unlawful activity mentioned in the preceding subsection shall be liable to a penalty equal to the value of the article or articles introduced or attempted to be introduced." (Tariff Act of 1930, sec. 596, as amended, 19 U. S. C. 1595a)

"All property taken or detained under any revenue law of the United States shall not be repleviable, but shall be deemed to be in the custody of the law and subject only to the orders and decrees of the courts of the United States having jurisdiction thereof." (28 U. S. C. 2463)

It is not necessary that proceedings shall have been instituted against the master or owner personally before proceedings are instituted by libel against the vessel or vehicle.

It is immaterial whether the owner or driver of a domestic vehicle used wholly within the United States in the transportation of smuggled merchandise had or had not knowledge of its illegal use. If, however, the smuggled merchandise or the vehicle or property illegally used has been stolen, the rightful owner may interpose that fact as a defense to forfeiture.

[7] "Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto." (Tariff Act of 1930, sec. 594; 19 U. S. C. 1594)

The immunity from seizure of vessels used as common carriers does not extend to fines imposed for the carriage of smoking opium.

[6] "The master of any vessel of less than five net tons carrying merchandise and the person in charge of any vehicle arriving in the United States from contiguous country, shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which such vessel or vehicle shall cross the boundary line or shall enter the territorial waters of the United States, and if such vessel or vehicle have on board any merchandise, shall produce to such customs officer a manifest as required by law, and no such vessel or vehicle shall proceed farther inland nor shall discharge or land any merchandise, passengers, or baggage without receiving a permit therefor from such customs officer. Any person importing or bringing merchandise into the United States from a contiguous country otherwise than in a vessel or vehicle shall immediately report his arrival to the customs officer at the port of entry or customhouse which shall be nearest to the place at which he shall cross the boundary line and shall present such merchandise to such customs officer for inspection." (Tariff Act of 1930, sec. 459, as amended; 19 U. S. C. 1459)

"The master of any vessel or the person in charge of any vehicle who fails to report arrival in the United States as required by the

§ 23.4 Articles landed by seamen.

(a) Except as provided for in paragraph (c) of this section, any article which is to be taken ashore by a seaman or officer of a vessel shall be declared and any article landed without having been properly declared as provided for hereinafter in this section shall be considered as having been unladen without a permit, subjecting the offender and the master to the penalties provided for in section 453, Tariff Act of 1930.[5] When practicable, the clearance of articles through customs shall be made and permission to unlade obtained before they are taken from the vessel but, if at any port or landing place the situation is such that no danger to the revenue will result therefrom, they may be submitted for examination and clearance at the customs office on the pier under a Declaration and Entry of Crew Member for Imported Articles, customs Form 5123, prepared by the crew member in accordance with § 10.22 (a) of this chapter. In the latter case, however, if the circumstances under which the articles are landed indicate an attempt to avoid customs inspection, the penalties prescribed in such section 453 shall be assessed.

(b) Articles taken ashore by an officer or seaman permanently leaving his vessel without intention to reship shall be cleared through customs on the vessel or at the customs office on the pier and any duty found due shall be collected as in the case of an arriving passenger. (See § 10.22 of this chapter.) If the declaration does not include all the articles landed, the officer or seaman shall be subject to the penalties prescribed in section 497, Tariff Act of 1930, with respect to the articles omitted. If a declaration is not made, the articles shall be considered as having been unladen without a permit and the penalties prescribed in section 453, Tariff Act of 1930, shall be assessed. Except as provided for in the last sentence of paragraph (a) of this section, section 453 shall not be applied if any, though not all, of the articles are declared.

(c) Articles in the possession of and exclusively for use by any officer or seaman during the voyage, such as necessary clothing, toiletries, and purely personal effects, may be brought ashore by such officer or seaman on temporary shore leave for use while in port without a written entry or declaration and without payment of duty or internal-revenue tax, provided the collector is satisfied that the articles so landed are necessary and appropriate for the officer's or seaman's accommodation while on temporary shore leave; that they will be devoted solely to his bona fide personal use; that the quantities are reasonable, depending upon the circumstances of each particular case; and that in the case of tobacco products and alcoholic beverages, the containers shall have been opened and the total quantity brought ashore while the vessel is in port shall not exceed 50 cigars, 300 cigarettes, or 3 pounds of smoking tobacco, or a proportionate amount of each, and 1 quart of alcoholic beverages. In the case of articles possessing substantial commercial value, such as cameras, watches, razors, and other articles not consumed through use, the customs officer concerned, before passing the article free of duty, shall assure himself beyond doubt that the article brought ashore is for the actual bona fide personal use of the seaman while on shore leave and is to be returned to the vessel.[10]

(Secs. 453, 497, 46 Stat. 716, 728; 19 U. S. C. 1453, 1497)

§ 23.5 Baggage of passengers from foreign countries.

(a) Except as provided for in paragraph (b) of this section any article in the baggage of a passenger arriving from a foreign country which is not declared as required by § 10.19 of this chapter shall be seized if it is available for seizure at the time the violation is detected and the personal penalty prescribed by section 497, Tariff Act of 1930,[11] shall be demanded from the passenger. If the article is not seized, the Government is limited to a claim for the personal penalty against the person who imported the merchandise without declaration, since section 497 does not provide for the collection of value in lieu of seizure. Since undeclared articles are treated as smuggled, no duty shall be collected.

(b) When an article not declared in accordance with § 10.19 of this chapter is found in the baggage of a person arriving in the United States and it is satisfactorily established that (1) the article would have been free of duty and internal-revenue tax if it had been properly declared, (2) that its importation is not prohibited or restricted, and (3) that the failure to declare was not due to wilful negligence or fraudulent intent, the personal penalty incurred is hereby remitted pursuant to the authority of section 618, Tariff Act of 1930. In any such case, when the article would have been free of duty only because of the provisions of paragraph 1798 or section 321 (a)(2)(B), Tariff Act of 1930, as amended, the forfeiture incurred is hereby mitigated pursuant to the authority of the said section 618 to a sum equal to the duty and any internal-revenue tax which would have accrued upon the article had it been imported for commercial purposes, and when the article would otherwise have been free of duty and internal-revenue tax, the forfeiture incurred is hereby remitted pursuant to the same authority.

(c) A passenger who makes any false or fraudulent statement or is guilty of other conduct within the purview of section 592, Tariff Act of 1930, as amended, whereby a customs officer is or may be induced to pass an article free of duty under paragraph 1798 or section 321 (a)(2)(B) of the said act, as amended, or at less than the proper amount of duty, or who attempts to enter under the said paragraph 1798 or section 321(a)(2)(B) any article which in fact does not belong to him and a returning resident who, in connection with his return to the United States, claims the benefit of the $200 or $300 exemption provided for in said paragraph 1798 within the respective period during which taking advantage of the claimed exemption is prohibited, shall be deemed to have violated the said section 592. In any such case the article involved shall be seized, if it is available for seizure at the time the violation is detected and such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the customs violation. If the article is not available for seizure or is in the hands of such an innocent holder, or if seizure is impracticable, the domestic value of the article, determined in accordance with section 606, Tariff Act of 1930, shall be demanded from the passenger. Whether the article is seized or the domestic value thereof is demanded in lieu of seizure,

---

preceding section, or if so reporting proceeds farther inland without a permit from the proper customs officer, shall be subject to a penalty of $100 for each offense. If any merchandise is imported or brought into the United States in any vessel or vehicle, or by any person otherwise than in a vessel or vehicle, from a contiguous country, which vessel, vehicle, or merchandise is not so reported to the proper customs officers; or if the master of such vessel or the person in charge of such vehicle fails to file a manifest for the merchandise carried therein, or discharges or lands such merchandise without a permit; such merchandise and the vessel or vehicle, if any, in which it was imported or brought into the United States shall be subject to forfeiture; and the master of such vessel or the person in charge of such vehicle, or the person importing or bringing in merchandise otherwise than in a vessel or vehicle, shall, in addition to any other penalty, be liable to a penalty equal to the value of the merchandise which was not reported, or not included in the manifest, or which was discharged or landed without a permit. If any vessel or vehicle not so reported carries any passenger; or if any passenger is discharged or landed from any such vessel or vehicle before it is so reported, or after such report but without a permit; the master of the vessel or the person in charge of the vehicle shall, in addition to any other penalty, be liable to a penalty of $500 for each passenger so carried, discharged, or landed." (Tariff Act of 1930, sec. 460, as amended; 19 U. S. C. 1460)

[5] "If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture." (Tariff Act of 1930, sec. 453; 19 U. S. C. 1453)

[10] The fact that any such article shows no evidence of use would be sufficient in most cases to raise a reasonable doubt, particularly if the article is of foreign origin.

[11] "Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article." (Tariff Act of 1930, sec. 497; 19 U. S. C. 1497)

the duty estimated to be due thereon shall be demanded of the passenger as soon as possible after the discovery of the violation. Any applicable internal-revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

(Secs. 497, 592, 618, 46 Stat. 728, 750, as amended, 757; 19 U. S. C. 1497, 1592, 1618)

§ 23.6 Entry by false invoice, declaration, other document, or statement; forfeiture incurred; liability for duties unaffected.

(a) When merchandise or the value thereof is subject to forfeiture under section 592, Tariff Act of 1930, as amended,[11] the collector may elect to proceed against the merchandise or its domestic value. If the merchandise is in the possession of an innocent purchaser, it shall not be seized. In such cases, or when the merchandise is not available for seizure, the collector shall proceed to recover the domestic value.

(b) If a claim for forfeiture value is made by the collector and is not paid or settled as prescribed in this part, the claim shall be forwarded to the United States attorney for appropriate action.

(c) When any article is seized under the provisions of section 499, Tariff Act of 1930, as amended,[12] it shall be subject to forfeiture under section 592 of the tariff act, as amended.

(d) An entry covering merchandise subject to the provisions of such section 592 shall be liquidated and the duties collected as though no forfeiture had been incurred. Appraisement of the merchandise or liquidation of the entry shall not be withheld merely because of the pending forfeiture proceedings. When merchandise not covered by an entry is subject to such section 592, a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise in addition to the seizure of the merchandise or the demand for forfeiture value. Any applicable internal-revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

(Sec. 592, 46 Stat. 750, as amended; 19 U. S. C. 1592)

§ 23.8 Merchandise imported contrary to law.

Action shall be taken under section 545, title 18, United States Code,[13] only when there is clear indication of a violation of some specific provision of law.[14]

(Sec. 1, 62 Stat. 716; 18 U. S. C. 545)

§ 23.9 Narcotic drugs and marihuana.

(a) The penalties prescribed in section 584, Tariff Act of 1930, as amended,[15] shall be assessed with respect to any unmanifested narcotic drug found on board of, or after having been unladen from, a vessel or vehicle. This rule is without exception and shall be applied without regard to any opinion of a customs officer as to any question of negligence or responsibility.

(b) When a package of regular cargo or a passenger's baggage otherwise properly manifested is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not shown as such on the manifest, the penalties prescribed in such section 584 shall be assessed with respect to such narcotic drug or marihuana.

(c) The penalties prescribed in section 453, Tariff Act of 1930, shall be assessed in every case where a narcotic drug or marihuana is unladen without a permit.

(d) When a package of regular cargo or a passenger's baggage otherwise covered by a permit to unlade is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not specifically covered by a permit to unlade, the penalties prescribed by such section 453 shall be assessed with respect to such narcotic drug or marihuana.

(e) Where a penalty has been incurred under section 584, Tariff Act of 1930, as amended, for failure to manifest

[11] "If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 485 of this Act (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. The arrival within the territorial limits of the United States of any merchandise consigned for sale and remaining the property of the shipper or consignor and the acceptance of a false or fraudulent invoice thereof by the consignee or the agent of the consignor, or the existence of any other facts constituting an attempted fraud, shall be deemed, for the purposes of this section, to be an attempt to enter such merchandise notwithstanding no actual entry has been made or offered." (Tariff Act of 1930, sec. 592, as amended; 19 U. S. C. 1592)

Acts or omissions which constitute grounds for forfeiture under section 592 may also justify criminal prosecution under 18 U. S. C. 542, in addition to the forfeiture incurred under section 592.

[12] "* * * If any package is found by the appraiser to contain any article not specified in the invoice and he reports to the collector that in his opinion such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package in which such article is found shall be liable to seizure, but if the appraiser reports that no such fraudulent intent is apparent then the value of said article shall be added to the entry and the duties thereon paid accordingly. * * *" (Tariff Act of 1930, sec. 499, as amended; 19 U. S. C. 1499)

[13] "Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or

"Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law—

"Shall be fined not more than $5,000 or imprisoned not more than two years, or both.

"Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section.

"Merchandise introduced into the United States in violation of this section, or the value thereof, to be recovered from any person described in the first or second paragraph of this section, shall be forfeited to the United States."

"The term 'United States', as used in this section, shall not include the Philippine Islands, Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam." (18 U. S. C. 545)

[14] It is not necessary that the Government shall have been deprived of duty to warrant a conviction of forfeiture under 18 U. S. C. 545; it need only be established that merchandise has been fraudulently or knowingly introduced into the United States contrary to law.

"Contrary to law" is not confined to the customs laws but means any law. See Callahan v. United States, 285 U. S. 515.

[15] "* * * If any of such merchandise so found consists of heroin, morphine, or cocaine, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of $50 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium or opium prepared for smoking, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of $25 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle shall be liable to a penalty of $10 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the collector, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. * * *" (Tariff Act of 1930, sec. 584, as amended; 19 U. S. C. 1584)

narcotic drugs, clearance of the vessel involved shall be withheld until the penalty is paid or a bond satisfactory to the collector is given for the payment thereof, unless (1) the narcotics were discovered in a passenger's baggage and the collector is satisfied that neither the master nor any of the officers nor the owner of the vessel knew or had any reason to know or suspect that the narcotics had been on board the vessel, or (2) prior authority for the clearance without payment of the penalty or the furnishing of the bond is obtained from the Bureau.

(f) A written notice and demand for payment of the penalty incurred under section 584, Tariff Act of 1930, as amended, together with a copy of such section 584, shall be sent to the master of the vessel or the person in charge of the vehicle and to the owner of such vessel or vehicle. In the case of a vessel, if bond has been given, such notice shall be sent also to each surety. If the penalty is not paid or a petition filed under section 618, Tariff Act of 1930, for relief from such penalty, the collector shall refer the case to the United States attorney for appropriate action.

(g) When a petition has been filed and a decision made thereon, the collector shall send notice of such decision to the interested persons together with a demand for any payment required under the terms of such decision. If payment is not made, the collector shall refer the case to the United States attorney for collection of the full statutory penalty.

(h) Collectors may permit narcotic drugs (not including any smoking opium or opium prepared for smoking) in reasonable quantity and properly listed as medical stores of a vessel to remain on such vessel if satisfied that such drugs are adequately safeguarded and intended to be used only for medical purposes.

(i) All smoking opium or opium prepared for smoking shall be seized whenever and wherever found and shall stand forfeited without forfeiture proceedings of any character.[16]

(j) Except as provided for in this paragraph, all narcotic drugs seized under the Narcotic Drugs Import and Export Act by any Federal officer other than a customs officer shall be delivered immediately into the custody of the collector of customs in whose district the seizure is made, together with a full report of the circumstances of the seizure. When the seizure is made by a Federal narcotic inspector or agent in connection with an investigation which such inspector or agent considers may result in criminal prosecution under any Federal narcotic law, the drugs so seized shall not be delivered into the custody of the collector of customs until it is determined that they will not, or will no longer, be required as evidence.

(k) The exportation of smoking opium and opium prepared for smoking is absolutely prohibited. Other narcotic drugs or marihuana may be exported only under a permit issued by the Commissioner of Narcotics.[17]

(l) Arrests and seizures under the narcotic laws, except as specified above, shall be handled in the same manner as other customs arrests and seizures.

(m) The functions relating to the notice and demand to produce order forms for marihuana under section 4744 of the Internal Revenue Code (26 U. S. C. 4744) may be performed by collectors of customs, supervising customs agents, and other officers of the customs.

(Sec. 584, 46 Stat. 748, as amended; 19 U. S. C. 1584)

§ 23.9a Narcotic addicts and violators; border crossings.

Any United States citizen who is addicted to or uses narcotic drugs as defined in section 4731 of the Internal Revenue Code of 1954, as amended (except in those cases where the narcotic drug is lawfully prescribed by a duly licensed physician in attendance upon such person) or who has been convicted of a violation of any of the narcotic or marihuana laws of the United States or of any State thereof, the penalty for which is imprisonment for more than one year, shall register his departure from the United States with the collector of customs at the port of departure on customs Form 3231, Registration Certificate of Narcotic User or Violator. The original shall be given to the registrant who, upon his return to the United States, shall register with the collector of customs at the port of arrival by signing before a customs officer and in the space provided for this purpose on the original and by surrendering the completed form to the customs officer. Any United States citizen subject to the registration requirements of the Narcotic Control Act of 1956[18a] who had departed from the United States prior to July 19, 1956, the effective date of said act, shall register his return to the United States with the collector of customs at the port of arrival on customs Form 3231. (Sec. 201, 70 Stat. 574; 18 U. S. C. 1407.)

(Sec. 1407, 70 Stat. 574; 18 U. S. C. 1407)

§ 23.10 Maritime Administration vessels; exemption from penalty.

(a) When a vessel owned or chartered under bareboat charter by the Maritime Administration and operated for its account becomes liable for the payment of a penalty incurred for violation of the customs revenue or navigation laws, clearance of the vessel shall not be withheld nor shall any proceedings be taken against the vessel itself looking to the enforcement of such liability.

(b) This exemption shall not in any way be considered to relieve the master of any such vessel or other person incurring such penalties from personal liability for payment.

[16] territory under its control or jurisdiction; except that such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only may be imported and brought into the United States or such territory under such regulations as the Commissioner of Narcotics shall prescribe, but no crude opium may be imported or brought in for the purpose of manufacturing heroin. All narcotic drugs imported under such regulations shall be subject to the duties which are now or may hereafter be imposed upon such drugs when imported.

"Any narcotic drug imported or brought into the United States or any territory under its control or jurisdiction, contrary to law, shall (1) if smoking opium or opium prepared for smoking, be seized and summarily forfeited to the United States Government without the necessity of instituting forfeiture proceedings of any character; or (2) if any other narcotic drug be seized and forfeited to the United States Government, without regard to its value, in the manner provided by sections 514 and 515 of Title 19, or the provisions of law hereafter enacted which are amendatory of, or in substitution for, such sections. Any narcotic drug which is forfeited in a proceeding for condemnation or not claimed under such sections, or which is summarily forfeited as provided in this subdivision, shall be placed in the custody of the Commissioner of Narcotics and in his discretion be destroyed or delivered to some agency of the United States Government for use for medical or scientific purposes." (21 U. S. C. 173)

[17] "It shall be unlawful for any person subject to the jurisdiction of the United States Government to export or cause to be exported from the United States, or from territory under its control or jurisdiction, or from countries in which the United States exercises extraterritorial jurisdiction, any narcotic drug to any other country. Narcotic drugs (except smoking opium * * *) may be exported to a country only which has * * * become a party of the convention * * * commonly known as the International Opium Convention of 1912, * * *." (21 U. S. C. 182 (a))

[18a] "(a) * * * no citizen of the United States who is addicted to or uses narcotic drugs, as defined in section 4731 of the Internal Revenue Code of 1954, as amended (except a person using such narcotic drugs as a result of sickness or accident or injury and to whom such narcotic drug is being furnished, prescribed, or administered in good faith by a duly licensed physician in attendance upon such person, in the course of his professional practice) or who has been convicted of a violation of any of the narcotic or marihuana laws of the United States, or of any State thereof, the penalty for which is imprisonment for more than one year, shall depart from or enter into or attempt to depart from or enter into the United States, unless such person registers, under such rules and regulations as may be prescribed by the Secretary of the Treasury with a customs official, agent, or employee at a point of entry or a border customs station. Unless otherwise prohibited by law or Federal regulation such customs official, agent, or employee shall issue a certificate to any such person departing from the United States; and such person shall, upon returning to the United States, surrender such certificate to the customs official, agent, or employee present at the port of entry or border customs station.

"(b) Whoever violates any of the provisions of this section shall be punished for each such violation by a fine of not more than $1,000 or imprisonment for not less than one nor more than three years, or both." (18 U. S. C. 1407.)

§ 23.11 Seizures,[21] who may make; search warrants.

(a) Any customs officer having reasonable cause to believe that a violation has been committed of any law, the enforcement of which is within the jurisdiction of the Customs Service, by reason of which any property has become subject to forfeiture, shall seize such property if available. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized. A collector of customs may adopt a seizure made by a person[22] other than a customs officer if such collector has reasonable cause to believe that the property is subject to forfeiture under the customs laws.

(b) If the duly constituted officials of a State have seized any merchandise, vessel, or vehicle under the provisions of the statutes of such State, such property shall not be seized by customs officers unless it is voluntarily turned over to them to be proceeded against under the Federal statutes.

(c) A customs officer to whom a warrant is issued to search for and seize merchandise is without authority to remove letters and other documents and records, unless they themselves are instruments of crime and are seized as an incident to a lawful arrest.[23]

(d) When acting under a warrant to search the rooms in a building occupied by persons named or described in the warrant, no search shall be made of any rooms in such building which are not described in the warrant as occupied by such persons.

(e) The warrant shall be served in person by the officer to whom it is issued and addressed.

(f) In serving a search warrant, the officer shall leave a copy of the warrant with the person in charge or possession of the premises, together with a receipt for the property seized thereunder. In the absence of any person, the copy and receipt shall be left in some conspicuous place on the premises searched.

(g) A customs officer who is lawfully on any premises and is able to identify merchandise which has been imported contrary to law may seize such merchandise without a warrant.

(h) This section shall be applicable to the search of buildings on the international boundary line. (See § 5.15 of this chapter.)

§ 23.12 Appraisement of property subject to forfeiture; determination of penalties measured by value.

(a) Seized property shall be appraised as required by section 606, Tariff Act of 1930.[24]

(b) The term "domestic value," applied with respect to such section 606, shall be the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, such value in the principal market nearest to the place of appraisement shall be reported.

(c) Seized merchandise the importation of which is absolutely prohibited shall be appraised at its foreign-market value, since such merchandise has no domestic value.

(d) For the purpose of condemnation or forfeiture only,[25] the value of all seized merchandise the importation of which is prohibited shall be held not to exceed $2,500.

(e) With respect to property not under seizure, the value to be used as the basis of a claim for forfeiture value or for the assessment of a penalty is the domestic value, which shall be determined or estimated in accordance with paragraph (b) of this section, except that the value shall be fixed as of the date of the violation. In the case of entered merchandise, the date of the violation shall be the date of the entry or the date of the filing of the document or the commission of the act forming the basis of the claim, whichever is later.

(Secs. 606, 608, 46 Stat. 754, 755; 19 U. S. C. 1606, 1608)

§ 23.13 Claims for seized property valued at not over $2,500; bond for costs.

(a) The bond required by section 608, Tariff Act of 1930,[26] to be filed with a claim for any seized property valued at not over $2,500 and subject to summary forfeiture shall be on customs Form 4615 and there shall be endorsed thereon a list or schedule which shall in every case be signed by the claimant in the presence of the witnesses to the bond, and attested by the witnesses. The list or schedule shall be substantially as follows:

List or schedule containing a particular description of seized articles, claim for which is covered by the within bond, to-wit:

The foregoing list is correct.

----------, Claimant.

Attest:

(b) The giving of a bond covering seized property, pursuant to such section 608, shall not be construed to entitle the claimant to possession of the property, but only to stop the summary forfeiture proceedings. (See § 23.21 (c).)

(Sec. 608, 46 Stat. 755; 19 U. S. C. 1608)

§ 23.14 Release on payment of appraised value.

(a) When the appraised domestic value of property seized under the customs laws does not exceed $50,000 and the collector is satisfied that a claimant making a written offer to pay such value pursuant to section 614, Tariff Act of 1930,[27] has, in fact, a substantial interest therein, the collector is hereby authorized to accept such offer and to release such property, provided its entry into the commerce of the United States is not prohibited by law and the claimant or his attorney shall have executed an assent to forfeiture and a waiver of further proceedings on customs Form 4607. In any case where the collector is not satisfied that the proponent has a substantial interest in the seized property or for any other reason believes that it would not be to the interest of the United States to accept the offer, the procedure outlined in paragraph (b) of this section shall be followed.

(b) Any application not covered by paragraph (a) of this section shall be in writing, addressed to the Commissioner of Customs, signed by the claimant or his attorney, and shall contain an assent to forfeiture and a waiver of further proceedings. It shall be submitted in duplicate to the collector for the district in which the property was seized. Proof of ownership shall be submitted with the application if the facts in the case make such action necessary.

(Sec. 614, 46 Stat. 757; 19 U. S. C. 1614)

§ 23.16 Notice of seizure and sale; value not exceeding $2,500; advertisement.

(a) The notice required by section 607, Tariff Act of 1930, as amended,[27] of seizure and intention to forfeit and sell or otherwise dispose of according to law property not exceeding $2,500 in value shall (1) describe the property seized; (2) state the time, cause, and place of seizure; and (3) state that any person desiring to claim the property must appear at a designated place and file with the collector within 20 days from the date of the first publication of the notice a claim to such property and a bond in the sum of $250, in default of which the property will be disposed of in accordance with the law. When the appraised value of the property involved in one seizure from one person exceeds $250, the notice shall be published in a newspaper of general circulation in the customs collection district and the judicial district in which the property was seized. When the appraised value does not exceed $250, the notice shall be published by posting in a conspicuous place accessible to the public in the customhouse nearest the place of seizure and in the customhouse at the headquarters port for the customs collection district, with the date of posting noted thereon, and shall be kept posted for at least 3 successive weeks.

(b) Before seized drugs, insecticides, seeds, plants, nursery stock, and other articles required to be inspected by other Government agencies are sold, they shall be inspected by a representative of such agency to ascertain whether or not they meet the requirements of the law and the regulations of that agency, and, if found not to meet such requirements, they shall be destroyed forthwith.

(Sec. 607, 46 Stat. 754, as amended; 19 U. S. C. 1607)

§ 23.17 Disposition of goods after summary forfeiture; value not exceeding $2,500.

(a) When property has been forfeited pursuant to section 609, Tariff Act of 1930, as amended,[28] the declaration of forfeiture shall be noted on the report of seizure, customs Form 5955. If no petition for relief from the forfeiture is filed or if a petition was filed and has been denied, and the property is not retained for official use, it shall be disposed of in accordance with the regulations of the General Services Administration applicable to the Bureau of Customs.

(b) If the forfeited property is cleared for sale, it shall be sold in accordance with the applicable provisions of Part 20 of this chapter.

(c) The collector may postpone the sale of small seizures until he believes the proceeds of a consolidated sale will pay all expenses.

(d) If a seizure is made under a statute which provides that the property may be seized and proceeded against by libel,[29] the summary forfeiture proceedings set forth in this section and the proceedings set forth in §§ 23.13 and 23.16 do not apply. Such cases shall be referred to the United States attorney.

(Sec. 609, 46 Stat. 755, as amended; 19 U. S. C. 1609)

§ 23.18 Summary sale of seized property.

Seized property of the kinds enumerated in section 612, Tariff Act of 1930,[30] which has not been delivered under bond and is valued at not over $2,500 shall be advertised for sale and sold at public auction at the earliest possible date. Within 24 hours after receipt of the appraiser's report the collector shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not the notice of seizure and intention to forfeit and sell provided for in § 23.16. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims.

(Sec. 612, 46 Stat. 756; 19 U.S.C. 1612)

---

[21] To constitute a valid seizure there must be an open visible possession claimed and authority exercised by the seizing officer. The parties must understand that they are dispossessed and that they are no longer at liberty to exercise any control over the property. A superior physical force is not necessary to be employed if there is voluntary acquiescence in the seizure and dispossession. A seizure once made, if voluntarily abandoned by the seizing officer, loses its validity.

[22] A person other than a customs officer who makes a seizure does so on his own responsibility if the seizure is not adopted by a collector of customs.

[23] "It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the collector for the district in which such violation occurred, and to turn over and deliver to such collector any vessel, merchandise, or baggage seized by him, and to report immediately to such collector every violation of the customs laws." (Tariff Act of 1930, sec. 602; 19 U. S. C. 1602)

[24] "(a) *Warrant.* If any collector of customs or other officer or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any merchandise upon which the duties have not been paid, or which has been otherwise brought into the United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States commissioner, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise: * * *

"(b) *Entry upon property of others.* Any person authorized by this Act to make searches and seizures, or any person assisting him or acting under his directions, may, if deemed necessary by him or them, enter into or upon or pass through the lands, inclosures, and buildings, other than the dwelling house, of any person whomsoever, in the discharge of his official duties." (Tariff Act of 1930, section 595; 19 U. S. C. 1595)

"Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and, for a subsequent offense, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"This section shall not apply to any person—

"(a) serving a warrant of arrest; or

"(b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or

"(c) making a search at the request or invitation or with the consent of the occupant of the premises." (18 U. S. C. 2236)

"Whoever falsely represents himself to be an officer, agent, or employee of the United States, and in such assumed character arrests or detains any person or in any manner searches the person, buildings, or other property of any person, shall be fined not more than $1,000 or imprisoned not more than three years, or both." (18 U. S. C. 913)

[25] "The collector shall require the appraiser to determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, merchandise, or baggage seized under the customs laws." (Tariff Act of 1930, sec. 606; 19 U. S. C. 1606)

The function of determining the domestic value of seized property under section 606, Tariff Act of 1930 (19 U.S.C. 1606), in any case where the aggregate value of the seizure is not more than $500 has been transferred from the appraiser to the collector. (T.D. 54949)

[26] See sec. 607, as amended, and secs. 610 and 612, Tariff Act of 1930.

[27] "Any person claiming such vessel, vehicle, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the collector a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of $250, with sureties to be approved by the collector, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, the collector shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law." (Tariff Act of 1930, sec. 608; 19 U. S. C. 1608)

The costs and expenses secured by the bond are such as are incurred after the filing of the bond, including storage costs, safeguarding, court fees, marshal's costs, etc.

[28] "If any person claiming an interest in any vessel, vehicle, merchandise, or baggage seized under the provisions of this Act offers to pay the value of such vessel, vehicle, merchandise, or baggage, as determined under section 606 of this Act, and it appears that such person has in fact a substantial interest therein, the collector may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Secretary of Commerce if under the navigation laws, accept such offer and release the vessel, vehicle, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 613 of this Act." (Tariff Act of 1930, sec. 614; 19 U. S. C. 1614)

[29] "If such value of such vessel, vehicle, merchandise, or baggage returned by the appraiser, does not exceed $2,500, the collector shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 610 and 612 of this Act merchandise the importation of which is prohibited shall be held not to exceed $2,500 in value." (Tariff Act of 1930, sec. 607, as amended; 19 U. S. C. 1607)

[30] "If no such claim is filed or bond given within the twenty days hereinbefore specified, the collector shall declare the vessel, vehicle, merchandise or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold, or otherwise dispose of the same according to law and shall deposit the proceeds of sale, after deducting the actual expenses of seizure, publication and sale in the Treasury of the United States." (Tariff Act of 1930, sec. 609, as amended; 19 U. S. C. 1609).

[31] For example: The Insecticide Act, 7 U. S. C. 133; the Federal Caustic Poison Act, 15 U. S. C. 404; the Food and Drugs Act, 21 U. S. C. 14. See Part 12 of this chapter.

[32] "Whenever it appears to the collector that any vessel, vehicle, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and the value of such vessel, vehicle, merchandise, or baggage as determined by the appraiser under section 606 of this Act, does not exceed $2,500, and such vessel, vehicle, merchandise, or baggage has not been delivered under bond, the collector shall, within twenty-four hours after the receipt by him of the appraiser's return proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such value of such vessel, vehicle, merchandise, or baggage exceeds $2,500 the collector shall forthwith transmit the appraiser's return and his report of the seizure to the United States district attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the collector or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, merchandise, or baggage so sold would have been subject to such claim." (Tariff Act of 1930, sec. 612; 19 U. S. C. 1612)

§ 23.19 Transfer of forfeited property to other districts for sale; destruction of forfeited property.

(a) Pursuant to the provisions of section 611, Tariff Act of 1930,[31] if the laws of a State in which property is seized and forfeited prohibit the sale of such property, or if the Commissioner is of the opinion that the sale of forfeited property may be made more advantageously in another customs district, the property shall be moved to and sold in such other customs district as the Commissioner may direct provided it has been cleared for sale pursuant to the regulations of the General Services Administration applicable to the Bureau of Customs.

(b) If, after the summary forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale, the collector may order the destruction of the property. Similarly, property forfeited under a decree of any court may be destroyed if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury for disposition in accordance with section 611, Tariff Act of 1930.

[31] "If the sale of any vessel, vehicle, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, merchandise, or baggage so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only." (Tariff Act of 1930, sec. 611; 19 U.S.C. 1611)

(c) Any vessel or vehicle summarily forfeited for violation of any law respecting the customs revenue may be destroyed in lieu of the sale thereof when such destruction is authorized by the Commissioner of Customs to protect the revenue.[31a] Any such property forfeited under a decree of any court may be destroyed under the same condition if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury for disposition under 19 U. S. C. 1705.

(Sec. 611, 46 Stat. 755, sec. 5, 49 Stat. 519; 19 U.S.C. 1611, 1705)

§ 23.20 Disposition of proceeds of sale.

(a) Expenses incurred by customs officers in connection with seizures and forfeitures shall be paid from the customs appropriation. In the event that the forfeiture property has been authorized for transfer to another Federal agency for official use, the receiving agency shall reimburse the customs appropriation for the costs incurred for moving and storing such property from the date of seizure to the date of delivery. If the property is cleared for sale, the customs appropriation shall be reimbursed from the proceeds of the sale for all expenses paid from such appropriation in connection with the seizure and forfeiture of such property.

(b) If the forfeiture and sale of property is pursuant to court proceedings, or the imposition of a fine or penalty results from a prosecution instituted in a civil or criminal case under the customs laws, the sum recovered, after deducting all proper charges for marshal's fees, court costs, etc., is payable to the collector of customs. Upon receipt of such sum, the collector shall distribute it without delay in accordance with section 613, Tariff Act of 1930, as amended.[32]

(Sec. 613, 46 Stat. 756, as amended; 19 U. S. C. 1613)

[31a] "Any vessel or vehicle forfeited to the United States, whether summarily or by a decree of any court, for violation of any law respecting the revenue, may, in the discretion of the Secretary of the Treasury, if he deems it necessary to protect the revenue of the United States, be destroyed in lieu of the sale thereof under existing law." (19 U. S. C. 1705.)

[32] "* * * If no application for such remission of restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury or the Secretary of Commerce, the proceeds of sale shall be disposed of as follows:

"(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale, and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

"(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the collector according to law; and

"(3) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine." (Tariff Act of 1930, sec. 613, as amended; 19 U. S. C. 1613)

§ 23.21 Forfeiture by court decree; reports to United States attorneys.

(a) When it is necessary to institute legal proceedings in order to forfeit seized property, or to forfeit the value of property subject to forfeiture, or to prosecute by a civil or criminal action for any violation of the customs laws, the collector or the principal local officer of the Customs Agency Service shall furnish a report to the United States attorney,[33]

[33] Judicial proceedings for the forfeiture of seized merchandise must be instituted within the judicial district in which the seizure was made.

Such proceedings for forfeiture under any law of the United States of a seizure made on the high seas may be prosecuted in any judicial district in which the property so seized is brought and proceedings instituted.

The trial of offenses in criminal cases takes place in the judicial district in which the crime was committed, but when the offense is begun in one district and completed in another, it may be tried in either district.

Offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular state or judicial district, are tried in the judicial district in which the offender is found, or into which he is first brought.

"No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered: *Provided*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation." (Tariff Act of 1930, sec. 621, as amended; 19 U. S. C. 1621)

"In all suits or actions brought for the forfeiture of any vessel, vehicle, merchandise, or baggage seized under the provisions of (Footnote 33—Continued)

any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

"(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel or vehicle, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

"(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

"(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel." (Tariff Act of 1930, sec. 615, as amended; 19 U. S. C. 1615)

"Upon the entry of judgment for the claimant in any proceeding to condemn or forfeit property seized under any Act of Congress, such property shall be returned forthwith to the claimant or his agent; but if it appears that there was reasonable cause for the seizure, the court shall cause a proper certificate thereof to be entered and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution." (28 U. S. C. 2465)

"Execution shall not issue against a collector or other revenue officer on a final judgment in any proceeding against him for any of his acts, or for the recovery of any money exacted by or paid to him and subsequently paid into the Treasury, in performing his official duties, if the court certifies that:

(1) probable cause existed; or

(2) the officer acted under the directions of the Secretary of the Treasury or other proper Government officer.

"When such certificate has been issued, the amount of the judgment shall be paid out of the proper appropriation by the Treasury." (28 U.S.C. 2006)

in accordance with the provisions of section 603, Tariff Act of 1930, as amended.[34]

(b) When the appraised value of seized property exceeds $2,500 and neither an application to the Bureau for relief nor an offer to pay the domestic value thereof, as provided for in § 23.14, is made within a reasonable time, the collector shall report the facts to the United States attorney for the judicial district in which the seizure was made.[35]

(c) If the appraised value of seized property is less than $2,500 and the claimant gives a bond on customs Form 4615, as provided for in § 23.13, within the statutory period, the collector shall likewise report the case to the United States attorney.

(Secs. 603, 610, 46 Stat. 754, as amended, 755; 19 U.S.C. 1603, 1610)

§ 23.22 Bonding of seized property; petition to the court.

When a claimant desires to file a bond for the release of seized property which is the subject of a court proceeding [36] he shall be referred to the United States attorney.

[34] "Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the collector or the principal local officer of the Customs Agency Service to report such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction." (Tariff Act of 1930, sec. 603, as amended; 19 U. S. C. 1603)

[35] "If the value returned by the appraiser or any vessel, vehicle, merchandise, or baggage so seized is greater than $2,500, the collector shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property." (Tariff Act of 1930, sec. 610; 19 U. S. C. 1610)

[36] "Notwithstanding any provisions of law relating to the return on bond of any vessel or vehicle seized for the violation of any law of the United States the court having jurisdiction of the subject matter, may, in its discretion and upon good cause shown by the United States, refuse to order such return of any such vessel or vehicle to the claimant thereof. * * *" (Internal Revenue Code, sec. 3173 (d); 26 U. S. C. 3173 (d))

§ 23.23 Fines, penalties, and forfeitures; remission of.

(a) Every offender under the customs or navigation laws shall be advised of any fine or penalty incurred by him as well as any liability to forfeiture. Whenever possible, customs officers shall inform each interested person of his right to apply for relief under section 618, Tariff Act of 1930 [37] or any other applicable statute authorizing mitigation or remission of penalties.

(b) In the case of smuggling of articles of small value, demand shall be made for an immediate deposit on account of the penalty incurred in an amount equivalent to the domestic value of the articles whether or not a petition for relief is filed. Such demand need not be made in connection with any liability incurred by the master of a vessel under the provisions of section 453, Tariff Act of 1930.

(c) Except as provided for in § 23.21 (b), if the person liable for any violation of the customs or navigation laws fails to petition for relief or pay the penalty within 60 days from the date of mailing of the notice of violation as provided for in paragraph (a) of this section, the case shall be referred immediately to the United States attorney for appropriate action, unless it appears that the person liable for the penalty is absent from the United States or during the said period was absent for more than 30 days, in which event the collector may withhold such action for a further reasonable time, or unless other action is expressly authorized by the Bureau. When a penalty is mitigated or a forfeiture remitted upon condition that a stated amount be paid, and the mitigated penalty or stated amount is not paid or a supplemental petition filed within 60 days from the date a notice of the settlement is mailed to the petitioner, the matter shall be referred immediately to the United States attorney for appropriate attention, unless other action has been directed by the Bureau.

(d) No action looking to the remission or mitigation of a fine, penalty, or forfeiture shall be taken on any petition, irrespective of the amount involved, if the case has been referred to the Department of Justice for the institution of legal proceedings.

(e) In the case of vessels or vehicles awarded for official use, a petition shall not be considered unless filed before final disposition of the property is made.

(Sec. 618, 46 Stat. 757; 19 U.S.C. 1618)

§ 23.24 Petitions for the remission or mitigation of fines, penalties, and forfeitures, and restoration of proceeds of sale.

(a) Any petition for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by the Bureau of Customs or for the restoration of the proceeds of a sale of property forfeited under the customs laws shall be addressed to the Commissioner of Customs, unless final action thereon may be taken by the collector of customs, in which event it shall be addressed to the collector concerned, and shall be signed by the petitioner and filed with the collector of customs of the district in which the property was seized or the fine or penalty imposed. It shall be filed in duplicate or in triplicate, as required by the collector, and shall set forth a description of the property involved; the date and place of violation or seizure; and the facts relied upon by the petitioner to justify the remission or mitigation. In addition, when the petition is for relief from forfeiture or for the restoration of the proceeds of a sale, it shall show the interest of the petitioner in the property and in appropriate cases shall be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence. If the property was in the possession of another person who was responsible for the act which caused the fine, penalty, or forfeiture, evidence shall be produced as to the manner in which the property came into the possession of such other person. Evidence of any investigation made by the petitioner prior to parting with the property shall also be produced, or the reason for the lack of such investigation given.

(b) A petitioner holding a chattel mortgage or conditional sale contract covering seized property shall submit with his petition evidence showing whether, prior to extending credit, he made a thorough investigation of the moral character and financial responsibility of the mortgagor or purchaser of the property and, if so, whether such investigation showed that the mortgagor or purchaser was a good credit risk or disclosed any facts indicating a probability that the property would be used in violation of law.

(c) When the petition is for the restoration of the proceeds of sale under section 613, Tariff Act of 1930, as amended,[38] it shall be filed within 3

The bond prescribed by this section is a substitute for and in lieu of the property released, and the Government, if forfeiture is decreed, is entitled to recover the penal sum of the bond. See *U. S.* v. *Two Trunks*, Fed. Cas. 16592.

[37] "Whenever any person interested in any vessel, vehicle, merchandise, or baggage seized under the provisions of this Act, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Secretary of Commerce if under the navigation laws, before the sale of such vessel, vehicle, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture, was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs agent, collector, judge of the United States Customs Court, or nothing in this section shall be construed United States commissioner, to take testimony upon such petition: *Provided*, That to deprive any person of an award of compensation made before the filing of such petition." (Tariff Act of 1930, sec. 618; 19 U. S. C. 1618)

[38] "Any person claiming any vessel, vehicle, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this Act, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circum-

months after the date of sale and shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing it.

(d) If forfeited property the subject of a claim under such section 613 has been authorized for official use, retention or delivery shall be regarded as the sale thereof for the purposes of the abovementioned section, and the appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges, and contributions in general average that may have been filed.[39]

(Secs. 613, 618, 46 Stat. 756, as amended, 757, secs. 305, 306, 49 Stat. 880; 19 U. S. C. 1613, 1618, 40 U.S.C. 304j, 304k)

---

stances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. * * *" (Tariff Act of 1930, sec. 613, as amended; 19 U. S. C. 1613)

[39] "The appropriation available to any agency for the purchase, hire, operation, maintenance, and repair of property of any kind shall be available for the payment of expenses of operation, maintenance, and repair of property of the same kind received by it under any provision of sections 304g to 304i of this title for official use; for the payment of any lien recognized and allowed pursuant to law, and for the payment of all moneys found to be due any person upon the duly authorized remission or mitigation of any forfeiture; and for reimbursement of other agencies as hereafter provided. The costs of hauling, transporting, towing, and storage of such property shall be paid by the agency which has seized such property or to which it has been abandoned; and, if such property is later delivered to another agency or official under section 304g, 304h, or 304i of this title, the latter shall make reimbursement for all such costs incurred prior to the date of delivery to it of such property." (40 U. S. C. 304j)

"Retention or delivery of forfeited or abandoned property under sections 304g to 304i of this title shall be regarded as the sale thereof for the purpose of laws providing for informer's fees or remission or mitigation of any forfeiture. Any property so acquired when no longer needed for official use shall be disposed of in the same manner as other surplus property." (40 U. S. C. 304k)

[39a] As to remission or mitigation of fines, penalties, and forfeitures in cases of the seizure of unendorsed mail parcels and articles in passengers' baggage, see §§ 9.5 (b) and (c) of this chapter and 23.5 (b), respectively.

§ 23.25 **Remission, mitigation, or cancellation by collectors.**

(a) Fines, penalties, and forfeitures incurred under any law administered by the Bureau of Customs may be mitigated or remitted by the collector of customs concerned in the following cases on such terms and conditions as, under the law and in view of the circumstances, he shall deem appropriate[39a]:

(1) Fines and other pecuniary penalties aggregating less than $100 in respect of any one offense.

(2) Penalties of $500 each imposed under the Federal Aviation Act of 1958 for failure to manifest merchandise or for landing merchandise without a permit (see § 6.11 of this chapter), provided the value of the merchandise is under $500.

(3) When imported merchandise or the value thereof has become subject to forfeiture and the duty is $100 or less, or the merchandise is nondutiable and valued at $500 or less.

(4) When merchandise, other than imported merchandise, has become subject to forfeiture, is valued at $500 or less, and no liability outside the purview of any subdivision of this paragraph has been incurred in connection with the same offense.

(5) Except as hereinafter provided for, penalties under $500 each imposed against the offender under section 453 or 584, Tariff Act of 1930, as amended, and the penalty of $500 each imposed by section 584 if merchandise described in the manifest is not found on board. The collector of customs at the port of New York may remit or mitigate penalties incurred in his district under section 453 or 584, Tariff Act of 1930, provided the aggregate of the penalties incurred under either or both sections by the offender in the case under consideration does not exceed $1,000.

(6) Fines or other pecuniary penalties, aggregating not more than $2,000 in respect of any one offense, as follows:

TARIFF ACT OF 1930

Section		
436	Failure to report arrival or enter	Master; $1,000.
439	Failure to transmit or deliver copy of manifest	Master; $500.
440	Failure to make or to transmit or deliver post entry	Master; $500.
445	Violation of residue cargo procedures	Master; $500.

TITLE 46, UNITED STATES CODE

22	Master's oath of citizenship false	Master; $1,000.
23	Failure surrender register when vessel lost, captured, broken up or sold foreign.	Master or owner; $500.
30	Failure to surrender temporary register granted upon change of vessel ownership.	Master and owner; $100.
32	Failure to surrender temporary register granted upon purchase of vessel through an agent.	Master and owner; $100.
37	Failure to surrender temporary register granted in lieu of one lost or destroyed.	Master; $100.
38	Failure to surrender outstanding register when re-registration required.	Owner; $500.
40	Failure to report change of master	Master; $100.
45	Failure to mark official number	Owner; $30 each vessel arrival.
46	Failure to mark name and home port	Owner; $10 each name.
77	Failure to mark net tonnage	Owner; $30 each vessel arrival.
91, 95	Clearance violation	Master; $500–$1,000. Bond; up to $1,000.
92, 95	Clearance violation	Bond; up to $1,000.
101	Failure to report consular fees paid	Master; $50.
152	Improper berths for steerage passengers	Master; $5 each passenger.
153	Improper lighting, air, etc	Master; $250.
155	Lack of hospital, surgeon, medicine	Master; $250.
156	Failure to keep discipline, cleanliness, etc	Master; $250.
159	Failure to pay passenger death fee	Master or consignee; $50 each passenger.
265	Failure to surrender temporary register or enrollment upon arrival home port.	Master; $100.
267	Failure to deliver license for renewal or surrender	Master; $10.
276	Failure to report change of master, licensed vessel	Master; $10.
277	Failure to exhibit marine document to inspecting officer	Master; $100.
289	Foreign vessel transporting passengers in coastwise trade	Owner; $200 each passenger.
315	Foreign vessel violating coastwise manifesting and permit procedures.	Master; $100.
316 (a)	Foreign vessel engaging in coastwise towing	Owner and master $250–$1,000 each: $50/ton vessel towed.
319	Fishing or trading coastwise without license	Owner; $30 each arrival.
323	Alteration of vessel papers	Violator; $500.
493	Failure to mark steam vessel name on pilot house	Owner; $10 each name omitted.

(7) Forfeitures of merchandise under section 883, title 46, United States Code, illegally transported coastwise, when the merchandise subject to forfeiture is valued at not more than $2,000, or without regard to value if the violation occurred as the direct result of an arrival of the transporting vessel in distress.

(8) Penalties and forfeitures, aggregating under $20,000 in any one case and incurred under section 460, Tariff Act of 1930, as amended, for failure to report as required by section 459, Tariff Act of 1930, as amended, in the following cases:

(i) Violations due to ignorance of the reporting requirements or to inadvertence and either no merchandise, or only typical personal or souvenir merchandise which would have been free of duty, if entered, is carried in the vessel or vehicle, or

(ii) Where the violation is the first offense, although not due to ignorance or inadvertence, and no intended commercial use or threat to the revenue is involved, or

(iii) Pedestrians carrying merchandise of nominal value and no intended commercial use is involved.

(b) When the collector is satisfied that a failure to obtain advance permission to land an aircraft elsewhere than at an airport of entry, or a failure to furnish advance notice of the intended arrival of an aircraft, was due to circumstances entirely beyond the control of the violator, and there are no other violations of the customs aircraft regulations, the penalty of $500 imposed for each such offense under the Federal Aviation Act of 1958 is hereby remitted. If any such failure, although not due to circumstances entirely beyond the control of the violator, occurred without intent to violate the law, the penalty incurred for failure to obtain advance permission to land elsewhere than at an airport of entry is hereby mitigated to $10 if advance notice of intended arrival was given; the penalty incurred for failure to give advance notice of arrival, when arrival is made at a designated airport of entry, is hereby mitigated to $25; and the total penalties incurred for failure to obtain advance permission to land elsewhere than at a designated airport of entry and to furnish advance notice of arrival are hereby mitigated to the sum of $25.

(c) When any imported liquor or compound or any vessel or vehicle in which the same has been transported has become subject to forfeiture for noncompliance with section 1263, title 18, United States Code (see § 12.38 of this chapter), and the United States attorney has advised the collector that there is not sufficient evidence of intent to violate the law to warrant criminal prosecution thereunder, the forfeitures incurred are hereby remitted pursuant to the authority of section 7327, Internal Revenue Code and section 618, Tariff Act of 1930, upon the condition that the expenses of seizure, if any, shall be paid.

(d) If the interested party is not satisfied with the collector's decision, he may file a supplemental petition with the collector to be forwarded to the Bureau for reconsideration of the case. A statement to that effect shall be contained in each notification to an interested party of the collector's action on any petition for relief.

(e) If it is definitely determined that the act or omission forming the basis of a penalty or forfeiture claim did not in fact occur, the claim shall be canceled by the collector and appropriate notations shall be made on customs Forms 5211 and 5955, or 5955–A, if the transaction has already been recorded thereon. When the determination of whether or not the claim was erroneously made depends upon a construction of law, the claim shall not be canceled without Bureau approval, unless there is in force a Bureau ruling decisive of the issue. Bureau instructions shall be requested in all doubtful cases.

(Sec. 618, 46 Stat. 757, sec. 1, 40 Stat. 223, as amended, 53 Stat. 460; 19 U.S.C. 1618, 22 U.S.C. 401, 26, U.S.C. 3726)

§ 23.26 **Compromise of claims.**

(a) No offer pursuant to section 617, Tariff Act of 1930, as amended,[40] in which a specific sum of money is tendered in compromise of a Government claim arising under the customs laws, will be considered by the Bureau until it has received due notice that such sum has been properly deposited with the Treasurer of the United States or a Federal reserve bank.[41] If the offer is rejected, the money will be returned to the proponent.

(b) The offer and the terms upon which it is made shall be stated in writing and shall be limited to the civil liability of the proponent in the matter which is the subject of the Government's claim.

(c) The amount offered shall be deposited in the name of the person submitting the offer.

(Sec. 617, 46 Stat. 757, as amended; 19 U. S. C. 1617)

§ 23.27 **Claims for compensation to informers.**

(a) Any person not an officer of the United States[42] who furnishes information in accordance with the provisions of section 619, Tariff Act of 1930, as amended,[43] may file a claim for an award of compensation.

(b) Such claim shall be in duplicate on customs Form 4623 and shall be filed with the collector. Any customs officer may receive such a claim for transmittal to the collector. Any additional copies required by the collector to complete his files shall be furnished on demand.

(c) No claim for compensation shall be forwarded to the Bureau unless a sum not less than $5 is available for an award.

(d) No claim under such section 619 shall be paid until the amount recovered has been deposited in the proper account. No such claim shall be paid out of the proceeds of a sale.

(e) Any person whose claim has not for any reason been transmitted by the collector to the Bureau may apply directly to the Commissioner of Customs.

(Sec. 619, 46 Stat. 758, as amended; 19 U. S. C. 1619)

§ 23.28 **Inspection of importer's books, records, etc.**

Before demanding an inspection of an importer's books, correspondence, or records pursuant to section 511, Tariff Act of 1930,[44] the investigating officer shall present a written request for such inspection signed by the Commissioner of Customs, appraiser, person acting as appraiser, collector, or judge of the United States Customs Court.

(Sec. 511, 46 Stat. 733; 19 U.S.C. 1511)

§ 23.29 **Examination of importer and others.**

The citation of a person pursuant to section 509, Tariff Act of 1930, as amended,[45] to appear and testify shall be

---

[40] "Upon a report by a collector, district attorney, or any special attorney or customs agent, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised, the Secretary of the Treasury is hereby authorized to compromise such claim, if such action shall be recommended by the General Counsel for the Department of the Treasury." (Tariff Act of 1930, sec. 617, as amended; 19 U. S. C. 1617)

[41] A proponent at a distance from a Federal reserve bank may perfect his offer by tendering a bank draft for the amount of the offer payable to the Secretary of the Treasury for collection and deposit.

[42] "Any officer of the United States who directly or indirectly receives, accepts, or contracts for any portion of the money which may accrue to any person making such detection and seizure, or furnishing such information, shall be guilty of a felony and, upon conviction thereof shall be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both, and shall be thereafter ineligible to any office of honor, trust, or emolument. Any such person who pays to any such officer, or to any person for the use of such officer, any portion of such money, or anything of value for or because of such money, shall have a right of action against such officer, or his legal representatives, or against such person, or his legal representatives, and shall be entitled to recover the money so paid or the thing of value so given." (Tariff Act of 1930, sec. 620; 19 U. S. C. 1620)

[43] Any person not an officer of the United States who detects and seizes any vessel, vehicle, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a district attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $50,000 in any case." (Tariff Act of 1930, sec. 619, as amended; 19 U. S. C. 1619)

The term "in any case," as used in the statute, has reference to the information furnished and not to the recoveries growing out of such information.

The payment of the award for information furnished concerning violations of the Narcotic Drugs Import and Export Act, as amended, will be made by the court exercising jurisdiction in cases involving violations of that law.

[44] "If any person importing merchandise into the United States or dealing in imported merchandise fails, at the request of the Secretary of the Treasury, or an appraiser, or person acting as appraiser, or a collector, or the United States Customs Court, or a judge of such court, as the case may be, to permit a duly accredited officer of the United States to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise, then while such failure continues the Secretary of the Treasury under regulations prescribed by him, (1) shall prohibit the importation of merchandise into the United States by or for the account of such person and (2) shall instruct the collectors to withhold delivery of merchandise imported by or for the account of such person. If such failure continues for a period of one year from the date of such instructions the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in the case of forfeited merchandise." (Tariff Act of 1930, sec. 511; 19 U. S. C. 1511)

[45] "Collectors and appraisers may cite to appear before them or any of them and to examine upon oath, which said officers or any of them are hereby authorized to administer, any owner, importer, consignee, agent, or other person upon any matter or thing which they, or any of them, may deem material respecting any imported merchandise

in writing and signed by the proper official. It shall indicate clearly the merchandise or entries concerning which the examination will be held and the documents required to be presented. It shall be addressed to the person to be examined and shall state the specific time when and place where his personal appearance is required. Such citation shall be served in person or by registered mail.

(Sec. 509, 46 Stat. 733, as amended; 19 U. S. C. 1509)

§ 23.30 Bribery of customs officers and employees.

If, upon investigation, it is determined that money or anything of value was given, offered, or promised to a customs officer or employee with a view to controlling or influencing such officer or employee in the performance of his official duties, the matter shall be referred to the United States attorney for prosecution under section 212, Title 18, United States Code.[45]

(Sec. 1, 62 Stat. 698; 18 U.S.C. 212)

§ 23.31 Export controls.

(a) Importations and exportations of arms, ammunition, implements of war, helium gas, and other munitions of war are governed by laws administered by the Department of State, those of narcotic drugs and gold are governed by laws administered by the Treasury Department, and those of atomic energy source material, fissionable material, and equipment and devices for utilizing or producing fissionable material are subject to laws administered by the Atomic Energy Commission.

(b) The exportation of articles, other than those previously mentioned herein, are subject to requirements of laws administered by the Department of Commerce.

(c) All the laws above mentioned are enforced, in whole or in part, by the Customs Service for the administering agencies.

(d) When articles are imported, or are intended to be, are being, or have been, exported from the United States in violation of law, such articles and any vessel, vehicle, or aircraft knowingly used in their transportation shall be seized and proceeded against.

(Sec. 5 (b), 40 Stat. 415, as amended, 62 Stat. 716, 748, R. S. 3062, as amended, sec. 2, 35 Stat. 614, as amended, secs. 4, 5, 6, 8, 38 Stat. 275, as amended, 277, as amended, sec. 1, 40 Stat. 223, as amended, sec. 12, 54 Stat. 10, as amended, sec. 4, 48 Stat. 340, secs. 4, 7, 60 Stat. 759, 764, sec. 4, 48 Stat. 1111, as amended; 12 U. S. C. 95a, 18 U. S. C. 545, 968, 19 U. S. C. 483, 21 U. S. C. 173, 177, 178, 180, 182, 184, 22 U. S. C. 401, 452, 31 U. S. C. 443, 42 U. S. C. 1804, 1807, 50 U. S. C. 165)

§ 23.32 Pollution of coastal and navigable waters.

(a) When any customs officer has reason to believe that any refuse matter is being or has been deposited in navigable waters in violation of section 13 of the act of March 3, 1899 (33 U.S.C. 407) or that oil is being or has been discharged into or upon the coastal navigable waters of the United States in violation of the Oil Pollution Act of 1924 (33 U.S.C. 431–437),[45a] he shall promptly furnish to the collector a full report of the incident, together with the names of the witnesses, and, when practicable, a sample of the material discharged from the vessel in question.

(b) The collector shall forward this report immediately, without recommendation, to the District Engineer of the Department of the Army (at New York to the Supervisor of New York Harbor) for his decision as to prosecution and a copy of each such report shall be furnished to the Bureau.

(c) If the vessel involved is of American registry, a copy of the report shall be furnished also to the District Commander of the Coast Guard District concerned.

(Sec. 13, 30 Stat. 1152, sec. 7, 43 Stat. 605; 33 U.S.C. 407, 436)

§ 23.33 Identification cards.

(a) Each customs employee, other than an officer of the Customs Agency Service, who needs identification in the performance of his official duties shall be furnished an identification card on customs Form 3133 if the employee is required to carry weapons regularly or from time to time. In all other cases customs Form 3135 shall be used.

(b) The Commissioner will issue identification cards in appropriate cases to principal field officers. Each principal field officer shall be the issuing officer for the employees under his jurisdiction.

(c) Special identification cards, bearing the facsimile signature of the Secretary of the Treasury and countersigned by the Commissioner, shall be issued to officers of the Customs Agency Service. All officers of the Customs Agency Service are authorized to carry weapons in the performance of their official duties, and specific authorization is therefore omitted from their identification cards.

(Sec. 581, 46 Stat. 747, as amended; 19 U. S. C. 1581)

§ 23.34 Return of property stolen in Canada.

(a) Any person claiming to be the owner of property stolen in Canada, brought into the United States, and seized by customs authorities for violation of law may file with the collector of customs having custody of the property a petition, addressed to the Secretary of the Treasury, for the release thereof. The petition shall be supported by evidence of ownership in the claimant and shall contain a waiver and release of all possible claims against the United States or any officer thereof for compensation or damages incident to the seizure and detention of the property.

(b) If the collector is satisfied that the claimant is the owner of the property and that it was brought into the United States without collusion on the part of the claimant, the collector may release the property for return to Canada upon the payment of all expenses incident to the seizure and detention thereof. In the event of conflicting claims for the property or any doubt as to the claimant's interest in or right to the property, the collector shall submit the matter to the Commissioner of Customs for decision.

§ 23.35 Customs supervision.[47]

Except as otherwise prescribed in the regulations of this chapter or by instructions from the office of the Secretary of the Treasury or the Bureau in particular cases, whenever any action or thing is required by the regulations of this chapter or by any provision of the customs or navigation laws to be done or maintained under the supervision of customs officers, such supervision shall be direct and continuous or, if the principal customs field officer shall determine that less intensive supervision will assure proper enforcement of the law and protection of the revenue, by such occasional verification as such officer shall direct. Nothing in this section shall be deemed to warrant any failure to direct and furnish a required supervision or to excuse any failure of a party in interest to comply with the prescribed procedures for obtaining any required supervision.

(Sec. 22, 67 Stat. 520; 19 U. S. C. 1646)

---

then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty; and they, or any of them, may require the production of any letters, accounts, contracts, invoices, or other documents relating to said merchandise, and may require such testimony to be reduced to writing, and when so taken it shall be filed and preserved, under such rules as the United States Customs Court may prescribe, and such evidence may be given consideration in subsequent proceedings relating to such merchandise." (Tariff Act of 1930, sec. 509; 19 U. S. C. 1509)

"If any person so cited to appear shall neglect or refuse to attend, or shall decline to answer or shall refuse to answer in writing any interrogatories, and subscribe his name to his deposition, or to produce such papers when so required by a judge of the United States Customs Court, or a division of such court, or an appraiser, or a collector, he shall be liable to a penalty of not less than $20 nor more than $500; and if such person be the owner, importer, or consignee, the appraisement last made of such merchandise, whether made by an appraiser, a judge of the United States Customs Court, or a division of such court, shall be final and conclusive against such person; and any person who shall willfully and corruptly swear falsely on an examination before any judge of the United States Customs Court, or division of such court, or appraiser or collector, shall be deemed guilty of perjury; and if he is the owner, importer, or consignee, the merchandise shall be forfeited or the value thereof may be recovered from him." (Tariff Act of 1930, sec. 510; 19 U. S. C. 1510)

[45] "Whoever gives, offers, or promises any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of merchandise or baggage, or of the liquidation of the entry thereof, or by threats or demands or promises of any character attempts improperly to influence or control any such officer or employee of the United States as to the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

"Evidence, satisfactory to the court, of such giving, offering, or promising to give, or attempting to influence or control, shall be prima facie evidence that the same was contrary to law." (18 U. S. C. 212)

"Moneys received or tendered in evidence in any United States Court, or before any officer thereof, which have been paid to or received by any official as a bribe, shall, after the final disposition of the case, proceeding or investigation, be deposited in the registry of the court to be disposed of in accordance with the order of the court, to be subject, however, to the provisions of section 852 [now 2042] of Title 28." (18 U. S. C. 3612)

[45a] See Appendix VII, Customs Regulations.

[47] "Wherever in this Act any action or thing is required to be done or maintained under the supervision of customs officers, such supervision may be direct and continuous or by occasional verification as may be required by regulations of the Secretary of the Treasury, or, in the absence of such regulations for a particular case, as the principal customs officer concerned shall direct." (Sec. 646, Tariff Act of 1930, as amended; 19 U. S. C. 1646)

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Sec.
24.1 Checks receivable for duties.
24.2 Persons authorized to receive customs collections.
24.3 Bills and accounts; receipts.
24.11 Increased or additional duties or taxes; notice to importer.
24.12 Customs fees; charges for storage.
24.13 Car, compartment, and package seals; kind, procurement.
24.14 Salable customs forms.
24.16 Overtime services; overtime compensation; rate of compensation.
24.17 Other services of officers; reimbursable.
24.25 Claims for surplus proceeds of sale of unclaimed merchandise.
24.32 Claims; unpaid compensation of deceased employees and death benefits.
24.34 Vouchers; vendors' bills of sale; invoices.
24.36 Refunds of excessive duties, taxes, etc.
24.70 Claims; deceased or incompetent public creditors.
24.71 Claims for personal injury or damages to or loss of privately owned property.
24.72 Claims; set-off.
24.73 Miscellaneous claims.

AUTHORITY: §§ 24.1 to 24.73 issued under R.S. 161, 251, sec. 624, 46 Stat. 759; sec. 501, 65 Stat. 290; 5 U.S.C. 22, 140, U.S.C. 66, 1624. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 24.1 Checks receivable for duties.

(a) (1) Any bank draft, cashier's check, or certified check drawn on a national or state bank or trust company of the United States which can be cashed without cost to the Government shall be accepted in payment of duties or charges.

(2) A domestic traveler's check or a United States postal, bank, express, or telegraph money order shall be accepted in payment of duties or charges only when it can be cashed without expense to the Government.

(b) An uncertified check drawn by an interested party on a national or state bank or trust company of the United States which can be cashed without expense to the Government shall be accepted by the collector of customs in payment of duties or other charges if there is on file with the collector of customs a customs entry bond or other bond to secure the payment of such duties or other charges, or if a bond has not been filed, the organization or individual drawing and tendering the uncertified check has been approved by the collector to make payment in such manner. In determining whether an uncertified check shall be accepted in the absence of a bond, the collector shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check. The collector may refuse to accept an uncertified check in any case if in his discretion he deems such acceptance inadvisable.

(c) Checks on foreign banks, foreign travelers' checks, and commercial drafts or bills of exchange subject to acceptance by the drawees shall not be accepted.

(Sec. 1, 36 Stat. 965, as amended, sec. 648, 46 Stat. 762; 19 U.S.C. 198, 1648)

§ 24.2 Persons authorized to receive customs collections.

Deputy collectors of customs in charge of ports of entry, customs cashiers, customs inspectors, customs dock tellers, and such other officers and employees as the collector shall designate shall receive customs collections.

§ 24.3 Bills and accounts; receipts.

(a) Any bill or account for money due the United States shall be rendered by an authorized customs officer or employee on an official form.

(b) Any payor desiring an official receipt shall submit the original bill with his payment. If an official receipt form is provided, the receipt shall be prepared and issued on such form. When no official receipt form is provided, the original bill shall be stamped with the fact and date of payment, initialed or signed by the customs officer to whom the payment is made, and returned to the payor.

(c) If an importer desires a receipt for duties or taxes paid on a formal or appraisement entry, such receipt shall be given on a copy of customs Form 5101 or on a copy of the entry, whichever is presented for that purpose by the person making the entry.

(d) Every payment which is not made in person shall be accompanied by the original bill or by a communication con-

taining sufficient information to identify the account or accounts to which it is to be applied.

(e) A bill for duties, taxes, or other charges is due and payable upon receipt thereof by the debtor.

§ 24.11 Increased or additional duties or taxes; notice to importer.

(a) Any increased or additional duties or taxes found due upon liquidation shall be billed on customs Form 5107 to the importer of record or to the actual owner when there shall have been filed:

(1) A declaration of the actual owner on customs Form 3347 in accordance with section 485(d), Tariff Act of 1930, and the regulations in this part; and

(2) The superseding bond of the actual owner on customs Form 7601, as provided for in §§ 8.18(d) and 25.4(a)(32) of this chapter.

(b) In any case in which a timely owner's declaration, but not a timely superseding bond, has been filed, and the collector of customs is of the opinion that because of special circumstances the collection of the increased or additional duties should be effected under the timely owner's declaration, he shall report the facts to the Bureau and await instructions.

(Secs. 483, 485(d), 46 Stat. 721, 724; 19 U.S.C. 1483, 1485(d))

§ 24.12 Customs fees; charges for storage.

(a) A table of the rates of fees prescribed by law or hereafter in this paragraph shall be kept posted in each collector's, surveyor's, and comptroller's office. When payment of such fee is received by any customs employee a receipt therefor shall be issued.

(1) A customs fee in the amount indicated shall be collected for each application for the following actions whether the action requested is granted or denied:

(i) Recording a trademark, trade name, or copyright, $75; recording a renewal or change of ownership of a trademark or copyright, $25. (See §§ 11.15, 11.16, and 11.19 of this chapter.)

(ii) Designating a common carrier as a carrier of customs bonded merchandise, $35. (See § 18.1 of this chapter.)

(iii) Establishment of a customs bonded warehouse, $50. (See § 19.2 of this chapter.)

(iv) Issuance of a customs cartage or lighterage license, $35. (See § 21.1 of this chapter.)

(v) Issuance of a customhouse broker's license, $100.

The fee in subdivision (iii) of this subparagraph shall be assessed and collected for an application requesting the initial establishment of a customs bonded warehouse or for the rebonding of a warehouse after its discontinuance. Such fee shall not be collected for action in connection with the discontinuance or alteration of a customs bonded warehouse or the reactivation of such a warehouse after its temporary suspension.

(2) Unless otherwise prescribed by law, a fee of 20 cents shall be collected for each official certification.

(3) A customs fee of $100 shall be collected for each application for the furnishing, for a period of 60 days, the names and addresses of importers of articles appearing to infringe a registered patent. Where this information is furnished for a second period of 60 days, an additional fee of $100 shall be collected.

(4) A charge of $4.20 shall be made for an annual subscription to the Monthly Supplement to "Merchant Vessels of the United States." Subscriptions shall be addressed to the Bureau of Customs and shall be accompanied by a remittance in that amount.

(b) Except for services within the purview of section 1 of the act of June 9, 1886, as amended (46 U. S. C. 331), or subsection I of the Ship Mortgage Act of 1920 (46 U. S. C. 927),[28] the following charges shall be made:

(1) Whenever files are searched to obtain records for private parties, whether for copying by them or for examination, a charge shall be made, based upon the actual time and salary of the employee, computed in multiples of 1 minute based on an hourly rate computed in accordance with § 19.5 (b) of this chapter, but no charge shall be made for such service where the amount, so computed, is less than 50 cents. Where the amount, so computed, is 50 cents or more, but less than $1, a minimum charge of $1 shall be made. There shall be included in computing the cost of such labor any amount actually payable to the employee for performing such service outside his basic 40-hour workweek. However, no charge shall be made under this subparagraph for any service rendered in making an entry and related documents available for examination by authorized persons prior to liquidation of the entry or during any period thereafter in which a timely protest may be filed against the liquidation or reliquidation of the entry.

(2) If any copy of a customs record is made by a customs employee for a party in interest, such party shall reimburse the Government for the actual cost of material, labor, including that used in searching for the record, and any required postage. The charge for labor shall be computed as prescribed in subparagraph (1) of this paragraph, but a minimum total charge of $1 shall be imposed for each order. For copying by mechanical methods the charge shall be based on the prevailing rates established by private concerns in the locality, provided that such charge shall not be less than an amount computed according to the following minimum scale of charges with a minimum total charge of $1 for each order:

Methods and sizes	First copy of each page (one side)	Additional copies of the same page
Photocopy paper negatives and prints (including photostat prints):		
Up to 9 x 12	20 cents each	15 cents each.
12 x 18 (two 9 x 12 units).	30 cents each	25 cents each.
18 x 24 (four 9 x 12 units).	50 cents each	45 cents each.
Photographic film negatives and prints (single Weight paper): Approximately 8 x 10½.	$1.90 (incl. negative).	50 cents each.

(3) In any case where a search of the files is necessary to verify the correctness of a document which is to be certified by a customs employee, and for which a fee of 20 cents is charged, a separate charge for the time required for searching shall be made. This charge shall be computed as prescribed in subparagraph (1) of this paragraph, but shall not be imposed if the amount is less than 50 cents. If the amount, so computed, is 50 cents or more, but less than $1, a minimum charge of $1 shall be made.

[28] For fees under 46 U. S. C. 927, see § 4.98 of this chapter.

(c) The rates charged for storage in Government-owned or rented buildings shall not be less than the charges made at the port by commercial concerns for the storage and handling of merchandise. Except as to an examination package covered by an application for an entry by appraisement, storage shall be charged on any examination package for any period it remains in the appraiser's store after 2 full working days following the day on which the permit to release or transfer was issued. As to an examination package covered by an application for an entry by appraisement, storage shall be charged for any period it remains in the appraiser's store after 2 full working days following the day of issuance to the importer of oral or written notice of the amount of duties or taxes required to be deposited or that the package is ready for delivery. In computing the 2 working days, (1) the day on which the permit to release or transfer is issued, or the day on which the notice is issued of the amount of duties or taxes that shall be deposited or that the package is ready for delivery, whichever is applicable, (2) Saturdays, (3) Sundays, and (4) National holidays, shall be excluded.

(R.S. 2635, as amended, 2654, as amended, 4383, as amended, sec. 2, 23 Stat. 118, as amended, sec. 30, 41 Stat. 1002, sec. 524, 46 Stat. 741, as amended, sec. 501, 65 Stat. 290; 5 U.S.C. 140, 19 U.S.C. 58, 59, 1524, 46 U.S.C. 2, 333, 927)

§ 24.13 Car, compartment, and package seals; kind, procurement.

(a) Tyden seals, manufactured by the International Seal and Lock Co., Hastings, Mich., and automatic metal seals, manufactured by the International Seal & Knot Protector Co., 109 Spring Street, New York, N.Y., shall be used in sealing openings, packages, or articles requiring the security provided by such sealing.

(b) In-bond seals used for sealing imported merchandise shipped between ports in the United States shall be colored red and stamped "U.S. Customs in Bond." except that (1) bright green seals shall be used to seal carload or truckload shipments of merchandise and (2) uncolored seals shall be used to seal containers of commercial travelers' samples moving in-transit between Canadian ports through the United States in bond as provided for by § 5.11 (b) and (c) of this

chapter. Such green seals used on railroad cars shall be stamped

CAN. CUSTOMS,
U.S. TRANSIT

those used on trucks stamped H.W.

CAN. CUSTOMS,
U.S. TRANSIT

and the uncolored seals used on containers of commercial travelers' samples stamped CANADA-UNITED STATES CUSTOMS. In-transit seals used for sealing merchandise shipped from one port in the United States through foreign territory or waters to another port in the United States shall be colored blue and stamped "U.S. Customs In-Transit," except that in-transit seals used on carload or truckload shipments of merchandise or on containers of commercial travelers' samples moving in transit between United States ports via Canada shall be colored yellow. Such yellow seals used on railroad cars shall be stamped [U. S. Customs / Can. Transit], those used on trucks stamped [H. W. U.S. Customs, / Can. Transit] and those used on containers of commercial travelers' samples stamped "United States-Canada Customs." Seals used for sealing merchandise for customs purposes other than for (1) shipping in bond, (2) shipping by other than a bonded common carrier in accordance with section 553, Tariff Act of 1930, as amended, or (3) shipping in transit shall be uncolored and stamped "U.S. Customs." All seals (except green in-transit seals for use on trucks and uncolored in-transit seals on containers of commercial travelers' samples) shall be stamped with the name of the port for which they are ordered. Each Tyden seal shall be stamped with a serial number. Each automatic metal seal shall be stamped with a symbol number and, when required, with a serial number. These numbers will be assigned by the collector of customs when the orders therefor are approved.

(c) Carriers of merchandise or their commercial associations or comparable representatives approved by the collector (see paragraph (f) of this section) shall purchase quantity supplies of in-bond and in-transit seals from the manufacturers of approved seals, but their orders for said seals (except the aforesaid green and uncolored in-transit seals) shall be submitted to the collector of customs at the headquarters port of the customs district for authorization, assignment of numbers and symbols, and forwarding to the manufacturer. The order shall be prepared by the purchaser and shall be confined to seals for use at one port, and shall specify the kind and quantity of seals desired, the name of the port at which they are to be used, and the name and address of the consignee to whom they are to be shipped. Carriers may purchase small emergency supplies of in-bond and intransit seals from collectors of customs, who will keep a supply of such seals for this purpose. An order for green or uncolored in-transit seals shall be submitted to the office of the Director of Customs-Excise Inspection, Ottawa, Canada, for approval and forwarding to the manufacturer. An order for green Tyden in-bond seals for use on railroad cars must stipulate that the seals are to be consigned to the collector of customs and excise in Canada at the port indicated on the seals for entry purposes and storage under customs lock and key.

(d) The manufacturer shall ship the seals to the consignee named in the order and shall advise the collector of customs for the customs district to which the seals are shipped as to the kind and quantity of seals shipped, the name of the port and the serial numbers or symbol number stamped thereon, the name and address of the consignee, and the date of shipment. When a shipment of seals is received, the consignee, if other than a collector of customs, shall immediately deliver it intact into customs custody.

(e) Except as hereinafter provided, only such quantities of seals as are required for the immediate use of a carrier shall be issued from the stock in customs custody. Where the needs of a port justify the issuance of larger quantities of red Tyden in-bond or blue Tyden in-transit seals and the collector is satisfied that a larger quantity may be safely issued upon the carrier's undertaking to account for the use made of the seals, he may, upon written application of the carrier, approve the issuance of a quantity sufficient to meet the carrier's needs for such period as he deems reasonable and proper. In such application the carrier shall agree to store the seals in a well-protected place approved by the collector and to keep and provide information, in the form, time, and manner prescribed by the collector, showing the use of the seals issued to it. As used in this regulation, the term "carrier" does not include an association or other entity of which the carrier is a member.

(f) In-bond seals may be purchased only by a customs bonded carrier, by a nonbonded carrier permitted to transport articles in accordance with section 553 of the tariff act, as amended, or in the case of red in-bond seals, by the carrier's commercial association or comparable representative approved by the collector. In-transit seals may be purchased by a bonded or other carrier of merchandise or, in the case of blue in-transit seals, by the carrier's commercial association or comparable representative approved by the collector. Except for uncolored in-transit seals, uncolored customs seals may not be purchased by private interests and shall be furnished by collectors of customs for authorized use without charge. In-bond and in-transit seals sold by collectors of customs shall be charged for at the rate of 10 cents per seal.

§ 24.14 Salable customs forms.

(a) Customs forms for sale to the general public shall be designated by the Commissioner of Customs. Customs forms which are designated as salable shall meet the following conditions: (1) The form is distributed to private parties for use in completing customs transactions; (2) the quantity used nationwide annually is sufficient to justify the administrative costs involved in selling the form and accounting for the collections involved therein, or the form is primarily for the use of a special group; (3) distribution is or can generally be made in lots of 100 or more; (4) the form is normally distributed to commercial concerns (customhouse brokers, freight forwarders, vessel agents, carriers, regular commercial importers, etc.) rather than to or for the use of individuals or others (tourists, churches, schools, occasional importers, etc.) for noncommercial purposes.

(b) The price of each salable customs form shall be established by the Commissioner of Customs and shall be adjusted periodically as the varying costs of printing and distribution require. A list of salable customs forms showing the price at which each is sold shall be prominently posted in each customhouse in a location accessible to the general public.

(c) Customs forms for sale to the general public, except unusually large or otherwise unsuitable forms, shall normally be prepared in units containing 100 copies. If a completely prepared bill or receipt is presented by the purchaser at the time of the purchase, the collector's paid stamp shall be impressed thereon; otherwise, no receipt shall be given.

(Sec. 1, 37 Stat. 434; 19 U.S.C. 1)

§ 24.16 Overtime services; overtime compensation; rate of compensation.

(a) *General.* Customs services for which overtime compensation is provided for by section 5 of the Act of February 13, 1911, as amended (19 U. S. C. 267),[29] or

[29] "The Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf, or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs, who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury. Such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. In those ports where customary working hours are other than those hereinabove mentioned, the collector of customs

section 451, Tariff Act of 1930, as amended,[4] shall be furnished only upon compliance with the requirements of those statutes for applying for such services and giving security for the reimbursement of the overtime compensation, unless the compensation is nonreimbursable under the said section 451. Reimbursements of overtime compensation shall be collected by the collectors from the applicants for the services. Customs employees shall not receive overtime compensation for services performed on regular tours of duty at night, but no regular tour of duty shall embrace any part of a Sunday or holiday if the services performed are such that extra compensation would be payable if performed at the request of a private interest. Reimbursable overtime services shall not be furnished to an applicant who fails to cooperate with the Customs Service by filing a seasonable application therefor during regular hours of business when the need for the services can reasonably be foreseen, nor in any case until the maximum probable reimbursement is adequately secured.

(b) *Night, Sunday, and holiday defined.* For the purposes of this section the word "night" shall mean the time between 5 p. m. of any day and 8 a. m. of the following day, or between the corresponding hours at ports or stations where regular hours for the transaction of the general class of customs business involved other than those from 8 a. m. to 5 p. m. have been established to agree with local prevailing working hours, but shall not include any such time within the 24 hours of a Sunday or holiday. The night hours at the end of the regular workday immediately preceding a Sunday or holiday and the night hours at the beginning of the next regular workday shall be considered for the purposes of this section as parts of a single night. For such purpose the term "holiday" shall include only days on which customs employees generally are not required to work and which are usually observed as national holidays.[5] The time accounted for as overtime shall be computed on the basis of the regular hours for the performance of the particular work of the assignment, even though such hours differ from the regular working hours of the employee assigned,[5a] but no extra compensation shall be paid pursuant to this section for any services performed by an employee at his regular post or elsewhere during a regular tour of duty of such employee.

(c) *Application and bond.* (1) Except as provided for in subparagraph (2) of this paragraph, an application for services of customs employees at night or on a Sunday or holiday, customs Form 3171, or 3853, supported by the required cash deposit or bond, shall be filed in the office of the collector before the assignment of such employees for reimbursable overtime services. The cash deposit to secure reimbursement shall be fixed by the collector or his authorized representative in an amount sufficient to pay the maximum probable compensation and expenses of the customs employees in connection with the particular services requested. The bond to secure reimbursement shall be on customs Form 7597 or 7599 and in an amount to be fixed by the collector, unless another bond containing a provision to secure reimbursement is on file.

(2) Prior to the expected arrival of a pleasure vessel or private aircraft the collector may designate a customs employee to proceed to the place of expected arrival to receive an application for night, Sunday, or holiday services in connection with the arrival of such vessel or aircraft, together with the required cash deposit or bond. In each such case the assignment to perform services shall be conditional upon the receipt of the appropriate application and security.

(3) An application on customs Form 3853 for overtime services of customs employees, when supported by the required cash deposit or bond on customs Form 7599, may be granted for any period not longer than for 1 year nor longer than the period of the supporting bond. In such a case, the application must show the exact times when the overtime services will be needed, unless arrangements are made so that the proper customs officer will be seasonably notified during official hours in advance of the services requested as to the exact times that the services will be needed.

(d) *Assignment.* Customs employees may be ordered to report for any overtime duty sufficiently in advance of the time specified by the applicant to avoid unnecessary delay, but in no case more than 1 hour in advance of the time so specified unless the specified time is subject to change without reasonable notice as in the case of some aircraft arrivals. If no time can be specified for the services to begin, the employees required and

---

is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed." (19 U. S. C. 267)

[4] "Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the Act of February 13, 1911, as amended (U. S. C., 1952 edition, title 19, sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. Upon a request made by the owner, master, or person in charge of a vessel or vehicle, or by or on behalf of a common carrier or by or on behalf of the owner or consignee of any merchandise or baggage, for overtime services of customs officers or employees at night or on a Sunday or holiday, the collector shall assign sufficient customs officers or employees if available to perform any such services which may lawfully be performed by them during regular hours of business, but only if the person requesting such services deposits sufficient money to pay, or gives a bond in an amount to be fixed by the collector, conditioned to pay the compensation and expenses of such customs officers and employees, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to duty in connection with lading or unlading at night or on Sunday or a holiday. Nothing in this section shall be construed to impair the existing authority of the Treasury Department to assign customs officers or employees to regular tours of duty at nights or on Sundays or holidays when such assignments are in the public interest: *Provided*, That the provisions of this section, sections 450 and 452 of this Act, and the provisions of section 5 of the Act of February 13, 1911, as amended (U. S. C., title 19, sec. 267), insofar as such section 5 requires payment of compensation by the master, owner, agent, or consignee of a vessel or conveyance, shall not apply to the owner, operator, or agent of a highway vehicle, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, nor to the lading or unlading of merchandise, baggage, or persons arriving in or departing from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry. At ports of entry and customs stations where any merchandise, baggage, or persons shall arrive in or depart from the United States by motor vehicle, trolley car, on foot, or by other means of highway travel upon, over, or through any highway, bridge, tunnel, or ferry, between the United States and Canada or between the United States and Mexico, the collector, under such regulations as the Secretary of the Treasury may prescribe, shall assign customs officers and employees to duty at such times during the twenty-four hours of each day, including Sundays and holidays, as the Secretary of the Treasury in his discretion may determine to be necessary to facilitate the inspection and passage of such merchandise, baggage, or persons. Officers and employees assigned to such duty at night or on Sunday or a holiday shall be paid compensation in accordance with existing law as interpreted by the United States Supreme Court in the case of the United States v. Howard C. Myers (320 U. S. 561); but all compensation payable to such customs officers and employees shall be paid by the United States without requiring any license, bond, obligation, financial undertaking, or payment in connection therewith on the part of any owner, operator, or agent of any such highway vehicle, bridge, tunnel, or ferry, or other person. As used in this section, the term 'ferry' shall mean a passenger service operated with the use of vessels which arrive in the United States on regular schedules at intervals of at least once each hour during any period in which customs service is to be furnished without reimbursement as above provided." (Tariff Act of 1930, sec. 451, as amended; 19 U. S. C. 1451)

[5] The days usually observed as national holidays are: January 1, February 22, May 30, July 4, the first Monday in September, November 11, Thanksgiving Day, and December 25.

[5a] For example: At a port where the regular hours of business have been fixed at 8 a. m. to 4 p. m. for the inside force and 7 a. m. to 4 p. m. for the outside force, a clerk whose regular working hours are 8 a. m. to 4 p. m. is not entitled to reimbursable extra compensation if assigned to inspectional work from 7 a. m. to 8 a. m. on a week day, since he works within the regular hours for the service to which he is assigned.

available shall be assigned to the overtime duty as soon as practicable. Customs employees shall not be deemed available to perform reimbursable overtime services at night unless the total time of service, including waiting time, will be at least one hour, but nothing in this section shall prohibit the collector or other administrative officer from requiring an employee to perform, before he leaves his duty status and without extra compensation under the act of February 13, 1911, as amended, any work which is pending at the beginning of the night and can be completed in less than 1 hour. No customs employee shall be assigned on a weekday, or for more than an aggregate of 8 hours on a Sunday or holiday, to any overtime service for which nonreimbursable extra compensation is payable, except under special authorization from the Commissioner of Customs.

(e) *Nonperformance of requested services.* If services which have been requested and for which employees have reported are not performed by reason of circumstances beyond the control of the employees concerned, extra compensation shall be paid and collected on the same basis as though the services had actually been performed during the period between the time the employees were ordered to report for duty and did so report and the time they were notified that their services would not be required, and in any case as though actual performance had continued for at least 1 hour.

(f) *Broken periods.* When overtime services at night or on a Sunday or holiday are rendered in broken periods and less than 2 hours intervene between such broken periods, the intervening waiting time, including any time required for travel between posts of overtime duty but not including any periods for meals or other time not spent at the post of duty, shall be included in the computation of overtime compensation as though the services had been continuous. If 2 hours or more intervene between periods during which services are actually performed, the collector shall determine according to the circumstances of the case whether the service shall be treated as continuous with compensable waiting time or as two or more distinct assignments with compensation to be computed separately for each assignment in accordance with the provisions of paragraph (g) of this section. In no case shall any employee be entitled to receive more than 2½ days' pay by reason of the fact that he is given two or more assignments during one night.

(g) *Rate for night service.* The reasonable rate of extra compensation for authorized overtime services performed by customs employees at night on any weekday is hereby fixed at one-half of the gross daily rate of regular pay of the employee who performs the service for each 2 hours of compensable time, any fraction of 2 hours amounting to at least 1 hour to be counted as 2 hours. The compensable time shall be the period between the beginning of the night and the conclusion of the services if the employee is assigned and reports for duty before the expiration of the first 4 hours of the night; the period between the time the employee is assigned and reports for duty and the conclusion of the services, plus 4 hours, if the time of assignment is after the expiration of the first 4 and before the beginning of the last 2 hours of the night; or 2 hours if the employee is assigned and reports for duty 2 hours or less before the end of the night. However, if an employee performs Sunday or holiday services which are in continuation of an assignment to overtime services begun during the last 2 night hours at the end of the regular workday preceding such Sunday or holiday, the compensable time for the overtime services preceding the Sunday or holiday shall be 2 hours; or if an employee performs overtime services during the night hours at the beginning of the next regular workday following a Sunday or holiday which overtime services are in continuation of an assignment begun on the Sunday or holiday immediately preceding such regular workday, the compensable time for the overtime services following such Sunday or holiday shall be the period between midnight of such Sunday or holiday and the conclusion of the overtime services. The compensable time for overtime service performed by a customs employee assigned to a regular tour of duty covering any part of a night shall be computed in accordance with this night rate as though the beginning of the regular tour of duty of such employee marked the end of a night period and the close of such tour marked the beginning of another night period, but extra compensation is not payable in accordance with this section for overtime services performed by any customs employee on a regular workday during other than the night hours of the port or station. The total extra compensation paid pursuant to this section to a customs employee for overtime services performed during one night shall not exceed 2½ times the gross daily rate of his regular pay.

(h) *Rate for Sunday or holiday service.* The reasonable rate of extra compensation for Sunday or holiday services is hereby fixed at twice the gross daily rate of regular pay of the employee who performs the service for any and all services totaling an aggregate of not more than 8 hours during the 24 hours from midnight to midnight of the Sunday or holiday, including actual waiting time and time required for travel between posts of duty but not including any periods for meals or other time not spent at the post of duty. This rate shall apply regardless of the length of time served within the aggregate of 8 hours, whether it is served continuously or in broken periods, and whether it is served for one or more applicants. Services in excess of an aggregate of 8 hours performed during the 24 hours of a Sunday or holiday shall be compensated on the same basis as overtime services performed at night on a weekday, the time between the completion of the aggregate of 8 hours and midnight being considered as the hours of a night.

(i) *Part-time employees.* The extra compensation for overtime services performed by a permanent part-time employee at night or on a Sunday or holiday shall be computed on the basis of the gross daily rate of regular pay the part-time employee would receive for full-time service in the position held by him. Customs employees who are paid on a per-diem-when-employed basis shall be paid the overtime rate but not the per-diem rate when assigned to perform overtime services on a Sunday or holiday.

(j) *Proration of charges.* If services are performed for two or more applicants during one continuous tour of overtime duty, the charge for the extra compensation earned shall be prorated equitably according to the time attributable to the services performed for each applicant. For the purpose of this paragraph the Government shall be considered the applicant for nonreimbursable overtime services.

(k) *Participation in overtime work.* In general, services for which extra compensation is payable in accordance with this section, or for which reimbursement is required in accordance with § 24.17, shall be performed by employees who are regularly assigned to perform the same class of work during their regular tours of duty, but when the collector or other administrative field officer concerned finds that the needs of the service so require he is hereby authorized to assign any other available and competent employee to perform such services and such employees while so assigned shall be deemed acting inspectors, acting customs warehouse officers, etc., as the case may be.

(Sec. 5, 36 Stat. 901, as amended, secs. 450, 451, 452, 46 Stat. 715, as amended, sec. 6, 49 Stat. 1385, as amended; 19 U.S.C. 261, 267, 1450, 1451, 1452, 46 U.S.C. 382b)

§ 24.17 Other services of officers; reimbursable.

(a) Amounts chargeable to private interests in connection with services rendered by customs officers or employees under one or more of the following circumstances shall be collected from such private interests and deposited by collectors of customs as repayments to the appropriations from which paid.

(1) When a customs officer or employee is assigned on board a vessel or vehicle under authority of section 457, Tariff Act of 1930, to protect the revenue, the owner or master of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(2) When a customs officer or employee is assigned on board a vessel under authority of section 458, Tariff Act of 1930, to supervise the unlading of such vessel, the master or owner of such vessel shall be charged the full compensation of such officer or employee for every day consumed in unlading after the expiration of 25 days after the date of the vessel's entry.

(3) When a customs officer or employee is assigned under authority of section 304, Tariff Act of 1930, as amended, to supervise the exportation, destruction, or marking to exempt arti-

cies from the duty provided for in such section, the importer of such merchandise shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(4) When a customs officer or employee is assigned pursuant to § 1.2 of this chapter to a customs station or other place which is not a port of entry for service in connection with the entry or clearance of a vessel, the owner, master, or agent of the vessel shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns. When a customs officer or employee is so assigned to render service in connection with the entry or delivery of merchandise only, the private interest shall be charged only for the authorized travel and subsistence expenses incurred by such officer or employee from the time he leaves his official station until he returns thereto except that no collection need be made if the total amount chargeable against one importer for one day amounts to less than 50 cents (see § 1.2 (c) of this chapter). Where the amount chargeable is 50 cents or more, but less than $1, a minimum charge of $1 shall be made.

(5) When a customs officer or employee is assigned under authority of section 447, Tariff Act of 1930, to make entry of a vessel at a place other than a port of entry or to supervise the unlading of cargo, the private interest shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(6) When a customs officer or employee is assigned under authority of section 19 (a) of the Customs Administrative Act of June 25, 1938 (46 U. S. C. 331), to measure or certify the tonnage of a vessel at the request of the owner thereof at a place other than a port of entry or a customs station, such owner shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto.

(7) When a customs officer or employee is assigned on any vessel or vehicle, under authority of section 456, Tariff Act of 1930, while proceeding from one port to another, the master or owner of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such officer or employee from the time he leaves his official station until he returns thereto, or, in lieu of such expenses, the master or owner may furnish such officer or employee the accommodations usually supplied to passengers.

(8) When a customs officer or employee[see] is assigned under authority of section 562, Tariff Act of 1930, as amended, to supervise the manipulation of merchandise at a place other than a bonded warehouse, the compensation and expenses of such officer or employee shall be reimbursed to the Government by the party in interest.

(9) When a customs officer or employee is assigned to supervise the destruction of merchandise pursuant to section 557 (c), Tariff Act of 1930, as amended, at a place where a customs employee is not regularly assigned, the full compensation and expenses of such officer or employee shall be reimbursed to the Government by the party in interest.

(10) When fur or wool products are labeled under customs supervision in accordance with §§ 11.12 (b) and 11.12a (b) of this chapter, the compensation and expenses of customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government by the party in interest.

(11) When a customs officer or employee is assigned to supervise examination, sampling, weighing, repacking, segregation, or other operation on merchandise in accordance with §§ 8.5(b), 15.2, 15.3(b) and 15.10 of this chapter, the compensation and other expenses of such officer or employee shall be reimbursed to the Government by the party-in-interest except when a warehouse proprietor is liable therefor.

(b) When a customs officer or employee is assigned to render services the nature of which is such that the private interest is required to reimburse the Government for his compensation and on the same assignment performs services for which compensation is not reimbursable, a charge shall be made to the private interest for the full compensation of the customs employee unless the time devoted to each class of service can be clearly segregated.

(c) The charge for any service enumerated in this section for which expenses are required to be reimbursed shall include actual transportation expenses and any authorized per diem expenses of a customs employee whether the services are performed within or without the port limits, except that no charge shall be made for transportation expenses when a customs employee is reporting to, as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(d) The reimbursable compensation charge shall be computed in accordance with § 19.5 (b) of this chapter.

(Secs. 456, 524, 557, 562, 46 Stat. 716, 741, as amended, 744, as amended, 745, as amended, sec. 1, 24 Stat. 79, as amended; 19 U.S.C. 1456, 1524, 1557, 1562, 46 U.S.C. 331)

§ 24.25 Claims for surplus proceeds of sale of unclaimed merchandise.

Claims for the surplus proceeds of the sale of unclaimed merchandise shall be filed with the collector of customs at whose direction the merchandise was sold. Such claims shall be supported by the original bill of lading. If only a part of a shipment is involved, either a photostatic or a certified copy of the original bill of lading may be submitted in lieu of the original bill of lading.

(Secs. 491, 493, 46 Stat. 726, as amended, 727; 19 U.S.C. 1491, 1493)

§ 24.32 Claims; unpaid compensation of deceased employees and death benefits.

(a) A claim made by a designated beneficiary or a surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1153, Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee. A claim made by anyone other than a designated beneficiary or surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1155, Claim for Unpaid Compensation of Deceased Civilian Employee. The claims shall be forwarded to the customs office where the deceased was employed.

(b) Claims for death benefits, either in the form of an annuity or lump-sum payment of the amount to the credit of the deceased officer or employee in the Retirement and Disability Fund shall be executed on standard Form 100, Application for Death Benefit, and forwarded together with a certified copy of the public record of death directly to the Civil Service Commission, Washington 25, D. C.

(Secs. 1, 3, 64 Stat. 395, 396, sec. 11, 41 Stat. 619, as amended; 5 U. S. C. 61f, 61h, 724)

§ 24.34 Vouchers; vendors' bills of sale; invoices.

(a) Vouchers or invoices for transportation and related services which are intended for payment from official funds shall contain the following certification signed by the claimant:

I certify that the above bill is correct and just and that payment has not been received.

Vouchers, vendors' bills of sale, or invoices for purchases or services other than personal do not require the foregoing certification.

(b) Every voucher shall be in the name of the person or persons furnishing the service or supplies, except in the case of a service or supplies paid for in an emergency by a customs officer or employee, in which case the voucher may be in the name of the officer or employee who made the payment.

(c) The signature of a claimant made by a mark shall be attested in each case by a disinterested witness.

(d) The dates appearing on vouchers and on receipts filed in support thereof shall always be the actual dates of the transactions recorded or action taken thereon. As many copies in memorandum form, duly authenticated if desired, may be prepared as administrative or other requirements demand.

(e) When an erasure, interlineation, or change of any kind is made in a voucher after it has been certified by the claimant, such correction or change shall be initialed and dated by the claimant.

(f) (1) Vouchers for passenger transportation furnished customs officers or employees on Government transportation requests, standard Form 1169, and vouchers for transportation of freight and express furnished on Government

[see] A customs officer or employee so assigned is not acting as a customs warehouse officer, since the services have no connection with a customs bonded warehouse.

No. 248—Part II——34

bills of lading, standard Form 1103, issued by customs officers or employees shall be rendered on Public Voucher for Transportation Charges, standard Form 1171 or 1113, respectively, to the customs office to be billed as indicated on the transportation request or bill of lading.

(2) Charges for freight or express must not be included on the same vouchers with charges for passenger transportation. The words "Passenger," "Freight," or "Express," as the case may be, should be printed or otherwise placed by the carrier immediately above the title of the voucher form. Original Government bills of lading, standard Form 1103, or transportation requests, standard Form 1169, or certificates in lieu thereof, standard Forms 1108 or 1172, respectively, shall be attached to these vouchers.

(Sec. 22, 28 Stat. 210, R.S. 4179, secs. 2, 3, 23 Stat. 118, as amended, 119, as amended, secs. 1–3, 41 Stat. 436, as amended, 437, as amended; 41 U.S.C. 21, 46 U.S.C. 2, 3, 50–53)

§ 24.36 Refunds of excessive duties, taxes, etc.*

(a) When it is found on liquidation or reliquidation of an entry that a refund of excessive duties or taxes, or both, is due, a notice of refund on customs Form 5269 shall be prepared at the headquarters port in the name of the person to whom the refund is due, as determined by paragraphs (b) and (c) of this section. If an authority to mail checks to someone other than the payee, customs Form 4811, is on file with the collector, the address of the payee shall be shown as in care of the address of the authorized person. If a power of attorney is on file with the collector, the address of the payee may be shown as in care of the address of such attorney if requested.

(b) Refunds of excessive duties or taxes shall be certified for payment to the importer of record unless a transferee of the right to withdraw merchandise from bonded warehouse is entitled to receive the refund under section 557 (b), Tariff Act of 1930, as amended, or an owner's declaration has been filed in accordance with section 485 (d), Tariff Act of 1930. The certification of a refund for payment to a nominal consignee may be made prior to the expiration of the 90-day period within which an owner's declaration may be filed as prescribed in section 485 (d) of the tariff act, provided the nominal consignee waives in writing his right to file such declaration. If an owner's declaration has been duly filed, the refund shall be certified for payment to the actual owner who executed the declaration, except that, whether or not an owner's declaration has been filed refunds shall be certified for payment to a transferee provided for in section 557 (b), Tariff Act of 1930, as amended, if the moneys with respect to which the refund was allowed were paid by such transferee.

(c) If the nominal consignee has become bankrupt, refunds of duties or internal revenue taxes on merchandise entered in the name of such nominal consignee for the account of the actual owner shall be withheld from payment pending the receipt of a claim therefor and the establishment of rights thereto, unless the declaration of the actual owner has been filed with the collector under section 485 (d), Tariff Act of 1930.

(d) The authority of collectors of customs to make refunds pursuant to paragraphs (a), (b), and (c) of this section of excessive deposits of alcohol or tobacco taxes, as defined in section 6423(e)(1), Internal Revenue Code of 1954 (26 U.S.C. 6423(e)(1)),[†] is confined to cases of the types which are excepted from the application of section 6423, Internal Revenue Code of 1954 (26 U.S.C. 6423). The excepted types of cases and, therefore, the types in which the collector of customs is authorized to make refunds of such taxes are those in which:

(1) The tax was paid or collected on an article imported for the personal or household use of the importer;

(2) The refund is made pursuant to provisions of laws and regulations for drawback;

(3) The tax was paid or collected on an imported article withdrawn from the market, returned to bond, or lost or destroyed, when any law expressly provides for refund in such case;

(4) The tax was paid or collected on an imported article which has been lost, where a suit or proceeding was instituted before June 15, 1957;

(5) The refund of tax is pursuant to a claim based solely on errors of computation of the quantity of the imported article, or on mathematical errors in computation of the tax due;

(6) The tax was paid or collected on an imported article seized and forfeited, or destroyed, as contraband;

(7) The tax was paid or collected on an imported article refused admission to customs territory and exported or destroyed in accordance with section 558, Tariff Act of 1930, as amended;

(8) The refund of tax is pursuant to a reliquidation of an entry under section 520(c)(1), Tariff Act of 1930, as amended, and does not involve a rate of tax applicable to an imported article; or

(9) The tax was paid or collected on a greater quantity of imported articles than that actually imported and the fact of the deficiency is established to the collector of customs' satisfaction before liquidation of the entry becomes final.

(e) In any instance in which a refund of internal-revenue tax on imported distilled spirits, wines, and beer, is not of a type covered by paragraph (d) of this section the following procedure shall apply:

(1) The collector shall issue a notice of refund for duty only and shall place the following statement on the notice of refund issued for duty: "Claim for refund of any overpayment of internal-revenue tax on this entry must be executed and filed with the assistant regional commissioner (alcohol and tobacco tax) of the internal revenue region in which the claimant is located, in accordance with internal revenue regulations (Title 26 of the Code of Federal Regulations)." On request of the claimant, the collector shall issue a certified statement on customs letterhead identifying the entry, showing the amount of internal revenue tax deposited with respect to each entry for which a claim on internal revenue Form 843 is to be made, and showing the date of issuance of the notice of refund of duty.

(2) The claim shall be executed on internal revenue Form 843 (original only) which may be procured from offices of the Internal Revenue Service and shall be filed with the assistant regional commissioner (alcohol and tobacco tax) of the internal revenue region in which the claimant is located. The certified statement shall be attached to and filed in support of such claim which may include refunds under more than one entry but shall be limited to refunds under entries filed in the same customs collection district and the same internal revenue region. The data to be shown on the claim shall be as prescribed in internal revenue regulations, with the exception that any data on the certified statement also required to be shown in the claim need not be restated in the claim.

(3) The date of allowance of refund or credit in respect of such tax for the purposes of section 6407, Internal Revenue Code of 1954 (26 U.S.C. 6407) shall be that date on which a claim is perfected and the refund is authorized for scheduling under the applicable internal revenue regulations.

(72 Stat. 9; 26 U.S.C. 6423)

* "(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

"(1) *Excess deposits.* Whenever it is ascertained on liquidation or reliquidation of an entry that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

"(2) *Fees, charges, and exactions.* Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected; and

"(3) *Fines, penalties, and forfeitures.* Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted." (Tariff Act of 1930, sec. 520(a), as amended; 10 U.S.C. 1520(a)).

The refunding of moneys in compliance with any ruling or decision of the Customs Court is the function of the Secretary of the Treasury, and there is no foundation for a suit against the collector of customs to restrain him from disposal of such moneys.

Payment of costs and interest upon refunds in customs cases is not allowed.

† "(e) *Meaning of terms.* For purposes of this section—

(1) *Alcohol or Tobacco Tax.* The term 'alcohol or tobacco tax' means—

(A) Any tax imposed by chapter 51 (other than part II of subchapter A, relating to occupational taxes) or by chapter 52 or by any corresponding provision of prior internal revenue laws, and

(B) In the case of any commodity of a kind subject to a tax described in subparagraph (A), any tax equal to any such tax, any additional tax, or any floor stocks tax." (26 U.S.C. 6423(e)(1)).

§ 24.70 Claims; deceased or incompetent public creditors.

(a) Claims for amounts due individual deceased public creditors of the United States (except civilian officers and employees subject to the provisions of section 61f–61k, title 5, United States Code), should be made on standard Form No. 1055—Revised. Such claims include claims for payments due deceased contractors for articles furnished or services performed, and claims for payments due deceased importers or owners of merchandise on account of refunds of excessive duties, or taxes, or for payment of drawback, etc. Claims for payment of Government checks drawn on the Treasurer of the United States or other authorized Government depositary to the order of such public creditors, which cannot be paid because of the death of the payee, should be stated on standard Form 1055—Revised. Information should be furnished regarding the disposition of these checks in case they are not in possession of the claimant, otherwise they should accompany the claim.

(b) No form is prescribed for use of a guardian or committee of an estate of an incompetent in making claim for sums due from the United States. Such guardian or committee may submit in letter form, over his address and signature, an application for amounts due an estate of an incompetent, setting forth the incompetent's connection with the Bureau of Customs. This application should be supported by a short certificate of the court showing the appointment and qualification of the claimant as guardian or committee. In case the total amount due the estate of the incompetent is small, and no guardian or committee of the estate has been or will be appointed, the application may be submitted by the person or persons having care or custody of the incompetent, or by close relatives who will hold any amount found due for the use and benefit of the incompetent. Applications for recurring payments need not be accompanied by an additional certificate of the court. but should be supported by a statement that the appointment is still in full force and effect. All Government checks drawn on the Treasurer of the United States or other authorized Government depositary to the order of individuals which cannot be paid because of incompetency of the payee should accompany the claim, otherwise an explanation should be given as to the disposition of the check.

(c) Claims for payments due deceased or incompetent contractors should be submitted to the customs field officer at whose order the articles were furnished or services performed. Claims for refunds of excessive duties, or taxes, or for payment of drawback, etc., due deceased or incompetent public creditors should be submitted to the appropriate collector of customs. The customs field officer may grant necessary assistance to claimants to insure proper execution of standard Form 1055—Revised in the case of deceased public creditors, and in the case of incompetent public creditors to insure submission of the application in proper form. The customs field officer should forward the claim, with his recommendation in duplicate, together with the originals or certified copies of all documents and papers necessary to establish the claimant's right to the moneys due, to the Bureau of Customs, Attention: Fiscal Section, for administrative examination and transmission to the General Accounting Office for direct settlement.

§ 24.71 Claims for personal injury or damages to or loss of privately owned property.

Procedures for the settlement of claims arising from actions of Treasury Department employees are published in 31 CFR Part 3.

§ 24.72 Claims; set-off.

When an importer of record has a judgment or other claim allowed by legal authority against the United States, and he is indebted to the United States either as principal or surety, the collector shall not certify for payment so much of such judgment or claim as will equal the amount of the debt due the Government and shall report the facts to the Bureau for instructions.

§ 24.73 Miscellaneous claims.

Every claim of whatever nature arising under the customs laws which is not otherwise provided for shall be forwarded directly to the Bureau, together with all supporting documents and information available.

PART 25—CUSTOMS BONDS

Sec.
25.1 Classes of bonds.
25.3 Bonds approved by the Bureau; form and execution.
25.4 Bonds approved by collectors; form and execution.
25.5 General instructions.
25.6 Seal.
25.7 Partnerships as principals.
25.8 Corporations as principals.
25.9 Individual sureties.
25.10 Delinquent sureties.
25.11 Partners as sureties.
25.12 Corporate sureties.
25.13 Same party as principal and surety; attorney.
25.14 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.
25.15 Export bonds; cancellation.
25.16 Bonds and stipulations for production of missing documents; card memorandum; time for production of documents.
25.17 Nonproduction of documents; failure to redeliver packages; sums to be collected.
25.18 Extensions of periods for compliance with requirements of bonds and stipulations.
25.19 Cancellation of erroneous charges.

AUTHORITY: §§ 25.1 to 25.19 issued under R.S. 161, 251, secs. 623, 624, 46 Stat. 759; 5 U.S.C. 22, 19 U.S.C. 66, 1623, 1624. Statutory provisions interpreted or applied and other special rule making authority are cited to text in parentheses.

§ 25.1 Classes of bonds.

All bonds required to be given under the customs statutes or regulations shall be known as customs bonds and shall consist of two classes. Those approved by the Bureau and those approved by collectors of customs.[1]

[1] "(a) In any case in which bond or other security is not specifically required by law, the Secretary of the Treasury may by regulation or specific instruction require, or authorize collectors of customs to require, such bonds or other security as he, or they, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary of the Treasury or the Customs Service may be authorized to enforce.

"(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

"(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: *Provided*, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

"(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

"(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

"(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

"(c) The Secretary of the Treasury may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient.

"(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bonds. * * *." (Tariff Act of 1930, sec. 623, as amended; 19 U. S. C. 1623)

§ 25.3 Bonds approved by Bureau; form and execution.

(a) The following bonds, after execution by the principals and sureties shall be forwarded to the Bureau for approval:

(1) Proprietor's manufacturing warehouse bond, class 6, customs Form 3583, in an amount to be recommended by the collector, but not less than $5,000 on each building or area and not more than $50,000 on all buildings or areas, unless the Bureau believes additional security

necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. It shall be prepared in duplicate and, after execution by the principal and surety, delivered to the collector of customs to be forwarded to the Bureau with his recommendation, together with all reports, documents, and drawings filed in connection therewith.

(2) Cartage contract bond, customs Form 3083, in an amount to be recommended in each case by the collector. The cartage contract and bond shall be executed in quadruplicate.

(3) Blanket smelting and refining bond in the form prescribed by T.D. 50267, as amended by T.D. 52403, in an amount to be recommended by the collector and fixed by the Bureau.

(b) A blanket term bond shall be accompanied by a sufficient number of copies for transmittal, through the Bureau, to each port at which the principal seeks to conduct business.

§ 25.4 Bonds approved by collectors; form and execution.

(a) The following bonds shall be approved by the collector and remain on file in his office, except customs Form 4615, which shall be transmitted to the United States attorney:

(1) Carrier's bond, custom Form 3587, in an amount to be determined by the collector.

(2) Proprietor's warehouse bond, customs Form 3581, in the amount of $5,000 on each building or area covered, but not to exceed $50,000 on all buildings or areas unless the collector believes additional security necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. All reports, documents, and drawings submitted in connection with the bonding of the warehouse shall be filed with the bond.

(3) Bond of customs cartman or lighterman, customs Form 3855, in such amount as the collector deems, necessary, but not less than $5,000, and not more than $50,000, unless the collector deems the latter amount insufficient and reports the matter to the Bureau for action, in which case the bond shall be in the amount specified by the Bureau.

(4) Bond of claimant of seized goods for costs of judicial condemnation, customs Form 4615, in the amount of $250.

(5) Bond to produce shipper's export declaration for goods exported to Canada by rail, customs Form 7303, in such amount as the collector may deem necessary.

(6) Term bond to produce shipper's export declaration for goods exported to Canada by rail, in such amount as the collector may deem necessary.

(7) Special single entry carpet wool and camel's hair bond, customs Form 7547, in an amount equal to the value of the wool or hair involved plus double the estimated duty, as determined at the time of entry.

(8) Special term carpet wool and camel's hair bond, customs Form 7549, in the amount of $10,000, or such larger amount as the collector may deem necessary.

(9) Immediate delivery and consumption entry bond (single entry), customs Form 7551, in an amount equal to the value of the articles, as set forth in the entry, plus the estimated duty[2] (including any taxes required by law to be treated as duties) and the estimated amount of any other taxes imposed upon or by reason of importation, as determined at the time of entry except:

(i) When the merchandise involved will remain in customs custody until (*a*) examination has been completed, (*b*) it is found to be truly and correctly invoiced, and (*c*) it is determined that its release is not precluded by law or regulation and it is entitled to admission into the commerce of the United States, the bond shall be in an amount equal to the aggregate sum of double the estimated amount of ordinary customs duty on the merchandise (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the collector.

(ii) When the merchandise appears to the satisfaction of the collector to be unconditionally free of duty and not prohibited from admission into the commerce of the United States, the amount of the bond may be in such lesser amount (disregarding the value of the articles) as, in the opinion of the collector, will be sufficient to accomplish the purpose for which the bond is given, but in no case less than $100.

(iii) When the bond relates to an application for immediate delivery prior to entry, the amount shall be fixed as above set forth on the basis of the information shown in the application.

(10) Immediate delivery and consumption entry bond (term), customs Form 7553, in the amount of $10,000, or such larger amount as the collector may deem necessary. This bond shall be taken to cover only entries to be made at a single port and shall not be modified to cover more than one port. The rules prescribed in subparagraph (9) of this paragraph for determining the amount of the single immediate delivery and consumption entry bond shall be applied in making charges against immediate delivery and consumption entry term bonds.

(11) Warehouse entry bond, customs, Form 7555, in an amount equal to the aggregate sum of double the estimated amount of ordinary customs duty[2] on the merchandise (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the collector of customs.

(12) Single entry bond for exportation, or for transportation, or for transportation and exportation, customs Form 7557, in an amount equal to double the estimated duty.

(13) Term bond for exportation, or for transportation, or for transportation and exportation, customs Form 7559, in the amount of $10,000, or such larger amount as the collector may deem necessary to afford ample security to the revenue.

(14) Bond for articles entered or withdrawn from warehouse conditionally free of duty, customs Form 7561, in an amount equal to the aggregate sum of double the estimated amount of ordinary customs duty[2] on the merchandise (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the collector of customs.

(15) Bond for temporary importations, customs Form 7563, in an amount equal to one and one-quarter times the estimated duties, as determined at the time of entry.

(16) Term bond for temporary importations, customs Form 7563–A, in such amount as the collector may deem necessary, but in no case less than $1,000, unless the bond covers entries at 2 or more ports in which case the amount shall not be less than $10,000.

(17) Bond for articles for exhibition, customs Form 7565, in an amount equal to one and one-quarter times the estimated duties as determined at the time of entry.

(18) Single entry vessel, vehicle, or aircraft bond, customs Form 7567, in such amount as the collector may deem necessary, but in no case less than $1,000.

(19) Vessel, vehicle, or aircraft term bond, customs Form 7569, in the amount of $10,000, or such larger amount as the collector may deem necessary.

(20) Blanket vessel, vehicle, or aircraft term bond, customs Form 7569, in the amount of $10,000, or such larger amount as may be fixed by the collector of customs at the port where the bond is filed. A carrier desiring to execute such a bond shall file an application for permission to execute the bond with the collector of customs at any headquarters port. The bond shall be accompanied by a copy for each port named therein.

(21) Bond on entry for or withdrawal from manufacturing warehouse (single entry), customs Form 7571, in an amount equal to the aggregate sum of double the estimated amount of ordinary customs duty on the merchandise, as determined at the time of entry (including any taxes required by law to be treated as duties) plus the estimated amount of any other tax or taxes on the merchandise collectible by the collector of customs.

(22) Single entry bond to produce bill of lading, customs Form 7581, in an amount equal to one and one-half times the invoice value.

(23) Antidumping bond, customs Form 7591, in an amount equal to the estimated value of the merchandise.

(24) Landing bond, customs Form 7593, to land spirits, wines, or other alcoholic liquors in foreign ports, in an amount equal to double the estimated duty.

(25) General term bond for the entry of merchandise, customs Form 7595, in the amount of $100,000, or such larger

[2] When the bond is to cover merchandise granted a conditional right of entry at a reduced rate of duty, the amount of the bond shall be fixed on the basis of the maximum rate of duty prescribed by the law.

[2] When the bond is to cover merchandise granted a conditional right of entry at a reduced rate of duty, the amount of the bond shall be fixed on the basis of the maximum rate of duty prescribed by the law.

amount as may be fixed by the collector. A principal desiring to execute this form of bond shall file with a collector at any headquarters port to be named in the bond an application for permission to file the bond. The application shall show the ports at which it is intended to file entries; the general character of the merchandise to be entered; and the total amount of ordinary customs duties (including any taxes required by law to be treated as duties) accruing on all merchandise imported by the principal during the calendar year preceding the date of the application, plus the estimated amount of any other tax or taxes on the merchandise collectible by the collector of customs. Such total amount of duties and taxes shall be that which would have been required to be deposited had the merchandise been entered for consumption, even though some of or all the merchandise may have been entered under bond. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(26) Single entry bond, customs Form 7597, in an amount deemed by the collector to be sufficient to secure the payment of overtime services requested by or on behalf of parties in interest.

(27) Term bond, customs Form 7599, in an amount deemed by the collector to be sufficient to secure the payment of overtime services requested by or on behalf of parties in interest.

(28) Bond for conditionally-free withdrawal of distilled spirits (including alcohol), wines, or beer for supplies of fishing vessels, customs Form 7603, in an amount equal to the duties and taxes that would have been assessed had the supplies been regularly entered, or withdrawn, for consumption. When the form is used as a term bond the bond shall be fixed in such larger amount as the collector may deem necessary.

(29) Special bond, taken under the provisions of section 337(f), Tariff Act of 1930, in the form prescribed in T.D. 45474. This bond shall be in an amount equal to the domestic value of the merchandise.

(30) Special bond in the form prescribed in T.D. 45474 for clearance of vessel penalized for carrying smoking opium or other narcotics under the provisions of section 584, Tariff Act of 1930, as amended. This bond shall be in an amount satisfactory to the collector to guarantee the payment of any fine imposed against the owner or master of the vessel.

(31) Special bond in the form prescribed in T.D. 45474 for exportation of convict-made goods, in an amount equal to the domestic value of the merchandise.

(32) Special bond for observance of neutrality in the form prescribed in T.D. 45474, in an amount equal to double the value of the vessel and cargo on board, including her armament.

(33) Superseding bond of the actual owner whose declaration has been filed pursuant to section 485(d), Tariff Act of 1930, to pay increased and additional duties imposed upon or by reason of importation, to redeliver merchandise for marking and other purposes, and to perform all required acts with respect to merchandise not entitled to admission into the commerce of the United States, customs Form 7601, in an amount equal to the amount of the single-entry bond or the bond charge which it supersedes.

(34) Bond for the control of certain instruments of international traffic, customs Form 7587, specified in § 10.41a of this chapter in the amount of $10,000, or such larger amounts as the collector may deem necessary to afford ample security to the revenue.

(b) The amount of any customs bond approved by the collector shall not be less than $100, except when the law or regulation expressly provides that a lesser amount may be taken. Fractional parts of a dollar shall be disregarded in computing the amount, which shall be stated always as the next higher dollar. The amount of the bond shall be stated both in words and figures. Abbreviations shall not be used, except in dates, descriptions of merchandise, and the marks and numbers on packages. Lines shall be drawn through all spaces not filled in.

(c) If a situation develops where the approved form of a bond is deemed to be inapplicable, the collector may draft a form which he believes will be sufficient, but before execution of the bond the case shall be submitted to the Bureau for its consideration and approval of the proposed form.

(R.S. 4197, as amended, 4200, as amended; 46 U.S.C. 91, 92)

§ 25.5 General instructions.

(a) The names of the principal and sureties and their respective places of residence shall appear in full in the body of the bond. The signature of each party to a bond executed by a non-corporate principal or surety shall be witnessed by two persons, who shall sign their names as witnesses, followed by their addresses. No witnesses are required where bonds are executed by properly authorized officers or agents of a corporate principal or a corporate surety. If the bond is executed by an authorized officer of a corporation, the officer's signature shall be properly attested under the corporate seal.

(b) When two persons signing as witnesses act for both principal and surety, they shall so indicate by stating "as to both," or a similar term.

(c) Each bond shall bear the date of the day it was actually executed. The termination date of every term bond shall be the last day of the period and not the first day of a succeeding period; for example, January 1, 1940, to and including December 31, 1940, and not January 1, 1940, to January 1, 1941.

(d) A bond in which erasures, interlineations, or alterations occur shall have placed upon it a statement by an agent of the surety company or by the personal sureties that such erasures, interlineations, or alterations were made prior to this signing of the bond. If such alterations or erasures were made after the bond was signed, the consent of all the parties thereto shall be written in the bond.

§ 25.6 Seal.

(a) The seal on a bond approved by the Secretary of the Treasury or the Bureau shall be affixed adjoining the signatures of principals and sureties, if individuals, and the corporate seal shall be affixed adjoining the signatures of persons signing on behalf of the corporation.

(b) Bonds approved by collectors of customs shall be sealed in accordance with the law of the state in which executed, and when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

§ 25.7 Partnerships as principals.

(a) Partnership bonds shall be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.[3]

(b) Unless written notice of the full names of all partners in the firm have been previously filed with the collector, the names of all persons composing the partnership shall appear in the body of the bond; for example, "A, B, and C, composing the firm of A, B, and Co."

§ 25.8 Corporations as principles.

(a) When a corporation is the principal, its legal designation and the address of its principal place of business shall be inserted in the body of the bond. The bond shall be signed by an authorized officer or attorney of such corporation and the corporate seal shall be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 25.6 (b). When the bond is to be approved by the Secretary of the Treasury or the Bureau, the official character and authority of the person or persons executing the bond for the principal may be certified by the secretary, assistant secretary, or other officer of the corporation. Such certification shall be made by executing the certificate as to corporate principal appearing in the bond. In lieu of such certificate, there may be attached to the bond so much of the records of the corporation as will show the official character and authority of the officer signing, such evidence to consist of:

(1) A certificate from the proper public officer showing the legal existence of the corporation.

(2) A copy of the bylaws, or so much thereof as authorizes the execution of such bonds, certified by the secretary of the corporation and authenticated by its corporate seal.

[3] "When any bond is required by law or regulation to be executed by any partnership for any purpose connected with the transaction of business at any customhouse, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same." (Tariff Act of 1930, sec. 495; 19 U. S. C. 1495)

(3) A copy of the document authorizing such officer to sign such bonds, certified by the secretary of the corporation under the corporate seal, or a power of attorney executed in accordance with § 8.19 of this chapter containing such authority.

(b) When the bond is approved by the collector, the evidence prescribed in paragraph (a) of this section shall be filed with such officer. The collector may waive the production of evidence of incorporation when such fact is a matter of common knowledge and he shall so certify.

(c) When an attorney in fact executes a bond on behalf of a corporation and the bond is to be approved by the Secretary of the Treasury or the Bureau, there shall be attached a power of attorney executed under the corporate seal by an officer of the corporation whose authority to execute such power shall be shown as prescribed in paragraph (a) of this section. If the bond is to be approved by the collector, the power of attorney shall be filed with him on the prescribed form.

(d) The name of a corporation executing a customs bond may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

§ 25.9 Individual sureties.

(a) If individuals sign as sureties, there shall be not less than two, except that, in the case of bonds, approved by the collector, one surety may be accepted if the collector is satisfied that such surety is sufficient for the protection of the Government. Every surety on a customs bond must be both a resident and a citizen of the United States. Before being accepted as surety, he shall take oath on customs Form 3579, setting forth the amount of his assets over and above all his debts and liabilities and such exemptions as may be allowed by law, the general description and the location of one or more pieces of real estate owned by him within the limits of the customs district and the value thereof over and above all encumbrances, and he shall produce such evidence of solvency and financial responsibility as the collector may require.

(b) Each individual surety must have unencumbered property liable to execution, the current market value of which must be equal to the penalty of any bond executed by him. If a single surety is accepted, he shall qualify in an amount equal to twice the penalty of the bond. The property must be located within the limits of the customs district in which the contract of suretyship is to be performed.

(c) An individual surety shall not be accepted on a bond until he has satisfied the collector as to his financial responsibility. The collector may refer the matter to the principal officer of the Customs Agency Service in his district for immediate investigation to verify the financial responsibility of the surety.

(d) In order to follow the continued solvency and sufficiency of individual sureties, the collector shall require a new oath and determine the sufficiency of each such surety as prescribed in paragraphs (a) and (c) of this section at least once every 6 months, and oftener if he deems it advisable.

(e) A married woman shall not be accepted as surety.

(f) Any individual other than a married woman may grant a power of attorney to sign as surety on customs bonds. If limited to bonds of one or several importers, the importers shall be named in the power.

§ 25.10 Delinquent sureties.

(a) No person shall be accepted as surety on any customs bond while he is in default as principal on any other customs bond.

(b) A surety on a customs bond which is in default may be accepted as surety on other customs bonds only to the extent that his assets are unencumbered by such default.

§ 25.11 Partners as sureties.

A person may act as surety for a business partner when such person is acting with respect to his separate property and in his individual capacity, but a member of a partnership shall not be accepted as surety on a bond executed by the firm as principal.

§ 25.12 Corporate sureties.

(a) A list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted, will be furnished annually to all collectors of customs by the Secretary of the Treasury. No corporation shall be accepted as a surety on a bond unless named in the current list and no bond shall be for a greater amount than the respective limit stated in such list, unless the excess is protected as prescribed in 31 CFR 223.12.

(b) Two or more companies may be accepted as sureties on any obligation the amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. In such cases each company shall limit its liability, in terms, upon the face of the bond to a definite specified amount, using customs Form 3903 for that purpose, such amount to be in all cases within the limitation prescribed by the Secretary, unless such excess is protected as prescribed in 31 CFR 223.12.

(c) When a bond is executed by an authorized and approved corporate surety through its agent or attorney, a power of attorney on Treasury Form 272, showing the authority of such person to act for the surety company, shall be filed in the office of the collector approving such bond or shall be filed in the Treasury Department when the bond is to be approved by the Secretary of the Treasury or the Bureau.

(d) When a bond is executed in a customs district other than the one in which it is to be filed, the bond may be approved as to surety by the collector of customs in the district in which it was executed if evidence of the authority of each officer or agent executing the bond on behalf of the surety is on file in his office. If the bond is not to be approved by the collector in whose district it is executed, the authority of the person or persons executing the bond on behalf of the company shall be completed, as provided for in paragraph (c) of this section, and attached to the bond unless such evidence has been submitted to the collector at the port where the bond is to be approved and filed.

§ 25.13 Same party as principal and surety; attorney.

The same person, partnership, or corporation cannot be both principal and surety on a bond, but a person may act as attorney in fact for both principal and surety. A person acting as attorney in fact for a principal may be accepted as surety on the same bond and, when acting as attorney for the surety, may be the principal on such bond.

§ 25.14 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, collectors of customs are authorized to accept United States money, United States bonds, United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the amount of the bond.[4] At the time of the deposit of any obligation of the United States, other than United States money, with the collector, the obligor shall deliver to such collector a duly executed power of attorney and agreement in favor of the collector in a form similar to that prescribed in Department Circular 154, dated February 6, 1935, authorizing such officer, in case of any default in the performance of any of the conditions or stipulations of the bond, to sell such obligation so deposited and to apply the proceeds of such sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of such default. If cash is deposited in lieu of sureties on the bond, the collector is authorized to apply such cash, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of a default under the bond.

§ 25.15 Export bonds; cancellation.

(a) A bond to assure the exportation[5] of merchandise may be canceled upon the specification of such merchandise on the outward manifest or outward bill of

[4] "The Secretary of the Treasury is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce." (Tariff Act of 1930, sec. 623 (e), as amended; 19 U. S. C. 1623 (e))

[5] An exportation is a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation

lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and the production of a foreign landing certificate if such certificate is required by the collector; or, if exportation or destruction is not timely in the case of articles entered under section 308, Tariff Act of 1930, as amended, upon the payment of liquidated damages in accordance with the provisions of § 10.39 of this chapter. The requirements of the vessel, vehicle, or aircraft bond, customs Form 7567 or 7569, may be considered as having been complied with upon the production of such of the abovementioned documents as may be applicable thereto; but to establish the exportation of narcotic drugs or any equipment, stores (except such articles as are placed on board vessels or aircraft under the provisions of section 309 or 317, Tariff Act of 1930, as amended), or machinery for vessels, a landing certificate shall be required in every case.

(b) This landing certificate shall be produced within 6 months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that such country has no customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing.

(c) Except as provided for in § 4.88 of this chapter, in cases where landing certificates are required and they cannot be produced, an application for waiver thereof may be made to the Bureau through the collector, accompanied by such proofs of exportation and landing abroad as may be available.

(d) In the case of articles for which the ordinary customs duty estimated at the time of entry did not exceed $10 and which are exported within the period of the bond (including any lawful extension) but without customs supervision, the bond may be canceled upon production of evidence of a bona fide exportation satisfactory to the collector.

(e) If any customs bond, except one given only for the production of free-entry or reduced-duty documents, is unsatisfied upon the expiration of 60 days after a liability has accrued thereunder, the matter shall be reported to the United States attorney for prosecution unless measures have been taken to file an application for relief or to effect a satisfactory settlement.

§ 25.16 Bonds and stipulations for production of missing documents; card memorandum; time for production of documents.

(a) When entry is made prior to the production of a required document, whether the importer gives bond on customs Form 7551 or 7553, or other appropriate form, or stipulates to produce such documents, a card memorandum on customs Form 5101 shall be prepared by the importer and presented with the entry.

(b) When a charge for the production of a missing document is made against a term bond, the charge shall be in the amount of the single entry bond that would have been taken had the transaction been covered by a single entry bond.

(c) Except when another period is fixed by law or the regulations in this chapter any document for the production of which a bond or stipulation is given shall be delivered to the collector of customs within 6 months from the date of the transaction in connection with which the bond or stipulation was given, or within any extension of such time which may be granted pursuant to § 25.18 (a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day shall be accepted as timely.

§ 25.17 Nonproduction of documents; failure to redeliver packages; sums to be collected.

(a) Collectors of customs are hereby authorized to treat any bond charge for the production of a missing document as satisfied upon payment by the principal or surety of the sum of $25 as liquidated damages for each missing declaration of the consignee or other document, except shippers' export declarations and special customs and commercial invoices not produced within the time prescribed by law or regulations or any lawful extension of such time.

(b) When a required special customs or commercial invoice is not produced on the date of entry or within 6 months thereafter, the bond charge for the production thereof may be canceled upon the payment of $25 as liquidated damages, provided the person who made the entry submits an application for relief from the full amount of the charge, explaining in detail why the special customs or commercial invoice could not be produced within the prescribed period, and the collector of customs is satisfied by such application or otherwise that the failure to produce the invoice within the prescribed period was due to causes wholly beyond the control of the person making the entry and not to any purpose of the foreign seller or shipper to withhold information required by law, regulation, or special instruction to be shown on the invoice.

(c) For each shipper's export declaration covering goods exported to Canada or Mexico by car, vehicle, or ferry, which is not produced within the time prescribed by the regulations or any lawful extension thereof, the sum of $50 shall be collected as liquidated damages.

(d) For failure to return to the collector on demand merchandise subject to return to customs custody, an amount equal to the value as set forth in the entry of the merchandise not returned plus the estimated duties and taxes imposed upon or by reason of importation, if any, on such merchandise as determined at the time of entry shall be demanded. When the demand for return to customs custody is made in the case of merchandise entered under section 308, Tariff Act of 1930, as amended, liquidated damages in an amount equal to one and one-quarter times the estimated duties on the merchandise not returned shall be demanded. When the demand for return to customs custody is made pursuant to the Federal Seed Act and the regulations thereunder, an amount equal to the value of the entire shipment, as set forth in the entry, plus the estimated duties, if any, as determined at the time of entry shall be demanded.

(e) When free entry or the application of a reduced rate of duty is dependent upon the production of a document which the importer fails to produce, or when a conditionally free or reduced-duty provision claimed on entry is held to be inapplicable, the claim for free entry or reduced rate of duty shall be treated as abandoned upon the assessment and payment of duty and the bond given for the production of the free-entry or reduced-duty document shall be cancelled without the collection of liquidated damages.

(f) When a customs requirement supported by a bond is waived by the Bureau, the waiver may be unconditional, in which case the importer is relieved from the payment of liquidated damages, or it may be conditioned upon prior settlement of the bond obligation by payment of such liquidated damages, or upon such other terms and conditions, as the Bureau may deem sufficient. When such a requirement is waived by the collector of customs pursuant to authority conferred upon him in these regulations, the waiver shall be unconditional.

(g) Except as otherwise provided for by this chapter, collectors of customs may cancel liquidated damages under $200, assessed under the terms of any bond given pursuant to any provision of the customs regulations, upon the payment of such lesser amount as he may deem appropriate under the law and in view of the circumstances, or without the payment of any amount.

(h) If the interested party is not satisfied with the collector's decision on any application for relief from liquidated damages under a bond given pursuant to a law or regulation administered by the Customs Service, he may file a further application with the collector to be forwarded to the Bureau for reconsideration of the case. A statement to that effect shall be contained in the notification to the applicant of the collector's action.

§ 25.18 Extensions of periods for compliance with requirements of bonds and stipulations.

(a) If a document (other than an invoice) referred to in § 25.16(c) is not produced within 6 months from the date of the transaction in connection with which the bond or stipulation was given, the collector, upon written application of the importer, in his discretion, may extend the period for further periods of 6 months each, but in no case to exceed a total of 2 years from the date of such transaction.

(b) In cases where the regulations relating to certain classes of merchandise,

in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation. Merchandise of foreign origin returned from abroad under these circumstances is dutiable according to its nature, weight, and value at the time of its original arrival in this country.

such as leather imported to be manufactured into footwear (see § 10.84 (c) of this chapter), prescribe a 3-year period within which proof must be produced of the use or disposition of the merchandise in, or its exportation from, the United States, and such proof is not furnished within the prescribed period, the collector may, upon the written application of the importer, extend the 3-year period for further periods of 1 year each, but not to exceed 5 years from the date of entry.

(c) No application for the extension of the period of any bond or stipulation given to assure the production of a missing document shall be allowed by a collector if such application is received later than 6 months after the expiration of the period of the bond or stipulation, including any prior extension. However, when a bond or stipulation is given for the production of any free-entry or reduced-duty document and a satisfactory document is not produced within the prescribed time but is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be completed, it shall be accepted as satisfying the requirement that it be filed in connection with the entry, and the bond charge for its production shall be canceled.

(d) It is not necessary to secure the assent of the sureties to any extension of the period prescribed in a bond when such extension is authorized by law or these regulations. The assent of the sureties shall be obtained before any other extension of such a period is allowed.

§ 25.19 Cancellation of erroneous charges.

When it is definitely determined that liquidated damages assessed or paid under a bond did not in fact accrue, the charge against the bond shall be canceled by the collector without regard to the amount thereof, the liquidated damages, if paid, shall be refunded, and an appropriate notation shall be made on customs Forms 5211 and 5955, or 5955–A, if the transaction has already been recorded thereon. When the determination of whether or not the charge was erroneously made depends upon a construction of law, the charge shall not be canceled without Bureau approval, unless there is in force a Bureau ruling decisive of the issue. Bureau instructions shall be requested in all doubtful cases.

(Sec. 3, 44 Stat. 1382, secs. 514, 643, 46 Stat. 734, 761; 5 U. S. C. 281b, 19 U. S. C. 1514, 1643)

PART 26—DISCLOSURE OF INFORMATION

Sec.
26.1 Inspection of final opinions, orders and rules.
26.2 Public records.
26.3 Confidential information.
26.4 Confidential treatment of customs records and documents.
26.5 Information for the press and associations.
26.6 Review of data.
26.7 Suspension of disclosure.

AUTHORITY: §§ 26.1 to 26.7 issued under R. S. 161; 5 U. S. C. 22. Statutory provisions interpreted or applied and special rule making authority are cited to text in parentheses.

§ 26.1 Inspection of final opinions, orders and rules.

(a) All final opinions or orders in the adjudication of cases issued by the Secretary of the Treasury, the Commissioner of Customs, or other officials of the Treasury Department or the Bureau of Customs in matters administered by the Bureau of Customs, except those held confidential for good cause and not cited as precedents, are made available to public inspection. For the most part, final opinions or orders in matters administered by the Bureau of Customs are in the form of letters, addressed to customs field officers or to parties in interest, ruling upon questions arising under the customs and navigation laws and other related laws. Requests for inspection of such opinions or orders should be addressed in writing to the Commissioner of Customs, Washington 25, D. C. Insofar as practicable copies of such opinions or orders will be furnished unless they are confidential under the standards set forth in §§ 26.2 to 26.7. In cases where an opinion or order contains confidential information but the actual ruling can be separated from the confidential matter, partial copies containing only such parts as can properly be disclosed will be furnished insofar as is practicable without undue interference with the work of the Bureau. Final opinions or orders of exceptional importance or wide public interest are published, either in full or in abstracted form, in the Treasury Decisions.

(b) All rules issued in matters administered by the Bureau of Customs, except to the extent that they involve a function requiring secrecy in the public interest or relate solely to internal management, are made available to public inspection. Most of them are published in the Treasury Decisions and the FEDERAL REGISTER or in circular letters made available to the public. Any rule not so published, unless requiring secrecy in the public interest or relating solely to internal management, may be inspected at the Bureau of Customs, Washington, D. C.

(Sec. 3 (b), 60 Stat. 238; 5 U. S. C. 1002 (b))

§ 26.2 Public records.

(a) In general, the types of official records at the headquarters or field offices of the Customs Service include the following:

(1) Entry records.
(2) Warehouse records.
(3) Appraisement records.
(4) Certificates of weight, measure, and gauge.
(5) Vessel manifests, crew lists, and passenger lists.
(6) Statistical information relative to the volume, source, and destination of commodities in foreign trade.
(7) Bulletin notice of liquidation, which is posted or lodged in the customhouse and is available for public inspection.
(8) Record of entry and clearance of vessels.
(9) Record of vessels of the United States belonging to the merchant marine. This information is published annually in a bound volume entitled "Merchant Vessels of the United States," for sale through the office of the Superintendent of Documents.
(10) Records of documents of vessels of the United States.
(11) Records of bills of sales, conveyances, mortgages, and hypothecations pertaining to vessels of the United States.
(12) Statistical information relative to the merchant marine.

(b) Some of the information contained in the documents mentioned in paragraph (a) of this section is held to be confidential for one or more of the following good causes and in accordance with the standards prescribed in §§ 26.2 to 26.7 and is not available to the public:

(1) It relates to the details of business transactions of private parties, the disclosure of which details would be detrimental to the interests of the parties involved, without furthering the public interest.

(2) It is submitted in reliance upon the long-established assurance that such information will be kept in confidence and used only for official purposes.

(3) Its disclosure would be inimical to the public interest.

(c) Requests for information contained in the public records mentioned in paragraph (a) of this section may be made in accordance with established procedures (see 16 F. R. 6964).

(d) The rules set forth in §§ 26.2 to 26.7 regarding the disclosure of information are found to be in compliance with the provisions of the Administrative Procedure Act (5 U. S. C. 1001–1011) and the standards prescribed in those sections for determining what information is for good cause to be regarded as confidential are applicable to all requests for information or for inspection of final opinions, orders, or official records.

(Sec. 3 (c), 60 Stat. 238; 5 U. S. C. 1002 (c))

§ 26.3 Confidential information.

(a) Except as authorized hereafter in this section, no collector, appraiser, customs agent, or other customs officer or employee shall disclose details of any customs activity for publication, except under special authority from the Bureau.

(b) Collectors and other customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases of public interest until the matter is completed. The collector may give the public information concerning any case involving an offense against the customs and navigation laws after he has completed his investigation and the case has been closed by final customs action, such as settlement of a civil liability or reference of a case to the United States attorney for handling. Field officers shall exercise proper restraint and judgment in disclosing local transactions. Unless specifically authorized so to do, they shall not disclose to any person not immediately concerned the text or substance of any communication from the Bureau or the Treasury involving any matter of policy.

(c) Insofar as administrative matters in Washington are concerned, statements will be issued only through the office of the Secretary or the Assistant Secretary in charge of the Customs Service.

(d) The disclosure of the confidential information contained in customs documents or the disclosure to one importer or exporter of information relative to the business of another importer or exporter acquired by the officer or employee by reason of his official employment shall constitute grounds for dismissal from the Service; and if done for a valuable consideration will subject such person to criminal prosecution.

§ 26.4 Confidential treatment of customs records and documents.

(a) The information contained in invoices, entries, manifests, export declarations, official reports of investigating officers, and other papers or documents filed with customs officers for any official purpose shall be treated as confidential, except for the purpose for which such documents are required to be filed. All officers and employees of the Customs Service are prohibited, unless specially authorized to do so by the Bureau or by the regulations in this part from giving out information contained in such papers and documents except to the importer, exporter (in the case of export documents), or other person directly in interest, or to his authorized agent.

(b) Importers and exporters, or their duly authorized brokers, attorneys, or agents, may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or to make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(c) In answer to a legal process or demand from a court issued in behalf of the United States or an officer thereof, customs officers or employees shall produce in court in customs custody, and may testify with respect to, any official customs papers or documents demanded. When any such process or demand is issued in behalf of a party other than the United States, it shall be complied with only to the extent that the party in whose behalf the papers or documents are demanded is permitted under these regulations to inspect such papers or documents at the customhouse.

(d) Except as stated in paragraph (f) of this section, nothing in this part shall preclude customs officers or employees from producing in the United States Customs Court in customs custody any customs papers or documents or from testifying or otherwise rendering all proper assistance to the court in proceedings before it when request therefor is made by the court; nor from furnishing to counsel for the United States information in, and permitting him to inspect, customs papers or documents requested by him, nor from testifying on behalf of the United States or otherwise assisting him in the performance of his official duties.

(e) Except as stated in paragraph (c) of this section, copies of customs documents or records desired by or on behalf of parties to a suit, whether in a court of the United States or any other, shall be furnished without prior Departmental approval only to the court on a rule of the court upon the Secretary of the Treasury requesting them, or to a person entitled under paragraph (a) of this section to obtain the information they disclose. Exceptions to this rule shall be made only on the written order of the Secretary, the Under Secretary, an Assistant Secretary, or the Administrative Assistant to the Secretary. When requested, such copies may be authenticated pursuant to the provisions of 28 U. S. C. 1733.

(f) The authority granted in paragraphs (c), (d), and (e) of this section is subject to the restriction that no matters of a confidential nature or the disclosure of which would be prejudicial to the public interest shall be disclosed to any person.

(g) Upon being served with a subpoena or subpoena duces tecum from a court or officer thereof calling for testimony or the production of papers or documents in cases not covered by paragraph (c) or (d) of this section, or in cases where the testimony or documents desired would disclose matters of a confidential nature or the disclosure of which would be prejudicial to the public interest, the matter shall be referred to the Bureau for instructions with a report which shall specifically describe the testimony or documents desired; shall set forth the views of the submitting officer as to whether the giving of the testimony or the furnishing of the documents would disclose confidential information or be inimical to the public interest; and shall state in what particulars, if any, the disclosure of the information and work incidental thereto would interfere with the orderly conduct of customs business in the event instructions are not received prior to the date set for appearance or production of documents, or if the Bureau declines to permit their production or the disclosure of the information contained therein or otherwise within the knowledge of the customs officers or employee whose testimony is requested, the customs officer or employee shall appear in court or before the officer concerned in answer to the subpoena and respectfully decline to produce the documents called for or to testify, except to the extent specifically authorized elsewhere in this section, citing this regulation as authority for his refusal. If the matter has not already been referred to the Bureau for instructions, the customs officer or employee shall advise the court or officer that it will be so referred.

§ 26.5 Information for the press and associations.

Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications may be permitted to examine vessels' manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data not of a confidential nature, subject to the following rules:

(a) Of the information and data appearing on outward manifests, only the general character, destination, and quantity (or value) of the commodity, name of vessel, and country of destination may be copied and published. Where the manifests show both quantity and value, either may be copied and published, but not both in any instance.

(b) Confidential information, such as the names of the shippers and consignees, marks and numbers, and both quantities and values of commodities shall not be copied from outward manifests or any other papers. Disclosure of special category export shipments which might endanger the security of the United States is not now permitted. Such restriction upon disclosure shall be in effect during any period covered by a finding by the President under section 1, of the act of August 9, 1950, as amended (50 U.S.C. 191). Such a finding is now in effect (Executive Order No. 10173, Oct. 18, 1950 (3 CFR, 1949–1953 Comp. p. 356; 15 F.R. 7005)).

(c) Of the information shown on inward manifests, only the name of the consignee, the general character of the commodity, the quantity (or value), name of vessel, and the country of dispatch shall be copied and published. When an inward manifest shows both quantity and value of the commodity, either may be copied and published, but not both in any instance.

(d) Accredited representatives of regularly established associations, whether incorporated or not, shall be permitted to examine vessels' manifests for the purpose of securing data relative to merchandise of the kind or class in the importation of which the association is interested, subject to the foregoing rules; but this authority does not extend to attorneys or customs brokers representing individual importers.

§ 26.6 Review of data.

All copies and notations from inward or outward manifests shall be submitted for examination by a customs officer designated for that purpose.

§ 26.7 Suspension of disclosure.

(a) Upon written application of a consignee or importer, the collector of customs shall refuse to permit any person, except as provided in § 26.4, to copy the name of such consignee from manifests.

(b) If any individual shall abuse the privilege granted him of examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

PART 30—FOREIGN-TRADE ZONES

Sec.
30.1 Merchandise permitted in a zone.
30.2 Use of zone by carriers.
30.3 Transportation of merchandise to a zone.
30.4 Who may file a zone application.
30.5 Admission of merchandise into a zone.
30.6 Privileged foreign merchandise.
30.7 Privileged domestic merchandise.
30.8 Non-privileged foreign merchandise.
30.9 Non-privileged domestic merchandise.
30.10 Zone-restricted merchandise.
30.11 Customs control of merchandise in a zone.
30.12 Manipulation, manufacture, or exhibition in a zone.
30.13 Destruction of merchandise in a zone.
30.14 Sending merchandise from a zone into customs territory.
30.15 Direct exportation from a zone.
30.16 Supplies, equipment, and repair material for vessels or aircraft.
30.17 Transfer of merchandise from one zone to another.
30.18 Reimbursement of customs expenses.

AUTHORITY: §§ 30.1 to 30.18 issued under R. S. 161, 251, secs. 1–21, 48 Stat. 998, 999, as amended, 1000–1003, sec. 624, 46 Stat. 759; 5 U. S. C. 22, 19 U. S. C. 66, 81a–81u, 1624)

§ 30.1 Merchandise permitted in a zone.

Foreign and domestic merchandise of every description, except such as is prohibited by law, may be brought into a foreign-trade zone (hereinafter in this part referred to as a "zone") established pursuant to the act of June 18, 1934, as amended by section 1 of the act of June 17, 1950 (19 U. S. C. 81a–81u, sec. 1, 64 Stat. 246), hereinafter in this part referred to as "the act"). Merchandise which is specifically and absolutely prohibited by law shall not be admitted into a zone.[1] Any merchandise so prohibited by law which is found within a zone shall be disposed of in the manner provided for in the laws and regulations applicable to such merchandise. A distinction is made between (a) merchandise which is specifically and absolutely prohibited by law on the grounds of policy or morals, such as immoral or subversive literature, obscene articles or lottery matter, and (b) merchandise which is subject to conditional prohiibtion only, for example, articles which are subject to permits or licenses for the protection of economic or national security or which may be reconditioned to bring them into compliance with the laws administered by various Federal Agencies. Collectors of customs are required to exclude the first class of articles and may not permit them to be transferred to a zone if they are aware of their prohibited status, except that the collector may permit the temporary deposit of any such merchandise in the zone pending final determination of its status. The transfer of articles of the second class to a zone is subject to any requirements of the Federal agency concerned. There is no prohibition against placing over-quota merchandise in a zone pending its right to transfer to customs territory pursuant to the applicable quota provisions. The application for the admission of merchandise into a zone shall be approved or disapproved by the collector, as the representative of the Foreign-Trade Zones Board (hereinafter in this part referred to as "the Board"), where the merchandise is not excluded by any other Federal agency having jurisdiction over it.

§ 30.2 Use of zone by carriers.

(a) The water area, docking facilities, or any loading or unloading stations of a zone are intended primarily for the use of vessels, vehicles, or aircraft unlading merchandise[2] into the zone or lading merchandise from the zone, and their use for other purposes may be terminated by the Secretary of the Treasury if found to endanger the revenue, or by the Board if found to impede the primary uses of the zone.

(b) Nothing in the act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other pertinent law or regulation.

[1] "Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this Act, be brought into a zone * * *." 19 U. S. C. 81C)

[2] As used in this part the term "merchandise" means goods, wares and chattels of every description, except prohibited articles, and except the usual wearing apparel and accouterments of persons entitled to enter a zone.

§ 30.3 Transportation of merchandise to a zone.[4]

(a) Merchandise may be brought directly to a zone from any place outside customs territory[4] by vessel, vehicle, or aircraft.

(b) Domestic merchandise[5] may be brought to a zone from customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(c) Foreign merchandise[6] destined to a zone and moving through customs territory outside a port shall be subject to the laws and regulations pertaining to the movement of like merchandise between two ports in customs territory.

(d) Foreign merchandise being transferred within a port to a zone shall be subject to the laws and regulations pertaining to the movement of like merchandise within the customs territory of the port before delivery to the importer.

§ 30.4 Who may file a zone application.

(a) This section tells who is authorized to apply for permission to transfer merchandise into a zone, to do anything with respect to the merchandise within the zone, or remove the merchandise from the zone. In general, the zone grantee shall have the sole responsibility for determining the legal right of the applicant to make the application. Accordingly, such applications shall show a written concurrence of the zone grantee, except where the regulations in this part provide for the filing of applications by the zone grantee itself, or permit the filing of blanket concurrences by the zone grantee. Government officers acting in their official capacities may question the zone grantee's concurrence if in their opinion it is improperly given. In the case of foreign merchandise brought into a zone through customs territory, the appropriate application as prescribed in § 30.5 must be filed by the person having a right to apply for release.

(b) The forms of application provided for in this part shall be filed in the number of copies required for the purposes of local administration.

§ 30.5 Admission of merchandise into a zone.

(a) This section tells how to obtain the right to unlade or bring merchandise into a foreign-trade zone.

(b) If the merchandise is to be unladen from any carrier in the zone for immediate transfer to customs territory, or if it is to be transferred from customs territory through the zone for immediate lading on any carrier therein, an application for permission to unlade or lade shall be filed on customs Form 3171 and the collector shall permit the unlading or lading unless he has reason to believe that the merchandise will not be moved promptly from the zone or made the subject of an application for zone status in accordance with paragraph (d) of this section. Any such merchandise shall not be considered within the purview of the act, but shall be treated in all respects as though the unlading or lading were in customs territory. Merchandise brought into a zone for lading on a carrier which is not laden without delay which will endanger the revenue must be made the subject of an application for zone status in accordance with paragraph (d) of this section or be removed from the zone.

(c) Imported merchandise which has been entered and which has remained in continuous customs custody may be temporarily transferred to a zone for manipulation under customs supervision pursuant to section 562, Tariff Act of 1930, as amended, and for return to customs territory. Any such merchandise shall not be considered within the purview of the Foreign-Trade Zones Act, but shall be treated in all respects as though remaining in customs territory. Therefore, no zone form or procedure shall be considered applicable, but the merchandise shall remain subject in the zone to such requirements as are necessary for the enforcement of section 562 and other pertinent customs laws.

(d) If the merchandise is to be unladen or brought into the zone for purposes other than as provided for in paragraph (b) of this section an application to transfer into the zone shall be filed on zone Form D. The approval of the grantee shall be noted on this application unless the grantee furnishes a specific or blanket approval separately in writing. In the case of merchandise to be unladen within a zone directly from an importing vessel or aircraft and intended to have zone status, an application for permission to unlade shall also be filed on customs Form 3171. Before foreign merchandise being transported through customs territory may be brought into a foreign trade zone, a release order authorizing the transfer of the merchandise to the zone must be obtained from the carrier bringing the merchandise to the port at which the zone is located. The release order shall be noted on the application Form D unless the carrier has given the release order as a separate document. Whether the release order is noted on application Form D or is given as a separate document, application Form D shall be supported by evidence of the right of the applicant to transfer the merchandise to the zone. This evidence shall be the same as would be required to establish the right of the applicant to apply for release of the merchandise from customs custody at the end of its transit through customs territory. Such evidence usually consists of an original bill of lading in the name of the applicant, an original bill of lading endorsed to him, or a carrier's certificate.[7] Every application made under this paragraph shall indicate the zone status desired as follows:

(1) Privileged foreign merchandise,

(2) Privileged domestic merchandise,

(3) Non-privileged foreign merchandise,

(4) Non-privileged domestic merchandise, or

(5) Zone-restricted merchandise.

(e) No merchandise shall be transferred into a zone until an application has been filed and a permit issued for the transfer, as set forth in paragraph (b) or (d) of this section.

(f) The collector may cause any merchandise in a zone to be examined at the time of admission, or at any time thereafter, if the examination is deemed necessary to facilitate the proper administration of any law, regulation, or instruction which the Customs Service is authorized to enforce.

(g) Whenever a certificate as to the arrival of any merchandise in a zone is required by a Federal agency the collector shall issue the certificate, properly describing and identifying the merchandise involved.

§ 30.6 Privileged foreign merchandise.

(a) This section tells how to obtain a privileged status for foreign merchandise, and what are the legal incidents of such status.

(b) Merchandise within the purview of the first proviso to section 3 of the act, as amended,[8] shall be given status as privileged foreign merchandise on proper application. Each application for this status shall be filed on zone Form B, with the application for admission of the merchandise into the zone, or at any time thereafter and before the merchandise has been manipulated or

[4] For transfer of merchandise from one zone to another zone, see § 30.17.

[4] As used in this part the term "customs territory" means territory of the United States in which the general tariff law of the United States applies but which is not included in any zone.

[5] As used in the act and in this part, the term "domestic merchandise" means merchandise of every description (not including prohibited articles) which has been (1) produced in the United States and not exported therefrom or (2) previously imported into customs territory and properly released from customs custody.

[6] As used in the act and in this part the term "foreign merchandise" means imported merchandise of every description (not including prohibited articles) which has not been properly released from customs custody in customs territory.

[7] See § 8.6 of this chapter.

[8] "• • • *Provided*, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the collector of customs shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, of manufactured under the supervision and regulations perscribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: • • •." (Sec. 1, Pub. Law No. 566, 81st Cong.).

manufactured in the zone in a manner which has effected a change in its tariff classification. Each applicant for such status shall file with his application a zone customs entry on customs Form 7502. Upon acceptance of the entry, the collector shall cause the merchandise to be appraised and taxes determined and duties liquidated thereon promptly. The taxes to be determined are those of the same nature as are indicated in the liquidation of entries of imported merchandise in customs territory.

(c) A status as privileged foreign merchandise and the consequent determination of taxes and liquidation of duties cannot be abandoned, but remain applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste, as long as the merchandise remains within the purview of the act.

(d) The procedure in connection with the preparation, filing, and acceptance of the entry, the making of notations on invoices, the preparation of customs Form 6417, the designation of examination packages or quantities, and the examination and appraisement of the merchandise shall be the same as that prescribed in the case of an entry for warehouse made in customs territory, except that no bond shall be required.

(e) Application may be made for permission to manipulate, manufacture, or exhibit any privileged foreign merchandise before taxes have been determined and duties liquidated thereon, but in such case the examination for purposes of appraisement must be completed, or the packages or samples required for such examination must be segregated, before the collector approves the application.

(f) Privileged foreign merchandise shall be subject to appraisement and tariff classification according to its condition and quantity, and to the rates of duty and tax in force, on the date of the filing with the collector, in complete and proper form for approval, of the request on zone Form B for privileged foreign status and the zone customs entry which is required to accompany it. The value of such merchandise shall be determined in accordance with sections 402 and 503 of the Tariff Act of 1930 and the related provisions of law.

(g) For all customs purposes, the date of exportation of privileged foreign merchandise from the country whence it was exported to the United States is the date of its final departure from that country, in accordance with § 14.3 (b) of this chapter.

(h) The value declared in any zone customs entry for privileged merchandise may be amended in accordance with the provisions of section 487, Tariff Act of 1930, and the regulations thereunder.[9]

(i) With respect to privileged foreign merchandise, the requirements, privileges, and procedures of notices of appraisement, appeals for reappraisement, posting of liquidations, and protests against decisions of the collector are the same as those prescribed in the case of merchandise covered by an entry for warehouse in customs territory.

(j) The original of the application on zone Form B when approved by the zone grantee shall be accepted by the collector as the equivalent of a bill of lading or carrier's certificate to identify the person designated in such Form B as the consignee of the merchandise and its owner for customs purposes, except that such person may transfer the right to withdraw such merchandise from the zone to customs territory in accordance with § 30.14 (f).

§ 30.7 Privileged domestic merchandise.

Merchandise within the purview of the second proviso to section 3 of the act, as amended,[10] shall be given status as privileged domestic merchandise on proper application. Application for this status shall be included in the application to transfer the merchandise into the zone on zone Form D, as provided for in § 30.5 (d). In such cases the evidence of the right of the applicant to transfer the merchandise to the zone provided for in that section and the release order of the carrier are not required. If the collector is satisfied that the revenue will be protected, and the rights of importers will not be prejudiced, he may permit the transfer to a zone of domestic packing and repair materials and other adjunctive articles without requiring an application on zone Form D. If the requirements of the second proviso are complied with, any of the foregoing may subsequently be brought back to customs territory free of quotas, duty, or tax.

§ 30.8 Non-privileged foreign merchandise.

(a) All the following shall have the status of non-privileged foreign merchandise.

(1) Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(2) Waste recovered from any manipulation or manufacture of privileged foreign merchandise; and

(3) Domestic merchandise which will be subject to treatment as foreign merchandise as provided for in the third proviso to section 3 of the act as amended,[11] if removed to customs territory.

(b) Any domestic merchandise shall be deemed to have lost its identity as such for the purposes of paragraph (a) (3) of this section if the collector shall determine that it cannot be identified positively by customs officers as domestic merchandise on the basis of their examination of the articles and their consideration of any proof that may be submitted promptly by a party in interest.

§ 30.9 Non-privileged domestic merchandise.

All merchandise which could have obtained the status of privileged domestic merchandise but for which no application for such status has been approved (not including any merchandise within the purview of § 30.8 (a) (3)) shall have the status of non-privileged domestic merchandise.

§ 30.10 Zone-restricted merchandise.

(a) Merchandise within the purview of the fourth proviso to section 3 of the act, as amended,[12] shall be given status as zone-restricted merchandise on proper application. Application for this status shall be included in the application to transfer the merchandise into the zone on zone Form D, as provided for in § 30.5 (d).

(b) If the merchandise is to be considered exported for the purpose of any Federal law other than the customs laws, the collector shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before he approves the application provided for in § 30.5 (d).

(c) If the applicant desires a zone-restricted status in order that the mer-

[9] See § 8.16 of this chapter.

[10] "• • • *Provided further*, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the collector, and whether or not they have been combined with or made a part, while in such zone, of other articles, may be brought back thereto free of quotas, duty or tax: • • •." (19 U. S. C. 81c)

[11] "*Provided further*, That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of non-compliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: • • •." (19 U. S. C. 81c)

[12] "• • • *Provided further*, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

"(a) The draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

"(b) The statutes and bonds exacted for the payment of draw-back, refund, or exemption from liability for internal-revenue laws generally and the regulations thereunder.

"Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615 (f) of the Tariff Act of 1930, as amended: • • •." (19 U. S. C. 81c)

chandise may be considered exported for the purpose of any customs laws, all pertinent customs requirements relating to actual exportations shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the United States. Any declaration or form required for a case of actual exportation shall be modified to show that the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved application provided for in § 30.5 (d) may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(d) If merchandise is transferred from a customs bonded warehouse into a zone, it shall have the status of zone-restricted merchandise when admitted into the zone in view of the provisions of the fourth proviso to section 3 of the act, and in all such cases the application provided for in § 30.5 (d), shall state that a zone-restricted status is desired for the merchandise. Merchandise taken into a zone for manipulation elsewhere than in a bonded warehouse under the provisions of section 562, Tariff Act of 1930, as amended, is not considered within the purview of the fourth proviso of section 3 of the act.

§ 30.11 Customs control of merchandise in a zone.

(a) No merchandise in a zone shall be removed therefrom in any manner or for any purpose except as provided for in the regulations in this part.

(b) If the collector deems it necessary for the protection of the revenue, he may require segregation of privileged foreign, privileged domestic, zone-restricted, and such other merchandise as he determines to be subject to special risks to the revenue.

(c) The operator of the zone shall keep the collector's office currently informed as to the location of any merchandise in the zone which is not within the purview of paragraph (b) of this section, and shall notify the collector promptly of any loss or damage that may occur to any merchandise in the zone.

§ 30.12 Manipulation, manufacture, or exhibition in a zone.

(a) Permission for manipulation, manufacture, or exhibition of merchandise in a zone may be obtained by filing with the collector an application on zone Form E. No such operation shall be carried on until the collector has approved the application.

(b) The application shall include a full description of the proposed operation; a designation of the exact place in the zone where the operation is to be performed; the identification of the involved merchandise by lot number, marks and numbers of the packages, description, quantity, and zone status; and in the case of manipulation or manufacture a statement as to whether articles with one zone status are to be packed, commingled, or combined with articles having a different zone status.

(c) The collector shall approve the application unless the proposed operation would be in violation of the fourth or fifth proviso to section 3 of the act, as amended,[12] or the place designated for its performance is not suitable for preventing confusion as to the identity or status of the merchandise and for safeguarding the revenue.

(d) In the event of the denial of any application by the collector for any reason, the applicant, the grantee of the zone, or the operator of the zone, may appeal the adverse ruling to the Board. If any revenue protection considerations are involved in such an application, the Board shall be guided by the determinations of the Secretary of the Treasury with respect to them.

(e) When any privileged merchandise is to be manipulated in any way or manufactured, the person performing the operation shall maintain records containing the following information:

(1) A full identification, as specified in paragraph (b) of this section, of each lot of privileged merchandise used in the operation,

(2) The unit and total values of each such lot, the values in the case of privileged foreign merchandise to be those declared in the zone customs entry, including any amendment thereof,

(3) The commercial name or description of the product resulting from the operation, or of each such product if there are more than one,

(4) The quantity of such product or of each such product, as the case may be,

(5) The commercial name or description and quantity of each kind of waste recovered from the operation, and

(6) The description (i. e., evaporation, leakage, spillage, dust, etc.) and quantity of each kind of total physical loss resulting from the operation.

If any non-privileged merchandise is to be used in the operation, records shall be maintained containing a full identification, as specified in paragraph (b) of this section, and the unit and total values of each lot of the merchandise used in the operation.

§ 30.13 Destruction of merchandise in a zone.

(a) Each application to destroy merchandise in a zone shall be filed with the collector on zone Form E.

(b) The application shall include a description of the proposed method of destruction, a designation of the place where the destruction is to be accomplished, and an identification of the merchandise as in the case of an application for permission to manipulate (§ 30.12 (b)).

(c) The destruction of distilled spirits, wines, and fermented malt liquors having a zone-restricted status may not be authorized in view of the exception in the fourth proviso to section 3 of the act, as amended. In any other case, if the collector is satisfied that the destruction will be effective and that the revenue will be adequately protected, he shall approve the application. If proper destruction can not be effectively accomplished within the zone, the collector may permit it to be done elsewhere, in whole or in part, under such conditions as he shall specify for protecting the revenue. Any residue of destruction which is entirely worthless may be removed to customs territory for disposal.

§ 30.14 Sending merchandise from a zone into customs territory.

(a) When privileged domestic merchandise which has not been mixed, combined, or repacked in the zone with merchandise having a different zone status is to be transferred from the zone to customs territory, the zone grantee shall submit to the collector a description of the proposed transaction, in triplicate, and signed by him which shall include:

(1) The proposed date of transfer;

(2) The identification of the carrier;

(3) The destination of the shipment;

(4) Identification of the merchandise by zone storage location, lot number, marks and numbers of the packages, description, quantity, and zone status; and

(5) A notation as to any shortage or damage.

If the transfer is approved by the collector the original of the desoription shall be so stamped to serve as a permit of delivery, the original and one copy shall be returned to the grantee, and the triplicate shall be retained by the collector. If a form of tally prepared by the zone grantee for its purposes contains the necessary information, it may be accepted by the collector as the description required by this paragraph. No document other than the permit of delivery shall be required to release the merchandise to the grantee and authorize its transfer into customs territory.

(b) When privileged foreign merchandise which has not been mixed, combined, or repacked in the zone is to be transferred to customs territory otherwise than for exportation, a zone withdrawal on customs Form 7505 shall be filed as an application for the transfer (see § 30.4). Such withdrawal shall be supported by a bond on customs Forms 7551, 7553, or other appropriate form, and the applicant shall pay the liquidated duties and determined taxes, as assessed in the liquidation of the pertinent zone customs entry, for the quantity of merchandise to be transferred. Such bond shall not be required when all the merchandise to be transferred to customs territory has been inspected, examined, and appraised, and has been found to comply with all laws and regulations governing its admission into the commerce of the United States, and

[12] The fourth proviso is quoted in footnote 12.

"* * * *Provided further*, That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraph 367 or paragraph 368 of the Tariff Act of 1930, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this Act prior to July 1, 1949: * * *." (19 U. S. C. 81c)

there have been produced all documents for the production of which a bond is required by law or regulations if not filed at the time of entry. If the pertinent zone customs entry has not been liquidated estimated duties and taxes shall be deposited. Upon acceptance of the withdrawal, the collector shall release the merchandise to the grantee for delivery.

(c) When a product of a manipulation or manufacture in a zone composed of or derived from privileged merchandise only, whether all foreign, or partly foreign and partly domestic, is to be transferred to customs territory otherwise than for exportation, a zone withdrawal shall be filed as prescribed in paragraph (b) of this section. There shall be filed with the withdrawal a statement in the form of an invoice containing the information specified in § 30.12 (e), and when necessary to support the withdrawal, application may be made for a certificate on zone Form F covering identification as shown by the customs records of any privileged domestic or privileged foreign merchandise used in the manipulation or manufacture.

(d) When merchandise described in paragraph (b) or (c) of this section is to be transferred to customs territory otherwise than for exportation and it is desired to pay the duties and taxes at a port other than the port in which the zone is located, the merchandise shall be withdrawn for transportation to the other port on customs Form 7512 which shall clearly indicate the status of the merchandise, and the withdrawal for consumption at the other port shall be made in the manner prescribed in paragraph (b) or (c) of this section except that customs Form 7519 shall be used. The collector at the zone port shall issue a certificate in triplicate, describing the merchandise in its present condition and certifying the amount of duties and taxes and applicable to the shipment, and the duplicate copy of such certificate shall be given to the importer to be filed with the withdrawal for consumption.

(e) When merchandise described in paragraph (b) or (c) of this section is to be transferred to customs territory for exportation, a withdrawal for exportation, or for transportation and exportation, shall be filed on customs Form 7512. Upon acceptance of the withdrawal the collector shall make a notation as to the status of the merchandise on the document, and release the merchandise to the grantee for delivery to the bonded cartman, lighterman, or carrier.

(f) The applicant on customs Form 7505 or 7519 for purposes described in paragraph (b), (c), or (d) of this section shall be the consignee named in zone Form B as approved by the grantee (see § 30.6 (j)), except that such consignee may transfer the right to transfer the merchandise from the zone to customs territory by an endorsement on customs Form 7505 or 7519, whichever is applicable, naming a designated transferee. Customs Form 7505 or 7519 so endorsed with the name of a designated transferee who has been approved by the grantee shall be accepted by the collector to identify the transferee named therein as the consignee of the merchandise to be transferred and the owner thereof for customs purposes.

(g) When merchandise not covered by paragraph (a), (b), (c), (d), or (e) of this section, or either of the last two sentences of § 30.13 (c), is to be transferred from a zone to customs territory, the grantee shall make an application to the collector on zone Form C. The applicant shall state the name and address of the person who will be deemed the consignee of the merchandise when it is transferred to customs territory. The collector shall not accept a term application on Form C. The applicant shall also include a complete identification of the merchandise as it entered the zone, including the lot numbers, marks and numbers of the packages, status of each lot, description, and quantities. If any change in respect of any of the foregoing items of identification occurred while the merchandise was in the zone, the current information with respect to each such item which has been changed shall also be stated.

(h) Upon the approval by the collector of an application on zone Form C, the merchandise is transferred to constructive customs territory, without physical removal from the zone. The collector shall note on the application the date of such constructive transfer and the zone status of the merchandise. Merchandise so constructively transferred shall be marked or labeled with the initials "C. T.". For all customs and internal revenue purposes the merchandise shall be considered to have been imported into customs territory at the time of the constructive transfer.

(i) (1) If a customs entry for disposition in customs territory of the constructively transferred merchandise has not been filed in proper form before 5 p. m. of the second working day after the constructive transfer of the merchandise, or within such longer time as may be specified in a lay-order issued by the collector upon a written application of the grantee or designated consignee filed with the collector on customs Form 3189, and approved by the grantee if made by the consignee, the merchandise shall be deposited by the collector in general order storage. However, if it is desired to restore the merchandise to a zone status after it has been constructively transferred and before the expiration of the lay-order period specified above, a new zone Form D may be filed and the same procedure followed as though the merchandise had then first arrived in the zone from or through customs territory (§ 30.5 (d)). In such a case, the zone grantee shall be deemed the carrier which brought the merchandise to the port.

(2) As an alternative to the filing of a new zone Form D the applicant may, if he so desires, arrange for the redelivery to the collector, prior to the filing of a customs entry and prior to the expiration of the lay-order period specified above, of the grantee's original copy of the zone Form C with a request that it be cancelled.

(j) The original of zone Form C, when approved by the collector and endorsed as provided for in paragraph (h) of this section, shall be accepted by the collector as the equivalent of a bill of lading or carrier's certificate to identify the person designated in such Form C as the consignee of the merchandise and its owner for customs purposes.

(k) When a consumption entry is accepted for zone merchandise which is in constructive customs territory, the collector shall release the merchandise to the grantee for delivery to the consignee. When any other entry is accepted for such merchandise, the release of the merchandise by the collector for physical removal to the designated destination in customs territory shall be in accordance with the customs regulations as to merchandise imported into customs territory, the zone grantee to be considered as the importing carrier.

(l) The products described in subparagraphs (1), (2), or (3) of this paragraph, upon transfer from a zone and entry for consumption, either immediately or after transportation in bond, shall be subject to appraisement and tariff classification in accordance with their character, condition, and quantity at the time of their constructive transfer to customs territory in accordance with paragraph (h) of this section, and at the rate or rates of duty and tax in force at the time entry is made in customs territory as stated in § 8.4(d) of this chapter. The value of such products shall be determined in accordance with sections 402 and 500 of the Tariff Act of 1930 and the related provisions of law.

(1) Articles composed entirely of, or derived entirely from, non-privileged merchandise, foreign or domestic.

(2) Articles composed in part of, or derived in part from, non-privileged merchandise, domestic or foreign, and in part of or from privileged merchandise, domestic or foreign.

(3) Recoverable waste resulting from the manipulation or manufacture in a zone of privileged foreign merchandise. Any of the articles described in subparagraphs (1), (2), or (3) of this paragraph, except articles composed in part of, or derived in part from, privileged foreign merchandise, may be transferred from a zone for entry for warehousing, either immediately or after transportation in bond, subject to the treatment specified in the first two sentences of this paragraph. There shall be filed with each entry covering articles described in subparagraph (2) of this paragraph a statement in the form of an invoice containing the information specified in § 30.12 (e). When necessary to support the entry, application may be made for a certificate on zone Form F covering identification as shown by the customs records of any privileged domestic or privileged foreign merchandise in the articles.

(m) The consumption or warehouse entry covering a product provided for in paragraph (l) of this section shall be liquidated in accordance with Part 16 of this chapter, except that in the case of articles described in paragraph (l) (2) of this section adjustment shall be made for that part of the product which

consists of or has been derived from privileged merchandise.

(n) Unless the Foreign-Trade Zones Board has ruled that the return of the merchandise to customs territory for domestic consumption is in the public interest, zone-restricted merchandise shall not be transferred to customs territory except under an entry for exportation or for transportation and exportation, or for destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or for transfer from one zone to another. Each such entry shall be subject to the pertinent provisions of paragraphs (g) to (k), inclusive, of this section, except that if the entry has not been filed in proper form before the expiration of the period mentioned in the first sentence of paragraph (i) of this section, the merchandise shall not be deposited by the collector in general-order storage but shall be considered as having been returned from constructive customs territory to the zone. Upon acceptance of the entry, it shall be endorsed by a customs officer to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the act, as amended. If the Board has ruled that the return of the merchandise to customs territory is in the public interest, after the merchandise has been constructively transferred to customs territory it may be entered for consumption, warehousing, or immediate transportation without appraisement, unless the Board in its ruling has specified which of these forms of entry shall be made. The entry shall be endorsed by the collector to show the authority under which the entry was made and that the merchandise is subject to the provisions of paragraph 1615 (f) of the Tariff Act of 1930, as amended.

(o) Articles produced or manufactured in a zone and returned to customs territory of the United States after having been exported without first having been transferred to customs territory otherwise than for exportation or for transportation and exportation shall be subject to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that they were produced or manufactured exclusively with the use of privileged domestic merchandise, the identity of which was maintained in accordance with the pertinent provisions of these foreign-trade zone regulations, in which case they shall be subject to the pertinent provisions of paragraph 1615, Tariff Act of 1930.[14]

§ 30.15 Direct exportation from a zone.

Regardless of its zone status, any merchandise in a zone may be exported directly therefrom upon compliance with the procedure prescribed in § 30.14 (a) for the transfer of privileged domestic merchandise to customs territory.

§ 30.16 Supplies, equipment, and repair material for vessels or aircraft.

(a) Any article in a zone, including zone-restricted merchandise, which is suitable for use on a vessel or aircraft entitled to the privileges of section 309, Tariff Act of 1930, as amended, as supplies, equipment, or repair material may be laden on such a vessel or aircraft in the zone or transferred from the zone to such a vessel or aircraft at a port of entry in the United States outside the zone, subject to any applicable limitation prescribed in such section 309.

(b) If the article is laden on the vessel or aircraft in the zone, the provisions of § 30.15 pertaining to direct exportations from the zone shall apply and, in addition, the pertinent provisions of §§ 10.59 to 10.65, inclusive, of this chapter shall also apply as though the article were being withdrawn in customs territory from continuous customs custody elsewhere than in a bonded warehouse for such lading. If the article is to be transferred from the zone to the vessel or aircraft at a port of entry outside the zone, the provisions of § 30.14 pertaining to transfers from a zone to customs territory for exportation shall apply, in which case, when constructive transfer to customs territory has been accomplished, the merchandise shall thereafter be liable to or exempt from duty or tax and be subject to any other applicable provisions of sections 309 and 317, Tariff Act of 1930, I.R.C. section 3451, and §§ 10.59 to 10.65, inclusive, of this chapter as though it were imported merchandise which had remained in continuous customs custody in customs territory elsewhere than in a bonded warehouse.

(c) Any article in a zone which is suitable for use as ground equipment for aircraft entitled to the privileges prescribed in section 309 or 317, Tariff Act of 1930, as amended, with respect to ground equipment may be used in the zone, or transferred to customs territory for use, as ground equipment for such aircraft without payment of duty or any internal-revenue tax imposed upon or by reason of importation.

§ 30.17 Transfer of merchandise from one zone to another.

(a) The transfer of merchandise, other than privileged domestic, from a zone in one port of entry to a zone in another port shall be by bonded carrier under an entry for immediate transportation on customs Form 7512. The sending of the merchandise from the first zone into customs territory and its admission into the zone of destination shall be in accordance with § 30.14 (g) through (j) and § 30.5 (d), respectively. All copies of the entry for immediate transportation shall bear a notation that the merchandise is being taken from the first zone for the purpose of transfer to the second zone.

(b) Upon removal of merchandise as specified in paragraph (a) of this section from the first zone, the collector in charge of the port in which such zone is located shall immediately forward to the collector in charge of the port in which the zone of destination is located a history of the merchandise as shown by the records of the first zone.

(c) The transfer of privileged domestic merchandise from one zone to another is not subject to customs control except that the removal of the merchandise from the first zone and its admission into the zone of destination shall be in accordance with §§ 30.14 (a) and 30.5 (d), respectively.

§ 30.18 Reimbursement of customs expenses.

(a) The Commissioner of Customs will assign to each zone the necessary customs officers and guards to maintain appropriate customs control over merchandise in a zone and to protect the revenue.

(b) All necessary cost of maintaining the additional customs services required under the act and these foreign-trade zone regulations shall be reimbursed to the Government by the grantee of the zone,[15] payment to be made monthly to the collector of customs.

---

[14] "• • • *Provided further*, That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section, may, on such importation, be entered as American goods, returned." (19 U. S. C. 81c)

[15] "• • • the cost of maintaining the additional customs service required under this act shall be paid by the operator of the zone." (Sec. 14, act of June 18, 1934; 19 U. S. C. 81n)

PART 31—CUSTOMHOUSE BROKERS

Sec.
31.1 Scope of part.
31.2 Licenses for customhouse brokers required.
31.3 Definitions.
31.4 Application for license; investigation and examination.
31.5 Issuance or denial of license.
31.6 Other representation by customhouse brokers.
31.7 Licenses for more than one customs district.
31.8 License, when not required.
31.9 Books and papers.
31.10 Other duties and obligations of customhouse brokers.
31.11 Revocation or suspension of licenses.
31.12 Cancelation of licenses.
31.13 Licenses issued under prior acts of Congress.
31.14 Appeal from the Secretary's decision.
31.15 Records of the Commissioner.

AUTHORITY: §§ 31.1 to 31.15 issued under R. S. 161, 251, secs. 624, 641, 46 Stat. 759, as amended; 5 U. S. C. 22, 19 U. S. C. 66, 1624, 1641.

§ 31.1 Scope of part.

This part sets forth regulations providing for the licensing as customhouse brokers of persons, including individuals, corporations, partnerships, and associations, desiring to transact business as customhouse brokers, the procedure for applying for licenses, and the qualifications required of the applicants. The regulations also prescribe the duties and responsibilities of customhouse brokers, the grounds for revocation or suspension of the licenses, and the procedures for such revocation or suspension.

§ 31.2 Licenses for customhouse brokers required.

(a) No person shall transact the business of a customhouse broker unless he has first been granted a license in accordance with the provisions of section 641, Tariff Act of 1930, as amended.[1] A license to transact business as a customhouse broker may be granted by the Commissioner of Customs upon application submitted therefor, in accordance with the regulations in this part.

(b) No representative of the Treasury Department shall recognize or deal with any person transacting the business of a customhouse broker, or any employee, officer, or agent thereof, unless such person is licensed as a customhouse broker in accordance with the provisions of this part.

---

[1] "(a) *Regulations for licensing.* The Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships, and may require as a condition to the granting of any license, the showing of such facts as he may deem advisable as to the qualifications of the applicant to render valuable service to importers and exporters. No such license shall be granted to any corporation, association, or partnership unless licenses as customhouse brokers have been issued to at least two of the officers of such corporation or association, or two of the members of such partnership, and such licenses are in force. Any license granted to any such corporation, association, or partnership shall be deemed revoked if for any continuous period of more than sixty days after the issuance of such license there are not at least two officers of such corporation or association or two members of such partnership who are qualified to transact business as customhouse brokers. Except as provided in subdivision (c) of this section, no person shall transact business as a customhouse broker without a license granted in accordance with the provisions of this subdivision, but nothing in this section shall be construed to authorize the requiring of a license in the case of any person transacting at a customhouse business pertaining to his own importations.

"(b) *Revocation or suspension.* The collector or chief officer of the customs may at any time, for good and sufficient reasons, serve notice in writing upon any customhouse broker so licensed to show cause why said license shall not be revoked or suspended, which notice shall be in the form of a statement specifically setting forth the ground of complaint. The collector or chief officer of customs shall within ten days thereafter notify the customhouse broker in writing of a hearing to be held before him within five days upon said charges. At such hearing the customhouse broker may be represented by counsel, and all proceedings, including the proof of the charges and the answer thereto, shall be presented, with the right of cross-examination to both parties, and a stenographic record of the same shall be made and a copy thereof shall be delivered to the customhouse broker. At the conclusion of such hearing the collector or chief officer of customs shall forthwith transmit all papers and the stenographic report of the hearing, which shall constitute the record of the case, to the Secretary of the Treasury for his action. Thereupon the said Secretary of the Treasury shall have the right to revoke or suspend the license of any customhouse broker shown to be incompetent, disreputable, or who has refused to comply with the rules and regulations issued under this section, or who has, with intent to defraud, in any manner willfully and knowingly deceived, misled, or threatened any importer, exporter, claimant, or client, or prospective importer, exporter, claimant, or client, by word, circular, letter or by advertisement.

"An appeal may be taken by any licensed customhouse broker from any order of the Secretary of the Treasury suspending or revoking a license. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Secretary of the Treasury be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the Clerk of the Court to the Secretary of the Treasury, or any officer designated by him for that purpose, and thereupon the Secretary of the Treasury shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Secretary of the Treasury shall be considered by the court unless such objection shall have been urged before the collector or chief officer of customs or unless there were reasonable grounds for failure so to do. The finding of the Secretary of the Treasury as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the Court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the collector or chief officer of customs, the court may order such additional evidence to be taken before the collector or chief officer of customs and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary of the Treasury may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Secretary of the Treasury shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254, title 28 of the United States Code. The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the Secretary of the Treasury's order.

"(c) *Prior licenses.* Licenses issued under the Act of June 10, 1910 (36 Stat. 454; U. S. C., title 19, sec. 415), or under the provisions of subdivision (a) of this section prior to the effective date of this amendment, shall continue in force and effect, subject to suspension and revocation as provided in subdivision (b) of this section.

"(d) *Regulations by Secretary.* The Secretary of the Treasury shall prescribe such rules and regulations as he may deem necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations requiring the keeping of books, accounts, and records by customhouse brokers, and the inspection thereof, and of their papers, documents, and correspondence by, and the furnishing by them of information relating to their business to, any duly accredited agent of the United States." (Tariff Act of 1930, sec. 641, as amended; 19 U. S. C. 1641.)

§ 31.3 Definitions.

When used in the regulations in this part, the following terms shall have the meanings, respectively, indicated:

(a) "Customhouse broker" includes any person who, acting on behalf of others, transacts customs business not limited to a kind described in § 31.8.

(b) "Treasury Department or any representative thereof" includes any division, branch, bureau, office, or unit of the Treasury Department, whether in Washington or in the field, and any officer or employee of any such division, branch, bureau, office or unit.

(c) "Commissioner" means the Commissioner of Customs.

(d) "Person" includes individuals, corporations, partnerships, and associations.

(e) "Books and papers" includes all books, accounts, records, papers, documents, and correspondence of a customhouse broker relating to his customs business.

(f) "Freight forwarder" means any person engaged in the business of dispatching shipments on behalf of other persons for a consideration, in foreign commerce between the United States, its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments.

§ 31.4 Application for license; investigation and examination.

(a) *Application to Commissioner.* A person desiring to engage in the business of a customhouse broker shall submit to the collector of customs of the district in which the applicant intends to operate an application in duplicate, addressed to the Commissioner, stating his qualifications for a license. The application shall be under oath and executed on customs Form 3123 (individual), customs Form 3125 (partnership), customs Form 3127 (corporation), or customs Form 3129 (association), whichever is appropriate, and shall be accompanied by the fee of $100 prescribed by § 24.12 of this chapter. If the applicant is an individual who proposes to operate under a trade or fictitious name, evidence of the applicant's authority so to conduct business must accompany his application.

(b) *Posting application.* As soon as possible after an application has been filed, the collector of customs shall cause to be posted conspicuously in the customhouse at the headquarters port for the district and at the port where the applicant proposes to maintain his principal office the name and address of the applicant and, if the applicant is a corporation, an association, or a partnership, the names of the licensed officers or members thereof.

(c) *Examination of applicant.* The collector of customs shall notify the applicant, if an individual, to appear before a committee of examiners at a specified time and place in the customs district in which the applicant proposes to do business. The committee of examiners shall consist of not less than three nor more than five members designated as such by the Commissioner.

(d) *Purpose of examination.* The examination shall have for its purpose a determination of the applicant's knowledge of customs and related law and procedure and his fitness to render valuable service to importers and exporters. The Commissioner may from time to time furnish lists of suggestions for the guidance of committees of examiners in conducting such examinations. The examination may, at the option of the committee, be oral or written, but if oral shall be stenographically reported and transcribed, and in either case shall be transmitted forthwith to the collector of customs, with the report and recommendation of the committee of examiners.

(e) *Investigation of applicant*—(1) *Individual.* Upon the applicant's obtaining a satisfactory grade on the examination, his application shall be referred by the collector of customs to the supervising customs agent in charge of the district for investigation, report, and recommendation.

(2) *Corporation, association, or partnership.* Each application shall be referred by the collector of customs to the supervising customs agent in charge of the district for investigation, report, and recommendation.

(3) *Information desired.* The investigation shall seek information relevant to the question whether the application should be granted and shall cover, but need not be limited to, (i) the correctness of the statements made in the application, (ii) the business integrity of the applicant, and (iii) when the applicant is an individual (including an officer of a corporation or association or a member of a partnership), the character and reputation of the applicant.

(4) *Return of application to collector of customs.* The investigating agent shall return the application with his report and recommendation to the collector of customs who requested it. The collector shall forward them to the Commissioner, accompanied by the report and recommendation of the committee of examiners, if any. If he so desires, the collector may also submit his independent recommendation.

(f) *Additional investigation or examination.* The Commissioner shall endeavor to ascertain, without undue expense or inconvenience to the applicant, all facts deemed necessary to pass upon the application, and may require additional investigation to be conducted. In the event, however, that the Commissioner is not satisfied by the information received, he may require the applicant (or, in the case of a corporation, association, or partnership, one or more of its officers or members) to appear in person before the Commissioner or before one or more representatives of the Commissioner, for the purpose of undergoing additional written or oral examination into the applicant's qualifications for a license.

§ 31.5 Issuance or denial of license.

(a) *Issuance if applicant qualified.* If he finds that the applicant is qualified, the Commissioner will issue a license in such standard form as he shall have prescribed. The license shall be forwarded to the appropriate collector, who shall deliver it to the licensee after making a record thereof in a roster of licensed brokers which shall be maintained in the customhouse in such manner that it will be readily accessible to the proper customs officers and employees. The license for an individual who is an officer of a corporation or association or a member of a partnership will be issued in the name of the individual licensee, and not in his capacity as officer or member of the organization with which he is connected.

(b) *Denial of license.* (1) If the applicant fails to obtain a satisfactory grade on the examination, notice of denial shall be given by the collector to the applicant.

(2) At the request of the applicant, the Commissioner may allow a further opportunity to the applicant to present information or arguments in support of his application either by personal appearance or in writing, or both, in the discretion of the Commissioner.

(3) If the Commissioner determines that the application for license should be denied for any reason, notice of denial shall be given by the Commissioner to the applicant and to the collector of the district in which the applicant proposed to do business.

(c) *Grounds for denial of license.* The causes sufficient to justify denial of an application for a license shall include, but shall not be limited to, (1) any cause which would justify suspension or revocation of the license of a licensed customhouse broker under the provisions of § 31.11; (2) a failure to establish the business integrity and character of the applicant; (3) any gross misstatement of pertinent facts in the application; (4) any conduct which would be deemed grossly unfair in commercial transactions by accepted standards; (5) a bad reputation imputing to an applicant conduct of any of the foregoing types or of a criminal, dishonest, or unethical kind; (6) the minority of the applicant; or (7) a failure to establish sufficient knowledge by the applicant of customs and related law and procedures and fitness to render valuable service to importers and exporters. In the case of a corporation, association, or partnership, the application will be denied by the Commissioner unless it appears that the officers or members who are licensed customhouse brokers are to exercise responsible supervision and control of the transaction of the customs business of such corporation, association, or partnership. An individual who is unable for any reason to take the oath of allegiance and to support the Constitution of the United States shall not be licensed. An alien undergoing naturalization is ineligible to receive a license until he has received his final naturalization certificate. An officer or employee of the United States is ineligible to receive a license.

(d) *Review.* A decision of the Commissioner denying a license, upon the written request of the applicant, will be submitted to the Secretary of the Treasury for such review as the Secretary shall deem appropriate.

§ 31.6 Other representation by customhouse brokers.

A customhouse broker requires no further license or enrollment for the representation, within the customs districts in which he is licensed, at the office of the Regional Commissioner of Internal Revenue, or at the seat of the Government, of any person for whom he has acted as customhouse broker in respect of any matters relating specifically to the importation or exportation of merchandise under customs or internal-revenue laws.

§ 31.7 Licenses for more than one customs district.

Separate licenses shall be required if the licensee desires to transact customs business in more than one customs district. However, a licensee having a license in force in one district may on application to the Commissioner be granted a license to transact business in another district without further examination, provided it appears on investigation that the licensee is prepared and qualified to render efficient service in such other district. Licenses may be granted to partnerships with two licensed members, and to corporations and associations with two licensed officers, whether or not such members or officers are licensed in the district for which the partnership, corporation, or association license is granted.

§ 31.8 License, when not required.

(a) *Dealing for one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(b) *Transportation in bond by common carrier.* A common carrier transporting merchandise for another may make entry for such merchandise for transportation in bond without being licensed as a customhouse broker.

(c) *Marine transactions.* A person transacting business in connection with entry, clearance, or documentation of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a customhouse broker.

(d) *Employees of licensed brokers.* An employee of a customhouse broker is not required to be licensed in order to act solely for his employer, but in order that such employee may sign customs documents on behalf of his employer the broker must file with the collector a power of attorney for that purpose. Each broker shall file with the collector at each port where the business is to be transacted an authorization specifically naming each employee who may properly act for him. A broker must promptly give notice of any change in the authority of any such employee and must exercise such supervision of his employees as will insure proper conduct on the part of the employees in the transaction of customs business. Each broker will be held strictly responsible for the acts or omissions of his employees within the scope of their employment, and for acts or omissions of such employees which, in the exercise of reasonable care and diligence, the broker should have foreseen. Every attorney in fact acting for a customhouse broker must be a resident of the United States.

§ 31.9 Books and papers.[1]

(a) Each customhouse broker shall maintain correctly and in orderly itemized manner, and keep current, records of account reflecting all his financial transactions as a customhouse broker. He shall keep and maintain on file a copy of each entry made by him, and copies of all his correspondence and other papers relating to his customs business.

(b) Except as provided for in paragraph (c) of this section, each customhouse broker shall keep on customs Form 3079 (Record of Transactions of Licensed Customhouse Broker), in accordance with the instructions printed thereon, records of all customs business transacted by him in behalf of his clients. If a transaction has been handled only in part by the broker, he need fill in only the appropriate part of his customs Form 3079. Records on customs Form 3079 shall be in addition to, and not in lieu of, the regular records of account required by paragraph (a) of this section to be kept and maintained.

(c) If the data prescribed to be recorded on customs Form 3079 are disclosed in other records regularly kept and maintained by a customhouse broker in a systematic, convenient, and readily available form which will permit an effective inspection thereof by duly accredited agents of the United States, such broker may, by notice in writing from the collector for the district, be exempted from the requirements of paragraph (b) of this section. Such notice of exemption shall be issued only if (1) a broker makes written application therefor to the collector, setting forth the facts as to the records he keeps and agreeing that if the exemption is granted he will not change his system of records or his manner of keeping and maintaining them without notification to and prior approval by the said collector and (2) the collector and the supervising customs agent for the district are satisfied that the records are and will be kept and maintained by the broker in conformity with the conditions above stated.

(d) Whenever it shall appear to the satisfaction of the collector, upon investigation by a duly accredited agent of the United States, that a broker to whom an exemption has been granted as provided for in paragraph (c) of this section is not keeping and maintaining records in conformity with the requirements of the said paragraph (c), the exemption of such broker shall be revoked by notice in writing from the collector, and such broker shall thereafter keep and maintain records on customs Form 3079 as above stated.

(e) All the books and papers required by the foregoing provisions of this section shall be kept on file for at least 5 years and maintained in such manner that they may readily be examined. Any or all such books and papers shall be made available to duly accredited agents of the United States on demand therefor within 5 years after their preparation or receipt by the broker, or within any longer period of time during which they remain in the possession of the broker. Each customhouse broker shall advise the Commissioner and the collector at the headquarters port in each district in which his license is held of each change of his business address. The broker shall also furnish such additional information regarding his activities as a customhouse broker as such agents may require.

(f) The supervising customs agent in charge of the agency district, or a customs agent designated by him, shall make such inspection of the books and papers required by this part to be kept and maintained by a customhouse broker as may be necessary to enable the supervising customs agent, the collector of customs, and other proper officials of the Treasury Department to determine whether or not the broker is complying with the requirements of this section. Furthermore, the supervising customs agent, or any duly accredited agent of the United States designated by him, may at any time, for the purpose of protecting importers or the revenue of the United States, inspect such books and papers to obtain information regarding specific customs transactions.

(g) The agent making any investigation contemplated by paragraph (f) of this section shall report his findings in full to the Commissioner and the collector.

(h) The books and papers referred to in this section and pertaining to the business of the clients serviced by the broker shall be considered confidential and the broker shall not disclose their contents or any information connected therewith to any persons other than such clients and duly accredited agents of the United States except on subpoena by a court of competent jurisdiction.

§ 31.10 Other duties and obligations of customhouse brokers.

(a) No customhouse broker shall permit his license or his name to be used by or for any unlicensed person, or by or for any broker whose license is under suspension, in the solicitation, promotion, or performance of any customs business or transaction.

(b) (1) No customhouse broker shall accept or retain employment from or with an unlicensed employer to transact customs business for others than the employer in such manner that the fees or other benefits resulting from the services rendered by the broker for others inure to the benefit of the unlicensed employer, except that a customhouse broker may compensate a freight forwarder for services rendered in obtaining brokerage business, provided that

(i) The importer shall be notified in advance by the forwarder or broker of the name of the customhouse broker selected by the forwarder for the handling of his customs transactions;

(ii) If the fees and charges for such brokerage services are to be collected by or through the forwarder, the customhouse broker shall transmit directly to the importer a true copy of his bill of charges as rendered to the forwarder. If, on the other hand, such fees and charges are to be collected by or through the customhouse broker, he shall transmit directly to the importer a statement of his bill of charges and an itemized list of any charges to be collected for the account of the freight forwarder.

(iii) No part of the agreement of compensation between the customhouse broker and the forwarder, nor any action taken pursuant thereto, shall forbid or prevent direct communication between the importer and the customhouse broker; and

(iv) In making such agreement and in all actions taken pursuant thereto, the customhouse broker shall be subject to all other provisions of these regulations and any amendments thereto.

(2) Where a customhouse broker is employed for the transaction of customs business by an unlicensed employer who is not the actual importer, a copy of the statement of charges made by the customhouse broker must be transmitted to the actual importer by the customhouse broker, except where the merchandise was purchased for delivery on an all free basis.

(c) No customhouse broker shall knowingly and directly or indirectly (1) accept employment to effect a customs transaction as associate, correspondent,

[1] See section 641 (d) in footnote 1 to § 31.2.

officer, employee, agent, or subagent from any person whose license as a customhouse broker shall have been revoked for any cause, or whose license is under suspension, or who is notoriously disreputable, or (2) assist the furtherance of any customs business or transaction of such person, or (3) employ, or accept such assistance from, any such person, or (4) share fees with any such person, or (5) permit any such person directly or indirectly to participate, whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker: *Provided*, That nothing herein shall be deemed to prohibit any customhouse broker from acting as a customhouse broker for any bona fide importer or exporter, notwithstanding such importer or exporter may have had his license as a customhouse broker revoked or suspended, or may be disreputable.

(d) No customhouse broker shall act in behalf of any person, or attempt to represent any person, in respect of any protest or appeal for reappraisement, unless he shall previously have been specifically or generally authorized to do so by such person.

(e) No customhouse broker shall knowingly use false or misleading representations to procure employment in any customs matter, nor shall he represent to a client or prospective client that he can obtain extraordinary favors from the Treasury Department or any representative thereof.

(f) No customhouse broker shall represent a client before the Treasury Department or any representative thereof in any matter to which the broker, as officer or employee, gave personal consideration, or as to the facts of which he gained knowledge, while in the Government service.

(g) No customhouse broker shall knowingly (1) assist a person who has been employed by a client in a matter pending before the Treasury Department or any representative thereof to which matter such person gave personal consideration or gained personal knowledge of the facts or issues thereof while in the Government service, or (2) accept assistance in any such matter from any such person, or (3) share fees in any such matter with any such person.

(h) No customhouse broker shall suggest to a client or a prospective client a plan known to be illegal for evading payment of any duty, tax, or other debt or obligation owing to the Government.

(i) Each customhouse broker who knows that a client has not complied with the law or has made any error in, or omission from, any document, affidavit, or other paper which the law requires such client to execute shall advise his client promptly of the fact of such noncompliance, error, or omission.

(j) Each customhouse broker shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any customs business; and no customhouse broker shall knowingly impart to a client false information relative to any such business when such false information is or might be detrimental to the interests of the Government, the client, or any other person.

(k) No customhouse broker shall withhold information relative to any customs business from a client who is entitled to the information.

(l) Each customhouse broker shall promptly pay over to the Government when due all sums received for the payment of any duty, tax, or other debt or obligation owing to the Government, and shall promptly account to clients for funds received for them from the Government, or received from a client in excess of the governmental or other charges properly payable in respect of the client's customs business.

(m) No customhouse broker shall endorse or accept without authority of his client any Government draft, check, or warrant drawn to the order of such client.

(n) No customhouse broker who has recommended to his client an attorney shall demand of, or accept from, such attorney any fee or remuneration by reason of such recommendation without the knowledge and consent of the client.

(o) No customhouse broker shall file or procure or assist in the filing of any claim, or of any document, affidavit, or other paper, known by such broker to be false, nor shall knowingly give, or solicit or procure the giving of, any false or misleading information or testimony in any matter pending before the Treasury Department or any representative thereof.

(p) Each customhouse broker shall exercise due diligence in answering correspondence, in making financial settlements, and in preparing, or assisting in the preparation and filing of, documents relating to any matter handled by him as a customhouse broker.

(q) No customhouse broker shall procure, or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

(r) No customhouse broker shall attempt to influence the conduct of any representative of the Treasury Department in any matter pending before the Treasury Department or any representative thereof by the use of a threat, false accusation, duress, or the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

(s) No customhouse broker shall refuse access to, conceal, remove, or destroy the whole or any part of any book, paper, or other record, relating to his transactions as a customhouse broker, which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Treasury Department or any representative thereof, or shall otherwise interfere, or attempt to interfere, with any proper and lawful efforts by such Department or representative to procure such information.

(t) Every licensed officer or member of a corporation, association, or partnership, which is licensed as a customhouse broker, shall exercise responsible supervision and control over the transaction of the customhouse business of such corporation, association, or partnership.

(u) A customhouse broker who is authorized by State law to transact business under a fictitious or trade name, and who proposes to so operate, shall submit evidence of his authority so to do and receive the approval of the Commissioner before he uses such name, and, when signing customs documents, shall affix his own name in conjunction with each signature of the fictitious or trade name.

§ 31.11 Revocation or suspension of licenses.

(a) Failure or refusal to comply with the duties, obligations, or requirements specified in § 31.10 or elsewhere in this part relating to customhouse brokers may be deemed grounds for suspension or revocation of the license of a customhouse broker, but such duties, obligations, or requirements are not to be considered as exclusive, as conduct not within the purview of any specification of this part may be deemed to be conduct warranting the suspension or revocation of a license under the authority of section 641(b), Tariff Act of 1930, as amended.[3]

(b) A proceeding for the revocation or suspension of a customhouse broker's license shall be governed by the following rules, subject to the Tariff Act of 1930, as amended, and the Administrative Procedure Act (5 U. S. C. 1001–1011):

(1) *Inability of collector to act.* In the case of sickness or necessary absence of the collector which prevents him from acting as provided for in this section, the assistant collector shall be deemed the chief officer of the customs referred to in amended section 641 (b), Tariff Act of 1930, and shall perform the duties of the collector prescribed in this section.

(2) *Investigation.* Every complaint or charge against any customhouse broker filed with a collector or other customs officer shall forthwith be forwarded for investigation to the supervising customs agent in charge of the district in which the broker is located. The supervising customs agent shall make his report and transmit it, with recommendation, to the collector of the appropriate district for such action as may be necessary, and shall also transmit a copy thereof to the Commissioner.

(3) *Abatement of charges.* If the collector determines that there is not sufficient evidence to prefer charges, he shall report all the facts to the Commissioner.

(4) *Institution of proceedings.* If the collector determines that there is sufficient evidence to prefer charges, he shall institute and conduct, subject to the applicable provisions of this section, a proceeding pursuant to amended section 641 (b), Tariff Act of 1930.

(5) *Drafting of notice.* The collector may request the Commissioner to assist in the preparation of the statement of charges to be served upon the accused broker. If the statement is prepared in the field, it shall be submitted to the Commissioner for review before being made the basis of action.

[3] See the first paragraph of section 641 (b) in footnote 1 to § 31.2.

(6) *Opportunity to avoid proceeding.* The collector, before a proceeding is instituted, shall give to the accused broker a preliminary notice in writing that:

(i) Transmits a copy of the proposed statement of charges, or a specification of the substance thereof;

(ii) Cites sections 5 (b) and 9 (b) of the Administrative Procedure Act (5 U. S. C. 1004 (b) and 1008 (b));

(iii) Calls upon the accused broker to show cause, if he so desires, why the proceeding should not be instituted;

(iv) Informs the accused broker that the notice affords him opportunity to make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(v) Invites any negotiation that the accused broker deems it desirable to enter into; and

(vi) Specifies a reasonable time for response to that notice: *Provided*, That, if prior to service of the statement of charges, the collector determines that the case is one where such preliminary notice would be improper and unnecessary, he shall incorporate his findings and his reasons therefor in the statement of charges, and the statement of charges shall be served without first giving such preliminary notice.

(7) *Service of statement of charges.* Notice of the charges, signed by the collector, shall be served upon the accused customhouse broker in the following manner:

(i) If an individual:

(*a*) By delivery to the accused broker personally, or

(*b*) By registered mail, with demand for a return card signed solely by the addressee.

(ii) If a corporation, association, or partnership:

(*a*) By delivery to any officer of such corporation or association, or member of such partnership, or

(*b*) By registered mail addressed to any such officer or member, with demand for a return card signed solely by the addressee: *Provided*, That, if a customhouse broker shall have signed and filed with the Commissioner his written consent to be served in some other manner, it shall be sufficient if service is made in that manner. Where the service is by registered mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

(8) *Content of statement of charges.* The notice of charges shall state the place where and time within which the accused may file in duplicate his verified answer, and shall contain or be accompanied by a statement of charges, which statement shall be signed by the collector, giving a plain and concise, but not necessarily detailed, description of the facts which it is claimed constitute grounds for suspension or revocation of license. A statement of charges which fairly informs the accused of the charges against him so that he is able to prepare his defense shall be deemed sufficient. Different means by which a purpose might have been accomplished or different intents with which acts might have been done so as to constitute grounds for suspension or revocation of license may be alleged in the statement of charges in a single count in the alternative. If, in order to prepare his defense, the accused desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may present a motion in writing to the collector asking that the statement or charges be made more specific, setting forth in such motion in what specific respect the statement of charges leaves him in doubt and describing the particular language of the statement of charges as to which additional information is needed. If in the opinion of the collector such information is reasonably necessary to enable the accused to prepare his defense, the collector shall furnish the accused with an amended statement of charges giving the needed information.

(9) *Service of other papers.* After notice of the charges has been duly served, all other papers in the case, including notice of the time and place of the hearing, shall be served by:

(i) Delivering the same to the accused personally if an individual; or if a corporation, association, or partnership, to any officer or member thereof; or

(ii) Leaving them at the office of the accused, or of such officer or member, with his clerk or with a person in charge thereof; or

(iii) Depositing them in a United States post office or post-office box, enclosed in a sealed envelope, plainly addressed to such accused, or to such member or officer, at the address under which the accused is licensed or at the last known address of the accused, or such member or officer.

(iv) When the accused, whether an individual, corporation, association, or partnership, is represented by an attorney, by service upon the attorney in the manner provided for in subdivision (i), (ii), or (iii) of this subparagraph for service on the accused personally.

(10) *Copies filed with Commissioner.* Copies of all papers in the case, including the notice of charges, and each notice of the time and place of any hearing, shall be sent promptly by the collector to the Commissioner.

(11) *Hearing.* The hearing shall be before the collector or other chief officer of the customs, who shall provide a competent reporter to make the record of the hearing. If a competent reporter is not available to the collector, he shall request the Commissioner to furnish one for the hearing or to permit the use of available appropriated funds to hire the services of a reporter. The Commissioner shall designate an officer to represent the Government at the hearing and to participate in the presentation of testimony. The collector may designate a member of his staff to assist in the proceedings. The accused or his attorney shall have the right to examine all exhibits introduced at the hearing. Pursuant to order of the collector giving due notice to the parties, depositions upon oral or written interrogatories may be taken by either party for use at the hearing before any officer duly authorized to administer oaths for general purposes or in customs matters.

(12) *Submittals.* After conclusion of the reception of the evidence, the collector shall by rule afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor as contemplated by section 8 (b) of the Administrative Procedure Act (5 U. S. C. 1007 (b)).

(13) *Decision by the collector.* After compliance with subparagraph (12) of this paragraph the collector shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The collector shall recommend to the Secretary the dismissal of the charges when in his opinion the charges have not been proved. The collector shall recommend to the Secretary that the license be suspended or revoked if in the opinion of the collector such action is warranted by the record. The collector's decision shall conform with the requirements of section 8 of the Administrative Procedure Act (5 U. S. C. 1007).

(14) *Decision by Secretary of the Treasury.* Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submittals as may then be required by section 8 (b) of the Administrative Procedure Act (5 U. S. C. 1007 (b)) and by the circumstances of the case. Thereafter the Secretary will make his decision.

(15) *Dismissal subject to new proceedings.* If the evidence at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, the Secretary may instruct the collector to file appropriate charges as a basis for new proceedings.

(16) *Immaterial mistakes.* The deciding officer shall disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or the ownership of any property, a failure to prove immaterial allegations in the description of the accused's conduct, or any other immaterial mistake in the statement of charges.

(17) *Proof, partial.* If the deciding officer finds that a part of the charges in the statement of charges is not sufficiently proved but that the residue thereof is so proved, he may base his decision on any facts established by the evidence which are grounds for suspension or revocation of the license and which are substantially charged by the said residue of the statement of charges.

(18) *Default.* No decision by default shall be made against an accused broker except upon evidence submitted on behalf of the Government.

(19) *Notice of suspension or revocation.* If the Secretary of the Treasury in the exercise of his discretion issues his order of suspension or revocation of the license of the accused, notice thereof shall be given by the Commissioner to the heads of all interested bureaus, offices, and divisions of the Treasury Department and to other interested departments and agencies of the Government in such manner as the Commissioner may determine. Except as pro-

vided for on appeal pursuant to section 641 (b), Tariff Act of 1930, as amended, such person will not thereafter be recognized as a customhouse broker during the period of suspension or revocation of his license.

(20) *Reopening.* Any customhouse broker who has been suspended or whose license has been revoked may make written application to the collector to have the order of suspension or revocation set aside or modified upon the ground (i) of newly discovered evidence, or (ii) that important evidence is now available which the applicant was unable to produce at the original hearing by the exercise of due diligence. Every such application shall be filed with the collector in duplicate. Such application must set forth specifically the precise character of the evidence to be relied upon in its support and shall state the reasons why the applicant was unable to produce it when the original charges were heard. If the collector after due consideration of the application shall deem it sufficiently meritorious to warrant a hearing, he shall so recommend to the Secretary, who may order the taking of additional testimony before the collector. The collector shall set a time and place for such hearing, and give due notice thereof to the applicant. The procedures governing the hearing and decision will be the same as those governing the original proceeding.

(21) *Notice of reinstatement.* In the event that the Secretary shall issue an order vacating or modifying the prior order of suspension or revocation, notice thereof shall be given to all those to whom notice of the original order of suspension or revocation was sent.

(22) *Saving provision.* Any proceeding for revocation or suspension of a license instituted prior to the effective date of this section shall be governed by the provisions of 31 CFR 11.10 in force at the time the proceeding was instituted: *Provided, however,* That if in the course of the proceeding there is taken any action that is authorized by the provisions of 31 CFR 11.10 governing the proceedings, but is not authorized by this section or any intervening amendment of 31 CFR 11.10, said action shall not constitute grounds for disturbing any order thereafter made in the proceeding, unless (i) it is shown that the action was in derogation of substantive rights and not merely procedural rights; and (ii) upon occurrence of the action the respondent made timely objection supported by his reasons and the objection was overruled: *Provided further,* That adherence may be had to this section pursuant to stipulation of the parties.

§ 31.12 Cancellation of licenses.

(a) Any corporation, association, or partnership which is licensed as a customhouse broker shall immediately notify the collector of each district in which it is licensed to transact business in the event it ceases to have at least two officers or members who are licensed individually as customhouse brokers and who exercise responsible supervision and control of the transaction of the customs business of the licensed organization. Collectors shall report to the Commissioner all cases wherein the required number of officers or members of any licensed corporation, association, or partnership have ceased to be qualified as customhouse brokers and the deficiency has continued for more than 60 days. The Commissioner, in such cases, will notify the corporation, association, or partnership that its license has been revoked in accordance with the requirement of section 641 (a), Tariff Act of 1930, as amended.[4] A copy of such notice shall be sent by the Commissioner to the collector.

(b) A customhouse broker's license may be canceled upon written application to the Commissioner and surrender of the license certificate, but before granting the request, inquiry shall be made by the Commissioner to ascertain whether it has been made in order to evade proceedings for revocation or suspension of the license, in which event the request shall be denied, unless the Secretary of the Treasury shall otherwise order.

§ 31.13 Licenses issued under prior acts of Congress.

Licenses issued under prior acts of Congress shall continue in force and effect in accordance with the provisions of section 641 (c), Tariff Act of 1930, as amended.[5]

§ 31.14 Appeal from the Secretary's decision.

An appeal from any order of the Secretary of the Treasury suspending or revoking a license may be taken by any customhouse broker in accordance with the provisions of section 641 (b), Tariff Act of 1930, as amended.[6]

§ 31.15 Records of the Commissioner.

(a) *Maintenance.* The Commissioner will keep such rosters and other records as may be necessary to perform his functions under this part.

(b) *Availability.* (1) The Commissioner, on request, will furnish information to any person as to whether any specified person is a customhouse broker.

(2) There are available to public inspection at the office of the Commissioner:

(i) The roster of all persons licensed as customhouse brokers pursuant to amended section 641, Tariff Act of 1930.

(ii) The final opinion or order in the adjudication of any case in which revocation of any license was sought, provided the licensee (or former licensee) expressly consents to publication.

(3) Matters of official record pertaining to the licensing of customhouse brokers, to persons properly and directly concerned.

(4) The official records pertaining to the revocation (or the proposed revocation) of any license, and to the investigation of any applicant therefor, constitute confidential information, except as provided for in paragraph (b) (2) and (3) of this section. These records are held confidential for these good causes:

(i) Publication is capable of injuring a licensee or former licensee without furthering the public interest.

(ii) Much of the information is elicited without the aid of the subpoena power on the assurance that the sources will be protected.

[4] See the third sentence of section 641 (a) in footnote 1 to § 31.2.

[5] See section 641 (c) in footnote 1 to § 31.2.

[6] See the second paragraph of section 641 (b) in footnote 1 to § 31.2.

PART 32—TRADE FAIRS

Sec.
- 32.1 Definitions.
- 32.2 Invoices; marking; bond.
- 32.3 Entry; appraisement; procedure.
- 32.4 Compliance, provisions of Plant Quarantine Act of 1912, and Federal Food, Drug and Cosmetic Act.
- 32.5 Detail of customs officers to protect revenue; expenses.
- 32.6 Disposition of articles entered for fairs; entry or transfer; destruction; abandonment, voluntary or mandatory; exportation.

AUTHORITY: §§ 32.1 to 32.6, inclusive, issued under R.S. 161, as amended, 251, secs. 623, 624, 46 Stat. 759, as amended, secs. 2–7, 73 Stat. 18, 19; 5 U.S.C. 22, 19 U.S.C. 66, 1623, 1624, 1751–1756.

§ 32.1 Definitions.

(a) *The Act.* The term "the Act" means the Trade Fair Act of 1959.[1]

(b) *Fair.* The term "fair" means a fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to the Trade Fair Act of 1959.

(c) *Fair operator.* The term "fair operator" means the party named by the Secretary of Commerce as the operator of the fair.

(d) *Port.* The term "port" means the port at which the fair is to be held or, if the fair is not to be held within the limits of a port, the port nearest to the location of the fair which is in the same customs collection district as the fair.

(e) *Collector.* The term "collector" means the collector, or deputy collector in charge, of the port as defined above.

(f) *Closing date of the fair.* The term "closing date of the fair" means the date designated by the Secretary of Commerce as the date when the fair will close (which date is subject to extension by the said Secretary), or, if the fair closes earlier, the date on which the fair actually closes.

(g) *Articles for exhibition.* The term "articles for exhibition" includes, but is not limited to, pamphlets, brochures, and explanatory material in reasonable quantities relating to exhibits at a fair.

§ 32.2 Invoices; marking; bond.

(a) Articles intended for exhibition under the provisions of the Act and valued at over $500 are subject to the usual special customs invoice requirements if of a class for which such invoices are required under the Tariff Act of 1930, as amended, and the regulations in this chapter. The invoices shall be on either customs Form 5515 or on foreign service Form 138 and shall contain the information prescribed under section 481 of the Tariff Act of 1930.

(b) The marking requirements of the Tariff Act of 1930, as amended, and the regulations promulgated thereunder will not apply to articles entered under the regulations in this part except when such articles are entered for consumption, in which case they shall be released from customs custody only upon a full compliance with the marking requirements of the tariff act, as amended, and the regulations promulgated thereunder.

(c) The packaging, marking, and labeling requirements of the internal-revenue laws and of the Federal Alcohol Administration Act will not apply to articles entered under the regulations in this part, except (1) that any article failing to comply with such requirements shall be conspicuously marked prior to exhibition "Not labeled or packaged as required by law—not for sale", and (2) when any such article is withdrawn for consumption, it shall be released from customs custody only upon a full compliance with such packaging, marking, and labeling requirements.

(d) The fair operator shall furnish for the approval of the collector a bond in the following form and in an amount to be determined by the collector:

TRADE FAIR BOND

Know all men by these presents, That ----------,

[1] SECTION 1. *Short title.* This Act may be cited as the "Trade Fair Act of 1959".

SEC. 2. *Designation of fairs.*

(a) *In general.* When the Secretary of Commerce is satisfied that the public interest in promoting trade will be served by allowance of the privileges provided for in this Act to any fair to be held in the United States, he shall so advise the Secretary of the Treasury, designating (1) the name of the fair, (2) the place where the fair will be held, (3) the date when the fair will open and the date when it will close, and (4) the name of the operator of the fair.

(b) *Definitions.* For purposes of this Act—

(1) The term "fair" means any fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to this section.

(2) The term "closing date" in the case of any fair means the date designated pursuant to subsection (a)(3) as the date when the fair will close, or (if earlier) the date on which such fair actually closes.

(c) *Regulations.* The Secretary of Commerce may prescribe such regulations as he deems necessary or appropriate to carry out the provisions of this section.

SEC. 3. *Entry of articles for fairs.* Any article imported or brought into the United States—

(1) Which is in continuous customs custody, covered by a customs exhibition bond, or in a foreign trade zone, and

(2) On which no duty or internal-revenue tax has been paid, may, without payment of any duty or internal-revenue tax, be entered under bond under this section for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair.

SEC. 4. *Disposition of articles entered for fairs.*

(a) *Entry under general customs laws, etc.* At any time before, or within 3 months after, the closing date of any fair, any article entered for such fair under section 3 may be sold or otherwise disposed of within, or may be removed from, the area of such fair. This subsection shall apply only if, before such disposition or removal—

(1) The article, after the entry for such fair under section 3, has been entered under any provision of the customs laws, and

(2) Any applicable duties and internal-revenue taxes are paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry as if such article were imported or brought into the United States at the time of such entry.

(b) *Disposition without payment of duty.* At any time before, or within 3 months after, the closing date of any fair, any article entered for such fair under section 3 may, without the payment of any duties or internal-revenue taxes, be—

(1) Exported,

(2) Transferred from such fair to other customs custody status or to a foreign-trade zone,

(3) Destroyed, or

(4) Abandoned to the Government.

(c) *Mandatory abandonment to Government.* If any article entered under section 3 is still in customs custody, under such entry, at the expiration of 3 months after the closing date of the fair for which it was entered, such article shall thereupon be regarded as an article abandoned to the Government and shall be subject to sale or destruction of the article and disposition of the proceeds of sale in the manner provided for in sections 491, 492, and 493 of the Tariff Act of 1930. For purposes of this subsection, any duties or internal-revenue taxes on the article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale.

(d) *Period for performance of certain acts.* Whenever any article entered under section 3 is transferred pursuant to subsection (b)(2) or entered under subsection (a), the period prescribed for the performance of any act required by the provision governing the status to which the article is transferred, or under which the article is entered, shall run from the date of such transfer or entry.

SEC. 5. *Marking, packaging, and labeling.*

(a) *Customs laws.* Articles entered under section 3 shall not be subject to any marking requirements of the customs laws, except that when any such article is entered for consumption under section 4 it shall not be released from customs custody until the marking requirements of the customs laws have been complied with.

(b) *Internal-revenue laws, etc.* Articles entered under section 3 shall not be subject to the packaging, marking, or labeling requirements of the internal-revenue laws or of the Federal Alcohol Administration Act, except that any such article failing to comply with such requirements—

(1) Shall be conspicuously marked prior to exhibition "Not labeled or packaged as required by law—not for sale", and

(2) When entered for consumption under section 4, shall not be released from customs custody until such packaging, marking, and labeling requirements have been complied with.

The application of the permit requirements of the Federal Alcohol Administration Act and the occupational taxes prescribed by chapter 51 of the Internal Revenue Code of 1954 shall be determined without regard to this Act.

SEC. 6. *Responsibilities of fair operator.*—(a) *Sole consignee and importer.* Each fair operator designated by the Secretary of Commerce pursuant to section 2 shall be deemed the sole consignee and importer of all articles entered under section 3 for the fair for which such operator has been designated.

(b) *Expenses of customs custody, etc.* The actual and necessary customs charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under section 3, together with the necessary charges for salaries of customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed to the United States by the operator of the fair for which they are entered. Receipts from such reimbursements shall be deposited as refunds to the appropriation from which paid, in the manner provided for in section 524 of the Tariff Act of 1930, as amended (19 U.S.C., sec. 1524).

SEC. 7. *Regulations.* The Secretary of the Treasury may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this Act (other than section 2 thereof). (P.L. 86–14; 73 Stat. 18)

of _____, as principal, and _____, of _____, and _____, of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars ($ _____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19__.

Whereas, pursuant to the provisions of the Trade Fair Act of 1959, Public Law 86–14, approved April 22, 1959, the Secretary of Commerce has approved an application by the principal hereon for the operation of a fair to be known as _____

(Insert exact name of fair)

at _____; and

(City and State)

Whereas, pursuant to the foregoing Act, imported articles may be imported or brought into the United States without the payment of duties, taxes, fees, charges, or exactions, for purposes of exhibition at the designated fair, or for use in constructing, installing, or maintaining foreign exhibits at such fair, under such regulations as the Secretary of the Treasury shall prescribe;

Now, therefore, the condition of this obligation is such, that—

(1) If the above-bounden principal shall comply in all respects with the provisions of the foregoing Act and the regulations issued by the Secretary relating to the exhibition or use of any article imported or brought into the United States for the designated fair; and shall receive for exhibition or use at such fair only such articles as may be permitted by law and regulations to be deposited therein; and shall safely keep or use the same therein all in accordance with the purposes authorized by law, and shall not remove, nor suffer to be removed, any article from the fair premises without lawful permit and without the presence of the customs officer in charge;

(2) And if the above-bounden principal shall pay to the collector of customs, when demanded by him, all unpaid duties, taxes, fees, charges, or exactions found legally due in connection with all articles entered or brought into the United States for the fair under the provisions of the designated Act and charged against this bond; and if in respect of any of the articles released from customs custody shall redeliver or cause to be redelivered to the order of the collector of customs, upon proper demand made at any time, any and all articles found not to comply with the law and regulations governing their admission into the commerce of the United States, and shall, after proper notice, mark, label, clean, fumigate, destroy, export, and do any and all other things in relation to said articles that may be required to secure the protection of the revenue and compliance with the Trade Fair Act referred to in the recital clause of this obligation and with all applicable customs and related laws; it being expressly understood and agreed that the liability under this bond shall extend to all cases where any of the articles entered for exhibition or use are lost or stolen, whether or not the said loss or theft shall result from the fault of said principal;

(3) And if the above-bounden principal shall pay monthly to the collector of customs, the actual and necessary customs charges for labor, services, and other expenses in connection with the entry, examination, appraisement, release, or custody of the imported articles, together with the compensation of the customs officers and employees on duty at or assigned to the fair premises in connection with the accounting for, custody of, and supervision over, the articles entered pursuant to the designated Act, including overtime compensation of customs officers and employees assigned to duty at night or on Sunday or a holiday;

(4) And if the above-bounden principal, when an article is entered from the Fair for exportation, shall cause the said article to be actually exported from the United States and not relanded therein, and if proof of exportation from the United States be furnished to the said collector in the form and within the time required by law or regulations, or within any lawful extension of such time; or in lieu of exportation, if the said article shall be destroyed or abandoned within the period fixed by law, or, in default thereof, if the obligors shall pay to the collector the full amount of duties, taxes, fees, charges, and exactions which may be found legally due on the said articles;

(5) And if the said principal shall deliver to the collector of customs all the documents and evidence as may be required in connection with the entry of the articles at the designated fair, and in the form and within the time required by law or regulations, or any lawful extensions thereof, and shall comply with all other requirements of law and regulations;

Then this obligation shall be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

_____
(Name) (Address)

_____ _____ [SEAL]
(Name) (Address) (Principal)

_____
(Name) (Address)

_____ _____ [SEAL]
(Name) (Address) (Surety)

_____
(Name) (Address)

_____ _____ [SEAL]
(Name) (Address) (Surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the ____(*)____ of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of the said corporation; that I know his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

_____ [SEAL]

*(May be executed by the secretary, assistant secretary, or other corporate officer.)

§ 32.3 Entry; appraisement; procedure.

(a) All entries under the regulations in this part shall be made at the port in the name of the fair operator which shall be deemed for customs purposes the sole consignee of the merchandise entered under the Act and which shall be held responsible to the Government for all duties and charges due the United States on account of such entries; but, in the case of merchandise entered under the general customs laws from a fair, the entry may be made in the name of any person duly authorized in writing by the fair operator to make such entry.

(b) Articles to be entered under the regulations in this part which arrive at ports other than "the port", as defined in this part, shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed in Part 18 of this chapter.

(c) Upon the arrival at the port of articles to be entered under the regulations in this part, they shall be entered on a special form of entry to read substantially as follows:

ENTRY FOR EXHIBITION

Entry No. _____

Entry at the port of _____ of articles consigned or transferred to _____ (Fair operator) under _____ I.T. No _____ ex S.S _____ from _____ on the _____ day of _____ 19____, for exhibition purposes under the Trade Fair Act of 1959.

Mark	Number	Package and contents	Quantity	Invoice value

_____ (Fair operator)

By _____

(d) Upon such entry being made, the collector shall issue a special permit for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in the discretion of the collector, to the appraiser's stores for examination and subsequent transfer to the buildings in which they are to be exhibited or used. The articles shall be tentatively appraised prior to their exhibition or use. No imported exhibit entered under the regulations in this part shall be removed from or used on the fair premises unless it is first entered in accordance with § 32.6(a), and no imported construction, installation, or maintenance material entered under these regulations shall be removed from the fair premises except in accordance with that section; and such exhibits and materials shall be kept segregated from domestic articles and from imported articles entered under the provisions of the general customs laws and released from customs custody thereunder.

(e) If for any reason articles imported or brought in for entry under the regulations in this part are not upon their arrival to be delivered immediately at a fair building, the fair operator should so indicate to the collector in writing, who will cause such articles to be placed in a bonded warehouse under a "general order permit" at the risk and expense of the fair operator. At any time within one year from the date such articles are imported or brought in, they may be entered under these regulations for a fair, or entered under the general tariff law, or for exportation. If not so entered within such period, they will be regarded as abandoned to the Government.

(f) Any article imported or brought into the United States which is in continuous customs custody, covered by a customs exhibition bond, or in a foreign-trade zone, on which no duty or internal-revenue tax has been paid, may be entered under bond under the regulations in this part for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair. In each case an entry under paragraph (c) of this section shall be filed, which entry shall supersede any previous entry. No bond other than that specified in § 32.2(d) shall be required. Articles which have been entered under section 308 of the Tariff Act of 1930, as amended, may not be entered under the regulations in this part for a fair.

§ 32.4 Compliance, provisions of Plant Quarantine Act of 1912, and Federal Food, Drug, and Cosmetic Act.

The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–164a, 167), shall not be permitted except under permits issued therefor by the Plant Quarantine Division of the Agriculture Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations. The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.), and regulations issued thereunder.

§ 32.5 Detail of customs officers to protect revenue; expense.

(a) The collector shall detail an officer to act as his representative at the fair and shall station inside the buildings as many additional customs officers and employees as may be necessary to properly protect the revenue.

(b) All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under the regulations in this part, together with the necessary charges for salaries of customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed by the fair operator to the Government, payment to be made monthly to the collector for deposit to the appropriation from which paid.

§ 32.6 Disposition of articles entered for fairs: entry or transfer; destruction; abandonment, voluntary or mandatory; exportation.

(a) Any article entered under the regulations in this part may be entered for consumption, for warehouse, or under any other provision of the customs laws, or for another fair, or may be transferred to other customs custody status or to a foreign-trade zone, or abandoned to the Government, or destroyed under customs supervision, or exported, at any time before, or within three months after, the closing date of the fair (including any extension of such closing date). Upon entry of such articles under a provision of the customs laws, or at the expiration of three months after the closing date of the fair (including any extension) in the case of articles not previously entered or transferred, they shall be appraised. Such appraisement shall be final in the absence of an appeal to reappraisement, as provided in section 501 of the Tariff Act of 1930, as amended. In the case of any article entered under a provision of the customs laws or for another fair, or transferred to other customs custody status or to a foreign-trade zone, the period prescribed for the performance of any act required by the provision governing the status under which the article is entered, or to which it is transferred, shall be computed from the date of such entry or transfer.

(b) At any time before, or within three months after, the closing date of the fair, including any extension, any article entered hereunder may be abandoned to the Government or destroyed under customs supervision, upon compliance with the regulations provided for in § 15.4 of this chapter, so far as applicable in the case of articles abandoned under section 563(b) of the Tariff Act of 1930, as amended, or destroyed under section 557(c) of the Tariff Act of 1930, as amended.

(c) Articles which are entered from a fair under the regulations in this part for entry at another fair under such regulations shall be retained in continuous customs custody.

(d) Any article entered hereunder from a foreign-trade zone status of "zone restricted merchandise" which is entered for consumption from a fair is subject to the provisions of paragraph 1615 (f) of the Tariff Act of 1930, as amended.

(e) Any article entered under the regulations in this part which has not been entered under a provision of the customs laws or for another fair, exported, or transferred to other customs custody status or to a foreign-trade zone, or which has not been abandoned to the Government or destroyed under customs supervision, before the expiration of three months after the close of the fair (including extension) shall be regarded as abandoned to the Government. Such article shall be subject to sale or destruction and the proceeds of sale disposed of in the manner provided in sections 491, 492, and 493, of the Tariff Act of 1930, as amended, and the regulations promulgated thereunder. Any duties or internal-revenue taxes on such article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale.

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

Sec.

54.2 Free entry of personal and household effects of certain classes of persons in the service of the United States, or of their families, and of evacuees.
54.3 Bona fide gifts from a member of the armed forces of the United States. [Amended]

ALUMINA

54.4 Alumina to be used in producing aluminum.

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING

54.5 Scope of exemptions; nondeposit of estimated duty.
54.6 Proof of intent; bond; proof of use; liquidation.

AUTHORITY: §§ 54.2 to 54.6 issued under sec. 624, 46 Stat. 759; 19 U.S.C. 1624. Statutory provisions interpreted or applied are cited to text in parentheses.

§ 54.2 Free entry of personal and household effects of certain classes of persons in the service of the United States, or of their families, and of evacuees.

(a) Under section 1 of the act of June 30, 1955, free entry may be accorded to the personal and household effects (with the limitation on alcoholic beverages and tobacco products prescribed by paragraph (c) of this section) of any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty at a post or station outside the customs territory of the United States, or of returning members of his family who have resided with him at such post or station, or of any person evacuated to the United States under Government orders or instructions, provided such effects are entered or withdrawn from warehouse, for consumption before July 1, 1960.

(b) The privilege does not apply to articles imported for sale, or for the account of any person not specified in the act, but the term "personal effects" as used in the statute is not confined to that class of articles described in paragraph 1798 (b) (1), Tariff Act of 1930, as amended (19 U. S. C. 1201, par. 1798 (b) (1)); nor is any period of use, such as is prescribed by paragraph 1632, Tariff Act of 1930 (19 U. S. C. 1201, par. 1632), applicable to household effects entered under this act.

(c) Not more than one wine gallon of alcoholic beverages and not more than one hundred cigars may be imported by any person under the act, except that no alcoholic beverages or cigars shall be accorded free entry under the act in addition to either of such products concurrently imported by the person in connection with his return to the United States and accorded free entry under the provisions of paragraph 1798 (c) (2) (A) or (B), Tariff Act of 1930, as amended (19 U. S. C. 1201, par. 1798 (c) (2) (A) or (B).

(d) Collectors of customs shall be satisfied in all cases that the effects imported free of duty under the act are the personal and household effects of the importer, particularly in those cases where the quantity of effects imported may appear to be an unreasonable quantity for personal or household use.

(e) Except as it may otherwise be deemed proper in accordance with the provisions of paragraph (f) or (g) of this section, no person, or member of his family, shall be allowed free entry of personal or household effects under the act where the person returns to the United States pursuant to Government orders or instructions which authorized him initially to proceed to a foreign post or station and return to the United States upon termination of temporary duty.

(f) The requirement of the act that the person "returns to the United States upon the termination of assignment to extended duty" shall be considered met upon the necessary proof being submitted that any one of the following cases is applicable:

(1) The person is returning from duty outside the customs territory of the United States of at least 140 days duration.

(2) The person is returning after the termination of an assignment to permanent duty at a post or station outside customs territory of the United States, regardless of the duration of the duty.

(3) The person returns to the United States under Government orders at any time after leaving the United States for extended duty of not less than 140 days outside the customs territory of the United States.

(4) The person, although not returning to the United States, is ordered by the Government agency involved from duty at a post or station outside the customs territory of the United States to duty at another post or station outside the customs territory of the United States necessitating the return to the United States of his personal and household effects.

(g) In any case where the limitation on the quantity of alcoholic beverages and tobacco products which may be exempted from duty and tax under paragraph (c) of this section, or the failure of the person to meet the requirement that he be returning from "extended duty", as explained in paragraph (f) of this section, will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement, as the case may be, if he deems such waiver warranted by the facts.

(h) All articles for which free entry is claimed under the act shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930. Collectors of customs shall accord free entry under the act upon the production of satisfactory proof that the articles are entitled to the benefits thereof. Customs Form 6061 may be used as a declaration and entry for articles granted exemption from duty and tax under the act when entry is made in the name of the person who is entitled to the benefits of the statute. Such declaration and entry shall be verified by the customs officer by an inspection of the owner's travel orders, unless other evidence is furnished which satisfies the collector that the effects were brought into the United States in connection with the person's return to the United States upon the termination of assignment to extended duty, as explained in paragraph (f) of this section, or in connection with the return of members of his family who have resided with him at such post or station, or in connection with the evacuation of a person to the United States under Government orders or instructions. If the collector accepts an inspection of the owner's travel orders as evidence that the effects were brought into the United States within the requirements of the act, the owner's travel orders shall be identified on the entry, which shall be handled like a free baggage declaration. The date of the person's last departure from the United States shall be indicated on the declaration and entry. The inward foreign manifest covering a shipment entered on customs Form 6061 shall be liquidated by noting thereon "Free on C. F. 6061, C. R. 54.2."

(i) No invoice shall be required for articles accorded free entry under the act.

(Secs. 481, 484, 498, 46 Stat. 719, 722, as amended, 728, sec. 1, 56 Stat. 461, as amended; 19 U. S. C. 1481, 1484, 1498, 50 U. S. C. App. 801)

§ 54.3 Bona fide gifts from a member of the armed forces of the United States.

(a) Under the act of December 5, 1942, as amended (50 U. S. C. App. 846,[1] 847), collectors of customs shall afford entry free of duty, internal-revenue taxes, and customs charges and exactions, except as provided below, to bona fide gifts from members of the Armed Forces of the United States on duty outside the continental limits of the United States to the extent of $50 in value in any shipment if the gifts were purchased in or through authorized agencies of the Armed Forces of the United States or in accordance with regulations prescribed by the major geographical commands of the United States Armed Forces. The privileges of free importation shall not apply to alcoholic beverages or to nontaxpaid American cigarettes exported under the provisions of section 5704 of the Internal Revenue Code.

(b) Satisfactory evidence as to the status of articles under the act of December 5, 1942, as amended (50 U.S.C. App. 846, 847), will have been filed in connection with the entry within the meaning of the statute if (1) the shipment is accompanied by a declaration of the donor and a duly designated officer of the armed forces executed substantially in the following form:

I certify that I am a member of the armed forces of the United States on duty outside the continental limits of the United States, that the following-described articles in this parcel are being sent as bona fide gifts from me, that they were purchased in accordance with regulations prescribed by the major geographical command of the armed forces from which sent, and that the amounts listed below are the actual amounts paid for such articles:

Item	Amount paid (Indicate type of currency)

_____
(Name)

_____
(Rank) (Serial No.)

_____
(Post of duty)

I certify that the above-described articles were purchased (1) in or through an authorized agency of the armed forces of the United States in accordance with regulations prescribed by the major geographical command of the United States armed forces from which sent, or (2) in accordance with regulations prescribed by the major geographical command of the United States armed forces from which sent (Strike out inapplicable clause).

_____ _____
(Date) (Name)

_____
(Rank) (Serial No.)

(Officer designated by local commander to execute the foregoing declaration in accordance with current rules and regulations

or if (2) such a declaration, adequately describing and identifying the articles, is subsequently filed at the customhouse, and the entry, if liquidated, can be reliquidated in accordance with section 514, Tariff Act of 1930, or section 520 (c) of the tariff act, as amended, and § 16.14 of this chapter.

(c) The declaration provided for in paragraph (b) (1) of this section shall be retained by customs officers, or, if affixed to the parcel in a manner which makes removal impracticable, shall be appropriately marked to prevent its further use.

(d) The entry requirements prescribed in the Tariff Act of 1930, as amended, and the Customs Regulations are applicable to articles entitled to free entry under the act of December 5, 1942, as amended (50 U. S. C. App. 846, 847). When any shipment is granted exemption from duty or tax under that act, the declaration of the donor and a duly designated officer of the armed forces required by paragraph (b) of this section may be treated as an entry therefor, to be supported by proper evidence of the right to make the entry. In such a case, except when affixed to the parcel in a manner whch makes removal impracticable (see paragraph (c) of this section), the entry shall be handled like a free baggage declaration. The inward foreign manifest covering a shipment passed free under this procedure shall be liquidated by noting thereon "Free on declaration, 50 U. S. C. App. 846, 847."

(e) Customs invoices, including the invoices provided for in § 9.1, of this chapter, shall not be required for shipments of bona fide gifts accorded free entry under the act of December 5, 1942, as amended (50 U.S.C. App. 846, 847), in whole or in part. If the certificate provided for in paragraph (b)(1) of this section stating the information as to the purchase price of each article listed accompanies the parcel, it shall be accepted as a compliance with the other requirements of § 9.1 of this chapter of the customs regulations.

(f) Free entry shall be accorded under the said act to articles entered, or withdrawn from warehouse, for consumption on and after December 6, 1942, and before July 1, 1959.

(Sec. 498, 46 Stat. 728, as amended, sec. 1, 56 Stat. 461, as amended, secs. 1, 2, 56 Stat. 1041, as amended; 19 U.S.C. 1498, 50 U.S.C. App. 801, 846, 847)

[1] Under such regulations as the Secretary of the Treasury shall prescribe so much of any shipment as does not exceed $50 in value, with such further limitation on the importation of alcoholic beverages and tobacco products as the Secretary may prescribe, shall be admitted into the United States or its Territories or possessions or the Commonwealth of Puerto Rico free of all customs duties, charges, or exactions, or internal-revenue taxes imposed upon or by reason of importation, if there is filed in connection with the entry satisfactory evidence that the articles for which free entry is claimed were purchased in or through authorized agencies of the Armed Forces of the United States or in accordance with regulations prescribed by the major geographical commands of the United States Armed Forces, and are bona fide gifts from a member of the Armed Forces of the United States on duty outside the continental limits of the United States. (50 U. S. C. App. 846.)

ALUMINA

§ 54.4 Alumina to be used in producing aluminum.

Pursuant to Public Law No. 725, 84th Congress,[2] alumina, when imported for use in producing aluminum and entered, or withdrawn from warehouse, for consumption during the two-year period beginning July 17, 1956, may be released without the deposit of duty in the same manner and subject to the same conditions as leather to be used in the manufacture of footwear (see § 10.84 of this chapter), except that the proof of use shall show that the alumina was used in the production of aluminum and the other documents required shall be modified accordingly.

(Interprets or applies 70 Stat. 554; 19 U.S.C. 1001, par. 6 note)

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURING BY MELTING

§ 54.5 Scope of exemptions; nondeposit of estimated duty.

(a) Articles in chief value of metal (except ores, concentrates, crude metal, and those metals and articles specifically excluded by law) imported to be used, and actually used, in remanufacture by melting shall be exempted from duty (including import tax), upon compliance with the provisions of § 54.6, if entered, or withdrawn from warehouse, for consumption during the effective period of the act of September 30, 1950 (sec. 2, 64 Stat. 1093) and the close of the last extension thereof.

(b) No deposit of estimated duty shall be required upon the entry, or withdrawal, for consumption of articles within the purview of paragraph (a) of this section if the collector is satisfied at the time of entry or withdrawal by written declaration of the importer that the merchandise was imported to be used in remanufacture by melting.

(Interprets or applies 56 Stat. 171, as amended, sec. 2, 64 Stat. 1093, as amended; 19 U.S.C. 1001 note)

§ 54.6 Proof of intent; bond; proof of use; liquidation.

Articles in chief value of metal, except ores, concentrates, crude metal, and those metals and articles specifically excluded by law, imported to be used in remanufacture by melting shall be admitted free of duty and import tax upon compliance with the following conditions:

(a) There shall be filed in connection with the entry[3] a statement of the importer that the articles are to be used in remanufacture by melting.

(b) If the articles are entered for consumption, there shall also be filed in connection with the entry a bond on customs Form 7551 or 7553. If the articles are entered for warehouse, the regular warehouse bond, customs Form 7555, shall be given and withdrawals shall be made on customs Form 7506. The liquidation of the consumption or warehouse entry shall be suspended pending proof of use or other disposition of the articles within the time prescribed by this section.

(c) Within 3 years from the date of entry (in the case of warehouse entries as well as consumption entries) the importer shall submit to the collector of customs at the port of entry a statement of the superintendent or manager of the plant at which the articles were used in remanufacture by melting, showing: (1) The name and location of the plant; (2) the entry number, date, and port of entry (if the person making the statement is not in possession of this information a reference to invoices, purchase orders, or other documents which will identify the shipment with the entry may be substituted); (3) the date or in-

[2] "That no duty shall be levied, collected, or payable under the Tariff Act of 1930, as amended, with respect to alumina, when imported for use in producing aluminum, under such regulations as the Secretary of the Treasury shall prescribe.

"Sec. 2. This Act shall be effective as to alumina entered, or withdrawn from warehouse, for consumption during the two-year period beginning on the day following the date of the enactment of this Act." (Pub. Law 725, 84th Cong.)

[3] "In connection with the entry" means any time prior to liquidation of the entry or within the period during which a valid reliquidation may be completed (§ 26.18 (c)). Therefore, a claim for free entry under section 2 of the act of March 13, 1942 (56 Stat. 171), as amended, supported by a statement of intent may be filed at any time prior to the liquidation of the entry or within the period during which a valid reliquidation may be completed.

clusive dates of the processing of the articles; and (4) a description of the processing in sufficient detail to enable the collector to determine whether such processing constituted a use in remanufacture by melting. In appropriate cases the processing of the articles covered by more than one entry may be included in one statement. The statement shall be based on adequate and carefully kept plant and import records, which shall be open at all times to customs agents or other employees of the Customs Service. The statement shall be in duplicate, one copy to be forwarded to the comptroller of customs.

(d) If satisfactory proof of use of the articles in remanufacture by melting is furnished within the prescribed time, the entry shall be liquidated without the assessment of duty on the articles covered by such proof. If such proof is not filed within 3 years from the date of entry, or the use does not warrant the classification claimed, the entry shall be liquidated without any exemption from duty and import tax under section 2 of the Act of March 13, 1942, as amended.[4]

(Interprets or applies 56 Stat. 171, as amended, sec. 2, 64 Stat. 1093, as amended; 19 U.S.C. 1001 note)

[4] The act of March 13, 1942 (Ch. 180; 56 Stat. 171), as amended, is hereby amended to read as follows:

* * * * * *

"SEC. 2. Articles of which metal is the component material of chief value, other than ores or concentrates or crude metal, imported to be used in remanufacture by melting, shall be accorded entry free of duty and import tax, upon submission of proof, under such regulations and within such time as the Secretary of the Treasury may prescribe, that they have been used in remanufacture by melting: *Provided, however,* That nothing contained in the provisions of this section shall be construed to limit or restrict the exemption granted by section 1 of this Act." (Sec. 1, 64 Stat. 1093)

PART 56—EXTENSIONS OF TIME PURSUANT TO PROCLAMATION OF THE PRESIDENT UNDER SECTION 318, TARIFF ACT OF 1930

MERCHANDISE IN GENERAL ORDER AND BONDED WAREHOUSES

Sec.

56.1 Periods of time prescribed in sections 491, 557, and 559, Tariff Act of 1930, as amended, extended; conditions.
56.2 Merchandise in general order.
56.3 Extension of bonds.

AUTHORITY: §§ 56.1 to 56.3 issued under sec. 624, 46 Stat. 759; 19 U. S. C. 1624. Interpret or apply sec. 318, 46 Stat. 696; 19 U. S. C. 1318. Proc. 2948, Oct. 12, 1951, 16 F. R. 10589; 3 CFR, 1951 Supp.

§ 56.1 Periods of time prescribed in sections 491, 557, and 559, Tariff Act of 1930, as amended, extended; conditions.

(a) Pursuant to authority contained in Proclamation No. 2948 (3 CFR, 1949–1953 Comp. p. 132), issued by the President on October 12, 1951, the 1-year period prescribed in section 491, Tariff Act of 1930, as amended, or the 3-year period prescribed in sections 557 and 559 of the said act, as amended, as the case may be, or any extension or further extension thereof heretofore granted under the authority of Proclamation No. 2599 of November 11, 1943 (3 CFR, 1943–1948 Comp. p. 13), as amended by Proclamation No. 2712 of December 3, 1946 (3 CFR, 1943–1948 Comp. p. 98), is hereby extended for 1 year in each case wherein such 1-year or 3-year period or any such previous extension thereof has expired on or after December 16, 1950, or shall have expired hereafter and during the continuance of the national emergency proclaimed on December 16, 1950 (Proclamation No. 2914, 3 CFR, 1949–1953 Comp. p. 99), and wherein the collector of customs concerned shall have been furnished with:

(1) If the merchandise is in general order, the written application of the consignee for extension and any evidence of identity required by § 56.2 (c); or

(2) If the merchandise is charged against an entry bond, the agreement of the principal and the sureties on the bond to remain bound under the terms and conditions of the bond to the same extent as if no extension had been granted, or a new bond with acceptable sureties to include the period of extension; or

(3) If the merchandise is charged against a carrier's bond, the agreement of the principal and the sureties on the bond to remain bound under the terms and conditions of the bond to the same extent as if no extension had been granted; and

(4) If the merchandise is in general order or charged against an entry bond, the certificate of the proprietor of the warehouse in which the merchandise is stored consenting to the extension, or certifying that all charges or amounts due or owing to the proprietor for the storage or handling of the merchandise up to the date of the beginning of the 1-year period of extension requested have been paid.

(b) Pursuant to the same authority and subject to the same conditions, such 1-year or 3-year period, as the case may be, is hereby extended for an additional period of 1 year each from and after the expiration of the immediately preceding extension if such expiration occurs during the continuance of the aforesaid national emergency.

§ 56.2 Merchandise in general order.

(a) Applications for extension or further extension of the 1-year period prescribed in section 491, Tariff Act of 1930, as amended, shall be made in each case by the consignee, in writing, and in substantially the following form, and shall be submitted, in duplicate, to the collector of customs at the port where the merchandise is stored:

_____, 19____
(Date)

THE COLLECTOR OF CUSTOMS
_____

SIR: In accordance with the provisions of Treasury Decision No. 52896, of December 28, 1951, application is hereby made for an extension (or further extension) of the 1-year period prescribed in section 491, Tariff Act of 1930, as amended, for 1 year in the case of the merchandise described below:

Quantity and description of the merchandise: _____
Name of port where imported: _____
Date of importation: _____
Present location of merchandise: _____
_____
(Address of warehouse where the merchandise is stored)

Additional information: _____
_____
_____
_____
_____
(Here state whether any previous extension has been allowed or application made for such extension and, if so, the details thereof)

_____
(Name of consignee)
By _____
(Name and title)

The undersigned hereby consents to the granting of the 1-year extension requested herein, or

The undersigned hereby certifies that all charges or amounts due or owing to the undersigned for storage or handling of the merchandise described above up to the date of the beginning of the 1-year period of extension requested herein have been paid.

_____
(Date)

_____
(Warehouse proprietor)
By _____
(Name and title)

(b) If the merchandise concerned is stored in the public store, all charges or amounts due or owing to the Government for the storage or handling of the merchandise up to the date of the beginning of the 1-year period of extension requested shall be paid as a condition precedent to the granting of the extension.

(c) In connection with each application for extension, there shall be furnished, as evidence that the applicant is the consignee, the bill of lading or a duplicate thereof or a carrier's certificate covering the merchandise, but it will not be necessary that such evidence be furnished in connection with applications for any subsequent extensions when made by the same applicant.

(d) If the application is approved by the collector, he shall endorse the fact and date of his approval on both copies of the application, retain the original as his record of the transaction, and return the duplicate to the consignee for his records. If the application is disapproved by the collector, he shall retain both copies of the application on file in his office and advise the applicant in writing as to the reasons for his disapproval.

§ 56.3 Extension of bonds.

(a) In each case in which the merchandise remains charged against a carrier's bond, customs Form 3587, and an extension or further extension of the 1-year period prescribed in section 491, Tariff Act of 1930, as amended, is desired, there shall be furnished to the collector of customs at the port where the charge against the bond was made the agreement of the principal and sureties on such bonds in the following form:

EXTENSION OF CARRIER'S BOND

Whereas, in Treasury Decision No. 52896, of December 28, 1951, issued pursuant to authority contained in the President's Proclamation No. 2948, dated October 12, 1951, the 1-year period prescribed in section 491, Tariff Act of 1930, as amended, was extended for 1 year and further extended for additional periods of 1 year each from and after the expiration of the immediately preceding extension, provided, among other things, that in each case in which the merchandise remains charged against a carrier's bond the principal on such bond shall agree to the extension and shall furnish the agreement of the sureties on the bond to remain bound under the terms and conditions of the bond to the same extent as if no extension had been granted, and

Whereas, the carrier's bond described below was furnished in connection with the entry for transportation in bond indicated and it is now desired to extend the liability under such bond for a period of 1 year from the date of maturity of the bond:[1]

Name of carrier: _____
Date of bond: _____
Date of approval: _____
Class and number of transportation in bond entry: _____
Dated: _____
Port where charge against bond was made: _____
Description of merchandise: _____
Date of importation: _____

Now, Therefore, This is to certify that _____, principal, and _____ and _____, sureties on the carrier's bond referred to above, hereby stipulate and agree that their liability under said bond[1] shall continue unchanged and in full force and effect to the same extent as if no extension had been granted for a period of 1 year from the date of maturity of the bond.[1]

Witness our hands and seals this _____ day of _____, 19____.

Signed, sealed and delivered in the presence of—

_____ (Name) _____ (Address)
_____ (Name) _____ (Address)
[SEAL] _____ (Principal)
_____ (Name) _____ (Address)
_____ (Name) _____ (Address)
[SEAL] _____ (Surety)
_____ (Name) _____ (Address)
_____ (Name) _____ (Address)
[SEAL] _____ (Surety)

[1] Here insert the words "as extended" if a previous extension has been allowed.

(b) In each case in which the merchandise is covered by a warehouse entry bond on customs Form 7555, and an extension or further extension of the 3-year period prescribed in sections 557 and 559, Tariff Act of 1930, as amended, is desired, the principal on the bond, in order to obtain the benefit of such extension, shall furnish to the collector of customs at the port where the bond is on file an agreement in the following form:

EXTENSION OF WAREHOUSE ENTRY BOND

Whereas, in Treasury Decision No. 52896, of December 28, 1951, issued pursuant to authority contained in the President's Proclamation No. 2948, dated October 12, 1951, the 3-year warehousing period for imported merchandise prescribed in sections 557 and 559, Tariff Act of 1930, as amended, was extended for 1 year and further extended for additional periods of 1 year each from and after the expiration of the immediately preceding extension, provided, among other things, that in each case the principal on the entry bond shall furnish the agreement of the sureties on the bond to remain bound under the terms and conditions of the bond to the same extent as if no extension had been granted, and

Whereas, the warehouse entry bond described below was furnished in connection with the warehouse entry indicated, and it is now desired to extend the liability under such bond for a period of 1 year from the date of maturity of the bond:[1]

Port of _____
Bond No. _____ dated _____
Warehouse entry No. _____
Description of merchandise _____
Date of importation _____,

Now, Therefore, This is to certify that _____, principal, and _____, and _____, sureties, on the warehouse entry bond referred to above, hereby stipulate and agree that their liability under said bond[1] shall continue unchanged and in full force and effect to the same extent as if no extension had been granted for a period of 1 year from the date of maturity of the bond.[1]

Witness our hands and seals this _____ day of _____, 19___.

Signed, sealed, and delivered in the presence of—

_____ (Name) _____ (Address)
[SEAL] _____ (Principal)
_____ (Name) _____ (address)
By _____ (Name and official title)
_____ (Name) _____ (Address)
[SEAL] _____ (Surety)
_____ (Name) _____ (address)
By _____ (Name and official title)
_____ (Name) _____ (Address)
[SEAL] _____ (Surety)
_____ (Name) _____ (address)
By _____ (Name and official title)

(c) If the principal on a warehouse entry bond desires to furnish a new bond to include the period of extension or further extension in lieu of furnishing an agreement in the form prescribed in paragraph (b) of this section, the new bond shall be furnished on customs Form 7555 but with the words "3 years" appearing in conditions (1) and (2) of the form changed to read "4 years" or "5 years," and so forth, as the case may require.

(d) In cases in which the merchandise concerned was entered for warehouse and charged against a General Term Bond for Entry of Merchandise, customs Form 7595, or against a Blanket Smelting and Refining Bond in the form prescribed in Treasury Decision 50267, as modified by Treasury Decision 52403, the agreement of the principal and sureties on the bond shall be furnished to the collector of customs in the following form:

EXTENSION OF GENERAL TERM BOND FOR ENTRY OF MERCHANDISE[1a]

Whereas, in Treasury Decision No. 52896, of December 28, 1951, issued pursuant to authority contained in the President's Proclamation No. 2948, dated October 12, 1951, the 3-year warehousing period for imported

[1a] Substitute the words "Blanket Smelting and Refining Bond" if the merchandise was charged against such a bond.

merchandise prescribed in sections 557 and 559, Tariff Act of 1930, as amended, was extended for 1 year and further extended for additional periods of 1 year each from and after the expiration of the immediately preceding extension, provided, among other things, that in each case the principal on the entry bond shall furnish the agreement of the sureties on the bond to remain bound under the terms and conditions of the bond to the same extent as if no extension had been granted, and

Whereas, the bond described below was furnished by _____
(Name of principal on the bond)
and accepted by the Government of the United States to cover, among other things, the entry of imported merchandise for warehouse or rewarehouse at the port(s) of _____, during the period beginning on _____, 19____, and ending on _____, 19____,[2]

General Term Bond for Entry of Merchandise [2a] in the sum of _____, executed by _____, as principal, and _____ and _____, as sureties, under date of _____, 19____, and approved by the Bureau of Customs under date of _____, 19____; and

Whereas, certain imported merchandise was entered for warehouse or rewarehouse at the ports and under the entries indicated below and such entries were charged against the bond described above:

Name of port	Entry No.	Date of Entry
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

and

Whereas, _____
(Name of principal on bond)
desires, as to such merchandise, to obtain an extension of the period during which it may remain in warehouse for 1 year from and after the expiration of the 3-year period prescribed in sections 557 and 559, Tariff Act of 1930, as amended, or to obtain a further extension for an additional period of 1 year from and after the expiration of any immediately preceding extension which may have been granted, and to continue the liability therefor under the bond for such 3-year period and to extend the liability under the bond to cover such extension or further extension of 1 year.

Now, Therefore, This is to certify that _____, principal, and _____, and _____,

sureties, on the bond described above, hereby stipulate and agree that, in consideration of the granting of an extension or further extension of 1 year of the 3-year period during which the merchandise may remain in warehouse, their liability under the bond as to such merchandise shall cover such 1-year extension or further extension, together with the original 3-year period.

Witness our hands and seals this_____ day of_____, 19____.

Signed, sealed and delivered in the presence of—

_____
(Name) (Address)

[SEAL] _____
(Principal)

_____
(Name) (Address)

By _____
(Name and official title)

_____
(Name) (Address)

[SEAL] _____
(Surety)

_____
(Name) (Address)

By _____
(Name and official title)

_____
(Name) (Address)

[SEAL] _____
(Surety)

_____
(Name) (Address)

By _____
(Name and official title)

A sufficient number of copies of this agreement shall be furnished to permit retention of the original in the Bureau and the filing of one copy at each of the ports where the entries involved were filed.

(e) There shall also be furnished with either of the agreements or the new bond required in paragraphs (b), (c), and (d) of this section a statement of the proprietor of the warehouse in which the merchandise concerned is stored, consenting to the extension or further extension covered by the agreement or new bond, or certifying that all charges or amounts due or owing to the proprietor for storage or handling of the merchandise concerned up to the date of the beginning of the 1-year period of extension or further extension covered by the agreement or new bond have been paid. Such statements shall not be required in cases in which the principal on the agreement or new bond is the proprietor of the warehouse in which the merchandise is stored.

[2] If the merchandise was charged against a Blanket Smelting and Refining Bond, delete the words "during the period beginning on _____, 19____, and ending on _____, 19____," and substitute therefor the words "on and after _____ 19____".

PART 57—REFUND OF IMPORT TAX ON MANUFACTURED SUGAR

Sec.
57.1 Refund of import tax.
57.2 Proof of claim.
57.3 Form of claim.
57.4 Transfer of custody of imported manufactured sugar.
57.5 Transfer of custody of articles manufactured from imported manufactured sugar.
57.6 Evidence of importation.
57.7 Period for filing claim.
57.8 Payment of Claim.

AUTHORITY: § 57.1 to 57.8 issued under R. S. 161, 251; 5 U. S. C. 22, 19 U. S. C. 66. Interpret or apply secs. 4501, 4502, 4504, 6418, 6511, 68A Stat. 533 as amended, 534 as amended, 535, as amended, 801 as amended, 808 as amended; 26 U. S. C. 4501, 4502, 4504, 6418, 6511.

§ 57.1 Refund of import tax.

Any person (individual, firm, corporation, or association) using any manufactured sugar, or article manufactured therefrom, with respect to which an import tax has been paid under section 4501(b), Internal Revenue Code of 1954,[1] as livestock feed, in the production of livestock feed, or for the distillation of alcohol, may file a claim under section 6418(a), Internal Revenue Code of 1954, as amended,[2] with any collector of customs for a refund of the amount of the tax paid.

§ 57.2 Proof of claim.

No claim for refund under I.R.C. section 6418(a), as amended, shall be allowed unless the claimant establishes to the satisfaction of the collector (a) that the tax with respect to the imported manufactured sugar upon which claim is based was actually paid; (b) the quantity, identity, and polariscopic test of the imported manufactured sugar upon which claim is based; (c) that the imported manufactured sugar, or article manufactured therefrom, was actually used as livestock feed, in the production of livestock feed, or for the distillation of alcohol; and (d) such other facts as may be necessary to determine the claimant's right to a refund.

§ 57.3 Form of claim.

Claim for refund shall be filed in duplicate and shall be in substantially the following form:

CLAIM FOR REFUND AND CERTIFICATE OF USE OF IMPORTED MANUFACTURED SUGAR

BUREAU OF CUSTOMS

Port of _____, 19____

Claim for Refund filed by _____, covering imported manufactured sugar, or article manufactured therefrom, described in particular below, which has been used _____;
(Name of Claimant) (State use)
in accordance with the provisions of section 6418 (a), Internal Revenue Code of 1954, as amended.

TAX-PAID MANUFACTURED SUGAR, OR ARTICLE MANUFACTURED THEREFROM, USED

Import Entry No.	Name of importer	Importing carrier	Where imported	Date imported	Marks	Description of sugar used	Quantity of sugar used	Rate of tax paid	Certificate of manufacture or certificate of delivery No.

Quantity and Description of Articles Produced, or Kind of Livestock Fed

_____

_____

I solemnly declare that the imported manufactured sugar, or manufacture thereof, described above was used by me between _____ 19____, and _____ 19____, at _____
(Dates of use)
_____
for the purpose set forth above; that the identification of the imported manufactured sugar, or article manufactured therefrom, shown above is in accordance with my records of importation, or the Certificate of Delivery as noted above, a copy of which is in my files as furnished by the importer, and according to said records, no part of the import taxes has been heretofore claimed or refunded by way of drawback or otherwise; and that a true record of all imported manufactured sugar, or manufactures thereof, used, is kept by me and is at all times open to the inspection of officers of the customs.

_____
(Claimant)

[1] *"Import tax.* In addition to any other tax or duty imposed by law, there is hereby imposed, under such regulations as the Secretary or his delegate shall prescribe, a tax upon articles imported or brought into the United States as follows:

"(1) On all manufactured sugar testing by the polariscope 92 sugar degrees, 0.465 cent per pound, and, for each additional sugar degree shown by the polariscopic test, 0.00875 cent per pound additional, and fractions of a degree in proportion;

"(2) On all manufactured sugar testing by the polariscope less than 92 sugar degrees, 0.5144 cent per pound of the total sugars therein;

"(3) On all articles composed in chief value of manufactured sugar, 0.5144 cent per pound of the total sugars therein." (26 U.S.C. 4501 (b))

[2] *"Use as livestock feed or for distillation of alcohol.* Upon the use of any manufactured sugar, or article manufactured therefrom, as livestock feed, or in the production of livestock feed, or for the distillation of alcohol, there shall be paid by the Secretary or his delegate to the person so using such manufactured sugar, or article manufactured therefrom, the amount of any tax paid under section 4501 with respect thereto." (26 U. S. C. 6418 (a))

§ 57.4 Transfer of custody of imported manufactured sugar.

When the imported sugar which is the basis of a claim for refund under I.R.C. section 6418(a), as amended, was not imported by the user thereof, transfer of custody of such sugar from the importer to the user, including transfers through any intermediate holders, shall be evidenced by filing with the collector at the port where the claim for refund is filed a certificate of delivery, in duplicate, on customs Form 7543, or official evidence of the existence of such a certificate filed at another port, fully describing the sugar delivered and tracing it from the importer to the user. Requirements in this respect shall be the same as those for drawback transactions, as set forth in § 22.15 of this chapter.

§ 57.5 Transfer of custody of articles manufactured from imported manufactured sugar.

(a) When imported manufactured sugar has passed through some process of manufacture before delivery to the ultimate user (claimant under I. R. C. section 6418 (a), as amended), a certificate shall be filed in duplicate on customs Form 7577 showing the particulars relative to the manufacture and delivery of the articles concerned. Procedures shall be the same as those for drawback transactions, as set forth in § 22.16 of this chapter.

(b) In order to preclude the payment of claims or refund to both the manufacturer of livestock feed and the feeder thereof, each manufacturer executing a certificate of manufacture and delivery shall state thereon that he has not filed and will not file a claim for refund of the import tax paid on the sugar contained in the products covered by the certificate.

§ 57.6 Evidence of importation.

If the imported manufactured sugar identified in the claim for refund or certificate of manufacture was not imported at a port within the customs collection district where the claim or certificate of manufacture is filed, a certificate of importation on customs Form 5265, or an extract therefrom on customs Form 5267, shall be obtained as evidence of importation of said sugar. The procedure to be followed in obtaining the certificate of importation or the extract therefrom is set forth in § 22.14 of this chapter.

§ 57.7 Period for filing claim.

No refund under I.R.C. section 6418(a), as amended, shall be allowed unless claim therefor is filed by the person entitled thereto (see § 57.1) within 2 years from the date the right to such refund accrued. Right to refund accrues as of the date the manufactured sugar, or article manufactured therefrom, is used for one of the purposes for which refund is allowable.

§ 57.8 Payment of claim.

(a) No refund shall be made until the import entries covering the manufactured sugar upon which claim is based have been liquidated, the liquidated duties have been paid, and such liquidation has been made final by operation of law or by acceptance in writing by the importer.

(b) Import entries, certificates of importation, and extracts from such certificates shall constitute the records from which the amount of import tax paid on the manufactured sugar shall be determined. In order to guard against errors in identification and overallowance, all sugar identified in certificates of manufacture and claims for refund which have been liquidated and all sugar covered by certificates of importation and extracts from such certificates shall be charged against the records of importation to which they respectively refer.

(c) The amount of the refund due having been ascertained, the collector shall certify such amount for payment to the person making the claim.

[SEAL] RALPH KELLY,
Commissioner of Customs.

Approved: December 15, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11793; Filed, Dec. 21, 1960; 8:45 a.m.]

VOL 25

DEC

Part II begins on page 13649

THE UNIVERSITY OF MICHIGAN
DEC 2[illegible] 1960

Pages 13619–13677

PART I

FEDERAL REGISTER

VOLUME 25 NUMBER 249

Washington, Friday, December 23, 1960

Contents

Agricultural Marketing Service

NOTICES:
Grundy County Auction Co.; deposting of stockyards 13641
San Joaquin Auction and Sales Yard; posted stockyards 13641

PROPOSED RULE MAKING:
Milk in Colorado Springs-Pueblo marketing area; notice of hearing on proposed amendments to tentative marketing agreement and order 13637

RULES AND REGULATIONS:
Carrots grown in South Texas; shipments limitation 13631
Raisins produced from grapes grown in California; monthly report of disposition of free tonnage raisins 13630

Agricultural Research Service

NOTICES:
Handling of anti-hog-cholera serum and hog-cholera virus; order selecting members and alternate members of control agency pursuant to marketing agreement and order 13641

Agriculture Department

See also Agricultural Marketing Service; Agricultural Research Service; Commodity Stabilization Service.

RULES AND REGULATIONS:
Importers of cotton; foreign quality arbitration 13621

Alien Property Office

NOTICES:
Schnewlin-Andreae, Veronica and Furth-Andreae Babel; amended notice of intention to return vested property 13642

Civil Aeronautics Board

NOTICES:
Proposed air star route; description 13643
Hearings, etc.:
Aerolineas Argentinas 13643
Aeronaves De Mexico, S.A. 13643
Aerovias Condor De Colombia, Ltda 13643
Northeast Airlines, Inc. 13643
Washington, D.C., Helicopter Service Case 13643

Coast Guard

NOTICES:
Kapok buoyant cushion; termination of approval 13640

RULES AND REGULATIONS:
Navigation requirements for Western rivers; moving a vessel from her dock or anchorage 13633

Commerce Department

See Federal Maritime Board.

Commodity Stabilization Service

RULES AND REGULATIONS:
Wheat; determination of county normal yields, 1961 marketing year 13621

Federal Aviation Agency

PROPOSED RULE MAKING:
Federal airways, associated control areas and reporting points; revocation and alteration 13637

RULES AND REGULATIONS:
Airworthiness directive; Bendix Scintilla Magnetos 13631

Federal Maritime Board

NOTICES:
Agreements filed for approval:
Kirsten, A., et al 13642
Trans-Pacific Passenger Conference 13642
Waterman Steamship Corp.; notice of application and hearing 13642

Federal Power Commission

RULES AND REGULATIONS:
Uniform system of accounts for Class D natural gas companies (*see* Part II of this issue) 13649

Fish and Wildlife Service

RULES AND REGULATIONS:
Sport fishing; Seney National Wildlife Refuge, Michigan 13634
United States standards for grades of frozen ocean-perch fillets and frozen Pacific ocean-perch fillets 13634

Food and Drug Administration

RULES AND REGULATIONS:
Food additives permitted in animal feed or animal feed supplements; zoalene in medicated feeds 13632
Tolerances and exemptions from tolerances for pesticide chemicals in or on raw agricultural commodities; tolerances for residues of:
Biphenyl 13631
DDT; correction 13632

Foreign Assets Control

NOTICES:
Hair of certain animals, cotton and silk waste and carpet wool; importation from countries not in authorized trade territory; applications for licenses 13640

Health, Education, and Welfare Department

See Food and Drug Administration.

Interior Department

See Fish and Wildlife Service; Land Management Bureau; Mines Bureau; Oil Import Administration.

Interstate Commerce Commission

NOTICES:
Fourth section applications for relief 13644
Motor carrier transfer proceedings 13645

(Continued on next page)

RULES AND REGULATIONS:
Chicago and North Western Railway Co.; authorization to operate over certain trackage of Chicago, Burlington and Quincy Railroad Co. 13633

Justice Department
See Alien Property Office.

Land Management Bureau
NOTICES:
California; small tract classification order 13640

RULES AND REGULATIONS:
Public land orders:
Arizona 13633
Idaho; correction 13633

Mines Bureau
NOTICES:
Research Director, Anthracite Research Center; redelegation of purchasing authority 13641

Oil Import Administration
RULES AND REGULATIONS:
Oil import; allocations of crude oil and unfinished oils—District V; correction 13632

Securities and Exchange Commission
NOTICES:
Attleboro Electric Co. et al.; notice of filing of application-declaration regarding merger of subsidiary companies 13643
PROPOSED RULE MAKING:
Application for registration as an investment adviser 13638
Delaying amendments 13638

Treasury Department
See Coast Guard; Foreign Assets Control.

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

7 CFR
11 13621
728 13621
989 13630
1032 13631
PROPOSED RULES:
994 13637

14 CFR
507 13631
PROPOSED RULES:
600 13637
601 13637

17 CFR
PROPOSED RULES:
230 13638
275 13638
279 13638

18 CFR
205 (*see* Part II of this issue) 13649

21 CFR
120 (2 documents) 13631, 13632
121 13632

32A CFR
OIA (Ch. X):
OI Reg 1 13632

33 CFR
96 13633

43 CFR
PUBLIC LAND ORDERS:
2217 (correction) 13633
2226 13633

49 CFR
95 13633

50 CFR
33 13634
269 13634

Now Available

Public Papers of the Presidents

Containing Public Messages, Speeches and Statements, Verbatim News Conferences

Volumes for the following years are now available:

1953	$6.75
1954	7.25
1955	6.75
1956	7.25
1957	6.75
1958	8.25
1959	7.00

Published by the Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

PART 11—SALES OF AGRICULTURAL COMMODITIES FOR FOREIGN CURRENCIES

Subpart A—Regulations Governing the Financing of Commercial Sales of Surplus Agricultural Commodities for Foreign Currencies

IMPORTERS OF COTTON; FOREIGN QUALITY ARBITRATION

Basis and purpose of amendment. Section 11.13(f) of the regulations sets forth the requirement that importers of cotton obtain foreign quality arbitration upon request by CCC. This section further provides that any costs of arbitration incurred by the importer pursuant to request for arbitration by CCC which are in excess of the award be refunded to the importer in foreign currency. The purpose of this amendment is to provide that such excess costs may at CCC's discretion be reimbursed in dollars.

Section 11.13(f) is amended to read as follows:

(f) An importer of cotton shall, if requested by CCC, obtain foreign quality arbitration under the specified market rules. If the contract provides for USDA Form A Certificates, CCC will not request such arbitration. The arbitration award may be appealed by the supplier or the importer upon request of CCC, under the applicable rules specified in the contract. If the costs paid by the importer for an arbitration or appeal requested by CCC are in excess of the award, CCC will authorize the refund of foreign currency, or at its discretion reimburse the importer in United States dollars, in an amount equal to such excess, upon submission to the Director, CSS Commodity Office, New Orleans, Louisiana, of documentation showing the amount of costs paid by the importer and the amount of the award. These provisions shall not alter the rights of the importer and supplier to effect adjustments by arbitration or otherwise in accordance with the provisions of the contract or customs of the trade for other than quality deficiencies, or for quality deficiencies if CCC does not request arbitration.

(Sec. 102, 63 Stat. 455, as amended, 69 Stat. 44; 7 U.S.C. 1702, E.O. 10560, 19 F.R. 5927, 3 CFR, 1954 Supp.)

Done at Washington, D.C., this 20th day of December 1960. Witness my hand and the seal of the Department of Agriculture.

[SEAL] E. T. BENSON,
Secretary of Agriculture.

[F.R. Doc. 60-11898; Filed, Dec. 22, 1960; 8:48 a.m.]

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 728—WHEAT

Subpart—1961 Marketing Year

DETERMINATION OF COUNTY NORMAL YIELDS

The regulations contained in § 728.1108 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, and govern the determination of county normal yields of wheat for 1961, including the appraisal of yields for years in the ten-year period used in determining county normal yields for which the data are not available, or in which there were no actual yields.

Prior to preparing the regulations in § 728.1108, public notice (25 F.R. 218) was given in accordance with the Administrative Procedure Act. No data, views, or recommendations pertaining to the regulations in § 728.1108 were submitted pursuant to such notice.

§ 728.1108 Determination of the county normal yields for the 1961 crop of wheat.

(a) A county normal yield shall be determined for each wheat-producing county except counties in States designated by the Secretary as being outside the commercial wheat-producing area. The county normal yield for 1961 shall be determined on the basis of the average of the yields per harvested acre of wheat for the county during the ten calendar years, 1950 through 1959, adjusted for abnormal weather conditions and trends in yields. In adjusting for abnormal weather conditions: (1) If the yield for the crop for any year of the ten-year period 1950 through 1959 is less than 75 per centum of the average of the remaining nine years, such year shall be eliminated in calculating the normal yield per acre; (2) if the yield for the crop for any year of the ten-year period is determined to be abnormally low due to abnormal weather conditions, and is 75 per centum or more of the average of the remaining nine years, such yield shall be adjusted by substituting therefor the average yield for the years remaining after the elimination of any of the annual yields required to be eliminated under the provisions of subparagraph (1) of this paragraph; (3)(i) if the yield for the crop for any year is determined to be abnormally high due to abnormal weather conditions, such yield shall be adjusted by substituting therefor 125 per centum of the average yield for the years remaining after the elimination of any of the annual yields required to be eliminated under the provisions of subparagraph (1) of this paragraph; (ii) if five or more years of the ten-year period are eliminated as required under the provisions of subparagraph (1) of this paragraph, and it is determined that the yield for any other year is abnormally high due to abnormally favorable weather conditions, and that the adjusted yield as determined under the provisions of subdivision (i) of subparagraph (3) of this paragraph is inappropriate because of the elimination of five or more years of the ten-year period, the yield for such year shall be adjusted by substituting therefor 128 per centum of the unadjusted ten-year average yield.

(b) The adjustment for trend in yields shall be made by averaging the ten-year average of the annual yields as adjusted for abnormal weather conditions as described above with the average of the annual yields for the five-year period, 1955–59 inclusive, adjusted for abnormal weather conditions as described above, giving equal weight to each. No adjustment for trend shall be made in those counties in which it is determined that due to abnormally unfavorable weather conditions it is impossible to determine if there has been any trend in yields for the county.

(c)(1) If for any year of the ten-year period 1950 through 1959 the yield data are not available, or there was no actual yield, the yield for such year shall be appraised, taking into consideration the yields for years for which data are available and the yield for such year in nearby or adjacent counties or crop reporting districts recognized by the Agricultural Marketing Service in which the production of wheat is similar.

(2) In those counties in which the production of wheat is partially on irrigated land, partially on summer fallow land, and partially on continuous cropping land, a normal yield computed in accordance with the method described above shall be determined for the land devoted to irrigation, summer fallow, and continuous cropping cultural practices, respectively. The normal yield for the land devoted to each of these practices shall be averaged, using for weights the latest data available as to the acreage devoted to each practice.

(d) County Normal Yields are as follows:

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre

ALABAMA

County	Normal yield	County	Normal yield
Autauga	20.4	Clarke	18.6
Baldwin	20.0	Clay	19.0
Barbour	18.8	Cleburne	20.2
Bibb	18.8	Coffee	18.7
Blount	21.6	Colbert	22.6
Bullock	18.8	Conecuh	20.1
Calhoun	20.3	Coosa	18.3
Chambers	19.8	Covington	20.4
Cherokee	21.0	Crenshaw	19.5
Chilton	20.3	Cullman	21.0

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

ALABAMA—Continued

County	Normal yield	County	Normal yield
Dale	18.9	Madison	22.7
Dallas	19.8	Marengo	19.0
De Kalb	22.5	Marion	21.1
Elmore	20.2	Marshall	21.2
Escambia	20.5	Mobile	19.7
Etowah	21.9	Monroe	19.6
Fayette	20.0	Montgomery	19.8
Franklin	21.6	Morgan	22.0
Geneva	19.4	Perry	19.4
Greene	19.0	Pickens	18.9
Hale	18.8	Pike	19.2
Henry	19.6	Randolph	18.5
Houston	19.9	Russell	18.5
Jackson	22.3	St. Clair	20.8
Jefferson	20.0	Shelby	20.0
Lamar	20.6	Sumter	19.2
Lauderdale	21.8	Talladega	19.1
Lawrence	22.4	Tallapoosa	18.5
Lee	19.5	Tuscaloosa	19.6
Limestone	21.6	Walker	20.2
Lowndes	19.5	Washington	18.5
Macon	19.0	Wilcox	19.7

ARIZONA

*Apache	17.0	*Mohave	15.0
*Cochise	22.0	Navajo	15.0
*Coconino	14.0	*Pima	23.6
*Gila	19.2	*Pinal	30.0
*Graham	21.0	*Santa Cruz	23.6
*Greenlee	24.7	*Yavapai	23.8
*Maricopa	37.1	*Yuma	34.8

ARKANSAS

Arkansas	20.6	Little River	17.6
Ashley	20.6	Logan	18.9
Baxter	17.8	Lonoke	19.4
Benton	19.5	Madison	18.2
Boone	18.4	Marion	15.2
Carroll	17.7	Miller	17.7
Chicot	20.7	Mississippi	28.2
Clark	15.0	Monroe	20.4
Clay	20.2	Montgomery	15.4
Cleburne	16.9	Newton	16.8
Conway	21.0	Ouachita	15.0
Craighead	21.1	Perry	17.4
Crawford	23.9	Phillips	22.6
Crittenden	27.8	Pike	15.0
Cross	23.9	Poinsett	24.1
Desha	26.0	Polk	14.8
Drew	17.9	Pope	21.4
Faulkner	21.3	Prairie	18.8
Franklin	23.7	Pulaski	22.5
Fulton	16.6	Randolph	18.8
Garland	14.4	St. Francis	25.3
Grant	15.5	Saline	15.8
Greene	16.8	Scott	21.1
Hempstead	17.2	Searcy	14.5
Hot Spring	16.1	Sebastian	20.5
Independence	20.0	Sevier	15.0
Izard	15.6	Sharp	17.0
Jackson	19.2	Stone	14.9
Jefferson	20.5	Van Buren	14.6
Johnson	21.5	Washington	18.8
Lafayette	18.1	White	17.8
Lawrence	18.0	Woodruff	21.7
Lee	23.6	Yell	19.7
Lincoln	20.8		

CALIFORNIA

*Alameda	23.2	*Los Angeles	9.9
*Alpine	30.0	*Madera	14.0
*Amador	23.2	*Marin	26.2
*Butte	24.5	*Mariposa	30.0
*Calaveras	18.4	*Mendocino	22.3
*Colusa	25.8	*Merced	27.0
*Contra Costa	23.5	*Modoc	19.3
*Fresno	38.8	*Mono	20.0
*Glenn	23.7	*Monterey	19.1
*Humboldt	27.4	*Napa	30.7
*Imperial	47.5	*Orange	17.6
*Inyo	26.5	*Placer	19.8
*Kern	17.0	*Plumas	18.3
*Kings	29.3	*Riverside	18.0
*Lake	25.6	*Sacramento	32.2
*Lassen	15.8	*San Benito	19.4

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

CALIFORNIA—Continued

County	Normal yield	County	Normal yield
*San Bernardino	26.7	*Siskiyou	20.0
*San Diego	21.8	*Solano	30.7
*San Joaquin	25.1	*Sonoma	20.6
*San Luis Obispo	16.9	*Stanislaus	26.7
*San Mateo	22.0	*Sutter	35.5
*Santa Barbara	19.6	*Tehama	18.8
*Santa Clara	23.4	*Trinity	20.0
*Shasta	13.7	*Tulare	21.4
*Sierra	17.9	*Tuolumne	19.8
		*Ventura	21.1
		*Yola	33.6
		*Yuba	21.0

COLORADO

*Adams	22.6	*La Plata	18.3
*Alamosa	23.6	*Larimer	25.0
*Arapahoe	20.6	*Las Animas	11.7
*Archuleta	19.1	*Lincoln	17.0
*Baca	13.0	*Logan	20.9
*Bent	15.5	*Mesa	22.5
*Boulder	25.8	*Moffat	17.2
*Chaffee	26.5	*Montezuma	16.0
*Cheyenne	16.5	*Montrose	24.6
*Conejos	24.0	*Morgan	18.3
*Costilla	25.8	*Otero	34.9
*Crowley	12.4	*Ouray	16.3
*Custer	14.1	*Park	14.5
*Delta	31.5	*Phillips	24.6
*Dolores	15.0	*Pitkin	21.8
*Douglas	22.7	*Prowers	15.4
*Eagle	38.5	*Pueblo	17.3
*Elbert	18.8	*Rio Blanco	20.4
*El Paso	16.2	*Rio Grande	28.3
*Fremont	16.5	*Routt	21.0
*Garfield	19.1	*Saguache	25.8
*Grand	18.4	*San Miguel	17.6
*Gunnison	18.0	*Sedgwick	27.6
*Huerfano	14.0	*Teller	16.0
*Jackson	17.7	*Washington	21.5
*Jefferson	26.7	*Weld	21.6
*Kiowa	12.9	*Yuma	22.5
*Kit Carson	17.3		

DELAWARE

Kent	24.4	Sussex	21.8
New Castle	28.6		

GEORGIA

Appling	17.4	De Kalb	19.0
Bacon	17.3	Dodge	15.7
Baker	17.2	Dooly	21.4
Baldwin	17.3	Dougherty	24.5
Banks	18.7	Douglas	17.6
Barrow	18.0	Early	24.5
Bartow	20.3	Effingham	19.5
Ben Hill	18.0	Elbert	19.8
Berrien	20.2	Emanuel	17.4
Bibb	21.5	Evans	19.4
Bleckley	16.0	Fannin	17.6
Brooks	19.4	Fayette	18.8
Bryan	18.6	Floyd	18.6
Bulloch	21.0	Forsyth	18.0
Burke	17.4	Franklin	19.4
Butts	19.5	Fulton	20.4
Calhoun	19.6	Gilmer	17.6
Candler	19.2	Glascock	18.0
Carroll	19.7	Gordon	17.6
Catoosa	18.5	Grady	23.3
Chatham	16.0	Greene	15.8
Chattooga	18.4	Gwinnett	18.4
Cherokee	19.9	Habersham	19.1
Clarke	20.0	Hall	17.0
Clay	16.6	Hancock	15.6
Clayton	17.3	Haralson	17.3
Cobb	17.9	Harris	17.6
Coffee	17.9	Hart	21.1
Colquitt	19.4	Heard	20.2
Columbia	15.4	Henry	19.4
Coweta	17.0	Houston	23.8
Crawford	21.0	Irwin	18.0
Crisp	20.5	Jackson	19.8
Dade	17.6	Jasper	17.9
Dawson	17.6	Jeff Davis	18.0
Decatur	17.0	Jefferson	19.9

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

GEORGIA—Continued

County	Normal yield	County	Normal yield
Jenkins	17.2	Schley	18.8
Johnson	15.7	Screven	19.0
Jones	16.4	Seminole	20.4
Lamar	19.4	Spalding	21.2
Laurens	18.2	Stephens	18.0
Lee	24.7	Stewart	19.4
Lincoln	16.8	Sumter	21.5
Lowndes	19.2	Talbot	19.2
Lumpkin	18.0	Taliaferro	14.4
McDuffie	16.1	Tattnall	17.6
Macon	20.6	Taylor	18.8
Madison	18.6	Telfair	18.0
Marion	17.6	Terrell	21.2
Meriwether	20.6	Thomas	18.4
Miller	19.1	Tift	20.0
Mitchell	21.1	Toombs	19.7
Monroe	18.9	Towns	19.0
Montgomery	17.9	Treutlen	15.6
Morgan	17.4	Troup	17.8
Murray	18.8	Turner	19.7
Newton	17.1	Twiggs	17.3
Oconee	18.9	Union	20.3
Oglethorpe	17.5	Upson	20.5
Paulding	17.0	Walker	20.0
Peach	22.5	Walton	19.1
Pickens	17.8	Warren	18.8
Pike	21.2	Washington	18.6
Polk	17.8	Webster	18.2
Pulaski	20.2	Wheeler	15.8
Putnam	17.2	White	18.4
Quitman	20.5	Whitfield	18.1
Rabun	18.2	Wilcox	18.9
Randolph	18.6	Wilkes	17.4
Richmond	16.1	Wilkinson	19.1
Rockdale	17.4	Worth	19.7

IDAHO

*Ada	44.9	*Gem	46.6
*Adams	32.3	*Gooding	50.6
*Bannock	23.7	*Idaho	35.5
*Bear Lake	20.0	*Jefferson	42.6
*Benewah	37.4	*Jerome	56.8
*Bingham	39.2	*Kootenai	30.5
*Blaine	35.1	*Latah	38.0
*Boise	30.6	*Lemhi	42.2
*Bonner	24.2	*Lewis	40.3
*Bonneville	29.0	*Lincoln	49.0
*Boundary	43.0	*Madison	31.7
*Butte	30.8	*Minidoka	51.4
*Camas	22.2	*Nez Perce	40.9
*Canyon	54.2	*Oneida	22.3
*Caribou	25.2	*Owyhee	56.1
*Cassia	35.3	*Payette	43.3
*Clark	18.9	*Power	20.8
*Clearwater	36.0	*Teton	24.4
*Custer	45.2	*Twin Falls	55.6
*Elmore	30.3	*Valley	26.0
*Franklin	26.5	*Washington	28.8
*Fremont	29.8		

ILLINOIS

Adams	30.0	Edwards	24.4
Alexander	22.5	Effingham	28.1
Bond	28.5	Fayette	27.3
Boone	30.9	Ford	31.4
Brown	28.5	Franklin	24.5
Bureau	32.2	Fulton	29.0
Calhoun	25.5	Gallatin	26.6
Carroll	29.7	Greene	31.6
Cass	30.8	Grundy	32.0
Champaign	33.8	Hamilton	22.9
Christian	32.9	Hancock	28.4
Clark	26.4	Hardin	24.8
Clay	23.7	Henderson	28.5
Clinton	27.0	Henry	31.8
Coles	29.8	Iroquois	33.4
Cook	32.8	Jackson	24.2
Crawford	24.7	Jasper	25.4
Cumberland	29.1	Jefferson	25.6
De Kalb	34.5	Jersey	28.6
De Witt	30.8	Jo Daviess	27.1
Douglas	36.7	Johnson	20.4
Du Page	35.4	Kane	35.2
Edgar	31.9	Kankakee	33.4

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

ILLINOIS—Continued

County	Normal yield	County	Normal yield
Kendall	34.4	Pike	28.2
Knox	30.9	Pope	23.6
Lake	32.6	Pulaski	23.8
La Salle	34.2	Putnam	32.2
Lawrence	25.4	Randolph	25.9
Lee	32.3	Richland	23.8
Livingston	31.6	Rock Island	25.5
Logan	32.3	St. Clair	30.0
McDonough	30.6	Saline	25.8
McHenry	31.5	Sangamon	32.8
McLean	33.6	Schuyler	30.5
Macon	35.7	Scott	30.0
Macoupin	32.8	Shelby	29.0
Madison	29.5	Stark	31.2
Marion	26.1	Stephenson	28.4
Marshall	32.9	Tazewell	30.6
Mason	29.2	Union	27.5
Massac	25.6	Vermilion	33.4
Menard	33.1	Wabash	26.1
Mercer	26.6	Warren	30.1
Monroe	28.2	Washington	28.0
Montgomery	30.3	Wayne	25.3
Morgan	33.8	White	26.1
Moultrie	32.9	Whiteside	30.7
Ogle	31.6	Will	33.0
Peoria	31.8	Williamson	22.6
Perry	24.2	Winnebago	29.7
Piatt	32.4	Woodford	30.4

INDIANA

Adams	26.2	Lawrence	24.9
Allen	28.6	Madison	33.0
Bartholomew	24.7	Marion	29.2
Benton	36.3	Marshall	29.4
Blackford	26.1	Martin	23.0
Boone	30.6	Miami	30.4
Brown	23.2	Monroe	25.6
Carroll	32.2	Montgomery	30.6
Cass	32.5	Morgan	27.8
Clark	21.9	Newton	33.4
Clay	24.6	Noble	29.6
Clinton	32.2	Ohio	22.4
Crawford	22.2	Orange	23.3
Daviess	28.0	Owen	22.1
Dearborn	22.1	Parke	29.8
Decatur	24.4	Perry	20.7
De Kalb	26.6	Pike	22.6
Delaware	30.8	Porter	21.4
Dubois	22.2	Posey	26.9
Elkhart	29.7	Pulaski	30.2
Fayette	23.2	Putnam	28.6
Floyd	23.4	Randolph	26.2
Fountain	30.1	Ripley	21.9
Franklin	21.9	Rush	24.6
Fulton	29.0	St. Joseph	30.6
Gibson	28.6	Scott	22.1
Grant	31.4	Shelby	24.8
Greene	23.4	Spencer	21.8
Hamilton	29.8	Starke	27.8
Hancock	30.2	Steuben	29.8
Harrison	22.0	Sullivan	27.4
Hendricks	30.4	Switzerland	23.3
Henry	28.0	Tippecanoe	33.4
Howard	33.6	Tipton	34.4
Huntington	28.2	Union	23.7
Jackson	22.4	Vanderburgh	25.0
Jasper	31.2	Vermillion	32.0
Jay	26.4	Vigo	27.0
Jefferson	22.5	Wabash	29.6
Jennings	20.8	Warren	34.2
Johnson	27.8	Warrick	25.9
Knox	29.3	Washington	24.9
Kosciusko	29.4	Wayne	24.5
Lagrange	30.2	Wells	28.6
Lake	31.2	White	32.2
La Porte	30.3	Whitley	28.8

IOWA

Adair	23.2	Boone	26.0
Adams	24.4	Bremer	24.3
Allamakee	26.8	Buchanan	24.2
Appanoose	23.9	Buena Vista	19.7
Audubon	24.7	Butler	26.9
Benton	26.9	Calhoun	25.8
Blackhawk	21.5	Carroll	23.9

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

IOWA—Continued

County	Normal yield	County	Normal yield
Cass	26.2	Louisa	28.2
Cedar	27.7	Lucas	20.1
Cerro Gordo	27.2	Lyon	24.2
Cherokee	25.5	Madison	25.5
Chickasaw	21.4	Mahaska	25.4
Clarke	22.8	Marion	25.8
Clay	28.6	Marshall	28.4
Clayton	26.6	Mills	28.7
Clinton	28.2	Mitchell	25.2
Crawford	26.4	Monona	23.6
Dallas	25.2	Monroe	19.9
Davis	22.4	Montgomery	27.9
Decatur	22.9	Muscatine	25.5
Delaware	31.1	O'Brien	21.1
Des Moines	29.8	Osceola	25.0
Dickinson	21.0	Page	27.8
Dubuque	25.0	Palo Alto	23.0
Emmet	22.4	Plymouth	26.8
Fayette	23.8	Pocahontas	23.3
Floyd	23.9	Polk	29.4
Franklin	28.6	Pottawattamie	27.0
Fremont	30.0	Poweshiek	26.5
Greene	22.9	Ringgold	22.4
Grundy	25.2	Sac	30.0
Guthrie	23.2	Scott	27.8
Hamilton	27.9	Shelby	25.2
Hancock	26.9	Sioux	26.6
Hardin	29.6	Story	29.0
Harrison	26.3	Tama	24.2
Henry	23.4	Taylor	21.7
Howard	25.1	Union	22.2
Humboldt	30.6	Van Buren	23.2
Ida	25.1	Wapello	23.7
Iowa	27.0	Warren	26.9
Jackson	24.1	Washington	25.6
Jasper	27.8	Wayne	21.8
Jefferson	21.8	Webster	28.3
Johnson	24.7	Winnebago	27.9
Jones	28.3	Winneshiek	23.0
Keokuk	22.6	Woodbury	23.0
Kossuth	28.4	Worth	25.4
Lee	26.6	Wright	26.5
Linn	23.9		

KANSAS

Allen	27.2	*Haskell	16.6
Anderson	28.6	*Hodgeman	14.8
Atchison	28.9	Jackson	29.0
*Barber	18.3	Jefferson	28.4
*Barton	17.8	*Jewell	18.6
Bourbon	23.2	Johnson	29.0
Brown	29.4	*Kearny	19.6
Butler	23.4	*Kingman	17.1
Chase	27.0	*Kiowa	16.7
Chautauqua	24.5	Labette	23.6
Cherokee	23.2	*Lane	19.2
*Cheyenne	24.6	Leavenworth	27.4
*Clark	17.4	*Lincoln	17.3
*Clay	21.1	Linn	24.4
*Cloud	17.8	*Logan	18.3
Coffey	27.5	Lyon	27.8
*Comanche	15.8	*McPherson	22.4
Cowley	24.1	*Marion	21.9
Crawford	24.8	Marshall	25.5
*Decatur	22.7	*Meade	16.3
*Dickinson	21.8	Miami	27.6
Doniphan	29.6	*Mitchell	19.3
Douglas	29.4	Montgomery	24.8
*Edwards	15.6	Morris	24.7
Elk	24.2	*Morton	15.5
*Ellis	17.0	Nemaha	28.2
*Ellsworth	18.3	Neosho	25.7
*Finney	18.3	*Ness	17.9
*Ford	16.6	*Norton	21.2
Franklin	27.8	Osage	29.4
Geary	26.9	*Osborne	18.0
*Gove	20.0	*Ottawa	21.4
*Graham	17.0	*Pawnee	17.8
*Grant	18.8	*Phillips	18.1
*Gray	15.4	Pottawatomie	27.2
*Greeley	19.7	*Pratt	17.2
Greenwood	24.9	*Rawlins	24.1
*Hamilton	17.0	*Reno	20.7
*Harper	20.1	*Republic	19.5
*Harvey	23.1	*Rice	19.1

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

KANSAS—Continued

County	Normal yield	County	Normal yield
Riley	25.6	*Stanton	19.6
*Rooks	16.9	*Stevens	16.3
*Rush	17.4	*Sumner	21.5
*Russell	16.6	*Thomas	22.6
*Saline	21.0	*Trego	17.9
*Scott	19.7	Wabaunsee	28.0
*Sedgwick	22.6	*Wallace	19.1
*Seward	16.0	*Washington	22.7
Shawnee	29.8	*Wichita	19.4
*Sheridan	20.2	Wilson	25.8
*Sherman	21.9	Woodson	25.6
*Smith	18.8	Wyandotte	29.9
*Stafford	16.1		

KENTUCKY

Adair	19.3	Jessamine	20.3
Allen	21.6	Kenton	19.7
Anderson	19.5	Knox	16.8
Ballard	20.8	Larue	20.2
Barren	20.7	Laurel	18.2
Bath	20.4	Lee	16.2
Boone	20.2	Lewis	18.9
Bourbon	22.1	Lincoln	19.6
Boyd	19.9	Livingston	24.4
Boyle	20.7	Logan	26.0
Bracken	22.5	Lyon	22.5
Breckenridge	21.1	McCracken	22.1
Bullitt	21.2	McLean	22.6
Butler	18.0	Madison	20.7
Caldwell	22.9	Marion	20.7
Calloway	21.9	Marshall	18.6
Campbell	20.3	Mason	21.2
Carlisle	21.4	Meade	21.5
Carroll	21.0	Mercer	20.1
Carter	19.2	Metcalfe	18.4
Casey	19.6	Monroe	18.6
Christian	24.6	Montgomery	20.8
Clark	22.2	Morgan	18.4
Clay	17.0	Muhlenberg	20.6
Clinton	19.7	Nelson	20.5
Crittenden	21.6	Nicholas	20.2
Cumberland	18.6	Ohio	20.6
Daviess	24.9	Oldham	22.8
Edmonson	18.0	Owen	20.9
Estill	17.2	Pendleton	20.1
Fayette	23.4	Powell	18.0
Fleming	20.9	Pulaski	19.4
Franklin	20.2	Robertson	19.6
Fulton	23.9	Rockcastle	19.7
Gallatin	22.2	Rowan	18.2
Garrard	19.2	Russell	19.1
Grant	20.6	Scott	22.2
Graves	22.2	Shelby	21.6
Grayson	19.2	Simpson	26.1
Green	19.1	Spencer	21.3
Greenup	18.5	Taylor	19.3
Hancock	22.4	Todd	25.9
Hardin	20.2	Trigg	24.6
Harrison	21.5	Trimble	21.0
Hart	18.4	Union	25.0
Henderson	25.5	Warren	23.6
Henry	20.8	Washington	20.1
Hickman	22.6	Wayne	20.6
Hopkins	20.8	Webster	22.8
Jackson	17.8	Wolfe	17.0
Jefferson	23.9	Woodford	22.4

MARYLAND

Allegany	19.8	Howard	25.0
Anne Arundel	17.2	Kent	27.3
Baltimore	25.5	Montgomery	25.9
Calvert	17.6	Prince Georges	17.7
Caroline	23.3	Queen Annes	23.5
Carroll	23.4	St. Marys	20.0
Cecil	26.8	Somerset	24.4
Charles	18.2	Talbot	25.3
Dorchester	24.9	Washington	24.2
Frederick	24.0	Wicomico	19.6
Garrett	23.8	Worcester	23.0
Harford	27.9		

MICHIGAN

Alcona	27.5	Alpena	28.6
Alger	23.6	Antrim	23.8
Allegan	28.3	Arenac	29.1

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

MICHIGAN—Continued

County	Normal yield	County	Normal yield
Baraga	21.0	Leelanau	28.8
Barry	28.0	Lenawee	30.2
Bay	32.6	Livingston	29.6
Benzie	18.5	Luce	16.0
Berrien	30.4	Mackinac	17.6
Branch	28.6	Macomb	28.2
Calhoun	30.2	Manistee	19.9
Cass	27.5	Marquette	21.7
Charlevoix	25.1	Mason	27.8
Cheboygan	24.8	Mecosta	28.4
Chippewa	19.2	Menominee	29.2
Clare	27.9	Midland	34.2
Clinton	30.6	Missaukee	26.8
Crawford	18.4	Monroe	29.6
Delta	23.9	Montcalm	30.0
Dickinson	25.8	Montmorency	24.2
Eaton	32.0	Muskegon	25.0
Emmet	23.6	Newaygo	27.0
Genesee	30.6	Oakland	30.2
Gladwin	29.0	Oceana	27.2
Gogebic	18.0	Ogemaw	27.0
Grand Traverse	23.8	Ontonagon	21.9
Gratiot	33.8	Osceola	23.9
Hillsdale	27.2	Oscoda	18.5
Houghton	19.9	Otsego	22.9
Huron	32.6	Ottawa	27.4
Ingham	31.0	Presque Isle	26.8
Ionia	30.0	Roscommon	19.8
Iosco	23.9	Saginaw	33.8
Iron	17.9	St. Clair	29.4
Isabella	31.6	St. Joseph	29.0
Jackson	29.2	Sanilac	30.8
Kalamazoo	30.1	Schoolcraft	23.4
Kalkaska	19.0	Shiawassee	31.5
Kent	27.0	Tuscola	36.2
Keweenaw	16.5	Van Buren	26.9
Lake	22.2	Washtenaw	29.1
Lapeer	32.2	Wayne	28.2
		Wexford	22.4

MINNESOTA

County	Normal yield	County	Normal yield
Aitkin	20.5	Martin	24.6
Anoka	19.6	Meeker	23.2
Becker	24.4	Mille Lacs	20.6
Beltrami	19.0	Morrison	19.2
Benton	19.3	Mower	26.3
Big Stone	18.7	Murray	21.9
Blue Earth	26.4	Nicollet	25.6
Brown	22.8	Nobles	20.2
Carlton	18.5	Norman	23.7
Carver	27.6	Olmsted	25.0
Cass	17.3	Otter Tail	21.2
Chippewa	21.0	Pennington	22.6
Chisago	20.0	Pine	18.4
Clay	24.5	Pipestone	19.8
Clearwater	21.8	Polk	25.0
Cottonwood	22.2	Pope	19.7
Crow Wing	18.5	Ramsey	20.0
Dakota	25.0	Red Lake	22.1
Dodge	26.6	Redwood	21.9
Douglas	21.1	Renville	23.0
Faribault	28.6	Rice	25.0
Fillmore	23.6	Rock	19.5
Freeborn	27.8	Roseau	20.6
Goodhue	23.7	St. Louis	23.2
Grant	21.1	Scott	26.8
Hennepin	24.1	Sherburne	20.6
Houston	22.5	Sibley	26.6
Hubbard	19.8	Stearns	20.0
Isanti	20.3	Steele	28.5
Itasca	18.8	Stevens	18.4
Jackson	22.2	Swift	18.8
Kanabec	21.8	Todd	20.2
Kandiyohi	20.1	Traverse	19.3
Kittson	20.9	Wabasha	22.0
Koochiching	18.3	Wadena	18.0
Lac qui Parle	17.9	Waseca	29.7
Lake of the Woods	20.4	Washington	22.2
Le Sueur	25.7	Watonwan	21.3
Lincoln	17.8	Wilkin	22.6
Lyon	19.3	Winona	22.9
McLeod	26.8	Wright	25.7
Mahnomen	23.8	Yellow Medicine	19.1
Marshall	24.4		

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

MISSISSIPPI

County	Normal yield	County	Normal yield
Adams	18.0	Leflore	26.3
Alcorn	21.0	Lincoln	18.0
Attala	23.0	Lowndes	21.6
Benton	24.5	Madison	21.8
Bolivar	25.4	Marshall	23.5
Calhoun	23.0	Monroe	21.0
Carroll	24.0	Montgomery	22.5
Chickasaw	22.5	Neshoba	22.0
Choctaw	23.0	Newton	20.0
Claiborne	22.5	Noxubee	23.5
Clarke	23.5	Oktibbeha	22.5
Clay	23.6	Panola	25.1
Coahoma	26.1	Pearl River	20.0
Copiah	21.0	Perry	20.0
Covington	20.0	Pike	18.0
De Soto	24.8	Pontotoc	21.0
Forrest	18.0	Prentiss	23.0
Franklin	18.0	Quitman	24.7
George	18.0	Rankin	22.0
Greene	18.0	Scott	20.0
Granada	22.0	Sharkey	25.1
Harrison	20.0	Simpson	20.0
Hinds	22.0	Smith	20.0
Holmes	23.6	Stone	18.0
Humphreys	25.4	Sunflower	24.3
Issaquena	25.4	Tallahatchie	25.3
Itawamba	23.0	Tate	22.5
Jackson	18.0	Tippah	22.5
Jasper	20.0	Tishomingo	22.0
Jefferson	21.0	Tunica	23.6
Jefferson Davis	18.0	Union	22.5
Jones	18.0	Warren	23.0
Kemper	24.8	Washington	25.8
Lafayette	21.5	Wayne	18.0
Lamar	18.0	Webster	20.5
Lauderdale	22.0	Wilkinson	18.0
Lawrence	18.0	Winston	23.0
Leake	23.0	Yalobusha	22.5
Lee	24.0	Yazoo	21.4

MISSOURI

County	Normal yield	County	Normal yield
Adair	31.4	Holt	27.8
Andrew	28.0	Howard	27.8
Atchison	27.0	Howell	17.3
Audrain	31.8	Iron	20.8
Barry	24.6	Jackson	30.4
Barton	24.0	Jasper	26.6
Bates	25.4	Jefferson	24.2
Benton	24.7	Johnson	27.6
Bollinger	19.3	Knox	26.6
Boone	27.4	Laclede	25.0
Buchanan	32.1	Lafayette	31.2
Butler	31.2	Lawrence	24.4
Caldwell	29.5	Lewis	25.6
Callaway	30.3	Lincoln	28.6
Camden	22.3	Linn	29.6
Cape Girardeau	29.0	Livingston	30.8
Carroll	31.3	McDonald	22.6
Carter	20.8	Macon	28.4
Cass	28.3	Madison	20.4
Cedar	23.3	Maries	22.5
Chariton	28.4	Marion	28.0
Christian	26.0	Mercer	29.7
Clark	24.2	Miller	25.9
Clay	32.2	Mississippi	28.1
Clinton	31.2	Moniteau	25.8
Cole	25.0	Monroe	27.3
Cooper	30.2	Montgomery	32.5
Crawford	23.2	Morgan	26.8
Dade	25.7	New Madrid	30.0
Dallas	21.9	Newton	25.3
Daviess	26.8	Nodaway	29.3
De Kalb	27.9	Oregon	20.3
Dent	20.1	Osage	26.4
Douglas	17.6	Ozark	19.1
Dunklin	30.0	Pemiscot	34.4
Franklin	28.9	Perry	27.1
Gasconade	27.0	Pettis	31.7
Gentry	29.6	Phelps	24.1
Greene	24.6	Pike	27.7
Grundy	23.8	Platte	33.3
Harrison	27.1	Polk	25.2
Henry	25.6	Pulaski	19.2
Hickory	21.0	Putnam	26.0
		Ralls	29.4

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

MISSOURI—Continued

County	Normal yield	County	Normal yield
Randolph	27.2	Shelby	27.1
Ray	32.9	Stoddard	25.9
Reynolds	21.4	Stone	24.6
Ripley	16.2	Sullivan	28.0
St. Charles	31.5	Taney	19.4
St. Clair	24.3	Texas	19.4
St. Francois	26.5	Vernon	21.6
St. Louis	27.1	Warren	29.9
Ste. Genevieve	29.0	Washington	26.3
Saline	29.3	Wayne	21.2
Schuyler	27.3	Webster	22.1
Scotland	23.6	Worth	25.0
Scott	27.6	Wright	22.4
Shannon	20.2		

MONTANA

County	Normal yield	County	Normal yield
*Beaverhead	23.6	*McCone	16.0
*Big Horn	24.5	*Madison	25.8
*Blaine	18.8	*Meagher	20.7
*Broadwater	23.5	*Mineral	24.6
*Carbon	23.1	*Missoula	28.1
*Carter	13.2	*Musselshell	19.6
*Cascade	26.6	*Park	22.6
*Chouteau	25.7	*Petroleum	14.0
*Custer	17.9	*Phillips	17.5
*Daniels	15.3	*Pondera	26.6
*Dawson	16.1	*Powder River	20.5
*Deer Lodge	20.2	*Powell	20.5
*Fallon	13.7	*Prairie	16.3
*Fergus	24.4	*Ravalli	32.8
*Flathead	30.5	*Richland	18.6
*Gallatin	27.2	*Roosevelt	16.8
*Garfield	13.1	*Rosebud	19.4
*Glacier	25.3	*Sanders	23.2
*Golden Valley	19.1	*Sheridan	16.9
*Granite	21.5	*Silver Bow	26.0
*Hill	22.9	*Stillwater	21.3
*Jefferson	21.1	*Sweet Grass	19.8
*Judith Basin	21.8	*Teton	26.4
*Lake	25.1	*Toole	24.8
*Lewis and Clark	21.9	*Treasure	23.9
*Liberty	24.1	*Valley	15.2
*Lincoln	21.1	*Wheatland	18.1
		*Wibaux	16.4
		*Yellowstone	23.5

NEBRASKA

County	Normal yield	County	Normal yield
*Adams	23.1	*Hall	20.9
*Antelope	20.1	*Hamilton	23.4
*Arthur	15.2	*Harlan	26.2
*Banner	28.2	*Hayes	23.1
*Blaine	10.1	*Hitchcock	23.6
*Boone	24.1	*Holt	16.2
*Box Butte	27.0	*Hooker	9.9
*Boyd	16.6	*Howard	22.2
*Brown	19.4	*Jefferson	23.7
*Buffalo	21.5	*Johnson	24.1
*Burt	30.3	*Kearney	22.7
*Butler	25.6	*Keith	27.0
*Cass	30.2	*Keya Paha	16.2
*Cedar	22.5	*Kimball	21.7
*Chase	24.0	*Knox	21.4
*Cherry	19.2	*Lancaster	24.9
*Cheyenne	27.4	*Lincoln	22.5
*Clay	22.6	*Logan	17.2
*Colfax	26.5	*Loup	20.1
*Cuming	29.8	*McPherson	19.2
*Custer	23.1	*Madison	24.2
*Dakota	25.7	*Merrick	22.2
*Dawes	26.7	*Morrill	25.2
*Dawson	23.7	*Nance	25.1
*Deuel	29.1	*Nemaha	26.0
*Dixon	22.9	*Nuckolls	22.5
*Dodge	28.3	*Otoe	27.4
*Douglas	29.6	*Pawnee	24.8
*Dundy	23.3	*Perkins	26.6
*Fillmore	22.5	*Phelps	26.7
*Franklin	22.7	*Pierce	24.2
*Frontier	25.4	*Platte	26.7
*Furnas	23.8	*Polk	26.5
*Gage	24.7	*Red Willow	24.4
*Garden	28.0	*Richardson	26.8
*Garfield	20.2	*Rock	16.2
*Gosper	27.0	*Saline	25.6
*Greeley	23.2	*Sarpy	31.3

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

NEBRASKA—Continued

County	Normal yield	County	Normal yield
*Saunders	26.1	*Thomas	10.9
*Scotts Bluff	27.7	*Thurston	25.8
*Seward	27.0	*Valley	23.6
*Sheridan	24.6	*Washington	31.2
*Sherman	20.0	*Wayne	26.2
*Sioux	22.7	*Webster	21.2
*Stanton	26.2	*Wheeler	18.4
*Thayer	23.6	*York	24.2

NEW JERSEY

County	Normal yield	County	Normal yield
Atlantic	20.9	Middlesex	30.4
Bergen	27.7	Monmouth	31.5
Burlington	30.0	Morris	26.9
Camden	25.1	Ocean	27.8
Cape May	21.0	Passaic	28.6
Cumberland	28.7	Salem	30.8
Essex	28.5	Somerset	26.4
Gloucester	25.4	Sussex	29.0
Hunterdon	28.0	Union	28.6
Mercer	31.7	Warren	29.2

NEW MEXICO

County	Normal yield	County	Normal yield
*Bernalillo	10.0	*Mora	10.4
*Catron	8.9	*Otero	15.0
*Chaves	23.1	*Quay	8.6
*Colfax	10.9	*Rio Arriba	11.3
*Curry	12.7	*Roosevelt	8.7
*De Baca	14.8	*Sandoval	11.5
*Dona Ana	27.0	*San Juan	21.0
*Eddy	27.2	*San Miguel	11.7
*Grant	29.4	*Santa Fe	7.4
*Guadalupe	8.5	*Sierra	21.5
*Harding	7.4	*Socorro	6.0
*Hidalgo	25.0	*Taos	16.4
*Lea	8.3	*Torrance	7.0
*Lincoln	7.3	*Union	10.0
*Luna	24.0	*Valencia	11.4
*McKinley	9.2		

NEW YORK

County	Normal yield	County	Normal yield
Albany	29.1	Oneida	34.3
Allegany	28.9	Onondaga	31.4
Broome	30.4	Ontario	33.4
Cattaraugus	30.0	Orange	28.6
Cayuga	33.4	Orleans	32.6
Chautauqua	28.8	Oswego	27.3
Chemung	30.3	Otsego	32.4
Chenango	30.9	Putnam	30.0
Clinton	25.0	Rensselaer	28.6
Columbia	30.6	Rockland	29.0
Cortland	31.3	St. Lawrence	24.8
Delaware	28.8	Saratoga	32.3
Dutchess	30.3	Schenectady	28.0
Erie	28.8	Schoharie	30.6
Essex	25.5	Schuyler	27.0
Franklin	25.5	Seneca	31.7
Fulton	27.8	Steuben	28.8
Genesee	32.5	Suffolk	33.8
Greene	28.0	Sullivan	29.4
Herkimer	29.4	Tioga	28.9
Jefferson	21.2	Tompkins	30.4
Lewis	28.0	Ulster	29.6
Livingston	32.7	Warren	25.5
Madison	33.0	Washington	30.5
Monroe	32.2	Wayne	29.6
Montgomery	28.0	Westchester	30.8
Nassau	27.4	Wyoming	31.6
Niagara	29.4	Yates	32.0

NORTH CAROLINA

County	Normal yield	County	Normal yield
Alamance	22.2	Carteret	23.2
Alexander	20.2	Caswell	22.1
Alleghany	24.3	Catawba	21.8
Anson	19.5	Chatham	22.8
Ashe	23.7	Cherokee	20.4
Avery	20.1	Chowan	24.0
Beaufort	24.4	Clay	18.2
Bertie	23.1	Cleveland	21.6
Bladen	21.9	Columbus	24.5
Brunswick	24.6	Craven	23.1
Buncombe	22.2	Cumberland	22.5
Burke	21.6	Currituck	25.8
Cabarrus	20.0	Davidson	23.2
Caldwell	20.6	Davie	21.9
Camden	24.1	Duplin	25.9

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

NORTH CAROLINA—Continued

County	Normal yield	County	Normal yield
Durham	22.6	Onslow	23.0
Edgecombe	26.2	Orange	22.4
Forsyth	23.0	Pamlico	25.8
Franklin	22.2	Pasquotank	28.2
Gaston	20.6	Pender	23.7
Gates	22.2	Perquimans	25.1
Graham	17.8	Person	22.0
Granville	23.0	Pitt	25.5
Greene	24.9	Polk	20.6
Guilford	22.6	Randolph	22.2
Halifax	21.6	Richmond	17.4
Harnett	24.2	Robeson	23.2
Haywood	21.0	Rockingham	23.2
Henderson	21.3	Rowan	22.8
Hertford	20.8	Rutherford	20.5
Hoke	21.6	Sampson	24.6
Hyde	24.3	Scotland	21.3
Iredell	21.4	Stanly	20.2
Jackson	19.5	Stokes	21.6
Johnston	25.3	Surry	23.4
Jones	24.0	Swain	20.0
Lee	24.7	Transylvania	20.9
Lenoir	27.0	Tyrrell	23.7
Lincoln	21.8	Union	21.4
McDowell	17.6	Vance	22.1
Macon	20.6	Wake	24.0
Madison	19.1	Warren	21.6
Martin	24.3	Washington	24.0
Mecklenburg	20.7	Watauga	23.3
Mitchell	19.2	Wayne	25.0
Montgomery	18.6	Wilkes	22.9
Moore	19.2	Wilson	28.1
Nash	27.0	Yadkin	23.4
New Hanover	22.4	Yancey	20.6
Northampton	21.7		

NORTH DAKOTA

County	Normal yield	County	Normal yield
*Adams	13.6	*McKenzie	15.9
*Barnes	20.3	*McLean	16.2
*Benson	16.6	*Mercer	14.7
*Billings	14.7	*Morton	13.2
*Bottineau	17.0	*Mountrail	15.4
*Bowman	13.9	*Nelson	19.6
*Burke	16.6	*Oliver	14.7
*Burleigh	15.4	*Pembina	23.6
*Cass	22.4	*Pierce	13.6
*Cavalier	21.9	*Ramsey	18.0
*Dickey	15.7	*Ransom	17.0
*Divide	15.2	*Renville	18.7
*Dunn	14.9	*Richland	18.5
*Eddy	15.4	*Rolette	16.3
*Emmons	12.8	*Sargent	18.3
*Foster	18.7	*Sheridan	14.0
*Golden Valley	16.4	*Sioux	13.2
*Grand Forks	25.0	*Slope	16.6
*Grant	13.6	*Stark	15.9
*Griggs	20.1	*Steele	23.1
*Hettinger	16.5	*Stutsman	17.0
*Kidder	13.4	*Towner	19.1
*La Moure	15.5	*Traill	25.1
*Logan	13.2	*Walsh	22.9
*McHenry	15.1	*Ward	18.9
*McIntosh	12.9	*Wells	17.3
		*Williams	15.7

OHIO

County	Normal yield	County	Normal yield
Adams	19.7	Defiance	26.6
Allen	29.2	Delaware	25.8
Ashland	26.8	Erie	30.4
Ashtabula	24.1	Fairfield	23.9
Athens	21.9	Fayette	25.4
Auglaize	28.1	Franklin	26.4
Belmont	25.7	Fulton	30.9
Brown	19.4	Gallia	21.6
Butler	23.4	Geauga	25.4
Carroll	27.2	Greene	26.2
Champaign	27.7	Guernsey	21.8
Clark	27.8	Hamilton	24.5
Clermont	21.3	Hancock	28.9
Clinton	23.6	Hardin	28.6
Columbiana	27.2	Harrison	27.4
Coshocton	24.4	Henry	30.5
Crawford	27.1	Highland	20.3
Cuyahoga	25.4	Hocking	19.8
Darke	26.2	Holmes	26.5

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

OHIO—Continued

County	Normal yield	County	Normal yield
Huron	29.2	Perry	22.0
Jackson	20.2	Pickaway	23.7
Jefferson	26.6	Pike	19.1
Knox	23.3	Portage	26.0
Lake	24.3	Preble	24.3
Lawrence	21.2	Putnam	28.7
Licking	24.1	Richland	26.1
Logan	26.6	Ross	21.9
Lorain	26.6	Sandusky	30.0
Lucas	31.8	Scioto	21.0
Madison	27.2	Seneca	28.2
Mahoning	26.8	Shelby	27.2
Marion	27.9	Stark	28.1
Medina	26.6	Summit	27.2
Meigs	20.2	Trumbull	25.2
Mercer	27.7	Tuscarawas	25.8
Miami	28.1	Union	26.2
Monroe	24.6	Van Wert	29.5
Montgomery	25.6	Vinton	19.8
Morgan	22.5	Warren	23.4
Morrow	24.8	Washington	22.4
Muskingum	23.0	Wayne	27.3
Noble	23.0	Williams	27.1
Ottawa	27.8	Wood	31.2
Paulding	26.0	Wyandot	28.0

OKLAHOMA

County	Normal yield	County	Normal yield
Adair	17.0	Le Flore	19.0
Alfalfa	18.7	Lincoln	17.9
Atoka	15.5	Logan	18.6
*Beaver	13.2	Love	15.3
Beckham	14.5	McClain	18.7
Blaine	16.9	McCurtain	15.0
Bryan	15.3	McIntosh	18.6
*Caddo	18.8	Major	17.5
Canadian	20.7	Marshall	16.0
Carter	15.9	Mayes	19.8
Cherokee	18.8	Murray	20.3
Choctaw	15.5	Muskogee	18.6
*Cimarron	13.6	Noble	18.3
Cleveland	19.7	Nowata	22.6
Coal	17.8	Okfuskee	17.1
Comanche	15.6	Oklahoma	19.1
Cotton	15.7	Okmulgee	17.9
Craig	22.6	Osage	21.8
Creek	16.2	Ottawa	23.6
*Custer	16.5	Pawnee	18.6
Delaware	22.6	Payne	17.7
*Dewey	14.8	Pittsburg	16.0
*Ellis	13.7	Pontotoc	17.8
Garfield	18.1	Pottawatomie	19.3
Garvin	20.2	Pushmataha	15.0
Grady	20.1	Roger Mills	14.5
Grant	20.1	Rogers	20.4
*Greer	14.3	Seminole	16.9
*Harmon	15.2	Sequoyah	20.6
*Harper	13.7	Stephens	17.0
Haskell	19.4	*Texas	14.7
Hughes	18.8	*Tillman	17.3
*Jackson	17.0	Tulsa	21.6
Jefferson	14.0	Wagoner	20.4
Johnston	17.3	Washington	22.3
Kay	23.1	*Washita	15.2
Kingfisher	18.5	*Woods	14.3
Kiowa	17.1	*Woodward	12.8
Latimer	15.0		

OREGON

County	Normal yield	County	Normal yield
*Baker	31.7	*Lane	24.6
*Benton	28.3	*Linn	25.8
*Clackamas	28.6	*Malheur	42.4
*Columbia	29.2	*Marion	29.6
*Crook	41.3	*Morrow	27.6
*Deschutes	37.5	*Multnomah	27.8
*Douglas	22.4	*Polk	30.4
*Gilliam	27.8	*Sherman	33.1
*Grant	25.0	*Umatilla	31.1
*Harney	19.5	*Union	36.7
*Hood River	33.5	*Wallowa	27.6
*Jackson	30.6	*Wasco	29.7
*Jefferson	32.7	*Washington	32.4
*Josephine	24.4	*Wheeler	21.4
*Klamath	24.9	*Yamhill	30.4
*Lake	27.1		

1961 Wheat Marketing Quota Program County Normal Yields in Bushels Per Acre—Con.

PENNSYLVANIA

County	Normal yield	County	Normal yield
Adams	23.8	Lackawanna	25.3
Allegheny	26.0	Lancaster	31.4
Armstrong	23.2	Lawrence	25.7
Beaver	26.4	Lebanon	29.0
Bedford	26.4	Lehigh	26.9
Berks	25.8	Luzerne	23.0
Blair	28.0	Lycoming	24.2
Bradford	24.4	McKean	23.8
Bucks	27.2	Mercer	25.0
Butler	25.8	Mifflin	27.2
Cambria	24.4	Monroe	25.2
Cameron	21.5	Montgomery	27.8
Carbon	24.0	Montour	22.2
Centre	26.6	Northampton	28.9
Chester	30.7	Northumberland	24.0
Clarion	23.1	Perry	25.5
Clearfield	22.8	Philadelphia	28.7
Clinton	26.0	Pike	22.7
Columbia	24.4	Potter	26.5
Crawford	23.6	Schuylkill	23.0
Cumberland	25.8	Snyder	24.0
Dauphin	24.5	Somerset	25.0
Delaware	30.7	Sullivan	23.4
Elk	23.1	Susquehanna	23.4
Erie	25.1	Tioga	24.3
Fayette	25.7	Union	26.1
Forest	21.2	Venango	24.9
Franklin	24.0	Warren	23.2
Fulton	22.4	Washington	26.6
Greene	23.5	Wayne	22.7
Huntingdon	25.3	Westmoreland	25.3
Indiana	22.5	Wyoming	24.3
Jefferson	23.6	York	27.8
Juniata	25.4		

SOUTH CAROLINA

County	Normal yield	County	Normal yield
Abbeville	17.7	Hampton	21.1
Aiken	17.2	Horry	25.5
Allendale	21.2	Jasper	19.4
Anderson	20.2	Kershaw	20.4
Bamberg	19.7	Lancaster	20.1
Barnwell	20.6	Laurens	21.0
Berkeley	21.2	Lee	23.0
Calhoun	22.4	Lexington	17.0
Charleston	21.0	McCormick	18.7
Cherokee	20.0	Marion	24.3
Chester	21.0	Marlboro	21.9
Chesterfield	19.0	Newberry	20.8
Clarendon	22.3	Oconee	19.0
Colleton	20.5	Orangeburg	19.4
Darlington	21.4	Pickens	18.0
Dillon	23.1	Richland	19.6
Dorchester	23.1	Saluda	19.8
Edgefield	20.5	Spartanburg	19.4
Fairfield	20.5	Sumter	22.6
Florence	22.8	Union	17.4
Georgetown	22.8	Williamsburg	21.8
Greenville	19.8	York	20.2
Greenwood	20.0		

SOUTH DAKOTA

County	Normal yield	County	Normal yield
*Aurora	17.7	*Grant	16.6
*Beadle	14.4	*Gregory	20.5
*Bennett	26.7	*Haakon	20.0
*Bon Homme	14.2	*Hamlin	15.2
*Brookings	16.3	*Hand	15.1
*Brown	15.7	*Hanson	17.6
*Brule	17.4	*Hardin	12.9
*Buffalo	13.0	*Hughes	14.5
*Butte	17.5	*Hutchinson	14.5
*Campbell	14.5	*Hyde	13.2
*Charles Mix	19.8	*Jackson	23.2
*Clark	13.4	*Jerauld	12.8
*Clay	18.6	*Jones	15.2
*Codington	14.2	*Kingsbury	14.1
*Corson	12.5	*Lake	16.8
*Custer	13.2	*Lawrence	15.2
*Davison	15.6	*Lincoln	15.5
*Day	15.6	*Lyman	17.8
*Deuel	15.6	*McCook	16.3
*Dewey	15.6	*McPherson	13.3
*Douglas	15.5	*Marshall	16.6
*Edmunds	13.2	*Meade	15.0
*Fall River	22.1	*Mellette	20.0
*Faulk	14.7	*Miner	12.8
*Minnehaha	16.0	*Sully	17.4
*Moody	18.4	*Todd	21.1
*Pennington	17.9	*Tripp	18.6
*Perkins	12.4	*Turner	14.8
*Potter	15.9	*Union	18.4
*Roberts	15.4	*Walworth	14.3
*Sanborn	12.5	*Washabaugh	25.0
*Shannon	27.9	*Yankton	15.7
*Spink	14.1	*Ziebach	15.0
*Stanley	17.8		

TENNESSEE

County	Normal yield	County	Normal yield
Anderson	20.4	Lake	26.0
Bedford	16.4	Lauderdale	19.4
Benton	16.6	Lawrence	18.4
Bledsoe	16.9	Lewis	14.8
Blount	20.8	Lincoln	15.8
Bradley	17.0	Loudon	18.3
Campbell	19.0	McMinn	17.6
Cannon	15.6	McNairy	18.6
Carroll	18.2	Macon	17.0
Carter	22.2	Madison	17.6
Cheatham	21.2	Marion	17.6
Chester	17.9	Marshall	16.4
Claiborne	18.6	Maury	19.6
Clay	15.8	Meigs	17.4
Cocke	18.9	Monroe	18.8
Coffee	19.4	Montgomery	22.6
Crockett	16.4	Moore	18.0
Cumberland	16.4	Morgan	18.4
Davidson	18.5	Obion	20.4
Decatur	15.4	Overton	18.2
DeKalb	15.2	Perry	13.5
Dickson	16.6	Pickett	17.6
Dyer	21.0	Polk	17.0
Fayette	18.0	Putnam	18.1
Fentress	17.8	Rhea	16.8
Franklin	22.1	Roane	16.4
Gibson	16.0	Robertson	22.8
Giles	16.2	Rutherford	17.3
Grainger	20.4	Sequatchie	17.8
Greene	19.0	Sevier	19.0
Grundy	23.5	Shelby	20.0
Hamblen	22.8	Smith	13.8
Hamilton	18.2	Stewart	17.8
Hancock	17.9	Sullivan	21.0
Hardeman	17.5	Sumner	17.6
Hardin	15.6	Tipton	21.4
Hawkins	20.0	Trousdale	15.8
Haywood	17.9	Unicoi	22.4
Henderson	17.4	Union	17.4
Henry	19.3	Van Buren	19.0
Hickman	15.8	Warren	19.0
Houston	20.0	Washington	21.6
Humphreys	16.6	Wayne	14.8
Jackson	12.8	Weakley	18.2
Jefferson	21.5	White	19.6
Johnson	20.6	Williamson	17.4
Knox	20.4	Wilson	15.6

TEXAS

County	Normal yield	County	Normal yield
Anderson	13.0	Cherokee	12.0
Archer	11.4	*Childress	15.6
*Armstrong	13.8	Clay	13.4
Atascosa	11.1	*Cochran	15.1
Austin	11.0	Coke	11.5
*Bailey	20.8	Coleman	10.2
Bandera	11.9	Collin	18.5
Bastrop	11.5	*Collingsworth	15.8
Baylor	14.2	Comal	11.0
Bee	11.0	Comanche	11.0
Bell	12.6	Concho	12.3
Bexar	12.2	Cooke	18.5
Blanco	14.9	Coryell	12.2
Borden	14.3	*Cottle	14.0
Bosque	13.2	*Crosby	17.3
Bowie	12.0	Culberson	20.0
Brazos	12.0	*Dallam	14.2
*Briscoe	15.4	Dallas	18.0
Brown	11.4	*Dawson	11.1
Burnet	12.0	*Deaf Smith	18.9
Caldwell	10.0	Delta	15.6
Callahan	10.4	Denton	19.1
*Carson	14.7	De Witt	10.0
*Castro	23.5	*Dickens	13.2
*Donley	11.3	Mason	12.9
Eastland	10.8	Maverick	13.0
Edwards	10.0	Medina	12.2
Ellis	16.3	Menard	11.2
Erath	10.6	Midland	9.0
Falls	12.7	Milam	12.4
Fannin	16.9	Mills	14.0
Fayette	10.0	Mitchell	12.4
Fisher	11.1	Montague	13.9
*Floyd	19.1	Moore	15.0
*Foard	16.1	Morris	13.0
Freestone	12.0	Motley	15.1
Frio	13.0	Nacogdoches	12.0
*Gaines	12.4	Navarro	15.4
*Garza	12.4	Nolan	11.3
Gillespie	16.1	Ochiltree	13.3
Glasscock	11.4	Oldham	12.5
Goliad	10.0	Palo Pinto	10.8
Gonzales	10.5	Panola	11.0
*Gray	13.1	*Parmer	21.1
Grayson	17.6	Pecos	15.0
Guadalupe	10.4	*Potter	14.0
*Hale	22.8	Presidio	25.0
*Hall	14.5	Rains	13.0
Hamilton	11.2	*Randall	15.4
*Hansford	14.0	Real	10.0
*Hardeman	15.9	Red River	13.5
Harris	10.0	Reeves	15.0
*Hartley	14.3	*Roberts	14.4
*Haskell	12.3	Robertson	12.0
Hays	11.3	Rockwall	15.6
*Hemphill	14.3	Runnels	9.7
Henderson	12.0	San Saba	13.3
Hill	15.5	Schleicher	12.6
Hockley	19.7	Scurry	13.5
Hood	10.9	Shackelford	11.5
Hopkins	13.0	Shelby	12.0
Houston	13.0	*Sherman	13.7
Howard	13.5	Smith	12.0
Hudspeth	20.0	Somervell	11.1
Hunt	16.6	Stephens	11.4
Hutchinson	16.0	Sterling	9.0
Irion	9.0	Stonewall	11.1
Jack	10.5	Sutton	9.0
Jackson	11.6	*Swisher	22.2
Jeff Davis	19.0	Tarrant	14.6
Johnson	15.4	Taylor	10.3
Jones	11.3	*Terry	15.0
Karnes	12.1	Throckmorton	13.6
Kaufman	16.1	Titus	12.0
Kendall	16.4	Tom Green	11.0
Kent	12.1	Travis	10.6
Kerr	13.9	Uvalde	12.7
Kimble	10.8	Van Zandt	12.6
King	12.3	Victoria	12.0
Knox	14.0	Walker	12.0
Lamar	17.2	Waller	11.0
Lamb	23.2	Ward	15.0
Lampasas	13.0	Wharton	12.0
Leon	12.5	*Wheeler	12.5
Limestone	12.6	*Wichita	16.1
Lipscomb	13.1	*Wilbarger	16.8
Live Oak	11.0	Williamson	12.2
Llano	11.0	Wilson	12.0
Lubbock	20.2	Wise	15.2
Lynn	16.8	Wood	12.0
McCulloch	13.7	*Yoakum	12.7
McLennan	14.0	Young	11.2
Madison	12.0	Zavala	13.3
Martin	11.7		

UTAH

County	Normal yield	County	Normal yield
*Beaver	28.6	*Kane	17.1
*Box Elder	18.6	*Millard	15.7
*Cache	23.3	*Morgan	25.4
*Carbon	29.4	*Piute	25.4
*Daggett	33.0	*Rich	18.9
*Davis	43.3	*Salt Lake	23.9
*Duchesne	26.0	*San Juan	14.6
*Emery	24.8	*Sanpete	22.3
*Garfield	19.8	*Sevier	39.3
*Grand	17.4	*Summit	29.9
*Iron	16.4	*Tooele	15.2
*Juab	15.6	*Uintah	28.0
*Utah	24.2	*Wayne	31.2
*Wasatch	35.7	*Weber	39.8
*Washington	14.8		

VIRGINIA

County	Normal yield	County	Normal yield
Accomac	23.8	Lunenburg	24.4
Albermarle	24.5	Madison	25.2
Alleghany	20.5	Mathews	22.6
Amelia	23.0	Mecklenburg	23.6
Amherst	20.2	Middlesex	23.8
Appomattox	22.8	Montgomery	22.6
Augusta	25.0	Nansemond	26.0
Bath	21.0	Nelson	20.2
Bedford	22.3	New Kent	23.4
Bland	21.8	Newport News	22.0
Botetourt	22.6	Norfolk	27.4
Brunswick	23.6	Northampton	24.4
Buchanan	19.3	Northumberland	26.3
Buckingham	22.8	Nottoway	25.2
Campbell	22.0	Orange	25.2
Caroline	23.7	Page	24.0
Carroll	21.0	Patrick	22.9
Charles City	25.8	Pittsylvania	23.6
Charlotte	24.4	Powhatan	23.3
Chesterfield	22.8	Prince Edward	23.6
Clarke	25.0	Prince George	22.4
Craig	23.3	Prince William	25.0
Culpepper	25.2	Princess Anne	25.6
Cumberland	22.5	Pulaski	23.2
Dickenson	19.6	Rappahannock	23.2
Dinwiddie	23.8	Richmond	25.8
Essex	22.9	Roanoke	25.2
Fairfax	25.2	Rockbridge	22.0
Fauquier	24.0	Rockingham	24.0
Floyd	23.1	Russell	21.8
Fluvanna	22.9	Scott	20.6
Franklin	24.0	Shenandoah	25.3
Frederick	23.0	Smyth	22.1
Giles	20.6	Southampton	23.8
Gloucester	21.4	Spotsylvania	23.0
Goochland	23.1	Stafford	23.2
Grayson	19.6	Surry	23.0
Greene	20.6	Sussex	23.4
Greensville	22.0	Tazewell	21.2
Halifax	23.6	Warren	23.7
Hampton	22.5	Washington	22.0
Hanover	23.0	Westmoreland	26.8
Henrico	24.6	Wise	19.8
Henry	21.6	Wythe	22.0
Highland	21.6	York	22.2
Isle of Wight	23.7		
James City	24.1		
King and Queen	21.8		
King George	24.4		
King William	24.2		
Lancaster	23.6		
Lee	20.4		
Loudoun	25.8		
Louisa	23.6		

WASHINGTON

County	Normal yield	County	Normal yield
*Adams	25.7	*Klickitat	24.7
*Asotin	26.2	*Lewis	34.0
*Benton	22.3	*Lincoln	38.2
*Chelan	21.2	*Okanogan	21.2
*Clallam	45.0	*Pend Oreille	24.1
*Clark	25.5	*Pierce	30.4
*Columbia	35.8	*San Juan	36.3
*Cowlitz	30.2	*Skagit	43.0
*Douglas	22.2	*Skamania	19.8
*Ferry	27.7	*Snohomish	38.0
*Franklin	24.9	*Spokane	33.8
*Garfield	38.3	*Stevens	32.4
*Grant	27.4	*Thurston	29.2
*Grays Harbor	29.8	*Walla Walla	39.0
*Island	46.7	*Whatcom	39.8
*Jefferson	40.7	*Whitman	41.4
*Kittitas	39.5	*Yakima	39.7

WEST VIRGINIA

County	Normal yield	County	Normal yield
Barbour	22.5	Cabell	19.0
Berkley	22.6	Calhoun	19.8
Boone	19.5	Clay	20.3
Braxton	21.5	Doddridge	23.1
Brooke	25.6	Fayette	21.7
Gilmer	21.4	Ohio	24.0
Grant	23.6	Pendleton	22.2
Greenbrier	24.0	Pleasants	24.0
Hampshire	24.4	Pocohontas	24.1
Hancock	25.7	Preston	23.6
Hardy	23.5	Putnam	21.2
Harrison	23.9	Raleigh	20.0
Jackson	21.4	Randolph	25.0
Jefferson	23.0	Ritchie	20.9
Kanawha	20.2	Roane	20.2
Lewis	23.7	Summers	21.9
Lincoln	19.2	Taylor	22.9
Marion	23.4	Tucker	23.9
Marshall	22.6	Tyler	21.3
Mason	22.8	Upshur	22.8
Mercer	23.2	Wayne	19.4
Mineral	23.4	Webster	19.8
Monongalia	24.4	Wetzel	21.6
Monroe	23.2	Wirt	24.4
Morgan	20.4	Wood	21.9
Nicholas	23.6	Wyoming	18.8

WISCONSIN

County	Normal yield	County	Normal yield
Adams	18.5	Marathon	24.0
Ashland	17.4	Marinette	22.6
Barron	22.0	Marquette	20.0
Bayfield	18.2	Milwaukee	29.0
Brown	26.9	Monroe	23.6
Buffalo	23.6	Oconto	24.8
Burnett	18.0	Oneida	20.6
Calumet	29.0	Outagamie	28.0
Chippewa	19.5	Ozaukee	29.8
Clark	23.7	Pepin	22.1
Columbia	26.5	Pierce	21.8
Crawford	24.2	Polk	19.3
Dane	28.3	Portage	19.0
Dodge	29.5	Price	20.0
Door	26.0	Racine	30.6
Douglas	17.0	Richland	24.8
Dunn	20.6	Rock	27.8
Eau Claire	21.4	Rusk	17.1
Florence	17.8	St. Croix	20.9
Fon du Lac	30.2	Sauk	25.0
Forest	19.0	Sawyer	16.9
Grant	26.2	Shawano	25.5
Green	26.6	Sheboygan	29.8
Green Lake	23.5	Taylor	20.9
Iowa	25.9	Trempealeau	22.8
Iron	18.3	Vernon	25.2
Jackson	22.0	Vilas	19.6
Jefferson	29.4	Walworth	30.0
Juneau	20.6	Washburn	17.6
Kenosha	30.2	Washington	30.2
Kewaunee	28.1	Waukesha	28.4
La Crosse	23.7	Waupaca	21.6
Lafayette	26.2	Waushara	20.2
Langlade	24.0	Winnebago	28.4
Lincoln	22.1	Wood	22.6
Manitowac	28.3		

WYOMING

County	Normal yield	County	Normal yield
*Albany	9.6	*Natrona	21.2
*Big Horn	33.5	*Niobrara	18.6
*Campbell	16.4	*Park	36.2
*Carbon	13.2	*Platte	20.1
*Converse	16.8	*Sheridan	21.7
*Crook	18.7	*Sublette	18.2
*Fremont	34.4	*Sweetwater	21.8
*Goshen	19.9	*Teton	27.8
*Hot Springs	29.4	*Uinta	23.2
*Johnson	16.7	*Washakie	31.5
*Laramie	20.6	*Weston	18.8
*Lincoln	16.1		

*Indicates counties having special wheat cultural practices. See table below.

(Sec. 375, 52 Stat. 66; 7 U.S.C. 1375. Interprets or applies sec. 301, 52 Stat. 38, as amended; 7 U.S.C. 1301)

Issued at Washington, D.C., this 16th day of December 1960.

WALTER C. BERGER,
Administrator,
Commodity Stabilization Service.

Normal Yields of Wheat for Special Cultural Practices

ARIZONA

County	Irrigated	Summer fallow	Continuous cropping
Apache	30.0		17.0
Cochise	22.0		
Coconino	30.0		14.0
Gila	19.2		
Graham	21.0		
Greenlee	24.7		
Maricopa	37.1		
Mohave	30.0		15.0
Navajo	30.0		15.0
Pima	23.6		
Pinal	30.0		
Santa Cruz	23.6		
Yavapai	23.8		
Yuma	34.8		

CALIFORNIA

County	Irrigated	Summer fallow	Continuous cropping
Alameda		24.8	23.2
Alpine			30.0
Amador			23.2
Butte		23.6	26.6
Calveras			18.4
Colusa		24.8	28.0
Contra Costa		24.5	23.5
Fresno	43.2	15.2	11.4
Glenn		23.9	23.5
Humboldt			27.4
Imperial	47.5		
Inyo			26.5
Kern	28.3	13.0	7.1
Kings	29.3		
Lake			25.6
Lassen	20.2	15.6	16.1
Los Angeles	26.2	9.0	6.4
Madera	29.5	14.8	10.0
Marin			26.2
Mariposa			30.0
Mendocino			22.3
Merced	32.6	24.5	20.0
Modoc	30.2	18.7	16.9
Mono			20.0
Monterey	33.6	19.7	14.1
Napa			30.7
Orange			17.6
Placer		20.2	18.0
Plumas			18.3
Riverside	27.9	18.4	16.1
Sacramento	42.5	20.5	34.0
San Benito			19.4
San Bernardino			26.7
San Diego			21.8
San Joaquin	38.5	22.5	26.0
San Luis Obispo		17.1	13.9
San Mateo			22.0
Santa Barbara		17.1	21.8
Santa Clara			23.4
Shasta		13.2	13.7
Sierra			17.9
Siskiyou	38.1	15.9	16.3
Solano	42.0	24.3	27.0
Sonoma			20.6
Stanislaus			26.7
Sutter	39.0	30.2	36.8
Tahama		18.8	18.1
Trinity			20.0
Tulare	25.9	20.6	15.6
Tuolumne			19.6
Ventura			21.1
Yola	38.6	30.4	32.4
Yuba			21.0

COLORADO

County	Irrigated	Summer fallow	Continuous cropping
Adams	30.0	22.5	11.0
Alamosa	23.6		
Arapahoe	30.8	20.5	11.1
Archuleta	28.1	15.3	10.8
Baca	27.3	13.1	8.1
Bent	29.6	12.3	8.2
Boulder	31.2	24.5	15.5
Chaffee	26.5		
Cheyenne	25.0	16.5	10.0
Conejos	24.0		
Costilla	25.8		
Crowley	34.3	10.8	8.0
Custer	28.2	13.8	7.9
Delta	34.0	17.1	12.5
Dolores	26.5	15.1	12.2
Douglas	26.0	22.6	15.1
Eagle	38.5		19.5
Elbert	27.0	15.8	12.8
El Paso	25.0	16.3	8.3
Fremont	27.9	14.8	8.5
Garfield	31.5	15.8	13.0
Grand	27.6	17.6	13.2
Gunnison	29.0	18.0	14.5
Huerfano	26.4	13.8	11.9
Jackson	29.5	17.7	14.0
Jefferson	28.4	26.6	15.2
Kiowa	25.0	13.2	8.0
Kit Carson	25.5	17.3	9.3

Normal Yields of Wheat for Special Cultural Practices—Continued

COLORADO—Continued

State and county	Irrigated	Summer fallow	Continuous cropping
La Plata	27.0	18.7	13.1
Larimer	32.8	24.4	13.6
Las Animas	26.7	11.6	8.1
Lincoln	24.7	17.0	10.6
Logan	28.0	21.3	12.6
Mesa	32.2	13.3	12.9
Moffat	31.2	17.2	12.7
Montezuma	26.4	16.9	12.8
Montrose	36.8	13.9	12.0
Morgan	33.6	18.5	9.6
Otero	37.5	12.6	9.7
Ouray	33.2	15.6	11.8
Park			14.5
Phillips	25.0	25.0	13.2
Pitkin	39.0	17.8	16.5
Prowers	30.0	14.9	8.2
Pueblo	36.4	15.5	10.0
Rio Blanco	33.5	20.2	13.6
Rio Grande	25.2		
Routt	33.2	21.1	15.0
Saguache	25.8		
San Miguel	32.0	14.2	11.7
Sedgwick	29.2	28.0	13.7
Teller			16.0
Washington	31.6	21.5	11.0
Weld	30.0	21.4	11.8
Yuma	28.0	22.5	13.5

IDAHO

Ada	49.0	23.2	18.7
Adams	42.2	22.4	
Bannock	44.6	21.9	17.0
Bear Lake	33.8	19.4	17.4
Benewah		38.6	24.5
Bingham	50.2	16.4	11.8
Blaine	43.2	18.6	20.8
Boise	38.9	22.2	
Bonner		24.2	19.2
Bonneville	52.6	22.2	13.4
Boundary		46.5	39.1
Butte	49.0	8.7	8.1
Camas	37.2	21.8	20.2
Canyon	54.2		21.5
Caribou	40.4	23.7	20.6
Cassia	54.9	18.3	18.0
Clark	38.6	15.3	11.9
Clearwater		40.3	28.7
Custer	45.2		16.2
Elmore	41.8	21.7	17.1
Franklin	45.2	22.3	19.2
Fremont	44.2	25.2	19.0
Gem	46.6		19.5
Gooding	50.6		
Idaho		36.9	26.0
Jefferson	48.1	15.1	11.6
Jerome	56.8		15.1
Kootenai	32.1	30.8	25.6
Latah		38.7	28.4
Lemhi	42.2		
Lewis		41.2	30.2
Lincoln	51.6	15.1	
Madison	49.0	26.1	19.8
Minidoka	54.8	14.6	10.5
Nez Perce	40.6	41.9	28.4
Oneida	42.2	21.1	17.4
Owyhee	56.1		20.0
Payette	43.3		18.7
Power	48.2	20.0	17.4
Teton	33.4	23.2	17.7
Twin Falls	50.7	12.4	8.8
Valley	33.2	18.8	
Washington	47.0	24.8	20.9

KANSAS

Barber		20.6	17.3
Barton		21.6	16.4
Cheyenne		28.0	13.7
Clark		18.1	16.2
Clay		24.8	21.0
Cloud		22.7	17.4
Comanche		18.3	14.4
Decatur		23.6	15.8
Dickinson		26.1	21.7
Edwards	24.5	18.6	13.6
Ellis		20.9	14.2
Ellsworth		21.4	17.2
Finney	32.6	19.1	11.8
Ford	27.0	18.0	14.6
Gove		21.9	13.0
Graham		18.3	13.1
Grant	27.8	18.2	13.6
Gray	26.0	16.8	11.8
Greeley		21.0	11.7
Hamilton	25.5	17.8	12.4
Harper		24.8	19.7
Harvey	26.5	28.8	22.8
Haskell	25.0	17.2	11.4
Hodgeman	25.6	17.8	12.4

Normal Yields of Wheat for Special Cultural Practices—Continued

KANSAS—Continued

State and county	Irrigated	Summer fallow	Continuous cropping
Jewell		22.6	18.0
Kearny	31.5	19.9	13.7
Kingman		21.2	16.6
Kiowa	24.5	18.5	14.0
Lane		20.8	15.0
Lincoln		21.0	16.8
Logan		19.7	12.2
McPherson		27.4	22.1
Marion		28.6	21.8
Meade	25.0	16.8	13.4
Mitchell		23.5	18.2
Morton	23.5	16.4	11.6
Ness	24.5	21.7	13.4
Norton	27.0	22.0	15.7
Osborne		20.2	17.1
Ottawa		26.5	20.8
Pawnee	24.5	22.1	15.1
Phillips		19.6	15.8
Pratt	24.5	20.0	15.5
Rawlins	27.0	25.2	16.4
Reno	26.5	24.3	20.2
Republic		25.7	19.1
Rice		23.8	18.3
Rooks		19.2	13.8
Rush	24.5	21.0	14.8
Russell		20.1	15.1
Saline		24.8	20.6
Scott	29.4	19.6	15.4
Sedgwick		26.8	22.5
Seward	24.0	16.6	11.3
Sheridan		21.5	12.8
Sherman	27.0	22.9	13.1
Smith		21.9	16.0
Stafford		18.3	12.9
Stanton	26.0	19.7	11.3
Stevens	24.0	18.5	11.3
Sumner		26.4	21.4
Thomas		24.1	15.7
Trego		19.9	13.6
Wallace		20.3	13.6
Washington		28.1	22.4
Wichita	32.0	19.8	12.6

MONTANA

Beaverhead	39.1	19.4	15.2
Big Horn	28.1	24.4	16.9
Blaine	29.2	18.4	14.0
Broadwater	34.3	21.2	14.2
Carbon	31.5	21.1	16.2
Carter	21.0	15.2	9.0
Cascade	30.8	26.6	19.4
Chouteau	28.6	25.7	19.6
Custer	29.2	17.8	12.0
Daniels		15.5	12.5
Dawson	31.4	16.5	12.0
Deer Lodge	32.1	22.2	18.5
Fallon		14.6	10.8
Fergus	28.4	24.4	14.1
Flathead	35.4	32.4	22.0
Gallatin	30.8	24.6	19.4
Garfield	21.9	13.6	8.7
Glacier	32.8	25.4	17.2
Golden Valley	25.2	19.2	11.4
Granite	30.0	21.0	13.6
Hill	28.6	23.0	13.8
Jefferson	29.1	20.0	14.4
Judith Basin	24.2	21.9	14.9
Lake	27.2	25.0	18.8
Lewis and Clark	27.6	21.6	15.8
Liberty	26.0	24.2	16.4
Lincoln	25.3	20.7	18.6
McCone	27.4	16.6	11.4
Madison	32.7	19.6	17.3
Meagher	21.0	20.5	13.7
Mineral	33.6	26.0	20.5
Missoula	39.0	25.4	20.6
Musselshell	26.0	19.6	12.0
Park	29.4	21.6	16.0
Petroleum	25.6	14.3	11.3
Phillips	27.0	17.3	11.7
Pondera	32.0	26.4	22.4
Powder River	29.7	21.4	12.4
Powell	34.9	20.5	16.2
Prairie	24.5	16.6	10.7
Ravalli	40.7	25.1	17.8
Richland	34.2	18.3	13.9
Roosevelt	23.4	17.2	12.8
Rosebud	30.6	19.1	11.3
Sanders	31.3	24.0	17.5
Sheridan	23.4	17.1	13.3
Silver Bow	26.0	17.5	14.2
Stillwater	29.8	20.9	18.7
Sweet Grass	27.5	19.6	13.4
Teton	33.2	26.2	20.7
Toole	26.0	24.8	20.2
Treasure	33.5	18.9	13.9
Valley	22.6	15.5	11.1
Wheatland	25.1	17.9	11.2
Wibaux		16.6	13.2
Yellowstone	34.8	22.6	14.5

Normal Yields of Wheat for Special Cultural Practices—Continued

NEBRASKA

State and county	Irrigated	Summer fallow	Continuous cropping
Adams	30.3	26.8	20.2
Antelope			20.1
Arthur			15.2
Banner		28.6	14.1
Blaine			10.1
Boone			24.1
Box Butte	28.0	27.8	14.1
Boyd			16.6
Brown			19.4
Buffalo	30.0	23.2	19.0
Burt			30.3
Butler	30.0	24.8	25.5
Cass	32.5	32.8	30.2
Cedar			22.5
Chase	31.3	24.4	16.7
Cherry			19.2
Cheyenne	31.0	27.7	14.3
Clay	30.0	25.7	21.0
Cuming	34.0	28.9	26.4
Custer	32.3	24.8	29.8
Dakota			19.4
Dawes	27.9	27.4	25.7
Dawson	30.0	24.5	14.5
Deuel	34.7	29.2	15.8
Dixon			15.4
Dodge	31.5	28.6	22.9
Douglas			28.3
Dundy	31.5	24.3	29.6
Fillmore	33.7	26.1	15.1
Franklin	29.0	24.6	22.0
Frontier	33.5	25.6	19.2
Furnas		24.0	17.9
Gage	31.0	26.2	18.3
Garden	30.0	28.4	24.6
Garfield			14.6
Gosper	30.7	27.4	20.2
Greeley	30.0	24.7	19.5
Hall	34.0	25.0	21.8
Hamilton	31.3	26.6	19.7
Harlan	31.0	26.7	22.6
Hayes	29.0	24.1	20.0
Hitchcock	30.7	24.2	12.1
Holt			16.8
Hooker			16.2
Howard	31.7	25.2	9.9
Jefferson	32.0	26.4	19.5
Johnson	32.5	24.8	23.4
Kearney	32.0	24.6	24.1
Keith	37.0	27.3	20.0
Keya Paha			15.2
Kimball	25.3	21.8	16.2
Knox			10.8
Lancaster	32.5		21.4
Lincoln	29.8	23.8	25.7
Logan			14.8
Loup			17.2
McPherson			20.1
Madison			19.2
Merrick	30.0	23.4	24.2
Morrill	34.1	25.7	21.7
Nance	32.0	26.5	12.9
Namaha		26.7	25.0
Nuckolls	30.5	25.4	26.0
Otoe		28.2	21.2
Pawnee	31.0	25.6	27.4
Perkins	32.3	26.8	24.8
Phelps	31.7	27.9	14.5
Pierce			20.5
Platte	35.0		24.2
Polk	31.0	27.0	27.2
Redwillow	31.7	24.5	26.4
Richardson		27.0	19.3
Rock			26.8
Saline	32.7	27.5	16.2
Sarpy			25.4
Saunders	34.0		31.3
Scotts Bluff	36.8	27.8	26.6
Seward	33.5	27.8	14.2
Sheridan	25.8	26.9	27.0
Sherman	32.0	24.1	14.3
Sioux	29.7	25.4	17.9
Stanton			13.6
Thayer	32.0	26.6	26.2
Thomas			23.1
Thurston			10.9
Valley	31.3	26.0	25.8
Washington			20.4
Wayne			31.2
Webster	30.0	22.2	26.2
Wheeler			19.4
York	33.5	27.8	18.4

NEW MEXICO

Bernalillo	25.6	7.0	6.0
Catron	20.0	7.0	6.5
Chaves	23.1		
Colfax	21.4	9.5	8.0
Curry	22.0	10.5	7.6
De Baca	24.0	8.0	6.5
Dona Ana	27.0		
Eddy	27.2		

Normal Yields of Wheat for Special Cultural Practices—Continued

NEW MEXICO—Continued

State and county	Irrigated	Summer fallow	Continuous cropping
Grant	29.4		
Guadalupe	17.0	7.5	6.0
Harding	18.0	8.0	6.2
Hidalgo	25.0		
Lea	25.0	8.0	7.0
Lincoln	23.0	6.5	5.5
Luna	24.0		
McKinley	18.4	7.0	6.5
Mora	20.1	7.5	6.2
Otero	23.0	8.0	7.0
Quay	22.6	9.5	6.9
Rio Arriba	19.4	10.5	9.0
Roosevelt	21.4	10.5	8.4
Sandoval	17.0	8.5	7.5
San Juan	22.7	8.0	7.0
San Miguel	17.7	7.5	6.2
Santa Fe	21.7	7.5	6.0
Sierra	21.5		
Socorro	20.0	6.0	5.0
Taos	17.8	10.0	8.5
Torrance	24.0	7.0	5.5
Union	20.0	9.5	7.5
Valencia	18.6	7.0	6.5

NORTH DAKOTA

Adams		15.4	12.1
Barnes		22.6	16.8
Benson		20.0	14.0
Billings		15.9	10.9
Bottineau		18.5	11.6
Bowman		16.5	10.2
Burke		17.5	11.2
Burleigh		20.2	13.7
Cass		26.0	19.9
Cavalier		23.5	18.0
Dickey		21.4	14.2
Divide		18.4	12.1
Dunn		16.2	13.1
Eddy		19.9	13.3
Emmons		19.6	12.6
Foster		20.6	15.8
Golden Valley		17.4	14.1
Grand Forks		26.3	23.8
Grant		15.7	11.5
Griggs		22.2	16.6
Hettinger		17.2	13.7
Kidder		17.0	12.7
La Moure		20.8	13.6
Logan		18.9	12.5
McHenry		18.2	10.7
McIntosh		16.8	12.6
McKenzie	31.1	16.1	11.5
McLean		19.1	12.8
Mercer		16.6	13.9
Morton		17.2	11.2
Mountrail		16.3	11.6
Nelson		22.4	16.4
Oliver		16.2	13.7
Pembina		25.5	21.4
Pierce		18.0	10.9
Ramsey		20.4	14.9
Ransom		20.2	15.7
Renville		19.6	12.6
Richland		22.8	17.5
Rolette		18.2	12.4
Sargent		21.3	16.9
Sheridan		18.6	11.0
Sioux		17.7	10.2
Slope		17.6	13.4
Stark		17.3	12.8
Steele		25.1	19.3
Stutsman		20.1	13.6
Towner		21.8	15.6
Traill		26.3	24.0
Walsh		24.1	22.2
Ward		20.4	14.0
Wells		20.8	13.4
Williams	26.8	15.7	11.7

OKLAHOMA

Beaver	23.0	18.4	11.0
Caddo	22.0		18.3
Cimarron	25.0	14.5	9.9
Custer	22.0		16.5
Dewey	22.0		14.7
Ellis		16.6	13.4
Greer	22.0		13.7
Harmon	22.0		14.2
Harper		16.3	12.8
Jackson	22.0		17.6
Texas	25.0	15.2	11.1
Tillman	22.0		17.3
Washita	22.0		16.2
Woods		18.2	14.1
Woodward	24.0	18.4	12.4

Normal Yields of Wheat for Special Cultural Practices—Continued

OREGON

State and county	Irrigated	Summer fallow	Continuous cropping
Baker	37.4	24.3	14.6
Benton			28.3
Clackamas			28.6
Columbia			29.2
Crook	50.6	22.5	14.4
Deschutes	39.1	23.0	21.5
Douglas			22.4
Gilliam	33.6	27.8	18.1
Grant	29.4	21.6	20.4
Harney	24.2	15.9	17.5
Hood River			33.5
Jackson			30.6
Jefferson	47.6	21.9	13.1
Josephine			24.4
Klamath	36.6	24.5	14.7
Lake	28.8	26.1	16.9
Lane			24.6
Linn			25.8
Malheur	49.0	20.3	12.8
Marion			29.6
Morrow	33.6	27.6	21.4
Multnomah			27.8
Polk			30.4
Sherman		33.1	21.0
Umatilla	34.5	31.8	27.4
Union	41.2	38.7	25.9
Wallowa	36.6	27.8	20.7
Wasco	32.2	29.8	17.5
Washington			32.4
Wheeler	28.6	21.4	22.2
Yamhill			30.4

SOUTH DAKOTA

Aurora		24.9	14.1
Beadle		21.4	13.7
Bennett		26.0	15.1
Bon Homme			14.2
Brookings			16.3
Brown		23.0	14.8
Brule		27.6	13.5
Buffalo		23.0	13.0
Butte		21.4	16.0
Campbell		22.8	12.6
Charles Mix		24.4	17.4
Clark		20.5	13.0
Clay			18.6
Codington	19.2		13.8
Corson	16.9		10.6
Custer			13.2
Davison			15.6
Day		22.3	14.9
Deuel		20.3	15.6
Dewey		20.4	13.5
Douglas			15.5
Edmunds		20.4	12.3
Fall River		23.9	12.8
Faulk		20.0	12.4
Grant		21.7	16.1
Gregory		26.0	14.0
Haakon		24.6	13.1
Hamlin		20.0	15.2
Hand		21.2	13.7
Hanson		19.0	17.4
Harding		16.6	11.3
Hughes		21.2	13.0
Hutchinson			14.5
Hyde		21.0	12.4
Jackson		25.5	15.3
Jerauld		19.3	12.0
Jones		24.0	12.3
Kingsbury		22.5	14.1
Lake			16.8
Lawrence		22.8	15.2
Lincoln			15.5
Lyman		24.3	13.5
McCook			16.3
McPherson		22.4	12.2
Marshall		21.6	16.0
Meade		20.4	12.1
Mellette		22.8	11.5
Miner			12.8
Minnehaha			16.0
Moody			18.4
Pennington	20.9		12.2
Perkins	16.0		10.4
Potter		22.6	14.9
Roberts		20.4	15.2
Sanborn			12.5
Shannon		29.1	16.9
Spink		20.8	13.4
Stanley		24.6	12.8
Sully		23.9	16.4
Todd		25.4	14.5
Tripp		26.0	13.2
Turner			14.8
Union			18.4
Walworth		21.2	12.6
Washabaugh		23.9	15.6
Yankton			15.7
Ziebach		19.0	11.0

Normal Yields of Wheat for Special Cultural Practices—Continued

TEXAS

State and county	Irrigated	Summer fallow	Continuous cropping
Armstrong	21.5	16.1	12.2
Bailey	26.5	13.4	10.9
Briscoe	23.3	17.0	12.2
Carson	22.0	13.9	11.1
Castro	26.8	16.6	12.6
Childress	23.0		15.6
Cochran	23.0		15.1
Collingsworth	22.0		15.8
Cottle	22.0		14.0
Crosby	23.1	12.5	10.4
Dallam	20.0	15.7	12.8
Dawson	20.0		11.1
Deaf Smith	28.0	14.5	11.8
Dickens	22.0		13.2
Donley	22.0	15.3	9.5
Floyd	23.8	14.9	11.7
Foard	23.0		16.1
Gaines	20.0		12.4
Garza	21.5		12.4
Gray	23.0	15.4	12.2
Hale	25.4	15.4	11.5
Hall	22.0		14.5
Hansford	23.0	14.9	11.6
Hardeman	23.0		15.9
Hartley	21.0	15.7	11.4
Haskell	24.0		12.3
Hemphill	22.0	15.4	13.1
Hockley	22.0		19.7
Hutchinson	22.5	15.5	12.1
Knox	24.0		14.0
Lamb	25.2	15.4	12.1
Lipscomb	23.5	15.8	12.8
Lubbock	23.4	13.8	10.4
Lynn	21.0		16.8
Moore	23.0	14.8	11.2
Motley	22.0		15.1
Ochiltree	24.0	15.5	12.2
Oldham	22.0	14.4	10.4
Parmer	28.9	16.2	12.8
Potter	21.0	13.5	10.2
Randall	22.0	16.2	12.1
Roberts	23.0	14.6	12.5
Sherman	22.0	15.3	11.8
Swisher	24.6	16.2	13.5
Terry	22.0		15.0
Wheeler	22.0	14.4	11.8
Wichita	23.0		16.1
Wilbarger	23.0		16.8
Yoakum	22.0		12.7

UTAH

Beaver	34.0	15.0	
Box Elder	36.4	15.5	
Cache	38.5	18.5	
Carbon	31.0	15.0	
Daggett	33.0	15.0	
Davis	49.0	23.5	
Duchesne	29.6	15.0	
Emery	32.0	15.0	
Garfield	27.5	15.0	
Grand	30.0	15.0	
Iron	24.0	15.0	
Juab	30.0	15.0	
Kane	25.0	15.0	
Millard	30.0	14.0	
Morgan	38.5	20.0	
Piute	33.0	16.0	
Rich	32.0	17.0	
Salt Lake	42.0	16.0	
San Juan	25.0	14.5	
Sanpete	33.0	16.0	
Sevier	45.0	15.0	
Summit	35.0	17.5	
Tooele	27.5	14.5	
Uintah	29.5	20.0	
Utah	37.9	13.5	
Wasatch	38.0	20.0	
Washington	26.0	14.5	
Wayne	36.0	16.0	
Weber	45.4	25.0	

WASHINGTON

County	Irrigated	Summer fallow	Continuous cropping	Seeded after peas
Adams	38.9	25.6	16.9	33.0
Asotin		26.9	18.9	23.9
Benton	50.0	21.1	17.6	
Chelan	39.8	20.4	20.7	
Clallam			45.0	
Clark			25.5	
Columbia		36.1	30.7	35.6
Cowlitz			30.2	
Douglas	52.5	22.2	22.4	
Ferry	37.6	28.1	25.7	
Franklin	39.3	24.4	20.4	18.0

Normal Yields of Wheat for Special Cultural Practices—Continued

WASHINGTON—Continued

County	Irrigated	Summer fallow	Continuous cropping	Seeded after peas
Garfield		38.4	35.4	38.1
Grant	39.3	25.5	20.7	21.8
Grays Harbor			29.8	
Island			46.7	
Jefferson			40.7	
Kittitas	47.9	25.8	21.3	
Klickitat	37.5	25.4	18.7	22.9
Lewis			34.0	
Lincoln	40.5	38.8	28.9	34.5
Okanogan	31.7	22.2	18.3	21.1
Pend Oreille		21.8	28.4	
Pierce			30.4	
San Juan			36.3	
Skagit			43.0	
Skamania			19.8	
Snohomish			38.0	
Spokane	36.8	34.0	31.1	33.6
Stevens	39.7	35.6	25.9	23.8
Thurston			29.2	
Walla Walla	45.6	38.0	35.2	46.0
Whatcom			39.8	
Whitman	41.3	42.0	31.5	29.7
Yakima	48.6	24.5	16.8	23.1

WYOMING

County	Irrigated	Summer fallow	Continuous cropping
Albany	19.6	13.9	8.7
Big Horn	33.5		
Campbell	23.7	17.5	11.5
Carbon	21.9	13.5	11.7
Converse	22.0	17.5	12.0
Crook	24.5	20.4	14.4
Fremont	34.4		
Goshen	24.4	20.0	12.6
Hot Springs	29.4		
Johnson	26.0	17.7	11.4
Laramie	25.5	20.7	13.0
Lincoln	22.7	17.4	14.0
Natrona	22.8	13.0	7.9
Niobrara	20.0	19.5	12.8
Park	36.2		
Platte	23.4	20.1	13.9
Sheridan	28.2	22.1	14.8
Sublette	18.2		
Sweetwater	21.8		
Teton	33.9	23.6	20.5
Uinta	22.2	17.0	13.5
Washakie	31.5		
Weston	24.3	20.1	13.3

[F.R. Doc. 60-11805; Filed, Dec. 22, 1960; 8:45 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

MONTHLY REPORT OF DISPOSITION OF FREE TONNAGE RAISINS

Notice was published in the December 6, 1960, issue of the FEDERAL REGISTER (25 F.R. 12476), that consideration was being given to a proposal to amend the reporting requirements in § 989.173(d) of the administrative rules and regulations, as amended (Subpart—Administrative Rules and Regulations; §§ 989.101–989.180, as amended), effective pursuant to, and for operations under, Marketing Agreement No. 109, as amended, and Order No. 89, as amended (7 CFR Part 989; 25 F.R. 12813), regulating the handling of grapes produced from grapes grown in California. The said amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was recommended by the Raisin Administrative Committee established under this regulatory program.

In said notice, interested persons were afforded the opportunity to submit written data, views or arguments with respect to the proposal; and views thereon were received. In such views it was suggested, in substance, that the words "file with the committee on or before the fifth day of each month" appearing in the first sentence of § 989.173(d) should be changed to state that the reports are to be received by the committee not later than the seventh day of each month. According to the definition of "file" in § 989.23, the filing of a report (as presently required by § 989.173(d)) may be accomplished at the time shown by the postmark, in case submission is by mail. The suggested change is designed to assure that the required reports of handlers will be in the hands of the committee by the seventh day of the month—a time reasonably close to the end of a month and within which the report could be prepared and delivered to the committee. The committee could thus promptly utilize the information. Moreover, handlers would, in the main, be afforded some additional time for preparation of the reports.

The amendatory action relates to the monthly reports of the disposition of free tonnage raisins by handlers who are not processors. In addition to requiring that the reports of all of the handlers be received by the committee not later than the seventh day of the month, such action requires the aggregate quantity of the raisins in consumer packs, as currently reported, to be segregated according to the quantity shipped in consumer cartons and the quantity shipped in bags having a net weight content of four pounds or less. The more detailed information on consumer packs is expected to provide the committee with a better basis on which to formulate its marketing policy, and to determine the need for, or to cause to be carried out, research on the marketing, distribution, and consumption of raisins. In compiled form, it will show the trends in the use of the two types of the containers and thus provide guides as to the growth or decline of market outlets for each of the two types of packed raisins.

After consideration of all relevant matters presented, including the proposal set forth in the notice and the data and recommendation submitted by the committee, it is hereby found that to amend, as hereinafter set forth, § 989.173(d) of the administrative rules and regulations will tend to effectuate the declared policy of the act.

Therefore, it is ordered, That § 989.173(d) of the administrative rules and regulations, as amended (Subpart—Administrative Rules and Regulations; §§ 989.101–989.180, as amended), shall be, and it hereby is, amended to read as follows:

(d) *Monthly report of disposition of free tonnage raisins.* Each month each handler who is not a processor shall furnish to the committee, on an appropriate form provided by the committee and so that it is received by the committee not later than the seventh day of the month, a report showing the aggregate quantity of each varietal type of free tonnage packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by him during the preceding month (exclusive of transfers within the State of California between the plants of any such handler and from such handler to other handlers). Such required information shall be segregated as to: (1) Domestic outlets (exclusive of Federal Government purchases) according to the quantity shipped in consumer cartons, the quantity shipped in bags having a net weight content of four pounds or less, and the quantity shipped in bulk packs (including, but not limited to, those in bags having a net weight content of more than four pounds); (2) Federal Government purchases; (3) export outlets according to the quantity shipped in consumer cartons, the quantity shipped in bags having a net weight content of four pounds or less, and the quantity shipped in bulk packs (including, but not limited to, those in bags having a net weight content of more than four pounds); and (4) each of any other outlets in which the handler has made disposition of such raisins other than by any transfer which is excluded by the preceding sentence. For the purpose of this paragraph, Canada shall be considered as a domestic outlet and not an export outlet.

It is hereby further found that good cause exists for making this amendatory action effective upon publication in the FEDERAL REGISTER and for not postponing such effective time until 30 days after such publication (5 U.S.C. 1001–1011) in that: (1) This action does not require handlers to report prior to January 7, 1961, and the initial report will not require any information of handlers which will not be available to them promptly after December 31, 1960; (2) the content of the report required pursuant to this action differs in only a minor respect from that of the report presently required to be furnished under § 989.173(d); (3) unless this amendatory action is made effective prior to January 6, 1961, information concerning disposition during the current month will have to be filed by January 5, 1961, and in the manner currently prescribed; (4) the time intervening between the publication of this document in the FEDERAL REGISTER and January 7, 1961, will afford handlers ample time for the preparation and delivery of the initial report to the committee; (5) since the disposition of raisins by handlers during the month of December of a crop year is a substantial portion of all such dispositions for the crop year, it is necessary that the report covering December 1960, which is presently required to be filed not later than January 5, 1961, include the information required by this amendatory action so as to make information as to dispositions during the 1960–61 crop year more significant; and (6) in light of the foregoing, no useful purpose would be served by postponing the effective time of this action beyond its publication.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated December 20, 1960, to become effective upon publication in the FEDERAL REGISTER.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-11896; Filed, Dec. 22, 1960; 8:48 a.m.]

[1032.301, Amdt. 2]

PART 1032—CARROTS GROWN IN SOUTH TEXAS

Limitation of Shipments

Pursuant to Marketing Agreement No. 142 and Order No. 132 (7 CFR Part 1032; 25 F.R. 9523), regulating the handling of carrots grown in designated counties in South Texas, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of recommendations and information submitted by the South Texas Carrot Committee, established pursuant to said Marketing Agreement and Order, and upon other available information, it is hereby found that the following amendment to the limitation of shipments regulation will tend to effectuate the declared policy of the act.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment for 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) the time intervening between the date when information upon which this amendment is based became available, and the time when this amendment must become effective in order to effectuate the declared policy of the act, is insufficient, (2) more orderly marketing in the public interest than would otherwise prevail will be promoted by regulating shipments of carrots in the manner set forth below on and after the effective date of this amendment, (3) compliance with this amendment will not require any special preparation on the part of handlers which cannot be completed by the effective date, (4) reasonable time is permitted under the circumstances for such preparation, and (5) information regarding the committee's recommendations has been made available to producers and handlers in the production area, and (6) this amendment relieves restrictions on the handling of carrots grown in the production area.

Order, as amended. In § 1032.301 (25 F.R. 11207, 12828), delete paragraph (b) and substitute in lieu thereof a new paragraph (b) as set forth below.

§ 1032.301 Limitation of shipments.

* * * * *

(b) *Sizing requirements*—(1) *Small-to-medium.* ⅝ inch minimum diameter to 1¼ inch maximum diameter, 4½ inches minimum length;

(2) *Medium-to-large.* ⅞ inch minimum diameter to 1½ inches maximum diameter, 5 inches minimum length;

(3) *Jumbos.* 1 inch minimum diameter to 3 inches maximum diameter, 3 inches minimum length.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: This amendment shall become effective December 21, 1960.

Dated: December 20, 1960.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-11895; Filed, Dec. 22, 1960; 8:48 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 605; Amdt. 237]

PART 507—AIRWORTHINESS DIRECTIVES

Bendix Scintilla Magnetos

An excessive number of difficulties with Bendix Scintilla magneto models used in engines rated at 400 h.p. or less have been reported. Several of these have resulted in forced landings of the aircraft. The difficulty has been traced to improper lubrication of the magneto distributor shaft and bushing. Accordingly, it is necessary to accomplish relubrication to preclude damage to the distributor gear and finger assembly.

In the interest of safety notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon date of publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

BENDIX. Applies to the following Scintilla magneto models with Serial Numbers 635577 and below. These magnetos are used in engines rated at 400 or less h.p.

S4LN and S4RN–20, –21, –200 and –204.

S6LN and S6RN–20, –21, –22, –23, –25, –200, –201, –202, –204, –205 and –206.

Compliance required within 25 hours' time in service after effective date of this amendment.

Service information indicates that the distributor gear shaft and distributor block bushing of the above magnetos require additional lubrication to preclude damage to the distributor gear and finger assembly. Accordingly, unless already accomplished, these magnetos shall be relubricated as follows:

(a) Disconnect the ignition harness from the magneto. Apply enough SAE No. 30 lubricating oil to the distributor shaft felt washer to completely saturate the washer.

(b) Rotate the "tru-arc" distributor shaft retaining ring until the ring gap is straight up. Carefully apply one or two drops of SAE No. 30 oil in the gap of the ring and allow it to seep into the space between the distributor gear shaft and the distributor block bushing.

(c) Carefully clean off any oil which may have run on to the distributor block. Do not blot or wipe any oil from the felt washer.

(d) Identify magnetos lubricated in accordance with this directive by painting a ¼-inch diameter white dot on the housing between the timing window plug and the high tension outlet. This dot will indicate the lubrication has been accomplished and need not be lubricated again until regular magneto overhaul.

(Scintilla Service Bulletin No. 459, Lycoming Service Bulletin No. 277 and Continental Service Bulletin M60–11 cover this same subject.)

This amendment shall become effective December 23, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 16, 1960.

GEORGE C. PRILL,
Acting Director, Bureau of Flight Standards.

[F.R. Doc. 60-11864; Filed, Dec. 22, 1960; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Tolerances for Residues of Biphenyl

A petition was filed with the Food and Drug Administration by Crown Zellerbach Corporation, 343 Sansome Street, San Francisco 19, California, requesting the establishment of tolerances for residues of biphenyl (also known as diphenyl) in or on citrus citron, kumquats, limes, tangelos, tangerines, and other hybrids of citrus fruits at 110 parts per million.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR 120.141) are amended by changing the name "diphenyl" to "biphenyl" to conform with the American Chemical Society's nomenclature and by adding to the list of raw agricultural commodities the items citrus citron, kumquats, limes, tangelos, tangerines, other citrus fruits,

and hybrids thereof. As amended, § 120.141 reads as follows:

§ 120.141 Tolerances for residues of biphenyl.

A tolerance of 110 parts per million for residues of biphenyl (also known as diphenyl) is established in or on each of the following raw agricultural commodities: Citrus citron, grapefruit, kumquats, lemons, limes, oranges, tangelos, tangerines, other citrus fruits, and hybrids thereof.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)).

Dated: December 16, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11880; Filed, Dec. 22, 1960; 8:46 a.m.]

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Tolerances for Residues of DDT; Correction

The following corrections are made in F.R. Doc. 60-11167, published in the FEDERAL REGISTER December 1, 1960 (25 F.R. 12288):

1. The tolerance of 1 part per million for residues of DDT on potatoes was inadvertently omitted from the above-cited document. Section 120.147 should read as follows:

§ 120.147 Tolerances for residues of DDT.

Tolerances for residues of DDT (a mixture of 1,1,1-trichloro-2,2-bis (*p*-chlorophenyl) ethane and 1,1,1-trichloro-2-(*o*-chlorophenyl)-2-(*p*-chlorophenyl) ethane) are established in or on raw agricultural commodities, as follows:

7 parts per million in the fat of meat from cattle, hogs, and sheep and in or on sweetpotatoes (from postharvest use).

3.5 parts per mission in or on the fresh vegetable sweet corn (determined on kernels plus cob after removing any husk present when marketed).

1 part per million in or on potatoes (determined after washing off any soil present when marketed).

§ 120.147a [Amendment]

2. In § 120.147a(a), the references in the first and second sentences: "§ 121.101 (b)(43)" and "§ 120.147(b)", are corrected to read "§ 120.101(e)(43)" and "§ 120.147", respectively.

3. In § 120.147a(b), the reference in the first sentence, "§ 120.147(a)" is corrected to read "§ 120.147".

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: December 16, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11881; Filed, Dec. 22, 1960; 8:46 a.m.]

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Animal Feed or Animal Feed Supplements

ZOALENE IN MEDICATED FEEDS

The Commissioner of Food and Drugs, having evaluated the data filed by the Dow Chemical Company, Midland, Michigan, has concluded that the following amendment should issue in conformity with section 409 of the Federal Food, Drug, and Cosmetic Act with respect to the food additive zoalene in chicken feed, to provide for the addition of certain antibiotics. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)), and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR 121.207) are amended as set forth below:

1. Section 121.207(a) is amended to read as follows:

§ 121.207 Zoalene (3,5-dinitro-o-toluamide) in medicated feed.

* * * * *

(a) It is used or intended for use in the prevention and control of cecal and intestinal coccidiosis in chickens caused by Eimeria acervulina, Eimeria brunetti, Eimeria maxima, Eimeria necatrix, or Eimeria tenella. The zoalene is used:

(1) As the sole medication in the feed; or

(2) In combination with the following antibiotic as an aid in stimulating growth and improving feed efficiency in growing chickens:

Penicillin: Not less than 2.4 grams nor more than 50 grams of master standard equivalent per ton of finished feed.

2. Section 121.207(b), the introduction to paragraph (c), and paragraph (c)(1) are amended to read as follows:

(b) The quantity of the zoalene to be used or to remain in the finished medicated feed shall not exceed 125 parts per million (0.0125 percent), but may be used at lower levels in accordance with and under the labeling provided for by § 146.26(b)(45) of this chapter.

(c) To assure safe use of the additive zoalene and antibiotics in medicated feed, the label on the additive container or any intermediate mixes shall contain, in addition to the other information required by the act:

(1)(i) The name of the additive, zoalene.

(ii) The name of any antibiotic added as provided in paragraph (a)(2) of this section.

3. Section 121.207(d)(1) is amended to read as follows:

(1)(i) The name of the additive, zoalene.

(ii) The name of any antibiotic added as provided in paragraph (a)(2) of this section.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: December 19, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-11882; Filed, Dec. 22, 1960; 8:47 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Oil Import Administration, Department of the Interior

[Revision 2; Amdt. 2]

OIL IMPORT REGULATION 1

Allocations of Crude Oil and Unfinished Oils; District V

Correction

In F.R. Doc. 60-11801, appearing at page 12999 of the issue for Tuesday, Dec. 20, 1960, the last two figures in the "Percent of input" column of the tabular material in section 11(b) should be transposed, so that paragraph (b) reads as follows:

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the year ending September 30, 1960, and computed according to the following schedule:

Average B/D input:	*Percent of input*
0– 10,000	42.0
10– 20,000	33.0
20– 30,000	23.9
30– 60,000	14.2
60–100,000	11.5
100–150,000	10.5
150–200,000	9.4
200,000 plus	7.6

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

SUBCHAPTER F—NAVIGATION REQUIREMENTS FOR WESTERN RIVERS

[CGFR 60-79]

PART 96—INTERPRETIVE RULINGS

Subpart 96.10—Steering and Sailing

MOVING A VESSEL FROM HER DOCK OR ANCHORAGE

An interpretive ruling designated 33 CFR 96.10–1(a), regarding the meaning of the phrase "when a steam vessel is moved from her dock, or anchorage" in Rule Numbered 24(c) (33 U.S.C. 349) of the Western Rivers Rules, was published in the FEDERAL REGISTER of October 8, 1960 (25 F.R. 9681). The rule numbered 24(c) reads as follows: "When a steam vessel is moved from her dock, or anchorage, she shall give the same signal as in the case of a steam vessel nearing a bend, but she and any approaching vessel shall be governed by rules 25 and 26 until her course is apparent, and then both vessels shall be governed by the other steering and sailing rules."

This interpretive ruling provided that the phrase "when a steam vessel is moved from her dock, or anchorage" should mean "* * * moving from a mooring to a riverbank or from a mooring of any type." Since then information has been received indicating that this interpretive ruling still leaves a doubt about what is meant because the phrase "mooring to a riverbank" may be construed as meaning either a "riverbank mooring" (which was the meaning intended), or it may express the relation of direction, approach and arrival, as from a "mooring" to a "riverbank." This Rule Numbered 24(c) requires a prescribed signal of three distinct blasts on her whistle shall be given when a vessel is "moved from her dock, or anchorage," and this phrase should be interpreted to mean when a vessel is "moving from a mooring of any type."

Because the regulation in this document is an interpretation, it is hereby found that the Coast Guard is exempt from compliance with the Administrative Procedure Act (respecting notice of proposed rule making, public rule making procedures thereon, and effective date requirements thereof).

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), and 167–17, dated June 29, 1955 (20 F.R. 4976), to promulgate regulations in accordance with the statutes cited with the regulations below, § 96.10–1 is amended to read as follows, effective on and after the date of publication of this document in the FEDERAL REGISTER:

§ 96.10–1 Vessel moved from dock or anchorage.

(a) Rule Numbered 24(c) of section 4233 of the Revised Statutes as amended (33 U.S.C. 349), requires "when a vessel is moved from her dock, or anchorage," to give a prescribed signal of three distinct blasts on her whistle. The phrase "moved from her dock, or anchorage," includes moving from a riverbank mooring or from a mooring of any type.

(Sec. 3, 60 Stat. 238, and secs. 2, 633, 63 Stat. 496, 545; 5 U.S.C. 1002, 14 U.S.C. 2, 633)

Dated: December 16, 1960.

[SEAL] A. C. RICHMOND,
Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 60-11874; Filed, Dec. 22, 1960; 8:46 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2217]

[Idaho 09333]

IDAHO

Partial Revocation of Reclamation Withdrawals (Minidoka Project)

Correction

In F.R. Doc. 60-11656, appearing at page 12885 of the issue for Thursday, Dec. 15, 1960, the following corrections are made:

1. Under T. 8 S., R. 19 E., that portion of the entry for Sec. 28 which precedes the second comma should read: "Sec. 28, W½W½NE¼NE¼,".

2. Under T. 9 S., R. 21 E., the entry for Sec. 29 should read: "Sec. 29, SW¼NW¼;".

[Public Land Order 2226]

[632906]

ARIZONA

Partly Revoking Stock Driveway No. 10, Arizona No. 1

By virtue of the authority contained in section 10 of the act of December 29, 1916 (39 Stat. 862; 43 U.S.C. 300) as amended, it is ordered as follows:

1. The departmental order of March 18, 1918, creating Stock Driveway Withdrawal No. 10, Arizona No. 1, is hereby revoked so far as it affects the following-described lands:

GILA AND SALT RIVER MERIDIAN

T. 14 N., R. 19 E.,
Sec. 6.

Containing 651.12 acres.

2. Subject to valid existing rights, the requirements of applicable law, and the regulations in 43 CFR, the lands are hereby opened to application, selection, and location under the public land laws. Applications and selections received at or before 10:00 a.m. January 24, 1961, shall be considered as simultaneously filed at that time. Those thereafter received will be considered in the order of filing.

3. Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

4. The lands have been open to location under the U.S. Mining laws, and to applications and offers under the mineral leasing laws (43 CFR 185.35–185.36).

5. The State of Arizona has waived its preference right of application under the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852).

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Phoenix, Arizona.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 19, 1960.

[F.R. Doc. 60-11883; Filed, Dec. 22, 1960; 8:47 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[S.O. 934, Amdt. 1]

PART 95—CAR SERVICE

Chicago and North Western Railway Co. Authorized To Operate Over Certain Trackage of Chicago, Burlington & Quincy Railroad Co.

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D.C., on the 16th day of December A.D. 1960.

Upon further consideration of Service Order No. 934 (25 F.R. 6760), and good cause appearing therefor:

It is ordered, That:

Section 95.934(a) *The Chicago and North Western Railway Company authorized to operate over certain trackage of the Chicago, Burlington & Quincy Railroad Company*, of Service Order No. 934, be and it is hereby amended by substituting the following paragraph (f) for paragraph (f) thereof.

(f) *Expiration date.* This section shall expire at 11:59 p.m., June 30, 1961, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., December 31, 1960.

(Sec. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or

applies sec. 1(10–17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4))

It is further ordered, That copies of this order and direction shall be served upon the Nebraska State Railway Commission, and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 3.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60–11877; Filed, Dec. 22, 1960; 8:46 a.m.]

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 33—SPORT FISHING

Seney National Wildlife Refuge, Michigan

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

MICHIGAN

SENEY NATIONAL WILDLIFE REFUGE

Sport fishing on the Seney National Wildlife Refuge, Michigan is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period from January 1 through February 28, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 4,200 acres and 4.5 percent of the total refuge and which is described as follows:

In Unit I—those pools designated as B, C, D, E, F, G, H, I, J, Upper Goose Pen Pool, and Show Pools; in Unit II—that pool designated as M pool; and those waters of the Manistique River which lie within the Seney National Wildlife Refuge. These areas are delineated on maps available at the refuge office and from the Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis 8, Minnesota.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) Travel shall be restricted to routes designated and posted by the refuge officer in charge. Roads in Unit I will be cleared of snow periodically during the winter fishing season.

(3) A Federal permit is not required to enter the public fishing area.

(4) The provisions of this special regulation are effective January 1, 1961, through February 28, 1961.

R. W. BURWELL, *Regional Director, Bureau of Sport Fisheries and Wildlife.*

DECEMBER 12, 1960.

[F.R. Doc. 60–11867; Filed, Dec. 22, 1960; 8:45 a.m.]

SUBCHAPTER G—PROCESSED FISHERY PRODUCTS, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

PART 269—UNITED STATES STANDARDS FOR GRADES OF FROZEN OCEAN-PERCH FILLETS AND FROZEN PACIFIC OCEAN-PERCH FILLETS [1]

On October 21, 1960, a notice and text of a proposed new Part 269 of Title 50, Code of Federal Regulations was published in the FEDERAL REGISTER (25 F.R. 10064). The purpose of the new part is to issue United States Standards for Grades of Frozen Ocean-perch Fillets and Frozen Pacific Ocean-perch Fillets under the authority transferred to the U.S. Department of the Interior by section 6(a) of the Fish and Wildlife Act of August 8, 1956 (16 U.S.C. 742e).

Interested persons were given until November 20, 1960, to submit written comments, suggestions or objections with respect to the proposed new part. No comments, suggestions or objections have been received. The proposed new part is hereby adopted without change and is set forth below. This part shall become effective 30 days after publication in the FEDERAL REGISTER.

Dated: December 17, 1960.

ELMER F. BENNETT, *Acting Secretary of the Interior.*

PRODUCT DESCRIPTION AND GRADES

Sec.
269.1 Product description.
269.2 Grades of frozen ocean-perch fillets.

WEIGHTS AND DIMENSIONS

269.6 Recommended weights and dimensions.

FACTORS OF QUALITY

269.11 Ascertaining the grade.
269.12 Evaluation of the unscored factor of flavor and odor.
269.13 Evaluation and rating of the scored factors: Appearance, size, absence of defects, and character.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act.

Sec.
269.14 Appearance.
269.15 Size.
269.16 Absence of defects.
269.17 Character.

DEFINITIONS AND METHODS OF ANALYSIS

269.21 Cooking in a suitable manner.

LOT CERTIFICATION TOLERANCES

269.25 Tolerances for certification of officially drawn samples.

SCORE SHEET

269.31 Score sheet for frozen ocean-perch fillets.

AUTHORITY: §§ 269.1 to 269.31 issued under sec. 6(a), Fish and Wildlife Act of August 8, 1956 (16 U.S.C. 742e), and sec. 205(b), Agricultural Marketing Act of August 14, 1946, as amended (7 U.S.C. 1624(b)).

PRODUCT DESCRIPTION AND GRADES

§ 269.1 Product description.

The product described in this part consists of: (a) Clean, whole, wholesome fillets, cut away from either side of the ocean perch, Sebastes marinus, which are packaged and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product; or (b) clean, whole, wholesome fillets, cut away from either side of the Pacific ocean perch, Sebastodes alutus, which are packaged and frozen in accordance with good commercial practice and are maintained at temperatures necessary for the preservation of the product.

§ 269.2 Grades of frozen ocean-perch fillets.

(a) "U.S. Grade A" is the quality of frozen ocean-perch fillets that possess good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 85 points.

(b) "U.S. Grade B" is the quality of frozen ocean-perch fillets that possess at least reasonably good flavor and odor; and for those factors of quality which are rated in accordance with the scoring system outlined in this part the total score is not less than 70 points.

(c) "Substandard" is the quality of frozen ocean-perch fillets that fail to meet the requirements of U.S. Grade B.

WEIGHTS AND DIMENSIONS

§ 269.6 Recommended weights and dimensions.

(a) The net weights and dimensions of packaged frozen ocean-perch fillets and Pacific ocean-perch fillets are not incorporated in the grades of the finished product since net weights and dimensions, as such, are not factors of quality for the purpose of these grades.

(b) It is recommended that the net weight of the packaged frozen ocean-perch fillets and Pacific ocean-perch fillets be not less than 12 ounces and not over 10 pounds and that the product be classified as large, medium, or small as classified by common commercial size classification practices.

TABLE II—SCORE DEDUCTIONS FOR SIZE OF FILLETS

Number of fillets per pound	Number of small fillets or pieces of fillets										
	0	1	2	3	4	5	6	7	8	9	10	11
	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points	Deduction points
	Under two ounces in weight											
2	0	5	10	15	20	20	20	20	20	20	20	20
3	0	5	10	15	20	20	20	20	20	20	20	20
4	0	4	7	10	15	20	20	20	20	20	20	20
5	0	3	6	9	15	20	20	20	20	20	20	20
6												
	Under one ounce in weight											
7	0	5	10	15	20	20	20	20				
8	0	5	10	15	20	20	20	20	20	20		
9	0	5	10	15	20	20	20	20	20	20	20	20
10	0	5	10	15	20	20	20	20	20	20	20	20
11	0	5	10	15	20	20	20	20	20	20	20	20
12	0	5	10	15	20	20	20	20	20	20	20	20
13	0	5	10	15	20	20	20	20	20	20	20	20
14	0	5	10	15	20	20	20	20	20	20	20	20
15 or more	0	5	10	15	20	20	20	20	20	20	20	20

FACTORS OF QUALITY

§ 269.11 Ascertaining the grade.

The grade of frozen ocean-perch fillets is ascertained by examining the product in the frozen, thawed, and cooked states. The following factors of quality are evaluated in ascertaining the grade of the product: Flavor and odor, appearance, size, absence of defects, and character. These factors are rated in the following manner:

(1) *Flavor and odor.* This factor is rated directly by organoleptic evaluation. Score points are not assessed (see § 269.12).

(2) *Appearance, size, absence of defects, and character.* The relative importance of these factors is expressed numerically on the scale of 100. The maximum number of points that may be given each of these factors are:

Factors:	Points
Appearance	15
Size	20
Absence of defects	50
Character	15
Total possible score	100

§ 269.12 Evaluation of the unscored factor of flavor and odor.

(a) *Good flavor and odor.* "Good flavor and odor" (essential requirement for a Grade A product) means that the fish flesh has good flavor and odor characteristic of the species (either Sebastes marinus or Sebastodes alutus) and is free from staleness, and off-flavors and off-odors of any kind.

(b) *Reasonably good flavor and odor.* "Reasonably good flavor and odor" (minimum requirement for a Grade B product) means that the fish flesh may be somewhat lacking in good flavor and odor; and is free from objectionable off-flavors and off-odors of any kind.

§ 269.13 Evaluation and rating of the scored factors: Appearance, size, absence of defects, and character.

The essential variations in quality within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. Point deductions are allotted for each degree or amount of variation within each factor. The net score for each factor is the maximum points for that factor less the sum of the deduction-points within the factor. The total score for the product is the sum of the net scores for the four scored factors.

§ 269.14 Appearance.

(a) The factor of appearance refers to the color of the frozen fish flesh, and to the degree and amount of surface dehydration of the frozen product.

(b) For the purpose of rating the factor of appearance the schedule of deduction-points in Table I apply. Frozen ocean-perch fillets which receive 15 deduction points for the factor of appearance shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE I—SCORED DEDUCTIONS FOR APPEARANCE

Color of frozen product	Deduction points
No discoloration	0
Slight yellowing	4
Moderate yellowing	9
Excessive yellowing and/or rusting	15

Degree of dehydration of frozen product	Surface area affected (percent)		Deduction points
	Over—	Not over—	
Slight—Shallow and not color masking	0	1	5
	1	50	10
	50	100	15
Moderate—Deep, but just deep enough to easily scrape with fingernail	0	25	15
	25	50	15
	50	100	15
Excessive—Deep dehydration not easily scraped off	0	5	15
	5	100	15

§ 269.15 Size.

(a) The factor of size refers to the degree of freedom from undesirably small fillets.

(b) For the purpose of rating the factor of size, the schedule of deduction-points in Table II apply. Ocean-perch fillets which receive 20 deduction-points for this factor shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

1½ square inches in area; each bruise larger than 1½ square inches is considered as two instances of bruise. An "instance of black-belly lining or membrane" is any piece of black-belly lining or membrane not less than ½ inch and not more than 1 inch in length; each additional ½ inch length of individual pieces of black-belly lining or membrane longer than 1 inch is considered as an instance. Each aggregate area of identifiable fin or parts of any fin up to 1 square inch is considered as one "instance of fin". One "instance of scales" is an aggregate area of scales greater than ½ square inch per fillet. One "instance of skin" consists of one piece of skin at least ½ square inch in area; except that any skin patches larger than 1½ square inches are considered as two instances of skin.

(4) *Bones.* One "instance of bones" means an objectionable bone or group of bones occupying or contacting a circular area up to 1 square inch. An objectionable bone is any bone of such size and rigidity as to remain objectionable after cooking. Bones which will soften or disintegrate after cooking are not considered objectionable.

(b) For the purpose of rating the factor of absence of defects the schedule of deduction-points in Table III applies.

TABLE III.—SCORE DEDUCTIONS FOR ABSENCE OF DEFECTS

Subfactors	Method of determining subfactor score	Deduction points
Improper packing	Slight defects, not noticeably affecting the product's appearance.	0
	Moderate defects, noticeably affecting the product's appearance.	2
	Excessive defects, seriously affecting product's appearance.	4
Blemishes	Number of blemishes per 1 lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 2	0
	Over 2 not over 4	2
	Over 4 not over 5	4
	Over 5 not over 6	7
	Over 6 not over 7	10
	Over 7 not over 8	15
	Over 8 not over 9	20
	Over 9 not over 10	30
	Over 10 not over 11	40
	Over 11	50
	Number of blemishes per 1 lb. of product when there are 7 to 12 (inclusive) fillets per lb.:	
	Over 0 not over 3	0
	Over 3 not over 5	2
	Over 5 not over 6	4
	Over 6 not over 7	7
	Over 7 not over 8	10
	Over 8 not over 9	15
	Over 9 not over 10	20
	Over 10 not over 11	30
	Over 11 not over 12	40
	Over 12	50
	Number of blemishes per 1 lb. of product when there are 13 or more fillets per lb.:	
	Over 0 not over 6	0
	Over 6 not over 8	2
	Over 8 not over 9	4
	Over 9 not over 10	7
	Over 10 not over 11	10
	Over 11 not over 12	15
	Over 12 not over 13	20
	Over 13 not over 14	30
	Over 14 not over 15	40
	Over 15	50
Bones	Number of instances per lb. of product when there are 6 or less fillets per lb.:	
	Over 0 not over 4	0
	Over 4 not over 5	1
	Over 5 not over 6	2
	Over 6 not over 7	5
	Over 7 not over 8	12
	Over 8 not over 9	20
	Over 9 not over 10	35
	Over 10	50
	Number of instances per lb. of product when there are 7 or more fillets per lb.:	
	Over 0 not over 3	0
	Over 3 not over 4	1
	Over 4 not over 5	2
	Over 5 not over 6	5
	Over 6 not over 7	12
	Over 7 not over 8	20
	Over 8 not over 9	35
	Over 9	50
Cutting and trimming	Slight defects, scarcely noticeable.	0
	Moderate defects, noticeable but not affecting the useability of any fillets.	4
	Excessive defects impairing:	
	(a) the usability of up to ¼ of the total number of fillets.	8
	(b) the usability of over ¼ but not more than ½ of the total number of fillets.	16
	(c) the usability of over ½ of the total number of fillets.	40

§ 269.17 Character.

(a) General: The factor of character refers to the tenderness and moistness of the cooked fish flesh.

(b) For the purpose of rating the factor of character, the schedule of deduction-points in Table IV apply. Ocean-perch fillets which receive 15 deduction-points for the factor of character shall not be graded above Substandard regardless of the total score for the product. This is a limiting rule.

TABLE IV—SCORE DEDUCTIONS FOR CHARACTER

Texture of the cooked fish	Point deductions
1. Texture:	
(a) Firm, but tender and moist	0
(b) Slightly tough, dry, and/or fibrous, or mushy	4
(c) Moderately tough, rubbery, and/or fibrous	8
(d) Excessively tough, rubbery, and/or fibrous	15

DEFINITIONS AND METHODS OF ANALYSIS

§ 269.21 Cooking in a suitable manner.

"Cooking in a suitable manner" shall mean that the product is cooked as follows: Place the thawed unseasoned product into a boilable film-type pouch. Fold the pouch over a suspension bar and clamp it in place so that a loose seal is maintained. Immerse the pouch and its contents in boiling water and cook until the internal temperature of the fillets reaches 160° F. (about 20 minutes).

LOT CERTIFICATION TOLERANCES

§ 269.25 Tolerances for certification of officially drawn samples.

The sample rate and grades of specific lots shall be certified in accordance with Part 170 of this chapter (Regulations Governing Processed Fishery Products, 23 F.R. 5064, July 3, 1958).

SCORE SHEET

§ 269.31 Score sheet for frozen ocean-perch fillets.

Label.....
Size and kind of container.....
Container mark or identification.....
Size of lot.....
Number of packages per master carton.....
Size of sample.....
Type of overwrap.....
Actual net weight..... (lb.) ..... (kg.)

Factor	Score points	Sample score
Appearance	15	
Size	20	
Absence of defects	50	
Character	15	
Total	100	

Flavor and odor.....
Final grade.....

[F.R. Doc. 60-11866; Filed, Dec. 22, 1960; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 994]

[Docket No. AO-300-A2]

MILK IN COLORADO SPRINGS-PUEBLO MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in the Continental Denver Motel, Valley Highway, Denver, Colorado, beginning at 10:00 a.m., local time, on January 7, 1961, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Colorado Springs-Pueblo marketing area.

The public hearing is for the purpose of receiving evidence with respect to the economic and emergency marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Colorado Springs Milk Producers' Association and the Pueblo Dairymen's Cooperative Inc.:

Proposal No. 1. Amend § 994.9 by the addition of the following:

(d) A cooperative association with respect to the milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned or controlled by such cooperative associations, if the cooperative associations notifies the market administrator and a handler to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case, the milk shall be deemed to have been received from producers by the cooperative associations at the location of the plant to which the milk is delivered.

Proposal No. 2. Amend § 994.42 to provide for a shrinkage allowance of 0.5 percent to a cooperative association which is the handler on bulk tank milk in the same manner as now provided for milk transferred in bulk from pool plants of other handlers.

Proposal No. 3. Amend § 994.80 to provide for payments on the basis of class utilization to cooperative associations with respect to milk for which such cooperative associations are the handlers, and increase the rate of the advance payment now provided in § 994.80 (a) from the Class II price for the preceeding month to the uniform price for the preceeding month.

Proposal No. 4. Establish in § 994.41 a Class II(a) utilization for milk used in the manufacture of cheddar cheese and in § 994.51 a price for Class II(a) milk at a level 20 cents less than the established price for Class II milk for each month.

Proposal No. 5. Review the pool plant standards for cooperative associations operating supply plants.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 6. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, 121 East Boulder, Colorado Springs, Colorado, or from the Hearing Clerk, Room 112, Administration Building, United States Department of Agriculture, Washington 25, D.C., or may be there inspected.

Issued at Washington, D.C., this 20th day of December 1960.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 60-11894; Filed, Dec. 22, 1960; 8:48 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-122]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation and Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.16, 600.6020, 601.16, 601.4016, 601.6020, and 601.7001 of the regulations of the Administrator, the substance of which is stated below.

Green Federal airway No. 6 extends in part from Greensboro, N.C., to Richmond, Va. VOR Federal airway No. 20 extends in part from South Boston, Va., to Flat Rock, Va. The Federal Aviation Agency is considering revoking this segment of Green 6. It is the policy of the Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Greensboro to Richmond would be adequately served by Victor 20. Therefore, it appears that the retention of this airway segment is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke the segment of Green 6 and its associated control areas from Greensboro to Richmond. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with this segment of Green 6. Any proposal to discontinue one or more of these aids would be processed in accordance with current Agency procedures. In addition, the Richmond, Va., radio range station would be revoked as a designated reporting point on Green 6.

Concurrently with these actions, the Federal Aviation Agency is considering alteration of the segment of Victor 20 from South Boston, to Flat Rock. It is proposed to redesignate this airway segment and its associated control areas from the South Boston VOR direct to the Richmond VOR where it would terminate. Also under consideration is the designation of Victor 20 north alternate and its associated control areas to extend from the South Boston VOR via the intersection of the South Boston VOR 042° and the Flat Rock VORTAC 234° True radials; Flat Rock VORTAC; to the Richmond VOR. The proposed altered segment of Victor 20 from Boston to Richmond would provide a replacement route for the segment of Green 6 proposed for revocation. The designation of the proposed north alternate segment to Victor 20 from South Boston via Flat Rock to Richmond would provide an additional route for the air traffic management of aircraft operating between the Richmond, Danville, Va., and Greensboro, terminal areas. In addition, it is proposed to designate the Richmond VOR as a domestic VOR reporting point.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An

informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 19, 1960.

J. R. BAILEY,
Assistant Chief,
Airspace Utilization Division.

[F.R. Doc. 60-11865; Filed, Dec. 22, 1960; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 230]

DELAYING AMENDMENTS

Notice of Proposed Rule Making

Section 8(a) of the Securities Act provides that registration statements filed under that Act shall become effective on the twentieth day after filing or such earlier date as the Commission shall determine. The filing of an amendment to the statement establishes a new filing date and starts the twenty-day period running anew. In order to prevent registration statements from becoming effective through the lapse of time and before they have been amended to cure any deficiencies therein, it has been the practice of registrants to file technical or so-called "delaying" amendments to start the waiting period running again.

The Commission has from time to time been requested by attorneys and other representatives of registrants to adopt a rule which would make unnecessary the filing of delaying amendments. In view of the increased volume and backlog of statements filed under the Act, the Commission has determined to give consideration to the problem of eliminating delaying amendments, or at least reducing the number of such amendments filed. The Commission is moved to consider the matter both in the interest of expediting its own work and in the interest of reducing, insofar as possible, the work involved in the preparing and filing of papers by registrants.

In an effort to meet this problem, the Commission is considering an amendment to Rule 473 proposed by the staff which would provide for the filing, either with a registration statement or at a later date, of an amendment delaying the effective date until the registrant shall file a further amendment which specifically states that the earlier amendment shall no longer operate to delay the effective date of the statement. The proposed new procedure would not be mandatory, although it is expected that registrants would find it to their advantage to follow it in order to avoid the necessity of preparing and filing successive delaying amendments.

Rule 473 (§ 230.473) as proposed to be amended would read as follows:

§ 230.473 Delaying amendments.

(a) An amendment in the following form filed with a registration statement, or as an amendment to a registration statement which has not become effective, shall be deemed, for the purpose of section 8(a) of the Act, to be filed on such date or dates as may be necessary to delay the effective date of such registration statement until the registrant shall file a further amendment which specifically states that the earlier amendment shall no longer operate to delay the effective date of the registration statement:

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this amendment shall no longer operate to delay the effective date hereof.

(b) An amendment pursuant to paragraph (a) of this section filed after the filing of the registration statement, or an amendment altering the proposed date of the public sale, may be made by telegram or letter. Each such telegraphic amendment shall be confirmed in writing within a reasonable time by the filing of a signed copy of the amendment. Such confirmation shall not be deemed an amendment.

All interested persons are invited to submit their views and comments on the proposed rule, in writing, to the Securities and Exchange Commission, Washington 25, D.C., on or before January 16, 1961. All communications in regard to the proposed rule will be considered available for public inspection.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

DECEMBER 16, 1960.

[F.R. Doc. 60-11871; Filed, Dec. 22, 1960; 8:46 a.m.]

[17 CFR Parts 275, 279]

APPLICATION FOR REGISTRATION AS INVESTMENT ADVISER

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposal to amend its Form ADV (§ 279.1), the form of application for registration as an investment adviser, or for amending such an application, and to amend Rule 204-1 (§ 275.204-1), which provides for the filing of supplements and amendments to such an application. The proposal also contemplates the adoption of Form ADV-SUP, which would be required to be filed within 60 days after the proposal becomes effective, by investment advisers already registered and by those who have an application pending on such date.

Public Law 86-750 passed by the Second Session of the 86th Congress amends the Investment Advisers Act of 1940 in many important respects. Among other things, the amendments provide new grounds for denying, suspending or revoking the registration of an investment adviser. Before the amendments were adopted the provisions of section 203(d) of the Act provided, in substance, that the Commission could deny, suspend or revoke the registration of an investment adviser if it found that such action was in the public interest and that the investment adviser, or any partner, officer, director or controlling person: (1) Within 10 years of the order, was convicted of a felony or misdemeanor involving the purchase or sale of a security or arising out of activities as an investment adviser, underwriter, broker or dealer, or as an affiliated person or employee of an investment company, bank or insurance company; or (2) was subject to an injunction based upon similar conduct or activity; or (3) had wilfully made any untrue statement or misleading omission of a material fact in any application or report filed with the Commission. As amended, the Act now provides additional bases for denial, suspension or revocation of registration: (1) conviction of a felony or misdemeanor involving mail fraud; fraud by wire, radio or television; or embezzlement, fraudulent conversion or misappropriation of funds or securities; (2) wilful violation of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, or any rule or regulation under any of such acts; or (3) aiding or abetting any other person's violation of any of such acts, rules or regulations. The amendments also provide that any of the above disqualifications by a controlled person (as well as by a partner, officer, director or controlling person) may also be a basis for denial, suspension or revocation.

As proposed to be amended, Form ADV would require the furnishing of information to disclose whether any of the persons mentioned above are subject to any disqualification under the Act, as amended. Thus, Item 8 has been expanded to reflect the new bases for denial, suspension or revocation of registration. Some other changes have been made to Form ADV, however, to obtain certain additional information, to clarify the instructions, and to simplify its use and its processing at the Commission. For example, Item 10 requests more specific information concerning the investment adviser's business. Item 11 has been revised to reflect the amendment of section 208(c) of the statute which changes the conditions under which an investment adviser may use the designation or title "investment counsel". Item 9 will require the furnishing of information concerning the education and experience of key personnel.

The principal reason for amending Rule 204-1 is to require every investment adviser whose registration is effective when the proposal is adopted or who has an application for registration pending on that date, to file a supplement to his application on Form ADV-SUP within 60 days thereafter. Form ADV-SUP would be substantially the same as Form ADV, as amended, except that the first page would be modified to serve its use as a supplement.

The proposed amendments would be adopted pursuant to the provisions of Sections 203, 204 and 211(a) of the Act.

A copy of Form ADV as proposed to be amended is attached hereto.[1]

The text of proposed Rule 204-1(a) as it is proposed to be amended is as follows:

[1] Form filed as part of original document.

§ 275.204-1 Supplement and amendments to applications.

(a) *Supplement.* Every investment adviser whose registration is effective on _____ (the date this amendment becomes effective), or whose application for registration is pending on that date, shall file a supplement to such application on Form ADV-SUP not later than _____ (60 days after the date this amendment becomes effective).

All interested persons are invited to submit their views and comments on the proposal in writing to the Securities and Exchange Commission, Washington 25, D.C. on or before January 16, 1961. All such communications will be available for public inspection.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

DECEMBER 16, 1960.

[F.R. Doc. 60-11872; Filed, Dec. 22, 1960; 8:46 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Coast Guard

[CGFR 60-78]

KAPOK BUOYANT CUSHION

Termination of Approval

Various items of lifesaving equipment used on certain motorboats and other pleasure craft are required by the act of April 25, 1940, as amended (46 U.S.C. 526–526u), other navigation and vessel inspection laws, and various regulations in 46 CFR Chapter I to be of types approved by the Commandant, United States Coast Guard. The procedures governing the granting of approvals and the suspension, cancellation, termination or withdrawal of approvals are set forth in 46 CFR 2.75–1 to 2.75–50, inclusive. With respect to kapok buoyant cushions, a specification has been prescribed by the Commandant and is published in 46 CFR Part 160, as "Subpart 160.048—Buoyant Cushions, Kapok or Fibrous Glass, for Motorboats of Classes A, 1, or 2 Not Carrying Passengers for Hire" (Subchapter Q—Specifications).

The Commandant's approval of a specific item is intended to provide a control over its quality. Therefore, such approval applies only to the item constructed or installed in accordance with the applicable requirements and the details described in the specific approval. If a specific item when manufactured does not comply with the details of the approval, such item is not considered to have the Commandant's approval, and the certificate of approval issued to the manufacturer does not apply to such modified item.

The purpose of this document is to notify all concerned that Approval No. 160.048/170/0 for a kapok buoyant cushion for use on motorboats of Classes A, 1, or 2 not carrying passengers for hire is terminated. Since the kapok buoyant cushions manufactured by the Protection Products Company, Division of Ero Manufacturing Company, Hazlehurst, Georgia, and marked with Approval No. 160.048/170/0 did not perform satisfactorily under service conditions and failed to comply with applicable requirements for construction and workmanship, the Officer in Charge, Marine Inspection, United States Coast Guard, Savannah, Georgia, notified the Protection Products Company, Division of Ero Manufacturing Company, Hazlehurst, Georgia, by a letter dated September 22, 1960, that this approval was suspended and production of buoyant cushions manufactured under this approval number must cease immediately, and at the same time giving the manufacturer until October 27, 1960, to show why this approval should not be terminated. No written objections to the suspension and proposed termination of this approval were received. Neither did the manufacturer submit reasons in protest to the termination of the approval, as set forth in this document.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Order No. 120, dated July 31, 1950 (15 F.R. 6521), and R.S. 4405, as amended, and 4462, as amended, and sections 6 and 17, of the Act of April 25, 1940, as amended (54 Stat. 164, 166; 46 U.S.C. 375, 416, 526e, 526p), and implementing regulations in 46 CFR Chapter I, it is ordered that the following approval shall be terminated, effective October 27, 1960, because the specific kapok buoyant cushion manufactured thereunder does not comply with present Coast Guard requirements for construction and workmanship:

BUOYANT CUSHIONS, KAPOK OR FIBROUS GLASS

Termination of Approval No. 160.048/170/0, special approval for 15" x 15" x 2" rectangular buoyant cushion with heat-sealed seams, 20-oz. kapok, dwg. No. 2–B.C.S. dated November 10, 1959, and sketch No. 2–B–C–S dated October 15, 1959, manufactured by Protection Products Co., Division of Ero Manufacturing Co., 2637 West Polk Street, Chicago, Ill., and Hazlehurst, Ga. (Approved FEDERAL REGISTER March 16, 1960, 25 F.R. 2170. Termination of approval effective October 27, 1960.)

Notwithstanding this termination of Approval No. 160.048/170/0, as set forth in this document, all kapok buoyant cushions bearing a label showing this approval number which may be in service on board motorboats of Classes A, 1, or 2 not carrying passengers for hire may be continued in use so long as such equipment is in good and serviceable conditions.

Dated: December 16, 1960.

[SEAL] A. C. RICHMOND,
Admiral, U.S. Coast Guard, Commandant.

[F.R. Doc. 60–11873; Filed, Dec. 22, 1960; 8:46 a.m.]

Foreign Assets Control

HAIR OF CERTAIN ANIMALS, COTTON AND SILK WASTE AND CARPET WOOL; IMPORTATION FROM COUNTRIES NOT IN AUTHORIZED TRADE TERRITORY

Applications for Licenses

Notice is hereby given that the Treasury Department is now prepared to consider applications for licenses under the Foreign Assets Control Regulations (31 CFR 500.101 to 500.808) for the importation during 1961 of limited quantities of the following commodities from countries (other than Communist China and North Korea) not in the authorized trade territory:

Badger hair
Camel hair
Carpet wool
Cotton waste
Goat hair
Horse mane hair, horse tail hair and other horse hair
Silk waste
Yak hair

Applications must be filed on or before January 11, 1961.

Any person interested in importing any of the above-named commodities from a country (other than Communist China and North Korea) not in the authorized trade territory may obtain additional information and license application forms from the Foreign Assets Control, Treasury Department, Washington 25, D.C.

Attention is directed to the fact that the term "authorized trade territory" is defined in § 500.322 of the Foreign Assets Control Regulations and that the term "countries (other than Communist China and North Korea) not in the authorized trade territory" as used herein includes Albania, Bulgaria, Czechoslovakia, the Eastern Zone of Germany, the Eastern Sector of Berlin, Estonia, Hungary, Latvia, Lithuania, Outer Mongolia, Poland, Rumania, the Union of Soviet Socialist Republics, and Viet-Nam (only those areas under Communist control).

[SEAL] MARGARET W. SCHWARTZ,
Acting Director, Foreign Assets Control.

[F.R. Doc. 60–11940; Filed, Dec. 22, 1960; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[California No. 608]

CALIFORNIA

Small Tract Classification Order

DECEMBER 16, 1960.

1. Pursuant to the authority delegated to me by the California State Supervisor, Bureau of Land Management, under Part II, Document 4, California State Office, dated November 19, 1954 (19 F.R. 7697), I hereby classify the following described public land, totaling approximately 160 acres in Shasta County, California as suitable for title transfer under the Small Tract Act of June 1, 1938 (52 Stat. 609, 43 U.S.C. 682a), as amended:

MOUNT DIABLO MERIDIAN

T. 31 N., R. 5 W.,
Sec. 9: W½NE¼, W½NW¼SE¼, N½SW¼SE¼, SW¼SW¼.

Containing approximately 160 acres of which 60 acres are covered by 12 applications from persons entitled to preference under 43 CFR, 257.5(a).

2. Classification of the above described lands by this order segregates them from all appropriations, including locations under the mining laws, except as to applications under the mineral leasing laws.

3. The lands classified by this order shall not become subject to applications under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a), as amended, until it is so provided by an order to be issued by an authorized officer, opening the lands to application or bid.

4. All valid applications filed prior to December 16, 1960, will be granted, as soon as possible, the preference right provided for by 43 CFR, 257.5(a).

R. G. SPORLEDER,
Officer-in-Charge, Northern Field Group, Sacramento 14, California.

[F.R. Doc. 60–11868; Filed, Dec. 22, 1960; 8:45 a.m.]

Bureau of Mines

RESEARCH DIRECTOR, ANTHRACITE RESEARCH CENTER

Redelegation of Purchasing Authority

In accordance with the authority delegated in subparagraph 205.2.4A(1), Bureau of Mines Manual, the following redelegation is hereby made:

The Research Director, Anthracite Research Center, may enter into contracts for supplies, equipment and services in amounts not to exceed $2,500 for any one contract.

Dated: December 13, 1960.

J. A. CORGAN,
Chief, Division of Anthracite.

[F.R. Doc. 60–11869; Filed, Dec. 22, 1960; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

GRUNDY COUNTY AUCTION CO. AND CROSBY'S LIVESTOCK COMMISSION SALE

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the stockyards named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said act for the reason that they are no longer being conducted or operated as public markets, and are, therefore, no longer subject to the provisions of the act.

Name and location of stockyard:	*Date of posting*
Grundy County Auction Co. (formerly Trenton Livestock Market), Trenton, Mo.	June 11, 1959
Crosby's Livestock Commission Sale, Leicester Junction, Vt.	Nov. 20, 1959

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not deposting promptly a stockyard which is no longer within the definition of that term contained in said act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 19th day of December 1960.

H. L. JONES,
Acting, Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 60–11892; Filed, Dec. 22, 1960; 8:47 a.m.]

SAN JOAQUIN AUCTION & SALES YARD ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 131 et seq.), on the respective dates specified below it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the act (7 U.S.C. 202) and were, therefore, subject to the act, and notice was given to the owners and to the public by posting notice at the stockyards as required by said section 302.

Name of Stockyard and Date of Posting

CALIFORNIA

San Joaquin Auction & Sales Yard, Pumpkin Center, October 19, 1960.

ILLINOIS

Dameron Livestock Auction, Vienna, October 26, 1960.

IOWA

Greenfield Community Sales, Inc., Greenfield, December 11. 1959.

MINNESOTA

Arrowhead Sales Barn, Grand Rapids, October 7, 1960.

MISSISSIPPI

South Eastern Stockyards, Inc., Laurel, October 31, 1960.

MISSOURI

Boot Hill Auction, Eldon, October 19, 1960.
Oregon Livestock Sales Company, Oregon, October 24, 1960.

NEW JERSEY

Livestock Cooperative Auction Market, Association of North Jersey, Inc., Hackettstown, October 14, 1960.

NEW YORK

Boss Livestock Market, Richfield Springs, October 19, 1960.
Spike Adams Livestock Market, Granville, November 2, 1960.

OKLAHOMA

Cheyenne Livestock Auction, Cheyenne, September 16, 1960.

SOUTH CAROLINA

Nichols Livestock Auction Market, Inc., Nichols, October 19, 1960.

TENNESSEE

Middle Tennessee Livestock Sales, Lawrenceburg, October 28, 1960.

WISCONSIN

Nerison Livestock Sales, Coon Valley, October 27, 1960.
Frederic Livestock Sales, Inc., Frederic, October 19, 1960.
Rice Lake Livestock Auction, Rice Lake, November 14, 1960.

Done at Washington, D.C., this 16th day of December 1960.

H. L. JONES,
Acting Chief, Rates and Registration Branch, Packers and Stockyards Division, Agricultural Marketing Service.

[F.R. Doc. 60–11893; Filed, Dec. 22, 1960; 8:47 a.m.]

Agricultural Research Service

HANDLING OF ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

Order Selecting Members and Alternate Members of Control Agency Pursuant to Marketing Agreement and to Marketing Order

Pursuant to the provisions of the marketing agreement and the marketing order regulating the handling of anti-hog-cholera serum and hog-cholera virus (9 CFR part 131), effective under the provisions of Public Law 320, 74th Congress, approved August 24, 1935 (7 U.S.C. 851 et seq.), the following persons are hereby selected to serve as members and alternates on the Control Agency established pursuant to the said marketing agreement and to the said marketing order:

To represent manufacturers marketing their products principally through veterinarians:

1. E. A. Cahill, as member, and John Todd as his alternate.
2. Edward Buesking, as member, and Carl Norden as his alternate.
3. M. F. Wallace, as member, and E. L. Boley as his alternate.
4. D. A. Peterson, as member, and H. L. Hansen as his alternate.
5. John Gwin, as member, and K. R. Peterson as his alternate.

To represent manufacturers marketing their products principally through other channels:

6. Vernon Witt, as member, and T. B. Huff as his alternate.
7. B. M. Zillman, as member, and T. B. Huff as his alternate.
8. Majon Huff, as member, and O. T. Snow as his alternate.
9. A. R. Glasier, as member, and O. T. Snow as his alternate.

10. Henry Carpenter, as member, and O. T. Snow as his alternate.

To represent distributors marketing their products principally through veterinarians:

11. H. N. Holmes, as member, and William A. Butler as his alternate.

To represent distributors marketing their products principally through other channels:

12. George Cloys, as member, and E. F. Dreppard as his alternate.

Each person hereby selected as a member or alternate member of the Control Agency shall be notified of his selection and shall begin serving on the date that such person qualifies by filing a written acceptance of his appointment with the Secretary, and each such person shall serve, after having qualified as aforesaid, until December 31, 1961, and in the event that the respective person's successor has not been selected and has not qualified by December 31, 1961, such person shall serve until his successor has been selected and has qualified.

Done at Washington, D.C., this 20th day of December 1960.

M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 60-11897; Filed, Dec. 22, 1960; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

TRANS-PACIFIC PASSENGER CONFERENCE

Notice of Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 131-233, between the member lines of the Trans-Pacific Passenger Conference, modifies the basic agreement of that conference (No. 131, as amended), to include a new By-Law providing that passengers utilizing the services of more than one member line on a one-way or round trip voyage entirely within the jurisdiction of the conference, may be granted reduction from published fare as may be determined unanimously by the member lines.

Agreement No. 131-234, between the member lines of the Trans-Pacific Passenger Conference, modifies the basic agreement of that conference (No. 131, as amended), with respect to the interchange of tickets and/or orders on interocean, round-the-world, circuit tours of the Pacific, one-way and round trip passenger traffic.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 19, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11885; Filed, Dec. 22, 1960; 8:47 a.m.]

A. KIRSTEN ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8372-1, between A. Kirsten, Sartori & Berger and Ahnenkiel & Bene, modifies approved Agreement No. 837, covering an arrangement for the scheduling of their vessels operating as the "Hamburg Chicago Linie", in the trade between U.S. Great Lakes ports and ports enroute, on the one hand, and ports on the continent of Europe (Bordeaux/Hamburg Range), on the other hand, and in the trade between any two of said ports which are in the Western Hemisphere (not including transportation within the purview of the coastwise laws of the United States). The purpose of this modification is to provide that the agreement may be cancelled on March 31st of any year, by any party giving written notice to the other parties on December 15th of the preceding year, rather than on November 1st of the preceding year as presently provided.

Agreement No. 8501-1, between Weaver Bros., Inc., Puget Sound-Alaska Van Lines, Inc., and Puget Sound Tug & Barge Co., modifies approved Agreement No. 8501, between Weaver Bros., Inc., and Puget Sound-Alaska Van Lines, Inc., which covers a through billing arrangement on cargo between Seattle, Washington and places in the interior of Alaska, with transhipment at Seward, Alaska. The purpose of this modification is to substitute Puget Sound Tug & Barge Co., as a party to Agreement No. 8501, in lieu of Puget Sound-Alaska Van Lines, Inc.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 19, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11884; Filed, Dec. 22, 1960; 8:47 a.m.]

[Docket No. S-73]

WATERMAN STEAMSHIP CORP.

Notice of Application and of Hearing

Notice is hereby given that in connection with the application of Waterman Steamship Corporation for written permission of the Federal Maritime Board, under section 805(a) of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1223, to continue, if and after it is awarded a subsidy contract, to operate in certain domestic coastwise services, the Federal Maritime Board has set down for further hearings the question of continuing the permissions granted in the Board's Order served on September 13, 1960, insofar as they involve service between Jacksonville, Florida and New York (Port Newark).

In accordance with Rule 6(d) of the Board's rules of practice and procedure (46 CFR 201.94), a pre-hearing conference will be held before an Examiner on January 10, 1961, beginning at 10:00 a.m. in Room 4519 of the New General Accounting Office Building at 5th and G Streets NW., Washington, D.C. Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in this matter and desiring to be heard on issues pertinent to section 805(a) must, before the close of business on January 4, 1961, notify the Secretary, Federal Maritime Board, in writing, in triplicate, and file petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief. Notwithstanding anything in Rule 5(n) of the rules of practice and procedure, Federal Maritime Board, petitions for leave to intervene received after the close of business on January 4, 1961, will not be granted in this proceeding.

Dated: December 20, 1960.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11929; Filed, Dec. 22, 1960; 8:48 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

VERONICA SCHNEWLIN-ANDREAE AND BARBEL FURTH-ANDREAE

Amended Notice of Intention To Return Vested Property

The Notice of Intention to Return Vested Property to Comex A. G. (in liquidation), Basale, Switzerland, which was published in the FEDERAL REGISTER on October 6, 1959 (24 F.R. 8084), is hereby amended in its entirety to read as follows:

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Veronica Schnewlin-Andreae, Zurich, Switzerland; $34,761.58 in the Treasury of the United States. 12 21/100ths shares of International Nickel Co. of Canada common stock, included among those represented by Certificate No. NB439316, registered in the name of Rush & Co., assigned to the Attorney General and held in the Federal Reserve Bank, New York, New York, for safekeeping.

Barbel Furth-Andreae, Zurich, Switzerland; $12,568.86 in the Treasury of the United States. 4 42/100ths shares of International Nickel Co. of Canada common stock, included among those represented by the aforesaid Certificate No. NB439316.

Vesting Order Nos. 18631 and 19143; Claim No. 60505.

Executed at Washington, D.C., on December 14, 1960.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Director,
Office of Alien Property.

[F.R. Doc. 60-11878; Filed, Dec. 22, 1960; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11946]

AEROLINEAS ARGENTINAS

Notice of Prehearing Conference

In the matter of the application of Aerolineas Argentinas, Docket 11946, for renewal of its foreign air carrier permit to engage in foreign air transportation with respect to persons, property, and mail, between a point or points in Argentina, the intermediate points Sao Paulo, Brazil; Rio de Janeiro, Brazil, Belem, Brazil; Port of Spain, Trinidad, B.W.I., and Havana, Cuba, and the terminal point, New York, New York.

Notice is hereby given that a prehearing conference is assigned to be held on January 4, 1961, at 10:00 a.m., e.s.t., in Room 725, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Leslie G. Donahue.

Dated at Washington, D.C., December 20, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11886; Filed, Dec. 22, 1960; 8:47 a.m.]

[Docket 11925]

AERONAVES DE MEXICO, S.A.

Notice of Hearing

In the matter of the application of Aeronaves De Mexico, S.A., under section 402 of the Federal Aviation Act of 1958 for a foreign air carrier permit.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above entitled proceeding is assigned to be held on December 29, 1960, at 10:00 a.m., e.s.t., in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Merritt Ruhlen.

Dated at Washington, D.C., December 16, 1960.

[SEAL] FRANCIS BROWN.
Chief Examiner.

[F.R. Doc. 60-11887; Filed, Dec. 22, 1960; 8:47 a.m.]

[Docket 11922]

AEROVIAS CONDOR DE COLOMBIA, LTDA.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on January 24, 1961 at 10:00 a.m. in Room 701 Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Barron Fredricks.

Dated at Washington, D.C., December 19, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11888; Filed, Dec. 22, 1960; 8:47 a.m.]

[Dockets 8493, 9843, 11254, 11853]

NORTHEAST AIRLINES, INC.; SUSPENSION OR TERMINATION OF SERVICE

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matters is assigned to be held on February 8, 1961 at 10:00 a.m. in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Barron Fredricks.

Dated at Washington, D.C., December 19, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11889; Filed, Dec. 22, 1960; 8:47 a.m.]

[Docket 11941]

WASHINGTON, D.C., HELICOPTER SERVICE CASE

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference on the above-entitled proceeding is assigned to be heard on January 17, 1961, at 10:00 a.m. e.s.t., in Room 1027, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Ralph L. Wiser.

Dated at Washington, D.C., December 20, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-11890; Filed, Dec. 22, 1960; 8:47 a.m.]

PROPOSED AIR STAR ROUTE

Description

In accordance with Public Law 277 of the 81st Congress (approved August 30, 1949), notice is hereby given that the Civil Aeronautics Board has received a request from the Postmaster General (Docket No. 11993) for certification that the proposed air star route, hereinafter described, does not conflict with the development of air transportation as contemplated under the Federal Aviation Act of 1958, as amended.

The route proposed is as follows: Willow Run Airport, Detroit Metropolitan-Wayne County Airport, and a downtown point in the City of Detroit, Michigan.

Under the provisions of the said Public Law 277, the Postmaster General is required to obtain the certification of the Board prior to advertising for bids for the carriage of mail by aircraft on any star route. Any contract which may ultimately be awarded by the Postmaster General under such law will not confer authority to carry persons or property (other than mail) by air.

Prior to reaching its decision as to whether the requested certification should be issued, the Board desires to afford interested persons an opportunity to comment thereon through the submission of written data, views or arguments, in triplicate, addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D.C. All relevant matter in communications bearing the above docket number received on or before January 20, 1961 will be considered by the Board before taking final action on the request of the Postmaster General.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

DECEMBER 20, 1960.

[F.R. Doc. 60-11891; Filed, Dec. 22, 1960; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-3921]

ATTLEBORO ELECTRIC CO. ET AL.

Notice of Filing of Application-Declaration Regarding Merger of Subsidiary Companies

DECEMBER 16, 1960.

In the matter of Attleboro Electric Company, Northampton Electric Lighting Company, Northern Berkshire Electric Company, Quincy Electric Company, Southern Berkshire Power & Electric Company, Weymouth Light and Power Company, Worcester County Electric Company, New England Electric System; File No. 70-3921.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and seven of its electric utility subsidiary companies,

namely, Attleboro Electric Company ("Attleboro"), Northampton Electric Lighting Company ("Northampton"), Northern Berkshire Electric Company ("Northern Berkshire"), Quincy Electric Company ("Quincy"), Southern Berkshire Power & Electric Company ("Southern Berkshire"), Weymouth Light and Power Company ("Weymouth"), and Worcester County Electric Company ("Worcester County"), have filed a joint application-declaration with this Commission pursuant to the provisions of the Public Utility Holding Company Act of 1935 ("Act") and the Rules and Regulations promulgated thereunder and have designated sections 6(a), 7, 9(a), 10, 12(d) and 12(f) of the Act and Rules 43, 44 and 50(a) as applicable to the proposed transactions.

All interested persons are referred to the application-declaration on file in the offices of the Commission for a statement of the transactions therein proposed, which are summarized as follows:

Attleboro, Northampton, Northern Berkshire, Quincy, Southern Berkshire, and Weymouth, all of the common stocks of which are held by NEES, will be merged into Worcester County, all of the common stock of which is also held by NEES. In order to carry out such merger Attleboro, Northhampton, Northern Berkshire, Quincy, Southern Berkshire, and Weymouth will transfer all of their utility properties and related assets to Worcester County which will assume all of the liabilities of such companies. Concurrently, Worcester County will issue 376,420 additional shares of its $25 par value common stock, having an aggregate par value of $9,410,500, in exchange for all of the stocks of the other six subsidiary companies having the same aggregate par value as the additional shares of Worcester County to be issued therefor. Such exchanged stocks will be cancelled. In connection with the merger, it is proposed that the capital stock account, premium on capital stock account, and surplus accounts of Worcester County each will be equal to the aggregate amount of those respective accounts on the books of the seven subsidiary companies and that the common stock of Worcester County to be received by NEES will be entered upon its books in the same amount as the aggregate of its present investments in the common stocks of the other six subsidiary companies.

The application-declaration states that the Massachusetts Department of Public Utilities has jurisdiction over the proposed merger and the issuance of Worcester County common stock in connection therewith and other related matters; that a copy of that State commission's order will be filed by amendment; and that no other State commission and no other Federal commission has jurisdiction over the proposed transactions if they are passed upon by this Commission.

The total estimated expenses of $46,000 in connection with the proposed transactions include $25,000 as the estimated cost of services to be rendered by New England Power Service Company, an affiliated service company, and $21,000 for taxes, including recording charges. Of such fees and expenses $45,500 is applicable to Worcester County and $500 is applicable to NEES.

Notice is further given that any interested person may, not later than January 4, 1961, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the filing which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11870; Filed, Dec. 22, 1960; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 20, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36780: *Substituted service—C&NW for Acme Carriers, Inc.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 175), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., on the one hand, and Des Moines and Sioux City, Iowa, on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 6 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36781: *Coal from Wisconsin to Minnesota points.* Filed by Western Trunk Line Committee, Agent (No. A-2158), for interested rail carriers. Rates on coal, anthracite and bituminous, in carloads, from points in Wisconsin, to points in Minnesota.

Grounds for relief: Market competition with Duluth, Minn.

Tariff: Supplement 50 to Chicago and North Western Railway tariff I.C.C. 4876, and other schedules named in the application.

FSA No. 36782: *Substituted service—Wabash Et Al., for McLean Trucking Company, Et Al.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 174), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between East St. Louis, Ill., on the one hand, and East Cambridge, Holyoke and Worcester, Mass., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 6 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36783: *Substituted service—PRR, Et Al., for McLean Trucking Company, Et Al.* Filed by The Eastern Central Motor Carriers Association, Inc., Agent (No. 173), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Cincinnati, Ohio, East St. Louis, Ill., Indianapolis, Ind., and Louisville, Ky., on the one hand, and East Cambridge, Holyoke and Worcester, Mass., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 6 to Eastern Central Motor Carriers Association, Inc., tariff MF-I.C.C. A-185.

FSA No. 36784: *Sulphur from Texas and Louisiana to Virginia points.* Filed by Southwestern Freight Bureau, Agent (No. B-7944), for interested rail carriers. Rates on sulphur (brimstone), refined, in carloads, from points in Louisiana and Texas to Bedford, Bentonville, Damascus, Front Royal and Winchester, Va.

Grounds for relief: Market competition.

Tariff: Supplement 167 to Southwestern Freight Bureau tariff I.C.C. 4177.

FSA No. 36785: *Sulphur from High Island, Tex.* Filed by Southwestern Freight Bureau, Agent (No. B-7945), for interested rail carriers. Rates on crude or refined sulphur, in carloads, from High Island, Tex., to points in southern, official (including Illinois) and western trunk line territories.

Grounds for relief: Market competition.

Tariff: Supplement 167 to Southwestern Freight Bureau tariff I.C.C. 4177.

FSA No. 36786: *T.O.F.C. class rates from and to Atlanta, Ga.* Filed by Southwestern Freight Bureau, Agent (No. B-7940), for interested rail carriers. Rates on various commodities moving on class rates loaded in trailers and transported on railroad flat cars between Atlanta, Ga., on the one hand, and points in southwestern territory, on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 12 to Southwestern Freight Bureau tariff I.C.C. 4368.

FSA No. 36787: *Liquid fertilizer from Idaho and Utah.* Filed by the Union Pacific Railroad Company (No. 121), for itself and on behalf of interested rail carriers. Rates on liquid fertilizers, in tank-car loads, from Don and Georgetown, Idaho and Garfield and Geneva, Utah, to points in Minnesota, North Dakota and South Dakota.

Grounds for relief—Short-line distance formula and grouping.

Tariff—Supplement 134 to Union Pacific Railroad Company tariff I.C.C. 5415.

FSA No. 36788: *Salt from Michigan and Ohio points to Memphis, Tenn.* Filed by Traffic Executive Association-Eastern Railroads, Agent (ER No. 2565), for interested rail carriers. Rates on common salt (sodium chloride), in bulk in 100 lb. bags, in carloads, from Manistee, Mich., Akron, Barberton and Rittman, Ohio, to Memphis, Tenn.

Grounds for relief: Market competition.

Tariff: Supplement 46 to Traffic Executive Association-Eastern Railroads tariff I.C.C. 4534 (Hinsch series).

FSA No. 36789: *Soda ash from Louisiana and Texas to Illinois points.* Filed by Southwestern Freight Bureau, Agent (No. B-7946), for interested rail carriers. Rates on soda ash, other than modified soda ash, in bulk, or in bulk in bags, barrels, boxes or pails, in carloads, from Lake Charles, La., Corpus Christi, Freeport and Houston, Tex., to Federal, Hartford and Roxana, Ill.

Grounds for relief: Market competition.

Tariffs: Supplements 485 and 23 to Southwestern Freight Bureau tariffs I.C.C. 4087 and 4370, respectively.

FSA No. 36791: *Coarse Grains from Illinois, Iowa and Missouri points to Southwestern Territory.* Filed by Southwestern Freight Bureau, Agent (No. B-7941), for interested rail carriers. Rates on coarse grains and grain products, in carloads, from points in Illinois, Iowa and Missouri to points in Arkansas, Kansas, Louisiana, Missouri, Oklahoma, and Texas.

Grounds for relief: Truck competition.

Tariffs: Supplement 84 to Southwestern Freight Bureau tariff I.C.C. 4237, and other schedules listed in the application.

FSA No. 36792: *Asphalt from Chaison, Tex., to Mississippi River crossings.* Filed by Southwestern Freight Bureau, Agent (No. B-7935), for interested rail carriers. Rates on asphalt (asphaltum), natural, by-products, or petroleum (other than paint, stain or varnish), in carloads or tank-car loads, from Chaison, Tex., to Mississippi River crossings, also points in Louisiana named in the application.

Grounds for relief: Market competition, short-line distance formula, and grouping.

Tariff: Southwestern Freight Bureau tariff I.C.C. 4395.

FSA No. 36793: *Petroleum and petroleum products from Veltin, La., to the South.* Filed by Southwestern Freight Bureau, Agent (No. B-7942), for interested rail carriers. Rates on petroleum and petroleum products, in carloads, from Veltin, La., to points in southern territory.

Grounds for relief: Market competition, short-line distance formula and grouping.

Tariff: Supplement 69 to Southwestern Freight Bureau tariff I.C.C. 4334.

FSA No. 36794: *T.O.F.C. service—Commodity rates in the southwest.* Filed by Southwestern Freight Bureau, Agent (No. B-7943), for interested rail carriers. Rates on various commodities moving on commodity rates, loaded in trailers and transported on railroad flat cars between points in southwestern territory, also between points in southwestern territory, on the one hand, and Memphis, Tenn., and Natchez, Miss., on the other.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 25 to Southwestern Freight Bureau tariff I.C.C. 4353.

AGGREGATE-OF-INTERMEDIATES

FSA No. 36790: *Soda Ash from Louisiana and Texas to Illinois Points.* Filed by Southwestern Freight Bureau, Agent (No. B-7947), for interested rail carriers. Rates on soda ash, other than modified soda ash, in bulk, or in bulk in bags, barrels, boxes or pails, in carloads, from Lake Charles, La., Corpus Christi, Freeport and Houston, Tex., to Federal, Hartford and Roxana, Ill.

Grounds for relief: Maintenance of depressed rates established to meet market competition without having to use such rates as factors in constructing combination rates.

Tariffs: Supplements 485 and 23 to Southwestern Freight Bureau tariffs I.C.C. 4087 and 4370, respectively.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 60-11875; Filed, Dec. 22, 1960; 8:46 a.m.]

[Notice 427]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 20, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63064. By order of December 16, 1960, The Transfer Board approved the transfer to Wayne Bell, doing business as Wayne Bell Trucking, El Paso, Tex., of the "grandfather" operating rights claimed to have been performed by Ray Burke and Gene Crutcher, El Paso, Tex., under section 7 of the Transportation Act of 1958 (72 Stat. 574), for which a certificate is sought in Docket No. MC 118076 for the transportation of bananas between El Paso, Amarillo and Midland, Tex., Denver, Colo., Los Angeles, Calif., and Tucson and Phoenix, Ariz. Joe A. Morgan, Bassett Tower, El Paso, Texas, for applicants.

No. MC-FC 63786. By order of December 16, 1960, The Transfer Board approved the transfer to Robert C. Sorensen, doing business as Sorensen Transport, Woodbridge, Conn., as the purchaser of the rights sought in Docket No. MC 118080, in lieu of Gerald Don and Seymour Bloom, doing business as D & B Produce, Bridgeport, Conn., for the right to transport bananas, from Weehawken, N.J., to Waterbury and Bridgeport, Conn., under the "grandfather clause" of Section 7 of the Transportation Act of 1958 (72 Stat. 574). George D. Shamiss, 308 Security Building, 1115 Main St., Bridgeport 3, Conn., for applicants.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 60-11876; Filed, Dec. 22, 1960; 8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

Page

PROCLAMATIONS:
- Oct. 3, 1905 — 12915
- Dec. 7, 1907 — 12915
- Feb. 10, 1909 — 12915
- Dec. 10, 1910 — 12915
- Oct. 18, 1912 — 12915
- 2935 — 12501
- 3355 — 13131
- 3382 — 12587
- 3383 — 13131

EXECUTIVE ORDERS:
- Feb. 26, 1852 — 13229
- Oct. 20, 1916 — 12887
- June 8, 1926 — 12887
- 3797–A — 12412, 12599
- 6260 — 12281
- 9941 — 12429
- 10896 — 12281
- 10897 — 12429
- 10898 — 12429
- 10899 — 12729

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
- Letter, Jan. 17, 1953 — 12501
- Letter, Nov. 16, 1960 — 12501

5 CFR

- 2 — 12285
- 6 — 12393, 12547, 12588, 12733, 12869, 13132
- 30 — 12733
- 325 — 13132

6 CFR

- 331 — 12994
- 421 — 12282, 12283

7 CFR

- 11 — 13621
- 33 — 12430
- 51 — 12941
- 319 — 12809
- 601 — 13132
- 718 — 12588
- 722 — 12393, 12403, 12809, 12812, 12987
- 728 — 13621
- 730 — 12503
- 811 — 13211
- 833 — 12650
- 845 — 12285
- 871 — 12547
- 903 — 12504
- 905—908 — 12504
- 911—913 — 12504
- 914 — 12405, 12650, 12812, 12941
- 916—919 — 12504
- 921 — 12504
- 923—925 — 12504
- 928—932 — 12504
- 933 — 12405–12407, 12504, 12987
- 935 — 12504
- 941—942 — 12504
- 943 — 12504, 12813
- 944 — 12504, 12987
- 946—948 — 12504
- 949 — 12504, 12941
- 952 — 12504
- 953 — 12407, 12430, 12651, 12948
- 954 — 12504
- 955 — 12949
- 956 — 12504
- 963 — 12504

7 CFR—Continued

Page

- 965—968 — 12504
- 970 — 12994
- 971—972 — 12504
- 974—978 — 12504
- 980 — 12504
- 982 — 12504
- 985—988 — 12504
- 989 — 12813, 13630
- 991 — 12504
- 994—995 — 12504
- 998 — 12504
- 1000 — 12504
- 1002 — 12504
- 1004—1005 — 12504
- 1008—1009 — 12504
- 1010 — 12994
- 1011—1014 — 12504
- 1016 — 12504
- 1018 — 12504, 12588
- 1023—1024 — 12504
- 1031 — 12505, 12651, 12652
- 1032 — 12828, 13631

PROPOSED RULES:
- 51 — 12298, 12299
- 718 — 13142
- 812 — 12712
- 901 — 12742
- 923 — 12558
- 936 — 12465
- 938 — 12752
- 949 — 12606
- 953 — 13141
- 961 — 13001
- 965 — 12466
- 989 — 12476
- 994 — 13239, 13637
- 1010 — 13001
- 1012 — 12558
- 1032 — 12712, 12752
- 1033 — 12606
- 1034 — 13142

8 CFR

- 211 — 12290

9 CFR

- 72 — 12548
- 74 — 12995, 13132
- 94 — 12831

PROPOSED RULES:
- 83 — 12571

10 CFR

- 30 — 12730
- 70 — 12730

PROPOSED RULES:
- 25 — 12753
- 115 — 12367

12 CFR

PROPOSED RULES:
- 206 — 12479

13 CFR

PROPOSED RULES:
- 107 — 12754

14 CFR

- 41 — 12908
- 49 — 12352
- 225 — 12589
- 243 — 12908
- 293 — 12908
- 298 — 12909

14 CFR—Continued

Page

- 300 — 12430
- 302 — 12432, 12933
- 414 — 12589
- 506 — 12505
- 507 — 12352, 12433, 12549, 12829, 12995, 13212, 13631
- 514 — 12433, 12995
- 600 — 12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734, 12933, 12934
- 601 — 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997
- 602 — 12288, 12552, 12678, 12831, 12997, 13213
- 608 — 12678, 12679, 12734, 12830, 12934, 12997, 13213
- 609 — 12353, 12735, 12935
- 610 — 13213
- 612 — 12410
- 1501 — 12434

PROPOSED RULES:
- 41 — 12299
- 43 — 12524
- 221 — 12913
- 302 — 12477
- 507 — 12477, 12478, 12571, 12844
- 600 — 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244, 13637
- 601 — 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952, 13244, 13637.
- 608 — 12479, 12846
- 626 — 12952

15 CFR

- 203 — 12590
- 204 — 13215
- 371 — 12734

16 CFR

- 13 — 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133

PROPOSED RULES:
- 56 — 13245

17 CFR

- 230 — 12912

PROPOSED RULES:
- 230 — 13638
- 240 — 13245
- 249 — 13245
- 250 — 13245
- 259 — 13245
- 270 — 13245
- 274 — 13245
- 275 — 13638
- 279 — 13638

18 CFR

- 104 — 12763
- 105 — 12961
- 154 — 12653
- 204 — 13161
- 205 — 13649

19 CFR

- 1—57 — 13325

PROPOSED RULES:
- 8 — 12681

21 CFR

Page

- 1 — 12592
- 8 — 12288
- 120 — 12288, 12506, 13631, 13632
- 121 — 12412, 12595, 12731, 12831, 13008, 13217, 13632
- 130 — 12592
- 146 — 12506, 12596, 12732
- 146c — 12289

PROPOSED RULES:
- 27 — 12372
- 120 — 12374, 12571
- 121 — 12299, 12477, 12839, 12840, 13008

22 CFR

- 3 — 13138
- 46 — 12289

25 CFR

- 171 — 12408

PROPOSED RULES:
- 52 — 12518
- 176 — 12299
- 252 — 13239

26 (1939) CFR

- 16 — 12442
- 17 — 12443
- 29 — 12339
- 39 — 12339
- 40 — 12340

PROPOSED RULES:
- 81 — 13001

26 (1954) CFR

- 1 — 12340, 12345, 12654
- 18 — 12340
- 19 — 12654
- 31 — 13031
- 41 — 13133
- 44 — 13133
- 46 — 13133
- 48 — 12669
- 49 — 13133
- 151 — 13135
- 170 — 12732
- 301 — 13137

PROPOSED RULES:
- 1 — 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140
- 20 — 13001
- 25 — 12707
- 31 — 12835
- 48 — 12362, 13001
- 170 — 12710
- 197 — 12362
- 250 — 12511

28 CFR

- 21 — 12290

29 CFR

- 2 — 13228

PROPOSED RULES:
- 604 — 12950
- 606 — 12950
- 713 — 12950

31 CFR

- 54 — 12345

32 CFR

- 505 — 12869
- 570 — 12869
- 750 — 12870
- 753 — 12879
- 805 — 12291
- 888 — 12999
- 1001 — 12999
- 1002 — 13000

32 CFR—Continued

Page

- 1003 — 13000
- 1004 — 13000
- 1006 — 13000
- 1007 — 13000
- 1008 — 12444
- 1009 — 12446
- 1010 — 12449, 13000
- 1012 — 12449
- 1013 — 12449, 13000
- 1016 — 12450, 12456
- 1030 — 12451
- 1052 — 12456, 13000
- 1053 — 12456
- 1054 — 12458, 13000
- 1055 — 12462
- 1057 — 12462, 13000
- 1059 — 12462
- 1619 — 12291

32A CFR

OIA (CH. X):
- OI Reg. 1 — 13632

33 CFR

- 96 — 13633
- 202 — 12393
- 203 — 12740
- 207 — 12740

38 CFR

- 3 — 12463
- 21 — 13229

39 CFR

- 4 — 13218
- 27 — 12348
- 61 — 13218
- 62 — 13223
- 63 — 13224
- 168 — 12884

41 CFR

- 3–75 — 12502, 12596
- 5–1 — 12553, 13217
- 50–201 — 12553
- 50–202 — 12553

PROPOSED RULES:
- 50–202 — 12363, 12522

42 CFR

- 1 — 12292

43 CFR

- 76 — 12597, 12949
- 181 — 12679
- 192 — 12352
- 257 — 12679

PROPOSED RULES:
- 259 — 12606

PUBLIC LAND ORDERS:
- 82 — 12412, 12599
- 261 — 13138
- 797 — 12413
- 1124 — 12885
- 1253 — 12481
- 1273 — 13138
- 1621 — 12599
- 1965 — 12599
- 2209 — 12412
- 2210 — 12413
- 2211 — 12413
- 2212 — 12597
- 2213 — 12597
- 2214 — 12598
- 2215 — 12599
- 2216 — 12599
- 2217 — 12885, 13633
- 2218 — 12885
- 2219 — 12886

43 CFR—Continued

Page

PUBLIC LAND ORDERS—Continued
- 2220 — 12887
- 2221 — 12887
- 2222 — 12887
- 2223 — 13138
- 2224 — 13229
- 2225 — 13229
- 2226 — 13633

45 CFR

- 145 — 13230
- 146 — 13230
- 601—620 — 12600

PROPOSED RULES:
- 301 — 12840
- 306 — 12840
- 307 — 12841
- 308 — 12842
- 309 — 12843
- 311 — 12844

46 CFR

- 24 — 12554
- 30 — 12554
- 56 — 12554
- 70 — 12555
- 90 — 12555
- 110 — 12555
- 111 — 12555
- 136 — 12555
- 171 — 12555
- 308 — 12348

47 CFR

- 1 — 12358, 12600, 12602, 12603, 12605, 13230
- 3 — 13230
- 4 — 12680
- 5 — 12359
- 7 — 13230
- 8 — 13232, 13233
- 9 — 12359
- 10 — 12359
- 11 — 12359
- 12 — 12358
- 16 — 12359
- 19 — 12359
- 21 — 12359, 12603, 12605

PROPOSED RULES:
- 1 — 12624, 12898
- 2 — 13244
- 3 — 12371, 12624, 12626, 12627, 12899
- 7 — 12951
- 8 — 12951
- 9 — 13244
- 10 — 13244
- 11 — 13244
- 16 — 13244
- 19 — 13244
- 21 — 13244

49 CFR

- 91 — 12506
- 95 — 13633
- 122 — 12506
- 171 — 12888

PROPOSED RULES:
- 71–78 — 12420
- 197 — 12420

50 CFR

- 32 — 12555, 12888
- 33 — 12507, 12556, 12557, 12888, 13138, 13139, 13234–13238, 13634
- 269 — 13634

PROPOSED RULES:
- 14 — 12741
- 41 — 13001

Pages 13649-13677

PART II

FEDERAL REGISTER

VOLUME 25 NUMBER 249

Washington, Friday, December 23, 1960

Uniform System of Accounts for Class D Natural Gas Companies

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

SUBCHAPTER F—ACCOUNTS, NATURAL GAS ACT

[Order No. 228; Docket No. R–187]

PART 205—UNIFORM SYSTEM OF ACCOUNTS FOR CLASS D NATURAL GAS COMPANIES

This Commission has under consideration in this proceeding the revision of Part 204—Application of Uniform System of Accounts to Class C and Class D Natural Gas Companies of Subchapter F—Accounts, Natural Gas Act, of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations (CFR), to prescribe a revised Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class D). That revised System of Accounts, as set forth in the attachment to the Notice of Proposed Rulemaking in this docket (25 F.R. 7955–7970) is prescribed hereinafter to become effective January 1, 1961, as a new part of the CFR, Part 205.

Part 204, §§ 204.1 through 204.8, of said Title and Code correspond to, and appear at pages 179–200 of the Commission's pamphlet publication of its Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, effective January 1, 1940, revised to January 1, 1954,[1] as amended by Order No. 203 issued May 29, 1958 (23 F.R. 4164, June 12, 1958). That System of Accounts, as revised and prescribed hereinafter, follows the numbering system (accounts, instructions, definitions, etc.) used in the Notice of Proposed Rulemaking referred to above.

[1] The Uniform System of Accounts effective January 1, 1940, was prescribed by Commission Order No. 69 dated November 3, 1939 (4 F.R. 4764, December 5, 1939); and was contained in the codification and reissuance of the Commission's general rules promulgated by Commission Order No. 141, December 11, 1947, effective January 1, 1948 (12 F.R. 8461).

Important developments in the natural gas industry since the adoption of the Uniform System of Accounts effective January 1, 1940, and the experience of the Commission over the past 20 years indicated the need for a revision of the System of Accounts. Accordingly, this proceeding was commenced by Notice of Proposed Rulemaking served upon interested parties, including State and Federal regulatory agencies, and by publication in the FEDERAL REGISTER on August 17, 1960 (25 F.R. 7954). Copies of the proposed revised System of Accounts were served and published as a part of the general notice, as heretofore noted.

The revisions of the Commission's System of Accounts, as then proposed are prescribed hereinafter as a part of the Commission's Uniform System of Accounts to become effective January 1, 1961.

Heretofore, the Commission has not had a separately issued Uniform System of Accounts for Class D Natural Gas Companies, as such. The accounting requirements presently effective for small utilities (Class C and Class D), consist of an abridgment of the accounts for large natural gas companies by means of account charts appearing as Appendix II of the pamphlet version of the Uniform System of Accounts. In these account charts, the condensed accounts applicable to the small utilities are indicated by bracketing related account titles applicable to Class A and Class B utilities. The result is that small utilities have had to work with an inordinate amount of textual materials designed for larger utilities. An objective of the System of Accounts, prescribed hereinafter is to relieve small utilities from that burden. It is believed that the revised System of Accounts provides these smaller utilities with a simplified System of Accounts appropriate for the magnitude of their operations. The revised System of Accounts prescribed herein reflects the basic principles found in this Commission's recently issued revised Uniform System of Accounts Prescribed for Class A and Class B Natural Gas Companies Subject to the Provisions of the Natural Gas Act, Docket No. R–174. The revised System of Accounts introduces the following important improvements in this Commission's small utility accounting requirements:

a. New size classifications for gas utilities;

b. Simple plant and expense classifications for manufactured gas;

c. Certain necessary new accounts;

d. New arrangement of balance sheet and certain other accounts to make them more informative;

e. A reduced number of expense account classifications, mainly but not entirely, by the discontinuance of segregations of numerous functional accounts as to labor and other expenses;

f. Expanded items lists of account texts and clearer description of such items according to their functional nature, to facilitate use and consistency of respective account classifications; and

g. Restatements of the accounting aspects of certain accounting interpretations issued in the past.

In recommending the form of revised System of Accounts accompanying the Notice of Proposed Rulemaking in this proceeding, the staff of this Commission correlated its activities with the activities of the National Association of Railroad and Utility Commissioners (NARUC) which has recently prepared a form of NARUC Uniform System of Accounts for Class D gas utilities. This was done to promote continued consistency and uniformity of approach to the common problems with which the two accounting systems are concerned; and to assure a minimum amount of deviation where the two accounting systems do differ. The staff's activities in this regard were undertaken mainly with the Committee on Statistics and Accounts of the NARUC.

The aforesaid Notice of Proposed Rulemaking provided for the submission of data, views, comments, or protests in writing not later than September 19, 1960. To date no such data, views, comments, or protests have been received.

The Commission recognizes that some burden and expense will have to be borne by the accounting and reporting parties affected in connection with the transition from the present to the revised System of Accounts. However, the Commission is of the opinion that the physical burden and monetary cost of the changeover is of minor importance when viewed in relation to the immediate and future benefits to be derived from the revised System of Accounts, as prescribed herein.

For the convenience of all parties concerned, Appendix A set forth below correlates the account titles of the Commission's Uniform System of Accounts applicable to Class D Natural Gas Companies, effective January 1, 1940, with the revised System of Accounts prescribed herein effective January 1, 1961. Being a schematic presentation only, and of a very general nature, nothing contained therein shall be construed as in any way modifying the general or specific account titles, texts, and instructions of either of the Systems of Accounts.

Also, it should be noted that for the period of time required for the preparation and publication of the revised System of Accounts prescribed herein in pamphlet form, the revised System of Accounts (18 CFR Part 205) will be available in the printed form set forth below as Appendix B.

The Commission finds:

(1) In view of the foregoing, and upon consideration of all relevant matters presented, it is necessary and appropriate for the purposes of the Natural Gas Act, that the proposed revised System of Accounts as set forth in the Notice of Proposed Rulemaking (25 F.R. 7955–7970), be adopted and promulgated as this Commission's revised Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class D), effective January 1, 1961, all in the manner as hereinafter provided.

(2) Good cause exists for the adoption of the revised System of Accounts set forth herein to be effective as of January 1, 1961.

The Commission, acting pursuant to the Natural Gas Act, as amended, particularly sections 8(a), 10, and 16 (15 U.S.C. 717g, 717i, and 717o) orders:

(A) Effective January 1, 1961, Subchapter F—Accounts, Natural Gas Act of Chapter I—Federal Power Commission, Title 18—Conservation of Power, of the Code of Federal Regulations is amended by the addition of a new Part 205 to read as set forth in Appendix B below.

(B) Effective January 1, 1961, all Class D Natural Gas Companies under the Natural Gas Act shall keep their accounts in the manner set forth in the revised System of Accounts appearing in Appendix B below.

(C) The Secretary of the Commission shall cause prompt publication of this order.

Issued: December 23, 1960.

By the Commission.

[SEAL] J. H. GUTRIDE, *Secretary.*

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Gas Plant:			
Gas plant in service, leased to others and held for future use.	2100.1	100	Gas plant.
		393	Gas plant leased to others.
		394	Gas plant held for future use.
Construction work in progress	2100.3	395	Construction work in progress—gas.
Gas plant acquisition adjustments	2100.5	396	Gas plant acquisition adjustments.
Gas plant in process of reclassification	2100.6	392	Gas plant in process of reclassification.
Gas plant adjustments	2107	397	Other gas plant adjustments.
Other utility plant	2108	118	Other utility plant.
2. Investment and Fund Accounts			*2. Other Property Investments*
Other physical property	2110	121	Nonutility property.
Miscellaneous investments and special funds	2114	124	Other investments.
		125	Special funds.
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	2120	131	Cash and working funds.
Temporary cash investments	2123	132	Temporary cash investments.
Notes and accounts receivable	2124	141	Notes receivable.
Receivable from associated companies	2126	142	Customer accounts receivable.
		143	Other accounts receivable.
Materials and supplies	2131	150	Materials and supplies.
Prepayments	2132	165	Prepayments.
Miscellaneous current and accrued assets	2133	170	Other current and accrued assets.
Gas stored underground	2134	------	(See General instruction No. 6B.)
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	2140	181	Unamortized debt discount and expense.
Extraordinary property losses	2141	182	Extraordinary property losses.
Miscellaneous deferred debits	2146	183	Other deferred debits.
5. Capital Stock Discount and Expense			
Discount on capital stock	2150	213	Discount on capital stock.
Capital stock expense	2151	214	Capital stock expense.
6. Reacquired Securities			
Reacquired securities	2152	217	Reacquired capital stock.
		221	Bonds.
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
7. Capital Stock			*5. Proprietary Capital*
Common capital stock	2200	201	Common capital stock.
Preferred capital stock	2201	204	Preferred capital stock.
Stock liability for conversion	2202		
Premiums and assessments on capital stock	2203	207	Other paid-in capital.
Capital stock subscribed	2204		
Installments received on capital stock	2205	212	Installments received on capital stock.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS			BALANCE SHEET ACCOUNTS
ASSETS AND OTHER DEBITS			ASSETS AND OTHER DEBITS
1. Utility Plant			*1. Utility Plant*
Gas plant	100	2100.1	Gas plant in service, leased to others, and held for future use.
Accumulated provision for depreciation, depletion and amortization of gas plant.	110	2250	Reserve for depreciation and amortization of gas plant.
		2251	Reserve for amortization of other limited-term gas investments.
		2252	Reserve for amortization of gas plant acquisition adjustments.
Other utility plant	118	2108	Other utility plant.
Accumulated provision for depreciation and amortization of other utility plant.	119	2253	Reserve for depreciation and amortization of other property.
2. Other Property and Investments			
Nonutility property	121	2110	Other physical property.
Accumulated provision for depreciation and amortization of nonutility property.	122	2253	Reserve for depreciation and amortization of other property.
Other investments	124	2114	Miscellaneous investments and special funds.
Special funds	125		
3. Current and Accrued Assets			*3. Current and Accrued Assets*
Cash and working funds	131	2120	Cash and working funds.
Temporary cash investments	132	2123	Temporary cash investments.
		2124	Notes and accounts receivable.
Notes receivable	141	2126	Receivable from associated companies.
		2221	Notes receivable discounted.
Customer accounts receivable	142		
Other accounts receivable	143	2124	Notes and accounts receivable.
Accumulated provision for uncollectible accounts—credit.	144	2254	Reserve for uncollectible accounts.
Materials and supplies	150	2131	Materials and supplies.
Prepayments	165	2132	Prepayments.
Other current and accrued assets	170	2133	Miscellaneous current and accrued assets.
4. Deferred Debits			*4. Deferred Debits*
Unamortized debt discount and expense	181	2140	Unamortized debt discount and expense.
Extraordinary property losses	182	2141	Extraordinary property losses.
Other deferred debits	183	2146	Miscellaneous deferred debits.
LIABILITIES AND OTHER CREDITS			LIABILITIES AND OTHER CREDITS
5. Proprietary Capital			*7. Capital Stock*
Common capital stock	201	2200	Common capital stock.
Preferred capital stock	204	2201	Preferred capital stock.
		2202	Stock liability for conversion.
Other paid-in capital	207	2203	Premiums and assessments on capital stock.
		2204	Capital stock subscribed.
		2270	Capital surplus.
Installments received on capital stock	212	2205	Installments received on capital stock.
Discount on capital stock	213	2150	Discount on capital stock.
Capital stock expense	214	2151	Capital stock expense.
Appropriated earned surplus	215		
Unappropriated earned surplus	216	2271	Earned surplus.
Reacquired capital stock	217	2152	Reacquired securities.
Noncorporate proprietorship	218	------	New account.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.
8. Long-Term Debt			*6. Long-Term Debt*
Bonds	2210	221	Bonds.
Receivers' certificates	2211	224	Other long-term debt.
Advances from associated companies	2212	223	Advances from associated companies.
Miscellaneous long-term debt	2213	224	Other long-term debt.
9. Current and Accrued Liabilities			*7. Current and Accrued Liabilities*
Notes and accounts payable	2220	231	Notes payable.
		232	Accounts payable.
Notes receivable discounted	2221	141	Notes receivable (see note).
Payables to associated companies	2223		
Dividends declared	2224		
Matured long-term debt	2225	238	Other current and accrued liabilities.
Matured interest	2226		
Customers' deposits	2227	235	Customer deposits.
Taxes accrued	2228	236	Taxes accrued.
Interest accrued	2229	237	Interest accrued.
Other current and accrued liabilities	2230	238	Other current and accrued liabilities.
10. Deferred Credits			*8. Deferred Credits*
Unamortized premium on debt	2240	251	Unamortized premium on debt.
Customers' advances for construction	2241	252	Customer advances for construction.
Other deferred credits	2242	253	Other deferred credits.
11. Reserves			*9. Operating Reserves*
Reserve for depreciation and amortization of gas plant.	2250		
Reserve for amortization of other limited-term gas investments	2251	110	Accumulated provision for depreciation, depletion and amortization of gas plant.
Reserve for amortization of gas plant acquisition adjustments.	2252		
		119	Accumulated provision for depreciation and amortization of other utility plant.
Reserve for depreciation and amortization of other property.	2253	122	Accumulated provision for depreciation and amortization of nonutility property.
Reserve for uncollectible accounts	2254	144	Accumulated provision for uncollectible accounts—credit.
Miscellaneous reserves	2258	261	Property insurance reserve.
		265	Miscellaneous operating reserves.
12. Contributions in Aid of Construction			*10. Contributions in Aid of Construction*
Contributions in aid of construction	2265	271	Contributions in aid of construction.
13. Accumulated Deferred Taxes on Income			
Accumulated deferred taxes on income—accelerated amortization.	2266.1		
Accumulated deferred taxes on income—liberalized depreciation.	2266.2	------	(See general instruction No. 6C.)
Accumulated deferred taxes on income—other	2266.3		
14. Surplus			
Capital surplus	2270	207	Other paid-in capital.
Earned surplus	2271	215	Appropriated earned surplus.
		216	Unappropriated earned surplus.
GAS PLANT ACCOUNTS			GAS PLANT ACCOUNTS
1. Intangible Plant			*1. Intangible Plant*
Intangible plant	2301	301	Organization.
		302	Franchises and consents.
		303	Miscellaneous intangible plant.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
BALANCE SHEET ACCOUNTS—Continued			BALANCE SHEET ACCOUNTS—Continued
LIABILITIES AND OTHER CREDITS—con.			LIABILITIES AND OTHER CREDITS—con.
6. Long-Term Debt			*8. Long-Term Debt*
Bonds	221	2152	Reacquired securities.
		2210	Bonds.
Advances from associated companies	223	2212	Advances from associated companies.
Other long-term debt	224	2211	Receivers' certificates.
		2213	Miscellaneous long-term debt.
7. Current and Accrued Liabilities			*9. Current and Accrued Liabilities*
Notes payable	231	2220	Notes and accounts payable.
Accounts payable	232		
Customer deposits	235	2227	Customers' deposits.
Taxes accrued	236	2228	Taxes accrued.
Interest accrued	237	2229	Interest accrued.
		2223	Payables to associated companies.
		2224	Dividends declared.
Other current and accrued liabilities	238	2225	Matured long-term debt.
		2226	Matured interest.
		2230	Other current and accrued liabilities.
8. Deferred Credits			*10. Deferred Credits*
Unamortized premium on debt	251	2240	Unamortized premium on debt.
Customer advances for construction	252	2241	Customers' advances for construction.
Other deferred credits	253	2242	Other deferred credits.
9. Operating Reserves			*11. Reserves*
Property insurance reserve	261	2258	Miscellaneous reserves.
Miscellaneous operating reserve	265		
10. Contributions in Aid of Construction			*12. Contributions in Aid of Construction*
Contributions in aid of construction	271	2265	Contributions in aid of construction.
GAS PLANT ACCOUNTS			GAS PLANT ACCOUNTS
1. Intangible Plant			*1. Intangible Plant*
Organization	301		
Franchises and consents	302	2301	Intangible plant.
Miscellaneous intangible plant	303		

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
2. Production Plant			*2. Manufactured Gas Production Plant*
A. Manufactured Gas Production Plant			
Land and land rights	2311	310	Land and land rights.
Structures and improvements	2312	311	Structures and improvements.
Boiler plant and other power equipment	2313	313	Water gas equipment.
Benches and retorts	2315	312	Coal gas equipment.
Coke ovens	2316		
Producer gas equipment	2317		
Other gas generating equipment	2320	313	Water gas equipment.
		314	Petroleum gas equipment.
		315	Production equipment—other processes.
Coal, coke, and ash handling equipment	2321	312	Coal gas equipment.
Gas reforming equipment	2322	315	Production equipment—other processes.
Purification equipment	2323	312	Coal gas equipment.
Other production equipment	2326	312	Coal gas equipment.
		313	Water gas equipment.
		314	Petroleum gas equipment.
		315	Production equipment—other processes.
B1. Natural Gas Production and Gathering Plant			*3. Natural Gas Production and Gathering*
Natural gas producing land, leaseholds, and rights	2330.1	320	Producing gas lands, leaseholds, and gas rights.
Other land and land rights	2330.5	321	Other land and land rights.
Production system structures	2331	322	Structures and improvements.
Producing gas wells	2332	323	Producing gas wells.
Field lines and equipment	2333	324	Gathering lines and equipment.
		325	Drilling and cleaning equipment.
Purification equipment	2335	326	Other production equipment.
Other production and gathering equipment	2336		
B2. Products Extraction Plant			
Land and land rights	2337.1	------	(See general instruction No. 6A.)
Structures and improvements	2337.2		
Products extraction and refining equipment	2337.3		
3. Storage Plant			
A. Underground Storage Plant			
Land and land rights	2341	------	(See general instruction No. 6B.)
Structures and improvements	2342		
Storage gas wells	2343.1		
Underground storage lines and equipment	2343.2		
Gas stored underground—noncurrent	2344		
B. Local Storage Plant			
Land and land rights	2345	310	Land and land rights.
		330	Land and land rights.
Structures and improvements	2346	311	Structures and improvements.
Gas holders	2347	331	Structures and improvements.
Other local gas storage equipment	2349	331	Structures and improvements.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
2. Manufactured Gas Production Plant			*2. Production Plant*
Land and land rights	310	2311	Land and land rights.
		2345	Land and land rights.
Structures and improvements	311	2312	Structures and improvements.
		2346	Structures and improvements.
		2347	Gas holders.
		2315	Benches and retorts.
		2316	Coke ovens.
Coal gas equipment	312	2317	Producer gas equipment.
		2321	Coal, coke, and ash handling equipment.
		2323	Purification equipment.
		2326	Other production equipment.
Water gas equipment	313	2313	Boiler plant and other power equipment.
		2320	Other gas generating equipment.
		2326	Other production equipment.
Petroleum gas equipment	314	2320	Other gas generating equipment.
		2326	Other production equipment.
Production equipment—other processes	315	2320	Other gas operating equipment.
		2322	Gas reforming equipment.
		2326	Other production equipment.
3. Natural Gas Production and Gathering			*B. Natural Gas Production and Gathering Plant*
Producing gas lands, leaseholds, and gas rights	320	2330.1	Natural gas producing lands, leaseholds, and rights.
Other land and land rights	321	2330.5	Other land and land rights.
Structures and improvements	322	2331	Production system structures.
Producing gas wells	323	2332	Producing gas wells.
Gathering lines and equipment	324	2333	Field lines and equipment.
Drilling and cleaning equipment	325		
Other production equipment	326	2335	Purification equipment.
		2336	Other production and gathering equipment.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
4. Transmission Plant			*4. Transmission and Distribution Plant*
Land and land rights	2351	330	Land and land rights.
Structures and improvements	2352	331	Structures and improvements.
Mains	2353	332	Mains.
Pumping and regulating equipment	2354	333	Pumping and regulating equipment.
Other transmission system equipment	2355	340	Other equipment.
5. Distribution Plant			
A. City Gate and Main Line Industrial Measuring and Regulating Station Plant			
Land and land rights	2356.1	330	Land and land rights.
Structures and improvements	2356.2	331	Structures and improvements.
Measuring and regulating station equipment	2356.3	333	Pumping and regulating equipment.
B. General Distribution System Plant			
Land and land rights	2357	330	Land and land rights.
Structures and improvements	2358	331	Structures and improvements.
Mains	2359	332	Mains.
Pumping and regulating equipment	2360	333	Pumping and regulating equipment.
Services	2361	334	Services.
Meters and regulators	2362	335	Meters.
		336	Meter installations.
		337	House regulators.
		338	House regulator installations.
Other property on customer's premises	2366	339	Property on customers' premises.
Street lighting equipment	2367		
Other distribution equipment	2368	340	Other equipment.
6. General Plant			*5. General Plant*
Land and land rights	2370	370	Land and land rights.
Structures and improvements	2371	371	Structures and improvements.
Office furniture and equipment	2372	372	Office furniture and equipment.
General plant equipment	2373	373	Transportation equipment.
		379	Other general equipment.
			6. Other Gas Plant
Other tangible property	2390	390	Other tangible property.
Gas plant purchased	2391	391	Gas plant purchased or sold.
Gas plant sold	2392		
EARNED SURPLUS ACCOUNTS			EARNED SURPLUS
Credits:			Credits:
Earned surplus (at beginning of period)	2271	216	Unappropriated earned surplus (at beginning of period).
Credit balance transferred from income account	2400	433	Balance transferred from income.
Miscellaneous credits to surplus	2401	434	Miscellaneous credits to surplus.
Debits:			Debits:
Debit balance transferred from income account	2410	433	Balance transferred from income.
Dividend appropriations—preferred stock	2411	437	Dividends declared—preferred stock.
Dividend appropriations—common stock	2412	438	Dividends declared—common stock.
Miscellaneous reservations of surplus	2413	436	Appropriations of surplus.
Miscellaneous debits to surplus	2414	435	Miscellaneous debits to surplus.
Earned surplus (at end of period)	2271	216	Unappropriated earned surplus (at end of period).

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
GAS PLANT ACCOUNTS—Continued			GAS PLANT ACCOUNTS—Continued
4. Transmission and Distribution Plant			*4-5. Transmission and Distribution Plants*
Land and land rights	330	2315	Land and land rights.
		2351	
		2356.1	
		2357	
Structures and improvements	331	2346	Structures and improvements.
		2347	Gas holders.
		2349	Other local gas storage equipment.
		2352	Structures and improvements.
		2356.2	Structures and improvements.
		2358	Structures and improvements.
Mains	332	2353	Mains.
		2359	
Pumping and regulating equipment	333	2354	Pumping and regulating equipment.
		2356.3	Measuring and regulating station equipment.
		2360	Pumping and regulating equipment.
Services	334	2361	Services.
Meters	335	2362	Meters and regulators.
Meter installations	336		
House regulators	337		
House regulator installations	338		
Property on customers' premises	339	2366	Other property on customers' premises.
		2367	Street lighting equipment.
Other equipment	340	2355	Other transmission system equipment.
		2368	Other distribution equipment.
5. General Plant			*6. General Plant*
Land and land rights	370	2370	Land and land rights.
Structures and improvements	371	2371	Structures and improvements.
Office furniture and equipment	372	2372	Office furniture and equipment.
Transportation equipment	373	2373	General plant equipment.
Other general equipment	379		
6. Other Gas Plant			
Other tangible property	390	2390	Other tangible property.
Gas plant purchased or sold	391	2391	Gas plant purchased.
		2392	Gas plant sold.
Gas plant in process of reclassification	392	2100.6	Gas plant in process of reclassification.
Gas plant leased to others	393	2100.1	Gas plant in service, leased to others, and held for future use.
Gas plant held for future use	394		
Construction work in progress—gas	395	2100.3	Construction work in progress.
Gas plant acquisition adjustments	396	2100.5	Gas plant acquisition adjustments.
Other gas plant adjustments	397	2107	Gas plant adjustments.
(In the system of accounts effective Jan. 1, 1961, the earned surplus accounts are included with the income accounts. See below.)			

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
INCOME ACCOUNTS			INCOME ACCOUNTS
1. Utility Income			*1. Utility Operating Income*
Gas operating income:			
Operating revenues	2501	400	Operating revenues.
Operating revenue deductions:			Operating expenses:
Operating expenses	2502	401	Operation and maintenance expense.
Depreciation	2503.1	403	Depreciation and depletion expense.
Amortization and depletion of producing natural gas land and land rights.	2503.2		
Amortization of other limited-term gas investments.	2504	404	Amortization expense.
Amortization of gas plant acquisition adjustments.	2505		
Property losses chargeable to operations	2506		
Taxes	2507	408	Taxes other than income taxes.
		409	Income taxes.
Provisions for deferred federal income taxes	2507A	-------	(See general instruction No. 6C.)
Credits to operations arising from federal income taxes deferred in prior years—credit.	2507B		
Income from gas plant leased to others	2508	412–413	Income from gas plant leased to others:
Revenues from plant leased to others	2508.1	412	Revenues from gas plant leased to others.
Expenses of plant leased to others	2508.2	413	Expenses of gas plant leased to others.
Other utility operating income	2509	414	Other utility operating income.
2. Other Income			*2. Other Income*
Income from merchandising, jobbing, and contract work:	2520	415–416	Income from merchandising, jobbing, and contract work.
Revenues from merchandising, jobbing, and contract work.	2520.1	415	Revenues from merchandising, jobbing, and contract work.
Costs and expenses of merchandising, jobbing, and contract work.	2520.2	416	Expenses of merchandising, jobbing, and contract work.
Income from nonutility operations	2521	421	Miscellaneous nonoperating income.
Revenues from lease of other physical property	2522	418	Nonoperating rental income.
Dividend revenues	2523	419	Interest and dividend income.
Interest revenues	2524		
Revenues from sinking and other funds	2525		
Miscellaneous nonoperating revenues	2526	421	Miscellaneous nonoperating income.
Nonoperating revenue deductions	2527	-------	Deleted.
3. Income Deductions			*3. Miscellaneous Income Deductions*
Interest on long-term debt	2530	427	Interest on long-term debt.
Amortization of debt discount and expense	2531	428	Amortization of debt discount and expense.
Amortization of premium on debt—credit	2532	429	Amortization of premium on debt—credit.
Taxes assumed on interest	2533	431	Other interest expense.
Interest on debt to associated companies	2534	430	Interest on debt to associated companies.
Other interest charges	2535	431	Other interest expense.
Interest charged to construction—credit	2536	432	Interest charged to construction—credit.
Miscellaneous amortization	2537	425	Miscellaneous amortization.
Miscellaneous income deductions	2538	426	Other income deductions.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
INCOME ACCOUNTS			INCOME ACCOUNTS
1. Utility Operating Income			*1. Utility Income*
Operating revenues	400	2501	Operating revenues.
Operating expenses:			Operating revenue deductions:
Operation and maintenance expenses	401	2502	Operating expenses.
Depreciation and depletion expense	403	2503.1	Depreciation.
		2503.2	Amortization and depletion of producing natural gas land and land rights.
Amortization expense	404	2504	Amortization of other limited-term gas investments.
		2505	Amortization of gas plant acquisition adjustments.
		2506	Property losses chargeable to operations.
Taxes other than income taxes	408	2507	Taxes.
Income taxes	409		
Income from gas plant leased to others	412–413	2508	Income from gas plant leased to others:
Revenues from gas plant leased to others	412	2508.1	Revenues from plant leased to others.
Expenses of gas plant leased to others	413	2508.2	Expenses of plant leased to others.
Other utility operating income	414	2509	Other utility operating income.
2. Other Income			*2. Other Income*
Income from merchandising, jobbing, and contract work:	415–416	2520	Income from merchandising, jobbing, and contract work:
Revenues from merchandising, jobbing, and contract work.	415	2520.1	Revenues from merchandising, jobbing, and contract work.
Expenses of merchandising, jobbing, and contract work.	416	2520.2	Expenses of merchandising, jobbing, and contract work.
Nonoperating rental income	418	2522	Revenues from lease of other physical property.
Interest and dividend income	419	2523	Dividend revenues.
		2524	Interest revenues.
		2525	Revenues from sinking and other funds.
Miscellaneous nonoperating income	421	2521	Income from nonutility operations.
		2526	Miscellaneous nonoperating revenues.
3. Miscellaneous Income Deductions			*3. Income Deductions*
Miscellaneous amortization	425	2537	Miscellaneous amortization.
Other income deductions	426	2538	Miscellaneous income deductions.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 11, 940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
INCOME ACCOUNTS—Con.			INCOME ACCOUNTS—Con.
4. Disposition of Net Income			
Miscellaneous reservations of net income	2540	-------	Deleted.
OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS
1. Gas Service Revenues			*1. Sales of Gas*
Residential sales	2600	480	Residential sales.
Commercial and industrial sales	2602	481	Commercial and industrial sales.
Public street and highway lighting	2603	-------	Deleted.
Other sales to public authorities	2604	-------	Deleted.
Sales to other gas utilities	2605	483	Sales for resale.
Interdepartmental sales	2607	484	Interdepartmental sales.
Other sales	2608	-------	Deleted.
2. Other Gas Revenues			*2. Other Operating Revenues*
Rent from gas property	2610	493	Rent from gas property.
Interdepartmental rents	2611	494	Interdepartmental rents.
Customers' forfeited discounts and penalties	2612	487	Forfeited discounts.
Servicing of customers' installations	2614	488	Miscellaneous service revenues.
Revenue from transportation of gas of others	2615	489	Revenues from transportation of gas of others.
Sales of products extracted from natural gas	2616	-------	(See general instruction No. 6A.)
Revenues from natural gas processed by others	2617	491	Revenues from natural gas processed by others.
Incidental gasoline sales	2618.1	492	Incidental gasoline and oil sales.
Incidental oil sales	2618.2		
Miscellaneous gas revenues	2619	495	Other gas revenues.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
INCOME ACCOUNTS—Con.			INCOME ACCOUNTS—Con.
4. Interest Charges			
Interest on long-term debt	427	2530	Interest on long-term debt.
Amortization of debt discount and expense	428	2531	Amortization of debt discount and expense.
Amortization of premium on debt—credit	429	2532	Amortization of premium on debt—credit.
Interest on debt to associated companies	430	2534	Interest on debt to associated companies.
Other interest expense	431	2533	Taxes assumed on interest.
		2535	Other interest charges.
Interest charged to construction—credit	432	2536	Interest charged to construction—credit.
5. Earned Surplus			EARNED SURPLUS ACCOUNTS
Unappropriated earned surplus (at beginning of period).	216	2271	Earned surplus (at beginning of period).
Balance transferred from income	433	2400	Credit balance transferred from income account.
		2410	Debit balance transferred from income account.
Miscellaneous credits to surplus	434	2401	Miscellaneous credits to surplus.
Miscellaneous debits to surplus	435	2414	Miscellaneous debits to surplus.
Appropriations of surplus	436	2413	Miscellaneous reservations of surplus.
Dividends declared—preferred stock	437	2411	Dividend appropriations—preferred stock.
Dividends declared—common stock	438	2412	Dividend appropriations—common stock.
Unappropriated earned surplus (at end of period).	216	2271	Earned surplus (at end of period).
OPERATING REVENUE ACCOUNTS			OPERATING REVENUE ACCOUNTS
1. Sales of Gas			*1. Gas Service Revenues*
Residential sales	480	2600	Residential sales.
Commercial and industrial sales	481	2602	Commercial and industrial sales.
Sales for resale	483	2605	Sales to other gas utilities.
Interdepartmental sales	484	2607	Interdepartmental sales.
2. Other Operating Revenues			*2. Other Gas Revenues*
Forfeited discounts	487	2612	Customers' forfeited discounts and penalties.
Miscellaneous service revenues	488	2614	Servicing of customers' installations.
Revenues from transportation of gas of others	489	2615	Revenue from transportation of gas of others.
Revenues from natural gas processed by others	491	2617	Revenues from natural gas processed by others.
Incidental gasoline and oil sales	492	2618.1	Incidental gasoline sales.
		2618.2	Incidental oil sales.
Rent from gas property	493	2610	Rent from gas property.
Interdepartmental rents	494	2611	Interdepartmental rents.
Other gas revenues	495	2619	Miscellaneous gas revenues.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS
1. Production Expenses			*1. Manufactured Gas Production*
A. Manufactured Gas Production			
Operation:			
Operation supervision and labor	2701	700	Supervision and labor.
Boiler fuel	2708	701	Fuel and raw materials.
Water	2709	703	Operation supplies and expenses.
Coal gas fuel	2710		
Fuel for liquefied petroleum gas processes	2713		
Coal carbonized	2714	701	Fuel and raw materials.
Water gas generator fuel	2715		
Oil and enricher materials	2717		
Raw materials for other gas processes	2720		
Other production supplies and expenses	2722	-------	(Various, see accounts effective January 1, 1961.)
Maintenance:			
Maintenance of production plant	2723	706	Repairs of manufactured gas production plant.
Miscellaneous:			
Power from other sources	2728	703	Operation supplies and expenses.
Rent	2729		
Residuals produced—credit	2730.1	701	Fuel and raw materials.
Residuals expenses	2730.2		
Joint expenses—debit	2731.1	-------	Deleted.
Joint expenses—credit	2731.2	-------	Deleted.
B1. Natural Gas Production and Gathering			*2. Natural Gas Production and Gathering*
Operation:			
Operation supervision and labor	2733.1	710	Supervision and labor.
Operating supplies and expenses	2733.3	713	Operation supplies and expenses.
Maintenance:			
Maintenance of production and gathering plant	2734	725	Repairs of production and gathering plant.
Miscellaneous:			
Gas well royalties	2735.1	714	Gas well royalties.
Natural gas rents	2735.2	713	Operation supplies and expenses.
Joint expenses—debit	2735.3	-------	Deleted.
Joint expenses—credit	2735.4	-------	Deleted.
B2. Products Extraction Operation			
Operation:			
Operation supervision and labor	2736.1		
Gas shrinkage and fuel	2736.3		
Operating supplies and expenses	2736.6		
Maintenance:			
Maintenance of products extraction plant	2737.1	-------	(See general instruction No. 6A.)
Miscellaneous:			
Products purchased for resale	2738.1		
Miscellaneous products extraction expenses	2738.2		
Joint expenses—debit	2738.7	-------	Deleted.
Joint expenses—credit	2738.8	-------	Deleted.
B3. Exploration and Development			
Delay rentals	2739.1	720	Delay rentals.
Nonproductive well drilling	2739.2	721	Nonproductive well drilling.
Abandoned leases	2739.3	722	Abandoned leases.
Other exploration costs	2739.4	723	Other exploration.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS			OPERATING EXPENSE ACCOUNTS
1. Manufactured Gas Production			*1. Production Expenses*
			A. Manufactured Gas Production
Supervision and labor	700	2701	Operation supervision and labor.
Fuel and raw materials	701	2708	Boiler fuel.
		2710	Coal gas fuel.
		2713	Fuel for liquefied petroleum gas processes.
		2714	Coal carbonized.
		2715	Water gas generator fuel.
		2717	Oil and enricher materials.
		2720	Raw materials for other gas processes.
		2730.1	Residuals produced—credit.
		2730.2	Residuals expenses.
Operation supplies and expenses	703	2709	Water.
		2728	Power from other sources.
		2729	Rent.
Repairs of manufactured gas production plant	706	2723	Maintenance of production plant.
2. Natural Gas Production and Gathering			*B1. Natural Gas Production and Gathering*
Supervision and labor	710	2733.1	Operation supervision and labor.
Operation supplies and expenses	713	2733.3	Operating supplies and expenses.
		2735.2	Natural gas rents.
Gas well royalties	714	2735.1	Gas well royalties.
Delay rentals	720	2739.1	Delay rentals.
Nonproductive well drilling	721	2739.2	Nonproductive well drilling.
Abandoned leases	722	2739.3	Abandoned leases.
Other exploration	723	2739.4	Other exploration costs.
Repairs of production and gathering plant	725	2734	Maintenance of production and gathering plant.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATING AND MAINTENANCE EXPENSE ACCOUNTS—Con.
1. Production Expenses—Con.			
C. Other Gas Supply Expenses			*3. Purchased Gas*
Purchased gas	2745	730	Purchased gas.
Purchased gas expenses	2746		
Gas withdrawn from underground storage—debit	2747.1	-------	(See general instruction No. 6B.)
Gas delivered to underground storage—credit	2747.2		
Gas used in utility operation—credit	2748	730	Purchased gas.
Other gas supply expenses	2749		
Joint expenses—debit	2750	-------	Deleted.
Joint expenses—credit	2751	-------	Deleted.
2. Storage Expenses			
A. Underground Storage			
Operation:			
Operation supervision and labor	2755		
Operation supplies and expenses	2755.3		
Nonoperative storage well drilling	2755.4		
Storage maps and records	2755.5	-------	(See general instruction No. 6B.)
Maintenance:			
Maintenance of underground storage plant	2756		
Miscellaneous:			
Underground storage rents	2757.1		
Joint expenses—debit	2757.2	-------	Deleted.
Joint expenses—credit	2757.3	-------	Deleted.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATING AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
3. Purchased Gas			*1. Production Expenses*—Con.
			C. Other Gas Supply Expenses
Purchased gas	730	2745	Purchased gas.
		2746	Purchased gas expenses.
		2748	Gas used in utility operation—credit.
		2749	Other gas supply expenses.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATING AND MAINTENANCE EXPENSE ACCOUNTS—Con.
2. Storage Expenses—Con.			*4. Transmission and Distribution*
B. Local Storage			
Operation:			
Operation supervision and labor	2758.1	760	Supervision and labor.
Operation supplies and expenses	2758.3	761	Operation supplies and expenses.
Maintenance:			
Maintenance of local storage plant	2758.4	762	Repairs of transmission and distribution plant.
Miscellaneous:			
Local storage rents	2758.9	761	Operation supplies and expenses.
Joint expenses—debit	2758.10		Deleted.
Joint expenses—credit	2758.11		Deleted.
3. Transmission			
Operation:			
System operation	2759	760 761 765	Supervision and labor. Operation supplies and expenses. Transportation and expenses.
Maintenance:			
System maintenance	2760	760 761 762 765	Supervision and labor. Operation supplies and expenses. Repairs of transmission and distribution plant. Transportation expenses.
Miscellaneous:			
Rents	2761.1	761	Operation supplies and expenses.
Transmission and compression of gas by others	2761.2		
Joint expenses—debit	2761.3		Deleted.
Joint expenses—credit	2761.4		Deleted.
4. Distribution			
A. City Gate and Main Line Industrial Measuring and Regulating Station Expenses			
Operation:			
Operation of city gate and main line industrial measuring and regulating stations.	2764.1	760 761 765	Supervision and labor. Operation supplies and expenses. Transportation expenses.
Maintenance:			
Maintenance of city gate and main line industrial measuring and regulating stations.	2764.4	760 761 762 765	Supervision and labor. Operation supplies and expenses. Repairs of transmission and distribution plant. Transportation expenses.
Miscellaneous:			
Rents	2764.7	761	Operation supplies and expenses.
Joint expenses—debit	2764.8		Deleted.
Joint expenses—credit	2764.9		Deleted.

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
4. Transmission and Distribution			*2. Storage—3. Transmission—4. Distribution*
Supervision and labor	760	2758.1 2759 2760 2764.1 2764.4	Operation supervision and labor. System operation. System maintenance. Operation of city gate and main line industrial measuring and regulating stations. Maintenance of city gate and main line industrial measuring and regulating stations.
		2765	System operation.
		2771	Maintenance of distribution system.
Operation supplies and expenses	761	2758.3 2758.9 2759 2760 2761.1 2762.2 2764.1 2764.4 2764.7 2765 2771 2776	Operation supplies and expenses. Local storage rents. System operation. System maintenance. Rents. Transmission and compression of gas by others. Operation of city gate and main line industrial measuring and regulating stations. Maintenance of city gate and main line industrial measuring and regulating stations. Rents. System operation. Maintenance of distribution system. Rents.
Repairs of transmission and distribution plant	762	2758.4 2760 2764.4 2771 2759 2760 2764.1 2764.4	Maintenance of local storage plant. System maintenance. Maintenance of city gate and main line industrial measuring and regulating stations. Maintenance of distribution system. System operation. System maintenance. Operation of city gate and main line industrial measuring and regulating stations. Maintenance of city gate and main line industrial measuring and regulating stations.
Transportation expenses (may be used as a clearing account).	765	2765 2771 2811 2903	System operation. Maintenance of distribution system. Transportation expenses. Transportation expenses—clearing.

APPENDIX A—*Comparison of the uniform system of accounts prescribed for Natural Gas Companies effective Jan. 1, 1940, with the revised system of accounts effective Jan. 1, 1961*—Continued

From the system of accounts effective Jan. 1, 1940, to the system of accounts effective Jan. 1, 1961

System of accounts effective Jan. 1, 1940		System of accounts effective Jan. 1, 1961	
Account title	No.	No.	Account title
OPERATING EXPENSE ACCOUNTS—Con.			OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.
4. Distribution—Con.			*4. Transmission and Distribution*—Con.
B. General Distribution Expenses			
Operation:			
System operation	2765	760 761 765	Supervision and labor. Operation supplies and expenses. Transportation expenses.
Maintenance:			
Maintenance of distribution system	2771	760 761 762 765	Supervision and labor. Operation supplies and expenses. Repairs of transmission and distribution plant. Transportation expenses.
Miscellaneous:			
Rents	2776	761	Operation supplies and expenses.
Joint expenses—debit	2777.1		Deleted.
Joint expenses—credit	2777.2		Deleted.
5. Customers' Accounting and Collecting Expenses			*5. General Expenses*
Meter reading, accounting, and collecting	2779	770 771	Administrative and general salaries. Office supplies and expenses.
Uncollectible accounts	2783	778	Uncollectible accounts.
Rents	2784	777	Miscellaneous general expenses.
6. Sales Promotion Expenses			
Sales promotion expenses	2785	770 771	Administrative and general salaries. Office supplies and expenses.
Rents	2788	777	Miscellaneous general expenses.
Merchandising, jobbing, and contract work	2789	780 781	Revenues from merchandising, jobbing, and contract work. Costs and expenses of merchandising, jobbing, and contract work.
7. Administrative and General Expenses			
General office salaries	2790	770	Administrative and general salaries.
General office and miscellaneous expenses	2793	771 772 773 775 777	Office supplies and expenses. Outside services employed. Insurance expense. Employee pensions and benefits. Miscellaneous general expenses.
Regulatory commission expenses	2797	776	Regulatory commission expenses.
Maintenance of general property	2802	771 777	Office supplies and expenses. Miscellaneous general expenses.
Rents	2803	777	Miscellaneous general expenses.
Franchise requirements	2805	777	Miscellaneous general expenses.
Duplicate miscellaneous charges—credit	2806		Deleted.
Administrative and general expenses transferred—credit.	2807	770 771	Administrative and general salaries. Office supplies and expenses.
Joint expenses—debit	2808		Deleted.
Joint expenses—credit	2809		Deleted.
Stores expenses	2810		Deleted. See account 183.
Transportation expenses	2811	765 771	Transportation expenses. Office supplies and expenses.
CLEARING ACCOUNTS			
Charges by associated companies—clearing	2901		Deleted. See account 183.
Stores expenses—clearing	2902		Deleted. See account 183.
Transportation expenses—clearing	2903	765	Transportation expenses. (May be used as a clearing account.)

From the system of accounts effective Jan. 1, 1961, to the system of accounts effective Jan. 1, 1940

System of accounts effective Jan. 1, 1961		System of accounts effective Jan. 1, 1940	
Account title	No.	No.	Account title
OPERATION AND MAINTENANCE EXPENSE ACCOUNTS—Con.			OPERATING EXPENSE ACCOUNTS—Con.
5. General Expenses			*6. Customers' Accounting* *6. Sales Promotion* *7. Administrative and General Expenses*
Administrative and general salaries	770	2779 2785 2790 2807	Meter reading, accounting, and collecting. Sales promotion expenses. General office salaries. Administrative and general expenses transferred—credit.
Office supplies and expenses	771	2779 2785 2793 2802 2807	Meter reading, accounting, and collecting. Sales promotion expenses. General office and miscellaneous expenses. Maintenance of general property. Administrative and general expenses transferred—credit.
Outside services employed	772	2811	Transportation expenses.
Insurance expense	773	2793	General office and miscellaneous expenses.
Employees pensions and benefits	775		
Regulatory commission expenses	776	2797	Regulatory commission expenses.
Miscellaneous general expenses	777	2784 2788 2793 2802 2803 2805	Rents. Rents. General office and miscellaneous expenses. Maintenance of general property. Rents. Franchise requirements.
Uncollectible accounts	778	2783	Uncollectible accounts.
Revenues from merchandising, jobbing, and contract work.	780	2789	Merchandising, jobbing and contract work.
Costs and expenses of merchandising, jobbing, and contract work.	781		

APPENDIX B—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT (CLASS D)

Definitions

When used in this system of accounts:

1. "Accounts" means the accounts prescribed in this system of accounts.

2. "Amortization" means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

3. "Book cost" means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, amortization or for other purposes.

4. "Commission," means the Federal Power Commission.

5. "Cost" means the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common stock in a merger or a pooling of interest, the value of such consideration shall be determined on a cash basis.

6. "Cost of removal" means the cost of demolishing, dismantling, tearing down or otherwise removing gas plant, including the cost of transportation and handling incidental thereto.

7a. "Depletion," as applied to natural gas producing land and land rights, means the loss in service value incurred in connection with the exhaustion of the natural resource in the course of service.

7b. "Depreciation," as applied to depreciable gas plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption or prospective retirement of gas plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities, and, in the case of natural gas companies, the exhaustion of natural resources.

8. "Investment advances" means advances, represented by notes or by book accounts only, with respect to which it is mutually agreed or intended between the creditor and debtor that they shall be settled by the issuance of securities or shall not be subject to current settlement.

9. "Minor items of property" means the associated parts or items of which retirement units are composed.

10. "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

11. "Natural gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

12. "Net salvage value" means the salvage value of property retired less the cost of removal.

13. "Original cost," as applied to gas plant, means the cost of such property to the person first devoting it to public service.

14. "Property retired," as applied to gas plant, means property which has been removed, sold, abandoned, destroyed, or which for any cause has been withdrawn from service.

15. "Replacing" or "replacement," when not otherwise indicated in the context, means the construction or installation of gas plant in place of property retired, together with the removal of the property retired.

16. "Retirement units" means those items of gas plant which, when retired, with or without replacement, are accounted for by crediting the book cost thereof to the gas plant account in which included.

17. "Salvage value" means the amount received for property retired, less any expenses incurred in connection with the sale or in preparing the property for sale; or, if retained, the amount at which the material recoverable is chargeable to materials and supplies, or other appropriate account.

18. "Service life" means the time between the date gas plant is includible in gas plant in service, or gas plant leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, then service life should be measured in terms of the appropriate unit of production.

19. "Service value" means the difference between original cost and net salvage value of gas plant.

20. "Utility," as used herein and when not otherwise indicated in the context, means any natural gas company to which this system of accounts is applicable.

General Instructions

1. *Classification of Utilities.*

A. For the purpose of applying systems of accounts prescribed by the Commission, natural gas companies are divided into four classes as follows:

Class A. Natural gas companies having annual gas operating revenues of $2,500,000 or more.

Class B. Natural gas companies having annual gas operating revenues of $1,000,000 or more but less than $2,500,000.

Class C. Natural gas companies having annual gas operating revenues of $150,000 or more but less than $1,000,000.

Class D. Natural gas companies having annual gas operating revenues of $25,000 or more but less than $150,000.

B. This system of accounts applies to Class D utilities. Those applicable to Classes A and B and to Class C utilities are issued separately.

C. The class to which any utility belongs shall originally be determined by the average of its annual gas operating revenues for the last three consecutive years. Subsequent changes in classification shall be made when the annual gas operating revenues for each of the three immediately preceding years shall exceed the upper limit, or be less than the lower limit, of the annual gas operating revenues of the classification previously applicable to the utility.

D. Any utility may, at its option, adopt the system of accounts prescribed by the Commission for any larger class of utilities.

2. *Records.*

A. Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit a ready identification, analysis, and verification of all facts relevant thereto.

B. In addition to prescribed accounts, clearing accounts, temporary or experimental accounts, and subdivisions of any account, may be kept provided the integrity of the prescribed accounts is not impaired.

C. Each utility shall keep its books on either a monthly or quarterly basis. Each utility shall close its books at the end of each calendar year unless otherwise authorized by the Commission.

3. *Item Lists.*

Lists of "items" appearing in the texts of the accounts or elsewhere herein are for the purpose of more clearly indicating the application of the prescribed accounting. The lists are intended to be representative, but not exhaustive. The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list. The proper entry in each instance must be determined by the texts of the accounts. In cases of doubtful interpretation, the matter shall be submitted to the Commission for decision.

4. *Distribution of Pay and Expenses of Employees.*

The charges to gas plant, operating expenses and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

5. *Gas Well Records.*

Each utility with natural gas operations shall maintain operating or accounting records for each well showing (a) acreage on which drilled, (b) dates of drilling period, (c) cost of drilling, (d) depth of well, (e) particulars and depth of each stratum drilled through, (f) geological formation from which gas obtained, (g) initial rock pressure and open flow capacity, (h) size of casing used and the lengths of each size, (i) total cost of well as recorded in gas plant accounts, (j) date well abandoned, for wells once productive, (k) date transferred to underground storage use, for wells converted to storage use, and (l) date drilling discontinued, for wells determined to be nonproductive. The foregoing data, as appropriate, shall also be maintained for each subsequent change in the depth of each well.

6. *Functions and Accounts Not Included.*

A. If the utility is a Class D utility for the purposes of this system of accounts but derives the major portions of its revenues from the extraction of gasoline or other products from natural gas, it shall incorporate in its accounting classifications the accounts of the Class C system of accounts for these functions as follows:

Plant: Accounts 340 to 347, as appropriate.
Revenues: Account 490, Sales of Products Extracted from Natural Gas.
Expenses: Account 712, Extracted Products Supplies and Expenses, and Account 718, Maintenance of Products Extraction Plant.

B. If the utility has underground gas storage operations but is a Class D utility for the purposes of this system of accounts, it shall account for the inventory of gas stored underground and the inputs to and withdrawals from storage in accordance with the provisions of the accounts relating thereto of the Class C system of accounts. It is not required, however, that Class D utilities utilize the Class C plant and expense accounts for underground storage operations unless underground gas storage is a major activity or unless required by the Commission for other reasons.

C. If the utility contemplates or is following accounting for deferred taxes on income it shall use the accounts for deferred taxes on income prescribed for Classes A and B or Class C natural gas companies and comply with the related instructions and account texts of such Class A and B or Class C Uniform System of Accounts as though such accounts and instructions were a part of this system of accounts.

Gas Plant Instructions

1. *Gas Plant To Be Recorded at Cost.*

A. All amounts included in the accounts for gas plant acquired as an operating unit or system, except as otherwise provided in the texts of the intangible plant accounts, shall be stated at the cost incurred by the person who first devoted the property to utility service. All other gas plants shall be included in the accounts at the cost incurred by the utility. Where the term "cost" is used in the detailed plant accounts, it shall have the meaning stated in this paragraph.

B. When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis. (See, however, Definition 5.) In the entry recording such transaction, the actual consideration shall be described with sufficient particularity to identify it. The utility shall be prepared to furnish the Commission the particulars of its determination of the cash value of the consideration if other than cash.

C. When property is purchased under a plan involving deferred payments, no charge shall be made to the gas plant accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

D. Gas plant contributed to the utility or constructed by it from contributions to it of cash or its equivalent shall be charged to the gas plant accounts at cost of construction, estimated if not known. There shall be credited to the accounts for accumulated depreciation, depletion, and amortization the estimated amount of depreciation, depletion, and amortization applicable to the property at the time of its contribution to the utility. The difference between the amounts included in the gas plant accounts and the accumulated depreciation, depletion, and amortization shall be credited to account 271, Contributions in Aid of Construction.

2. *Components of Construction Cost.*

The cost of construction of property chargeable to the gas plant accounts shall include, where applicable, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction work, privileges and permits, special machine service, interest during construction and such portion of general engineering, administrative salaries and expenses, insurance, taxes and other analogous items as may be properly includible in construction costs.

3. *Land and Land Rights.*

A. The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, rights-of-way, natural gas rights, and other like interests in land.

B. Where special assessments for public improvements provide for deferred payments, the full amount of the assessments shall be charged to the appropriate land account and the unpaid balance shall be carried in an appropriate liability account. Interest on unpaid balances shall be charged to the appropriate interest account. If any part of the cost of public improvements is included in the general tax levy, the amount thereof shall be charged to the appropriate tax account.

C. The cost of buildings and other improvements (other than public improvements) shall not be included in the land accounts. If at the time of acquisition of an interest in land such interest extends to buildings or other improvements (other than public improvements), which are then devoted to utility operations, the land and improvements shall be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking shall be charged and the salvage credited to the account in which the cost of the land is recorded.

D. When the purchase of land for gas operations requires the purchase of more land than needed for such purposes, the charge to the specific land account shall be based upon the cost of the land purchased, less the fair market value of that portion of the land which is not to be used in utility operations. The portion of the cost measured by the fair market value of the land not to be used shall be included in account 394, Gas Plant Held for Future Use, or account 121, Nonutility Property, as appropriate. Regarding land and land rights held for the production of natural gas, account 100, Gas Plant, shall include (1) the cost of the lands owned in fee upon which producing natural gas wells are located or lands owned in fee which are being drained through the operation by the utility of wells on other land, and (2) the first cost of lands held under lease upon which the utility pays royalties for the natural gas obtained therefrom. The cost of all other land and land rights held for the production of natural gas under a definite plan for such use shall be included in account 394, Gas Plant Held for Future Use.

NOTE: In addition to the accounting records prescribed herein, supplemental records of land and land rights held for future use shall be kept in such manner as to permit the segregation within a reasonable time of the land and land rights constituting (1) productive but nonproducing fields, (2) unproven or undeveloped fields, and (3) storage fields, and to show the following data with respect to each natural gas lease, regardless of the accounting treatment accorded the lease costs: (a) name of lessor, (b) location of leasehold and number of other identification assigned thereto, (c) date and period of lease agreement, (d) first cost of lease including details of the elements of such cost, (e) annual rental provisions, (f) date and cost of drilling, (g) date gas determined to exist, (h) date of completion of first well drilled by the utility in each pool of gas, (i) royalty provisions, (j) amortization and depletion provisions, and (k) date of abandonment of lease.

E. Provision shall be made for amortizing amounts carried in the accounts for limited-term interests in land, so as to apportion equitably the cost of each interest over the life thereof. For the purposes of amortization of natural gas rights, separate interests in land which comprise an interest in a production area may be grouped to form a depletion unit. (See account 403, Depreciation and Depletion Expense, and account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Utility Plant, for the accounting for depletion of producing natural gas lands and land rights. See also account 722, Abandoned Leases, for the accounting for abandonments of natural gas leases which have never been productive.)

4. *Structures and Improvements.*

A. The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land.

B. The cost of specially provided foundations not intended to outlast the machinery or apparatus for which provided, and the cost of angle irons, castings, etc., installed at the base of any item of equipment, shall be charged to the same account as the cost of the machinery, apparatus or equipment.

C. Where furnaces and boilers are used primarily for furnishing steam for some particular department and only incidentally for furnishing steam for heating a building and operating the equipment therein, the entire cost of

such furnaces and boilers shall be charged to the appropriate plant account, and no part to the building account.

5. *Equipment.*

A. The cost of equipment chargeable to the gas plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchases, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate.

B. Exclude from equipment accounts hand and other portable tools, which are likely to be lost or stolen or which have relatively small value or short life, unless the correctness of the accounting therefor as gas plant is verified by current inventories. Special tools acquired and included in the purchase price of equipment shall be included in the appropriate plant account. Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plant or department, such as production, transmission, distribution, etc., or in "stores," shall be charged to the plant account appropriate for their use.

C. The equipment accounts shall include angle irons and similar items which are installed at the base of an item of equipment, but piers and foundations which are designed to be as permanent as the buildings which house the equipment, or which are constructed as a part of the building and which cannot be removed without cutting into the walls, ceilings, or floors, or without in some way impairing the building, shall be included in the building accounts.

6. *Gas Plant Retired.*

A. When depreciable gas plant is abandoned, destroyed, withdrawn or otherwise retired from service for any cause, the book cost of the plant shall be deducted from the gas plant accounts and charged to accumulated provision for depreciation. The cost of removing such plant (except customers' meters and house regulators) shall be charged to accumulated provision for depreciation and the amount received for any materials recovered and sold, or salvage value if returned to stores, shall be credited to the accumulated provision for depreciation. It is not intended that the above procedure shall be followed in the replacement of minor items of plant, the replacement of which is charged to operating expense accounts.

B. The book cost of land retired shall be credited to the appropriate land account. If the land is sold, the difference between the book cost (less any accumulated provision for depreciation, depletion, or amortization therefor which has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate. If the land is not used in utility service but is retained by the utility, the book cost shall be charged to account 394, Gas Plant Held for Future Use, or account 121, Nonutility Property, as appropriate.

C. The book cost of gas plant retired shall be the amount at which such property is included in the gas plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and, if this cannot be done, it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

1. UTILITY PLANT

100 Gas plant
110 Accumulated provision for depreciation, depletion, and amortization of gas plant.
118 Other utility plant.
119 Accumulated provision for depreciation and amortization of other utility plant.

2. OTHER PROPERTY AND INVESTMENTS

121 Nonutility property.
122 Accumulated provision for depreciation and amortization of nonutility property.
124 Other investments.
125 Special funds.

3. CURRENT AND ACCRUED ASSETS

131 Cash and working funds.
132 Temporary cash investments.
141 Notes receivable.
142 Customer accounts receivable.
143 Other accounts receivable.
144 Accumulated provision for uncollectible accounts—Cr.
150 Materials and supplies.
165 Prepayments.
170 Other current and accrued assets.

4. DEFERRED DEBITS

181 Unamortized debt discount and expense.
182 Extraordinary property losses.
183 Other deferred debits.

LIABILITIES AND OTHER CREDITS

5. PROPRIETARY CAPITAL

201 Common capital stock.
204 Preferred capital stock.
207 Other paid-in capital.
212 Installments received on capital stock.
213 Discount on capital stock.
214 Capital stock expense.
215 Appropriated earned surplus.
216 Unappropriated earned surplus.
217 Reacquired capital stock.
218 Noncorporate proprietorship.

6. LONG-TERM DEBT

221 Bonds.
223 Advances from associated companies.
224 Other long-term debt.

7. CURRENT AND ACCRUED LIABILITIES

231 Notes payable.
232 Accounts payable.
235 Customer deposits.
236 Taxes accrued.
237 Interest accrued.
238 Other current and accrued liabilities.

8. DEFERRED CREDITS

251 Unamortized premium on debt.
252 Customer advances for construction.
253 Other deferred credits.

9. OPERATING RESERVES

261 Property insurance reserve.
265 Miscellaneous operating reserves.

10. CONTRIBUTIONS IN AID OF CONSTRUCTION

271 Contributions in aid of construction.

Balance Sheet Accounts

ASSETS AND OTHER DEBITS

1. UTILITY PLANT

100 Gas plant.

A. This account shall include the book amount of gas plant, included in the plant accounts 301 to 397, inclusive, prescribed herein, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees.

B. The cost of additions to and betterments of property leased from others, which are includible in this account, shall be maintained in subdivisions separate and distinct from those relating to owned property.

110 Accumulated provision for depreciation, depletion and amortization of gas plant.

A. This account shall be credited with the following:

(1) Amounts charged to account 403, Depreciation and Depletion Expense, to account 404, Amortization Expense, to account 413, Expense of Gas Plant Leased to Others, to account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work, or to clearing accounts for currently accruing depreciation, depletion, or amortization of plant.

(2) Amounts charged to account 435, Miscellaneous Debits to Surplus, for past accrued depreciation, depletion, or amortization.

(3) Amounts of depreciation, depletion, or amortization, applicable to gas properties acquired as operating units or systems.

(4) Amounts chargeable to account 182, Extraordinary Property Losses, when authorized by Commission.

(5) Amounts of depreciation, depletion, or amortization applicable to gas plant donated to the utility.

B. At the time of retirement of gas plant, this account shall be charged with the book cost of the property retired and the cost of removal, and shall be credited with the salvage value and any other amounts recovered, such as insurance.

C. The credits and debits to this account shall be so kept as to show separately: (1) The amount of accrual for depreciation, depletion, or amortization, (2) the book cost of property retired, (3) cost of removal, (4) salvage, and (5) other items, including recoveries from insurance.

D. The utility is restricted in its use of the accumulated provision for depreciation, depletion, and amortization to the purposes set forth above. It shall not transfer any portion of this account to surplus or make any other use thereof without authorization by the Commission.

E. Subsidiary records shall be maintained in accordance with the provisions of this account for accumulated depletion and amortization provisions for natural gas lands and land rights in service.

118 Other utility plant.

This account shall include the balance in accounts for utility plant, other than gas plant, such as electric, railway, etc.

119 Accumulated provision for depreciation and amortization of other utility plant.

This account shall include the accumulated provision for depreciation and amortization applicable to utility property other than gas plant.

2. OTHER PROPERTY AND INVESTMENTS

121 Nonutility property.

This account shall include the book cost of land, structures, equipment or other tangible or intangible property owned by the utility, but not used in utility service and not properly includible in account 394, Gas Plant Held for Future Use.

122 Accumulated provision for depreciation and amortization of nonutility property.

This account shall include the accumulated provision for depreciation and amortization applicable to nonutility property.

124 Other investments.

A. This account shall include the book cost of investments in securities issued or assumed by other companies, investment advances to such companies, and any investments not accounted for elsewhere. Include, also, the off-setting entry to the recording of amortization of discount or premium on interest-bearing investments owned by the utility. (See account 419, Interest and Dividend Income.)

B. The records shall be maintained in such manner as to show the amount of each investment and the investment advances to each person.

125 Special funds.

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for bond retirements, property additions, and replacements, insurance, employees' pensions, savings, relief, hospital, and other purposes not provided for elsewhere. A separate account, with appropriate title, shall be kept for each fund.

NOTE: Amounts deposited with a trustee under the terms of an irrevocable trust agreement for pensions or other employees' benefits shall not be included in this account.

3. CURRENT AND ACCRUED ASSETS

131 Cash and working funds.

This account shall include the amount of cash on hand and in banks and cash advanced to officers, agents, employees, and others as petty cash or working funds. Special cash deposits for payment of interest, dividends or other special purposes shall be included in this account in separate subdivisions which shall specify the purpose for which each such special deposit is made.

NOTE: Special deposits for more than one year, which are not offset by current liabilities, shall not be charged to this account but to account 125, Special Funds.

132 Temporary cash investments.

A. This account shall include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

B. This account shall be so maintained as to show separately temporary cash investments in securities of associated companies and of others. Records shall be kept of any pledged investments.

141 Notes receivable.

This account shall include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable and similar evidences (except interest coupons) of money due on demand or within one year from the date of issue..

NOTE: The face amount of notes receivable, discounted, sold, or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in financial statements of any contingent liability arising from such transactions.

142 Customer accounts receivable.

A. This account shall include amounts due from customers for utility service, and for merchandising, jobbing, and contract work.

B. This account shall be maintained so as to permit ready segregation of the amounts due for merchandising, jobbing, and contract work.

143 Other accounts receivable.

A. This account shall include amounts due the utility upon open accounts, other than amounts due from customers for utility services and merchandising, jobbing, and contract work.

B. This account shall be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees, but the account shall not include amounts advanced to officers or others as working funds.

144 Accumulated provision for uncollectible accounts—Cr.

A. This account shall be credited with amounts provided for losses on accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. Concurrent charges shall be made to account 778, Uncollectible Accounts, for amounts applicable to utility operations, and to corresponding accounts for other operations. Records shall be maintained so as to show the writeoffs of accounts receivable for each utility department.

B. This account shall be subdivided to show the provision applicable to the following classes of accounts receivable:

Utility customers.
Merchandising, jobbing, and contract work.
Officers and employees.
Other.

NOTE A: Accretions to this account shall not be made in excess of a reasonable provision against losses of the character provided for.

NOTE B: If provisions for uncollectible notes receivable are necessary, separate subaccounts therefor shall be established under account 141, Notes Receivable.

150 Materials and supplies.

A. This account shall include the cost of fuel on hand and unapplied materials and supplies (except meters and house regulators). It shall include also the book cost of materials recovered in connection with construction, maintenance or the retirement of property, such materials being credited to construction, maintenance, or accumulated depreciation provision, respectively, and included herein as follows:

(1) Reusable materials consisting of large individual items shall be included in this account at original cost, estimated if not known. The cost of repairing such items shall be charged to the maintenance account appropriate for the previous use.

(2) Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the final abandonment or sale thereof) cannot be ascertained without undue refinement in accounting, shall be included in this account at current prices new for such items. The cost of repairing such items shall be charged to the appropriate expense account as indicated by previous use.

(3) Scrap and nonusable materials included in this account shall be carried at the estimated net amount realizable therefrom. The difference between the amounts realized for scrap and nonusable materials sold and the net amount at which the materials were carried in this account, as far as practicable, shall be adjusted to the accounts credited when the materials were charged to this account.

B. Materials and supplies issued shall be credited hereto and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative-average, first-in-first-out, or such other method of inventory accounting as conforms with accepted accounting standards consistently applied.

C. Inventories of materials, supplies, fuel, etc., shall be taken at least annually and the necessary adjustments shall be made to bring this account into agreement with the actual inventories. In effecting the adjustments, large differences which can be assigned to important classes of materials shall be equitably adjusted among the accounts to which such classes of materials have been charged since the previous inventory. Other differences shall be equitably apportioned among the accounts to which materials have been charged.

ITEMS

1. Invoice price of materials less cash or other discounts.
2. Freight, switching or other transportation charges when practicable to include as part of the cost of particular materials to which they relate.
3. Customs duties and excise taxes.
4. Costs of inspection and special tests prior to acceptance.

5. Insurance and other directly assignable charges.

NOTE A: Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they may be charged to a stores expense clearing account and distributed therefrom to the appropriate account.

NOTE B: When materials and supplies are purchased for immediate use, they need not be carried through this account but may be charged directly to the appropriate gas plant or expense account.

165 Prepayments.

A. This account shall include the amount of rents, taxes, insurance, interest and like disbursements made in advance of the period to which they apply. As the periods covered by such prepayments expire, credit this account and charge the proper operating expense or other account with the amount applicable to the period.

B. This account shall be kept or supported in such manner as to disclose the amount of each class of prepayments.

170 Other current and accrued assets.

This account shall include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included herein.

4. DEFERRED DEBITS

181 Unamortized debt discount and expense.

A. This account shall include the total of the unamortized balance of discount and expense for all classes of long-term debt.

B. The discount and expenses shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be charged to account 428, Amortization of Debt Discount and Expense. The utility may, however, accelerate the writing off of discount and expense where the amounts are insignificant.

182 Extraordinary property losses.

A. When authorized or directed by the Commission, this account shall include extraordinary losses on property abandoned or otherwise retired from service which are not provided for by the accumulated provisions for depreciation, depletion, or amortization and which could not reasonably have been foreseen and provided for, and extraordinary losses, such as unforeseen damages to property, which could not reasonably have been anticipated and which are not covered by insurance or other provisions.

B. The entire cost, less net salvage, of depreciable property retired shall be charged to accumulated provision for depreciation. If all, or a portion of the loss is to be included in this account, the accumulated provision for depreciation shall then be credited and this account charged with the amount properly chargeable hereto.

C. Application to the Commission for permission to use this account shall be accompanied by a statement giving a complete explanation with respect to the items which it is proposed to include herein, the period over which, and the accounts to which it is proposed to write off the charges, and other pertinent information.

183 Other deferred debits.

A. This account shall include the following classes of items:

(1) Expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of projects under contemplation. If construction results, this account shall be credited with the amount applicable thereto and the appropriate plant accounts shall be charged with an amount which does not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to plant. If the work is abandoned, the charge shall be to account 435, Miscellaneous Debits to Surplus, or to the appropriate operating expense account.

(2) Expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of acquiring land and land rights to provide a future supply of natural gas. If such land or land rights are acquired, this account shall be credited and the appropriate gas plant account (see gas plant instruction 3) charged with the amount of expenditures related to such acquisition. Such preliminary survey and investigation charges transferred to gas plant shall not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to gas plant. If the project is abandoned, the expenditures related thereto shall be charged to account 723, Other Exploration.

(3) Undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing accounts shall be substantially cleared not later than the end of the calendar year unless items held therein relate to a future period.

(4) Balances representing expenditures for work in progress other than on gas plant. This includes jobbing and contract work in progress.

(5) Other debit balances, the proper final disposition of which is uncertain, and unusual or extraordinary expenses, not included in other accounts, which are in process of being written off.

B. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each deferred debit included herein. The records supporting entries for preliminary natural gas surveys and investigations shall be so kept that the utility can furnish, for each investigation, complete information as to identification and location of the territory investigated, the number or other identification assigned to the land tract or leasehold acquired, and the nature and respective amounts of the charges.

LIABILITIES AND OTHER CREDITS

5. PROPRIETARY CAPITAL

201 Common capital stock.

204 Preferred capital stock.

A. These accounts shall include the par value or the stated value of stock without par value if such stock has a stated value, and, if not, the cash value of the consideration received for such nonpar stock, of each class of capital stock actually issued, including the par or stated value of such capital stock in account 217, Reacquired Capital Stock.

B. When the actual cash value of the consideration received is more or less than the par or stated value of any stock having a par or stated value, the difference shall be credited or debited, as the case may be, to the premium or discount account for the particular class and series.

C. When capital stock is retired, these accounts shall be charged with the amount at which such stock is carried herein.

D. A separate ledger account, with a descriptive title, shall be maintained for each class and series of stock. The supporting records shall show the shares nominally issued, actually issued, and nominally outstanding.

NOTE: When a levy or assessment, except a call for payment on subscriptions, is made against holders of capital stock, the amount collected upon such levy or assessment shall be credited to account 207, Other Paid-In Capital; provided, however, that the credit shall be made to account 213, Discount on Capital Stock, to the extent of any remaining balance of discount on the issue of stock.

207 Other paid-in capital.

This account shall include the balance of all other credits for paid-in capital not includible in the capital stock accounts, and shall be kept so as to show the source of the credits includible herein.

ITEMS

1. Premium received on original issues of capital stock.
2. Donations received from stockholders or reduction of debt of the utility, and the cash value of other assets received as a donation.
3. Reduction in par or stated value of capital stock.
4. Gain on resale or cancellation of reacquired capital stock.
5. Miscellaneous paid-in capital.

NOTE: Premium on capital stock shall not be set off against expenses. Further, a premium received on an issue of a certain class or series of stock shall not be set off against expense of another issue of the same class or series.

212 Installments received on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock the amount of installments received on capital stock on a partial or installment payment plan for subscribers who are not bound by legally enforceable subscription contracts.

B. As subscriptions are paid in full and certificates issued, this account shall be charged and the appropriate capital stock account credited with the par or stated value of such stock. Any discount or premium on an original issue shall be included in the appropriate discount or premium account.

213 Discount on capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock all discount on the original issuance and sale of capital

stock, including additional capital stock of a particular class or series as well as first issues.

B. When capital stock which has been actually issued is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-In Capital, provided, however, that the amount shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that it exceeds the balance in account 207.

C. The utility may amortize the balance in this account by charges to account 425, Miscellaneous Amortization, or it may write off capital stock discount in whole or in part to account 435, Miscellaneous Debits to Surplus.

214 Capital stock expense.

A. This account shall include in a separate subdivision for each class and series of stock all commissions and expenses incurred in connection with the original issuance and sale of capital stock, including additional capital stock of a particular class or series as well as first issues. Expenses applicable to capital stock shall not be deducted from premium on capital stock.

B. When capital stock which has been actually issued by the utility is retired, the amount in this account applicable to the shares retired shall be written off to account 207, Other Paid-In Capital, to the extent of gains on resale or cancellation of reacquired stock includible therein: *Provided, however,* That the amount shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that it exceeds the balance in account 207, from such source.

C. The utility may amortize the balance in this account by systematic charges to account 425, Miscellaneous Amortization, or it may write off capital stock expense in whole or in part by charges to account 435, Miscellaneous Debits to Surplus.

NOTE: Expenses in connection with the reacquisition or resale of the utility's capital stock shall not be included herein.

215 Appropriated earned surplus.

This account shall include the amount of earned surplus which has been appropriated or set aside for specific purposes. Separate subaccounts shall be maintained under such titles as will designate the purpose for which each appropriation was made.

216 Unappropriated earned surplus.

This account shall include the balance, either debit or credit, of unappropriated surplus arising from earnings. It shall not include items includible in any subaccount of account 207, Other Paid-In Capital.

217 Reacquired capital stock.

A. This account shall include in a separate subdivision for each class and series of capital stock, the cost of capital stock actually issued by the utility and reacquired by it and not retired or canceled, except, however, stock which is held by trustees in sinking or other funds.

B. When reacquired capital stock is retired or canceled, the difference between its cost, including commissions and expenses paid in connection with the reacquisition, and its par or stated value plus any premium and less any discount and expenses applicable to the shares retired, shall be debited or credited, as appropriate, to account 207, Other Paid-In Capital: *Provided, however,* That debits shall be charged to account 435, Miscellaneous Debits to Surplus, to the extent that they exceed the balance of gains on resale or cancellation or reacquired stock included in account 207.

C. When reacquired capital stock is resold by the utility, the difference between the amount received on the resale of the stock, less expenses incurred in the resale, and the cost of the stock included in this account shall be accounted for as outlined in paragraph B.

NOTE: The accounting for reacquired stock shall be as prescribed herein unless otherwise specifically required by statute.

218 Noncorporate proprietorship.

This account shall include the investment in an unincorporated utility by the proprietor thereof, and shall be charged with all withdrawals from the business by its proprietor. At the end of each calendar year the net income for the year, as developed in the income account, shall be transferred to this account. (See optional accounting procedure provided in Note C, hereunder.)

NOTE A: Amounts payable to the proprietor as just and reasonable compensation for services performed shall not be charged to this account but to appropriate operating expense or other accounts.

NOTE B: When the utility is owned by a partnership, a separate account shall be kept to show the net equity of each member therein and the transactions affecting the interest of each such partner.

NOTE C: This account may be restricted to the amount considered by the proprietor to be the permanent investment in the business, subject to change only by additional investment by the proprietor or the withdrawal of portions thereof not representing net income. When this option is taken, the surplus accounts shall be maintained and entries thereto shall be made in accordance with the texts thereof.

6. LONG-TERM DEBT

221 Bonds.

A. Separate accounts shall be maintained hereunder for unmatured bonds of each class and series. Each such account shall be subdivided so as to show: (1) the face value of the actually issued and unmatured bonds, which have not been retired or canceled; also, the face value of such bonds issued by others, the payment of which has been assumed by the utility, (2) the face value of bonds actually issued or assumed by the utility and reacquired by it, not paid, retired, or canceled. The account for reacquired debt shall not include securities which are held by trustees in sinking or other funds.

B. When bonds are reacquired, the difference between face value, adjusted for unamortized discount, expense or premium and the amount paid upon reacquisition, shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate.

223 Advances from associated companies.

A. This account shall include the face value of notes payable to associated companies and the amount of open book accounts representing advances from associated companies. It does not include notes and open accounts representing indebtedness subject to current settlement.

B. The records supporting the entries to this account shall be so kept that the utility can furnish complete information concerning each note and open account.

224 Other long-term debt.

A. This account shall include, until maturity, all long-term debt not otherwise provided for. This covers such items as receivers' certificates, real estate mortgages executed or assumed, assessments for public improvements, notes and unsecured certificates of indebtedness not owned by associated companies, receipts outstanding for long-term debt, and other obligations maturing more than one year from date of issue or assumption.

B. Separate accounts shall be maintained for each class of obligation, and records shall be maintained to show for each class all details as to date of obligation, date of maturity, interest dates and rates, security for the obligation, etc.

NOTE: Miscellaneous long-term debt reacquired shall be accounted for in accordance with the procedures set forth in account 221, Bonds.

7. CURRENT AND ACCRUED LIABILITIES

231 Notes payable.

This account shall include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding one year from date of issue.

232 Accounts payable.

This account shall include all amounts payable by the utility within one year, which are not provided for in other accounts.

235 Customer deposits.

This account shall include all amounts deposited with the utility by customers as security for the payment of bills.

236 Taxes accrued.

A. This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet shall be shown under account 165, Prepayments.

B. If accruals for taxes are found to be insufficient or excessive, correction therefor shall be made through current tax accruals. However, if such correc-

tions are so large as to seriously distort current expenses, they shall be included in account 434, Miscellaneous Credits to Surplus, or account 435, Miscellaneous Debits to Surplus, as appropriate.

C. Accruals for taxes shall be based upon the net amount payable after credit for any discounts and shall not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds shall be credited to account 419, Interest and Dividend Income, and interest paid on deficiencies shall be charged to account 431, Other Interest Expense.

D. The records supporting the entries to this account shall be kept so as to show for each class of taxes, the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

237 Interest accrued.

This account shall include the amount of interest accrued but not matured on all liabilities of the utility, not including, however, interest which is added to the principal of the debt on which incurred. Supporting records shall be maintained so as to show the amount of interest accrued on each obligation.

238 Other current and accrued liabilities.

This account shall include the amount of all other current and accrued liabilities not provided for elsewhere appropriately designated and supported so as to show the nature of each liability.

ITEMS

1. Dividends declared but not paid.
2. Matured long-term debt.
3. Matured interest.
4. Taxes collected through pay roll deductions or otherwise pending transmittal to the proper taxing authority.

8. DEFERRED CREDITS

251 Unamortized premium on debt.

A. This account shall include the total of the unamortized balance of premium and expense for all classes of long-term debt, including receivers' certificates.

B. The premium and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities. The amortization shall be credited to account 429, Amortization of Premium on Debt—Cr.

252 Customer advances for construction.

This account shall include advances by customers for construction which are to be refunded either wholly or in part. When a customer is refunded the entire amount to which he is entitled, according to the agreement or rule under which the advance was made, the balance, if any, remaining in this account shall be credited to account 271, Contributions in Aid of Construction.

253 Other deferred credits.

This account shall include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

9. OPERATING RESERVES

261 Property insurance reserve.

A. This account shall include amounts reserved by the utility for self-insurance against losses through accident, fire, flood, or other hazards to its own property or property leased from others. A schedule of risks covered by this reserve shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered by self-insurance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

265 Miscellaneous operating reserves.

A. This account shall include all operating reserves maintained by the utility which are not provided for elsewhere.

B. This account shall be maintained in such manner as to show the amount of each separate reserve and the nature and amounts of the debits and credits thereto.

NOTE: This account includes only such reserves as may be created for operating purposes and does not include any reservations of income the credits for which should be carried in account 215, Appropriated Earned Surplus.

10. CONTRIBUTIONS IN AID OF CONSTRUCTION

271 Contributions in aid of construction.

A. This account shall include donations or contributions in cash, services, or property from states, municipalities or other governmental agencies, individuals, and others for construction purposes.

B. The credits to this account shall not be transferred to earned surplus or to any other account without the approval of the Commission.

C. The records supporting the entries to this account shall be so kept that the utility can furnish information as to the purpose of each donation, the conditions, if any, upon which it was made, the amount of donations from (a) states, (b) municipalities, (c) customers, and (d) others, and the amount applicable to each utility department.

NOTE: There shall not be included in this account advances for construction which are ultimately to be repaid wholly or in part. Such advances shall be credited to account 252, Customer Advances for Construction.

Gas Plant Accounts

1. INTANGIBLE PLANT

301 Organization.
302 Franchises and consents.
303 Miscellaneous intangible plant.

2. MANUFACTURED GAS PRODUCTION PLANT

310 Land and land rights.
311 Structures and improvements.
312 Coal gas equipment.
313 Water gas equipment.
314 Petroleum gas equipment.
315 Production equipment—Other processes.

3. NATURAL GAS PRODUCTION AND GATHERING

320 Producing gas lands, leaseholds, and gas rights.
321 Other land and land rights.
322 Structures and improvements.
323 Producing gas wells.
324 Gathering lines and equipment.
325 Drilling and cleaning equipment.
326 Other production equipment.

4. TRANSMISSION AND DISTRIBUTION PLANT

330 Land and land rights.
331 Structures and improvements.
332 Mains.
333 Pumping and regulating equipment.
334 Services.
335 Meters.
336 Meter installations.
337 House regulators.
338 House regulator installations.
339 Property on customers' premises.
340 Other equipment.

5. GENERAL PLANT

370 Land and land rights.
371 Structures and improvements.
372 Office furniture and equipment.
373 Transportation equipment.
379 Other general equipment.

6. OTHER GAS PLANT

390 Other tangible property.
391 Gas plant purchased or sold.
392 Gas plant in process of reclassification.
393 Gas plant leased to others.
394 Gas plant held for future use.
395 Construction work in progress—Gas.
396 Gas plant acquisition adjustments.
397 Other gas plant adjustments.

Gas Plant Accounts

1. INTANGIBLE PLANT

301 Organization.

This account shall include the cost of organizing and incorporating the utility and putting it into readiness to do business. This includes the cost of legal services, amounts paid for privileges of incorporation, office expenses, incident to organizing the company and stock and minute books and corporate seal.

NOTE: This account shall not include any discounts upon securities issued or assumed, nor shall it include any costs incident to negotiating loans, selling bonds, or other evidences of debt, or expenses in connection with the authorization, issuance or sale of capital stock.

302 Franchises and consents.

A. This account shall include amounts paid to the federal government, to a state or to a political subdivison thereof in consideration for franchises, consents, or certificates, running in perpetuity or for a specified term of more than one year, together with necessary and reasonable expenses incident to procuring such franchises, consents, or certificates of permission and approval.

B. If a franchise, consent, or certificate is acquired by assignment, the charge to this account in respect thereof shall not exceed the amount paid therefor by the utility to the assignor, nor shall it exceed the amount paid by the original grantee, plus the expense of acquisition to such grantee. Any excess of the amount actually paid by the utility over the amount above specified shall be charged to account 435, Miscellaneous Debits to Surplus.

C. When any franchise has expired, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or to account 110, Accumulated Provision for

Depreciation, Depletion and Amortization of Gas Plant, as appropriate.

D. Records supporting this account shall be maintained so as to show separately the book cost of each franchise or consent.

NOTE: Annual or other periodic payments under franchises shall not be included herein but in the appropriate operating expense account.

303 Miscellaneous intangible plant.

A. This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility operations and not specifically chargeable to any other account.

B. When any item included in this account is retired or expires, the book cost thereof shall be credited hereto and charged to account 435, Miscellaneous Debits to Surplus, or account 110, Accumulated Provision for Depreciation, Depletion and Amortization of Gas Plant, as appropriate.

C. This account shall be maintained in such a manner that the utility can furnish full information with respect to the amounts included herein.

2. MANUFACTURED GAS PRODUCTION PLANT

NOTE: If the utility produces gas in two or more plants, separate production plant accounts shall be kept for each plant; when more than one kind of gas is produced at a single plant, the equipment used in common, if any, shall be kept in separate subdivisions and the extent of use for each process shall be indicated.

310 Land and land rights.

This account shall include the cost of land and land rights used in connection with gas production. (See gas plant instruction 3.)

311 Structures and improvements.

This account shall include the cost in place of structures and improvements used in connection with manufactured gas production. This includes relief and storage holders when located at the production plant. (See gas plant instruction 4.)

312 Coal gas equipment.

This account shall include the cost installed of plant and equipment used for the production and purification of coal gas.

ITEMS

1. Power equipment, such as furnaces, boilers, internal combustion engines and other driving equipment; accessory equipment, such as fuel and ash handling and storage equipment, piping and accessories, etc.
2. Benches and retorts, coke ovens, and accessory equipment.
3. Producer gas equipment and accessories.
4. Purification equipment and accessories.
5. Residual refining equipment and accessories.
6. Other production and accessory equipment, such as gas mixing equipment, tanks, odorizing equipment, oil foggers, piping and accessories, works exhauster, works station meters and gauges, production laboratory equipment, etc.

NOTE: This account shall not include boilers or steam pipes whose primary purpose is the heating of structures.

313 Water gas equipment.

This account shall include the cost installed of equipment used in the generation and purification of water gas.

ITEMS

1. Power equipment, such as furnaces, boilers, internal combusion engines and other driving equipment; accessory equipment such as fuel and ash handling and storage equipment, piping and accessories, etc.
2. Water gas generating equipment, such as generators, carburetors, superheaters, and equipment accessory thereto.
3. Purification equipment and accessories.
4. Residual refining equipment and accessories.
5. Other production and accessory equipment, such as gas mixing equipment, tanks, odorizing equipment, oil foggers, piping and accessories, works exhauster, works station meters and gauges, production laboratory equipment, etc.

NOTE: This account shall not include boilers or steam pipes whose primary purpose is the heating of structures.

314 Petroleum gas equipment.

This account shall include the cost installed of equipment used for the production of gas from petroleum derivatives, such as propane, butane or gasoline.

ITEMS

1. Carbureting equipment and accessories.
2. Compression equipment including pumps and accessories.
3. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
4. Mixing or proportioning equipment.
5. Piping, including valves.
6. Storage equipment other than holders.
7. Vaporizing equipment.

315 Production equipment—other processes.

This account shall include the cost installed of production equipment for processes other than those provided for in preceding accounts, such as for the production of oil, gas, acetylene gas, etc., for producer gas when not for use in the manufacture of coal gas, and equipment for making or reforming gas by the catalytic cracking process.

3. NATURAL GAS PRODUCTION AND GATHERING

320 Producing gas lands, leaseholds and gas rights.

A. This account shall include the cost of (a) lands held in fee on which producing gas wells are located, and lands held in fee which are being drained of gas through the operation by the utility of wells on other land, (b) leaseholds on which the utility pays royalties for natural gas obtained therefrom, and (c) natural gas rights used in producing natural gas, whereby the utility obtains ownership in gas underlying land not owned or leased by the utility. (See gas plant instruction 3.)

B. Exclude from this account rents paid periodically for rights obtained under leases. Exclude also from this account the cost of leaseholds which terminate in one year or less after they become effective.

321 Other land and land rights.

This account shall include the cost of rights-of-way for gathering pipe lines and other lands and land rights used in connection with natural gas production operations except producing gas lands, leaseholds, and gas rights. Do not include in this account any payments with respect to rights-of-way or other land rights which terminate less than one year after they become effective. Any such payments, as well as annual or other periodic payments for use of land, should be charged to account 713, Operation Supplies and Expenses. (See gas plant instruction 3.)

322 Structures and improvements.

This account shall include the cost of structures and improvements used in connection with natural gas production and gathering operations. (See gas plant instruction 4.)

323 Producing gas wells.

This account shall include the cost of productive gas wells.

ITEMS

1. Casing.
2. Clearing site for drilling.
3. Drive pipe.
4. Fittings, including shut-in valve, separators, and drips.
5. Fuel or power used in drilling, cost of.
6. Packing.
7. Pumps and drives permanently connected.
8. Tubing.
9. Rent of drilling equipment.
10. Roads to well site, cost of making, clearing, etc.
11. Cost of hauling, erecting, dismantling, and removing boilers, portable engines, derricks, rigs and other equipment and tools used in drilling.
12. Water used in drilling obtained either by driving wells, piping from springs or streams, or by purchase.

NOTE: Cost of drilling, etc., incurred in connection with dry holes shall be charged as provided in account 721, Nonproductive Well Drilling.

324 Gathering lines and equipment.

This account shall include the cost installed of pipe lines and equipment used in conveying natural gas from the wells to the point of storage or compression, or where it enters the transmission or distribution system.

ITEMS

1. Boosters.
2. Drip traps.
3. Driving units.
4. Gathering lines, including pipe, valves, fittings, and supports.
5. Instruments, meters, pressure gauges, etc.
6. Pressure regulators.
7. Pumps.

325 Drilling and cleaning equipment.

This account shall include the cost of implements and equipment used in drilling and cleaning natural gas wells.

ITEMS

1. Bailers.
2. Boilers.
3. Derricks.
4. Drilling cables.
5. Drilling machines.
6. Engines.
7. Motors.
8. Pulling machines.
9. Rigs.

326 Other production equipment.

This account shall include the cost installed of equipment used in the production of gas, when not assignable to any of the foregoing accounts.

ITEMS

1. Natural gas purification equipment.
2. Odorizing equipment.
3. Oil foggers.
4. Production laboratory equipment.

4. TRANSMISSION AND DISTRIBUTION PLANT

330 Land and land rights.

This account shall include the cost of land and land rights used in connection with transmission or distribution operations. (See gas plant instruction 3.)

331 Structures and improvements.

A. This account shall include the cost in place of structures and improvements used in connection with transmission or distribution operations. (See gas plant instruction 4.)

B. This includes storage holders and accessory equipment when located on the transmission or distribution system. Storage holders and accessory equipment located at the production plant shall be included in account 311, Structures and Improvements.

332 Mains.

This account shall include the cost installed of transmission and distribution system mains.

ITEMS

1. Drip lines and pots.
2. Excavation, including shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
3. Municipal inspection.
4. Pavement disturbed, including cutting and replacing pavement, pavement base and sidewalks.
5. Permits.
6. Pipe coatings.
7. Pipe and fittings.
8. Pipe laying.
9. Pipe supports.
10. Protection of street openings.
11. Surveys made for main construction.
12. Valves (including manholes or pits), not associated with pumping or regulating equipment.

333 Pumping and regulating equipment.

This account shall include the cost installed of pumping, regulating, and measuring equipment, including minor structures which house such equipment.

ITEMS

1. After-cooling equipment and accessories.
2. Boosters.
3. Compressors.
4. Driving units for items listed herein.
5. Excavation, including shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
6. Foundations and vaults for items listed herein.
7. Governors or regulators for pressure in mains.
8. Manholes or pits used to house equipment included in this account.
9. Meters located on mains.
10. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
11. Piping and fittings for equipment.
12. Pressure indicators.
13. Pressure regulating devices.
14. Valves associated with pumping or regulating equipment.

334 Services.

A. This account shall include the cost installed of service pipes and accessories leading to the customers' premises.

B. A complete service begins with the connection on the main and extends to but does not include the connection with the customer's meter. A stub service extends from the main to the property line, or the curb stop.

C. Services which have been used but have become inactive shall be retired from utility plant in service immediately if there is no prospect for reuse, and, in any event, shall be retired by the end of the second year following that during which the service became inactive unless reused in the interim.

ITEMS

1. Curb valves and curb boxes.
2. Excavation, including shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
3. Landscaping, including lawns, shrubbery, shoring, bracing, bridging, pumping, backfill, and disposal of excess excavated material.
4. Municipal inspection.
5. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
6. Permits.
7. Pipe and fittings, including saddle, T, or other fitting on street main.
8. Pipe coating.
9. Pipe laying.
10. Protection of street openings.
11. Service drips.
12. Service valves, at head of service, when installed or furnished by the utility.

NOTE: When a customer pays all or a part of the cost of the service and such cost is properly includible in this account, the amount borne or contributed by the customer shall be credited to account 271, Contributions in Aid of Construction.

335 Meters.

A. This account shall include the cost installed of meters or devices and appurtenances thereto, for use in measuring gas delivered to users, whether actually in service or held in reserve.

B. When a meter is permanently retired from service, the installed cost thereof shall be credited to this account.

C. The records of meters shall be so kept that the utility can furnish information as to the number of meters of each type and capacity in service and in reserve as well as the location of each meter.

ITEMS

1. Meters, including badging and initial testing.

Meter installations:

2. Cocks.
3. Labor.
4. Locks.
5. Meter bars.
6. Pipe and fittings.
7. Seals.
8. Shelves.
9. Swivels and bushings.
10. Transportation.

NOTE A: At the option of the utility, costs of meter installations may be accounted for separately from the cost of meters in accordance with the provisions of account 336, Meter Installations. The practice of the utility, however, shall be consistent from year to year and throughout the utility's system.

NOTE B: The labor cost of removing and resetting meters shall be charged to account 760, Supervision and Labor, and supplies used or other expense incurred charged to account 761, Operation Supplies and Expenses.

336 Meter installations.

A. This account shall include the cost of labor and materials used, and expenses incurred in connection with the original installation of customer meters.

B. When a meter installation is permanently retired from service, the cost thereof shall be credited to this account.

ITEMS

1. Cocks.
2. Locks.
3. Labor.
4. Meter bars.
5. Pipe and fittings.
6. Seals.
7. Shelves.
8. Swivels and bushings.
9. Transportation.

NOTE: At the option of the utility, meter installations may be accounted for as part of the cost installed of meters, in accordance with the provisions of account 335, Meters. The practice of the utility, however, shall be consistent from year to year and throughout the utility's system.

337 House regulators.

A. This account shall include the cost installed of house regulators whether actually in service or held in reserve.

B. When a house regulator is permanently retired from service, the installed cost thereof shall be credited to this account.

ITEMS

1. House regulator.

House regulator installations:

2. Cocks.
3. Labor.
4. Locks.
5. Pipe and fittings.
6. Regulator vents.
7. Swivels and bushings.
8. Transportation.

NOTE: At the option of the utility, cost of house regulator installations may be accounted for separately from the cost of house regulators in accordance with the provisions of account 338, House Regulator Installations. The practice of the utility, however, shall be consistent from year to year and throughout the utility's system.

338 House regulator installations.

A. This account shall include the cost of labor and materials used and expenses incurred in connection with the original installation of house regulators.

B. When a house regulator installation is permanently retired from service, the cost thereof shall be credited to this account.

ITEMS

1. Cocks.
2. Labor.
3. Locks.
4. Pipe and fittings.
5. Regulator vents.
6. Swivels and bushings.
7. Transportation.

NOTE: At the option of the utility, house regulator installations may be accounted for as part of the cost installed of house regulators in accordance with the provisions of account 337, House Regulators. The practice, however, shall be consistent from year to year and throughout the utility's system.

339 Property on customers' premises.

This account shall include the cost, including first setting and connecting, of equipment owned by the utility installed on customer premises which is not includible in other accounts.

340 Other equipment.

This account shall include the cost installed of all other transmission and distribution equipment not provided for in the foregoing accounts, including street lighting equipment.

ITEMS

1. Carbon monoxide tester and indicator.
2. Explosimeters.
3. Fire extinguisher.
4. Gas masks.
5. Lockers.
6. Portable pump.
7. Recording gauges.
8. Street lighting equipment.
9. Test meters.
10. Watchmen's clocks.

5. GENERAL PLANT

370 Land and land rights.

This account shall include the cost of land and land rights used for utility purposes, the cost of which is not properly includible in other land and land rights accounts. (See gas plant instruction 3.)

371 Structures and improvements.

This account shall include the cost in place of structures and improvements used for utility purposes, the cost of which is not properly includible in other structures and improvements accounts. (See gas plant instruction 4.)

372 Office furniture and equipment.

This account shall include the cost of office furniture and equipment owned by the utility and devoted to utility service, and not permanently attached to buildings, except the cost of such furniture and equipment which the utility elects to assign to other plant accounts on a functional basis.

ITEMS

1. Bookcases and shelves.
2. Desks, chairs, and desk equipment.
3. Drafting-room equipment.
4. Filing, storage, and other cabinets.
5. Floor covering.
6. Library and library equipment.
7. Mechanical office equipment, such as accounting machines, typewriters, etc.
8. Safes.
9. Tables.

373 Transportation equipment.

This account shall include the cost of transportation vehicles used for utility purposes.

ITEMS

1. Automobiles.
2. Bicycles.
3. Electrical vehicles.
4. Motor trucks.
5. Motorcycles.
6. Repair cars or trucks.
7. Tractors and trailers.
8. Other transportation vehicles.

379 Other general equipment.

This account shall include the cost installed of the following equipment:

(1) Equipment used for the receiving, shipping, handling, and storage of materials and supplies when not an integral part of the housing structure.

(2) Equipment specially provided for general shops when such equipment is not an integral part of the housing structure.

(3) Laboratory equipment used for general laboratory purposes and not specially provided for or includible in other departmental or functional plant accounts.

(4) Tools, implements, and equipment used in construction or repair work exclusive of equipment includible in other equipment accounts.

(5) Other general equipment, apparatus, etc., used in the utility's gas operations, and which is not includible in any other account.

NOTE: General equipment of the nature indicated above whenever practicable shall be assigned to the gas plant accounts on a functional basis.

6. OTHER GAS PLANT

390 Other tangible property.

This account shall include the cost of tangible gas plant not provided for elsewhere.

391 Gas plant purchased or sold.

This account shall be charged with the cost of gas plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and shall be credited with the selling price of like property transferred to others pending the distribution to appropriate accounts as the Commission shall approve or direct.

392 Gas plant in process of reclassification.

A. This account shall include temporarily the balance of gas plant as of the effective date of the prior system of accounts, which has not yet been reclassified as of the effective date of this system of accounts. The detail or primary accounts in support of this account employed prior to such date shall be continued pending reclassification into the gas plant accounts herein prescribed (301–390), but shall not be used for additions, betterments, or new construction.

B. No charges other than as provided in paragraph A, above, shall be made to this account, but retirements of such unclassified gas plant shall be credited hereto and to the supporting (old) fixed capital accounts until the reclassification shall have been accomplished.

393 Gas plant leased to others.

A. This account shall include the original cost of gas plant owned by the utility, but leased to others as operating units or systems, where the lessee has exclusive possession.

B. The property included in this account shall be classified according to the detailed accounts (301–390) prescribed for gas plant in service, and this account shall be maintained in such detail as though the property were used by the owner in its utility operations.

394 Gas plant held for future use.

A. This account shall include the original cost of property owned and held for future use in gas service under a definite plan for such use. There shall be included herein property acquired but never used by the utility in gas service, but held for such service in the future under a definite plan, and property previously used by the utility in gas service pending its reuse in the future, under a definite plan, in gas service. This includes land and land rights held to insure a future supply of natural gas.

B. The property included in this account shall be classified according to the detailed accounts (301–390) prescribed for gas plant in service and the account shall be maintained in such detail as though the property were in service.

NOTE A: Materials and supplies, meters and transformers held in reserve, and normal spare capacity of plant in service shall not be included in this account.

NOTE B: Include in this account natural gas wells shut in after construction which have not been connected with the line; also, natural gas wells which have been connected with the line but which are shut in for any reason excepting seasonal excess capacity or governmental proration requirements or for repairs.

395 Construction work in progress—Gas.

This account shall include the total of the balances of work orders for gas plant in process of construction but not ready for service at the date of the balance sheet.

396 Gas plant acquisition adjustments.

A. This account shall include the difference between (a) the cost to the accounting utility of gas plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and (b) the original cost, estimated if not known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated provision for depreciation, depletion and amortization and contributions in aid of construction with respect to such property.

B. The amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct.

397 Other gas plant adjustments.

A. This account shall include the difference between the original cost, estimated if not known, and the book cost of gas plant to the extent that such difference is not properly includible in account 396, Gas Plant Acquisition Adjustments.

B. Amounts included in this account shall be classified in such manner as to show the origin of each amount and shall be disposed of as the Commission may approve or direct.

NOTE: The provisions of this account shall not be construed as approving or authorizing the recording of appreciation of gas plant.

Income Accounts

1. UTILITY OPERATING INCOME

400 Operating revenues.
Operating expenses:
401 Operation and maintenance expense.
403 Depreciation and depletion expense.

404 Amortization expense.
408 Taxes other than income taxes.
409 Income taxes.
Total operating expenses.
Operating income.
412–413 Income, from gas plant leased to others.
414 Other utility operating income.
Total operating income.

2. Other Income

415–416 Income from merchandising, jobbing, and contract work.
418 Nonoperating rental income.
419 Interest and dividend income.
421 Miscellaneous nonoperating income.
Total other income.
Total income.

3. Miscellaneous Income Deductions

425 Miscellaneous amortization.
426 Other income deductions.
Total income deductions.
Income before interest charges.

4. Interest Charges

427 Interest on long-term debt.
428 Amortization of debt discount and expense.
429 Amortization of premium on debt—Cr.
430 Interest on debt to associated companies.
431 Other interest expense.
432 Interest charged to construction—Cr.
Total interest charges.
Net income.

5. Earned Surplus

216 Unappropriated earned surplus (at beginning of period).
433 Balance transferred from income.
434 Miscellaneous credits to surplus.
435 Miscellaneous debits to surplus.
436 Appropriations of surplus.
Net addition to earned surplus.
437 Dividends declared—Preferred stock.
438 Dividends declared—Common stock.
216 Unappropriated earned surplus (at end of period).

Income Accounts

1. Utility Operating Income

400 Operating revenues.

There shall be shown under this caption the total amount included in the gas operating revenue accounts provided herein.

401 Operation and maintenance.

There shall be shown under this caption the total amount included in the gas operation and maintenance expense accounts provided herein.

403 Depreciation and depletion expense.

A. This account shall include the amount of depreciation expense for the period covered by the income statement for all classes of depreciable gas plant in service except such depreciation expense as is chargeable to clearing accounts or to merchandising, jobbing and contract work activities. It shall also include depletion and amortization expense with respect to producing natural gas lands and land rights.

B. The charges to this account for amortization and depletion of producing natural gas land and land rights shall be made in such manner as to distribute the cost of producing natural gas land and land rights over the period of their benefit to the utility, based upon the exhaustion of the natural gas deposits recoverable from such land and land rights.

404 Amortization expense.

This account shall include amortization charges applicable to amounts included in the gas plant accounts for limited-term franchises, licenses, patent rights, limited-term interests in land, other than land rights held for production of natural gas, and expenditures on leased property where the service life of the improvements is terminable by action of the lease. The charges to this account shall be such as to distribute the book cost of each investment as evenly as may be over the period of its benefit to the utility. Include also, when authorized by the Commission, amortization of extraordinary property losses. (See account 182, Extraordinary Property Losses.)

408 Taxes other than income taxes.

A. This account shall include the amount of ad valorem, gross revenue or gross receipts taxes, state unemployment insurance, franchise taxes, federal excise taxes, social security taxes, and all other taxes assessed by federal, state, county, municipal, or other local governmental authorities, which are properly chargeable to gas operations, except income taxes.

B. This account shall be charged in each accounting period with the amount of taxes which is applicable thereto, with concurrent credits to account 236, Taxes Accrued, or account 165, Prepayments, as appropriate. When it is not possible to determine the exact amount of taxes, the amount shall be estimated and adjustments made in current accruals as the actual tax levies become known.

C. The charges to this account shall be made or supported so as to show the amount of each tax and the basis upon which each charge is made. In the case of a utility rendering more than one utility service, taxes of the kind includible in this account shall be assigned directly to the utility department the operation of which gave rise to the tax in so far as practicable. Where the tax is not attributable to a specific utility department, it shall be distributed among the utility departments or nonutility operations on an equitable basis.

Note A: Taxes applicable to nonutility property or investments, including taxes on net income derived therefrom, shall be charged to the account in which the income from the property or investments is included.

Note B: Special assessments for street and similar improvements shall be included in the appropriate utility plant or nonutility property account.

Note C: Taxes specifically applicable to construction shall be included in the cost of construction.

Note D: Taxes assumed by the utility on property leased from others for use in utility operations shall be charged to the appropriate rent expense or clearing account.

Note E: Gasoline and other sales taxes shall be charged as far as practicable to the same account as the materials on which the tax is levied.

Note F: Social Security and other forms of so-called pay roll taxes shall be destributed to utility departments and to nonutility functions on a basis related to pay roll. Amounts applicable to construction shall be charged to the appropriate plant account.

409 Income taxes.

A. This account shall include the amount of state and federal taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals shall be made to account 236, Taxes Accrued, and as the exact amount of taxes becomes known, the current tax accruals shall be adjusted accordingly so that this account, as nearly as can be ascertained, shall include the actual taxes payable which are chargeable to utility operations.

B. The accruals for income taxes shall be apportioned among utility departments and nonutility operations so that, as nearly as practicable, each tax shall be included in the expenses of the utility department or nonutility operation the income from which gave rise to the tax.

Note A: Taxes assumed by the utility on interest shall be charged to account 431, Other Interest Expense.

Note B: Income taxes on income from gas plant leased to others shall be charged to account 413, Expenses of Gas Plant Leased to Others.

Note C: Where statutes or regulatory practices require that the profits or losses of merchandising, jobbing and contract work shall not be considered in arriving at rates to be charged for utility service, income taxes on income from merchandising, jobbing and contract work shall be charged to account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

Note D: Income taxes on nonutility income shall be charged to the account in which the income is included.

Note E: Interest on tax refunds or deficiencies shall not be included in this account but in account 419, Interest and Dividend Income, or account 431, Other Interest Expenses, as appropriate.

412 Revenues from gas plant leased to others.

413 Expenses of gas plant leased to others.

A. These accounts shall include, respectively, revenues from gas property constituting a distinct operating unit or system leased by the utility to others, and which property is properly includible in account 393, Gas Plant Leased to Others, and the expenses attributable to such property.

B. The detail of expense shall be kept or supported so as to show separately the following:

Operation and maintenance.
Rents.
Depreciation and depletion.
Amortization.
Taxes other than income taxes.
Income taxes.

414 Other utility operating income.

A. This account shall include the revenues received and expenses incurred in connection with the operations of utility plant, the book cost of which is included in account 118, Other Utility Plant.

B. The expenses shall include every element of cost incurred in such operations, including depreciation, rents, taxes, and insurance.

2. Other Income

415 Revenues from merchandising, jobbing and contract work.

416 Costs and expenses of merchandising, jobbing and contract work.

These accounts shall include, respectively, all revenues derived from the sale of merchandise and jobbing or contract work including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission, and all expenses incurred in such activities.

Note: The revenues and expenses of merchandising, jobbing and contract work shall be reported in these accounts if a State regulatory body having jurisdiction over the utility requires the net income therefrom to be reported as other income; but the amounts shall be reported in accounts 780 and 781 if such regulatory body requires the net income to be reported as an operating income or expense item. In the absence of a requirement by a State regulatory body, the utility may use these accounts or accounts 780 and 781 at its option, in which case the practice of the utility must be consistent.

Items

Account 415:
1. Revenues from sale of merchandise and from jobbing and contract work.
2. Discounts and allowances made in settlement of bills for merchandise and jobbing work.

Account 416:
1. Cost of merchandise sold and materials used in jobbing work.
2. Labor and expenses incurred in merchandising and jobbing operations.

418 Nonoperating rental income.

This account shall include all rent revenues and related expenses of land, buildings, or other property included in account 121, Nonutility Property.

419 Interest and dividend income.

A. This account shall include interest revenues on securities, loans, advances, special deposits, tax refunds and all other interest-bearing assets, and dividends on stocks of other companies, whether the securities on which the interest and dividends are received are carried as investments or included in sinking- or other special-fund accounts.

B. If any interest or dividends are required to be retained in a special fund and the fund is represented by a reserve, the amount of such accretion to the fund shall concurrently be credited to the appropriate reserve account and charged to account 436, Appropriations of Surplus.

421 Miscellaneous nonoperating income.

This account shall include all revenue and expense items properly includible in the income account and not provided for elsewhere.

3. Miscellaneous Income Deductions

425 Miscellaneous amortization.

This account shall include amortization charges not includible in other accounts which are properly deductible in determining the income of the utility before interest charges. Charges includible herein, if significant in amount, must be in accordance with an orderly and systematic amortization program. Similar charges made irregularly without a definite program, or which are dependent upon the amount of net income shall be charged to account 435, Miscellaneous Debits to surplus.

Items

1. Amortization of utility plant acquisition adjustments or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by the Commission.
2. Amortization of amounts in account 182, Extraordinary Property Losses, when not authorized to be included in utility operating expenses by the Commission.
3. Amortization of capital stock discount or expenses when in accordance with a systematic amortization program.

426 Other income deductions.

This account shall include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

Items

1. Donations for charitable, social or community welfare purposes.
2. Life insurance of officers and employees where utility is beneficiary (net premiums less increase in cash surrender value of policies).
3. Penalties or fines for violation of statutes pertaining to regulation.

Note: The classification of expenses as nonoperating and their inclusion in this account is for accounting purposes. It does not preclude Commission consideration of proof to the contrary for ratemaking or other purposes.

4. Interest Charges

427 Interest on long-term debt.

A. This account shall include the amount of interest on outstanding long-term debt issued or assumed by the utility, the liability for which is included in account 221, Bonds, or account 224, Other Long-Term Debt.

B. This account shall be so kept or supported as to show the interest accruals on each class and series of long-term debt.

Note: This account shall not include interest on nominally issued or nominally outstanding long-term debt, including securities assumed.

428 Amortization of debt discount and expense.

A. This account shall include the amortization of unamortized debt discount and expense on outstanding long-term debt. Amounts charged to this account shall be credited concurrently to account 181, Unamortized Debt Discount and Expense.

B. This account shall be so kept or supported as to show the debt discount and expense on each class and series of long-term debt.

429 Amortization of premium on debt—Cr.

A. This account shall include the amortization of unamortized net premium on outstanding long-term debt. Amounts credited to this account shall be charged concurrently to account 251, Unamortized Premium on Debt.

B. This account shall be so kept or supported as to show the premium on each class and series of long-term debt.

430 Interest on debt to associated companies.

A. This account shall include the interest accrued on amounts included in account 223, Advances from Associated Companies, and on all other obligations to associated companies.

B. The records supporting the entries to this account shall be so kept as to show to whom the interest is to be paid, the period covered by the accrual, the rate of interest and the principal amount of the advances or other obligations on which the interest is accrued.

431 Other interest expense.

This account shall include all interest charges not provided for elsewhere.

Items

1. Interest on notes payable on demand, or maturing one year or less from date and on open accounts, except notes and accounts with associated companies.
2. Interest on customers' deposits.
3. Interest on claims and judgments, tax assessments, and assessments for public improvements past due.
4. Income and other taxes levied upon bondholders of utility and assumed by it.

432 Interest charged to construction—Cr.

This account shall include concurrent credits for interest charged to construction based upon the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate upon other funds when so used. No interest shall be capitalized on plant which is completed and ready for service.

5. Earned Surplus

433 Balance transferred from income.

This account shall include the net credit or debit transferred from income for the year.

434 Miscellaneous credits to surplus.

This account shall include credits affecting earned surplus not provided for elsewhere. If an amount otherwise required by the uniform system of accounts to be credited to this account is not significant with respect to net income determination for the year, it may be credited to the appropriate non-operating income account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

Items

1. Delayed credits.
2. Profit on reacquisition and resale or retirement of utility's debt securities.
3. Profit on sale of property or investments.

435 Miscellaneous debits to surplus.

This account shall include amounts chargeable to earned surplus but not provided for elsewhere. If an amount otherwise required by the uniform system of accounts to be charged to this account is not significant with respect to net in-

come determination for the year, it may be charged to the appropriate non-operating income deduction account. All items included in this account shall be sufficiently described in the entries relating thereto as to permit ready analysis.

ITEMS

1. Decline in value of investments.
2. Delayed debits.
3. Loss on reacquisition and resale or retirement of utility's debt securities.
4. Provision for past accrued depreciation not provided for.
5. Long-term debt discount and expense written off.
6. Loss on sale of property or investments.
7. Write off of utility plant acquisition adjustments or of intangibles when not done under an orderly systematic program indicating the propriety of inclusion of the annual charges in account 425, Miscellaneous Amortization.
8. Preliminary survey and investigation expenses on abandoned projects.
9. Income taxes, both state and federal, occasioned by items included in account 434, Miscellaneous Credits to Surplus.
10. Charges from retirement or resale of reacquired capital stock.

436 Appropriations of surplus.

This account shall include appropriations of earned surplus for purposes not provided for elsewhere in this system of accounts.

ITEMS

1. Appropriations of income required under terms of mortgages, orders of courts, contracts or other agreements.
2. Appropriations of income required by action of regulatory authorities.
3. Miscellaneous appropriations of income made at option of utility for specified purposes.

437 Dividends declared—Preferred stock.

This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding preferred or prior lien capital stock issued by the utility.

438 Dividends declared—Common stock.

This account shall include amounts declared payable out of earned surplus as dividends on actually outstanding common capital stock issued by the utility.

Operating Revenue Accounts

1. SALES OF GAS

480 Residential sales.
481 Commercial and industrial sales.
483 Sales for resale.
484 Interdepartmental sales.

2. OTHER OPERATING REVENUES

487 Forfeited discounts.
488 Miscellaneous service revenues.
489 Revenues from transportation of gas of others.
491 Revenues from natural gas processed by others.
492 Incidental gasoline and oil sales.
493 Rent from gas property.
494 Interdepartmental rents.
495 Other gas revenues.

Operating Revenue Accounts

1. SALES OF GAS

480 Residential sales.

A. This account shall include the net billing for gas supplied for residential or domestic purposes.

B. Records shall be maintained so that the quantity of gas sold and the revenues received under each rate schedule shall be readily available.

NOTE: When gas supplied through a single meter is used for both residential and commercial purposes, the total revenue shall be included in this account or account 481, Commercial and Industrial Sales, according to the rate schedule which is applied. If the same rate schedules are applicable to both residential and commercial service, classification shall be according to principal use.

481 Commercial and industrial sales.

A. This account shall include the net billing for gas supplied to commercial and industrial customers.

B. Records shall be maintained so that the quantity of gas sold and revenue received under each rate schedule shall be readily available.

NOTE: When gas supplied through a single meter is used for both commercial and residential purposes, the total revenue shall be included in this account or in account 480, Residential Sales, according to the rate schedule which is applied. If the same rate schedules are applicable to both residential and commercial service, classification shall be according to principal use.

483 Sales for resale.

A. This account shall include the net billing for gas supplied to other gas utilities or to public authorities for resale purposes.

B. Records shall be maintained so that there shall be readily available the revenues for each customer under each revenue schedule and the billing determinants, as applicable, i.e., volume of gas (actual and billing), contract demand, maximum actual demand, billing demand, and Btu adjustment factor.

NOTE: Revenues from gas supplied to other public utilities for use by them and not for distribution, shall be included in account 481, Commercial and Industrial Sales, unless supplied under the same contract as and not readily separable from revenues includible in this account.

484 Interdepartmental sales.

A. This account shall include amounts charged by the gas department at tariff or other specified rates for gas supplied by it to other utility departments.

B. Records shall be maintained so that the quantity of gas supplied each other department and the charge made therefor shall be readily available.

2. OTHER OPERATING REVENUES

487 Forfeited discounts.

This account shall include the amount of discounts forfeited or additional charges imposed because of the failure of customers to pay gas bills on or before a specified date.

488 Miscellaneous service revenues.

This account shall include revenues from all miscellaneous services and charges billed to customers which are not specifically provided for in other accounts.

ITEMS

1. Fees for changing, connecting, or disconnecting service.
2. Profit on maintenance of appliances, piping, gas firing and other utilization facilities, or other installations on customers' premises.
3. Net credit or debit (cost less net salvage and less payment from customers) on closing work orders for plant installed for temporary service of less than one year.
4. Recovery of expenses in connection with gas diversion cases. (Billing for the gas consumed shall be included in the appropriate gas revenue account.)
5. Services performed for other gas companies for testing and adjusting meters, changing charts, etc.

489 Revenues from transportation of gas of others.

This account shall include revenues from transporting gas for other companies through the production, transmission, and distribution lines, or compressor stations of the utility.

491 Revenues from natural gas processed by others.

A. This account shall include revenues from royalties and permits, or other bases of settlement, for permission granted others to remove products from natural gas of the utility.

B. The records supporting this account shall be so maintained that full information concerning determination of the revenues will be readily available concerning each processor of gas of the utility, including as applicable (a) the Mcf of gas and approximate average Btu content thereof per cubic foot delivered to such other party for processing, (b) the Mcf of gas and approximate average Btu content thereof per cubic foot of gas received back from the processor, (c) the field, general production area, or other source of the gas processed, (d) Mcf of gas used for processing fuel, etc., which is chargeable to the utility, (e) total gallons of each product recovered by the processor and the utility's share thereof, (f) the revenues accruing to the utility, and (g) the basis of determination of the revenues accruing to the utility. Such records shall be maintained even though no revenues are derived from the processor.

492 Incidental gasoline and oil sales.

This account shall include revenues from natural gas gasoline produced direct from gas wells or recovered from drips or obtained in connection with purification or dehydration processes, and revenues from oil obtained from wells which produce oil and gas, the investment in which is carried in account 323, Producing Gas Wells.

493 Rent from gas property.

A. This account shall include rents received for the use by others of land, buildings, and other property devoted to gas operations by the utility.

B. When property owned by the utility is operated jointly with others under a definite arrangement for sharing the actual expenses among the parties to the

arrangement, any amount received by the utility for interest or return or in reimbursement of taxes or depreciation on the property shall be credited to this account.

NOTE: Do not include rent from property constituting an operating unit or system in this account. (See account 412, Revenues from Gas Plant Leased to Others.)

494 Interdepartmental rents.

This account shall include credits for rental charges made against other departments of the utility. In the case of property operated under a definite arrangement to allocate actual costs among the departments using the property, any allowance to the gas department for interest or return and depreciation and taxes shall be credited to this account.

495 Other gas revenues.

This account shall include revenues derived from gas operations not includible in any of the foregoing accounts.

ITEMS

1. Commission on sale or distribution of gas of others when sold under rates filed by such others.
2. Compensation for minor or incidental services provided for others such as customer billing, engineering, etc.
3. Profit or loss on sale of material and supplies not ordinarily purchased for resale and not handled through merchandising and jobbing accounts.
4. Sales of steam, water, or electricity, including sales or transfers to other departments of the utility.
5. Service charges for storing gas of others.
6. Miscellaneous royalties received.
7. Revenues from dehydration and other processing of gas of others, except compression of gas of others, revenues from which are includible in account 489, Revenues from Transportation of Gas of Others.

Operation and Maintenance Expense Accounts

1. MANUFACTURED GAS PRODUCTION

700 Supervision and labor.
701 Fuel and raw materials.
702 Operation supplies and expenses.
706 Repairs of manufactured gas production plant.

2. NATURAL GAS PRODUCTION AND GATHERING

710 Supervision and labor.
713 Operation supplies and expenses.
714 Gas well royalties.
720 Delay rentals.
721 Nonproductive well drilling.
722 Abandoned leases.
723 Other exploration.
725 Repairs of production and gathering plant.

3. PURCHASED GAS

730 Purchased gas.

4. TRANSMISSION AND DISTRIBUTION

760 Supervision and labor.
761 Operation supplies and expenses.
762 Repairs of transmission and distribution plant.
765 Transportation expenses.

5. GENERAL EXPENSE

770 Administrative and general salaries.
771 Office supplies and expenses.
772 Outside services employed.
773 Insurance expense.
775 Employees pensions and benefits.
776 Regulatory commission expenses.
777 Miscellaneous general expenses.
778 Uncollectible accounts.
780 Revenues from merchandising, jobbing, and contract work.
781 Costs and expenses of merchandising, jobbing, and contract work.

Operation and Maintenance Expense Accounts

1. MANUFACTURED GAS PRODUCTION

700 Supervision and labor.

This account shall include the cost of supervision and labor in the operation and maintenance of manufactured gas production plants including miscellaneous labor such as care of grounds, building service, etc.

ITEMS

1. Operating and attending gas making equipment and auxiliaries.
2. Cleaning, lubricating and oiling gas making equipment and auxiliaries.
3. Unloading and other handling of coal or other fuel, residuals, waste materials, etc.
4. Keeping plant logs, and other records and preparing reports on plant operations.

701 Fuel and raw materials.

A. This account shall include the cost delivered at works, including freight, switching, etc., of coal, oil, liquefied petroleum gas, enriching materials, and any other fuel and raw materials used in the manufacture of gas. This account also shall include the net cost of, or amount realized from, the disposal of ashes.

B. Records shall be kept to show the quantity and cost of each type of fuel and raw material used.

703 Operation supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in connection with the operation of manufactured gas production plant.

ITEMS

1. Lubricants.
2. Packing.
3. Power or steam purchased.
4. Purification supplies.
5. Tools, hand.
6. Water purchased.
7. Waste.
8. Rents.

706 Repairs of manufactured gas production plant.

This account shall include the cost of repair parts and materials, and amounts of bills from others for repairs made to steam production plant. It shall not, however, include the cost of labor of the utility's own plant operating force.

ITEMS

1. Contract work for repairs and for rearrangement or relocation of plant not retired.
2. Repair parts and materials for repairs of manufactured gas production plant.

2. NATURAL GAS PRODUCTION AND GATHERING

710 Supervision and labor.

This account shall include the cost of supervision and labor in the operation and maintenance of gas wells, field lines, compressors, measuring and regulating equipment, drilling and cleaning equipment, and other plant of the natural gas production and gathering system.

ITEMS

1. Turning on and shutting off gas wells, bailing, swabbing, blowing gas wells, etc.
2. Patrolling field lines, attending and lubricating valves and other equipment, blowing and cleaning drips, taking line pressures, etc.
3. Operating field booster stations.
4. Attending measuring and regulating stations, recording pressures, changing charts, adjusting equipment, inspecting and pumping drips, etc.
5. Attending and servicing purification apparatus.
6. Moving equipment, minor structures, etc. not in connection with construction.
7. Cutting grass and weeds on rights-of-way or around equipment, etc.
8. Cleaning and repairing tools.
9. Building and repairing gate boxes, foot bridges, stiles, etc.

713 Operation supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in the operation and maintenance of natural gas production and gathering plant.

ITEMS

1. Fuel.
2. Lubricants.
3. Meter charts and supplies.
4. Odorizing material.
5. Oil for oil fogging.
6. Power.
7. Pressure charts and supplies.
8. Purification supplies.
9. Tools, hand.
10. Transportation.
11. Waste.
12. Scrubber oil.
13. Well swabs.
14. Geological and gas reserve services by others than employees in connection with gas production.

714 Gas well royalties.

A. This account shall include royalties or other amounts paid for natural gas produced by the utility from wells on land owned by others.

B. Records supporting the entries to this account shall be so kept that the utility can furnish the name of the parties to each contract involving royalties, the terms of each contract, the location of the property involved, the method of determining the royalties, and the amounts payable.

720 Delay rentals.

A. This account shall be charged with the amount of rents paid periodically on natural gas lands in order to hold natural gas land and land rights for the purpose of obtaining a supply of gas in the future.

B. Include, also, in this account the cost of obtaining natural gas leases for a period of one year or less.

C. Records supporting this account shall be so kept that the utility can furnish complete details of the charges made for each natural gas leasehold. (See note to paragraph D of gas plant instruction 3.)

721 Nonproductive well drilling.

This account shall include the net cost of drilling wells which prove to be nonproductive.

NOTE: Records in support of the charges to this account shall conform, as appropriate, to note of general instruction 5, Gas Well Records.

722 Abandoned leases.

This account shall be charged with losses on abandonment of natural gas leases included in account 394, Gas Plant Held for Future Use, which have never been productive, unless otherwise authorized or directed by the Commission.

723 Other exploration.

This account shall be charged with the cost of abandoned projects on which preliminary expenditures were made for the purpose of determining the feasibility of acquiring acreage to provide a future supply of natural gas. (See account 183, Other Deferred Debits.)

725 Repairs of production and gathering plant.

This account shall include the cost of repair parts and materials and amounts of bills from others for repairs to natural gas production and gathering plant, including payments to others for repairs of well equipment and conditioning and cleaning of wells. It shall not, however, include the cost of labor of the utility's own plant operating force.

ITEMS

1. Contract work for cleaning and conditioning wells, repairing well equipment and rearranging, relocating, and repairing field lines, measuring and regulating equipment and other plant not retired.
2. Repair parts and materials for repairs of natural gas production and gathering plant.

3. PURCHASED GAS

730 Purchased gas.

A. This account shall include the cost at point of receipt by the utility of gas purchased for resale.

B. The records supporting this account shall be so maintained that there shall be readily available for each vendor and each point of receipt, the quantity of gas, basis of charges, and the amount paid for the gas.

NOTE: If any gas is used as fuel or raw materials in a manufactured gas process, the cost of such gas shall first be charged to this account and a separate entry made crediting this account and charging account 701, Fuel and Raw Materials, with the cost of the gas so used.

4. TRANSMISSION AND DISTRIBUTION EXPENSES

760 Supervision and labor.

This account shall include the cost of supervision and labor in the operation and maintenance of the transmission and distribution system including work on customers' premises.

ITEMS

1. Supervising and directing the operation and maintenance of transmission and distribution facilities.
2. Operating and servicing compressor station equipment.
3. Patrolling lines, cleaning debris, cutting grass and weeds, changing charts, taking pressures, attending and servicing regulating and measuring equipment, storage facilities, etc.
4. Cleaning and repairing tools.
5. Blowing and cleaning lines and drips, draining water from lines, taking line pressures, changing charts, attending and lubricating valves, locating and inspecting valve boxes, service lines, mains, etc.
6. Keeping logs and records.
7. Distribution office clerical and stenographic services.
8. Cutting and replacing pavement and sidewalks in connection with repairs.
9. Repairing materials for reuse.
10. Labor on customers' premises for inspecting, testing, repairing, removing and resetting or changing the location of meters or house regulators and necessary equipment on customers' premises, investigating service complaints, adjustments in connection with change in Btu content of gas, pressure, and other work on customers' premises.

NOTE: The cost of the first installation at a location of a meter or a house regulator shall not be charged to this account but to gas plant account 335, Meters, or 337, House Regulators.

761 Operation supplies and expenses.

This account shall include the cost of supplies used and expenses incurred in the operation and maintenance of transmission and distribution plant.

ITEMS

1. Transmission and compression of gas by others.
2. Consultants' fees and expenses for transmission and distribution operations.
3. Scrubber oil.
4. Charts and printed forms.
5. Lubricants, wiping rags, etc.
6. Small hand tools.
7. Compressor station fuel and power.
8. Meter locks and seals.
9. Rents.

762 Repairs of transmission and distribution plant.

This account shall include the cost of repair parts and materials and amounts of bills from others for repairs made to transmission and distribution plant. It shall not, however, include the cost of labor of the utility's own plant operating forces.

ITEMS

1. Contract work for repairs and for rearrangement or relocation of plant not retired.
2. Repair parts and materials for repairs of transmission and distribution plant.

765 Transportation expenses.

A. This account shall include the cost of labor, materials used and expenses incurred in the operation and maintenance of general transportation equipment of the utility.

B. This account may be used as a clearing account in which event the charges hereto shall be cleared by apportionment to the appropriate operating expense, utility plant, or other accounts on a basis which will distribute the expenses equitably. Credits to this account shall be made in such detail as to permit ready analysis.

ITEMS

1. Depreciation of transportation equipment.
2. Insurance on transportation equipment.
3. License fees for vehicles and drivers.
4. Rents for equipment and garages.
5. Repairs of transportation equipment.
6. Supplies, such as gas, oil, tires, tubes, grease, etc.

NOTE: Transportation expenses applicable to construction shall not be included in operating expenses.

5. GENERAL EXPENSES

770 Administrative and general salaries.

This account shall include the cost of supervision and labor incurred in administrative, customer accounts, and sales activities.

ITEMS

1. Accounting and clerical work on customers' accounts and on general records.
2. Meter reading.
3. Solicitation of business.
4. Stenographic work.
5. Supervision and administration.

771 Office supplies and expenses.

This account shall include office supplies and expenses incurred in connection with customer accounts, sales and general administration of the utility's operations.

ITEMS

1. Address plates and supplies.
2. Automobile service, including charges through clearing account.
3. Bank messenger and service charges.
4. Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax services, etc.
5. Building service expenses for customer accounts, sales, and administrative and general purposes.
6. Commissions or fees to others for collecting revenues.
7. Communication service expenses.
8. Cost of individual items of office equipment used by general departments which are of small value or short life.
9. Meals, traveling and incidental expenses.
10. Membership fees and dues in trade, technical, and professional associations paid by utility for employees. (Company memberships are includible in account 777.)
11. Meter books and binders.
12. Office supplies and expenses.
13. Payment of court costs, witness fees, and other expenses of legal department.
14. Postage, printing and stationery.
15. Rent of office equipment.
16. Repairs of office equipment.

772 Outside services employed.

A. This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operation function nor to other accounts. It shall include, also, the pay and expenses of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered an employee of the utility.

B. This account shall be so maintained as to permit ready summarization according to the nature of service and the person furnishing the same.

ITEMS

1. Fees, pay and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, tax consultants, etc.
2. Supervision fees and expenses paid under contracts for general management services.

NOTE: Do not include inspection and brokerage fees and commissions chargeable to other accounts or fees and expenses in connection with security issues which are includible in the expenses of issuing securities.

773 Insurance expense.

A. This account shall include the cost of insurance or reserve accruals (1) to protect the utility against losses and damages to owned or leased property used in its utility operations, and (2) to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance and expenses incurred in settlement of injuries and damages claims.

B. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

C. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries and damages and insurance dividends or refunds shall be credited to this account.

775 Employee pensions and benefits.

A. This account shall include pensions paid to or on behalf of retired employees, or accruals to provide for pensions, or payments for the purchase of annuities for this purpose, when the utility has definitely, by contract committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes; and payment for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses incurred in medical, educational or recreational activities for the benefit of employees.

B. The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to the Commission of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

C. There shall be credited to this account the portion of pensions and benefits expenses which is applicable to nonutility operations or which is charged to construction unless such amounts are distributed directly to the accounts involved and are not included herein in the first instance.

776 Regulatory commission expenses.

A. This account shall include all expenses (except pay of regular employees only incidentally engaged in such work) properly includible in utility operating expenses, incurred by the utility in connection with formal cases before regulatory commissions, or other regulatory bodies, or cases in which such a body is a party, including payments made to a regulatory commission for fees assessed against the utility for pay and expenses of such commission, its officers, agents, and employees.

B. Amounts of regulatory commission expense which by approval or direction of the Commission are to be spread over future periods shall be charged to account 183, Other Deferred Debits, and amortized by charges to this account.

C. The utility shall be prepared to show the cost of each formal case.

777 Miscellaneous general expenses.

This account shall include the cost of expenses incurred in connection with the general management of the utility not provided for elsewhere.

ITEMS

1. Association dues for company memberships.
2. Contributions for conventions and meetings of the industry.
3. Experimental and general research work for the industry.
4. Communication service not chargeable to other accounts.
5. Trustee, registrar, and transfer agent fees and expenses.
6. Stockholders meeting expenses.
7. Dividend and other financial notices.
8. Printing and mailing dividend checks.
9. Directors' fees and expenses.
10. Publishing and distributing annual reports to stockholders.
11. Institutional or goodwill advertising.
12. Public notices of financial, operating, and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.
13. Rent for property used in customers' accounts, sales or administrative and general functions.

778 Uncollectible accounts.

This account shall be charged with amounts sufficient to provide for losses from uncollectible utility revenues. Concurrent credits shall be made to account 144, Accumulated Provision for Uncollectible Accounts—Cr. Losses from uncollectible accounts shall be charged to account 144.

780 Revenues from merchandising, jobbing and contract work.

781 Costs and expenses of merchandising, jobbing, and contract work.

These accounts shall include all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission and all expenses incurred in such activities.

NOTE A: The revenues and expenses of merchandising, jobbing and contract work shall be reported in this account if a state regulatory body having jurisdiction over the utility requires the net income therefrom to be reported as an operating expense item; but the amounts shall be reported in accounts 415 and 416 if such regulatory body requires such income to be reported as nonoperating income. In the absence of a requirement by a state regulatory body, the utility may use this account or accounts 415 and 416, at its option, in which case the practice of the utility must be consistent.

NOTE B: See accounts 415 and 416 for list of items includible herein.

[F.R. Doc. 60-11850; Filed, Dec. 22, 1960; 8:45 a.m.]

Pages 13679–13742

FEDERAL REGISTER

VOLUME 25. NUMBER 250

Washington, Saturday, December 24, 1960

THE UNIVERSITY OF MICHIGAN
DEC 28 1960
MAIN READING ROOM

Contents

THE PRESIDENT

Proclamations

Designation of restricted waters under the Great Lakes Pilotage Act of 1960 ---- 13681
Immigration quota ---- 13681

EXECUTIVE AGENCIES

Agricultural Conservation Program Service

RULES AND REGULATIONS:
National agricultural conservation; miscellaneous amendments ---- 13685

Agricultural Marketing Service

PROPOSED RULE MAKING:
Milk in Washington, D.C., marketing area; notice of recommended decision and opportunity to file written exceptions on proposed amendments to tentative marketing agreement and order ---- 13720

RULES AND REGULATIONS:
Handling limitations:
Lemons grown in California and Arizona ---- 13684
Navel oranges grown in Arizona and designated part of California ---- 13683
Limes grown in Florida; quality regulation ---- 13684
Limes; prohibition of imports ---- 13685
Milk in certain marketing areas; orders suspending certain provisions:
Neosho Valley ---- 13683
Washington, D.C ---- 13683
Milk in Mississippi Gulf Coast marketing area; notice of correction with respect to order amending order ---- 13684

Agriculture Department

See Agricultural Conservation Program Service; Agricultural Marketing Service; Commodity Credit Corporation.

Civil Aeronautics Board

NOTICES:
St. Catharines Flying Club; hearing ---- 13733

Coast Guard

NOTICES:
Certificates and/or registers issued by National Cargo Bureau, Inc.; acceptance ---- 13730
Equipment, installations, or materials; approval ---- 13730

Commerce Department

See also Federal Maritime Board; Great Lakes Pilotage Administration; Public Roads Bureau.

NOTICES:
Norris, Sam; statement of changes in financial interests ---- 13733

Commodity Credit Corporation

RULES AND REGULATIONS:
Rye loan and purchase agreement program, 1960 crop (2 documents) ---- 13682
Wheat loan and purchase agreement program, 1960 crop ---- 13682
Tobacco loan program; miscellaneous amendments ---- 13682

Customs Bureau

RULES AND REGULATIONS:
Documentation of rebuilt vessels ---- 13687

Federal Aviation Agency

PROPOSED RULE MAKING:
Control area extensions:
Alterations ---- 13725
Modifications and revocations (3 documents) ---- 13725, 13726
Control zones:
Alterations (2 documents) ---- 13728
Modification ---- 13727
Federal airway and associated control areas; alteration ---- 13725

RULES AND REGULATIONS:
Control zone; modification ---- 13686

Federal Communications Commission

NOTICES:
Canadian broadcast stations; list of changes, proposed changes, and corrections in assignments ---- 13736

Hearings, etc.:
Atlanta OK Broadcasting Co., Inc., and WRMA Broadcasting Co., Inc ---- 13733
Auburn Broadcasting Co., Inc. (WAUD) ---- 13734
Bernalillo Broadcasting Co. et al ---- 13734
Capitol Broadcasting Corp., Inc. (WKXL), et al ---- 13735
Dixie Radio, Inc., and Bowyer, Harry Llewellyn, Jr ---- 13734
Eugene Broadcasters and Allen, W. Gordon ---- 13734
Fort Hamilton Broadcasting Co. (WMOH) et al ---- 13735
Franklin Broadcasting Co., Inc. (KMAR), et al ---- 13735
Hughey, L. M. (WIWB), and Sugarland Broadcasting Co ---- 13735
"Jet" Broadcasting Co., Inc. (WJET), et al ---- 13735
Laurino, John, et al ---- 13735
Mid-Kansas, Inc ---- 13735
Sawnee Broadcasting Co ---- 13736

Federal Maritime Board

RULES AND REGULATIONS:
Free time and demurrage charges on import property applicable to all common carriers by water; interpretation and discontinuance of rule making procedure ---- 13696

Federal Power Commission

NOTICES:
Cities Service Gas Co.; notice of application and date of hearing ---- 13736

Federal Reserve System

PROPOSED RULE MAKING:
Trust powers of national banks; extension of time for receipt of comments ---- 13729

(*Continued on next page*)

Federal Trade Commission
RULES AND REGULATIONS:
Baar and Beards, Inc., et al.; prohibited trade practices 13687

Foreign-Trade Zones Board
NOTICES:
Foreign-Trade Zone No. 3; extension of time for permanent relocation 13737

Great Lakes Pilotage Administration
PROPOSED RULE MAKING:
Great Lakes pilotage regulations .. 13721

Immigration and Naturalization Service
NOTICES:
Amendments to the statement of organization 13732
RULES AND REGULATIONS:
Miscellaneous amendments to chapter 13686

Indian Affairs Bureau
RULES AND REGULATIONS:
Extension of the trust or restricted status of certain Indian lands; trust periods expiring during calendar year 1961 .. 13688

Interior Department
See Indian Affairs Bureau; Land Management Bureau.

Internal Revenue Service
PROPOSED RULE MAKING:
Documentary stamp taxes 13699
Income tax; taxable years beginning after December 31, 1953 ... 13697
RULES AND REGULATIONS:
Income tax; taxable years beginning after December 31, 1953; depreciation or amortization of improvements made by lessee on lessor's property 13689
Manufacturers and retailers excise taxes; auto baby seats, auto beds, and auto hammocks 13693

Interstate Commerce Commission
NOTICES:
Motor carrier transfer proceedings 13737

Justice Department
See Immigration and Naturalization Service.

Labor Department
See Wage and Hour Division.

Land Management Bureau
NOTICES:
Alaska; notice of termination of proposed withdrawal and reservation of lands 13733
RULES AND REGULATIONS:
Public land orders:
Alaska 13696
California 13694
Montana 13694
New Mexico 13693
New Mexico and Arizona 13694
Utah 13695
Wyoming (3 documents) .. 13693, 13694

Maritime Administration
See Federal Maritime Board.

Public Roads Bureau
PROPOSED RULE MAKING:
National standards for regulations by States of outdoor advertising signs, displays and devices adjacent to the National System of Interstate and Defense Highways 13724

Securities and Exchange Commission
NOTICES:
Hearings, etc.:
Columbia Title Insurance Co. ... 13738
Fidelity Fund, Inc. 13738
National Security Life Insurance Co. 13739
Real Estate Title Insurance Co. . 13739

Treasury Department
See Coast Guard; Customs Bureau; Internal Revenue Service.

Wage and Hour Division
PROPOSED RULE MAKING:
Employment of learners; men's and boys' clothing industry 13724

Codification Guide

3 CFR
EXECUTIVE ORDERS:
July 13, 1910 (see PLO 2233) 13694
4257 (revoked in part by PLO 2235) 13696
5327 (see PLO 2233) 13694
8278 (see PLO 2235) 13696
PROCLAMATIONS:
3384 13681
3385 13681

6 CFR
421 (3 documents) 13682
464 13682

7 CFR
902 13683
914 13683
928 13683
953 13684
1001 13684
1014 13684
1069 13685
1101 13685
PROPOSED RULES:
902 13720

8 CFR
324 13686
332 13686

12 CFR
PROPOSED RULES:
206 13729

14 CFR
601 13686
PROPOSED RULES:
600 13725
601 (8 documents) 13725

16 CFR
13 13687

19 CFR
3 13687
4 13687

23 CFR
PROPOSED RULES:
20 13724

25 CFR
Appendix 13688

26 (1954) CFR
1 13689
40 13693
PROPOSED RULES:
1 13697
47 13699
148 13699

29 CFR
PROPOSED RULES:
522 13724

43 CFR
PUBLIC LAND ORDERS:
221 (revoked by PLO 2234) 13695
1119 (revoked in part by PLO 2229) 13694
1230 (revoked in part by PLO 2229) 13694
2144 (amended by PLO 2231) 13694
2186 (corrected by PLO 2230) 13694
2227 13693
2228 13693
2229 13694
2230 13694
2231 13694
2232 13694
2233 13694
2234 13695
2235 13696

46 CFR
226 13696
PROPOSED RULES:
401 13721

Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3384

IMMIGRATION QUOTA

By the President of the United States of America

A Proclamation

WHEREAS under the provisions of section 202(a) of the Immigration and Nationality Act, each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than independent countries of North, Central, and South America, is entitled to be treated as a separate quota area when approved by the Secretary of State; and

WHEREAS under the provisions of section 201(b) of the Immigration and Nationality Act, the Secretary of State, the Secretary of Commerce, and the Attorney General, jointly, are required to determine the annual quota of any quota area established pursuant to the provisions of section 201(a) of the said Act, and to report to the President the quota of each quota area so determined; and

WHEREAS under the provisions of section 202(e) of the said Act, the Secretary of State, the Secretary of Commerce, and the Attorney General, jointly, are required to revise the quotas, whenever necessary, to provide for any political changes requiring a change in the list of quota areas; and

WHEREAS the Islamic Republic of Mauritania, a former Autonomous Republic within the French Community, became independent on November 28, 1960; and

WHEREAS the Secretary of State, the Secretary of Commerce, and the Attorney General have jointly determined and reported to me the immigration quota hereinafter set forth:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the aforesaid Act of Congress, do hereby proclaim and make known that the annual quota of the quota area hereinafter designated has been determined in accordance with the law to be, and shall be, as follows:

Quota Area	*Quota*
Mauritania	100

The establishment of an immigration quota for any quota area is solely for the purpose of compliance with the pertinent provisions of the Immigration and Nationality Act and is not to be considered as having any significance extraneous to such purpose.

Proclamation No. 3298 of June 3, 1959, entitled "Immigration Quotas," is amended by the addition of the immigration quota established by this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-first day of December in the year of our Lord nineteen hundred and sixty and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER

By the President:

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 60-12073; Filed, Dec. 23, 1960; 1:17 p.m.]

Proclamation 3385

DESIGNATION OF RESTRICTED WATERS UNDER THE GREAT LAKES PILOTAGE ACT OF 1960

By the President of the United States of America

A Proclamation

WHEREAS, pursuant to section 3(a) of the Great Lakes Pilotage Act of 1960 (Public Law 86-555; 74 Stat. 259), the President is directed to designate and by proclamation announce those United States waters of the Great Lakes in which registered vessels of the United States and foreign vessels shall be required to have in their service a United States registered pilot or a Canadian registered pilot for the waters concerned; and

WHEREAS the aforesaid section 3(a) provides that these designations shall be made with due regard to the public interest, the effective utilization of navigable waters, marine safety, and the foreign relations of the United States:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by section 3(a) of the Great Lakes Pilotage Act of 1960, do hereby designate and proclaim the following areas in which registered vessels of the United States and foreign vessels shall be required to have in their service a United States registered pilot or a Canadian registered pilot for the waters concerned, on and after the effective date of regulations issued by the Secretary of Commerce pursuant to the Act:

(1) *District 1.* All United States waters of the St. Lawrence River between the international boundary at St. Regis and a line at the head of the river running (at approximately 127° true) between Carruthers Point Light and South Side Light extended to the New York shore.

(2) *District 2.* All United States waters of Lake Erie westward of a line running (at approximately 026° true) from Sandusky Pierhead Light at Cedar Point to Southeast Shoal Light; all waters contained within the arc of a circle of one mile radius eastward of Sandusky Pierhead Light; the Detroit River; Lake St. Clair; the St. Clair River, and northern approaches thereto south of latitude 43°05'30" N.

(3) *District 3.* All United States waters of the St. Marys River, Sault Sainte Marie Locks and approaches thereto between latitude 45°57' N. at the southern approach and a line (at approximately 020° true) from Point Iroquois Light to the westward tangent of Jackson Island at the northern approach.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-second day of December in the year of our Lord nineteen hundred and sixty, and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER

By the President:

CHRISTIAN A. HERTER,
Secretary of State.

[F.R. Doc. 60-12074; Filed, Dec. 23, 1960; 1:21 p.m.]

Rules and Regulations

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Amdt. 2, Rye]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Rye Loan and Purchase Agreement Program

CORRECTION

In Federal Register Document 60-11157 published at page 12282 in the issue for Thursday, December 1, 1960, the following changes should be made:

In the table of basic support rates contained in § 421.5387(b) under the State of Washington, the rates for the counties of Okanogan and Pacific should have been shown as follows:

County:	Rate per bushel From—	To—
Okanogan	$1.01	$1.04
Pacific	1.03	1.04

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended; Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441)

Issued this 21st day of December 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 60-11955; Filed, Dec. 23, 1960; 8:49 a.m.]

[1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Amdt. 3, Rye]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Rye Loan and Purchase Agreement Program

IDAHO AND WASHINGTON

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in (25 F.R. 3781, 4895, 6497, 9196 and 12282), containing the specific requirements of the 1960-crop rye price support program are hereby amended as follows:

Sections 421.5387(b) is amended by increasing the following basic county support rates:

IDAHO

County:	Rate per bushel From—	To—
Bonner	$0.91	$0.95
Shoshone	.87	.91

WASHINGTON

County:	Rate per bushel From—	To—
Benton	$1.07	$1.09
Kitsap	1.01	1.03
Mason	1.03	1.04
Pend Oreille	.88	.91

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended; Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441)

Issued this 21st day of December 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 60-11956; Filed, Dec. 23, 1960; 8:49 a.m.]

[1960 C.C.C. Grain Price Support Bulletin 1, Supplement 2, Amdt. 5, Wheat]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Wheat Loan and Purchase Agreement Program

IDAHO AND WASHINGTON

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in (25 F.R. 3915, 4631, 7479, 7731, 8321, 9137, 9138, 9196 and 12282) containing the specific requirements of the 1960-crop wheat price support program are hereby amended as follows:

Section 421.5047(b) is amended by increasing the following basic county support rates:

IDAHO

County:	Rate per bushel From—	To—
Bonner	$1.64	$1.68
Shoshone	1.60	1.64

WASHINGTON

Benton	1.82	1.83
Clallam	1.69	1.70
Kitsap	1.75	1.76
Mason	1.77	1.78
Pacific	1.77	1.78
Pend Oreille	1.61	1.64

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended; Title II, 73 Stat. 178, 15 U.S.C. 714c, 7 U.S.C. 1421, 1441)

Issued this 21st day of December 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 60-11957; Filed, Dec. 23, 1960; 8:49 a.m.]

PART 464—TOBACCO

Subpart—Tobacco Loan Program

MISCELLANEOUS AMENDMENTS

The purpose of this amendment is to correct errors of grade designations in the schedule of advance rates by grade for the 1960 crop of certain types of tobacco as published in 25 F.R. 12166.

Sections 464.1243 and 464.1244 (25 F.R. 12166) are amended to read as follows:

§ 464.1243 1960 crop; New York and Pennsylvania Havana Seed Tobacco, Type 53, and Southern Wisconsin Tobacco, Type 54, advance schedule.[3]

[Dollars per hundred pounds, farm sales weight]

Grade	Advance rate	Grade	Advance rate
Binders:		Crop-run:	
B1	35	X1	31
B2	34	X2	28
B3	31	X3	20
Strippers:		Farm fillers:	
C1	30	Y1	24
C2	29	Y2	22
C3	27	Y3	20
		Nondescript:	
		N1	16

§ 64.1244 1960 crop; Northern Wisconsin Tobacco, Type 55, advance schedule.[3]

[Dollars per hundred pounds, farm sales weight]

Grade	Advance rate
Binders:	
B1	46
B2	42
B3	38
Strippers:	
C1	32
C2	30
C3	27
Crop-run:	
X1	31
X2	28
X3	20
Farm fillers:	
Y1	24
Y2	22
Y3	20
Nondescript:	
N1	16

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 63 Stat. 1051, as amended, 1054, 74 Stat. 6, 15 U.S.C. 714c, 7 U.S.C. 1441, 1421, 1423; sec. 125, 70 Stat. 198, 7 U.S.C. 1813; Pub. Law 86-80, 73 Stat. 178)

Issued this 20th day of December 1960.

CLARENCE D. PALMBY,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 60-11933; Filed, Dec. 23, 1960; 8:47 a.m.]

[3] The Cooperative Association through which price support is made available is authorized to deduct from the amount paid the grower $1.00 per hundred pounds on tobacco of the B grade group and fifty cents per hundred pounds on tobacco of all other grade groups to apply against receiving and overhead costs, plus a fee of $5.00 for each lot of tobacco received for sample grading purposes. Only the original producer is eligible to receive advances. No advance is authorized for tobacco graded No-G (no grade), N2 (second quality nondescript), or S (scrap).

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

SUBCHAPTER A—MARKETING ORDERS

[Milk Order No. 2]

PART 902—MILK IN WASHINGTON, D.C., MARKETING AREA

Order Suspending Certain Provisions

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Washington, D.C. marketing area (7 CFR Part 902), it is hereby found and determined that:

(a) The following provision of the order no longer tends to effectuate the declared policy of the Act: The phrase in § 902.50(a) which reads "During the first 18 months after the effective date of this part * * *".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) Without this suspension action the Class I price formula will terminate after December 31, 1960.

(4) A public hearing has been held September 28 and 29, 1960, pursuant to notice issued September 6, 1960 (25 F.R. 8745) on Class I prices for periods after December 31, 1960, and a recommended decision has been issued. Since it is not possible to complete the amendment procedure before January 1, 1961, temporary provision for a Class I price is necessary pending the issuance of such amendment.

Therefore, good cause exists for making this order effective January 1, 1961.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended effective January 1, 1961.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Issued at Washington, D.C., this 21st day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60-11954; Filed, Dec. 23, 1960; 8:49 a.m.]

[Navel Orange Regulation 198]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 914.498 Navel Orange Regulation 198.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this section is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting, the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 22, 1960.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., December 25, 1960, and ending at 12:01 a.m., P.s.t., January 1, 1961, are hereby fixed as follows:

(i) District 1: 300,000 cartons;
(ii) District 2: 100,102 cartons;
(iii) District 3: Unlimited movement;
(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 22, 1960.

FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-12058; Filed, Dec. 23, 1960; 11:26 a.m.]

[Milk Order 28]

PART 928—MILK IN NEOSHO VALLEY MARKETING AREA

Order Suspending Certain Provision

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Neosho Valley marketing area (7 CFR Part 928), it is hereby found and determined that:

(a) The following provision of the order does not tend to effectuate the declared policy of the Act for the period December 1, 1960 through February 28, 1961.

(1) In 928.51(b) the phrases "for the delivery periods of July through March", "the basic formula price", and "and for the delivery periods of April through June".

(b) Notice of proposed rule making, public procedure thereon, and 30 days notice of effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(1) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date.

(2) This suspension order is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area.

(3) The Class II pricing provisions as amended April 1, 1960, have resulted in Class II prices in recent months higher than those established under other Fed-

eral orders in the region. These price relationships are disturbing the Neosho Valley milk market in that handlers are reluctant to accept Class II milk at the order prices. Unless the Class II price is reduced, handlers may refuse to accept milk for Class II use and some producers may be unable to find a market for their milk. This suspension order will encourage acceptance of milk for Class II use since it results in a 10 cent per hundredweight reduction in the Class II price.

(4) More than two-thirds of the producers supplying the market and several handlers have requested this suspension.

Therefore, good cause exists for making this order effective December 1, 1960.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the period December 1, 1960, through February 28, 1961.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 20th day of December 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–11932; Filed, Dec. 23, 1960; 8:47 a.m.]

[Lemon Reg. 878]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.985 Lemon Regulation 878.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this section is based become available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 20, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., December 25, 1960, and ending at 12:01 a.m., P.s.t., January 1, 1961, are hereby fixed as follows:

(i) District 1: 27,900 cartons;

(ii) District 2: 158,100 cartons;

(iii) District : Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 22, 1960.

DECEMBER 22, 1960.

FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12004; Filed, Dec. 23, 1960; 8:50 a.m.]

[Lime Reg. 9]

PART 1001—LIMES GROWN IN FLORIDA

Quality Regulation

§ 1001.309 Lime Regulation 9.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 101, as amended (7 CFR Part 1001), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the Florida Lime Administrative Committee, established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of limes, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that, as hereinafter set forth, the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; and this regulation relieves restrictions on the handling of limes grown in Florida.

(b) *Order.* (1) *Termination of Lime Order 8, as amended.* Lime Order 8, as amended (25 F.R. 3313, 9170, 10796), is hereby terminated at 12:01 a.m., e.s.t., December 26, 1960.

(2) During the period beginning at 12:01 a.m., e.s.t., December 26, 1960, and ending at 12:01 a.m., e.s.t., April 17, 1961, no handler shall handle:

(i) Any limes of the group known as true limes (also known as Mexican, West Indian, and Key limes and by other synonyms), grown in the production area, which do not meet the requirements of at least U.S. No. 2 grade for Persian (Tahiti) limes, except as to color; or

(ii) Any limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties), grown in the production area, which do not grade at least U.S. No. 2, Mixed Color.

(3) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, as used herein, shall have the same meaning as is given to the term in the United States Standards for Persian (Tahiti) Limes (§§ 51.1000–51.1016).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 22, 1960.

FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12005; Filed, Dec. 23, 1960; 8:50 a.m.]

[Milk Order No. 114]

PART 1014—MILK IN MISSISSIPPI GULF COAST MARKETING AREA

Notice of Correction With Respect to Order Amending Order

In F.R. Doc. 60–10140, filed October 27, 1960, and published on October 28, 1960,

in Column 1, 25 F.R. 10342, correct the first three lines of amendment Number 18 to read as follows: 18. Add a new § 1014.89a.

§ 1014.89a Overdue accounts.

(Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 21st day of December 1960 to be effective on and after the 1st day of November 1960.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–11953; Filed, Dec. 23, 1960; 8:49 a.m.]

SUBCHAPTER B—PROHIBITIONS OF IMPORTED COMMODITIES

[Lime Reg. No. 5]

PART 1069—LIMES

§ 1069.5 Lime Regulation No. 5.

(a) On and after the effective time of this regulation, the importation into the United States of any lot of limes which in the aggregate exceeds 250 pounds, net weight, is prohibited unless:

(1) Such limes of the group known as true limes (also known as Mexican, West Indian, and Key limes and by other synonyms) meet the requirements of at least the U.S. No. 2 grade for Persian (Tahiti) limes, except as to color;

(2) Such limes of the group known as large fruited or Persian limes (including Tahiti, Bearss, and similar varieties) meet the requirements of at least the U.S. No. 2, Mixed Color grade; and

(3) Each such importation is made in conformance with the General Regulation (7 CFR Part 1060) applicable to the importation of listed commodities and the requirements of this regulation: *Provided*, That the provisions of § 1060.4(e) of this chapter shall not apply.

(b) The Federal Inspection Service is hereby designated to perform, through inspectors authorized or licensed by such Service, the inspection and certification prescribed in § 1060.3 *Eligible imports* of the aforesaid General Regulations. Such inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of limes should make arrangements for inspection, through the applicable one of the following offices, at least the specified number of days prior to the time when the limes will be imported:

Ports	Office	Advance notice
All Texas points.	W. T. McNabb, McClendon Building, P.O. Box 111, 305 East Jackson, Harlingen, Tex. (Telephone: Garfield 3–6644).	1 day.
	or	
	Norman E. Taylor, Room 204, U.S. Court House, El Paso, Tex. (Telephone: Keystone 3–9351 Ext. 340).	Do.
All Arizona points.	R. H. Bertelson, Room 202, Trust Building, 136 Grand Avenue, P.O. Box 1646, Nogales, Ariz. (Telephone: Atwater 7–2902).	Do.
All Florida points.	Lloyd W. Boney, Dade County Growers Market, 1200 NW. 21 Terrace, Room 5, Miami, Fla. (Telephone: Newton 5–7967).	Do.
	or	
	Hubert S. Flynt, 775 Warner Street, P.O. Box 6697, Orlando, Fla. (Telephone: Garden 2–2447).	Do.
All California points.	Carley D. Williams, 294 Wholesale Terminal Building, 784 South Central Avenue, Los Angeles 21, Calif. (Telephone: Madison 2–5756).	3 days.
All other points.	E. E. Conklin, Chief, Fresh Products Standardization and Inspection Branch, Fruit and Vegetable Division, AMS, Washington 25, D.C. (Telephone: Dudley 8–5870).	Do.

(c) Terms relating to grade shall, when used herein, have the same meaning as is given to the term in the United States Standards for Persian (Tahiti) Limes (§§ 51.100–51.1016) and all other terms shall have the same meaning as is given to the respective terms in the General Regulations. Copies of the aforesaid standards may be obtained upon request to any office of the Federal or Federal-State Inspection Service of this Department.

(d) *Termination of Lime Regulation No. 4, as amended.* Lime Regulation No. 4, as amended (25 F.R. 3314, 9171, 10867), is hereby terminated at the effective time hereof.

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this regulation beyond that hereinafter specified (5 U.S.C. 1001–1011) in that (a) the requirements of this import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation necessary; (b) such regulation imposes the same restrictions on imports of limes as the grade, size, and quality restrictions applicable to the shipment of limes grown in Florida under Lime Regulation 9 (§ 1001.309); (c) compliance with this import regulation will not require any special preparation which cannot be completed by the effective time hereof; and (d) this regulation relieves restrictions on the importation of Persian limes.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated, December 22, 1960, to become effective at 12:01 a.m., e.s.t., December 26, 1960.

FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12006; Filed, Dec. 23, 1960; 8:50 a.m.]

Chapter XI—Agricultural Conservation Program Service, Department of Agriculture

[ACP–1961, Supp. 2]

PART 1101—NATIONAL AGRICULTURAL CONSERVATION

Subpart—1961

MISCELLANEOUS AMENDMENTS

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended, and Public Law 86–532, the 1961 National Agricultural Conservation Program, approved July 1, 1960 (25 F.R. 6415), as amended September 8, 1960 (25 F.R. 8775), is further amended as follows:

1. Section 1101.1026 is amended, for purposes of the 1961 program, to read:

§ 1101.1026 Failure to meet minimum requirements.

Notwithstanding other provisions of the 1961 program, costs may be shared for performance actually rendered even though the minimum requirements for a practice are not met, if the farmer or rancher establishes to the satisfaction of the county committee, the State committee or its designee, and the State and county representatives of any other agency having responsibility for technical phases of the practice (a) that he made every reasonable effort to meet the minimum requirements, and (b) that the practice as performed adequately meets the conservation problem.

2. Paragraph (a) of § 1101.1034 is amended, for purposes of the 1961 program, to read:

§ 1101.1034 Appeals.

(a) Any person may, within 15 days after notice thereof is forwarded to or made available to him, request the county committee or State committee in writing to reconsider its recommendation or determination in any matter affecting the right to or the amount of his Federal cost-shares with respect to the farm or ranch. If a person is dissatisfied with

the decision of the county committee, he may, within 15 days after the decision is forwarded to or made available to him, appeal in writing to the State committee. If he is dissatisfied with the decision of the State committee, he may, within 15 days after its decision is forwarded to or made available to him, request the Administrator, ACPS, to review the decision of the State committee. The decision of the Administrator, ACPS, shall be final. All appeals shall be considered as soon as practicable after they are filed, and prompt written notice of the decision shall be given to the appellant. Written notice of any decision rendered under this section by the county or State committee shall also be issued to each other landlord, tenant, or sharecropper on the farm or ranch who may be adversely affected by the decision.

3. Section 1101.1036 is amended, for purposes of the 1961 program, to read:

§ 1101.1036 Maintenance and use of practices.

The sharing of costs, by the Federal Government, for the performance of approved conservation practices on any farm or ranch under the 1961 program will be subject to the condition that the person with whom the costs are shared will maintain and use such practices for the conservation purposes for which cost-sharing was authorized throughout their normal lifespans as long as the land on which they are carried out is under his control, unless the State or county committee determines that good farming practice does not require such maintenance and use, or that the failure to so maintain and use the practices was due to conditions beyond his control.

4. Section 1101.1037 is amended, for purposes of the 1961 program, to read:

§ 1101.1037 Practices defeating purposes of programs.

If the county committee finds with the concurrence of the State committee, or if the State committee finds, that any person has adopted or participated in any practice during the 1961 program year which tends to defeat the purposes of the 1961 or any previous program, including, but not limited to, failure to maintain, in accordance with good farming practices, practices carried out under a previous program, it may withhold, or require to be refunded, all or any part of the Federal cost-share which otherwise would be due him under the 1961 program.

5. Section 1101.1061 is amended, for purposes of the 1961 program, to read:

§ 1101.1061 Practice B–5: Constructing wells for livestock water as a means of protecting vegetative cover or to make practicable the utilization of the land for vegetative cover.

The wells must be at locations which will bring about the desired protection of vegetative cover through proper distribution of grazing or better grassland management or make practicable the utilization of the land for vegetative cover. Adequate storage facilities must be provided. Pumping equipment must be installed, except for artesian wells. No Federal cost-sharing will be allowed for wells constructed primarily for the use of headquarters, or for costs other than for constructing or deepening wells and for water storage facilities.

(Sec. 4, 49 Stat. 164, secs. 7–17, 49 Stat 1148, as amended, 74 Stat. 232; 16 U.S.C. 590d, 590g–590q)

Done at Washington, D.C., this 20th day of December 1960.

C. M. FERGUSON,
Assistant Secretary.

[F.R. Doc. 60–11952; Filed, Dec. 23, 1960; 8:49 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE

PART 332—PRELIMINARY INVESTIGATION OF APPLICANTS FOR NATURALIZATION AND WITNESSES

Miscellaneous Amendments to Chapter

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

1. Section 324.15 is added to read as follows:

§ 324.15 Certificate by examiner when petitioner is entitled to an immediate hearing.

The officer or employee conducting the preliminary investigation shall execute a certificate of examination on Form N–440, in duplicate, for attachment to the original and duplicate petitions for naturalization filed under section 324(a) of the Act.

§ 332.11 [Amendment]

2. The last sentence of paragraph (a) *Scope of investigation* of § 332.11 *Investigation preliminary to filing petition for naturalization* is amended to read as follows: "During the interrogation of the applicant and his witnesses and at the applicant's request, his attorney or representative who has filed an appearance in accordance with Part 292 of this chapter may be permitted to be present and observe the interrogation and make notes without otherwise participating therein."

§ 332.12 [Revocation]

3. Section 332.12 *Certificate by examiner whenever petitioner is entitled to immediate hearing* is revoked.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall become effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238; 5 U.S.C. 1003) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the rules prescribed by the order relate to agency procedure.

Dated: December 21, 1960.

J. M. SWING,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 60–11951; Filed, Dec. 23, 1960; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60–KC–56]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification

On October 11, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9733) stating that the Federal Aviation Agency proposed to modify the Camp Douglas, Wis., control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the Notice, § 601.2408 (25 F.R. 8181) is amended to read:

§ 601.2408 Camp Douglas, Wis., control zone.

Within a 5-mile radius of Volk Field, Camp Douglas (Lat. 43°56'25" N., Long. 90°15'20" W.); within 2 miles either side of the 093° True radial of the Volk Field TVOR, extending from the 5-mile radius zone to 12 miles E. of the TVOR, from 0600 to 2400 hours, local standard time, daily, from May to September, annually, with specific dates on which the designation begins and ends for each annual period to be established in advance by a Notice to Airmen.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 19, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–11907; Filed, Dec. 23, 1960; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6400 o.]

PART 13—PROHIBITED TRADE PRACTICES

Baar & Beards, Inc., et al.

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* § 13.1053–30 *Flammable Fabrics Act.* Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Baar & Beards, Inc., etc., et al., New York, N.Y., Docket 6400, October 21, 1960]

In the Matter of Baar & Beards, Inc., a Corporation, and Sylvan M. Baar and Milton Beards, Individually and as Officers of Said Corporation.

Order requiring importers in New York City to cease violating the Flammable Fabrics Act by transporting and selling in commerce silk scarves manufactured in Japan which were so highly flammable as to be dangerous when worn, and furnishing their customers with false guaranties representing that tests showed the scarves not to be dangerously flammable.

The order to cease and desist is as follows:

It is ordered, That the respondent Baar & Beards, Inc., a corporation, and its officers, and respondents Sylvan M. Baar and Milton Beards, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate of other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce, any article of wearing apparel, which, under the provisions of section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals;

2. Selling or offering for sale any article of wearing apparel made of fabric which, under the provisions of section 4 of said Act, as amended, is so highly flammable as to be dangerous when worn by individuals and which has been shipped or received in commerce, as "commerce" is defined in said Act;

3. Furnishing to any person a guaranty with respect to any article of wearing apparel which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in section 4 of the Flammable Fabrics Act, as amended, and the rules and regulations promulgated thereunder, show and will show that the article of wearing apparel, or the fabrics used or contained therein, covered by the guaranty, are not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals: *Provided, however,* That this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the wearing apparel was manufactured or from whom it was received.

By "Final Order", report of compliance was required as follows:

It is ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 21, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60–11910; Filed, Dec. 23, 1960; 8:45 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 55278]

PART 3—DOCUMENTATION OF VESSELS

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

Documentation of rebuilt vessels—Customs Regulations amended.

Sections 3.2, 3.28, 3.29, and 4.7, Customs Regulations, relating to the documentation and use of rebuilt vessels and reports of such rebuilding, amended.

The Act of July 5, 1960 (Pub. Law 86–583, 86th Cong.; 74 Stat. 321; T.D. 55189), further amends section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), by amending the second proviso to prohibit the operation in the coastwise trade of any vessel of more than 500 gross tons which has been rebuilt unless the entire rebuilding, including the construction of any major components of the hull or superstructure, is effected within the United States, its Territories (not including trust territories), or its possessions. In order to give effect to that enactment, the following changes are made in the Customs Regulations:

Section 3.2(f) is amended to read as follows:

(f) No vessel of classes 1 through 8 above which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, shall have the right to engage in such trade if it thereafter has been sold or transferred foreign in whole or in part or placed under foreign registry (§ 3.43), or, if of more than 500 gross tons, has been rebuilt unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, was effected within the United States, its Territories (not including trust territories), or its possessions. However, no rebuilt vessel shall be deemed to have lost its coastwise privileges within the meaning of the above merely because it may have been rebuilt within the United States, its Territories (not including trust territories), or its possessions under a contract executed before July 5, 1960, if the work of rebuilding is commenced not later than 24 months after such date (§ 3.28).' When a vessel has lost its coastwise privileges, no document shall be issued for the coastwise trade and any document which may be issued to such vessel for any other trade or employment shall bear the following notation: "As amended by section 27 of the Merchant Marine Act of June 5, 1920, as amended. This vessel shall not engage in the coastwise trade."

(R.S. 4132, as amended, sec. 22, 41 Stat. 997, R.S. 4136, as amended, 4214, as amended, secs. 2, 9, 39 Stat. 729, as amended, 730, as amended, sec. 27, 41 Stat. 999, as amended, secs. 2, 3, 70 Stat. 544, 72 Stat. 1736, secs. 2, 3, 4, 74 Stat. 321; 46 U.S.C. 11, 13, 14, 103, 802, 808, 883, 883a, 883b, 883–1)

Footnote 3 to § 3.2(f) is amended to read as follows:

• • • • [Sec. 1] • • • the second proviso of section 27 of the Merchant Marine Act, 1920, as amended (U.S.C., 1958 edition, title 46, sec. 883), is amended to read as follows: *"Provided further,* That no vessel of more than five hundred gross tons which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions:" • • •

Sec. 4. This Act shall be effective from the time of enactment hereof: *Provided, however,* That no vessel shall be deemed to have lost its coastwise privileges as a result of the amendments made by this Act if it is rebuilt within the United States, its Territories (not including trust territories), or its possessions under a contract executed before such date of enactment and if the work of rebuilding is commenced not later than twenty-four months after such date of enactment. (Secs. 1 and 4, Act of July 5, 1960 (74 Stat. 321))

Section 3.28(b) is amended to read as follows:

(b) When a new vessel is constructed in whole or in part of material taken from an old vessel; when an existing vessel is rebuilt; when in the case of a vessel of more than 500 gross tons, an addition or change in any major component of the hull or superstructure is

made and such major component was not constructed in the United States, its Territories (not including trust territories), or its possessions; when a vessel of more than 500 gross tons is otherwise so altered as to give rise to a reasonable belief that such vessel may have been rebuilt, unless such alteration was effected entirely in the United States, its Territories (not including trust territories), or its possessions; or when it is desired, in the case of an unrigged wooden vessel, other than a foreign-built vessel (class 9), that a notation be made in the publication, Merchant Vessels of the United States, as to rebuilding, the owner of the vessel shall submit through the collector of customs at the port where the vessel then is or next arrives thereafter to the Commissioner of Customs a certificate of specifications outlining the work performed on the vessel, showing the place where any such building or rebuilding was effected, and describing the extent to which old materials used were taken up, refitted, and reset or the extent to which parts of the old hull in its intact condition were used or built upon. The certificate shall be accompanied by accurate sketches or blueprints illustrating the extent of the work performed when such sketches or blueprints are available. Such certificate shall also be accompanied by a certificate of the builder, which shall be on customs Form 1261 if the vessel is claimed to be new. In the case of an unrigged wooden vessel, the shipbuilder, in addition to certifying that the vessel is rebuilt and the date of completion and place of such rebuilding, shall certify that the vessel is sound and free from rotten or doted wood in its structural parts; that it is properly fastened and calked; and that it is as good as new in strength and seaworthiness. The Commissioner of Customs shall decide whether or not the vessel is to be considered to be new or rebuilt and, if either, that decision shall be reflected on the vessel's marine document.

Section 3.28(d) is amended to read as follows:

(d) No vessel of more than 500 gross tons which has been rebuilt and has thereby lost its coastwise privileges (see sec. 3.2(f) shall be documented for nor permitted to engage in the coastwise trade.

(R.S. 4155, as amended, 4179, 37 Stat. 189, R.S. 4319, as amended, sec. 27, 41 Stat. 999, as amended, secs. 2, 3, 70 Stat. 544, secs. 2, 3, 4, 74 Stat. 321; 46 U.S.C. 25, 50, 63, 259, 883, 883a, 883b)

Section 3.29(a) is amended to read as follows:

(a) When a documented vessel is altered in form or tonnage by being lengthened, shortened, or built upon or changed from one denomination to another by a change in rig or fitting, the vessel shall cease to be deemed a vessel of the United States unless she is documented anew. Every such alteration of a vessel of more than 500 gross tons which is not effected entirely within the United States, its Territories (not including trust territories), or its possessions, including the construction of any major components of the hull or superstructure, shall be reported in accordance with the provisions of § 3.28(b), and the master shall submit the statement required by § 4.7(b) of this chapter.

The citation of authority for § 3.29 is amended to read:

(R.S. 4170, as amended, secs. 2, 3, 70 Stat. 544; 46 U.S.C. 39, 883a, 883b)

Section 4.7(b), subparagraphs (2) and (3) are amended to read as follows:

(2) The master of a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or intended to be employed in such trade, at each port of first arrival from a foreign country shall declare on customs Form 3415 any equipment, repair part, or material purchased for the vessel, or any expense for repairs incurred, in a foreign country,[16b] within the purview of section 466, Tariff Act of 1930, as amended. If no equipment has been purchased or repairs made, a declaration to that effect shall be made on customs Form 3415. If the vessel is of more than 500 gross tons, the declaration shall include a statement that no work in the nature of a rebuilding or alteration which might give rise to a reasonable belief that the vessel may have been rebuilt within the meaning of the second proviso to section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), has been effected which has not been either previously reported or separately reported simultaneously with the filing of such declaration. The declaration shall be ready for production on demand and for inspection by the boarding officer, and shall be presented with the original manifest when formal entry of the vessel is made.

(3) The master of every American vessel of more than 500 gross tons which is altered or rebuilt, when any part of the alteration or rebuilding, including the construction of any major component of the hull or superstructure of the vessel, is effected outside the United States, its Territories (not including trust territories), or its possessions, shall upon the first entry of the vessel at a port of the United States thereafter report the facts and circumstances of the alteration or rebuilding of the vessel to the collector of customs at the port of entry. The report shall be accompanied by the papers required under section 3.28 of these regulations. If any such papers are not available at the time such report is made, they shall be produced to the collector concerned as soon thereafter as may be practicable but if they are not presented within 30 days, and if the delay is not explained to the satisfaction of the collector, appropriate penalty action shall be taken charging violations of the provisions of section 2 of the Act of July 14, 1956, as amended (46 U.S.C. 883a).[16c]

Footnote 16(c) appended to § 4.7(b)(3) is amended to read as follows:

[16c] * * * Sec. 2. If any vessel of more than five hundred gross tons documented under the laws of the United States, or last documented under such laws, is rebuilt, and any part of the rebuilding, including the construction of major components of the hull and superstructure of the vessel, is not effected within the United States, its Territories (not including trust territories), or its possessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury, upon the first arrival of the vessel thereafter at a port within the customs territory of the United States, if rebuilt outside the United States, its Territories (not including trust territories), or its possessions, or, in any other case, upon completion of the rebuilding, in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of $200. Any penalty or forfeiture incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes of the United States, as amended (46 U.S.C. 7). (Sec. 2, Act of July 14, 1956, as amended (46 U.S.C. 883a))

The citation of authority for § 4.7 is amended to read:

(Secs. 431, 439, 465, 581(a), 583, 46 Stat. 710, as amended, 712, as amended, 718, 747, as amended, 748, as amended, secs. 2, 3, 70 Stat. 544; 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583, 46 U.S.C. 883a, 883b)

Notice of the proposal to issue the above amendments to the regulations was published in the FEDERAL REGISTER on September 3, 1960 (25 F.R. 8549), pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 1003). Data, views, and arguments relating thereto which were received have been considered. The above amendments are adopted effective 30 days after the date of publication in the FEDERAL REGISTER.

[SEAL] C. A. EMERICK,
Acting Commissioner of Customs.

Approved: December 16, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-11943; Filed, Dec. 23, 1960; 8:48 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

APPENDIX—EXTENSION OF THE TRUST OR RESTRICTED STATUS OF CERTAIN INDIAN LANDS

Trust Periods Expiring During Calendar Year 1961

By virtue of and pursuant to the authority delegated by Executive Order No. 10250 of June 5, 1951, and pursuant to section 5 of the Act of February 8, 1887 (24 Stat. 388, 389), the Act of June 21, 1906 (34 Stat. 325, 326), and the Act of March 2, 1917 (39 Stat. 969, 976), and other applicable provisions of law, it is hereby ordered that the periods of trust or other restrictions against alienation contained in any patent applying to Indian lands, whether of a tribal or individual status, which, unless extended will expire during the calendar year 1961, be, and the same are hereby, extended for a further period of five years from the date on which any such trust would otherwise expire.

This order is not intended to apply to any case in which Congress has specifically reserved to itself authority to extend the period of trust on tribal or individual Indian lands.

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 19, 1960.

[F.R. Doc. 60-11911; Filed, Dec. 23, 1960; 8:45 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6520]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Depreciation or Amortization of Improvements Made by Lessee on Lessor's Property

On September 3, 1960, a notice of proposed rule making regarding the regulations under section 178 of the Internal Revenue Code of 1954, relating to depreciation or amortization of improvements made by lessee on lessor's property, and certain amendments to the Income Tax Regulations (26 CFR Part 1) to conform to the rules relating to depreciation or amortization of improvements made by lessee on lessor's property was published in the FEDERAL REGISTER (25 F.R 8550). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Paragraph (b)(5) of § 1.178–1 is revised.

PAR. 2. Paragraph (c) of § 1.178–3 is revised.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: December 21, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

The regulations under section 178 of the Internal Revenue Code of 1954 set forth in paragraph 1 are hereby prescribed.

The Income Tax Regulations (26 CFR Part 1) are amended as set forth in paragraphs 2, 3, and 4 to conform to the rules relating to depreciation or amortization of improvements made by lessee on leased property prescribed under section 178.

PARAGRAPH 1. The following regulations are hereby prescribed under section 178 of the Internal Revenue Code of 1954:

§ 1.178 Statutory provisions; depreciation or amortization of improvements made by lessee on lessor's property.

SEC. 178. *Depreciation or amortization of improvements made by lessee on lessor's property*—(a) *General rule.* Except as provided in subsection (b), in determining the amount allowable to a lessee as a deduction for any taxable year for exhaustion, wear and tear, obsolescence, or amortization—

(1) In respect of any building erected (or other improvement made) on the leased property, if the portion of the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee) remaining upon the completion of such building or other improvement is less than 60 percent of the useful life of such building or other improvement, or

(2) In respect of any cost of acquiring the lease, if less than 75 percent of such cost is attributable to the portion of the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee) remaining on the date of its acquisition,

the term of the lease shall be treated as including any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, unless the lessee establishes that (as of the close of the taxable year) it is more probable that the lease will not be renewed, extended, or continued for such period than that the lease will be so renewed, extended, or continued.

(b) *Related lessee and lessor*—(1) *General rule.* If a lessee and lessor are related persons (as determined under paragraph (2)) at any time during the taxable year then, in determining the amount allowable to the lessee as a deduction for such taxable year for exhaustion, wear and tear, obsolescence, or amortization in respect of any building erected (or other improvement made) on the leased property, the lease shall be treated as including a period of not less duration than the remaining useful life of such improvement.

(2) *Related persons defined.* For purposes of paragraph (1), a lessor and lessee shall be considered to be related persons if—

(A) The lessor and the lessee are members of an affiliated group (as defined in section 1504), or

(B) The relationship between the lessor and lessee is one described in subsection (b) of section 267, except that, for purposes of this subparagraph, the phrase "80 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in such subsection.

For purposes of determining the ownership of stock in applying subparagraph (B), the rules of subsection (c) of section 267 shall apply, except that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(c) *Reasonable certainty test.* In any case in which neither subsection (a) nor subsection (b) applies, the determination as to the amount allowable to a lessee as a deduction for any taxable year for exhaustion, wear and tear, obsolescence, or amortization—

(1) In respect of any building erected (or other improvement made) on the leased property, or

(2) In respect of any cost of acquiring the lease,

shall be made with reference to the term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee), unless the lease has been renewed, extended, or continued or the facts show with reasonable certainty that the lease will be renewed, extended, or continued.

[Sec. 178 as added by sec. 15, Technical Amendments Act 1958 (72 Stat. 1612)]

§ 1.178–1 Depreciation or amortization of improvements on leased property and cost of acquiring a lease.

(a) *In general.* Section 178 provides rules for determining the amount of the deduction allowable for any taxable year to a lessee for depreciation or amortization of improvements made on leased property and as amortization of the cost of acquiring a lease. For purposes of section 178 the term "depreciation" means the deduction allowable for exhaustion, wear and tear, or obsolescence under provisions of the Code such as section 167 or 611 and the regulations thereunder and the term "amortization" means the deduction allowable for amortization of buildings or other improvements made on leased property or for amortization of the cost of acquiring a lease under provisions of the Code such as section 162 or 212 and the regulations thereunder. The provisions of section 178 are applicable with respect to costs of acquiring a lease incurred, and improvements begun, after July 28, 1958, other than improvements which, on July 28, 1958, and at all times thereafter, the lessee was under a binding legal obligation to make.

(b) *Determination of amount of deduction.* (1) In determining the amount of the deduction allowable to a lessee (other than a lessee who is related to the lessor within the meaning of § 1.178–2) for any taxable year for depreciation or amortization of improvements made on leased property, or for amortization in respect of the cost of acquiring a lease, the term of the lease shall, except as provided in subparagraph (2) of this paragraph, be treated as including all periods for which the lease may be renewed, extended, or continued pursuant to an option or options exercisable by the lessee (whether or not specifically provided for in the lease) if—

(i) In the case of any building erected, or other improvements made, by the lessee on the leased property, the portion of the term of the lease (excluding all periods for which the lease may subsequently be renewed, extended, or continued pursuant to an option or options exercisable by the lessee) remaining upon the completion of such building or other improvements is less than 60 percent of the estimated useful life of such building or other improvements; or

(ii) In the case of any cost of acquiring the lease, less than 75 percent of such cost is attributable to the portion of the term of the lease (excluding all periods for which the lease may be renewed, extended, or continued pursuant to an option or options exercisable by the lessee) remaining on the date of its acquisition.

(2) The rules provided in subparagraph (1) of this paragraph shall not apply if the lessee establishes that, as of the close of the taxable year, it is more probable that the lease will not be renewed, extended, or continued than that the lease will be renewed, extended,

or continued. In such case, the cost of improvements made on leased property or the cost of acquiring a lease shall be amortized over the remaining term of the lease without regard to any options exercisable by the lessee to renew, extend, or continue the lease. The probability test referred to in the first sentence of this subparagraph shall be applicable to each option period to which the lease may be renewed, extended, or continued. The establishment by a lessee as of the close of the taxable year that it is more probable that the lease will not be renewed, extended, or continued will ordinarily be effective as of the close of such taxable year and any subsequent taxable year, and the deduction for amortization will be based on the term of the lease without regard to any periods for which the lease may be renewed, extended, or continued pursuant to an option or options exercisable by the lessee. However, in appropriate cases, if the facts as of the close of any subsequent taxable year indicate that it is more probable that the lease will be renewed, extended, or continued, the deduction for amortization (or depreciation) shall, beginning with the first day of such subsequent taxable year, be determined by including in the remaining term of the lease all periods for which it is more probable that the lease will be renewed, extended, or continued.

(3) If at any time the remaining term of the lease determined in accordance with section 178 and this section is equal to or of longer duration than the then estimated useful life of the improvements made on the leased property by the lessee, the cost of such improvements shall be depreciated over the estimated useful life of such improvements under the provisions of section 167 and the regulations thereunder.

(4) For purposes of section 178(a)(1) and this section, the date on which the building erected or other improvements made are completed is the date on which the building or improvements are usable, whether or not used.

(5)(i) For purposes of section 178(a)(2) and this section, the portion of the cost of acquiring a lease which is attributable to the term of the lease remaining on the date of its acquisition without regard to options exercisable by the lessee to renew, extend, or continue the lease shall be determined on the basis of the facts and circumstances of each case. In some cases, it may be appropriate to determine such portion of the cost of acquiring a lease by applying the principles used to measure the present value of an annuity. Where that method is used, such portion shall be determined by multiplying the cost of the lease by a fraction, the numerator comprised of a factor representing the present value of an annually recurring savings of $1 per year for the period of the remaining term of the lease (without regard to options to renew, extend, or continue the lease) at an appropriate rate of interest (determined on the basis of all the facts and circumstances in each case), and the denominator comprised of a factor representing the present value of $1 per year for the period of the remaining term of the lease including the options to renew, extend, or continue the lease at an appropriate rate of interest.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example. Lessee A acquires a lease with respect to unimproved property at a cost of $100,000 at which time there are 21 years remaining in the original term of the lease with two renewal options of 21 years each. The lease provides for a uniform annual rental for the remaining term of the lease and the renewal periods. It has been determined that this is an appropriate case for the application of the principles used to measure the present value of an annuity. Assume that in this case the appropriate rate of interest is 5 percent. By applying the tables (Inwood) used to measure the present value of an annuity of $1 per year, the factor representing the present value of $1 per annum for 21 years at 5% is ascertained to be 12.821, and the factor representing the present value of $1 per annum for 63 years at 5% is 19.075. The portion of the cost of the lease ($100,000) attributable to the remaining term of the original lease (21 years) is 67.21% or $67,210 determined as follows:

$$\frac{12.821}{19.075} \text{ or } 67.21\%.$$

(6) The provisions of this paragraph may be illustrated by the following examples:

Example (1). Lessee A constructs a building on land leased from lessor B. The construction is commenced on August 1, 1958, and is completed and placed in service on December 31, 1958, at which time A has 15 years remaining on his lease with an option to renew for an additional 20 years. Lessee A computes his taxable income on a calendar year basis. Lessee A was not, on July 28, 1958, under a binding legal obligation to erect the building. The building has an estimated useful life of 30 years. A is not related to B. Since the portion of the term of the lease (without regard to any renewals) remaining upon completion of the building (15 years) is less than 80 percent of the estimated useful life of the building (60 percent of 30 years, or 18 years), the term of the lease shall be treated as including the remaining portion of the original lease period and the renewal period, or 35 years. Since the estimated useful life of the building (30 years) is less than 35 years, the cost of the building shall, in accord with paragraph (b)(3) of this section, be depreciated under the provisions of section 167, over its estimated useful life. If, however, lessee A establishes, as of the close of the taxable year 1958, it is more probable that the lease will not be renewed than that it will be renewed, then in such case the remaining term of the lease shall be treated as including only the 15-year period remaining in the original lease. Since this is less than the estimated useful life of the building, the remaining cost of the building would be amortized over such 15-year period under the provisions of section 162 and the regulations thereunder.

Example (2). Assume the same facts as in example (1), except that A has 21 years remaining on his lease with an option to renew for an additional 10 years. Section 178(a) and paragraph (b)(1) of this section do not apply since the term of the lease remaining on the date of completion of the building (21 years) is not less than 60 percent of the estimated useful life of the building (60 percent of 30 years, or 18 years).

Example (3). Assume the same facts as in example (1), except that A has no renewal option until July 1, 1961, when lessor B grants A an option to renew the lease for a 10-year period. Because there is no option to renew the lease, the term of the lease is, for the taxable years 1959 and 1960 and for the first six months of the taxable year 1961, determined without regard to section 178(a). However, as of July 1, 1961, the date the renewal option is granted, section 178(a) and paragraph (b)(1) of this section become applicable since the portion of the term of the lease remaining upon completion of the building (15 years) was less than 60 percent of the estimated useful life of the building (60 percent of 30 years, or 18 years). As of July 1, 1961, the term of the lease shall be treated as including the remaining portion of the original lease period (12½ years) and the 10-year renewal period, or 22½ years, unless lessee A can establish that, as of the close of 1961, it is more probable that the lease will not be renewed than that it will be.

Example (4). On January 1, 1959, lessee A pays $10,000 to acquire a lease for 20 years with two options exercisable by him to renew for periods of 5 years each. Of the total $10,000 cost to acquire the lease, $7,000 was paid for the original 20-year lease period and the balance of $3,000 was paid for the renewal options. Since the $7,000 cost of acquiring the initial lease is less than 75 percent of the $10,000 cost of the lease ($7,500), the term of the lease shall be treated as including the original lease period and the 2 renewal periods, or 30 years. However, if lessee A establishes that, as of the close of the taxable year 1959, it is more probable that the lease will not be renewed than that it will be renewed, the term of the lease shall be treated as including only the original lease period, or 20 years.

Example (5). Assume the same facts as in example (4), except that the portion of the total cost ($10,000) paid for the 20-year original lease period is $8,000. Since the $8,000 cost of acquiring the original lease is not less than 75 percent of the $10,000 cost of the lease ($7,500), section 178(a) and paragraph (b)(1) of this section do not apply.

(c) *Application of section 178(a) where lessee gives notice to lessor of intention to exercise option.* (1) If the lessee has given notice to the lessor of his intention to renew, extend, or continue a lease, the lessee shall, for purposes of applying the provisions of section 178(a) and paragraph (b)(1) of this section, take into account such renewal or extension in determining the portion of the term of the lease remaining upon the completion of the improvements or on the date of the acquisition of the lease.

(2) The application of the provisions of this paragraph may be illustrated by the following examples:

Example (1). Lessee A constructs a building on land leased from lessor B. The construction was commenced on September 1, 1958, and was completed and placed in service on December 31, 1958. Lessee A was not, on July 28, 1958, under a binding legal obligation to erect the building. A and B are not related. At the time the building was completed (December 31, 1958), lessee A had 3 years remaining on his lease with 2 options to renew for periods of 20 years each. The estimated useful life of the building is 50 years. Prior to completion of the building, lessee A gives notice to lessor B of his intention to exercise the first 20-year option. Therefore, the portion of the term of the lease remaining on January 1, 1959, shall be the 3 years remaining in the original lease period plus the 20-year renewal period, or 23 years. Since the term of the lease remaining upon completion of the building (23 years) is less than 60 percent of the estimated useful life of the building (60 percent of 50 years, or 30 years), the provisions of section 178(a) and paragraph (b)(1) of this section are applicable. Accordingly, the term of the lease shall be treated as including the aggregate of the remaining term of the original lease (23 years) and the second 20-year renewal period or 43 years, unless lessee A establishes that it is more probable that the lease will not be renewed, extended, or continued under the second 20-year option than that it will be so renewed, extended, or continued under such option. If this is established by lessee A, then the term of the lease shall be treated as including only the remaining portion of the original lease period and the first 20-year renewal period, or 23 years.

Example (2). Assume the same facts as in example (1), except that the estimated useful life of the building is 30 years. Since the term of the lease remaining upon completion of the building (23 years) is not less than 60 percent of the estimated life of the building (60 percent of 30 years, or 18 years), the provisions of section 178(a) and paragraph (b)(1) of this section do not apply.

Example (3). If in examples (1) and (2), the lessee failed to give notice of his intention to exercise the renewal option, the renewal period would not be taken into account in computing the percentage requirements under section 178(a) and paragraph (b)(1) of this section. Thus, unless lessee A establishes the required probability, the provisions of section 178(a) and paragraph (b)(1) of this section would apply in both examples since the term of the lease remaining upon completion of the building (3 years) is less than 60 percent of the estimated useful life of the building in either example (60 percent of 50 years, or 30 years; 60 percent of 30 years, or 18 years).

(d) *Application of section 178 where lessee is related to lessor.* (1)(i) If the lessee and lessor are related persons within the meaning of section 178(b)(2) and § 1.178–2 at any time during the taxable year, the lease shall be treated as including a period of not less duration than the remaining estimated useful life of improvements made by the lessee on leased property for purposes of determining the amount of deduction allowable to the lessee for such taxable year for depreciation or amortization in respect of any building erected or other improvements made on leased property. If the lessee and lessor cease to be related persons during any taxable year, then for the immediately following and subsequent taxable years during which they continue to be unrelated, the amount allowable to the lessee as a deduction shall be determined without reference to section 178(b) and in accordance with section 178(a) or section 178(c), whichever is applicable.

(ii) Although the related lessee and lessor rule of section 178(b) and § 1.178–2 does not apply in determining the period over which the cost of acquiring a lease may be amortized, the relationship between a lessee and lessor will be a significant factor in applying section 178 (a) and (c) in cases in which the lease may be renewed, extended, or continued pursuant to an option or options exercisable by the lessee.

(2) The application of the provisions of this paragraph may be illustrated by the following examples:

Example (1). Lessee A constructs a building on land leased from lessor B. The construction was commenced on August 1, 1958, and was completed and put in service on December 31, 1958. Lessee A was not on July 28, 1958, under a binding legal obligation to erect the building. On the completion date of the building, lessee A had 20 years remaining in his original lease period with an option to renew for an additional 20 years. The building has an estimated useful life of 50 years. During the taxable years 1959 and 1960, A and B are related persons within the meaning of section 178(b)(2) and § 1.178–2, but they are not related persons at any time during the taxable year 1961 or during any subsequent taxable year. Since A and B are related persons during the taxable years 1959 and 1960, the term of the lease shall, for each of those years, be treated as 50 years. Section 178(a) and paragraph (b)(1) of this section become applicable in the taxable year 1961 since A and B are not related persons at any time during that year and because the portion of the original lease period remaining at the time the building was completed (20 years) is less than 60 percent of the estimated useful life of the building (60 percent of 50 years, or 30 years). Thus, the term of the lease shall, beginning on January 1, 1961, be treated as including the remaining portion of the original lease period (18 years) and the renewal period (20 years), or 38 years, unless lessee A can establish that, as of the close of the taxable year 1961 or any subsequent taxable year, it is more probable that the lease will not be renewed than that it will be renewed.

Example (2). Assume the same facts as in example (1), except that the estimated useful life of the building is 30 years. During the taxable years 1959 and 1960, the term of the lease shall be treated as 30 years. For the taxable year 1961, however, neither section 178(a) nor section 178(b) apply since the percentage requirement of section 178(a) and paragraph (b) of this section are not satisfied and A and B are not related persons within the meaning of section 178(b)(2) and § 1.178–2.

§ 1.178–2 Related lessee and lessor.

(a) For purposes of section 178 and § 1.178–1, a lessor and lessee shall be considered to be related persons if—

(1) The lessor and lessee are members of an affiliated group, as defined in section 1504 and the regulations thereunder; or

(2) The relationship between the lessor and lessee is one described in section 267(b), except that the phrase "80 percent or more" shall be substituted for the phrase "more than 50 percent" wherever such phrase appears in section 267(b).

(b) In the application of section 267(b) for purposes of section 178, the rules provided in section 267(c) shall apply, except that the family of an individual shall include only his spouse, ancestors, and lineal descendants. Thus, if the lessee is the brother or sister of the lessor, the lessee and lessor will not be considered to be related persons for purposes of section 178 and § 1.178–1. If the lessor leases property to a corporation of which he owns 80 percent or more in value of the outstanding stock, the lessor and lessee shall be considered to be related persons. On the other hand, if the lessor leases property to a corporation of which he owns less than 80 percent in value of the outstanding stock and his brother owns the remaining stock, the lessor and lessee will not be considered to be related persons.

(c) If a relationship described in section 267(b) exists independently of family status, the brother-sister exception does not apply. For example, if the lessor leases property to the fiduciary of a trust of which he is the grantor, the lessor and lessee will be considered to be related persons for purposes of section 178. This result obtains whether or not the fiduciary is the brother or sister of the lessor since the disqualifying relationship exists because of the grantor-fiduciary status and not because of family status.

§ 1.178–3 Reasonable certainty test.

(a) In any case in which neither section 178 (a) nor (b) applies, the determination as to the amount of the deduction allowable to a lessee for any taxable year for depreciation or amortization in respect of any building erected, or other improvements made, on leased property, or in respect of any cost of acquiring a lease, shall be made with reference to the original term of the lease (excluding any period for which the lease may subsequently be renewed, extended, or continued pursuant to an option exercisable by the lessee) unless the lease has been renewed, extended, or continued, or the facts show with reasonable certainty that the lease will be renewed, extended, or continued. In a case in which the facts show with reasonable certainty that the lease will be renewed, extended, or continued, the term of the lease shall, beginning with the taxable year in which such reasonable certainty is shown, be treated as including the period or periods for which it is reasonably certain that the lease will be renewed, extended, or continued. If the lessee has given notice to the lessor of his intention to renew, extend, or continue a lease, the lease shall be considered as renewed, extended, or continued for the periods specified in the notice. See paragraph (c) of § 1.178–1.

(b) The reasonable certainty test is applicable to each option to which the lease is subject. Thus, in a case of two successive options, the facts in a particular taxable year may show with reasonable certainty that the lease will be renewed pursuant to an exercise of only the first option; and, beginning with such year, the term of the lease will be treated as including the first option, but not the second. If in a subsequent taxable year the facts show with reasonable certainty that the second option will also be exercised, the term of the lease shall, beginning with such subsequent taxable year, be treated as including both options. Although the related lessee and lessor rule of section 178(b) and paragraph (d) of § 1.178–1 does not apply in determining the period over which the cost of acquiring a lease may be amortized, the relationship between the lessee and lessor will be a significant factor in determining whether the "reasonable certainty" rule of section 178(c) and this section applies.

(c) The application of the provisions of this section may be illustrated by the following examples:

Example (1). Corporation A leases land from lessor B for a period of 30 years be-

ginning with January 1, 1958. Corporation A and lessor B are not related persons. The lease provides that Corporation A will have two renewal options of 5 years each at the same annual rental as specified in the lease for the initial 30 years. Corporation A constructs a factory building on the leased land at a cost of $100,000. Corporation A was not, on July 28, 1958, under a binding legal obligation to erect the building. The construction was commenced on August 1, 1958, and was completed and placed in service on December 31, 1958. On January 1, 1959, Corporation A has 29 years remaining in the initial term of the lease. The estimated useful life of the building on January 1, 1959, is 40 years. The location of the leased property is particularly suitable for Corporation A's business and the annual rental of the property is lower than A would have to pay for other suitable property. No factors are present which establish that these conditions will not continue to exist beyond the initial term of the lease. Since the period remaining in the initial term of the lease on January 1, 1959 (29 years) is not less than 60 percent of the estimated useful life of the building (60 percent of 40 years, or 24 years), the provisions of section 178(a) and paragraph (b)(1) of § 1.178–1 do not apply, and since Corporation A and lessor B are not related, section 178(b) and paragraph (d) of § 1.178–1 do not apply. However, since the facts show with reasonable certainty that Corporation A will renew the lease for the period of the two options (10 years), the cost of the building shall be amortized over the term of the lease, including the two renewal options, or 39 years.

Example (2). Assume the same facts as in example (1), except that a term of 30 years is the longest period that lessor B is willing to lease the unimproved property; that there was no agreement that Corporation A will have any renewal options; and that any other location would be as suitable for Corporation A's business as the leased property. Since the facts do not show with reasonable certainty that the initial term of the lease will be renewed, extended, or continued, Corporation A shall amortize the cost of the building over the remaining term of the lease, or 29 years.

PAR. 2. Section 1.162–11 is amended to read as follows:

§ 1.162–11 Rentals.

(a) *Acquisition of a leasehold.* If a leasehold is acquired for business purposes for a specified sum, the purchaser may take as a deduction in his return an aliquot part of such sum each year, based on the number of years the lease has to run. Taxes paid by a tenant to or for a landlord for business property are additional rent and constitute a deductible item to the tenant and taxable income to the landlord, the amount of the tax being deductible by the latter. For disallowance of deduction for income taxes paid by a lessee corporation pursuant to a lease arrangement with the lessor corporation, see section 110 and the regulations thereunder. See section 178 and the regulations thereunder for rules governing the effect to be given renewal options in amortizing the costs incurred after July 28, 1958, of acquiring a lease.

(b) *Improvements by lessee on lessor's property.* (1) The cost to a lessee of erecting buildings or making permanent improvements on property of which he is the lessee is a capital investment, and is not deductible as a business expense. If the estimated useful life in the hands of the taxpayer of the building erected or of the improvements made, determined without regard to the terms of the lease, is longer than the remaining period of the lease, an annual deduction may be made from gross income of an amount equal to the total cost of such improvements divided by the number of years remaining in the term of the lease, and such deduction shall be in lieu of a deduction for depreciation. If, on the other hand, the useful life of such buildings or improvements in the hands of the taxpayer is equal to or shorter than the remaining period of the lease, this deduction shall be computed under the provisions of section 167 (relating to depreciation).

(2) If the lessee began improvements on leased property before July 28, 1958, or if the lessee was on such date and at all times thereafter under a binding legal obligation to make such improvements, the matter of spreading the cost of erecting buildings or making permanent improvements over the term of the original lease, together with the renewal period or periods depends upon the facts in the particular case, including the presence or absence of an obligation of renewal and the relationship between the parties. As a general rule, unless the lease has been renewed or the facts show with reasonable certainty that the lease will be renewed, the cost or other basis of the lease, or the cost of improvements shall be spread only over the number of years the lease has to run without taking into account any right of renewal. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A subsidiary corporation leases land from its parent at a fair rental for a 25-year period. The subsidiary erects on the land valuable factory buildings having an estimated useful life of 50 years. These facts show with reasonable certainty that the lease will be renewed, even though the lease contains no option of renewal. Therefore, the cost of the buildings shall be depreciated over the estimated useful life of the buildings in accordance with section 167 and the regulations thereunder.

Example (2). A retail merchandising corporation leases land at a fair rental from an unrelated lessor for the longest period that the lessor is willing to lease the land (30 years). The lessee erects on the land a department store having an estimated useful life of 40 years. These facts do not show with reasonable certainty that the lease will be renewed. Therefore, the cost of the building shall be spread over the remaining term of the lease. An annual deduction may be made of an amount equal to the cost of the building divided by the number of years remaining in the term of the lease, and such deduction shall be in lieu of a deduction for depreciation.

(3) See section 178 and the regulations thereunder for rules governing the effect to be given renewal options where a lessee begins improvements on leased property after July 28, 1958, other than improvements which on such date and at all times thereafter, the lessee was under a binding legal obligation to make.

PAR. 3. Section 1.167(a)–4 is amended to read as follows:

§ 1.167(a)–4 Leased property.

Capital expenditures made by a lessee for the erection of buildings or the construction of other permanent improvements on leased property are recoverable through allowances for depreciation or amortization. If the useful life of such improvements in the hands of the taxpayer is equal to or shorter than the remaining period of the lease, the allowances shall take the form of depreciation under section 167. See §§ 1.167(b)–0, 1, 2, 3, and 4 for methods of computing such depreciation allowances. If, on the other hand, the estimated useful life of such property in the hands of the taxpayer, determined without regard to the terms of the lease, would be longer than the remaining period of such lease, the allowances shall take the form of annual deductions from gross income in an amount equal to the unrecovered cost of such capital expenditures divided by the number of years remaining of the term of the lease. Such deductions shall be in lieu of allowances for depreciation. See section 162 and the regulations thereunder. See section 178 and the regulations thereunder for rules governing the effect to be given renewal options in determining whether the useful life of the improvement exceeds the remaining term of the lease where a lessee begins improvements on leased property after July 28, 1958, other than improvements which on such date and at all times thereafter, the lessee was under a binding legal obligation to make. Capital expenditures made by a lessor for the erection of buildings or other improvements shall, if subject to depreciation allowances, be recovered by him over the estimated life of the improvements without regard to the period of the lease.

PAR. 4. Paragraph (a)(1) of § 1.461–1 is amended to read as follows:

§ 1.461–1 General rule for taxable year of deduction.

(a) *General rule*—(1) *Taxpayer using cash receipts and disbursements method.* Under the cash receipts and disbursements method of accounting, amounts representing allowable deductions shall, as a general rule, be taken into account for the taxable year in which paid. Further, a taxpayer using this method may also be entitled to certain deductions in the computation of taxable income which do not involve cash disbursements during the taxable year, such as the deductions for depreciation, depletion, and losses under sections 167, 611, and 165, respectively. If an expenditure results in the creation of an asset having a useful life which extends substantially beyond the close of the taxable year, such an expenditure may not be deductible, or may be deductible only in part, for the taxable year in which made. An example is an expenditure for the construction of improvements by the lessee on leased property where the estimated life of the improvements is in excess of the remaining period of the lease. In such a case, in lieu of the allowance for depreciation provided by section 167, the basis shall be amortized ratably over the remaining period of the lease. See section 178 and the regulations thereunder for rules governing the effect to be given renewal options in determining whether the useful life of the

improvements exceeds the remaining term of the lease where a lessee begins improvements on leased property after July 28, 1958, other than improvements which on such date and at all times thereafter, the lessee was under a binding legal obligation to make. See section 263 and the regulations thereunder for rules relating to capital expenditures.

[F.R. Doc. 60–11938; Filed, Dec. 23, 1960; 8:48 a.m.]

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 6519]

PART 40—MANUFACTURERS AND RETAILERS EXCISE TAXES

Auto Baby Seats, Auto Beds, and Auto Hammocks

In view of the fact that § 40.4061(b)–2 of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 40), relating to the definition of parts or accessories for motor vehicles, does not reflect the position followed by the Revenue Service prior to the adoption of such regulations in the case of baby seats for automobiles, automobile beds, and automobile hammocks, § 40.4061(b)–2 is amended by adding at the end thereof the following new paragraph:

(f) *Effective date.* Under the authority of section 7805(b), the provisions of this section shall not be applicable in respect of baby seats for automobiles, automobile beds, and automobile hammocks sold by a manufacturer, producer, or importer before July 23, 1959.

Because this Treasury decision merely prescribes the extent to which certain provisions of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 40) are to be applied without retroactive effect in respect of sales of certain articles thereby providing relief from tax in respect of such sales, it is found unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of said Act.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 20, 1960.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F.R. Doc. 60–11947; Filed, Dec. 23, 1960; 8:48 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2227]

[85673]

WYOMING, NEW MEXICO, AND IDAHO

Revoking in Whole or in Part Certain Departmental Orders Which Withdrew Lands for Use of the Forest Service as Administrative Sites

By virtue of the authority vested in the President by the act of June 4, 1897 (30 Stat. 34, 36; 16 U.S.C. 473) and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. The departmental orders of November 13, 1906, November 25, 1907, October 6, 1908, October 12, 1908, and November 11, 1908, which withdrew lands for use of the Forest Service, Department of Agriculture, as administrative sites, are hereby revoked so far as they affect the following-described lands:

WYOMING

BRIDGER NATIONAL FOREST

Sixth Principal Meridian

Departmental Order of November 13, 1906

Fontenelle Administrative Site:
T. 26 N., R. 116 W.,
Sec. 25, lots 3, 6, 7, and NW¼SE¼.
Containing 148.78 acres.
Cottonwood Creek Administrative Site:
T. 30 N., R. 118 W.,
Sec. 4, SW¼SW¼, unsurveyed;
Sec. 9, NW¼NW¼, unsurveyed.
Containing 80 acres.

NEW MEXICO

APACHE NATIONAL FOREST

New Mexico Principal Meridian

Departmental Order of November 25, 1907

Luna Administrative Site:
T. 5 S., R. 20 W.,
Sec. 32, W½NW¼SW¼NW¼SE¼ and W½SW¼SW¼NW¼SE¼.
Containing 2.5 acres.

IDAHO

PAYETTE NATIONAL FOREST

Boise Meridian

Department Order of October 6, 1908

Mann Creek Administrative Site:
T. 14 N., R. 5 W.,
Sec. 32, E½NE¼SE¼;
Sec. 33, W½SW¼ and W½SE¼SW¼.
Containing 120 acres.

WYOMING

BRIDGER NATIONAL FOREST

Sixth Principal Meridian

Departmental Order of October 12, 1908

Coy Administrative Site:
T. 35 N., R. 118 W.,
Sec. 30, lots 4 and 5.
Containing 79.53 acres.

IDAHO

PAYETTE NATIONAL FOREST

Boise Meridian

Departmental Order of November 11, 1908

Rush Creek Administrative Site:
T. 16 N., R. 3 W.,
Sec. 28, NE¼NE¼SE¼, W½E½SE¼, and E½W½SE¼.
Containing 90 acres.

The areas described total 520.81 acres.

2. The lands shall be open, subject to valid existing rights, and the requirements of applicable law, to such applications, selections, and locations as are permitted on national forest lands effective at 10:00 a.m. on January 25, 1961.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R. Doc. No. 60–11912; Filed, Dec. 23, 1960; 8:45 a.m.]

[Public Land Order 2228]

[New Mexico 048730]

NEW MEXICO

Withdrawing Lands for Use of Federal Aviation Agency in Maintenance of Air Navigation Facilities

By virtue of the authority vested in the Secretary of the Interior by section 4 of the Act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

Subject to valid existing rights, the following-described public lands in New Mexico are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws, nor disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604) as amended, and reserved for use of the Federal Aviation Agency in the maintenance of air navigation facilities:

NEW MEXICO PRINCIPAL MERIDIAN

T. 14 N., R. 4 E.,
Sec. 15, NE¼SW¼SW¼SE¼.

The tract described contains 2.5 acres.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R Doc. 60–11913; Filed, Dec. 23, 1960; 8:45 a.m.]

[Public Land Order 2229]

NEW MEXICO AND ARIZONA

Revoking Various National Forest Administrative Site Withdrawals

By virtue of the authority vested in the President by the act of June 4, 1897 (30 Stat. 34, 36; 16 U.S.C. 473), and otherwise, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

The hereinafter described departmental and public land orders reserving lands in national forests for use of the Forest Service as administrative sites, are hereby revoked so far as they affect the lands comprising each site described:

[84981] (New Mexico)

NEW MEXICO PRINCIPAL MERIDIAN

GILA NATIONAL FOREST

a. The departmental order of November 26, 1906 (Tularosa Administrative Site No. 4).

T. 6 S., R. 18 W.,
Sec. 11, NE¼SE¼.
Containing 40 acres.

b. The departmental order of December 10, 1907 (Tularosa Administrative Site "L").

T. 6 S., R. 18 W.,
Sec. 11, E½SW¼, W½SE¼, and SE¼SE¼;
Sec. 12, W½SW¼, (lots 11 and 12);
Sec. 14, NW¼NE¼ and NE¼NW¼.
Containing 360 acres.

c. Public Land Order No. 1230 of September 27, 1955 (Tularosa Administrative Camp Site).

T. 6 S., R. 18 W.,
Sec. 12, SW¼NW¼, (lot 4).
Containing 36.93 acres.

d. The departmental order of January 30, 1907 (Nursery Site Station No. 65).

T. 11 S., R. 19 W.,
Sec. 2, lots 2, 3, 7, and 8.
Containing 177 acres.

e. Public Land Order No. 1119 of April 12, 1955 (Little Dry Creek Forest Camp Recreation Area).

T. 13 S., R. 19 W.,
Sec. 8, S½SE¼NE¼ and N½NE¼SE¼.
Containing 40 acres.

[84975] (Arizona)

CORONADO NATIONAL FOREST

GILA SALT RIVER MERIDIAN

a. The departmental order of June 24, 1907 (Camp Inception Administrative Site).

T. 8 S., R. 24 E., unsurveyed,
Sec. 23, an area described by metes and bounds, and containing about 105 acres.

b. The departmental order of November 1, 1907 (Spud Rock Administrative Site)

T. 14 S., R. 18 E., unsurveyed,
Sec. 19, an area described by metes and bounds and containing about 216.75 acres.

The areas described total in the aggregate about 975.68 acres.

At 10:00 a.m. on January 25, 1961, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

December 20, 1960.

[F.R. Doc. 60-11914; Filed, Dec. 23, 1960; 8:45 a.m.]

[Public Land Order 2230]

[Montana 034596]

MONTANA

Correcting Public Land Order No. 2186 of August 19, 1960

In Federal Register Document 60-7914, appearing at pages 8145-46 of the issue for Thursday, August 25, 1960, that part of the land description reading "T. 17 S.," is hereby corrected to read "T. 17 N."

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R. Doc. 60-11915; Filed, Dec. 23, 1960; 8:45 a.m.]

[Public Land Order 2231]

CALIFORNIA

Withdrawing Lands for Use of the Forest Service as Foresthill Administrative Site; Amending Public Land Order No. 2144

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws nor disposals of materials under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601-604), as amended, and reserved for use of the Forest Service, Department of Agriculture, as the Foresthill Administrative Site:

[Sacramento 059766]

MOUNT DIABLO MERIDIAN

T. 14 N., R. 10 E.,
Sec. 25, lots 8 and 9.

Containing 16.81 acres.

[Sacramento 060256]

2. Paragraphs 3 and 4 of Public Land Order No. 2144 of June 30, 1960, which opened lands under Section 24 of the Federal Power Act, are hereby amended to substitute the words "lot 20" for the words "lot 21" wherever they appear.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R. Doc. 60-11916; Filed, Dec. 23, 1960; 8:46 a.m.]

[Public Land Order 2232]

[86338]

WYOMING

Partly Revoking Departmental Order of December 4, 1906, Which Withdrew Lands for Use of the Forest Service as an Administrative Site

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

The departmental order of December 4, 1906, which withdrew certain lands for use of the Forest Service, Department of Agriculture, as an administrative site, is hereby revoked so far as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

SHOSHONE NATIONAL FOREST

North Fork Ranger Station Administrative Site

T. 33 N., R. 102 W.,
Sec. 5, E½SW¼.

The area described contains 80 acres.

Subject to valid existing rights and the requirements of applicable law, the lands shall be open to such applications, selections, and locations as are permitted on national forest lands effective at 10:00 a.m. on January 25, 1961.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R. Doc. 60-11917; Filed, Dec. 23, 1960; 8:46 a.m.]

[Public Land Order 2233]

[Wyoming 010524]

WYOMING

Partly Revoking Stock Driveway Withdrawal No. 23 (Wyoming No. 6)

By virtue of the authority vested in the Secretary of the Interior by section 10 of the act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300), as amended, it is ordered as follows:

1. The departmental order of June 20, 1918, which established Stock Driveway Withdrawal No. 23 (Wyoming No. 6), is hereby revoked so far as it affects the following-described lands:

SIXTH PRINCIPAL MERIDIAN

T. 16 N., R. 84 W.,
Sec. 6, lots 1 to 11, incl.
T. 16 N., R. 85 W.,
Sec. 1, lots 1 to 10, incl.;
Sec. 2, lots 1 to 10, incl.;
Sec. 3, lots 1 to 10, incl.;
Sec. 4, lots 1 to 10, incl.;
Sec. 5;
Sec. 6, lot 13, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, incl.
T. 16 N., R. 86 W.,
Sec. 10, S½;
Sec. 11;
Sec. 12, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 15;
Sec. 22, W½;
Sec. 27, NW¼.
T. 12 N., R. 87 W.,
Sec. 8, lots 4 and 5.
T. 12 N., R. 88 W.,
Sec. 5, lots 6, 7, 8, 10, and 11;
Sec. 6, lots 12, 13, SE¼SW¼, SW¼SE¼, and E½SE¼.
T. 13 N., R. 88 W.,
Sec. 7, lots 7 to 13, incl.;
Sec. 18, lots 5, 9, NW¼NE¼, and SE¼NE¼.
T. 12 N., R. 89 W.,
Sec. 1, S½;
Sec. 2, S½;
Sec. 3, S½;
Sec. 4, E½SE¼;
Sec. 9, NE¼, N½SE¼, and SE¼SE¼.
T. 13 N., R. 89 W.,
Sec. 10, SE¼;
Sec. 11, W½SW¼ and NE¼SW¼;
Sec. 12, S½.

T. 15 N., R. 89 W.,
Sec. 5, lots 7, 8, and S½NW¼;
Sec. 6, lots 8 to 11, incl., and S½N½.
T. 14 N., R. 90 W.,
Sec. 2, lot 8, SW¼NW¼, and W½SW¼;
Sec. 11, W½W½;
Sec. 14, NW¼NW¼, S½NW¼, and SW¼;
Sec. 23;
Sec. 26, N½N½ and S½NW¼.
T. 15 N., R. 90 W.,
Sec. 1, lots 5 to 8, incl., SW¼NE¼, and S½NW¼;
Sec. 2, lots 5 to 8, incl., S½N½, and SW¼;
Sec. 11, W½;
Sec. 14, NW¼NW¼ and SW¼;
Sec. 23, W½W½;
Sec. 26, SW¼NW¼ and W½SW¼;
Sec. 27, S½N½, SW¼, W½SE¼, and NE¼SE¼;
Sec. 28, NW¼NW¼, S½N½, E½SW¼, and SE¼;
Sec. 35, W½W½.
T. 13 N., R. 91 W.,
Sec. 9, W½W½;
Sec. 11, NE¼, N½NW¼, SE¼NW¼, SW¼, W½SE¼, and NE¼SE¼;
Sec. 14, W½NE¼, W½, and SE¼;
Sec. 15, NE¼ and E½SE¼;
Sec. 21, W½;
Sec. 22, N½NE¼.
T. 14 N., R. 91 W.,
Secs. 5, 8, and 17;
Sec. 18, W½W½;
Sec. 19, W½W½;
Sec. 20;
Sec. 28, W½;
Sec. 30, W½.
T. 15 N., R. 91 W.,
Secs. 17, 20, 29, and 32.
T. 16 N., R. 91 W.,
Sec. 2;
Sec. 10, E½;
Sec. 11, W½;
Sec. 14, NW¼ and W½SW¼;
Sec. 15, E½;
Sec. 22;
Sec. 27, NW¼;
Sec. 28, NE¼NE¼, S½NE¼, and NW¼;
Sec. 29, N½.
T. 17 N., R. 91 W.,
Sec. 25, E½, E½NW¼, SW¼NW¼, and SW¼.
T. 15 N., R. 94 W.,
Secs. 1 to 3, incl.;
Sec. 4, lots 1 to 4 incl., SW¼NE¼, S½NW¼, and S½;
Secs. 5 and 6.
T. 15 N., R. 95 W.,
Secs. 1 to 6, incl.
T. 15 N., R. 96 W.,
Secs. 1 to 6, incl.
T. 15 N., R. 97 W.,
Secs. 1 and 11.

The areas described aggregate approximately 38,537 acres.

2. The lands in T. 15 N., Rs. 94, 95, 96, and 97 W., (12706 acres) are withdrawn by Executive Order No. 5327 of April 15, 1930, for preservation of their oil shale deposits.

3. Lot 9, section 6, T. 16 N., R. 84 W., is patented.

4. The remaining lands are in part included in Coal Land Withdrawal No. 1, created by the Executive order of July 13, 1910.

5. The lands are located in southwestern Carbon County and adjoining parts of southeastern Sweetwater County, Wyoming. The region consists of rugged, stream-cut canyons and mesa-butte topography, typical of arid areas. Vegetative cover varies, all vegetative types being dominated by big sagebrush, associated in some cases with grasses and in other cases with desert shrubs.

6. Subject to any valid existing rights and the requirements of applicable law, the lands described in paragraph 1 of this order, excepting those described in paragraphs 2 and 3 hereof, are hereby opened to filing of applications, selections, and locations in accordance with the following, the coal lands referred to in paragraph 4, having previously been made subject to entry and selection with a reservation to the United States of their coal deposits by the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83), as amended. Any disposals of such coal lands, therefore, shall continue to be subject to the reservation required by the said act of June 22, 1910, supra:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph:

(2) Until 10:00 a.m. on June 20, 1961, the State of Wyoming shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852), and the regulations in 43 CFR.

(3) All valid applications and selections under the nonmineral public land laws other than any from the State of Wyoming, presented prior to 10:00 a.m. on June 20, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws.

7. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims, must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Cheyenne, Wyoming.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R. Doc. 60-11918; Filed, Dec. 23, 1960; 8:46 a.m.]

[Public Land Order 2234]

[1960439]

UTAH

Revoking Public Land Order No. 221 of April 7, 1944

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Public Land Order No. 221 of April 7, 1944, reserving the following described lands for use in connection with the prosecution of the war is hereby revoked:

SALT LAKE MERIDIAN

T. 37 S., R. 21 E.,
Sec. 3, SW¼, unsurveyed;
Sec. 10, NW¼, unsurveyed.

Aggregating 320 acres.

2. Subject to any existing valid rights and the requirements of applicable law, the lands are hereby opened to filing of such applications, selections, and locations as may be made for unsurveyed lands in accordance with the following:

a. Applications and selections under the nonmineral public land laws and applications and offers under the mineral leasing laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Until 10:00 a.m. on June 20, 1961, the State of Utah shall have a preferred right of application to select the lands in accordance with and subject to the provisions or subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851).

(2) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(3) All valid applications and selections under the nonmineral public land laws and applications and offers under the mineral leasing laws presented prior to 10:00 a.m. on January 25, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections and offers filed after that hour will be governed by the time of filing.

b. The lands will be open to location under the United States mining laws, beginning 10:00 a.m. on June 20, 1961.

Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Salt Lake City, Utah.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R. Doc. 60-11919; Filed, Dec. 23, 1960; 8:46 a.m.]

[Public Land Order 2235]

[Anchorage 050896]

ALASKA

Partly Revoking Executive Order No. 4257 of June 27, 1925

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Executive Order No. 4257 of June 27, 1925, which withdrew public lands in Alaska for lighthouse purposes, is hereby revoked so far as it affects the following-described lands:

Parcel 18

Halibut Cove, Kachemak Bay, Cook Inlet, Alaska, shown on U.S. Coast and Geodetic Survey Chart No. 8554, Sheet No. 17:

All of Ismailof Island (Approx. Long. 151° 14' W., Lat. 59° 35½' N.), except the northeast point of land containing the Halibut Cove Light and being that part lying east of the easterly boundary of U.S. Survey No. 1540.

The areas described aggregate approximately 49 acres.

Parcel 35

Puffin Island, Chiniak Bay, Alaska, shown on U.S. Coast and Geodetic Survey Chart No. 8570, Sheet No. 33. Island about 2 nautical miles 206° true from the town of Kodiak; including adjacent rocks and reefs not covered at low water. (Approx. Long. 152°26½' W., Lat. 57°45' N.)

The area described contains approximately 3 acres.

2. In Parcel 18, the following-described lands, totaling 61.04 acres, have been patented: U.S. Survey No. 1380; U.S. Survey No. 1540; U.S. Survey No. 1541. The following are included in Color-of-Title Claims: U.S. Survey No. 1542 (Anchorage 045501); U.S. Survey No. 1543 (Anchorage 044985; Anchorage 045638). Parcel 35 is withdrawn by Executive Order No. 8278 of October 28, 1939, as amended, for use of the Department of the Navy, for military purposes.

3. Ismailof Island is situated off-shore of Halibut Cove in Kachemak Bay, approximately 10 miles southeast of the Homer Spit.

4. Subject to any valid existing rights and the requirements of applicable law, the unreserved, unappropriated public lands are hereby opened to settlement, and to filing of applications, selections and locations as are allowable on unsurveyed lands, in accordance with the following:

a. Applications and selections under the nonmineral public land laws, may be presented to the Manager mentioned below beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on March 22, 1961, the State of Alaska shall have a preferred right of application to select the lands in accordance with and subject to the provisions of the Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b), and section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339).

(3) All valid applications and selections under the nonmineral public land laws other than from the State of Alaska presented prior to 10:00 a.m. on January 25, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral leasing laws. They will be open to settlement under the homestead and Alaska homesite laws, and location under the United States mining laws, beginning at 10:00 a.m. on March 22, 1961.

5. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Anchorage, Alaska.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 20, 1960.

[F.R. Doc. 60-11920; Filed, Dec. 23, 1960; 8:46 a.m.]

Title 46—SHIPPING

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS AND RELATED ACTIVITIES

[Docket No. 859; General Order 69, Amdt. 2]

PART 226—FREE TIME AND DEMURRAGE CHARGES ON IMPORT PROPERTY APPLICABLE TO ALL COMMON CARRIERS BY WATER

Interpretation and Discontinuance of Rule Making Procedure

The procedure instituted by notice of proposed rule making in the above subject matter under Docket No. 859, which appeared in the FEDERAL REGISTER issue of July 25, 1959 (24 F.R. 5973), is hereby discontinued.

Part 226 is hereby amended by adding the following new section and center heading:

INTERPRETATION

§ 226.2 Applicability of decision and order.

This part is interpreted by the Federal Maritime Board to bar common carriers by water from assessing demurrage or storage charges against import property at New York for any period during which they are unable to deliver such property because of a strike by longshoremen, regardless of whether the cargo has been made available for delivery during the entire prescribed period of free time.

By order of the Federal Maritime Board.

Dated: December 15, 1960.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114)

THOMAS LISI,
Secretary.

[F.R. Doc. 60-11930; Filed, Dec. 23, 1960; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381(c)(11) (contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans) and (20) (carryover of unused pension trust deductions in certain cases). The regulations under section 381(c)(11) shall apply to liquidations and reorganizations, the tax treatment of which is determined under the Internal Revenue Code of 1954. The regulations under section 381(c)(20) are applicable with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954.

Sec.

1.381(c)(11) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

1.381(c)(11)-1 Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

1.381(c)(20) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; carryover of unused pension trust deductions in certain cases.

§ 1.381(c)(11) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

SEC. 381. *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

* * * * *

(11) *Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.* The acquiring corporation shall be considered to be the distributor or transferor corporation after the date of distribution or transfer for the purpose of determining the amounts deductible under section 404 with respect to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

§ 1.381(c)(11)-1 Contributions to pension plans, employees' annuity plans, and stock bonus and profit-sharing plans.

(a) *Carryover requirement.* Section 381(c)(11) provides that, for purposes of determining amounts deductible under section 404 for any taxable year, the acquiring corporation shall be considered after the date of distribution or transfer to be the distributor or transferor corporation in respect of any pension, annuity, stock bonus, or profit-sharing plan.

(b) *Nature of carryover.* (1) Primarily, section 381(c)(11) and this section apply to the amount of any unused deductions or excess contributions carryovers which, in the absence of the transaction causing section 381 to apply, would have been available to the distributor or transferor corporation under section 404. Thus, for example, this section applies to unused deductions under a profit-sharing or stock bonus trust which, in accordance with the second sentence of section 404(a)(3)(A) and § 1.404(a)-9, would have been available in succeeding taxable years to the transferor corporation if the transfer of assets to the acquiring corporation had not occurred.

(2) Section 381(c)(11) also permits or requires the acquiring corporation to be treated as though it were the distributor or transferor corporation for the purpose of satisfying any conditions which would have been required of the distributor or transferor corporation in the absence of the distribution or transfer, so that it may be determined whether the distributor or transferor corporation, or the acquiring corporation, is entitled to take a deduction under section 404 in respect of a trust or plan established by the distributor or transferor corporation. Thus, for example, in a case when the taxable year of the transferor corporation ends on the date of transfer pursuant to section 381(b)(1), that corporation is entitled, pursuant to the provisions of section 404(a)(6) and paragraph (c) of § 1.404(a)-1, to a deduction in such taxable year for a payment to a qualified trust of that corporation made by the acquiring corporation after the close of such taxable year but within the time specified in section 404(a)(6). In further illustration, if the transferor corporation were to establish a qualified plan, and if the plan were maintained as a qualified plan by the acquiring corporation, then any contributions paid under the plan by the acquiring corporation (other than those which are deductible by the transferor corporation by reason of section 404(a)(6)) would be deductible under section 404 by the acquiring corporation even though the plan were exclusively for the benefit of former employees of the transferor corporation. Also, for example, if the transferor corporation were to adopt an annuity plan during its taxable year ending on the date of transfer, the acquiring corporation would be entitled, subject to the provisions of section 401(b) and § 1.401-5, to amend the plan so as to make it retroactively satisfy the requirements of section 401(a)(3), (4), (5), and (6) for the period beginning with the date on which the plan was put into effect.

(c) *Taxable year of deduction.* The first taxable year of the acquiring corporation in which any amount shall be allowed as a deduction to that corporation by reason of section 381(c)(11) and this section shall be its first taxable year ending after the date of distribution or transfer.

(d) *Requirements for deductions.* (1) In order for any amount paid by the acquiring corporation (other than amounts deductible under section 404(a)(5)) to be deductible by the acquiring corporation by reason of this section in respect of a trust or nontrusteed annuity plan which is established by a distributor or transferor corporation and maintained by the acquiring corporation, the contributions must be paid (or deemed to have been paid under section 404(a)(6)) by the acquiring corporation in a taxable year of that corporation which ends with or within a year of the trust for which it is exempt under section 501(a), or, in the case of a nontrusteed annuity plan, for which it meets the requirements of section 404(a)(2). See, however, section 404(a)(4) and § 1.404(a)-11 for rules relating to deductions for contributions to foreign-situs trusts. The trust or plan which is established by the distributor or transferor corporation and maintained by the acquiring

corporation may separately satisfy the requirements of section 401(a) or section 404(a)(2) or may, together with other trusts or plans of the acquiring corporation, constitute a single plan which qualifies under section 401(a) or meets the requirements of section 404(a)(2).

(2) Excess contributions paid under a qualified trust or plan established by the transferor or distributor corporation may be carried over and, subject to the applicable limitations, deducted by the acquiring corporation in a taxable year ending after the date of distribution or transfer regardless of whether the trust is exempt, or the plan meets the requirements of section 404(a)(2), during such taxable year. There are, however, special rules for computing the limitations on the amount of excess contributions which are deductible in a taxable year ending after the trust or plan has terminated (see § 1.404(a)-7, paragraph (e) of § 1.404(a)-9, and paragraph (a) of § 1.404(a)-13). For this purpose, the pension, annuity, stock bonus, or profit-sharing plan of the distributor or transferor corporation under which the excess contributions were made shall be considered continued (and not terminated) by the acquiring corporation if, after the date of distribution or transfer, the acquiring corporation continues the plan as a separate and distinct plan of its own which continues to qualify under section 401(a), or to meet the requirements of section 404(a)(2), or consolidates or replaces that plan with a comparable plan. See subparagraph (4) of this paragraph for rules relating to what constitutes a "comparable" plan.

(3) In order for any amount paid by the acquiring corporation to be deductible by the acquiring corporation as an unused deduction carried over from a qualified profit-sharing or stock bonus trust established by a distributor or transferor corporation, the acquiring corporation must continue such trust established by the distributor or transferor corporation as a separate and distinct trust of its own which continues to qualify under section 401(a), or must consolidate or replace that trust with a comparable trust. In addition the amount paid by the acquiring corporation will be deductible as an unused deduction carried over from the transferor or distributor corporation only if it is paid into the profit-sharing or stock bonus trust established by the transferor or distributor corporation, or the comparable trust, in a taxable year of the acquiring corporation which ends with or within a year of such trust (or such comparable trust) for which it meets the requirements of section 401(a) and is exempt under section 501(a). See subparagraph (4) of this paragraph for rules relating to what constitutes a "comparable" trust.

(4) For purposes of subparagraphs (2) and (3) of this paragraph, a plan under which deductions are determined pursuant to paragraph (1) or (2) of section 404(a) shall be considered comparable to another plan under which deductions are determined pursuant to either of those paragraphs, and a plan under which deductions are determined pursuant to paragraph (3) of section 404(a) shall be considered comparable to another plan under which deductions are determined pursuant to such paragraph (3). Thus, a profit-sharing plan (which qualifies under section 401(a)) established by the transferor or distributor corporation shall, for purposes of subparagraphs (2) and (3) of this paragraph, be considered terminated if, after the date of distribution or transfer, the acquiring corporation transfers the funds accumulated under the profit-sharing plan into a pension plan covering the same employees. In such a case, excess contributions paid under the profit-sharing plan by the distributor or transferor corporation may be carried over and deducted by the acquiring corporation in a taxable year ending after the date of distribution or transfer subject to the limitations in section 404(a)(3)(A) computed in accordance with the rules in paragraph (e)(2) of § 1.404(a)-9 for computing limitations when a profit-sharing plan has terminated. On the other hand, unused deductions attributable to the profit-sharing plan may not be carried over and used by the acquiring corporation as a basis for deducting amounts contributed by it to the pension plan.

(e) *Effect of consolidation or replacement of plan on prior contributions.* If a pension, annuity, stock bonus, or profit-sharing plan which was established by a distributor or transferor corporation is terminated after the date of distribution or transfer because of consolidation or replacement with a comparable plan of the acquiring corporation, then the contributions paid to or under its plan by the distributor or transferor corporation on or before the date of distribution or transfer shall not be disallowed under section 404 merely because of the termination of the plan which was established by that corporation, provided that the termination does not cause the plan to fail to qualify under section 401(a).

(f) *Amounts deductible under section 404.* Section 381(c)(11) and this section apply only to amounts which are otherwise deductible under section 404 and the regulations thereunder. See §§ 1.404(a) through 1.404(d)-1. Thus, to be deductible by reason of this section, contributions paid by the acquiring corporation must be expenses which otherwise satisfy the conditions of section 162 (relating to trade or business expenses). No deduction shall be allowed by reason of section 381(c)(11) and this section for a contribution which is allowable under section 162 but is not allowable under section 404. Thus, the acquiring corporation shall not be allowed a deduction by reason of this section in respect of a plan established by a distributor or transferor corporation if the contribution would not otherwise be deductible under section 404 by reason of section 404(c) and § 1.404(c)-1. On the other hand, any unused deductions or excess contributions of a distributor or transferor corporation which are carried over from 1939 Code years shall be deductible by the acquiring corporation if the requirements of this section, section 404(d), and § 1.404(d)-1 are satisfied.

(g) *Cost of past service credits.* In computing the cost of past service credits under a plan with respect to employees of the distributor or transferor corporation, the acquiring corporation may include the cost of credits for periods during which the employees were in the service of the distributor or transferor corporation.

(h) *Separate carryovers required.* The excess contributions which are available to a distributor or transferor corporation under the provisions of section 404(a)(1)(D) and section 404(a)(3)(A) at the close of the date of distribution or transfer and are carried over to the acquiring corporation under this section shall be kept separate and distinct from each other and from any excess contributions which are available to the distributor or transferor corporation at that time under the provisions of section 404(a)(7) and are carried over to the acquiring corporation under this section. If there are excess contributions carried over to the acquiring corporation from more than one transferor or distributor corporation, the excess contributions of each transferor or distributor corporation shall be kept separate and distinct from those of the other transferor or distributor corporations and, with respect to each such transferor or distributor corporation, shall be kept separate and distinct as provided in the preceding sentence. See, however, paragraph (i) of this section for rules for applying the provisions of section 404(a)(3)(A) when the acquiring corporation maintains two or more profit-sharing or stock bonus trusts, one or more of which was established by a distributor or transferor corporation. The requirements in this paragraph shall apply with respect to any excess contributions which are carried over to the acquiring corporation from a distributor or transferor corporation under the provisions of section 404(d) and this section.

(i) *Limitations applicable to profit-sharing or stock bonus trusts.* When contributions are paid by the acquiring corporation after the date of distribution or transfer to two or more profit-sharing or stock bonus trusts, and one or more of such trusts was established by a distributor or transferor corporation, such trusts shall be considered as a single trust in applying the provisions of section 404(a)(3)(A) under this section. Accordingly, in determining its secondary limitation, and its excess contributions carryover, under section 404(a)(3)(A) and § 1.404(a)-9 in any taxable year ending after the date of distribution or transfer, the acquiring corporation shall take into accounts its primary limitations, and the deductions allowed or allowable to it, for all prior years under the limitations provided in those sections, and also the primary limitations of, and deductions allowed or allowable to, the distributor or transferor corporation or corporations for all prior years under the limitations provided in those sections.

(j) *Successive carryovers.* The provisions of section 381(c)(11) and this section shall apply to an acquiring corporation which, in a distribution or transfer to which section 381(a) applies, acquires the assets of a distributor or transferor corporation which has previously acquired the assets of another corporation in a transaction to which section 381(a) applies, even though, in computing an unused deductions or excess contributions carryover to the second acquiring corporation, it is necessary to take into account contributions paid by, and limitations applicable to, the first distributor or transferor corporation.

(k) *Information to be furnished by acquiring corporation.* The acquiring corporation shall furnish such information with respect to a plan established by a distributor or transferor corporation as will, consistently with the principles of § 1.404(a)-2, establish that the provisions of section 404 and this section apply. For purposes of this section, the district director may require any other information that he considers necessary to determine deductions allowable under section 404 and this section or qualification under section 401. Any unused deductions or excess contributions carried over from a distributor or transferor corporation pursuant to this section shall be properly identified with the corporation which would have been permitted to use those deductions or contributions in the absence of the transaction causing section 381 to apply.

(l) *Illustration.* The application of this section may be illustrated by the following example:

Example. In 1955, X Corporation, which makes its return on the basis of the calendar year, paid $600,000 to completely fund past service credits under a qualified pension plan and deducted 10 percent ($40,000) of that cost in each of the taxable years 1955, 1956, and 1957. The pension plan established by X Corporation had an anniversary date of January 1. On December 31, 1957, on which date the undeducted part of the cost amounted to $280,000, X Corporation transferred all its assets to Y Corporation in a statutory merger to which section 361 applies. Y Corporation, which also makes its return on the basis of the calendar year, had a qualified pension plan and trust which also had an anniversary date of January 1. Since Y Corporation had many more employees than X Corporation on the date of transfer, it covered the former employees of X Corporation under its own plan. Y Corporation is entitled to deductions under section 404(a)(1)(D) and this section in 1958 and succeeding taxable years, in order of time, with respect to the undeducted balance of $280,000, to the extent of the difference between the amount paid and deductible by that corporation in each such taxable year and the maximum amount deductible by that corporation for such taxable year in accordance with the applicable limitations of section 404(a)(1). In computing the maximum amount deductible by Y Corporation for 1958 and 1959 under section 404(a)(1)(C), that corporation may include $40,000 for each year, the amount that X Corporation could have included for each of those years in computing the maximum amount that would have been deductible by X Corporation under section 404(a)(1)(C) if the merger had not occurred. Thus, assuming that Y Corporation's appropriate limitation so computed under section 404(a)(1)(C) is $1,000,000 (including the $40,000 carried over from X Corporation under this section) for each of those taxable years, and that Y Corporation contributed $925,000 to its trust in 1958 and $975,000 in 1959, then Y Corporation is entitled under section 404(a)(1)(D) and this section to deduct in 1958 $75,000, and in 1959 $25,000, of the amount ($280,000) carried over from X Corporation. The undeducted balance of such amount ($180,000) available to Y Corporation on December 31, 1959, would be deductible by that corporation in succeeding taxable years in accordance with section 404(a)(1)(D) and this section.

§ 1.381(c)(20) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; carryover of unused pension trust deductions in certain cases.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • • •

(20) *Carry-over of unused pension trust deductions in certain cases.* Notwithstanding the other provisions of this section, or section 394(a), a corporation which has acquired the properties and assumed the liabilities of a wholly owned subsidiary shall be considered to have succeeded to and to be entitled to take into account contributions of the subsidiary to a pension plan, and shall be considered to be the distributor or transferor corporation after the date of distribution or transfer (but not for taxable years with respect to which this paragraph does not apply) for the purpose of determining the amounts deductible under section 404 with respect to contributions to a pension plan if—

(A) The corporate laws of the State of incorporation of the subsidiary required the surviving corporation in the case of merger to be incorporated under the laws of the State of incorporation of the subsidiary, and

(B) The properties were acquired in a liquidation of the subsidiary in a transaction subject to section 112(b)(6) of the Internal Revenue Code of 1939.

[Sec. 381(c)(20) as added by sec. 1, Act of Jan. 28, 1956 (Pub. Law 396, 84th Cong., 70 Stat. 7)]

[F.R. Doc. 60-11945; Filed, Dec. 23, 1960; 8:48 a.m.]

quest, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

The following regulations, relating to documentary stamp taxes, are hereby prescribed under chapter 34 of the Internal Revenue Code of 1954, as amended, and under those administrative provisions of subtitle F of the Code which have special application to the taxes imposed by such chapter 34. The regulations, except where otherwise specifically provided, are applicable in respect of transactions occurring on or after January 1, 1959, and supersede § 148.1-1 of the Regulations on Certain Excise Tax Matters under Excise Tax Technical Changes Act of 1958 (26 CFR 148.1-1).

Subpart A—Introductory Provisions

Sec.
47.0-1 Introduction.
47.0-2 General definitions and use of terms.
47.0-3 Scope of regulations.
47.0-4 Extent to which the regulations in this part supersede prior regulations.

Subpart B—Tax on Issuance of Capital Stock and Similar Interests

47.4301 Statutory provisions; imposition of tax.
47.4301-1 Imposition of tax on original issue of stock.
47.4301-2 Illustrations.
47.4302 Statutory provisions; stock issued in recapitalization.
47.4302-1 Limitation on tax in case of recapitalization.
47.4303 Statutory provisions; exemptions.
47.4303-1 Exemptions.
47.4304 Statutory provisions; affixing of stamps.
47.4304-1 Affixing of stamps.
47.4305 Statutory provisions; cross references.
47.4305-1 Cross references.

Subpart C—Tax on Issuance of Certificates of Indebtedness

47.4311 Statutory provisions; imposition of tax.
47.4311-1 Imposition of tax on issuance of certificates of indebtedness.
47.4311-2 Illustrations.
47.4312 Statutory provisions; renewal of certificates of indebtedness.
47.4312-1 Tax on renewal of certificates of indebtedness.
47.4313 Statutory provisions; bond as security for debt.
47.4313-1 Bond as security for debt.
47.4314 Statutory provisions; exemption for certain installment obligations.
47.4315 Statutory provisions; cross references.
47.4315-1 Cross references.

Subpart D—Tax on Sales or Transfers of Capital Stock and Similar Interests

47.4321 Statutory provisions; imposition of tax.
47.4321-1 Imposition of tax.
47.4321-2 Illustrations.
47.4321-3 Tax on warrants.
47.4321-4 Cross references.
47.4322 Statutory provisions; exemptions.

[26 CFR (1954) Part 47]

DOCUMENTARY STAMP TAXES

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his re-

Sec.
47.4322–1 Exemptions.
47.4323 Statutory provisions; affixing of stamps.
47.4323–1 Affixing of stamps.
47.4324 Statutory provisions; cross references.
47.4324–1 Cross references.

Subpart E—Tax on Sales or Transfers of Certificates of Indebtedness

47.4331 Statutory provisions; imposition of tax.
47.4331–1 Imposition of tax.
47.4331–2 Illustrations.
47.4331–3 Tax on warrants.
47.4331–4 Records of sales and transfers of certificates of indebtedness.
47.4331–5 Registration of nominees.
47.4331–6 Rules applicable to securities exchanges and clearinghouses.
47.4332 Statutory provisions; exemptions.
47.4332–1 Exemptions.
47.4333 Statutory provisions; cross references.
47.4333–1 Cross references.

Subpart F—Provisions Common to Sales or Transfers of Capital Stock and Certificates of Indebtedness

Exemptions

47.4341 Statutory provisions; transfers as security.
47.4341–1 Transfers as security.
47.4342 Statutory provisions; fiduciaries and custodians.
47.4342–1 Transfers to or by fiduciaries or custodians.
47.4343 Statutory provisions; transfers by operation of law.
47.4343–1 Transfers by operation of law.
47.4344 Statutory provisions; certain other transfers.
47.4344–1 Certain other transfers.
47.4345 Statutory provisions; exemption certificates.
47.4345–1 Exemption certificates.
47.4346 Statutory provisions; cross references.

Miscellaneous Provisions

47.4351 Statutory provisions; definitions.
47.4351–1 Definitions.
47.4352 Statutory provisions; affixing of stamps.
47.4352–1 Affixing of stamps.
47.4353 Statutory provisions; payment of tax through national securities exchanges without use of stamps.
47.4353–1 Payment of tax through national securities exchanges or their clearinghouses.
47.4354 Statutory provisions; cross references.
47.4354–1 Cross references.

Subpart G—Tax on Conveyances

47.4361 Statutory provisions; imposition of tax.
47.4361–1 Imposition of tax.
47.4361–2 Illustrations.
47.4361–3 Affixing of stamps.
47.4362 Statutory provisions; exemptions.
47.4362–1 Exemptions.
47.4363 Statutory provisions; cross references.
47.4363–1 Cross references.

Subpart H—Tax on Policies Issued by Foreign Insurers

47.4371 Statutory provisions; imposition of tax.
47.4371–1 Imposition of tax on policies issued by foreign insurers; scope of tax.
47.4371–2 Rate and computation of tax.
47.4372 Statutory provisions; definitions.
47.4373 Statutory provisions; exemptions.
47.4374 Statutory provisions; affixing of stamps.
47.4374–1 Affixing of stamps.
47.4375 Statutory provisions; cross references.
47.4375–1 Cross references.

Subpart I—Miscellaneous Provisions Applicable to Documentary Stamp Taxes

47.4381 Statutory provisions; definitions.
47.4381–1 Definitions.
47.4382 Statutory provisions; exemptions.
47.4382–1 Exemptions.
47.4383 Statutory provisions; certain changes in partnerships.
47.4383–1 Certain changes in partnerships.
47.4384 Statutory provisions; liability for tax.
47.4384–1 Liability for tax.

Subpart J—Administrative Provisions Applicable to Documentary Stamp Taxes

47.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.
47.6001–1 Records of sales and transfers of stock.
47.6001–2 Records with respect to foreign insurance policies.
47.6801 Statutory provisions; authority for establishment, alteration, and distribution.
47.6801–1 Establishment of meter machines and stamps.
47.6802 Statutory provisions; supply and distribution.
47.6802–1 Where stamps may be purchased and where requisition forms for the purchase of such stamps may be obtained and filed.
47.6804 Statutory provisions; attachment and cancellation.
47.6804–1 Stamps to be used and denominations thereof.
47.6804–2 Cancellation of stamps.
47.6805 Statutory provisions; redemption of stamps.
47.7208 Statutory provisions; offenses relating to stamps.
47.7209 Statutory provisions; unauthorized use or sale of stamps.
47.7209–1 Use or resale of unused stamps.
47.7270 Statutory provisions; insurance policies.
47.7271 Statutory provisions; penalties for offenses relating to stamps.
47.7271–1 Cross references.
47.7701 Statutory provisions; definitions.
47.7805 Statutory provisions; rules and regulations.
47.7805–1 Promulgation of regulations.

Subpart A—Introductory Provisions

§ 47.0–1 Introduction.

(a) *In general.* The regulations in this part (Part 47, Subchapter D, Chapter I, Title 26 (1954) Code of Federal Regulations) are designated "Documentary Stamp Tax Regulations". The regulations relate to the taxes imposed by chapter 34 of the Internal Revenue Code of 1954, as amended, and to certain related administrative provisions of subtitle F of such Code. Chapter 34 of the Code imposes a tax on the issuance and on the sale or transfer of shares or certificates of stock or certificates of indebtedness, on conveyances of realty, and on policies issued by foreign insurers. References in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

(b) *Division of regulations.* The regulations in this part are divided into 10 subparts. Subpart A contains provisions relating to the arrangement and numbering of the sections of the regulations in this part, general definitions and use of terms, scope of regulations, and the extent to which the regulations in this part supersede prior regulations relating to the excise taxes imposed by chapter 34 of the Internal Revenue Code. The other subparts of the regulations in this part and the subject matter to which they relate are as follows:

Subpart B—Tax on issuance of capital stock and similar interests

Subpart C—Tax on issuance of certificates of indebtedness

Subpart D—Tax on sales or transfers of capital stock and similar interests

Subpart E—Tax on sales or transfers of certificates of indebtedness

Subpart F—Provisions common to sales or transfers of capital stock and certificates of indebtedness

Subpart G—Tax on conveyances

Subpart H—Tax on policies issued by foreign insurers

Subpart I—Miscellaneous provisions applicable to documentary stamp taxes

Subpart J—Administrative provisions applicable to documentary stamp taxes

(c) *Arrangement and numbering.* Each section of the regulations in Subpart B through Subpart J is preceded by the section, subsection, or paragraph of the Internal Revenue Code which it interprets. The sections of the regulations can readily be distinguished from the sections of the Code since—

(1) The sections of the regulations are printed in larger type;

(2) The sections of the regulations are preceded by a section symbol and the part number, arabic numeral 47 followed by a decimal point (§ 47.); and

(3) The sections of the Code are preceded by "Sec.".

Each section of the regulations setting forth law or regulation is designated by a number composed of the part number followed by a decimal point (47.) and the number of the corresponding provision of the Internal Revenue Code. In the case of a section setting forth regulations, this designation is followed by a hyphen (-) and a number identifying such section.

§ 47.0–2 General definitions and use of terms.

(a) *In general.* As used in the regulations in this part, unless otherwise expressly indicated—

(1) The terms defined in the provisions of law contained in the regulations in this part shall have the meanings so assigned to them.

(2) The Internal Revenue Code of 1954 means the Act approved August 16, 1954 (68a Stat.), entitled "An Act to revise the internal revenue laws of the United States", as amended.

(3) District director means district director of internal revenue. The term also includes the Director of International Operations in all cases where the authority to perform the functions which may be performed by a district director has been delegated to the Director of International Operations.

(4) The terms "stamp tax" and "stamp taxes" generally mean any one or all of the stamp taxes which constitute the subject of the regulations in this part.

(5) The term "documentary stamps" means all stamps issued for use in payment of stamp taxes imposed by chapter 34 of the Internal Revenue Code, including stamps issued by authorized meter machines. See § 47.6801–1.

(6) The cross references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience and shall be given no legal effect.

(b) *Cross references.* For other definitions, see section 4381, § 47.4381–1, and section 7701 (§ 47.7701).

§ 47.0–3 Scope of regulations.

The regulations in this part relate to the documentary stamp taxes referred to in subparts B through H (see paragraph (b) of § 47.0–1) and, except where otherwise specifically provided, have application to transactions occurring on or after January 1, 1959. The provisions of the Internal Revenue Code set forth in the regulations in this part are, unless otherwise indicated, provisions of law in effect on January 1, 1959.

§ 47.0–4 Extent to which the regulations in this part supersede prior regulations.

The regulations in this part, with respect to the subject matter within the scope thereof, suspersede the Documentary Stamp Tax Regulations contained in Part 43 of this chapter.

Subpart B—Tax on Issuance of Capital Stock and Similar Interests

§ 47.4301 Statutory provisions; imposition of tax.

Sec. 4301 *Imposition of tax.* There is hereby imposed, on each original issue of shares or certificates of stock issued by a corporation (whether on organization or reorganization), a tax at the rate of 10 cents on each $100 (or major fraction thereof) of the actual value of the certificates (or of the shares where no certificates are issued); except that such rate shall be 4 cents instead of 10 cents in the case of shares or certificates issued by a corporation to which subchapter M of chapter 1 applies for the taxable year during which such share or certificate is issued. The tax imposed by this section shall be computed on the basis of all certificates (or shares) so issued by the corporation on each day.

[Sec. 4301 as amended and in effect Jan. 1, 1959, and as further amended by Act of Apr. 8, 1960 (Pub. Law 86–416, 74 Stat. 36)]

§ 47.4301–1 Imposition of the tax on original issue of stock.

(a) *Scope of tax*—(1) *In general.* Section 4301 imposes a tax on each original issue of shares or certificates of stock issued by a domestic corporation. See section 4381(b) and paragraph (b) of § 47.4381–1 and section 4381(c) and paragraph (c) of § 47.4381–1, respectively, for definitions of the terms "corporation" and "shares or certificates of stock". In the case of subscriptions, stock is deemed to be issued when the subscription is accepted. The tax applies to each original issue of the shares or certificates, whether upon organization, reorganization, or otherwise, regardless of the purpose of the issue, the person to whom issued, or the time of delivery. Thus, the tax applies to shares or certificates issued in a recapitalization where the recapitalization results in the dedication of an amount as capital for the first time (see § 47.4302–1).

(2) *Original issue.* An original issue of stock means any issue of shares or certificates of stock which reflects in whole or in part the addition of an amount to the capital stock account.

(b) *Rate and computation of tax*—(1) *Rate of tax*—(i) *In general.* Except as otherwise provided in subdivision (ii) of this subparagraph, the rate of tax is 10 cents on each $100 (or major fraction thereof) of the actual value of the certificates (or of the shares where no certificates are issued).

(ii) *Regulated investment companies.* In the case of shares or certificates issued on or after April 9, 1960, by a corporation to which subchapter M of chapter 1 of the Code applies for the taxable year during which such shares or certificates are issued, the rate of tax is 4 cents on each $100 (or major fraction thereof) of the actual value of the certificates (or of the shares where no certificates are issued). The term "taxable year", as used in this subdivision, has the same meaning as when used in subchapter M of chapter 1 of the Code and the regulations thereunder. In the case of a newly created company which has filed its notification of registration with the Securities and Exchange Commission pursuant to the provisions of the Investment Company Act of 1940, the 4-cent rate will apply if—

(a) The company has notified its stockholders in writing that it intends to elect to be taxed, for Federal income tax purposes, as a regulated investment company, and

(b) The company qualifies to be taxed as a regulated investment company for the taxable year. If tax is computed at the 4-cent rate in respect of shares or certificates issued by a newly created company, or by a company which qualified as a regulated investment company for one or more taxable years immediately preceding the taxable year in which the shares or certificates were issued, such shares or certificates shall be subject to tax at the 10-cent rate if the company fails to qualify as a regulated investment company for such taxable year.

(iii) *Major fraction.* A major fraction of $100 is any amount in excess of $50 and less than $100.

(2) *Computation of tax*—(i) *In general.* A single computation of tax must be made with respect to the certificates (and shares which are not represented by certificates) issued by a corporation on each day. The amount of tax imposed under section 4301 in respect of shares or certificates issued by a corporation on a particular day is computed by ascertaining the actual value of all certificates (and shares which are not represented by certificates) issued on such day and applying to such actual value the applicable rate of tax.

(ii) *Actual value.* (a) In general, the actual value of stock is the fair market value of the stock. Fair market value of stock is considered to be the price agreed upon by the parties to the issuance to be paid for the stock unless the price includes property or services or the issuance transaction is not an arm's length transaction or is subject to special conditions which result in a price not reflecting the value of the stock as such value would be determined by reference to the mean selling price of the stock on the open market or to all the facts and circumstances of the case. In the absence of a price agreed upon by the parties or if the price agreed upon includes property or services, results from a transaction not at arm's length, or is affected by special conditions, the fair market value of each share of stock issued on a particular day shall be considered to be the mean between the high and low selling prices of the stock on the open market for such day. Thus, the price to be paid for stock to be issued by reason of the exercise of a stock option in a case where the option price is less than the mean selling price of the stock on the open market may not be used in ascertaining the value of the stock so issued for the reason that the transaction is subject to special conditions which result in the option price not reflecting the mean selling price of the stock. If the fair market value of the stock cannot be determined by reference to the price of the stock agreed upon by the parties or the mean between the high and low selling prices thereof on the open market, the fair market value shall be determined on the basis of all the facts and circumstances of the particular case.

(b) In the case of a unit offering by a corporation, as, for example, a share of stock and a certificate of indebtedness, the fair market value of the stock shall be considered to be the mean between the high and low selling prices of the stock on the open market for the day of issuance if such stock is being traded on the open market other than as a part of such a unit offering. Thus, the actual value and the face value of the certificate of indebtedness are to be disregarded for purposes of determining the value of the stock. If the fair market value of the stock cannot be determined by reference to the mean between the high and low selling prices thereof on the open market, the fair market value shall be determined on the basis of all the facts and circumstances of the particular case. The provisions of this subdivision (b) shall have application only to shares or certificates of stock, constituting a part of a unit offering, issued on or after the tenth day following the date of publication of the regulations in this part in the FEDERAL REGISTER.

§ 47.4301–2 Illustrations.

(a) *Issues subject to tax.* The following are examples of issues subject to the tax:

(1) Certificates or shares representing beneficial interests in any organization

which is a corporation within the meaning of section 4381(b) or section 7701(a)(3).

(2) Stock issued for property, real or personal, or for the purpose of purchasing a business.

(3) Stock issued by joint-stock land banks.

(4) Stock issued as a dividend. (For limitation of tax, see § 47.4302–1.)

(5) Temporary or interim certificates.

(6) The issue of a fractional share, or a certificate for a fractional share, of stock (see, however, paragraph (b)(6) of this section).

(7) Stock issued upon exercise of a warrant or rights entitling the holder to subscribe for unissued stock (see paragraph (a) of § 47.4321–3).

(8) Stock issued in connection with a consolidation by a consolidated corporation in exchange for stock of the consolidating corporations whether issued directly to the consolidating corporations or to the stockholders of the consolidating corporations (see also paragraph (a)(9) of § 47.4321–2 relating to the imposition of the stock transfer tax where the stock is issued directly to the stockholders). For exemption from tax in respect of issuances of stock to make effective a plan of reorganization or adjustment whereby a mere change in identity, form, or place of organization is affected, see paragraph (d) of § 47.4382–1.

(9) Stock issued in connection with a merger by the continuing corporation whether issued directly to the merging corporation or to the stockholders of the merging corporation (see also paragraph (a)(9) of § 47.4321–2) and stock issued to the stockholders of the continuing corporation in a recapitalization under section 4302 which results in the dedication of an amount as capital which amount is so dedicated for the first time. For exemption from tax in respect of issuances of stock to make effective a plan of reorganization or adjustment whereby a mere change in identity, form, or place of organization is effected, see paragraph (d) of § 47.4382–1.

(10) Stock issued outside the United States by a domestic corporation.

(11) A business property investment certificate, wherein it is certified that the holder thereof is the owner of an interest in certain specified property, legal title to which has been previously conveyed to a trustee, and whereby the issuing corporation agrees to manage the property and distribute the proceeds.

(12) Stock issued where the capital stock account, although not increased at the time of such issuance, was previously increased by a dedication of an amount as capital for the first time which was not accompanied by an issuance of shares or certificates of stock and with respect to which there has been no other issuance of shares or certificates of stock.

(b) *Issues not subject to tax.* In addition to the various issues specifically exempt under sections 4303 and 4382, the following are examples of issues not subject to the tax:

(1) The issue of warrants or rights to subscribe for unissued stock (see, however, § 47.4321–3).

(2) The issue of certificates of stock in exchange for outstanding certificates representating the same stock as, for instance, to reflect a change in the name of the issuing corporation or to secure several certificates for one certificate, or vice versa.

(3) The issue of voting-trust certificates.

(4) The issue of definitive certificates of stock in exchange for temporary or interim certificates upon the issuance of which the tax has been paid.

(5) The issue of stock in a recapitalization or reorganization where there is no dedication of additional capital, either by transfer of earned surplus or otherwise (see, however, paragraph (b) of § 47.4302–1).

(6) Stock issued on the surrender of fractional shares or certificates for fractional shares of stock (see, however, paragraph (a)(6) of this section).

(7) The issue in the United States of stock of a foreign corporation.

(8) The issue of stock to effect a mere split in outstanding shares without any increase in the issuing corporation's capital stock account. See, however, paragraph (a)(12) of this section.

(9) The issue of one type of stock for another type of stock and in which the new stock does not reflect the addition of an amount to the capital stock account.

§ 47.4302 Statutory provisions; stock issued in recapitalization.

SEC. 4302 *Recapitalization.* In the case of a recapitalization, the tax imposed by section 4301 shall be that proportion of the tax computed on the certificates (or on the shares where no certificates are issued) issued in the recapitalization that (1) the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to (2) the total actual value of such certificates or shares issued in the recapitalization.

[Sec. 4302 as amended and in effect Jan. 1, 1959]

§ 47.4302–1 Limitation on tax in case of recapitalization.

(a) *In general.* Where stock is issued in a recapitalization, the tax payable is that proportion of the total tax imposed by section 4301 computed with respect to all the shares or certificates issued in the recapitalization that the amount dedicated as capital for the first time by the recapitalization, whether by a transfer of earned surplus or otherwise, bears to the total actual value of the shares or certificates so issued.

(b) *Dedication of capital for first time.* A tax is not payable with respect to stock issued in a recapitalization unless the recapitalization results in the dedication of an amount as capital which amount is so dedicated for the first time. Thus, where a corporation transferred an amount from the capital stock account to capital surplus in a prior recapitalization, and such corporation in a subsequent or second recapitalization transfers such amount from capital surplus to the capital stock account under such circumstances that the amount so restored to the capital stock account is clearly identifiable, a tax is not payable with respect to the amount so rededicated as capital. If the amount transferred to the capital stock account from capital surplus cannot be clearly identified as having been previously dedicated to the capital stock account, the portion of the amount so transferred which is attributable to the amount in capital surplus not previously dedicated to capital is considered to be the amount dedicated to capital for the first time, and tax will be imposed with respect thereto. The amount so transferred which is attributable to the amount in capital surplus not previously dedicated to capital is that proportion of the total amount so transferred that the amount in the capital surplus account before such transferred not previously dedicated to capital bears to the total amount in the capital surplus account before such transfer not preals payable with respect to a transfer of capital surplus to the capital stock account by way of a recapitalization where the amount so transferred can be clearly identified as not having been previously dedicated as capital.

(c) *Examples of computation of tax in a recapitalization.* The computation of tax in a recapitalization may be illustrated by the following examples:

Example (1). Corporation A has outstanding 10,000 shares of common stock having a stated value of $50 per share and has an earned surplus of $1,500,000. Corporation A declares a stock dividend of one share for each share outstanding and issues shares pursuant thereto. As a part of the transaction, $500,000 is transferred from earned surplus to the capital stock account. The actual value of the 10,000 shares issued in the recapitalization is $2,000,000, and the tax computed on $2,000,000 would be $2,000. $\frac{\$500,000}{\$2,000,000} \times \$2,000$ or $500 is the portion of the tax computed on the shares issued in the recapitalization which is considered under section 4302 to be attributable to the amount dedicated to capital for the first time. The tax imposed on the shares issued in such recapitalization is, therefore, $500.

Example (2). Corporation B has outstanding 1,000 shares of no par common stock with a stated value of $20 per share which is shown in the capital stock account in the amount of $20,000. Corporation B also maintains an account designated "capital surplus" which consists of $100,000, of which $75,000 is attributable to paid-in-surplus and $25,000 is attributable to a reduction in the capital stock account. Corporation B issues to its shareholders for each share outstanding one additional share of no par common stock and one share of preferred stock having a par value of $30 per share, for which each shareholder pays the corporation $5 for each share held by him. As a part of such transaction, the capital stock account is increased to $60,000, consisting of $5,000 received from the shareholders, the transfer of $25,000 from capital surplus, and the transfer of $10,000 from earned surplus. The stated value of the no par common stock is reduced from $20 per share to $15 per share. Since $75,000 of the amount in the capital surplus account has not been previously dedicated to the capital stock account, $\frac{\$75,000}{\$100,000}$ or ¾ of $25,000 ($18,750) is the portion of the amount transferred to the capital stock account

from capital surplus considered to be dedicated to capital for the first time. The $10,000 transferred from earned surplus and the $5,000 received from shareholders are clearly identified as having never been previously taxed. The total amount, therefore, considered to be dedicated to capital for the first time is $33,750. The 2,000 shares of stock issued have an actual value of $130,000, and the tax computed on such amount would be $130. Applying the formula provided in section 4302, $\frac{\$33,750}{\$130,000} \times 130$ or $33.75 is the portion of the tax computed on all shares issued in the recapitalization which is attributable to the amount dedicated to capital for the first time. The tax imposed on the shares issued in such recapitalization is, therefore, $33.75.

(d) *Recapitalization as part of other transaction.* Where a recapitalization is effected in connection with, or as part of, some other transaction, for example, an original or an additional issue of stock, a merger, etc., the limitation of the tax payable to the proportion specified in this section applies only to the stock issued in that part of the transaction which constitutes a recapitalization. Thus, where a corporation makes a change in its capital structure by transferring to the capital stock account a portion of its earned surplus and replacing an issue of stock with another issue of stock and at the same time disposes of part of the new stock by sale to underwriters, the tax limitation is applicable only to that portion of the new stock which is issued in exchange for the old stock retired thereby. In such case, the portion of the new stock sold to the underwriters is taxable in its entirety without any adjustment on account of the recapitalization. Similarly, where a corporation retires its preferred stock by transferring to the capital stock account a portion of its earned surplus and issuing common stock in exchange therefor, and such exchange is made in connection with a merger in which the corporation issues common stock also to the former stockholders of the merged company, the tax limitation is applicable only to the common stock issued in exchange for the preferred stock, and the shares or certificates of common stock issued to the former stockholders of the merged company are subject to tax without any adjustment on account of the recapitalization.

§ 47.4303 Statutory provisions; exemptions.

SEC. 4303 *Exemptions*—(a) *Common trust funds.* The tax imposed by section 4301 shall not apply to the issue of shares or certificates of a common trust fund, as defined in section 584.

(b) *Pooled investment funds.* The tax imposed by section 4301 shall not apply to the issue of shares or certificates of a fund maintained by a bank exclusively for the collective investment and reinvestment of assets of qualified trusts (within the meaning of section 401, relating to qualified pension, profit-sharing, and stock bonus plans).

(c) *Installment purchases of certain shares or certificates.* The tax imposed by section 4301 shall not apply to shares or certificates issued by a corporation pursuant to an installment purchase agreement which provides that—

(1) The periodic payments by the purchaser will be applied (as received by the corporation) solely to the acquisition of shares or certificates in specified other corporations (and in specified percentages), and

(2) The corporation will transfer to the purchaser, on or before the termination of the agreement, all shares or certificates in other corporations acquired by it for the purchaser.

For the purposes of the preceding sentence, the term "purchaser" includes a successor in interest of the purchaser.

(d) *Other exemptions.* For other exemptions, see section 4382.

[Sec. 4303 amended and in effect Jan. 1, 1959]

§ 47.4303–1 Exemptions.

(a) *Common trust funds.* For regulations under section 584, see Part 1 of this chapter (Income Tax Regulations).

(b) *Pooled investment funds.* Section 4303(b) exempts from the tax imposed by section 4301 the issue of shares or certificates of stock of a fund maintained by a bank exclusively for the collective investment and reinvestment of assets of trusts which are qualified trusts within the meaning of section 401, relating to qualified pension, profit-sharing, and stock bonus plans. The exemption applies to such issue of shares or certificates regardless of the capacity in which the bank holds those assets of the qualifying trusts which have been pooled for the purpose of collective investment or reinvestment. For regulations under section 401, see Part 1 of this chapter (Income Tax Regulations).

(c) *Installment purchases of certain shares or certificates.* Section 4303(c) exempts from the tax imposed by section 4301, under certain circumstances, shares or certificates of stock issued by a corporation pursuant to an installment purchase agreement. The exemption has application only if the installment purchase agreement provides that:

(1) The periodic payments required to be made by the purchaser under the installment purchase agreement will be applied, as received by the corporation, solely to the acquisition of shares or certificates of stock in other corporations which are designated in the agreement and that the periodic payments will be so applied in accordance with the specified percentages set forth in the agreement, and

(2) The corporation, on or before the termination of the installment purchase agreement, will transfer to the purchaser all shares or certificates of stock in the designated corporations which were acquired by it for such purchaser pursuant to such agreement.

The exemption will have application only if all of the foregoing conditions are met. The exemption will not apply, for example, if the corporation has an option, under the installment purchase agreement or otherwise, to distribute cash in lieu of the stock purchased for the purchaser. However, the exemption will apply if the purchaser has the option to receive cash in lieu of the stock purchased for him. For purposes of subparagraph (1) of this paragraph, periodic payments will be considered as being applied "solely to the acquisition of shares or certificates of stock in other corporations" notwithstanding that the agreement authorizes the corporation to apply a portion of such payments to cover loading charges or to retain amounts insufficient to purchase a full share of stock. For purposes of section 4303(c) and this paragraph, the term "purchaser" includes a successor in interest of the purchaser.

§ 47.4304 Statutory provisions; affixing of stamps.

SEC. 4304 *Affixing of stamps.* The stamps representing the tax imposed by section 4301 shall be affixed to the stock books or corresponding records of the organization and not to the certificates issued.

[Sec. 4304 as originally enacted and in effect Jan. 1, 1959]

§ 47.4304–1 Affixing of stamps.

(a) *Documentary stamps.* Only documentary stamps shall be used in payment of the tax imposed by section 4301. The requisite stamps shall be affixed to the stock books or corresponding records of the corporation, and not to the certificates issued. See §§ 47.6804–1 and 47.6804–2 for appropriate use, denominations, and cancellation of such stamps.

(b) *Purchase of documentary stamps.* Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802–1. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801 (§ 47.6801), 6802 (§ 47.6802), and 6805 (§ 47.6805), and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration), and § 47.6801–1.

§ 47.4305 Statutory provisions; cross references.

SEC. 4305 *Cross references.* For definitions, penalties, and other general and administrative provisions applicable to this part, see sections 4381 and 4384 and subtitle F.

[Sec. 4305 as amended and in effect Jan. 1, 1959]

§ 47.4305–1 Cross references.

(a) For definitions, see section 4381, § 47.4381–1, and section 7701 (§ 47.7701).

(b) For penalties, see section 7271 and § 47.7271–1.

(c) For other general and administrative provisions, see section 4384, § 47.4384–1, Subpart J, and the applicable sections of subtitle F and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Subpart C—Tax on Issuance of Certificates of Indebtedness

§ 47.4311 Statutory provisions; imposition of tax.

SEC. 4311 *Imposition of tax.* There is hereby imposed, on all certificates of indebtedness issued by a corporation, a tax at the rate of 11 cents on each $100 of face value or fraction thereof.

[Sec. 4311 as amended and in effect Jan. 1, 1959]

§ 47.4311–1 Imposition of tax on issuance of certificates of indebtedness.

(a) *Scope of tax.* Section 4311 imposes a tax on the issue within the territorial jurisdiction of the United States

by any corporation of certificates of indebtedness as defined in section 4381(a) and paragraph (a) of § 47.4381–1. See section 4381(b) and paragraph (b) of § 47.4381–1 for definition of the term "corporation". Every renewal of a certificate of indebtedness is subject to tax as a new issue (see § 47.4312–1). A certificate of indebtedness is issued within the meaning of the law at the time it is delivered so as to constitute an obligation of the issuer.

(b) *Rate and computation of tax.* The rate of tax is 11 cents on each $100 or fraction thereof of the face value of each certificate of indebtedness; except that, where a certificate conditioned for the repayment or payment of money is given in a penal sum, greater than the debt secured, the tax is based upon the amount secured (see section 4313). A separate computation of tax must be made with respect to each certificate of indebtedness regardless of the number of certificates which may be issued in a single transaction. For example, the tax on the issuance of a certificate having a face value of $1,000 is $1.10. The tax on the issuance of 2 certificates having a face value of $50 each is 22 cents, that is, 11 cents on each certificate, whether the certificates are issued to the same person or to different persons.

(c) *Affixing of stamps.* (1) The requisite documentary stamps shall be affixed either to the certificates of indebtedness or to the indenture or agreement under which they are issued. If the stamps are affixed to the indenture or agreement, the certificate must bear a legend showing that the proper documentary stamps have been affixed to the indenture or agreement and duly cancelled. If the indenture provides for the issue of certificates over a period of years, the requisite stamps may be affixed at the time of each issue. Only documentary stamps shall be used in payment of the tax imposed by section 4311. See §§ 47.6804–1 and 47.6804–2 for the appropriate use, denominations, and cancellation of such stamps.

(2) Documentary stamps may be purchased, and requisitions for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802–1. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801 (§ 47.6801), 6802 (§ 47.6802), and 6805 (§ 47.6805), and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration), and § 47.6801–1.

§ 47.4311–2 Illustrations.

(a) *Issues subject to tax.* The following are examples of corporate instruments taxable upon issue:

(1) A bond secured by a real estate mortgage.

(2) A bond delivered to a bank or trust company as security for the payment of an obligation.

(3) Bonds executed outside the United States by a foreign corporation and delivered in the United States.

(4) Interim certificates or temporary bonds issued in lieu of definitive bonds. However, no additional tax is due on the issuance of the corresponding permanent or definitive bonds, but each of such permanent or definitive bonds must bear notation of the fact that requisite stamps were duly affixed to the interim certificates or temporary bonds or to the indenture or agreement under which such interim certificates or temporary bonds were issued.

(5) Equipment trust certificates.

(6) Any certificate of indebtedness issued by any receiver, trustee in bankruptcy, assignee, or other person, having custody of property, or charge of the affairs of any corporation (see section 4381(b)).

(b) *Issues not subject to tax.* In addition to the various issues specifically exempt under sections 4314(a) and 4382, the following are examples of instruments not taxable upon issue:

(1) An instrument issued by an individual or partnership.

(2) An instrument merely representing the assignment of an interest in a bond (see, however, § 47.4331–1 and paragraph (b) of § 47.4351–1).

(3) Bonds issued in exchange for outstanding bonds of different denominations but of the same kind, the same total face amount, and the same maturity date.

(4) Permanent or definitive bonds issued in exchange for interim certificates or temporary bonds representing the same obligation (see, however, paragraph (a)(4) of this section).

(5) A certificate of deposit issued by a bank, whether or not negotiable, and whether payable on demand or at some specified time; and a certificate of deposit issued by an organization operating under the Morris Plan.

(6) Indemnity, fidelity, and surety bonds.

(7) A business property investment certificate, wherein it is certified that the holder thereof is the owner of an interest in certain specified property, legal title to which has been previously conveyed to a trustee, and whereby the issuing corporation agrees to manage the property and distribute the proceeds. However, such instrument is subject to the tax imposed by section 4301 (see paragraph (a)(11) of § 47.4301–2).

(8) A bond issued by a trust company on behalf of the estate of a decedent for which it is acting as executor or administrator, provided the certificate is issued solely on the credit of the estate.

(9) A warrant granting the right to purchase unissued bonds (see § 47.4331–3).

§ 47.4312 Statutory provisions; renewal of certificates of indebtedness.

SEC. 4312 *Renewals.* Every renewal of any certificate of indebtedness shall be taxed as a new issue.

[Sec. 4312 as redesignated and in effect Jan. 1, 1959]

§ 47.4312–1 Tax on renewal of certificates of indebtedness.

Every renewal of a certificate of indebtedness is subject to the tax imposed by section 4311 as a new issue. Whenever there is such a material change in the obligation as to constitute a new obligation, as, for example, an extension of maturity date or a change in the interest rate of the outstanding certificate of indebtedness, such change constitutes a renewal subject to tax as a new issue. The time when the original certificate was issued is immaterial.

Likewise, the time when the certificate is renewed, whether before or after the original date of maturity, is immaterial. A tax liability is not dependent upon use of any particular form of instrument to effect the renewal. The renewal may, for example, be evidenced by a notation on the original certificate, by a collateral agreement, or by an extension agreement.

§ 47.4313 Statutory provisions; bond as security for debt.

SEC. 4313 *Bond as security for debt.* In the case where a bond conditioned for the repayment or payment of money is given in a penal sum greater than the debt secured, the tax imposed by section 4311 shall be based upon the amount secured.

[Sec. 4313 as redesignated and in effect Jan. 1, 1959]

§ 47.4313–1 Bond as security for debt.

For the effect of section 4313 on the computation of the tax, see paragraph (b) of §47.4311–1.

§ 47.4314 Statutory provisions; exemption for certain installment obligations.

SEC. 4314 *Exemptions*—(a) *Installment purchase of obligations.* The tax imposed by section 4311 shall not apply to any instrument under the terms of which the obligee is required to make payment therefor in installments and is not permitted to make in any year a payment of more than 20 percent of the cash amount to which entitled upon maturity of the instrument.

(b) *Other exemptions.* For other exemptions, see section 4382.

[Sec. 4314 as redesignated and in effect Jan. 1, 1959]

§ 47.4315 Statutory provisions; cross references.

SEC. 4315 *Cross references.* For definitions, penalties, and other general and administrative provisions applicable to this part, see sections 4381 and 4384 and subtitle F.

[Sec. 4315 as redesignated and amended and in effect Jan. 1, 1959]

§ 47.4315–1 Cross references.

(a) For definitions, see section 4381, § 47.4381–1, and section 7701 (§ 47.7701).

(b) For penalties, see section 7271 and § 47.7271–1.

(c) For other general and administrative provisions, see section 4384, § 47.4384–1, Subpart J, and the applicable sections of subtitle F and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Subpart D—Tax on Sales or Transfers of Capital Stock and Similar Interests

§ 47.4321 Statutory provisions; imposition of tax.

SEC. 4321 *Imposition of tax.* There is hereby imposed on each sale or transfer of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation, a tax at the rate of 4 cents on each $100 (or major fraction thereof) of the actual value of the certificates, of the shares where no certificates are sold or transferred, or of the rights, as the case may be. In no case shall the tax so imposed on any such sale or transfer be—

(1) More than 8 cents on each share, or

(2) Less than 4 cents on the sale or transfer.

[Sec. 4321 as amended and in effect Jan. 1, 1959, and as further amended by sec. 5(a), Act of Sept. 21, 1959 (Pub. Law 86–344, 73 Stat. 619)]

§ 47.4321–1 Imposition of tax.

(a) *Scope of tax.* Section 4321 imposes a tax on each sale or transfer (as defined in section 4351(b)), within the territorial jurisdiction of the United States of shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, issued by a corporation. As to sales or transfers of warrants to subscribe for or to purchase stock, see § 47.4321–3. The tax applies to the specified dealings or transactions in stock, whether occurring before, after, or without the issuance of a certificate. The tax attaches at the time of making the sale or transfer, regardless of the time or manner of delivery of the certificate, agreement, or memorandum of sale. For requirements as to the making and keeping of records of such sales or transfers, see §§ 47.4352–1 and 47.6001–1. See section 4381 and § 47.4381–1 for definitions of the terms "corporation" and "shares or certificates of stock". For purposes of the tax imposed by section 4321, the term "stock", as used in the regulations in this part, includes shares or certificates of stock and rights to subscribe for or to receive such shares or certificates.

(b) *Rate and computation of tax*—(1) *Computation.* Where, by sale or transfer, stock of the same class issued by one corporation is transferred from a single transferor to a single transferee, the tax is computed on the basis of the aggregate actual value of all the shares transferred. Where there are two or more transferors or two or more transferees, or where in a single transaction transfer is made of the stock of two or more corporations or of two or more classes issued by a single corporation, a separate tax computation must be made with respect to each transferor and each transferee and with respect to the stock of each corporation and the stock of each class issued by a single corporation. The foregoing rule may be illustrated by the following examples:

Example (1). A, owning 25 shares of common stock and 25 shares of preferred stock of the X Corporation, and 50 shares of the common stock of the Y Corporation, transfers all the stock by delivering the certificates to B. In this situation, there are three distinct transactions, namely, a transfer of 25 shares of common stock of the X Corporation, a transfer of 25 shares of preferred stock of the X Corporation, and a transfer of 50 shares of common stock of the Y Corporation, and the tax is computed, in the case of each transfer, upon the actual value of the stock.

Example (2). A, owning 100 shares of stock in the X Corporation represented by one or more certificates, sells 50 shares each to B and C. To that end, A sends his certificate or certificates to the transfer agent with instructions to issue one or more certificates aggregating 50 shares to each purchaser. In this situation, there are two distinct transactions, namely, two sales of 50 shares of stock each, and the tax is computed upon the actual value of the stock transferred to each purchaser.

Example (3). A and B, each owning 50 shares of stock in the X Corporation represented in each case by one or more certificates, make a gift of their stock to C. To that end, they send their certificates to the transfer agent with instructions to issue to the donee one or more certificates for the entire 100 shares. In this situation, there are likewise two distinct transactions, namely, two gifts of 50 shares of stock each, and a separate computation must be made with respect to each gift.

(2) *Rate of tax*—(i) *In general.* The rate of tax applicable to each sale or transfer of shares or certificates of stock or of rights to subscribe for or to receive shares or certificates of stock is 4 cents on each $100 (or major fraction thereof) of the actual value of the certificates, of the shares where no certificates are sold or transferred, or of the rights. In no case, however, shall the tax imposed on any such sale or transfer be—

(*a*) More than 8 cents on each share sold or transferred or, in the case of the sale or transfer of rights to subscribe for or to receive shares or certificates of stock, more than 8 cents in respect of each share covered by such rights, or

(*b*) Less than 4 cents on any one sale or transfer.

(ii) *Exception in the case of rights sold or transferred prior to November 1, 1959.* The rate of tax applicable in respect of any sale or transfer, prior to November 1, 1959, of rights to subscribe for or to receive shares or certificates of stock is 4 cents on each $100 (or major fraction thereof) of the actual value of the stock to which the rights relate. However, the provisions of subdivision (i) (*a*) (insofar as they relate to rights) and (*b*) of this subparagraph are applicable in computing the maximum and minimum amount of tax imposed on any sale or transfer of rights to which this subdivision has application.

(iii) *Major fraction.* A major fraction of $100 is any amount in excess of $50 and less than $100.

(3) *Actual value.* The principles set forth in paragraph (b)(2)(ii) of § 47.4301–1 for determining the actual value of shares or certificates of stock issued are equally applicable for purposes of determining the actual value of shares or certificates of stock, or rights thereto, sold or transferred.

(4) *Examples of computation.* The computation of the tax imposed by section 4321 may be illustrated by the following examples:

Example (1). A sells to B 100 shares of stock of the X Corporation having an actual value of $10,000 and gives to B 10 shares of stock of the Y Corporation having an actual value of $2,560. A separate computation must be made with respect to the stock of each corporation. Applying the rate of 4 cents for each $100 of actual value (or major fraction thereof), the tax on the sale of the X Corporation stock is $4 (100×$.04) and the tax on the gift of the Y Corporation stock is $1.04 (26, applying the major fraction rule, ×$0.4). Since the application of the 4-cent rate results in tax in excess of 8 cents per share in the case of the Y Corporation stock ($1.04÷10), the tax in respect of such stock is computed at the rate of 8 cents per share resulting in tax of $.80. Thus, the total tax in respect of the sale and gift of the stock of X Corporation and of Y Corporation is $4.80.

Example (2). A sells to B 10 shares of stock having an actual value of $50. Since $50 does not constitute a major fraction of $100 the provision of section 4321 imposing a minimum tax of not less than 4 cents on a sale or transfer applies. Accordingly, the tax on the sale of the 10 shares is 4 cents.

(5) *Cross reference.* For provisions relating to the application of the tax imposed by section 4321 in the case of certain changes in a partnership, see section 4383 and § 47.4383–1.

§ 47.4321–2 Illustrations.

(a) *Sales and transfers subject to tax.* The following transfers of stock are illustrations of transactions which are taxable, unless exempt from tax under a specific provision of the Internal Revenue Code (see sections 4322, 4341 to 4344, inclusive, 4382, and 4383(a) with respect to such exemptions):

(1) Transfer by gift.

(2) Transfer by an administrator or executor to a distributee or legatee (see, however, section 4344(b) and paragraph (b) of § 47.4344–1).

(3) Transfer to or by trustees (see, however, section 4343(a)(8)).

(4) Transfer of an interim certificate, a voting trust certificate, or a certificate of beneficial interest in an association.

(5) Transfer from persons holding legal title as tenants in common, as joint tenants, or as tenants by the entirety, to the same persons separately to effect a partition, or from one person to two or more persons, whether or not including the transferor, as tenants in common, as joint tenants, or as tenants by the entirety (see, however, section 4343(a)(9)).

(6) Transfer from a partnership on its termination under section 708; also from a partnership to an individual member thereof upon a dissolution of his interest in the partnership. See § 47.4383–1.

(7) Transfer to a corporation of its own stock (see, however, paragraph (b)(3) of this section).

(8) Transfer upon a merger from the name of a merging corporation of stock owned by it to the name of the continuing corporation. Similarly, upon a consolidation, a transfer from any of the consolidating corporations to the consolidated corporation (see, however, paragraphs (b) (6) and (7) of this section). For exemption from tax in respect of transfers to make effective a plan of reorganization or adjustment whereby a mere change in identity, form, or place of organization is effected, see paragraph (d) of § 47.4382–1.

(9) In addition to the tax on the issuance of stock in connection with a merger or consolidation, where such stock is issued directly to the stockholders of the merging or consolidating corporations by the continuing or consolidated corporation (see paragraphs (a) (8) and (9) of § 47.4301–2), there is also a transfer tax imposed at the time of the is-

suance of such stock. The transfer tax is applicable to such a transaction inasmuch as there is involved the transfer to the stockholders of the merging or consolidating corporations of such corporations' right to receive the stock of the continuing or consolidated corporation. For exemption from tax in respect of transfers to make effective a plan of reorganization or adjustment whereby a mere change in identity, form, or place of organization is effected, see paragraph (d) of § 47.4382–1.

(10) Transfer of stock to another person upon order of the purchaser; transfer of the right to receive a stock dividend already declared; issuance of stock to a person other than the subscriber; all other transfers of rights to receive stock; and all transfers of rights to subscribe for stock.

(11) Transfer by a broker to a customer of stock issued as a dividend on stock purchased for the customer by the broker and held by the broker in his own name or in the name of his nominee.

(12) Transfer of stock on the books of a domestic corporation, regardless of where the sale is made or the stock certificate is delivered.

(13) Sale or transfer within the territorial jurisdiction of the United States of stock of a foreign corporation.

(14) Transfers by operation of law (see, however, § 47.4343–1).

(b) *Sales and transfers not subject to tax.* In addition to the exemptions prescribed in sections 4382 and 4383(a) which apply to documentary stamp taxes generally and to the specific exemptions provided in sections 4322 and 4341 to 4344, inclusive, and the regulations thereunder, the following are examples of transactions not subject to the tax:

(1) Transfer of stock pursuant to a sale, where the requisite stamps have been affixed to the memorandum of sale.

(2) Surrender of certificates in exchange for other certificates representing the same stock issued to the same person (see also paragraph (b)(2) of § 47.4301–2).

(3) Surrender of stock to the issuing corporation for extinguishment (see also paragraph (a)(7) of this section).

(4) Change in the registration of stock for the sole purpose of recording a change in the name of a stockholder, such as from the maiden name to the married name of a stockholder, or a change in the name of a corporation which is a stockholder.

(5) Transfer of stock to or by an insolvent bank, where such transfer is within the provisions of section 7507.

(6) In a consolidation of corporations, the surrender of stock of any of the consolidating corporations in exchange for stock of the consolidated corporation (see, however, paragraph (a)(9) of this section and paragraph (a)(8) of § 47.4301–2).

(7) In a merger of corporations, the surrender of stock of both the merging and the continuing corporations in exchange for stock of the continuing corporation (see, however, paragraph (a)(9) of this section and paragraph (a)(9) of § 47.4301–2).

(8) Deliveries of stock to or by a clearinghouse for the sole purpose of clearing or adjusting accounts of its members.

(9) Transfer of stock pursuant to a call, since a "call" is an agreement to sell stock and taxable as such. However, a person making such nontaxable transfer shall furnish and attach to the certificate a statement in substantially the following form:

It is hereby certified that the transfer of ---------- shares of the within stock to ---------- has been made pursuant to a "call", and that the requisite Federal documentary stamps for the transaction are affixed to such "call", which is in the possession of the undersigned.

Signature

(10) The mere delivery of a certificate of stock by a customer to his broker solely for the purpose of enabling such broker to sell the stock for the customer, where the broker has no legal title or other interest in the stock.

(11) The mere delivery of a certificate of stock by a purchasing broker to his customer, if the tax was paid upon the sale of the stock to such broker and such broker has no legal title or other interest in the stock.

§ 47.4321–3 Tax on warrants.

(a) *To subscribe for stock.* Transfers of warrants entitling the holder to subscribe for stock are taxable as transfers of rights to subscribe. For computation of the tax on transfers of rights to subscribe for stock, see paragraph (b) of § 47.4321–1. The issue of a warrant entitling the holder to subscribe for stock is not subject to tax, but the issue of stock upon exercise of the warrant is subject to the tax imposed by section 4301 (see paragraph (a)(7) of § 47.4301–2).

(b) *To purchase issued stock.* (1) Warrants entitling the holder to purchase issued stock are taxable upon issuance as agreements to sell stock (see definition of "sale or transfer" in section 4351(b) and paragraph (b) of § 47.4351–1). The tax imposed by section 4321 is computed on the basis of the actual value of the stock at the time the warrant is issued. The warrant price is not indicative of the actual value to be attributed to the stock for purposes of the tax.

(2) Transfers of warrants entitling the holder to purchase issued stock are not subject to the stamp tax since the statute does not impose a tax on sales or transfers of agreements to sell stock. If the transfer tax is paid upon the issuance of a warrant as an agreement to sell stock, no additional transfer tax is incurred upon the subsequent transfer of the stock pursuant to the exercise of the warrant. However, the person making such exempt transfer of stock shall furnish and attach to the certificate a statement in substantially the following form:

It is hereby certified that the transfer of the attached certificate for----------
(Number of shares and description of stock)
----------is made
(Name of transferee)
pursuant to the exercise of a warrant which is in the possession of the undersigned, and that the requisite stamps due upon the issuance of such warrant have been affixed thereto.

Signature

§ 47.4321–4 Cross references.

(a) *Records of sales and transfers of stock.* For recordkeeping requirements, see § 47.6001–1.

(b) *Registration of nominees.* For provisions with respect to registration of nominees, see paragraph (a) of § 47.4351–1.

(c) *Rules applicable to securities exchanges and clearinghouses.* For rules applicable to securities exchanges and clearinghouses, see § 47.4353–1.

§ 47.4322 Statutory provisions; exemptions.

SEC. 4322 *Exemptions*—(a) *Exemptions for certain transfers.* The tax imposed by section 4321 shall not apply to any delivery or transfer of shares, certificates, or rights—

(1) *Brokers.* To a broker or his registered nominee for sale of such shares, certificates, or rights; by a broker or his registered nominee to a customer for whom and upon whose order the broker has purchased same; or by a purchasing broker to his registered nominee to be held by such nominee for the same purpose as if held by the broker; or

(2) *Nominees of corporations.* From a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, provided that in each instance such shares, certificates, or rights are to be held by the nominee for the same purpose as if retained by the corporation; or from such nominee to such corporation.

(b) *Certain odd-lot transactions*—(1) *Exemption.* The tax imposed by section 4321 shall not apply to any odd-lot sale by an odd-lot dealer if the shares, certificates, or rights are delivered or transferred to a broker pursuant to an order of a customer of such broker for such shares, certificates, or rights.

(2) *Definitions.* For purposes of paragraph (1)—

(A) The term "odd-lot sale" means an odd-lot transaction under the rules of the securities exchange of which the odd-lot dealer is a member.

(B) The term "odd-lot dealer" means a person who is (1) a member of a securities exchange which is registered with the Securities and Exchange Commission as a national securities exchange, and (ii) registered under the rules of such exchange as an odd-lot dealer or as a specialist.

(c) *Other exemptions.* For other exemptions, see sections 4341, 4342, 4343, 4344, and 4382.

[Sec. 4322 as amended and in effect Jan. 1, 1959]

§ 47.4322–1 Exemptions.

(a) *Transfer from customer to broker.* (1) If stock is transferred to the name of a broker, or to the name of a broker's registered nominee, solely for the purpose of enabling such broker to sell the stock for the customer, the transfer is exempt from tax provided the broker furnishes at the time of transfer or delivery an exemption certificate in substantially the form prescribed in § 47.4345–1. For provisions relating to the registration of nominees, see paragraph (a) of § 47.4351–1.

(2) A transfer to the name of a selling agent other than a broker, as for example, a bank, whether the sale be made by the agent direct or through a broker for the agent's account, is subject to tax, since the exemption applies only to deliveries and transfers to brokers (but see paragraph (b) of § 47.4342–1). However, liability is not incurred by the mere delivery of a certificate of stock to an agent who obtains no legal title or other interest in the stock.

(b) *Transfer from broker to customer.* (1) If stock is transferred to the name of a purchasing broker or his registered nominee who holds the stock for the same purpose as if held by the broker and tax on such transfer is paid, transfer may thereafter be made to the name of the purchaser (for whom and upon whose order the broker has purchased such stock) without payment of tax. If the tax was paid upon the transfer to the name of the purchasing broker, transfer may be made to the name of his registered nominee and from such nominee to the name of the purchaser without payment of tax. However, no exemption will be allowed under this paragraph unless the broker furnishes at the time of transfer or delivery an exemption certificate in substantially the form prescribed in § 47.4345–1. For provisions relating to the registration of nominees, see paragraph (a) of § 47.4351–1.

(2) Delivery to, or transfer to the name of, the customer may not be made tax free in any case in which the stock was transferred from the seller to the broker or his registered nominee without payment of the tax, since the law requires that the tax shall be paid on the transfer or transfers between the actual seller and actual buyer. A transfer from the name of a purchasing agent other than a broker, as, for example, a bank, whether the purchase be made directly or through a broker for the agent's account, is subject to tax, since the exemption applies only to deliveries and transfers from brokers (but see paragraph (b) of § 47.4342–1). However, liability is not incurred by the mere delivery to the principal of a certificate of stock by an agent having no legal title or other interest in the stock, or by a broker for the account of such agent.

(c) *Transfers between corporations and nominees.* The tax does not apply to the delivery or transfer of stock from a corporation to a registered nominee of such corporation, or from one such nominee to another such nominee, if in either case the shares or certificates continue to be held by such nominee for the same purpose for which they would be held if retained by such corporation; or from such nominee to such corporation. No exemption is granted unless the nominee is registered in the manner provided in paragraph (a) of § 47.4351–1. Nor shall the exemption be granted in any case unless the delivery or transfer is accompanied by an exemption certificate, executed by the person making the exempt transfer, in substantially the form prescribed in § 47.4345–1.

(d) *Certain odd-lot transactions.* The tax imposed by section 4321 shall not apply to any odd-lot sale by an odd-lot dealer if the shares, certificates, or rights are delivered or transferred to a broker pursuant to an order of a customer of such broker for such shares, certificates, or rights and the broker furnishes at the time of transfer or delivery an exemption certificate in substantially the form prescribed in § 47.4345–1. Actual physical delivery or transfer of the shares, certificates, or rights sold is not required if the effect of the transaction is a sale to a customer of the broker. Thus, if an odd-lot dealer executes odd-lot purchase and sale orders in a particular stock for a broker pursuant to orders of the broker's customers during a given day and only the net balance of such stock for that day is physically delivered or transferred to the broker, all of the odd-lot sales which contributed to such net balance are exempt. The term "odd-lot sale" means an odd-lot transaction under the rules of the securities exchange of which the odd-lot dealer making the sale is a member. The term "odd-lot dealer" means a person who is (1) a member of a securities exchange which is registered with the Securities and Exchange Commission as a national securities exchange, and (2) registered under the rules of such exchange as an odd-lot dealer or as a specialist.

§ 47.4323 Statutory provisions; affixing of stamps.

SEC. 4323 *Affixing of stamps*—(a) *Books of the corporation.* The stamps representing the tax imposed by section 4321 shall be affixed to the books of the corporation in case of a sale where the evidence of transfer is shown only by the books of the corporation.

(b) *Certification as to value by transferor or transferee.* Where shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, are presented for transfer and the tax thereon is paid by the use of adhesive stamps, such shares, certificates, or rights shall be accompanied by a certification signed by the transferor or his agent or the transferee or his agent as to the actual value of the shares, certificates, or rights so transferred, and any corporation or transfer agent to whom such shares, certificates, or rights are presented shall be entitled to rely on such certification without further inquiry.

(c) *Other evidences of sale or transfer.* For provisions applicable to the affixing of stamps in cases of sale or transfer shown otherwise than only by the books of the corporation, see section 4352.

[Sec. 4323 as amended and in effect Jan. 1, 1959 and as further amended by sec. 5(b), Act of Sept. 21, 1959 (Pub. Law 86–344, 73 Stat. 619)]

§ 47.4323–1 Affixing of stamps.

(a) *Books of the corporation.* (1) Except as provided in section 4353 and § 47.4353–1, only documentary stamps shall be used in payment of the tax imposed by section 4321. In the case of a sale or transfer evidenced only by the books of the corporation or other organization, the requisite stamps shall be affixed to such books. In the case of a sale or transfer evidenced otherwise than only by the books of the corporation or other organization, see section 4352 and § 47.4352–1 for provisions relating to the affixing of the requisite stamps. See also §§ 47.6804–1 and 47.6804–2 for the appropriate use, denominations, and cancellation of such stamps. For provisions relating to payment, through a national securities exchange or a clearinghouse for such exchange, of tax without use of stamps, see § 47.4353–1.

(2) Documentary stamps may be purchased, and requisitions for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802–1. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801 (§ 47.6801), 6802 (§ 47.6802), and 6805 (§ 47.6805), and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration), and § 47.6801–1.

(b) *Certification as to value by transferor or transferee.* Where shares or certificates of stock, or of rights to subscribe for or to receive such shares or certificates, are presented for transfer and the tax thereon is paid by the use of documentary stamps or through a national securities exchange or a clearinghouse for such exchange without the use of stamps (see section 4353(b)), such shares, certificates, or rights shall be accompanied by a certification signed by the transferor or his agent or the transferee or his agent as to the actual value of the shares, certificates, or rights so transferred and any corporation or transfer agent to whom such shares, certificates, or rights are presented shall be entitled to rely on such certification without further inquiry. The certification shall show the basis used for establishing actual value and shall be in substantially the following form:

It is hereby certified that the actual value of the accompanying instrument(s) submitted for transfer is $--------, as determined by ----------
(basis of valuation—sale price, mean selling price on market, etc.)

Signature of transferor, transferee, or agent of either

§ 47.4324 Statutory provisions; cross references.

SEC. 4324 *Cross references.* For definitions, penalties, and other general and administrative provisions applicable to this part, see sections 4345, 4351, 4353, 4381, and 4384, and subtitle F.

[Sec. 4324 as amended and in effect Jan. 1, 1959]

§ 47.4324–1 Cross references.

(a) For definitions, see section 4351 and § 47.4351–1, section 4381 and § 47.4381–1, and section 7701 (§ 47.7701).

(b) For penalties, see section 7271 and § 47.7271–1.

(c) For other general and administrative provisions, see section 4345 and § 47.4345–1, section 4352 and § 47.4352–1, section 4353 and § 47.4353–1, section 4384 and § 47.4384–1, Subpart J, and the applicable sections of subtitle F and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Subpart E—Tax on Sales or Transfers of Certificates of Indebtedness

§ 47.4331 Statutory provisions; imposition of tax.

SEC. 4331 *Imposition of tax.* There is hereby imposed, on each sale or transfer of

any certificates of indebtedness isued by a corporation, a tax at the rate of 5 cents on each $100 or fraction thereof of the face value.

[Sec. 4331 as amended and in effect Jan. 1, 1959]

§ 47.4331–1 Imposition of tax.

(a) *Scope of tax.* Section 4331 imposes a tax on each sale or transfer (as defined in section 4351(b)) within the territorial jurisdiction of the United States of certificates of indebtedness issued by a corporation. See section 4381 and § 47.4381–1 for definitions of the terms "certificates of indebtedness" and "corporation". The tax attaches at the time of making the sale or transfer, regardless of the time or manner of delivery of the certificate or agreement or memorandum of sale. As to sales or transfers of warrants to subscribe for or purchase certificates of indebtedness, see § 47.4331–3. For requirements in respect of records and memoranda of such sales or transfers, see §§ 47.4331–4 and 47.4352–1. For provisions relating to the application of the tax imposed by section 4331 in the case of certain changes in a partnership, see section 4383 and § 47.4383–1.

(b) *Rate and computation of tax.* (1) Where by sale or otherwise certificates of indebtedness of the same issue of a single corporation are transferred by a single transferor to a single transferee, the tax is 5 cents on each $100 of face value, or fraction thereof, of the aggregate face value of all the certificates. Where there are two or more transferors or two or more transferees, or where in a single transaction transfer is made of certificates of two or more corporations or of two or more classes issued by a single corporation, a separate tax computation must be made with respect to each transferor and each transferee, and with respect to the certificates of each corporation and of the certificates of each class issued by a single corporation. The foregoing rule may be illustrated by the following examples:

Example (1). M, owning 25 class A bonds of the X Corporation and 25 class B bonds of the same corporation, and 50 class A bonds of the Y Corporation, transfers all the bonds to N. In this situation there are three taxable transfers, and a separate tax computation must be made with respect to the aggregate face value of the bonds involved in each.

Example (2). M, owning 100 class A bonds of the X Corporation, sells 50 bonds to N and 50 bonds to O. In this situation, there are two sales of 50 bonds each, and the tax is measured by the aggregate face value of the bonds sold to each purchaser.

Example (3). A husband and wife, each owning $50,000 face amount of class A bonds of the X Corporation, simultaneously give their bonds to their son. In this situation, there are two gifts, and a separate computation must be made with respect to the aggregate face value of the bonds included in each gift.

(2) The separate tax computation required will result in a difference in the amount of tax only where the face value of the certificates transferred is not $100 or multiples thereof.

(c) *Affixing of stamps.* (1) Except as provided in section 4353 and § 47.4353–1, only documentary stamps shall be used in payment of the tax imposed by section 4331. For provisions relating to the affixing of the requisite stamps in case of a sale or transfer of certificates of indebtedness, see section 4352 and § 47.4352–1. See also §§ 47.6804–1 and 47.6804–2 for the appropriate use, denominations, and cancellation of such stamps. For provisions relating to payment, through a national securities exchange or a clearinghouse for such exchange, of tax without use of stamps, see § 47.4353–1.

(2) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802–1. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801 (§ 47.6801), 6802 (§ 47.6802), and 6805 (§ 47.6805), and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration), and § 47.6801–1.

§ 47.4331–2 Illustrations.

(a) *Sales and transfers subject to tax.* The tax on sales or transfers of certificates of indebtedness imposed by section 4331 is similar in scope to the tax on stock transfers imposed by section 4321. Accordingly, the various examples set forth in paragraph (a) of § 47.4321–2 of sales and transfers of stocks subject to the stock transfer tax apply, with certain exceptions, to sales and transfers of certificates of indebtedness unless such sales and transfers of certificates of indebtedness are exempt from tax under a specific provision of the Internal Revenue Code (see sections 4332, 4341 to 4344, inclusive, 4382, and 4383(a) with respect to such exemptions). These exceptions are the examples stated in paragraphs (a) (9) and (10) of § 47.4321–2.

(b) *Sales and transfers not subject to tax.* In addition to the exemptions prescribed in sections 4382 and 4383(a) which apply to documentary stamp taxes generally and to the specific exemptions provided in sections 4332, and 4341 to 4344, inclusive, and the regulations thereunder, the examples set forth in paragraph (b) of § 47.4321–2 of sales and transfers of stocks not subject to the stock transfer tax illustrate sales and transfers of certificates of indebtedness which are not subject to the tax imposed by section 4331.

§ 47.4331–3 Tax on warrants.

(a) *To subscribe for certificates of indebtedness.* Warrants entitling the holder to subscribe for unissued certificates of indebtedness are not subject to tax under section 4331.

(b) *To purchase issued certificates of indebtedness.* Warrants entitling the holder to purchase issued certificates of indebtedness are, upon issuance, subject to tax under section 4331, as agreements to sell certificates (see definition of "sale or transfer" in section 4351(b) and paragraph (b) of § 47.4351–1). Subsequent transfers of such warrants are not subject to the transfer tax since the statute does not impose a tax upon transfers of agreements to sell certificates of indebtedness. For rate and computation of tax, see paragraph (b) of § 47.4331–1. If the transfer tax is paid upon issuance of a warrant, the subsequent transfer of the certificate pursuant to the exercise of such warrant is not subject to the transfer tax. However, the person transferring the certificate shall furnish and attach thereto a statement substantially as follows:

It is hereby certified that the transfer of the attached certificates of indebtedness,

---

(description and face value of certificates)

to ---

(name of transferee)

is made pursuant to the exercise of a warrant which is in the possession of the undersigned, and that the requisite stamps due upon the issuance of such warrant have been affixed thereto.

(Signature)

§ 47.4331–4 Records of sales and transfers of certificates of indebtedness.

The provisions of § 47.6001–1 relating to records of sales and transfers of stock are also applicable to sales and transfers of certificates of indebtedness, except that the records of sales of certificates of indebtedness need not show the sales prices, since the selling price is immaterial for purposes of the tax imposed by section 4331.

§ 47.4331–5 Registration of nominees.

The provisions of paragraph (a) of § 47.4351–1 relating to registration requirements in connection with transactions involving stock are also applicable to transactions involving certificates of indebtedness.

§ 47.4331–6 Rules applicable to securities exchanges and clearinghouses.

For rules applicable to securities exchanges and clearinghouses, see § 47.4353–1.

§ 47.4332 Statutory provisions; exemptions.

Sec. 4332 *Exemptions*—(a) *Brokers.* The The tax imposed by section 4331 shall not apply to any delivery or transfer to a broker for sale, nor upon any delivery or transfer by a broker to a customer for whom and upon whose order he has purchased the certificates of indebtedness.

(b) *Instalment purchase of obligations.* The tax imposed by section 4331 shall not apply to any instrument under the terms of which the obligee is required to make payment therefor in installments and is not permitted to make in any year a payment of more than 20 percent of the cash amount to which entitled upon maturity of the instrument.

(c) *Other exemptions.* For other exemptions, see sections 4341, 4342, 4343, 4344, and 4382.

[Sec. 4332 as amended and in effect Jan. 1, 1959]

§ 47.4332–1 Exemptions.

(a) *Transfer to or from brokers.* The rules stated in paragraphs (a) and (b) of § 47.4322–1 with respect to the exemption of transfers to or by brokers from the tax imposed by section 4321 also apply with respect to the tax imposed by section 4331.

(b) *Other exemptions.* For other exemptions with respect to the tax imposed on sales or transfers of certificates of indebtedness, see sections 4341, 4342, 4343, 4344, and 4382 and the regulations thereunder.

§ 47.4333 Statutory provisions; cross references.

Sec. 4333 *Cross references.* For definitions, penalties, and other general and administrative provisions applicable to this part, see sections 4345, 4381, and 4384; sections 4351 to 4353 inclusive; and subtitle F.

[Sec. 4333 as amended and in effect Jan. 1, 1959]

§ 47.4333–1 Cross references.

(a) For definitions, see section 4351 and § 47.4351–1, section 4381 and § 47.4381–1, and section 7701 (§ 47.7701).

(b) For penalties, see section 7271 and § 47.7271–1.

(c) For other general and administrative provisions, see section 4345 and § 47.4345–1, section 4352 and § 47.4352–1, section 4353 and § 47.4353–1, section 4384 and §47.4384–1, Subpart J, and the applicable sections of subtitle F and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Subpart F—Provisions Common to Sales or Transfers of Capital Stock and Certificates of Indebtedness

EXEMPTIONS

§ 47.4341 Statutory provisions; transfers as security.

Sec. 4341 *Transfers as security.* The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections—

(1) *Collateral security.* To a lender as collateral security for money loaned thereon, if such collateral security is not actually sold, or by such lender as a return of such collateral security.

(2) *Security for performance.* To a trustee or public officer made pursuant to Federal or State law as security for the performance of an obligation, or by such trustee or public officer as a return of such security.

[Sec. 4341 as amended and in effect Jan. 1, 1959]

§ 47.4341–1 Transfers as security.

(a) *Stock or certificates of indebtedness deposited as collateral security.* The tax imposed by section 4321 or 4331 does not apply to an agreement evidencing a deposit of certificates of stock or certificates of indebtedness as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of the certificates so deposited. The exemption applies also to transfers of stock or certificates of indebtedness to a nominee of the lender and from such nominee back to the lender, if the stock or certificates of indebtedness are at all times held as collateral security for the loan; and to the return of the stock or certificates of indebtedness to the borrower by the lender or his nominee upon payment of the loan. The exemption does not apply, however, to deposits of stock or certificates of indebtedness as collateral security made otherwise than in connection with money loaned on such stock or certificates. The person making an exempt transfer under this paragraph shall, at the time of transfer or delivery, furnish an exemption certificate in substantially the form prescribed in § 47.4345–1. If the delivery or transfer is not accompanied by the required exemption certificate the person making the delivery or transfer will be required to pay the tax imposed by section 4321 or 4331. However, if an exemption certificate is furnished after the transfer or delivery, such person will be entitled to a refund of the tax paid upon filing a timely claim for refund.

(b) *Transfer of stock or certificates of indebtedness made pursuant to Federal or State law to secure the performance of obligations.* The tax imposed by section 4321 or section 4331 does not apply to any delivery or transfer of stock or certificates of indebtedness to a trustee or public officer, which is made pursuant to Federal or State law to secure the performance of an obligation, or to a redelivery or retransfer of such stock or certificates of indebtedness to the transferor. The exemption provided under this paragraph shall be granted only if the delivery or transfer is accompanied by an exemption certificate in substantially the form prescribed in § 47.4345–1.

§ 47.4342 Statutory provisions; fiduciaries and custodians.

Sec. 4342 *Fiduciaries and custodians.* The taxes imposed by section[s] 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections—

(1) *Fiduciaries.* From a fiduciary to his nominee, or from one nominee of the fiduciary to another nominee, provided that in each instance such instruments are to be held by the nominee for the same purpose as if retained by the fiduciary; or from the nominee to such fiduciary; or

(2) *Custodians.* (A) From the owner to a custodian if under a written agreement between the parties such instruments are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or from such custodian to such owner; or

(B) From a custodian as specified in subparagraph (A) to a registered nominee of such custodian, or from one such nominee to another such nominee, provided that in each instance such instruments are to be held by the nominee for the same purpose as if retained by the custodian; or from such nominee to such custodian.

[Sec. 4342 as amended and in effect Jan. 1, 1959]

§ 47.4342–1 Transfers to or by fiduciaries or custodians.

(a) *Transfers between fiduciaries and their nominees.* The tax imposed by section 4321 or 4331 does not apply to deliveries or transfers of stock or certificates of indebtedness from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, if the stock or certificates of indebtedness are to be held by such nominee for the same purpose as they would be held if retained by such fiduciary. Nor does the tax apply to deliveries or transfers from a nominee of a fiduciary to such fiduciary. The exemption provided under this paragraph shall be granted only if the delivery or transfer is accompanied by an exemption certificate in substantially the form prescribed in § 47.4345–1.

(b) *Transfers to or by a custodian.* (1) The tax imposed by section 4321 or 4331 does not apply to the delivery or transfer of stock or certificates of indebtedness from the owner thereof to a custodian if, under a written agreement between the owner and the custodian, the instruments so delivered or transferred are to be held or disposed of by such custodian for, and subject at all times to the instructions of, the owner; or the delivery or transfer of stock or certificates of indebtedness from such custodian to such owner.

(2) The tax also does not apply to the delivery or transfer of stock or certificates of indebtedness from a custodian specified in subparagraph (1) of this paragraph to a registered nominee of such custodian, or from the owner direct to such registered nominee, or from one such nominee to another such nominee, if the stock or certificates of indebtedness are to be held by the nominee for the same purpose as they would be held if retained by such custodian. Nor does the tax apply to deliveries or transfers from a nominee of a custodian to such custodian or to the owner. No exemption is granted unless the nominee is registered in the manner provided in paragraph (a) of § 47.4351–1.

(3) Moreover, the tax does not apply to the delivery or transfer of stock or certificates of indebtedness from a custodian of the owner to another custodian of the owner or from a registered nominee of the first custodian to the second custodian or to the registered nominee of the latter, if the transfer would have been exempt under subparagraph (1) or (2) of this paragraph if made by the owner direct to the second custodian or to the registered nominee of the latter.

(4) For purposes of this paragraph, a custodian is a person to whom stock or certificates of indebtedness are delivered or transferred to be held or disposed of by such person for, and subject at all times to the instructions of, the owner and not otherwise. The term "custodian", as used in this paragraph, does not include a trustee. A custodian is to be distinguished from a nominee who merely lends his name and usually does not retain possession of the securities registered in his name.

(5) The exemption provided under this paragraph shall be granted only if the delivery or transfer is accompanied by an exemption certificate in substantially the form prescribed in § 47.4345–1.

§ 47.4343 Statutory provisions; transfers by operation of law.

Sec. 4343 *Transfers by operation of law*—(a) *Exempt transfers.* The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections—

(1) *Decedents.* From a decedent to his executor or administrator.

(2) *Minors.* From a minor to his guardian, or from a guardian to his ward upon attaining majority.

(3) *Incompetents.* From an incompetent to his committee or similar legal representative, or from a committee or similar legal

representative to a former incompetent upon removal of disability.

(4) *Financial institutions.* From a bank, trust company, financial institution, insurance company, or other similar entity, or nominee, custodian, or trustee therefor, to a public officer or commission, or person designated by such officer or commission or by a court, in the taking over of its assets, in whole or part, under Federal or State law regulating or supervising such institutions, nor upon redelivery or retransfer by any such transferee or successor thereto.

(5) *Bankrupts.* From a bankrupt or person in receivership due to insolvency to the trustee in bankruptcy or receiver, from such receiver to such trustee, or from such trustee to such receiver, nor upon redelivery or retransfer by any such transferee or successor thereto.

(6) *Successors.* From a transferee under paragraphs (1) to (5), inclusive, to his successor acting in the same capacity, or from one such successor to another.

(7) *Foreign governments and aliens.* From a foreign country or national thereof to the United States or any agency thereof, or to the government of any foreign country, directed pursuant to the authority vested in the President by section 5(b) of the Trading With the Enemy Act, as amended by the First War Powers Act, 1941 (50 U.S.C. App. sec. 5).

(8) *Trustees.* From trustees to surviving, substituted, succeeding, or additional trustees of the same trust.

(9) *Survivors.* Upon the death of a joint tenant or tenant by the entireties, to the survivor or survivors.

(b) *Nonexempt transfers.* No delivery or transfer shall be exempt because effected by operation of law unless an exemption is otherwise specifically provided.

[Sec. 4343 as amended and in effect Jan. 1, 1959]

§ 47.4343–1 Transfers by operation of law.

No delivery or transfer shall be exempt from the tax imposed by section 4321 or 4331 because effected by operation of law unless an exemption is otherwise specifically provided. Each of the transfers specified in section 4343(a) is exempt from tax, but only if the delivery or transfer is accompanied by an exemption certificate as provided in § 47.4345–1.

§ 47.4344 Statutory provisions; certain other transfers.

SEC. 4344 *Certain other transfers*—(a) *Loans.* The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections to a borrower as a loan of such instruments, or to the lender as a return of such loan.

(b) *Worthless stock and obligations.* The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections by an executor or administrator to a legatee, heir, or distributee, if it is shown to the satisfaction of the Secretary or his delegate that the value of such instrument is not greater than the amount of the tax which would otherwise be imposed on such delivery or transfer.

(c) *Transfers between certain revocable trusts.* The taxes imposed by sections 4321 and 4331 shall not apply to any delivery or transfer of any of the instruments referred to in such sections by one revocable trust to another revocable trust if—

(1) The grantor of both trusts is the same person, and

(2) At the time of such delivery or transfer, such grantor is treated under section 676 as the owner of both trusts.

For purposes of the preceding sentence, if 2 or more grantors are treated under section 676 as owners in the same relative proportions of both trusts, such grantors shall be treated as the same person.

[Sec. 4344 as added and in effect Jan. 1, 1959]

§ 47.4344–1 Certain other transfers.

(a) *Loan of stock or certificate of indebtedness and the return thereof.* A mere loan of stock or certificates of indebtedness or the return of stock or certificates of indebtedness loaned is exempt from the taxes imposed by sections 4321 and 4331 if the loan or return is accompanied by an exemption certificate in substantially the form prescribed in § 47.4345–1.

(b) *Transfers of worthless stock or certificates of indebtedness by executors, etc.* The taxes imposed by sections 4321 and 4331 do not apply to deliveries or transfers of stock or certificates of indebtedness by an executor or administrator to a legatee, heir, or distributee, if it is shown to the satisfaction of the district director that the value of the stock or certificates of indebtedness so delivered or transferred is not greater than the amount of tax that would otherwise be imposed on such delivery or transfer.

(c) *Transfers between certain revocable trusts.* The taxes imposed by sections 4321 and 4331 do not apply to any delivery or transfer of stock or certificates of indebtedness by one revocable trust to another revocable trust if (1) the grantor of both trusts is the same person, (2) at the time of such delivery or transfer such grantor is treated under section 676 and the regulations thereunder as the owner of the entire interest in both trusts, and (3) the delivery or transfer is accompanied by an exemption certificate in substantially the form prescribed in § 47.4345–1. If two or more grantors are treated under section 676 as owners in the same relative proportions of the entire interest in both trusts, such grantors shall be treated as the same person. For regulations under section 676, see Part 1 of this chapter (Income Tax Regulations).

§ 47.4345 Statutory provisions; exemption certificates.

SEC. 4345 *Exemption certificates.* Except as provided in regulations prescribed by the Secretary or his delegate, no exemption shall be granted under sections 4322, 4332(a), 4341, 4342, 4343(a), or 4344 (a) or (c) unless the delivery or transfer is evidenced by a certificate setting forth such facts as the Secretary or his delegate may by regulations prescribe.

[Sec. 4345 as amended and redesignated and in effect Jan. 1, 1959]

§ 47.4345–1 Exemption certificates.

No exemption shall be granted under sections 4322, 4332(a), 4341, 4342, 4343 (a), or 4344 (a) or (c) unless the delivery or transfer is accompanied by a certificate in substantially the following manner:

It is hereby certified that the transfer of the accompanying instrument(s) is made under such circumstances as to come within one of the exemptions specified in sections 4322, 4332(a), 4341, 4342, 4343(a), or 4344 (a) or (c) of the Internal Revenue Code, and that the evidence in proof of the exemption is maintained by the undersigned and is available for inspection by internal revenue officers.

(Signature)

§ 47.4346 Statutory provisions; cross references.

SEC. 4346 *Cross references.* For other exemptions, see sections 4322, 4332, and 4382.

[Sec. 4346 as redesignated and in effect Jan. 1, 1959]

MISCELLANEOUS PROVISIONS

§ 47.4351 Statutory provisions; definitions.

SEC. 4351 *Definitions*—(a) *Registered nominee.* For purposes of this subchapter, the term "registered nominee" means any person registered in accordance with such regulations as the Secretary or his delegate shall prescribe.

(b) *Sale or transfer.* For purposes of this subchapter, the term "sale or transfer" means any sale, agreement to sell, memorandum of sale or delivery, or transfer of legal title, whether or not shown by the books of the corporation or other organization (or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale), and whether or not the holder acquires a beneficial interest in the instruments.

[Sec. 4351 as amended and in effect Jan. 1, 1959]

§ 47.4351–1 Definitions.

(a) *Registered nominee.* For purposes of the regulations in this part, the term "registered nominee" means any person appointed as nominee of a broker, custodian, or corporation if the person so appointed is registered with the district director for the district in which the principal office of the broker, custodian, or corporation is located. No special form is prescribed for use in registering a nominee. Substitution of a nominee may be effected by the registration of the successor nominee. Upon registration of any person as a nominee of a broker, custodian, or corporation, the district director shall issue to the broker, custodian, or corporation a certificate of registration signed by him and setting forth the date of issue, the name of the person registered as nominee, and the name of the broker, custodian, or corporation on whose behalf the nominee is registered. Such certificate shall be kept at the principal place of business of the broker, custodian, or corporation to whom the certificate is issued. The certificate of registration issued as provided in this paragraph shall be held available for ready inspection by internal revenue officers.

(b) *Sale or transfer.* For purposes of the regulations in this part, the term "sale or transfer" includes sales of, agreements to sell, or memoranda of sales of, stock or certificates of indebtedness; deliveries of stock or certificates of indebtedness with intent to pass title; transfer of legal title to stock or certificates of indebtedness; transfers of rights to subscribe for stock; and transfers of rights to receive stock. The taxes imposed by sections 4321 and 4331 apply to the specified dealings or transactions in stock or certificates of indebtedness, whether effected by any assignment in blank, or by any delivery, or by any paper, agreement, memorandum or other evidence of transfer or sale (and in the case of stock, whether made before, after, or without the issuance of a certificate and whether made upon or shown by the books of the corporation or other organization), and without regard to whether the holder or transferee of the stock or certificate of indebtedness (or specified right in the case of stock) is entitled to any beneficial interest therein.

(c) *Agreement to sell.* As used in the regulations in this part, unless otherwise specified or indicated by the context, the term "agreement to sell" includes contracts to sell, either written or oral, and whether on the deferred or partial payment plan or otherwise, options, calls, offers, indemnities, and privileges.

(d) *Clearinghouse.* For definition of the term "clearinghouse", see paragraph (d) of § 47.4353–1.

§ 47.4352 Statutory provisions; affixing of stamps.

SEC. 4352 *Affixing of stamps.* The stamps representing the taxes imposed by section 4321 and section 4331 shall be affixed to—

(1) *Instrument.* The instrument where the change of ownership is by transfer of the instrument.

(2) *Bill or memorandum of sale.* The bill or memorandum of sale in cases of an agreement to sell or where the transfer is by delivery of the instrument assigned in blank. Such bill or memorandum of sale shall be made and delivered by the seller to the buyer, and shall show the date thereof, the name of the seller, the amount of the sale, and the instrument to which it refers.

[Sec. 4352 as amended and redesignated and in effect Jan. 1, 1959]

§ 47.4352–1 Affixing of stamps.

(a) *Documents to which stamps to be affixed.* (1) In all cases where the change of ownership of stock or a certificate of indebtedness is by transfer or by delivery of the stock or certificate of indebtedness under special endorsement, i.e., by insertion of the name of the transferee in the endorsement on the back of the certificate, the stamps shall be affixed to the certificate, whether or not the change of ownership results from a sale.

(2) In cases of agreements to sell stock or certificates of indebtedness and in cases of transfers of title thereto by delivery of certificates assigned in blank, the stamps shall be affixed to the memoranda of such transactions. See paragraph (b) of this section. For cases where the evidence of sale or transfer of stock is shown only by the books of the corporation or other organization, see paragraph (a)(1) of § 47.4323–1.

(b) *Requirement of memoranda of agreements to sell, etc.* Every person who makes an agreement to sell stock or certificates of indebtedness, or who, by sale or otherwise, transfers title to stock or certificates of indebtedness by delivery of certificates assigned in blank, shall, as a part of the transaction, promptly make and deliver to the buyer or transferee, a bill or memorandum of such agreement to sell, sale, or transfer, duly signed by the seller, or transferor, or his agent. Such bill or memorandum shall show the date of the transaction, the names of the parties thereto, the description and number of shares of stock or certificates of indebtedness, the tax paid on the transaction, and, where a sale of stock is involved, the sale price. No more than one stamped bill or memorandum shall be required in respect of a single transaction. (See § 47.4353–1 relative to rules applicable to securities exchanges and clearinghouses.)

(c) *In general.* In no event shall any corporation or transfer agent transfer any shares, certificates of stock, or certificates of indebtedness unless stamps for the transfer tax due have been properly affixed and cancelled as required by the regulations in this part or unless tax has been paid without the use of stamps as provided in § 47.4353–1.

§ 47.4353 Statutory provisions; payment of tax through national securities exchanges without use of stamps.

SEC. 4353 *Payment of tax through national securities exchanges without use of stamps*—(a) *General rule.* Under regulations prescribed by the Secretary or his delegate, if a member of a securities exchange which is registered with the Securities and Exchange Commission as a national securities exchange appoints such exchange, or the clearinghouse for such exchange, as his agent for purposes of paying the taxes imposed by sections 4321 and 4331 in respect of his transactions, the taxes imposed by such sections in respect of such transactions may be paid through such agent without the use of stamps.

(b) *Treatment as stamp tax.* For purposes of this title—

(1) Any tax which is payable as provided under subsection (a) shall be treated as tax payable by stamp, and

(2) Any amount of tax which is paid as provided under subsection (a) shall be treated as tax paid by stamp.

[Sec. 4353 as added and in effect Jan. 1, 1959]

§ 47.4353–1 Payment of tax through national securities exchanges or their clearinghouses.

(a) *Appointment of agent.* A member of a securities exchange which is registered with the Securities and Exchange Commission as a national securities exchange may appoint in writing such exchange or the clearinghouse for such exchange as his agent for the purpose of paying the tax required in respect of his transactions in stock or certificates of indebtedness.

(b) *Conditions for payment through agent.* The privilege granted by paragraph (a) of this section may be exercised only upon compliance with the following conditions:

(1) *Authorization.* The member shall authorize and require the exchange or the clearinghouse to pay the tax in respect of all transactions in stock or certificates of indebtedness, including rights to subscribe for or to receive stock, arising in the conduct of his business, irrespective of whether the stock or certificates of indebtedness are listed or unlisted, whether the transactions are clearable or not, and including transactions involving over-the-counter sales.

(2) *Daily report of member.* The member shall make a daily report to the exchange or clearinghouse for each business day showing the total amount of tax payable on all his business transactions as specified in subparagraph (1) of this paragraph. The report shall be filed with the exchange or clearinghouse on the day on which the transactions covered thereby are due for settlement (blotter date).

(3) *Daily records to be kept by member.* The member shall maintain complete and adequate daily records, such as a blotter or similar book of original entry, of all transactions in stock or certificates of indebtedness as specified in subparagraph (1) of this paragraph, whether the transaction is taxable or not. In the case of taxable transactions, the daily record shall show the amount of tax payable in respect of each transaction. In the case of nontaxable transactions, the daily record shall disclose the basis on which the exemption from the tax is claimed. Such daily records shall be kept in permanent form for a period of at least 3 years from the date any part of the tax is paid on the transaction and must be available for ready inspection by internal revenue officers.

(4) *Payment of tax.* The exchange or clearinghouse shall pay to the district director for the district in which the exchange or clearinghouse is located the total tax shown on the daily reports specified in subparagraph (2) of this paragraph. Any such payment of tax shall be made on the day on which the report specified in subparagraph (2) of this paragraph is received by the exchange or clearinghouse. Each daily payment of tax to the district director shall be accompanied by a statement, in substantially the following form:

The accompanying check No. ------ in the amount of $------ is in payment of the total documentary stamp transfer tax liability as shown to be due on the reports received by the exchange or clearinghouse for ----------.
(Date)

(Name of stock exchange or clearinghouse)
by ---------- ----------
(Name) (Title)

(5) *Records to be kept by exchange or clearinghouse.* The daily reports received from its members shall be kept in permanent form by the exchange or clearinghouse for a period of at least 3 years from the date any part of the tax is paid with respect to any transaction reported therein, and must be available for ready inspection by internal revenue officers.

(6) *Endorsement showing payment of tax.* The member shall make and deliver to the buyer the bill or memorandum required by paragraph (b) of § 47.4352–1 and shall make an endorsement on the bill or memorandum substantially in the following form:

It is hereby certified that the Federal stamp tax applicable to this transaction has been paid through the ----------
(Insert name of stock
---------- on our behalf.
exchange or clearinghouse)

(Member ---------- Stock Exchange)

If so desired, the member may also make a similar endorsement on the certificates of stock or certificates of in-

debtedness covered by the bill or memorandum. In that event, the endorsement shall be in substantially the following form:

It is hereby certified that the Federal stamp tax applicable to the transfer of ------ shares of this certificate (or applicable to the transfer of this certificate of indebtedness) has been paid through ----------
(Insert name of
---------- on our
stock exchange or clearinghouse)
behalf.

------ ----------
(Date) (Member -------- Stock Exchange)

The endorsement (including a facsimile signature of the member) may be made on the bill or memorandum and on the accompanying certificate of stock or certificates of indebtedness by a handstamped impression, if (i) the handstamp is held at all times in the custody of the person authorized to make such impression, and (ii) the records of the member contain sufficient information to establish the identity of the person so authorized.

(c) *Treatment of payment of tax without use of stamps.* For purposes of the regulations in this chapter, any tax payable under section 4353 and the regulations in this section shall be treated as tax payable by stamp, and any amount of tax paid as provided thereunder shall be treated as tax paid by stamp.

(d) *Definition of clearinghouse.* The term "clearinghouse" includes every corporation, and every association of individuals, partnerships, or corporations, wholly or partly engaged in the business of clearing, settling or adjusting transactions in the purchase, sale, receipt, or delivery of stock, certificates of indebtedness, rights, or warrants, whether or not a part or department of a securities exchange or an independent body.

§ 47.4354 Statutory provisions; cross references.

SEC. 4354 *Cross references.* For penalties and other general and administrative provisions applicable to this subchapter, see section 4384 and subtitle F.

[Sec. 4354 as amended and in effect Jan. 1, 1959]

§ 47.4354–1 Cross references.

(a) For other definitions, see section 4381, § 47.4381–1, and section 7701 (§ 47.7701).

(b) For penalties, see section 7271 and § 47.7271–1.

(c) For other general and administrative provisions, see section 4384, § 47.4384–1, Subpart J, and the applicable sections of subtitle F and regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Subpart G—Tax on Conveyances

§ 47.4361 Statutory provisions; imposition of tax.

SEC. 4361 *Imposition of tax.* There is hereby imposed, on each deed, instrument, or writing by which any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his or their direction, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale) exceeds $100, a tax at the rate of 55 cents for each $500 or fractional part thereof.

[Sec. 4361 as amended and in effect Jan. 1, 1959]

§ 47.4361–1 Imposition of tax.

(a) *Scope of tax.* (1) Section 4361 imposes a tax upon deeds, instruments, or other writings, whereby realty sold is granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or, at his direction, any other person, when the consideration for, or value of, the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100.

(2) The tax is limited to conveyances of realty sold and does not apply to other conveyances (see paragraph (b) of § 47.4361–2). The tax attaches at the time the deed or other instrument of conveyance is delivered, irrespective of the time when the sale is made. Deeds deposited in escrow become subject to the tax upon delivery to the grantee. A conveyance of realty subject to an equity of redemption is taxable when made, not when the time for redemption expires.

(3) For purposes of the tax imposed by section 4361, the determination of what constitutes "realty" is not controlled by the definition or scope of that term under State law. State law determines the character of the rights conveyed by an instrument, but whether such conveyance constitutes a conveyance of "realty" is to be determined under Federal law.

(4) For purposes of the regulations in this part—

(i) The term "realty" includes—

(a) Those interests in real property which endure for a period of time, the termination of which is not fixed or ascertained by a specific number of years, such as an estate in fee simple, life estate, perpetual easement, etc., and

(b) Those interests enduring for a fixed period of years but which, either by reason of the length of the term or the grant of a right to extend the term by renewal or otherwise, consist of a bundle of rights approximating those of the class of interests mentioned in (a) of this subdivision.

(ii) The term "sold" imports a transfer of an interest for a valuable consideration, which may involve money or anything of value.

(iii) The term "deed" includes any instrument or writing whereby realty is assigned, transfererd, or otherwise conveyed to, or vested in, the purchaser, or at his direction, any other person.

(b) *Rate and computation of tax.* The rate of tax is 55 cents on each $500 or fractional part thereof of the net consideration paid for, or the net value of, the realty conveyed, that is, the gross consideration or gross value less, in either case, the amount of all liens or encumbrances on the realty existing before the sale and not removed thereby. The tax is based upon the net consideration where it is definite in amount, or may be definitely determined. The tax is based upon net value where the amount of the consideration is indefinite, or is left open to be fixed by future contingencies. In determining the amount of the net consideration for, or net value of, the realty conveyed, only the amount of the liens and encumbrances on the property existing before the sale and not removed thereby may be deducted. Thus, for example, taxes or assessmnets which are liens on the property before the sale and are not paid at the time of sale are deductible. No deduction shall be made on account of any lien or encumbrance placed upon the property in connection with the sale, or by reason of deferred payments of the purchase price, whether represented by notes or otherwise.

§ 47.4361–2 Illustrations.

(a) *Conveyances subject to tax.* The following are examples of conveyances subject to the tax:

(1) A conveyance of realty in exchange for other property; also the conveyance of the other property, if it is realty.

(2) A conveyance of realty in consideration of life maintenance. The tax is computed on the net value of the realty conveyed.

(3) A conveyance by a defaulting mortgagor to the mortgagee in consideration of the cancellation of the mortgage debt. The tax is computed on the amount of the unpaid mortgage debt plus unpaid accrued interest.

(4) Deeds given by masters in chancery, sheriffs, clerks of court, etc., for realty sold under foreclosure or execution. The tax is computed on the amount bid for the property plus the costs if paid by the purchaser, whether the purchaser is the mortgagee, judgment creditor, or any other person.

(5) A conveyance of realty by a judgment or decree in a condemnation proceeding under the power of eminent domain, or a conveyance of such property under threat or imminence of such proceeding.

(6) Conveyances to or by building and loan associations. However, the tax does not apply to a conveyance of realty to a building and loan association for the purpose of securing a loan thereon, nor to the reconveyance of the realty to its owner as part of the loan transaction.

(7) A conveyance of realty to a corporation in exchange for shares of its capital stock.

(8) A conveyance of realty by a corporation in liquidation or in dissolution to its shareholders subject to the debts of the corporation; however, if there are no corporate debts and the conveyance is made solely for the cancellation and retirement of the capital stock, the tax does not apply.

(9) Deeds to standing timber and to mines. (For definition of the term "deed", see paragraph (a)(4)(iii) of § 47.4361–1.)

(10) In jurisdictions where common-law dower still exists, an instrument conveying the estate acquired by a widow upon assignment of dower. However, an instrument purporting to convey the inchoate right of dower of a wife, or the consummate right of dower of a widow prior to assignment of dower, is not subject to the tax. Where by statute dower has been abolished and in lieu thereof a different interest in the husband's real property conferred upon the wife, the taxability of an instrument purporting to convey such interest prior to its assignment must be determined by the nature of the wife's interest as fixed by the statutes and decisions of the jurisdiction in which the real estate is located.

(11) A conveyance of real estate sold to or by the United States (see, however, paragraph (a) of § 47.4384–1).

(12) A conveyance of realty by a partner to the partnership as a contribution of partnership assets. See section 4383 and § 47.4383–1 for application of tax in case of a termination of a partnership owning realty.

(b) *Conveyances not subject to tax.* In addition to the various exemptions prescribed in sections 4362 and 4382 and in the Bankruptcy Act as amended, the following are examples of conveyances not subject to tax:

(1) The reconveyance of realty, conveyed to secure a debt, upon payment of such debt.

(2) Conveyances of realty without consideration and otherwise than in connection with a sale, including a deed conveying realty as a bona fide gift, although the deed may recite a consideration for the transfer, such as "natural love and affection and $1", "desire to promote public welfare and $1", or "$1 and other valuable consideration"; a gift of realty by a husband to his wife accomplished through the conveyance of the property for an ostensible consideration to a "straw man" who immediately reconveys the property to the wife; and a deed to or by a trustee not pursuant to a sale.

(3) A deed to confirm title already vested in the grantee, such as a quit claim deed to correct a flaw in title.

(4) A deed given by an executor in accordance with the terms of the will; however, if, by reason of a consideration passing between devisees, one of them takes a greater share in the realty than that to which he is entitled under the will, the deed given by the executor to convey such greater share is subject to a tax computed upon the amount exceeding such consideration.

(5) A deed from an agent to his principal conveying real estate purchased for and with funds of the principal.

(6) An option for the purchase of real property or a contract for the sale of real property, if the contract does not vest legal title.

(7) Partition deeds, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess.

(8) Ordinary leases of real property for a definite term of years (see, however, paragraph (a)(4)(i) of § 47.4361–1).

(9) A deed executed by a debtor conveying property to a trustee for the benefit of his creditors; however, when the trustee conveys such property to a creditor or sells it to any other person, the deed executed by him is taxable

(10) Conveyance to a receiver of realty included in the receivership assets, and reconveyance of such realty upon termination of the receivership.

(11) A deed conveying real estate situated in a foreign country.

(12) Transfer of real estate in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation.

§ 47.4361–3 Affixing of stamps.

(a) Only documentary stamps shall be used in payment of the tax imposed by section 4361. The requisite stamps shall be affixed to the deed, instrument, or other writing by which the realty is conveyed. See §§ 47.6804–1 and 47.6804–2 for the appropriate use, denominations, and cancellation of such stamps.

(b) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802–1. For provisions relating to distribution, supply, and redemption of stamps, see sections 6801 (§ 47.6801), 6802 (§ 47.6802), and 6805 (§ 47.6805), and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration) and § 47.6801–1.

§ 47.4362 Statutory provisions; exemptions.

SEC. 4362 *Exemptions*—(a) *Security for debt.* The tax imposed by section 4361 shall not apply to any instrument or writing given to secure a debt.

(b) *State and local government conveyances.* No State or Territory, or political subdivision thereof, or the District of Columbia, shall be liable for the tax imposed by section 4361 with respect to any deed, instrument, or writing to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

(c) *Other exemptions.* For other exemptions, see section 4382.

[Sec. 4362 as amended and in effect Jan. 1, 1959]

§ 47.4362–1 Exemptions.

(a) *Security for debt.* Section 4362 expressly exempts from the tax imposed by section 4361 any instrument or writing, such as a mortgage or a deed of trust, given to secure a debt.

(b) *Conveyance to which State is party.* No State or Territory, or political subdivision thereof, or the District of Columbia shall be liable for the tax imposed by section 4361 in respect of a conveyance to which it is a party regardless of the capacity in which it acts. However, the conveyance is not exempt from tax, and the nonexempt party to the conveyance shall be liable for the tax. The affixing of stamps to the deed or other instrument of conveyance by the exempt governmental body does not constitute payment of the tax, and the nonexempt party remains liable for the tax in such case. Where all parties to a taxable conveyance are governmental bodies exempt under section 4362, no tax shall be imposed.

(c) *Other exemptions.* For other exemptions, see section 4382 and § 47.4382–1.

§ 47.4363 Statutory provisions; cross references.

SEC. 4363 *Cross references.* For penalties and other general and administrative provisions applicable to this subchapter, see section 4384 and subtitle F.

[Sec. 4363 as amended and in effect Jan. 1, 1959]

§ 47.4363–1 Cross references.

(a) For definitions, see section 4381, § 47.4381–1, and section 7701 (§ 47.7701).

(b) For penalties, see section 7271 and § 47.7271–1.

(c) For other general and administrative provisions, see section 4384, § 47.4384–1, Subpart J, and the applicable sections of subtitle F and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Subpart H—Tax on Policies Issued by Foreign Insurers

§ 47.4371 Statutory provisions; imposition of tax.

SEC. 4371 *Imposition of tax.* There is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax at the following rates:

(1) *Casualty insurance and indemnity bonds.* Four cents on each dollar, or fractional part thereof, of the premium charged on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d).

(2) *Life insurance, sickness, and accident policies, and annuity contracts.* One cent on each dollar, or fractional part thereof, of the premium charged on the policy of life, sickness, or accident insurance, or annuity contract, unless the insurer is subject to tax under section 819.

(3) *Reinsurance.* One cent on each dollar, or fractional part thereof, of the premium charged on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2).

[Sec. 4371 as amended and in effect Jan. 1, 1959, and as further amended by sec. 3(f)(3) Life Insurance Income Tax Act 1959 (73 Stat. 140)]

§ 47.4371–1 Imposition of tax on policies issued by foreign insurers; scope of tax.

(a) *Certain insurance policies, and indemnity, fidelity, or surety bonds.* Section 4371(1) imposes a tax upon each policy of insurance (other than those referred to in paragraph (b) of this section), upon each indemnity, fidelity, or surety bond, or upon each certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of insurance of the character involved or an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed, if issued—

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as insurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia in which the insurer is authorized to do business; and

(2) To or for, or in the name of, a domestic corporation, domestic partner-

ship, or an individual resident of the United States, against or with respect to hazards, risks, losses, or liabilities wholly or partly within the United States; or

(3) To or for, or in the name of, a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States with respect to hazards, risks, or liabilities wholly within the United States.

For definition of the term "indemnity bond", see section 4372(c).

(b) *Life insurance, sickness, and accident policies and annuity contracts.* Section 4371(2) imposes a tax upon each policy of insurance or annuity contract, or certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of insurance or an annuity contract is made, continued, or renewed, if issued—

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as insurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the insurer in a State, Territory, or the District of Columbia in which such insurer is authorized to do business, or if not so signed or countersigned, the insurer is not subject to tax under section 819; and

(2) To any person with respect to the life or hazards to the person of a citizen or resident of the United States.

(c) *Reinsurance.* Section 4371(3) imposes a tax upon each policy of reinsurance, certificate, binder, covering note, receipt, memorandum, cablegram, letter, or other instrument by whatever name called, whereby a contract of reinsurance is made, continued, or renewed, if issued—

(1) By a nonresident alien individual, a foreign partnership, or a foreign corporation, as reinsurer, and the policy or other instrument is not signed or countersigned by an officer or agent of the reinsurer in a State, Territory, or the District of Columbia in which such reinsurer is authorized to do business; and

(2) To any person against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts described in section 4371 (1) or (2).

(d) *Exempt indemnity bonds.* The tax imposed by section 4371 does not apply to any indemnity bond described in section 4373(2).

§ 47.4371–2 Rate and computation of tax.

(a) *Rate of tax.* (1) The tax under section 4371(1) is imposed at the rate of 4 cents on each dollar, or fractional part thereof, of the premium charged.

(2) The tax under section 4371 (2) and (3) is imposed at the rate of 1 cent on each dollar, or fractional part thereof, of the premium charged.

(b) *Computation of tax.* The tax is measured strictly by the amount of the premium charged. The time and method of payment of the premium are immaterial; the tax liability attaches if the insurance becomes effective, even though the premium is never paid. The full rate of tax applies to each fractional part of a dollar of the premium charged. For example, upon a premium charge of $10.10, the tax at the rate of 4 cents amounts to 44 cents, and at the rate of 1 cent amounts to 11 cents.

(c) *Meaning of premium.* For purposes of the regulations in this part, the term "premium" means the agreed price or consideration for assuming and carrying the risk or obligation, and includes any additional assessment or charge which may be assessed or charged under the contract, whether payable in one sum or installments.

§ 47.4372 Statutory provisions; definitions.

SEC. 4372 *Definitions*—(a) *Foreign insurer or reinsurer.* For purposes of this subchapter, the term "foreign insurer or reinsurer" means an insurer or reinsurer who is a nonresident alien individual, foreign partnership, or a foreign corporation. The term includes a nonresident alien individual, foreign partnership, or foreign corporation which shall become bound by an obligation of the nature of an indemnity bond.

(b) *Policy of casualty insurance.* For purposes of section 4371(1), the term "policy of casualty insurance" means any policy (other than life) or other instrument by whatever name called whereby a contract of insurance is made, continued, or renewed.

(c) *Indemnity bond.* For purposes of this subchapter, the term "indemnity bond" means any instrument by whatever name called whereby an obligation of the nature of an indemnity, fidelity, or surety bond is made, continued, or renewed. The term includes any bond for indemnifying any person who shall have become bound or engaged as surety, and any bond for the due execution or performance of any contract, obligation, or requirement, or the duties of any office or position, and to account for money received by virtue thereof, where a premium is charged for the execution of such bond.

(d) *Insured.* For purposes of section 4371(1), the term "insured" means—

(1) A domestic corporation or partnership, or an individual resident of the United States, against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States, or

(2) A foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, against, or with respect to, hazards, risks, losses, or liabilities within the United States.

(e) *Policy of life, sickness, or accident insurance, or annuity contract.* For purposes of section 4371(2), the term "policy of life, sickness, or accident insurance, or annuity contract" means any policy or other instrument by whatever name called whereby a contract of insurance or an annuity contract is made, continued, or renewed with respect to the life or hazards to the person of a citizen or resident of the United States.

(f) *Policy of reinsurance.* For purposes of section 4371(3), the term "policy of reinsurance" means any policy or other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts taxable under paragraph (1) or (2) of section 4371.

[Sec. 4372 as amended and in effect Jan. 1, 1959]

§ 47.4373 Statutory provisions; exemptions.

SEC. 4373 *Exemptions.* The tax imposed by section 4371 shall not apply to—

(1) *Domestic agent.* Any policy, indemnity bond, or annuity contract signed or countersigned by an officer or agent of the insurer in a State, Territory, or District of the United States within which such insurer is authorized to do business.

(2) *Indemnity bond.* Any indemnity bond required to be filed by any person to secure payment of any pension, allowance, allotment, relief, or insurance by the United States, or to secure a duplicate for, or the payment of, any bond, note, certificate of indebtedness, war-saving certificate, warrant, or check, issued by the United States.

[Sec. 4373 as amended and in effect Jan. 1, 1959]

§ 47.4374 Statutory provisions; affixing of stamps.

SEC. 4374 *Affixing of stamps.* Any person to or for whom or in whose name any policy, indemnity bond, or annuity contract referred to in section 4371 is issued, or any solicitor or broker acting for or on behalf of such person in the procurement of any such instrument shall affix the proper stamps to such instrument.

[Sec. 4374 as originally enacted and in effect Jan. 1, 1959]

§ 47.4374–1 Affixing of stamps.

(a) *General.* (1) Documentary stamps shall be used in payment of the tax. Requisite stamps must be affixed to the first instrument whereby the taxable contractual relationship is created, continued, or renewed, whether it be a letter of acceptance, a cablegram, or other instrument by whatever name called. Where the instrument which creates or evidences the contractual relationship is confirmed by a subsequent instrument, the latter shall bear a notation designating such prior instrument (referred to in this section as the original instrument) and showing that the requisite stamps have been affixed thereto and canceled.

(2) In any case where the amount of the premium is not definitely determined at the time of entering into the taxable contractual relationship, the stamps may be affixed to the receipts for monthly or other payments if proper notation be made upon such receipts identifying the original instruments to which they apply.

(b) *Subsequent instruments.* In case a subsequent instrument provides for the payment of a premium greater than that provided for in the original instrument, the subsequent instrument must have affixed thereto stamps equal to the tax imposed upon the additional premium charged and must bear a notation of the stamps affixed to the original instrument.

(c) *Affixing of stamps.* (1) Only documentary stamps shall be used in payment of the tax imposed by section 4371. See also §§ 47.6804–1 and 47.6804–2 for the appropriate use, denominations, and cancellation of such stamps.

(2) Documentary stamps may be purchased, and requisition forms for the purchase of such stamps may be obtained, from the sources and in the manner provided in § 47.6802–1. For provisions relating to distribution, supply, and redemption of stamps, see sections

owner. The stamps shall be affixed by any person who is a party to the taxable contractual relationship, including any solicitor or broker acting for or on behalf of such person.

6801 (§ 47.6801), 6802 (§ 47.6802), 6805 (§ 47.6805), and the regulations thereunder contained in Part 301 of this chapter (Regulations on Procedure and Administration), and § 47.6801–1.

(d) *Instruments without stamps or notation of stamping.* For provisions relating to the penalty for failure to comply with the requirements of section 4374, see § 47.7270.

(e) *Record requirements.* For provisions relating to the requirements concerning records and the retention of policies for a period of 3 years, see § 47.6001–2.

§ 47.4375 Statutory provisions; cross references.

SEC. 4375. *Cross references.* For penalties and other general and administrative provisions, see section 4384 and subtitle F.

[Sec. 4375 as amended and in effect Jan. 1, 1959]

§ 47.4375–1 Cross references.

(a) For definitions, see section 4381, § 47.4381–1, and section 7701 (§ 47.7701).

(b) For penalties, see section 7271 and § 47.7271–1.

(c) For other general and administrative provisions, see section 4384, § 47.4384–1, Subpart J, and the applicable sections of subtitle F and the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

Subpart I—Miscellaneous Provisions Applicable to Documentary Stamp Taxes

§ 47.4381 Statutory provisions; definitions.

SEC. 4381 *Definitions*—(a) *Certificates of indebtedness.* For purposes of the taxes imposed by sections 4311 and 4331, the term "certificates of indebtedness" means bonds, debentures, or certificates of indebtedness; and includes all instruments, however termed, issued by a corporation with interest coupons or in registered form, known generally as corporate securities.

(b) *Corporation.* For purposes of the taxes imposed by this chapter, the term "corporation" includes any investment trust or similar organization (or any person acting in behalf of such investment trust or similar organization) issuing, holding or dealing in shares or certificates of stock, or in certificates of indebtedness. For purposes of the tax imposed by section 4311, the term "corporation" also includes any receiver, trustee in bankruptcy, assignee, or other person having custody of property of, or charge of the affairs of, the corporation. Nothing contained in this subsection shall be construed to limit the effect of the definition of the term "corporation" provided in section 7701(a)(3).

(c) *Shares or certificates of stock.* For purposes of the taxes imposed by sections 4301 and 4321, the term "shares or certificates of stock" includes shares or certificates of profits or of interest in property or accumulations.

[Sec. 4381 as amended and in effect Jan. 1, 1959]

§ 47.4381–1 Definitions.

(a) *Certificates of indebtedness.* The term "certificates of indebtedness" includes bonds, debentures, and certificates of indebtedness. Such term also includes all instruments, however termed, issued by a corporation with interest coupons or in registered form and known generally as corporate securities. The essence of a corporate security is marketability. An instrument is ordinarily considered to be marketable if it is issued in series, under a trust indenture, and in registered form or with interest coupons attached. For example, an instrument containing the essential features of a promissory note is included within the meaning of the term "certificates of indebtedness" if it has, in addition, the general characteristics of a corporate security. Whether or not an instrument is a certificate of indebtedness within the meaning of section 4381(a) is not determined by its name alone, but depends upon all the facts which can be derived from the face of the instrument, such as the form and terms of the instrument. The nature of the transaction or any act appearing outside of the instrument itself is immaterial for purposes of making such determination.

(b) *Corporation.* For purposes of the taxes imposed by sections 4301, 4311, 4321, 4331, 4361, and 4371, the term "corporation" includes associations, joint-stock companies, and insurance companies (see § 47.7701), as well as any investment trust or similar organization (or any person acting in behalf of such investment trust or similar organization) issuing, holding or dealing in shares or certificates of stock, or in certificates of indebtedness. In addition, for purposes of the tax imposed by section 4311; the term "corporation" also includes any receiver, trustee in bankruptcy, assignee, or other person having custody of property, or charge of the affairs, of the corporation.

(c) *Shares or certificates of stock.* For purposes of the regulations in this part, the term "stock" includes shares or certificates of stock. The term "stock" also includes shares in an association, joint-stock company, or insurance company (see § 47.7701). For purposes of the tax imposed by section 4321, the term "stock" also includes rights to subscribe for or to receive shares or certificates of stock (see paragraph (a) of § 47.4321–1). For purposes of the taxes imposed by sections 4301 and 4321, the term "shares or certificates of stock" includes shares or certificates of profits or of interest in property or accumulations.

(d) *Cross references.* For other definitions of general application, see §§ 47.0–2 and 47.7701.

§ 47.4382 Statutory provisions; exemptions.

SEC. 4382 *Exemptions*—(a) *Governments; certain associations.* The taxes imposed by this chapter shall not apply to—

(1) *Government and State obligations.* Any certificate of indebtedness, note, or other instrument, issued by the United States, or by any foreign government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power.

(2) *Domestic building and loan associations and mutual ditch or irrigation companies.* Shares or certificates of stock and certificates of indebtedness issued by domestic building and loan associations, savings and loan associations, cooperative banks, and homestead associations substantially all the business of which is confined to making loans to members, or by mutual ditch or irrigation companies.

(3) *Farmers', fruit growers', or cooperative associations.* Shares or certificates of stock and certificates of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in section 521.

(b) *Certain reorganizations, etc.* The taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 shall not apply to—

(1) *Corporate and railroad reorganization.* The issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, to make effective any plan of reorganization or adjustment—

(A) Confirmed under the Bankruptcy Act, as amended (11 U.S.C.),

(B) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77(m) of the Bankruptcy Act, as amended (11 U.S.C. 205(m)),

(C) Approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106(3) of the Bankruptcy Act, as amended (11 U.S.C. 506), or

(D) Whereby a mere change in identity, form, or place or organization is effected, but only if the issuance, transfer, or exchange of securities, or the making, delivery, or filing of instruments of transfer or conveyances, occurs within 5 years from the date of such confirmation, approval, or change.

(2) *Orders of the Securities and Exchange Commission.* The issuance, transfer, or exchange of securities, or making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 1083(a); but only if—

(A) The order of the Securities and Exchange Commission in obedience to which such issuance, transfer, exchange, or conveyance is made recites that such issuance, transfer, exchange, or conveyance is necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79k(b)),

(B) Such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed, and

(C) Such issuance, transfer, exchange, or conveyance is made in obedience to such order.

[Sec. 4382 as amended and in effect Jan. 1, 1959]

§ 47.4382–1 Exemptions.

(a) *Government and State obligations.* Section 4382(a)(1) exempts from the tax imposed by section 4311 or 4331 any certificate of indebtedness issued by the United States, or by any foreign government, or by any State, Territory, or the District of Columbia, or local subdivision thereof, or municipal or other corporation exercising the taxing power.

(b) *Stocks and certificates of indebtedness of domestic building and loan associations, etc.* Section 4382(a)(2) exempts from the tax imposed by section 4301, 4311, 4321, or 4331 any stock or certificate of indebtedness issued by a (1) domestic building and loan association, savings and loan association, cooperative bank, or homestead association, substantially all the business of which is confined to making loans to members, or (2) mutual ditch or irrigation com-

pany. For definition of the term "domestic building and loan association", see § 47.7701.

(c) *Stocks and certificates of indebtedness of farmers', fruit growers', or cooperative associations.* Section 4382(a)(3), exempts from the tax imposed by section 4301, 4311, 4321, or 4331 any stock or certificate of indebtedness issued by any farmers' or fruit growers' or like associations organized and operated on a cooperative basis for the purposes, and subject to the conditions, prescribed in section 521. For regulations under section 521, see Part 1 of this chapter (Income Tax Regulations).

(d) *Corporate and railroad reorganizations.* (1) Section 4382(b)(1) exempts from the taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, to make effective any plan of reorganization or adjustment—

(i) Confirmed under the Bankruptcy Act, as amended (11 U.S.C.);

(ii) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in section 77(m) of the Bankruptcy Act, as amended (11 U.S.C. 205(m));

(iii) Approved in an equity receivership proceeding in a court involving a corporation, as defined in section 106(3) of the Bankruptcy Act, as amended (11 U.S.C. 506); or

(iv) Whereby a mere change in identity, form, or place of organization is effected,

if the issuance, transfer, or exchange of securities, or the making, delivery, or filing of instruments of transfer or conveyance, occurs within 5 years from the date of such confirmation, approval, or change.

(2) Section 267 of the Bankruptcy Act (11 U.S.C. 667) also exempts from stamp tax the issuance, transfer, or exchange of securities, or the making or delivery of instruments of transfer under any plan of reorganization confirmed under chapter X of the Bankruptcy Act, as amended. However, by reason of the provisions of section 4382(b)(1) the exemption conferred by section 267 has no application to the issuance, transfer, or exchange of securities, or the making, delivery, or filing of conveyances, which occurs after 5 years from the date of confirmation or approval of the plan of reorganization.

(e) *Orders of the Securities and Exchange Commission.* Section 4382(b)(2) exempts from the taxes imposed by sections 4301, 4311, 4321, 4331, and 4361 the issuance, transfer, or exchange of securities, or the making or delivery of conveyances, to make effective any order of the Securities and Exchange Commission as defined in section 1083(a), if (1) the order of the Securities and Exchange Commission in obedience to which such issuance, transfer, or exchange of securities or conveyance is made recites that such issuance, transfer, or exchange of securities or conveyance is necessary or appropriate to effectuate the provisions of section 11(b) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79k(b)); (2) such order specifies and itemizes the securities and other property which are ordered to be issued, transferred, exchanged, or conveyed; and (3) such issuance, transfer, exchange, or conveyance is made in obedience to such order.

(f) *Alteration and modification of securities under the Interstate Commerce Act.* Section 20b of the Interstate Commerce Act (49 U.S.C. 20b) provides for alteration or modification of securities of a carrier as defined in section 20a(1). Paragraph (12) of such section 20b (by application of section 7852) makes sections 4301, 4311, 4321, 4331, and 4361, and any amendments thereto, unless specifically provided to the contrary, inapplicable to the issuance, transfer, or exchange of securities or the making or delivery of conveyances to make effective any alteration or modification effected pursuant to section 20b.

§ 47.4383 Statutory provisions: certain changes in partnerships.

SEC. 4383 *Certain changes in partnerships*—(a) *Continuing partnerships.* In the case of any share, certificate, right, or realty held by a partnership, no tax shall be imposed under section 4321, 4331, or 4361 by reason of any transfer of an interest in a partnership or otherwise, if—

(1) Such partnership (or another partnership) is considered as a continuing partnership (within the meaning of section 708), and

(2) Such continuing partnership continues to hold the share, certificate, right, or realty concerned.

(b) *Terminated partnerships.* If there is a termination of any partnership (within the meaning of section 708)—

(1) For purposes of this chapter, such partnership shall be treated—

(A) As having transferred all shares, certificates, and rights held by such partnership at the time of such termination; and

(B) As having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination; but

(2) Not more than one tax shall be imposed under section 4321, 4331, or 4361, as the case may be, by reason of such termination (and any transfer pursuant thereto) with respect to the shares, certificates, rights, or realty held by such partnership at the time of such termination.

[Sec. 4383 as added and in effect Jan. 1, 1959]

§ 47.4383–1 Certain changes in partnerships.

(a) *Continuing partnerships.* No tax shall be imposed under section 4321, 4331, or 4361 by reason of any transfer of an interest in a partnership holding shares, certificates, rights, or realty if such partnership (or another partnership) is considered to be a continuing partnership within the meaning of section 708 and if such shares, certificates, rights, or realty continue to be held, regardless of the name in which held, by the continuing partnership (or the continuing partnerships if more than one). For rules relating to continuations of partnerships, see section 708 and the regulations thereunder in Part 1 of this chapter (Income Tax Regulations). To the extent that the shares, certificates, rights, or realty do not continue to be so held, the taxes imposed by sections 4321, 4331, and 4361 will apply. For example, if a partner withdraws from a partnership under such circumstances that the withdrawal does not constitute a termination of the partnership under the provisions of section 708 and the regulations thereunder, and if the partnership transfers to him, in consideration for his withdrawal, stock owned by the partnership, the stock so transferred will be subject to tax. However, if the partner receives cash in consideration for his withdrawal, and the partnership retains the stock, no tax is imposed since the stock is held by a continuing partnership.

(b) *Termination of partnerships.* If there is a termination, within the meaning of section 708, of a partnership holding shares, certificates, rights, or realty, the partnership is considered, for purposes of the taxes imposed by sections 4321, 4331, and 4361, as having transferred at the time of such termination all of such shares, certificates, and rights, and as having executed at the time of such termination an instrument conveying, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all of such realty. However, not more than one tax shall be imposed under each section with respect to such shares, certificates, rights, or realty by reason of a termination and any transfer pursuant thereto. Tax should be computed with respect to the transfer or conveyance deemed to occur under this paragraph. Any other deemed or actual transfer or conveyance which occurs by reason of the transaction resulting in the termination is not subject to tax. The operation of this paragraph may be illustrated by the following examples:

Example (1). Partnership AB owns 150 shares of X Corporation stock having a total actual value of $13,000 and real estate having a fair market value (exclusive of the value of any lien or encumbrance thereon) of $10,000. Partner B retires and receives 100 shares of X Corporation stock in liquidation of his entire partnership interest. Partner A receives the remainder of the partnership properties in liquidation of his entire partnership interest, and he continues to run the business as a sole proprietor. Partnership AB is terminated within the meaning of section 708 since the partnership business is no longer carried on by a partnership. Partnership AB is, therefore, considered to have executed an instrument conveying the real estate for $10,000 and to have transferred the X Corporation stock having a total actual value of $13,000. The transaction is subject to the taxes imposed by sections 4321 and 4361. No tax is imposed on the actual transfer of 100 shares of X Corporation stock to partner B or on the actual transfer and conveyance of the remaining stock and realty to partner A since such conveyance and transfers are made by reason of the transaction resulting in the termination.

Example (2). Partnership ABCD owns 1,000 shares of Y Corporation stock having a total actual value of $60,000. Partner A owns a 40 percent interest in the capital and profits of the partnership and partners B, C, and D each have a 20 percent interest. In January, 1960, partner A sells his partnership interest to E, and in September, 1960, partner B sells his partnership interest to F thereby causing a termination of the partnership within the meaning of section 708. The partnership is, therefore, considered to have transferred in September, 1960, the 1,000 shares of Y Corporation stock, and there is a tax under section 4321 with respect to such shares. No further tax is imposed with respect to the transaction. Inasmuch as A is not a partner in the partnership at the time of its termination, he incurs no liability for the tax imposed with respect to the 1,000 shares of stock.

Example (3). Partnership ABCDE terminates within the meaning of section 708 by reason of the sale by E of his partnership interest to F. Pursuant to the termination transaction, partners A and B withdraw from the partnership, receiving stock owned by the partnership in consideration for their withdrawal, under such circumstances that the withdrawal constitutes a liquidation under section 708 and the regulations thereunder. All of the stock owned by the partnership is considered to be transferred on termination and tax is imposed with respect to such stock, but no additional tax is imposed with respect to the stock actually distributed to partners A and B in liquidation of their partnership interest. Furthermore, no tax will be imposed on the transfer by partners A and B of the stock distributed to them to a new partnership AB if such transfer is made pursuant to an agreement entered into concurrently with and as a result of the transaction in which partnership ABCDE is terminated.

(c) *Application of section.* Only those partnership changes occurring on or after January 1, 1959, shall be considered in determining whether a partnership is a continuing or terminated partnership under section 708.

§ 47.4384 Statutory provisions: liability for tax.

SEC. 4384 *Liability for tax.* The taxes imposed by this chapter shall be paid by any person who makes, signs, issues, or sells any of the documents and instruments subject to the taxes imposed by this chapter, or for whose use or benefit the same are made, signed, issued, or sold. The United States or any agency or instrumentality thereof shall not be liable for the tax with respect to an instrument to which it is a party, and affixing of stamps thereby shall not be deemed payment for the tax, which may be collected by assessment from any other party liable therefor.

[Sec. 4384 as amended and redesignated and in effect Jan. 1, 1959]

§ 47.4384–1 Liability for tax.

(a) *In general.* Except as otherwise provided in paragraphs (c) and (d) of this section, the tax is payable by any of the parties to a taxable transaction. For example, in the case of the transfer of stock, the liability therefor is imposed upon the transferor, the transferee, and the corporation whose stock is transferred (if there is a transfer of record). The parties to the transaction may agree among themselves as to which shall pay the tax, but such agreement does not relieve the others from their liability in the event it is not carried out. No provisions, by-laws, or rules, of any exchange, and no custom, shall exempt any person from payment of the tax imposed.

(b) *Liability of subscriber for tax on issuance of stock.* The liability of a subscriber for the tax imposed by section 4301 on an issuance of stock to him by a corporation extends only to that portion of the total tax on all issuances of stock by such corporation for the day that the total actual value of the shares or certificates of stock issued to him in that day bears to the total actual value of all shares or certificates issued by the corporation in such day. For example, if a total of 100 shares of stock having a total actual value of $1,800 are issued in one day by a corporation, the tax would be $1.80. If A were issued in that day 10 shares of such stock having a total value of $180, his liability for tax would be 18 cents.

(c) *United States as party to transaction.* The United States or any agency or instrumentality thereof shall not be liable for tax in respect of an instrument to which it is a party regardless of the capacity in which it acts. However, the transaction is not exempt from tax, and the nonexempt party to the transaction shall be liable for the tax. The affixing of stamps to the instrument by the United States or any agency or instrumentality thereof does not constitute payment of the tax, and the nonexempt party remains liable for the tax in such case.

(d) *State as party to transaction.* Except with respect to the tax imposed by section 4361, where a State or a political subdivision thereof, acting in its governmental capacity, is a party to a taxable transaction, under chapter 34 of the Code, the transaction will not be exempt from the documentary stamp tax merely by reason of the governmental character of one of the parties. The legal incidence of the tax in such a case rests upon the other party to the transaction. However, if in a taxable transaction with a private party, a State or political subdivision thereof is acting in its proprietary function, both parties will be liable for the tax. Where all parties to a transaction are States or political subdivisions thereof, acting in their governmental capacity, no tax shall be imposed. See section 4362(b) and paragraph (b) of § 47.4362–1 for the exemption of any State, Territory, political subdivision thereof, or the District of Columbia from the tax imposed by section 4361 on conveyances of realty to which it is a party, regardless of the capacity in which it acts.

Subpart J—Administrative Provisions Applicable to Documentary Stamp Taxes

§ 47.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

SEC. 6001 *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

[Sec. 6001 as originally enacted and in effect Jan. 1, 1959]

§ 47.6001–1 Records of sales and transfers of stock.

(a) *Brokers, dealers, etc.* All persons who are wholly or partly engaged in the business of buying, selling, or transferring stock, either at public or private sale, whether or not they are members of an exchange, including persons engaged in transactions known as "matched", "on-order", "pass-outs", or "give-ups", or transactions which are settled directly between the seller and buyer or which are cleared or adjusted through a clearinghouse or otherwise, or persons (other than those described in paragraph (b) of this section) engaged in accepting and procuring the transmission of orders for purchase or sale of shares of stock shall keep a record as to each transaction showing:

(1) Date of transaction.
(2) Name of customer for whom sold or loaned, or for whom bought or borrowed.
(3) Name of party to whom sold or loaned, or from whom bought or borrowed.
(4) Name of correspondent broker, if any.
(5) Number of shares involved.
(6) Name and description of stock.
(7) Selling price of stock, per share.
(8) Amount of tax paid.

(b) *Correspondent brokers.* Persons engaged in accepting and procuring the transmission of orders for the purchase or sale of stock, to be executed at a brokerage office or at an exchange, board of trade, or similar place, shall keep a record as to each transaction showing:

(1) Date of acceptance and transmission of order.
(2) Name of person from whom accepted.
(3) Name and address of person to whom transmitted.
(4) Name and description of stock.
(5) Number of shares involved.
(6) Whether purchase or sale.
(7) Selling price of stock, per share.
(8) Date of execution of order.

(c) *Floor brokers, etc.* Brokers known as strictly "floor brokers", "two-dollar men", or "room traders", whether their transactions are settled directly between seller and buyer, by "matched", "on-order", "pass-out", "scratch sale", or "give-up", or by any other kind of sale or purchase, or whether their transactions are cleared through a clearinghouse or otherwise, shall, in lieu of the record prescribed in paragraph (a) of this section, keep a record as to each transaction showing:

(1) Date of transaction.
(2) Name of seller.
(3) Name of purchaser.
(4) Name and description of stock.
(5) Number of shares involved.
(6) Selling price of stock, per share.
(7) Whether the transaction is "matched", "on-order", "pass-out", "scratch sale", or "give-up".
(8) Name of person to whom "given-up".

(d) *General.* Persons keeping records as prescribed in this section may incorporate therein additional information for their own use, which should be en-

tered, however, so as not to interfere with the recording of the information required by this section. These records must be kept in permanent form for a period of at least three years from the date any part of the tax is paid on the transaction and must be available for ready inspection by internal revenue officers.

§ 47.6001–2 Records with respect to foreign insurance policies.

(a) *Records to be kept by solicitors, brokers, etc.* No return or statement showing a list of policies or other instruments subject to the tax imposed by section 4371 is required from any person to or for whom, or in whose name, such policy or other instrument is issued, or from the solicitor or broker acting directly or indirectly for or on behalf of such person. However, each person, solicitor, or broker, accepting, placing, soliciting, or making, directly or indirectly, or paying or receiving compensation with respect to, a policy or other instrument subject to the tax imposed by section 4371 shall keep a record of such policy or other instrument for a period of at least three years from the date any part of the tax was paid with respect to the issuance thereof and shall be prepared to furnish full information to the district director at any time upon demand.

(b) *Records to be kept by policy holder.* The person having control or possession of a policy of insurance, or reinsurance, or other instrument to which documentary stamps must be affixed shall retain such instrument for at least 3 years from the date any part of the tax was paid with respect to the issuance thereof to enable internal revenue officers to ascertain whether the requisite stamps have been affixed and cancelled.

§ 47.6801 Statutory provisions; authority for establishment, alteration, and distribution.

SEC. 6801 *Authority for establishment, alteration, and distribution.*—(a) *Establishment and alteration.* The Secretary or his delegate may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the laws relating to internal revenue.

(b) *Preparation and distribution of regulations, forms, stamps and dies.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, and stamps; and shall provide proper and sufficient adhesive stamps and other stamps or dies for expressing and denoting the several stamp taxes.

[Sec. 6801 as originally enacted and in effect Jan. 1, 1959]

§ 47.6801–1 Establishment of meter machines and stamps.

The Commissioner of Internal Revenue or his delegate shall have the authority to set the standards for and to approve meter machines for use in the sale of documentary stamps and to prescribe instructions and requirements governing the circumstances and conditions under which such machines may be used. In addition to the documentary stamps customarily sold and used for the payment of taxes imposed under chapter 34 of the Code, stamps produced by authorized documentary stamp meter machines shall be proper for such use. See paragraph (a)(5) of § 47.0–2 for the definition of the term "documentary stamps".

§ 47.6802 Statutory provisions; supply and distribution.

SEC. 6802 *Supply and distribution.* The Secretary or his delegate shall furnish, without prepayment, to—

(1) *Postmaster General.* The Postmaster General a suitable quantity of adhesive stamps (other than the stamps on playing cards), coupons, tickets, or such other devices as may be prescribed by the Secretary or his delegate pursuant to section 6302(b) or this chapter, to be distributed to, and kept on sale by, the various postmasters in the United States in all post offices of the first and second classes, and such post offices of the third and fourth classes as—

(A) Are located in county seats, or

(B) Are certified by the Secretary to the Postmaster General as necessary;

(2) *Designated depositary of the United States.* Any designated depositary of the United States a suitable quantity of adhesive stamps to be kept on sale by such designated depositary;

(3) *State agents.* Any person who is—

(A) Duly appointed and acting as agent of any State for the sale of stock transfer stamps of such State, and

(B) Designated by the Secretary or his delegate for the purpose,

a suitable quantity of such adhesive stamps as are required by section 4301, to be kept on sale by such person.

[Sec. 6802 as originally enacted and in effect Jan. 1, 1959]

§ 47.6802–1 Where stamps may be purchased and where requisition forms for the purchase of such stamps may be obtained and filed.

(a) *Where stamps may be purchased.* Documentary stamps may be purchased from (1) district directors and other duly authorized officials; (2) postmasters in all post offices of the first and second classes and such post offices of the third and fourth class as are located in county seats; (3) designated depositaries of the United States (see section 6802(2) (§ 47.6802)); and (4) State agents designated under paragraph (3) of section 6802 (§ 47.6802).

(b) *Requests for purchase of stamps.* A request for the purchase of documentary stamps (other than stamps issued by authorized meter machines) from a district director, designated United States depositary, or designated State agent shall be made in writing. Form 427 may be used for this purpose. Copies of this form may be procured from any district director.

(c) *Use or resale of unused documentary stamps.* Unused documentary stamps may be used at any time in payment of any tax imposed by section 4301, 4311, 4321, 4331, 4361, or 4371, or may be resold by the owner at any time. For redemption of stamps see section 6805 (§ 47.6805).

§ 47.6804 Statutory provisions; attachment and cancellation.

SEC. 6804 *Attachment and cancellation.* Except as otherwise expressly provided in this title, the stamps referred to in section 6801 shall be attached, protected, removed, canceled, obliterated, and destroyed, in such manner and by such instruments or other means as the Secretary or his delegate may prescribe by rules or regulations.

[Sec. 6804 as originally enacted and in effect Jan. 1, 1959]

§ 47.6804–1 Stamps to be used and denominations thereof.

(a) *Documentary stamps only to be used.* Except as provided in section 4353 and § 47.4353–1, documentary stamps only shall be used in payment of the stamp taxes imposed by sections 4301, 4311, 4321, 4331, 4361, and 4371. Ordinary postage stamps shall not be used in payment of documentary stamp taxes.

(b) *Use of stamps.* Wherever feasible, a stamp tax shall be paid by the use of a single stamp. If a stamp of a denomination equal to the tax is not readily available, the smallest practical number of stamps shall be used. A stamp affixed to an instrument and canceled cannot lawfully be removed therefrom and affixed to another instrument requiring a stamp (see section 7208 (§ 47.7208), relating to penalties).

(c) *Denominations of documentary stamps.* Documentary stamps (other than stamps issued by authorized meter machines) are issued in the following denominations: 1 cent, 2 cents, 3 cents, 4 cents, 5 cents, 8 cents, 10 cents, 20 cents, 25 cents, 40 cents, 50 cents, 55 cents, 80 cents, $1, $1.10, $1.65, $2, $2.20, $2.75, $3, $3.30, $4, $5, $10, $20, $30, $50, $60, $100, $500, $1,000, $2,500, $5,000, and $10,000.

§ 47.6804–2 Cancellation of stamps.

A person using or affixing a stamp shall cancel it and so deface it as to render it unfit for reuse by marking it with his initials and the day, month, and year when the affixing occurs. (See section 7271(1) (§ 47.7271), relating to penalties.) Such marking shall be made by writing or stamping in indelible ink or by perforating with a machine or punch. However, the stamp shall not be so defaced as to prevent ready determination of its denomination and genuineness.

§ 47.6805 Statutory provisions; redemption of stamps.

SEC. 6805 *Redemption of stamps*—(a) *Authorization.* The Secretary or his delegate, subject to regulations prescribed by him, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of any internal revenue law, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use.

(b) *Method and conditions of allowance.* Such allowance or redemption may be made, either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Secretary or his delegate, or until satisfactory proof has been made showing the reason why the same cannot be returned; or, if so required by the Secretary or his delegate, when the person presenting the same cannot satisfactorily trace the history of said stamps from their issuance to the presentation of his claim as aforesaid.

(c) *Time for filing claims.* No claim for the redemption of, or allowance for, stamps shall be allowed under this section unless presented within 3 years after the purchase of such stamps from the Government.

(d) *Finality of decisions.* The findings of fact in and the decision of the Secretary or his delegate upon the merits of any claim presented under or authorized by this section shall, in the absence of fraud or mistake in mathematical calculation, be final and not subject to revision by any accounting officer.

[Sec. 6805 as amended and in effect Jan. 1, 1959]

§ 47.6805–1 Redemption of stamps.

For provisions with respect to redemption of stamps, see the regulations under section 6805 in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 47.7208 Statutory provisions; offenses relating to stamps.

SEC. 7208 *Offenses relating to stamps.* Any person who—

(1) *Counterfeiting.* With intent to defraud, alters, forges, makes, or counterfeits any stamp, coupon, ticket, book, or other device prescribed under authority of this title for the collection or payment of any tax imposed by this title, or sells, lends, or has in his possession any such altered, forged, or counterfeited stamp, coupon, ticket, book, or other device, or makes, uses, sells, or has in his possession any material in imitation of the material used in the manufacture of such stamp, coupon, ticket, book, or other device; or

(2) *Mutilation or removal.* Fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title, any adhesive stamp or the impression of any stamp, die, plate, or other article provided, made, or used in pursuance of this title; or

(3) *Use of mutilated, insufficient, or counterfeited stamps.* Fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title,

(A) Any adhesive stamp, or the impression of any stamp, die, plate, or other article, which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, package, or article, upon which any tax is imposed by this title; or

(B) Any adhesive stamp or the impression of any stamp, die, plate, or other article of insufficient value; or

(C) Any forged or counterfeited stamp, or the impression of any forged or counterfeited stamp, die, plate, or other article; or

(4) *Reuse of stamps*—(A) *Preparation for reuse.* Willfully removes, or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp, with intent to use, or cause the same to be used, after it has already been used; or

(B) *Trafficking.* Knowingly or willfully buys, sells, offers for sale, or gives away, any such washed or restored stamp to any person for use, or knowingly uses the same; or

(C) *Possession.* Knowingly and without lawful excuse (the burden of proof of such excuse being on the accused) has in possession any washed, restored, or altered stamp, which has been removed from any vellum, parchment, paper, instrument, writing, package, or article; or

(5) *Emptied stamped packages.* Commits the offense described in section 7271 (relating to disposal and receipt of stamped packages) with intent to defraud the revenue, or to refraud any person;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both.

[Sec. 7208 as originally enacted and in effect Jan. 1, 1959]

§ 47.7209 Statutory provisions; unauthorized use or sale of stamps.

SEC. 7209 *Unauthorized use or sale of stamps.* Any person who buys, sells, offers for sale, uses, transfers, takes or gives in exchange, or pledges or gives in pledge, except as authorized in this title or in regulations made pursuant thereto, any stamp, coupon, ticket, book, or other device prescribed by the Secretary or his delegate under this title for the collection or payment of any tax imposed by this title, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 6 months, or both.

[Sec. 7209 as originally enacted and in effect Jan. 1, 1959]

§ 47.7209–1 Use or resale of unused stamps.

For provisions with respect to the use or resale of unused stamps, see paragraph (c) of § 47.6802–1. For provisions with respect to the unauthorized use or sale of stamps, see the regulations under section 7209 in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 47.7270 Statutory provisions; insurance policies.

SEC. 7270 *Insurance policies.* Any person who fails to comply with the requirements of section 4374 (relating to the affixing of stamps on insurance policies, etc.), with intent to evade the tax shall, in addition to other penalties provided therefor, pay a fine of double the amount of the tax.

[Sec. 7270 as originally enacted and in effect Jan. 1, 1959]

§ 47.7271 Statutory provisions; penalties for offenses relating to stamps.

SEC. 7271 *Penalties for offenses relating to stamps.* Any person who with respect to any tax payable by stamps—

(1) *Failure to attach or cancel stamps, etc.* Fails to comply with rules or regulations prescribed pursuant to section 6804 (relating to attachment, cancellation, etc., of stamps), unless such failure is shown to be due to reasonable cause and not willful neglect; or

* * * * *

(3) *Instruments.* Makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever without the full amount of tax thereon being duly paid; or

* * * * *

shall be liable for each such offense to a penalty of $50.

[Sec. 7271 as originally enacted and in effect Jan. 1, 1959]

§ 47.7271–1 Cross references.

For other provisions relating to penalties, see the applicable sections of the regulations in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 47.7701 Statutory provisions; definitions.

SEC. 7701 *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.* The term "person" shall be construed to mean and include an individual a trust, estate, partnership, association, company or corporation.

(2) *Partnership and partner.* The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) *Domestic.* The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) *Foreign.* The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) *Fiduciary.* The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) *Stock.* The term "stock" includes shares in an association, joint-stock company, or insurance company.

* * * * *

(9) *United States.* The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) *Secretary.* The term "Secretary" means the Secretary of the Treasury.

(12) *Delegate*—(A) *In general.* The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

* * * * *

(13) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue.

* * * * *

(19) *Domestic building and loan association.* The term "domestic building and loan association" means a domestic building and loan association, a domestic savings and loan association, and a Federal savings and loan association, substantially all the business of which is confined to making loans to members.

* * * * *

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

* * * * *

(d) *Cross references*—(1) *Other definitions.* For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

* * * * *

[Sec. 7701 as originally enacted and in effect Jan. 1, 1959, and as amended by sec. 22 (g) and (h) of the Alaska Omnibus Act (73

Stat. 146, 147); sec. 18 (i) and (j) of the Hawaii Omnibus Act (74 Stat. 416); sec. 103(t) of the Social Security Amendments 1960 (74 Stat. 941)]

§ 47.7805 Statutory provisions; rules and regulations.

SEC. 7805 *Rules and regulations*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

[Sec. 7805 as originally enacted and in effect Jan. 1, 1959]

§ 47.7805–1 Promulgation of regulations.

In pursuance of section 7805 of the Internal Revenue Code of 1954, the foregoing regulations are hereby prescribed. (See § 47.0–3 relating to the scope of the regulations.)

[F.R. Doc. 60–11944; Filed, Dec. 23, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 902]

[Docket No. AO–293–A3]

MILK IN WASHINGTON, D.C., MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the Washington, D.C., marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., not later than the close of business the 10th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Washington, D.C., on September 28 and 29, 1960, pursuant to notice thereof which was issued September 6, 1960 (25 F.R. 8745).

The material issues on the record of the hearing relate to:

1. Modification of the definition of "handler" to cover a cooperative association with respect to farmers' milk delivered to pool plants in trucks owned, operated, or controlled by the association;

2. Permitting unlimited diversion of a producer's milk in certain circumstances;

3. Accounting for milk received from a nonpool plant to which producer milk is diverted from a pool plant;

4. Accounting for shrinkage;

5. The price level for Class I milk;

6. The price for milk used in the manufacture of butter and cheese;

7. Establishment of a base-excess plan; and

8. Miscellaneous provisions.

Proposals 9 and 10 in the notice of hearing were not supported by any testimony at the hearing and, accordingly, no findings or conclusions with respect to those proposals are contained herein. Issues Nos. 1, 2, 3, 4, 6, 7, and 8 are reserved for a further decision on this record.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

5. *Price for Class I milk.* No change should be made in the pricing formula for Class I milk, except to extend it in its present form for another 18 months.

Official notice is taken of market data published by the market administrator for months subsequent to those for which data appear in the record.

Official notice is taken, also, of the decisions of the Assistant Secretary issued May 1, 1959, on milk in the Washington, D.C., marketing area (24 F.R. 3630) and on November 20, 1959, on milk in the Upper Chesapeake Bay marketing area (24 F.R. 9441).

A producer organization proposed that the present pricing mechanism be changed, first, by increasing the prices by 40 cents per hundredweight for each of the months of April through February, and secondly, by including March in the group of months with the higher seasonal price. This would raise the annual average of Class I prices about 43.8 cents. The producer organization also asked that the price adjustment mechanism based upon the average of the Federal order Class I prices in Philadelphia, New York and Chicago, be modified to eliminate any effect of those markets' supply-demand adjusters upon prices in this market.

There has been substantial variation in the monthly volumes of producer milk received at handlers' plants since the order was made effective July 1, 1959. A large part of this variation undoubtedly represents normal seasonal changes in production per cow. Production per farm varied from 1001 pounds per day in November 1959, to 1,298 per day in May 1960. Production for the market also varied because there were substantial changes in the number of producers. From a figure of 2,109 in July 1959, the number increased steadily to 2,332 in December 1959 and then decreased to 2,125 in July 1960. Subsequent months show an increase in the number of producers, and in October 1960 the number was 2,351.

The volume of Class I sales likewise has varied considerably from month to month during the period since the order was established. The daily average sales, in each month ranged from a low of 1,540,000 pounds in July 1960, to 1,875,000 pounds in October 1959. Daily Class I sales, however, for September 1960 were at approximately the same level as a year before.

In July, August and October 1960, production for the market was higher in relation to Class I disposition than a year earlier, but in September 1960 the supply-sales ratio was very close to that of September a year previous. Although a definite trend in the supply-sales relationship is not clear from the available data, the relatively higher level of supply in some recent months than a year previous raises the question of whether the supply is tending to expand at the present price level. In the decision of May 1, 1959, it was concluded: "It is apparent that there is, and has been, a somewhat larger than necessary supply • • •". Because of the similarity of conditions then and now, there is no basis in the local supply situation for a different conclusion as to price level.

The relationship of the Class I price to prices in other markets was a primary consideration in the decision issued May 1, 1959, for establishing the appropriate price level in the Washington market. As indicated in the record of this hearing, the Department contemplates a hearing in the near future on Federal orders in the Northeastern markets, particularly for the purpose of establishing prices which reflect proper relationships among the markets and to the manufacturing milk price level. Since the effective date of the Washington, D.C., order, Order No. 127 has also been issued for the Upper Chesapeake Bay marketing area, effective February 1, 1960. In issuing the latter order, the Department found that the Class I price should be the same as under the Washington order. The two markets draw milk supplies, in large part, from the same areas. Under Order No. 127, also, the Class I price was established for an initial period of 18 months.

The necessity to co-ordinate the local price level with prices in other principal markets also bears on the proposal to change the price adjustment mechanism based on average Class I prices in Chicago, Philadelphia and New York-New Jersey Federal orders. This proposal would eliminate the effect on the price for this market of supply-demand adjusters under the other orders. Proponent recommended, however, that no supply-demand adjustment based on statistics for this market be substituted in place of price adjustments resulting from the supply-demand adjustments in other markets as reflected in the three-market average. Proponent argued that adequate data for a local supply-demand adjustment are not yet available, but urged that such a supply-demand adjustment be reconsidered when adequate data are available.

This proposal is denied. Prices in such markets are a significant factor affecting the availability of supplies for this market and were so recognized in the relationship of this market to the other markets established in the decision of May 1, 1959. There has been no fundamental change in this situation and pending a possible new approach to price relationships among all such markets, the current Washington formula should serve to provide reasonable price coordination.

The change in the seasonal prices proposed by a producer association which would increase the price in March may not be accommodated unless the price in some other month is reduced; otherwise an unsupported increase in price level would result. Without some definite plan as to how the seasonal pricing may be improved while retaining the same annual price level, it is concluded that the proposal to increase the price for March should be denied.

Because of the foregoing considerations it is concluded that the present Class I pricing mechanism should be retained in the Washington order for another 18-month period.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the Washington, D.C., marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

In § 902.50 delete paragraph (a) and substitute the following:

(a) *Class I price.* During the period January 1961 and subsequent months through and including June 1962 the price for Class I milk shall be $5.55 for the months of July through February and $5.10 for the months of March through June: *Provided,* That such price in any month shall be adjusted to reflect the deviation of the average of the Federal order Class I prices for the Philadelphia, New York-New Jersey and Chicago markets for such month from such average price in the corresponding month of 1958, as follows:

3-market average deviation from corresponding month of 1958 (cents), plus or minus:	*Washington price or minus adjustment (cents), plus*
0–15	0
15.1–35	20
35.1–55	40
55.1–75	60
75.1–95	80

Issued at Washington, D.C., this 20th day of December 1960.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 60–11931; Filed, Dec. 23, 1960; 8:47 a.m.]

DEPARTMENT OF COMMERCE

Great Lakes Pilotage Administration

[46 CFR Part 401]

GREAT LAKES PILOTAGE REGULATIONS

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be promulgated by the Acting Administrator, Great Lakes Pilotage Administration. Prior to the final adoption of such regulations, hearings will be held by the Acting Administrator at 10:00 a.m. on January 10, 11, and 12, 1961, in the Federal Courthouse at Cleveland, Ohio. Interested persons may submit such written data, views, or arguments as they may desire directly to the Acting Administrator, Great Lakes Pilotage Administration, Department of Commerce, Washington 25, D.C., prior to completion of the hearings. Persons desiring to present their views at the hearings are requested to notify the Acting Administrator prior to the hearings. The proposed regulations are to be issued under the authority contained in Sections 4 and 5 of the Great Lakes Pilotage Act of 1960 (74 Stat. 260, 261; 46 U.S.C. 216).

Dated: December 23, 1960.

A. T. MESCHTER,
Acting Administrator,
Great Lakes Pilotage Administration.

Approved:

FREDERICK H. MUELLER,
Secretary of Commerce.

Explanatory statement. Pursuant to the authority vested in him by the Great Lakes Pilotage Act of 1960 (74 Stat. 259, 46 U.S.C. 216) the President of the United States has by Proclamation dated December 23, 1960 designated the following United States waters of the Great Lakes as those in which registered vessels of the United States and foreign vessels will be required to have in their service a United States registered pilot or a Canadian registered pilot to direct the navigation of the vessel, subject to the customary authority of the master:

(1) *District 1.* All United States waters of the St. Lawrence River between the international boundary at St. Regis and a line at the head of the river running (at approximately 127° True) between Curruthers Point Light and South Side Light extended to the New York shore.

(2) *District 2.* All United States waters of Lake Erie westward of a line running (at approximately 026° True) from Sandusky Pierhead Light at Cedar Point to Southeast Shoal Light; all waters contained within the arc of a circle of one mile radius eastward of Sandusky Pierhead Light; the Detroit River; Lake St. Clair; the St. Clair River, and Northern approaches thereto south of latitude 43°05'30'' N.

(3) *District 3.* All United States waters of the St. Marys River, Sault Sainte Marie Lock and approaches thereto between latitude 45°57' N at the Southern approach and a line running (at approximately 020° True) from Point Iroquois Light to the westward tangent of Jackson Island.

The Great Lakes Pilotage Act of 1960 also requires registered vessels of the United States and foreign vessels navigating United States waters of the Great Lakes which are not designated by the President to have on board a United States registered pilot or a Canadian registered pilot or other officer qualified for the waters concerned who will be available to direct the navigation of the

vessel in such undesignated waters at the discretion of and subject to the customary authority of the master.

The head of the Department in which the Coast Guard is operating is responsible for enforcement of these provisions of the Act.

The Secretary of Commerce is responsible for carrying out those provisions of the Act relating to the registration of United States pilots, the formation of pools by voluntary associations of United States registered pilots, and the establishment of the rates, charges, and other conditions or terms for services performed by registered pilots. In carrying out these responsibilities, the Secretary of Commerce is authorized to enter into arrangements with an appropriate agency of Canada.

The Secretary of Commerce delegated authority to the Administrator, Great Lakes Pilotage Administration by Department Order No. 169, effective September 8, 1960 (25 F.R. 10142) to perform the functions and to exercise the authority vested in the Secretary of Commerce under the Great Lakes Pilotage Act of 1960, except for the appointment of members of the Advisory Committee authorized by such Act, and the imposition, remission, or mitigation of penalties under such Act.

Subpart A—General

401.100 Purpose.
401.110 Definitions.

Subpart B—Registration of Pilots

401.200 Application for registration.
401. 210 Requirements and qualifications for registration.
401.220 Registration of pilots.
401.230 Certificates of Registration.
401.240 Renewal of Certificates of Registration.
401.250 Suspension and revocation of Certificates of Registration.

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

401.300 Authorization for establishment of pools.
401.310 Application for establishment of pools.
401.320 Requirements and qualifications for authorization to establish pools.
401.330 Certificates of Authorization.

Subpart D—Rates and Charges for Pilotage Services

401.400 Rates and charges on designated waters.
401.410 Rates and charges on undesignated waters.
401.420 Dismissal.
401.430 Prohibited charges.

Subpart E—Penalties; Operations Without Registered Pilots

401.500 Penalties for violations.
401.510 Operations without registered pilots.

AUTHORITY: § 401.110 to 410.510 issued under sections 4 and 5, 74 Stat. 260, 261; 46 U.S.C. 216.

Subpart A—General

§ 401.100 Purpose.

The purpose of this part is to carry out those provisions of the Great Lakes Pilotage Act of 1960 (74 Stat. 259, 46 U.S.C. 216) relating to the registration of United States pilots, the formation of pools by voluntary associations of United States registered pilots and the establishment of rates, charges, and other conditions or terms for services performed by registered pilots to meet the provisions of the Act.

§ 401.110 Definitions.

(a) The following terms where used in this part shall have the following meanings:

(1) "Act" means the Great Lakes Pilotage Act of 1960. P.L. 86-555 (74 Stat. 239, 46 U.S.C. 216).

(2) "Administrator" means the Administrator, Great Lakes Pilotage Administration, U.S. Department of Commerce.

(3) "Canadian registered pilot" means a person, other than a member of the regular complement of a vessel, who holds a master's certificate or equivalent license authorizing navigation on the Great Lakes and suitably endorsed for pilotage on routes specified therein, issued by an appropriate agency of Canada, and is registered by a designated agency of Canada on substantially the same basis as registration by the Administrator under the provisions of Subpart B of this part.

(4) "Foreign vessels" means all foreign merchant vessels except Canadian vessels whose operations are exclusively upon the Great Lakes or between ports in the Great Lakes and the St. Lawrence River, or whose operations while predominately as aforesaid fail of being exclusively so only because of an occasional voyage to a port or ports in the maritime provinces of Canada in the Canadian coastal trade.

(5) "Great Lakes" means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the St. Lawrence River as far east as Saint Regis, and adjacent port areas.

(6) "Other officer" means the master of any other member of the regular complement of the vessel concerned who is qualified for the navigation of those United States waters of the Great Lakes which are not designated by the President in Proclamation No. 3385 dated December 23, 1960 and who is either licensed by the head of the Department in which the Coast Guard is operating under regulations issued by him or certificated by an appropriate agency of Canada.

(7) "Secretary" means the Secretary of Commerce.

(8) "United States registered pilot" means a person, other than a member of the regular complement of a vessel, who holds an unlimited master's license authorizing navigation on the Great Lakes and suitably endorsed for pilotage on routes specified therein, issued by the head of the Department in which the Coast Guard is operating under regulations issued by him, and is registered by the Administrator under the provisions of Subpart B of this part.

Subpart B—Registration of Pilots

§ 401.200 Application for registration.

An application for registration as a United States registered pilot shall be made on the form to be prescribed by the Administrator. A check or money order, in the amount of five dollars ($5.00), drawn to the order of the United States Department of Commerce shall accompany an application for registration.

§ 401.210 Requirements and qualifications for registration.

(a) No person shall be registered as a United States registered pilot unless:

(1) He holds an unlimited master's license authorizing navigation on the Great Lakes and suitably endorsed thereon for pilotage on routes specified therein, issued by the head of the Department in which the Coast Guard is operating.

(2) He is a citizen of the United States.

(3) He is of good moral character and temperate habits.

(4) He passes a physical examination equivalent to that required for issuance of an original deck officer's license by the Coast Guard.

(5) He has not reach the age of 65.

(6) He possesses a validated Merchant Mariner's Document issued by the Coast Guard.

(7) He agrees that he will be continuously available for service under such terms and conditions as may be prescribed.

(8) He agrees to comply with all applicable provisions of this part and amendments thereto.

(b) Notwithstanding the provisions of subparagraph (5) of paragraph (a) of this section, the Administrator may, if he determines that it is in the public interest, issue a Certificate of Registration to a person who has reached the age of 65 if satisfactory evidence is furnished that such person is physically fit to perform the duties of a registered pilot.

§ 401.220 Registration of pilots.

(a) The Administrator shall determine the number of pilots required to be registered in order to assure adequate and efficient pilotage service in the United States waters of the Great Lakes and to provide for equitable participation of United States registered pilots with Canadian pilots in the rendering of pilotage services. In the event that the number of qualified applicants exceeds the number of pilots determined by the Administrator to be necessary to accomplish these objectives, preference shall be given ot those applicants having (1) the greatest number of years as a pilot; (2) the greatest experience in piloting vessels over the waters for which application is made; and (3) experience in piloting oceangoing vessels.

(b) Subject to the provisions of paragraph (a) of this section, a pilot found to be qualified under this subpart shall be issued a Certificate of Registration, valid for a term of two (2) years or until the expiration of his unlimited master's license, whichever occurs first.

§ 401.230 Certificates of Registration.

(a) A Certificate of Registration shall describe the part or parts of the Great Lakes within which the pilot is authorized to perform pilotage and such description shall not be inconsistent with the terms of the pilotage authorization in his unlimited master's license.

(b) A Certificate of Registration shall not authorize the holder to board any vessel, or to serve as a pilot of any vessel, without the permission of the owner or master. A Certificate of Registration shall be in the possession of a pilot at all times when he is in the service of a vessel, and shall be displayed upon demand of the owner or master, any United States Coast Guard officer or inspector, or a representative of the Administrator.

(c) A Certificate of Registration shall not be pledged, deposited, or surrendered to any person except as authorized by this part. A Certificate of Registration may not be photostated or copied.

(d) An application for replacement of a lost, damaged or defaced Certificate of Registration shall be made on the form to be prescribed by the Administrator. A check or money order in the amount of five dollars ($5.00), drawn to the order of the United States Department of Commerce, shall accompany any such application. A damaged or defaced certificate which is to be replaced must be submitted with the application. A certificate issued as a replacement for a lost, damaged or defaced certificate shall be marked so as to indicate that it is a replacement.

(e) The Administrator shall advise the Coast Guard of the name, Coast Guard license number, and registration number of each pilot who is issued a Certificate of Registration.

§ 401.240 Renewal of Certificates of Registration.

(a) An application for renewal of a Certificate of Registration shall be made on the form to be prescribed by the Administrator, and shall be filed with the Administrator at least fifteen (15) days prior to the expiration date of the existing certificate. Failure of a registered pilot to comply with this requirement may constitute cause for withholding renewal of the Certificate of Registration.

(b) No Certificate of Registration shall be renewed unless an applicant meets the requirements and qualifications set forth in § 401.210 for issuance of an original Certificate of Registration.

(c) If the Administrator determines that there is good cause for withholding renewal of a Certificate of Registration, the applicant shall be notified in writing of such determination and the cause thereof. The applicant may thereupon apply within fifteen (15) days for a hearing in regard to such cause for the withholding of a renewal of the certificate, which hearing shall be granted. Such hearing shall be subject to the procedures provided in § 401.250 with respect to suspension and revocation of Certificates of Registration.

(d) Upon receipt of a renewed Certificate of Registration, the expired certificate shall be surrendered to the Administrator.

§ 401.250 Suspension and revocation of Certificates of Registration.

(a) A Certificate of Registration issued pursuant to the provisions of this subpart may be suspended or revoked by the Administrator upon a determination by him on the record, after a hearing in accordance with the Administrative Procedure Act (5 U.S.C. 1001), that the pilot has violated any provision of this part or is no longer eligible for registration. Specific procedures to be followed in such a hearing will be prescribed in the Notice of Hearing.

(b) Notwithstanding the provisions of paragraph (a) of this section, the basis for suspension or revocation of a Certificate of Registration shall not extend to or include matters which may be the basis for suspension or revocation of the pilot's unlimited master's license by the Coast Guard under section 4450, Revised Statutes (46 U.S.C. 239), or under any law or regulation administered or prescribed by the Coast Guard, except that suspension or revocation by the Coast Guard of such license shall operate as an automatic suspension or revocation of a Certificate of Registration.

(c) When a Certificate of Registration which is about to expire is suspended, the renewal of such certificate may be withheld until the expiration of the period of suspension.

(d) The Administrator shall advise the Coast Guard of the name, Coast Guard license number, and registration number of each pilot whose Certificate of Registration has been suspended or revoked.

Subpart C—Establishment of Pools by Voluntary Associations of United States Registered Pilots

§ 401.300 Authorization for establishment of pools.

(a) Voluntary associations of United States registered pilots will be authorized to establish a pool or pools in the following areas of the United States waters of the Great Lakes designated by the President in a Proclamation dated December 23, 1960 or in such other areas as the Administrator may deem necessary to assure adequate and efficient pilotage services for the United States waters of the Great Lakes:

(1) *District No. 1.* All United States waters of the St. Lawrence River between the international boundary at St. Regis and a line at the head of the river running (at approximately 127° True) between Carruthers Point Light and South Side Light extended to the New York shore.

(2) *District No. 2.* All United States waters of Lake Erie westward of a line running (at approximately 026° True) from Sandusky Pierhead Light at Cedar Point to Southeast Shoal Light; all waters contained within the arc of a circle of one mile radius eastward of Sandusky Pierhead Light; the Detroit River; Lake St. Clair; the St. Clair River, and Northern approaches thereto south of latitude 43°05'30" N.

(3) *District No. 3.* All United States waters of the St. Marys River, Sault Sainte Marie Lock and approaches thereto between latitude 45°57' N. at the Southern approach and a line running (at approximately 020° True) from Point Iroquois Light to the westward tangent of Jackson Island.

(b) The Administrator shall determine the number of pools that will be authorized for establishment by voluntary associations of United States registered pilots in order to assure adequate and efficient pilotage services for the United States waters of the Great Lakes.

§ 401.310 Application for establishment of pools.

An application by a voluntary association for authorization to establish a pool shall be filed on the form to be prescribed by the Administrator. The form shall require, among other things, furnishing of the following information:

(1) The name and address of the association.

(2) The names and addresses of all officers of the association.

(3) Type of organization (partnership, corporation, etc.).

(4) Copies of articles of incorporation, bylaws, partnership agreements, etc.

(5) A copy of the financial statements of the association.

(6) The names, addresses and Certificate of Registration numbers of all member pilots.

(7) The District or area in which members of the association desire to render pilotage services.

(8) An inventory of owned or leased boats, launches, radio equipment, vehicles, etc. which may be used in the performance of pilotage services.

§ 401.320 Requirements and qualifications for authorization to establish pools.

No voluntary association shall be authorized to establish a pool unless:

(a) The Administrator determines that a pool is necessary for the efficient dispatching of vessels and the providing of pilotage services in the area concerned.

(b) The management and control of the voluntary association is exercised by member registered pilots, and no stock or other financial interest is held by any persons other than member registered pilots.

(c) The voluntary association establishes that it possesses the ability, experience, financial resources, and other qualifications necessary to enable it to operate and maintain an efficient and effective pilotage service.

(d) The voluntary association agrees that:

(1) Pilotage services to vessels will be provided on a first-come first-serve basis in accordance with working rules approved by the Administrator;

(2) it will adopt and use the uniform system of accounts, records and reports to be prescribed by the Administrator;

(3) it shall be subject to audit and inspection by the Administrator, and will submit annually at its own expense an audit report prepared by an independent certified public accountant; and

(4) it will be subject to such other provisions as may be prescribed by the Administrator governing the operation of pools.

§ 401.330 Certificates of Authorization.

(a) Subject to the provisions of paragraph (b) of § 401.300, an association found to be qualified to establish a pool in a District or area shall be issued a Certificate of Authorization, which shall be valid until withdrawn by the Administrator.

(b) A Certificate of Authorization shall be in such form as the Administrator may prescribe, but shall describe the area of the Great Lakes in which the pool will perform pilotage services. A Certificate of Authorization shall be posted in the principal place of business of an association in such manner so as to be available for examination by members of the association and the public.

Subpart D—Rates and Charges for Pilotage Services

§ 401.400 Rates and charges on designated waters.

(a) The following rates and charges shall be payable for services performed by United States or Canadian registered pilots in the following Districts of the United States waters of the Great Lakes described in § 401.300:

(1) *District No. 1.* (i) Snell Locks to Cape Vincent	$180
(ii) Trips commencing or terminating at any point other than the limits of the District, an amount computed on a pro-rata basis according to the distance piloted shall be charged as pilotage dues with a minimum charge therefor of	25
(2) *District No. 2.* (i) Port Colburne (Southeast Shoal) to Huron Light (includes direct transit of undesignated Lake Erie waters)	125
(ii) Port Colburne (Southeast Shoal) to any point on Lake Erie west of Southeast Shoal (includes transit of undesignated Lake Erie waters)	80
(iii) Any point on Lake Erie west of Southeast Shoal to any point on the St. Clair River or to Huron Light	125
(iv) Any point on Lake Erie west of Southeast Shoal to any point on the Detroit River	80
(v) Any point on the Detroit River to any point on the St. Clair River or to Huron Light	80
(vi) Any point on the Detroit River or the St. Clair River to any point on the same river, or from any point on Lake Erie west of Southeast Shoal to any other point on Lake Erie west of Southeast Shoal	50
(3) *District No. 3.* Detour Island to Gros Cap Reefs Light	170

§ 401.410 Rates and charges on undesignated waters.

The rates or charges for pilotage services in the undesignated waters of the Great Lakes payable for each 24-hour period or part thereof, including travel time to port of origin if traveled, shall be $50.

§ 401.420 Dismissal.

The rates or charges for pilots dismissed by a master or owner of vessel shall be as follows:

(a) Within one hour after reporting on board	$25
(b) For each additional hour (but not to exceed $50 in any one day)	5

§ 401.430 Prohibited charges.

No rate or charge shall be applied against any vessel, owner or master thereof, by a registered pilot which differs from the rates and charges set forth in this part, nor shall any rate or charge be made for pilotage services other than those for which a rate is prescribed in this part, without the approval of the Administrator.

Subpart E—Penalties; Operations Without Registered Pilots

§ 401.500 Penalties for violations.

Any person who violates any provision of this part shall be liable to the United States in a civil penalty not exceeding $500 for each violation. Such penalty may be remitted or mitigated, upon application therefor, by the Secretary upon such terms as he, in his discretion, shall think proper.

§ 401.510 Operations without registered pilots.

Section 8 of the Act provides that:

Notwithstanding any other provision of this Act, a vessel may be navigated in the United States waters of the Great Lakes without a United States or Canadian registered pilot when—

(a) the Secretary, or his designee, with the concurrence of the head of the Department in which the Coast Guard is operating, or his designee, notifies the master that a United States or Canadian registered pilot is not available, or

(b) the vessel or its cargo is in distress or jeopardy.

The provisions of this part shall become effective upon the first day of the fourth month following the date of its issuance by the Administrator.

[F.R. Doc. 60-12027; Filed, Dec. 23, 1960; 8:51 a.m.]

DEPARTMENT OF COMMERCE

Bureau of Public Roads

[23 CFR Part 20]

NATIONAL STANDARDS FOR REGULATION BY STATES OF OUTDOOR ADVERTISING SIGNS, DISPLAYS AND DEVICES ADJACENT TO THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Notice of Proposed Rule Making

Notice is hereby given that the Department of Commerce has under study an amendment set forth in tentative form below which if adopted would amend § 20.8(g) of the National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways (23 F.R. 8793) by modifying the square-footage limitation applicable to the erection or maintenance of Class 3 signs (within 12 miles of advertised activities) and Class 4 signs (in the specific interest of the traveling public) outside of informational sites, and to the erection or maintenance of Class 2 signs (on premises). Prior to action on the final adoption of such amendment, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Federal Highway Administrator, Bureau of Public Roads, Washington 25, D.C., on or before January 17, 1961.

Dated: December 22, 1960.

FREDERICK H. MUELLER,
Secretary of Commerce.

GENERAL PROVISIONS

The National Standards for Regulation by States of Outdoor Advertising Signs, Displays and Devices Adjacent to the National System of Interstate and Defense Highways (23 F.R. 8793) are hereby amended by:

Deleting all of paragraph (g) of § 20.8 and by substituting in lieu thereof the following:

(g) No sign may be permitted to exceed 25 feet in length, width or height, or 300 square feet in area, including border and trim but excluding supports, except Class 2 signs not more than 50 feet from, and advertising activities being conducted upon, the real property where the sign is located.

[F.R. Doc. 60-12009; Filed, Dec. 23, 1960; 8:50 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 522]

EMPLOYMENT OF LEARNERS

Men's and Boys' Clothing Industry

Pursuant to authority in section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1068, 29 U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR, 1949–1953 Comp., p. 1004), and General Order No. 45–A of the Secretary of Labor, I propose to amend 29 CFR 522 by adding a centerhead and a new section to read as follows:

MEN'S AND BOYS' CLOTHING INDUSTRY

§ 522.104 General denial policy.

All applications for the employment of learners at wages lower than $1.00 an hour in the men's and boys' clothing industry shall be denied. For the purpose of this section, the men's and boys' clothing industry is defined as the industry which manufactures men's, youths', and boys' suits, coats, and overcoats.

Any person interested in this proposed amendment may file a written statement of data, views, or arguments in support of or opposition to the proposal with the Administrator of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor, Constitution Avenue and 14th Street NW., Washington 25, D.C., within fifteen days after this notice is published in the FEDERAL REGISTER.

Signed at Washington, D.C., this 19th day of December 1960.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 60-11921; Filed, Dec. 23, 1960; 8:46 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-LA-68]

FEDERAL AIRWAYS AND CONTROL AREAS

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6004 and 601.6004 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 4 extends from Seattle, Wash., to Herndon, Va. The Federal Aviation Agency is considering extending Victor 4 and its associated control areas northwestward from the Seattle VOR via the intersection of the Seattle VOR 322° and the 090° True radial of a VOR to be installed approximately March 1, 1961, near Port Angeles, Wash., at Lat. 48°08'28" N, Long. 123° 25'08" W; the Port Angeles VOR, to the Neah Bay, Wash., radio range, excluding the portion which would coincide with the Juan De Fuca Restricted Area (R–236) and the portion outside the United States.

This would provide a route between Seattle and Neah Bay for VOR equipped aircraft operating between Seattle and Kodiak, Alaska, and between Seattle and Homer, Alaska. The Canadian Department of Transport has agreed to designate the portion of this airway within Canada.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue, NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 19, 1960.

J. R. BAILEY,
Assistant Chief,
Airspace Utilization Division.

[F.R. Doc. 60-11906; Filed, Dec. 23, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-KC-49]

CONTROL AREAS

Alteration of Control Area Extension

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.1103 of the regulations of the Administrator, the substance of which is stated below.

The Minot, N. Dak., control area extension (§ 601.1103) is designated within a 15-mile radius of the Minot, N. Dak., VOR. The Federal Aviation Agency is considering a proposal by the Department of the Air Force to alter this control area extension by redesignating it within a 35-mile radius of Minot AFB, and within 35 miles of the Minot VOR extending clockwise from the 091° True radial to the 147° True radial of the VOR. The proposed 35-mile radius control area extension centered on Minot AFB would provide protection for aircraft arriving and departing the airbase while being vectored by application of radar air traffic control procedures. The proposed control area extension based on the Minot VOR would provide protection for aircraft executing prescribed VOR instrument approach procedures at Minot AFB.

If this action is taken, the Minot, N. Dak., control area extension would be redesignated within a 35-mile radius of Minot AFB (Lat. 48°25'18" N, Long. 101°22'08" W), and within a 35-mile radius of the Minot VOR extending clockwise from the 091° True radial to the 147° True radial of the VOR.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 20, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11899; Filed, Dec. 23, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-WA-168]

CONTROL AREAS

Modification and Revocation of Control Area Extensions

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 and § 601.1132 of the regulations of the Administrator, the substance of which is stated below.

The West Palm Beach, Fla., control area extension (§ 601.1132), is presently designated within 5 miles either side of the 036° True radial of the West Palm Beach VOR extending from the VOR to its intersection with the 109° True radial of the Orlando, Fla., VOR thence northwestward within 5 miles either side of the Orlando VOR 109° True radial to its intersection with the centerline of the Wilmington, N.C., control area extension No. 1150, excluding the portion below 2,000 feet MSL which lies outside the continental limits of the United States.

The Federal Aviation Agency is considering modifying this control area extension by redesignating it as the area east of Vero Beach, Fla., bounded on the north by a line five miles south of and parallel to the 071° True radial of the Orlando, Fla., VOR, on the east by the 79th meridian and the Miami Oceanic/Nassau Control Area boundary, on the south by the West Palm Beach control area extension (§ 601.1235), and on the west by VOR Federal airway No. 3, excluding the portion which would coincide with the Banana River, Fla., restricted area (R–162), and excluding the portion below 2,000 feet MSL which

lies outside the United States. The portion of this control area extension which would coincide with portions of Warning Area W–497B would be used during IFR weather conditions only after obtaining prior approval from the Federal Aviation Agency Air Traffic Control. This modification would consolidate presently designated control area extensions and the areas between such extensions, east of Vero Beach, into one control area to facilitate the management of air traffic arriving and departing airports in the vicinity of Vero Beach. This modification would also permit more effective utilization of the Miami, Fla., Air Route Traffic Control Center long-range radar by providing area for radar vectors to expedite the high volume of air traffic east of Vero Beach. In addition, the caption to § 601.1132 would be changed to "Control area extension (Vero Beach, Fla.)" to more accurately describe the location of the proposed control area extension.

Concurrently with this action, the presently designated Vero Beach control area extensions (§§ 601.1163 and 601.1448) would be revoked since these extensions would be encompassed by the control area extension proposed herein.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 20, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60–11902; Filed, Dec. 23, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60–WA–167]

CONTROL AREAS

Modification and Revocation of Control Area Extensions

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 and § 601.1232 of the regulations of the Administrator, the substance of which is stated below.

The Miami, Fla., control area extension (601.1232) is presently designated as that airspace bounded by a line beginning on the eastern edge of Amber Federal airway No. 7 at Lat. 25°53'00" N, extending easterly to the western boundary of the Miami Oceanic/Nassau Control Area at Lat. 25°55'00" N, Long. 79°00'00" W, thence due south along that boundary to Lat. 24°40'00" N, Long. 79°00'00" W, thence southeasterly to Lat. 24°00'00" N, Long. 78°03'00" W, thence due west to Lat. 24°00'00" N, Long. 80°25'00" W, thence due north to the southern edge of Miami control area extension (601.1230), and the southern edge of Amber Federal airway No. 7, thence along Amber Federal airway No. 7, to Lat. 25°53'00" N point of beginning, excluding the portion below 1000' mean sea level which lies outside of the continental limits of the United States.

The Federal Aviation Agency is considering modifying this control area extension by redesignating it as the airspace east of Miami, Fla., bounded on the east by the Miami Oceanic/Nassau control area boundary, on the south by Lat. 24°00'00" N, on the west by a line beginning at Lat. 24°00'00" N, Long. 80°25'00" W; thence due north to the southern edge of VOR Federal airway No. 51; thence east along the southern edge of Victor 51 and north along the eastern edge of VOR Federal airway No. 3 to the southern boundary of the West Palm Beach, Fla., control area extension (601.1235); and on the north by the southern boundary of the West Palm Beach control area extension (601.1235), excluding the portion below 2,000 MSL which lies outside the United States. The portion of this control area extension which would coincide with Warning Area (W–497–B) would be used during IFR weather conditions only after obtaining prior approval from the Federal Aviation Agency Air Traffic Control. This modification would consolidate presently designated control area extensions and the area between the extensions east of Miami, Fla., into one control area to facilitate the management of air traffic arriving and departing airports in the Miami, Fla., area. This modification would also permit more effective utilization of the Miami, Fla., Air Route Traffic Control Center long-range radar by providing area for radar vectors to expedite the high volume of air traffic east of Miami.

Concurrently with this action, the presently designated West Palm Beach, Fla., control area extension (601.1036), and the Miami, Fla., control area extensions (601.1389 and 601.1427), would be revoked since these extensions would be encompassed by the control area extension proposed herein.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 20, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60–11901; Filed, Dec. 23, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60–WA–166]

CONTROL AREAS

Modification and Revocation of Control Area Extensions

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 and § 601.1408 of the regulations of the Administrator, the substance of which is stated below.

The Miami control area extension (601.1408) is presently designated as the airspace south of Miami bounded on the north by Miami control area extension (601.1230) and Amber Federal airway No. 7, on the east by Miami control area extension (601.1232), on the south by Blue Federal airway No. 48 and on the northwest by Blue Federal airway No. 19; the airspace southwest of Miami bounded on the north by Miami control area extension (601.1230), on the east and southeast by Blue Federal airway No. 19 and on the west by the Marathon control area extension (601.1234); the airspace west of Miami bounded on the north by the Miami control area extension (601.1230), on the southeast by the Key West control area extension (601.1434), and on the southwest by a line 3 miles southwest of and parallel to the coastline. The Federal Aviation Agency is considering modifying the Miami control area extension (601.1408) by redesignating it as the area bounded on the north by a line extending from Lat. 25°49'00" N, Long. 81°47'00" W, to Lat. 25°46'40" N, Long. 81°09'15" W, to Lat. 25°30'30" N, Long. 80°51'20" W, to Lat. 25°34'00" N, Long. 80°25'00" W; on the east by Long. 80°25'00" W; on the south by VOR Federal airway No. 35; and on the west by VOR Federal airway No. 225, excluding the portion below 2000 feet mean sea level which lies outside the United States and that portion above 20,000 feet mean sea level which coincides with the Key West Warning Area (W–173).

This modification would consolidate presently designated control area extensions and the area between such extensions southwest of Miami, Fla. This modification would also permit more effective utilization of the Miami, Fla., Federal Aviation Agency Air Route Traffic Control Center long-range radar by providing area for radar vectors to expedite the high volume of air traffic southwest of Miami.

Concurrently with this action, the presently designated Key West control area extension (601.1434) would be revoked since this extension would be encompassed by the control area extension proposed herein.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under sections 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on December 20, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60–11900; Filed, Dec. 23, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60–NY–60]

CONTROL ZONES

Modification

Pursuant to the authority delegated to me by the Administrator (Section 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2005 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration modification of the Boston, Mass., control zone. The Boston control zone is presently designated within a 5-mile radius of Logan International Airport; within 2 miles either side of the north course of the Boston radio range extending from the radio range station to a point 10 miles north, and within 2 miles either side of the ILS localizer course extending from the airport to a point 10 miles beyond the outer marker and within 2 miles either side of the 144° True radial of the Boston VOR extending from the VOR to a point 12 miles southeast.

It is proposed to decrease the length of these extensions and to designate 3 new extensions as described herein. The northeast extension, based on the northeast course of the L/MF range would terminate at the Peabody fan marker. The south extension based on the 144° True radial of the Boston VOR would terminate 7 miles south of the VOR. The southwest extension based on the ILS localizer serving Runway 4R would terminate at the outer marker. The instrument approach procedures which these extensions serve have been modified to eliminate the requirement for the portions of control zone proposed for revocation herein. The additional extensions would be based on the 001° and 071° True radials of the Boston VOR and the southeast course of the localizer for the ILS system being installed to serve Runway 33. The extensions would extend from the 5-mile radius zone to 12 miles north and east of the VOR, and to the outer marker. These extensions would provide protection to aircraft executing instrument approach procedures based on the Boston VOR and the Runway 33 ILS System.

The Boston High Density Air Traffic Zone, which is associated with the Boston control zone, is so designated that it would automatically conform to the modified control zone. Accordingly, no amendment relating to the High Density Air Traffic Zone would be necessary.

If these actions are taken, the Boston, Mass., control zone would be designated within a 5-mile radius of the Logan International Airport (Lat. 42°21'47" N., Long. 71°00' 19" W.); within 2 miles either side of the 001° True radial of the Boston VOR extending from the 5-mile radius zone to 12 miles north of the VOR; within 2 miles either side of the north course of the Boston radio range extending from the 5-mile radius zone to the Peabody, Mass., fan marker; within 2 miles either side of the 071° True radial of the Boston VOR extending from the 5-mile radius zone to 12 miles east of the VOR; within 2 miles either side of the southeast course of the ILS localizer serving Runway 33 extending from the 5-mile radius zone to the outer marker; within 2 miles either side of the 144° True radial of the Boston VOR extending from the 5-mile radius zone to 7 miles south of the VOR; and within 2 miles either side of the southwest course of the ILS localizer serving Runway 4R extending from the 5-mile radius zone to the outer marker.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B–316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 20, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.D. Doc. 60–11905; Filed, Dec. 23, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-KC-87]

CONTROL ZONES

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2070 of the regulations of the Administrator, the substance of which is stated below.

The St. Louis, Mo., control zone is presently designated within a 5-mile radius of Lambert-St. Louis Municipal Airport, within 2 miles either side of the east course of the St. Louis radio range extending from the radio range station to 10 miles east, within 2 miles either side of the front course of the St. Louis ILS localizer extending from the localizer to 5 miles east of the outer compass locator and within 2 miles either side of the back course of the ILS localizer extending from the localizer to 10 miles southwest of the Lake radio beacon, and within 2 miles either side of the 323° and 143° True radials of the St. Louis VOR extending from the airport to 10 miles northwest of the VOR.

The Federal Aviation Agency has under consideration alteration of the St. Louis, Mo., control zone as follows:

1. Revoke the control zone extensions based on the east course of the St. Louis radio range and on the St. Louis ILS localizer northeast course. These control zone extensions would no longer be required for the protection of aircraft as the prescribed instrument approach procedure based on the radio range is to be cancelled and the procedure based on the northeast course of the ILS localizer is to be changed so that adequate protection would be provided by the 5-mile radius zone.

2. Alter the control zone extension based on the St. Louis VORTAC 143° True radial by basing it on the St. Louis VORTAC 142° True radial, and shortening it to terminate at the VORTAC. The prescribed VORTAC instrument approach procedures are being revised to eliminate the requirement for the portion of the control zone extension northwest of the VORTAC, and the extension would be realigned to coincide with the prescribed instrument approach procedure final approach course.

3. Lengthen the control zone extension based on the St. Louis ILS localizer southwest course to 12 miles southwest of the Lake radio beacon. The increased length of this extension is required for the protection of aircraft executing the prescribed instrument approach procedures utilizing the southwest course of the St. Louis ILS or the Lake radio beacon.

If these actions are taken, the St. Louis, Mo., control zone would be redesignated within a 5-mile radius of the Lambert-St. Louis Municipal Airport, (Lat. 38°44'50" N, Long. 90°21'55" W), within 2 miles either side of the Lambert-St. Louis ILS localizer southwest course extending from the 5-mile radius zone to 12 miles southwest of the Lake radio beacon, and within 2 miles either side of the 142° True radial of the St. Louis VORTAC extending from the 5-mile radius zone to the VORTAC.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 20, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-11904; Filed, Dec. 23, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-FW-100]

CONTROL ZONES

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2327 of the regulations of the Administrator, the substance of which is stated below.

The Baton Rouge, La., control zone is presently designated within a 5-mile radius of Ryan Airport and within a 3-mile radius of Downtown Airport, Baton Rouge, within 2 miles either side of the Baton Rouge radio range northwest course extending from the radio range to 10 miles northwest, within 2 miles either side of the 313° and 133° True track through the Baton Rouge ILS Outer Marker Compass locator extending from the Ryan Airport control zone to 10 miles northwest and 19 miles southeast of the ILS outer marker compass locator, and within 2 miles either side of the Baton Rouge VOR 071° and 251° True radials extending from the Ryan Airport control zone to 10 miles southwest of the VOR.

The Federal Aviation Agency has under consideration alteration of the Baton Rouge control zone by revoking the control zone extensions to the northwest and southeast and reducing the extension to the southwest to terminate it at the Baton Rouge VOR. The prescribed instrument approach procedures based on the Baton Rouge ILS, VOR and compass locator are being revised and the prescribed instrument approach procedures based on the Baton Rouge radio range is being cancelled. These revisions of the prescribed instrument approach procedures would eliminate the requirement for the portions of the Baton Rouge control zone proposed for alteration and revocation herein.

If these actions are taken, the Baton Rouge, La., control zone would be redesignated within a 5-mile radius of Ryan Airport (Lat. 30°31'55" N, Long. 91°09'00" W), and within a 3-mile radius of Downtown Airport (Lat. 30°26'45" N, Long. 91°06'25" W), and within 2 miles either side of the Baton Rouge VOR 071° True radial extending from the Ryan Airport 5-mile radius zone to the VOR.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 19, 1960.

J. R. BAILEY,
Assistant Chief,
Airspace Utilization Division.

[F.R. Doc. 60-11903; Filed, Dec. 23, 1960; 8:45 a.m.]

FEDERAL RESERVE SYSTEM

[12 CFR Part 206]

[Reg. F]

TRUST POWERS OF NATIONAL BANKS

Extension of Time for Receipt of Comments

In the FEDERAL REGISTER for December 6, 1960 (25 F.R. 12479) notice was given of a proposed amendment to subparagraph (3) of paragraph (a) of § 206.17 with respect to the eligibility of various kinds of trusts for participation in Common Trust Funds.

To aid in the consideration of this matter, the Board stated that it would be glad to receive from interested persons, not later than January 13, 1961, any relevant data, views or arguments. The time for submission of such data, views or arguments, in writing, has been extended to March 15, 1961.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,
[SEAL] KENNETH A. KENYON,
Assistant Secretary.

[F.R. Doc. 60-11909; Filed, Dec. 23, 1960; 8:45 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Coast Guard

[CGFR 60-73]

ACCEPTANCE OF CERTIFICATES AND/OR REGISTERS ISSUED BY NATIONAL CARGO BUREAU, INC.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167-14, dated November 26, 1954 (19 F.R. 8026), 167-20, dated June 18, 1956 (21 F.R. 4894), CGFR 56-28, dated July 24, 1956 (21 F.R. 5659), and 167-38, dated October 26, 1959 (24 F.R. 8857), and the applicable inspection laws administered in conjunction with R.S. 4405, as amended, 4462, as amended (46 U.S.C. 375, 416), and the regulations in 46 CFR 71.25-25(a)(5) and 91.25-25(a)(3): *It is ordered*, That:

(a) The valid current certificates and/or registers issued by the National Cargo Bureau, Inc., with home office at 99 John Street, New York 38, New York, attesting to the tests and surveys of shipboard cargo gear on a passenger, cargo, or miscellaneous vessel conducted by or for such Bureau, may be accepted as prima facie evidence of the condition and suitability of such gear by the Coast Guard when performing an inspection of a vessel as further described in 46 CFR Part 71. 25-25 or 91.25-25: *Provided*, That:

(1) Such certificates and/or registers shall be maintained currently and shall indicate that the described shipboard cargo gear for the particular vessel described therein complies with the standards respecting shipboard cargo gear as set forth in the Convention Concerning the Protection Against Accidents of Workers Employed in Loading or Unloading Ships (Revised) (International Labor Organization Convention No. 32); and,

(2) The dates when such tests or surveys were conducted, together with the signatures or initials of the competent persons performing them shall be recorded therein.

(b) This approval and permission to accept valid current certificates and/or registers of the National Cargo Bureau, Inc., shall become effective on the date of publication of this document in the FEDERAL REGISTER and shall be in effect until suspended, amended, or canceled by proper authority.

Dated: December 19, 1960.

[SEAL] A. C. RICHMOND,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 60-11941; Filed, Dec. 23, 1960; 8:48 a.m.]

[CGFR 60-77]

EQUIPMENT, INSTALLATIONS, OR MATERIALS

Approval Notice

1. Various items of lifesaving, firefighting, and miscellaneous equipment, installations, and materials used on merchant vessels subject to Coast Guard inspection or on certain motorboats and other pleasure craft are required by law and various regulations in 46 CFR Ch. I to be of types approved by the Commandant, United States Coast Guard. The procedures governing the granting of approvals, and cancellation, termination or withdrawal of approvals are set forth in 46 CFR 2.75-1 to 2.75-40 (25 F.R. 6138, 6139), and 2.75-50. For certain types of equipment, installations, and materials, specific specifications have been prescribed by the Commandant and are published in 46 CFR Parts 160 to 164, inclusive (Subchapter Q—Specifications), and detailed procedures for obtaining approvals are also described therein.

2. The Commandant's approval of a specific item is intended to provide a control over its quality. Therefore, such approval applies only to the item constructed or installed in accordance with the applicable requirements and the details described in the specific approval. If a specific item when manufactured does not comply with the details in the approval, then such item is not considered to have the Commandant's approval, and the certificate of approval issued to the manufacturer does not apply to such modified item. For example, if an item is manufactured with changes in design or material not previously approved, the approval does not apply to such modified item.

3. After a manufacturer has submitted satisfactory evidence that a particular item complies with the applicable laws and regulations, a Certificate of Approval (Form CGHQ-10030) will be issued to the manufacturer certifying that the item specified complies with the applicable laws and regulations and approval is given, which will be in effect for a period of 5 years from the date given unless sooner cancelled or suspended by proper authority.

4. The purpose of this document is to notify all concerned that certain approvals were granted, as described in this document, during the period from October 11, 1960 through November 7, 1960. These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50.

5. Delegations of authority for the Coast Guard's actions with respect to approvals may be found in Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167-14, dated November 26, 1954 (19 F.R. 8026), 167-15, dated January 3, 1955 (20 F.R. 840), 167-20, dated June 18, 1956 (21 F.R. 4894), CGFR 56-28, dated July 24, 1956 (21 F.R. 5659), or 167-38, dated October 26, 1959 (24 F.R. 8857), and the statutory authority may be found in R.S. 4405, as amended, 4462, as amended, 4488, as amended, 4491, as amended, sections 1, 2, 49 Stat. 1544, as amended, section 17, 54 Stat. 166, as amended, section 3, 54 Stat. 346, as amended, section 3, 70 Stat. 152 (46 U.S.C. 405, 416, 481, 489, 367, 526p, 1333, 390b), section 4(c), 67 Stat. 462 (43 U.S.C. 1333(e)), or section 3(c) of 68 Stat. 675 (50 U.S.C. 198), and implementing regulations in 46 CFR Ch. I or 33 CFR Ch. I.

6. In Part I of this document is listed the approvals granted which shall be in effect for a period of 5 years from the dates granted, unless sooner cancelled or suspended by proper authority.

PART I—APPROVALS OF EQUIPMENT, INSTALLATIONS, OR MATERIALS

BUOYANT APPARATUS

Approval No. 160.010/59/0, 4.17' x 3.0' (8'' x 8'' body section) rectangular buoyant apparatus, fibrous glass reinforced plastic shell with unicellular plastic foam core, 7-person capacity, The Plasti-Kraft Corp., Oldsmar, Florida, dwg. No. BA-2 dated June 6, 1958, and specifications as revised October 12, 1960, manufactured by The Plasti-craft Corp., Oldsmar, Florida, for The American Pad & Textile Co., 511 North Solomon Street, New Orleans 19, La., effective October 24, 1960.

Approval No. 160.010/60/0, 6.17' x 3.67' (9'' x 9'' body section) rectangular buoyant apparatus, fibrous glass reinforced plastic shell with unicellular plastic foam core, 13-person capacity, The Plasti-Kraft Corp, Oldsmar, Florida, dwg. No. BA-2 dated June 6, 1958, and specifications as revised October 12, 1960, manufactured by The Plasti-Kraft Corp., Oldsmar, Florida, for The American Pad & Textile Co., 511 North Solomon Street, New Orleans 19, La., effective October 24, 1960.

GAS MASKS, SELF-CONTAINED BREATHING APPARATUS, AND SUPPLIED-AIR RESPIRATORS

Approval No. 160.011/12/2, MSA Ammonia Mask, part No. 15775 having the All-Vision facepiece assembly, or part No. 48448 having the All-Vision Cleartone speaking diaphragm facepiece assembly which may be used in conjunction with the MSA Maskfone, or part No. 84006 having the Clearvue facepiece assembly, Bureau of Mines Approval No. BM-1406, dwg. Nos. 1128-1, Rev. 17 dated January 26, 1958, and 84006 Rev. 2, dated October 2, 1959, manufactured by Mine Safety Appliances Co., 201 North Braddock Avenue, Pittsburgh 8, Pa., effective October 25, 1960. (It supersedes Approval No. 160.011/12/1 published in the FEDERAL REGISTER November 11, 1955.)

Approval No. 160.011/15/3, MSA Model "S" All-Service Gas Mask, part No. 42021 having the Model "S" canister and the All-Vision facepiece assembly, or part No. 48446 having the Model "S" canister and the All-Vision Cleartone speaking diaphragm facepiece assembly which may be used in conjunction with the MSA Maskfone, or part No. 84000 having the Model "S" canister and the Clearvue facepiece assembly, or part No. 81226 having the Model "S" Window-Cator canister and the All-Vision Cleartone speaking diaphragm facepiece assembly which may be used in conjunction with the MSA Maskfone, or part No. 83998 having the Model "S" Window-Cator canister and the Clearvue facepiece assembly, Bureau of Mines Approval No. 1434A; dwg. Nos. 1128-1, Rev. 17 dated January 26, 1958; 84000, Rev. 2 dated August 21, 1959; 81226, Rev. 3 dated August 24, 1959; 81227, Rev. 3 dated August 24, 1959; and 83998, Rev. 2 dated September 21, 1959, manufactured by Mine Safety Appliances Co., 201 North Braddock Avenue, Pittsburgh 8, Pa., effective October 25, 1960. (It supersedes Approval No. 160.011/15/2 published in the FEDERAL REGISTER March 16, 1960.)

Approval No. 160.011/18/2, MSA Standard All-Service Gas Mask, part No. 15765 having the All-Vision facepiece assembly, or part No. 48442 having the All-Vision Cleartone speaking diaphragm facepiece assembly which may be used in conjunction with the MSA Maskfone, or part No. 83999 having the Clearvue facepiece assembly, Bureau of Mines Approval No. BM-1405, dwg. Nos. 1128-1, Rev. 17, dated January 26, 1958, and 83999, Rev. 2 dated August 21, 1959, manufactured by Mine Safety Appliances Co., 201 North Braddock Ave., Pittsburgh 8, Pa., effective October 25, 1960. (It supersedes Approval No. 160.011/18/1 published in the FEDERAL REGISTER November 11, 1955.)

Approval No. 160.011/30/0, Globe Guardsman Air Breathing Protector, permissible one-half hour self-contained compressed air breathing apparatus, at least one extra fully charged cylinder of breathing air to be included as part of the complete unit, Bureau of Mines Approval No. 13D-11 only for use with BM 13D-11 facepiece and BM 13D-11 pressure regulator and assembly, assembly dwg. No. 1795-2 GA Rev. C dated June 13, 1960, manufactured by Globe Industries, Inc., 125 Sunrise Place, Dayton 7, Ohio, effective October 18, 1960.

LADDERS, EMBARKATION-DEBARKATION (FLEXIBLE)

Approval No. 160.017/4/6, Model 241-A, Type II, embarkation-debarkation ladder, chain suspension, steel ears, dwg. No. 241-A, dated February 21, 1950, revised July 21, 1959, approval limited to ladders 65 feet or less in length, manufactured by Great Bend Manufacturing Corp., 243 Godwin Ave., Paterson, N.J. (Plant: Great Bend, Pa.), effective October 19, 1960. (It supersedes Approval No. 160.017/4/5, dated December 17, 1959.)

Approval No. 160.017/10/2, Model 241-A/GR, Type II embarkation-debarkation ladder, chain suspension, steel ears, steel rungs, dwg. No. 241-A/GR, dated January 10, 1952, revised November 21, 1956, approval limited to ladders 61 feet or less in length, manufactured by Great Bend Manufacturing Corp., 243 Godwin Ave., Paterson, N.J. (Plant: Great Bend, Pa.), effective October 19, 1960. (It supersedes Approval No. 160.017/10/1, dated January 30, 1957.)

Approval No. 160.017/11/2, Model CTL-6, Type II embarkation-debarkation ladder, chain suspension, steel rungs, dwg. No. CTL-6, dated January 14, 1952, revised November 21, 1956, approval limited to ladders 67 feet or less in length and for use where stowage facilities require special consideration of the ladders used, manufactured by Great Bend Manufacturing Corp., 243 Godwin Ave., Paterson, N.J. (Plant: Great Bend, Pa.), effective October 19, 1960. (It supersedes Approval No. 160.017/11/1, dated January 30, 1957.)

Approval No. 160.017/16/2, Model 10 PL-S, Type II embarkation-debarkation ladder, chain suspension, steel ears, dwg. dated November 28, 1956, approval limited to ladders 65 feet or less in length, manufactured by H. K. Metal Craft Manufacturing Co., 3775-3789 10th Ave. at 203d St., New York 34, New York, effective October 19, 1960. (It supersedes Approval No. 160.017/16/1, dated April 10, 1957.)

Approval No. 160.017/24/1, Viking Model A-1, Type II embarkation-debarkation ladder, chain suspension, wood ears, dwg. No. 561-S16-15, dated September 1956, revised December 28, 1956, approval limited to ladders 65 feet or less in length, manufactured by Viking Marine Co., 2614 Western Ave., Seattle 1, Washington, effective October 19, 1960. (It supersedes Approval No. 160.017/24/0, dated April 10, 1957.)

Approval No. 160.017/27/2, Model E-1004D, Type II embarkation-debarkation ladder, chain suspension, steel ears, The Marine Ladder Mfg. Co. dwg. No. LC-104, Rev. 3, dated July 15, 1958, approval limited to ladders 65 feet or less in length, manufactured by Don D. Fleming, Inc., 460 Bay Street, San Francisco 11, California, effective October 19, 1960. (It supersedes Approval No. 160.017/27/1, dated December 31, 1958.)

LIFE RAFTS

Approval No. 160.018/16/0, Type "B" MK2, life raft, for other than ocean and coastwise service, 9.58' x 8.0' x 2.33', 18-person capacity, with polyurethane foamed, fibrous glass reinforced plastic tanks, identified by general arrangement dwg. No. M-99-17 dated May 6, 1959 and revised September 20, 1960, manufactured by Marine Safety Equipment Corp., Point Pleasant Beach, New Jersey, effective October 18, 1960.

LIFE FLOATS

Approval No. 160.027/55/0, 4.17' x 3.0' (8'' x 8'' body section) rectangular life float, fibrous glass reinforced plastic shell with unicellular plastic foam core, 6-person capacity, dwg. No. LF-2 dated June 6, 1958, and revised specification dated October 12, 1960, manufactured by The Plasti-Kraft Corp., Oldsmar, Florida for The American Pad & Textile Co., 511 North Solomon Street, New Orleans 19, La., effective October 24, 1960.

Approval No. 160.027/56/0, 6.17' x 3.67' (9'' x 9'' body section) rectangular life float, fibrous glass reinforced plastic shell with unicellular plastic foam core, 11-person capacity, dwg. No. LF-2 dated June 6, 1958, and revised specification dated October 12, 1960, manufactured by The Plasti-Kraft Corp., Oldsmar, Florida, for The American Pad & Textile Co., 511 North Solomon Street, New Orleans 19, La., effective October 24, 1960.

BUOYANT VESTS, KAPOK OR FIBROUS GLASS, ADULT AND CHILD

NOTE: Approved for use on motorboats of Classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.047/463/0, Type I, Model AK-1, adult kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Swan Products Co., Inc., 130-30 180th Street, Springfield Gardens 34, N.Y., for Viking Products Co., 145-92 228th Street, Springfield Gardens 13, N.Y., effective November 4, 1960.

Approval No. 160.047/464/0, Type I, Model CKM-1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Swan Products Co., Inc., 130-30 180th Street, Springfield Gardens 34, N.Y., for Viking Products Co., 145-92 228th Street, Springfield Gardens 13, N.Y., effective November 4, 1960.

Approval No. 160.047/465/0, Type I, Model CKS-1, child kapok buoyant vest, U.S.C.G. Specification Subpart 160.047, manufactured by Swan Products Co., Inc., 130-30 180th Street, Springfield Gardens 34, N.Y., for Viking Products Co., 145-92 228th Street, Springfield Gardens 13, N.Y., effective November 4, 1960.

BUOYANT CUSHIONS, KAPOK OR FIBROUS GLASS

NOTE: Approved for use on motorboats of Classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.048/188/0, group approval for rectangular and trapezoidal kapok buoyant cushions, U.S.C.G. Specification Subpart 160.048, sizes and weights of kapok filling to be as per Table 160.048-4(c)(1)(i), manufactured by Kahler's Upholstery Shop, 820 Seventh Street, Tell City, Indiana, effective October 24, 1960.

BUOYANT CUSHIONS, UNICELLULAR PLASTIC FOAM

NOTE: Approved for use on motorboats of Classes A, 1, or 2 not carrying passengers for hire.

Approval No. 160.049/31/2, group approval for rectangular or trapezoidal unicellular plastic foam buoyant cushions with vinyl dip coatings, sizes to be as per Table 160.049-4(c)(1), and dwg. No. 1, dated September 15, 1960, manufactured by Jones & Yandell Division, American Tent Co., P.O. Box 270, Canton, Mississippi, effective October 21, 1960. (It

supersedes Approval No. 160.049/31/1, dated July 13, 1960 and published in the FEDERAL REGISTER August 31, 1960.)

Approval No. 160.049/34/1, group approval for rectangular and trapezoidal unicellular plastic foam buoyant cushions, U.S.C.G. Specification Subpart 160.049, sizes to be as per Table 160.049–4(c)(1), manufactured by Massoud Marine Upholstery, Inc., 110 Manufacturing St., Dallas, Texas and 1817 East Wayne Street, Fort Wayne, Indiana, effective October 24, 1960. (It supersedes Approval No. 160.049/34/1 dated August 4, 1960 to show change of address.)

Approval No. 160.049/38/0, group approval for rectangular and trapezoidal unicellular plastic foam buoyant cushions, U.S.C.G. Specification Subpart 160.049, sizes to be as per Table 160.049–4(c)(1), manufactured by See Bentz & Sons Upholstery, 111 Fifth Street, Watertown, Wisconsin, effective October 24, 1960.

BUOYS, LIFE, RING, UNICELLULAR PLASTIC

Approval No. 160.050/26/0, 20-inch ring life buoy, fibrous glass reinforced plastic shell with unicellular plastic foam core, The Plasti-Kraft Corp., Oldsmar, Florida, dwg. dated Feb. 1, 1958 and specifications as amended Oct. 12, 1960, approved as alternate construction to that provided by U.S.C.G. Specification Subpart 160.050, manufactured by The Plasti-Kraft Corp., Oldsmar, Florida for The American Pad & Textile Co., 511 North Solomon Street, New Orleans 19, La., effective October 24, 1960.

Approval No. 160.050/27/0, 24-inch ring life buoy, fibrous glass reinforced plastic shell with unicellular plastic foam core, The Plasti-Kraft Corp., Oldsmar, Florida, dwg. dated Feb. 1, 1958 and specifications as amended Oct. 12, 1960, approved as alternate construction to that provided by U.S.C.G. Specification Subpart 160.050, manufactured by The Plasti-Kraft Corp., Oldsmar, Florida for The American Pad & Textile Co., 511 North Solomon Street, New Orleans 19, La., effective October 24, 1960.

Approval No. 160.050/28/0, 30-inch ring life buoy, fibrous glass reinforced plastic shell with unicellular plastic foam core, The Plasti-Kraft Corp., Oldsmar, Florida, dwg. dated Feb. 1, 1958 and specifications as amended Oct. 12, 1960, approved as alternate construction to that provided by U.S.C.G. Specification Subpart 160.050, manufactured by The Plasti-Kraft Corp., Oldsmar, Florida, for The American Pad & Textile Co., 511 North Solomon Street, New Orleans 19, La., effective October 24, 1960.

FIRE EXTINGUISHERS, PORTABLE, HAND, CARBON-DIOXIDE TYPE

Approval No. 162.005/74/1, Fire Chex Model FC–5, 5-lb. carbon dioxide type hand portable fire extinguisher, assembly dwg. No. CO–5–A revised August 2, 1957, name plate dwg. No. CO–5–3, Rev. 5 dated July 1, 1960 (Coast Guard classification: Type B, Size I; and Type C, Size I), formerly Model CO–5, manufactured by Fire Chex Corp., 36136 Harper Ave., Mt. Clemens, Mich., effective October 14, 1960. (It supersedes Approval No. 162.005/74/0 published in FEDERAL REGISTER January 22, 1958.)

Approval No. 162.005/75/1, Fire Chex Model FC–10, 10-lb. carbon dioxide hand portable type fire extinguisher, assembly dwg. No. CO–10–A dated December 4, 1952, name plate dwg. No. CO–10–3A, Rev. C dated July 1, 1960 (Coast Guard classification: Type B, Size I; and Type C, Size I), manufactured by Fire Chex Corp., 36136 Harper Ave., Mt. Clemens, Mich., effective October 14, 1960. (It supersedes Approval No. 162.005/75/0 published in FEDERAL REGISTER dated March 14, 1959.)

Approval No. 162.005/76/1, Fire Chex Model FC–15, 15-lb. carbon dioxide type hand portable fire extinguisher, assembly dwg. No. CO–15–A revised August 2, 1957, name plate dwg. No. CO–15–3A, Rev. B dated July 1, 1960 (Coast Guard classification: Type B, Size II; and Type C, Size II), formerly Model CO–15, manufactured by Fire Chex Corp., 36136 Harper Ave., Mt. Clemens, Mich., effective October 14, 1960. (It supersedes Approval No. 162.005/76/0 published in FEDERAL REGISTER January 22, 1958.)

FIRE EXTINGUISHERS, PORTABLE, HAND, CHEMICAL-FOAM TYPE

Approval No. 162.006/32/2, Fyr-Fyter Model No. 18–24, 2½-gal. chemical foam type hand portable fire extinguisher, assembly dwg. No. 18–24, Rev. D dated May 27, 1960, name plate dwg No. 4708, Rev. J dated March 27, 1960 (Coast Guard classification: Type A, size II; and Type B, Size II), formerly Model No. 18–24 C.G. and formerly Model 18–26, manufactured by The Fyr-Fyter Co., 221 Crane St., Dayton 1, Ohio, effective October 13, 1960. (It supersedes Approval No. 162.006/32/1 published in FEDERAL REGISTER January 22, 1958.)

Approval No. 162.006/33/2, Buffalo Model 18–25, 2½-gal. chemical foam type hand portable fire extinguisher, assembly dwg. No. 18–25, Rev. D dated May 27, 1960, name plate dwg. No. 4709, Rev. H dated May 27, 1960 (Coast Guard classification: Type A, Size II; and Type B, Size II), formerly Model No. 18–25 C. G. and formerly Model No. 18–27, manufactured by The Fyr-Fyter Co., 221 Crane St., Dayton 1, Ohio, effective October 13, 1960. (It supersedes Approval No. 162.006/33/1 published in FEDERAL REGISTER July 28, 1959.)

Approval No. 162.006/48/0, Pyrene Model PS13, 2½-gal. chemical foam type hand portable fire extinguisher, assembly dwg. No. P13, Rev. D dated May 27, 1960, name plate dwg. No. 7068, Rev. E dated May 27, 1960 (Coast Guard classification: Type A, Size II; and Type B, Size II), manufactured by The Fyr-Fyter Co., 221 Crane St., Dayton 1, Ohio, effective October 13, 1960.

VALVES, PRESSURE-VACUUM RELIEF AND SPILL

Approval No. 162.017/84/0, Model MV–250 pressure-vacuum relief valve, enclosed pattern screwed inlet, weight loaded discs, all bronze construction, dwg. No. MV–250A dated April 18, 1960, approved for 2½" pipe size, manufactured by The Staytite Company, 3606–12 Polk Avenue, Houston 3, Texas, effective October 12, 1960.

APPLIANCES, LIQUEFIED PETROLEUM GAS CONSUMING

Approval No. 162.020/132/0, Basmor Champion Model No. 320E liquefied petroleum gas hot water heater, approved by the American Gas Association, Inc. under Certificate No. 3–798–1.301, manufactured by Bastian-Morley Co., Inc., La Porte, Indiana, effective November 7, 1960.

Approval No. 162.020/133/0, Basmor Champion Model No. 320GE liquefied petroleum gas hot water heater, approved by the American Gas Association, Inc., under Certificate No. 3–798–1.301, manufactured by Bastian-Morley Co., Inc., La Porte, Indiana, effective November 7, 1960.

Approval No. 162.020/134/0, Basmor Champion Model No. 330E liquefied petroleum gas hot water heater, approved by the American Gas Association, Inc. under Certificate No. 3–798–1.201, manufactured by Bastian-Morley Co., Inc., La Porte, Indiana, effective November 7, 1960.

Approval No. 162.020/135/0, Basmor Champion Model No. 330GE liquefied petroleum gas hot water heater, approved by the American Gas Association, Inc., under Certificate No. 3–798–1.201, manufactured by Bastian-Morley Co., Inc., La Porte, Indiana, effective November 7, 1960.

Approval No. 162.020/136/0, Basmor Champion Model No. 340E liquefied petroleum gas hot water heater, approved by the American Gas Association, Inc. under Certificate No. 3–798–1.101, manufactured by Bastian-Morley Co., Inc., La Porte, Indiana, effective November 7, 1960.

Approval No. 162.020/137/0, Basmor Champion Model No. 340GE liquefied petroleum gas hot water heater, approved by the American Gas Association, Inc. under Certificate No. 3–798–1.101, manufactured by Bastian-Morley Co., Inc., La Porte, Indiana, effective November 7, 1960.

FIRE EXTINGUISHING SYSTEMS, FIXED

"Akron Foghed Systems," water spray type fixed fire extinguishing systems for tank vessel pump rooms, Foghed Models 1" BM–54, 1" DM–24, ½" BM–15, ½" DM–34, and ½" DM–15, typical systems dwg. No. D–6636, Rev. B dated August 12, 1960 (JJ/162.021/Akron), manufactured by Akron Brass Manufacturing Co., Inc., Wooster, Ohio, effective October 11, 1960.

Dated: December 19, 1960.

[SEAL] A. C. RICHMOND.

[F.R. Doc. 60–11942; Filed, Dec. 23, 1960; 8:48 a.m.]

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

AMENDMENTS TO STATEMENT OF ORGANIZATION

Effective upon publication in the FEDERAL REGISTER, the following amendments to the Statement of Organization of the Immigration and Naturalization Service (19 F.R. 8071, December 8, 1954), as amended, are prescribed:

1. Subparagraph (2) *Ports of entry for aliens arriving by vessel or by land transportation* of paragraph (c) *Suboffices* of sec. 1.51 *Field Service* is amended in the following respects:

a. The list of ports in District No. 2 is amended to read as follows:

DISTRICT NO. 2—BOSTON, MASS.

Class A

Boston, Mass. (the port of Boston includes, among others, the port facilities at Beverly, Braintree, Chelsea, Everett, Hingham, Lynn, Manchester, Marblehead, Milton, Quincy, Revere, Salem, Saugus, and Weymouth, Mass.)
Gloucester, Mass.
Pittsburg, N.H.
Providence, R.I. (the port of Providence includes, among others, the port facilities at Davisville, Hillsgrove, Melville, Newport, Portsmouth, Quonset Point, and Tiverton, R.I.; and at Fall River and Somerset, Mass.)

Class C

New Bedford, Mass.
Newburyport, Mass.
Plymouth, Mass.
Provincetown, Mass.
Woods Hole, Mass.
Portsmouth, N.H.

b. The list of ports in District No. 3 is amended to read as follows:

DISTRICT NO. 3—NEW YORK, N.Y.

Class A

New York, N.Y. (the port of New York includes, among others, the port facilities at Bayonne, Carteret, Edgewater, Elizabeth, Hoboken, Jersey City, Linden, Perth Amboy, Port Newark, Sewaren, and Weehawken, N.J.; and at Poughkeepsie and Yonkers, N.Y.)

c. The list of Class B ports in District No. 7—Buffalo, N.Y., is amended by deleting "Thousand Island Park, N.Y. (June, July, and August only)".

d. The list of Class B ports in District No. 22—Portland, Maine, is amended by deleting "Four Falls Road, Maine".

2. Subparagraph (4) *Immigration offices in foreign countries* of paragraph (c) *Suboffices* of sec. 1.51 *Field Service* is amended by adding "Vienna, Austria" in alphabetical sequence.

Dated: December 21, 1960.

J. M. SWING,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 60–11950; Filed, Dec. 23, 1960; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ALASKA

Notice of Termination of Proposed Withdrawal and Reservation of Lands

DECEMBER 14, 1960.

Notice of an application Serial No. A. 046232, for withdrawal and reservation of lands was published as Federal Register Document No. 59–7220 on page 7043–44 of the issue for Aug. 29, 1959. The applicant agency has canceled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Part 295, such lands will be at 12:01 a.m. on 1/19/61 relieved of the segregative effect of the above-mentioned application.

The lands involved in this notice of termination are:

Passage Canal—Whittier

Beginning at a point on the westerly boundary of Parcel No. 1 PLO 587 which bears N. 10°00' W., 1,100 feet from the common corner and point of beginning for Parcels No. 1 and No. 3 of PLO 587, thence N. 10°00' W., 1,900 feet; thence N. 58°30' E., 4,000 feet; thence East, 2,200 feet to the West shoreline of Passage Canal; thence Southwesterly 3,600 feet, approximately, along line of mean high water thence West, 770 feet thence S. 17°30' W., 795 feet; thence West, 1,320 feet; thence S. 18°42' W., 907.39 feet; thence West, 566.82 feet, more or less, to the point of beginning. The tract as described contains an area of approximately 198 acres.

L. T. MAIN,
Operations Supervisor.

[F.R. Doc. 60–11939; Filed, Dec. 23, 1960; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Office of the Secretary

SAM NORRIS

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests as reported in the FEDERAL REGISTER during the last six months.

A. Deletions: None.
B. Additions: None.

This statement is made as of December 12, 1960.

SAM NORRIS.

DECEMBER 13, 1960.

[F.R. Doc. 60–11949; Filed, Dec. 23, 1960; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 11986]

ST. CATHARINES FLYING CLUB

Notice of Hearing

In the matter of the application of St. Catharines Flying Club for a foreign air carrier permit issued pursuant to section 402 of the Federal Aviation Act of 1958, as amended, to perform operations of a casual, occasional or infrequent nature in common carriage from Canada into the United States.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled matter is assigned to be held on December 29, 1960, at 10:00 a.m., e.s.t., in Room 701, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., December 20, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Docket 60–11948; Filed, Dec. 23, 1960; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13871, 13899; FCC 60–1524]

ATLANTA OK BROADCASTING CO., INC., AND WRMA BROADCASTING CO., INC.

Order To Show Cause

In the matter of Atlanta OK Broadcasting Company, Inc., licensee of standard broadcast Station WAOK, Atlanta, Georgia, Docket No. 13871; WRMA Broadcasting Company, Inc., licensee of standard broadcast Station WRMA, Montgomery, Alabama, Docket No. 13899; order to show cause why a Cease and Desist Order should not be issued.

The Commission having under consideration the responses on behalf of Stations WAOK, Atlanta, Georgia, and WRMA, Montgomery, Alabama, to the Commission's inquiry of December 2, 1959, with respect to "payola" practices, and the report of a field inquiry into the affairs of Station WAOK, and

It appearing that Stan Raymond, Zenas Sears, and Dorothy Lester each own a one-third stock interest in Atlanta OK Broadcasting Company, Inc., licensee of standard broadcast Station WAOK, Atlanta, Georgia, and a one-third stock interest in OK Realty & Investment Company, the parent company of WRMA Broadcasting Company, Inc., licensee of standard broadcast Station WRMA, Montgomery, Alabama, and

It further appearing that Zenas Sears, Vice President, Treasurer, Director, and stockholder of the licensee of Station WAOK, and also program director and disc jockey at that station, received monies from certain record manufacturing companies for distribution to on-the-air personnel at Station WAOK; and

It further appearing that in an affidavit dated December 30, 1959, by Stan Raymond, President of the licensee of Station WAOK, which affidavit was submitted in response to the Commission's inquiry of December 2, 1959, concerning "payola," it was acknowledged that payments by record companies had been received by Zenas Sears and distributed by Sears, with the knowledge and consent of the officers and directors of the licensee of Station WAOK, to all disc jockeys of Station WACK in accordance with the amount of broadcast time allotted to each member of the staff; and

It further appearing that a written statement by Zenas Sears on August 20, 1960, confirms the statements made in the Raymond affidavit and acknowledges the receipt of payments in the years 1957, 1958, and 1959 by Sears from cer-

tain record companies, the distribution of said payments to disc jockeys of Station WAOK, and the retention of part of said payments for himself; and

It further appearing that, according to Sears, the distribution of the payments from the record companies was made among the on-the-air personnel "most apt to have played records made by the contributing company;" and

It further appearing that the making of said payments by record manufacturers and the acceptance of said payments with the knowledge and consent of the licensee, its officers and directors is incompatible with allegations by the licensee of Station WAOK that said payments had little or no effect on the selection of records broadcast over Station WAOK facilities; and

It further appearing that said payments constituted a valuable consideration directly or indirectly paid to and accepted by or on behalf of the licensee of Station WAOK to insure or induce the play of records produced by the companies making such payments; and

It further appearing that records produced by companies making such payments to Zenas Sears in 1957, 1958, and 1959 were played and broadcast by Station WAOK without announcement at the time such records were broadcast that a consideration had been received or furnished and by whom, such announcements being required under Section 317 of the Communications Act of 1934, as amended, and § 3.119 of the Commission's rules; and

It further appearing that the failure of the licensee of Station WAOK to make the required announcements at various times during 1957, 1958, and 1959 constitutes wilful and repeated violations of section 317 of the Communications Act and § 3.119 of the Commission's rules; and

It further appearing that the response to the Commission's inquiry of December 2, 1959, on behalf of Station WRMA was substantially similar to that for Station WAOK, and that the same sanctions should be imposed;

It is ordered, This 14th day of December 1960, pursuant to the provisions of section 312(b) of the Communications Act of 1934, as amended, that Atlanta OK Broadcasting Company, Inc., and WRMA Broadcasting Company, Inc., are directed to show cause why the said Atlanta OK Broadcasting Company, Inc., WRMA Broadcasting Company, Inc., and their respective officers, agents, employees, or other parties acting in concert with either the said Atlanta OK Broadcasting Company, Inc., or the said WRMA Broadcasting Company, Inc., or both of them, should not be ordered to cease and desist from violating section 317 of the Communications Act of 1934, as amended, by accepting monies or things of value from anyone for the purpose of inducing the broadcast of phonograph records or other program material over either Radio Station WAOK, Atlanta, Georgia, or Station WRMA, Montgomery, Alabama, or both of them, without the appropriate announcement having been made, as required by section 317 of the Communications Act of 1934, as amended, and to appear and give evidence with respect thereto at a hearing [1] to be held in Washington, D.C., at a time to be specified by subsequent order, said time in no event to be less than 30 days after receipt of this order; and

It is further ordered, That the Acting Secretary of this Commission send a copy of this order by Certified Mail-Return Receipt Requested to the said Atlanta OK Broadcasting Company, Inc., and WRMA Broadcasting Company, Inc.

Released: December 20, 1960.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11958; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket No. 13877; FCC 60M-2147]

AUBURN BROADCASTING CO., INC. (WAUD)

Order Scheduling Hearing

In re application of Auburn Broadcasting Company, Incorporated (WAUD), Auburn, Alabama, Docket No. 13877, File No. BP-13077; for construction permit.

It is ordered, This 19th day of December 1960, that Annie Neal Huntting will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 21, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11959; Filed, Dec. 23, 1960; 8:50 a.m.]

---

[1] Section 1.62 of the Commission's rules provides that a licensee, in order to avail itself of the opportunity to be heard, shall, in person or by its attorney, file with the Commission, within thirty days of the receipt of the Order To Show Cause, a written statement stating that it will appear at the hearing and present evidence on the matter specified in the order. In the event it would not be possible for respondent to appear for hearing in the proceeding if scheduled to be held in Washington, D.C., it should advise the Commission of the reasons for such inability within five days of the receipt of this order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty days of the receipt of the Order To Show Cause. If such statement contains, with particularity, factual allegations denying or justifying the facts upon which the show cause order is based, the Hearing Examiner may call upon the submitting party to furnish additional information, and shall request all opposing parties to file an answer to the written statement and/or additional information. The record will then be closed and an initial decision issued on the basis of such procedure. Where a hearing is waived and no written statement has been filed within the thirty days of the receipt of the Order To Show Cause, the allegations of fact contained in the Order To Show Cause will be deemed as correct and the sanctions specified in the Order To Show Cause will be revoked.

[2] Concurring Statement of Chairman Ford filed as part of the original document.

[Docket Nos. 13837-13840; FCC 60M-2131]

BERNALILLO BROADCASTING CO. ET AL.

Order Continuing Hearing

In re applications of Oscar E. Reeder, tr/as Bernalillo Broadcasting Co., Albuquerque, New Mexico, Docket No. 13837, File No. BP-12708; Carter M. Waid, tr/as Belen Broadcasting Company, Belen, New Mexico, Docket No. 13838, File No. BP-12822; Philip B. Rosenthal, tr/as Cosmopolitan Broadcasting Co., Santa Fe, New Mexico, Docket No. 13839, File No. BP-13706; KARA, Incorporated (KARA), Albuquerque, New Mexico, Docket No. 13840, File No. BP-14024; for construction permits.

Pursuant to a prehearing conference in this proceeding as of this date: *It is ordered*, This 16th day of December 1960, that the hearing now scheduled for January 24, 1961, be, and the same is hereby rescheduled for March 27, 1961, 10:00 a.m., in the Commission's Offices, Washington, D.C.

Released: December 19, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11960; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13338, 13870; FCC 60M-2144]

DIXIE RADIO, INC., AND HARRY LLEWELLYN BOWYER, JR.

Order Scheduling Hearing

In re applications of Dixie Radio, Inc., Brunswick, Georgia, Docket No. 13338, File No. BP-13854; Harry Llewellyn Bowyer, Jr., Brunswick, Georgia, Docket No. 13870, File No. BP-12507; for construction permits.

It is ordered, This 19th day of December 1960, that Isadore A. Honig will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 23, 1961, in Washington, D.C.

Released: December 20, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11961; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13882-13883; FCC 60M-2149]

EUGENE BROADCASTERS AND W. GORDON ALLEN

Order Scheduling Hearing

In re applications of Diana Crocker Redington, William H. Crocker II, Thomas J. Davis, Jr., and Robert Sherman, d/b as Eugene Broadcasters (a Joint Venture), Eugene, Oregon, Docket No. 13882, File No. BP-12954; W. Gordon Allen, Eugene, Oregon, Docket No. 13883, File No. BP-13214; for construction permits.

It is ordered, This 19th day of December 1960, that Forest L. McClenning will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 28, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11962; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13879-13881; FCC 60M-2148]

FORT HAMILTON BROADCASTING CO. (WMOH) ET AL.

Order Scheduling Hearing

In re applications of the Fort Hamilton Broadcasting Company (WMOH), Hamilton, Ohio, Docket No. 13879, File No. BP-12869; Lafayette Broadcasting, Inc. (WASK), Lafayette, Indiana, Docket No. 13880, File No. BP-13252; Indiana Broadcasting Corporation (WANE), Fort Wayne, Indiana, Docket No. 13881, File No. BP-13768; for construction permits.

It is ordered, This 19th day of December 1960, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 27, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11963; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13874-13876; FCC 60M-2146]

FRANKLIN BROADCASTING CO., INC. (KMAR) ET AL.

Order Scheduling Hearing

In re applications of Franklin Broadcasting Co., Inc. (KMAR), Winnsboro, Louisiana, Docket No. 13874, File No. BP-12937; John Anthony Lazarone and Irving Ward-Steinman, d/b as Leesville Broadcasting Company (KLLA), Leesville, Louisiana, Docket No. 13875, File No. BP-13165; Yam Broadcasting Company, Incorporated, Opelousas, Louisiana, Docket No. 13876, File No. BP-13864; for construction permits.

It is ordered, This 19th day of December 1960, that Basil P. Cooper will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 13, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11964; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13872-13873; FCC 60M-2145]

L. M. HUGHEY (WTWB) AND SUGARLAND BROADCASTING CO.

Order Scheduling Hearing

In re applications of L. M. Hughey (WTWB), Auburndale, Florida, Docket No. 13872, File No. BP-11777; Sugarland Broadcasting Company, Okeechobee, Florida, Docket No. 13873, File No. BP-12513; for construction permits.

It is ordered, This 19th day of December 1960, that H. Gifford Irion will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 28, 1961, in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Released: December 21, 1960.

[F.R. Doc. 60-11965; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13887-13890; FCC 60M-2151]

CAPITOL BROADCASTING CORP., INC. (WKXL) ET AL.

Order Scheduling Hearing

In re applications of Capitol Broadcasting Corporation, Inc. (WKXL), Concord, New Hampshire, Docket No. 13887, File No. BP-12712; Tri-State Area Broadcasting Corporation (WTSA), Brattleboro, Vermont, Docket No. 13888, File No. BP-13126; WMAS, Incorporated (WMAS), Springfield, Massachusetts, Docket No. 13889, File No. BP-13264; Normandy Broadcasting Corporation (WWSC), Glens Falls, New York, Docket No. 13890, File No. BP-13274; for construction permits.

It is ordered, This 19th day of December 1960, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 13, 1961, in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

Released: December 21, 1960.

[F.R. Doc. 60-11966; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13884-13886; FCC 60M-2150]

"JET" BROADCASTING CO., INC. (WJET) ET AL.

Order Scheduling Hearing

In re applications of The "Jet" Broadcasting Co., Inc. (WJET), Erie, Pennsylvania, Docket No. 13884, File No. BP-12188; WBNY, Incorporated (WBNY), Buffalo, New York, Docket No. 13885, File No. BP-13285; Lake Shore Broadcasting Company, Inc. (WDOE), Dunkirk, New York, Docket No. 13886, File No. BP-13300; for construction permits.

It is ordered, This 19th day of December 1960, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 16, 1961 in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11967; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket Nos. 13891-13895; FCC 60M-2152]

JOHN LAURINO ET AL.

Order Scheduling Hearing

In re applications of John Laurino, Waynesboro, Virginia, Docket No. 13891, File No. BP-12428; Radio Danville, Incorporated, (WDTI), Danville, Virginia, Docket No. 13892, File No. BP-13618; Music Productions Incorporated, Waynesboro, Virginia, Docket No. 13893, File No. BP-13714; James J. Williams, Waynesboro, Virginia, Docket No. 13894, File No. BP-13746; Samuel J. Cole and J. R. Mims, Sr. d/b as Blue Ridge Broadcasters, Luray, Virginia, Docket No. 13895, File No. BP-13753; for construction permits.

It is ordered, This 19th day of December 1960, that Charles J. Frederick will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 13, 1961, in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11968; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket No. 13853; FCC 60M-2137]

MID-KANSAS, INC.

Order Scheduling Prehearing Conference

In re applications of Mid-Kansas, Inc., Docket No. 13853, for construction permit for a common carrier microwave station at Manhattan, Kansas, File No. 2205-C1-P-60; for construction permit for a common carrier microwave station at Junction City, Kansas, File No. 2206-C1-P-60; for construction permit for a common carrier microwave station at Abilene, Kansas, File No. 2207-C1-P-60; for construction permit for a common carrier microwave station at St. Mary's, Kansas, File No. 224-C1-P-61.

It is ordered, This 19th day of December 1960 that a prehearing conference, in accordance with § 1.111 of the rules, will be held in the above-entitled matter at 10:00 a.m. on January 4, 1961, in the offices of the Commission at Washington, D.C.

Released: December 20, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11969; Filed, Dec. 23, 1960; 8:50 a.m.]

[Docket No. 13896; FCC 60M-2153]

SAWNEE BROADCASTING CO.

Order Scheduling Hearing

In re application of John T. Pittard, tr/as Sawnee Broadcasting Company, Cumming, Georgia, Docket No. 13896, File No. BP-13266; for construction permit.

It is ordered, This 19th day of December 1960, that Jay A. Kyle will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 16, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11970; Filed, Dec. 23, 1960; 8:50 a.m.]

[Canadian List No. 153]

CANADIAN BROADCAST STATIONS

List of Changes, Proposed Changes and Corrections in Assignments

DECEMBER 5, 1960.

Notification under provisions of part III section 2 of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in Assignments of Canadian Broadcast Stations Modifying Appendix containing assignments of Canadian Broadcast Stations (Mimeograph #47214-3) attached to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting.

Call letters	Location	Power	Antenna	Schedule	Class	Expected date of commencement of operation
		560 kilocycles				
New	Corner Brook, Newfoundland.	1	DA-N	U	III	Delete assignment—vide 570 kc.
		570 kilocycles				
CFCB	Corner Brook, Newfoundland.	1	ND	U	III	Now in operation.
		610 kilocycles				
CKKL	Thompson Townsite, Manitoba.	1	ND	U	III	Delete assignment.
		1250 kilocycles				
CKVD (PO: 1220 kc 0.25 kw ND).	Val D'Or, P.Q.	1 kw D/0.25 kw N	ND	U	IV	EIO 11-30-61.
New	Kamloops, British Columbia.	1 kw D/0.25 kw N	ND	U	IV	Delete assignment.
		1350 kilocycles				
New	Dartmouth, Nova Scotia.	5	DA-1	U	III	Delete assignment.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-11971; Filed, Dec. 23, 1960; 8:50 a.m.]

FEDERAL POWER COMMISSION

[Docket No. CP61-67]

CITIES SERVICE GAS CO.

Notice of Application and Date of Hearing

DECEMBER 15, 1960.

Take notice that on September 6, 1960, as supplemented on October 14, 1960, Cities Service Gas Company, Oklahoma City, Oklahoma (Applicant), filed in Docket No. CP61-67 an application pursuant to section 7 of the Natural Gas Act for authorization to abandon certain natural gas facilities by sale or by retirement and for a certificate of public convenience and necessity authorizing the construction and operation of certain other facilities, all as more fully set forth in the application and exhibits, as supplemented, which are on file with the Commission and open to public inspection.

Applicant proposes the following:

A. Vicinity of Kansas City, Kansas:

(1) To construct and operate a new town border meter station, with appurtenant facilities;

(2) To abandon by sale to The Gas Service Company (Gas Service), an existing distributing company customer, a total of approximately 4.9 miles of 4- to 24-inch pipeline, and two meter and regulator settings on these lines;

B. Vicinity of Topeka, Kansas:

(1) To construct and operate two new town border meter stations, with appurtenant facilities, in East Topeka;

(2) To abandon by sale to Gas Service a total of approximately 2.59 miles of 10- to 20-inch pipeline, and five meter and regulator settings on these lines, all in East Topeka;

(3) To abandon and reclaim approximately 2 miles of 12-inch pipeline, and one meter setting thereon, in the eastern part of Topeka;

C. Vicinity of Hutchinson, Kansas:

(1) To construct and operate one high-pressure regulator setting in the southeastern section of Hutchinson where a check meter is now located;

(2) To abandon by sale to Gas Service approximately 3.2 miles of 2- to 10-inch pipeline and six meter and regulator installations thereon in eastern Hutchinson;

D. Vicinity of Pawhuska, Oklahoma:

(1) To construct and operate approximately 3 miles of 6-inch pipeline extending from Applicant's existing 12-inch line in Osage County, Oklahoma, to Pawhuska, and a new town border meter station, with appurtenant facilities, at the western edge of Pawhuska; and

(2) To abandon and reclaim approximately 38.6 miles of 1- to 12-inch pipeline presently extending from Shidler, Oklahoma, to Tallant, Oklahoma, and one town border meter station thereon at the eastern edge of Pawhuska.

Applicant states that the estimated cost of the facilities proposed to be constructed is $112,150. The estimated cost of reclaiming the facilities to be reclaimed is $81,300, with salvage credit of $208,785, for such facilities. The facilities to be sold to Gas Service will be sold for $163,350. Construction costs will be paid by Applicant from treasury cash.

The subject proposed realignment of properties is stated to stem from Applicant's policy of disposing of pipeline facilities in residential or commercial areas, where possible, to the local distribution company, resulting generally in the elimination of expensive maintenance, operation and relocation work.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 17, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a noncontested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 6, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11908; Filed, Dec. 23, 1960; 8:45 a.m.]

FOREIGN-TRADE ZONES BOARD

FOREIGN-TRADE ZONE NO. 3, SAN FRANCISCO, CALIFORNIA

Extension of Time for Permanent Relocation

Mr. Cyril Magnin, President, San Francisco Port Authority, San Francisco, California, as representative of the zone grantee, on December 2, 1960, advised the Foreign-Trade Zones Board of their inability to accomplish the permanent relocation of Foreign-Trade Zone No. 3 by the date established in Order No. 46, and requested an extension of time to June 30, 1962.

The Committee of Alternates has reviewed the circumstances in this case and unanimously recommend that the request for an extension of time from May 14, 1961, to June 30, 1962, be granted.

Upon consideration the Board concurs in the Committee's recommendation and hereby adopts the following resolution:

"The Foreign-Trade Zones Board, after consideration of the request from the San Francisco Port Authority, Grantee, Foreign-Trade Zone No. 3, for an extension of time from May 14, 1961, to June 30, 1962, to permanently relocate the zone, approves the request."

The Executive Secretary of the Foreign-Trade Zones Board is directed to incorporate this Memorandum, the letters from the Assistant Secretary of the Treasury, A. Gilmore Flues, dated December 13, 1960, and Col. Carl H. Bronn, Army Member, Committee of Alternates, dated December 13, 1960, approving the foregoing Resolution in the official records of the Foreign-Trade Zones Board. The Executive Secretary will publish the foregoing Resolution in the FEDERAL REGISTER.

Dated: December 19, 1960.

FREDERICK H. MUELLER,
Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

[F.R. Doc. 60-11934; Filed, Dec. 23, 1960; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 428]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 21, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63304. By order of December 19, 1960, the Transfer Board approved the transfer to Gentile Distributing Co., Inc., Hurley, Wisconsin, of the operating rights authorized to Nicholas Gentile, doing business as Gentile Distributors, in Permit No. MC 116691 Sub 1, issued February 18, 1960, authorizing the transportation, over irregular routes, of empty shop trailers and shop trailers loaded with miscellaneous fittings, couplings, office furniture, and tools to be used on construction jobs (except house trailers designed to be drawn by passenger automobiles), between points in Michigan, Minnesota, and Wisconsin. Alex J. Raineri, 317 Silver Street, Hurley, Wisconsin, for applicants.

No. MC-FC 63796. By order of December 19, 1960, the Transfer Board approved the transfer to Eldorado Truck Line, Incorporated, El Dorado Springs, Mo., of Certificates Nos. MC 110070, Sub 1, and MC 110070 Sub 2, issued May 16, 1950, May 16, 1950, and April 16, 1958, to Donald B. Lightner, doing business as El Dorado Truck Line, El Dorado Springs, Mo., authorizing the transportation of general commodities, excluding household goods, commodities in bulk, and various specified commodities, over regular route, between Eldorado Springs, Mo., and Kansas City, Mo.; to and from points in the Kansas City, Mo.-Kansas City, Kans. commercial zone as defined by the Commission, as intermediate and off-route points in connection with the above-route; between Bolivar, Mo., and Eldorado Springs, Mo.; between Springfield, Mo., and Clinton, Mo.; household goods over irregular routes, between points in Cedar, St. Clair, and Vernon Counties, Mo., on the one hand, and, on the other, points in Oklahoma, Nebraska, and Iowa and Illinois; and household goods, over irregular routes, between points in Cedar County, Mo., on the one hand, and, on the other, points in Kansas. Rolland V. Cox, 824 Landers Bldg., Springfield, Mo., for applicants.

No. MC-FC 63801. By order of December 19, 1960, The Transfer Board approved the transfer to J. E. Cox and Sons, Inc., Breckenridge, Tex., of the operating rights authorized to Zola M. Cox, J. E. Cox, Jr., Wesley N. Cox, and Genevieve C. Crowley, a Partnership, doing business as J. E. Cox & Sons, in Certificates Nos. MC 41610 and MC 41610 Sub 11, issued January 19, 1953, and January 24, 1956, respectively, authorizing the transportation, over irregular routes, of machinery, materials, equipment, and supplies used in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products, not including the stringing or pick-up of pipe in connection with the construction or dismantling of pipe lines, and machinery, materials, equipment, and supplies, used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe line, including the stringing and picking-up thereof, except the stringing or picking up of pipe in connection with main or trunk pipe line, machinery and equipment, used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of sulphur and its products, and materials and supplies (not including sulphur) used in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of sulphur and its products, restricted to the transportation of shipments of materials and supplies moving to or from exploration, drilling, production, job, construction, plant (including refining, manufacturing, and processing plant) sites or storage sites, machinery, equipment, materials, and supplies used in or in connection with, the drilling of water wells, and household goods, between specified points in Texas, New Mexico, Louisiana, and Oklahoma. Ewell H. Muse, Jr., 415 Perry Brooks Bldg., Austin 1, Tex., for applicants.

No. MC-FC 63802. By order of December 19, 1960, The Transfer Board approved the transfer to Roy Williams, George Williams and Warren Higgenbotham, a partnership, doing business as Williams Trucking Service, Clackamas, Oregon, Certificate No. MC 7155 Sub 1 issued February 20, 1959, in the name of George Williams, Roy Williams, Warren Littlejohn, and Warren Higginbotham, a partnership, doing business as Williams Trucking Service, Clackamas, Oregon, authorizing the transportation over irregular routes of agricultural machinery and equipment, and household goods, between points in Marion, and Linn Counties, Oreg., not served by regular route motor carriers, on the one hand, and, on the other, points in Washington; agricultural produce and wool, from points in Marion, and Linn Counties, Oreg., not served by regular route interstate motor carriers, to Portland, Oreg.; unprocessed agricultural and horticultural products, from points in Washington, and Idaho, to Salem, Oreg.; livestock, from points in Marion, and Linn Counties, Oreg., to Seattle, Wash.; fertilizer, from Pocatello, Idaho, and points within 5 miles thereof, to points in Deschutes, Jefferson, Marion, Polk, Linn, Lane, and Tillamook Counties, Oreg.; fertilizers, from Wendell, and Pocatello, Idaho, and points within 5 miles of each, to points in Columbia, Clatsop, Yamhill, and Benton Counties, Oreg.; shingles, from points in Marion, and Linn Counties, Oreg., to points in Idaho, except those in and north of Idaho County, Idaho; lumber, from points in Marion, Polk, Linn, and Lane Counties, Oreg., to points in Benton, and Franklin Counties, Wash., and points in Idaho, except those

in and north of Idaho County, Idaho; from Idaho, Oreg., to points in Idaho; from points in Columbia, Clatsop, Yamhill, and Benton Counties, Oreg., to points in Idaho except those in and north of Lewis, Nez Perce, and Idaho Counties, Idaho; from points in Marion, Polk, Linn, Lane, Columbia, Clatsop, Yamhill, and Benton Counties, Oreg., to points in Utah; from points in Washington, to points in Utah, points in Idaho except those in and north of Lewis, Nez Perce, and Idaho Counties, Idaho, and points in Oregon in and east of Hood River, Wasco, Jefferson, Deschutes, and Klamath Counties, Oreg. Robert R. Hollis, 1121 Equitable Bldg., Portland 4, Oreg., for applicants.

No. MC-FC 63807. By order of December 19, 1960, The Transfer Board approved the transfer to Ransom Bros., Inc., Brooklyn, N.Y., of Certificate No. MC 84832 issued March 17, 1952, in the name of Alfred A. Ransom, Gordon E. Ransom and Herbert A. Ransom, a partnership, doing business as Ransom Bros., Brooklyn, N.Y., authorizing the transportation of household goods as defined by the Commission, over irregular routes, between New York, N.Y., on the one hand, and, on the other, points in New York, Connecticut, New Jersey, and Pennsylvania. Bernard Kovner, 170 Broadway, New York 38, N.Y., for applicants.

No. MC-FC 63809. By order of December 19, 1960. The Transfer Board approved the transfer to Vess Transfer, Inc., Evansville, Indiana, of Certificate in No. MC 61054, issued November 23, 1940, to Clarence R. Kuhn, doing business as Kuhn Truck Line, Mount Vernon, Indiana, authorizing the transportation of: General commodities (excluding household goods, commodities in bulk, and other specified commodities between Evansville, Ind., and Mount Vernon, Ind.). Ferdinand Born, Attorney at law, 1019 Chamber of Commerce Bldg., Indianapolis 4, Ind., for applicants.

No. MC-FC 63811. By order of December 19, 1960, The Transfer Board approved the transfer to Klappert Moving & Storage, Incorporated, Covington, Ky., of Certificate No. MC 649 issued October 31, 1955, in the name of Hugh Johnson and Mary Johnson, doing business as Klappert Moving & Storage, Covington, Ky., authorizing the transportation of household goods as defined by the Commission, over irregular routes, between points in Campbell, Kenton, and Boone Counties, Ky., on the one hand, and, on the other, points in Illinois, Indiana, Michigan, Missouri, Ohio, Tennessee, and West Virginia. Robert H. Rettig, 227 Scott St., Covington, Ky., for transferee and Hugh Johnson, 229 Scott Blvd., Covington, Ky., for Transferor.

No. MC-FC 63826. By order of December 19, 1960, The Transfer Board approved the transfer to Kansas Transportation, Inc., Topeka, Kansas, of Certificate in No. MC 116321 Sub 3, issued June 26, 1959, to Thunderbird Transportation Co., Inc., Hiawatha, Kansas, authorizing the transportation of: Passengers and their baggage, and newspapers, express, and mail in the same vehicle with passengers, between Kansas City, Mo., and Bonner Springs, Kans., between Bonner Springs, Kans., and Lawrence, Kans., and using an alternate route for operating convenience only when highway becomes impassable from Bonner Springs over Kansas Highway 7 to junction U.S. Highway 40, thence over U.S. Highway 40 to junction Kansas Highway 32 and return over the same route. Clinton C. Marker, Attorney, 512 Garlinghouse Bldg., Topeka, Kans., for applicants.

No. MC-FC 63829. By order of December 19, 1960, The Transfer Board approved the transfer to Interstate Grocery Transport System, Inc., New York, N.Y., of Certificate No. MC 668531 issued August 24, 1959, to Gennaro Gargiulo and Angelina Gargiulo, a partnership, doing business as New York-Newark Express, New York, N.Y., authorizing the transportation of general commodities, excluding household goods, commodities in bulk, and various specified commodities, over irregular routes, between points in the New York, N.Y., Commercial Zone, as defined by the Commission on the one hand, and, on the other, Newark, N.J.; and groceries, from New York, N.Y., to points in Bergen, Monmouth, Passaic, Essex, Hudson, Union, Middlesex, and Morris Counties, N.J. William D. Traub, 10 East 40th St., New York 16, N.Y., for applicants.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60-11927; Filed, Dec. 23, 1960; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-2830]

COLUMBIA TITLE INSURANCE CO.

Notice of Application To Strike From Listing and Registration and of Opportunity for Hearing

DECEMBER 20, 1960.

In the matter of The Columbia Title Insurance Company, Capital Stock; File No. 1-2830.

Philadelphia-Baltimore Stock Exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-1(b) promulgated thereunder, to strike the specified security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following: Over 90 percent of the stock has been acquired by the American Title Insurance Company. The issuer concurs in the application.

Upon receipt of a request, on or before January 6, 1961, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D.C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official files of the Commission pertaining to the matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 60-11922; Filed, Dec. 23, 1960; 8:46 a.m.]

[File No. 812-1346]

FIDELITY FUND, INC.

Notice of Filing of Application

DECEMBER 16, 1960.

Notice is hereby given that Fidelity Fund, Inc. ("Fidelity"), a registered open-end investment company, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission exempting from the provisions of section 22(d) of the Act the proposed issuance of its shares at net asset value for substantially all of the cash and securities of The Wescon Company ("Wescon") on the basis set forth below.

Shares of Fidelity, a Massachusetts corporation, are offered to the public on a continuous basis at net asset value plus varying sales charges dependent on the amount purchased. As of September 14, 1960, the net assets of Fidelity amounted to $375,800,051.

Wescon, a New Jersey corporation, is a personal holding company which engages in the business of investing and reinvesting its funds. Wescon is excepted from the definition of investment company under the Act by reason of the provisions of section 3(c)(1) thereof. Pursuant to an agreement between Fidelity and Wescon, substantially all of the cash and securities of Wescon, with a total value of $2,121,923 as of September 14, 1960, will be transferred to Fidelity in exchange for shares of stock of Fidelity. The shares acquired by Wescon are to be distributed immediately to its shareholders, who intend to take such shares for investment with no present intention of distribution or redemption. The number of shares of Fidelity to be delivered to Wescon will be determined by dividing the net asset value per share of Fidelity in effect at the closing time into the value of the Wescon assets to be exchanged (with certain adjustments as set forth below).

Since the exchange will be tax free for Wescon and its shareholders, Fidelity's cost basis for tax purposes on the assets acquired from Wescon will be the same as for Wescon, rather than the price actually paid by Fidelity for the assets. Fidelity intends to retain for investment the securities acquired from Wescon on which there was an unrealized gain of $608,310 as of September 14, 1960, or 28.6 percent of the total assets acquired from Wescon. As of the same date, Fidelity's unrealized appreciation was $83,639,643, or 22.3 percent of its total net assets, and Fidelity also had undistributed net realized gains of $14,369,310.

In order to compensate the present shareholders of Fidelity for possible adverse tax consequences in the event of future sale of the assets acquired from Wescon, it has been agreed that the value of Wescon's assets will be reduced by 12½ percent of the amount by which the unrealized appreciation on the assets acquired from Wescon is greater proportionately than the unrealized appreciation on Fidelity's assets. This excess appreciation is to be computed as of the closing time by applying the percentage of unrealized appreciation on Fidelity's assets to the value of the assets acquired from Wescon and subtracting the resulting amount from the unrealized appreciation on Wescon's assets. If such calculation had been made as of September 14, 1960, the excess appreciation would have amounted to $135,121, and the 12½ percent adjustment thereon to $16,890. Provision is also made for an offset to this adjustment if the Wescon shareholders assume any undistributed realized capital gains of Fidelity, and to this extent relieve present shareholders of Fidelity of an immediate tax burden. Such offset would be computed by applying 17½ percent to the undistributed realized capital gains of Fidelity allocable to the shares to be issued to Wescon, the rate of 17½ percent having been selected on the assumption that the average effective capital gains tax rate of Fidelity's shareholders is midway between the minimum effective rate of 10 percent and the maximum effective rate of 25 percent. It is unlikely, however, that this offset will be material, since it is presently intended that the transaction will be effective immediately after the year-end distribution of capital gains by Fidelity.

The application recites that the terms of the entire transaction were arrived at through arm's-length bargaining between Fidelity and Wescon.

Section 22(d) of the Act provides, in pertinent part, that no registered investment company shall sell any redeemable security issued by it to any person except at a current offering price described in the prospectus, with certain exceptions not applicable here. Under the terms of the Agreement, however, the shares of Fidelity are to be issued to Wescon at a price other than the public offering price stated in the prospectus.

Section 6(c) of the Act authorizes the Commission by order upon application to exempt, conditionally or unconditionally, any transaction from any provision of the Act or of any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 29, 1960, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by the statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon.

Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 60-11923; Filed, Dec. 23, 1960; 8:46 a.m.]

[File No. 1-2831]

REAL ESTATE TITLE INSURANCE CO.

Notice of Application To Strike From Listing and Registration and of Opportunity for Hearing

DECEMBER 20, 1960.

In the matter of the Real Estate Title Insurance Company, Capital Stock; File No. 1-2831.

Philadelphia-Baltimore Stock Exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-1(b) promulgated thereunder, to strike the specified security from listing and registration thereon.

The reasons alleged in the application for striking this security from listing and registration include the following: Over 94 percent of the stock has been acquired by the American Title Insurance Company. The issuer concurs in the application.

Upon receipt of a request, on or before January 6, 1961, from any interested person for a hearing in regard to terms to be imposed upon the delisting of this security, the Commission will determine whether to set the matter down for hearing. Such request should state briefly the nature of the interest of the person requesting the hearing and the position he proposes to take at the hearing with respect to imposition of terms. In addition, any interested person may submit his views or any additional facts bearing on this application by means of a letter addressed to the Secretary of the Securities and Exchange Commission, Washington 25, D.C. If no one requests a hearing on this matter, this application will be determined by order of the Commission on the basis of the facts stated in the application and other information contained in the official files of the Commission pertaining to the matter.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 60-11925; Filed, Dec. 23, 1960; 8:46 a.m.]

[File No. 24C-2294]

NATIONAL SECURITY LIFE INSURANCE CO.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

DECEMBER 20, 1960.

I. National Security Life Insurance Company (issuer) a corporation incorporated under the laws of the State of Indiana on June 7, 1955, with officers at 1060 Broad Ripple Avenue, Indianapolis, Indiana, filed with the Commission on November 14, 1960, a notification on Form 1-A and an offering circular and other material pertaining to a proposed offering by the issuer of 73,300 shares of its common stock, $1 par value, at $2 per share for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, as amended, pursuant to the provisions of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that the exemption provided by Regulation A is not available for the securities proposed to be offered, in that:

A. The terms and conditions of Regulation A have not been compiled with in that:

1. The offering under the above numbered notification commenced prior to the expiration of ten business days after the filing of the notification;

2. The aggregate offering price of the securities which have been and are to be offering exceed the $300,000 limitation imposed by Rule 254 and Rule 253(c);

3. The notification fails to disclose the complete residence addresses of certain officers of the issuer, as required by Item 3 thereof;

4. The notification fails to disclose the jurisdictions in which the offering is to be made, as required by Item 8 thereof;

5. The notification fails to disclose that the Illinois Security Life Insurance Company is a predecessor of the issuer, as required by Item 2 thereof;

6. The notification fails to disclose the issuance and sale of unregistered securities of the issuer, as required by Item 9 thereof;

7. No escrow or similar arrangement meeting the requirements of Rule 253(c) was filed in accordance with Item 11;

8. The consent of Haight, Davis and Haight, actuarial firm passing upon the insurance policies of the issuer, was not filed as an exhibit to the notification;

9. The offering circular does not contain the complete statement required by Item 1 of Schedule I;

10. The offering circular does not describe the method by which the securities are proposed to be offered, as required by Item 5 of Schedule I;

11. The offering circular does not adequately or accurately describe the physical properties held or to be held by the issuer, as required by Item 8C(b) of Schedule I;

12. The offering circular does not contain the financial statements required by Item 11 of Schedule I;

13. The offering circular fails to describe material transactions between the officers and directors and the issuer, as required by Item 9(c) of Schedule I;

14. The offering circular does not adequately or accurately describe the purposes for which the net cash proceeds to the issuer are to be used and the amount to be used for each such purpose as required by Item 6(a) of Schedule I.

B. The notification and offering circular contain untrue statements of material facts and omit to state material facts necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading, in the following respects:

1. Item 9 of the notification falsely states that no unregistered securities of the issuer were issued within one year preceding the filing of the notification;

2. The offering circular fails to disclose the issuer's contingent liability arising out of the sale of unregistered securities;

3. The offering circular fails to adequately or accurately describe the nature and extent of the issuer's business and more specifically, fails to clearly disclose the adverse operating results of said business;

4. The offering circular fails to disclose payments made, directly and indirectly, by the issuer to its officers and directors;

5. The failure to include adequate and accurate financial statements, prepared in accordance with generally accepted accounting principles.

C. The offering would be and is being made in violation of section 17 of the Securities Act of 1933, as amended.

III. It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and it hereby is, temporarily suspended.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for hearing within thirty days after the entry of this order; that within twenty days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission, for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; that if no hearing is requested and none is ordered by the Commission, this order shall remain in effect unless or until it is modified or vacated by the Commission; and that notice of the time and place for any hearing will promptly be given by the Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11924; Filed, Dec. 23, 1960; 8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE---DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

	Page
PROCLAMATIONS:	
Oct. 3, 1905	12915
Dec. 7, 1907	12915
Feb. 10, 1909	12915
Dec. 10, 1910	12915
Oct. 18, 1912	12915
2935	12501
3355	13131
3382	12587
3383	13131
3384	13681
3385	13681
EXECUTIVE ORDERS:	
Feb. 26, 1852	13229
July 13, 1910	13694
Oct. 20, 1916	12887
June 8, 1926	12887
3797-A	12412, 12599
4257	13696
5327	13694
6260	12281
8278	13696
9941	12429
10896	12281
10897	12429
10898	12429
10899	12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Letter, Jan. 17, 1953	12501
Letter, Nov. 16, 1960	12501

5 CFR

	Page
2	12285
6	12393, 12547, 12588, 12733, 12869, 13132
30	12733
325	13132

6 CFR

	Page
331	12994
421	12282, 12283, 13682
464	13632

7 CFR

	Page
11	13621
33	12430
51	12941
319	12809
601	13132
718	12583
722	12393, 12403, 12809, 12812, 12987
728	13621
730	12503
811	13211
833	12650
845	12285
871	12547
902	13683
903	12504
905—908	12504
911—913	12504
914	12405, 12650, 12812, 12941, 13683
916—919	12504
921	12504
923—925	12504
928	12504, 13683
929—932	12504
933	12405–12407, 12504, 12987
935	12504
941—942	12504
943	12504, 12813
944	12504, 12987
946—948	12504
949	12504, 12941
952	12504
953	12407, 12430, 12651, 12948, 13684
954	12504
955	12949
956	12504
963	12504
965—968	12504
970	12994
971—972	12504
974—978	12504
980	12504
982	12504
985—988	12504
989	12813, 13630
991	12504
994—995	12504
998	12504
1000	12504
1001	13684
1002	12504
1004—1005	12504
1008—1009	12504
1010	12994
1011—1013	12504
1014	12504, 13684
1016	12504
1013	12504, 12588
1023—1024	12504
1031	12505, 12651, 12652
1032	12328, 13631
1069	13685
1101	13685
PROPOSED RULES:	
51	12298, 12299
718	13142
812	12712
901	12742
902	13720
923	12558
936	12465
938	12752
949	12606
953	13141
961	13001
965	12466
989	12476

7 CFR—Continued

	Page
PROPOSED RULES—Continued	
994	13239, 13637
1010	13001
1012	12558
1032	12712, 12752
1033	12606
1034	13142

8 CFR

	Page
211	12290
324	13686
332	13686

9 CFR

	Page
72	12548
74	12995, 13132
94	12831
PROPOSED RULES:	
83	12571

10 CFR

	Page
30	12730
70	12730
PROPOSED RULES:	
25	12753
115	12367

12 CFR

	Page
PROPOSED RULES:	
206	12479, 13729

13 CFR

	Page
PROPOSED RULES:	
107	12754

14 CFR

	Page
41	12908
49	12352
225	12589
243	12908
293	12908
298	12909
300	12430
302	12432, 12933
414	12589
506	12505
507	12352, 12433, 12549, 12829, 12995, 13212, 13631
514	12433, 12995
600	12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734, 12933, 12934
601	12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997, 13686
602	12288, 12552, 12678, 12831, 12997, 13213
608	12678, 12679, 12734, 12830, 12934, 12997, 13213
609	12353, 12735, 12935
610	13213
612	12410
1501	12434
PROPOSED RULES:	
41	12299
43	12524
221	12913
302	12477
507	12477, 12478, 12571, 12844
600	12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244, 13637, 13725
601	12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952, 13244, 13637, 13725.
608	12479, 12846
626	12952

15 CFR

	Page
203	12590
204	13215
371	12734

16 CFR

	Page
13	12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133, 13687
PROPOSED RULES:	
56	13245

17 CFR

	Page
230	12912
PROPOSED RULES:	
230	13638
240	13245
249	13245
250	13245
259	13245
270	13245
274	13245
275	13638
279	13638

18 CFR

	Page
104	12763
105	12961
154	12653
204	13161
205	13649

19 CFR

	Page
1—57	13325
3	13687
4	13687
PROPOSED RULES:	
8	12681

21 CFR

	Page
1	12592
8	12288
120	12288, 12506, 13631, 13632
121	12412, 12595, 12731, 12831, 13008, 13217, 13632
130	12592
146	12506, 12596, 12732
146c	12289
PROPOSED RULES:	
27	12372
120	12374, 12571
121	12299, 12477, 12839, 12840, 13008

22 CFR

	Page
3	13138
46	12289

23 CFR

	Page
PROPOSED RULES:	
20	13724

25 CFR

	Page
171	12408
Appendix	13688
PROPOSED RULES:	
52	12518
176	12299
252	13239

26 (1939) CFR

	Page
16	12442
17	12443
29	12339
39	12339
40	12340
PROPOSED RULES:	
81	13001

26 (1954) CFR

	Page
1	12340, 12345, 12654, 13689
18	12340
19	12654
31	13031
40	13693
41	13133
44	13133
46	13133
48	12669
49	13133
151	13135
170	12732
301	13137
PROPOSED RULES:	
1	12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140, 13697
20	13001
25	12707
31	12835
47	13699
48	12362, 13001
148	13699
170	12710
197	12362
250	12511

28 CFR

	Page
21	12290

29 CFR

	Page
2	13228
PROPOSED RULES:	
522	13724
604	12950
606	12950
713	12950

31 CFR

	Page
54	12345

32 CFR

	Page
505	12869
570	12869
750	12870
753	12879
805	12291
888	12999
1001	12999
1002	13000
1003	13000
1004	13000
1006	13000
1007	13000
1008	12444
1009	12446
1010	12449, 13000
1012	12449
1013	12449, 13000
1016	12450, 12456
1030	12451
1052	12456, 13000
1053	12456
1054	12458, 13000
1055	12462
1057	12462, 13000
1059	12462
1619	12291

32A CFR

	Page
OIA (CH. X):	
OI Reg. 1	13632

33 CFR

	Page
96	13633
202	12393
203	12740
207	12740

38 CFR Page

3 ... 12463
21 ... 13229

39 CFR

4 ... 13218
27 ... 12348
61 ... 13218
62 ... 13223
63 ... 13224
168 ... 12864

41 CFR

3-75 ... 12502, 12596
5-1 ... 12553, 13217
50-201 ... 12553
50-202 ... 12553
PROPOSED RULES:
50-202 ... 12363, 12522

42 CFR

1 ... 12292

43 CFR

76 ... 12597, 12949
181 ... 12679
192 ... 12352
257 ... 12679
PROPOSED RULES:
259 ... 12606
PUBLIC LAND ORDERS:
82 ... 12412, 12599
221 ... 13695
261 ... 13138
797 ... 12413
1119 ... 13694
1124 ... 12885
1230 ... 13694
1253 ... 12481
1273 ... 13138
1621 ... 12599
1965 ... 12599
2144 ... 13694
2186 ... 13694
2209 ... 12412
2210 ... 12413
2211 ... 12413
2212 ... 12597

43 CFR—Continued Page

PUBLIC LAND ORDERS—Continued
2213 ... 12597
2214 ... 12598
2215 ... 12599
2216 ... 12599
2217 ... 12885, 13633
2218 ... 12885
2219 ... 12886
2220 ... 12887
2221 ... 12887
2222 ... 12887
2223 ... 13138
2224 ... 13229
2225 ... 13229
2226 ... 13633
2227 ... 13693
2228 ... 13693
2229 ... 13694
2230 ... 13694
2231 ... 13694
2232 ... 13694
2233 ... 13694
2234 ... 13695
2235 ... 13696

45 CFR

145 ... 13230
146 ... 13230
601—620 ... 12600
PROPOSED RULES:
301 ... 12840
306 ... 12840
307 ... 12841
308 ... 12842
309 ... 12843
311 ... 12844

46 CFR

24 ... 12554
30 ... 12554
56 ... 12554
70 ... 12555
90 ... 12555
110 ... 12555
111 ... 12555
136 ... 12555
171 ... 12555
226 ... 13696
308 ... 12348

46 CFR—Continued Page

PROPOSED RULES:
401 ... 13721

47 CFR

1 ... 12358, 12600, 12602, 12603, 12605, 13230
3 ... 13230
4 ... 12680
5 ... 12359
7 ... 13230
8 ... 13232, 13233
9 ... 12359
10 ... 12359
11 ... 12359
12 ... 12358
16 ... 12359
19 ... 12359
21 ... 12359, 12603, 12605
PROPOSED RULES:
1 ... 12624, 12898
2 ... 13244
3 ... 12371, 12624, 12626, 12627, 12899
7 ... 12951
8 ... 12951
9 ... 13244
10 ... 13244
11 ... 13244
16 ... 13244
19 ... 13244
21 ... 13244

49 CFR

91 ... 12506
95 ... 13633
122 ... 12506
171 ... 12888
PROPOSED RULES:
71-78 ... 12420
197 ... 12420

50 CFR

32 ... 12555, 12888
33 ... 12507, 12556, 12557, 12888, 13138, 13139, 13234-13238, 13634
269 ... 13634
PROPOSED RULES:
14 ... 12741
41 ... 13001

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Part II begins on page 13809

Pages 13743–13825

FEDERAL REGISTER

VOLUME 25 NUMBER 251

Washington, Wednesday, December 28, 1960

THE UNIVERSITY OF MICHIGAN
DEC 30 1960
MAIN READING ROOM

Contents

Agricultural Marketing Service
PROPOSED RULE MAKING:
Lettuce grown in Lower Rio Grande Valley in South Texas (2 documents) ... 13791, 13793
Milk in Great Basin marketing area; recommended decision and opportunity to file written exceptions on proposed amendments to tentative marketing agreement and order ... 13787
RULES AND REGULATIONS:
Lemons grown in California and Arizona; handling limitation ... 13745

Agricultural Research Service
NOTICES:
Certain humanely slaughtered livestock; identification of carcasses ... 13796

Agriculture Department
See Agricultural Marketing Service; Agricultural Research Service.

Army Department
See Engineers Corps.

Civil Aeronautics Board
NOTICES:
New York-San Juan cargo rates investigation; supplemental order of investigation and suspension ... 13798
Transcontinental, S.A.; notice of prehearing conference ... 13798

Civil Service Commission
NOTICES:
Positions for which there is determined to be a manpower shortage; notice of listing ... 13798
RULES AND REGULATIONS:
Exceptions from the competitive service; Office of Civil and Defense Mobilization ... 13745

Commerce Department
See Foreign Commerce Bureau.

Defense Department
See Engineers Corps.

Engineers Corps
RULES AND REGULATIONS:
Santa Monica Bay, California; navigation regulations ... 13769

Federal Aviation Agency
RULES AND REGULATIONS:
Coded jet routes; modifications (2 documents) ... 13747
Control zone; modification ... 13746
Federal airways; modifications (2 documents) ... 13746
Federal airways and associated control areas; modification ... 13746
Restricted area/military climb corridor; modification ... 13747

Federal Communications Commission
NOTICES:
Hearings, etc.:
Cherokee County Radio Station ... 13798
Deters, Arthur A., and College Radio ... 13799
Radio Station WHCC (WHCC) and Aluminum Cities Broadcasting Co ... 13799
Spencer Broadcasting Co. et al ... 13799
PROPOSED RULE MAKING:
Table of assignments, television broadcast stations (Augusta, Bangor, Calais and Presque Isle, Maine); order extending time for filing comments ... 13794
RULES AND REGULATIONS:
Stations on land and on shipboard in the maritime services; radiotelephony for navigational communications ... 13773

Federal Housing Administration
RULES AND REGULATIONS:
Mutual mortgage insurance and servicemen's mortgage insurance; miscellaneous amendments to chapter ... 13745

Federal Power Commission
NOTICES:
Second amendment to statement of general policy No. 61-1 ... 13799
Hearings, etc.:
Arkansas Louisiana Gas Co ... 13799
Ben Bolt Gathering Co. et al ... 13800
Iowa Power and Light Co ... 13800
Texas Gas Transmission Corp.; correction ... 13800

Food and Drug Administration
PROPOSED RULE MAKING:
Food additives; notice of filing of petitions (5 documents) ... 13794
Tolerances and exemptions from tolerances for certain pesticide chemicals in or on raw agricultural commodities; petition filing ... 13793
RULES AND REGULATIONS:
Animal feed containing antibiotic drugs; certification ... 13750
Food additives; nylon resins as components of equipment used in processing (not packaging) food ... 13748

Foreign Commerce Bureau
RULES AND REGULATIONS:
General licenses; miscellaneous amendments ... 13748

Health, Education, and Welfare Department
See also Food and Drug Administration.
NOTICES:
Statement of organization and delegation of authority; department claims officer ... 13798

Housing and Home Finance Agency
See Federal Housing Administration.

(Continued on next page)

CONTENTS

Indian Affairs Bureau

PROPOSED RULE MAKING:
Colorado River Indian Irrigation Project; Arizona; operation and maintenance charges 13787

Interior Department

See also Indian Affairs Bureau; Land Management Bureau; National Park Service; Oil Import Administration.

NOTICES:
Clark, Lemore W.; appointee's statement of financial interests .. 13796

Internal Revenue Service

PROPOSED RULE MAKING:
Beer:
Concentration and reconstitution 13783
Exportation of concentrate 13785
Income tax; taxable years beginning after December 31, 1953 13775
Labeling and advertising of malt beverages; notice of hearing 13786

RULES AND REGULATIONS:
Statement of procedural rules; miscellaneous amendments 13758

Interstate Commerce Commission

NOTICES:
Fourth section application for relief 13800

PROPOSED RULE MAKING:
Transportation of explosives and other dangerous articles; extension of date for filing response statements 13794

RULES AND REGULATIONS:
Railroad annual report form C ... 13774

Labor Department

See Public Contracts Division; Wage and Hour Division.

Land Management Bureau

RULES AND REGULATIONS:
Public land orders:
California 13773
Idaho (2 documents) 13771, 13772
Utah 13769
Washington 13771
Wyoming 13770

Narcotics Bureau

RULES AND REGULATIONS:
Miscellaneous amendments to chapter 13750

National Park Service

PROPOSED RULE MAKING:
Shenandoah National Park, Virginia; "fishing for fun" in certain streams 13787

Oil Import Administration

RULES AND REGULATIONS:
Oil import regulations; miscellaneous amendments 13768

Public Contracts Division

RULES AND REGULATIONS:
Safety and health standards for Federal supply contracts 13809

Securities and Exchange Commission

NOTICES:
Hearings, etc.:
American Research and Development Corp. and Tracerlab, Inc. 13801
Delaware Realty and Investment Co. and Christiana Securities Co. 13802
Devonshire Street Fund, Inc. .. 13803
Lynn Electric Co. et al 13804

Treasury Department

See Internal Revenue Service; Narcotics Bureau.

Wage and Hour Division

NOTICES:
Certificates authorizing the employment of learners at special minimum rates 13805

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

3 CFR

EXECUTIVE ORDERS:
Nov. 12, 1911 (revoked in part by PLO 2239) 13771
Feb. 28, 1912 (revoked in part by PLO 2239) 13771

5 CFR

6 13745

7 CFR

953 13745

PROPOSED RULES:
963 13787
1034 (2 documents) 13791, 13793

14 CFR

600 (3 documents) 13746
601 (2 documents) 13746
602 (2 documents) 13747
608 13747

15 CFR

371 13748

21 CFR

121 13748
146 13750
302 13750
303 13750
304 13750
305 13750
307 13750

PROPOSED RULES:
120 13793
121 (5 documents) 13794

24 CFR

222 13745
233 13745
293a 13745

25 CFR

PROPOSED RULES:
221 13787

26 (1954) CFR

601 13758

PROPOSED RULES:
1 13775
245 13783
252 13785

27 CFR

PROPOSED RULES:
7 13786

32A CFR

OIA (Ch. X):
OI Reg. 1 13768

33 CFR

207 13769

36 CFR

PROPOSED RULES:
7 13787

41 CFR

50–204 13809

43 CFR

PUBLIC LAND ORDERS:
2236 13769
2237 13770
2238 13771
2239 13771
2240 13772
2241 13773

47 CFR

7 13773
8 13773

PROPOSED RULES:
3 13794

49 CFR

120 13774

PROPOSED RULES:
71—78 13794
197 13794

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Office of Civil and Defense Mobilization

Effective upon publication in the FEDERAL REGISTER, paragraph (p) of § 6.363 is revoked.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director, Bureau of Management Services.

[F.R. Doc. 60–11973; Filed, Dec. 27, 1960; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Lemon Regulation 877, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001 et seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

Order, as amended. The provisions in paragraph (b)(1) (i), (ii) and (iii) of § 953.984 (Lemon Regulation 877, 25 F.R. 12948) are hereby amended to read as follows:

(i) District 1: 37,200 cartons;
(ii) District 2: 153,450 cartons;
(iii) District 3: Unlimited movement.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 22, 1960.

FLOYD F. HEDLUND,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12036; Filed, Dec. 27, 1960; 8:50 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Housing and Home Finance Agency

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following miscellaneous amendments have been made to this chapter:

SUBCHAPTER C—MUTUAL MORTGAGE INSURANCE AND SERVICEMEN'S MORTGAGE INSURANCE

PART 222 — MUTUAL MORTGAGE INSURANCE; RIGHTS AND OBLIGATIONS OF MORTGAGEE UNDER THE INSURANCE CONTRACT

Section 222.155 is amended to read as follows:

§ 222.155 Debenture interest rate.

Debentures shall bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date the mortgage was endorsed for insurance, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate	On or after—	Prior to—
Percent		
3¾	Jan. 1, 1959	July 1, 1959
4¼	July 1, 1959	Jan. 1, 1961
3¾	Jan. 1, 1961	

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 203, 52 Stat. 10, as amended; 12 U.S.C. 1709)

SUBCHAPTER D—MULTIFAMILY AND GROUP HOUSING INSURANCE

PART 233—RENTAL HOUSING INSURANCE; RIGHTS AND OBLIGATIONS OF MORTGAGEE UNDER INSURANCE CONTRACT

Section 233.9(a)(1)(vii) is amended to read as follows:

§ 233.9 Insurance benefits.

(a) * * *
(1) * * *

(vii) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate	On or after—	Prior to—
Percent		
3¾	Jan. 1, 1959	July 1, 1959
4¼	July 1, 1959	Jan. 1, 1961
3¾	Jan. 1, 1961	

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 207, 52 Stat. 16, as amended; 12 U.S.C. 1713)

SUBCHAPTER M—MILITARY AND ARMED SERVICES HOUSING MORTGAGE INSURANCE

PART 293a—ARMED SERVICES HOUSING INSURANCE; RIGHTS AND OBLIGATIONS OF THE MORTGAGEE UNDER THE INSURANCE CONTRACT

Subpart A—Military Personnel

Section 293a.9(a)(1)(vii) is amended to read as follows:

§ 293a.9 Delivery of debentures and certificate of claim.

(a) * * *
(1) * * *

(vii) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is the higher. The following interest rates are effective for the dates listed:

Effective rate	On or after—	Prior to—
Percent		
3¾	Jan. 1, 1959	July 1, 1959
4¼	July 1, 1959	Jan. 1, 1961
3¾	Jan. 1, 1961	

(Sec. 807, 69 Stat. 651; 12 U.S.C. 1748f. Interprets or applies sec. 803, 69 Stat. 647, as amended; 12 U.S.C. 1748b)

Issued at Washington, D.C., December 22, 1960.

NORMAN P. MASON,
Acting Federal Housing Commissioner.

[F.R. Doc. 60-12041; Filed, Dec. 27, 1960; 8:51 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-KC-77]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification

On October 8, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9686) stating that the Federal Aviation Agency proposed to designate a west alternate to VOR Federal airway No. 15 between Bismarck, N. Dak., and Minot, N. Dak.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following action is taken:

In the text of § 600.6015 (14 CFR 600.6015, 25 F.R. 5481, 8635) "to the Minot, N. Dak., VOR." is deleted and "to the Minot, N. Dak., VOR, including a W alternate via the INT of the Bismarck VOR 333° True and the Minot VOR 197° True radials." is substituted therefor.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 20, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11979; Filed, Dec. 27, 1960; 8:45 a.m.]

[Airspace Docket No. 60-KC-69]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

Modification

On September 29, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9294) stating that the Federal Aviation Agency proposed to modify the standard west alternate of VOR Federal airway No. 67 between Mason City, Iowa, and Rochester, Minn.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following action is taken:

In the text of § 600.6067 (14 CFR 600.6067) "Mason City, Iowa, omnirange station; to the Rochester, Minn., omnirange station, including a west alternate." is deleted and "Mason City, Iowa, VORTAC to the Rochester, Minn., VOR, including a W alternate via the INT of the Mason City VORTAC 023° True and the Rochester VOR 243° True radials." is substituted therefor.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 20, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11978; Filed, Dec. 27, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-265]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Federal Airways and Associated Control Areas

The purpose of these amendments to §§ 600.6035, 600.6115, and 601.6115 of the regulations of the Administrator is to modify VOR Federal airways No. 35 and No. 115 and associated control areas.

Victor airway No. 35 extends from Key West, Fla., to Pittsburgh, Pa., and from Johnstown, Pa., to Syracuse, N.Y. The continuity of this airway is broken between Johnstown and Pittsburgh. The Federal Aviation Agency (FAA) is revoking the segment of V-35 between Charleston, W. Va., and Pittsburgh and extending V-35 from Charleston to Johnstown via the Clarksburg, W. Va., VOR, the Morgantown, W. Va., VORTAC, and the Indian Head, Pa., VOR. This segment will coincide with VOR Federal airway No. 106.

Victor airway No. 115 extends in part from Crestview, Fla., to Charleston. The FAA is extending this segment of Victor 115 from Charleston to Pittsburgh via the Parkersburg, W. Va., VOR. This segment will coincide with the segment of Victor 35 between Charleston and Pittsburgh that is being revoked herein. These modifications will not involve the designation of any additional navigable airspace.

Since these amendments impose no additional burden on any person, notice and public procedure hereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), the following actions are taken:

1. In the text of § 600.6035 (14 CFR 600.6035, 25 F.R. 583, 10049) "Parkersburg, W. Va., VOR; INT of the Parkersburg VOR 060° and the Pittsburgh VOR 223° radials; to the Pittsburgh, Pa., VOR. From the Johnstown, Pa., VOR via the" is deleted and "INT of the Charleston VORTAC 051° True and the Elkins, W. Va., VORTAC 264° True radials; Clarksburg, W. Va., VOR; Morgantown, W. Va., VORTAC; Indian Head, Pa., VOR; Johnstown, Pa., VOR;" is substituted therefor.

2. In § 600.6115 (14 CFR 600.6115) the following changes are made:

(a) In the caption "to Charleston, W. Va.," is deleted and "to Pittsburgh, Pa.," is substituted therefor.

(b) In the text "to the Charleston, W. Va., VOR" is deleted and "Charleston, W. Va., VORTAC; Parkersburg, W. Va., VOR; INT of the Parkersburg VOR 060° True and the Pittsburgh, Pa., VORTAC 223° True radials; to the Pittsburgh VORTAC." is substituted therefor.

3. In the caption of § 601.6115 (14 CFR 601.6115) "to Charleston, W. Va." is deleted and "to Pittsburgh, Pa." is substituted therefor.

These amendments shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 20, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11980; Filed, Dec. 27, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-174]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8825) stating that the Federal Aviation Agency (FAA) proposed to modify the Peru, Ind., control zone.

As stated in the notice, the Peru, Ind., control zone is presently designated within a 5-mile radius of Bunker Hill Air Force Base, and within 2 miles either side of the extended centerline of the Bunker Hill AFB northeast-southwest runway extending to a point 9 miles southwest of the end of the runway.

The FAA proposed the following:

1. Designate a control zone extension northeast of the Bunker Hill AFB on the 042° True radial of the TVOR (Lat. 40°38'28" N, Long. 86°09'02" W) extending from the 5-mile radius zone to 12 miles northeast of the TVOR.

2. Designate a control zone extension within a 5-mile radius of the Kokomo, Ind., Municipal Airport; and within 2 miles either side of the 131° True radial of the Kokomo VOR extending from the Kokomo 5-mile radius zone to 12 miles southeast of the VOR.

3. Redesignate the present southwest control zone extension by realigning it on the 220° True radial of the Bunker Hill AFB TACAN, and extending it from the 5-mile radius zone to 10 miles southwest of the TACAN (Lat. 40°38'58" N, Long. 86°08'00" W).

4. Designate control zone extensions southwest of the Bunker Hill AFB on the 226° and 231° True radials of the TVOR extending from the 5-mile radius zone to 12 miles southwest of the TVOR.

These modifications would provide protection for aircraft executing prescribed instrument approach procedures to the Bunker Hill Air Force Base and the Kokomo Municipal Airport during instrument flight rule weather conditions.

Four comments were received regarding the proposed amendment. The Aircraft Owners and Pilots Association (AOPA) questioned the need for a control zone extension based on the TACAN since they did not find a published approach for the Bunker Hill AFB TACAN. AOPA further stated that this extension appeared excessive and requested a review of the need for this particular control zone extension. Two TACAN approaches are published for Bunker Hill AFB (JAL-470-TACAN 1 and 2). These approaches specify that approaching aircraft cross the 8 nautical mile gate at 1,487 feet above the elevation of the airport. Since it is not possible to determine the exact point an aircraft will descend below 1,000 feet above the terrain between the 8 nautical mile gate and the airport, the FAA considers it necessary in this instance to extend the control zone extension to the approach gate which, at 8 nautical miles from the approach end of the runway, is established in accordance with the U.S. Manual of Criteria for Standard Instrument Approach Procedures.

The Aeronautics Commission of Indiana, USAF, and Air Transport Association of America endorsed the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated herein and in the notice, § 601.2378 (14 CFR 601.2378) is amended to read:

§ 601.2378 Peru, Ind., control zone.

Within a 5-mile radius of Bunker Hill Air Force Base, Peru, Ind., (Lat. 40°39'38" N, Long. 86°08'31" W); within 2 miles either side of the 042°, 226°, and 231° True radials of the Bunker Hill AFB TVOR extending from the 5-mile radius zone to 12 miles NE and SW of the TVOR; within 2 miles either side of the 220° True radial of the Bunker Hill AFB TACAN, extending from the 5-mile radius zone to 10 miles SW of the TACAN; within a 5-mile radius of the Kokomo, Ind., Municipal Airport (Lat. 40°31'43" N, Long. 86°03'33" W); and within 2 miles either side of the 131° True radial of the Kokomo VOR extending from the Kokomo 5-mile radius zone to 12 miles SE of the VOR.

This amendment shall become effective 0001 e.s.t. March 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 20, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11977; Filed, Dec. 27, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-238]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Route

On October 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9872) stating that the Federal Aviation Agency proposed to modify the segment of VOR/VORTAC jet route No. 13 between Cheyenne, Wyo., and Great Falls, Mont.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following action is taken:

In the text of § 602.513 (14 CFR 602.513) "Casper, Wyo., VOR; Livingston, Mont., VOR" is deleted and "Crazy Woman, Wyo., VOR; Billings, Mont., VOR" is substituted therefor.

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 20, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11976; Filed, Dec. 27, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-228]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Routes

On October 4, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9474) stating that the Federal Aviation Agency proposed to modify VOR/VORTAC jet routes No. 24, 29 and 32.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, the following actions are taken:

1. In the text of § 602.524 (14 CFR 602.524) "Garden City, Kans., VOR; Salina, Kans., VOR; Kansas City, Mo., VOR; St. Louis, Mo., VOR; Indianapolis, Ind., VOR; INT Indianapolis 113° and Charleston 291° radials; Charleston, W. Va., VOR to the Flat Rock, Va., VOR." is deleted and "Garden City, Kans., VORTAC; INT of Garden City VORTAC 066° True and the Salina, Kans., VORTAC 257° True radials; Salina VORTAC; Kansas City, Mo., VORTAC; St. Louis, Mo., VORTAC; Indianapolis, Ind., VORTAC; INT of the Indianapolis VORTAC 120° True and the Charleston, W. Va., VORTAC 284° True radials; Charleston VORTAC to the Flat Rock, Va., VORTAC." is substituted therefor.

2. In the text of § 602.529 (14 CFR 602.529) "Evansville, Ill., VOR; Dayton, Ohio, VOR;" is deleted and "Evansville, Ill., VORTAC; INT of the Evansville VORTAC 052° True and the Dayton, Ohio, VORTAC 231° True radials; Dayton VORTAC;" is substituted therefor.

3. In the text of § 602.532 (14 CFR 602.532) "Aberdeen, S. Dak., VOR to the Duluth, Minn., VOR." is deleted and "Aberdeen, S. Dak., VOR; INT of the Aberdeen VOR 067° True and the Duluth, Minn., VOR 258° True radials to the Duluth VOR." is substituted therefor.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 20, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11975; Filed, Dec. 27, 1960; 8:45 a.m.]

[Airspace Docket No. 60-AN-1]

PART 608—RESTRICTED AREAS

Modification of a Restricted Area/Military Climb Corridor

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9419) stating that the Federal Aviation Agency proposed to modify the Anchorage, Alaska (Elmendorf AFB), Restricted Area/Military Climb Corridor (R-561) (Chart-Alaska RF).

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 8005), and for the reasons stated in the notice, the Anchorage, Alaska (Elmendorf AFB) Restricted Area/Military Climb Corridor (R-561) (Chart-Alaska RF) in § 608.61 *Alaska* (24 F.R. 3230), is amended to read:

1. Anchorage, Alaska (Elmendorf AFB), Restricted Area/Military Climb Corridor (R-561) (Chart-Alaska RF).

Description: That area centered on the 298° True radial of the Elmendorf Air Force Base TACAN, extending from 3 statute miles from the west end of Elmendorf AFB runway 23 to 25 statute miles from the west end of runway 23, and having a width of 2.145 statute miles at the beginning and expanding uniformly to a width of 4.3 statute miles at the outer extremity.

Designated altitudes.

3,000' MSL to 27,000' MSL from 3 statute miles west of the west end of runway 23 to 5 statute miles west of the west end of runway 23.

5,000' MSL to 27,000' MSL from 5 to 7 statute miles west of the west end of runway 23.

7,000' MSL to 27,000' MSL from 7 to 12 statute miles west of the west end of runway 23.

10,000' MSL to 27,000' MSL from 12 to 17 statute miles west of the west end of runway 23.

13,000' MSL to 27,000' MSL from 17 to 22 statute miles west of the west end of runway 23.

16,000' MSL to 27,000' MSL from 22 to 25 statute miles west of the west end of runway 23.

Time of designation. Continuous.

Controlling agency. Anchorage Approach Control, FAA

This amendment shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 20, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-11981; Filed, Dec. 27, 1960; 8:45 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[9th Gen. Rev. Export Regs., Amdt. 46[1]]

PART 371—GENERAL LICENSES

Miscellaneous Amendments

1. Section 371.52 *Supplement 2; Commodities destined to Poland (including Danzig) which are excepted from General License GRO* is amended by adding the following commodities to the list of commodities:

Schedule B No.	*Commodity*
61875---	Steel storages tanks, lined, n.e.c.
61936---	Gas cylinders (all metal and all sizes), unfilled.
61995---	Gas storage containers, except iron and steel.[1]

[1] For other items under this Schedule B number which require a validated license for shipments to Poland (including Danzig), see the Positive List (§ 399.1 of this chapter).

2. Section 371.53 *Supplement 3; Commodities destined to the Dominican Republic which are excepted from General License GRO* is amended by substituting the following entries for entries presently on the list of commodities:

Schedule B No.	*Commodity Description*
70922---	Starting, lighting, and ignition equipment, and specially fabricated parts and accessories, n.e.c., except battery clips; dimmer switches; ignition locks; sockets; spark plug parts; starter springs; switches; terminals; and wiring connectors.[1]
79148---	Parts listed in footnote 2 below, specially fabricated, ordered and invoiced as original equipment for passenger, commercial, and military vehicles previously shipped.[1 2]
79168---	Leaf springs, and spring leaves, for replacement.
79261---	Parts listed in footnote 2 below, for assembly.[1 2]
79262---	Parts listed in footnote 2 below, for spares, replacement, or manufacture into larger components.[1 2]
79277---	Parts listed in footnote 2 below, for military automotive vehicles.[1 2]

[1] For other items under this Schedule B number which require a validated license for shipments to the Dominican Republic see the Positive List (§ 399.1 of this chapter).

[2] The following parts and accessories are included in this list under Schedule B Nos. 79148 through 79277: axle shafts; ball and socket joints; brake drums, carburetors; clutch plates; clutches; connecting-rod bearings; crankshaft bearings; crank shafts; cylinder blocks; cylinder heads; diesel fuel injection equipment; differential gears; differential units; drive gears; drive shafts; engine bearings; engine parts; engine rebuilding packages; engines; engine valve assemblies; four-wheel drive conversion units; fuel pumps; gear shift units; gears, rear end; knee-action springs (helical or coil); leaf springs; main bearings; needle valves; piston rings; pistons; propellor shafts; rear axle housings; spring leaves; steering apparatus; third axle assemblies; timers; timing gears; torque convertors; transmission gears; transmission units; universal joints; water pumps; and wheels.

This amendment shall become effective as of December 23, 1960, except that with respect to shipment of any commodities removed from general license as a result of this amendment which were on dock for lading, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to actual orders for export prior to 12:01 a.m., December 23, 1960, may be exported under the previous general license provisions up to and including January 16, 1961. Any such shipment not laden aboard the exporting carrier on or before January 16, 1961 requires a validated license for export.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023. E.O. 9630, 10 F.R. 12245, 3 CFR, 1945 Supp., E.O. 9919, 13 F.R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Director, Bureau of Foreign Commerce.

[F.R. Doc. 60-12024; Filed, Dec. 27, 1960; 8:49 a.m.]

[1] This amendment was published in Current Export Bulletin 843, dated December 15, 1960.

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

NYLON RESINS AS COMPONENTS OF EQUIPMENT USED IN PROCESSING (NOT PACKAGING) FOOD

The Commissioner of Food and Drugs, having evaluated the data submitted in petitions filed by E. I. duPont deNemours and Company, Wilmington, Delaware, and other relevant material, has concluded that the following food additive regulations should issue in conformance with section 409 of the Federal Food, Drug, and Cosmetic Act with respect to certain nylon resins to be used as components of food-processing equipment. Therefore, pursuant to the provisions of the act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under the authority delegated to the Commissioner by the Secretary of Health, Education, and Welfare (25 F.R. 8625): *It is ordered*, That the food additive regulations (21 CFR Part 121) be amended by adding thereto the following new sections:

§ 121.2502 66 Nylon resin.

66 nylon resin (polyhexamethylene adipamide), as defined in paragraph (b) of this section and subject to the conditions prescribed in this section, may safely be used to produce articles (except food packages) intended for use in processing and handling food.

(a) 66 nylon is manufactured by the condensation of hexamethylenediamine and adipic acid under controlled conditions whereby it meets the specifications and tests prescribed in paragraphs (b) and (c) of this section.

(b) *Specifications*—(1) *Qualitative tests*—(i) *Infrared identification.* 66 nylon has characteristic infrared spectra useful for identification purposes.

(ii) Other properties for identifying 66 nylon are as follows:

(a) Specific gravity---------- 1.14±0.015
Determined by weighing a 1-gram to 5-gram specimen first in air and then in freshly boiled distilled water at 23° C. ±2° C.

(b) Melting point-------- 475° F. —495° F.
The melting point is determined as follows: Use a hot-stage apparatus. The use of crossed nicol prisms with a microscope hot stage and reading of the thermometer when the birefringence disappears increase the accuracy. If the crossed nicol apparatus is not available, use the lowest temperature at which the sample becomes transparent or the sharp edges or corners of the sample become rounded as the melting point. In case of doubt as to the onset of melting, the sample is prodded with a sharp instrument. If it sticks to the heating block, it is considered to have melted. If the melting point is low, dry the sample in an oven at 85° C. for 24 hours in a nitrogen atmosphere.

(c) Solubility in boiling 4.2*N* HCl. Dissolves in 1 hour.
The test is run on a sample approximately the size of a ½-inch cube in at least 25 milliliters of 4.2*N* HCl.

(2) Extractability limitations using the method described in paragraph (c) of this section.

66 nylon:	*Percent*
Water	1.0
95 percent ethyl alcohol	1.0
Ethyl acetate	0.1
Benzene	0.1

(c) *Procedure for determining the material extractable from nylon resins by selected solvents.* (1) The granules of nylon molding powders are in the proper form for the extraction tests described in this section. Samples of fabricated articles such as pipe, fittings, and other components must be cut to approximately the size of the molding powder. This can be done conveniently by using a small-scale commercial plastics granulator and cutting the sample through a screen having ¼-inch mesh. Fine particles should be separated from the cut resin by screening through a 20-mesh screen. The material retained on the screen is suitable for the extraction tests.

(2) The organic solvents must be of American Chemical Society analytical reagent grade; distilled water is used. Approximately 100 grams of the prepared sample is weighed to the nearest milligram. The weighed resin is transferred to a 300-milliliter round-bottom flask equipped with a reflux condenser. Approximately 100 milliliters of solvent is added to the flask and the contents refluxed gently for 8 hours with a heating mantle. The solvent is then filtered off while still hot, using a Büchner funnel approximately 5 inches in diameter, a suction flask, and a hardened filter paper (Whatman No. 50 or equivalent). The paper is wet with the solvent and a slight suction applied just before starting the filtration. The resin is washed twice with approximately 100-milliliter portions of warm solvent and the combined filtrate and washings are reduced to approximately 25 milliliters by evaporation at reduced pressure (50 millimeters to 100 millimeters of mercury, absolute), heating as necessary. The contents of the flask are transferred to an evaporating dish (which has been held in a vacuum desiccator over anhydrous calcium sulfate until constant weight has been attained). The weight of the solid residue is determined by difference after holding in a vacuum desiccator over anhydrous calcium sulfate until constant weight has been attained. The percent of solids extracted is calculated by dividing the weight of the solid residue by the weight of the sample and multiplying by 100.

§ 121.2503 610 Nylon resins.

610 nylon (polyhexamethylene sebacamide) as defined in paragraph (a) of this section and subject to the further conditions prescribed in this section, may safely be used to produce articles (except food packages) intended for use in processing and handling food.

(a) 610 nylon is manufactured by the condensation of hexamethylenediamine and sebacic acid, under controlled conditions, whereby it meets the specifications and tests prescribed in paragraphs (b) and (c) of this section.

(b) *Specifications*—(1) *Qualitative tests*—(i) *Infrared identification.* 610 nylon has characteristic infrared spectra useful for identification purposes.

(ii) Other properties for identifying 610 nylon:

(a) Specific gravity---------- 1.09±0.015
Determined by weighing a 1-gram to 5-gram specimen first in air and then in freshly boiled distilled water at 23° C. ±2° C.

(b) Melting point--------- 405° F.—425° F.
The melting point is determined as follows: Use a hot-stage apparatus. The use of crossed nicol prisms with a microscope hot stage and reading of the theromometer when the birefringence disappears increase the accuracy. If the crossed nicol apparatus is not available, use the lowest temperature at which the sample becomes transparent or the sharp edges or corners of the sample become rounded as the melting point. In case of doubt as to the onset of melting, the sample is prodded with a sharp instrument. If it sticks to the heating block, it is considered to have melted. If the melting point is low, dry the sample in an oven at 85° C. for 24 hours in a nitrogen atmosphere.

(c) Solubility in boiling 4.2*N* HCl. Insoluble after 1 hour.
The test is run on a sample approximately the size of a ½-inch cube in at least 25 milliliters of 4.2*N* HCl.

(2) *Extractability limitations.*

610 nylon:	*Percent*
Water	0.25
95 percent ethyl alcohol	1.0
Ethyl acetate	0.15
Benzene	0.15

(c) Procedure for determining the material extractable from nylon resins by selected solvents is described in § 121.2502(c).

§ 121.2504 66/610 nylon resins.

Copolymer 66/610 nylon, as defined in paragraph (a) of this section and further subject to the conditions prescribed in this section, may safely be used to produce articles (except food packages) intended for use in processing and handling food (except milk).

(a) Copolymer 66/610 nylon is manufactured by polymerizing equal weights of the 66 and 610 monomeric salts under controlled conditions whereby it meets the specifications and tests prescribed in paragraphs (b) and (c) of this section.

(b) *Specifications*—(1) *Qualitative tests*—(i) *Infrared identification.* Copolymer 66/610 nylon has characteristic infrared spectra useful for identification purposes.

(ii) Other properties for identifying copolymer 66/610 nylon:

(a) Specific gravity---------- 1.10±0.015
Determined by weighing a 1-gram to 5-gram specimen first in air and then in freshly boiled distilled water at 32° C. ±2° C.

(b) Melting point--------- 375° F.-395° F.
The melting point is determined as follows: Use a hot-stage apparatus. The use of crossed nicol prisms with a microscope hot stage and reading of the thermometer when the birefringence disappears increase the accuracy. If the crossed nicol apparatus is not available, use the lowest temperature at which the sample becomes transparent or the sharp edges or corners of the sample become rounded as the melting point. In case of doubt as to the onset of melting, the sample is prodded with a sharp instrument. If it sticks to the heating block, it is considered to have melted. If the melting point is low, dry the sample in an oven at 85° C. for 24 hours in a nitrogen atmosphere.

(c) Solubility in boiling 4.2*N* HCl. Dissolves in 1 hour.

(2) *Extractability limitations.*

Nylon copolymer 66/610:	*Percent*
Water	1.0
95 percent ethyl alcohol	1.5
Ethyl acetate	0.15
Benzene	0.15

(c) Procedure for determining the material extractable from nylon resins by selected solvents is described in § 121.2502(c).

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c), 72 Stat. 1786; 21 U.S.C. 348)

Dated: December 20, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F.R. Doc. 60-12022; Filed, Dec. 27, 1960; 8:49 a.m.]

SUBCHAPTER C—DRUGS

PART 146—GENERAL REGULATIONS FOR THE CERTIFICATION OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Animal Feed Containing Antibiotic Drugs

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs by the Secretary (23 F.R. 9500, 25 F.R. 5611), the general regulations for the certification of antibiotic and antibiotic-containing drugs (21 CFR 146.26) are amended by adding to paragraph (b) the following new subparagraph (45):

§ 146.26 Animal feed containing penicillin.

* * * * *

(b) * * *

(45) It is intended for use in the prevention and control of cecal and intestinal coccidiosis in chickens caused by Eimeria acervulina, Eimeria brunetti, Eimeria maxima, Eimeria necatrix, and Eimeria tenella, and for stimulating growth and improving feed efficiency in growing chickens; its labeling bears adequate directions and warnings for such use, including a warning against its use in laying hens; it contains, per ton of feed, not less than 2.4 grams of penicillin and not more than 50 grams of penicillin; and it contains the following quantities of zoalene (3,5-dinitro-o-toluamide), by weight of feed, under the conditions and for the ages of chickens indicated:

Growing conditions	Percent of drug in feed for birds up to 6 weeks of age	Percent of drug in feed for birds from 6–14 weeks of age
Severe exposure to coccidiosis.	0.0125	0.0083–0.0125
Light to moderate exposure to coccidiosis.	0.0083	0.0063–0.0083

The exemption from certification is granted with the further proviso that there has been submitted to the Commissioner, in triplicate, adequate information of the kind described in § 146.7 to establish the safety and efficacy of the article and to guarantee its identity, strength, quality, and purity. The exemption shall expire at the beginning of any act changing the composition or labeling of such drug, or the methods used in and the facilities and controls used for its manufacturing, processing, and packaging, or in its labeling, unless the person who obtains the exemption has submitted to the Commissioner, in triplicate, amended information that describes such proposed changes, and such amendment has been accepted by the Commissioner. ♦ Both concentrates and finished poultry feed containing zoalene must comply with all the requirements of § 121.207 of this chapter, including labeling.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry, since it relaxes existing requirements, and since it would be contrary to public interest to delay providing for the amendment incorporated in this order.

I further find that animal feed containing antibiotic drugs and conforming with the conditions prescribed in this order need not comply with the requirements of sections 502(1) and 507 of the Federal Food, Drug, and Cosmetic Act in order to insure their safety and efficacy.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: December 19, 1960.

[SEAL] GEO. P. LARRICK,
Commissioner of Foods and Drugs.

[F.R. Doc. 60–12000; Filed, Dec. 27, 1960; 8:46 a.m.]

Chapter II—Bureau of Narcotics, Department of the Treasury

[T.D. 60]

PART 302—IMPORTATION AND EXPORTATION OF NARCOTIC DRUGS

PART 303—OPIUM POPPIES

PART 304—ADJUDICATION AND LICENSING

PART 305—OPIATES

PART 307—MANUFACTURING OF NARCOTIC DRUGS

Miscellaneous Amendments

On pages 11227 to 11235 of the FEDERAL REGISTER of November 26, 1960, there was published a notice of proposed rule making to issue regulations with respect to importation and exportation of narcotic drugs; opium poppies; adjudication and licensing; opiates; and manufacturing of narcotic drugs.

After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted subject to the changes set forth below:

PARAGRAPH 1. Paragraph (b) of § 307.121 is amended by changing the word "was" appearing in the third sentence to read "will be"; by changing the words "has relied", appearing in the fourth sentence to read "will rely", and the word "took" in the same sentence to read "will take".

PAR. 2. Section 307.127 is deleted in its entirety.

Effective date. This Treasury Decision shall become effective January 1, 1961.

[SEAL] H. J. ANSLINGER,
Commissioner of Narcotics.

Approved: December 22, 1960.

A. GILMORE FLUES,
Acting Secretary of the Treasury.

In Part 302—Importation and Exportation of Narcotic Drugs:

1. Section 302.17 *Exportation* is revised to read as follows:

§ 302.17 Exportation.

(a) Except as otherwise provided in paragraph (b) of this section, no person shall in any manner export from or take out of the United States, or cause to be exported or taken out of the United States any narcotic drug, nor shall any carrier receive for exportation, or export, or carry out of the United States any narcotic drug, unless and until a permit, in due form to export the narcotic drug in each instance shall have been issued by the Commissioner.

(b) A pharmaceutical preparation, containing a narcotic drug, conforming to the standards set forth in 26 CFR 151.422 as a Class "M" product may be exported or taken out of the United States without compliance with requirements set forth in §§ 302.17–302.27.

2. Section 302.19 *Foreign import license or permit to be submitted* is amended by changing "legitimate" to read "scientific". As so amended, § 302.19 reads as follows:

§ 302.19 Foreign import license or permit to be submitted.

There shall also be submitted with the application any import license or permit (and a translation thereof if in a foreign language) or a certified copy of any such license or permit issued by competent authorities in the country of destination, or other documentary evidence deemed adequate by the Commissioner showing that the merchandise is consigned to an authorized permittee, that it is to be applied exclusively to medical and scientific uses within the country of destination, that it will not be reexported from such country, and that there is an actual shortage of and a demand for the merchandise for medical and scientific uses within such country. Verification by an American consular officer of signatures on foreign import licenses will be necesary if such licenses do not bear the seal of the officer signing them.

In Part 303—Opium Poppies:

3. Section 303.6 *Production in excess of quantities named in licenses* is renumbered § 303.7.

4. Section 303.8 *Issuance of license to manufacture* is revoked and § 303.7 *Application for license to manufacture* is renumbered § 303.8 and is revised to read as follows:

§ 303.8 License to manufacture.

Any person who desires to manufacture opium or opium products from opium poppies shall first obtain the required license and quota for the manufacture of a basic class of narcotic drug and be subject to all of the provisions and requirements of the Narcotics Manufacturing Act of 1960 (Pub. Law 86–429, 74 Stat. 55), and the regulations issued pursuant thereto (Part 307 of this chapter). No further manufacturing license shall be required. However, no license to manufacture opium or opium products from opium poppies shall be issued by the Commissioner unless he finds that the medical and scientific needs of the United States for narcotic drugs are not being or cannot be supplied from crude opium obtained by importation.

5. Section 303.9 *Limitations* is renumbered section 303.6 and is revised to read as follows:

§ 303.6 Limitations.

All licenses to produce opium poppies, issued by the Commissioner, shall be limited to such number, localities, and areas as the Commissioner shall determine to be appropriate to supply the medical and scientific needs of the United States for opium or opium products, with due regard to provision for reasonable reserves. It shall be the policy of the Commissioner, so far as practicable, to confine the production of opium poppies to such areas as will permit efficient and economical enforcement of the narcotic laws and regulations.

In Part 304—Adjudication and Licensing Procedure:

6. Paragraph (g) of § 304.1 is revised to read as follows:

§ 304.1 Adjudication and licensing.

* * * * *

(g) *Functions of the Secretary of the Treasury, or his delegate under Opiates Act.* Under subsection (g) of section 4731 of the Internal Revenue Code of 1954, as amended by section 4(b) of the Narcotics Manufacturing Act of 1960 (Pub. Law 86–429, 74 Stat. 57), the Secretary of the Treasury or his delegate has the function of making a determination, after due notice and an opportunity for public hearing, of what substances shall be an "opiate" as that term is defined in 21 CFR Part 305.

In Part 305—Opiates:

7. Section 305.1 *Hearing; notice* is revised to read as follows:

§ 305.1 Opiate.

(a) *Definition.* The word "opiate" shall mean any drug (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g))) or other substance found by the Commissioner of Narcotics (after considering the technical advice of the Secretary of Health, Education, and Welfare, or his delegate, on the subject) to have (1) an addiction-forming or addiction-sustaining liability similar to morphine or cocaine; or (2) to be capable of conversion into a drug having such addiction-forming or addiction-sustaining liability with relative technical simplicity and degree of yield as to create a risk of improper use.

(b) *Finding.* Prior to making any finding that a drug or other substance is an "opiate" (as defined in paragraph (a) of this section), the Commissioner of Narcotics shall give due notice of his intention to consider the desirability of making such a finding and afford an opportunity for a public hearing to all interested parties. Not less than twenty days prior to the date set for a hearing, the Commissioner shall cause to be published in the FEDERAL REGISTER a notice setting forth the date, time and place of the proposed hearing. Any person desiring to be heard shall furnish written notice to the Commissioner not later than twenty days from the date notice of hearing is published in the FEDERAL REGISTER. If no written notice of a desire to be heard shall be received by the Commissioner within such period of twenty days, no hearing shall be held, but the Commissioner shall proceed to make a finding based on all available evidence including pharmacological and clinical tests of the drug. If written notice of a desire to be heard is received by the Commissioner within the prescribed period of twenty days, the hearing will be held in accordance with the original notice. When the Commissioner finds that a drug is an "opiate", he shall proclaim such finding in the FEDERAL REGISTER after which all of the provisions of the Federal narcotic laws shall apply to such drug.

(c) *Termination.* The Commissioner of Narcotics may withdraw any previous finding that a drug or other substance is an "opiate" whenever he determines that such previous finding was erroneous. Such determination shall take effect immediately upon publication in the FEDERAL REGISTER and the particular drug or other substance shall thereupon cease to be an "opiate". The Commissioner may, although he is not bound to, consider any action taken by the World Health Organization pursuant to Article 3 of the 1948 Protocol in withdrawing a drug or other substance previously declared an "opiate".

§ 305.2 [Revocation]

8. Section 305.2 *Procedure* is revoked.

Part 307—Manufacturing of Narcotic Drugs:

9. A new Part 307—*Manufacturing of Narcotic Drugs*, is added to read as follows:

GENERAL PROVISIONS

Sec.
307.51 Hearings.
307.52 Practice before Bureau of Narcotics.
307.53 Definitions.
307.54 Delegation of functions.

INTERNATIONAL CONTROL OF NARCOTIC DRUGS

307.61 Notifications, findings and decisions under 1948 Protocol.
307.62 Findings by United Nations organs.
307.63 Withdrawal of narcotic drug from international control.

BASIC CLASSES OF NARCOTIC DRUGS

307.71 Modification of list of basic classes of narcotic drugs.
307.72 Establishment of a new basic class of narcotic drug.

MANUFACTURE OF NARCOTIC DRUGS

307.81 Restrictions on manufacture of narcotic drugs.
307.82 Omission of a narcotic drug from a basic class.
307.83 Manufacture for scientific research and testing.

MANUFACTURERS' LICENSES

307.90 License to manufacture narcotic drugs; generally.
307.91 Registration as a prerequisite to issuance of license.
307.92 Requirements for license applications.
307.93 Action upon applications.
307.94 Factors governing issuance of licenses.
307.95 Period of validity of licenses.
307.96 Assignment or transfer of licenses.
307.97 Warning to licensees for failure to comply.
307.98 Order to show cause.
307.99 Suspension of licenses.
307.100 Revocation of licenses.

AUTHORITY TO SEIZE NARCOTIC DRUGS, ORDER FORMS AND TAX STAMPS

307.111 Sealing and safeguarding of narcotic drugs.
307.112 Forfeiture of narcotic drugs.

MANUFACTURING QUOTAS

307.121 Manufacturing quotas for basic classes of narcotic drugs; generally.
307.122 Individual manufacturing quotas.
307.123 Formula for fixing individual manufacturing quotas.
307.124 Provisional manufacturing quotas.
307.125 Application for individual manufacturing quotas.
307.126 Increase in individual manufacturing quotas.

INCIDENTAL MANUFACTURE OF NARCOTIC DRUGS

307.131 Exception from applicability of license and quota provisions.

MANUFACTURE OF NARCOTIC PRECURSORS

307.141 Narcotic precursors.

IMPORTATION OF NARCOTIC DRUGS

307.151 Importation of narcotic drugs for scientific purposes.

GENERAL PROVISIONS

§ 307.51 Hearings.

To the extent that a hearing under the regulations in this part is required pursuant to the provisions of the Administrative Procedure Act (60 Stat. 237), such hearing shall be conducted in accordance therewith. The Commissioner may specify such procedural rules as may be necessary from time to time to secure the efficient and expeditious conduct of hearings.

§ 307.52 Practice before Bureau of Narcotics by former employees.

(a) *Matters pending while employed.* No person having served as an agent, district supervisor, administrative officer, attorney or in any other capacity with the Bureau of Narcotics shall, within two years after the termination of his employment with the Bureau, practice or in any manner act as an attorney or agent or as the employee of an attorney or agent in any matter pending during the period of his employment therein, unless he shall first obtain the written consent of the Commissioner. This consent will not be granted unless it appears that the applicant for such consent did not give personal consideration to the matter or gain knowledge of the facts involved during and by reason of his employment in the Bureau of Narcotics.

(b) *Practice before Bureau.* For the purpose of this section, practice before the Bureau shall include the preparation of any statement, opinion or other paper by any attorney, accountant, chemist, pharmacologist or other expert filed with the Commissioner.

§ 307.53 Definitions.

As used in this part:

"Act" means the Narcotics Manufacturing Act of 1960, Pub. Law 86–429 (74 Stat. 55).

"Bureau" means the United States Bureau of Narcotics.

"Commissioner" means the Commissioner of Narcotics.

"Licensee" means a person granted a license under section 8 of Act to manufacture a basis class of narcotic drug.

"Manufacture" means the production of a narcotic drug, either directly or indirectly, by extraction from substances of vegetable origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.

"Narcotic", "narcotics", or "narcotic drugs" means any of the substances defined as narcotic drugs in section 4731(a) of the Internal Revenue Code of 1954, as amended by section 4(a) of the Narcotics Manufacturing Act of 1960.

"Person" includes an individual, partnership, corporation, association, trust, or other institution or entity.

"1912 Convention" means the International Opium Convention for the Suppression of the Abuses of Opium and other Drugs signed at the Hague, January 23, 1912, and entered into force with respect to the United States, February 11, 1915.

"1925 Convention" means the International Opium Convention signed at Geneva, February 19, 1925 to which the United States is not a party.

"1931 Convention" means the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, concluded at Geneva, July 13, 1931, and entered into force with respect to the United States July 9, 1933.

"1946 Protocol" means the protocol amending the Conventions of 1912, 1925 and 1931, signed at Lake Success on December 11, 1946, and entered into force with respect to the United States, August 12, 1947.

"1948 Protocol" means the protocol bringing under international control drugs outside the scope of the 1931 Convention, signed at Paris, November 19, 1948, and entered into force with respect to the United States, September 11, 1950.

§ 307.54 Delegation of functions.

Treasury Department Order No. 180–5 issued by the Acting Secretary of the Treasury, dated August 3, 1960 (25 F.R. 7544) provides as follows:

By virtue of the authority vested in me by Reorganization Plan No. 26 of 1950 and by P.L. 86–429, there is hereby delegated to the Commissioner of Narcotics authority to perform all the functions of the Secretary of the Treasury under P.L. 86–429, 74 Stat. 55, cited as the "Narcotics Manufacturing Act of 1960".

The functions herein transferred to the Commissioner of Narcotics may be delegated by him to subordinates as he deems necessary.

Regulations issued by the Commissioner of Narcotics under the Narcotics Manufacturing Act of 1960 shall be subject to approval by the Secretary of the Treasury.

International Control of Narcotic Drugs

§ 307.61 Notifications, findings and decisions under the 1948 Protocol.

(a) *Notification given.* The United States is obligated, as a signatory state Party to the 1948 Protocol to notify the Secretary-General of the United Nations whenever it considers that a drug which is or may be used for medical or scientific purposes is liable to the same kind of abuse and productive of the same kind of harmful effects as the drugs specified in Article 1, Paragraph 2 of the 1931 Convention and is not covered by that Convention. The notification to the Secretary-General of the United Nations shall be made only after the Commissioner has found and proclaimed such drug to be an "opiate" in accordance with the procedure prescribed by section 4731(g) of the Internal Revenue Code of 1954, as amended by section 4(b) of the Narcotics Manufacturing Act of 1960.

(b) *Notification received.* When the United States receives notification from the Secretary-General of the United Nations (pursuant to Article 1 or 2 of the 1948 Protocol) based on a decision of the World Health Organization or of the Commission on Narcotic Drugs of the Economic and Social Council that a drug which is or may be used for medical or scientific purposes and which is liable to the same kind of abuse and productive of the same kind of harmful effects as the drugs specified in Article 1, Paragraph 2 of the 1931 Convention, and is not covered by the 1931 Convention, is capable of producing addiction or of conversion into a drug capable of producing addiction, the Commissioner shall cause to be published in the FEDERAL REGISTER such decision of the World Health Organization or Commission on Narcotic Drugs, unless such drug has already been determined to be an "opiate" in accordance with section 4731(g) of the Internal Revenue Code of 1954, as amended by section 4(b) of the Narcotics Manufacturing Act of 1960. From the time of such publication, the drug will be subject to the same control as an "opiate" in the same manner as if it had been so determined and proclaimed by the Commissioner pursuant to the procedure set forth in section 4731(g) of the Internal Revenue Code of 1954, as amended by section 4(b) of the Narcotics Manufacturing Act of 1960.

§ 307.62 Findings by United Nations organs.

(a) *Arguments opposed to finding or decision.* Any person interested in the domestic manufacture and distribution for medical or scientific purposes of a drug which becomes subject to control by virtue of the procedure set forth in § 307.61(b), may submit to the Commissioner of Narcotics written data, views, briefs and argument opposed to such finding or decision. The Commissioner shall transmit such written data, views, briefs and argument to the Department of State for transmittal to the Secretary-General of the United Nations for consideration of the World Health Organization or the Commission on Narcotic Drugs, as the case may be, (under Article 3 of the 1948 Protocol), as the written opposition of such interested party, and not necessarily as the views of the United States.

(b) *Revised finding or decision.* If, after the submission of written data, views, and argument to the Secretary-General of the United Nations in accordance with paragraph (a), the United States receives a revised finding or decision that the drug in question is not capable of producing addiction or conversion into a drug capable of producing addiction and that the provisions of the 1931 Convention shall not apply to such drug, the Commissioner of Narcotics shall cause such revised finding or decision to be published in the FEDERAL REGISTER within ninety (90) days of receipt thereof. From the time of such publication, such drug shall cease to be an "opiate", unless the Commissioner has previously initiated an "opiate" procedure pursuant to section 4731(g) of the Internal Revenue Code of 1954, as amended by section 4(b) of the Narcotics Manufacturing Act of 1960.

§ 307.63 Withdrawal of Narcotic Drug from International control.

General: When the United States receives a revised finding or decision (under Article 3 of the 1948 Protocol) that a drug already subject to the federal narcotic laws as an "opiate" is not capable of producing addiction or of conversion into a drug capable of producing addiction and that the provisions of the 1931 Convention shall not apply to such drug, the Commissioner of Narcotics may, in his discretion, cause to be published in the FEDERAL REGISTER such revised finding or decision and, from the time of publication, such drug shall cease to be an "opiate". If on the other hand the Commissioner, in his discretion, does not cause such revised finding or decision to be published in the FEDERAL REGISTER, the drug in question shall continue to be an "opiate".

Basic Classes of Narcotic Drugs

§ 307.71 Modification of list of basic class of narcotic drugs.

(a) *Definition of "basic class" of narcotic drug.* The term "basic class" of narcotic drug means any class of narcotic drug which has been included in the list enumerated in section 3(g) of the Narcotics Manufacturing Act of 1960, as such list may be altered from time to time by adding to, subtracting from, or further defining any such class.

(b) *Alteration of a basic class.* Whenever the Commissioner of Narcotics shall, either upon his own motion or upon the application of an interested party, determine that a narcotic drug as defined in section 4731 of the Internal Revenue Code of 1954, as amended by section 4 of the Narcotics Manufacturing Act of 1960, on the basis of its chemical structure and content possesses an addiction-forming or addiction-sustaining liability or convertibility into an addicting drug so great as to present a hazard, if manufactured and distributed, to the public health and safety, he may alter the classification set forth in section 3(g) of this Act by subtracting such basic class from existing classification or he may further define such basic class, as the case may be. The Commissioner, prior to making such alteration, shall cause to be published in the FEDERAL REGISTER a notice as to this proposed subtraction or further definition of a basic class. Such notice shall also apprise interested parties of their right to request a hearing as to the proposed alteration of a basic class.

(c) *Addition of a new basic class to existing classification.* No new basic class of narcotic drug shall be added by the Commissioner to the established enumeration unless he shall first have determined that;

(1) such drug is a narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954, as amended by section 4 of the Narcotics Manufacturing Act of 1960, or has caused to be published in the FEDERAL REGISTER a determination to this effect pursuant to section 5 of this Act; and

(2) to permit the manufacture of such drug will not be contrary to the public health and safety.

§ 307.72 Establishment of a new basic class of narcotic drug.

(a) *Request to establish a new basic class of narcotic drug.* A person interested in having a new basic class of narcotic drug established, as provided in § 307.71, shall file a formal written request therefor with the Commissioner of Narcotics on Bureau Form 187.

(b) *Preparation of Bureau Form 187.* The applicant for the establishment of a new basic class of narcotic drug in preparing Bureau Form 187 shall, to the extent available, render the following information called for on the form:

(1) Generic name for drug;

(2) International non-proprietary name of the drug;

(3) Chemical name or description (structural formula);

(4) General description and composition;

(5) Therapeutic action and uses;

(6) Advantages, if any, over similar drugs already in use;

(7) Known or suspected habituation or addiction potentials;

(8) Known side effects, if any, and precautions desirable in its use;

(9) Methods of administration and recommended dosage;

(10) Nature of applicant's interest in the drug.

(c) *Submission of Bureau Form 185.* The applicant for the establishment of a new basic class of narcotic drug, in addition to the filing of Bureau Form 187, shall prepare and file Bureau Form 185. The purpose of this form is to provide the Commissioner with whatever information is available respecting the chemical formulas, physical properties and general identification of new narcotic drugs and their closely related analogs, on which the Bureau is called upon to take some action, particularly new synthetics and newly prepared opium derivatives, whose properties are not yet published in standard chemical or pharmaceutical reference works.

(d) *Addition of new basic class by Commissioner.* Where the Commissioner, on his own initiative, determines in accordance with paragraph (c) of § 307.71, that the addition of a new basic class of narcotic drug to the existing classification would not be contrary to the public health and safety, he shall cause a notice to this effect to be published in the FEDERAL REGISTER. The notice shall also apprise interested parties that they may request a hearing as to the proposed addition of a new basic class of narcotic drug to the existing classification, as enumerated in section 3(g) of the Act.

(e) *Granting of application to establish a new basic class.* If on the basis of all the information before him, the Commissioner determines that the approval of an application for the addition of a new basic class to the existing classification would be consistent with the law and the public health and safety, he shall cause to be published in the FEDERAL REGISTER a notice to the effect that an application to establish a new basic class of narcotic drug has been made by a named applicant, specifying the class of narcotic drug involved and apprising all interested parties of their right to request a hearing as to the proposed addition of a new basic class to the existing classifications. The notice shall indicate that in the absence of evidence convincing the Commissioner that such course is inappropriate, he intends to grant the application.

(f) *Final determination to establish a new basic class.* The Commissioner, after having determined under paragraph (d) or (e) of this section that it is consistent with law and the public health and safety to establish a new basic class of narcotic drug to the existing classification, shall cause to be published in the FEDERAL REGISTER a notice to this effect.

(g) *Denial of application.* If, on the basis of all of the information before him, the Commissioner determines that the approval of an application for the addition of a new basic class to the existing classification would not be consistent with law and the public health and safety, he may deny such application. Prior to denying such application, the Commissioner shall afford the applicant an opportunity to present any additional evidence relevant to the application. If after such additional evidence is presented, the Commissioner determines that it would now be consistent with the public health and safety to grant such application, the provisions of paragraph (f) of this section shall apply.

(h) *Opportunity for hearing.* If the Commissioner continues to be of the opinion that the granting of the application would not be consistent with law and the public health and safety, he shall afford the applicant an opportunity for a hearing, causing a notice to this effect to be published in the FEDERAL REGISTER.

Manufacture of Narcotic Drugs

§ 307.81 Restriction on manufacture of narcotic drugs.

General: Except as provided in § 307.83, it shall be unlawful for any person to engage in the manufacture of any narcotic drug or cause or permit another to engage in the manufacture of any narcotic drug unless:

(a) Such narcotic drug is included in a "basic class" of narcotic drug (see § 307.71); and

(b) Such person holds a currently effective license for the manufacture of such basic class of narcotic drug issued pursuant to section 8 of the Act (see § 307.90); and

(c) Such person holds a currently effective manufacturing quota with respect to such basic class of narcotic drug, as set forth in section 11 of the Act (see § 307.121).

§ 307.82 Omission of a narcotic drug from a basic class.

(a) No narcotic drug shall be manufactured unless it is included within a basic class enumerated in section 3(g) of the Narcotics Manufacturing Act of 1960, or established pursuant to section 6 of the Act.

(b) The fact that the Commissioner shall have (1) determined that a drug is a narcotic drug, or (2) caused a finding or decision with respect to any drug or other substance to be published in the FEDERAL REGISTER pursuant to section 5 of the Narcotics Manufacturing Act of 1960 (see § 307.61), shall not require the Commissioner to add such narcotic drug to the classification set forth in section 3(g) of the Act (see § 307.71 as to modification of list of basic class of narcotic drugs), or to grant a manufacturing quota pursuant to section 11 of the Act (see § 307.121), for such narcotic drug, if he finds that it would be contrary to the public health and safety.

§ 307.83 Manufacturing for scientific research and testing.

(a) *Manufacture for scientific research.* The Commissioner of Narcotics shall exempt from the provisions of § 307.90, any person desirous of manufacturing a narcotic drug exclusively for research in the development of manufacturing processes for the drug, or for chemical, pharmacological or medical testing of such drug, for fitness for medical or scientific use and for determination of its suitability for general manufacture and distribution for medical or scientific use.

(b) *Authorization to manufacture.* Written authorization from the Commissioner to manufacture a narcotic drug for scientific purposes must be obtained prior to the undertaking of such manufacture. The Commissioner shall grant such authorization only to those public officials who have evidenced their exemption from registration and payment of tax (26 CFR 151.221) with the District Director of the Internal Revenue Service or to persons registered in Class I or Class VI, under section 4722 of the Internal Revenue Code of 1954, as amended, and who otherwise meet the standards for licensing under subsection (a) of section 8 of the Narcotics Manufacturing Act of 1960.

(c) *Application for authorization to manufacture.* A person desiring to obtain authorization to manufacture a narcotic drug for scientific purposes shall file an application therefor on Bureau Form 190 in duplicate, which form is available at the office of the Commissioner, Bureau of Narcotics, Washington 25, D.C. If the drug to be manufactured is produced by chemical synthesis, whether or not from narcotic materials,

the application shall be accompanied by an outline of the process of synthesis on Form 186, identifying the substances from which it is to be made and those resulting from each successive step of the process, and indicating in each instance whether the substance is isolated and weighed or measured or whether it remains in solution in a continuing process of manufacture. The applicant need not disclose on this form any technical detail of the process which he regards as an important trade secret, but in order that the Commissioner may discharge his responsibility under the law with respect to narcotic precursors the applicant must identify each substance used and each substance resulting from the successive stages of manufacture. Information disclosed on Form 186 will be held in confidence by the Bureau.

(d) *Limitations on authorization.* Authorization to manufacture under this section will be limited to narcotic drugs not readily available to the researcher from sources within the United States, except where the development of new or improved methods of production is the object of the research to be undertaken. In addition, the Commissioner may specify a limitation on the quantity of narcotic drug to be manufactured under this section of the regulations.

(e) *Reports required.* Persons authorized to manufacture under this section of the regulations and who are Class I registrants shall render a quarterly report to the Commissioner on Bureau Form 810 and its supplements in accordance with 26 CFR 151.261. Those persons who are Class VI registrants shall render to the Commissioner semi-annual reports on Bureau Form 192, as of June 30 and December 31 of each year, to be submitted not later than the 15th of the month following, accounting for the manufacture and use or other disposition of the drugs so manufactured.

(f) *Disposition of drugs manufactured.* All such drugs manufactured under this section of the regulations shall be used in research or otherwise disposed of, as authorized by the Commissioner, within five years from the date of manufacture, unless an extension of time for completion of the research has been requested in writing and granted by the Commissioner.

(g) *Suspension or revocation of authorization.* Any authorization granted by the Commissioner under this section of the regulations shall be subject to suspension or revocation in accordance with the procedure set forth in §§ 307.79 and 307.80 as to suspension or revocation of licenses to manufacture.

MANUFACTURERS' LICENSES

§ 307.90 License to manufacture narcotic drugs; generally.

(a) Every manufacturer of a basic class or classes of narcotic drug shall obtain a license for each such basic class on or before January 1, 1961, if then already engaged in such manufacture. All other persons desiring to engage in the manufacture of a basic class or classes of narcotic drug after January 1, 1961 shall obtain appropriate licenses for each such basic class prior to undertaking such manufacture. Issuance of a license for the manufacture of any one basic class of narcotic drug shall not entitle the licensee to engage in any transaction with respect to any other basic class of narcotic drug.

(b) A person desiring to obtain a license as provided in paragraph (a) of this section shall prepare and file an application for such a license in accordance with the procedure set forth in § 307.92.

§ 307.91 Registration as a prerequisite to issuance of a license.

In addition to the conditions precedent for the issuance of a license to manufacture a particular basic class of narcotic drug as provided in § 307.90, each applicant for a license must be registered as a Class I registrant pursuant to the provisions of sections 4721 and 4722 of the Internal Revenue Code of 1954, as amended (see 26 CFR Part 121 et seq.).

§ 307.92 Requirements for license applications.

(a) *Who may file.* Any person may file an application for a license to manufacture a basic class of narcotic drug under section 8 of the Narcotics Manufacturing Act of 1960.

(b) *Filing of applications.* All applications for licenses must be filed in the office of the Commissioner, Bureau of Narcotics, Washington 25, D.C. Application shall be made on Bureau Form 188 in duplicate which form is available at the above address. If the drug to be manufactured is produced by chemical synthesis, whether or not from narcotic materials, the application shall be accompanied by an outline of the process of synthesis on Form 186, identifying the substances from which it is to be made and those resulting from each successive step of the process, and indicating in each instance whether the substance is isolated and weighed or measured or whether it remains in solution in a continuing process of manufacture. The applicant need not disclose on this form any technical detail of the process which he regards as an important trade secret, but in order that the Commissioner may discharge his responsibility under the law with respect to narcotic precursors the applicant must identify each substance used and each substance resulting from the successive stages of manufacture. Information disclosed on Form 186 will be held in confidence by the Bureau.

(c) *Separate applications.* An applicant who files separate applications to manufacture more than one class of narcotic drug need not repeat information on each application. He may make reference on any application to information which he has furnished on another application, identifying such other application by either file number, or if there has been no file number assigned, by basic class.

(d) *Subscription of applications.* Each application, or amendment thereto, and each written statement of fact required by the Commissioner from any applicant to enable the Commissioner to determine whether an application should be granted or denied, shall be personally signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if an association or corporation.

(e) *Contents of applications.* (1) Each application shall include all information called for by Forms 186 and 188 unless the information called for is inapplicable, in which case this fact shall be indicated.

(2) The Commissioner may require an applicant to submit such documents and written statements of fact pertinent to the subject matter of the application, as in the Commissioner's judgment may be necessary, or to amend the application to make it more definite and certain.

(f) *Acceptance of applications for filing.* (1) Applications submitted for filing are dated by the office of the Commissioner upon receipt and then forwarded to the Returns Division of the Bureau where an administrative examination is made to ascertain whether the applications are complete. Applications found to be complete or substantially complete are accepted for filing and are given a file number, which file number shall be transmitted to the applicant to be used on all future correspondence related to the application. In case of minor defects as to completeness, the applicant will be requested to supply the missing information. Applications which are not substantially complete will be returned to the applicant.

(2) Acceptance of an application for filing merely means that it has been the subject of a preliminary review by the Commissioner's administrative staff as to completeness and has no relevance to whether the application will be granted or denied. Such acceptance will not preclude the subsequent request for further information.

(g) *Defective applications.* (1) Applications which are determined to be patently not in accordance with these regulations or the Commissioner's specific requirements as to a particular applicant, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing. If it is ascertained that an application has been inadvertently accepted for filing, the filing will be cancelled. Requests for waiver or exception desired shall set forth the reasons in support thereof, and will be accepted or rejected in the discretion of the Commissioner.

(2) If an applicant is requested by the Commissioner to file any additional documents or information pertinent to the application not included in the prescribed application form, a failure to comply with such request will be deemed to render the application defective and the filing of such application will be cancelled.

(h) *Amendments to applications.* (1) Any application may be amended as a matter of right prior to the date of the receipt of notice from the Commissioner establishing a date for a hearing as requested by the applicant in accordance with § 307.93(d).

(2) Requests to amend an application after it has been designated for hearing will be considered only upon written permission by the Commissioner, and will be granted only for good cause shown.

(i) *Withdrawal of applications.* (1) Any application may, upon request of the applicant, be withdrawn as a matter of right prior to the date of receipt of notice from the Commissioner establishing a date for a hearing as requested by the applicant in accordance with § 307.93 (d). An applicant's request for the return of an application that has been accepted for filing will be regarded as a request to withdraw the application.

(2) Requests to withdraw an application after it has been designated for a hearing will be granted only for good cause shown.

(3) Failure to prosecute an application or failure to respond to official correspondence or request for additional information will be treated as a request by the applicant for withdrawal of his application.

§ 307.93 Action upon applications.

(a) *Notice of intention to grant application.* If after appropriate consideration, the Commissioner finds that it would be consistent with the public interest to grant any application filed pursuant to § 307.92, he shall so notify the applicant. This notification, however, shall not be construed as granting the application.

(b) *Protest of grant of application.* After notification is given to the applicant, as provided in paragraph (a) of this section, the Commissioner shall cause to be published in the FEDERAL REGISTER a notice to the effect that a named applicant has applied for a license to manufacture a particular basic class of narcotic drug, and that such application is being favorably considered. He shall at the same time mail a copy of this notice to every person who then holds an effective license to manufacture a narcotic drug in the basic class to which the application applies or who has a pending application therefor on file. Within twenty days after the notice is published in the FEDERAL REGISTER, any interested person may file a written protest with both the Commissioner and the applicant against favorable consideration of the application. Any such protest shall specify with particularity the facts relied upon as showing that a license if granted to the applicant would not be in the public interest. Such interested person may request a hearing as to his protest. The Commissioner shall, within twenty days after the filing of a timely protest, designate a date for a hearing. The Commissioner may require of the applicant that he file with the Commissioner and the person making the protest, a written statement setting forth the grounds, if any, for his opposition to the protest. If such statement is required by the Commissioner, the applicant must file it within twenty days after the demand upon him is made by the Commissioner. Failure on the part of the applicant to submit such statement will be grounds for denial of the application.

(c) *Action on denial of license.* If upon examination of any application prepared and filed by the applicant in accordance with § 307.92, the Commissioner is unable to find that it would be consistent with the law and the public interest to grant the application, he shall notify the applicant that he is denying the application and shall state the grounds and reasons for his action.

(d) *Right of hearing after denial of license.* Following notice of denial, as set forth in paragraph (c) of this section, the applicant within twenty days from receipt thereof, may present in writing any reasons for disagreeing with the Commissioner's denial of the application. If the Commissioner thereafter determines that it is appropriate to give favorable consideration to the application, the provisions of paragraphs (a) and (b) of this section shall apply. If the Commissioner adheres to his decision to deny the application, he shall afford the applicant an opportunity to be heard. If the applicant elects to have a hearing, the Commissioner shall specify a date for the hearing and shall appropriately notify the applicant and each licensee who holds an effective license to manufacture the basic class of narcotic drug to which the application relates and every person who has on file an application to manufacture the basic class of narcotic drug involved. The Commissioner shall also cause to be published in the FEDERAL REGISTER a notice to the same effect.

(e) *Joinder of parties and consolidation of hearings.* All interested persons are permitted to participate in any hearing under this section and may be compelled by the Commissioner to do so or waive their rights to be heard. The Commissioner may direct that more than one application to manufacture a basic class of narcotic drug be consolidated for the purpose of a hearing. After consolidation, an application will be retained for hearing notwithstanding that prior to hearing any other application with which it has been consolidated has been dismissed, or amended or otherwise removed from the hearing.

§ 307.94 Factors governing issuance of licenses.

In determining whether to issue a license to an applicant to manufacture a particular basic class of narcotic drug, under § 307.90, the Commissioner shall be governed by whether the issuance of the license would tend to achieve the objectives set forth in section 8 of the Narcotics Manufacturing Act of 1960.

§ 307.95 Period of validity of license.

The Commissioner shall designate the form which the license to be issued pursuant to § 307.90 shall take. The license once issued, shall not require any renewal and shall remain in effect, subject only to annual renewal of registration as required in section 8(b) of the Narcotics Manufacturing Act of 1960, unless otherwise revoked or suspended pursuant to section 9 of the Act (see §§ 307.99–307.100), or voluntarily surrendered.

§ 307.96 Assignment or transfer of licenses.

No license nor any right granted thereunder shall be assigned or otherwise transferred except upon such conditions as the Commissioner may specifically designate and then only pursuant to his written consent.

§ 307.97 Warning to licensee for failure to comply.

(a) *Failure to comply, generally.* Where a licensee has failed to comply with any of the provisions of these regulations or has failed to operate in accordance with any provision of the federal narcotic laws and regulations, the Commissioner of Narcotics may serve written notice upon such licensee calling his attention to the facts or conduct of such licensee without serving an order to show cause as provided in § 307.98. The licensee may then be accorded an opportunity to demonstrate or achieve compliance with all lawful requirements, and to render a full and complete explanation as to the matter brought to his attention by the Commissioner.

(b) *Willful failure to comply.* Where the Commissioner of Narcotics considers the licensee's failure to comply with any of the provisions of these regulations or his failure to operate in accordance with any provision of the federal narcotic laws and regulations is willful or contrary to the public health and safety, the Commissioner shall issue an order to show cause, pursuant to § 307.98.

§ 307.98 Orders to show cause.

(a) Before revoking any license, the Commissioner shall serve upon the licensee an order to show cause why an order of revocation should not be issued. Any such order to show cause shall contain a statement of the basis thereof, and shall call upon such licensee to appear before the Commissioner at a time and place stated in the order, but in no event less than thirty days after the date of receipt of such order, and give evidence upon the matter specified therein.

(b) In order to avail himself of the opportunity to be heard, the licensee shall within thirty days of the date of the receipt of the order file with the Commissioner a written statement that he will appear in accordance with the order and will present evidence on the matter specified in the order. If the licensee fails to file such written statement within the time specified in this paragraph, the right to a hearing shall be deemed to have been waived.

(c) Where a hearing is waived under paragraph (b) of this section, or where the licensee has failed to appear after having stated that he would do so, the allegations of fact contained in the order to show cause will be deemed to be correct.

(d) Where a hearing is waived, not under paragraph (b) of this section, but rather by written formal waiver, the licensee may submit to the Commissioner a written statement in mitigation or justification within thirty days of the date of receipt of the order to show cause.

(e) Any order of revocation issued pursuant to this section of the regulations by the Commissioner shall include a statement by him of his findings and grounds and reasons therefor and shall:

(1) Specify the effective date of the order; and

(2) Cause such order to be served on the licensee.

(f) Any proceeding under this section shall be independent of, and not in lieu of, criminal prosecution or other proceedings under this Act or any other law of the United States.

§ 307.99 Suspension of licenses.

(a) The Commissioner may suspend any license, when or at any time after he issues an order to show cause under § 307.98, in any case where he finds that the public health, safety or interest requires such suspension.

(b) Where the Commissioner orders a license suspended under paragraph (a) of this section, the licensee shall send the license to the Commissioner in Washington, D.C., promptly upon receipt of the notice of suspension.

(c) Any suspension ordered by the Commissioner, as provided in this section of the regulations, shall continue in effect until the conclusion of any revocation proceeding, including judicial review thereof, if any, unless sooner withdrawn by the Commissioner, or dissolved by a court of competent jurisdiction.

§ 307.100 Revocation of licenses.

(a) Any license issued pursuant to section 8 of the Narcotics Manufacturing Act of 1960 may be revoked by the Commissioner if the licensee

(1) Has been convicted of violating or conspiring to violate any law of the United States or of any State where the offense involves any activity or transaction with respect to narcotic drugs; or

(2) Has violated or failed to comply with any duly promulgated regulation relating to narcotic drugs, and such violation or failure to comply reflects adversely on the licensee's reliability and integrity with respect to narcotic drugs.

(b) In the case of a licensee who is the holder of more than one license issued pursuant to section 8 of the Act, the Commissioner may revoke under paragraph (a) of this section one or all of the licenses issued to such licensee.

AUTHORITY TO SEIZE NARCOTIC DRUGS, ORDER FORMS AND TAX STAMPS

§ 307.111 Sealing and safeguarding of narcotic drugs.

(a) The Commissioner of Narcotics on or after ordering the suspension or revocation of a licensee's license under § 307.99 or § 307.100 may order that all narcotic drugs, whether or not taxes have been paid thereon, owned or possessed by such licensee and all unused order forms and narcotic tax stamps owned or possessed by such licensee be placed under seal under the supervision of a representative of the Bureau of Narcotics, pending final disposition of the revocation proceeding.

(b) The representative of the Bureau, referred to in paragraph (a) of this section, shall, in the presence of the licensee or his representative, prepare an inventory, in triplicate, of all items thus placed under seal. The original inventory shall be forwarded to the Commissioner of Narcotics, the duplicate copy shall be forwarded to the narcotic District Supervisor of the district wherein the sealing takes place and the triplicate copy shall be given to the affected licensee.

(c) A licensee may make no disposition of any item placed under seal. The licensee shall be responsible for safeguarding all sealed items to insure against their disposition and to protect them against being tampered with.

§ 307.112 Forfeiture of narcotic drugs.

(a) When a revocation order, under § 307.100, becomes final, all narcotic drugs, unused order forms and tax stamps relating to narcotic drugs, owned or possessed by the affected licensee, shall be forthwith confiscated, and when confiscated shall be deemed to be forfeited to the Government.

(b) Representatives of the Bureau of Narcotics when confiscating narcotic drugs, unused order forms and tax stamps, shall determine whether there has been any disposition of or tampering with any such items that had been sealed pursuant to § 307.111.

(c) At the time of confiscating narcotic drugs, unused order forms and tax stamps which have not previously been ordered sealed and safeguarded under § 307.111, the representatives of the Bureau of Narcotics who are confiscating the items shall, in the presence of the licensee or his representative, prepare an inventory in triplicate of the items being confiscated. The original inventory shall be forwarded to the Commissioner of Narcotics, the duplicate copy shall be forwarded to the narcotic District Supervisor of the district wherein the confiscation was made and the triplicate copy shall be given to the licensee from whom the confiscation was made, and shall be retained by him for a period of not less than two years.

(d) Representatives of the Bureau of Narcotics at the time of confiscating narcotic drugs pursuant to this section may, as the Commissioner of Narcotics directs, either destroy accumulated narcotic wastes and undesired narcotic drugs or dispose of such wastes and drugs pursuant to the procedures set forth in paragraph (e) of this section.

(e) All confiscated items not destroyed shall be delivered to the narcotic District Supervisor of the district wherein the confiscation takes place. The narcotic District Supervisor will forward the narcotic drugs thus confiscated to the Commissioner of Narcotics (Drugs Disposal Committee) for proper disposition in accordance with the provisions of 26 CFR 151.491. Confiscated unused order forms and tax stamps shall be forwarded to the District Director of the Internal Revenue Service of the district wherein the licensee was registered for cancellation of such order forms and for disposition of the tax stamps. No refund will be allowed for tax stamps forfeited to the Government under this section of the regulations.

MANUFACTURING QUOTAS

§ 307.121 Manufacturing quotas for basic classes of narcotic drugs; generally.

(a) In order to carry out the treaty obligations of the United States, the Commissioner of Narcotics shall, on or before June 1, of each year, make determinations of the total quantity of each basic class of narcotic drug necessary to be manufactured during that calendar year to provide for the estimated medical and scientific needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.

(b) In fixing yearly manufacturing quotas for each basic class of narcotic drug, the Commissioner of Narcotics shall consider the total needs for the procurement of such drugs for further manufacturing or processing by registered manufacturers who do not hold quotas to manufacture such basic class of narcotic drug. In order that such information may be available to the Commissioner each registered manufacturer who does not hold a manufacturing quota shall on or before November 30, notify the Commissioner in writing on Bureau Form 194 of the amount of each basic class of narcotic drug which he desires to procure in the following year for further manufacturing or processing. The Commissioner shall notify each person who has filed Bureau Form 194 whether the request thereon will be relied upon by the Commissioner in fixing the annual manufacturing quotas. When the Commissioner states that he will rely upon any such forms he shall also state the amount which he will take into account and such amount shall be known as the "purchase quota" of the person filing the form. Such purchase quotas will be based upon the applicant's previous yearly requirements and upon his reasonably anticipated requirements.

(c) Notwithstanding the provisions of (b) of this section, Bureau Form 194 need not be filed by any registered manufacturer who uses less than one kilogram of all basic classes of narcotic drugs annually.

§ 307.122 Individual manufacturing quotas.

(a) *Fixing of individual manufacturing quotas.* The Commissioner of Narcotics shall upon application fix annual manufacturing quotas for each licensee holding a license to manufacture each basic class of narcotic drug and in so doing shall be governed by the provisions of section 11 of the Narcotics Manufacturing Act of 1960.

(b) *Reducing individual manufacturing quotas.* The Commissioner of Narcotics, after having established individual manufacturing quotas for a basic class of narcotic drug may reduce an individual manufacturing quota which he has previously fixed, so as to prevent the aggregate of the manufacturing quotas outstanding or to be granted from exceeding the established quota for the basic class of narcotic drug.

(c) *Production in excess of quota.* No person shall knowingly manufacture any narcotic drug in any quantity in excess of any quota which he holds. When a licensee who under a quota as originally fixed, or as reduced by the Commissioner of Narcotics under paragraph (b) of this section, has already manufactured a basic class of narcotic drug in excess of the quota, such excess shall be subtracted by the Commissioner of Narcotics from the licensee's manufacturing quota for the following year.

(d) *Proportionate reduction of manufacturing quota.* Any reduction of an individual manufacturing quota shall be in the same proportion as the reduction of the aggregate of the established quota for the basic class of narcotic drug or in the proportion that a quota to a new licensee may require in order to keep the aggregate of the individual quotas from exceeding the established quota for the basic class of narcotic drug.

§ 307.123 Formula for fixing individual manufacturing quotas.

(a) *Time for fixing of quotas.* Upon application therefor, the Commissioner of Narcotics shall, on or before June 1 of each year fix individual manufacturing quotas for the manufacture of each basic class of narcotic drug.

(b) *Sufficiency of manufacturing quotas.* Subject to the right of the Commisioner of Narcotics to reduce, limit, suspend or revoke any manufacturing quota, any quota established for a licensee for the manufacture of a basic class of narcotic drug shall be sufficient to cover the licensee's estimated requirement for the calendar year in question as to—

(1) His "net disposal" (as defined in paragraph (c)) for such calendar year;

(2) His inventory at the close of such calendar year; and subject to such other factors as the Commisioner may determine should be taken into consideration in arriving at a proper quota under all the circumstances (i.e., licensee's current net disposal rate, the trend of such net disposal rate during the preceding calendar year or years, the licensee's production cycle and current inventory position, the economic and physical availability of raw materials used by the licensee in the production of such basic class of narcotic drug, yield and stability problems, emergency situations such as catastrophies and strikes, and any other factors which the Commissioner deems appropriate to consider in arriving at the proper quota under the circumstances).

(c) *Definition of "net disposal".* The term "net disposal" means the quantity of a basic class of narcotic drug sold, exchanged, given away, used in the production of another basic class of narcotic drug for which the manufacturer is licensed, or otherwise disposed of (as such or contained in or combined with other drugs compounded by the manufacturer of such basic class) by the manufacturer during a stated period, less the quantity of any such basic class of narcotic drug returned to the manufacturer by a customer and any quantity sold or transferred to another licensed manufacturer of the same basic class of narcotic drug.

(d) *Definition of "inventory".* The term "inventory" means all factory and branch stocks (whether held by the manufacturer under Class I or Class II registration as provided in 26 CFR 151.41) of a basic class of narcotic drug manufactured or otherwise acquired by a licensee, whether in bulk, marketable packages, or contained in pharmacutical preparations in the possession of the licensee and all subsidiary companies, if any, of such licensee.

(e) *Establishment of manufacturing quotas.* Subject to the right of the Commissioner of Narcotics to reduce, limit, suspend or revoke any manufacturing quota, the quota for each licensed manufacturer shall not be less than the sum of—

(1) Such licensed manufacturer's net disposal of such basic class of narcotic drug during the immediately preceding calendar year or the average of the three immediately preceding calendar years in which such manufacturer produced such basic class of narcotic drug, whichever is greater; and

(2) One-half of such manufacturer's net disposal of such basic class of narcotic drug during the immediately preceding calendar year;

less such manufacturer's inventory of such basic class of narcotic drug on December 31 of the preceding calendar year.

(f) *Manufacturing quotas for new licensees.* Subject to the right of the Commissioner of Narcotics to reduce, limit, suspend or revoke any manufacturing quota, the Commissioner, upon application therefor, shall fix a quota for any licensed manufacturer of a basic class of narcotic drug who has not manufactured such basic class of narcotic drug during one or more of the three immediately preceding calendar years, in an amount adequate to cover such manufacturer's reasonably anticipated requirements for the current calendar year.

§ 307.124 Provisional manufacturing quotas.

(a) A licensed manufacturer, between January 1 of any year and the time when he receives a quota for such year under § 307.123 may manufacture a provisional quota of the basic class of narcotic drug for which he is licensed.

(b) The provisional quota referred to in paragraph (a) of this section, except as provided in paragraph (c) of this section shall be not more than 75 per centum of whichever of the following is greater:

(1) Such licensee's aggregate net disposal of such basic class of narcotic drug during the twelve months immediately preceding September 30 of the preceding year; or

(2) Twelve times such licensee's average monthly net disposal of such basic class of narcotic drug for the thirty-three months immediately preceding September 30 of the preceding year.

(c) The Commissioner of Narcotics may, for good cause, raise or lower the provisional quota percentage provided for in paragraph (b) of this section. Any increase or decrease in percentage provided for by the Commissioner shall apply to the provisional quotas of all licenses for the basic class of narcotic drug involved.

§ 307.125 Application for individual manufacturing quotas.

(a) Each person desirous of manufacturing a basic class of narcotic drug for which he holds a currently effective manufacturing license, shall file an application for an individual manufacturing quota on Bureau Form 189 for each such basic class of narcotic drug. Bureau Form 189 shall be filed with the Commissioner of Narcotics no later than March 1 of each year in which the licensee desires to manufacture such basic class of narcotic drug.

(b) Any person who is not desirous of manufacturing a basic class of narcotic drug for which he holds a currently effective manufacturing license, shall notify the Commissioner of Narcotics no later than March 1 of any year in which he does not desire to manufacture such basic class of narcotic drug.

(c) Any person who after having filed an application for an individual manufacturing quota under paragraph (a) of this section, decides not to manufacture such basic class of narcotic drug or to discontinue the manufacture of such basic class of narcotic drug, shall forthwith notify the Commissioner of Narcotics, in writing, to this effect.

§ 307.126 Increase in individual manufacturing quotas.

(a) Any licensee who holds a manufacturing quota for a basic class of narcotic drug may file an application on Bureau Form 189 with the Commissioner of Narcotics for an increase in such manufacturing quota in order for him to meet his estimated net disposal, inventory and other requirements during the remainder of such calendar year.

(b) The Commissioner of Narcotics, in passing upon a licensee's application for an increase in his manufacturing quota, shall take into consideration any occurrences since the filing of such licensee's initial quota application that may require an increased manufacturing rate by such licensee during the balance of the calendar year. In passing upon such application the Commissioner may also take into consideration the amount, if any, by which his determination of the total quantity for the basic class of narcotic drug to be manufactured under § 307.121, exceeds the aggregate of all the individual manufacturing quotas for the basic class of narcotic drug, and the equitable distribution of such excess among other licensees.

INCIDENTAL MANUFACTURE OF NARCOTIC DRUGS

§ 307.131 Exception from applicability of license and quota provisions.

(a) Any licensee who, incidentally but necessarily, manufactures a narcotic drug as a result of his manufacture of a basic class of narcotic drug for which he holds a license and manufacturing quota under the regulations in this part, shall be exempt from the requirement of a license and quota under the regulations in this part as to such resulting narcotic drug.

(b) No license or quota shall be required for any quantity of narcotic drug which incidentally but necessarily results from the manufacture of any nonnarcotic substance not covered by the regulations in this part.

(c) Any incidentally but necessarily resulting narcotic drug, within the meaning of paragraphs (a) or (b) of

this section which is a basic class of narcotic drug, shall be disposed of in the following ways only:

(1) By transfer to another manufacturer who holds a license to manufacture such basic class of narcotic drug. Before such transfer can be made, however, the manufacturer desirous of making such transfer shall first apply to the Commissioner of Narcotics in writing for approval to transfer specified quantities of such resulting narcotic drugs to a specified transferee or transferees. No transfer is authorized unless the Commissioner approves such transfer in writing in advance thereof.

(2) By shipment to the narcotic District Supervisor as excess and undesired narcotic drugs pursuant to 26 CFR 151.474; or

(3) By destruction in the presence of a representative of the Bureau of Narcotics, authorized by the Commissioner of Narcotics to witness such destruction.

(d) Any incidentally but necessarily resulting narcotic drug within the meaning of paragraph (a) or (b) of this section which is not a basic class of narcotic drug, may be disposed of in one of the following ways only:

(1) By shipment to the narcotic District Supervisor as excess and undesired narcotic drugs pursuant to 26 CFR 151.474; or

(2) By destruction in the presence of a representative of the Bureau of Narcotics, authorized by the Commissioner of Narcotics to witness such destruction.

(e) A manufacturer may retain a resulting narcotic drug within the meaning of paragraph (a) or (b) of this section only for such period of time as is reasonably necessary for him to make disposition of such drug in the manner provided in this section.

MANUFACTURE OF NARCOTIC PRECURSORS

§ 307.141 Narcotic precursors.

(a) *Definition of "narcotic precursor".* The term "narcotic precursor" means a substance other than a narcotic drug which the Commissioner has found to be

(1) An immediate chemical precursor of a narcotic drug;

(2) Produced primarily for use in the manufacture of a narcotic drug; and

(3) Used or likely to be used, in the manufacture of a narcotic drug by persons other than persons licensed under section 8 of the Narcotics Manufacturing Act of 1960, to manufacture such narcotic drug.

Before finding a substance to be a narcotic precursor, the Commissioner shall give due notice in the FEDERAL REGISTER and afford an opportunity for public hearing to interested persons.

(b) *Requirements as to persons engaging in transactions with respect to narcotic precursors.* Any person who is engaged in the manufacture, compounding, packaging, selling, dealing in or giving away of a narcotic precursor, as defined in paragraph (a) of this section, shall:

(1) Maintain records as prescribed in paragraph (d) of this section; and

(2) Prepare and submit an annual report on Bureau Form 193 on or before February 15 of each year.

(c) *Exception to applicability of paragraph (b).* The provisions of paragraph (b) of this section shall not apply to a person manufacturing a narcotic precursor who holds a license to manufacture a basic class of narcotic drug under section 8 of the Narcotics Manufacturing Act of 1960, provided that the narcotic precursor manufactured by such licensee is to be used exclusively by him for the manufacture of the basic class of narcotic drug for which he holds a license.

(d) *Procedure as to maintenance of records and preparation of annual report.* The manufacturer of a substance which has been declared a narcotic precursor shall keep for a period of not less than two years such records as will enable him to supply the Commissioner accurate information as to the quantity of such precursor manufactured or otherwise acquired by him, his dispositions thereof, the names and addresses of the persons to whom supplied, the quantity supplied to each and the use for which intended. The annual report on Form 193 shall include a summary of this information for the calendar year.

IMPORTATION OF NARCOTIC DRUGS

§ 307.151 Importation of narcotic drugs for scientific purposes.

(a) *Exemption for scientific purposes.* Notwithstanding the provisions of § 302.1 of this chapter, the Commissioner of Narcotics may issue a formal permit to certain classes of persons desiring to import any narcotic drug or drugs (including crude opium and coca leaves) for scientific purposes only.

(b) *Application for import permit.* Application for a permit to import shall be made to the Commissioner on Bureau Form 191. The applicant for such import permit shall also prepare and submit to the Commissioner, Bureau Form 185 (Drug Identification Sheet), where the substance to be imported is a narcotic drug not described in the standard reference works on drugs and chemicals.

(c) *Limitation on authorization to import.* Imports under this section will be limited to narcotic drugs not readily available to the applicant from sources within the United States, unless questions of origin, types or particular methods of production are elements of the research objectives. Applicants for import permits licensed under section 8 of the Narcotics Manufacturing Act of 1960, who as part of their manufacturing business maintain branch or subsidiary manufacturing establishments in foreign countries may be issued import permits for occasional imports of samples of the products of these foreign branches or subsidiaries for the purpose of research or spot check analyses to establish or maintain proper chemical and therapeutical standards of their products. However, an applicant will not be granted an import permit to make continuous or regular imports of samples of recurring batches or lots of the same product for routine factory controls. Each importation desired must be separately applied for and be covered by a separate import permit.

(d) *Disposition.* All drugs imported under this section shall be used in research or otherwise disposed of as authorized by the Commissioner, within five years from the date of their import, unless an extension of time for completion of the research has been granted by the Commissioner.

(e) *Reports.* Persons importing narcotic drugs under this section shall render to the Commissioner semi-annual reports on Bureau Form 192, as of June 30 and December 31 of each year, to be submitted not later than the 15th of the month following, accounting for the importation and use or other disposition of the narcotic drug or drugs so imported.

10. Add under § 302.1 the following cross reference:

CROSS REFERENCE: For importation of narcotic drugs for scientific purposes only see § 307.151 of this chapter.

(26 U.S.C. 4731(g), as amended by sec. 4, Pub. Law 86-429 (74 Stat. 57), 21 U.S.C. 188e, 56 Stat. 1046, 21 U.S.C. 173, 182, as amended by secs. 15, 16, Pub. Law 86-429 (74 Stat. 66, 67), sec. 17, Pub. Law 86-429 (74 Stat. 67))

[F.R. Doc. 60-12015; Filed, Dec. 27, 1960; 8:48 a.m.]

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Miscellaneous Amendments

This part as filed with the FEDERAL REGISTER on June 29, 1955, and as last amended on February 14, 1959, is further amended as follows:

PARAGRAPH 1. Section 601.105 is amended by revising subparagraph (1) of paragraph (b), by adding a new subparagraph (5) to paragraph (b), and by revising subdivision (i) of paragraph (d)(2). These amended provisions read as follows:

§ 601.105 Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

* * * * *

(b) *Examination of returns*—(1) *General.* The original examination of income, profits, estate, gift, excise, and employment tax returns is a primary function of internal revenue agents in the Audit Division of the office of each district director of internal revenue. Such internal revenue agents are organized in groups, each of which is under the immediate supervision of a group supervisor designated by the district director. Revenue agents and revenue officers (and such other officers or employees of the Internal Revenue Service as may be designated for this purpose by the Commissioner) are authorized to examine any books, papers, records, or memoranda bearing upon matters required to be included in Federal tax returns and to take testimony relative thereto and to administer oaths. See section 7602 of the Code and the regulations thereunder. There are two general types of audit. These are commonly called "office audit" and "field audit". During the audit of a return a taxpayer may be represented before the examining officer by an attorney or agent enrolled to practice before the Internal Revenue Service or by a duly authorized unenrolled person who signed the return as preparer thereof. The representation of a taxpayer by such as unenrolled person, however, is subject to the limitations contained in section 10.7(a)(7) of Department Circular No. 230.

* * * * *

(5) *Technical advice from the National Office*—(i) *Procedure regarding request.* Where the district director decides that an issue requires technical advice from the National Office, the taxpayer will be advised of the proposed referral. If he so desires, the taxpayer may submit a brief of the facts, law and argument to be transmitted with the case to the National Office. Similarly, a taxpayer may request that an issue be referred to the National Office for technical advice on the grounds of lack of uniformity or that the issue is so unusual or complex as to warrant National Office consideration. If the examining officer (or informal conferee, in case of an informal conference) is of the opinion that the circumstances do not warrant such referral, the matter will be submitted to the Chief, Audit Division, for decision. If the Chief, Audit Division, determines that advice from the National Office will not be requested, he will inform the taxpayer, in writing, of his decision.

(ii) *Regional post review of examined cases.* Regional commissioners review samples of the examined cases closed in their district offices to assure uniformity throughout their districts in the application of the provisions of the Code, regulations, and rulings, as well as the general polices of the Service. In certain circumstances, such as where substantial errors are found or where there is evidence of fraud or collusion, the regional commissioner has authority to reopen the case.

* * * * *

(d) *Thirty-day letters and protests*—(1) *General.* * * *

(2) *Protests.* (i) If the taxpayer chooses to file a protest against the proposed determination set forth in the "30-day letter", his protest should be filed in the district director's office and, following review of the protest, the case will be referred to the Appellate Division of the region if that Division has jurisdiction. The taxpayer will also be accorded a conference in the Appellate Division if he requests it. Protests should be filed in duplicate. No particular form of protest has been prescribed. However, instructions for the preparation of protests are sent with the "30-day letter". For a description of the procedure in the Appellate Division, see § 601.106.

PAR. 2. Paragraphs (a) and (c) of § 601.109 are amended to read as follows:

§ 601.109 Bankruptcy and receivership cases.

(a) *General.* (1) Upon the adjudication of bankruptcy of any taxpayer in any liquidating proceeding, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act or the appointment of a receiver for any taxpayer in any receivership proceeding before a court of the United States or of any State or Territory or of the District of Columbia, the assessment of any deficiency in income, profits, estate, or gift tax (together with all interest, additional amounts, or additions to the tax provided for by law) shall be made immediately. See section 6871 of the Code. In such cases the restrictions imposed by section 6213(a) of the Code upon assessments are not applicable. (In the case of an assignment for the benefit of creditors, the assessment will be made under section 6861, relating to jeopardy assessments. See § 601.105(h).) Cases in which immediate assessment will be made include those of taxpayers in receivership or in bankruptcy, agricultural composition, reorganization, arrangement, or wage earner proceedings under chapters I to VII, sections 75, 77, chapters X, XI, XII, and XIII of the Bankruptcy Act. The term "approval of a petition in any other proceeding under the Bankruptcy Act" includes the filing of a petition under section 75 or chapters XI to XIII of the Bankruptcy Act with a court of competent jurisdiction. A fiduciary in any proceeding under the Bankruptcy Act (including a trustee, receiver, debtor in possession, or other person designated by the court as in control of the assets or affairs of a debtor) or a receiver in any receivership proceeding may be required, as provided in regulations prescribed under section 6036 of the Code, to give notice in writing to the district director of his qualification as such. Failure on the part of such fiduciary in a receivership proceeding or a proceeding under the Bankruptcy Act to give such notice, when required, results in the suspension of the running of the period of limitations on the making of assessments from the date of the institution of the proceeding to the date upon which such notice is received by the district director, and for an additional 30 days thereafter. However, in no case where the required notice is not given shall the suspension of the running of the period of limitations on assessment exceed 2 years. See section 6872 of the Code.

(2) Except in cases where departmental instructions direct otherwise, the district director will, promptly after ascertaining the existence of any outstanding Federal tax liability against a taxpayer in any proceeding under the Bankruptcy Act or receivership proceeding, and in any event within the time limited by appropriate provisions of law or the appropriate orders of the court in which such proceeding is pending, file a proof of claim covering such liability in the court in which the proceeding is pending. Such a claim may be filed regardless of whether the unpaid taxes involved have been assessed. Whenever an immediate assessment is made of any income, estate, or gift tax after the commencement of a proceeding, the district director will send to the taxpayer notice and demand for payment together with a copy of such claim.

* * * * *

(c) *Procedure before Appellate Division not applicable.* A case involving immediate assessment under section 6871 of the Code or an assessment of excise or employment taxes after an adjudication of bankruptcy in a liquidating proceeding or the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other proceeding under the Bankruptcy Act or the appointment of a receiver will not be referred by the district director to a field office of the Appellate Division. Therefore, the taxpayer, or the trustee, receiver, or debtor in possession or other person designated by the court as in control of the assets or affairs of the debtor, may not request consideration of the case by the Appellate Division. If at the time of the adjudication of bankruptcy or the filing or the approval of a petition or the appointment of a receiver, an income, estate, or gift tax case is under consideration by a field office of the Appellate Division, whether before or after issuance of a statutory notice of deficiency, the case will be returned to the district director for assessment (if not previously assessed) and for issuance of the Form 7900 letter and filing proof of claim in any proceeding under the Bankruptcy Act or in a receivership proceeding. Excise and employment tax cases pending in the Appellate Division at such time will likewise be returned to the district director for assessment (if not previously assessed) and for filing proof of claim in any proceeding under the Bankruptcy Act or in a receivership proceeding. Thereafter, the case will not be transferred by the district director to the Appellate Division unless a petition for redetermination of the deficiency has been filed in the Tax Court prior to the adjudication of bankruptcy in a liquidating proceeding or the filing or the approval of a petition in any other proceeding under the Bankruptcy Act or the appointment of a receiver, and the taxpayer or the trustee, receiver, debtor in possession or other person designated by the bankruptcy or receivership court as in control of the debtor's assets or affairs elects to prosecute the proceeding in the Tax Court. A petition for redetermination of a deficiency may not be filed in the Tax Court after the adjudication of bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankruptcy proceeding, or the appointment of a receiver. See section 6871(b) of the Code. However, the Tax Court is not deprived of jurisdiction where the adjudication of

bankruptcy, the filing or (where approval is required by the Bankruptcy Act) the approval of a petition of, or the approval of a petition against, any taxpayer in any other bankrutpcy proceeding, or the appointment of a receiver occurred subsequent to the filing of the petition. In such a case the jurisdiction of the bankruptcy or receivership court and the Tax Court is concurrent.

PAR. 3. Paragraph (f)(2) of § 601.201 is amended to read as follows:

§ 601.201 Rulings and determination letters.

* * * * *

(f) *Instructions with respect to submission of requests for rulings or determination letters.* * * *

(2) If the request is an application for exemption from income tax as an organization described in section 501 (c) or (d) or section 521 of the Code, see paragraph (k) of this section. If the request is with respect to the qualification of a plan under section 401(a) of the Code, see paragraph (l) of this section. Applications for income tax exemption as an organization described in section 501 (c) or (d) of the Code, as well as the information required to be filed with such applications, should be submitted in duplicate. It is not required that any of the other applications or requests described in this subparagraph, or that the information required to be filed with such applications or requests, be submitted in duplicate.

PAR. 4. Paragraph (a)(2) of § 601.202 is amended to read as follows:

§ 601.202 Closing agreements.

(a) *General.* * * *

(2) Closing agreements under section 7121 of the Code may relate to any taxable period ending prior or subsequent to the date of the agreement. With respect to taxable periods ended prior to the date of the agreement, the matter agreed upon may relate to the total tax liability of the taxpayer or it may relate to one or more separate items affecting the tax liability of the taxpayer. A closing agreement may also be entered into in order to provide a "determination", as defined in section 1313 of the Code, and for the purpose of allowing a deficiency dividend deduction under section 547 of the Code. But see also sections 547(c)(3) and 1313(a)(4) of the Code and the regulations thereunder as to other types of "determination" agreements. With respect to taxable periods ending subsequent to the date of the agreement, the matter agreed upon may relate to one or more separate items affecting the tax liability of the taxpayer. A closing agreement with respect to any taxable period ending subsequent to the date of the agreement is subject to any change in or modification of the law enacted subsequent to the date of the agreement and applicable to such taxable period, and each closing agreement shall so recite. Closing agreements may be entered into even though under the agreement the taxpayer is not liable for any tax for the period to which the agreement relates. There may be a series of agreements relating to the tax liability for a single period. A closing agreement may be entered into in any case in which there appears to be an advantage in having the case permanently and conclusively closed, or where good and sufficient reasons are shown by the taxpayer for desiring a closing agreement and it is determined by the Commissioner or his representatives that the Government will sustain no disadvantage through consummation of such an agreement.

PAR. 5. Section 601.203 is amended by revising paragraph (a)(1), revising subdivisions (iii) and (iv) of paragraph (c)(1), revising subdivision (v) of paragraph (c)(2), and revising paragraph (c)(3). These amended provisions read as follows:

§ 601.203 Offers in compromise.

(a) *General.* (1) The Commissioner may compromise, in accordance with the provisions of section 7122 of the Code, any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense. Certain functions of the Commissioner with respect to compromises of civil cases involving liability under $5,000 (prior to July 1, 1960) and under $25,000 (on and after July 1, 1960), and of certain specific penalties involving only the regulatory provisions of the Code and related statutes, have been delegated to district directors of internal revenue. In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel are performed by the Chief Counsel for the Internal Revenue Service. In certain cases these functions are performed in the National Office and in other cases by Regional Counsel. (See also paragraph (c) of this section.)

* * * * *

(c) *Consideration of offer.* (1) * * *

(iii) Accept the offer if it involves a civil liability of $500 or more, but less than $5,000 (prior to July 1, 1960) and less than $25,000 (on and after July 1, 1960), or involves a specific penalty (including in the case of narcotics, smoking opium, and marihuana taxes only those specific penalties which involve delinquency in registration or delinquency in payment), and the Regional Counsel concurs in the acceptance of the offer, or

(iv) Recommend to the National Office the acceptance of the offer if it involves a civil liability of $5,000 or over (prior to July 1, 1960) and $25,000 or over (on and after July 1, 1960).

(2) * * *

(v) An offer under the processing jurisdiction of the Regional Counsel which is considered acceptable is either referred to the district director or to the Office of the Chief Counsel in Washington for approval, depending upon the amount of civil liability involved.

(3) The district directors and the Director of the Audit Division of the National Office are authorized to reject any offer in compromise referred for their consideration. Offers considered in the Office of the Chief Counsel in Washington which are not acceptable are rejected by the Commissioner. Offers considered by Regional Counsel which are not acceptable are rejected by district directors. If an offer is not acceptable, the taxpayer is promptly notified of the rejection of the offer. If an offer is rejected, the sum submitted with the offer is returned by the district director to the proponent. A selective post review of offers rejected by a district director involving liabilities totaling $5,000 or more is made by each regional commissioner.

PAR. 6. The heading and subheading of Subpart C is amended to read as follows:

Subpart C—Provisions Relating to Distilled Spirits, Wines, Beer, Tobacco Products (Manufactured Tobacco, Cigars, and Cigarettes), Tobacco Materials, Cigarette Papers and Tubes, and Certain Firearms

DISTILLED SPIRITS, WINES, AND BEER

PAR. 7. Section 601.301 is amended to read as follows:

§ 601.301 Imposition of taxes, qualification requirements, and regulations.

(a) *Imposition of taxes.* Subchapter A of Chapter 51 of the Internal Revenue Code of 1954 imposes taxes on distilled spirits (including alcohol), wine, and beer. Except as specifically provided, additional taxes are imposed when distilled spirits and wine are rectified by blending, compounding, etc. Subchapter A of chapter 51 of the Code also imposes taxes on stills and condensers used to produce spirits. Occupational taxes are imposed upon still manufacturers, brewers, rectifiers, dealers in liquors, and as a prerequisite for drawback under section 5134 of the Code, upon manufacturers of nonbeverage products.

(b) *Qualification requirements.* Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, liquor bottle manufacturers, dealers in specially denatured alcohol, users of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with the Internal Revenue Service, usually by filing notice or application and bond with, and procuring permit from, the assistant regional commissioner (alcohol and tobacco tax) of the region in which operations are to be conducted. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Regulations.* The procedural requirements with respect to matters relating to distilled spirits, wines, and beer which are within the jurisdiction of the Alcohol and Tobacco Tax Division are published in the regulations described in this paragraph. These regulations contain full information as to the general course and method by which the functions concerning liquors are channeled and determined, including the nature and requirements of formal and informal procedures, the forms, records, reports, and other documents required, and the contents of applications, notices, registrations, permits, bonds, and other documents. Supplies of prescribed forms may be obtained from the offices of assistant regional commissioners (alcohol and tobacco tax), except that Forms 52–A, 52–B, 122, 133, 134, 338, 2051, 2054–2060, 2621, and 2637 must be provided by the users at their own expense; users and commercial printers may procure specimen copies of such forms from such offices. The following is a brief description of the several regulations arranged according to the principal subjects and operations concerned:

(1) *Establishment and operation of distilled spirits plants.* Part 201 of this chapter contains the regulations relating to the location, qualification, construction, arrangement, equipment, and operations (including activities incident thereto) of distilled spirits plants for the production and/or warehousing (including denaturation), rectification, and bottling (including bottling in bond) of distilled spirits.

(2) *Miscellaneous liquor transactions.* Part 170 of this chapter contains miscellaneous regulations relative to:

(i) Restamping of packages of distilled spirits;

(ii) Redemption of strip stamps, and stamps denoting payment of tax, purchased prior to January 1, 1955;

(iii) Refund of tax and duty paid on distilled spirits, wines, rectified products, and beer lost as a result of floods, hurricanes or other disasters;

(iv) Application of section 6423, Internal Revenue Code of 1954, as amended, to refund or credit of tax on distilled spirits, wines, and beer;

(v) Regulations in effect on June 30, 1959, which were prescribed on July 1, 1959, as interim regulations;

(vi) Redemption of unused distilled spirits excise tax stamps and unused rectification tax stamps; and

(vii) Manufacture and sale of certain compounds, preparations, and products containing alcohol.

(3) *Disposition of substances used in the manufacture of distilled spirits and articles and of containers used for the packaging of distilled spirits.* Part 173 of this chapter contains the regulations relative to the returns and records of the disposition of articles from which distilled spirits may be recovered, of substances of the character used in the manufacture of distilled spirits, and of containers of the character used for the packaging of distilled spirits.

(4) *Manufacture and use of containers of distilled spirits.* Part 175 of this chapter contains the regulations relating to the traffic in containers of distilled spirits of a capacity of not less than one-half pint and not more than five wine gallons. The regulations cover the manufacture, sale, and use of liquor bottles for packaging distilled spirits for other than industrial use; labeling of distilled spirits; reports, and inventories of liquor bottles; imports and exports of liquor bottles; permits and revocation proceedings; reuse or refilling of liquor bottles (see also Part 194 of this chapter); and the purchase, sale and possession of refilled or used liquor bottles.

(5) *Gauging of distilled spirits.* Part 186 of this chapter contains the regulations that prescribe the gauging instruments, and methods or techniques to be used in measuring distilled spirits (including denatured spirits). Tables are provided for use in making the necessary computation from gauge data.

(6) *Stills and condensers.* Part 196 of this chapter contains the regulations relative to the manufacture, taxpayment, removal, use, and registration of stills and condensers, and the exportation or transfer to foreign-trade zones of stills and condensers with benefit of drawback of internal revenue tax or without payment of tax.

(7) *Rules of practice in permit proceedings.* Part 200 of this chapter contains the rules governing the procedure and practice in connection with the disapproval of applications for basic permits, and for the issuance of citations for the suspension, revocation and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.), and disapproval, suspension, revocation of container, industrial use, operating, withdrawal, and tobacco permits under the Code. Such rules also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to be determined on the record, after opportunity for hearing, under laws administered by the Alcohol and Tobacco Tax Division.

(8) *Basic permit requirements under the Federal Alcohol Administration Act.* Regulations No. 1 (27 CFR Part 1), issued pursuant to the Federal Alcohol Administration Act, as amended, contain the requirements relative to the issuance under that Act of basic permits to producers, rectifiers, blenders, bottlers, warehousemen, importers, and wholesalers of distilled spirits, wine, or beer, and the amendment, duration, revocation, suspension, or annulment of such permits.

(9) *Bulk sales and bottling of distilled spirits.* Regulations No. 3 (27 CFR Part 3), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk.

(10) *Labeling and advertising of distilled spirits.* Regulations No. 5 (27 CFR Part 5), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the labeling and advertising of distilled spirits under the Federal Alcohol Administration Act, including standards of identity for distilled spirits, standards of fill for bottles of distilled spirits, and the issuance of certificates of label approval and certificates of exemption from label approval.

(11) *Credit period to be extended to retailers of alcoholic beverages.* Regulations No. 8 (27 CFR Part 8) issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the credit period which may be extended by vendors to retailers of alcoholic beverages.

(12) *Production and removal of wine.* Part 240 of this chapter contains the regulations relative to the establishment and operation of bonded wine cellars, including bonded wineries, for the production, cellar treatment, and storage of wines, including amelioration, sweetening, addition of wine spirits (including distillates containing aldehydes), blending, and other cellar treatment; removals; taxpayment; return of unmerchantable taxpaid wine; and use of wine for distilling material and manufacture of vinegar.

(13) *Bottling or packaging of taxpaid wine.* Part 231 of this chapter contains the regulations relative to the establishment, qualification, and operations of taxpaid wine bottling houses on premises other than those of a plant operated under Part 201 of this chapter, and to the bottling and packaging of taxpaid United States and foreign wines at such premises.

(14) *Nonindustrial use of distilled spirits and wine.* Regulations No. 2 (27 CFR Part 2), issued under the Federal Alcohol Administration Act, as amended, specify what uses of distilled spirits and wine are considered "nonindustrial", as that term is used in section 17 of the Federal Alcohol Administration Act.

(15) *Labeling and advertising of wine.* Regulations No. 4 (27 CFR Part 4), issued under the Federal Alcohol Administration Act, as amended contain the requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, the withdrawal of imported wine from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(16) *Establishment and operations of breweries.* Part 245 of this chapter contains the regulations relating to the production, taxpayment, and withdrawal of beer and cereal beverages. The regulations cover the location, construction, equipment, and operations of breweries; and the qualification of such establishments, including the ownership, control, and management thereof.

(17) *Labeling and advertising of malt beverages.* Regulations No. 7 (27 CFR Part 7), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the labeling and advertising of malt beverages (beer) under the Federal Alcohol Administration Act, and the issuance of certificates of label approval.

(18) *Liquor dealers.* Part 194 of this chapter contains the regulations relative to the occupational taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers; restrictions on purchases of distilled spirits; reuse or refilling of liquor bottles (see also Part 175 of this chapter); sales or possession of refilled or used liquor bottles; and repackaging of alcohol for industrial use.

(19) *Production of vinegar by the vaporizing process.* Part 195 of this chapter contains the regulations relating to the production of vinegar by the vaporizing process (fermentation and distillation of alcoholic liquid). The regulations cover the location, construction, equipment, qualification, and operation of vinegar plants.

(20) *Drawback of tax on spirits used in nonbeverage products.* Part 197 of this chapter contains the regulations which relate to obtaining drawback of internal revenue tax on distilled spirits used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes.

(21) *Production of volatile fruit-flavor concentrates.* Part 198 of this chapter contains the regulations relating to the manufacture, storage, removal, sale, transportation, and use of volatile fruit-flavor concentrates and includes provisions regarding the location, use, qualification, and operations of concentrate plants.

(22) *Inducements furnished to retailers.* Regulations No. 6 (27 CFR Part 6), issued under the Federal Alcohol Administration Act, as amended, contain the requirements relative to the furnishing, giving, renting, lending, or selling of equipment, fixtures, signs, supplies, money, services, or other things of value to retailers of distilled spirits, wine, and malt beverages, by other members of the liquor industry (principally vendors), including the furnishing of samples and advertising cuts.

(23) *Distribution and use of denatured spirits.* Part 211 of this chapter contains the regulations relating to the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits; and includes requirements in respect to industrial use and withdrawal permits; and the packaging, labeling, sale, rebottling, and reprocessing of articles containing specially denatured spirits.

(24) *Formulas for denatured spirits.* Part 212 of this chapter contains the regulations relating to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the uses of specially denatured spirits; and to the specifications for denaturants. The procedural requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in Part 201 of this chapter, and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in Part 211 of this chapter.

(25) *Distribution and use of tax-free spirits.* Part 213 of this chapter contains the regulations relating to tax-free alcohol and covers the procurement, storage, use, and recovery of such alcohol; and includes requirements in respect to industrial use and withdrawal permits.

(26) *Liquors and articles from Puerto Rico and the Virgin Islands.* Part 250 of this chapter contains the regulations relating to the production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax and the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands.

(27) *Importation of liquors.* Part 251 of this chapter contains the substantive and procedural requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, and labeling, and stamping of containers and packages.

(28) *Exportation of liquors.* Part 252 of this chapter contains the regulations relating to exportation, lading for use on vessels and aircraft, and the transfer to a foreign-trade zone or a manufacturing bonded warehouse, class six, of distilled spirits (including specially denatured spirits), beer, and wine, whether without payment of tax, free of tax, or with benefit of drawback, and includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

PAR. 8. Paragraph (a) of § 601.302 is amended to read as follows:

§ 601.302 Taxes.

(a) *Collection.* Taxes on distilled spirits, wines, beer, and rectified products are paid by returns. If the person responsible for paying the tax has filed a proper bond with the assistant regional commissioner (alcohol and tobacco tax), he may file semimonthly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, beer and rectified products during such semimonthly periods. If the taxpayer is not qualified to defer taxpayment, or has been placed on a prepayment basis by the assistant regional commissioner, he must repay the tax on the distilled spirits, wines, beer or rectified products. Distilled spirits and rectification tax returns are filed with an officer designated by the assistant regional commissioner (alcohol and tobacco tax), or with the district director of internal revenue when so directed by the assistant regional commissioner, except that where a remittance is in cash the return must be filed with the district director. Returns of tax on beer and wine are filed with the district director in all cases. The forms for filing these tax returns are furnished to industry members by the assistant regional commissioner (alcohol and tobacco tax). Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, rectifiers, still manufacturers, and manufacturers of nonbeverage products; such stamps are required to be posted in the taxpayer's place of business as evidence of taxpayment. Special tax stamps are also issued to denote payment of the commodity tax on stills and condensers, and are required to be cancelled and secured to the article or furnished to the user of the apparatus for retention at the premises where such apparatus is set up, available for inspection by internal revenue officers. Detailed information respecting the payment of tax on liquors and the payment of occupational and commodity taxes, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in § 601.301(c).

PAR. 9. Section 601.303 is amended to read as follows:

§ 601.303 Claims.

(a) *Claims for remission.* When distilled spirits (including distilling material and denatured spirits) or beer on which the tax has not been paid or determined is lost, and the person liable for payment of the tax thereon desires to be relieved from such liability, he may file claim on Form 2635 for remission of tax on the quantity that was lost. The assistant regional commissioner may, in any event, require such a claim to be filed, and will require it if circumstances indicate that the loss was caused by theft or, in the case of distilled spirits (including distilling material), unauthorized voluntary destruction. On receipt of a claim the assistant regional commissioner makes a factual determination, and notifies the claimant of allowance or rejection of his claim. If the claim is rejected, and circumstances so warrant, the assistant regional commissioner will take appropriate steps to collect the tax.

(b) *Claims for abatement.* When the tax on distilled spirits, wine, beer, or firearms, or the rectification tax is assessed and the taxpayer thinks that the tax is not due under the law, he may file a claim for abatement of the tax on Form 843 with the district director of internal revenue or, where required by regulations, with the assistant regional commissioner (alcohol and tobacco tax). Forms 843 may be procured from the district director or the assistant regional commissioner. The district director forwards the claim to the assistant regional commissioner (alcohol and tobacco tax) for consideration, and the district director may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, both the taxpayer and the district director are notified of the allowance or rejection of the claim. If the claim is rejected, the district director will proceed to collect the tax.

(c) *Claims for refund—(1) Taxes illegally, erroneously, or excessively collected.* A claim on Form 843 for refund of taxes illegally, erroneously, or excessively collected may be filed by a taxpayer with the district director of internal revenue to whom the tax was paid. Such claim must be filed within three years (two years under certain circumstances) after the date of payment of the tax. The district director forwards the claim to the assistant regional commissioner (alcohol and tobacco tax) for consideration. If the claim is rejected, the taxpayer is notified of the rejection by registered or certified mail, and he may then bring suit in the United States District Court or the Court of Claims for recovery of the tax. Such suits must be filed generally within two years from the date of mailing of the rejection notice. If the claim is allowed, an appropriate notice of allowance with a check for the amount of the refund and allowable interest is forwarded to the taxpayer; however, if there are other unpaid taxes outstanding against the taxpayer, the overpayment may be applied to the outstanding taxes and the balance, if any, refunded.

(2) *Taxes on liquors lost, destroyed, returned to bond, or taken as samples by the United States.* A taxpayer may, subject to the conditions in the appropriate regulations, file claim on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for refund of tax paid on (i) spirits returned to bonded premises, lost in rectification or bottling operations, lost by accident or disaster, or taken as samples by the United States, or (ii) wine returned to bond a unmerchantable, or lost by disaster, or (iii) beer withdrawn from market, or lost by disaster. If the claim is allowed, a notice of allowance with a check for the amount of the refund is forwarded to the claimant; except, that where there are any unpaid taxes outstanding against the claimant, the refund may be applied to the outstanding taxes and a check for the balance, if any, forwarded to the claimant. If the claim is rejected, a notice giving the reasons for rejection is forwarded to the claimant.

(d) *Claims for allowance, credit, or relief.* A qualified permittee, manufacturer, or proprietor may, subject to the conditions in the appropriate regulations, file claim on Form 2635 with the assistant regional commissioner (alcohol and tobacco tax) for allowance of loss, credit of tax, or relief from tax liability, as applicable, on (1) spirits returned to bonded premises, lost or destroyed on bonded premises or in transit thereto, or lost in rectification or bottling operations; (2) wine lost or destroyed on bonded premises or in transit thereto, and unmerchantable domestic wine returned to bond; (3) beer withdrawn from the market, lost (other than by theft), or destroyed by fire, casualty, or act of God; (4) denatured spirits lost or destroyed in bond, or lost on the premises of a qualified dealer or user or in transit to such premises; and (5) tax-free spirits lost on the premises of a qualified user or in transit to such premises.

(e) *Claims for payment—disaster losses.* When distilled spirits, wines, rectified products, or beer held or intended for sale is lost, rendered unmarketable, or condemned as a result of a "major disaster", the person holding such product for sale at that time may, subject to the condtions in the appropriate regulations, file claim on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) of the region in which the product was lost, rendered unmarketable, or condemned for payment of an amount equal to the internal revenue taxes paid or determined and any customs duties paid thereon. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred.

PAR. 10. Section 601.304 is amended to read as follows:

§ 601.304 Preparation and filing of claims.

(a) *Distilled spirits at distilled spirits plants.* Procedural instructions in respect of claims for remission, abatement, credit, or refund of tax on spirits (including denatured spirits) lost or destroyed on or lost in transit to, or on spirits returned to, the premises of a distilled spirits plant are contained in Part 201 of this chapter. It is not necessary to file a claim for credit of tax on taxpaid samples taken by internal revenue officers from distilled spirits plants, as the assistant regional commissioner will allow credit, without claim, for tax on such samples.

(b) *Specially denatured spirits.* Procedural instructions in respect of claims for allowance of loss on specially denatured spirits lost on the premises of a bonded dealer or user, or while in transit to such premises, are contained in Part 211 of this chapter.

(c) *Tax-free alcohol.* Procedural instructions in respect of claims for allowance of loss on tax-free alcohol lost on the premises of a qualified user, or while in transit to such premises, are contained in Part 213 of this chapter.

(d) *Wine spirits and wine at bonded wine cellar.* Procedural instructions in respect of claims for (1) remission of tax on wine spirits lost on the premises of a bonded wine cellar or in transit thereto, (2) allowance of losses of wine in bond, and (3) credit or refund of tax paid on unmerchantable domestic wine returned to bond are contained in Part 240 of this chapter.

(e) *Beer.* Procedural instructions in respect of claims for refund or credit of tax which has been paid (or allowance, credit, or relief of tax liability if the tax has not been paid) on domestic beer removed from the market or lost or destroyed by fire, casualty, or act of God are contained in Part 245 of this chapter.

(f) *Distilled spirits, wines, or beer for export.* Procedural instructions in respect of claims for (1) drawback of internal revenue tax on distilled spirits or wines, for export, use as supplies on certain vessels or aircraft, deposit in a foreign-trade zone or customs manufacturing bonded warehouse and on beer removed for export, use as supplies on certain vessels and aircraft, or transfer to a foreign-trade zone, and (2) remission of tax on distilled spirits, specially denatured spirits, wines, or beer, withdrawn without payment of tax and lost during transportation to the port of export, manufacturing bonded warehouse, vessel or aircraft, or foreign-trade zone, are contained in Part 252 of this chapter.

(g) *Miscellaneous.* Procedural instructions are contained in Part 170 of this chapter in respect of claims for—

(1) Redemption of (i) unused stamps denoting payment of tax on beer and wines, and (ii) unused strip stamps procured for bottled spirits under the provisions of sections 2803(b) and 2903(d) of the Internal Revenue Code of 1939,

(2) Refund of tax and duty paid on distilled spirits and wines lost as a result of the hurricanes of 1954,

(3) Credit or refund of tax assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or in an excessive amount, on distilled spirits, wines, and beer,

(4) Payment of an amount equal to the internal revenue tax paid on beer lost by reason of the floods of 1951 or hurricanes of 1954,

(5) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a major disaster occurring in the United States after December 31, 1954, and

(6) Redemption of unusued distilled spirits excise tax stamps or unused rectification tax sheet stamps.

(h) *Special taxes.* Procedural instructions in respect of claims for abatement of assessments or refund of overpayments of liquor dealers occupational taxes and penalties are contained in Part 194 of this chapter. When claim is filed for refund of an occupational tax for which a stamp was issued, the stamp (or a Certificate in Lieu of Lost or Destroyed Special Tax Stamp, accompanied by affidavits attesting to loss or destruction of the stamp) must be surrendered with the claim. Such claims must be submitted within three years from the date of payment of the tax.

(i) *Low wines at vinegar plants.* Procedural instructions in respect of claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process are contained in Part 195 of this chapter.

(j) *Stills and condensers.* Procedural instructions in respect of claims for drawback of the internal revenue tax paid on stills and condensers which have been exported or deposited in a foreign-trade zone for exportation, destruction, or storage therein pending exportation, are contained in Part 196 of this chapter.

(k) *Distilled spirits used in nonbeverage products.* Procedural instructions in respect of claims for drawback of tax on distilled spirits used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, are contained in Part 197 of this chapter.

PAR. 11. Paragraph (a) of § 601.305 is amended to read as follows:

§ 601.305 Offers in compromise.

(a) *Liability under Internal Revenue Code.* Persons desiring to submit offers in compromise in order to avoid forfeiture or prosecution proceedings, and taxpayers who disclaim liability for the amount of taxes assessed, or claim inability to pay the taxes in full, may submit offers in compromise to the district director of internal revenue or to an internal revenue officer. The Director, Alcohol and Tobacco Tax Division, has the authority to accept or reject offers in compromise of liability to forfeiture of personal property seized in connection with liquor, firearms, tobacco, and wagering tax violations, and each assistant regional commissioner (alcohol and tobacco tax) has the authority to accept or reject offers in compromise of (1) tax liabilities arising from (i) the illegal production of untaxpaid distilled spirits, wines or beer, and (ii) the failure to file

returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, or firearms, and (iii) the failure to pay firearms "making" or transfer taxes, and (2) criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles. The Commissioner accepts or rejects all other offers in compromise except those in compromise of violations under paragraph (b) of this section. (For offers in compromise generally, see § 601.203.) Form 656 (Rev. 7–57) is used in all cases regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be paid by deferred payment or payments. Offers received by the district director are forwarded to the assistant regional commissioner (alcohol and tobacco tax) for consideration and appropriate action. When the offer is acted upon, the district director and the proponent are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer is returned to the proponent, and forfeiture, prosecution, or collection proceedings are resumed. If the offer is accepted, the taxpayer is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

PAR. 12. Section 601.306 is amended to read as follows:

§ 601.306 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.

Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the Director of the Alcohol and Tobacco Tax Division. Applications for such permission to take office shall be prepared and filed in accordance with instructions available from the assistant regional commissioner (alcohol and tobacco tax) or from the Director of the Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C.

PAR. 13. The subheading preceding § 601.311 is amended to read as follows:

TOBACCO PRODUCTS (MANUFACTURED TOBACCO, CIGARS, AND CIGARETTES), TOBACCO MATERIALS, AND CIGARETTE PAPERS AND TUBES

PAR. 14. Section 601.311 is amended to read as follows:

§ 601.311 Imposition of taxes; regulations.

(a) *Taxes.* Subchapter A of chapter 52 of the Internal Revenue Code of 1954, as amended, imposes taxes on manufactured tobacco, cigars, cigarettes, and cigarette papers and tubes manufactured in or imported into the United States.

(b) *Regulations.* The procedural requirements with respect to matters relating to tobacco are contained in the regulations listed below:

(1) Part 200 of this chapter relates to the procedure and practice in connection with the disapproval of applications for permits, and the suspension and revocation of permits, under chapter 52 of the Code.

(2) Part 253 of this chapter relates to the removal, under bond, of tobacco products (manufactured tobacco, cigars, and cigarettes) and cigarette papers and tubes, without payment of tax, from domestic factories and export warehouses for delivery to foreign-trade zones.

(3) Part 270 of this chapter relates to the taxes on cigars and cigarettes and to the operations of manufacturers and importers of, and dealers in, such products.

(4) Part 275 of this chapter relates to the taxes on manufactured tobacco and to the operations of manufacturers and importers of, and dealers in, such products.

(5) Part 280 of this chapter relates to the operations of dealers in tobacco materials and to the purchase and sale of such materials.

(6) Part 285 of this chapter relates to the taxes on cigarette papers and tubes and to the operations of manufacturers and importers of such articles.

(7) Part 290 of this chapter relates to the exportation (including supplies for vessels and aircraft) of tobacco materials, tobacco products (manufactured tobacco, cigars, and cigarettes), and cigarette papers and tubes, without payment of tax, or with benefit of drawback of tax, and to the operations of export warehouse proprietors.

(8) Part 295 of this chapter relates to the removal of tobacco products (manufactured tobacco, cigars, and cigarettes) and cigarette papers and tubes, without payment of tax, for use of the United States.

(9) Part 296 of this chapter relates to the provisions of a miscellaneous nature or not of continuing application. Included are regulations relating to the limitations imposed by section 6423 of the Code on the refund or credit of tax paid or collected on tobacco materials, tobacco products, and cigarette papers and tubes; to losses of tobacco products and cigarette papers and tubes caused by disasters; and to temporary rules and procedures for taxpayment of tobacco products by return.

PAR. 15. Section 601.312 is amended to read as follows:

§ 601.312 Qualification and bonding requirements.

(a) *Manufacturers of tobacco products and proprietors of export warehouses.* Every person, before commencing business as a manufacturer of tobacco products or as a proprietor of an export warehouse, is required to qualify with the Internal Revenue Service by making application for permit and filing bond and other required documents with, and obtaining a permit from, the assistant regional commissioner (alcohol and tobacco tax) for the region in which operations are to be conducted.

(b) *Manufacturers of cigarette papers and tubes and dealers in tobacco materials.* Every person, before commencing business as a manufacturer of cigarette papers and tubes or as a dealer in tobacco materials, is required to qualify with the Internal Revenue Service by filing bond and other required documents with the assistant regional commissioner (alcohol and tobacco tax) for the region in which operations are to be conducted.

(c) *Proprietors of customs warehouses.* Every proprietor of a customs bonded manufacturing warehouse, Class 6, who desires to remove cigars from his warehouse for domestic consumption is required to file a bond with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the customs warehouse is located and otherwise comply with the provisions of chapter 52 of the Code and regulations thereunder. A proprietor of such a warehouse who desires to remove tax-exempt cigars, for exportation (including supplies for vessels and aircraft) or for delivery for subsequent exportation, is also required to file a bond. However, an export bond is not required when a customs warehouse proprietor has in effect a bond to cover removals for domestic consumption.

(d) *Drawback of tax.* Taxpaid tobacco products and cigarette papers and tubes may be exported with benefit of drawback of tax. Drawback may be allowed only to the person who paid the tax on such articles and who files claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 601.311. As a condition precedent to the allowance of any drawback claim, the claimant is required to file a bond in an amount not less than the amount of tax covered in the claim.

(e) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 601.311.

PAR. 16. Section 601.313 is amended to read as follows:

§ 601.313 Collection of taxes.

(a) *Tobacco products.* Taxes on tobacco products are paid by the manufacturer on the basis of a return. If the manufacturer has filed a proper bond, he may defer payment at the time of removal and file semimonthly returns to cover the taxes. If the manufacturer has not filed such a bond or if he has defaulted in any way in paying his taxes, he is required to file a prepayment return prior to removal of such products, and to continue so doing until the assistant regional commissioner (alcohol and tobacco tax) finds that the revenue will not be jeopardized by deferred payment. Taxes on cigars manufactured in a customs bonded manufacturing warehouse, Class 6, are paid by the proprietor on the basis of a return filed for each day on which cigars are removed from such warehouse. Taxes on imported tobacco products are paid by the importer on the basis of a return filed for, and prior to, each removal from customs custody. Tax returns, with remittances, are filed with the appropriate district director of internal revenue. Internal revenue taxes on noncommercial importations of tobacco products in passengers' baggage in excess of the quantity exempted from tax by law and customs regulations, or by mail where the value does not exceed $250, are paid by the importer on the basis of a return filed with the collector of customs in accordance with customs requirements.

(b) *Cigarette papers and tubes.* Taxes on cigarette papers and tubes are paid by the manufacturer on the basis of a monthly return. Taxes on imported cigarette papers and tubes are paid by the importer on the basis of a return filed for, and prior to, each removal from customs custody. Tax returns, with remittances, are filed with the appropriate district director of internal revenue.

(c) *General.* Detailed information about the payment of taxes on tobacco products and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 601.311.

PAR. 17. Section 601.314 is amended to read as follows:

§ 601.314 Assessments.

When additional or delinquent tax liability on tobacco materials, tobacco products, and cigarette papers and tubes is disclosed by an investigation or by an examination of the taxpayer's records, a notice (except where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error) is forwarded to the taxpayer advising him of the basis for, and amount of, the liability and affording him an opportunity to show cause, in writing, against assessment.

PAR. 18. Section 601.315 is amended to read as follows:

§ 601.315 Claims.

(a) *Abatement of assessment.* Abatement of the unpaid portion of an assessment of any tax on tobacco materials, tobacco products, and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. The taxpayer against whom such assessment has been made may file a claim for abatement of the tax on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax or liability was assessed.

(b) *Allowance of tax.* Relief from the payment of tax on tobacco products and cigarette papers and tubes may be extended to a manufacturer by allowance of the tax, where such articles, after removal from the factory upon determination of tax and prior to the time for payment of such tax, are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by him from the market. A claim for allowance is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tobacco products and cigarette papers and tubes were removed from the factory. A manufacturer may not anticipate allowance of his claim by making an adjusting entry in a tax return, pending consideration and action on the claim by the assistant regional commissioner.

(c) *Remission of tax liability.* Remission of tax liability on tobacco products and cigarette papers and tubes may be extended to a manufacturer or export warehouse proprietor liable for the tax, where such articles, before removal, or after removal for tax-exempt purposes (including transfers in bond), are lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer or export warehouse proprietor. A claim for remission of such tax liability is filed with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the factory or warehouse is located.

(d) *Refund of tax.* Taxes paid be return, or otherwise, on tobacco products and cigarette papers and tubes lost (otherwise than by theft) or destroyed, by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, importer, or export warehouse proprietor, or withdrawn by him from the market, may be refunded. A claim for refund of tax is filed on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the tax was paid. If tax was paid in more than one region, a claim may be filed with the assistant regional commissioner for any one of the regions in which tax was paid.

(e) *Losses caused by disaster.* Payment of an amount equal to the amount of internal revenue taxes paid or determined and customs duties paid on tobacco products and cigarette papers and tubes removed from the factory or released from customs custody, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, may be made only if, at the time of the disaster, such articles were being held for sale by the claimant. A claim for payment of the internal revenue taxes for such losses is filed on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the internal revenue region in which the articles were lost, rendered unmarketable, or condemned. A separate claim in respect of customs duties is also filed on Form 843 with the same assistant regional commissioner.

(f) *Drawback of tax.* Drawback may be allowed only to the person who paid the tax on tobacco products and cigarette papers and tubes which are shipped to a foreign country, Puerto Rico, and the Virgin Islands, or a possession of the United States. A claim for drawback of tax is filed on Form 2147 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which such articles covered by the claim are held by the claimant.

(g) *Redemption of stamps.* Tobacco products tax stamps which have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner of such stamps has no use, may be redeemed. A claim for redemption of such stamps is filed on Form 843 with the assistant regional commissioner (alcohol and tobacco tax) for the region in which the stamps were purchased.

(h) *General.* Detailed information as to the requirements necessary to be complied with and the procedure to be followed in the filing of a claim, the forms to be used, the time within which a claim may be filed, and the supporting documents which must be submitted with a claim, is contained in the applicable regulations referred to in § 601.311.

PAR. 19. Section 301.316 is amended to read as follows:

§ 601.316 Offers in compromise.

Persons desiring to submit offers in compromise of civil or criminal liabilities arising under chapter 52 of the Code may submit such offers in compromise to the district director of internal revenue or to an internal revenue officer. Each assistant regional commissioner (alcohol and tobacco tax) has the authority to accept or reject such offers in compromise, except that the Director, Alcohol and Tobacco Tax Division, has the authority to accept or reject offers in compromise of liability to administrative forfeiture of personal property seized in connection with tobacco violations. (For offers in compromise generally, see § 601.203.)

PAR. 20. Section 601.317 is amended to read as follows:

§ 601.317 Rulings.

Any person who is in doubt about any matter arising in connection with his operations and transactions in the tobacco tax area may request a ruling thereon by addressing a letter to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., or to the assistant regional commissioner (alcohol and tobacco tax) for the region in which his business is located.

PAR. 21. Section 601.318 is amended to read as follows:

§ 601.318 Forms.

Detailed information as to all forms prescribed for use in connection with tobacco taxes is contained in the regulations referred to in § 601.311(b). Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from assistant regional commissioners (alcohol and tobacco tax).

PAR. 22. Paragraph (c) of § 601.324 is amended to read as follows:

§ 601.324 Claims.

* * * * * *

(c) Claims for the abatement or refund of occupational taxes and penalties erroneously assessed or collected, and claims for redemption of stamps for occupational taxes are prepared and filed

in accordance with the procedure set forth in § 601.304(h).

PAR. 23. Paragraph (d) of § 601.401 is amended by revising subparagraphs (1) and (3) to read as follows:

§ 601.401 Employment taxes.

* * * * *

(d) *Special refunds of employee social security tax.* (1) In the case of an employee receiving wages from more than one employer during the calendar year, amounts may be deducted and withheld as employee social security tax (that is, employee tax under the Federal Insurance Contributions Act) with respect to wages in excess of $4,800 ($4,200 for certain calendar years prior to 1959). Under certain conditions, the employee may receive a so-called "special refund" of the amount of employee social security tax deducted and withheld from wages in excess of such amount. An employee who is entitled to a special refund of employee tax with respect to wages received during a calendar year, and who is required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year), may obtain the benefits of such special refund only by claiming credit for such special refund on such income tax return in the same manner as if such special refund were an amount deducted and withheld as income tax at source on wages.

* * * * *

(3) If an employee entitled to a special refund of employee social security tax is not required to file an income tax return for the year in which such special refund may be claimed as a credit, he may file a claim for refund of the excess social security tax on Form 843. Claims must be filed with the district director of internal revenue for the district in which the employee resides.

PAR. 24. Section 601.402 is amended by revising paragraph (a)(2)(i), revising paragraph (c)(1), and revising subparagraphs (1) and (2) of paragraph (d). These amended provisions read as follows:

§ 601.402 Sales taxes collected by return.

(a) *General.* * * *

(2) * * *

(i) Automotive and related items.
Motor vehicles.
Tires, tubes and tread rubber.
Petroleum products.

* * * * *

(c) *Returns, refunds, and credits*—(1) *Returns.* The sales taxes referred to in paragraph (a) of this section are collected by means of returns. Any person liable for tax is required to file returns with the district director of internal revenue for the district in which the principal place of business of such person is located. Subject to applicable regulations and pursuant to agreement, a supplier may file returns and pay for the retailer the taxes imposed on the sale of jewelry and related items, furs, toilet preparations, and luggage, handbags, etc. A procedure similar to the Depositary Receipt procedure with respect to the payment of certain Federal employment taxes, described in paragraph (a)(5) of § 601.401, is prescribed with respect to the sales taxes referred to in paragraph (a) of this section. For information relating to the use of depositary receipts for the payment of such taxes, see the applicable regulations and the instructions on Form 720, Quarterly Federal Excise Tax Return.

* * * * *

(d) *Registration and bonding requirements.* (1) Under temporary regulations effective January 1, 1959, in general, an article may be sold tax-free under chapter 32 of the Code by the manufacturer for certain uses, provided the seller, first purchaser and second purchaser, as the case may be, have been registered. In the case of State governments, registration is optional. Also, the requirements for registration do not apply to sales or purchases by the United States; to sales or purchases of mechanical pencils, fountain pens, and ball point pens for export; or to a purchaser located in a foreign country or a possession of the United States in the case of the sale of any article for export. Any person who has been issued a certificate of registry prior to January 1, 1959, which has not been revoked, is registered for purposes of the temporary regulations. Any other person entitled to sell or purchase articles tax free under such regulations who has not previously registered, may register by completing Form 637 setting forth the prescribed information and forwarding it to his district director. Such person shall be considered to be registered for purposes of making such tax-free sales or purchases upon receipt of a validated Form 637 from his district director.

(2) If not previously registered, producers and importers of gasoline and manufacturers of lubricating oil (including wholesale distributors of gasoline who qualify as producers under applicable regulations) must, before incurring any liability for tax under section 4081 or 4091 of the Code, make application for registration on Form 637. The application for registration must be accompanied by a bond on Form 928 in a sum equivalent to the approximate amount of tax which might be incurred by the taxpayer during an average 3-month period at the rates of tax then in effect, but in no case shall the bond be for less than $2,000. Detailed instructions as to the filing of applications for registration and the submission of bonds by producers and importers of gasoline and manufacturers of lubricating oil are prescribed in applicable regulations.

PAR. 25. Section 601.403 is amended by revising subparagraphs (1), (2), and (7) of paragraph (a), and by revising subparagraph (2) of paragraph (c). These amended provisions read as follows:

§ 601.403 Miscellaneous excise taxes collected by return.

(a) *General.* Miscellaneous excise taxes collected by return include the following:

(1) *Admissions, cabaret, dues and initiation fees.* Subchapter A of chapter 33 of the Internal Revenue Code imposes a tax on admissions (including a tax on amounts charged by ticket brokers, box office employees, and others in excess of the established price), and on charges made by cabarets, roof gardens and other similar places. Where cabaret tax is imposed on a concessionaire in a cabaret, the proprietor is required to collect and report such tax. Subchapter A of chapter 33 also imposes certain taxes on amounts paid as dues or initiation fees to any social, athletic, or sporting club or organization.

(2) *Communications.* Subchapter B of chapter 33 of the Code imposes a tax on amounts paid for general telephone service, toll telephone service, telegraph service, teletypewriter exchange service, wire mileage service and wire and equipment service.

* * * * *

(7) *Coconut and other vegetable oils.* Chapter 37 of the Code imposes a tax upon the first domestic processing of coconut oil, palm oil, palm-kernel oil, fatty acids derived from any of the foregoing oils, salts from any of the foregoing or any combination or mixture containing a substantial quantity of any one or more of such oils, fatty acids or salts. See however Public Law 85–235 and Public Law 86–37 as amended by Public Law 86–432 for suspension of the tax for certain periods.

* * * * *

(c) *Collection of tax*—(1) *Imposed taxes.* * * *

(2) *Collected taxes.* The other miscellaneous excise taxes referred to in this section are imposed on the person making the payment for the admission, telephone, transportation or other service involved. These taxes are required to be collected by the theater, telephone company, railroad, or other person receiving the payment. All taxes collected in this manner are held by the collecting agent in trust for the United States until deposited in accordance with the Depositary Receipt procedure or paid over to the district director of internal revenue. The collecting agencies are required to file returns and the tax is payable, without notice from the district director, at the time fixed for filing the returns. If the person from whom the tax is required to be collected refuses to pay it or, if for any reason it is impossible for the collecting agency to collect the tax from such person, the collecting agency is required to report to the district director of internal revenue for the district in which its returns are required to be filed the name and address of such person, the nature of the service or facility rendered, the amount paid therefor, and the date on which paid. Upon receipt of this information the district director will proceed against the person to whom the facilities were provided or the services rendered to assert the amount of tax due, affording such person the same informal conference, protest and appellate rights as are available to other excise taxpayers.

PAR. 26. Section 601.404 is amended by revising paragraph (b)(1), paragraph (d)(2), and paragraph (h)(1). These amended provisions read as follows:

§ 601.404 Miscellaneous excise taxes collected by sale of revenue stamps.

* * * * *

(b) *Documentary stamp taxes*—(1) *Capital stock, certificates of indebtedness, deeds of conveyance, and foreign insurance policies.* Chapter 34 of the Internal Revenue Code imposes a tax on the issuance of corporate certificates of indebtedness, capital stock, or similar instruments, and foreign insurance policies. Chapter 34 of the Code also imposes a tax on all sales or transfers of corporate certificates of indebtedness, capital stock, or similar instruments, and on deeds of conveyance of realty sold. Under certain circumstances, a national securities exchange, or clearing house for such exchange, may pay tax on behalf of its members without the use of stamps.

* * * * *

(d) *Occupational stamp taxes.* * * *

(2) *Coin-operated amusement or gaming devices.* Subchapter B of chapter 36 of the Code imposes an occupational tax with respect to coin-operated amusement or gaming devices, or similar devices operated without a coin.

* * * * *

(h) *Administrative remedies available to taxpayers after purchase of documentary, commodity, or occupational tax stamps or after assessment or payment of tax*—(1) *Redemption of stamps.* Where stamps have been rendered useless by gumming or sticking together in transit or otherwise without fault of the purchaser, they may be exchanged by a district director of internal revenue for other stamps of the same quantity and denomination. Stamps which have been spoiled, destroyed, or rendered useless, or unfit for the purpose intended, or for which the owner may have no use, or which through mistake have been improperly or unnecessarily used, or have been used in excess of the amount of tax actually due, may be redeemed upon proper claim filed with the district director. All such claims must be prepared on Form 843 and must be filed with the district director for the district in which is located the principal office of the claimant, or if he has no such office, with the district director for the district in which he resides. A claim for redemption of unused stamps must be filed within three years after the date of purchase of the stamps from the Government, while a claim for used stamps must be filed within three years after the stamps were affixed and cancelled. The stamps either must be submitted with the claim, or if it is impracticable to remove them from the instruments, documents, etc., to which they are attached, the words "Claim for refund of $———— filed.", with the appropriate amount inserted, shall be written across the face of the stamps by the claimant or the person having custody of the instruments or documents to which the stamps are affixed. The claimant must make a statement in his claim that the stamps have been so marked and by whom. In the case of a claim for unused stamps where the actual date of purchase of the stamps from the Government cannot be given, it must be definitely shown in the claim whether they were so purchased within 3 years prior to the date of filing of the claim. Once filed, a claim for redemption follows generally the same channels as do all other claims for refund. See §§ 601.103 to 601.106.

PAR. 27. Section 601.601 is amended by redesignating paragraph (b) as paragraph (c), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (b). These amended provisions read as follows:

§ 601.601 Rules and regulations.

* * * * *

(b) *Comments on proposed rules.* Interested persons are privileged to submit any data, views, or arguments with respect to proposed rules. Such comments are confidential and are not disclosed to the public. Information as to who filed comments is also confidential. However, the name of any person requesting a public hearing and the issues which may be discussed at the hearing are not confidential.

(c) *Petition to change rules.* Interested persons are privileged to petition for the issuance, amendment, or repeal of a rule. A petition for the issuance of a rule should identify the section or sections of law involved; and a petition for the amendment or repeal of a rule should set forth the section or sections of the regulations involved. The petition should also set forth the reasons for the requested action. Such petitions will be given careful consideration and the petitioner will be advised of the action taken thereon. Petitions should be addressed to the Commissioner of Internal Revenue, Washington 25, D.C., Attention: T:P.

(d) *Publication of rules and regulations.* All internal revenue regulations and Treasury decisions (whether interpretative or substantive) are published in the FEDERAL REGISTER and in the Code of Federal Regulations. The Treasury decisions are also published in the weekly Internal Revenue Bulletin and the semi-annual Cumulative Bulletin. The Internal Revenue Bulletin is the authoritative instrument of the Commissioner for the announcement of official rulings, and for the publication of Treasury decisions, Executive orders, legislation, and court decisions pertaining to internal revenue matters. It is the policy of the Service to publish in the bulletin all substantive and procedural rulings of importance or general interest, the publication of which is considered necessary to promote a uniform application of the laws administered by the Service. It is also the policy to publish all rulings which revoke, modify, amend or affect any published ruling. Rulings relating solely to matters of internal management are not published. The rulings are prepared in the various offices of the Service.

PAR. 28. Paragraph (a)(5) and paragraph (b)(1), (2), (3), and (5) of § 601.702 are amended to read as follows:

§ 601.702 Publication and public inspection.

(a) *General.* * * *

(5) *State liquor cases or State firearms cases.* If the interests of the United States will not be jeopardized thereby, and if information will not be divulged contrary to section 7213(b) of the Code, assistant regional commissioners (alcohol and tobacco tax) may upon receipt of subpoenas or requests of State authorities, and at the expense of the State, authorize investigators and other employees under their supervision to attend trials and administrative hearings in liquor cases or firearms cases in which the State is a party, produce records and testify as to facts coming to their knowledge in their official capacities.

* * * * *

(b) *Final opinions and orders*—(1) *Accepted offers in compromise*—(i) *Income, profits, estate or gift tax.* In the case of offers in compromise in respect of income, profits, capital stock (repealed), estate or gift tax liability accepted on or after August 20, 1952, a copy of the summary sheet (abstract) of each such offer is available for public inspection in the office of the appropriate district director if the liability involved is less than $5,000, and in the office of the Public Information Division of the National Office if the liability involved totals $5,000 or more. Such summary sheet includes a brief description of the reasons for acceptance of the offer. If information in addition to that shown on the summary sheet is requested, such information, subject to the provisions set forth in Internal Revenue Cumulative Bulletin 1952–2, pages 299–300, will also be made available for inspection. In the case of offers in compromise of such tax liabilities accepted before August 20, 1952, a copy of the summary sheet will be made available for inspection upon request identifying the taxpayer. See Treasury Decision 5927, approved August 20, 1952 (26 CFR (1939), 1954 Supp. 458.-313), and Executive Order 10386, dated August 20, 1952 (3 CFR, 1952 Supp.).

(ii) *Refilling of liquor bottles.* For each offer in compromise submitted and accepted on or after December 21, 1956, pursuant to section 7122 of the Code, in any case arising under sections 5604 and 5606 of the Code, relating to refilling of liquor bottles, a copy of the abstract and statement relating to the offer shall be available for public inspection for a period of one year in the office of the assistant regional commissioner (alcohol and tobacco tax) accepting the offer and in the office of the district director for the internal revenue district in which the offer is submitted. Information, however, is not disclosed concerning any trade secrets, processes, operations, style of work, or apparatus, or confidential data, amount or source of income, profits, losses, or expenditures, or any other matter within the prohibition of section 1905 of Title 18 of the United States Code.

(2) *Information regarding permits*—(i) *Application for permits.* Information with respect to the handling of applications for basic permits under the

Federal Alcohol Administration Act, operating permits under section 5171 of the Code, and industrial use permits under section 5271 of the Code is maintained for public inspection in the offices of assistant regional commissioners (alcohol and tobacco tax) until the expiration of one year following final action on such applications.

(ii) *Card index record of permits.* A current card index record for all persons to whom industrial use permits have been issued; for all proprietors of distilled spirits plants to whom operating permits have been issued to cover distilling for industrial use, bonded warehousing of spirits for industrial use, or denaturing of spirits; and for all applicants for such industrial use and operating permits; is available in the offices of assistant regional commissioners (alcohol and tobacco tax). Such card index records may be inspected by persons who are authorized to sell or purchase tax-free alcohol or specially denatured spirits.

(3) *List of plants and permittees.* Upon request, the assistant regional commissioner (alcohol and tobacco tax) may, as far as possible without interference with the work of his office, furnish a list of any type of qualified proprietor or permittee located in his region.

* * * * *

(5) *Publication of decisions.* Rulings and decisions on matters arising under the internal revenue laws which because they announce a ruling or decision upon a novel question or upon a question in regard to which there exists no previously published ruling or decision, or for other reasons, are of such importance as to be of general interest, or which revoke, amend or affect in any manner a published ruling or decision are, after rephrasing to eliminate any confidential information relating to a particular case, including identity of persons, regularly published in the Internal Revenue Bulletin. See also § 601.601(d). No unpublished ruling or decision will be cited or relied upon by any officer or employee of the Internal Revenue Service as a precedent in the disposition of other cases.

(R.S. 161; 5 U.S.C. 22)

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

[F.R. Doc. 60-11999; Filed, Dec. 27, 1960; 8:46 a.m.]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Oil Import Administration, Department of the Interior

[Oil Import Reg. 1 (Revision 2), Amdt. 3]

MISCELLANEOUS AMENDMENTS

1. Section 10 of Oil Import Regulation 1 (Revision 2) (25 F.R. 4958) is amended to read as follows:

Sec. 10 Allocations of crude oil and unfinished oils—Districts I–IV.

(a) The quantity of imports of crude oil and unfinished oils determined to be available for allocation in Districts I–IV for the allocation period January 1, 1961, through June 30, 1961, shall be allocated by the Administrator among eligible applicants as provided in paragraphs (b) and (c) of this section.

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the year ending September 30, 1960, and computed according to the following schedule:

Average B/D input:	Percent of input
0–10,000	11.5
10–20,000	10.5
20–30,000	9.6
30–60,000	8.6
60–100,000	7.7
100–150,000	6.7
150–200,000	5.7
200–300,000	4.7
300,000 plus	3.8

(c) If an eligible applicant has been importing crude oil pursuant to an allocation under the Voluntary Oil Import Program and if an allocation computed under paragraph (b) of this section would be less than 72 percent of the applicant's last allocation of imports of crude oil under the Voluntary Oil Import Program, the applicant shall nevertheless receive an allocation under this section equal to 72 percent of his last allocation of imports of crude oil under the Voluntary Oil Import Program.

(d) No allocation made pursuant to this section shall entitle a person to a license which will allow the importation of unfinished oils in excess of 10 percent of the allocation.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

2. Amendment 2 (12 F.R. 12999) to Oil Import Regulation 1 (Revision 2) is revoked and section 11 of that regulation (25 F.R. 4958) is amended to read as follows:

Sec. 11 Allocations of crude oil and unfinished oils—District V.

(a) The quantity of imports of crude oil determined to be available for allocation in District V for the allocation period January 1, 1961, through June 30, 1961, shall be allocated by the Administrator among eligible applicants as provided in paragraphs (b) and (c) of this section.

(b) Except as provided in paragraph (c) of this section, each eligible applicant shall receive an allocation based on refinery inputs for the year ending September 30, 1960 and computed according to the following schedule:

Average B/D input:	Percent of input
0–10,000	40.0
10–20,000	31.3
20–30,000	22.7
30–60,000	13.5
60–100,000	10.9
100–150,000	10.0
150–200,000	8.9
200,000 plus	7.2

(c) If an eligible applicant has been importing crude oil pursuant to an allocation under the Voluntary Oil Import Program and if an allocation computed under paragraph (b) of this section would be less than 66.5 percent of the applicant's last allocation of imports of crude oil under the Voluntary Oil Import Program, the applicant shall nevertheless receive an allocation under this section equal to 66.5 percent of his last allocation of imports of crude oil under the Voluntary Oil Import Program.

(d) Allocations made pursuant to this section shall not permit the importation of unfinished oils in excess of 10 percent of the permissible imports of crude oil. With respect to any allocation made pursuant to this section, the Administrator upon request shall issue a license permitting the importation of unfinished oils in an amount not in excess of 10 percent of the allocation. If the total quantity of unfinished oils applied for is less than 10 percent of the permissible imports of crude oils, the Administrator may to that extent increase the percentage amount of unfinished oils specified in licenses of persons who request such increases. Each person making such a request shall receive an increase in the proportion that his allocation bears to the total of allocations made to all persons requesting increases. Each barrel of unfinished oil imported shall be deemed to be the equivalent of one barrel of crude oil and will be so charged against the person's license by the respective Collectors of Customs. The permissible percentage of imports of unfinished oils and the equivalence of unfinished oils to crude oil may be changed during the allocation period, if necessary to prevent impairing accomplishment of the purposes of the program. Such a change will be made only after notice of proposed rule making and will not become effective until the 30th calendar day following publication in the FEDERAL REGISTER of the amendment making such change.

(e) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

3. Section 14 of Oil Import Regulation 1 (Revision 2) (25 F.R. 4959) is amended to read as follows:

Sec. 14 Determination of maximum level of imports—Puerto Rico.

(a) Pursuant to section 2 of Proclamation 3279, it is determined (1) that the average barrels per day of imports of crude oil and unfinished oils into Puerto Rico during any particular allocation period shall not exceed the average barrels per day, as determined by the Administrator, during the month of July of the calendar year 1958 of imports of such commodities into Puerto Rico, and (2) that the average barrels per day, as determined by the Administrator, of imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel into Puerto Rico during any particular allocation period shall not exceed the average barrels per day of imports of such products, respectively, into Puerto Rico during the last half of the calendar year 1958.

(b) The Administrator shall from time to time review the determinations set forth in paragraph (a) of this section and shall recommend to the Secretary of the Interior that the level of imports be increased or decreased as may be required to meet increases or decreases in local demand in Puerto Rico or in demand for export to foreign areas.

4. Section 15 of Oil Import Regulation 1 (Revision 2) (25 F.R. 4959) is amended to read as follows:

Sec. 15 Allocation of crude oil and unfinished oils—Puerto Rico.

(a) For the allocation period January 1, 1961 through June 30, 1961, the Administrator shall allocate to each eligible applicant for an allocation for Puerto Rico quantities of imports of crude oil and unfinished oils in proportion to the applicant's average barrels daily of refinery input (adjusted by the Administrator for downtime) in Puerto Rico during the months of July, August, and September of the year 1958.

(b) In the event that the maximum levels of imports of crude oil and unfinished oils are increased or decreased pursuant to paragraph (b) of section 14, the Administrator shall increase or decrease individual allocations in the proportion that each allocation bears to the total allocations of crude oil and unfinished oils.

(c) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

5. Section 16 of Oil Import Regulation 1 (Revision 2) (25 F.R. 4959) is amended to read as follows:

Sec. 16 Allocations of finished products—Puerto Rico.

(a) For the allocation period January 1, 1961 through June 30, 1961, the Administrator shall allocate to each eligible applicant for an allocation for Puerto Rico a quantity of imports of finished products equal to the applicant's average barrels daily of imports of such products during the last 6 months of the calendar year 1958. Separate allocations shall be made for imports of residual fuel oil to be used as fuel and of imports of finished products other than residual fuel oil to be used as fuel.

(b) In the event that the maximum level of imports of residual fuel oil to be used as fuel or of finished products other than residual fuel oil to be used as fuel is increased or decreased pursuant to paragraph (b) of section 14, the Administrator shall increase or decrease individual allocations in the proportion that each allocation bears to the total allocations of residual fuel oil to be used as fuel or of finished products other than residual fuel oil to be used as fuel, respectively.

(c) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

Because allocations must be made and licenses issued for the allocation period beginning January 1, 1961, it is impracticable to give notice of proposed rule making on, or to delay the effective date of, this amendment. Accordingly, this amendment shall become effective immediately.

ELMER F. BENNETT,
Acting Secretary of the Interior.

DECEMBER 24, 1960.

[F.R. Doc. 60-12099; Filed, Dec. 27, 1960; 9:09 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 207—NAVIGATION REGULATIONS

Santa Monica Bay, Calif.

Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C.), § 207.619 is hereby prescribed establishing and governing the use and navigation of a restricted area in Santa Monica Bay, California, as follows:

§ 207.619 Santa Monica Bay, Calif.; restricted area.

(a) *The area.* The waters of the Pacific Ocean, Santa Monica Bay, in an area extending seaward from the shoreline a distance of about 5 nautical miles (normal to the shoreline) and basically outlined as follows:

Station	Latitude N.	Longitude W.
A	33°54′59″	118°25′41″
B	33°54′59″	118°28′00″
C	33°53′59.5″	118°31′37″
D	33°56′19.5″	118°34′05″
E	33°56′25″	118°26′29″

(b) *The regulations.* (1) Vessels shall not anchor within the area at any time without permission.

(2) Dredging, dragging, seining, or other fishing operations which might foul underwater installations within the area are prohibited.

(3) All vessels entering the area, other than vessels operated by or for the United States, the State of California, the county of Los Angeles, or the city of Los Angeles, shall proceed across the area by the most direct route and without unnecessary delay. The area will be open and unrestricted to small recreational craft for recreational activities at all times.

(4) The placing of buoys, markers, or other devices requiring anchors will not be permitted.

(5) The city of Los Angeles will maintain a patrol of the area as needed.

(6) The regulations of this section shall be enforced by the Commander, Eleventh Coast Guard District, Times Building, Long Beach, California, and such agencies as he may designate.

Effective date. This section shall become effective upon its publication in the FEDERAL REGISTER.

[Regs., Dec. 7, 1960, 285/91 (Santa Monica Bay, Calif.)—ENGCW-O] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

R. V. LEE,
Major General, U.S. Army, The Adjutant General.

[F.R. Doc. 60-11974; Filed, Dec. 27, 1960; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 2236]

[64769]

UTAH

Restoration Under Section 24, Federal Power Act

By virtue of the authority contained in section 24 of the act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818), as amended, and pursuant to determination DA-82-Utah of the Federal Power Commission, it is ordered as follows:

1. The following-described lands are hereby opened to filing of applications, selections and locations, subject to valid existing rights, the requirements of applicable law, the provisions of section 24 of the Federal Power Act, and also subject to the stipulation that if and when the land is required in whole or in part for purposes of power development, any structures or improvements placed thereon which are found to interfere with such development shall be removed or relocated so as to eliminate interference, without cost or expense to the United States, its permittees or licensees:

SALT LAKE MERIDIAN

T. 42 S., R. 19 E.,
Sec. 7, lots 10, 12, 13, 14, 15, and SW¼NE¼.

Aggregating 103.77 acres.

2. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

a. Until 10:00 a.m. on June 22, 1961, the State of Utah shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851, 852), and the regulations in 43 CFR. During this period the State may also apply for the reservation to it or to any of its political subdivisions, of any of the lands required for rights-of-way or materials sites in accordance with the provisions of section 24 of the Federal Power Act.

b. Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

c. All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on January 26, 1961, will be considered as simul-

taneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

d. The lands have been open to applications and offers under the mineral leasing laws and to locations under the mining laws.

3. Persons claiming preference rights must submit evidence of their entitlement.

Inquiries shall be addressed to the Manager, Land Office, Bureau of Land Management, Salt Lake City, Utah.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 21, 1960.

[F.R. Doc. 60-11987; Filed, Dec. 27, 1960; 8:45 a.m.]

[Public Land Order 2237]

[84913]

WYOMING

Partially Revoking Stock Driveway Withdrawals Nos. 21, 128, 144, 228, and 245

By virtue of the authority vested in the Secretary of the Interior by Section 10 of the Act of December 29, 1916 (39 Stat. 865; 43 U.S.C. 300), as amended; it is ordered as follows:

1. Stock Driveway Withdrawal No. 21 (Wyoming No. 5) of May 24, 1918; No. 128 (Wyoming No. 13) of March 18, 1920, as enlarged by departmental order of December 21, 1925, and as modified by the departmental order of June 14, 1926; No. 144 (Wyoming No. 18) of April 20, 1931; No. 228 (Wyoming No. 40) of March 28, 1932; and No. 245 (Wyoming No. 42) of May 2, 1934, are hereby revoked so far as they affect the following-described lands:

STOCK DRIVEWAY WITHDRAWAL NO. 21, WYOMING NO. 5

(Departmental Order of May 24, 1918)

SIXTH PRINCIPAL MERIDIAN

T. 27 N., R. 91 W.,
Sec. 30, lots 1, 2, 3, 4, E½W½, and SE¼;
Sec. 31.
T. 32 N., R. 91 W.,
Sec. 5, lots 1, 2, 4, S½N½, and S½;
Sec. 8;
Sec. 17, NE¼, E½NW¼, NW¼NW¼, SW¼, W½SE¼, and NE¼SE¼;
Sec. 20, E½NE¼, SW¼NE¼, NW¼, and S½;
Secs. 29 and 30.
T. 33 N., R. 91 W.,
Sec. 10, SW¼ and E½SE¼;
Sec. 15, E½, NW¼, NE¼SW¼, and S½ SW¼;
Secs. 19 and 20;
Sec. 21, W½;
Sec. 22, N½ and SE¼;
Sec. 28, NW¼ and S½;
Sec. 33.
T. 27 N., R. 92 W.,
Sec. 7, lots 1, 2, 3, 4, S½NE¼, NW¼NE¼, E½W½, and SE¼;
Secs. 18 and 19;
Sec. 20, E½NE¼, SW¼NE¼, NW¼, and S½;
Secs. 21 and 22;
Sec. 23, NW¼NW¼, S½N½, and S½;
Sec. 24, S½NW¼ and S½;
Sec. 25.
T. 32 N., R. 92 W.,
Sec. 25;
Sec. 26, N½, N½SW¼, SW¼SW¼, NE¼ SE¼, and S½SE¼;
Secs. 27, 28, 29, and 30.
T. 33 N., R. 92 W.,
Sec. 19, lots 1, 2, 3, 4, E½, E½NW¼, and SE¼SW¼;
Secs. 20, 21, 22, 23, and 24.
T. 27 N., R. 93 W.,
Secs. 2, 11, and 12.
T. 28 N., R. 93 W.,
Sec. 1;
Sec. 2, lots 1, 2, 3, 4, S½N½, SW¼, NE¼ SE¼, and S½SE¼;
Sec. 3, lots 1, 2, 3, 4, S½N½, and SW¼;
Secs. 12 and 13;
Sec. 24, N½, SW¼, and W½SE¼;
Sec. 25;
Sec. 26, N½, W½SW¼, SE¼SW¼, and SE¼;
Sec. 35.
T. 29 N., R. 93 W.,
Secs. 7, 17, 18, 20, 21, 27, 28, and 34;
Sec. 35, W½.
T. 32 N., R. 93 W.,
Secs. 25, 26, 27, and 28;
Sec. 29, N½, NE¼SW¼, S½ SW¼;
Sec. 30.
T. 33 N., R. 93 W.,
Secs. 5, 7, 8, 9, and 10;
Sec. 11, E½, NW¼, N½SW¼, and SE¼ SW¼;
Secs. 12, 13, and 24.
T. 34 N., R. 93 W.,
Secs. 3, 4, 5, 8, and 17;
Sec. 20, S½NE¼, NW¼NE¼, NW¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Secs. 29 and 32.
T. 35 N., R. 93 W.,
Sec. 27, SW¼ and SW¼SE¼;
Sec. 34.
T. 29 N., R. 94 W.,
Secs. 7, 8, 9, 10, 11, and 12.
T. 32 N., R. 94 W.,
Sec. 25;
Sec. 26, E½, S½NW¼, and SW¼;
Secs. 27 and 28;
Sec. 29, NE¼.
T. 33 N., R. 94 W.,
Sec. 7, lots 2, 3, 4, 5, 6, 7, 8, E½W½, and N½NE¼;
Sec. 8, lots 1, 2, 3, 4, 5, 6, SE¼NE¼, NW¼NE¼, N½NW¼, and E½SE¼;
Secs. 9, 10, and 11;
Sec. 12, NE¼, and S½.
T. 33 N., R. 95 W.,
Sec. 2, W½, W½SE¼, and SE¼SE¼;
Secs. 11 and 12.
T. 34 N., R. 95 W.,
Sec. 30;
Sec. 31, E½;
Secs. 32, 33, 34, and 35.
T. 34 N., R. 96 W.,
Secs. 25, 26, 27, and 28;
Sec. 29, E½, S½NW¼, and NE¼NW¼;
Sec. 30, lots 1 through 16, and SE¼.
T. 34 N., R. 97 W.,
Secs. 25, 26, 27, 28, 29, and 30.
Containing 71,928.34 acres.

STOCK DRIVEWAY WITHDRAWAL NO. 128, WYOMING NO. 13

(Departmental Order of March 18, 1920)

T. 38 N., R. 90 W.,
Sec. 2, SE¼;
Sec. 10, SE¼;
Sec. 11, lots 3, 4, E½SW¼, and E½;
Sec. 15, E½;
Sec. 21, lots 1, 2, S½NE¼, and SE¼;
Sec. 22, lots 1, 2, 3, 4, and S½N½;
Sec. 28, NE¼, and N½NW¼;
Sec. 29, E½;
Sec. 32, N½.
T. 39 N., R. 90 W.,
Sec. 26, E½NE¼, NW¼NW¼, E½SW¼ and SE¼;
Sec. 35, E½.
Containing 3,284.83 acres.

(Departmental Order of June 14, 1926)

T. 39 N., R. 91 W.,
Sec. 2, E½;
Sec. 11, NW¼NE¼, and W½;
Sec. 14, W½;
Sec. 23, W½;
Sec. 26, W½;
Sec. 27, E½;
Sec. 35, W½.
Containing 2,191.90 acres.

(Departmental Order of December 21, 1925)

T. 40 N., R. 91 W.,
Sec. 21, lots 1, 2, 3, 4, S½N½, and NE¼ SE¼;
Sec. 22, lots 8, 9, 10, 11, E½SW¼, and NW¼SW¼;
Sec. 26, lot 3 and SW¼SW¼;
Sec. 27, NE¼ and E½SE¼;
Sec. 35, W½ and W½SE¼.
Containing 1,295.97 acres.

STOCK DRIVEWAY WITHDRAWAL NO. 144, WYOMING NO. 18

(Departmental Order of April 20, 1931)

T. 29 N., R. 86 W.,
Sec. 2, N½SW¼ and SE¼;
Sec. 3, SW¼ and N½SE¼;
Sec. 4, lots 3, 4, S½NW¼, and S½;
Sec. 9, W½NW¼;
Sec. 10, E½NW¼;
Sec. 11, N½NE¼.
T. 30 N., R. 86 W.,
Sec. 4, E½;
Sec. 9, E½;
Sec. 10, S½NW¼ and SW¼;
Sec. 15, W½;
Sec. 20, SE¼SW¼ and SE¼;
Sec. 21, N½ and SW¼;
Sec. 22, NW¼;
Sec. 29, W½NE¼, NE¼NW¼, E½SW¼, and SW¼SE¼;
Sec. 32, E½ and E½NW¼;
Sec. 33, SW¼.
T. 31 N., R. 86 W.,
Sec. 4, lots 7, 8, 9, 10, 15, 16, 17, and 18;
Sec. 8, lots 1, 2, 3, 4, and NE¼;
Sec. 9, NW¼;
Sec. 17, E½;
Sec. 20, NE¼;
Sec. 21;
Sec. 28, E½;
Sec. 33, E½.
T. 32 N., R. 86 W.,
Sec. 6, lots 3, 4, 5, 6, 7, 12, 13, 14, 15, SE¼ NW¼, and E½SW¼;
Sec. 7, lots 4, 5, 6, E½SW¼, and SW¼SE¼;
Sec. 17, lots 3, 4, S½NE¼, N½SW¼, SE¼ SW¼, and SE¼;
Sec. 18, lot 5, S½NE¼, NW¼NE¼, E½ NW¼, and N½SE¼;
Sec. 20, E½ and S½NW¼;
Sec. 21, SW¼ and SW¼;
Sec. 26, NW¼, W½SW¼, and SE¼ SW¼
Sec. 28 [illegible];
Sec. 33, W½.
T. 32 N., R. 87 W.,
Sec. 1, lots 1, 2, and SE¼NE¼.
Containing 9,570.95 acres, of which the NE¼SW¼ of sec. 26, T. 32 N., R. 86 W., has been patented.

STOCK DRIVEWAY WITHDRAWAL NO. 228, WYOMING NO. 40

(Departmental Order of March 28, 1932)

T. 28 N., R. 91 W.,
Sec. 5, lot 3.
T. 29 N., R. 91 W.,
Sec. 14, SW¼ and NW¼SE¼;
Sec. 22, NE¼, S½SW¼, NE¼SW¼, N½ SE¼, and SW¼SE¼;
Sec. 23, W½NW¼;
Sec. 27, NW¼ and W½SW¼;
Sec. 28, E½NE¼ and SE¼;
Sec. 32, SE¼SE¼;
Sec. 33, NE¼, SE¼NW¼, SW¼, and W½ SE¼;
Sec. 34, NW¼NW¼.
Containing 1,719.93 acres.

STOCK DRIVEWAY WITHDRAWAL NO. 245 WYOMING NO. 42

(Departmental Order of May 2, 1934)

T. 40 N., R. 92 W.,
Sec. 18, lot 4, and SE¼SW¼;
Sec. 19, lots 1, 2, SE¼NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 28, SW¼NE¼, and S½NW¼;
Sec. 29, S½NE¼, N½NW¼, and SE¼NW¼;
Sec. 30, NE¼NE¼, SW¼NE¼, and NE¼ SW¼.
Containing 826.04 acres.

The areas total in the aggregate 90,817.96 acres.

2. The lands are within southeastern Fremont and southwestern Natrona Counties, in the central part of the Wind River Basin. The topography varies from gently rolling to rough and mountainous and elevation changes about 6,000 feet. The area is characterized by a semi-desert vegetal cover, dominated by big sagebrush.

3. Subject to any existing valid rights and the requirements of applicable law, the lands described in paragraph 1 thereof, are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on June 22, 1961, the State of Wyoming shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of Section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851-853), and the regulations of 43 CFR.

(3) All valid applications and selections under the non-mineral public land laws, other than those from the State, presented prior to 10:00 a.m. on January 26, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws pursuant to the regulations in 43 CFR 185.35–185.36.

4. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Cheyenne, Wyoming.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 21, 1960.

[F.R. Doc. 60-11988; Filed, Dec. 27, 1960; 8:45 a.m.]

[Public Land Order 2238]

[Washington 02466]

WASHINGTON

Order Opening Public Lands Formerly in Power Withdrawals

1. In DA-127-Washington, the Federal Power Commission vacated the withdrawal created by the filing on October 21, 1930, of an application for license for Project No. 1125, for the following-described lands:

WILLAMETTE MERIDIAN

All portions of the following tracts lying within the project boundaries of the diversion dam and power house sites, and within 15 feet of the center line of the pipe line location, and within 15 feet of the center line of the transmission line location, all as shown on a map designated "Exhibit F" and entitled "Quinault Hotel Co. Inc. Power Project" and filed in the office of the Federal Power Commission on October 21, 1930:

T. 23 N., R. 9 W.,
Sec. 20, lots 1, 2, 3, and NW¼SE¼;
Sec. 21, lots 1, 2, S½NW¼, and SW¼NE¼.

Containing approximately 4 acres.

2. An order of the Geological Survey of November 23, 1956 (Power Site Cancellation No. 116), canceled the departmental order of September 20, 1926, creating Power Site Classification No. 152, Washington No. 24, so far as it affects the following-described lands:

WILLAMETTE MERIDIAN

T. 23, N., R. 9 W.,
Sec. 1, lot 4;
Sec. 2, lots 1, 5, 7, 8, 9, and NW¼SW¼;
Sec. 3, NE¼SW¼;
Sec. 4, S½SW¼;
Sec. 5, S½S½;
Sec. 7, lots 3, 4, 5, 6, and NE¼NE¼, S½ NE¼, NE¼SW¼, and NW¼SE¼;
Sec. 8, lot 6, N½NE¼NE¼, N½SW¼NE¼ NE¼, NW¼NE¼, and N½NW¼;
Sec. 9, lots 1, 5, and 6;
Sec. 10, lot 1, SW¼NE¼SW¼, W½SE¼ NE¼SW¼, W½SE¼SW¼, and W½E½SE¼ SW¼;
Sec. 16, lots 2, 5, NE¼SE¼, and S½SE¼;
Sec. 19, lot 1;
Sec. 20, lots 1, 2, 3, 4, 5, SE¼SW¼, and SE¼;
Sec. 21, lots 1, 2, NW¼NE¼, S½NW¼, and NW¼SW¼;
Sec. 29, NW¼NE¼, NW¼, and NW¼SW¼;
Sec. 30, lots 1, 2, 3, 4, SE¼NE¼, and SE¼;
Sec. 31, lot 1.
T. 23 N., R. 10 W.,
Sec. 13, lot 5, N½NE¼, SW¼NE¼, N½ NW¼, and SE¼NW¼;
Sec. 14, SE¼NE¼, SE¼SW¼, and SE¼;
Sec. 23, lots 1, 2, 3, and 4.

The areas described aggregate 3,120.19 acres, of which the NE¼SW¼, section 3; S½SW¼, section 4; a strip 33 feet wide along the east side of the W½SE¼ NE¼SW¼, section 10, and lot 5, section 16, are patented.

3. The lands are withdrawn either for the Olympic National Park, or the Olympic National Forest.

4. Until 10:00 a.m. on March 23, 1961, the national forest lands shall be open only to application by the State of Washington under any statute or regulation applicable thereto for the reservation to it or to any of its political subdivisions of any of the lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways, as provided by Section 24 of the Federal Power Act of 1920, as amended.

5. Commencing at 10:00 a.m. on March 23, 1961, the national forest lands shall be open to such other forms of disposition as may by law be made of national forest lands.

6. The national forest lands have been open to location under applicable mining laws, and to application and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Spokane, Washington.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 21, 1960.

[F.R. Doc. 60-11989; Filed, Dec. 27, 1960; 8:45 a.m.]

[Public Land Order 2239]

[Idaho 010989; 011339]

IDAHO

Power Site Cancellation No. 142; Power Site Restoration Nos. 559 and 562; Opening Lands From Power Withdrawals; (Power Site Classification No. 336; Power Site Reserves Nos. 223, 134 and 221)

1. In DA-522- and DA-527-Idaho, the Federal Power Commission determined that the value of the following-described lands would not be injured or destroyed for purposes of power development by location, entry, or selection under the public land laws, subject to the provisions of section 24 of the Federal Power Act, as amended:

BOISE MERIDIAN

In DA-522

T. 12 N., R. 18 E.,
Sec. 24, SE¼NE¼ and E½SE¼;
Sec. 25, lots 3, 4, 5, 6, 7, NW¼NE¼, SE¼NW¼, and NE¼SE¼;
Sec. 26, lot 1;
Sec. 35, lots 2, 3, and NE¼SE¼.
T. 14 N., R. 18 E.,
Sec. 2, lots 3, 4, SW¼NE¼, SE¼NW¼, and N½SW¼;
Sec. 3, NE¼SE¼.
T. 12 N., R. 19 E.,
Sec. 5, lot 4;
Sec. 6, lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 15, SE¼NW¼, and NE¼SW¼;
Sec. 7, lots 2, 3, 5, 6, 8, 11, NW¼NE¼, SE¼ NE¼, and SE¼SW¼;
Sec. 8, W½ SW¼;
Sec. 17, W½NW¼ and NW¼SW¼;
Sec. 18, lots 2, 4, 5, 9, 11, SE¼NE¼, and NE¼SE¼;

Sec. 19, lots 3, 6, 7, SE¼NE¼, NE¼SE¼, and SW¼SE¼;
Sec. 30, lots 1, 3, NW¼NE¼, and SE¼NW¼.
T. 13 N., R. 19 E.,
Sec. 2, lot 4;
Sec. 21, lots 1, 2, and 3;
Sec. 28, lots 5, 6, 7, and 9;
Sec. 29, lots 4, 5, and NW¼SE¼;
Sec. 31, E½SE¼;
Sec. 32, lots 2, 3, 4, 5, 8, 9, 10, 11, W½NW¼, and SW¼SE¼;
Sec. 33, NW¼NW¼.
T. 14 N., R. 19 E.,
Sec. 2, lots 2, 8, 11, SW¼NE¼, and SW¼SE¼;
Sec. 10, E½SW¼;
Sec. 11, lots 1 and 4;
Sec. 13, lot 4;
Sec. 14, E½NE¼;
Sec. 15, E½NW¼;
Sec. 23, lots 1, 4, and 5;
Sec. 24, lots 1, 2, and NW¼SW¼.

In DA–527

T. 17 N., R. 24 E.,
Sec. 5, lot 1, SE¼NE¼, NE¼SE¼, and S½SE¼;
Sec. 8, W½NE¼, E½NW¼, and E½SE¼;
Sec. 9, SW¼SW¼;
Sec. 15, SW¼SW¼;
Sec. 22, N½N½;
Sec. 23, SW¼NW¼, NE¼SW¼, and SE¼SE¼;
Sec. 25, NW¼NW¼ and SE¼SE¼.
T. 18 N., R. 24 E.,
Sec. 4, NW¼SW¼ and SE¼SW¼;
Sec. 9, E½W½;
Sec. 16, E½W½;
Sec. 21, E½W½.
T. 19 N., R. 24 E.,
Sec. 4, lots 5, and 7;
Sec. 9, lot 1;
Sec. 15, SW¼NW¼ and NW¼SW¼.
T. 20 N., R. 24 E.,
Sec. 32, SW¼NE¼, E½NW¼, NW¼SE¼, and SE¼SE¼.

The areas described aggregate approximately 5,901 acres.

2. By virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141), and pursuant to Executive Order No. 10355 of May 26, 1952, and by virtue of the authority contained in section 1 of the act of March 3, 1879, and as Secretary of the Interior, and pursuant to the determination of the Federal Power Commission in DA–522–Idaho and DA–527–Idaho, it is ordered as follows:

a. The Executive order of November 12, 1911, establishing Power Site Reserve No. 223, and the departmental order of January 12, 1943, establishing Power Site Classification No. 336, are hereby revoked so far as they affect the following-described lands (DA–522):

BOISE MERIDIAN

T. 12 N., R. 18 E.,
Sec. 25, NW¼SW¼;
Sec. 35, W½SE¼.
T. 12 N., R. 19 E.,
Sec. 5, SW¼NW¼;
Sec. 6, SE¼SE¼;
Sec. 7, lot 9;
Sec. 18, SE¼SE¼;
Sec. 19, NE¼NE¼ and SE¼SE¼;
Sec. 30, lot 4 and NE¼SW¼.
T. 13 N., R. 19 E.,
Sec. 11, NE¼SW¼;
Sec. 31, W½SE¼.
T. 14 N., R. 19 E.,
Sec. 11, E½SE¼.

b. The Executive order of February 28, 1912, establishing Power Site Reserve No. 221, and the departmental order of March 30, 1910, establishing Power Site Reserve No. 134, are hereby revoked so far as they affect the following-described lands (DA–527):

BOISE MERIDIAN

T. 17 N., R. 24 E.,
Sec. 8, NW¼SE¼;
Sec. 25, SW¼NW¼ and NW¼SW¼.
T. 18 N., R. 24 E.,
Sec. 4, W½NW¼, SE¼NW¼, and NE¼SW¼.
T. 19 N., R. 24 E.,
Sec. 4, lots 3, 4, 6, SE¼NW¼, and NE¼SW¼;
Sec. 9, lots 2, 3, and 4;
Sec. 15, W½NE¼, N½NW¼, SE¼NW¼, and NE¼SW¼;
Sec. 21, SE¼NW¼, NE¼SW¼, and SW¼SE¼;
Sec. 28, NE¼NE¼, SE¼SW¼, and NW¼SE¼;
Sec. 33, E½NW¼ and NE¼SW¼.
T. 20 N., R. 24 E.,
Sec. 29, SE¼SW¼;
Sec. 32, NE¼SE¼;
Sec. 33, SW¼SW¼.
T. 17 N., R. 25 E.,
Sec. 32, SE¼SW¼.

The areas described aggregate approximately 2,024 acres.

3. The following lands will remain in existing withdrawals for reclamation and power purposes:

T. 12 N., R. 18 E.,
Sec. 25, lots 3 to 7, incl. and SE¼NW¼.
T. 14 N., R. 18 E.,
Sec. 2, lots 3, 4, SW¼NE¼, SE¼NW¼, and N½SW¼.
T. 14 N., R. 19 E.,
Sec. 2, lot 2;
Sec. 10, E½SW¼;
Sec. 15, E½NW¼.

4. The S½NW¼, section 15, T. 19 N., R. 24 E., is withdrawn for the Salmon National Forest.

5. The lands are situated in part within the main valley of the Lemhi River drainage, and in part near the main Salmon River. Vegetation consists of sage brush and native grasses. Topography ranges from gently to severe undulating and steep rocky hillsides.

6. Subject to valid existing rights, the provisions of existing withdrawals, and requirements of applicable law, the lands are hereby opened to filing of applications, selections, and locations in accordance with the following, the lands described in paragraph 1 hereof, being opened subject to the provisions of section 24 of the Federal Power Act as amended:

a. Applications and selections under the nonmineral public land laws, may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) Until 10:00 a.m. on June 22, 1961, the State of Idaho shall have a preferred right of application to select the lands in accordance with and subject to the provisions of subsection (c) of section 2 of the act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 851–852), and the regulations in 43 CFR. During this period the State may also apply for the reservation to it or to any of its political subdivisions under any law or regulation applicable thereto, of any of the lands, required for rights-of-way or materials sites, in accordance with the provisions of section 24 of the Federal Power Act, supra.

(3) All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on June 22, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

b. The lands have been open to applications and offers under the mineral leasing laws, and to location under the United States mining laws pursuant to the act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

7. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their applications, setting forth all facts relevent to their claims.

Inquiries concerning the lands should be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 21, 1960.

[F.R. Doc. 60–11990; Filed, Dec. 27, 1960; 8:45 a.m.]

[Public Land Order 2240]

[Idaho 011466]

IDAHO

Partly Revoking Reclamation Withdrawal (Minidoka Project)

By virtue of the authority contained in section 3 of the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416), it is ordered as follows:

1. The departmental order of March 18, 1908, withdrawing the following-described lands for reclamation purposes in connection with the Minidoka Project is hereby revoked:

BOISE MERIDIAN

T. 7 S., R. 25 E.,
Sec. 35, SW¼SW¼SW¼.

Containing 10 acres.

2. Subject to any existing valid rights and the requirements of applicable law, the lands are hereby opened to filing applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications and selections under the nonmineral public land laws presented prior to 10:00 a.m. on January 26, 1961, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

3. The lands have been open to applications and offers under the mineral leasing laws. They will be open to location under the mining laws beginning at 10:00 a.m. on January 26, 1961. (The State of Idaho has waived its preference rights of application under subsection (c) of section 2 of the Act of August 27, 1958 (72 Stat. 928; 43 U.S.C. 416)).

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Boise, Idaho.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 21, 1960.

[F.R. Doc. 60–11991; Filed, Dec. 27, 1960; 8:45 a.m.]

[Public Land Order 2241]

[1905869]

CALIFORNIA

Opening Lands Withdrawn in Power Project No. 1870

1. The Federal Power Commission, under provisions of section 24 of the Federal Power Act has vacated the withdrawal of the following-described lands, created by the filing on December 18, 1941, by Southern California Edison Company, Ltd., of an application for preliminary permit for proposed Project No. 1870:

MOUNT DIABLO MERIDIAN

T. 9 S., R. 23 E.,
Sec. 9, S½S½SE¼;
Sec. 11, S½NE¼NE¼, S½NE¼, SE¼NW¼, N½NE¼SE¼, W½SE¼, E½SW¼, and E½W½SW¼;
Sec. 12, S½N½, S½N½NW¼, N½SE¼, SE¼SE¼, N½N½SW¼;
Sec. 13, NE¼NE¼;
Sec. 14, W½NE¼, E½NW¼, SW¼NW¼, E½NW¼NW¼, NW¼SE¼, N½SW¼, SW¼SW¼, and N½SE¼SW¼;
Sec. 15, S½S½NE¼, W½NW¼, S½SE¼NW¼, N½S½, SE¼SE¼, N½SW¼SE¼, and SE¼SW¼SE¼;
Sec. 16, E½, N½NE¼NW¼, S½SE¼NW¼, and SW¼;
Sec. 17, S½;
Sec. 18, E½SE¼;
Sec. 20, N½N½, SE¼NE¼, and N½SW¼NE¼;
Sec. 21, N½NE¼, N½SE¼NE¼, SW¼SE¼NE¼, SW¼NE¼, NW¼, NW¼SE¼, and NE¼SW¼.
T. 9 S., R. 24 E.,
Sec. 7, lot 4;
Sec. 17, lots 2 and 3;
Sec. 18, lots 5 to 10 incl.

The areas described aggregate 3,462.25 acres.

2. All the lands are in the Sierra National Forest. All the lands are included in other withdrawals for power purposes except the following:

MOUNT DIABLO MERIDIAN

T. 9 S., R. 23 E.,
Sec. 9, S½S½SE¼;
Sec. 12, SE¼NE¼ and S½ N½NW¼;
Sec. 15, NW¼NW¼;
Sec. 16, N½NE¼ and N½NE¼NW¼;
Sec. 20, SE¼NE¼;
Sec. 21, NW¼, NE¼SW¼, and NE¼SE¼ NE¼.

Aggregating 510 acres.

3. The following-described lands in Power Site Classification No. 138 for transmission line purposes are subject to the general determination of the Federal Power Commission of April 17, 1922.

MOUNT DIABLO MERIDIAN

T. 9 S., R. 23 E.,
Sec. 15, S½S½NE¼ and S½SE¼NW¼;
Sec. 16, N½NE¼.

Aggregating 140 acres.

4. Until 10:00 a.m. on March 23, 1961, the State of California shall have a preferred right to apply under any statute or regulation applicable thereto, for the reservation to the State or to any of its political subdivisions of any of the lands described in paragraphs 2 and 3 of this order required as a right-of-way, or as a source of materials for the construction and maintenance of such highways, pursuant to the provisions of section 24 of the Federal Power Act of 1920, as amended.

5. At 10:00 a.m. on March 23, 1961, the lands described in paragraphs 2 and 3 of this order shall be open to such forms of disposition as may by law be made of national forest lands, any disposition of the lands described in paragraph 3, however, to be subject to the provisions of section 24 of the Federal Power Act.

Inquiries concerning the lands shall be addressed to the Manager, Land Office, Bureau of Land Management, Sacramento, California.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 21, 1960.

[F.R. Doc. 60–11992; Filed, Dec. 27, 1960; 8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

Washington 25, D.C.

[FCC 60–1525]

PART 7—STATIONS ON LAND IN THE MARITIME SERVICES

PART 8—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Radiotelephony for Navigational Communications

In the matter of radiotelephony for navigational communications. Extension of time to file applications and deletion of termination date of initial licenses for the frequency 156.65 Mc.

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 21st day of December 1960;

The Commission having under consideration the above-captioned matter:

It appearing that the Commission has provided for an operational evaluation trial period for radiotelephone communication to be conducted on a single short-range frequency (VHF 156.65 Mc) for the exchange of marine navigational information and related emergency messages directly between navigating personnel stationed on the bridges of ships at sea and on inland waters, and between ship and shore stations concerned with the safe movement of ships through locks and bridge structures spanning inland waters; and

It further appearing that the present provisions of Parts 7 and 8 of the Commission's rules prohibit the filing of applications after December 31, 1960, for limited coast stations (developmental), marine utility (developmental), and/or limited ship stations (developmental) on the frequency 156.65 Mc, and also provide that all initial licenses for such frequency shall terminate April 1, 1961; and

It further appearing that the time limit for filing such applications should be extended indefinitely and provision made for the issuance of initial licenses for a full one-year period in order to allow the Commission additional time to consider this matter; and

It further appearing that the provisions of section 4 (a) and (b) of the Administrative Procedure Act need not be complied with (1) since the amendments herein ordered delete certain obsolete requirements and are of minor effect in that there is no change in the nature of the developmental operation authorized; (2) since it is impracticable to follow the rule making procedure in view of the cut-off date of December 31, 1960, for the filing of applications for the above-men-

tioned stations; and (3) since the present rule indicates, with respect to the extension of the time limit on the filing of applications, that the Commission may, in its discretion, take any action it deemed appropriate; and

It further appearing that, for the same reasons and because the rule amendments herein ordered relieve restrictions which would otherwise be applicable, the provisions of Section 4(c) of the Administrative Procedure Act need not be complied with;

It is ordered, That pursuant to section 303(r) of the Communications Act of 1934, as amended, Parts 7 and 8 of the Commission's rules are amended as set forth below, effective December 30, 1960.

Released: December 22, 1960.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Acting Secretary.

A. Part 7 is amended as follows:

1. Section 7.506(b)(2) is amended to read as follows:

§ 7.506 Report of operation required.

* * * * *

(b) * * *

(2) A report on the results of the developmental program shall be filed by each licensee, or by one or more such licensees acting jointly as a coordinated group, within 60 days of the expiration of each developmental station license.

2. The text of § 7.508 is deleted and the word "[Reserved]" is inserted in lieu thereof, as follows:

§ 7.508 [Reserved]

3. Section 7.509 is amended to read as follows:

§ 7.509 Time limit on filing of initial applications for operation on 156.65 Mc.

Applications for developmental limited coast station licenses to authorize, initially, operation on the radio channel of which 156.65 Mc is the authorized carrier frequency may be filed until such time, in the discretion of the Commission, a need develops for discontinuance of this category of application.

B. Part 8 is amended as follows:

1. Section 8.436(b)(3) is amended to read as follows:

§ 8.436 Report of operation required.

* * * * *

(b) * * *

(3) A report on the results of the developmental program shall be filed by each licensee, or by one or more such licensees acting jointly as a coordinated group, within 60 days of the expiration of each developmental station license.

2. The text of § 8.438 is deleted and the word "[Reserved]" is inserted in lieu thereof, as follows:

§ 8.438 [Reserved]

3. Section 8.439 is amended to read as follows:

§ 8.439 Time limit on filing of initial applications for operation on 156.65 Mc.

Applications for developmental ship station licenses to authorize, initially, operation on the radio channel of which 156.65 Mc is the authorized carrier frequency may be filed until such time, in the discretion of the Commission, a need develops for the discontinuance of this category of application.

[F.R. Doc. 60-12028; Filed, Dec. 27, 1960; 8:49 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 120—ANNUAL, SPECIAL OR PERIODICAL REPORTS

Railroad Annual Report Form C

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 30th day of November A.D. 1960.

The matter of annual reports of line-haul and switching and terminal railroad companies of Class II being under further consideration, and the changes to be made by this order being minor changes in the data to be furnished, rule-making procedures under section 4(a) of the Administrative Procedure Act, 5 U.S.C. 1003, being deemed unnecessary:

It is ordered, That § 120.12 of the order of December 2, 1959, in the matter of Railroad Annual Report Form C, be, and it is hereby, modified and amended, with respect to annual reports for the year ended December 31, 1960, and subsequent years, to read as shown below.

It is further ordered, That § 120.12, be, and it is hereby, modified and amended to read as follows:

§ 120.12 Form prescribed for Class II railroads.

Commencing with the year ended December 31, 1960, and for subsequent years thereafter, until further order, all line-haul and switching and terminal railroad companies of Class II, as described in § 126.1 of this chapter, all carriers with average annual operating revenues of less than $3,000,000, subject to the provisions of section 20, part I of the Interstate Commerce Act, are required to file annual reports in accordance with Railroad Annual Report Form C, which is attached to and made a part of this section.[1] Such annual report shall be filed in duplicate in the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, Washington 25, D.C., on or before March 31 of the year following the year to which it relates.

(Sec. 12, 24 Stat. 383, as amended; 49 U.S.C. 12. Interpret or apply sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

And it is further ordered, That copies of this order and of Annual Report Form C shall be served on all line-haul and switching and terminal railroad companies of Class II, subject to the provisions of section 20, part I, of the Interstate Commerce Act, and upon every receiver, trustee, executor, administrator or assignee of any such railroad company, and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Division 2.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-12003; Filed, Dec 27, 1960; 8:46 a.m.]

[1] Filed as part of the original document.

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

The following regulations are hereby prescribed under sections 382 (relating to special limitations on net operating loss carryovers) and 394 (relating to effective date of part V, subchapter C, chapter 1) of the Internal Revenue Code of 1954:

§ 1.382(a) Statutory provisions; special limitations on net operating loss carryovers; purchase of a corporation and change in its trade or business.

SEC. 382. *Special limitations on net operating loss carryovers*—(a) *Purchase of a corporation and change in its trade or business*—(1) *In general.* If, at the end of a taxable year of a corporation—

(A) Any one or more of those persons described in paragraph (2) own a percentage of the total fair market value of the outstanding stock of such corporation which is at least 50 percentage points more than such person or persons owned at—

(i) The beginning of such taxable year, or

(ii) The beginning of the prior taxable year,

(B) The increase in percentage points at the end of such taxable year is attributable to—

(i) A purchase by such person or persons of such stock, the stock of another corporation owning stock in such corporation, or an interest in a partnership or trust owning stock in such corporation, or

(ii) A decrease in the amount of such stock outstanding or the amount of stock outstanding of another corporation owning stock in such corporation, except a decrease resulting from a redemption to pay death taxes to which section 303 applies, and

(C) Such corporation has not continued to carry on a trade or business substantially the same as that conducted before any change in the percentage ownership of the fair market value of such stock,

the net operating loss carryovers, if any, from prior taxable years of such corporation to such taxable year and subsequent taxable years shall not be included in the net operating loss deduction for such taxable year and subsequent taxable years.

(2) *Description of person or persons.* The person or persons referred to in paragraph (1) shall be the 10 persons (or such lesser number as there are persons owning the outstanding stock at the end of such taxable year) who own the greatest percentage of the fair market value of such stock at the end of such taxable year; except that, if any other person owns the same percentage of such stock at such time as is owned by one of the 10 persons, such person shall also be included. If any of the persons are so related that such stock owned by one is attributed to the other under the rules specified in paragraph (3), such persons shall be considered as only one person solely for the purpose of selecting the 10 persons (more or less) who own the greatest percentage of the fair market value of such outstanding stock.

(3) *Attribution of ownership.* Section 318 (relating to constructive ownership of stock) shall apply in determining the ownership of stock, except that section 318(a)(2)(C) shall be applied without regard to the 50 percent limitation contained therein.

(4) *Definition of purchase.* For purposes of this subsection, the term "purchase" means the acquisition of stock, the basis of which is determined solely by reference to its cost to the holder thereof, in a transaction from a person or persons other than the person or persons the ownership of whose stock would be attributed to the holder by application of paragraph (3).

§ 1.382(a)-1 Purchase of a corporation and change in its trade or business.

(a) *In general.* (1) Section 382(a) provides for the complete elimination of the net operating loss carryovers of a corporation (hereinafter called a "loss corporation") if certain circumstances exist. In general, section 382(a) applies only if, at the end of a loss corporation's taxable year, there has been a change (occurring in specified ways) since the beginning of such year, or since the beginning of the prior taxable year, of at least 50 percent in the ownership of the corporation's outstanding stock (hereinafter called a "change of ownership"), and only if the corporation has not continued to carry on substantially the same trade or business as that conducted before such change. If section 382(a) is applicable at the end of a taxable year, then the entire net operating loss carryovers from prior taxable years of such corporation are excluded in computing the net operating loss deduction for such taxable year and for subsequent taxable years.

(2) For purposes of this section, (i) section 318(a) shall apply in determining ownership of stock, except that section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation contained therein, and (ii) stock acquired by the exercise of an option shall be considered as having been acquired on the date the option was acquired. Thus, if A acquires on December 15, 1959, an option to purchase 50 percent of the outstanding stock of X Corporation and if A acquires the stock by exercising the option on January 15, 1961, A will be considered as having purchased the stock on December 15, 1959.

(3) For the definition of the term "stock" as used in this section, see § 1.382(c)-1.

(b) *Circumstances under which section 382(a) is applicable.* Section 382(a) applies if, at the end of a taxable year of a loss corporation, all of the following circumstances exist:

(1) Any one or more of those persons described in paragraph (c) of this section own, actually and constructively, a percentage of the total fair market value of the outstanding stock of such corporation which is at least 50 percentage points more than such person or persons owned at the beginning of such taxable year or at the beginning of the prior taxable year;

(2) The increase in percentage points referred to in subparagraph (1) of this paragraph is attributable to (i) a purchase or purchases (as defined in section 382(a)(4) and paragraph (e) of this section) by the person or persons specified in subparagraph (1) of this paragraph of such stock or the stock of another corporation owning stock in such loss corporation, (ii) the purchase or purchases by such person or persons of an interest in a partnership or trust owning stock in such loss corporation, (iii) a decrease in the amount of outstanding stock of such loss corporation or in the amount of outstanding stock of another corporation owning stock in such loss corporation, except a decrease resulting from a redemption to pay death taxes to which section 303 applies, or (iv) a combination of the transactions described in subdivisions (i), (ii), and (iii) of this subparagraph; and

(3) The loss corporation has not continued to carry on a trade or business substantially the same as that conducted before any increase in percentage points described in subparagraph (2) of this paragraph.

(c) *Description of person or persons.* (1) The persons specified in paragraph (b)(1) of this section shall be the 10 persons who own, actually and constructively, the greatest percentage of the fair market value of the outstanding stock of a loss corporation at the end of a taxable year (or such lesser number as there are persons owning the outstanding stock at the end of such taxable year), except that if any two or more persons own the same percentage of such stock and it is necessary to include one

such person in order to select the 10 persons, then all of such persons shall be included. Any such persons so selected who are so related that stock owned by one is attributed to another under the constructive ownership rule specified in paragraph (a)(2) of this section shall be considered as only one person solely for the purpose of selecting such 10 persons. Although considered as one person for purposes of selecting such 10 persons, such related persons are considered as separate persons for all other purposes of section 382(a).

(2) In selecting the 10 persons (more or less) described in subparagraph (1) of this paragraph, the following procedure shall be used:

(i) First, determine those persons who own, actually and constructively, stock of the loss corporation and determine the fair market value of the stock owned, actually and constructively, by such persons.

(ii) Second, select from such persons the number of persons required by the first sentence of subparagraph (1) of this paragraph.

(iii) Third, if any of the persons so selected are so related that stock of one is attributed to another under the rule specified in paragraph (a)(2) of this section, such persons shall be considered as one person.

(iv) Fourth, if, as the result of considering two or more persons as one person, the number of persons previously selected drops below ten, additional persons shall be selected in the manner prescribed in subdivision (ii) of this subparagraph.

(v) Finally, if any such additional persons are related under the rule specified in paragraph (a)(2) of this section to persons previously selected, or to one another, then the principles of subdivisions (iii) and (iv) of this subparagraph shall again be applied.

(3) The application of this paragraph may be illustrated by the following example:

Example. (i) Assume that the outstanding stock of a loss corporation (based on fair market value) is owned, actually and constructively, at the end of a taxable year by the following individuals and partnership:

Person	Percentage of stock actually owned	Percentage of stock owned actually and constructively
A	15	15
B (A's wife)	0	15
C (A's son)	0	15
D (A's daughter)	0	15
GH (a partnership)	0	20
E	16	20
F	15	15
G (a 50-percent partner in GH)	10	15
H (a 50-percent partner in GH)	10	15
I	5	5
J	5	5
K	5	5
L (E's grandson)	4	4
M	4	4
N	3	3
O	2	2
P	2	2
Q	2	2
R	2	2

(ii) The persons selected under subparagraph (2)(ii) of this paragraph are the following 12 persons: A, B, C, D, partnership GH, E, F, G, H, I, J, and K (I, J, and K must all be included because each owns the same percentage of stock). However, A, B, C, and D are considered as one person for purposes of this paragraph because they are related under the rule specified in paragraph (a)(2) of this section, and G, H, and partnership GH are considered as one person for the same reason. Therefore, it is necessary to select three additional persons, L, M, and N, in order to reach the required number of ten. However, since L is related to one of the persons previously selected, he cannot be considered a separate person. It therefore becomes necessary to select an additional person and since O, P, Q, and R each owns the same percentage of stock, they all must be selected. Accordingly, the 10 persons (more or less) who own the greatest percentage of the fair market value of the outstanding stock are individuals A through R and partnership GH.

(d) *Change of ownership.* (1) The determination of whether a change of ownership has occurred under section 382(a) is made as of the close of a taxable year of a loss corporation. A "change of ownership" has occurred only if the stock ownership of the 10 persons (more or less) selected under paragraph (c) of this section has increased at least 50 percentage points using a prescribed period and such increase is attributable to a transaction or transactions described in section 382(a)(1)(B) and in paragraphs (e), (f), and (g) of this section. The aggregate increase of at least 50 percentage points during a prescribed one time during the taxable year or during the prior taxable year, or may take place in several transactions occurring during such 2-year period. An increase of 50 percentage points is not the same thing as an increase of 50 percent. Thus, a stockholder who owns 4 percent of the fair market value of the stock of a corporation and who increases his ownership to 6 percent has had a 50-percent increase in ownership but an increase in percentage points of only 2.

(2)(i) It is unnecessary to determine whether a "change of ownership" has occurred unless, as of the end of any taxable year (hereinafter called a "current taxable year"), the loss corporation has changed its trade or business after the date of the first increase in percentage points during such taxable year, or during the prior taxable year, which would be taken into account under subparagraph (3) of this paragraph in determining whether a "change of ownership" has occurred.

(ii) If, as of the end of the current taxable year, the loss corporation has changed its trade or business after the date of the first increase in percentage points during such current year, then in determining whether a "change of ownership" has occurred it is first necessary to compare ownership of the outstanding stock at the end of the current taxable year with such ownership at the beginning of such current taxable year. If a "change of ownership" has not occurred as a result of such comparison, then it is necessary to compare ownership of the outstanding stock at the end of the current taxable year with such ownership at the beginning of the prior taxable year.

(iii) If, as of the end of the current taxable year, the loss corporation has not changed its trade or business after the date of the first increase in percentage points during such current year, but the corporation has changed its trade or business after the date of the first increase in percentage points during the prior taxable year, then in determining whether a "change of ownership" has occurred it is necessary to compare ownership of the outstanding stock at the end of the current taxable year with such ownership at the beginning of the prior taxable year.

(iv) For purposes of subdivisions (ii) and (iii) of this subparagraph, an increase in percentage points means only an increase in percentage ownership which would be taken into account under subparagraph (3) of this paragraph in determining whether a "change of ownership" has occurred.

(v) A loss corporation has changed its trade or business during a period between one date and another date only if, as of the later date, the corporation has not continued to carry on a trade or business substantially the same as that conducted immediately before the earlier date. See paragraph (h) of this section for rules relating to change in trade or business.

(3) In determining whether a "change of ownership" has occurred, the following procedure shall be used:

(i) First, as of the close of a taxable year, the percentage of the total fair market value of stock owned, actually and constructively, by each of the 10 persons (more or less) selected under paragraph (c) of this section shall be computed. For this purpose, each person included in selecting such 10 persons shall be treated as a separate person even though any such persons are considered as only one person under such paragraph (c) in selecting the 10 persons who own the greatest percentage of the fair market value of the outstanding stock.

(ii) Second, the percentage of the total fair market value of stock owned, actually and constructively, by each of such persons as of the beginning of the current taxable year or the prior taxable year, whichever is applicable, shall be computed.

(iii) Third, after computing the percentage of the total fair market value of stock owned by each of the persons as of the close of the current taxable year and as of the beginning of the applicable year, a comparison shall be made between the percentages owned by each such person as of each such date.

(iv) Fourth, with respect to each person who sustained an increase in percentage ownership, the portion of such increase which is attributable to a transaction or transactions described in paragraphs (e), (f), and (g) of this section shall be determined.

(v) Finally, the increases in percentage ownership attributable to such transaction or transactions shall be totaled and the resulting figure shall be used in determining whether a "change of ownership" has occurred.

(4) This paragraph may be illustrated by the following examples:

Example (1). Assume that a loss corporation has changed its trade or business during the current taxable year ending on December 31, 1960. Assume further that the following table shows the percentage of the fair market value of the outstanding stock owned by each stockholder as of December 31, 1960, and the percentages owned by such stockholders as of January 1, 1960, and January 1, 1959. The percentage of stock actually owned is followed in parentheses by the percentage owned actually and constructively under section 318(a). It is assumed that all increases in actual ownership are attributable to a purchase or purchases of stock described in paragraph (e) of this section.

Stockholder	Dec. 31, 1960	Jan. 1, 1960	Jan. 1, 1959
	Percent	*Percent*	*Percent*
A	10(23)	15(15)	15(15)
B (A's wife)	10(23)	0(15)	0(15)
C	10(25)	10(25)	0(0)
D (C's wife)	5(25)	5(25)	0(10)
E (son of C and D)	5(20)	5(20)	0(0)
F (daughter of C and D)	5(20)	5(20)	0(0)
G	10(10)	10(10)	0(0)
H	5(5)	0(0)	0(0)
I	5(5)	0(0)	0(0)
J	5(5)	0(0)	0(0)
K	5(5)	0(0)	0(0)
L	5(5)	5(5)	5(5)
M	4(4)	0(0)	0(0)
N	4(4)	0(0)	0(0)
O	3(3)	3(3)	3(3)
P	3(3)	3(3)	3(3)
Q	3(3)	3(3)	3(3)
R (grandson of A and B)	3(3)	0(0)	0(0)
S (D's father)	0(15)	0(15)	10(10)

(i) The 10 persons (more or less) who own the greatest percentage of the fair market value of the outstanding stock on December 31, 1960 (as selected under paragraph (c) of this section), are A through N and S. Each of such persons is treated as a separate person in computing increases in percentage ownership.

(ii) A and B each owns, actually and constructively, 23 percent of the outstanding stock on December 31, 1960, 15 percent on January 1, 1960, and 15 percent on January 1, 1959. Therefore, as of December 31, 1960, A and B each has sustained an increase of 8 percentage points since January 1, 1960, and a similar increase since January 1, 1959. A's increase is not attributable to a purchase by him. B's increase, however, is attributable to a purchase by her of 10 percent of the outstanding stock. Therefore, B's increase of 8 percentage points is taken into account in determining whether a "change of ownership" has occurred.

(iii) C owns, actually and constructively, 25 percent of the outstanding stock on December 31, 1960, 25 percent on January 1, 1960, and none on January 1, 1959. Therefore, as of December 31, 1960, C has sustained no increase since January 1, 1960, but he has sustained an increase of 25 percentage points since January 1, 1959. Of this increase 10 percentage points are attributable to a purchase by C.

(iv) D owns, actually and constructively, 25 percent of the outstanding stock on December 31, 1960, 25 percent on January 1, 1960, and 10 percent on January 1, 1959. Therefore, as of December 31, 1960, D has sustained no increase since January 1, 1960, but she has sustained an increase of 15 percentage points since January, 1 1959. Of this increase 5 percentage points are attributable to a purchase by D.

(v) E and F each owns, actually and constructively, 20 percent of the outstanding stock on December 31, 1960, 20 percent on January 1, 1960, and none on January 1, 1959. Therefore, as of December 31, 1960, E and F each has sustained an increase of 20 percentage points since January 1, 1959, of which 5 percentage points in each case are attributable to a purchase.

(vi) G has sustained an increase of 10 percentage points since January 1, 1959, all of which are attributable to a purchase by G.

(vii) H, I, J, and K each has sustained an increase of 5 percentage points since January 1, 1960, and a similar increase since January 1, 1959, all of which are attributable to purchases.

(viii) L has sustained no increase in percentage points.

(ix) M and N each has sustained an increase of 4 percentage points since January 1, 1960, and a similar increase since January 1, 1959, all of which are attributable to purchases.

(x) S has sustained an increase of 5 percentage points since January 1, 1959, but the increase is not attributable to a purchase by S.

(xi) The aggregate increase in percentage ownership (attributable to purchases) since January 1, 1960, is 36 percentage points (8 points from B, 5 each from H, I, J, and K, and 4 each from M and N).

(xii) Since an aggregate increase (attributable to transactions described in paragraph (e)) in stock ownership of at least 50 percentage points has not occurred since January 1, 1960, the beginning of the taxable year, it is necessary to determine whether such an increase has occurred since January 1, 1959, the beginning of the prior taxable year. The aggregate increase in percentage ownership (attributable to purchases) since January 1, 1959, is 71 percentage points (8 from B, 10 each from C and G, 5 each from D, E, F, H, I, J, and K, and 4 each from M and N). Therefore, section 382(a) applies as of December 31, 1960, to eliminate any net operating loss carryovers from 1959 and earlier taxable years to 1960 and subsequent taxable years.

Example (2). Assume that a loss corporation has changed its trade or business during the current taxable year ending on December 31, 1960. Assume further that the following table shows the percentage of the fair market value of the outstanding stock owned by each stockholder as of December 31, 1960, and the percentages owned by such stockholders as of January 1, 1960. The percentage of stock actually owned is followed in parentheses by the percentage owned actually and constructively under section 318(a). It is assumed that all increases in actual ownership are attributable to a purchase or purchases of stock described in paragraph (e) of this section.

Stockholder	Dec. 31, 1960	Jan. 1, 1960
	Percent	*Percent*
Partnership AB	20(100)	0(40)
A (a 50-percent partner in AB)	40(70)	40(40)
B (a 50-percent partner in AB)	30(70)	0(20)
C (B's wife)	10(70)	0(20)

(i) Since there are less than 10 stockholders as of December 31, 1960, all of such stockholders are included among the persons who own the greatest percentage of stock.

(ii) Since partnership AB owns, actually and constructively, 100 percent of the outstanding stock on December 31, 1960, and 40 percent on January 1, 1960, AB has sustained an increase of 60 percentage points. Of this increase 20 percentage points are attributable to a purchase by AB.

(iii) A has sustained an increase of 30 percentage points, but none of such increase is attributable to a purchase by A.

(iv) B has sustained an increase of 50 percentage points, of which 30 are attributable to a purchase by B.

(v) C has sustained an increase of 50 percentage points, of which 10 are attributable to a purchase by C.

(vi) Since there has been an aggregate increase (attributable to transactions described in paragraph (e) of this section) of 60 percentage points since January 1, 1960, section 382(a) applies as of December 31, 1960, to eliminate any net operating loss carryovers from 1959 and earlier taxable years to 1960 and subsequent taxable years.

Example (3). (i) Assume that on June 15, 1959, A, an individual, purchases (within the meaning of section 382(a)(4) and paragraph (e) of this section) 100 percent of the outstanding stock of X Corporation, a loss corporation which makes its return on the basis of the calendar year. On June 30, 1959, A transfers such stock to Y Corporation, the entire outstanding stock of which is owned by A. During September 1959, the business of X Corporation is changed.

(ii) Since, as of December 31, 1959, A is considered under section 318(a) as owning 100 percent of the outstanding stock of X Corporation and he owned none of such stock on January 1, 1959, and since A's increase in percentage points is attributable to a purchase of such stock by him, section 382(a) applies as of December 31, 1959, to eliminate any net operating loss carryovers from 1958 and earlier taxable years to 1959 and subsequent taxable years.

(e) *Meaning of "purchase".* (1) In determining whether a "change of ownership" has occurred, an increase in stock ownership which is attributable to an acquisition of stock by the person sustaining the increase (whether the stock acquired is stock of the loss corporation or of a corporation owning stock in the loss corporation) shall be taken into account only if such increase is attributable to a purchase (or purchases) by such person, as defined in section 382(a)(4) and this paragraph. There is a "purchase" of stock only if—

(i) The basis of such stock is determined solely by reference to its cost to the acquirer thereof, and

(ii) Immediately before its acquisition the ownership of such stock would not be attributed to the acquirer by application of the constructive ownership rule of paragraph (a)(2) of this section.

For purposes of subdivision (i) of this subparagraph, if the basis of the stock is determined by reference to its basis in the hands of the transferor thereof or of another person, or by reference to the basis of property (other than cash or its equivalent) exchanged for such stock, then the basis of such stock is not determined solely by reference to its cost to the acquirer. Thus, an acquisition of stock by gift or bequest is not a purchase. However, if stock is received in a taxable exchange, its basis is considered to be determined solely by reference to its cost to the acquirer. Thus, if A owns a house which he exchanges for stock in a loss corporation, the basis of the stock is determined solely by reference to its cost to A. For purposes of subdivision (ii) of this subparagraph, if, immediately before any acquisition of stock, the acquirer would be considered under the constructive ownership rule of paragraph (a)(2) of this section as owning less than 100 percent of the stock owned by the transferor, then the acquirer shall be considered as owning, immediately before such acquisition, only

that proportion of the stock so acquired as is equal to the proportion of the total stock owned by the transferor which the acquirer would be so considered as owning at such time. Thus, if A acquires stock from B, his wife, A has not made a "purchase" because all the stock so acquired would be considered as owned by A immediately before the acquisition. However, if C and D (who are otherwise unrelated) are equal partners in a partnership and if C acquires 50 shares of stock from D, only 25 of such shares will be considered as owned by C immediately before the acquisition.

(2) If a person acquires stock with a view to invoking the constructive ownership rule of paragraph (a)(2) of this section so that a later acquisition of stock by, or from, such person will not qualify as a "purchase" under section 382(a)(4), the earlier acquisition will be disregarded solely for the purpose of determining whether the later acquisition is a "purchase." Moreover, in determining whether an acquisition of stock is a "purchase" under section 382(a)(4), negligible holdings of stock or of an interest in a partnership or trust will be disregarded. This subparagraph may be illustrated by the following example:

Example. A owns all or part of the outstanding stock of X Corporation, a loss corporation. A desires to sell his stock to Y Corporation and Y Corporation desires to purchase such stock. However, Y Corporation wishes to avoid the provisions of section 382(a). Therefore, A buys stock of Y Corporation and thereafter Y Corporation acquires for cash all or part of A's stock in X Corporation. Since the purpose of A's acquisition of stock in Y Corporation is avoidance of the provisions of section 382(a), such acquisition is ignored and Y Corporation's acquisition from A of stock in X Corporation is considered a "purchase" under section 382(a)(4).

(f) *Increase in percentage points attributable to an indirect purchase of stock.* (1) An increase in percentage points may be attributable to a purchase of stock of a corporation which owns stock of the loss corporation. For example, if X Corporation owns 100 shares of stock of Y Corporation and if A purchases 20 percent in value of the outstanding stock of X Corporation, this will be considered a purchase by A of 20 shares of stock of Y Corporation.

(2) An increase in percentage points may also be attributable to a purchase of an interest in a partnership or trust which owns stock of the loss corporation. For example, if a partnership owns 100 shares of the stock of Y Corporation, a purchase by A of a 20-percent interest in the partnership will be considered a purchase by A of 20 shares of the stock of Y Corporation. Similarly, if a trust owns 100 shares of stock of a loss corporation, and if A purchases an interest in the trust which on an actuarial basis is worth 20 percent, this will be considered a purchase by A of 20 shares of stock of the loss corporation.

(g) *Increase in percentage points attributable to a decrease in outstanding stock.* (1) An increase in percentage points may be attributable to a decrease in the amount of outstanding stock of a loss corporation. For example, if A and B each owns 50 percent in value of the outstanding stock of X Corporation, a redemption by X Corporation of all of B's stock will increase A's ownership of stock by 50 percentage points.

(2) An increase in percentage points may also be attributable to a decrease in the outstanding stock of a corporation owning, directly or indirectly, stock in the loss corporation. For example, if X Corporation owns 100 percent of the outstanding stock of Y Corporation, a loss corporation, and if A and B each owns 50 percent of the value of the outstanding stock of X Corporation, a redemption by X Corporation of all of B's stock will increase A's indirect ownership of the outstanding stock of Y Corporation by 50 percentage points.

(3) If a decrease in the amount of outstanding stock of a corporation (whether a loss corporation or a corporation owning, directly or indirectly, stock in a loss corporation) results from a redemption to pay death taxes to which section 303 applies, such decrease shall not be taken into account in determining whether there has occurred an increase of at least 50 percentage points under paragraph (d) of this section. For purposes of the preceding sentence, a decrease in outstanding stock results from a redemption to which section 303 applies only to the extent that the amount distributed in redemption does not exceed the sum of the items described in paragraphs (1) and (2) of section 303(a). Thus, if the amount of $100,000 is distributed in redemption of 100 shares and if the sum of the items described in paragraphs (1) and (2) of section 303(a) is $60,000, a decrease in outstanding stock of only 60 shares will be considered to result from a redemption to which section 303 applies.

(h) *Change in trade or business.* (1) The provisions of section 382(a) are applicable only if the loss corporation has not continued to carry on a trade or business substantially the same as that conducted before any increase in stock ownership which is taken into account in determining under paragraph (d) of this section whether a change of ownership has occurred. The change in trade or business may occur at any time on or after the date of the earliest such increase during the period beginning on the first day of the loss corporation's prior taxable year. For example, assume that on December 31, 1958 (the end of the corporation's taxable year), the following shareholders own a percentage of the fair market value of the outstanding stock which is greater than each owned at the beginning of the corporation's prior taxable year (January 1, 1957) and that all increases are attributable to purchases within the meaning of paragraph (e) of this section. The increase in percentage points and the date of purchase is shown for each such shareholder:

Shareholder	Increase	Date of purchase
	Percent	
A	20	Sept. 15, 1958
B	20	June 15, 1958
C	10	Mar. 15, 1958
D	10	June 15, 1957

Since there have been increases in stock ownership which aggregate at least 50 percentage points, section 382(a) is applicable if the corporation has not continued to carry on a trade or business substantially the same as that conducted immediately before June 15, 1957, the date on which the first purchase occurred during the 2-year period.

(2) Section 382(a) may apply as of the close of a taxable year even though neither a change of ownership nor a change in trade or business has occurred during such year. For example, if during 1958 there is a purchase of at least 50 percent of the fair market value of a corporation's outstanding stock followed by a change in the corporation's trade or business, section 382(a) will apply as of December 31, 1958, to eliminate any net operating loss carryovers from 1957 and prior taxable years to 1958 and subsequent taxable years, and, even though no changes in stock ownership occur during 1959, section 382(a) will also apply as of December 31, 1959, to eliminate any net operating loss carryover from 1958 to 1959 and subsequent taxable years.

(3) A change in the trade or business of a corporation made in contemplation of a change in stock ownership will be treated as if such change in trade or business had occurred after such change in stock ownership. For example, if a loss corporation changes its business as part of a plan initiated by, or on behalf of, prospective buyers of the loss corporation's stock who wish to avoid the provisions of section 382(a), a subsequent sale of stock to such buyers will cause the change in business to be treated as if it had occurred after the sale.

(4) For purposes of this paragraph, the holding, purchase, or sale for investment purposes of stock, securities, or similar property shall not be considered a trade or business unless such activities historically have constituted the primary activities of the corporation.

(5) In determining whether a corporation has not continued to carry on a trade or business substantially the same as that conducted before any increase in the ownership of its stock, all the facts and circumstances of the particular case shall be taken into account. Among the relevant factors to be taken into account are changes in the corporation's employees, plant, equipment, product, location, customers, and other items which are significant in determining whether there is, or is not, a continuity of the same business enterprise. These factors shall be evaluated in the light of the general objective of section 382(a) to disallow net operating loss carryovers where there is a purchase of the stock of a corporation with losses for the purpose of using its loss carryovers to offset gains of a business unrelated to that which produced the losses. However, the prohibited utilization of net operating loss carryovers to offset gains of a business unrelated to that which produced the losses is not dependent upon considerations of purpose, motive, or intent, but rather is established by the objective facts of the particular case. The principles set forth in this subparagraph shall be applied in accordance with the rules set forth in the following subparagraphs of this paragraph.

(6) A corporation has not continued to carry on a trade or business substantially the same as that conducted before any increase in the ownership of its stock if the corporation is not carrying on an active trade or business at the time of such increase in ownership. Thus, if the corporation is inactive at the time of such an increase and subsequently is reactivated in the same line of business as that originally conducted, the corporation has not continued to carry on a trade or business substantially the same as that conducted before such increase in stock ownership. This subparagraph may be illustrated by the following examples:

Example (1). X Corporation is engaged in the business of manufacturing and selling machinery. On January 1, 1958, the corporation suspends its manufacturing activities and begins to reduce its inventory of finished products because of general adverse business conditions and lack of profits. During the period between January 1 and September 1, 1958, the business of the corporation remains dormant. On September 1, 1958, A, an individual, purchases at least 50 percent in value of X Corporation's outstanding stock. On October 1, 1958, the corporation begins to manufacture the same type of machinery it manufactured before January 1, 1958. The reactivation of the corporation in the same line of business as that conducted before January 1, 1958, does not constitute the carrying on of a trade or business substantially the same as that conducted before the increase in stock ownership.

Example (2). Y Corporation is engaged in the business of manufacturing machinery. On January 1, 1958, the corporation suspends its manufacturing activities because of a fire which disrupts the operation of its plant. During the period between January 1 and June 1, 1958, substantial efforts are made to reactivate the business of the corporation by reconstructing the damaged plant. On June 1, 1958, A, an individual, purchases at least 50 percent in value of Y Corporation's outstanding stock. On July 1, 1958, the corporation resumes its normal manufacturing activities. The fact that the corporation's normal activities are temporarily suspended at the time of the increase in ownership does not of itself constitute a failure to carry on a trade or business substantially the same as that conducted before the increase in stock ownership.

(7) A corporation has not continued to carry on a trade or business substantially the same as that conducted before an increase in the ownership of its stock if the corporation discontinues more than a minor portion of its business carried on before such increase. In determining whether the discontinued activities are more than "minor" for purposes of the preceding sentence, consideration shall be given to whether the discontinuance of the activities has the effect of utilizing loss carryovers to offset gains of a business unrelated to that which produced the losses. This subparagraph may be illustrated by the following examples:

Example (1). X Corporation, a calendar-year taxpayer, is engaged in three separate businesses, A, B, and C. Approximately one-half of X Corporation's total business activities (measured in terms of capital invested, gross income, size of payroll, and similar factors) relates to business A, 30 percent to business B, and the remaining 20 percent to business C. On December 31, 1957, X Corporation has substantial net operating loss carryovers all of which are attributable to the operation of business C. On June 1, 1958, Y Corporation purchases at least 50 percent in value of X Corporation's outstanding stock and during 1959 X Corporation discontinues business C. As of December 31, 1959, X Corporation has not continued to carry on substantially the same trade or business as that conducted prior to the increase in ownership.

Example (2). Assume the same facts as in example (1), except that all of X Corporation's net operating loss carryovers are attributable to business A and that the capital released by the discontinuance of business C is used to revitalize business A. Since the discontinuance of business C does not result in the utilization of net operating losses attributable to one business to offset gains of a business unrelated to that which produced the losses, the discontinuance of such business does not of itself constitute the failure to carry on substantially the same trade or business as that conducted prior to the increase in ownership.

(8) If, after an increase in ownership, the corporation continues to carry on its prior business activities undiminished, the addition by the corporation of a new trade or business does not constitute a failure to carry on substantially the same trade or business. This subparagraph may be illustrated by the following example:

Example. X Corporation, a calendar-year taxpayer, is engaged in the manufacture and sale of electrical appliances and has sustained substantial net operating losses. On June 30, 1958, Y Corporation purchases 100 percent of X Corporation's outstanding stock. During 1959, X Corporation continues undiminished its activities in the manufacture and sale of electrical appliances and also diversifies its activities by acquiring a cement manufacturing plant. The addition of the cement manufacturing business by X Corporation does not of itself constitute a failure to carry on substantially the same trade or business even though net operating loss carryovers attributable to the electrical appliance business are used to offset profits of the cement manufacturing business. See, however, section 269 and the regulations thereunder.

(9) A corporation has not continued to carry on a trade or business substantially the same as that conducted before any increase in the ownership of its stock if the corporation changes the location of a major portion of its activities and as a result of such change in location the business of the corporation is substantially altered. This subparagraph may be illustrated by the following examples:

Example (1). X Corporation, a calendar-year taxpayer, is engaged in the business of manufacturing in State A and has sustained substantial net operating losses. On June 30, 1958, Y Corporation purchases all of X Corporation's outstanding stock. During 1959, X Corporation transfers its operations to State B which is several hundred miles distant from State A. In order to effect the change in location, X Corporation disposes of its plant and a large portion of its machinery located in State A. The distance between State A and State B makes it necessary for the majority of the employees of X Corporation to terminate their employment with X Corporation. During 1959, X Corporation resumes its manufacturing activities in State B and continues to make the same product and to serve substantially the same group of customers. However, by reason of the changes in location, employees, plant, and equipment, X Corporation, on December 31, 1959, is not carrying on substantially the same trade or business as that conducted prior to the increase in ownership.

Example (2). Y Corporation, a calendar-year taxpayer, is engaged in the operation of a department store in city A. On June 30, 1958, Z Corporation purchases all of the outstanding stock of Y Corporation. During 1959, Y Corporation transfers its operations to town B, a suburb of city A. By reason of the change in location, Y Corporation disposes of its interest in the building formerly occupied by it in city A and also substitutes new equipment for a major portion of the equipment formerly utilized by it in city A. After the change in location, Y Corporation continues to sell substantially the same products to substantially the same customers and retains substantially all of the employees formerly employed in city A. Under such circumstances, the change of location does not result in a failure to carry on substantially the same trade or business as that conducted before the increase in ownership.

Example (3). Z Corporation, a calendar-year taxpayer, operates a retail liquor store in town M, utilizing the services of 10 employees. On June 30, 1958, individual A purchases all of the stock of Z Corporation. During 1959, Z Corporation transfers its operations to town O, a distance of 5 miles from its former location. By reason of the change in location, Z Corporation disposes of its interest in the premises formerly occupied by it and also disposes of the license and franchise issued by town M. During 1959, Z Corporation transfers its inventory of liquor to its new location and resumes its retail liquor activities under a license and franchise issued by town O. Z Corporation continues to employ 5 of the 10 employees formerly employed in town M, but the corporation serves a substantially different group of customers. Under these circumstances, the change of location results in a failure to carry on substantially the same trade or business as that conducted before the increase in ownership.

(10) A corporation has not continued to carry on a trade or business substantially the same as that conducted before any increase in the ownership of its stock if the corporation is primarily engaged in the rendition of services by a particular individual or individuals and, after the increase in ownership, the corporation is primarily engaged in the rendition of services by different individuals. This subparagraph may be illustrated by the following examples:

Example (1). X Corporation, a calendar-year taxpayer, is engaged in the business of selling real estate and insurance primarily through the services of individual A as broker. On June 30, 1958, individual B purchases all of the stock of X Corporation, and individual A retires from the business. During the latter part of 1958, X Corporation is engaged primarily in rendering the brokerage services of individual B in the sale of insurance and real estate. On December 31, 1958, the corporation has not continued to carry on a trade or business substantially the same as that conducted before the increase in ownership.

Example (2). Y Corporation, a calendar-year taxpayer, is engaged in the business of operating a beauty salon with 10 employees under the supervision of individual A, who owns all of the stock of Y Corporation and who is held out to the public as the corporation's principal beauty consultant. However, the quality of the services rendered by each of the 10 employees is primarily responsible for attracting the corporation's clientele. On June 30, 1958, individual B purchases all of

the outstanding stock of Y Corporation and individual A retires from the business. During 1959, Y Corporation continues to operate the beauty salon in the same location and continues to serve substantially the same group of customers with substantially the same employees under the supervision of individual B, who is held out to the public as the corporation's principal beauty consultant. On December 31, 1959, Y Corporation has continued to carry on substantially the same trade or business as that conducted before the increase in ownership.

§ 1.382(b) Statutory provisions; special limitations on net operating loss carryovers; change of ownership as the result of a reorganization.

SEC. 382. *Special limitations on net operating loss carryovers.* • • •

(b) *Change of ownership as the result of a reorganization*—(1) *In general.* If, in the case of a reorganization specified in paragraph (2) of section 381(a), the transferor corporation or the acquiring corporation—

(A) Has a net operating loss which is a net operating loss carryover to the first taxable year of the acquiring corporation ending after the date of transfer, and

(B) The stockholders (immediately before the reorganization) of such corporation (hereinafter in this subsection referred to as the "loss corporation"), as the result of owning stock of the loss corporation, own (immediately after the reorganization) less than 20 percent of the fair market value of the outstanding stock of the acquiring corporation, the total net operating loss carryover from prior taxable years of the loss corporation to the first taxable year of the acquiring corporation ending after the date of transfer shall be reduced by the percentage determined under paragraph (2).

(2) *Reduction of net operating loss carryover.* The reduction applicable under paragraph (1) shall be the percentage determined by substracting from 100 percent—

(A) The percent of the fair market value of the outstanding stock of the acquiring corporation owned (immediately after the reorganization) by the stockholders (immediately before the reorganization) of the loss corporation, as the result of owning stock of the loss corporation, multiplied by

(B) Five.

(3) *Exception to limitation in this subsection.* The limitation in this subsection shall not apply if the transferor corporation and the acquiring corporation are owned substantially by the same persons in the same proportion.

(4) *Net operating loss carryovers to subsequent years.* In computing the net operating loss carryovers to taxable years subsequent to a taxable year in which there was a limitation applicable to a net operating loss carryover by operation of this subsection, the income in such taxable year, as computed under section 172(b)(2), shall be increased by the amount of the reduction of the total net operating loss carryover determined under paragraph (2).

(5) *Attribution of ownership.* If the transferor corporation or the acquiring corporation owns (immediately before the reorganization) any of the outstanding stock of the loss corporation, such transferor corporation or acquiring corporation shall, for purposes of this subsection, be treated as owning (immediately after the reorganization) a percentage of the fair market value of the acquiring corporation's outstanding stock which bears the same ratio to the percentage of the fair market value of the outstanding stock of the loss corporation (immediately before the reorganization) owned by such transferor corporation or acquiring corporation as the fair market value of the total outstanding stock of the loss corporation (immediately before the reorganization) bears to the fair market value of the total outstanding stock of the acquiring corporation (immediately after the reorganization).

(6) *Stock of corporation controlling acquiring corporation.* If the stockholders of the loss corporation (immediately before the reorganization) own, as a result of the reorganization, stock in a corporation controlling the acquiring corporation, such stock of the controlling corporation shall, for purposes of this subsection, be treated as stock of the acquiring corporation in an amount valued at an equivalent fair market value.

§ 1.382(b)-1 Change of ownership as the result of a reorganization.

(a) *In general.* (1) Section 382(b)(1) provides that if, in the case of a reorganization described in section 381(a)(2), either the transferor corporation or the acquiring corporation has a net operating loss carryover which is a carryover to the first taxable year of the acquiring corporation ending after the date of transfer, the amount of such carryover which may be used by the acquiring corporation is reduced unless the stockholders (immediately before the reorganization) of the corporation possessing the carryover (hereinafter called the "loss corporation") own, immediately after the reorganization, at least 20 percent of the fair market value of the outstanding stock of the acquiring corporation. See paragraph (b) of § 1.381(b)-1 for determination of the date of transfer, and paragraph (b) of this section for computation of the amount of the reduction.

(2) The ownership of at least 20 percent of the fair market value of the stock of the acquiring corporation after the reorganization must result from the ownership of stock in the loss corporation immediately before the reorganization. Thus, if stockholders of a transferor-loss corporation before the reorganization also own stock of the acquiring corporation at such time, such stock of the acquiring corporation is not considered as owned after the reorganization by such stockholders as a result of owning stock in the loss corporation in determining whether the 20-percent requirement is satisfied. Moreover, the stockholders (immediately before the reorganization) of a transferor-loss corporation shall not be regarded as owning, immediately after the reorganization, any stock of the acquiring corporation which is not distributed to such stockholders pursuant to the plan of reorganization.

(3) If the net operating loss carryovers of a loss corporation are reduced under section 382(b)(1), then in computing the net operating loss deduction of the acquiring corporation for its first taxable year ending after the date of transfer, that portion of such deduction which is attributable to the net operating loss carryovers of the loss corporation is limited to the amount of such carryovers minus the reduction. Thus, if the net operating loss carryovers of the loss corporation are $100,000 and if the amount of the reduction is $60,000, only $40,000 of such carryovers may be used by the acquiring corporation in computing its net operating loss deduction under section 172(a) for its first taxable year ending after the date of transfer. The reduction provided in section 382(b)(1) is applied to the aggregate of the allowable net operating loss carryovers of the loss corporation without regard to the taxable years in which the net operating losses were sustained.

(4) See paragraph (e) of this section for the effect of the reduction in subsequent taxable years of the acquiring corporation.

(5) The reduction provided by section 382(b)(1) may apply to the carryovers of more than one corporation a party to the reorganization. For example, assume that X Corporation acquires the assets of Y Corporation and of Z Corporation in a reorganization described in section 381(a)(2) and that both X Corporation and Y Corporation have net operating loss carryovers at the date of the reorganization. The reduction under section 382(b)(1) will apply to the net operating loss carryovers of X Corporation unless the stockholders (immediately before the reorganization) of X Corporation own, immediately after the reorganization, at least 20 percent of the fair market value of the outstanding stock of X Corporation. Similarly, the reduction under section 382(b)(1) will apply to the net operating loss carryovers from Y Corporation unless the stockholders (immediately before the reorganization) of Y Corporation own, immediately after the reorganization, at least 20 percent of the fair market value of the outstanding stock of X Corporation.

(6) Section 382(b) applies only with respect to those reorganizations described in section 381(a)(2). However, a series of transactions which purport to be a reorganization qualifying under section 368(a)(1)(B) followed by a liquidation qualifying under section 332, but which in substance comprise a reorganization qualifying under section 368(a)(1)(C), will be considered as a reorganization of the last-described type for purposes of section 382(b) and this section.

(7) See § 1.382(c)-1 for definition of the term "stock" as used in this section.

(b) *Amount of reduction.* (1) The amount of the reduction provided in section 382(b)(1) shall be determined as follows:

(i) Determine the percentage of the fair market value of the outstanding stock of the acquiring corporation owned, immediately after the reorganization, by the stockholders (immediately before the reorganization) of the loss corporation, which is attributable to their ownership of stock in the loss corporation immediately before the reorganization.

(ii) If the percentage determined under subdivision (i) of this subparagraph is less than 20 percent, compute the difference between such percentage and 20 percent, and multiply such difference by five. The resulting product is the percentage by which the net operating loss carryovers are reduced.

(2) Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. Assume that X Corporation acquires the assets of Y Corporation, a loss corporation, in a reorganization described in section 381(a)(2), and that immediately after the reorganization the former stockholders of Y Corporation, as the result of owning stock of Y Corporation, own 8 percent of the fair market value of X Corporation's outstanding stock. The difference between 8 percent and 20 percent is 12 percent, which when multiplied by five produces 60 percent. Therefore, the amount of the reduction is equal to 60 percent of the net operating loss carryovers from the loss corporation, so that if the net operating loss carryovers from Y Corporation amounted to $100,000, the amount of the reduction would be $60,000.

(c) *Acquisitions designed to avoid section 382(b).* The purpose of the 20-percent requirement of section 382(b)(1) is to ensure that the net operating loss carryovers from a corporation a party to a reorganization will be allowed in full only when the shareholders of the loss corporation have a substantial continuing interest in the acquiring corporation, thereby ensuring that the carryovers will be utilized to some extent for the benefit of those persons who were owners of the loss corporation before the reorganization. Therefore, in applying section 382(b)(1), any acquisition of stock of a loss corporation will be disregarded if made for the purpose of avoiding the 20-percent continuity of interest requirement. Moreover, two or more successive reorganizations will be treated as if they had occurred simultaneously in cases where they are undertaken with a view to avoiding the 20-percent continuity requirement. These rules may be illustrated by the following examples:

Example (1). Assume that X Corporation desires to merge into Y Corporation, a loss corporation, in a reorganization. A and B, who are the controlling stockholders of X Corporation, with a view to avoiding the 20-percent continuity of interest requirement of section 382(b)(1), acquire for cash 40 percent of the fair market value of the outstanding stock of Y Corporation (or acquire an option to purchase such stock, which option they exercise shortly after the merger). Thereafter, Y Corporation acquires the assets of X Corporation in a reorganization to which section 381(a) applies. In determining whether the 20-percent continuity requirement is satisfied (and, if not, the amount of the reduction under section 382(b)(2)), the stock of Y Corporation purchased by A and B (or acquired upon their exercise of the option) will be considered as outstanding immediately after the reorganization but will not be considered as owned by persons who were stockholders of Y Corporation immediately before the reorganization.

Example (2). Assume that X Corporation, which has a net worth of $2,000,000, desires to acquire the assets of Y Corporation, a loss corporation, which has a net worth of $100,000. X Corporation also desires to acquire the assets of Z Corporation, which has a net worth of $400,000. With a view to avoiding the 20-percent continuity requirement, Z Corporation acquires the assets of Y Corporation in a reorganization to which section 381(a) applies. Immediately after the reorganization, the former stockholders of Y Corporation own 20 percent of the fair market value of the outstanding stock of Z Corporation. Shortly thereafter, X Corporation acquires the assets of Z Corporation in a reorganization to which section 381(a) applies. Immediately after the reorganization, the former stockholders of Y Corporation own 4 percent of the fair market value of the outstanding stock of X Corporation. Under these circumstances, the application of section 382(b)(1) to the net operating loss carryovers of Y Corporation shall be determined by reference to the fair market value of the outstanding stock of X Corporation owned, immediately after the successive reorganizations, by the stockholders (immediately before the successive reorganizations) of Y Corporation. Therefore, the net operating loss carryovers from Y Corporation will be reduced by 80 percent.

(d) *Exception to application of section 382(b).* (1) Section 382(b)(3) provides an exception to the application of the reduction provided in section 382(b)(1). Under this exception there is no reduction if, immediately before the reorganization, the transferor corporation and the acquiring corporation are owned substantially by the same persons in the same proportion. If the acquiring corporation is not in existence immediately before the reorganization (as in the case of a statutory consolidation), the requirements of section 382(b)(3) are not met unless the transferor corporations immediately before the reorganization are owned substantially by the same persons in the same proportion.

(2) The transferor corporation and the acquiring corporation will be considered as owned substantially by the same persons in the same proportion only if the same persons own substantially all the stock of the corporations in substantially the same proportion. This rule may be illustrated by the following examples:

Example (1). A and B each owns 50 percent of the fair market value of the outstanding stock of X Corporation. A owns 52 percent and B owns 48 percent of the fair market value of the outstanding stock of Y Corporation. Y Corporation acquires the assets of X Corporation in a reorganization to which section 381(a) applies. The exception provided in section 382(b)(3) is applicable.

Example (2). A and B each owns 50 percent of the fair market value of the outstanding stock of X Corporation. A owns 60 percent and B owns 40 percent of the fair market value of the outstanding stock of Y Corporation. Y Corporation acquires the assets of X Corporation in a reorganization to which section 381(a) applies. The exception provided in section 382(b)(3) is not applicable.

Example (3). A and B each owns 48 percent of the fair market value of the outstanding stock of X Corporation and of Y Corporation. C owns the remaining 4 percent of X Corporation and D owns the remaining 4 percent of Y Corporation. Y Corporation acquires the assets of X Corporation in a reorganization to which section 381(a) applies. The exception provided in section 382(b)(3) is applicable.

Example (4). A and B each owns 40 percent of the fair market value of the outstanding stock of X Corporation and of Y Corporation. C owns the remaining 20 percent of X Corporation and D owns the remaining 20 percent of Y Corporation. Y Corporation acquires the assets of X Corporation in a reorganization to which section 381(a) applies. The exception provided in section 382(b)(3) is not applicable.

(3) The exception provided in section 382(b)(3) is not applicable in any case in which stock of the transferor or acquiring corporation is acquired or disposed of for the purpose of meeting the requirements of section 382(b)(3). For example, section 382(b)(3) is not applicable if A, owning 100 percent of the outstanding stock of X Corporation and 75 percent of the outstanding stock of Y Corporation, a loss corporation, acquires the remaining 25 percent of the outstanding stock of Y Corporation with a view to merging the two corporations.

(e) *Carryovers to subsequent years.* (1) The reduction provided in section 382(b)(1) applies only to net operating loss carryovers to the first taxable year of the acquiring corporation ending after the date of transfer. However, section 382(b)(4) contains a rule to ensure that the portion of the carryovers equal to the amount of the reduction will not be available for deduction in subsequent taxable years of the acquiring corporation. This rule provides that if a reduction is applicable under section 382(b)(1), then in computing net operating loss carryovers from taxable years of the transferor and acquiring corporations ending on or before the date of transfer to taxable years of the acquiring corporation subsequent to the first taxable year ending after the date of transfer, the income of the acquiring corporation for such first taxable year, as computed under section 172(b)(2) (without regard to the fact that the deduction under section 172(a) is reduced by the amount computed under section 382(b)(2)), shall be increased by the amount of the reduction computed under section 382(b)(2) for that year. The preceding rule may be illustrated by the following example:

Example. X Corporation and Y Corporation are organized on January 1, 1957, and each makes its return on the basis of the calendar year. On December 31, 1958, Y Corporation acquires the assets of X Corporation in a reorganization to which section 381(a) applies. Immediately after the reorganization, those persons who were stockholders of X Corporation immediately before the reorganization own 10 percent of the fair market value of the outstanding stock of Y Corporation. The net operating losses and the taxable income (computed without any net operating loss deduction) of the two corporations are as follows:

Year:	*X Corporation (transferor)*	*Y Corporation (acquirer)*
1957	($5,000)	($5,000)
1958	(15,000)	(1,000)
1959		5,000

The computation of the carryovers to Y Corporation's calendar year 1960 may be illustrated as follows:

(i) *X Corporation's 1957 loss.* The carryover to 1960 is $0, computed as follows:

Net operating loss	$5,000

Less:			
X's 1958 taxable income		$0	
Y's 1959 taxable income before adjustment under section 382(b)(4)	$5,000		
Plus amount of reduction computed under section 382(b)(2) (50% of $20,000)	10,000		
		15,000	
			$15,000
Carryover to 1960			0

(ii) *Y Corporation's 1957 loss.* The carryover to 1960 is $0, computed as follows:

Net operating loss			$5,000
Less:			
Y's 1958 taxable income		$0	
Y's 1959 taxable income before net operating loss deduction and adjustment under section 382(b)(4)	$5,000		
Minus Y's 1959 net operating loss deduction (i.e., X's 1957 carryover)	5,000		
Plus amount of reduction under section 382(b)(2)	10,000		
		10,000	
			10,000
Carryover to 1960			0

(iii) *X Corporation's 1958 loss.* The carryover to 1960 is $10,000, computed as follows:

Net operating loss			$15,000
Less:			
X's 1957 taxable income		$0	
Y's 1959 taxable income before net operating loss deduction and adjustment under section 382(b)(4)	$5,000		
Minus Y's 1959 net operating loss deduction (i.e., X's 1957 carryover of $5,000 and Y's 1957 carryover of $5,000)	10,000		
Plus amount of reduction under section 382(b)(2)	10,000		
		5,000	
			5,000
Carryover to 1960			10,000

(iv) *Y Corporation's 1958 loss.* The carryover to 1960 is $1,000, computed as follows:

Net operating loss			$1,000
Less:			
Y's 1957 taxable income		$0	
Y's 1959 taxable income before net operating loss deduction and adjustment under section 382(b)(4)	$5,000		
Minus Y's 1959 net operating loss deduction (i.e., X's 1957 carryover of $5,000, Y's 1957 carryover of $5,000, and X's 1958 carryover of $15,000)	25,000		
Plus amount of reduction under section 382(b)(2)	10,000		
		0	
			0
Carryover to 1960			1,000

(v) *Summary of carryovers to 1960.* The aggregate of the net operating loss carryovers to 1960 is $11,000, computed as follows:

X's 1958 loss	$10,000
Y's 1958 loss	1,000
Total	11,000

(2) If the date of transfer is on a day other than the last day of a taxable year of the acquiring corporation, and if the reduction provided in section 382(b)(1) applies to net operating loss carryovers of the transferor corporation, then for purposes of section 381(c)(1)(C), the adjustment provided in section 382(b)(4) shall be considered as an increase in income of the "postacquisition part year" and no portion of such adjustment shall be considered as an increase in income of the "preacquisition part year."

(f) *Attribution of ownership.* (1) Section 382(b)(5) provides a special rule for determining whether the reduction provided in section 382(b)(1) applies in cases where, immediately before the reorganization, either the transferor corporation or the acquiring corporation owns outstanding stock of the loss corporation. Under this rule, the transferor or acquiring corporation (whichever owns stock of the loss corporation) is treated as owning, immediately after the reorganization, a percentage, A, of the fair market value of the acquiring corporation's outstanding stock which bears the same ratio to B (the percentage of the fair market value of the stock of the loss corporation owned, immediately before the reorganization, by such transferor or acquiring corporation) as C (the fair market value of the outstanding stock of the loss corporation immediately before the reorganization) bears to D (the fair market value of the outstanding stock of the acquiring corporation immediately after the reorganization). Stated algebraically, the percentage of the fair market value of the acquiring corporation's outstanding stock treated as owned by the transferor or acquiring corporation immediately after the reorganization, A, equals—

$$\frac{\text{Value of stock of loss corporation immediately before reorganization (C)}}{\text{Value of stock of acquiring corporation immediately after reorganization (D)}} \times \text{Percentage of stock of loss corporation owned by transferor or acquiring corporation immediately before reorganization (B)}$$

The preceding rule may be illustrated by the following examples:

Example (1). Assume that X Corporation owns 25 percent of the fair market value of the outstanding stock of Y Corporation, a loss corporation; that X Corporation acquires the assets of Y Corporation in a reorganization to which section 381(a) applies; that immediately before the reorganization the total outstanding stock of Y Corporation has a fair market value of $10,000; and that immediately after the reorganization the total outstanding stock of X Corporation has a fair market value of $50,000. For the purpose of determining whether the reduction provided in section 382(b)(1) is applicable (and, if so, the amount of the reduction computed under section 382(b)(2)), X Corporation is treated as owning (immediately after the reorganization) 5 percent of the fair market value of its outstanding stock, determined as follows.

$$\frac{\$10,000\ (C)}{\$50,000\ (D)} \times 25\%\ (B) = 5\%\ (A)$$

Thus, if the other former stockholders of Y Corporation own, after the reorganization, at least 15 percent of the fair market value of the outstanding stock of X Corporation as the result of owning stock in Y Corporation, there will be no reduction under section 382(b)(1).

Example (2). Assume the same facts as in example (1), except that Y Corporation acquires the assets of X Corporation in a reorganization to which section 381(a) applies and that immediately after the reorganization the total outstanding stock of Y Corporation has a fair market value of $50,000. The result is the same as that in example (1). X Corporation is treated as owning (immediately after the reorganization) 5 percent of the fair market value of the outstanding stock of Y Corporation. Thus, there will be no reduction under section 382(b)(1) if those persons (other than X Corporation) who were stockholders of Y Corporation immediately before the reorganization own at least 15 percent of the fair market value of the outstanding stock of Y Corporation immediately after the reorganization.

(2) The provisions of paragraph (5) of section 382(b) do not apply with respect to an interest in a loss corporation which is acquired for the purpose of avoiding the 20-percent continuity of interest requirement of section 382(b)(1). Thus, paragraph (5) of section 382(b) does not apply with respect to stock of a loss corporation which is acquired by another corporation with a view to causing a merger of the two corporations. For example, if X Corporation owns 15 percent of the fair market value of the outstanding stock of Y corporation, a loss corporation, and if X Corporation purchases an additional 15 percent with a view to causing a merger of the two corporations, paragraph (5) of section 382(b) applies only with respect to the stock previously held by X Corporation and not to the stock so purchased.

(g) *Stock of corporation controlling acquiring corporation.* (1) Section 382(b)(6) provides a special rule for determining whether the reduction provided in section 382(b)(1) applies in cases where the transferor corporation is a loss corporation and the former stockholders of the loss corporation own, as a result of the reorganization, stock in a corporation which controls (within the meaning of section 368(c)) the acquiring corporation. In such cases, the former stockholders of the loss corporation are treated as owning, after the reorganization, stock of the acquiring corporation equal in value to the fair market value of their stock in the controlling corporation. This rule may be illustrated by the following example:

Example. X Corporation owns 100 percent of the stock of Y Corporation. In a reorganization to which section 381(a) applies, Y Corporation acquires the assets of Z Corporation, a loss corporation, in exchange for stock of X Corporation. Immediately after the reorganization the total outstanding stock of Y Corporation has a fair market value of $50,000, and the stockholders (immediately before the reorganization) of the loss corporation own, as a result of the reorganization, stock of X Corporation having a fair market value of $20,000. For the purpose of determining whether the reduction provided in section 382(b)(1) is applicable (and, if so, the amount of the reduction computed under section 382(b)(2)), the former stockholders of the loss corporation are treated as owning stock of Y Corporation worth $20,000 (the value of their stock in X Corporation), which is 40 percent ($20,000 divided by $50,000) of the fair market value of the outstanding stock of the acquiring corporation.

(2) The 20-percent continuity of interest requirement of section 382(b)(1) applies with respect to an interest in the corporation desiring to utilize the net operating loss carryovers from the loss corporation. Thus, the provisions of section 382(b)(6) and of subparagraph (1) of this paragraph apply only if, at the time of the reorganization, it is intended that the acquiring corporation itself, and not the corporation which controls the acquiring corporation, shall make use of the net operating loss carryovers from the loss corporation. Section 382(b)(6) and subparagraph (1) of this paragraph do not apply if the loss corporation is acquired by a controlled corporation with a view to the liquidation of the controlled corporation into its parent at a time when a substantial part of the net operating loss carryovers from the loss corporation remain to be utilized. (This requirement is satisfied in any case in which such action was contemplated at the time of the reorganization by those persons in a position to determine the policies of the controlled corporation.) In such case, it is the controlling corporation, instead of the controlled corporation, in which the former stockholders of the loss corporation must own a 20-percent interest. Thus, assume in the example appearing in subparagraph (1) of this paragraph, that the total fair market value of the outstanding stock of X Corporation immediately after the reorganization is $200,000 and that X Corporation causes Y Corporation to be liquidated at a time when a substantial part of the loss carryovers from Z Corporation remain to be utilized. Under these circumstances, the former stockholders of the loss corporation would own after the reorganization only 10 percent ($20,000 divided by $200,000) of the fair market value of the outstanding stock of the controlling corporation and the net operating loss carryovers from Z Corporation to the first taxable year of Y Corporation ending after the date of transfer would accordingly be reduced by 50 percent.

§ 1.382(c) Statutory provisions; special limitations on net operating loss carryovers; definition of stock.

SEC. 382. *Special limitations on net operating loss carryovers.* * * *

(c) *Definition of stock.* For purposes of this section, "stock" means all shares except nonvoting stock which is limited and preferred as to dividends.

§ 1.382(c)-1 Definition of stock.

Section 382(c) contains the definition of the term "stock" for purposes of section 382 (a) and (b). For these purposes, the term "stock" means all outstanding shares except nonvoting stock which is limited and preferred as to dividends.

§ 1.394 Statutory provisions; effective date of part V, subchapter C, chapter 1 of the Code.

SEC. 394. *Effective date of part V*—(a) *Section 381.* Except as otherwise provided in this subchapter, section 381 shall apply to liquidations and reorganizations, the tax treatment of which is determined under this Code.

(b) *Section 382(a).* For purpose of applying the special limitation on net operating losa carryovers in section 382(a), the beginning of the taxable years specified in clauses (i) and (ii) of section 382(a)(1)(A) shall be considered to be the beginning of such taxable years or June 22, 1954, whichever occurs later.

(c) *Section 382(b).* Section 382(b) shall apply to reorganizations, the tax treatment of which is determined under this Code.

§ 1.394-1 Effective date of part V of subchapter C.

(a) *Section 381.* Section 394(a) provides that, except as otherwise provided in subchapter C, chapter 1 of the Code, section 381 shall apply to liquidations and reorganizations, the tax treatment of which is determined under the Internal Revenue Code of 1954. For such liquidations, see section 392 and the regulations thereunder. For such reorganizations, see section 393 and the regulations thereunder.

(b) *Section 382(a).* Section 394(b) provides that for purposes of applying the special limitation on net operating loss carryovers contained in section 382(a), the beginning of the taxable years specified in clauses (i) and (ii) of section 382(a)(1)(A) shall be considered to be the beginning of such taxable years or June 22, 1954, whichever occurs later. Thus, if X Corporation made its returns for 1954 and 1955 on the basis of the calendar year, then in determining whether the limitation contained in section 382(a) applies as of December 31, 1954, the beginning of the taxable years specified in clauses (i) and (ii) of section 382(a)(1)(A) would be June 22, 1954, and in determining whether section 382(a) applies as of December 31, 1955, the beginning of the taxable year specified in clause (i) of section 382(a)(1)(A) would be January 1, 1955, and the beginning of the taxable year specified in clause (ii) of section 382(a)(1)(A) would be June 22, 1954.

(c) *Section 382(b).* Section 394(c) provides that section 382(b) shall apply to reorganizations, the tax treatment of which is determined under the Internal Revenue Code of 1954. See section 393 and the regulations thereunder.

[F.R. Doc. 60-11946; Filed, Dec. 27, 1960; 8:45 a.m.]

[26 CFR (1954) Part 245]

BEER

Concentration and Reconstitution

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. The regulations are proposed for consideration by reason of a petition for the issuance of regulations dealing with the subject of the proposals by the Union Carbide Corporation, New York, N.Y. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., within the period of 90 days from the date of publication of this notice in the FEDERAL REGISTER, or prior to the termination of the public hearing scheduled herein, whichever is later. A public hearing on these proposed regulations will be held on Tuesday, March 21, 1961, at 10:00 a.m.; e.s.t., in Room 3313, Internal Revenue Building, Twelfth Street and Constitution Avenue NW., Washington, D.C., at which time and place all interested parties will be afforded an opportunity to be heard, in person or by authorized representative, with reference to the proposals. Persons who plan to attend the hearing are requested to so notify the Commissioner of Internal Revenue, Attention: O:AT, Washington 25, D.C., by March 13, 1961. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to provide by regulations for (1) the production in a brewery of a concentrate from beer by the removal of water, (2) the reconstitution of beer from such concentrate by brewers by the addition of water and carbon dioxide, (3) the qualification as breweries of plants concentrating or reconstituting beer, (4) the transfer of concentrate between breweries belonging to the same brewer, and (5) the exportation of the concentrate without payment of tax, the regulations in 26 CFR Part 245, "Beer", are amended by inserting the following subpart immediately after subpart AA:

Subpart BB—Concentration and Reconstitution of Beer

Sec.
245.235 General.
245.236 Application for approval of concentration process.
245.237 Conditions to use of concentration process.
245.238 Application for approval of reconstitution process.
245.239 Conditions to use of reconstitution process.
245.240 Consent of surety on bond of brewer concentrating beer.
245.241 Consent of surety on bond of brewer reconstituting beer.
245.242 Operations.
245.243 Transfers between breweries.
245.244 Exportation.
245.245 Records and reports.

§ 245.235 General.

The term "concentrate" as used in this subpart means a concentrate produced from beer by the removal of water therefrom. A brewer may, in accordance with the provisions of this subpart, produce concentrate, reconstitute beer from concentrate in the brewery, transfer such concentrate from the brewery to another brewery of the same ownership, and remove such concentrate from the brewery without payment of tax for exportation or for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation. Concentrate shall not be produced, or beer be reconstituted from concentrate, nor shall concentrate be removed from the brewery, except as provided in this subpart. The processes of concentration and reconstitution of beer, approved in accordance with the provisions of this subpart, are deemed to be authorized processes in the production of beer. Every person who produces concentrate, or who reconstitutes beer from concentrate, shall qualify as a brewer in accordance with the provisions of this part, and comply with all applicable provisions thereof. Beer reconstituted from concentrate in accordance with this subpart shall, for the purposes of this chapter, be treated the same as beer which has not been concentrated and reconstituted and all provisions of this chapter applicable to beer which has not been concentrated and reconstituted shall be applicable thereto. Notwithstanding the provisions of § 245.46, a brewer whose bond is or would be less than the maximum penal sum under that section and who commences or continues to concentrate beer under the provisions of this subpart shall have on file with the assistant regional commissioner a bond or bonds with a total penal sum equal to the amount computed under § 245.46 plus the amount of tax at the rate prescribed by law on beer produced and removed for consumption or sale, computed on the maximum quantity of beer to be used in the concentration of beer by him during any one calendar month, but not in excess of the maximum penal sum provided in § 245.46.

§ 245.236 Application for approval of concentration process.

A brewer intending to produce concentrate shall file with the Director, Alcohol and Tobacco Tax Division, through the assistant regional commissioner, an application on Form 3019, for approval of the process which he intends to use. The application shall describe the concentration process to be employed and the equipment to be used, state the degree to which the beer will be concentrated, and specify the premises where the concentrate will be reconstituted. A brewer shall not employ a concentration process until the application with respect thereto on Form 3019 has been approved by the Director. The Director, Alcohol and Tobacco Tax Division, may require a brewer to furnish with the application a flow diagram, drawing, or other accurate depiction of the process. The Director or the assistant regional commissioner may at any time require the brewer to submit such samples and additional information relating to the operation as he may consider necessary.

§ 245.237 Conditions to use of concentration process.

The Director, Alcohol and Tobacco Tax Division, shall not approve an application for concentration unless the brewer has filed with the assistant regional commissioner a consent of surety on his bond Form 1566 as provided in § 245.240. The process of concentration of beer shall not be used unless the beer on reconstitution will, without the addition of any substance other than carbon dioxide and water, possess substantially the taste, aroma, color, and other characteristics of such beer before concentration. Also, no process of concentration which separates alcoholic spirits from any fermented substance shall be employed in the brewery. Alcoholic spirits so separated or any concentrated fermented substance which on reconstitution solely with water and carbon dioxide will not possess the taste, aroma, color, and other characteristics of beer produced merely by natural fermentation, shall be classed and taxed as distilled spirits. Approval of any application to use any process of concentrating beer shall be conditioned on agreement by the brewer that the concentrate will not be removed from the brewery except as specifically authorized in this subpart and, except in the case of removal for exportation as provided in § 245.244, that the concentrate shall be reconstituted in accordance with the approved process for reconstitution applicable thereto. The Director, Alcohol and Tobacco Tax Division, may withdraw approval of a concentration process in any case where the brewer fails to comply with the provisions of this subpart.

(72 Stat. 1313; 26 U.S.C. 5002)

§ 245.238 Application for approval of reconstitution process.

A brewer intending to reconstitute beer from concentrate shall file with the Director, Alcohol and Tobacco Tax Division, through the assistant regional commissioner, an application on Form 3019, for approval of the process to be used in reconstitution at the brewery. The application shall describe the reconstitution process to be employed and the equipment to be used, and state the degree to which the beer will be reconstituted. The brewer shall state in the application the name and address of the brewery at which the concentrate to be used is to be produced. The brewer shall not employ the reconstitution process until the application with respect thereto on Form 3019 has been approved by the Director, Alcohol and Tobacco Tax Division. The Director may require a brewer to furnish with the application a flow diagram, drawing, or other accurate depiction of the process. The Director or the assistant regional commissioner may at any time require the brewer to submit such samples and additional information relating to the operation as he may consider necessary.

§ 245.239 Conditions to use of reconstitution process.

The Director, Alcohol and Tobacco Tax Division, shall not approve an application for reconstitution unless the brewer has filed with the assistant regional commissioner a consent of surety on his bond Form 1566, as provided in § 245.241. The process of reconstitution of beer shall consist of the addition to concentrate of carbon dioxide, and of water only in the proportion set forth in the process approved under § 245.238. Sufficient water must be added to the concentrate to restore it to a volume not less than, and an alcoholic content not greater than, that of the beer used to produce the concentrate. Approval of any application to use any process of reconstituting beer shall be conditioned on agreement by the brewer that he will be responsible and accountable for all concentrate removed for transfer to him from the time of removal from the consignor brewery and that the concentrate will not be removed from his brewery except as specifically authorized in this subpart. The Director, Alcohol and Tobacco Tax Division, may withdraw approval of a reconstitution process in any case where the brewer fails to comply with the provisions of this subpart.

§ 245.240 Consent of surety on bond of brewer concentrating beer.

A brewer who intends to produce concentrate shall file with the assistant regional commissioner a Consent of Surety, Form 1533, extending the terms of his bond, Form 1566, to cover the use of the concentration process and containing the following statement:

Whereas, the principal intends to concentrate beer on the above-described premises under the provision of Subpart BB of Part 245, Title 26, Code of Federal Regulations;

Now, therefore, the above-described bond is further specifically conditioned that the principal named therein shall pay, or cause to be paid, on demand of the assistant regional commissioner (alcohol and tobacco tax), an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce concentrate:

(a) If such concentrate is produced, reconstituted, used, or removed from the brewery in violation of laws or regulations, now or hereafter in force, or in any manner contrary to the terms or conditions of his application for approval of the concentration process; and

(b) If such concentrate is removed without payment of tax for export and is not exported or otherwise accounted for.

The aforesaid terms and conditions shall have the same force and effect as the other terms and conditions stated in the bond.

A brewer who intends to reconstitute beer from concentrate at the premises covered by an application for approval of the concentration process shall also give the consent of surety provided for in § 245.241.

§ 245.241 Consent of surety on bond of brewer reconstituting beer.

A brewer who intends to reconstitute beer from concentrate shall file with the assistant regional commissioner a Consent of Surety, Form 1533, extending the terms and conditions of his bond, Form 1566, to cover the transportation, receipt, and reconstitution of concentrate and containing the following statement:

Whereas, the principal intends to reconstitute beer from concentrate or to receive concentrate and reconstitute beer therefrom on the above-described premises under the provisions of Subpart BB of Part 245, Title 26, Code of Federal Regulations;

Now, therefore, the above-described bond is further specifically conditioned that the principal named therein shall pay, or cause to be paid, on demand of the assistant regional commissioner (alcohol and tobacco tax), an amount equal to the tax which would have been due on removal for consumption or sale, including penalties and interest, on all beer used to produce concentrate:

(a) If such concentrate is transported, reconstituted, or removed from the brewery in violation of laws or regulations, now or hereafter in force, or in any manner contrary to the terms or conditions of his application for approval of the process for reconstitution;

(b) If such concentrate is removed for transfer to the said brewery from other breweries owned by the said principal, and is not transported, received and accounted for in accordance with laws or regulations now or hereafter in force, and

(c) If such concentrate is removed without payment of tax for export and is not exported or otherwise accounted for.

The aforesaid terms and conditions shall have the same force and effect as the other terms and conditions of the bond.

§ 245.242 Operations.

The operations incident to the production of concentrate and the reconstitution of beer therefrom shall be conducted in the brewery but shall not be conducted in the brewery bottling house or racking room. Each tank, vat, cask, or other container used or intended for use as a receptacle for concentrate shall meet the requirements of § 245.25. Such receptacles shall be identified as containers of concentrate. Concentrate produced shall be identified and accounted for by the serial number of Form 3019 under which it was produced and shall not be mingled with unconcentrated beer. The brewer shall accurately measure the quantity and determine the balling and alcohol content of all (a) beer entered into the concentration process, (b) concentrate produced, (c) concentrate transferred to other breweries belonging to the same brewer, (d) concentrate removed for export, (e) concentrate received, (f) concentrate used in reconstituting beer, and (g) beer reconstituted. Containers of concentrate transferred to other breweries belonging to the same brewer, and containers of concentrate removed for export shall be marked, branded, and labeled in the same manner as is prescribed for containers of beer in Subpart O of this part and shall be clearly marked as containers of concentrate.

§ 245.243 Transfers between breweries.

Concentrate produced from beer may, under the provisions of this subpart, be removed without payment of tax from the brewery to another brewery belonging to the same brewer (within the limits of ownership and on submission of evidence of control as described in § 245.140). Concentrate may be transferred only to a brewery which is qualified under this subpart for the reconstitution of beer. The provisions of Subpart Q of this part, except as otherwise provided in this section, shall be applicable in respect of transfers of concentrate which is produced under the provisions of this subpart. Concentrate may not be removed in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale. Reconstituted beer may be mingled with beer at the receiving brewery but concentrate shall not be mingled with unconcentrated beer. The brewer shall give notice on Form 3020 of the shipment and receipt of concentrate (in the manner outlined in §§ 245.145 to 245.147 for Form 2035), reflect the details of such transactions in his daily records, and report such transactions monthly on Form 103 in accordance with the provisions of § 245.245.

§ 245.244 Exportation.

Concentrate produced under the provisions of this subpart may be removed from the brewery without payment of tax (a) for exportation, or (b) for transfer to and deposit in foreign-trade zones for exportation or for storage pending exportation, in accordance with the provisions of Part 252 of this chapter.

§ 245.245 Records and reports.

(a) *Daily record.* A brewer who produces concentrate or reconstitutes beer therefrom under the provisons of this subpart shall, in addition to complying with the requirements of Subpart AA of this part, maintain daily records which will accurately and clearly reflect the quantity and the balling and the alcohol content of all (1) beer entered into the concentration process, (2) concentrate produced, (3) concentrate transferred to other breweries belonging to the same brewer, (4) concentrate exported, (5) concentrate received, (6) concentrate used in reconstituting beer, and (7) beer reconstituted.

(b) *Monthly summary reports.* Where concentrate is produced and/or beer is reconstituted from concentrate the brewer shall reflect by special entries on Form 103, the quantity of beer entered into the concentration process and the quantity of beer reconstituted from concentrate. Where such operations are conducted, the brewer shall likewise prepare and submit monthly, a separate Form 103, suitably identified and modified, summarizing the concentration and reconstitution operations for the month. This separate Form 103 shall show, in the modified "Materials" section of the form, the quantities (expressed in barrels of 31 gallons and fractions thereof to three decimal places) of concentrate on hand at the beginning and end of the month, and received, and the specific disposition thereof (as "used in reconstitution of beer", "removed for export", "transferred to other breweries"). The quantity of beer which is reconstituted during the month shall be so reported on the face of this form.

[F.R. Doc. 60-12012; Filed, Dec. 27, 1960; 8:47 a.m.]

[26 CFR (1954) Part 252]

EXPORTATION OF LIQUORS

Beer Concentrate

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. The regulations are proposed for consideration by reason of a petition for the issuance of regulations dealing with the subject of the proposals by the Union Carbide Corporation, New York, N.Y. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., within the period of 90 days from the date of publication of this notice in the FEDERAL REGISTER, or prior to the termination of the public hearing scheduled herein, whichever is later. A public hearing on these proposed regulations will be held on Tuesday, March 21, 1961, at 10:00 a.m., e.s.t., in Room 3313, Internal Revenue Building, Twelfth Street and Constitution Avenue NW., Washington, D.C., at which time and place all interested parties will be afforded an opportunity to be heard, in person or by authorized representative, with reference to the proposals. Persons who plan to attend the hearing are requested to so notify the Commissioner of Internal Revenue, Attention: O:AT, Washington 25, D.C., by March 13, 1961. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to provide by regulations for the exportation, without payment of tax, of concentrate produced from beer by the removal of water therefrom, the regulations in 26 CFR Part 252, "Exportation of Liquors", are amended by inserting the following subpart immediately after Subpart G:

Subpart Ga—Removal Without Payment of Tax for Exportation or Transfer to a Foreign-Trade Zone of Concentrate Produced From Beer

Sec.
252.150a General.
252.150b Notice, Form 3021.
252.150c Containers.
252.150d Procedures applicable to concentrate removed without payment of tax.
252.150e Marks and brands.
252.150f Disposition of forms.
252.150g Return of concentrate.
252.150h Brewer's report.
252.150i Processing of Form 3021.
252.150j Charges and credits on bond.
252.150k Loss of concentrate in transit.

§ 252.150a General.

Concentrate, produced from beer by the removal of water therefrom under the provisions of Subpart BB of Part 245 of this chapter, may, subject to this subpart, be removed from the brewery without payment of tax, for:

(a) Export to a foreign country; or

(b) Transfer to and deposit in a foreign-trade zone for exportation or for storage pending exportation.

All such removals shall be made by the brewer under the provisions of his bond, Form 1566, as extended by consent of surety under the provisions of § 245.240 or § 245.241.

§ 252.150b Notice, Form 3021.

(a) Whenever a brewer intends to remove concentrate without payment of tax from the brewery for exportation from the United States or for transportation to and deposit in a foreign-trade zone, he shall prepare a notice for each such removal on Form 3021, in quadruplicate.

(b) The brewer shall execute on each copy of Form 3021 his agreement to pay on demand from the assistant regional commissioner, an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate removed for the stated purpose and for which proper evidence of exportation or transfer to a foreign-trade zone, as the case may be, has not been furnished as prescribed by this part.

§ 252.150c Containers.

Concentrate may not be removed for export, or for transfer to and deposit in a foreign-trade zone, in containers of the kind ordinarily used by brewers for the removal of beer for consumption or sale.

§ 252.150d Procedures applicable to concentrate removed without payment of tax.

The provisions of §§ 252.30, 252.35 to 252.38, 252.241, 252.245 to 252.247, 252.250 to 252.253, and 252.262 are applicable to concentrate removed under this subpart for exportation or for transfer to and deposit in a foreign-trade zone to the same extent that such provisions are applicable to beer removed for such purposes.

§ 252.150e Marks and brands.

In addition to the marks and brands prescribed in Part 245 of this chapter, each container of concentrate to be removed without payment of tax under this subpart shall be marked as specified below:

(a) "Beer Concentrate For Export—Without Payment of Tax", where the concentrate is to be removed for export from the United States; or

(b) "Beer Concentrate For Export—Without Payment of Tax Via FTZ No." followed by the number of the zone—where the concentrate is removed for deposit in a foreign-trade zone.

All such markings shall be placed on the containers in the same manner as is prescribed by the regulations in Part 245 of this chapter for the affixing of the original marks.

§ 252.150f Disposition of forms.

On removal of concentrate from the brewery under this subpart, the brewer shall forward one copy of Form 3021 to the assistant regional commissioner, retain one copy in his files, and deliver the original and remaining copy to the officer to whom the shipment is consigned.

§ 252.150g Return of concentrate.

Concentrate removed without payment of tax under this subpart may be returned to the brewery from which removed if lading of the concentrate is delayed for more than the period provided in § 252.262 or where the brewer has other good cause for such return. The brewer shall request the collector of customs to release the concentrate for return to the brewery and, on such release, the collector of customs shall endorse both copies of the appropriate Form 3021 to show his release of the concentrate to the brewery, the brewer shall record the quantity in his daily records, mark the two copies of Form 3021 returned by the collector of customs, "Canceled—Returned to Brewery", and forward one copy to the assistant regional commissioner.

§ 252.150h Brewer's report.

The brewer's records shall reflect the quantity of concentrate removed without payment of tax or returned to the brewery under this subpart, and he shall report the quantity of concentrate so removed or returned on a separate Form 103, in accordance with the provisions of Subpart BB of Part 245 of this chapter.

§ 252.150i Processing of Form 3021.

The processing of Form 3021 by customs officers shall be in accordance with the procedures prescribed in §§ 252.261, 252.264 to 252.267, 252.269 (a) and (c), and 252.290, as the case may be, for the processing of forms prescribed for use for the exportation of beer.

§ 252.150j Charges and credits on bond.

The removal of concentrate from the brewery without payment of tax under this subpart shall constitute a charge against the brewer's bond, Form 1566, of an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the concentrate which is removed. Conversely, the satisfactory accounting for concentrate so removed shall constitute a credit to the bond.

§ 252.150k Loss of concentrate in transit.

When the certifying officer's report on Form 3021 discloses that there has been a loss of concentrate after removal from the brewery and while in transit to the port of export or to the foreign-trade zone, and that such loss was a normal one caused by casualty, leakage, or spillage, the assistant regional commissioner will allow the loss. Where the report discloses that the loss is large or unusual, the assistant regional commissioner shall conduct an investigation of the loss and, if he finds that it occurred by reason of casualty, leakage, or spillage, credit for the loss will be allowed. Where the investigation discloses evidence indicating that the loss in transit resulted from theft or from fraud, the assistant regional commissioner will afford the brewer opportunity to submit a written explanation with respect to the causes of such loss before taking further action. The assistant regional commissioner shall make demand on the brewer for an amount equal to the tax which would be due on removal for consumption or sale, including penalties and interest, on all beer used to produce the quantity of concentrate which is not satisfactorily accounted for.

[F.R. Doc. 60-12013; Filed, Dec. 27, 1960; 8:48 a.m.]

[27 CFR Part 7]

LABELING AND ADVERTISING OF MALT BEVERAGES

Notice of Hearing

Notice is hereby given, pursuant to the provisions of section 5 of the Federal Alcohol Administration Act (49 Stat. 981 as amended; 27 U.S.C 205), of a public hearing to be held on Tuesday, March 21, 1961, at 10:00 a.m., e.s.t., in Room 3313, Internal Revenue Building, Twelfth Street and Constitution Avenue NW., Washington, D.C., at which time and place all interested parties will be afforded opportunity to be heard, in person or by authorized representative, with reference to the proposals, the substance of which is stated below, to amend Regulations No. 7 (27 CFR Part 7), relating to labeling and advertising of malt beverages. Persons who plan to attend the hearing are requested to so notify the Commissioner of Internal Revenue, Attention: O:AT, Washington 25, D.C., by March 13, 1961.

Written data, views, or arguments relevant and material to these proposals may be submitted, in duplicate, for incorporation into the record of hearing (1) by mailing the same to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., provided that they are received prior to the termination of the hearing, or (2) by presenting the same at the said hearing. At the conclusion of the hearing a reasonable opportunity will be afforded interested parties for examination of the record and for the submission of briefs.

Substance of proposals. To amend section 24 (27 CFR 7.24) by relettering paragraphs (b), (c), (d), (e), (f) and graphs (b), (c), (d), (e), (f) and (g) inserting a new paragraph (b) reading substantially as follows:

(b) Malt beverages which have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide shall, for the purposes of this part, be labeled in the same manner as malt beverages which have not been concentrated and reconstituted.

Or, in the alternative: To amend section 24 (27 CFR 7.24) by relettering paragraphs (b), (c), (d), (e), (f) and (g) as (c), (d), (e), (f), (g) and (h) and inserting a new paragraph (b) reading substantially as follows:

(b) Malt beverages which have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide shall be designated in the same manner as malt beverages which have not been concentrated and reconstituted, except that the designation shall be qualified by the word "reconstituted" in substantially the same size and kind of type, e.g., "reconstituted beer", "reconstituted ale", "reconstituted stout"; etc.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

[F.R. Doc. 60-12014; Filed, Dec. 27, 1960; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

OPERATION AND MAINTENANCE CHARGES

Colorado River Indian Irrigation Project, Arizona

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the acts of August 1, 1914 and March 7, 1928 (38 Stat. 583, 45 Stat. 210:25 U.S.C. 385-387) and by virtue of the authority delegated by the Secretary of the Interior to the Commissioner, Bureau of Indian Affairs, by Secretarial Order No. 2508, Amendment No. 1 (16 F.R. 473), it is proposed to amend 25 CFR 221.6 and 221.7 as set forth below. The purpose of this amendment is to increase the annual operation and maintenance assessment rate in § 221.6 from $8.00 to $8.50 per acre and the assessment rate for excess water in § 221.7 from $1.50 to $1.75 per acre foot.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Commissioner, Bureau of Indian Affairs, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

1. Section 221.6 is amended to read as follows:

§ 221.6 Charges.

The annual basic charge against the land to which water can be delivered under the Colorado River Indian Irrigation Project in Arizona, for the operation and maintenance of that project, is hereby fixed at $8.50 per irrigable acre, whether water is used or not. Payment of this charge will entitle the wateruser to, but not in excess of, eight acre-feet of water per acre per annum on certain sandy areas as described in a schedule on file at the Colorado Indian Agency, and available for inspection by interested parties, and to five acre-feet of water per annum per irrigable acre on all other lands. With the approval of the Superintendent, additional water, reasonably sufficient to carry away alkali salts, may be allowed on certain alkali tracts at no additional charge for the purpose of reclaiming lands by the usual methods, such as flooding and leaching. The foregoing charges and allotments of water shall become effective for the calendar year 1961 and continue in effect thereafter, until further notice.

2. Section 221.7 is amended to read as follows:

§ 221.7 Excess water charges.

Additional water, if and when available, in excess of basic allowances, may be delivered upon written request to the Superintendent by landowners or users at the rate of $1.75 per acre foot, or fraction thereof.

GLENN L. EMMONS,
Commissioner.

DECEMBER 21, 1960.

[F.R. Doc. 60-12010; Filed, Dec. 27, 1960; 8:47 a.m.]

National Park Service

[36 CFR Part 7]

SHENANDOAH NATIONAL PARK, VIRGINIA

"Fishing for Fun" in Certain Streams

Basis and purpose. Notice is hereby given that pursuant to §4(a) of the Administrative Procedure Act, approved June 11, 1946 (60 Stat. 238; 5 U.S.C., 1003); authority contained in §3 of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C., 3); National Park Service Order No. 14 (19 F.R. 8824); and Regional Director, Region One, Order No. 3 (21 F.R. 1493), it is proposed to amend 36 CFR 7.15 as set forth below. The purpose of this amendment is to designate certain streams where "fishing for fun" only is permitted and to limit hours of fishing.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Shenandoah National Park, Luray, Virginia, within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

R. TAYLOR HOSKINS,
Superintendent,
Shenandoah National Park.

Section 7.15 is amended by revising paragraph (a) (1) and (3) to read as follows:

§ 7.15 Shenandoah National Park.

(a) *Fishing*—(1) *Applicability of regulations.* The regulations in this section shall govern fishing on those portions of all streams lying wholly within the Park, except for the Rapidan and Staunton Rivers and their tributaries where "fishing for fun" only is permitted with the following restrictions in addition to those set out in subparagraphs (3), (7), and (8) of this paragraph:

(i) Fishing is restricted to artificial flies or lures having one barbless hook.

(ii) No fish of any size may be in possession at any time. All fish caught must be handled carefully and returned immediately to the stream.

Along those portions of the streams which follow the boundary line of the Park, the State of Virginia laws and regulations governing fishing shall apply.

* * * * *

(3) *Season.* The opening date of the trout fishing season and the permissible hours of fishing shall conform with those of the State of Virginia and shall close on the same date as the State, or October 15, whichever date is earlier.

[F.R. Doc. 60-11993; Filed, Dec. 27, 1960; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 963]

[Docket No. AO-309-A2]

MILK IN GREAT BASIN MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Great Basin marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington,

D.C., not later than the close of business the 15th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at South Salt Lake City, Utah, on May 10–12, 1960, pursuant to notice thereof which was issued April 15, 1960 (25 F.R. 3420).

The material issues on the record of the hearing relate to:

1. Extension of the marketing area;
2. Limitation of diversion to nonpool plants by a cooperative association;
3. Requirements for producer-handler status;
4. Base-excess payments to producers;
5. Classification of transfers to nonpool plants;
6. Pool plant requirements;
7. Accounting for frozen cream;
8. Shrinkage allowance on milk received in bulk tanks for which a cooperative association is the handler;
9. Advance payments to producers; and
10. Allocation provisions applicable to receipts of packaged sour cream priced under another order.

No evidence was offered with respect to a proposal in the hearing notice to modify the provisions applicable to plants regulated under other orders operating routes in the marketing area. The record presents no issue with respect to this proposal.

Findings and conclusions. Issues 4 and 10 and that portion of issue 5 related to the distance that bulk cream may be moved for manufacturing use as Class II milk were dealt with in a separate decision issued by the Acting Secretary on August 15, 1960 (25 F.R. 7998) and by amendment to the order issued August 26, 1960 (25 F.R. 8293). The following findings and conclusions on the remaining issues are based on evidence presented at the hearing and the record thereof:

1. *Marketing area.* White Pine, Elko and Eureka Counties, Nevada, should be added to the marketing area.

Two producer associations proposed that the area be extended to include the northeastern Nevada counties of White Pine, Elko, and Eureka. These counties are contiguous to the Great Basin marketing area and cover 30,202 square miles with a total population (1960 census) of 22,586. The chief centers of population, the cities of Elko and Ely are each approximately 225 miles from Salt Lake City.

Four handlers regulated under the Great Basin order and two Nevada handlers distribute milk in these counties. The plants of the Nevada handlers are located at Genoa and Reno in western Nevada, more than 300 miles from Elko and Ely. In 1959 sales of the Great Basin handlers in these three counties were 3.7 million pounds. For March 1960, these handlers reported sales of 34,377 gallons (295,642 pounds) to the Nevada Dairy Commission. Based on such reports 56 percent of total sales in the area were by Great Basin handlers and 44 percent by Nevada handlers. Based on estimated population and per capita sales proponents claimed that their 1959 sales represented 70 percent of total sales. Annual sales of the Utah dealers declined 11 percent in volume from 1955 to 1959.

While sales volumes of Great Basin handlers have declined those of Nevada dealers have increased as have total sales. In 1955 Nevada plant sales were exclusively from a local plant in Ely which is no longer in operation. When this plant ceased operation in 1959 the Genoa plant took over its distribution and expanded its sales in these counties.

The Great Basin producer associations assert that Nevada handlers enjoy certain competitive procurement advantages due to the fact that they purchase milk solely on butterfat value. Under this system no value is allocated to skim milk and the raw material cost of skim milk drinks and buttermilk, Class I products under the Great Basin order, is very low.

The real issue, however, is not so much competitive procurement advantage as the danger that certain Great Basin handlers now serving these counties may find it attractive to establish separate processing plants for these Nevada sales or transfer such sales to already existing unregulated plants. Differences in Nevada and Utah inspection requirements have existed for years. Nevada requires certain barn and milkhouse construction features not required by Utah or the U.S. Public Health Service Code. Until recently Nevada authorities have permitted separate processing of milk from Nevada approved farms for Nevada sales. They had, at the time of the hearing, established a September 1960 deadline by which plants processing milk for sale in Nevada could receive milk only from producers meeting Nevada requirements.

Costs of remodeling existing facilities of all producers supplying the four plants selling in this area were claimed to be prohibitive. Testimony of Nevada health authorities indicated that they had discussed with Great Basin handlers the handling of Nevada milk in segregated plants. Such plants would not engage in sales in the present marketing area, hence the value of their sales would be lost to the pool. While certain Nevada qualified producers might be transferred to such plants, the pool would continue to bear the burden of surplus, equal sharing of which was one of the principal objectives sought by the order.

Great Basin milk continues to be sold in Nevada beyond the deadline. This is presumably achieved by concentrating and processing all such milk in one plant and assigning to such plant all Nevada approved producers. The market has thus at least temporarily halted the potential loss to the pool of the Class I sales historically a part of the market. Incorporation of the three Nevada counties in the marketing area will permit plant operators to process Nevada milk as best fits their needs and health requirements without removing such sales from the pool.

Proponents suggested that a special provision be included for any plant subject to producer pricing of the Nevada Dairy Commission that has insufficient distribution for pool status. Under the proposal such a plant would have had the option of paying the compensatory payment presently provided for nonpool plants on the volume of their sales in the marketing area or of comparing their aggregate payment to the dairy farmers supplying them with milk with the order value of such milk and paying any difference into the pool. They did not propose, however, to make this option available to all handlers operating nonpool distributing plants. It is concluded that no change should be made on the basis of this record in the obligations to the pool from operators of distributing plants that fail to qualify for pool status.

2. *Limitation of diversion by a cooperative association.* A cooperative association should not be limited with respect to the percentage of its milk diverted to nonpool plants.

Three producer cooperatives proposed that the order be amended so as to limit the quantity of milk that a cooperative may divert as producer milk to a nonpool plant. Specifically, they proposed that the percentage of a cooperative's milk which is utilized as Class I by pool handlers and at nonpool plants should be at least 50 percent in the months of August through March and 40 percent in other months. Proponents contended that this would protect the Great Basin market in the event that a cooperative association, through the diversion privilege afforded it, should include the reserve supply of another market in the Great Basin pool without adding the Class I sales of the other market.

In effect, the proposal would extend to cooperative associations performance standards which are similar to those required of pool plants distributing packaged milk in the marketing area. Performance standards are required of pool plants to assure that only those plants which supply milk for fluid consumption in the market may pool their sales. Thus, the dairy farmers supplying such plants share in the marketwide equalization.

In the interest of efficient marketing of milk, the reserve supply of milk for pool plants is allowed to go directly to manufacturing plants rather than to require it to be transported to distributing plants to be pooled. This is accomplished by allowing handlers to divert the milk for their account and also by allowing a cooperative association to divert milk not needed by pool plants to nonpool plants by assuming the responsibility for accounting and pooling such milk.

Although milk which is diverted by a cooperative association is not covered by the performance requirements which a pool plant must meet, it is subject to the performance requirements placed on individual producers, which assures their association with the market in order to share in the marketwide equalization. This requirement is that during any month at least one-third of a producer's milk must be received at pool plants.

There is no evidence that the present performance requirements of the order will not adequately protect the pool. If the present provisions are inadequate, it would probably be more feasible to modify them rather than to add the proposed provisions. It is concluded that no change should be made at this time to limit diversion by cooperatives.

3. *Requirements for producer-handler status.* The definition of producer-handler should be revised so as to limit the amount of milk a producer-handler may receive other than his own production. Also the qualification for ownership of a producer-handler operation should be clarified.

Producer associations proposed that producer-handlers lose their status as such and become fully regulated handlers if they receive any milk other than their own farm production. The association witness contended that any producer-handler could gain a competitive advantage over other handlers and disrupt the market by disposing of all his own production as Class I milk and supplement such production with milk either from pool plants or diverted directly from other producers, as is now provided under the order. In such a situation producers who ship to pool plants carry the seasonal reserve associated with the Class I sales of the producer-handler without sharing in the Class I sales of the producer-handler's own production.

Large operations which receive milk from their own farm production and rely on other handlers for substantial supplemental supplies, either in bulk or packaged form, are not significally different from the operations of regular handlers. In addition, such individuals do not assume the risk or cost of providing a full supply. If they are accorded producer-handler status, the pool does not receive the benefits of their Class I sales but acts as a supply balance and carries the reserve supplies necessary for their operation.

It is concluded that a producer-handler should rely on his own production so as to carry his own share of the risk and cost of providing an adequate supply for his customers. However, a producer-handler would not be in a position to make the producers who ship milk to pool plants responsible for bearing the burden of the reserve milk supply associated with his Class I sales if he were allowed to make small purchases to meet emergencies. Therefore, it is further concluded, that a producer-handler should be permitted during any month to purchase from pool plants an amount of milk equal to not more than the larger of five percent of his Class I sales, or 100 pounds on a daily average basis without losing his status as a producer-handler.

Since the exemption of pooling own farm production provides an incentive for individuals to attain producer-handler status, it is necessary to preclude certain devices which may be used to circumvent the intent of the order provisions. Producers proposed that the wording of the order be made more explicit so as to bring under regulation operations which attempt to masquerade as those of producer-handlers through leases with limited risk or by restricted partnerships. The order should provide that a producer-handler operation be limited to individuals, partnerships, and corporations. A partnership or corporation should make available to the market administrator its articles of partnership or incorporation so he may assure himself that all of the producer-handler's operation is organized and run as a single unit without restrictions or limitations. The producer-handler should have the complete risk and financial responsibility for the entire producer-handler operation.

Inclusion of the aforementioned requirements in the producer-handler definition should give greater assurance that no operation will be exempt from pooling its own farm production or sharing its Class I sales to the detriment of producers or the effectiveness of the order.

5. *Classification of transfers to nonpool plants.* The transfer provisions of the order should be amended to assure equitable classification of milk transferred to nonpool plants. The present provisions of the order do not give adequate assurance that milk transferred to a nonpool plant as Class II is not needed by such plant for Class I purposes. This could happen in a plant which has both Class I distribution and manufacturing and its Class I distribution is greater than the receipts from its regular producers. Thus, it might utilize some of the transferred milk purportedly utilized in manufacturing for its Class I uses, while manufacturing receipts of uninspected milk.

Producers proposed that the transfer provision should be amended to provide that milk, skim milk, and cream transferred or diverted to nonpool plants within 525 miles of Salt Lake City be Class II only if the fluid milk products disposed of from the nonpool plant do not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers directly supplying such plant. If the Class I disposition of the nonpool plant exceeds the receipts from dairy farmers regularly supplying such plant, it was proposed that the difference should be assigned to the fluid milk products transferred or diverted from a pool plant and classified as Class I milk. If transfers or diversions to a nonpool plant were made during the month from two or more pool plants, it was proposed that any Class I credit should be divided pro rata. Likewise, provision was proposed to prorate available Class I utilization with transfers from plants regulated under other orders.

This method of classifying transfers and diversions from pool plants to nonpool plants accords equitable treatment to Great Basin order handlers and gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving priority to receipts from dairy farmers supplying Grade A milk directly to a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. This method of classification will safeguard the primary functions of the transfer provision of the order by promoting orderly disposal of reserve supplies and by assuring that shipments to nonpool plants will be classified in an equitable manner.

6. *Pool plant requirements.* The definition of pool plant should be modified by eliminating the inclusion of milk received from nonpool supply plants in determining the percentage requirements for qualification as a pool plant. The Weber Central Dairy Association receives incidental shipments of milk from nonpool plants for disposal in manufactured milk products. The association proposed that these shipments not be included in the receipts used for the purpose of determining its pool plant status. This would enable the association to continue using its plant as an outlet for the reserve supplies of other markets for conversion to manufactured products without jeopardizing its status as a pool plant under the Great Basin order. Changing the pool plant definition as herein recommended would include for this purpose only those receipts which are the regular and dependable supply for the market in the determination requirements for maintaining pool plant status.

7. *Classification and accounting for frozen cream.* No change should be made in the classification and accounting of frozen cream under the Great Basin order.

The Great Basin order provides that the skim milk and butterfat used to produce frozen cream be assigned to Class II use. Producers proposed that since there is no such product produced or sold in the market, the references to it should be deleted from the order. They contended that such an amendment would preclude the possibility of selling frozen cream to consumers in competition with fluid cream.

When frozen cream is produced it is normally stored for future use in ice cream or butter, which are Class II products under the Great Basin order. There is no evidence that frozen cream has been sold directly to consumers.

Under the order any frozen cream that might be produced and placed into storage would be Class II disposition. At such time as the frozen cream is taken out of storage to be used in another product it would be treated as other source milk.

In view of the aforementioned consideration, it is concluded that there is no justification for changing the order provisions pertaining to frozen cream.

8. *Shrinkage.* The shrinkage allowance should be modified so as to permit a handler to receive all of the shrinkage associated with bulk tank milk for which a cooperative association elects to become the handler if the handler receiving such milk regularly accepts such milk on the basis of weights taken at the farm.

The order provides that shrinkage not exceed 2 percent on producer milk and 1½ percent on bulk tank lots of milk received from other handlers. In effect 0.5 percent shrinkage is allotted for the

assembly of milk from farms and 1½ percent for processing and distribution.

A cooperative association may be the handler for milk of its members which it delivers from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association. Thus, the cooperative performs the function of assembling the milk; accordingly any shrinkage associated with this function should not normally be passed on to the handler whose plant receives the milk. However, if the handler elects to use the weights taken at the farm he should be afforded the same shrinkage allowance as is provided for producer milk, since the volume for which he has to account is the same as that for producer milk.

The only difference would be that the cooperative is responsible for reporting the amount of such milk. It is therefore concluded, that the operator of the pool plant should receive the entire 2 percent shrinkage allowance if he notifies the market administrator in advance that he is purchasing such milk from the cooperative association on the basis of farm weights.

Since the limits on allocated shrinkage are only applied to bulk receipts, the order should be modified to provide that shrinkage be prorated only to bulk receipts.

9. *Advance payments to producers.* The order should provide for an advance payment for producer milk received during the first half of each month.

The Great Basin order provides that producers be paid by the 17th of each month for milk delivered during the previous month. However, the historic practice in this market has been to pay producers twice a month for milk received from them and producers proposed that the order provide for an advance payment to assure the continuation of the practice in the market.

Specifically, producers proposed that for producer milk received during the first 15 days of the month, handlers pay one-half of the amount paid such producers during the preceding month less authorized deductions. This method would in many instances result in a payment which is in excess of the amount otherwise due producers. For example, it would result in an overpayment to producers who do not ship for the full 15 days as well as on occasions when production or prices are lower than the previous month. Nor would it adequately provide for a producer who ships milk to more than one plant during the month. Therefore, it is recommended that the minimum payment for deliveries during the first 15 days of the month be based on the pounds of milk actually delivered during such period.

The use of the Class II price for the previous month times the hundredweight of producer milk will overcome the shortcoming of the method proposed for determining the amount of the advance payment. This is the method used in other orders and it is recommended for the Great Basin order. Administrative detail is kept at a minimum by this method in that no adjustments for butterfat, hauling or other deductions are required. However, it will be necessary for a handler to report the receipts of producer milk during the first 15 days of the month to the cooperative association to which a producer belongs. In case of a cooperative association which is also a handler for its producers, it is only necessary for handlers to make an advance payment of the Class II price on the aggregate of the milk received from the cooperative.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the Great Basin marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. Delete § 963.6 and substitute therefor the following:

§ 963.6 Great Basin marketing area.

"Great Basin marketing area" hereinafter called the "marketing area" means all territory, including all government reservations and installations and all municipalities, within the counties of Box Elder, Davis, Morgan, Salt Lake, Tooele, Utah, Wasatch, Weber, Summit, Grand, Daggett, Duchesne, Carbon, Sanpete, Juab, Millard, Sevier, Uintah, and Emery in the State of Utah, and the counties of Elko, Eureka, and White Pine in the State of Nevada.

2. Delete § 963.8 and substitute therefor the following:

§ 963.8 Producer-handler.

"Producer-handler" means an individual, or a partnership or cooperation for which written articles of partnership or incorporation are furnished the market administrator, which:

(a) Produces milk and operates an approved plant described in § 963.10(a);

(b) Receives milk only from (1) his own farm production and (2) from pool plants in an amount during the month not in excess of the larger of 3,000 pounds or 5 percent of such person's Class I sales; and

(c) The operation of the milk production, processing, and distributing facilities are under the complete and exclusive control of such person and at his sole risk.

§ 963.11 [Amendment]

3. Delete § 963.11(a) and substitute the following:

(a) An approved plant, except the plant of a producer-handler as described in § 963.8, from which during the month there is disposed of on routes fluid milk products equal to not less than 50 percent in the months of August through March and 40 percent in other months of the receipts during the month at such plant of producer milk, producer milk diverted therefrom by the plant operator and receipts at the plant of fluid milk products from plants described pursuant to paragraph (b) of this section, and there are disposed of on routes in the marketing area fluid milk products equal to not less than 10 percent of the total fluid milk product disposition from the plant on routes: *Provided*, That if a handler operates more than one approved plant, the combined receipts and disposition of any of such plants may be used as the basis for qualifying the respective plants pursuant to the preceding computations specified in this paragraph if the handler in writing so requests the market administrator: *And provided further*, That any approved plant from which the total route disposition of fluid milk products is to individuals or institutions for charitable purposes and is without remuneration from such individuals or institutions shall not qualify as a pool plant pursuant to this paragraph.

§ 963.41 [Amendment]

4. Delete § 963.41(b)(5) and substitute therefor the following:

(5) In shrinkage of skim milk and butterfat, respectively, allocated pursuant to § 963.45(b)(2) not to exceed the following: 2 percent of producer milk (except diverted milk), plus 1½ percent of milk received from pool plants of other handlers in bulk tank lots, plus 1½ percent of milk received from a cooperative association which is the handler for such milk pursuant to § 963.9(c) (except that if the handler operating the pool plant files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent), less 1½ percent of milk disposed of in bulk tank lots to pool plants of other handlers (except when the preceding exception hereof applies, the applicable percentage shall be 2 percent).

§ 963.42 [Amendment]

5. Delete § 963.42(c)(4) and substitute therefor the following:

(4) Class I utilization in the nonpool plant does not exceed the receipts of skim milk and butterfat in milk received during the month from dairy farmers who deliver Grade A milk directly from farms to such plant. If Class I utilization exceeds such receipts, the skim milk and butterfat transferred or diverted shall be Class I to the extent of such excess, except that when transfers or diversions are made during the month to such nonpool plant from other plants subject to the classification and pricing provisions of this part or other orders issued pursuant to the Act, the skim milk and butterfat assigned to Class I at the pool plant shall be not less than that obtained by prorating the assignable Class I milk at the transferee plant over all such receipts at such nonpool plant.

§ 963.45 [Amendment]

6. Delete § 963.45(b) and substitute therefor the following:

(b) For each handler prorate the resulting amounts between (1) the pounds of skim milk and butterfat in other source milk received in bulk form as fluid milk products, and (2) the pounds of skim milk and butterfat in other fluid milk products received in bulk form (excluding diverted milk).

7. Delete § 963.80 and substitute therefor the following:

§ 963.80 Time and method of payment for producer milk.

(a) Except as provided in paragraph (b) or (d) of this section, each handler shall make payment to each producer from whom milk is received as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class II price for the preceding month; and

(2) On or before the 17th day of the following month, for producer milk received during the month, at not less than the uniform prices pursuant to § 963.71 adjusted by the butterfat and location differentials to producers, subject to the following adjustments:

(i) Less marketing service deductions made pursuant to § 963.85;

(ii) Less the payment made pursuant to subparagraph (1) of this paragraph;

(iii) Plus or minus adjustments for errors made in previous payments to such producers and proper deductions authorized in writing by such producer; and

(iv) If by the date specified, such handler has not received full payment from the market administrator pursuant to § 963.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) In the case of a cooperative association, which is authorized by its members to collect payment for their milk, and which has requested such payment from any handler in writing, such handler shall on or before the second day prior to the dates on which payments are due to individual producers, pay the cooperative association for milk received from the producer-members of such association, amounts equal to not less than the totals of the payments otherwise due such producer-members for milk deliveries during the first 15 days of each month and for the entire month as determined pursuant to paragraph (a) of this section: *Provided*, That the cooperative has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association for each such producer on or before the second day prior to the end of the month, the pounds of milk received during the first 15 days of such month and on or before the 7th day of the following month, as follows:

(1) The total pounds of milk received during the month, including the pounds of base milk and excess milk;

(2) The pounds of milk received each day, together with the butterfat content of such milk;

(3) The amount or rate and nature of any proper deductions authorized to be made from payments; and

(4) The amount and nature of payments due pursuant to § 963.84.

(d) Each handler shall pay a cooperative association for milk received by him from such cooperative association for which the association is the handler as follows:

(1) On or before the second day prior to the end of each month, for milk received during the first 15 days of the month an amount per hundredweight not less than the Class II price for the preceding month; and

(2) On or before the 15th day of the following month for milk received during the month, not less than an amount computed by multiplying the minimum prices for milk in each class subject to the applicable location adjustment provided in § 963.53 and the butterfat differential provided by § 963.52, by the hundredweight of milk in each class pursuant to § 963.44, such amount to be reduced in the amount of the payment made pursuant to subparagraph (1) of this paragraph.

Issued at Washington, D.C., this 21st day of December, 1960.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 60-12007; Filed, Dec. 27, 1960; 8:47 a.m.]

[7 CFR Part 1034]

LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Notice of Rule Making With Respect to Administrative Rules and Regulations

Notice is hereby given that the Secretary of Agriculture is considering the issuance of administrative rules and regulations, as hereinafter set forth, which were recommended by the South Texas Lettuce Committee, established pursuant to Marketing Agreement No. 144 and Marketing Order No. 134 (7 CFR Part 1034; 25 F.R. 12227) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Consideration will be given to any data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than five days following publication of this notice in the FEDERAL REGISTER. The proposals are as follows:

GENERAL

§ 1034.100 Order.

Order means Order No. 134 (§§ 1034.1 to 1034.92; 25 F.R. 12227) regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas.

§ 1034.101 Terms.

The terms used in this subpart shall have the same meaning as when used in the order.

§ 1034.102 Communications.

Unless otherwise provided in the order, or by specific direction of the committee, all reports, applications, submittals, requests and communications in connection with the order shall be addressed to the South Texas Lettuce Committee, at its principal office.

§ 1034.103 Fiscal period.

The initial fiscal period shall begin on the effective date of this part and end on

October 31, 1961. Thereafter, each fiscal period shall begin on November 1 of each year and end on October 31 of the following year, both dates inclusive.

§ 1034.104 Registered handler.

For purposes of this part any person who operates as an established lettuce handler within the production area, with commonly accepted adequate facilities for grading and packing lettuce for market and who customarily buys lettuce from producers for packing and marketing, shall be recorded by the committee as a registered handler. Any other person who wishes to be listed as a registered handler may make application for registration on forms furnished by the committee. If such applicant has facilities available to him that are determined by the committee to be adequate for grading and packing lettuce for market, and he assumes responsibility for inspection of lettuce handled by him, and for assessments thereon, he may be approved and recorded as a registered handler. If the committee determines from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating the reason for denial of his application. Any registration of a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application. Any handler whose registration has been canceled shall be so informed by written notice thereof stating the reason therefor. The committee shall also notify producers of each such cancellation of handler registration through committee bulletins or published notice in local newspapers of general distribution, or both.

ESTIMATES AND ALLOTMENTS

§ 1034.110 Estimates of lettuce for current shipment.

(a) *Administrative policy.* Prior to, or at the beginning, of each lettuce marketing season the committee shall consider whether volumes regulations are probable during the ensuing season. If, after consideration of all factors bearing on the marketing of lettuce during the ensuing season, volume regulations are deemed sufficiently probable to warrant preparation therefor, the committee shall so announce to producers, handlers, and the public. Announcements shall indicate the preparatory work necessarily required of lettuce producers and handlers for estimates of lettuce available for current shipment during any ensuing allotment periods. The committee shall specify the dates on which fields or blocks of lettuce shall be recorded with the committee, and the dates on which it will begin estimating lettuce available for current shipment in ensuing allotment periods. The committee shall provide forms for recording fields or blocks of lettuce by producers and handlers and for use in applying for allocation bases and allotments.

(b) *Application for allocation bases and allotments.* Each season, on the date established by the committee for the initial allotment period and thereafter on the date established for each succeeding allotment period, each person who has lettuce available for current shipment shall submit, at the time, place, and manner prescribed by the committee, and on forms provided by the committee, an application for an allocation base and allotments on specific fields or blocks of lettuce declared by such person as available for current shipment. Applications shall contain information essential to the committee for estimating current supplies available for shipment by the applicant during the allotment periods set forth in the application, and to the extent applicable, shall include the following:

(1) Name and address of the applicant

(2) Names and addresses of producers of lettuce included in the application

(3) Agent or handler

(4) Proof of ownership or other authority supporting the application

(5) Identification, location, and description of fields or blocks

(6) Net acres in the respective fields or blocks

(7) Harvest period

(8) Intended harvesting percentage for each week

(9) Signature of applicant.

§ 1034.111 Apportionment of allotments.

(a) Pursuant to computations made in accordance with § 1034.53(d)(1), the committee shall notify each applicant of (1) his total allotment, (2) the amount thereof based on lettuce produced by the applicant and (3) (if applicable) the amount thereof based on lettuce produced by each of the other producers named in the application.

(b) Each handler with an allotment which is made up in whole or in part of lettuce produced by others shall notify each of the other participating producers, in the manner and at the time prescribed by the committee, of his equitable portion of the allotment.

(c) When handlers are limited by weekly volume regulations, or in the proportion of their weekly allotment which may not be exceeded in any one day, each handler with allotted lettuce owned or controlled by other persons shall equitably apportion such allotment among each of the other persons whose lettuce is included in the estimates on which the allotment is based. In carrying out the equitable apportionment of such weekly allotments, handlers may give consideration to the following factors: (1) Weather conditions, or other similar acts beyond control of the producers or the handler and their effect on the growth, maturity, and harvestability of each producer's lettuce; (2) reasonable management of harvesting and packing operations; (3) practical and economical distribution and assignment of harvesting and packing crews in the mutual interests of producers and handlers; (4) customary management and marketing practices under similar conditions in the absence of regulations, and (5) other factors contributing to mutually satisfactory producer-handler relationships in the marketing of lettuce.

§ 1034.112 Compliance verification.

(a) Each week during allotment periods, the committee shall investigate, or cause to be investigated, each handler's performance in harvesting fields or blocks of lettuce included within their applications and on which allotments have been established. Such checks and investigations shall report (1) compliance with allotments, (2) the extent to which allotments applicable to specific fields have been used, and (3) include fields on which allotments no longer apply. From time to time the committee shall inform handlers of the status of their allotments with respect to specific fields and of the dates on which allotments for specific fields shall terminate.

(b) Upon packaging, selling, or otherwise handling all lettuce allotted for shipment from a specific field, no person shall package or sell lettuce from such field, unless regulations under § 1034.52 (b)(5) are suspended or terminated.

§ 1034.113 Adjustment of allotments.

Allocation bases and allotments may be transferred or adjusted under the conditions set forth below. However, no adjustments or transfers of allotments may be made by the committee in excess of the allocation base and allotment of the respective handler, or which will result in allotments in excess of that specified for any allotment period or any day therein.

(a) When a person with an allocation base and an allotment sells or otherwise disposes of unharvested lettuce included therein to any other person, the allocation base and allotment therefor shall be transferred to such person. Such transfers shall be based on a bona fide contract transferring ownership or control of such lettuce. The committee shall maintain a record of all such transfers.

(b)(1) Any person with an allocation base and an allotment may request the committee, within such time as may be prescribed by the committee, for a reappraisal of his fields and the estimates of his available lettuce supplies to determine whether changes due to weather, maturity, harvestability, quality, or condition of the lettuce warrant an adjustment of his allotment. Upon investigation and report thereon, the committee shall determine the action to be taken on the request. In addition to other findings that may be made, such report shall indicate changes, if any, in harvesting percentages or yields that may properly be made in such applicant's estimates of supplies for current shipment.

(2) When the committee receives reports, properly verified by its staff, that lettuce in an applicant's allotment will not be used, such allotment shall be adjusted accordingly. The allotment thus released shall be made available equitably by the committee to other applicants who have requested an increase in their allotment.

(c) The committee shall maintain daily and weekly records setting forth a full disclosure of all transfers and adjustments of allocation bases and allotments. Reports thereon may be requested by the Secretary at any time.

§ 1034.114 Reports.

(a) During any allotment period, each handler shall report, or cause to be reported, the amount of lettuce packaged or otherwise handled by him from fields or blocks of lettuce on which his allotments were based or from any other source. Such reports may be provided by cooling plants or other commonly accepted sources from which such information is available.

(b) Persons selling or transporting lettuce for export to Mexico may be required to report all handling thereof, with identification of amounts of lettuce, date, vehicle, and fields from which such lettuce was harvested.

SAFEGUARDS

§ 1034.120 Policy.

Whenever shipments of lettuce for special purposes pursuant to § 1034.54 are relieved in whole or in part from regulations issued under §§ 1034.52 and 1034.53, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such lettuce in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

§ 1034.121 Qualification.

Before handling lettuce for special purposes which do not meet regulations issued pursuant to §§ 1034.52 and 1034.53, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle lettuce, (b) agree to comply with reporting and other requirements set forth in §§ 1034.120 to 1034.125, inclusive, with respect to such shipments, and (c) receive approval of the committee, or its duly authorized agents, to so handle lettuce. Such approval will be based upon evidence furnished in his application for Certificate of Privilege and other information available to the committee.

§ 1034.122 Application.

(a) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, and quality of the lettuce to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the lettuce is to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 1034.120.

(b) The committee may require each handler making shipments of lettuce for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525–V applicable to such shipment.

§ 1034.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of lettuce to be sold or transported to a designated consignee for the purposes declared.

§ 1034.124 Reports.

Each handler of lettuce shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point, destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 1034.125 Disqualification.

The committee from time to time may conduct surveys of handling of lettuce for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with requirements and regulations applicable to handling of lettuce in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a Certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

Dated: December 22, 1960.

FLOYD F. HEDLUND,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 60–12008; Filed, Dec. 27, 1960; 8:47 a.m.]

[7 CFR Part 1034]

LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Expenses and Rate of Assessment

Notice is hereby given that the Secretary of Agriculture is considering the approval of the expenses and rate of assessment hereinafter set forth, which were recommended by the South Texas Lettuce Committee, established pursuant to Marketing Agreement No. 144 and Marketing Order No. 134 (7 CFR Part 1034; 25 F.R. 12227).

Said marketing order regulates the handling of lettuce grown in the Lower Rio Grande Valley in South Texas, and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Consideration will be given to any data, views, or arguments pertaining thereto which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 10 days following publication of this notice in the FEDERAL REGISTER.

§ 1034.201 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the South Texas Lettuce Committee, established pursuant to Marketing Agreement No. 144, and this part, to enable such committee to perform its functions pursuant to the provisions of the aforesaid marketing agreement and order during the fiscal period December 1, 1960, through October 31, 1961, will amount to $40,000.

(b) The rate of assessment to be paid by each handler pursuant to Marketing Agreement No. 144 and this part shall be two cents ($0.02) per carton of lettuce handled by him as the first handler thereof during said fiscal period.

(c) All other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 144 and this part (Part 1034; 25 F.R. 12227).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 21, 1960.

FLOYD F. HEDLUND,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 60–12037; Filed, Dec. 27, 1960; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a (d)(1)), the following notice is issued:

A petition has been filed by Niagara Chemical Division, Food Machinery and Chemical Corporation, Middleport, New York, proposing the establishment of tolerances of 2 parts per million for residues of 6,7,8,9,10,10-hexacholoro-1,5,5a,6,9,9a-hexahydro - 6,9 - methano - 2,4,3-benzo - dioxathiepin-3-oxide in or on apples, apricots, artichokes, eggplants, grapes,

nectarines, peaches, pears, peppers, and tomatoes.

The analytical methods proposed in the petition for determining residues of 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide are the methods published in the FEDERAL REGISTER of March 18, 1960 (25 F.R. 2269), and a modification of the gas chromatographic-microcoulometric procedure of Coulson, et al., published in the Journal of Agricultural and Food Chemistry, Volume 8, page 399 (1960).

Dated: December 21, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12016; Filed, Dec. 27, 1960; 8:48 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by the Kellogg Company, Battle Creek, Michigan, proposing the issuance of a regulation to establish a total tolerance in breakfast cereals of 50 parts per million (0.005 percent) of antioxidants consisting of one or a combination of butylated hydroxyanisole, butylated hydroxytoluene, and propyl gallate.

Dated: December 21, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12017; Filed, Dec. 27, 1960; 8:48 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by Food Technology, Incorporated, 5903 Northwest Highway, Chicago 31, Illinois, proposing the issuance of a regulation permitting the use as an emulsifier in food of hydroxylated lecithin manufactured by reacting lecithin with hydrogen peroxide and acetic acid.

Dated: December 21, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12018; Filed, Dec. 27, 1960; 8:48 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by National Starch and Chemical Corporation, 1700 West Front Street, Plainfield, New Jersey, proposing the issuance of a regulation to permit the safe use of polyvinylidene chloride latex in coatings for food packaging.

Dated: December 21, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12019; Filed, Dec. 27, 1960; 8:48 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by Dow Chemical Company, Midland, Michigan, proposing the issuance of a regulation to establish a tolerance of 20 parts per million (0.002 percent) of sodium-2,2-dichloropropionate in or on dried citrus pulp for cattle feed.

Dated: December 21, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12020; Filed, Dec. 27, 1960; 8:48 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348 (b)(5)), notice is given that a petition has been filed by Interchemical Corporation, Post Office Box 659, Newark, New Jersey, proposing the issuance of a regulation to permit the safe use of sodium lauryl sulfate in coatings for food packaging.

Dated: December 21, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12021; Filed, Dec. 27, 1960; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 13852 (RM-102 and RM-183)]

TABLE OF ASSIGNMENTS; TELEVISION BROADCAST STATIONS

Order Extending Time for Filing Comments

In the matter of amendment of § 3.606 *Table of assignments,* Television Broadcast Stations (Augusta, Bangor, Calais and Presque Isle, Maine).

1. The Commission has before it a petition of Coastal Broadcasting Company, Inc., licensee of standard broadcast station WDEA, Ellsworth, Maine, requesting that the time for filing comments in the above-captioned proceeding be extended for original comments from December 23, 1960, to January 20, 1961, and for reply comments from January 9, 1961, to February 3, 1961.

2. The petitioner states that the additional time requested is needed for it to complete preparation of comments in this proceeding; that in connection therewith, it is making a detailed study of the need for television service in southeastern Maine, and intends to submit a counterproposal in the proceeding, and to comply fully with the Commission's request in the notice for "the most specific and detailed information possible" concerning plans and preparation for the use of the channel proposed for reassignment. Petitioner urges that the Commission and all parties interested in the proceeding will benefit if more time is afforded to permit all parties to make the most complete showing possible in their comments.

3. The Commission is of the view that the public interest will be served by affording the additional time requested for filing comments, and that, in view of the approaching Christmas and New Year holidays, it will not unduly delay the proceeding.

4. *Accordingly, it is ordered,* This 20th day of December 1960, That the above-mentioned request of Coastal Broadcasting Company, Inc., is granted; that the time for filing comments in this proceeding is extended from December 23, 1960, to January 20, 1961, and that the time for filing reply comments is extended from January 9, 1961, to February 3, 1961.

Released: December 22, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12029; Filed, Dec. 27, 1960; 8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 71-78, 197]

[Docket No. 3666 [1]]

TRANSPORTATION OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES BY MOTOR VEHICLE

Extending Date for Filing Statements

Upon consideration of the record in the above-entitled proceeding, and requests received from the following for an extension of time within which to file written statements in response to rule making notice 46 dated November 29, 1960:

(1) Institute of Makers of Explosives, dated December 13, 1960.

(2) Manufacturing Chemists' Association, Inc., filed December 14, 1960.

(3) American Petroleum Institute, filed December 15, 1960.

(4) National Paint, Varnish and Lacquer Association, filed December 15, 1960.

and good cause appearing therefor;

It is ordered, That the time within which written statements may be filed pertaining to the proposals contained in rule making notice 46 be and it is hereby extended from December 15, 1960, to January 16, 1961.

Dated at Washington, D.C., this 15th day of December A.D., 1960.

By the Commission, Commissioner Hutchinson.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-12034; Filed, Dec. 27, 1960; 8:50 a.m.]

[1] This order embraces Ex Parte No. MC-13, In the Matter of Regulations Governing the Transportation of Explosives and Other Dangerous Articles by Motor Vehicle, and Ex Parte No. MC-3, In the Matter of Need for Establishing Reasonable Requirements to Promote Safety of Operation of Motor Vehicles Used in Transporting Property by Private Carriers.

Notices

DEPARTMENT OF THE INTERIOR

Office of the Secretary

LEMORE W. CLARK

Appointee's Statement of Financial Interests

NOVEMBER 22, 1960.

Pursuant to section 302(a) of Executive Order 10647, the following information on a WOC appointee in the Department of the Interior is furnished for publication in the FEDERAL REGISTER:

Name of appointee: Lemore W. Clark.

Name of employing agency: Department of the Interior, Office of Assistant Secretary for Water and Power Development.

The title of the appointee's position: Deputy Director, Defense Electric Power Area 6.

The name of the appointee's private employer or employers: The Detroit Edison Co., Detroit, Mich.

The statement of "financial interests" is set forth below.

FRED G. AANDAHL,
Acting Secretary of the Interior.

Appointee's Statement of Financial Interests

In accordance with the requirements of section 302(b) of Executive Order 10647, I am filing the following statement for publication in the FEDERAL REGISTER:

(1) Names of any corporations of which I am, or had been within 60 days preceding my appointment, on November 22, 1960, as Deputy Director, Defense Electric Power Area 6, an officer or director:

None.

(2) Names of any corporations in which I own, or did own within 60 days preceding my appointment, any stocks, bonds, or other financial interests:

Curtiss Wright Corp., New York, N.Y.
The Detroit Edison Co., Detroit, Mich.

(3) Names of any partnerships in which I am associated, or had been associated within 60 days preceding my appointment:

None.

(4) Names of any other businesses which I own, or owned within 60 days preceding my appointment:

None.

LEMORE W. CLARK.

DECEMBER 16, 1960.

[F.R. Doc. 60-12011; Filed, Dec. 27, 1960; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

CERTAIN HUMANELY SLAUGHTERED LIVESTOCK

Identification of Carcasses

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904) and the statement of policy thereunder in 9 CFR 181.1 (25 F.R. 5863) the following table lists the establishments operated under Federal inspection under the Meat Inspection Act (21 U.S.C. 71 et seq.) which were officially reported on December 1, 1960, as humanely slaughtering and handling on that date the species of livestock respectively designated for such establishments in the table. Establishments reported after December 1, as using humane methods on December 1, or a later date in December will be listed in a supplemental list. Previously published lists represented establishments reported in November or December 1960 as humanely slaughtering and handling the designated species of livestock on November 1 or some later date in November 1960 (25 F.R. 12257 and 12579). The establishment number given with the name of the establishment is branded on each carcass of livestock inspected at that establishment. The table should not be understood to indicate that all species of livestock slaughtered at a listed establishment are slaughtered and handled by humane methods unless all species are listed for that establishment in the table. Nor should the table be understood to indicate that the affiliates of any listed establishment use only humane methods:

Name of establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses
Gus Juengling and Son, Inc	298	(*)					
Waldeck Packing Co	299					(*)	
Star Packing Co	306	(*)	(*)				
Greater New York Packing Co., Inc	317A	(*)	(*)			(*)	
Stadler Packing Co., Inc	320	(*)	(*)			(*)	
Frisco Packing Co	327	(*)	(*)				
C and M Meat Packing Corp	329		(*)				
Royal Packing Co	331	(*)	(*)				
Sokolik Packing Co	331A	(*)	(*)				
Shapiro Packing Co., Inc	332	(*)	(*)				
Nobles Independent Meat Co	335	(*)	(*)				
Anza Packing Co	345	(*)	(*)	(*)			
Union Packing Co	351	(*)	(*)				
McCandless Packing Co., Inc	355	(*)	(*)				
Hell Packing Co	357	(*)	(*)				
Meyers Packing Co	363	(*)	(*)			(*)	
Westport Packing Corp	369	(*)	(*)				
The John Hilberg and Sons Co	375	(*)	(*)				
Cross Bros. Meat Packers, Inc	376	(*)	(*)	(*)			
Emee Packing Co., Inc	380	(*)	(*)			(*)	
American Stores Co	384	(*)	(*)				
Oldhams Farm Sausage Co., Inc	392	(*)	(*)			(*)	
Roth Packing Co	394	(*)	(*)				
The Northside Packing Co	395	(*)	(*)				
Logan Packing Co	397	(*)	(*)				
Ceebee Packing Co	404	(*)	(*)	(*)			
Neuhoff Bros	406	(*)	(*)			(*)	
Philadelphia Boneless Beef Co	418	(*)	(*)				
Murray Packing Co., Inc	421	(*)	(*)				
The Collins Packing Co	423	(*)	(*)			(*)	
Lone Star Packing Co	433	(*)	(*)				
Monarch Meat Packing Co	435	(*)	(*)				
Schneider Packing Co	439	(*)	(*)				
Prime Packing Co., Inc	443	(*)	(*)				
Peerless Packing Co., Inc	448	(*)	(*)				
Swift and Co	459	(*)	(*)			(*)	
Lancaster Packing Co	462	(*)	(*)				
Litvak Packing Co	465	(*)	(*)				
Beewar Packing Co	467	(*)	(*)				
Eckert Packing Co	471	(*)	(*)			(*)	
Armour and Co	477	(*)	(*)	(*)			
Eldridge Packing Co	478	(*)	(*)				
Middletown Beef Co., Inc	485	(*)	(*)				
Memphis Butchers Association, Inc	488	(*)	(*)	(*)		(*)	
Nebraska Beef Co	489	(*)	(*)				
Triangle Meat Distributors, Inc	497	(*)	(*)				
Helm Brothers Packing Co	499	(*)	(*)			(*)	
Greenlee Packing Co	501	(*)	(*)				
B. Rothschild and Co	506	(*)	(*)				
Frosty Morn Meats	507	(*)	(*)				
Gruensfelder Packing Co	508	(*)	(*)	(*)			
Armour and Co	509	(*)	(*)				
Eben Valley Meat Packers, Inc	511	(*)	(*)			(*)	
Armour and Co	2AG	(*)	(*)				
Do	2AU	(*)	(*)	(*)			
Do	2B	(*)	(*)				
Do	2C	(*)	(*)	(*)			
Do	2E	(*)	(*)				
Swift and Co	3A	(*)	(*)	(*)			
Do	3AC	(*)	(*)				
Do	3AE	(*)	(*)				
Do	3AF	(*)	(*)				
Do	3AN	(*)	(*)				
Do	3B	(*)	(*)				
Do	3C	(*)	(*)	(*)			
Do	3L	(*)	(*)				
Do	3NN	(*)	(*)				
Do	3Z	(*)	(*)				
Lykes Bros., Inc., of Georgia	8	(*)	(*)				
The Cudahy Packing Co	10	(*)	(*)			(*)	
Hygrade Food Products Corp	12	(*)	(*)	(*)			
Do	12A	(*)	(*)				
Do	12D	(*)	(*)				
Do	12P	(*)	(*)				
Mickelberrys Food Products Co	16	(*)	(*)				
John Morrell and Co	17	(*)	(*)				
C. Finkbeiner, Inc	18	(*)	(*)				
The Cudahy Packing Co. of Nebraska	19E	(*)	(*)				
Wilson and Co., Inc	20A	(*)	(*)				
Do	20N	(*)	(*)				
Do	20Q	(*)	(*)				
Swift and Co	23	(*)	(*)	(*)		(*)	
American Packing Co	26	(*)	(*)				
Patrick Cudahy, Inc	28	(*)	(*)				
Montana Packing Co., Inc	37	(*)	(*)				
Pocomoke Provision Co	39	(*)	(*)				
Sunnyland Packing Co	43	(*)	(*)				
Stark Wetzel and Co	44	(*)					
Do	44A						
Idaho Meat Packers	46	(*)	(*)	(*)		(*)	
Consolidated Dressed Beef Co., Inc	47	(*)	(*)				
Sunnyland Packing Co. of Alabama	56	(*)	(*)				
Gonzales Packing Co., Inc	60	(*)	(*)				
Welland Packing Co	61	(*)	(*)				
Empire Packing Corp	63	(*)	(*)				
Somerville Packing Co	66	(*)	(*)	(*)			
The Quaker Oats Co	67E	(*)	(*)				
Eastern Packing Co	74E	(*)	(*)				
Armour and Co	75	(*)	(*)	(*)			
The Brain Brothers Packing Co	76	(*)	(*)				
The Cudahy Packing Co	81	(*)	(*)				
Hill Packing Co	82E	(*)	(*)				
The E. Kahns Sons Co	89	(*)	(*)				
Hygrade Food Products Corp	90	(*)	(*)				
Shenandoah Provision Co	92	(*)	(*)				
Shonyo Packing Co	93	(*)	(*)				
The F. Brennan Co	94	(*)	(*)				
The Val Decker Packing Co	95	(*)	(*)				
Wm. G. Rehns Sons	96	(*)	(*)				
A. Kocks Sons	98	(*)	(*)				
Liberty Packing Co	101	(*)	(*)				
H. Graver Co	103	(*)	(*)				
J. Lynn Cornwell, Inc	107	(*)	(*)	(*)			
Aurora Packing Co., Inc	110	(*)	(*)				
Wilson and Co., Inc	111	(*)	(*)	(*)			
Hoffman Packing Co., Inc	112	(*)	(*)				
Marhoefer Packing Co., Inc	113	(*)	(*)	(*)			
E. J. Arehle and Sons, Inc	122	(*)	(*)				
John Roth and Son, Inc	130	(*)	(*)				
Edward J. Kluener, Inc	142	(*)	(*)	(*)			
J. B. Rice Sausage Co., Inc	144	(*)	(*)				
Kansas City Dressed Beef Co	166A	(*)	(*)				
Swift and Co	180	(*)	(*)	(*)			
Peerless Packing Co	184	(*)	(*)				
Swift and Co	186C	(*)	(*)	(*)			
The Rath Packing Co	191	(*)	(*)				
Swift and Co	198	(*)	(*)	(*)			
Krey Packing Co	199N	(*)	(*)				
George A. Hormel and Co	203A	(*)	(*)				
The Cudahy Packing Co	205	(*)	(*)				
Eimer Packing Co., Inc	208	(*)	(*)				
Farmers Packing Co., Inc	209	(*)	(*)				
Helms Riverside Abattoir, Inc	210	(*)	(*)				
S. Adams Packing Co	211	(*)	(*)				
Penn Packing Co	212	(*)	(*)				
Agar Packing Co	213C	(*)	(*)				
Hygrade Food Products Corp	222	(*)	(*)				
Do	222A	(*)	(*)				
Gold Merit Packing Co., Inc	232	(*)	(*)				
Kuskin Packing Co	237	(*)	(*)				
Armour and Co	238	(*)	(*)				
Geo. Lueders and Co	240	(*)	(*)				
John Morrell and Co	246	(*)	(*)				
The Dunahy Packing Co	247	(*)	(*)				
Swift and Co	249	(*)	(*)				
Suber Edwards and Co	250	(*)	(*)				
The Jones Dairy Farm	263	(*)	(*)				
Stock Yards Packing Co	268	(*)	(*)				
Houston Packing Co	271	(*)	(*)				
Wilson and Co., Inc	275	(*)	(*)				
American Stores Co	279	(*)	(*)				
Agar Packing Co., Inc	282	(*)	(*)				
Three City Dressed Beef, Inc	283	(*)	(*)				
Sioux City Dressed Beef Co	513	(*)	(*)				
Pearl Packing Co., Inc	524	(*)	(*)				
Smallwood Packing Co., Inc	529	(*)	(*)				
Omaha Packing Co	532	(*)	(*)				
Oscar Mayer and Co., Inc	536A	(*)	(*)				
Do	537C	(*)	(*)				
Greendell Packing Corp	542	(*)	(*)				
United Dressed Meats, Inc	546	(*)	(*)				
Mid South Packers, Inc	557	(*)	(*)				
Lone Star Packing Co	564	(*)	(*)				
Peretta Packing Co., Inc	571	(*)	(*)				
Armour and Co	579	(*)	(*)				
Kingsford Packing Co., Inc	581	(*)	(*)				
Stahl Meyer, Inc	583	(*)	(*)				
Cloverleaf Packing Co., Inc	583	(*)	(*)				
Coffeyville Packing Co	583	(*)	(*)				
F. A. Ferris & Co., Inc	583	(*)	(*)				
Peoria Packing Co., Inc	583	(*)	(*)				
Swift and Co	591	(*)	(*)	(*)			
New York Central Packing Co	606	(*)	(*)				
Swift and Co	608	(*)	(*)	(*)			
Eastern Oregon Meat Co., Inc	611	(*)	(*)				
Midtown Veal and Mutton Co., Inc	612	(*)	(*)				
City Packing Co	625	(*)	(*)	(*)			
Big Foot Packing Co., Inc	627	(*)	(*)				
E. A. Miller and Sons Packing Co., Inc	628	(*)	(*)				
General Meat Co	630	(*)	(*)				
Auburn Packing Co., Inc	637	(*)	(*)				
H. and C. Packing Co	645	(*)	(*)				
The William-Schladerberg T. J. Kuridle Co	649	(*)	(*)				
John Morrell and Co	650	(*)	(*)	(*)			
Illinois Beef Co., Inc	655	(*)	(*)				
Hallsta Bolognia Co	656	(*)	(*)				
St. Louis Dressed Beef Co	659	(*)	(*)				
McCook Packing Corp	660	(*)	(*)				
Globe Packing Co	663	(*)	(*)	(*)			
Swotsbluff Packing Co	667	(*)	(*)				
Sioux City Meat Packers, Inc	671	(*)	(*)				
E. S. Redell Packing Co	672	(*)	(*)				
Union Packing Co	673	(*)	(*)				
Jacob Bauers Sons, Inc	678	(*)	(*)	(*)			
Armour and Co	680	(*)	(*)				
Nations Packers Packing Co	683	(*)	(*)				
The Sullivan Packing Co	685	(*)	(*)				
Marco Packing Co	692	(*)	(*)				
Carter Packing Co	698	(*)	(*)				
Central Nebraska Packing Co	J13E	(*)	(*)				
Davenport Packing Co., Inc	716	(*)	(*)				
The Joseph N. Rice Co	717	(*)	(*)				
Swift and Co	720	(*)	(*)	(*)			
Decker and Son	727	(*)	(*)				
The Quaker Oats Co	734F	(*)	(*)				
Jacob Schlachters Sons Co	739	(*)	(*)				
Hygrade Food Products Corp	747	(*)	(*)				
Philadelphia Dressed Beef Co	765	(*)	(*)				
Schaake Packing Co., Inc	768	(*)	(*)				
Earl C. Gibbs, Inc	770	(*)	(*)				
Cadwell Martin Meat Co	773	(*)	(*)				
Modern Meat Packing Co	774	(*)	(*)	(*)			
Dubuque Packing Co	777	(*)	(*)				
Bryan Brothers Packing Co	780	(*)	(*)				
Diamond Meat Co., Inc	783	(*)	(*)				
Granite State Packing Co	785	(*)	(*)				
John Polak Packing Co	786	(*)	(*)				
Wimp Packing Co	791	(*)	(*)	(*)			
Hygrade Meat Packers	792	(*)	(*)				
Max Bauer Meat Packer	800	(*)	(*)				
McFarland, Inc	811	(*)	(*)				
William N. Peters, Inc	813	(*)	(*)	(*)			
Henry Meyers Sons, Inc	822	(*)	(*)				
Home Packing Co	823	(*)	(*)				
Hygrade Food Products Corp	825	(*)	(*)				
Penford Packing Co	827	(*)	(*)				
Bristol Packing Co	828	(*)	(*)				
Norman Peters Packing Co	834	(*)	(*)				
John Morrell and Co	836	(*)	(*)				
Nat Burling Packing Co. of Arkansas, Inc	837B	(*)	(*)				
Kretschmar Bros. Packing Co	839	(*)	(*)				
N. Y. Garden State Provision Co., Inc	845	(*)	(*)				
Sioux City Dressed Beef, Inc	867	(*)	(*)				
Wells and Davies Packing Co	880	(*)	(*)				
Sierra Meat Co	882	(*)	(*)				
Pabst Packing Corp	888	(*)	(*)				
Wilson Packing Beef Co., Inc	888A	(*)	(*)				
Wilson Davies Co., Inc	888A	(*)	(*)				
O Neill Packing Co	889	(*)	(*)				
Rambol Packing Co	892	(*)	(*)				
Meats, Inc	899	(*)	(*)				
Sigman Meat Co., Inc	901	(*)	(*)				

Name of establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses
Hoosier Veterinary Laboratories, Inc.	912					(*)	
National Meat Packers, Inc.	917	(*)	(*)				
South Philadelphia Willowbrook, Inc.	923	(*)	(*)				
Kerber Packing Co.	929	(*)	(*)				
Tarpoff Packing Co.	931	(*)					
McKenney Meat Co.	932	(*)	(*)				
Volz Packing Co.	938	(*)					
Wilson and Co., Inc.	940	(*)	(*)			(*)	
Joe Doctorman and Son Packing Co., Inc.	949	(*)	(*)	(*)			
Greater Omaha Packing Co., Inc.	960	(*)					
Greeley Capitol Packing Co.	969	(*)		(*)			
Hawaii Meat Co., Ltd.	970	(*)	(*)	(*)			
Perlin Packing Co., Inc.	974	(*)	(*)	(*)	(*)		
National Food Stores, Inc.	981	(*)					
Reitz Meat Products Co.	983					(*)	
Eagle Packing Co.	987	(*)					
Clover Packing Co., Inc.	1005	(*)	(*)				
Armour and Co.	1085	(*)	(*)				
Browns Packing House	1154	(*)					
The Harris Packing Co.	1175					(*)	
A.P. Moyer and Sons, Inc.	1311	(*)	(*)			(*)	
McCabe Packing Plant	1312	(*)	(*)	(*)			
H. and H. Packing Co.	1315	(*)	(*)				

Done at Washington, D.C., this 22d day of December 1960.

C. H. PALS,
Director, Meat Inspection Division, Agricultural Research Service.

[F.R. Doc. 60-12038; Filed, Dec. 27, 1960; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

STATEMENT OF ORGANIZATION AND DELEGATION OF AUTHORITY

Department of Claims Officer

The Statement of Organization and Delegations of Authority of the Department of Health, Education, and Welfare (22 F.R. 1045) is hereby amended:

Subsection (a) (5) of section 2-300.40 of Part 2 is revised to read as follows:

SEC. 2-300.40 *Department Claims Officer.* (a) • • •

(5) Designate a person to act for him during periods of temporary absence from his office. Effective December 19, 1960, during a vacancy in the position of Associate General Counsel, the Chief, Administrative Services Branch, Office of General Counsel, shall exercise the functions of the Department Claims Officer.

Dated: December 16, 1960.

[SEAL] BERTHA S. ADKINS,
Acting Secretary.

[F.R. Doc. 60-12001; Filed, Dec. 27, 1960; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 11278 etc.; Order No. E-16162]

NEW YORK-SAN JUAN CARGO RATES INVESTIGATION

Supplemental Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of December 1960.

In the matter of the New York-San Juan cargo rates investigation, Docket 11278 et al.

In the matter of the proposed specific commodity rates of Riddle Airlines, Inc., Pan American World Airways, Inc.; complaints of Trans Caribbean Airways, Inc., Pan American World Airways, Inc., Allied Air Freight International Corp., Dockets 11790, 11796, and 11797.

The Board, by Order E-15851 of September 29, 1960, instituted an investigation of and suspended reduced specific commodity rates between New York and Puerto Rico proposed by Pan American World Airways, Inc., and Riddle Airlines, Inc.

The Board finds that the suspension period of the proposed rates will expire before the investigation of their lawfulness can be concluded and final order made.

Accordingly, it is ordered that:

1. The suspension period of the rates and provisions from Arecibo, Mayaguez, Ponce Ramey Field, and San Juan, P.R., to New York, N.Y., for Commodity Group Nos. 20, 30, and 210 and from New York, N.Y. to Arecibo, Mayaguez, Ponce Ramey Field, and San Juan, P.R. for Commodity Group Nos. 30 and 60 on 16th Revised Page 10 to C.A.B. No. 7 of Riddle Airlines, Inc.; and the rates and provisions from New York, N.Y., to San Juan, P.R., in Item Numbers 1226, 1400, 1500, 2199, 2500Z, 3965, 4702, 6802, 9540, 9700, and 9994, and from San Juan, P.R. to New York, N.Y. in Item Numbers 115, 116, 2990, 4401, 4702, 5000, 9540, and 9994 appearing on Original Page 10-J, 65th Revised Page 38 and 29th Revised Page 40-C to Agent R. C. Lounsbury's C.A.B. No. 118, be and hereby is extended to and including March 30, 1961.

2. A copy of this order shall be filed with the aforesaid tariffs and shall be served upon Allied Air Freight International Corp., Pan American World Airways, Inc., Riddle Airlines, Inc., and Transportation Corporation of America.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

[F.R. Doc. 60-12039; Filed, Dec. 27, 1960; 8:51 a.m.]

[Docket 11927]

TRANSCONTINENTAL, S.A.

Notice of Prehearing Conference

In the matter of the application of Transcontinental, S.A. Docket 11927, for a renewal of its permit to engage in foreign air transportation between points in Argentina, the intermediate points Sao Paulo and Rio de Janeiro, Brazil; Caracas, Venezuela; and the terminal point New York, New York.

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on January 13, 1961, at 10:00 a.m., e.s.t., in Room 701, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner John A. Cannon.

Dated at Washington, D.C., December 21, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-12040; Filed, Dec. 27, 1960; 8:51 a.m.]

CIVIL SERVICE COMMISSION

POSITIONS FOR WHICH THERE IS DETERMINED TO BE A MANPOWER SHORTAGE

Notice of Listing

Under the provisions of Public Law 86-587, the Civil Service Commission had determined that there is a manpower shortage for positions of Engineering Technician (Nuclear Reactor Operator), GS-802-O, grades 9 to 13, National Aeronautics and Space Administration, Sandusky, Ohio, and travel and transportation expenses may be made for appointees to their duty station.

Any payment of travel and transportation expenses made to appointees as a result of this determination must be in accordance with travel regulations issued by the Bureau of the Budget.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director, Bureau of Management Services.

[F.R. Doc. 60-11972; Filed, Dec. 27, 1960; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13878; FCC 60M-2157]

CHEROKEE COUNTY RADIO STATION

Order Scheduling Hearing

In re application of Mac M. Thomas and Ruby Jo Clotfelter d/b as Cherokee County Radio Station, Centre, Alabama, Docket No. 13878, File No. BP-13084; for construction permit.

It is ordered, This 19th day of December 1960, that Elizabeth C. Smith will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 21, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12030; Filed, Dec. 27, 1960; 8:50 a.m.]

[Docket Nos. 13865-13866; FCC 60M-2155]

ARTHUR A. DETERS AND COLLEGE RADIO

Order Scheduling Hearing

In re applications of Arthur A. Deters, Greenfield, Massachusetts, Docket No. 13865, File No. BP-13046; Augustine L. Cavallaro, Jr., tr/as College Radio, Amherst, Massachusetts, Docket No. 13866, File No. BP-14179; for construction permits.

It is ordered, This 19th day of December 1960, that Herbert Sharfman will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 21, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12031; Filed, Dec. 27, 1960; 8:50 a.m.]

[Docket Nos. 13745-13746; FCC 60M-2161]

RADIO STATION WHCC (WHCC) AND ALUMINUM CITIES BROADCASTING CO. (WGAP)

Order Setting Further Prehearing Conference

In re applications of Kenneth D. Fry and Margaret F. Fry d/b/as Radio Station WHCC (WHCC), Waynesville, North Carolina, Docket No. 13745, File No. BP-12615, Has: 1400 kc, 250 w, U, Requests: 1400 kc, 250 w, 1 kw-LS, U; Harry C. Weaver and Frank H. Corbett, a Limited Partnership, d/b as Aluminum Cities Broadcasting Company (WGAP), Maryville, Tennessee, Docket No. 13746, File No. BP-12642, Has 1400 kc, 250 w, U, Requests: 1400 kc, 250 w, 1 kw-LS, U; for construction permits.

It appearing that counsel for the applicants herein has this date orally advised the Hearing Examiner that said parties now propose to proceed to an evidentiary hearing on their respective applications; and

It further appearing that the hearing date originally scheduled in the instant proceeding was postponed indefinitely pending submission to the Commission by these applicants of petitions for reconsideration and grants without hearing of their applications, and that the course of action now indicated by applicant's counsel makes it advisable to convene a further prehearing conference on the Examiner's own motion for the purpose of reaching agreements on the scheduling of a new hearing date as well as other procedural dates;

Accordingly, it is ordered, This 20th day of December 1960, on the Hearing Examiner's own motion, that all parties, or their counsel, in the above-captioned proceeding are directed to appear for a further prehearing conference pursuant to the provisions of § 1.111 of the Commission's rules, on Thursday, January 5, 1961, at 10:00 a.m. in the offices of the Commission at Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12032; Filed, Dec. 27, 1960; 8:50 a.m.]

[Docket Nos. 13867-13869; FCC 60M-2156]

SPENCER BROADCASTING CO. ET AL.

Order Scheduling Hearing

In re applications of Spencer Broadcasting Company, Spencer, West Virginia, Docket No. 13867, File No. BP-12886; WSTV, Inc. (WBOY), Clarksburg, West Virginia, Docket No. 13868, File No. BP-13116; Community Radio, Inc., Spencer, West Virginia, Docket No. 13869, File No. BP-14102; for construction permits.

It is ordered, This 19th day of December 1960, that David I. Kraushaar will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 16, 1961, in Washington, D.C.

Released: December 21, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12033; Filed, Dec. 27, 1960; 8:50 a.m.]

FEDERAL POWER COMMISSION

SECOND AMENDMENT TO STATEMENT OF GENERAL POLICY NO. 61-1

DECEMBER 20, 1960.

In our Statement of General Policy No. 61-1, issued September 28, 1960, we announced a price level of 14.0 cents per Mcf for increased rates of independent producers in Texas District Nos. 2, 3, 4, and 6. We also stated therein that as it becomes apparent that certain adjustments have general applicability in a specific area, the area price standard will be revised and set forth in greater detail with regard to the conditions to which the rate applies.

Prior to the issuance of Statement of General Policy No. 61-1, the Commission had in numerous cases accepted settlement offers providing for elimination of price redetermination and favored-nation provisions and had accepted increased rates higher than the ceiling for increased rates announced in our Policy Statement for Texas District Nos. 2, 3, 4, and 6.

As a result of our considerable experience with the effects of favored-nation and price redetermination provisions upon independent producer prices, we concluded that acceptance of settlement offers was desirable in the public interest, appropriate to carry out the provisions of the Natural Gas Act, and beneficial to ultimate consumers, pipeline purchasers and independent producers. In view of the foregoing, an adjustment to the price level for increased rates in Texas District Nos. 2, 3, 4, and 6, when coupled with the elimination of price redetermination provisions and favored-nation provisions in existing filed rate schedules appears to be appropriate.

Accordingly, the Commission's Statement of General Policy No. 61-1, issued September 28, 1960, as amended, is hereby further amended to provide:

For rate schedules from which favored-nation provisions, price redetermination provisions, and periodic escalation clauses have been eliminated, the area price level for increased rates for natural gas sales by independent producers in Texas District Nos. 2, 3, 4, and 6 is 15¢ per Mcf at 14.65 psia.

For rate schedules from which favored-nation and price redetermination provisions have been eliminated, the area price level for increased rates for natural gas sales by independent producers in Texas District Nos. 2, 3, 4, and 6 is 14.6 cents per Mcf at 14.65 psia, provided, however, that any escalations contained in such rate schedules shall not take effect prior to February 5, 1963, further escalations shall not take effect at less than five-year intervals from the effective date of the initial escalation, and the increase in rate for such escalation shall not exceed one cent per Mcf.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11982; Filed, Dec. 27, 1960; 8:45 a.m.]

[Docket No. CP61-78]

ARKANSAS LOUISIANA GAS CO.

Notice of Application and Date of Hearing

DECEMBER 20, 1960.

Take notice that on September 20, 1960, as supplemented on November 4, 1960, Arkansas Louisiana Gas Company (Applicant), Slattery Building, Shreveport, Louisiana, filed in Docket No. CP61-78 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of field facilities to enable Applicant to take into its certificated transmission pipeline system natural gas which will be purchased from producers thereof from time to time during the calendar year 1961 in the general area of Applicant's existing transmission system at a total cost not to exceed $6,918,500, with no single project to exceed a cost of $500,000, all as more fully set forth in the application and supplement which are on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment applicant's ability to act with reasonable dispatch in contracting for and connecting to its exist-

ing pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

Applicant proposes to finance the cost of the subject facilities from funds on hand, from cash generated by operations and from internal sources.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice, that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 12, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 10, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11983; Filed, Dec. 27, 1960; 8:45 a.m.]

[Docket No. G-20032, etc.]

BEN BOLT GATHERING CO. ET AL.

Notice of Postponement of Hearing

DECEMBER 20, 1960.

Ben Bolt Gathering Company, Docket No. G-20032; Associated Oil & Gas Co., et al., Docket No. G-20058; Carrl Oil, Operator, Docket No. G-20331; East White Point Gathering Company, Docket No. G-20355; Engeo Gathering Company, Docket No. G-20356; Engeo Oil & Gas Company, Operator, Docket No. G-20357; Burdette Graham, Operator, Docket No. G-20360.

Upon consideration of the motion filed December 15, 1960 by Counsel for Associated Oil & Gas Co., et al., for postponement of the hearing now scheduled for December 27, 1960 in the above-designated matters;

The hearing now scheduled for December 27, 1960 is hereby postponed to February 27, 1961, at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11984; Filed, Dec. 27, 1960; 8:45 a.m.]

[Docket No. E-6974]

IOWA POWER AND LIGHT CO.

Notice of Application

DECEMBER 20, 1960.

Take notice that on December 13, 1960, an application was filed with the Federal Power Commission pursuant to section 203 of the Federal Power Act by Iowa Power and Light Company ("Applicant"), authorizing the sale of certain of its facilities to Iowa Southern Utilities Company (Iowa Southern) and to acquire certain facilities from Iowa Southern. Applicant is a public utility engaged in electric and natural gas service in the central and southwestern sections of Iowa with its principal business office at Des Moines, Iowa. The application is for an exchange of electric facilities between Applicant and Iowa Southern with a consideration of $99,489 to be paid to Applicant by Iowa Southern. Also certain electric facilities of Applicant which are not transferred to Iowa Southern and are no longer needed for service to Iowa Southern will be retired. The proposed exchange is designed so as to give each company ownership of the facilities located in its service area and most directly useful in serving its customers. The exchange in no way affects the immediate use of any property, and the proposed exchange does not include all of the facilities of either of the companies. The major property items involved in the exchange are as follows:

Property now owned by Iowa Power and Light Company and proposed for transfer to Iowa Southern Utilities Company:

1. That portion of Newton-Marshalltown 115,000 volt transmission line owned by Iowa Power and Light Company.

2. Certain facilities at the Newton 115,000/46,000 volt substation.

3. The Newton-Metz tap portion of the Newton-Prairie City 46,000 volt transmission line.

4. Certain metering facilities located in the Chariton substation, Creston plant and Metz pumping station.

Property now owned by Iowa Southern Utilities Company and proposed for transfer to Iowa Power and Light Company:

1. The Prairie City-Skunk River portion of the Prairie City-Newton 69,000 volt transmission line including a small tract of land.

2. Certain facilities in the Prairie City 69,000 volt Switching Station.

Property now owned by Iowa Power and Light Company and proposed for retirement:

1. All remaining facilities located in the Newton substation.

2. The Prairie City-Metz tap portion of the Prairie City-Newton 46,000 volt transmission line.

3. The remaining metering facilities owned in the Chariton substation.

According to the application, the proposed exchange will have no effect upon any contract for the purchase, sale, or interchange of electric energy. Applicant states that the proposed exchange will be in the public interest by helping each utility to render more efficient service to its customers, giving each utility ownership of the facilities that it needs to furnish adequate, reliable service to its customers. The agreement between Applicant and Iowa Southern to effect the above-described exchange is dated August 23, 1960.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 9th day of January 1961, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11985; Filed, Dec. 27, 1960; 8:45 a.m.]

[Docket No. RP61-15]

TEXAS GAS TRANSMISSION CORP.

Order Permitting Filing of Tariff Sheets and Providing for Hearing on Proposed Revised Tariff Sheets and Suspension of Certain Filings; Correction

DECEMBER 20, 1960.

In the Order Permitting Filing of Tariff Sheets and Providing For Hearing on Proposed Revised Tariff Sheets and Suspension of Certain Filings, issued December 5, 1960 and published in the FEDERAL REGISTER on December 10, 1960 (F.R. Doc. 60-11498; 25 F.R. 12721): At the top of page 12722 change "Eighth Revised Sheets Nos. 70-I and 79-J" to read "Eighth Revised Sheets Nos. 79-I and 79-J."

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-11986; Filed, Dec. 27, 1960; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

DECEMBER 22, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36815: *Passenger fares—Erie & St. Lawrence Corporation.* Filed by Erie & St. Lawrence Corporation (No. 3) for itself. Involving fares for the transportation of persons by water between Port Newark, N.J., and Jacksonville, Fla., via Miami, Fla.

Grounds for relief: Operation through higher-rated intermediate point.

Tariff: Supplement 2 to Erie & St. Lawrence Corporation tariff I.C.C. 1.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-12035; Filed, Dec. 27, 1960; 8:50 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1369]

AMERICAN RESEARCH & DEVELOPMENT CORP. AND TRACERLAB, INC.

Notice of Application for Order Exempting Transactions

DECEMBER 20, 1960.

Notice is hereby given that American Research and Development Corporation ("Research"), a registered closed-end non-diversified management investment company, and Tracerlab, Incorporated ("Tracerlab"), a manufacturing company, have filed an application pursuant to section 17(b) of the Investment Company Act of 1940 ("Act"), requesting an order exempting from the provisions of section 17(a) of the Act a refunding loan by Research to a wholly owned subsidiary of Tracerlab and the granting by Tracerlab to Research of options to purchase common stock of Tracerlab, as more fully described below.

Tracerlab is a Massachusetts corporation having its principal place of business in Waltham, Massachusetts. Tracerlab's business consists of the manufacture and sale of scientific and industrial instruments and equipment for the utilizing, detection and measurement of radioactivity, research and service activities in the field of nuclear physics and chemistry and, through its wholly owned subsidiary, Keleket X-Ray Corporation, the manufacture and sale of X-Ray equipment, accessories and supplies.

Tracerlab holds a note of its wholly owned subsidiary, Tracerlab Realty Inc. ("TRI"), secured by a second mortgage on the land and building occupied by Tracerlab in Waltham, Massachusetts. Research purchased, pursuant to an order of the Commission dated March 27, 1957 (Investment Company Act Release No. 2502) and amendment thereto dated August 8, 1957 (Investment Company Act Release No. 2570), and now holds a 25 percent participation in such second mortgage indebtedness. Such second mortgage indebtedness became due on September 30, 1960, and Research proposes to make a refunding loan to TRI in the full principal amount of such unpaid indebtedness which refunding loan would extend the maturity of the second mortgage indebtedness to September 30, 1966, and reduce the interest rate thereof from 6 percent to 5 percent per annum. Such refunding note would continue to be secured by a second mortgage on TRI's property. In order to induce Research to take such refunding note, Research will be granted options to purchase additional shares of Tracerlab common stock. Research now owns 88,459 shares of stock.

Tracerlab's plant in Waltham, Massachusetts, is owned by TRI subject to the following:

1. A first mortgage held by The Equitable Life Assurance Society of the United States in an original principal amount of $1,000,000, of which $886,789 is now outstanding.

2. The second mortgage indebtedness herein described, held by Tracerlab in an original principal amount of $400,000, of which $324,780 is now outstanding. Research's participating interest therein is now $81,195.

3. A long-term lease to Tracerlab, payments under which are stated to be sufficient to service and pay the first and second mortgage indebtedness except for a balance of $341,459.48 in connection with the first mortgage indebtedness to be paid on February 1, 1972.

Tracerlab initially sold to Research a 25 percent participating interest in the original second mortgage note and second mortgage for $100,000, paid in cash. At the same time Research purchased 25,454 shares of Tracerlab's common stock for a price of $5.50 per share. These transactions were consummated pursuant to the above mentioned orders of the Commission. In connection with the sale of the 25 percent participation in the second mortgage indebtedness to Research, Tracerlab entered into an agreement with Research that if Tracerlab did not dispose of the entire second mortgage indebtedness to other interests on or before one year from the date of the acquisition by Research of its certificate of participation, Tracerlab would cause the second mortgage indebtedness to be modified so as to make it due and payable in full on or before September 30, 1960, instead of September 30, 1966. Such second mortgage indebtedness was not so disposed of and accordingly, on June 30, 1958, a new second mortgage note having a maturity of September 30, 1960, was delivered by TRI to Tracerlab, and a new Certificate of Participation therein was delivered by Tracerlab to Research.

TRI desires to refund and extend the maturity of the second mortgage indebtedness for six years to September 30, 1966, and to reduce the interest rate from 6 percent to 5 percent. The proposed refunding by Research of TRI's second mortgage indebtedness will involve an increased investment of $243,584 by Research over the amount of its present participation in such indebtedness. Tracerlab will realize approximately $243,584 of net proceeds through its receipt of payment of the present second mortgage note of TRI which it holds. As further consideration and as an inducement for Research to undertake such refunding, Tracerlab proposes to grant Research an option to purchase at any time or times while the note is unpaid and for a period of thirty days thereafter, up to 25,000 additional shares of Tracerlab common stock at an option price of $11.48 per share, that price for which certain shares were recently exchanged and sold to an investor in Belgium in connection with Tracerlab's acquisition and financing of Physique Industrielle S.A.

The reasons stated in the application for Tracerlab's desire to extend and revise the debt with increased participation by Research, is because payment of Research's present 25 percent participation in the second mortgage indebtedness would decrease Tracerlab's cash when it has a particular need to increase its working capital. Research is willing to take the full amount of such extended and revised indebtedness of TRI because it believes the obligation to be well secured and because Research now holds a substantial amount of Tracerlab common stock and believes it is in the best interests of Tracerlab and its shareholders for Tracerlab to so increase its working capital at this time. The property is stated to be well maintained and is believed to have a realizeable market value substantially in excess of the total mortgage indebtedness. The application also states that Tracerlab's new products have been well received and that the financial position and results of operations of Tracerlab and its subsidiaries have been improving over the past three years. It is also stated that operations for the year 1960 are expected to be profitable assuming no extraordinary changes in general business conditions or in the position of Tracerlab. A net profit of $55,000 is shown for the first six months of 1960.

Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company from borrowing money from such registered company and from knowingly selling its securities.

Under section 17(b), the Commission shall, however, upon application grant an order exempting proposed transactions of the Applicant if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of the registered investment company concerned, and that the proposed transaction is consistent with the general purposes of the Act.

Notice is further given that any interested person may, not later than January 3, 1961, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after such date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application unless an order for hearing upon said applica-

tion shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11995; Filed, Dec. 27, 1960; 8:46 a.m.]

[File No. 812-1367]

DELAWARE REALTY AND INVESTMENT CO. AND CHRISTIANA SECURITIES CO.

Notice of Filing of Application for Order Exempting Transactions Between Affiliates Incident to a Merger

DECEMBER 19, 1960.

Notice is hereby given that Delaware Realty and Investment Company ("Delaware") and Christiana Securities Company ("Christiana"), both of which are incorporated in the State of Delaware and are registered under the Investment Company Act of 1940 ("Act") as closed-end non-diverafied management investment companies, have filed a joint application pursuant to sections 17(b) and 6(c) of the Act for an order exempting from the provisions of section 17(a) of the Act certain transactions incident to a proposed merger of Delaware into Christiana, with Christiana as the surviving corporation. All interested persons are referred to said application for a statement of the proposed transaction which is summarized below.

Delaware owns 49,000 shares (32.7 percent) of the 150,000 outstanding shares of common (voting) stock of Christiana. Accordingly, Delaware presumptively controls Christiana within the meaning of section 2(a) (9) of the Act, and the companies are affiliated persons as defined in section 2(a) (3) of the Act.

Christiana's assets consist of cash and securities, of which the most important holding is 12,199,200 shares (26.6 percent) of the outstanding common stock of E. I. du Pont de Nemours and Company ("du Pont"). The value of the total net assets of Christiana as of September 30, 1960, with investments reflected at market value on November 11, 1960, was $2,418,263,000, of which 98.6 percent was represented by its holdings of common stock of du Pont. The remaining security holdings of Christiana consist primarily of common stock of General Motors Corporation which represents approximately 1 percent of the value of the assets of Christiana.

Christiana has outstanding 150,000 shares of 7 percent cumulative preferred stock, having a liquidation value of $100 per share and a redemption price of $120 per share, and 150,000 shares of common stock. The net asset value of the common stock of Christiana, based on the market value of its portfolio as of November 11, 1960, and after deducting its outstanding preferred stock at the redemption price, was $16,001.75 per share. The bid price of the common stock in the over-the-counter market on November 11, 1960 was $13,900 per share. There are approximately 3,800 holders of Christiana common stock.

Delaware's assets are represented by cash and security holdings consisting primarily of the above common stock interest in Christiana and 1,217,920 shares (2.7 percent) of the outstanding common stock of du Pont. Its remaining assets consist of 43,500 shares (29 percent) of the cumulative preferred stock of Christiana, 300,000 shares (3.56 percent) of the common stock of Hercules Powder Company ("Hercules"), and 16,256 shares of $4.50 cumulative preferred stock of du Pont. The value of the total net assets of Delaware as of September 30, 1960, based on the net asset value of its common stock interest in Christiana, the redemption price of its holdings of Christiana preferred stock, and the market value of its other security holdings on November 11, 1960, was $1,052,225,000. Of this amount, 74.5 percent was represented by its holdings of Christiana common stock and 22.6 percent by its holdings of du Pont common stock. Delaware's indirect (through Christiana) and direct holdings in du Pont represented more than 97 percent of the value of the net assets of Delaware.

The outstanding securities of Delaware consist of 785,000 shares of common stock, held by approximately 220 stockholders. The underlying net asset value of such stock as of November 11, 1960, determined as above indicated, was $1,340.41 per share. There is no quoted market for such common stock.

Under the proposed plan of merger, the outstanding common stock of Delaware will be converted into such number of shares of common stock of Christiana as determined by dividing the net asset value per share of the Christiana common stock into an amount equal to 98.5 percent of the total underlying net asset value of the Delaware common stock, except that for purposes of determining Delaware's underlying net asset value the market value of its holdings of Hercules common stock will be reduced by an amount equal to one-half of the estimated expenses (approximately 7½ percent of the market value of the stock) and capital gains taxes that would be incurred if there were a public sale of the Hercules stock. The applicants state that the adjustment in respect of the Hercules stock, which would reduce the underlying net asset value of the Delaware common stock as of November 11, 1960, to $1,335.99 per share, is appropriate since it is contemplated that the surviving corporation following the merger will dispose of the Hercules stock because of possible antitrust considerations and that, although the divestment will probably be effected through a voluntary exchange of Hercules stock for outstanding common stock of the surviving corporation, the adjustment reflects reasonable latitude to Christiana in disposing of the Hercules stock without loss and also provides compensation for the market risk which Christiana will undertake up to the time of divestment.

The conversion ratios under the plan of merger will be determined by the respective boards of directors on the basis of valuations made as of the closest practicable date to the closing date, which will be January 16, 1961, or such later date within sixty days thereafter as may be fixed by the boards of directors. On the basis of market values as of November 11, 1960, and giving effect to the methods of valuation employed in the plan, the 785,000 shares of Delaware common stock would be converted into 64,557 shares of Christiana common stock, with each share of Delaware common stock being converted into 0.08224 shares of Christiana common stock. On the basis of market values on November 11, 1960, the pro forma net asset value of the surviving corporation would amount to $16,096.76 per share, or an increase of 0.6 percent over the net asset value of the present Christiana common stock of $16,001.75 per share, while the pro forma net asset value applicable to each present share of Delaware common stock would amount to $1,323.77, or a reduction of 0.9 percent from the adjusted underlying net asset value of the Delaware stock of $1,335.99 per share. On the basis of statements of income of the companies for the year 1959, net income of $524.67 applicable to each share of common stock of Christiana would be increased to $525.64 pro forma after the merger, or an increase of 0.2 percent; and net income of $40.79 applicable to each present share of Delaware common stock would be increased to $43.23 pro forma, or an increase of 6 percent.

All common and preferred stock of Christiana owned by Delaware will be canceled in the merger. All other shares of stock of Christiana will remain outstanding. Christiana will not issue fractional shares to the stockholders of Delaware. In lieu thereof Christiana, in its discretion, may adopt either of the following procedures: (1) Christiana may issue scrip certificates exchangeable until the second anniversary of the date of the merger for common stock when combined in sufficient amount for one full share of stock; or (2) Christiana may afford each stockholder the opportunity for a period of not less than sixty nor more than ninety days following the merger to consolidate his fractional interest into one full share of common stock by purchasing the additional fractional interest required or to sell his fractional interest. Any scrip certificates or fractional interests remaining after the period for consolidation has expired (depending upon which of the foregoing alternative procedures is adopted by Christiana) will be sold and the proceeds held for the persons entitled thereto for a period of six years from the date of the merger, after which any amounts remaining unclaimed will become the property of Christiana.

Under the Delaware Corporation Law, after approval of the agreement of merger by the respective boards of directors of Delaware and Christiana, the affirmative vote of the holders of two-thirds of the total outstanding shares of each company will be required, with Christiana's common and preferred stock voting together as a class. Any stockholder not voting in favor of the merger who objects in writing within the prescribed time may receive the appraised value of his shares in cash.

The plan of merger contemplates that shortly following the merger the board of directors of Christiana, as the surviving corporation, will call a meeting of stockholders to vote on a split-up of the Christiana stock on an 80-for-1 basis. It is also contemplated that, to effect the divestment of the common stock of Hercules, an exchange offer will be made to the stockholders of the surviving corporation to tender their Christiana stock for Hercules stock on the basis of the relative market values of the two stocks after discounting the Hercules stock by not more than 15 percent from its market value.

The proposed plan of merger and the method of determining the conversion ratios were developed on the basis of a detailed financial study made by Morgan Stanley & Co., an investment banking firm which has no affiliation with Delaware or Christiana. The study concluded that the merger would confer advantages on the stockholders of both companies and that the terms of the merger were fair and reasonable to them. It deemed the discount of 1.5 percent applied to the adjusted underlying net asset value of the Delaware stock to be justified primarily because of the intercorporate relationships of the two companies and its opinion that a portion of the increase in earnings which would become available to the shareholders of Delaware through the tax savings resulting from a merger should be made available to the shareholders of Christiana as an inducement to them to provide the requisite votes for approval of the merger.

Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling to or purchasing from such registered company or any company controlled by such registered company, any security or other property, subject to certain exceptions, unless the Commission upon application pursuant to section 17(b) grants an exemption from the provisions of section 17(a), after finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act. Section 6(c) of the Act provides that the Commission may conditionally or unconditionally exempt any transaction or class of transactions from any provision of the Act if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 12, 1961, submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

It is ordered, That the Secretary of the Commission shall give notice of this filing by mailing a copy of this notice by registered mail to Delaware and Christiana; and that applicants shall cause a copy of this notice to be mailed on or before December 23, 1960, to each stockholder of Delaware and Christiana at his last known address.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60-11996; Filed, Dec. 27, 1960; 8:46 a.m.]

[File No. 812-1356]

DEVONSHIRE STREET FUND, INC.

Notice of Application for Order of Exemption

DECEMBER 20, 1960.

Notice is hereby given that Devonshire Street Fund, Inc. ("Applicant"), of Boston, Massachusetts, a Massachusetts corporation and an open-end, diversified management investing company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act for an order of the Commission exempting Applicant from compliance with the provisions of section 14(a) of the Act.

Applicant has filed a registration statement under the Securities Act of 1933, seeking registration of 2,000,000 shares of common stock, $1 par value, to be offered to investors in exchange for such investors' securities. Such registration statement has not as yet become effective. The purpose of the Fund is to provide investors holding securities at relatively low tax bases with a means of exchanging such securities for shares of the Fund, thereby obtaining diversification without incurring any Federal capital gains tax liability at the time of such exchange. Applicant intends to solicit deposits of securities, to be held by an escrow agent in safekeeping for the separate account of each investor, for a period of not to exceed 90 days after the effective date of the Securities Act registration statement. At all times during the solicitation period, the depositing investor will retain all incidents of ownership to the securities deposited, with the right to withdraw such securities from the deposit without charge.

The minimum deposit to be accepted from any investor is to be securities having a market value of $15,000, and the exchange will not be consummated unless the market value of the deposited securities as at the effective date of the planned exchange aggregates a minimum of $10,000,000. In the event that such value is not then realized, the deposited securities wil be returned to investors without charge to them. If such value, determined as at the respective dates of deposits, is obtained upon the termination of the solicitation period, a report describing the deposited securities, including their current market value and their basis for Federal income taxation, will be mailed to all depositing investors, who will then have the right to withdraw any or all of their deposited securities for a period of 20 days from the mailing of the report. During this period and for a further period of 10 days thereafter, Applicant may require any investor to withdraw any or all of his deposited securities, in which event such investor will have the right to withdraw any or all of his securities from the deposit for a further period of 10 days. If, as a result of voluntary withdrawals, an investor's deposited securities are reduced below the $15,000 minimum value, then the investor will be required to withdraw his entire deposit, but such requirement will not be operative if such reduction below the minimum is caused, wholly or in part, by required withdrawals. All of Applicant's shares which are issued in exchange for securities will be issued simultaneously on the effective date of the exchange.

Section 14(a) of the Act provides, in pertinent part, that no registered investment company shall make a public offering of its securities unless such company has a net worth of at least $100,000 or unless provision is made as a condition of the registration of its securities under the Securities Act which, in the opinion of the Commission, adequately insures (A) that, after the effective date of such registration statement, it will not issue any security or receive any proceeds of any subscription until no more than 25 responsible persons have made firm agreements to purchase securities in an aggregate net amount which will give the company a net worth of at least $100,000; (B) that said amount will be paid in to such company before subscriptions will be accepted from any persons in excess of 25; and (C) that arrangements will be made whereby any amounts so paid in, plus any sales load, will be refunded to any subscriber on demand in the event the net proceeds so received do not result in the company's having a net worth of at least $100,000 within 90 days after such registration statement becomes effective. Applicant's presently outstanding capital stock consists of three shares of common stock owned by the Fund's proposed investment adviser, which shares were purchased at a price of $12.50 per share. Applicant submits that under the circumstances described the exemption sought would be consistent with the pur-

poses intended to be served by section 14(a).

Section 6(c) of the Act provides, among other things, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 3, 1961, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60–11997; Filed, Dec. 27, 1960; 8:46 a.m.]

[File Nos. 59–106, 54–229]

LYNN ELECTRIC CO. AND NEW ENGLAND ELECTRIC SYSTEM

Notice of Filing and Order for Hearing; Order Instituting Proceedings

DECEMBER 20, 1960.

In the matters of Lynn Electric Company and New England Electric System, File No. 59–106; New England Electric System, File No. 54–229.

I. Notice is hereby given that New England Electric System ("NEES"), a registered holding company, has filed a plan pursuant to section 11(e) of the Public Utility Holding Company Act of 1935 ("Act") providing for the issue by NEES of its common stock in exchange for the 2.82 percent publicly-held common stock of Lynn Electric Company ("Lynn"), an electric utility subsidiary company of NEES. A copy of the plan may be examined at the offices of this Commission or is available, on request, at the offices of NEES (441 Stuart Street, Boston 16, Massachusetts). All interested persons are referred to said plan for a full statement of the transactions and terms proposed therein which are summarized as follows:

NEES will issue 40,233 shares of its common stock in exchange for the publicly-held common stock of Lynn at the exchange ratio of 2¼ common shares of NEES for each share of common stock of Lynn. No fractional shares will be issued by NEES but, in lieu thereof, fractional scrip, exchangeable for whole shares, will be delivered to the public-holders of the common stock of Lynn and, unless consolidated, will become void five years after the consummation date, as defined in the plan.

The plan will be consummated on a date (called the "Consummation Date") which will be the earliest practicable date after the entry of an order by a Court approving and enforcing the plan and will be effective as of a date (called the "Effective Date") which will be not more than sixty (60) days prior to the Consummation Date. On the Consummation Date NEES will become the owner of all of the shares of common stock of Lynn and all previously existing rights of the public-holders of such common stock will cease. On and after such Consummation Date the public-holders will be entitled to receive NEES' common shares and fractional scrip as provided under the plan (and any dividends that may have been paid on said NEES common shares prior to exchange).

At the end of five (5) years from the Consummation Date any common shares, scrip, and dividends held on account of unexchanged shares of common stock of Lynn shall irrevocably belong to NEES and the public-holders of such stock will have lost all rights with respect thereto.

II. The Commission having been advised by its Division of Corporate Regulation ("Division") that the Division, pursuant to sections 11(a), 18(a), and 18(b) of the Act, has made a preliminary examination of the corporate structure of Lynn, and the relationship between Lynn and the other companies in the NEES holding company system; and it appearing to the Division from such examination that:

1. NEES is a voluntary association created in 1926 in Massachusetts by Agreement and Declaration of Trust, is solely a holding company, and is registered as such under section 5 of the Act.

2. As of June 30, 1960, NEES had outstanding 13,051,590 shares of $1 par value common stock the holders of which are entitled to one vote for each share held and are entitled to dividends out of net earnings or surplus of NEES when declared by the board of directors.

3. NEES owns 97.18 percent of the outstanding shares of common stock of Lynn and the public owns 2.82 percent thereof.

4. Lynn owns and operates facilities for the generation, transmission, distribution, and sale of electric energy.

5. As at June 30, 1960, Lynn's property, plant, and equipment account was stated on its books at $21,409,887 and such account less reserves for depreciation ($7,386,071) amounted to $14,023,816.

6. For the twelve months ended June 30, 1960, Lynn's sales of electric energy amounted to $8,185,893.

7. Of the 265,087,454 kwh electric energy generated (net) and purchased by Lynn in the calendar year 1959, it purchased 137,606,712 kwh from New England Power Company, and 14,954 kwh from Suburban Electric Company, both of which are electric utility companies all of the common stocks of which are owned by NEES. The balance of Lynn's electric energy requirements were generated by itself.

III. The Division avers that the foregoing allegations establish or tend to establish that voting power is unfairly and inequitably distributed among the security holders of Lynn.

IV. It being the duty of the Commission pursuant to section 11(b)(2) of the Act, to require by order, after notice and opportunity for hearing, that each registered holding company and each subsidiary company thereof take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in a holding company system does not, among other things, unfairly or inequitably distribute voting power among security holders of such holding company system; and

The Commission being required by the provisions of section 11(e) of the Act to find, after notice and opportunity for hearing and before approving any plan filed thereunder, that such plan, as submitted or as modified, is necessary to effectuate the provisions of section 11(b) and is fair and equitable to the persons affected thereby; and

The Commission deeming it appropriate that notice be given and a hearing held for the purpose of determining what action should be ordered under section 11(b)(2) and for the purpose of ascertaining whether the plan should be approved; and

It appearing that common issues of fact and law arise in connection with the plan and in connection with issues involved under section 11(b)(2), making it appropriate that the hearing on said matters be consolidated and that NEES and Lynn should be made parties to the consolidated proceeding:

It is hereby ordered:

(a) That a proceeding be, and the same hereby is, instituted in respect of NEES and Lynn pursuant to section 11(b)(2) of the Act; and

(b) That said proceeding be, and the same hereby is, consolidated with the proceeding in connection with the plan of NEES; and

(c) That NEES and Lynn be, and the same hereby are, made parties to said consolidated proceeding; and

(d) That NEES and Lynn file an answer or answers with the Secretary of the Commission on or before January 12, 1961, to the allegations contained in Parts II and III hereof, in the form prescribed by Rule 25 of the rules and regulations under the Act. Any of such allegations which are not denied or otherwise controverted shall be deemed to be admitted for the purpose of these proceedings.

It is further ordered, That the hearing in the consolidated proceedings be held on the 26th day of January 1961, at 10:00 a.m., at the offices of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D.C., in such room as may be designated on such date by the hearing room clerk. Any persons desiring to be heard in connection with these proceedings or proposing to intervene therein shall file with the Secretary of the Commission, on or before January 23, 1961, a written request relative thereto as provided in Rule 9 of the Commission's rules of practice.

It is further ordered, That James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearing in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all the powers granted to the Commission under section 18(c) of said Act and to a hearing officer under the Commission's rules of practice.

The Division having advised the Commission that, upon the basis of its preliminary examination of the affairs and of the corporate structures of NEES and Lynn and of a preliminary study of said plan of NEES, the following matters and questions are presented for consideration at such hearing without prejudice, however, to the presentation of additional matters and questions upon further examination:

1. Whether the allegations contained in Parts II and III hereof are true and correct;

2. Whether the corporate structure of Lynn unfairly and inequitably distributes voting power among its security holders, and, if so, what steps, if any, are necessary and should be required to be taken by NEES and Lynn to distribute fairly and equitably the voting power among the security holders of Lynn;

3. Whether the plan, as submitted by NEES or as it may be modified or amended, is necessary to effectuate the provisions of section 11(b)(2) of the Act;

4. Whether the plan is fair and equitable to the persons affected thereby;

5. Whether, in general, the transactions proposed in the plan satisfy the applicable provisions of the Act; and

6. Whether the accounting entries proposed to be made in connection with the plan are proper and in accord with sound accounting principles.

It is further ordered, That at said hearing evidence shall be adduced with respect to the foregoing matters and questions.

It is further ordered, That jurisdiction be, and it hereby is, reserved to separate, in whole or in part, either for hearing or for disposition any issues or questions which may arise in these proceedings and to take such other action as may appear conducive to an orderly, prompt, and economical disposition of the matters involved.

It is further ordered, That the Secretary of the Commission shall serve notice of such hearing by mailing a copy of this order by registered mail to NEES and Lynn, to the Federal Power Commission, and to The Department of Public Utilities of Massachusetts and that said notice of said hearing be given to all other interested persons by a general release of the Commission and by publication of this order in the FEDERAL REGISTER.

It is further ordered, That NEES mail a copy of this notice and order to all stockholders of record of Lynn at least twenty-five days prior to the date herein fixed as the date for hearing.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 60–11998; Filed, Dec. 27, 1960; 8:46 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulations on employment of learners (29 CFR Part 522), and Administrative Order No. 524 (24 F.R. 9274) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expiration dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (§ 522.1 to 522.11) are as indicated below. Conditions provided in certificates issued under special industry regulations are as established in these regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.20 to 522.24, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

B. Bennett Co., Inc., 123 Magazine Street, New Orleans, La.; effective 12–27–60 to 12–26–61 (work and semi-dress pants, work and sport shirts).

Bestform Foundations of Windber, Inc., 21st Street and Stockholm Avenue, Windber, Pa.; effective 12–9–60 to 12–8–61 (ladies' brassieres and girdles).

Blue Bell, Inc., Prentiss County, Booneville, Miss.; effective 12–17–60 to 12–16–61 (blouses, shirts).

Cluett, Peabody & Co., Inc., Gilbert, Minn.; effective 12–17–60 to 12–16–61 (collars for first quality dress shirts).

Cluett, Peabody & Co., Inc., 1221 West Third Street, Williamsport, Pa.; effective 12–8–60 to 12–7–61 (men's sport shirts).

C. R. Dix, Inc., 7 Augusta Street, Greenville, S.C.; effective 12–12–60 to 12–11–61 (dresses).

Frances Gee Garment Co., Inc., Higginsville, Mo.; effective 12–9–60 to 12–8–61 (women's uniforms).

Kenrose Manufacturing Co., Inc., Radford, Va.; effective 12–12–60 to 12–11–61 (wash dresses).

Myrna Mills, Adamsville, Tenn.; effective 12–7–60 to 12–6–61 (men's and boys' sport shirts).

M. Nirenberg Sons, Inc., 750 Second Avenue, Troy, N.Y.; effective 12–16–60 to 12–15–61 (men's dress shirts).

Salant & Salant, Inc., Henderson, Tenn.; effective 12–13–60 to 12–12–61 (men's cotton work shirts).

Stahl-Urban Co., North Second Street, Brookhaven, Miss.; effective 12–19–60 to 12–18–61 (men's and boys' work trousers and sportswear).

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Allee-Berry, Inc., Columbus, Kans.; effective 12–8–60 to 12–7–61; 10 learners (ivy style pants).

Baldwin Garment Co., Inc., Baldwin, Ga.; effective 12–9–60 to 12–8–61; 10 learners (ladies' blouses).

Glenn Berry Manufacturers, Inc., Oswego, Kans.; effective 12–10–60 to 19–9–61; 10 learners (boys' dungarees).

Irene Garment Co., R. 410 East Diamond Avenue, Hazleton, Pa.; effective 12–12–60 to 12–11–61; 10 learners (women's dresses).

Kilgore Mfg. Co., 400 South Longview, Kilgore, Tex.; effective 12–12–60 to 12–11–61; 10 learners. No learners may be employed in the production of separate skirts or suits under this certificate (replacement certificate) (women's dresses, blouses and slacks).

Lake Butler Apparel Co., Lake Butler, Fla.; effective 12–10–60 to 12–9–61; 10 learners (men's walking shorts).

The Loudoun Mfg. Co., Emmitsburg Manufacturing Co. Division, Emmitsburg, Md.; effective 12–8–60 to 12–7–61; 10 learners (men's trousers).

Nast Manufacturing Co., 231 Oak Street, Bonner Springs, Kans.; effective 12–8–60 to 12–7–61; 5 learners (men's and women's bowling shirts).

Nast Manufacturing Co., Edwardsville, Kans.; effective 12–8–60 to 12–7–61; 5 learners (men's bowling shirts).

Princess Kent, Inc., 198 Main Street, Fort Kent, Maine; effective 12–9–60 to 12–8–61; 10 learners (girls' nightwear).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.60 to 522.66, as amended).

The Boss Manufacturing Co., 105 Elm Street, Chillicothe, Mo.; effective 12–15–60 to 12–14–61; 10 percent of the total number of machine stitchers for normal labor turnover purposes (work gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.40 to 522.44, as amended).

Auburn Hosiery Mills, Inc., Auburn, Ky.; effective 12–7–60 to 12–6–61; 5 learners for normal labor turnover purposes (full-fashioned).

Kayser-Roth Hosiery Co., Inc., Pittsboro Seamless Knitting Division, Pittsboro, N.C.; effective 12–22–60 to 6–21–61; 15 learners for plant expansion purposes (seamless).

Knit-Sox Knitting Mills, Inc., 11 Eighth Street, S.E., Hickory, N.C.; effective 12–5–60 to 12–4–61; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Royal Hosiery Mills, Inc., Yanceyville, N.C.; effective 12–9–60 to 6–8–61; 15 learners for plant expansion purposes (full-fashioned, seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.30 to 522.35, as amended).

Ellwood Knitting Mills, Inc., 1110 Mecklen Lane and 911 Lawrence Avenue, Ellwood City, Pa.; effective 12–11–60 to 12–10–61; 5 percent of the total number of factory production workers for normal labor turn-

over purposes (men's and boys' knitted outerwear).

Shoe Industry Learner Regulations (29 CFR 522.1 to 522.11, as amended, and 29 CFR 522.50 to 522.55, as amended).

Greenup Manufacturing Co., Greenup, Ill.; effective 12-7-60 to 12-6-61; 10 percent of the total number of factory production workers for normal labor turnover purposes (children's shoes).

International Shoe Co., Batesville, Ark.; effective 12-17-60 to 12-16-61; 10 percent of the total number of factory production workers for normal labor turnover purposes (children's stitchdown shoes).

International Shoe Co., West Plains, Mo.; effective 12-22-60 to 12-21-61; 10 percent of the total number of factory production workers for normal labor turnover purposes (men's welt dress shoes).

Regulations Applicable to the Employment of Learners (29 CFR 522.1 to 522.11, as amended).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods, and the number or proportion of learners authorized to be employed, are as indicated.

Caribe Staple Co., Calle Igualdad, Fajardo, P.R.; effective 11-14-60 to 4-19-61; 15 learners for plant expansion purposes in the occupations of: (1) the single occupation of machine operator, and inspector, each for a learning period of 480 hours at the rates of 75 cents an hour for the first 240 hours and 88 cents an hour for the remaining 240 hours; (2) inspector-packer for a learning period of 240 hours at the rate of 75 cents an hour (industrial staples).

D.W.G. International, Inc., Barrio Rincon, Gurabo, P.R.; effective 11-28-60 to 5-27-61; 30 learners for plant expansion purposes in the occupations of: (1) sorting and selecting for a learning period of 240 hours at the rate of 60 cents an hour; (2) machine stripping for a learning period of 160 hours at the rate of 65 cents an hour (process tobacco).

Overseas Sports Co., Inc., Mayaguez, P.R.; effective 11-21-60 to 11-20-61; 25 learners for normal labor turnover purposes in the occupation of handsewing of baseballs and softballs for a learning period of 320 hours at the rates of 47 cents an hour for the first 160 hours and 55 cents an hour for the remaining 160 hours (baseballs and softballs).

Overseas Sports Co., Inc., Mayaguez, P.R.; effective 11-21-60 to 5-20-61; 15 learners for plant expansion purposes in the occupation of handsewing of baseballs and softballs for a learning period of 320 hours at the rates of 47 cents an hour for the first 160 hours and 55 cents an hour for the remaining 160 hours (baseballs and softballs).

Paradise Manufacturing, Inc., Gurabo, P.R.; effective 11-16-60 to 5-1-61; 25 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (supplemental certificate) (brassieres).

Playtex Caribe, Inc., Dorado, P.R.; effective 12-5-60 to 6-4-61; 180 learners for plant expansion purposes in the occupation of sewing machine operators for a learning period of 480 hours at the rates of 70 cents an hour for the first 320 hours and 78 cents an hour for the remaining 160 hours (brassieres).

Porto Corp., Division "A", Utuado, P.R.; effective 11-15-60 to 11-14-61; 10 learners for normal labor turnover purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 57 cents an hour for the first 240 hours and 66 cents an hour for the remaining 240 hours; (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 57 cents an hour (men's and boys' T-shirts).

Porto Corp., Division "A", Utuado, P.R.; effective 11-15-60 to 5-14-61; 44 learners for plant expansion purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 57 cents an hour for the first 240 hours and 66 cents an hour for the remaining 240 hours; (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 57 cents an hour (men's and boys' T-shirts).

Porto Corp., Division "B", Arecibo, P.R.; effective 11-15-60 to 11-14-61; 5 learners for normal labor turnover purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 57 cents an hour for the first 240 hours and 66 cents an hour for the remaining 240 hours; (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 57 cents an hour (men's athletic shirts).

Porto Corp., Division "B", Arecibo, P.R.; effective 11-15-60 to 5-14-61; 25 learners for plant expansion purposes in the occupations of: (1) sewing machine operators for a learning period of 480 hours at the rates of 57 cents an hour for the first 240 hours and 66 cents an hour for the remaining 240 hours; (2) final inspection of fully assembled garments for a learning period of 160 hours at the rate of 57 cents an hour (men's athletic shirts).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at subminimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9.

Signed at Washington, D.C., this 16th day of December 1960.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 60-11994; Filed, Dec. 27, 1960; 8:46 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

PROCLAMATIONS:
- Oct. 3, 1905 — 12915
- Dec. 7, 1907 — 12915
- Feb. 10, 1909 — 12915
- Dec. 10, 1910 — 12915
- Oct. 18, 1912 — 12915
- 2935 — 12501
- 3355 — 13131
- 3382 — 12587
- 3383 — 13131
- 3384 — 13681
- 3385 — 13681

EXECUTIVE ORDERS:
- Feb. 26, 1852 — 13229
- July 13, 1910 — 13694
- Nov. 12, 1911 — 13771
- Feb. 28, 1912 — 13771
- Oct. 20, 1916 — 12887
- June 8, 1926 — 12887
- 3797-A — 12412, 12599
- 4257 — 13696
- 5327 — 13694
- 6260 — 12281
- 8278 — 13696

3 CFR—Continued

EXECUTIVE ORDERS—Continued
- 9941 — 12429
- 10896 — 12281
- 10897 — 12429
- 10898 — 12429
- 10899 — 12729

PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:
- Letter, Jan. 17, 1953 — 12501
- Letter, Nov. 16, 1960 — 12501

5 CFR
- 2 — 12285
- 6 — 12393, 12547, 12588, 12733, 12869, 13132, 13745
- 30 — 12733
- 325 — 13132

6 CFR
- 331 — 12994
- 421 — 12282, 12283, 13682
- 464 — 13682

7 CFR
- 11 — 13621
- 33 — 12430
- 51 — 12941
- 319 — 12809
- 601 — 13132
- 718 — 12588
- 722 — 12393, 12403, 12809, 12812, 12987
- 728 — 13621
- 730 — 12503
- 811 — 13211
- 833 — 12650
- 845 — 12285
- 871 — 12547
- 902 — 13683
- 903 — 12504
- 905—908 — 12504
- 911—913 — 12504
- 914 — 12405, 12650, 12812, 12941, 13683
- 916—919 — 12504
- 921 — 12504
- 923—925 — 12504
- 928 — 12504, 13683
- 929—932 — 12504
- 933 — 12405-12407, 12504, 12987

7 CFR—Continued
- 935 — 12504
- 941—942 — 12504
- 943 — 12504, 12813
- 944 — 12504, 12987
- 946—948 — 12504
- 949 — 12504, 12941
- 952 — 12504
- 953 — 12407, 12430, 12651, 12948, 13684, 13745
- 954 — 12504
- 955 — 12949
- 956 — 12504
- 963 — 12504
- 965—968 — 12504
- 970 — 12994
- 971—972 — 12504
- 974—978 — 12504
- 980 — 12504
- 982 — 12504
- 985—988 — 12504
- 989 — 12813, 13630
- 991 — 12504
- 994—995 — 12504
- 998 — 12504
- 1000 — 12504
- 1001 — 13684
- 1002 — 12504
- 1004—1005 — 12504
- 1008—1009 — 12504
- 1010 — 12994
- 1011—1013 — 12504
- 1014 — 12504, 13684
- 1016 — 12504
- 1018 — 12504, 12588
- 1023—1024 — 12504
- 1031 — 12505, 12651, 12652
- 1032 — 12828, 13631
- 1069 — 13685
- 1101 — 13685

PROPOSED RULES:
- 51 — 12298, 12299
- 718 — 13142
- 812 — 12712
- 901 — 12742
- 902 — 13720
- 923 — 12558
- 936 — 12465
- 938 — 12752
- 949 — 12606
- 953 — 13141
- 961 — 13001
- 963 — 13787
- 965 — 12466
- 989 — 12476
- 994 — 13239, 13637
- 1010 — 13001
- 1012 — 12558
- 1032 — 12712, 12752
- 1033 — 12606
- 1034 — 13142, 13791, 13793

8 CFR
- 211 — 12290
- 324 — 13686
- 332 — 13686

9 CFR
- 72 — 12548
- 74 — 12995, 13132
- 94 — 12831

PROPOSED RULES:
- 83 — 12571

10 CFR
- 30 — 12730
- 70 — 12730

PROPOSED RULES:
- 25 — 12753
- 115 — 12367

12 CFR

PROPOSED RULES:
- 206 — 12479, 13729

13 CFR

PROPOSED RULES:
- 107 — 12754

14 CFR
- 41 — 12908
- 49 — 12352
- 225 — 12589
- 243 — 12908
- 293 — 12908
- 298 — 12909
- 300 — 12430
- 302 — 12432, 12933
- 414 — 12589
- 506 — 12505
- 507 — 12352, 12433, 12549, 12829, 12995, 13212, 13631
- 514 — 12433, 12995
- 600 — 12285-12287, 12408, 12410, 12549-12551, 12589, 12676, 12734, 12933, 12934, 13746
- 601 — 12287, 12409, 12410, 12549-12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997, 13686, 13746
- 602 — 12288, 12552, 12678, 12831, 12997, 13213, 13747
- 608 — 12678, 12679, 12734, 12830, 12934, 12997, 13213, 13747
- 609 — 12353, 12735, 12935
- 610 — 13213
- 612 — 12410
- 1501 — 12434

PROPOSED RULES:
- 41 — 12299
- 43 — 12524
- 221 — 12913
- 302 — 12477
- 507 — 12477, 12478, 12571, 12844
- 600 — 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244, 13637, 13725
- 601 — 12328, 12329, 12478, 12479, 12524, 12525, 12572-12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952, 13244, 13637, 13725
- 608 — 12479, 12846
- 626 — 12952

15 CFR
- 203 — 12590
- 204 — 13215
- 371 — 12734, 13748

16 CFR
- 13 — 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133, 13687

PROPOSED RULES:
- 56 — 13245

17 CFR
- 230 — 12912

PROPOSED RULES:
- 230 — 13638
- 240 — 13245
- 249 — 13245
- 250 — 13245
- 259 — 13245
- 270 — 13245
- 274 — 13245
- 275 — 13638
- 279 — 13638

18 CFR
- 104 — 12763
- 105 — 12961
- 154 — 12653
- 204 — 13161
- 205 — 13649

19 CFR
- 1—57 — 13325
- 3 — 13687
- 4 — 13687

PROPOSED RULES:
- 8 — 12681

21 CFR
- 1 — 12592
- 8 — 12288
- 120 — 12288, 12506, 13631, 13632
- 121 — 12412, 12595, 12731, 12831, 13008, 13217, 13632, 13748
- 130 — 12592
- 146 — 12506, 12596, 12732, 13750
- 146c — 12289
- 302 — 13750
- 303 — 13750
- 304 — 13750
- 305 — 13750
- 307 — 13750

PROPOSED RULES:
- 27 — 12372
- 120 — 12374, 12571, 13793
- 121 — 12299, 12477, 12839, 12840, 13008, 13794

22 CFR
- 3 — 13138
- 46 — 12289

23 CFR

PROPOSED RULES:
- 20 — 13724

24 CFR
- 222 — 13745
- 233 — 13745
- 293a — 13745

25 CFR
- 171 — 12408
- Appendix — 13688

PROPOSED RULES:
- 52 — 12518
- 176 — 12299
- 221 — 13787
- 252 — 13239

26 (1939) CFR
- 16 — 12442
- 17 — 12443
- 29 — 12339
- 39 — 12339
- 40 — 12340

PROPOSED RULES:
- 81 — 13001

26 (1954) CFR
- 1 — 12340, 12345, 12654, 13689
- 18 — 12340
- 19 — 12654
- 31 — 13031
- 40 — 13693
- 41 — 13133
- 44 — 13133
- 46 — 13133
- 48 — 12669
- 49 — 13133
- 151 — 13135
- 170 — 12732
- 301 — 13137
- 601 — 13758

26 (1954) CFR—Continued Page

PROPOSED RULES:
1 ..... 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140, 13697, 13775
20 13001
25 12707
31 12835
47 13699
48 ..... 12362, 13001
148 13699
170 12710
197 12362
245 13783
250 12511
252 13785

27 CFR

PROPOSED RULE:
7 13786

28 CFR

21 12290

29 CFR

2 13228

PROPOSED RULES:
522 13724
604 12950
606 12950
713 12950

31 CFR

54 12345

32 CFR

505 12869
570 12869
750 12870
753 12879
805 12291
888 12999
1001 12999
1002 13000
1003 13000
1004 13000
1006 13000
1007 13000
1008 12444
1009 12446
1010 ..... 12449, 13000
1012 12449
1013 ..... 12449, 13000
1016 ..... 12450, 12456
1030 12451
1052 ..... 12456, 13000
1053 12456
1054 ..... 12458, 13000
1055 12462
1057 ..... 12462, 13000
1059 12462
1619 12291

32A CFR

OIA (CH. X):
OI Reg. 1 ..... 13632, 13768

33 CFR

96 13633
202 12393
203 12740
207 ..... 12740, 13769

36 CFR

PROPOSED RULES:
7 13787

38 CFR

3 12463
21 13229

39 CFR Page

4 13218
27 12348
61 13218
62 13223
63 13224
168 12884

41 CFR

3-75 ..... 12502, 12596
5-1 ..... 12553, 13217
50-201 12553
50-202 12553
50-204 13809

PROPOSED RULES:
50-202 ..... 12363, 12522

42 CFR

1 12292

43 CFR

76 ..... 12597, 12949
181 12679
192 12352
257 12679

PROPOSED RULES:
259 12606

PUBLIC LAND ORDERS:
82 ..... 12412, 12599
221 13695
261 13138
797 12413
1119 13694
1124 12885
1230 13694
1253 12481
1273 13138
1621 12599
1965 12599
2144 13694
2186 13694
2209 12412
2210 12413
2211 12413
2212 12597
2213 12597
2214 12598
2215 12599
2216 12599
2217 ..... 12885, 13633
2218 12885
2219 12886
2220 12887
2221 12887
2222 12887
2223 13138
2224 13229
2225 13229
2226 13633
2227 13693
2228 13693
2229 13694
2230 13694
2231 13694
2232 13694
2233 13694
2234 13695
2235 13696
2236 13769
2237 13770
2238 13771
2239 13771
2240 13772
2241 13773

45 CFR Page

145 13230
146 13230
601—620 12600

PROPOSED RULES:
301 12840
306 12840
307 12841
308 12842
309 12843
311 12844

46 CFR

24 12554
30 12554
56 12554
70 12555
90 12555
110 12555
111 12555
136 12555
171 12555
226 13696
308 12348

PROPOSED RULES:
401 13721

47 CFR

1 ..... 12358, 12600, 12602, 12603, 12605, 13230
3 13230
4 12680
5 12359
7 ..... 13230, 13773
8 ..... 13232, 13233, 13773
9 12359
10 12359
11 12359
12 12358
16 12359
19 12359
21 ..... 12359, 12603, 12605

PROPOSED RULES:
1 ..... 12624, 12898
2 13244
3 ..... 12371, 12624, 12626, 12627, 12899, 13794
7 12951
8 12951
9 13244
10 13244
11 13244
16 13244
19 13244
21 13244

49 CFR

91 12506
95 13633
120 13774
122 12506
171 12888

PROPOSED RULES:
71-78 ..... 12420, 13794
197 ..... 12420, 13794

50 CFR

32 ..... 12555, 12888
33 ..... 12507, 12556, 12557, 12888, 13138, 13139, 13234-13238, 13634
269 13634

PROPOSED RULES:
14 12741
41 13001

Pages 13809–13825

PART II

FEDERAL REGISTER

VOLUME 25 NUMBER 251

Washington, Wednesday, December 28, 1960

Title 41—PUBLIC CONTRACTS

Chapter 50—Division of Public Contracts, Department of Labor

PART 50-204—SAFETY AND HEALTH STANDARDS FOR FEDERAL SUPPLY CONTRACTS

The Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 35 et seq.) requires that contracts entered into by any agency of the United States for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000 must contain, among other provisions, a stipulation that no "part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract".

A single standard of safety and health conditions is thus required for all work subject to the Act. An objective description of the working conditions encountered, established by a preponderance of the reliable, probative, and substantial evidence, is, of course, essential to the administrative application of this standard. A second question which must be resolved is whether conditions of the type described are "unsanitary or hazardous or dangerous to the health or safety of employees". This is a question of fact. For assistance in its resolution, the act provides a special rule of evidence: "Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection."

The statutory provision concerning "prima-facie evidence" does not purport to take the place of the uniform national standard. It has application only to issues which require evidence. In the absence of opposing evidence, it authorizes resolution of such issues compatibly with the prima-facie evidence. Also, rules concerning prima-facie evidence obviously have no application in situations where evidence is not required. Where, therefore, the common experience of men is all that is needed to lead a rational and prudent person to the conclusion that certain conditions of employment are incompatible with the safety and health of employees, no defense is provided by the statutory "prima-facie evidence" rule merely because such conditions may not be specifically prohibited in the State safety, sanitary, and factory inspection laws, or the regulations hereby proposed. Neither is it necessary to call a witness to testify concerning the hazardous nature of such conditions.

The statutory rule of "prima-facie evidence" was not designed to deter the Secretary of Labor from diligent inquiry even beyond the safety, sanitary, and factory inspection laws of the several states to discover more directly what are the "working conditions which are unsanitary or habardous or dangerous to the health and safety of employees." This is demonstrated by the provisions in sections 4 and 5 of the Act, directing the Secretary to administer it and authorizing him to appoint experts, make investigations, hold hearings, compel the production of evidence, and make findings of fact. Accordingly, following enactment of the Act, experts were appointed and their testimony used in the administrative enforcement proceedings conducted under section 5 of the Act. Differences of opinion over what conditions of employment fail to meet the statutory standard have thus been resolved with the assistance of expert testimony on a case-by-case basis in nearly a quarter of a century of hearings and findings under the Act. These have been conducted in accordance with sections 5, 7, and 8 of the Administrative Procedure Act since its enactment.

The hazardous characteristic of a particular working condition, is, of course, the likelihood that it will cause illness, or injury in the employment situation. This characteristic is not always immediately apparent. Causative analysis of injury frequency rates in industry has shed much light on the importance of certain precautions not fully appreciated by those responsible for the operation of industrial establishments. The Department's discovery and evaluation of these hazards and the development of the regulations herein promulgated has relied quite extensively on the outstanding contributions of the private and public organizations which are generally accepted as preeminent in this field. Among these are the publications of American Standards Association, Inc., American Society of Mechanical Engineers, National Fire Protection Association, National Board of Fire Underwriters, the Public Health Service of the United States Department of Health, Education, and Welfare, the Bureau of Mines of the United States Department of the Interior, and the Atomic Energy Commission.

Section 7(d) of the Administrative Procedure Act recognizes that, even in the most formal type of administrative adjudications, agency decision may rest on "official notice of a material fact not appearing in the evidence in the record," but it requires that "any party shall on timely request be afforded an opportunity to show the contrary". The Attorney General's Manual on the Administrative Procedure Act points out (p. 80) that this authority "extends properly to all matters as to which the agency by reason of its functions is presumed to be expert, such as technical or scientific facts within its specialized knowledge. Cf. H.R. Rep. p. 38 (Sen. Doc. p. 272). * * * The matters thus noticed become a part of the record and, unless successfully controverted, furnish the same basis for findings of fact as does 'evidence' in the usual sense."

The hazardous characteristics of many working conditions, thus being facts of a "technical or scientific" nature, and having come within the Department's "specialized knowledge" by reason of its experience, proof of them in administrative adjudications by official notice is appropriate. The facts declared in these regulations are soundly based in the experience of the Department and in the experience of outstanding public and private experts in their specialized divisions of the field of health and safety engineering. The regulations herewith promulgated extend, however, into areas in which reasonable men may differ. Any party to an administrative adjudication who is adversely affected by them will, therefore, have the opportunity to contest them by presenting the issue in

his responsive pleading and introducing such evidence as he will be able to muster for consideration at his hearing.

Publication of standards which will underline the enforcement policy of the agency which administers the Walsh-Healey Public Contracts Act will promote observance of the safety and health requirements by curtailing uncertainty on the part of those whose duty it is to comply. Such publication will permit the administrative adjudication of many safety and health cases without the necessity of calling an expert witness to the place of hearing to testify to the hazardous nature of the working conditions denounced in the regulations. Except in cases where a party gives notice of intent to challenge the safety standards expressed in the regulation at hearing, as provided in the regulations herein promulgated, this element of possible controversy, and occasion of possible variety in decision, will be eliminated. These are the considerations which prompt this use of the authority expressed in section 4 of the Walsh-Healey Public Contracts Act to make "such rules and regulations as may be necessary to carry out the provisions of this Act."

Radiation standards for inclusion in the regulations herein promulgated as amendments are currently being drafted. They will apply the recommendations of the Federal Radiation Council approved by the President for the guidance of federal agencies May 13, 1960 (25 F.R. 4402).

As these regulations are rules of agency procedure or practice delineating facts which will be officially noticed in enforcement proceedings under section 5 of the Act, notice of proposed rule making and public proceedings in their adoption are not required by subsections 4 (a) and (b) of the Administrative Procedure Act.

In accordance with section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 1003), therefore, and under the authority of section 4 of the Walsh-Healey Public Contracts Act (49 Stat. 2038, 41 U.S.C. 38), effective 30 days after publication in the FEDERAL REGISTER, a new Part 50–204—Safety and Health Standards for Federal Supply Contracts, is hereby added to 41 CFR, Chapter 50.

SCOPE AND APPLICATION

50–204.1 Scope and application.

BUILDINGS AND APPURTENANCES

50–204.2 Buildings.
50–204.3 Floors.
50–204.4 Building egress.

STAIRWAYS OR STEPS

50–204.9 Stair width of treads and height of risers.
50–204.10 Stairway maintenance.
50–204.11 Treads.
50–204.12 Stairway railings and handrails.

GUARDING OF FLOOR OPENINGS AND FLOOR HOLES

50–204.17 Stairway floor openings.
50–204.18 Ladderway floor openings.
50–204.19 Hatchway and chute floor.
50–204.20 Floor hole.

GUARDING OF OPEN-SIDED FLOORS, PLATFORMS AND RUNWAYS

50–204.25 Open-sided floor and platform.
50–204.26 Runway, guarding.

RAILINGS AND GUARDS

50–204.27 Standard railing.
50–204.28 Stair railing.
50–204.29 Strength of standard railing and stair railing.

ELEVATORS

50–204.34 Elevator inspection.
50–204.35 Hoistways.
50–204.36 Under car safety device.
50–204.37 Hatch limit controls.

ILLUMINATION

50–204.42 Minimum standards.

LADDERS

50–204.47 Construction and use of portable ladders.
50–204.48 Rails of portable ladders.
50–204.49 Painting of wooden ladders.
50–204.50 Stepladders.
50–204.51 Fixed ladders.

AISLES AND PASSAGEWAYS

50–204.56 Maintenance.
50–204.57 Aisle widths.

MATERIAL STORAGE

50–204.62 Height.
50–204.63 Small articles.
50–204.64 Pipe and other long stock.
50–204.65 Hazardous chemicals.
50–204.66 Gases in cylinders.

OUTDOOR STORAGE

50–204.71 Aisle spacing.
50–204.72 Housekeeping.
50–204.73 Drainage.
50–204.74 Clearance signs.
50–204.75 Derail and bumper blocks.
50–204.76 Traffic control signs.
50–204.77 Open pits, tanks, vats, ditches, etc.

FLAMMABLE LIQUIDS

50–204.82 Sources of ignition.
50–204.83 Vegetation removal.
50–204.84 Housekeeping.
50–204.85 Electrical lighting.
50–204.86 Ventilation.
50–204.87 Refuse storage.
50–204.88 Open flame devices prohibited.
50–204.89 Bonding and grounding.
50–204.90 Relief vents.
50–204.91 Storage in other than flammable storage buildings.
50–204.92 Safety containers.

PAINTS AND PAINTING

50–204.97 Storage of paints, varnishes, lacquers, thinners, etc.
50–204.98 Storage locations.
50–204.99 Storage of flammable paint materials in opened containers.
50–204.100 Paint-soiled clothing and drop cloth.
50–204.101 Housekeeping: paint scrapings and paint saturated containers.
50–204.102 Ventilation of harmful substances.
50–204.103 Ventilation of flammable vapors.
50–204.104 Smoking or open flames prohibited.
50–204.105 Electrical equipment.
50–204.106 Electric motors.
50–204.107 Enclosure driving belts.
50–204.108 Storage of combustible and flammable cleaning materials.

FIRE PREVENTION

50–204.113 Equipment, general.
50–204.114 First aid fire fighting extinguishers, general rules.
50–204.115 Classification of extinguishers.

PRESSURE VESSELS

50–204.120 Boilers.
50–204.121 Steam cookers, digesters, glue pots, etc.
50–204.122 Unfired pressure vessels.

TOOLS AND EQUIPMENT

50–204.127 Maintenance.
50–204.128 Portable electric power tools.
50–204.129 Portable pneumatic tools.
50–204.130 Cables, ropes, and chains.

VENTILATION AND PROTECTION IN WELDING AND CUTTING

50–204.135 Welding and cutting in confined spaces.
50–204.136 Ventilation in confined spaces.
50–204.137 Mechanical ventilation.
50–204.138 Welding and cutting involving metals of toxic significance.
50–204.139 Protection to other employees.
50–204.140 Inert-gas-metal arc welding.
50–204.141 General welding and cutting.

ELECTRICAL EQUIPMENT

50–204.148 General plant wiring.

MECHANICAL POWER TRANSMISSION APPARATUS

50–204.153 Flywheels.
50–204.154 Cranks and connecting rods.
50–204.155 Tail rods or extension piston rods.
50–204.156 Governor balls.
50–204.157 Shafting installation.
50–204.158 Guarding horizontal shafting.
50–204.159 Guarding vertical and inclined shafting.
50–204.160 Projecting shaft ends.
50–204.161 Power-transmission apparatus located in basements.
50–204.162 Pulleys.
50–204.163 Horizontal belts, ropes and chain drives.
50–204.164 Overhead chain and link belt drives.
50–204.165 Vertical and inclined belts.
50–204.166 Vertical belts.
50–204.167 Cone-pulley belts.
50–204.168 Gears.
50–204.169 Sprockets and chains.
50–204.170 Openings for oiling.
50–204.171 Friction drives.
50–204.172 Keys, set screws, and other projections.
50–204.173 Collars.
50–204.174 Couplings.

GUARD STANDARDS FOR MECHANICAL POWER TRANSMISSION

50–204.179 Materials.
50–204.180 Disk, shield, and "U" guards.
50–204.181 Approved materials.
50–204.182 Wood guards.
50–204.183 Guards for horizontal overhead belts.
50–204.184 Guards for horizontal overhead rope and chain drives.
50–204.185 Guard rails and toe boards.

MISCELLANEOUS MACHINE GUARDING

50–204.190 Lathes and automatic screw machines.
50–204.191 Drill presses.
50–204.192 Planers and shapers (metal).
50–204.193 Shears.
50–204.194 Guillotine cutters, power-driven.
50–204.195 Power presses.
50–204.196 Foot and hand presses.
50–204.197 Other power-press safety devices.
50–204.198 Platen presses.
50–204.199 Abrasive wheels.
50–204.200 Revolving drums and cylinders.
50–204.201 Fans.

WOODWORKING MACHINERY

50–204.208 Circular table saws.
50–204.209 Swing and sliding cut-off saws.
50–204.210 Inverted swing cut-off saws (jump saws).
50–204.211 Radial saws.

50–204.212 Portable circular saws.
50–204.213 Band saws and band resaws.
50–204.214 Jointers.
50–204.215 Wood shapers, hand-feed panel raisers and similar machines.
50–204.216 Planing, molding, sticking and matching machines.
50–204.217 Sanding machines.

HOUSEKEEPING

50–204.229 General.
50–204.230 Floors.
50–204.231 Flammable materials.
50–204.232 Tools and other materials.
50–204.233 Receptacles for waste disposal.
50–204.234 Sweeping and refuse removal.

TOILET FACILITIES AND WASH ROOMS

50–204.239 Separate toilet for each sex.
50–204.240 Location.
50–204.241 Water closets.
50–204.242 Construction of toilet rooms.
50–204.243 Chemical closets and privies.
50–204.244 Washing facilities.
50–204.245 Change rooms.
50–204.246 Retiring rooms for women.

LUNCH ROOMS AND FOOD HANDLING

50–204.251 Location.
50–204.252 Waste food disposal.
50–204.253 Presence of toxic materials.

DRINKING WATER

50–204.258 Potable water.
50–204.259 Non-potable water.

MEDICAL SERVICES

50–204.264 Medical services.

EYE PROTECTION

50–204.269 General requirement.
50–204.270 First-aid for chemical burns.

ENVIRONMENTAL CONDITIONS

50–204.275 Toxic gases, vapors, fumes, dust and mists.
50–204.276 Threshold limit values.

VENTILATION

50–204.288 General ventilation and temperature requirement.
50–204.289 Local exhaust ventilation.

NOISE

50–204.293 Noise.

PERSONAL PROTECTIVE EQUIPMENT

50–204.298 Personal protective equipment.

MINING

50–204.300 Federal Mine Safety Code.

AUTHORITY: §§ 50–204.1 to 50–204.300 issued under sec. 4, 49 Stat. 2038, 41 U.S.C. 38. Interpret or apply sec. 1, 49 Stat. 2036, 41 U.S.C. 35.

§ 50–204.1 Scope and application.

(a) The Walsh-Healey Public Contracts Act (40 Stat. 2036, 41 U.S.C. 35 et seq.) requires that contracts entered into by any agency of the United States for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000 must contain, among other provisions, a stipulation that "No part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of the contract." This Part 50–204 of this chapter expresses certain minimum safety and health standards which will be applied in the administration and enforcement of the Act, including proceedings under its section 5 and 41 CFR Part 50–203, Subpart A, to determine whether particular contracts subject to the Act are being, or have been, performed in compliance with its safety and health requirements.

(b) In all administrative, enforcement, and investigative proceedings conducted by the United States Department of Labor under the Act, official notice will be taken of the fact that failure to comply with the requirements expressed in this Part 50–204 of this chapter results in working conditions which are "unsanitary or hazardous to employees" within the meaning of section 1(e) of the Act, and contracts incorporating the stipulation it requires.

(c) In formal enforcement proceedings under section 5 of the Act, respondents will be permitted to demonstrate, by reliable, substantial, and probative evidence, that their failure to comply with the requirements expressed in Part 50–204 of this chapter did not result in working conditions which were "unsanitary or hazardous or dangerous to employees," but only if the answer to the complaint, filed under 41 CFR 50–203.3, makes express allegation to that effect, identifying the particular code unit challenged and setting out the factual basis for the challenge. In the event such issue is drawn, and reliable, substantial, and probative evidence is introduced in support of the challenge, the pertinent portions of the publications of the American Standards Association, Inc., American Society of Mechanical Engineers, National Fire Protection Association, National Board of Fire Underwriters, the Public Health Service of the United States Department of Health, Education, and Welfare, the Bureau of Mines of the United States Department of the Interior, and the Atomic Energy Commission will be considered, together with any other evidence that may be adduced in support of the regulation, on the issue whether the preponderance of the reliable, substantial, and probative evidence supports a finding that the working conditions prohibited in the regulation are unsanitary or hazardous or dangerous to the health and safety of employees.

(d) The standards expressed in Part 50–204 of this chapter are for application to ordinary employment situations, and do not preclude proof or recognition of the necessity of higher standards for employment situations of extraordinary hazard. Neither do the standards expressed in this Part 50–204 of this chapter purport to describe all of the working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees. Other working conditions may be found to be unsanitary or hazardous or dangerous to the health and safety of employees on evidence to that effect, or without such evidence, where such unsanitary or hazardous or dangerous characteristic should be apparent to a rational and prudent person of common experience.

(e) Compliance with the standards expressed in Part 50–204 of this chapter will not relieve anyone from any obligation to comply with any more strict standard stemming from any other source whatsoever.

BUILDINGS AND APPURTENANCES

§ 50–204.2 Buildings.

Buildings and all appurtenances thereto, including bridges, towers, balconies, runways, and platforms, shall be structurally safe to prevent collapse.

§ 50–204.3 Floors.

(a) No floor or platform shall be so loaded as to have a factor of safety of less than four. That is, the weight placed upon a floor or platform shall not exceed one-fourth of the breaking strength of the platform or floor.

(b) Floors, other than those resting directly on solid ground, when used for heavy storage shall be clearly posted to show maximum safe floor loads.

(c) All floor surfaces shall be kept clean and dry and maintained in a smooth (free from holes or projections that might cause tripping and reasonably nonslippery) condition.

(d) Where the type of operation necessitates working on floor areas which would be otherwise wet or slippery, such areas shall be covered with mats, grates, cleats, or other high friction floor coverings.

(e) Safe means of access, suited to conditions, shall be provided to every overhead point to which employees are called upon to go in connection with their employment.

§ 50–204.4 Building egress.

(a) *Exits.* Not less than two means of egress (other than ladders or elevators) as remote from each other as possible, shall be provided on every floor, including basements and cellars of every building or section where persons are employed. On the street floor at least one of these shall be a door leading directly outside the building, and the other may be a door leading outside the building, or a standard horizontal exit. On upper floors and basements, one exit shall be an enclosed stairway or smokeproof tower and the other or others may be inside stairways or horizontal exits or fire escape stairs.

(b) *Exit doors.* Doors shall swing in the direction of exit and open in such a manner as not to obstruct passageways or corridors used as ways of egress. No chairs or seats, fixtures, chutes, materials, or equipment shall block or in any way jeopardize the use of ways and means provided for egress. All exit doors and windows used as means of egress in case of fire or panic shall be so arranged as always to be opened readily from the inside. Locks on doors and windows, if provided, shall not require the use of a key to open.

(c) *Exit signs.* All exits or means of egress shall be provided with a sign having on it the word "EXIT" which shall be in letters at least five inches in height and plainly indicate to persons within the building the location of such egress.

Directional signs to the means of egress should be provided where necessary.

STAIRWAYS OR STEPS

§ 50–204.9 Stair width of treads and height of risers.

There shall be no variation in the width of treads and height of risers in any flight. Where variation in heights of risers in different flights is necessary on account of varying story heights, such variations shall not exceed 3/16 inch. All treads shall be at least 10 inches wide.

§ 50–204.10 Stairway maintenance.

Every stairway or step shall be maintained in good repair, free from protruding bolts, screws, nails, dirt, or slippery conditions, and no storage shall be permitted on stairways.

§ 50–204.11 Treads.

Treads shall be renewed when the surface, including the nosing, shows wear to the extent of ¼ inch or more. All metal treads shall have a surface which will reasonably prevent slipping.

§ 50–204.12 Stairway railings and handrails.

Every flight of stairs having four or more risers shall be equipped with a stair railing or handrails constructed to conform to the requirements of sections 50–204.28 and 50–204.29 under the following conditions:

(a) On stairways of width less than 44 inches and having both sides enclosed—at least one handrail on the right side descending.

(b) On stairways of width less than 44 inches and having one side open—at least one stair railing that shall be on the open side.

(c) On stairways of width less than 44 inches and having both sides open—one stair railing on each side.

(d) On stairways of width 44 inches or more but less than 88 inches—one handrail on each enclosed side and one stair railing on each open side.

(e) On stairways 88 inches or more in width—one handrail on each enclosed side, one stair railing on each open side and one intermediate stair railing located approximately midway of the width.

(f) Winding stairs shall be equipped with a handrail so offset as to prevent walking on any portions of the treads having width less than 6 inches.

GUARDING OF FLOOR OPENINGS AND FLOOR HOLES

§ 50–204.17 Stairway floor openings.

A railing constructed to conform to the requirements of sections 50–204.28 and 50–204.29 shall be provided on all exposed sides of stairway floor openings (except at entrance to stairway). Standard toe boards shall be provided also, except in stair towers.

§ 50–204.18 Ladderway floor openings.

Every ladderway floor opening shall be guarded by a standard railing with standard toe board on all exposed sides, except at entrance to opening.

§ 50–204.19 Hatchway and chute floor.

Every hatchway and chute floor opening shall be guarded either by:

(a) Hinged floor-opening cover of standard strength and construction equipped with railing constructed in accordance with sections 50–204.27 and 50–204.29 so as to leave no exposed side. When the opening is not in use the cover shall be closed.

(b) A removable railing with toe boards on not more than two sides of the opening and permanent railings with toe boards on all other exposed sides both constructed in accordance with sections 50–204.27 and 50–204.29. The removable railings shall be kept in place when the opening is not in use.

(c) Where operating conditions necessitate the feeding of material into any hatchway or chute opening from all sides, the guarding requirements will be satisfied if bars, chains, or other adequate protection is provided to prevent a person from falling through the opening.

§ 50–204.20 Floor hole.

Every floor hole except those described in sections 50–204.17, 50–204.18, 50–204.19 shall be guarded either by:

(a) A railing constructed in conformance with the requirement in sections 50–204.27 and 50–204.29 with standard toe board on all exposed sides; or

(b) A floor opening cover, hinged in place. While the cover is open, floor holes shall be constantly attended by someone or shall be protected by a portable enclosing railing.

GUARDING OF OPEN-SIDED FLOORS, PLATFORMS AND RUNWAYS

§ 50–204.25 Open-sided floor and platform.

(a) Every open-sided floor shall be guarded by a railing constructed in accordance with sections 50–204.27 and 50–204.29 on all open sides 5 feet or more above the adjacent floor or ground level, except where there is entrance to a ramp, stairway or fixed ladder. The railing shall be provided with a toe board wherever, beneath the open sides,

(1) Persons can pass,

(2) There is moving machinery, or

(3) There is equipment with which falling materials could create a hazard.

(b) The intermediate railing and toe board required by sections 50–204.27 and 50–204.29 may be omitted where materials have to be regularly passed over the edge of the floor (as in lumber storage), or where the railing is set back 12 inches or more from the edge.

(c) The entire railing may be temporarily removed from particular sections of open-sided floors where regular operating conditions make a permanent railing wholly impracticable.

§ 50–204.26 Runway guarding.

Every runway shall be guarded by a railing constructed in accordance with sections 50–204.27 and 50–204.29 on all open sides 5 feet or more above floor or ground level. Wherever tools, machine parts or materials are likely to be used on the runway, a toe board shall also be provided on each exposed side.

(a) Runways, used exclusively for special purposes (such as oiling, shafting or filling tank cars), may have the railing on one side omitted where operating conditions necessitate such omission, providing there is no falling hazard.

RAILINGS AND GUARDS

§ 50–204.27 Standard railing.

A standard railing shall consist of top rail, intermediate rail and posts, having a vertical height of 42 inches from upper surface of top rail to floor, platform, runway or ramp level. The top rail shall be smooth surfaced throughout the length of the railing. The intermediate rail shall be approximately halfway between the top rail and floor, platform, runway or ramp. The ends of the rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

§ 50–204.28 Stair railing.

A stair railing shall be of construction similar to a standard railing but the vertical height shall be not more than 34 inches nor less than 30 inches from upper surface of top rail to surface of tread in line with face of riser at forward edge of tread.

(a) Intermediate rails shall not be required where stairways are 22 inches or less in width.

§ 50–204.29 Strength of standard railing and stair railing.

The strength of standard railings and stair railings under different types of construction is specified as follows:

(a) Wood railing: For wood railings, the posts shall be of at least 2 inch by 4 inch stock spaced not to exceed 8 feet; the top rails shall be of at least 2 inch by 4 inch stock or of two right angle pieces of at least 1 inch by 4 inch stock and the intermediate rails shall be of at least 2 inch by 2 inch stock or of at least 1 inch by 4 inch stock.

(b) Pipe railing: For pipe railings, the posts and top rails shall be metal pipe of at least 1¼ inches inside diameter and the intermediate rails shall be metal pipe of at least 1 inch inside diameter. The spacing of posts shall not exceed 8 feet.

(c) Structural metal railings: For structural metal railings, the posts and top rails shall be angle iron of at least 1½ inches by 1½ inches by 3/16 inch or other structural shapes of equivalent bending strength; and the intermediate rails shall be angle iron of at least 1¼ inches by 1¼ inches by ⅛ inch or other structural shapes of equivalent bending strength. The spacing of posts shall not exceed 8 feet.

(d) *Anchor posts:* The anchoring of posts and framing of members for railings of all types shall be of such construction that the completed structure shall be capable of withstanding a load of at least 200 pounds applied in any direction at any point of the top rail.

(e) *Toe board:* A toe board shall be 4 inches in vertical height from top edge to the level of the floor, platform, runway, or ramp. It shall be securely fastened in place and with not more than ¼ inch clearance above floor level. It may be made of any substantial material either solid or with openings not over 1 inch in length.

ELEVATORS

§ 50–204.34 Elevator inspection.

Elevator inspection by a competent elevator inspection service or maintenance contract on an annual basis will be acceptable as evidence of satisfactory installation and maintenance.

§ 50–204.35 Hoistways.

All hoistway openings at the floor level to the elevator shall be protected by doors or gates either manually or mechanically operated, and interlocked with the elevator control so that it is impossible to start the elevator until the door or gate is locked in the closed position, and also so that it is impossible to open the door or gate when the car is not at the landing.

§ 50–204.36 Under car safety device.

All elevators other than hydraulic elevators shall be equipped with an under car safety device operated by speed governor control that will hold the elevator in case of cable failure or over speeding.

§ 50–204.37 Hatch limit controls.

All types of elevators shall be equipped with upper and lower travel limit devices that will normally bring the car to rest at either terminal, and a final limit switch that will prevent the movement in either direction if opened by the car as the result of excessive over travel in either direction.

ILLUMINATION

§ 50–204.42 Minimum standards.

(a) Illumination shall be provided and distributed to all working areas as required in these regulations.

(b) Seeing tasks requiring discrimination of fine detail under conditions of fair contrast and where the nature of the work is very exacting and prolonged shall be provided with a minimum of 100 foot-candles of illumination.

(c) Seeing tasks requiring discrimination of detail over prolonged periods of time and under conditions of moderate contrast shall be provided with a minimum of 50 foot-candles of illumination.

(d) Seeing tasks requiring moderate discrimination of detail over intermittent periods of time and under conditions of normal contrast shall be provided with a minimum of 30 foot-candles of illumination.

(e) Casual seeing tasks not involving discrimination of fine detail shall be provided with a minimum of 10 foot-candles of illumination.

(f) Rough seeing tasks not requiring critical seeing shall be provided with a minimum of 5 foot-candles of illumination

LADDERS

§ 50–204.47 Construction and use of portable ladders.

Portable ladders shall be substantially built, set level and well secured.

§ 50–204.48 Rails of portable ladders.

Rails of portable ladders shall always project at least three feet above working level and shall be of sound material.

§ 50–204.49 Painting of wooden ladders.

Wooden ladders shall not be painted, as painting covers up defects. Linseed oil or oil stain shall be used instead.

§ 50–204.50 Stepladders.

All stepladders shall be provided with an automatic locking device or spreader of not more than 40 degrees to hold the front and back sections in open position.

§ 50–204.51 Fixed ladders.

(a) Rest platforms: If fixed ladders are used to ascend to heights exceeding 30 feet, a landing or rest platform shall be provided for each 30 feet or fraction thereof unless the ladder is provided with safety cages.

(b) Rails: Rails of fixed ladders to landings shall extend a distance of at least 3 feet above the landing.

(c) Rungs: The rungs may be omitted above the landing. Where an employee must step a greater distance than 14 inches from the ladder to roof, tank, hoist, etc., a landing shall be provided.

(d) Guard rails: All fixed ladder landings shall be equipped with a standard guard rail and toe boards, so arranged as to give the safest possible access to the ladder. Such platforms shall not be less than 24 inches in width.

AISLES AND PASSAGEWAYS

§ 50–204.56 Maintenance.

Permanent aisles and passageways shall be kept clear and in good repair, with no obstructions across or in aisles that might cause tripping. Where, due to lack of proper identification, aisles and passageways are likely to become hazardous, they shall be clearly defined by painted lines, curbings, or other methods of marking.

§ 50–204.57 Aisle widths.

Where industrial trucks are in customary use, one-way traffic aisles shall be at least 2 feet wider than the widest vehicle. Two-way aisles shall be at least 3 feet wider than twice the width of the widest vehicle.

MATERIAL STORAGE

§ 50–204.62 Height.

(a) All material in bags, containers, or bundles, stored in tiers, shall be stacked, blocked, interlocked, and limited in height so that it is stable, so that it is secure against sliding or collapse.

(b) Where automatic sprinkler protection is provided, clearance of at least 18 inches shall be maintained between the tops of materials and the underside of lowest beams or other overhead structures. Where reliance is placed on hose streams, clearance of at least 3 feet shall be maintained between the tops of piles and the underside of the lowest beams, girders, or other obstructions which restrict the play of hose streams over the material.

§ 50–204.63 Small articles.

Small articles shall be stored in containers suitable to the material, such as small cans or trays that can be stacked.

§ 50–204.64 Pipe and other long stock.

Pipe and other long stock shall be stored in suitable racks or blocked to prevent spreading or rolling. Projecting ends shall be protected by location, railings, or barriers.

§ 50–204.65 Hazardous chemicals.

Hazardous chemicals shall be distinctively marked to indicate their nature and stored in containers or locations suitable to the material.

§ 50–204.66 Gases in cylinders.

(a) Cylinders shall be supported in an upright position so as to prevent them from falling or rolling.

(b) Cylinders shall be kept away from excessive heat, such as the direct rays of the sun.

(c) Cylinders shall be stored away from combustible materials.

(d) Empty cylinders shall be plainly marked "EMPTY," and the valves shall be closed. The empty cylinders shall be segregated from the full cylinders and returned to the supplier as soon as practicable.

(e) Valve covers shall be kept in place at all times when the cylinder is not in use.

OUTDOOR STORAGE

§ 50–204.71 Aisle spacing.

Aisles shall be maintained between piles, between buildings, and between piles and the boundary of the storage site. Aisles shall be wide so as to reduce the danger of spread of fire from pile to pile and to permit ready access for fire fighting or emergency removal of material.

§ 50–204.72 Housekeeping.

The entire storage site shall be kept free from unnecessary accumulations of combustible materials. Weeds and grass shall be kept down and the area kept clean.

§ 50–204.73 Drainage.

Proper drainage shall be provided.

§ 50–204.74 Clearance signs.

Clearance signs to warn of clearance limits shall be provided.

§ 50–204.75 Derail and bumper blocks.

Derail and bumper blocks shall be provided on spur tracks.

§ 50–204.76 Traffic control signs.

Traffic control signs to warn pedestrian, vehicular, and railroad traffic shall be provided.

§ 50–204.77 Open pits, tanks, vats, ditches, etc.

Covers or guard rails shall be provided to protect all open pits, tanks, vats, ditches, etc. near which people are regularly employed.

FLAMMABLE LIQUIDS

§ 50–204.82 Sources of ignition.

All sources of ignition shall be prohibited in areas where flammable liquids are stored, handled, and processed. Suitable warning and "No Smoking" signs shall be posted in all such areas.

§ 50-204.83 Vegetation removal.

The areas where flammable liquids are stored, handled, or processed shall be left clear of rubbish, brush, long grass, or other combustible material at all times.

§ 50-204.84 Housekeeping.

Accumulations of flammable liquids on floors, walls, and other surfaces, are prohibited. All spills of flammable liquids shall be cleaned up immediately.

§ 50-204.85 Electrical lighting.

Electrical lighting shall be the only means used for artificial illumination in areas where flammable liquids, vapors, fumes, dust, or gases are present. All electrical equipment and installations shall be of the explosion proof type.

§ 50-204.86 Ventilation.

All buildings, rooms and compartments where flammable liquids are stored, processed, or used shall be properly ventilated to prevent accumulation of flammable vapors.

§ 50-204.87 Refuse storage.

In buildings, shops, or rooms where flammable liquids are handled or stored, a self-closing metal refuse can shall be provided and maintained in good condition.

§ 50-204.88 Open flame devices prohibited.

Open flame heating devices shall not be used in areas where flammable liquids are present.

§ 50-204.89 Bonding and grounding.

Storage tanks and systems shall be electrically bonded and grounded.

§ 50-204.90 Relief vents.

Storage tanks shall be equipped with proper relief vents. Tank vents shall not be located close to open flames, stacks, heating apparatus, or any other source of ignition. Vent screens shall not be painted.

§ 50-204.91 Storage in other than flammable storage buildings.

A ventilated steel cabinet or a cabinet lined with noncombustible material shall be provided for the storage of more than a total of 10 gallons of flammable liquids in buildings used for other than storage. Not more than a total of 50 gallons shall be stored in any one cabinet, nor shall any individual container exceed 5 gallon capacity in such a cabinet. Containers must be of metal and kept tightly closed. Storage in drums of over 50 gallons of flammable liquids shall be outside the work room.

§ 50-204.92 Safety containers.

Handling of all flammable liquids by hand containers shall be in approved type safety containers substantially constructed to avoid the danger of leakage and designed to minimize the likelihood of spilling.

PAINTS AND PAINTING

§ 50-204.97 Storage of paints, varnishes, lacquers, thinners, etc.

Packages containing paints, varnishes, lacquers, thinners, or other volatile materials shall be kept tightly closed when not in actual use.

§ 50-204.98 Storage locations.

Sealed containers of paints, varnishes, lacquers, thinners, and other flammable paint materials, shall be kept in a well-ventilated location, free from excessive heat, smoke, sparks, flame, or direct rays of the sun.

§ 50-204.99 Storage of flammable paint materials in opened containers.

Flammable paint materials, when in excess of 10 gallons and not exceeding 50 gallons, shall be stored in a ventilated steel cabinet, or a cabinet lined with noncombustible material. Containers shall be kept tightly closed when not in use.

§ 50-204.100 Paint-soiled clothing and drop cloth.

Paint-soiled clothing and drop cloths, when not in use, shall be stored in well-ventilated steel cabinets.

§ 50-204.101 Housekeeping.

Paint scrapings and paint saturated debris shall be removed from the premises daily.

§ 50-204.102 Ventilation of harmful substances.

Ventilation adequate to reduce the concentration of harmful substances in the atmosphere shall be provided, as referred to in section 50-204.86.

§ 50-204.103 Ventilation of flammable vapors.

Ventilation adequate to prevent the accumulation of flammable vapors to hazardous levels of concentration shall be provided in all areas where spray painting, dipping or similar processes are performed.

§ 50-204.104 Smoking or open flames prohibited.

No smoking, open flame, exposed flame heating elements, or other sources of ignition of any kind shall be permitted in areas or rooms where spray painting, paint dipping or similar processes are done.

§ 50-204.105 Electrical equipment.

When electric lights, switches, or electrical equipment are necessary where indoor spray painting, paint dipping or similar processes are performed, they shall be of the explosion-proof type.

§ 50-204.106 Electric motors.

Electric motors driving exhaust fans shall not be placed inside booths or ducts exhausting flammable materials.

§ 50-204.107 Enclosure driving belts.

Belts shall not enter duct or booth exhausting flammable materials unless belt and pulley within the duct or booth are thoroughly enclosed.

§ 50-204.108 Storage of combustible and flammable cleaning materials.

Combustible and flammable cleaning materials at the establishment shall be stored in tightly closed metal containers.

FIRE PREVENTION

§ 50-204.113 Equipment general.

Fire fighting equipment suitable to the conditions and hazards involved shall be provided and maintained in an effective operating condition. A systematic inspection of these devices is required.

§ 50-204.114 First-aid fire fighting extinguishers, general rules.

The following general rules shall be applied to all types of first-aid fire extinguishers:

(a) Persons who may have occasion to use any fire extinguisher shall have knowledge of the proper way to use the device effectively.

(b) The instructions of the manufacturer of the extinguisher as to charging, maintenance and operations shall be followed exactly. All extinguishers shall be examined at least once a year to determine positively that they are in operating condition.

(c) Frequent inspections shall be made to determine that extinguishers are in their designated places, are readily accessible, have not been damaged or tampered with, and that nozzles are not clogged.

§ 50-204.115 Classification of extinguishers.

Listed below are various classes of fires and the extinguishing equipment which shall be maintained appurtenant to the various materials identified.

(a) *Class "A" Fires.* Fires in ordinary combustible materials where the quenching and cooling effects of quantities of water or solutions containing large percentage of water are of first importance. Required extinguishing equipment—soda and acid, pump tank extinguishers or water barrels and buckets.

(b) *Class "B" Fires.* Fires in flammable liquids, greases, and similar materials, where blanketing effect is essential. Required extinguishing equipment—foam, carbon tetrachloride, CO_2, dry powder type extinguishers, or sand buckets and scoops. Carbon tetrachloride extinguishers shall not be used in a confined area.

(c) *Class "C" Fires.* Fire in electrical equipment where the use of nonconducting extinguishing agent is of first importance. Required extinguishing equipment—CO_2, or dry powder pressure-type extinguishers.

PRESSURE VESSELS

§ 50-204.120 Boilers.

Boiler inspection and approval on an annual basis by a recognized boiler inspection service will be acceptable evidence of satisfactory installation and maintenance.

§ 50-204.121 Steam cookers, digester, glue pots, etc.

All pressure vessels to which steam is supplied from an outside source shall be designed for the maximum line pressure to which the vessel will be subjected. On such vessels it is required that, in addition to the necessary pressure reducing valve, a safety valve be installed on the vessel itself or on the line between it and the pressure reducer. There shall be no means of cutting off or bypassing this safety valve. Inspection and adequate maintenance of the vessel, including regular testing of the safety valve, are mandatory.

§ 50-204.122 Unfired pressure vessels.

(a) Air receivers shall be so installed that all drains, handholes, and manholes therein are easily accessible.

(b) Air receivers shall be supported with sufficient clearance to permit a complete external inspection and to avoid corrosion of external surfaces.

(c) Under no circumstances shall air receivers be buried underground or located in an inaccessible place.

(d) The receiver shall be located as close to the compressor or aftercooler as is possible to keep the discharge short.

(e) The receiver shall be located in a cool place to facilitate the condensation of moisture and oil vapors.

TOOLS AND EQUIPMENT

§ 50-204.127 Maintenance.

Each employer shall be responsible for the safe condition of the tools used by his employees, whether furnished by him or by them, and be sure that such tools are suited by safe design and construction for the work to be done.

§ 50-204.128 Portable electric power tools.

(a) Electric power tools showing worn, deteriorated or inadequate insulation, split or chipped plugs, worn or bent plugs, terminals, defective switch, shall be repaired.

(b) Portable electric power tools shall be effectively grounded to maintain at all times an effective ground on the noncurrent carrying parts of the tools.

§ 50-204.129 Portable pneumatic tools.

(a) The operating trigger on portable hand-operated pneumatic equipment shall be so located as to minimize the possibility of accidental operation and shall be arranged to close the air inlet valve automatically when the pressure of the operator's hand is removed.

(b) A tool retainer shall be installed on each piece of pneumatic equipment which, without such a retainer, may eject the tool.

(c) No tool change or work other than regular operations shall be made or done on any piece of portable hand-operated pneumatic equipment unless the stop valve in the air line supplying that equipment is closed.

§ 50-204.130 Cables, ropes, and chains.

(a) Chains, ropes, cables, hooks, rings, slings, and other devices and accessories used for hoisting and lifting shall not be subjected to greater working loads than recommended by their manufacturers. They shall be frequently inspected and shall be renewed when inpection reveals unsafe conditions.

(b) Bolts or nails shall not be used to connect, splice, or shorten chains. Knots shall not be tied in the chain.

(c) A hoist cable shall be considered unsafe and shall be replaced when upon inspection 10 percent or more of the total number of wires are broken in a length equal to eight diameters of the cable, or when the wires on the crown of the strand are worn down to less than 60 percent of their original diameter.

(d) Crane hoist cable shall be lubricated and inspected at frequent intervals.

VENTILATION AND PROTECTION IN WELDING AND CUTTING

§ 50-204.135 Welding and cutting in confined spaces.

For the purpose of this section a confined space shall mean:

(a) A space of less than 10,000 cubic feet per welder, or

(b) A space having an overhead height of less than 16 feet, or

(c) A space in which there are structural barriers to the extent that they significantly obstruct cross ventilation.

§ 50-204.136 Ventilation in confined spaces.

All welding and cutting operations carried on in confined spaces shall be adequately mechanically ventilated to prevent the accumulation of toxic gases or possible oxygen deficiency or air supplied respirators approved by the U.S. Bureau of Mines shall be provided to the welder and all other personnel in the immediate vicinity.

§ 50-204.137 Mechanical ventilation.

Mechanical ventilation shall consist of either general ventilation systems or local exhaust systems.

(a) General ventilation shall be at the minimum rate of 2,000 cubic feet per minute per welder.

(b) Local exhaust shall consist of freely movable hoods intended to be placed by the welder as near as practicable to the work being welded and provided with a rate of air flow sufficient to maintain a velocity in the direction of the hood of 100 linear feet per minute in the zone of welding when the hood is at its most remote distance from the point of welding.

§ 50-204.138 Welding and cutting involving metals of toxic significance.

(a) Welding and cutting involving the following metals whether or not in confined spaces or in other enclosed spaces shall be done in accordance with the provisions of sections 204.136 and 204.137.

(1) Zinc-bearing base of filler metals or metals coated with zinc-bearing materials.

(2) Lead base metals.

(3) Cadmium-bearing filler materials.

(b) Welding or cutting involving the following metals in confined spaces shall be done using local exhaust ventilation or air-line respirators approved by the U.S. Bureau of Mines.

(1) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials, including paint.

(2) Cadmium-bearing or cadmium-coated base metals.

(3) Metals coated with mercury-bearing metals, including paint.

(4) Beryllium-containing base or filler metals. Because of its high toxicity, work involving beryllium shall be done with both local exhaust ventilation and air-line respirators.

§ 50-204.139 Protection to other employees.

In all cases employees in the immediate vicinity of welding operations shall be protected in accordance with sections 50-204.269 and 50-204.298.

§ 50-204.140 Inert-gas metal-arc welding.

Since the inert-gas metal-arc welding process involves the production of ultraviolet radiation of intensities five to thirty times that produced during shielded metal-arc welding, the decomposition of chlorinated solvents by ultraviolet rays, and the liberation of toxic fumes and gases, employees shall not be permitted to engage in, or be exposed to the process unless:

(a) The use of chlorinated solvents is kept at least 200 feet from the exposed arc; surfaces prepared with chlorinated solvents are thoroughly dry before welding is permitted on such surface.

(b) Shaded goggles with side shields are worn by helpers and others in the area not protected from the arc by screening.

(c) Protective clothing is worn by welders and others within the area exposed to radiation so that the skin is covered completely to prevent burns and other damage by ultraviolet rays; shirts worn are dark in color to reduce reflection to the face from underneath the helmet; exposed cotton clothing is covered since it disintegrates rapidly when exposed to high intensities of ultraviolet rays; welding helmets and hand shields are free of leaks and openings, and free of highly reflective surfaces.

(d) Local exhaust ventilation or supplied air respirators are provided in all cases when doing inert-gas metal-arc welding of stainless steel to protect against dangerous concentrations of nitrogen dioxide.

§ 50-204.141 General welding and cutting.

Welding and cutting not involving conditions or materials described in sections 50-204.135 and 50-204.138 may normally be done without special precautions, but where, because of unusual physical or atmospheric conditions, a harmful accumulation of contaminants would exist, mechanical ventilation or suitable respiratory protective equipment shall be provided.

ELECTRICAL INSTALLATION AND EQUIPMENT

§ 50-204.148 Electrical installation and equipment.

Electrical conductors and equipment installed within or on buildings and other premises and the conductors that connect the installation to a supply of electricity and other outside conductors adjacent to the premises shall conform to the minimum requirements of the National Electrical Code, 1959 Edition, National Fire Protection Association.

MECHANICAL POWER TRANSMISSION APPARATUS

§ 50-204.153 Flywheels.

Flywheels located so that any part is 7 feet or less above floor or platform shall be guarded in one of the following ways:

(a) With an enclosure of sheet, perforated, or expanded metal, or woven wire. For standards, see sections 50–204.179 and 50–204.180.

(b) With guard rails placed not less than 15 inches nor more than 20 inches from rim. When flywheel extends into pit or is within 12 inches of floor, a standard toe board shall also be provided. For standards, see section 50–204.185.

(c) An adjustable guard to be used for starting the engine or for running adjustment may be provided at the flywheel of gas or oil engines. A slot opening for the jack bar will be permitted.

(d) Wherever flywheels are above working areas, guards shall be installed having sufficient strength to hold the weight of the flywheel in the event of a shaft or wheel mounting failure.

§ 50–204.154 Cranks and connecting rods.

Cranks and connecting rods, when exposed to contact, shall be guarded in accordance with sections 50–204.179 and 50–204.180 or by a guard rail as described in section 50–204.185.

§ 50–204.155 Tail rods or extension piston rods.

Tail rods or extension piston rods shall be guarded in accordance with sections 50–204.179 and 50–204.181 or by a guard rail on sides and end, with a clearance of not less than 15 nor more than 20 inches when rod is fully extended.

§ 50–204.156 Governor balls.

Governor balls 6 feet or less from the floor or other working level, when exposed to contact shall be provided with an enclosure extending to the top of the governors balls when at their highest position. The material used in the construction of this enclosure shall conform to sections 50–204.179 and 50–204.181.

§ 50–204.157 Shafting installation.

(a) Each continuous line of shafting shall be secured in a position against excessive end-wise movement.

(b) Inclined and vertical shafts, particularly inclined idler shafts, shall be securely held in position against endwise thrust.

§ 50–204.158 Guarding horizontal shafting.

(a) All exposed parts of horizontal shafting 7 feet or less from floor or working platform, excepting runways used exclusively for oiling, or running adjustments, shall be protected by a stationary casing enclosing shafting completely or by a trough enclosing sides and top or sides and bottom of shafting as location requires.

(b) Wherever shafting extends over a driveway, it shall be protected as stated above unless it is located 15 feet or more above driveway.

(c) Shafting under bench machines shall be enclosed by a stationary casing, or by a trough at sides and top or sides and bottom, as location requires. The sides of the trough shall come within at least 6 inches of the underside of table, or if shafting is located near floor, within 6 inches of floor. In every case the sides of the trough shall extend at least 2 inches beyond the shafting or protuberance. For requirements regarding materials and construction, see sections 50–204.179 and 50–204.181.

§ 50–204.159 Guarding vertical and inclined shafting.

Vertical and inclined shafting 7 feet or less from floor or working platform, excepting maintenance runways, shall be enclosed with a stationary casing in accordance with requirements of sections 50–204.179 and 50–204.181.

§ 50–204.160 Projecting shaft ends.

(a) Projecting shaft ends shall present a smooth edge and end and shall not project more than one-half the diameter of the shaft unless guarded by nonrotating caps or safety sleeves.

(b) Unused key-ways shall be filled up or covered.

§ 50–204.161 Power-transmission apparatus located in basements.

All mechanical power transmission apparatus located in basements, towers, and rooms used exclusively for power transmission equipment shall be guarded in accordance with these standards, except that the requirements for safeguarding belts, pulleys, and shafting may be omitted if the following conditions are met:

(a) The basement, tower, or room occupied by transmission equipment is locked against unauthorized entrance.

(b) The vertical clearance in passageways between the floor and power transmission beams, ceiling, or any other objects, is not less than 5 feet 6 inches.

(c) The footing is dry, firm, and level.

(d) The route followed by the oiler is protected in such manner as to prevent accidents.

§ 50–204.162 Pulleys.

Any parts of which are 7 feet or less from the floor or working platform shall be guarded in accordance with the standards specified under section 50–204.179 and 50–204.181. Pulleys serving as balance wheels (e.g., punch presses) on which the point of contact between belt and pulley is more than 6 feet 6 inches from the floor or platform may be guarded with a disk covering the spokes. See section 50–204.180.

§ 50–204.163 Horizontal belts, ropes and chain drives.

(a) Where both runs of horizontal belts are 7 feet or less from the floor level, the guard shall extend to at least fifteen inches above the belt or to a standard height (see table, section 50–204.181) except that where both runs of a horizontal belt are 42 inches or less from the floor, the belt shall be fully enclosed in accordance with sections 50–204.179 and 50–204.181. In power plants or power-development rooms, a guard rail may be used in lieu of the requirement in section 50–204.163.

(b) Overhead horizontal belts, with lower part 7 feet or less from the floor or platform, shall be guarded on sides and bottom in accordance with section 50–204.183.

(c) Horizontal overhead belts more than 7 feet above floor or platform shall be guarded for their entire length under the following conditions:

(1) If located over passageways or work places and traveling 1800 feet or more per minute.

(2) If center to center distance between pulleys is 10 feet or more.

(3) If belt is 8 inches or more in width. For detail of guard construction and for sizes of material see section 50–204.183 and table following section 50–204.184.

(d) Where the upper and lower runs of horizontal belts are so located that passage of persons between them would be possible, the passage shall be either:

(1) Completely barred by a guard rail or other barrier in accordance with sections 50–204.179 and 50–204.181, or

(2) Where passage is regarded as necessary, there shall be a platform over the lower run guarded on either side by a railing completely filled in with wire mesh or other filler, or by a solid barrier. The upper run shall be so guarded as to prevent contact therewith either by the worker or by objects carried by him. In power plants, only the lower run of the belt need be guarded.

§ 50–204.164 Overhead chain and link belt drives.

Overhead chain and link belt drives are governed by the same rules as overhead horizontal belts and shall be guarded in the same manner as belts (section 50–204.163).

§ 50–204.165 Vertical and inclined belts.

(a) Vertical and inclined belts shall be enclosed by a guard conforming to standards in sections 50–204.179 and 50–204.181.

(b) All guards for inclined belts shall be arranged in such a manner that a minimum clearance of 7 feet is maintained between belt and floor at any point outside of guard.

§ 50–204.166 Vertical belts.

Vertical belts running over a lower pulley more than 7 feet above floor or platform shall be guarded at the bottom in the same manner as horizontal overhead belts, if conditions are such as stated in section 50–204.163(c) (1), (2), and (3).

§ 50–204.167 Cone-pulley belts.

(a) The cone belt and pulley shall be equipped with a belt shifter so constructed as to guard adequately the nip-point of the belt and pulley. If the frame of the belt shifter does not adequately guard the nip-point of the belt and pulley, the nip-point shall be further protected by means of a vertical guard placed in front of the pulley and extending at least to the top of the largest step of the cone.

(b) If the belt is of the endless type or laced with rawhide laces, and a belt shifter is not desired, the nip-point of the belt pulley shall be protected by a nip-point guard located in front of the cone extending at least to the top of the largest step of the cone, and formed to show the contour of the cone in order to give the nip-point of the belt and pulley the maximum protection.

(c) If the cone is located less than 3 feet from the floor or working platform, the cone pulley and belt shall be guarded to a height of 3 feet regardless of whether the belt is endless or laced with rawhide.

§ 50–204.168 Gears.

Gears shall be guarded in accordance with one of the following specifications:

(a) A complete enclosure.

(b) A standard guard as described in section 204.181 at least 7 feet high extending 6 inches above the mesh point of the gears.

(c) By a band guard covering the face of the gear and having flanges extended inward beyond the root of the teeth on the exposed side or sides. Where any portion of the train of gears guarded by a band guard is less than 6 feet from the floor a disk guard or a complete enclosure to the height of 6 feet shall be required.

§ 50–204.169 Sprockets and chains.

All sprocket wheels and chains shall be enclosed unless more than 7 feet above the floor or platform. Where the drive extends over other machines or working areas, protection against falling shall be provided.

§ 50–204.170 Openings for oiling.

When frequent oiling must be made, openings with hinged or sliding self-closing covers shall be provided. All points not readily accessible shall have oil feed tubes if lubricant is to be added while machinery is in motion.

§ 50–204.171 Friction drives.

(a) The driving point of all friction drives when exposed to contact shall be guarded.

(b) All arm or spoke friction drives and all web friction drives with holes in the web shall be entirely enclosed.

(c) All projecting bolts on friction drives where exposed to contact shall be guarded.

§ 50–204.172 Keys, set screws, and other projections.

All projecting keys, set screws and other projections in revolving parts shall be removed or made flush or guarded by metal covers. This does not apply to keys or set screws within gear or sprocket casings or other enclosures, nor to keys, set screws, or oil cups in hubs of pulleys less than twenty inches in diameter where they are within the plane of the rim of the pulley.

§ 50–204.173 Collars.

All revolving collars, including split collars, shall be cylindrical, and screws or bolts used in collars shall not project beyond the largest periphery of the collar.

§ 50–204.174 Couplings.

(a) Shaft couplings shall be so constructed as to present no hazard from bolts, nuts, set screws, or revolving surfaces.

(b) Bolts, nuts, and set screws will, however, be permitted where they are covered with safety sleeves or where they are used parallel with the shafting and are countersunk or else do not extend beyond the flange of the coupling.

GUARD STANDARDS FOR MECHANICAL POWER TRANSMISSION

§ 50–204.179 Materials.

(a) Standard conditions will be secured by the use of the following materials: Expanded metal, perforated or solid metal or wire mesh on a frame of angle iron or iron pipe securely fastened to floor or to frame of machine (see section 50–204.181).

(1) All metal shall be free from burrs and sharp edges.

(2) Wire mesh shall be of the type in which the wires are securely fastened at every cross point either by welding, soldering, or galvanizing, except in case of diamond or square wire mesh made of No. 14 gauge wire, ¾ inch mesh or heavier.

(b) Design of guards:

(1) Where it is necessary to change belts, make adjustments or apply oil or grease, guards shall have hinged sections or be removable.

(2) Guards shall be designed so as not to interfere with the usual machine operations, but give the maximum protection to the operator.

(c) Methods of manufacture:

(1) Filler material shall be expanded metal, sheet or perforated metal, or wire mesh and be securely fastened to frame.

(2) By welding to frame every 4 inches. By weaving through channel or angle frame, or if No. 14 gauge ¾ inch mesh or heavier is used, by bending entirely around rod frames.

(3) Where openings in pipe railing are to be filled in with expanded metal, wire or sheet metal, the filler material shall be made into panels with rolled edges or bound with "V" or "U" edging of No. 24 gauge or heavier sheet metal fastened to the panels with bolts or rivets spaced not more than 5 inches center to center. The bound panels shall be fastened to the railing by sheet-metal clips spaced not more than 5 inches center to center.

(4) Where the design of guards requires filled material of greater area than 12 square feet, additional frame members shall be provided to maintain panel area within this limit.

(5) All joints of framework shall be made equivalent in strength to the material of the frame.

§ 50–204.180 Disk, shield, and "U" guards.

(a) Disk guard: A disk guard shall consist of a sheet-metal disk not less than No. 22 gauge fastened by "U" bolts or rivets to spokes of pulleys, flywheels, or gears. Where possibility of contact with sharp edges of the disk exists, the edge shall be rolled or wired. In all cases the nuts shall be provided with lock nuts which shall be placed on the unexposed side of the wheel.

(b) Shield guards.

(1) A shield guard shall consist of a frame filled in with wire mesh, expanded, perforated, or solid sheet metal.

(2) If area of shield does not exceed 6 square feet the wire mesh or expanded metal may be fastened in a framework of ⅜ inch solid rod, ¾ inch x ¾ inch x ⅛ inch angle iron or metal construction of equivalent strength.

(3) Metal shields may have edges entirely rolled around a ⅜ inch solid iron rod. All material of shield guard shall meet the requirements of section 50–204.181.

(c) "U" Guards: A "U" guard consisting of a flat surface with edge members shall be designed to cover the under surface and lower edge of a belt, multiple chain, or rope drive. It shall be constructed of materials specified in table of section 50–204.181 and shall conform to the requirements of sections 50–204.183 and 50–204.184. Edges shall be smooth, and if size of guard requires, these edges shall be reinforced by rolling, wiring, or by binding with angle or flat iron.

§ 50–204.181 Approved materials.

(a) Minimum Requirements. The materials and dimensions specified in this section shall apply to all guards except horizonal overhead belts, rope, cable or chain guards more than 7 feet above floor, or platform. (For the latter, see table following section 50–204.184.)

TABLE OF STANDARD MATERIALS AND DIMENSIONS

Material	Clearance from moving part at all points	Largest mesh or opening allowable	Minimum gauge (U.S. standard) or thickness	Minimum height of guard from floor or platform level
Woven wire	Under 2"	⅜"	No. 16	7'0".
	2"–4"	½"	No. 16	7'0".
	Under 4"	½"	No. 16	7'0".
	4"–15"	2"	No. 12	7'0".
Expanded metal	Under 4"	½"	No. 18	7'0".
	4"–15"	2"	No. 13	7'0".
Perforated metal	Under 4"	½"	No. 20	7'0".
	4"–15"	2"	No. 14	7'0".
Sheet metal	Under 4"		No. 22	7'0".
	4"–15"		No. 22	7'0".
Wood or metal strip crossed	Under 4"	¾"	Wood ¾" / Metal No. 16	7'0".
	4"–15"	2"	Wood ¾" / Metal No. 16	7'0".
Wood or metal strip not crossed	Under 4"	⅓" width	Wood ¾" / Metal No. 16	7'0".
	4"–15"	1" width	Wood ¾" / Metal No. 16	7'0".
Std. rail	Min. 15" / Max. 20"	See Standard for Railings Section 204.185.		

(b) **Framework:**

(1) **Minimum** dimensions of material for the framework of all guards except as noted in subparagraph (5) of this paragraph shall be angle iron 1 inch x 1 inch x ⅛ inch, metal pipe of ¾ inch inside diameter or metal construction of equivalent strength.

(2) All guards shall be rigidly braced every 3 feet or fractional part of their height to some fixed part of machinery or building structure. Where guard is exposed to contact with moving equipment additional strength is necessary.

(3) The framework for all guards fastened to floor or working platform and without other support or bracing shall consist of 1½ inch x 1½ inch x ⅛ inch angle iron, metal pipe or 1½ inch inside diameter or metal construction of equivalent strength. All rectangular guards shall have at least 4 upright frame members each of which shall be carried to the floor and be securely fastened thereto.

(4) Cylindrical guards shall have at least 3 supporting members carried to floor.

(5) Guards thirty inches or less in height and with a total surface not in excess of ten square feet may have a framework of ⅜ inch solid rod, ¾ inch x ¾ inch x ⅛ inch angle or metal construction of equivalent strength. The filling material shall correspond to the requirements of the table contained in paragraph (a) of this section.

(c) The specifications given in paragraphs (a) and (b) of this section are the minimum requirements; where guards are exposed to unusual wear, deterioration or impact, heavier material and construction shall be used to protect amply against the specific hazards involved.

§ 50–204.182 Wood guards.

(a) **Wood guards** may be used in the woodworking and chemical industries, in industries where the presence of fumes or where manufacturing conditions would cause the rapid deterioration of metal guards; also in construction work and in locations outdoors where extreme cold or extreme heat makes metal guards and railings undesirable. In all other industries, wood guards will not be allowed.

(b) Material and construction.

(1) Wood shall be sound, tough, and free from any loose knots.

(2) Guards shall be made of planed lumber not less than one inch rough board measure and edges and corners rounded off.

(3) Wood guards shall be securely fastened together with wood screws, hard wood dowel pins, bolts, or rivets.

(4) While no definite dimensions are given under this heading for framework or filler materials, wood guards shall be equal in strength and rigidity to metal guards specified in section 50–204.181(a)(b)(c).

(5) For construction of standard wood railing, see section 50–204.185.

§ 50–204.183 Guards for horizontal overhead belts.

(a) **Guards** for horizontal overhead belts shall run the entire length of the belt and follow the line of the pulley to the ceiling or be carried to the nearest wall, thus enclosing the belt effectively. Where belts are so located as to make it impracticable to carry the guard to wall or ceiling, construction of the guard shall be such as to enclose completely the top and bottom runs of belt and the face of pulleys. See section 50–204.163 (b) and (c).

(b) The guard and all its supporting members shall be securely fastened to wall or ceiling by gimlet-point lag screws or through bolts. In case of masonry construction, expansion bolts shall be used.

(c) Suitable reinforcement shall be provided for the ceiling rafters or overhead floor beams, where such is necessary, to sustain safely the weight and stress likely to be imposed by the guard. The interior surface of all guards, by which is meant the surface of the guard with which a belt will come in contact, shall be smooth and free from all projections of any character, except where construction demands it; protruding shallow round-head rivets may be used. Overhead belt guards shall be at least one-quarter wider than the belt which they protect, except that this clearance need not in any case exceed 6 inches on each side. Overhead rope drive and block and roller-chain-drive guards shall be not less than 6 inches wider than the drive on each side.

In overhead silent chain-drive guards where the chain is held from lateral displacement on the sprockets, the side clearances required on drives of 20 inch centers or under shall not be less than ¼ inch from the nearest moving chain part and on drives of over 20 inch centers a minimum of ½ inch from the nearest moving chain part.

(d) The table following section 50–204.184 gives sizes of materials to be used and general construction of guards for belts 10 inches or more in width. No material for overhead belt guards should be smaller than that specified in this table for belts 10 to 14 inches wide, even if the belt is less than 10 inches in width. However, No. 20 gauge sheet metal may be used as a filler on guards for belts less than 10 inches wide. Expanded metal, because of the sharp edges, shall not be used as a filler in horizontal belt guards.

(e) For clearance between guards and belts, ropes or chains of various center to center dimensions between the shafts, see bottom of table following section 50–204.184.

§ 50–204.184 Guards for horizontal overhead rope and chain drives.

Overhead-rope and chain-drive guard construction shall conform to section 50–204.183 for overhead-belt guard construction of similar width, except that the filler materials shall be of the solid type as shown in table following section 50–204.181(a) unless the fire hazard demands the use of open construction. A side guard member of the same solid filling material shall be carried up in a vertical position 2 inches above the level of the lower run of the rope or chain drive and 2 inches within the periphery of the pulleys which the guard encloses thus forming a trough. These side filler members shall be reinforced on the edges with 1½ inch x ¼ inch flat steel, riveted to the filling material at not greater than 8 inch centers; the reinforcing strip shall be fastened or bolted to all guard supporting members with at least one ⅜ inch rivet or bolt at each intersection, and the ends shall be secured to the ceiling with lag screws or bolts. The filling materials shall be fastened to the framework of the guard and the filler supports by 5/16 inch rivets spaced on 4 inch centers. The width of the multiple drive shall be determined by measuring the distance from the outside of the first to the outside of the last rope or chain in the group accommodated by the pulley.

§ 50–204.185 Guard rails and toe boards.

(a) Guard rails shall be 42 inches in height, with mid-rail between top rail and floor.

(b) Posts shall be not more than 8 feet apart; they are to be permanent and substantial, smooth, and free from protruding nails, bolts, and splinters. If made of pipe, the post shall be 1¼ inches inside diameter, or larger. If made of metal shapes or bars, their section shall be equal in strength to that of 1½ by 1½ by 5/16 inch angle iron. If made of wood, the posts shall be 2 x 4 inches or larger. The upper rail shall be 2 x 4 inches or two 1 x 4 strips, one at the top and one at the side of posts. The mid-rail shall be 1 x 4 inches or more. The rails (metal shapes, metal bars, or wood), shall be on that side of the posts which gives the best protection and support. Where panels are fitted with expanded metal or wire mesh as noted in table, section 204.181 the middle rails may be omitted. Where guard is exposed to contact with moving equipment, additional strength may be necessary.

(c) Toe boards shall be 4 inches or more in height, of wood, metal, or of metal grill not exceeding 1 inch mesh.

MISCELLANEOUS MACHINE GUARDING

§ 50–204.190 Lathes and automatic screw machines.

(a) Chucks and face plates shall be free from projections, and dogs, if used, shall be of the safety type only—circular in shape with no projections beyond the periphery.

(b) Chip guards to catch flying chips, particularly in the case of the high speeds used in the softer metals, shall be provided.

(c) Rotating stock in turret lathes and automatic screw machines shall be completely enclosed in pipe long enough to contain the longest stock used.

(d) Suitable shields and oil catchers shall be provided to prevent slipperiness from oil thrown from the automatic screw machines.

§ 50–204.191 Drill presses.

(a) All projections on the rotating spindle and as much as possible of the spindle itself should be guarded.

(b) Spindle drive belts, when in range of the operator's head or body, shall be guarded to protect the operator from both contact and breakage.

GUARD REQUIREMENTS FOR HORIZONTAL OVERHEAD BELTS, ROPES, AND CHAINS 7 FEET OR MORE ABOVE FLOOR OR PLATFORM

Members	Width: Over 10" to 14" incl.	Width: Over 14" to 24" incl.	Width: Over 24"	Material
Framework	1½" x 1½" x ¼"	2" x 2" x 5/16"	3" x 3" x ⅜"	Angle iron.
Filler (belt guards)	1½" x 3/16"	2" x 3/16"	2" x 3/16"	Flat iron.
Filler and vertical side member	No. 20 A.W.G.	No. 18 A.W.G.	No. 18 A.W.G.	Solid sheet metal.
Filler supports	2" x 3/16" flat iron	2" x ⅜" flat iron	2½" x 2½" x ¼" angle.	Flat & Angle.
Guard supports	2" x 3/16"	2" x ⅜"	2½" x ⅜"	Flat iron.
FASTENINGS				
Filler supports to framework	(2) 5/16"	(2) ⅜"	(3) ½"	Rivets.
Filler flats to supports (belt guards)	(1) 5/16"	(1) 5/16"	(2) ⅜"	Flush rivets.
Filler to frame and supports (rope and chain guards).	3/16" rivets spaced	8" centers on sides and 4" centers on bottom.		
Guard supports to framework	(2) ⅜"	(2) 5/16"	(2) ⅜"	Rivets or bolts.
Guard and supports to overhead ceiling.	¾" x 3½" lag screws or ½" bolts.	⅜" x 4" lag screws or ⅝" bolts.	¾" x 6" lag screws or ¾" bolts.	Lag screws or bolts.
DETAILS—SPACING, ETC.				
Width of guards	one-quarter wider than belt, rope, or chain drive.			
Spacing between filler supports	20" C. to C.	16" C. to C.	16" C. to C.	
Spacing between filler flat (belt guards).	2" apart	2½" apart	3" apart	
Spacing between guard supports	36" C. to C.	36" C. to C.	36" C. to C.	
OTHER BELT GUARD FILLING PERMITTED				
Sheet metal fastened as in rope and chain guards.	No. 20 A.W.G.	No. 18 A.W.G.	No. 18 A.W.G.	Solid or perforated.
Woven wire, 2" mesh	No. 12 A.W.G.	No. 10 A.W.G.	No. 8 A.W.G.	

CLEARANCE FROM OUTSIDE OF BELT, ROPE, OR CHAIN DRIVE TO GUARD

Distance center to center of shafts.	Up to 15' incl.	Over 15' to 25' incl.	Over 25' to 40' incl.	Over 40'.
Clearance from belt, rope, or chain to guard.	6"	10"	15"	20".

§ 50–204.192 Planers and shapers (metal).

(a) The spaces between the ways of planer frames shall be filled in smoothly with heavy sheet metal to eliminate the shear hazard.

(b) Where there is not a 12-inch clearance between a fixed object and the planer table and the work carried on the table, a railing shall be provided between the fixed object and the table and the work on the table to protect workers passing between the fixed object and the planer.

§ 50–204.193 Shears.

(a) Alligator shears shall be guarded by running a heavy U-shaped metal strap horizontally around the moving (upper) jaw with the lower edge of the strap just far enough above the cutting edge of the fixed (lower) jaw to allow the material to be inserted in the shears.

(b) Squaring shears shall be provided with a fixed barrier which clears the top of the table by not more than ⅜ inch plus the minimum thickness of material for which used. Automatic clamps shall be acceptable as guards when cutouts are filled in so that fingers of the operator cannot enter the danger zone.

§ 50–204.194 Guillotine cutters, power-driven.

(a) Power-driven guillotine cutters shall be equipped with a guard or device which will prevent the hands of the workers from entering the zone traveled by the knife while the knife is in motion. This may be a fixed barrier or it may consist of a two-handed device requiring the simultaneous use of the worker's two hands at points outside the zone of danger.

(b) In addition to the point of operation guard or device described in section 50–204.194(a), the power-driven guillotine cutter shall be provided with an arrangement which will prevent the cutter from making a second stroke until the lever or two-handed device is again used.

§ 50–204.195 Power presses.

(a) *Safeguarding classification.* One or more means of safeguarding the press at the point of operation shall be provided and used on every power press, depending upon the method of feeding, in accordance with the following:

SAFEGUARDING CLASSIFICATION

Method of feeding press	*Safeguarding required*
Automatic feed: Automatic roll feed. Automatic push, pull or dial feed.	Fixed barrier guard or gate guard (section 50–204.195 (c), (d)
Semiautomatic feed: Chute feed (both gravity and follow feed). Slide or push feed. Sliding dies. Dial feed. Revolving dies.	Fixed barrier guard or gate guard (section 50–204.195 (c), (d)
Manual feed	Fixed barrier guard or gate guard, two-hand tripping device, or pull-out guard, electronic sweep guard (section 50–204.195 (c), (d), (e), (f), (g), (h))

(b) *General requirements for point of operations guarding.* Every point of operation guarding device shall be simple and reliable in construction, application, and adjustment. It shall be permanently attached to the press or the die. It shall not offer any accident hazard in itself.

(1) The device shall be designed and constructed so that it is impossible for the operator to place or permit his hand or fingers to remain within the danger zone created by the movement of the ram.

(2) Care shall be used in the selection of the method of guarding for each particular job. Guards shall be installed, maintained, and adjusted to produce safe operation at each setting of the press.

(3) Guards which are attached to the ram and which move downward so that the operator's hand or fingers might be caught between gate and lower die shall not be used.

(c) *Fixed barrier guard.* (1) A fixed barrier guard is an enclosure to prevent the hands or fingers of the operator from entering the area between the dies. It may be attached to the press or individual guards may be attached to the dies.

(2) There shall be no exposed shear points between the guard and any moving part.

(3) Openings in the guard or between the guard and working surface shall not be greater than those shown in the Table below:

PERMISSIBLE OPENINGS (INCHES)

Distance of opening from nip point:	*Maximum width of opening*
0½ to 1½	¼
1½ to 2½	3/8
2½ to 3½	½
3½ to 5½	5/8
5½ to 6½	¾
6½ to 7½	⅞
7½ to 8½	1¼

(4) For the portion of the guard between the operator and the die or working area, it is required that 3/16-inch minimum vertical steel rods, vertically slotted material, or shatterproof, nonflammable, transparent material be used. Mesh, or perforated plate shall not be used between the operator and the die.

(5) Any hinged or movable section of a fixed barrier guard shall be connected to an interlocking device that will prevent tripping the press while the section is open.

(d) *Gate guards.* (1) A gate guard is a movable barrier arranged so that it completes the enclosure of the point of operation before the operating clutch can become engaged.

(2) Openings in the barrier of the gate guard shall be not greater than those specified for the openings in fixed barrier guards in section 50–204.195(c)(3). The mechanism of the guard shall be designed so that there will be no positive linkage or other close motion which may trap the hand of the operator.

(3) Gate guards shall include either fixed or movable side enclosures around the die.

(4) When the speed of the ram is so slow that an operator might beat the ram on the down stroke after the press has been tripped, the gate guard shall be designed so that the gate remains closed until the ram has completed the down stroke.

(c) *Two-hand tripping device.* (1) Two-hand tripping devices include only those which make it impossible to trip the press without the simultaneous use of both hands outside the danger zone. It shall be designed, located, and arranged so as to prevent tying, wedging, or otherwise securing one handle or button or operating it with any gesture or device and tripping the press while the other hand may be in the danger zone.

(2) On friction-clutch-operated presses, the controls shall be arranged so that if any hand is removed from a control during the down stroke of the ram, it will be instantly stopped.

(3) Where two or more persons are engaged in the operation of a single press, separate two-hand controls shall be provided for each person, except that an auxiliary foot control (air or electric) may be used in lieu of one set of two-hand controls, provided the foot control is located so that the nip point is out of the reach of the operator, but the foot controls shall in no case be less than a distance of 36 inches measured horizontally from the nip point.

(f) *Pull-out guards.* (1) Pull-out guards shall be so constructed as to be attached to the operator's hands or arms and connected to the ram, plunger, or outer slide of the press in such a way that the operator's hands and fingers will be withdrawn from the danger zone before the ram, plunger, or outer slide descends to a hazardous point.

(2) Where the open distance between the top of the work and the lower extremity of the punch is less than 2 inches the multiplying action of this guard shall be such that the hands will be withdrawn a safe distance before this open distance is ¼ closed.

(g) *Electronic safety device.* (1) An electronic safety device shall be so designed and installed that when the operator's hand or any part of the body is in the die zone, the press cannot be tripped and if the hand or any part of the body is inserted while the ram is in a downward motion, it will immediately stop the ram.

(2) These guards shall be operated from a circuit wired so that interruption of the electric current will automatically prevent the press from tripping until the current has been restored.

(3) Electronic safety devices shall not be used on positive clutch presses where the ram continues for a complete stroke after each tripping of the press.

(h) *Sweep guards.* (1) Sweep guards may be provided with either single or double sweep arms. The sweep arm, or arms, shall be connected to the ram in such a way as to forcibly sweep the hands of the operator from the die zone as the ram or plunger descends and before there is danger of injury.

(2) Sweep guards shall be so designed and operated that the operator cannot reach behind the guard in the danger zone before the ram has completed its downward stroke.

(3) The sweep or sweeps shall not offer any hazard of or in themselves by creating a shear hazard between the sweep arm and press tie rods, die straps, or other parts of the press or guard.

(i) *One-hand tripping device.* Whenever a press is set up so as to require tripping the ram or plunger by one hand, additional guarding as specified in section 50–204.195 shall be provided.

(j) *Special hand tools.* Hand tools for placing and removing material shall be such as to permit easy handling of material without the operator's placing a hand in the danger zone. Such tools shall not be accepted in lieu of other guarding as provided in this section.

§ 50–204.196 Foot presses.

Foot presses shall be guarded by one or more of the guards described in section 50–204.195 (a) to (d), inclusive.

(a) *Fixed barrier guards.* Fixed barrier guards shall conform to section 50–204.195(c).

(b) *Limitation of stroke.* If a foot or kick press is guarded by limitation of the ram stroke, the adjustment must be set and locked securely in position to limit the maximum travel of the ram to ⅜ inch on each stroke. There shall be no pinching or crushing hazards between other parts of the ram or die shoe.

(c) *Gate guards.* A gate shall be designed to close the opening at the front of the press before the foot lever can be operated.

(d) *Two-hand operation.* Two-hand operations shall conform to section 50–204.195(e).

(e) *Sweep guards.* Sweep guards shall conform to section 50–204.195(h).

(f) *Pull-out guards.* Pull-out guards shall conform to section 50–204.195(f).

(g) *Location.* Foot presses shall not be located in a position which will permit the operating lever to extend into an aisle or passageway.

(h) *Mounting.* Foot presses shall be securely bolted to the floor.

§ 50–204.197 Other power-press safety devices.

(a) *Treadle guard.* A substantial guard shall be placed over the treadle of every foot-operated power press to prevent accidental tripping.

(b) *Foot treadle.* The use of tension springs or counterweights on any treadle shaft or tension springs on any treadle-shaft lever is prohibited.

(c) *Latch on hand-operating lever.* Hand-operated power presses, shall be equipped with a spring latch on the operating lever to prevent accidental or premature tripping.

(d) *Interlocking device.* Each hand-operated power press, if tended by more than one person at one time shall conform to the requirements of section 50–204.195(e) (1) and (3).

(e) *Single-stroke attachments.* On positive-type clutch presses a single-stroke attachment shall be provided, by which the treadle or operating lever is disconnected after each stroke.

§ 50–204.198 Platen presses.

Platen presses shall be provided with an automatic feed device, an automatic stop device, a guard gate or sweep motion device, or another device, all as defined in this section.

(a) An automatic feed device is one which does not require the operator's hand to be placed between the platen and bed.

(b) An automatic stop device is one which will prevent the platen from closing if the hand or hands of the operator are caught between the platen and the bed.

(c) A guard, gate or sweep motion device, is one which will throw the operator's hands out of the way before the press closes. If the guard is of the type which lifts the hands out of the danger zone, it shall rise at least 4 inches above the platen before the press closes. The guard shall be arranged so that it will prevent a shear between the guard and the top of the platen.

(d) "Another device" is one that will prevent the platen from closing on the operator's hands before they are removed from between the platen and the bed.

§ 50–204.199 Abrasive wheels.

(a) The machine shall be securely mounted on substantial floors, benches, foundations or other adequate structures.

(b) *Guards.* Every stationary abrasive wheel and portable wheel used in stationary position shall be equipped with a hood or band guard strong enough to withstand the shock of a bursting wheel. A guard of this type shall also be used on every portable wheel where the nature of the work will permit.

(c) *Spindle.* The spindle and nut and flange projection, if any, shall be guarded.

(d) *Mountings and fastenings.* Hoods shall be mounted so as to maintain proper alignment with the wheels, and the strength of the fastenings shall exceed the strength of the hood.

(e) *Dust exhaust provisions.* Hoods on machines used for dry grinding and other operations where dust is produced shall have provisions made for connection to an exhaust system.

(f) *Work rests.* Work rests shall be kept adjusted close to the wheel with a maximum distance of ⅛ inch to prevent the work from being caught between the wheel and the rest.

§ 50–204.200 Revolving drums and cylinders.

Every revolving barrel, drum or other revolving container shall be guarded by an enclosure which is interlocked with the driving mechanism, so that the barrel or drum cannot revolve unless the guard enclosure is in place.

§ 50–204.201 Fans.

When the periphery of the blades of a fan is less than 7 feet above the floor or working level the blades shall be guarded.

WOODWORKING MACHINERY

§ 50–204.208 Circular table saws.

(a) *Guards.* Each circular saw shall be guarded by a hood which shall completely enclose that portion of the saw above the table and shall be arranged so that the hood will automatically adjust itself to the thickness of, and remain in contact with, the material being cut. Where there is a possibility of contact with a portion of a circular saw beneath or behind the saw table, that portion shall be covered with a guard to prevent accidental contact with the saw.

(b) *Spreaders.* Each circular ripsaw shall be furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator. A spreader need not be used for work which is restricted to grooving, dadoing, or rabbeting.

(c) *Non-kickback fingers or dogs.* Each circular ripsaw shall be provided with non-kickback fingers or dogs so located as to oppose the thrust or tendency of the saw to pick up the material or to throw it back toward the operator.

§ 50–204.209 Swing and sliding cut-off saws.

The requirements expressed in this section apply to all swing cut-off saws and to those sliding cut-off saws which are mounted above the table.

(a) *Hood.* Each of the saws to which this section applies shall be provided with a hood that shall completely enclose the upper half of the saw, the arbor end, and the point of operation at all positions of the saw. The hood shall be constructed in such a manner and of such material that it will protect the operator from flying splinters and broken saw teeth. It shall be designed so that it will automatically cover the lower portion of the blade, so that when the saw is returned to the back of the table the hood will rise on top of the fence, and when the saw is moved forward the hood will drop on top of and remain in contact with the table or material being cut.

(b) *Counterweights.* Each of the saws to which this section applies shall be provided with an effective device to return the saw automatically to the back of the table when released at any point in its travel.

(c) *Limit stops.* Limit chains or other equally effective devices shall be provided to prevent the saw from swinging beyond the front or back edges of the table.

(d) *Latches.* A latch or equivalent device shall be provided to prevent the saw from rebounding upon its return to the rear of the table.

§ 50–204.210 Inverted swing cut-off saws (jump saws).

Inverted swing-cut-off saws shall be provided with a hood that will cover the part of the saw that protrudes above the top of the table or above the material being cut. It shall automatically adjust itself to the thickness of, and remain in contact with, the material being cut.

§ 50–204.211 Radial saws.

(a) *Hoods and guards.* The upper hood shall completely enclose the upper portion of the blade down to a point that will include the end of the saw arbor. The upper hood shall be constructed in such a manner and of such material that it will protect the operator from flying splinters, broken saw teeth, etc., and will deflect sawdust away from the operator. The sides of the lower exposed portion of the blade shall be guarded to the full diameter of the blade by a device that will automatically adjust itself to the thickness of the stock and remain in contact with stock being cut to give maximum protection possible for the operation being performed.

(b) *Spreaders.* When radial saws are used for ripping, a spreader shall be provided meeting the requirements expressed in section 50–204.208(b).

(c) *Non-kickback fingers or dogs.* Each radial saw used for ripping shall be provided with non-kickback fingers or dogs located on both sides of the saw so as to oppose the thrust or tendency of the saw to pick up the material or to throw it back toward the operator.

(d) *Adjustable stops and return devices.* An adjustable stop shall be provided to prevent the forward travel of the blade beyond the position necessary to complete the cut in repetitive operations.

§ 50–204.212 Portable circular saws.

All portable power-driven saws shall be equipped with guards above and below the base plate or shoe. The upper guard shall cover the saw to the depth of the teeth, except for the arc required to permit the base to be tilted. The lower guard shall cover the saw to the depth of the teeth, except for the minimum arc required to allow proper retraction and contact with the work. When the tool is withdrawn from the work, the lower guard shall automatically and instantly return to covering position.

§ 50–204.213 Band saws and band resaws.

(a) *Enclosing band-saw blades.* All portions of the saw blade shall be enclosed or guarded, except for the working portion of the blade between the bottom of the guide rolls and the table. Band-saw wheels shall be fully encased. The outside periphery of the enclosure shall be solid. The front and back of the band wheels shall be either enclosed by solid material or by wire mesh or perforated metal. Such mesh or perforated metal shall be not less than 0.037 inch (U.S. Gauge No. 20), and the openings shall be not greater than ⅝ inch. Solid material used for this purpose shall be of an equivalent strength and firmness. The guard for the portion of the blade between the sliding guide and the upper-saw-wheel guard shall protect the operator from the saw blade at the front and outer side. Brakes shall be provided to stop the wheel in case of blade breakage.

(b) *Tension.* Each band-saw machine shall be provided with a tension control device to indicate a proper tension for the standard saws used on the machine.

(c) *Feed rolls.* Feed rolls of band resaws shall be protected with a guard to prevent the hands of the operator from coming in contact with the in-running rolls at any point.

§ 50–204.214 Jointers.

(a) *Point of operation.* (1) Each hand-fed planer and jointer with horizontal head shall be equipped with a cylindrical cutting head, the knife projection of which shall not exceed ⅛ inch beyond the cylindrical body of the head.

(2) The clearance between the edge of the rear table and the cutter head shall be not more than ⅛ inch. The table throat opening shall be not more than 2½ inches when tables are set or aligned with each other for zero cut.

(b) *Automatic guards.* (1) Each hand-fed jointer with a horizontal cutting head shall have an automatic guard which will cover all the section of the head on the working side of the fence or gage. The guard shall keep the operator's hand from coming in contact with the revolving knives. The guard shall automatically adjust itself to cover the unused portion of the head and remain in contact with the material at all times.

(2) Each hand-fed jointer with horizontal cutting head shall have a guard which will cover the section of the head back of the gage or fence.

(3) Each wood jointer with vertical head shall have either an exhaust hood or other guard so arranged as to enclose completely the revolving head, except for a slot of such width as may be necesssary and convenient for the application of material to be jointed.

§ 50–204.215 Wood shapers, hand-fed panel raisers, and similar machines.

(a) The cutting heads of each wood shaper, hand-fed panel raiser, or other similar machine not automatically fed, shall be enclosed with a cage or adjustable guard designed to keep the operator's hands away from the cutting edge. The diameter of circular shaper guards shall be not less than the greatest diameter of the cutter. In no case shall a warning device of leather or other material attached to the spindle be acceptable.

(b) Cylindrical heads shall be used whenever the nature of the work will permit.

(c) All double-spindle shapers shall be provided with a starting and stopping device for each spindle.

§ 50–204.216 Planing, molding, sticking and matching machines.

(a) Each planing, molding, sticking, and matching machine shall have all cutting heads, and saws if used, covered by a metal guard. If such guard is constructed of sheet metal, the material used shall be not less than 1/16 inch in thickness; and, if cast iron is used, it shall be not less than 3/16 inch in thickness.

(b) Where an exhaust system is used, the guards shall form part or all of the exhaust hood and shall be constructed of metal of a thickness not less than that specified in paragraph (a) of this section.

(c) Feed rolls shall be guarded by a hood or suitable guard to prevent the hands of the operator from coming in contact with the in-running rolls at any point. The guard shall be fastened to the frame carrying the rolls so as to remain in adjustment for any thickness of stock.

(d) Surfacers or planers used in processing multiple pieces of material simultaneously shall be provided with sec-

tional infeed rolls having sufficient yield in the construction of the sections to provide feeding contact pressure on the stock, over the permissible range of variation in stock thickness specified or for which the machine is designed. In lieu of such yielding sectional rolls, suitable section kickback finger devices shall be provided at the infeed end.

§ 50–204.217 Sanding machines.

(a) *Feed rolls.* Feed rolls of self-feed sanding machines shall be protected with a semi-cylindrical guard to prevent the hands of the operator from coming in contact with the in-running rolls at any point. The guard shall be constructed of heavy material firmly secured to the frame carrying the rolls so as to remain in adjustment for any thickness of stock. The bottom of the guard shall come down to within ⅜ inch of a plane formed by the bottom or contact face of the feed roll, where it touches the stock.

(b) *Drum sanding machines.* Each drum sanding machine shall have an exhaust hood, or other guard, arranged to enclose the revolving drum, except for that portion of the drum above the table, if a table is used.

(c) *Disk sanding machines.* Each disk sanding machine shall have the exhaust hood, or other guard if no exhaust system is required, arranged to enclose the revolving disk, except for that portion of the disk above the table, if a table is used.

(d) *Belt sanding machines.* Belt sanding machines shall be provided with guards at each nip point where the sanding belt runs on to a pulley. The unused run of the sanding belt shall be guarded against accidental contact.

HOUSEKEEPING

§ 50–204.229 General.

All phases of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition.

§ 50–204.230 Floors.

(a) Floors of every workroom shall be maintained in a clean, and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable.

(b) Cleaning and sweeping shall be done in such a manner as to minimize the contamination of the air with dust and, so far as is practicable, should be done outside of working hours.

(c) Every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards.

§ 50–204.231 Flammable materials.

Oily rags, oily waste, waste paper and other flammable and combustible material shall be stored in tightly closed metal containers. Magnesium and other flammable metal scraps shall not be mixed with other scrap. All flammable scrap material of any kind shall be removed from the work areas daily.

§ 50–204.232 Tools and other materials.

Tools, materials, or debris shall not be strewn about in a manner which may cause tripping or other hazards.

§ 50–204.233 Receptacles for waste disposal.

Any receptacle used for decaying solid or liquid waste or refuse shall be so constructed that it does not leak and may be conveniently and thoroughly cleaned, and it shall be maintained in a sanitary condition. Such a receptacle shall be equipped with a tight-fitting cover.

§ 50–204.234 Sweeping and refuse removal.

All sweepings, solid or liquid waste, refuse, and garbage shall be removed in such a manner as to avoid creating a nuisance or menace to health and as often as necessary to maintain the place of employment in a sanitary condition.

TOILET FACILITIES AND WASH ROOMS

§ 50–204.239 Separate toilet for each sex.

Every place of employment shall be provided with adequate toilet facilities which are separate for each sex.

§ 50–204.240 Location.

Toilet facilities shall be provided so as to be readily accessible to all employees. Toilet facilities so located that employees must use more than one floor-to-floor flight of stairs are not considered as readily accessible.

§ 50–204.241 Water closets.

Water closets, or chemical closets or privies where permitted by local law, shall be provided for each sex and shall be in accordance with the following table. The number to be provided for each sex shall in every case be based on the maximum number of persons of that sex employed at any one time at work on the premises for which the facilities are furnished. When persons other than employees are permitted the use of toilet facilities on the premises, a reasonable allowance shall be made for such other persons in computing the minimum number of toilet facilities required.

(a)

Number of persons	*Minimum number of facilities*
1 to 9	1
10 to 24	2
25 to 49	3
50 to 74	4
75 to 100	5
Over 100	(1)

[1] 1 for each additional 30 persons.

Where 10 or more are employed, one water closet less than the number specified in the foregoing may be provided for men for each urinal, except that the number of water closets in such cases may not be reduced to less than two-thirds of the number specified in the foregoing. Two feet of trough urinal shall be considered as equivalent to one individual urinal.

(b) An adequate supply of toilet paper with holder shall be provided for every water closet.

(c) Covered receptacles shall be kept in all toilet rooms used by women.

§ 50–204.242 Construction of toilet rooms.

(a) Each toilet facility (closet) shall occupy a separate compartment, equipped with a door, latch, and clothes hook.

(b) The walls of compartments or partitions between fixtures may be less than the height of room walls, but the top shall not be less than six feet from the floor and the bottom not more than one foot from the floor.

(c) The door to every toilet room shall be fitted with an effective self-closing device, and the entrance to the toilet rooms shall be so screened that the interior of the toilet room is not visible from the workroom.

(d) The floors, walls, ceilings, partitions, and doors of all toilet rooms shall be of a finish that can be easily cleaned.

(e) Toilet rooms, except those in work places accessible to men only, shall be completely enclosed with solid material that is nontransparent from the outside.

§ 50–204.243 Chemical closets and privies.

When chemical closets or privies are permitted by local law they shall be of a type approved by the health authorities having jurisdiction and shall be maintained in a sanitary condition.

§ 50–204.244 Washing facilities.

Adequate facilities for maintaining personal cleanliness shall be provided in every place of employment. These shall be convenient for the employees for whom they are provided and shall be maintained in a sanitary condition.

(a) At least one lavatory (wash basin) with adequate hot and cold water, shall be provided for every 20 employees (men or women) or portion thereof, up to 100 persons, and one lavatory (wash basin) for each additional 25 persons or portion thereof. Twenty-four inches of sink with individual faucet shall be considered as equal to one lavatory. In all instances, a suitable cleansing agent shall be provided at each wash place.

(b) Where employees are exposed to skin contamination by poisonous, infectious, or irritating material, one lavatory supplied with hot and cold water, shall be provided for every 5 employees.

(c) One shower bath with ample supply of hot and cold water from one fixture shall be supplied for every 15 workers, or portion thereof, exposed to excessive heat or to skin contamination by poisonous, infectious, or irritating material.

(d) Individual hand towels, or sections thereof, of cloth or paper, or mechanical apparatus for drying the hands, shall be provided. Proper receptacles or other sanitary means shall be maintained for the disposal of used towels. Towels for common use shall not be provided.

(e) Adequate washing facilities shall be provided in every toilet room or adjacent thereto.

§ 50–204.245 Change rooms.

Separate change or dressing rooms shall be provided for each sex wherever it is the practice to change from street clothes or wherever it is necessary to change because the work performed involves exposure to excessive dirt, heat, fumes, vapor, or moisture. Where change rooms are not provided, facilities shall be furnished for hanging outer garments:

(a) Where employees' work clothes are exposed to contamination by poisonous, infectious, or irritating material, facilities shall be provided in change rooms so that street and work clothes will not be stored in contact with each other.

(b) Where the process in which the worker is engaged is such that his working clothes become wet or have to be washed between shifts, provision shall be made to insure that such clothing is dry before re-use.

§ 50–204.246 Retiring rooms for women.

Where 10 or more women are employed at any one time, at least one retiring room shall be provided.

(a) Where less than 10 women are employed and a retiring room is not furnished, some equivalent space shall be provided which can be properly screened for privacy and made suitable for the use of women employees.

(b) At least one couch or bed shall be provided in every place where women are employed. The number of such beds or couches required shall be as follows:

	Beds
1 to 100	1
100 to 250	2

1 additional bed for each additional 250 women employees. A minimum of 60 square feet per bed shall be provided.

LUNCH ROOMS AND FOOD HANDLING

§ 50–204.251 Location.

In all places of employment where employees lunch on the premises, an adequate space suitable for that purpose shall be provided for the maximum number of employees who may use such space at one time. Such space shall be separate from any location where there is exposure to toxic materials.

§ 50–204.252 Waste food disposal.

A covered receptacle shall be provided and shall be used by employees for the disposal of all waste food.

§ 50–204.253 Presence of toxic materials.

No employee shall be permitted to store or eat any part of his lunch or other food at any time where there are present any toxic material or other substance that may be injurious to health.

DRINKING WATER

§ 50–204.258 Potable water.

(a) An adequate supply of potable water, approved as to source and distribution by appropriate authority, shall be provided for drinking, washing and cooking purposes in all places of employment.

(b) In all instances where water is cooled by ice made from non-potable water the construction of the container shall be such that the ice does not come in direct contact with the water.

(c) Open containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, whether or not they are fitted with a cover, shall not be allowed.

(d) The common drinking cup is prohibited.

(e) Where single service cups are supplied, a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

§ 50–204.259 Non-potable water.

Outlets for non-potable water, such as water for industrial or fire-fighting purposes only, shall be posted to indicate that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

MEDICAL SERVICES

§ 50–204.264 Medical services.

(a) The employer shall assure the ready availability of qualified medical personnel for advice and consultation on plant health problems, for emergency medical services, and for the supervision of first-aid attendants.

(b) In the absence of an infirmary, a person trained to render first aid and a kit containing the following items shall be available at every place of employment.

1 Adhesive Plaster ½" x 5 yd. Roll.
1 Adhesive Plaster, 1 x 5 yd. Roll.
2 Absorbent Cotton, 2-ounce packages.
1 Absorbent Gauze, 1 yd.
1 Activol Soap, 2-ounce bottle.
100 Adhesive Bandages, 1".
1 Aromatic Spirits of Ammonia, 2-ounce bottle.
1 Boric Acid Solution, 2-ounce bottle.
1 Castor Oil, 2-ounce bottle.
12 Compress Bandages, 2".
4 Compress Bandages, 4".
12 Cotton Wound Applicators.
1 Eye Cup.
1 Eye Dropper.
6 Finger Cots.
6 Foille for Burns, ⅛ oz. tubes.
1 Foille for Burns, 2-ounce bottle.
6 Gauze Roller Bandages 1" x 6 yds.
6 Gauze Roller Bandages 2" x 6 yds.
6 Gauze Roller Bandages 3" x 6 yds.
10 Gauze Sterilized, 12" x 18".
1 Merthiolate, Tincture, 2-ounce bottle.
1 Medicine Glass.
1 Manual First Aid Instruction.
1 Scissors Pair 4" Bandage.
1 Tweezers Pair 3½".
12 Safety Pins.
1 Spoon.
1 Tourniquet.
2 Triangular Bandages 40".
6 Wood Splints for Fractures.
12 Wood Tongue Depressors.

EYE PROTECTION

§ 50–204.269 General requirement.

Eye protection shall be provided where persons are exposed to any hazard which may cause injury to the eyes from the following operations: chipping, calking, coarse grinding, riveting, sledging, scaling, light grinding, stone dressing, spot welding, woodworking, metal-working, babbitting, casting, dipping in hot metal baths, handling of acids and caustics, electric arc welding, oxyacetylene and oxyhydrogen welding and cutting, furnace tending, and irradiation with ultraviolet light.

§ 50–204.270 First-aid for chemical burns.

Where workers' eyes may be exposed to injurious chemical materials such as acids, caustics, etc., suitable facilities for quick drenching or flushing of the eyes shall be provided within the workroom, for immediate emergency use.

ENVIRONMENTAL CONDITIONS

§ 50–204.275 Toxic gases, vapors, fumes, dusts, and mists.

No employee shall be exposed to any of the gases, vapors, mists, dusts, or fumes on the list in section 50–204.276 which exceed the limits there stated when applied to him on an average basis for an eight hour workday, unless he is protected therefrom by respiration equipment approved for the purpose by the United States Bureau of Mines of the United States Department of the Interior and operated in accordance with the recommendations of its manufacturer. Exposures without such equipment which exceed such limits temporarily, without exceeding them on a daily average basis, or which involve more than one such toxic substance, regardless of the degree of its concentration, are also hazardous unless they are undertaken in strict conformity with prior written approval of a qualified industrial hygienist who has studied the particular circumstances of exposure and the toxic substances and concentrations involved.

§ 50–204.276 Threshold limit values.

Gases and vapors—Substance	Parts per million parts of air by volume	Milligrams per cubic meter of air
Acetaldehyde	200	360
Acetic acid	10	25
Acetic anhydride	5	20
Acetone	1,000	2,400
Acrolein	.5	1.2
Acrylonitrile	20	45
Allyl alcohol	5	12
Allyl chloride	5	15
Allyl propyl disulfide	2	12
Ammonia	100	70
Amyl acetate	200	1,050
Amyl alcohol (isoemyl alcohol)	100	360
Aniline	5	19
Arsine	.05	.2
Benzene (benzol)	25	80
Benzyl chloride	1	5
Bromine	1	7
Butadiene (1,3-butadiene)	1,000	2,200
Butanone (methyl ethyl ketone)	250	740
Butyl acetate (*n*-butyl acetate)	200	950
Butyl alcohol	100	300
Butylamine	5	15
Butyl cellosolve (2-butoxyethanol)	50	240
Carbon dioxide	5,000	9,000
Carbon disulfide	20	60
Carbon monoxide	100	110
Carbon tetrachloride	25	160
Cellosolve (2-ethoxyethanol)	200	740
Cellosolve acetate (2-ethoxyethyl acetate)	100	540
Chlorine	1	3
Chlorine trifluoride	.1	.4
Chlorobenzene (monochlorobenzene)	75	350
Chloroform (trichloromethane)	100	490
1-Chloro-1-nitropropane	20	100
Chloropicrin	1	7
Chloroprene (2-chloro-1,3-butadiene)	25	90
Cresol (all isomers)	5	22
Cyclohexane	400	1,400
Cyclohexanol	100	410

Gases and vapors—Substance	Parts per million parts of air by volume	Milligrams per cubic meter of air
Cyclohexanone	100	400
Cyclohexene	400	1,350
Cyclopropane	400	690
Decaborane	.05	.3
Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	50	240
Diborane	.1	.1
o-Dichlorobenzene	50	300
Dichlorodifluoromethane	1,000	4,950
1,1-Dichloroethane	100	400
1,2-Dichloroethane (ethylene dichloride)	100	400
1,2-Dichloroethylene	200	790
Dichloroethyl ether	15	90
Dichloromonofluoromethane	1,000	4,200
1,1-Dichloro-1-nitroethane	10	60
Dichlorotetrafluoroethane	1,000	7,000
Diethylamine	25	75
Difluorodibromomethane	100	860
Diisobutyl ketone	50	290
Dimethylaniline (N-dimethylaniline)	5	25
Dimethylsulfate	1	5
Dioxane (diethylene dioxide)	100	360
Ethyl acetate	400	1,400
Ethyl acrylate	25	100
Ethyl alcohol (ethanol)	1,000	1,900
Ethylamine	25	45
Ethylbenzene	200	870
Ethyl bromide	200	890
Ethyl chloride	1,000	2,600
Ethyl ether	400	1,200
Ethyl formate	100	300
Ethylsilicate	100	850
Ethylene chlorohydrin	5	16
Ethylenediamine	10	30
Ethylene dibromide (1,2-dibromoethane)	25	190
Ethylene imine	5	9
Ethylene oxide	50	90
Fluorine	.1	.2
Fluorotrichloromethane	1,000	5,600
Formaldehyde	5	6
Furfural	5	20
Gasoline	500	2,000
Heptane (n-heptane)	500	2,000
Hexane (n-hexane)	500	1,800
Hexanone (methyl butyl ketone)	100	410
Hexone (methyl isobutyl ketone)	100	410
Hydrazine	1	1.3
Hydrogen bromide	5	17
Hydrogen chloride	5	7
Hydrogen cyanide	10	11
Hydrogen fluoride	3	2
Hydrogen peroxide, 90%	1	1.4
Hydrogen selenide	.05	.2
Hydrogen sulfide	20	30
Iodine	.1	1
Isoborone	25	140
Isopropylamine	5	12
Mesityl oxide	25	100
Methyl acetate	200	610
Methyl acetylene	1,000	1,650
Methyl acrylate	10	35
Methyl alcohol (methanol)	200	260
Methyl bromide	20	80
Methyl cellosolve (2-methoxyethanol)	25	80
Methyl cellosolve acetate (ethylene glycol monomethyl ether acetate)	25	120
Methyl chloride	100	210
Methylal (dimethoxymethane)	1,000	3,100
Methyl chloroform (1,1,1-trichloroethane)	500	2,700
Methylcyclohexane	500	2,000
Methylcyclohexanol	100	470
Methylcyclohexanone	100	460
Methyl formate	100	250
Methyl isobutyl carbinol (Methyl amyl alcohol)	25	100
Methyl styrene	100	480
Methylene chloride (dichloromethane)	500	1,750
Monomethyl aniline	2	9
Naphtha (coal tar)	200	800
Naphtha (petroleum)	500	2,000
Nickel carbonyl	.001	.007
Nitric acid	5	25
p-Nitroaniline	1	6
Nitrobenzene	1	5
Nitroethane	100	310
Nitrogen dioxide	5	9
Nitroglycerin	.5	5
Nitromethane	100	250
2-Nitropropane	50	180
Nitrotoluene	5	30
Octane	500	2,350
Ozone	.1	.2
Paradichlorobenzene	75	450
Pentane	1,000	2,950
Pentanone (methyl propyl ketone)	200	700
Perchlorethylene (tetrachloroethylene)	200	1,350
Phenol	5	19
Phenylhydrazine	5	22
Phosgene (carbonyl chloride)	1	4
Phosphine	.05	.07
Phosphorus trichloride	.5	3
Propyl acetate	200	840
Propyl alcohol (isopropyl alcohol)	400	980
Propyl ether (isopropyl ether)	500	2,100
Propylene dichloride (1,2-dichloropropane)	75	350
Propylene imine	25	60
Propylene oxide	100	240
Pyridine	10	30
Quinone	.1	.4
Stibine	.1	.5
Stoddard solvent	500	2,900
Styrene monomer (phenylethylene)	100	420
Sulfur dioxide	5	13
Sulfur hexafluoride	1,000	6,000
Sulfur monochloride	1	6
Sulfur pentafluoride	.025	.25
Tertiary butyl alcohol	100	300
p-Tertiarybutyltoluene	10	60
1,1,2,2-Tetrachloroethane	5	35
Tetrahydrofuran	200	590
Tetranitromethane	1	8
Toluene (toluol)	200	750
o-Toluidine	5	22
Trichloroethylene	200	1,050
Triethylamine	25	100
Trifluoromonobromomethane	1,000	6,100
Turpentine	100	560
Vinyl chloride (chloroethylene)	500	1,300
Vinyl toluene	100	480
Xylene (xylol)	200	870
Xylidine	5	25

TOXIC DUSTS, FUMES, AND MISTS

Substance	Milligrams per cubic meter of air
Aldrin (1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-1,4,5,8-dimethanonaphthalene)	0.25
Ammate (ammonium sulfamate)	15
Antimony	.5
ANTU (alpha naphthyl thiourea)	.3
Arsenic	.5
Barium	.5
Beryllium	2ym3
Cadmium oxide fume	.1
Calcium arsenate	.1
Chlordane (1,2,4,5,6,7,8,8-octachloro-3a,4,7,7a-tetrahydro-4,7-methanoindane)	2
Chlorinated camphene, 60%	.5
Chlorinated diphenyl oxide	.5
Chlorodiphenyl (42% chlorine)	1
Chlorodiphency (54% chlorine)	.5
Chromic acid and chromates (as CrO_3)	.1
Crag herbicide (sodium 2-[sodium 2-[2,4-dichlorophenoxy] ethanol hydrogen sulfate)	15
Cyanide (as CN)	5
2,4-D(2,4-dichlorophenocyacetic acid)	10
DDT (2,2-bis [p-chlorophenyl]-1,1,1-trichloroethane)	1
Dieldrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4,5,8-dimethanonaphthalene)	.25
Dinitrobenzene	1
Dinitrotoluene	1.5
Dinitro-o-cresol	.2
EPN (O-ethyl O-p-nitrophenyl thionobenzenephosphonate)	.5
Ferbam (ferric dimethyl dithiocarbamate)	15
Ferrovanadium dust	1
Fluoride	2.5
Hydroquinone	2
Iron oxide fume	15
Lead	.2
Lead arsenate	.15
Lindane (hexachlorocyclohexane, gamma isomer)	.5

TOXIC DUSTS, FUMES, AND MISTS—Con.

Substance	Milligrams per cubic meter of air
Magnesium oxide fume	15
Malathion (O,)-dimethyl dithiophosphate of diethyl mercaptosuccinate)	15
Manganese	6
Mercury	.1
Mercury (organic compounds)	.01
Methoxychlor (2,2-di-p-methoxyphenyl-1,1,1-trichloroethane)	15
Molybdenum:	
soluble compounds	5
insoluble compounds	15
Nicotine	.5
Parathion (O,O-diethyl O-*p*-nitrophenyl thiophosphate)	.1
Pentachloronaphthalene	.5
Pentachlorophenol	.5
Phosphorus (yellow)	.1
Phosphorus pentachloride	1
Phosphorus pentasulfide	1
Picric acid	.1
Pyrethrum	2
Rotenone	5
Selenium compounds (as Se)	.1
Sodium hydroxide	2
Sodium fluoroacetate (1080)	.1
Strychnine	.15
Sulfuric acid	1
TEDP (tetraethyl dithionopyrophosphate)	.2
TEPP (tetraethyl pyrophosphate)	.05
Tellurium	.1
Tetryl (2,4,5-trinitrophenylmethylnitramine)	1.5
Thiram (tetramethyl thiuram disulfide)	5
Thallium (soluble compounds)	.1
Titanium dioxide	15
Trichloronaphthalene	5
Trinitrotoluene	1.5
Uranium:	
soluble compounds	.05
insoluble compounds	.25
Vanadium:	
V_2O_5 dust	.5
V_2O_5 fume	.1
Warfarin (3-[acetonylbenzyl]-4-hydroxycoumarin)	.5
Zinc oxide fumes	15
Zirconium compounds (as Zr)	5

MINERAL DUSTS

Substance	Millions of particles per cubic meter of air
Aluminum oxide	50
Asbestos	5
Dust (nuisance, no free silica)	50
Mica (below 5% free silica)	20
Portland cement	50
Silica:	
High (above 50% free SiO_2)	5
Medium (5 to 50% free SiO_2)	20
Low (below 5% free SiO_2)	50
Silicon carbide	50
Soapstone (below 5% free SiO_2)	20
Talc	20

VENTILATION

§ 50–204.288 General ventilation and temperature requirements.

(a) Outside air shall be provided to all workrooms at the rate of 15 cubic feet per minute per person, or one and one-half air changes per hour, whichever is greater. In most instances, leakage through walls, doors, and windows will produce at least one and one-half air changes per hour.

(b) A minimum air temperature of 60° F. should be maintained at all workrooms where work of a strenuous nature is performed, and a minimum air temperature of 65° F. should be maintained in all other workrooms unless prohibited by process requirements.

§ 50–204.289 Local exhaust ventilation.

(a) Every local exhaust ventilation system shall produce and maintain a movement of air toward the opening, sufficient to prevent escape of contaminant to the workroom during working hours, beyond the limits shown in section 50–204.276.

(b) Air flow through branch and main ducts shall be sufficient to transport the contaminant through the system without settling.

(c) Piping shall be located so as to be accessible for inspection and maintenance.

(d) Air flow equipment including hoods, pipes, fans, motors, and collectors shall be effectively grounded.

(e) Two or more operations involving more than one substance shall not be permitted to be connected to the same exhaust system when a combination of the substances removed may constitute a fire hazard, an explosion hazard, or otherwise dangerous mixture.

(f) Those processes or operations using or generating flammable dusts, gases, fumes, vapors, mists, fibers or other impurities shall be completely protected from all sources of ignition.

(g) The capacity of an exhaust system shall be calculated on the basis of all hoods, booths, and enclosures connected to the system being open, except where the system is so interlocked that only a portion of it can be operated at a given time, in which case the capacity should be calculated on the basis that all the hoods in the group requiring the greatest volume rate of exhaust are open.

(h) Suitable air inlets shall be provided for replacement of exhausted air.

(i) Exhaust systems handling dusts and discharging to the outer air shall be provided with suitable air-cleaning devices to remove air contaminants prior to the discharge to the outer air, except under unusual circumstances.

(j) The discharge from any exhaust system shall be such that no air contamination therefrom will enter any window, door, or other opening of any work space in quantities sufficient to create a health hazard to such space or create a nuisance to surrounding areas.

(k) Collected materials shall be removed at intervals frequent enough to insure that the exhaust system will meet the requirements of section 50–204.288 (a), at all times.

NOISE

§ 50–204.293 Noise.

Noise shall be reasonably reduced or eliminated as a means of preventing fatigue or accidents.

PERSONAL PROTECTIVE EQUIPMENT

§ 50–204.298 Personal protective equipment.

Personal protective equipment or protective shields or barriers shall be provided and maintained in usable condition whenever substances, radiation, or mechanical irritants are encountered in a manner capable of causing injury or impairment in function of any part of the body through skin or mucous membrane absorption.

BITUMINOUS COAL AND LIGNITE MINES

§ 50–204.300 Federal Mine Safety Code.

The Federal Mine Safety Code for Bituminous Coal and Lignite Mines of the United States, Part I—Underground Mines, and Part II—Strip Mines, as published by the Bureau of Mines, United States Department of Interior is hereby adopted by reference as the safety and health standard required for observance in the bituminous coal and lignite mining to which section 1(e) of the Walsh-Healey Public Contracts Act has application.

Signed at Washington, D.C., this 12th day of December 1960.

JAMES P. MITCHELL,
Secretary of Labor.

[F.R. Doc. 60–11689; Filed, Dec. 27, 1960; 8:45 a.m.]

THE UNIVERSITY
OF MICHIGAN
DEC 30 1960
MAIN
READING ROOM

Pages 13827–13941



FEDERAL REGISTER

VOLUME 25 NUMBER 252

Washington, Thursday, December 29, 1960

Contents

Agricultural Marketing Service

RULES AND REGULATIONS:
Navel oranges grown in Arizona and designated part of California; handling limitation---- 13867
Raisins produced from grapes grown in California; monthly report of disposition of free tonnage raisins; correction------- 13869
Shipments limitations: Irish potatoes grown in:
Certain designated counties in Idaho and Malheur County, Oregon---------- 13868
Maine---------- 13868
Red River Valley of North Dakota and Minnesota--------- 13867

Agriculture Department

See Agricultural Marketing Service; Commodity Credit Corporation; Commodity Stabilization Service.

Atomic Energy Commission

RULES AND REGULATIONS:
Commission review of intermediate decisions---------- 13869

Civil Aeronautics Board

NOTICES:
Hearings, etc.:
Aeronaves De Mexico, S.A----- 13925
Allegheny Airlines, Inc-------- 13925
Pan American mail rate case--- 13925

Civil Service Commission

RULES AND REGULATIONS:
Exceptions from the competitive service:
Air Force Department--------- 13829
Commerce Department-------- 13829
Health, Education, and Welfare Department; exclusions from provisions of Federal Employees Pay Act and Classification Act-- 13829

Coast Guard

RULES AND REGULATIONS:
Lifesaving equipment; lifeboats-- 13892

Commerce Department

See Federal Maritime Board; Maritime Administration.

Commodity Credit Corporation

RULES AND REGULATIONS:
Mohair; support level for 1961 marketing year---------- 13829
Wool; incentive level for 1961 marketing year---------- 13830

Commodity Stabilization Service

RULES AND REGULATIONS:
Soil bank; conservation reserve program for 1956–1959; miscellaneous amendments--------- 13830
Sugar; requirements relating to non-quota purchase for three-month period ending March 31, 1961---------- 13864

Customs Bureau

NOTICES:
Rayon staple fiber from France; purchase price less than foreign market value---------- 13924

Federal Aviation Agency

RULES AND REGULATIONS:
Air traffic; definitions of prohibited area and restricted area--- 13869
Certification procedures--------- 13870
Control zones; modifications (3 documents)---------- 13880, 13881
Inter-American aviation training grants---------- 13879
Reporting points; modification and revocation---------- 13882
Representatives of the Administrator---------- 13877
Restricted areas; modification--- 13882
Small airplanes, gliders, engines, and propellers; delegation option procedures for certification---------- 13874

Federal Communications Commission

NOTICES:
Hearings, etc.:
Abilene Radio and Television Co. et al---------- 13925
Atlanta OK Broadcasting Co., Inc., and WRMA Broadcasting Co., Inc---------- 13926
Follmer, Walter L. and Interstate Broadcasting Co., Inc. (WQXR) ---------- 13926
Newport Broadcasting Co. and Crittenden County Broadcasting Co---------- 13926
RULES AND REGULATIONS:
Incidental and restricted radiation devices---------- 13829

Federal Maritime Board

See also Maritime Administration.
NOTICES:
Agreements filed for approval:
Far East Conference et al----- 13924
Shaw, Savill and Albion Co., Ltd., et al---------- 13924

Federal Power Commission

RULES AND REGULATIONS:
Statement of sales and revenues of independent producers-------- 13882

Fish and Wildlife Service

RULES AND REGULATIONS:
Sport fishing; Mark Twain National Wildlife Refuge, Illinois and Iowa---------- 13908

(*Continued on next page*)

Interior Department

See Fish and Wildlife Service.

Internal Revenue Service

PROPOSED RULE MAKING:
Alcohol, tobacco, and other excise taxes; machine guns and certain other firearms 13920
Income tax; taxable years beginning after December 31, 1953 (2 documents) 13909, 13911
Manufacturers and retailers excise taxes 13915

RULES AND REGULATIONS:
Basic permit requirements under the Federal Alcohol Administration Act 13831
Estate tax; estates of decedents dying after August 16, 1954; miscellaneous amendments 13884
Income tax; taxable years beginning after December 31, 1953; foreign corporations and change of estimated income tax filing requirements for individuals 13883

Interstate Commerce Commission

NOTICES:
Fourth section applications for relief (2 documents) 13926, 13927
Motor carrier applications and certain other proceedings 13928
Motor carrier transfer proceedings 13928

RULES AND REGULATIONS:
Railroad accidents; monthly reports 13893
Uniform system of accounts for maritime carriers 13907

Maritime Administration

RULES AND REGULATIONS:
Uniform system of accounts for operating-differential subsidy contractors 13892

Post Office Department

RULES AND REGULATIONS:
Directory of International mail; Nicaragua import prohibitions 13883

Small Business Administration

PROPOSED RULE MAKING:
Small business size standards 13923

Treasury Department

See Coast Guard; Customs Bureau; Internal Revenue Service.

Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

5 CFR

6 (2 documents) 13829
27 13829

6 CFR

468 13829
472 13830
485 13830

7 CFR

819 13864
914 13867
938 13867
957 13868
970 13868
989 13869

10 CFR

2 13869

13 CFR

PROPOSED RULES:
121 13923

14 CFR

60 13869
406 13870
410 13874
418 13877
450 13879
601 (4 documents) 13880–13882
608 13882

18 CFR

260 13882

26 (1939) CFR

PROPOSED RULES:
330 13195

26 (1954) CFR

1 13883
20 13884
24 13884

PROPOSED RULES:
1 (2 documents) 13909, 13911
48 13915
179 13920

27 CFR

1—8 13831

39 CFR

168 13883

46 CFR

75 13892
282 13892

47 CFR

15 13829

49 CFR

125 13893
323 13907

50 CFR

33 13908

FEDERAL REGISTER

Telephone WOrth 3-3261

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Office of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D.C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of the Air Force

Effective upon publication in the FEDERAL REGISTER, paragraph (a)(2) of § 6.307 is amended as set out below.

§ 6.307 Department of the Air Force.

(a) *Office of the Secretary.*

* * * * * *

(2) Five private secretaries. (For employment of private secretaries to officials in the Office of the Secretary who are appointed by the President or are appointed under subparagraph (1) of this paragraph.)

(R.S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director, Bureau of Management Services.

[F.R. Doc. 60-12087; Filed, Dec. 28, 1960; 8:49 a.m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

Department of Commerce

Effective upon publication in the FEDERAL REGISTER, paragraph (d)(1) of § 6.312 is revoked and paragraph (a)(32) is added as set out below.

(a) *Office of the Secretary.*

* * * * * *

(32) Director, Office of Field Services.

(R.S. 1753, sec. 2, 22 Stat. 403, as amended, 5 U.S.C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director, Bureau of Management Services.

[F.R. Doc. 60-12055; Filed, Dec. 28, 1960; 8:46 a.m.]

PART 27—EXCLUSIONS FROM PROVISIONS OF THE FEDERAL EMPLOYEES PAY ACT OF 1945, AS AMENDED, AND THE CLASSIFICATION ACT OF 1949, AS AMENDED, AND ESTABLISHMENT OF MAXIMUM STIPENDS FOR POSITIONS IN GOVERNMENT HOSPITALS FILLED BY STUDENT OR RESIDENT TRAINEES

Department of Health, Education, and Welfare

1. Effective January 1, 1961, the item under § 27.1 for student dietitians, Department of the Army, approved training after a minimum of three years college level training is amended as follows:

§ 27.1 Exclusions from provisions of Federal Employees Pay Act and Classification Act.

* * * * * *

Student dietitians, Department of the Army and Department of Health, Education, and Welfare, approved training after a minimum of three years college level training.

2. Effective January 1, 1961, the maximum stipends prescribed under § 27.2 for positions of student dietitians, Department of the Army: Approved training after a minimum of three years' college level training, per month, $166.00, is amended as follows:

§ 27.2 Maximum stipends prescribed.

* * * * * *

Student dietitians, Department of the Army and Department of Health, Education, and Welfare: Approved training after a minimum of three years' college level training, per month, $166.00.

(61 Stat. 727; 5 U.S.C. 1051–1058)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] DAVID F. WILLIAMS,
Director, Bureau of Management Services.

[F.R. Doc. 60-12054; Filed, Dec. 28, 1906; 8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 60-1536; RM-210]

PART 15—INCIDENTAL AND RESTRICTED RADIATION DEVICES

Date When Certification Is Required

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 21st day of December 1960;

The Commission, having under consideration § 15.68(b) of its rules and regulations, and in particular the proviso therein permitting operation of UHF television receivers with field strength of 1000 uv/m at 100 feet until December 31, 1960, and a rule making petition, RM-210, filed October 14, 1960, by Electronic Industries Association requesting extension of such authority until December 31, 1962; and

It appearing that, no evidence has been brought to the attention of the Commission substantiating or supporting the need for a return to the 500 uv/m limit, at this time; and

It further appearing that, the "state of the art" in regard to controlling oscillator radiation from UHF television receivers has remained unchanged in the last two years; and

It further appearing that, the proposed amendment merely extends an existing provision; that operation under this provision during the past 2 years has had no adverse effect; that the Commission has no reason to believe that any party has an interest in discontinuing the provision, or that any party would submit comments to that effect if afforded an opportunity to do so; and hence, that notice and public procedure are unnecessary; and

It further appearing that, since the amendment herein ordered imposes no new requirements but rather relieves an existing requirement, the amendment may be made effective less than 30 days after publication as provided in section 4(c) of the Administrative Procedures Act; and

It further appearing that, the amendment adopted herein is issued pursuant to authority contained in sections 4(i), 301, 303(f), and 303(r) of the Communications Act of 1934, as amended;

It is ordered, That, the EIA petition RM-210 is granted and, effective December 31, 1960, § 15.68(b) of the rules and regulations is amended as follows:

§ 15.68 Date when certification is required.

* * * * * *

(b) UHF television broadcast receivers manufactured after December 1957 shall comply with the certification requirements of this subpart: *Provided, however*, That, the limit of 500 uv/m appearing in the table contained in § 15.62 is temporarily increased to 1000 uv/m for all UHF television receivers until December 31, 1962.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 301, 303, 48 Stat. 1081, 1082; 47 U.S.C. 301, 303)

Released: December 23, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12088; Filed, Dec. 28, 1960; 8:49 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[Amdt. 1]

PART 468—MOHAIR

Subpart—Payment Program for Mohair

SUPPORT LEVEL FOR 1961 MARKETING YEAR

The Payment Program for Mohair issued by Commodity Credit Corporation and the Commodity Stabilization Service (§ 468.161, 24 F.R. 10191) is amended in its entirety to read as follows:

§ 468.161 Announcement of program.

The Commodity Stabilization Service and Commodity Credit Corporation hereby announce a payment program for mohair pursuant to the National Wool Act of 1954, as amended. The program will be carried out under the general supervision and direction of the Executive Vice President of Commodity Credit Corporation through the Commodity Stabilization Service.

§ 468.162 Method and level of support.

(a) *Method of support.* The price of mohair will be supported by payments to producers for any marketing year in which the national average return to the producers for all mohair sold by them is less than the support level announced for that marketing year.

(b) *Level of support for 1960 marketing year.* The price of mohair sold in the 1960 marketing year (April 1, 1960, through March 31, 1961) will be supported at a level which will yield a national average return to producers of 70 cents a pound for all mohair sold in that marketing year.

(c) *Level of support for 1961 marketing year.* The price of mohair sold in the 1961 marketing year (April 1, 1961, through March 31, 1962) will be supported at a level which will yield a national average return to producers of 73 cents a pound for all mohair sold in that marketing year. An announcement of this support level was made on August 16, 1960.

§ 468.163 Provisions of regulations.

If market conditions become such that it appears that payments to producers will be necessary for any marketing year, regulations containing detailed program requirements will be issued. Such regulations will be generally similar to the regulations dealing with shorn wool payments which are included in the Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool), issued by Commodity Credit Corporation and the Commodity Stabilization Service on January 27, 1959 (24 F.R. 649), as amended, except that there will be no deductions from payments under the mohair program based on any purchases of goats. Applicants for payments under the mohair program will submit sales documents meeting the requirements as to sales documents for shorn wool in the previously mentioned wool payment program (§§ 472.1007 and 472.1008 of this chapter), and producers of mohair are cautioned to obtain and keep such documents for use under the mohair program if mohair payments should be made.

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 702–709, 68 Stat. 910–912, secs. 401–403, 72 Stat. 994–995; 15 U.S.C. 714c, 7 U.S.C. 1781–1787, 1446)

Issued this 22d day of December 1960.

WALTER C. BERGER,
Executive Vice President, Commodity Credit Corporation, and Administrator, Commodity Stabilization Service.

[F.R. Doc. 60-12063; Filed, Dec. 28, 1960; 8:48 a.m.]

[Amdt. 5]

PART 472—WOOL

Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool)

INCENTIVE LEVEL FOR 1961 MARKETING YEAR AND OTHER AMENDMENTS

The regulations issued by Commodity Credit Corporation and the Commodity Stabilization Service containing the requirements with respect to the payment program for shorn wool and unshorn lambs (pulled wool), as amended (24 F.R. 649, 10191; 25 F.R. 1725, 2705, 5872), are further amended as follows:

1. At the end of § 472.1002, the following new paragraph (d) is inserted:

(d) *1961 marketing year.* For the 1961 marketing year, the price support level was announced on August 16, 1960, as 62 cents per pound of shorn wool, grease basis.

2. At the end of paragraph (a) of § 472.1006, the following new sentence is inserted: "If the producer files more than one application in the same county office or different county offices, all such applications may be considered together for the purpose of determining the amount of the payment based on the sales of shorn wool and the amount of the reduction on account of purchases of unshorn lambs."

3. In § 472.1006, the following is inserted at the end of paragraph (c): "If the amount of the reduction exceeds the payment computed on the shorn wool marketed, the liveweight of lambs which corresponds to the excess amount shall be carried forward and used to reduce payments on shorn wool or unshorn lambs marketed in future years."

4. In § 472.1023, the following is inserted at the end thereof: "If the liveweight reported pursuant to § 472.1026 exceeds the liveweight of the unshorn lambs sold or moved to slaughter during the marketing year for which the application is filed, such excess liveweight shall be carried forward and used to reduce payments on unshorn lambs or shorn wool marketed in future years. If the producer files more than one application in the same county office or in different county offices, all such applications may be considered together for the purpose of determining the amount of the payment based on the sales of unshorn lambs and the amount of the reduction on account of purchases of unshorn lambs."

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 62 Stat. 1072, secs. 702–709, 68 Stat. 910–912, secs. 401–403, 72 Stat. 994–995; 15 U.S.C. 714c, 7 U.S.C. 1781–1787, 1446)

Issued this 22d day of December 1960.

WALTER C. BERGER,
Executive Vice President, Commodity Credit Corporation, and Administrator, Commodity Stabilization Service.

[F.R. Doc. 60-12064; Filed, Dec. 28, 1960; 8:48 a.m.]

SUBCHAPTER D—REGULATIONS UNDER SOIL BANK ACT

[Amdt. 44]

PART 485—SOIL BANK

Subpart—Conservation Reserve Program for 1956 Through 1959

MISCELLANEOUS AMENDMENTS

The regulations governing the Conservation Reserve Program for 1956 through 1959, 21 F.R. 6289, as amended, are hereby further amended as follows:

1. Section 485.157(f)(1) is amended to read as follows:

(1) Effective August 1, 1959, if the county committee determines that an approved conservation use to which the land was devoted when it was placed under contract or which was established with or without cost-sharing after the land was placed under contract, has failed or deteriorated as a result of flood, drought, hurricane, or other natural disaster to the extent that it will not provide adequate soil protection, or satisfactory impoundment of water, as the case may be, the county committee may authorize cost-sharing for eligible measures which the county committee determines are needed to reestablish or restore the approved conservation use so as to provide adequate soil protection, or satisfactory impoundment of water, as the case may be, except that no cost-sharing shall be approved for reestablishment or restoration measures to be carried out during the last year of the contract period. Approvals of cost-sharing for reestablishment or restoration measures shall be at rates of cost-sharing not in excess of 50 percent of the current rates of cost-sharing for the measures for which cost-sharing is being approved. If the contract is for a period of less than 5 years, cost-sharing for reestablishment or restoration measures shall not be authorized.

2. Section 485.162(a) is amended by adding at the end thereof the following: "Notwithstanding any other provision of this paragraph, (1) rates of cost-sharing for approvals issued on or after January 1, 1961 for practice C–14 shall not exceed 50 percent of the average cost of performing such practice, and (2) rates of cost-sharing for approvals issued on or after January 1, 1961 for all other practices shall not exceed the rates of cost-sharing which would be applicable for such practices under the regulations governing the Conservation Reserve Program for 1960."

(Sec. 124, 70 Stat. 198; 7 U.S.C. 1812.)

Issued at Washington, D.C., this 22d day of December 1960.

WALTER C. BERGER,
Administrator, Commodity Stabilization Service.

[F.R. Doc. 60-12065; Filed, Dec. 28, 1960; 8:48 a.m.]

Title 27—INTOXICATING LIQUORS

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6521]

REPUBLICATION OF REGULATIONS

All regulations published under Title 27 of the Code of Federal Regulations, pursuant to the Federal Alcohol Administration Act, prior to September 1, 1960, are hereby republished for the purpose of making certain editorial changes, including corrections of form, style, and internal references, as well as conforming corrections required by the revision of Chapter 51 of the Internal Revenue Code of 1954 by section 201 of the Excise Tax Technical Changes Act of 1958, 72 Stat. 1313; 26 U.S.C. 5001.

Part
1 Basic permit requirements under the Federal Alcohol Administration Act.
2 Nonindustrial use of distilled spirits and wine.
3 Bulk sales and bottling of distilled spirits.
4 Labeling and advertising of wine.
5 Labeling and advertising of distilled spirits.
6 Inducements furnished to retailers.
7 Labeling and advertising of malt beverages.
8 Credit period to be extended to retailers of alcoholic beverages.

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT

Subpart A—Scope

Sec.
1.1 General.
1.2 Territorial extent.
1.3 Forms prescribed.

Subpart B—Definitions

1.5 Meaning of terms.
1.6 Act.
1.7 Applicant.
1.8 Assistant Regional Commissioner.
1.9 Basic permit.
1.10 Commissioner.
1.11 Director, Alcohol and Tobacco Tax Division.
1.12 Other term.
1.13 Permittee.
1.14 Person.
1.15 Regional Commissioner.
1.16 Resale at wholesale.
1.17 Trade buyer.

Subpart C—Basic Permits

WHEN REQUIRED

1.20 Importers.
1.21 Domestic producers, rectifiers, blenders, and warehousemen.
1.22 Wholesalers.
1.23 State agencies.

PERSONS ENTITLED TO BASIC PERMITS

1.24 Qualifications of applicants.

APPLICATIONS FOR PERMITS

1.25 General.
1.26 Incomplete or incorrectly executed applications.
1.27 Change in ownership, management, or control of the applicant.
1.28 Forms upon which to apply for basic permits.
1.29 Individual plant or premises.
1.30 Power of attorney; Form 1534.
1.31 Denial of permit applications.

Subpart D—Authorization

1.35 Authority to issue, amend, deny, suspend, revoke, or annul basic permits.

Subpart E—Amendment and Duration of Basic Permits

1.40 Change of name.
1.41 Change of address.
1.42 Change in ownership, management, or control of business.
1.43 Duration of permits.
1.44 Automatic termination of permits.

Subpart F—Revocation, Suspension, or Annulment of Basic Permits

1.50 Revocation or suspension.
1.51 Annulment.
1.52 Disposition of stocks of alcoholic beverages upon revocation, annulment, or automatic termination of basic permit.

Subpart G—Miscellaneous

1.55 Recalling permits for correction.
1.56 Oaths and affirmations.
1.57 Procedure.
1.58 Filing of permits.
1.59 Public information as to applications acted upon.

AUTHORITY: §§ 1.1 to 1.59 issued under 49 Stat. 977, as amended; 27 U.S.C. 202 note.

Subpart A—Scope

§ 1.1 General.

The regulations in this part relate to requirements governing the issuance, amendment, denial, revocation, suspension, automatic termination, and annulment of basic permits and the duration of permits, except that the provisions of 26 CFR Part 200, Rules of Practice in Permit Procedings are hereby made applicable to administrative proceedings with respect to the application for, and to the suspension, revocation, or annulment of, basic permits under the Federal Alcohol Administration Act.

§ 1.2 Territorial extent.

The provisions of this part are applicable to the several States of the United States, the District of Columbia and Puerto Rico.

§ 1.3 Forms prescribed.

The Director, Alcohol, and Tobacco Tax Division, is authorized to prescribe all forms required by this part. Information called for shall be furnished in accordance with the instructions on the form or issued in respect thereto.

Subpart B—Definitions

§ 1.5 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this subpart.

§ 1.6 Act.

"Act" shall mean the Federal Alcohol Administration Act.

§ 1.7 Applicant.

"Applicant" shall mean any person who has filed with the Assistant Regional Commissioner an application for a basic permit under the Federal Alcohol Administration Act.

§ 1.8 Assistant Regional Commissioner.

"Assistant Regional Commissioner" shall mean the Assistant Regional Commissioner, Alcohol and Tobacco Tax, who is responsible to, and functions under, the direction and supervision of the Regional Commissioner.

§ 1.9 Basic permit.

"Basic permit" shall mean a formal document issued under the Act in the form prescribed by the Director, Alcohol and Tobacco Tax Division authorizing the person named therein to engage in the activities specified at the location stated.

§ 1.10 Commissioner.

"Commissioner" shall mean the Commissioner of Internal Revenue, and shall include anyone authorized to act in his place and stead.

§ 1.11 Director, Alcohol and Tobacco Tax Division.

"Director, Alcohol and Tobacco Tax Division" shall mean the Director of the Alcohol and Tobacco Tax Division of the Internal Revenue Service, Washington, D.C., and shall include anyone authorized to act in his place and stead.

§ 1.12 Other term.

Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by such act.

§ 1.13 Permittee.

"Permittee" shall mean any person holding a basic permit issued under the Federal Alcohol Administration Act.

§ 1.14 Person.

"Person" shall mean any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent.

§ 1.15 Regional Commissioner.

"Regional Commissioner" shall mean the Regional Commissioner of Internal Revenue of an internal revenue region.

§ 1.16 Resale at wholesale.

"Resale at wholesale" shall mean a sale to any trade buyer.

§ 1.17 Trade buyer.

"Trade buyer" shall mean any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

Subpart C—Basic Permits

WHEN REQUIRED

§ 1.20 Importers.

No person, except pursuant to a basic permit issued under the act, shall:

(a) Engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or, (b) while so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

§ 1.21 Domestic producers, rectifiers, blenders, and warehousemen.

No person, except pursuant to a basic permit issued under the Act, shall:

(a) Engage in the business of distilling distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits; or (b) while so engaged, sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits or wine so distilled, produced, rectified, blended, or bottled, or warehoused and bottled.

§ 1.22 Wholesalers.

No person, except pursuant to a basic permit issued under the act, shall:

(a) Engage in the business of purchasing for resale at wholesale, distilled spirits, wine, or malt beverages; or, (b) While so engaged, receive, sell, offer or deliver for sale, contract to sell, or ship in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

§ 1.23 State agencies.

This subpart shall not apply to any agency of a State or political subdivision thereof or to any officer or employee of any such agency, and no such agency or officer or employee thereof shall be required to obtain a basic permit under this subpart.

PERSONS ENTITLED TO BASIC PERMITS

§ 1.24 Qualifications of applicants.

The application of any person shall be granted and the permit issued by the Assistant Regional Commissioner if the applicant proves to the satisfaction of the Assistant Regional Commissioner that:

(a) Such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has not, within 5 years prior to the date of application, been convicted of a felony under Federal or State law, and has not, within 3 years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; and

(b) Such person, by reason of his business experience, financial standing or trade connections, is likely to commence operations as a distiller, warehouseman and bottler, rectifier, wine producer, wine blender, importer, or wholesaler, as the case may be, within a reasonable period and to maintain such operations in conformity with Federal law; and

(c) The operations proposed to be conducted by such person are not in violation of the law of the State in which they are to be conducted.

APPLICATIONS FOR PERMITS

§ 1.25 General.

Applications for basic permits to engage in any of the operations set forth in §§ 1.20 to 1.22 shall be made on the appropriate form prescribed by the Director, Alcohol and Tobacco Tax Division, verified as required by § 1.56, and shall be accompanied by such affidavits, documents, and other supporting data, as the Director, Alcohol and Tobacco Tax Division or the Assistant Regional Commissioner shall require. All data, written statements, affidavits, documents, or other evidence submitted in support of the application, or upon hearing thereon, shall be deemed to be a part of the application. All applications shall be filed by mailing or delivering the same to the office of the Assistant Regional Commissioner.

§ 1.26 Incomplete or incorrectly executed applications.

Incomplete or incorrectly executed applications will not be acted upon, but the applicant shall be entitled to file a new application without prejudice, or to complete the application already filed.

§ 1.27 Change in ownership, management, or control of the applicant.

In the event of any change in the ownership, management, or control of the applicant (in case of a corporation, any change in the officers, directors, or persons holding more than 10 percent of the corporate stock), after the date of filing of any application for a basic permit and prior to final action on such application, the applicant shall notify the Assistant Regional Commissioner immediately of such change.

§ 1.28 Forms upon which to apply for basic permits.

The appropriate forms upon which to apply for basic permits may be secured from the assistant regional commissioner's office upon request.

§ 1.29 Individual plant or premises.

An application for basic permit must be filed, and permit issued, to cover each individual plant or premises where any of the businesses specified in section 3 of the act is engaged in, such application to be filed with and permit issued by the Assistant Regional Commissioner for the region wherein such plant or premises is located.

§ 1.30 Power of attorney; Form 1534.

If the application and other documents in support of such application are signed by an attorney in fact for an individual, partnership, association, or corporation, or by one of the members of a copartnership or association, or, in the case of a corporation by an officer or other person not authorized by the corporation's bylaws or by its board of directors to sign such applications and supporting documents, the applications must be supported by a duly authenticated copy of the power of attorney conferring authority upon the person signing the documents to execute the same. Such powers of attorney will be executed on Form 1534, in triplicate, and submitted to the Assistant Regional Commissioner.

§ 1.31 Denial of permit applications.

If, upon examination of any application for a basic permit, the Assistant Regional Commissioner has reason to believe that the applicant is not entitled to such permit he shall institute proceedings for the denial of the application in accordance with the procedure set forth in 26 CFR Part 200, which part is made applicable to such proceedings.

Subpart D—Authorization

§ 1.35 Authority to issue, amend, deny, suspend, revoke, or annul basic permits.

The authority and power of issuing, amending, or denying basic permits, or amendments thereof, is conferred upon the Commissioner and (except as to agency initiated curtailment) upon the Assistant Regional Commissioner. The authority and power of suspending, revoking or annulling basic permits is conferred upon the Commissioner, and upon the hearing examiners referred to in 26 CFR Part 200. Any Assistant Commissioner of Internal Revenue, when designated to do so by the Commissioner, and the Director, upon consideration of appeals on petitions for review, may order the Assistant Regional Commissioner to issue, deny, suspend, revoke, and annul basic permits.

Subpart E—Amendment and Duration of Basic Permits

§ 1.40 Change of name.

In the event of any change in the name (trade or corporate name) of a permittee, or, in the event a permittee desires to engage in operations under an additional trade name, such permittee must file application (Form 1643), with the Assistant Regional Commissione., for an amended basic permit, which application must be approved, and amended permit issued, before operations may be commenced under the new name.

§ 1.41 Change of address.

In the event of a change in address, the permittee must file application (Form 1643), with the Assistant Regional Commissioner, for an amended basic permit.

§ 1.42 Change in ownership, management, or control of business.

In the event of any change in the ownership, management, or control of any business operated pursuant to a basic permit (if the permittee is a corporation, if any change occurs in the officers, directors, or persons owning or controlling more than 10 percent of the voting stock of said corporation) the permittee shall immediately notify the Assistant Regional Commissioner of such change, giving the names and addresses of all new persons participating in the ownership, management, or control of such business, or in the case of a corporation, the names and addresses of such new officers, directors, or persons owning or controlling more than 10 percent of the voting stock. Notice to the Assistant Regional Commissioner of any such change shall be accompanied or supplemented by such data in reference to the personal or business history of such persons as the Assistant Regional Commissioner may require.

§ 1.43 Duration of permits.

A basic permit shall continue in effect until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided in the act and in this part.

§ 1.44 Automatic termination of permits.

No basic permit shall be leased, sold, or otherwise voluntarily transferred, and, in the event of such lease, sale, or other voluntary transfer, the said basic permit shall automatically terminate thereupon. If any basic permit is transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly whether by stock ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of 30 days thereafter: *Provided*, That if within such 30-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such time as the application is finally acted upon.

Subpart F—Revocation, Suspension, or Annulment of Basic Permits

§ 1.50 Revocation or suspension.

Whenever the Assistant Regional Commissioner has reason to believe that any permittee has willfully violated any of the conditions of his basic permit or has not engaged in the operations authorized by the permit for a period of more than two years, he shall institute proceedings for the revocation or suspension of such permit, in accordance with the procedure set forth in 26 CFR Part 200, which part is made applicable to such proceedings.

§ 1.51 Annulment.

Whenever the Assistant Regional Commissioner has reason to believe that any basic permit was procured through fraud, or misrepresentation or concealment of material fact, he shall institute proceedings for the annulment of such permit in accordance with the procedure set forth in 26 CFR Part 200, which part is made applicable to such proceedings.

§ 1.52 Disposition of stocks of alcoholic beverages upon revocation, annulment, or automatic termination of basic permit.

In the event of the revocation or annulment of a basic permit, pursuant to 26 CFR Part 200, or in the event such permit is automatically terminated by operation of law (27 U.S.C. 204(g)) and § 1.44, the Assistant Regional Commissioner may authorize the orderly disposition of stocks of distilled spirits, wines or malt beverages then held by the permittee or former permittee upon such conditions as may be considered proper.

Subpart G—Miscellaneous

§ 1.55 Recalling permits for correction.

Whenever it shall be discovered that any basic permit has been issued authorizing acts, or combinations of acts, which may not properly, under the law and regulations, as now or hereafter in force, be authorized, or that any material mistake has occurred in the issuance thereof, the holder of such permit shall forthwith surrender the same for correction or amendment upon demand of the Assistant Regional Commissioner.

§ 1.56 Oaths and affirmations.

Any document required by regulations or instructions of the Commissioner to be verified, shall be so verified upon oath or affirmation taken before a person authorized by the laws of the United States or by State or local law to administer oaths or affirmations in the State, Territory, or District wherein such document is to be executed.

§ 1.57 Procedure.

The procedures prescribed by the rules of practice in Permit Proceedings (26 CFR Part 200) are applicable to administrative proceedings for the issuance, amendment, denial, revocation, suspension, and annulment of basic permits, the issuance of subpoenas and the taking of depositions under the Federal Alcohol Administration Act.

§ 1.58 Filing of permits.

Every person receiving a basic permit under the provisions of this part must file the same, at the place of business covered by the basic permit, so that it may be examined by Government officers.

§ 1.59 Public information as to applications acted upon.

The Assistant Regional Commissioner shall cause to be maintained currently in his office for public inspection, until the expiration of one year following final action on the application, the following information with respect to each application for basic permit filed:

(a) The name, including trade name or names, if any, and the address of the applicant; the kind of permit applied for and the location of the business; whether the applicant is an individual, a partnership or a corporation; if a partnership, the name and address of each partner; if a corporation, the name and address of each of the principal officers and of each stockholder owning 10 percent or more of the corporate stock.

(b) The time and place set for any hearing on the application.

(c) The final action taken on the application. In the event a hearing is held upon an application for a basic permit, the Assistant Regional Commissioner shall make available for inspection at his office, upon request therefor: The transcript of the hearing, a copy of the examiner's recommended decision, a copy of the Assistant Regional Commissioner's decision and, in the event of an appeal to the Director, Alcohol and Tobacco Tax Division, the decision on appeal with the reasons given in support thereof.

PART 2—NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE

Subpart A—Scope of Regulations

Sec.
2.1 Nonindustrial use of distilled spirits and wine.

Subpart B—Definitions

2.5 Distilled spirits.
2.6 Wine.

Subpart C—Uses Regarded as Industrial

2.10 Use of distilled spirits.
2.11 Use of wine.
2.12 Use of distilled spirits or wine for experimental purposes and in manufacture of nonbeverage products.

Subpart D—Uses Classed as Nonindustrial

2.15 General.
2.16 Distilled spirits in containers of a capacity of one gallon or less.

AUTHORITY: §§ 2.1 to 2.16 issued under 49 Stat. 977, as amended; 27 U.S.C. 202 note.

Subpart A—Scope of Regulations

§ 2.1 Nonindustrial use of distilled spirits and wine.

The regulations in this part specify what uses of distilled spirits and wine are "nonindustrial," as that term is used in section 17 of the Federal Alcohol Administration Act. No procedural requirements are prescribed.

Subpart B—Definitions

§ 2.5 Distilled spirits.

Section 17(a) of the Federal Alcohol Administration Act defines "distilled spirits" as ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

§ 2.6 Wine.

Section 17(a) of the Federal Alcohol Administration Act defines "wine" as (a) wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045), as now in force or hereafter amended, and (b) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for nonindustrial use.

Subpart C—Uses Regarded as Industrial

§ 2.10 Use of distilled spirits.

The following uses of distilled spirits are regarded as "industrial" and will be excluded from any application of the term "nonindustrial use." The use of distilled spirits:

(a) Free of tax by, and for the use of, the United States or any governmental agency thereof, any State or Territory, any political subdivision of a State or Territory, or the District of Columbia, for nonbeverage purposes; or

(b) Free of tax for nonbeverage purposes and not for resale or use in the manufacture of any product for sale:

(1) For the use of any educational organization described in 26 U.S.C. 503(b)(2) which is exempt from income tax under 26 U.S.C. 501(a), or for the use of any scientific university or college of learning;

(2) For any laboratory for use exclusively in scientific research;

(3) For use at any hospital, blood bank, or sanitarium (including use in making analysis or test at such hospital, blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analyses or tests, for hospitals or sanitariums; or

(4) For the use of any clinic operated for charity and not for profit (including use in compounding of bona fide medicines for treatment outside of such clinics of patients thereof); or

(c) Free of tax, after denaturation of such spirits in the manner prescribed by law for:

(1) Use in the manufacture of ether, chloroform, or other definite chemical substance where such distilled spirits are changed into some other chemical substance and do not appear in the finished product; or

(2) Any other use in the arts and industries (except for uses prohibited by 26 U.S.C. 5273 (b) or (d)) and for fuel, light, and power.

§ 2.11 Use of wine.

The following uses of wine are regarded as "industrial" and will be excluded from any application of the term "nonindustrial". The use of wine:

(a) Without payment of tax for use in the production of vinegar; or

(b) Free of tax for experimental or research purposes by any scientific university, college of learning, or institution of scientific research; or

(c) Free of tax for use by the United States or any agency thereof, and for use for analysis, testing, research, or experimentation by the governments of the several States and Territories and the District of Columbia or of any political subdivision thereof or by any agency of such governments; or

(d) Which has been rendered unfit for beverage use.

§ 2.12 Use of distilled spirits or wine for experimental purposes and in manufacture of nonbeverage products.

The use of distilled spirits or wine for experimental purposes and in the manufacture of (a) medicinal, pharmaceutical, or antiseptic products, including prescriptions compounded by retail druggists; (b) toilet preparations; (c) flavoring extracts, syrups, or food products; or (d) scientific, chemical, mechanical, or industrial products, provided such products are unfit for beverage use, is regarded as "industrial," and will be excluded from any application of the term "nonindustrial use."

Subpart D—Uses Classed as Nonindustrial

§ 2.15 General.

All uses of distilled spirits and wines, except as provided in Subpart C of this part, are regarded as "nonindustrial." Such "nonindustrial" use shall include, but not be limited to, distilled spirits or wine used for beverage purposes, or in the manufacture, rectification, or blending of alcoholic beverages; or in the preparation of food or drink by a hotel, restaurant, tavern, or similar establishment; or for sacramental purposes; or as a medicine.

§ 2.16 Distilled spirits in containers of a capacity of one gallon or less.

Distilled spirits in containers of a capacity of one wine gallon or less, except anhydrous alcohol and alcohol which may be withdrawn free of tax under the internal revenue laws, will be deemed to be for nonindustrial use.

PART 3—BULK SALES AND BOTTLING OF DISTILLED SPIRITS

Subpart A—Scope of Part

Sec.
3.1 Bulk sales and bottling of distilled spirits.

Subpart B—Definitions

3.5 Distilled spirits.
3.6 Brandy.
3.7 In bulk.
3.8 Other terms.

Subpart C—Bulk Sales and Bottling

3.10 Sales of distilled spirits in bulk.
3.11 Importation of distilled spirits in bulk.
3.12 Acquiring or receiving distilled spirits in bulk for warehousing and bottling.
3.13 Acquiring or receiving distilled spirits in bulk for rectification or fortification.
3.14 Acquisition of distilled spirits in bulk by Government agencies.

Subpart D—Warehouse Receipts

3.20 Distilled spirits in bulk.
3.21 Bottled distilled spirits.

Subpart E—Sales of Distilled Spirits for Industrial Use

3.25 General.

AUTHORITY: §§ 3.1 to 3.25 issued under 49 Stat. 985, as amended; 27 U.S.C. 206.

Subpart A—Scope of Part

§ 3.1 Bulk sales and bottling of distilled spirits.

This part, issued pursuant to section 6 of the Federal Alcohol Administration Act (27 U.S.C. 206), contains the substantive requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk. No procedural requirements are prescribed.

Subpart B—Definitions

§ 3.5 Distilled spirits.

Section 17(a) of the Federal Alcohol Administration Act defines "distilled spirits" as ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

§ 3.6 Brandy.

As used in this part, the term "brandy" means brandy or wine spirits for addition to wines as permitted by Internal Revenue law and the term "alcohol" means ethyl alcohol distilled at or above 190° proof.

§ 3.7 In bulk.

As used in this part, the term "in bulk" shall mean in containers having a capacity in excess of 1 wine gallon.

§ 3.8 Other terms.

Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by such act.

Subpart C—Bulk Sales and Bottling

§ 3.10 Sales of distilled spirits in bulk.

It is unlawful for any person to sell, offer to sell, contract to sell, or otherwise dispose of distilled spirits in bulk, for nonindustrial use, except for export or to the classes of persons enumerated in §§ 3.12, 3.13 and 3.14.

§ 3.11 Importation of distilled spirits in bulk.

It is unlawful for any person to import distilled spirits in bulk, for nonindustrial use, except for sale to or for use by the classes of persons enumerated in §§ 3.12, 3.13 and 3.14.

§ 3.12 Acquiring or receiving distilled spirits in bulk for redistillation, processing, rectification, warehousing, or warehousing and bottling.

Persons holding basic permits (issued under 27 CFR Part I) authorizing the distilling, rectifying, or warehousing and bottling of distilled spirits, or operating permits (issued under 26 CFR 201.136 et seq.) may acquire or receive in bulk distilled spirits as follows:

(a) *Proprietor of a distilled spirits plant having distilling or bonded storage facilities.* If the permittee is authorized to operate distilling or bonded storage facilities of a distilled spirits plant, he may acquire or receive in bulk, and redistill or otherwise process, or warehouse, or warehouse and bottle domestic untax-determined distilled spirits.

(b) *Proprietor of a distilled spirits plant having bottling premises for bottling taxpaid distilled spirits.* If the permittee is authorized to operate taxpaid bottling premises of a distilled spirits plant, he may acquire or receive in bulk, and warehouse and bottle imported taxpaid distilled spirits and domestic distilled spirits on which all applicable taxes imposed by law have been determined or paid as provided by law. If he is authorized to rectify distilled spirits, he may acquire or receive in bulk taxpaid imported distilled spirits, and domestic distilled spirits on which all applicable taxes imposed by law have been determined or paid as provided by law, for use in rectifying and blending or for warehousing and bottling.

(c) *Proprietor of class 8 customs bonded warehouse.* If the permittee operates a class 8 customs bonded warehouse, he may acquire or receive in bulk, and warehouse and bottle, imported distilled spirits, so far as permitted by the customs laws.

§ 3.13 Acquiring or receiving distilled spirits in bulk for addition to wine.

Persons holding permits as producers and blenders of wine, may, pursuant to such permit, acquire or receive in bulk alcohol or brandy for addition to wines.

§ 3.14 Acquisition of distilled spirits in bulk by Government agencies.

Any agency of the United States, or of any State or political subdivision thereof, may acquire or receive in bulk, and warehouse and bottle, imported and domestic distilled spirits in conformity with the internal revenue laws.

Subpart D—Warehouse Receipts

§ 3.20 Distilled spirits in bulk.

By the terms of the Federal Alcohol Administration Act (27 U.S.C. 206), all warehouse receipts for distilled spirits in bulk must require that the warehouseman shall package such distilled spirits, before delivery, in bottles labeled and marked in accordance with law, or deliver such distilled spirits in bulk only to persons to whom it is lawful to sell or otherwise dispose of distilled spirits in bulk.

§ 3.21 Bottled distilled spirits.

The provisions of the Federal Alcohol Administration Act, which forbid any person to sell, offer to sell, contract to sell, or otherwise dispose of warehouse receipts for distilled spirits in bulk, do not apply to warehouse receipts for bottled distilled spirits.

CROSS REFERENCE: For labeling of distilled spirits, see Part 5 of this chapter.

Subpart E—Sales of Distilled Spirits for Industrial Use

§ 3.25 General.

Distillers, rectifiers, and other permittees engaged in the sale or other disposition of distilled spirits for nonindustrial use shall not sell or otherwise dispose of distilled spirits in bulk (other than alcohol) for industrial use, unless such distilled spirits are shipped or delivered directly to the industrial user thereof.

PART 4—LABELING AND ADVERTISING OF WINE

Subpart A—Scope

Sec.
4.1 General.
4.2 Territorial extent.

Subpart B—Definitions

4.10 Meaning of terms.

Subpart C—Standards of Identity for Wine

4.20 Application of standards.
4.21 The standards of identity.
4.22 Blends, cellar treatment, alteration of class or type.
4.23 Grape type designations.
4.24 Generic, semi-generic, and non-generic designations of geographic significance.
4.25 Appellations of origin.

Subpart D—Labeling Requirements for Wine

4.30 General.
4.31 Misbranding.
4.32 Mandatory label information.
4.33 Brand names.
4.34 Class and type.
4.35 Name and address.
4.36 Alcoholic content.
4.37 Net contents.
4.38 General requirements.
4.39 Prohibited practices.

Subpart E—Requirements for Withdrawal of Wine From Customs Custody

Sec.
4.40 Label approval and release.

Subpart F—Requirements for Approval of Labels of Wine Domestically Bottled or Packed

4.50 Certificates of label approval.
4.51. Exhibiting certificates to Government officials.
4.52. Photoprints.

Subpart G—Advertising of Wine

4.60 Application.
4.61 Definitions.
4.62 Mandatory statements.
4.63 Legibility of requirements.
4.64. Prohibited statements.

Subpart H—Standards of Fill for Wine

4.70 Application.
4.71 Standard wine containers.
4.72 Standards of fill.

Subpart I—General Provisions

4.80 Exports.

AUTHORITY: §§ 4.1 to 4.80 issued under 49 Stat. 981, as amended; 27 U.S.C. 205.

CROSS REFERENCES: Other regulations relating to this part are as follows:

27 CFR, Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR, Part 5—Labeling and Advertising of Distilled Spirits.
27 CFR, Part 7—Labeling and Advertising of Malt Beverages.
26 CFR, Part 200—Rules of Practice in Permit Proceedings.
26 CFR 240—Wine.
26 CFR, Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands.
26 CFR, Part 251—Importation of Distilled Spirits, Wines and Beer.
26 CFR, Part 252—Exportation of Liquors.

Subpart A—Scope

§ 4.1 General.

The regulations in this part relate to the labeling and advertising of wine.

§ 4.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

Subpart B—Definitions

§ 4.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this part.

(a) *Act.* "Act" means the Federal Alcohol Administration Act.

(b) *Assistant Regional Commissioner.* "Assistant Regional Commissioner" shall mean the Assistant Regional Commissioner, Alcohol and Tobacco Tax, who is responsible to, and functions under the direction and supervision of the Regional Commissioner.

(c) *Director.* "Director" shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C.

(d) *Permittee.* "Permittee" means any person holding a basic permit under the Federal Alcohol Administration Act.

(e) *Wine.* "Wine" means: (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 3036, 3044, 3045) and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and sake; in each instance only if containing not less than 7 percent, and not more than 24 percent of alcohol by volume, and if for nonindustrial use.

(f) *Pure condensed must.* "Pure condensed must" means the dehydrated juice or must of sound, ripe grapes, or other fruit or agricultural products, concentrated to not more than 80° (Balling), the composition thereof remaining unaltered except for removal of water; the term "restored pure condensed must" means pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process; and the term "sugar" means pure cane, beet, or dextrose sugar in dry form containing, respectively, not less than 95 percent of actual sugar calculated on a dry basis.

(g) *Added brandy or alcohol.* As used in the phrase "added brandy or alcohol" the term "brandy" means brandy or wine spirits for use in the fortification of wine as permitted by internal revenue law. The term "alcohol" means ethyl alcohol distilled at or above 190° proof.

(h) *Vintage wine.* "Vintage wine" means a wine made wholly from grapes gathered in the same calendar year and grown and fermented in the same viticultural area, and conforming to the standards prescribed in Classes 1, 2, and 3 of § 4.21.

(i) *Container.* "Container" means any bottle, barrel, cask or other closed receptacle irrespective of size or of the material from which made for use for the sale of wine at retail. The term "bottler" means any person who places wine in containers of a capacity of 1 gallon or less; and the term "packer" means any person who places wine in containers of a capacity in excess of 1 gallon.

(j) *Gallon.* "Gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

(k) *Brand label.* "Brand label" means the label carrying, in the usual distinctive design, the brand name of the wine.

(l) *United States.* "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Puerto Rico.

(m) *Interstate commerce.* "Interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(n) *Person.* "Person" means any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent, and including an officer or employee of any agency of a

State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(o) *Use of other terms.* Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by such act.

Subpart C—Standards of Identity for Wine

§ 4.20 Application of standards.

The standards of identity for the several classes and types of wine set forth herein shall be applicable to all regulations and permits issued under the act. Whenever any term for which a standard of identity has been established herein is used in any such regulation or permit, such term shall have the meaning assigned to it by such standard of identity.

§ 4.21 The standards of identity.

Standards of identity for the several classes and types of wine set forth in this part shall be as follows:

(a) *Class 1; grape wine.* (1) "Grape wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must, and with or without added grape brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided,* That the product may be ameliorated before, during or after fermentation by either of the following methods:

(i) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent; but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(ii) By adding, separately or in combination, not more than 20 percent by weight of dry sugar, or not more than 10 percent by weight of water.

(iii) In the case of domestic wine, in accordance with section 5383 of the Internal Revenue Code.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural red wine, more than 0.14 gram, and for other grape wine, more than 0.12 gram, per 100 cubic centimeters (20° C.). Grape wine deriving its characteristic color or lack of color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as "red wine," "pink (or rose) wine," "amber wine," or "white wine" as the case may be. Any grape wine containing no added grape brandy or alcohol may be further designated as "natural."

(2) "Table wine" is grape wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated as "light wine," "red table wine," "light white wine," "sweet table wine," etc., as the case may be.

(3) "Dessert wine" is grape wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume. Dessert wine having the taste, aroma and characteristics generally attributed to sherry and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 17 percent by volume, may be designated as "sherry". Dessert wines having the taste, aroma and characteristics generally attributed to angelica, madeira, muscatel and port and an alcoholic content, derived in part from added grape brandy or alcohol, of not less than 18 percent by volume, may be designated as "angelica," "madeira," "muscatel," or "port" respectively. Dessert wines having the taste, aroma, and characteristics generally attributed to any of the above products and an alcoholic content, derived in part from added grape brandy or alcohol, in excess of 14 percent by volume but, in the case of sherry, less than 17 percent, or, in other cases, less than 18 percent by volume, may be designated as "light sherry," "light angelica," "light madeira," "light muscatel" or "light port," respectively.

(b) *Class 2; sparkling grape wine.* (1) "Sparkling grape wine" (including "sparkling wine," "sparkling red wine" and "sparkling white wine") is grape wine made effervescent with carbon dioxide resulting solely from the fermentation of the wine within a closed container, tank or bottle.

(2) "Champagne" is a type of sparkling light wine which derives its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the champagne district of France.

(3) A sparkling light wine having the taste, aroma, and charcteristics generally attributed to champagne but not otherwise conforming to the standard for "champagne" may, in addition to but not in lieu of the class designation "sparkling wine" be further designated as "champagne style" or "champagne type" or "American (or New York State, California, etc.) champagne—bulk process"; all the words in such further designation shall appear in lettering of substantially the same size and such lettering shall not be substantially larger than the words "sparkling wine".

(4) "Crackling wine", "petillant wine", "frizzante wine" (including cremant, perlant, reciotto and other similar wine) is sparkling light wine normally less effervescent than champagne or other similar sparkling wine, but containing sufficient carbon dioxide in solution, derived solely from limited fermentation within the bottle, to produce, upon pouring under normal conditions, after the disappearance of air bubbles, a slow and steady effervescence evidenced by the formation of gas bubbles flowing up through the wine.

(c) *Class 3; carbonated grape wine.* "Carbonated grape wine" (including "carbonated wine" "carbonated red wine," and "carbonated white wine") is grape wine made effervescent with carbon dioxide other than that resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle.

(d) *Class 4; citrus wine.* (1) (i) "Citrus wine" or "citrus fruit wine" is wine produced by the normal alcoholic fermentation of the juice of sound, ripe citrus fruit (including restored or unrestored pure condensed citrus must), with or without the addition, after fermentation, of pure condensed citrus must, and with or without added citrus brandy or alcohol, but without any other addition or abstraction except as may occur in cellar treatment: *Provided,* That a domestic product may be ameliorated or sweetened in accordance with the provisions of section 5384 of the Internal Revenue Code and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural citrus wine, more than 0.14 gram, and for other citrus wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(iii) Any citrus wine containing no added brandy or alcohol may be further designated as "natural."

(2) "Citrus table wine" or "citrus fruit table wine" is citrus wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated "light citrus wine," "light citrus fruit wine," "light sweet citrus fruit wine," etc., as the case may be.

(3) "Citrus dessert wine" or "citrus fruit dessert wine" is citrus wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(4) Citrus wine derived wholly (except for sugar, water, or added alcohol) from one kind of citrus fruit, shall be designated by the word "wine" qualified by the name of such citrus fruit, e.g., "orange wine," "grapefruit wine." Citrus wine not derived wholly from one kind of citrus fruit shall be designated as "citrus wine" or "citrus fruit wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Citrus wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and citrus wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

(e) *Class 5; fruit wine.* (1) (i) "Fruit wine" is wine (other than grape wine or citrus wine) produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must), with or without the addition, after fermentation, of pure condensed fruit must, and with or without added fruit brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment: *Provided,* That a domestic product may be ameliorated or sweetened in accordance with the provisions of section 5384 of the Internal Revenue Code and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will increase the volume of the resulting product, in the case of wines produced from loganberries, currants, or gooseberries, having a normal acidity of 20 parts or more per thousand, not more than 60 percent, and in the case of other fruit wines, not more than 35 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation, of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(iii) Any fruit wine containing no added brandy or alcohol may be further designated as "natural."

(2) "Berry wine" is fruit wine produced from berries.

(3) "Fruit table wine" or "berry table wine" is fruit or berry wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated "light fruit wine," or "light berry wine."

(4) "Fruit dessert wine" or "berry dessert wine" is fruit or berry wine having an alcoholic content in exces of 14 percent but not in excess of 24 percent by volume.

(5) Fruit wine derived wholly (except for sugar, water, or added alcohol) from one kind of fruit shall be designated by the word "wine" qualified by the name of such fruit, e. g., "peach wine," "blackberry wine." Fruit wine not derived wholly from one kind of fruit shall be designated as "fruit wine" or "berry wine," as the case may be, qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines which are derived wholly (except for sugar, water, or added alcohol) from apples or pears may be designated "cider" and "perry," respectively, and shall be so designated if lacking in vinous taste, aroma, and characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and fruit wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

(f) *Class 6; wine from other agricultural products.* (1) (i) Wine of this class is wine (other than grape wine, citrus wine, or fruit wine) made by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, with the addition before or during fermentation of a volume of water not greater than the minimum necessary to correct natural moisture deficiencies in such products, with or without the addition, after fermentation, of pure condensed must, and with or without added alcohol or such other spirits as will not alter the character of the product, but without other addition or abstraction except as may occur in cellar treatment: *Provided,* That a domestic product may be ameliorated or sweetened in accordance with Subpart T of 26 CFR Part 240, and any product other than domestic may be ameliorated before, during, or after fermentation by adding, separately or in combination, dry sugar or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, but in no event shall any product so ameliorated have an alcoholic content, derived by fermentation of more than 13 percent by volume, or a natural acid content, if water has been added, of less than 5 parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters.

(ii) The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for natural wine of this class, more than 0.14 gram, and for other wine of this class, more than 0.12 gram, per 100 cubic centimeters (20° C.).

(iii) Wine of this class containing no added alcohol or other spirits may be further designated as "natural".

(2) "Table wine" of this class is wine having an alcoholic content not in excess of 14 percent by volume. Such wine may also be designated as "light".

(3) "Dessert wine" of this class is wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume.

(4) "Raisin wine" is wine of this class made from dried grapes.

(5) "Sake" is wine of this class produced from rice in accordance with the commonly accepted method of manufacture of such product.

(6) Wine of this class derived wholly (except for sugar, water, or added alcohol) from one kind of agricultural product shall, except in the case of "sake," be designated by the word "wine" qualified by the name of such agricultural product, e.g., "honey wine," "raisin wine," "dried blackberry wine." Wine of this class not derived wholly from one kind of agricultural product shall be designated as "wine" qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Wine of this class rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of wine within a closed container, tank, or bottle shall be further designated as "sparkling"; and wine of this class rendered effervescent by carbon dioxide otherwise derived shall be further designated as "carbonated."

(g) *Class 7; aperitif wine.* (1) "Aperitif wine" is wine having an alcoholic content of not less than 15 percent by volume, compounded from grape wine containing added brandy or alcohol, flavored with herbs and other natural aromatic flavoring materials, with or without the addition of caramel for coloring purposes, and possessing the taste, aroma, and characteristics generally attributed to aperitif wine and shall be so designated unless designated as "vermouth" under paragraph (b) of this section.

(2) "Vermouth" is a type of aperitif wine compounded from grape wine, having the taste, aroma, and characteristics generally attributed to vermouth, and shall be so designated.

(h) *Class 8; imitation and substandard wine.* (1) "Imitation wine" shall bear as a part of its designation the word "imitation," and shall include:

(i) Any wine containing synthetic materials.

(ii) Any wine made from a mixture of water with residue remaining after thorough pressing of grapes, fruit, or other agricultural products.

(iii) Any class or type of wine the taste, aroma, color, or other characteristics of which have been acquired in whole or in part, by treatment with methods or materials of any kind, if the taste, aroma, color, or other characteristics of normal wines of such class or type are acquired without such treatment.

(iv) Any wine made from must concentrated at any time to more than 80° (Balling).

(2) "Substandard wine" shall bear as a part of its designation the word "substandard," and shall include:

(i) Any wine having a volatile acidity in excess of the maximum prescribed therefor in §§ 4.20 to 4.25.

(ii) Any wine for which no maximum volatile acidity is prescribed in §§ 4.20 to 4.25, inclusive, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20° C.).

(iii) Any wine for which a standard of identity is prescribed in this §§ 4.20 to 4.25, inclusive, which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard.

(iv) Any "grape wine," "citrus wine," "fruit wine," or "wine from other agricultural products" to which has been added sugar and water solution in an amount which is in excess of the limitations prescribed in the standards of identity for these products, unless, in the case of "citrus wine," "fruit wine" and "wine from other agricultural products" the normal acidity of the material from which such wine is produced is 20 parts or more per thousand and the volume of the resulting product has not been increased more than 60 percent by such addition.

(i) *Class 9, retsina wine.* "Retsina wine" is grape table wine fermented or flavored with resin.

CROSS REFERENCE: For Internal Revenue regulations relating to fortified wine, see 26 CFR Part 240.

§ 4.22 Blends, cellar treatment, alteration of class or type.

(a) If the class or type of any wine shall be altered, and if the product as so altered does not fall within any other class or type either specified in §§ 4.20–4.25 or known to the trade, then such wine shall, unless otherwise specified in this section, be designated with a truthful and adequate statement of composition in accordance with § 4.34.

(b) Alteration of class or type shall be deemed to result from any of the following occurring before, during, or after production.

(1) Treatment of any class or type of wine with substances foreign to such wine which remain therein: *Provided*, That the presence in finished wine of not more than 350 parts per million of total sulphur dioxide, or sulphites expressed as sulphur dioxide, shall not be precluded under this paragraph.

(2) Treatment of any class or type of wine with substances not foreign to such wine but which remain therein in larger quantities than are naturally and normally present in other wines of the same class or type not so treated.

(3) Treatment of any class or type of wine with methods or materials of any kind to such an extent or in such manner as to affect the basic composition of the wine so treated by altering any of its characteristic elements.

(4) Blending of wine of one class with wine of another class or the blending of wines of different types within the same class.

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this article with sugar or water in excess of the quantities specifically authorized by such standard: *Provided*, That the class or type thereof shall not be deemed to be altered (i) where such wine (other than grape wine) is derived from fruit, or other agricultural products, having a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters, and the content of natural acid is not less than 7.5 parts per thousand and (ii) where such wine is derived exclusively from fruit, or other agricultural products, the normal acidity of which is 20 parts or more per thousand, if the volume of the resulting product has been increased not more than 60 percent by the addition of sugar and water solution, for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wines when produced from loganberries, currants, or gooseberries) there is stated as a part of the class and type designation the phrase "Made with over 35 percent sugar solution".

(c) Nothing in this section shall preclude the treatment of wine of any class or type in the manner hereinafter specified, provided such treatment does not result in the alteration of the class or type of the wine under the provisions of paragraph (b) of this section.

(1) Treatment with filtering equipment, and with fining or sterilizing agents.

(2) Treatment with pasteurization as necessary to perfect the wines to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

(3) Treatment with refrigeration as necessary to perfect the wine to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine nor to eliminate any of its characteristic elements.

(4) Treatment with methods and materials to the minimum extent necessary to correct cloudiness, precipitation, or abnormal color, odor, or flavor developing in wine.

(5) Treatment with constituents naturally present in the kind of fruit or other agricultural product from which the wine is produced for the purpose of correcting deficiencies of these constituents, but only to the extent that such constituents would be present in normal wines of the same class or type not so treated.

§ 4.23 Grape type designations.

A name indicative of a variety of grape may be employed as the type designation of a grape wine if the wine derives its predominant taste, aroma, and characteristics, and at least 51 per cent of its volume, from that variety of grape. If such type designation is not known to the consumer as the name of a grape variety, there shall appear in direct conjunction therewith an explanatory statement as to the significance thereof.

§ 4.24 Generic, semi-generic, and non-generic designations of geographic significance.

(a) (1) A name of geographic significance which is also the designation of a class or type of wine, shall be deemed to have become generic only if so found by the Director.

(2) Examples of generic names, originally having geographic significance, which are designations for a class or type of wine are: Vermouth, Sake.

(b) (1) A name of geographic significance, which is also the designation of a class or type of wine, shall be deemed to have become semi-generic only if so found by the Director. Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the true place of origin of the wine, and if the wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations in this part or, if there be no such standard, to the trade understanding of such class or type.

(2) Examples of semi-generic names which are also type designations for grape wine are Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (syn. Hock), Sauterne, Haut Sauterne, Sherry, Tokay.

(c) (1) A name of geographic significance, which has not been found by the Director to be generic or semi-generic may be used only to designate wines of the origin indicated by such name, but such name shall not be deemed to be the distinctive designation of a wine unless the Director finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.

(2) Examples of non-generic names which are not distinctive designations of specific wines are: American, California, Lake Erie Islands, Napa Valley, New York State, French, Spanish.

(3) Examples of non-generic names which are also distinctive designations of specific grape wines are: Bordeaux Blanc, Bordeaux Rouge, Graves, Medoc, St. Julien, Chateau Yquem, Chateau Margaux, Chateau Lafite, Pommard, Chambertin, Montrachet, Rhone, Liebfraumilch, Rudesheimer, Forster, Deidesheimer, Schloss Johannisberger, Lagrima, Lacryma Christi.

(4) Examples of names, not generic or semi-generic, which are distinctive designations of specific natural table wines, when qualified by the word "wine," or its French or German equivalent: Bordeaux, Medoc, St. Julien, Margaux, Graves, Barsac, Pomerol, St. Emilion; Bourgogne, Grand Chablis or Bourgogne des Environs de Chablis, Cote de Nuits, Gevrey-Chambertin, Morey, Chambolle-Musigny, Flagey-Echezeaux, Vosne-Romanee, Nuits or Nuits-St. Georges, Cote de Beaune, Aloxe-Corton, Savigny, Beaune, Pommard, Volnay, Santenay, Meursault, Puligny-Montrachet, Chassagne-Montrachet, Cote Maconnaise or Maconnais, Macon, Cote Beaujolaise, Beaujolais; Rhone or Cote du Rhone, Cote Rotie, Hermitage, Chateauneuf-du-Pape, Tavel; Loire, Anjou, Coteaux du Layon, Coteaux re la Loise, Saumur, Anjou-Saumur, Touraine, Vouvray; Alsace or Alsatian; Mosel-Saar-Ruwer, Mosel; Swiss or Suisse.

§ 4.25 Appellations of origin.

(a) A wine shall be entitled to an appellation of origin if (1) at least 75 percent of its volume is derived from fruit or other agricultural products both grown and fermented in the place or region indicated by such appellation, (2) it has been fully manufactured and finished within such place or region, and (3) it conforms to the requirements of the laws and regulations of such place or region governing the composition, method of manufacture and designation of wines for home consumption.

(b) Wines subjected to cellar treatment outside the place or region of origin under the provisions of § 4.22(c), and blends of wines of the same origin blended together outside the place or region of origin (if all the wines in the blend have a common class, type or other designation which is employed as the designation of the blend) shall be entitled to the same appellation of origin to which they would be entitled if such cellar treatment or blending took place within the place or region of origin.

Subpart D—Labeling Requirements for Wine

§ 4.30 General.

(a) *Application.* No person engaged in business as a producer, rectifier, blender, importer, or wholesaler, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine in containers unless such wine is packaged, and such packages are marked, branded, and labeled in conformity with this article. Wine domestically bottled or packed prior to Dec. 15, 1936, and imported wine entered in customs bond in containers prior to that date shall be regarded as being packaged, marked, branded and labeled in accordance with this article, if the labels on such wine (1) bear all the mandatory label information required by § 4.32, even though such information is not set forth in the manner and form as required by § 4.32 and other sections of this title referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(b) *Alternation of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label upon wine held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law, or except as provided in subparagraph (2) of this paragraph: *Provided*, That the Assistant Regional Commissioner, Alcohol and Tobacco Tax may, upon written application, permit additional labeling or relabeling of wine for purposes of compliance with the requirements of this part or of State law.

(2) No application for permission to relabel wine need be made in any case where there is added to the container, after removal from customs custody or from the premises where bottled or packed, a label identifying the wholesale or retail distributor thereof, and containing no reference whatever to the characteristics of the product.

CROSS REFERENCE: For customs warehouses and control of merchandise therein, see 19 CFR Part 19.

§ 4.31 Misbranding.

Wine in containers shall be deemed to be misbranded:

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by this part and conforming to the general requirements specified in this part.

(b) If the container or any label on the container or any individual covering, carton, or other wrapper of the container used for sale at retail (other than a shipping carton, covering or wrapper of the container) or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial or emblematic representation that is prohibited by this article.

(c) If the container is in an individual carton, covering, or other wrapper used for sale at retail (other than a shipping carton, covering, or wrapper of the container) displaying thereon any written, printed, graphic, or other matter, other than the name and address of the producer, importer, or person by whom bottled or packed (and in addition the name and address of the person for whom bottled or packed), and such individual covering, carton, or other wrapper obscures the mandatory label information required to be stated, and such individual covering, carton or other wrapper fails to reproduce on it, in the same manner, all information so obscured; or if any statement required by this section to appear upon the label, or upon such individual covering, carton, or other wrapper, is obscured in any other manner or is modified in any manner.

§ 4.32 Mandatory label information.

(a) Except as otherwise provided in paragraph (c) of this section, there shall be stated on the brand label:

(1) Brand name, in accordance with § 4.33.

(2) Class, type, or other designation, in accordance with § 4.34.

(3) Name and address, in accordance with § 4.35.

(4) On blends consisting of foreign and domestic wines, if any reference to the presence of foreign wine is made, the exact percentage by volume of foreign wine.

(b) There shall be stated on the brand label, or on a separate label affixed in immediate proximity thereto on the same side of the container:

(1) Alcoholic content, or type designation in lieu thereof, in accordance with § 4.36.

(2) Net contents, in accordance with § 4.37.

(c) In the case of imported wine, the name and address of the importer need not be stated upon the brand label if it is stated upon any other label affixed to the container. In the case of domestic wine, bottled or packed for a retailer or other person under his private brand, the name and address of the bottler or packer need not be stated upon the brand label if the name and address of the person for whom bottled or packed appears upon the brand label, and the name and address of the bottler or packer is stated upon any other label affixed to the container.

§ 4.33 Brand names.

(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the Director finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935: *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualifications shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 4.34 Class and type.

(a) The class of the wine shall be stated and such statement shall be in conformity with §§ 4.20 to 4.25 if the wine is defined therein, except that "table" ("light") and "dessert" wines need not be designated as such. In the case of still grape wine there may appear, in lieu of the class designation, any grape-type designation, semi-generic geographic type designation, or geographic distinctive designation to which the wine may be entitled. In the case of champagne, or crackling wines, the type designation "champagne" or "crackling wine" ("petillant wine", "frizzante wine") may appear in lieu of the class designation "sparkling wine." In the case of wine which has a total solids content of more than 17 grams per 100 cubic centimeters the words "extra sweet," "specially sweetened," "specially sweet" or "sweetened with excess sugar" shall be stated as a part of the class and type designation. The last of these quoted phrases shall appear where required by 26 CFR Part 240, on wines sweetened with sugar in excess of the maximum quantities specified in such regulations. If the class of the wine is not defined in §§ 4.20–4.25, a truthful and adequate statement of composition shall appear upon the brand label of the product in lieu of a class designation. In addition to the mandatory designation for the wine, there may be stated a distinctive or fanciful name, or a designation in accordance with trade understanding. All parts of the designation of the wine, whether mandatory or optional, shall be in direct conjunction and in lettering substantially of the same size and kind.

(b) An application of origin such as "American", "California", "Chilean", "New York State" or "Spanish", disclosing the true place of origin of the wine, shall appear in direct conjunction with and in lettering substantially as conspicuous as the class and type designation, (1) if a grape variety name having geographic significance is employed as the type designation of the wine pursuant to § 4.23, (2) if a semi-generic type designation of geographic significance is employed as the type designation of the wine pursuant to § 4.24(b), or (3) if the label bears any statement, design, device, or representation which indicates or in-

fers an origin other than the true place of origin of the wine.

§ 4.35 Name and address.

(a) *Domestic wine.* On labels of containers of domestic wine, there shall be stated the name of the bottler or packer and the place where bottled or packed (or in lieu of such place, the principal place of business of the bottler or packer if in the same State where the wine was bottled or packed, and, if bottled or packed on internal revenue bonded premises, the internal revenue registry number of such premises) immediately preceded by the words "Bottled by" or "Packed by" except that:

(1) If the bottler or packer is also the person who made not less than 75 percent of such wine by crushing the grapes or other materials, fermenting the must and clarifying the resulting wine, or if such person treated the wine in such manner as to charge the class thereof, there may be stated, in lieu of the words "Bottled by" or "Packed by", the words "Produced and bottled by" or "Produced and packed by".

(2) If the bottler or packer has also either made or treated the wine, otherwise than as described in subparagraph (1) of this paragraph, there may be stated, in lieu of the words "Bottled by" or "Packed by", the phrases "Blended and bottled (packed) by," "Rectified and bottled (packed) by," "Prepared and bottled (packed) by," "Made and bottled (packed) by," as the case may be, or, in the case of imitation wine only, "Manufactured and bottled (packed) by."

(3) In addition to the name of the bottler or packer and the place where bottled or packed (but not in lieu thereof) there may be stated the name and address of any other person for whom such wine is bottled or packed, immediately preceded by the words "Bottled for" or "Packed for" or "Distributed by" or other similar statement; or the name and principal place of business of the rectifier, blender, or maker, immediately preceded by the words "Rectified by," "Blended by," or "Made by," respectively, or, in the case of imitation wine only, "Manufactured by."

(b) *Imported wine.* On labels of containers of imported wine, there shall be stated the words "Imported by" or a similar appropriate phrase, and immediately thereafter the name of the permittee who is the importer, agent, sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition, but not in lieu thereof, there may be stated the name and principal place of business of the foreign producer, blender, rectifier, maker, bottler, packer, or shipper, preceded by the phrases "Produced by," "Blended by," "Rectified by," "Made by," "Bottled by," "Packed by," "Shipped by," respectively, or, in the case of imitation wine only, "Manufactured by."

(1) If the wine is bottled or packed in the United States, there shall be stated, in addition, the name of the bottler or packer and the place where bottled or packed immediately preceded by the words "bottled by" or "packed by" except that if the wine is bottled or packed in the United States for the person responsible for the importation there may be stated, in lieu of the above-required statements, the name and principal place of business in the United States of such person, immediately preceded by the phrase "imported by and bottled (packed) in the United States for" (or a similar appropriate phrase). If, however, the wine is bottled or packed in the United States by the person responsible for the importation there may be stated, in lieu of the above-required statements, the name and principal place of business in the United States of such person, immediately preceded by the phrase "Imported and bottled (packed) by" or a similar appropriate phrase.

(2) If the wine is blended, bottled, or packed in a foreign country other than the country of origin and the country of origin is stated or otherwise indicated on the label, there shall also be stated the name of the bottler, packer, or blender, and the place where bottled, packed, or blended, immediately preceded by the words "Bottled by", "Packed by", "Blended by", or other appropriate statement.

(c) *Form of address.* The "place" stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person unless (1) such person is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(d) *Trade names.* The trade name of any permittee appearing upon any label shall be identical with the name in which his basic permit is issued by the Assistant Regional Commissioner.

§ 4.36 Alcoholic content.

(a) Alcoholic content shall be stated in the case of wines containing more than 14 percent of alcohol by volume, and, in the case of wine containing 14 percent or less of alcohol by volume, either the type designation "table" wine ("light" wine) or the alcoholic content shall be stated. Any statement of alcoholic content shall be made as prescribed in paragraph (b) of this section.

(b) Alcoholic content shall be stated in terms of percentage of alcohol by volume, and not otherwise, as provided in either subparagraph (1) or (2) of this paragraph:

(1) "Alcohol ____% by volume." Except as provided in paragraph (c) of this section, a tolerance of 1 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of 1.5 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted either above or below the stated percentage.

(2) "Alcohol ____% to ____% by volume." Except as provided in paragraph (c) of this section, a range of not more than 2 percent, in the case of wines containing more than 14 percent of alcohol by volume, and of not more than 3 percent, in the case of wines containing 14 percent or less of alcohol by volume, will be permitted between the minimum and maximum percentages stated, and no tolerances will be permitted either below such minimum or above such maximum.

(c) Regardless of the type of statement used and regardless of tolerances normally permitted in direct statements and ranges normally permitted in maximum and minimum statements, alcoholic content statements, whether required or optional, shall definitely and correctly indicate the class, type and taxable grade of the wine so labeled and nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcoholic content statement in terms of maximum and minimum percentages which overlaps a prescribed limitation on the alcoholic content of any class, type, or taxable grade of wine, or a direct statement of alcoholic content which indicates that the alcoholic content of the wine is within such a limitation when in fact it is not.

§ 4.37 Net contents.

(a) The net contents of wine for which a standard of fill is prescribed in §§ 4.70–4.72 shall be stated in the same manner and form in which such standard of fill is set forth in said article.

(b) The net contents of wine for which no standard of fill is prescribed in §§ 4.70–4.72 shall be stated as follows, except that net contents may be expressed in the metric system of measure for containers of ½ liter, 1 liter and 1½ liter:

(1) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(2) If less than a pint, the net contents shall be stated in fractions of a pint, or in fluid ounces.

(3) If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than a gallon, the net contents shall be stated in gallons and fractions thereof.

(c) All fractions shall be expressed in their lowest denomination.

(d) The net contents need not be stated on any label if the net contents are displayed by having the same blown, etched, sand-blasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the Director, in the sides, front, or back of the bottle, in letters and figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part.

(e) Statement of net contents shall indicate exactly the volume of wine within the container, except that the following tolerances shall be allowed:

(1) Discrepancies due exclusively to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due exclusively to differences in the capacity of containers, resulting solely from unavoidable difficulties in manufacturing such containers so as to be of uniform capacity: *Provided,* That no greater tolerance shall be allowed in case of containers which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of containers which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in containers to evaporation. The reasonableness to discrepancies under this paragraph shall be determined on the facts in each case.

(f) Unreasonable shortages in certain of the containers in any shipment shall not be compensated by overages in other containers in the same shipment.

§ 4.38 General requirements.

(a) *Contrasting background.* All labels shall be so designed that all the statements thereon required by §§ 4.30–4.39 are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* All statements (other than alcoholic content statements upon labels of containers having a capacity of 1 gallon or less) required on labels by this article, shall be in readily legible script, type, or printing not smaller than 8-point Gothic caps except that if contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter: *Provided,* That in the case of labels of containers having a capacity of less than one-half pint, such script, type, or printing thereon need not be in 8-point Gothic caps, but shall be readily legible under ordinary conditions. Alcoholic content statements, whether required or optional, on labels on containers having a capacity of 1 gallon or less shall be in readily legible script, type, or printing not smaller than 6-point Gothic caps, except in the case of containers having a capacity of less than one-half pint, in which case such script, type, or printing need not be as large as 6-point Gothic caps, but shall be readily legible under ordinary conditions. Alcoholic content statements shall not appear in script, type, or printing larger or more conspicuous than 8-point Gothic caps on labels on containers having a capacity of 1 gallon or less and shall not be set off with a border or otherwise accentuated.

(c) *English language.* All mandatory label information shall be stated on labels in the English language: *Provided,* That the brand name, the place of production, and the name of the manufacturer, producer, blender, rectifier, maker, bottler, packer, or shipper appearing on the label need not be in the English language if the words "Product of" immediately precede the name of the country of origin stated in accordance with customs' requirements. Additional statements in foreign languages may be made on labels, if no such statements in any way conflict with, or are contradictory to, the requirements of §§ 4.30–4.39.

(d) *Location of label.* No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall be affixed over the mouths of containers of wine, and no label shall obscure any such stamps or be obscured thereby.

(e) *Labels firmly affixed.* All labels shall be affixed to containers of wine in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.* Labels may contain information other than the mandatory label information required by §§ 4.30–4.39, provided such information complies with the requirements of such sections and does not conflict with, nor in any manner qualify statements required by, any regulations promulgated under the act.

(g) *Representations as to materials.* If any representation (other than representations or information required by §§ 4.30–4.39) is made as to the presence, excellence, or other characteristic of any ingredient in any wine, or used in the production thereof, the label containing such representation shall state, in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient.

(h) *Statement of contents of containers.* Upon request of the Director, there shall be submitted to him a full and accurate statement of the contents of the containers to which labels are to be or have been affixed.

§ 4.39 Prohibited practices.

(a) *Statements on labels.* Containers of wine, or any label on such containers, or any individual covering, carton, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such container to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant scientific, or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; *Provided,* That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, blender, rectifier, importer, wholesaler, retailer, bottler, or warehouseman of wine, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation (other than a statement of alcoholic content in conformity with § 4.36) which tends to create the impression that a wine is "unfortified" or has been "fortified", or contains distilled spirits, or has intoxicating qualities, except that a statement of composition, if required to appear as the designation of a product not defined in these regulations, may include a reference to the type of distilled spirits employed therein.

(8) Any coined word or name in the brand name or class and type designation which simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or permitted designation recognized by the regulations in this part unless such wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(b) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that:

(1) In the case of domestic vintage wine bottled or packed in containers by the permittee who crushed the grapes, fermented the must, and clarified such wine, the year of vintage may be stated but only if there is likewise stated on the brand label, in direct conjunction with the class, type, or distinctive designation, and in lettering substantially as conspicuous as such designation, the name of the viticultural area in which the grapes were grown and the wine fermented.

(2) In the case of domestic vintage wine rebottled in containers of a capacity of 1 gallon or less by a person other than the producer thereof, the year of vintage may be stated but only if the container from which such wine is bottled is the original container of the permittee who produced such wine, and such container bears upon the brand label thereof a vintage date. If the year of vintage is stated up on the brand label of wine so rebottled, there shall also be stated the

[1] Under subparagraph (5) the Director has permitted the use of statements in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

----------"
(Name of permittee making statement)

name of the viticultural area, and the class, type, or distinctive designation of the wine, in the same manner and form as such statements appear on the brand label of the original container.

(3) In the case of imported wine, the year of vintage may be stated if such wine was bottled prior to importation in containers of 1 gallon or less (except that the year of vintage may be stated in the case of champagne whether or not bottled in containers of 1 gallon or less), or, if such wine is bottled in the United States in containers of 1 gallon or less from the original container of the product and such container bears the vintage date upon the brand label thereof and the bottler possesses a certificate, issued by a duly authorized official of the country of origin of such wine, identifying that container as containing vintage wine as defined in § 4.1(h) and certifying (i) that the laws of such country regulate the appearance of vintage dates upon the labels of wine produced for consumption therein, (ii) that the wine in question has been produced in conformity with such laws, and (iii) that such wine would be entitled, under such laws, to bear the vintage date if sold in such country: *Provided*, That, in the case of imported wine bottled prior to importation in containers of 1 gallon or less, the year of vintage may be stated only when the invoice is accompanied by a certificate identical with that required above in the case of wine bottled in the United States in containers of 1 gallon or less, if the issuance of such a certificate with respect to such wine has been authorized by the foreign Government concerned.

(4) Truthful references of a general and informative nature relating to methods of wine production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars," may appear but only in an inconspicuous manner and then only on back labels or on other matter accompanying the container.

(c) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears in lettering not greater than 8-point Gothic caps and in the following form: "Bottled in ____" (inserting the year in which the wine was bottled).

(d) *Use of the word "old."* The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age, if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name is printed.

(e) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (b) and (c) of this section with respect to statement of vintage year and bottling date, shall be stated on any label unless in addition thereto and in direct conjunction therewith in the same size and kind of printing, there shall be stated an explanation of the significance thereof such as "established" or "founded in". If any such date refers to the date of establishment of any business or brand name, it shall not be stated, in the case of containers of a capacity of 1 gallon or less, in any printing, type, or script larger than 8-point Gothic caps, and shall be stated in direct conjunction with the name of the person, company, or brand name to which it refers if the Director finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date is applicable.

(f) *Simulation of Government stamps.* (1) No labels shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the wine contained in the labeled container is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State or Federal Government authorization, law, or regulation, unless such statement is required or specifically authorized by Federal, State or municipal law or regulation, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal Government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) Bonded wine cellar and bonded winery numbers may be stated but only in direct conjunction with the name and address of the person operating such wine cellar or winery. Statement of bonded wine cellar or winery numbers may be made in the following form: "Bonded Wine Cellar No. ____", "Bonded Winery No. ____", "B. W. C. No. ____", "B. W. No. ____". No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(3) If imported wines are covered by a certificate of origin and/or a certificate of vintage date issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statements relating thereto. The reference to such certificate or certification shall be substantially in the following form:

This product accompanied at the time of the importation by a certificate issued by the
---
(Name of government)
Government indicating that the product is

(Class and type as stated on the label)
and (if label bears a statement of vintage date) that the wine is of the vintage of
---
(Year of vintage stated on the label)

(g) *Use of the word "Importer", or similar words.* The word "Importer", or similar words, shall not be stated on labels on containers of domestic wine except as part of the bona fide name of a permittee for or by whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided*, That in all cases where such words are used as part of such name, there shall be stated on the same label the words "Product of the United States", or similar words to negative any impression that the product is imported, and such negative statements shall appear in the same size and kind of printing as such name.

(h) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the Director finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(i) *Curative and therapeutic effects.* Labels shall not contain any statement, design, or device representing that the use of any wine has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(j) *Individual coverings and cartons.* Individual coverings, cartons, or other wrappers of containers of wine, or any written, printed, graphic, or other matter accompanying the container, shall not contain any statement or any graphic pictorial, or emblematic representation or other matter which is prohibited from appearing on any label or container of wine.

Subpart E—Requirements for Withdrawal of Wine From Customs Custody

§ 4.40 Label approval and release.

(a) *Application.* On or after December 15, 1936, imported wine shall not be released from customs custody for consumption, except pursuant to procedure and forms prescribed by this section.

(b) *Certificate of Label Approval.* No imported wine shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry the original or a photostatic copy of a "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649). Such certificate shall be issued by the Director upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.* If the original or photostatic copy of the "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649) bears the signature of the Director, then the brand or lot of imported wine bearing labels identical with those shown thereon may be released from customs custody.

(d) *Relabeling.* Imported wine in customs custody which is not labeled in conformity with certificates of label approval issued by the Director must be relabeled prior to release, under the supervision and direction of the customs officers of the port at which such wine is located.[2]

§ 4.45 Certificates of origin and identity.

Imported wine shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the appropriate foreign government, if the issuance of such certificates with respect to such wine has been authorized by the foreign government concerned, certifying as to the identity of the wine and that the wine has been produced in compliance with the laws of the respective foreign government regulating the production of such wine for home consumption.

Subpart F—Requirements for Approval of Labels of Wine Domestically Bottled or Packed

§ 4.50 Certificates of label approval.

(a) No person shall bottle or pack wine, other than wine bottled or packed in customs custody, or remove such wine from the plant where bottled or packed, unless upon application to the Director he has obtained and has in his possession a "Certificate of label approval under the Federal Alcohol Administration Act" (Form 1649), covering such wine. Such certificate of label approval shall be issued by the Director upon application made upon the form designated "Application for certificate of label approval under the Federal Alcohol Administration Act" (Form 1649), properly filled out and certified to by the applicant.

(b) Any bottler or packer of wine shall be exempt from the requirements of this section if upon application he shows to the satisfaction of the Director that the wine to be bottled or packed by him is not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. A "Certificate of exemption from label approval under the Federal Alcohol Administration Act" (Form 1650) shall be issued by the Director upon application upon the form designated "Application for certificate of exemption from label approval under the Federal Alcohol Administration Act" (Form 1648), properly filled out and certified to by the applicant.[3]

[2] Copies of Form 1649 may be secured from the Assistant Regional Commissioners, Alcohol and Tobacco Tax, on request.

[3] Copies of Forms 1648 and 1649 may be secured from the Assistant Regional Commissioners, Alcohol and Tobacco Tax, on request.

§ 4.51 Exhibiting certificates to Government officials.

Any bottler or packer holding an original or duplicate original of a certificate of label approval or a certificate of exemption shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government.

§ 4.52 Photoprints.

Photoprints or other reproductions of certificates of label approval or certificates of exemption are not acceptable, for the purposes of §§ 4.50–4.52, as substitutes for an original or duplicate original of a certificate of label approval, or a certificate of exemption. The Director will, upon the request of the bottler or packer, issue duplicate originals of certificates of label approval or of certificates of exemption if wine under the same brand is bottled or packed at more than one plant by the same person, and if the necessity for the duplicate original is shown and there is listed with the Director the name and address of the additional bottling or packing plant where the particular label is to be used.

Subpart G—Advertising of Wine

§ 4.60 Application.

No person engaged in business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of wine, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 4.60–4.64: *Provided*, That such sections shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising: *And provided further*, That such sections shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly, or through an affiliate.

§ 4.61 Definitions.

As used in §§ 4.60–4.64 the term "advertisement" includes any advertisement of wine through the medium of radio broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards—if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce; or is disseminated by mail; except that such term shall not include:

(a) Any label affixed to any container of wine; or any individual covering, carton, or other wrapper of such container or any written, printed, graphic, or other matter accompanying the container which constitutes a part of the labeling under §§ 4.30–4.39.

(b) Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

§ 4.62 Mandatory statements.

(a) *Responsible advertiser.* The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class, type, and distinctive designation.* The advertisement shall contain a conspicuous statement of the class, type, or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required to appear on the label of the product.

§ 4.63 Legibility of requirements.

Statements required under §§ 4.60–4.64 to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

NOTE: Mandatory information should be stated at least in type or lettering which is the equivalent of eight-point type. The size of the type should be increased proportionately with the size of the advertisement, and should not be smaller or less conspicuous than promotional copy or other unrequired descriptive matter appearing in the advertisement. In the case of signs, billboards, and displays, the mandatory information should be conspicuous and readily legible from the distance at which the advertisement is intended to be and is customarily viewed.

Mandatory information should be so stated as to be clearly a part of the advertisement and should not be separated in any manner from the remainder of the advertisement.

Mandatory information for two products should not be stated in direct conjunction unless clearly distinguished.

Mandary information should not be buried or concealed by including it in unrequired descriptive matter.

In every case mandatory information should be stated so that it will come to the ttention of persons viewing the advertisement.

§ 4.64 Prohibited statements.

(a) *Restrictions.* The advertisement of wine shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(6) Any statement that the wine is produced, blended, bottled, packed, or sold under, or in accordance with, any municipal, State, or Federal Government authorization, law, or regulations; and if a municipal, State, or Federal permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

(7) Any statement of bonded winecellar and bonded winery numbers unless stated in direct conjunction with the name and address of the person operating such winery or storeroom. Statement of bonded winecellar and bonded winery numbers may be made in the following form: "Bonded Winecellar No. ----," "Bonded Winery No. ----," "B. W. C. No. ----," "B. W. No. ----." No additional reference thereto shall be made, nor shall any use be made of such statement that may convey the impression that the wine has been made or matured under Government supervision or in accordance with Government specifications or standards.

(8) Any statement, design, device, or representation which relates to alcoholic content or which tends to create the impression that a wine is "unfortified" or has been "fortified," or contains distilled spirits, or has intoxicating qualities, except that a statement of composition, if required to appear as a designation of a product not defined in these regulations, may include a reference to the type of distilled spirits employed therein.

(b) *Statements inconsistent with labeling.* The advertisement shall not contain any statement concerning a brand or lot of wine that is inconsistent with any statement on the labeling thereof.

(c) *Statement of age.* No statement of age or representation relative to age (including words or devices in any brand name or mark) shall be made, except that:

(1) In the case of domestic vintage wine bottled or packed and labeled in accordance with the provisions of § 4.39 (b) (1), (2), the year of vintage may be stated but only if there is likewise stated, in direct conjunction with the class, type, or distinctive designation of the wine, in lettering substantially as conspicuous as such designation and in the same manner and form as such statements appear on the brand label of the container, the name of the viticultural area in which the grapes were grown and the wine fermented.

(2) In the case of imported vintage wine bottled and labeled in accordance with the provisions of § 4.39(b)(3) the year of vintage may be stated.

(3) Truthful references of a general and informative nature relating to methods of wine production involving storage or aging, such as "This wine has been mellowed in oak casks," "Stored in small barrels" or "Matured at regulated temperatures in our cellars" may be made.

(d) *Statement of bottling dates.* The statement of any bottling date shall not be deemed to be a representation relative to age, if such statement appears without undue emphasis in the following form: "Bottled in ----" (inserting the year in which the wine was bottled).

(e) *Use of the word "old."* The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age, if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name appears.

(f) *Statement of miscellaneous dates.* No date, except as provided in paragraphs (c) and (d) of this section, with respect to statement of vintage year and bottling date, shall be stated unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date: *Provided,* That if any date refers to the date of establishment of any business, such date shall be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to, the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crests, or insignia is associated.

(h) *Statements indicative of origin.* No statement, design, device, or representation which tends to create the impression that the wine originated in a particular place or region, shall appear in any advertisement unless the label of the advertised product bears an appellation of origin, and such appellation of origin appears in the advertisement in direct conjunction with the class and type designation.

(i) *Use of the word "importer" or similar words.* The word "importer" or similar words shall not appear in advertisements of domestic wine except as part of the bona fide name of the permittee by or for whom, or of a retailer for whom, such wine is bottled, packed or distributed: *Provided,* That in all cases where such words are used as part of such name, there shall be stated the words "Product of the United States" or similar words to negate any impression that the product is imported, and such negating statements shall appear in the same size and kind of printing as such name.

(j) *Curative and therapeutic effects.* The advertisement shall not contain any statement, design, or device representing that the use of any wine has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(k) *Confusion of brands.* Two or more different brands or lots of wine shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of §§ 4.60–4.64 or are in any respect untrue.

Subpart H—Standards of Fill For Wine

§ 4.70 Application.

(a) Except as provided in paragraph (b) of this section, no person engaged in business as a producer, rectifier, blender, importer, or wholesaler of wine, directly or indirectly or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any wine unless such wine is bottled or packed in the standard wine containers herein prescribed.

(b) Sections 4.70–4.72 shall not apply (1) to sake, or (2) to wine packed in containers of 5 gallons or more, or (3) to imported wine in the original containers in which entered in customs custody, or (4) to wine domestically bottled or packed, either in or out of customs custody, prior to the effective date of this article, if the container, or the label on the container, bears a conspicuous statement of the net contents thereof, and if the actual capacity of the container is not substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use.

§ 4.71 Standard wine containers.

(a) A standard wine container shall be made, formed and filled to meet the following specifications:

(1) *Design.* It shall be so made and formed as not to mislead the purchaser. Wine containers shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser if the actual capacity is substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use; and

(2) *Fill.* It shall be so filled as to contain the quantity of wine specified in one of the standards of fill prescribed in § 4.72; and

(3) *Headspace.* It shall be so made and filled as to have a headspace not in excess of 6 percent of its total capacity after closure if the net contents of the container is ⅔ pint or more, and a headspace not in excess of 10 percent of such capacity in the case of all other containers.

§ 4.72 Standards of fill.

(a) The standards of fill for wine shall be the following, subject to the tolerances hereinafter allowed:

(1) For all wines:

4.9 gallons.	1 pint.
3 gallons.	⅘ pint.
1 gallon.	½ pint.
⅘ gallon.	⅖ pint.
½ gallon.	4 ounces.
⅖ gallon.	3 ounces.
1 quart.	2 ounces.
⅘ quart.	

(2) In addition, for aperitif wines only: $15/16$ quart:

Provided, however, That the standards of fill for the ⅘ and ⅖ gallon shall be applicable only to wine contained in bottles of the traditional bordeaux or burgundy shapes, and the ½ pint standard shall be applicable only to wine contained in bottles of traditional chianti or round shapes.

(b) The tolerances in fill shall be the same as are allowed by § 4.37 in respect to statement of net contents upon labels.

Subpart I—General Provisions

§ 4.80 Exports.

The regulations in this part shall not apply to wine exported in bond.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

NOTE: Treasury Decision 6288 amended certain sections in part 5, as listed below, to become effective three years after April 3, 1958:

1. In § 5.21(b) the proviso as set forth therein at the end of the first sentence in the introductory text to be added and subparagraph (14) to be deleted; in paragraph (h)(4) the parenthetical phrase to be deleted.

2. In § 5.34(f) the words "and blended Scotch type whisky" appearing in parentheses to be deleted.

3. In § 5.39(a)(7), the proviso in the undesignated paragraph following subparagraph (7) to be deleted; paragraph (c) to be deleted and paragraphs (d) and (e) to be redesignated "(c)" and "(d)", respectively.

4. In § 5.73(a)(3) the words "and Scotch and Irish type whisky" to be deleted.

Subpart A—Scope

Sec.
5.1 General.
5.2 Territorial extent.

Subpart B—Definitions

5.10 Meaning of terms.

Subpart C—Standards of Identity for Distilled Spirits

5.20 Application of standards.
5.21 The standards of identity.
5.22 Alteration of class and type; harmless coloring, flavoring and blending materials.

Subpart D—Labeling Requirements for Distilled Spirits

5.30 General.
5.31 Misbranding.
5.32 Mandatory label information.
5.33 Brand names.
5.34 Class and type.
5.35 Name and address.
5.36 Alcoholic content.
5.37 Net contents.
5.38 Presence of neutral spirits and coloring, flavoring, and blending materials.
5.39 Statements of age and percentage.
5.40 General requirements.
5.41 Prohibited practices.

Subpart E—Requirements for Withdrawal From Customs Custody of Bottled Imported Distilled Spirits

Sec.
5.45 Label approval and release.
5.46 Certificates of age and origin.

Subpart F—Requirements for Approval of Labels of Domestically Bottled Distilled Spirits

5.50 Certificates of label approval.
5.51 Certificates of age and origin.
5.52 Exhibiting certificates to Government officials.
5.53 Photoprints.

Subpart G—Advertising of Distilled Spirits

Sec.
5.60 Application.
5.61 Definitions.
5.62 Mandatory statements.
5.63 Lettering.
5.64 Prohibited statements.

Subpart H—Standards of Fill for Bottled Distilled Spirits

5.70 Application.
5.71 Misbranding.
5.72 Standard liquor bottles.
5.73 Standards of fill.
5.74 Vintage spirits, cordials, liqueurs, and specialties.

Subpart I—General Provisions

5.80 Exports.
5.81 Applicability of other regulations.

AUTHORITY: §§ 5.1 to 5.81 issued under 49 Stat. 981, as amended; 27 U.S.C. 205.

CROSS REFERENCES: Other regulations relating to this part are as follows:

27 CFR, Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR, Part 2—Nonindustrial Use of Distilled Spirits and Wine.
27 CFR, Part 3—Bulk Sales and Bottling of Distilled Spirits.
27 CFR, Part 4—Labeling and Advertising of Wine.
27 CFR, Part 7—Labeling and Advertising of Malt Beverages.
26 CFR, Part 175—Traffic in Containers in Distilled Spirits.
26 CFR, Part 200—Rules of Practice in Permit Proceedings.
26 CFR, Part 201—Distilled Spirits Plants.
26 CFR, Part 250—Liquors and Articles From Puerto Rico and the Virgin Islands.
26 CFR, Part 251—Importation of Distilled Spirits, Wines and Beer.
26 CFR, Part 252—Exportation of Liquors.

Subpart A—Scope

§ 5.1 General.

The regulations in this part relate to the labeling and advertising of distilled spirits.

§ 5.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Subpart B—Definitions

§ 5.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this part. (a) "Act" means the Federal Alcohol Administration Act.

(b) *Assistant Regional Commissioner.* "Assistant Regional Commissioner" shall mean the Assistant Regional Commissioner, Alcohol and Tobacco Tax, who is responsible to and functions under the direction and supervision of the Regional Commissioner.

(c) *Director.* "Director" shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C.

(d) *Permittee.* "Permittee" means any person holding a basic permit under the Federal Alcohol Administration Act.

(e) *Distilled spirits.* "Distilled spirits" means ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use.

(f) *Bottle.* "Bottle" means any container, irrespective of the material from which made, used for the sale of distilled spirits at retail.

(g) *In bulk.* "In bulk" means in containers having a capacity in excess of one wine gallon.

(h) *Gallon.* "Gallon" means United States gallon of 231 cubic inches of alcoholic beverage at 60° F. All other liquid measures used are subdivisions of the gallon as so defined.

(i) *Brand label.* "Brand label" means the label carrying, in the usual distinctive design, the brand name of the distilled spirits.

(j) *Age.* "Age" means the period during which, after distillation and before bottling, distilled spirits have been kept in oak containers, charred if for a whisky of American type other than corn whisky, straight corn whisky, blended corn whisky, or a blend of straight corn whiskies. In the case of American type whiskies produced on or after July 1, 1936, other than corn whisky, straight corn whiskies, blended corn whisky, and blends of straight corn whisky "age" means the period during which the whisky has been kept in charred new oak containers.

(k) *United States.* "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Puerto Rico.

(l) *Interstate commerce.* "Interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Territory or the District of Columbia, or between points within the same State but through any place outside thereof.

(m) *Person.* "Person" means any individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision thereof; and the term "trade buyer" means any person who is a wholesaler or retailer.

(n) Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by such act.

Subpart C—Standards of Identity for Distilled Spirits

§ 5.20 Application of standards.

The standards of identity for the several classes and types of distilled spirits

set forth in this part shall be applicable only to distilled spirits for beverage or other non-industrial purposes. Nothing contained in these standards of identity shall be construed as authorizing the non-industrial use of any distilled spirits produced in an industrial alcohol plant, except that "alcohol" or "neutral spirits," as defined in this part, may be so used if produced pursuant to the basic permit requirements of the Federal Alcohol Administration Act.

§ 5.21 **The standards of identity.**

Standards of identity for the several classes and types of distilled spirits set forth in this part shall be as follows:

(a) *Class 1; Neutral spirits or alcohol.* "Neutral spirits" or "alcohol" are distilled spirits distilled from any material at or above 190° proof, whether or not such proof is subsequently reduced.

(1) "Vodka" is neutral spirits distilled from any material at or above 190° proof, reduced to not more than 110° proof and not less than 80° proof and, after such reduction in proof, so treated by one of the following methods as to be without distinctive character, aroma, or taste:

(i) By causing the distillate to flow continuously through a tank or a series of tanks containing at least 1½ pounds of charcoal for each gallon of distillate contained therein at any one time so that the distillate is in intimate contact with the charcoal for a period of not less than 8 hours, not less than 10 percent of the charcoal being replaced by new charcoal at the expiration of each 40 hours of operation, at a rate which will replace at least 6 pounds of charcoal for every 100 gallons of spirits treated;

(ii) By keeping the distillate in constant movement by mechanical means in contact for not less than 8 hours with at least 6 pounds of new charcoal for every 100 gallons of distillate;

(iii) By purifying or refining the distillate by any other method which the Director finds will result in a product equally without distinctive character, aroma or taste, and which has been approved by him.

After such treatment the distillate is stored in metal, porcelain or glass containers or paraffin-lined tanks, and bottled at not less than 80° proof. If any flavoring material is added to the distillate it shall be designated "flavored vodka" and may be further qualified with the name of the flavoring material used.

(b) *Class 2; Whisky.* "Whisky" is an alcoholic distillate from a fermented mash of grain distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to whisky, and withdrawn from the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof; and also includes mixtures of the foregoing distillates for which no specific standards of identity are prescribed in this part: *Provided,* That a maximum of 1,000 barrels of whisky per distillery, withdrawn prior to July 1, 1960, at above 110° proof for experimental storage but at not more than 160° proof may be designated as whisky or any type thereof to which it would have been entitled under these standards of identity but for the fact that it was withdrawn at over 110° proof. Those types of whisky specified in subparagraphs (1) to (10) of this paragraph shall be deemed "American type" whiskies.

(1) "Rye whisky", "bourbon whisky", "wheat whisky", "malt whisky", or "rye malt whisky" is whisky which has been distilled at not exceeding 160° proof from a fermented mash of not less than 51 percent rye grain, corn grain, wheat grain, malted barley grain or malted rye grain, respectively, and, if produced on or after March 1, 1938, stored in charred new oak containers, and also includes mixtures of such whiskies where the mixture consists exclusively of whiskies of the same type. "Corn whisky" is whisky which has been distilled at not exceeding 160° proof from a fermented mash of not less than 80 percent corn grain, stored in uncharred oak containers, or reused charred oak containers, and not subjected, in the process of distillation or otherwise, to treatment with charred wood, and also includes mixtures of such whisky.

(2) "Straight whisky" is an alcoholic distillate from a fermented mash of grain at not exceeding 160° proof and withdrawn from the distillery at not more than 110° and not less than 80° proof, whether or not such proof is further reduced prior to bottling to not less than 80° proof, and is:

(i) Aged for not less than 12 calendar months if bottled on or after July 1, 1936, and before July 1, 1937; or

(ii) Aged for not less than 18 calendar months if bottled on or after July 1, 1937, and before July 1, 1938; or

(iii) Aged for not less than 24 calendar months if bottled on or after July 1, 1938.

The term "straight whisky" also includes mixtures of straight whisky which, by reason of being homogeneous, are not subject to the rectification tax under the internal-revenue laws.

(3) "Straight rye whisky" is straight whisky distilled from a fermented mash of grain of which not less than 51 percent is rye grain.

(4) (i) "Straight bourbon whisky" is straight whisky distilled from a fermented mash of grain of which not less than 51 percent is corn grain.

(ii) "Straight corn whisky" is straight whisky distilled from a fermented mash of grain of which not less than 80 percent is corn grain, aged for the required period in uncharred oak containers or reused charred oak containers, and not subjected, in the process of distillation, or otherwise, to treatment with charred wood.

(5) "Straight wheat whisky" is straight whisky distilled from a fermented mash of grain of which not less than 51 percent is wheat grain.

(6) "Straight malt whisky" and "straight rye malt whisky" are straight whisky distilled from a fermented mash of grain of which not less than 51 percent of the grain is malted barley or malted rye, respectively.

(7) "Blended whisky" (whisky — a blend) is a mixture which contains at least 20 percent by volume of 100° proof straight whisky and, separately or in combination, whisky or neutral spirits, if such mixture at the time of bottling is not less than 80° proof.

(8) "Blended rye whisky" (rye whisky—a blend), "blended bourbon whisky" (bourbon whisky—a blend), "blended corn whisky" (corn whisky—a blend), "blended wheat whisky" (wheat whisky—a blend), "blended malt whisky" (malt whisky—a blend) or "blended rye malt whisky" (rye malt whisky—a blend) is blended whisky which contains not less than 51 percent by volume of straight rye whisky, straight bourbon whisky, straight corn whisky, straight wheat whisky, straight malt whisky, or straight rye malt whisky, respectively.

(9) "A blend of straight whiskies" (blended straight whiskies), "A blend of straight rye whiskies" (blended straight rye whiskies), "A blend of straight bourbon whiskies" (blended straight bourbon whiskies), "A blend of straight corn whiskies" (blended straight corn whiskies), "A blend of straight wheat whiskies" (blended straight wheat whiskies), "A blend of straight malt whiskies" (blended straight malt whiskies), and "A blend of straight rye malt whiskies" (blended straight rye malt whiskies) are mixtures of only straight whiskies, straight rye whiskies, straight bourbon whiskies, straight corn whiskies, straight wheat whiskies, straight malt whiskies, or straight rye malt whiskies, respectively.

(10) "Spirit whisky" is a mixture (i) of neutral spirits and not less than 5 percent by volume of whisky, or (ii) of neutral spirits and less than 20 percent by volume of straight whisky, but not less than 5 percent by volume of straight whisky, or of straight whisky and whisky, if the resulting product at the time of bottling be not less than 80° proof.

(11) "Scotch whisky" is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of Great Britain regulating the manufacture of Scotch whisky for consumption in Great Britain, and containing no distilled spirits less than 3 years old: *Provided,* That if in fact such product as so manufactured is a mixture of distilled spirits, such mixture is "blended Scotch whisky" (Scotch whisky—a blend), "Scotch whisky" shall not be designated as "straight."

(12) "Irish whisky" is a distinctive product of Ireland, manufactured either in the Irish Free State or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whisky for home consumption, and containing no distilled spirits less than 3 years old: *Provided,* That if in fact such product as so manufactured is a mixture of distilled spirits, such whisky is "blended Irish whisky" (Irish whisky—a blend). "Irish whisky" shall not be designated as "straight."

(13) "Canadian whisky" is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of whisky for consumption in Canada, and containing no distilled spirits less than 2 years old: *Provided,* That if in fact such product as so manufactured is a mixture of distilled spirits, such whisky is "blended Canadian whisky" (Canadian whisky—a blend). "Canadian whisky" shall not be designated as "straight."

(14) "Blended Scotch type whisky" (Scotch type whisky—a blend) is a mixture made outside Great Britain and composed of:

(i) Not less than 20 percent by volume of 100° proof malt whisky or whiskies distilled in pot stills at not more than 160° proof (whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof) solely from a fermented mash of malted barley dried over peat fire and aged for not less than 3 years in new plain, or reused, oak containers, and

(ii) Not more than 80 percent by volume of whisky distilled at more than 180° proof (whether or not such proof is subsequently reduced prior to bottling to not less than 80° proof) aged for not less than 3 years in new plain, or reused, oak containers.

(c) *Class 3; gins.* (1) "Distilled gin" is a distillate obtained by original distillation from mash, or by the redistillation of distilled spirits, over or with juniper berries and other aromatics customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures solely of such distillates.

(2) "Compound gin" is the product obtained by mixing neutral spirits with distilled gin or gin essence or other flavoring materials customarily used in the production of gin, and deriving its main characteristic flavor from juniper berries and reduced at time of bottling to not less than 80° proof; and includes mixtures of such products.

(3) "Dry gin", "London dry gin", "Hollands gin", "Geneva gin", "Old Tom gin", "Tom gin", and "Buchu gin" are the types of gin known under such designations, and shall be further designated as "distilled" or "compound", as the case may be.

(d) *Class 4; brandies.* "Brandy" is a distillate, or a mixture of distillates, obtained solely from the fermented juice, mash or wine of fruit, or from the residue thereof, distilled at less than 190° proof in such manner as to possess the taste, aroma and characteristics generally attributed to the product, and bottled at not less than 80° proof; and shall also include such distillates, aged for a period of not less than 50 years, and bottled at not less than 72° proof, in cases where the reduction in proof below 80° is due solely to losses resulting from natural causes during the period of aging. Brandy, or mixtures thereof, not conforming to any of the following standards shall be designated as "brandy," and such designation shall be qualified by a truthful and adequate statement of composition in direct conjunction therewith.

(1) "Fruit brandy" is brandy distilled solely from the juice or mash of whole, sound, ripe fruit, or from standard grape, citrus, or other fruit wine, having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, not in excess of 0.20 gram per 100 cubic centimeters (20° C.), with or without the addition of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation), and shall include mixtures of such brandy with not more than 30 percent (calculated on a proof basis) of lees brandy. Fruit brandy, derived exclusively from grapes, shall be designated as "grape brandy" or "brandy": *Provided,* That in the case of any fruit brandy, other than neutral brandy, pomace brandy, marc brandy or grappa brandy distilled from the fermented juice, mash, or wine of grapes, or the residue thereof, which has been aged for less than two years, the statement of the class (and type, if any) shall be preceded by the word "immature" appearing in the same size and kind of type and as a part thereof, e.g., "immature brandy" or "immature grape brandy". Fruit brandy, other than grape brandy, derived exclusively from one variety of fruit, shall be designated by the word "brandy" qualified by the name of such fruit (e.g., "peach brandy," "apple brandy," "orange brandy"), except that "apple brandy" may be designated "applejack." Fruit brandy derived from more than one variety of fruit shall be designated as "fruit brandy," qualified by a truthful and adequate statement of composition (e.g., "fruit brandy—a blend of 90 percent grape brandy and 10 percent blackberry brandy").

(2) "Cognac" or "Cognac (grape) brandy," is grape brandy distilled in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French government.

(3) "Dried fruit brandy," is brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins, or from raisin wine, shall be designated as "raisin brandy." Other brandies defined in this paragraph shall be designated in the same manner as fruit brandy from the corresponding variety or varieties of fruit except that the name of the fruit shall be qualified by the word "dried."

(4) "Lees brandy" is brandy distilled from the lees of standard grape, citrus, or other fruit wine, and shall be designated as "lees brandy," qualified by the name of the fruit from which such lees are derived.

(5) "Pomace brandy," or "marc brandy," is brandy distilled from the skin and pulp of sound, ripe grapes, citrus or other fruit, after the withdrawal of the juice or wine therefrom, and shall be designated as "pomace brandy," or "marc brandy," qualified by the name of the fruit from which derived. Grape pomace brandy may be designated as "grappa" or "grappa brandy."

(6) "Residue brandy" is brandy distilled wholly or in part from the residue of fruit or wine, and shall be designated as "residue brandy" qualified by the name of the fruit from which derived. Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in subparagraphs (1), (3), (4) and (5) of this paragraph, may, regardless of such fact, be designated "residue brandy" by the distiller thereof; but the use of this designation shall be conclusive, precluding any later change of designation.

(7) "Neutral brandy" is any brandy distilled on or after July 1, 1941 at more than 170° proof. Brandy so distilled shall be designated in the same manner as if distilled at a lower proof, except that the designation shall be qualified by the word "neutral" in the same size and kind of type, e.g., "neutral brandy," "neutral grape lees brandy," or "neutral grape pomace brandy."

(8) "Substandard" brandy shall bear as a part of its designation the word "substandard," and shall include:

(i) Any brandy distilled from juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20° C.); measurements of volatile acidity under this paragraph shall be calculated exclusive of water added to facilitate distillation.

(ii) Any brandy which has been distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material.

(e) *Class 5; rum.* (1) "Rum" is any alcoholic distillate from the fermented juice of sugarcane, sugarcane sirup, sugarcane molasses, or other sugarcane byproducts distilled at less than 190° proof (whether or not such proof is further reduced prior to bottling to not less than 80° proof) in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to rum; and includes mixtures solely of such distillates.

(2) "New England Rum" is rum as above defined, except that it is produced in the United States and is distilled at less than 160° proof.

(3) Puerto Rico, Cuba, Demerara, Barbados, St. Croix, St. Thomas, Virgin Islands, Jamaica, Martinique, Trinidad, Haiti, and San Domingo rum are not distinctive types of rum. Such names are not generic but retain their geographic significance. They may not be applied to rum produced in any other place than the particular region indicated in the name, and may not be used as a designation of a product as rum, unless such product is rum as defined in subparagraph (1) of this paragraph.

(f) *Class 6; cordials and liqueurs.* (1) Cordials and liqueurs are products obtained by mixing or redistilling neutral spirits, brandy, gin, or other distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and containing sugar or dextrose or both in an amount not less than 2½ percent by weight of the finished product.

Synthetic or imitation flavoring materials shall not be included.

(2) "Sloe gin" is a cordial or liqueur with the main characteristic flavoring derived from sloe berries.

(3) Cordials and liqueurs shall not be designated as "distilled" or "compound."

(4) The designation of a cordial or liqueur may include the word "dry" if the added sugar and dextrose are less than 10 percent by weight of the finished product.

(5) *Rye liqueur, bourbon liqueur.* "Rye liqueur", "bourbon liqueur" (rye, bourbon cordial) are liqueurs, bottled at not less than 60° proof, in which not less than 51 percent, on a proof basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and which possess a predominant characteristic bourbon or rye flavor derived from such whisky.

(6) *Rock and rye, rock and bourbon, rock and brandy, rock and rum.* "Rock and rye", "rock and bourbon", "rock and brandy", "rock and rum" are liqueurs, bottled at not less than 48° proof, in which, in the case of rock and rye and rock and bourbon, not less than 51 percent, on a proof basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy distilled at not in excess of 170° proof or rum, respectively; containing rock candy or sugar syrup, with or without the addition of fruit, fruit juices or other natural flavoring materials, and possessing, respectively, a predominant characteristic rye, bourbon, brandy or rum flavor derived from the distilled spirits used.

(g) *Class 7; imitations.* Imitations shall bear, as a part of the designation thereof, the word "imitation" and shall include the following:

(1) Any class or type of distilled spirits to which has been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(2) Any class or type of distilled spirits (other than distilled spirits required under § 5.34 to bear a distinctive or fanciful name and a truthful and adequate statement of composition) to which has been added synthetic flavoring material;

(3) Any class or type of distilled spirits (other than distilled spirits required under § 5.34 to bear a distinctive or fanciful name and a truthful and adequate statement of composition) to which has been added a natural flavoring material which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any other flavoring material, if the labeling of such distilled spirits creates the impression that such other flavoring material has been employed in the manufacture of the product: *Provided*, That the word "imitation" shall not be required to appear as a part of the designation of a cherry product by reason of the addition of a natural flavoring material derived from crushed cherry pits;

(4) Any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate, or infer, that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whisky essence, brandy essence, rum essence or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(5) Any type of rum to which neutral spirits or other distilled spirits than rum have been added;

(6) Any type of brandy to which neutral spirits or other distilled spirits than brandy have been added; and

(7) Any brandy to the distilling material for which has been added any amount of sugar other than the kind and amount of sugar expressly authorized for the amelioration of standard wine.

(h) *Class 8; geographical designations.* (1) Geographical names for distinctive types of distilled spirits (other than names found by the Director under subparagraph (2) of this paragraph to have become generic) shall not be applied to distilled spirits produced in any other place than the particular region indicated by the name, unless (i) in direct conjunction with the name there appears the word "type" or the word "American" or some other adjective indicating the true place of production, in lettering substantially as conspicuous as such name, and (ii) the distilled spirits to which the name is applied conform to the distilled spirits of that particular region. The following are examples of distinctive types of distilled spirits with geographical names that have not become generic: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, Swedish punch, blended Scotch whisky, blended Irish whisky, blended Canadian whisky. Geographical names for distinctive types of distilled spirits shall be used to designate only distilled spirits conforming to the standard of identity, if any, for such type specified in §§ 5.20–5.21, or if no such standard is so specified, then in accordance with the trade understanding of that distinctive type. Such geographical names for distinctive types of distilled spirits shall not be used as the name or a part of the name for distilled spirits not of that distinctive type.

(2) Only such geographical names for distilled spirits as the Director finds have by usage and common knowledge lost their geographical significance to such extent that they have become generic, shall be deemed to have become generic. The following are examples of distinctive types of distilled spirits with geographical names that have become generic: London dry gin, Geneva gin, Hollands gin, Tequila.

(3) Geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, shall not be applied to distilled spirits produced in any other place than the particular place or region indicated in the name. The following are examples of geographical names for distilled spirits that are not generic and are not names for distinctive types of distilled spirits: Cognac, Armagnac, Greek brandy, Pisco brandy, Jamaica rum, Kentucky straight bourbon whisky, Maryland straight rye whisky.

(4) The words "Scotch", "Scots", "Highland" or "Highlands" and similar words connoting, indicating, or commonly associated with Scotland, shall not (except for the use of the word "Scotch" in the type designation "blended Scotch type whisky") be used to designate any product not wholly produced in Scotland.

(i) *Class 9; products without geographical designations but distinctive of a particular place.* (1) The whiskies of the types specified in paragraph (b) (1)–(10) of this section are distinctive products of the United States, and if produced in a foreign country, shall be designated by the applicable designation prescribed in such paragraph, together with the words "American type" or the words "produced (distilled, blended) in _____", the blank to be filled in with the name of the foreign country. If whisky of any of these types is composed in part of whisky or whiskies produced in a foreign country there shall be stated, on the government label, the percentage of such whisky and the country of origin thereof. Such statement shall appear as a part of, or in direct conjunction with, any age or percentage statement which may be required under § 5.39.

(2) The name for other distilled spirits which are distinctive products of a particular place or country shall not be given to the product of any other place or country unless the designation for such product includes the word "type" or an adjective such as "American" or the like, clearly indicating the true place of production. This paragraph shall not apply to designations which by usage and common knowledge have lost their geographical significance to such an extent that they have become generic, provided the approval of the Director is obtained prior to using such designation. An example of a product which is a distinctive product of a particular place or country and which has not become generic is the following: Habanero. Examples of products which have lost their geographical significance to such an extent that they are no longer distinctive products of a particular place or country, but have become generic, are the following: Vodka, Slivovitz, Zubrovka, Aquavit, Arrack, and Kirschwasser.

§ 5.22 Alteration of class and type; harmless coloring, flavoring and blending materials.

(a) Except as otherwise provided in this section, the addition of any coloring, flavoring or blending materials whatsoever, to any class or type of distilled spirits shall be deemed to alter the class and type thereof. If the class or type of any distilled spirits shall be so altered, and if there is no class or type designation for the product as so altered, either specified in §§ 5.20 and 5.21 or in accordance with trade understanding, such distilled spirits shall be designated with a distinctive or fanciful name together with a truthful and adequate statement of composition in accordance with § 5.34. There may be added to any class or type of distilled spirits, without changing the class or type thereof, (1) such harmless coloring, flavoring or blending materials as are an essential component part of the particular class or type of distilled spirits to which added, and (2) harmless coloring, flavoring or blending materials such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar or wine, which are not an essential component part of the particular distilled spirits to which added, but which are customarily employed therein in accordance with established trade usage, if such coloring, flavoring or blending materials do not total more than 2½ percent by volume of the finished product.

(b) "Harmless coloring, flavoring and blending materials" shall not include (1) any material which would render the product to which it is added an imitation, or (2) any material whatsoever in the case of straight whisky or in the case of neutral spirits, or (3) any material, other than caramel and sugar, in the case of cognac brandy.

(c) Nothing in this section shall be construed as in any manner modifying the standards of identity for cordials and liqueurs, or as authorizing any product which is defined in Class 7 as an imitation to be otherwise designated.

Subpart D—Labeling Requirements for Distilled Spirits

§ 5.30 General.

(a) *Application.* No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody, any distilled spirits in bottles, unless such distilled spirits are packaged, and such packages are marked, branded, or labeled in conformity with §§ 5.30–5.41. Distilled spirits domestically bottled prior to August 15, 1936, and imported distilled spirits entered in customs bond in bottles prior to that date shall be regarded as being packaged, marked, branded, and labeled in accordance with §§ 5.30–5.41, if the labels on such distilled spirits (1) bear all the mandatory label information required by § 5.32, even though such information is not set forth in the manner and form as required by such section and the other sections referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(b) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label upon distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law, or except as provided in subparagraph (2) of this paragraph: *Provided*, That the assistant regional commissioner, Alcohol and Tobacco Tax, or the Internal Revenue officer, if any, assigned to the premises may, upon written application, permit additional labeling or relabeling of bottled distilled spirits with labels, covered by certificates of approval issued by the Director, which comply with the requirements of this part and with State law.

(2) No application for permission to relabel bottled distilled spirits need be made in any case where there is added to the bottle, after removal from customs custody or from the bottling premises, a label identifying the wholesale or retail distributor thereof, and containing no references whatever to the characteristics of the product.

§ 5.31 Misbranding.

Distilled spirits in bottles shall be deemed to be misbranded:

(a) If the bottle fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 5.30–5.41 and conforming to the general requirements specified herein.

(b) If the bottle or any label on the bottle, or any individual covering, carton, or other container of the bottle used for sale at retail, other than a shipping container, or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 5.30–5.41.

(c) If the bottle is in an individual covering, carton, or other container used for sale at retail, other than a shipping container, displaying thereon any written, printed, graphic, or other matter, other than the name and address of the manufacturer, importer, or person by whom bottled (and in addition the name and address of the person for whom bottled), and such individual covering, carton, or other container obscures the mandatory label information required to be stated and such individual covering, carton, or other container fails to reproduce on it, in the same manner, all information so obscured; or if any statement required by §§ 5.30–5.41 to appear upon the label, or upon such individual covering, carton, or other container of the bottle, is obscured in any other manner or is modified in any manner.

§ 5.32 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 5.33.

(2) Class and type, in accordance with § 5.34.

(3) Name and address, in accordance with § 5.35, except as provided in paragraph (b) of this section.

(b) On the brand label or on a separate label (back or front):

(1) In case of imported distilled spirits, name and address of importer, in accordance with § 5.35.

(2) In the case of distilled spirits bottled for the holder of a permit or a retailer, the name and address of the distiller, blender, or bottler, in accordance with § 5.35.

(3) In the case of imported distilled spirits, the country of origin in accordance with § 5.35.

(c) On a separate label (for the purpose of this part to be known as the Government label), in such manner and form as shall be prescribed by the Director:

(1) Alcoholic content, in accordance with § 5.36.

(2) Net Contents, in accordance with § 5.37.

(3) Artificial or excessive coloring or flavoring, in accordance with § 5.38.

(4) Percentage of neutral spirits and name of commodity from which distilled, or in case of continuously distilled neutral spirits or gin the name of the commodity only, in accordance with § 5.38.

(5) Age of whisky and straight whisky, respective percentages of whisky, straight whisky and neutral spirits, and type of cooperage, in accordance with § 5.39: *Provided*, That no label shall bear any statement relative to age or period of storage for any American whisky (other than corn whisky, straight corn whisky, blended corn whisky, and blends of straight corn whisky) produced on and after July 1, 1936, and prior to March 1, 1938, unless such whisky has been stored in a charred new oak container.

(6) State of distillation of domestic types of whisky and straight whisky, except blends, in accordance with § 5.35.

The mandatory information required by any of the subparagraphs of paragraph (c) of this section to be stated on a separate label may, if desired, reappear or be restated on the brand label, in which event there shall also reappear or be restated all information required to be stated in conjunction therewith by such separate subparagraph and the section to which such subparagraph refers. If it is desired, all of the mandatory information required by paragraph (c) of this section may appear on the brand label in lieu of a separate label.

§ 5.33 Brand names.

(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the Director finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least five years immediately preceding August 29, 1935; *Provided*, That if such trade name or brand is used, the designation of the product shall be qualified

by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 5.34 Class and type.

(a) The class and the type of the distilled spirits shall be stated in conformity with §§ 5.20–5.22 if defined in those sections. If the class is not so defined, then the class shall be stated in conformity with the trade understanding thereof, and if the type is not so defined, any reference to type shall be similarly stated, but no product shall be regarded as having a designation in conformity with trade understanding unless through established usage such product has become known to the trade and to the public under such designation. If the class is not defined in §§ 5.20–5.22, and there is no trade understanding as to the designation of the product, a distinctive or fanciful name, which shall be deemed the class designation for the purpose of these regulations, shall be stated on the brand label of the product. Notwithstanding the foregoing provisions of this section, the word "cordial" or "liqueur" need not be stated to indicate the class of distilled spirits which in fact are cordials or liqueurs, unless the Director finds that, without a designation of the class, the type designation is one which does not clearly indicate to the consumer that the product is a cordial or liqueur.

(b) Except as otherwise provided in this part a truthful and adequate statement of composition shall appear upon the brand label of any product which, in conformity with paragraph (a) of this section, bears a distinctive or fanciful name or a designation in accordance with trade understanding. In the case of products such as highballs, cocktails, and similar prepared specialties, bearing, in conformity with paragraph (a) of this section, trade designations which adequately indicate to the consumer the general character of the product, a statement of the classes and types of distilled spirits used in the manufacture thereof shall be deemed a sufficient statement of composition. No statement of composition is required to appear upon products bearing designations in accordance with trade understanding if such designation, through general and established usage, in itself adequately indicates to the consumer the composition of the product. No highball, cocktail or other prepared specialty shall bear a designation, whether through trade understanding or otherwise, which indicates that it is composed of a certain class or type of distilled spirits, unless, in fact, the distilled spirits used in its preparation conform to such class or type.

(c) On labels of cordials and liqueurs, the type of distilled spirits used for mixing or redistillation, and the percentage of each type thereof, may, but need not, be stated. Any such statement shall be substantially in accordance with the following examples: apricot liqueur, the distilled spirits used are all apricot brandy; cherry cordial, the distilled spirits used are all grape brandy; pineapple liqueur, the distilled spirits used are 30 percent distilled London dry gin, 70 percent neutral spirits.

(d) In the case of whisky (as defined in § 5.21(b)) and American type whisky produced on or after March 1, 1938, and in the case of brandy produced on or after July 1, 1941, which, in whole or in part, is treated with wood chips through percolation or otherwise, during distillation, rectification, or storage, there shall be stated as a part of the class and type designation the phrase "colored and flavored with wood chips": *Provided*, That this paragraph shall not be construed as authorizing the treatment of any of the types of corn whisky with charred wood chips.

(e) In the case of whisky (as defined in § 5.21, Class 2) produced in the United States on or after March 1, 1938, and stored in reused cooperage, which has been distilled at not exceeding 160° proof from a fermented mash of not less than 51 percent rye grain, corn grain, wheat grain, malted barley grain, or malted rye grain, respectively, there shall be stated as a part of the class and type designation, in uniform lettering not greater than one-half the size of such designation, "Distilled from rye (or bourbon, wheat, malt or rye malt) mash", as the case may be: *Provided, however*, That any product conforming to the standard of identity prescribed for one of the types of corn whisky (§ 5.21(b)(1), (4)(ii), (8), (9)) shall, notwithstanding the provisions of this paragraph, be designated in accordance with such standard.

(f) All distillates (other than neutral spirits) produced in a foreign country from a fermented mash of grain, and possessing the taste, aroma and characteristics generally attributed to whisky, and all mixtures thereof, bottled at not less than 80° proof, which are not of a type defined in Class 2, § 5.21 shall be deemed to be "whisky" and shall be so designated. In the case of mixtures of whisky, the component parts of which were distilled in more than one country, there shall be stated in direct conjunction with the class designation "whisky" a truthful and adequate statement of the composition of the product. In the case of any of the types of whisky defined in any of the subsections of § 5.21 Class 2 which contains any whisky or whiskies produced in a country other than that indicated by the type designation, there shall be stated on the government label the percentage of such whisky and the country of origin thereof. If any age or percentage statement is required under § 5.39 the statement herein required shall appear as a part of, or in direct conjunction with, such age and percentage statement. All whisky (other than American type whisky and blended Scotch type whisky) manufactured in Scotland, Ireland or Canada, shall be deemed to be Scotch, Irish or Canadian whisky, and shall be so designated, in conformity with § 5.21(b)(11), (12) and (13), unless the application of such designation to the particular product will result in consumer deception, or unless such a product is not entitled to such designation under the laws of the country in which manufactured.

§ 5.35 Name and address.

(a) *"Bottled by"*. On labels of domestic distilled spirits, there shall be stated the phrase "bottled by", immediately followed by the name (or trade name) of the bottler and the place where such distilled spirits are bottled. If the bottler is the actual bona fide operator of more than one distilled spirits plant engaged in bottling the same brand of distilled spirits, there may be stated immediately following the name (or trade name) of such bottler the addresses of the plants at which such product is bottled: *Provided*, That the State of distillation is stated as provided by paragraph (e) of this section: *Provided further:*

(1) That, where distilled spirits are bottled by or for the distiller thereof, there may be stated, in lieu of the phrase "bottled by", followed by the bottler's name (or trade name) and address, the phrase "distilled by", followed by the corporate name, or the trade name under which the particular spirits were distilled, or (except in the case of distilled spirits bottled in bond under section 5233, Internal Revenue Code) any trade name shown on the distiller's permit (covering the premises where the particular spirits were distilled), at the time the spirits were distilled, irrespective of the name under which they were actually distilled; and the address (or addresses) of the distiller;

(2) That, where distilled spirits are bottled by or for the rectifier thereof, there may be stated, in lieu of the phrase "bottled by", followed by the bottler's name (or trade name) and address, the phrases "blended by", "made by", "prepared by", "manufactured by", or "produced by" (whichever may be appropriate to the act of rectification involved), followed by the name (or trade name) under which the distilled spirits were rectified, and the address (or addresses) of the rectifier.

(b) *"Imported by."* (1) On labels of imported distilled spirits, bottled prior to importation, there shall be stated the words "imported by", "imported exclusively by", or a similar appropriate phrase, and immediately thereafter the name of the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

(2) On labels of imported distilled spirits bottled after importation by a person other than the person responsible for the importation, there shall be stated, in the manner and form prescribed above, the name and address of the person responsible for the importation, and in addition thereto the words "bottled by", and immediately thereafter, the name of the bottler and the place where bottled, except that if the distilled spirits are bottled in the United States for the person responsible for the importation there may be stated, in lieu of the above-required statements, the name and principal place of business in the United States of such person, immediately preceded by the phrase "imported by and bottled in the United States for" (or a similar appropriate phrase).

(3) On labels of imported distilled spirits bottled after importation by the person responsible for the importation, there shall be stated the words "imported and bottled by," "imported and bottled exclusively by," or a similar appropriate phrase, and immediately thereafter the name of such person and the address of the place where bottled or the address of such person's principal place of business.

(4) The statements provided for domestic distilled spirits by paragraph (a) of this section, if applicable, may, but need not, appear on labels of imported bottled distilled spirits, unless required by State or foreign law or regulation. If required by State or foreign law or regulation, they shall appear in accordance with the requirements thereof.

(c) *"Bottled for"*. In addition to the requirements of paragraphs (a) and (b) of this section, there may also be stated the name and address of the person for whom the distilled spirits are bottled, immediately preceded by the words "bottled for" or "distributed by", or other similar statement.

(d) *Post-office address*. The "place" stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, firm, or corporation, unless (1) such person or retailer is actively engaged in the conduct of an additional bona fide and actual alcoholic beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product.

(e) *State of distillation*. On labels of whisky and straight whisky there shall be stated the State of distillation of such whisky, if such whisky is not distilled in the State given in the address on the brand label. Notwithstanding the provisions of § 5.32(c), the statement of the State of distillation shall appear on the brand label in all cases where the Director finds that without such statement the label is misleading as to the State of actual distillation.

(f) *Country of origin*. On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form "Product of ------", the blank to be filled in with the name of the country of origin.

(g) *Trade names*. The trade name of any permittee appearing upon any label shall be identical with the name in which his basic permit is issued by the Assistant Regional Commissioner.

§ 5.36 Alcoholic content.

(a) The alcoholic content by proof shall be stated for distilled spirits except as provided in paragraph (b) of this section.

(b) The alcoholic content is percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Director from time to time.

§ 5.37 Net contents.

(a) The net contents of distilled spirits for which a standard of fill is prescribed in § 5.73(a) shall be stated in the same manner and form in which such standard of fill is set forth in said section.

(b) The net contents of distilled spirits for which no standard of fill is prescribed in § 5.73(a) shall be stated as follows:

(1) If one pint, one quart, or one gallon, the net contents shall be so stated.

(2) If less than a pint, the net contents shall be stated in fractions of a pint, or in fluid ounces.

(3) If more than a pint, but less than a quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than a quart, but less than a gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(c) All fractions shall be expressed in their lowest denomination.

(d) The net contents need not be stated on any label if the net contents are displayed by having the same blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the Director, on the sides, front, or back of the bottle, in letters and figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part. The letters and figures shall be not less than one-quarter inch in height, except in case of bottles having a capacity of less than one-half pint, in which case the letters and figures shall be of such size as to be readily legible under ordinary conditions.

§ 5.38 Presence of neutral spirits and coloring, flavoring, and blending materials.

(a) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "____% neutral spirits distilled from grain"; or "____% neutral spirits distilled from cane products"; or "____% neutral spirits distilled from fruit"; or "____% grain (cane products), (fruit) neutral spirits."

(b) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit."

(c) If the aggregate amount of coloring, blending, smoothing, or flavoring materials in any distilled spirits other than cordials, liqueurs, gin, gin fizzes, highballs, bitters, and such other specialties as may be specified by the Director from time to time, is in excess of 2½ percent by volume of the distilled spirits contained in the bottle, then the name and amount in percent by volume of each of such materials shall be stated.

(d) There shall be stated the words "artificially colored" on the label of any distilled spirits containing synthetic coloring materials, or natural materials, other than caramel, the primary contribution of which is color, as well as upon the label of any distilled spirits, the labeling of which is such as to convey the impression that the color of the product is derived from a given source, if such color is, in whole or in part, not so derived. In the case of distilled spirits to which no coloring material other than caramel has been added the words "colored with caramel" or a substantially similar statement may appear in lieu of the words "artificially colored": *Provided*, That no such statement shall be required by reason of the use of caramel in any brandy or rum or in any type of whisky other than straight whisky: *And provided further*, That where such statement would be required by reason of the use of natural flavoring materials solely, there may be stated in lieu of "artificially colored" a truthful and adequate statement of the source of the color, such as "color derived from (name of fruit, plant, etc., the name of which the product bears) and other fruits (plants, herbs, etc., or the name of such other fruits, plants, or herbs)": *And provided further*, That where such statement would be required solely by reason of the use of coloring materials which have been certified as suitable for use in foods by the Food and Drug Administration, there may be stated, in lieu of artificially colored, the phrase "certified color added".

(e) The presence of beading oil in any type of whisky shall be stated.

§ 5.39 Statements of age and percentage.

(a) *Statements of age and percentage for whisky*. Except in the case of straight whisky bottled under the Bottling in Bond Act of the United States and foreign or domestic whisky (whether or not mixed or blended but containing no neutral spirits) all of which is four years or more old, there shall be stated the following:

(1) In the case of whisky defined in § 5.21(b)(1), (11), (12), (13), if not mixed, the age of the whisky; if mixed, the age of the youngest whisky. The statement of age in both cases under this paragraph shall be substantially as follows: "This whisky is _____ (years and/or months) old."

(2) In the case of any of the types of straight whisky the age of the straight whisky. The statement of age in cases under this paragraph shall be substantially as follows: "This whisky is _____ (years and/or months) old."

(3) (i) In case of any of the types of blended whisky as defined in § 5.21(b)(7), (8), the age of the straight whisky

(or if there be two or more straight whiskies, then of the youngest thereof) and the age of the other whisky (or if there be two or more other whiskies, then of the youngest of such other whiskies) together with the percentage by volume of straight whisky, other whisky, and neutral spirits therein.

(ii) The statement of age in cases under this paragraph shall be as follows, in accordance with the ingredients used. If only one straight whisky and one other whisky is in the blend, the statement of age shall read: "The straight whisky in the product is _____ (years and/or months) old; _____ percent straight whisky, _____ percent whisky _____ (years and/or months) old" or "_____ percent straight whisky _____ (years and/or months) old, _____ percent whisky _____ (years and/or months) old." The age blanks shall be filled in with the respective ages of the straight whisky and the other whisky. If more than one straight whisky and more than one other whisky is in the blend, the statement of age shall read: "The straight whiskies in this product are _____ (years and/or months) or more old; _____ percent straight whisky, _____ percent whisky _____ (years and/or months) or more old; _____ per-percent straight whiskies _____ (years and/or months) or more old; _____ per-cent whisky _____ (years and/or months) or more old." The age blanks shall be filled in with the ages of the youngest straight whisky and the young-est of the other whiskies. If neutral spirits have been used in the blend, the statement thereof shall appear in im-mediate conjunction with the statement of age and percentage amounts of straight whisky and other whisky (if any) and shall be in the form required by § 5.38(a).

(iii) In addition (but not as a substi-tute for the foregoing required state-ments) a statement may be made of the ages and percentages of all of the straight whiskies in the blend. Such statements, if made, shall read "_____% straight whisky, _____ years old, _____% straight whisky, _____ years old, and ____% straight whisky, _____ years old." The age and percentage blanks shall be filled in with the respective ages and percentages of all of the straight whis-kies in the blend.

(4) If the product is a blend of straight whiskies, the age of the youngest straight whisky. The statement of age under this paragraph shall be as follows: "The straight whiskies in this product are____ (years and/or months) or more old." *Provided*, That, if the product is com-posed of 51 percent or more, but less than 100 percent, of one type of straight whisky and the class and type designa-tion contains a reference to this predom-inant type, the required statement shall contain a statement of the percentage of this predominant type in the product as follows:

The straight whiskies in this product are _____ (years and/or months) or more old, _____ percent straight _____ whisky, the blanks to be filled in with the appro-priate age, percentage and type state-ments. The blank shall be filled in with the age of the youngest straight whisky in the blend. In addition (but not as a substitute for the foregoing required statement) a statement may be made of the ages and percentages of all of the whiskies and straight whiskies in the blend. Such statements, if made, shall read: "____% straight whisky, _____ years old, _____ percent straight whisky, _____ years old, and ____% straight whisky, _____ years old." The age and percentage blanks shall be filled in with the respective ages and percentages of all of the straight whiskies in the blend.

(5) In the case of spirit whisky, the age of the whisky or straight whisky (or, if there be two or more whiskies or straight whiskies, then the age of the youngest whisky or straight whisky, or, if there be both whisky and straight whisky, then the age of the youngest whisky) together with the percentage by volume of the whisky or straight whisky and the percentage by volume of neutral spirits. Such statements shall be as fol-lows: "The whisky (straight whisky) in this product is __ (years and/or months) old; ____ percent whisky (or ____ percent straight whisky and, if there be other whisky or whiskies, ____ percent whisky) and ____ percent neutral spirits" (con-tinuing in accordance with the require-ments of § 5.38(a) to state the commod-ity from which the neutral spirits is derived). If there be more than one whisky or (if there be no whisky) more than one straight whisky in the product, the statement of age shall read: "The whiskies (straight whiskies) in this product are ____ (years and/or months) or more old" followed by the statement of percentages and of the commodity from which the neutral spirits is derived. In addition (but not as a substitute for the foregoing required statements) a statement may be made of the ages and percentages of all of the whiskies and straight whiskies in the product. Such statement, if made, shall be in the fol-lowing form: "____ percent straight whisky, _____ years old, _____ percent straight whisky, _____ years old, _____ percent whisky, ____ years old and ____ percent whisky, _____ years old." The age and percentage blanks shall be filled with the respective ages and percentages of each of the straight whiskies and whiskies in the product.

(6) In the case of imported American type whiskies (as defined in § 5.21, Class 9) the labels shall state the ages and percentages in the same manner and form as is required for the same type of whisky produced in the United States.

(7) In the case of straight whisky bot-tled under the Bottling in Bond Act of the United States and foreign or domes-tic whisky (whether or not mixed or blended but containing no neutral spirits) all of which is four years or more old, statements of age shall be optional but, if made, shall appear in the form specified for the appropriate class and type.

Notwithstanding the foregoing provi-sions of this paragraph, in the case of whisky (as defined in § 5.21(b), Class 2), produced in the United States on and after March 1, 1938, and stored in reused cooperage, there shall be stated in lieu of the words "* * * is _____ (years and/or months) old", the words "* * * stored _____ (years and/or months) in reused cooperage", and in lieu of the words "* * * _____ (years and/or months) or more old", the words "* * * stored _____ (years and/or months) or more in reused cooperage": *Provided*, That this paragraph shall not apply to "blended Scotch type whisky" or to any whisky properly contained therein.

(b) *Statements of age for rum and brandy.* (1) Age may, but need not, be stated on labels of rums and brandies: *Provided*, That an appropriate state-ment with respect to age shall appear on the brand label in case of brandy (other than immature brandies) not aged for a period of at least two years.

(2) If age is stated, it shall be sub-stantially as follows: "This rum is ____ years old;" "This brandy is ____ years old;" the blanks to be filled in with the age of the youngest distilled spirits in the product.

(c) *Statements of age and percentage for blended Scotch type whisky.* (1) (i) In the case of blended Scotch type whisky, there shall be stated the age of the malt whisky (or if there be two or more malt whiskies, the youngest there-of) and the age of the other whisky (or if there be two or more other whiskies, the youngest of such other whiskies) to-gether with the percentages by volume of the malt whisky and of the other whisky therein. The statement of ages and percentages shall be in the following form: "The malt whisky in this product is ____ (years and/or months) old; ____ percent malt whisky, ____ percent whisky, ____ (years and/or months) old" or, if more than one malt whisky or more than one other whisky is in the blend, the relevant portion of such statement shall read "The malt whiskies in this product are ____ (years and/or months) or more old" and "____ percent whisky ____ years and/or months) or more old", as the case may be.

(ii) In addition (but not as a substi-tute for the statement in (i) of this sub-paragraph) a statement may be made of the ages and percentages of all of the malt whiskies and whiskies in the prod-uct. Such statement, if made, shall be in the following form: "____ percent malt whisky, ____ years old; ____ per-cent malt whisky, ____ years old; ____ percent whisky, ____ years old; and ____ percent whisky, ____ years old." The age and percentage blanks shall be filled with the respective ages and percentages of each of the malt whiskies and whis-kies in the product.

(d) *Other distilled spirits.* Age, ma-turity, or similar statements or repre-sentations as to neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, bitters, and specialties are misleading and are prohibited from being stated on any label.

(e) *Miscellaneous age representations.* (1) If the age of any product for which age is required to be stated is in excess of 1 year, months in excess of a year may be omitted, and if the age is less than 1 month, the age shall be stated as "Less than one month" in lieu of "____ (years and/or months)."

(2) Age may be understated but may not be overstated.

(3) Any permissive additional state-ments as to age shall appear on the same labels as the required statements and only in direct conjunction therewith and in substantially the same size and kind of print. Any such additional permis-sive statements as to age not in direct conjunction with the required statements are prohibited, and all statements as to age other than the required statements, the additional permissive statements, and the optional statements for distilled spirits are prohibited. Additional per-missive age and percentage statements shall not be given prominence, either by position or color over required age and percentage statements.

(4) Variations in the form of the re-quired statements or the additional permissive statements as to age and per-centages are prohibited.

(5) If any age, maturity, or similar representation (including words or de-vices in any brand name or mark) is made relative to any distilled spirits (except neutral spirits, gin, liqueurs, cor-dials, vodka, cocktails, gin fizzes, high-balls, and bitters), the age shall also be stated on all labels where such represen-tation appears, and in script, type, or printing substantially as conspicuous as such representation: *Provided*, That the labels of such whiskies and brandies (ex-cept immature brandies) as are not re-quired to bear a statement of age on the label and the labels of rum which has been aged for not less than 4 years may contain general inconspicuous age, maturity or other similar representations even though the label does not bear the optional age statement. Age, maturity or similar representations as to neutral spirits, gin, liqueurs, cordials, vodka, cocktails, gin fizzes, highballs, and bit-ters, are misleading, and shall not appear upon any label, except that the use of the word "old" or other word denoting age, appearing as part of the brand name, shall not be deemed to be an age repre-sentation in the case of such distilled spirits, or in the case of distilled spirits bottled in bond under the Bottling in Bond Act of the United States, or in the case of whiskies and brandies (except immature brandies) as are not required to bear a statement of age on the label or in the case of rum which has been aged for not less than 4 years. As to all other distilled spirits the word "old" or other word denoting age, appearing as part of the brand name, shall be deemed to be an age representation unless the word "brand" appears in direct conjunction with such brand name in letters of equally conspicuous color and at least one-half the size of the type in which such brand name is printed.

§ 5.40 General requirements.

(a) *Contrasting background.* All la-bels shall be so designed that all the statements thereon required by §§ 5.30–5.41 are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* All statements re-quired on labels by §§ 5.30–5.41 shall be in readily legible script, type, or print-ing not smaller than 8-point Gothic caps, except that if contained among other descriptive or explanatory reading mat-ter, the script, type, or printing of all required material shall be of a size sub-stantially more conspicuous than such other descriptive or explanatory reading matter: *Provided*, That in the case of labels on bottles having a capacity of less than one-half pint, such script, type, or printing thereon need not be in 8-point Gothic caps, but shall be readily legible under ordinary conditions. All state-ments of the type of distilled spirits shall be in script, type, or printing substan-tially as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(c) *English language.* All the require-ments of §§ 5.30–5.41 shall be stated on all labels in the English language: *Pro-vided*, That the brand name, the place of production, and the name of the pro-ducer appearing on labels need not be in the English language if the words "product of" immediately precede the name of the country in which the dis-tilled spirits were produced in accordance with customs requirements. Additional statements in foreign languages may be made on labels, if no such statements conflict with, or are contradictory to, the requirements of §§ 5.30–5.41. Labels on bottles of distilled spirits bottled for con-sumption within Puerto Rico may, if desired, state the information required by §§ 5.30–5.41 solely in the Spanish lan-guage in lieu of the English language, ex-cept that the net contents, and if an imitation, the word "imitation" shall also be stated in the English language.

(d) *Location of label.* No label other than stamps authorized or required by the United States Government or any other government, shall be affixed over the mouths of bottles of distilled spirits, and no label shall obscure any govern-ment stamp or be obscured thereby, or obscure any markings or information re-quired to be blown in the bottle by regu-lations of the Secretary of the Treasury.

(e) *Labels firmly affixed.* All labels shall be affixed to bottles of distilled spir-its in such manner that they cannot be removed without thorough application of water or other solvents.

(f) *Additional information on labels.* Labels (other than the label to be known for the purposes of this part as the gov-ernment label) may contain information other than the mandatory label infor-mation required by §§ 5.30–5.41, provided such information complies with the re-quirements of §§ 5.30–5.41, and does not conflict with, nor in any manner qualify, statements required by any regulations promulgated under the act.

(g) *Representations as to materials.* If any representation (other than rep-resentations or information required by §§ 5.30–5.41) is made as to the presence, excellence, or other characteristic of any ingredient in any distilled spirits, or used in the production thereof, the label con-taining such representation shall state in print, type, or script, substantially as conspicuous as such representation, the name and amount in percent by volume of each such ingredient, except that percentages of whisky, where stated, shall be stated as provided in § 5.39. If only a portion of the materials used is of such higher grade, then the percentage thereof that is of such higher grade shall be stated in direct conjunction with such statement, in print, type, or script, sub-stantially as conspicuous as that used in connection with such statement.

(h) *Contents of bottles.* Upon request of the Director or Assistant Regional Commissioner there shall be submitted to him a full and accurate statement of the contents of the bottles to which labels are to be or have been affixed.

§ 5.41 Prohibited practices.

(a) *Statements on labels.* Bottles containing distilled spirits, or any labels on such bottles, or any individual cover-ing, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the con-sumer shall not contain:

(1) Any statement that is false or un-true in any particular or that, irrespec-tive of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical mat-ter, tends to create a misleading impres-sion. Examples of such prohibited statements are:

(i) Reproductions of medals or fac-similes of awards, when no medals or awards have been given for the par-ticular product.

(ii) The statement that the product is "100% straight whiskies," when in fact the product is less than 100 proof.

(iii) The statement that "Fine fla-vored, genuine bourbon whisky is made only in Kentucky."

(iv) Domestic products containing the statement "Furnished to His Majesty, the King of _____."

(v) "Due to our method of storage, this product ages in half the time."

(vi) "This whisky is two months old. Due to our special aging process, how-ever, it has the taste and characteristics of a much older whisky."

(vii) "This whisky is four months old. Due to our special manufacturing proc-esses, this whisky has all the character-istics of a one year old whisky."

(viii) "Distilled from a scientifically controlled fermentation under labora-tory control."

(2) Any statement that is disparaging of a competitor's products. Examples of such prohibited statements are:

(i) "Contains no neutral spirits or alcohol."

(ii) "Matured naturally—not heat treated."

(iii) "Not a compound, but a delicious distilled dry gin."

(iv) "Should not be confused with im-itations that are made from neutral spirits."

(v) "Contains no headaches."

(3) Any statement, design, device, or representation which is obscene or in-decent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer. Examples of such statements are:

(i) "From 20 to 30 scientific deter-minations are required for each bottle tested."

(ii) "Analyzed by State laboratories and found to be pure and free from deleterious ingredients."

(iii) "Chemical analysis shows this whisky to contain the flavoring, aroma, and other characteristics of four year old whisky," when in fact such whisky is less than 4 years old.

(iv) "Before bottling it is subjected to the most rigid tests for its taste, bouquet, and aroma, by our technical staff, signed _____, B. Ch. E."

(v) The statement that "The _____ Laboratories, recognized expert authority, tests and judges _____ products."

(vi) The statement "Tested and approved," signed by The _____ Research Institute.

(vii) The statement "Tasted and tested to assure the highest quality flavoring and freedom from deleterious ingredients."

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Director finds to be likely to mislead the consumer. Nothing in this part shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

_____."

(Blank to be filled in with the name of the permittee making guaranty)

Examples of such statements are:

(i) "Guaranteed to consumer by _____."

(ii) "Warranted to be the best product in its price range."

(iii) "Certified to be pure and free from deleterious matter."

(iv) "Guaranteed to be ten years old."

(v) "Guaranteed to be distilled in the State of _____."

(vi) "Attested to be made by modern, scientific manufacturing processes."

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbrevation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided*, That this subparagraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Simulation of Government stamps, etc.* (1) No label shall be of such design as to resemble or simulate a stamp of the United States Government or any State or foreign Government. No label, other than stamps authorized or required by this or any other Government, shall state or indicate that the distilled spirits contained in the labeled bottle are distilled, blended, made, bottled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulations, unless such statement is required or specifically authorized by Federal, State, or municipal law or regulations, or is required or specifically authorized by the laws or regulations of a foreign country. If the municipal, State, or Federal government permit number is stated upon a label, it shall not be accompanied by any additional statement relating thereto.

(2) If imported distilled spirits are covered by a certificate of origin or of age issued by a duly authorized official of the appropriate foreign government, the label, except where prohibited by the foreign government, may refer to such certificate or the fact of such certification, but shall not be accompanied by any additional statement relating thereto. The reference to such certificate or certification shall, in the case of Cognac, be substantially in the following form: "This product accompanied at the time of importation by an 'Acquit Regional Jaune d'Or' issued by the French Government, indicating that this grape brandy was distilled in the Cognac Region of France"; and in the case of the other distilled spirits, substantially in the following form: "This product accompanied at time of importation by a certificate issued by the _____ government (name of government) indicating that the product is _____ (class and type as required to be stated on the label), and (if label claims age) that none of the distilled spirits are of an age less than stated on this label."

(3) The words "bond", "bonded", "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of domestic distilled spirits unless such distilled spirits were in fact bottled in bond under the Bottling in Bond Act of the United States.

(4) The words "bond," "bonded," "bottled in bond," "aged in bond," or phrases containing these or synonymous terms, shall not be used on any label or as part of the brand name of imported distilled spirits unless such distilled spirits, as to proof and age, and in all other respects, meet the requirements applicable to distilled spirits bottled for domestic consumption, under the Bottling in Bond Act of the United States (26 U.S.C. 5205, 5233) and unless the laws and regulations of the country in which such distilled spirits are produced authorize the bottling of distilled spirits in bond and require or specifically authorize such distilled spirits to be so labeled. All spirits labeled as "bonded," "bottled in bond," or "aged in bond" pursuant to the provisions of this subparagraph shall bear in direct conjunction with such statement and in script, type or printing substantially as conspicuous as that used on such statement, the name of the country under whose laws and regulations such distilled spirits were so bottled.

(c) *Use of word "pure."* The word "pure" shall not be stated in any manner on any labels, except as part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled.

(d) *Use of "double distilled" or similar terms.* No gin or other distilled spirits shall be labeled as "double distilled" or "triple distilled," or any similar term.

(e) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the Director finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(f) *Curative and therapeutic effects.* Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

(g) *Individual coverings and cartons.* Individual coverings, cartons, or other containers of bottled distilled spirits, or any written, printed, graphic, or other matter accompanying the bottle shall not contain any statement or any graphic, pictorial, or emblematic representation or other matter which is prohibited from appearing on any label or bottle of distilled spirits.

Subpart E—Requirements for Withdrawal From Customs Custody of Bottled Imported Distilled Spirits

§ 5.45 Label approval and release.

(a) *Application.* On or after August 15, 1936, bottled distilled spirits shall not be released from customs custody for consumption, except pursuant to procedure and form prescribed by §§ 5.45, 5.46.

(b) *Certificate of label approval.* No bottled distilled spirits shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry the original or a photostatic copy of a "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649). Such certificate shall be issued by the Director upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.* If the original or photostatic copy of the "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649) bears the signature of the Director, then the brand or lot of bottled distilled spirits bearing labels identical with those shown thereon may be released from customs custody.

(d) *Relabeling.* Distilled spirits in customs custody which are not labeled in conformity with certificates of label approval issued by the Director must be relabeled prior to release, under the supervision and direction of the customs officers of the port at which such distilled spirits are located.[1]

§ 5.46 Certificates of age and origin.

(a) Scotch, Irish, and Canadian whiskies, in bottles, whether blended or unblended, imported on or after August 15, 1936, shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian Governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whisky for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If the label of any Scotch, Irish, or Canadian whisky, whether blended or unblended, imported in bottles on or after August 15, 1936, contains any statement of age for Scotch or Irish whisky in excess of 3 years, or Canadian whisky in excess of 2 years, the whisky shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying that none of the distilled spirits in the bottle are of an age less than that stated on the label. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers.

(c) If the label of any rum, brandy, or cognac, imported in bottles on or after August 15, 1936, contains any statement of age, the rum, brandy, or cognac shall not be released from customs custody unless accompanied by a certificate issued by a duly authorized official of the government of the foreign country in which the rum, brandy, or cognac was produced, certifying that none of the distilled spirits in the product are of an age less than that stated on the label. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Cognac in bottles, imported on or after August 15, 1936, shall not be released from customs custody unless the invoice is accompanied by a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) Whisky (as defined in § 5.21(b)) and American type whiskies, imported on or after August 15, 1936, shall not be released from customs custody in bottles unless there is presented at the time of entry or at the time of request for release, a certificate issued by a duly authorized official of the appropriate foreign government certifying:

(1) In case of straight whisky, (i) the class and type (such as straight whisky, straight rye whisky, straight bourbon whisky, etc.) thereof, (ii) the American proof at which distilled, (iii) that no neutral spirits or other whisky has been added as a part thereof or included therein, whether or not for the purpose of replacing outage, (iv) the age of the whisky, and (v) the type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(2) In case of whisky and the distinctive types of whisky, (i) the class and type (such as whisky, rye whisky, bourbon whisky, etc.), (ii) the American proof at which distilled, (iii) that no neutral spirits has been added as a part thereof or included therein, whether or not, for the purpose of replacing outage, (iv) the age of the whisky, and (v) the type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(3) In case of blended whisky, (i) the class and type (such as blended whisky, blended rye whisky, blended bourbon whisky, etc.), (ii) the percentage of straight whisky, or any distinctive type thereof, used in the blend, (iii) the American proof at which the straight whisky was distilled, (iv) the percentage of other whisky, if any, in the blend, (v) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled, (vi) the age of the straight whisky and the age of the other whisky, if any, in the blend, and (vii) the type of containers in which such age or ages were acquired (whether new or re-used, also whether charred or uncharred).

(e) Distilled spirits (other than Scotch, Irish and Canadian whiskies, and Cognac) in bottles shall not be released from customs custody for consumption unless the invoice is accompanied by a certificate of origin issued by a duly authorized official of the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits has been authorized by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

Subpart F—Requirements for Approval of Labels of Domestically Bottled Distilled Spirits

§ 5.50 Certificates of label approval.

(a) No person shall bottle distilled spirits, other than distilled spirits in customs custody, or remove such spirits from his distilled spirits plant unless upon application to the Director he has obtained, and has in his possession, a "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), covering such distilled spirits. Such certificate of label approval shall be issued by the Director upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), properly filled out and certified to by the permittee.

(b) Any bottler of distilled spirits shall be exempt from the requirements of §§ 5.50–5.51 if upon application he shows to the satisfaction of the Director that the distilled spirits to be bottled by him are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. A "Certificate of Exemption from Label Approval under the Federal Alcohol Administration Act" (Form 1650) shall be issued by the Director upon application made on the form designated "Application for Certificate of Exemption from Label Approval under the Federal Alcohol Administration Act" (Form 1648), properly filled out and certified to by the permittee.

§ 5.51 Certificates of age and origin.

(a) Scotch, Irish, and Canadian whiskies, whether blended or unblended, imported in bulk on or after August 15, 1936, and bottled in the United States, shall not be labeled as Scotch, Irish, or Canadian whiskies respectively, unless the bottler possesses a certificate of origin issued by a duly authorized official of the British, Irish, or Canadian governments, certifying (1) that the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be, (2) that the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of the whisky for home consumption, and (3) that the product conforms to the requirements of the Immature Spirits Act of such foreign government for spirits intended for home consumption.

(b) If any Scotch, Irish, or Canadian whisky, whether blended or unblended, is imported in bulk on or after August 15, 1936, and bottled in the United States, no statement shall appear on the label thereof representing the age of such Scotch or Irish whisky to be in excess of 3 years, or Canadian whisky in excess of 2 years, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such distilled spirits issued by a duly authorized official of the appropriate foreign government certifying as to age of such whisky. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers.

(c) If any rum or brandy is imported in bulk on or after August 15, 1936, and bottled in the United States, no statement of age shall appear on the labels of such rum or brandy, unless the permittee authorized to bottle such distilled spirits possesses a certificate issued by a duly

[1] Copies of Form 1649 may be secured from the Assistant Regional Commissioners, Alcohol and Tobacco Tax.

authorized official of the government of the foreign country in which the rum or brandy was produced, certifying as to the age of such rum or brandy. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been kept in oak containers. Brandy imported in bulk on or after August 15, 1936, and bottled in the United States, shall not be labeled as "Cognac" unless the permittee authorized to bottle such distilled spirits possesses a certificate issued by a duly authorized official of the appropriate foreign government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as "Cognac" by the laws and regulations of the French Government.

(d) Distilled spirits imported in bulk on or after August 15, 1936, and bottled in the United States with or without taxable rectification, shall not be labeled as whisky (as defined in § 5.21(b)), or as any type of American whisky, unless the permittee authorized to bottle such distilled spirits possesses a certificate for such whisky issued by a duly authorized official of the appropriate foreign government certifying:

(1) In case of straight whisky: (i) the class and type (such as straight whisky, straight rye whisky, straight bourbon whisky, etc.) thereof; (ii) the American proof at which distilled; (iii) that no neutral spirits or other whisky has been added as a part thereof or included therein, whether or not for the purpose of replacing outage; (iv) the age of the whisky; and (v) the type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(2) In case of whisky and the distinctive types of whisky: (i) the class and type (such as whisky, rye whisky, bourbon whisky, etc.); (ii) the American proof at which distilled; (iii) that no neutral spirts has been added as a part thereof or included therein, whether or not for the purpose of replacing outage; (iv) the age of the whisky; and (v) the type of container in which such age was acquired (whether new or re-used, also whether charred or uncharred);

(3) In case of blended whisky: (i) the class and type (such as blended whisky, blended rye whisky, blended bourbon whisky, etc.); (ii) the percentage of straight whisky, or any distinctive type thereof, used in the blend; (iii) the American proof at which the straight whisky was distilled; (iv) the percentage of other whisky, if any, in the blend; (v) the percentage of neutral spirits, if any, in the blend, and the name of the commodity from which distilled; (vi) the age of the straight whisky and the age of the other whisky, if any, in the blend; and (vii) the type of containers in which such age or ages were acquired (whether new or re-used, also whether charred or uncharred); and unless the labels are in all particulars consistent with the facts stated in the certificate.

(e) Distilled spirits (other than Scotch, Irish and Canadian whiskies, and Cognac) imported in bulk may not be bottled in the United States unless the bottler possesses a certificate of origin issued by a duly authorized official of the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits has been authorized by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

§ 5.52 Exhibiting certificates to Government officials.

Any bottler holding an original or duplicate original of a certificate of label approval or a certificate of exemption, shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government.

§ 5.53 Photoprints.

Photoprints or other reproductions of certificates of label approval or certificates of exemption are not acceptable, for the purposes of this article, as substitutes for an original or duplicate original of a certificate of label approval, or a certificate of exemption. The Director will, upon request of the bottler, issue duplicate originals of certificates of label approval or certificates of exemption if distilled spirits under the same brand are bottled at more than one plant by the same permittee, and if the necessity for the duplicate original is shown and there is listed with the Director the name and address of the additional bottling plant where the particular label is to be used.

Subpart G—Advertising of Distilled Spirits

§ 5.60 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 5.60–5.64: *Provided*, That such sections shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising: *And provided further*, That §§ 5.60–5.64 shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler of distilled spirits, directly or indirectly, or through an affiliate.

§ 5.61 Definitions.

As used in §§ 5.60–5.64, the term "advertisement" includes any advertisement of distilled spirits through the medium of radio broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail; except that such term shall not include:

(a) Any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under §§ 5.30–5.41.

(b) Any editorial or other reading matter in any periodical or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

§ 5.62 Mandatory statements.

(a) *Responsible advertiser.* The advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class and type.* The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) *Alcoholic content.* (1) The alcoholic content by proof shall be stated for distilled spirits except as otherwise provided in subparagraph (2) of this paragraph.

(2) The alcoholic content in percentage by volume or by proof shall be stated for cordials and liqueurs, and gin fizzes, cocktails, highballs, bitters, and such other specialties as may be specified by the Director from time to time.

(d) *Percentage of neutral spirits and name of commodity.* (1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "____% neutral spirits distilled from grain"; or "___% neutral spirits distilled from cane products"; or "___% neutral spirits distilled from fruit"; or "___% grain, (cane products), (fruit), neutral spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "Distilled from grain", or "Distilled from cane products", or "Distilled from fruit."

§ 5.63 Lettering.

Statements required under §§ 5.60–5.64 to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

§ 5.64 Prohibited statements.

(a) *Restrictions.* An advertisement of distilled spirits shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Director finds to be likely to mislead the consumer. Nothing in this section shall prohibit the use of an enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

_____ "

(Blank to be filled in with name of the permittee making guaranty.)

(6) Any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, State or Federal authorization, law, or regulation; and if a municipal, State or Federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) The words "bond", "bonded", "bottled in bond", "aged in bond", or phrases containing these or synonymous terms, unless such words or phrases appear, pursuant to §§ 5.30–5.41 upon the labels of the distilled spirits advertised, and are stated in the advertisement in the manner and form in which they are required to appear upon the label.

(8) The word "pure" except as part of the bona fide name of a permittee or a retailer for whom the distilled spirits are bottled.

(9) The terms "double distilled", "triple distilled", or any similar term.

(b) *Statements inconsistent with labeling.* The advertisement shall not contain any statement concerning a brand or lot of distilled spirits that is inconsistent with any statement on the labeling thereof.

(c) *Statements of age.* The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required to be made on the label under the provisions of §§ 5.30–5.41. An advertisement for any whisky or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum which has been aged for not less than 4 years may, however, contain general inconspicuous age, maturity or other similar representations even though the optional age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) *Curative and therapeutic effects.* The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(e) *Place of origin.* The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) *Confusion of brands.* Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of this article or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

Subpart H—Standards of Fill for Bottled Distilled Spirits

§ 5.70 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with §§ 5.70–5.74. Distilled spirits domestically bottled prior to January 1, 1935, and imported distilled spirits entered in customs bond in bottles prior to March 1, 1935, shall be regarded as being in conformity with §§ 5.70–5.74.

(a) if the bottle, or the label on the bottle, contains a conspicuous statement of the net contents thereof, and (b) if the actual capacity of the bottle is not substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

§ 5.71 Misbranding.

Distilled spirits shall be deemed to be misbranded:

(a) If the bottle is not a standard liquor bottle as prescribed by § 5.72 for such distilled spirits.

(b) If the amount of the distilled spirits contained in the bottle does not conform to one of the standards of fill in effect therefor under § 5.73.

(c) If the bottle is in an individual carton or other container, and the carton or other container is so made or formed as to mislead purchasers as to the size of the bottle.

§ 5.72 Standard liquor bottles.

(a) *General.* A standard liquor bottle shall be one so made, formed and filled as not to mislead the purchaser.

(b) *Size.* A liquor bottle shall be held to be so filled as to mislead the purchaser if the bottle holds distilled spirits in an amount other than one of the standards of fill in effect therefor under § 5.73.

(c) *Headspace.* A liquor bottle of a capacity of one-half pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(d) *Design.* A liquor bottle shall be held (irrespective of the correctness of the net contents specified on the label) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

§ 5.73 Standards of fill.

(a) The standards of fill for distilled spirits in liquor bottles shall be the following, subject to the tolerances allowed in this section:

(1) For all distilled spirits, whether domestically manufactured, domestically bottled, or imported:

1 gallon	1 pint
½ gallon	½ pint
1 quart	⅛ pint
⅘ quart	1/10 pint

(2) In addition, for brandy, whether domestically manufactured, domestically bottled, or imported: 1/16 pint.

(3) In addition, for Scotch and Irish whisky and Scotch and Irish type whisky, and for brandy and rum: ⅘ pint.

(b) The following tolerances shall be allowed:

(1) Discrepancies due exclusively to erors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due exclusively to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles so as to be of uniform capacity: *Provided*, That no greater tolerance shall be al-

lowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

§ 5.74 Vintage spirits, cordials and liqueurs, and specialties.

Sections 5.70–5.74 shall not apply to:

(a) Distilled spirits imported as vintage spirits under permit issued by an Assistant Regional Commissioner pursuant to 26 CFR Part 175.

(b) Cordials and liqueurs, and cocktails, highballs, gin fizzes, bitters, and such other specialties as are specified from time to time by the Director.

GENERAL PROVISIONS

§ 5.80 Exports.

The regulations in this part shall not apply to distilled spirits for export.

§ 5.81 Applicability of other regulations.

Nothing contained in this part shall be construed as, in any manner relieving any person from conforming with the requirements of 26 CFR Part 175.

PART 6—INDUCEMENTS FURNISHED TO RETAILERS

Subpart A—Scope of Regulations

Sec.
6.1 Inducements furnished to retailers.
6.2 Territorial extent.

Subpart B—Definition

6.10 Meaning of terms.

Subpart C—Unlawful Inducements and Exceptions

UNLAWFUL INDUCEMENTS

6.20 Application.

EXCEPTIONS

6.21 General.
6.22 Equipment.
6.23 Inside signs: wine and malt beverages.
6.23a Inside signs: distilled spirits.
6.24 Supplies.
6.25 Coil cleaning service.
6.26 Advertising service.
6.27 Consumer advertising specialties.
6.28 Retailer advertising specialties.
6.29 Samples.
6.30 Newspaper cuts.
6.31 Merchandise.

AUTHORITY: §§ 6.1 to 6.31 issued under 49 Stat. 981, as amended; 27 U.S.C. 205.

Subpart A—Scope of Regulations

§ 6.1 Inducements furnished to retailers.

The regulations in this part, issued pursuant to section 5 of the Federal Alcohol Administration Act (27 U.S.C. 205), contain the substantive requirements relative to the furnishing of inducements to retailers of distilled spirits, wine and malt beverages. No procedural requirements are prescribed.

§ 6.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

Subpart B—Definitions

§ 6.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meanings ascribed in this subpart.

(a) *Retailer.* "Retailer" shall mean any person engaged in the sale of distilled spirits, wine or malt beverages to consumers.

(b) *Retail establishment.* "Retail establishment" shall mean any premises where distilled spirits, wine or malt beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.

(c) *Industry member.* "Industry member" shall mean any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, but shall not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

(d) *Product.* "Product" shall mean distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

(e) *Other terms.* Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by such act.

Subpart C—Unlawful Inducements and Exceptions

UNLAWFUL INDUCEMENTS

§ 6.20 Application.

Except as provided in this part, it is unlawful for any industry member to induce, by furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other thing of value, directly or indirectly or through an affiliate, any retailer to purchase any products from such industry member to the exclusion in whole or in part of such products sold or offered for sale by other industry members in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such industry member engages in the practice of using such means to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder, or restrict other industry members from selling or offering for sale any such products to such retailer in interstate or foreign commerce: *Provided,* That in the case of malt beverages, this part shall apply to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5 (b) of the Federal Alcohol Administration Act (27 U.S.C. 205(b)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be: *Provided further,* That this part shall not operate to exempt any person from the requirements of any State law or regulation.

EXCEPTIONS

§ 6.21 General.

An industry member may furnish to a retailer, under the conditions and within the limitations prescribed, the equipment, signs, supplies, services, or other things of value specified in §§ 6.22–6.31: *Provided,* That such furnishing is not conditioned directly or indirectly on the purchase of distilled spirits, wine, or malt beverages.

§ 6.22 Equipment.

Tapping accessories, such as rods, vents, taps, hoses, washers, couplings, vent tongues, and check valves may be sold to a retailer and installed in his establishment if such tapping accessories are sold at a price not less than the cost thereof to the industry member selling the same, and if the price thereof is collected within 30 days of the date of sale.

§ 6.23 Inside signs: wine and malt beverages.

Signs, posters, placards, designs, devices, decorations or graphic displays, bearing advertising matter and for use in the windows or elsewhere in the interior of a retail establishment, may be given, rented, loaned, or sold to a retailer by an industry member engaged in business as a rectifier, blender, producer, bottler, importer or wholesaler, of wine, or as a brewer, importer or wholesaler, of malt beverages, if they have no value to the retailer except as advertisements and if the total value of all such materials furnished by any industry member and in use at any one time in any retail establishment does not exceed $10, including all expenses incurred directly or indirectly by any industry member in connection with the purchase, manufacture, transportation, assembly, and installation of such materials and of accessories thereto: *Provided,* That the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation.

§ 6.23a Inside signs: distilled spirits.

Signs, posters, placards, designs, devices, decorations or graphic displays, bearing advertising matter and for use in the windows or elsewhere in the interior of a retail establishment, may be given, rented, loaned, or sold to a retailer by an industry member engaged in business as a distiller, rectifier, blender, producer, importer, wholesaler, bottler, or warehouseman and bottler, of distilled spirits, (a) if they have no value to the retailer except as advertisements, (b) if the total value of all such materials furnished by any industry member and in use in any one retail establishment at any one time does not exceed $15 in the case of materials used in window displays, or does not exceed $30 in the case of materials used elsewhere than in the windows, and (c) if the cost of installation of such materials does not exceed that which is usual and customary in that locality: *Provided,* That the industry member shall not directly or indirectly pay or credit the retailer for displaying such materials or for any expense incidental to their operation.

§ 6.24 Supplies.

Carbonic acid gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price thereof in the locality where sold, and if the price thereof is collected within 30 days of the date of sale.

§ 6.25 Coil cleaning service.

Coil cleaning service may be furnished, given, or sold to a retailer of malt beverages.

§ 6.26 Advertising service.

The names and addresses of retailers selling the products of any industry member may be listed in an advertisement of such industry member, if such listing is the only reference to any retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole.

§ 6.27 Consumer advertising specialties.

Consumer advertising specialties, such as ash trays, bottle or can openers, corkscrews, paper shopping bags, matches, printed recipes, wine lists, leaflets, blotters, post cards, and pencils, which bear advertising matter, may be furnished, given, or sold to a retailer for unconditional distribution by him to the general public, if the retailer is not paid or credited in any manner directly or indirectly for such distribution service.

§ 6.28 Retailer advertising specialties.

Retailer advertising specialties, such as trays, coasters, beer mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, tap markers, thermometers, clocks, and calendars, which bear advertising matter, and which are primarily valuable to the retailer as point of sale advertising media, may be furnished, given, or sold to a retailer if the aggregate cost to any industry member of such retailer advertising specialties furnished, given, or sold in connection with any one retail establishment in any one calendar year does not exceed $10.

§ 6.29 Samples.

Not more than 2 gallons of any brand of malt beverages, not more than 1 pint of any brand of distilled spirits, and not more than 1 gallon of any brand of wine, may be furnished or given as a sample to a retailer who has not previously purchased that particular product: *Provided,* That 2 quarts of any brand of distilled spirits may be furnished or given as a sample to any agency of a State or political subdivision thereof which has not purchased that particular product.

§ 6.30 Newspaper cuts.

Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements, may be furnished, given, rented, loaned, or sold by an industry member to a retailer selling his products.

§ 6.31 Merchandise.

Merchandise, such as groceries and drugs, may be sold to a retailer, without limit as to quantity or value, by an industry member who is also engaged in business as a bona fide vendor of such merchandise, if such merchandise is sold in accordance with the reasonable open market price thereof in the locality where sold, and if such merchandise is not sold in combination with distilled spirits, wine, or malt beverages and is itemized separately on the industry member's invoices and other records: *Provided,* That equipment, fixtures, signs, supplies, and consumer and retailer advertising specialties may be furnished only as provided elsewhere in this part.

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Subpart A—Scope

Sec.
7.1 General.
7.2 Territorial extent.

Subpart B—Definitions

7.10 Meaning of terms.

Subpart C—Labeling Requirements for Malt Beverages

7.20 General.
7.21 Misbranding.
7.22 Mandatory label information.
7.23 Brand names.
7.24 Class and type.
7.25 Name and address.
7.26 Alcoholic content.
7.27 Net contents.
7.28 General requirements.
7.29 Prohibited practices.

Subpart D—Requirements for Withdrawal of Imported Malt Beverages From Customs Custody

7.30 Application.
7.31 Label approval and release.

Subpart E—Requirements for Approval of Labels of Malt Beverages Domestically Bottled or Packed

7.40 Application.
7.41 Certificates of label approval.
7.42 Exhibiting certificates to Government officials.

Subpart F—Advertising of Malt Beverages

7.50 Application.
7.51 Definitions.
7.52 Mandatory statements.
7.53 Legibility of requirements.
7.54 Prohibited statements.

Subpart G—General Provisions

7.60 Exports.

AUTHORITY: §§ 7.1 to 7.60 issued under 49 Stat. 981, as amended; 27 U.S.C. 205.

CROSS REFERENCES: Other regulations relating to this part are as follows:

27 CFR, Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act.
27 CFR, Part 4—Labeling and Advertising of Wine.
27 CFR, Part 5—Labeling and Advertising of Distilled Spirits.
26 CFR, Part 200—Rules of Practice in Permit Proceedings.
26 CFR, Part 245—Beer.
26 CFR, Part 250—Liquors and Articles From Puerto Rico and the Virgin Islands.
26 CFR, Part 251—Importation of Distilled Spirits, Wines and Beers.

Subpart A—Scope

§ 7.1 General.

The regulations in this part relate to the labeling and advertising of malt beverages.

§ 7.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

Subpart B—Definitions

§ 7.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this subpart.

(a) *Act.* "Act" means the Federal Alcohol Administration Act.

(b) *Assistant Regional Commissioner.* "Assistant Regional Commissioner" shall mean the assistant regional commissioner, alcohol and tobacco tax, who is responsible to and functions under the direction and supervision of the Regional Commissioner.

(c) *Director.* "Director" shall mean the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington, D.C.

(d) *Malt beverage.* "Malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

(e) *Container.* "Container" means any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. The term "bottler" means any person who places malt beverages in containers of a capacity of 1 gallon or less; and the term "packer" means any person who places malt beverages in containers of a capacity in excess of 1 gallon.

(f) *Gallon.* "Gallon" means United States gallon of 231 cubic inches of malt beverages at 39.2° F. (4° C.). All other liquid measures used are subdivisions of the gallon as so defined.

(g) *Brand label.* "Brand label" means the label carrying, in the usual distinctive design, the brand name of the malt beverage.

(h) *United States.* "United States" means the several States and Territories and the District of Columbia; the term "State" includes a Territory and the District of Columbia; and the term "Territory" means Puerto Rico.

(i) *Interstate commerce.* "Interstate or foreign commerce" means commerce between any State and any place outside thereof, or commerce within any Ter-

ritory or the District of Columbia, or between points within the same State but through any place outside thereof.

(j) *Person.* "Person" means any individual, partnership, joint-stock company, business trust, association, corporation, or other form of business enterprise, including a receiver, trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision thereof.

(k) *Any other term used.* Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the same meaning assigned to it by such act.

Subpart C—Labeling Requirements for Malt Beverages

§ 7.20 General.

(a) *Application.* Sections 7.20–7.29 shall apply to malt beverages sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the law of such State imposes similar requirements with respect to the labeling of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.

(b) *Marking, branding, and labeling.* No person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, shall sell or ship, or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody any malt beverages in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with §§ 7.20–7.29. Malt beverages domestically bottled or packed prior to December 15, 1936, and imported malt beverages entered in customs bond in containers prior to that date shall be regarded as being packaged, marked, branded, and labeled in accordance with §§ 7.20–7.29, if the labels on such malt beverages (1) bear all the mandatory label information required by § 7.22, even though such information is not set forth in the manner and form as required by § 7.22 and other sections of this part referred to therein, and (2) bear no statements, designs, or devices which are false or misleading.

(c) *Alteration of labels.* (1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law: *Provided,* That the Assistant Regional Commissioner may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of §§ 7.20–7.29 or of State law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

§ 7.21 Misbranding.

Malt beverages in containers shall be deemed to be misbranded:

(a) If the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by §§ 7.20–7.29 and conforming to the general requirements specified in this part.

(b) If the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 7.20–7.29.

(c) If the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a brewer, wholesaler, bottler, or importer, of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

§ 7.22 Mandatory label information.

There shall be stated:

(a) On the brand label:

(1) Brand name, in accordance with § 7.23.

(2) Class, in accordance with § 7.24.

(3) Name and address (except when branded or burned in the container) in accordance with § 7.25, except as provided in paragraph (b) of this section.

(4) Net contents (except when blown, branded, or burned, in the container) in accordance with § 7.27.

(b) On the brand label or on a separate label (back or front):

(1) In the case of imported malt beverages, name and address of importer, in accordance with § 7.25.

(2) In the case of malt beverages bottled or packed for the holder of a permit or a retailer, the name and address of the bottler or packer, in accordance with § 7.25.

(3) Alcoholic content, when required by State law, in accordance with § 7.26.

§ 7.23 Brand names.

(a) *General.* The product shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this part.

(b) *Misleading brand names.* No label shall contain any brand name, which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the Director finds that such brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(c) *Trade name of foreign origin.* This section shall not operate to prohibit the use by any person of any trade name or brand of foreign origin not effectively registered in the United States Patent Office on August 29, 1935, which has been used by such person or his predecessors in the United States for a period of at least 5 years immediately preceding August 29, 1935: *Provided,* That if such trade name or brand is used, the designation of the product shall be qualified by the name of the locality in the United States in which produced, and such qualification shall be in script, type, or printing as conspicuous as the trade name or brand.

§ 7.24 Class and type.

(a) The class of the malt beverage shall be stated and, if desired, the type thereof may be stated. Statements of class and type shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of the composition of the product, shall be stated, and such statement shall be deemed to be a statement of class and type for the purposes of this part.

(b) No product shall be designated as "half and half" unless it is in fact composed of equal parts of two classes of malt beverages the names of which are conspicuously stated in conjunction with the designation "half and half".

(c) No product containing less than one-half of 1 percent of alcohol by volume shall bear the class designations "beer", "lager beer", "lager", "ale", "porter", or "stout", or any other class or type designation commonly applied to malt beverages containing one-half of 1 percent or more of alcohol by volume.

(d) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to "ale," "porter," or "stout" and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall bear any of these class designations.

(e) Geographical names for distinctive types of malt beverages (other than names found by the Director under paragraph (f) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless (1) in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name, and (2) the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wein, Weiner, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurtzburger, Pilsen (Pilsener and Pilsner): *Provided,* That notwithstanding the foregoing provisions of this section, beer which is produced in the United States may be designated as "Pilsen," "Pilsener," or "Pilsner" without further modification, if it conforms to such type.

(f) Only such geographical names for distinctive types of malt beverages as the Director finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic, e.g. India Pale Ale.

(g) Except as provided in § 7.23(b), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

§ 7.25 Name and address.

(a) *Domestic malt beverages.* On labels of containers of domestic malt beverages there shall be stated the name of the bottler or packer and the place where bottled or packed. If such malt beverages are bottled or packed for a person other than the actual bottler or packer there may be stated in addition to the name and address of the bottler or packer (but not in lieu thereof), the name and address of such other person immediately preceded by the words "bottled for," "distributed by," or some other similar appropriate phrase.

(b) *Imported malt beverages.* On labels of containers of imported malt beverages, there shall be stated the words "imported by," or a singular appropriate phrase, and immediately thereafter the name of the permittee who is the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person. In addition there may, but need not, be stated unless required by State or foreign law or regulation the name and principal place of business of the foreign manufacturer, bottler, packer, or shipper.

(c) *Post-office address.* The "place" stated shall be the post-office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, unless (1) such person is actively engaged in the conduct of an additional bona fide and actual malt beverage business at such additional place or address, and (2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular malt beverage.

§ 7.26 Alcoholic content.

The alcoholic content and the percentage and quantity of the original extract shall not be stated unless required by State law. When alcoholic content is required to be stated, but the manner of statement is not specified in the State law, it shall be stated in percentage of alcohol by weight or by volume, and not by proof or by maximums or minimums. Otherwise the manner of statement shall be as specified in the State law.

§ 7.27 Net contents.

(a) Net contents shall be stated as follows:

(1) If less than 1 pint, in fluid ounces, or fractions of a pint.

(2) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated.

(3) If more than 1 pint, but less than 1 quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than 1 quart, but less than 1 gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than 1 gallon, the net contents shall be stated in gallons and fractions thereof.

(b) All fractions shall be expressed in their lowest denominations.

(c) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

§ 7.28 General requirements.

(a) *Contrasting background.* All labels shall be so designed that all statements thereon required by §§ 7.20–7.29 are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) *Size of type.* Except as to statements of alcoholic content, all statements required on labels by §§ 7.20–7.29 shall be in readily legible script, type, or printing not smaller than 8-point Gothic caps. If contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be of a size substantially more conspicuous than such other descriptive or explanatory reading matter. All portions of any statement of alcoholic content shall be of the same size and kind of lettering and of equally conspicuous color, and such lettering shall not be larger than 8-point Gothic caps, except when otherwise required by State law.

(c) *English language.* All information, other than the brand name, required by §§ 7.20–7.29 to be stated on labels shall be in the English language. Additional statements in foreign languages may be made, if no such statements in any way conflict with, or are contradictory to, the requirements of §§ 7.20–7.29. Labels on containers of malt beverages packaged for consumption within Puerto Rico may, if desired, state the information required by §§ 7.20–7.29 solely in the Spanish language, in lieu of the English language, except that the net contents shall also be stated in the English language.

(d) *Labels firmly affixed.* All labels shall be affixed to containers of malt beverages in such manner that they cannot be removed without thorough application of water or other solvents.

(e) *Additional information.* Labels may contain information other than the mandatory label information required by §§ 7.20–7.29, provided such information complies with the requirements of §§ 7.20–7.29, and does not conflict with, nor in any manner qualify, statements required by any regulation promulgated under the act.

§ 7.29 Prohibited practices.

(a) *Statements on labels.* Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic, or other matter accompanying such containers to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Director finds to be likely to mislead the consumer.[1]

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization: *Provided,* That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, packer, wholesaler, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(b) *Simulation of Government stamps.* No label shall be of such design as to resemble or simulate a stamp of the United States Government or of any State or foreign government. No label, other than stamps authorized or required by the United States Government or any State or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, Federal, or foreign government authorization, law, or regula-

[1] Under (5) the Director has permitted the use of statements in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package.

(Name of the permittee making statement)"

tion, unless such statement is required or specifically authorized by Federal, State, or municipal, law or regulation, or is required or specifically authorized by the laws or regulations of the foreign country in which such malt beverages were produced. If the municipal or State government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by State law.

(c) *Use of word "bonded", etc.* The words "bonded", "bottled in bond", "aged in bond", "bonded age", "bottled under customs supervision", or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing, shall not be used on any label for malt beverages.

(d) *Flags, seals, coats of arms, crests, and other insignia.* Labels shall not contain, in the brand name or otherwise, any statement, design, device, or pictorial representation which the Director finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any label contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(e) *Curative and therapeutic effects.* Labels shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(f) *Use of words "strong", "full strength", and similar words.* Labels shall not contain the words "strong", "full strength", "extra strength", "high test", "high proof", "pre-war strength", "full oldtime alcoholic strength", or similar words or statements, likely to be considered as statements of alcoholic content, except where required by State law.

(g) *Use of numerals.* Labels shall not contain any statements, designs, or devices whether in the form of numerals, letters, characters, figures, or otherwise, which are likely to be considered as statements of alcoholic content, unless required by State law.

(h) *Coverings, cartons, or cases.* Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverages.

Subpart D—Requirements for Withdrawal of Imported Malt Beverages From Customs Custody

§ 7.30 Application.

Sections 7.30 and 7.31 shall apply to withdrawals of malt beverages from customs custody only in the event that the laws or regulations of the State in which such malt beverages are withdrawn for consumption require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20–7.29.

§ 7.31 Label approval and release.

(a) *Application.* On or after December 15, 1936, imported malt beverages shall not be released from customs custody for consumption, except pursuant to the procedure and forms prescribed by §§ 7.30 and 7.31.

(b) *Certificate of label approval.* No imported malt beverages shall be released from customs custody unless there shall have been deposited with the appropriate customs officer at the port of entry the original or a photostatic copy of a "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649). Such certificate shall be issued by the Director upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), properly filled out and certified to by the importer or transferee in bond.

(c) *Release.* If the original or photostatic copy of the "Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649) bears the signature of the Director, then the brand or lot of imported malt beverages bearing labels identical with those shown thereon may be released from customs custody.

(d) *Relabeling.* Imported malt beverages in customs custody, which are not labeled in conformity with certificates of label approval issued by the Director, must be relabeled, prior to release, under the supervision and direction of the customs officers of the port at which such malt beverages are located.[2]

Subpart E—Requirements for Approval of Labels of Malt Beverages Domestically Bottled or Packed

§ 7.40 Application.

Sections 7.40–7.42 shall apply only to persons bottling or packing malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State, the laws or regulations of which require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of §§ 7.20–7.29.

§ 7.41 Certificates of label approval.

No person shall bottle or pack malt beverages, or remove such malt beverages from the plant where bottled or packed, unless upon application to the Director, he has obtained, and has in his possession, a "Certificate of Label Approval under the Federal Alcohol Act" (Form 1649) covering such malt beverages. Such certificate of label approval shall be issued by the Director upon application made on the form designated "Application for Certificate of Label Approval under the Federal Alcohol Administration Act" (Form 1649), properly filled out and certified to by the applicant.[2]

§ 7.42 Exhibiting certificates to Government officials.

Any bottler or packer holding an original or duplicate original of a certificate of label approval shall, upon demand, exhibit such certificate to a duly authorized representative of the United States Government or any duly authorized representative of a State or political subdivision thereof.

Subpart F—Advertising of Malt Beverages

§ 7.50 Application.

No person engaged in business as a brewer, wholesaler, or importer, of malt beverages, directly or indirectly, or through an affiliate, shall publish or disseminate, or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of malt beverages if such advertisement is in, or is calculated to induce sales in interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with §§ 7.50–7.54: *Provided,* That §§ 7.50–7.54 shall not apply to outdoor advertising in place on June 18, 1935, but shall apply upon replacement, restoration, or renovation of any such advertising: *And provided further,* That §§ 7.50–7.54 shall apply to advertisements of malt beverages intended to be sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws of such State impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in such State: *And provided further,* That §§ 7.50–7.54 shall not apply to the publisher of any newspaper, periodical, or other publication, or radio broadcaster, unless such publisher or radio broadcaster is engaged in business as a brewer, wholesaler, bottler, or importer, of malt beverages, directly or indirectly, or through an affiliate.

§ 7.51 Definitions.

As used in §§ 7.50–7.54 the term "advertisement" includes any advertisement of malt beverages through the medium of radio broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement; or of any other printed or graphic matter, including trade booklets, menus, and wine cards, if such advertisement is in, or is calculated to induce sales in, interstate or foreign commerce; or is disseminated by mail; except that such term shall not include:

(a) Any label affixed to any container of malt beverages; or any coverings, cartons or cases of containers of malt beverages used for sale at retail, or any written, printed, graphic, or other matter accompanying the container which constitutes a part of the labeling under §§ 7.20–7.29.

(b) Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person engaged in business, as a brewer, wholesaler, or importer of malt beverages.

§ 7.52 Mandatory statements.

(a) *Responsible advertiser.* The advertisement shall state the name and address of the brewer, bottler, packer, wholesaler, or importer responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) *Class.* The advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

§ 7.53 Legibility of requirements.

Statements required under §§ 7.50–7.54 to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

§ 7.54 Prohibited statements.

(a) *General prohibition.* An advertisement of malt beverages shall not contain:

(1) Any statement that is false or misleading in any material particular.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the Director finds to be likely to mislead the consumer.

(6) Any statement that the malt beverages are brewed, made, bottled, packed, labeled, or sold under, or in accordance with, any municipal, State, or Federal authorization, law, or regulation; and if a municipal or State permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto.

(7) The words "bonded", "bottled in bond", "aged in bond", "bonded age", "bottled under customs supervision", or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packing.

(b) *Statements inconsistent with labeling.* The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

(c) *Alcoholic content.* The advertisement shall not contain any statement of alcoholic content, or any statement of the percentage and quantity of the original extract, or any numerals, letters, characters, or figures, likely to be considered as designations of alcoholic content.

(d) *Class.* (1) No product containing less than one-half of 1 per centum of alcohol by volume shall be designated in any advertisement as "beer", "lager beer", "lager", "ale", "porter", or "stout", or by any other class or type designation commonly applied to fermented malt beverages containing one-half of 1 per centum or more of alcohol by volume.

(2) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to "ale," "porter," or "stout" and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) shall be designated in any advertisement by any of these class designations.

(e) *Curative and therapeutic effects.* The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular, or tends to create a misleading impression.

(f) *Confusion of brands.* Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or a newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provision of §§ 7.50–7.54 or are in any respect untrue.

(g) *Flags, seals, coats of arms, crests, and other insignia.* No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

Subpart G—General Provisions

§ 7.60 Exports.

This part shall not apply to malt beverages exported in bond.

[2] Copies of Form 1649 may be secured from the Assistant Regional Commissioners, Alcohol and Tobacco Tax.

PART 8—CREDIT PERIOD TO BE EXTENDED TO RETAILERS OF ALCOHOLIC BEVERAGES

Subpart A—Scope

Sec.
8.1 General.

Subpart B—Definitions

8.10 Meaning of terms.

Subpart C—Prohibited Extensions of Credit

8.20 Statutory provision.
8.21 Circumstances in which extension prohibited.
8.22 Calculation of period.

AUTHORITY: §§ 8.1 to 8.22 issued under 49 Stat. 981, as amended; 27 U.S.C. 205.

Subpart A—Scope

§ 8.1 General.

The regulations in this part specify circumstances in which the extension of credit is prohibited. No procedural requirements are prescribed.

Subpart B—Definitions

§ 8.10 Meaning of terms.

As used in this part, unless the context otherwise requires, terms shall have the meaning ascribed in this part.

(a) *Act.* "Act" means the Federal Alcohol Administration Act.

(b) *Distilled spirits.* "Distilled spirits" mean ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for non-industrial use.

(c) *Wine.* "Wine" means (1) wine as defined in section 610 and section 617 of the Revenue Act of 1918, (U.S.C., title 26, secs. 441 and 444) as now in force or hereafter amended, and (2) other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine compounds sold as wine, vermouth, cider, perry and sake; in each instance only if containing not less than 7 per centum and not more than 24 per centum of alcohol by volume, and if for non-industrial use.

(d) *Malt beverage.* "Malt beverage" means a beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption.

Subpart C—Prohibited Extensions of Credit

§ 8.20 Statutory provision.

Pursuant to clause 6, subsection (b), section 5, Federal Alcohol Administration Act (27 U.S.C. 205(b)(6)), the credit period usual and customary to the industry is hereby ascertained to be thirty days from date of delivery in the case of

all sales of distilled spirits, wine, and malt beverages.

§ 8.21 Circumstances in which extension prohibited.

The extension of credit to a retailer, by any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine, or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits, for a period of time in excess of thirty days from date of delivery, is prohibited when the extension of such credit induces any retailer engaged in the sale of distilled spirits, wine, or malt beverages to purchase any such products from such person to the exclusion in whole or in part of distilled spirits, wine, or malt beverages sold or offered for sale by other persons in interstate or foreign commerce, if such inducement is made in the course of interstate or foreign commerce, or if such person engages in the practice of using such means to such an extent as to substantially restrict or prevent transactions in interstate or foreign commerce in any such products, or if the direct effect of such inducement is to prevent, deter, hinder or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

§ 8.22 Calculation of period.

For the purpose of the regulations in this part, the period of credit shall be calculated as the time elapsing between the date of delivery of the merchandise and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

Approved: December 22, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

[F.R. Doc. 60-12023; Filed, Dec. 28, 1960; 8:45 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

PART 819—REQUIREMENTS RELATING TO NON-QUOTA PURCHASE SUGAR FOR THE THREE-MONTH PERIOD ENDING MARCH 31, 1961

Sec.
819.1 Basis and purpose, and persons affected.
819.2 Definitions.
819.3 Non-quota purchases of sugar authorized.
819.4 Source of non-quota purchase sugar.
819.5 Requirements relating to importing non-quota purchase sugar.
819.6 Application by importer.
819.7 Release by a Collector of Customs.
819.8 Specific authorization for release.
819.9 Determination of quantities and time of effect.
819.10 Records and reports.
819.11 Delegation of authority.

AUTHORITY: §§ 819.1 to 819.11 issued under sec. 403, 61 Stat. 922, as amended, 933, as amended; 7 U.S.C. 1101, P.L. 86-592, approved July 6, 1960. Presidential Proclamation 3383 (25 F.R. 13131)

§ 819.1 Basis and purpose, and persons affected.

(a) The regulations in this Part are issued under the authority contained in the Sugar Act of 1948, as amended (61 Stat. 922, as amended), and as further amended by Public Law 86-592, approved July 6, 1960, and the authority delegated under Presidential Proclamation 3383, (25 F.R. 13131). These regulations establish and set forth for the three-month period ending March 31, 1961, (1) the amount of non-quota purchase sugar which may be imported into the continental United States (including Alaska) for consumption therein from all foreign countries and (2) the procedures applicable to importing such sugar.

(b) Persons affected by the provisions of this part include importers, mainland refiners, shipping companies engaged in the transportation of sugar to ports in the continental United States, and persons otherwise engaged in the movement of sugar in interstate or foreign commerce.

(c) It is found that under the prevailing circumstances it is in the National interest to provide that the quantity of nonquota sugar hereby authorized for purchase from the Dominican Republic should be purchased at prices which are lower than those currently prevailing for sugar for the United States market. Accordingly, provision is made for a fee per pound, raw value, to be paid to the United States Government on all non-quota purchase sugar imported from the Dominican Republic. Provision is made for the payment of the fee by requiring that any person who applies for authorization to import non-quota sugar from the Dominican Republic must accompany his application with an initial payment which is equal to the estimated raw value pounds equivalent of the sugar to be imported multiplied by the effective fee. For the purpose of computing this initial payment, provision is made for estimating the raw value pounds equivalent of the sugar by multiplying the weight of the sugar to be imported as shown on the application by the factor 1.04, which is the factor applicable for determining the raw value equivalent of sugar polarizing approximately 98.2 degrees. Final settlement of the amount due the United States Government on each cargo or shipment of sugar is to be based on the raw value equivalent of the sugar imported pursuant to each authorization issued under § 819.8 determined as provided in Title I of the act on the basis of weights and tests of the sugar determined pursuant to Part 810 of this subchapter and reported in accordance with § 819.6(h).

(d) All of the countries named in § 819.4 are members of the International Sugar Agreement except Colombia and Ecuador. Recently these countries initiated action to become members of the International Sugar Agreement. Under the provisions of these regulations the quantity of non-quota sugar authorized for purchase from Colombia and Ecuador may be authorized for importation upon receipt of notice that they have become a participant in the International Sugar Agreement. Provision is made in Part 811 of this chapter for the importation of 21 short tons, raw value, of sugar from non-participating countries as a group which is the maximum quantity permitted to be imported from such countries pursuant to the International Sugar Agreement. Article 7 of the Agreement limits imports in any year from non-participating countries as a group to the total quantity imported from such countries as a group in any one of the years 1951, 1952, or 1953.

(e) To assure an orderly and adequate flow of sugar throughout the three-month period ending March 31, 1961, including the early days of January 1961, the persons who purchase and import sugar for continental United States consumption must make arrangements sufficiently in advance of the beginning of the year, not only to permit the physical movement of the sugar from the various countries and areas of origin to the United States, which requires from 1 to 7 weeks, but also to permit contracting for purchase of the sugar, contracting for ocean freight, loading time and other related arrangements. It is necessary that the persons who import non-quota sugar know the exact amounts which will be authorized for purchase and importation from the individual countries during the three-month period ending March 31, 1961, in order to make such arrangements in conformity therewith. It is, therefore, essential that the exact quantities of non-quota sugar which will be authorized for purchase and importation during the three-month period ending March 31, 1961, be established immediately so that persons who sell, purchase and import such sugar will have adequate foreknowledge to permit these necessary arrangements for purchase and shipment of non-quota sugar and provide for an orderly flow of such sugar in the early days of the year and throughout the three-month period. Accordingly, it is hereby found and determined that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is impracticable and contrary to the public interest and this regulation shall become effective on January 1, 1961.

§ 819.2 Definitions.

As used in this part:

(a) The term "act" means the Sugar Act of 1948, as amended (61 Stat. 922, as amended).

(b) The term "person" means an individual, partnership, corporation, association, estate, trust, or other business enterprise or legal entity, and, wherever applicable, any unit, instrumentality, or agency of a government, domestic or foreign.

(c) The term "Department" means the United States Department of Agriculture.

(d) The term "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has lawfully delegated the authority or to whom authority may hereafter be delegated to act in his stead.

(e) The term "Sugar Division" means the Sugar Division of the Commodity Stabilization Service, of the Department, Washington 25, D.C., or any other organizational unit within the Department to which administration of the Sugar Act may hereafter be delegated.

(f) The term "Collector" means the Collector of Customs, U.S. Bureau of Customs, for the District in which the port of entry is located or any officer of the Bureau of Customs designated to act in his stead.

(g) The terms "import," "importation" and "importing" mean the act of bringing sugar into the continental United States (including Alaska) from a foreign country.

(h) The term "importer" means any person who brings or imports sugar into the continental United States (including Alaska), including but not limited to the owner, consignor, consignee, transferee or purchaser of such sugar or the broker acting on behalf of such person.

(i) The term "refiner" means any person who subjects offshore sugar to processes as provided in Part 810 of this subchapter.

(j) The terms "sugars," "sugar," and "raw sugar" have the meanings ascribed to each in section 101 (b), (c), and (d), respectively, of the act subject to the provisions of Part 810 of this subchapter which are hereby made applicable to non-quota purchase sugar.

(k) The term "non-quota purchase sugar" means sugar purchased pursuant to the provisions of section 408(b) of the act.

§ 819.3 Non-quota purchases of sugar authorized.

Non-quota purchases of sugar, in accordance with section 408(b) of the act, are authorized to be made in accordance with the provisions of this part. Such non-quota purchases must be made after July 6, 1960, from the producer of such sugar or from a citizen, partnership, corporation, or other legal entity, or Government agency, of the country in which the sugar was produced, for shipment to the United States, or after shipment to the United States. Pursuant to section 408(b) of the act, the President by Proclamation No. 3383 established the amount of the quotas for sugar and for liquid sugar for Cuba for the three-month period ending March 31, 1961 at zero. At a level of consumption requirements for consumers in the United States of 10,000,000 short tons, raw value of sugar for 1961, the amount of the quotas that otherwise would have been provided for Cuba under the terms of Title II of the act for the three-month period ending March 31, 1961, are 824,299 tons, raw value of sugar and 1,992,640 wine gallons of liquid sugar, 72 per centum total sugar content, which amounts represent the quantities that may be caused or permitted to be brought or imported into or marketed in the United States pursuant to section 408(b) of the act. The quantities of non-quota sugar authorized in § 819.4 for purchase from countries having quotas under section 202(c) of the act are allocated in accordance with section 408(b) of the act to the extent of the ability of each such country to supply such sugar based on advice received from such countries. Quantities are also authorized for purchase from China and from countries not having quotas under section 202(c) of the act, pursuant to the proviso in section 408(b)(2)(iii) of the act.

§ 819.4 Source of non-quota purchase sugar.

Subject to the provisions of paragraph (c) of this section the amounts of non-quota purchase sugar that may be permitted to be imported into the continental United States for consumption therein from individual foreign countries for the three-month period ending March 31, 1961, are as follows:

Country:	*Short tons, raw value*
Netherlands	1,463
China (Formosa)	11,505
Panama	1,505
Costa Rica	1,508
Republic of the Philippines	122,683
Peru	215,000
Dominican Republic	222,723
Mexico	191,168
Haiti	433
Nicaragua	16,000
Canada	1,266
United Kingdom	1,034
Belgium	361
British West Indies and British Guiana	10,168
Hong Kong	8
El Salvador	2,000
Guatemala	2,000
Brazil	11,474
Ecuador	6,000
Colombia	6,000
Total	824,299

The 1,992,640 wine gallons of liquid sugar, 72 per centum total sugar content is not authorized for purchase at this time.

(b) It is hereby found that raw sugar is not reasonably available in sufficient quantity to supply our requirements during the three-month period ending March 31, 1961. Accordingly, nonquota purchase sugar testing in excess of 99 degrees polarization is authorized for importation from Mexico to be further refined or improved in quality in the United States, and sugar imported from any country for which the total permitted quantity of nonquota purchase sugar, as established in paragraph (a) of this section, is 2,500 short tons, raw value, or less may be released for direct-consumption. All other nonquota purchase sugar is limited to raw sugar as defined in Part 810 of this Chapter.

(c) To give effect to Article 7 of the International Sugar Agreement which limits total importations in any year from nonparticipating countries, no sugar may be authorized to be imported from any country named in paragraph (a) of this section while such country is not a participant in the International Sugar Agreement.

§ 819.5 Requirements relating to importing nonquota purchase sugar.

(a) Notwithstanding the provisions of Part 817 of this chapter, nonquota purchase sugar may be imported from the country where produced in accordance with the provisions of this part. The provisions of this part apply only to nonquota purchase sugar.

(b) Nonquota purchase sugar shall be imported only at Customs ports of entry.

(c) A copy of the ship's manifest, bills of lading, or other shipping documents covering all sugar in a shipment must be submitted to the Collector within 72 hours after the beginning of unlading of the sugar.

(d) The Collector shall take custody of such sugar and shall retain custody, at the risk and expense of the consignee or owner, until authorized to permit release thereof in accordance with § 819.7. In taking and retaining custody pursuant to these regulations, the Collector shall be governed by the provisions of §§ 4.37, 4.38, 19.1 to 19.9 and 19.12 of Chapter I, Title 19, Code of Federal Regulations, which are made applicable to such custody by reference as fully as if set forth in full herein.

§ 819.6 Application by importer.

(a) A separate application must be submitted as specified in paragraph (c) of this section on appropriate copies of a form prescribed by the Secretary entitled "Sugar Quota Clearance Record," with the changes hereinafter specified, not more than 10 days prior to the departure date stated thereon, showing the following information regarding the sugar to be delivered to a single refinery or importer from each cargo:

(1) *Port and date of arrival.* If the port is not known when the application is submitted, this information must be supplied before a Collector will be authorized to release the sugar.

(2) Name of the vessel or other specific identification of the carrier.

(3) Name of the producing area, the port of lading and the date the carrier is expected to depart from such port.

(4) Name and address of the person to whom delivery is to be made from the importing carrier. If not known when an application is submitted to the Sugar Division, this information must be supplied before a Collector will be authorized to release the sugar.

(5) Quantities, in pounds, to be imported as shown on the application; if in bags, identified by marks, quantities should be shown separately for each mark. The designation of separate quantities within the total to be imported which are identified by separate marks shall be shown on the report required pursuant to paragraph (h) of this section, if such information cannot be shown at the time the application is submitted.

(6) Name, address and authorized signature of the applicant.

(b) Any application made pursuant to this section constitutes a representation by the applicant that at the time the application is made:

(1) He has control of the quantity of sugar which is subject to shipment as specified;

(2) Firm commitment has been made by the shipping company for shipment as described on the application; and

(3) The date of departure of the vessel or carrier stated on the application is (i) the date specified to the applicant or shipper by the Master, Owner or Agent of such vessel or carrier as the expected departure date, or (ii) the date the shipper expects the vessel to depart based on the date the vessel or carrier will be available for loading as specified by the Master, Owner or Agent of such vessel or carrier plus the normally required loading time.

(c) The application specified in paragraph (a) of this section shall be submitted to the Sugar Division for the issuance of an authorization by the Secretary to the appropriate Collector for the release of sugar as provided in § 819.7.

(d) The specific authorization by the Secretary required pursuant to § 819.7 may be issued prior to the receipt of an application on appropriate copies of the "Sugar Quota Clearance Record" provided all of the information required pursuant to paragraphs (a) and (e) of this section is transmitted to the Sugar Division by telegram and such advance authorization is necessary to avoid delay in the delivery of the sugar.

(e) Any application made pursuant to this section shall contain over the signature of the applicant, the following certification:

This application is made under Sugar Regulation 819 for importing non-quota purchase sugar and is subject to all of the provisions of such regulation. The applicant certifies that he is either (1) the producer of the sugar, or (2) a citizen, partnership, corporation, or other legal entity, or government agency, of the country in which the sugar is produced, or (3) has purchased such sugar after July 6, 1960, from_____, the producer of such sugar, or from _____, a citizen, partnership, corporation, or other legal entity, or government agency, of the country in which the sugar was produced, for exportation to the United States.

(f) As a condition for the importation of any quantity of non-quota purchase sugar from the Dominican Republic a fee of $0.0225 per pound, raw value, shall be paid as provided in this paragraph and paragraph (g) of this section by the person applying to the Secretary for release of such quantity of sugar. With each application submitted as provided in paragraph (a) of this section covering sugar to be imported pursuant to § 819.4 from the Dominican Republic, the applicant shall make an initial payment in an amount determined by multiplying the quantity of sugar stated in pounds as shown on the application by 1.04 and multiplying the result by $0.0225 per pound. Upon receipt of such an application and initial payment, the Secretary may issue an authorization for release by a Collector as provided in § 819.8 of the quantity of sugar covered by the application. The fee per pound shall be subject to change by amendment of these regulations effective when filed for public inspection in the Office of the Federal Register, and any payment with respect to an application shall be based upon the fee per pound effective at the time such application first becomes eligible for authorization as provided in § 819.8(b). The payment required under this paragraph shall be made to the Sugar Division in the form of a certified check payable to the Commodity Stabilization Service. Any application submitted for the purpose of changing the person to whom delivery is to be made or the port of arrival as shown on the original application, shall be considered as an amendment to the original application, and no initial payment is required to accompany the amendatory application. The applicant may request the cancellation of an application submitted with an initial payment as provided for in this paragraph to take advantage of a decreased fee or for other reasons, by notifying the Sugar Division in writing of such request prior to the release by the Collector of any of the sugar covered by the application, and thereafter such applicant may submit a new application covering all or a part of the quantity of sugar covered by the cancelled application, provided an initial payment as provided for in this paragraph accompanies the new application.

(g) If, prior to the release by the Collector of sugar covered by an application with which payment was submitted as required under paragraph (f) of this section, the Sugar Division receives a written request from the applicant to cancel from such application all or a specified part of the quantity of sugar covered thereby, refund will be made to the applicant of all or a part of the payment made with such application in the same proportion that the quantity of sugar requested to be canceled bears to the quantity of sugar stated on the application. In making final settlement a determination will be made of the quantity of sugar in terms of raw value as provided in § 819.9(b)(2) with respect to the quantity imported pursuant to each application governed by paragraph (f) of this section, for the purpose of ascertaining whether any further payment by the applicant or any refund to the applicant is required. Upon such determination, further payment shall be made by the applicant in the amount by which the product of the quantity of sugar, raw value, imported multiplied by the effective fee per pound provided for in paragraph (f) of this section exceeds the amount of the initial payment made pursuant to paragraph (f) of this section after deducting the amount of any refunds made of such initial payment; or refund to the applicant shall be made in the amount by which the product of the quantity of sugar, raw value, imported multiplied by such effective fee per pound is less than the amount of the initial payment made pursuant to paragraph (f) of this section after deducting the amount of any refunds made of such initial payment.

(h) Within 30 days after release of the sugar by the Collector pursuant to § 819.7 the results of weights, samples and tests and the name of the person retaining the reserve portion of each sample as provided for in Part 810 of this subchapter shall be reported to the Sugar Division on the applicable copy of the "Sugar Quota Clearance Record" or a duplicate of such copy, together with information specified in paragraph (a) of this section. The period within which the report required pursuant to this paragraph must be made may be extended for good cause shown with respect to a specified shipment upon request to and approval by the Secretary.

§ 819.7 Release by a Collector.

A Collector of Customs may release sugar imported from any country for any purpose only pursuant to Part 817 of this chapter or upon specific authorization by the Secretary pursuant to § 819.8 with respect to each application required under § 819.6.

§ 819.8 Specific authorization for release.

(a) *Time of issue and duration of validity.* Specific authorizations by the Secretary for release by a Collector will be issued no more than 5 days prior to the stated date of departure of the vessel or other carrier on which the sugar is to be shipped. The authorization shall be valid for the period specified thereon, subject to extension by the Secretary for good cause, and shall be cancelled only if mistakenly issued, a misrepresentation was made, the shipment does not depart within 3 days of the date stated on the application, or importation does not occur during the period specified. In case the port of arrival or the name of the receiver is not known when the application becomes eligible pursuant to paragraph (b) of this section, the authorization will not be transmitted to the Collector until all the information required by paragraph (a) of § 819.6 is received in the Sugar Divison.

(b) *Order of eligibility for authorization.* An application on file with the Sugar Division for the release of sugar shall become eligible for authorization at 12:01 a.m., on the fifth calendar day prior to the date stated on the application as the date of departure of the shipment of sugar from the country of origin or at the time of receipt of the application, whichever time occurs later. The Secretary shall authorize the release of sugar by the Collector within the unfilled portion of the amount of non-quota purchase sugar authorized to be imported from a country in the same order in which the applications pertaining to such country become eligible for authorization: *Provided*, That, if two or more applications pertaining to the same country become eligible for authorization at the same time, such applications shall be authorized in the order of their stated date of departure (earliest first), and in such case if two or more such applications have the same date of departure and the quantity which may be authorized within the unfilled amount of non-quota purchase sugar assigned to such country is less than the sum of the applied-for quantities, the quantity authorized for each application shall be in the same proportion to the quantity which may be authorized within the unfilled portion as the quantity requested on each such application is to the sum of the quantities requested on all such applications.

(c) *Extent of authorizations.* No authorization shall be issued when the quantity of non-quota purchase sugar released for consumption in the continental United States, together with the quantity covered by valid authorizations issued hereunder but not yet released, equals the amount of non-quota purchase sugar assigned to the country.

(d) *Denial of authorizations.* Authorizations on applications otherwise eligible may be denied if the applicant has failed to report in the manner and within the time prescribed in this part with respect to shipments previously imported.

§ 819.9 Determination of quantities and time of effect.

(a) Non-quota purchase sugar imported shall be subject to the amount authorized to be imported from the country in which the sugar was produced.

(b)(1) Each quantity authorized for release pursuant to § 819.8 shall be effective for filling the amount of non-quota purchase sugar at the time the applicable authorization is issued. For this purpose the raw value of the authorized quantity shall be estimated by considering the relationship between other authorized quantities for recent shipment from the same country and the raw values thereof determined as provided in Title I of the act on the basis of weights and tests determined pursuant to Part 810 of this subchapter and such other factors as the Secretary deems applicable.

(2) Upon receipt of and on the basis of the report required pursuant to § 819.6 (h) covering an application initially given effect pursuant to subparagraph (1) of this paragraph, the quantity effective for filling the amount of non-quota purchase sugar shall be the quantity of sugar imported pursuant to the authorization to the extent of its raw value, as defined in Title I of the act and as finally computed from the weights and tests determined pursuant to Part 810 of this subchapter.

§ 819.10 Records and reports.

(a) For the purposes of this part, any quantities of sugar imported as crystalline sugar which are subsequently converted into and marketed as liquid sugar shall be reported subsequent to such conversion as the quantities of crystalline sugar so converted and the raw value thereof shall be determined as prescribed in paragraph (1), (2), or (3) of section 101(h) of the act, applicable to the crystalline sugar so converted. Liquid sugar for which the quantities of converted crystalline sugar are unknown shall be reported in terms of the total sugar content and the raw value thereof shall be determined by multiplying the total sugar content by the factor 1.07.

(b) Each person subject to the provisions of this part shall keep and preserve, for a period of two years following the end of the calendar year in which the sugar was imported into the continental United States, an accurate record of the receipt, processing and movement of such sugar and of all tests and weights pertaining thereto. Upon request by any authorized employee of the Department, such records shall be made freely available for examination by such employee during the regular working hours of any business day.

(c) Each person subject to the provisions of this part shall make application for authorizations provided for in this part and shall report information as and when required by the Secretary on forms specified by him and approved by the Bureau of the Budget under the Federal Reports Act of 1942. In addition to the applications, authorizations and reports otherwise specifically referred to in this part, this requirement shall include, but is not necessarily limited to, the information prescribed on Form SU-73, Form SU-74 or Form SU-75.

§ 819.11 Delegation of authority.

The Director, or Deputy Director, of the Sugar Division, or the Chief or Acting Chief of the Quota and Allotment Branch thereof, Commodity Stabilization Service of the Department, is hereby authorized to act for and on behalf of the Secretary in administering §§ 819.1 to 819.10.

Done at Washington, D.C., this 22d day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

Concurred in for the Secretary of State by:

THOMAS C. MANN.

[F.R. Doc. 60-12075; Filed, Dec. 28, 1960; 8:48 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Regulation 197, Amdt. 1]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, an orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b) (1) (i) and (iii) of § 914.497 (Navel Orange Regulation 197, 25 F.R. 12941) are hereby amended to read as follows:

(i) District 1: 500,000 cartons;
(iii) District 3: 50,000 cartons.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 23, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-12059; Filed, Dec. 28, 1960; 8:47 a.m.]

[938.302 Amdt. 1]

PART 938—IRISH POTATOES GROWN IN THE RED RIVER VALLEY OF NORTH DAKOTA AND MINNESOTA

Limitation of Shipments

Section 8e (7 U.S.C. 608e) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation of any such commodity shall be prohibited unless it complies with the grade, size, quality, and maturity provisions of the marketing order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition.

In compliance with this requirement and determinations made pursuant thereto, comprehensive regulations governing the importation of Irish potatoes have been issued (7 CFR 1066.1; 24 F.R. 7809, 25 F.R. 2659). Such regulations determined, among other things, that each marketing season from October 1 through the following June 30, imports of red skinned round varieties of potatoes are in most direct competition with the same varieties produced in the Red River Valley of North Dakota and Minnesota and regulated by Order No. 38, and required that potato imports meet the grade, size, quality, and maturity requirements applicable to red

skinned round varieties under Order No. 38. Therefore, the grade, size, quality, and maturity requirements applicable to red skinned round varieties of potatoes set forth in the limitation of shipment regulations, § 938.302 (7 CFR 938.302), issued under Order No. 38, effective August 8, 1960 through June 30, 1961 (25 F.R. 7238) became applicable to imports of such potatoes for the period October 1, 1960 through June 30, 1961.

In order that information pertaining to requirements applicable to potato imports occasioned by requirements applicable to domestically produced potatoes may be more readily disseminated to interested persons, this amendment, through cross reference, incorporates such import requirements in the currently effective domestic regulation by the addition of a new paragraph (i) to § 938.302. Accordingly, § 938.302 is hereby amended by adding thereto a new paragraph (i) as set forth below.

§ 938.302 Limitation of shipments.

* * * * *

(i) *Applicability of import regulations.* Pursuant to section 608e of the act and 7 CFR 1066.1 (24 F.R. 7809 and 25 F.R. 2659), it has been determined that, each season from October 1 through the following June 30, potato imports of red skinned round varieties are in most direct competition with the same varieties produced in the Red River Valley of North Dakota and Minnesota and regulated by this subpart and it is required that such potato imports meet the grade, size, quality and maturity requirements applicable to the same varieties regulated under this subpart. Therefore, importation of red skinned round variety potatoes during the period October 1, 1960, through June 30, 1961, are required to meet the grade, size, quality and maturity provisions of paragraph (a) of this section, namely, U.S. No. 2, or better, grade, 2 inches minimum diameter, or U.S. No. 1, or better, grade, size B.

* * * * *

Coincident with the issuance of import regulations applicable to Irish potato imports, § 1066.1 (7 CFR 1066.1) and issuance of the currently effective limitation of shipments regulations, § 938.302 (7 CFR 938.302) under Order No. 38, the requirements of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) with respect to notice of rule making, public procedure thereon, and effective date were complied with or appropriate findings in lieu thereof were made. Therefore, it is unnecessary to again comply with the same requirements.

(Secs. 1019, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date, dated December 22, 1960, to become effective upon publication in the FEDERAL REGISTER.

FLOYD F. HEDLUND,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 60–12060; Filed, Dec. 28, 1960; 8:47 a.m.]

[957.319 Amdt. 1]

PART 957—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

Limitation of Shipments

Section 8e (7 U.S.C. 608e) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation of any such commodity shall be prohibited unless it complies with the grade, size, quality and maturity provisions of the marketing order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition.

In compliance with this requirement and determinations made pursuant thereto, comprehensive regulations governing the importation of Irish potatoes have been issued (7 CFR 1066.1; 24 F.R. 7809, 25 F.R. 2659). Such regulations determined, among other things, that each marketing season from October 1 through the following June 30, imports of long varieties of potatoes are in most direct competition with the same varieties produced in certain designated counties in Idaho and Malheur County, Oregon, and regulated by Order No. 57, as amended, and required that potato imports meet the grade, size, quality and maturity requirements applicable to long varieties under Order No. 57, as amended. Therefore, the grade, size, quality and maturity requirements applicable to long varieties of potatoes set forth in the limitation of shipments regulation, § 957.319(7 CFR 957.319), issued under Order No. 57, as amended, effective July 18, 1960 through June 30, 1961 (25 F.R. 6745) became applicable to imports of such potatoes for the period October 1, 1960 through June 30, 1961.

In order that information pertaining to requirements applicable to potato imports occasioned by requirements applicable to domestically produced potatoes may be more readily disseminated to interested persons, this amendment, through cross reference, incorporates such import requirements in the currently effective domestic regulation by the addition of a new paragraph (i) to § 957.319. Accordingly, § 957.319 is hereby amended by adding thereto a new paragraph (g) as set forth below.

§ 957.319 Limitation of shipments.

* * * * *

(g) *Applicability of import regulations.* Pursuant to section 608e of the act and 7 CFR 1066.1 (24 F.R. 7809 and 25 F.R. 2659), it has been determined that, each season from October 1 through the following June 30, potato imports of long varieties are in most direct competition with the same varieties produced in certain designated counties in Idaho and Malheur County, Oregon, and regulated by this subpart and it is required that such potato imports meet the grade, size, quality and maturity requirements applicable to the same varieties regulated under this subpart. Therefore, importations of long potatoes during the period of October 1, 1960 through June 30, 1961, are required to meet the grade, size, quality and maturity provisions of paragraphs (a) and (b) of this section, namely, U.S. No. 2, or better, grade, 2 inches minimum diameter, or 4 ounces minimum weight, "generally fairly clean" and not more than "slightly skinned."

* * * * *

Coincident with the issuance of import regulations applicable to Irish potato imports, § 1066.1 (7 CFR 1066.1) and issuance of the currently effective limitation of shipments regulations, § 957.319 (7 CFR 957.319) under Order No. 57, as amended, the requirements of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) with respect to notice of rule making, public procedure thereon, and effective date were complied with or appropriate findings in lieu thereof were made. Therefore, it is unnecessary to again comply with the same requirements.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date, dated December 22, 1960, to become effective upon publication in the FEDERAL REGISTER.

FLOYD F. HEDLUND,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 60–12062; Filed, Dec. 28, 1960; 8:48 a.m.]

[970.307 Amdt. 1]

PART 970—IRISH POTATOES GROWN IN MAINE

Limitation of Shipments

Section 8e (7 U.S.C. 608e) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the importation of any such commodity shall be prohibited unless it complies with the grade, size, quality and maturity provisions of the marketing order which, as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in most direct competition.

In compliance with this requirement and determinations made pursuant thereto, comprehensive regulations governing the importation of Irish potatoes have been issued (7 CFR 1066.1; 24 F.R. 7809, 25 F.R. 2659). Such regulations determined, among other things, that each marketing season from October 1 through the following June 30, imports of round white varieties of potatoes are in most direct competition with the same varieties produced in the State of Maine and regulated by Order No. 70, and required that potato imports meet the grade, size, quality and maturity requirements applicable to round white varieties under Order No. 70. Therefore, the grade, size, quality and maturity requirements applicable to round white varieties of potatoes set forth in the limitation of shipments regulation, § 970.307 (7 CFR 970.307), issued under Order No. 70, effective September 19, 1960 through June 30, 1961 (25 F.R. 8942) became applicable to imports of such potatoes for the period October 1, 1960 through June 30, 1961.

In order that information pertaining to requirements applicable to potato imports occasioned by requirements applicable to domestically produced potatoes may be more readily disseminated to interested persons, this amendment, through cross reference, incorporates such import requirements in the currently effective domestic regulation by the addition of a new paragraph (i) to § 970.307. Accordingly, § 970.307 is hereby amended by adding thereto a new paragraph (i) as set forth below.

§ 970.307 Limitation of shipments.

* * * * *

(i) *Applicability of import regulations.* Pursuant to section 608e of the act and 7 CFR 1066.1 (24 F.R. 7809 and 25 F.R. 2659), it has been determined that, each season from October 1 through the following June 30, potato imports of round white varieties are in most direct competition with the same varieties produced in the State of Maine and regulated by this subpart and it is required that such potato imports meet the grade, size, quality and maturity requirements applicable to the same varieties regulated under this subpart. Therefore, importations of round white variety potatoes during the period of October 1, 1960 through June 30, 1961, are required to meet the grade, size, quality and maturity provisions of paragraph (a) of this section, namely, U.S. No. 1, or better, grade, 2¼ inches minimum diameter, 4 inches maximum diameter, and at least 90 percent fairly clean.

* * * * *

Coincident with the issuance of import regulations applicable to Irish potato imports, § 1066.1 (7 CFR 1066.1) and issuance of the currently effective limitation of shipments regulations, § 970.307 (7 CFR 970.307) under Order No. 70, the requirements of § 4 of the Administrative Procedure Act (5 U.S.C. 1003) with respect to notice of rule making, public procedure thereon, and effective date were complied with or appropriate findings in lieu thereof were made. Therefore, it is unnecessary to again comply with the same requirements.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date. Dated December 22, 1960, to become effective upon publication in the FEDERAL REGISTER.

FLOYD F. HEDLUND,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 60–12061; Filed, Dec. 28, 1960; 8:47 a.m.]

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

MONTHLY REPORT OF DISPOSITION OF FREE TONNAGE RAISINS

Correction

In F.R. Doc. 60–11896, appearing at page 13630 of the issue for Friday, December 23, 1960, the phrase "handling of grapes produced from grapes", in the last two lines of the first column should be changed to read "handling of raisins produced from grapes".

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 2—RULES OF PRACTICE

Commission Review of Intermediate Decisions

In order that the Commission may more adequately review intermediate decisions of hearing examiners when no exceptions thereto have been filed by the parties, the rules of procedure are being amended to provide that the Commission shall have 10 days after the period permitted for the filing of exceptions in which to make its own review.

Because of the procedural nature of these rules, the Commission has found that general notice of proposed rule making and public procedure thereon are unnecessary, and that good cause exists why these rules should be made effective without the customary prior notice.

Pursuant to the Administrative Procedure Act, the following rules are published as a document subject to codification, to be effective upon publication thereof in the FEDERAL REGISTER:

1. Section 2.751 (a), (b), and (c) is amended to read as follows:

§ 2.751 Intermediate decisions and their effect.

(a) After hearing, the Presiding Officer will ordinarily render an intermediate decision, which decision shall become final unless exceptions are taken in accordance with § 2.752, or the Commission has directed that the record be certified to it for final decision. An order that the record be certified to the Commission for final decision may be made not later than 10 days after the expiration of the period fixed pursuant to § 2.752 for the filing of exceptions by a party.

(b) However, in any case involving an application for an initial license the Commission may direct that the presiding officer certify the record to it without an intermediate decision. In such case the Commission may:

(1) Direct a responsible officer to prepare an intermediate decision which will not become final until the Commission acts upon it; or

(2) Prepare its own intermediate decision, which shall become final unless exceptions are taken in accordance with § 2.752; or

(3) Omit an intermediate decision upon a finding on the record that due and timely execution of the Commission's functions imperatively and unavoidably so require.

(c) Each intermediate decision shall be in writing and shall contain:

(1) Findings and conclusions, with the reasons or basis therefor upon all material issues of fact, law, or discretion presented on the record;

(2) The ruling upon each proposed finding or conclusion filed by a party;

(3) All facts officially noticed pursuant to § 2.750, relied upon in the decision;

(4) The appropriate rule, order, sanction, relief, or denial thereof, with the effective date;

(5) In the case of an intermediate decision which may become final unless exceptions are filed, or the Commission directs that the record be certified to it for final decision, the date when such decision will become final in the absence of exceptions thereto or an order of the Commission that the record be certified to it.

Dated at Washington, D.C., this 27th day of December 1960.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

[F.R. Doc. 60–12140; Filed, Dec. 28, 1960; 8:51 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Agency

SUBCHAPTER A—CIVIL AIR REGULATIONS

[Reg. Docket No. 614; Amdt. 60–20]

PART 60—AIR TRAFFIC RULES

Definitions of Prohibited Area and Restricted Area

Part 60 of the Civil Air Regulations comprises the air traffic rules and certain definitions pertaining thereto. Section 60.13a provides that the Administrator will establish Restricted Areas when he finds such action necessary. Section 60.60 defines certain terms, among which are Prohibited Area and Restricted Area.

The Federal Aviation Act of 1958, Title III, section 307(a), authorizes and directs the Administrator to "assign by rule, regulation or order the use of navigable airspace." Prior to the enactment of this statutory authorization, the authority to designate prohibited areas and restricted areas, with provision for subordinate delegation of this authority, was contained in the Air Commerce Act of 1926 and the Civil Aeronautics Act of 1938. This authority is variously cited in §§ 60.13a and 60.60 in the definitions of Prohibited Area and Restricted Area.

The Air Commerce Act of 1926 and the Civil Aeronautics Act of 1938 were repealed by the Federal Aviation Act of

1958. This repeal rendered § 60.13a and the citations of the authority of these acts obsolete.

It is deemed advisable to rescind §60.-13a of Part 60 and to amend the definitions of Prohibited Area and Restricted Area in § 60.60 to remove reference to obsolete authorities.

Inasmuch as this action is editorial in nature and imposes no additional burden upon any person, compliance with the notice, public procedure and effective date requirements of the Administrative Procedure Act is unnecessary.

In consideration of the foregoing, Civil Air Regulations Part 60 (14 CFR Part 60) is hereby amended as follows:

1. By rescinding § 60.13a.

2. By amending §60.60 as follows:

§ 60.60 Definitions.

• • • • • •

Prohibited Area. Airspace identified by an area on the surface of the earth within which the flight of aircraft is prohibited.

• • • • • •

Restricted Area. Airspace identified by an area on the surface of the earth within which the flight of aircraft, while not wholly prohibited, is subject to restrictions.

This amendment shall become effective December 23, 1960.

(Sec. 307; 72 Stat. 752; 49 U.S.C. 1354)

Issued in Washington, D.C., on December 23, 1960.

E. R. QUESADA,
Administrator.

[F.R. Doc. 60-12094; Filed, Dec. 28, 1960; 8:50 a.m.]

Chapter III—Federal Aviation Agency

SUBCHAPTER A—PROCEDURAL REGULATIONS

[Reg. Docket No. 609]

PART 406—CERTIFICATION PROCEDURES

Part 406, Regulations of the Administrator, has been extensively altered by amendment and much of its terminology has become obsolete. Without integration of the fifteen amendments to date and usage of current terminology in the basic regulation, confusion and misuse can result. For these reasons a complete restatement of the part is necessary. This revision incorporates the outstanding amendments, up-dates terminology and deletes obsolete material.

Inasmuch as this revision is procedural only and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it may be made effective immediately.

In consideration of the foregoing, Part 406 of Chapter III of Title 14 of the Code of Federal Regulations is hereby revised, effective on the date of its publication in the FEDERAL REGISTER, to read as follows:

Subpart A—Introduction

Sec.
406.1 Definitions of terms.
406.2 Use of forms, etc.

Subpart B—Issuance of Certificates

Sec.
406.11 General.
406.12 Medical certificates.
406.13 Airman certificates.
406.14 Aircraft certificates.
406.15 Air carrier certificates.
406.16 Air agency certificates.
406.17 Air navigation certificate and notices.
406.19 Crew member certificate.

Subpart C—Medical Records

406.31 Availability of medical history.

AUTHORITY: §§ 406.1 to 406.31 issued under secs. 313(a), 501-505, 601-608, 72 Stat. 752, 771, 772, 774, 775, 776, 778, 779; 49 U.S.C. 1354, 1401, 1402, 1403, 1404, 1405, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428.

Subpart A—Introduction

§ 406.1 Definitions of terms.

As used in this part:

(a) "Act" shall mean Federal Aviation Act of 1958, as amended.

(b) "Agency" shall mean Federal Aviation Agency.

(c) "Administrator" shall mean the Administrator of the Federal Aviation Agency.

(d) "Board" shall mean Civil Aeronautics Board.

(e) "Aviation medical examiner" shall mean a licensed physician designated by the Administrator to perform appropriate medical examinations and to issue or deny medical certificates prescribed by the Civil Air Regulations.

(f) "Medical certificate" shall mean an acceptable evidence of an airman's physical fitness issued by the Administrator or his authorized representative within the Agency, or by an aviation medical examiner.

§ 406.2 Use of forms, etc.

Forms and other documents prescribed in this part which contain references to specific units of organization will not be affected by any change in the titles of the units. Such forms and documents will continue in use until they have been superseded or revoked.

Subpart B—Issuance of Certificates

§ 406.11 General.

(a) *Application.* Except as otherwise indicated in this subpart, an application for a certificate may be obtained from, and shall be submitted to, a representative of the Agency or to one of its regional, district, or field offices.

(b) *Examination.* A medical examination where required will be given by an aviation medical examiner as indicated in this subpart. A theoretical or written examination where required will be given by a representative of the Agency except that a student pilot may be examined on the Civil Air Regulations by a certificated flight instructor. Written examinations will be conducted at selected recognized airports. Itineraries of agents will be posted at such airports.

(c) *Issuance.* Requirements concerning the issuance of a certificate are set forth in Chapter I of this title, or in this part.

§ 406.12 Medical certificates.

The following medical certificates will be issued by the Agency to qualified applicants: (a) *First-class medical certificate*—(1) *Purpose.* This certificate must be obtained by an applicant for, or the holder of, an airline transport pilot rating.

(2) *Examination.* An examination for this certificate will be given by an aviation medical examiner specifically designated for this purpose. A list of these aviation medical examiners in any area may be obtained by addressing a request to the Regional Manager of the region in which the area is located.

(3) *Issuance.* This certificate will be issued on a "Medical Certificate," Form FAA-1004.1 with the appropriate class entered in the space provided.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 29 of Chapter I of this title.

(b) *Second-class medical certificate*—(1) *Purpose.* This certificate must be obtained by an applicant for, or holder of, a commercial pilot certificate, air-traffic control-tower operator certificate, flight navigator certificate, flight engineer certificate, or commercial lighter-than-air pilot certificate.

(2) *Examination.* An examination for this certificate will be given by an aviation medical examiner. A list of the aviation medical examiners in any area may be obtained by addressing a request to the Regional Manager of the region in which the area is located.

(3) *Issuance.* This certificate will be issued on a "Medical Certificate", Form FAA-1004.1 with the appropriate class entered in the space provided.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 29 of Chapter I of this title.

(c) *Third-class medical certificate*—(1) *Purpose.* This certificate must be obtained by an applicant for, or holder of, a student pilot certificate, private pilot certificate, student lighter-than-air pilot certificate, private lighter-than-air pilot certificate, free balloon pilot certificate, and flight radio operator certificate.

(2) *Examination.* An examination for this certificate will be given by an aviation medical examiner. A list of the aviation medical examiners in any area may be obtained by addressing a request to the Regional Manager of the region in which the area is located.

(3) *Issuance.* This certificate will be issued on a "Medical Certificate," Form FAA-1004.1, with the appropriate class entered in the space provided.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 29 of Chapter I of this title.

(d) *Delegation of authority.* The authority vested in the Administrator to issue or deny the issuance of medical certificates by section 602(a) and 602(b) of the Act is delegated to the Civil Air Surgeon and his authorized representatives within the Agency to the extent necessary (1) to examine applicants for and holders of airman medical certificates for compliance with the medical standards applicable to the issuance or renewal of airman medical certificates; and (2) to issue, renew, or deny issuance or renewal of airman medical certificates to applicants or holders of such certificates based upon compliance or noncompliance with the applicable medical standards. Subject to such limitations as may be provided by rules or regulations of the Agency, the authority delegated above is also delegated to aviation medical examiners.

The authority vested in the Administrator by section 609 of the Act to reexamine any civil airman to the extent necessary to amend, suspend, or revoke a medical certificate, is delegated to the Civil Air Surgeon or his authorized representative within the Agency.

(e) *Reconsideration of denial of medical certificate by aviation medical examiner.* Any action of an aviation medical examiner denying issuances of a medical certificate shall be subject to reconsideration by the Civil Air Surgeon or his authorized representative. Denial of issuance of a medical certificate by an aviation medical examiner shall not constitute a denial by the Administrator under section 602, Federal Aviation Act of 1958. Any person whose application for issuance of a medical certificate has been denied by an aviation medical examiner may apply for reconsideration of such denial pursuant to section 314(b) of the Federal Aviation Act by application made in writing and addressed to the Civil Air Surgeon, Federal Aviation Agency, Washington 25, D.C., together with a copy addressed to the respective medical examiner. In the event no application for reconsideration is made within thirty days of the action of the aviation medical examiner, the applicant will be deemed to have acquiesced in the action and to have withdrawn his application for medical certificate. Denial by the Civil Air Surgeon, or his representative, upon application for reconsideration, shall constitute a denial by the Administrator under section 602, Federal Aviation Act.

(f) *Reconsideration of denial by the Civil Air Surgeon of medical certificate.* Any denial by the Civil Air Surgeon or his authorized representative within the Agency shall constitute a denial by the Administrator under section 602 of the Act. Any person whose application for issuance of a medical certificate has been denied initially or upon reconsideration by the Civil Air Surgeon or his authorized representative within the Agency may petition the Administrator pursuant to 14 CFR 405.32 for exemption from Part 29 of the Civil Air Regulations, or he may appeal from such a decision to the Civil Aeronautics Board.

(g) *Medical certification by senior flight surgeons of the military services.* In accordance with agreements entered into by the Civil Air Surgeon on one hand and his counterpart in each of the military services on the other hand, the FAA has designated as aviation medical examiners for the Agency, senior flight surgeons on specified military posts, stations and facilities. These specially designated aviation medical examiners are authorized to perform the physical examination of applicants for FAA medical certificates who are on active duty or others who are eligible under Department of Defense medical programs for FAA medical certification as civil airmen. Furthermore, they have the authority to issue or deny the issuance of appropriate FAA medical certificates in accordance with the rules, regulations and established policies of the Agency. A list of military posts, stations and facilities in which the senior flight surgeon has been designated as aviation medical examiner for the FAA may be obtained from the various Surgeons General of the different services or from the Chief of Medical Certification Division, AM-30, Federal Aviation Agency, Washington 25, D.C.

§ 406.13 Airman certificates.

The following airman certificates will be issued by the Agency to qualified applicants:

(a) *Student pilot certificate*—(1) *Purpose.* This certificate will authorize the holder to pilot in solo flight, aircraft of a type, class, and model specified on the certificate.

(2) *Application.* A single application for this certificate will be made on an "Application for Student or Private Pilot Certificate," Form FAA-355.

(3) *Issuance.* This certificate will be issued on a Form FAA-340.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Parts 20 and 43 of Chapter I of this title.

(b) *Pilot certificate*—(1) *Purpose.* This certificate will authorize the holder to pilot aircraft in accordance with limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate with ratings shall be made on an "Application for Commercial Pilot or Flight Instructor Certificate or Rating," Form FAA-342, or an "Application for Student Pilot or Private Pilot Certificate," Form FAA-355, if for initial certification as a civilian pilot.

(3) *Issuance.* This certificate with ratings will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Parts 20 and 43 of Chapter I of this title.

(c) *Airline transport pilot certificate*—(1) *Purpose.* This certificate will authorize the holder to exercise the privileges of an airline transport pilot in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Airline Transport Pilot Certificate or Rating Thereon," Form FAA-342A.

(3) *Issuance.* This certificate will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 21 of Chapter I of this title.

(d) *Lighter-than-air pilot certificate*—(1) *Purpose.* This certificate will authorize the holder to exercise the privileges of a lighter-than-air pilot in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Student Pilot or Private Pilot Certificate," Form FAA-355.

(3) *Issuance.* This certificate will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 22 of Chapter I of this title.

(e) *Mechanic or repairman certificate*—(1) *Purpose.* This certificate will authorize the holder to inspect, maintain, or repair aircraft and aircraft engines and appliances in accordance with the limitations set forth on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Airman Mechanic, Repairman, or Parachute Rigger Certificate or Rating," Form FAA-363.

(3) *Issuance.* This certificate will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 24 of Chapter I of this title.

(f) *Parachute rigger certificate*—(1) *Purpose.* This certificate will authorize the holder to inspect, pack, repair, or construct parachutes in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Airman Mechanic, Repairman, or Parachute Rigger Certificate or Rating," Form FAA-363.

(3) *Issuance.* This certificate will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 25 of Chapter I of this title.

(g) *Air-traffic control-tower operator certificate*—(1) *Purpose.* This certificate will authorize the holder to control air traffic in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Control-Tower Operator or Aircraft Dispatcher Certificate and Rating," Form FAA-374.

(3) *Issuance.* This certificate will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 26 of Chapter I of this title.

(h) *Aircraft dispatcher certificate*—(1) *Purpose.* This certificate will authorize the holder to act as an aircraft dispatcher for a certificated air carrier in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Control-Tower Operator or Aircraft Dispatcher Certificate and Rating," Form FAA-374.

(3) *Issuance.* This certificate will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 27 of Chapter I of this title.

(i) *Flight radio operator certificate*—(1) *Purpose.* This certificate will authorize the holder to exercise the privileges of a flight radio operator in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Flight Radio Operator Certificate," Form FAA–1863B.

(3) *Issuance.* This certificate will be issued on a Form FAA–1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 33 of Chapter I of this title.

(j) *Flight navigator certificate*—(1) *Purpose.* This certificate will authorize the holder to exercise the privileges of a flight navigator in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Flight Navigator Certificate," Form FAA–1863.

(3) *Issuance.* This certificate will be issued on a Form FAA–1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 34 of Chapter I of this title.

(k) *Flight engineer certificate*—(1) *Purpose.* This certificate will authorize the holder to exercise the privileges of a flight engineer in accordance with the limitations prescribed on the certificate.

(2) *Application.* A single application for this certificate shall be made on an "Application for Flight Engineer Certificate," Form FAA–1863A.

(3) *Issuance.* This certificate will be issued on Form FAA–1710.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 35 of Chapter I of this title.

§ 406.14 Aircraft certificates.

The following aircraft certificates will be issued by the Agency to qualified applicants:

(a) *Type certificate*—(1) *Purpose.* This certificate will certify that an aircraft, aircraft engine, propeller, or appliance specified in the Civil Air Regulations as eligible for a type certificate is of proper design, material, specifications, construction, and performance for safe operation, and meets the minimum requirements of the Civil Air Regulations.

(2) *Application.* A single application for this certificate shall be made on an "Application for Type Certificate," Form FAA–312. This application form may be obtained from, and shall be submitted to the Engineering and Manufacturing Branch of the regional office serving the area in which the manufacturer's plant is located.

(3) *Issuance.* This certificate will be issued on a Form FAA–331.

(4) *Reports.* Upon the initial transfer of title to any aircraft manufactured in accordance with Agency standards and requirements for United States registry, and where such aircraft has been manufactured under the terms of a type certificate only, i.e., without benefit of a production certificate, the holder of the type certificate or of a current right to the benefits of a type certificate under a licensing arrangement shall submit a "Statement of Conformity," Form FAA–317, to a duly authorized representative of the Administrator.

(5) *Additional requirements.* Further provisions regarding this certificate are contained in Part 1 of Chapter I of this title.

(b) *Production certificate*—(1) *Purpose.* This certificate will authorize duplicates of a product for which a type certificate has been issued, to be manufactured at designated places.

(2) *Application.* A single application for this certificate and a production limitation record, shall be made on an "Application for Production Certificate," Form FAA–332. The application form may be obtained from, and shall be submitted to, the Engineering and Manufacturing Branch of the regional office serving the area in which the manufacturer's plant is located. If an amendment is desired, application shall be made to such regional office.

(3) *Issuance.* This certificate will be issued on a "Production Certificate," Form FAA–333. It will include a "Production Limitation Record," Form FAA–333A, which will set forth the applicable type certificate.

(4) *Reports.* The holder of this certificate shall notify the Regional Office which issued the certificate, of any changes in organization, methods, procedures, facilities, or location of the manufacturing facilities which affect the product for which the certificate was issued.

(5) *Additional requirements.* Further provisions regarding this certificate are contained in Part 1 of Chapter I of this title.

(c) *Aircraft registration certificate*—(1) *Purpose.* This certificate will satisfy the provisions of the act requiring that an aircraft be registered by its owner before it may be operated or navigated.

(2) *Application and fee.* An application for this certificate shall be made on a Form FAA–500. This form will contain three parts: Part A, "Certificate of Registration"; Part B, "Application for Registration"; and Part C, "Bill of Sale." An applicant for a certificate of registration shall mail the original and a duplicate of Part A, an original of Part B, an original of Part C or another bill of sale or other form of conveyance described in § 501.4(b)(2) of this chapter, and a registration fee of $4 to the Federal Aviation Agency, Aircraft and Airman Records Branch, Oklahoma City, Oklahoma. If a contract of conditional sale is submitted, an additional fee of $4 shall be enclosed to record it. The applicant shall retain the duplicate of Part B in the aircraft as a temporary registration pending receipt of the certificate of registration, Part A of Form FAA–500, and in the event later notification from the FAA authorizes continued temporary operation of the aircraft pending receipt of such certificate of registration, the applicant shall also retain such notification in the aircraft.

(3) *Issuance.* This certificate will be issued on the original "Certificate of Registration," Form FAA–500, Part A.

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 501 of this Chapter.

(d) *Dealer's aircraft registration certificate*—(1) *Purpose.* This certificate will provide an alternate form of registration permitting the operation, demonstration, and merchandising of civil aircraft moving in ordinary trade channels from a manufacturer, distributor, or dealer to an ultimate purchaser.

(2) *Application and fee.* (An application for this certificate shall be made on an "Application for Issuance of Dealer's Aircraft Registration Certificate(s)," Form FAA–1706. It will require a statement of the dealer's citizenship and certain data concerning his status as a bona fide dealer in aircraft. An application containing current data shall be submitted each time certificates are requested, and may cover as many certificates as are desired at that time. This application may be obtained from, and shall be submitted to, the Engineering and Manufacturing Branch of the Regional Office serving the area in which the applicant's business is located. A fee of $5 will be charged for the first certificate, and $1 for each additional or subsequent certificate issued to the same dealer.

(3) *Issuance.* This certificate will be issued on a "Dealers' Aircraft Registration Certificate," Form FAA–1707. It will be valid for 12 months from the date of issuance. Duplicates will not be issued.

(4) *Additional requirements.* Further provisions regarding the issuance and use of this certificate are contained in Part 502 of this chapter.

(e) *Aircraft airworthiness certificate*—(1) *Purpose.* This certificate is issued for an aircraft which complies with the airworthiness requirements of the Civil Air Regulations (Subchapter A of Chapter I of this title). (In addition to an airworthiness certificate, the Civil Air Regulations require that there be carried in the aircraft an approved airplane flight manual which sets forth the limitations for safe operation; or placards or listings or combination of both, containing operating limitations, insofar as they may have been prescribed by the Administrator for a particular aircraft.)

(2) *Application.* A single application for this certificate and an aircraft operation record shall be made on an "Application for Airworthiness Certificate and/or Annual Inspection of an Aircraft," Form FAA–305. Usually, the manufacturer obtains the certificate, which thereafter shall remain with the aircraft. If no airworthiness certificate has been issued for the aircraft, an application for such a certificate may be made by the registered owner of the aircraft, or his agent.

(3) *Issuance.* This certificate will be issued on a "Certificate of Airworthiness," Form FAA–1362 or Form FAA–1362A whichever is applicable.

(4) *Inspections.* An annual inspection of all certificated aircraft by an authorized representative of the Administrator is required unless the aircraft is being maintained and inspected by a continuous maintenance and inspection system. The aircraft and engine records must be maintained and kept available for inspection. (See Part 43 of Chapter I of this title.)

(f) *Ferry permit*—(1) *Purpose.* This permit will authorize the flight of a civil aircraft of United States registry between two specified points for the purpose of repairing, or obtaining certification of, an aircraft, or it will authorize an aircraft to be delivered via fly-away to a border of the United States or to some other point within the United State from which the aircraft is to be exported. (See § 43.10(b) of Chapter I of this title.)

(2) *Application.* An application for this permit shall be made on an "Application and Authorization for Ferry Permit," Form FAA–1779. The applicant shall furnish evidence identifying the aircraft, reveal the points between which the aircraft will be flown, estimate duration of the flight, and furnish a statement giving the reasons why an aircraft airworthiness certificate is not applicable.

(3) *Issuance.* Normally, this permit will be issued on an "Application and Authorization for Ferry Permit," Form FAA–1779, but in some instances may be authorized by wire or telephone.

(g) *Certificate of airworthiness for export*—(1) *Purpose.* This certificate will certify that the type-certificated product involved meets certain general and special requirements for export to particular foreign citizens or foreign countries.

(2) *Application.* An application for this certificate shall be made on an "Application for Export Certificate of Airworthiness," Form FAA–306.

(3) *Issuance.* This certificate will be issued on a "Certificate of Airworthiness for Export," Form FAA–26.

§ 406.15 Air carrier certificates.

The following air carrier certificates will be issued by the Agency to qualified applicants: (a) *Air carrier operating certificate*—(1) *Purpose.* This certificate will describe the operations authorized, and prescribe such operation specifications and limitations as may reasonably be required in the interest of safety. It is required for all air carriers engaged in scheduled and irregular operations.

(2) *Application.* (i) An application for a scheduled air carrier operating certificate shall be made by letter to the regional office of the Agency serving the area in which the principal office of the air carrier is located.

(ii) An application for an irregular air carrier operating certificate shall be made on an "Application for Certificate under CAR 42, 45, or 47," Form FAA–1602, to the regional office serving the area in which the principal office of the air carrier is located.

(3) *Additional requirements.* Further provisions regarding this certificate are contained in Parts 40, 41, 42 and 47 of Chapter I of this title.

§ 406.16 Air agency certificates.

The following air agency certificates and ratings will be issued by the Agency to qualified applicants:

(a) *Basic ground school rating*—(1) *Purpose.* This rating will authorize the holder to operate as a basic ground school.

(2) *Application.* An application for this rating shall be made on an "Application for Airman Agency Certificate and Rating, and Inspection Report," Form FAA–387. A new application shall be submitted at least every two years.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA–390.

(4) *Reports.* The holder of this rating shall submit an "Air Agency Activity Report," Form FAA–1784, whenever it is able to report on 32 students, or at least every six months.

(5) *Additional requirements.* Further provisions regarding this rating are contained in Part 50 of Chapter I of this title.

(b) *Advanced ground school rating*—(1) *Purpose.* This rating will authorize the holder to operate as an advanced ground school.

(2) *Application.* An application for this rating shall be made on an "Application for Airman Agency Certificate and Rating, and Inspection Report," Form FAA–387. A new application shall be submitted at least every two years.

(3) *Issuance.* This certificate will be issued on an "Air Agency Certificate," Form FAA–390.

(4) *Reports.* The holder of this rating shall submit an "Air Agency Activity Report," Form FAA–1784, whenever it is able to report on 32 students, or at least every six months.

(5) *Additional requirements.* Further provisions regarding this rating are contained in Part 50 of Chapter I of this title.

(c) *Primary flying school rating*—(1) *Purpose.* This rating will authorize the holder to operate as a primary flying school.

(2) *Application.* An application for this rating shall be made on an "Application for Airman Agency Certificate and Rating, and Inspection Report," Form FAA–387. A new application shall be submitted at least every two years.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA–390.

(4) *Reports.* The holder of this rating shall submit an "Air Agency Activity Report," Form FAA–1784, whenever it is able to report on 32 students or at least every six months.

(5) *Additional requirements.* Further provisions regarding this rating are contained in Part 50 of Chapter I of this title.

(d) *Commercial flying school rating*—(1) *Purpose.* This rating will authorize the holder to operate as a commercial flying school.

(2) *Application.* An application for this rating shall be made on an "Application for Airman Agency Certificate and Rating, and Inspection Report," Form FAA–387. A new application shall be submitted at least every two years.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA–390.

(4) *Reports.* The holder of this rating shall submit an "Air Agency Activity Report," Form FAA–1784, whenever it is able to report on 32 students, or at least every six months.

(5) *Additional requirements.* Further provisions regarding this rating are contained in Part 50 of Chapter I of this title.

(e) *Instrument flying school rating*—(1) *Purpose.* This rating will authorize the holder to operate as an instrument flying school.

(2) *Application.* An application for this rating shall be made on an "Application for Airman Agency Certificate and Rating, and Inspection Report," Form FAA–387. A new application shall be submitted at least every two years.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA–390.

(4) *Reports.* The holder of this rating shall submit an "Air Agency Activity Report," Form FAA–1784, whenever it is able to report on 32 students, or at least every six months.

(5) *Additional requirements.* Further provisions regarding this rating are contained in Part 50 of Chapter I of this title.

(f) *Flight instructor school rating*—(1) *Purpose.* This rating will authorize the holder to operate as a flight instructor school.

(2) *Application.* An application for this rating shall be made on an "Application for Airman Agency Certificate and Rating, and Inspection Report," Form FAA–387. A new application shall be submitted at least every two years.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA–390.

(4) *Reports.* The holder of this rating shall submit an "Approved Air Agency Activity Report," Form FAA–1784, whenever it is able to report on 32 students or at least every six months.

(5) *Additional requirements.* Further provisions regarding this rating are contained in Part 50 of Chapter I of this title.

(g) *Repair station rating*—(1) *Purpose.* This rating will authorize the holder to operate as a repair station.

(2) *Application.* An application for this rating shall be made on an "Application for Repair Station Certificate and Rating," Form FAA–394.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA–390.

(4) *Additional requirements.* Further provisions regarding this rating are contained in Part 52 of Chapter I of this title.

(h) *Mechanic school rating*—(1) *Purpose.* This rating will authorize the holder to operate as a mechanic school.

(2) *Application.* An application for this rating shall be made on a "Mechanic School Application and Inspection Report," Form FAA–614.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA-390.

(4) *Reports.* The holder of this rating shall submit a Mechanic School Report," Form FAA-392, in January and July of every year.

(5) *Additional requirements.* Further provisions regarding this rating are contained in Parts 50 and 53 of Chapter I of this title.

(i) *Parachute loft rating*—(1) *Purpose.* This rating will authorize the holder to operate as a parachute loft.

(2) *Application.* An application for this rating shall be made on an "Application for Parachute Loft Certificate and Rating," Form FAA-1371.

(3) *Issuance.* This rating will be issued on an "Air Agency Certificate," Form FAA-390.

(4) *Additional requirements.* Further provisions regarding this rating are contained in Part 54 of Chapter I of this title.

(j) *Ground instructor certificate and rating*—(1) *Purpose.* This certificate and rating will authorize the holder to serve as a ground instructor.

(2) *Application.* An application for this certificate and rating shall be made on an "Application for Ground Instructor Certificate or Rating," Form FAA-360.

(3) *Issuance.* This certificate and rating will be issued on a Form FAA-1710.

(4) *Additional requirements.* Further provisions regarding this certificate and rating are contained in Parts 50 and 51 of Chapter I of this title.

(k) *Commercial operator certificate*—(1) *Purpose.* This certificate will authorize the holder to serve as a commercial operator.

(2) *Application.* An application for this certificate shall be made on an "Application for Certificate under CAR 42, 45, or 47," Form FAA-1602.

(3) *Issuance.* This certificate will be issued on a Form FAA-1603, "Air Carrier Operating Certificate."

(4) *Additional requirements.* Further provisions regarding this certificate are contained in Part 45 of Chapter I of this title.

§ 406.17 Air navigation certificate and notices.

The following air navigation certificate will be issued by the Administrator to qualified applicants: In addition, the following air navigation notices are required for the construction or alteration of certain structures and landing areas.

(a) *Authorization to operate true light*—(1) *Purpose.* Upon certification by an applicant that a light will be established, maintained and operated as an aid to air navigation in accordance with the applicable requirements of the Agency, the Administrator will issue an authorization to the applicant authorizing him to operate such light as a "true light."

(2) *Application.* The application shall be submitted on Form FAA-114, "Certification and Lawful Authority to Operate a True Light."

(b) *Notice of construction or alteration*—(1) *Purpose.* The purpose of this notice is to advise the Administrator of the construction or alteration of certain structures and landing areas along or near civil airways for which a notice is required under Part 625 of this chapter.

(2) *Submittal of notice.* Notice shall be submitted to the Administrator in accordance with the provisions of Part 625 of this chapter on Form FAA-117, "Notice of Proposed Construction or Alteration."

§ 406.19 Crew member certificate.

(a) *Purpose.* This certificate will be issued to facilitate the entry and clearance into ICAO contracting states of United States citizens employed by scheduled air carriers as flight crew members or crew members on U.S.-registered aircraft engaged in scheduled international air transportation, as provided in Annex 9, as amended, to the Convention on International Civil Aviation.

(b) *Application.* An application for this certificate shall be made on an "Application for Crew Member Certificate," Form FAA-2116, and submitted to the Air Carrier District Office in charge of the air carrier by whom the applicant is employed.

(c) *Issuance.* This certificate will be issued on a "Crew Member Certificate," Form FAA-2116.1.

(d) *Surrender.* This certificate will be surrendered for cancellation by the air carrier or the certificate holder to the nearest Air Carrier District Office upon termination of the holder's assignment in scheduled international air transportation with the air carrier.

Subpart C—Medical Records

§ 406.31 Availability of medical history.

If the Administrator or his authorized representative finds that additional medical history is necessary to determine whether any person who applies for or holds a medical certificate meets the physical standards therefor, such person will be requested to authorize any clinic, hospital, doctor or other person to release to the Administrator or his authorized representative any available information or records concerning such medical history. Refusal or failure to provide the requested authorization may be cause for denial, suspension, modification, or revocation of the medical certificate.

Issued in Washington, D.C. on December 22, 1960.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 60-12069; Filed, Dec. 28, 1960; 8:46 a.m.]

[Reg. Docket No. 611]

PART 410—DELEGATION OPTION PROCEDURES FOR CERTIFICATION OF SMALL AIRPLANES, GLIDERS, ENGINES, AND PROPELLERS

The language contained in Part 410, Regulations of the Administrator, has become obsolete. Without usage of current terminology, confusion and misuse can result in the application of this regulation. This revision incorporates the outstanding amendment, up-dates terminology, and deletes obsolete material.

Inasmuch as this revision is procedural only and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it may be made effective immediately.

In consideration of the foregoing, Part 410 of Chapter III of Title 14 of the Code of Federal Regulations is hereby revised, effective on the date of its publication in the FEDERAL REGISTER, to read as follows:

PART 410—DELEGATION OPTION PROCEDURES FOR CERTIFICATION OF SMALL AIRPLANES, GLIDERS, ENGINES, AND PROPELLERS

Subpart A—General

410.1 Definition of terms.
410.2 Basis and purpose.

Subpart B—Delegation Option Authorization

410.11 Application.
410.12 Authorization.
410.13 Eligibility.
410.14 Designated manufacturer's certification representative (DMCR).
410.15 Duration.
410.16 Maintenance of eligibility.
410.17 Transfer.
410.18 Inspections.

Subpart C—Delegation Option Procedures

410.31 Limits of applicability.
410.32 Type certificates.
410.33 Production certificates.
410.34 Airworthiness certificates.
410.35 Certificates of airworthiness for export.
410.36 Service difficulties and noncompliance.
410.37 Maintenance, repair, and alteration of products.
410.38 Data and records.

AUTHORITY: §§ 410.1 to 410.38 issued under secs. 313, 314, 603, 72 Stat. 752, 754, 776; 49 U.S.C. 1354, 1355, 1423.

Subpart A—General

§ 410.1 Definition of terms.

As used in this part:

(a) "Administrator" shall mean Administrator of the Federal Aviation Agency.

(b) "FAA" shall mean Federal Aviation Agency.

(c) "DMCR" shall mean Designated Manufacturer's Certification Representative.

(d) "Product" shall mean an airplane, a glider, an aircraft engine, or propeller.

§ 410.2 Basis and purpose.

(a) Section 603 of the Federal Aviation Act of 1958 (72 Stat. 776; 49 U.S.C. 1423) authorizes the Administrator to conduct inspections and tests necessary to the issuance of type, production, and airworthiness certificates, and to issue such certificates. Section 314 of the Federal Aviation Act of 1958 (72 Stat. 754; 49 U.S.C. 1355) authorizes the Administrator to delegate the functions to properly qualified private persons.

(b) Under delegation option procedures, type, production, and airworthiness certification of airplanes and gliders having maximum weight of 12,500 lbs. or less, and type and production certification of piston engines of less than 1,000 cubic inches piston displacement and propellers for use on such engines, may be accomplished by manufacturers utilizing a DMCR. Standard procedures will be used by manufacturers who are not eligible to use, or do not elect to use, the delegation option procedures.

Subpart B—Delegation Option Authorization

§ 410.11 Application.

Application for an authorization from the Administrator to use the delegation option procedures shall contain the information specified in appendix A [1] to this part, and shall be submitted to the FAA regional office for the region in which the manufacturer is located.

§ 410.12 Authorization.

Upon receiving an application and finding that the applicant meets the eligibility requirements, the Administrator will issue an authorization to the applicant to use the delegation option procedures in accordance with the provisions of this part. A sample authorization is shown in appendix B [1] to this part.

§ 410.13 Eligibility.

To be eligible for an authorization to use the delegation option procedure, the applicant shall:

(a) Hold a current type certificate under the same part of the Civil Air Regulations and a production certificate, issued to the applicant under the standard procedure,

(b) Employ a competent staff of engineering, flight test, production, and inspection personnel adequate to maintain compliance with the applicable certification requirements of Parts 1, 3, 4a, 5, 8, 13, and 14 of this title, and

(c) Have requested the appointment of an individual by the Administrator as a Designated Manufacturer's Certification Representative in accordance with § 410.14.

§ 410.14 Designated manufacturer's certification representative (DMCR).

(a) A Designated Manufacturer's Certification Representative is an individual who:

(1) Holds a responsible position in a manufacturer's organization with respect to the design and manufacture of the pertinent product; and

(2) Upon request by the manufacturer, has been issued a certificate by the Administrator, and has been listed on the delegation option authorization issued to the manufacturer.

(b) The Designated Manufacturer's Certification Representative may be replaced by another individual upon request by the holder of the delegation option procedure authorization and the listing of such replacing individual by the Administrator on the authorization.

(c) A DMCR will be furnished FAA forms, and instructions on the use thereof, under the delegation option procedures.

§ 410.15 Duration.

An authorization to use the delegation option procedure shall remain in effect for 1 year unless suspended, canceled, or revoked by the Administrator. An authorization may be renewed upon application if the Administrator finds the record of the applicant to be satisfactory. (See § 410.16.) The holder of such authorization shall request the FAA to cancel it if he no longer desires to use the delegation option procedure.

§ 410.16 Maintenance of eligibility.

The holder of an authorization to use the delegation option procedure shall continue to comply with the initial requirements for issuance. To be eligible for renewal the holder must have a record over the previous year which shows he is competent, willing, and able to carry out the responsibilities delegated.

§ 410.17 Transfer.

An authorization to use the delegation option procedure is not transferable.

§ 410.18 Inspections.

At any time, upon request, the applicant for a delegation option procedure authorization or the holder of such authorization shall permit authorized employees of the Administrator to inspect his organization, facilities, product, and records.

Subpart C—Delegation Option Procedures

§ 410.31 Limits of applicability.

(a) The delegation option procedures shall be applied only to products which are manufactured by the holder of a delegation option authorization, and which:

(1) Are eligible for certification under the type, production, and airworthiness requirements of Parts 1, 3, 4a, 5, 8, 13, or 14 of this title, and

(2) Are airplanes or gliders having a maximum weight of 12,500 pounds or less, or

(3) Are piston engines having less than 1,000 cubic inches piston displacement, or

(4) Are propellers designed for use on engines having less than 1,000 cubic inches piston displacement.

(b) Within the limitations prescribed in paragraph (a) of this section, the delegation option procedure may be applied to:

(1) Type certification.

(2) Changes in the type design of products for which the manufacturer holds or obtains a type certificate.

(3) The amendment of the production certificate held by the manufacturer, to include additional models or additional types for which he holds or obtains type certificates.

(4) The issuance of airworthiness certificates for airplanes and gliders of any type for which the manufacturer holds a type certificate and holds or is in the process of obtaining a production certificate. For this privilege to be continued, the production certificate shall be obtained within 6 months from the date of issuance of the type certificate.

(c) The delegation option procedures may be applied to one or more types as selected by the manufacturer, who shall notify the FAA of each model, and the first serial number of each model manufactured by him under the delegation option procedures. Other types or models may remain under the standard procedures.

§ 410.32 Type certificates.

(a) When a manufacturer desires to obtain a type certificate for a new type under the delegation option procedures:

(1) The DMCR for such manufacturer shall submit to the FAA an application for Type Certificate (Form FAA-312) together with a statement listing particular airworthiness requirements of this title by part and date, which the DMCR considers applicable, plus a three-view drawing, a description of the salient characteristics of the design, an outline of the method to be used to substantiate compliance, and an estimated time schedule involved. After reviewing the application, the FAA will notify the DMCR in an acceptance letter that the Administrator finds such requirements, or other specified requirements, applicable.

(2) The FAA will verify compliance with standards, rules, and regulations for unconventional designs and/or design features having a substantially significant effect on safety, and will determine that there are no apparent unairworthy features. An initial review will be made by the FAA of new type designs including discussions with the manufacturer concerning any unconventional design features, interpretations of the regulations, or means of determining compliance. Following this review the FAA will notify the manufacturer concerning the extent to which the FAA will verify compliance, and the extent to which the FAA will participate in test programs. Also, the FAA will counsel and advise manufacturers upon request or indicated need.

(3) After determining that the applicable airworthiness requirements are met, the DMCR shall request the Administrator to issue a type certificate. The request shall include a Statement of Compliance and the information prescribed in appendix C [1] to this part. The proposed specification and, if required by the applicable airworthiness requirements, a copy of the Airplane Flight Manual as approved by the DMCR, or if an airplane flight manual is not required, a summary of the required DMCR approved operating limitations information, and performance, shall be transmitted with the request. If the results of his own participation in the process of determining compliance with the regulations have revealed no failure of compliance, the Administrator will issue the type certificate which includes the Type Certificate Data Sheet.

(b) Under these delegation option procedures, the manufacturer may change the type design for which he holds a type certificate, when the DMCR finds that the changes comply with the applicable airworthiness requirements. If such changes would alter the information in the specification or Airplane Flight Manual, the manufacturer shall promptly submit proposed specification revisions or Airplane Flight Manual revisions to the FAA.

[1] Not filed with the Federal Register Division.

(1) The DMCR shall furnish a statement to the FAA, briefly describing major changes to the type design and listing the particular airworthiness requirements of this title which the DMCR considers applicable. Upon receiving such a statement, the FAA will notify the DMCR that the Administrator finds such requirements or other specified requirements applicable. The FAA will verify compliance as considered necessary and will counsel and advise manufacturers upon request or indicated need.

(c) As a part of determining compliance with the applicable airworthiness requirements, the DMCR shall conduct a type inspection and complete a Type Inspection Report using an acceptable form or format which he shall sign and include in the manufacturer's technical data file.

(d) The manufacturer or the DMCR may request the advice of the FAA concerning interpretation of the certification requirements in Parts 1, 3, 4a, 5, 8, 13, and 14 of this title. The DMCR shall request the advice of the FAA on any interpretation which requires application of the equivalent safety provisions contained in the certification requirements. FAA rulings will be confirmed in writing.

(e) The manufacturer shall prepare and maintain a technical data file for each product type under the delegation option procedure, in accordance with § 410.33(a)(1). Authorized employees of the FAA shall have access to the file at any time. In the event the manufacturer goes out of business or no longer operates under the delegation option procedure the file becomes the property of the FAA.

§ 410.33 Production certificates.

(a) When a manufacturer desires to list a new model or new type certificate on his production certificate, the DMCR for such manufacturer shall, after finding that the manufacturer meets the production certificate requirements of Part 1 of this title with respect to the new model or type, submit a request therefor to the Administrator. (See § 410.31(b)(4).) This request shall be accompanied by:

(1) A Statement of Compliance containing the information prescribed in appendix D [1] of this part, and,

(2) A properly executed application for an amendment to the manufacturer's production certificate (Form FAA–332).

Upon receipt of these documents the Administrator will add the new model designation and/or type certificate number to the production certificate and forward to the manufacturer an amended production limitation record.

(b) In determining that the manufacturer meets the applicable production certificate requirements, the DMCR shall, for each new model or type added to the production certificate under the delegation option procedure, conduct an inspection of the manufacturer's organization, facilities, methods, and procedures for manufacturing and controlling the quality and conformity of the product. The FAA shall be notified in advance of such inspections and will participate as considered necessary. The DMCR shall complete and sign a Manufacturing Inspection Report (Form FAA–314) for inclusion in the manufacturer's records.

(c) At least once each year while the manufacturer holds a delegation option procedure authorization, the DMCR shall conduct an inspection of the manufacturer's facilities, methods, and procedures. The FAA will participate as considered necessary. The DMCR shall make a report to the FAA on each annual factory inspection, using form FAA–314.

(d) The manufacturer shall prepare and maintain a production certification file and make reports covering changes in organization and procedures and special processes, as required by the production certificate requirements of Part 1 of this title. He shall include such reports and inspection records for each model produced uder the delegation option procedure in his records as specified in § 410.38(a)(2).

§ 410.34 Airworthiness certificates.

(a) A DMCR shall issue an airworthiness certificate for an airplane or glider manufactured under the delegation option procedure when he finds, on the basis of the inspection and production flight check, that the aircraft conforms to a type design for which the manufacturer holds a type certificate and is in a condition for safe operation.

(b) The DMCR may authorize other employees of the manufacturer to sign such airworthiness certificates for him, over his name and designee number: *Provided*, That:

(1) Such employees perform or are in direct charge of the inspections specified in paragraph (a) of this section. and

(2) Such employees have been listed on the manufacturer's application to use the delegation option procedures (see appendix A [1] to this part), or on amendments thereto.

(c) A DMCR shall issue and attach an approval tag, Form ACA–186, to each new engine or propeller manufactured under the delegation option procedure when he finds, on the basis of the inspection and operational tests, that the engine or propeller conforms to a type design for which the manufacturer holds a type certificate and is in condition for safe operation.

After the new model has been included on the Production Limitation Record, the production certification number shall be stamped on the engine or propeller identification data plate in lieu of the issuance of the approval tag, Form FAA–186.

§ 410.35 Certification of airworthiness for export.

A certificate of airworthiness for export may be issued on the same basis as an airworthiness certificate, as specified in § 410.34.

§ 410.36 Service difficulties and noncompliance.

Service difficulties and questions of compliance on articles produced under the delegation option procedures will be handled as follows:

(a) *Reports.* When service difficulties are deemed of sufficient importance, FAA will forward copies of the reports to the manufacturer for his information and any action he deems appropriate. The FAA will not request replies or action on any report except as indicated in paragraph (b) of this section.

(b) *Serious defects.* If FAA investigation of accident or service difficulty reports indicates unsafe features or characteristics caused by defect in design or manufacture, the FAA will request the manufacturer to report the results of his investigation, and also to report the action, if any, taken or proposed by him (e.g., service bulletins, design changes, etc.). If the nature of the defect is of such importance that mandatory corrective action by the user of the product is necessary for safety, the FAA will require the manufacturer to submit the information necessary for the issuance of an airworthiness directive.

(c) *Investigation of data, products, or manufacturing facilities.* The manufacturer shall, at any time upon request, permit the FAA to inspect and test his product, and investigate his technical data files and manufacturing facilities (see §§ 410.18 and 410.38).

(d) *Maintenance of files.* The manufacturer shall maintain a file of information on service difficulties received from all sources, which will be available to the FAA at all times.

(e) *Noncompliance.* When investigation is made by the FAA, and the findings indicate that a serious safety hazard exists because of the manufacturer's failure to comply with Parts 1, 3, 4a. 5. 8, 13, or 14 of this title, the FAA will take such action as is deemed necessary to require correction of the defect in existing models and to assure compliance in articles subsequently produced.

(f) *Revocation of delegation option authorization.* If the number or importance of established cases of noncompliance warrants, or if the manufacturer is found not to comply with the requirements of this part, the FAA may request the manufacturer to show cause why his privileges under the delegation option procedures should not be withdrawn. These privileges may be withdrawn until the manufacturer reestablishes his eligibility to the satisfaction of the Administrator.

(g) *Suspension and revocation of certificates.* Any action against type or production certificates held by the manufacturer will be processed in accordance with the standard procedures.

§ 410.37 Maintenance, repair, and alteration of products.

Aircraft, engines, and propellers manufactured under the delegation option procedures shall be maintained, repaired, and altered in accordance with Part 18 of this title and the following provisions:

(a) *Approval of major repairs and alterations performed by the manufacturer.* For types included under the manufacturer's delegation option authorization:

(1) The DMCR may, after finding that the major repair or alteration complies with the applicable requirements, approve such repair or alteration under the provisions of § 18.11 of this title.

(2) A completed Repair and Alteration Form (Form FAA–337) shall be furnished to the owner and a copy forwarded to the FAA in accordance with established procedures. Technical data covering the design change shall be included in the manufacturer's records. The Form FAA–337 shall contain a description of the repair or alteration and a statement that it was accomplished under the delegation option procedures.

(3) The DMCR may authorize other employees of the manufacturer to execute and sign Forms FAA–337 and make required logbook entries over his name and designee number: *Provided*, That:

(i) Such employees perform or are in direct charge of inspecting the repair or alteration, and

(ii) They have been listed on the manufacturer's application for the delegation option (see appendix A [1] to this part), or on amendments thereto.

(b) *Approval of major repairs and alterations performed by agencies other than the manufacturer.* Anyone performing a major repair or alteration to a product certificated under the delegation option procedure must either:

(1) Obtain the necessary technical data or advice from the manufacturer, or

(2) Conduct the technical investigations and tests necessary to demonstrate compliance with the applicable airworthiness requirements.

§ 410.38 Data and records.

(a) A manufacturer shall maintain at his factory, for all models certificated under the delegation option procedures, current records containing the following:

(1) A technical data file for each type. This data shall include the type design drawings, specifications, and reports on tests prescribed by Parts 1, 3, 4a, 5, 8, 13, or 14 of this title, the original type inspection report (Form FAA–283), and amendments thereto. This file shall be retained for the duration of the manufacturer's operation under the delegation option procedure.

(2) A complete inspection record for each model produced according to serial number and data covering the processes and tests to which materials and parts are subjected. These records shall be retained for 2 years.

(3) The report required to be submitted with the original application for the production certificate and amendments thereto. This report shall be retained for the duration of the manufacturer's operation under the delegation option procedure.

(4) The factory inspection reports specified in § 410.33 (b) and (c). These factory inspection reports shall be retained for 2 years.

(5) A record of all major repairs and alterations performed under the delegation option procedure. This record shall be retained for the duration of the manufacturer's operation under the delegation option procedure.

(6) A record of all reported service difficulties. These records shall be retained for 2 years.

(b) The records and data specified in paragraph (a) of this section shall be:

(1) Made available, upon request, for examination at any time by authorized employees of the Administrator,

(2) Identified and transferred to the FAA in the event the manufacturer goes out of business or no longer operates under the delegation option procedure.

Issued in Washington, D.C., on December 22, 1960.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 60–12070; Filed, Dec. 28, 1960; 8:46 a.m.]

[1] Not filed with the Federal Register Division.

[Reg. Docket No. 610]

PART 418—REPRESENTATIVES OF THE ADMINISTRATOR

Revision of Part

The language contained in Part 418, Regulations of the Administrator, has become obsolete. Without usage of current terminology and integration of the outstanding amendments, confusion and misuse can result in the application of this regulation. For these reasons, a complete restatement of the part is necessary. This revision incorporates the outstanding amendments, up-dates terminology, deletes obsolete material and rearranges certain of the sections where necessary.

Inasmuch as this revision is procedural only and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it may be made effective immediately.

In consideration of the foregoing, Part 418 of Chapter III of Title 14 of the Code of Federal Regulations is hereby revised, effective on the date of its publication in the FEDERAL REGISTER, to read as follows:

Subpart A—Introduction

Sec.
418.1 Basis and purpose.
418.2 Definitions of terms.
418.3 Use of forms, etc.

Subpart B—Certification

418.10 Selection.
418.11 Certificates.
418.12 Duration.
418.13 Reports.

Subpart C—Types of Designations and Privileges

418.20 Medical examiners.
418.21 Pilot examiners.
418.22 Technical personnel examiners.
418.23 Designated aircraft maintenance inspectors (DAMI).
418.24 Designated engineering representatives (DER).
418.25 Designated manufacturing inspection representative (DMIR).

AUTHORITY: §§ 418.1 to 418.25 issued under sec. 314, 72 Stat. 754, 49 U.S.C. 1355.

Subpart A—Introduction

§ 418.1 Basis and purpose.

This part describes the requirements under section 314 of the act for the issuance of designations to private persons to act as representatives of the Administrator, in the examination, inspection, and testing necessary for the issuance of airman and aircraft certificates by the Administrator. It also delineates the privileges of such persons and establishes basic rules for the exercise of such privileges.

§ 418.2 Definitions of terms.

As used in this part:

(a) "Act" shall mean Federal Aviation Act of 1958, as amended.

(b) "Administrator" shall mean Administrator of the Federal Aviation Agency or his authorized representative.

(c) "Inspector" shall mean Bureau of Flight Standards Inspector or Advisor.

(d) "FSDO" shall mean Flight Standards District Office.

(e) "Board" shall mean Civil Aeronautics Board.

(f) "FAA" shall mean Federal Aviation Agency.

(g) "District" shall mean Flight Standards District over which the local Flight Standards District Office has jurisdiction.

(h) "Local Flight Standards Inspector" shall mean the inspector who has been assigned by the FAA to supervise the Flight Standards Designated Representative to whom any powers or duties are delegated under this part.

(i) "Medical certificate" shall mean an acceptable evidence of an airman's physical fitness which is a part of, but has a separate entity from an airman certificate.

(j) "Senior Regional Flight Surgeon" shall mean the aviation medical officer in each region who has been assigned the duty to supervise the person to whom any power or duties related to the examination and medical certification of airmen has been delegated.

§ 418.3 Use of forms, etc.

Forms and other documents prescribed in this part which contain references to specific units of organization will not be affected by any changes in the titles of the units. Such forms and documents will continue in use until they have been superseded or revoked.

Subpart B—Certification

§ 418.10 Selection.[1]

Aviation Medical Examiners are selected by the Civil Air Surgeon or his authorized representative, from qualified physicians who have submitted application, Form FAA–861. Except for Engineering and Manufacturing Inspection Representatives, Flight Standards Designated Representatives are selected by the local Flight Standards Inspector upon a determination by such Inspector that the need for such designation exists. Designated Engineering Representatives and Designated Manufacturing Inspection Representatives are selected by the Chief, Engineering and Manufacturing Division, or his authorized representative from those qualified persons whose requests for appoint-

[1] Not filed with the Federal Register Division.

[1] Inquiry may be made to any FAA Regional Office or Flight Standards District Office for information concerning methods of selecting designees.

ment have been initiated by letter. This letter must be accompanied by a Statement of Qualifications of Designated Engineering Representative, Form FAA–1599, or a Statement of Qualifications for Designated Manufacturing Inspection Representative, Form FAA–1381. Air Traffic Control Tower Operator Examiners are selected by the Director, Bureau of Air Traffic Management.

§ 418.11 Certificates.

An official "Certificate of Authority", Form FAA–1382, specifying the type or types of designations for which a designee is qualified is issued to all Flight Standards Designated Representatives. In addition all designees of Flight Standards are issued a "Certificate of Designation," Form FAA–2001, for display purposes, designating the holder as a Flight Standards Representative and specifying the particular type of designations for which he is qualified. A "Certificate of Designation," Form FAA–2001, is issued to Aviation Medical Examiners along with an identification card on Form FAA–2680.1.

§ 418.12 Duration.

(a) Unless otherwise terminated under the provisions of paragraph (c) of this section, a designation as a Flight Standards Designated Representative shall be effective for one year from the date of issuance. Thereafter it may be renewed for additional periods of one year at the discretion of the Administrator. The "Certificate of Authority", Form FAA–1382 specifies the expiration date for each designation.

(b) An Aviation Medical Examiner "Certificate of Designation" is of indefinite duration subject only to the provisions of paragraph (c) of this section, except that each such certificate must be revalidated on or before the beginning of every calendar year by a letter of designation and an identification card issued by the Civil Air Surgeon which specify the year in which the designation is valid.

(c) A designation shall terminate: (1) At the written request of the designee; (2) at the written request of the employer when the recommendation of such employer is required for issuance of the designation; (3) upon the separation of the designee from the employment of the employer who recommended him for the designation; (4) upon a finding by the Administrator or his authorized representative that the designee has not properly exercised or performed the privileges of such designation; (5) when the assistance of such designee is no longer required by the Administrator; or (6) for any other reason which the Administrator deems appropriate.

§ 418.13 Reports.

A designee shall submit such reports[2] as are prescribed by the Administrator or his authorized representative.

[2] Reports required by the Administrator are prescribed in detail in instructions issued to each designee upon his designation.

Subpart C—Types of Designations and Privileges

§ 418.20 Medical examiners.

(a) A person designated as an aviation medical examiner may accept applications for, and conduct under the general supervision of the Civil Air Surgeon, or the appropriate senior regional flight surgeon, physical examinations required for the issuance of medical certificates prescribed by the Civil Air Regulations. Such examiners may also issue or deny issuance of medical certificates pursuant to the applicable regulations and procedures. As requested, aviation medical examiners may be called upon to participate in the investigation of aircraft accidents.

(b) A qualified forensic pathologist may be designated by the Civil Air Surgeon to assist in the medical investigation of aircraft accidents. Each consultant forensic pathologist is issued an appropriate "Certificate of Designation" on Form FAA–2001 and identification card, Form FAA–2680.1. When on duty these consultants will be on fee basis at the expense of the government.

§ 418.21 Pilot examiners.

(a) *Types.* The types of pilot examiner designations issued by the FAA are: Pilot Examiner, Instrument Rating Examiner, and Airline Transport Pilot Examiner.

(b) *Privileges.* A person designated as a pilot examiner may accept applications for, and conduct under the general supervision of the local Flight Standards Inspector, flight examinations and tests required for the issuance of pilot certificates and ratings prescribed by the Civil Air Regulations. Such examiner may also, at the discretion of the local agent, issue temporary pilot certificates and ratings to qualified applicants.

§ 418.22 Technical personnel examiners.

(a) *Types.* The types of technical personnel examiner designations issued by FAA are: Mechanic Examiner (Airframe and Powerplant), Parachute Rigger Examiners, Air Traffic Control Tower Operator Examiner, Air Crew Examiners (Flight Radio Operator Examiner, Flight Navigator Examiner, Flight Engineer Examiner).

(b) *Privileges*—(1) *Designated mechanic examiners (DME).* A person authorized to act as a DME may accept applications for and conduct mechanic oral and practical examinations required for the issuance of mechanic certificates prescribed by the Civil Air Regulations. Such examiner may also, at the discretion of the local inspector, issue temporary mechanic certificates to qualified applicants.

(2) *Designated parachute rigger examiners (DPRE).* A person authorized to act in the capacity of a DPRE may accept applications for and conduct parachute rigger oral and practical examinations required for the issuance of a parachute rigger certificate prescribed by the Civil Air Regulations. Such examiner may also, at the discretion of the local Flight Standards Inspector, issue temporary parachute rigger certificates to qualified applicants.

(3) *Air traffic control tower operator examiners.* A person designated as an air traffic control tower operator examiner may accept applications for, and conduct the written and practical examination for a control tower operator's certificate. Such examiner may also at the discretion of the Director, Bureau of Air Traffic Management, process the necessary airman record forms for the issuance of the certificate, but is not authorized to issue the certificate.

(4) *Air crew examiners*—(i) *Designated flight engineer examiner (DFEE).* A person authorized to act as a DFEE may accept applications for and conduct flight engineer oral and practical examinations required for the issuance of flight engineer certificates prescribed by the Civil Air Regulations. Such examiner may also, at the discretion of the local inspector, issue temporary flight engineer certificates to qualified applicants.

(ii) *Designated flight navigator examiner (DFNE).* A person authorized to act as a DFNE may accept applications for and conduct flight navigator oral and practical examinations required for the issuance of flight navigator certificates prescribed by the Civil Air Regulations. Such examiner may also, at the discretion of the local inspector, issue temporary flight navigator certificates to qualified applicants.

(iii) *Designated flight radio operator examiner (DFROE).* A person authorized to act as a DFROE may accept applications for and conduct flight radio operator oral and practical examinations required for the issuance of flight radio operator certificates prescribed by the Civil Air Regulations. Such examiner may also, at the discretion of the local inspector, issue temporary flight radio operator certificates to qualified applicants.

§ 418.23 Designated aircraft maintenance inspectors (DAMI).

A person authorized to act as a DAMI may approve maintenance on civil aircraft used by U.S. military flying clubs in foreign countries.

§ 418.24 Designated engineering representatives (DER).

(a) *Types.* The types of engineering representative designations issued by FAA are: Structural engineering, powerplant engineering, systems and equipment engineering, radio engineering, engine engineering, propeller engineering, flight analyst, and flight test pilot.

(b) *Privileges*—(1) *Structural engineering representative.* A person designated as a structural engineering representative may approve structural engineering data and other structural considerations within limitations prescribed by and under the general supervision of the Administrator or his authorized representative, when such data and other structural considerations have been determined by him to comply with pertinent Civil Air Regulations.

(2) *Powerplant engineering representative.* A person designated as a powerplant engineering representative may approve data relating to powerplant installations within limitations prescribed by and under the general supervision of the Administrator or his authorized representative, when such data have been determined by him to comply with pertinent Civil Air Regulations.

(3) *Systems and equipment engineering representative.* A person designated as a systems and equipment engineering representative may approve engineering data relating to equipment and systems other than those of a structural powerplant, or radio nature within limitations prescribed by and under the general supervision of the Administrator or his authorized representative, when such data have been determined by him to comply with pertinent Civil Air Regulations.

(4) *Radio engineering representative.* A person designated as a radio engineering representative may approve engineering data relating to the design and operating characteristics of radio equipment within limitations prescribed by and under the general supervision of the Administrator or his authorized representative, when such data have been determined by him to comply with pertinent Civil Air Regulations.

(5) *Engine engineering representative.* A person designated as an engine engineering representative may approve engineering data relating to engine design, operation, and service within limitations prescribed by and under the general supervision of the Administrator or his authorized representative, when such data have been determined by him to comply with pertinent Civil Air Regulations.

(6) *Propeller engineering representative.* A person designated as a propeller engineering representative may approve engineering data relating to propeller design, operation, and maintenance within the limitations prescribed by and under the general supervision of the Administrator or his authorized representative, when such data have been determined by him to comply with pertinent Civil Air Regulations.

(7) *Flight analyst representative.* A person designated as a flight analyst representative may approve flight test data within the limitations prescribed by and under the general supervision of the Administrator or his authorized representative, when such data have been determined by him to comply with pertinent Civil Air Regulations.

(8) *Flight test pilot representative.* A person designated as a flight test pilot representative may conduct flight tests, and prepare and approve flight test data relating to compliance with Civil Air Regulations within limitations prescribed by and under the general supervision of the Administrator or his authorized representative.

§ 418.25 Designated manufacturing inspection representative (DMIR).

A person designated as a DMIR may issue original airworthiness and export certificates for aircraft, engines, propellers, and other type certificated products which are found to conform with approved type design data; issue export ferry permits; conduct station and conformity inspections; and make such additional examinations as may be necessary to ascertain that prototype and production articles are airworthy and safe for operation. Such authorization is limited to the manufacturing plant in which the designee is employed.

Issued in Washington, D.C., on December 22, 1960.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 60–12072; Filed, Dec. 28, 1960; 8:47 a.m.]

SUBCHAPTER B—AIRMAN REGULATIONS

[Reg. Docket No. 608]

PART 450—INTER-AMERICAN AVIATION TRAINING GRANTS

Revision of Part

The language contained in Part 450, Regulations of the Administrator, has become obsolete. Without usage of current terminology, confusion and misuse can result in the application of this regulation. This revision updates terminology and deletes obsolete material.

Inasmuch as this revision imposes no additional burden on any person, notice and public procedure hereon are unnecessary and it may be made effective immediately.

In consideration of the foregoing, Part 450 of Chapter III of Title 14 of the Code of Federal Regulations is hereby revised, effective on the date of its publication in the FEDERAL REGISTER, to read as follows:

Sec.
450.1 General.
450.2 Types of training.
450.3 Qualifications.
450.4 Award of training grants.
450.5 Types of training grants.
450.6 Allowances and expenses.
450.7 Duration of training grants.
450.8 Official notification.

AUTHORITY: §§ 450.1 to 450.8 issued under sec. 313, 72 Stat. 752, 49 U.S.C. 1354.

§ 450.1 General.

Training grants may be awarded to qualified male applicants from other American republics.

§ 450.2 Types of training.

Training grants may provide instruction, observation, study and practical training, in one or more of the following categories:

(a) Air traffic control and communications training, comprising such special courses of study as may be prescribed by the Administrator of the Federal Aviation Agency on the basis of the qualifications and needs of the trainee and the purpose of the training as indicated by his government, in one or more of the various specialized technical branches of aviation, including airway communications, airway traffic control, airport traffic control, aviation meteorology, aviation navigation, aeronautical charting, and airline dispatching. The special courses of study scheduled over a period not to exceed one year will consist of (1) preliminary orientation, during which the trainee may receive intensive instruction in English, (2) physical education, (3) general and observational meteorology as related to airway service; International Continental Morse Code, teletypewriting, and radio telegraph; radio telephone, interphone, broadcast and teletype communications, procedures, practices and phraseologies; Civil Air Regulations relating to air traffic rules; dead reckoning, navigation, radio navigation, radio aids to air navigation, and radio range monitoring; airport traffic control tower operation, procedures, practices and phraseologies; airway traffic control procedures, practices and phraseologies; organization, structure, and principal functions of the Federal Aviation Agency, and (4) assignment to one or more of the various offices and installations of the Federal Aviation Agency for practical on-the-job training in airport traffic control, airways communications, and airway traffic control, and assignment to United States Weather Bureau Station for practical on-the-job training in aviation meteorology. Upon satisfactory completion of the training course, a trainee is eligible to take examinations for Federal Aviation Agency airport traffic control tower operator and aircraft communicator certificates.

(b) Aviation industry training provides practical on-the-job training for a period of not to exceed 10 months in a special field in the aviation industry of the United States selected according to the background and qualifications of the individual trainee and the special needs of his country in aviation. Such training is available in airline operations; airline maintenance; aircraft, and aircraft engine, maintenance and overhaul; maintenance and overhaul of aircraft accessories; production and maintenance of single-engine aircraft; and airline traffic and administration. One month of preliminary orientation, including intensive instruction in English, may be given each trainee.

(c) Civil aviation official training provides an opportunity for high-level government and private civil aviation officials, during an eight-week period, to study and observe the organization, administration, and operation of civil aviation as developed in the United States and/or the methods and techniques in specialized fields of aviation in which they are primarily interested. This type of training is available to government and private civil aviation officials who are already experienced in their field of specialization, but who would make further contributions to civil aviation if they were afforded this opportunity to observe advanced operations.

§ 450.3 Qualifications.

Each applicant selected for an aviation training grant shall meet the following requirements:

(a) *Age.* (1) An air traffic control and communications trainee shall be in the age range of 21 to 31, inclusive, as of the closing date for receipt of applications;

(2) An aviation industry trainee shall be in the age range of 21 to 35, inclusive, as of the closing date for receipt of applications;

(3) A civil aviation official trainee shall be at least 21 years of age, as of the closing date for receipt of applications.

(b) *Citizenship.* A trainee shall be a bona fide citizen of one of the American Republics other than the United States.

(c) *Language.* (1) An air traffic control and communications trainee and an aviation industry trainee shall be able to speak, read, write, and understand the English language, and make a satisfactory score in an English written examination prescribed by the Administrator of the Federal Aviation Agency;

(2) A civil aviation official trainee should have a fair knowledge of English or an available interpreter, furnished at no expense to the Government of the United States.

(d) *Physical requirements.* (1) An air traffic control and communications trainee shall be in a satisfactory physical condition as evidenced by a Federal Aviation Agency medical certificate (Form FAA-1004.1) issued by a designated aviation medical examiner attesting compliance with Federal Aviation Agency Second Class physical requirements and shall furnish a satisfactory laboratory report of blood test:

(2) An aviation industry trainee shall be in a satisfactory physical condition as evidenced by a statement of a physical examination issued by a licensed physician within 60 days of the date of application, describing the applicant's physical condition and stating that he is free from any communicable disease or disability that would interfere with any activity incidental to the training grant and he shall furnish a satisfactory laboratory report of blood test;

(3) A civil aviation official trainee shall be in a satisfactory physical condition.

(e) *Education.* (1) An air traffic control and communications trainee shall possess a diploma attesting the successful completion of a course of study with a degree of "Bachillerato" (or the equivalent at a recognized institution of learning):

(2) An aviation industry trainee shall have completed at least six years of schooling and have sufficient training or experience in practical mathematics and mechanics to enable him to make a satisfactory grade in a written examination prescribed by the Administrator of the Federal Aviation Agency;

(3) A civil aviation official trainee shall have attained a high-ranking position in civil aviation, either commercial or government.

(f) *Purpose.* (1) An air traffic control and communications trainee or an aviation industry trainee shall have expressed in an original composition in Spanish or Portuguese, a sincere desire and intention to engage in civil aviation in the country of which he is a citizen and in that branch of aviation for which application for a training grant is made. The original composition shall constitute a part of the application papers:

(2) A civil aviation official trainee is not required to express a purpose.

(g) *Character.* (1) An air traffic control and communications trainee or an aviation industry trainee shall furnish the names of at least three responsible persons residing in the republic of which he is a citizen, who can testify to his dependability, spirit of initative, industry, stability, honesty, perserverance, and aptitude in that branch of aviation for which application for training grant is made;

(2) A civil aviation official trainee is not required to furnish references.

(h) *Sponsor.* Preference will be given to an applicant who has at least one sponsor willing and able to employ him in that branch of aviation for which the training grant has qualified him upon his return to the republic of which he is a citizen.

(i) *Endorsement.* A trainee shall have received the endorsement of the United States Embassy in the country from which he applies.

§ 450.4 Award of training grants.

Training grants will be awarded by the Administrator of the Federal Aviation Agency with the approval of the Secretary of State of the United States or their duly authorized representatives, upon the recommendation of the Inter-American Aviation Selection Committee appointed by the government of the American republic wherein the applicant resides. No applicant will be considered in the awarding of training grants unless his application and supporting papers shall have been submitted by such Selection Committee through the Department of State to the Administrator of the Federal Aviation Agency for the elimination of unqualified applicants prior to the final recommendation of the Inter-American Aviation Selection Committee. After the elimination of any unqualified applicants by the Administrator of the Federal Aviation Agency, the Inter-American Aviation Selection Committees of the respective countries shall make final recommendations from those qualified applicants remaining.

§ 450.5 Types of training grants.

Three types of training grants may be offered: Type A wherein the total cost of the training grant is paid for by the United States Government, Type B wherein the total cost of the training grant is paid for by an American republic other than the United States or by an aviation industrial concern, and Type C wherein a portion of the cost of the training grant is paid for by the United States Government and the remainder of the cost of the training grant is paid for by an American republic other than the United States or by an aviation industrial concern.

§ 450.6 Allowances and expenses.

An applicant awarded a Type B training grant will not be entitled to any allowances and expenses paid from funds appropriated by the United States Government. An applicant awarded a Type A or a Type C training grant may be paid the appropriate allowances and expenses as provided in 22 CFR Part 65, as interpreted, modified, or altered by the Department of State.

§ 450.7 Duration of training grants.

Air traffic control and communications training grants will be awarded for periods of one year; aviation industry training grants will be awarded for periods of 10 months; and civil aviation official training grants will be awarded for periods of 2 months. Subject to the availability of appropriations, training grants may be extended by the Administrator of the Federal Aviation Agency not to exceed four months. Training grants may be canceled for cause by the Administrator of the Federal Aviation Agency with the approval of the Secretary of State, or their duly authorized representatives.

§ 450.8 Official notification.

Each applicant selected for a training grant shall be notified of his award through diplomatic channels by a letter of award, which shall describe the training, state the duration and type of training grant and the allowances authorized. The amounts originally specified for allowances and expenses may be amended by the Administrator of the Federal Aviation Agency or his duly authorized representative, if necessary, provided that such amounts are kept within the maximum limits specified by regulations of the Department of State. The Administrator of the Federal Aviation Agency may amend the types of training or duration of training grants in the interest of obtaining instruction better suited to the needs and capabilities of trainees than those prescribed in the original letter of award.

Issued in Washington, D.C., on December 22, 1960.

JAMES T. PYLE,
Acting Administrator.

[F.R. Doc. 60-12071; Filed, Dec. 28, 1960; 8:47 a.m.]

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60-NY-89]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 14, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8825) stating that the Federal Aviation Agency proposed to modify the Westover, Mass., control zone. On October 22, 1960, a modification of proposal was published in the FEDERAL REGISTER (25 F.R. 10105) which proposed a further modification to the control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2276 (14 CFR 601.2276) is amended to read:

§ 601.2276 Westover, Mass., control zone.

Within a 5-mile radius of the Westover AFB (Lat. 42°11'40" N., Long. 72°32'15" W.), within 2 miles either side of the Westover TACAN 028° True radial extending from the 5-mile radius zone to 10 miles NE of the TACAN and within 2 miles either side of the NE course of the Westover ILS localizer extending from the 5-mile radius zone to 12 miles NE of the ILS OM.

This amendment shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 21, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-12042; Filed, Dec. 28, 1960; 8:45 a.m.]

[Airspace Docket No. 60-NY-95]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On October 13, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9814) stating that the Federal Aviation Agency proposed to modify the Wright-Patterson AFB, Ohio, control zone.

No adverse comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendment having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated in the notice, § 601.2265 (14 CFR 601.2265) is amended to read:

§ 601.2265 Wright-Patterson AFB, Ohio, control zone.

Within a 5-mile radius of Patterson AFB (Lat. 39°49'25" N., Long. 84°02'55" W.) and within a 5-mile radius of Wright AFB (Lat. 39°46'35" N., Long. 84°06'35" W.); within 2 miles either side of the 039° True radial of the Patterson TVOR extending from the Patterson AFB 5-mile radius zone to 12 miles NE of the TVOR; and within 2 miles either side of the 054° True radial of the Patterson TACAN extending from the Patterson AFB 5-mile radius zone to 8 miles NE of the TACAN, excluding that portion which coincides with the Springfield, Ohio, control zone (§ 601.2266).

This amendment shall become effective 0001 e.s.t., March 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 21, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-12043; Filed, Dec. 28, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-184]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification of Control Zone

On September 16, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8911) stating that the Federal Aviation Agency (FAA) proposed to modfy the Abilene, Tex., control zone.

As stated in the notice, the Abilene control zone is presently designated within a 5-mile radius of the Abilene Municipal Airport, within 2 miles either side of the north course of the Abilene radio range extending from the radio range station to a point 10 miles north; within 2 miles either side of a direct line extending from the Abilene radio range station to and including a 5-mile radius of Dyess Air Force Base; within 2 miles either side of the 292° and the 112° True radials of the Abilene VOR extending from the Abilene Municipal Airport 5-mile radius zone to a point 5 miles northwest of the VOR; within 2 miles either side of the 354° True radial of the Abilene VOR extending from the VOR to a point 10 miles north; and within 2 miles either side of the centerline of Dyess AFB north/south runway 16_{34} extending to a point 10 miles south of the end of the runway. An ILS is being installed at the Abilene Municipal Airport to serve the north/south runway. The ILS outer marker will be located at Lat. 32°18'50" N., Long. 99°41'04"W. The FAA is modifying the Abilene control zone by designating an extension 2 miles either side of the ILS localizer south course extending from the 5-mile radius zone of the Abilene Municipal Airport to the ILS outer marker; revoking the control zone extension northwest of the Abilene VOR; extending the present north extensions based on the north course of the Abilene radio range and VOR to 12 miles north of the radio range and VOR; and extending the present south extension based on the Dyess radio beacon to 12 miles south of the Dyess radio beacon. These modifications would provide protection for aircraft executing the prescribed instrument approach procedures at Abilene Municipal Airport and Dyess AFB.

The Department of the Air Force concurred in the proposed modification. However, the Aircraft Owners and Pilots Association (AOPA) questioned the need for a control zone extension between the Abilene radio range station and Dyess AFB, since no published instrument approach to Dyess AFB utilizing the radio range station appears to exist. The AOPA further questioned the need for the control zone extension south of Dyess AFB which would extend 12 miles south of the Dyess radio beacon.

The FAA concurs with the first point of the AOPA's comments and action is taken herein to eliminate the extension between the Abilene radio range and Dyess AFB from the description of the modified control zone. However, with regard to the second comment, the extension south of Dyess AFB extending from the 5-mile radius zone to 12 miles south of the Dyess radio beacon is considered necessary because aircraft executing the ADF instrument approach procedure are maneuvering less than 1,000 feet above the surface south of the radio beacon due to terrain features. If the instrument procedure required aircraft to maintain 3,400 feet MSL until crossing the radio beacon, an excessive rate of descent would be required for landing aircraft. Therefore, the FAA is modifying the Abilene control zone as proposed with the exception of the extension between Dyess AFB and the Abilene radio range station.

This action will result in the Abilene control zone being designated within a 5-mile radius of Abilene Municipal Airport (Lat. 32°25'10" N, Long. 99°41'20" W); within 2 miles either side of the Abilene ILS localizer south course extending from the 5-mile radius zone to the ILS outer marker; within 2 miles either side of the north course of the Abilene radio range extending from the 5-mile radius zone to 12 miles north of the radio range; within a 5-mile radius of Dyess AFB (Lat. 32°25'10" N, Long. 99°51'15" W); within 2 miles either side of the 112° True radial of the Abilene VOR extending from the Abilene Municipal Airport 5-mile radius zone to the Abilene VOR; within 2 miles either side of the 354° True radial of the Abilene VOR extending from the Dyess AFB 5-mile radius zone to 12 miles north of the VOR and within 2 miles either side of the 168° and 348° True bearings of the Dyess AFB RBN extending from the 5-mile radius zone to 12 miles south of the RBN.

No other comments were received regarding the proposed amendment.

Interested persons have been afforded an opportunity to participate in the making of the rule herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (24 F.R. 4530) and for the reasons stated herein and in the Notice, § 601.2247 (14 CFR 601.2247) is amended to read:

§ 601.2247 Abilene, Tex., control zone.

Within a 5-mile radius of Abilene Municipal Airport (Lat. 32°25'10" N., Long. 99°41'20" W.); within 2 miles either side of the Abilene ILS localizer

S course extending from the Abilene Municipal Airport 5-mile radius zone to the ILS OM; within 2 miles either side of the N course of the Abilene RR extending from the Abilene Municipal Airport 5-mile radius zone to 12 miles N of the RR; within 2 miles either side of the 112° True radial of the Abilene VOR extending from the Abilene Municipal Airport 5-mile radius zone to the Abilene VOR; within a 5-mile radius of Dyess AFB (Lat. 32°25'10" N., Long. 99°51'15" W.); within 2 miles either side of the 354° True radial of the Abilene VOR extending from the Dyess AFB 5-mile radius zone to 12 miles N of the VOR and within 2 miles either side of the 168° and 348° True bearings of the Dyess AFB RBN extending from the Dyess AFB 5-mile radius zone to 12 miles S of the RBN.

This amendment shall become effective 0001 e.s.t., February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 21, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-12044; Filed, Dec. 28, 1960; 8:45 a.m.]

[Airspace Docket No. 60-WA-270]

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Modification and Revocation of Reporting Points

The purpose of these amendments to §§ 601.4020 and 601.7001 of the regulations of the Administrator is to revoke designated reporting points that the Federal Aviation Agency has determined are no longer required for air traffic management purposes and modify the location of an existing designated reporting point. Flight progress reports over designated locations, automatically initiated by pilots, will facilitate air traffic management and assist the controller in the performance of his duties. However, due to the continuous modernization of the airway structure of the United States, the need for reporting points at particular locations is constantly being revised. Thus the actions taken herein reflect this changing need on the part of air traffic control.

Since these amendments are of a procedural nature and do not assign or reasign the use of navigable airspace, compliance with the notice and public procedure of the Administrative Procedure Act is unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective more than 30 days after publication.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (24 F.R. 4530), the following actions are taken:

1. In the text of § 601.4020 (14 CFR 601.4020) "Gooding, Idaho nondirectional radio beacon;" is deleted.

2. In the text of § 601.7001 (14 CFR 601.7001; 25 F.R. 7489) the following changes are made:

(a) "Eagle INT: The INT of the Thermal, Calif., VORTAC 069° True and the Blythe, Calif., VOR 288° True radials." is deleted and "Eagle INT: The INT of the Twentynine Palms, Calif., VORTAC 154° True and the Blythe, Calif., VOR 288° True radials." is substituted therefor.

(b) "Petersburg, INT: The INT of the Elkins, W. Va., VOR 077° and the Grantsville, Md., VOR 191° radials." is deleted.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 21, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-12045; Filed, Dec. 28, 1960; 8:45 a.m.]

[Airspace Docket No. 60-LA-82]

PART 608—RESTRICTED AREAS

Modification

The purpose of this amendment to § 608.20 of the regulations of the Administrator is to modify the Arco, Idaho, Restricted Area (R-500) (Pocatello Chart).

The Arco Restricted Area is designated for use by the Atomic Energy Commission (AEC) from the surface to unlimited. The AEC has advised that the ceiling of R-500 can be safely lowered from unlimited to 20,000 feet MSL. Therefore, the Federal Aviation Agency (FAA) is modifying R-500 herein to reflect this change.

Since this amendment reduces a burden on the public, compliance with the notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary, and it may be made effective immediately.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 8005), the following action is taken:

In § 608.20 *Idaho*, the Arco, Idaho, Restricted Area (R-500) (Pocatello Chart) (23 F.R. 8580), "Surface to unlimited." is deleted and "Surface to 20,000 feet MSL." is substituted therefor.

This amendment shall become effective upon the date of publication in the FEDERAL REGISTER.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 21, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-12046; Filed, Dec. 28, 1960; 8:45 a.m.]

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

SUBCHAPTER G—APPROVED FORMS, NATURAL GAS ACT

[Order No. 231; Docket No. R-191]

PART 260—FORMS

Statement of Sales and Revenues of Independent Producers

In this proceeding the Commission has under consideration the amendment of Part 260, entitled "Statements and Reports (Schedules)" of Subchapter G, Approved Forms, Natural Gas Act, Chapter I—Federal Power Commission, Title 18—Conservation of Power, Code of Federal Regulations (18 CFR, Part 260), by the revision of § 260.5 (18 CFR 260.5) and the addition of a new section, § 260.6, so as to prescribe FPC Forms No. 301-A and No. 301-B,[1] both entitled Independent Producers Report.

Section 260.5 and the reporting requirements thereof were first prescribed by Commission Order No. 187, Docket No. R-152, issued May 11, 1956, 21 FR 3146, 15 FPC 802, prescribing FPC Form No. 301, Independent Producers Report of Natural Gas Transactions for the year ending December 31, 1955. By Order No. 198, Docket No. R-162, issued November 19, 1957, 22 FR 9385, 18 FPC 662, § 260.5 was amended to prescribe a Form 301 for the year 1956 with somewhat enlarged reporting requirements. By Order No. 214, Docket No. R-176, issued July 15, 1959, 24 FR 5755, 22 FPC 81, § 260.5 was further amended to prescribe simplified and slightly revised Forms Nos. 301 for 1957 and 1958. The forms prescribed herein are essentially the same as Form No. 301-1957 or Form No. 301-1958. Proposed Form No. 301-A corresponds to Part I of the 1957 or 1958 form, with a minor revision of format. Form No. 301-B corresponds to Parts II and III of the 1957 or 1958 form.

Forms Nos. 301-A and 301-B are prescribed hereinafter to be filed annually. Forms Nos. 301-1957 and 301-1958 were intended for use in reporting for the years 1957 and 1958, respectively. The report forms for the years 1955 and 1956 were similarly intended to cover the years 1955 and 1956, respectively.

The Commission's regulations exempt independent producers from compliance with the comprehensive accounting and reporting requirements of the Commission's regulations under the Natural Gas Act. This exemption is still continued, but the Commission's experience in the regulation of producers convinces it of the necessity for continuing to require at least the minimum data called for in the forms prescribed herein in order that the regulatory responsibilities of the Commission may be viewed in relation to the relative importance and financial effects of such regulation on the regulated producers.

General public notice of the hereinafter ordered amendment was given by publication of Notice of Proposed Rulemaking in the FEDERAL REGISTER on October 28, 1960 (25 F.R. 10358) and by the mailing of copies of the Notice of Proposed Rulemaking to interested parties including State and Federal regulatory agencies; that Notice being accompanied by copies of the forms as proposed. In giving notice of the proposed amendment, the Commission invited all interested parties to submit data, views, or comments not later than November 14, 1960. The several responses to that invitation included in principal part: various suggestions for revision of the formats of the forms; allegations that there is an undue reporting burden on certain signatory producers; objection to requirement that residue gas and liquid hydrocarbons be reported separately for sales under standard casinghead agreements; objection to the furnishing of information about liquid hydrocarbons; objection to requiring certain small producers to file the proposed forms; suggestion that small operators be required to report in less detail; requests for more time to file for reporting year 1959. All responses have been considered by the Commission.

The Commission finds:

(1) In view of the foregoing and upon consideration of all relevant matters presented, the amendment of the regulations under the Natural Gas Act hereinafter adopted and promulgated, including the forms approved and prescribed therein (as attached hereto), is necessary and appropriate to carry out the provisions of the Natural Gas Act; all in the manner as hereinafter provided.

(2) Good cause exists that the amendment of the Regulations under the Natural Gas Act as hereinafter adopted and promulgated including the forms approved and prescribed therein, shall become effective as hereinafter provided.

The Commission, acting pursuant to authority granted by the Natural Gas Act, particularly sections 10 and 16 thereof (52 Stat. 826, 830; 15 U.S.C. 717i, 717o) orders:

(A) Part 260 of the Commission's regulations entitled "Statements and Reports (Schedules)" of Subchapter G, Approved Forms, Natural Gas Act (18 CFR, Part 260), is hereby amended by the amendment of § 260.5 thereof (18 CFR 260.5) and the addition of a new section thereto, § 260.6, both to read as follows:

§ 260.5 Form No. 301-A, Statement of sales and revenues of independent producers.

(a) FPC Form No. 301-A Independent Producers Report, being a statement of sales of natural gas made during the reporting year (calendar year or fiscal year ending prior to July 1 next following the calendar year) under rate schedules filed with the Commission pursuant to §§ 154.92 or 154.94 of this chapter, including the instructions and schedules therein contained, is hereby approved and prescribed.

(b) Each independent producer as defined in § 154.91 of this chapter who had a rate schedule on file with the Commission, pursuant to §§ 154.92 or 154.94 of this chapter, as of the end of the reporting year, shall (1) beginning with reporting year 1960 hereafter annually prepare and file with the Commission on or before the last day of the sixth month following the close of the reporting year one copy of such FPC Form No. 301-A; and (2) for the reporting year 1959 prepare and file with the Commission on or before March 31, 1961, one copy of such FPC Form No. 301-A.

§ 260.6 Form No. 301-B, Statement of sales and revenues of independent producers.

(a) FPC Form No. 301-B Independent Producers Report, being a statement of sales of natural gas totaling two million or more Mcf made during the reporting year (calander year or fiscal year ending prior to July 1 next following the calendar year) under rate schedules filed with the Commission pursuant to §§ 154.92 or 154.94 of this chapter, including the instructions and schedules therein contained, is hereby approved and prescribed.

(b) In addition to complying with the provisions of § 260.5 of this chapter, each independent producer as defined in § 154.91 of this chapter who had a rate schedule on file with the Commission, pursuant to §§ 154.92 or 154.94 of this chapter, as of the end of the reporting year and whose sales of natural gas totaled two million or more Mcf during the reporting year shall (1) beginning with reporting year 1960 hereafter annually prepare and file with the Commission on or before the last day of the sixth month following the close of the reporting year two copies of such FPC Form No. 301-B; and (2) for the reporting year 1959 prepare and file with the Commission on or before March 31, 1961, two copies of such FPC Form No. 301-B.

(B) Forms Nos. 301-A and 301-B, as approved and prescribed in paragraph (A) above, are attached hereto.

(C) The amendment of the regulations under the Natural Gas Act as adopted and promulgated herein, including the forms approved and prescribed therein, shall become effective 30 days after the issuance of this order.

Issued: December 21, 1960.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-12048; Filed, Dec. 28, 1960; 8:46 a.m.]

[1] Filed as part of original document.

Title 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

[T.D. 6523]

SUBCHAPTER A—INCOME TAX

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Foreign Corporations and Estimated Income Tax Filing Requirements for Individuals

In order to make provision in the Income Tax Regulations (26 CFR Part 1) for the use of Form 1120F by foreign corporations, and in order to conform such regulations to the amendments made to section 6015(a) of the Internal Revenue Code of 1954 by section 5 of the Act of September 14, 1960 (Public Law 86-779, 74 Stat. 1000), the regulations are amended as follows:

PARAGRAPH 1. Subparagraphs (1) and (2) of § 1.6012-2(g), are amended to read as follows:

§ 1.6012-2 Corporations required to make returns of income.

* * * * * * *

(g) *Returns by foreign corporations*—(1) *Nonresident foreign corporations*—(i) *In general.* A nonresident foreign corporation is not required to make a return of income if the tax liability of the corporation is fully satisfied at the source. A nonresident foreign corporation shall, however, make or have made a return with respect to that portion of its income described in § 1.881-2 upon which the tax has not been fully satisfied at the source, including such income upon which the tax is limited by tax convention. Such return shall be made on Form 1120NB for taxable years ending before December 31, 1960, and on Form 1120F for taxable years ending on or after December 31, 1960. The tax liability of a nonresident foreign corporation is not fully satisfied at the source in any case where, if it were not for the allowance of deductions to such corporation, it would be liable for tax. For example, the tax liability of a nonresident foreign corporation which is a personal holding company (as defined in section 542) is not fully satisfied at the source

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 168—DIRECTORY OF INTERNATIONAL MAIL

Nicaragua Import Prohibitions

In § 168.5 *Individual country regulations*, the country "Nicaragua", under Parcel Post, is revised by amending the last paragraph of the item *Prohibitions*, as added by Federal Register Document 60-11601, 25 F.R. 12884-12885, by deleting "boots" where it appears therein. As so amended, the last paragraph reads as follows:

Prohibitions. * * *

Footwear, including shoes, slippers, and rubbers, except when sent as personal gifts.

(R.S. 161, as amended, secs. 501, 505, 74 Stat. 580, 581, (Pub. Law 86-682); 5 U.S.C. 22, 39 U.S.C. 501, 505)

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 60-12056; Filed, Dec. 28, 1960; 8:46 a.m.]

if such corporation would be liable for the personal holding company tax imposed by section 541 if it were not for the fact that it may be allowed a deduction for dividends paid (as defined in section 561). See section 545, relating to the definition of undistributed personal holding company income, and section 882 (c)(1), relating to allowance of deductions only if a return is filed.

(ii) *Claim for refund.* Notwithstanding the provisions of subdivision (i) of this subparagraph, a nonresident foreign corporation shall include on its return its entire income described in § 1.881–2, whether or not the tax has been fully satisfied at the source upon a portion thereof, if a claim for refund of an overpayment of tax is made in accordance with section 6402 and §§ 301.6402–2 and 301.6402–3 of this chapter (Regulations on Procedure and Administration). However, if the overpayment to be refunded consists solely of tax deemed to have been paid under section 852(b)(3)(D), relating to undistributed capital gains of a regulated investment company, it is not necessary to include on the return the entire income described in § 1.881–2.

(iii) *Inconsistent regulations.* All regulations inconsistent with the provisions of this paragraph shall be deemed to have been modified accordingly.

(2) ***Resident foreign corporations.*** Every resident foreign corporation shall make or have made a return of all its income described in § 1.882–1, including such income upon which the tax is limited by tax convention. Such return shall be made on Form 1120 for taxable years ending before December 31, 1960, and on Form 1120F for taxable years ending on or after December 31, 1960.

PAR. 2. Section 1.6015(a) is amended to read as follows:

§ 1.6015(a)–1 Statutory provisions; declaration of estimated income tax by individuals; requirement of declaration.

SEC. 6015 *Declaration of estimated income tax by individuals*—(a) *Requirement of declaration.* Every individual (other than a nonresident alien with respect to whose wages, as defined in section 3401(a), withholding under chapter 24 is not made applicable, but including every alien individual who is a resident of Puerto Rico during the entire taxable year) shall make a declaration of his estimated tax for the taxable year if—

(1) The gross income for the taxable year can reasonably be expected to exceed—

(A) $5,000, in the case of—

(i) A single individual other than a head of a household (as defined in section 1(b)(2)) or a surviving spouse (as defined in section 2(b));

(ii) A married individual not entitled under subsection (b) to file a joint declaration with his spouse; or

(iii) A married individual entitled under subsection (b) to file a joint declaration with his spouse, but only if the aggregate gross income of such individual and his spouse for the taxable year can reasonably be expected to exceed $10,000; or

(B) $10,000, in the case of—

(i) A head of a household (as defined in section 1(b)(2)); or

(ii) A surviving spouse (as defined in section 2(b)); or

(2) The gross income can reasonably be expected to include more than $200 from sources other than wages (as defined in section 3401(a)).

Notwithstanding the provisions of this subsection, no declaration is required if the estimated tax (as defined in subsection (c)) can reasonably be expected to be less than $40.

[Sec. 6015(a) as amended by sec. 5, Act of Sept. 14, 1960 (Pub. Law 86–779, 74 Stat. 1000)]

PAR. 3. Paragraph (a) of § 1.6015(a)–1 is amended to read as follows:

§ 1.6015(a)–1 Declaration of estimated income tax by individuals.

(a) *Requirement*—(1) *Taxable years beginning after December 31, 1960.* With respect to taxable years beginning after December 31, 1960, a declaration of estimated income tax by an individual is not required if the estimated tax (as defined in section 6015(c)) can reasonably be expected to be less than $40. In all other cases a declaration shall be made by every citizen of the United States, whether residing at home or abroad, every individual residing in the United States though not a citizen thereof, every nonresident alien who is a resident of Canada, Mexico, or Puerto Rico and who has wages subject to withholding at the source under section 3402, and every nonresident alien who has been, or expects to be, a resident of Puerto Rico during the entire taxable year, if—

(i) The gross income for the taxable year can reasonably be expected to exceed—

(*a*) $5,000, in the case of—

(*1*) A single individual other than a head of a household (as defined in section 1(b)(2)) or a surviving spouse (as defined in section 2(b));

(*2*) A married individual not entitled under section 6015(b) to file a joint declaration with his spouse; or

(*3*) A married individual entitled under section 6015(b) to file a joint declaration with his spouse, but only if the aggregate gross income of such individual and his spouse for the taxable year can reasonably be expected to exceed $10,000; or

(*b*) $10,000, in the case of—

(*1*) A head of a household (as defined in section 1(b)(2)); or

(*2*) A surviving spouse (as defined in section 2(b)); or

(ii) The gross income can reasonably be expected to include more than $200 from sources other than wages (as defined in section 3401(a)).

(2) *Taxable years beginning before January 1, 1961.* With respect to taxable years beginning before January 1, 1961, a declaration of estimated tax shall be made by every citizen of the United States, whether residing at home or abroad, every individual residing in the United States though not a citizen thereof, every nonresident alien who is a resident of Canada, Mexico, or Puerto Rico and who has wages subject to withholding at the source under section 3402, and every nonresident alien who has been, or expects to be, a resident of Puerto Rico during the entire taxable year, if—

(i) The gross income for the taxable year can reasonably be expected to consist of wages (as defined in section 3401(a)) and of not more than $100 from sources other than such wages, and can reasonably be expected to exceed—

(*a*) $5,000, in the case of a single individual other than a head of a household (as defined in section 1(b)(2)) or a surviving spouse (as defined in section 2(b)) or in the case of a married individual not entitled to file a joint declaration with his spouse;

(*b*) $10,000, in the case of a head of a household (as defined in section 1(b)(2)) or a surviving spouse (as defined in section 2(b)); or

(ii) The gross income can reasonably be expected to include more than $100 from sources other than wages (as defined in section 3401(a)) and can reasonably be expected to exceed the sum of—

(*a*) The amount obtained by multiplying $600 by the number of exemptions to which he is entitled under section 151 plus

(*b*) $400.

Because this Treasury decision makes only technical and procedural changes, it is hereby found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 4(a) of the Administrative Procedure Act, approved June 11, 1946, or subject to the effective date limitation of section 4(c) of that Act.

(68A Stat. 917; 26 U.S.C. 7805)

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: December 23, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

[F.R. Doc. 60–12083; Filed, Dec. 28, 1960; 8:49 a.m.]

SUBCHAPTER B—ESTATE AND GIFT TAXES

[T.D. 6522]

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Miscellaneous Amendments

On October 1, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9408), with respect to conforming the Estate Tax Regulations (26 CFR Part 20) to sections 66(c) and 206 (a), (c), and (e) of Public Law 85–866, approved September 2, 1958, relative to the rate at which interest is to be paid on estate tax and to the payment in installments of the estate tax attributable to inclusion in the gross estate of an interest in a closely held business. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted, subject to the changes set forth below. Such regulations supersede the temporary regulations in Part 24 relating to Certain Estate Tax Matters under Small Business Tax Revision Act of 1958 (26 CFR 24.1–1).

PARAGRAPH 1. Section 20.6166–1 is revised by changing paragraphs (a) and (d) and by inserting a new paragraph (e)(3).

PAR. 2. Section 20.6166–4 is revised by changing paragraphs (a) and (b).

(68A Stat. 917; 26 U.S.C. 7605)

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

Approved: December 23, 1960.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

In order to conform the Estate Tax Regulations (26 CFR Part 20) to sections 66(c) and 206 (a), (c), and (e) of Public Law 85–866, approved September 2, 1958, relative to the rate at which interest is to be paid on estate tax and to the payment in installments of the estate tax attributable to inclusion in the gross estate of an interest in a closely held business, such regulations are amended as follows:

PARAGRAPH 1. Paragraph (b) of § 20.6151–1 is amended by inserting new subparagraph (3) to read as follows:

§ 20.6151–1 Time and place for paying tax shown on the return.

* * * * * * *

(b) *Extension of time for paying.* * * *

(3) *Interest in a closely held business.* For provisions relating to payment in installments of the estate tax attributable to inclusion in the gross estate of an interest in a closely held business, see §§ 20.6166–1 through 20.6166–4.

PAR. 2. Section 20.6161 is amended by revising subsection (a)(2) of section 6161 and by adding a historical note to read as follows:

§ 20.6161 Statutory provisions: extension of time for paying tax.

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return.* * * *

(2) *Estate tax.* If the Secretary or his delegate finds—

(A) That the payment, on the due date, of any part of the amount determined by the executor as the tax imposed by chapter 11,

(B) That the payment, on the date fixed for the payment of any installment under section 6166, of any part of such installment (including any part of a deficiency prorated to an installment the date for payment of which had not arrived), or

(C) That the payment upon notice and demand of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived,

would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 10 years from the date prescribed by section 6151(a) for payment of the tax.

* * * * * * *

[Sec. 6161 as amended by sec. 206(c), Small Business Tax Revision Act 1958 (72 Stat. 1684)]

PAR. 3. Paragraph (a) and (c) of § 20.6161–1 are amended to read as follows:

§ 20.6161–1 Extension of time for paying tax shown on the return.

(a) In any case where the district director finds that payment on the due date of any part of the tax shown on the return, or payment of any part of an installment under section 6166 (including any part of a deficiency prorated to an installment the date for payment of which had not arrived) on the date fixed for payment thereof, would impose undue hardship upon the estate, he may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed more than 10 years from the date prescribed in section 6151(a) for payment of the tax. See paragraph (a) of § 20.6151–1. In addition, if the district director finds that payment upon notice and demand of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived would impose undue hardship upon the estate, he may extend the time for payment for a similar period or periods.

* * * * * * *

(c) An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury, showing the undue hardship that would result to the estate if the requested extension were refused. The application, with the supporting information, must be filed with the district director. When received, it will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The district director will not consider an application for such an extension of time for payment of the tax or of an installment under section 6166 (including any part of a deficiency prorated to an installment the date for payment of which had not arrived) unless the extension is applied for on or before the date fixed for payment of the tax or the installment. Similarly, the district director will not consider an application for such an extension of time for payment of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived, unless the extension is applied for on or before the date prescribed for payment of the deficiency as shown by the notice and demand from the district director. If the executor desires to obtain an additional extension of time for payment of any part of the tax shown on the return, or any part of an installment under section 6166 (including any part of a deficiency prorated to an installment), it must be applied for on or before the date of the expiration of the previous extension. The granting of the extension of time for paying the tax is discretionary with the district director and his authority will be exercised under such conditions as he may deem advisable. If, in the mistaken belief that an estate satisfies the requirements of section 6166, the executor, within the time prescribed in paragraph (e) of § 20.6166–1, files a notification of election to pay estate tax in installments, the notification of election to pay tax in installments will be treated as a timely filed application for an extension, under section 6161, of time for payment of the tax if the executor so requests, in writing, within a reasonable time after being notified by the district director that the estate does not satisfy the requirements of section 6166. A request that the election under section 6166 be treated as a timely filed application for an extension under section 6161 must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury, setting forth the period of the extension requested, and showing the undue hardship that would result if the requested extension were refused.

PAR. 4. Paragraph (a) of § 20.6161–2 is amended to read as follows:

§ 20.6161–2 Extension of time for paying deficiency in tax.

(a) In any case in which the district director finds that payment, on the date prescribed therefor, of any part of a deficiency would impose undue hardship upon the estate, he may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the date prescribed for payment thereof. However, see § 20.6161–1 for extensions of time for payment of the part of a deficiency which is prorated to installments under the provisions of section 6166.

PAR. 5. Immediately after § 20.6165–1 the following new sections are inserted:

§ 20.6166 Statutory provisions; extension of time for payment of estate tax where estate consists largely of interest in closely held business.

SEC. 6166. *Extension of time for payment of estate tax where estate consists largely of interest in closely held business*—(a) *Extension permitted.* If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds either—

(1) 35 percent of the value of the gross estate of such decedent, or

(2) 50 percent of the taxable estate of such decedent,

the executor may elect to pay part or all of the tax imposed by section 2001 in two or more (but not exceeding 10) equal installments. Any such election shall be made not later than the time prescribed by section 6075(a) for filing the return of such tax (including extensions thereof), and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe. If an election under this section is made, the provisions of this subtitle shall apply as though the Secretary or his delegate were extending the time for payment of the tax. For purposes of this section, value shall be value determined for Federal estate tax purposes.

(b) *Limitation.* The maximum amount of tax which may be paid in installments as provided in this section shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as the value of the interest in a closely held business which qualifies under subsection (a) bears to the value of the gross estate.

(c) *Closely held business.* For purposes of this section, the term "interest in a closely held business" means—

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business, if—

(A) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

(B) Such partnership had 10 or less partners,

(3) Stock in a corporation carrying on a trade or business, if—

(A) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

(B) Such corporation had 10 or less shareholders.

For purposes of this subsection, determinations shall be made as of the time immediately before the decedent's death.

(d) *Special rule for interests in two or more closely held businesses.* For purposes of subsections (a), (b), and (h)(1), interests in two or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate more than 50 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 50-percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property shall be treated as having been included in determining the value of the decedent's gross estate.

(e) *Date for payment of installments.* If an election is made under subsection (a), the first installment shall be paid on or before the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is one year after the date prescribed by this subsection for payment of the preceding installment.

(f) *Proration of deficiency to installments.* If an election is made under subsection (a) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to such installments. The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary or his delegate. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(g) *Time for payment of interest.* If the time for payment of any amount of tax has been extended under this section, interest payable under section 6601 on any unpaid portion of such amount shall be paid annually at the same time as, and as a part of, each installment payment of the tax. Interest, on that part of a deficiency prorated under this section to any installment the date for payment of which has not arrived, for the period before the date fixed for the last installment preceding the assessment of the deficiency, shall be paid upon notice and demand from the Secretary or his delegate. In applying section 6601(b) (relating to the application of the 4-percent rate of interest in the case of certain extensions of time to pay estate tax) in the case of a deficiency, the entire amount which is prorated to installments under this section shall be treated as an amount of tax the payment of which is extended under this section.

(h) *Acceleration of payment—(1) Withdrawal of funds from business; disposition of interest—(A) If—*

(i) Aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subsection (a), made with respect to such interest, equal or exceed 50 percent of the value of such trade or business, or

(ii) 50 percent or more in value of an interest in a closely held business which qualifies under subsection (a) is distributed, sold, exchanged, or otherwise disposed of,

then the extension of time for payment of tax provided in this section shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

(i) Subparagraph (A)(i) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed, and

(ii) Subparagraph (A)(ii) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (e) for payment of the first installment which becomes due after the date of the distribution, there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

(C) Subparagraph (A)(ii) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of such subparagraph as an interest qualifying under subsection (a).

(D) Subparagraph (A)(ii) does not apply to a transfer of property of the decedent by the executor to a person entitled to receive such property under the decedent's will or under the applicable law of descent and distribution.

(2) *Undistributed income of estate.* (A) If an election is made under this section and the estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of—

(i) The amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a) (relating to deduction for distributions, etc.);

(ii) The amount of tax imposed for the taxable year on the estate under chapter 1; and

(iii) The amount of the Federal estate tax (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

(3) *Failure to pay installment.* If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary or his delegate.

(i) *Transitional rules—(1) In general.* If—

(A) A deficiency in the tax imposed by section 2001 is assessed after the date of the enactment of this section, and

(B) The estate qualifies under paragraph (1) or (2) of subsection (a),

the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(2) *Time of election.* An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary or his delegate for the payment of the deficiency, and shall be made in such manner as the Secretary or his delegate shall by regulations prescribe.

(3) *Effect of election on payment.* If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to the installments which would have been due if an election had been timely made under this section at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

(4) *Application of subsection (h)(2).* In the case of an election under this subsection, subsection (h)(2) shall not apply with respect to undistributed net income for any taxable year ending before January 1, 1960.

(j) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to the application of this section.

(k) *Cross references—(1) Interest.* For provisions requiring the payment of interest at the rate of 4 percent per annum for the period of an extension, see section 6601(b).

(2) *Security.* For authority of the Secretary or his delegate to require security in the case of an extension under this section, see section 6165.

(3) *Period of limitation.* For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

[Sec. 6166 as added by sec. 206(a) Small Business Tax Revision Act 1958 (72 Stat. 1681)]

§ 20.6166–1 Extension of time for payment of estate tax where estate consists largely of interest in closely held business.

(a) *In general.* Section 6166 provides that where the value of an interest in a closely held business, which is included in the gross estate of a decedent who was a citizen or resident of the United States at the time of his death, exceeds either (1) 35 percent of the value of the gross estate, or (2) 50 percent of the taxable estate, the executor may elect to pay part or all of the Federal estate tax in installments. The election to pay the tax in installments applies to deficiencies in tax as well as to the tax shown on the return, unless the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax. Except as otherwise provided in section 6166(i) and § 20.6166–4, the provisions of section 6166 and this section apply only if the due date of the return is after September 2, 1958. See § 20.6166–4 for special rules applicable where the decedent died after August 16, 1954, and the due date of the return was on or before September 2, 1958. See also § 20.6075–1 for the due date of the return, and § 20.6166–2 for definition of the term "interest in a closely held business". Since the election must be made on or before the due date of the return, the provisions of section 6166 will not apply to a deficiency in a case where, for whatever reason, no election was made to pay in installments the tax shown on the return. However, see paragraph (e)(3) of this section concerning a protective election. The general administrative provisions of subtitle F of the Code are applicable in connection with an election by the executor to pay the estate tax in installments in the same manner in which they are applied in a case where an extension of time under section 6161 is granted for payment of the tax. See paragraph (a) of § 20.6165–1 for provisions requiring the furnishing of security for the payment of the tax in cases where an extension is granted under section 6161.

(b) *Limitation on amount of tax payable in installments.* The amount of estate tax which the executor may elect to pay in installments is limited to an amount A, which bears the same ratio to B (the gross Federal estate tax, reduced by the credits authorized by sections 2011 through 2014 and any death tax convention) as C (the value of the interest in a closely held business which is included in the gross estate) bears to D (the value of the gross estate). Stated algebraically, the limitation (A) equals

$$\frac{\text{Value of interest in a closely held business which is included in the gross estate (C)}}{\text{Value of gross estate (D)}} \times \text{Gross Federal estate tax reduced by the credits authorized by sections 2011 through 2014 and any death tax convention (B).}$$

The executor may elect to pay in installments an amount less than the amount computed under the limitation in this paragraph. For example, if the total estate tax payable is $100,000 and the amount computed under the limitation in this paragraph is $60,000, the executor may elect to pay in installments some lesser sum such as $30,000, in which event the executor must pay $73,000 to the district director on or before the date prescribed by section 6151(a) for payment of the tax. Of such payment, $70,000 represents tax which the executor either could not elect to pay in installments or did not choose to so elect, and $3,000 represents a payment of the first installment of the tax which the executor elected to pay in installments.

(c) *Number of installments and dates for payment.* The executor may elect to pay part or all of the tax (determined after application of the limitation contained in paragraph (b) of this section) in two or more, but not exceeding 10, equal annual installments. The first installment shall be paid on or before the date prescribed by section 6151(a) for payment of the tax (see paragraph (a) of § 20.6151–1), and each succeeding installment shall be paid on or before the date which is one year after the date prescribed for the payment of the preceding installment. See § 20.6166–3 for the circumstances under which the privilege of paying the tax in installments will terminate.

(d) *Deficiencies.* The amount of a deficiency which may be paid in installments shall not exceed the difference between the amount of tax which the executor elected to pay in installments and the maximum amount of tax (determined under paragraph (b) of this section) which the executor could have elected to pay in installments on the basis of a return which reflects the adjustments which resulted in the deficiency. This amount is then prorated to the installments in which the executor elected to pay the tax. The part of the deficiency prorated to installments not yet due shall be paid at the same time as, and as a part of, such installments. The part of the deficiency prorated to installments already paid or due shall be paid upon notice and demand from the district director. At the time the executor receives such notice and demand he may, of course, prepay the portions of the deficiency which have been prorated to installments not yet due. See paragraph (h) of this section.

(e) *Notice of election—(1) Filing of notice.* The notice of election to pay the estate tax in installments shall be filed with the district director on or before the due date of the return. However, if the due date of the return is after September 2, 1958, but before November 3, 1958, the election will be considered as timely made if the notice is filed with the district director on or before November 3, 1958. See § 20.6075–1 for the due date of the return.

(2) *Form of notice.* The notice of election to pay the estate tax in installments may be in the form of a letter addressed to the district director. The executor shall state in the notice the amount of tax which he elects to pay in installments, and the total number of installments (including the installment due 15 months after the date of the decedent's death) in which he elects to pay the tax. The properties in the gross estate which constitute the decedent's interest in a closely held business should be listed in the notice, and identified by the schedule and item number at which they appear on the estate tax return. The notice should set forth the facts which formed the basis for the executor's conclusion that the estate qualifies for the payment of the estate tax in installments.

(3) *Protective election.* In a case where the estate does not qualify under section 6166(a) on the basis of the values as returned, or where the return shows no tax as due, an election may be made, contingent upon the values as finally determined meeting the percentage requirements set forth in section 6166(a), to pay in installments any portion of the estate tax, including a deficiency, which may be unpaid at the time of such final determination and which does not exceed the limitation provided in section 6166(b). The protective election must be made on or before the due date of the return and should state that it is a protective election. In the absence of a statement in the protective election as to the amount of tax to be paid in installments and the number of installments, the election will be presumed to be made for the maximum amount so payable and for the payment thereof in 10 equal annual installments, the first of which would have been due on the date prescribed in section 6151(a) for payment of the tax. The unpaid portion of the tax which may be paid in installments is prorated to the installments which would have been due if the provisions of section 6166(a) had applied to the tax, if any, shown on the return. The part of the unpaid portion of the tax so prorated to installments the date for payment of which would not have arrived before the deficiency is assessed shall be paid at the time such installments would have been due. The part of the unpaid portion of the tax so prorated to any installment the date for payment of which would have arrived before the deficiency is assessed shall be paid upon receipt of notice and demand from the district director. At the time the executor receives such notice and demand he may, of course, prepay the unpaid portions of the tax which have been prorated to installments not yet due. See paragraph (h) of this section.

(f) *Time for paying interest.* Under the provisions of section 6601, interest at the rate of 4 percent per annum shall be paid on the unpaid balance of the estate tax which the executor has elected to pay in installments, and on the unpaid balance of any deficiency prorated to the installments. Interest on such unpaid balance of estate tax shall be paid annually at the same time as, and as a part of, each installment of the tax. Accordingly, interest is computed on the entire unpaid balance for the period from the preceding installment date to the current installment date, and is paid with the current installment. In making such a computation, proper adjustment shall be made for any advance payments made during the period, whether the advance payments are voluntary or are brought about by the operation of section 6166(h)(2). In computing the annual interest payment, the portion of any deficiency which is prorated to installments the date for payment of which has not arrived shall be added to the unpaid balance at the beginning of the annual period during which the assessment of the deficiency occurs. Interest on such

portion of the deficiency for the period from the original due date of the tax to the date fixed for the payment of the last installment preceding the date of assessment of a deficiency shall be paid upon notice and demand from the district director. Any extension of time under section 6161(a)(2) (on account of undue hardship to the estate) for payment of an installment will not extend the time for payment of the interest which is due on the installment date.

(g) *Extensions of time for payment in hardship cases.* The provisions of section 6161, under which extensions of time may be granted for payment of estate tax in cases involving undue hardship, apply to both the portion of the tax which may be paid in installments under section 6166 and the portion of the tax which is not so payable. Therefore, in a case involving undue hardship, the executor may elect under section 6166 to pay in installments the portion of the tax which is attributable to the interest in the closely held business and, in addition, may file an application under section 6161 for an extension of time to pay both the portion of the tax which is not attributable to the interest in the closely held business and such of the installments as are payable within the period of the requested extension. If an executor files a notice of election to pay the tax in installments and thereafter it is determined that the estate does not qualify for the privilege of paying the tax in installments, the executor is not deprived of the right to request an extension under section 6161 of time for payment of the tax to which the purported election applied. See § 20.6161–1 for the circumstances under which a timely filed election to pay the tax in installments will be treated as a timely filed application for an extension of time to pay the tax on account of undue hardship to the estate.

(h) *Prepayments.* Voluntary prepayment may be made at any time of all, or of any part, of the unpaid portion of the tax (including deficiencies) payable in installments. Voluntary prepayments shall be applied in payment of such installments, installment, or part of an installment as the person making the prepayment shall designate. For purposes of this paragraph, a payment described in paragraph (d)(2) of § 20.6166–3 of tax in an amount not less than the amount of money or other property distributed in a section 303 redemption is considered to be a voluntary prepayment to the extent paid before the date prescribed for payment of the first installment after the redemption or, if paid on the date prescribed for payment of such installment, to the extent it exceeds the amount due on the installment. See paragraph (b)(3) of § 20.6166–3 for the application to be made of the prepayment required by section 6166(h)(2).

§ 20.6166–2 Definition of an interest in a closely held business.

(a) *In general.* For purposes of §§ 20.6166–1, 20.6166–3, and 20.6166–4, the term "interest in a closely held business" means

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business if 20 percent or more of the total capital interest in the partnership is included in determining the decedent's gross estate or if the partnership had 10 or less partners.

(3) Stock in a corporation carrying on a trade or business if 20 percent or more in value of the voting stock of the corporation is included in determining the decedent's gross estate or if the corporation had 10 or less shareholders.

(b) *Number of partners or shareholders.* The number of partners of the partnership or shareholders of the corporation is determined as of the time immediately before the decedent's death. Where an interest in a partnership, or stock in a corporation, is the community property of husband and wife, both the husband and the wife are counted as partners or shareholders in arriving at the number of partners or shareholders. Similarly, if stock is held by coowners, tenants in common, tenants by the entirety, or joint tenants, each coowner, tenant in common, tenant by the entirety, or joint tenant is counted as a shareholder.

(c) *Carrying on a trade or business.* (1) In order for the interest in a partnership or the stock of a corporation to qualify as an interest in a closely held business it is necessary that the partnership or the corporation be engaged in carrying on a trade or business at the time of the decedent's death. However, it is not necessary that all the assets of the partnership or the corporation be utilized in the carrying on of the trade or business.

(2) In the case of a trade or business carried on as a proprietorship, the interest in the closely held business includes only those assets of the decedent which were actually utilized by him in the trade or business. Thus, if a building was used by the decedent in part as a personal residence and in part for the carrying on of a mercantile business, the part of the building used as a residence does not form any part of the interest in the closely held business. Whether an asset will be considered as used in the trade or business will depend on the facts and circumstances of the particular case. For example, if a bank account was held by the decedent in his individual name (as distinguished from the trade or business name) and it can be clearly shown that the amount on deposit represents working capital of the business as well as nonbusiness funds (e.g., receipts from investments, such as dividends and interest), then that part of the amount on deposit which represents working capital of the business will constitute a part of the interest in the closely held business. On the other hand, if a bank account is held by the decedent in the trade or business name and it can be shown that the amount represents nonbusiness funds as well as working capital, then only that part of the amount on deposit which represents working capital of the business will constitute a part of the interest in the closely held business. In a case where an interest in a partnership or stock of a corporation qualifies as an interest in a closely held business, the decedent's entire interest in the partnership, or the decedent's entire holding of stock in the corporation, constitutes an interest in a closely held business even though a portion of the partnership or corporate assets is used for a purpose other than the carrying on of a trade or business.

(d) *Interests in two or more closely held businesses.* For purposes of paragraphs (a) and (b) of § 20.6166–1 and paragraphs (d) and (e) of § 20.6166–3, interests in two or more closely held businesses shall be treated as an interest in a single closely held business if more than 50 percent of the total value of each such business is included in determining the value of the decedent's gross estate. For the purpose of the 50 percent requirement set forth in the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in community property shall be considered as having been included in determining the value of the decedent's gross estate.

§ 20.6166–3 Acceleration of payment.

(a) *In general.* Under the circumstances described in this section all or a part of the tax which the executor has elected to pay in installments shall be paid before the dates fixed for payment of the installments. Upon an estate's having undistributed net income described in paragraph (b) of this section for any taxable year after its fourth taxable year, the executor shall pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments. Upon the happening of any of the events described in paragraphs (c), (d), and (e) of this section, any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the district director.

(b) *Undistributed net income of estate.* (1) If an estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments. The amount shall be paid to the district director on or before the time prescribed for the filing of the estate's income tax return for such taxable year. For this purpose extensions of time granted for the filing of the income tax return are taken into consideration in determining the time prescribed for filing the return and making such payment. In determining the number of taxable years, a short taxable year is counted as if it were a full taxable year.

(2) The term "undistributed net income" of the estate for any taxable year for purposes of this section is the amount by which the distributable net income of the estate, as defined in section 643, exceeds the sum of—

(i) The amount for such year specified in section 661(a)(1) and (2),

(ii) The amount of the Federal income tax imposed on the estate for such taxable year under chapter 1 of the Code, and

(iii) The amount of the Federal estate tax, including interest thereon, paid for the estate during such taxable year (other than any amount paid by reason of the application of this acceleration rule).

(3) The payment described in subparagraph (1) of this paragraph shall be applied against the total unpaid portion of the tax which the executor elected to pay in installments, and shall be divided equally among the installments due after the date of such payment. The application of this subparagraph may be illustrated by the following example:

Example. The decedent died on January 1, 1959. The executor elects under section 6166 to pay tax in the amount of $100,000 in 10 installments of $10,000. The first installment is due on April 1, 1960. The estate files its income tax returns on a calendar year basis. For its fifth taxable year (calendar year 1963) it has undistributed net income of $6,000. If the prepayment of $6,000 required by section 6166(h)(2)(A), and due on or before April 15, 1964, is paid before the fifth installment (due April 1, 1964), the $6,000 is apportioned equally among installments 5 through 10, leaving $9,000 as the amount due on each of such installments. However, if the prepayment of $6,000 is paid after the fifth installment, it is apportioned equally among installments 6 through 10, leaving $8,800 as the amount due on each of such installments.

(c) *Failure to pay installment on or before due date.* If any installment of tax is not paid on or before the date fixed for its payment (including any extension of time for the payment thereof), the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand from the district director. See paragraph (c) of § 20.6166–1 for the dates fixed for the payment of installments. See also § 20.6161–1 for the circumstances under which an extension of time for the payment of an installment will be granted.

(d) *Withdrawal of funds from business.* (1) In any case where money or other property is withdrawn from the trade or business and the aggregate withdrawals of money or other property equal or exceed 50 percent of the value of the trade or business, the privilege of paying the tax in installments terminates and the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand from the district director. The withdrawals of money or other property from the trade or business must be in connection with the interest therein included in the gross estate, and must equal or exceed 50 percent of the value of the entire trade or business (and not just 50 percent of the value of the interest therein included in the gross estate). The withdrawal must be a withdrawal of money or other property which constitutes "included property" within the meaning of that term as used in paragraph (d) of § 20.2032–1. The provisions of this section do not apply to the withdrawal of money or other property which constitutes "excluded property" within the meaning of that term as used in such paragraph (d).

(2) If a distribution in redemption of stock is (by reason of the provisions of section 303 or so much of section 304 as relates to section 303) treated for income tax purposes as a distribution in full payment in exchange for the stock so redeemed, the amount of such distribution is not counted as a withdrawal of money or other property made with respect to the decedent's interest in the trade or business for purposes of determining whether the withdrawals of money or other property made with respect to the decedent's interest in the trade or business equal or exceed 50 percent of the value of the trade or business. However, in the case described in the preceding sentence the value of the trade or business for purposes of applying the rule set forth in subparagraph (1) of this paragraph is the value thereof reduced by the proportionate part thereof which such distribution represents. The proportionate part of the value of the trade or business which the distribution represents is determined at the time of the distribution, but the reduction in the value of the trade or business represented by it relates back to the time of the decedent's death, or the alternate valuation date if an election is made under section 2032, for purposes of determining whether other withdrawals with respect to the decedent's interest in the trade or business constitute withdrawals equaling or exceeding 50 percent of the value of the trade or business. See example (3) of paragraph (e)(6) of this section for illustration of this principle. The rule stated in the first sentence of this subparagraph does not apply unless after the redemption, but on or before the date prescribed for payment of the first installment which becomes due after the redemption, there is paid an amount of estate tax not less than the amount of money or other property distributed. Where there are a series of section 303 redemptions, each redemption is treated separately and the failure of one redemption to qualify under the rule stated in the first sentence of this subparagraph does not necessarily mean that another redemption will not qualify.

(3) The application of this paragraph may be illustrated by the following examples, in each of which the executor elected to pay the estate tax in installments:

Example (1). A, who died on July 1, 1957, owned an 80 percent interest in a partnership which qualified as an interest in a closely held business. B owned the other 20 percent interest in the partnership. On the date of A's death the value of the business was $200,000 and the value of A's interest therein was included in his gross estate at $160,000. On October 1, 1958, when the value of the business was the same as at A's death, the executor withdrew $80,000 from the business. On December 1, 1958, when the value of the remaining portion of the business was $160,000, the executor withdrew $20,000 from the business and B withdrew $10,000. On February 1, 1959, when the value of the then remaining portion of the business was $150,000 the executor withdrew $15,000. The withdrawals of money or other property from the trade or business with respect to the interest therein included in the gross estate are considered as not having equaled or exceeded 50 percent of the value of the trade or business until February 1, 1959. The executor is considered as having withdrawn 40 percent of the value of the trade or business on October 1, 1958, computed as follows:

$$\frac{\$80{,}000 \text{ (withdrawal)}}{\$200{,}000 \text{ (value of trade or business at time of withdrawal)}} \times 100 \text{ percent} = 40 \text{ percent}$$

Immediately following the October withdrawal the remaining portion of the business represents 60 percent of the value of the trade or business in existence at the time of A's death (100 percent less 40 percent withdrawn). The executor is considered as having withdrawn 7.5 percent of the value of the trade or business on December 1, 1958, and B as having withdrawn 3.75 percent of the value thereof at that time, computed as follows:

Executor's withdrawal—

$$\frac{\$20{,}000 \text{ (withdrawal)}}{\$160{,}000 \text{ (value of trade or business at time of withdrawal)}} \times 60 \text{ percent} = 7.5 \text{ percent}$$

B's withdrawal—

$$\frac{\$10{,}000 \text{ (withdrawal)}}{\$160{,}000 \text{ (value of trade or business at time of withdrawal)}} \times 60 \text{ percent} = 3.75 \text{ percent}$$

Immediately following the December withdrawal the then remaining portion of the business represented 48.75 percent of the value of the trade or business in existence at the time of A's death (100 percent less 40 percent withdrawn by executor in October, 7.5 percent withdrawn by executor in December, and 3.75 percent withdrawn by B in December). It should be noted that while at this point the total withdrawals by the executor and B from the trade or business exceed 50 percent of the value thereof, the aggregate of the withdrawals by the executor were less than 50 percent of the value of the trade or business. Also it should be noted that while the total withdrawals by the executor exceeded 50 percent of the value of A's interest in the trade or business, they did not exceed 50 percent of the value of the entire trade or business. The executor is considered as having withdrawn 4.875 percent of the value of the trade or business on February 1, 1959, computed as follows:

$$\frac{\$15{,}000 \text{ (withdrawal)}}{\$150{,}000 \text{ (value of trade or business at time of withdrawal)}} \times 48.75 \text{ percent} = 4.875 \text{ percent}$$

As of February 1, 1959, the total withdrawals from the trade or business made with respect to A's interest therein was 52.375 percent of the value of the trade or business.

Example (2). The decedent's 40-percent interest in the XYZ partnership constituted an interest in a closely held business. Since the decedent's interest in the closely held

business amounted to less than 50 percent of the value of the business, money or other property equaling or exceeding 50 percent of the value of the business could not be withdrawn from the decedent's interest in the business. Therefore, withdrawals of money or other property from this trade or business never would accelerate the payment of the tax under the provisions of this paragraph.

Example (3). The decedent died on September 1, 1957. He owned 100 shares of B Corporation (the total number of shares outstanding at the time of his death) and a 75 percent interest in a partnership of which C was the other partner. The B Corporation stock and the interest in the partnership together make up the interest in the closely held business which was included in the decedent's gross estate. The B Corporation stock was included in the gross estate at a value of $400,000 and the interest in the partnership was included at a value of $300,000. On November 1, 1957, at which time the value of the corporation's assets had not changed, in a section 303 redemption the executor surrendered 26 shares of B Corporation stock for $104,000. On December 1, 1957, at which time the value of the partnership's assets had not changed, the partners withdrew 90 percent of the assets of the partnership, with the executor receiving $270,000 and C receiving $90,000. The estate tax amounts to $240,000, of which the executor elected under section 6166 to pay $140,000 in 10 installments of $14,000 each. On December 1, 1958, the due date for paying the estate tax which was not payable in installments and for paying the first installment under section 6166, the executor paid estate tax of $114,000, of which $100,000 represented the tax not payable in installments and $14,000 represented the first installment. Inasmuch as after the section 303 distribution and on or before the due date of the first installment (December 1, 1958) after the section 303 distribution the executor paid as estate tax an amount not less than the amount of the distribution, the section 303 distribution does not constitute a withdrawal of money or other property from the business for purposes of section 6166(h)(1). Therefore, the value of the trade or business is reduced by the amount of the section 303 distribution. Accordingly, the value of the entire trade or business is $696,000, of which $400,000 represents the value of the partnership and $296,000 represents the value of the B Corporation stock. Since the executor is considered as having withdrawn only $270,000 (the withdrawal from the partnership) from the trade or business, the withdrawal of money or other property from the trade or business made with respect to the decedent's interest therein was $\frac{270,000}{696,000}$ of the value of the entire trade or business, or less than 50 percent thereof.

(e) *Disposition of interest in business.* (1) In any case where in the aggregate 50 percent or more of the decedent's interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of, the privilege of paying the tax in installments terminates and the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand from the district director. A transfer by the executor of an interest in the closely held business to a beneficiary or trustee named in the decedent's will or to an heir who is entitled to receive it under the applicable intestacy law does not constitute a distribution thereof for purposes of determining whether 50 percent or more of an interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of. However, a subsequent transfer of the interest by the beneficiary, trustee, or heir will constitute a distribution, sale, exchange, or other disposition thereof for such purposes. The disposition must be a disposition of an interest which constitutes "included property" within the meaning of that term as used in paragraph (d) of § 20.2032–1. The provisions of this section do not apply to the disposition of an interest which constitutes "excluded property" within the meaning of that term as used in such paragraph (d).

(2) The phrase "distributed, sold, exchanged, or otherwise disposed of" comprehends all possible ways by which an interest in a closely held business ceases to form a part of the gross estate. The term includes the surrender of a stock certificate for corporate assets in complete or partial liquidation of a corporation pursuant to section 331. The term also includes the surrender of stock for stock pursuant to a transaction described in subparagraphs (A), (B), or (C) of section 368(a)(1). In general the term does not, however, extend to transactions which are mere changes in form. It does not include a transfer of assets to a corporation in exchange for its stock in a transaction with respect to which no gain or loss would be recognizable for income tax purposes under section 351. It does not include an exchange of stock in a corporation for stock in the same corporation or another corporation pursuant to a plan of reorganization described in subparagraphs (D), (E), or (F) of section 368(a)(1), nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies. However, any stock received in an exchange to which the two preceding sentences apply shall for purposes of this paragraph be treated as an interest in a closely held business.

(3) An interest in a closely held business may be "distributed" by either a trustee who received it from the executor, or a trustee of an interest which is included in the gross estate under sections 2035 through 2038, or section 2041. See subparagraph (1) of this paragraph relative to the distribution of an interest by the executor to the person entitled to receive it under the decedent's will or an intestacy law.

(4) An interest in a closely held business may be "sold, exchanged, or otherwise disposed of" by (i) the executor; (ii) a trustee or other donee to whom the decedent in his lifetime transferred the interest included in his gross estate under section 2035 through 2038, or section 2041; (iii) a beneficiary, trustee, or heir entitled to receive the property from the executor under the decedent's will or under the applicable law of descent and distribution, or to whom title to the interest passed directly under local law; (iv) a surviving joint tenant or tenant by the entirety; or (v) any other person.

(5) If a distribution in redemption of stock is (by reason of the provisions of section 303 or so much of section 304 as relates to section 303) treated for income tax purposes as a distribution in full payment in exchange for the stock redeemed, the stock so redeemed is not counted as distributed, sold, exchanged, or otherwise disposed of for purposes of determining whether 50 percent or more of the decedent's interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of. However, in the case described in the preceding sentence the interest in the closely held business for purposes of applying the rule set forth in subparagraph (1) of this paragraph is such interest reduced by the proportionate part thereof which the redeemed stock represents. The proportionate part of the interest which the redeemed stock represents is determined at the time of the redemption, but the reduction in the interest represented by it relates back to the time of the decedent's death, or the alternate valuation date if an election is made under section 2032, for purposes of determining whether other distributions, sales, exchanges, and dispositions of the decedent's interest in the closely held business equal or exceed in the aggregate 50 percent of such interest. See example (3) of subparagraph (6) of this paragraph for illustration of this principle. The rule stated in the first sentence of this subparagraph does not apply unless after the redemption, but on or before the date prescribed for payment of the first installment which becomes due after the redemption, there is paid an amount of estate tax not less than the amount of money or other property distributed. Where there are a series of section 303 redemptions, each redemption is treated separately and the failure of one redemption to qualify under the rule stated in the first sentence of this subparagraph does not necessarily mean that another redemption will not qualify.

(6) The application of this paragraph may be illustrated by the following examples, in each of which the executor elected to pay the tax in installments:

Example (1). The decedent died on October 1, 1957. He owned 8,000 of the 12,000 shares of D Corporation outstanding at the time of his death and 3,000 of the 5,000 shares of E Corporation outstanding at that time. The D Corporation stock was included in the gross estate at $50 per share, or a total of $400,000. The E Corporation stock was included in the gross estate at $100 per share, or a total of $300,000. On November 1, 1958, the executor sold the 3,000 shares of E Corporation and on February 1, 1959, he sold 1,000 shares of D Corporation. Since the decedent's shares of D Corporation and E Corporation together constituted the interest in a closely held business, the value of such interest was $700,000 ($400,000 plus $300,000) and the D Corporation stock represented $\frac{400,000}{700,000}$ thereof and the E Corporation stock represented $\frac{300,000}{700,000}$ thereof. While the sale of 3,000 shares of E Corporation on November 1, 1958, was a sale of the decedent's entire interest in E Corporation and a sale of more than 50 percent of the outstanding stock of E Corporation, nevertheless it constituted a sale of only $\frac{300,000}{700,000}$ of the interest in the closely held business. The sale of 1,000 shares of D Corporation stock on February 1, 1959, represented a sale of $\frac{50,000}{700,000}$ of the interest in the closely held business. The numerator of $50,000 is determined as follows:

$$\frac{1,000 \text{ (shares sold)}}{8,000 \text{ (shares owned)}} \times \$400,000 \text{ (value of shares owned, as included in gross estate)}$$

Taken together the two sales represented a sale of 50 percent $\left(\frac{350,000}{700,000}\right)$ of the interest in the closely held business. Therefore, as of February 1, 1959 (the date of the sale of 1,000 shares of E Corporation), 50 percent or more in value of the interest in the closely held business is considered as distributed, sold, exchanged, or otherwise disposed of.

Example (2). The decedent died on September 1, 1958. The interest owned by him in a closely held business consisted of 100 shares of the M Corporation. On February 1, 1959, in a section 303 redemption, 20 shares were redeemed for cash and an amount equivalent to the proceeds was paid on the Federal estate tax before the date of the next installment. On July 1, 1959, the executor sold 40 of the remaining shares of the stock. The section 303 redemption is not considered to be a distribution, sale, exchange, or other disposition of the portion of the interest represented by the 20 shares redeemed. As a result of the section 303 redemption the remaining 80 shares represent the decedent's entire interest in the closely held business for purposes of determining whether in the aggregate 50 percent or more of the interest in the closely held business has been distributed, sold, exchanged, or otherwise disposed of. The sale on July 1, 1959, of the 40 shares represents a sale of 50 percent of the interest in the closely held business.

Example (3). The facts are the same as in example (2) except that the 40 shares were sold on December 1, 1958 (before the section 303 redemption was made) instead of on July 1, 1959 (after the section 303 redemption was made). The sale of the 40 shares in December represents, as of that date, a sale of 40 percent of the interest in the closely held business. However, the section 303 redemption of 20 shares does not count as a distribution, sale, exchange, or other disposition of the interest, but it does reduce the interest to 80 shares (100 shares less 20 shares redeemed) for purposes of determining whether other distributions, sales, exchanges, and dispositions in the aggregate equal or exceed 50 percent of the interest in the closely held business. Since the reduction of the interest to 80 shares relates back to the time of the decedent's death, or the alternate valuation date if an election is made under section 2032, the sale of the 40 shares, as recomputed represents a sale of 50 percent of the interest. However, since the sale of the 40 shares did not represent a sale of 50 percent of the interest until the section 303 distribution was made, February 1, 1959 (the date of the section 303 distribution) is considered the date on which 50 percent of the interest was distributed, sold, exchanged, or otherwise disposed of.

(f) *Information to be furnished by executor.* (1) If the executor acquires knowledge of the happening of any transaction described in paragraph (d) or (e) of this section which, in his opinion, standing alone or when taken together with other transactions of which he has knowledge, would result in

(i) Aggregate withdrawals of money or other property from the trade or business equal to or exceeding 50 percent of the value of the entire trade or business, or

(ii) Aggregate distributions, sales, exchanges, and other dispositions equal to or exceeding 50 percent of the interest in the closely held business which was included in the gross estate,

the executor shall so notify the district director, in writing, within 30 days of acquiring such knowledge.

(2) On the date fixed for payment of each installment of tax (determined without regard to any extension of time for the payment thereof), other than the final installment, the executor shall furnish the district director, in writing, with either

(i) A complete disclosure of all transactions described in paragraphs (d) and (e) of this section of which he has knowledge and which have not previously been made known by him to the district director, or

(ii) A statement that to the best knowledge of the executor all transactions described in paragraphs (d) and (e) of this section which have occurred have not produced a result described in subparagraph (1) (i) or (ii) of this paragraph.

(3) The district director may require the submission of such additional information as is deemed necessary to establish the estate's right to continue payment of the tax in installments.

§ 20.6166–4 Special rules applicable where due date of return was before September 3, 1958.

(a) *In general.* Section 206(f) of the Small Business Tax Revision Act of 1958 (72 Stat. 1685) provides that section 6166(i) of the Code shall apply in cases where the decedent died after August 16, 1954, but only if the date for filing the estate tax return (including extensions thereof) expired before September 3, 1958. Therefore, the privilege of paying the estate tax in installments as described in §§ 20.6166–1 through 20.6166–3 is available also in cases where the due date of the return is before September 3, 1958, but under somewhat different circumstances. These differences are explained in paragraphs (b) through (e) of this section. Therefore, except as otherwise provided in paragraphs (b) through (e) of this section, the regulations contained in §§ 20.6166–1 through 20.6166–3 apply also in cases where the due date of the return is before September 3, 1958. See § 20.6075–1 for the due date of the return. The value of the gross estate as determined for purposes of a deficiency in tax assessed after September 2, 1958, and the value at which the interest in the closely held business, to which the election applies, is included in such value of the gross estate are used in ascertaining whether an estate coming within the purview of section 6166(i) and this section satisfies the percentage requirements as to qualification set forth in section 6166(a).

(b) *Tax to which election applies.* In a case where the due date of the return was before September 3, 1958, an election to pay estate tax in installments does not apply to the tax shown on the return nor to a deficiency in tax assessed before that date. It does apply to a deficiency in tax assessed after September 2, 1958, unless the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax. The amount of the deficiency which may be paid in installments shall not exceed that proportion of the total tax (including the deficiency) which is determined by applying thereto the ratio set forth in paragraph (b) of § 20.6166–1. See paragraph (c) of this section for the method of prorating the deficiency to the installments.

(c) *Proration of deficiency to installments.* The deficiency in tax which may be paid in installments is prorated to the installments which would have been due if the provisions of section 6166(a) had applied to the tax shown on the return and if an election had been timely made at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived before the election is made shall be paid at the time the election is made. The portion of the deficiency so prorated to installments the date for payment of which would not have arrived before the election is made shall be paid at the time such installments would have been due if such an election had been made.

(d) *Notice of election.* The notice of election to pay the deficiency in installments shall be filed with the district director not later than 60 days after issuance of notice and demand by the district director for payment of the deficiency. The number of installments in which the executor elects to pay the deficiency includes those installments the dates for payment of which would have arrived within the meaning of paragraph (c) of this section. See paragraph (c)(2) of § 20.6166–1 for further information relative to the notice of election.

(e) *Undistributed income of estate.* In any case where the due date of the estate tax return was before September 3, 1958, the provisions of paragraph (b) of § 20.6166–3 (providing for acceleration of payment of estate tax by amount of estate's undistributed net income for any taxable year after its fourth taxable year) shall not apply with respect to the estate's undistributed net income for any taxable year ending before January 1, 1960.

PAR. 6. Section 20.6601 is amended by revising subsection (b) of section 6601 and by adding a historical note to read as follows:

§ 20.6601 Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment, of tax.

SEC. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax.* • • •

(b) *Extensions of time for payment of estate tax.* If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6161(a)(2) or 6166, or if the time for payment of an amount of such tax is postponed or extended as provided by section 6163, interest shall be paid at the rate of 4 percent, in lieu of 6 percent as provided in subsection (a).

• • • • • •

[Sec. 6601 as amended by sec. 66(c), Technical Amendments Act 1958 (72 Stat. 1658); sec. 206(e), Small Business Tax Revision Act 1958 (72 Stat. 1685)]

[F.R. Doc. 60–12082; Filed, Dec. 28, 1960; 8:49 a.m.]

Title 46—SHIPPING

Chapter I—Coast Guard, Department of the Treasury

SUBCHAPTER H—PASSENGER VESSELS

[CGFR 60-36a]

PART 75—LIFESAVING EQUIPMENT

Subpart 75.20—Equipment for Lifeboats, Life Rafts, Life Floats, and Buoyant Apparatus

LIFEBOATS

The Coast Guard document CGFR 60-36 (F.R. document 60-10395) contained miscellaneous amendments to the vessel inspection regulations and was published as Part II of the FEDERAL REGISTER dated November 5, 1960. Among the changes set forth in this document were revised requirements for "painters" for lifeboats. In listing the required equipment for lifeboats for passenger vessels, Table 75.20-10(a) was reprinted in its entirety (25 F.R. 10627). The revised requirements were intended to include a change in the number of required "painters" from "1" to "2" for Great Lakes passenger vessels while no change in the quantity of "storm oil" required was contemplated. However, a mistake was made in Table 75.20-10(a) under the heading "Great Lakes" (fourth column), when the quantity for "storm oil" (opposite letter identification "y") was increased from "1" to "2" while no change is indicated for "painter" (opposite letter identification "z").

By virtue of the authority vested in me as Commandant, United States Coast Guard by Treasury Department Orders 120, dated July 31, 1950 (15 F.R. 6521), 167-9, dated August 3, 1954 (19 F.R. 5915), 167-14, dated November 28, 1954 (19 F.R. 8026), 167-20, dated June 18, 1956 (21 F.R. 4894), CGFR 56-28, dated July 24, 1956 (21 F.R. 5659), and 167-38, dated October 26, 1959 (24 F.R. 8857), and in accordance with the authority in R.S. 4405, as amended, 4462, as amended, 4426, as amended, 4488, as amended, 4491, as amended, secs. 1, 2, 49 Stat. 1544, as amended, sec. 3, 54 Stat. 347, as amended, sec. 3, 70 Stat. 152, and sec. 3, 68 Stat. 675 (46 U.S.C. 375, 416, 404, 481, 489, 367, 1333, 390b, 50 U.S.C. 198), the Table 75.20-10(a) in § 75.20-10(a), regarding required equipment for lifeboats (25 F.R. 10627), is amended in the fourth column under heading "Great Lakes" by changing "2" to "1" opposite letter identification "y" for item "oil, storm (gallons)," and by changing "1" to "2" opposite the letter identification "z" for the item "painter."

Dated: December 22, 1960.

[SEAL] A. C. RICHMOND,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 60-12086; Filed, Dec. 28, 1960; 8:49 a.m.]

Chapter II—Federal Maritime Board, Maritime Administration, Department of Commerce

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 22, Rev., Amdt. 5]

PART 282—UNIFORM SYSTEM OF ACCOUNTS FOR OPERATING-DIFFERENTIAL SUBSIDY CONTRACTORS

Part 282 is hereby amended as follows:

1. Amend § 282.301 Capital Reserve Fund by changing the heading of paragraphs (a) and (b), and adding a new paragraph (c) to read as follows:

§ 282.301 Capital Reserve Fund.

* * * * *

(a) *301-1 Cash and securities, non-trust.* * * *

(b) *301-2 Discounts and premiums, non-trust.* * * *

(c) *301-3 Common Stock Trust.* This account shall be charged with the amount of the non-trust portion of the Capital Reserve Fund transferred to the Capital Reserve Fund-Common Stock Trust, the acquisition cost of common stock in which the trust is invested, the income, capital gains, and other principal, and shall be credited with withdrawals therefrom and capital losses in accordance with the provisions of section 607(d) of the Merchant Marine Act, 1936, as amended, and under such rules and regulations as the Maritime Administrator may issue. Subsidiary accounts of the Capital Reserve Fund-Common Stock Trust are to be maintained to record cash, common stocks, and other principal.

2. Amend § 282.302 Special Reserve Fund by changing the heading of paragraphs (a) and (b), and adding a new paragraph (c) to read as follows:

§ 282.302 Special Reserve Fund.

* * * * *

(a) *302-1 Cash and securties, non-trust.* * * *

(b) *302-2 Discounts and premiums, non-trust.* * * *

(c) *302-3 Common Stock Trust.* This account shall be charged with the amount of the non-trust portion of the Special Reserve Fund transferred to the Special Reserve Fund-Common Stock Trust, the acquisition cost of common stock in which the trust is invested, the income, capital gains, and other principal, and shall be credited with withdrawals therefrom and capital losses in accordance with the provisions of section 607(d) of the Merchant Marine Act, 1936, as amended, and under such rules and regulations as the Maritime Administrator may issue. Subsidiary accounts of the Special Reserve Fund-Common Stock Trust are to be maintained to record cash, common stocks, and other principal.

3. Three new sections are added as follows:

§ 282.307 Escrow funds.

This account shall be charged with the amounts required to be deposited in the Escrow fund and credited with disbursements therefrom, in connection with the insurance of loans and mortgages financed by sale of bonds to the general public, pursuant to the provisions of section 1111 of the Merchant Marine Act, 1936, as amended, and/or the provisions of contracts or agreements as may be entered into. These funds shall be reported separately and maintained in accordance with such rules and regulations as the Maritime Administrator may issue.

§ 282.308 Construction funds.

This account shall be charged with the amounts required to be deposited therein, representing the difference between the principal of insured bonds and the principal amount required to be deposited in the Escrow fund or such other amounts required by contracts or agreements entered into, and shall be credited with authorized disbursements therefrom. These funds shall be reported separately and maintained in accordance with such rules and regulations as the Maritime Administrator may issue.

§ 282.310 Restricted funds.

This account shall be established at the time of the first deposit required therein, and shall be charged with deposits pursuant to the provisions of contracts or agreements. This account shall be credited with authorized withdrawals therefrom. These funds shall be reported separately and maintained in accordance with such rules and regulations as the Maritime Administrator may issue.

4. Amend § 282.525 to read as follows:

§ 282.525 Long-term debt.

This account shall be subdivided as set forth in §§ 282.526, 282.527, 282.530, and 282.534.

5. Add a new section following § 282.526, to read as follows:

§ 282.527 U.S. Government insured Merchant Marine mortgage bonds and mortgage notes.

This account shall include all U.S. Government insured Merchant Marine mortgage bonds and mortgage notes issued pursuant to the provisions of contracts or agreements, and shall be maintained by vessel.

6. Amend § 282.530 *Mortgage bonds and debentures* by changing the title and text to read as follows:

§ 282.530 Other mortgage bonds and debentures.

This account shall include the face amount of bonds and debentures not provided for in other accounts and shall be maintained to show full particulars in respect to each issue outstanding. Reacquired bonds and debentures shall be charged to this account at face amount.

7. Amend § 282.779 by changing the example of charges pertaining to Canal tolls to read as follows:

§ 282.779 Other port expenses.

* * * * *

Canal tolls other than Panama Canal, Suez Canal, and Saint Lawrence Seaway (see account 795).

8. Amend § 282.795 to read as follows:

§ 282.795 Canal tolls.

This account shall include only the cost of tolls levied against vessels for traversing the Panama Canal, Suez Canal, and Saint Lawrence Seaway. Tolls assessed for passage through other canals shall be included in account 779, "Other port expenses."

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; sec. 607, P.L. 85-637 (72 Stat. 592); sec. 1111, P.L. 86-127 (73 Stat. 272))

Dated: November 22, 1960.

By order of the Maritime Administrator.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-12051; Filed, Dec. 28, 1960; 8:46 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

PART 125—RAILROAD ACCIDENTS; REPORTS AND CLASSIFICATION

Monthly Reports of Railroad Accidents

At a general session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 8th day of December 1960.

The matter of rules governing monthly reports of railroad accidents being under consideration, and

It appearing that representatives of the Commission have been participating in conferences with representatives designated by the Association of American Railroads, the American Short Line Railroad Association, and the Railway Labor Executives' Association for the purpose of revising the Rules Governing Monthly Reports of Railroad Accidents in conformance with the Accident Reports Act as amended by Public Law 86-762, 74 Stat. 903, approved September 13, 1960, and in conformance with certain recommendations of interested parties; and

It further appearing that full agreement on the revised rules as set forth herein has been reached by the representatives mentioned above;

And it further appearing that the revised rules appear to be noncontroversial, and that rule-making procedures under section 4(a) of the Administrative Procedure Act, 5 U.S.C. 1003 are unnecessary and impracticable;

It is ordered, That common carriers subject to the Accident Reports Act (45 U.S.C. 38-43), shall make to the Commission monthly reports of accidents in the form and manner set forth in Appendix A attached hereto, and made a part hereof;

It is further ordered, That 49 CFR § 125.9 to § 125.60, inclusive, be deleted in their entirety and that § 125.9 to § 125.12, and § 125.14 to § 125.60, both inclusive, as set forth below, be substituted therefor;

It is further ordered, That the Commission's order of November 23, 1956, entitled "Rules Governing Monthly Reports of Railroad Accidents," and supplemental orders of December 27, 1956, and of July 25 and December 23, 1957, be, and they are hereby, vacated and set aside, effective February 1, 1961, except insofar as they apply to reports of accidents occurring before January 1, 1961;

It is further ordered, That a copy of this order shall be served on the common carriers subject to the provisions of the Accident Reports Act, and that notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the FEDERAL REGISTER;

And it is further ordered, That this order shall be effective February 1, 1961, and shall apply to all accidents occurring on and after January 1, 1961.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

GENERAL INSTRUCTIONS

Sec.
125.9 Public examination of reports only after approval.
125.10 Purpose.
125.11 Definition of the phrase "Arising from the operation of a railroad".
125.12 Definition of "Accidents".
125.14 Accidents to be reported.
125.15 Accidents or occurrences not to be reported.
125.16 Doubtful cases.
125.17 Joint operations.

CLASSIFICATION OF RAILROAD ACCIDENTS

125.21 Primary groups and their definitions.

GROUP I.—TRAIN ACCIDENTS

125.22 Classification.

GROUP II.—TRAIN-SERVICE ACCIDENTS

125.23 Train-service accidents.

GROUP III.—NONTRAIN ACCIDENTS

125.24 Nontrain accidents (class N)

FORM AND ARRANGEMENT OF REPORTS

125.25 Forms used and duplicate reports.
125.26 Form V (Verification)
125.27 Form T (Train and Train-service, and nontrain accidents)
125.28 Supplemental Form T.
125.30 Form F (Subsequent fatalities)
125.31 Classification symbols.
125.32 Arrangement and numbering of sheets.

PARTICULARS TO BE REPORTED

125.40 General.
125.41 Yard.
125.42 Train, locomotives and cars.
125.43 Negligence of employees.
125.44 Defective equipment.
125.45 Defective way and structures.
125.46 Accidents due to miscellaneous causes.
125.47 Casualties.
125.48 Damage.

CLASSIFICATION OF PERSONS

125.50 Classification of persons.

CODES FOR ACCIDENT REPORTING

125.55 Codes for accident reporting.

ELECTRIC RAILWAYS

125.60 Electric railways; Form of report.

AUTHORITY: §§ 125.9 to 125.60 issued under sec. 12, 24 Stat. 383, as amended, 49 U.S.C. 12; sec. 1-sec. 7, as amended, 36 Stat. 350, as amended, 45 U.S.C. 38-43, as amended. Interpret or apply sec. 20, as amended, 24 Stat. 386, as amended, 49 U.S.C. 20.

GENERAL INSTRUCTIONS

§ 125.9 Public examination of reports only after approval.

Accident reports made by railroads in compliance with the rules in this part shall be for the information of the Commission and shall be open to public inspection only upon prior approval of an application by this Commission. Applications for public inspection will be granted if the Commission is satisfied that such inspection will not result in a violation of section 4 of the Accident Reports Act and is for the purpose of obtaining information to be presented before Federal and other governmental bodies, or which will contribute to the promotion of safety in railroad operations.

§ 125.10 Purpose.

The purpose of reporting accidents and injuries to persons arising from the operation of a railroad to this Commission is to carry out the intent of Congress as expressed in the Accident Reports Act, as amended, namely the disclosure of hazards arising in the provision of common carrier transportation by railroad. The purpose of this revision of the accident reporting rules is to implement the amendment of September 13, 1960, and to improve further the quality and accuracy of reporting.

§ 125.11 Definition of the phrase "Arising from the operation of such railroad."

Section 7 of the Accident Reports Act, as amended, defines the phrase "arising from the operation of such railroad", as used in the Act, to "include all activities of the railroad which are related to the performance of its transportation business." The scope of this definition includes all the usual activities of a railroad. Insofar as employees on duty are concerned, it includes all such employees as are reported to this Commission under the "Rules Governing the Classification of Railroad Employees and Reports of their Service and Compensation" (Part 127 of this chapter).

§ 125.12 Definition of "Accidents".

An accident is a collision, derailment or other accidental event resulting in death or injury to any person or damage to equipment or roadbed. As used in the rules in this part, an "accident" presupposes an occurrence. An "injury" is the result of an accident.

§ 125.14 Accidents to be reported.

An accident which results in one or more of the following:

(a) Death of a person: A death resulting from an accident within 24 hours immediately following the accident is

reportable as a fatality; if death occurs after the expiration of the 24-hour period, the casualty is reportable as an injury and also as a subsequent fatality.

(b) Injury to an employee on duty sufficient to incapacitate him from performing fully and acceptably and without extra assistance all the duties customarily included in the assignment of the employee at the time of the injury for more than 24 hours in the aggregate during the 10 days (240 hours) immediately following the accident. Under this subsection, incapacitation includes Sundays, holidays, and lay-off days, and begins whenever the pain or inconvenience resulting from the accident becomes so serious that it would prevent the injured person from performing all of his duties, whether or not there is necessity or opportunity for him to do so at the time. Incapacitation ends whenever the injured person has recovered sufficiently to be able to resume performance of all his duties whether or not there is necessity or opportunity for him to do so at the time.

(c) Injury to any person other than an employee on duty if the injury is sufficient to incapacitate the injured person from following his customary vocation or mode of life for more than 24 hours in the aggregate during the 10 days (240 hours) immediately following the accident.

(d) Collisions, derailments, or other train accidents with more than $750 damage to equipment, track, or roadbed, excluding cost of clearing wreck. The term "other train accident" does not include equipment failures resulting from ordinary wear and tear.

§ 125.15 Accidents or occurrences not to be reported.

(a) Accidents at highway or street crossings, or on parts of highways within railroad rights-of-way, not involving the presence or operations of trains, locomotives, cars, track cars, or similar equipment and not involving employees then engaged in the operation of a railroad;

(b) Accidents in or about living quarters not arising from the operation of a railroad;

(c) Disability resulting from illness or disease, only of the person afflicted;

(d) Suicides as determined by a coroner or other public authority, or attempted suicides; and

(e) The consequences of horseplay, insofar as the participants are concerned.

§ 125.16 Doubtful cases.

Whenever any person declares that he has been injured in an accident arising from the operation of a railroad and the carrier involved denies the allegation, the reporting railroad must report the case, but may designate it as "claimed but not admitted by the carrier", or otherwise as may be appropriate, with a statement of the carrier's position thereon. Even though there may be no witness to an accident, if there is any evidence which indicates that an accident may have occurred, a report of an accident must be made. In contrast, if there is no evidence of an accident due to the operation of a railroad, the occurrence should not be reported.

§ 125.17 Joint operations.

(a) "Joint operations" is a term intended to cover operations conducted on terminal or other tracks used jointly or in common by two or more reporting carriers, or where the equipment of one carrier moves as its own train over the track of another carrier.

(b) Locomotives, with or without crews, if loaned or leased by one carrier to another, are not thereby made subject to the rules relative to "joint operations".

(c) Trains or locomotives of a nonreporting carrier which may become involved in reportable accidents on the line of a reporting carrier do not fall under the rules pertaining to "joint operations"; such accidents, however, must be included in the report of the reporting carrier.

(d) If a reportable accident occurs on a private siding or track of like character, it must be reported by the carrier having possession of the locomotive concerned or employing the persons involved, but not as a joint-operation accident.

(e) The question of responsibility among carriers for accidents classifiable under the rules applicable to joint operations is not to be considered in relation to the making of reports concerning them, but all carriers involved must make reports as respectively required.

(f) Train accidents resulting in death or injury or damage to equipment, track, or roadbed, in excess of $750, or collisions, derailments, or other accidents, with damage to equipment, track, or roadbed in excess of $750, occurring on tracks used by two or more reporting carriers must be severally reported by the carrier or carriers whose equipment or employees are involved and the carrier whose superintendent is in immediate charge of the track on which the accident occurs. Each carrier concerned in such an accident must report the death or injury, if any, and the damage to its equipment and other items of expense as provided in the report form and state (estimating, if unknown) the death or injury, if any, and the amount of damage sustained by the other carriers involved, the names of which must be respectively indicated before casualties and the items of damage. If a reportable train accident, though occurring on jointly used track, involves only the equipment and employees of the carrier whose superintendent is in immediate charge of such track, the accident must be reported only by the carrier concerned.

(g) Train-service accidents occurring on terminal or other tracks used jointly or in common by two or more reporting carriers must be reported by each of the carriers concerned.

(h) Death or injury to railroad employees on an adjacent track of another railroad must be reported by both railroads, whether or not a joint operation is involved.

CLASSIFICATION OF RAILROAD ACCIDENTS

§ 125.21 Primary groups and their definitions.

Sections 125.21 to 125.24, relating to classification of railroad accidents, are intended solely as a guide to reporting and do not limit in any way those accidents to be reported, as set forth in § 125.14.

Reportable railroad accidents are divided into three groups:

GROUP I—TRAIN ACCIDENTS
GROUP II—TRAIN-SERVICE ACCIDENTS
GROUP III—NONTRAIN ACCIDENTS

(a) *Group I.* Train accidents are those arising from the operation or movement of trains, locomotives, or cars which result in:

(1) A reportable death or injury and more than $750 damage to equipment, track or roadbed[1]; or

(2) A collision, derailment or other train accident, with more than $750 damage to equipment, track or roadbed.[1]

(b) *Group II.* Train-service accidents are those arising from the operation or movement of trains, locomotives, or cars which result in a reportable death or injury but not more than $750 damage to equipment, track, or roadbed.[1]

(c) *Group III.* Nontrain accidents are those which do not result from the operation or movement of trains, locomotives, or cars.

GROUP I—TRAIN ACCIDENTS

§ 125.22 Classification.

Train accidents should be classified as:

(a) A collision (Class C), which is an impact of a train, locomotive, or car with some other train, locomotive, or car while both are on rails. Accidents, however, in which cars not in suitable condition to withstand common train usage, that when coupled in trains, may be damaged through ordinary train movements, should be classified as other train accidents, and not as collisions. Accidents caused by trains, etc., striking bumping posts, or track motor cars and like roadway machines not equipped with A.A.R. couplers, except when operating under train rules and subject to the protection afforded to trains, are not classified as collisions.

(1) Reports of collisions, in addition to furnishing the information required by sections of these rules having general application, should describe briefly the method of operation in use for the track involved, stating whether a signal system was in use, and, if in use, whether it was manual, controlled manual or automatic block, interlocking or C.T.C., cab signal or automatic train control. For collisions involving any question of train orders, the information should show whether they were on Form "19" or Form "31" (A.A.R. Standard Code of Train Rules).

(2) In the case of a collision, the number of main tracks in use in the locality of the accident should be stated.

(3) Collisions should be classified as follows:

[1] Excluding cost of clearing wreck.

(i) *Rear-end collisions.* A rear-end collision is a collision in which the trains or locomotives involved are bound in the same direction on the same track.[2]

(ii) *Head-on collisions.* A head-on collision is a collision in which the trains or locomotives involved are bound in opposite directions on the same track.[2]

(iii) *Broken-train collisions.* A broken-train collision is a collision in which a moving train breaks into parts and a violent impact of two or more of the uncoupled parts of the same train occurs, or one or more of the parts collide with another train, locomotive, or car. Collisions in which the equipment involved is employed in a switching movement are not to be included in this class.

(iv) *Side or raking collisions.* This class does not include collisions of trains with cars classifiable under subdivision (vi) of this subparagraph or collisions of equipment employed in switching movements classifiable under subdivision (vii) of this subparagraph. An accident caused by parts of equipment on one track coming in contact with equipment on a parallel track should not be classified as a collision, but as a miscellaneous train accident, unless a derailment occurs.

(v) *Crossing collisions at railroad crossings.* The term "crossing collisions at railroad crossings" is used herein to mean collisions occurring at crossings or junctions involving trains, locomotives, or cars operated on the intersecting tracks.[3] This class does not include accidents due to striking automobiles or other highway vehicles.

(vi) *Collisions of trains with cars not in trains.* This class does not include collisions of trains with cars, subject by train rules to the protection afforded to trains, which should be classified, under subdivisions (i), (ii), (iii), (iv) or (v) of this subparagraph in accordance with the circumstances of the particular cases.

(vii) *Switching collisions.* The term "switching collisions" is used herein to mean collisions occurring to equipment being switched, as in making or breaking up trains, shifting or setting out cars, etc., including accidents to locomotives involved in such service. A collision should not receive this classification when two or more locomotives, trains, or cuts of cars are involved unless both or all such units of equipment are employed in switching movements at the time of accident, but it should be classified under subdivisions (i), (ii), (iii), (iv), (v), (vi), or (vii) of this subparagraph in accordance with the circumstances of the particular case.

(viii) *Collisions not elsewhere classifiable.* This class includes collisions between light locomotives moving to or from servicing facilities; also collisions between a locomotive and cars of a train or cut of cars occurring in recoupling the locomotive after it has been cut off for servicing, but does not include collisions between locomotives and cars while engaged in switching movements as described in subdivision (vii) of this subparagraph.

(b) (1) Derailment (Class D): In reporting derailments the information required by provisions of these rules having general application must be furnished, and this must be indicated in particular, by initials and number, or name, the equipment causing the derailment. The term "derailment" does not include derailment of track-motor cars and like roadway machines not equipped with A.A.R. couplers.

(2) If a derailment is the result of a public highway grade-crossing accident, a Supplement to a Form T, in addition to a Form T must be supplied.

(c) (1) Other train accidents (Class O) include all train accidents other than collisions and derailments, as defined in § 125.21.

(2) If any such other train accident is the result of a public highway grade-crossing accident, a Supplement to a Form T, in addition to a Form T, must be supplied.

GROUP II—TRAIN SERVICE ACCIDENTS

§ 125.23 Train service accidents.

(a) (Class S) are those arising from the operation or movement of trains, locomotives, or cars which result in a reportable death or injury but not more than $750 damage to equipment, track or roadbed, excluding cost of clearing wreck.

(b) If a train-service accident is the result of a public highway grade-crossing accident, a Supplement to a Form T, in addition to a Form T, must be supplied.

GROUP III—NONTRAIN ACCIDENTS

§ 125.24 Nontrain accidents (Class N).

This group covers accidents that do not occur directly in connection with the operation or movement of trains, locomotives, or cars. Examples of this class would be accidents occurring in connection with the construction, repair or painting of buildings, tracks, or other structures or equipment, accidents in offices, stations, and shops, and accidents to employees on duty while traveling off railroad property. This group includes reportable accidents resulting from the movement of locomotives or cars on shop tracks, or the movement of locomotives at servicing facilities by inside hostlers. Accidents in which injuries are received by trackmen, bridge and building men, and other classes of employees or other persons and which are caused by trains, locomotives, or cars striking hand cars, tools, or other objects, should be appropriately reported as train accidents or train service accidents.

FORM AND ARRANGEMENT OF REPORTS

§ 125.25 Forms used and duplicate reports.

(a) Sections 125.25 to 125.32 on form and arrangement are intended solely as a guide to reporting, and do not limit in any way those accidents to be reported, as set forth in § 125.14.

(b) Monthly reports of railroad accidents must be made on forms provided by the Interstate Commerce Commission or on forms identical therewith in arrangement, size, and in color and weight of paper, and every reporting carrier is required to retain in its files a duplicate of each report rendered to the Commission. For the reporting railroads' files, this duplicate must also show the name or names of the casualty or casualties reported and the precise location at which the accident occurred. The forms provided, which are of four kinds, are designated as Form V, T, Supplement to T, and F.

(c) The first sheet of each report must show in the appropriate place the name of the company for which it is filed; the following sheets may designate the name of the company by a commonly used short version or initials. Each sheet of each report must show the month and year to which the report relates, and all other particulars called for by the form. Each sheet of each report following Form V must bear the autograph signature of a responsible officer or employee.

§ 125.26 Form V (Verification).

(a) A report must be made on this form each month, even though no reportable (train, train-service, or nontrain) accident occurred during the month covered. Such report must include an oath or verification, made by the proper officer of the reporting carrier, as provided for attestation on Form V, which must show the total number of train, train-service, and nontrain accidents (whether reported on Form V or Form T) that occurred during the month for which the report is made, and the number of sheets, inclusive of Form V. If no reportable accident occurred during the month, that fact must be stated on this form. Form V must also show the total number of locomotive and motor-train miles run during the month, computed in accordance with Train-Mile, Locomotive-Mile and Car-Mile accounts in the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission.

(b) In the calendar year 1961 reportable train-service and nontrain accidents of the following type may be reported in sections A and B of Form V: all reportable accidents involving only employees on duty in which there is no death or no disability of more than 72 hours in the aggregate during the 10 days (240 hours) immediately following the accident. Alternatively if the carrier desires, these accidents may be reported on Form T sheets as provided in § 125.27. All such accidents must be reported, but they may be reported in either of the methods described in this paragraph.

§ 125.27 Form T (Train, train-service, and nontrain accidents).

(a) In the calendar year 1961 a separate Form T sheet, showing the required particulars concerning the accident, must be used for each reportable train,

[2] The time-table or schedule direction, when applicable, should govern the classification of collisions in classes § 125.22(a)(3)(i) and (ii) if at the time of the accident either of the trains or locomotives is at rest or if its incidental movement temporarily differs from its schedule direction.

[3] Crossing collisions must be reported by each carrier affected. Items of damage and casualties to persons must be reported in the same manner as described in connection with "joint operation" accidents, § 125.17.

train-service and nontrain accident except for those accidents involving employees on duty which may be reported in section A and B of Form V as provided in § 125.26. Where a reportable accident results in any injury which must be reported on a Form T sheet, all reportable injuries resulting from such accident must be included on the Form T sheet, and none reported in sections A and B of Form V. If the carrier desires, each accident no matter of what type may be reported on separate Form T sheet, but no accident should be reported twice.

(b) In the calendar year 1962 and in subsequent years, a separate Form T sheet (or a modified Form T sheet approved by this Commission) must be used for each reportable train accident, train-service accident, or nontrain accident and must show the required particulars concerning the accident.

(c) Information called for by each of the questions shown on T sheets must be supplied except where the answers would not be significant, in which case the space provided for the answer may be left blank or blanked out.

§ 125.28 Supplemental Form T.

A Supplement to each Form T sheet also must be used for each reportable:

(a) Derailment due to highway grade-crossing accident;

(b) Other train accident due to a highway grade-crossing accident;

(c) Train-service accident due to a highway grade-crossing accident.

§ 125.30 Form F (Subsequent fatalities).

If, as the result of an injury, a person dies more than 24 hours after the occurrence of the accident the casualty must be reported as an injury and, in addition, a memorandum of the death must be given on Form F in accordance with the requirements of that form. This additional report is to be made in connection with the report for the month in which the accident occurred, if practicable, otherwise it must separately accompany the first monthly report filed after the death has come to the knowledge of the carrier. A single Form F may contain reports of more than one such fatality, provided all persons included therein were injured during the same month.

§ 125.31 Classification symbols.

Symbols indicating the class of train, train-service, or nontrain accidents and the class of persons involved should be entered in the appropriate spaces on Form T as follows:

(a) *Class of accident.* Sheets carrying reports of collisions are to be marked "C"; those relating to derailments, "D"; those relating to other train accidents, "O"; those relating to train-service accidents, "S", and those relating to nontrain, N.

(b) *Class of person.* The designation of the class of person should include the applicable capital letter preceding the name of the class. The number of the "Reporting Division" with such other descriptive detail as may be appropriate should be added in the case of employees.

§ 125.32 Arrangement and numbering of sheets.

(a) All the forms in a monthly report should be afranged in the order V, T, and F. Supplements to T sheets should follow the T sheet to which each refers. All Forms T should be further grouped in accordance with the character of the accidents and arranged in the order C, D, O, S, and N. Collisions should be subgrouped in order by subclasses; as, for example, all of C–1, followed by all of C-2, followed in turn by all of C–3, etc., throughout the series. All sheets are to be numbered consecutively beginning with number 1 for Form V each month. When properly arranged and numbered, all sheets including Form V, should be securely fastened.

(b) In no case should the report for any month include a Form T sheet completed for an accident that did not occur during the month covered by the report. Should it be discovered by a carrier that the report of a particular accident on a Form T has, through mistake or otherwise, been improperly omitted from its regular monthly accident report, the sheet covering such accident must be separately transmitted to the Bureau of Transport Economics and Statistics, with a suitable letter of explanation.

PARTICULARS TO BE REPORTED

§ 125.40 General.

(a) The codes shown in the index § 125.55, have been designed, so far as that is practicable, to indicate the primary causes of the accidents reported. As to each specific reportable accident, the Reporting Officer should first examine all the evidence available, to the railroad from which he should determine the cause of accident. The code number should be entered on the Form T sheet to be sent to the Interstate Commerce Commission.

(b) In addition to reporting the number of the code under which each accident should be classified, the Reporting Officer should supply sufficient information to not only enable the Interstate Commerce Commission to verify the code number selected but also to classify all other data called for as they pertain to each of the accidents reported.

§ 125.41 Yard.

A system of tracks within defined limits provided for the making up or breaking up of trains, for the storing of cars, and for other purposes over which movements not authorized by timetable, or by train order, may be made, subject to prescribed signals and rules or under special instructions.

§ 125.42 Train, locomotives and cars.

For the purpose of reporting railroad accidents, a train is defined as a unit of equipment, or a combination of units of equipment (exclusive of light locomotives), in condition for movement over tracks by self-contained motor equipment. A locomotive is a self-propelled unit of equipment designed solely for moving other equipment. A light locomotive is a locomotive in condition for movement by its own motor equipment, uncoupled to cars, work equipment, or dead locomotives. A motor car is a self-propelled unit of equipment designed to carry freight or passenger traffic, and is not to be considered a locomotive. (Train or train-service accidents may result from the movement of cars without the use of a locomotive.) Track motor cars and like roadway machines not equipped with A.A.R. couplers are not regarded as "cars" within the meaning here used.

In reporting accidents involving trains, locomotives, or cars, sufficient particulars should be given to show definitely to which of the four classes of service described below the equipment was assigned. Definite information is required in this respect and descriptive terms of local application, such as "milk", "transfer", "mine", etc., should not be used to designate classes of trains. In connection with this matter, a light engine involved in an accident should be classified as belonging to that class of service to which its assignment at the time of the accident was related.

(a) Transportation service-Freight includes trains run between terminals or stations containing loaded or empty freight-train cars and trains consisting of a locomotive and caboose running light in connection with such service. Trains which contain passenger-train cars shall be classed as freight trains whenever the number of freight-train cars is in excess of the number of passenger-train cars in them.[1]

(b) Transportation service-Passenger includes trains run between terminals or stations containing loaded or empty passenger-train cars. Trains which contain freight-train cars shall be classed as passenger trains whenever the number of passenger-train cars is in excess of the number of freight-train cars in them.[1]

(c) Work service includes nonrevenue trains run in the administration and upkeep service of the railroad, such as official trains, inspection trains, pay trains, special trains running with company fire apparatus to save the railroad's property from destruction, and trains run for the purpose of transporting the railroad's employees to and from work when no transportation charge is made; wrecking trains; construction and upkeep trains run in connection with maintenance and improvement work, the cost of operating such trains being chargeable to the appropriate capital or maintenance accounts for rail-line operations; and material and supply trains run in connection with operation.

Work service trains do not include solid fuel trains and other freight trains laden with company material and running from station to station under the same operating conditions as ordinary revenue freight trains.

(d) Yard service includes the handling of equipment being switched or used in switching other equipment, as, for example, in making up or breaking up trains, serving industrial tracks, stor-

[1] Passenger-equipped box or refrigerator cars are counted as passenger-train cars.

ing, weighing, or classifying cars, and other like operations. Operations incidental to a road run when performed by a road train crew are not included.

When significant, state the number of cars in the train; where and when locomotives, cars, and brakes were last inspected; and under what orders the train was moving and what were its rights of track at the particular time and place of the accident.

§ 125.43 Negligence of employees.

(a) All of the codes of causes in § 125.-55 numbered between 1000 and 1988, and some but not all of those numbered between 5000 and 5988, refer to those situations in which it is known that the direct or immediate cause of the train or train-service accident was the negligence, mistake, or misconduct of railroad employees. These include such matters as, for example, improper handling of switches, misunderstanding of or error in giving signals, excessive speed in violation of instructions, failure of trackmen to protect while replacing rails, etc.

(b) All of the codes of causes not specifically referred to in the preceding paragraph refer to those situations in which it is known that the direct or immediate cause of the accident was not the negligence, mistake, or misconduct of railroad employees. In these instances there may or may not be present an indirect negligence of railroad employees which contributed to the accident. These include such matters as, for example the failure of inspectors or maintenance men to discover defects in equipment, track, and roadbed. Because a complete knowledge of these matters cannot be acquired, it is not practicable to place such accidents in usable categories which would indicate contributary negligence. Therefore they should be reported in their proper codes as defects.

(c) There is another form of contributary negligence which is brought about by a prior direct negligence. For example, the prior negligence of a first crew in running through a switch may be the contributing cause of a following train being derailed. But to the crew of the following train, this accident was due to a defective switch and not necessarily its own negligence. Such an accident should be reported under the proper one of the cause codes which go to defective track.

§ 125.44 Defective equipment.

(a) All of the codes of causes in § 125.-55 numbered 2000 to 2888, and some but not all of those numbered between 5000 and 5988, refer to those situations in which it is known that defects in or failure of equipment were the direct or immediate cause of the train or train-service accident. The report should show whenever significant, details as to:

Number and initials of locomotive or car,
Manufacturer and type of equipment or part,
Weight, number, and other identifying marks,
Year of manufacture and year of placing in service,
When, where, and by what class of employees the equipment was last inspected, whether any defects were noted, and, if any, what remedies were applied.

(b) The following relates to explanation of certain specific codes:

(1) On locomotives other than steam, Code 2110, relates only to fires in wiring connecting electrical apparatus. Fires within electrical apparatus should be listed under the respective kinds of electrical equipment involved (see Codes 2103 to 2107, inclusive).

(2) Fires caused by steam generating boiler or appurtenances should be coded under that equipment in Code 2109 and not in Code 2112.

(3) Body center plate should be coded in Code 2210.

(4) Body side bearings should be coded in Code 2213.

§ 125.45 Defective way and structures.

All of the codes of causes in § 125.55 numbered 3000 to 3588, and some but not all of those numbered between 5000 and 5988, refer to those situations in which it is known that defects in or improper maintenance of way and structures were the direct or immediate cause of the train or train-service accident, including accidents which occur as the result of ordinary wear and weather conditions. The report should show, whenever significant:

Manufacture and type of apparatus or part,
Weight, number, and other identifying marks,
Year of manufacture and year of placing in service,
When and by what class of employee inspected, whether any defects were noted, and, if any, what remedies were applied.

§ 125.46 Accidents due to miscellaneous causes.

Included in this category are train accidents in codes of causes numbered 4000 to 4388 in § 125.55, and train-service accidents in codes of causes numbered 5800 to 5988. This category includes accidents caused by coal, ballast or parts of equipment or lading of another train falling on or afoul of track, throwing track out of alignment or wedging in switch, and other unforeseen happenings or obstructions of similar character. Parts of the equipment or lading of a train which, by falling on or afoul of the track, cause an accident to the same train, are not to be regarded as obstructions classifiable under 4300 to 4388 codes, but should be properly classified under other appropriate codes.

§ 125.47 Casualties.

In reporting casualties to persons, personal injuries should be sufficiently described to indicate:

(a) The part of body injured and the specific nature and extent of the injury received which should be reported in sufficient detail to enable the Interstate Commerce Commission to classify the injury. Indefinite terms such as "mashed", "crushed", "injured", "hurt", etc., should not be used. In case of loss of any part, the extent should be indicated, as, for example, tip of index finger of right hand, two middle fingers to second joint of left hand, left arm to elbow, loss of right eye, etc.

(b) The actual number of days of disability if ascertained at the time the report is made but, if the disability has not terminated by that time or is not ascertainable, an estimate of the number should be shown in the appropriate column on Form T, or the absence of an estimate fully explained. When the injury is of a permanent nature, that fact may be stated in lieu of the number of days' disability.

(c) The degree to which the person is maimed, if at all.

§ 125.48 Damage.

(a) The question on Form T which calls for the amount of damage occasioned by an accident should be answered only in the case of train accidents. The question should not be answered as to train-service or nontrain accidents.

(b) Amounts of damage should not only include damage to equipment (including damage to foreign cars), track, or roadbed of the reporting railroad but should include comparable expenses of all reporting railroads. Other expenses of reporting railroads occasioned by the accident (such as overhead, cost of clearing wrecks, loss and damage, etc.), all expenses of nonreporting railroads, and contingent expenses because of personal injuries are not to be included. If the amount of damage is not known at the time the report is filed, it should be estimated as accurately as practicable and the fact that it is estimated should be stated.

CLASSIFICATION OF PERSONS

§ 125.50 Classification of persons.

For the purpose of permitting an appropriate classification, sufficient particulars of each person involved in a train, train-service, or nontrain accident should be given on Form T. The aggregate of all persons of each class involved in all railway accidents should be given on Form V.

The classes "employees" (A and B) apply to any person having such classification or relationship to a reporting railroad. As used herein, it is intended to include every person in the service of the reporting carrier who is subject to its continuing authority to supervise and direct the manner of rendering his service.

When a casualty is known or believed to be an employee of another reporting railroad that fact should be stated and appropriate class symbols indicating the customary occupation of the employee, with the name of the railroad by which he is employed, should be entered.

(a) *Employees on duty; class (A).* Employees on duty are those persons who are engaged in the operation of a railroad as herein defined in § 125.11 above. Ordinarily the fact that the employee is or is not under pay will determine whether he is or is not "on duty". There may, however, be exceptions such as employees "trading time" or doing work which they are expected to do but actually perform before pay starts or after pay stops. Such persons must be considered as "employees on duty".

(b) *Employees not on duty; class (B).* (1) Employees not on duty are those persons who are on railroad property, before and after duty; for purposes con-

nected with their employment; or with other railroad permission. An employee is "not on duty" until he actually begins duty in the operation of a railroad as herein defined in § 125.11; while he has been relieved from the performance of any and all service for a definite time; when he has wilfully left the vicinity of his post of duty contrary to accepted or tolerated practice; or when he has completed his duty.

(2) Employees (including members of train and engine crews deadheading between terminals) on trains for the purpose of travel and riding in that part of the train assigned to the use of passengers should be included in class (D) as passengers. Employees trespassing should be included in class (F) as trespassers.

(c) *List of employee reporting divisions.* The following list of 128 Reporting Divisions into which all the distinctive classes of railroad positions are grouped is derived from the "Rules Governing the Classification of Steam Railroad Employees and Reports of Their Service and Compensation" prescribed by the Interstate Commerce Commission to be effective on January 1, 1951 (§§ 127.1 to 127.7 of this chapter). The returns on all accident report forms should, with respect to the classification of employees, be made in conformity with these Reporting Divisions. For each employee reported on Form T or Form V as killed or injured there should be given the correct number of the Reporting Division to which the employee is properly assignable, and also, in the case of Form T, the pay-roll or distinctive class title of his occupational position. The letter (A) or (B) should be used to indicate respectively whether he was on or off duty at the time of accident. Abbreviations or contractions may be used in the indication of position titles if their meaning is sufficiently clear. For example, to indicate a casualty sustained by a road freight brakeman (through freight) on duty, the proper designation of class of person on Form T should be A–117, Road freight brakemen and flagmen (through freight), while that of a casualty incurred in a train or train-service accident by a train attendant on duty would be A–101, Train attendants.

LIST OF REPORTING DIVISIONS FOR EMPLOYEES

Division No.	*Reporting division*
I—EXECUTIVES, OFFICIALS, AND STAFF ASSISTANTS	
1	Executives, general officers, and assistants.
2	Division officers, assistants, and staff assistants.
II—PROFESSIONAL, CLERICAL, AND GENERAL	
3	Professional and subprofessional assistance.
4	Supervisory or chief clerks (major departments).
5	Chief clerks (minor departments) and assistant chief clerks and supervising cashiers.
6	Clerks and clerical specialists (A).
7	Clerks (B) and (C).
8	Mechanical device operators (office).
9	Stenographers and secretaries (A).
10	Stenographers and typists (B).
11	Storekeepers, sales agents, and buyers.
12	Ticket agents and assistant ticket agents.
13	Traveling auditors or accountants.
14	Telephone switchboard operators and office assistants.
15	Messengers and office boys.
16	Elevator operators and other office attendants.
17	Lieutenants and sergeants of police.
18	Patrolmen and watchmen.
19	Traffic and various other agents, inspectors, and investigators.
20	Claim agents or investigators.
21	Freight claim agents or investigators.
22	Chief claim agents or investigators.
23	Miscellaneous trade workers (other than plumbers).
24	Motor vehicle and motor car operators.
25	Teamsters and stablemen.
26	Janitors and cleaners.
III—MAINTENANCE OF WAY AND STRUCTURES	
27	Roadmasters, general foreman, and assistants.
28	Maintenance of way and scale inspectors.
29	Bridge and building gang foremen (skilled labor).
30	Bridge and building carpenters.
31	Bridge and building ironworkers.
32	Bridge and building painters.
33	Masons, bricklayers, plasterers, and plumbers.
34	Maintenance of way and structures helpers and apprentices.
35	Portable steam equipment operators.
36	Portable steam equipment operator helpers.
37	Pumping equipment operators.
38	Gang foremen (extra gang and work-train laborers).
39	Gang foremen (bridge and building, signal and telegraph laborers).
40	Gang or section foremen.
41	Extra gang men.
42	Section men.
43	Maintenance of way laborers (other than track and roadway) and gardeners and farmers.
44	General and assistant general foremen and inspectors (signal, telegraph, and electrical transmission).
45	Gang foremen (signal and telegraph skilled trades labor).
46	Signalmen and signal maintainers.
47	Linemen and groundmen.
48	Assistant signalmen and assistant signal maintainers.
49	Signalman and signal maintainer helpers.
IV—MAINTENANCE OF EQUIPMENT AND STORES	
50	General, assistant general, and department foremen.
51	General and assistant general foremen (stores).
52	Equipment, shop, electrical, material and supplies inspectors.
53	Gang foremen and gang leaders (skilled labor).
54	Blacksmiths.
55	Boilermakers.
56	Carmen (A and B).
57	Carmen (C and D).
58	Electrical workers (A).
59	Electrical workers (B).
60	Electrical workers (C).
61	Machinists.
62	Molders.
63	Sheet-metal workers.
64	Skilled trades helpers (M. of E. and stores).
65	Helper apprentices (M. of E. and stores).
66	Regular apprentices (M. of E. and stores).
67	Coach cleaners.
68	Gang foremen (shops, engine houses, and power plants).
69	Gang foremen (stores and ice, reclamation, and timber-treating plants).
70	Classified laborers (shops, engine houses, and power plants).
71	General laborers (shops, engine houses, and power plants).
72	General laborers (stores and ice, reclamation, and timber-treating plants).
73	Stationary engineers (steam).
74	Stationary firemen, oilers, coal passers, and water tenders.
V—TRANSPORTATION (OTHER THAN TRAIN, ENGINE, AND YARD)	
75	Chief train dispatchers.
76	Train dispatchers.
77	Train directors.
78	Station agents (supervisory, major stations, nontelegraphers).
79	Station agents (smaller stations, nontelegraphers).
80	Station agents (telegraphers and telephoners).
81	Chief telegraphers and telephoners or wire chiefs.
82	Clerk-telegraphers and clerk-telephoners.
83	Telegraphers, telephoners, and towermen.
84	Stationmasters and assistants.
85	Supervising baggage agents.
86	Baggage agents and assistants.
87	Baggage, parcel room, and station attendants.
88	General foremen (freight stations, warehouses, grain elevators, and docks).
89	Assistant general foremen (freight stations, warehouses, grain elevators, docks).
90	Gang foremen (freight station, warehouse, grain elevator, and dock labor).
91	Callers, loaders, sealers, scalers, and perishable-freight inspectors.
92	Truckers (stations, warehouses, and platforms).
93	Laborers (coal and ore docks and grain elevators).
94	Common laborers (stations, warehouses, platforms, and grain elevators).
95	Stewards, restaurant and lodging-house managers, and dining-car supervisors.
96	Chefs and cooks (restaurants or dining cars).
97	Waiters, camp cooks, kitchen helpers, etc.
98	Officers, workers, and attendants on barges, launches, ferry boats, towing vessels, steamers, and shore workers.
99	Transportation and dining-service inspectors.
100	Parlor and sleeping car conductors.
101	Train attendants.
102	Bridge operators and helpers.
103	Crossing and bridge flagmen and gatemen.
104	Foremen (laundry) and laundry workers.
VI (a)—TRANSPORTATION (YARDMASTER SWITCHTENDERS, AND HOSTLERS)	
105	Yardmasters.
106	Assistant yardmasters.
107	Switch tenders.
108	Outside hostlers.
109	Inside hostlers.
110	Outside hostler helpers.
VI(b)—TRANSPORTATION (TRAIN AND ENGINE)	
111	Road passenger conductors.
112	Assistant road passenger conductors and ticket collectors.
113	Road freight conductors (through freight).
114	Road freight conductors (local and way freight).
115	Road passenger baggagemen.
116	Road passenger brakemen and flagmen.
117	Road freight brakemen and flagmen (through freight).
118	Road freight brakemen and flagmen (local and way freight).
119	Yard conductors and yard foremen.
120	Yard brakemen and yard helpers.
121	Road passenger engineers and motormen.
122	Road freight engineers and motormen (through freight).
123	Road freight engineers and motormen (local and way freight).
124	Yard engineers and motormen.
125	Road passenger firemen and helpers.
126	Road freight firemen and helpers (through freight).
127	Road freight firemen and helpers (local and way freight).
128	Yard firemen and helpers.

(d) *Passengers on trains, class (D).* Passengers on trains are those persons who are on, or boarding, or alighting from, railroad cars for the purpose of travel.

(e) *Nontrespassers, class (E).* Nontrespassers are those persons who are lawfully on that part of railroad property which is used in railroad operation, as herein defined in § 125.11 above, other than those herein defined as employees, passengers, or trespassers, and persons adjacent to railroad premises when injured as the result of the operation of a railroad.

(f) *Trespassers, class (F).* (1) Trespassers are those persons who are on that part of railroad property which is used in railroad operation, as herein defined in § 125.11 above, whose presence is prohibited, or forbidden, or unlawful.

(2) Whenever persons are classed as "trespassers" the report should state the circumstances that warrant such a classification and, if possible, the regular occupation of such persons killed or injured.

(3) A person should not be classed as a trespasser on a highway grade crossing unless the crossing is protected by gates, or other similar barriers, which were closed when the person went on the crossing, or unless the person attempted to pass over or under trains or cars at the crossing.

CODES FOR ACCIDENT REPORTING

§ 125.55 Codes for accident reporting.

The following pages contain information pertaining to the codes that are to be used in connection with accident reports. Certain codes should be inserted by the Reporting Officer in reports furnished to the Commission; namely, the following:

(a) On Form T, Class of Person.

(b) On Form T, Reporting Division number and title of employee's position (from list in § 125.50).

(c) On Form T, Cause of train, train-service or nontrain accident, causes should be reported in accordance with the lists designated "Train accidents," "Train-service accidents" and "Nontrain accidents" shown in this section under "Code of Causes".

(d) On Form V, cause of train-service or nontrain accident (from lists).

(e) On Form V Sections A and B, Reporting Division number from list in § 125.50.

All other coding will be done by the Commission.

TRAINS OR CARS

1. Freight.
2. Passenger.
3. Work.
4. Yard.
5. Train, handled by hostler.
6. Standing cars.
7. Runaway cars.
8. Industrial.
9. Unknown.

KIND OF EQUIPMENT

1. Main line track.
2. Freight-train car (or work equipment), or
3. Passenger-train car (including rail motor car).

KIND OF TRACK

1. Main line track.
2. Branch line track, or
3. Way switching, yard switching, or other track.

HIGHWAY CROSSING PROTECTION

0. Gates, automatic.
1. Gates, manual.
2. Watchman.
3. Employee other than watchman.
4. Audible and visual signal.
5. Audible signal.
6. Visual signal.
7. Fixed signs.
8. Unprotected.

CLASS OF PERSON

Employees on duty (A).
Employees not on duty (B).
Passengers (D).
Nontrespassers (E).

TRESPASSERS—EMPLOYEES

Trespassers, employees (F).
1. Walking along track (a).
2. Crossing tracks at public highway crossings (b).
3. Crossing tracks at other places (c).
4. On or getting on or off trains (d).
5. Not otherwise classed (e).

TRESPASSERS—OTHER THAN EMPLOYEES

Trespassers; under 14 years of age (G).
1. Walking along track (a).
2. Crossing tracks at public highway crossings (b).
3. Crossing tracks at other places (c).
4. On or getting on or off trains (d).
5. Not otherwise classed (e).

Trespassers; 14 to 21 years of age (H).
1. Walking along track (a).
2. Crossing tracks at public highway crossings (b).
3. Crossing tracks at other places (c).
4. On or getting on or off trains (d).
5. Not otherwise classed (e).

Trespassers; adult hoboes or tramps (I).
1. Walking along track (a).
2. Crossings tracks at public highway crossings (b).
3. Crossing tracks at other places (c).
4. On or getting on or off trains (d).
5. Not otherwise classed (e).

Trespassers: adults except hoboes or tramps (J).
1. Walking along track (a).
2. Crossing tracks at public highway crossings (b).
3. Crossing tracks at other places (c).
4. On or getting on or off trains (d).
5. Not otherwise classed (e).

NATURE OF INJURY

1. Bruise.
2. Sprain or strain.
3. Cut or laceration.
4. Electrical shock or burn.
5. Other burn.
6. Dislocation.
7. Fracture.
8. Amputation.
9. Not classifiable above, such as concussion, nervous shock, internal injuries, etc.

Each of the above classes should be subdivided to show the part of the body injured and other information as follows:

1. One eye, causing blindness therein.
2. Both eyes, causing total blindness
3. Other injury to eyes.
4. Scalp.
5. Nose.
6. Ears.
7. Mouth or teeth.
8. Skull.
9. Face or head (other part).
10. Collar bone.
11. Ribs.
12. Spine.
13. Back (other part).
14. Chest (other part).
15. Abdomen (not internal injury)
16. Other body injury (external).
17. Internal body injury.
18. Private parts.
19. Shoulder.
20. Upper arm.
21. Elbow.
22. Lower arm.
23. Wrist.
24. Hand.
25. Finger or thumb.
26. Hip.
27. Upper leg.
28. Knee.
29. Lower leg.
30. Ankle.
31. Foot.
32. Toes.
33. Heel.

STATES AND TERRITORIES

1. Alabama.
2. Arizona.
3. Arkansas.
4. California.
5. Colorado.
6. Connecticut.
7. Delaware.
8. Florida.
9. Georgia.
10. Idaho.
11. Illinois.
12. Indiana.
13. Iowa.
14. Kansas.
15. Kentucky.
16. Louisiana.
17. Maine.
18. Maryland.
19. Massachusetts.
20. Michigan.
21. Minnesota.
22. Mississippi.
23. Missouri.
24. Montana.
25. Nebraska.
26. Nevada.
27. New Hampshire.
28. New Jersey.
29. New Mexico.
30. New York.
31. North Carolina.
32. North Dakota.
33. Ohio.
34. Oklahoma.
35. Oregon.
36. Pennsylvania.
37. Rhode Island.
38. South Carolina.
39. South Dakota.
40. Tennessee.
41. Texas.
42. Utah.
43. Vermont.
44. Virginia.
45. Washington.
46. West Virginia.
47. Wisconsin.
48. Wyoming.
49. District of Columbia.
50. Alaska.
51. Hawaii.
52. Puerto Rico.

CODE OF CAUSES

TRAIN ACCIDENTS

1. NEGLIGENCE OF EMPLOYEES

TRAIN ORDERS

1001 Error in transmission or copying.
1002 Misunderstanding by train or engine crew.
1003 Other improper handling by dispatcher.
1004 Other improper handling by operator.
1005 Other improper handling by train or engine crew (including failure to pick up, read or obey).
1006 Meeting point overrunning.
1088 Other negligence in connection with train orders.

CAB SIGNALS

1101 Operation of train contrary to cab signal indications without authority.
1188 Other negligence in connection with cab signals.

AUTOMATIC TRAIN CONTROL

1201 Failure to operate train in accordance with automatic train control.

FIXED SIGNALS

1301 Clear signal displayed for occupied block.
1302 Clear approach signal displayed with home signal at stop.
1303 Train order signal, failure to display.
1304 Restore signal to normal, failure to.
1305 Position of signal improperly changed in face of approaching train.
1306 Other improper display of signals.
1307 Stop signal, disregard of.
1308 Restricting signal, disregard of.
1309 Train-order signal, disregard of.
1310 Switch signal, disregard of.
1311 Signal light out, disregard of.
1312 Failure to keep proper lookout for signals necessitating emergency application of brakes.
1388 Other improper observance or disregard of signals.

HAND SIGNALS

1401 Failure to give hand signal.
1402 Failure to pass hand signal, including failure to be in position to pass.
1403 Failure to regard hand signal, including failure to watch for.
1404 Failure to stop when hand signal could not be seen.
1405 Wrong hand signal given.
1406 Misunderstanding of hand signals given by member of own train or yard crew.
1407 Acceptance of hand signal given by member of another train or yard crew.
1488 Other negligence in connection with hand signals.

TRAIN FLAGGING

(Including use of lanterns, torpedoes and fusees)

1501 Failure to flag.
1502 Failure to go back or ahead a sufficient distance.
1503 Torpedoes, failure to use or place properly.
1504 Fusees, failure to use or place properly.
1505 Other improper flagging, including failure to carry flagman's equipment.
1506 Failure to regard flag, including failure to watch for.
1507 Torpedoes, failure to regard.
1508 Fusees, failure to regard.
1588 Other negligence in connection with train flagging.

AIR BRAKES

1601 Insufficient air pressure, failure of engineman to regard.
1602 Improperly releasing air brakes.
1603 Emergency or severe application from locomotive, unjustifiable.
1604 Improper handling of independent air brake.
1605 Other improper handling by engineman.
1606 Failure to test.
1607 Application from train, unjustifiable.
1608 Pressure retaining valves, failure to set sufficient number.
1609 Failure to have sufficient air brakes in service.
1610 Air not fully coupled.
1611 Other improper handling of air brakes by train or yard crew.
1688 Other negligence in connection with air brakes.

HAND BRAKES

1701 Failure to control by hand brake.
1702 Failure to secure by hand brake including failure to set hand brakes on sufficient number of cars.
1703 Failure to test properly.
1704 Premature release of hand brake.
1788 Other negligence in connection with hand brakes.

SWITCHES

1801 Hand-operated switch, improperly set.
1802 Hand-operated switch, thrown under train.
1803 Hand-operated switch, failure to latch or secure lever.
1804 Hand-operated switch failure to see that points fitted up.
1805 Reverse movement before train had cleared spring switch.
1806 Equipment fouling switch.
1807 Switch, running through.
1808 Derail, running off.
1888 Other negligence in connection with switches.

OTHER FORMS OF NEGLIGENCE

1901 Excessive speed or failure to control in yard limits.
1902 Excessive speed in other than yard limits.
1903 Headlight improperly used.
1904 Superior train, failure to clear.
1905 Meeting point, or passing point, failure to clear switch or other tracks.
1906 Disregard of slow flag or other protection placed by maintenance or other nontrain employees.
1907 Failure to whistle or otherwise warn in accordance with rules or instructions.
1908 Failure to sufficiently reduce speed in accordance with rules or instructions where view was obstructed by weather conditions.
1909 Failure to sufficiently reduce speed in accordance with rules or instructions where view was obstructed by other than weather conditions.
1910 Failure of engineman to keep proper lookout, not otherwise classified.
1911 Moving locomotives, trains, or cars without orders or signals.
1912 Locomotives, trains or cars improperly secured, unexpected movement of.
1913 Low water in locomotive boiler.
1914 Premature opening of cover plates on diesel locomotive crankcase, after overheating of lubricating oil.
1915 Other improper handling of locomotives, rail motor cars or trains by enginemen.
1916 Running of locomotive or rail motor car by unauthorized person.
1917 Absence of man on or at leading car being pushed.
1918 Cutting off cars at excessive speed.
1919 Cutting off cars without rider to control.
1920 Failure or inability of rider to get on cars to control.
1921 Failure to sufficiently slow down cars in retarder.
1922 Stop or excessively slow down cars in retarder.
1923 Failure to place skate or derail ahead of car.
1924 Failure of maintenance or other employees to put out slow flag or otherwise to protect when obstructing track.
1925 Disregard of slow flag or other protection placed by maintenance or other employees.
1926 Failure to remove skate or derail from under car.
1927 Failure to return skate to skate-placing mechanism.
1928 Attempted or actual coupling at excessive speed.
1929 Coupling not properly made.
1930 Improper shifting of cars on or off floats or vessels.
1931 Other improper handling in switching.
1932 Improper movement of locomotives by hostlers.
1933 Turntable or transfer table, failure to align, latch or secure.
1934 Joint failure to protect and disregard of restricting signal.
1935 Joint failure to protect and excessive speed.
1936 Failure by supervisors (Terminal Trainmaster, Yardmaster, etc.) to convey correct information.
1937 Improper routing of car with high or wide load onto line not having sufficient clearance for same.
1988 Other negligence of employees.

2. DEFECTS IN OR FAILURES OF EQUIPMENT

STEAM LOCOMOTIVES

2001 Boiler explosions.
2002 Boilers or appurtenances, other failures of or defects in.
2003 Rods, main and side, crank pins and collars.
2004 Other machinery.
2088 Other defects in steam locomotives (including tenders).

LOCOMOTIVES OTHER THAN STEAM INCLUDING PROPULSION EQUIPMENT OF RAIL MOTOR CARS

2101 Crankcase and air box explosions.
2102 Internal combustion engines and turbines, other failures of, or defects in.
2103 Generators and motor-generator sets.
2104 Traction motor armature bearing seized.
2105 Traction motors, other failures of or defects in.
2106 Current collection systems.
2107 Electrical control and conversion equipment (including batteries).
2108 Hydraulic, mechanical or other nonelectrical power transmission to axles.
2109 Steam generating boiler or appurtenances.
2110 Fires from short circuits or grounds in wiring.
2111 Fires from fuel or lubricating oil leaks.
2112 Other fires, not otherwise classified.
2113 Fumes from internal combustion engine or appurtenances.
2188 Other defects on locomotives other than steam.

TRUCKS

2201 Truck side frame, bent or broken.
2202 Equalizer, bent or broken.
2203 Pedestal tie bar, loose or defective.
2204 Journal box, non-integral type.
2205 Journal bearing assembly, defects, including fires.
2206 Transom, bent or broken.
2207 Truck bolster, bent or broken.
2208 Truck bolster anchor, loose or defective.
2209 Snubbing device in truck bolster guides, locked, broken or otherwise defective.
2210 Center plate.
2211 Center pin, broken or missing.
2212 Side bearing, improper clearance.
2213 Side bearing, broken, defective or missing.
2214 Spring plank, bent or broken.
2215 Swing hanger broken.
2216 Swing hanger pin, broken or missing.
2217 Spring or snubber, missing or defective.
2218 Spring seat or support bar, missing or defective.
2219 Truck safety hanger, loose or defective.
2220 Truck, insufficient weight on any wheel.
2221 Truck, stiff, improper lateral or improper swivelling.
2288 Other truck defects.

WHEELS AND AXLES

2301 Cast-iron wheel, flange broken.
2302 Cast-iron wheel, tread or rim defective.
2303 Cast-iron wheel, broken, overheating.

2304 Cast-iron wheel, broken, other causes.
2305 Cast-steel wheel, flange broken.
2306 Cast-steel wheel, tread or rim defective.
2307 Cast-steel wheel, broken, overheating.
2308 Cast-steel wheel, broken, other causes.
2309 Wrought-steel wheel, flange broken.
2310 Wrought-steel wheel, tread or rim defective.
2311 Wrought-steel wheel, broken, overheating.
2312 Wrought-steel wheel, broken, other causes.
2313 Wheel, other or unknown composition, broken.
2314 Wheel, flange worn.
2315 Wheel, loose or out of gage.
2316 Wheel, tire loose or broken.
2317 Axle, broken between journals.
2318 Journal broken, cold.
2319 Journal broken, overheating.
2387 Other defects in wheels.
2388 Other defects in axles.

AIR BRAKES AND APPURTENANCES

2401 Air compressor.
2402 Air reservoir, or its fittings, safety valve or check valve.
2403 Air brake control valve.
2404 Brake pipe, or fittings, broken or defective.
2405 Air brake hose, broken or burst.
2406 Air brake parts, falling off.
2407 Air brake, sticking.
2408 Air brake, defective, due to snow and ice.
2409 Air brake failure, excessive piston travel.
2410 Triple valves, lazy, dirty, or otherwise defective.
2488 Other air brake defects.

HAND BRAKES, BRAKE RIGGING AND APPURTENANCES

2501 Brake beam, broken, disconnected, displaced, etc.
2502 Brake chains or bolts, breaking or giving way.
2503 Brake chains, kinking, twisting, overlapping, or too long.
2504 Brake hanger, broken or disconnected.
2505 Brake rod, broken, defective, or disconnected.
2506 Brake shaft, broken or defective.
2507 Brake shoe, worn, broken, or missing.
2508 Brake wheel, loose or defective.
2509 Pawl or ratchet, failure or defect.
2510 Brake rigging coming down, other failure or defect.
2511 No brake on car.
2512 Insufficient braking power, not otherwise provided for.
2588 Miscellaneous.

COUPLERS, DRAFT GEAR AND RELATED PARTS

2601 Coupler, broken, not pulled out.
2602 Coupler, improper height.
2603 Jackknifing of couplers.
2604 Couplers passing in attempting to make coupling.
2605 Knuckle, broken or defective.
2606 Knuckle lock or locklift assembly.
2607 Uncoupling device.
2608 Friction buffer or diaphragm.
Coupler or draft gear pulled out or down, due to failure of:
2609 Coupler.
2610 Coupler rivets or swivel pin.
2611 Coupler yoke.
2612 Coupler key.
2613 Coupler key retainer.
2614 Striking casting or coupler carrier.
2615 Sills or draft lugs.
2616 Draft gear carrier.
2617 Cushion underframe parts.
2618 Other parts causing coupler or draft gear to drop.
2688 Other defects in couplers.
2687 Other defects in draft gear.
2688 Other defects in cushion underframe.

CAR STRUCTURE

2701 Sills, bent or broken.
2702 Body bolster.
2703 Other underframe parts.
2704 Sides, spreading or buckling beyond equipment clearance line.
2705 Drop end, falling off.
2706 Passenger car—end gate, falling off.
2707 Floor, material falling from or through.
2708 Side door, falling off.
2709 Drop door, open or defective.
2710 Hatch, dome or manhole cover.
2711 Stake pocket or load retainer.
2788 Other defects in car structure.

OTHER PARTS OF EQUIPMENT

2801 Air dump cars, dumping mechanism.
2802 Crane boom on car or tiedowns for.
2803 Snow plow, flanger, ditcher or spreader defects.
2804 Steam heat connections, dragging or falling off.
2805 Car water tanks.
2806 Axle-driven generator.
2807 Internal combustion power plant for car electrical auxiliaries or refrigeration.
2887 Other defects in car electrical or mechanical equipment for lighting, heating, cooling, radio, etc. (not propulsion).
2888 Other equipment defects.

3. DEFECTS IN OR IMPROPER MAINTENANCE OF WAY AND STRUCTURES

BRIDGES, TRESTLES, CULVERTS, AND TUNNELS

3001 Bridges, structural defect or failure.
3002 Bridges, improper or insufficient maintenance.
3003 Trestles, structural defect or failure.
3004 Trestles, improper or insufficient maintenance.
3005 Culverts, structural defect or failure.
3006 Culverts, improper or insufficient maintenance.
3007 Tunnels, structural defect or failure.
3008 Tunnels, improper or insufficient maintenance.
3088 Other defects in or failures of bridges, trestles, culverts, and tunnels.

TIES AND TIE PLATES

3101 Ties, broken.
3102 Ties, decayed or worn.
3103 Ties, soft or poor quality of timber.
3104 Ties, insufficient number or size.
3105 Tie plates, broken or otherwise defective.
3106 Steel, concrete or other nonwood tie.
3107 Non-metallic tie plate, or non-metallic inserts in metallic tie plate, broken or otherwise defective.
3188 Other defects in ties and tie plates.

RAILS AND JOINTS

3201 Broken rail, with bolted joint.
3202 Broken rail, with welded joints.
3203 Flow of metal.
3204 Crushed head.
3205 Split head.
3206 Split web.
3207 Broken base.
3208 Other forms of rail failures not due to wear.
3209 Rails, spreading because improperly spiked or braced.
3210 Rails, spreading because joints loosely or improperly bolted.
3211 Rails, spreading, other causes.
3212 Rails, giving way or causing accidents because of worn condition.
3213 Rail joints, angle bars or bolts broken or otherwise defective.
3214 Rail joints, failure at, due to insulation for signal apparatus.
3215 Rail joints, loosely or improperly bolted.
3216 Compromise joints, defect, or improper maintenance.
3288 Other defects in or failures of rail joints.

FROGS AND SWITCHES

3301 Frogs, broken or missing bolts.
3302 Frogs, guard rail or fastenings defective or missing.
3303 Frogs, guard rail improperly placed or secured.
3304 Frogs, springs or spring bolts loose or defective.
3305 Frogs, wing rails broken.
3306 Frogs, point broken.
3307 Other defects in frogs.
3308 Switch-detector bar, broken or defective.
3309 Switch, lost motion or out of adjustment.
3310 Switch lug, broken.
3311 Switch point, bent or sprung.
3312 Switch point, broken.
3313 Switch point, worn.
3314 Switch stand or head block, loose, broken, or defective.
3315 Switch, rod broken or disconnected.
3316 Switch, rod bent or sprung.
3317 Switch indicator, defective.
3318 Spring switch, defective.
3319 Keeper or latch, broken, defective, or missing.
3320 Electric or interlocking parts or appurtenances, failure or defect.
3321 Switch, spiked, working loose.
3388 Other defects in or improper maintenance of switches.

INTERLOCKING AND BLOCK SIGNAL SYSTEM

3401 Signal displaying false "clear" for restricting.
3402 Signal displaying false "clear" for stop.
3403 Signal displaying false "restricting" for stop.
3404 Other improper indications of.
3405 Improper location of signal.
3406 Sand, rust or other deposits on rails.
3488 Other defects in, or improper maintenance of, signal system.

OTHER WAY AND STRUCTURE ITEMS

3501 Guard rail improperly placed or secured.
3502 Improper superelevation of track.
3503 Improper alignment of track.
3504 Improper surface of track.
3505 Improper gage of track.
3506 Improper curvature for traffic conditions and equipment used.
3507 Dirty ballast or other poor drainage.
3508 Soft track not otherwise provided for.
3509 Rigid track not otherwise provided for.
3510 Insufficient side entrance.
3511 Insufficient overhead clearance.
3512 Car retarder.
3513 Skates and skate-placing mechanism.
3514 Mules, car dumping equipment and car shakeout devices.
3515 Float bridges.
3516 Fueling facilities.
3517 Sanding facilities.
3518 Water columns and other water supply facilities for servicing equipment.
3519 Turntables and transfer tables.
3520 Dragging equipment detectors.
3521 Rail lubricators.
3522 Catenary, third rail or other wayside current collection apparatus.
3588 Other defects in way and structures.

4. MISCELLANEOUS CAUSES

IMPROPER LOADING

4001 Load too high for proper clearance.
4002 Load too wide for proper clearance.
4003 Load too heavy or other unbalanced loading.
4004 Car overloaded.
Load shifted, due to improper or defective:
4005 Steel banding.
4006 Steel banding retainer.
4007 Cable, chain or rope.

4008 Stakes, blocking, bracing or other fastenings.
4009 Load on two or more cars, failure to adjust for curves, failure to properly block coupler or failure to make uncoupling mechanism inoperative.
4088 Other improper loading of cars.

NEGLIGENCE OF NONEMPLOYEES

4101 Failure to control movement of locomotive or car.
4102 Failure to secure locomotive or car.
4103 Improper use of hand-operated switch or derail.
4104 Swinging car door left open.
4105 Car drop doors left open.
4106 Tractors, lift trucks, cranes and other portable machines not in clear.
4107 Chutes, ramps, conveyors, pipes and other loading or unloading devices not in clear.
4108 Dirt or other obstructions on track.
4188 Other negligence of nonemployees.

MALICIOUS OR CARELESS ACTS OF NONEMPLOYEES

4201 Switch stand run into by vehicle.
4202 Switch or derail padlock, tampered with.
4203 Other tampering with switch or derail.
4204 Obstruction placed on track.
4205 Track or structure tampered with.
4206 Signal system tampered with.
4207 Brakes or chocks tampered with.
4208 Incendiarism.
4288 Other malicious acts or misbehavior of nonemployees.

OBSTRUCTIONS, FORCES OF NATURE, ETC.

4301 Landslides or boulders on, or foul of track.
4302 Snow or ice on track.
4303 Animals on track.
4304 Switch, derail or frog obstacles in.
4305 Roadway machine or track motor car obstructing track.
4306 Accidents caused by other train accidents.
4307 Track or structures damaged or washed out by floods.
4308 Bridge or trestle, timber construction, damaged by accidental fire.
4309 Timber tunnel lining damaged by accidental fire.
4310 Car damaged by accidental fire.
4386 Other accidental fires.
4387 Other track obstructions.
4388 Other forces of nature.

RAIL-HIGHWAY GRADE CROSSING ACCIDENTS

Struck by locomotive or car:
4401 Passenger automobile.
4402 Bus.
4403 Truck.
4404 Other vehicle.
Ran into side of locomotive or car:
4411 Passenger automobile.
4412 Bus.
4413 Truck.
4414 Other vehicle.
4421 Accident caused by sudden brake application to avoid highway crossing accident.
4422 Highway vehicle struck by locomotive or car at private crossing.
4423 Highway vehicle ran into side of locomotive or car at private crossing.
4488 Other highway grade crossing accidents.

COMBINATION OF TWO OR MORE CAUSES

Wheel flange worn and:
4501 Switch point worn.
4502 Switch and adjoining frog too close together.
4503 Improper surface of track.
4504 Tight gage of track.
4505 Improper loading of car.
Truck stiff, close side bearing clearance or improper swivelling and:
4506 Switch point worn.
4507 Improper surface of track.
4508 Tight gage of track.
4509 Improper loading of car.
4510 Wheel flange worn.
Excessive side bearing clearance and:
4511 Improper surface of track.
4512 Improper superelevation of track on curve.
4513 Improper loading of car.
Slack action and:
4514 Improper surface of track.
4515 Tight gage of track.
4516 Improper loading of car.
4517 Heavy impact and weakened condition of car.
4518 High locomotive tractive effort and light cars on sharp curve.
4588 Other combinations of two or more causes.

OTHER ASCERTAINED CAUSES

4601 Rocking or swaying of car.
4602 Rail slippery.
4603 Car blown out of siding by wind.
4604 Unable to control locomotive or cars on grade.
4605 Use of helper locomotive, not otherwise provided for.
4606 Emergency or severe application of air brakes.
4607 Slack action, not otherwise classified.
4608 Handling bad order equipment, including use of chains, bars, etc., in place of standard coupler.
4609 Cars parted, not otherwise classified.
4610 Vision obscured by smoke, steam, fog, smog, ice, snow, rain, etc.
Use of, or operation of:
4611 Crane car.
4612 Snow plow, flanger, ditcher or spreader.
4613 Air dump car.
4614 Fueling, watering or sanding facilities.
4615 Mules, car dumpers or shakeout devices.
4616 Turntables or transfer tables.
4617 Float bridges.
4618 Car retarder.
4619 Skates or skate-placing mechanism.
4687 Accident investigated—other ascertained cause.
4688 Accident not investigated.

TRAIN-SERVICE ACCIDENTS

5. SPECIFIED GROUPS OF CAUSES

COUPLING AND UNCOUPLING LOCOMOTIVES OR CARS, OR MANIPULATING AIR OR STEAM CONNECTIONS

Coupling and uncoupling locomotives or cars:
5001 Adjusting coupler, unexpected movement of cars due to slack.
5002 Adjusting coupler, unexpected movement of cars due to mistake or misunderstanding in giving or observing hand signals.
5003 Adjusting coupler, unexpected movement of cars due to other causes.
5004 Adjusting coupler, when moving cars were nearing each other.
5005 Adjusting coupler on moving cars, lost footing.
5006 Adjusting coupler with foot, cars moving.
5007 Adjusting coupler with foot, cars not moving.
5008 Adjusting coupler, part of coupler fell striking person.
5009 Uncoupling without using lever.
5010 Uncoupling lever, manipulation of.
5011 Uncoupling, lost footing, or fell from car.
5012 Uncoupling, unexpected movement of cars or locomotives.
5013 Coupling or uncoupling with chains or other emergency appliances.
5014 Coupling or uncoupling damaged or bad-order cars, not otherwise provided for.
5015 Foot caught in frog, switch, guard rail, crossing plank, etc.
5016 Coming in contact with objects or material, etc., or striking parts of body against cars or locomotives while coupling or uncoupling, not otherwise provided for.
5017 Hand, arm, foot, or any part of body caught between projecting load and car, not otherwise provided for.
5018 Stumbling, slipping, or falling, not otherwise provided for.
5019 Struck by freight or other objects falling from cars or locomotives.
5048 Miscellaneous.

Coupling and uncoupling air hose (or turning angle cocks), steam hose, and safety chains:
5051 Air or steam hose, angle cocks or safety chains, cars moved while manipulating.
5052 Air or steam hose, angle cocks or safety chains, going between moving cars to manipulate.
5053 Air hose, uncoupling, struck by hose because of sudden release of air.
5054 Steam hose, burned by hot water or steam from.
5055 Stumbling, slipping, or falling, not otherwise provided for.
5056 Parts defective, or hard to manipulate.
5057 Struck by freight or other objects falling from cars or locomotives, while manipulating.
5098 Miscellaneous.

OPERATING LOCOMOTIVES AND RAIL MOTOR CARS

A. Operating Steam Locomotives

5101 Fueling, watering or sanding, other causes.
5102 Shoveling coal or using other hand tools, other causes.
5103 Burn from firebox, steam or hot water, other causes.
5104 Coming in contact with objects on the locomotive, negligence.
5105 Stumbling, slipping or falling, other causes.
5148 Other accidents while operating steam locomotives, other causes.

B. Operating locomotives other than steam, including rail motor cars

5151 Fueling, watering or sanding.
5152 Using hand tools.
5153 Burn from hot oil, steam, or hot water.
5154 Operating steam generating boiler and appurtenances.
5155 Electrical flash, shock or burn.
5156 Fumes from internal combustion engine or appurtenances.
5157 Coming in contact with objects on the locomotive, defective equipment.
5158 Coming in contact with objects on the locomotive, other causes.
5159 Struck by tools or other objects falling.
5160 Stumbling, slipping, or falling on ground.
5161 Stumbling, slipping, or falling, due to oil leaks.
5162 Stumbling, slipping, or falling, other defective equipment.
5163 Stumbling, slipping, or falling, other causes.
5164 Running of locomotive or rail motor car by unauthorized person.
5165 Checking, oiling locomotive, etc.
5166 Unexpected movement of locomotive not otherwise classified.
5167 Doors, injured by.

5186 Other accidents while operating locomotives other than steam including rail motor cars, negligence.
5187 Other accidents while operating locomotives other than steam including rail motor cars, defective parts.
5188 Other accidents while operating locomotives other than steam including rail motor cars, other causes.

OPERATING HAND BRAKES

5201 Brake chains or bolts breaking or giving way.
5202 Brake chains kinking, twisting, overlapping, or too long.
5203 Brake shaft, broken or defective.
5204 Brake wheel, loose or defective.
5205 Pawl or ratchet, defect in or failure of.
5206 Defective hand brakes not included above.
5207 Pawl slipping or accidentally knocked out of ratchet, no defects.
5208 Brake club slipping in wheel.
5209 Brake club, struck by, because wheel flew around.
5210 Brake club, breaking.
5211 Sudden stopping, starting, lurch, or jerk of train or car.
5212 Slipping or falling because of ice or snow on cars or locomotives.
5213 Losing hold, slipping, or falling, not otherwise classified.
5214 Using or holding hand brakes against air.
5215 Caught between running boards.
5216 Load shifting.
5217 Finger, hand, or other part of body caught between parts of equipment or lading, not otherwise provided for.
5218 Operating ratchet-handle brake, no defect.
5288 Miscellaneous.

OPERATING SWITCHES

5301 Switch lever flying up.
5302 Switch lever or ball falling on or catching hand, foot, or other part of body.
5303 Slipping or falling on ice or snow on tracks or elsewhere.
5304 Tripping, slipping, or falling, not otherwise classified.
5305 Caught between locomotive or car and switch lever or stand.
5306 Struck by locomotive or cars.
5307 Foot, hand, or other part of body caught in or by mechanism of switch.
5388 Miscellaneous.

PERSONS ON LOCOMOTIVES OR CARS COMING IN CONTACT WITH STRUCTURES, ETC.

Person on locomotive or car coming in contact with fixed structure

Overhead:
5401 Standard clearance.
5402 Less than standard clearance (notified).
5403 Less than standard clearance (not notified).
5404 Less than standard clearance (not notified) defective railroad-owned structure.
5405 Less than standard clearance (not notified) nonrailroad - owned structure.
Side:
5406 Standard clearance.
5407 Less than standard clearance (notified).
5408 Less than standard clearance (not notified).
5409 Less than standard clearance (not notified) defective railroad-owned structure.
5410 Less than standard clearance (not notified) nonrailroad-owned structure.

Person on locomotive or car coming in contact with other than fixed structure

Temporary obstruction at less than standard clearance notified:
5411 Overhead.
5412 Side.
Temporary obstruction at less than standard clearance not notified:
Overhead:
5413 Railroad-owned or placed obstruction.
5414 Nonrailroad-owned or placed obstruction.
Side:
5415 Railroad-owned or placed obstruction.
5416 Nonrailroad-owned or placed obstruction.
Portable loading and unloading devices, gangplanks, chutes, etc.:
5417 Standard side clearance.
5418 Less than standard side clearance.
5419 Less than standard side clearance railroad-owned devices, etc.
5420 Less than standard side clearance nonrailroad-owned devices, etc.
Locomotive or car on adjacent track:
5421 Standard side clearance.
5422 Less than standard side clearance (notified).
5423 Less than standard side clearance (not notified).
Tractors, lift trucks, etc.:
5424 Standard side clearance.
5425 Less than standard side clearance railroad-owned tractor, etc.
5426 Less than standard side clearance nonrailroad-owned tractor, etc.
5488 Person on locomotive or car coming in contact with other structures, etc.

GETTING ON OR OFF CARS OR LOCOMOTIVES

5501 Handhold or grab iron, missing or losing hold of.
5502 Handhold or grab iron, defective.
5503 Step, stirrup, or footboard, missing footing or slipping on.
5504 Step, stirrup, or footboard, defective.
5505 Ladder, missing foothold, or slipping on or losing hold of rung.
5506 Ladder, defective.
5507 Striking hands, arms, feet, legs, head, or body against cars or locomotives.
5508 Stepping or tripping on coal, boards, stone, rubbish, or other loose or refuse material, or in holes.
5509 Stepping or tripping on ties, rails, ballast, etc. (part of track).
5510 Slipping on ice or snow on ground.
5511 Slipping on ice or snow on locomotives or freight cars.
5512 Slipping or falling on or from coach steps, foot catching.
5513 Slipping or falling on or from coach steps, ice or snow on step.
5514 Slipping or falling on or from coach steps, defective step.
5515 Slipping or falling on or from coach steps, train starting or stopping.
5516 Slipping or falling on or from coach steps, not otherwise classified.
5517 Slipping or falling on station platform, ice or snow on platform.
5518 Slipping or falling on station platform, defective platform.
5519 Stepping or falling between car and high platform.
5520 Stepping or falling between car steps and low platform.
5521 Slipping or falling on station platform, not otherwise classified.
5522 Falling, slipping, tripping, or ankle turned or sprained, not otherwise classified.
5523 Missing footing on porter's footstool.
5524 Falling from or through bridge or trestle.
5525 Getting on front end of approaching locomotive.
5526 Coming in contact with trucks (baggage, express, mail, etc.).
5527 Coming in contact with or tripping over baggage, express matter, etc.
5528 Coming in contact with nails, splinters, part of lading, etc., on cars, not otherwise provided for.
5529 Struck by loose material, tools, etc., falling on or from locomotives or cars.
5530 Hand or other part of body striking or being struck by loose or swinging car doors, or projections from locomotives or cars.
5531 Trapdoors on coach, injured by.
5532 Otherwise injured by car doors.
5533 Clothing catching.
5534 Sudden stopping, starting, lurch, or jerk of locomotive or car.
5535 Attempting to carry material or tools while getting on or off locomotives or cars.
5536 Jumping from equipment in anticipation of an accident.
5537 Jumping from equipment, while mentally deranged, or to escape from custody, etc.
Coming in contact with fixed structure:
5538 Standard side clearance.
5539 Less than standard side clearance (notified).
5540 Less than standard side clearance (not notified).
5541 Less than standard side clearance (not notified) defective railroad-owned structure.
5542 Less than standard side clearance (not notified) nonrailroad-owned structure.
Coming in contact with other than fixed structures:
5543 Temporary obstruction at less than standard side clearance (not notified) railroad-owned or placed obstruction.
5544 Temporary obstruction at less than standard side clearance (not notified) nonrailroad-owned or placed obstruction.
Portable loading and unloading devices, gangplanks, chutes, etc.:
5545 Standard side clearance.
5546 Less than standard side clearance railroad-owned devices, etc.
5547 Less than standard side clearance nonrailroad-owned devices, etc.
Locomotive or car on adjacent track:
5548 Standard side clearance.
5549 Less than standard side clearance (notified).
5550 Less than standard side clearance (not notified).
Tractors, lift trucks, etc.:
5551 Standard side clearance.
5552 Less than standard side clearance railroad-owned tractor, etc.
5553 Less than standard side clearance nonrailroad-owned tractor, etc.
5588 Getting on or off, not otherwise provided for.

ACCIDENTS AT PUBLIC RAIL-HIGHWAY CROSSINGS

5601 Pedestrian struck by locomtive or car.
5602 Passenger automobile struck by locomotive or car.
5603 Bus struck by locomotive or car.
5604 Truck struck by locomotive or car.
5605 Motorcycle struck by locomotive or car.
5606 Other vehicle, machine or animal struck by locomotive or car.
5607 Pedestrian ran into, or drawn into locomotive or car.
5608 Passenger automobile ran into side of locomotive or car.
5609 Bus ran into side of locomotive or car.
5610 Truck ran into side of locomotive or car.

5611 Motorcycle ran into side of locomotive or car.
5612 Other vehicle, machine or animal ran into side of locomotive or car.
5613 Vehicle ran into roadway structure to avoid locomotive or car.
5614 Accident caused by sudden brake application to avoid highway crossing accident.
5615 Pedestrian passing over, through or under cars on crossing.
5688 Highway crossing accidents due to other causes.

STRUCK BY OR RAN INTO LOCOMOTIVES OR CARS AT PLACES OTHER THAN PUBLIC RAIL-HIGHWAY CROSSINGS

5701 Standing, walking, or running on or along track.
5702 Crossing track at private crossing.
5703 Crossing track not at crossing.
5704 While on public thoroughfare (track in street).
5705 Sitting or lying on track or near track not in clear.
5706 While working on or along track, negligence.
5707 While working on or along track, improper instructions.
5708 While working on or along track, improper protection.
5709 While working on or along track, defective protective devices.
5710 While working on or along track, other causes.
5788 Other accidents to persons by locomotives or cars at places other than public rail-highway crossings.

MISCELLANEOUS CAUSES

FREIGHT, BAGGAGE, EXPRESS OR MAIL

5801 Handling freight.
5802 Lading shifted.
5803 Improper routing of car with high or wide load onto line not having sufficient clearance for same.
5804 Handling baggage, express or mail.
5805 Locomotive or car striking baggage, express, freight or mail, or striking baggage trucks or similar objects.
5806 Baggage or similar articles falling from luggage rack in passenger car.
5807 Baggage or similar articles in passenger car aisle or vestibule, tripping over.
5808 Other accidents involving freight, baggage, express or mail.

BRAKING OR SECURING EQUIPMENT

5811 Emergency or severe application of air brakes, negligence of engineman.
5812 Emergency or severe application of air brakes, negligence of train crew.
5813 Other accidents in braking or securing equipment.

DOORS, WINDOWS, AND RELATED PARTS

5821 Locomotive door, defective.
5822 Locomotive door, no defect.
5823 Freight car door, defective.
5824 Freight car door, no defect.
5825 Caboose door, defective.
5826 Caboose door, no defect.
5827 Baggage car door, defective.
5828 Baggage car door, no defect.
5829 Power-operated passenger car door, defective.
5830 Power-operated passenger car door, no defect.
5831 Hand-operated passengar car door, defective.
5832 Hand-operated passenger car door, no defect.
5833 Passenger car trap door, defective.
5834 Passenger car trap door, no defect.
5835 Passenger car end gate, defective.
5836 Passenger car end gate, no defect.
5837 Gondola car end gate, defective.
5838 Gondola car end gate, no defect.
5839 Hopper car drop door, defective.
5840 Hopper car drop door, no defect.
5841 Car door falling off.
5842 Loose or swinging door projecting beyond equipment clearance line.
5843 Locomotive, caboose or passenger car window, defective.
5844 Locomotive, caboose or passenger car window, no defect.
5845 Glass breaking in locomotive or car door or window.
5846 Other accidents involving doors, windows and related parts.

SERVICING OR MAINTENANCE ACCIDENTS INVOLVING TRAIN OPERATION

5851 Fueling, watering or sanding locomotive or rail motor cars.
5852 Lubrication of locomotive or cars.
5853 Icing of refrigerator cars.
5854 Servicing of car mechanical refrigeration equipment.
5855 Cleaning or washing of locomotive or cars.
5856 Icing or watering of passenger cars.
5857 Servicing of passenger car heating, lighting or air-conditioning equipment.
5858 Locomotive or car coming against locomotive or car being repaired under flag or signal protection.
5859 Locomotive or car coming against locomotive or car being repaired without flag or signal protection.
5860 Locomotive or car being repaired on the road or in yard, not otherwise provided for.
5861 Rerailing locomotives or cars or handling rerailing devices.
5862 While working around wrecks, not otherwise provided for.
5863 Failure of maintenance or other employees to put out slow flag or otherwise to protect when obstructing track.
5864 Disregard of slow flag or other protection placed by maintenance or other employees.
5865 Track motor car, jumping from, in anticipation of being struck by locomotive or car.
5866 Other on-rail roadway machines struck by locomotive or car.
5867 Removing obstacles from track.
5868 Other servicing or maintenance accidents.

STUMBLING, SLIPPING, FALLING, CAUGHT, ETC., NOT ELSEWHERE CLASSIFIED

5871 On snow or ice on locomotives or cars.
5872 On passenger car buffer or foot plate, defective.
5873 On passenger car buffer or foot plate, no defect.
5874 In passenger cars, not elsewhere classified.
5875 Stepping or jumping between locomotives or cars in the same train.
5876 Falling from, not otherwise classified.
5877 Stumbling, slipping or falling on, not otherwise classified.
5878 On snow or ice on ground.
5879 Falling off or through bridges, trestles or retaining walls, equipped with handrails.
5880 Falling off or through bridges, trestles or retaining walls, not equipped with handrails.
5881 On stairways, ramps, station platforms, etc.
5882 Falling into transfer table, turntable, inspection or other pits.
5883 Stepping or tripping into holes or depressions.
5884 On switch or signal parts in place.
5885 On rails, ties or other parts of track in place.
5886 On loose or piled track material.
5887 On nails, splinters or other sharp materials or sharp trash.
5888 On coal, boards or other loose material or loose trash.

Between locomotive or car and fixed structure:

5889 Less than standard side clearance (notified).
5890 Less than standard side clearance (not notified).
5891 Less than standard side clearance (not notified) defective railroad-owned structure.
5892 Less than standard side clearance (not notified) nonrailroad-owned structure.

Between locomotive or car and other than fixed structures:

5893 Temporary obstruction at less than standard side clearance (notified).
5894 Temporary obstruction at less than standard side clearance (not notified).
5895 Temporary obstruction at less than standard side clearance (not notified) railroad-owned or placed obstruction.
5896 Temporary obstruction at less than standard side clearance (not notified) nonrailroad-owned or placed obstruction.
5897 Portable loading and unloading devices, gangplanks, chutes, etc., at less than standard side clearance.
5898 Portable loading and unloading devices, gangplanks, chutes, etc., at less than standard side clearance railroad-owned devices, etc.
5899 Portable loading and unloading devices, gangplanks, chutes, etc., at less than standard side clearance nonrailroad-owned devices, etc.
5900 Tractors, lift trucks, etc., at less than standard side clearance.
5901 Tractors, lift trucks, etc., at less than standard side clearance, railroad-owned tractor, etc.
5902 Tractors, lift trucks, etc., at less than standard side clearance nonrailroad-owned tractor, etc.

Between locomotives and/or cars on adjacent tracks:

5903 Less than standard side clearance (notified).
5904 Less than standard side clearance (not notified).
5905 Caught by nails or splinters.
5906 While standing, walking or running beside locomotives or cars, not elsewhere classified.
5907 Other stumbling, slipping, falling, caught, pinched or crushed.

FLYING OR FALLING OBJECTS, BURNS AND SIMILAR CAUSES

5908 Sparks, cinders or other flying objects, in eye.
5909 Stones, or other objects "picked up" by train.
5910 Other injuries by flying objects.
5911 Coal, coke or other material or lading falling from tenders or cars.
5912 Electrical flash, shock or burn from locomotive or car.
5913 Electrical flash, shock or burn from third rail.
5914 Electrical flash, shock or burn from catenary construction.
5915 Electrical flash, shock or burn from other sources.
5916 Fire or explosion of fuses or torpedoes.
5917 Fire or explosion on locomotive.
5918 Fire or explosion on freight-train car (or work equipment).
5919 Fire or explosion on passenger-train car or rail motor car.
5920 Fire or explosion along right-of-way.
5921 Burned by hot or corrosive substances.
5922 Other burns, not elsewhere classified.
5923 Overcome by fumes or gases, not elsewhere classified.

5924 Other flying or falling objects, burns and similar causes.

OTHER ASCERTAINED CAUSES

5925 Crossing over, under or between locomotives or cars.
5926 Locomotive or car coming against car placed for loading or unloading.
5927 Sudden starting, stopping, lurch or jerk of locomotive or car, not elsewhere classified.
5928 Poling or roping cars.
5929 Car sides spreading or buckling beyond equipment clearance line.
5930 Blocking or chocking cars.
5931 Projections of material, tools, or equipment parts beyond the equipment clearance line on other locomotive or car.
5932 Caught by passenger car buffer or foot plate, defective.
5933 Caught by passenger car buffer or foot plate, no defect.
5934 Passenger car diaphragm.
5935 Emergency or severe application of air brakes, burst or parted air hose.
5936 Emergency or severe application of air brakes, other defective equipment.
5937 Accident investigated—other ascertained cause.

UNASCERTAINED CAUSES

5948 Accident investigated-cause undetermined.
5988 Accident not investigated.

NONTRAIN ACCIDENTS

7. EQUIPMENT

LOCOMOTIVES

Servicing of locomotive, including facilities used for doing this work

7001 Fueling, watering or sanding.
7002 Lubricating or cleaning.
7003 Maintenance of servicing facilities.
7004 Use of portable tools.
7005 Use of scaffolds, ladders, etc.
7006 Use of cranes, hoists, turntables, etc.
7007 Use of shop machinery.
7008 Use of lift trucks and other portable material-handling equipment.
7009 Use of paint spraying or paint removing equipment.
7010 Maintenance of shop buildings or storehouses.
7011 Maintenance of shop machinery.

Accidents while servicing locomotive due to:

7012 Flying objects.
7013 Falling objects.
7014 Electrical flash, shock or burn.
7015 Fire or explosion.
7016 Hot or corrosive substances.
7017 Fumes or gases.
7018 Stumbling, slipping or falling.
7019 Moving locomotive for repairs.
7020 Unexpected movement of locomotive.
7088 Other causes.

CONSTRUCTION SERVICING OR MAINTENANCE OF CARS

A. Car Bodies

7101 Use of portable tools.
7102 Use of scaffolds, ladders, etc.
7103 Use of cranes, hoists, transfer tables, etc.
7104 Use of shop machinery.
7105 Use of lift trucks and other portable material-handling equipment.
7106 Use of paint spraying or paint removing equipment.

B. Car Trucks

7111 Use of portable tools.
7112 Use of cranes, hoists, transfer tables, etc.
7113 Use of shop machinery.
7114 Use of lift trucks and other portable material-handling equipment.
7115 Use of paint spraying or paint removing equipment.

C. Other Equipment

7121 Construction, rebuilding or dismantling of floating equipment.
7122 Operation of floating equipment.
7123 Servicing of floating equipment.
7124 Maintenance of floating equipment.
7131 Lubricating.
7132 Cleaning.
7133 Icing.
7134 Servicing of car mechanical refrigeration equipment.
7135 Servicing of car heaters.
7136 Construction, reconstruction or removal of servicing facilities.
7137 Maintenance of servicing facilities.

Accidents due to:

7141 Flying objects.
7142 Falling objects.
7143 Electrical flash, shock or burn.
7144 Fire or explosion.
7145 Hot or corrosive substances.
7146 Fumes or gases.
7147 Stumbling, slipping or falling.
7148 Moving car for repairs.
7149 Unexpected movement of car.
7188 Other causes.

CONSTRUCTION OR MAINTENANCE OF FACILITIES FOR EQUIPMENT

7201 Construction, reconstruction or removal of shop buildings or storehouses.
7202 Maintenance of shop buildings or storehouses.
7203 Installation or removal of shop machinery.
7204 Maintenance of shop machinery.

MISCELLANEOUS EQUIPMENT

A. Operation (except on public highways) of

7301 Passenger automobiles.
7302 Buses.
7303 Trucks.
7304 Other highway vehicles and machines.

B. Servicing of

7311 Passenger automobiles.
7312 Buses.
7313 Trucks.
7314 Other highway vehicles and machines.

C. Maintenance of

7321 Passenger automobiles.
7322 Buses.
7323 Trucks.
7324 Other highway vehicles and machines.
7388 Accidents involving other equipment not elsewhere classified.

D. Operation (on public highway) of

7401 Passenger automobiles.
7402 Buses.
7403 Trucks.
7404 Other highway vehicles and machines.

8. WAY AND STRUCTURE

BRIDGES, TUNNELS, CULVERTS, ETC.

8001 Use of hand tools at site.
8002 Use of portable power tools at site.
8003 Use of scaffolds, ladders, etc. at site.
8004 Use of paint spraying or paint removing equipment at site.
8005 Use of cranes, derricks, piledrivers, etc. at site.
8006 Loading or unloading material on cars or trucks.
8007 Moving cars in bridge work.
8008 Use of machinery and other equipment at shop.
8009 Moving cars in tunnel work.
8010 Flying objects.
8011 Falling objects.
8012 Electrical flash, shock or burn.
8013 Fire or explosion.
8014 Fumes or gases.
8015 Stumbling, slipping or falling.
8088 Other causes.

OTHER STRUCTURES

A. Freight or Passenger Stations

8101 Use of hand tools at site.
8102 Use of portable power tools at site.
8103 Use of scaffolds, ladders, etc. at site
8104 Use of paint spraying or paint removing equipment at site.
8105 Use of cranes, derricks, piledrivers, etc. at site.
8106 Loading or unloading material on cars or trucks.
8107 Moving cars in station building structure work.
8108 Use of machinery and other equipment at shop.

B. Roadway Buildings

8111 Use of hand tools at site.
8112 Use of portable power tool at site.
8113 Use of scaffolds, ladders, etc. at site.
8114 Use of paint spraying or paint removing equipment at site.
8115 Use of cranes, derricks, etc. at site.
8116 Loading or unloading material on cars or trucks.
8117 Moving cars in roadway building structure work.
8118 Use of machinery and other equipment at shop.

C. Bridge and Building Department Shop Facilities

8121 Construction, reconstruction or removal of shop buildings or storehouses.
8122 Maintenance of shop buildings or storehouses.
8123 Installation or removal of machinery and other shop equipment.
8124 Maintenance of machinery and other shop equipment.

D. Wharves, Docks, or Floatbridges

8131 Use of hand tools at site.
8132 Use of portable power tools at site.
8133 Use of scaffolds, ladders, etc. at site.
8134 Use of cranes, derricks, piledrivers, etc. at site.
8135 Loading or unloading material on cars, trucks or vessels.
8136 Moving cars in wharf work.
8137 Use of machinery and other equipment at shop.

E. Grain Elevators or Warehouses

8141 Use of hand tools at site.
8142 Use of portable power tools at site.
8143 Use of scaffolds, ladders, etc. at site.
8144 Use of paint spraying or paint removing equipment at site.
8145 Use of cranes, derricks, piledrivers, etc. at site.
8146 Loading or unloading material on cars or trucks.
8147 Moving cars in grain elevator or warehouse work.
8148 Use of machinery and other equipment at shop.

F. Other Miscellaneous Structures

8151 Use of hand tools at site.
8152 Use of portable power tools at site.
8153 Use of scaffolds, ladders, etc. at site.
8154 Use of paint spraying or paint removing equipment at site.
8155 Use of cranes, derricks, piledrivers, etc. at site.
8156 Loading or unloading material on cars or trucks.
8157 Moving cars in miscellaneous structure work.
8158 Use of machinery and other equipment at shop.

Accidents while engaged in work on other structures, due to:

8161 Flying objects.
8162 Falling objects.
8163 Electrical flash, shock or burn.
8164 Fire or explosion.
8165 Fumes or gases.

8166 Stumbling, slipping or falling.
8188 Other causes.

ROADBED

A. Earth or Rock Cuts or Fills

8201 Use of hand tools at site.
8202 Use of portable power tools at site.
8203 Loading or unloading material on cars or trucks.
8204 Moving cars or other on-track machines for earthwork at site.
8205 Moving off-track roadway machines at site.
8206 Use of machinery and other equipment at shop.

B. Retaining Walls and Cribbing

8211 Use of hand tools at site.
8212 Use of portable power tools at site.
8213 Use of scaffolds, ladders, etc. at site.
8214 Use of cranes, derricks, piledrivers, etc. at site.
8215 Loading or unloading material on cars or trucks.
8216 Moving cars in retaining wall work.
8217 Use of machinery and other equipment at shop.
Accidents while engaged in roadbed work, due to:
8221 Flying objects.
8222 Falling objects.
8223 Fire or explosion.
8224 Fumes or gases.
8225 Stumbling, slipping or falling.
8288 Other causes.

TRACK

A. Ties, switch timbers, and tie plates

8301 Inserting or removing by use of hand tools.
8302 Inserting or removing by use of power tools.
8303 Loading or unloading cars or trucks.
8304 Moving cars in tie work.
8305 Machining or other processing at shop.

B. Rail and fastenings

8311 Laying or removing by use of hand tools.
8312 Welding, building-up, cutting or hardening rail at site.
8313 Welding, building-up, cutting or hardening rail at shop.
8314 Loading or unloading cars or trucks.
8315 Moving cars in rail work.

C. Special work

8321 Laying or removing by use of portable tools at site.
8322 Laying or removing by use of cranes or derricks at site.
8323 Welding, building-up, cutting or hardening at site.
8324 Welding, building-up, cutting or hardening at shop.
8325 Loading or unloading material on cars or trucks.
8326 Moving cars in installing or removing special work.
8327 Use of machinery and other equipment at shop in fabricating or assembly of special work.

D. Track and roadway shop facilities

8331 Construction, reconstruction or removal of shop buildings or storehouses.
8332 Maintenance of shop buildings or storehouses.
8333 Installation or removal of machinery and other shop equipment.
8334 Maintenance of machinery and other shop equipment.
Accidents due to:
8341 Flying objects.
8342 Falling objects.
8343 Electrical flash, shock or burn.
8344 Fire or explosion.
8345 Fumes or gases.
8346 Stumbling, slipping or falling.
8388 Other causes.

SIGNAL SYSTEM

A. Block, Interlocking and Highway Crossing Signals

8401 Use of hand tools at site.
8402 Use of portable power tools at site.
8403 Use of scaffolds, ladders, etc. at site.
8404 Use of paint spraying or paint removing equipment.
8405 Use of cranes or derricks at site.
8406 Loading or unloading material on cars or trucks.
8407 Moving cars in signal work.
8408 Use of machinery and other equipment at shop.

B. Signal Shop Facilities

8411 Construction, reconstruction or removal of shop buildings or storehouses.
8412 Maintenance of shop buildings or storehouses.
8413 Installation or removal of machinery and other shop equipment.
8414 Maintenance of machinery and other shop equipment.
Accidents due to:
8421 Flying objects.
8422 Falling objects.
8423 Electrical flash, shock or burn.
8424 Fire or explosion.
8425 Hot or corrosive substances.
8426 Fumes or gases.
8427 Stumbling, slipping or falling.
8488 Other causes.

COMMUNICATIONS SYSTEM

A. Telephone, Telegraph, and Radio Communications

8501 Use of hand tools at site.
8502 Use of portable power tools at site.
8503 Use of ladders, lineman's climbing irons, etc.
8504 Use of pole-setting or other hoisting equipment at site.
8505 Loading or unloading material on cars or trucks.
8506 Moving cars in communications work.
8507 Use of machinery and other equipment at shop.

B. Communications Shop Facilities

8511 Construction, reconstruction or removal of shop buildings or storehouses.
8512 Maintenance of shop buildings or storehouses.
8513 Installation or removal of machinery and other shop equipment.
8514 Maintenance of machinery and other shop equipment.
Accidents due to:
8521 Flying objects.
8522 Falling objects.
8523 Electrical flash, shock or burn.
8524 Fire or explosion.
8525 Hot or corrosive substances.
8526 Fumes or gases.
8527 Stumbling, slipping or falling.
8588 Other causes.

OTHER WAY AND STRUCTURES

A. Operation of Track Motor Cars and Other Roadway Machines

8601 Track motor cars striking each other.
8602 Track motor cars striking other roadway machines.
8603 Track motor cars leaving the track while in motion.
8604 Track motor cars, jumping from, in anticipation of nontrain accident.
8605 Other nontrain accidents involving operation of track motor cars.
8606 Other nontrain accidents involving operation of other roadway machines, not elsewhere classified.

B. Servicing or Maintenance of Roadway Machines

8611 Use of portable tools.
8612 Use of shop machinery.
8613 Construction, reconstruction or removal of shop buildings or storehouses.
8614 Maintenance of shop buildings or storehouses.
8615 Installation or removal of shop machinery.
8616 Maintenance of shop machinery.

C. Power Plants

8621 Construction, reconstruction, installation or removal of power plant buildings and machinery.
8622 Operation of power plant buildings and machinery.
8623 Servicing of power plant buildings and machinery.
8624 Maintenance of power plant buildings and machinery.

D. Substations

8631 Construction, reconstruction, installation or removal of substations.
8632 Operation of substations.
8633 Servicing of substations.
8634 Maintenance of substations.

E. Power Transmission Systems

8641 Construction, reconstruction, installation or removal of power transmission systems.
8642 Operation of power transmission systems.
8643 Servicing of power transmission systems.
8644 Maintenance of power transmission systems.

F. Power Distribution Systems

8651 Construction, reconstruction, installation or removal of power distribution systems.
8652 Operation of power distribution systems.
8653 Servicing of power distribution systems.
8654 Maintenance of power distribution systems.

G. Construction, Maintenance of Fences and Signs

8661 Use of portable tools at site.
8662 Use of paint spraying equipment at site.
8663 Use of paint spraying equipment at shop.
8664 Use of machinery at shop.
Accidents due to:
8671 Flying objects.
8672 Falling objects.
8673 Electrical flash, shock or burn.
8674 Fire or explosion.
8675 Hot or corrosive substances.
8676 Fumes or gases.
8677 Stumbling, slipping or falling.
8688 Other causes.

9. MISCELLANEOUS CAUSES

9001 Operating freight stations, and the freight portion of combination stations.
9002 Handling freight within stations, to or from cars, between cars or within cars, by hand.
9003 Handling freight within stations, to or from cars, between cars or within cars, by power.
9004 Operating passenger stations, and the passenger portion of combination stations.
9005 Handling baggage, express and mail by hand.
9006 Handling baggage, express and mail by power.
9087 Other accidents within stations, not elsewhere classified.
9088 Other accidents to station employees outside stations, not elsewhere classified.
9101 Operating storehouse buildings and equipment and storage yards.
9102 Operating car dumpers, gantry cranes, mules, skip hoists, shakeout devices, etc.
9201 Accidents to yard office employees and others within yard offices.
9202 Accidents to yard office employees and others outside yard offices.

Other miscellaneous accidents

9301 Accidents to crossing and bridge flagmen and gatemen.
9302 Accidents to patrolmen and watchmen.
9303 Accidents to commissary and laundry employees.
Accidents not elsewhere classified, due to:
9401 Flying objects.
9402 Falling objects.
9403 Electrical flash, shock or burn.
9404 Fire or explosion.
9405 Hot or corrosive substances.
9406 Fumes or gases.
9407 Stumbling, slipping or falling.
9488 Accident investigated—other ascertained cause.

UNASCERTAINED CAUSES

9548 Accident investigated—cause undetermined.
9588 Accident not investigated.

ELECTRIC RAILWAYS

§ 125.60 Electric railways; form of report.

(a) All carriers by electric railway subject to the Accident Reports Act, approved May 6, 1910, shall render their monthly accident reports to this Commission on Form L, as adopted for such carriers and shall be subject in all other respects to the provisions of "Rules Governing Monthly Reports of Railroad Accidents". (§§ 125.10–125.55)

(b) Such rules shall be construed in such manner as to be conformable with the tenor of the modified requirements concerning electric railway companies indicated in this section.

[F.R. Doc. 60–12002; Filed, Dec. 28, 1960; 8:45 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER C—CARRIERS BY WATER

[No. 32451]

PART 323—UNIFORM SYSTEM OF ACCOUNTS FOR MARITIME CARRIERS

Miscellaneous Amendments

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 13th day of December 1960.

The matter of accounting regulations prescribed for maritime carriers being under consideration pursuant to provisions of the Interstate Commerce Act, as amended; and,

It appearing, that certain technical modifications of those regulations are necessary in order to provide at this time suitable accounts in which to classify funds which such carriers are now required to maintain pursuant to provisions of the Merchant Marine Act, 1936, as amended, and certain other technical minor amendments are required for clarification and administration of the regulations; and these modifications are of such a nature that, for good cause, the notice of proposed rule making requirements of section 4 of the Administrative Procedure Act are deemed unnecessary; therefore,

It is ordered, That the modifications designated "Modifications in the accounts relating to reserve funds and other matters," which are attached hereto and made a part hereof shall become effective December 30, 1960;

It is further ordered, That this order shall be served on all carriers by water subject to provisions of the Interstate Commerce Act which also operate vessels in foreign service, and every lessor thereof, and on every receiver, trustee, executor, administrator, or assignee of any such carrier or lessor, and notice of this order shall be given to the general public by depositing one order with the attached modifications in the office of the Secretary of the Commission at Washington, D.C., and by filing the order with the Director, Office of the Federal Register.

(Sec. 313, 54 Stat. 944, as amended; 49 U.S.C. 913)

By the Commission, Division 2.

[SEAL] HAROLD D. McCOY, *Secretary.*

Part 323 is amended as follows:

§ 323.301 [Amendment]

Item No. 1. In § 323.301 *Capital reserve fund*, make the following changes and addition:

In subsection 301–1 *Cash and securities*, change the title of this subsection to read: *Cash and securities, nontrust.*

In subsection 301–2 *Discounts and premiums*, change the title of this subsection to read: *Discounts and premiums, nontrust.*

At the end of § 323.301 add the following new and additional paragraph:

301–3 *Common stock trust.* This account shall be charged with the amount of the non-trust portion of the Capital Reserve Fund transferred to the Capital Reserve Fund-Common Stock Trust, the acquisition cost of common stock in which the trust is invested, the income, capital gains, and other principal, and shall be credited with withdrawals therefrom and capital losses in accordance with the provisions of section 607(d) of the Merchant Marine Act, 1936, as amended, and under such rules and regulations as the Maritime Administrator may issue. Subsidiary accounts of the Capital Reserve Fund-Common Stock Trust are to be maintained to record cash, common stocks, and other principal.

§ 323.302 [Amendment]

Item No. 2. In § 323.302 *Special reserve fund*, make the following changes and addition:

In subsection 302–1 *Cash and securities*, change the title of this subsection to read: *Cash and securities, nontrust.*

In subsection 302–2 *Discounts and premiums*, change the title of this subsection to read: *Discounts and premiums, nontrust.*

At the end of § 323.302 add the following new and additional paragraph:

302–3 *Common stock trust.* This account shall be charged with the amount of the non-trust portion of the Special Reserve Fund transferred to the Special Reserve Fund-Common Stock Trust, the acquisition cost of common stock in which the trust is invested, the income, capital gains, and other principal, and shall be credited with withdrawals therefrom and capital losses in accordance with the provisions of section 607(d) of the Merchant Marine Act, 1936, as amended, and under such rules and regulations as the Maritime Administrator may issue. Subsidiary accounts of the Special Reserve Fund-Common Stock Trust are to be maintained to record cash, common stocks, and other principal.

§ 323.306 [Amendment]

Item No. 3. After § 323.306 add the following three new and additional sections:

§ 323.307 Escrow funds.

This account shall be charged with the amounts required to be deposited in the Escrow fund and credited with disbursements therefrom, in connection with the insurance of loans and mortgages financed by sale of bonds to the general public, pursuant to the provisions of section 1111 of the Merchant Marine Act, 1936, as amended, and/or the provisions of contracts or agreements as may be entered into. These funds shall be reported separately and maintained in accordance with such rules and regulations as the Maritime Administrator may issue.

§ 323.308 Construction funds.

This account shall be charged with the amounts required to be deposited therein, representing the difference between the principal of insured bonds and the principal amount required to be deposited in the Escrow fund or such other amounts required by contracts or agreements entered into, and shall be credited with authorized disbursements therefrom. These funds shall be reported separately and maintained in accordance with such rules and regulations as the Maritime Administrator may issue.

§ 323.310 Restricted funds.

This account shall be established at the time of the first deposit required therein, and shall be charged with deposits pursuant to the provisions of contracts or agreements. This account shall be credited with authorized withdrawals therefrom. These funds shall be reported separately and maintained in accordance with such rules and regulations as the Maritime Administrator may issue.

Item No. 4. In § 323.525 *Long-term debt*, add to the text in the appropriate

numerical sequence reference to § 323.527. Make no change in existing reference to §§ 323.526, 323.530, and 323.534.

Item No. 5. After § 323.526 add the following new and additional section:

§ 323.527 U.S. Government insured Merchant Marine Mortgage bonds and mortgage notes.

This account shall include all U.S. Government insured Merchant Marine mortgage bonds and mortgage notes issued pursuant to the provisions of contracts or agreements, and shall be maintained by vessel.

§ 323.530 [Amendment]

Item No. 6. In § 323.530 *Mortgage bonds and debentures,* change the title of this section to read: *Other mortgage bonds and debentures.*

In addition to this change in title, insert in the text between the word "debentures" and the word "and", the following: not provided for in other accounts.

§ 323.779 [Amendment]

Item No. 7. In § 323.779 *Other port expenses,* list of items (5th item), insert "Saint Lawrence Seaway" so that the item will read:

Canal tolls other than Panama, Suez, and Saint Lawrence Seaway Canals (see account 795).

Item No. 8. In § 323.795 *Canal tolls,* text of the section, add "Saint Lawrence Seaway" so that the complete text will read as follows:

§ 323.795 Canal tolls.

This account shall include only the cost of tolls levied against vessels for traversing the Panama Canal, Suez Canal and Saint Lawrence Seaway. Tolls assessed for passage through other canals shall be included in account 779, "Other port expenses."

[F.R. Doc. 60-11928; Filed, Dec. 28, 1960; 8:47 a.m.]

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Mark Twain National Wildlife Refuge, Illinois and Iowa

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ILLINOIS AND IOWA

MARK TWAIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Mark Twain National Wildlife Refuge, Illinois and Iowa is permissible only under the following conditions:

(a) Species permitted to be taken: as prescribed by State regulations.

(b) Open season:

ILLINOIS

In the Calhoun and Batchtown Units of the Mark Twain National Wildlife Refuge the fishing season is open from January 1, 1961 through October 14, 1961.

In the Gardner and Keithsburg Units of the Mark Twain National Wildlife Refuge the fishing season is open from April 1, 1961 through September 30, 1961.

IOWA

In the Lower Louisa Unit of the Mark Twain National Wildlife Refuge the fishing season is open from January 1, 1961 through September 30, 1961.

In the Upper Louisa Unit of the Mark Twain National Wildlife Refuge the fishing season is open from April 1, 1961 through September 30, 1961.

(c) Daily creel limits: as prescribed by State regulations.

(d) Methods of fishing: as prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 5,300 acres and 23 percent of the total refuge and which is described as follows:

ILLINOIS

In Pool 25, Calhoun County, all waters of Swan and Gilbert Lakes within the Calhoun Unit of the Mark Twain Wildlife Refuge.

In Pool 24, Calhoun County, all waters within the boundaries of the Batchtown Unit of the Mark Twain National Wildlife Refuge.

In Pool 21, Adams County, all waters within the boundaries of the Gardner Unit of the Mark Twain National Wildlife Refuge.

In Pool 18, Mercer County, all waters within the boundaries of the Keithsburg Unit of the Mark Twain National Wildlife Refuge.

IOWA

In Pool 17, Louisa County, all waters within the boundaries of the Lower Louisa Unit of the Mark Twain National Wildlife Refuge.

In Pool 18, Louisa County, all waters within the boundaries of the Upper Louisa Unit of the Mark Twain National Wildlife Refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961 through October 14, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 20, 1960.

[F.R. Doc. 60-12049; Filed, Dec. 28, 1960; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Carryover Method of Accounting in Certain Corporate Acquisitions

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381(c)(4) of the Internal Revenue Code of 1954, relating to the carryover of method of accounting in certain corporate acquisitions:

§ 1.381(c)(4) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; method of accounting.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • • •

(4) *Method of accounting.* The acquiring corporation shall use the method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of computing taxable income adopted pursuant to regulations prescribed by the Secretary or his delegate.

§ 1.381(c)(4)–1 Method of accounting.

(a) *Carryover requirement*—(1) *General rule.* (i) Section 381(c)(4) provides that, in a transaction to which section 381(a) applies, an acquiring corporation shall use the same method of accounting used by the distributor or transferor corporation on the date of distribution or transfer unless different methods of accounting were used on that date by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods of accounting were used, the acquiring corporation shall use the method or combination of methods of accounting adopted pursuant to this section.

(ii) The acquiring corporation shall take into its accounts the dollar balances of those accounts of the distributor or transferor corporation representing items of income or deduction which, because of its method of accounting, were not required or permitted to be included or deducted by the distributor or transferor corporation in computing taxable income for taxable years ending on or before the date of distribution or transfer. The acquiring corporation shall similarly take into its accounts the dollar balances of those accounts of the distributor or transferor corporation which represent reserves in respect of which the distributor or transferor corporation has taken a deduction for taxable years ending on or before the date of distribution or transfer. The acquiring corporation shall include or deduct in computing its taxable income any item of income or deduction of the distributor or transferor corporation which the distributor or transferor corporation, by reason of its method of accounting, would have been required or permitted to include or deduct for a taxable year ending after the date of distribution or transfer. The acquiring corporation shall not include or deduct in computing its taxable income any item of income or deduction of the distributor or transferor corporation which the distributor or transferor corporation, by reason of its method of accounting, was required or permitted to include or deduct for a taxable year ending on or before the date of distribution or transfer. Items of income and deduction shall have the same character in the hands of the acquiring corporation as they would have had in the hands of the distributor or transferor corporation or corporations if no distribution or transfer had occurred. This section shall have no application to items of income or deduction, or dollar balances, to the extent they are attributable to assets or obligations not distributed or transferred, and shall have no application to items the tax treatment of which is specifically provided for in other paragraphs of section 381(c).

(2) *Rules of application.* For purposes of section 381(c)(4) and this section, the term "method of accounting" shall have the same meaning as that provided in section 446 and the regulations thereunder. This section shall not be construed as preventing the application of section 269, 453(c), or 482, or the regulations thereunder. For provisions defining the date of distribution or transfer, see paragraph (b) of § 1.381(b)–1. See other paragraphs of section 381(c) and the regulations thereunder for other rules regarding the treatment of the carryover of certain items specifically enumerated therein.

(b) *Conditions for continuation of methods of accounting.* (1) *No differences in methods of accounting.* If all the parties to a section 381(a) transaction used the same method of accounting on the date of distribution or transfer, the acquiring corporation shall continue to use such method of accounting, unless the acquiring corporation has obtained the consent of the Commissioner in accordance with paragraph (e) of § 1.446–1 to use a different method of accounting. This subparagraph may be illustrated by the following examples:

Example (1). X and Y Corporations use the accrual method as their over-all method of accounting. Both corporations have established a reserve for bad debts under section 166(c). Pursuant to elections made by each corporation they are amortizing trademark and trade name expenditures over a 60-month period under section 177, expensing intangible drilling and development costs under section 263(c), and accruing real property taxes ratably under section 461(c). It is assumed that there are no other items of income or deduction to which paragraph (a) of this section might apply. Y Corporation acquires all of the assets of X Corporation in a transaction to which section 381(a) applies. On and after the date of distribution or transfer Y Corporation must continue, without further election, to use the same over-all method of accounting and the same accounting treatment of the specified items, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the methods of accounting. Thus, Y Corporation shall add to the balance in its reserve for bad debts account the balance in X Corporation's reserve for bad debts account, shall continue to amortize and deduct over the remaining portion of the 60-month period the unamortized portion of the trademark and trade name expenditures carried over from X Corporation, and shall continue the same treatment of intangible drilling and development costs and of real property taxes.

Example (2). M and N Corporations use the cash receipts and disbursements method of accounting. N Corporation acquires all the assets and assumes all the obligations of M Corporation in a transaction to which section 381(a) applies. M Corporation, immediately prior to the transaction, is entitled to receive $10,000 for unbilled services performed, and has billed, but not received payment for services performed in an amount of $20,000. It has received but not paid invoices amounting to $18,000, and has received services in the amount of $5,000 for

which no invoices have been received. Since M and N Corporations are both on the cash receipts and disbursements method, N Corporation must continue to use that method, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change its method of accounting. Accordingly, N Corporation must include in income when received the unrealized receivables of M Corporation and may deduct the payment of those obligations of M Corporation which would have been deductible by such corporation if paid by it. Thus, N Corporation shall treat as ordinary income the receipt by it of M Corporation's $30,000 of receivables, and may deduct upon payment the amount of M Corporation's $23,000 of payables which would have been deductible by it.

(2) *Separate businesses.* If, after the date of distribution or transfer, the trades or businesses of the parties to a transaction described in section 381(a) are operated as separate and distinct trades or businesses within the meaning of paragraph (d) of § 1.446–1, then the method of accounting employed by the parties to the transaction on the date of distribution or transfer with respect to each trade or business shall be used by the acquiring corporation, unless the acquiring corporation has obtained the consent of the Commissioner in accordance with paragraph (e) of § 1.446–1 to use a different method of accounting. However, if only a single method of accounting may be employed by a taxpayer with respect to a particular item, but different methods were employed by the several corporations on the date of distribution or transfer with respect to such an item, then the acquiring corporation shall adopt the method of accounting described in paragraph (c) of this section for such an item, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of accounting. This subparagraph may be illustrated by the following examples:

Example (1). M Corporation is engaged in a retail furniture business. N Corporation is engaged in a personal service business. M Corporation uses the accrual method of accounting. N Corporation uses the cash receipts and disbursements method of accounting. M Corporation acquires the assets of N Corporation in a transaction to which section 381(a) applies. In accordance with paragraph (d) of § 1.446–1, M Corporation operates as a separate and distinct trade or business the business formerly operated by N Corporation. Unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of accounting, M Corporation shall continue to use the cash receipts and disbursements method of accounting with respect to the business formerly operated by N Corporation, and shall use the accrual method of accounting with respect to the retail furniture business.

Example (2). Assume the same facts as in example (1), except that N Corporation has elected under section 171 to amortize bond premium with respect to fully taxable bonds. M Corporation has not made the election to amortize bond premium with respect to such bonds owned by it. M Corporation may not continue separate accounting methods as to amortizable bond premium but must consistently apply only a single method of accounting with respect to such bond premium since the election to amortize bond premium applies to all fully taxable bonds held by the taxpayer. M Corporation shall use the method of accounting described in paragraph (c) of this section for such bond premium, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of accounting.

(3) *Integrated businesses.* (i) If, after the date of distribution or transfer, any of the trades or businesses of the parties to a transaction described in section 381(a) are not operated as separate and distinct trades or businesses within the meaning of paragraph (d) of § 1.446–1, then, to the extent that the same methods of accounting were employed on the date of distribution or transfer by the parties to the transaction with respect to any trades or businesses which are integrated or are required to be integrated in accordance with section 446 (d) and the regulations thereunder, the acquiring corporation shall continue to employ such methods of accounting, unless the acquiring corporation has obtained the consent of the Commissioner in accordance with paragraph (e) of § 1.446–1 to use a different method of accounting.

(ii) If, after the date of distribution or transfer, any of the trades or businesses of the parties to a transaction described in section 381(a) are not operated as separate and distinct trades or businesses within the meaning of paragraph (d) of § 1.446–1, then, to the extent that different methods of accounting were employed on the date of distribution or transfer by the parties to the transaction with respect to any trades or business which are integrated or required to be integrated in accordance with section 446(d) and the regulations thereunder, the acquiring corporation shall adopt the method of accounting described in paragraph (c) of this section, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of accounting.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). M and N Corporations both use the accrual method as an over-all method of accounting. M Corporation has established a reserve for bad debts while N Corporation uses the specific charge-off method with respect to its bad debts. M Corporation acquires all of the assets of N Corporation in a transaction to which section 381(a) applies and integrates the business formerly operated by N Corporation into the business operated by M Corporation before the date of distribution or transfer. M Corporation shall continue to use the accrual method as its over-all method of accounting, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change its method of accounting. M Corporation shall use the method of accounting described in paragraph (c) of this section with respect to bad debts, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of accounting.

Example (2). X Corporation conducts two separate and distinct trades or businesses, a personal service business with respect to which the cash receipts and disbursements method of accounting is used and a manufacturing business with respect to which the accrual method of accounting is used. Y Corporation conducts a manufacturing business and uses the accrual method of accounting. Y Corporation acquires all of the assets of X Corporation in a transaction to which section 381(a) applies. After the date of distribution or transfer, Y integrates the manufacturing business formerly operated by X Corporation into the manufacturing business operated by it and continues to operate as a separate and distinct trade or business the personal service business formerly operated by X Corporation. Unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of accounting, Y Corporation shall continue to use the accrual method of accounting with respect to the integrated manufacturing business and shall continue to use the cash receipts and disbursements method of accounting with respect to the personal service business.

(4) *General rules.* In any case where the method of accounting employed on the date of distribution or transfer is continued, it will be unnecessary for the acquiring corporation to renew any election previously made by it or by any distributor or transferor corporation with respect to such method of accounting. Also, the acquiring corporation is bound by the elections previously made by it or by any distributor or transferor corporation with respect to such method of accounting which are in effect on the date of distribution or transfer to the same extent as though the distribution or transfer had not occurred. If, on the date of distribution or transfer, any party to a section 381(a) transaction had no established method of accounting for any item, or came into existence as a result of the transaction, such party shall not be considered to be using a method of accounting for such item or having an over-all method of accounting different from that used by the other parties to the transaction.

(c) *Change of method of accounting without consent of Commissioner—(1) General rule.* If the acquiring corporation may not continue to use, under the provisions of paragraph (b) of this section, the method of accounting used by it or the distributor or transferor corporation or corporations on the date of distribution or transfer, the acquiring corporation shall use the principal method of accounting of such corporations (as defined in subparagraph (2) of this paragraph), unless the acquiring corporation has obtained the consent of the Commissioner in accordance with paragraph (d) of this section to use a different method of accounting. The principal method of accounting shall be used provided that: (i) such method of accounting clearly reflects the income of the acquiring corporation, and (ii) the Commissioner could have granted permission to the acquiring or distributor or transferor corporations to change to the principal method of accounting. If, pursuant to this paragraph, the principal method of accounting is used by the acquiring corporation all adjustments necessary to reflect the change from the method of accounting previously used by any of the corporations involved shall be taken into account by the acquiring corporation. The amount of such adjustments, the manner in which they are to be taken into account by the acquiring corporation, and the tax attributable thereto, shall be determined and computed in the same manner as if, immediately after the date of distribution or transfer, each of the several corporations that were not using the principal method of accounting on the date of distribution or transfer had initiated a change in accounting method. The change in method of accounting shall be treated as initiated by the taxpayer for purposes of section 481, since the corporations voluntarily entered into the transaction which causes the provisions of section 381 to apply. If the acquiring corporation uses the principal method of accounting, it will be unnecessary for the acquiring corporation to renew any election previously made with respect to such principal method of accounting. Also the acquiring corporation is bound by elections previously made with respect to such principal method of accounting which are in effect on the date of distribution or transfer to the same extent as though the distribution or transfer had not occurred.

(2) *Principal method of accounting.* (i) The determination of the principal method of accounting shall be made with reference to each integrated trade or business operated by the acquiring corporation after the date of distribution or transfer, and with reference to the methods of accounting previously employed by the parties with respect to the trades or businesses of such parties which are integrated after the date of distribution or transfer. The following factors, for a representative period, are among those which shall be considered for each group of trades or businesses with respect to which one type of over-all method of accounting common to all was employed and these factors shall be compared with comparable factors for the group of trades or businesses with respect to which another type of over-all method of accounting common to all was employed: (*a*) total assets, (*b*) gross sales, (*c*) net profit, and (*d*) net worth. Whether or not the same over-all method of accounting was employed with respect to all integrated trades or businesses, if the parties to the transaction applied different methods of accounting with respect to particular items of income or deduction a similar comparison of the amount of the item and of related accounts shall be made with respect to such items. Thus, in the case of the treatment of bad debts, trades or businesses which had been using the reserve method of accounting will be compared with the trades or businesses which had been using the specific charge-off method of accounting. The following factors for a representative period are among those to be compared with respect to each group of trades or businesses using the same accounting treatment with respect to bad debts: sales on account, accounts receivable, and the annual deduction with respect to bad debts.

(ii) If there is no principal method of accounting the acquiring corporation shall use the method of accounting adopted in accordance with paragraph (d) of this section.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). M Corporation uses the cash receipts and disbursements method of accounting, while N Corporation uses the accrual method. The principal method of accounting is assumed to be the accrual method. On June 30, 1961, N Corporation acquires all of the assets of M Corporation in a transaction to which section 381(a) applies. N Corporation then integrates its own business with that of M Corporation. N Corporation shall, under such circumstances, use the accrual method of accounting for the integrated business, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of accounting. All adjustments necessary to place the accounts of M Corporation on the accrual method shall be taken into account by N Corporation. Such adjustments shall be determined and computed in the same manner as if M Corporation had initiated a change in method of accounting as of July 1, 1961.

Example (2). Assume the same facts as in example (1) except that N Corporation acquires all the assets of M Corporation with the exception of certain notes receivable on which interest has accrued. In such case, the total adjustment which N must take into account shall not reflect any adjustment attributable to the notes that are not transferred.

Example (3). P and S Corporations use the accrual method of accounting. P Corporation has established a reserve for bad debts and S Corporation uses the specific charge-off method with respect to bad debts. S Corporation acquires all of the assets of P Corporation in a transaction to which section 381 (a) applies. At such time the balance in P Corporation's reserve for bad debt account is $50,000, deductions attributable to which produced a tax benefit. The specific charge-off method with respect to bad debts is assumed to be the principal method of accounting for that item. S Corporation shall carry over into its accounts the balance of $50,000 in P Corporation's reserve for bad debts account. After the date of distribution or transfer S Corporation shall use the accrual method as the over-all method of accounting, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the over-all method of accounting. S Corporation shall use the specific charge-off method with respect to bad debts, and shall include in its income the $50,000 reserve for bad debts of P Corporation, unless consent of the Commissioner has been obtained in accordance with paragraph (d) of this section to use a different method of accounting.

(d) *Change of method of accounting with consent of Commissioner—(1) General rule.* (i) If the acquiring corporation may not continue to use, under paragraph (b), the method of accounting used by it or the distributor or transferor corporation or corporations on the date of distribution or transfer, or may not under paragraph (c) use the principal method of accounting, then the acquiring corporation shall request the Commissioner to determine the appropriate method, or combination of methods, of accounting to be used.

(ii) If an acquiring corporation, to which paragraph (c) of this section applies, wishes to use a method, or combination of methods, of accounting other than the principal method of accounting it shall apply to the Commissioner for permission to use such other method, or combination of methods, of accounting. Permission to use such other method, or combination of methods, of accounting will not be granted unless the acquiring corporation and the Commissioner agree to the terms, conditions and adjustments under which the change to such method or combination of methods will be effected.

(iii) The adjustments necessary to reflect the change from the method of accounting previously used by any of the corporations involved shall be taken into account by the acquiring corporation. The amount of such adjustments, the manner in which they are to be taken into account by the acquiring corporation, and the tax attributable thereto shall be determined and computed in the same manner as if, immediately after the date of distribution or transfer, each of the several corporations, that were not on the date of distribution or transfer using the method or combination of methods of accounting adopted pursuant to subdivision (i) or (ii) of this subparagraph, had initiated a change of accounting method.

(2) *Time and manner of making application.* Applications under subparagraph (1) of this paragraph for permission to use a method of accounting, or requests for determination of the method of accounting to be used shall be filed with the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C., not later than 90 days after the date of distribution or transfer. The application shall be accompanied by a copy of the statement described in paragraph (b)(3) of § 1.381(b)–1, and by a statement specifying the nature of the transaction which causes section 381 to apply; the differences in accounting methods used by the corporations concerned; the method or methods of accounting proposed to be used by the acquiring corporation; and the various amounts, if any, of items of income or deduction which will be duplicated or omitted in the computation of taxable income under such proposed method or methods. The Commissioner may also require such other information as may be necessary in order to determine the proper method or methods of accounting to be used by the acquiring corporation.

[F.R. Doc. 60–10278; Filed, Dec. 28, 1960; 8:49 a.m.]

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Carryover of Inventories in Certain Corporate Acquisitions

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., with-

in the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381(c)(5) of the Internal Revenue Code of 1954, relating to the carryover of inventories in certain corporate acquisitions:

§ 1.381(c)(5) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; inventories.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • • •

(5) *Inventories.* In any case in which inventories are received by the acquiring corporation, such inventories shall be taken by such corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventory adopted pursuant to regulations prescribed by the Secretary or his delegate.

§ 1.381(c)(5)–1 Inventories.

(a) *Carryover requirement.*—(1) *In general.* Section 381(c)(5) provides that, in a transaction to which section 381(a) applies and in which inventories are received by the acquiring corporation, such inventories shall be taken by the acquiring corporation (in determining its income) on the same basis on which such inventories were taken by the distributor or transferor corporation, unless different inventory methods were used by several distributor or transferor corporations or by a distributor or transferor corporation and the acquiring corporation. If different methods were used, the acquiring corporation shall use the method or combination of methods of taking inventories adopted pursuant to this section.

(2) *Rules of application.* References in this section to a method or methods of taking inventories are to be construed as referring to both the method or methods of identifying the goods and the method or methods of valuing the goods. The method or methods of taking inventories shall be determined as of the date of distribution or transfer and any corporation, a party to a section 381(a) transaction, whose taxable year does not end on such date shall be considered as using the method or methods of taking inventories that it would have employed had its taxable year ended on such date. This section shall not be construed as preventing the acquiring corporation from adopting an inventory method which, under the provisions of section 471 or 472, and the regulations thereunder, may be adopted without the consent of the Commissioner. For provisions defining the date of distribution or transfer, see paragraph (b) of § 1.381(b)–1.

(b) *Conditions for continuation of methods of taking inventories*—(1) *No differences in methods of taking inventories.* If all the parties to a section 381(a) transaction used the same method of taking inventories on the date of distribution or transfer, the acquiring corporation shall continue to use such method of taking inventories, unless the acquiring corporation has obtained the consent of the Commissioner, in accordance with paragraph (e) of § 1.446–1, to use a different method of taking inventories. This subparagraph may be illustrated by the following examples:

Example (1). Y and Z Corporations are manufacturing concerns which compute their entire inventories on the first-in first-out method of identification and the cost or market, whichever is lower, method of valuation. Z Corporation acquires all the assets of Y Corporation in a transaction to which section 381(a) applies. On and after the date of distribution or transfer Z Corporation must continue, without further election, to use the first-in first-out method of identifying and the cost or market, whichever is lower, method of valuing all its inventories, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of taking inventories.

Example (2). O and P Corporations are manufacturing companies which compute their entire inventories by the use of the last-in first-out method of identification and the cost basis of valuation. In applying the last-in first-out method both corporations use the dollar-value method, use the double-extension method, pool under the natural business unit method, and value annual inventory increases by reference to the actual cost of goods most recently purchased. P Corporation acquires the assets of O Corporation in a transaction to which section 381(a) applies. On and after the date of distribution or transfer P Corporation must continue, without further election, to use the last-in first-out method of identification, the cost basis of valuation, and, in applying the last-in first-out method, must continue to use the dollar-value method, use the double-extension method, pool under the natural business unit method, and value annual inventory increases by reference to the actual cost of goods most recently purchased, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of taking inventories.

(2) *Separate businesses.* If, after the date of distribution or transfer, the trades or businesses of the parties to a transaction described in section 381 (a) are operated as separate and distinct trades or businesses within the meaning of paragraph (d) of § 1.446–1, then the method or methods of taking inventories employed by the parties to the transaction on the date of distribution or transfer with respect to each trade or business shall be used by the acquiring corporation, unless the acquiring corporation has obtained the consent of the Commissioner, in accordance with paragraph (e) of § 1.446–1, to use a different method of taking inventories. This subparagraph shall not be construed as precluding the Commissioner under section 471 or 472, and the regulations thereunder, from requiring that the method of taking inventories used in a particular trade or business be used in another trade or business with respect to similar types of goods if, in the opinion of the Commissioner, the use of such method of taking inventories is essential to a clear reflection of income. See paragraph (e) of this section for special rules relating to the use of the last-in first-out method. This paragraph may be illustrated by the following example:

Example. R Corporation is engaged in the production of radios and television sets, and S Corporation is engaged in the production of washers and driers. In computing their inventories both corporations use the cost basis of valuation. R Corporation uses the last-in first-out method of identification, whereas S Corporation uses the first-in first-out method. T Corporation acquires the assets of R Corporation and S Corporation in a transaction to which section 381(a) applies. In accordance with paragraph (d) of § 1.446–1, T Corporation operates as a separate and distinct trade or business each of the businesses formerly operated by R Corporation and S Corporation. Unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the methods of taking inventories, on and after the date of transfer, T Corporation is required to continue to use the method of taking inventories previously used by R Corporation and S Corporation respectively, with respect to each trade or business. However, the Commissioner may require T Corporation to use the last-in first-out method with respect to that portion of the goods in the trade or business formerly operated by S Corporation which are similar to goods in the trade or business formerly operated by R Corporation, if, in his opinion, the use of the last-in first-out method with respect to such similar goods is essential to a clear reflection of income.

(3) *Integrated businesses.* (i) If, after the date of distribution or transfer, any of the trades or businesses of the parties to a transaction described in section 381(a) are not operated as separate and distinct trades or businesses within the meaning of paragraph (d) of § 1.446–1, then, to the extent that the same methods of taking inventories for particular types of goods were employed on the date of distribution or transfer by the parties to the transaction with respect to any trades or businesses which are integrated or are required to be integrated in accordance with section 446(d) and the regulations thereunder, the acquiring corporation shall continue to employ such methods of taking inventories for such types of goods unless the acquiring corporation has obtained the consent of the Commissioner, in accordance with paragraph (e) of § 1.446–1, to use a different method of taking inventories. This subdivision shall not be construed as precluding the Commissioner under section 471 or 472, and the regulations thereunder, from requiring that the

method of taking inventories used in a particular trade or business operated by the acquiring corporation after the date of distribution or transfer with respect to similar types of goods, to be used in another trade or business operated by it after such date if, in the opinion of the Commissioner, the use of such method of taking inventories is essential to a clear reflection of income. However, see paragraph (e) of this section for special rules relating to the use of the last-in first-out method.

(ii) If, after the date of distribution or transfer, any of the trades or businesses of the parties to a transaction described in section 381(a) are not operated as separate and distinct trades or businesses within the meaning of paragraph (d) of § 1.446–1, then, to the extent that different methods of taking inventories for particular types of goods were employed on the date of distribution or transfer by the parties to the transaction with respect to any trades or businesses which are integrated or required to be integrated in accordance with section 446(d) and the regulations thereunder, the acquiring corporation shall adopt the method of taking inventories for such types of goods described in paragraph (c) of this section, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of taking inventories.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). O and P Corporations are manufacturing companies which compute their entire inventories by the use of the last-in first-out method of identification and the cost basis of valuation. In applying the last-in first-out method both corporations use the dollar-value method and both use the double-extension method. However, O Corporation pools under the natural business unit method while P Corporation pools under the multiple pool method and O Corporation has elected to value its annual inventory increase by reference to the actual cost of goods most recently purchased, whereas P Corporation has elected to value such increase by reference to the actual cost of the goods purchased during the taxable year in the order of acquisition. P Corporation acquires the assets of O Corporation in a transaction to which section 381(a) applies and integrates the business formerly operated by O Corporation into the business which was operated by P Corporation before the date of the distribution or transfer. P Corporation shall continue to use the last-in first-out method of identification, the cost basis of valuation, and in applying the last-in first-out method, shall continue to use the dollar-value method and the double-extension method, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of taking inventories. P Corporation shall use the method of taking inventories described in paragraph (c) of this section with respect to the method of pooling and the method of valuing annual inventory increases, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of taking inventories.

Example (2). Y and Z Corporations are engaged in the manufacture of cereal products. Y Corporation uses the first-in first-out method of identifying and the cost or market, whichever is lower, method of valuing its inventories including oats. Z Corporation uses the first-in first-out method of identifying and the cost or market, whichever is lower, method of valuing its inventories, except oats which are valued on the cost method. Y Corporation acquires all of the assets of Z Corporation in a transaction to which section 381(a) applies and integrates the business formerly operated by Z Corporation into the business which was operated by Y Corporation before the date of the distribution or transfer. Y Corporation must continue to use the first-in first-out method with respect to all of its inventories and must continue to use the cost or market, whichever is lower, method of valuing all inventories except oats, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of taking inventories. Y Corporation shall use the method described in paragraph (c) of this section in valuing its inventory of oats, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of taking inventories.

(4) *General rules.* In any case where the method of taking inventories employed on the date of distribution or transfer is continued, it will be unnecessary for the acquiring corporation to renew any election previously made by it or by any distributor or transferor corporation with respect to such method of taking inventories. Also, in such case, the acquiring corporation is bound by the elections previously made by it or by any distributor or transferor corporation with respect to such method of taking inventories which are in effect on the date of distribution or transfer to the same extent as though the distribution or transfer had not occurred. If, on the date of distribution or transfer, any party to a section 381(a) transaction had no inventories of a particular type of goods, or came into existence as a result of the transaction, such party shall not be considered to be using a method of taking inventories for the particular type of goods different from that used by the other parties to the transaction. If, on the date of distribution or transfer, any one of the parties to the transaction is not required to take inventories by reason of the use of the cash receipts and disbursements method of accounting, the determination as to whether this method of accounting is to be continued by the acquiring corporation shall be made in accordance with section 381(c)(4) and the regulations thereunder. The acquiring and the various distributor or transferor corporations shall not be considered to be taking inventories on different methods on the date of distribution or transfer merely because the several corporations use different cost accounting systems in computing the cost of inventories. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). M Corporation is engaged in manufacturing and computes its inventories under the first-in first-out method of identification and the cost or market, whichever is lower, method of valuation. N Corporation is also engaged in manufacturing and computes its inventories under the first-in first-out method of identification and the cost method of valuation. M Corporation acquires the assets of N Corporation in a transaction to which section 381(a) applies and M Corporation integrates the business formerly operated by N Corporation into the business which was operated by M Corporation before the date of distribution or transfer. On the date of distribution or transfer, N Corporation has inventories of sheet steel while M Corporation has no inventories of this particular type of goods. In all other respects the inventories of the two corporations consist of similar types of goods. M Corporation shall use the first-in first-out method of identification and the cost method of valuation of inventories of sheet steel, unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of taking such inventories. For the other goods in its inventories M Corporation shall use the method of taking inventories described in paragraph (c), unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of taking inventories.

Example (2). W Corporation is engaged in the business of raising cattle and uses the cash receipts and disbursements method of computing taxable income under which method inventories are not required to be taken into account. X Corporation is also engaged in the business of raising cattle, and uses the accrual method as an over-all method of accounting under which it has elected to use the "farm-price method" of valuing inventories. The assets of W Corporation are acquired by X Corporation in a transaction to which section 381(a) applies and X Corporation integrates the business formerly operated by W Corporation into the business which was operated by X Corporation before the date of distribution or transfer. Whether X Corporation is required to take inventories will depend upon which over-all method of accounting is used by X Corporation after the date of distribution or transfer in accordance with the provisions of section 381(c)(4) and the regulations thereunder. If the cash receipts and disbursements method is used, X Corporation will not be required to take inventories into account in computing its taxable income. However, if X Corporation uses the accrual method then it shall use the "farm-price method" of taking inventories, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use a different method of taking inventories.

(c) *Change of method of taking inventories without consent of Commissioner*—(1) *General rule.* If the acquiring corporation may not continue to use, under the provisions of paragraph (b) of this section, the method of taking inventories used by it or the distributor or transferor corporation or corporations on the date of distribution or transfer, the acquiring corporation shall use the principal method of taking inventories for particular types of goods of such corporation (as defined in subparagraph (2) of this paragraph), unless the acquiring corporation has obtained the consent of the Commissioner in accordance with paragraph (d) of this section to use a different method of taking inventories for such types of goods. The principal method of taking inventories shall be used provided that, in the opinion of the Commissioner, such method clearly reflects the income of the acquiring corporation. If, pursuant to this paragraph, the principal method of taking inventories is used by the acquiring corporation all adjustments necessary to reflect the change from the method of taking inventories previously used by

any of the corporations involved shall be taken into account by the acquiring corporation. The amount of such adjustments, the manner in which they are to be taken into account by the acquiring corporation, and the tax attributable thereto, shall be determined and computed in the same manner as if, immediately after the date of distribution or transfer, each of the several corporations that were not using the principal method of taking inventories on the date of distribution or transfer had initiated a change in accounting method. The change in method of accounting shall be treated as initiated by the taxpayer for purposes of section 481, since the corporation voluntarily entered into the transaction which causes the provisions of section 381 to apply. If, pursuant to this paragraph, the acquiring corporation uses the principal method of taking inventories, it will be unnecessary for the acquiring corporation to renew any election previously made with respect to such principal method of taking inventories. Also, in such case, the acquiring corporation is bound by elections previously made with respect to such principal method of taking inventories which are in effect on the date of distribution or transfer to the same extent as though the distribution or transfer had not occurred.

(2) *Principal method of taking inventories.* (i) The determination of the principal method of taking inventories shall be made with reference to particular types of goods of each integrated trade or business operated by the acquiring corporation after the date of distribution or transfer, and with reference to the methods of taking inventories previously employed by the parties with respect to such types of goods of the trades or businesses of such parties which are integrated after the date of distribution or transfer. The fair market value of the particular types of goods, for a representative period for each group of trades or businesses with respect to which one method of taking inventories common to all was employed shall be compared with the fair market value of comparable goods for such period for other groups of trades or businesses with respect to which another method of taking inventories common to all was employed. The method of taking inventories with respect to a particular type of goods for the group of trades or businesses having the largest fair market value of such goods for a representative period shall be the principal method of taking inventories for that particular type of goods.

(ii) If there is no principal method of taking inventories, the acquiring corporation shall use the method of taking inventories adopted in accordance with paragraph (d) of this section.

(3) The provisions of this paragraph may be illustrated by the following example:

Example. X, Y, and Z Corporations are all engaged in the manufacture of sheet metal. In addition, Y and Z Corporations are engaged in the manufacture of paper containers. X and Y Corporations use the first-in first-out method of identifying goods and the cost method of valuation for all inventories, while Z Corporation uses the first-in first-out method of identifying goods and the cost or market, whichever is lower, method of valuation for all inventories. X, Y, and Z Corporations enter into a transaction to which section 381(a) applies, and the acquiring corporation integrates the sheet metal businesses formerly operated by X, Y, and Z Corporations and also integrates the paper container businesses formerly operated by Y and Z Corporations. The fair market value of the inventories of the sheet metal business for a representative period is $10,000 for X Corporation, $7,000 for Y Corporation, and $15,000 for Z Corporation and each corporation has the same types of goods in the inventories of its sheet metal business. The fair market value of the inventories of the paper container business for a representative period is $6,000 for Y Corporation and $7,000 for Z Corporation and each corporation has the same type of goods in the inventories of its paper container business. The acquiring corporation shall continue to use the first-in first-out method of identifying all goods unless consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446–1 to change the method of accounting. In determining which is the principal method of valuing inventories for the sheet metal business, the total fair market value of inventories in the sheet metal business of X Corporation and Y Corporation is compared with the fair market value of the inventories in the sheet metal business of Z Corporation. Since the total fair market value ($17,000) for the inventories of the sheet metal businesses of X Corporation and Y Corporation exceeds the fair market value ($15,000) of the inventories of the sheet metal business of Z Corporation, the cost method of valuation is the principal method of taking such inventories. Since the fair market value of the paper container inventories of Z Corporation exceeds the fair market value of the paper container inventories of Y Corporation, the cost or market, whichever is lower, method of valuation is the principal method of taking such inventories. The acquiring corporation shall use the cost method of valuation of the inventories of its sheet metal business, and the cost or market, whichever is lower, method of valuation of the inventories of its paper container business, unless consent of the Commissioner is obtained in accordance with paragraph (d) of this section to use different methods of taking inventories.

(d) *Change of method of taking inventories with consent of the Commissioner*—(1) *General rule.* (i) If the acquiring corporation may not continue to use, under paragraph (b) of this section, the method of taking inventories used by it or the distributor or transferor corporation or corporations on the date of distribution or transfer, or may not, under paragraph (c) of this section, use the principal method of taking inventories, then the acquiring corporation shall request the Commissioner to determine the appropriate method of taking inventories.

(ii) If an acquiring corporation, to which paragraph (c) of this section applies, wishes to use a method of taking inventories other than the principal method of taking inventories for a particular type of goods it shall apply to the Commissioner for permission to use such other method of taking inventories. Permission to use such other method of taking inventories will not be granted unless the acquiring corporation and the Commissioner agree to the terms, conditions, and adjustments under which the change to such method will be effected.

(iii) The adjustments necessary to reflect the change from the method of taking inventories previously used by any of the corporations involved shall be taken into account by the acquiring corporation. The amount of such adjustments, the manner in which they are to be taken into account by the acquiring corporation, and the tax attributable thereto shall be determined and computed in the same manner as if, immediately after the date of distribution or transfer, each of the several corporations, that were not on the date of distribution or transfer using the method of taking inventories adopted pursuant to subdivision (i) or (ii) of this subparagraph, had initiated a change of accounting method.

(2) *Time and manner of making application.* Applications under subparagraph (1) of this paragraph for permission to use a method of taking inventories, or request for a determination of the method of taking inventories to be used, shall be filed with the Commissioner of Internal Revenue, Attention: T:R, Washington 25, D.C., not later than 90 days after the date of distribution or transfer. The application shall be accompanied by a copy of the statement described in paragraph (b)(3) of § 1.381(b)–1, and by a statement specifying the nature of the transaction which causes section 381 to apply; the differences in methods of taking inventories used by the corporations concerned; the method of taking inventories proposed to be used by the acquiring corporation; and the amounts of adjustments necessary to prevent duplication or omission in the computation of taxable income under such proposed method. The Commissioner may also require such other information as may be necessary in order to determine the proper method of taking inventories to be used by the acquiring corporation.

(e) *Special rules under last-in first-out method.* (1) *Permission to use last-in first-out method.* Notwithstanding the provisions of paragraph (b) or (c) of this section, in any case where the last-in first-out method has been used with respect to a particular type of goods by any party to a transaction to which section 381(a) applies, the acquiring corporation may elect, without the consent of the Commissioner, to use the last-in first-out method with respect to all goods of the same type without regard to the principal method of taking inventories. In such a case, the acquiring corporation shall not be required to file a new Form 970 electing the last-in first-out method for goods of that type, but shall include these goods under the election made by the party which elected the last-in first-out method with respect to the particular type of goods.

(2) *Carryover of base year inventories and layers of increment.* In any case where the acquiring corporation is required or permitted to use the last-in first-out method the base-year inventories and any layers of increment for such inventories prior to the date of the transaction to which section 381 (a) applies must be retained, except that all base-year inventories or layers of increment which occur in the same taxable year must be combined.

(3) *Section 1321 election.* For purposes of applying section 1321, and the regulations thereunder, relating to the involuntary liquidation of last-in first-out inventories the acquiring corporation shall be treated as though it were the distributor or transferor corporation.

(f) *Basis of inventories received.* The basis of inventories received by the acquiring corporation from a distributor or transferor corporation shall be determined in accordance with section 334(b)(1) or 362(b), and the regulations thereunder. See also section 1013, and the regulations thereunder.

[F.R. Doc. 60–12095; Filed, Dec. 28, 1960; 8:50 a.m.]

[26 CFR (1954) Part 48]

EXCLUSION OF LOCAL ADVERTISING CHARGES FROM SALE PRICE, FOR PURPOSES OF MANUFACTURERS EXCISE TAXES AND READJUSTMENT OF SALE PRICE FOR PURPOSES OF SUCH TAXES, BY REASON OF ALLOWANCES FOR SUCH ADVERTISING

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954, as amended (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

The following regulations relating to the exclusion of local advertising charges from sale price, for purposes of the manufacturers excise taxes, and the readjustment of sale price, for purposes of such taxes, by reason of allowances for local advertising, are hereby prescribed under sections 4216(f) and 6416(b)(1), respectively, of the Internal Revenue Code of 1954. The regulations are applicable with respect to articles sold on or after January 1, 1961. To the extent of the subject matter within the scope thereof, such regulations supersede the Regulations on Determination of Price and Price Readjustments (26 CFR (1939) Part 330).

Subpart M—Special Provisions Applicable to Manufacturers Taxes

§ 48.4216(f) Statutory provisions; definition of price; exclusion of local advertising charge from sale price.

SEC. 4216. *Definition of price.* • • •

(f) *Exclusion of local advertising charge from sale price*—(1) *Exclusion.* In determining for purposes of this chapter, the price for which an article is sold, there shall be excluded a charge for local advertising (as defined in paragraph (4)) to the extent that such charge—

(A) Does not exceed 5 percent of the price for which the article is sold (as determined under this section by excluding any charge for local advertising),

(B) Is a separate charge made when the article is sold, and

(C) Is intended to be refunded to the purchaser or any subsequent vendee in reimbursement of costs incurred for local advertising.

In the case of any such charge (or portion thereof) which is not so refunded before the first day of the fifth calendar month following the calendar year during which the article was sold, the exclusion provided by the preceding sentence shall cease to apply as of such first day.

(2) *Aggregate amount which may be excluded.* In the case of articles upon the sale of which tax was imposed under the same section of this chapter—

(A) The sum of (i) the aggregate of the charges for local advertising excluded under paragraph (1), plus (ii) the aggregate of the readjustments for local advertising under section 6416(b)(1) (relating to credits or refunds for price readjustments), shall not exceed

(B) 5 percent of the aggregate of the prices (determined under this section by excluding all charges for local advertising) at which such articles were sold in sales on which tax was imposed by such section of this chapter.

The preceding sentence shall be applied to each manufacturer, producer, and importer as of the close of each calendar quarter, taking into account the items specified in subparagraphs (A) and (B) for such calendar quarter and preceding calendar quarters in the same calendar year.

(3) *No adjustment for other advertising charges.* Except to the extent provided by paragraphs (1) and (2), no charge or expenditure for advertising shall serve, for purposes of this section or section 6416(b)(1), as the basis for an exclusion from, or as a readjustment of, the price of any article.

(4) *Local advertising defined.* For purposes of this section and section 6416(b)(1), the term "local advertising" means only advertising which—

(A) Is initiated or obtained by the purchaser or any subsequent vendee,

(B) Names the article for which the price is determinable under this section and states the location at which such article may be purchased at retail, and

(C) Is broadcast over a radio station or television station or appears in a newspaper.

[Sec. 4216(f) as added by sec. 1, Act of Sept. 14, 1960 (Pub. Law 86–781, 74 Stat. 1017)]

§ 48.4216(f)–1 Exclusion of local advertising charges from sale price.

(a) *In general.* Section 4216(f) deals with the treatment to be accorded charges made by a manufacturer for, and reimbursements by a manufacturer of expenditures in connection with, the advertising of certain articles subject to excise tax under chapter 32 of the Code. Section 4216(f) provides an exclusion (which is in addition to the exclusions provided by section 4216(a) and the regulations thereunder) in respect of charges for local advertising, as defined in paragraph (b) of this section, for purposes of determining the price for which an article is sold. See paragraph (c) of this section. The exclusion provided by section 4216(f) and paragraph (c) of this section has application only in respect of articles sold on or after January 1, 1961. Section 4216(f) also provides an over-all limitation in respect of the sum of the amount of the exclusions from price as charges for local advertising and the amount of the readjustments authorized under section 6416(b)(1) (relating to credits or refunds for price readjustments) in respect of reimbursements by a manufacturer of expenditures for local advertising. See § 48.4216(f)–2. For provisions prohibiting exclusion from price or readjustment of price in respect of charges for, and reimbursements of expenditures for, advertising other than local advertising, see § 48.4216(f)–3.

(b) *Definition of local advertising*—(1) *In general.* For purposes of the regulations under sections 4216(f) and 6416(b)(1), the term "local advertising" means advertising which relates to an article with respect to which tax is imposed under chapter 32 of the Code on the price for which sold and which—

(i) Is initiated or obtained by the purchaser or any subsequent vendee,

(ii) Names the article for which the price is determinable under section 4216 and states the location at which such article may be purchased at retail, and

(iii) Is broadcast over a radio station or television station or appears in a newspaper.

(2) *Initiating or obtaining advertising.* For purposes of subparagraph (1) of this paragraph, the advertising must be initiated or obtained by one or more of the persons in the chain of distribution of the article (wholesale distributor, jobber, dealer, etc.) who purchased the article for resale. In general, advertising of an article is considered to be initiated or obtained by one or more persons in the chain of distribution of the article if any such person—

(i) Takes an active part in the actual planning and development, or in the arrangements or negotiations leading to the development, of the form and content of the advertising, or

(ii) Contracts for the placement of the advertising.

The participation by the manufacturer of the article in the planning, development, or placement of the advertising is immaterial provided the advertising is in fact initiated or obtained by one or more

persons in the chain of distribution of the article. Furthermore, it is immaterial whether or not the advertising is subject to the approval of the manufacturer of the article. However, if the manufacturer of the article both initiates and obtains advertising, such advertising does not qualify as "local advertising".

(3) *Identification of article and sales location.* To meet the requirements of subparagraph (1) of this paragraph, the advertising must identify the article for which the price is determinable under section 4216 and give the location at which the article may be purchased at retail. All products taxable at the same rate under the same section of chapter 32 of the Code shall be considered to be an "article" for purposes of the preceding sentence. No specific method or means of identification is prescribed. The identification of the article may be made through the use of the name of the manufacturer or the use of an established trade-mark, such as a seal, picture, letter or letters, etc., or a combination thereof. The advertising must identify the particular retail establishment at which the article may be purchased at retail but need not specify the location of such establishment in terms of the number by which the premises are designated or the name of the street on which the retail premises are situated. However, the location of the retail premises must be described sufficiently, as, for example, by reference to a particular named shopping area or shopping center, to enable consumers to find the retail establishment.

(4) *Determination of costs of local advertising.* Where an advertisement identifies more than one article, and all such articles are not taxable, or are not taxable at the same rate under the same section of chapter 32 of the Code, a reasonable allocation of the cost of the advertisement must be made among (i) articles taxable at the same rate under the same section of the Code and (ii) articles which are not taxable under chapter 32 of the Code. For example, in the case of a single page newspaper advertisement, an allocation of costs reflecting the lineage or space devoted to the specified categories will be considered to reflect a reasonable allocation of the cost of advertising the different articles. As a general rule, only the cost of the "spot" portion identifying the retail establishment is considered "local advertising" in the case of national television or radio programs.

(5) *Meaning of "newspaper".* The term "newspaper", as used in subparagraph (1) of this paragraph, is limited to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. The term does not include handbills, circulars, flyers, or the like, unless printed and distributed as a part of a publication which constitutes a newspaper within the meaning of this subparagraph. Neither does the term include any publication which is issued to supply information on certain subjects of interest to particular groups, unless such publication otherwise qualifies as a newspaper within the meaning of this subparagraph. For purposes of this subparagraph, advertising is not considered to be news of a general character and of a general interest.

(c) *Exclusion—(1) Conditions and limitations.* A charge for local advertising which is required by a manufacturer to be paid as a condition to his sale on or after January 1, 1961, of an article is not a part of the taxable price of the article, to the extent that such charge meets each of the following conditions and limitations:

(i) Such charge does not exceed 5 percent of the difference between (*a*) an amount which would constitute the taxable price of the article (computed at the time of the sale of the article) if no part of any charge for local advertising were excludable in computing taxable price and (*b*) the amount of any separate charge for local advertising, whatever the amount of such charge may be.

(ii) Such charge is specifically shown as a separate charge for local advertising on the invoice or statement covering the sale of the article.

(iii) Such charge is billed by the manufacturer with the intention on his part of repaying the amount of the charge to the person purchasing the article from him, or to any person who subsequently purchases the article for resale, in reimbursement of costs incurred for local advertising of such article or some other article or articles taxable at the same rate under the same section of the Code. In the absence of evidence to the contrary, the fact of such intention will be assumed in all cases where the manufacturer and his vendees are parties to an advertising plan which calls for such repayments, or the manufacturer can otherwise establish that the vendees to whom he bills such charges understand and expect that such repayments will be made.

(2) *When exclusion ceases to apply.* To the extent that a charge for local advertising meets the conditions and limitations stated in subparagraph (1) of this paragraph, such charge is excludable in computing the taxable price of the article in respect of which the charge was made. However, the exclusion will cease to apply in respect of any part of such charge which the manufacturer fails to repay, before May 1 of the calendar year following the calendar year in which the article was sold, to the person who purchased the article from him, or to some other person who subsequently purchases the article for resale, in reimbursement of costs incurred for local advertising of such article or some other article or articles taxable at the same rate under the same section of the Code. If, on such May 1, any part of the charge so excluded has not been so repaid, the manufacturer becomes liable for tax at that time in the same manner as if an article taxable under such section of the Code had been sold by him on such May 1 at a taxable price equivalent to that part of the charge not so repaid. However, see paragraph (c)(2) of § 48.6416(b)–1, relating to price readjustments in cases where local advertising charges are not repaid as of such May 1 but are subsequently paid over by the manufacturer to his vendees in reimbursement of costs for local advertising. For provisions relating to the method of determining whether a payment by a manufacturer is or is not attributable to an excluded local advertising charge, see paragraph (b)(3) of § 48.4216(f)–2. In any case where the payment is determined to be attributable to such a charge, the date of the sale in connection with which the charge was made shall be determined on a first-in-first-out basis in respect of the vendee to whom the charge was billed by the manufacturer.

(d) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). During the first calendar quarter of 1961, a manufacturer sold refrigerators to one of his distributors at a total charge of $10,500, exclusive of tax, transportation charges, delivery charges, or other charges which are excludable in computing taxable price pursuant to section 4216(a). This total charge of $10,500 was billed as follows:

Refrigerators	$10,000
Local advertising charge	500
Total charge	10,500

At the time of the manufacturer's sale of the refrigerators, it was his intention, in accordance with the agreement between him and the distributor, to make repayment to the distributor of the local advertising charge, to the extent of expenditures by the distributor for radio, television, or newspaper advertising specifically naming refrigerators or other articles taxable at the same rate under section 4111 which were manufactured by the manufacturer, and giving the location of various retail stores within the distributor's territory where such articles may be purchased. Pursuant to such agreement, the selection of the advertising medium to be employed is to be made by the distributor, who is to plan the advertising subject to approval by the manufacturer, and contract for its placement. In this example, the advertising for which the charge is made qualifies as local advertising, the charge is billed to the manufacturer's vendee as a separate charge, the manufacturer intends to repay the charge to his vendee in reimbursement of costs incurred by the vendee for local advertising, and the charge does not exceed 5 percent of $10,000. Accordingly, the manufacturer's charge of $500 for local advertising is not includible in the taxable price of the refrigerators for purposes of computing and paying the tax imposed by section 4111.

Example (2). Assume the same facts as those stated in Example (1), and assume further that prior to May 1, 1962, the manufacturer has repaid to the distributor, in reimbursement of local advertising expenses incurred by the distributor in connection with refrigerators or other articles taxable at the same rate under section 4111 sold to him by the manufacturer, $400 of the $500 billed as a local advertising charge by the manufacturer in connection with his sale of refrigerators to the distributor in the first quarter of 1961. The manufacturer is liable, as of May 1, 1962, for tax in respect of the $100 which has not been repaid to the distributor. The amount of the tax is determinable at the rate in effect under section 4111 on May 1, 1962, in respect of refrigerators and is includible in the manufacturer's return of tax under such section for the second quarter of 1962.

Example (3). During the first calendar quarter of 1961, a manufacturer sold refrigerators to one of his distributors at a total charge of $11,000, exclusive of tax, transportation charges, delivery charges, or other charges which are excludable in computing taxable price under section 4216(a). This total charge of $11,000 was billed as follows:

Refrigerators	$10,000
Local advertising charge	1,000
Total charge	11,000

At the time of the manufacturer's sale of the refrigerators, it was his intention, in accordance with the terms of a cooperative advertising plan to which the manufacturer and the distributor were parties, to make repayment to the distributor of the local advertising charge. Pursuant to the plan, the repayment would be made to the extent of expenditures by the distributor for radio, television, or newspaper advertising, initiated or obtained by him, specifically naming refrigerators or other articles taxable at the same rate under section 4111 which were manufactured by the manufacturer, and giving the location of various retail stores within the distributor's territory where such articles may be purchased. In this example, only $500 of the manufacturer's charge of $1,000 for local advertising may be excluded in determining the taxable price of the refrigerators for purposes of reporting and paying the tax imposed by section 4111. The remaining $500 may not be excluded in computing the taxable price of the refrigerators since this is the amount by which the $1,000 local advertising charge exceeds 5 percent of $10,000. Thus, the taxable price of the refrigerators in this example is $10,500.

Example (4). Assume the same facts as those stated in Example (1), except that, pursuant to the agreement between the manufacturer and the distributor, the manufacturer is to contract for the placement of the local advertising. Payment of the $500 local advertising charge is to be made by the manufacturer to the person with whom the advertising is placed in satisfaction of the manufacturer's contractual liability to such person. Under these circumstances, the manufacturer's payment of the $500 charge to the person with whom the advertising is placed does not constitute a refund to the purchaser in reimbursement of costs incurred for local advertising.

§ 48.4216(f)–2 Limitation on aggregate of exclusions and price readjustments.

(a) *In general.* The sum of the amount excluded from taxable price in respect of charges for local advertising, as provided in section 4216(f)(1) and § 48.4216(f)–1, plus the amount of the readjustments for which credits or refunds may be claimed in respect of local advertising, as provided in section 6416(b)(1) and paragraph (c) of § 48.6416(b)–1, is subject to an over-all 5 percent limitation. This limitation applies to each manufacturer, as of the close of each calendar quarter, in respect of all articles taxable under the same section of chapter 32 which were sold by such manufacturer in such quarter (and the preceding quarter or quarters, if any, in the calendar year). For example, a manufacturer selling articles taxable under section 4061 (relating to automobiles, trucks, buses, etc.), and also selling articles taxable under section 4111 (relating to refrigerators, quick-freeze units, etc.), who makes separate charges for local advertising in connection with his sales, or who makes reimbursement of local advertising expenses to his vendees out of moneys previously included in taxable price, in respect of any one or more articles in each of the two groups must apply the limitation separately in relation to the articles taxable under section 4061 and in relation to the articles taxable under section 4111. However, in such case, no breakdown of the separate articles taxable under section 4061, or of the separate articles taxable under section 4111, is required.

(b) *Computation of over-all 5 percent limitation—(1) In general.* The limitation prescribed by section 4216(f)(2) (the "over-all 5 percent limitation" referred to in paragraph (a) of this section) as to the total of the exclusions from price and readjustments of price which may be claimed for local advertising in respect of all articles taxable under the same section of chapter 32 of the Code shall be computed as of the close of each calendar quarter of the calendar year. The over-all 5 percent limitation is 5 percent of the difference between (i) the amount which would constitute the total taxable price (computed at the time of sale) of all articles taxable under the same section of chapter 32 of the Code sold by the manufacturer during the elapsed calendar quarters of the calendar year, if no part of any charge for local advertising were excludable in computing taxable price, and (ii) the total of all amounts billed as separate charges for local advertising of such articles (whatever the amount of any single charge or the total of all charges). In making the computations under subdivisions (i) and (ii) of this subparagraph, credits or refunds under section 6416(b) of tax paid on the sale of any such articles are to be disregarded and articles sold tax-free by the manufacturer are to be excluded. The amount by which the over-all 5 percent limitation computed as of the close of a particular calendar quarter in respect of articles taxable under the same section of the Code exceeds the sum of the charges for local advertising excluded in computing the taxable price and the amount of reimbursements for local advertising of such articles made during the elapsed calendar quarters of the calendar year, in respect of which credit or refund has been claimed, represents the unused portion of the over-all 5 percent limitation. Such unused portion is the maximum amount of reimbursements for local advertising in respect of which credit or refund may be claimed at the close of the particular calendar quarter, subject to the applicable conditions and limitations governing the right to claim a credit or refund in respect of local advertising (see § 48.6416(b)–1). The unused portion of the over-all 5 percent limitation as of the close of the fourth calendar quarter of a calendar year in respect of which credit or refund may not be claimed as of the close of such quarter must be disregarded in computing the over-all 5 percent limitation for any subsequent calendar quarter. Moreover, the amount of any reimbursements for local advertising made by a manufacturer in a calendar year which is in excess of the amount of such reimbursements in respect of which credit or refund may be claimed, within the over-all limitation, as of the close of the calendar year, may not subsequently serve as the basis for a credit or refund.

(2) *Alternative method of computation in certain cases.* If during the portion of the calendar year ending with the date as of which the over-all 5 percent limitation is being computed the amount of the local advertising charge separately billed by the manufacturer has not, in respect of any sale of any articles taxable under the same section of chapter 32 of the Code, exceeded the amount excludable pursuant to paragraph (c) of § 48.4216(f)–1 in computing taxable price, the over-all 5 percent limitation as of the close of a particular calendar quarter in respect of articles taxable under such section is 5 percent of the total taxable price (computed at the time of the sale) of all such articles sold tax-paid during the calendar year.

(3) *Allocation of amounts paid in reimbursement of expenditures for local advertising.* If a manufacturer makes contributions to a local advertising program in connection with which he makes excludable local advertising charges, it is necessary that reimbursements by the manufacturer for local advertising be attributed to the charges for local advertising, to the manufacturer's contributions, or allocated between them. Whether an amount paid by a manufacturer in reimbursement of expenses for local advertising is or is not a repayment of a local advertising charge which was excluded from taxable price under section 4216(f)(1) and § 48.4216(f)–1, shall be determined on the basis of an allocation made under the agreement between the manufacturer and his vendee (or any subsequent vendee).

(c) *Examples.* The application of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). During the first and second calendar quarters of 1961, a manufacturer makes sales of articles taxable under section 4111 to his distributors. The total charges for such sales, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a), in computing taxable price, are as follows:

First Quarter

Articles taxable under section 4111	$100,000
Local advertising charges	3,000
Total charge	103,000

Second Quarter

Articles taxable under section 4111	$150,000
Local advertising charges	4,000
Total charge	154,000

Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays $5,500 and $1,000 during the first and second calendar quarters of 1961, respectively, to his distributors in reimbursement of expenses incurred by them for local advertising of the articles purchased from the manufacturer.

Computation as of close of first calendar quarter

1. Amount which would constitute total taxable price (computed at time of sale) if no part of any charge for local advertising were excludable in computing taxable price	$103,000
2. Amounts billed as separate charges for local advertising	3,000
3. Difference	100,000
4. Over-all 5 percent limitation (5 percent of item 3)	5,000
5. Amount excluded in computing taxable price	3,000
6. Unused portion of limitation	2,000
7. Allocation, pursuant to agreement, of $5,500 paid to distributors:	
Charges for local advertising	3,000
Contributions by manufacturer	2,500

Readjustment may be claimed in respect of that portion of the total amount repaid to the distributors which is allocated to the manufacturer's contribution ($2,500) to the extent that such portion does not exceed the unused portion of the over-all 5 percent limitation ($2,000). Accordingly, as of the close of the first calendar quarter the manufacturer may claim credit or refund in respect of a readjustment or price in the amount of $2,000.

Computation as of close of second calendar quarter

1. Amount which would constitute total taxable price (computed at time of sale) if no part of any charge for local advertising were excludable in computing taxable price ($103,000+$154,000)	$257,000
2. Amounts billed as separate charges for local advertising ($3,000+$4,000)	7,000
3. Difference	250,000
4. Over-all 5 percent limitation (5 percent of item 3)	12,500
5. Amount excluded in computing taxable price ($3,000+$4,000) plus readjustment claimed at end of first calendar quarter ($2,000)	9,000
6. Unused portion of limitation	3,500
7. Allocation, pursuant to agreement, of $6,500 ($5,500 +$1,000) paid to distributors:	
Charges for local advertising	3,500
Contributions by manufacturer	3,000

Although the total reimbursements for local advertising expenses attributable to contributions by the manufacturer ($3,000) does not exceed the unused portion of the over-all 5 percent limitation ($3,500), the manufacturer having taken, at the close of the first calendar quarter, a price readjustment in the amount of $2,000 in respect of his contributions is entitled at the close of the second calendar quarter to claim credit or refund in respect of a price readjustment in the amount of $1,000 ($6,000−$2,000).

Example (2). During the first calendar quarter of 1961, a manufacturer sold articles taxable under section 4111 to his distributors at a total charge of $106,000, exclusive of the tax, transportation charges, delivery charges, or other charges which are excludable, pursuant to section 4216(a), in computing taxable price. This total charge of $106,000 was billed as follows:

Articles taxable under section 4111	$100,000
Local advertising charges	6,000
Total charge	106,000

Assume further that the manufacturer contributes to the advertising plan and that the manufacturer pays $3,000 during the first calendar quarter of 1961 to his distributors in reimbursement of expenses incurred by them for local advertising of the articles purchased from the manufacturer.

Computation as of close of first calendar quarter

1. Amount which would constitute total taxable price (computed at time of sale) if no part of any charge for local advertising were excludable in computing taxable price	$106,000
2. Amounts billed as separate charges for local advertising	6,000
3. Difference	100,000
4. Over-all 5 percent limitation (5 percent of item 3)	5,000
5. Amount excluded in computing taxable price (see paragraph (c) of § 48.4216(f)-1)	5,000
6. Unused portion of limitation	0
7. Allocation, pursuant to agreement, of $3,000 paid to distributors:	
Charges for local advertising	2,000
Contributions by manufacturer	1,000

Credit or refund may not be claimed in respect of that portion of the total amount repaid to the distributors ($3,000) which is allocated to the manufacturer's contribution ($1,000) since the amount excluded in computing taxable price is equal to the over-all 5 percent limitation.

§ 48.4216(f)-3 No exclusion or readjustment for other advertising charges or reimbursements.

(a) *Exclusions from price.* No exclusion in computing the taxable price of any article sold by the manufacturer on or after January 1, 1961, may be allowed in respect of any charge for advertising if, and to the extent that, such charge—

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(f)(4) and paragraph (b) of § 48.4216(f)-1, or

(2) Does not satisfy all of the conditions and limitations stated in section 4216(f)(1) and paragraph (c) of § 48.4216(f)-1.

(b) *Readjustments of price.* No credit or refund under section 6416(b)(1) may be allowed in respect of any amount which was included in the taxable price of an article sold by the manufacturer on or after January 1, 1961, and which was later paid by him to his vendee in reimbursement of costs incurred for advertising, if, and to the extent that, the amount so paid—

(1) Is for advertising which does not qualify as local advertising within the meaning of section 4216(f)(4) and paragraph (b) of § 48.4216(f)-1, or

(2) Is not within the limitation provided in section 4216(f)(2), as computed in accordance with § 48.4216(f)-2, as of the close of the calendar quarter in which the amount is so paid over or as of the close of any subsequent calendar quarter in the same calendar year. See, however, paragraph (c)(2)(ii) of § 48.6416(b)-1, relating to redetermination of price readjustments in cases where local advertising charges excluded from taxable price in one calendar year become taxable as of May 1 of the following calendar year.

Subpart O—Refunds and Other Administrative Provisions of Special Application to Retailers and Manufacturers Taxes

§ 48.6416(b) Statutory provisions; special cases in which tax payments considered overpayments.

SEC. 6416. *Certain taxes on sales and services.* • • •

(b) *Special cases in which tax payments considered overpayments.* Under regulations prescribed by the Secretary or his delegate, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) *Price readjustments.* If the price of any article in respect of which a tax, based on such price, is imposed by chapter 31 or 32, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including (in the case of a tax imposed by chapter 32) a readjustment for local advertising (but only to the extent provided in section 4216(f)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment. The preceding sentence shall not apply in the case of an article in respect of which tax was computed under section 4223(b)(2); but if the price for which such article was sold is readjusted by reason of the return or repossession of the article, the part of the tax proportionate to the part of such price repaid or credited to the purchaser shall be deemed to be an overpayment.

(2) *Specified uses and resales.* The tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article shall be deemed to be an overpayment if such article was, by any person—

(A) Exported (except in any case to which subsection (g) applies);

(B) Used or sold for use as supplies for vessels or aircraft;

(C) Sold to a State or local government for the exclusive use of a State or local government;

(D) Sold to a nonprofit educational organization for its exclusive use;

(E) Resold to a manufacturer or producer for use by him as provided in subparagraph (A), (B), or (E) of paragraph (3);

(F) In the case of a tire, inner tube, or receiving set, resold for use as provided in subparagraph (C) or (D) of paragraph (3) and the other article referred to in such subparagraph is by any person exported or sold as provided in such subparagraph;

(G) In the case of a liquid taxable under section 4041, sold for use as fuel in a diesel-powered highway vehicle or as fuel for the propulsion of a motor vehicle, motorboat, or airplane, if (i) the vendee used such liquid otherwise than as fuel in such a vehicle, motorboat, or airplane or resold such liquid, or (ii) such liquid was (within the meaning of paragraphs (1), (2), and (3) of section 6420(c)) used on a farm for farming purposes;

(H) In the case of a liquid in respect of which tax was paid under section 4041 at the rate of 3 cents or 4 cents a gallon, used during any calendar quarter in vehicles while engaged in furnishing scheduled common carrier public passenger land transportation service along regular routes; except that (i) this subparagraph shall apply only if the 60 percent passenger fare revenue test set forth in section 6421(b)(2) is met with respect to such quarter, and (ii) the amount of such overpayment for such quarter shall

be an amount determined by multiplying 1 cent (where tax was paid at the 3-cent rate) or 2 cents (where tax was paid at the 4-cent rate) for each gallon of liquid so used by the percentage which such person's tax-exempt passenger fare revenue (as defined in section 6421(d)(2)) derived from such scheduled service during such quarter was of his total passenger fare revenue (not including the tax imposed by section 4261, relating to the tax on transportation of persons) derived from such scheduled service during such quarter;

(I) In the case of a liquid in respect of which tax was paid under section 4041(a)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use as a fuel in a diesel-powered highway vehicle (i) which (at the time of such use or resale) is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a diesel-powered highway vehicle owned by the United States, is not used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(J) In the case of a liquid in respect of which tax was paid under section 4041(b)(1) at the rate of 3 cents or 4 cents a gallon, used or resold for use otherwise than as a fuel for the propulsion of a highway vehicle (i) which (at the time of such use or resale) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (ii) which, in the case of a highway vehicle owned by the United States, is used on the highway; except that the amount of any overpayment by reason of this subparagraph shall not exceed an amount computed at the rate of 1 cent a gallon where tax was paid at the 3-cent rate or at the rate of 2 cents a gallon where tax was paid at the 4-cent rate;

(K) In the case of any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a));

(L) In the case of tread rubber in respect of which tax was paid under section 4071(a)(4), used or sold for use otherwise than in the recapping or retreading of tires of the type used on highway vehicles (as defined in section 4072(c)), unless credit or refund of such tax is allowable under subsection (b)(3);

(M) In the case of gasoline, used or sold for use in production of special motor fuels referred to in section 4041(b).

(N) In the case of lubricating oil, used or sold for nonlubricating purposes;

(O) In the case of lubricating oil in respect of which tax was paid at the rate of 6 cents a gallon, used or sold for use as cutting oils (within the meaning of section 4092(b)); except that the amount of such overpayment shall not exceed an amount computed at the rate of 3 cents a gallon;

(P) In the case of any musical instrument taxable under section 4151, sold to a religious institution for exclusively religious purposes;

(Q) In the case of unexposed motion picture film, used or sold for use in the making of newsreel motion picture film.

(3) *Tax-paid articles used for further manufacture, etc.* If the tax imposed by chapter 32 has been paid with respect to the sale of any article by the manufacturer, producer, or importer thereof to a second manufacturer or producer, such tax shall be deemed to be an overpayment by such second manufacturer or producer if—

(A) In the case of any article other than an article to which subparagraph (B), (C), (D), or (E) applies, such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, another article taxable under chapter 32 manufactured or produced by him;

(B) In the case of—

(i) A part or accessory taxable under section 4061(b),

(ii) A radio or television component taxable under section 4141, or

(iii) A camera lens taxable under section 4171,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, any other article manufactured or produced by him;

(C) In the case of—

(i) A tire or inner tube taxable under section 4071, or

(ii) An automobile radio or television receiving set taxable under section 4141,

such article is sold by the second manufacturer or producer on or in connection with, or with the sale of, any other article manufactured or produced by him and such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft;

(D) In the case of a radio receiving set or an automobile radio receiving set—

(i) Such set is used by the second manufacturer or producer as a component part of any other article manufactured or produced by him, and

(ii) Such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft; or

(E) In the case of—

(i) A bicycle tire (as defined in section 4221(e)(4)(B)), or

(ii) An inner tube for such a tire,

such article is used by the second manufacturer or producer as material in the manufacture or production of, or as a component part of, a bicycle (other than a rebuilt or reconditioned bicycle).

For purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

(4) *Tires, inner tubes, and automobile radio and television receiving sets.* If—

(A)(i) A tire or inner tube taxable under section 4071, or automobile radio or television receiving set taxable under section 4141, is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him, or

(ii) A radio receiving set or an automobile radio receiving set is used by the manufacturer thereof as a component part of any other article manufactured or produced by him; and

(B) Such other article is by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, any tax imposed by chapter 32 in respect of such tire, inner tube, or receiving set which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

(5) *Return of certain installment accounts.* If—

(A) Tax was paid under section 4053(b)(1) or 4216(e)(1) in respect of any installment account,

(B) Such account is, under the agreement under which the account was sold, returned to the person who sold such account, and

(C) The consideration is readjusted as provided in such agreement,

the part of the tax paid under section 4053(b)(1) or 4216(e)(1) proportionate to the part of the consideration repaid or credited to the purchaser of such account shall be deemed to be an overpayment.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

[Sec. 6416(b) as amended and in effect Jan. 1, 1959, and as further amended by sec. 201(d), Federal-Aid Highway Act 1959 (73 Stat. 613); sec. 3, Act of Apr. 8, 1960 (Pub. Law 86-418, 74 Stat. 38); sec. 2, Act of Sept. 14, 1960 (Pub. Law 86-781, 74 Stat. 1018)]

§ 48.6416(b)-1 Readjustments of price on which manufacturers or retailers excise tax is based.

• • • • • •

(c) *Reimbursements in respect of local advertising*—(1) *In general.* In any case in which a manufacturer has paid tax under chapter 32 based on the price of any article sold by him after 1960, and a portion of the price is thereafter paid by the manufacturer to his vendee in reimbursement of expenses for local advertising of such article or any other article taxable at the same rate under the same section of chapter 32 which was sold by such manufacturer, such reimbursement will constitute a price readjustment with respect to which the manufacturer may claim credit or refund, if and to the extent that such reimbursement is within the limitation provided in section 4216(f)(2), as computed in accordance with the provisions of § 48.4216(f)-2 as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year.

(2) *Local advertising charges excluded from taxable price in one calendar year but repaid on or after May 1 of following calendar year*—(i) *Determination of price readjustments for year in which charge is repaid.* In any case where local advertising charges which were excluded in computing the taxable price of an article sold in any calendar year after 1960 are not repaid to the manufacturer's vendee or any subsequent vendee before May 1 of the following calendar year and tax is paid with respect to such charges (see section 4216(f)(1) and § 48.4216(f)-1), any subsequent repayment of such charges to the manufacturer's vendee in reimbursement of expenses incurred for local advertising will constitute a price readjustment with respect to which the manufacturer may claim credit or refund, if and to the ex-

tent that such reimbursement is within the limitation provided in section 4216 (f) (2), as computed in accordance with the provisions of § 48.4216(f)–2 as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year.

(ii) *Redetermination of price readjustments for year in which charge was made.* In any case where local advertising charges which were excluded in computing the taxable price of an article sold in any calendar year after 1960 are not repaid to the manufacturer's vendee or any subsequent vendee before May 1 of the following calendar year and tax is paid with respect to such charges (see section 4216(f)(1) and § 48.4216(f)–1), the manufacturer may make a redetermination, in respect of the calendar year in which the charge was made, of the price readjustments with respect to which he may claim credit or refund; excluding from such redetermination the local advertising charges made in such calendar year which became taxable as of May 1 of the following calendar year.

[F.R. Doc. 60–12081; Filed, Dec. 28, 1960; 8:49 a.m.]

[26 CFR (1954) Part 179]

MACHINE GUNS AND CERTAIN OTHER FIREARMS

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Director within the 30-day period. In such a case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under 68A Stat. 917, 26 U.S.C. 7805, and implement Chapter 53 of the Internal Revenue Code of 1954 (68A Stat. 721).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

In order to implement the provisions of the Internal Revenue Code of 1954, as amended by Public Law 86–478 (74 Stat. 149), and to make certain conforming and clarifying changes, regulations in 26 CFR Part 179 are amended as follows:

1. The statement of authority under which this Part is issued is amended to read as follows:

AUTHORITY: § 179.1 through 179.195 are issued under 68A Stat. 917, 26 U.S.C. 7805, and implement Chapter 53 of the Internal Revenue Code of 1954 (68A Stat. 721). Related statutes which are interpreted or applied are cited in the text of the section interpreting or applying such a statute or in parentheses at the conclusion of the section.

§ 179.1 [Amendment]

2. Section 179.1 is amended by inserting "(occupational)" between the words "special" and "taxes" in paragraph (a).

§ 179.14 [Deletion]

3. Section 179.14 is deleted.

4. Section 179.20 is amended to read as follows:

§ 179.20 Firearm.

"Firearm" shall mean (a) a shotgun having a barrel or barrels of less than 18 inches in length, or (b) a rifle having a barrel or barrels of less than 16 inches in length, or (c) any weapon made from a rifle or shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than 26 inches, or (d) any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or (e) a machine gun, and includes (f) a muffler or silencer for any firearm whether or not such firearm is included within the foregoing definition.

§ 179.22 [Amendment]

5. Section 179.22 is amended by adding a second sentence to read as follows: "Except that, bringing a firearm from a foreign country or a territory subject to the jurisdiction of the United States into a foreign trade zone for storage pending shipment to a foreign country or subsequent importation into this country, pursuant to the I.R.C. and this Part, shall not be deemed importation."

§ 179.29 [Amendment]

6. Section 179.29 is amended by striking the words "or creation" and "other weapon" and inserting in lieu of the latter two words, the word "firearm".

7. A new § 179.29a to read as follows is inserted immediately after § 179.29:

§ 179.29a Manual reloading.

Manual reloading shall mean the inserting of a cartridge or shell into the chamber of a firearm either with the hands or by means of a mechanical device controlled and energized by the hands.

§§ 179.32 and 179.33 [Deletions]

8. Sections 179.32 and 179.33 are deleted.

9. Section 179.35 is amended to read as follows:

§ 179.35 Pistol.

"Pistol" shall mean a weapon originally designed, made, and intended to fire a small projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s). The term shall not include any gadget device, any gun altered or converted to resemble a pistol, any gun that fires more than one shot, without manual reloading, by a single function of the trigger, or any small portable gun such as: Nazi belt buckle pistol, glove pistol, or a one-hand stock gun designed to fire fixed shotgun ammunition.

§ 179.43 [Amendment]

10. Section 179.43 is amended by striking, ", the Territories of Alaska and Hawaii,".

11. A new § 179.45 to read as follows is inserted immediately after § 179.44:

§ 179.45 Unserviceable firearm.

"Unserviceable firearm" shall mean a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

12. Section 179.50 is amended to read as follows:

§ 179.50 Liability for tax.

Every person who engages in the business of importing, manufacturing or dealing in (including pawnbrokers) firearms in the United States is required to pay a special (occupational) tax for each place where such business is conducted.

13. Section 179.51 is amended to read as follows:

§ 179.51 Special (occupational) tax rates.

(a) The special (occupational) taxes are as follows:

	Per year or fraction thereof
Class 1: Importers of firearms	$500
Manufacturers of firearms, except manufacturers in Class 2	500
Class 2: Manufacturers of firearms whose production is limited to guns with combination shotgun and rifle barrels, 12 inches or more but less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, or guns classified as "any other weapon" under section 5848 (5), I.R.C., or guns of both types	25
Class 3: Pawnbrokers	300
Class 4: Dealers, other than pawnbrokers, except those in Class 5	200
Class 5: Dealers whose dealing in firearms is limited to guns with combination shotgun and rifle barrels, 12 inches or more but less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, or guns classified as "any other weapon" under section 5848 (5), I.R.C., or guns of both types	10

(b) The tax year begins July 1 and ends June 30. Special (occupational) taxes are due and payable on first engaging in business, and thereafter on or before the first day of July each year. Special (occupational) taxes may not be prorated. Persons commencing business

at any time after the first day of July in any year are liable for the special (occupational) tax for the complete tax year.

14. Section 179.52 is amended to read as follows:

§ 179.52 Registration, return, and payment of special (occupational) taxes.

Every person, prior to commencing any business taxable under section 5801, I.R.C., must, for each place of business operated by such person, register, file a return (Form 11) with, and pay the proper tax to, the District Director of the collection district in which each such place of business is located. Thereafter, such person must, for each place of business, register, file a return (Form 11), and pay the proper tax on or before the 1st day of July each year during which he continues such business. If a person has paid special (occupational) taxes for a taxable year, the District Director will furnish him a return (Form 11), which must be filled out and executed under penalty of perjury, for registration and tax payment for the succeeding taxable year if that person intends to continue in business. Properly completing, executing, and timely filing of a return (Form 11) will constitute compliance with section 5802, I.R.C. A person doing business under a style or trade name must give his own name, followed by his style or trade name. In the case of a partnership, unincorporated association, firm, or company, other than a corporation, its style or trade name must be given, also the name of each member and his place of residence. The class of business, as described in § 179.51, and the period for which special (occupational) tax is due, must also be stated.

15. Section 179.53 is amended to read as follows:

§ 179.53 The special tax stamp, receipt for special (occupational) taxes.

Upon receipt of a properly completed and executed return (Form 11) accompanied by remittance of the full amount due, the District Director will issue a special tax stamp as evidence of payment of the special (occupational) tax.

16. Section 179.56 is amended to read as follows:

§ 179.56 Engaging in business at more than one location.

A person must pay the special (occupational) tax for each location where he engages in any business taxable under section 5801, I.R.C. However, a person paying a special (occupational) tax covering his principal place of business may utilize other locations solely for storage of firearms without incurring special (occupational) tax liability at such locations. A manufacturer, upon the single payment of the appropriate special (occupational) tax, may sell firearms of the type(s) covered by such tax, if such firearms are of his own manufacture, at the place of manufacture and at his principal office or place of business if no such firearms, except samples, are kept at such office or place of business. When a person changes the location of a business for which he has paid the special (occupational) tax, he will be liable for another such tax unless the change is properly registered with the District Director, as provided in § 179.64.

17. Section 179.57 is amended to read as follows:

§ 179.57 Engaging in more than one business at the same location.

If more than one business taxable under section 5801, I.R.C., is carried on at the same location during a taxable year, the special (occupational) tax imposed on each such business must be paid.

§ 179.58 [Amendment]

18. Section 179.58 is amended by striking "copartnership" and inserting "partnership" in lieu thereof, and by inserting "(occupational)" between the words "special" and "tax".

§ 179.60 [Amendment]

19. Section 179.60 is amended by inserting "(occupational)" between the words "special" and "tax" in the first sentence and striking the expression "Form 11A (Firearms)" in the second sentence and substituting the expression "return, Form 11" in lieu thereof.

§ 179.61 [Amendment]

20. Section 179.61 is amended by inserting "(occupational)" between the words "special" and "tax" preceding the word "liability" in the second sentence.

21. Section 179.62 is amended to read as follows:

§ 179.62 Change in partnership or unincorporated association.

When one or more members withdraw from a partnership or an unincorporated association, the remaining member, or members, may, without incurring additional special (occupational) tax liability, carry on the same business at the same location for the balance of the taxable period for which special (occupational) tax was paid, provided any such change shall be registered in the same manner as required by § 179.60. Where new member(s) are taken into a partnership or an unincorporated association, the new firm so constituted may not carry on business under the special tax stamp of the old firm. The new firm must file a return, pay the special (occupational) tax and register in the same manner as a person who first engages in business is required to do under § 179.52, even though the name of the new firm may be the same as that of the old. Where the members of a partnership or an unincorporated association, which has paid special (occupational) tax, form a corporation to continue the business, a new special tax stamp must be taken out in the name of the corporation.

§ 179.63 [Amendment]

22. Section 179.63 is amended by inserting "(occupational)" between the words "special" and "tax" in the first sentence and inserting "(occupational)" between the words "special" and "tax" in the second sentence.

23. Section 179.64 is amended to read as follows:

§ 179.64 Notice by taxpayer.

Whenever a taxpayer removes his business to a location other than specified in his last special (occupational) tax return (see § 179.52), he shall, within 30 days after the date of removal, file another return (Form 11). Such return shall be designated as "removal registry", set forth the time of removal, and the address of the new location. The taxpayer's special tax stamp must accompany the return for notation by the District Director of the change of location. As to liability in case of failure to register a change of location within 30 days, see § 179.66.

24. Section 179.65 is amended to read as follows:

§ 179.65 Failure to pay special (occupational) tax.

Any person who engages in a business taxable under section 5801, I.R.C., without timely payment of the tax imposed with respect to such business (see § 179.52) shall be liable for such tax, plus the interest and penalties thereon. In addition, such person may be liable for criminal penalties under section 5861, I.R.C.

§ 179.66 [Amendment]

25. Section 179.66 is amended by inserting "(occupational)" between the words "special" and "tax" at the three places where these two words appear together in the section.

26. Section 179.67 is amended to read as follows:

§ 179.67 Delinquency.

Any person liable for special (occupational) tax under section 5801, I.R.C., who fails to file a return (Form 11), as prescribed, will be liable for a delinquency penalty computed on the amount of tax due unless a return (Form 11) is later filed and failure to file the return timely is shown to the satisfaction of the District Director to be due to reasonable cause. The delinquency penalty to be added to the tax is 5 percent if the failure is for not more than one month, with an additional 5 percent for each additional month or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate (section 6651, I.R.C.). However, no delinquency penalty is assessed where the 50 percent addition to tax is assessed for fraud (see § 179.68).

§ 179.69 [Amendment]

27. Section 179.69 is amended by inserting ", possession" between "manufacture" and "or" in the third sentence, and inserting "(occupational)" between the words "special" and "tax" in the last sentence.

§ 179.70 [Amendment]

28. Section 179.70 is amended by inserting "(occupational)" between the words "special" and "taxes" in the first sentence and the second sentence, and by inserting "District" before the word "Director" in the second sentence.

29. Section 179.75 is amended to read as follows:

§ 179.75 Rate of tax.

Except as provided in §§ 179.82, 179.83, and 179.84, a tax of $200 is imposed on the making of any firearm in the United States (whether by manufacture, putting together, alteration, any combination thereof, or otherwise). Such tax shall be paid in advance of the making of the firearm by the person making the firearm. Payment of the tax on the making of a firearm shall be represented by a $200 adhesive stamp bearing the words "National Firearms Act".

§ 179.76 [Deletion]

30. Section 179.76 is deleted.

§ 179.77 [Amendment]

31. Section 179.77 is amended by striking "of the proper denomination (see § 179.76)" in the third sentence and inserting in lieu thereof "(see § 179.75)."

§ 179.78 [Amendment]

32. Section 179.78 is amended by striking "90 days" in the first sentence and inserting "one year" in lieu thereof.

§ 179.82 [Amendment]

33. Section 179.82 is amended by inserting "(occupational)" between the words "special" and "tax" in the first sentence.

34. Section 179.83 is amended to read as follows:

§ 179.83 Altering a firearm, the making of which has previously been taxed.

No tax will be imposed on the making of a firearm from another firearm with respect to which a making tax has been paid under section 5821(a), I.R.C., prior to such making. However, the person so altering or converting such firearm shall notify the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., in writing immediately thereafter, giving a complete description of the firearm so altered or converted and indicating the changes made.

§ 179.84 [Amendment]

35. Section 179.84 is amended by striking the heading and inserting in lieu thereof "Making a firearm for use of Government agencies or peace officers." and by striking the words "or any Federal officer" in the first sentence.

§ 179.95 [Amendment]

36. Section 179.95 is amended by inserting the words "of the proper denomination" between the words "stamp" and "bearing".

37. Section 179.96 is amended to read as follows:

§ 179.96 Rate of tax.

The transfer tax imposed with respect to firearms transferred within the United States is at the rate of $200 for the transfer of each firearm, except that, the transfer tax imposed with respect to any gun with combination shotgun and rifle barrels, 12 inches or more but less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and on any gun classified as "any other weapon" under section 5848(5), I.R.C., is at the rate of $5 for the transfer of each such weapon.

38. A new § 179.96a to read as follows is inserted immediately after § 179.96.

§ 179.96a Liability for tax.

The tax imposed on the transfer of a firearm shall be paid by the transferor, except that, if a firearm is transferred without payment of the proper tax, the transferor and transferee shall be jointly and severally liable for such tax.

39. Section 179.98 is amended to read as follows:

§ 179.98 Written application and order required for transfer of firearm.

Except as otherwise provided, no firearm may be transferred in the United States unless a Form 4 (Firearms) covering the transfer of the firearm has been approved by the Director, Alcohol and Tobacco Tax Division, Washington 25, D.C. The person seeking to obtain a firearm must complete the items in Form 4 (Firearms), in duplicate, relating to the applicant, execute said form as the applicant, and then submit the form, in duplicate, to the person transferring the firearm. The person desiring to transfer the firearm will complete the items in the Form 4 (Firearms), in duplicate, relating to such a person, affix to the original a "National Firearms Act" stamp of the proper denomination in the space provided (§ 179.96), properly cancel such stamp (§ 179.101), execute the said form, and submit the said form, in duplicate, to the Director for approval. Upon approval, the original of the Form 4 (Firearms) will be returned to the transferor, who may then deliver the firearm and the approved original Form 4 (Firearms) to the applicant.

§ 179.99 [Amendment]

40. Section 179.99 is amended by striking "90 days" in the first sentence and inserting "one year" in lieu thereof.

41. Section 179.103 is amended to read as follows:

§ 179.103 Special (occupational) tax payers.

The transfer tax and the requirements as to the use of Form 4 (Firearms) (§ 179.98) are not applicable where importers or manufacturers in Class 1, pawnbrokers in Class 3 and dealers in Class 4, who have registered and paid special (occupational) tax, transfer any type of firearm to other like manufacturers, like importers, or like dealers (including pawnbrokers), who have registered and paid special (occupational) tax. Manufacturers in Class 2 and dealers in Class 5 may transfer only the types of firearms which they are authorized to produce or deal in to any other properly registered special (occupational) tax payer without payment of transfer tax and without complying with the requirements as to the use of Form 4 (Firearms). Similarly, importers, manufacturers in Class 1, pawnbrokers in Class 3 and dealers in Class 4 may transfer only guns with combination shotgun and rifle barrels, 12 inches or more but less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and firearms classified as "any other weapon" to manufacturers in Class 2 or dealers in Class 5 without payment of transfer tax and without complying with the requirements relating to the use of Form 4 (Firearms). The class of a special (occupational) tax payer (Class 1 through Class 5) referred to in this section shall be determined by the rate of special (occupational) tax paid by the manufacturer, importer or dealer, as provided in § 179.51. Before a tax-free transfer is made, the transferor must satisfy himself that the transferee is a registered special (occupational) tax payer.

42. Section 179.104 is amended to read as follows:

§ 179.104 Peace officers.

Pursuant to section 5812, I.R.C., the following persons are hereby designated as peace officers entitled to receive firearms without payment of transfer tax or the use of Form 4 (Firearms): Sheriffs, chiefs of police, commissioners of police, superintendents or other chief officers of State police units, including State highway patrols, directors of public safety, and bona fide subordinate officers under the command of the aforementioned persons upon appropriate recommendation of the officials designated. However, when any firearm is transferred tax-exempt under this section, §§ 179.105 and 179.106 must be complied with.

43. A new § 179.104a to read as follows is inserted immediately after § 179.104:

§ 179.104a Government Agencies.

Firearms may be transferred to the United States Government, any State, Territory, or possession of the United States, or to any political subdivision thereof, or to the District of Columbia, without payment of transfer tax or the use of Form 4 (Firearms). However, when any firearm is transferred tax-exempt under this section, §§ 179.105 and 179.106 must be complied with.

44. A new § 179.104b to read as follows is inserted immediately after § 179.104a:

§ 179.104b Unserviceable firearms.

An unserviceable firearm may be transferred as a curiosity or ornament without payment of transfer tax or the use of Form 4 (Firearms). However, when any unserviceable firearm is transferred tax-exempt under this section, § 179.105 must be complied with.

§ 179.105 [Amendment]

45. Section 179.105 is amended by striking the period from the heading and adding "and transfer." and by striking "of the Internal Revenue Code of 1954," in the first sentence and inserting "I.R.C., as implemented by §§ 179.104, 179.104a, and 179.104b," in lieu thereof.

§ 179.106 [Amendment]

46. Section 179.106 is amended by striking "of the Internal Revenue Code of 1954" from the first sentence and inserting "I.R.C., as implemented by §§ 179.104 and 179.104a," in lieu thereof.

§ 179.120 [Amendment]

47. Section 179.120 is amended by striking "already registered," in the first sentence and inserting "registered to him," in lieu thereof.

§ 179.130 [Amendment]

48. Section 179.130 is amended by striking the word "duplicate" in the first sentence and inserting the word "triplicate" in lieu thereof and by deleting the last sentence and inserting the following sentences in lieu thereof: "The approval of an application to import a firearm shall be automatically terminated at the expiration of 6 months, unless upon request, it is further extended by the Director. If a firearm described in the approved application is not imported, prior to the expiration of the permit, the Director should be so notified. Collectors of customs will not permit release of the firearm from customs custody, except for exportation, unless covered by an application which has been approved by the Director and such approval is currently effective."

§ 179.132 [Amendment]

49. Section 179.132 is amended by inserting "(occupational)" between the words "special" and "tax" in the first part of the proviso, and is further amended by striking "special-tax payer" from the latter part of the proviso and inserting "special (occupational) tax payer of a type qualified to import, manufacture, or deal in the firearm transferred" in lieu thereof.

50. Section 179.137 is amended to read as follows:

§ 179.137 Proof of exportation.

Within a six-month's period from date of issuance of the permit to export firearms, the exporter shall furnish or cause to be furnished to the Director, Alcohol and Tobacco Tax Division, Internal Revenue Service, Washington 25, D.C., (a) the certificate of exportation (Part 3 of Form 9 (Firearms)) executed by the U.S. Collector of Customs as provided in § 179.136, or (b) the certificate of mailing by parcel post (Part 4 of Form 9 (Firearms)) executed by the postmaster of the post office receiving the parcel containing the firearm, or (c) a certificate of landing executed by a Customs officer of the foreign country to which the firearm is exported, or (d) a sworn statement of the foreign consignee covering the receipt of the firearm, or (e) the return receipt, or a photostat thereof, signed by the addressee or his agent, where the shipment of a firearm was made by insured or registered parcel post. Issuance of a permit to export a firearm and furnishing of evidence establishing such exportation under this section will relieve the actual exporter and the person selling to the exporter for exportation from transfer tax liability. Where satisfactory evidence of exportation of a firearm is not furnished within the stated period the transfer tax will be assessed.

§ 179.139 [Amendment]

51. Section 179.139 is amended by striking "(other than Hawaii)" in the first sentence.

§ 179.151 [Amendment]

52. Section 179.151 is amended by striking the period at the end of the first sentence and inserting in lieu thereof a colon and adding "except that if a manufacturer, importer, or dealer has filed a Form 5 (Firearms) giving notice that a firearm has been transferred, a Form 3 (Firearms) need not be filed with respect to that firearm".

§ 179.171 [Amendment]

53. Section 179.171 is amended by striking "$1" and inserting "$5" in lieu thereof.

§ 179.181 [Amendment]

54. Section 179.181 is amended by inserting "(occupational)" between the words "special" and "taxes" in the first sentence.

§ 179.190 [Amendment]

55. Section 179.190 is amended by inserting "and the provisions of this Part," between "1954," and "shall".

[F.R. Doc. 60-12080; Filed, Dec. 28, 1960; 8:49 a.m.]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Notice of Proposed Rule Making

On October 5, 1960 there was published in the FEDERAL REGISTER (25 F.R. 9568) a notice to amend the definition of small business for the purpose of sales of Government-owned timber. The proposed amendment resulted in numerous comments with suggested changes thereto. As a result of the consideration of relevant matters presented by interested parties, the aforementioned notice is to be disregarded in view of the following.

Notice is hereby given that pursuant to the authority contained in section 5(b)(6) of the Small Business Act, Pub. Law 85-536, 72 Stat. 386, it is proposed to revise § 121.3-9(b) of the Small Business Size Standards Regulation relating to the definition of small business for the sales of Government-owned timber as set forth below.

Prior to final adoption of such revision consideration will be given to any comments submitted in writing, in duplicate, to the Director, Office of Small Business Size Standards, Small Business Administration, Washington 25, D.C., within the period of thirty days from the date of publication of this notice in the FEDERAL REGISTER.

Information. The major amendments under consideration provide for new requirements that when Government-owned timber is purchased for resale, saw logs to be manufactured into lumber or timber shall be resold only to small business concerns and when such timber is not to be resold it will be manufactured into lumber and timber only by the small business concern. The present restriction that a bidder shall not have been financed by any large concern for one year prior to such purchase has been removed. The proposed revision is as follows:

The Small Business Size Standards Regulation (Revision 1) (24 F.R. 3491), as amended (24 F.R. 7458, 7943, 9329; 25 F.R. 4577, 4711, 4985, 10087) is hereby further amended by deleting § 121.3-9 (b) and substituting in lieu thereof revised § 121.3-9(b) as follows:

(b) *Sales of Government-owned timber.* (1) In connection with the sale of Government-owned timber a small business is a concern that:

(i) Is primarily engaged in the logging or forest products industry;

(ii) Is independently owned and operated;

(iii) Is not dominant in its field of operation; and

(iv) Together with its affiliates employs not more than 250 persons.

(2) In the case of Government sales of timber reserved for or involving preferential treatment of small businesses, when the Government timber being purchased is to be resold in the form of logs, bolts, pulpwood, or similar products, a concern is a small business when:

(i) It is a small business within the meaning of subparagraph (1) of this paragraph, and

(ii) It agrees that, in the event it sells any saw logs of suitable size for sawing into lumber or timbers, which in fact will be manufactured into lumber or timbers, it will sell only to a concern which qualifies under subparagraph (1) of this paragraph as a small business, unless exemptions are granted for sales of mixed stumpage of hardwood and softwood species or to cover a fair exchange of species and grades.

(3) In the case of Government sales reserved for or involving preferential treatment of small businesses, when the Government timber purchased is not to be resold in the form of saw logs to be manufactured into lumber and timbers, a concern is a small business when:

(i) It meets the criteria contained in subparagraph (1) of this paragraph, and

(ii) It agrees that in manufacturing lumber or timbers from such saw logs cut from the Government timber, it will do so only with its own facilities or those of concerns that qualify under subparagraph (1) of this paragraph as a small business.

PHILIP MCCALLUM,
Administrator.

DECEMBER 7, 1960.

[F.R. Doc. 60-12050; Filed, Dec. 28, 1960; 8:46 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[643.3-0]

RAYON STAPLE FIBER FROM FRANCE

Notice That There Is Reason To Believe or Suspect Purchase Is Less or Likely To Be Less Than Foreign Market Value

DECEMBER 22, 1960.

Pursuant to section 201(b) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(b)), notice is hereby given that there is reason to believe or suspect, from information presented to me, that the purchase price of rayon staple fiber imported from France is less or likely to be less than the foreign market value, as defined by sections 203 and 205, respectively, of the Antidumping Act, 1921, as amended (19 U.S.C. 162 and 164).

Customs officers are being authorized to withhold appraisement of entries of rayon staple fiber from France pursuant to section 14.9 of the Customs Regulations (19 CFR 14.9).

[SEAL] LAWTON M. KING,
Acting Commissioner of Customs.

[F.R. Doc. 60-12076; Filed, Dec. 28, 1960; 8:48 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

SHAW, SAVILL & ALBION CO., LTD., ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8535, between Shaw, Savill & Albion Company, Ltd., Blue Star Line, Ltd., and the carriers comprising the Federal New Zealand Lines and the Port and Associated Lines joint services, provides for the establishment and maintenance of a joint cargo service primarily for the carriage of refrigerated cargo, and with limited passenger accommodations, in the trade from ports in the Dominion of New Zealand to ports on the East Coast of the United States of America and ports in the Gulf of Mexico and the Panama Canal Zone.

Agreement No. 8552, between Shaw, Savill & Albion Company, Ltd., Blue Star Line, Ltd., and the carriers comprising the Federal New Zealand Lines and the Port and Associate Lines joint services (parties to joint service Agreement No. 8535), constituting parties of the first part, and the carriers comprising the M.A.N.Z. Line joint service (parties to Agreement No. 7814, as amended), party of the second part, covers an arrangement with respect to the trade from ports in the Dominion of New Zealand to ports on the East Coast of the United States of America and ports in the Gulf of Mexico and the Panama Canal Zone, whereby (1) the party of the second part agrees to observe the rates, charges and practices with respect to refrigerated cargo, which may be established and maintained under joint service Agreement No. 8535; and (2) the party of the first part agrees to observe the rates, charges and practices with respect to general cargo, which may be established and maintained under Agreement No. 7814.

Agreement No. 8565, between the Board of Port Commissioners of the City of Oakland and West Coast Checkerboard Elevator Company, provides for an exclusive franchise for a term of twenty years to West Coast Checkerboard Elevator Company for the operation of a public utility wharfinger business on certain property in the Port of Oakland for the shipping, receipt and storage of agricultural commodities in bulk only, and the taking of dockage, tolls or wharfage and other terminal charges thereon, and including the performance of accessorial services in connection therewith.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 22, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-12052; Filed, Dec. 28, 1960; 8:46 a.m.]

MEMBER LINES OF THE FAR EAST CONFERENCE ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 17-28, between the member lines of the Far East Conference, modifies the basic agreement of that conference (No. 17, as amended), in the trade from Atlantic and Gulf ports of the United States to ports in Japan, Korea, Taiwan (Formosa), Siberia, Manchuria, China, Hong Kong, Indo-China, and the Republic of the Philippines. The purpose of this modification is to provide that carriers operating under an approved joint service agreement may be admitted to conference membership as a single member, with one vote, and the requirement of furnishing a single deposit, in the same manner as now required for the admission of individual carriers under the conference agreement.

Agreement No. 7997-2, between Lykes Bros. Steamship Co., Inc., and Garcia S.A., Compania Naviera, modifies the West Gulf-Havana Pool Agreement (No. 7997, as amended), in the trade from U.S. Gulf ports, west of but not including New Orleans, to Havana, Cuba. The purpose of the modification is to provide (1) for the removal of Cia. Naviera Cubamar, S.A., as a party to the agreement, (2) preparation of statement of cargo pooled under the agreement as of September 30, 1960, and the settlement of the results of the pool as between the remaining parties as of that date under the terms of the agreement, (3) that on and after October 1, 1960, the tonnage participation of the parties shall be on the basis of 42 percent to Garcia, and 58 percent to Lykes Bros., and (4) that the operation of the agreement shall be suspended as of October 1, 1960, until the first day of the month in which Lykes Bros. shall have resumed its service in the trade covered.

Agreement No. 8433-1, between Kawasaki Kisen Kaisha, Ltd., Osaka Shosen Kaisha, Ltd., and Yamashita Steamship Co., Ltd., modifies approved Agreement No. 8433 of the parties covering a pooling and sailing arrangement in the trade from Japan to U.S. Atlantic Coast ports. The purpose of the modification is to record the understanding of the parties as to the number of sailings to be maintained by each during the year ending September, 1961.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 22, 1960.

By order of the Federal Maritime Board.

THOMAS LISI,
Secretary.

[F.R. Doc. 60-12053; Filed, Dec. 28, 1960; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket 12003; Order No. E-16172]

ALLEGHENY AIRLINES, INC.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 23d day of December 1960.

In the matter of certain Hartford/Springfield and Providence fares proposed by Allegheny Airlines, Inc., Docket 12003.

Allegheny Airlines, Inc. (Allegheny) by tariff revision to become effective December 29, 1060, proposes to reduce passenger fares between Providence, on the one hand, and Baltimore, Salisbury, and Washington, on the other hand, to $23.50, the level of the present Hartford/Springfield-Washington fare, and to permit application of this fare between the latter points on routings via Providence. In addition, by tariff revision to become effective January 12, 1961, Allegheny proposes an increase to $23.90 in the Hartford/Springfield-Washington fare, with corresponding increases in the above-mentioned fares to/from Providence. The above-noted routing provision remains unchanged by this latter filing.

Eastern Air Lines, Inc. (Eastern) and American Airlines, Inc. (American) have filed timely complaints (Dockets 11977 and 11980, respectively), requesting investigation and suspension of the first-noted tariff revision. In substance, the carriers allege (1) that nothing is apparent in the present airline cost picture which would indicate that substantial reductions in short-haul fares are warranted or reasonable, particularly on the part of a subsidized carrier, (2) that the commonrating of Hartford and Providence conflicts with the geographical location of the cities since the distance to Providence from Washington exceeds that to Hartford by 43 miles, and (3) that the common fares would prejudice the direct Hartford passenger while granting an undue preference to the passenger traveling to Providence and to Hartford via the indirect routing. American further alleges that the reduced Providence-Washington fare would necessitate reductions of through fares to points south of Washington.

The Board concludes that the questions of lawfulness raised by the complainants warrant an investigation into the instant tariff revisions. The proposals would commonrate two points, one of which is 13.7 percent more distant from Washington than the other, and would entail a reduction of some 11 percent in the fare between Washington and the farther point, Providence. Further, whereas Hartford lies on a reasonably direct route between Washington and Providence, travel to and from this point via Providence involves a 66-mile back-haul segment, resulting in a total circuity of 109 miles, or approximately 35 percent. In view of the appreciable variation in the distances to which the same fare would apply and the magnitude of the proposed reduction in the Washington-Providence fare, we further conclude that suspension is warranted pending investigation.

The Board finds that its action herein is necessary and appropriate in order to carry out the provisions and objectives of the Federal Aviation Act of 1958, particularly sections 204(a), 403, 404, and 1002 thereof.

Accordingly, *It is ordered that:* 1. An investigation be and hereby is instituted to determine whether the fares and routings between Baltimore and Providence, R.I. on 14th and 15th Revised Pages 25; the routing between Hartford and Washington on 15th Revised Page 26; the fares and routings between Hartford and Washington on 16th Revised Page 26; the fares and routings between Providence, R.I., on the one hand, and Salisbury and Washington on the other, on 12th and 13th Revised Pages 27; of Agent C. C. Squire's C.A.B. No. 44, are, or will be, unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, and if found to be unlawful, to determine and prescribe the lawful fares.

2. Pending investigation, hearing, and decision by the Board, the fares and routings described in Ordering Paragraph 1 be and hereby are suspended and their use deferred to and including March 28, 1961 unless otherwise ordered by the Board and that no changes be made therein during the period of suspension except by order or special permission of the Board.

3. The proceeding ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated.

4. The complaints of Eastern Air Lines, Inc. and American Airlines, Inc. in Dockets 11977 and 11980, respectively, are consolidated herein.

5. Copies of this order be served upon Allegheny Airlines, Inc., Eastern Air Lines, Inc., and American Airlines, Inc. which are hereby made parties to this proceeding.

This order shall also be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] ROBERT C. LESTER,
Secretary.

[F.R. Doc. 60-12096; Filed, Dec. 28, 1960; 8:50 a.m.]

[Docket 11925]

AERONAVES DE MEXICO, S.A.

Notice of Postponement of Hearing

In the matter of the application of Aeronaves de Mexico, S.A., under section 402 of the Federal Aviation Act of 1958 for a foreign air carrier permit.

Notice is hereby given that the hearing in the above-entitled proceeding heretofore assigned to be held on December 29, 1960, has been postponed until January 5, 1961, at 10:00 a.m., e.s.t., Room 911 of the Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Merritt Ruhlen.

Dated at Washington, D.C., December 23, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-12097; Filed, Dec. 28, 1960; 8:50 a.m.]

[(1954) Docket 1706-A]

REOPENED PAN AMERICAN MAIL RATE CASE

Notice of Postponement of Hearing

In the matter of the determination of the fair and reasonable rates of compensation for the transportation of mail by Pan American World Airways System during the year 1954.

At the request of Bureau Counsel and Pan American World Airways, Inc., the hearing in the above-entitled proceeding previously assigned to be held on January 9, 1961 at 10:00 a.m., e.s.t., in Room 725 of the Universal Building, 1825 Connecticut Avenue, Washington 25, D.C., is hereby postponed until January 31, 1961, at the same time and in the same room.

Dated at Washington, D.C., December 22, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-12098; Filed, Dec. 28, 1960; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 13605-13607; FCC 60M-2167]

ABILENE RADIO AND TELEVISION CO. ET AL.

Order Scheduling Hearing

In re applications of Abilene Radio and Television Company, San Angelo, Texas, Docket No. 13605, File No. BPCT-2639; E. C. Gunter, San Angelo, Texas, Docket No. 13606, File No. BPCT-2663; Dornita Investment Corp., San Angelo, Texas, Docket No. 13607, File No. BPCT-2714; for construction permits.

Pursuant to agreement of counsel arrived at during the further prehearing conference held on this date: *It is ordered*, This 21st day of December 1960, that the hearing in the above-styled proceeding will commence at 10 o'clock

a.m., on February 28, 1961, in Washington, D.C.

Released: December 22, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12090; Filed, Dec. 28, 1960; 8:49 a.m.]

[Docket Nos. 13871, 13899; FCC 60M-2172]

ATLANTA OK BROADCASTING CO., INC. AND WRMA BROADCASTING CO., INC.

Order Scheduling Hearing

In the mattef of Atlanta OK Broadcasting Company, Inc., licensee of standard broadcast Station WAOK, Atlanta, Georgia, Docket No. 13871; WRMA Broadcasting Company, Inc., licensee of standard broadcast Station WRMA, Montgomery, Alabama, Docket No. 13899; order to show cause why a Cease and Desist Order should not be issued.

It is ordered, This 21st day of December 1960, that Thomas H. Donahue will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on March 7, 1961, in Washington, D.C.

Released: December 22, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12091; Filed, Dec. 28, 1960; 8:49 a.m.]

[Docket Nos. 12787, 12790; FCC 60M-2166]

WALTER L. FOLLMER AND INTERSTATE BROADCASTING CO., INC. (WQXR)

Order Scheduling Hearing

In re applications of Walter L. Follmer, Hamilton, Ohio, Docket No. 12787, File No. BP-11323; Interstate Broadcasting Company, Inc. (WQXR), New York, New York, Docket No. 12790, File No. BP-11707; for construction permits.

The Hearing Examiner having under consideration the designation of a date for further hearing in the above-entitled proceeding;

It is ordered, This 21st day of December 1960, that further hearing will convene on January 25, 1961.

Released: December 22, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12092; Filed, Dec. 28, 1960; 8:49 a.m.]

[Docket Nos. 12839-12840; FCC 60M-2175]

NEWPORT BROADCASTING CO. AND CRITTENDEN COUNTY BROADCASTING CO.

Order Scheduling Hearing

In re applications of Newport Broadcasting Company, West Memphis, Arkansas, Docket No. 12839, File No. BP-12113; Crittenden County Broadcasting Company, West Memphis, Arkansas, Docket No. 12840, File No. BP-12405; for construction permits.

It is ordered, This 22d day of December 1960 that a hearing conference will be held in the above-entitled proceeding on December 29, 1960 commencing at 10:00 a.m., in the offices of the Commission at Washington, D.C.; the purpose of said conference being to determine what action shall be taken relative to the depositions taken herein on the dates of October 26, 27 and 28, 1960, transcripts of which have not been received in the offices of the Commission.

Released: December 23, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12093; Filed, Dec. 28, 1960; 8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 21, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36795: *Substituted service—C&O for McLean Trucking Company, Et Al.* Filed by Central States Motor Freight Bureau, Inc., Agent (No. 53), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., on the one hand, and Buffalo, N.Y., Charleston, W. Va., Cincinnati, Ohio and Detroit, Mich., on the other, also between Detroit, Mich., and Buffalo, N.Y.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Central States Motor Freight Bureau tariff MF-I.C.C. 963.

FSA No. 36796: *Substituted service—IC for Jones Truck Lines, Inc.* Filed by Central States Motor Freight Bureau, Inc., Agent (No. 55), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., on the one hand, and Dubuque, Iowa and East St. Louis, Ill., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Central States Motor Freight Bureau, Inc., tariff MF-I.C.C. 963.

FSA No. 36797: *Substituted service—Wabash for Gateway Transportation Co.* Filed by Central States Motor Freight Bureau, Inc., Agent (No. 59), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Detroit, Mich., and Buffalo, N.Y., also between East St. Louis, Ill., and Toledo, Ohio, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Central States Motor Freight Bureau, Inc., tariff MF-I.C.C. 963.

FSA No. 36798: *Joint rail-motor rates from and to western trunk line territory.* Filed by Middlewest Motor Freight Bureau, Agent (No. 290), for interested carriers. Rates on various commodities, moving on class or commodity rates, loaded in highway trailers of the motor carriers over the highways, thence transported on railroad flat cars of the rail carriers, between points in western trunk-line territory; between points in western trunk-line territory, and points in central territory, also between points in central, southwestern and western trunk line territories.

Grounds for relief: Rail-truck competition.

FSA No. 36799: *Newsprint from Alabama to Virginia points.* Filed by O. W. South, Jr., Agent (No. A4051), for interested rail carriers. Rates on newsprint paper, in carloads, from Coosa Pines and Childersburg, Ala., to Norfolk, Newport News and Richmond, Va.

Grounds for relief: Market competition.

Tariff: Supplement 56 to Southern Freight Association tariff I.C.C. S-46.

FSA No. 36800: *Saturant solvent from Montana to Minnesota points.* Filed by Great Northern Railway Company (No. 1071), jointly with Northern Pacific Railway Company (No. 114), for themselves and interested rail carriers. Rates on saturant solvent, petroleum, timber-treating, in tank-car loads, from Billings, East Billings, Laurel and Great Falls, Montana, to Minneapolis, Minnesota Transfer and St. Paul, Minn.

Grounds for relief: Cross-country competition.

Tariffs: Supplement 29 to Northern Pacific Railway Company tariff I.C.C. 9906, and supplement 26 to Great Northern Railway Company tariff I.C.C. A-8854.

FSA No. 36801: *Substituted service—C&NW for Riss & Company, Inc.* Filed by Central States Motor Freight Bureau, Inc., Agent (No. 54), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., and East St. Louis, Ill., on traffic originating or destined such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Central States Motor Freight Bureau tariff MF-I.C.C. 963.

FSA No. 36802: *Substituted service—L&N for A. & H. Truck Lines, Inc.* Filed by Central States Motor Freight Bureau, Inc., Agent (No. 56), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between East St. Louis, Ill., on the one hand, and Evansville, Ind., and Louisville, Ky., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Central States Motor Freight Bureau tariff MF-I.C.C. 963.

FSA No. 36803: *Substituted service—PRR for Cooper-Jarrett, Inc.* Filed by Central States Motor Freight Bureau, Inc., Agent (No. 57), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars, between Chicago, Ill., and Buffalo, N.Y., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Central States Motor Freight Bureau tariff MF-I.C.C. 963.

FSA No. 36804: *Substituted service—TP&W and PRR for Great American Transportation, Inc.* Filed by General States Motor Freight Bureau, Inc., Agent (No. 58), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Peoria, Ill., on the one hand, and Buffalo, N.Y., and Detroit, Mich., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Central States Motor Freight Bureau tariff MF-I.C.C. 963.

FSA No. 36805: *Lumber from southern territory to Points in Michigan.* Filed by O. W. South, Jr., Agent (No. A4049), for interested rail carriers. Rates on lumber and related articles, in carloads, from points in southern territory to points in Michigan.

Grounds for relief: Short-line distance formula, grouping and motor-truck competition.

Tariffs: Supplement 100 to Southern Freight Association tariff I.C.C. 1443, and other schedules listed in the application.

FSA No. 36806: *Substituted service—C&NW for Riss & Company, Inc. (A Delaware Corp.).* Filed by Middlewest Motor Freight Bureau, Agent (No. 291), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Chicago, Ill., and East St. Louis, Ill., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 149 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

FSA No. 36807: *Substituted service—C&NW for Buckingham Express, Inc., et al.* Filed by Middlewest Motor Freight Bureau, Agent (No. 292), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Chicago, Ill., on the one hand, and Sioux Falls, S. Dak., and Marshalltown, Iowa, on the other, also between East St. Louis, Ill., and St. Paul, Minn., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 149 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

FSA No. 36808: *Substituted service—Wabash for Strickland Transportation Co., Inc., et al.* Filed by Middlewest Motor Freight Bureau, Agent (No. 293), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Chicago, Ill., and East St. Louis, Ill., on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 149 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

FSA No. 36809: *Substituted service—CRI&P for Healzer Cartage Co., et al.* Filed by Middlewest Motor Freight Bureau, Agent (No. 294), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Chicago (Burr Oak), Ill., and St. Louis, Mo., on the one hand, and Dallas, Ft. Worth and Houston, Tex., on the other; between St. Louis, Mo., on the one hand, and Dallas and Ft. Worth, Tex., and Oklahoma City, Okla., on the other; also between Kansas City (Armourdale), Kans., and St. Louis, Mo.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 149 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

FSA No. 36810: *Substituted service—CRI&P for Riss & Company, Inc. (A Delaware Corp.).* Filed by Middlewest Motor Freight Bureau, Agent (No. 295), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Denver, Colo., on the one hand, and Chicago (Burr Oak), Ill., and St. Louis, Mo., on the other, on traffic originating at or destined to such points or points beyond as described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 149 to Middlewest Motor Freight Bureau tariff MF-I.C.C. 223.

AGGREGATE-OF-INTERMEDIATES

FSA No. 36811: *Superphosphate from Florida to New England points.* Filed by O. W. South, Jr., Agent (No. A4050), for interested rail carriers. Rates on superphosphate, not defluorinated superphosphate nor feed grade superphosphate, in bulk, in carloads, from Florida producing points to specified points in Connecticut, Massachusetts and Rhode Island.

Grounds for relief: Maintenance of depressed rates established to meet rail-water-truck competition without having to use such rate as factors in constructing combination rates.

Tariff: Supplement 14 to Southern Freight Association tariff I.C.C. S-128.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-11926; Filed, Dec. 23, 1960; 8:46 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 23, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36812: *Commodities between points in Texas.* Filed by Texas-Louisiana Freight Bureau, Agent (No. 395), for interested rail carriers. Rates on brick, insecticides, fertilizer compounds, window frames, etc., in carloads and less-than-carloads, as described in the application, between points in Texas, over interstate routes through adjoining states.

Grounds for relief: Intrastate competition and maintenance of rates from and to points in other states not subject to the same competition.

Tariff: Supplement 114 to Texas-Louisiana Freight Bureau tariff I.C.C. 865.

FSA No. 36814: *Precipitated phosphate dust—Tennessee points to Illinois and WTL territories.* Filed by O. W. South,

Jr., Agent (No. A4052), for interested rail carriers. Rates on precipitated phosphate dust, in carloads from L & N RR producing points in Tennessee, to points in Illinois and western trunk-line territories.

Grounds for relief: Short-line distance formula and grouping.

Tariffs: Supplements 64 and 1 to Southern Freight Association tariffs I.C.C. 1386 and S–171, respectively.

AGGREGATE OF INTERMEDIATES

FSA No. 36813: *Commodities between points in Texas.* Filed by Texas-Louisiana Freight Bureau, Agent (No. 396), for interested rail carriers. Rates on motor fuel anti-knock compound, spelter and zinc anodes, iron or steel tanks, etc., in carloads or less-than-carloads, as described in the application, from, to, and between points in Texas, over interstate routes through adjoining states.

Grounds for relief: Maintenance of depressed rates established to meet intrastate competition without use of such rates as factors in constructing combination rates.

Tariff: Supplement 114 to Texas-Louisiana Freight Bureau tariff I.C.C. 865.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60–12066; Filed, Dec. 28, 1960; 8:48 a.m.]

[Notice 429]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 23, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 63839. By order of December 22, 1960, The Transfer Board approved the transfer to Lee Way Motor Freight of Indiana, Inc., Indianapolis, Ind., of Certificates Nos. MC 68715 Sub 1, MC 68715 Sub 7, MC 68715 Sub 8, MC 68715 Sub 9, and MC 68715 Sub 12, issued January 8, 1944, April 29, 1947, August 11, 1949, November 21, 1950, and December 8, 1960, to Summit Fast Freight, Inc., Akron, Ohio, authorizing the transportation of general commodities, excluding household goods, commodities, in bulk, and various specified commodities, over regular routes, between Ft. Wayne, Ind. and Chicago, Ill.; between specified points in Ohio; between Lima, Ohio and St. Louis, Mo.; between junction Indiana Highway 152 and U.S. Highway 6 and Akron, Ohio; between Chicago, Ill. and Pittsburgh, Pa.; and over irregular routes, from points in Chicago, Ill., commercial zone, to specified points in Ohio, West Virginia, Pennsylvania and New York; from North Canton, Massillon and Youngstown, Ohio, to points in West Virginia and Pennsylvania; from Canton, Ohio to points in West Virginia and Pennsylvania; from points in Allegheny County, Pa., and above points to points in Lake County, Ind., and Cook, DuPage, Kane and Will Counties, Ill.; between points in Ohio; between points in the Chicago, Ill., Commercial Zone and between points in the St. Louis, Mo., Commercial Zone; general commodities, excluding household goods, and various specified commodities, between Canton, Ohio, and points in Ohio, Pennsylvania and West Virginia; general commodities, excluding household goods, commodities in bulk, and various specified commodities, authorized to and from points in Cuyahoga County, Ohio as off-route points in connection with said carrier's authorized regular route between Cleveland and Canton; to and from Hampshire, Ill., and points in Kane County, Ill.; from Illinois points to points in Allegheny County, Pa.; between St. Louis, Mo., on the one hand, and, on the other, points in Illinois; between points in St. Louis County, Mo., other than Valley Park, Mo., on the one hand, and, on the other, points in Ill., and St. Louis, Mo.; between specified Illinois points; and, serving site of B. F. Goodrich Company, plant, approximately 13 miles east of Fort Wayne, Ind., in Milan Township, Allen County, Ind., as an off-route point in connection with carrier's regular route operations to and from Fort Wayne, Ind. Sidney P. Upsher, 3000 West Reno, Oklahoma City, Okla., for applicants.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60–12067; Filed, Dec. 28, 1960; 8:48 a.m.]

Bureau of Operating Rights

[Notice 356]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

DECEMBER 23, 1960.

The following publications are governed by the Interstate Commerce Commission's general rules of practice including special rules (49 CFR 1.241) governing notice of filing of applications by motor carriers of property or passengers or brokers under sections 206, 209 and 211 of the Interstate Commerce Act and certain other proceedings with respect thereto.

All hearings and pre-hearing conferences will be called at 9:30 o'clock a.m., United States standard time, unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 263 (Sub No. 122) (REPUBLICATION), filed August 15, 1960, published in the FEDERAL REGISTER, issue of August 31, 1960. Applicant: GARRETT FREIGHTLINES, INC., 2055 Pole Line Road, Pocatello, Idaho. Applicant's attorney: Maurice H. Greene, Boise, Idaho. The subject application, as originally filed sought authority to transport: Ferrophosphorus slag, in bulk, from Don, Idaho over U.S. Highway 30N to Pocatello, Idaho, thence over U.S. Highway 191 to Brigham City, Utah, thence over U.S. Highway 91 to Salt Lake City, Utah, thence over U.S. Highway 40 to Garfield, Utah. At the hearing held November 7, 1960, at Salt Lake City, Utah, before Hearing Examiner Lawrence A. Van Dyke, Jr., the application was amended to include service to Salt Lake City, as an intermediate point. In a Report and Order, served December 9, 1960, the Examiner finds that public convenience and necessity require operation by applicant as a *common carrier*, by motor vehicle, in interstate or foreign commerce, of *ferrophosphorus slag*, in bulk, over a regular route, from Don, Idaho, to Garfield and Salt Lake City, Utah, from Don over U.S. Highway 30N to Pocatello, Idaho, thence over U.S. Highway 191 to Brigham City, Utah, thence over U.S. Highway 91 to Salt Lake City, and thence over U.S. Highway 40 to Garfield, Utah, serving Salt Lake City as an intermediate point for delivery only. The purpose of this republication is to advise that any person or persons who may have been prejudiced by the allowance of the amendment, may, within 30 days from the date of this republication in the FEDERAL REGISTER, file an appropriate pleading.

No. MC 704 (Sub No. 23), filed December 15, 1960. Applicant: J. O. (RED) WILLETT PIPE LINE STRINGING CORPORATION, P.O. Box 2836, Monroe, La. Applicant's attorney: Tom B. Kretsinger, Suite 1014–18 Temple Building, Kansas City, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment or special handling, and *related machinery parts* and *related contractors' materials* and *supplies*, when their transportation is incidental to the transportation by said carrier of commodities which by reason of size or weight require special equipment or special handling, between points in California, Washington, Oregon, Arizona, Nevada, Idaho, Utah, Montana, Wyoming and Colorado.

HEARING: January 23, 1961, at the New Customs House, Denver, Colo., before Examiner Leo W. Cunningham.

No. MC 3252 (Sub No. 27), filed October 3, 1960. Applicant: PAUL E. MERRILL, doing business as MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, Maine. Applicant's attorney: Francis E. Barrett, Jr. Professional Building, 25 Bryant Avenue, East Milton 86 (Boston), Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aviation fuel*, in bulk, in tank vehicles; from Waltham, Mass., to Houlton, Maine, and *refused or rejected shipments*, on return.

NOTE: Common control may be involved.

HEARING: February 2, 1961, at the New Post Office and Court House Building, Boston, Mass., before Joint Board No. 69, or, if the Joint Board waives its right to participate, before Examiner Alton R. Smith.

No. MC 13250 (Sub No. 71), filed August 23, 1960. Applicant: J. H. ROSE TRUCK LINE, INC., 3804 Jensen Drive, P.O. Box 16037, Houston 22, Tex. Applicant's attorney: Charles D. Mathews, Brown Building, Austin, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment or handling, *parts thereof, machinery parts*, and *contractors' materials and supplies*, between points in Kansas, Oklahoma, Texas, Louisiana, and New Mexico, on the one hand, and, on the other, points in Oregon and Washington.

NOTE: Applicant is presently authorized to conduct operations in the states of Arizona, Arkansas, California, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Texas, Utah and Wyoming, under Certificate No. MC 13250 and subs thereunder. No duplication of present authority is sought by the instant application.

HEARING: January 23, 1961, at the New Customs House, Denver, Colo., before Examiner Leo W. Cunningham.

No. MC 13250 (Sub No. 72), filed August 23, 1960. Applicant: J. H. ROSE TRUCK LINE, INC., 3804 Jensen Drive, P.O. Box 16037, Houston 22, Tex. Applicant's attorney: Charles D. Mathews, Brown Building, P.O. Box 858, Austin, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment or handling, *parts thereof, machinery parts*, and *contractors' materials and supplies*, between points in Nevada, on the one hand, and, on the other, points in Texas, Louisiana, Oklahoma, Arkansas, Kansas, and Missouri.

NOTE: Applicant states that no duplication of present authority is sought by the instant application.

HEARING: January 23, 1961, at the New Customs House, Denver, Colo., before Examiner Leo W. Cunningham.

No. MC 17778 (Sub No. 32) (AMENDMENT), filed October 12, 1960, published in the FEDERAL REGISTER issue of November 23, 1960. Applicant: YALE TRANSPORT CORP., 460 12th Avenue, New York, N.Y. Applicant's attorney: Herbert Burstein, 160 Broadway, New York 38, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment; (A) Between Washington, D.C., Baltimore, Md., Philadelphia and Marcus Hook, Pa., and Trenton, N.J., on the one hand, and, on the other, points in Hudson, Essex, Union, Morris, Middlesex, Passaic and Bergen Counties, N.J. (B) Between New York, N.Y., New Rochelle, N.Y., and points in Westchester County, N.Y., within 15 miles of New Rochelle, on the one hand, and, on the other, points in Massachusetts, and points in Connecticut, except that no transportation is authorized for shipments originating in that part of Connecticut east of U.S. Highway 5. (C) Between points in Connecticut and Massachusetts, except that no transportation is authorized for shipments originating in that part of Connecticut east of U.S. Highway 5. (D) Between Providence, R.I., on the one hand, and, on the other, points in Massachusetts and Connecticut, except that no transportation is authorized for shipments originating in that part of Connecticut east of U.S. Highway 5. (E) Between Concord, N.H. and the Massachusetts-New Hampshire Boundary line, including all off-route and intermediate points in New Hampshire, as more particularly set forth in Certificates of Public Convenience and Necessity No. MC–10367 and Sub No. 1 thereunder, formerly owned by Chelsea Contracting and Trucking Co., which Yale Transport Corp. was authorized by the Interstate Commerce Commission to acquire in Docket No. MC–F–7246, on the one hand, and, on the other, points in Connecticut and Massachusetts, except that no transportation is authorized for shipments originating in that part of Connecticut east of U.S. Highway 5. (F) *General commodities*, except used household goods, and except Classes A and B explosives, and commodities requiring dump truck service; between Amsterdam, Hudson, Albany, Schenectady, Cohoes, Troy, Johnstown, Gloversville, Voorheesville, Middleville, Colonie, Menands, Saratoga Springs, N.Y., on the one hand, and, on the other, points in Connecticut and Massachusetts, except that no transportation is authorized for shipments originating in that part of Connecticut east of U.S. Highway 5.

NOTE: Applicant states that this application is filed for the purpose of eliminating the gateway points of Secaucus, N.J., New Haven, Conn. and New Rochelle, N.Y., and the gateway territory of points in Westchester County, N.Y., within 15 miles of New Rochelle.

HEARING: Remains as assigned, January 20, 1961, at 346 Broadway, New York, N.Y., before Examiner Reece Harrison.

No. MC 19553 (Sub No. 24), filed November 17, 1960. Applicant: KNOX MOTOR SERVICE, INC., P.O. Box 359, Rockford, Ill. Applicant's representative: Robert M. Kaske (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, including bulk liquids, assembled automobiles, and heavy machinery requiring special equipment for handling; serving Pekin, Ill., as an off-route point in connection with carriers authorized regular-route operations to and from Peoria, Ill.

NOTE: Applicant states that corporate officers of Knox Motor Service, Inc. are affiliated with Exonomy Express and Cartage, Milwaukee, Wis., therefore, common control may be involved.

HEARING: February 16, 1961, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Richard H. Roberts.

No. MC 30175 (Sub No. 11), filed November 9, 1960. Applicant: GAY'S EXPRESS, INC., Route 5, South, Bellows Falls, Vt. Applicant's attorney: Kenneth B. Williams, 111 State Street, Boston 9, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Classes A and B explosives*, between Burlington, Vt., on the one hand, and, on the other, points in New Hampshire, Massachusetts, Connecticut, New York and New Jersey located on applicant's regular routes, including off-route points, as described in applicant's present authority, in Certificates of Public Convenience and Necessity, No. MC 30175 and No. MC 30175 (Sub No. 10).

HEARING: February 15, 1961, at the Washington County Court House, Montpelier, Vt., before Examiner Alton R. Smith.

No. MC 31466 (Sub No. 24), filed March 28, 1960. Applicant: L. C. L. TRANSIT COMPANY, a corporation, 520 North Roosevelt Street, P.O. Box 667, Green Bay, Wis. Applicant's attorney: Edward A. Solie, 1 South Pinckney Street, Madison 3, Wis. Authority sought to operate as a *common or contract* carrier, by motor vehicle, over irregular routes, transporting: *Fresh meats*, including *carcasses* and *fresh cuts*, between St. Louis, Mo., Barron, Rice Lake, Superior, and Ashland, Wis., and Duluth, Minn., points in that part of Wisconsin on and south of Wisconsin Highway 64 from Marinette to Merrill, Wis., on and east of U.S. Highway 51 from Merrill to Wausau, Wis., on and south of Wisconsin Highway 29 from Wausau, Wis., to junction U.S. Highway 12, near Elk Mound, Wis., and on and south of U.S. Highway 12 from said junction to the Wisconsin-Minnesota State line, including points in Kewaunee and Door Counties, Wis., points in that part of Minnesota on and east of U.S. Highway 169 and on and south of U.S. Highway 12, Ottumwa, Burlington,

and Keokuk, Iowa, and points in that part of Iowa on and south of U.S. Highway 18 from Marquette to Garner, Iowa, on and east of U.S. Highway 69 from Garner to Des Moines, Iowa, and on and north of U.S. Highway 6 from Des Moines to Davenport, Iowa, points in that part of Illinois on and north of U.S. Highway 36, points in Indiana, and points in Michigan except those in that part of the Lower Peninsula of Michigan north of the northern boundary of Muskegon, Kent, Montcalm, Gratiot, Midland, Gladwin, Arenac, and Iosco Counties, Mich.

NOTE: A proceeding has been instituted under section 212(c) in No. MC 31466 (Sub No. 22) to determine whether applicant's status is that of a common or contract carrier. Applicant requests that duplication with present authority be eliminated.

HEARING: February 20, 1961, at the Wisconsin Public Service Commission, Madison, Wis., before Examiner Charles B. Heineman.

No. MC 31600 (Sub No. 486), filed November 7, 1960. Applicant: P. B. MUTRIE MOTOR TRANSPORTATION, INC., Calvary Street, Waltham, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Low sulphur No. 6 oil*, in bulk, in tank vehicles, from Rensselaer, N.Y., to Quincy, Mass., and *refused and rejected shipments*, on return.

HEARING: February 6, 1961, at the New Post Office and Court House Building, Boston, Mass., before Examiner Alton R. Smith.

No. MC 34227 (Sub No. 4) filed November 23, 1960. Applicant: E. L. NORTHCUTT (GERALD D. NORTHCUTT, Administrator), 523 Candelaria Avenue NW., Albuquerque, N. Mex. Applicant's attorney: William J. Torrington, 1003 Maryland Trust Building, Baltimore 2, Md. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are dealt in by wholesale, retail, and chain grocery and food business houses, and in connection therewith, *equipment, materials, and supplies*, used in the conduct of such businesses, from Los Angeles, Calif., and Phoenix, Ariz., to Albuquerque, N. Mex.

NOTE: Applicant states it now holds authority under Permit No. MC 34227 as a regular route carrier, and seeks herein to delete such regular route operations from said Permit upon the grounds that due to changes in highways and routing since 1940–1943 the above stated route is no longer possible or practical and applicant's operations are now in fact irregular route operations rather than regular route operations. Applicant also states it proposes to transport exempt commodities, on return. Common control may be involved.

HEARING: January 24, 1961, at the New Mexico State Corporation Commission, Santa Fe, N. Mex., before Joint Board No. 167.

No. MC 43475 (Sub No. 46), filed December 19, 1960. Applicant: GLENDENNING MOTORWAYS, INC., 820 Hampden Avenue, St. Paul, Minn. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, and those requiring special equipment, serving Portage, Ind., as an off-route point in connection with applicant's presently authorized regular route operations to and from Chicago, Ill.

HEARING: January 11, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local Daylight Saving Time, if that time is observed), in the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, or, if the Joint Board waives its right to participate, before Examiner John L. York.

No. MC 48388 (Sub No. 41), filed December 9, 1960. Applicant: J. E. FALTIN MOTOR TRANSPORTATION, INC., 515 South Willow Street, Manchester, N.H. Applicant's attorney: Clarence D. Todd, 1825 Jefferson Place NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over *irregular routes*, transporting: *Printed matter (books, catalogues, magazines, periodicals, printed sheets, and printing paper)*; between Westbury, L.I., N.Y., on the one hand, and, on the other, Concord, N.H.

HEARING: February 10, 1961, at the New Hampshire Public Service Commission, Concord, N.H., before Examiner Alton R. Smith.

No. MC 50201 (Sub No. 19), Filed December 9, 1960. Applicant: DOUGLAS TRUCKING LINES, INC., 1011 Main Street, Owosso, Mich. Applicant's attorney: David Axelrod, 39 South LaSalle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading; between Chicago, Ill., on the one hand, and, on the other, LaGrange, Ind.

HEARING: January 26, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed), in the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 21.

No. MC 52751 (Sub No. 24), filed October 24, 1960. Applicant: ACE LINES, INC., 4143 East 43d Street, Des Moines, Iowa. Applicant's representative: William A. Landau, 1307 East Walnut Street, Des Moines 16, Iowa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building materials;* from Minneapolis and St. Paul, Minn., to points in Nebraska (except Omaha).

HEARING: February 20, 1961, in Room 926, Metropolitan Building, Second Avenue, South and Third, Minneapolis, Minn., before Examiner Richard H. Roberts.

No. MC 59681 (Sub No. 46), filed December 19, 1960. Applicant: DAKOTA TRANSFER & STORAGE COMPANY, 11 Oak Street SE., Minneapolis, Minn. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving Portage, Ind., as an off-route point in connection with applicant's presently authorized regular route operations to and from Chicago, Ill.

HEARING: January 11, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed), in the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, or, if the Joint Board waives its right to participate, before Examiner John L. York.

No. MC 59852 (Sub-No. 14), filed December 12, 1960. Applicant: ALL STATES FREIGHT, INCORPORATED, 1250 Kelly Avenue, Akron, Ohio. Applicant's practitioner: Walter M. F. Neugebauer, 1250 Kelly Avenue, Akron 6, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General Commodities*, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, liquid commodities in bulk, and those requiring special equipment, serving points in Indiana bounded on the West by the Lake and Porter County lines, on the South by U.S. Highway 20, on the East by Indiana Highway 49, and on the North by Lake Michigan, and the site of the new Midwest Steel Corporation plant, located on U.S. Highway 12, approximately two miles East of the Lake-Porter County Line and at or near Portage, Ind., as off-route points in connection with applicant's operations to and from Chicago, Ill.

HEARING: January 11, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed), in the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, or, if the Joint Board waives its right to participate, before Examiner John L. York.

No. MC 61396 (Sub No. 77), filed December 9, 1960. Applicant: HERMAN BROS., INC., 229 W.O.W. Building, Omaha, Nebr. Applicant's attorney: Donald L. Stern, 924 City National Bank Building, Omaha 2, Nebr. Authority sought to operate as a *common carrier*, by motor vehicle, over *irregular routes*, transporting: *Petroleum* and *petroleum products*, in bulk, in tank vehicles; from Pipeline Terminal of Standard Oil Company (Indiana), located or to be located in Andrew County, Mo., to points in Missouri, Iowa, Kansas and Nebraska, and *rejected or damaged shipments*, on return.

HEARING: January 24, 1961, at the Park East Hotel, Kansas City, Mo., before Examiner C. Evans Brooks.

No. MC 61403 (Sub No. 58), filed December 12, 1960. Applicant: THE MASON AND DIXON TANK LINES, INC., Wilcox Drive, Kingsport, Tenn. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products, coal tar products, chemicals* and *insecticides*, in bulk, in tank vehicles, from Marshall, Ill. and points within five (5) miles thereof, to points in the United States on and east of U.S. Highway 85.

NOTE: Common control may be involved.

HEARING: January 18, 1961, at the U.S. Custom House, Room 852, 610 South Canal Street, Chicago, Ill., before Examiner John L. York.

No. MC 64932 (Sub No. 286), filed December 19, 1960. Applicant: ROGERS CARTAGE CO., a corporation, 1934 South Wentworth Avenue, Chicago, Ill. Applicant's attorney: David Axelrod, 39 South LaSalle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Acids*, and *chemicals*, and *dry commodities*, in bulk, in tank or hopper vehicles, from Marseilles, Ill. and points within five miles thereof, to points in Arkansas, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Tennessee, and Wisconsin.

HEARING: January 10, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed), in the U.S. Court Rooms, Indianapolis, Ind., before Examiner John L. York.

No. MC 70451 (Sub No. 223), filed December 12, 1960. Applicant: WATSON BROS. TRANSPORTATION CO., INC., 1910 Harney Street, Omaha, Nebr. Applicant's attorney: David Axelrod, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities, including Classes A and B explosives*, and except commodities in bulk, household goods as defined by the Commission, and commodities requiring special equipment, serving the site of the Four Corners Electric Generating Plant and Dam, located on an unnamed and unnumbered highway approximately six and one-half (6½) miles southwest of Fruitland, N. Mex., as an off-route point in connection with applicant's presently authorized regular route operations to and from Farmington, N. Mex.

HEARING: January 25, 1961, at the New Mexico State Corporation Commission, Santa Fe, N. Mex., before Joint Board No. 87.

No. MC 79577 (Sub No. 30), filed November 29, 1960. Applicant: OILFIELDS TRUCKING COMPANY, a corporation, P.O. Box 751, Bakersfield, Calif. Applicant's attorney: Phil Jacobson, 510 West Sixth Street, Suite 723, Los Angeles 14, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Petroleum and petroleum products*, in bulk, from points in Clark County, Nev. to points in Arizona, New Mexico, Utah, California, and Nevada, and (2) *contaminated or rejected petroleum or petroleum products*, in bulk, from Clark County, Nev. to points in Los Angeles and Kern Counties, Calif.

HEARING: January 18, 1961, at the Federal Building, Los Angeles, Calif., before Examiner F. Roy Linn.

No. MC 82101 (Sub No. 3), filed November 17, 1960. Applicant: WESTWOOD CARTAGE, INC., Route 1, near Everett Street, Westwood, Mass. Applicant's attorney: Francis E. Barrett, Jr., Professional Building, 25 Bryant Street, East Milton 86 (Boston), Mass. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by wholesale, retail and chain grocery and food business houses, and in connection therewith *equipment, materials and supplies* used in the conduct of such business (except commodities in bulk, in tank vehicles) between Springfield, Mass. and North Haven, Conn., on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and Westchester County, N.Y.

NOTE: Applicant states duplication with existing authority to be eliminated. Applicant also states the proposed service shall be performed under a continuing contract or contracts with Stop and Shop, Inc.

HEARING: February 7, 1961, at the New Post Office and Court House Building, Boston, Mass., before Examiner Alton R. Smith.

No. MC 87523 (Sub No. 82), filed March 14, 1960. Applicant: FRANK COSGROVE TRANSPORTATION COMPANY, INC., 393 Mystic Avenue, Medford, Mass. Applicant's attorney: Mary E. Kelley, 84 State Street, Boston 9, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bulk commodities*, in tank vehicle (except gasoline, fuel oil, tar and asphalt), between points in Massachusetts, Rhode Island and Connecticut; and between points in Massachusetts, Rhode Island and Connecticut, on the one hand, and, on the other, points in Maine, New Hampshire, Vermont, and the New York, New York Commercial Zone, as defined by the Commission in MCC 665.

HEARING: January 31, 1961, at the New Post Office and Court House Building, Boston, Mass., before Examiner Alton R. Smith.

No. MC 98610 (Sub No. 2), filed November 14, 1960. Applicant: THE KANSAS TRANSPORT COMPANY, INC., 1060 West Kansas, McPherson, Kans. Applicant's attorney: John E. Jandera, 641 Harrison Street, Topeka, Kans. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer and nitrogen fertilizer solution* (except anhydrous ammonia) in bulk, in tank vehicles, between points in Kansas, on the one hand, and, on the other, points in Nebraska and Iowa.

HEARING: February 7, 1961, at the Park East Hotel, Kansas City, Mo., before Examiner Charles B. Heineman.

No. MC 102616 (Sub No. 696), filed December 9, 1960. Applicant: COASTAL TANK LINES, INC., 501 Grantley Road, York, Pa. Applicant's attorney: Harold G. Hernly, 1624 Eye Street NW., Washington 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals*, in bulk, in tank or hopper type vehicles, from Trenton, Mich., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, and Rhode Island.

HEARING: January 16, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner David Waters.

No. MC 107403 (Sub No. 322), filed December 10, 1960. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Applicant's attorney: Shertz, Barnes and Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquefied petroleum gas*, in bulk, in tank vehicles, from Alma, Mich. to points in Indiana.

HEARING: February 10, 1961, in Room 215, Federal Building, Lansing, Mich., before Joint Board No. 23.

No. MC 107403 (Sub No. 325), filed December 19, 1960. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Applicant's attorney: Shertz, Barnes and Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products*, from Mosherville, Mich. and points within five miles thereof to points in Ohio.

HEARING: February 7, 1961, in Room 215, Federal Building, Lansing, Mich., before Joint Board No. 57.

No. MC 107515 (Sub No. 358), filed November 16, 1960. Applicant: REFRIGERATED TRANSPORT CO., INC., 290 University Avenue SW., Atlanta 10, Ga. Applicant's attorney: Paul M. Daniell, 214 Grant Building, Atlanta 3, Ga. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* including *frozen meats;* from points in Texas, to points in Mississippi and Louisiana. RESTRICTION: Shipments to points in Louisiana and Mississippi shall be restricted to those for partial unloading and subsequent delivery at destinations in Alabama, Tennessee, Georgia, Florida, North Carolina and South Carolina.

NOTE: Dual operations may be involved.

HEARING: February 6, 1961, at the Baker Hotel, Dallas, Tex., before Examiner Armin G. Clement.

No. MC 108158 (Sub No. 50), filed December 19, 1960. Applicant: MID-CONTINENT FREIGHT LINES, INC., 11 Oak Street SE., Minneapolis, Minn. Applicant's attorney: Edward G. Bazelon, 39 South La Salle Street, Chicago 3, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment; serving Portage, Indiana, as an off-route point in connec-

tion with applicant's presently authorized regular route operations to and from Chicago, Ill.

HEARING: January 11, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed), at the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, or, if the Joint Board waives its right to participate, before Examiner John L. York.

No. MC 109346 (Sub No. 7), filed December 15, 1960. Applicant: J. L. COX & SON, INC., P.O. Box 9476, Raytown, Mo. Applicant's attorney: Tom B. Kretsinger, Suite 1014–18 Temple Building, Kansas City, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, the transportation of which, because of their size or weight, require the use of special equipment or special handling, and *related machinery parts and related contractors' materials and supplies*, when their transportation is incidental to the transportation by said carrier of commodities which by reason of size or weight require special equipment or special handling, between points in California, Washington, Oregon, Arizona, Nevada, Idaho, Utah, Montana, Wyoming, and Colorado.

HEARING: January 23, 1961, at the New Customs House, Denver, Colo., before Examiner Leo W. Cunningham.

No. MC 109637 (Sub No. 171), filed December 5, 1960. Applicant: SOUTHERN TANK LINES, INC., 4107 Bells Lane, Louisville 11, Ky. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum and petroleum products* (except petroleum naptha) and (except asphalt and asphaltic derivatives from Columbia Park, Ohio), in bulk, in tank vehicles, from points in Hamilton County, Ohio to points in Kentucky west of U.S. Highway 31–W (except points in Jefferson County, Ky.).

NOTE: Common control may be involved.

HEARING: January 24, 1961, at the Kentucky Hotel, Louisville, Ky., before Joint Board No. 37, or, if the Joint Board waives its right to participate, before Examiner A. Lane Cricher.

No. MC 111557 (Sub No. 27), filed November 2, 1960. Applicant: KARL E. MOMSEN, doing business as MOMSEN TRUCKING CO., Highway 71 and 18 N, Spencer, Iowa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, dairy products, and articles distributed by meat packing houses* as defined in Sub Divisions A, B, and C of Appendix I of *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Fremont, Nebr. to Austin, Minn. and *empty containers or other such incidental facilities* (not specified) used in transporting the commodities specified above, on return.

HEARING: February 23, 1961, in Room 926, Metropolitan Building, Second Avenue, South and Third, Minneapolis, Minn., before Examiner Richard H. Roberts.

No. MC 112020 (Sub No. 102), filed August 22, 1960. Applicant: COMMERCIAL OIL TRANSPORT, INC., 1030 Stayton Street, Fort Worth, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wax*, in bulk, in tank vehicles, from points in Harris and Jefferson Counties, Tex., to points in Alabama, Oklahoma, Tennessee, and North Carolina.

HEARING: January 31, 1961, at the Baker Hotel, Dallas, Tex., before Examiner Armin G. Clement.

No. MC 112020 (Sub No. 105), filed October 4, 1960. Applicant: COMMERCIAL OIL TRANSPORT, INC., 1030 Stayton Street, Fort Worth, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives*, in bulk, in tank vehicles, from St. Joseph, Mo., to points in Texas, Oklahoma, Kansas, Colorado, Nebraska, Louisiana, Arkansas, Illinois, Iowa, Wisconsin, Minnesota, Indiana, Kentucky, Tennessee, Ohio, and Michigan.

HEARING: February 1, 1961, at the Baker Hotel, Dallas, Tex., before Examiner Armin G. Clement.

No. MC 112148 (Sub No. 17), filed November 29, 1960. Applicant: JAMES H. POWERS, INC., Melbourne, Iowa. Applicant's representative: William A. Landau, 1307 East Walnut, Des Moines 16, Iowa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Materials, supplies and products used in or produced by the food processing industry*, between Decatur and Lawton, Mich., on the one hand, and, on the other, Erie and North East, Pa., and points in New York on and west to U.S. Highway 11.

HEARING: February 7, 1961, at the Detroit-Leland Hotel, Detroit, Mich., before Examiner Richard H. Roberts.

No. MC 113267 (Sub No. 32), filed October 24, 1960. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 312 West Morris, Caseyville, Ill. Applicant's representative: Frederick H. Figge, 410 O'Farrell Street, Collinsville, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and wood products*, from Lachoochee, Fla., and points within ten (10) miles thereof, to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Missouri, Nebraska, Ohio, Tennessee and Wisconsin.

NOTE: Applicant has pending applications in No. MC 50132 and subs thereunder for contract carrier authority; therefore, dual operations under Section 210 may be involved.

HEARING: February 15, 1961, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Richard H. Roberts.

No. MC 113349 (Sub No. 2), filed December 14, 1960. Applicant: IURATO TRUCKING CO., a corporation, Rifle Camp Road, West Paterson, N.J. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City 6, N.J. Authority sought to operate as a *contract carrier*, by motor vehicle, over *irregular routes*, transporting: *Noodles*, in tote bins, from Fairlawn, N.J. to Albion, N.Y., and *empty tote bins*, on return.

NOTE: Under a continuing contract or contracts with A. Zerega & Son, Fairlawn, N.J.

HEARING: January 30, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Leo M. Pellerzi.

No. MC 113779 (Sub No. 133), filed August 10, 1960. Applicant: YORK INTERSTATE TRUCKING, INC., 9020 LaPorte Expressway, P.O. Box 12385, Houston 17, Tex. Applicant's attorney: Dale Woodall (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum* and *petroleum products*, in bulk, in specialized equipment; from the plant site of Sun Oil Company at Smiths Bluff, Tex., to points in Alabama, Arkansas, Florida, Georgia, Mississippi, and Tennessee.

HEARING: February 13, 1961, at the Federal Office Building, Franklin and Fannin Streets, Houston, Tex., before Examiner Armin G. Clement.

No. MC 113779 (Sub No. 134), filed October 5, 1960. Applicant: YORK INTERSTATE TRUCKING, INC., 9020 LaPorte Expressway, P.O. Box 12385, Houston 17, Tex. Applicant's attorney: Dale Woodall (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Acids* and *chemicals*, and *paint materials*, in bulk, in specialized equipment, from points in the Kansas City, Kans.-Kansas City, Mo., Commercial Zone, as defined by the Commission, to points in Texas.

HEARING: February 6, 1961, at the Park East Hotel, Kansas City, Mo., before Examiner Charles B. Heineman.

No. MC 114045 (Sub No. 63), filed October 27, 1960. Applicant: TRANS-COLD EXPRESS, INC., P.O. BOX 5842, Dallas, Tex. Applicant's attorney: Leroy Hallman, First National Bank Building, Dallas 2, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Food products*, from Philadelphia, Pa., to points in Texas, Oklahoma, Arkansas, and Louisiana.

HEARING: February 3, 1961, at the Baker Hotel, Dallas, Tex., before Examiner Armin G. Clement.

No. MC 114211 (Sub No. 21), filed October 17, 1960. Applicant: DONALDSON TRANSFER COMPANY, a corporation, P.O. Box 215, Waterloo, Iowa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Heating* and *air conditioning equipment* and *assemblies* and *parts thereof*, from Waterloo, Iowa, to points in the United States except Alaska and Hawaii, and *rejected shipments* of the above-described commodities, on return. (b) *Heating* and *air conditioning equipment* and *assemblies and parts thereof*, and *rejected shipments*, between Hialeah, Fla., Houston and Terrell, Tex., and Waterloo, Iowa.

HEARING: February 13, 1961, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Richard H. Roberts.

No. MC 114211 (Sub No. 22), filed October 24, 1960. Applicant: DONALDSON TRANSFER COMPANY, a corporation, 213 Witry Street, Waterloo, Iowa. Applicant's attorney: Charles W. Singer, 33 North La Salle Street, Chicago 2, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural implements and farm machinery*, and *parts thereof;* (1) from Blair, Nebr., to points in Iowa, Minnesota, Wisconsin and Illinois, and (2) from Corpus Christie and Dallas, Tex. and Hesston, Kans., to points in the United States except Alaska and Hawaii, and *rejected shipments*, on return, in connection with (1) and (2) above.

HEARING: February 14, 1961, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Richard H. Roberts.

No. MC 114670 (Sub No. 2), filed November 16, 1960. Applicant: GEORGE R. T. ROBERTS, Sabetha, Kans. Applicant's attorney: J. F. Miller, 500 Board of Trade Building, Kansas City 5, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alfalfa hay pellets* (dehydrated and not dehydrated), from Sabetha, Kans., to points in Kansas, Nebraska, Missouri (except Joplin, Mo. and points within the Commercial Zone thereof), Oklahoma, New Mexico, Texas, Arkansas, Louisiana, Tennessee, Mississippi, Alabama, Georgia and Florida, and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, and *exempt commodities*, on return.

HEARING: February 8, 1961, at the Park East Hotel, Kansas City, Mo., before Examiner Charles B. Heineman.

No. MC 114699 (Sub No. 14), filed December 12, 1960. Applicant: TANK LINES, INCORPORATED, P.O. Box 6415, North Dabney Road, Richmond, Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry commodities*, excluding cement, in bulk, (1) Between Hopewell, Va. and points within 15 miles thereof, on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, New York, Pennsylvania, and the District of Columbia. (2) Between Atlas Point, Del. and Reynolds, Pa. and points within 10 miles of each, and points in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

HEARING: January 11, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner A. Lane Cricher.

No. MC 116077 (Sub No. 92), filed September 6, 1960. Applicant: ROBERTSON TANK LINES, INC., 5700 Polk Avenue, P.O. Box 9218, Houston, Tex. Applicant's attorney: Charles D. Mathews, Brown Building, Austin, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in specialized equipment, from Smith's Bluff, Tex., to points in Alabama, Arkansas, Florida, Georgia, Mississippi, and Tennessee.

HEARING: February 13, 1961, at the Federal Office Building, Franklin and Fannin Streets, Houston, Tex., before Examiner Armin G. Clement.

No. MC 116893 (Sub No. 5), filed October 12, 1960. Applicant: MARTEL EXPRESS, LTD., 499 Main Street, Farnham, Quebec, Canada. Applicant's attorney: Gelsie J. Monti, 107 North Main Street, Barre, Vt. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wrapped packages or containers of unlabeled frozen vegetables;* from Seabrook, N.J. and Marlboro, N.Y., to the port of entry on the International Boundary between the United States and Canada at Rouses Point, N.Y.

HEARING: February 14, 1961, at the Washington County Court House, Montpelier, Vt., before Examiner Alton R. Smith.

No. MC 117039 (Sub No. 1), filed October 24, 1960. Applicant: HAROLD R. RODI, doing business as RODI AUTO TOWING COMPANY, 2315 South Ashland Avenue, Chicago, Ill. Applicant's attorney: Joseph M. Scanlan, 111 West Washington Street, Chicago 2, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked or disabled motor vehicles*, between Chicago, Ill., Iowa and Michigan.

HEARING: February 16, 1961, in Room 852, U.S. Custom House, 610 South Canal Street, Chicago, Ill., before Examiner Richard H. Roberts.

No. MC 117349 (Sub No. 5), filed November 21, 1960. Applicant: VINCENT J. BRAIO, doing business as J. BRAIO TRANS., 5 High Street, Worcester, Mass. Applicant's practitioner: Arthur A. Wentzell, 539 Hartford Turnpike Shrewsbury, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fish Meal*, in bags, or in bulk, in dump trucks, from Amagansett, N.Y., to Franklin, Conn., and Manchester, N.H.

HEARING: February 7, 1961, at the New Post Office and Court House Building, Boston, Mass., before Examiner Alton R. Smith.

No. MC 117644 (Sub No. 6), filed October 21, 1960. Applicant: D & T TRUCKING CO., INC., 3242 Highway 8, New Brighton, Minn. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Mink feed*, in bulk, in special compartment type vehicles equipped with auger and blower type unloader; from Minneapolis, Minn., to points in Illinois, Iowa, Michigan (upper peninsula), South Dakota, and Wisconsin.

NOTE: Applicant indicates that the destination points will be mink ranches or farms, located in other than incorporated cities or villages.

HEARING: February 21, 1961, in Room 926, Metropolitan Building, Second Avenue, South and Third, Minneapolis, Minn., before Examiner Richard H. Roberts.

No. MC 117865 (Sub No. 1), filed November 23, 1960. Applicant: ERIC LORENTZEN, 5 Beacon Road, Hull, Mass. Applicant's attorney: Mary E. Kelley, 10 Tremont Street, Boston 8, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, (1) from Baltimore, Md. to Worcester and Brockton, Mass. and Manchester, N.H., and (2) from Weehaukin, N.J., and New York, N.Y., to Manchester, N.H., and *exempt commodities* of (1) and (2) above, on return.

HEARING: February 8, 1961, at the New Post Office and Court House Building, Boston, Mass., before Examiner Alton R. Smith.

No. MC 119280 (Sub No. 1), filed November 7, 1960. Applicant: WHITE FREIGHT SERVICE, INC., 1402 Palmer Street, Houston, Tex. Applicant's attorney: Harry W. Patterson, San Jacinto Building, Houston 2, Tex. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* having a prior or subsequent movement by air; between Houston International Airport, on Airport Boulevard, Andrau Park, Westheimer Road, Allef, Tex. (both in Houston, Tex. Commercial Zone), and the Jefferson County Airport, located between Beaumont and Port Arthur, Tex., on U.S. Highway 287, on the one hand, and, on the other, points in Matagorda, Wharton, Lavaca, Fayette, Colorado, Brazoria, Fort Bend, Austin, Washington, Burleson, Brazos, Leon, Madison, Grimes, Walker, Montgomery, Harris, Galveston, Chambers, Polk, Liberty, San Jacinto, Trinity, Houston, Tyler, Hardin, Jefferson, Orange, Jasper, Calhoun, Victoria, Jackson, Angelina, and Newton Counties, Tex.

NOTE: Common control may be involved.

HEARING: February 14, 1961, at the Federal Office Building, Franklin and Fannin Street, Houston, Tex., before Joint Board No. 77, or, if the Joint Board waives its rights to participate, before Examiner Armin G. Clement.

No. MC 119317 (Sub No. 5) (CORRECTION), filed October 12, 1960, published FEDERAL REGISTER issue of November 30, 1960. Applicant: GROSS AND SONS TRANSPORT COMPANY, a corporation, 1706 Arlington Street, Independence, Mo. Applicant's attorney: William Taylor, 1012 Baltimore Building, Kansas City 5, Mo. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid milk*, in temperature controlled vehicles, including *Grade A, homogenized, pasteurized, chocolate* and *butter-milk, packaged butter, cream*, including *coffee cream, sour cream, heavy or whipping cream*, and *half and half cream, cottage cheese, liquid beverages*, including *Kraft orange juice, grape juice and orangeade*, all in glass or in paper containers, in packages and grouped in metal or other suitable carrying cases for easy handling, also *miscellaneous related items*, including *bulk milk* and *cream* in five gallon metal containers, from the processing and storage facilities of the National Dairy Products Cor-

poration, Sealtest Central Division, at Kansas City, Mo., to Atchison, Leavenworth, Lawrence, Topeka, Manhattan, Emporia, Ottawa, Fort Scott, Chanute, Parsons, Pittsburg, Garnett, and Iola, Kans., and *empty cases, bottles, containers* and *spoiled, rejected* or *returned items*, on return.

NOTE: The purpose of this republication is to show applicant's correct address as shown above. Previous publication incorrectly showed the street address as 1076.

HEARING: Remains as assigned January 20, 1961, at the Park East Hotel, Kansas City, Mo., before Joint Board No. 36, or, if the Joint Board waives its right to participate, before Examiner C. Evans Brooks.

No. MC 119564, filed March 7, 1960. Applicant: TRUX, INC., 1200 Builders Exchange, Minneapolis, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over regular route, transporting: *Glassware* and *bottles*, from Washington, Pa., to Minneapolis, Minn., from Washington over U.S. Highway 40 to Columbus, Ohio, thence over U.S. Highway 33 to Marysville, Ohio, thence over Ohio Highway 31 to Kenton, Ohio, thence over U.S. Highway 30–S to junction U.S. Highway 30, thence over U.S. Highway 30 to Van Wert, Ohio, thence continuing over U.S. Highway 30 to junction U.S. Highway 41 (South of Chicago, Ill.), thence over U.S. Highway 41 to Interstate Highway 90 Tollroad, thence over Interstate Highway 90 to junction U.S. Highway 14, thence over U.S. Highway 14 to Madison, Wis., thence over U.S. Highway 12 to Minneapolis, and return over the same route, serving no intermediate points.

NOTE: Applicant states it proposes to transport agricultural products only on return. This application is accompanied by a Petition to Dismiss.

HEARING: February 21, 1961, in Room 926, Metropolitan Building, Second Avenue, South and Third, Minneapolis, Minn., before Examiner Richard H. Roberts.

No. MC 119637 (Sub No. 1), filed November 15, 1960. Applicant: SILVER BROS. CO., INC., 177 Granite Street, Manchester, N.H. Applicant's attorney: G. Marshall Abbey, Forty Stark Street, Manchester, N.H. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Syrups and nonalcoholic carbonated beverages*, in bottles and cans, *ingredients* used in the manufacture thereof, in containers, and *miscellaneous materials and supplies, consisting of containers, partitions, caps, labels, bottling machine parts and advertising materials and displays*, between Manchester, N.H., and points in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey.

NOTE: Applicant states the proposed service shall be performed under a continuing contract or contracts with Cott Bottling Co. of Somerville, Mass., Inc., Cott Bottling Co. of New Jersey, Inc., and American Dry Beverage Corporation, all of Manchester, N.H.

HEARING: February 9, 1961, at the New Hampshire Public Service Commission, Concord, N.H., before Examiner Alton R. Smith.

No. MC 123028, filed August 25, 1960. Applicant: MERRILL G. JARVIS AND WILLIAM C. DOW, doing business as GREEN MOUNTAIN FILM TRANSPORTATION, 64 Marble Avenue, Burlington, Vt. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commercial motion picture film*, between Boston, Mass., and points in New Hampshire, including Lebanon, Claremont, and Keene, and points in Vermont.

HEARING: February 14, 1961, at the Washington County Court House, Montpelier, Vt., before Joint Board No. 189, or, if the Joint Board waives its right to participate, before Examiner Alton R. Smith.

No. MC 123093, filed September 26, 1960. Applicant: ENNIS TRANSPORTATION CO., INC., 106 Knight Hurst, Ennis, Tex. Applicant's attorney: Albert G. Walker, 202 Capital National Bank Building, Austin 16, Tex. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe* and *fiber pipe*, and *building materials*, including but not limited to (1) prepared insulated siding, asbestos siding and felt, and materials used in installation of such siding, (2) prepared roofing, asbestos shingles, asbestos roofing and felt and materials used in installation of such roofing, (3) aluminum siding and materials used in installation of such siding, (4) mineral wool insulation (rock or slag wool), and (5) liquid emulsion in containers, from Ennis, Tex., and points within five (5) miles of Ennis, to points in Oklahoma and Kansas, and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodities, on return.

NOTE: Applicant states the operations applied for under the instant application are limited to a transportation service to be performed under the contract or contracts with only The Flintkote Company, Ennis, Tex.

HEARING: February 2, 1961, at the Baker Hotel, Dallas, Tex., before Joint Board No. 170, or, if the Joint Board waives its right to participate, before Examiner Armin G. Clement.

No. MC 123123 (Sub No. 1), filed November 9, 1960. Applicant: JOHN F. NOONS, County Road, North Truro, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over a regular route, transporting: *Industrial sand*, in bulk, in dump vehicles, between Provincetown, Mass., and North Eastham, Mass., over U.S. Highway 6, serving no intermediate points.

HEARING: February 6, 1961, at the New Post Office and Court House Building, Boston, Mass., before Joint Board No. 231, or, if the Joint Board waives its right to participate, before Examiner Alton R. Smith.

No. MC 123152, filed October 20, 1960. Applicant: CHARLES FREDERICK, doing business as FREDERICK'S TRUCKING, Village of Merlin, Province of Ontario, Canada. Applicant's attorney: S. Harrison Kahn, 1110–14 Investment Building, Washington, D.C. Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: (1) *Seed, soya beans, feeds* and *feed concentrate*, from the port of entry on the International Boundary line between the United States and Canada at Detroit, Mich. to points in Michigan, Indiana, Ohio, and Illinois, and (2) *seed corn* and *soya bean meal*, in bags, in bulk, *seed* and *corn*, in bulk, from points in Michigan, Indiana, Ohio and Illinois to the port of entry on the International Boundary line between the United States and Canada at Detroit, Mich. RESTRICTION: Applicant states the transportation herein is restricted to foreign commerce of movements of property between points in the Dominion of Canada, on the one hand, and, on the other, points in the United States.

HEARING: February 10, 1961, at the Detroit-Leland Hotel, Detroit, Mich., before Examiner Richard H. Roberts.

No. MC 123172, filed October 28, 1960. Applicant: FLOYD H. PULVER, doing business as PULVER'S MOTOR SERVICE, 972 Fourteenth Avenue Southwest, Rochester, Minn. Applicant's attorney: Richard E. White, South Broadway at Third, Rochester, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Disabled motor vehicles*, between points in Minnesota, Iowa, Illinois and Wisconsin.

NOTE: Applicant tows motor vehicles of all types which have become damaged or incapacitated at request of persons in control of disabled vehicles.

HEARING: February 23, 1961, in Room 926, Metropolitan Building, Second Avenue, South and Third, Minneapolis, Minn., before Examiner Richard H. Roberts.

No. MC 123182, filed November 1, 1960. Applicant: ALBERT J. HOPE, Branch Road, Keene, N.H. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand, gravel and road paving materials*, between points in New Hampshire, Vermont, and Massachusetts.

HEARING: February 13, 1961, at the New Hampshire Public Service Commission, Concord, N.H., before Joint Board No. 189, or, if the Joint Board waives its right to participate, before Examiner Alton R. Smith.

No. MC 123192, filed November 7, 1960. Applicant: HAROLD SCHAK, Tyler, Minn. Applicant's representative: A. R. Fowler, 2288 University Avenue, St. Paul 14, Minn. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Animal and poultry feed*, in bags, from Sioux City, Iowa, and Lincoln, Nebr., to Tyler and Arco, Minn. (2) *Farm machinery and parts* thereof, from Sioux Falls, S. Dak., to Tyler and Arco, Minn. (3) *Emigrant movables*, from points in Lincoln and Lyon Counties, Minn., to points in Iowa and South Dakota.

HEARING: February 24, 1961, in Room 926, Metropolitan Building, Second Avenue, South and Third, Minneapolis, Minn., before Examiner Richard H. Roberts.

No. MC 123193, filed November 7, 1960. Applicant: ALAN TRANSPORT CORP., 43 Martin Road, Amesbury, Mass. Applicant's representative: Arthur A. Wentzell, 539 Hartford Turnpike, Shrewsbury, Mass. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, fresh fruits* and *fresh vegetables*, in mixed shipments, in the same vehicles; from Boston, Mass., to Canadian Ports of entry on the International Boundary Line between the United States and Canada located in the State of Maine, and *empty containers or other such incidental facilities*, used in transporting the above-described commodities, on return.

HEARING: February 2, 1961, at the New Post Office and Court House Building, Boston, Mass., before Joint Board No. 69, or, if the Joint Board waives its right to participate, before Examiner Alton R. Smith.

No. MC 123210, filed November 14, 1960. Applicant: LLEWELLYN R. BROWN, Sandwich Road, Holderness, N.H. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Log debarkers, live decks associated therewith*, and *components thereof*, between Contoocook, N.H. and points in the United States excluding Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, Montana, Wyoming, Colorado, New Mexico, Nebraska, Kansas, Oklahoma, and Ports of Entry on the International Boundary line between the United States and Canada.

HEARING: February 9, 1961, at the New Hampshire Public Service Commission, Concord, N.H., before Examiner Alton R. Smith.

No. MC 123213, filed November 15, 1960. Applicant: JAMES L. MILLER, 414 Euclid Street, Peoria Heights, Ill. Applicant's attorney: Don B. Pioletti, Nickel Building, Eureka, Ill. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed dairy products*, from Peoria, Ill. to Kentland, Logansport, Kokomo, Lafayette, West Lafayette and Peru, Ind., and *empty containers or other such incidental facilities* used in transporting the above-specified commodities, on return.

HEARING: January 24, 1961, at the U.S. Court Rooms and Federal Building, Springfield, Ill., before Joint Board No. 21.

No. MC 123251 (REPUBLICATION), filed November 30, 1960, published in the FEDERAL REGISTER, issue of December 21, 1960. Applicant: EAST-WEST TRANSPORT, LTD., 570 Nairn Avenue, Winnipeg, Manitoba, Canada. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and those contaminating to other lading, between points on the International Boundary line between the United States and Canada and the ports of entry at Blaine and Oroville, Wash., Eastport, Idaho, Sweet Grass and Raymond, Mont., Portal and Pembina, N. Dak., Noyes, Minn., Sault Ste. Marie, Port Huron, and Detroit, Mich.

NOTE: Applicant advises that the proposed operations will be restricted as follows: "No pick up in the United States or delivery in the United States."

HEARING: Remains as assigned February 9, 1961, at the Federal Office Building, Seattle, Wash., before Examiner Charles J. Murphy.

No. MC 123257, filed December 5, 1960. Applicant: DONALD W. DAVIS, Arlington, Vt. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic material, products made from plastic material*, and *raw materials used in the manufacture of plastic material*, between Arlington, Vt. and points in Massachusetts, Rhode Island, and New York.

HEARING: February 15, 1961, at the Washington County Court House, Montpelier, Vt., before Examiner Alton R. Smith.

No. MC 123277, filed December 12, 1960. Applicant: ALL STATES FREIGHT, INC., 1250 Kelly Avenue, Akron, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, and Classes A and B explosives, household goods as defined by the Commission, commodities, in bulk, and those requiring special equipment, serving points in that part of Indiana bounded on the West by the Lake Porter county line, on the South by the U.S. Highway 20, on the East by Indiana Highway 49, and on the North by Lake Michigan, and the site of the new Midwest Steel Corporation plant, located on U.S. Highway 12, approximately two miles East of Lake Porter County line and at or near Portage, Ind., as off-route points in connection with applicant's authorized regular route operations to and from Chicago, Ill.

HEARING: January 11, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed), in the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 72, or, if the Joint Board waives its right to participate, before Examiner John L. York.

No. MC 123287, filed December 14, 1960. Applicant: CAROLINA DRESS CARRIERS, INC., 466 Tenth Avenue, New York, N.Y. Applicant's attorney: Morris Honig, 150 Broadway, New York, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel, materials, supplies and equipment*, used in or incidental to the manufacture of wearing apparel, between New York, N.Y., on the one hand, and, on the other, Lynchburg, Bedford and Appomattox, Va.

HEARING: January 31, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Frank R. Saltzman.

No. MC 123287 (Sub No. 1), filed December 14, 1960. Applicant: CAROLINA DRESS CARRIERS, INC., 466 Tenth Avenue, New York, N.Y. Applicant's attorney: Morris Honig, 150 Broadway, New York 38, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel, materials, supplies and equipment*, used in and incidental to the manufacture of wearing apparel, between New York, N.Y., on the one hand, and, on the other, points in North Carolina.

HEARING: January 31, 1961, at the Offices of the Interstate Commerce Commission, Washington, D.C., before Examiner Frank R. Saltzman.

No. MC 123301, filed December 19, 1960. Applicant: JOHN COULES, doing business as COULES CARTAGE, 1106 East Chicago Avenue, East Chicago, Ind. Applicant's attorney: Howell Ellis, Suite 1210–12 Fidelity Building, 111 Monument Circle, Indianapolis 4, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, and Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading, between points in the Chicago, Ill. Commercial Zone, as defined by the Commission, and points in Indiana bounded on the West by the Lake-Porter County line; on the South by U.S. Highway 20; on the East by Indiana Highway 49, and on the North by Lake Michigan, including the town or city of Portage, Ind.

HEARING: January 11, 1961, at 9:30 o'clock a.m., United States standard time (or 9:30 o'clock a.m., local daylight saving time, if that time is observed), at the U.S. Court Rooms, Indianapolis, Ind., before Joint Board No. 21, or, if the Joint Board waives its right to participate, before Examiner John L. York.

MOTOR CARRIERS OF PASSENGERS

No. MC 123126 (CORRECTION), filed October 12, 1960, published in the FEDERAL REGISTER issue of December 7, 1960. Applicant: GURNIE L. BLUNT, doing business as BLUNT'S BUS LINE, 309 Roosevelt Street, Franklin, Va. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in charter operations, beginning and ending at points in Greensville, Nansemond, Sussex, Isle of Wight and Southampton Counties, Va. and extending to points in Maryland and North Carolina, and Washington, D.C., Philadelphia, Pa., and New York, N.Y.

NOTE: The purpose of this republication is to correct the spelling of origin point of *Greensville County*, Va., erroneously shown as Greenville County, Va.

HEARING: Remains as assigned January 31, 1961, at the U.S. Court Rooms, Richmond, Va., before Examiner Garland E. Taylor.

No. MC 123153, filed October 20, 1960. Applicant: SKINNER SCHOOL BUS LINES LIMITED, Rural Route No. 9, London, Ontario, Canada. Applicant's attorney: S. Harrison Kahn, 1110–14 Investment Building, Washington, D.C. Authority sought to operate as a *com-*

mon carrier, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in round trip charter operations, beginning and ending at ports of entry on the International Boundary line between the United States and Canada at Detroit and Port Huron, Mich., Buffalo and Niagara Falls, N.Y., and extending to points in Michigan, Indiana, Ohio, Pennsylvania, New York, Maryland, Virginia, and the District of Columbia. RESTRICTION: Applicant states the transportation requested herein shall be restricted to foreign commerce only.

HEARING: February 9, 1961, at the Detroit-Leland Hotel, Detroit, Mich., before Examiner Richard H. Roberts.

No. MC 123154, filed October 20, 1960. Applicant: WILLIAM C. BROWN AND ROY NORTON, a partnership, doing business as SPRINGBANK BUS LINES, 270 Springbank Drive, London, Ontario, Canada. Applicant's attorney: S. Harrison Kahn, 1110–14 Investment Building, Washington, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in round trip charter operations, beginning and ending at ports of entry on the International Boundary line between the United States and Canada at Detroit and Port Huron, Mich., Buffalo and Niagara Falls, N.Y., and extending to points in Michigan, Indiana, Ohio, Pennsylvania, New York, Maryland, Virginia, and the District of Columbia. RESTRICTION: Applicant states the transportation requested herein shall be restricted to foreign commerce only.

HEARING: February 8, 1961, at the Detroit-Leland Hotel, Detroit, Mich., before Examiner Richard H. Roberts.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING IS REQUESTED

MOTOR CARRIERS OF PROPERTY

No. MC 1034 (Sub No. 10), filed December 12, 1960. Applicant: TIDEWATER EXPRESS LINES, INC., West and Warner Streets, Baltimore 30, Md. Applicant's attorney: William J. Torrington, 1003 Maryland Trust Building, Baltimore 2, Md. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, commodities in bulk, and those requiring special equipment, between Waynesboro, Pa., and Hagerstown, Md.: from Waynesboro, Pa., over Pennsylvania Highway 316 to the Pennsylvania-Maryland State line, thence over Maryland Highway 60 to Hagerstown, Md., and return over the same route, serving no intermediate points.

NOTE: Common control may be involved.

No. MC 1783 (Sub No. 7), filed December 16, 1960. Applicant: BLUE LINE EXPRESS, INC., Lowell Road, Nashua, N.H. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper*, printing, other than newsprint or carbonized print, from Bennington, N.H. to Poughkeepsie, N.Y., and *empty containers or other such incidental facilities* (not specified) used in transporting the above-described commodities and *rejected, returned or refused shipments*, on return.

NOTE: Common control may be involved. Applicant states the authority sought will not be tacked to present authority.

No. MC 30887 (Sub No. 103), filed December 15, 1960. Applicant: SHIPLEY TRANSFER, INC., 534 Main Street, Reistertown, Md. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime sulphur solution*, in bulk, in tank vehicles; from Winchester, Va., to Hanover, Pa.

No. MC 42487 (Sub No. 492), filed December 19, 1960. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous hydrazine and unsymmetrical dimethylydrazine mix*, in bulk, in tank vehicles, moving on government bills of lading, from Rocky Mountain Arsenal, Colo., to the site of Martin Aircraft plant near Waterton, Colo.

No. MC 44290 (Sub No. 14), filed December 15, 1960. Applicant: HUSMANN & ROPER FREIGHT LINES, INC., 1717 North Broadway, St. Louis 6, Mo. Applicant's attorney: G. M. Rebman, Suite 1230, Boatmen's Bank Building, St. Louis 2, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading; between Louisville, Ky., and junction of U.S. Highways 421 and 50, near Versailles, Ind., from Louisville over U.S. Highway 31E to junction U.S. Highway 31E and Indiana Highway 62, thence over Indiana Highways 62 and 107, thence over Indiana Highway 107 to junction Indiana Highway 107 and U.S. Highway 421, thence over U.S. Highway 421 to junction U.S. Highways 421 and 50, with joinder at the said junction of U.S. Highways 421 and 50, serving no intermediate points, for operating convenience only, as an alternate route in connection with applicant's present operations between St. Louis, Mo., on the one hand, and, on the other, Cincinnati, Ohio.

NOTE: Applicant states that by the instant application it does not seek authority to transport commodities moving between Louisville, Ky., or the commercial zone of Louisville, Ky., on the one hand, and, on the other, Cincinnati, Ohio and the commercial zone of Cincinnati, Ohio.

No. MC 61403 (Sub No. 59), filed December 19, 1960. Applicant: THE MASON AND DIXON TANK LINES, INC., Wilcox Drive, Kingsport, Tenn. Applicant's attorney: S. S. Eisen, 140 Cedar Street, New York 6, N.Y. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals, dry and liquid*, in bulk, in tank and hopper type vehicles, between Kingsport, Tenn., on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho Iowa (except Davenport), Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

No. MC 66562 (Sub No. 1762), filed December 14, 1960. Applicant: RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42d Street, New York 17, N.Y. Applicant's attorney: William H. Marx (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, moving in express service; between Grand Rapids, Mich. and Cadillac, Mich., from Grand Rapids over U.S. Highway 131 to Cadillac, and return over the same route, serving the intermediate points of Morley, Big Rapids and Howard City, Mich. RESTRICTIONS: (1) The service to be performed by applicant shall be limited to service which is auxiliary to or supplemental of express service of applicant. (2) Shipments transported by applicant shall be limited to those moving on a through bill of lading or express receipt.

No. MC 68183 (Sub No. 15), filed December 15, 1960. Applicant: YANKEE LINES, INC., 1400 East Archwood Avenue, Akron 6, Ohio. Applicant's representative: W. R. Hubbard, 1032 Standard Building, Cleveland 13, Ohio. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment; between Cleveland, Ohio and Barberton, Ohio, from Cleveland over U.S. Highway 21 to Barberton, serving Richfield, Ohio as an intermediate point, and West Richfield, Ohio, as an off-route point, and serving Cleveland and Barberton for joinder only.

NOTE: Applicant states it presently holds authority to operate between Cleveland and Barberton (Akron) over the described route. The purpose of this application is to secure authority to effect the interchange of traffic (otherwise authorized to be effected at Cleveland and Akron, Ohio) at the terminals of connecting line carriers which are now located at Richfield and West Richfield. No other service to be performed.

No. MC 107403 (Sub No. 323), filed December 19, 1960. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Applicant's attorneys: Shertz, Barnes and Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry bulk commodities*, excluding cement, in bulk; between Baltimore, Md., Bound Brook, N.J., Buffalo, N.Y., Claymont, Del., Edgewater, Elizabeth, Haledon, N.J., Hopewell, Va., Johnsonburg, Pa., Newell, Pa., Passaic, N.J., Sunbury, Pa., and Whippany, N.J., on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, New York, Pennsylvania, and the District of Columbia.

NOTE: Applicant holds contract authority in MC–117637 and Subs, therefore dual operations may be involved.

No. MC 107403 (Sub No. 324), filed December 19, 1960. Applicant: E. BROOKE MATLACK, INC., 33d and Arch Streets, Philadelphia 4, Pa. Applicant's attorney: Shertz, Barnes and Shertz, Suite 601, 226 South 16th Street, Philadelphia 2, Pa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry bulk commodities*, excluding cement, in bulk, between Atlas Point, Del. and Reynolds, Pa. and points within ten miles of each, and points in Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

No. MC 110525 (Sub No. 431), filed December 13, 1960. Applicant: CHEMICAL TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, Pa. Applicant's attorney: Leonard A. Jaskiewicz, Munsey Building, Washington 4, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry commodities*, excluding cement, in bulk, between Baltimore, Md., Bound Brook, Edgewater, Elizabeth, Haledon, Passaic and Whippany, N.J., Buffalo and Syracuse, N.Y., Claymont, Del., Johnsonburg, Newell, Philadelphia and Sunbury, Pa., on the one hand, and, on the other, points in Delaware, Maryland, New Jersey, New York, Pennsylvania, and the District of Columbia.

NOTE: Section 210, dual operations may be involved. Applicant holds contract carrier authority in Permit MC 117507 and Subs thereunder.

No. MC 114724 (Sub No. 2), filed December 16, 1960. Applicant: NORMAN KOBRIGER, R.R. No. 2, Postville, Iowa. Applicant's representative: William A. Landau, 1307 East Walnut Street, Des Moines 16, Iowa. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese*, from Postville, Iowa to Fennimore, Wis., and *empty containers or other such incidental facilities* (not specified) used in transporting the above-specified commodity, on return.

No. MC 115821 (Sub No. 2), filed December 15, 1960. Applicant: FRANK BEELMAN, JR., St. Libory, Ill. Applicant's attorney: Ernest A. Brooks, II, 1301 Ambassador Building, St. Louis 1, Mo. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed Rock* and *stone*, from points in Monroe and St. Clair Counties, Ill., to St. Louis, and points in St. Louis County, Mo.

MOTOR CARRIERS OF PASSENGERS

No. MC 45626 (Sub-No. 43), filed December 13, 1960. Applicant: VERMONT TRANSIT CO., INC., 135 St. Paul Street, Burlington, Vt. Applicant's attorney: L. C. Major, Jr., 2001 Massachusetts Avenue NW., Wash. 6, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express and newspapers* in same vehicle with passengers, in special operations over the routes shown below in (1) thru (5) in connection with special operations over applicant's presently authorized routes and with right of joinder as required with applicant's presently existing routes, serving all intermediate points. (1) between Waterbury, Vt. and Morrisville, Vt.; from Waterbury over Vermont Highway 100 to Morrisville and return over the same route; (2) from a point about 3 miles south of Iresville, Vt. on Vermont Highway 100, over unnumbered highway to Sugarbush Valley Ski Areas, and return over the same route; (3) from Mad River Glen (Fayston, Vt.) over unnumbered highway designated as McCullough Turnpike to its junction with unnumbered Vermont Highway; (4) from junction U.S. Highway 2 and above unnumbered Vermont Highway, over unnumbered Vermont highway to its junction with Vermont Highway 116, thence over Vermont Highway 116 to its junction with Vermont Highway 125, and return over the same route and (5) from junction U.S. Highway 7, and Vermont Highway 125, over Vermont Highway 125 to its junction with Vermont Highway 100.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carrier of property or passengers under section 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC–F 7467. (TRANSCONTINENTAL BUS SYSTEM, INC.—CONTROL—DENVER-COLORADO SPRINGS-PUEBLO MOTOR WAY, INC., AND DENVER-SALT LAKE-PACIFIC STAGES, INC.), published in the March 9, 1960, issue of the FEDERAL REGISTER on page 2036. Order dated December 13, 1960. Transaction herein authorized was consummated on May 16, 1960. By order of December 13, 1960, by the Commission, Division 4, the proceeding was reopened and the prior findings were to authorize the acquisition of control by TRANSCONTINENTAL BUS SYSTEM, INC., of DENVER-SALT LAKE-PACIFIC STAGES, INC., through direct ownership of two-thirds of its outstanding common capital stock, pursuant to a petition received July 25, 1960. The order of December 13, 1960 is to become effective 30 days from the date of this publication, unless otherwise ordered.

MC–F 7742. Authority sought for merger into JOHNSON FREIGHT LINES COMPANY, INC., 420 Sixth Ave., South, Nashville, Tenn., of the operating rights and property of DURRETT TRANSFER, INC., U.S. Highway 41, Springfield, Tenn., and for acquisition by A. E. GREENE, JR., 775 Greeley Drive, Nashville, Tenn., H. F. WULF, 976 Bay Esplanade, Clearwater Beach, Fla., HELEN M. WULF, 976 Bay Esplanade, Clearwater, Fla., and HOMEPORT COMPANY, 976 Bay Esplanade, Clearwater Beach, Fla., of control of such rights and property through the transaction. Applicants' attorney: A. O. Buck, 434 Stahlman Building, Nashville, Tenn. Operating rights sought to be merged: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier*, over regular routes serving the site of the plant of the Aluminum Company of America near Newburgh, Ind., as an off-route point, restricted against the interchange with other carriers at either Owensboro, Ky., or Evansville, Ind., of traffic moving to or from said plant site, between Nashville, Tenn., and Adairville, Ky., serving all intermediate points: between Russellville, Ky., and Owensboro, Ky., serving all intermediate points; between South Carrollton, Ky., and Owensboro, Ky., serving all intermediate points with the restriction that the two regular routes described herein next above are not to be used for the transportation of any shipments moving between Owensboro, Ky., and Nashville, Tenn.; between Nashville, Tenn., and Owensboro, Ky., serving no intermediate points; between Adairville, Ky., and Russellville, Ky., serving no intermediate points; over several alternate routes for operating convenience only: *general commodities*, excepting, among others, commodities in bulk, but not excepting household goods, between Sacramento, Ky., and Evansville, Ind., serving certain intermediate and off-route points, between Stanley, Ky., and Evansville, Ind., serving no intermediate points. Vendee is authorized to operate as a *common carrier* in Georgia, Ohio, Tennessee, and Kentucky. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–7743. Authority sought for control by HAROLD E. WILLIAMS, 204 Franklin, Mansfield, Ohio, REID C. BLACK, Overlook, Mansfield, Ohio, and THOMAS A. KEEFE, 234 Berkshire Road, Avon Lake, Ohio, of WARNER STORAGE, INCORPORATED, 3208 Broadview Road, Cleveland 9, Ohio. Applicants' attorney: Herbert Baker, 50 West Broad Street, Columbus 15, Ohio. Operating rights sought to be controlled: *Household goods* as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, as a common carrier over irregular routes, between points in Cuyahoga County, Ohio, on the one hand, and, on the other, points in Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia. HAROLD E. WILLIAMS, REID C. BLACK and THOMAS A. KEEFE, holds no authority from this Commission. However, HAROLD E. WILLIAMS is affiliated with FRANK WILLIAMS TRANSFER & STORAGE CO., 204 North Franklin St., Mansfield, Ohio, and NORTH AMERICAN VAN LINES, INC., Lincoln Highway East, P.O. Box 988, Fort Wayne, Ind.; and THOMAS A. KEEFE is also affiliated with NORTH AMERICAN VAN LINES, INC., which are authorized to operate as *common carriers* in Ohio, Illinois, Indiana, Michigan, Missouri, New York, Pennsylvania, Ken-

tucky, Maryland, New Jersey, Virginia, West Virginia, Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, New Hampshire, North Carolina, Rhode Island, South Carolina, Tennessee, Vermont, Wisconsin, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-7744. Authority sought for purchase by MIDWEST COAST TRANSPORT, INC., P.O. Box 747, Wilson Terminal Building, Sioux Falls, South Dakota, of the operating rights of SIDNEY L. MAGNUSON, doing business as MAGNUSON TRUCK SERVICE, P.O. Box 533, Sioux Falls, South Dakota, and for acquisition by H. LAUREN LEWIS, P.O. Box 747, Sioux Falls, South Dakota, of control of such rights through the purchase. Applicants' attorney: Donald L. Stern, 924 City National Bank Bldg., Omaha, Nebr. Operating rights sought to be transferred: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier* over irregular routes, between Council Bluffs, Iowa, and Omaha, Nebr.; *newspapers*, from Omaha, Nebr., to Denison, Carroll, Glidden, Ralston, Scranton, and Jefferson, Iowa, the authority granted herein covers the substitution of motor service for rail service between the points named and is restricted to traffic moving by rail in joint rail-motor service to or from points beyond the above-named points: *fresh meats, packing house products, dairy products, eggs, and poultry*, between Beatrice, Nebr., Sioux City, Iowa, and points in Kansas, except Kansas City, Kans. Vendee is authorized to operate as a *common carrier* in South Dakota, Washington, Oregon, Minnesota, Iowa, California, Nebraska, Nevada, Idaho, Illinois, Missouri, Utah, North Dakota, Montana, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, New York, Pennsylvania, Delaware, Maryland, Michigan, Ohio, Virginia, West Virginia, Indiana, Kentucky, Wisconsin, Missouri, Arizona, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-7745. Authority sought for control and merger by R. E. SHORT, INC., 2785 Fairview Avenue North, St. Paul 13, Minn., of the operating rights and property of MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, Minn., and for acquisition by MUELLER TRANSPORTATION COMPANY, 2785 Fairview Avenue North, St. Paul 13, Minn., and, in turn, by R. E. SHORT, 2785 Fairview Avenue North, St. Paul 13, Minn., of control of such rights and property through the transaction. Applicants' attorney: John R. Turney, 2001 Massachusetts Ave. NW., Washington 6, D.C. Operating rights sought to be controlled and merged: *General commodities*, excepting, among others, household goods and commodities in bulk, as a *common carrier* over regular routes, between Hopkins, Minn., and Des Moines, Iowa, and Moline, Ill., between Des Moines, Iowa and Omaha, Nebr., between Des Moines, Iowa, and St. Louis, Mo., between Des Moines, Iowa, and Moline, Ill., between Des Moines, Iowa, and Kansas City, Mo., serving all intermediate and off-route points on the above-specified routes, restricted to certain points and places in Minnesota, Colorado, Iowa and Missouri; between St. Louis, Mo., and Kansas City, Mo., between Rock Island, Ill., and St. Louis, Mo., between Bettendorf, Iowa, and East Moline, Ill., serving no intermediate points, between Omaha, Nebr., and Ottumwa, Iowa serving certain intermediate points, between Radio Center and Farmington, Minn., and Waterloo, Iowa, serving no intermediate points, between Bloomfield, Iowa, and junction U.S. Highway 61 and Missouri Highway 4; serving no intermediate points, between Mount Pleasant, Iowa, and Cedar Rapids, Iowa, serving certain intermediate points, between Waverly, Iowa, and Independence, Iowa, serving no intermediate points, between DeWitt, Iowa, and Clinton, Iowa, between Stanwood, Iowa, and Davenport, Iowa, between Austin, Minn., and Albert Lea, Minn., between Albert Lea, Minn., and Ames, Iowa, between Mason City, Iowa and junction U.S. Highways 18 and 218, serving no intermediate points, between Colo, Iowa, and Des Moines, Iowa: *general commodities*, except uncrated household goods, and office furnishings, from Rock Island and Moline, Ill., to Des Moines, Iowa, between Rock Island and Moline, Ill., and Homestead, Iowa, serving all intermediate points; *general commodities*, excepting, among others, household goods and commodities in bulk, between St. Joseph, Mo., and Omaha, Nebr., serving certain intermediate points, between Chicago, Ill., and Davenport, Iowa, serving certain intermediate and off-route points, between Chicago, Ill., and Minneapolis, Minn., serving all intermediate and certain off-route points, between Ottawa, Ill., and Joliet, Ill., serving no intermediate points, to and from points and places in the Davenport-Rock Island and Moline Commercial Zone, as defined by the Commission as intermediate and off-route points, between Denver, Colo., and Omaha, Nebr., serving certain off-route points, between Kearney, Nebr., and Omaha, Nebr., between Grand Island, Nebr., and Omaha, Nebr., between Grand Island, Nebr., and Lincoln, Nebr., between Sidney, Nebr., and Scottsbluff, Nebr., serving certain off-route points, between Denver, Colo., and Ault, Colo., restricted to traffic moving to or from points in Nebraska and Iowa, between Omaha, Nebr., and Sioux City, Iowa, between Columbus, Nebr., and Sioux City, Iowa, serving certain intermediate and off-route points: *The commodities* classified as (a) meats, meat products, and meat by-products in appendix to the report in *Modification of Permits—Packing House Products*, from Cedar Rapids, Iowa, to Madison, Wis., serving no intermediate points, restricted against the transportation of traffic which originates at Omaha, Nebr., between Chicago, Ill., and the junction of Tri-State Expressway, U.S. Highway 2, and Indiana Highway 20, serving all intermediate points, between Onarga, Ill., and Gary, Ind., serving all intermediate points, between St. Louis, Mo., and Effingham, Ill., serving all intermediate points, between Elkhart, Ind., and Cleveland, Ohio serving certain intermediate points, between Elkhart, Ind. and Gary, Ind., serving certain intermediate and off-route points, between points in Ohio, serving no intermediate points, between Perrysburg, Ohio, and Toledo, Ohio, serving certain intermediate points, between Fremont, Ohio and certain specified points and places; between junction U.S. Highway 14 and Illinois Highway 83 and junction U.S. Highway 20 and Indiana Highway 51, serving all intermediate points; serving several alternate routes for operating convenience only; *general commodities*, excepting, among others, household goods and commodities in bulk, over irregular routes, between Minneapolis, Minn., and Anoka, and Stillwater, Minn., between Minneapolis and St. Paul, Minn., on the one hand, and, on the other, the site of the Twin City Ordnance Plant in Mounds View Township, Ramsey County, Minn. R. E. SHORT, INC., holds no authority from this Commission. However, MUELLER TRANSPORTATION COMPANY, is affiliated with ADMIRAL TRANSIT, INC., 2785 Fairview Ave., North, St. Paul 13, Minn., which is authorized to operate as a *common carrier* in Illinois, Wisconsin, Minnesota, and Iowa. Application has been filed for temporary authority under section 210a(b).

No. MC-F-7746. Authority sought for purchase by DAILY EXPRESS, INC., P.O. Box 311, R.D. No. 1, Carlisle, Pa., of the operating rights of J. OTTO ECK, WALTER A. ECK and JAMES W. ECK, a partnership, doing business as ECK BROTHERS, 820 Broad St., Montoursville, Pa., and for acquisition by D. E. LUTZ, 330 Washington Lane, Carlisle, Pa., of control of such rights through the purchase. Applicants' attorneys: James E. Wilson, Wilson, Woods & Villalon, 716 Perpetual Bldg., 1111 E. St. NW., Washington 4, D.C., and Christian V. Graf, 407 North Front St., Harrisburg, Pa. Operating rights sought to be transferred: *Such commodities as by reason of their size or weight require the use of special equipment*, as a *common carrier* over irregular routes, between those points in a Pennsylvania area bounded on the north by the New York-Pennsylvania State line, thence by highways beginning at junction of said State line with U.S. Highway 11 over U.S. Highway 11 to junction U.S. Highway 522, thence over U.S. Highway 522 to junction U.S. Highway 322, thence over U.S. Highway 322 to junction U.S. Highway 219, and thence over U.S. Highway 219 to Pennsylvania-New York State line, including points on the indicated Highways, on the one hand, and, on the other, points in New York, New Jersey, Maryland, Virginia, Ohio, Delaware, West Virginia, and the District of Columbia; *commodities which, by reason of size or weight, require the use of special equipment*, except machinery, equipment, materials, and supplies, used in, or in conection with, the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, between points in that part of Pennsylvania on and east of U.S. Highway 219, from the New York-Pennsylvania State line to Grampian, on and north of a line beginning at Grampian, Pa., and extending along U.S. Highway 322 through Clearfield and State College, Pa., to Lewistown, Pa., thence along U.S. Highway 522 to Selinsgrove, Pa., and on and west of U.S. Highway 11, from Selinsgrove, Pa., to the New York-Pennsylvania State line except the site of the Curtis Wright Corporation plant near Clearfield, on the one hand, and, on the other, points in Kentucky, North Carolina, South Carolina, Georgia, Florida, Maine, New Hampshire, Vermont, Indiana, Illinois, Michigan, Wisconsin, and Minnesota; *commodities described above*, with the further exception of boilers, heaters, and castings, between points in Pennsylvania territory described immediately above, on the one hand, and, on the other, points in Connecticut and Massachusetts. Vendee is authorized to operate as a *common carrier* in all 48 States and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-7747. Authority sought for control by REDWING CARRIERS, INC., a Florida corporation, P.O. Box 426, Tampa 1, Fla., of REDWING CARRIERS, INC., a Alabama corporation. Wilson Road-Powderly Station, P.O. Box 34, Birmingham, Ala., and for acquisition by CHARLES E. MENDEZ, P.O. Box 426, Tampa, Fla., of control of REDWING CARRIERS, INC., a Alabama corporation, through the acquisition by REDWING CARRIERS, INC., a Florida corporation. Applicants' attorneys: James E. Wilson and Edward G. Villalon, 716 Perpetual Bldg., Washington 4, D.C. Operating rights sought to be controlled: Authority applied for covering the transportation of *lime*, in bulk, and *cement*, in bulk, as a *common carrier* over irregular routes, from points in Alabama to points in Mississippi, Tennessee, Florida, and Georgia. REDWING CARRIERS, INC., a Florida corporation, is authorized to operate as a *common carrier* in Florida, Alabama, Georgia, South Carolina, North Carolina, Mississippi, and Tennessee. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-7748. Authority sought for purchase by KAW TRANSPORT COMPANY, 701 North Sterling Ave., Kansas City 21, Mo., of a portion of the operating rights of COMMERCIAL TRANSPORT, INC., P.O. Box 297, South 20th St., Belleville, Ill., and for acquisition by FRED R. SUDDARTH, also of Kansas City, Mo., of control of such rights through the purchase. Applicants' attorney: James E. Wilson, 1111 E St. N.W., Washington 4, D.C. Operating rights sought to be transferred: *Petroleum and petroleum products*, as described in Appendix XIII to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, in bulk, in tank vehicles, as a common carrier over irregular routes, from Coffeyville, Kans., to Ava, Mo., and from Kansas City, Coffeyville, Neodesha, and Chanute, Kans., to points in that part of Missouri bounded by a line beginning at the Missouri-Kansas State line and extending along U.S. Highway 36 to junction U.S. Highway 63, thence along U.S. Highway 63 to junction U.S. Highway 60, thence along U.S. Highway 60 to the Missouri-Oklahoma State line, thence along the Missouri-Oklahoma and the Missouri-Kansas State lines to point of beginning, including points on the indicated portions of the highways specified. Vendee is authorized to operate as a *common carrier* in Missouri, Kansas, Arkansas, Oklahoma, Iowa, and Nebraska. Application has not been filed for temporary authority under section 210a(b).

No. MC-F 7749. Authority sought for purchase by FRANK C. KLEIN & CO., INC., 3600 East 46th Avenue, Denver 16, Colo., of a portion of the operating rights of JIM CHELF, INC., 5226 Brighton Blvd., Denver 16, Colo., and for acquisition by FRANK C. KLEIN, 3600 East 46th Ave., Denver 16, Colo., of control of such rights through the purchase. Applicant's attorney: Michael T. Corcoran, 1360 Locust St., Denver 20, Colo. Operating rights sought to be transferred: *Petroleum products*, in bulk, as a *common carrier* over regular routes, from Sinclair (formerly Parco), Wyo., to specified places in Nebraska and Colorado, and from Sinclair to construction projects in Colorado, and to transport *"Refined petroleum products,"* from refining and distributing points in Kansas to Denver, Keenesburg, Longmont, and Roggen, Colorado. Vendee is authorized to operate as a *common carrier* in Colorado, Wyoming, Arkansas, Kansas. Application has not been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 60-12085; Filed, Dec. 28 1960; 8:49 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

3 CFR

	Page
PROCLAMATIONS:	
Oct. 3, 1905	12915
Dec. 7, 1907	12915
Feb. 10, 1909	12915
Dec. 10, 1910	12915
Oct. 18, 1912	12915
2935	12501
3298	13681
3355	13131
3382	12587
3383	13131
3384	13681
3385	13681
EXECUTIVE ORDERS:	
Feb. 26, 1852	13229
July 13, 1910	13694
Nov. 12, 1911	13771
Feb. 28, 1912	13771
Oct. 20, 1916	12887
June 8, 1926	12887
3797-A	12412, 12599
4257	13696
5327	13694
6260	12281
8278	13696
9941	12429
10896	12281

3 CFR—Continued

	Page
EXECUTIVE ORDERS—Continued	
10897	12429
10898	12429
10899	12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Letter, Jan. 17, 1953	12501
Letter, Nov. 16, 1960	12501

5 CFR

2	12285
6	12393, 12547, 12588, 12733, 12869, 13132, 13745, 13829
27	13829
30	12733
325	13132

6 CFR

331	12994
421	12282, 12283, 13682
464	13682
468	13829
472	13830
485	13830

7 CFR

11	13621
33	12430

7 CFR—Continued

	Page
51	12941
319	12809
601	13132
718	12588
722	12393, 12403, 12809, 12812, 12987
728	13821
730	12503
811	13211
819	13864
833	12650
845	12285
871	12547
902	13683
903	12504
905—908	12504
911—913	12504
914	12405, 12650, 12812, 12941, 13683, 13867
916—919	12504
921	12504
923—925	12504
928	12504, 13683
929—932	12504
933	12405-12407, 12504, 12987
935	12504
938	13867
941—942	12504

7 CFR—Continued

943 ... 12504, 12813
944 ... 12504, 12987
946—948 ... 12504
949 ... 12504, 12941
952 ... 12504
953 ... 12407, 12430, 12651, 12948, 13684, 13745
954 ... 12504
955 ... 12949
956 ... 12504
957 ... 13868
963 ... 12504
965—968 ... 12504
970 ... 12994, 13868
971—972 ... 12504
974—978 ... 12504
980 ... 12504
982 ... 12504
985—988 ... 12504
989 ... 12813, 13630, 13869
991 ... 12504
994—995 ... 12504
998 ... 12504
1000 ... 12504
1001 ... 13684
1002 ... 12504
1004—1005 ... 12504
1008—1009 ... 12504
1010 ... 12994
1011—1013 ... 12504
1014 ... 12504, 13684
1016 ... 12504
1018 ... 12504, 12588
1023—1024 ... 12504
1031 ... 12505, 12651, 12652
1032 ... 12828, 13631
1069 ... 13685
1101 ... 13685

PROPOSED RULES:

51 ... 12298, 12299
718 ... 13142
812 ... 12712
901 ... 12742
902 ... 13720
923 ... 12558
936 ... 12465
938 ... 12752
949 ... 12606
953 ... 13141
961 ... 13001
963 ... 13787
965 ... 12466
989 ... 12476
994 ... 13239, 13637
1010 ... 13001
1012 ... 12558
1032 ... 12712, 12752
1033 ... 12606
1034 ... 13142, 13791, 13793

8 CFR

211 ... 12290
324 ... 13686
332 ... 13686

9 CFR

72 ... 12548
74 ... 12995, 13132
94 ... 12831

PROPOSED RULES:

83 ... 12571

10 CFR

2 ... 13869
30 ... 12730
70 ... 12730

PROPOSED RULES:

25 ... 12753
115 ... 12367

12 CFR

PROPOSED RULES:

206 ... 12479, 13729

13 CFR

PROPOSED RULES:

107 ... 12754
121 ... 13923

14 CFR

41 ... 12908
49 ... 12352
60 ... 13869
225 ... 12589
243 ... 12908
293 ... 12908
298 ... 12909
300 ... 12430
302 ... 12432, 12933
406 ... 13870
410 ... 13874
414 ... 12589
418 ... 13877
450 ... 13879
506 ... 12505
507 ... 12352, 12433, 12549, 12829, 12995, 13212, 13631
514 ... 12433, 12995
600 ... 12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734, 12933, 12934, 13746
601 ... 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997, 13686, 13746, 13880–13882
602 ... 12288, 12552, 12678, 12831, 12997, 13213, 13747
608 ... 12678, 12679, 12734, 12830, 12934, 12997, 13213, 13747, 13882
609 ... 12353, 12735, 12935
610 ... 13213
612 ... 12410
1501 ... 12434

PROPOSED RULES:

41 ... 12299
43 ... 12524
221 ... 12913
302 ... 12477
507 ... 12477, 12478, 12571, 12844
600 ... 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244, 13637, 13725
601 ... 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952, 13244, 13637, 13725.
608 ... 12479, 12846
626 ... 12952

15 CFR

203 ... 12590
204 ... 13215
371 ... 12734, 13748

16 CFR

13 ... 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133, 13687

PROPOSED RULES:

56 ... 13245

17 CFR

230 ... 12912

PROPOSED RULES:

230 ... 13638
240 ... 13245
249 ... 13245
250 ... 13245
259 ... 13245
270 ... 13245
274 ... 13245

17 CFR—Continued

PROPOSED RULES—Continued

275 ... 13638
279 ... 13638

18 CFR

104 ... 12763
105 ... 12961
154 ... 12653
204 ... 13161
205 ... 13649
260 ... 13882

19 CFR

1—57 ... 13325
3 ... 13687
4 ... 13687

PROPOSED RULES:

8 ... 12681

21 CFR

1 ... 12592
8 ... 12288
120 ... 12288, 12506, 13631, 13632
121 ... 12412, 12595, 12731, 12831, 13008, 13217, 13632, 13748
130 ... 12592
146 ... 12506, 12596, 12732, 13750
146c ... 12289
302 ... 13750
303 ... 13750
304 ... 13750
305 ... 13750
307 ... 13750

PROPOSED RULES:

27 ... 12372
120 ... 12374, 12571, 13793
121 ... 12299, 12477, 12839, 12840, 13008, 13794

22 CFR

3 ... 13138
46 ... 12289

23 CFR

PROPOSED RULES:

20 ... 13724

24 CFR

222 ... 13745
233 ... 13745
293a ... 13745

25 CFR

171 ... 12408
Appendix ... 13688

PROPOSED RULES:

52 ... 12518
176 ... 12299
221 ... 13787
252 ... 13239

26 (1939) CFR

16 ... 12442
17 ... 12443
29 ... 12339
39 ... 12339
40 ... 12340

PROPOSED RULES:

81 ... 13001
330 ... 13915

26 (1954) CFR

1 ... 12340, 12345, 12654, 13689, 13883
18 ... 12340
19 ... 12654
20 ... 13884
24 ... 13884
31 ... 13031
40 ... 13693
41 ... 13133
44 ... 13133
46 ... 13133

26 (1954) CFR—Continued

48 ... 12669
49 ... 13133
151 ... 13135
170 ... 12732
301 ... 13137
601 ... 13758

PROPOSED RULES:

1 ... 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140, 13697, 13775, 13909, 13911
20 ... 13001
25 ... 12707
31 ... 12835
47 ... 13699
48 ... 12362, 13001, 13915
148 ... 13699
170 ... 12710
179 ... 13920
197 ... 12362
245 ... 13783
250 ... 12511
252 ... 13785

27 CFR

1—8 ... 13831

PROPOSED RULES:

7 ... 13786

28 CFR

21 ... 12290

29 CFR

2 ... 13228

PROPOSED RULES:

522 ... 13724
604 ... 12950
606 ... 12950
713 ... 12950

31 CFR

54 ... 12345

32 CFR

505 ... 12869
570 ... 12869
750 ... 12870
753 ... 12879
805 ... 12291
888 ... 12999
1001 ... 12999
1002 ... 13000
1003 ... 13000
1004 ... 13000
1006 ... 13000
1007 ... 13000
1008 ... 12444
1009 ... 12446
1010 ... 12449, 13000
1012 ... 12449
1013 ... 12449, 13000
1016 ... 12450, 12456
1030 ... 12451
1052 ... 12456, 13000
1053 ... 12456
1054 ... 12458, 13000
1055 ... 12462
1057 ... 12462, 13000
1059 ... 12462
1619 ... 12291

32A CFR

OIA (CH. X):

OI Reg. 1 ... 13632, 13768

33 CFR

96 ... 13633
202 ... 12393
203 ... 12740
207 ... 12740, 13769

36 CFR

PROPOSED RULES:

7 ... 13787

38 CFR

3 ... 12463
21 ... 13229

39 CFR

4 ... 13218
27 ... 12348
61 ... 13218
62 ... 13223
63 ... 13224
168 ... 12884, 13883

41 CFR

3-75 ... 12502, 12596
5-1 ... 12553, 13217
50-201 ... 12553
50-202 ... 12553
50-204 ... 13809

PROPOSED RULES:

50-202 ... 12363, 12522

42 CFR

1 ... 12292

43 CFR

76 ... 12597, 12949
181 ... 12679
192 ... 12352
257 ... 12679

PROPOSED RULES:

259 ... 12606

PUBLIC LAND ORDERS:

82 ... 12412, 12599
221 ... 13695
261 ... 13138
797 ... 12413
1119 ... 13694
1124 ... 12885
1230 ... 13694
1253 ... 12481
1273 ... 13138
1621 ... 12599
1965 ... 12599
2144 ... 13694
2186 ... 13694
2209 ... 12412
2210 ... 12413
2211 ... 12413
2212 ... 12597
2213 ... 12597
2214 ... 12598
2215 ... 12599
2216 ... 12599
2217 ... 12885, 13633
2218 ... 12885
2219 ... 12886
2220 ... 12887
2221 ... 12887
2222 ... 12887
2223 ... 13138
2224 ... 13229
2225 ... 13229
2226 ... 13633
2227 ... 13693
2228 ... 13693
2229 ... 13694
2230 ... 13694
2231 ... 13694
2232 ... 13694
2233 ... 13694
2234 ... 13695
2235 ... 13696
2236 ... 13769
2237 ... 13770
2238 ... 13771
2239 ... 13771
2240 ... 13772
2241 ... 13773

45 CFR

145 ... 13230
146 ... 13230
601—620 ... 12600

PROPOSED RULES:

301 ... 12840
306 ... 12840
307 ... 12841
308 ... 12842
309 ... 12843
311 ... 12844

46 CFR

24 ... 12554
30 ... 12554
56 ... 12554
70 ... 12555
75 ... 13892
90 ... 12555
110 ... 12555
111 ... 12555
136 ... 12555
171 ... 12555
226 ... 13696
282 ... 13892
308 ... 12348

PROPOSED RULES:

401 ... 13721

47 CFR

1 ... 12358, 12600, 12602, 12603, 12605, 13230
3 ... 13230
4 ... 12680
5 ... 12359
7 ... 13230, 13773
8 ... 13232, 13233, 13773
9 ... 12359
10 ... 12359
11 ... 12359
12 ... 12358
15 ... 13829
16 ... 12359
19 ... 12359
21 ... 12359, 12603, 12605

PROPOSED RULES:

1 ... 12624, 12898
2 ... 13244
3 ... 12371, 12624, 12626, 12627, 12899, 13794
7 ... 12951
8 ... 12951
9 ... 13244
10 ... 13244
11 ... 13244
16 ... 13244
19 ... 13244
21 ... 13244

49 CFR

91 ... 12506
95 ... 13633
120 ... 13774
122 ... 12506
125 ... 13893
171 ... 12888
323 ... 13907

PROPOSED RULES:

71–78 ... 12420, 13794
197 ... 12420, 13794

50 CFR

32 ... 12555, 12888
33 ... 12507, 12556, 12557, 12888, 13138, 13139, 13234–13238, 13634, 13908
269 ... 13634

PROPOSED RULES:

14 ... 12741
41 ... 13001

Pages 13943–14005

FEDERAL REGISTER

VOLUME 25 NUMBER 253

Washington, Friday, December 30, 1960

JAN 3 1961
MAIN READING ROOM

Contents

THE PRESIDENT

Proclamations

Modifying Proclamation 3279 of March 10, 1959, adjusting imports of petroleum and petroleum products 13945
Modifying the duty on certain wool fabrics 13945

EXECUTIVE AGENCIES

Agricultural Marketing Service

RULES AND REGULATIONS:
Fresh Bartlett pears, plums, and Elberta peaches grown in California; findings and determinations relative to expenses to be incurred and fixing of rates of assessment for 1960–61 season .. 13951

Agricultural Research Service

PROPOSED RULE MAKING:
Handling of anti-hog-cholera serum and hog-cholera virus .. 13982
RULES AND REGULATIONS:
Cured meat products; labeling, reinspection and preparation of products 13952
Khapra beetle; domestic quarantine notice designating certain premises as regulated areas 13948

Agriculture Department

See Agricultural Marketing Service; Agricultural Research Service; Commodity Stabilization Service.

Atomic Energy Commission

NOTICES:
Issuance of utilization facility license amendments:
Bethesda Naval Hospital 13992
Catholic University of America .. 13993
General Dynamics Corp 13993
Oregon State College 13994
University of Akron 13994
University of Oklahoma 13994
William Marsh Rice University .. 13995
RULES AND REGULATIONS:
Standards for protection against radiation; statement of considerations 13952

Civil Aeronautics Board

PROPOSED RULE MAKING:
Terms, conditions and limitations of certificates of public convenience and necessity; foreign air transportation 13984

Civil and Defense Mobilization Office

NOTICES:
Ogden, C. F.; appointee's statement of business interests 14002

Commerce Department

See Federal Maritime Board; Foreign Commerce Bureau.

Commodity Stabilization Service

RULES AND REGULATIONS:
Allotment of the direct-consumption portion of mainland sugar quota for Puerto Rico; three-month period 13948

Federal Aviation Agency

RULES AND REGULATIONS:
Airworthiness directive; Sikorsky S–58 helicopters 13955

Federal Communications Commission

NOTICES:
Deters, Arthur A.; notice of prehearing conference 14002
PROPOSED RULE MAKING:
CONELRAD drills and tests; operator requirements 13986
TV broadcast stations concerning requirements for frequency monitors; order extending time for filing comments 13985
Reallocation of certain fixed, land mobile and maritime mobile bands between 25 and 470 Mc .. 13985
Tables of assignments; certain television broadcast stations (5 documents) 13986–13988
RULES AND REGULATIONS:
Frequency allocations and radio treaty matters; miscellaneous amendments 13976

Federal Home Loan Bank Board

RULES AND REGULATIONS:
Operations; loans 13953

Federal Maritime Board

NOTICES:
Agreements filed for approval:
American West African Freight Conference 13992
Skibsaktieselskabet Varild 13991

Federal Power Commission

NOTICES:
Hearings, etc.:
Area Rate Proceeding 13998
Columbia Gulf Transmission Co 13996
Maxwell Oil Co. et al 13997
Standard Oil Company of California et al 13995
Tidewater Oil Co. et al 13995
RULES AND REGULATIONS:
Area price levels for natural gas sales by independent producers .. 13969

Federal Trade Commission

RULES AND REGULATIONS:
Weinstein, Daniel D. and Title, Irwin R.; prohibited trade practices 13969

Fish and Wildlife Service

RULES AND REGULATIONS:
Sport fishing:
Crescent Lake National Wildlife Refuge, Nebraska 13976
DeSoto National Wildlife Refuge, Iowa and Nebraska .. 13976
North Platte National Wildlife Refuge, Nebraska 13977
Union Slough National Wildlife Refuge, Iowa 13977

(*Continued on next page*)

Foreign Assets Control
NOTICES:
Importation of doll clothes; available certifications by the government of Hong Kong ... 13989

Foreign Commerce Bureau
RULES AND REGULATIONS:
Export regulations:
Denial of export privileges ... 13956
Positive list of commodities and related matters ... 13967

Indian Affairs Bureau
NOTICES:
Superintendents and other designated employees; redelegation of authority ... 13989
PROPOSED RULE MAKING:
Flathead Indian Irrigation Project, Montana; delinquent bills ... 13981
Wapato Indian Irrigation Project, Yakima Indian Reservation, Washington; orders fixing operation and maintenance charges ... 13980

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; National Park Service; Reclamation Bureau.

Internal Revenue Service
PROPOSED RULE MAKING:
Income tax; taxable years beginning after December 31, 1953 ... 13978

Interstate Commerce Commission
NOTICES:
Fourth section applications for relief ... 14002

Labor Department
See Public Contracts Division.

Land Management Bureau
NOTICES:
Nevada; small tract classification amendment ... 13989
Proposed withdrawals and reservations of lands:
Nebraska ... 13990
South Dakota ... 13989
Utah ... 13989
Wyoming (3 documents) ... 13990
PROPOSED RULE MAKING:
Recreation and public purposes ... 13981

National Park Service
PROPOSED RULE MAKING:
Grand Teton National Park, Wyoming; snowplanes and boats ... 13982
RULES AND REGULATIONS:
Blue Ridge Parkway, Virginia and North Carolina; use of radar and motor boats ... 13972
Yellowstone National Park, Wyoming, Montana, and Idaho; boats ... 13970

Post Office Department
RULES AND REGULATIONS:
Miscellaneous amendments to chapter ... 13973

Public Contracts Division
PROPOSED RULE MAKING:
Electronic component parts industry; proceedings for determination of prevailing minimum wages; decision on motion to exclude Government counsel ... 13984

Reclamation Bureau
NOTICES:
Yuma Irrigation Project, Arizona-California Reservation Division, California; annual operation and maintenance charges and annual water rental charges ... 13991

Securities and Exchange Commission
NOTICES:
Campbell Soup Co. et al.; applications for unlisted trading privileges and opportunity for hearing ... 14002

Small Business Administration
RULES AND REGULATIONS:
Small business size standards; miscellaneous amendments ... 13954

Treasury Department
See also Foreign Assets Control; Internal Revenue Service.
NOTICES:
Sodium hydrosulfite from France; determination of no sales at less than fair value ... 13989

Veterans Administration
RULES AND REGULATIONS:
National Service Life Insurance; reinstatement ... 13972
Vocational rehabilitation and education:
Children of veterans who died of a service-connected disability incurred during the induction period ... 13972
Korean conflict veterans ... 13972

Codification Guide

3 CFR
2761A (modified by Proc. 3387) ... 13945
2929 (modified by Proc. 3387) ... 13945
3160 (see Proc. 3387) ... 13945
3225 (see Proc. 3387) ... 13945
3279 (modified by Proc. 3386) ... 13945
3285 (see Proc. 3387) ... 13945
3290 (see Proc. 3386) ... 13945
3317 (see Proc. 3387) ... 13945
3328 (see Proc. 3386) ... 13945
3386 ... 13945
3387 ... 13945

7 CFR
301 ... 13948
815 ... 13948
936 ... 13951

9 CFR
17 ... 13952
18 ... 13952
PROPOSED RULES:
131 ... 13982

10 CFR
20 ... 13952

12 CFR
545 ... 13953

13 CFR
121 ... 13954

14 CFR
507 ... 13955
PROPOSED RULES:
203 ... 13984

15 CFR
382 ... 13956
399 ... 13967

16 CFR
13 ... 13969

18 CFR
2 ... 13969

25 CFR
PROPOSED RULES:
221 ... 13980
232 ... 13981

26 (1954) CFR
PROPOSED RULES:
1 ... 13978

36 CFR
7 (2 documents) ... 13970, 13972

PROPOSED RULES:
7 ... 13982

38 CFR
8 ... 13972
21 (2 documents) ... 13972

39 CFR
14 ... 13973
15 ... 13973
45 ... 13973
46 ... 13973

41 CFR
PROPOSED RULES:
50–202 ... 13984

43 CFR
PROPOSED RULES:
254 ... 13981

47 CFR
2 ... 13976
PROPOSED RULES:
2 ... 13985
3 (7 documents) ... 13985–13988

50 CFR
33 (4 documents) ... 13976, 13977

Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3386

MODIFYING PROCLAMATION 3279 [1] OF MARCH 10, 1959, ADJUSTING IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS

By the President of the United States of America

A Proclamation

WHEREAS, pursuant to section 2 of the act of July 1, 1954, as amended (72 Stat. 678, 19 U.S.C. 1352a), I found and declared that adjustments must be made in the imports of crude oil, unfinished oils, and finished products so that such imports would not threaten to impair the national security and by Proclamation 3279 of March 10, 1959 (24 F.R. 1781), proclaimed such adjustments;

WHEREAS, I find and declare that adjustments must be made in the imports of crude oil and unfinished oils for overestimates and underestimates of total demand:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the statutes including section 2 of the act of July 1, 1954, as amended, do hereby proclaim that:

On and after January 1, 1961, Proclamation 3279 of March 10, 1959, as amended by Proclamation 3290 of April 30, 1959, and Proclamation 3328 of December 10, 1959, is hereby further amended as follows:

Subparagraph (1) of paragraph (a) of section 2 is amended to read as follows:

(a)(1) In Districts I-IV the maximum level of imports of crude oil, unfinished oils, and finished products other than residual fuel oil to be used as fuel shall be approximately the amount equal to the arithmetical product, adjusted as provided in this subparagraph, of the total demand in these districts as estimated by the Bureau of Mines for periods fixed by the Secretary of the Interior multiplied by 9 percent. The level so determined for an allocation period shall be increased or decreased by 9 percent of the amount by which the estimated total demand for the allocation period (for imports of crude oils and unfinished oils) most recently ended fell short of or exceeded the actual total demand for that allocation period. Within this maximum level, imports of finished products other than residual fuel oil to be used as fuel shall not exceed the level of imports of such products into these districts during the calendar year 1957 and imports of unfinished oils shall not exceed 10 percent of the permissible imports of crude oil and unfinished oils.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this twenty-fourth day of December in the year of our Lord nineteen hundred and sixty, and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER

By the President:

LIVINGSTON T. MERCHANT,
Acting Secretary of State.

[F.R. Doc. 60-12185; Filed, Dec. 28, 1960; 1:11 p.m.]

[1] 24 F.R. 1781; 3 CFR, 1959 Supp., p. 23.

Proclamation 3387

MODIFYING THE DUTY ON CERTAIN WOOL FABRICS

By the President of the United States of America

A Proclamation

1. WHEREAS, pursuant to the authority vested in him by the Constitution and the statutes, including section 350(a) of the Tariff Act of 1930, as amended, 48 Stat. 943, 57 Stat. 125, 59 Stat. 410, the President on October 30, 1947 entered into a trade agreement with certain foreign countries, which trade agreement consists of the General Agreement on Tariffs and Trade and the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, together with a Final Act, 61 Stat. (Parts 5 and 6) A7, A11 and A2051, including a schedule of United States concessions (hereinafter referred to as "Schedule XX—Geneva 1947");

2. WHEREAS by Proclamation No. 2761A of December 16, 1947, 61 Stat. (pt. 2) 1103, the President proclaimed such modifications of existing duties and other import restrictions of the United States of America and such continuance of existing customs or excise treatment of articles imported into the United States of America as were then found to be required or appropriate to carry out the trade agreement specified in the first recital of this proclamation on and after January 1, 1948;

3. WHEREAS items 1108 and 1109(a), and the appropriate headings, in Part I of Schedule XX—Geneva 1947, which items were given effect by the proclamation of December 16, 1947, read as follows:

Tariff Act of 1930, paragraph	Description of products	Rate of duty
1108	Woven fabrics, weighing not more than four ounces per square yard, wholly or in chief value of wool, regardless of value:	
	If the warp is wholly of cotton or other vegetable fiber.	30¢ per lb. and 25% ad val.
	Other	37½¢ per lb. and 25% ad val.
	NOTE: The United States reserves the right to increase the ad valorem part of the rate applicable to any of the fabrics provided for in item 1108 or 1109(a) of this Part to 45 per centum ad valorem on any of such fabrics which are entered in any calendar year in excess of an aggregate quantity by weight of 5 per centum of the average annual production of similar fabrics in the United States during the 3 immediately preceding calendar years.	
1109(a)	Woven fabrics, weighing more than four ounces per square yard, wholly or in chief value of wool, regardless of value.	37½¢ per lb. and 25% ad val.

4. WHEREAS, pursuant to the authority cited in the first recital of this proclamation, on April 21, 1951, the President entered into a trade agreement with certain foreign countries, which trade agreement consists of the Torquay Protocol to the General Agreement on Tariffs and Trade (3 UST (pt. 1) 615, (pt. 2) 1841), including a schedule of United States concessions constituting a United States Schedule to the General Agreement on Tariffs and Trade (3 UST (pt. 1) 1125) (hereinafter referred to as "Schedule XX—Torquay 1951");

5. WHEREAS by Proclamation No. 2929 of June 2, 1951 (65 Stat. C12), the President proclaimed, effective June 6, 1951, such modifications of existing duties and other import restrictions of the United States and such continuance of existing customs or excise treatment of articles imported into the United States as were then found to be required or appropriate to carry out the trade agreement specified in the fourth recital of this proclamation;

6. WHEREAS item 1109(a), and the appropriate headings, in Part I of Schedule XX annexed to the said Torquay Protocol, which item was given

effect by the said proclamation of June 2, 1951, read as follows:

Tariff Act of 1930, paragraph	Description of products	Rate of duty
1109(a)	Woven green billiard cloths in the piece, weighing over 11 but not over 15 ounces per square yard, wholly of wool, regardless of value.	37½¢ per lb. and 20% ad val.

NOTE: This item shall be subject to the note in item 1108 in Part I of Schedule XX (original).

and item 1109(a) was made effective as of June 6, 1951 by the letter of the President to the Secretary of the Treasury dated June 2, 1951 (3 C.F.R. 1949 ed., 1951 Supp., p. 530; 16 F.R. 5386), pursuant to the procedure described in Part I(b)(I) of said Proclamation No. 2929 of June 2, 1951;

7. WHEREAS the President, by Proclamation No. 3160, of September 28, 1956, which proclamation has been amended by Proclamation No. 3225, of March 7, 1958, by Proclamation No. 3285, of April 21, 1959, and by Proclamation No. 3317, of September 24, 1959, invoked the right reserved in the notes to item 1108 in Part I of Schedule XX—Geneva 1947 and to item 1109(a) in Part I of Schedule XX—Torquay 1951 by increasing to not more than 45 per centum the ad valorem of the rate applicable to any of the fabrics provided for in item 1108 or 1109(a) of Part I of Schedule XX—Geneva 1947 (including any of the fabrics provided for in item 1109(a) of Part I of Schedule XX—Torquay 1951) in excess of amounts, not greater than 5 per centum of the average annual production of similar fabrics in the United States during the three immediately preceding calendar years, to be notified by him to the Secretary of the Treasury for each year;

8. WHEREAS Article XXVIII of the General Agreement on Tariffs and Trade provides that a contracting party may, pursuant to procedures provided for therein, modify or withdraw concessions in its schedules to that Agreement;

9. WHEREAS the procedures of Article XXVIII of the General Agreement on Tariffs and Trade are being complied with to the extent necessary to permit the modification on January 1, 1961 of the concessions provided for in the items set forth in the third and sixth recitals of this proclamation so that such items may read as hereinafter proclaimed in Part I of this proclamation;

10. WHEREAS reasonable public notice of the intention to conduct the trade agreement renegotiations necessary to accomplish the modifications of the concession hereinafter proclaimed in Part I of the proclamation was given, the views presented by persons interested in such renegotiations were received and considered, and information and advice with respect to such renegotiations were sought and obtained from the Departments of State, Agriculture, Commerce, and Defense, and from other sources;

11. WHEREAS, pursuant to section 3 of the Trade Agreements Extension Act of 1951, 65 Stat. 72, as amended, I transmitted to the United States Tariff Commission for investigation and report a list of articles imported into the United States of America to be considered for possible modification of duties and other import restrictions, imposition of additional import restrictions, or continuance of existing customs or excise treatment in such renegotiations, and the Tariff Commission made an investigation in accordance with that section and thereafter reported to me its determinations made pursuant thereto within the time specified therein; and

12. WHEREAS, as a result of the modifications of the concessions set forth in the third and sixth recitals of this proclamation which are hereinafter proclaimed in Part I of this proclamation, I determine that it is required or appropriate to carry out the trade agreements specified in the first and fourth recitals of this proclamation, that, on and after January 1, 1961, the proclamations specified in the second and fifth recitals of this proclamation be modified as proclaimed in Part II of this proclamation, and that the justification for the proclamations specified in the seventh recital of this proclamation will then cease to exist.

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and statutes, including section 350 of the Tariff Act of 1930, as amended, do hereby proclaim that, effective January 1, 1961:

PART I

1. The concessions provided for in items 1108 and 1109(a) in Part I of Schedule XX—Geneva 1947 set forth in the third recital of this proclamation are hereby modified so that such items, and appropriate headings, read as follows:

Tariff Act of 1930, paragraph	Description of products	Rate of duty
1108	Woven fabrics, weighing not more than four ounces per square yard, wholly or in chief value of wool:	
	Hand-woven fabrics with a loom width of less than thirty inches; and other fabrics, if valued over $4 per pound and wholly or in chief value of wool of the sheep, in solid colors, imported to be used in the manufacture of apparel for members of religious orders:	
	With warp wholly of cotton or other vegetable fiber.	30¢ per lb. and 25% ad val.
	Not with warp wholly of cotton or other vegetable fiber.	37½¢ per lb. and 25% ad val.
	Other:	
	With warp wholly of cotton or other vegetable fiber, valued—	
	Not over $2 per pound	$1.06 per lb., but not over 30¢ per lb. plus 60% ad val.
	Over $2 per pound	30¢ per lb. and 38% ad val.
	Not with warp wholly of cotton or other vegetable fiber, valued—	
	Not over $2 per pound	$1.13½ per lb., but not over 37½¢ per lb. plus 60% ad val.
	Over $2 per pound	37½¢ per lb. and 38% ad val.
1109(a)	Woven fabrics weighing over 4 ounces per square yard, wholly or in chief value of wool:	
	Hand-woven fabrics with a loom width of less than 30 inches; and serges weighing not over 6 ounces per square yard, wholly or in chief value of wool of the sheep, valued at over $4 per pound, in solid colors, imported to be used in the manufacture of apparel for members of religious orders	37½¢ per lb. and 25% ad val.
	Other fabrics, valued—	
	Not over $2 per pound	$1.13½ per lb. but not over 37½¢ per lb. plus 60% ad val.
	Over $2 per pound	37½¢ per lb. and 38% ad val.

2. The concession provided for in item 1109(a) in Part I of Schedule XX—Torquay 1951 set forth in the sixth recital of this proclamation is hereby modified so that such item, and appropriate headings, read as follows:

Tariff Act of 1930, paragraph	Description of products	Rate of duty
1109(a)	Woven green billiard cloths in the piece, weighing over 11 but not over 15 ounces per square yard, wholly of wool.	37½¢ per lb. and 30% ad val.

PART II

The provisions of items 1108 and 1109(a) of Part I of this proclamation shall be applied, and all proclamations of the President heretofore issued under the authority of section 350 of the Tariff Act of 1930, as amended, are terminated insofar as they are inconsistent with this proclamation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 28th day of December in the year of our Lord nineteen hundred and sixty, and of the Independence of the United States of America the one hundred and eighty-fifth.

[SEAL]

DWIGHT D. EISENHOWER

By the President:

LIVINGSTON T. MERCHANT,
Acting Secretary of State.

[F.R. Doc. 60-12047; Filed, Dec. 29, 1960; 10:45 a.m.]

Rules and Regulations

Title 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

[P.P.C. 612, 29th Rev.]

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Khapra Beetle

ADMINISTRATIVE INSTRUCTIONS DESIGNATING CERTAIN PREMISES AS REGULATED AREAS

Pursuant to § 301.76–2 of the regulations supplemental to the Khapra Beetle Quarantine (7 CFR 301.76–2) under sections 8 and 9 of the Plant Quarantine Act of 1912, as amended (7 U.S.C. 161, 162), revised administrative instructions are hereby issued as follows, listing premises in which infestations of the khapra beetle have been determined to exist and designating such premises as regulated areas within the meaning of said quarantine and regulations.

§ 301.76–2a Administrative instructions designating certain premises as regulated areas under the khapra beetle quarantine and regulations.

Infestations of the khapra beetle have been determined to exist in the premises listed in paragraphs (a) and (b) of this section. Accordingly, such premises are hereby designated as regulated areas within the meaning of the provisions in this subpart:

(a)

ARIZONA

Wayne Brand Farm & Feed Lot, Route 1, Box 629C, Yuma.

CALIFORNIA

Anza Land Company, Borrego Springs, located on Palm Canyon Road, ½ mile east of school on south side of said road.

(b) The portion of each of the following premises in which live khapra beetles were found has received the approved fumigation treatment, but these premises must continue under frequent observation and inspection for a period of one year following fumigation before a determination can be made as to the adequacy of such treatment to eradicate the khapra beetle in and upon such premises. During this period regulated articles may be moved from the premises only in accordance with the regulations in this subpart.

TEXAS

Beaver Egg Farm, Route 1, Box 44, Ysleta.
El Paso Union Stock Yards, 1800 East 11th Street, El Paso.

(Sec. 9, 37 Stat. 318; 7 U.S.C. 162. Interprets or applies sec. 8, 37 Stat. 318, as amended; 7 U.S.C. 161. 19 F.R. 74, as amended; 7 CFR 301.76–2)

These administrative instructions shall become effective December 30, 1960, when they shall supersede P.P.C. 612, Twenty-eighth Revision, effective August 2, 1960 (25 F.R. 7237).

Subsequent to the twenty-eighth revision, effective August 2, 1960, infestations of the khapra beetle were discovered on the following premises of the USDA Forest Service's Tonto National Forest: Roosevelt Ranger Station, located 2 miles east of Roosevelt Dam on Highway 88; Ashdale Ranger Station Corral, located at Cave Creek, Seven Springs Road; Tangle Creek Ranger Station Corral, located on Bloody Basin Road, north of Ashdale Ranger Station; Copper Creek Ranger Station Corral, located 12.5 miles east of Black Canyon Highway on Bloody Basin Road, all in the Phoenix, Arizona area; as well as the H. R. Brooks Corral, 1514 East Cocopah; the Eugene H. Cheves Bird Pen, 1327 West Mackenzie Drive; the Chester Green Poultry Yard, 3730 East Buckeye Road, all in Phoenix, Arizona; and the Van Cochran Chicken Yard, 506 Bakersfield Avenue, Wellton, Arizona. Movement of regulated articles from these properties was immediately stopped. Within a few days the infested premises had been fumigated in their entirety and declared free of khapra beetle infestation. Accordingly, these properties are not being included in this revision.

This revision adds certain premises in Arizona and California to the list of premises in which khapra beetle infestations have been determined to exist, and designates such premises as regulated areas under the khapra beetle quarantine and regulations.

As an informative item, the revision segregates certain regulated premises in Texas where the approved fumigation treatment has been applied to the portion of the premises in which live khapra beetles were found and which are consequently in a somewhat different category than untreated premises.

These instructions impose restrictions supplementing khapra beetle quarantine regulations already effective. They must be made effective promptly in order to carry out the purposes of the regulations. Accordingly, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003), it is found upon good cause that notice and other public procedure with respect to the foregoing administrative instructions are impracticable and good cause is found for making the effective date thereof less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 22d day of December 1960.

[SEAL] E. D. BURGESS,
Director,
Plant Pest Control Division.

[F.R. Doc. 60–12147; Filed, Dec. 29, 1960; 8:51 a.m.]

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 815]

PART 815—ALLOTMENT OF THE DIRECT-CONSUMPTION PORTION OF 1960 MAINLAND SUGAR QUOTA FOR PUERTO RICO

Three-Month Period

Basis and purpose. This allotment order is issued under section 205(a) of the Sugar Act of 1948, as amended (herein called the "act"), for the purpose of allotting the portion of the sugar quota for Puerto Rico for the three-month period ending March 31, 1961, which may be filled by direct-consumption sugar among persons who market such sugar for consumption in the continental United States.

Omission of recommended decision and effective date. The record of the hearing regarding the subject of this order shows that the capacity to produce refined sugar in Puerto Rico far exceeds the maximum quantity of Puerto Rican direct-consumption sugar that may be marketed within prospective mainland and local quotas (R. 7). The proceeding to which this order relates was instituted for the purpose of allotting the direct-consumption portion of the mainland quota to prevent disorderly marketing and to afford each interested person an equitable opportunity to market direct-consumption sugar in the continental United States. The allotments made by this order are small in relation to the quantities of sugar that could be produced for marketing and delay in the issuance of the order might result in some persons marketing more than their fair share of the direct-consumption portion of the quota. Therefore, it is imperative that this order become effective on January 1, 1961, in order to fully effectuate the purposes of section 205(a) of the act. Accordingly, it is hereby found that due and timely execution of the functions imposed upon the Secretary under the act imperatively and unavoidably requires the omission of a recommended decision in this proceeding. It is hereby further found that compliance with the 30-day effective date requirements of the Administrative Procedure Act (60 Stat. 237) is impracticable and contrary to the public interest and, consequently, this order shall be effective on January 1, 1961.

Preliminary statement. Under the provisions of section 205(a) of the act, the Secretary is required to allot a quota or proration thereof whenever he finds that allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, (2) to prevent the disorderly marketing of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar or liquid sugar, or (4) to afford all interested persons an equitable opportunity to market sugar or liquid sugar within the quota for the area. Section 205(a) also provides that such allotment shall be made after such hearing and upon such notice as the Secretary may by regulation prescribe.

Pursuant to the applicable rules of practice and procedure (7 CFR 801.1 et seq.), a preliminary finding was made that allotment of the direct-consumption portion of the quota is necessary and a notice was published on October 4, 1960 (25 F.R. 9425) of a public hearing to be held at Santurce, Puerto Rico, in the Conference Room, Caribbean Area Office, ASC, Segarra Building, on October 21, 1960, at 10:00 a.m., for the purpose of receiving evidence to enable the Secretary to make a fair, efficient and equitable distribution of the direct-consumption portion of the mainland sugar quota for Puerto Rico for the three-month period ending March 31, 1961, or for the calendar year 1961 or a part thereof. The hearing was held at the time and place specified in the notice.

In arriving at the findings, conclusions and regulatory provisions contained herein, all proposed findings and conclusions were carefully and fully considered in conjunction with the record evidence pertaining to the allotment of the direct-consumption portion of the mainland quota. To the extent that findings and conclusions proposed by interested persons are inconsistent with the findings and conclusions contained herein, the specific or implied requests to make such findings and reach such conclusions are denied on the basis of the facts found and stated in connection with the conclusions herein set forth.

Basis for findings and conclusions. Sec. 205(a) of the act reads in pertinent part as follows:

> • • • Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processing of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of Sec. 302, pertained; the past marketings or importations of each such person and the ability of such person to market or import that portion of such quota or proration thereof allotted to him • • •

The record of the hearing regarding the subject of this order shows that the capacity to produce refined sugar in Puerto Rico far exceeds the maximum quantity of Puerto Rican direct-consumption sugar that may be marketed under the probable quotas (R. 6, 7). The direct-consumption portion of the mainland quota for Puerto Rico for the three-month period ending March 31, 1961, was established in Part 811 (25 F.R. 13211) in accordance with the legislative conferees' report on P.L. 86–592 at 37,076 short tons, raw value, which is equal to one-fourth of the direct-consumption limitation which would be effective for a calendar year at the level of sugar requirements of 10,000,000 short tons, raw value.

To prevent disorderly marketing of sugar and to afford all interested persons an equitable opportunity to market sugar within the quota as required by section 205(a) of the act, allotment of the direct-consumption portion of the mainland sugar quota for Puerto Rico for the three-month period ending March 31, 1961, is found to be necessary (R. 7, 8).

While all three factors specified in the provisions of Sec. 205(a) of the act quoted above have been considered, only the "past marketings" and "ability to market" factors have been given percentile weightings in the formula on which the allotment of the direct-consumption portion of the mainland quota for Puerto Rico is based. Testimony indicates that allottees accounting for over 94 percent of the direct-consumption sugar brought into the continental United States do not process sugar from sugarcane and that giving weight to the factor "processing from proportionate shares" would not lead to equitable allotments (R. 9).

The government witness proposed the factor "past marketings" be measured for each processor and refiner by the average annual quantity of direct-consumption sugar which he marketed in the continental United States within the mainland quotas for Puerto Rico during the five years 1956 through 1960, inclusive, expressed as a percentage of the sum of such quantities for all processors and refiners. The witness stated that the use of the quantities marketed in the most recent five-year period will reflect market conditions similar to those which would be expected to occur in the marketing of direct-consumption sugar in the mainland in 1961 or a part thereof, and furthermore that a five-year average of such marketings tends to minimize shortrun influences affecting data for a single year and adds stability to the "past marketings" factor (R. 9).

The government witness proposed that the factor "ability to market" be measured by the largest quantity of direct-consumption sugar marketed in the mainland by each refiner and processor in any one of the past five years, 1956 through 1960, expressed as a percentage of the sum of such quantities for all refiners and processors. The witness stated that marketings of direct-consumption sugar in the recent period, 1956 through 1960, are considered to be the best measure of processor's and refiner's relative ability to market sugar in 1961 or a part thereof, and that the use of a more remote period would not be indicative of current ability to market (R. 10).

In determining allotments of the direct-consumption portion of the mainland quota for the three-month period ending March 31, 1961, the government witness proposed that the factors "past marketings" and "ability to market" be weighted equally as was done in establishing past allotments of the quota (R. 11).

In prior years liquid sugar in a form known as melao cane syrup manufactured in Puerto Rico has been imported into the continental United States for consumption (R. 11, 12). The estimated raw value equivalent of these shipments was 32 short tons in 1958, 26 in 1959, and 31 through August 1960. A sample of this product indicates that it contains less than 6 percent non-sugar solids and is liquid sugar under the definition thereof in the Sugar Act and subject to the quota provisions of the act (R. 11). It was proposed by the government witness that a liquid sugar reserve be established to permit the marketing of liquid sugar in the continental United States by other than named allottees (R. 12).

It was further proposed that the quantity of sugar that may be brought into the continental United States within the direct-consumption portion of the mainland quota for Puerto Rico for the three-month period ending March 31, 1961, less the quantity set aside for liquid sugar shipments by other than named allottees, be allotted by applying 50 percent weight to each of the factors "past marketings" and "ability to market" measured for each allottee as indicated in the preceding paragraphs (R. 13).

At the hearing, Roig Refining Company proposed that the factor "ability to market" be given a weight of 25 percent and that it be measured by basing ability to market on ability to produce. It was proposed that for each allottee the average daily production of the ten consecutive days giving the highest production in either 1959 or 1960 would be multiplied by 300 working days for refiners and by 125 days for mills making refined, washed, or turbinado sugars. From the resulting quantities for each allottee would be deducted 1957–1959 average annual local marketings to obtain the measure of "ability to market" (R. 29). The factor "past marketings" would be measured by the average annual marketings, 1955 through 1959, and weighted 75 percent (R. 29, 32, 33).

Testimony at the hearing indicated that daily production data is not available unless allottees voluntarily supply such data since daily production data are not reported to either the Sugar Division or the Caribbean Area ASC Office (R. 32, 35). It was proposed that if such data are not supplied, the highest production for each allottee during any month in 1959 or 1960 be used in the calculation of the measure of ability (R. 53).

The witness for Central Aguirre Sugar Company testified that production from the 1960 crop was abnormally low because of weather conditions and proposed that the year 1960 should not be included in the measures of "past marketings" and "ability to market", but that the same method and years used for the 1960 allotment method should be used for 1961 (R. 43). Central Roig Refining Company also proposed that the factor "past marketings" be measured by the use of the annual average marketings for the period 1955 through 1959 (R. 26, 27).

In testimony at the hearing and in a brief, Western Sugar Refining Com-

pany proposed that the factor "past marketings" be measured by the average annual marketings of each processor during the 15-year period, 1946 through 1960, and that the factor "ability to market" be measured by the highest marketings of each processor during any year of the 15-year period, 1946 through 1960. Equal weight would be given to each such factor (R. 46, 48).

Puerto Rican American Sugar Refinery, Inc., supported the allotment method proposed by the government, and Central San Francisco gave qualified support to such method.

In determining the measure of "past marketings" on the basis of testimony and evidence submitted at the hearings, the use of the years 1955 through 1959 and the omission of the 1960 marketings would not permit consideration of the most recent year in which marketings occurred. Furthermore, it has not been substantiated that 1955 marketings would be as appropriate as 1960 marketings in calculating a measure of "past marketings." The use of the period 1946–1960 does not appear to be as indicative of market conditions expected to occur in 1961 as does the most recent period of 1956 through 1960 which is herein adopted.

In determining the measure of "ability to market", the use of the period 1946–1960 as a measure of ability as proposed by Western Sugar Refining Company would include years immediately after World War II during which marketing conditions, in comparison to the most recent five-year period, are less representative of conditions to be faced in 1961. The use of the period 1955–59, as proposed by Central Aguirre Sugar Company, would eliminate consideration of the most recent year of demonstrated ability which under the circumstances that prevailed and by virtue of its proximity is more representative of conditions to be faced in 1961 than is 1955.

The use of the proposed measure of ability to produce as a basis for measuring "ability to market" does not appear justified on the basis of the testimony and evidence submitted at the hearing. Testimony at the hearing left considerable doubt as to the accuracy with which the proposed method would demonstrate ability to produce. Furthermore, a showing of ability to produce does not necessarily reflect willingness to produce nor ability to market.

On the basis of the record the performance of allottees as reflected in actual shipments of direct-consumption sugar to the mainland is considered the best and most practical measure of "ability to market". The use of the most recent five-year period provides a sufficient period of time for allottees to demonstrate ability to market. The largest quantity marketed by an allottee in any one year during such a recent period would be more indicative of current relative ability to market than the highest year's marketings in a more remote period. The hearing record discloses no information that there has been any impairment in recent years in the capacity of the production facilities of the allottees that are subject to the allotment order issued pursuant to this proceeding. Furthermore, the proration of allotment deficits during each of the last five years provided additional marketing opportunities to allottees who demonstrated ability to utilize additional allotments. In view of the foregoing, the method of measuring the factor "ability to market" proposed by the government witness has been adopted.

In accordance with the record of the hearing (R. 16, 17) provision has been made in the findings and the order to revise allotments without further notice or hearing for purposes of (1) giving effect to the substitution of revised estimates or final data or both for estimates of the quantity of direct-consumption sugar imported into the continental United States by each allottee in 1960, and (2) giving effect to any increase or decrease in the direct-consumption portion of the mainland quota for the three-month period ending March 31, 1961. Also, as proposed in the record (R. 21), the findings and order contain provisions relating to restrictions on marketing similar to those contained in the 1960 Puerto Rican allotment order since such provisions operated successfully in 1960 and no objection was made in the record to their inclusion.

Findings and conclusions. On the basis of the record of the hearing I hereby find and conclude that:

(1) The potential capacity of Puerto Rican processors and refiners to produce direct-consumption sugar during the calendar year 1961 is about 320,000 short tons and this quantity is proportionately far greater than the total quantity of such sugar which may be marketed within the local sugar quotas for Puerto Rico for the three-month period ending March 31, 1961.

(2) The allotment of the direct-consumption portion of the mainland sugar quota for Puerto Rico for the three-month period ending March 31, 1961, is necessary to prevent disorderly marketings of such sugar and to afford each interested person an equitable opportunity to market such sugar in the continental United States.

(3) Assignment of percentile weight to the "processing from proportionate shares" factor in the allotment formula would not result in fair, efficient and equitable allotments.

(4) An allotment of 12 short tons, raw value, shall be established as a liquid sugar reserve to permit the marketing of liquid sugar in the continental United States by persons other than named allottees during the three-month period ending March 31, 1961.

(5) The "past marketings" factor shall be measured by each allottee's percentage of the average entries of direct-consumption sugar by all allottees in the continental United States during the years 1956 through 1960.

(6) The "ability to market" factor shall be measured for each allottee by expressing each allottee's largest entries of direct-consumption sugar into the United States during any one of the past five years, 1956 through 1960, as a percent of the sum of such entries for all allottees.

(7) The quantities of sugar and percentages referred to in paragraphs (5) and (6), above, based on data involving estimates for 1960 direct-consumption entries which shall be used to establish allotments pending availability and substitution of revised or final data for such estimates, are set forth in the following table:

Allottee	Average annual marketings 1956–60		Highest annual marketings 1956–60	
	Short tons, raw value (1)	Percent of total (2)	Short tons, raw value (3)	Percent of total (4)
Central Aguirre Sugar Co., a trust	5,010	3.6636	6,931	4.2961
Central Roig Refining Co.	20,542	15.0213	22,000	13.6363
Central San Francisco	1,470	1.0749	1,625	1.0072
Puerto Rican American Sugar Refinery, Inc.	87,644	64.0898	104,778	64.9448
Western Sugar Refining Co.	22,086	16.1504	26,000	16.1156
Total	136,752	100.0000	161,334	100.0000

(8) Allotments totaling the direct-consumption portion of the Puerto Rican mainland quota for the three-month period ending March 31, 1961, less the liquid sugar reserve provided for in Finding (4), above, should be established by giving fifty percent weight to past marketings, measured as provided in Finding (5), above, and fifty percent weight to ability to market, measured as provided in Finding (6), above.

(9) This order may be revised without further notice or hearing for the purpose of substituting revised estimates or final data or both for previous estimates of the Puerto Rican direct-consumption sugar entries by and on behalf of each allottee in 1960 when such revised data or final data or both become part of the official records of the Department.

(10) This order shall be revised without further notice or hearing to revise allotments to give effect to any change in the direct-consumption portion of the quota for Puerto Rico for the three-month period ending March 31, 1961, on the same basis as is provided in these findings for establishing allotments.

(11) Official notice will be taken of (a) estimated and final data for 1960 calendar year marketings of sugar for direct-consumption on the mainland that become a part of the official records of the Department, and (b) any regulation issued by the Secretary which changes the mainland sugar quota for Puerto Rico and the direct-consumption portion thereof established for the three-month period ending March 31, 1961.

(12) Each allottee during the three-month period ending March 31, 1961, shall be restricted from bringing into the continental United States for consumption therein any direct-consumption sugar in excess of the smaller of his allotment established herein or the sum of the quantity of sugar produced by the allottee from sugarcane grown in Puerto Rico and the quantity of sugar acquired from Puerto Rican processors by the allottee during such period for shipment to the mainland within the applicable mainland quota for Puerto Rico. All other persons shall be prohibited from bringing direct-consumption sugar into the continental United States during the three-month period ending March 31, 1961, for consumption therein except such sugar acquired in such period from an allottee within his allotment established herein or sugar brought in within the liquid sugar reserve established for other than named allottees. All persons collectively shall be prohibited from bringing into the continental United States any direct-consumption sugar other than crystalline sugar in excess of the quantity by which the direct-consumption portion of the mainland quota exceeds 31,508 short tons, raw value. Of that part of the direct-consumption portion of the mainland quota that may be filled by either liquid or crystalline sugar, 12 short tons, raw value, shall be reserved to cover shipments of liquid sugar by other than named allottees as provided in Finding (4).

(13) To facilitate full and effective use of allotments, provision shall be made in the order for transfer of allotments under circumstances of a succession of interest.

(14) Allotments established in the foregoing manner and the amounts set forth in the order provide a fair, efficient, and equitable distribution of the direct-consumption portion of the mainland quota, as required by section 205(a) of the act.

Order. Pursuant to the authority vested in the Secretary of Agriculture by sec. 205(a) of the act, and in accordance with the findings and conclusions heretofore made, it is hereby ordered:

§ 815.1 Allotment of the direct-consumption portion of mainland sugar quota for Puerto Rico for the three-month period ending March 31, 1961.

(a) *Allotments.* The direct-consumption portion of the sugar quota for Puerto Rico for the three-month period ending March 31, 1961, amounting to 37,076 short tons, raw value, is hereby allotted as follows:

Allottee:	Direct-consumption allotment (short tons, raw value)
Central Aguirre Sugar Co., a trust	1,475
Central Roig Refining Company	5,311
Central San Francisco	386
Puerto Rican American Sugar Rfy., Inc.	23,913
Western Sugar Refining Co.	5,979
Liquid sugar reserve for persons other than named above	12
Total	37,076

(b) *Restrictions on marketing.* (1) During the three-month period ending March 31, 1961, each allottee named in paragraph (a) of this section is hereby prohibited from bringing into the continental United States within an allotment established for such allottee, for consumption therein, any direct-consumption sugar from Puerto Rico in excess of the smaller of (i) the allotment therefor established in paragraph (a) of this section, or (ii) the sum of the quantity of sugar produced by the allottee from sugarcane grown in Puerto Rico, and the quantity of sugar produced from Puerto Rican sugarcane which was sugar acquired by the allottee in 1961 for further processing and shipment within the direct-consumption portion of the mainland quota for Puerto Rico for the three-month period ending March 31, 1961.

(2) During the three-month period ending March 31, 1961, all persons other than the allottees specified in paragraph (a) of this section are hereby prohibited from bringing into the continental United States, for consumption therein, any direct-consumption sugar from Puerto Rico except that acquired from an allottee within the quantity limitations established in subparagraph (1) of this paragraph and that brought in within the liquid sugar reserve for persons other than named allottees.

(3) Of the total quantity of direct-consumption sugar allotted in paragraph (a) of this section, 31,508 short tons, raw value, may be filled only by sugar principally of crystalline structure and the balance may be filled by sugar whether or not principally of crystalline structure, except that 12 short tons, raw value, of such balance is reserved to cover shipments of liquid sugar by other than named allottees.

(c) *Revision of allotments.* The Director of the Sugar Division, Commodity Stabilization Service, U.S. Department of Agriculture, is hereby authorized to revise the allotments established under this section without further notice or hearing to give effect to (1) the substitution of revised estimates or final data for estimates as provided in Finding (9) accompanying this section, and (2) any increase or decrease in the direct-consumption portion of the mainland quota for Puerto Rico for the three-month period ending March 31, 1961, as provided in Finding (10) accompanying this section.

(d) *Transfer of marketing rights under allotments.* The Director of the Sugar Division, Commodity Stabilization Service, of the Department, consistent with the provisions of the act, may permit a quantity of sugar produced from sugarcane grown in Puerto Rico to be brought into the continental United States for direct-consumption therein by one allottee, or other person, within the allotment or portion thereof established for another allottee upon relinquishment by the latter allottee of an equivalent quantity of his allotment and upon receipt of evidence satisfactory to the Secretary that a merger, consolidation, transfer of sugar-processing facilities, or other action of similar effect upon the allottees or persons involved has occurred.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies secs. 205, 209; 61 Stat. 926, 928; 7 U.S.C. 1115, 1119; sec. 1, Pub. Law 86–592)

Done at Washington, D.C., this 27th day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

[F.R. Doc. 60–12176; Filed, Dec. 29, 1960; 8:54 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

PART 936—FRESH BARTLETT PEARS, PLUMS, AND ELBERTA PEACHES GROWN IN CALIFORNIA

Expenses and Fixing of Rates of Assessment for 1960–61 Season

Pursuant to the marketing agreement, as amended, and Order No. 36, as amended (7 CFR Part 936), regulating the handling of fresh Bartlett pears, plums, and Elberta peaches grown in the State of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of the Control Committee established under the aforesaid amended marketing agreement and order, it is hereby found and determined that the expenses of the Control Committee in regard to Elberta peaches will amount to $13,500.

Order. In § 936.214 (25 F.R. 4897) delete subparagraph (4) of paragraph (a) and substitute in lieu thereof a new subparagraph (4) as set forth below.

§ 936.214 Expenses and rate of assessment for the 1960–61 season.

(a) *Expenses.* * * *

(4) Elberta peaches, $13,500.

It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendatory order until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that: (1) The increase in the budget set forth above does not involve an increase in the rate of assessment heretofore established by the Secretary (25 F.R. 4897); (2) the relevant provisions of said amended marketing agreement and this part requires that rates of assessment fixed for a particular marketing year shall be applicable to all assessable Elberta peaches from the beginning of such year and such rate of assessment shall be sufficient to provide funds for the payment of committee expenses; and (3) the Control Committee and the Commodity Committee in the performance of their duties and functions have incurred expenses in excess of those previously thought likely to be incurred. Therefore, it is essential that this amendatory action be issued immediately so

that said committee can meet its obligations.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 27, 1960.

FLOYD F. HEDLUND,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12144; Filed, Dec. 29, 1960; 8:51 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER A—MEAT INSPECTION REGULATIONS

PART 17—LABELING

PART 18—REINSPECTION AND PREPARATION OF PRODUCTS

Cured Meat Products

Pursuant to the authority conferred by the Meat Inspection Act, as amended and extended (21 U.S.C. 71–96), and section 306 of the Tariff Act of 1930, as amended (19 U.S.C. 1306), Parts 17 and 18 of the Meat Inspection regulations (9 CFR Parts 17 and 18, as amended) are hereby amended as follows:

1. Section 17.8(c)(49) is deleted.
2. Section 17.8(c)(54) is deleted.
3. A new paragraph (e) is added to § 17.8 to read:

(e) In the preparation of the following cured meat products the following restrictions with respect to the use of moisture shall be observed:

(1) Smoked hams, smoked pork shoulders, smoked pork shoulder picnics and smoked pork shoulder butts may not contain more than ten percent added moisture. Smoked beef tongues shall not contain added moisture.

(2) Cooked cured products such as hams, pork shoulders, pork shoulder picnics, pork shoulder butts, or pork loins, either smoked or unsmoked, prepared with either moist or dry heat, and identified as "cooked", "fully cooked", "thoroughly cooked", "ready to eat" or "ready to serve" shall not contain added moisture.

(3) Canned hams, pork shoulders, pork shoulder picnics, pork shoulder butts and pork loins shall not contain more than eight percent added moisture.

4. Section 18.7(n) is deleted.

Implementation of the foregoing changes in the regulations will be accomplished by inspection routines and laboratory analysis of finished products using generally the same inspection and sampling methods now applied to cooked sausage products.

A review of the requirements presently in effect with respect to the preparation of the cured meat products disclosed considerable urgency for prompt change of the regulations to enable the public to obtain the types of products desired. The proposed amendments are less restrictive than the regulations presently in effect. Therefore, under section 4 of the Administrative Procedure Act (5 U.S.C. 1003) it is found upon good cause that notice of rule making and public participation in the rule making procedure with respect to these amendments would be impracticable and unnecessary and the amendments may be made effective less than 30 days after publication in the FEDERAL REGISTER. Accordingly, these amendments shall become effective upon publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 23d day of December 1960.

M. R. CLARKSON,
Acting Administrator, Agricultural Research Service.

[F.R. Doc. 60–12145; Filed, Dec. 29, 1960; 8:51 a.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

Statement of Considerations

On September 7, 1960 the Commission published in the FEDERAL REGISTER amendments to 10 CFR Part 20 to become effective January 1, 1961. The amendments were designed to bring the Commission's radiation protection standards into accord with the most recent recommendations of the Federal Radiation Council and the National Committee on Radiation Protection and Measurements. Subsequent to publication of the amendments on September 7, 1960, the Commission has received several comments from interested parties requesting clarification and corrections of certain sections of the regulation. The following amendments are designed to clarify and correct the regulation in the following respects:

1. Section 20.3(a)(4) of the regulation permits licensees to determine calendar quarters either (1) as successive 3-month calendar periods starting on January 1 of a year or (2) as successive periods of 13 complete consecutive weeks starting with the first complete calendar week of the year. Film badge processors have indicated that method (1) of determining calendar quarters would present problems to the industry in that every user of film badges on a monthly basis would be required to start his use on the first day of each month, thereby resulting a large influx of badges to be processed at that time of the month with only a few badges during the balance of the month. They have indicated that method (2) of determining calendar quarters is also unsatisfactory in that users of film badges on a two-week calendar basis could not keep records for a 13-week calendar quarter. Since the purpose of the regulation in defining a calendar quarter is limited to assuring that the exposure of individuals during a period of approximately 3 months is restricted to specified amounts, § 20.3(a)(4)(i) is amended to permit 3-month "calendar quarters" to start on any date within January, April, July or October rather than only on the first of the month; and to permit "calendar quarters" determined on a weekly basis to consist of alternating 14-week and 12-week periods, rather than only 13-week periods.

2. Section 20.206(c) requires Form AEC–3, (Notice to Employees), to be posted in every establishment where licensed activities are carried on regardless of whether any restricted areas which require radiation protection control measures exist in such establishment. Some licensees have pointed out that this requirement is unduly burdensome since posting of a Notice in unrestricted areas will result in many employees not working in restricted areas, nor even engaged in work with licensed material, becoming needlessly concerned as to the applicability of the poster to their activities. Since the purpose of the Notice is soley to assure that an employee working in or frequenting a restricted areas would be made aware of the information contained in the poster, § 20.206(c) is amended to require posting in such locations as to assure that employees working in or frequenting restricted areas will observe the Notice on the way to or from work.

3. Section 20.3(a)(14) of the regulation defines "Restricted area" in part as any area access to which is controlled by the licensee. Some licensees have requested clarification of the definition since access is controlled to many areas which have no relation to radioactive material. The definition has been changed by adding the phrase "for purposes of protection of individuals from exposure to radiation and radioactive materials". A corresponding change has been made in the definition of an unrestricted area in § 20.3(a)(17).

4. The Appendix "B" note in the regulation specifies methods of general applicability for determining limits for concentrations where there is a mixture in air or water of more than one radionuclide. It was not contemplated that these methods would necessarily apply in determining concentration limits for unique complex mixtures such as uranium ore dust. The concentration limit for the mixture of radionuclides in uranium ore dust calculated in accordance with these methods is lower by a factor of about 4 than previous concentration limits used for uranium ore dust. The uranium mill licensees have questioned the applicability of the Appendix "B" note methods for deriving a limit for uranium ore dust. The reduction in the limit for uranium ore dust is due to the fractional contribution of the unusually low limit for the radionuclide Thorium-230. The limit for Thorium-230 is based on a retention half-time in the lung of 4 years for pure thorium compounds. However, Thorium-230 does not appear in uranium ore dust as pure thorium compounds. The radionuclides in uranium ore dust of major health concern consist primarily of particles of insoluble uranium, which account for about 99.99 percent of the radionuclides with respect to mass, in secular equilibrium with the daughter products Thorium-230 and Radium-226 which are probably interspersed in a matrix within the uranium particle. Because of the unique physical and chemical state of the mixture of radionuclides in uranium ore dust, it does not appear appropriate to use the retention time for pure Thorium-230 as the basis for establishing a limit for ore dust. Rather, it appears desirable to use a single retention time for the mixture based upon the characteristics of the dust particle in which the radionuclides are fixed in insoluble form.

According, Appendix "B" note has been modified by adding paragraph 4 to establish concentration limits which are specifically applicable to uranium ore dust in air. It is assumed in deriving the new limits that the retention half-life of the individual radionuclides are governed not by their individual characteristics in the pure chemical state but by the characteristics of the dust particles in which the radionuclides are contained. For this purpose, a half-life of 120 days is used. This follows the practice of the International Commission on Radiological Protection and the National Committee on Radiation Protection in using a 120 day half-life for all insoluble materials in the lung except thorium and plutonium. This problem is under study by the Commission and by the Federal Radiation Council and the limits specified should be considered interim values pending the result of such studies. Appropriate revisions will be made in the limits if the studies indicate a need therefor.

Inasmuch as these amendments are intended to relieve from rather than to impose restrictions under regulations currently in effect and will not adversely affect the public health and safety, the Commission has found that general notice of proposed rule-making and public procedure thereon are unnecessary and good cause exists why these amendments should be made effective as of January 1, 1961, the effective date of previously published amendments to Part 20.

Notice is hereby given that effective January 1, 1961, Part 20, Title 10, Code of Federal Regulations, "Standards for Protection Against Radiation," as amended on September 7, 1960 (25 F.R. 8595) is further amended in the following respects:

1. Amend § 20.3(a)(4)(i) to read as follows:

(i) The first period of any year may begin on any date in January; provided that the second, third and fourth periods accordingly begin on the same date in April, July, and October, respectively, and that the fourth period extend into January of the succeeding year, if necessary to complete a three-month quarter. During the first year of use of this method of determination by a licensee, the first period for that year shall also include any additional days in January preceding the starting date for the first period.

2. After the first sentence in § 20.3(a)(4)(ii) add the following sentence: "Alternatively, the four periods may consist of the first 14 complete, consecutive calendar weeks; the next 12 complete, consecutive calendar weeks; the next 14 complete, consecutive calendar weeks; and the last 12 complete, consecutive calendar weeks."

3. Amend § 20.3(a)(14) to read as follows:

(14) "Restricted area" means any area access to which is controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials. "Restricted area" shall not include any areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area;

4. Amend § 20.3(a)(17) to read as follows:

(17) "Unrestricted area" means any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials, and any area used for residential quarters.

5. Amend § 20.206(c) to read as follows:

(c) Form AEC–3, "Notice to Employees", shall be conspicuously posted in a sufficient number of places in every establishment where employees are employed in activities licensed by the Commission to permit employees working in or frequenting any portion of a restricted area to observe a copy on the way to or from their place of employment.

6. Add the following paragraph 4 to the note in Appendix "B":

4. If the mixture of radionuclides consists of uranium and its daughter products in ore dust prior to chemical processing of the uranium ore, the values specified below may be used in lieu of those determined in accordance with paragraph 1 above or those specified in paragraphs 2 and 3 above.

a. For purposes of Table I, Col. 1—1×10^{-10} μc/ml gross alpha activity; or 2.5×10^{-11} μc/ml natural uranium; or 75 micrograms per cubic meter of air natural uranium.

b. For purposes of Table II, Col. 1—3×10^{-12} μc/ml gross alpha activity; or 8×10^{-13} μc/ml natural uranium; or 3 micrograms per cubic meter of air natural uranium.

Dated at Germantown, Md., this 22d day of December 1960.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

[F.R. Doc. 60–12107; Filed, Dec. 29, 1960; 8:46 a.m.]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 14187]

PART 545—OPERATIONS

Loans

DECEMBER 23, 1960.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of liberalization as hereinafter set forth of the limitations contained in subdivision (iv) of subparagraph (1) of paragraph (b) of § 545.6–1 of the rules and regulations for the Federal Savings and Loan System with respect to the maximum percentage of value and the maximum repayment period of loans on property designed or used primarily for residential purposes for more than six families but not more than twelve families and the limitation contained in subdivision (v) of said subparagraph (1) with respect to the maximum repayment period of loans on real estate which is improved by an income-producing structure thereon, and for the purpose of effecting such liberalization, hereby amends subdivisions (iv) and (v) of subparagraph (1) of paragraph (b) of said § 545.6–1 to read as follows, effective December 30, 1960:

(iv) 66⅔ percent of the value of property designed or used primarily for residential purposes: *Provided*, That the loan is an installment loan repayable monthly within 15 years: *Provided further*, That the foregoing limitations of 66⅔ percent and 15 years in this subdivision shall be 70 percent and 20 years in the case of such a loan on property designed or used primarily for residential use for more than six families: *Provided further*, That, where a governmental entity certifies to the Federal association, in advance of the making of the loan, that the development, alteration, repair, or improvement of such property is essential to, or in furtherance of the objectives of, a program of slum clearance or urban renewal which has been or is expected to be undertaken in whole or in part by such governmental entity, the loan may be an installment loan repayable monthly within 25 years;

(v) 60 percent of the value of real estate which is improved by an income-producing structure thereon: *Provided*, That the loan is an installment loan repayable monthly within a period of 20 years.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp.)

Resolved further that, as said amendments only relieve restriction, the Board hereby finds that notice and public procedure thereon are unnecessary under the provisions of § 508.12 of the general regulations of the Federal Home Loan Bank Board (12 CFR 508.12) or section 4(a) of the Administrative Procedure Act and, as said amendments relieve restriction, deferment of the effective date thereof is not required under section 4(c) of said Act.

By the Federal Home Loan Bank Board.

[SEAL] HARRY W. CAULSEN,
Secretary.

[F.R. Doc. 60–12142; Filed, Dec. 29, 1960; 8:50 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Amdt. 7]

PART 121—SMALL BUSINESS SIZE STANDARDS

Miscellaneous Amendments

The Small Business Size Standards Regulation (Revision 1) (24 F.R. 3491), as amended, (24 F.R. 5628, 7458, 7943, 9329; 25 F.R. 4577, 4711, 4985, 10087) is hereby further amended by:

§ 121.3–11 [Amendment]

1. Deleting the title for "§ 121.3–11 *Definition of Small Business for investment companies*" and substituting in lieu thereof the title "§ 121.3–11 *Definition of Small Business for assistance by Small Business investment companies.*"

2. Deleting § 121.3–1 and substituting in lieu thereof revised § 121.3–1 as follows:

§ 121.3–1 Purpose.

This part defines "small business concerns" and establishes standards, criteria and procedures to determine which concerns are "small business concerns" within the meaning of the Small Business Act, as amended (hereinafter referred to as the "Act"), and the Small Business Investment Act of 1958, as amended (hereinafter referred to as the "Investment Act").

3. Amending § 121.3–2 by deleting paragraphs (e) and (i) and substituting in lieu thereof revised paragraph (e) and (i) and adding new paragraphs (l), (m) and (n) as follows:

§ 121.3–2 Definition of terms.

(e) "Concern" means any business entity organized for profit with a place of business located in the United States, including, but not limited to, an individual, partnership, corporation, joint venture, association or cooperative.

* * * * *

(i) "Number of employees" means the average employment of any concern including the employees of its domestic and foreign affiliates based on the number of persons employed on a full time, part time, temporary or other basis during the pay period ending nearest the 15th day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the 15th day of each month.

* * * * *

(l) "Size determination" means a ruling by SBA that a concern is or is not a small business within the meaning of this Part.

(m) "Reconsideration" means a review by a Regional Director or Deputy Administrator on written request by an interested party of a prior size determination made by such Regional Director or Deputy Administrator, based on new information furnished with the request.

(n) "Appeal" means a written request for a review of a size determination made by a Deputy Administrator.

(o) "Protest" means a statement in writing from a party having a valid interest in whether or not a bidder on a Government procurement or Government disposal contract is a small business within the meaning of this part, and shall contain the basis for the protest, together with specific detailed evidence supporting the protestant's claim that such bidder is not a small business. A complaint received that a concern is not a small business, but which does not meet the requirements of this paragraph, will not be considered a "protest" and will not be considered.

4. Deleting § 121.3–3 and substituting in lieu thereof revised § 121.3–3 as follows:

§ 121.3–3 Organization.

(a) *Deputy Administrator for Administration.* The Deputy Administrator for Administration has the overall responsibility for carrying out the Small Business Administration's size standards programs.

(b) *Director, Office of Small Business Size Standards.* The Director, Office of Small Business Size Standards is responsible for: (1) Reviewing and recommending size standards for all size programs; (2) establishing procedures for the implementation of all size programs; (3) holding industry hearings; (4) issuing advisory opinions on all size cases referred to him by a Deputy Administrator; (5) issuing interpretations of the size standards regulations and criteria; and (6) taking such other actions as may be appropriate for accomplishment of his assigned functions.

(c) *Deputy Administrators for Procurement and Technical Assistance, Financial Assistance and the Investment Division.* The Deputy Administrators for Procurement and Technical Assistance, Financial Assistance and the Investment Division are responsible for making size determinations within their respective program responsibilities under established regulations, criteria and procedures. They may decide any original size question submitted by SBA field personnel and requests for reconsideration, but not appeals.

(d) *Regional Directors.* Regional Directors may make original size determinations except those involving requests for Small Business Certificates, questions of dominance, or questions of affiliation arising out of franchise agreements, license agreements or other contractual arrangements.

(e) *Size Appeals Board.* The organization and authority of the Size Appeals Board is described in § 121.3–6.

5. Deleting § 121.3–4 and substituting in lieu thereof revised § 121.3–4 as follows:

§ 121.3–4 Application for size determination and Small Business Certificate.

(a) An application for a size determination or Small Business Certificate shall be submitted on SBA Form 355, in duplicate, to any SBA field office serving the area in which the applicant is located. The application must be complete and any supporting materials must be attached thereto. If a question of size is submitted by a Small Business Investment Company or an applicant thereto, SBA Form 480 must be submitted together with SBA Form 355. Detailed instructions for completing SBA Form 355 and SBA Form 480 are attached thereto.

(b) Completed SBA Form 355 or SBA Form 480 requesting a Small Business Certificate, or involving a question of dominance, or involving questions of affiliation arising out of franchise agreements, license agreements or other similar contractual arrangements shall be reviewed by the Regional Director who shall insure that all facts are presented adequately in the forms and attachments thereto, and forward them with recommendations to the Deputy Administrator for Procurement and Technical Assistance, the Deputy Administrator for Financial Assistance or the Deputy Administrator for the Investment Division, as appropriate.

(c) *Requests for reconsideration.* (1) If a Regional Director has made a size determination, the applicant or other interested party may request reconsideration of this determination by filing such request, together with additional information, with the Regional Director. The Regional Director may, upon review of the new information submitted with the request for reconsideration, reverse his original determination.

If no new information is provided or if the new information does not warrant reversal in the opinion of the Regional Director, he shall submit the case to the appropriate Deputy Administrator who shall decide the request for reconsideration.

(2) If a Deputy Administrator has made a size determination, the applicant or other interested party may request reconsideration of this determination by filing such request, together with additional information with the Deputy Administrator. If no new information is provided or if the new information does not warrant reversal in the opinion of the Deputy Administrator, he shall deny such request. An appeal from such denial may be taken by following the procedure set forth in § 121.3–6.

6. Deleting § 121.3–5 and substituting in lieu thereof revised § 121.3–5 as follows:

§ 121.3–5 Protest of small business status.

(a) Any bidder or offerer or other interested party may question the small business status of any bidder or offerer by sending a written protest, as defined in § 121.3–2(o), to the contracting officer responsible for the particular procurement. Any contracting officer who receives such protest or who wishes to protest a bidder or offerer himself shall forward such protest record (or submit his protest) to the SBA Regional Director for the region in which the contracting officer is located. Upon receipt of a protest, the SBA Regional Director shall immediately notify the contracting officer of the date such protest has been received and that the size of the concern being protested is being considered by SBA. The Regional Director shall also advise the SBA Regional Director for the region in which the protested concern is located, and the bidder or offerer of the receipt of the protest, that it is under review, and shall forward to such bidder or offerer a copy of the protest and blank SBA Form 355, Application for Small Business Certificate or Size Determination. The bidder or offerer shall, within three days after receipt of the copy of the protest and SBA Form 355, file said form as directed by the Regional Director and shall attach thereto, a statement in answer to the allegations of the letter of protest, together with evidence to support such position.

(b) After receipt of a protest, SBA shall investigate and determine the small business status of the protested bidder or offerer and notify the contracting officer, the protestant and the protested bidder or offerer of its decision within ten working days, if possible.

7. Deleting § 121.3–6 and substituting in lieu thereof, revised § 121.3–6 as follows:

§ 121.3–6 Appeals.

(a) *Appeals organization.* (1) The Size Appeals Board is designated as the duly authorized representative of the Administrator and is responsible for reviewing size appeals and issuing final size determinations thereon.

(2) The Size Appeals Board shall consist of two Deputy Administrators neither of whom made the size determination being appealed and the General Counsel. The Director of the Office of Small Business Size Standards shall act as Secretary to the Board, but shall not have a vote. The Size Appeals Board is authorized to conduct such proceedings, to take such actions and to adopt such rules and procedures as may be necessary and appropriate for accomplishment of its assigned functions and for efficient disposition of matters which may properly come before it.

(b) *Method of appeal—(1) Who may appeal.* Any interested party who has protested the small business status of a concern pursuant to § 121.3–5 and whose protest has been denied by a Deputy Administrator or any concern which has been denied small business status by a determination of a Deputy Administrator pursuant to section 121.3–4 hereof, may appeal from the Deputy Administrator's determination by filing a Notice of Appeal addressed to the Secretary, Size Appeals Board, Small Business Administration, Washington 25, D.C.

(2) *Time for appeal.* Because of the urgency of pending procurements, appeals in such cases must be filed within five (5) days after receipt of the Deputy Administrator's determination. All other other appeals must be filed within thirty (30) days after receipt of such determination.

(3) *Grounds for appeal.* The only ground for appeal is the possible error of a Deputy Administrator in applying published size standards regulations. Argument that a published regulation is itself improper may appropriately be presented in writing to the Director, Office of Small Business Size Standards, who shall consider whether such regulation should or should not be amended, and make appropriate recommendations.

(4) *Notice of appeal.* While no particular form is prescribed for the Notice of Appeal, the following information should be included therein to avoid time consuming delays and necessity for further correspondence:

(i) Name and address of concern on which the size determination was made.

(ii) The character of the determination from which appeal is taken and its date.

(iii) If applicable, the IFB or contract number and date and the name and address of contracting officer.

(iv) A concise and direct statement of the claims why the decision of the Deputy Administrator is deemed erroneous. (See subparagraph (3) of this paragraph.)

(v) Documentary evidence in support of such claims.

(vi) Action sought by the appellant.

(c) *Notice to interested parties.* The Size Appeals Board will promptly acknowledge receipt of the Notice of Appeal and a copy of such Notice of Appeal will be sent to the appropriate Deputy Administrator, the contracting officer, and other interested parties.

(d) *Statement by interested parties.* After receipt of a copy of appellant's Notice of Appeal, interested parties may file in duplicate with the Board, a statement as to why the appeal should or should not be dismissed. Such statement must be accompanied by evidence as appropriate. Copies of such statements will be furnished to the appellant. Such statements should be addressed to the Secretary, Size Appeals Board, Small Business Administration, Washington 25, D.C., and in order to be considered must be filed within five (5) days of the receipt of the copy of Notice of Appeal (unless an extension is for cause granted by the Secretary of the Size Appeals Board).

(e) *Consideration by the Size Appeals Board.* The Size Appeals Board will consider the appeal on the written submissions of the appellant, or may, in its discretion, permit oral presentations by interested parties, and will then, in executive session make its decision.

(f) *Notification of decision.* The decision of the Size Appeals Board, together with the reasons therefor, will be communicated in writing to the appellant and interested parties as appropriate.

Effective date: This amendment shall become effective upon publication in the FEDERAL REGISTER.

PHILIP MCCALLUM,
Administrator.

DECEMBER 28, 1960.

[F.R. Doc. 60-12174; Filed, Dec. 29, 1960; 8:53 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 612, Amdt. 238]

PART 507—AIRWORTHINESS DIRECTIVES

Sikorsky S–58 Helicopters

As a result of the failure of a reworked input bevel gear on a Sikorsky S–58C helicopter which caused a forced landing, retirement and rework criteria must be established to preclude recurrence of failures of input bevel gears that have been salvaged.

In the interest of safety notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

SIKORSKY. Applies to all S–58 helicopters. Compliance required as indicated.

As a result of a recent failure of a salvaged S1635–20011–2 input bevel gear which caused an autorotative landing, the following must be accomplished.

(a) All input bevel gears (S1635–20011–2) salvaged in accordance with instructions in Sikorsky Service Information Circular No. 1635–1127 Revisions A and E must be retired upon the accumulation of 1,200 hours' time in service since salvage unless reworked in accordance with paragraph (b).

(b) Gears salvaged as outlined in paragraph (a) that have accrued less than 1,200 hours' time in service since such salvage work may be reworked prior to accumulating 1,200 hours since such salvage work or at overhaul, whichever occurs first, in accordance with the following:

(1) Strip the chrome plate from the gear by reverse electrolysis. (Use Unichrome 80X, manufactured by United Chrome Co., Waterbury, Conn., or equivalent solution.)

(2) Measure the bearing journal diameter. If the diameter is more than 0.010 inch below the low limit of the manufacturing tolerance, reject the part.

(3) Perform a magnetic inspection on the bearing area of the gear for cracks, concentrating attention on fillet area; e.g., Magnaflux in accordance with SPEC MIL–I–6868.

(4) If cracks exist, reject the gear.

(5) If no cracks exist, proceed as follows:

(i) Machine and blend the fillet radius at the bearing journal using a radius of blending of 0.150 inch with the maximum depth of undercut equal to 0.010/0.015 inch.

(ii) Again perform a magnetic inspection.

(iii) Shotpeen the area to be chrome plated, in accordance with SPEC–MIL–S–13165, at an intensity of 12A2 to 18A2, using S170 shot.

(iv) Bake the gear for five hours at 275° ±10° F.

(v) Anodically clear the gear so as not to embrittle any carburized areas and to prepare the gear for chrome plating.

(vi) In accordance with FED. SPEC QQ–C–320, Class 2, chrome plate the bearing area

to the thickness corresponding to the diameter below lower limits of manufacturing tolerance shown in the following table:

Diameter below lower limits of manufacturing tolerance	*Chrome plate thickness*
0.006	0.005
0.007	0.006
0.008	0.006
0.009	0.007
0.010	0.007

(vii) Bake the gear for five hours at 275° ±10° F.

(viii) Final machine the newly chrome plated O.D. to 5.0382/5.0372 inches. After final machining, the chrome plated area shall have a minimum plate thickness of 0.002 inch.

(ix) Perform magnetic inspection after final machining.

(c) Gears reworked in accordance with the provisions of paragraph (b) shall be retired upon the accumulation of 2,400 hours' total time in service.

(Sikorsky Service Bulletin No. 58B35-3A covers this same subject.)

This amendment shall become effective December 30, 1960.

(Sec. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. (1354(a), 1421, 1423)

Issued in Washington, D.C., on December 22, 1960.

OSCAR BAKKE,
Director, Bureau of Flight Standards.

[F.R. Doc. 60-12109; Filed, Dec. 29, 1960; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[9th Gen. Rev. of Export Reg., Amdt. 47]

PART 382—DENIAL OF EXPORT PRIVILEGES

Miscellaneous Amendments

Section 382.51 *Supplement 1: Table of denial and probation orders currently in effect*, paragraph (b) *Table of denial and probation orders* is amended to read as follows:

(b) *Table of denial and probation orders.*

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Aarsen, H., Meent 93, Rotterdam, Netherlands.	5-24-57	5-24-58 (on probation from 5-25-58 for duration).*		22 F.R. 3765, 5-29-57.
Abel, Alexander, Abel, Friedrich, 50, Rue de Bassano, Paris, France.	4-25-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 2852, 5-1-56.
Abel, Rudolph, 14 Avenue Pierre Ier de Serbie, Paris, France.	4-25-56	do	do	Do.
A.C.E. Nominees, Ltd., 1 Broad Street Place, London, E.C. 2, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Abou Hadid Freres, Rue Hamidie—P.O. Box 81, and Souk Nasrie, No. 49—Damascus, United Arab Republic—Syria Region.	7-21-59	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 5946, 7-24-59.
Abramovich, Arie, 580 Broadway, New York, N.Y.	4-18-60	6-18-60 (on probation from 6-19-60 to 4-18-61).*		25 F.R. 3500, 4-21-60.
Aeberli-Schaller, Karl, also known as Aeberli, Karl, Oberalpstrasse 51, Basel, Switzerland.	2-13-58	3-11-60 (on probation from 3-12-60 for duration).*	(Party related to Standard Chemie A.G., Basel, and W. K. S. Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Agencia Comercial "Progresso" (ACP) (Hsin Chi Yang Hang), 443-445 Alexandra House, P.O. 2713, Hong Kong, and 161 Rua do Guimaraes, Macao.	8- 4-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 6379, 8-7-59. 25 F.R. 687, 1-27-60.
Agencia Comercial "Progresso" Ltda., 443-445 Alexandra House, P.O. Box 2713, Hong Kong.	8- 4-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanley Ho, which see.)	24 F.R. 6379, 8-7-59.
Agencia Comercial "Progresso", Ltd., 161 Rua do Guimaraes, Macao.	8- 4-59	do	do	Do.
Alembik, Abram, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Alfa Electric Co., Ltd., Chancery House, 53/64 Chancery Lane, London, W.C. 2, England.	5-21-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Zemanek & Co., Ltd., which see.)	21 F.R. 3609, 5-25-56.
Alimable, S. A., 205 Rue Americaine, Ixelles, Brussels, Belgium.	8- 3-49	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Bernard Liebermann, which see.)	14 F.R. 4913, 8-9-49.
Allgemeines & Technische Vertriebs Gesellschaft, Eschen, Liechtenstein, and Lausanne, Switzerland.	4-25-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Abel, which see.)	21 F.R. 2852, 5-1-56.
Allround Establishment, Inc., P.O. Box 34,613, Vaduz, Liechtenstein.	6-10-60	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Maireco Export-Import G.M.B.H. and Emmerich Kuruc, which see.)	25 F.R. 5546, 6-18-60.
Alsemgeest, Adrianos A. C., Rotterdamse Weg 3, Delft, Netherlands.	4- 6-59	do	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 2754, 4-9-59.
Alsemgeest, W. & A., N.V Plompertstraat 24, Rotterdam, Netherlands, and 148 Rotterdamse Weg, Delft, Netherlands.	4- 6-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to N. V. Handelmaatschappij Delft, which see.)	Do.
American Hellenic Corp., 17 Battery Pl., New York, N.Y.	10-14-48	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	13 F.R. 6126, 10-20-48.
American Market Stores, Frankfurt/Main-Westhafen, West Germany.	6-13-60	do	do	25 F.R. 5610, 6-21-60.
American Potash & Chemical Corp., 3000 West 6th St., Los Angeles 54, Calif.	11-28-60	(On probation from 11-28-60 to 11-28-61).*		25 F.R. 12386, 12-2-60.
Anciens Etablissements Hofman, Kortrijkse Steenweg 233, Ghent, Belgium.	2-24-58	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 1221, 2-27-58.
Anglo-Canadian Cement Co., Ltd., 540 Burrard St., Vancouver, B.C., Canada.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Anglo-Canadian Cement, Ltd., Marina House, Broad St., Lagos, Nigeria.	3-11-57	do*	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Anglo-Continental Exchange, Ltd., 31 Throgmorton St., London, E. C. 3, England.	3-25-57	do*		22 F.R. 2053, 3-28-57.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Arnold, I. K., 27 Cantelupe Rd., East Grinstead, Sussex, and 14 D Sloane Avenue Mansions, London S.W.3, England.	11-13-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 9948, 12-9-59.
Arnos, A. G., 51 Oberalpstrasse, Basel, Switzerland.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Attijara-Societe, Marocaine pour le Commerce International, 106 Avenue Poeymirau, Casablanca, Morocco.	10-8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58. 22 F.R. 2053, 3-28-57.
Austria West Africa Corp., Ltd., Vaduz, Liechtenstein.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Austria Westafrica Corp., Ltd., 1 Brickfield Rd., Ebute Metta (Lagos), Nigeria.	3-11-57	do	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Automobile Commerciale Internationale, 1 rue du Rhone, Geneva, Switzerland.	10-4-56	Until further notice.	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 7703, 10-9-56. 22 F.R. 1649, 3-14-57.
Aviv, Mendel, 580 Broadway, New York, N.Y.	4-18-60	6-18-60 (on probation from 6-19-60 to 4-18-61).*		25 F.R. 3500, 4-21-60.
Back, Dr. Alfred Kommerzgesellschaft m.b.H., Plossigasse 1, Vienna IV, Austria.	3-12-59	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 1920, 3-17-59.
Bakanowski Corp., Ltd., 2 Doughty St., London W.C. 2, England.	9-23-58	do	do	23 F.R. 7556, 9-27-58.
Bakely Distributors, Ltd., 105 Colcherne Court, London S.W. 5, England.	11-13-59	Duration	do	24 F.R. 9948, 12-9-59.
Bakely Distributors (1950), Ltd., 27 Cantelupe Rd., East Grinstead, Sussex, England.	11-13-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Bakely Distributors, Ltd., and I. K. Arnold, which see.)	Do.
Ban-Ling, Chang, 806 Bank of East Asia Bldg., Hong Kong.	7-10-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Oversea Trading Co., (H.K.) Ltd., which see.)	23 F.R. 5400, 7-16-58.
Barber, Albert A., Barber, Maison A., 46 Rue Joseph Brand, Brussels, Belgium.	12- 8-59	do	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 10020, 12-11-59.
Barsel Trust, Vaduz, Liechtenstein.	4-25-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Abel, which see.)	21 F.R. 2852, 5-1-56.
Bau, C. F. & Cie., G.m.b.H., also known as Bau, K. H. & Co., K. G., 14/25 Hindenburg St., Offenburg/BW, West Germany.	12-18-56	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	22 F.R. 1786, 3-19-57.
Bellmex Corp., 1186 Broadway, New York, N.Y.	8- 3-49	Duration	General and validated licenses, all commodities, any destination.	14 F.R. 4913, 8-9-49.
Benedetti, Nicholas R., 602 Broderick St., San Francisco, Calif.	3-31-49	do	General and validated licenses, all commodities, any destination, also exports to Canada.	14 F.R. 1689, 4-8-49.
Berger, Aron, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Berk, Milton, 1457 Le Jeune Rd., Coral Gables, Miami, Fla.	5-25-49	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	14 F.R. 2882, 6-1-49.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
BERMAL Importation - Exportation, S.A.R.L., 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Bertling, F. H., Monckebergstrasse 11, Hamburg 1, and Gr. Altefahre 23, Luebeck Schleswig-Holstein, West Germany.	7-16-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 5810, 7-21-59.
Bertling, F. H., Schiffartskontor G.M.B.H., Gaensemarkt 33, Hamburg, West Germany.	7-16-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to F. H. Bertling, which see.)	Do.
Berwin Trading Co., Inc., 15 Park Row, New York 38, N.Y.	4-23-53	do	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 2481, 4-28-53.
Beydoun, Ihsan M., 85-86 London House, Loveday Street, POB 5102, Johannesburg, Union of South Africa.	4-24-51	do	do	16 F.R. 3671, 4-28-51.
Bierma, Sipke N., Keizersgracht 702, Amsterdam, Netherlands.	10-28-55	10-28-56 (on probation from 10-29-56 for duration).*		20 F.R., 8224, 11-2-55.
Bilik, John, Jr., International Trade Mart, 124 Camp St., New Orleans, La.	2-13-52	Until further notice.	General and validated licenses, no participation all commodities, as carrier, forwarder, exporter, or otherwise.	17 F.R. 1633, 2-18-52.
Biochemische Industrie Zurich, Badenerstrasse 398, Zurich, Switzerland.	12-18-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Oleine S. A., which see.)	24 F.R., 10719, 12-25-59.
Blum, Friedrich Walter, also known as Blum, Walter, Schanzeneggstrasse 1, Zurich 2/39, Switzerland.	8-15-60	(On probation from 8-15-60 to 8-15-61).*		25 F.R. 10112, 10-22-60.
Boland, Inc., Volunteer Bldg., Atlanta 3, Ga.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57, 22 F.R. 2053, 3-28-57.
Borax Import, Genferstrasse 24, Zurich, Switzerland.	12-18-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Emilio F. Bordin, which see.)	24 F.R. 10719, 12-25-59.
Bordin, Emilio F., Genferstrasse 24, Zurich, Switzerland.	12-18-59	do	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 10719, 12-25-59.
Botez, Alexander, also known as Allessandro Donici Botez, A. B. Gamboa, Alexander Botez Gamboa, Boite Postale 21, Poste Grange Canal, Geneva, Switzerland.	7-22-60	do	do	25 F.R. 7163, 7-28-60.
Braista, S. A., 3 Saint-Pierre, Lausanne, Switzerland.	12- 8-50	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Gerald Stanley Panchand, which see.)	15 F.R. 8868, 12-14-50.
Brimall, R. E., 14 and 16 Ludgate Hill, St. Paul's, London E.C. 4, England.	1-29-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to MacDonald Hall & Co., Ltd., which see.)	23 F.R. 688, 2-1-58.
Brandes, Ralph Harry, Boersenstrasse 16, Zurich, Switzerland.	9-24-51	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	16 F.R. 10088, 10-3-51.
Braunstein, Moises Oscar, 3 Rue des Cultes, Brussels, Belgium.	4-29-59	do	do	24 F.R. 3515, 5-1-59.
Burgi, Karl, also known as Burgi-Tobler, Karl, Burgi-Tobler, Anna, Burgi-Tobler, K. & Co., Stampfenbachstrasse 69, Zurich, Switzerland.	3- 1-57	10-1-59 (on probation from 10-2-59 for duration).*		20 F.R. 1188, 2-25-55, 22 F.R. 1343, 3-5-57.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
BUBIEX, 61 Rue Des Petits Champs, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Burke & Wilson, Ltd., Prince's Bldg., Hong Kong.	12- 8-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Gerald Stanley and John Braithwaite Panchaud, which see.)	15 F.R. 8868, 12-14-50.
Burn, W. A., 2 Doughty St., London, W.C. 2, England.	9-23-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Bakanowski Corp., Ltd., which see.)	23 F.R. 7556, 9-27-58.
Byrrild-Steffensen, K.B., Warburgstrasse 33, Hamburg 36, West Germany.	8-28-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Alf Tomsen & Co., which see.)	24 F.R. 7150, 9-3-59.
Canales, Jesus, Madero 1547, Mexicali, B.C., Mexico.	12- 4-58	do	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 9643, 12-12-58.
Caravan Trading Corp., 68 Nassau St., New York 38, N.Y.	8-12-60	11-12-60 (on probation from 11-13-60 to 8-12-62).*	(Firm related to James L. Fitzgerald, which see.)	25 F.R. 7892, 8-17-60.
CEEI, also known as Comptoir Europeen d'Exportation et d'Importation, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 7931, 10-14-58.
Centralimpex, S. A., 205, Rue Americaine, Ixelles, Brussels, Belgium.	8- 3-49	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Bernard Liebermann, which see.)	14 F.R. 4913, 8-9-49.
C. H. Pharmacy, C.H. Pharmacy, Ltd., Partnership, 145-9 and 147-75 Chakrapetch Rd., Bangkok, Thailand.	5-19-54	do	General and validated licenses, all commodities, any destination, also exports to Canada.	19 F.R. 3009, 5-25-54.
Chambers, James Robert, Finsbury Circus House, 4/10 Blomfield St., London, E.C. 2, England.	5-24-57	2-24-58 (on probation from 2-25-58 for duration).*		22 F.R. 3765, 5-29-57.
Chanwit Kunothai, also known as Chan Vit Kunothai, Chanvitya Kunothai, 147-75 Chakrapetch Rd., Bangkok, Thailand.	5-19-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	19 F.R. 3009, 5-25-54.
Chem. Techn. Industrie, "Tilburg," N.V., Poststraat 39, Postbox 37, Tilburg, Netherlands.	1-31-58	1-31-59 (on probation from 2-1-59 for duration).*		23 F.R. 761, 2-5-58.
Chemical Industries of Nigeria, Ltd., 1 Brickfield Rd., Ebute Metta, Lagos, Nigeria.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Chemische Industrie, "Den Haag," N.V., Le van der Kunstraat 55-57, The Hague, Netherlands.	10-27-55	10-27-57 (on probation from 10-28-57 for duration).*		20 F.R. 8202, 11-1-55.
Cheung Kam Kee Trading Co., Cheung Yuk Leung, 10 Wing Kut St., Hong Kong.	12-12-55	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	20 F.R. 9431, 12-15-55.
Chirana, Ltd., St. Eriksgatan 69, Stockholm, Sweden.	3-24-60	Until further notice.	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 2687, 3-30-60.
Chow, P. S., Alexandra House, 18 Chater Rd., Hong Kong.	6-29-60	6-29-61 (on probation from 6-30-61 to 6-29-62).*	do	25 F.R. 6370, 7-7-60.
Christjan's Export Co. AB, Christjan's Import Co. AB, Christjan's Print AB, Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	Until further notice.	do	25 F.R. 11195, 11-24-60.
Chung Han-Ch'i, 443/444 Alexandra House, P.O. Box 2713, Hong Kong.	8- 4-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanley Ho, which see.)	24 F.R. 6379, 8-7-59.
Chunichi Seiyaku K.K, No. 14 Daikancho, Tate, Higashiku, Nagoyashi, Japan.	1-31-56	do	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 775-777, 2-3-56.
Churchin, Jack R., 15 Moore St., New York 4, N.Y.	1- 1-60	(On probation from 1-1-60 to 12-31-60).*	(Party related to Minthorne International Co., Inc., which see.)	25 F.R. 125, 1-7-60.
C.I.C., Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	Until further notice.	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 11195, 11-24-60.
Civilian Aircraft and Procurement Supply Office, Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	do	do	Do.
COFINA (Israel), Ltd., Tel Aviv, Israel.	4-29-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to COFINA S.A. and Moises Oscar Braunstein, which see.)	24 F.R. 3515, 5-1-59.
COFINA S.A. (Compagnie Commerciale Financiere Industrielle & Agricole), 3 Rue des Cultes, Brussels, Belgium.	4-29-59	do	General and validated licenses, all commodities, any destination, also exports to Canada.	Do.
Cohen, Nisan Simon, 83 Biesbosstraat, Amsterdam, Netherlands.	4-29-57	do	do	22 F.R. 3134, 5-2-57.
Cohn, Julia, 1186 Broadway, New York, N.Y.	8- 3-49	do	do	14 F.R. 4913, 8-9-49.
Commercial Appliance Co., 12 Wellington St., Hong Kong.	6-29-60	do	do	25 F.R. 6370, 7-7-60.
Compadimex, S.A., also known as Cie. D'Importation et D'Exportation, 1 Pont de Meir, Union Bldg., Antwerp, Belgium.	10-30-56	do	do	21 F.R. 8412, 11-2-56.
Compagnie Commerciale Financiere Industrielle & Agricole S.A. (COFINA S.A.), 3 Rue des Cultes, Brussels, Belgium.	4-29-59	do	do	24 F.R. 3515, 5-1-59.
Compentrad Chemical Products & Supplies, Ltd., 1 Broad Street Pl., London, E. C. 2, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Comptoir European, d'Exportation et d'Importation, also known as CEEI, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 7931, 10-14-58.
Comptoir General de Recuperation, 21 Rue de Madrid, Paris (8e), France.	6-10-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Adam A. Lutfi Way and Toutimpex Tangier, which see.	25 F.R. 5462, 6-17-60.
Comptoir Paul Stevens & Co., S. A., 179 Ter Rivierenlaan, Deurne, Antwerp, Belgium.	9-17-51	do	General and validated licenses, all commodities, any destination, also exports to Canada.	16 F.R. 9667, 9-21-51.
Condor Industries, Inc., 125 Cedar St., New York 6, N.Y.	10- 4-56	10-3-57 (on probation from 10-4-57 for duration).*		21 F.R. 7699, 10-9-56.
Contimex Merchants, Ltd., 24 St. Mary Ave, London, E. C. 3, England.	10-28-55	10-28-56 (on probation from 10-29-56 for duration.)*	(Company related to Continental Commerce and Finance Company, N.V. and N. V. Noord-Hollandsche Handelsassociatie, which see.)	20 F.R. 8224, 11-2-55.
Continental Commerce and Finance Co., Stadhouderskade 51, Amsterdam Z, Netherlands.	10-28-55	do*		Do.
Corti, Dante, Corti & Cia. s.r.l., Dante, 1/6 Piazza Campetto, Genoa, Italy, and 24 Viale Montegrappa, Prato, Italy.	4-14-52	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	17 F.R. 3361, 4-15-52.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Crystal Industries, Inc., 125 Cedar St., New York 6, N.Y.	10- 4-56	10-3-57 (on probation from 10-4-57 for duration).*	(Company related to Fred W. Schonfeld, which see.)	21 F.R. 7699, 10-9-56.
D'Acunto, Frank P., 276 5th Ave., New York, N.Y.	6-30-60	(On probation from 6-30-60 to 12-30-60).*		25 F.R. 6341, 7-6-60.
David (Davis), Israel, 511 State St., Long Beach, N.Y.	3- 6-53	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 1406, 3-11-53.
Davis Electrical and Radio Accessories, Ltd., Central Hall, 16 Drayton Park, N5, London, England.	5- 1-53	Indefinite	do	18 F.R. 2659, 5-7-53.
De Fiori, Enrica L., De Fiori, Victor E., 1564 Broadway, New York, N.Y.	3-10-50	Duration	do	15 F.R. 1496, 3-16-50.
D'Importation et D'Exportation Cie., also known as Compadimex, S. A., 1 Pont de Meir, Union Bldg., Antwerp, Belgium.	10-30-56	do	do	21 F.R. 8412, 11-2-56.
Del Bo, Giacinto Leopoldo, Via Manzoni 41A, Milan, Italy.	7- 9-56	do	do	21 F.R. 5197, 7-12-56.
Delft, Handelmaatschappij N. V., Rotterdamse Weg 3, Delft, Netherlands, and Fasanenstrasse 28, Berlin, West Germany.	4- 6-59	Indefinite	do	24 F.R. 2754, 4-9-59.
De Metz, Rene, 128 Bisschoppenhofiaan, Deurne (Antwerp), Belgium.	10-30-56	Duration	do	21 F.R. 8412, 11-2-56.
de Pesters, Jhr. C. A., Adjunct Managing Director, Chemische Industrie "Den Haag," N. V., Le van der Kunstraat 55-57, The Hague, Netherlands.	10-27-55	10-27-57 (on probation from 10-28-57 for duration).*		20 F.R. 8202 11-1-55.
Depoorter, Paul, doing business as Fortior, De Smet de Nayerlaan 12, Ostend, Belgium.	3-17-58	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 1960, 3-20-58.
Dermine, Ltd., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Dobias & Co., K. G., Dobias, Johann, Neubaugasse 21, Vienna 7, Austria.	9-30-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 9820, 10-13-60.
Dualca Steamship Co., International Trade Mart, 124 Camp St., New Orleans, La.	2-13-52	Until further notice.	General and validated licenses, no participation, all commodities, as carrier, forwarder, exporter, or otherwise.	17 F.R. 1633, 2-18-52.
Dublin Chemicals, 39 Dame St., Dublin, Ireland.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Dunlap, Archibald S., 342 West 71st St., New York, N.Y.	4- 7-52	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	17 F.R. 3241, 4-12-52.
Eastern Steel Supplies, Ltd., c/o Panchaud-Freres, S.A., 3 Saint-Pierre, Lausanne, Switzerland.	12- 8-50	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Gerald Stanley Panchaud, which see.)	15 F.R. 8868, 12-14-50.
Economic Digest, Ltd., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Eigler, Georg, doing business as Eigler, Georg, Import-Export; also Industrie-Warenverkehr Neulinggasse 50, and Strassergasse 43-47, Vienna III and 19, Austria.	8- 4-58	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 6002, 8-7-58.
Electra Commodity & Barter Corp., 3 East 84th St., New York, N.Y.	5-26-51	do	do	16 F.R. 5295, 6-5-51.
Electrical Agencies (London) Ltd., Central Hall, 16 Drayton Park, N5, London, England.	5- 1-53	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 2659, 5-7-53.
Electroexport, Rotenturmstrass 25, Vienna 1, Austria.	6- 1-56	5-31-58 (on probation from 6-1-58 for duration).*		21 F.R. 8880, 6-6-56.
Elimex, Apostelnkloster 21-25, Cologne, West Germany.	7- 9 58	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Richard Fleschner, which see.)	23 F.R. 5310, 7-12-58.
Elmetrik, Sovdeborgsgatan 31, Malmoe, Sweden.	12-31-59	Until further notice.	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 205, 1-9-60.
Engler & Co., Engler, Ltd., Engler, Werner, Stadhausquai 7, Zurich, Switzerland.	2-26-59	Duration	do	24 F.R. 1573, 3-3-59.
Essex International Corp., 120 Liberty St., New York 6, N.Y.	10- 4-56	10-3-57 (on probation from 10-4-57 for duration).*		21 F.R. 7699, 10-9-56.
Europaische Verkaufs G.m.b.H. (European Sales Co. of American Market Stores), Frankfurt/Main-Westhafen, West Germany.	6-13-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 5610, 6-21-60.
Euro-Union, N.V., 21 Kloveniersburgwal, Amsterdam, Netherlands.	10-28-55	10-28-56 (on probation from 10-29-56 for duration).*	(Company related to Continental Commerce and Finance Company, N.V. and N. V. Noord-Hollandsche Handelsassociatie, which see.)	20 F.R. 8224, 11-2-55.
Export Elektrotechnischer Erzeugnisse, trading as Electroexport, Rotenturmstrasse 25, Vienna 1, Austria.	6- 1-56	5-31-58 (on probation from 6-1-58 for duration).*		21 F.R. 3880, 6-6-56.
Express Internationale Spedition G.m.b.H., Wohllebengasse 18, Vienna IV, Austria.	3-12-59	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	24 F.R. 1920, 3-17-59.
Farner, Werke A. G., Grenchen, Switzerland.	7-22-60	Duration	do	25 F.R. 7163, 7-28-60.
Farner, Willi, also known as Willi Farner Moser, Grenchen, Switzerland, and Sagrera 44-58, Barcelona, Spain.	7-22-60	do	do	25 F.R. 7163, 7-28-60.
Feldag Immobiliengesellschaft, 51 Oberalpstrasse, Basel, Switzerland.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Felix, Mario, doing business as Internationale Transporte, Paradiesstrasse 9, Zurich, Switzerland.	5-19-58	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 3549, 5-22-58.
Films of Great Britain, Ltd., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Fitzgerald, James L., Fitzgerald, James L. Co., Inc., 68 Nassau St. New York 38, N.Y.	8-12-60	11-12-60 (on probation from 11-13-60 to 8-12-62).*		25 F.R. 7892, 8-17-60.
Fleschner, Richard, doing business as Richard Fleschner Import-Export, Detmolder Str. 46, Berlin-Wilmersdorf, West Germany.	7- 9-58	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 5310, 7-12-58.
Fortior, De Smet de Nayerlaan 12, Ostend, Belgium.	3-17-58	do	do	23 F.R. 1860, 3-20-58.
Fraenkel, Mrs. Christa, 2-10 Hohenzollernring, Cologne, West Germany.	7 -9-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Richard Fleschner, which see).	23 F.R. 5310, 7-12-58.
Fujisawa Shoko K.K., No. 14 Hirano-Machi 3-Chome, Higashi-Ku, Osaka, Japan.	1-31-56	do	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 775-777, 2-3-56.
G & L Electrical Supply Co. Ltd., 15 Percy St., London, W. 1, England.	5- 1-53	Indefinite	do	18 F.R. 2659, 5-7-53.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	FEDERAL REGISTER citation
Galiron, Ltd., Buckingham House, 19-21 Palace St., London, S.W. 1, England.	12- 8-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Gerald Stanley Panchaud, which see).	15 F.R. 8868, 12-14-50.
Gamboa, Alexander Botez, also known as A. B. Gamboa, Alexander Botez, Allessandro Donici Botez, Boite Postale 21, Poste Grange Canal, Geneva, Switzerland.	7-22-60	do	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 7163, 7-28-60.
Gebrs. Melman, Lohengrinstr. 9, Wannsee, West Berlin, West Germany.	4- 5-56	do	do	21 F.R. 2302, 4-10-56. 22 F.R. 7408, 9-17-57.
Gee & Garnham, Ltd., Global Works, 1-5 Sanford Lane, Stoke Newington, London, England.	9- 7-60	9-7-62	do	25 F.R. 8759, 9-10-60.
Gevirtzmann, Fanny, Gevirtzmann, Mosche, Central Hall, 16 Drayton Park, N5, London, England.	5- 1-53	Indefinite	do	18 F.R. 2659, 5-7-53.
Gibson Hong Co., 33 Ko Shing St., Hong Kong.	8- 4-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanley Ho, which see).	24 F.R. 6379, 8-7-59.
Gintz, Franz, 46-47 Chancery Lane, London W.C. 2, England.	5-21-56	do	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 3600, 5-25-56.
Gold Oil Co., 41 Eendrachtsweg, Rotterdam, Netherlands.	11- 6-53	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Klaasen, et al., which see.)	18 F.R. 7179, 11-11-53.
Govaerts, Robert (Alias Bernard Liebermann), 1186 Broadway, New York, N.Y., and 60 Rue Ravenstein, Brussels, Belgium.	8- 3-49	do	General and validated licenses, all commodities, any destination, also exports to Canada.	14 F.R. 4913, 8-9-49.
Graupner, Ernest A., 20 East 74th St., New York, N.Y.	11-28-60	11-28-61	Validated licenses.	25 F.R. 12386, 12-2-60.
Greenbaum, Irving, 276 5th Ave., New York, N.Y.	6-30-60	(On probation from 6-30-60 to 12-30-60).*		25 F.R. 6341, 7-6-60.
Grote, Rolf G., 1482 York Ave., New York, N.Y.	7- 3-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	15 F.R. 4323, 7-7-50.
Gryp, Andre, Kortrijkse Steenweg 233, Ghent, Belgium.	2-24-58	do	do	23 F.R. 1221, 2-27-58.
Hadid Freres, Abou, Hadid, Jean Abou, Hadid, Rizqallah Abou, Rue Hamidie—P.O. Box 81, and Souk Nasrie, No. 49—Damascus, United Arab Republic—Syria Region.	7-21-59	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Abou Hadid Freres, which see.)	24 F.R. 5946, 7-24-59.
Haeusler (Häusler), R. & Co. K. G. Rechbauerstrasse 15, Graz, Austria.	11-25-60	1-3-61	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 12388, 12-2-60.
Hakanson, Sven O., trading as Ingeniorsfirman Elmetrik AB, Fact 33, Alingsas, and Sovdeborgagatan 31, Malmo, Sweden.	7-14-60	Indefinite	do	25 F.R. 205, 1-9-60. 25 F.R. 6854, 7-19-60.
Halfpap, Karl-Hans, Rosstrasse 41, Dusseldorf, West Germany.	8-30-60	(On probation from 8-30-60 to 8-30-62)*.		25 F.R. 8579, 9-3-60.
Hammerson, J., Hammerson, S. L., 1-5 Sanford Lane, Stoke Newington, London, England.	9- 7-60	9-7-62	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 8759, 9-10-60.
Handelmaatschappij J. Smits Import-Export, N.V., Molsraat 1, Rotterdam, Netherlands.	10-28-54	Duration	Positive List commodities under validated or general licenses and other commodities under validated licenses, any destination, including Canada.	19 F.R. 7197, 11-5-54. 22 F.R. 727, 2-5-57.
Hanke, A. & Co., or Anneliese Hanke & Co., (Handel mit Pharmazeutika), or Hanke, Anneliese, Hegelgasse 5, Vienna 1, Austria, and 91 Seehof Strasse, Berlin-Zehlendorf, West Germany.	4-21-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Hanke Chemie, et al., which see.)	19 F.R. 2432, 4-24-54.
Hanke-Chemie, Hochstrasse 19, Frankfurt, and/or Goldfinkweg 46, Berlin-Zehlendorf, West Germany, Postplatz 26, Vaduz, Liechtenstein.	4-21-54	do	General and validated licenses, all commodities, any destination, also exports to Canada.	19 F.R. 2432, 4-24-54.
Hanke, Franz, also known as Hanke, Gunther, or Hanke, Franz Gnenther, Goldfinkweg 46, Berlin-Dahlem, West Germany.	4-21-54	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Hanke Chemie, et al., which see.)	19 F.R. 2432, 4-24-54.
Hanke, Franz Gunther (Chemikalien-Grosshandel), Hegelgasse 5, Vienna 1, Austria.	4-21-54	do	do	Do.
Hanke-Holz, Kreutzstrasse 8, Salzburg, Austria.	4-21-54	do	do	Do.
Hanke-Ziegler, A. G., Hettlingen, Winterthur, Switzerland.	4-21-54	do	General and validated licenses, all commodities, any destination, also exports to Canada.	Do.
Hannoco, S.P.R.L. c/o Gaston Triest, 192, Avenue Franklin Roosevelt, Brussels, Belgium, and/or Hottlingerstrasse 4, Zurich, Switzerland.	4-21-54	do	do	Do.
Harlow & Jones (Belgium), S.A., 1 Pont de Meir, Antwerp, Belgium.	12- 8-50	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Gerald Stanley Panchand, which see.)	15 F.R. 8868, 12-14-50.
Harlow & Jones Ltd., 18 Buckingham Gate, London, S.W. 1, England.	12- 8-50	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Gerald Stanley and John Braithwaite Panchand, which see.)	Do.
Hauptfeld, Dr. Georg, Stein Bei Hennef (Sieg), West Germany.	4-21-54	5-31-55 (on probation from 6-1-55 for duration).*		19 F.R. 2432, 4-24-54. 20 F.R. 3921, 6-4-55.
Hauser, Maurice, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite.	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Häusler (Haeusler), R. & Co. K. G., Häusler (Haeusler), Richard, Rechbauerstrasse 15, Graz, Austria.	11-25-60	1-3-61	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 12388, 12-2-60.
Heinemeier, Ludwig, Gr. Altefahre 23, Luebeck, Schleswig-Holstein, West Germany.	7-16-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to F. H. Bertling, which see.)	24 F.R. 5810, 7-21-59.
Heinemeier, Willy A., Moenckebergstrasse 11, Hamburg, West Germany.	7-16-59	do	do	Do.
Herlasteel, A. B., 34-B Artillerigatan, Stockholm, Sweden.	12-31-59	Until further notice.	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Labeco A/B, which see.)	25 F.R. 205, 1-9-60.
Hertford Chemical Co., Nottingham Pl., London, W. 1, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Hip Wah Hong, Ltd., 445 Alexandra House, Hong Kong, and 161 Rua do Guimaraes, Macao.	8- 4-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanley Ho, which see.)	24 F.R. 6379, 8-7-59.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	FEDERAL REGISTER citation
Ho, Stanley, also known as Ho Hung Sun, 443/445 Alexandra House, P.O. Box 2713, and 12 Conduit Rd. Hong Kong.	8- 4-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	Do. 25 F.R. 689, 1-27-60.
Hoechti, Kurt, Neubaugasse 21, Vienna 7, Austria.	9-30-60	do	do	25 F.R. 9820, 10-13-60.
Hof, W., Longue Rue Nueve 43, Antwerp, Belgium.	10-27-55	10-27-57 (on probation from 10-28-57 for duration).*	(Company related to Stemmler-Imex, N.V., which see.)	20 F.R. 8202, 11-1-55.
Huber, Hermann August, Badenerstrasse 398, Zurich, Switzerland.	12-18-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Oleine S.A., which see.)	24 F.R. 10719, 12-25-59.
Huiles et Produits Chimiques Pour L'Agriculture et L'Industrie, 27 Rue des Petites Ecuries, Paris 10, France.	12-13-55	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Union Europeenne des Produits Chimiques, and Jean Richard, which see.)	16 F.R. 10088, 12-16-55. 21 F.R. 4322, 6-20-56.
Hutmacher, Dr. Georg, Boersenstrasse 16, Zurich, Switzerland.	9-24-51	do	General and validated licenses, all commodities, any destination, also exports to Canada.	16 F.R. 10089, 10-3-51.
Independent Plastic Industries, 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Industrial Specialty Co., Ltd., Industrial Specialty (Iron & Steel) Ltd., 18 Buckingham Gate, London, S.W. 1, England.	12- 8-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Gerald Stanley and John Braithwaite Panchaud, which see.)	15 F.R. 8868, 12-14-50.
Industrie Chemie Etablissement, Postplatz 26, Vaduz, Liechtenstein.	4-21-54	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Hanke Chemie, et al., which see.)	19 F.R. 2432, 4-24-54.
Industriele Handelsonderneming v/h Rotterdamsche Producten, 23 Maarten Dijkschoornlaan, Rotterdam, Netherlands.	11- 6-53	do	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 7179, 11-11-53.
Industrie-Warenverkehr, Neulinggasse 50 and Strassergasse 43-47, Vienna III and 19, Austria.	8- 4-58	do	do	23 F.R. 6002, 8-7-58.
Ingeniorsfirman Elmetrik AB, Fact 33, Alingsas, and Sovdeborgagatan 31, Malmo, Sweden.	7-14-60	Indefinite	do	25 F.R. 205, 1-9-60. 25 F.R. 6854, 7-19-60.
Intercontinental Import-Export S.A., 70 Rue du Lombard, Brussels, Belgium.	8- 3-49	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Bernard Leibermann, which see.)	14 F.R. 4913, 8-9-49.
International Cement Corp., Ltd., Vancouver & Chilliwack, B.C., Canada.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
International Meat Co., 41 Eendrachtsweg, Rotterdam, Netherlands.	11- 6-53	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Klaasen, et al., which see.)	18 F.R. 7179, 11-11-53.
International Models AB, Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	Until further notice.	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 11195, 11-24-60.
International Trading Co., also known as Kokusai Bokei Shokai, 603-4 Fukoka Bldg., Uchisaiwaicho, 2-Chome, Chiyoda-Ku, Tokyo, Japan.	1-31-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Levee and Co., which see.)	21 F.R. 775-777, 2-3-56.
Internationale Transporte, Paradiesstrasse 9, Zurich, Switzerland.	5-10-58	do	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 3549, 5-22-58.
Interzack Holzgrosshandels Import & Export, G.m.b.H., Hochstrasse 19, Frankfurt, West Germany.	4-21-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Hanke-Chemie, et al., which see.)	19 F.R. 2432, 4-24-54.
Istawa S.R.L., Via Mario Pagano 35, Milan, Italy.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Italiana Gestione Immobiliari, Societa (S.I.G.I.), 24 Viale Montegrappa, Prato, Italy.	4-14-52	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Dante Corti, which see.)	17 F.R. 3361, 4-15-52.
J. W. Transport & Travel Association, 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2058, 3-28-57.
Jackson, George, 18 Buckingham Gate, London, S.W. 1, England.	12- 8-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	15 F.R. 8868, 12-14-50.
Jegouzo, Mathurin Marie, 106 Avenue Poeymiran, Casablanca, Morocco.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Jerry, Williams & Co., Hong Kong.	6- 1-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 3878, 6-6-56.
Joan Sangyo K. K., No. 14 Hirano-Machi 3-Chome, Higashi-Ku, Osaka, Japan.	1-31-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Fujisawa Shoko K. K. which see.)	21 F.R. 775-777, 2-3-56.
Johnson & Warnes Ltd., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Kajihara, Tokio, 15 Akasaka Tameike-cho, Minato-ku, Tokyo, Japan.	3-31-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 2868, 4-5-60.
Karstens, Fritz, Moenckebergstrasse 11, Hamburg, West Germany.	7-16-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to F. H. Bertling, which see.)	24 F.R. 5810, 7-21-59.
Kassar, Adel, Kassar, Adnan, Kassar, Adnan and Adel, Maarad St., Kassar Bldg., P.O. Box 1531, Beirut, Lebanon.	4-15-57	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	22 F.R. 2717, 4-18-57.
Kato, Motohisa and Kato, Toshio, officials of Chunichi Seiyaku K.K., No. 14 Daikancho, Tate, Higashiku, Nagoyashi, Japan.	1-31-56	Duration	do	21 F.R. 775-777, 2-3-56.
Kazantzis, Theodore E., 17 Battery Pl., New York, N.Y.	10-15-48	do	do	13 F.R. 6126, 10-20-48.
KESCO, G.m.b.H., Mainluststrasse 8, Frankfurt, West Germany.	3-29-55	do	do	20 F.R. 2093, 4-2-55. 21 F.R. 7699, 10-9-56.
Kessler, Hans Jr., Kessler, Hans Sr., Mainluststrasse 8, Frankfurt, West Germany.	3-29-55	do	do	20 F.R. 2093, 4-2-55. 21 F.R. 7699, 10-9-56.
King, W. E., 2 Doughty St., London, W.C. 2, England.	9-23-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Bakanowski Corp. Ltd., which see.)	23 F.R. 7556, 9-27-58.
Kitahara, Koji, 15 Akasaka Tameike-cho, Minato-ku, Tokyo, Japan.	3-31-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 2868, 4-5-60.
Klaasen, A. A., Klaasen, J. M. A., 41 Eendrachtsweg, Rotterdam, Netherlands.	11- 6-53	do	do	18 F.R. 7179, 11-11-53.
Klein, Aaron, 224 East 86th St., New York, N.Y., and 138-17 225th St., Laurelton, N.Y.	8-26-49	do	do	14 F.R. 5400, 8-31-49.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Klenfex Laboratories, Ltd., 22-32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Kokusahai Boeki Shokai, also known as International Trading Co., 603-4 Fukoka Bldg., Uchisaiwai-cho, 2 Chome, Chiyoda-Ku, Tokyo, Japan.	1-31-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Levee and Co., which see.)	21 F.R. 775-777, 2-3-56.
Kolb, Edward M., 99 Park Ave., New York 16, N.Y.	11-28-60	7-28-61 (on probation from 7-28-61 to 11-28-61).*	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 12386, 12-2-60.
Koopman, Jack, Koopman & Co., Inc., Jack, 15 Park Row, New York 38, N.Y.	4-23-53	Duration	do	18 F.R. 2481, 4-28-53.
Kow Ting Heng, or Koh Ting Heng, trading as C. H. Pharmacy, 147/75 Chakrapetch Rd., Bangkok, Thailand.	5-19-54	do	do	19 F.R. 3009, 5-25-54.
Krainz & Co., Herrengasse 6, Vienna, Austria.	4-13-59	Indefinite	do	24 F.R. 2915, 4-16-59.
Krueger, Herbert, Krueger, Luise (Johannsen), Hanau-Wilhelmsbad, Hohe Tanne 101, West Germany.	4-21-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Hanke Chemie, et al., which see.)	19 F.R. 2432, 4-24-54.
Kurue, Emmerich, 166 Waehringer Guertel, Vienna IX, Austria.	6-10-60	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 5546, 6-18-60.
Labeco A/B, Kungsgatan 4A, Stockholm C, Sweden, and Kurfurstendamm 26a, Berlin W. 15, West Germany.	11-23-60	Duration	do	25 F.R. 12211, 11-29-60.
Lachnit, Karl L., Oberzellergasse 4, Vienna III, Austria.	10-5-59	Indefinite	do	24 F.R. 8303, 10-13-59.
Lai, I. K., Lai, S. K., owners of Levee and Co., Rm. 604, Fukoku Bldg., Uchisaiwai-Cho, 2-Chome, Chiyoda-Ku, Tokyo, Japan, and 50 Queen's Road Central, Hong Kong.	1-31-56	Duration	do	21 F.R. 775-777, 2-3-56.
Lambreb, 20 Avenue de l'Opera, Paris, France.	10-8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
La Rapida Shipping & Trading Co., 1564 Broadway, New York, N.Y.	3-10-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	15 F.R. 1494, 3-16-50.
Larkins, G. D., 2 Doughty St., London, W.C. 2, England.	9-23-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Bakanowski Corp. Ltd., which see.)	23 F.R. 7556, 9-27-58.
Larkins, G. D. & Co., Ltd., Buckingham House, 19/21 Palace St., London, S.W. 1, England.	12-8-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Gerald Stanley Panchaud, which see.)	15 F.R. 8868, 12-14-50.
Lau Yiu Chuen, 326 Prince's Bldg., Hong Kong.	6-1-56	do	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 3878, 6-6-56.
Lauter G.m.b.H., Kurfurstendamm 26a, Berlin W. 15, West Germany.	11-23-60	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Labeco A/B, which see.)	25 F.R. 12211 11-29-60
Lauter, Mikhel, c/o A/B Labeco, Kungsgatan 4A, Stockholm, Sweden.	11-23-60	do	do	Do.
Lee On Construction Co., Ltd., 33 Ko Shing St., Hong Kong.	8-4-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanely Ho, which see.)	24 F.R. 6379, 8-7-59.
Les Grandes Editions Publicitaires Internationales, 27 Rue des Petites Ecuries, Paris 10, France.	12-13-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Union Europeenne des Produits Chimiques, and Jean Richard, which see.)	20 F.R. 9469, 12-16-55. 21 F.R. 4322, 6-20-56.
Levee and Co., Room 604, Fukoku Bldg., Uchisaiwai-Cho, 2-Chome, Chiyoda-Ku, Tokyo, Japan, and 50 Queen's Road Central, Hong Kong.	1-31-56	do	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 775-777, 2-3-56.
Li, Hsiu Kuang (alias S. K. Lai), Room 604, Fukoku Bldg., Uchisaiwai-Cho, 2-Chome, Chiyoda-Ku, Tokyo, Japan, and 50 Queen's Road Central, Hong Kong.	1-31-56	do	do	Do.
Liberty Electronics, Inc., 580 Broadway, New York, N.Y.	4-18-60	6-18-60 (on probation from 6-19-60 to 4-18-61).*		25 F.R. 3500, 4-21-60.
Liebermann, Bernard (alias Rohert Govaerts), 56 Rue du Rocher, Paris 8, France, and 60 Rue Ravenstein, Brussels, Belgium.	8-3-49	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	14 F.R. 4913, 8-9-49.
Lien Hsin Hang, 443 Alexandra House, P.O. Box 2713, and 259 Hennessy Road, Hong Kong.	8-4-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanley Ho, which see.)	24 F.R. 6379, 8-7-59.
Lijnzaad, D., N. W., Transport en Handelmaat schappij, 58 Coolsingel, Boursgebouw, Rotterdam, Netherlands.	10-27-55	(On probation from 10-27-55 for duration.)*		20 F.R. 8226, 11-2-55.
Lijnzaad, Dirk, 7 Duinweg, Wassenaar, Netherlands.	10-27-55	do		Do.
Lindemann, E. & Co., 41 Eendrachtsweg, Rotterdam, Netherlands.	11-6-53	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Klaasen, et al., which see.)	18 F.R. 7179, 11-11-53.
Linson Trading Co., also known as Lien Hsin Hang, 443 Alexandra House, P.O. Box 2713, and 259 Hennessy Road, Hong Kong.	8-4-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanley Ho, which see.)	24 F.R. 6379, 8-7-59.
Lippig, F. O., doing business as Elimex, Apostelnkloster 21-25, Cologne, West Germany.	7-9-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Richard Fleschner, which see.)	23 F.R. 5310, 7-12-58.
London Export Corp., Ltd., 5 Chandos St., London, W. 1, England.	5-24-57	do	General and validated licenses, all commodities, any destination, also exports to Canada.	22 F.R. 3765, 5-29-57.
London Wax Refining Co., 22-32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (On probation from 3-12-60 for duration).	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Loyal Trust, The, Vaduz, Liechtenstein.	3-25-57	do		22 F.R. 2053, 3-28-57.
Lu Lieh Ming, proprietor Well Lu Trading Co., P.O. Box 697, 201, Rama 1 Rd., Pratumwarn, Bangkok, Thailand.	5-19-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	19 F.R. 3009, 5-25-54.
Luttway, Adam A., 21 Rue de Madrid, Paris (8e), France.	6-10-60	do	do	25 F.R. 5462, 6-17-60.
Lynch, Thomas P., 280 Klemath St., Brisbane, California, and 21 Bridge St., New York, N.Y.	8-15-49	do	do	14 F.R. 5207, 8-19-49.
Lyon, Raymond, 20 Avenue de l'Opera, Paris, France.	10-8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Maag-Fetscherin, Jacob, Stadhausquai 7, Zurich, Switzerland.	2-26-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Engler Ltd., which see).	24 F.R. 1573, 3-3-59.
MacDonald Hall & Co., Ltd., MacDonald-Hall, R., 14 & 16 Ludgate Hill, St. Paul's, London E. C. 4, England.	1-29-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 688, 2-1-58.
Maireco Export-Import G.M.B.H., 166 Waehringer Guertel, Vienna IX, Austria.	6-10-60	do	do	25 F.R. 5546, 6-18-60.
Malcouronne, Andre Emile, 20 Avenue de l'Opera, Paris, France.	10-8-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Mandatare Treuhand, A. G., Vaduz, Liechtenstein.	4-21-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Hanke Chemie, et al., which see).	19 F.R. 2432, 4-24-54.
Manufacture Nouvelle de Textiles (MANOTEX), 3 Rue Olivier de Serres, Paris 15, France.	8-3-49	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Bernard Liebermann, which see).	14 F.R. 4913, 8-9-49.
Marano & Co., Inc., A. V., 276 5th Ave., New York, N.Y.	6-30-60	(On probation from 6-30-60 to 12-30-60.)*		25 F.R. 6341, 7-6-60.
Maru, Tadami, official of Tokyo Shoko K.K., No. 9 Kyobashi 2-Chome, Chuo-Ku, Tokyo, Japan.	1-31-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 775-777, 2-3-56.
Masatsugo, Kazushige, 15 Akasaka Tameike-cho, Minato-ku, Tokyo, Japan.	3-31-60	do	do	25 F.R. 2868, 4-5-60.
Mazloumian, Bramall & Co., Aleppo, P.O. Box 130, United Arab Republic—Syria Region.	1-29-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to MacDonald Hall & Co. Ltd., which see.)	23 F.R. 688, 2-1-58.
Meersman, Willy-Louis, 225 Avenue Van Rijswijck, Antwerp, Belgium.	12-8-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Gerald Stanley Panchaud, which see.)	16 F.R. 3670, 4-28-51.
Meiwa Kogyo, 603-4 Fukoku Bldg., Uchisaiwai-cho 2-Chome, Chiyoda-Ku, Tokyo, Japan.	1-31-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Levee and Co., which see.)	21 F.R. 775-777, 2-3-56.
Meiman, Petrus, doing business as Gebrs. Meiman, Lohengrinstr. 9, Wannsee, West Berlin, West Germany.	4-5-56	do	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 2302, 4-10-56. 22 F.R. 7408, 9-17-57.
Metalimport, S.A.R.L., 26 Rue de la Pepiniere, Paris, France.	4-25-56	do	do	21 F.R. 2852, 5-1-56.
Metalimport Trust, Vaduz, Liechtenstein, and Dreikonigstrasse 21, Zurich, Switzerland.	4-25-56	do	do	Do.
Meyns, Peter & Co., Meyns, Peter, Gertrudenkirchhof 10, Hamburg 1, West Germany.	1-29-59	do	do	24 F.R. 742, 2-3-59.
Middle East Cotton Co., Maarad St., Kassar Bldg., P.O. Box 1531, Beirut, Lebanon.	4-15-57	Indefinite	do	22 F.R. 2717, 4-18-57.
Minex Import-Export Treuhand-Gesellschaft, P.O. Box 44-4-80, Vaduz, Liechtenstein.	9-30-60	Duration	do	25 F.R. 9820, 10-13-60.
Minthorne International Co., Inc., 15 Moore St., New York 4, N.Y.	1-1-60	(On probation from 1-1-60 to 12-31-60.)*		25 F.R. 125, 1-7-60.
Mortel, Jean Paul, 20 Avenue de l'Opera, Paris, France.	10-8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Moser, Willi Farner, also known as Willi Farner, Grenchen, Switzerland, and Sagrera 44-58, Barcelona, Spain.	7-22-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 7163, 7-28-60.
Munich, Kurt, Hegelgasse 5, Vienna 1, Austria.	4-21-54	do	do	19 F.R. 2432, 4-24-54.
Naigai Kogyo, 603-4 Fukoka Bldg., Uchisaiwai-cho, 2-Chome, Chiyoda-Ku, Tokyo, Japan.	1-31-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Levee and Co., which see.)	21 F.R. 775-777, 2-3-56.
Nanyang Bros. Tobacco Co., Ltd., 271 Wanchai Rd., Hong Kong.	12-17-57	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Suspension for 18 months or as long as Treasury Dept. designated national, whichever longer.)	22 F.R. 10311, 12-20-57.
Nautrup, Theodore Poulsen, Gertrudenkirchhof 10, Hamburg 1, West Germany.	1-29-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Peter Meyns & Co., which see.)	24 F.R. 742, 2-3-59.
Nedimtrans, N. V., 58 Coolsingel, Bourgebouw, Rotterdam, Netherlands.	10-27-55	(On probation from 10-27-55 for duration.)*		20 F.R. 8226, 11-2-55.
Nelson, A., Nelson & Co., A., Nelson, Mrs. Danielle L. (nee Lederberg), 172 Orchard St., New York, N.Y.	3-23-49	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	14 F.R. 1399, 3-29-49.
Nelson, Murray M., Nelson, Inc., Murray M., Nelson's Trading House, 1151 East 165th St., New York, N.Y.	3-23-49	do	do	Do.
Newmark, M. & Co., Ltd., 5 & 7 Watling Court, Cannon St., London, England.	3-26-56	Indefinite	do	21 F.R. 1941, 3-29-56. 21 F.R. 2851, 5-1-56.
New York Export Agency Co., 280 Klemeth St., Brisbane, California, and 21 Bridge St., New York, N.Y.	8-15-49	Duration	do	14 F.R. 5207, 8-19-49.
Noble, L. A. W., 2 Doughty St., London, W.C. 2, England.	9-23-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Bakanowski Corp. Ltd., which see.)	23 F.R. 7556, 9-27-58.
Noord-Hollandsche, Handelsassociatie, N.V., Keizersgracht 702, Amsterdam, Netherlands.	10-28-55	10-28-56 (on probation from 10-29-56 for duration).*		20 F.R. 8224, 11-2-55.
Nordische Transportgesellschaft G.M.B.H., Moenckebergstrasse 11, Hamburg, West Germany.	7-16-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to F. H. Bertling, which see.)	24 F.R. 5810, 7-21-59.
Norte Americana Compania, 15 Park Row, New York 38, N.Y.	4-23-53	do	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 2481, 4-28-53.
Nysaters Fabriker A/B, Erik Dahlbergsgatan 4, Goteborg, Sweden.	6-10-60	do	do	25 F.R. 5462, 6-17-60.
Obegi, Les Fils de Basile, Obegi, Maurice, Obegi, Raymond, Khan Ghoumrok, Aleppo, P.O. Box 277, United Arab Republic—Syria Region.	6-9-55	do	do	20 F.R. 4190, 6-15-55.
Obermayr, Albert, Rotenturmstrasse 25, Vienna 1, Austria.	6-1-56	5-31-58 (on probation from 6-1-58 for duration).*		21 F.R. 3880, 6-6-56.
"Objecta" Treuhand und Verwaltung, Oberalpstrasse 51, Basel, Switzerland.	2-13-58	3-11-60 (on probation from 3-12-60 for duration).*	(Party related to Standard Chemie A.G., Basel, and W.K.S. Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Oceanic Express Co., 168 West 23d St., New York, N.Y.	3-24-50	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	15 F.R. 1821, 3-30-50.
Oestawa Handelshaus A.G., Vaduz, Leichtenstein, and Rennweg 3, Vienna III, Austria.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Office Appliance Co. (1955) Ltd., Alexandra House, 18 Chater Rd., Hong Kong.	6-29-60	12-29-60 (on probation from 12-30-60 to 6-29-62).*	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 6370, 7-7-60.
Oleine, S. A., Genferstrasse 24, Zurich, Switzerland.	12-18-59	Duration	do	24 F.R.10719, 12-25-59.
Oleynick & Company, L., Oleynick, Leah, 1151 East 165th St. New York, N.Y.	3-23-49	do	do	14 F.R. 1399, 3-29-49.
Oriental Purchasing Co., Bank of East Asia Bldg., Hong Kong.	7-10-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Oversea Trading Co. (H.K.) Ltd., which see.)	23 F.R. 5400, 7-16-58.
Oriental Trading Co., Ltd., sometimes known as Toyo Boeki K.K. or Toyo Trading Co., 15 Akasaka Tameike-cho, Minato-ku, Tokyo, Japan.	3-31-60	do	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 2868, 4-5-60.
Orr, Thomas Ulo, doing business under firm names Christjan's Export Co. AB, Christjan's Import Co. AB, Christjan's Print AB, C.I.C., Civilian Aircraft and Procurement Supply Office, International Models AB, TUC International Corp., TUO Svenska Forsaljnings AB, and Vastlands Fargfabrik AB, successor to Polaro (or Polaris) Chemical Co., AB, Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	Until further notice.	do	25 F.R. 11195, 11-24-60.
Oversea Trading Co., (H. K.), Ltd., 806 Bank of East Asia Bldg., Hong Kong.	7-10-58	Duration	do	23 F.R. 5400, 7-16-58. 24 F.R. 4062, 5-20-59.
Pan Pacific Trading Co., 602 Broderick St., San Francisco, Calif.	3-31-49	do	do	14 F.R. 1689, 4-8-49.
Panchaud Freres, S.A., 3 Saint-Pierre, Lausanne, Switzerland.	12- 8-50	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Gerald Stanley Panchaud, which see.)	15 F.R. 8868, 12-14-50.
Panchaud, Gerald Stanley, Panchaud, John Braithwaite, 1 Galerie Benjamin Constant, Lausanne, Switzerland, and 18 Buckingham Gate, London, S. W. 1, England.	12- 8-50	do	General and validated licenses, all commodities, any destination, also exports to Canada.	Do.
Passot, Madelaine, 106 Avenue Poeymirau, Casablanca, Morocco.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Pawlitza, Dr. Josef, Hegelgasse 5, Vienna 1, Austria.	4-21-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	19 F.R. 2432, 4-24-54.
Pesters, Jhr. C. A. de Adjunct Managing Director Chemische Industrie "Den Haag," N. V., Le van der Kunstraat 55-57, The Hague, Netherlands.	10-27-55	10-27-57 (on probation from 10-28-57 for duration).*		20 F.R. 8202, 11-1-55.
Pisk, Alexander W., Freiestrasse 87, Zurich, Switzerland.	4-21-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	19 F.R. 2432, 4-24-54.
Polaris (or Polaro) Chemical Co. AB, Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	Until further notice.	do	25 F.R. 11195, 11-24-60.
Porje, Allan, St. Eriksgatan 69, Stockholm, Sweden.	3-24-60	do	do	25 F.R. 2667, 3-30-60.
Porn & Dunwoody, Ltd., Union Works, Bear Gardens, London, S.E. 1, England.	10-14-59	Indefinite	do	24 F.R. 8653, 10-27-59.
Prodalco, S.A.R.L., 15 Rue de la Cite, and 7 Place de la Fusterie, Geneva, Switzerland.	6- 9-55	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Les Fils de Basile Obegi, et al., which see.)	20 F.R. 4190, 6-15-55.
Pun, Tsze E., & Co., Rm. 1201, Wing on Life Bldg., P.O. Box 2606, Hong Kong.	12-17-57	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Suspension for 18 months or as long as Treasury Dept. designated national, whichever longer.)	22 F.R. 10311, 12-20-57.
Ralux Gesellschaft fuer Elektrotechnik mbH, 6 Romerstrasse, Munich 23, West Germany.	2-21-57	do	General and validated licenses, all commodities, any destination, also exports to Canada.	22 F.R. 1153, 2-27-57.
Rederi A/B Lauter Shipping, 34-B Artillerigatan, Stockholm, Sweden.	12-31-59	Until further notice.	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Labeco A/B, which see.)	25 F.R. 205, 1-9-60.
Rei Shu Ko (alias S. K. Lai) Rm. 604, Fukoku Bldg., Uchisaiwai-Cho, 2-Chome, Chiyoda-Ku, Tokyo, Japan, and 50 Queen's Road Central, Hong Kong.	1-31-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 775-777, 2-3-56.
Rentzeperis, John, 168 West 23d St., New York, N.Y.	3-24-50	do	do	15 F.R. 1821, 3-30-50.
Richard, Jean, 27 Rue des Petites Ecuries, Paris, France.	12-13-55	do	do	20 F.R. 9469, 12-16-55. 21 F.R. 4322, 6-20-56.
Riviere, Maurice, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Rogers, B., 14 & 16 Ludgate Hill, St. Paul's London E.C. 4, England.	1-29-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to MacDonald Hall & Co., Ltd., which see.)	23 F.R. 688, 2-1-58.
Rohimport Trust, Vaduz, Liechtenstein.	4-21-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Hanke Chemie, et al., which see.)	19 F.R. 2432 4-24-54.
Royal Industrial Co., 150 Broadway, Rm. 914, New York, N.Y.	4-23-53	do	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 2481 4-28-53.
Saida, Societe Immobiliere de la, S. A., Paris, France.	4-25-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Abel, which see.)	21 F.R. 2852, 5-1-56.
Samprod Ges.m.b.H., Ltd., Rechbauerstrasse 15, Graz, Austria.	11-25-60	1-3-61	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 12388, 12-2-60.
Satis, A. G., Boersenstrasse 16, Zurich, Switzerland.	9-24-51	Duration	do	16 F.R. 10088, 10-3-51.
Satis, S. A., Melide, Switzerland.	9-24-51	do	do	Do.
Schneider, Hans M., 174 Seestrasse and 50 Renggerstrasse, Zurich, Switzerland.	12-18-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Oleine, S. A., which see.)	24 F.R. 10719, 12-25-59.
Schonfeld, Fred W., 125 Cedar St. and 120 Liberty St., New York 6, N.Y.	10- 4-56	10-3-57 (on probation from 10-4-57 for duration).*		21 F.R. 7699, 10-9-56.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Schroeder, Mr. Werner (prokurist for F. H. Bertling) Moenckebergstrasse 11, Hamburg, West Germany.	7-16-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to F. H. Bertling, which see.)	24 F.R. 5810, 7-21-59.
Schulthess, Johannes, 69 Stampfenbachstrasse, Zurich, Switzerland.	3- 1-57	10-1-59 (on probation from 10-2-59 for duration).*		22 F.R. 1343, 3-5-57.
Selart, Evald, Selart & Co., Erik Dahlbergsgatan 4, Goteborg, Sweden.	6-10-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 5462, 6-17-60.
Semadis & Co., Semadis, Peter K., 641 8th Ave., New York, N.Y.	3-24-49	do	do	14 F.R. 1605, 4-5-49.
Serata A. G., 51 Oberalpstrasse, Basel, Switzerland.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Serti, S. A., 15 Rue de la Cite, and 7 Place de la Fusterie, Geneva, Switzerland, and Lazarich Bldg., Beirut, Lebanon, and Kassas-Sadat Bldg., Rue Fardosse, Damascus, United Arab Republic—Syria Region.	6- 9-55	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Les Fils de Basile Obegi, et al., which see.)	20 F.R. 4190, 6-15-55.
Seto, Wai Man, Hong Kong	8- 5-53	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 4751, 8-11-53.
Siegwart and Hanke, Hegelgasse 5, Vienna I, Austria.	4-21-54	Duration	do	19 F.R. 2432, 4-24-54.
Smits J., Officer of N. V. Handelmaatschappij J., Smits Import-Export, Molstratt 1, Rotterdam, Netherlands.	10-28-54	do	Positive List commodities under validated or general licenses and other commodities under validated licenses, any destination, including Canada.	19 F.R. 7197, 11-5-54. 22 F.R. 727, 2-5-57.
Smits, J., Import-Export, N. V., Molstratt 1, Rotterdam, Netherlands.	10-28-54	do	do	Do. 22 F.R. 727, 2-5-57.
Smits, J. K., 41 Eendrachtsweg, Rotterdam, Netherlands.	11- 6-53	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Klaasen, et al., which see.)	18 F.R. 7179, 11-11-53.
Snow, H. Martyn, 105 Colcherne Court, London S.W. 5, England.	11-13-59	do	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 9948, 12-9-59.
Societe d'Etudes et de Recherches Technique et Industrielles (SERTI), S.A., 15 Rue de la Cite, and 7 Place de la Fusterie, Geneva, Switzerland.	6- 9-55	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Les Fils de Basile Obegi, et al., which see.)	20 F.R. 4190, 6-15-55.
Societe d'Etudes de l'Union Francaise, Paris, France.	4-25-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Abel, which see.)	21 F.R. 2852, 5-1-56.
Societe Generale de Produits Chimiques et Biologiques, 27 Rue des Petites Ecuries, Paris 10, France.	12-13-55	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Union Europeenne des Produits Chimiques, and Jean Richard, which see.)	20 F.R. 9469, 12-16-55. 21 F.R. 4322, 6-20-56.
Societa Italiana Gestione, Immobiliari (S.I.G.I.), 24 Viale Montegrappa, Prato, Italy.	4-14-52	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Dante Corti, which see.)	17 F.R. 3361, 4-15-52.
Sorkin, Edwin J., 15 Moore St., New York 4, N.Y.	1- 1-60	6-30-60 (on probation from 7-1-60 to 12-31-60).*		25 F.R. 125, 1-7-60.
South Sea Trading Co., Ltd., 314 China Bldg., Hong Kong.	10- 4-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 7699, 10-9-56.
Spaeth, Anneliese, Spaeth, Karl-Heinz, 6 Romerstrasse, Munich 23, West Germany.	2-21-57	Indefinite	do	22 F.R. 1153, 2-27-57.
Spicer Food Co., Ltd., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Spiess Trust, Vaduz, Liechtenstein.	4-25-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Abel, which see.)	21 F.R 2852, 5-1-56.
Standard Chemica S.A., Via Piemonte 63, Rome, Italy.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Standard Chemical & Pharmaceutical Corp., Ltd., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	do*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Standard Chemie, 5 Steinhovelstrasse, Ulm/Donau, West Germany.	3-11-57	do*	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Standard Chemie, A. G., Vaduz, Liechtenstein.	3-11-57	do*	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Standard Chemie, A. G., St. Albangraben 8, Basel, Switzerland.	3-25-57	do*		22 F.R. 2053, 3-28-57.
Stawa A. G., Vaduz, Liechtenstein.	3-11-57	do*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Stawa Co., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	do*	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Steinfellner, Otto R., Max-Joseph Strasse 5, Munich, West Germany.	†10-27-55	10-31-61 (on probation from 11-1-61 to 10-31-62).*	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 8579, 9-3-60.
Stemmler, Carl Herman Ferdinand, Manager and Director.	10-27-55	10-27-57 (on probation from 10-28-57 for duration).*		20 F.R. 8202, 11-1-55.
Stemmler-Imex, N. V., Leidseplein-Hirschgebouw, Post Box 649, Amsterdam, Netherlands.	10-27-55	do*	(Company related to Stemmer-Imex, N. V., which see.)	Do.
Stemmler-Imex Succ., Longue Rue Nueve 43, Antwerp, Belgium.	5- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada.	23 F.R. 3158, 5-13-58.
Steuerungstechnik und Messgerate, G. M. B. H., Wahringerstrasse 12, Vienna IX, Austria.	9-17-51	Duration	do	16 F.R. 9667, 9-21-51.
Stevens, Paul, Comptoir Paul, Stevens & Co., S. A., 179 Ter Rivierenlann, Deurne, Antwerp, Belgium.	12- 8-50	do	do	15 F.R. 8868, 12-14-50.
Stonehill, G. C., 18 Buckingham Gate, London, S. W. 1, England.	8- 4-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Agencia Comercial "Progresso" (ACP) and/or Stanley Ho, which see.)	24 F.R. 6379, 8-7-59.
Sun Kee, 444 Alexandra House, P.O. Box 2713, Hong Kong.	6-29-60	do	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 6370, 7-7-60.
Sung, W. W., 12 Wellington St., Hong Kong.				

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

†(For revocation of outstanding validated licenses 8-30-60; for denial of U.S. export privileges 11-1-60).*

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Szurek, Mojsiek, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Takeno, Yonesaburo, official of Tokyo Shoko K.K., No. 14 Hirano-Machi 3-Chome, Higashi-Ku, Osaka, Japan.	1-31-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 775-777, 2-3-56.
Technica Steinfellner & Co. (formerly known as Technical Hoellerer & Co.), Max Joseph Strasse 5, Munich, West Germany.	(†)	10-31-61 (on probation from 11-1-61 to 10-31-62).*	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 8579, 9-3-60.
Technische Entwicklungsgesellschaft M.B.H., Hamburg, West Germany.	7-16-59	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to F. H. Bertling, which see.)	24 F.R. 5810, 7-21-59.
Termac, Kaistrasse 7, Duesseldorf, West Germany.	4-25-56	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Abel, which see.)	21 F.R. 2852, 5-1-56.
Thiel, Reynold, 15 Rue de la Cite, and 7 Place de la Fusterie, Geneva, Switzerland.	6- 9-55	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Related to Les Fils de Basile Obegi, et al., which see.)	20 F.R. 4190, 6-15-55.
Timm, Mr. (prokurist for F. H. Bertling), Moenckebergstrasse 11, Hamburg, West Germany.	7-16-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to F. H. Bertling, which see.)	24 F.R. 5810, 7-21-59.
Tingley, E. & Son, Ltd., 22-32 Copperfield Rd., Canal Road, London, E. 3, England.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*		22 F.R. 1650, 3-14-57.
Tingley E., Trading, Ltd., 22-32 Copperfield Rd., London, E. 3, England, and 1 Brickfield Rd., Ebute Metta (Lagos), Nigeria.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Tokyo Shoko K.K., No. 9 Kyobashi 2-Chome, Chuo-Ku, Tokyo, Japan.	1-31-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 775-777, 2-3-56.
Tomsen, Alf & Co., Warburgstrasse 33, Hamburg 36, West Germany.	8-28-59	do	do	24 F.R. 7150, 9-3-59.
Torbay Trading, Ltd., Copperfield Rd., Westhill, Ontario, Canada.	3-11-57	3-11-60 (on probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Toutimpex Tangier, 21 Rue de Madrid, Paris (8e), France.	6-10-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 5462, 6-17-60.
Tower Warehousing Co., (London) Ltd., Brown Bear Alley, London, E. 1, England.	12- 8-50	do	General and validated licenses all commodities, any destination, also exports to Canada. (Company related to Gerald Stanley and John Braithwaite Panchaud, which see.)	15 F.R. 8868, 12-14-50.
Toyo Boeki K.K. or Toyo Trading Co., 15 Akasaka Tamelke-cho, Minato-ku. Tokyo, Japan.	3-31-60	do	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 2868, 4-5-60.
Toyo Koeki, Rm. 603-4 Fukoku Bldg., Uchisaiwai-cho, 2-Chome, Chiyoda-Ku, Tokyo, Japan.	1-31-56	do	General and validated licenses all commodities, any destination, also exports to Canada. (Firm related to Levee and Co., which see.)	21 F.R. 775-777, 2-3-56.
Toyo Trading Co., 15 Akasaka Tamieke-cho, Minato-ku, Tokyo, Japan.	3-31-60	do	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 2868, 4-5-60.
TRACOPORT N.V., Handelmaatschappij, 24 Plompertstraat, Rotterdam, Netherlands.	4- 6-59	Indefinite	General and validated licenses all commodities, any destination, also exports to Canada. (Firm related to N. V. Handelmaatschappij Delft and Adrianus A. C. Alsemgeest, which see.)	24 F.R. 2754, 4-9-59.
Trans Chemie, 702 Keizersgracht, Amsterdam, Netherlands.	10-28-55	10-28-56 (on probation from 10-29-56 for duration).*	(Company related to Continental Commerce and Finance Company, N. V. and N. V. Nord-Hollandsche Handelsassociatie, which see.)	20 F.R. 8224, 11-2-55.
Transmare Handelmaatschappij, N. V., Meent 93, Rotterdam, Netherlands.	5-24-57	5-24-58 (on probation from 5-25-58 for duration).*		22 F.R. 3765, 5-29-57.
Traverse, N. V., 51 Stadhouderskade, Amsterdam, Netherlands.	10-28-55	10-28-56 (on probation from 10-29-56 for duration).*	(Company related to Continental Commerce and Finance Co., N. V. and N. V. Nord-Hollandsche Handelsassociatie, which see.)	20 F.R. 8224, 11-2-55.
Tsong, C. S., 806 Bank of East Asia Bldg., Hong Kong.	7-10-58	Duration	General and validated licenses all commodities, any destination, also exports to Canada.	23 F.R. 5400, 7-16-58.
TUC International Corp., Jenny Linds Gata 4 and Valntavagen 72, Hagersten, Sweden.	11-21-60	Until further notice.	do	25 F.R. 11195, 11-24-60.
TUO Svenska Forsaljnings AB, Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	do	do	Do.
Union Europeenne de Produits Chimiques, 27 Rue des Petites, Ecuries, Paris, France.	12-13-55	Duration	do	20 F.R. 9469, 12-16-55. 21 F.R. 4322, 6-20-56.
United Petrolifera Italiana, S. R. L. (formerly-United Refineries Corp.), Via Manzoni 41A, Milan Italy	7- 9-56	do	do	21 F.R. 5197, 7-12-56.
Valentin, Madame, 20 Avenue de l'Opera, Paris, France.	10- 8-58	Indefinite	General and validated licenses all commodities, any destination, also exports to Canada. (Party related to CEEI, which see.)	23 F.R. 7931, 10-14-58.
Van de Looveren, N. V., A.M.M., Van de Looveren, Anthonius, M.M., Willemsparkweg 80, Amsterdam C, Netherlands.	12-12-55	Duration	General and validated licenses all commodities, any destination, also exports to Canada.	20 F.R. 9431, 12-15-55.
Van Der Zanden, Hendrik Frans, 1 Pont de Meir, Union Bldg., Antwerp, Belgium.	10-30-56	do	do	21 F.R. 8412, 11-2-56.
Van Woerkom, J. C. A. M., Industriele Handelsonderneming v/h Rotterdamsche Producten 23 Maarten Dijkschoornlaan, Rotterdam, Netherlands.	11- 6-53	do	do	18 F.R. 7179, 11-11-53.
Vastlands Fargfabrik AB, successor to Polaro (or Polaris) Chemical Co. AB, Jenny Linds Gata 4 and Valutavagen 72, Hagersten, Sweden.	11-21-60	Until further notice	do	25 F.R. 11195, 11-24-60.
Vitromecano A/B, Kungsgatan 4A, Stockholm C, Sweden.	12-31-59	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Labeco A/B, which see.)	25 F.R. 205, 1-9-60.
von der Fuhr, Hans W.J.M., von der Fuhr, Werner H.H., doing business as N.V. Chem. Industrie "Tillburg", Poststraat 39, Postbox 37, Tillburg, Netherlands.	1-31-58	1-31-59 (on probation from 2-1-59 for duration).*		23 F.R. 761, 2-5-58.
Wahle, Kurt O. W., Frankfurt/Main-Westhafen, West Germany.	6-13-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 5610 6-21-60.

†(For revocation of outstanding validated licenses 8-30-60; for denial of U.S. export privileges 11-1-60).*

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

Name and address	Effective date	Expiration dates	Export privileges affected	Federal Register citation
Wallastone Construction Co., Ltd., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	3-11-60 (On probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Waller Estates, Ltd., 540 Burrard St., Vancouver, B.C., Canada.	3-11-57	do*		22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Waller Family Trust, Ltd., Chambers, Nassau, Bahamas, British West Indies.	3-11-57	do*	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Waller Investment Corp., Ltd., Copperfield Rd., Westhill, Ontario, Canada.	3-11-57	do*	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Waller, W. K. S., 22/32 Copperfield Rd., London, E 3, England.	3-25-57	do*		Do.
Wallersteiner Familien Trust, Vaduz, Liechtenstein.	3-11-57	do*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Wallersteiner, William Kurt Samuel, also known as Waller, W. K. S., 22/32 Copperfield Rd., London, E. 3, England.	3-11-57	do*		22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Wassmer, Eugene E., doing business as Wassmer & Cie., Morgentalstrasse 10, Zurich 2/38, Switzerland.	8-12-60	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	25 F.R. 7894, 8-17-60.
Watford Chemical Co. (Canada), Ltd., Copperfield Rd., Westhill, Ontario, Canada.	3-11-57	3-11-60 (On probation from 3-12-60 for duration).*		22 F.R. 1650, 3-14-57.
Watford Chemical Co., Ltd., 22/32, Copperfield Rd., Canal Road, London, E. 3, England.	3-11-57	do*		Do. 22 F.R. 2053, 3-28-57.
Watford Chemical Corp., New York, N.Y.	3-11-57	do*		22 F.R. 1650, 3-14-57.
Watford Chemicals (Alberta), Ltd., Royal Bank of Canada, Chambers, Edmonton, Alberta, Canada.	3-11-57	do*	(Company related to William Kurt Samuel Wallersteiner, which see.)	Do. 22 F.R. 2053, 3-28-57.
Watford Realty, Ltd., Copperfield Rd., Westhill, Ontario, Canada.	3-11-57	do*	do	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Well Lu Trading Co., P.O. Box 697, 201, Rama 1 Road, Pratumwarn, Bangkok, Thailand.	5-19-54	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	19 F.R. 3069, 5-25-54.
Wemach Maschinen-Chemie-Vertriebs G.m.b.H., 2-10 Hohenzollernring, Cologne, West Germany.	7- 9-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Firm related to Richard Fleschner, which see.)	23 F.R. 5310, 7-12-58.
Westawa G.m.b.H., 30 Friedrich-Ebert Strasse, Frankfurt, West Germany.	3-11-57	3-11-60 (On probation from 3-12-60 for duration).*	(Company related to William Kurt Samuel Wallersteiner, which see.)	22 F.R. 1650, 3-14-57. 22 F.R. 2053, 3-28-57.
Wester Metaalwarenfabriek, Amsterdam- Netherlands.	10-27-55	10-27-57 (on probation from 10-28-57 for duration).*	(Company related to Stemmler-Imex, N. V., which see.)	20 F.R. 8202, 11-1-55.
Western Metal A. G., Zurich and Lausanne, Switzerland.	4-25-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada. (Company related to Abel, which see.)	21 F.R. 2852, 5-1-56.
Williams, Jerry & Co., Hong Kong.	6- 1-56	do	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 3878, 6-6-56.
Wilson, James Besil, 2 Doughty St., London W.C. 2, England.	9-23-58	Indefinite	General and validated licenses, all commodities, any destination, also exports to Canada. (Party related to Bakanowski Corp. Ltd., which see.)	23 F.R. 7556 9-27-58.
Wolff, Hans, doing business as Hans Wolff Export-Import, Bingerstrasse 31, Berlin-Wilmersdorf, West Germany.	4-15-57	(On probation from 4-15-57 for duration.)*		22 F.R. 2717, 4-18-57.
Wolfson, Irving N., 15 Park Row, New York 38, N.Y.	4-23-53	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	18 F.R. 2481, 4-28-53.
Youssem, Leon, 12 Avenue des Arts, Brussels, Belgium.	3-25-57	Indefinite	do	22 F.R. 2055, 3-28-57.
Zee, Mohan, Post Office Box 666, Hong Kong.	5- 5-58	do	General and validated licenses, all commodities, any destination, also exports to Canada. (Suspension for 18 months or as long as Treasury Dept. designated national, whichever longer.)	23 F.R. 3156, 5-13-58.
Zemanek & Co., Ltd., 46-47 Chancery Lane, London W.C. 2, England.	5-21-56	Duration	General and validated licenses, all commodities, any destination, also exports to Canada.	21 F.R. 3609, 5-25-56.
Zetlin, David or Davis, Zetland Corp., David, Zetland, David, Zetlan, David or Davis, 46 Cedar St., New York, N.Y.	5-28-51	do	do	16 F.R. 5295, 6-5-51.

*Although the named person or firm is entitled to all export privileges during this probation period, these privileges may be revoked upon a finding that the probation has been violated.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023. E.O. 9630, 10 F.R. 12245, 3 CFR, 1945 Supp., E.O. 9919, 13 F.R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Director, Bureau of Foreign Commerce.

[F.R. Doc. 60-12025; Filed, Dec. 29, 1960; 8:45 a.m.]

[9th Gen. Rev. of Export Regs., Amdt. P.L. 28 ¹]

PART 399—POSITIVE LIST OF COMMODITIES AND RELATED MATTERS

Miscellaneous Amendments

Section 399.1 *Appendix A—Positive List of Commodities* is amended in the following particulars:

1. The following commodities are added to the Positive List:

Dept. of Commerce Schedule B No.	Commodity description	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required	Commodity lists
61875	Fabricated steel products: Steel storage tanks, lined, n.e.c., and specially fabricated parts and accessories, n.e.c.: Liquefied gas containers, jacketed only, as follows: (a) liquid fluorine containers of 250 gallons capacity or over; and (b) other liquefied gas containers of 500 gallons capacity or over.[1 2]	Lb.	STEE 3	100	RO	A E-8

[1] This amendment was published in Current Export Bulletin 843, dated December 15, 1960.

Dept. of Commerce Schedule B No.	Commodity description	Unit	Processing code and related commodity group	G.L.V. dollar value limits	Validated license required	Commodity lists
	Steel bars and bar size rods and shapes, cold-finished, except tool steel and concrete reinforcement bars (all cold-drawn or cold-rolled flats and rounds, including bars in rolls or cut lengths, and special sections and bar shapes with cross-sectional dimension of under 3 inches):					
62255	Alloy steel bars, cold-finished, except stainless, special types only.[14 15]	Lb.	STEE 3	100	RO	A E-8
62255	Other alloy steel bars, cold-finished, except stainless, as follows: (a) high speed tool steels containing 6 up to and including 10 percent cobalt, less than 5 percent chromium, and no nickel, or (b) glass to metal sealing alloys containing 6 up to and including 20 percent cobalt, less than 5 percent chromium, and no nickel.[3 14]	Lb.	STEE 4	100	RO	E-8
64270	Tool steel bars, alloy steel, special types only.[14 15]	Lb.	STEE 3	100	RO	A E-8
64270	Other tool steel bars, alloy steel, as follows: high speed tool steels containing 6 up to and including 10 percent cobalt, less than 5 percent chromium, and no nickel.[3 14]	Lb.	STEE 4	100	RO	E-8
	Steel wire, n.e.c. (all round, shaped, and flat wire regardless of use):					
64813	Uncoated alloy steel wire (except stainless), special types only.[14 15]	Lb.	STEE 3	100	RO	A E-8
64818	Other uncoated alloy steel wire (except stainless), as follows: glass to metal sealing alloys containing 6 up to and including 20 percent cobalt.[3 14]	Lb.	STEE 4	100	RO	E-8
	Shipping containers for oil, gas, and other liquids and solids (all metals):					
69102	Unfilled liquefied gas containers, jacketed only, as follows: (a) liquid fluorine containers of 250 gallons capacity or over and (b) other liquefied gas containers of 500 gallons capacity or over.[1 9]	No.	STEE 3	100	RO	A E-8
69103	Unfilled liquefied gas cylinders, jacketed only, as follows: (a) liquid fluorine cylinders of 250 gallons capacity or over; and (b) other liquefied gas cylinders of 500 gallons capacity or over.[9 14]	Lb.	STEE 3	100	RO	A
69108	Welding rods and wires, including brazing rods: Welding rods and wires, electric, iron and steel, special types only.[14 15]	Lb.	STEE 3	100	RO	A E-8
69108	Other welding rods and wires, electric, iron and steel, as follows: (a) high speed tool steels containing 6 up to and including 10 percent cobalt, less than 5 percent chromium, and no nickel, or (b) glass to metal sealing alloys containing 6 up to and including 20 percent cobalt.[3 14]	Lb.	STEE 4	100	RO	E-8
61940	Welding rods and wires, iron and steel, non-electric, special types only.[14 15]	Lb.	STEE 3	100	RO	A E-8
61940	Other welding rods and wires, non-electric, iron and steel, as follows: (a) high speed tool steels containing 6 up to and including 10 percent cobalt, less than 5 percent chromium, and no nickel, or (b) glass to metal sealing alloys containing 6 up to and including 20 percent cobalt.[3 14]	Lb.	STEE 4	100	RO	E-8

[2] The processing code is changed or related commodity group number is changed (see § 372.5(e) of this chapter).
[3] The symbol "A" is deleted in the column headed "Commodity Lists," indicating that the commodity is no longer subject to the IC/DV procedure (see § 373.2 of this chapter).
[11] The commodity coverage is increased, effective December 23, 1960.
[14] The commodity is added to the Positive List under this Schedule B number.
[15] For export control purposes "special types" of alloy steel (including stainless) includes steels containing any of the following characteristics: (1) Alloys with 10 percent or more molybdenum; (2) alloys with 5 percent or more molybdenum and more than 14 percent chromium; (3) alloys with 6 percent or more cobalt, except (a) permanent magnetic metals with a cobalt content of 25 percent or less; (b) high speed tool steels containing up to 10 percent cobalt, less than 5 percent chromium, and no nickel, and (c) glass to metal sealing alloys containing 20 percent or less cobalt, less than 5 percent chromium, and no nickel; (4) alloys containing 4 percent or more columbium, with a total of 38 percent or less of alloying elements, except such steels containing less than 0.4 percent columbium, tantalum, or titanium, including, but not limited to, the following: A 286, Discaloy, W 545, Unitemp 312, 19-9 DL, DX, DW, EME, and Croloy 15-15 N; and (6) precipitation hardening steels as follows: A M 350, A M 355, 17-4 PH, 17-7 PH, PH 15-7 Mo, 17-10 P, 17-14 Cu, Mo, V-2, B, PNM, Stainless W, and FV 520.
[16] On or after January 30, 1961, an Import Certificate (or a Hong Kong Import License) will be required in support of a license application covering exports of this commodity to the countries specified in § 373.2 of this chapter.
[1] The symbol "E" in the column headed "Commodity Lists" indicates that this commodity may be exported under the Periodic Requirements licensing procedure. This symbol is followed by a numerical designation to indicate the P.R.L. Commodity Group to which this commodity has been assigned (see § 370.20 of this chapter).

This item of the amendment shall become effective as of December 23, 1960, except as otherwise indicated in the footnote.

2. The following entries set forth below are substituted for entries presently on the Positive List. Where the Positive List contains more than one entry under a Schedule B number, the entry to be superseded is identified by a numerical reference in parentheses following the commodity description in the revised entry:

Dept. of Commerce Schedule B No.	Commodity description	Unit	Processing code and related commodity group	G.L.V. dollar value limits	Validated license required	Commodity lists
	Steel ingots, blooms, billets, slabs, sheet bars, and tinplate bars:					
60178	Billets, blooms, slabs, and sheet bars, alloy steel, special types only; (export prohibited until sheet steel billets in 60174).[14 15]	S. ton	STEE 3	100	RO	A E-7
60178	Other billets, blooms, slabs, and sheet bars, alloy steel, as follows: (a) high speed tool steels containing 6 up to and including 10 percent cobalt, less than 5 percent chromium, and no nickel, or (b) glass to metal sealing alloys containing 6 up to and including 20 percent cobalt.[3 14]	S. ton	STEE 4	100	RO	E-7
60187	Wire rods, alloy steel, special types only.[14 15]	Lb.	STEE 3	100	RO	A E-8
60187	Other wire rods, alloy steel as follows: (a) high speed tool steels containing 6 up to and including 10 percent cobalt, less than 5 percent chromium, and no nickel, or (b) glass to metal sealing alloys containing 6 up to and including 20 percent cobalt.[3 14]	Lb.	STEE 4	100	RO	E-8
	Iron and steel bars and bar size rods and shapes, hot-rolled, except tool steel and concrete reinforcement bars (all hot-rolled flats and rounds, including bars in rolls or cut lengths, and special sections and bar shapes with cross-sectional dimension of under 3 inches):					
60220	Alloy steel bars, hot-rolled, except stainless, special types only.[14 15]	Lb.	STEE 3	100	RO	A E-8
60220	Other alloy steel bars, hot-rolled, except stainless, as follows: (a) high speed tool steels containing 6 up to and including 10 percent cobalt, less than 5 percent chromium, and no nickel, or (b) glass to metal sealing alloys containing 6 up to and including 20 percent cobalt.[3 14]	Lb.	STEE 3	100	RO	E-8

This item of the amendment shall become effective as of December 23, 1960.

This item of the amendment shall become effective as of December 16, 1960, except as otherwise indicated in the footnotes.

Shipments of any commodities removed from general license to Country Group R or Country Group O destinations as a result of changes set forth in this amendment which were on dock for lading, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to actual orders for export prior to 12:01 a.m., December 23, 1960, may be exported under the previous general license provisions up to and including January 16, 1961. Any such shipment not laden aboard the exporting carrier on or before January 16, 1961 requires a validated license for export.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023. E.O. 9630, 10 F.R. 12245, 3 CFR, 1945 Supp., E.O. 9919, 13 F.R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Director,
Bureau of Foreign Commerce.

[F.R. Doc. 60-12026; Filed, Dec. 29, 1960; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 7956 c.o.]

PART 13—PROHIBITED TRADE PRACTICES

Daniel D. Weinstein and Irwin R. Title

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* § 13.170–22 *Corrective, orthopedic, etc.;* § 13.170–30 *Durability or permanence;* § 13.170–70 *Preventive or protective;* § 13.190 *Results;* § 13.205 *Scientific or other relevant facts.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Daniel D. Weinstein et al., Oakland, Calif., Docket 7956, October 21, 1960.]

In the Matter of Daniel D. Weinstein and Irwin R. Title, Individually and as Copartners Trading Under Their Own Names

Consent order requiring sellers of corneal contact lenses in Oakland, Calif., to cease advertising falsely that their contact lenses could be worn successfully by all in need of visual correction and without discomfort, would correct all defects in vision and protect the eye, could be worn for a lifetime without change of prescription, etc.

The order to cease and desist is as follows:

It is ordered, That Daniel D. Weinstein and Irwin R. Title, individually and as copartners trading under their own names or under any other name, or names, their representatives, agents and employees, directly or through any corporate or other device, in connection with the sale of contact lenses, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication that:

(a) All persons can successfully wear their contact lenses;

(b) There is no discomfort in wearing their contact lenses;

(c) All persons can wear respondents' contact lenses all day without discomfort; or that any person can wear said contact lenses all day without discomfort until such person has become fully adjusted thereto;

(d) Eyeglasses can always be discarded upon the purchase of respondents' lenses;

(e) Their contact lenses will correct all defects in vision;

(f) Their contact lenses differ from other contact lenses in that they permit tear and air flow;

(g) Said contact lenses may be worn for a lifetime without change of prescription; or misrepresenting the time that they may be so worn;

(h) Said contact lenses protect the eye unless limited to the small portion of the eye that is covered thereby.

2. Disseminating, or causing to be disseminated, any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of said products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in Paragraph 1 above.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Daniel D. Weinstein and Irwin R. Title, individually and as copartners trading under their own names, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: October 21, 1960.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F.R. Doc. 60-12169; Filed, Dec. 29, 1960; 8:52 a.m.]

Title 18—CONSERVATION OF POWER

Chapter I—Federal Power Commission

[Statement of General Policy No. 61-1]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Area Price Levels for Natural Gas Sales by Independent Producers

DECEMBER 23, 1960.

Part 2, General Policy and Interpretations, of Chapter I, Federal Power Commission, of Title 18 of the Code of Federal Regulations, is amended by adding § 2.56, as follows:

§ 2.56 Area price levels for natural gas sales by independent producers.

(a) The Commission in its Statement of General Policy No. 61–1 issued September 28, 1960, first amendment thereto issued October 25, 1960, and second amendment thereto issued December 20, 1960, stated in pertinent part:

This statement establishing rate standards for independent producers of natural gas is issued on our own motion and is based on our experience gained after six years of regulation of independent producers under the Natural Gas Act. By this statement and the appended area price schedules we will set standards for initial and increased rate filings by producers for the sale of natural gas into interstate commerce. These standards will serve as a guide to us and to interested parties in determining whether proposed initial rates should be certificated without a price condition and whether proposed rate changes should be accepted or suspended.

* * * * *

* * * It is essential, particularly in the interest of the consumer for whose protection the statute was enacted, that means be found for making the most effective use possible of the Commission's limited facilities in discharging the new and additional duties called for by the regulation of producers of natural gas. In our opinion, the price standards established by this statement will aid in effectively applying the provisions of the Act to independent producers on a simple, clear and administratively feasible basis, and in a manner fair to all whose interests are affected by Commission regulation. * * *

* * * The geographical areas which we have used are convenient and well known. They are not necessarily in complete accord with geographical and economic factors which may be relevant to the establishment of pricing areas. As experience and changing factors may indicate, we will change or alter these areas from time to time in order to eliminate such inequities as may appear to exist because of our use of geographical boundaries.

In arriving at the price levels for the various areas set forth in the appendix to this statement, we have considered all of the relevant facts available to us. Such consideration included cost information from all decided and pending cases, existing and historical price structures, volumes of production, trends in production, price trends in the various areas over a number of years, trends in exploration and development, trends in demands, and the available markets for the gas. Of necessity, we have not set forth the adjustments to these prices which must be made to take into account every possible provision of every contract which may affect the actual price, such as Btu adjustments, conditions of delivery, etc. The relevance of such adjustments to the basic contract price and the appropriate established price standard must be considered as each filing is made. As it becomes apparent that certain adjustments have general applicability in a specific area, the area price standard will be revised and set forth in greater detail with regard to the exact sale conditions to which the rate applies. We should, however, make it clear that these present price standards apply to pipeline quality gas as that term is generally understood in each area and, except for the Louisiana prices, are inclusive of all taxes.

Two price standards are set for each area. Initial prices in new contracts are, and in many cases by virtue of economic factors, must be higher than the prices contained in old contracts. For this reason, we have found it advisable to adopt two schedules of

prices, one pertaining to initial prices in new contracts and one pertaining to escalated prices in existing contracts. It is anticipated that these differences in price levels will be reduced and eventually eliminated as subsequent experience brings about revisions in the prices in the various areas.

• • • • • •

These price levels • • • are for the purpose of guidance and initial action by the Commission and their use will not deprive any party of substantive rights or fix the ultimate justness and reasonableness of any rate level. As with the areas, the prices will be adjusted from time to time as such facts as may come before us compel such adjustments. For the present, and in the absence of compelling evidence calling for other action by us, proposed initial sales of natural gas by independent producers which include rates higher than those indicated in the appendix attached to this statement shall be denied a certificate or certificated only upon the condition that lower rates be filed, and all rate changes filed under existing contracts which call for a rate exceeding the indicated price level in the attached appendix to this statement shall be suspended.

Where a proposed price exceeds the indicated rate level and is therefore conditioned or suspended we will, in determining whether the higher price is justified, not necessarily consider only the financial requirements of the individual producer proposing the price but will consider all of the above elements relevant to the industry generally in the area concerned. Similar evidence will also be required from purchasers or their customers who object to any of the price levels or any specific price. Our determination will be in the nature of setting a price for the gas itself from any source questioned and not necessarily a price applicable solely to the party proposing some other price. In this connection we urge that all parties who have any interest in changing an area price join in such a proceeding leading to a determination of a proper revision, if any, in an area price or in the geographical area itself. As there will undoubtedly be numerous parties with an interest in such a proceeding full use should be made of prehearing procedures to reduce the factual issues and consolidate factual presentations to eliminate repetition and duplication of evidence. Because of the impossibility of giving detailed instructions for every proceeding, the precise course of each hearing and the admissibility and relevant weight of each type of evidence must be determined as hearings proceed and we expect to issue additional policy statements from time to time clarifying various aspects of these procedures and principles. The new area rate determinations resulting from such proceedings will represent final determinations of just rates for the areas involved as of the date of the decision and for prior periods.

• • • • • •

As a result of our considerable experience with the effects of favored-nation and price redetermination provisions upon independent producer prices, we concluded that acceptance of settlement offers was desirable in the public interest, appropriate to carry out the provisions of the Natural Gas Act, and beneficial to ultimate consumers, pipeline purchasers and independent producers. In view of the foregoing, an adjustment to the price level for increased rates in Texas District Nos. 2, 3, 4, and 6, when coupled with the elimination of price redetermination provisions and favored-nation provisions in existing filed rate schedules appears to be appropriate.

(b) Accordingly, the Commission provides that: For rate schedules from which favored-nation provisions, price redetermination provisions, and periodic escalation clauses have been eliminated, the area price level for increased rates for natural gas sales by independent producers in Texas District Nos. 2, 3, 4, and 6 is 15 cents per Mcf at 14.65 psia.

(c) For rate schedules from which favored-nation and price redetermination provisions have been eliminated, the area price level for increased rates for natural gas sales by independent producers in Texas District Nos. 2, 3, 4, and 6 is 14.6 cents per Mcf at 14.65 psia, provided, however, that any escalations contained in such rate schedules shall not take effect prior to February 5, 1963, further escalations shall not take effect at less than five-year intervals from the effective date of the initial escalation, and the increase in rate for such escalation shall not exceed one cent per Mcf.

(Sec. 4, 5, 16, 52 Stat. 822, 823, 830; 15 U.S.C. 717c, 717d, 717e)

JOSEPH H. GUTRIDE,
Secretary.

The area price levels for natural gas sales by independent producers are set forth below (all rates at 14.65 psia):

Area	Initial service rates/MCF	Increased rates/MCF
	Cents	*Cents*
Texas:		
District No. 1	15.0	14.0.
District No. 2	18.0	14.0.
District No. 3	18.0	14.0.
District No. 4	18.0	14.0.
District No. 5	14.0	14.0.
District No. 6	15.0	14.0.
District No. 7-b	14.0	11.0.
District No. 7-c	16.0	11.0.
District No. 8	16.0	11.0.
District No. 9	14.0	14.0.
District No. 10	17.0	11.0.
Louisiana:		
Southern	20.96 (21.5 cents at 15.025 psia).	13.7 (14.0 cents at 15.025 psia).
Northern	16.6 (17.0 cents at 15.025 psia).	13.7 (14.0 cents at 15.025 psia).
Mississippi	20.96 (21.5 cents at 15.025 psia).	13.7 (14.0 cents at 15.025 psia).
Oklahoma:		
Panhandle Area	17.0	11.0.
Other	15.0	11.0.
Carter-Knox	16.8	11.0.
Kansas	16.0	11.0.
New Mexico:		
Permian Basin	16.0	11.0.
San Juan Basin	12.7 (13.0 cents at 15.025 psia).	12.7 (13.0 cents at 15.025 psia).
Colorado	14.6 (15.0 cents at 15.025 psia).	12.7 (13.0 cents at 15.025 psia).
Wyoming	15.0	12.7 (13.0 cents at 15.025 psia).
West Virginia	26.8 (28.0 cents at 15.325 psia).	23.9 (25.0 cents at 15.325 psia).

[F.R. Doc. 60-12113; Filed, Dec. 29, 1960; 8:46 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 7—SPECIAL REGULATIONS RELATING TO PARKS AND MONUMENTS

Yellowstone National Park, Wyoming, Montana, Idaho; Boats

On pages 4554 and 4555 of the FEDERAL REGISTER of May 24, 1960, there was published a notice and text of proposed amendments to § 7.13(d), Title 36, Code of Federal Regulations. The purpose of the amendments is to close Shoshone Lake, the Lewis River Channel and certain parts of Yellowstone Lake to machinery-propelled boats, and to prescribe accident reporting and other procedures regulating the operation of boats on the various waters in Yellowstone National Park, Wyoming, Montana, and Idaho.

Interested persons were given an opportunity to submit written comments, suggestions, or objections to the proposal and in addition and to further facilitate participation of the public in this rule making process a representative of the Secretary of the Interior conducted public hearings at Cody, Wyoming, Yellowstone National Park, and Idaho Falls, Idaho. Consideration having been given to findings of the hearings and all other relevant matters presented, it has been determined that the amendments should be and are hereby adopted and are set forth below with the following correction:

In paragraph (d)(12)(iv) the coordinate description for "Flat Mountain Arm" is corrected by changing "44°22'-70" to read "44°22'40"".

These amendments shall become effective at the beginning of the 30th calendar day following the date of this publication in the FEDERAL REGISTER. (39 Stat. 535; 16 U.S.C. 1958 ed., sec. 3).

FRED A. SEATON,
Secretary of the Interior.

DECEMBER 23, 1960.

1. Paragraph (d) of § 7.13 is amended to read as follows:

(d) *Boats*—(1) *Permit.* A permit, issued by the Superintendent, is required for all boats operated upon the waters of the Park. This permit must be carried within the boat at all times when any person is aboard, and shall be exhibited upon request to any person authorized to enforce the regulations in this chapter. A violation of the regulations, or disregard of the conditions outlined, by the permittee or other persons using the boat, will constitute cause for the cancellation of the permit.

(2) *Commercial operation.* No privately-owned boat shall be used to carry passengers for hire or be used in any commercial operation unless the owner thereof shall be authorized to do so by permit or contract issued by the Superintendent or other authorized officer.

(3) *Size and type limitation.* (i) The following water-borne craft are prohibited from being placed or operated upon the waters of the park:

(a) All privately-owned boats more than 32 feet in length, measured in a straight line through the middle of the boat from bow to stern.

(b) Sailboats of any type.

(c) Houseboats or any similar type watercraft.

(d) All watercraft propelled by airplane type propellers.

(4) *Removal of boats.* All privately owned boats, boat trailers, water-borne craft of any kind, buoys, mooring floats, and anchorage equipment will not be permitted in the Park prior to May 1 and must be removed by November 1.

(5) *Boat equipment and requirements.* All boats operated upon Park waters are subject to the following requirements:

(i) All boats operated from sunset to sunrise must display the following lights:

(a) *Class A (less than 16 feet in length).* A clear white light showing all around the horizon and visible for one mile.

(b) *Class I (16 feet to less than 26 feet in length).* Same light requirement as Class A boats.

(c) *Class II (26 feet to 32 feet in length).* Individual running lights, red to port and green to starboard, visible for one mile. A bright white light aft showing all around the horizon and visible for two miles, also a bright white light forward showing from right ahead to two points abaft the beam on both sides and visible for two miles.

(ii) Boats shall carry an approved warning device as follows:

(a) *Class A boats.* No warning device required.

(b) *Class I boats.* A hand, mouth, or power operated whistle or horn, capable of producing a blast for at least two seconds duration and audible for a distance of at least one-half mile.

(c) *Class II boats.* Same requirement as Class I boats except the device shall be capable of producing a blast audible for a distance of at least one mile.

(iii) All boats shall carry an approved life preserver, ring buoy, or buoyant cushion in good and serviceable condition for each person on board. Such devices shall be properly secured and stowed so as to be readily accessible in emergency.

(iv) All boats having built-in or inboard motors shall carry approved fire extinguishers as follows:

(a) *Class A and Class I boats.* One hand operated and portable fire extinguisher. This may be a 1¼-gallon foam, 4-pound carbon-dioxide, one quart carbon-tetrachloride or a 4-pound dry chemical, or larger.

(b) *Class II boats.* One fixed carbon-dioxide system and two hand operated, portable extinguishers of an approved type, such as 2½-gallon foam, 15-pound carbon-dioxide or 12-pound dry chemical.

(v) All boats powered with inboard motors which use gasoline as fuel are subject to the following conditions:

(a) Carburetors shall be fitted with an approved device which has demonstrated its ability to arrest backfire.

(b) In decked over boats, two or more ventilators are required, with cowls or equivalent capable of removing gases from bilges in engine and fuel tank compartments. Bilges must be kept free of oil, gasoline and grease.

(c) Drip pans are required on all updraft carburetors. These pans are to be equipped with a fine mesh wire screen cover to prevent the overflow from catching fire.

(d) The fuel tank filler pipe must be outside the cabin and cockpit, and so constructed that spillage of gasoline will not flow into the bilge. A vent of not less than ⅜-inch diameter is required from the fuel tank to the outside of the hull and shall be independent of the filler pipe.

(vi) Galley and cabin stoves shall be of such type and installation as approved by the Underwriters Laboratories.

(a) Approved types of galley stoves are those which use coal, charcoal, wood, alcohol, fuel oil or kerosene as fuel. Stoves which use gasoline as fuel are prohibited.

(b) Where a galley or cabin stove is installed, it shall be firmly attached, insulated from the woodwork, and so located that it does not endanger flammable material.

(vii) General conditions.

(a) Fuel lines must be intact with no leaks and must have a shut-off valve installed near the fuel tank in a readily accessible location.

(b) Electrical wiring must be in good condition.

(c) All boats must carry a bailing bucket on board in addition to whatever bilge pumps or automatic bailing devices with which they may be equipped.

(d) All boats 26 feet or less in length shall be equipped with oars and oarlocks, or carry a sweep adequate to propel the boat in case of engine failure.

(6) *Special limits for small boats.* (i) The following water-borne craft are prohibited from being operated at a distance of more than one-quarter mile from the shore of any lake:

(a) All boats 16 feet or less in length measured in a straight line through the middle of the boat from bow to stern.

(b) Water-borne craft, such as, canoes, kayaks, and rafts regardless of length.

(7) *Rules of the road.* The following rules of the road shall be observed:

(i) No person shall operate water-borne craft of any type or description upon any body of water in a reckless or negligent manner so as to endanger the life, limb, or property of any person. To "operate" means to navigate or otherwise use any water-borne craft.

(ii) In narrow channels, boats shall be operated to the right of the middle of the channel.

(iii) When approaching or passing other water craft, speed shall be reduced so that the wake does not endanger the other craft.

(iv) Slow speed shall be maintained in docking and fishing areas so as not to endanger persons or other craft.

(v) Right-of-way shall be given larger craft.

(8) *Registration of trip.* The operator of each boat leaving for an extended trip, including trips of overnight duration, shall register both upon departure and return at one of the following Ranger Stations: Lake Ranger Station, Fishing Bridge Ranger Station, West Thumb Ranger Station, South Entrance Station, Old Faithful Ranger Station, and East Entrance Station.

(9) *Sanitation.* No fish offal, bottles, cans, rubbish, or refuse shall be discarded from any boat or water-borne craft into Park waters, or from docks, or from the shores, or otherwise placed in the waters of the Park. Boats, not equipped with or utilizing sewage and waste treatment equipment (consisting of shredding, retention, and chlorination prior to discharge) are hereby prohibited from discharging head and or galley wastes within one-half mile of low water mark or any domestic water supply intake. All boats or other water-borne craft operating in Park waters shall have a receptacle aboard to contain rubbish and refuse which shall be emptied only into facilities provided at docks or other specified places.

(10) *Limitation of boat loads.* No boat or other water-borne craft shall be operated on any water of the Park with more than a safe capacity load of passengers or supplies. The following formula shall be used to determine the maximum safe load for boats and other water-borne craft: Maximum safe load (in pounds) = 7½ x length in feet measured through the middle of the boat x width in feet amidship x depth in feet amidship.

(11) *Restricted landing areas.* Prior to July 1 of each year, the landing of any water-borne craft on the shore of Yellowstone Lake between Trail Creek and Beaverdam Creek is prohibited, except upon written permission of the Superintendent.

(12) *Restricted waters.* (i) All water-borne craft of every type or description are prohibited on the following lakes or lagoons:

(a) Sylvan Lake.

(b) Eleanor Lake.

(c) Twin Lakes.

(d) Beach Springs Lagoon.

(ii) All water-borne craft of every type or description are prohibited on all Park streams (as differentiated from lakes and lagoons), except as follows:

(a) Yellowstone River from the outlet of Yellowstone Lake to a point 300 yards below Fishing Bridge.

(b) On the channel between Lewis Lake and Shoshone Lake, which shall be open only to hand-propelled water craft.

(iii) Machinery-propelled water-borne craft of every type or description, including, but not limited to, boats, canoes and rafts are prohibited on all waters of the Park except Lewis Lake, the Yellowstone River from the outlet of Yellowstone Lake to a point 300 yards below Fishing Bridge, and those portions of Yellowstone Lake not restricted under subdivision (iv) of this subparagraph, which follows.

(iv) The operation of any machinery-propelled water-borne craft of every type or description, including but not limited to boats, canoes and rafts, is prohibited on the South East, South and Flat Mountain Arms of Yellowstone Lake, mor particularly described as follows:

South Arm: South of a line beginning at a point marked by a monument located on the west shore of the South Arm and approximately one and one-quarter (1¼) miles southerly from Plover Point, said point being approximately 44°21'52.3" North Latitude and 110°21'05.6" West Longitude, then running approximately 8,720 feet due east to a point marked by a monument located on the east shore of the South Arm, said point being approximately 44°21'52.3" North Latitude and 110°19'05" West Longitude.

South East Arm: South of a line beginning at a point marked by a monument located on the north bank of the mouth of Alluvium

Creek on the east shore of the South East Arm, said point being approximately 44°22'54.6" North Latitude and 110°14'25.8" West Longitude, then running due west approximately 9,480 feet to a point marked by a monument on the west shore of the South East Arm, said point being approximately 44°22'54.6" North Latitude and 110°16'38.4" West Longitude.

Flat Mountain Arm: West of a line beginning at a point marked by a monument located on the south shore of the Flat Mountain Arm and approximately 10,200 feet easterly from the South West tip of the said Arm, said point being approximately 44°22'13.2" North Latitude and 110°25'07.2" West Longitude, then running approximately 2,800 feet due north to a point marked by a monument located on the north shore of the Flat Mountain Arm, said point being approximately 44°22'40" North Latitude and 110°25'07.2" West Longitude.

(v) The disturbance in any manner or by any means of the birds inhabiting or nesting on either of the islands designated as "Molly Islands" in the South East Arm of Yellowstone Lake is prohibited; nor shall any boat, canoe, or any other water-borne craft approach the shoreline of said islands within one-quarter mile.

(vi) Water skiing, boat racing, towing of aircraft, water pageants, and spectacular or unsafe types of recreational use are prohibited on all park waters.

(vii) These restrictions shall not apply to craft operated for administrative purposes or in emergencies.

(13) *Accidents.* (i) In the case of collision, accident or other casualty involving any water-borne craft, it shall be the duty of the operator, if and so far as he can do so without serious danger to his own water-borne craft, or persons aboard, to render such assistance as may be practicable and necessary to other persons affected by the collision, accident, or casualty. He shall also give his name, address, and identification of his water-borne craft to any person injured and to the owner of any property damaged.

(ii) A report of any collision or accident that results in property damage in excess of $25.00 or injury or death to any person or persons must be made to the nearest ranger station within 24 hours.

[F.R. Doc. 60-12128; Filed, Dec. 29, 1960; 8:48 a.m.]

PART 7—SPECIAL REGULATIONS RELATING TO PARKS AND MONUMENTS

Blue Ridge Parkway, Virginia and North Carolina; Use of Radar and Motor Boats

On page 10850 of the FEDERAL REGISTER of November 15, 1960 there was published a notice and text of a proposed amendment to § 7.34 (a)(2) and (h)(2) of Title 36, F.R. The purpose of this amendment is to provide for the use of radiomicrowaves (radar) in checking speeds of motor vehicles and for the operation of motor boats on waters of the Blue Ridge Parkway.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received, and the proposed amendment is hereby adopted without change. This amendment shall become effective at the beginning of the 30th calendar day following the date of this publication in the FEDERAL REGISTER.

(60 Stat. 238; 5 U.S.C. 1003; 39 Stat. 535; 16 U.S.C. 3)

SAM P. WEEMS,
Superintendent,
Blue Ridge Parkway.

1. Section 7.34 is amended by designating the present text as paragraph (a)(1) and by adding a new subparagraph (2) to read as follows:

§ 7.34 Blue Ridge Parkway.

(a) *Speed.* * * *

(2) The speed of any motor vehicle may be checked on any park road in the Blue Ridge Parkway, in the States of Virginia and North Carolina, by the use of radiomicrowaves or other electrical device when such park road, on which the device is used, is clearly marked "Speed Checked by Radar" or "Speed Radar Enforced" at or near intersections with primary State or Federal highways between which the device is used. The results of such checks shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceedings where the speed of the motor vehicle is at issue.

2. Section 7.34(h)(2) is amended by the addition of a sentence to read as follows:

(h) *Boating.* * * *

(2) * * * The provisions of this paragraph shall not be applicable to boats engaged on official business of the Federal Government or used in emergencies in accordance with the directions of the Superintendent.

[F.R. Doc. 60-12171; Filed, Dec. 29, 1960; 8:53 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 8—NATIONAL SERVICE LIFE INSURANCE

Reinstatement of National Service Life Insurance

In § 8.22, paragraph (d) is amended to read as follows:

§ 8.22 Reinstatement of National Service life insurance.

* * * * *

(d) *Inquiry prior to expiration of the grace period.* When the insured under a National Service life insurance policy makes inquiry prior to the expiration of the grace period disclosing a clear intent to continue insurance protection, such as a request for information concerning premium rates or conversion privileges, etc., an additional reasonable period not exceeding 60 days may be granted for payment of premiums due; but the premiums in any such case must be paid during the lifetime of the insured.

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective December 30, 1960.

[SEAL] ROBERT J. LAMPHERE,
Deputy Administrator.

[F.R. Doc. 60-12139; Filed, Dec. 29, 1960; 8:50 a.m.]

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Education of Korean Conflict Veterans Under 38 U.S.C. Ch. 33

CRIMINAL PENALTIES AND FORFEITURES; AUDIT AND REVIEW OF PAYMENTS

1. Section 21.2308 is revised to read as follows:

§ 21.2308 Criminal penalties and forfeitures.

Rights to educational and training benefits may be forfeited only in accordance with the provisions of sections 3503, 3504, and 3505 of Title 38, United States Code, as amended by Public Law 86-222.

2. Section 21.2310 is added to read as follows:

§ 21.2310 Audit and review of payments.

Payments under Chapter 33, Title 38, United States Code, shall be subject to audit and review by the General Accounting Office as provided by the Budget and Accounting Act of 1921 and the Budget and Accounting Procedures Act of 1950 (38 U.S.C. 1661(a)).

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective December 30, 1960.

[SEAL] ROBERT J. LAMPHERE,
Deputy Administrator.

[F.R. Doc. 60-12139; Filed, Dec. 29, 1960; 8:50 a.m.]

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—War Orphans' Educational Assistance Under 38 U.S.C. Ch. 35

EDUCATION AND TRAINING FOR THE CHILDREN OF VETERANS WHO DIED OF A SERVICE-CONNECTED DISABILITY INCURRED DURING THE INDUCTION PERIOD

Subpart C, Part 21, Chapter I of Title 38 of the Code of Federal Regulations, is amended by adding § 21.3401 as follows:

§ 21.3401 Education and training for the children of veterans who died of a service-connected disability incurred during the induction period.

(a) *Provisions of the law.* (1) The first section of Public Law 86-785, amends paragraph (1) of section 1701(a) of title 38, United States Code—

(i) By striking out in the first sentence of such paragraph "or the Korean conflict" and inserting in lieu thereof "the Korean conflict, or the induction period";

(ii) By inserting in the second sentence of such paragraph immediately after "disability" the following: "arising out of service during the Spanish-American War, World War I, World War II, or the Korean conflict"; and

(iii) By adding at the end of such paragraph the following new sentence: "The standards and criteria for determining whether or not a disability arising out of service during the induction period is service-connected shall be those applicable under chapter 11 of this title, except that the disability must (A) be shown to have directly resulted from, and the causative factor therefor must be shown to have arisen out of, the performance of active military, naval, or air service (but not including service described under section 106 of this title), or (B) have resulted (i) directly from armed conflict or (ii) from an injury or disease received while engaged in extrahazardous service (including such service under conditions simulating war)."

(2) Section 2 of the law amends subsection (a) of section 1701, title 38, United States Code by adding a new paragraph as follows:

(9) The term "induction period" means (A) the period beginning September 16, 1940, and ending December 6, 1941, and the period beginning January 1, 1947, and ending June 26, 1950, and (B) the period beginning on February 1, 1955, and ending on the day before the first day thereafter on which individuals (other than individuals liable for induction by reason of a prior deferment) are no longer liable for induction for training and service into the Armed Forces under the Universal Military Training and Service Act.

(3) Section 3 of the law amends subsection (d) of section 1701, title 38, United States Code by striking out "or the Korean conflict" and inserting in lieu thereof the following: "the Korean conflict, or the induction period".

(4) Section 4 of the law amends subsection (c) of section 1723, title 38, United States Code—

(i) By deleting "television" and inserting in lieu thereof "open circuit television (except as herein provided)"; and

(ii) By adding at the end thereof the following sentence: "The Administrator may approve the enrollment of an eligible person in a course, to be pursued in residence, leading to a standard college degree which includes, as an integral part thereof, subjects offered through the medium of open circuit televised instruction, if the major portion of the course requires conventional classroom or laboratory attendance."

(5) Section 5 of the law reads as follows:

SEC. 5. In the case of any individual who is an "eligible person" within the meaning of section 1701(a)(1) of title 38, United States Code, solely by virtue of the amendments made by this Act, and who is above the age of seventeen years and below the age of twenty-three years on the date of enactment of this Act, the period referred to in section 1712 of title 38, United States Code, shall not end with respect to such individual until the expiration of the five-year period which begins on the date of enactment of this Act.

(b) *Effects of the act.* (1) The act extends benefits of the War Orphans' Educational Program to a group of orphans who were not previously eligible, that is, the children of veterans who died of a service-connected disability incurred during the "induction periods" under certain specified conditions. The "induction periods" are defined in paragraph (a)(2) of this section. The law establishes new criteria and standards for determining service connection for disabilities arising out of service in the "induction period" which are more restrictive than those arising out of war service. It also specifically excludes from qualifying service in the "induction period", service defined under section 106, title 38, United States Code. The act does not affect the eligibility of an orphan whose parent died from a service-connected disease or injury which was incurred during the Spanish-American War, World War I, World War II, or the Korean conflict. For such wartime service the standards and criteria for determining whether or not a disability is service-connected are those applicable under chapter 11, title 38, United States Code. However, in order for a child of a person who served during the "induction period" to be eligible for benefits under this act it must be shown that such person died of a service-connected disability and that one of the following criteria is met:

(i) Such service-connected disability must be shown to have resulted directly from, and the causative factor therefor must be shown to have arisen out of, the performance of active military, naval or air service (but not including service described under 38 U.S.C. 106). Under this criterion, it is not sufficient that the disability causing death has been rated as service connected in line of duty for compensation purposes. Thus conditions service connected under the presumptive provisions of the law are excluded. The disease or injury causing death must be found to be directly traceable to the performance of duty and not merely coincident in time with active duty. An indirect causal relationship between a disease and the performance of active duty, for example, would not suffice. Moreover, for a finding that the disease arose directly out of the performance of duty, it must be shown that it is reasonable to expect that such disease would not have been contracted had not the individual been performing active service in the Armed Forces. The disability obviously could not meet the criterion if acquired while on leave or off-duty status. Circumstances incident to the performance of duty of such character as to be a cause of the disability, and without which the disability would not reasonably be expected to have arisen, must be shown. Where the service-connected disability, directly resulting from the performance of duty as indicated in this subdivision, is the contributory cause of death, it may be the basis of a favorable determination.

(ii) The disability must have resulted directly from armed conflict, or directly from an injury or disease received while engaged in extrahazardous service, including such service under conditions simulating war. In determining whether the disability was incurred in extrahazardous service or under conditions simulating war the standards established under § 3.67 of this chapter are for application.

(2) The conditions under which open circuit television may be approved are specified by the law. (Instruction 1, Title 38, United States Code, Chapter 35, Public Law 86-785.)

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective December 30, 1960.

[SEAL] ROBERT J. LAMPHERE,
Deputy Administrator.

[F.R. Doc. 60-12137; Filed, Dec. 29, 1960; 8:50 a.m.]

Title 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 14—NONMAILABLE MATTER

PART 15—MATTER MAILABLE UNDER SPECIAL RULES

PART 45—CITY DELIVERY

PART 46—RURAL SERVICE

Miscellaneous Amendments

The regulations of the Post Office Department are amended as follows:

I. Part 14—Nonmailable Matter—is amended by (1) rearranging the regulation under new section headings and amending the regulations therein for the purpose of clarification; (2) by adding regulations regarding the treatment and disposal of dangerous radioactive materials; and (3) by adding a new section 14.9 to show that postmasters must submit certain questions about mailability to the General Counsel. As so amended, Part 14 reads as follows:

PART 14—NONMAILABLE MATTER

Sec.
14.1 Introduction.
14.2 Harmful matter.
14.3 Intoxicating liquors.
14.4 Obscene and indecent matter.
14.5 Lotteries, frauds, and libelous matter.
14.6 Disloyalty and threats to the President.
14.7 Copyright violations.
14.8 Certain foreign communications.
14.9 Opinions on mailability.

AUTHORITY: §§ 14.1 to 14.9 issued under R.S. 161, as amended, sec. 1, 62 Stat. 740, as amended, 741, 761-763, as amended, 768, as amended, 769, 781, as amended, 782; 64 Stat. 451; secs. 501, 4001-4006, 4007, as amended by 74 Stat. 553 (Pub. Law 86-673), 4057, 4353, 74 Stat. 580, 654-657, 666 (Pub. Law 86-682); 5 U.S.C. 22, 18 U.S.C. 871, 876, 877, 1262, 1302, 1305, 1341, 1342, 1461, 1463, 1714-1718, 39 U.S.C. 501, 4001-4007, 4057, 4353.

§ 14.1 Introduction.

(a) *Description.* Nonmailable matter includes all matter which is by law, regulation, or treaty stipulation prohibited from being sent in the mail or which cannot be forwarded to its destination because of illegible, incorrect, or insufficient address.

(b) *Applicability.* The harmful or objectionable things identified or described in this part are some of the matter which may not be sent through the mail, as a matter of absolute prohibition. See Part 15 of this chapter for matter mailable only under special rules or conditions. Notwithstanding any statement

contained in the regulations of this part, which covers only some of the items prohibited in the mail, the burden rests with the mailer to assure that he has complied with the law. In addition to other nonmailable items mentioned in this part, certain other articles are prohibited in the mail to military post offices overseas. See Part 17 of this chapter.

(c) *Penalties for violation.* Severe penalties, by fine or imprisonment, or both, are provided for persons who knowingly mail or cause to be mailed, any matter which has been declared nonmailable under law.

(d) *Nonconformity with postal regulations.* Regardless of its nature, matter may not be mailed in any form if done in violation of postal regulations for such reasons as failure to pay postage, improper size or weight, improper permits, improper addresses, etc.

(e) *Responsibility of mailer.* When mailers are in doubt as to whether any matter is properly mailable, they should ask the postmaster. Even though the Post Office Department has not expressly declared any matter to be nonmailable, the mailer of such matter may be held fully liable for violation of law if he does actually send nonmailable matter through the mail.

§ 14.2 Harmful matter.

(a) *General provisions of law.* Any articles, compositions, or materials, which may kill or injure another, or injure the mail or other property, are nonmailable. This includes but is not limited to:

(1) All kinds of poison or matter containing poison.

(2) All poisonous animals, except scorpions (see § 15.3(e) of this chapter), all poisonous insects, all poisonous reptiles, and all kinds of snakes.

(3) All disease germs or scabs.

(4) All explosives, inflammable material, infernal machines, and mechanical, chemical, or other devices or compositions which may ignite or explode.

(b) *General examples of harmful matter.* Harmful matter includes, among others, that which is likely to destroy, deface, or otherwise damage the contents of the mailbags or harm the person of anyone engaged in the Postal Service, such as caustic poisons (acids and alkalies), oxidizing materials, or highly flammable solids; or which are likely under conditions incident to transportation to cause fires through friction, through absorption of moisture, through spontaneous chemical changes or as a result of retained heat from manufacturing or processing; explosives or containers previously used for shipping high explosives having a liquid ingredient (such as dynamite), ammunition; fireworks; highly flammable liquids or substances; radioactive materials; matches; or articles exhaling a bad odor.

(c) *Acceptability if properly packed.* When authorized by the Postmaster General, various of the articles specified in this part as being nonmailable may be sent through the mail if they conform to special regulations as to preparation and packaging and if they are not outwardly dangerous, or of their own force dangerous or injurious to life, health, or property. See Part 15 of this chapter.

(d) *Radioactive matter.* (1) Radioactive materials other than those described in § 15.2(d) of this chapter are nonmailable. Any package of radioactive matter bearing an Interstate Commerce Commission red or blue label as CLASS D POISON or which is marked to indicate that it contains radioactive matter in excess of the quantities listed in § 15.2(d) of this chapter is nonmailable. These labels are illustrated below:

(Printed in Red)





(Printed in Blue)





(2) If a nonmailable package of radioactive material is discovered intact in the mail, the postmaster shall take the following action immediately:

(i) Place the parcel at least 15 feet from other mail or personnel. Under no circumstances shall the package be dispatched.

(ii) Notify the postal inspector in charge promptly, requesting instructions as to disposition of the package.

(3) If a nonmailable package of radioactive material is found to be broken or leaking, the following action shall be taken:

(i) The area around the damaged package shall be isolated to prevent contact of persons with any loose radioactive material. Any conveyor belt, chute, or other equipment or conveyance, including mail bags, in which the radioactive material has leaked should also be isolated. The isolated area shall be roped off or guarded wherever practicable. A temporary sign indicating the presence of radioactive materials with a warning to keep out should be placed at the edge of the roped off area. The postmaster in cooperation with a postal inspector, if one is available, shall immediately request the assistance of qualified persons to check radiation hazards and to supervise salvage and decontamination. This assistance may be obtained from the sender, if he is nearby, or from one of the following:

(a) Local civil defense authorities.

(b) Local health, fire or police department.

(c) Nearest office of U.S. Atomic Energy Commission. See § 14.2(d)(5).

(d) Nearby scientific laboratory.

(e) Nearby military installation.

(ii) When assistance from qualified personnel is delayed, those who were in the immediate area of the contaminated package shall wash thoroughly and make a complete change of clothes and remain isolated so as to prevent spread of the contamination until they have been examined by qualified persons. Exposed clothing and shoes should not be removed from the premises. A report of the incident shall be made to the postal inspector in charge.

(iii) When the incident has been appraised by competent radiological specialists, the postmaster should ascertain the need for medical attention to exposed employees. Injury reports are to be treated like other occupational injuries.

(4) Operations Offices of the United States Atomic Energy Commission are as follows:

Operations office	Mail address	Telephone No.
Albuquerque Operations Office.	P.O. Box 5400, Albuquerque, N. Mex.	Alpine 6-4411, Ext. 38267.
Chicago Operations Office.	9800 South Cass Avenue, Argonne, Ill.	Lemont, Ill., Clearwater 7-7711, Ext. 2111 or 541.
Grand Junction Operations Office.	Grand Junction, Colo.	Chapel 3-2110.
Hanford Operations Office.	P.O. Box 550, Richland, Wash.	Whitehall 2-1111, Ext. 6-5441.
Idaho Operations Office.	P.O. Box 2108, Idaho Falls, Idaho.	Jackson 2-6640.
Lockland Aircraft Operations Office.	P.O. Box 23, Lockland Branch, Cincinnati 15, Ohio.	Valley 1-7400.
New York Operations Office.	376 Hudson Street, New York 14, N.Y.	Yukon 9-1000.
Oak Ridge Operations Office.	P.O. Box E, Oak Ridge, Tenn.	Oak Ridge, Tenn., 5-7486 or 5-8611, Ext. 7607.
Pittsburgh Naval Reactors Operations Office.	P.O. Box 1105, Pittsburgh 30, Pa.	Homestead, Pa., 2-3000.
San Francisco Operations Office.	2111 Bancroft Way, Berkeley 4, Calif.	Thornwall 1-5920.
Savannah River Operations Office.	P.O. Box A, Aiken, S.C.	Augusta, Ga., Park 4-6311, Est. 3333. Aiken, S.C., Midway 9-6211.
Schenectady Naval Reactors Operations Office.	P.O. Box 1069, Schenectady, N.Y.	Express 3-6611.

§ 14.3 Intoxicating liquors.

(a) Spirituous, vinous, malted, fermented, or other intoxicating liquors of any kind containing more than 3.2 percent of alcohol by weight.

(b) Intoxicating liquors containing not more than 3.2 percent of alcohol by weight when addressed to a Territory or district of the United States, the laws of which prohibit the manufacture or sale therein of alcoholic beverages of that content.

(c) Beer, lager beer, ale, porter, wine or other liquors, regardless of alcoholic content, when mailed to Indian wards anywhere or into any Indian reservation.

§ 14.4 Obscene and indecent matter.

(a) *Lewd or filthy matter.* Obscene, lewd, lascivious, or filthy publications or writings, or mail containing information concerning where, how, or from whom such may be obtained, and matter which is otherwise mailable but which has on its wrapper or envelope any indecent, lewd, lascivious, or obscene writing or printing. Any mail containing any filthy, vile, or indecent thing.

(b) *Contraceptive and abortive materials.* (1) Anything intended to prevent conception or produce abortion.

(2) Anything advertised or described so as to lead another to use it for preventing conception or producing abortion.

(3) Any written or printed matter giving information as to how to obtain any article or to use any means for preventing conception or producing an abortion.

(4) Any other written or printed matter intended to induce, or incite to, the prevention of conception or the production of abortion.

(c) *Inciting to violence.* Any matter of a character tending to incite arson, murder, or assassination.

§ 14.5 Lotteries, frauds, and libelous matter.

(a) *Lotteries.* (1) Any letter, package, postal card, or circular concerning any lottery, gift enterprise, or similar scheme offering prizes dependent in whole or in part on lot or chance.

(2) Any lottery ticket or part thereof or substitute.

(3) Any form of payment for a lottery ticket or share.

(4) Any newspaper, circular, pamphlet, or publication of any kind containing any advertisement of a lottery or similar enterprise, or any list of prizes awarded in such an enterprise.

(b) *Fishing contest exception.* Paragraph (a) does not apply to any fishing contest not conducted for profit wherein prizes are awarded for the species, size, weight, or quality of fish caught by contestants in any bona fide fishing or recreational event.

(c) *Fraudulent enterprises.* Anything mailed in pursuance of any scheme for obtaining money or property of any kind through the mail, by means of false or fraudulent pretenses, representations, or promises.

(d) *Fictitious matter.* Any matter addressed to a person using any fictitious, false, or assumed name, title, or address in conducting, promoting, or carrying on or assisting therein, through the mail, any business scheme or device in violation of law. The recipient must appear at the post office of receipt and be identified. If the addressee fails to appear and be identified, after notification, or if the fictitious character of such mail is established to the satisfaction of the Postmaster General, it is forwarded to the dead letter office as fictitious matter or otherwise disposed of as the Postmaster General directs.

(e) *Libelous matter.* Any matter otherwise mailable which has on its outside wrapper or envelope, or any postal card or post card carrying on it:

(1) Any libelous, scurrilous, defamatory, or threatening language, whether written or printed, or which by its manner or style of display is obviously intended to reflect injuriously on the character or conduct of another; or

(2) Any language asking for payment of a bill, which by its manner or style of display is defamatory and reflects injuriously on the character of addressee.

§ 14.6 Disloyalty and threats to the President.

(a) Any letter, publication, or thing containing any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States.

(b) Any letter or other matter containing any threat to take the life of or to inflict bodily harm upon, the President of the United States.

§ 14.7 Copyright violations.

Publications which violate copyright granted by the United States.

§ 14.8 Certain foreign communications.

(a) Matter addressed to foreign countries, posted in violation of law or treaty stipulations.

(b) Matter of any kind giving or offering to give information concerning procurement of a divorce in a foreign country and designed to solicit business in connection with such procurement.

§ 14.9 Opinions on mailability.

Postmasters and other employees at post offices shall not give opinions to the public concerning the mailability of matter under §§ 14.4, 14.5, 14.6, 14.7, 14.8 and §§ 15.5 and 15.6 of this chapter. When there is doubt as to the mailability of any such matter, the postmaster shall withhold it from dispatch or delivery and a sample or a complete statement of the facts shall be submitted to the General Counsel for instructions.

NOTE: The corresponding Postal Manual Part is 124.

§ 15.2 [Amendment]

II. In § 15.2 *Adequacy of preparation and packaging*, amend paragraph (d) by adding the following to the last sentence therein: "See § 14.2(d) of this chapter regarding disposition of dangerous radioactive materials that are nonmailable."

NOTE: The corresponding Postal Manual section is 125.24.

(R.S. 161, as amended, secs. 501, 4058, 74 Stat. 580, 657 (Pub. Law 86-682); 5 U.S.C. 22, 39 U.S.C. 501, 4058)

§ 45.6 [Amendment]

III. In § 45.6 *Apartment house receptacles*, amend paragraph (e) by deleting "Connecticut Telephone and Electric Company, Meriden, Conn. (Keil)" where it appears in the list therein of manufacturers of approved apartment house mail receptacles.

NOTE: The corresponding Postal Manual section is 155.65.

(R.S. 161, as amended, secs. 501, 6003, 74 Stat. 580, 686 (Pub. Law 86-682); 5 U.S.C. 22, 39 U.S.C. 501, 6003)

§ 46.5 [Amendment]

IV. In § 46.5 *Rural boxes*, subparagraph (4) of paragraph (a), as amended by Federal Register document 60-5283, 25 F.R. 5184, and by Federal Register document 60-9775, 25 F.R. 10018-10019, is further amended by deleting "Lee Silver Service, Inc., 13561 Helen Avenue, Detroit 12, Michigan"; and by inserting "Southern Fabricators Corp., 1010 West Broadway, Steeleville, Ill.; and Waterloo

Valve Spring Compressor Co., Post Office Box 209, Waterloo, Iowa" in the proper alphabetical order of manufacturers of approved rural mail boxes.

NOTE: The corresponding Postal Manual section is 156.514.

(R.S. 161, as amended, secs. 501, 6005, 74 Stat. 580, 686 (Pub. Law 86-682); 5 U.S.C. 22, 39 U.S.C. 501, 6005)

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F.R. Doc. 60-12057; Filed, Dec. 29, 1960; 8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 60-1528]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Miscellaneous Amendments

At a session of the Federal Communications Commission held at its offices in Washington, D.C. on the 21st day of December 1960;

The Commission having under consideration the conditions and requirements under which it has heretofore concurred in the use of non-Government frequencies above 25 Mc by Government agencies for cooperative Government/non-Government activities, and the desirability of publishing such procedures and conditions in its rules; and

It appearing, that the section added herein does not alter existing conditions or requirements, but states long-established Commission policies for public information, and hence that compliance with the public notice, procedural, and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary; and

It further appearing, that the new section is added pursuant to authority contained in sections 4(i), 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, and pursuant to the requirements of section 3 of the Administrative Procedure Act;

It is ordered, That effective February 1, 1961, Part 2 of the rules and regulations is amended as set forth below.

Appendix II[1], is the complete list of conditions under which Government stations may be authorized to use non-Government frequencies and visa versa, which will be available for public inspection at each of the Commission's Field Engineering and Monitoring Bureau Field Offices.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

Released: December 27, 1960.

[SEAL] BEN F. WAPLE,
SECRETARY,
FEDERAL COMMUNICATIONS COMMISSION,
Acting Secretary.

[1] Filed as part of original document.

§ 2.102 [Redesignation]

1. Section 2.102 is redesignated as § 2.101.

§ 2.103 [Redesignation]

2. Section 2.103 is redesignated as § 2.102.

3. Section 2.103 is added as follows:

§ 2.103 Government use of non-Government frequencies.

(a) Government stations may be authorized to use non-Government frequencies in the bands above 25 Mc if the Commission finds that such use is necessary for communications between Government and non-Government stations, or that such use is necessary for coordination of Government and non-Government activities: *Provided, however,* That:

(1) Government operation on non-Government frequencies shall conform with the conditions agreed upon by the Commission and the Office of Civil and Defense Mobilization (the more important of which are contained in subparagraphs 2, 3, and 4 of this paragraph), a complete list of which is available for public examination at each of the Commission's Field Engineering and Monitoring Bureau Field Offices;

(2) Such operations shall be in accordance with Commission rules governing the service to which the frequencies involved are allocated;

(3) Such operations shall not cause harmful interference to non-Government stations and, should harmful interference result, that the interfering Government operation shall immediately terminate; and

(4) Government operation has been certified as necessary by the non-Government licensees involved and this certification has been furnished, in writing, to the Government agency with which communication is required.

[F.R. Doc. 60-12165; Filed, Dec. 29, 1960; 8:52 a.m.]

Title 50—WILDLIFE

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Crescent Lake National Wildlife Refuge, Nebraska

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEBRASKA

CRESCENT LAKE NATIONAL WILDLIFE REFUGE

Sport fishing on the Crescent Lake National Wildlife Refuge, Nebraska, is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period from January 1, 1961 through September 30, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Bait: No person shall use minnows or any other fish or any part thereof for bait while fishing in any waters of the refuge. It shall be unlawful for any person to possess within the boundaries of the refuge such bait or any seine or net that may be used in capturing minnows.

(f) Boats: The use of boats or floating devices is permitted for fishing purposes. The use of outboard motors or motorboats is prohibited.

(g) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 1,330 acres and three percent of the total refuge and which is described as follows:

All waters of Crane and Hackberry Lakes, and the south two-thirds (⅔) of Island Lake, lying within the Crescent Lake National Wildlife Refuge.

(h) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961 through September 30, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 23, 1960.

[F.R. Doc. 60-12119; Filed, Dec. 29, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

DeSoto National Wildlife Refuge, Iowa and Nebraska

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

IOWA AND NEBRASKA

DESOTO NATIONAL WILDLIFE REFUGE

Sport fishing on the DeSoto National Wildlife Refuge, Iowa and Nebraska is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by States' regulations for Missouri River boundary waters.

(b) Open season: Daylight hours during the period from January 1, 1961 through February 28, 1961.

(c) Daily creel limits: As prescribed by States' regulations for Missouri River boundary waters.

(d) Methods of fishing: As prescribed by States' regulations for Missouri River boundary waters.

(e) Descripiton of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 850 acres and 14 percent of the total refuge and which is described as follows:

All waters of the DeSoto National Wildlife Refuge.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) The operation of motor vehicles on the ice is prohibited.

(3) Shelters or other personal equipment may not be left on the refuge overnight.

(4) Open fires are not permitted anywhere on the refuge.

(5) A Federal permit is not required to enter the public fishing area.

(6) The provisions of this special regulation are effective January 1, 1961 through February 28, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 20, 1960.

[F.R. Doc. 60-12117; Filed, Dec. 29, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

North Platte National Wildlife Refuge, Nebraska

The following special regulation is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEBRASKA

NORTH PLATTE NATIONAL WILDLIFE REFUGE

Sport fishing on the North Platte National Wildlife Refuge, Nebraska is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: January 1, 1961 through September 30, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Boats: The use of boats, motorboats and other floated craft is permitted.

(f) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately 3,300 acres and 65 percent of the total refuge and which is described as follows:

All waters of the North Platte National Wildlife Refuge, which include Lake Alice, Winter Creek Lake and Lake Minatare.

(g) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961 through September 30, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 23, 1960.

[F.R. Doc. 60-12118; Filed, Dec. 29, 1960; 8:47 a.m.]

PART 33—SPORT FISHING

Union Slough National Wildlife Refuge, Iowa

The following special regulaion is issued.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

IOWA

UNION SLOUGH NATIONAL WILDLIFE REFUGE

Sport fishing on the Union Slough National Wildlife Refuge, Iowa, is permissible only under the following conditions:

(a) Species permitted to be taken: As prescribed by State regulations.

(b) Open season: Daylight hours during the period January 1, 1961 through February 28, 1961.

(c) Daily creel limits: As prescribed by State regulations.

(d) Methods of fishing: As prescribed by State regulations.

(e) Description of areas open to fishing: Fishing is permitted in accordance with the above on the posted area which comprises approximately three acres and is described as follows:

Two gravel pits which are located within the recreational area on the west side of the Union Slough National Wildlife Refuge in the SW¼NE¼ of Section 26, T. 98 N., R. 28 W.

(f) Other provisions:

(1) The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33.

(2) A Federal permit is not required to enter the public fishing area.

(3) The provisions of this special regulation are effective January 1, 1961 through February 28, 1961.

R. W. BURWELL,
Regional Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 21, 1960.

[F.R. Doc. 60-12116; Filed, Dec. 29, 1960; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Carryovers of Method of Computing Depreciation Allowance, Installment Method, and Recovery of Bad Debts, Prior Taxes, or Delinquency Amounts

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] CHARLES I. FOX,
Acting Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381(c) (6), (8), and (12) of the Internal Revenue Code of 1954, relating respectively to the carryovers of method of computing depreciation allowance, installment method, and recovery of bad debts, prior taxes, or delinquency amounts:

Sec.
1.381(c)(6) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; method of computing depreciation allowance.
1.381(c)(6)-1 Depreciation method.
1.381(c)(7) [Reserved]
1.381(c)(8) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; installment method.
1.381(c)(8)-1 Installment method.
1.381(c)(12) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; recovery of bad debts, prior taxes, or delinquency amounts.
1.381(c)(12)-1 Recovery of bad debts, prior taxes, or delinquency amounts.

§ 1.381(c)(6) Statutory provisions: carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; method of computing depreciation allowance.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • •

(6) *Method of computing depreciation allowance.* The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the depreciation allowance under paragraphs (2), (3), and (4) of section 167 (b) on property acquired in a distribution or transfer with respect to that part or all of the basis in the hands of the acquiring corporation as does not exceed the basis in the hands of the distributor or transferor corporation.

§ 1.381(c)(6)-1 Depreciation method.

(a) *Carryover requirement.* (1) Section 381(c)(6) provides that if, in a transaction to which section 381(a) applies, an acquiring corporation acquires depreciable property from a distributor or transferor corporation which computes its allowance for the depreciation of the property under section 167(b)(2), (3), or (4), then the acquiring corporation shall compute its depreciation allowance by the same method used by the distributor or transferor corporation with respect to such property. Thus, if the distributor or transferor corporation used the sum of the years-digits method under section 167(b)(3) with respect to an asset distributed or transferred to an acquiring corporation, then the acquiring corporation shall be required to use the sum of the years-digits method with respect to such asset acquired. The computation of the depreciation allowance with respect to the property acquired shall be made under the provisions of section 167 and the regulations thereunder.

(2) The rules provided in section 381(c)(6) and subparagraph (1) of this paragraph shall apply only with respect to that part or all of the basis of the property in the hands of the acquiring corporation immediately after the date of distribution or transfer as does not exceed the basis of the property in the hands of the distributor or transferor corporation on the date of distribution or transfer. For this purpose, the basis of the property in the hands of the distributor or transferor corporation shall be the adjusted basis provided in section 1011 for the purpose of determining gain on the sale or other disposition of such property. For provisions defining the date of distribution or transfer see § 1.381(b)-1(b).

(b) *Portion in excess of distributor or transferor corporation's basis.* With respect to that part of the basis of the depreciable property which in the hands of the acquiring corporation exceeds the adjusted basis to the distributor or transferor corporation, the acquiring corporation may use any reasonable method of computing depreciation, other than the methods provided in section 167(b)(2), (3), or (4). See paragraph (b) of § 1.167(b)-0 for methods which are acceptable under section 167(a). See also sections 334(b)(1) and 362(b) for the determination of basis of property in the hands of the acquiring corporation in connection with a transaction to which section 381(a) applies.

(c) *Records required.* Records shall be maintained in sufficient detail to identify any depreciable property to which this section applies, and to establish the basis thereof.

(d) *Agreement under section 167(d).* To the extent not inconsistent with paragraph (b) of this section, an acquiring corporation shall be treated as the distributor or transferor corporation in the case of an agreement between the distributor or transferor corporation and the district director under section 167(d) and § 1.167(d)-1 with respect to property to which section 381(c)(6) and this section apply. Thus, in the case where the basis of an asset in the hands of an acquiring corporation exceeds the basis of such asset in the hands of the distributor or transferor corporation, such an agreement will not have the effect of permitting the acquiring corporation to compute its depreciation allowance with respect to such excess basis under the methods provided in section 167(b)(2), (3), or (4). However, the provisions of the agreement will continue to apply with respect to the useful life of the asset.

(e) *Change of method of depreciation.* Although the acquiring corporation is required to use the method of computing depreciation used by the distributor or transferor with respect to depreciable property to which this section applies, such acquiring corporation may use another method with respect to such property if consent of the Commissioner is obtained in accordance with paragraph (e) of § 1.446-1. Further, subject to the provisions of paragraph (b) of § 1.167(e)-1 the acquiring corporation may change from the declining balance method described in section 167(b)(2) to the straight line method without consent of the Commissioner.

(f) *Successive transactions to which section 381(a) applies.* The provisions of this section shall apply in the case of successive transactions to which section 381(a) applies. Thus, for example, if X Corporation, a transferor corporation, used the sum of the years-digits method under section 167(b)(3) with respect to an asset transferred to Y Corporation, an acquiring corporation, in a transaction to which section 381(a) applies, and subsequently Y Corporation, using the same method, transfers such asset to Z Corporation in a transaction to which section 381(a) also applies, then Z Corporation shall be required to use the sum of the years-digits method with respect to such asset.

(g) *Illustration.* The application of this section may be illustrated by the following example:

Example. M and N Corporations compute their taxable incomes on the basis of the calendar year. On December 31, 1959, M Corporation transfers all of its assets to N Corporation in a transaction to which section 381(a) applies. Included among these assets is an item of depreciable property which on that date has an adjusted basis (for determining gain) of $800,000 after M Corporation takes into account for 1959 its allowance for depreciation under section 167(b)(2). The basis attributable to the asset under section 362(b) is determined to be $900,000 in the hands of N Corporation. Under the provisions of section 381(c)(6) and paragraph (a) of this section, N Corporation is required to compute its allowance for the depreciation of the asset under section 167(b)(2) for 1960 and subsequent years but only in respect of $800,000 of its basis. N Corporation may use any reasonable method other than the methods provided in section 167(b)(2), (3), or (4) in computing its depreciation allowance of the remaining $100,000.

§ 1.381(c)(7) [Reserved]

§ 1.381(c)(8) Statutory provisions: carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; installment method.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • •

(8) *Installment method.* If the acquiring corporation acquires installment obligations (the income from which the distributor or transferor corporation has elected, under section 453, to report on the installment basis) the acquiring corporation shall, for purposes of section 453, be treated as if it were the distributor or transferor corporation.

§ 1.381(c)(8)-1 Installment method.

(a) *Carryover requirement.* (1) Section 381(c)(8) provides that if, in a transaction to which section 381(a) applies, an acquiring corporation acquires installment obligations, the income from which the distributor or transferor corporation has elected under section 453 and the regulations thereunder to report on the installment method, then the acquiring corporation shall be treated as the distributor or transferor corporation would have been treated under section 453 had it not transferred the installment obligations. Thus, if the distributor or transferor corporation had properly elected to return income from the sale or other disposition of property giving rise to the obligations on the installment method, then the acquiring corporation shall be required to return the income from all such installment obligations in the same manner and to the same extent as the distributor or transferor corporation, unless consent of the Commissioner to use another method is obtained in accordance with paragraph (e) of § 1.446-1.

(2) Section 381(c)(8) and this section have no application to sales or other dispositions of property made by the acquiring corporation on or after the date of distribution or transfer. For provisions defining the date of distribution or transfer, see § 1.381(b)-1(b). See section 381(c)(4) and the regulations thereunder for rules relating to the proper method or combination of methods of accounting to be used by the acquiring corporation.

(b) *Basis of obligations.* The basis in the hands of an acquiring corporation of installment obligations described in section 381(c)(8) and paragraph (a) of this section shall be the same as in the hands of the distributor or transferor corporation.

(c) *Repossession of property sold in prior years.* If the acquiring corporation repossesses property, previously sold by the distributor or transferor corporation, by reason of default by the purchaser in payment of the acquired installment obligations, then the acquiring corporation shall be treated as though it were the vendor corporation for purposes of determining, under section 453 and the regulations thereunder, the gain, loss, income, or deduction with respect to the property repossessed.

§ 1.381(c)(12) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; recovery of bad debts, prior taxes, or delinquency amounts.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • •

(12) *Recovery of bad debts, prior taxes, or delinquency amounts.* If the acquiring corporation is entitled to the recovery of bad debts, prior taxes, or delinquency amounts previously deducted or credited by the distributor or transferor corporation, the acquiring corporation shall include in its income such amounts as would have been includible by the distributor or transferor corporation in accordance with section 111 (relating to the recovery of bad debts, prior taxes, and delinquency amounts).

§ 1.381(c)(12)-1 Recovery of bad debts, prior taxes, or delinquency amounts.

(a) *Carryover requirement.* (1) If, as a result of a distribution or transfer to which section 381(a) applies, the acquiring corporation is entitled to the recovery of a bad debt, prior tax, or delinquency amount on account of which a deduction or credit was allowed to a distributor or transferor corporation for a prior taxable year, and such debt, tax, or amount is recovered by the acquiring corporation after the date of distribution or transfer, then under the provisions of section 381(c)(12) the acquiring corporation is required to include in its gross income for the taxable year of recovery the same amount of income attributable to the recovery as the distributor or transferor corporation would have been required to include under section 111 and the regulations thereunder had the distribution or transfer not occurred.

(2) The rule prescribed by paragraph (a)(1) of this section and by section 381(c)(12) with respect to bad debts, prior taxes, and delinquency amounts applies equally with respect to the recovery by the acquiring corporation of all other losses, expenditures, and accruals made the basis of deductions from the gross income of a distributor or transferor corporation for prior taxable years, including war losses referred to in section 127 of the Internal Revenue Code of 1939, but not including deductions with respect to depreciation, depletion, amortization, or amortizable bond premiums. An item which is not a "section 111 item" for purposes of the regulations under section 111 is not subject to the provisions of section 381(c)(12). The provisions of section 111(c) shall be applied with respect to a recovery by the acquiring corporation in the same manner as they would have been applied by the distributor or transferor corporation.

(b) *Amount of recovery exclusion allowable for year of recovery.* For the year of any recovery by the acquiring corporation, the amount of the recovery exclusion for the original taxable year shall be determined in accordance with paragraph (b) of § 1.111-1. For the purpose of this paragraph and section 381(c)(12), the recovery exclusion for any year with respect to section 111 items of the acquiring corporation shall be kept separate from the recovery exclusion for any year with respect to section 111 items of each distributor or transferor corporation. The recovery by the acquiring corporation of any section 111 item of such corporation after the date of the distribution or transfer shall be considered separately from recoveries by the acquiring corporation of any such item which was deducted or credited by a distributor or transferor corporation. Any recovery by the acquiring corporation of a section 111 item shall be excluded from the gross income of the acquiring corporation to the extent of the recovery exclusion (1) determined for the original year for which that item was deducted or credited by the specific corporation which claimed the deduction or credit and (2) reduced by the excludable recoveries (whether made by the acquiring corporation, or by the distributor or transferor corporation) in intervening years with respect to the recovery exclusion of such corporation for such original year. There shall be taken into account the effect of net operating loss carryovers and carrybacks or capital loss carryovers.

(c) *Illustration of carryover of recovery exclusion*—(1) *Facts.* (i) The application of section 381(c)(12) may be illustrated by the following example. M and N Corporations are both organized on January 1, 1957, and both corporations compute their taxable income on the basis of the calendar year. On December 31, 1959, M Corporation transfers all

its assets to N Corporation in a reorganization to which section 381(a) applies.

(ii) The section 111 items of the two corporations for the following taxable years are as follows, identification of such items being made by an appropriate letter:

Taxable year of deduction or credit	M Corporation (transferor)	N Corporation (acquirer)
1957	$500(g)	$200(h)
1958	300(i)	400(j)
1959	600(k)	100(m)

(iii) The recovery exclusions in respect of such taxable years, computed in accordance with § 1.111-1(b)(2), are assumed to be as follows:

Taxable year	M Corporation (transferor)	N Corporation (acquirer)
1957	$400	$150
1958	200	300
1959	500	75

(iv) The recoveries of the abovementioned section 111 items by the two corporations are as follows:

Taxable year of recovery	M Corporation (transferor)	N Corporation (acquirer)
1958	$25 (g)	$50 (h)
1959	50 (g)	20 (h)
	30 (i)	15 (j)
1960		350 (g)
		225 (i)
		350 (k)
		100 (h)
		350 (j)
		85 (m)

(2) *M Corporation's 1958 recovery.*

Total recovery of section 111 items for 1957	$25
Less: Recovery exclusion for 1957	400
Amount included in gross income of M Corporation for 1958	0

(3) *M Corporation's 1959 recoveries.*

(i) Total recovery of section 111 items for 1957		$50
Less: Recovery exclusion for 1957	$400	
Minus excludable recovery	25	
		375
Amount included in gross income of M Corporation for 1959		0
(ii) Total recovery of section 111 items for 1958		30
Less: Recovery exclusion for 1958		200
Amount included in gross income of M Corporation for 1959		0

(4) *N Corporation's 1958 recovery.*

Total recovery of section 111 items for 1957	$50
Less: Recovery exclusion for 1957	150
Amount included in gross income of N Corporation for 1958	0

(5) *N Corporation's 1959 recoveries.*

(i) Total recovery of section 111 items for 1957		$20
Less: Recovery exclusion for 1957	$150	
Minus excludable recovery in 1958	50	
		100
Amount included in gross income of N Corporation for 1959		0
(ii) Total recovery of section 111 items for 1958		15
Less: Recovery exclusion for 1958		300
Amount included in gross income of N Corporation for 1959		0

(6) *N Corporation's 1960 recoveries.*

(i) Total recovery of section 111 items of M Corporation for 1957		$350
Less: Recovery exclusion of M Corporation for 1957	$400	
Minus: Excludable recovery in 1959	$50	
Excludable recovery in 1958	25	
		75
		325
Amount included in gross income of N Corporation for 1960		25
(ii) Total recovery of section 111 items of M Corporation for 1958		225
Less: Recovery exclusion of M Corporation for 1958	200	
Minus excludable recovery in 1959	30	
		170
Amount included in gross income of N Corporation for 1960		55
(iii) Total recovery of section 111 items of M Corporation for 1959		$550
Less: Recovery exclusion of M Corporation for 1959		500
Amount included in gross income of N Corporation for 1960		50
(iv) Total recovery of section 111 items of N Corporation for 1957		100
Less: Recovery exclusion of N Corporation for 1957	$150	
Minus: Excludable recovery in 1959	$20	
Excludable recovery in 1958	50	
		70
		80
Amount included in gross income of N Corporation for 1960		20
(v) Total recovery of section 111 items of N Corporation for 1958		350
Less: Recovery exclusion of N Corporation for 1958	300	
Minus excludable recovery in 1959	15	
		285
Amount included in gross income of N Corporation for 1960		65
(vi) Total recovery of section 111 items of N Corporation for 1959		85
Less: Recovery exclusion of N Corporation for 1959		75
Amount included in gross income of N Corporation for 1960		10

(7) *Summary of recoveries included in gross income of N Corporation for 1960.*

(i) Recovery of M Corporation items for:		
1957	$25	
1958	55	
1959	50	
		$130
(ii) Recovery of N Corporation items for:		
1957	20	
1958	65	
1959	10	
		95
Total amount included in gross income		225

[F.R. Doc. 60-12079; Filed, Dec. 29, 1960; 8:45 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

OPERATION AND MAINTENANCE CHARGES

Wapato Indian Irrigation Project, Yakima Indian Reservation, Washington

DECEMBER 22, 1960.

Pursuant to section 4(a) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238 U.S.C. 1001) and pursuant to the Acts of August 11, 1914 and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387) and by virtue of authority delegated by the Commissioner of Indian Affairs to the undersigned Area Director, Portland Area Office, Portland, Oregon by section 200 of the Commissioner's Order 551 with subsequent approval by the Commissioner by a letter dated December 15, 1960, notice is hereby given of intention to modify § 221.86 *Charges*, of Title 25, Code of Federal Regulations, dealing with the operation and maintenance charges on assessable lands under the Wapato Indian Irrigation Project, Yakima Indian Reservation, Washington, beginning with calendar year 1961 and for subsequent years until further notice, as follows:

By increasing the annual operation and maintenance assessments under paragraph (b) from $6.00 to $7.00 per acre, and under paragraph (c) for all lands with a storage water right known as "B" lands from 45¢ to 50¢ per acre.

Interested parties are hereby given opportunity to participate in preparing the proposed amendment by submitting their views and data or arguments in writing to Don C. Foster, Area Director, Bureau of Indian Affairs, Post Office Box 4097, Portland 8, Oregon, within 30 days from the date of publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

DON C. FOSTER,
Area Director.

DECEMBER 22, 1960.

[F.R. Doc. 60-12114; Filed, Dec. 29, 1960; 8:46 a.m.]

[25 CFR Part 232]

FLATHEAD INDIAN IRRIGATION PROJECT, MONTANA

Delinquent Bills

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by R.S. 161, sec. 7 (62 Stat. 273), 5 U.S.C. 22, it is proposed to amend 25 CFR 232.21 as set forth below. The purpose of this amendment is to provide for a more realistic reconnection charge in those cases where the Project has discontinued electrical service until the consumer has paid all bills due. The proposed increase in the reconnection charge from $2.00 to $5.00 in § 232.21 is necessary due to present day prices and the extensive rural area that has to be served by the power system.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Commissioner, Bureau of Indian Affairs, Department of the Interior, Washington 25, D.C., within thirty days of the date of publication of this notice in the FEDERAL REGISTER.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 27, 1960.

Section 232.21 is amended to read as follows:

§ 232.21 Delinquent bills.

If payment of a bill is not made on or before the fifteenth day of the month following the date of its issue, the project engineer shall discontinue service and shall not restore the same until the consumer has paid all bills then due as well as a $5.00 reconnection charge, and satisfied any deposit requirement which may exist under § 232.5. The discontinuance of service shall not relieve the consumer of liability for minimum monthly payments guaranteed by him under his contract.

[F.R. Doc. 60-12170; Filed, Dec. 29, 1960; 8:52 a.m.]

Bureau of Land Management

[43 CFR Part 254]

RECREATION AND PUBLIC PURPOSES

Notice of Proposed Rule Making

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the act of June 14, 1926 (44 Stat. 744) as amended June 4, 1954 (68 Stat. 173), June 23 and September 21, 1959 (73 Stat. 110, 571), and September 13, 1960 (74 Stat. 899; 43 U.S.C. 869, 869:1-4), and by section 2478 of the Revised Statutes (43 U.S.C. 1201), it is proposed to amend portions of 43 CFR, Part 254, as set forth below. A major purpose of this amendment is to incorporate into regulations issued pursuant to the Recreation and Public Purposes Act the provisions of the acts of 1959 and 1960, supra, which (1) made some of the provisions of the Act applicable to the Oregon and California revested and Coos Bay reconveyed lands, (2) modified and limitations as to acreage patentable to qualified applicants in each calendar year, and (3) eliminated the 25-year limitation on the reversionary clauses required by law in patents issued pursuant to the Act. The amendment would also reflect the transition of Alaska from Territorial status to Statehood, and permit the Bureau of Land Management to collect more than one year's rental in advance.

It is the policy of the Department of the Interior whenever practicable to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Bureau of Land Management, Washington 25, D.C., within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Sections 254.1, 254.2 and 254.3; paragraphs (c) and (f) of § 254.5; paragraph (b) of § 254.7; paragraph (e) of § 254.8; paragraph (c) of § 254.10; and § 254.13 are amended, all to read as follows:

§ 254.1 Statutory authority.

The act of June 14, 1926 (44 Stat. 741), as amended June 4, 1954 (68 Stat. 173), June 23 and September 21, 1959 (73 Stat. 110, 571), and September 13, 1960 (74 Stat. 899; 43 U.S.C. 869; 869:1-4), authorizes the Secretary of the Interior, under specified conditions, to lease or sell lands for recreational and public purposes. This legislation is referred to as "the act" in the regulations of this part.

§ 254.2 Who may apply.

The following are qualified to make applications under the act; States, Federal and State instrumentalities and political subdivisions, including counties and municipalities; and nonprofit associations and nonprofit corporations.

§ 254.3 Lands subject to disposition.

The act is applicable to any public domain lands except (a) lands withdrawn or reserved for national forests, national parks and monuments, and national wildlife refuges and (b) Indian lands and lands set aside or held for use by or the benefit of Indians. The act is applicable to the Oregon and California Railroad revested grant lands and to the Coos Bay reconveyed wagon-road grant lands only insofar as it applies to leases of land to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

§ 254.5 General limitations and conditions on dispositions.

• • • • •

(c) No applicant in any one calendar year can receive under the act patents for land except in conformance with the following:

(1) Any State may acquire in its own name, or in the name of its State park agency, or in the name of any other agency having jurisdiction over the State park system of said State designated by the Governor of the State as its sole representative for acceptance of lands under this provision for recreational purposes, not more than 6,400 acres involving not more than three sites, except that should any State fail in any one calendar year to receive the maximum herein specified, other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State pursuant to any application on file with the Secretary of the Interior on the last day of said year, to the extent that the conveyances would not have exceeded the limitations of said year.[1] In addition, any State may acquire, in its own name or in the name of an agency or instrumentality of such State not more than 640 acres for each of its programs involving public purposes other than recreation.

(2) Any political subdivision of a State and any nonprofit corporation or nonprofit association may acquire in its own name for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

• • • • •

(f) Municipal corporations cannot secure land under this act if it is not within convenient access to the municipality and within the same State as the municipality. Other qualified applicants cannot secure land outside of their political boundaries or other area of jurisdiction.

§ 254.7 Applications.

• • • • •

(b) The acreage applied for in any one application for patent cannot exceed 640 acres except that applications for patent for State park purposes may embrace as much as 6,400 acres, or where provided by law 12,800 acres.

§ 254.8 Purchase price and lease rentals.

• • • • •

(e) A patent applicant, when the land has been appraised, will be required to pay the full purchase price before the patent will be issued. The rental under a lease shall be payable in advance. Upon appraisal of the land, a lease applicant will be required to pay at least the first year's rental before the lease will be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term will be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease.

§ 254.10 Publications; protests; patents; transfers.

• • • • •

(c) All patents under this act will contain a clause providing that if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a

[1] During calendar years 1960, 1961, and 1962, this limitation is increased to 12,800 acres involving not more than six sites, plus such acreage as may be needed for small roadside parks and rest sites of not more than 10 acres each.

use other than that for which the lands were conveyed, without consent of competent authority or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States. Transferees must meet all the qualifications of applicants under the act and will be subject to the terms and conditions of the regulations of this part.

§ 254.13 Cooperation with the National Park Service.

In the furtherance of the purposes of the act of June 23, 1936 (49 Stat. 1894; 16 U.S.C. 17k), the National Park Service will review and make recommendations on all applications for recreational purposes submitted by States or their political subdivisions.

GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

DECEMBER 23, 1960.

[F.R. Doc. 60-12127; Filed, Dec. 29, 1960; 8:48 a.m.]

National Park Service

[36 CFR Part 7]

GRAND TETON NATIONAL PARK, WYOMING

Snowplanes and Boats

Basis and purpose. Notice is hereby given that pursuant to section 4(a) of the Administrative Procedure Act, approved June 11, 1946 (60 Stat. 238; 5 U.S.C., 1958 ed., § 1003); authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535; 16 U.S.C., 1958 ed., section 3); National Park Service Order No. 14 (19 F.R. 8824); and Regional Director, Region Two, Order No. 3 (21 F.R. 1494); it is proposed to amend 36 CFR, Part 7, § 7.22 as set forth below. The purpose of these amendments is to establish reasonable regulations which will provide adequate control over snowplanes and boats and insure a maximum of safety in their use.

It is the policy of the Department of the Interior whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendments to the Superintendent, Grand Teton National Park, Moose, Wyoming, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

Issued this 4th day of November 1960.

HARTHON L. BILL,
Superintendent,
Grand Teton National Park.

Two new paragraphs (f), entitled *Snowplanes*, and (g), *Boats*, are hereby added:

§ 7.22 Grand Teton National Park.

* * * * *

(f) *Snowplanes*—(1) *Permit.* No snowplane shall be operated within Grand Teton National Park without a permit from the Superintendent, who shall have authority to revoke said permit and require the immediate removal of the snowplane upon the failure of the permittee or other persons operating the snowplane to comply with the terms of the permit. This permit must be carried within the snowplane at all times, and shall be exhibited upon request to any person authorized to enforce the regulations in this chapter.

(2) *Commercial operation.* No snowplane shall be used to carry passengers for hire or be used in any commercial operation without authorization of the Superintendent.

(3) *Equipment and requirements.* All snowplanes operated within the Park are subject to the following requirements:

(i) All snowplanes must be equipped with a propeller guard, consisting of a combination of horizontal, vertical, and curved steel rods or tubes attached securely to the cab and structural frame of the snowplane, and shall enclose the motor and propeller in such manner that maximum safety for snowplane users will be afforded. The Superintendent shall prescribe a minimum standard for propeller guards on all snowplanes operated within the Park.

(ii) Each snowplane operated within the Park must carry one pair of Snowshoes or Skis, First Aid Kit, 25 ft. of Rope, and a Flashlight on every trip.

(4) *Registration of trip.* The operator of a snowplane shall register departure time, time of anticipated return, and trip route at one of the following stations: Jackson Lake Snowplane Parking Area, Jackson Lake Ranger Station, or Park Headquarters.

(5) *Rules of the road.* (i) The operation of any snowplane carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and at a speed or in a manner so as to endanger or be likely to endanger any person or property is prohibited.

(ii) Failing to keep any snowplane under proper control is prohibited.

(iii) Operating any snowplane in such a manner as to cause same to collide with another snowplane, person, fixed or moving object is prohibited.

(iv) Operating a snowplane which is in an unsafe mechanical condition is prohibited.

(v) Operators of snowplanes shall comply with the instructions of all official signs regarding parking of snowplanes and trailers, hazardous and closed areas, and one-way traffic.

(vi) Snowplanes overtaking and passing slower-moving or parked snowplanes shall pass on the left; snowplanes approaching and meeting shall keep to the right.

(vii) The ignition shall be switched off and the motor stopped whenever a snowplane is parked and the operator leaves the cab. A motor shall not be idled, while parked, without an operator at the controls.

(6) *Restricted areas.* Snowplanes will not be operated within 300 feet of the upper face of Jackson Lake Dam, or on Jackson Lake north of a line between Lizard Point and the high bluffs south of the mouth of Berry Creek, as designated by warning signs, or near the Warm Springs area on the west side of Jackson Lake, or on any road open to automobile traffic.

(g) *Boats*—(1) *Permit.* No privately owned boat, canoe, raft, or other water-borne or floating craft shall be placed or operated upon the waters of Grand Teton National Park without a permit from the Superintendent, who shall have authority to revoke the permit and require the immediate removal of such craft upon the failure of the permittee to comply with the terms and conditions of the permit. This permit must be carried within the boat at all times and shall be exhibited upon request to any person authorized to enforce the regulations in this chapter.

[F.R. Doc. 60-12129; Filed, Dec. 29, 1960; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

[9 CFR Part 131]

HANDLING OF ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

Notice of Proposed Rule Making

Notice is hereby given that the Control Agency is considering the issuance, as hereinafter proposed, of an amendment to the rules and regulations of the Control Agency, issued pursuant to the authority contained in Public Law 320, 74th Congress, approved August 24, 1935, as amended (49 Stat. 791, 72 Stat. 454; 7 USC 851–855) and the order regulating the handling of anti-hog-cholera serum and hog-cholera virus (9 CFR Part 131).

All persons who desire to submit data, views or arguments in connection with the proposed amendment should file the same in quadruplicate with the Executive Secretary of the Control Agency, 512 Veterans of Foreign Wars Building, Kansas City 11, Missouri, not later than 30 days after the publication of this notice in the FEDERAL REGISTER.

The proposed amendment is as follows:

1. Amend § 131.201 to read as follows:

§ 131.201 Public information.

Unless otherwise provided in this part, or by specific direction of the Control Agency, all matters required to be filed with the Control Agency and communications with respect to the Marketing Order and these regulations shall be addressed to the Control Agency, Office of Executive Secretary, 512 Veterans of Foreign Wars Building, Kansas City 11, Missouri.

2. Delete present §§ 131.211 and 131.212 setting forth definitions of "Wholesaler" and "Dealer", and insert new § 131.202 to read as follows:

§ 131.202 Terms.

Terms used in the rules and regulations (§§ 131.201 to 131.261) shall have the same meaning as when used in the order, as amended (§§ 131.1 to 131.113), unless the context indicates otherwise.

3. Add a new § 131.212 to read as follows:

§ 131.212 Classes of buyers.

Pursuant to authority contained in § 131.81, the classes of buyers not defined in the order shall be "consumers"; "lay-vaccinator" and "other dealers" as defined in §§ 131.213, 131.214 and 131.215.

§ 131.223 [Amendment]

4. Amend paragraph (b) of § 131.223 by changing the figure "500,000" to "300,000".

§ 131.227 [Amendment]

5. Amend § 131.227 by inserting "–131.55" immediately after "§ 131.51" contained in the first sentence, and by deleting the last sentence of the section and substituting therefor the following: "Serum or virus shall not be delivered on a particular sale unless the posted price for such serum or virus is the same at the times of offer, sale and delivery thereof."

6. Amend § 131.242 to read as follows:

§ 131.242 Manner of classifying wholesalers.

Any person who desires to be classified as a wholesaler shall apply for such classification on a form prescribed by the Control Agency. An applicant shall not be so classified unless he proves to the satisfaction of the Control Agency that he meets the requirements of paragraph (a)(1) of § 131.8 or the requirements of paragraph (a)(2) of §§ 131.8, 131.222 and 131.223. Such applicant shall also meet the requirements of paragraph (b) of § 131.8. An application for classification shall not be considered by the Control Agency until it has been on file in the Office of the Executive Secretary for at least sixty (60) days. The form of such application is as follows:

APPLICATION FOR CLASSIFICATION AS A WHOLESALER OF ANTI-HOG-CHOLERA SERUM AND HOG-CHOLERA VIRUS

Control Agency,
Office of Executive Secretary,
512 V.F.W. Building,
Kansas City 11, Mo.

The undersigned petitions the Control Agency to consider the facts set forth in the following application to determine if the applicant qualifies as a wholesaler under the Marketing Order, as amended.

1. Name and address of the applicant:
Firm Name _____
Address _____
(Street Address) (City)
_____ _____ _____
(P.O. Box. No.) (Zone No.) (State)

2. Type of organization:
(a) Individual _____
(b) Partnership _____
(c) Corporation _____ State of incorporation _____
(d) If a partnership, list partners and give their addresses; if a corporation, list three principal officers, and give their titles and home address: _____
_____
(e) Farmer Cooperative Association as used in this part means a cooperative association as defined in 12 U.S.C. Section 1141 (j)a, including a federation of such cooperative associations and any corporate organization, organized under a cooperative law or operating on a cooperative plan, which is owned and controlled, directly or indirectly, by such farmer cooperative associations or a federation of the same. Is the applicant a farmer cooperative association that meets the requirements of this definition? _____ State whether its members are cooperative associations or farmers: _____
_____

3. If the applicant has any subsidiaries or affiliates, give name and address of each:
_____

4. If the applicant is a subsidiary or affiliate, give name and address of parent company: _____
_____

5. Does applicant own or control, either directly or indirectly, an interest, in whole, or in part, in any dealer? _____ If so, give names and addresses of all such dealers _____
_____

6. Will the applicant appoint or utilize any dealer as its agent in any matter related to the handling of serum or virus? _____
_____

7. Will the applicant appoint or utilize, either directly or indirectly, any dealer as a branch house or distributional outlet for serum or virus? _____

8. Is any interest, in whole or in part, in the applicant owned or controlled, either directly or indirectly by any dealer? _____
_____
If a corporation, what per cent of the total outstanding stock of all classes is owned by dealers? _____

9. List name and address of all agents, branches, depots, and places from which serum or virus is sold, distributed, or placed in the channels of trade by the applicant:
_____
_____
(a) Have hog-cholera products ever been marketed by such agents, branches, depots and places? _____ Yes____ No____
(b) Will hog-cholera products be marketed by such agents, branches, depots and places? _____ Yes____ No____

10. Does any manufacturer or producer, or any officer or director of a manufacturer or producer, own or control, either directly or indirectly, an interest, in whole or in part, in the applicant? _____If so, give name and address: _____
_____

11. Does the applicant or any of its officers or directors own or control, either directly or indirectly, an interest, in whole or in part, in a manufacturer or producer? _____If so, give name and address: _____
_____

12. Do you pay or propose to pay patronage refunds, patronage dividends or make any refunds based on patronage to your customers? _____
_____

13. List persons (and titles) authorized to handle matters pertaining to the Marketing Order: _____
_____

14. What other firm name, if any, is used or will be used in advertising, selling and shipping hog-cholera products: _____
_____

15. Has your firm or any of your partners or officers ever made application to the Control Agency? _____ Yes____ No____

16. Do you act as a manufacturer's agent for any products handled? Yes____ No____

17. If you manufacture any products, give full information: _____
_____
_____

18. How long have you been in your present business? _____
_____

19. Do any of the following have a direct or indirect financial interest in the applicant:
(a) Manufacturer of veterinary products _____ Yes____ No____
(b) Seller of veterinary products _____ Yes____ No____
(c) Veterinarian _____ Yes____ No____
(d) Druggist _____ Yes____ No____
(e) Swine Owner _____ Yes____ No____
(f) Feed Dealer _____ Yes____ No____
(g) Feed Mill _____ Yes____ No____
(h) Hatchery _____ Yes____ No____

20. Is the applicant or any of its officers or employees a:
(a) County Agent _____ Yes____ No____
(b) Veterinarian _____ Yes____ No____
(c) Vocational Agriculture Teacher _____ Yes____ No____
(d) Druggist or Pharmacist _____ Yes____ No____

21. Does, or will, any officer, partner or employee of the applicant:
(a) Practice Veterinary Medicine _____ Yes____ No____
(b) Vaccinate Swine____ Yes____ No____
(c) Employ anyone to vaccinate _____ Yes____ No____
(d) Own swine _____ Yes____ No____
(e) Act as an agent or employee of anyone who owns swine _____ Yes____ No____
(f) Purchase supplies for any Federal, State, County or Municipal Institution___ Yes____ No____

22. (a) At present, what is the applicant's principal business: _____
_____
(b) In what other businesses are the applicant or its officers engaged or have a financial interest? _____
_____

23. Are you listed in
(a) Dun and Bradstreet__ Yes____ No____
(b) Hayes Druggist Directory Yes____ No____

24. Have you ever held, or do you hold now, a license from the U.S. Department of Agriculture or National Institutes of Health? _____
Explain: _____

25. (a) Have you or your associates ever handled any hog cholera products? Yes____ No____
(b) Other products for animal health? Yes____ No____

26. Is there any handler you care to give as a reference? _____
_____

27. If you purchased hog cholera products last year, indicate the quantity purchased:
(a) Serum _____cc
(b) Virus, including inactivated and modified _____Doses

28. Do you now maintain stocks of hog cholera products at all times? Yes____ No____
(a) Serum _____cc
(b) Virus, including inactivated and modified _____Doses

29. If you are familiar with livestock diseases, state your experience and training: _____
_____

30. Do you regularly maintain in stock a line of:
(a) Biologicals _____ Yes____ No____
(b) Pharmaceuticals_____ Yes____ No____
(c) Instruments_____ Yes____ No____
(d) Human health preparations Yes____ No____
(e) Agricultural chemicals Yes____ No____

31. If it is determined that you qualify as a wholesaler under the Marketing Order, what will be your average inventory of:
(a) Serum _____cc
(b) Virus, including inactivated and modified _____Doses

32. Describe your refrigerator or cooling equipment:
(a) Capacity in cubic feet _____

(b) Temperature maintained ----------°

33. State the approximate size of your shipping room: ----------

34. How do you advertise now? ----------

35. How will you advertise if it is determined that you qualify as a wholesaler? ----------

36. State the number of your

(a) Full time salesmen ----------

(b) Part time salesmen ----------

(c) Are you one of these salesmen?

Yes---- No----

If so, will you continue to sell in a territory if you qualify as a wholesaler?

Yes---- No----

37. If you qualify as a wholesaler, how many outside salesmen will you have selling animal health products, including serum and virus:

(a) Full time ----------

(b) Part time ----------

38. If you qualify as a wholesaler—

(a) What percentage of total sales of hog cholera products would you expect to make to dealers?----------%

(b) What percentage of total sales of all other products sold by you would you expect to make to dealers?----------%

(c) State the approximate number of dealers you will solicit----------

(d) Give the geographical area in which they are located:----------

----

(e) State how you will furnish field or veterinary service as required under definition of a wholesaler (Section 131.8):-------

----

39. Do you intend to solicit business from:

		Estimated per cent of total sales to each class
(a) Veterinarians	Yes--	------ No--
(b) County Farm Bureaus	Yes--	------ No--
(c) Retail Drug Stores	Yes--	------ No--
(d) Lay-vaccinators	Yes--	------ No--
(e) U.S. Licensed Stockyards	Yes--	------ No--
(f) Agencies (Federal, State, County and Municipal Institutions) who resell to consumers	Yes--	------ No--
(g) Farmers Cooperatives	Yes--	------ No--
(h) Farm Stores, Feed Stores, Elevators, Hatcheries, etc	Yes--	------ No--
(i) Consumers (Owners of Swine)	Yes--	------ No--

40. What is the population of the city where your place of business is located?----------

41. Describe methods of transportation you will use for distribution of your products: ----------

----

----

42. Is your place of business within the city limits?- Yes---- No----

43. Do you operate from your home? ---------- Yes---- No----

From a business establishment? ---------- Yes---- No----

44. Do you share your building or facilities with any other firm, agency, or business unit?---------- Yes---- No----

45. Did you read the Marketing Order and the Rules and Regulations?---- Yes---- No----

All further information requested by the Control Agency for the purpose of determining the proper classification of the applicant will be furnished by the undersigned.

If the Control Agency approves the applicant as a wholesaler handler of hog cholera products, applicant agrees to assume all the obligations and responsibilities of a wholesaler. Application fee is enclosed herewith.

Firm Name----------

Official ----------

(Signature and Title)

On this--------Day of----------, 19----, before me----------, a Notary Public, personally appeared---------- and first being duly sworn upon oath declared that he is an officer or employee of the aforesaid applicant, and that the information set forth herein is true and correct as he verily believes.

Notary Public

My Commission expires----------

WARNING!

[Any false, fictitious or fraudulent statement or representation on this form may subject the maker thereof to a fine of not more than $10,000.00 or imprisonment of not more than 5 years, or both. (18 U.S.C. 1001)]

§ 131.251 [Amendment]

7. Amend § 131.25 by adding at the end thereof the following: "Each price list shall be recorded by the Executive Secretary of the Control Agency as being filed on the date it is received in the office of the Control Agency, except as otherwise provided in § 131.52 and in this section, and shall become effective three days following such record date. In the event a price list or an amended price list is received at such office after 5 p.m. on a regular business day, it shall be recorded as having been received on the following regular business day.

8. Add new § 131.262 to read as follows:

§ 131.262 Agents or distributional outlets.

Each manufacturer and wholesaler handler shall file and maintain with the Control Agency a current list of his distributional outlets and agents for the marketing of serum or virus. Such list shall include the name and address of operators of all branches, agents, depots and places from, or through which serum or virus is sold, distributed, or placed in the channels of trade by such manufacturer or wholesaler.

§ 131.226 [Amendment]

9. Amend § 131.226 by deleting the numerals "§ 131.52" and substituting therefor the words "this part".

§§ 131.228, 131.229 [Amendment]

10. Amend §§ 131.228 and 131.229 by deleting the numerals "§ 131.51" contained in each section and substituting therefor "§§ 131.51 to 131.56".

§ 131.232 [Amendment]

11. Amend § 131.232 by deleting the word and numerals "and 131.211" contained therein.

Dated this 15th day of December 1960.

CONTROL AGENCY,
E. A. CAHILL, JR.,
Chairman.

[F.R. Doc. 60-12146; Filed, Dec. 29, 1960; 8:51 a.m.]

DEPARTMENT OF LABOR

Division of Public Contracts

[41 CFR Part 50-202]

ELECTRONIC COMPONENT PARTS INDUSTRY; PROCEEDINGS FOR DETERMINATION OF PREVAILING MINIMUM WAGES

Decision on Motion To Exclude Government Counsel

Counsel for the Electronic Industries Association moves to exclude Government Counsel from ex parte consultation in the decisions determining prevailing minimum wages under the Walsh-Healey Public Contracts Act in the Electronic Component Parts Industry. It is based on differences between these counsel which arose during the conduct of the hearing. This motion differs from two previously presented by the same counsel representing employer groups in other industries in similar proceedings only in that the details of the differences are not the same, and the relief now sought is somewhat more narrow in scope (24 F.R. 4597, 7763). The present motion is fully governed by the decisions in those proceedings that differences between government counsel and counsel for other parties arising in rule making hearings such as these are not adequate ground for any of the relief there sought. This motion is overruled.

Signed at Washington, D.C., this 23d day of December 1960.

JAMES P. MITCHELL,
Secretary.

[F.R. Doc. 60-12130; Filed, Dec. 29, 1960; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Part 203]

[Economic Regs. Docket No. 12007]

TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY; FOREIGN AIR TRANSPORTATION

Notice of Proposed Rule Making

DECEMBER 23, 1960.

Notice is hereby given that the Civil Aeronautics Board has under consideration a proposed amendment of Part 203 of the Economic Regulations which would repeal those provisions which require the filing of Nonstop Notices in Foreign Air Transportation by U.S. Carriers.

The principal features of the proposed regulation are explained in the Explanatory Statement set forth below and the proposed amendment is set forth below. This amendment is proposed under authority of sections 204(a), 401 and 402 of the Federal Aviation Act of 1958, as amended (72 Stat. 743, 754, 757; 49 U.S.C. 1324, 1371, 1372).

Interested persons may participate in the proposed rule making through submission of ten (10) copies of written data, views or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington 25, D.C. All relevant matter in communications received on or before January 28, 1961, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available after January 28, 1961, for examination by interested persons in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

By the Civil Aeronautics Board.

[SEAL] ROBERT C. LESTER,
Secretary.

Explanatory statement. Requirements for United States certificated route air carriers to file notices of intention to inaugurate nonstop service in foreign air transportation have existed for many years. Sections 203.3, 203.4, and 203.7 of Part 203 contain the current regulations in this regard. Section 203.3 requires a holder of a certificate to file with the Board a 20-day written notice of its intention to inaugurate a scheduled nonstop service between points authorized by its certificate if such service is not then regularly scheduled. Under § 203.4, a holder of such a certificate must file a written notice of nonstop service when such service is required in order to comply with any appropriate obligation, duty, or liability imposed by any foreign country upon the certificate holder. Section 203.7 sets forth those persons, other than the Board, upon whom such notice must be served.

Similar requirements for filing nonstop notices also existed at one time in interstate and overseas air transportation but were eliminated several years ago as having outlived their purpose. The Board believes the same situation is now true as respects foreign air transportation.

An examination of foreign air transportation nonstop notice filings over the past few years shows that in all but a very few cases the notice was allowed to stand. Though the filings, recently numbering about 20 per year, have presented few problems, they have cost the carriers and the Government loss of time and paper work. Moreover, the Board is of the opinion that possible hazards that might arise if the requirement is eliminated are minimal.

Proposed rule. Amend Part 203 of the Economic Regulations (14 CFR Part 203) as follows:

1. By deleting therefrom present § 203.3 *Nonstop service* and inserting in lieu thereof a new section to read as follows:

§ 203.3 Nonstop authorization.

Subject to the provisions of section 405(b) of the Act, the holder of a certificate may inaugurate scheduled nonstop service between any two points not consecutively named in its certificate or approved service plan (if such certificate or approved service plan authorizes service between such points and does not prohibit nonstop service between them) upon the effective date of a schedule page, showing such nonstop service, filed with the Board in accordance with Part 231 of this chapter.

§ 203.4 [Amendment]

2. By amending § 203.4 as follows:

(a) By deleting paragraph (a) and designating paragraphs (b) and (c) as paragraphs (a) and (b) respectively;

(b) By amending the remainder of § 203.4, commencing with newly designated paragraph (b) to read as follows:

(b) To change the terminal point in such foreign country;

such holder shall file with the Board written notice of such requirement. Such notice shall be filed within 20 days after the air carrier shall have been advised of such requirement; shall be conspicuously entitled Notice of Additional Stop Required by Foreign Country, or Notice of Terminal Change Required by Foreign Country, as the case may be, and shall fully set forth the facts and circumstances relating to such requirement. * * * [remainder of § 203.4 unchanged.]

§ 203.7 [Amendment]

3. By amending § 203.7 as follows:

(a) By deleting the phrases "Notice of Nonstop Service in Foreign Air Transportation" and "Notice of Nonstop Service Required by Foreign Country" located in the introductory text of § 203.7.

(b) By deleting paragraph (e) and designating paragraphs (f) and (g) as paragraphs (e) and (f) respectively.

[F.R. Doc. 60-12143; Filed, Dec. 29, 1960; 8:51 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 2]

[Docket No. 11959]

REALLOCATION OF CERTAIN FIXED, LAND MOBILE AND MARITIME MOBILE BANDS BETWEEN 25 AND 470 MC

Order Extending Time for Filing Comments

The Commission has before it for consideration a request from United Press International, Inc. to extend the time for filing comments in the above proceeding to January 30, 1961, and to extend the time for filing reply comments to February 12, 1961.

It appearing that United Press International, Inc., after giving the matter considerable study internally and after consultations with engineering and legal counsel, requires additional time for the preparation of comments in its behalf by recently retained counsel; and

It further appearing that United Press International has an interest in the use of radio frequencies for the furtherence of its services to more than 3,000 newspapers, radio and television stations throughout the United States; and that it proposes to file substantive comments and a counter proposal which may be of assistance to the Commission in determining the matters herein; and

It further appearing that the public interest will be served by the inclusion of the above mentioned comments and counter proposal in the material to be considered;

It is ordered, This 23d day of December 1960, pursuant to section 0.322(b) of the Commission's Statement of Delegations of Authority, That the time for filing comments in this proceeding is extended to January 30, 1961, and the time for filing reply comments is extended to February 12, 1961.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12158; Filed, Dec. 29, 1960; 8:51 a.m.]

[47 CFR Part 3]

[Docket No. 13854]

BROADCAST STATIONS CONCERNING REQUIREMENTS FOR FREQUENCY MONITORS

Order Extending Time for Filing Comments

In the matter of amendment of Part 3 of the Commission rules governing TV Broadcast Stations concerning requirements for frequency monitors.

The Commission has before it for consideration a request of the National Association of Broadcasters (NAB) filed on December 20, 1960 for an extension of time within which to file comments in the above-entitled proceeding from December 26, 1960 to March 13, 1961.

NAB states that it contemplates submitting the proposal outlined in the proceeding to its Engineering Advisory Committee but that, due to the holiday season, this cannot be done in time to submit comments by the date set by the Commission. It urges that the grant of the additional time will enable it to submit information which will assist the Commission in reaching a final decision in this matter.

The Commission is of the view that the public interest would be served by granting the requested extension of time in order that parties may have the fullest opportunity to submit meaningful and useful data on the proposal which would have an impact on the television broadcast industry. NAB points out further that the present rules waive the requirement for television broadcast stations to install type-approved frequency monitors to February 28, 1961 and that a grant of the instant request would require an extension of the waiver. This may, however, be accomplished at a later date by separate order.

In view of the foregoing: *it is ordered,* This 21st day of December 1960, that the request of National Association of Broadcasters for an extension of time is granted, and that the time for filing comments in response to the Notice of Proposed Rule Making is extended from December 26, 1960, to March 13, 1961 and

the time for filing reply comments is extended from January 6, 1961 to March 23, 1961.

Released: December 23, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12089; Filed, Dec. 28, 1960; 8:49 a.m.]

[47 CFR Part 3]

[Docket No. 13901; FCC 60-1527]

CONELRAD DRILLS AND TESTS

Operator Requirements

1. The Commission has before it for consideration a proposal to amend the operator requirement rules insofar as they pertain to standard broadcast station operation in the Emergency Broadcast System.

2. The Commission, on January 26, 1953, in Docket No. 10214, amended Parts 3 and 13 of its rules to provide that a person holding any class of radio operator license (or permit) who is authorized to perform limited operation of a standard broadcast station, may make adjustments "when a CONELRAD Radio Alert is called * * *" provided that the station's responsible radiotelephone first-class operator shall have previously instructed such person in the adjustments to the transmitter which are necessary to accomplish CONELRAD operation.

3. Under the provision of the above rules, a holder of a restricted radiotelephone operators permit may switch the broadcast transmitter to the Emergency Broadcast System frequency, in the event of a real CONELRAD Radio Alert, but does not permit such an operator to make the necessary transmitter adjustments in order for the station to take part in a test or drill of the Emergency Broadcast System.

4. Emergency Broadcast System drills have been conducted during the past years in accordance with the provisions of § 3.971. There is reason to believe that such drills will continue to be held in the future under the provisions of § 3.970. Many stations conduct tests of the Emergency Broadcast System on a local basis as well as on state and regional basis.

5. Many of the CONELRAD tests have been called when the required radiotelephone first-class operator was not available and thus authorized stations were unable to participate in the necessary tests. The same situation occurred in many instances during the once a year drills.

6. In order to properly train lesser grade operators and to keep them familiar with the necessary Emergency Broadcast System operating procedure as well as to insure operation by all stations having a National Defense Emergency Authorization, it appears necessary to amend the rules to provide that the lesser grade operator may make the necessary transmitter adjustments in order to participate in tests and drills of the Emergency Broadcast System, as well as during a real CONELRAD Radio Alert.

7. The Commission is of the view that a rule-making proceeding should be instituted in this matter in order that interested parties may submit their views on the proposed amendments as set forth below.

8. Authority for the adoption of the proposed amendments is contained in sections 4(i), 301, 303 (b), (c), (f), and (r) of the Communications Act of 1934, as amended.

9. Pursuant to applicable procedures set out in section 1.213 of the Commission's rules, interested parties may file comments on or before January 23, 1961, and reply comments on or before February 3, 1961.

10. In accordance with the provisions of § 1.54 of the rules an original and 14 copies of all written comments shall be furnished the Commission.

Adopted: December 21, 1960.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

1. It is proposed to amend that portion of § 3.93(b), which precedes subparagraph (1), to read as follows:

§ 3.93 Operator requirements.

* * * * *

(b) A station which is authorized for non-directional operation with power of 10 kilowatts or less may be operated by persons holding commercial radio operator license of any class when the equipment is so designed that the stability of the frequency is maintained by the transmitter itself within the limits of tolerance specified, and none of the operations, except those specified in subparagraphs (1) through (4) of this paragraph, necessary to be performed during the course of normal operation may cause off-frequency operation or result in any unauthorized radiation. (A person holding any class of radio operator license or permit who is authorized thereunder to perform limited operation of a standard broadcast station may, when a CONELRAD Radio Alert is called, or for the purpose of participation in a drill or test of the Emergency Broadcast System, make adjustments necessary to effect operation in accordance with a National Defense Emergency Authorization: *Provided*, That the station's full-time radiotelephone first-class operator shall have previously instructed such person in the adjustments to the transmitter which are necessary to accomplish operation in the Emergency Broadcast System.) Adjustments of transmitting equipment by such operators, except when under the immediate supervision of a radiotelephone first-class operator, shall be limited to the following:

2. It is proposed to amend § 13.62(d) to read as follows:

§ 13.62 Special privileges.

* * * * *

(d) When a CONELRAD Alert, or a drill, or test of the Emergency Broadcast System is called a person holding any class of radio operator license or permit who is authorized thereunder to perform limited operation of a standard broadcast station may make any adjustments necessary to effect operation on an Emergency Broadcast System frequency in accordance with the station's National Defense Emergency Authorization: *Provided*, That the station's responsible first-class radiotelephone operator(s) shall have previously instructed such person in the adjustments to the transmitter which are necessary to accomplish operation in the Emergency Broadcast System.

[F.R. Doc. 60-12160; Filed, Dec. 29, 1960; 8:51 a.m.]

[47 CFR Part 3]

[Docket No. 13902 (RM-174, RM-197); FCC 60-1549]

TABLE OF ASSIGNMENTS

Television Broadcast Stations (Austin and San Marcos, Tex.)

1. Notice is hereby given of proposed rule making in the above-entitled matter.

2. The Commission has under consideration a petition filed on September 21, 1960 (RM-197) and amended on November 3, 1960 by the Texas-Longhorn Broadcasting Corporation, prospective applicant for a television station in Austin, Texas, looking toward an amendment of § 3.606, *Table of Assignments*, Television Broadcast Stations so as to substitute Channel 67 for 70 at Austin and to reserve for education Channel 18 in that city as follows:[1]

City	Channel No.	
	Present	Proposed
Austin, Tex.	7+, 18−, 24, *70−	7+, *18−, 24, 67
Brenham, Tex.	52−	70−
San Marcos, Tex.	53+	80

3. In support of its request petitioner urges that the city of Austin, with a population of 211,500 persons receives only one Grade A television service and is in need of a second TV service; that the proposed change will permit the early establishment of another station without the outlay of a great amount of capital; that it would stimulate interest in other UHF assignments in Austin and in the State of Texas; and that in the event Channel 67 is assigned to Austin, the Petitioner will apply for a construction permit for a station on this channel. Petitioner submits that it is interested in Channel 67 rather than any of the assigned UHF channels in Austin because it has on hand a used transmitter designed for this channel and that a new transmitter or the conversion of the present Channel 67 transmitter would make the cost of the station prohibitive and in addition would delay the construction of the proposed station.

4. The Commission is of the view that a rule making proceeding should be instituted in order that all interested parties may submit their views and relevant data. Both Austin and San Marcos appear in the Table of Assignments attached to the United States-Mexican Television Agreement (UHF) and in conformance with the terms of that agreement any changes in these communities would have to meet with the approval of the Mexican Government.

5. It does not appear that the proposed change in the assignment to Brenham is necessary to accomplish the objective of the petitioner. Austin and Brenham are about 80 miles apart whereas the required spacing for assignments 15 channels apart (picture image taboo) is only 75 miles. A simple change would accomplish the petitioner's objective as follows:

City	Channel No.	
	Present	Proposed
Austin, Tex.	7+, 18−, 24, *70−	7+, *18−, 24, 67
San Marcos, Tex.	53+	75

Comments are invited on the question of whether the proposed change in Brenham is necessary and on the desirability of the adoption of the changes outlined above rather than the proposal advanced by petitioner.

6. Authority for the adoption of the amendments proposed herein is contained in sections 4 (i) and (j), 303 and 307(b) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested parties may file comments on or before January 30, 1961, and reply comments on or before February 15, 1961. In reaching its decision on the rule amendments which are proposed herein, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

8. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished the Commission.

Adopted: December 21, 1960.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12159; Filed, Dec. 29, 1960; 8:51 a.m.]

[1] On April 1, 1960 two principals of the subject petitioner, Mr. John R. Powley and Mr. Frank J. Hedrick filed a petition requesting Channel 67 at Austin by making other changes in the Table of Assignments (RM-174). By letter dated August 30, 1960, a request was made for the dismissal of the petition. In view of this request, the petition of April 1, 1960 (RM-174) is hereby dismissed.

[47 CFR Part 3]

[Docket No. 13906 (RM-214); FCC 60-1554]

TABLE OF ASSIGNMENTS

Television Broadcast Stations (Lexington and Winchester, Ky.)

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission has under consideration a petition filed November 30, 1960, by Bluegrass Broadcasting Co., Inc. asking that Channel 37 be deleted from Winchester and assigned to Lexington, Kentucky and substituting Channel 70 therefor, now assigned to Lexington, as follows:

City	Channel No.	
	Present	Proposed
Lexington, Ky.	18+, 27−, 64, 70+	18+, 27−, 37+, 61
Winchester, Ky.	37+	70+

3. In support of its request petitioner asserts neither channel mentioned in the request (Channels 37 and 70) has been applied for; such assignments are consistent with the Commission's allocation principles; there are two UHF stations in Lexington, Kentucky, WLEX on Channel 18 and WKYT on Channel 27; at the present state of the development of UHF television, it is economically and competitively more practicable to operate on a lower than on a higher UHF channel, being particularly true where operation is desired in a market having one or more UHF stations operating in the lower portion of the UHF band; the assignment of Channel 37 to Lexington would, therefore, equalize competitive opportunities in the market for a third UHF station; and that should Channel 37 be assigned to Lexington petitioner will apply for the channel.

4. The Commission is of the view that rule making proceeding should be instituted so that all interested parties may submit their views on the Bluegrass proposal.

5. Authority for the adoption of the amendments proposed herein is contained in sections 4 (i) and (j), 303, and 307(b) of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested persons may file comments on or before January 30, 1961 and reply comments on or before February 15, 1961. In reaching its decision on the rules and standards of general applicability which are proposed herein, the Commission will not be limited to consideration of comments of record, but will take into account all relevant information obtained in any manner from informed sources.

7. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished to the Commission.

Adopted: December 21, 1960.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12161; Filed, Dec. 29, 1960; 8:51 a.m.]

[47 CFR Part 3]

[Docket No. 13903 (RM-206); FCC 60-1550]

TABLE OF ASSIGNMENTS

Television Broadcast Stations (Madison, Richland Center, Wis.)

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission has under consideration a petition filed October 18, 1960 by Forward Television, Inc., licensee of television Station WMTV, Madison, Wisconsin (Channel 33), asking that Channel 15 be deleted from Richland Center, Wisconsin and assigned to Madison, Wisconsin, by amending § 3.606 of our rules as follows:

City	Channel No.	
	Present	Proposed
Madison, Wis.	3, *21−, 27−, 33+	3, 15, *21−, 27−
Richland Center, Wis.	15, *95−	40, *95−

3. Petitioner further requests it be ordered to show cause why its outstanding authorization for operation of Station WMTV should not be modified to specify operation on Channel 15.

4. Station WMTV is now authorized to operate on Channel 33. In addition to WMTV there are two other commercial stations in Madison, WISC-TV on Channel 3 and WKOW-TV on Channel 27, and non-commercial educational Station WHA-TV on Channel 21. Madison, Wisconsin is thus one of the few intermixed markets in the United States in which there is competition between UHF and VHF stations. WMTV states that while it is generally known to the Commission that UHF stations are at a disadvantage in obtaining economic support when they have VHF competition, it finds that the fact it operates on a higher UHF channel in Madison aggravates this disadvantage to a greater degree than if it were operating on a lower channel.

5. The Commission is of the view that a rule making proceeding should be instituted so that all interested parties may submit their views on the Forward proposal. Forward requests that concurrent with the adoption of the proposed allocation changes its license be modified to specify operation on Channel 15. In the event we decide to amend § 3.606 as proposed, we will then determine what further steps should be taken

with respect to the Forward request for modification of its license.

6. Authority for the adoption of the amendments proposed herein is contained in sections 4 (i) and (j), 303 and 307(b) of the Communications Act of 1934, as amended.

7. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested persons may file comments on or before January 30, 1961, and reply comments on or before February 15, 1961. All submissions by parties to this proceeding or by persons acting in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings.

8. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished to the Commission.

Adopted: December 21, 1960.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12162; Filed, Dec. 29, 1960; 8:51 a.m.]

[47 CFR Part 3]

[Docket No. 13904 (RM-205); FCC 60-1551]

TABLE OF ASSIGNMENTS

Television Broadcast Stations (Lancaster and Newark, Ohio)

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission has under consideration a petition filed October 17, 1960, by The Newark Public Schools, Newark, Ohio, asking that UHF Channel 28– be deleted from Lancaster, Ohio and assigned to Newark, Ohio, and to reserve that assignment for educational use and that Channel 68– be assigned to Lancaster, Ohio, by amending § 3.606 of our rules as follows:

City	Channel No.	
	Present	Proposed
Lancaster, Ohio	28–	68–
Newark, Ohio	60–	*28–, 60–

3. Petitioner states that its proposal would be in compliance with the Commission's rules concerning mileage separations with other station that there is interest and need for an educational television station to serve Newark and its surrounding area. Petitioner states that to provide educational service to the Newark public schools, to Licking County and to portions of other counties in the near future, it is planned that an application will be filed promptly for a UHF translator in Newark to rebroadcast the programs of Station WOSU-TV, Channel 34, Ohio State University, Columbus, Ohio. Following the operation of the translator station the Newark Public Schools plan to provide locally produced educational programs using its own station. Channel 60 is now assigned to Newark as a commercial channel for which no authorization is outstanding nor is any application pending. Petitioner is aware that application could be made for this channel and the proposed station operated on a noncommercial basis. However, it is petitioner's understanding that because of propagation and equipment factors greater coverage may be expected on lower UHF channels.

4. The Commission is of the view that a rule making proceeding should be instituted so that all interested parties may submit their views upon the Newark public schools proposal.

5. Authority for the adoption of the amendments proposed herein is contained in sections 4 (i) and (j), 303 and 307(b) of the Communications Act of 1934, as amended.

6. Pursuant to applicable procedures set out in § 1.213 of the Commission rules, interested persons may file comments on or before January 30, 1961, and reply comments on or before February 15, 1961. In reaching its decision on the rule amendments which are proposed herein, the Commission will not be limited to consideration of comments on record, but will take into account all relevant information obtained in any manner from informed sources.

7. In accordance with the provisions of § 1.54 of the rules, an original and 14 copies of all written comments and statements shall be furnished the Commission.

Adopted: December 21, 1960.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12163; Filed, Dec. 29, 1960; 8:51 a.m.]

[47 CFR Part 3]

[Docket Nos. 13858, 13859; FCC 60-1537]

TABLE OF ASSIGNMENTS

Television Broadcast Stations (Syracuse, Rochester, Elmira, Binghamton and Corning, N.Y., and Williamsport, Pa.)

1. Transcontinent Television Corporation, the licensee of Station WROC-TV, Channel 5, Rochester, New York, has in a petition filed December 19, 1960, requested the Commission to (a) clarify and amplify its notices of proposed rule making in the above-entitled proceedings and (b) to extend the time for filing comments from January 6, 1961, to March 6, 1961, or until a date not earlier than thirty days after the date on which the Commission clarifies and amplifies its notices, whichever is later.

2. In its proposals for Syracuse and Rochester the Commission recognized that coordination with Canada is required and acknowledged the prospect that certain restrictions, particularly regarding transmiter location and power authorized on Channel 13 in Rochester and Channel 9 in Syracuse, might be necessary. We expect to receive the Canadian comments in the near future, at which time the information will be made available to the parties. For this circumstance, and in consideration of the intervening holidays and the engagement of petitioner's legal and engineering counsel in other matters, as recited in the petition, the Commission is of the view that the public interest will be served by reasonably extending the deadlines in these proceedings.

3. *Accordingly, it is ordered*, This 23d day of December 1960, That the abovementioned petition by Transcontinent Television Corporation is granted to the extent ordered herein, and that the time for filing comments in these proceedings is extended from January 6, 1961, to February 15, 1961, and that the time for filing reply comments is extended from January 17, 1961, to February 27, 1961.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12164; Filed, Dec. 29, 1960; 8:51 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Foreign Assets Control

IMPORTATION OF DOLL CLOTHES DIRECTLY FROM HONG KONG

Available Certifications by the Government of Hong Kong

Notice is hereby given that certificates of origin issued by the Department of Commerce and Industry of the Government of Hong Kong under procedures agreed upon between that Government and the Foreign Assets Control are available with respect to the importation into the United States directly, or on a through bill of lading, from Hong Kong of the following additional commodity:

Doll clothes.

[SEAL] MARGARET W. SCHWARTZ,
Acting Director,
Foreign Assets Control.

[F.R. Doc. 60-12131; Filed, Dec. 29, 1960; 8:49 a.m.]

Office of the Secretary

[AA 643.3-W]

SODIUM HYDROSULFITE FROM FRANCE

Determination of No Sales at Less Than Fair Value

DECEMBER 22, 1960.

A complaint was received that sodium hydrosulfite from France was being sold in the United States at less than fair value within the meaning of the Antidumping Act of 1921.

I hereby determine that sodium hydrosulfite from France is not being, nor likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)).

Statement of reasons. It was determined that the quantity sold for home consumption was adequate to base the fair value comparison on the price in the home market. Sales to the United States were made outright to unrelated purchasers. Therefore, purchase price was compared with home consumption price.

In calculating purchase price, deductions were made for freight, insurance, and f.o.b. charges. In computing the home market price, deductions were made for cash discount, commission, technical assistance to purchasers, and average inland freight, and an addition made to reflect the higher cost of export packing. The comparison disclosed that the purchase price was less than the home market price.

There have been no importations of the involved merchandise since August 1960. The volume of imports as to which there was a margin was not more than insignificant. The shipper has decided to discontinue sales to the United States as long as the price differential situation exists between the price at which the merchandise can be sold to importers in the United States and the home market price.

This determination and the statement of reasons therefor are published pursuant to section 201(c) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(c)).

[SEAL] A. GILMORE FLUES,
Acting Secretary of the Treasury.

[F.R. Doc. 60-12132; Filed, Dec. 29, 1960; 8:49 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Portland Area Office Redelegation Order 1, Amdt. 11]

SUPERINTENDENTS AND OTHER DESIGNATED EMPLOYEES

Redelegation of Authority

The headnote and introductory paragraph for Part 2 of Portland Area Office Redelegation Order 1, as amended, are revised to read as follows:

PART 2—AUTHORITY OF SUPERINTENDENTS, SCHOOL SUPERINTENDENT, PROJECT ENGINEER, AND ASSISTANT SUPERINTENDENTS

Subject to the provisions of Part 1, Superintendents, School Superintendent, Project Engineer, and Assistant Superintendents may exercise the authority of the Area Director as indicated in this part.

GLENN L. EMMONS,
Commissioner.

DECEMBER 23, 1960.

[F.R. Doc. 60-12115; Filed, Dec. 29, 1960; 8:46 a.m.]

Bureau of Land Management

[Classification No. 95]

NEVADA

Small Tract Classification; Amendment

Effective December 19, 1960, Federal Register Document 53-8583 appearing on pages 6413-14 of the issue for October 18, 1953, is amended revising in part the appraised value of certain tracts. A list of tracts affected is posted and available for public inspection in the Nevada Land Office, 50 Ryland Street, Reno, Nevada. All tracts affected by this order are under application.

CHARLES E. HANCOCK,
Acting State Supervisor
for Nevada.

DECEMBER 19, 1960.

[F.R. Doc. 60-12120; Filed, Dec. 29, 1960; 8:47 a.m.]

SOUTH DAKOTA

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 21, 1960.

The Bureau of Reclamation has filed an application, Serial Number M-039671 (SD) for the withdrawal of the lands described below, from all forms of appropriation under the general mining laws. The applicant desires the land for reclamation purposes in connection with the Angostura Unit, Missouri River Basin Project.

For a period of thirty days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

BLACK HILLS MERIDIAN

T. 9 S., R. 5 E.,
Sec. 10, NW¼SW¼.

J. R. PENNY,
State Supervisor.

[F.R. Doc. 60-12121; Filed, Dec. 29, 1960; 8:47 a.m.]

[Utah (I-32)]

UTAH

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 20, 1960.

The Corps of Engineers, U.S. Army Engineer District, San Francisco, has filed an application, Serial No. U-058228, for the withdrawal of the land described below from all location and entry under the public land laws, including the general mining laws and the mineral leasing laws.

The lands are located about eight miles west of Tremonton, Utah, and are now used for grazing. The applicant agency desires the use of the land in conjunction with existing facilities for Air Force development purposes.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections or comments in writing to the State Supervisor for Utah, Bureau of Land Management, Darling Building, P.O. Box 777, Salt Lake City 10, Utah. If any objections are filed and the nature of the

opposition is such as to warrant it, a public hearing will be held at a convenient time and place, which will be announced, where opponents to the proposed withdrawal may state their views, and where proponents may explain its purpose.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER, either in the form of a public land order or in the form of a notice of determination if the application is rejected. In either case a separate notice will be sent to each interested party of record.

The lands involved in the application are:

SALT LAKE MERIDIAN

T. 11 N., R. 5 W.,
Sec. 4: SE¼SE¼.

The area described contains a total of 40 acres.

VAL B. RICHMAN,
State Supervisor.

[F.R. Doc. 60-12122; Filed, Dec. 29, 1960; 8:47 a.m.]

[Wyoming-059852]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 23, 1960.

The Forest Service, Department of Agriculture has filed an application, Serial No. Wyoming 059852, for withdrawal of the lands described below, from location and entry under the General Mining Laws, subject to existing valid claims.

The applicant desires the land for development and use as a planned public recreational area.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the State Supervisor, Bureau of Land Management, Department of the Interior, Post Office Box 929, Cheyenne, Wyoming.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, WYOMING

TARGHEE NATIONAL FOREST

WEST TABLE CREEK RECREATION AREA

T. 38 N, R. 117 W., (unsurveyed),
Sec. 36, SW¼.

The areas described total approximately 160 acres of public land.

EUGENE L. SCHMIDT,
Lands and Minerals Officer.

[F.R. Doc. 60-12123; Filed, Dec. 29, 1960; 8:47 a.m.]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 22, 1960.

The Forest Service, Department of Agriculture, has filed an application, Serial No. Wyoming 066672, for withdrawal of the lands described below from location and entry under the General Mining Laws of the United States.

The applicant desires the lands as public service sites for campground purposes.

For a period of thirty days, from the date of publication of this notice, persons having cause may present their objections in writing to the State Supervisor of the Bureau of Land Management, Department of the Interior, Post Office Box 929, Cheyenne, Wyoming.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, WYOMING

BLACK HILLS NATIONAL FOREST

North Redwater Campground

T. 53 N., R. 63 W.,
Sec. 14, Lot 1.

Togus Springs Campground Addition

T. 53 N., R. 63 W.,
Sec. 33, E½NW¼NE¼, NE¼SW¼NE¼, N½SE¼NE¼;
Sec. 34, NW¼SW¼NW¼.

Bearlodge Campground Addition

T. 54 N., R. 62 W.,
Sec. 20, SE¼NE¼SW¼.

Containing 109.63 acres.

EUGENE L. SCHMIDT,
Lands and Minerals Officer.

[F.R. Doc. 60-12124; Filed, Dec. 29, 1960; 8:47 a.m.]

NEBRASKA

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 22, 1960.

The Forest Service, Department of Agriculture, has filed an application, Serial Number Wyoming 074118 (Nebr.), for the withdrawal of the lands described below from location and entry under the General Mining Laws of the United States.

The applicant desires the land for administrative sites, lookout-administrative sites, and in the case of Signal Hill Natural Area, the scientific study of sandhills range plant ecology.

For a period of 30 days from the date of publication of this notice, persons having cause may present their objections in writing to the State Supervisor, Bureau of Land Management, Department of the Interior, P.O. Box 929, Cheyenne, Wyoming.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN, NEBRASKA

NEBRASKA NATIONAL FOREST

Halsey Administrative Site

T. 22 N., R. 26 W.,
Sec. 2, beginning at a point on the west boundary of Sec. 2 from which the south sixteenth section corner between Secs. 2 and 3 bears S. 0°28' E., 0.75 chains; thence N. 0°28' W. along section line approximately 19.70 chains to the south boundary of 100-foot right-of-way to C., B. & Q. R.R.; thence southeasterly along south boundary of said right-of-way to a point on meridinal center section line of Sec. 2; thence S. 0°21' E., 10.30 chains along said center section line to south center sixteenth section corner; thence S. 89°46' W., 23.34 chains, approximately along south latitudinal sixteenth section line; thence N. 81°48' W., 13.86 chains; thence S. 66°56' W., 3.29 chains to point of beginning, containing approximately 54.4 acres;
Sec. 3, SW¼, S½SE¼;
Sec. 10, N½.

Scotts Lookout Administrative Site

T. 22 N., R. 26 W.,
Sec. 9, S½SW¼.

Signal Hill Natural Area

T. 21 N., R. 27 W.,
Sec. 3, W½W½, NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼;
Sec. 4, NE¼, N½NW¼, SE¼NW¼, N½NW¼SE¼, NE¼SE¼.

Falls Administrative Site

T. 31 N., R. 30 W.,
Sec. 8, SE¼NW¼, NE¼SW¼.

Eagle Point Lookout Administrative Site

T. 32 N., R. 32 W.,
Sec. 28, SE¼NE¼.

Niobrara Ranger Station Administrative Site

T. 31 N., R. 33 W.,
Sec. 1, S½N½, N½S½;
Sec. 2, S½NE¼, N½SE¼.

Containing 2,094.4 acres more or less.

EUGENE L. SCHMIDT,
Lands and Minerals Officer.

[F.R. Doc. 60-12125; Filed, Dec. 29, 1960; 8:48 a.m.]

[Wyoming—061130]

WYOMING

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 22, 1960.

The Forest Service, Department of Agriculture, has filed an application, Serial No. Wyoming 061130, for withdrawal of the lands described below from location and entry under the General Mining Laws of the United States.

The applicant desires the land for picnic grounds, campgrounds and recreation areas in the Black Hills National Forest.

For a period of thirty days, from the date of publication of this notice, persons having cause may present their objections in writing to the State Supervisor of the Bureau of Land Management, Department of the Interior, Post Office Box 929, Cheyenne, Wyoming.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

The lands involved in the application are:

SIXTH PRINCIPAL MERIDIAN

BLACK HILLS NATIONAL FOREST

Bearlodge Picnic Ground

T. 54 N., R. 62 W.,
Sec. 20, SW¼SW¼NE¼, SE¼SE¼NW¼, NE¼NE¼SW¼, NW¼NW¼SE¼.

Togus Spring Campground

T. 53 N., R. 63 W.,
Sec. 33, NE¼NE¼;
Sec. 34, W½NW¼NW¼.

Containing 100 acres.

EUGENE L. SCHMIDT,
Lands and Minerals Officer.

[F.R. Doc. 60-12126; Filed, Dec. 29, 1960; 8:48 a.m.]

Bureau of Reclamation

[No. 79]

YUMA IRRIGATION PROJECT, ARIZONA-CALIFORNIA RESERVATION DIVISION, CALIFORNIA

Public Notice of Annual Operation and Maintenance Charges and Annual Water Rental Charges

NOVEMBER 28, 1960.

1. *Annual operation and maintenance charges for lands under public notice, Reservation Division.* The minimum annual operation and maintenance charge for the Calendar Year 1961 and thereafter until further notice against all lands of the Reservation Division under public notice shall be $10 per irrigable acre, whether water is used or not, payment of which will entitle the water user to 7 acre-feet of water per acre on certain sandy areas shown on the list attached to Public Notice No. 72 dated December 1, 1955, as amended, February 16, 1956, and to 5 acre-feet of water per irrigable acre on all other lands of the Division under public notice. Additional water, if available, will be furnished at the rate of $2.50 per acre-foot payable in advance. Credit equivalent to the amount paid for additional water unused prior to the end of any calendar year will be applied against the minimum charges for water for the following calendar year. No credit will be given for water purchased during any calendar year at the minimum charge but undelivered at the end of said calendar year.

The minimum annual operation and maintenance charge per calendar year for each parcel of land under public notice containing less than one acre shall be $10.

Where in the opinion of the Project Manager, Yuma Projects Office, it may be done without interference with other project requirements, upon written requests filed in advance by a water user who is not delinquent in the payment of any operation and maintenance charges, water will be furnished free of charge for reclaiming lands by the usual methods: *Provided, however,* That lands for which free water was served during the preceding calendar year will not again be served free water in the absence of evidence satisfactory to the Project Manager that although the water so served free of charge during such preceding year was applied to the land in sufficient quantities over a period of not less than 3 months, the results accomplished during such preceding year were not satisfactory.

All minimum annual operation and maintenance charges shall be due and payable on January 1, 1961, and on January 1 of each year thereafter.

2. *Annual water rental charges for other lands, Reservation Division.* Irrigation water will be furnished during the calendar year 1961 and thereafter until further notice for lands in the Reservation Division not under public notice which can be irrigated from the present distribution system without further construction expense by the Bureau, upon a rental basis under approved applications for temporary water service, at the following rates: the minimum annual charge shall be $10 per irrigable acre, payment of which will entitle the applicant to 5 acre-feet of water per acre. Additional water, if available, will be furnished at the rate of $2.50 per acre-foot. All charges shall be payable in advance of the delivery of water. Credit will be given for additional water paid for but not used.

3. *Penalties.* On all payments not made on or before the due dates, there shall be added on the following day a penalty of one-half of one percent of the amount unpaid and a like penalty of one-half of one percent of the amount unpaid on the first day of each calendar month thereafter so long as such default shall continue.

4. *Place of payment.* All payments should be made to the Bureau of Reclamation, Yuma Air Base, or mailed to Bureau of Reclamation, Bin 151, Yuma, Arizona.

(Act of June 17, 1902, 32 Stat. 388, as amended or supplemented)

A. B. WEST,
Regional Director.

[F.R. Doc. 60-12172; Filed, Dec. 29, 1960; 8:53 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

SKIBSAKTIESELSKABET VARILD ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8512, between Skibsaktieselskabet Varild, Aksjeselskapet Marina, Aktieselskabet Glittre, Dampskibsinteressentskabet Garonne, Aktieselskabet Standard and Fearnley & Egers Befragtningsforretning A/S (Norwegian companies under the direction of Fearnley & Eger), and Skibsaktieselskapet Sangstad, Skibsaktieselskapet Solstad, Skibsaktieselskapet Siljestad, Dampskibsaktieselskabet International, Skibsaktieselskapet Mandeville, Skibsaktieselskapet Goodwill and Universal Trading & Shipping Agency Aksjeselskap (Norwegian companies under the direction of A. F. Klaveness & Co.) is a new agreement of these parties providing for the establishment and maintenance of joint cargo, passenger and mail services in world wide trades. Agreement No. 8512, upon approval, will supersede and cancel the present joint service Agreement No. 7655, as amended, of the same parties, except Universal Trading and Shipping Agency Aksjeselskap.

Agreement No. 8061-7, between American President Lines, Ltd., Compania de Transports Oceaniques, Isthmian Lines, Inc., Kawasaki Kisen Kaisha, Ltd., Lykes Bros. Steamship Co., Inc., Mitsui Steamship Co., Inc., Prince Line, Ltd., N.V. Stoomvaart Maatschappij "Nederland", Koninklijke Rotterdamsche Lloyd, N.V., and the carriers comprising five (5) joint services, i.e., Barber-Fern-Ville Lines, Blue Funnel Line, Hoegh Line, Marchessini Lines, and A. P. Moller-Maersk Line, modifies approved Agreement No. 8061, as amended, to include Universal Trading & Shipping Agency Aksjeselskap as a participant in said agreement as a party to the Barber-Fern-Ville Lines joint service. Agreement No. 8061, as amended, covers an arrangement for the apportionment of the carriage of all rubber originating in Siam (except Bangkok local rubber), destined to United States Atlantic and Gulf ports, Whether loaded direct at Siam ports, or transhipped by road, rail or otherwise, to vessels of the carriers at ports in Malaya, Kohsichang or Bangkok.

Agreement No. 7749-2, between the carriers presently comprising the Barber-Wilhelmsen Line joint service, and Universal Trading & Shipping Agency, Aksjeselskap, modifies approved joint service Agreement No. 7749, as amended, to include the latter carrier as a party to the joint service, which operates in the trade from the Far East to Hawaii, Panama Canal Zone, and ports on the Pacific and Atlantic Coasts of the United States (not

including any transportation within the purview of the coastwise laws of the United States).

Agreement No. 7668–2, between the carriers presently comprising the Barber-West African Line joint service, and Universal Trading & Shipping Agency, Aksjeselskap, modifies approved joint service Agreement No. 7668, as amended, to include the latter carrier as a party to the joint service, which operates in the trade between Atlantic and St. Lawrence ports of Canada/United States Atlantic and Gulf ports and ports on the West Coast of Africa.

Agreement No. 7653–1, between the carriers presently comprising the Klaveness Line joint service, and Universal Trading & Shipping Agency, Aksjeselskap, modifies approved joint service Agreement No. 7653 to include the latter carrier as a party to the joint service, which operates in the trade between Pacific Coast ports of the United States and Canada and ports in the Far East.

Agreement No. 6060–C, between the member lines of the Pacific Indonesian Conference and the thirteen (13) Norwegian carriers comprising the New Fern-Ville Lines joint service, is a new associate membership agreement of that joint service with said conference which, upon approval, will supersede and cancel Agreement No. 6060–A, as amended, between the conference members and the twelve (12) Norwegian carriers presently comprising the joint service. As an associate member, the joint service will be obligated to abide by all the rates, rules, regulations and decisions of the conference; will have no vote in conference affairs; will be permitted to participate in conference contracts with shippers; and will not share in the expenses of the conference, except as may be specifically agreed upon between the parties.

Agreement No. 5680–G, between the member lines of the Pacific Straits Conference and the thirteen (13) Norwegian carriers comprising the new Fern-Ville Lines joint service, is a new associate membership Agreement of that joint service with said conference which, upon approval, will supersede and cancel Agreement No. 5680–A, as amended, between the conference members and the twelve (12) Norwegian carriers presently comprising the joint service. As an associate member, the joint service will be obligated to abide by all the rates, rules, regulations and decisions of the conference; will have no vote in conference affairs; will be permitted to participate in conference contracts with shippers; and will not share in the expenses of the conference, except as may be specifically agreed upon between the parties.

Agreement No. 57–74, between the member lines of the Pacific Westbound Conference and the thirteen (13) Norwegian carriers comprising the new Fern-Ville Lines joint service, is a new associate membership agreement of that joint service with said conference which, upon approval, will supersede and cancel associate membership Agreement No. 57–63, between the conference members and twelve (12) Norwegian carriers presently comprising the joint service. As an associate member, the joint service will be obligated to abide by all the rates, rules, regulations and decisions of the conference; will have no vote in conference affairs; will be permitted to participate in conference contracts with shippers; and will not share in the expenses of the conference, except as may be specifically agreed upon between the parties.

Agreement No. 7668–2, between the member lines of the Far East Conference, provides for the inclusion of Universal Trading & Shipping Agency Aksjeselskap as a party to the joint membership held by the carriers comprising the Fern-Ville Lines.

Interested parties may inspect these agreements and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to these agreements and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 27, 1960.

By order of the Federal Maritime Board.

GEO. A. VIEHMANN,
Assistant Secretary.

[F.R. Doc. 60–12134; Filed, Dec. 29, 1960; 8:49 a.m.]

AMERICAN WEST AFRICAN FREIGHT CONFERENCE

Notice of Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 7680–11, between the member lines of the American West African Freight Conference, modifies the basic agreement of that conference (No. 7680, as amended), to provide (1) that action at any meeting to establish, increase or decrease freight rates a quorum shall consist of the number of active members whose affirmative votes would, on the date of the respective meeting, be required for action, and (2) that no action will be taken on matters not set forth in the notice of meeting or agenda without the unanimous consent of all active members.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to this agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 27, 1960.

By order of the Federal Maritime Board.

GEO. A. VIEHMANN,
Assistant Secretary.

[F.R. Doc. 60–12135; Filed, Dec. 29, 1960; 8:50 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–60]

BETHESDA NAVAL HOSPITAL

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 2, set forth below, to License No. R–27 issued to Bethesda Naval Hospital. The amendment provides additional safeguards for the operation by the licensee of its reactor Model AGN–201, Serial No. 105, located on its site in Bethesda, Maryland. The Commission has found that operation of the reactor in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license as amended does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street, Washington, D.C. For further details see the application for license submitted by Bethesda Naval Hospital on file at the AEC's Public Document Room.

Dated at Germantown, Md., this 21st day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[License No. R–27; Amdt. 2]

License No. R–27, as amended, which authorizes Bethesda Naval Hospital to operate its reactor Model AGN–201, Serial No. 105, located on its site in Bethesda, Maryland, is hereby amended by adding the following additional conditions thereto:

1. A maximum of 0.25 percent excess reactivity may be loaded in the reactor with the glory hole empty and with the access ports containing their design loadings. The total worth of any experiments loaded in the reactor shall not exceed 0.4 percent excess reactivity. The excess reactivity loadings shall be determined at the operating temperature of the reactor.

2. The scram setting on the logarithmic scale micro-microammeter shall be set so that the power level at which the scram is to occur shall not exceed twice the licensed maximum power level and the period at which a scram is to occur shall not be less than five seconds.

3. The range selectors for the two linear channels shall be set so that the operator cannot switch to a scale on which the power level at which a scram is to occur is more than twice the licensed maximum power.

4. The reactor shall not be operated with any of the scram signals by-passed.

5. The licensee shall not conduct any experiment involving moving of the fixed fuel discs of the reactor unless authorized by an amendment to this license.

This amendment is effective thirty days after the date of issuance.

Date of issuance: December 21, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60–12100; Filed, Dec. 29, 1960; 8:45 a.m.]

[Docket No. 50–77]

CATHOLIC UNIVERSITY OF AMERICA

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 2, set forth below, to License No. R–31. The amendment provides additional safeguards for the operation by the licensee of its reactor Model AGN–201, Serial No. 101, located on its campus in Washington, D.C. The Commission has found that operation of the reactor in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license as amended does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street, Washington, D.C. For further details see the application for license submitted by The Catholic University of America on file at the AEC's Public Document Room.

Dated at Germantown, Md., this 21st day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[License No. R–31; Amdt. 2]

License No. R–31, as amended, which authorizes The Catholic University of America to operate its reactor Model AGN–201, Serial No. 101, located on its campus in Washington, D.C., is hereby amended by adding the following additional conditions thereto:

1. A maximum of 0.25 percent excess reactivity may be loaded in the reactor with the glory hole empty and with the access ports containing their design loadings. The total worth of any experiments loaded in the reactor shall not exceed 0.4 percent excess reactivity. The excess reactivity loadings shall be determined at the operating temperature of the reactor.

2. The scram setting on the logarithmic scale micro-microammeter shall be set so that the power level at which the scram is to occur shall not exceed twice the licensed maximum power level and the period at which a scram is to occur shall not be less than five seconds.

3. The range selectors for the two linear channels shall be set so that the operator cannot switch to a scale on which the power level at which a scram is to occur is more than twice the licensed maximum power.

4. The reactor shall not be operated with any of the scram signals by-passed.

5. The licensee shall not conduct any experiment involving moving of the fixed fuel discs of the reactor unless authorized by an amendment to this license.

This amendment is effective thirty days after the date of issuance.

Date of issuance: December 21, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60–12101; Filed, Dec. 29, 1960; 8:45 a.m.]

[Docket No. 50–163]

GENERAL DYNAMICS CORP.

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 1, set forth below, to License No. R–67. The amendment provides an additional authorization to General Dynamics Corporation to conduct in its TRIGA Mark F reactor (previously designated as "FLAIR") located at Torrey Pines Mesa, California, the non-fueled incore experiments described in its applications for license amendment dated September 30, 1960 and November 16, 1960. The Commission has found that operation of the reactor in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the conduct of the proposed experiments does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street, Washington, D.C. For further details see the application for license submitted by General Dynamics Corporation, and (2) a hazards analysis of the proposed operation prepared by the Test and Power Reactor Safety Branch of the Division of Licensing and Regulation, both on file at the AEC's Public Document Room. A copy of item (2) above may be obtained at the AEC's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D.C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 22d day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[License No. R–67; Amdt. 1]

License No. R–67, issued to General Dynamics Corporation, is hereby amended in the following respects:

In addition to the activities previously authorized by the Commission in License No. R–67, General Dynamics Corporation is authorized to conduct, in its TRIGA Mark F reactor (previously designated as "FLAIR") located at Torrey Pines Mesa, California, the non-fueled in-core experiments described in its applications for license amendment dated September 30, 1960, and November 16, 1960. When conducting the experiments, General Dynamics Corporation shall comply with the procedures and limitations set forth in License No. R–67 and the applications for license amendment dated September 30, 1960, and November 16, 1960, and with the additional condition set forth below:

The total reactivity worth of any combination of in-core experiments shall not exceed $4.00.

This amendment is effective as of the date of issuance.

Date of issuance: December 22, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60–12102; Filed, Dec. 29, 1960; 8:45 a.m.]

[Docket No. 50-106]

OREGON STATE COLLEGE

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 3, set forth below, to License No. R-61 issued to Oregon State College. The amendment provides additional safeguards for the operation by the licensee of its reactor Model AGN-201, Serial No. 114, located on its campus in Corvallis, Oregon. The Commission has found that operation of the reactor in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license as amended does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street, Washington, D.C. For further details see the application for license submitted by Oregon State College on file at the AEC's Public Document Room.

Dated at Germantown, Md., this 21st day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[License No. R-51; Amdt. 3]

License No. R-51, as amended, which authorizes Oregon State College to operate its reactor Model AGN-201, Serial No. 114, located on its campus in Corvallis, Oregon, is hereby amended by adding the following additional conditions thereto:

1. A maximum of 0.25 percent excess reactivity may be loaded in the reactor with the glory hole empty and with the access ports containing their design loadings. The total worth of any experiments loaded in the reactor shall not exceed 0.4 percent excess reactivity. The excess reactivity loadings shall be determined at the operating temperature of the reactor.

2. The scram setting on the logarithmic scale micro-microammeter shall be set so that the power level at which the scram is to occur shall not exceed twice the licensed maximum power level and the period at which a scram is to occur shall not be less than five seconds.

3. The range selectors for the two linear channels shall be set so that the operator cannot switch to a scale on which the power level at which a scram is to occur is more than twice the licensed maximum power.

4. The reactor shall not be operated with any of the scram signals by-passed.

5. The licensee shall not conduct any experiment involving moving of the fixed fuel discs of the reactor unless authorized by an amendment to this license.

This amendment is effective thirty days after the date of issuance.

Date of issuance: December 21, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing and Regulation.

[F.R. Doc. 60-12103; Filed, Dec. 29, 1960; 8:45 a.m.]

[Docket No. 50-64]

UNIVERSITY OF AKRON

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 2, set forth below, to License No. R-24 issued to The University of Akron. The amendment provides additional safeguards for the operation by the licensee of its reactor Model AGN-201, Serial No. 104, located on its campus in Akron, Ohio. The Commission has found that operation of the reactor in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of the proposed issuance of this amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license as amended does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room 1717 H Street, Washington, D.C. For further details see the application for license submitted by The University of Akron on file at the AEC's Public Document Room.

Dated at Germantown, Md., this 21st day of December 1960.

For The Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-12104; Filed, Dec. 29, 1960; 8:45 a.m.]

[License No. R-24; Amdt. 2]

License No. R-24, as amended, which authorizes The University of Akron to operate its reactor Model AGN-201, Serial No. 104, located on its campus in Akron, Ohio, is hereby amended by adding the following additional conditions thereto:

1. A maximum of 0.25 percent excess reactivity may be loaded in the reactor with the glory hole empty and with the access ports containing their design loadings. The total worth of any experiments loaded in the reactor shall not exceed 0.4 percent excess reactivity. The excess reactivity loadings shall be determined at the operating temperature of the reactor.

2. The scram setting on the logarithmic scale micro-microammeter shall be set so that the power level at which the scram is to occur shall not exceed twice the licensed maximum power level and the period at which a scram is to occur shall not be less than five seconds.

3. The range selectors for the two linear channels shall be set so that the operator cannot switch to a scale on which the power level at which a scram is to occur is more than twice the licensed maximum power.

4. The reactor shall not be operated with any of the scram signals by-passed.

5. The licensee shall not conduct any experiment involving moving of the fixed fuel discs of the reactor unless authorized by an amendment to this license.

This amendment is effective thirty days after the date of issuance.

Date of issuance: December 21, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing and Regulation.

[F.R. Doc. 60-12105; Filed, Dec. 29, 1960; 8:46 a.m.]

[Docket No. 50-112]

UNIVERSITY OF OKLAHOMA

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 1, set forth below, to License No. R-53 issued to the University of Oklahoma. The amendment authorizes the licensee to remove fuel elements from and reinsert fuel elements into its reactor Model AGN-211, Serial No. 102, located on its site in Norman, Oklahoma, in accordance with the procedures described in its letter to the Commission dated October 21, 1959. The Commission has found that operation of the reactor in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license as amended does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street NW., Washington, D.C. For further details see Docket No. 50-112 on file at the AEC's Public Document Room.

Dated at Germantown, Md., this 21st day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing and Regulation.

[License No. R-53; Amdt. 1]

In addition to the activities previously authorized by the Commission in License No. R-53, the University of Oklahoma is authorized to remove fuel elements from and reinsert fuel elements into its nuclear reactor Model AGN-211, Serial No. 102, located on its campus in Norman, Oklahoma, in accordance with the procedures described in its letter to the Commission dated October 21, 1959.

The licensee shall not otherwise modify the composition or configuration of the fuel elements in the reactor unless authorized by an amendment to this license.

These activities shall be conducted in accordance with the procedures and subject to the limitations contained in License No. R-53 and in the letter to the Commission dated October 21, 1959.

This amendment is effective as of the date of issuance.

Date of issuance: December 21, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[F.R. Doc. 60-12106; Filed, Dec. 29, 1960; 8:46 a.m.]

[Docket No. 50-114]

WILLIAM MARSH RICE UNIVERSITY

Notice of Issuance of Utilization Facility License Amendment

Please take notice that the Atomic Energy Commission has issued Amendment No. 2, set forth below, to License No. R-54 issued to William Marsh Rice University. The amendment provides additional safeguards for the operation by the licensee of its reactor Model AGN-211, Serial No. 101, located on its campus in Houston, Texas. The Commission has found that operation of the reactor in accordance with the terms and conditions of the license, as amended, will not present any undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the operation of the reactor in accordance with the terms of the license as amended does not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved operation of the reactor.

In accordance with the Commission's rules of practice (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after issuance of the license amendment. Petitions for leave to intervene and requests for a formal hearing shall be filed by mailing a copy to the Office of the Secretary, Atomic Energy Commission, Washington 25, D.C., or by delivery of a copy in person to the Office of the Secretary, Germantown, Maryland, or the AEC's Public Document Room, 1717 H Street, Washington, D.C. For further details see Docket No. 50-114 on file at the AEC's Public Document Room.

Dated at Germantown, Md., this 21st day of December 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director, Division of Licensing and Regulation.

[License No. R-54; Amdt. 2]

License No. R-54, as amended, which authorizes William Marsh Rice University to operate its reactor Model AGN-211, Serial No. 101, located on its campus in Houston, Texas, is hereby amended by adding the following additional conditions thereto:

1. A maximum of 0.25% excess reactivity may be loaded in the reactor with the experimental facilities empty. The total worth of any experiments loaded in the reactor shall not exceed 0.4% excess reactivity. The excess reactivity loadings shall be determined at the temperature at which the reactor temperature switch is set.

2. The reactor temperature switch shall not be set below 20° C nor above 25° C.

3. The scram setting on the reactor shall be set so that the power level at which a scram is to occur shall not exceed 150% of the licensed maximum power level and the period at which a scram is to occur shall not be less than five seconds.

4. The licensee shall not modify the composition or configuration of the fuel elements in the reactor unless authorized by an amendment to this license.

This amendment is effective thirty days after the date of issuance.

Date of issuance: December 21, 1960.

For the Atomic Energy Commission.

R. L. KIRK,
Deputy Director,
Division of Licensing and Regulation.

[F.R. Doc. 60-12107; Filed, Dec. 29, 1960; 8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. CI60-333 etc.]

STANDARD OIL COMPANY OF CALIFORNIA ET AL.

Notice of Postponement of Hearing

DECEMBER 23, 1960.

Standard Oil Company of California, Docket No. CI60-333; Dorsey Buttram, Docket No. CI60-442; George P. Caulkins, Jr., Docket No. CI60-560; Gulf Oil Corporation, Docket No. CI60-636.

Upon consideration of request by Commission Staff Counsel for postponement of the hearing now scheduled for January 10, 1961 in the above-designated matters.

The hearing now scheduled for January 10, 1961 is hereby postponed to February 7, 1961, at 10:00 a.m., e.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-12111; Filed, Dec. 29, 1960; 8:46 a.m.]

[Docket No. RI61-297 etc.]

TIDEWATER OIL CO. ET AL.

Order Permitting Superseding Rate Filing, Providing for Hearings on and Suspension of Rate Schedule and Proposed Rate Changes [1]

DECEMBER 23, 1960.

Tidewater Oil Company (Operator), et al., Docket No. RI61-297; Whitehall Oil Company, Inc., Docket No. RI61-298; Hurt Oil & Gas Corporation, Docket No. RI61-299; Placid Oil Company (Operator), et al., Docket No. RI61-213; Gulf Oil Corporation, Docket No. RI61-300; Anadarko Production Company, Docket No. RI61-301; Francis A. Callery (Operator), et al., Docket No. RI61-302.

The above-named Respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in docket No.
RI61-297	Tidewater Oil Co. (Operator), et al., P. O. Box 1404, Houston 1, Tex.	34	9	United Gas Pipe Line Co. (Hollywood Field, Terrebonne Parish, La.) (Southern La.).	$395,400	11-29-60	[1] 1-1-61	6-1-61	20.25	[2] 22.25	G-9892
RI61-298	Whitehall Oil Co., Inc., 1814 Mercantile Bank Bldg., Dallas 1, Tex.	2	25	Natural Gas Pipeline Co. of America (Booneville Field, Wise County, Tex.) (R.R. Dist. No. 9).	22,820	11-25-60	[3] 12-27-60	5-27-61	13.89	[3] [4] 14.89	--
RI61-299	Hurt Oil & Gas Corp., 701 San Jacinto Bldg., Houston, Tex.	3	2	United Gas Pipe Line Co. (Houma Field, Terrebonne Parish, La.) (Southern La.).	4,405	11-29-60	[1] 1-1-61	6-1-61	20.25	[2] 22.25	----------
RI61-213	Placid Oil Co. (Operator), et al., 418 Market St., Shreveport, La.	[5] 29		H. L. Hunt, et al. (Whelan Field, Harrison County, Tex.) (R.R. Dist. No. 6).	----	11-25-60	[6] 12-26-60	[7] 1-1-61	[3] 12.5	----------	RI61-213
RI61-300	Gulf Oil Corp., P. O. Drawer 2100, Houston 1, Tex.	187	1	Mesquite Gas Products, Inc. (Davis Field, Upton County, Tex.) (R.R. Dist. No. 7c).	1,500	11-29-60	[1] 1-1-61	6-1-61	7.0	[3] 12.0	----------
RI61-301	Anadarko Production Co., P. O. Box 351, Liberal, Kans.	7	2	Northern Natural Gas Co. (Hugoton Field, Morton County, Kans.) (Kans.).	6,662	11-30-60	[1] 1-1-61	6-1-61	12.0	[3] 17.0	----------
RI61-302	Francis A. Callery (Operator), et al., Bank of the Southwest Bldg., Houston 2, Tex.	16	11	United Gas Pipe Line Co. (East Gibson Field, Terrebonne Parish, La.) (Southern La.)	12,700	11-30-60	[1] 1-1-61	6-1-61	20.25	[2] 22.25	G-17822

[1] The stated effective date is the effective date proposed by Respondent.
[2] The pressure base is 15.025 psia.
[3] The pressure base is 14.65 psia.
[4] Includes 0.25 cents per Mcf for dehydration and 0.64 cents per Mcf for upward Btu adjustment both charged by seller.
[5] Supersedes Placid Oil Co. (Operator), et al.'s FPC Gas Rate Schedule No. 15 as amended.
[6] The stated effective date is the first day after expiration of the required 30 days' notice.
[7] Termination date of the suspension period in Docket RI61-213.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds:

(1) Placid Oil Company (Operator), et al's (Placid) contract dated March 16, 1959, designated as Placid's FPC Gas Rate Schedule No. 29, should be permitted to be filed to supersede Placid's contract dated August 7, 1947, contained in its FPC Gas Rate Schedule No. 15.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above designated rate schedule and supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Placid's superseding Rate Schedule No. 29 is hereby permitted to be filed to supersede that company's FPC Gas Rate Schedule No. 15, as amended.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Ch. I), public hearings shall be held upon the dates to be fixed by notices from the Secretary concerning the lawfulness of the several proposed changes and that the above-designated rate schedule and supplements be suspended and the use thereof deferred as hereinafter ordered.

(C) Pending hearings and decisions thereon, the above-designated rate schedule and supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(D) Neither the rate schedule and supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 6, 1961.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-12112; Filed, Dec. 29, 1960; 8:46 a.m.]

[Docket No. CP61-112]

COLUMBIA GULF TRANSMISSION CO.

Notice of Application and Date of Hearing

DECEMBER 22, 1960.

Take notice that on October 6, 1960, as supplemented on October 31, 1960, Columbia Gulf Transmission Company (Applicant), 1125 Brazos Street, Houston 2, Texas, filed in Docket No. CP61-112 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of field facilities to enable Applicant to take into its certificated main transmission pipeline system natural gas which will be purchased from producers thereof from time to time during the calendar year 1961 in the general area of Applicant's existing transmission system, at a total cost not to exceed $1,500,000, with no single project to exceed a cost of $500,000 all as more fully set forth in the application and supplement which are on file with the Commission and open to public inspection.

The purpose of this "budget-type" application is to augment Applicant's ability to act with reasonable dispatch in contracting for and connecting to its existing pipeline system new supplies of natural gas in various producing areas generally coextensive with said system.

Applicant proposes to finance the cost of the subject facilities from funds on hand.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 19, 1961, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Comission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 13, 1961. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 60-12110; Filed, Dec. 29, 1960; 8:46 a.m.]

[Docket Nos. RI61-281—RI61-296]

MAXWELL OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1] and Allowing Increased Rates To Become Effective Subject to Refund

DECEMBER 21, 1960.

Maxwell Oil Company (Operator), et al., Docket No. RI61-281; Texaco Inc., Docket No. RI61-282; J. H. Bartley, et al., Docket No. RI61-283; Phillips Petroleum Company (Operator), et al., Docket No. RI61-284; Continental Oil Company, Docket No. RI61-285; Crescent Production Company, Inc., Docket No. RI61-286; Crescent Drilling Company, Inc., Docket No. RI61-287; Columbian Fuel Corporation, Docket No. RI61-288; Peake Petroleum Company, Docket No. RI61-289; Sinclair Oil & Gas Company, Docket No. RI61-290; San Salvador Development Company, Inc., Docket No. RI61-291; Tidewater Oil Company, Docket No. RI61-292; Cabot Corporation (SW), Docket No. RI61-293; Pan American Petroleum Corporation (Operator), et al., Docket No. RI61-294; Petroleum, Inc. (Operator), et al., Docket No. RI61-295; The Ohio Oil Company, Docket No. RI61-296.

The above-named respondents have tendered for filing proposed changes in presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes are designated as follows:

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date [1] unless suspended—	Date suspended until—	Cents per Mcf [2]: Rate in effect	Cents per Mcf [2]: Proposed increased rate	Rate in effect subject to refund in docket Nos.
RI61-281	Maxwell Oil Co. (Operator), et al., Continental National Bank Bldg., Fort Worth, Tex.	1	1	El Paso Natural Gas Co. (Upton County, Tex.).	$16,622	11-21-60	1-1-61	6-1-61	10.64	15.7	----------
RI61-282	Texaco Inc., P.O. Box 2332, Houston, Tex.	72	6	Northern Natural Gas Co. (Hugoton Field, Haskell County, Kans.).	1,569	11-21-60	12-22-60	5-22-61	[3] 11.0	15.0	----------
RI61-283	J. H. Bartley, et al., 905 Midland Savings & Loan Bldg., Midland, Tex.	1	10	El Paso Natural Gas Co. (Spraberry Field, Reagan County, Tex.).	341	11-21-60	12-22-60	5-22-61	10.096	11.1056	----------
RI61-284	Phillips Petroleum Co. (Operator), et al., Bartlesville, Okla.	326	4	Natural Gas Pipeline Co. of America (Wise County, Tex.).	16,825	11-21-60	12-27-60	5-27-61	[4] 13.3748	14.3844	----------
RI61-285	Continental Oil Co., P.O. Box 2197, Houston 1, Tex.	169	6	Texas Eastern Transmission Corp. (Cherokee Lake Field, Rusk and Gregg Counties, Tex.).	508	11-21-60	12-22-60	5-22-61	14.8	15.0	RI60-160
RI61-286	Crescent Production Co., Inc., 812 Ouachita National Bank Bldg., Monroe, La.	15	5	Arkansas Louisiana Gas Co. (Colquitt Field, Clairborne Parish, La.).	34	11-23-60	12-24-60	12-25-60	12.888	13.337	G-18411
RI61-287	Crescent Drilling Co., Inc., 812 Ouachita Bldg., Monroe, La.	2	5	Arkansas Louisiana Gas Co. (Colquitt Field, Clairborne Parish, La.).	22	11-23-60	12-24-60	12-25-60	12.888	13.337	G-18410
RI61-288	Columbian Fuel Corp., 380 Madison Ave., New York 17, N.Y.	29 29	[5] 6	Atlantic Seaboard Corp. (Pike County, Ky.).	21,923	11-22-60	12-23-60	5-23-61	26.0	[3] 27.5	----------
		10 10	[4] 13 14	United Fuel Gas Co. (various counties, Ky.).	57,100	11-22-60	12-23-60	5-23-60	26.0	[4] 27.5	G-9673
RI61-289	Peake Petroleum Co., 1310 Williamson Bldg., Cleveland 14, Ohio.	3	2	Columbian Carbon Co. (Nicholas County, W. Va.).	2,464	11-23-60	12-24-60	12-25-60	16.0	20.0	----------
RI61-290	Sinclair Oil & Gas Co., P.O. Box 521, Tulsa, Okla.	139	5	Natural Gas Pipeline Co. of America (Grand Valley Field, Texas County, Okla.).	72	11-23-60	1-23-61	6-23-61	16.8	17.0	G-20282
RI61-291	San Salvador Development Co., Inc., 90 Broad St., New York 4, N.Y.	1	5	Tennessee Gas Transmission Co. (San Salvador Field, Hidalgo County, Tex.).	1,521	11-23-60	12-24-60	5-24-61	17.02416	17.24347	RI60-290
RI61-292	Tidewater Oil Co., P.O. Box 1404, Houston 1, Tex.	66	5	United Gas Pipe Line Co. (Southeast Houma Field, Terrebonne Parish, La.).	16,686	11-23-60	1-1-61	6-1-61	20.25	22.25	----------
		71	6	United Gas Pipe Line Co. (Midland Field, Acadia Parish, La.).	16,061	11-23-60	1-1-61	6-1-61	20.25	22.25	----------
RI61-293	Cabot Corporation (SW), P.O. Box 1101, Pampa, Tex.	50	1	El Paso Natural Gas Co. (Spraberry and Zulette-Fusselman Fields, Reagan County, Tex.).	29,189	11-25-60	1-1-61	6-1-61	11.1485	17.2296	----------
RI61-294	Pan American Petroleum Corp. (Operator), et al., P.O. Box 591, Tulsa, Okla.	227	3	United Gas Pipe Line Co. (Bourg Field, La Fourche and Terrebonne Parish, La.).	15,849	11-25-60	1-1-61	6-1-61	20.25	22.25	----------
RI61-295	Petroleum, Inc. (Operator), et al., P.O. Box 1374, Oil Center Station, Lafayette, La.	13	2	Trunkline Gas Co. (Fields Field, Beauregard Parish, La.).	1,638	11-28-61	1-1-61	6-1-61	18.3	18.5	G-20276
		14	3	United Gas Pipe Line Co. (Houma Field, Terrebonne Parish, La.).	4,405	11-29-60	1-1-61	6-1-61	20.25	22.25	----------
RI61-296	The Ohio Oil Co., 539 South Main St., Findlay, Ohio.	54	2	El Paso Natural Gas Co. (Pegasus Field Plant, Midland and Upton Counties, Tex.).	34	11-25-60	12-26-60	5-26-61	10.096	11.1056	----------

[1] The stated effective dates are the first day after the required thirty days notice or, if later, the date proposed by Respondent.
[2] The rates in the proceedings in Docket Nos. RI61-286, RI61-287, RI61-292, RI61-294 and RI61-295 are at a pressure base of 15.025 psia. The rates in Docket Nos. RI61-288 and RI61-289 are at 15.325 psia. The other rates are at 14.65 psia.
[3] Subject to Btu adjustment.
[4] Subject to Btu adjustment; includes 0.25 cent per Mcf charged by seller for gathering and dehydrating.
[5] The present rate in effect includes 6.0 cents per Mcf charged by seller for gathering. A supplemental agreement reduces that charge to 3.5 cents per Mcf and increases the base rate to 24.0 cents per Mcf.
[6] A supplemental agreement increases the seller's gathering charge from 2.0 cents to 3.5 cents per Mcf.

The increased rates and charges so proposed may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon hearings concerning the lawfulness of the several proposed changes and that the above-designated supplements be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), public hearings shall be held upon dates to be fixed by notices from the Secretary concerning the lawfulness of the several

[1] This order does not provide for the consolidation for hearing or disposition of the several matters covered herein, nor should it be so construed.

proposed increased rates and charges contained in the above-designated supplements.

(B) Pending hearings and decisions thereon, the above-designated supplements are hereby suspended and the use thereof deferred until the date indicated in the above "Rate Suspended Until" column, and thereafter until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until these proceedings have been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Supplement No. 5 to Crescent Production Company, Inc.'s FPC Gas Rate Schedule No. 15 and Supplement No. 5 to Crescent Drilling Company, Inc.'s FPC Gas Rate Schedule No. 2 (proposing increased rates which reflect questionable contract interpretations that should be determined after hearings) shall be effective as of December 25, 1960, with only the Louisiana severance tax reimbursement portion of the proposed rates being subject to refund; Supplement No. 2 to Peake Petroleum Company's FPC Gas Rate Schedule No. 3 (proposing a revenue-sharing increased rate based upon an increased rate that is effective subject to refund in the proceeding in Docket No. G-19782) shall be effective as of December 25, 1960: *Provided, however,* That within 20 days from the date of the issuance of this order these Respondents shall file under Docket Nos. RI61-286, RI61-287, RI61-289, respectively, with the Secretary of the Commission their agreements and undertakings to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder. The agreements and undertakings shall be signed by a responsible officer of the corporation accompanied by proper authorization from the Board of Directors and by a certificate showing service of copies upon all purchasers under the rate schedule involved. Unless these Respondents are advised to the contrary within 15 days after the filing of such agreement and undertaking, their agreement and undertaking shall be deemed to have been accepted.

(E) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 6, 1961.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE, *Secretary.*

[F.R. Doc. 60-12136; Filed, Dec. 29, 1960; 8:50 a.m.]

[Docket No. AR61-1 etc.]

ORDER INSTITUTING AREA RATE HEARING, CONSOLIDATING PROCEEDINGS AND PRESCRIBING PRELIMINARY PROCEDURE

DECEMBER 23, 1960.

Area rate proceeding,[1] Docket No. AR61-1; Claude E. Aikman,[2] Docket No. G-18466, et al.; North Central Oil Corportation (Operator), et al.,[3] Docket No. CI60-435, et al.

On September 28, 1960, the Federal Power Commission issued its Statement of General Policy No. 61-1 based upon the Commission's experience gained after six years of regulation of independent producers under the Natural Gas Act. By this Statement and the area schedules set forth therein the Commission has announced standards for both initial and increased area price levels for natural gas sold or to be sold in interstate commerce by producers.

The schedule of prices set forth in the Statement, however, was not intended to constitute a determination of just and reasonable rates, nor was it intended to foreclose any person from an opportunity to justify a particular rate in any area whether higher or lower than that set out in the Statement. Furthermore, it was contemplated that those prices might be revised from time to time as experience, and evidence adduced by parties to appropriate proceeding, might dictate. It was also recognized that the geographical areas underlying the schedule of prices might ultimately be found not proper for the establishment of appropriate pricing areas.

There are presently pending before the Commission numerous producer rate-suspension proceedings under section 4 of the Natural Gas Act. The majority of those proceedings concern proposed increased rates and charges which exceed the price levels set forth in the Commission's Statement of General Policy No. 61-1, as amended. In addition, there are pending numerous applications for certificates of public convenience and necessity under section 7 of the Natural Gas Act where the proposed initial rates exceed such price levels. In order that there may be assured the development of evidentiary records containing all significant facts relevant to the determination of an appropriate price level or levels for the various geographical areas set forth in our Policy Statement, it is necessary and appropriate to initiate and conduct area rate hearings.

More specifically, for immediate purposes, it is necessary and desirable to initiate and conduct an area rate hearing for the purpose of developing facts relevant and appropriate to the determination of a just and reasonable area producer rate, or rates, for or within the geographical area hereinafter described. The area rate hearing so initiated and as hereinafter ordered is to be concerned with the geographical area consisting of the areas of Permian Basin, New Mexico and Texas Railroad Commission Districts Nos. 7(c) and 8, Texas, as designated in our Statement of General Policy No. 61-1 and as more specifically set out in Appendix "D" hereof. The rates presently set forth in our Statement for initial rates and for increased rates, respectively, are identical for each of the three constituent areas.

We have concluded that no useful purpose would be served at this time by delaying the discharge of our primary responsibility under the Act of determining just and reasonable rates by entertaining issues or considering contentions that the areas we have delineated in our Statement might be inappropriate for rate making purposes. Accordingly, for the purposes of this area proceeding we do not propose to consider any evidence looking toward the fixing of rates for sales of gas in areas outside the boundaries of the geographical area we have delineated in Appendix "D" hereto.

In the proceedings at Docket Nos. G-18466, et al., the details of which are set out in Appendix "B" hereof, the Commission has heretofore issued its orders suspending proposed increases in rates and charges for sales of natural gas for resale in interstate commerce within the geographical area above described. The natural gas producers in these docketed proceedings, and other producers in the geographical area, may also be charging and collecting rates which, although not under suspension by the Commission presently, may be unjust, unreasonable, unduly discriminatory or preferential under the Natural Gas Act. In addition, certificate proceedings are pending for the sale of natural gas within the area in which there is involved the question of the appropriate initial rates applicable to such sales of natural gas. These proceedings are designated in Appendix "C" hereof. The interests not only of the producers but of the pipeline companies purchasing gas produced in the area, interested distributing companies, other parties having an interest, and the ultimate consumers for whose protection the Natural Gas Act was enacted, would be best served, and our responsibility under the statute more fully discharged, if all such proceedings were consolidated for hearing purposes with the area rate proceeding herein initiated.

Because of the large number of persons having interests which may be affected by the determination contemplated by this order and the consequent procedural impracticability of permitting unlimited individual participation of all such persons, and in order to expedite the hearing, it is appropriate in the public interest that there be established reasonable limitations upon the number of persons individually participating in the proceeding, the number of attorneys who will be permitted to examine or cross-examine witnesses or otherwise participate in the formal hearings as is contemplated by the Commission's rules of practice and procedure, and the number of witnesses that may be heard upon any issue raised in such proceeding.

The interest of all of the producers in the geographical area as hereinbefore described which are subject to the jurisdiction of the Commission, the other persons described above, and the public will also be served by providing for a prehearing conference as contemplated by the Commission's rules of practice and procedure for effectuation of the purposes specifically mentioned in § 1.18 of such rules. Attention is directed to the Commission's views with respect to the use of the conference technique and the ultimate objective of expediting the Commission's hearing proceedings as set forth in Order No. 217. Among other things, the objectives of the conference shall be to consider the type of evidence to be adduced, the order of presentation, the simplification and delineation of the issues, and the number of witnesses to be heard on any issue or subject. The right to participate in such a conference is predicated upon the filing in accordance with the provisions of Paragraph "E" of this order of a statement setting out specifically the interests in the proceeding by the person or persons seeking an opportunity to participate therein and the orders of the Commission or the rulings of the Presiding Examiner with respect thereto. Upon completion of the prehearing conference, the Presiding Examiner shall prepare and file with the Secretary of the Commission a summary report of such conference.

The Commission finds:

(1) To aid in carrying out its authority and responsibility under the Natural Gas Act, it is necessary and proper that the Commission on its own motion institute a proceeding to determine a just and reasonable area rate or rates for sales of natural gas within the geographical area specifically designated in Appendix "D", hereof and that a public hearing be held at a time and place to be designated by order of the Commission.

(2) Good cause exists to consolidate for the purposes of hearing all of the proceedings designated in Appendices "B" and "C" hereto with the rate proceeding contemplated in Finding (1) above and hereinafter instituted.

(3) Prior to the subject hearing to be held as contemplated in Finding (1) above, a prehearing conference should be held at 10:00 a.m. c.s.t. on March 6, 1961, for the purposes set forth in § 1.18 of the Commission's rules of practice and procedure, as amended.

Pursuant to the provisions of the Natural Gas Act, particularly sections 4, 5, 7, 14, 15 and 16 thereof,

The Commission orders:

(A) A proceeding is hereby instituted to determine the just and reasonable rate or rates for the sales of natural gas produced in the geographical area specifically designated in Appendix "D" hereto, subject to the jurisdiction of the Commission and a public hearing shall be held in such proceeding at a time and place hereafter to be ordered by the Commission. All persons named in Appendix "A" hereto and all parties on whose behalf such persons have filed FPC gas rate schedules are hereby made respondents in such proceeding.

(B) The proceeding herein before instituted shall also encompass issues as to whether any rate or charge demanded, observed, charged or collected by any natural gas company in connection with such sales is unjust, unreasonable, unduly discriminatory or preferential.

(C) A hearing shall be held in the proceedings designated in Appendix "C" hereto and the proceedings designated in Appendices "B" and "C" be and they are hereby consolidated for the purposes of hearing with the proceeding instituted in Paragraph (A) above.

(D) A prehearing conference be held pursuant to the Commission's rules of practice and procedure, particularly § 1.18 thereof at 10:00 a.m. c.s.t. on March 6, 1961, in a hearing room of the Federal Power Commission, located in the Community Theatre, Midland, Tex., for the purposes specifically set forth in said section of such rules and to afford all interested persons an opportunity to be heard with respect to the procedures to be followed in expeditiously determining the issues to be tried in the formal area rate hearing herein ordered. The prehearing conference proceedings shall be recorded by a reporter and such proceedings shall be recessed and reconvened at the discretion of the Presiding Examiner. Upon completion of the conference the Presiding Examiner shall prepare and file with the Secretary of the Commission his report of the conference, summarizing therein the issues, procedures and other matters considered during such conference and making such recommendations with respect thereto as he may deem appropriate.

(E) Any person who desires to participate in the prehearing conference to be held at the time and place designated in Paragraph (D) shall, on or before February 15, 1961, file with the Secretary of the Commission an original and 3 conformed copies of a statement of position which shall include, but not be limited to, a summarization of the following data:

(i) His interest in and claimed right to be heard in one or more of these consolidated proceedings.

(ii) The extent to which he desires to participate, i.e., a statement of position, presentation of evidence, type of evidence to be presented, number of witnesses, etc.

(iii) His representation, whether as an individual or as a representative for an association, group or segment of the natural gas industry, or of ultimate consumers.

(F) Any person, other than the applicants and respondents specifically named in Appendices "A", "B" and "C", who desires to participate as an intervener in the area rate hearing hereinabove ordered to be held shall, on or before February 15, 1961, file a notice of intervention or a petition to intervene with the Secretary of the Commission setting forth therein the basis claimed for the right to intervene in such proceeding. On or before February 25, 1961, the Secretary of the Commission shall advise all participants in these consolidated proceedings of the names of all persons who have filed notices of intervention or petitions for leave to intervene herein.

(G) A copy of this order shall be published in the FEDERAL REGISTER and served upon each of the respondents set out in Appendix "A", who according to the records of this Commission are known producers of gas within the above described area subject to the Commission's jurisdiction; also upon all purchasers of natural gas in the said area and upon interested State commissions as is provided for in Section 1.19 of the Commission's rules of practice and procedure.

(H) Edward B. Marsh, a duly qualified and appointed (as provided by section 11 of the Administrative Procedure Act) hearing examiner, or his successor legally qualified, appointed and designated, is designated to preside at the hearing herein instituted including the prehearing conference hereinbefore, ordered and is authorized and directed, in so doing, to exercise all of the functions and authority prescribed by the Administrative Procedure Act and this Commission's rules of practice and procedure.

By the Commission (Commissioner Kline concurs except as to the selection of the area involved).

[SEAL] MICHAEL J. FARRELL, *Acting Secretary.*

APPENDIX "A"

Abell, George T.
Ackers, D. E.
Ada Oil Co.
Adams & Ray
Aikman, Claud E.
Aldrich & Fullingim
Amerada Petroleum Corp.
American Trading & Production Corp.
Anderson-Prichard Oil Corp.
Antweil, Morris R.
Ard Drilling Co., The
Argo Oil Corporation
Ashland Oil & Refining Co.
Atlantic Refining Co., The
August, John J.
Aurora Gasoline Co.
Austral Oil Co., Inc.
AZTEC Oil & Gas Co.
BBM Drilling Co.
BTA Oil Producers
Baker & Taylor Drilling Co.
Bakke, W. E.
Bankers Trust Co., Trustee
Barnes, J. C.
Barnes, R. C.
Barnhart Hydrocarbon Corp.
Barnhart, Paul F.
Baxter, Murphy H.
Bayview Oil Corp.
Beach, Mrs. R. G.

[1] For listing of all persons hereinafter made respondents in such proceeding see Appendix "A" below.

[2] For listing of rate suspension proceedings consolidated herein see Appendix "B" below.

[3] For listing of certificate proceedings consolidated herein see Appendix "C" below.

Bell Petroleum Co.
Benedum-Trees Oil Co.
Bird, Ethel W.
Black, Henry Drilling Co., Inc.
Blackwood & Nichols Co.
Blackwood, F. G.
Blanco Oil Co.
Bond Oil Corp.
Bradley, Albert
British-American Oil Producing Co., The
Brown & Key, Inc.
Brown & Wheeler
Brown, Herman
Brown, James G. and Associates
Burk Royalty Co.
Burns, John J.
Cabot Carbon Co.
Cahill, John T.
Callery, F. A., Inc.
Campbell, E. P.
Carper Drilling Co., Inc.
Carter, R. W.
Castleman, Barbara B.
Champlin Oil & Refining Co.
Charm Oil Company
Cherry, A. W.
Christmann, John J.
Cities Service Oil Co.
Cities Service Production Co.
Clark Dale Drilling Co.
Cobb, Dalton H.
Coline Oil Corp.
Colorado Oil & Gas Corp.
Coltexo Corp.
Columbian Carbon Co.
Cone, J. R.
Cone, S. E.
Connally, J. E., d/b/a Connally Oil Co.
Constantin, E., Jr.
Constantine, S. T.
Continental Oil Co.
Coronet Oil Co.
Cosden Petroleum Corp.
Cox, John L.
Crouch, Louis
Cruce, J. L., Jr.
Crumly, L. D., Jr.
Culbertson, E. A. & Irwin, W. W.
Dalport Oil Corp.
Danglade, F. J.
Dansby, Ben, Jr.
Darnelle, George J.
Daugherty, J. A.
Davis, Ethel Jo
Davis, K. W.
Davis, K. W., Jr.
Davison, Leland
Delhi-Taylor Oil Corp.
Derrick, J. Roy
Dixon Management Corp.
Donnell Drilling Co.
Dorchester Corp.
Drilling & Exploration Co., Inc.
Duncan Drilling Co.
Duncan, J. Walter, Jr.
Duncan, Raymond T.
Duncan, Vincent J.
Duncan, Walter
Elliot & Hall
Elliot, Inc.
Elliot Production Co.
El Paso Natural Gas Products Co.
Enfield, Robert N.
Eppenauer, A. R.
Evans, David M.
Falcon Oil Corp.
Felmont Oil Corp.
Fields, Bert
Fikes, Leland
Fleet, Howard W.
Fogelson, E. E.
Foree, R. L.
Forest Oil Corp.
Fox, James O., Jr.
Franklin, John M.
French, L. R., Jr.
Gackle, Albert
General American Oil Co. of Texas
General Crude Oil Co.
George Royalty Co.
Getty Oil Co.
Gibbins, J. P.
Goldston Oil Corp.
Goldston, W. L., Estate of
Grace, Joseph Peter,
Great Western Drilling Co.
Greene, Hazel
Greenbrier Oil Co.
Gruss, Joseph S.
Gulf Oil Corp.
Halbouty, Michel T.
Hall, G. E.
Hall & Stewart Drilling Co.
Hamilton Dome Oil Co., Ltd.
Hammonds, George S.
Hammonds, Scott
Hamon, Jake L.
Hanley Co.
Hanlon-Boyle, Inc.
Harper Oil Co.
Hart, Patricia Ruth Carter
Haynes & V. T. Drilling Co.
Herd Oil & Gas Co.
Hernstadt, Wm. L.
Hiawatha Oil & Gas Co.
Hill, John H.
Hitchcock, E. C.
Hodge, T. F.
Honeyman, R. B., Jr.
Honolulu Oil Corp.
Horne, L. L.
Howard, Alvin H., and Vasser, D. E.
Howard, Frank A.
Hudson & Hudson, Inc.
Hudson, William A.
Hudson Co., W. H.
Humble Oil & Refining Co.
Hunt Trustee Estate, Caroline
Hunt, H. L.
Hunt, Lamar
Hunt, Lyda Bunker, Estate of
Hunt, N. B.
Hunt Oil Co.
Hunt, W. H.
Hunter, J. D., Trustee
Husky Oil Co.
Indian Royalty Co.
Inland Natural Gasoline
Inman, Curtis R.
Jal Oil Co. Inc.
Jocelyn-Varn Oil Co.
Johnson & French Oil Co.
Johnson, J. Wes, d/b/a Tower Oil & Gas Co. of Texas
Jones, J. E., Drilling Co.
Julkirk Corp.
Kay Kimbell, Oil Properties
Kelly, John M.
Kerr-McGee Oil Industries Inc.
Kewanee Oil Co.
Kidd, Barron
King, Warren, Dye & Yeckel
Kirby Production Co.
Ladenburg, Thalmann & Co.
Lamont, Thomas S.
Latch, Leonard
Late Oil Co.
Laughlin, Phil E.
Leonard, J. M.
Leonard Oil Co.
Limpia Royalties Inc.
Livermore, George P.
Lomax, W. L. (Pete) & J. P.
Lone Star Producing Co.
Lowe, Ralph
Lundbeck, G. Hilmer, Jr.
Luse, W. P.
Lyle, W. M.
M. W. J. Producing Co.
Macdonald Oil Corp.
Makin Drilling Co.
Maracaibo Oil Exploration Corp.
Markham, Jack
Martin, Williams and Judson
McAlester Fuel Co.
McFarlin, E. B., & Ketchum, E. P.
McGrath and Smith
McKnight, William L., d/b/a La Gorce Oil Co.
Meadows, A. H.
Mendota Oil Co.
Mertzon Corp.
Mesquite Gas Products, Inc.
Miami Petroleum Co., Inc.
Midland National Bank, The, Trustee
Midwest Oil Corp.
Miller, Charles P.
Moberly, George A.
Moncrief, W. A., Jr.
Monsanto Chemical Co.
Monterey Oil Co.
Moore, J. Hiram
Moore, John I.
Moore, Wayne
Moses, H. L.
Moses, Lucy
Mosser, H. J.
Murphy Corp.
Neill, J. P.
Neleh Gas & Oil Corp.
Nemaha Oil Co., Agent
Nolan, Wm. C., & Theodosia M., d/b/a Munoco Co.
Norsworthy, Clarence L., Jr.
North Central Oil Corp.
Northern Natural Gas Producing Co.
Norwood Oil Co. and/or Norwood Drilling Co.
O'Neill, Joseph I., Jr.
Odessa Natural Gasoline Co.
Ohio Oil Co.
Oil Well Drilling Co.
Olsen Oils, Inc.
Olsen, R., Oil Co.
Pan American Petroleum Corp.
Parker Drilling Co.
Parrish, Grace Marjorie Horan
Pauley Petroleum Inc.
Payne, Clifford E.
Pecos Co.
Peerless Oil & Gas Co.
Penrose, Neville G., Inc.
Phillips Petroleum Co.
Pioneer Production Corp.
Placid Oil Co.
Poff, H. Bryan
Powell, Celestine V. Trust
Powell, Doless E.
Powell, Purnell F.
Powell, Len
Powell, Mortimer
Prentice Development Corp.
Pulaski, Dan J.
Pure Oil Co., The
Putnam, G. D.
Redfern Oil Co.
Reef Corp.
Regester, H. W.
Reigle, E. E., d/b/a Richmond Drilling Co.
Republic Natural Gas Co.
Resler & Sheldon
Richardson, Sid W.
Robertson, French M.
Rodman, E. G.
Rodman, E. G. and Noel, W. D.
Rodman, Late & Noel
Rodman-Noel Oil Corp.
Rosenthal, Jerome B.
Rutherford, P. R.
Rutter & Wilbanks Bros.
Ryan, Katherine
Samedan Oil Corp.
Sands, Caroline H.
Santa Rosa Gas Co.
Sapphire American Petroleums, Inc.
Saturn Drilling Co.
Scarborough, Warren
Schermerhorn Oil Corp.
Scott, Paul P., Trust
Secure Trusts
Sharp, J. R., Inc.
Sharples Oil Corp., The
Shea, Edward L.
Shell Oil Co.
Signal Oil and Gas Co.
Simmons, Jay
Sinclair Oil & Gas Co.
Skelly Oil Co.
Slade, Inc.
Slick Oil Corp.
Snowden, James H.
Socony Mobil Oil Co., Inc.
Sohio Petroleum Co.
Southern California Petroleum Corp.
Southern Petroleum Exploration, Inc.
Southern Union Gas Co.

Southland Royalty Co.
Spence, Aurelia, Mrs.
Standard Oil Company of Texas.
Starr, J. W.
Stekoll Petroleum Corp.
Stout, Billy J.
Street, Gordon, Inc.
Street, Gordon P.
Sun Oil Co.
Sunray Mid-Continent Oil Co.
Sunset International Petroleum Corp.
Sunshine Royalty Co.
Superior Oil Co., The
TXL Oil Corp., The
Tela Corp.
Terrill, J. W.
Texaco, Inc.
Texaco Seaboard, Inc.
Texas Crude Oil Co.
Texas Gas Products Corp.
Texas Gulf Producing Co.
Texas-Hanover Oil Co.
Texas Hydrocarbon Co.
Texas National Petroleum Co.
Texas Pacific Coal and Oil Co.
Thornbury, D. H.
Three States Natural Gas Co.
Tidewater Oil Co.
Todd, W. L., Jr.
Tres Oil Co.
Tri-Service Drilling Co.
Trice Production Co.
Tucker, R. C.
Turner, Fred, Jr.
Two States Oil Co.
Union Oil Company of California
United States Smelting Refining and Mining Co.
V. E. M. Oil, Inc.
Vaughn, G. H., Jr., & Jack C.
Vest, Earl & Sam; Dorbandt, Arnett; Ross, Bert
Warren Petroleum Corp.
Watts, Ed. E.
Weier Drilling Co.
Welborn, J. M.
West Texas Gathering Co.
Westbrook-Thompson Holding Corp.
Western Development Company of Delaware
Western Natural Gas Co.
Western Oil Fields, Inc.
Western Petroleum Co.
Westlund, Carl J., Inc.
Willetts, Elmore A., Jr. and Craig, Earle M., Jr.
Williams, D. A.
Williamson, J. C.
Wolfson, Reuben I & Sam
Wrightsman, Charles B.
Young, Marshall R.
Zachary, J. M.

APPENDIX "B"

Producer[1] and Docket No.

Aikman, Claud E.; G–18466, RI60–73.
Amerada Petroleum Corp.; G–19488, G–19489, G–19490, G–19577, G–20390, RI60–353, RI60–354.
Anderson-Prichard Oil Corp.; G–19638, G–19644, G–19651, RI60–121, RI60–149, RI60–150.
Ard Drilling Co., The; RI60–90.
Argo Oil Corp.; RI60–177.
Ashland Oil and Refining Co.; RI60–329.
Austral Oil Co., Inc., Agent; G–19540.
Aztec Oil and Gas Co.; RI61–201.
BTA Oil Producers (Operator) et al.; G–20525.
Bakke, W. E., (Operator) et al.; G–16477.
Barnhart Hydrocarbon Corp.; G–16417, G–20418.
Barnhart, Paul F.; G–13985, G–14017, G–14018.
Baxter, Murphy H., (Operator) et al.; G–14181.
Benedum-Trees Oil Co.; G–12881, G–20522.
Bird, Ethel W., et al.; RI60–190.
Black, Henry, Drilling Co. Inc., (Oper.) et al.; RI60–105.
Blackwood, F. G., et al.; G–18515.
Blanco Oil Co. et al.; G–20402.
British-American Oil Producing Co., The; G–14028, G–19254.
Brown, Herman; RI60–82.
Brown, James G. & Associates (Oper.) et al.; RI60–346.
Brown and Wheeler, et al.; RI60–4.
Cabot Carbon Co.; G–18842, G–18844, RI60–27.
F. A. Callery, Inc., et al.; G–13993, G–19645, RI60–395.
Charm Oil Co.; G–19491, RI60–206.
Cities Service Oil Co.: G–20393, G–20394, G–20395.
Cities Service Producing Co. (Operator) et al.; G–20396.
Connally, J. E., d/b/a Connally Oil Co. (Operator) et al.; RI60–104.
Constantine, S. T.; RI60–43.
Continental Oil Co.; RI61–86, RI61–87.
Cosden Petroleum Corp.; RI60–376.
Cox, John L.; RI60–115, RI60–272, RI60–321.
Crumly, L. D., Jr.; G–20530, RI61–42.
Culbertson, E. A., Irwin, W. W.; RI60–153.
Dalport Oil Corp., et al.; G–20397, G–20398.
Davison, Leland, et al.; RI60–467, RI61–54.
Delhi-Taylor Oil Corp.; G–19728, RI60–322.
Donnell Drilling Co.; G–14736.
Dorchester Corporation (Operator); RI60–11.
Elliott, Inc.; RI60–228.
Elliott Production Co.; RI60–212.
Enfield, Robert N.; RI60–87.
Eppenauer, A. R.; G–20524.
Fleet, Howard W., et al.; RI60–157.
Foree, R. L.; G–20539.
Forest Oil Corp.; RI60–107.
French, L. R. Jr.; G–17347, G–19725, G–19726, RI60–9.
Gackle, Albert (Operator) et al.; G–13940, G–14045, RI60–117, RI60–151.
General American Oil Co. of Texas; RI60–248.
Getty Oil Co.; G–16533, RI60–72, RI61–19.
Goldston, W. J., Independent Executor of Estate of W. L. Goldston; RI60–343.
Greenbrier Oil Co.; RI60–22, RI60–23.
Gruss, Joseph S.; RI60–74, RI60–461.
Gulf Oil Corp.; G–20399, G–20400.
Hall, G. E. (Operator) et al.; G–15175.
Hamilton Dome Oil Co., Ltd.; G–20414.
Hammonds, George S.; G–16520.
Hammonds, Scott et al.; G–16521.
Hamon, Jake L.; G–18327, RI60–106, RI60–112.
Hanley Co.; RI60–75, RI60–76, RI60–77.
Harper Oil Co. (Operator) et al; RI60–200.
Herd Oil and Gas Co.; G–18769.
Honolulu Oil Corp.; G–16425, G–17059, RI60–32.
Horne, L. L.; G–18268.
Hudson, W. H., Co.; RI60–156.
Humble Oil and Refining Co.; G–16415, G–16416, G–18172, G–19487, RI60–430, RI60–443, RI60–444, RI60–447, RI60–473.
Hunt, H. L.; G–16421, G–18554, G–20527, RI60–84, RI60–110, RI60–324.
Hunt, Lyda Bunker, Estate of; G–16423, G–18556, G–20535.
Hunt, Lamar; G–16418, G–17424, G–18847, G–20528.
Hunt, N. B.; G–16420, G–16478, G–18557, G–20533.
Hunt, W. H.; G–16419, G–17425, G–18848, G–20534.
Husky Oil Co.; G–19722.
Inland Natural Gasoline; G–19992, RI61–91.
Jal Oil Co., Inc.; RI60–256, RI60–350, RI60–362, RI60–386, RI60–442.
Jocelyn-Varn Oil Co. (Operator) et al.; RI60–36.
Johnson, J. Wes d/b/a Tower Oil & Gas Co. of Texas; RI60–276.
J. E. Jones Drilling Co. (Operator) et al.; G–14762.
Kay Kimbell Oil Properties et al.; G–20538.
Kewanee Oil Co.; G–15235, RI61–155.
Kidd, Barron; RI60–109.
Kirby Production Co. (Operator) et al.; G–13838, RI60–311.
Latch, Leonard, et al.; RI60–328.
Late Oil Co. (Operator) et al.; G–14495.
Leonard Oil Co.; RI60–44, RI60–113.
Leonard, J. M.; RI61–226.
Limpia Royalties, Inc.; G–14761.
Luse, W. P., et al.; RI60–37.
Lyle, W. M., et al.; G–20419.
MWJ Producing Co. (Operator) et al.; RI60–88, RI60–188.
MacDonald Oil Corp. (Oper) et al.; RI60–258, RI60–419.
Markham, Jack, et al.; RI60–222.
Martin, Williams & Judson (Oper.) et al.; RI60–89.
McAlester Fuel Co.; G–19324.
McFarlin, E. B., & Ketchum, E. P.; G–13161, RI60–24.
McGrath & Smith (Oper) et al.; RI60–316.
McKnight, William L., d/b/a La Gorce Oil Co., et al.; RI60–315.
Meadows, A. H.; RI60–33.
Mendota Oil Co.; RI60–314, RI60–351.
Midhurst Oil Corp., RI60–103.
Monsanto Chemical Co.; RI60–122.
Monterey Oil Co.; G–17799, G–18568, RI60–28, RI60–42, RI60–80.
Moore, J. Hiram, et al.; RI60–3.
Moore, John I., et al.; RI60–120.
Moore, Wayne, et al.; G–20416.
Nemaha Oil Co., Agent; RI60–78, RI60–79.
Odessa Natural Gasoline Co.; RI60–5.
Ohio Oil Co., The; RI60–259, RI60–260.
Oil Well Drilling Co. et al.; RI60–152.
Olsen Oils, Inc.; G–20002, G–20003, RI60–118.
O'Neill, Joseph I., Jr., et al.; RI60–320.
Pan American Petroleum Corp.; G–16480, G–16481, G–16532, G–19998, G–20006, G–20007, G–20008, G–20452, RI61–43, RI61–44, RI61–45, RI61–53, RI61–58.
Parrish, Grace Marjorie Moran, et al.; G–16903.
Pauley Petroleum Inc., et al.; G–20529.
Pecos Co.; RI60–34, RI60–35.
Peerless Oil & Gas Co.; G–20401.
Phillips Petroleum Co.; G–11849, G–13734, G–14006, G–14115*, G–15314, G–15315, G–17071, G–18206, G–18207, G–18215, G–18417*, G–18418, G–20408*, G–20404, G–20405, G–20417, G–20523, RI60–2, RI60–15, RI61–30.
Pure Oil Co.; G–16800, G–17930, G–17937, G–20005, G–20280, RI60–91, RI60–418.
Redfern Oil Co.; G–18770.
Reef Corp. (Oper.), et al.; RI61–66.
Reigle, E. E., d/b/a Richmond Drilling Co.; RI60–38.
Republic Natural Gas Co.; G–13311, RI60–10.
Resler & Sheldon (Oper.) et al.; G–19492.
Robertson, French M., (Oper.) et al.; RI61–244.
Rodman, E. G., (Oper.) et al.; G–19994, RI60–7.
Rodman, E. G. & Noel, W. D.; RI60–6.
Rodman, Late & Noel; G–19952.
Rodman-Noel Oil Corp.; G–19996.
Rosenthal, Jerome B., et al.; RI60–414.
Rutter & Wilbanks Brothers (Oper.) et al.; RI60–155.
Santa Rosa Gas Co. (Operator); G–17165, G–20412.
Schermerhorn Oil Corp.; RI60–40 ,RI60–41, RI60–81.
Scott, Paul P. Trust et al.; RI60–108, RI61–98.
Secure Trusts; G–16424, G–18558, G–20536.
Sharples Oil Corp., The; G–14253, G–14624.
Signal Oil & Gas Co; RI60–219, RI60–305.
Simmons, Jay, et al.; RI60–154, RI60–197.
Sinclair Oil & Gas Co.; G–16534, G–16956, G–18326, G–19723, G–19724, G–20082,* G–20580, RI60–31, RI61–56.*
Skelly Oil Co.; RI61–88.
Socony Mobil Oil Co., Inc.; G–12981, G–12982, G–13030, G–15448, G–15449, G–15995,

[1] This producer designation is for general identification and may not include all of the respondents designated in the respective orders initiating rate suspension proceedings.

G–20406, G–20407, G–20408, RI60–46, RI61–94.
Sohio Petro. Co. (Oper.) et al.; RI60–8.
Southern California Petro. Corp.; RI60–12, RI60–13.
Southern Union Gas Co.; G–19483, RI60–242.
Southland Royalty Co.; G–19727, RI60–119, RI60–146, RI60–306, RI61–50.
Standard Oil Co. of Texas; G–13187, G–14059, G–19583, G–19664.
Standard Oil Co. of Texas; RI60–164, RI60–337, RI60–338, RI61–161.
Stanton Oil Co., Ltd.; RI61–106.
Stekoll Petroleum Corp. (Oper.) et al.; RI60–114.
Stratton, G., Jr. (Oper.) et al.; G–16535, G–18692.
Street, Gordon, Inc.; RI60–86.
Street, Gordon P.; RI60–85.
Sun Oil Co.; RI60–123, RI60–124.
Sunray Mid-Continent Oil Co.; G–13160, G–16884, G–19090, G–20537, RI60–14, RI60–29, RI60–101.
Superior Oil Co., The; G–12949, G–12950, G–15358, G–18771, G–20075.
TXL Oil Corporation, The; RI60–224.
Texaco Inc.; G–16414, G–17159, RI60–132, RI60–137, RI60–142, RI60–466, RI61–33, RI61–74.
Texaco Seaboard Inc.; G–14194.
Texas Gas Products Corp.; G–16888, G–18952, G–20420.
Texas Gulf Producing Co.; G–14066, G–16537, RI60–25, RI60–26.
Texas Hydrocarbon Co.; G–16889, G–18951, G–20421.
Texas National Petroleum Co.; RI60–325, RI61–26, RI61–27.
Texas Pacific Coal & Oil Co.; RI60–453, RI60–469, RI60–470.
Three States Natural Gas Co.; RI60–278.
Tidewater Oil Co.; G–14061, G–14185, G–16259, G–16260, RI60–70, RI60–71, RI61–17, RI61–18.
Todd, W. L., Jr., et al.; G–20415.
Tri-Service Drilling Co.; RI60–454.
Trice Production Co.; RI60–234.
Turner, Fred, Jr.; RI60–83.
Two States Oil Co.; RI60–39.
Union Oil Co. of California; G–13997, RI60–174, RI60–438.
Vaughn G. H. Jr. & Jack C.; G–13770, G–20413.
V. E. M. Oil, Inc.; RI60–116.
Warren Petroleum Corp.; G–12842, G–15304, G–15310, G–15311, G–16114, G–18467, G–18471, G–18517, G–18560, G–20409, G–20410.
Weier Drilling Co. (Oper) et al.; RI60–261.
Western Natural Gas Co.; G–19252, RI60–45.
Western Petroleum Co.; G–20411.
Westlund, Carl J., Inc. (Oper) et al.; RI60–196.
Wrightsman, Charles B.; G–20540.

* This proceeding is consolidated only insofar as it pertains to the Permian Basin, New Mexico and Texas Railroad Commission Districts Nos. 7–C and 8 areas.

APPENDIX "C"

Name and Docket No.

Brown, Robert T., Operator; et al.; CI61–733.
North Central Oil Corp., Operator; et al.; CI60–435.
Nortex Oil and Gas Co.; CI61–34.
T–L Oil Corporation, The; CI61–879.

APPENDIX "D"

Area and County

PERMIAN BASIN, NEW MEXICO

Chaves	Lea
Eddy	

TEXAS RAILROAD COMMISSION DISTRICT NO. 7–C

Coke	Reagan
Concho	Runnels
Crockett	Schleicher
Irion	Sutton
Kimble	Terrell
McCulloch	Tom Green
Menard	Upton

TEXAS RAILROAD COMMISSION DISTRICT NO. 8

Andrews	Jeff Davis
Bailey	Kent
Borden	King
Brewster	Lamb
Cochran	Loving
Cottle	Lubbock
Crane	Lynn
Crosby	Martin
Culberson	Midland
Dawson	Mitchell
Dickens	Motley
Ector	Pecos
El Paso	Presidio
Floyd	Reeves
Gaines	Scurry
Garza	Sterling
Glasscock	Terry
Hale	Ward
Hockley	Winkler
Howard	Yoakum
Hudspeth	

[F.R. Doc. 60-12166; Filed, Dec. 29, 1960; 8:52 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 13865, 13866; FCC 60M–2179]

ARTHUR A. DETERS AND COLLEGE RADIO

Notice of Prehearing Conference

In re applications of Arthur A. Deters, Greenfield, Massachusetts, Docket No. 13865, File No. BP–13046; Augustine L. Cavallaro, Jr., tr/as COLLEGE RADIO, Amherst, Massachusetts, Docket No. 13866, File No. BP–14179; for construction permits.

There will be a prehearing conference, under Rule 1.111, on Friday, January 13, 1961, 10 a.m., in the offices of the Commission, Washington, D.C.

Dated: December 22, 1960.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12157; Filed, Dec. 29, 1960; 8:51 a.m.]

OFFICE OF CIVIL AND DEFENSE MOBILIZATION

C. F. OGDEN

Appointee's Statement of Changes in Business Interests

The following statement lists the names of concerns required by subsection 710(b)(6) of the Defense Production Act of 1950, as amended.

Domestic Stocks

Aeroquip Corp.
American Airlines, Inc.
Aluminum, Ltd.
The Detroit Edison Co.
Dow Chemical Co.
Fundamental Investors, Inc.
General Dynamics.
General Electric Co.
Glenn L. Martin Co.
McLouth Steel.
Parke Davis & Co.
Phillips Petroleum.
Rayonier, Inc.
Republic Steel Corp.
Sperry Rand Corp.
Texas Gas Transmission.

Canadian Stocks

Britalta Petroleum, Ltd.
New Athona Mines, Ltd.
Scurry Rainbow Oil, Ltd.
Rayrock Mines, Ltd.
Sarnoil, Ltd.

This amends statement published July 14, 1960 (25 F.R. 6662).

Dated: December 8, 1960.

C. F. OGDEN.

[F.R. Doc. 60-12108; Filed, Dec. 29, 1960; 8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 27, 1960.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 36816: *Clay—From southern points to Minnesota.* Filed by O. W. South, Jr., Agent (No. A–4053), for interested rail carriers. Rates on clay, kaolin, or pyrophyllite, in carloads, as described in the application, from producing points in Alabama, Florida, Georgia, North Carolina and South Carolina, to specified points in Minnesota.

Grounds for relief: Short-line distance formula and grouping.

Tariff: Supplement 68 to Southern Freight Association tariff I.C.C. S–40.

FSA No. 36817: *Silica from Illinois points to Greensboro, N.C.* Filed by O. W. South, Jr., Agent (No. A–4054), for interested rail carriers. Rates on silica, ground or pulverized, in carloads, from Elco, Olive Branch, and Tamms, Ill., to Greensboro, N.C.

Grounds for relief: Short-line distance formula.

Tariff: Supplement 22 to Southern Freight Association tariff I.C.C. S–146.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 60-12133; Filed, Dec. 29, 1960; 8:49 a.m.]

SECURITIES AND EXCHANGE COMMISSION

CAMPBELL SOUP CO. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

DECEMBER 27, 1960.

In the matter of applications of the Pacific Coast Stock Exchange for unlisted trading privileges in certain securities.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(2) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

Campbell Soup Company, File 7–2122.
The Firestone Tire & Rubber Company, File 7–2123.
General Mills, Inc., File 7–2124.
The National Cash Register Company, File 7–2125.
Outboard Marine Corporation, File 7–2126.
Thiokol Chemical Corporation, File 7–2127.
Universal Oil Products Company, File 7–2128.
The Upjohn Company, File 7–2129.

Upon receipt of a request, on or before January 13, 1961 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 60-12173; Filed, Dec. 29, 1960; 8:53 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

3 CFR

	Page
PROCLAMATIONS:	
Oct. 3, 1905	12915
Dec. 7, 1907	12915
Feb. 10, 1909	12915
Dec. 10, 1910	12915
Oct. 18, 1912	12915
2761A	13945
2929	13945
2935	12501
3160	13945
3225	13945
3279	13945
3285	13945
3290	13945
3298	13681
3317	13945
3328	13945
3355	13131
3382	12587
3383	13131
3384	13681
3385	13681
3386	13945
3387	13945
EXECUTIVE ORDERS:	
Feb. 26, 1852	13229
July 13, 1910	13694
Nov. 12, 1911	13771
Feb. 28, 1912	13771
Oct. 20, 1916	12887
June 8, 1926	12887
3797–A	12412, 12599
4257	13696
5327	13694
6260	12281
8278	13696
9941	12429
10896	12281
10897	12429
10898	12429
10899	12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Letter, Jan. 17, 1953	12501
Letter, Nov. 16, 1960	12501

5 CFR

	Page
2	12285
6	12393, 12547, 12588, 12733, 12869, 13132, 13745, 13829
27	13829
30	12733
325	13132

6 CFR

	Page
331	12994
421	12282, 12283, 13682
464	13682
468	13629
472	13830
485	13830

7 CFR

	Page
11	13621
33	12430
51	12941
301	13948
319	12809
601	13132
718	12588
722	12393, 12403, 12809, 12812, 12987
728	13621
730	12503
811	13211
815	13948
819	13864
833	12650
845	12285
871	12547
902	13683
903	12504
905—908	12504
911—913	12504
914	12405, 12650, 12812, 12941, 13683, 13867
916—919	12504
921	12504
923—925	12504
928	12504, 13683
929—932	12504
933	12405–12407, 12504, 12987
935	12504
936	13951
938	13867
941—942	12504
943	12504, 12813
944	12504, 12987
946—948	12504
949	12504, 12941
952	12504
953	12407, 12430, 12651, 12948, 13684, 13745
954	12504
955	12949
956	12504
957	13868
963	12504
965—968	12504
970	12994, 13868
971—972	12504
974—978	12504
980	12504
982	12504
985—988	12504
989	12813, 13630, 13869
991	12504
994—995	12504
998	12504
1000	12504
1001	13684
1002	12504
1004—1005	12504
1008—1009	12504
1010	12994
1011—1013	12504
1014	12504, 13684
1016	12504
1018	12504, 12588
1023—1024	12504
1031	12505, 12651, 12652
1032	12828, 13631
1069	13685
1101	13685
PROPOSED RULES:	
51	12298, 12299
718	13142
812	12712
901	12742
902	13720
923	12558
936	12465
938	12752
949	12606
953	13141
961	13001
963	13787
965	12466
989	12476
994	13239, 13637
1010	13001
1012	12558
1032	12712, 12752
1033	12606
1034	13142, 13791, 13793

8 CFR

	Page
211	12290
324	13686
332	13686

9 CFR

	Page
17	13952
18	13952
72	12548
74	12995, 13132
94	12831
PROPOSED RULES:	
83	12571
131	13982

10 CFR

	Page
2	13869
20	13952
30	12730
70	12730
PROPOSED RULES:	
25	12753
115	12367

12 CFR

	Page
545	13953
PROPOSED RULES:	
206	12479, 13729

13 CFR

	Page
121	13954
PROPOSED RULES:	
107	12754
121	13923

14 CFR

	Page
41	12908
49	12352
60	13869
225	12589
243	12908
293	12908
298	12909
300	12430
302	12432, 12933
406	13870
410	13874
414	12589
418	13877
450	13879
506	12505
507	12352, 12433, 12549, 12829, 12995, 13212, 13631, 13955
514	12433, 12995
600	12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734, 12933, 12934, 13746
601	12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997, 13686, 13746, 13880–13882
602	12288, 12552, 12678, 12831, 12997, 13213, 13747
608	12678, 12679, 12734, 12830, 12934, 12997, 13213, 13747, 13882
609	12353, 12735, 12935
610	13213
612	12410
1501	12434
PROPOSED RULES:	
41	12299
43	12524
203	13984
221	12913
302	12477
507	12477, 12478, 12571, 12844
600	12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244, 13637, 13725

14 CFR—Continued

	Page
PROPOSED RULES—Continued	
601	12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952, 13244, 13637, 13725.
608	12479, 12846
626	12952

15 CFR

	Page
203	12590
204	13215
371	12734, 13748
382	13956
399	13967

16 CFR

	Page
13	12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133, 13687, 13969
PROPOSED RULES:	
56	13245

17 CFR

	Page
230	12912
PROPOSED RULES:	
230	13638
240	13245
249	13245
250	13245
259	13245
270	13245
274	13245
275	13638
279	13638

18 CFR

	Page
2	13969
104	12763
105	12961
154	12653
204	13161
205	13649
260	13882

19 CFR

	Page
1—57	13325
3	13687
4	13687
PROPOSED RULES:	
8	12681

21 CFR

	Page
1	12592
8	12288
120	12288, 12506, 13631, 13632
121	12412, 12595, 12731, 12831, 13008, 13217, 13632, 13748
130	12592
146	12506, 12596, 12732, 13750
146c	12289
302	13750
303	13750
304	13750
305	13750
307	13750
PROPOSED RULES:	
27	12372
120	12374, 12571, 13793
121	12299, 12477, 12839, 12840, 13008, 13794

22 CFR

	Page
3	13138
46	12289

23 CFR

	Page
PROPOSED RULES:	
20	13724

24 CFR

	Page
222	13745

24 CFR—Continued

	Page
233	13745
293a	13745

25 CFR

	Page
171	12408
Appendix	13688
PROPOSED RULES:	
52	12518
176	12299
221	13787, 13980
232	13981
252	13239

26 (1939) CFR

	Page
16	12442
17	12443
29	12339
39	12339
40	12340
PROPOSED RULES:	
81	13001
330	13915

26 (1954) CFR

	Page
1	12340, 12435, 12654, 13689, 13883, 13978
18	12340
19	12654
20	13884
24	13884
31	13031
40	13693
41	13133
44	13133
46	13133
48	12669
49	13133
151	13135
170	12732
301	13137
601	13758
PROPOSED RULES:	
1	12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140, 13697, 13775, 13909, 13911, 13978
20	13001
25	12707
31	12835
47	13699
48	12362, 13001, 13915
148	13699
170	12710
179	13920
197	12362
245	13783
250	12511
252	13785

27 CFR

	Page
1—8	13831
PROPOSED RULES:	
7	13786

28 CFR

	Page
21	12290

29 CFR

	Page
2	13228
PROPOSED RULES:	
522	13724
604	12950
606	12950
713	12950

31 CFR

	Page
54	12345

32 CFR

	Page
505	12869
570	12869

32 CFR—Continued

	Page
750	12870
753	12879
805	12291
888	12999
1001	12999
1002	13000
1003	13000
1004	13000
1006	13000
1007	13000
1008	12444
1009	12446
1010	12449, 13000
1012	12449
1013	12449, 13000
1016	12450, 12456
1030	12451
1052	12456, 13000
1053	12456
1054	12458, 13000
1055	12462
1057	12462, 13000
1059	12462
1619	12291

32A CFR

	Page
OIA (CH. X):	
OI Reg. 1	13632, 13768

33 CFR

	Page
96	13633
202	12393
203	12740
207	12740, 13769

36 CFR

	Page
7	13970, 13972
PROPOSED RULES:	
7	13787, 13982

38 CFR

	Page
3	12463
8	13972
21	13229, 13972

39 CFR

	Page
4	13218
14	13973
15	13973
27	12348
45	13973
46	13973
61	13218
62	13223
63	13224
168	12884, 13883

41 CFR

	Page
3–75	12502, 12596
5–1	12553, 13217
50–201	12553
50–202	12553
50–204	13809
PROPOSED RULES:	
50–202	12363, 12522, 13984

42 CFR

	Page
1	12292

43 CFR

	Page
76	12597, 12949

43 CFR—Continued

	Page
181	12679
192	12352
257	12679
PROPOSED RULES:	
254	13981
259	12606
PUBLIC LAND ORDERS:	
82	12412, 12599
221	13695
261	13138
797	12413
1119	13694
1124	12885
1230	13694
1253	12481
1273	13138
1621	12599
1965	12599
2144	13694
2186	13694
2209	12412
2210	12413
2211	12413
2212	12597
2213	12597
2214	12598
2215	12599
2216	12599
2217	12885, 13633
2218	12885
2219	12886
2220	12887
2221	12887
2222	12887
2223	13138
2224	13229
2225	13229
2226	13633
2227	13693
2228	13693
2229	13694
2230	13694
2231	13694
2232	13694
2233	13694
2234	13695
2235	13696
2236	13769
2237	13770
2238	13771
2239	13771
2240	13772
2241	13773

45 CFR

	Page
145	13230
146	13230
601—620	12600
PROPOSED RULES:	
301	12840
306	12840
307	12841
308	12842
309	12843
311	12844

46 CFR

	Page
24	12554

46 CFR—Continued

	Page
30	12554
56	12554
70	12555
75	13892
90	12555
110	12555
111	12555
136	12555
171	12555
226	13696
282	13892
308	12348
PROPOSED RULES:	
401	13721

47 CFR

	Page
1	12358, 12600, 12602, 12603, 12605, 13230
2	13976
3	13230
4	12680
5	12359
7	13230, 13773
8	13232, 13233, 13773
9	12359
10	12359
11	12359
12	12358
15	13829
16	12359
19	12359
21	12359, 12603, 12605
PROPOSED RULES:	
1	12624, 12898
2	13244, 13985
3	12371, 12624, 12626, 12627, 12899, 13794, 13985–13988
7	12951
8	12951
9	13244
10	13244
11	13244
16	13244
19	13244
21	13244

49 CFR

	Page
91	12506
95	13633
120	13774
122	12506
125	13893
171	12888
323	13907
PROPOSED RULES:	
71–78	12420, 13794
197	12420, 13794

50 CFR

	Page
32	12555, 12888
33	12507, 12556, 12557, 12888, 13138, 13139, 13234–13238, 13634, 13908, 13976, 13977
269	13634
PROPOSED RULES:	
14	12741
41	13001

Part II begins on page 14075

Pages 14007–14479

PART I

FEDERAL REGISTER

VOLUME 25 NUMBER 254

Washington, Saturday, December 31, 1960

THE NATIONAL ARCHIVES OF THE UNITED STATES
LITTERA SCRIPTA MANET
1934

JAN 3 1961

MAIN READING ROOM

llows:

Contents

Agricultural Marketing Service

PROPOSED RULE MAKING:
Milk in Worcester, Mass., marketing area; recommended decision and opportunity to file written exceptions on proposed amendments to tentative marketing agreement and order ---- 14043
RULES AND REGULATIONS:
Carrots grown in South Texas (2 documents) ---- 14019, 14020
Milk in certain designated marketing areas:
Colorado Springs-Pueblo ---- 14016
Philadelphia, Pa ---- 14011
Wilmington, Del ---- 14017
Handling limitations:
Lemons grown in California and Arizona ---- 14015
Navel oranges grown in Arizona and designated part of California ---- 14011
Shipments limitations:
Lettuce grown in Lower Rio Grande Valley in South Texas ---- 14020
Oranges, grapefruit, tangerines, and tangelos grown in Florida (4 documents) ---- 14013–14015

Agriculture Department

See Agricultural Marketing Service; Commodity Credit Corporation; Commodity Stabilization Service; Farmers Home Administration.

Alien Property Office

NOTICES:
Intention to return vested properties:
Lovejoy, Frederick, Jr ---- 14056
Nitecki, Izabella ---- 14056

Army Department

See also Engineers Corps.
RULES AND REGULATIONS:
Filling positions; miscellaneous amendments ---- 14009

Atomic Energy Commission

NOTICES:
N.S. Savannah; notice of public hearing ---- 14051
RULES AND REGULATIONS:
Various procurement regulations (2 documents) ---- 14032

Children's Bureau

RULES AND REGULATIONS:
Emergency maternity and infant care services; deletion of part ---- 14036

Civil Aeronautics Board

NOTICES:
Rutas Aereas De Colombia Limitada; notice of hearing ---- 14051

Commerce Department

See Federal Maritime Board; National Bureau of Standards.

Commodity Credit Corporation

RULES AND REGULATIONS:
Barley loan and purchase agreement program; 1960 crop ---- 14010

Commodity Stabilization Service

RULES AND REGULATIONS:
Sugar requirements and quotas:
Hawaii and Puerto Rico for 1961 and three-month period ending March 31, 1961 ---- 14010
Non-quota purchase sugar for 1960 ---- 14011

Defense Department

See also Army Department; Engineers Corps; Navy Department.
RULES AND REGULATIONS:
Secretary of Defense regulations; reorganization and revision of chapter (*see* Part II of this issue).

Engineers Corps

RULES AND REGULATIONS:
Bridge regulations; Brandywine River, Delaware ---- 14025

Farmers Home Administration

RULES AND REGULATIONS:
Direct farm ownership, other real estate and farm housing accounts; and insured farm ownership accounts held by the insurance fund; releasing notes from county office after receipt of payment ---- 14009
Soil and water conservation accounts; releasing notes from county office after receipt of payment ---- 14009

Federal Aviation Agency

PROPOSED RULE MAKING:
Control area extensions; designations (2 documents) ---- 14047, 14048
Control zone and control area extension; alteration ---- 14048
Federal airway and control area extension; alteration ---- 14049
Federal airway, associated control areas and reporting points; revocation ---- 14047
Revocation, designation and alteration of restricted areas; designation of control zone; revocation and alteration of control area extensions and alteration of Federal airway ---- 14046
RULES AND REGULATIONS:
Addition of certain parts ---- 14027
Coded jet routes; modification ---- 14023
Revocation of Federal airway, associated control areas and reporting points; and modification and revocation of control area extensions ---- 14023

Federal Communications Commission

NOTICES:
Allocation of frequency bands for space communications; supplement to notice of inquiry ---- 14054

(Continued on next page)

Hearings, etc.:
Auburn Broadcasting Co., Inc. (WAUD) ---- 14052
Dixie Radio, Inc., and Bowyer, Harry Llewellyn, Jr. ---- 14052
Four States Broadcasting Co., et al. ---- 14052
General Telephone Company of California ---- 14052
Laurino, John, et al. ---- 14054
Michigan Broadcasting Co. (WBCK) et al. ---- 14054
Mid-America Broadcasting System, Inc., et al. ---- 14054
Queen City Broadcasting Co. and Val Verde Broadcasting Co. ---- 14054
Skyline Broadcasters, Inc., and Trabue, Earl McKinley ---- 14054

PROPOSED RULE MAKING:
Table of assignments; television broadcast stations (Columbia, Camden, and Lancaster, S.C.) ---- 14049

RULES AND REGULATIONS:
Table of assignments; television broadcast stations (Susanville, Alturas, and Redding, Calif.) ---- 14036

Federal Maritime Board

NOTICES:
Barber-Fern-Ville Lines et al.; agreement filed for approval ---- 14051

Federal Register Administrative Committee

RULES AND REGULATIONS:
Public papers of the President of the United States; distribution to members of Congress ---- 14009

Fish and Wildlife Service

RULES AND REGULATIONS:
Hunting and possession of wildlife; importation of feathers of wild birds ---- 14037

Food and Drug Administration

PROPOSED RULE MAKING:
Food additives; notice of petition filing ---- 14045
Ice cream, French ice cream, ice milk, and fruit sherbets; optional ingredients mono- and diglycerides ---- 14045

General Services Administration

RULES AND REGULATIONS:
Special and directed sources of supply ---- 14026
Testing articles and commodities ---- 14032

Health, Education, and Welfare Department

See Children's Bureau; Food and Drug Administration.

Interior Department

See also Fish and Wildlife Service.

RULES AND REGULATIONS:
Editorial redesignation ---- 14037

Internal Revenue Service

PROPOSED RULE MAKING:
Income tax; taxable years beginning after December 31, 1953 ---- 14039
Labeling and advertising of malt beverages; hearing; correction ---- 14043

RULES AND REGULATIONS:
Editorial redesignations ---- 14021

Interstate Commerce Commission

NOTICES:
Motor carrier transfer proceedings ---- 14055

Justice Department

See Alien Property Office.

Labor Department

See Wage and Hour Division.

National Bureau of Standards

NOTICES:
WWV; notice of new timing code ---- 14052

Navy Department

RULES AND REGULATIONS:
Navy general claims ---- 14025

Small Business Administration

RULES AND REGULATIONS:
Loan policy statement; business loans and early maturities participation ---- 14022

Social Security Administration

See Children's Bureau.

Treasury Department

See Internal Revenue Service.

Veterans Administration

RULES AND REGULATIONS:
Construction, architect-engineer and supply contracts; appeals from decisions of contracting officers ---- 14025
Contract Appeals Board; delegations of authority ---- 14026
Loan guaranty; accounting records ---- 14026

Wage and Hour Division

RULES AND REGULATIONS:
Wage order procedure for Puerto Rico, Virgin Islands, and American Samoa; miscellaneous amendments ---- 14023

Codification Guide

1 CFR
32 ---- 14009

5 CFR
201 ---- 14009
202 ---- 14009

6 CFR
366 (2 documents) ---- 14009
421 ---- 14010

7 CFR
812 ---- 14010
818 ---- 14011
914 ---- 14011
933 (4 documents) ---- 14013–14015
953 ---- 14015
961 ---- 14011
994 ---- 14016
1010 ---- 14017
1032 (2 documents) ---- 14019, 14020
1034 ---- 14020
PROPOSED RULES:
999 ---- 14043

13 CFR
120 ---- 14022

14 CFR
600 ---- 14023
601 ---- 14023
602 ---- 14023
PROPOSED RULES:
600 (3 documents) ---- 14046, 14047, 14049
601 (6 documents) ---- 14046–14049
608 ---- 14046

21 CFR
PROPOSED RULES:
20 ---- 14045
121 ---- 14045

26 (1954) CFR
PROPOSED RULES:
1 ---- 14039

27 CFR
PROPOSED RULES:
7 ---- 14043

29 CFR
511 ---- 14023

32 CFR
1—288 (*see* Part II of this issue) ---- 14075
750 ---- 14025

33 CFR
203 ---- 14025

38 CFR
1 ---- 14025
2 ---- 14026
36 ---- 14026

41 CFR
1–5 ---- 14026
2–1 ---- 14027
2–2 ---- 14029
2–3 ---- 14030
2–9 ---- 14031
5–1 ---- 14032
9–1 ---- 14032
9–2 ---- 14034
9–3 ---- 14034

42 CFR
202 ---- 14036

47 CFR
3 ---- 14036
PROPOSED RULES:
3 ---- 14049

50 CFR
14 ---- 14037

Rules and Regulations

Title 1—GENERAL PROVISIONS

Chapter I—Administrative Committee of the Federal Register

PART 32—PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES

Distribution to Members of Congress

Part 32 of Title 1 of the Code of Federal Regulations is amended by revising § 32.15 to read as follows:

§ 32.15 Members of Congress.

Each Member of Congress, during his term of office, shall be entitled to one copy of each annual volume published during such term: *Provided*, That authorization for furnishing such copies shall be submitted in writing to the Director and signed by the authorizing Member.

(Sec. 6, 49 Stat. 501, as amended; 44 U.S.C. 306)

Effective date. This revision of 1 CFR 32.15 shall become effective upon publication in the FEDERAL REGISTER.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER,
WAYNE C. GROVER,
Archivist of the United States, Chairman.
RAYMOND BLATTENBERGER,
The Public Printer, Member.
WILLIAM O. BURTNER,
Representative of the Attorney General, Member.

Approved: December 28, 1960.

WILLIAM P. ROGERS,
Attorney General.
FRANKLIN FLOETE,
Administrator of General Services.

[F.R. Doc. 60–12189; Filed, Dec. 30, 1960; 8:48 a.m.]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter II—Employment and Compensation in the Canal Zone

PART 201—GENERAL

PART 202—FILLING POSITIONS

Miscellaneous Amendments

1. Effective upon publication in the FEDERAL REGISTER § 201.100 is amended by amending subparagraph (4) of paragraph (a) to read as follows and by adding new subparagraphs (6) and (7) to paragraph (b), as follows:

§ 201.100 Exclusions.

* * * * *

(a) The following positions, and the incumbents thereof, are excluded from all of the provisions of the Act, except section 16 thereof, and the regulations in this chapter—

* * * * *

(4) The magistrates, constables and other employees of the magistrates' courts of the Canal Zone Government.

* * * * *

(b) The following positions, and the incumbents thereof, are excluded from the provisions of Parts 202 and 203 of the regulations in this chapter—

* * * * *

(6) Visiting nurses of the Panama Canal Company assigned to the home visit program for beneficiaries of the Cash Relief Act of July 8, 1937, as amended (50 Stat. 478; 68 Stat. 17) who reside in the Republic of Panama.

(7) Non-United States citizen liaison agents of the Police Division of the Canal Zone Government.

2. F.R. Document 60–6161, appearing at 25 F.R. 6317, July 6, 1960, is corrected to change the promulgating clause of the amendment to § 202.9 to read as follows to show that it was intended to amend only the introductory clause of § 202.9 and not the entire section:

"1. Effective upon publication in the FEDERAL REGISTER, the introductory clause of § 202.9 is amended to read as follows:"

(Sec. 3, 15, 72 Stat. 405; E.O. 10794, 23 F.R. 9627, 3 CFR 1958 Supp.)

WILBER M. BRUCKER,
Secretary of the Army.

[F.R. Doc. 60–11552; Filed, Dec. 30, 1960; 8:45 a.m.]

Title 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

SUBCHAPTER E—ACCOUNT SERVICING

[FHA Instruction 451.4]

PART 366—PAYMENT IN FULL

Subpart A—Direct Farm Ownership, Other Real Estate and Farm Housing Accounts; and Insured Farm Ownership Accounts Held by the Insurance Fund

RELEASING NOTES FROM COUNTY OFFICE AFTER RECEIPT OF PAYMENT

Section 366.4(a), Title 6, Code of Federal Regulations (24 F.R. 9075) is revised to provide for temporary retention of notes by the County Supervisor in some circumstances and to read as follows:

§ 366.4 Delivery of satisfactions, notes and other documents.

* * * * *

(a) *Delivery of documents after note stamped "paid in full" is received from the Finance Office.* The Finance Office, upon receipt of Form FHA–144, "Summary of Remittances," covering the remittance which paid the account in full, will forward to the County Office the note with a "paid-in-full" legend. The note will be returned to the borrower immediately, except that when final payment is made in a form other than currency and coin, U.S. Treasury check, cashier's check or certified check, postal or bank money order, bank draft or a check issued by a responsible lending institution or a responsible title insurance or title and trust company, the note will not be surrendered until fifteen days after the date of final payment, or when the note is needed in making marginal release or satisfaction of the security instrument, the note will be held until the instrument is satisfied. Upon receipt of the note, except as provided above, the County Supervisor will deliver the stamped note, any property insurance policies, and the original mortgage to the borrower. The satisfaction will be executed and delivered in accordance with instructions from the State Director. Any water stock certificates held by the Farmers Home Administration that are the property of the borrower will be transferred to the borrower. Also, any assignment to the Farmers Home Administration of income from the property being released will be terminated as provided in the assignment agreement.

(Sec. 41, 50 Stat. 528, as amended, sec. 510, 63 Stat. 437; 7 U.S.C. 1015, 42 U.S.C. 1480; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188)

Dated: December 27, 1960.

H. C. SMITH,
Acting Administrator, Farmers Home Administration.

[F.R. Doc. 60–12179; Filed, Dec. 30, 1960; 8:47 a.m.]

[FHA Instruction 451.8]

PART 366—PAYMENT IN FULL

Subpart B—Soil and Water Conservation Accounts

RELEASING NOTES FROM COUNTY OFFICE AFTER RECEIPT OF PAYMENT

Section 366.24(a), Title 6, Code of Federal Regulations (25 F.R. 4790), is revised to provide for temporary retention of notes by the County Supervisor in some circumstances, and to read as follows:

§ 366.24 Payment in full of all direct Soil and Water Conservation loans except loans coded J.

* * * * *

(a) *Delivery of documents after note stamped "paid in full" is received from the Finance Office.* The Finance Office will forward to the County Office the note stamped with a "paid-in-full" legend. The note will be returned to the borrower immediately, except that when final pay-

ment is made in a form other than currency and coin, U.S. Treasury check, cashier's or certified check, postal or bank money order, bank draft or a check issued by a responsible lending institution or a responsible title insurance or title and trust company, the note will not be surrendered until fifteen days after the date of final payment, or when the note is needed in making marginal release or satisfaction of the security instrument, the note will be held until the instrument is satisfied. Upon receipt of the note, except as provided above, the County Supervisor will deliver the stamped note, any property insurance policies, and the original mortgage to the borrower. Any water stock certificates held by the Farmers Home Administration that are the property of the borrower will be transferred to the borrower. Also, any assignment to the Farmers Home Administration of income from the property being released will be terminated as provided in the assignment form. For all real estate loans, and when required for notes secured by chattel property, the satisfaction or release will be executed and delivered in accordance with the instructions of the State Director.

(Sec. 10, 68 Stat. 735; 16 U.S.C. 590x-3; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188)

Dated: December 27, 1960.

H. C. SMITH,
Acting Administrator,
Farmers Home Administration.

[F.R. Doc. 60-12178; Filed, Dec. 30, 1960; 8:47 a.m.]

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[1960 C.C.C. Grain Price Support Bulletin 1, Supp. 2, Admt. 4, Barley]

PART 421—GRAINS AND RELATED COMMODITIES

Subpart—1960-Crop Barley Loan and Purchase Agreement Program

The regulations issued by the Commodity Credit Corporation and the Commodity Stabilization Service published in 25 F.R. 3570, 4445, 4894, 5263, 8179, 9197, and 12282, and containing the specific requirements for the 1960-crop barley price support program are hereby amended as follows:

Section 421.5087(b) is amended by increasing the following basic county support rates:

IDAHO

County:	Rate per bushel From—	To—
Bonner	$0.75	$0.78
Shoshone	.71	.75
WASHINGTON		
Benton	.89	.90
Kitsap	.83	.85
Lewis	.86	.87
Mason	.85	.86
Pacific	.85	.86
Pend Oreille	.72	.75

(Sec. 4, 62 Stat. 1070, as amended; 15 U.S.C. 714b. Interpret or apply sec. 5, 63 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended, Title II, 73 Stat. 178, 15 U.S.C. 714, 7 U.S.C. 1421, 1441)

Issued this 27th day of December 1960.

FOREST W. BEALL,
Acting Executive Vice President,
Commodity Credit Corporation.

[F.R. Doc. 60-12209; Filed, Dec. 30, 1960; 8:51 a.m.]

Title 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

PART 812—SUGAR REQUIREMENTS AND QUOTAS; HAWAII AND PUERTO RICO

Three Month Period Ending March 31, 1961

On pages 12712 and 12713 of the FEDERAL REGISTER of December 10, 1960, there was published a notice of proposed rule making to issue a regulation determining sugar requirements for 1961 and establishing quotas for the three-month period ending March 31, 1961, for Hawaii and Puerto Rico. Interested persons were given 10 days in which to submit written data, views or arguments for consideration in connection with the proposed regulation.

No comments or objections were received relative to the proposed regulation.

The proposed regulation is hereby adopted without change.

Issued at Washington, D.C., this 27th day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

Basis and purpose. The purpose of Sugar Regulation 812 is to determine pursuant to sections 201 and 203 of the Sugar Act of 1948, as amended (hereinafter referred to as the "act"), the amount of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico and to establish quotas for local consumption in such areas. To the extent required by Sec. 201 of the act, this regulation establishes sugar requirements based on official estimates of the Department of Agriculture and on statistics published by other agencies of the government.

Since the act provides that the Secretary of Agriculture determine during December 1960 sugar requirements for local consumption in Hawaii and in Puerto Rico and establish local consumption quotas for the three-month period ending March 31, 1961, it is found to be impracticable and not in the public interest to comply with the 30-day effective date requirements of the Administrative Procedure Act, and these regulations shall be effective January 1, 1961.

§ 812.1 Sugar requirements and quota—Hawaii.

It is hereby determined, pursuant to section 203 of the act, that the amounts of sugar needed to meet the requirements of consumers in Hawaii for the calendar year 1961 is 45,000 short tons, raw value, and a quota of 11,250 short tons, raw value, is hereby established for Hawaii for local consumption for the three-month period ending March 31, 1961.

§ 812.2 Sugar requirements and quota—Puerto Rico.

It is hereby determined, pursuant to section 203 of the act, that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1961 is 120,000 short tons, raw value, and a quota of 30,000 short tons, raw value, is hereby established for Puerto Rico for local consumption for the three-month period ending March 31, 1961.

§ 812.3 Restrictions on marketing.

Pursuant to section 209 of the act, for the three-month period ending March 31, 1961, all persons are hereby prohibited from marketing, pursuant to Part 816 of this chapter (23 F.R. 1943), in Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the area for the three-month period ending March 31, 1961, has been filled. Pursuant to section 211(c) of the act, the quota for each area may be filled only with sugar produced from sugarcane grown in the respective area.

STATEMENT OF BASES AND CONSIDERATIONS

Pursuant to section 203 of the act, the provisions of section 201 of the act deemed applicable to the determination of the amounts of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico relate to (1) the quantities of sugar distributed for local consumption in Hawaii and in Puerto Rico during the twelve-month period ended October 31, 1960, (2) deficiencies or surpluses in inventories of sugar, and (3) changes in consumption because of changes in population and demand conditions.

The quantities of sugar distributed for consumption in Hawaii and Puerto Rico, including that which was lost in refining after charge to the local quotas, during such twelve-month period were approximately 41,000 short tons of sugar, raw value, and 113,000 short tons of sugar, raw value, respectively.

The official estimate of the total population for Hawaii as of April 1, 1960, is 632,772 and for Puerto Rico 2,349,544. Compared to official estimates of 1959 population, this represents a minute increase for Puerto Rico and a small decline for Hawaii. No official estimate for either of these areas for 1961 is available.

In Hawaii industrial use accounts for a substantial portion of the total consumption of sugar and this demand varies enough to make it a significant factor in the total sugar requirements. Recent trends and year-to-year variations suggest the possibility that requirements may be considerably higher in 1961 than in the twelve months ended October 31, 1960, when distribution was approximately 41,000 short tons, raw value.

In Puerto Rico during the first ten months of 1960, local distribution plus refining losses totaled 92,998 short tons, raw value. If stocks of refiners in Puerto Rico on December 31, 1960, are the same as a year previous, the total quantity of sugar used to meet the local needs in 1960 may approximate 117,000 short tons, raw value. In view of such possible local consumption in 1960, and after making allowance for expected consumption increases in 1961 resulting from population increases, the total sugar needed to meet requirements for local consumption in Puerto Rico in 1961 may be approximately 120,000 short tons, raw value.

Circumstances prevailing in the utilization of quota for local consumption in Hawaii and Puerto Rico are such that no special problems arise nor are the objectives of the act jeopardized if the 1961 local quota is not completely filled. It is, therefore, desirable to establish the 1961 requirements and quotas sufficiently high initially so that later adjustments may be avoided.

In accordance with the above, the requirements for local consumption in Hawaii and Puerto Rico for 1961 have been determined to be 45,000 and 120,000 short tons, raw value, respectively. Pursuant to Public Law 86-592 approved July 6, 1960, the quotas for local consumption in Hawaii and Puerto Rico for the three-month period ending March 31, 1961, have been established at one-fourth of the determined local consumption requirements for 1961.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies Secs. 201, 203, 209, 210, 412; 61 Stat. 923, as amended, 925, 928; 7 U.S.C. 1111, 1112, 1119, 1120; Sec. 1, Pub. Law 86-592)

[F.R. Doc. 60-12177; Filed, Dec. 30, 1960; 8:47 a.m.]

[Sugar Reg. 818, Amdt. 4]

PART 818—REQUIREMENTS RELATING TO NON-QUOTA PURCHASE SUGAR FOR 1960

The following changes correct references to paragraph (f) of § 818.6 to reflect the change in designation of such paragraph (f) to paragraph (h) made under a previous amendment of § 818.6 (Sugar Regulation 818, Amendment 3; 25 F.R. 9197).

Section 818.6(a)(5) of this chapter is amended by changing the reference to paragraph "(f)" to read paragraph "(h)"; and § 818.9(b)(2) of this chapter is amended by changing the reference to "§ 816.6(f)" contained therein to read "§ 818.6(h)".

Since the amendments made herein merely correct reference to conform with paragraph designation, it is hereby found that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is unnecessary, impractical and contrary to the public interest and the amendment herein shall become effective when published in the FEDERAL REGISTER.

(Sec. 403, 61 Stat. 932, 7 U.S.C. 1153; Presidential Proclamation 3355 (25 F.R. 6414). Interprets or applies Secs. 101, 408; 61 Stat. 922, as amended, 933, as amended; 7 U.S.C. 1101. P.L. 86-592, approved July 6, 1960)

Done at Washington, D.C., this 22d day of December 1960.

CLARENCE L. MILLER,
Acting Secretary.

Concurred in for the Secretary of State by:

EDWIN M. MARTIN,
Assistant Secretary of State.

[F.R. Doc. 60-12210; Filed, Dec. 30, 1960; 8:51 a.m.]

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Regulation 199]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 914.499 Navel Orange Regulation 199.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act by tending to establish and maintain such orderly marketing conditions for such oranges as will provide, in the interests of producers and consumers, and orderly flow of the supply thereof to market throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices, and is not for the purpose of maintaining prices to farmers above the level which it is declared to be the policy of Congress to establish under the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001-1011) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting, the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 29, 1960.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., January 1, 1961, and ending at 12:01 a.m., P.s.t., January 8, 1961, are hereby fixed as follows:

(i) District 1: 450,000 cartons;
(ii) District 2: 196,882 cartons;
(iii) District 3: Unlimited movement;
(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 30, 1960.

S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-12223; Filed, Dec. 30, 1960; 11:29 a.m.]

[Milk Order No. 61]

PART 961—MILK IN PHILADEPHIA, PA., MARKETING AREA

Order Amending Order

§ 961.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous find-

ings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Philadelphia, Pennsylvania, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued March 29, 1960, and a revised recommended decision was issued November 14, 1960. The decision of the Assistant Secretary containing all amendment provisions of this order, was issued December 15, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Philadelphia marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 961.22 [Amendment]

1A. In § 961.22(j) delete subparagraph (2) and substitute the following:

(2) The 15th day of the month preceding the start of each calendar quarter, the Class I price for such calendar quarter: *Provided,* That the Class I price for the calendar quarter of January, February and March 1961 shall be announced on or before January 5, 1961;

1B. In § 961.22(j) delete the word "and" at the end of subparagraph (4), change the period at the end of subparagraph (5) to a semicolon and add the word "and" and add a new subparagraph as follows:

(6) The 15th day of each month, the indexes computed pursuant to § 961.50 (a)(1) for the preceding month, the 12-month average of condensery prices for the period ending with the preceding month calculated in the manner described in § 961.50(a)(3), and the 12-month percentage utilization factor for the period ending with the preceding month calculated in the matter described in § 961.50(a)(4) and (5).

§ 961.50 [Amendment]

2. Delete § 961.50(a) and substitute therefor the following:

(a) *Class I milk.* For each month in each calendar quarter the price per hundredweight of Class I milk shall be the price computed for such quarter pursuant to subparagraphs (1) through (5) of this paragraph.

(1) Compute the indexes set forth in subdivisions (i) through (v) of this subparagraph for the 2d, 3d and 4th months preceding the first month of the pricing quarter and divide the sum of these indexes by 15. The result shall be the formula index.

(i) Compute an index of wholesale commodity prices, using a 1957–1958 base period, by dividing by 1.183, the average of the four latest weekly index figures (those available on the 15th day of the following month) of wholesale commodity prices as reported on a 1947–1949 base by the Bureau of Labor Statistics, United States Department of Labor.

(ii) Compute an index of prices paid by Pennsylvania farmers per hundredweight for 20 percent protein mixed dairy feed, using a 1957–1958 base period, by dividing by 0.03898 the monthly price for such feed published by the Pennsylvania Federal-State Crop Reporting Service.

(iii) Compute an index of prices received by Pennsylvania farmers for farm products except dairy, using a 1957–1958 base period, by dividing by 2.103 the monthly index published by the Pennsylvania Federal-State Crop Reporting Service.

(iv) Compute an index of prices paid for milk by selected Midwestern condenseries, using a 1957–1958 base period, by dividing by 0.030673 the monthly average prices paid by the following selected Midwestern condenseries:

COMPANY AND LOCATION

Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

as reported by the United States Department of Agriculture, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for such month:

January	1.027	July	0.974
February	1.023	August	.986
March	1.011	September	.999
April	.981	October	1.015
May	.968	November	1.022
June	.968	December	1.026

(v) Compute an index of average daily pounds of Class I milk disposition under Order No. 61 and Order No. 110, using a 1957–1958 base period, by dividing by 29,476 the daily average for the month of pounds of Class I milk disposition by producer milk plants under Order No. 61 and fluid milk plants under Order No. 110, excluding Class I milk disposition (on routes or otherwise) outside the marketing areas by any handler whose Class I disposition on routes in the marketing areas is less than 5.0 percent of his total Class I route disposition, and excluding any duplication because of disposition between plants, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for the month:

January	1.009	July	0.946
February	1.023	August	.949
March	1.011	September	1.020
April	1.025	October	1.046
May	1.010	November	1.005
June	.966	December	.990

(2) Subject to the conditions set forth in subparagraphs (3), (4) and (5) of this paragraph the Class I price shall be that price indicated for the pricing quarter in the following Class I price schedule in the line corresponding to the bracket in which the formula index computed pursuant to subparagraph (1) falls, or if such index value is not within a bracket, the price for the calendar quarter shall be determined by the adjacent index bracket which is the same as or nearest to the bracket equivalent to the price in the previous quarter: *Provided,* That for the purposes of this subparagraph for pricing in the first quarter of 1961, the bracket equivalent to the price in the previous quarter shall be considered to be "99.0 to 101.0".

CLASS I PRICE SCHEDULE

[Price per hundredweight]

Formula index	1st Quarter (January, February, March)	2d Quarter (April, May, June)	3d Quarter (July, August, September)	4th Quarter (October, November, December)
At least but less than—				
80.0–82.0	4.59	4.19	4.59	4.99
83.8–85.8	4.79	4.39	4.79	5.19
87.6–89.6	4.99	4.59	4.99	5.39
91.4–93.4	5.19	4.79	5.19	5.59
95.2–97.2	5.39	4.99	5.39	5.79
99.0–101.0	5.59	5.19	5.59	5.99
102.8–104.8	5.79	5.39	5.79	6.19
106.6–108.6	5.99	5.59	5.99	6.39
110.4–112.4	6.19	5.79	6.19	6.59
114.2–116.2	6.39	5.99	6.39	6.79
118.0–120.0	6.59	6.19	6.59	6.99

[1] If the formula index is more than 120.0 or less than 80.0 this table shall be extended at the same rate as the increase or decrease in the preceding bracket.

(3) If the annual level of the price for any calendar quarter (the price indicated for the first and third quarters for the bracket in which the formula index computed pursuant to subparagraph (1) falls) adjusted to a price for milk of 3.5 percent butterfat content (using the Class I butterfat differential computed for the second month preceding the quarter, pursuant to § 961.51) is greater than $2.60 over the simple average of prices of selected Midwestern condenseries (identified in subparagraph (1) of this paragraph) as reported by the United States Department of Agriculture for the 12-month period ending with the second month preceding the quarter for milk of 3.5 percent butterfat, the Class I price for such quarter shall be adjusted downward (in multiples of 20 cents) to a price so adjusted which will be within such $2.60 variance.

(4) For each month of any calendar quarter the Class I price shall be 20 cents more per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are less than 129 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents more if the percentage of such receipts to such disposition is less than 126: *Provided,* That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year plus 80 cents.

(5) For each month of any calendar quarter the Class I price shall be 20 cents less per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are more than 139 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents less if the percentage of such receipts to such disposition is more than 142: *Provided,* That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year less 80 cents.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 28th day of December 1960, to be effective on and after the 1st day of January 1961.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–12205; Filed, Dec. 30, 1960; 8:50 a.m.]

[Grapefruit Reg. 334]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1041 Grapefruit Regulation 334.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on December 27, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this regulation, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (7 CFR 51.750–51.783; 25 F.R. 8219).

(2) During the period beginning at 12:01 a.m., e.s.t., January 2, 1961, and ending at 12:01 a.m., e.s.t., January 16, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 1: *Provided,* That such grapefruit may have discoloration to the extent permitted under the U.S. No. 2 Russet grade, and may have slightly rough texture caused only by speck type melanose;

(ii) Any seeded grapefruit, grown in the production area, which are smaller than 3⅛ inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such

minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit; or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than 3$^{9}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said United States Standards for Florida Grapefruit.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 29, 1960.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12213; Filed, Dec. 30, 1960; 8:51 a.m.]

[Orange Reg. 382]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1040 Orange Regulation 382.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C 1001–1011) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, including Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on December 27, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this regulation, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, including Temple oranges, and compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (7 CFR 51.1140–51.1178; 25 F.R. 8211).

(2) During the period beginning at 12:01 a.m., e.s.t., January 2, 1961, and ending at 12:01 a.m., e.s.t., January 30, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, except Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Russet;

(ii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than 2$^{8}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos: *Provided,* That in determining the percentage of oranges in any lot which are smaller than 2$^{8}/_{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2$^{11}/_{16}$ inches in diameter or smaller.

(3) During the period beginning at 12:01 a.m., e.s.t., January 2, 1961, and ending at 12:01 a.m., e.s.t., January 16, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any Temple oranges, grown in the production area, which do not grade at least U.S. No. 1 Russet: *Provided,* That such oranges may have slightly rough texture caused only by scarring, and may have scars and discoloration to the extent permitted under the U.S. No. 2 grade.

(ii) Any Temple oranges, grown in the production area, which are of a size smaller than 2$^{8}/_{16}$ inches in diameter, except that a tolerance of ten percent, by count, for Temple oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the aforesaid United States Standards for Florida Oranges and Tangelos.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 29, 1960.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12214; Filed, Dec. 30, 1960; 8:51 a.m.]

[Tangelo Reg. 26]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1043 Tangelo Regulation 26.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on December 27, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this regulation, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangelos; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangelos, and compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Oranges and Tangelos (7 CFR 51.1140–51.1178; 25 F.R. 8211).

(2) During the period beginning at 12:01 a.m., e.s.t., January 2, 1961, and ending at 12:01 a.m., e.s.t., January 16, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U.S. No. 1 Russet; or

(ii) Any tangelos, grown in the production area, which are of a size smaller than 2$^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said United States Standards for Florida Oranges and Tangelos.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 29, 1960.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12215; Filed, Dec. 30, 1960; 8:51 a.m.]

[Tangerine Reg. 220]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

§ 933.1042 Tangerine Regulation 220.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation

grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on December 27, 1960, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this regulation, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (7 CFR 51.1810–51.1834; 25 F.R. 8216).

(2) During the period beginning at 12:01 a.m., e.s.t., January 2, 1961, and ending at 12:01 a.m. e.s.t., January 16, 1961, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least US. No. 1; or

(ii) Any tangerines, grown in the production area, that are of a size smaller than the size that will pack 210 tangerines, packed in accordance with the requirements of a standard pack, in a half-standard box (inside dimensions 9½ x 9½ x 19⅛ inches; capacity 1,726 cubic inches).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 29, 1960.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–11216; Filed, Dec. 30, 1960; 8:52 a.m.]

[Lemon Reg. 879]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 953.986 Lemon Regulation 879.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 23 F.R. 9053), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U.S.C. 1001, et seq.), because the time intervening between the date when information upon which this regulation is based become available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation

during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 28, 1960.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period begining at 12:01 a.m., P.s.t., January 1, 1961, and ending at 12:01 a.m., P.s.t., January 8, 1961, are hereby fixed as follows:

(i) District 1: 27,900 cartons;

(ii) District 2: 158,100 cartons;

(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 29, 1960.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12222; Filed, Dec. 30, 1960; 8:53 a.m.]

[Milk Order No. 94]

PART 994—MILK IN COLORADO SPRINGS-PUEBLO MARKETING AREA

Order Amending Order

§ 994.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Colorado Springs-Pueblo marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued October 27, 1960, and the decision of the Assistant Secretary containing all amendment provisions of this order, was issued December 16, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1960, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. The order is hereby amended as follows:

1. Delete § 994.7 and substitute therefor the following:

§ 994.7 Pool plant.

A "pool plant" shall be any plant meeting the conditions of paragraph (a) or (b) of this section except the plant of a handler exempted in § 994.60 or § 994.61:

(a) Any plant, hereinafter referred to as a "distributing pool plant", (1) in which fluid milk products are pasteurized or packaged, (2) from which an amount equal to 50 percent or more of receipts of Grade A milk from dairy farmers and from other pool plants is disposed of as Class I milk, and (3) from which 20 percent or more of the total Class I sales are on routes in the marketing area; and

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month not less than 40 percent of its dairy farm supply of Grade A milk is moved to a distributing pool plant(s). Any supply plant which has qualified as a pool plant in each of the months of September through February shall be a pool plant for each of the following months of March through August unless written request for nonpool status for any such month(s) is furnished in advance to the market administrator. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of March through August unless it fulfills the shipping requirements of this paragraph for such month.

§ 994.9 [Amendment]

2. In § 994.9 delete the following sentence: "Such milk shall be considered as having been received by such cooperative association at the plant from which it was diverted."

3. Delete § 994.10 and substitute therefor the following:

§ 994.10 Producer.

"Producer" means any person, other than a producer-handler (or a dairy farmer with respect to milk delivered to a pool plant which qualifies as producer milk under another Federal milk order) who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is:

(a) Received at a pool plant; or

(b) Diverted from a pool plant to a nonpool plant for the account of the handler operating the pool plant or of a cooperative association, subject to the following limitations and conditions:

(1) The days of production of such person for which milk is diverted during the month may not exceed the days of production for which milk is received at a pool plant, otherwise such person will not be considered a producer with respect to any milk diverted;

(2) For purposes of the requirements of § 994.7, milk diverted for the account of the operator of a pool plant shall be included in the receipts of the pool plant from which diverted; and

(3) For purposes of location adjustments pursuant to § 994.81, milk diverted to a nonpool plant shall be considered to have been received at the location of the nonpool plant to which diverted.

§ 994.44 [Amendment]

4. Delete § 994.44(c) and substitute therefor the following:

(c) Class I milk, if transferred or diverted as a fluid milk product in bulk to a nonpool plant located more than 200 miles, by the shortest highway distance as determined by the market administrator, from the El Paso County Courthouse, but not located in Cache or Weber Counties, Utah.

5. Delete § 994.44(e) and substitute therefor the following:

(e) Class I milk, if transferred or diverted as a fluid milk product in bulk to a nonpool plant located not more than 200 miles, by the shortest highway distance as determined by the market administrator, from the El Paso County Courthouse, or located in Cache or Weber Counties, Utah, unless the following conditions are met:

(1) The transferring handler claims Class II utilization in his report submitted pursuant to § 994.30;

(2) The operator of the nonpool plant maintains books and records showing receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for the purpose of verification;

(3) Class I utilization in the nonpool plant does not exceed the receipts of skim milk and butterfat in Grade A milk from dairy farmers. If Class I utilization exceeds such receipts, the skim milk and butterfat so transferred or diverted shall be Class I to the extent of a pro rata share of total receipts at the nonpool plant from all pool plants and from plants fully subject to other orders that are claimed as Class II utilization or as a class other than Class I under another order; and

(4) If any skim milk or butterfat is transferred to a second nonpool plant under this paragraph, the same conditions of audit, classification and allocation shall apply.

§ 994.46 [Amendment]

6. Delete § 994.46(a)(3) and substitute therefor the following:

(3) Subtract the pounds of skim milk in fluid milk products received from plants regulated under another order issued pursuant to the Act, as specified:

(i) If sour cream was not processed or packaged in the pool plant during the month, subtract from the pounds of skim milk in Class I milk the pounds of skim milk in sour cream packaged in consumer or institutional size packages, classified and priced as Class II milk pursuant to Order No. 41, regulating the handling of milk in Chicago, Illinois, marketing area (Part 941 of this chapter), disposed of in the same packages as received; and

(ii) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the remaining pounds of skim milk in other source milk received from a plant at which the handling of milk is fully subject to the pricing and payment provisions of another marketing agreement or order issued pursuant to the Act.

7. Delete § 994.52 and substitute therefor the following:

§ 994.52 Location differentials to handlers.

For milk which is received from producers at a plant located more than 200 miles by the shortest highway distance, as determined by the market administrator, from the El Paso County Courthouse in Colorado Springs, and which is classified as Class I milk the prices computed pursuant to § 994.51(a) shall be reduced by 31.5 cents if such plant is located more than 200 miles but not more than 210 miles from such Courthouse and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 210 miles: *Provided*, That for the purpose of calculating such differential transfers between pool plants shall be assigned to Class I milk in a volume not in excess of that by which Class I disposition at the transferee plant exceeds the receipts from producers at such plant, such assignment to transferor plants to be made first to plants at which no differential credit is applicable and then in the sequence beginning with the plant at which the lowest location differential credit would apply.

8. Delete § 994.81 and substitute therefor the following:

§ 994.81 Location differential to producers.

For milk which is received at a plant located more than 200 miles but not more than 210 miles by shortest highway distance, as determined by the market administrator, from the El Paso County Courthouse in Colorado Springs, there should be deducted 31.5 cents per hundredweight and an additional 1.5 cents shall be deducted for each 10 miles or fraction thereof that such distance exceeds 210 miles.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 28th day of December 1960, to be effective on and after the 1st day of January 1961.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–12207; Filed, Dec. 30, 1960; 8:50 a.m.]

[Milk Order No. 110]

PART 1010—MILK IN WILMINGTON, DEL., MARKETING AREA

Order Amending Order

§ 1010.0 Findings and determinations.

The findings and determinations hereinafter set forth in supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Wilmington, Delaware, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manners as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1961. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator of the Agricultural Marketing Service was issued March 29, 1960 and a revised recommended decision was issued November 14, 1960. The decision of the Assistant Secretary containing all amendment provisions of this order, was issued December 15, 1960. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1961, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the FEDERAL REGISTER. (Sec. 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least three-fourths of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Wilmington marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as hereby amended, and the aforesaid order is hereby amended as follows:

§ 1010.22 [Amendment]

1A. In § 1010.22(j) delete subparagraph (2) and substitute the following:

(2) The 15th day of the month preceding the start of each calendar quarter, the Class I price for such calendar quarter: *Provided*, That the Class I price for the calendar quarter of January, February, and March 1961 shall be announced on or before January 5, 1961;

1B. In § 1010.22(j) add a new subparagraph as follows:

(4) The 15th day of each month, the indexes computed pursuant to § 1010.50 (a)(1) for the preceding month, the 12-month average of condensery prices for the period ending with the preceding month calculated in the manner described in § 1010.50(a)(3), and the 12-month percentage utilization factor for the period ending with the preceding month calculated in the manner described in § 1010.50(a) (4) and (5).

§ 1010.50 [Amendment]

2. Delete § 1010.50(a) and substitute therefor the following:

(a) *Class I milk.* For each month in each calendar quarter the price per hundredweight of Class I milk shall be the price computed for such quarter pursuant to subparagraphs (1) through (5) of this paragraph.

(1) Compute the indexes set forth in subdivisions (i) through (v) of this subparagraph for the 2d, 3d and 4th months preceding the first month of the pricing quarter and divide the sum of these indexes by 15. The result shall be the formula index.

(i) Compute an index of wholesale commodity prices, using a 1957–1958 base period, by dividing by 1.183, the average of the four latest weekly index figures (those available on the 15th day of the following month) of wholesale commodity prices as reported on a 1947–1949 base by the Bureau of Labor Statistics, United States Department of Labor.

(ii) Compute an index of prices paid by Pennsylvania farmers per hundredweight for 20 percent protein mixed dairy feed, using a 1957–1958 base period, by dividing by 0.03896 the monthly price for such feed published by the Pennsylvania Federal-State Crop Reporting Service.

(iii) Compute an index of prices received by Pennsylvania farmers for farm products except dairy, using a 1957–1958 base period, by dividing by 2.103 the monthly index published by the Pennsylvania Federal-State Crop Reporting Service.

(iv) Compute an index of prices paid for milk by selected Midwestern condenseries, using a 1957–1958 base period, by dividing by 0.030673 the monthly average prices paid by the following selected Midwestern condenseries

COMPANY AND LOCATION

Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

as reported by the United States Department of Agriculture, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for such month:

January	1.027	July	0.974
February	1.023	August	.986
March	1.011	September	.999
April	.981	October	1.015
May	.968	November	1.022
June	.968	December	1.026

(v) Compute an index of average daily pounds of Class I milk disposition under Order No. 61 and Order No. 110, using a 1957–1958 base period, by dividing by 29,476 the daily average for the month of pounds of Class I milk disposition by producer milk plants under Order No. 61 and fluid milk plants under Order No. 110, excluding Class I milk disposition (on routes or otherwise) outside the marketing areas by any handler whose Class I disposition on routes in the marketing areas is less than 5.0 percent of his total Class I route disposition and excluding any duplication because of disposition between plants, and adjust the result for seasonal variation by dividing by the applicable figure indicated below for the month:

January	1.009	July	0.946
February	1.023	August	.949
March	1.011	September	1.020
April	1.025	October	1.046
May	1.010	November	1.005
June	.966	December	.990

(2) Subject to the conditions set forth in subparagraphs (3), (4), and (5) of this paragraph the Class I price shall be that price indicated for the pricing quarter in the following Class I price schedule in the line corresponding to the bracket in which the formula index computed pursuant to subparagraph (1) falls, or if such index value is not within a bracket, the price for the calendar quarter shall be determined by the adjacent index bracket which is the same as or nearest to the bracket equivalent to the price in the previous quarter: *Provided*, That for the purposes of this subparagraph for pricing in the first quarter of 1961, the bracket equivalent to the price in the previous quarter shall be considered to be "99.0 to 101.0".

CLASS I PRICE SCHEDULE

[Price per hundredweight]

Formula index	1st Quarter (January, February, March)	2d Quarter (April, May, June)	3d Quarter (July, August, September)	4th Quarter (October, November, December)
At least but less than—				
80.0 [1]–82.0	4.44	4.04	4.44	4.84
83.8–85.8	4.64	4.24	4.64	5.04
87.6–89.6	4.84	4.44	4.84	5.24
91.4–93.4	5.04	4.64	5.04	5.44
95.2–97.2	5.24	4.84	5.24	5.64
99.0–101.0	5.44	5.04	5.44	5.84
102.8–104.8	5.64	5.24	5.64	6.04
106.6–108.6	5.84	5.44	5.84	6.24
110.4–112.4	6.04	5.64	6.04	6.44
114.2–116.2	6.24	5.84	6.24	6.64
118.0–120.0	6.44	6.04	6.44	6.84

[1] If the formula index is more than 120.0 or less than 80.0 this table shall be extended at the same rate as the increase or decrease in the preceding bracket.

(3) If the annual level of the price for any calendar quarter (the price indicated for the first and third quarters for the bracket in which the formula index computed pursuant to subparagraph (1) falls) adjusted to a price for milk of 3.5 percent butterfat content (using the Class I butterfat differential computed for the second month preceding the quarter, pursuant to § 1010.51) is greater than $2.45 over the simple average of prices of selected Midwestern condenseries (identified in subparagraph (1) of this paragraph) as reported by the United States Department of Agriculture for the 12-month period ending with the second month preceding the quarter for milk of 3.5 percent, the Class I price for such quarter shall be adjusted downward (in multiples of 20 cents) to a price so adjusted which will be within such $2.45 variance.

(4) For each month of any calendar quarter the Class I price shall be 20 cents more per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are less than 129 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents more if the percentage of such receipts to such disposition is less than 126: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year plus 80 cents.

(5) For each month of any calendar quarter the Class I price shall be 20 cents less per hundredweight than the price prescribed in subparagraph (2) of this paragraph, adjusted pursuant to subparagraph (3) of this paragraph, if receipts of milk from producers at producer milk plants under Order No. 61 and fluid milk plants under Order No. 110 during the 12-month period ending with the second preceding month are more than 139 percent of total Class I disposition by such plants in the same period (excluding any duplication because of disposition between plants), and shall be an additional 20 cents less if the percentage of such receipts to such disposition is more than 142: *Provided*, That the price adjustment pursuant to this subparagraph shall not exceed an amount which will result in a Class I price equal to the Class I price for the same quarter of the preceding year less 80 cents.

§ 1010.50 [Amendment]

3. Delete § 1010.50(b)(1) and substitute therefor the following:

(b)(1) *Butterfat.* Add all market quotations (using the midpoint of any weekly range as one quotation) of prices per 40-quart can of fresh sweet cream of bottling quality of 40 percent butterfat content, not including prices for cream carrying special municipal approvals, reported at Philadelphia for each week ending within the month by the United States Department of Agriculture, divide by the number of quotations, subtract $2.00 and divide by 9.19: *Provided*, That such butterfat value shall not be less than 3.7 times 120 percent of the average of the daily wholesale selling price for Grade A (92-score) butter at New York as reported by the United States Department of Agriculture for the month for which payment is to be made, less 18.0 cents.

§ 1010.51 [Deletion]

4. Delete § 1010.51 and substitute therefor the following:

§ 1010.51 Butterfat differential to handlers.

For milk containing more or less than 3.7 percent butterfat, the class prices for the month, calculated pursuant to § 1010.50, shall be increased or decreased, respectively, for each one-tenth of 1.0 percent variation in butterfat content by the amount calculated pursuant to § 1010.50(b)(1) divided by 37 and rounded to the nearest one-tenth cent.

5. Delete "4.0 percent" in §§ 1010.50 and 1010.71 (b) and (d), and substitute therefor "3.7 percent".

§ 1010.81 [Deletion]

6. Delete § 1010.81 and substitute therefor the following:

§ 1010.81 Butterfat differential to producers.

The applicable uniform prices to be paid each producer pursuant to § 1010.80 shall be increased or decreased, for each one-tenth of 1.0 percent which the average butterfat content of his milk is above or below 3.7 percent, respectively, at a rate determined by dividing by 37 the butterfat value computed pursuant to § 1010.50(b)(1) and rounded to the nearest full cent.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Issued at Washington, D.C., this 28th day of December 1960, to be effective on and after the 1st day of January 1961.

CLARENCE L. MILLER,
Assistant Secretary.

[F.R. Doc. 60–12206; Filed, Dec. 30, 1960; 8:50 a.m.]

PART 1032—CARROTS GROWN IN SOUTH TEXAS

Notice of rule making with respect to proposed rules and regulations to be made effective under Marketing Agreement No. 142 and Order No. 132 (7 CFR Part 1032; 25 F.R. 9523), regulating the handling of carrots grown in designated counties in South Texas, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), was published in the FEDERAL REGISTER December 13, 1960 (25 F.R. 12752).

This notice afforded interested parties an opportunity to file data, views, or arguments pertaining thereto not later than 10 days after publication in the FEDERAL REGISTER. None was filed.

After consideration of all relevant matters, including the proposals set forth in the aforesaid notice which were recommended by the South Texas Carrot Committee, established pursuant to the aforesaid marketing agreement and order, the following rules and regulations are hereby approved to become effective upon publication in the FEDERAL REGISTER.

GENERAL

Sec.
1032.100 Order.
1032.101 Terms.
1032.102 Communications.
1032.103 Registered handler.
1032.104 Fiscal period.

SAFEGUARDS

1032.120 Policy.
1032.121 Qualification.
1032.122 Application.
1032.123 Approval.
1032.124 Reports.
1032.125 Disqualification.

AUTHORITY: §§ 1032.100 to 1032.125 issued under Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL

§ 1032.100 Order.

Order means this part (§ 1032.1 to 1032.92; 25 F.R. 9523) regulating the handling of carrots grown in South Texas.

§ 1032.101 Terms.

The terms used in this subpart shall have the same meaning as when used in the order.

§ 1032.102 Communications.

Unless otherwise provided in the order, or by specific direction of the committee, all reports, applications, submittals, requests and communications in connection with the order shall be addressed to the South Texas Carrot Committee, at its principal office.

§ 1032.103 Registered handler.

For purposes of this part any person who operates an established packing house within the production area with commonly accepted adequate facilities for grading and packing carrots for market, and who customarily buys carrots from producers for grading, packing, and marketing shall be recorded by the committee as a registered handler. Any other person who wishes to be listed as a registered handler may make application for registration on forms furnished by the committee. If such applicant has facilities available to him that are determined by the committee to be adequate for grading and packing carrots for market, and he assumes responsibility for inspection of carrots handled by him, and for assessments thereon, he may be approved and recorded as a registered handler. If the committee determines from the available information that the applicant is not entitled to be registered with the committee, he shall be so informed by written notice stating the reason for denial of his application. Any registration of a handler pursuant to this section may be canceled by the committee under circumstances which would have justified denial of his application. Any handler whose registration has been canceled shall be so informed by written notice thereof stating the reason therefor. The committee shall also notify producers of each such cancellation of handler registration through committee bulletins or published notice in local newspapers of general distribution or both.

§ 1032.104 Fiscal period.

The inital fiscal period shall begin on the effective date of this part, October 5, 1960, and end on July 31, 1961. Thereafter, each fiscal period shall begin on August 1 of each year and end on July 31 of the following year, both dates inclusive.

SAFEGUARDS

§ 1032.120 Policy.

Whenever shipments of carrots for special purposes pursuant to § 1032.53 are relieved in whole or in part from regulations issued under § 1032.52, the committee may require information and evidence on the manner, methods, and timing of such shipments as safeguards against the entry of any such carrots in trade channels other than those for which intended. Such information and evidence shall include requirements set forth below with respect to Certificates of Privilege.

§ 1032.121 Qualification.

Before handling carrots for special purposes which do not meet regulations issued pursuant to § 1032.52, a handler, when required by such regulations, must qualify with the committee to handle shipments for special purposes. To

qualify he must (a) apply for and receive a Certificate of Privilege indicating his intent to so handle carrots, (b) agree to comply with reporting and other requirements set forth in §§ 1032.120 to 1032.125, inclusive, with respect to such shipments, and (c) receive approval of the committee, or its duly authorized agents, to so handle carrots. Such approval will be based upon evidence furnished in his application for Certificate of Privilege and other information available to the committee.

§ 1032.122 Application.

(a) Applications for a Certificate of Privilege shall be made on forms furnished by the committee. Each application may contain, but need not be limited to, the name and address of the handler; the quantity by grade, size, and quality of the carrots to be shipped; the mode of transportation; the consignee; the destination; the purpose for which the carrots are to be used; and certification to the United States Department of Agriculture and to the committee as to the truthfulness of the information shown thereon, and any other appropriate information or documents deemed necessary by the committee or its duly authorized agents for the purposes stated in § 1032.120.

(b) The committee may require each handler making shipments of carrots for export to include with his application a copy of the Department of Commerce Shippers Export Declaration Form No. 7525–V applicable to such shipment.

§ 1032.123 Approval.

The committee or its duly authorized agents shall give prompt consideration to each application for a Certificate of Privilege. Approval of an application, based upon the determination as to whether the information contained therein and other information available to the committee supports approval, shall be evidenced by the issuance of a Certificate of Privilege to the applicant. Each certificate shall cover a specified period and specified qualities and quantities of carrots to be sold or transported to a designated consignee for the purposes declared.

§ 1032.124 Reports.

Each handler of carrots shipping under Certificates of Privilege shall supply the committee with reports as requested by the committee, or its duly authorized agents, showing the name and address of the shipper; the car or truck identification; the loading point; destination; consignee; the inspection certificate number when inspection is required; and any other information deemed necessary by the committee.

§ 1032.125 Disqualification.

The committee from time to time may conduct surveys of handling of carrots for special purposes requiring Certificates of Privilege to determine whether handlers are complying with the requirements and regulations applicable to such certificates. Whenever the committee finds that the handler or consignee is failing to comply with requirements and regulations applicable to handling of carrots in special outlets and requiring such certificates, a Certificate or Certificates of Privilege issued such handler may be rescinded and subsequent certificates denied. Such disqualification shall apply to, and not exceed, a reasonable period of time as determined by the committee, but in no event shall it extend beyond the date of the succeeding fiscal period. Any handler who has a Certificate rescinded or denied may appeal to the committee in writing for reconsideration of his disqualification.

It is hereby found that good cause exists for not postponing the effective date of these rules and regulations beyond the date of publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (1) these rules and regulations apply to the handling of carrots grown in the production area and the handling of the 1960–61 winter crop of carrots has begun, (2) it is necessary to place these rules and regulations in effect at the earliest possible date in order to facilitate operations under the marketing agreement and order, and (3) notice hereof has been given by publication in the FEDERAL REGISTER of December 13, 1960 (25 F.R. 12752).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: Dated December 28, 1960, to become effective upon publication in the FEDERAL REGISTER.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60–12217; Filed, Dec. 30, 1960; 8:52 a.m.]

PART 1032—CARROTS GROWN IN SOUTH TEXAS

Approval of Expenses and Rate of Assessment

Notice of rule making regarding proposed expenses and rate of assessment, to be made effective under Marketing Agreement No. 142 and Order No. 132 (7 CFR Part 1032; 25 F.R. 9523) regulating the handling of carrots grown in designated counties in South Texas, was published in the FEDERAL REGISTER December 10, 1960 (25 F.R. 12712). This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, which proposals were adopted and submitted for approval by the South Texas Carrot Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that:

§ 1032.201 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the South Texas Carrot Committee to enable such committee to perform its functions pursuant to the provisions of aforesaid marketing agreement and order, during the fiscal period ending July 31, 1961, will amount to $50,000.

(b) The rate of assessment to be effective for the fiscal period ending July 31, 1961, shall be one and one-fourth cents ($0.0125) per 50-pound sack (or crate) of carrots, or the equivalent quantity thereof packed in other containers, of carrots handled during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 142 and Order No. 132.

It is hereby found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that: (1) the relevant provisions of said marketing agreement and order require that rates of assessment fixed for a particular fiscal period shall be applicable to all assessable carrots from the beginning of such period and (2) the current fiscal period began on October 5, 1960, and the rates of assessment herein fixed will automatically apply to all assessable carrots beginning with such date.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 28, 1960.

G. R. GRANGE,
Acting Director, Fruit and Vegetable Division.

[F.R. Doc. 60–12218; Filed, Dec. 30, 1960; 8:52 a.m.]

PART 1034—LETTUCE GROWN IN THE LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Limitation of Shipments

Notice of rule making with respect to proposed Limitation of Shipments regulation to be made effective under Marketing Agreement No. 144 and Order No. 134 (7 CFR Part 1034; 25 F.R. 12227), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas, was published in the FEDERAL REGISTER December 21, 1960 (25 F.R. 13142). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This notice afforded interested parties an opportunity to file data, views, or arguments pertaining thereto within five days after publication. None was filed.

After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, it is hereby found that the limitation of shipments regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby found that good cause exists for not postponing the effective date of § 1034.301 until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 1001–1011) in that (i) the handling of lettuce grown in the production area will begin on or about the effective date of this section, (ii) more orderly marketing in the public interest than would otherwise prevail will be promoted by regulating the handling of lettuce in the manner set forth below on and after the effective date of this section, (iii) compliance with this section will not require any special preparation on the part of handlers which cannot be completed by the effective date, (iv) reasonable time is permitted under the circumstances for such preparation, and (v) notice has been given of the Limitation of Shipments set forth in this section through publicity in the production area and by publication in the FEDERAL REGISTER of December 21, 1960 (25 F.R. 13142).

§ 1034.301 Limitation of shipments.

No person shall package lettuce on any Sunday during the period beginning on January 8, 1961, through March 26, 1961, inclusive. During the period January 2, 1961, through March 31, 1961, no person shall handle any lot of lettuce grown in the production area unless such lettuce meets the grade requirements of paragraph (a), one of the sizing and pack requirements of paragraph (b), and the container requirements of paragraph (c), or unless such lettuce is handled in accordance with the provisions of paragraphs (d), (e), and (f) of this section.

(a) *Grade.* 70 percent U.S. No. 1, or better grade, not to exceed an average of 5 percent decay in any lot.

(b) *Sizing and pack.* Only lettuce that meets one of the following sizing and pack requirements may be handled:

(1) 18 heads per container;
(2) 24 heads per container; or
(3) 30 heads per container.

(c) *Container.* Lettuce may be handled only if packed in one of the following containers:

(1) A carton with inside dimensions of 10 inches x 14¼ inches x 21⁵⁄₁₆ inches (designated as carrier container No. 7303);

(2) A carton with inside dimensions of 9¾ inches x 14 inches x 21 inches (designated as carrier container No. 7306).

(d) *Minimum quantities.* Any person may handle up to but not to exceed 5 cartons or 250 pounds of lettuce a day without regard to the requirements of this section or to the inspection and assessment requirements of this part, but this exception shall not apply to any portion of a shipment of over 5 cartons or 250 pounds of lettuce.

(e) *Special purpose shipments.* The requirements of paragraphs (a), (b), and (c), of this section, and the inspection and assessment requirements of this part, shall not be applicable to lettuce handled for the following special purposes:

(1) Relief or charity;
(2) Experimental purposes; and
(3) Export to Mexico.

(f) *Safeguards.* (1) Each handler of lettuce which does not meet the requirements of paragraphs (a), (b), and (c) of this section, and which is handled pursuant to paragraph (e) of this section for relief or charity or experimental purposes shall, prior to handling, apply for and obtain a Certificate of Privilege from the committee which shall require the handler to furnish such reports and documents as the committee may require showing that the lettuce was handled for the purpose specified in the Certificate of Privilege.

(2) Each person who sells or otherwise handles lettuce which does not meet the requirements of paragraphs (a), (b), and (c) of this section, and which is handled pursuant to paragraph (e) of this section for export to Mexico, shall maintain the following records with respect to such lettuce:

(i) Name and address of the purchaser;
(ii) Quantity involved in each sale;
(iii) Date of sale; and
(iv) Identification of the vehicle of the purchaser or trucker by make, model, and license number.

(g) *Inspection.* (1) No handler shall handle any lettuce for which an inspection certificate is required unless an appropriate inspection certificate has been issued with respect thereto.

(2) No handler shall transport or cause the transportation of any shipment of lettuce by motor vehicle for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto or by documentary evidence on forms furnished by the committee identifying truck lots to which valid inspection certificates are applicable and a copy of such inspection certificate or committee document, upon request, is surrendered to authorities designated by the committee.

(3) For purpose of operation under this part each required inspection certificate or form required by the committee as evidence of inspection is hereby determined to be valid for a period not to exceed 72 hours following completion of inspection as shown on the certificate or the date shown on the document.

(h) *Definitions.* The term "U.S. No. 1" shall have the same meaning as set forth in the U.S. Standards for Lettuce (§§ 51.2510 to 51.2524 of this title), including the tolerances set forth therein. All other terms used in this section shall have the same meaning as when used in Marketing Order No. 134 (Part 1034 of this title).

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: Dated December 28, 1960, to become effective January 2, 1961.

S. R. GRANGE,
Acting Director, Fruit and Vegetable Division.

[F.R. Doc. 60–12208; Filed, Dec. 30, 1960; 8:51 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

EDITORIAL NOTE: With the enactment of the Internal Revenue Code of 1954 it became necessary to carry two titles 26 in the Code of Federal Regulations: (1) "Title 26—Internal Revenue", containing regulations under the Internal Revenue Code of 1939 (cloth bound books); and (2) "Title 26—Internal Revenue, 1954", containing regulations under the Internal Revenue Code of 1954 (paper bound books). Regulations under the 1939 Code, as made applicable to the corresponding provisions of the 1954 Code by Treasury Decision 6091, 19 F.R. 5167, Aug. 17, 1954, have been systematically superseded by regulations under the 1954 Code.

Since the greater portion of the regulations under the Internal Revenue Code of 1954 will have been issued as of January 1, 1961, two titles are no longer needed. Accordingly, the title heading as of that date is hereby designated "Title 26—Internal Revenue". Regulations under the Internal Revenue Code of 1954 will appear in the FEDERAL REGISTER under the new heading, together with amendatory regulations under the Internal Revenue Code of 1939.

The Code of Federal Regulations volumes will be revised under the new heading as of January 1, 1961. The new volumes will replace: (1) All volumes of the 1949 Edition of the Code, (2) the 1953 revisions of Parts 1 to 79, and Parts 183 to 299, and (3) all volumes issued as of January 1, 1960, under the heading "Title 26—Internal Revenue, 1954". The full text of the 1939 Code regulations, applicable to the 1954 Code provisions and not completely superseded, will be carried in the revision as appendices to appropriate subchapters.

Regulations under tax conventions in Part 7, appearing in Title 26—Internal Revenue, Parts 1 to 79, Revised 1953, and supplements, and Part 82, appearing in Title 26—Internal Revenue, 1949 Ed., Parts 80 to 169, and supplements, are hereby transferred to Subchapter G—Regulations Under Tax Conventions (Part 500 et seq.), and redesignated. Former §§ 505.201 to 505.210 are hereby redesignated §§ 505.301 to 505.310. The following table indicates these redesignations and shows the complete new structure of Subchapter G:

SUBCHAPTER G—REGULATIONS UNDER TAX CONVENTIONS

PART 501—AUSTRALIA

SUBPART—WITHHOLDING OF TAX

§§ 501.1 to 501.11.

PART 502—GREECE

SUBPART—WITHHOLDING OF TAX

§§ 502.1 to 502.10.

PART 503—GERMANY

SUBPART—WITHHOLDING OF TAX

§§ 503.1 to 503.9.

PART 504—BELGIUM

SUBPART—WITHHOLDING OF TAX

§§ 7.1100 to 7.1109 redesignated §§ 504.1 to 504.10

SUBPART—GENERAL INCOME TAX

§§ 504.101 to 504.121.

SUBPART—BELGIAN CONGO AND RUANDA-URUNDI

§§ 504.301 to 504.310.

PART 505—NETHERLANDS

SUBPART—WITHHOLDING OF TAX

§§ 7.800 to 7.810 redesignated §§ 505.1 to 505.11.

SUBPART—GENERAL INCOME TAX

§§ 7.850 to 7.868 redesignated §§ 505.101 to 505.119.

SUBPART—NETHERLANDS ANTILLES

§§ 505.201 to 505.210 redesignated §§ 505.301 to 505.310.

PART 506—JAPAN

SUBPART—WITHHOLDING OF TAX

§§ 506.1 to 506.9.

PART 507—UNITED KINGDOM

SUBPART—WITHHOLDING OF TAX

§§ 7.500 to 7.511 redesignated §§ 507.1 to 507.12.

SUBPART—GENERAL INCOME TAX

§§ 7.512 to 7.532 redesignated §§ 507.101 to 507.121.

SUBPART—ESTATE AND GIFT TAX

§§ 82.101 to 82.109 redesignated §§ 507.201 to 507.209.

SUBPART—UNITED KINGDOM COLONIES

§§ 507.501 to 507.511.

PART 509—SWITZERLAND

SUBPART—WITHHOLDING OF TAX

§§ 7.300 to 7.309 redesignated §§ 509.1 to 509.10.

SUBPART—GENERAL INCOME TAX

§§ 509.101 to 509.122.

PART 510—NORWAY

SUBPART—WITHHOLDING OF TAX

§§ 510.1 to 510.11.

SUBPART—GENERAL INCOME TAX

§§ 510.101 to 510.120.

PART 511—FINLAND

SUBPART—WITHHOLDING OF TAX

§§ 7.700 to 7.710 redesignated §§ 511.1 to 511.11.

SUBPART—GENERAL INCOME TAX

§§ 511.101 to 511.128.

PART 512—ITALY

SUBPART—WITHHOLDING OF TAX

§§ 512.1 to 512.10.

PART 513—IRELAND

SUBPART—WITHHOLDING OF TAX

§§ 7.1000 to 7.1010 redesignated §§ 513.1 to 513.11.

PART 514—FRANCE

SUBPART—WITHHOLDING OF TAX

§§ 514.1 to 514.10.

SUBPART—GENERAL INCOME TAX

§§ 7.410 to 7.426 redesignated §§ 514.101 to 514.117.

PART 515—HONDURAS

SUBPART—WITHHOLDING OF TAX

§§ 515.1 to 515.10.

PART 516—AUSTRIA

SUBPART—WITHHOLDING OF TAX

§§ 516.1 to 516.12.

PART 517—PAKISTAN

SUBPART—WITHHOLDING OF TAX

§§ 517.1 to 517.9.

PART 518—NEW ZEALAND

SUBPART—WITHHOLDING OF TAX

§§ 7.600 to 7.610 redesignated §§ 518.1 to 518.11.

PART 519—CANADA

SUBPART—WITHHOLDING OF TAX

§§ 7.45 to 7.56 redesignated §§ 519.1 to 519.12.

SUBPART—GENERAL INCOME TAX

§§ 7.20 to 7.39 redesignated §§ 519.101 to 519.120.

PART 520—SWEDEN

SUBPART—GENERAL INCOME TAX

§§ 7.200 to 7.218 redesignated §§ 520.101 to 520.119.

PART 521—DENMARK

SUBPART—WITHHOLDING OF TAX

§§ 7.900 to 7.907 redesignated §§ 521.1 to 521.8.

SUBPART—GENERAL INCOME TAX

§§ 7.950 to 7.966 redesignated §§ 521.101 to 521.117.

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Amdt. 2]

PART 120—LOAN POLICY STATEMENT

Business Loans; Early Maturities Participation Plan

The Loan Policy Statement Regulation (23 F.R. 10513 as amended, 24 F.R. 8325) is hereby further amended as follows:

1. Section 120.4–2(b)(3) is amended to read as follows:

§ 120.4–2 Business loans.

* * * * *

(b) * * *

(3) No agreement to participate shall establish any preferences in favor of the bank or other lending institution participating in the loan with SBA, except in participation agreements entered into in accordance with the Early Maturities Participation Plan set forth in § 120.4–6.

2. A new § 120.4–6 is added to read as follows:

§ 120.4–6 Early Maturities Participation Plan.

Early Maturities Participation business loans are authorized on an immediate participation basis whereby the full amount of the early scheduled principal payments on a loan can be applied toward reduction of the participating financial institution's share of the total loan subject to the following limitations:

(a) The financial institution shall participate in an amount not less than the greater of the following sums: (1) the aggregate of the level amortized principal payments due in the first two years of the loan; (2) 25 percent of the loan; (3) the full amount of any existing credit the remaining term of which is more than one year and of any credit the remaining term of which is less than one year upon which payments, if required, have not been made as originally agreed.

(b) All such loans shall be amortized on a level principal payment basis, plus interest, and only such principal payments as are made within 60 days of due date can be applied toward early reduction of the participating institution's share of the total loan. Upon expiration of 60 days after default of any payment of principal or interest due on the loan, unless the default is cured by payment within that period, the proportionate interests of the SBA and the institution participating in the loan shall be frozen or fixed in amounts equal to their respective percentages of exposure as of the date of the last principal payment received prior to the default, and all future payments on the loan from any source shall be paid over to, or credited to the participation of, bank and SBA according to their respective percentages of the frozen or fixed participation.

(c) No such agreement shall establish any preference in favor of the lending institution in any collateral security for the loan and at any time during the term of the loan while the participating institution continues to have an interest, regardless of whether bank's participation has been declared frozen or fixed, the proceeds from the liquidation or sale of any collateral or security supporting the loan, including voluntary or demanded payments by guarantors, or any other principal payments due to be applied in inverse order of maturity, shall be paid over to, or credited to the participation of the institution and SBA in amounts equal to their respective percentages of interest or exposure in the loan based upon the outstanding balance of the loan as of the date such principal payment is received.

(d) Upon the repayment of the aggregate amount of amortized payments due the participating institution it shall be released from the participation and SBA will assume servicing of the loan and sole custody and control of all collateral, provided that at the option of the participating institution it may purchase or enter into a new participation in the loan in an amount not less than its original participation and continue to service the loan. The new participation shall then be liquidated in the same manner as the original participation. The participating institution shall have additional options throughout the whole term of the loan to periodically enter into new participations in the loan, or may at any time purchase or acquire the full outstanding loan.

Effective date. This amendment shall become effective upon publication in the FEDERAL REGISTER.

PHILIP MCCALLUM,
Administrator.

DECEMBER 29, 1960.

[F.R. Doc. 60–12219; Filed Dec. 30, 1960; 8:53 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter III—Federal Aviation Agency

SUBCHAPTER E—AIR NAVIGATION REGULATIONS

[Airspace Docket No. 60–LA–51]

PART 600—DESIGNATION OF FEDERAL AIRWAYS

PART 601—DESIGNATION OF THE CONTINENTAL CONTROL AREA, CONTROL AREAS, CONTROL ZONES, REPORTING POINTS, POSITIVE CONTROL ROUTE SEGMENTS, AND POSITIVE CONTROL AREAS

Revocation of Federal Airway, Associated Control Areas and Reporting Points and Modification and Revocation of Control Area Extensions

On September 2, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 8490) stating that the Federal Aviation Agency proposed to revoke Amber Federal airway No. 3 in its entirety and its associated control areas and reporting points, revoke the La Junta, Colo., control area extension and modify the Denver, Colo., Colorado Springs, Colo., and Truth or Consequences, N.M., control area extensions. Subsequent to publication of the Notice, on November 3, 1960, a Modification of the Proposal was published in the FEDERAL REGISTER (25 F.R. 10553) stating that a further modification of the Colorado Springs and Truth or Consequences control area extensions was proposed.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the Notice and the subsequent Modification of the Proposal, the following actions are taken:

§§ 600.103, 601.103, 601.4103, and 601.1305 [Revocation]

1. In Parts 600 and 601 (14 CFR 600, 601) the following sections are revoked:

(a) Section 600.103 *Amber Federal airway No. 3 (El Paso, Tex., to Great Falls, Mont.).*

(b) Section 601.103 *Amber Federal airway No. 3 control areas (El Paso, Tex., to Great Falls, Mont.).*

(c) Section 601.4103 *Amber Federal airway No. 3 (El Paso, Tex., to Great Falls, Mont.).*

(d) Section 601.1305 *Control area extension (La Junta, Colo.).*

2. Section 601.1277 (14 CFR 601.1277, 25 F.R. 5451) is amended to read:

§ 601.1277 Control area extension (Denver, Colo.).

That airspace SW of Denver lying within a 34-mile radius of the Denver VOR bounded on the N by VOR Federal airway No. 8 and on the E by VOR Federal airway No. 81, including the area within 5 miles either side of a line bearing 174° True extending from the Aurora, Colo., RBN to 25 miles S of the RBN; the area NE of Denver bounded on the NE by VOR Federal airway No. 132, on the SE by VOR Federal airway No. 160 and on the W by VOR Federal airway No. 89; the area SE of Denver bounded on the NE by VOR Federal airway No. 4, on the E by VOR Federal airway No. 19, on the SW by the Colorado Springs, Colo., control area extension (601.1347) and on the W by VOR Federal airway No. 81.

3. Section 601.1347 (14 CFR 601.1347) is amended to read:

§ 601.1347 Control area extension (Colorado Springs, Colo.).

That airspace bounded by a line beginning at Lat. 39°09'35" N, Long. 104°48'45" W, thence clockwise along the arc of a circle 25 miles in radius centered on Peterson Field (Lat. 38° 48'35" N, Long. 104°42'20" W) to the W edge of VOR Federal airway No. 81, then S along the W edge of Victor 81 to the N edge of VOR Federal airway No. 244, then W along the N edge of Victor 244 to Long. 104°44'00" W, then N to Lat. 38°45'00" N, Long. 104°45'50" W, then NW to Lat. 38°46'05" N, Long. 104°46'50" W, then due W to Long. 104°48'48" W, then N to the point of beginning.

4. Section 601.1444 (14 CFR 601.1444) is amended to read:

§ 601.1444 Control area extension (Truth or Consequences, N.M.).

That airspace within 5 miles either side of the Truth or Consequences VOR 013° True radial extending from the VOR to 17 miles N and within 5 miles either side of the Truth or Consequences VOR 143° True radial extending from the VOR to 23 miles SE. The portion of this control area extension that coincides with the White Sands, N.M., Restricted Area No. 2 (R–521) shall be used only after obtaining prior approval from the Federal Aviation Agency Air Route Traffic Control Center, Albuquerque, N.M.

These amendments shall become effective 0001 e.s.t. March 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 22, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–12156; Filed, Dec. 30, 1960; 8:46 a.m.]

[Airspace Docket No. 60–WA–240]

PART 602—ESTABLISHMENT OF CODED JET ROUTES AND NAVIGATIONAL AIDS IN THE CONTINENTAL CONTROL AREA

Modification of Coded Jet Routes

On October 8, 1960, a notice of proposed rule making was published in the FEDERAL REGISTER (25 F.R. 9688) stating that the Federal Aviation Agency proposed to modify the segment of VOR/VORTAC jet route No. 70 between Erie, Pa., and Idlewild, N.Y., and the segment of VOR/VORTAC jet route No. 95 between Buffalo, N.Y., and Idlewild.

No adverse comments were received regarding the proposed amendments.

Interested persons have been afforded an opportunity to participate in the making of the rules herein adopted, and due consideration has been given to all relevant matter presented.

The substance of the proposed amendments having been published, therefore, pursuant to the authority delegated to me by the Administrator (25 F.R. 12582) and for the reasons stated in the Notice, the following actions are taken:

1. In the text of § 602.570 (25 F.R. 5452) "Allentown, Pa., VORTAC" is deleted and "Thornhurst, Pa., VOR" is substituted therefor.

2. In the text of § 602.595 (25 F.R. 2200) "via the Buffalo, N.Y., VORTAC;" is deleted and "via the Thornhurst, Pa., VOR; Buffalo, N.Y., VORTAC;" is substituted therefor.

These amendments shall become effective 0001 e.s.t. February 9, 1961.

(Sec. 307(a), 72 Stat. 749; 49 U.S.C. 1348)

Issued in Washington, D.C., on December 22, 1960.

D. D. THOMAS,
Director, Bureau of Air Traffic Management.

[F.R. Doc. 60–12150; Filed, Dec. 30, 1960; 8:45 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER A—REGULATIONS

PART 511—WAGE ORDER PROCEDURE FOR PUERTO RICO, THE VIRGIN ISLANDS, AND AMERICAN SAMOA

Miscellaneous Amendments

Part 511 of Title 29, Code of Federal Regulations, which establishes wage order procedure for Puerto Rico, the Virgin Islands, and American Samoa pursuant to section 5(c) of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), has been reviewed in the light of experience in its administration. This review indicates the desirability of amendments: (1) To eliminate the present distinctions between "parties" and "witnesses" and provide that all interested persons who meet the requirements for participation shall be designated as "parties"; (2) to require the submission of pertinent financial statements for a representative period of years by employers who testify as to the lack of economic feasibility of higher minimum wage rates; and (3) to provide for submission of petitions for minimum wage review, when the rate applicable to the petitioner is below the statutory rate, or when the petition concerns an activ-

ity not previously considered in arriving at the rate applicable to the petitioner.

Now, therefore, pursuant to authority contained in section 5 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, as amended; 29 U.S.C. 205), Reorganization Plan No. 6 of 1950 (64 Stat. 1263; 3 CFR 1949–1953 Comp., p. 1004), and General Order No. 45–A of the Secretary of Labor (15 F.R. 3290), 29 CFR 511.8, 511.13, 511.17, 511.19 are hereby amended to read as hereinbelow set out. These amendments shall be effective on and after March 1, 1961.

1. Section 511.8 is hereby amended to read as follows:

§ 511.8 Prehearing statements.

(a) Every employer, employee, trade association, trade union, or group of employers, employees, associations, or unions in the industry as defined, or in such industry elsewhere in the United States, and every other person who, in the judgment of the committee has an interest sufficient to justify the participation he proposes, shall be considered an interested person. No member of the committee may participate as an interested person.

(b) Any interested person who wishes to participate on his own behalf or by counsel shall file a written prehearing statement. Ten days before the first hearing date set for any committee in a notice of hearing concerning minimum wages for Puerto Rico or the Virgin Islands, the original and 11 copies of the prehearing statement shall be filed at the Office of the Territorial Director of the Wage and Hour Division, United States Department of Labor, New York Department Store Building, Fortaleza and San Jose Streets, San Juan, Puerto Rico, and one copy at the office of the Administrator of the Wage and Hour Division, United States Department of Labor, Washington 25, D.C. If such statements are sent by air mail between Puerto Rico or the Virgin Islands and the mainland, such filing shall be deemed timely if postmarked within the time provided. The number of copies of such statements and the times and places for filing them will be specified in the notices of hearings to determine minimum wages for American Samoa. The prehearing statement shall describe the person's interest in the proceeding and contain (1) the prepared statement he proposes to give, if any; (2) a statement of the individual classifications and minimum wage rates, if any, he proposes to support; (3) the written data he proposes to introduce in evidence, including all tangible objective data to be submitted pursuant to § 511.13; (4) the names and addresses of the witnesses he proposes to call and a summary of the evidence he proposes to develop; (5) the name and address of the individual who will present his case; and (6) a statement of the approximate length of time his case will take. If the prehearing statement is in conformity with the above requirements, the person shall have the right to participate as a party. In accordance with section 6(c) of the Administrative Procedure Act, industry committees shall, after considering the advice of committee counsel, issue subpoenas authorized by section 9 of the Fair Labor Standards Act of 1938, to parties who make a request therefor accompanied by a clear showing of general relevance and reasonable scope of the evidence sought.

(c) Prehearing statements of parties shall be made available for examination at the offices where they are filed. Each person who files a prehearing statement should, if requested, make himself available for conference with the committee staff to make any needed clarification of his prehearing statement, and arrange details of presenting his testimony or case.

(d) In exceptional circumstances a person who has not filed the prehearing statement required by this section and who does not appear on a witness list filed by a party may nevertheless be permitted, in the discretion of the committee, to offer testimony.

2. Section 511.13 is hereby amended to read as follows:

§ 511.13 Evidence.

In accordance with the notice of hearing, the committee and any authorized subcommittee will take official notice of the facts stated in the economic report to the extent they are not refuted by evidence received at the hearing. Other pertinent evidence available to the Department of Labor may be presented at the hearing. The committee itself may call witnesses not otherwise scheduled to testify. Oral or documentary evidence may be received, but the committee shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every interested person who has met the requirements for participation as a party shall have the right to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination of witnesses called by others as may be required for a full and true disclosure of the facts. Testimony on behalf of an employer or group of employers as to inability to pay the minimum wage rate specified in section 6(a)(1) of the Act, or as to inability to adjust to a higher minimum wage rate than prescribed by any applicable wage order of the Secretary, shall be supported by tangible objective data filed as part of the prehearing statement under § 511.8, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years for the individual firm or firms involved. Such financial data shall include the most recent period of a year or fraction thereof for which data are available. Financial statements filed in accordance with this provision, except those relating to a period of less than a full fiscal year or a fiscal year ending less than 90 days prior to the filing of the prehearing statement, shall be certified by an independent public accountant or shall be sworn to conform to and be consistent with the corresponding income tax returns covering the same years. Evidence of witnesses not present at the hearing may be submitted only by affidavits received with, or as a part of, a prehearing statement which meets the requirements of § 511.8 and satisfactorily explains why each affiant cannot be present. Such affidavits will be received in evidence to the same extent that testimony from affiants would have been admitted had they been present. The committee will give such weight to these statements as it considers appropriate, and the fact that such affiants have not been subject to cross examination may be considered, along with other relevant facts, in assessing the weight to be given such evidence.

3. Section 511.17 is hereby amended to read as follows:

§ 511.17 Records.

Each industry committee shall keep a journal recording the time and place of all its meetings, the members present, the votes, and other formal proceedings, including the appointment of subcommittees. Subcommittees shall keep a similar journal. No report of committee or subcommittee discussions need be included. All hearings shall be reported and transcribed within 45 days after the date of the Administrator's order under § 511.18. Promptly after completion of the committee's final report, the committee chairman shall certify the report and transmit it to the Administrator. As soon as practicable thereafter, the committee staff shall transmit to the Administrator (a) all committee and subcommittee journals, (b) all applications for leave to participate as parties together with the record of action thereon, and (c) the transcript of testimony and exhibits together with all papers and requests filed in the proceedings. These documents shall be available for inspection and copying by any interested person at the office of the Administrator during usual business hours.

4. Section 511.19 is hereby amended to read as follows:

§ 511.19 Petitions.

Any interested person may at any time file a petition with the Administrator for an amendment to the regulations contained in this part. Any interested person may at any time file a petition with the Administrator for an amendment to a wage order applicable to him, provided: (a) The wage order establishes minimum rates of wages that are not equal to the minimum wage rate prescribed in paragraph (1) of section 6(a) of the Act, or (b) the petition concerns an activity not previously considered in arriving at the wage order. In view of the statutory requirement that the minimum rates of wages established by order under section 8 of the Act be reviewed by an industry committee at least biennially, substantial cause must be shown in support of any petition for an amendment of a wage order out of regular course. Any interested person may also file a petition at any time with the Administrator for a public hearing under section 13(e) of the Act to determine whether economic conditions warrant rules or regulations providing reasonable limitations or allowing reasonable variations, tolerances, or exemptions to or from any or all of the provisions of section 7 of the Act with respect to employees in American Samoa for whom the Secretary of Labor has established minimum wage rates under section 6(a)(3) of the Act and the regulations contained in this part. Whenever it appears to the Secretary of Labor, by reason of such a petition or otherwise, to be probable that such a hearing is likely to reveal that economic conditions warrant such action, notice of such hearing specifying the procedure to be followed will be published in the FEDERAL REGISTER.

(Sec. 5, 52 Stat. 1062, as amended; 29 U.S.C. 205)

Signed at Washington, D.C., this 28th day of December 1960.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 60–12203; Filed, Dec. 30, 1960; 8:50 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

Brandywine River, Del.

Pursuant to the provisions of Section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.230 governing the operation of drawbridges across Brandywine River, Delaware, is hereby revised to read as follows:

§ 203.230 Brandywine River, Del.; bridges.

(a) *Seventh Street bridge, Wilmington, Del.* (1) The owner of or agency controlling the bridge will not be required to keep a draw tender in constant attendance.

(2) The owner of or agency controlling the bridge shall provide the appliances and the personnel necessary for the safe, prompt and efficient opening of the draw at any time during the day or night, except as provided in subparagraph (5) of this paragraph, for the passage of any vessel or other watercraft which cannot pass under the closed draw, when the following signal is received: Three blasts of a whistle or horn. When the draw of the bridge can be opened immediately, the draw tender shall reply by two blasts of a whistle or horn. When the draw of the bridge cannot be opened immediately or when the bridge is open and is to be closed immediately, the draw tender shall reply by one blast of a whistle or horn.

(3) Vehicles shall not be stopped on the drawspan, in such manner as to delay the operation of the draw except in case of urgent necessity, nor shall vessels be moored to the bridge fenders or so maneuvered as to unnecessarily hinder or delay the closing of the draw, but all passage over, through, or under the bridge shall be prompt to avoid delay to either land or water traffic.

(4) The owner of or agency controlling the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than 6 inches high, to indicate the headroom clearance under the closed span at all stages of the tide. These gauges shall be so placed on the ends of the drawspan fenders that they will be plainly visible to the navigators of a vessel approaching the bridge from either direction.

(5) At least 24 hours' advance notice will be required for opening this bridge at all times during January, February, March and December and between 8:00 p.m. and 6:00 a.m. from April to November, inclusive.

(i) Whenever a vessel unable to pass under the closed bridge desires to pass through the draw, advance notice, as specified, of the time the opening is required shall be given to the authorized representative of the owner of or agency controlling the bridge.

(ii) Upon receipt of such advance notice, the authorized representative of the owner of or agency controlling the bridge, in compliance therewith, shall arrange for the prompt opening of the draw at the time specified in the notice for the passage of the vessel.

(iii) The owner of or agency controlling the bridge shall keep conspicuously posted on both the upstream and downstream sides thereof, in such manner that it can easily be read at any time, a copy of the regulations in this paragraph together with a notice stating exactly how the representative specified in subdivision (i) of this subparagraph may be reached.

(iv) The operating machinery of the draw shall be maintained in a serviceable condition, and the draw shall be opened and closed at intervals frequent enough to make certain the machinery is in proper order for satisfactory operation.

(b) *Pennsylvania Railroad bridge above Seventh Street and Highway bridges at Church Street and Sixteenth Street, Wilmington, Del.* (1) The draws of these bridges need not be opened for the passage of vessels.

(2) The owners of or agencies controlling the bridges shall keep conspicuously posted on both the upstream and downstream sides of the respective bridges, in such manner that it can easily be read at any time, a copy of the regulations in this paragraph.

Effective date. This section shall become effective upon its publication in the FEDERAL REGISTER.

[Regs., 14 December 1960, 285/91 (Brandywine River, Del.) –ENGCW–O]

(Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

BRUCE EASLEY,
Major General, U.S. Army,
Acting The Adjutant General.

[F.R. Doc. 60–11617; Filed, Dec. 30, 1960; 8:45 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy

SUBCHAPTER E—CLAIMS

PART 750—NAVY GENERAL CLAIMS

Scope of 10 U.S.C. 2733

1. Section 750.19(a) is revised to read as follows:

(a) Subject to the exceptions set forth in paragraph (b) of this section, claims not in excess of $5,000 for damage to or loss or destruction of real or personal property or for personal injury or death, caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise, are payable by the Secretary of the Navy or his designees under 10 U.S.C. 2733 and §§ 750.17 to 750.26.

(R.S. 161, secs. 2733, 5031, 70A Stat. 153, 278, as amended; 5 U.S.C. 22, 10 U.S.C. 2733, 5031)

Dated: December 27, 1960.

By direction of the Secretary of the Navy.

W. C. MOTT,
Rear Admiral, U.S. Navy, Judge Advocate General of the Navy.

[F.R. Doc. 60–12149; Filed, Dec. 30, 1960; 8:45 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 1—GENERAL PROVISIONS

Appeals From Decisions of Contracting Officers Under Construction, Architect-Engineer and Supply Contracts

1. A new centerhead is added immediately preceding § 1.770 to read as follows: "Appeals from Decisions of Contracting Officers under Construction, Architect-Engineer and Supply Contracts."

2. In § 1.770, the headnote and paragraphs (a) and (c) are amended to read as follows:

§ 1.770 Contract Appeals Board.

(a) *Establishment.* The Contract Appeals Board has been established in the Office of the Administrator to act as his duly authorized representative to hear

and decide appeals of contractors under construction, architect-engineer and supply contracts.

• • • • • •

(c) *Short title.* The short title of the Board is VACAB.

• • • • • •

3. In § 1.711, paragraph (d) is amended to read as follows:

§ 1.771 Delegation of authority.

• • • • • •

(d) The Board is authorized to require Veterans Administration contracting officers and other Veterans Administration officials having responsibility for or official knowledge of the design of projects, or the award, administration or supervision of construction, architect-engineer or supply contracts, or of work performed thereunder, to furnish the Board such information, technical data, and similar assistance as the Board may require in the performance of its duties. In such event a copy of the request and of the reply will be furnished to the appellant.

• • • • • •

4. In § 1.773(a), subparagraph (1) is amended to read as follows:

§ 1.773 Rules of the Board.

(a) *Rule 1; filing of appeals*—(1) *Notice.* A contractor electing to appeal from a written decision of a contracting officer rendered under a construction, architect-engineer or supply contract which contains a clause providing for appeal shall file a written notice as provided in the contract and within the time specified therein.

• • • • • •

5. Section 1.775 is revised to read as follows:

§ 1.775 Effective dates.

(a) *Construction, architect-engineer and related contracts.* Sections 1.770 through 1.775 are effective for all appeals docketed on or after June 1, 1960. All appeals docketed prior to that date shall be governed by §§ 1.750 through 1.756.

(b) *Supply contracts.* Sections 1.770 through 1.775 are effective for all appeals docketed on or after January 1, 1961. All appeals docketed prior to that date shall be governed by §§ 1.760 through 1.765.

(72 Stat. 1114; 38 U.S.C. 210)

These regulations are effective January 1, 1961.

[SEAL] ROBERT J. LAMPHERE,
Deputy Administrator.

[F.R. Doc. 60-12186; Filed, Dec. 30, 1960; 8:48 a.m.]

PART 2—DELEGATIONS OF AUTHORITY

Contract Appeals Board

Sections 2.62, 2.63, 2.64 and 2.65 are revised to read as follows:

§ 2.62 The Contract Appeals Board authorized by Administrator to ascertain the facts and circumstances and to render and publish final decisions on appeals entered by contractors from decisions of Veterans Administration contracting officers in accordance with contract terms and §§ 1.770 through 1.775.

This delegation of authority is identical to § 1.771(a) of this chapter.

§ 2.63 The Contract Appeals Board and its individual members authorized by Administrator to take such actions as may be necessary to hear and decide appeals including the administering of oaths and affirmations, the taking of testimony and affidavits, the conduct of hearings, the dismissal of proceedings and ordering the production of documents and other evidence.

This delegation of authority is identical to § 1.771(b) of this chapter.

§ 2.64 The Contract Appeals Board authorized to take official notice of facts within general knowledge and to decide all questions necessary for complete adjudication of appeals.

This delegation of authority is identical to § 1.771(c) of this chapter.

§ 2.65 The Contract Appeals Board authorized to require Veterans Administration contracting officers and other Veterans Administration officials having responsibility for or official knowledge of the design of projects, or the award, administration or supervision of construction, architect-engineer or supply contracts, or of work performed thereunder, to furnish the Board such information, technical data, and similar assistance as the Board may require in the performance of its duties.

This delegation of authority is identical to § 1.771(d) of this chapter.

[SEAL] ROBERT J. LAMPHERE,
Deputy Administrator.

[F.R. Doc. 60-12187; Filed, Dec. 30, 1960; 8:48 a.m.]

PART 36—LOAN GUARANTY

Accounting Records

In § 36.4330, paragraph (a) is amended to read as follows:

§ 36.4330 Accounting records.

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Administrator ceases to be liable as guarantor or insurer of the loan. For the purpose of any accounting with the Administrator or computation of claim against him, any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

• • • • • •

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective December 31, 1960.

[SEAL] ROBERT J. LAMPHERE,
Deputy Administrator.

[F.R. Doc. 60-12211; Filed, Dec. 30, 1960; 8:51 a.m.]

Title 41—PUBLIC CONTRACTS

Chapter 1—Federal Procurement Regulations

PART 1-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Chapter 1 of Title 41 is amended as set forth below:

1. The part table of contents is amended by adding reference to Part 1-5, as follows:

1-5 Special and directed sources of supply.

2. New Part 1-5 is added to read as follows:

Subpart 1-5.1—[Reserved]
Subpart 1-5.2—[Reserved]
Subpart 1-5.3—[Reserved]
Subpart 1-5.4—[Reserved]
Subpart 1-5.5—[Reserved]
Subpart 1-5.6—[Reserved]
Subpart 1-5.7—[Reserved]
Subpart 1-5.8—[Reserved]

Subpart 1-5.9—Use of GSA Supply Sources by Prime Contractors in Performing Cost-Reimbursement Type Contracts

Sec.
1-5.900 Scope of subpart.
1-5.901 Policy.
1-5.902 Authorization to prime contractors.
1-5.903 Procedure for placing orders.
1-5.903-1 Orders under Federal Supply Schedule contracts.
1-5.903-2 Orders for GSA stores stock.
1-5.904 Furnishing information to contractors.
1-5.905 Payment for GSA stores stock.

AUTHORITY: §§ 1-5.900 to 1-5.905 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 1-5.9—Use of GSA Supply Sources by Prime Contractors in Performing Cost-Reimbursement Type Contracts

§ 1-5.900 Scope of subpart.

This subpart prescribes policies and procedures for the guidance of Federal agencies in authorizing the use of General Services Administration (GSA) supply sources (Federal Supply Schedule contracts and GSA stores stock) by their prime contractors in performing cost-reimbursement type contracts (see § 1-3.404).

§ 1-5.901 Policy.

(a) When a Federal agency deems that it is in the best interest of the Government to do so, the agency shall authorize its prime contractors to utilize GSA supply sources in performing cost-reimbursement type contracts. Before issuing such an authorization the agency should determine the advantage to be obtained therefrom in the performance of such contracts in terms of price, delivery, contract administration, and any other significant factors, and shall take into account any recommendations of the prime contractor.

(b) Government prime contractors shall not be authorized to utilize GSA supply sources in connection with the performance of any fixed-price type contract, whether or not such contract provides for price adjustment, escalation, redetermination or modification, or cost-reduction incentive.

§ 1-5.902 Authorization to prime contractors.

(a) Authorization to prime contractors to utilize GSA supply sources shall be given only if title to property ordered under Federal Supply Schedule contracts will pass to and vest in the Government directly from the Federal Supply Schedule contractor (rather than through the prime contractor), and title to Government-owned property ordered from GSA stores stock will remain in the Government.

(b) Authorizations shall be in writing and shall cite the number of the cost-reimbursement type contract; specify any applicable limitations on the authority, including the period of eligibility; and contain any other pertinent information (e.g., requirements relative to ordering, receiving, inspection, and payment).

(c) Copies of each authorization shall be forwarded to the General Services Administration, Federal Supply Service, Office of Supply Operations, General Services Building, Washington 25, D.C., and to the GSA regional office serving the geographical area in which the facilities of the authorized prime contractor are located.

§ 1-5.903 Procedure for placing orders.

§ 1-5.903-1 Orders under Federal Supply Schedule contracts.

Orders placed by cost-reimbursement type prime contractors under Federal Supply Schedule contracts shall be placed in accordance with the provisions of the applicable Federal Supply Schedule and the authorization. They shall be accompanied by a copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor) and shall contain a statement as follows:

This order is placed in behalf of the ____(insert name of authorizing Federal agency)____, in furtherance of U.S. Government contract No. ____(insert number of cost-reimbursement type contract)____, pursuant to written authorization dated ____ ____, [1]____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

[1] Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

§ 1-5.903-2 Orders for GSA stores stock.

Orders placed by cost-reimbursement type prime contractors for GSA stores stock shall be placed in accordance with the authorization. They shall show the address to which billings are to be sent and shall contain a statement as follows:

This order is placed in behalf of the ____(insert name of authorizing Federal agency)____, in furtherance of U.S. Government contract No. ____(insert number of cost-reimbursement type contract)____, pursuant to written authorization dated____.

§ 1-5.904 Furnishing information to contractors.

Federal agencies shall assist their prime contractors authorized to use GSA supply sources in obtaining pertinent Federal Supply Schedules and the GSA Stores Stock Catalog and appropriate supplements thereto, and shall furnish them with any other helpful information.

§ 1-5.905 Payment for GSA stores stock.

Bills for GSA stores stock will not be rendered by GSA until after shipment has been made. Agencies should direct their cost-reimbursement type prime contractors to make prompt payment. Contractors should be given permission to pay any such bills upon receipt. Necessary adjustments will be made by GSA subsequent to payment.

Effective date. These regulations are effective April 1, 1961, but may be observed earlier.

Dated: December 27, 1960.

FRANKLIN FLOETE,
Administrator of General Services.

[F.R. Doc. 60-12148; Filed, Dec. 30, 1960; 8:45 a.m.]

Chapter 2—Federal Aviation Agency

ADDITION OF CERTAIN PARTS

This chapter is supplemented by the following:

PART 2-1—GENERAL

Subpart 2-1.1—Agency Procurement Regulations System

Sec.
2-1.101 Purpose.
2-1.102 Authority.
2-1.103 Relation to Federal Procurement Regulations System.
2-1.104 Content.
2-1.105 Applicability.
2-1.106 Exclusions.
2-1.107 Issuance.
2-1.107-1 Internal.
2-1.107-2 Public.
2-1.107-3 Coordination.
2-1.108 Citation.
2-1.109 Bureau or office implementation.
2-1.110 Deviation.

Subpart 2-1.3—General Policies

2-1.315 Use of liquidated damages provisions in procurement contracts.
2-1.315-2 Policy.

Subpart 2-1.10—Publicizing Procurement Actions

2-1.1003 Synopsis of proposed procurements.
2-1.1004 Synopsis of contract awards.

AUTHORITY: §§ 2-1.101 to 2-1.1004 issued under secs. 303, 313, 72 Stat. 747, 752; 49 U.S.C. 1344, 1354.

Subpart 2-1.1—Agency Procurement Regulations System

§ 2-1.101 Purpose.

This subpart establishes a system of Federal Aviation Agency Procurement Regulations (FAPR) for the codification and publication of policies and procedures for the procurement of services and personal property by the Federal Aviation Agency.

§ 2-1.102 Authority.

FAPR are issued in compliance with the Federal Procurement Regulations System prescribed by the Administrator of General Services under the Federal Property and Administrative Services Act of 1949.

§ 2-1.103 Relation to Federal Procurement Regulations System.

The Federal Procurement Regulations System is designed to bring together, under Title 41, Subtitle A, of the Code of Federal Regulations, the procurement regulations applicable to all civilian agencies of the Government. Federal Procurement Regulations (FPR) are Chapter 1. Chapter 2 is assigned for the procurement regulations of the Federal Aviation Agency (FAA). Chapters 3 through 49 will be used by other agencies. FPR (Chapter 1) is subdivided into 49 parts. Parts 1 through 49 of FAPR (Chapter 2) will be used to expand upon or modify the policies and procedures included in FPR. Material issued in the first 49 parts of FAPR will be numerically keyed to the corresponding sections of FPR. Parts 50 through 99 of FAPR will be used for procurement policies and procedures for which there is no counterpart in FPR. The numbering system established by § 1-1.007-2 of this title will be utilized to the maximum practicable extent in FAPR.

§ 2-1.104 Content.

The basic Chapter 2 will contain procurement policies and procedures, prescribed by the Assistant Administrator for Management Services, for uniform application throughout the Federal Aviation Agency. Subsidiary chapters shall be used by Heads of Bureaus and Offices to set forth significant Bureau or Office procurement policies or procedures which are considered to be of interest to the general public. Material which is only for internal guidance of a Bureau or Office may also be included in chapters assigned to them. Chapters for Bureau and Office use are assigned as follows:

Chapter 2A—Bureau of Facilities and Materiel
Chapter 2B—Bureau of Research and Development
Chapter 2C—Bureau of National Capital Airports
Chapter 2D—Office of Management Services (OMS)

§ 2-1.105 Applicability.

Except where a deviation is specifically authorized in accordance with § 2-1.110, Agency employees engaged in procure-

ment activities shall comply with the policies and procedures set forth in FPR and FAPR unless they are optional by their terms. These regulations are not subject to the civil penalty provisions of section 901 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

§ 2–1.106 Exclusions.

Procurement policy or procedure which is expected to be in effect for less than six months or which is instituted on a trial basis will not be included in FAPR.

§ 2–1.107 Issuance.

§ 2–1.107–1 Internal.

FAPR will be published in loose-leaf form for distribution within the Federal Aviation Agency to procurement offices and others concerned. Requests to be placed on the distribution list, or for extra copies, should be addressed to the Printing Section of the Administrative Services Division, OMS.

§ 2–1.107–2 Public.

Those parts of FAPR which contain basic and significant policies and procedures considered to be of interest to the general public will be published in the daily issue of the FEDERAL REGISTER and, in cumulated form, in the Code of Federal Regulations. Copies of FAPR in FEDERAL REGISTER and Code of Federal Regulations form may be purchased by the public, at nominal cost, from the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

§ 2–1.107–3 Coordination.

Responsibility for the development of the basic Chapter 2 of FAPR is assigned to the Materiel Policy Division, OMS. In developing the regulations that Division shall solicit the views of the Bureaus and Offices concerned. The Division shall also provide advice and assistance as required in the development and publication of material to be included in chapters assigned to Bureaus and Offices.

§ 2–1.108 Citation.

Any section of FAPR may be informally identified in internal instructions or correspondence by "FAPR" followed by the section number. Only those sections of the regulations which have been published in the FEDERAL REGISTER may properly be incorporated in contracts by reference. Such sections should be cited as "41CFR" followed by the section number as "41CFR 2–1.108".

§ 2–1.109 Bureau or office implementation.

Bureaus or Offices shall prepare for publication in the FEDERAL REGISTER such instructions, which implement or supplement FPR or FAPR, as are considered to be of interest to the general public. Such material shall be submitted to the Materiel Policy Division, OMS, for review and publication arrangements. Bureaus or Offices may issue additional detailed operating instructions, consistent with FPR and FAPR, using FAPR style and arrangement or such other format as they elect. A copy of each such instruction shall be furnished to the Materiel Policy Division, OMS.

§ 2–1.110 Deviation.

Deviations (as defined in § 1–1.009–1 of this title) shall be kept to a minimum and, with respect to FPR or the basic Chapter 2 of FAPR shall be controlled as follows:

(a) The principal contracting officers in the Washington offices of the Bureau of Facilities and Materiel and the Bureau of Research and Development are each authorized to approve deviation from FPR and FAPR in individual cases in connection with contracts entered into under their immediate supervision, when such action is clearly in the best interests of the Agency. A record of the nature of each such deviation and the justification for it shall be prepared and included in the contract file, with a copy being forwarded promptly to the Materiel Policy Division, OMS. All other deviations shall be approved in advance by the Materiel Policy Division, OMS, and handled in the following manner:

(b) Requests for deviation may be initiated by the principal contracting officer of any procuring activity of the Agency. A request shall cite the specific part or section of FPR or FAPR from which it is desired to deviate, shall set forth the nature of the deviation, and shall give the reasons why such action is considered necessary or desirable. Requests shall be routed through the head of the procuring activity (as defined in § 1–1.206 of this title) for concurrence or additional comments. If the initiating office is at a field location, the request shall also be routed through the cognizant Washington office of the Bureau concerned. After the indicated concurrence has been obtained, requests shall be submitted to the Materiel Policy Division, OMS.

(c) If a requested deviation is considered appropriate, approval will be accomplished as follows:

(1) Where the deviation applies to an individual case, approval will be granted by memorandum addressed to the requesting contracting officer with copies to interested offices. The case file of the requesting office shall include a copy of the request and approval.

(2) Where the deviation applies to a class of cases, necessary coordination with the General Services Administration will be accomplished by the Materiel Policy Division, OMS. The deviation may be issued as a part of FAPR, or the Bureau or Office concerned may be authorized to issue internal instructions which incorporate the deviation.

(d) The requesting office will be notified by memorandum, with copies to other interested offices, whenever a requested deviation is disapproved.

(e) In emergency situations involving individual cases, deviation clearance may be handled by telephone or telegraph and later confirmed in writing.

(f) Requests for deviation may be made at any time, but contracting officers are urged to review new FPR releases as they are issued so that requests for deviation can be considered prior to the effective date of the FPR.

Subpart 2–1.3—General Policies

§ 2–1.315 Use of liquidated damages provisions in procurement contracts.

§ 2–1.315–2 Policy.

(a) Determination, in accordance with § 1–1.315–2 of this title, as to the use of liquidated damages provisions in a contract, and of the rate of such damages, is the responsibility of the contracting officer. In making the determination, he shall be guided by information furnished by the requisitioning office and the following general policies.

(1) The Agency can be expected to suffer damages in an indeterminable amount, and liquidated damages provisions should therefore be used: (i) when compliance with the completion or delivery schedule in a proposed facility or equipment contract is necessary in order to meet established commissioning goals; or (ii) when the contract involves make-ready or pre-production engineering time to such an extent that commissioning goals could not be met if it became necessary to terminate for default and re-procure.

(2) Liquidated damages provisions will generally not be used: In contracts for supplies or services which are for administrative purposes or are "shelf" items normally available within 30 to 45 days from two or more sources; or, in any case where the needs of the Agency can be met by termination and re-procurement if a contractor defaults.

(3 A fixed precentage of value formula shall not be used to establish the rate of damages. The rate per day may be set, however, within a range of from one-twentieth of one percent to one-fifth of one percent of the value of the item contracted for, after consideration of such factors as: The importance of the item in relation to the facility or project for which it is intended; the number of facilities or projects involved; the relative importance of the facility or project in the over-all program of the Agency; the tightness of the contract schedule; and, any unusual damages that can be anticipated.

(4) To the maximum practicable extent, rates shall not be applied to individual units of an item, but rather to quantities of an item, or to groups of items, which are required for delivery or completion at the same time. Rates should generally be expressed in terms of even dollars per day of delay with a minimum of one dollar. Where rates are applied to quantities or groups, assessment of damages will not be prorated for delay of partial quantities.

(5) Unless unusual damages can be specifically anticipated in connection with a particular case, the rate of damages applied to the construction of substantially identical facilities shall be the same in all geographical areas.

(b) Positive follow-up on the contractor's performance and actions to eliminate delays shall be maintained at all times. Serious consideration shall be given to termination of the contract in any case where the accrued damages reach 15% of the contract value.

(c) Where liquidated damages provisions are used, they shall be strictly enforced. In making partial or progress payments, deductions for damages should be made on the basis of the actual number of days of delay multiplied by the rate. Exception may be made if the contractor has applied for an extension of time and provided sufficient information to permit a finding by the contracting officer, or if delays caused by the Government are clearly established. In such cases appropriate adjustments should be made and the contractor notified of the action taken. It is the contractor's responsibility to give notice of delays and to provide evidence to support any remission of damages or contract time extension.

Subpart 2–1.10—Publicizing Procurement Actions

§ 2–1.1003 Synopsis of proposed procurements.

(a) In order to encourage competition, it is the policy of the Federal Aviation Agency to utilize the Department of Commerce Synopsis to the maximum practicable extent. Use of the exceptions permitted by § 1–1.1003 of this title should be kept at a minimum; the exceptions being utilized only when there is clearly no useful purpose to be gained by publicizing the procurement. Procurements originating in Alaska and Hawaii shall be publicized in the Synopsis whenever bids are to be solicited from firms in the Continental United States.

(b) Procurement information shall be prepared and transmitted in accordance with § 1–1.1003–7 of this title. Originating offices served by the General Services Administration—Public Buildings Service teletypewriter system shall submit material through that system. All other offices shall use airmail.

§ 2–1.1004 Synopsis of contract awards.

Publicing of contract awards shall be in accordance with § 1–1.1004 of this title. It should be noted that awards exceeding $25,000 for work to be performed in any of the United States, including Alaska and Hawaii, are required to be published even though the proposed procurement may not have been publicized. Award information shall be submited by regular mail by all procurement offices except those in Alaska and Hawaii which shall use airmail.

PART 2–2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 2–2.2—Solicitation of Bids

Sec.
2–2.203 Methods of soliciting bids.
2–2.203–1 Mailing or delivering to prospective bidders.
2–2.203–3 Publicity in newspapers and trade journals.

Subpart 2–2.4—Opening of Bids and Award of Contracts

2–2.406 Mistakes in bids.
2–2.406–3 Other mistakes disclosed before award.
2–2.406–4 Disclosure of mistakes after award.

AUTHORITY: §§ 2–2.203 to 2–2.406 issued under secs. 303, 313, 72 Stat. 747, 752; 49 U.S.C. 1344, 1354.

Subpart 2–2.2—Solicitation of Bids

§ 2–2.203 Methods of soliciting bids.

§ 2–2.203–1 Mailing or delivering to prospective bidders.

(a) Copies of invitations may be furnished for informational purposes to other non-governmental organizations such as trade associations, and bidding information services, provided they lend some assistance in advertising the requirements. The extent to which supporting papers (drawings, specifications and general provisions) are furnished, will depend on how the organizations intend to use the material. If they merely prepare a synopsis of bid solicitations for distribution to their members or subscribers, the invitation itself should suffice. If, however, they provide a reading room service (such as various trade associations do for construction projects), a complete set of all papers should be furnished without cost.

(b) In connection with invitations for construction, where the cost of reproduction and distribution of plans or drawings is a substantial cost item, the extent of distribution of bidding papers may be controlled by charging prospective contractors and sub-contractors a flat, non-refundable, plan fee. This method is preferred over the use of a refundable deposit system. When the plan fee method is used, arrangements should be made for plans and other bidding papers to be readily available for free inspection at the procurement office, other Federal Aviation Agency offices, trade association reading rooms, and similar locations. The non-refundable plan fee should be $5.00, $10.00, or $15.00 per set. The value of the project and the cost of reproduction and distribution of the plans should be considered in determining which amount is appropriate. No additional charge should be made for plans which are revised or added after the invitation is issued, or for additional plans required by the successful bidder. Plan fees collected are for deposit in the "Miscellaneous Receipts" account.

§ 2–2.203–3 Publicity in newspapers and trade journals.

General contracting authority does not include authority to order advertising in newspapers or periodicals. Where specific authority for such advertising has been delegated, paid advertisements in newspapers and trade journals and similar advertising media may be used to solicit bids for large construction projects (over $500,000) or for other projects where the Agency could not otherwise obtain the full benefit of available competition. Prices paid for advertising shall not exceed commercial rates charged to private individuals. Only Standard Forms SF–1143 and SF–1143a shall be used to place these orders. Paid advertising shall be accomplished in accordance with the procedures contained in Title 7, Chapter 5200, GAO Policy and Procedures Manual.

Title 44, U.S.C., 321 prohibits advertising in any newspaper published and printed in the District of Columbia unless the supplies or labor to be secured are to be furnished or performed in the District of Columbia or in the adjoining counties of Maryland and Virginia.

Subpart 2–2.4—Opening of Bids and Award of Contracts

§ 2–2.406 Mistakes in bids.

§ 2–2.406–3 Other mistakes disclosed before award.

(a) The Chief, Materiel Program Division, Bureau of Facilities and Materiel (BFM), Federal Aviation Agency, Washington, is the designated central authority to make the determinations set forth in § 1–2.406–3 of this title.

(b) Cases referred to the Chief, Materiel Program Division, BFM, shall be accompanied by the data prescribed in § 1–2.406–3(d)(3) of this title.

(c) When a determination has been made by the Chief, Materiel Program Division, the signed original will be forwarded to the contracting officer. All supporting documents submitted by the contracting officer, except his written statement, will be returned to him. The contracting officer shall withhold award action until he has received the signed determination or official notice thereof.

(d) Cases considered doubtful by the contracting officer shall be referred to the Chief Materiel Program Division. The Chief, Materiel Program Division will take appropriate action either to make a determination or to prepare a submittal, over his own signature, to the Comptroller General.

(e) Where a case clearly must be submitted to the Comptroller General for decision (either pursuant to a specific request from the contractor or because the case does not fall within the criteria set forth in § 1–2.406–3 of this title), it may, if urgent, be submitted directly to the Comptroller General by the contracting officer. The submittal shall be coordinated with Agency legal personnel available to the contracting office and shall be accompanied by substantially the same data as required by paragraph (b) of this section. A copy of the submittal letter shall be sent to the Chief, Materiel Program Division. If urgency is not a factor, the case shall be referred to the Chief, Materiel Program Division for submission by him to the Comptroller General.

§ 2–2.406–4 Disclosure of mistakes after award.

(a) Agency contracting officers are authorized to correct mistakes in the kinds of cases contemplated in § 1–2.406–4(a) of this title.

(b) The Chief, Materiel Program Division, Bureau of Facilities and Materiel, Federal Aviation Agency, Washington, is the designated central authority to make the determinations set forth in § 1–2.406–4(b) of this title.

(c) Cases referred to the Chief, Materiel Program Division, shall be accompanied by the data prescribed in § 1–2.406–4(f)(2) of this title.

(d) When a determination has been made by the Chief, Materiel Program Division, the signed original will be forwarded to the contracting officer. All supporting documents submitted by the

contracting officer, except his written statement, will be returned to him. Upon receipt of the signed determination, the contracting officer shall take appropriate action to rescind or reform the contract or to notify the contractor that the award will stand as made.

(e) Where administrative determination is precluded by the limitations set forth in § 1-2.406-4 of this title, or where the contractor has specifically requested review by the Comptroller General, the case shall be referred to the Chief, Materiel Program Division. The Chief, Materiel Program Division will take appropriate action either to make a determination or to prepare, in coordination with the Office of the General Counsel, a submittal from the Administrator to the Comptroller General.

PART 2-3—PROCUREMENT BY NEGOTIATION

Subpart 2-3.4—Types of Contracts

Sec.
2-3.403 Fixed-price type contracts.
2-3.403-50 Fixed-price contract with redetermination.
2-3.404 Cost-reimbursement type contracts.
2-3.404-3 Cost-plus-fixed-fee contract.

Subpart 2-3.8—Price Negotiation Policies and Techniques

2-3.802 Preparation for negotiation.
2-3.808-3 Cost analysis.

AUTHORITY: §§ 2-3.403 to 2-3.808-3 issued under secs. 303, 313, 72 Stat. 747, 752; 49 U.S.C. 1344, 1354.

Subpart 2-3.4—Types of Contracts

§ 2-3.403 Fixed-price type contract.

§ 2-3.403-50 Fixed-price contract with redetermination.

(a) *Description.* The fixed-price contract with redetermination provides for negotiated adjustment of the initially negotiated contract price, based on costs incurred by the contractor up to the cut-off date specified by the contract. Providing for price redetermination seeks to eliminate or minimize the inclusion of contingency allowances in the price. A fixed-price contract with redetermination may be a maximum price contract, which provides for adjustment downward only, or a flexible price contract, which provides for adjustment upward to a set ceiling as well as downward. Price redetermination may be applied in a variety of ways depending upon the circumstances of the particular case. Paragraph (d) of this section describes the most commonly used methods.

(b) *Applicability.* Unless precluded by the limitations stated in paragraph (c) of this section, a fixed-price contract with redetermination should be selected in preference to a firm fixed-price contract when: (1) The contract is for a substantial amount, usually in excess of $250,000; (2) lack of previous production experience with the contract items prevents adequate price comparisons; (3) effective competition is lacking; and, (4) the quantity of material or labor required, or the extent of other major costs, cannot be determined with reasonable accuracy until some of the work has been accomplished.

(c) *Limitations.* Redetermination should not be used as a substitute for the negotiation of close initial prices. A fixed-price contract with redetermination should not be used when: a target price substantially free of contingencies, or a reasonable maximum price, cannot be initially negotiated; and, a firm fixed-price cannot be established at an early stage in the contract performance.

(d) *Use.* In the negotiating process, provision for price redetermination should be made when the contractor has presented his lowest proposal for a firm fixed-price contract but the negotiator believes that the price is still unreasonably high. Steps in the process and factors to be considered are:

(1) Price redetermination will usually be applied to the full quantity of the contract items or services (retroactive and forward redetermination). In situations where it is possible to establish fair and reasonable firm fixed-prices for an initial portion of the contract items or services but not for all, redetermination may be applied only to the subsequent portion which is subject to contingencies (forward redetermination).

(2) When the cost factors which cause the quoted price to be considered unreasonably high cannot be identified, for example, when contingencies appear to be buried in the overhead costs, a maximum price contract is indicated. Under this type the negotiator and the contractor agree upon the maximum price which will be paid and upon the time when redetermination will be made whether that price or a lower price will be paid.

(3) If major contingency factors in the quoted price can be readily identified, but the contractor is unwilling to eliminate them, a flexible price contract should be used. In such a case, the negotiator and the contractor agree upon a target price which is their best estimate of a fair and reasonable price with contingency factors reduced to a minimum. A ceiling price will also be agreed upon which takes into account a reasonable allowance for contingencies. The ceiling price should be set at a level which provides reasonable risk assumption by the contractor. The ceiling price usually should not be more than 10 percent above the target price. A ceiling price is subject to adjustment resulting solely from the operation of any contract clause which provides for equitable adjustment or other revision of the contract price because of changes or upon the occurrence of an event or contingency. The negotiator and the contractor will fix the redetermination time at which the price will be adjusted upward toward the ceiling or downward without limit.

(4) In establishing the redetermination time, at least two dates are involved. One is the cut-off date, usually set at the end of a month to permit more ready segregation of costs incurred. The cut-off date may be a specific date or it may be expressed in terms of the end of the month in which: there is delivery of a specified number of percentage of units; or, there has been incurred a specified percentage of the estimated cost or of the total dollar value of the contract. A date must also be established for submission by the contractor of his redetermination price proposal and supporting data. This should be within 30 days after the cut-off date. If redetermination applies to other than the entire contract, the applicable part must be identified and the dates when the new price becomes effective will be fixed. When there are different kinds of items in a contract, it may be desirable to have a separate redetermination for each. More than one redetermination may also be desirable for a long production run of the same item or where preproduction engineering constitutes a substantial part of the contract. Since the contractor has little incentive to keep his costs low prior to redetermination, it should be provided for at the earliest possible time consistent with the availability of sufficient factual data to permit the setting of a firm fixed-price. Except under very unusual circumstances the redetermination time should not be later than the incurrence of 40% of the estimated contract costs.

(5) Prompt redetermination at the specified time is an essential element of this type of contract. This requires assuring that the contractor submits his redetermination proposal and supporting data on time, obtaining appropriate audit service, and reaching agreement with the contractor on the firm fixed-price. The redetermination process should not be permitted to extend beyond 30 to 45 days after the date set for the contractor's submission of his proposal.

(6) If redetermination is to be included in contracts which provide for progress payments, the Progress Payment clause should reserve to the contracting officer the right to withhold or reduce progress payments and increase the liquidation rate when he believes such action is necessary to avoid overpayment. In connection with partial payments for deliveries made, if any substantial proportion of the contract items are to be delivered prior to redetermination, it may be necessary to provide, in the contract, for withholding or limiting payments to avoid overpayment and the necessity for obtaining refunds.

(e) *Contract clause.* Because of the variety of ways in which price redetermination may be applied, no standard price redetermination clause is prescribed. The clause to be used must be tailored to the circumstances involved in the particular procurement action. The following subjects should be appropriately covered:

(1) What part of the price, if any, is not subject to redetermination.

(2) Provision for a ceiling on the total amount to be paid under the contract.

(3) Provision of dates for cut-off and submission of redetermination proposal(s); and effective date of redetermination, if required.

(4) Description of way in which redetermination proposal shall be submitted and extent of supporting data, with reservation of right to require additional data.

(5) Provision for prompt redetermination negotiation and withholding of payments if redetermination proposal is not submitted at the required time and in proper detail.

(6) Provision for the maintenance of suitable accounts and records by the contractor and all subcontractors performing on other than a firm fixed-price basis; and for access by the Government, until three years after final payment under the prime contract, to the accounts and records of the contractor, of all first-tier subcontractors, and of all lower-tier subcontractors performing on other than a firm fixed-price basis. (This requirement is supplemental to the mandatory Examinations of Records clause contained in Standard Form 32.)

(7) Provision for certification by the contractor to the currency and accuracy of the cost data submitted in support of his redetermination proposal.

(8) Prohibition of cost-plus-percentage-of-cost subcontracting and provision for advance approval by the contracting officer of cost-plus-fee subcontracts and such other subcontracts as appropriate.

(9) Provision for contract modification to reflect the redetermined prices.

(10) Provision for limitation or withholding of payments and for refund of any overpayments.

(11) Provision that failure to agree on a redetermined price within a specified time (usually 60 days) after the date set for submission of the redetermination proposal shall be handled under the "Disputes" clause of the contract, and that the contracting officer's decision thereon shall constitute redetermination under the contract, subject only to the contractor's right of appeal.

§ 2-3.404 Cost-reimbursement type contracts.

§ 2-3.404-3 Cost-plus-fixed-fee contract.

(a) *Limitations.* In Agency cost-plus-fixed-fee contracts for architectural or engineering services relating to public works or utility projects, the fee shall not exceed the limitation established by section 304(b) of the Federal Property and Administrative Services Act of 1949. In other cost-plus-fixed-fee contracts, the fee (based on the estimated cost of the contract exclusive of fee, as determined at the time of entering into the contract) shall generally not exceed: 10% in contracts for experimental, developmental or research work; and 7% in all other contracts. Exceptions may be made only if justified by unusual circumstances and if advance written approval is obtained from the Head of the Bureau or Office in which the contract is to be executed. Under no circumstances may fees exceed the statutory limitations established by section 304(b) of the Federal Property and Administrative Services Act, which are: 15% for contracts for experimental, developmental, and research work; and 10% for all other contracts except those for architectural and engineering services. In accordance with § 1-3.401 of this title, the limitations contained in this section shall be applied to cost-plus-fixed-fee subcontracts under prime contracts which are on other than a firm fixed-price basis.

Subpart 2-3.8—Price Negotiation Policies and Techniques

§ 2-3.802 Preparation for negotiation.

(a) *Price breakdowns.* Contractors should be required to submit price breakdowns to support their proposals for negotiated contracts and contract modifications. In cases where contracting officers can make a reasonably accurate estimate of the material and labor required, in advance of receipt of the proposal, and the probable value of the contract or modification will not exceed $10,000 this requirement may be waived. If items covered by the contract are standard commercial type and comparison with list or market prices can be easily made, this requirement may also be waived. The contractor's price breakdown should list all of the cost elements considered and, in the case of production contracts, should include as a minimum: direct labor hours, and wage rates and trends, for both engineering and production type labor; engineering and production burden rates based on direct labor value or, where special circumstances justify, on machine hours; kind and cost of material (raw stock, shelf items, purchase parts, and subcontracted items); overhead rate (general and administrative); and profit. Requests for Proposals should clearly require that if additional cost elements are included in a proposal, they should be separately listed. Contracting officers should require such other support of burden, overhead, and wage rates as appear appropriate. In all cases, the right should be reserved to the contracting officer to request additional supporting data.

§ 2-3.808-3 Cost analysis.

(a) An analysis of the price breakdown submitted by the contractor shall be made whenever the conditions set forth in § 1-3.808-3(a) of this title exist. The extent of the analysis shall be that which, in the judgment of the contracting officer, will assure that the price to the Government, under the type of contract selected will be fair and reasonable. The case file of every negotiated contract shall include a statement by the contracting officer setting forth the basis on which the contract price was considered to be reasonable and a detailed analysis of the contractor's breakdown. If such an analysis is not made, the contracting officer will explain the basis for making an exception.

(b) The following factors should be considered in evaluating specific elements of costs to determine the reasonableness of price. If other elements in specific situations appear proper for analysis, they should also be used. Appropriate use should be made of available audit and engineering services.

(1) *Direct labor hours.* Where the contractor has produced similar or like items in the past, he should be required to relate the present proposal to his experience in the previous item. This should include comparison of direct labor hours for preliminary design, general engineering, production engineering, and production. If quality control is charged as a direct cost, the direct labor hours for this function should also be included. If like or similar items have been produced by another contractor, comparison with the current proposal should also be made. In the absence of being able to make either of the above comparisons, contracting officers should refer the direct labor proposal to his own engineering sources for review and recommendation.

(2) *Wage rates and trends.* Contractors should be required to provide current wage rates by type of direct labor included in the proposal. If the wage rates used exceed current rates, contractors should be required to show the basis for the change in trend.

(3) *Burden rates.* Contractors should be required to show the basis used in establishing whatever burden rates are included; such basis should relate to recent past experience and the reliability of projections should be supported.

(4) *Material.* Contractors should provide a listing, including prices and sources, of raw stock, purchase parts, and subcontracted items. The method, if any, for handling of spoilage and scrap should be explained. Where material costs are a significant part of the contract price, review and recommendations by Agency engineering personnel should be obtained.

(5) *Tooling and test equipment.* Proposals for production contracts should list and price any items of tooling and special test equipment required for performance. Negotiation should be directed toward having the contractor capitalize the cost of these items. Where this is impracticable, the reliability of the pricing should be examined, the disposition of any items paid for or furnished by the Government should be determined, and proper controls should be established.

(6) *Pre-production costs.* In proposed contracts for $100,000 or other involving "first-run" or "pre-production" quantities, separate breakdowns should be provided by the contractor of the start up or pre-production costs, and of the production costs.

(7) *General and administrative costs.* Contractors will indicate the basis on which general and administrative costs are calculated and distributed. Such presentation should indicate whether such costs are related to the value of direct labor, cost of sales or other.

(8) *Other costs.* Proposals should clearly establish the basis and necessity, if any, for special costs such as travel, sales commissions, royalties, or manufacturer's excise tax.

PART 2-9—PATENTS, DATA AND COPYRIGHTS

Subpart 2-9.50—Retention of Patent and Royalty Rights

Sec.
2-9.5000 Scope of project.
2-9.5001 Policy.

AUTHORITY: § 2-9.5000 and § 2-9.5001 issued under secs. 303, 313, 72 Stat. 747, 752; 49 U.S.C. 1344, 1354.

Subpart 2-9.50—Retention of Patent and Royalty Rights

§ 2-9.5000 Scope of project.

This Subpart codifies, in FAPR, Federal Aviation Agency Order 56, which sets forth the Agency policy with respect to the retention of rights and recovery of costs in connection with negotiated contracts where research or development is a significant part of the work.

§ 2-9.5001 Policy.

In negotiating contracts under which the Government pays a part of all of the costs of research or development, it is the policy of the Federal Aviation Agency to retain, for the benefit of the United States, rights to data and patent rights, in reasonable proportion to the contributions of the Agency and the contractor; and to recover the Federal Aviation Agency's contribution toward such research and development through royalties to the Government upon commercial exploitation of the products developed thereby.

Effective date. These regulations are effective immediately.

Dated: December 28, 1960.

ALAN L. DEAN,
Assistant Administrator for Management Services.

[F.R. Doc. 60-12168; Filed, Dec. 30, 1960; 8:46 a.m.]

Chapter 5—General Services Administration

PART 5-1—GENERAL

Part 5-1 is amended by adding a new Subpart 5-1.52, to read as follows:

Subpart 5-1.52—Testing Articles and Commodities

Sec.
5-1.5201 General.
5-1.5202 Acceptance testing.
5-1.5203 Certification testing.
5-1.5204 Qualification (QPL) testing.
5-1.5205 Research or development testing.

AUTHORITY: §§ 5-1.5201 to 5-1.5205 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 5-1.52—Testing Articles and Commodities

§ 5-1.5201 General.

(a) Articles testing is conducting to determine conformance with specification and standard requirements and to aid in the development of new or revised specifications and standards. This subpart establishes certain types of article testing, including the facilities therefor, and prescribes policy regarding the fixing and collection of fees for such testing.

(b) The facilities of the General Services Administration, other Federal agencies, independent testing laboratories, manufacturers and others, as appropriate, may be used in the conduct of tests.

§ 5-1.5202 Acceptance testing.

(a) Acceptance testing is conducted to determine conformance with requirements of purchase descriptions or specifications before a shipment is accepted. Such testing shall not be undertaken solely for the purpose of furnishing information to a producer or vendor as to conformance of his article or commodity with specification requirements.

(b) Normally, the cost of services for acceptance testing of representative samples of a shipment shall be borne by GSA. However, if the samples tested fail to meet the requirements of the specification or purchase description, the contractor shall be required to pay any additional costs incurred as a result of such failure. Consequently, where it is anticipated that testing may be required, the contract shall contain a specific provision for charging contractors with any additional test costs.

(c) The contracting officer shall, upon request, inform the contractor of test charges involved when testing will be performed by a Federal Supply Service testing laboratory. When a testing facility other than a Federal Supply Service laboratory performs all or part of the required tests, the contractor shall be assessed the actual amount of the costs incurred by the Government as a result of testing in such a facility.

§ 5-1.5203 Certification testing.

(a) Certification testing is conducted to determine conformance of an article or commodity with a specification requirement for the purpose of executing a certificate of compliance where such certification is called for by the specification.

(b) A certificate of compliance with specification requirements from a recognized laboratory may be a requirement in a Federal Specification. When there is a lack of suitable commercial testing facilities, producers or vendors may obtain such certification from a Government laboratory such as the National Bureau of Standards, and shall be required to bear the cost of such testing, including all components of such cost. GSA will arrange for the required testing upon receipt of a request from a producer or vendor and payment of the required test fee.

§ 5-1.5204 Qualification (QPL) testing.

(a) Qualification testing is conducted to determine conformance of an article or commodity with the qualification requirements of a specification for inclusion of the article or commodity in a Qualified Products List (QPL).

(b) Where such tests will serve predominantly the interest of producer or vendor, GSA shall fix the test fee in such an amount as will recover the cost of conducting such test, including all components of such cost, determined in accordance with accepted accounting principles. Usually the producer or vendor shall be required to bear the cost of testing to qualify an article or commodity for inclusion in a qualified products list, except when it is determined that making such tests will not serve predominantly the interest of the producer or vendor. This may be the case where adequate competition has not been developed in industry because of the issuance of an insufficient number of qualification approvals or sources of supply have not been sufficiently established to assure availability. Where it is determined that making such tests will not serve predominantly the interest of the producer or vendor, GSA shall determine the test fee in an amount determined to be reasonable, giving due consideration to the interests of the Government.

(c) Normally, payment shall be made to the General Supply Fund and appropriate reimbursement shall be made by GSA to an agency whose laboratory conducted the tests. In certain cases the producer or vendor may be required to submit his product to one or more independent testing laboratories approved by GSA. In such cases, the producer or vendor may be directed to pay the testing fee directly to the laboratory which conducted the test.

(d) The original and four copies of all OPL test reports, where testing is conducted outside of GSA facilities, shall be forwarded to and be retained in GSA.

§ 5-1.5205 Research or development testing.

(a) Research or development testing is conducted to determine whether a new article or commodity which is not covered by an existing specification may be suitable for Government use or to aid in the development of contemplated specifications and standards.

(b) Where tests are conducted in the development of specifications or standards, those procedures in § 5-1.5204 (b) and (c) pertaining to test fees shall apply.

Effective date. These regulations are effective immediately.

Dated: December 23, 1960.

FRANKLIN FLOETE,
Administrator.

[F.R. Doc. 60-12180; Filed, Dec. 30, 1960; 8:47 a.m.]

Chapter 9—Atomic Energy Commission

GENERAL; PROCUREMENT BY NEGOTIATION

The following regulations are added to this chapter:

PART 9-1—GENERAL

Subpart 9-1.3—General Policies, Specifications and Standards

Sec.
9-1.305-1 Mandatory use of Federal Specifications.
9-1.305-3 Deviations from Federal Specifications.
9-1.305-5 Use of Federal and Interim Federal Specifications in construction of contracts.
9-1.306-1 Mandatory use and applications of Federal Standards.
9-1.307 Purchase descriptions.
9-1.350 AEC Specifications and Standards.
9-1.350-1 Special Specifications and Standards.
9-1.350-2 AEC Design Criteria.
9-1.351 Distribution of Federal Specifications and Standards.
9-1.352 Index of Military (Army, Navy, Air Force) Specifications and Standards.

Subpart 9-1.5—Contingent Fees

9-1.500 Scope of subpart.
9-1.501 Applicability.
9-1.507 Use of Standard Form 119.
9-1.507-1 Form prescribed.

Subpart 9-1.11—Qualified Products

9-1.1101 Procurement of Qualified Products.
9-1.1150 Distribution of Qualified Products Lists.

AUTHORITY: §§ 9-1.305-1 to 9-1.1150 issued under sec. 161(q), 70 Stat. 1069; 42 U.S.C. 2201(q). Implement and supplement sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 9-1.3—General Policies, Specifications and Standards

§ 9-1.305-1 Mandatory use of Federal Specifications.

The policies and procedures established by FPR 1-1.305 shall be complied with by AEC for all direct procurement except as provided in § 9-1.305-5 below. Managers of Operations are responsible for obtaining compliance on the part of cost-type contractors with the policies and procedures set forth in this subpart to the extent practicable and compatible with meeting program objectives, except AEC contractors must use paper specification standards published by the Joint Committee on Printing for the purchase of paper to be used in contractor-operated field printing plants authorized by the Joint Committee on Printing.

§ 9-1.305-3 Deviations from Federal Specifications.

Subject to the requirements of FPR 1-305.3, Managers of Operations, Heads of Divisions and Offices, Headquarters, or their representatives specifically designated for this purpose, may authorize deviations from Federal Specifications in connection with AEC direct procurement. In those cases where use of Federal Specifications are required under § 9-1.305-1 above, information required by FPR 1-1.305-3(5) with respect to deviations shall be forwarded through channels to the Director, Division of Construction and Supply.

§ 9-1.305-5 Use of Federal and Interim Federal Specifications in construction contracts.

When specifications for AEC construction are prepared by private firms, Managers of Operations and Heads of Divisions or Offices, Headquarters, are responsible for obtaining compliance with this policy to the extent practicable and compatible with meeting program objectives.

§ 9-1.306-1 Mandatory use and applications of Federal Standards.

The policies and procedures established by FPR 1-1.306 for the development and use of Federal Standards shall be complied with by AEC to the same extent as provided for Federal Specifications in § 9-1.305-1, 3, 5 above.

§ 9-1.307 Purchase descriptions.

Specifications should be in such terms as to permit full and free competition among all potential suppliers. However, technical reasons may occasionally exist for using specifications which limit competition by requiring certain types of material or articles, such as replacement parts, auxiliary equipment and tools required for use with major equipment. Restrictive specifications may be used to meet special requirements, provided, (a) AEC needs cannot reasonably be met in any other manner, and (b) a complete justification for the restriction is reduced to writing and included in the contract file.

§ 9-1.350 AEC Specifications and Standards.

§ 9-1.350-1 Special Specifications and Standards.

When special specifications or standards are used by an Operations Office or Headquarters on a recurring basis or used by two or more Operations Offices or contractors, consideration should be given to converting them to Departmental specifications. Accordingly, contracting officers are urged to bring to the attention of the Director, Division of Construction and Supply, any such special specifications which they believe may be of use to more than one Operations Office. The Division of Construction and Supply will notify field offices of the existence of any AEC specification.

§ 9-1.350-2 AEC Design Criteria.

Part 6300 AEC Manual, Design Criteria, shall be complied with in the preparation of specifications for construction work.

§ 9-1.351 Distribution of Federal Specifications and Standards.

AEC does not maintain a central distribution point for specifications and standards. Index of Federal Specifications and Standards may be obtained by submission of an order direct from field offices to the Stores Division, Federal Supply Service, GSA, Region 3, 7th and D Streets SW., Washington 25, D.C. Copies of Federal Specifications and Standards may be obtained in the same manner. In emergency cases, when time does not permit obtaining copies from the above source, single copies may be obtained without charge from any GSA Regional Office Business Service Center. Contractors not authorized to purchase from Government sources of supply may obtain the index and copies of Federal Specifications and Standards from the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

Operations Offices and Headquarters shall maintain current copies of these indexes and supplements and shall maintain files of current copies of Federal Specifications and Standards covering all items which are purchased on a recurring basis for which specifications or standards are available. Managers of Operations are responsible for assuring the availability of the indexes and Federal Specifications and Standards to cost-type contractors.

§ 9-1.352 Index of Military (Army, Navy, Air Force) Specifications and Standards.

May be obtained from the Superintendent of Documents, Government Printing Office, Washington 25, D.C. Copies of Specifications and Standards are ordered from the cognizant Military activity developing each particular specification or standard.

Subpart 9-1.5—Contingent Fees

§ 9-1.500 Scope of subpart.

This subpart prescribes the use by AEC of the "covenant against contingent fees" and sets forth the policies in regard to AEC direct procurement and cost-type contractor procurement.

§ 9-1.501 Applicability.

(a) AEC direct procurement. The provisions and policies of FPR 1-1.5 shall apply to all AEC direct procurement.

(b) Cost-type contractor procurement. Heads of Divisions and Offices, Headquarters, and Managers of Operations shall assure that a "covenant against contingent fees," comparable to that which appears in AEC direct contracts, is incorporated in all subcontracts entered into by AEC cost-type contractors.

§ 9-1.507 Use of Standard Form 119.

§ 9-1.507-1 Form prescribed.

Each Standard Form 119 completed in connection with an AEC direct contract, together with other relevant information, shall be reviewed by the Office of the General Counsel (or the Office of the Chief Counsel in the field) prior to the initiation of appropriate action. An information copy of each such form, together with a record of action taken, shall be forwarded to the Director, Office of Contract Policy, Headquarters.

Subpart 9-1.11—Qualified Products

§ 9-1.1101 Procurement of qualified products.

This subpart prescribes policies and procedures for the procurement of qualified products from lists of such products established by the Government. These procedures are applicable to AEC direct procurement and, to the extent authorized by the Contracting Officer, to cost-type contractor procurement.

Whenever procurement of qualified products is to be made by formal advertising, AEC contracting officers shall insert in invitations for bids the provision contained in FPR 1-1.11(b). This provision may be modified by AEC contracting officers with the advice of Counsel for their use in requests for proposals.

§ 9-1.1150 Distribution of qualified products lists.

Qualified products lists are distributed by GSA directly to Headquarters and Operations Offices. These lists shall be redistributed by contracting officers only to those persons authorized to use them. Such persons may include responsible

procurement personnel of cost-type contractors. The contents of such lists shall not be divulged to unauthorized persons. AEC contracting officers shall maintain records of the distribution of the lists. Extra copies may be obtained through the Office of Contract Policy, Headquarters.

PART 9–3—PROCUREMENT BY NEGOTIATION

Subpart 9–3.6—Small Purchases

Sec.
9–3.600 Scope of subpart.
9–3.603–2 Data to support small purchases.
9–3.604 Imprest funds (petty cash) method.
9–3.604–3 Agency responsibilities.
9–3.605–1 Standard Form 44.
9–3.605–2 Standard Forms 147 and 148.

AUTHORITY: §§ 9–3.600 to 9–3.605–2 issued under sec. 161(q), 70 Stat. 1069; 42 U.S.C. 2201(q). Implement and supplement sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 9–3.6—Small Purchases

§ 9–3.600 Scope of subpart.

The policies and procedures for the purchase of supplies and non-personal services from commercial sources when the aggregate amount involved in any one transaction does not exceed $2,500 shall be those prescribed in FPR 1–3.6. They are applicable only to AEC direct procurement. However, in developing procurement policies and procedures with cost reimbursement-type contractors, Managers of Operations should encourage adoption of comparable procedures in order to keep the administrative cost of small purchases to a minimum consistent with good business practices.

§ 9–3.603–2 Data to support small purchases.

The manner of securing quotations and the nature and extent of documentation to be required for small purchases are for determination by Heads of Divisions and Offices, Headquarters, and Managers of Operations, but should be limited to a minimum consistent with the objective of reducing the cost of handling small purchases. Normally, confirmation of purchase orders issued after the material has been received should not be required unless such confirmation is requested by the supplier. Documentation can be accomplished by the purchaser and receiver endorsing the invoice.

§ 9–3.604 Imprest funds (petty cash) method.

§ 9–3.604–3 Agency responsibilities.

The procedures for the establishment and use by the AEC of imprest funds are set forth in AEC Manual 1120–13.

§ 9–3.605–1 Standard Form 44.

The use of Standard Form 44 is optional within the AEC. Contracting and procurement officers shall be held accountable for books of Standard Form 44 issued to them. Heads of Divisions and Offices, Headquarters, and Managers of Operations shall issue detailed instructions, consistent with the provisions in Standard Form 44 and FPR 1–3.605–1, providing for accountability and safeguarding of the forms when used. Contracting and procurement officers, when using this form, will obtain any necessary obligation of funds and will limit procurement actions to items not otherwise restricted by law or regulation.

§ 9–3.605–2 Standard Forms 147 and 148.

The use of Standard Forms 147 and 148 is optional within the AEC. When in the judgment of the Director, Headquarters Services, or Managers of Operations the use of the forms will simplify the procurement process, they may authorize the use of the forms.

These regulations are effective January 1, 1961.

Dated at Germantown, Md., this 8th day of December 1960.

For the Atomic Energy Commission.

A. R. LUEDECKE,
General Manager.

[F.R. Doc. 60–12221; Filed, Dec. 30, 1960; 8:53 a.m.]

PART 9–2—PROCUREMENT BY FORMAL ADVERTISING

Sec.
9–2.000 Scope of part.
9–2.102 Policy.
9–2.105–50 Prebidding conferences.
9–2.2 Solicitation of bids.
9–2.201(b)(10) Preparation of invitation for bids.
9–2.202–50 Postponement of bid openings.
9–2.203–3(b) Paid advertisements.
9–2.4 Opening of bids and award of contract.
9–2.401 Receipt and safeguarding of bids.
9–2.402 Opening of bids.
9–2.406 Mistakes in bids.
9–2.406–4 Disclosure of mistakes after award.
9–2.407 Award.
9–2.407–1 General.
9–2.407–50 Government estimates.
9–2.407–8 Protests against award.
9–2.408 Information to bidders.

AUTHORITY: §§ 9–2.000 to 9–2.408 issued under sec. 161(q), 70 Stat. 1069; 42 U.S.C. 2201(q). Implement and supplement sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 9–2.000 Scope of part.

This part implements and supplements the requirements for procurement of personal property and non-personal services (including construction) by formal advertising set forth in FPR 1–2.

§ 9–2.102 Policy.

(a) Procurement by formal advertising for AEC direct procurement shall be followed, except where negotiation is authorized by the Atomic Energy Act of 1954, as amended, or the Federal Property and Administrative Services Act of 1949, as amended. Direct AEC procurement of supplies and services by formal advertising shall comply with the requirements of this part and FPR 1–2.

(b) Procurement by cost-type contractors shall be effected by methods calculated to assure such full and free competition as is consistent with securing the required supplies or services. While exact compliance with the practices and procedures set forth in this part and FPR 1–2 is not required of such contractors, they should be followed to the greatest extent practicable in order to assure the award of business on an impartial basis. AEC contracting officers shall use the substantive provisions of this part and FPR 1–2 as a guide or standard in reviewing procurement practices and procedures of cost-type contractors.

§ 9–2.105.50 Prebidding conferences.

Wherever considered advantageous, prebidding conferences should be held with prospective bidders, and their suppliers, prior to receipt of bids to outline principal features of a construction project; to answer questions and to identify any ambiguity or obscurity concerning the proposed construction and the plans and specifications; and to solicit suggested changes in design or in special conditions of the contract which would result in more economical construction. Changes or clarifications found to be necessary as a result of a prebidding conference shall be included in addenda to the invitation for bids.

§ 9–2.2 Solicitation of bids.

§ 9–2.201(b)(10) Preparation of invitations for bids.

When an option to increase or decrease the quantities specified is employed, the percentage inserted in the option should not normally exceed 25 percent and in no event shall it exceed 50 percent without prior authorization of the Director of the Headquarters division or office concerned. The following language is suggested for incorporation in invitations for bids:

> The Government reserves the right to increase or decrease the quantity specified in any item of the schedule by _____ per cent without change in the unit price, if at any time during the life of the contract such an increase or decrease shall be determined to be in the interests of the Government.

When the contract contains a provision for termination for convenience of the Government, the words "or decrease" in the option may be deleted.

§ 9–2.202–50 Postponement of bid openings.

(a) Whenever such action is determined by the contracting officer to be in the best interest of the Government, bid openings may be postponed by issuance and distribution to all prospective bidders of an amendment (see FPR 1–2.207) to the invitation for bids. Notices of postponement shall be issued by mail or telegraph as early as possible, but in any event prior to the time specified for the opening of bids.

(b) Bid openings shall be postponed when an important segment of prospective bidders requests additional time for filing their bids, or the contracting officer is on notice, or has reason to believe, that the specified opening date is not appropriate or is not conducive to the maximum practicable competition.

(c) Bid openings may be postponed, if determined by the contracting officer to be practicable and in the best interests of the Government, when the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control, and without fault or negligence of the bidders concerned, such as, but not limited to, flood, fire, accident, heavy snow, or strikes.

§ 9–2.203–3(b) Paid advertisements.

When it is deemed necessary to use paid advertisements in newspapers, written authority for such publication shall be obtained from the Manager of Operations or the Director of the Headquarters division or office concerned.

§ 9–2.4 Opening of bids and award of contract.

§ 9–2.401 Receipt and safeguarding of bids.

Envelopes, or other outer covering, containing identified bids shall be time-stamped (indicating the place, date, and time of receipt) upon receipt, either in a mail room or other receiving point at the address specified in the invitation.

§ 9–2.402 Opening of bids.

At the bid opening, the relative merits of any bids shall not be discussed by the person opening the bids, or the contracting officer, with the bidders, their representatives, or with casual observers. No statements shall be issued by the bid opener or the contracting officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, etc. No oral instructions shall be given to bidders at any time during the opening. Protests of bidders and inquiries regarding the award of contract shall be referred to the contracting officer after the completion of the bid opening procedure.

§ 9–2.406 Mistakes in bids.

Pursuant to FPR 1–2.406–3(b), the Director, Office of Contract Policy, is delegated authority to make the determinations under FPR 1–2.406–3. Mistakes in bids prior to award (other than obvious clerical errors) shall be submitted to the Director, Office of Contract Policy, Headquarters, through the division or office director concerned, accompanied by the data set forth in Part 1–2.406–3(d)(3). The Director, Office of Contract Policy, will promptly notify the contracting officer of the course of action to be taken.

§ 9–2.406–4 Disclosure of mistakes after award.

(a) *For AEC direct procurement.* If a mistake in bid is alleged after award, the bidder shall be requested to furnish evidence in explanation of the mistake. Such evidence shall be referred, through the director of the division or office concerned, to the Division of Finance, Headquarters, for appropriate action.

(b) *For cost-type contractor procurement.* (1) Mistakes not in excess of $500. AEC cost-type contractors may correct mistakes (obvious clerical errors in any amount may be corrected informally) in connection with bids and subcontracts, provided:

(i) The mistake is not in excess of $50.00; or

(ii) The mistake is in excess of $50.00, but not in excess of $500.00, and the prior written approval of the AEC contracting officer has been obtained.

(2) All other alleged mistakes in contractor procurement.

(i) In any case of alleged mistake not covered by (b)(1) above where the Manager of Operations, subject to his delegated contractual authority, and with the advice of AEC counsel, determines that (*a*) relief would be granted under applicable law, and (*b*) part or all of any cost resulting from granting relief is allowable under the terms of the prime contract, the Manager of Operations may approve the granting of relief and approve the costs determined to be allowable under the prime contract. If either of the above determinations cannot be made, the Manager of Operations may deny the relief requested or deny reimbursement or credit for the resulting cost or he may refer the request with all supporting data and his recommendation through the division director concerned to the Division of Finance, Headquarters.

(ii) In determining whether relief should be granted pursuant to (2)(i) above, in cases where the subcontract was executed or the work continued after assertion of the alleged mistake, the Manager of Operations may consider the merits of the alleged mistake as of the time it was asserted, provided the subcontract was executed or the work continued pursuant to an understanding that in so doing, the subcontractor was not waiving any rights.

(iii) The relief granted under (2)(i) above may in cases where rescission is an appropriate remedy, be authorization of a modification in specified amounts, or terms or conditions approved by the Manager of Operations in lieu of rescission.

(3) Information required to substantiate corrections.

(i) In support of corrections made under authority of (b)(1) above, a written statement signed by the cost-type contractor shall be placed in the file setting forth:

(*a*) The relevant information respecting the mistake including a copy of the claim of mistake together with any supporting documents;

(*b*) A determination by the cost-type contractor that the mistake was made in good faith, and is of the type that would be corrected under the cost-type contractor's normal practices and procedures;

(*c*) The mistake is of such a nature that correction thereof is justified by considerations of fair dealing, having regard for such factors as the degree of care exercised by the claimant and the diligence of the claimant in discovering and asserting the mistake;

(*d*) That the contract price as corrected does not exceed the second lowest bid where procedures similar to those of formal advertising were followed; and

(*e*) That the correction is made pursuant to § 9–2.406–4(b).

(ii) In cases referred to in (b)(1)(ii) above, there shall be attached to the information submitted by the cost-type contractor, as required by paragraph (3)(i) above, a written finding by the AEC contracting officer that there is adequate evidence to support the assertion of a mistake and that the proposed correction appears to be fair and reasonable.

(iii) In support of corrections made under authority of (b)(2) above, Managers of Operations shall make a written justification in support of a determination that (*a*) relief would be granted under applicable law, and (*b*) part or all of any costs resulting from granting relief is allowable under the terms of the prime contract.

(4) Submissions to the Director of Finance, Headquarters, shall be accompanied by the data set forth in FPR 1–2.406–3(d)(3).

§ 9–2.407 Award.

§ 9–2.407–1 General.

Awards for construction services shall not be made to other than the low bidder as to price, except with the written approval of the Director of the Headquarters division or office concerned, the Manager of Operations or, if they authorize, the written approval of the Contract Review Board.

§ 9–2.407–50 Government estimates.

For construction contracts and subcontracts under cost-type contracts, a Government estimate of costs shall be prepared prior to opening of bids in order to determine the reasonableness of bids received. The services of the architect-engineer, operating contractor, or construction contractor will be used as appropriate in the preparation of such estimates.

§ 9–2.407–8 Protests against award.

After providing the Comptroller General with a notice of intent to make an award, and formal or informal advice is obtained concerning the current status of the case (see FPR 1–2.407–8(b)(2)), the contracting officer shall obtain approval of his superior officer to make an award where a protest has been submitted to the Comptroller General and it is necessary to make an award before the matter is resolved.

§ 9–2.408 Information to bidders.

With respect to cost-type contractors, Managers of Operations are responsible for assuring compliance with the requirements of FPR 1–2.408. In the event that cost-type contractors find such requirements unacceptable because they are inconsistent with established commercial practices, the release of award information as prescribed by FPR 1–2.408 shall be accomplished by the Operations Office concerned.

These regulations are effective January 1, 1961.

Dated at Germantown, Maryland, this 9th day of December 1960.

For the Atomic Energy Commission.

R. E. HOLLINGSWORTH,
Acting General Manager.

[F.R. Doc. 60–12220; Filed, Dec. 30, 1960; 8:53 a.m.]

Title 42—PUBLIC HEALTH

Chapter II—Children's Bureau, Social Security Administration, Department of Health, Education, and Welfare

PART 202—EMERGENCY MATERNITY AND INFANT CARE SERVICES

Deletion of Part

Because of the liquidation of this program, the regulations pertaining thereto, published at 8 F.R. 3859, 10 F.R. 257, and 13 F.R. 2753, and all references thereto in this chapter, are hereby deleted from inclusion in the Code of Federal Regulations.

Dated: December 28, 1960.

[SEAL] W. L. MITCHELL,
Commissioner of Social Security.

[F.R. Doc. 60-11769; Filed, Dec. 30, 1960; 8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 13767(RM-190, 193); FCC 60-1553]

PART 3—RADIO BROADCAST SERVICES

Television Broadcast Stations (Susanville, Alturas and Redding, Calif.)

1. The Commission has before it for consideration the notice of proposed rule making (FCC 60-1064) issued in this proceeding on September 12, 1960, in response to conflicting petitions to amend § 3.606, *Table of Assignments*, Television Broadcast Stations.

2. Petitioner, California-Oregon Television, Inc. (hereinafter referred to as Cal-Ore), licensee of television Station KIEM-TV, Eureka, California, on July 6, 1960, filed a request (RM-190) to amend the Table of Assignments as follows:

City	Channel No.	
	Present	Proposed
Alturas, Calif.	9	13-
Redding, Calif.	7	7, 9
Eureka, Calif.	13-	13
Twin Falls, Idaho	13-	13+
Eugene, Oreg.	13	13+
LaGrande, Oreg.	13+	13

3. Petitioner, Cal-Ore, urges the reallocation of Channel 9 from Alturas to Redding on the ground that Channel 9 is not occupied by an operating station in Alturas; that no application has been filed for the use of Channel 9; and that the proposed allocation of Channel 13- to Alturas will retain a VHF TV outlet for Alturas, which can be utilized in the future. In addition, Cal-Ore urges the reallocation on the ground that the reassignment of Channel 9 will make possible the institution of a second local VHF outlet in Redding, thus providing competitive television service to that city and its environs; that the Redding area needs and can support a second VHF station; that the addition of a second channel to Redding will improve the program service now offered by making available more local programs and a full schedule of network shows and shows of national importance; that the requested reallocation comports with all of the Commission's Rules with respect to existing standards and mileage separations and will not affect the service of any existing station. Finally, Cal-Ore states that if the allocation of a second TV channel to Redding is approved it intends to file application for authority to operate a station on said channel.

4. On August 16, 1960, James E. McKahan, licensee of Radio Station KSUE at Susanville, California, and Shasta Telecasting Corporation (hereinafter referred to as Shasta), licensee of Station KVIP-TV (Channel 7) at Redding, California, filed a conflicting petition (RM-193) which requests the following amendment of the Table of Assignments:

City	Channel No.	
	Present	Proposed
Alturas, Calif.	9	13+
Susanville, Calif.	- -	9

Petitioners McKahan and Shasta also suggest that with the assignment of Channel 13+ to Alturas, Station KOVR at Stockton, California, change its operation from 13+ to 13 even.

5. Petitioners Shasta and McKahan support their request to move Channel 9 to Susanville rather than to Redding on the ground that the community of Susanville receives no direct television service; that the establishment of a local television channel would provide the community with access to network and other programs of national and regional importance; that the advent of a first local television station would make available to the local business community an additional advertising media to supplement the local radio station and weekly newspaper; that the proposed substitution of Channel 13 for Channel 9 in Alturas would not deprive Alturas of any service should an application for new television facilities be filed for that community; that the proposed change conforms with all of the Commission's Rules with respect to existing standards and mileage separations; and that if the Shasta-McKahan proposal is accepted, petitioners intend to file an application for authorization to operate a station on Channel 9 in Susanville.

6. Comments and reply comments were filed by petitioners Cal-Ore and McKahan-Shasta, and by Golden Empire Broadcasting Company, licensee of Station KHSL-TV, Chico, California, in opposition to the petition of Cal-Ore. The Commission also received a letter from Antenna-Vision, Inc., the operator of a cable TV system in Susanville. After careful consideration, the Commission is now prepared to render a decision herein.

7. Susanville is located in the southern part of Lassen County which in turn is situated in northeastern California. Preliminary census data indicates a population of 5,559 for the city in 1960 and a population of 13,497 for the county. These figures represent a gain of 4.1 percent (from 5,338) for the city and a loss of 26.9 percent (from 18,474) for the county compared to the 1950 figures. Susanville is presently served by the local radio station, KSUE, operated by McKahan, and a weekly newspaper. A CATV system is subscribed to by 972 homes and makes available KOLO-TV, Reno (NBC, CBS, ABC) KHSL-TV, Chico (CBS), and KCRA-TV, Sacramento (NBC). KOLO-TV, Reno and KCRA-TV, Sacramento, are also available through the UHF translator operations of K70CC and K72AJ which serve Susanville and the surrounding area. While Shasta and McKahan admit that Susanville is not a large community (they estimate that the proposed VHF channel would serve from eight to nine thousand people at the present time), petitioners insist that the area has "great promise of extensive growth in the immediate future". McKahan, as manager of the local radio station, has observed the area and feels that the time is ripe for the operation of a local television station. He has been supported by various local groups and individuals who approve the attempt to bring local TV broadcasting to Susanville.

8. Redding is situated in the northern end of the Sacramento Valley in the southern part of Shasta County. The population of Redding is 12,601, up from 10,256 in 1950. Shasta County's population has increased 61.6 percent since 1950 and now stands at 58,830. The entire northern part of the Sacramento Valley comprising the Redding-Chico market has experienced similar growth. Chico, some 60 miles to the south of Redding in Butte County, has grown from 12,272 to 14,591 in the decade; and the population of Butte County has increased 25 percent. Tehama County, which lies between Shasta and Butte Counties has grown some 31 percent to 25,330. Shasta (licensee of KVIP-TV, Redding) itself has published figures from Standard Rate and Data Service which indicate that the Redding-Chico market has increased 11.3 percent (288,200 to 321,000) from May 1956 to June 1959. KVIP-TV, Channel 7, presently serves Redding with primary ABC network programs plus NBC. In addition, Redding receives coverage from KHSL-TV, Channel 12, Chico, which carries the CBS network. Similarly, KVIP-TV is received by homes in Chico and northern Butte County. Tehama County receives nearly complete overlapping service from KVIP-TV and KHSL-TV. There is no UHF television service in Redding or the area which constitutes the Redding-Chico market.

9. To support the allocation of Channel 9 to Susanville, petitioners Shasta and McKahan state that the proposed assignment conforms with the allocation priorities of the Sixth Report and Order, and would best serve the "public interest". They stress that Redding presently is served by a local station and also receives the programs of KHSL-TV, Chico, while Susanville has no local station to fulfill the programming needs of the community and must rely upon an inferior and expensive CATV system (an allegation which is controverted by Antenna-Vision, Inc.).

10. Cal-Ore, on the other hand, urges that the allocation of Channel 9 to the Susanville area would be an uneconomic utilization of scarce VHF facilities. Within the existing Commission rules and mileage separation requirements they state that 3 UHF channels could be assigned to Susanville. Because the assignment of either a VHF or UHF channel to Susanville will result, in any event, in a set conversion problem (due to the existence of the 2 UHF translator stations and the CATV system), Cal-Ore urges that the public interest would best be served by the allocation of UHF channels to Susanville, thus providing the basis upon which competitive service could operate in that community while giving to Redding a competitive VHF outlet in an all-VHF market. To this Shasta and McKahan answer that the character of UHF propagation is such that in the mountainous Susanville area a UHF station could not survive, that a signal with the quality of VHF is needed to reach what they admit will be a comparatively small viewing audience. They also propose that a UHF channel be assigned to Redding rather than Channel 9.

11. Upon careful consideration the Commission is of the view that the public interest would best be served by the allocation of Channel 9 to Redding. This assignment will make available to Redding a second VHF channel and to the Redding-Chico market a third competitive service. While the City of Redding considered by itself might not warrant a second local station, the Redding-Chico market is an area of dynamic growth in which a third competitive service can be accommodated. The Commission is not convinced by the pleas of Golden Empire Broadcasting Company (KHSL-TV, Chico) or of Shasta KVIP-TV, Redding) that sustained, serious economic injury will accrue to them should a third station be assigned to the Redding-Chico market.

12. Of prime concern to the Commission in reaching this result is the desire to attain the most efficient assignment of limited VHF channels. As against a viewing populace of eight or nine thousand persons in Susanville, another television station in Redding would service over 300,000 persons according to Shasta's own figures. Without passing upon Cal-Ore's proposal to assign UHF channels to Susanville, Shasta and McKahan's protest that UHF is not technically feasible in the mountainous Susanville area would seem to be answered by Stations K70CC and K72AJ, UHF translators operating in the area.

13. Shasta and McKahan's counterproposal to assign a UHF channel to Redding cannot be considered seriously. Such an assignment would create an intermixture problem where none existed previously and would not provide a competitive service to the Redding-Chico area.

14. Shasta and McKahan's additional contention regarding Cal-Ore's putative monopolistic position in Northern California and Southern Oregon is an argument which cannot be considered in these proceedings. We are concerned here with rule making: Changes in the television Table of Assignments and not with the qualifications of an applicant to operate a television station.

15. The Commission is of the view, therefore, that on balance the allocation of Channel 9 to Redding will provide for the most efficient distribution of existing television channels in northern California. This allocation will make available a third competitive VHF service in an area which has shown substantial growth in the last 10 years as compared with the Susanville and Lassen County area. Such assignment in the view of the Commission will best serve the public interest. The request of California-Oregon Television, Inc. to assign Channel 9 to Redding, California, therefore, is granted; and the request of James E. McKahan and Shasta Telecasting Corporation to assign Channel 9 to Susanville, California, is denied.

16. Cal-Ore advanced several offset carrier changes on Channel 13 with the simultaneous allocation of Channel 13— to Alturas. The Commission is of the view that the substitution of Channel 13+ for Channel 9 in Alturas, as advanced by Shasta and McKahan, is the least complicated proposal. This substitution will not require any offset carrier changes at the present time. A change in offset for KOVR-TV, Stockton, California, from 13+ to 13 even may be desirable if, and when, broadcasting on 13+ from Alturas is begun. Such a decision, however, may be deferred until a request to operate a station on 13+ in Alturas is received by the Commission.

17. Authority for the adoption of the amendment herein is contained in sections 1, 4 (i) and (j), 301, 303 and 307(b) of the Communications Act of 1934, as amended, and section 4 of the Administrative Procedure Act.

18. In view of the foregoing: *It is ordered*, That effective January 30, 1961, the Table of Assignments contained in § 3.606 of the Commission's rules and regulations is amended, insofar as the communities named are concerned, as follows:

City	*Channel No.*
Alturas, Calif.	13+
Redding, Calif.	7, 9

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, 1083; 47 U.S.C. 301, 303, 307)

Adopted: December 21, 1960.

Released: December 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12200; Filed, Dec. 30, 1960; 8:49 a.m.]

Title 50—WILDLIFE AND FISHERIES

EDITORIAL NOTE: The heading of Title 50, Code of Federal Regulations, is hereby changed to read as set forth above.

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 14—IMPORTATION OF FEATHERS OF WILD BIRDS

Permit Fees and Quota Allocations

On pages 12741 and 12742 of the FEDERAL REGISTER of December 13, 1960, there was published a notice and text of proposed revision of Part 14, Title 50, Code of Federal Regulations. The purpose of this revision is to establish a user's charge or fee for importation permits issued under Part 14 and to revise the methods of allocation and reallocation of annual import quotas among the qualified applicants. Interested persons were given 15 days in which to submit written comments, suggestions, or objections to the proposed revision.

Inasmuch as no comment, suggestions, or objections have been received, the proposed revision of Part 14, Title 50, Code of Federal Regulations, is hereby adopted without change and is set forth below, to become effective September 1, 1961.

ELMER F. BENNETT,
Acting Secretary of the Interior.

DECEMBER 29, 1960.

Sec.

14.1 Fees and applications for importation permits.
14.2 Filing dates for applications.
14.3 Allocation of calendar year quotas.
14.4 Reallocation of unused calendar year quotas.
14.5 Issuance of importation permits.
14.6 Tenure of importation permits.
14.7 Compliance with other regulations.

AUTHORITY: §§ 14.1 to 14.7 issued under par. 1518, 46 Stat. 661, as amended; 19 U.S.C. 1001, par. 1518.

§ 14.1 Fees and applications for importation permits.

(a) Effective September 1, 1961 and thereafter, a fee of $10 will be charged for any importation permit issued pursuant to this part. Such fee must be submitted at the time and in the form prescribed in §§ 14.2(b) and 14.3(d).

(b) All persons desiring to share in the allocation of annual import quotas of skins bearing feathers of the grey jungle fowl (Gallus sonneratii), the mandarin duck (Dendronessa galericulata), and the following species of pheasant: Lady Amherst pheasant (Chrysolophus amherstiae), golden pheasant (Chrysolophus pictus), silver pheasant (Lophura nycthemera), Reeves pheasant (Syrmaticus reevesii), blue-eared pheasant (Crossoptilon auritum), and brown-eared pheasant (Crossoptilon mantchuricum), must apply during the periods

specified in § 14.2 by letter addressed to the Director, Bureau of Sport Fisheries and Wildlife, Washington 25, D.C. The letter must contain the following information:

(1) Name and address of applicant, nature of business, and the purpose for which feathers are required.

(2) Port at which entry has been or is to be made.

(3) Quantity of each species of bird skin or part thereof for which an importation permit is desired.

(4) Certification, that in the case of grey jungle fowl and mandarin duck, the skins are to be used only in the manufacture of fishing flies.

§ 14.2 Filing dates for applications.

Each application for a quota allocation must be postmarked during the dates set forth in paragraphs (a) and (b) of this section in order to be considered.

(a) Applicants desiring to participate in the allocation of calendar year quotas shall submit applications from September 1 through September 30 of the year preceding the calendar year for which quota allocations are to be made.

(b) Applicants desiring to participate in the reallocation of such portions of the established annual quotas as may become available for reallocation, shall submit applications from July 1 through July 31 of the calendar year for which the unused portions of the quota allocations were originally made, and in order to be considered, such applications must be accompanied by the prescribed $10 fee in the form of a postal money order or a check made payable to the Bureau of Sport Fisheries and Wildlife.

§ 14.3 Allocation of calendar year quotas.

As promptly as possible after the closing date for filing, all applications timely filed will be considered and tentative quotas allocated by the method set forth in paragraphs (a) through (e) of this section. For the purposes of this section, the six species of pheasant named in § 14.1 shall be grouped together and considered as one species.

(a) The number of eligible applicants for skins of grey jungle fowl, mandarin duck, and pheasants, respectively, shall be divided into the quotas of skins available for the ensuing calendar year for the respective species, to determine the number of skins of each species the several applicants would be entitled to import on an equal basis.

(b) Any applicant for an allocation in an amount equal to or less than the average quantity established for all applicants pursuant to paragraph (a) of this section is entitled to receive an allocation of the quantity for which he applied.

(c) After the allocations are made under paragraph (b) of this section, all remaining unallocated quantities of skins of the respective species shall be allocated equally among those applicants who applied for more than the average quantities determined under paragraph (a) of this section. However, no applicant shall be allocated a quantity of skins in excess of the number applied for.

(d) Each applicant shall then be furnished a tabulation by Registered or Certified Mail, Return Receipt requested, of the quantities of each species requested and the quantities proposed to be allocated to each applicant. Each applicant must then report by letter addressed to the Director, postmarked not later than 30 days after date of receipt of the notice of proposed allocations, that he accepts the proposed allocation. The letter must contain satisfactory proof, such as a copy of a currently confirmed order, that orders have been placed for the importing of his allocation of bird skins and must be accompanied by the prescribed $10 fee in the form of a postal money order or a check made payable to the Bureau of Sport Fisheries and Wildlife. Applicants failing to respond to the notice of proposed allocations or failing to furnish the prescribed fee shall be deemed to have withdrawn their applications. Applicants who submit the required showing and fee by other than Registered or Certified Mail, do so at their own risk.

(e) Any quantities of bird skins of the respective species which become available for allocation through the failure of applicants to submit the proper showing as required in paragraph (d) of this section, shall promptly be allocated among those applicants whose requests were not satisfied in full, using the methods prescribed in paragraphs (a) through (c) of this section to determine the additional quantity of skins allowable to each such applicant.

§ 14.4 Reallocation of unused calendar year quotas.

Any portion of the calendar year quotas which may become available for reallocation through surrender or nonuse, in whole or in part, of permits expiring on June 30 of any year, shall be reallocated as promptly as possible after the closing date for filing among applicants who have submitted proper applications in accordance with § 14.2(b). Such reallocations shall be made by the method prescribed in § 14.3 (a) through (c). If the quantities of the respective species of bird skins are insufficient to permit reallocation among all applicants by such method, preference shall be given to those applications bearing the earliest postmark.

§ 14.5 Issuance of importation permits.

As soon as practicable after the annual quota allocations or reallocations have been determined, the quotas allocated to successful applicants shall be evidenced by importation permits, issued in letter form, directed to the respective Collectors of Customs at the Ports of Entry specified in the applications. Such permits shall authorize the entry, or withdrawal from warehouse, of the quantities of bird skins allocated to each applicant. Until such time as it shall be found necessary to reduce the import quota established for pheasants, importation permits will not differentiate between the six species of pheasant named in § 14.1, but will authorize the importation of a stated number of pheasant skins in the aggregate, without specifying the species. A copy of the importation permit will be furnished each successful applicant as notice to him of his allocation. Importation permits are nontransferable and are subject to cancellation only if it is determined that the permit has been mistakenly issued, that the applicant has made a material misrepresentation in connection therewith, or if the permittee informs the Director that he will be unable to bring or import his quota of bird skins into the United States during the period specified in the permit. Permits are also subject to the further conditions set forth in § 14.6.

§ 14.6 Tenure of importation.

(a) Importation permits covering the calendar year quota allocations are issued as of January 1, and remain in effect through June 30 of the year of issue. No extension of time shall be granted on such permits and any portion of the quota allocations which become available through surrender or nonuse, in whole or in part, of a permit expiring on June 30, shall be reallocated among applicants who submit proper applications.

(b) Importation permits covering the reallocations made pursuant to § 14.2 (b) shall be issued as promptly as possible after July 31 and remain in effect through December 31 of the year of issue. No extension of time shall be granted on such permits, and any portion of the quotas so reallocated which are not imported through surrender of nonuse of reallocation permits, in whole or in part, on or before December 31 of the year of issue, shall lapse and no further allocation thereof shall be made.

§ 14.7 Compliance with other regulations.

Any importation permitted by the regulations in this part is also subject to any applicable health, quarantine, customs, or other requirements imposed by law or by regulation of duly authorized Federal or State agencies and munici-

[F.R. Doc. 60-12084; Filed, Dec. 30, 1960; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Notice of Proposed Rule Making

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM,
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under section 381(c)(2) (carryover of earnings and profits) and (16) (carryover of certain obligations of distributor or transferor corporation) of the Internal Revenue Code of 1954. Except as otherwise provided therein, such regulations shall apply to liquidations and reorganizations, the tax treatment of which is determined under such Code.

Sec.
1.381(c)(2) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; earnings and profits.
1.381(c)(2)-1 Earnings and profits.
1.381(c)(16) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; certain obligations of distributor or transferor corporation.
1.381(c)(16)-1 Obligations of distributor or transferor corporation.

§ 1.381(c)(2) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; earnings and profits.

SEC. 381. *Carryovers in certain corporate acquisitions.* • • •

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

• • • • • •

(2) *Earnings and profits.* In the case of a distribution or transfer described in subsection (a)—

(A) The earnings and profits or deficit in earnings and profits, as the case may be, of the distributor or transferor corporation shall, subject to subparagraph (B), be deemed to have been received or incurred by the acquiring corporation as of the close of the date of the distribution or transfer; and

(B) A deficit in earnings and profits of the distributor, transferor, or acquiring corporation shall be used only to offset earnings and profits accumulated after the date of transfer. For this purpose, the earnings and profits for the taxable year of the acquiring corporation in which the distribution or transfer occurs shall be deemed to have been accumulated after such distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of the acquiring corporation for such taxable year (computed without regard to any earnings and profits received from the distributor or transferor corporation, as described in subparagraph (A) of this paragraph) as the number of days in the taxable year after the date of distribution or transfer bears to the total number of days in the taxable year.

§ 1.381(c)(2)-1 Earnings and profits.

(a) *In general.* (1) Section 381(c)(2) requires the acquiring corporation in a transaction to which section 381(a) applies to succeed to, and take into account, the earnings and profits, or deficit in earnings and profits, of the distributor or transferor corporation as of the close of the date of distribution or transfer. In determining the amount of such earnings and profits, or deficit, to be carried over, and the manner in which they are to be used by the acquiring corporation after such date, the provisions of section 381(c)(2) and this section shall apply. For purposes of section 381(c)(2) and this section, if the distributor or transferor corporation accumulates earnings and profits, or incurs a deficit in earnings and profits, after the date of distribution or transfer and before the completion of the reorganization or liquidation, such earnings and profits, or deficit, shall be deemed to have been accumulated or incurred as of the close of the date of distribution or transfer.

(2) If the distributor or transferor corporation has accumulated earnings and profits as of the close of the date of distribution or transfer, such earnings and profits shall (except as hereinafter provided in this section) be deemed to be received by, and to become a part of the accumulated earnings and profits of, the acquiring corporation as of such time. Similarly, if the distributor or transferor corporation has a deficit in accumulated earnings and profits as of the close of the date of distribution or transfer, such deficit shall (except as hereinafter provided in this section) be deemed to be incurred by the acquiring corporation as of such time. In no event, however, shall the accumulated earnings and profits, or deficit, of the distributor or transferor corporation be taken into account in determining earnings and profits of the acquiring corporation for the taxable year during which occurs the date of distribution or transfer.

(3) Any part of the accumulated earnings and profits, or deficit in accumulated earnings and profits, of the distributor or transferor corporation which consists of earnings and profits, or deficits, accumulated before March 1, 1913, shall be deemed to become earnings and profits, or deficits, of the acquiring corporation accumulated before March 1, 1913, and any part of the accumulated earnings and profits of the distributor or transferor corporation which consists of increase in value of property accrued before March 1, 1913, shall be deemed to become earnings and profits of the acquiring corporation consisting of increase in value of property accrued before March 1, 1913.

(4) If the acquiring corporation and each distributor or transferor corporation has accumulated earnings and profits as of the close of the date of distribution or transfer, or if each of such corporations has a deficit in accumulated earnings and profits as of such time, then the accumulated earnings and profits (or deficit) of each such corporation shall be consolidated as of the close of the date of distribution or transfer in the accumulated earnings and profits account of the acquiring corporation. See subparagraph (6) of this paragraph for determination of the accumulated earnings and profits (or deficit) of the acquiring corporation as of the close of the date of distribution or transfer.

(5) If (i) one or more corporations a party to a distribution or transfer has accumulated earnings and profits as of the close of the date of distribution or transfer, and (ii) one or more of such corporations has a deficit in accumulated earnings and profits as of such time, the total of any such deficit shall be used only to offset earnings and profits accumulated, or deemed to have been accumulated under subparagraph (6) of this paragraph, by the acquiring corporation after the date of distribution or transfer. In such instance, the acquiring corporation will be considered as maintaining two separate earnings and profits accounts after the date of distribution or transfer. The first such account shall contain the total of the accumulated earnings and profits as of the close of the date of distribution or transfer of each corporation which has accumulated earnings and profits as of such time, and the second such account shall contain the total of the deficits in accumulated earnings and profits of each corporation which has a deficit as of such time. The total deficit in the second account may not be used to reduce the accumulated earnings and profits in the first account (although such earnings and profits may be off-

set by deficits incurred, or deemed to have been incurred, after the date of distribution or transfer) but shall be used only to offset earnings and profits accumulated, or deemed to have been accumulated under subparagraph (6) of this paragraph, by the acquiring corporation after the date of distribution or transfer.

(6) In any case in which it is necessary to compute the accumulated earnings and profits, or the deficit in accumulated earnings and profits, of the acquiring corporation as of the close of the date of distribution or transfer and such date is a day other than the last day of a taxable year of the acquiring corporation—

(i) If the acquiring corporation has earnings and profits for its taxable year during which occurs the date of distribution or transfer, such earnings and profits (*a*) shall be deemed to have accumulated as of the close of such date in an amount which bears the same ratio to the undistributed earnings and profits of such corporation for such year as the number of days in the taxable year preceding the date following the date of distribution or transfer bears to the total number of days in the taxable year, and (*b*) shall be deemed to have accumulated after the date of distribution or transfer in an amount which bears the same ratio to the undistributed earnings and profits of such corporation for such year as the number of days in the taxable year following such date bears to the total number of days in such taxable year. For purposes of the preceding sentence, the undistributed earnings and profits of the acquiring corporation for such taxable year shall be the earnings and profits for such taxable year reduced by any distributions made therefrom during such taxable year.

(ii) If the acquiring corporation has an operating deficit for its taxable year during which occurs the date of distribution or transfer, then, unless the actual accumulated earnings and profits, or deficit, as of such date can be shown, such operating deficit shall be deemed to have accumulated in a manner similar to that described in subdivision (i) of this subparagraph.

(7) This paragraph may be illustrated by the following examples, in which it is assumed that none of the accumulated earnings and profits, or deficits, consist of earnings and profits or deficits accumulated, or increase in value of property accrued, before March 1, 1913.

Example (1). (i) M and N Corporations make their returns on the basis of the calendar year. On June 30, 1959, M Corporation transfers all its assets to N Corporation in a statutory merger to which section 361 applies. The books of the two corporations reveal the following information:

Description	M Corporation (transferor)	N Corporation (acquirer)
Accumulated earnings and profits at close of calendar year 1958	$100,000	$150,000
Earnings and profits of taxable year ending June 30, 1959	$15,000	
Earnings and profits of calendar year 1959		$36,500
Distributions during calendar year 1959	0	0

(ii) As of the close of June 30, 1959, N acquires from M accumulated earnings and profits of $115,000. Since M and N each has accumulated earnings and profits as of the close of the date of transfer, M's accumulated earnings and profits are added to N's accumulated earnings and profits as of such time. However, no part of M's accumulated earnings and profits is taken into account in determining N's earnings and profits for the calendar year 1959. Therefore, N's earnings and profits for the calendar year 1959 are $36,500.

Example (2). (i) X and Y Corporations make their returns on the basis of the calendar year. On June 30, 1959, X Corporation transfers all its assets to Y Corporation in a statutory merger to which section 361 applies. The books of the two corporations reveal the following information:

Description	X Corporation (transferor)	Y Corporation (acquirer)
Accumulated earnings and profits at close of calendar year 1958	$20,000	$100,000
Deficit in earnings and profits for taxable year ending June 30, 1959	(80,000)	---
Earnings and profits of calendar year 1959	---	36,500
Distributions during calendar year 1959	0	0

(ii) As of the close of June 30, 1959, Y acquires from X a deficit in accumulated earnings and profits in the amount of $60,000. This deficit may be used only to reduce those earnings and profits of Y which are accumulated, or deemed to have accumulated, after June 30, 1959. Accordingly, as of December 31, 1959, the accumulated earnings and profits of Y amount to $118,100; at such time Y also has a separate deficit in accumulated earnings and profits in the amount of $41,600. These amounts are determined as follows:

Accumulated earnings and profits of Y as of the close of 1958	$100,000
Add:	
Portion of undistributed earnings and profits of Y for 1959 deemed to have accumulated as of close of June 30, 1959 ($36,500×181/365)	18,100
Accumulated earnings and profits of Y as of close of June 30, 1959, and also as of Dec. 31, 1959	118,100
Portion of undistributed earnings and profits of Y for 1959 deemed to have accumulated after June 30, 1959 ($36,500×184/365)	18,400
Less:	
Deficit in accumulated earnings and profits acquired by Y from X Corporation as of close of June 30, 1959	(60,000)
Separate deficit in accumulated earnings and profits of Y as of Dec. 31, 1959	(41,600)

Example (3). Assume the same facts as in example (2), except that on September 15, 1959, Y Corporation makes a cash distribution of $96,500. The entire distribution is a dividend: $36,500 from earnings and profits for the taxable year 1959 and $60,000 from earnings and profits accumulated as of December 31, 1958. Accordingly, as of December 31, 1959, Y has accumulated earnings and profits of $40,000, and also has a separate deficit in accumulated earnings and profits of $60,000. These amounts are determined as follows:

Earnings and profits of Y for calendar year 1959	$36,500
Accumulated earnings and profits of Y as of close of 1958	100,000
Total	136,500
Less:	
Distributions during 1959	96,500
Accumulated earnings and profits of Y as of Dec. 31, 1959	40,000
Deficit in accumulated earning and profits acquired from M as of close of June 30, 1959	(60,000)
Less:	
Portion of Y's undistributed earnings and profits for 1959 deemed to have accumulated after June 30, 1959	0
Separate deficit in accumulated earnings and profits of Y as of Dec. 31, 1959	(60,000)

Example (4). (i) M and N Corporations make their returns on the basis of the calendar year. On June 30, 1959, M Corporation transfers all its assets to N Corporation in a statutory merger to which section 361 applies. The books of the two corporations reveal the following information:

Description	M Corporation (transferor)	N Corporation (acquirer)
Accumulated earnings and profits at close of calendar year 1958	$100,000	$50,000
Earnings and profits for taxable year ending June 30, 1959	10,000	-------
Deficit in earnings and profits for calendar year 1959	-------	(146,000)
Distributions during calendar year 1959	0	0

(ii) Assuming that N has not shown its actual accumulated earnings and profits, or deficit, as of the close of June 30, 1959, N has a deficit in accumulated earnings and profits at such time which amounts to $22,400, determined as follows:

Accumulated earnings and profits of N as of close of 1958	$50,000
Less:	
Portion of deficit in earnings and profits of N for 1959 deemed to have accumulated as of close of June 30, 1959 ($146,000×181/365)	(72,400)
Deficit in accumulated earnings and profits of N as of close of June 30, 1959, and also as of Dec. 31, 1959	(22,400)

As of the close of June 30, 1959, N acquires from M accumulated earnings and profits in the amount of $110,000, no part of which may be offset by N's own deficit of $22,400; however, such earnings and profits may be offset by deficits incurred, or deemed incurred, by N after June 30, 1959. Thus, as of December 31, 1959, N has the abovementioned deficit of $22,400; at such time N also has accumulated earnings and profits in the amount of $36,400, determined as follows:

Accumulated earnings and profits acquired from M as of close of June 30, 1959	$110,000
Less:	
Portion of deficit in earnings and profits of N for 1959 deemed to have accumulated after June 30, 1959 ($146,000×184/365)	(73,600)
Accumulated earnings and profits of N as of Dec. 31, 1959	36,400

Example (5). Assume the same facts as in example (4), except that on September 9, 1959, N Corporation makes a cash distribution of $100,000. The amount of $82,000 is a dividend from accumulated earnings and profits, computed as follows:

Accumulated earnings and profits acquired from M as of close of June 30, 1959	$110,000
Less:	
Deficit in earnings and profits of N for 1959 deemed to have accumulated from June 30 through Sept. 8, 1959 ($146,000×70/365)	($28,000)
Accumulated earnings and profits as of close of Sept. 8, 1959	82,000

As of December 31, 1959, N Corporation has a deficit in accumulated earnings and profits of $68,000, computed as follows:

Deficit in accumulated earnings and profits of N as of close of June 30, 1959	($22,400)
Add:	
Portion of N's deficit in earnings and profits for 1959 deemed to have accumulated after Sept. 8, 1959 ($146,000×114/365)	(45,600)
Deficit in accumulated earnings and profits of N as of Dec. 31, 1959	(68,000)

Example (6). (i) X, Y, and Z Corporations make their returns on the basis of the calendar year. On June 30, 1959, X Corporation and Y Corporation transfer all their assets to Z Corporation in a statutory merger to which section 361 applies. The books of the three corporations reveal the following information:

Description	X Corporation (transferor)	Y Corporation (transferor)	Z Corporation (acquirer)
Accumulated earnings and profits (or deficit) at close of calendar year 1958	$35,000	($25,000)	($20,000)
Earnings and profits (or deficit) for taxable year ended June 30, 1959	5,000	(5,000)	-------
Earnings and profits for calendar year 1959	-------	-------	36,500
Distributions during 1959	0	0	0

(ii) As of the close of June 30, 1959, Z acquires from Y a deficit in accumulated earnings and profits of $30,000. As of such time, Z's own deficit in accumulated earnings and profits amounts to $1,900, determined as follows:

Deficit in accumulated earnings and profits of Z as of close of 1958	($20,000)
Less:	
Portion of undistributed earnings and profits of Z for 1959 deemed to have accumulated as of close of June 30, 1959 ($36,500×181/365)	18,100
Deficit in accumulated earnings and profits as of close of June 30, 1959	(1,900)

The total deficit of $31,900 may be used only to offset earnings and profits of Z accumulated, or deemed to have accumulated, after June 30, 1959; such deficit may not be used to reduce the accumulated earnings and profits of $40,000 acquired from X as of the close of June 30, 1959. Thus, as of December 31, 1959, the accumulated earnings and profits of Z amount to $40,000; at such time Z Corporation also has a separate deficit in accumulated earnings and profits in the amount of $13,500, determined as follows:

Deficit in accumulated earnings and profits as of close of June 30, 1959	($31,900)
Less:	
Portion of undistributed earnings and profits of Z for 1959 deemed to have accumulated after June 30, 1959 ($36,500×184/365)	18,400
Separate deficit in accumulated earnings and profits as of Dec. 31, 1959	(13,500)

Example (7). X and Y Corporations make their returns on the basis of the calendar year. On December 31, 1954, X transfers all its assets to Y in a statutory merger to which section 361 applies. The books of the two corporations reveal the following information:

Description	X Corporation (transferor)	Y Corporation (acquirer)
Accumulated earnings and profits (or deficit) at close of calendar year 1954	($50,000)	$210,000
Earnings and profits (or deficit) for calendar year:		
1955	---------	5,000
1956	---------	(20,000)
1957	---------	70,000
1958	---------	60,000
1959	---------	55,000
Cash distributions on:		
Sept. 1, 1957	---------	80,000
Sept. 1, 1958	---------	40,000
Sept. 1, 1959	---------	30,000

The balances in the accumulated earnings and profits account and the separate deficit account of Y Corporation at the close of the taxable year involved are as follows:

Year	Deficit acquired from X Corporation	Accumulated earnings and profits of Y Corporation
1954	($50,000)	$210,000
1955	(45,000)	210,000
1956	(45,000)	190,000
1957	(45,000)	180,000
1958	(25,000)	180,000
1959	None	180,000

(b) *Successive acquisitions.* (1) If, as of the date of distribution or transfer, either the acquiring corporation, or the distributor or transferor corporation, or both, is considered under paragraph (a) of this section to be maintaining separate earnings and profits accounts as the result of a prior transaction or transactions to which section 381(a) applied, the accumulated earnings and profits, or deficit in accumulated earnings and profits, of each such corporation shall be combined with the appropriate earnings and profits account of the other such corporation. For example, if, as of the date of transfer, the acquiring corporation and the transferor corporation are each maintaining separate accounts, one containing accumulated earnings and profits and the other containing a deficit in accumulated earnings and profits, the amounts in the two accumulated earnings and profits accounts shall be combined into one account, and the amounts in the two deficit accounts shall be combined into a second account, and the amount in one combined account may not be used to offset the amount in the other combined account.

(2) This paragraph may be illustrated by the following examples, in which it is assumed that none of the accumulated earnings and profits, or deficits, consist

of earnings and profits or deficits accumulated, or increase in value of property accrued, before March 1, 1913.

Example (1). (i) X, Y, and Z Corporations make their returns on the basis of the calendar year. On June 30, 1958, X Corporation transfers all its assets to Z Corporation in a statutory merger to which section 361 applies, and on August 31, 1958, Y Corporation transfers all its assets to Z Corporation in another statutory merger to which section 361 applies. The books of the three corporations reveal the following information:

Description	X Corporation (transferor)	Y Corporation (transferor)	Z Corporation (acquirer)
Accumulated earnings and profits (deficit) at close of calendar year 1957	($40,000)	$10,000	$60,000
Deficit in earnings and profits for taxable year ending June 30, 1958	(5,000)	-------	-------
Earnings and profits for taxable year ending Aug. 31, 1958	-------	2,000	-------
Earnings and profits of calendar year 1958	-------	-------	36,500
Distributions during calendar year 1958	0	0	0

(ii) As of the close of June 30, 1958, Z acquires from X a deficit in accumulated earnings and profits in the amount of $45,000, which deficit may be used only to reduce those earnings and profits of Z which are accumulated, or deemed to have been accumulated, after June 30, 1958. As of the close of August 31, 1958, Z acquires from Y earnings and profits of $12,000, no portion of which may be reduced by the deficit acquired by Z from X. Accordingly, as of December 31, 1958, Z has accumulated earnings and profits of $90,100, and also has a separate deficit in accumulated earnings and profits of $26,600. These amounts are determined as follows:

Accumulated earnings and profits of Z as of Dec. 31, 1957	$60,000
Add:	
Portion of undistributed earnings and profits of Z for 1958 deemed to have accumulated as of close of June 30, 1958 ($36,500×181/365)	18,100
Accumulated earnings and profits of Z as of June 30, 1958	78,100
Add:	
Accumulated earnings and profits acquired by Z from Y as of close of Aug. 31, 1958	12,000
Accumulated earnings and profits of Z as of close of Aug. 31, 1958, and also as of Dec. 31, 1958	90,100
Deficit in accumulated earnings and profits acquired by Z from X as of close of June 30, 1958	(45,000)
Less:	
Portion of undistributed earnings and profits of Z for 1958 deemed to have accumulated from June 30 through Aug. 31, 1958 ($36,500×62/365)	-6,200
Separate deficit in accumulated earnings and profits of Z as of Aug. 31, 1958	(38,800)
Less:	
Portion of undistributed earnings and profits of Z for 1958 deemed to have accumulated after Aug. 31, 1958 ($36,500×122/365)	12,200
Separate deficit in accumulated earnings and profits of Z as of Dec. 31, 1958	(26,600)

Example (2). (i) Assume the same facts as in example (1), plus the additional fact that on June 30, 1959, Z Corporation transfers all its assets to M Corporation (which makes its return on the basis of the calendar year) in a statutory merger to which section 361 applies, and that as of such time M Corporation is considered to be maintaining separate earnings and profits accounts as the result of a previous transaction to which section 381(a) applied. The books of the two corporations reveal the following information:

Description	Z Corporation (transferor)	M Corporation (acquirer)
Accumulated earnings and profits as of Dec. 31, 1958	$90,100	$50,000
Separate deficit in accumulated earnings and profits as of Dec. 31, 1958	(26,000)	(30,000)
Earnings and profits for taxable year ending June 30, 1959	5,000	-------
Earnings and profits of calendar year 1959	-------	36,500
Distributions during 1959	0	0

(ii) As of June 30, 1959, M acquires from Z accumulated earnings and profits of $90,100, which amount is combined with M's own accumulated earnings and profits of $50,000; M also acquires from Z a deficit in accumulated earnings and profits of $21,600 ($26,600 minus $5,000), which amount is combined with M's own deficit of $11,900. The total deficit of $33,500 may be used only to reduce earnings and profits of M which are accumulated, or deemed to have accumulated, after June 30, 1959. Accordingly, as of December 31, 1959, M has accumulated earnings and profits of $140,100, and also has a separate deficit in accumulated earnings and profits in the amount of $15,100. These amounts are determined as follows:

Deficit of M as of Dec. 31, 1958	($30,000)
Less:	
Portion of M's undistributed earnings and profits for 1959 deemed to have accumulated as of close of June 30, 1959 ($36,500×181/365)	18,100
Deficit of M as of June 30, 1959	(11,900)
Plus:	
Deficit of Z as of June 30, 1959	(21,600)
Combined deficit of M as of close of June 30, 1959	(33,500)
Less:	
Portion of M's undistributed earnings and profits for 1959 deemed to have accumulated after June 30, 1959 ($36,500×184/365)	18,400
Separate deficit of M as of Dec. 31, 1959	(15,100)
Accumulated earnings and profits of M as of Dec. 31, 1958, and also as of June 30, 1959	50,000
Accumulated earnings and profits of Z as of Dec. 31, 1958, and also as of June 30, 1959	$90,100
Combined accumulated earnings and profits of M as of close of June 30, 1959, and also as of Dec. 31, 1959	140,100

(c) *Distribution of earnings and profits pursuant to reorganization or liquidation.* (1) If, in a reorganization to which section 381(a)(2) applies, the transferor corporation pursuant to the plan of reorganization distributes to its stockholders property consisting not only of property permitted by section 354 to be received without recognition of gain, but also of other property or money, then the accumulated earnings and profits of the transferor corporation as of the close of the date of transfer shall be computed by taking into account the amount of the distribution which is properly chargeable to earnings and profits, regardless of whether such distribution occurs before or after the close of the date of transfer.

(2) If, in a distribution to which section 381(a)(1) (relating to certain liquidations of subsidiaries) applies, the acquiring corporation receives less than 100 percent of the assets distributed by the distributor corporation, then the accumulated earnings and profits of the distributor corporation as of the close of the date of distribution shall be computed by taking into account the amount of the distribution to minority stockholders which is properly chargeable to earnings and profits, regardless of whether such distribution occurs before or after the close of the date of distribution.

§ 1.381(c)(16) Statutory provisions; carryovers in certain corporate acquisitions; items of the distributor or transferor corporation; certain obligations of distributor or transferor corporation.

SEC. 381 *Carryovers in certain corporate acquisitions.* * * *

(c) *Items of the distributor or transferor corporation.* The items referred to in subsection (a) are:

* * * * *

(16) *Certain obligations of distributor or transferor corporation.* If the acquiring corporation—

(A) Assumes an obligation of the distributor or transferor corporation which, after the date of the distribution or transfer, gives rise to a liability, and

(B) Such liability, if paid or accrued by the distributor or transferor corporation, would have been deductible in computing its taxable income,

the acquiring corporation shall be entitled to deduct such items when paid or accrued, as the case may be, as if such corporation were the distributor or transferor corporation. A corporation which would have been an acquiring corporation under this section if the date of distribution or transfer had occurred on or after the effective date of the provisions of this subchapter applicable to a liquidation or reorganization, as the case may be, shall be entitled, even though the date of distribution or transfer occurred before such effective date, to apply this paragraph with respect to amounts paid or accrued in taxable years beginning after December 31, 1953, on account of such obligations of the distributor or transferor corporation. This paragraph shall not apply if such obligations are reflected in the amount of stock, securities, or property transferred by the acquiring corporation to the transferor corporation for the property of the transferor corporation.

§ 1.381(c)(16)–1 Obligations of distributor or transferor corporation.

(a) *Deduction allowed to acquiring corporation.* (1) If, in a transaction to which section 381(a) applies, the acquiring corporation assumes an obligation of a distributor or transferor corporation which gives rise to a liability after the date of distribution or transfer and if the distributor or transferor corporation would be entitled to deduct such liability in computing taxable income were it paid or accrued after that date by such corporation, then, under the provisions of section 381(c)(16) and this section, the acquiring corporation shall be entitled to deduct such liability as if it were the distributor or transferor corporation. However, section 381(c)(16) shall not apply to an obligation which is reflected in the amount of consideration, that is, the stock, securities, or other property, transferred by the acquiring corporation to a transferor corporation or its shareholders in exchange for the property of that transferor corporation. An obligation which is so reflected in the amount of consideration will be treated as an item or tax attribute not specified in section 381(c)(16). See paragraph (b)(3) of § 1.381(a)–1. Any deduction allowed under section 381(c)(16) to the acquiring corporation shall be taken by that corporation in the taxable year ending after the date of distribution or transfer in which the liability is paid or accrued by that corporation as the case may be.

(2) For purposes of section 381(c)(16) and this section, the term "obligation" includes any type of unforeseen charge or contingent liability. Thus, the phrase "assume an obligation" includes the assumption of responsibility for a possible deductible expense or other charge. Section 381(c)(16) shall apply to obligations assumed in a transaction to which section 381(a) applies whether they are assumed by agreement of the parties or by operation of law.

(3) The acquiring corporation may not take a deduction under section 381(c)(16) in respect of an obligation of a distributor or transferor corporation which gives rise to a liability on or before the date of distribution or transfer. For purposes of section 381(c)(16), an obligation of a distributor or transferor corporation gives rise to a liability when the liability would be accruable by a taxpayer using the accrual method of accounting notwithstanding the fact that the distributor or transferor corporation is not using the accrual method of accounting. See paragraph (a)(2) of § 1.461–1.

(b) *Distribution or transfer occurring under the Internal Revenue Code of 1939.* Subject to the provisions of section 381(c)(16) and this section, a corporation which would have been an acquiring corporation under the provisions of section 381(a) and paragraph (b) of § 1.381(a)–1 if the date of distribution or transfer had occurred on or after the effective date of the provisions of subchapter C, chapter 1 of the Internal Revenue Code of 1954, applicable to a liquidation or reorganization, as the case may be, shall be entitled to take a deduction for amounts paid or accrued in any taxable year beginning after December 31, 1953, in respect of any obligation which it has assumed from a corporation which would have been a distributor or transferor corporation under the provisions of section 381(a) and paragraph (b) of § 1.381(a)–1 if the date of distribution or transfer had occurred on or after such effective date.

(c) *Examples.* The application of section 381(c)(16) may be illustrated by the following examples:

Example (1). X and Y Corporations compute their taxable income on the basis of the calendar year, and both corporations use an accrual method of accounting. On December 31, 1954, Y Corporation acquires the assets of X Corporation in a transaction to which section 381(a) applies. By reason of State law, Y Corporation is required to assume responsibility for all of the obligations for which X Corporation is then, or may become, liable. On the date of transfer, a claim for damages on account of the alleged negligence of an alleged agent is pending against X Corporation; but X Corporation has never admitted liability, and the chances for recovery are considered so remote that the contingent liability is not in any way reflected in the amount of consideration transferred by Y Corporation in exchange for the assets of X Corporation. After commencement of legal action by the claimant and in order to eliminate the possibility of injury to its business, Y Corporation settles the claim in 1958 by paying the nominal amount of $3,000. Assuming that such sum would have been deductible under section 162 if paid by X Corporation, Y Corporation may take a deduction for such sum under section 381(c)(16) and this section in computing its taxable income for 1958. If in this case, Y Corporation had transferred $500 less in stock, securities, or other property in exchange for the assets of X Corporation because of the possibility of liability arising out of the pending claim, Y Corporation would not be entitled to any deduction under section 381(c)(16) and this section upon the settlement of the claim. Similarly, if in this case, Y Corporation had transferred $10,000 less in stock, securities, or other property in exchange for the assets of X Corporation to cover any unknown or contingent liabilities, Y Corporation would not be entitled to any deduction upon the settlement of the claim.

Example (2). M and N Corporations compute their taxable income on the basis of the calendar year, and both corporations use the cash receipts and disbursements method of accounting. On December 31, 1958, N Corporation acquires the assets of M Corporation in a transaction to which section 381(a) applies. Pursuant to agreement, N Corporation assumes responsibility for all of the obligations for which M Corporation is then, or may become, liable. On December 15, 1958, M Corporation ordered and had delivered at a price of $500 fuel oil, payment for which was due on January 15, 1959. On January 15th, N Corporation pays the $500 bill incurred by M Corporation. Since M Corporation was using the cash receipts and disbursements method of accounting, it is not entitled to a deduction with respect to this fuel oil for its taxable year ending on the date of transfer because it made no payment in such taxable year. Moreover, N Corporation is not entitled to a deduction under section 381(c)(16) and this section upon paying for the fuel oil because the liability for the fuel oil arose prior to the date of transfer. It is, therefore, immaterial in this case whether or not the liability for the fuel oil was reflected in the amount of stock, securities, or other property transferred by N Corporation in exchange for the assets of M Corporation.

[F.R. Doc. 60–12077; Filed, Dec. 30, 1960; 8:47 a.m.]

[27 CFR Part 7]

LABELING AND ADVERISTING OF MALT BEVERAGES

Notice of Hearing

Correction

In F.R. Doc. 60–12014, appearing at page 13786 of the issue for Wednesday, December 28, 1960, the first paragraph in column one of page 13787 should read as follows:

Substance of proposals. To amend section 24 (27 CFR 7.24) by relettering paragraphs (b), (c), (d), (e), (f) and (g) as (c), (d), (e), (f), (g) and (h) and inserting a new paragraph (b) reading substantially as follows:

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 999]

[Docket No. AO–204–A12]

MILK IN WORCESTER, MASSACHUSETTS MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Worcester, Massachusetts marketing area. Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington 25, D.C., not later than the close of business the 7th day after publication of this decision in the FEDERAL REGISTER. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Worcester, Massachusetts, on December 1, 1960, pursuant to notice

thereof which was issued November 21, 1960 (25 F.R. 11174).

The material issues on the record of the hearing relate to:

1. Extension of the 46-cent nearby farm location differential area.

2. Need for emergency action in effecting the proposed order changes.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Extension of the 46-cent nearby farm location differential area.* That portion of Connecticut east of the Connecticut River, the State of Rhode Island, and the Massachusetts counties of Bristol and Plymouth should be included in the area to which the 46-cent nearby farm location differential is applicable under the Worcester order.

The present area to which the differential applies consists of six Massachusetts counties and seven towns in New Hampshire and Vermont. Similar nearby differentials are effective under the other New England Federal orders although they are applicable to different (but to some degree overlapping) areas. Areas within which nearby differentials are paid have been adopted in all the New England milk orders (the Boston order differential has been in effect for more than 20 years) in recognition of the patterns of supply and price in the respective markets which had been customary before regulation.

The marketing area of the Worcester order was extended to 17 additional towns on September 1, 1960 and the pool plant provisions under the New England orders were changed to provide that a plant distributing in two or more Federally-regulated markets should be pooled in the market where the greatest proportion of sales from such plant are made. At least three handlers receiving milk from dairy farms located in Connecticut became regulated pool handlers under the Worcester order as a result of the amendments. Although the dairy farmers delivering to the three handlers have farms located in an area of both the Southeastern New England and Connecticut milksheds where a 46-cent nearby differential has been paid, they are not eligible to receive the similar differential provided under the Worcester order for which other nearby producers are eligible.

Eastern Connecticut is relatively rural in nature and serves as a natural production area for the southern portion of the Worcester marketing area comprised of the towns of Southbridge, Dudley, Webster and the surrounding territory. Producers and handlers have had longstanding arrangements for the disposition of milk produced in this portion of the Worcester market supply area which are now threatened to be disrupted unless the nearby area is extended. While the affected producers could in most cases deliver their milk to pool plants under a Connecticut or Southeastern New England order and continue to receive a nearby differential, this could result in uneconomic and inefficient transportation and handling of milk.

One Worcester handler proposed that the Connecticut towns of Thompson, Union and Woodstock be added to the nearby area since this area represents his source of supply in Connecticut. Another handler with a multiple plant operation has producers with farms widely dispersed throughout that part of Connecticut east of the Connecticut River. At the expense of efficient transportation and handling of milk, this handler has shifted approximately 400 cans (about 35,000 lbs.) per day of milk which was formerly received at the Dudley, Massachusetts plant regulated under the Worcester order to his Connecticut pool plant located in Putnam, Connecticut in order that the producers involved could continue to receive the nearby differential in the manner of other producers similarly located. Such handler testified that he has been planning to close his Putnam plant in the near future and to transfer the operations at that plant to his Dudley plant under the Worcester order, but that this plan is being inhibited by the present nearby differential situation.

Retention of the milk as part of the Worcester market supply of these handlers would require them competitively to pay the equivalent of the nearby differential as an additional payment above the uniform price, thus placing them at a cost disadvantage with other Worcester handlers purchasing nearby milk.

Worcester handlers are at a disadvantage also in buying milk from farms located in Connecticut, in competition with Connecticut and Southeastern New England handlers. Extension of the nearby differential area would mitigate price differences existing among neighboring farms in Massachusetts and Connecticut from which milk is delivered to the same plant. Worcester handlers thus would be enabled to compete in the purchase of milk on reasonable terms with regulated handlers in adjacent markets. For competitive reasons and efficient marketing of milk, it is desirable that producers who could receive the nearby differential under adjacent markets be afforded similar opportunity under the Worcester order.

A cooperative association of producers operates a pool plant in the Worcester area and a pool plant in the Southeastern New England area. These plants serve as balancing and surplus disposal plants for the respective markets. During excess supply periods they provide an outlet for producer milk which for various reasons cannot be received at other pool plants. Projected construction of an expressway may force relocation of the Worcester plant. The producer association also is considering a program to combine the operations of both the Worcester and Southeastern New England plants in a new plant which could effectively serve both markets.

Need exists for better coordination of the nearby differential area under this order with similar areas under the Southeastern New England and Connecticut orders, where the milksheds overlap substantially that of the Worcester market. While the nearby differential areas of the Southeastern New England and Connecticut markets extend well into the nearby area of the Worcester milkshed, the reverse is not true at this time, i.e., the Worcester differential area does not extend as far into the nearby milkshed areas of the other two markets. The present pattern of differential areas does not permit the Worcester market equal competitive opportunity to secure milk which might well gravitate to that market as the natural market outlet. Expansion of the nearby differential area as proposed will mitigate this condition and thus assist in implementing in the Worcester market the amendments (affecting all New England orders) made effective September 1, 1960, which were designed to make possible ready shifts of milk among markets as market circumstances and the allocation of supplies require. It would not be reasonable to delay expansion of the Worcester differential area to the communities specified herein if the result would be to inhibit the potential shifting of plants or producers to effect efficient handling and to gain the best available outlets.

There is no indication that extension of the Worcester nearby differential to Eastern Connecticut, Rhode Island, and the counties of Bristol and Plymouth, Massachusetts will qualify immediately any substantial quantity of additional milk for differential payments in the Worcester market. The only plant (referred to above) with any substantial number of producers who would receive the nearby differential which is likely to be added to the Worcester market in the near future is essentially a fluid milk operation. If added, it would bring Class I sales to the Worcester pool, thus minimizing any possible reduction in the uniform price as the result of a wider application of such differentials.

Such extension will recognize the technological advances in the transportation and handling of milk which makes possible plant combinations and improved allocation of supplies among markets with overlapping milksheds. Such plant combinations also tend to make possible more efficient handling of the available supplies of nearby milk.

Although a representative of certain nearby producers testified that any substantial increase in the nearby differential area should be made only on the basis of joint consideration of such differential areas under the various New England orders, no testimony was offered which would indicate that the enlarged area adopted under the Worcester order would be improperly related to like areas under the other orders.

For these reasons the differential area should be revised as provided in this decision.

2. *Need for emergency action effecting the proposed order changes.* The changes hereinafter set forth were supported by the major cooperative association representing producers serving the market and by all handlers appearing at the hearing. Proponents requested emergency action. However, the problems outlined by proponents of the enlarged area, although significant and deserving of early solution, are not such as to provide a serious threat to the maintenance of orderly marketing conditions in the procurement area of the Worcester market.

Therefore, elimination of the recommended decision and the opportunity for exceptions thereon is not warranted.

Rulings on proposed findings and conclusions. A brief and proposed findings and conclusions were filed on behalf of an interested party. This brief, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by such party are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order regulating the handling of milk in the Worcester, Massachusetts, marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

1. Delete § 999.64(a) of the Worcester order and substitute therefor the following:

(a) With respect to milk delivered by a producer whose farm is located in Hampshire, Franklin, Hampden, Hampshire, Middlesex, Norfolk, Plymouth or Worcester Counties in Massachusetts, or in Rhode Island, or east of the Connecticut River in Connecticut or in the towns of Brookline, Greenville, Hinsdale, Hollis, Mason, or New Ipswich in New Hampshire, or Vernon, Vermont, there shall be added 46 cents per hundredweight, unless such addition gives a result greater than the Class I price pursuant to §§ 999.40 and 999.42 which is effective at the plant to which such milk is delivered in which event there shall be added an amount which will give as a result such price.

Issued at Washington, D.C., this 28th day of December 1960.

ROY W. LENNARTSON,
Deputy Administrator.

[F.R. Doc. 60-12204; Filed, Dec. 30, 1960; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[21 CFR Part 20]

ICE CREAM, FRENCH ICE CREAM, ICE MILK, AND FRUIT SHERBETS; FROZEN DESSERTS; DEFINITIONS AND STANDARDS OF IDENTITY

Notice of Proposals To Amend Standards of Identity With Regard to the Optional Ingredients Mono- and Diglycerides

Notice is given that Distillation Products Industries, Rochester, New York, has filed a petition proposing that the subparagraphs designating mono- and diglycerides as permitted optional ingredients in the definitions and standards of identity for ice cream and fruit sherbets (21 CFR 20.1(f)(3) and 20.4 (e)(3)) be amended by adding at the end of each such subparagraph the following sentence: "When a preparation having a high proportion of monoglycerides (over 90 percent) is used, it may be preblended with edible fat in an amount not exceeding 20 percent by weight of such blend and the total amount of such blend used shall not exceed 0.2 percent of the weight of the finished frozen food."

Since the standards of identity for french ice cream and ice milk (21 CFR 20.2 and 20.3) are cross-referenced to the standard for ice cream, amending the ice cream standard as proposed would have the effect of similarly modifying the standards for french ice cream and ice milk.

Recently, there have become available supplies of fat-forming fatty acids that have been tested and found to be free of chickedema factor. Such supplies are suitable for production of mono- and diglycerides of such fatty acids. In recognition of this development, the Commissioner of Food and Drugs on his own initiative hereby proposes that the sentence "Monoglycerides or diglycerides or both from the glycerolysis of edible fats" as it occurs in paragraph (f)(3) of the standard for ice cream (21 CFR 20.1 (f)(3)) and in paragraph (e)(3) of the standard for fruit sherbets (21 CFR 20.4 (e)(3)) be changed to read "Monoglycerides or diglycerides or both of fat-forming fatty acids."

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and the authority delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), all interested persons are invited to present their views in writing regarding the proposals published in this notice. Views and comments should be submitted in quintuplicate, addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., prior to the thirtieth day following the date of publication of this notice in the FEDERAL REGISTER.

Dated: December 22, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12182; Filed, Dec. 30, 1960; 8:47 a.m.]

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition has been filed by Atlas Powder Company, Wilmington 99, Delaware, proposing the issuance of a regulation to provide for the safe use of polyoxyethylene (20) sorbitan tristearate as an emulsifier in cake mixes, alone or in combination with polyoxyethylene (20) sorbitan monostearate, as follows:

(1) It is used alone in an amount not to exceed 3,200 parts per million (0.32 percent).

(2) It is used in combination with polyoxyethylene (20) sorbitan monostearate in any combination providing no more than 4,600 parts per million (0.46 percent) of polyoxyethylene (20) sorbitan monostearate and no more than 3,200 parts per million (0.32 percent) of polyoxyethylene (20) sorbitan tristearate and providing a total combination not exceeding 4,600 parts per million (0.46 percent).

Dated: December 22, 1960.

[SEAL] J. K. KIRK,
Assistant to the Commissioner of Food and Drugs.

[F.R. Doc. 60-12181; Filed, Dec. 30, 1960; 8:47 a.m.]

FEDERAL AVIATION AGENCY

[14 CFR Parts 600, 601, 608]

[Airspace Docket No. 60-WA-273]

FEDERAL AIRWAYS, CONTROL AREAS, CONTROL ZONES AND RESTRICTED AREAS

Revocation, Designation and Alteration of Restricted Areas, Designation of Control Zone, Revocation and Alteration of Control Area Extensions and Alteration of Federal Airway

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 and §§ 600.-6267, 601.1005, and 608.18 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the revocation of Jacksonville, Fla., Restricted Areas R-161A, R-161B, R-161C, and R-161D; designation of Restricted Areas at Stevens Lake, Putnam, and Switzerland, Fla.; and the alteration of Pinecastle, Fla., Restricted Area R-165. The Jacksonville Restricted Area R-161A is an area of approximately 1,403 square miles designated for bombing, gunnery and rocket training from the surface to unlimited. Restricted Area R-161B is an area of approximately 113 square miles designated for high density all-weather training from 5,000 feet MSL to unlimited. Restricted Area R-161C is an area of approximately 64 square miles designated for high density all-weather training from 8,000 feet MSL to unlimited. Restricted Area R-161D is an area of approximately 1,070 square miles designated for high density all-weather training from 15,000 feet MSL to unlimited. These areas comprise a total of approximately 2,650 square miles and are designated for continuous use. The controlling agency is Commander Fleet Air, NAS, Jacksonville.

A review by the FAA of the utilization of these areas indicates that an excessive amount of special use airspace is assigned to contain the aeronautical activity presently conducted therein by the Department of the Navy. This Notice represents the culmination of more than one year of intensive study of the activities in the R-161 complex and informal discussions between this Agency and the Navy in an attempt to arrive at a mutually satisfactory redescription of the restricted airspace needed to serve Navy requirements in the vicinity of Jacksonville. We have been unable to reach agreement primarily due to the contention of the Department of the Navy representatives that the restricted airspace which would be revoked (as outlined herein) is required to encompass flight training and terminal area flight operations to and from the Navy airfields within this complex. Navy representatives have pointed out the high volume of such flight operations and the fact that introduction of other air traffic into this area could result in delays to and disruption of such training activities, possibly resulting in these training programs falling behind the normal schedule. It is contrary to the policy of the Federal Aviation Agency and to the public interest to designate segments of restricted airspace to protect terminal area flight operations and routine flight training activities from interference and air traffic delays which are caused by the transit of the navigable airspace by other users. The normally acceptable level of air safety is properly obtained through adherence to applicable regulations and rules of good operating practice, rather than by limiting or otherwise restricting the flow of traffic. It is notable in this regard that none of the military services chooses to confine operations of this nature or volume solely to restricted airspace. Therefore, it is proposed to replace the R-161 complex with new Restricted Areas of smaller dimensions designated on a joint use basis, and reduce the size of the Pinecastle Restricted Area (R-165). This would provide sufficient airspace wherein the hazardous activities conducted by the Department of the Navy, NAS Jacksonville could be accommodated. These restricted areas are described as follows:

Stevens Lake, Fla., Restricted Area

Description by geographical coordinates. Within a 3 nautical mile radius centered at Lat. 29°53'20" N., Long. 82°01'25" W., and within ½ nautical mile either side of the 038° and 120° True bearings from the center extending from the 3 nautical mile radius to 7 nautical miles northeast and southeast of the center, excluding that area more than 2 statute miles from the center lying within 1 statute mile either side of the 220° True bearing from the center.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. 0800 to 1630 e.s.t., Monday through Friday.

Controlling agency. Federal Aviation Agency, Jacksonville, Fla., Air Route Traffic Control Center.

Putnam, Fla., Restricted Area

Description by geographical coordinates. Within a 3 nautical mile radius of Lat. 29° 47'00" N., Long. 81°41'00" W.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. 0800 to 1600 e.s.t., daily.

Controlling agency. Federal Aviation Agency, Jacksonville, Fla., Air Route Traffic Control Center.

Switzerland, Fla., Restricted Area

Description by geographical coordinates. Within a 3 nautical mile radius of Lat. 30° 03'00" N., Long. 81°37'00" W., excluding the portion east of a line extending from Lat. 30°05'30" N., Long. 81°35'10" W. to Lat. 30° 00'50" N., Long. 81°34'45" W.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. 0800 to 1600 e.s.t., daily.

Controlling agency. Federal Aviation Agency, Jacksonville, Fla., Air Route Traffic Control Center.

The Switzerland Restricted Area would cause a reduction in the normal width of VOR Federal airway No. V-267 of one mile (a similar situation presently exists where R-161A overlaps this airway). However, this situation would only be temporary inasmuch as, upon completion of construction by the Navy of a replacement target complex in the vicinity of Rodman, Fla., approximately January 1, 1962, the Switzerland Restricted Area would be revoked and a new restricted area based on the Rodman target substituted therefor.

The Pinecastle, Fla., Restricted Area R-165 is presently designated within a six nautical mile radius of Lat. 39°06'52" N., Long. 81°42'55" W., from the surface to unlimited. Its time of designation is continuous. A review of this area indicates that the present area could be reduced and still adequately accommodate the activities conducted in R-165. This area would be designated as follows:

Pinecastle, Fla., Restricted Area R-165

Description by geographical coordinates. Within a 3¼-nautical mile radius of Lat. 29°06'52" N., Long. 81°42'55" W., with extensions ½ nautical mile either side of the 137° and 317° True bearings from the center, extending from the 3¼-mile radius to 7 nautical miles southeast and northwest of the center.

Designated altitudes. Surface to Flight Level 350.

Time of designation. 0800 to 2200 e.s.t., daily.

Controlling agency. Commander Fleet Air, NAS, Jacksonville.

In addition to the alteration of Restricted Areas near Jacksonville, the Federal Aviation Agency has under consideration the designation of a control zone southwest of Jacksonville and the redesignation of the Jacksonville control area extension (§ 601.1005).

The Jacksonville, Fla., control zone would be designated within a 5-mile radius of Jacksonville NAS (Lat. 30°14'00" N., Long. 81°41'00" W.), within a 5-mile radius of Cecil, Fla., NAS (Lat. 30°13'00" N., Long. 81°52'45" W.), within 2 miles either side of the 271° True radial of the Cecil VOR extending from the Cecil NAS 5-mile radius zone to 12 miles west of the VOR, within 2 miles either side of the 181° True radial of the Cecil VOR extending from the Cecil NAS 5-mile radius zone to 12 miles south of the VOR, within 2 miles either side of the 084° True radial of the Cecil VOR extending from the Cecil NAS 5-mile radius zone to the Jacksonville NAS 5-mile radius zone, within 2 miles either side of the 271° True radial of the Jacksonville NAS, TACAN extending from the Jacksonville NAS 5-mile radius zone to the Cecil NAS 5-mile radius zone, within 2 miles either side of the 097°, 127° and 231° True radials of the Jacksonville NAS TACAN extending from the Jacksonville NAS 5-mile radius zone to 6 miles east, southeast and southwest of the TACAN.

The Jacksonville, Fla., control area extension would be redesignated within 5 miles either side of the 064° True radial of the Jacksonville VOR extending from the VOR to 20 miles northeast and that airspace southwest of Jacksonville bounded on the north by VOR Federal airway No. 22, on the east by VOR Federal airway No. 267, on the south and west by a line beginning at Lat. 29°25'25" N., Long. 81°31'25" W., extending northwest to Lat. 29°33'50" N., Long. 81°47'50" W., thence southwest to Lat. 29°20'50" N., Long. 81°57'00" W., thence south along Long. 81°57'00" W., to the northern boundary of VOR Federal airway No. 159 thence along the northern boundary of Victor 159 to its intersection with VOR Federal airway No. 157 at Ocala, Fla., thence via the eastern boundary of VOR Federal airway No. 157 to its intersection with Victor 22.

The above control zone and control area extension would provide protection for aircraft executing prescribed instrument approach and departure procedures at the Cecil and Jacksonville Naval Air Stations and terminal operations within the greater Jacksonville terminal area.

In addition, the Ocala (§ 601.1431) and the Gainesville, Fla. (§ 601.1428) control area extensions would be revoked since the Jacksonville control area extension would provide adequate protection for IFR operations at the Gainesville Municipal Airport and the Ocala, Taylor Airport. The description of VOR Federal airway No. 267 would be amended to provide reference to the Switzerland Restricted Area in lieu of R-161A.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 28, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-12175; Filed, Dec. 30, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-181]

FEDERAL AIRWAYS, CONTROL AREAS AND REPORTING POINTS

Revocation

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Parts 600 and 601 of the regulations of the Administrator, the substance of which is stated below.

Blue Federal airway No. 39 extends from Philipsburg, Pa., to Elmira, N.Y. The Federal Aviation Agency is considering revoking Blue 39. It is the policy of this Agency to revoke L/MF airways wherever adequate VOR airways are available, and it appears that the route from Philipsburg to Elmira is adequately served by VOR Federal airway No. 35. In addition, the Federal Aviation Agency IFR peak-day airway traffic survey for the period July 1, 1959, through June 30, 1960, shows no aircraft operations on Blue 39. Therefore, it appears that the retention of this airway is unjustified as an assignment of airspace. Accordingly, the Federal Aviation Agency proposes to revoke Blue 39 and its associated control areas. Adoption of this proposal would not necessarily result in discontinuance of the low frequency navigational aids associated with Blue 39. Any proposal to discontinue one or more of these aids would be processed in accordance with current Agency procedures. In addition, § 601.4639, relating to reporting points on Blue 39, would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on December 23, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-12155; Filed, Dec. 30, 1960; 8:46 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-FW-93]

CONTROL AREAS

Designation of Control Area Extension

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.-13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a control area extension at Deming, N. Mex., to include the area within a 40-mile radius of the Deming VOR extending clockwise from a line 5 miles northwest of and parallel to the 023° True radial to a line 5 miles southeast of and parallel to the 058° True radial of the VOR and bounded on the southwest by the 148° and 293° True radials of the Deming VOR. This control area extension would provide protection for aircraft executing the prescribed high altitude instrument approach procedure based on the Deming VOR.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York, Avenue N.W., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air

Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on December 23, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-12151; Filed Dec. 30, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-NY-133]

CONTROL AREAS

Designation of Control Area Extension

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to Part 601 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration the designation of a control area extension at Du Bois, Pa., to include the area within 8 miles northwest and 5 miles southeast of the 056° True bearing from the Du Bois, Pa., radio beacon extending from the radio beacon to 17 miles northeast, within 5 miles either side of the 238° True bearing from the Du Bois radio beacon extending from the radio beacon to the northern boundary of VOR Federal airway No. 6, and within 5 miles either side of the 148° True bearing from the Du Bois radio beacon extending from the radio beacon to the northern boundary of VOR Federal airway No. 6. This proposed control area extension would provide protection for aircraft operating under instrument flight rule conditions while executing prescribed instrument approach procedures at the Du Bois-Jefferson County Airport and while transitioning from the Brookville, Pa., and the Rockton, Pa., intersections to the Du Bois radio beacon prior to commencing approach procedures.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C. on December 23, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-12152; Filed, Dec. 30, 1960; 8:45 a.m.]

[14 CFR Part 601]

[Airspace Docket No. 60-KC-86]

CONTROL AREAS AND CONTROL ZONES

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering amendments to §§ 601.2075 and 601.1034 of the regulations of the Administrator, the substance of which is stated below.

The Springfield, Mo., control zone is presently designated within a 5-mile radius of the Springfield Municipal Airport and within 2 miles either side of the southeast and northwest courses of the Springfield radio range extending 10 miles northwest of the radio range and within 2 miles either side of the 019° and 199° True radials of the Springfield VOR extending from the Springfield Municipal Airport to a point 10 miles northeast of the VOR. The Springfield, Mo., control area extension is presently designated as all that area within a 25-mile radius of the Springfield radio range station.

The Federal Aviation Agency has under consideration the alteration of the Springfield control zone and the Springfield control area extension as follows:

1. Revoke the northwest control zone extension based on the Springfield radio range. This extension is no longer required since the prescribed instrument approach procedures are being changed so that protection would be provided by the 5-mile radius zone.

2. Alter the northeast control zone extension based on the Springfield VORTAC (formerly VOR) 019° and 199° True radials by terminating it at the VORTAC and by changing the designation from the 199° to the 200° True radial. The portion of this extension northeast of the VORTAC is in excess of that required for the protection of aircraft executing the prescribed VORTAC instrument approach procedure. The alignment of the control zone extension would be changed to coincide with the final approach course.

3. Redesignate the Springfield control area extension as the area within a 23-mile radius of the Springfield Airport extending clockwise from the western boundary of VOR Federal airway No. 71 southeast of the airport to the eastern boundary of VOR Federal airway No. 63 southwest of the airport. This revised control area extension in conjunction with the control areas associated with the airways converging at Springfield would provide adequate protection for aircraft executing prescribed instrument approach procedures to the Springfield, Mo., Airport.

If these actions are taken, the Springfield, Mo., control zone would be redesignated within a 5-mile radius of the Springfield Airport (Lat. 37°14'35" N, Long. 93°23'20" W.), and within 2 miles either side of the 200° True radial of the Springfield VORTAC extending from the 5-mile radius zone to the VORTAC. The Springfield control area extension would be redesignated as the area south of Springfield between VOR Federal airways No. 63 and 71 within a 23-mile radius of the Springfield, Mo., Airport (Lat. 37°14'35" N, Long. 93°23'20" W).

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Field Division, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Field Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Field Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 23, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-12153; Filed, Dec. 30, 1960; 8:45 a.m.]

[14 CFR Parts 600, 601]

[Airspace Docket No. 60-NY-146]

FEDERAL AIRWAYS AND CONTROL AREAS

Alteration

Pursuant to the authority delegated to me by the Administrator (14 CFR 409.13), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6004 and 601.1067 of the regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 4 extends in part from Louisville, Ky., to Lexington, Ky. Victor 4 north alternate between these two cities is aligned via the intersection of the Louisville VORTAC 083° and the Lexington VOR 294° True radials. The Lexington control area extension is designated as the airspace within a 40-mile radius of the Lexington VOR extending clockwise from VOR Federal airway No. 4, east of Lexington to VOR Federal airway No. 4 south alternate, west of Lexington; and within a 25-mile radius of the Lexington VOR extending clockwise from VOR Federal airway No. 4 south alternate, west of Lexington to VOR Federal airway No. 4, east of Lexington.

The Federal Aviation Agency has under consideration a proposal by the Air Transport Association of America to alter Victor 4 north alternate from Louisville to Lexington and the Lexington control area extension. It is proposed to redesignate Victor 4 north alternate from the Louisville VORTAC via the intersection of the Louisville VORTAC 081° and the Lexington VOR 303° True radials; to the Lexington VOR. This alteration would align Victor 4 north alternate over the Capitol City Airport, Frankfort, Ky., thereby facilitating the air traffic management of aircraft arriving and departing the Capitol City Airport from the Louisville and Lexington terminals. The control areas associated with Victor 4 north alternate are so designated that they would automatically conform to the altered segment. Accordingly, no amendment relating to such control areas would be necessary.

Concurrently, it is proposed to alter the Lexington control area extension to include the area north of Frankfort, bounded on the northeast by VOR Federal airway No. 97 west alternate, on the south by VOR Federal airway No. 4 north alternate, and on the northwest by VOR Federal airway No. 502. This addition to the Lexington control area extension would provide protection for aircraft executing prescribed instrument approach procedures at the Capitol City Airport.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Management Division, Federal Aviation Agency, Federal Building, New York International Airport, Jamaica 30, N.Y. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Air Traffic Management Division Chief, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue N.W., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Air Traffic Management Division Chief.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348).

Issued in Washington, D.C., on December 23, 1960.

CHARLES W. CARMODY,
Chief, Airspace Utilization Division.

[F.R. Doc. 60-12154; Filed, Dec. 30, 1960; 8:46 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 3]

[Docket No. 13905 (RM-202); FCC 60-1552]

TABLE OF ASSIGNMENTS

Television Broadcast Stations (Columbia, Camden, and Lancaster, S.C.)

1. Notice is hereby given of rule making in the above-entitled matter.

2. The Commission has before it for consideration a petition filed October 12, 1960, by Palmetto Radio Corporation, licensee of UHF Station WNOK-TV, authorized to operate on Channel 67+, Columbia, South Carolina, for rule making to amend Section 3.606, Table of Assignments, Television Broadcast Stations, as follows:

Location	Channels	
	Present	Proposed
Columbia, S.C.	10-, *19+, 25-, 67+	10-, 14, 25-, *31-
Camden, S.C.	14	19+
Lancaster, S.C.	31-	67+

Petitioner also requests that the Commission direct it to show cause why its outstanding authorization for operation on Channel 67+ should not be modified to specify operation on Channel 14.

3. In support of its requests, petitioner asserts that:

(a) With the exception of Channel 67+, now occupied by petitioner, none of the channels which would be reallocated under this proposal is occupied by an operating station, so that the requested reallocation would not cause any loss of service; there never has been an operating station on Channel 14 in Camden, Channel 31- in Lancaster, or on Channel *19+ in Columbia, and a construction permit for a television station to operate on Channel 14 in Camden was recently cancelled by the Commission after it had noted that primary among the reasons given by the permittee for the delay in construction was its belief that the proposed station could not succeed financially under the present economic conditions in Camden; there is no immediate prospect of the use of either of the channels assigned to Camden or Lancaster, communities of approximately 7,000 each according to preliminary 1960 Census figures, and if applications for stations should be filed in the future, the needs of these small communities could be served by operations on Channels 19+ and 67+; no application has been filed for the use of Channel *19+ in Columbia so that the transfer of this channel to Camden and the subsequent designation of Channel 31- as Columbia's noncommercial educational channel would cause no inconvenience or hardship, and future applications for such a station could be adequately accommodated on Channel 31-;

(b) There is no application pending for the use of any of the channels which would be shifted under the proposal;

(c) The proposal is in complete compliance with the applicable minimum separation requirements specified in § 3.610 of the Commission's rules.

(d) Petitioner has filed comments (which it considers its first and basic proposal) in Docket No. 13340 in which it requested that the Commission allocate at least one additional VHF channel to Columbia and that petitioner be permitted to transfer its operations to a VHF channel so allocated; but in view of the fact that implementation of that proposal may not occur, or, that, if occurring, it may not occur until the passage of a great deal of time, petitioner is requesting the reallocation of channels in the instant rule-making proceeding;

(e) Before the filing of the aforementioned comments by petitioner in Docket No. 13340, First Carolina Corporation filed an application for a construction permit to construct a new television station on UHF Channel 25- in Columbia, and, since this would seriously jeopardize the survival of petitioner on high-band UHF Channel 67+, petitioner already being in competition with an established local VHF station and as many as ten VHF stations serving at least part of its service area, petitioner filed simultaneously with the instant petition an application for Channel 25-;

(f) If petitioner obtains a VHF channel under proceedings in Docket No. 13340, or if it obtains authority to operate on Channel 14 in the instant pro-

ceeding, it will withdraw its application for Channel 25—, but if neither of the aforementioned contingencies occurs, petitioner will pursue the appliaction for Channel 25— and endeavor to show it to be in the public interest to authorize their use of that channel.

4. Although not timely filed, First Carolina Corporation has herein filed comments in response to "Notice of Petition for Rule Making Filed" which favor the petition on the grounds that granting it will remove the present conflict involving Channel 25—, will provide a third television service to Columbia and will improve the UHF service to that city.

5. The Commission is of the view that rule making proceedings should be instituted in this matter in order that all interested parties may submit their views and relevant data.

6. If it is determined by the Commission that the rule amendments proposed herein will serve the public interest, the Commission will take such further action as may be appropriate with respect to outstanding authorizations. We accordingly defer action upon petitioner's request for issuance of an order to show cause.

7. Authority for the adoption of the amendment proposed herein is contained in section 4(i), 303, 307(b) and 316 of the Communications Act of 1934, as amended.

8. Pursuant to applicable procedures set out in § 1.213 of the Commission's rules, interested persons may file comments on or before January 9, 1961, and reply comments on or before January 19, 1961. All submissions by parties to this proceeding or by persons acting in behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings.

9. In accordance with the provisions of § 1.54 of the Commission's rules and regulations, an original and 14 copies of all written comments and statements shall be furnished the Commission.

Adopted: December 21, 1960.

Released: December 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12201; Filed, Dec. 30, 1960; 8:49 a.m.]

Notices

CIVIL AERONAUTICS BOARD

[Docket 11885]

RUTAS AEREAS DE COLOMBIA LIMITADA

Notice of Hearing

In the matter of the application of Rutas Aereas de Colombia Limitada for a foreign air carrier permit under section 402 of the Federal Aviation Act of 1958, as amended.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding is assigned to be held on January 10, 1961, at 10:00 a.m., e.s.t., in Room 1028, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Richard A. Walsh.

Dated at Washington, D.C., December 28, 1960.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F.R. Doc. 60-12202; Filed, Dec. 30, 1960; 8:49 a.m.]

ATOMIC ENERGY COMMISSION

NS SAVANNAH

Notice of Public Hearing

The NS *Savannah*, the first merchant vessel to be powered by atomic energy, has been undertaken as a joint project of the Atomic Energy Comission and the Maritime Administration pursuant to the Act of July 30, 1956, 70 Stat. 731, 46 U.S.C. 1206. The Atomic Energy Commission has the responsibility to provide a developed nuclear power plant for the NS *Savannah* and to assure the protection of the public health and safety in construction and operation of the nuclear power plant. This program, being performed under contract with the Commission, is exempt from the licensing requirements and procedures of the Atomic Energy Act of 1954, as amended. However, the Commission finds that, prior to initial loading of nuclear fuel in the NS *Savannah*, a public hearing should be held to permit public participation in the Commission's review of nuclear safety aspects of the vessel's construction, test and demonstration program.

Accordingly, and pursuant to section 161(c) of the Atomic Energy Act of 1954, as amended, notice is hereby given that a non-adjudicatory public hearing will be held at 10:00 a.m. on February 1, 1961, in the Auditorium of the Atomic Energy Commission at Germantown, Maryland. The hearing will be conducted by a presiding officer to be designated by the Chief Hearing Examiner of the Commission.

At the hearing, the presiding officer will receive testimony as to whether there is reasonable assurance that the NS *Savannah* nuclear power plant may be safely fueled and operated for test and demonstration purposes, at one or more locations, in accordance with the procedures set forth in the Final Safeguards Report for the NS *Savannah*. The hearing will cover the following: (1) reactor fueling, startup, and zero and low-level tests; (2) test operations at power; and (3) sea trials and propulsion plant demonstrations.

Testimony will be received from the following contractors: George C. Sharp, Inc. (naval architects); The Babcock & Wilcox Company (reactor designer and builder); and the New York Shipbuilding Corporation (shipbuilder and operator during test and demonstration program). Testimony will also be received from the Joint AEC-Maritime Group responsible for administration of the Savannah project, from the Atomic Energy Commission's Division of Compliance, from the Hazards Evaluation Staff of the Commission's Division of Licensing and Regulation and from the following bodies: Oak Ridge National Laboratory, United States Coast Guard, Public Health Service, and the American Bureau of Shipping.

Following the examination of the witnesses who present the above testimony, and any cross-examination by the presiding officer and by counsel for the above witnesses, statements will be received from interested members of the public who request permission to testify. These statements may be either written or oral; oral presentations shall not exceed 30 minutes. There will not be cross-examination or formal intervention by members of the public. Upon conclusion of the hearing, the record will be held open for an additional fifteen days for the filing of written statements by any member of the public.

When the hearing record is closed, the presiding officer will permit the participants to submit proposed findings of fact based upon the record. He will then transmit the entire hearing record to the Commission, and will make a recommended report thereon to the Commission, concerning which the participants may submit comments to the Commission. To the extent practicable, the Hearing Examiner will utilize the procedure provided in 10 CFR Part 2 of the Commission's rules of practice, with respect to the procedure provided in this paragraph. All hearings, papers, and documents in this proceeding shall be public, and a copy thereof shall be filed in the Public Document Room. Upon consideration of the hearing record and such additional information as it deems necessary and appropriate, the Commission will decide whether to authorize startup, test operation and sea trials, and if so, will prescribe such conditions as may be warranted.

Notice is hereby given that the Final Safeguards Report submitted by the contractors and the reports of the Atomic Energy Commission's Advisory Committee on Reactor Safeguards in this matter are available for public inspection at the AEC Public Document Room, 1717 H Street NW., Washington, D.C. Requests by members of the public to submit written or oral statements at the public hearing, and written statements offered for the record, may be submitted by mailing to the Secretary, Atomic Energy Commission, Washington 25, D.C.

Dated at Germantown, Md., this 27th day of December 1960.

For the Atomic Energy Commission.

WOODFORD B. MCCOOL,
Secretary.

[F.R. Doc. 60-12141; Filed, Dec. 30, 1960; 8:45 a.m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

BARBER-FERN-VILLE LINES ET AL.

Notice of Agreement Filed for Approval

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U.S.C. 814):

Agreement No. 8558, between Barber-Fern-Ville Lines, N.V. Stoomvaart Maatschappij "Nederland", Koninklyke Rotterdamsche Lloyd N.V., Hellenic Lines Limited, Isthmian Lines, Inc., and Mitsui Steamship Co., Ltd., common carriers by water in the trade from Red Sea and Gulf of Aden ports to U.S. Atlantic and Gulf ports, provides that the parties may consult and agree on rates, charges, classifications and related tariff matters to be charged or observed by them in the trade.

Interested parties may inspect this agreement and obtain copies thereof at the Office of Regulations, Federal Maritime Board, Washington, D.C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to this agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

By order of the Federal Maritime Board.

Dated: December 28, 1960.

GEO. A. VIEHMANN,
Assistant Secretary.

[F.R. Doc. 60-12167; Filed, Dec. 30, 1960; 8:46 a.m.]

UNIVERSITY OF MICHIGAN

National Bureau of Standards

NOTICE OF NEW TIMING CODE ON WWV

On January 1, 1961, the National Bureau of Standards will commence a regular broadcast from WWV of a timing code which gives the day, hour, minute and second (Universal Time) and which is locked in phase to the frequency and time signals. The code is a 36 binary digit 100 pulses per second code carried on 1000 cycles per second modulation. A complete time frame is one second. The code will be broadcast for 1 minute intervals and 10 times per hour. Except at the beginning of each hour, it immediately follows the standard frequencies of 440 and 600 cycles per second. The code was broadcast experimentally during the interval, April to August 1960, and is described in "Experimental Timing Code Added to WWV Broadcasts," NBS Technical News Bulletin, Vol. 44, No. 7, pp. 114–115, July 1960.

R. D. HUNTOON,
Deputy Director,
National Bureau of Standards.

[F.R. Doc. 60-12188; Filed, Dec. 30, 1960; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 13877; FCC 60M-2180]

AUBURN BROADCASTING CO., INC. (WAUD)

Order Scheduling Prehearing Conference

In re application of Auburn Broadcasting Company, Incorporated (WAUD), Auburn, Alabama, Docket No. 13877, File No. BP-13077; for construction permit.

The Hearing Examiner having under consideration the above-entitled proceeding;

It is ordered, This 22d day of December 1960, that all parties, or their attorneys, who desire to participate in the proceeding, are directed to appear for a prehearing conference, pursuant to the provisions of § 1.111 of the Commission's rules, at the Commission's offices in Washington, D.C., at 2:00 p.m., January 11, 1961.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12190; Filed, Dec. 30, 1960; 8:48 a.m.]

[Docket No. 12676 etc.; FCC 60M-2182]

FOUR STATES BROADCASTING CO. ET AL.

Order Re Procedural Dates

In re applications of John L. Miller, tr/as the Four States Broadcasting Company, Halfway, Maryland, Docket No. 12676, File No. BP-11227; et al., (GROUP I), Docket Nos. 12677-12679, 13782-13794; for construction permits.

The Hearing Examiner having under consideration a motion for extension of time and continuances, requesting postponement of various procedural dates, filed by Miners Broadcasting Service, Inc., on December 13, 1960;

It appearing that no opposition to this motion has been filed by any party and good cause has been shown for the grant of the motion;

It is ordered, This 23d day of December 1960, that the above motion is granted, and the dates designated for various procedural steps herein are postponed as follows:

Group I	From—	To—
Exchange of engineering exhibits	Dec. 28, 1960	Jan. 30, 1961
Notification of witnesses, if any, desired for cross-examination	Feb. 2, 1961	Mar. 2, 1961
Hearing on engineering issues	Feb. 14, 1961	Mar. 14, 1961
Exchange of lay exhibits, including Section 307(b) material	Feb. 21, 1961	Mar. 21, 1961
Notification of witnesses, if any, desired for cross-examination	Feb. 28, 1961	Mar. 28, 1961
Hearing on issues other than engineering	Mar. 6, 1961	Apr. 4, 1961

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12192; Filed, Dec. 30, 1960; 8:48 a.m.]

[Docket Nos. 13338, 13870; FCC 60M-2176]

DIXIE RADIO, INC., AND HARRY LLEWELLYN BOWYER, JR.

Order for Prehearing Conference

In re applications of Dixie Radio, Inc., Brunswick, Georgia, Docket No. 13338, File No. BP-13854; Harry Llewellyn Bowyer, Jr., Brunswick, Georgia, Docket No. 13870, File No. BP-12507; for construction permits.

On the Hearing Examiner's own motion: *It is ordered,* This 22d day of December 1960, that all parties, or their counsel, in the above-entitled proceeding are directed to appear for a prehearing conference pursuant to the provisions of § 1.111 of the Commission's rules, on January 12, 1961, at 10:00 a.m., in the offices of the Commission at Washington, D.C.

The prehearing conference will be concerned with the pertinent topics specified in § 1.111 of the rules and such other matters as will be conducive to the expeditious conduct of the hearing.[1] In this connection, attention is also called to the provisions of the Commission's "Hearing Manual for Comparative Broadcast Proceedings" which are applicable to Issue 6 in this proceeding.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12191; Filed, Dec. 30, 1960; 8:48 a.m.]

[Docket No. 13900; FCC 60-1526]

GENERAL TELEPHONE COMPANY OF CALIFORNIA

Memorandum Opinion and Order Designating Matter for Hearing on Stated Issues

In re application of General Telephone Company of California, Docket No. 13900, File No. 557-C2-P-61; for a construction permit to establish a new two-way common carrier station in the Domestic Public Land Mobile Radio Service at Santa Barbara, California (Station KME440).

1. Sylvan B. Malis, d/b as Coast Mobilphone Service (hereinafter called Protestant), licensee of Domestic Public Land Mobile Radio station KMD348 in Santa Barbara, California, on November 23, 1960 timely filed herein a protest and petition for reconsideration pursuant to sections 309(c) and 405, respectively, of the Communications Act of 1934, as amended, with respect to the grant without hearing, on October 18, 1960, of the above indicated application of General Telephone Company of California (hereinafter called General). The contested application is for a construction permit to provide a new two-way communication service in the Domestic Public Land Mobile Radio Service at Santa Barbara, California. General timely filed its opposition on December 5, 1960, and Protestant timely filed its reply thereto on December 13, 1960.

THE PROTEST

2. In support of his protest, Protestant asserts that he is a party in interest within the meaning of section 309(c) of the Communications Act, since Protestant is a miscellaneous common carrier[1] licensee of two-way station KMD348 in the Domestic Public Land Mobile Radio Service at Santa Barbara, California and that the Commission's grant of the captioned matter adversely affects the Protestant in that it authorizes a new two-way radio communications service which will be in direct competition with Protestant's station. Protestant alleges that station KMD348 is, at present, operating at only one-third its capacity in spite of active efforts to expand service and increase the number of subscribers; that General has failed to make any specific showing of public need for additional facilities; that General's proposed service would only divide the market, diminish Protestant's revenues, and threaten the continuation of service by station KMD348, which can only result in deterioration of service to the public. Protestant further alleges that General does not have a right to use the proposed transmitter site on Lavigia Hill in Santa Barbara, as specified in General's application; that the Public Utilities Commission of the State of California instituted proceedings, on September 1, 1960, in its Case No. 6945, to determine whether the miscellaneous common carriers operating in the Domestic Public Land Mobile Radio Services should be brought under the regulation of that Commission; that the staff of the State Commission has indicated that the miscellaneous Domestic Public Land Mobile Radio Service carriers should be treated as natural monopolies, having the right to a certain degree of area exclusivity; that, as a result of the California Public Utilities Commission action, the City Council of Santa Barbara, on October 18, 1960, postponed until November 22, 1960 considerations of General's request to use the proposed transmitter-antenna site.

3. Protestant requests that the application be stayed and designated for hearing.

OPPOSITION TO THE PROTEST

4. General asserts that it is a "telephone corporation" within the meaning of section 234 of the Public Utilities Code of California and is now providing local telephone service to certain communities in Southern and Central California, including the City and County of Santa Barbara, under a certificate of public convenience and necessity issued by the State Public Utilities Commission; that the rates, charges, practices, classifications and regulations for the proposed mobile telephone service will be as set forth in General's tariff now on file with the State Public Utilities Commission; that General's service will afford both a "general" and "dispatch" service as defined in § 21.1[2] of our rules and will be a part of, and interconnected with, the toll and exchange network of General and its connecting carriers; that Protestant offers only a "dispatch" service which is not interconnected with the toll and exchange network of any landline telephone company; that General will, thus, provide a needed service which Protestant cannot offer; that General's survey of the area has indicated a need for the type of service proposed by General; that the order of the California Public Utilities Commission in Case No. 6945 is directed against all miscellaneous common carriers in California, including Protestant; that neither General nor any other landline company has been made a party to this proceeding; that the California case is, in no way, concerned with the principle of exclusivity of service between miscellaneous common carriers, on the one hand, and landline telephone companies, on the other; that the California Commission staff did not recommend exclusivity of service areas as between miscellaneous common carriers and landline telephone companies but, rather, predicated the need for a rule of exclusivity on the limited number of frequencies available for public mobile use in most communities; that, under § 21.501 (b) and (c) of our rules, separate and distinct groups of frequencies are authorized for miscellaneous common carriers and landline telephone companies; that no final decision by the California Public Utilities Commission has been made; and that a delay of General's proposed service, pending ultimate resolution of the issues before the California Commission, would not be in the public interest; that, as a result of a meeting of the City Council of Santa Barbara on November 22, 1960, relative to General's request to use the Vic Trace Reservoir site as its transmitter-antenna location, the City Clerk, by letter of November 23, 1960, advised General that the proposed site is on city owned property and is currently zoned for residential only (even though several other transmitters, including Protestant's are located in the same area); that a special use permit is required and that the City Council will withhold further consideration of the matter until a recommendation is received on the conditional use permit. General indicated that it will file, within a few days, application for the conditional use permit and that, should such permit be denied, it will then seek appropriate modification of its construction permit. For these reasons, General requests that the Protest be denied, or, in the alternative, that the Commission not stay the grant pending hearing, if a hearing is found necessary.

5. The reply to the opposition, filed on December 13, 1960, has also been considered in the disposition hereof.

DISPOSITION OF THE PROTEST

6. Upon the allegations of adverse economic impact, we find and conclude that Protestant is a party in interest. The matters relating to competition appear to require determination upon a hearing record, consistent with views set forth in the next paragraph. The question relative to the antenna site also requires exploration.

7. General's request that the captioned grant now be stayed pending disposition of the protest must be granted. The record now before us shows that General will offer both a "general" and "dispatch" communication service which will be interconnected with the toll and exchange network of General and connecting carriers (which service Protestant does not afford) and that General's survey of the area showed an interest in such service by potential users. Accordingly, it appears that there is an implicit, if not explicit, public need for such service. It further appears that the Commission, in its Report and Order adopted April 27, 1949 in the matter of general mobile service (FCC Docket Nos. 8658, 8965, 8972, 8973, 8974, 9001, 9018, 9046 and 9047) stated, in part, in connection with the disposition of Docket No. 8658—

> The Commission has, in the disposition of this docket and the related proceedings, made provision for a host of non-common carrier communications services, including the taxicab service, as well as providing for the development of competitive communications common carrier systems. In the latter case, we have taken particular care to provide a family of frequencies within which the development of common carrier mobile radio systems by enterprises other than existing telephone companies may take place. These dispositions have been effected advisedly, and with the purpose, among others, of fostering the development of competing systems, techniques, and equipments.

The principles announced in the above quoted Docket are implemented in § 21.501 (b) and (c) of the rules applicable to this service, wherein separate and exclusive groups of frequencies are allocated for miscellaneous common carriers and landline telephone companies. Our stated purpose of fostering the development of competing systems, techniques and equipment has, in the light of experience since 1949, proved to be salutary and the pleadings in the matter now before us do not alter this view. For all of these reasons, we find and conclude that the public interest requires that this grant remain in effect pending final determination hereof.

8. *Accordingly, it is ordered,* That the protest is allowed and the matter is designated for hearing upon the following issues substantially as proposed by the Protestant, with necessary editorial changes:

A. To determine the nature and extent of service proposed by General, including rates, charges, practices, classifications, regulations, personnel and facilities pertaining thereto.

B. To determine the nature and extent of the service now provided by Protestant over the facilities of station KMD348, including the rates, charges, practices, classifications, regulations, personnel and facilities pertaining thereto.

C. To determine the areas and population served by Protestant's station KMD348.

D. To determine the area and population to be served by General's proposed facilities.

E. To determine the need for the proposed service of General, and the nature and extent of any benefits to the public which would accrue as a result of General's proposed service.

F. To determine whether any disadvantage to the public will accrue as a result of General's proposed service.

[1] Counsel should be prepared to advise the Examiner as to: (1) The availability of 1960 U.S. Census population data; and (2) whether waivers of § 3.28(c) will in fact be involved with respect to their particular applications.

[1] A "miscellaneous" common carrier is one which does not operate an associated landline telephone facility—but only operates a mobile radio facility. (See § 21.1 of Commission rules). Typically at the present time, such MCC services are not interconnected with telephone landline facilities. Protestant here does not allege that he is interconnected or that he has sought, or will seek such interconnection.

[2] Section 21.1 of our rules defines "general" and "dispatch" service as follows: *Dispatch communication.* Two-way voice communication, normally of not more than one minute's duration, between common carrier base and land mobile stations, or between a common carrier land mobile station and a landline telephone station not connected to a public message telephone system. *General communication.* Two-way voice communication, through a base station, between a common carrier land mobile station and a landline telephone station connected to a public message landline telephone system, or between two common carrier land mobile stations via a base station.

G. To determine whether the proposed antenna site as described in the subject application is available for use by General.

H. To determine whether, in the light of the determinations made upon the foregoing issues, the Commission should sustain the protest and set aside the grants of the applications herein.

9. *It is further ordered,* That General may construct and implement the captioned facilities pursuant to the terms and conditions stated in the protested construction permit, pending a final decision by the Commission with respect to the evidentiary hearing herein provided; and

10. *It is further ordered,* That the hearing on the issues specified above shall be held at the Commission's offices in Washington, D.C. on a date, and before an Examiner, to be announced in a subsequent order; and

11. *It is further ordered,* That the burden of proof on issues A, D, E and G, which are adopted by the Commission, is placed on General, and the burden of proof on issues B, C, F and H, which are not specifically adopted by the Commission, is placed on the Protestant; and

12. *It is further ordered,* That the Protestant and the Chief, Common Carrier Bureau are made parties to the proceedings herein; and

13. *It is further ordered,* That the parties desiring to participate herein shall file their appearance on or before the time specified in § 1.140 of our rules; and

14. *It is further ordered,* That Protestant's request that the Commission, pursuant to section 405 of our Act, reconsider its action granting the captioned application is, in view of the action taken above, dismissed as moot.

Adopted: December 21, 1960.

Released: December 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12193; Filed, Dec. 30, 1960; 8:49 a.m.]

[Docket Nos. 13891-13895; FCC 60M-2186]

JOHN LAURINO ET AL.

Order Scheduling Prehearing Conference

In re applications of John Laurino, Waynesboro, Virginia, Docket No. 13891, File No. BP-12428; Radio Danville, Incorporated (WDTI), Danville, Virginia, Docket No. 13892, File No. BP-13618; Music Productions, Incorporated, Waynesboro, Virginia, Docket No. 13893, File No. BP-13714; James J. Williams, Waynesboro, Virginia, Docket No. 13894, File No. BP-13746; Samuel J. Cole and J. R. Mims, Sr. d/b as Blue Ridge Broadcasters, Luray, Virginia, Docket No. 13895, File No. BP-13753; for construction permits.

It is ordered, This 23d day of December 1960, that a prehearing conference in the above-entitled matter will be held commencing at 10:00 a.m., January 12, 1961 in the Commission's offices in Washington, D.C.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12194; Filed, Dec. 30, 1960; 8:49 a.m.]

[Docket No. 13222 etc.; FCC 60M-2181]

MICHIGAN BROADCASTING CO. (WBCK) ET AL.

Order Re Procedural Dates

In re applications of Michigan Broadcasting Company (WBCK) Battle Creek, Michigan, Docket No. 13222, File No. BP-11439; et al. (Group 2), Docket Nos. 13223-13224, 13226, 13228, 13230-13233, 13237, 13239, 13241-13242, 13246, 13249, 13654; for construction permits.

Pursuant to agreements arrived at during the prehearing conference held on this date: *It is ordered,* This 22d day of December 1960, that the following schedule will apply with respect to the engineering phases of this proceeding and also evidence with respect to the possible waiver of § 3.28(c) of the rules:

(1) Additional engineering exhibits, or portions thereof, necessary to reflect 1960 U.S. Census data and the addition of the application of Muskingum Broadcasting Company to this consolidated proceeding, shall be exchanged on February 15, 1961.

(2) Notification as to any witness, not heretofore requested, desired for cross-examination in connection with the engineering phases of the case or evidence pertaining to waiver of § 3.28(c) shall be made on February 28, 1961.

(3) Hearing on the engineering phases of this proceeding shall commence on March 7, 1961, at 10 a.m.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12195; Filed, Dec. 30, 1960; 8:49 a.m.]

[Docket No. 13010 etc.; FCC 60M-2183]

MID-AMERICA BROADCASTING SYSTEM, INC., ET AL.

Order Scheduling Prehearing Conference

In re applications of Mid-America Broadcasting System, Inc., Highland Park, Illinois, Docket No. 13010, File No. BP-11689; et al., Docket Nos. 13014, 13016-13053, 13060-13061, 13641-13648; for construction permits.

To discuss whether 1960 Census figures should be used: *It is ordered,* This 23d day of December 1960, that a further prehearing conference for Group V is scheduled for Thursday, January 5, 1961, 9 a.m., in the offices of the Commission, Washington, D.C.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12196; Filed, Dec. 30, 1960; 8:49 a.m.]

[Docket Nos. 13856-13857; FCC 60M-2178]

QUEEN CITY BROADCASTING CO. AND VAL VERDE BROADCASTING CO.

Notice of Conference

In re applications of Queen City Broadcasting Company, Del Rio, Texas, Docket No. 13856, File No. BP-12115; Eugene Albert Houghton and Alton W. Stewart, d/b as Val Verde Broadcasting Company, Del Rio, Texas, Docket No. 13857, File No. BP-13050; for construction permits.

Notice is hereby given that a prehearing conference in the above-entitled proceeding will be held at 2:00 p.m. on Friday, January 20, 1961, in Washington, D.C.

Dated: December 22, 1960.

Released: December 27, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12197; Filed, Dec. 30, 1960; 8:49 a.m.]

[Docket Nos. 13657-13658; FCC 60M-2187]

SKYLINE BROADCASTERS, INC., AND EARL McKINLEY TRABUE

Order Continuing Hearing

In re applications of Skyline Broadcasters, Inc., Klamath Falls, Oregon, Docket No. 13657, File No. BP-12509; Earl McKinley Trabue, Myrtle Creek, Oregon, Docket No. 13658, File No. BP-13596; for construction permits.

Pursuant to agreement of counsel: *It is ordered,* This 23rd day of December 1960, that the hearing in the above-entitled proceeding now scheduled for December 23, 1960, be and it is hereby continued to January 3, 1961, at 10 a.m

Released: December 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12198; Filed, Dec. 30, 1960; 8:49 a.m.]

[Docket No. 13522; FCC 60-1535]

ALLOCATION OF FREQUENCY BANDS FOR SPACE COMMUNICATIONS

Supplement to Notice of Inquiry

1. On May 18, 1960 the Commission adopted a Notice of Inquiry in this proceeding, calling for initial comments on

or before March 1, 1961, on eight specific issues. Developments in recent months point up the need for an early concentration of effort in some areas of interest and for an expansion of the original issues. The Commission therefore wishes (1) to focus attention on a more clearly delineated "issue three" with the hope that interested parties will concentrate their efforts thereon for the March 1 filing; (2) to introduce a new but corollary issue—the selection of sites for earth terminals; and (3) to amend its request with regard to the number of copies of reports to be filed in this proceeding.

2. Issue three is revised herewith to read as follows:

Under what conditions can frequency bands for space communication be shared with other services—

a) in the case of passive relays?
b) in the case of active relays?
c) in the case of other space systems and functions?

Replies to this question should recognize that the emissions of the sharing services may be incompatible and should specify (1) the type of sharing service, i.e., fixed, mobile, radionavigation, etc., (2) transmitter powers, (3) antenna gains and orientations, (4) geographical separations, (5) the minimum angle above the horizon to which the earth terminal antennas will be oriented, (6) orbital characteristics of the satellite system being considered, i.e., altitude, degree of randomness, orbital plane, with or without attitude control, with or without station-keeping, etc., (7) the area to be served by the space system, if other than world-wide, and (8) any other pertinent information.

3. A new issue, No. 9, is added herewith to this proceeding:

9. Assuming, at least initially, (1) that existing surface communications must continue to function, and (2) that geographical separation is the key to successful sharing of frequency bands; it appears that earth terminals should be located in sparsely settled areas, away from concentrations of communication installations. Therefore, should the Commission, on the basis of criteria developed pursuant to the new issue three, give consideration to amending its rules at an early date to establish protected geographical areas to be held in reserve for the installation of future earth terminals for civil communication systems via space relays? If such a concept were adopted, it might be advisable to prohibit, for example, the use of certain frequency bands between 1215 Mc and 10,000 Mc within "X" miles of a given site for all uses other than space communication. Comments are requested on geographical areas which might be appropriate for such a protected reserve status and the frequency limits between which it would be applied.

4. Because of the wide interest being displayed in the general subject of space communication, and the difficulties encountered in reproducing voluminous reports, it is requested that thirty copies of each report be filed in this proceeding rather than fifteen as originally specified. Initial comments in this proceeding are still to be filed on March 1, 1961. As announced in the original notice, subsequent reports on all issues in this proceeding may be filed upon dates to be specified by further orders of this Commission.

5. Clause 1 of the first paragraph of this supplemental notice reflects the urgency with which the Commission views the subject matter of space communications. In view of that urgency the Commission does not deem itself precluded during the pendency of this proceeding from undertaking or authorizing such research activities and functions with respect to space communications as it deems appropriate.

Adopted: December 21, 1960.

Released: December 28, 1960.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Acting Secretary.

[F.R. Doc. 60-12199; Filed, Dec. 30, 1960; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 430]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 28, 1960.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 63529. By order of December 20, 1960, The Transfer Board approved the transfer to B. J. Brooks Oil Company, a corporation, 719 Atchison St., St. Joseph, Mo., of Certificate No. MC 43021, issued August 24, 1959, to B. J. Brooks Oil Co., 719 Atchison St., St. Joseph, Mo., authorizing the transportation of: Petroleum products, from refining and producing points in Kansas, St. Joseph, Mo., and from St. Joseph, Mo., to Sabetha, Reserve, and Elwood, Kans., and Salem, Nebr.

No. MC-FC 63581. By order of December 20, 1960, The Transfer Board approved the transfer to Swiftlines, Inc., Luverne, Minn., of a portion of Certificate No. MC 45187 issued June 20, 1958, to Ben A. Dirks, doing business as Dirks Trucking Company, Luverne, Minn., authorizing the transportation over irregular routes, of general commodities, excluding household goods, commodities in bulk, and various specified commodities, between points in Minnesota within 20 miles of Luverne, Minn., including Luverne; and between Luverne, Minn., and points in Minnesota within 20 miles of Luverne, on the one hand, and, on the other, points in Iowa, and South Dakota within 100 miles of Luverne, other than Sioux Falls, S. Dak. Mort B. Skewes, Luverne, Minn., for applicants.

No. MC-FC 63582. By order of December 20, 1960, The Transfer Board approved the transfer to Harry A. Malott, R. # 1, Williamsport, Md., of Permit No. MC 47398, issued December 29, 1942, to Edward Stake Malott, 129 West Salisbury St., Williamsport, Md., authorizing the transportation of: Bricks and clay products, over irregular routes, from Williamsport, Md., and points within one mile thereof, to Washington, D.C., Winchester, Va., and points in Arlington and Fairfax Counties, Va.; and sand, over irregular routes, from Washington, D.C., to points in Washington County, Md.

No. MC-FC 63677. By order of December 21, 1960, The Transfer Board approved the transfer to William F. Breneman, Waynesboro, Pa., of Certificate No. MC 102288, issued May 9, 1956, to Ruth E. Dorand and J. Frank Dorand, doing business as E. E. Dorand and Son, Waynesboro, Pa., authorizing the transportation of: Household goods, between Waynesboro, Pa., and points in Franklin County, Pa., within 15 miles of Waynesboro, on the one hand, and, on the other, points in Maryland, Virginia, West Virginia, Delaware, New Jersey, and the District of Columbia. Millard A. Ullman, Trust Company, Bldg., Waynesboro, Pa., for applicants.

MC-FC 63816. By order of December 20, 1960, The Transfer Board approved the transfer to Berman Moving & Storage, Inc., East Cleveland, Ohio, of Certificate in No. MC-78075, issued May 15, 1959, to Clarence O. Berman and Richard C. Berman, a partnership, doing business as Berman & Sons Moving and Storage, East Cleveland, Ohio, authorizing the transportation of: Household goods, as defined by the Commission, between points in Cuyahoga County, Ohio, on the one hand, and, on the other, points in Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin and the District of Columbia. Edwin C. Reminger, 75 Public Square Suite 1316, Cleveland 13, Ohio, for applicants.

No. MC-FC 63820. By order of December 20, 1960, The Transfer Board approved the transfer to Stockberger Transfer & Storage, Inc., Mason City, Iowa, of Certificate in No. MC 119801, issued September 30, 1960, to Lloyd E. Stockberger, doing business as R & R Truck Line, Mason City, Iowa, authorizing the transportation of: Such merchandise as is dealt in by wholesale grocery houses, including fruits and vegetables, from points in Minnesota, to points in Iowa, from points in Iowa to points in Minnesota, and from Des Moines, Fort Dodge, Marshalltown and Mason City, Iowa, to points in Minnesota, South Dakota, and Iowa; and

empty shipping containers from Minnesota and South Dakota, destination points to Iowa origin points. William A. Landau, P.O. Box 1634, Des Moines 6, Iowa, for applicants.

HAROLD D. McCOY,
Secretary.

[F.R. Doc. 60-12212; Filed, Dec. 30, 1960; 8:51 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

FREDERICK LOVEJOY, JR.

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Frederick Lovejoy, Jr., Guardian for Ingo Eberhard Roderich Rode, Hassfurt, Bavaria, Germany; All right, title, interest and claim of any kind or character whatsoever of Ingo Eberhard Roderich Rode in and to the Estate of Roman H. Heyn, deceased, and the Trust under the Will of Roman H. Heyn, deceased, administered by The South Norwalk Trust Company and Gertrude Hotchkiss Heyn, as Trustees, acting under the judicial supervision of the Court of Probate, District of Westport, State of Connecticut; and

Vesting Order Nos. 4560 and 10732; Claim No. 66595.

All right, title, interest and claim of any kind or character whatsoever of Ingo Eberhard Roderich Rode in and to and arising out of or under that certain trust agreement dated January 13, 1939, by and between Roman Henry Heyn, the insured, and The South Norwalk Trust Company and Gertrude Hotchkiss Heyn, Trustees, and in and to the property held thereunder by said South Norwalk Trust Company and Gertrude Hotchkiss Heyn as Trustees.

Executed at Washington, D.C., on December 22, 1960.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 60-12183; Filed, Dec. 30, 1960; 8:47 a.m.]

Office of Alien Property

IZABELLA NITECKI

Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Mrs. Izabella Nitecki, Wloclawek, Poland; $417.84 in the Treasury of the United States.
Voluntary Turnover; Claim No. 12480.

1 share Liberty Polish Commercial Corporation, Milwaukee, Wisconsin, $50 par value capital stock evidenced by Certificate No. 412, registered in the name of Z. Gogolewski,

2 shares of Rozwoj, Inc., Milwaukee, Wisconsin, $25 par value capital stock evidenced by Certificate No. 3025, registered in the name of Zygmunt Gogolewski,

A Polish Prayer Book with small Crucifix, and

A man's Elgin watch.

The above securities and personal property are held by the Custody and Clearance Unit, Office of Alien Property.

Executed at Washington, D.C. on December 22, 1960.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F.R. Doc. 60-12184; Filed, Dec. 30, 1960; 8:47 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

1 CFR

	Page
32	14009

3 CFR

	Page
PROCLAMATIONS:	
Oct. 3, 1905	12915
Dec. 7, 1907	12915
Feb. 10, 1909	12915
Dec. 10, 1910	12915
Oct. 18, 1912	12915
2761A	13945
2929	13945
2935	12501
3160	13945
3225	13945
3279	13945
3285	13945
3290	13945
3298	13681
3317	13945
3328	13945
3355	13131
3382	12587
3383	13131
3384	13681
3385	13681
3386	13945
3387	13945
EXECUTIVE ORDERS:	
Feb. 26, 1852	13229
July 13, 1910	13694
Nov. 12, 1911	13771
Feb. 28, 1912	13771
Oct. 20, 1916	12887
June 8, 1926	12887
3797-A	12412, 12599
4257	13696
5327	13694
6260	12281
8278	13696
9941	12429
10896	12281
10897	12429
10898	12429
10899	12729
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Letter, Jan. 17, 1953	12501
Letter, Nov. 16, 1960	12501

5 CFR

	Page
2	12285
6	12393, 12547, 12588, 12733, 12869, 13132, 13745, 13829
27	13829
30	12733
201	14009
202	14009
325	13132

6 CFR

	Page
331	12994
366	14009
421	12282, 12283, 13682, 14010
464	13682
468	13829
472	13830
485	13830

7 CFR

	Page
11	13621
33	12430
51	12941
301	13948
319	12809
601	13132
718	12588
722	12393, 12403, 12809, 12812, 12987
728	13621
730	12503
811	13211
812	14010
815	13948
818	14011
819	13864
833	12650
845	12285
871	12547
902	13683
903	12504
905—908	12504
911—913	12504
914	12405, 12650, 12812, 12941, 13683, 13867, 14011
916—919	12504
921	12504
923—925	12504
928	12504, 13683
929—932	12504
933	12405–12407, 12504, 12987, 14013–14015
935	12504
936	13951
938	13867
941—942	12504
943	12504, 12813
944	12504, 12987
946—948	12504
949	12504, 12941
952	12504
953	12407, 12430, 12651, 12948, 13684, 13745, 14015
954	12504
955	12949
956	12504
957	13868
961	14011
963	12504
965—968	12504
970	12994, 13868
971—972	12504
974—978	12504
980	12504
982	12504
985—988	12504
989	12813, 13630, 13869
991	12504
994	12504, 14016
995	12504
998	12504
1000	12504
1001	13684
1002	12504
1004—1005	12504
1008—1009	12504
1010	12994, 14017
1011—1013	12504
1014	12504, 13684
1016	12504
1018	12504, 12588
1023—1024	12504
1031	12505, 12651, 12652
1032	12828, 13631, 14019, 14020
1034	14020
1069	13685
1101	13685
PROPOSED RULES:	
51	12298, 12299
718	13142
812	12712
901	12742
902	13720
923	12558
936	12465
938	12752
949	12606
953	13141
961	13001
963	13787
965	12466
989	12476
994	13239, 13637
999	14043
1010	13001
1012	12558
1032	12712, 12752
1033	12606
1034	13142, 13791, 13793

8 CFR

	Page
211	12290
324	13686
332	13686

9 CFR

	Page
17	13952
18	13952
72	12548
74	12995, 13132
94	12831
PROPOSED RULES:	
83	12571
131	13982

10 CFR

	Page
2	13869
20	13952
30	12730
70	12730
PROPOSED RULES:	
25	12753
115	12367

12 CFR

	Page
545	13953
PROPOSED RULES:	
206	12479, 13729

13 CFR

	Page
120	14022
121	13954
PROPOSED RULES:	
107	12754
121	13923

14 CFR

	Page
41	12908
49	12352
60	13869
225	12589
243	12908
293	12908
298	12909
300	12430
302	12432, 12933
406	13870
410	13874

14 CFR—Continued Page

414 12589
418 13877
450 13879
506 12505
507 12352, 12433, 12549, 12829, 12995, 13212, 13631, 13955
514 12433, 12995
600 12285–12287, 12408, 12410, 12549–12551, 12589, 12676, 12734, 12933, 12934, 13746, 14023
601 12287, 12409, 12410, 12549–12552, 12589, 12590, 12676, 12677, 12734, 12830, 12933, 12934, 12996, 12997, 13686, 13746, 13880–13882, 14023
602 12288, 12552, 12678, 12831, 12997, 13213, 13747, 14023
608 12678, 12679, 12734, 12830, 12934, 12997, 13213, 13747, 13882
609 12353, 12735, 12935
610 13213
612 12410
1501 12434

PROPOSED RULES:

41 12299
43 12524
203 13984
221 12913
302 12477
507 12477, 12478, 12571, 12844
600 12328, 12478, 12479, 12524, 12572, 12573, 12622, 12711, 12712, 12845, 12914, 13244, 13637, 13725, 14046, 14047, 14049
601 12328, 12329, 12478, 12479, 12524, 12525, 12572–12574, 12622, 12623, 12711, 12712, 12845, 12914, 12952, 13244, 13637, 13725, 14046–14049.
608 12479, 12846, 14046
626 12952

15 CFR

203 12590
204 13215
371 12734, 13748
382 13956
399 13967

16 CFR

13 12337, 12338, 12393, 12441, 12502, 12552, 12591, 12592, 12649, 12733, 12883, 12884, 12998, 13133, 13687, 13969

PROPOSED RULES:

56 13245

17 CFR

230 12912

PROPOSED RULES:

230 13638
240 13245
249 13245
250 13245
259 13245
270 13245
274 13245
275 13638
279 13638

18 CFR

2 13969
104 12763
105 12961
154 12653
204 13161
205 13649
260 13882

19 CFR

1—57 13325
3 13687
4 13687

PROPOSED RULES:

8 12681

21 CFR

1 12592
8 12288
120 12288, 12506, 13631, 13632
121 12412, 12595, 12731, 12831, 13008, 13217, 13632, 13748
130 12592
146 12506, 12596, 12732, 13750
146c 12289
302 13750
303 13750
304 13750
305 13750
307 13750

PROPOSED RULES:

20 14045
27 12372
120 12374, 12571, 13793
121 12299, 12477, 12839, 12840, 13008, 13794, 14045

22 CFR

3 13138
46 12289

23 CFR

PROPOSED RULES:

20 13724

24 CFR

222 13745
233 13745
293a 13745

25 CFR

171 12408
Appendix 13688

PROPOSED RULES:

52 12518
176 12299
221 13787, 13980
232 13981
252 13239

26 (1939) CFR

16 12442
17 12443
29 12339
39 12339
40 12340

PROPOSED RULES:

81 13001
330 13915

26 (1954) CFR

1 12340, 12435, 12654, 13689, 13883, 13978, 14039
18 12340
19 12654
20 13884
24 13884
31 13031
40 13693
41 13133
44 13133
46 13133
48 12669
49 13133
151 13135
170 12732
301 13137
601 13758

PROPOSED RULES:

1 12293, 12414, 12416, 12464, 12508, 12681, 12703, 12833, 12890, 12898, 13001, 13140, 13697, 13775, 13909, 13911, 13978, 14039
20 13001
25 12707
31 12835
47 13699
48 12362, 13001, 13915
148 13699
170 12710
179 13920
197 12362
245 13783
250 12511
252 13785

27 CFR

1—8 13831

PROPOSED RULES:

7 13786, 14043

28 CFR

21 12290

29 CFR

2 13228
511 14023

PROPOSED RULES:

522 13724
604 12950
606 12950
713 12950

31 CFR

54 12345

32 CFR

1—288 14075
505 12869
570 12869
750 12870, 14025
753 12879
805 12291
888 12999
1001 12999
1002 13000
1003 13000
1004 13000
1006 13000
1007 13000
1008 12444
1009 12446
1010 12449, 13000
1012 12449
1013 12449, 13000
1016 12450, 12456
1030 12451
1052 12456, 13000
1053 12456
1054 12458, 13000
1055 12462
1057 12462, 13000
1059 12462
1619 12291

32A CFR

OIA (CH. X):

OI Reg. 1 13632, 13768

33 CFR

96 13633
202 12395
203 12740, 14025
207 12740, 13769

36 CFR

7 13970, 13972

PROPOSED RULES:

7 13787, 13982

38 CFR

1 14025
2 14026
3 12463
8 13972
21 13229, 13972
36 14026

39 CFR

4 13218
14 13973
15 13973
27 12348
45 13973
46 13973
61 13218
62 13223
63 13224
168 12884, 13883

41 CFR

1–5 14026
2–1 14027
2–2 14029
2–3 14030
2–9 14031
3–75 12502, 12596
5–1 12553, 13217, 14032
9–1 14032
9–2 14034
9–3 14034
50–201 12553
50–202 12553
50–204 13809

PROPOSED RULES:

50–202 12363, 12522, 13984

42 CFR

1 12292
202 14036

43 CFR

76 12597, 12949
181 12679
192 12352
257 12679

PROPOSED RULES:

254 13981
259 12606

PUBLIC LAND ORDERS:

82 12412, 12599
221 13695
261 13138
797 12413
1119 13694
1124 12885
1230 13694
1253 12481
1273 13138
1621 12599
1965 12599
2144 13694
2186 13694

43 CFR—Continued

PUBLIC LAND ORDERS—Continued

2209 12412
2210 12413
2211 12413
2212 12597
2213 12597
2214 12598
2215 12599
2216 12599
2217 12885, 13633
2218 12885
2219 12886
2220 12887
2221 12887
2222 12887
2223 13138
2224 13229
2225 13229
2226 13633
2227 13693
2228 13693
2229 13694
2230 13694
2231 13694
2232 13694
2233 13694
2234 13695
2235 13696
2236 13769
2237 13770
2238 13771
2239 13771
2240 13772
2241 13773

45 CFR

145 13230
146 13230
601—620 12600

PROPOSED RULES:

301 12840
306 12840
307 12841
308 12842
309 12843
311 12844

46 CFR

24 12554
30 12554
56 12554
70 12555
75 13892
90 12555
110 12555
111 12555
136 12555
171 12555
226 13696
282 13892
308 12348

PROPOSED RULES:

401 13721

47 CFR

1 12358, 12600, 12602, 12603, 12605, 13230
2 13976
3 13230, 14036
4 12680
5 12359
7 13230, 13773
8 13232, 13233, 13773
9 12359
10 12359
11 12359
12 12358
15 13829
16 12359
19 12359
21 12359, 12603, 12605

PROPOSED RULES:

1 12624, 12898
2 13244, 13985
3 12371, 12624, 12626, 12627, 12899, 13794, 13985–13988, 14049
7 12951
8 12951
9 13244
10 13244
11 13244
16 13244
19 13244
21 13244

49 CFR

91 12506
95 13633
120 13774
122 12506
125 13893
171 12888
323 13907

PROPOSED RULES:

71–78 12420, 13794
197 12420, 13794

50 CFR

14 14037
32 12555, 12888
33 12507, 12556, 12557, 12888, 13138, 13139, 13234–13238, 13634, 13908, 13976, 13977
269 13634

PROPOSED RULES:

14 12741
41 13001

THE UNIVERSITY OF MICHIGAN
JAN 3 1961

Pages 14075–14177

PART II
Section 1

FEDERAL REGISTER

VOLUME 25 Number 254

Washington, Saturday, December 31, 1960

Regulations of the Secretary of Defense

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

REORGANIZATION AND REVISION OF CHAPTER

32 CFR Chapter I has been recodified in its entirety, except for Subchapter A—Armed Services Procurement Regulations, which retains its present numbering of Parts 1 to 30.

For convenient reference, there is shown below a table listing the former part numbers, their headings, and their newly assigned part numbers. Following that is the new Table of Contents, and a reprint of all regulations in Chapter I published in the FEDERAL REGISTER on or before November 30, 1960, and effective as to facts arising on or after December 1, 1960. Not included in this reprint is the former Part 71 of Subchapter E—Armed Forces Industrial Defense Regulations, since publication of this document in the FEDERAL REGISTER and Code of Federal Regulations has been discontinued.

NOTE: All of the regulations in this chapter, except the Armed Services Procurement Regulations (Subchapter A), have been reorganized and renumbered. The following table lists the former part numbers and headings, and indicates their position in the reorganized chapter.

Old Part No.		*New Part No.*
Parts 1–30		No change
41	Release of information medical records	66
42	Mortgage insurance for servicemen to aid in construction or purchase of homes	77
44	Administrative discharges	41
45	Participation in Reserve training programs	101
46	Optional retirement	48
47	Servicemen's dependents allowances	80
48	Fulfilling the military service obligation	50
49	Occasions upon which the uniform of any of the armed forces may be worn by persons honorably discharged therefrom	53
50	Enlistment and discharge of individuals with juvenile and youthful offender records	44
51	Reserve Officers' Training Corps and related Officers' training programs	105
52	Assignment to and transfer between Reserve categories, and discharge from Reserve status	115
53	Screening the Ready Reserve under provisions of the Armed Services Reserve Act of 1952, as amended	125
54	Reserve Forces active duty for training for basic training	132
56	Medical care for dependents of members of the uniformed services	70
57	Recruiting policy for secondary schools	63
58	Appointment of doctors of osteopathy as medical officers	74
59	Ordering the Ready Reserve to active duty in a national emergency declared by the President	127
60	Management and mobilization of the Standby Reserve	136
61	Military colleges in the Reserve Officers' Training Corps programs; subsistence and uniform commutation rates for enrolled members of the ROTC	110
62	Inter-service transfer of officers (Regular)	56
63	Inter-service transfer of Reserve Officers on extended active duty	120
64	Transfer of persons between Reserve components of the Armed Forces	123
65	Early release of military enlisted personnel for college enrollment	60
65a	Advance pay for military personnel	60
65b	Dropping retired military personnel from the rolls of the armed forces	87
65c	Recoupment of reenlistment bonus (Military)	88
66	Uniform rules of procedure for proceedings in and before boards of review	150
67	Industrial personnel security review regulations	155
81	Statement of policy for treatment of depreciation on emergency facilities	160
82	Defense contract financing regulations	163
83	Uniform negotiation for reimbursement of independent research and development costs	167
84	Payments on incentive-type and price redetermination-type contracts	165
141	Solicitation of commercial life insurance on military installations	276
141a	Solicitation of commercial life insurance on military installations in oversea areas	277
142	Release and authentication of copies of official records	285
143	Exemption of certain personnel from operation of sections 281, 283, 284, 434, and 1914 of Title 18, United States Code	95
144	Schedule of fees and charges for copying, certification and search of records	288
145	National industrial reserve regulations	266
146	Procurement inspection stamping	251
147	Correspondents accompanying the armed forces	271
148	Use of the Military Postal Service	280
149	Preference to blind persons in operating vending stands	260
150	Contributions of Federal funds to the States under the National Defense Facilities Act of 1950, as amended	262
151	Naturalization of alien spouses and/or alien adopted children of military and civilian personnel ordered overseas	90
153	International interchange of patent rights and technical information	264
154	Procurement inspection policies and procedures for items covered by military and Federal specifications	253
155	Department of Defense policies and procedures for assuring the quality of production of complex supplies and equipment	255
156	Department of Defense origin procurement inspection of subsistence	257
157	Use of standardization documents issued by industry groups	268
201	Transportation by Military Air Transport Service	175
202	Transportation by aircraft other than Military Air Transport Service	180
203	Reimbursable and nonreimbursable travel	210
208	Transportation of household goods of military and civilian personnel	190
209	Movement of personnel via commercial contract and charter air transportation	184
211	Policy governing transportation and accommodations of military personnel and their dependents, civilian employees and their dependents, when traveling via commercial, government or private transportation	171
213	Ocean transportation service	200

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

Part
1 General provisions.
2 Procurement by formal advertising.
3 Procurement by negotiation.
4 Special types and methods of procurement.
5 Interdepartmental procurement.
6 Foreign purchases.
7 Contract clauses.
8 Termination of contracts.
9 Patents, data, and copyrights.
10 Bonds and insurance.
11 Federal, State and local taxes.
12 Labor.
13 Government Property.
14 Inspection and acceptance.
15 Contract cost principles and procedures.
16 Procurement forms.
17 Extraordinary contractual actions to facilitate the national defense.
30 Appendixes to Armed Services Procurement Regulations.

SUBCHAPTER B—PERSONNEL; MILITARY AND CIVILIAN

41 Administrative discharges.
44 Enlistment and discharge of individuals with juvenile and youthful offender records.
48 Optional retirement.
50 Fulfilling the military service obligation.
53 Occasions upon which the uniform of any of the armed forces may be worn by persons honorably discharged therefrom.
55 Physical examinations and annual certificates of physical condition.
56 Inter-service transfer of officers (Regular).
60 Early release of military enlisted personnel for college enrollment.
63 Recruiting policy for secondary schools.
66 Release of information from medical records.
70 Medical care for dependents of members of the uniformed services.
74 Appointment of doctors of osteopathy as medical officers.
77 Mortgage insurance for servicemen to aid in construction or purchase of homes.
85 Advance pay for military personnel.
87 Dropping retired military personnel from the rolls of the armed forces.
88 Recoupment of reenlistment bonus (Military).
90 Naturalization of alien spouses and/or alien adopted children of military and civilian personnel ordered overseas.
95 Exemption of certain personnel from operation of sections 281, 283, 284, 434 and 1914 of Title 18, United States Code.
101 Participation in Reserve training programs.
105 Reserve Officers' Training Corps and related Officers' training programs.
110 Military colleges in the Reserve Officers' Training Corps programs; subsistence and uniform commutation rates for enrolled members of the ROTC.
115 Assignment to and transfer between Reserve categories, and discharge from Reserve status.
120 Inter-service transfer of reserve officers on extended active duty.
123 Transfer of persons between Reserve components of the Armed Forces.
125 Screening the Ready Reserve under provisions of the Armed Forces Reserve Act of 1952, as amended.
127 Ordering the Ready Reserve to active duty in a national emergency declared by the President.
132 Reserve Forces active duty for training for basic training.
136 Management and mobilization of the Standby Reserve.

SUBCHAPTER C—REGULATIONS PERTAINING TO MILITARY JUSTICE

150 Uniform rules of procedure for proceedings in and before boards of review.

SUBCHAPTER D—SECURITY

155 Industrial personnel access authorization review regulation.

SUBCHAPTER E—DEFENSE CONTRACT FINANCING

160 Statement of policy for treatment of depreciation on emergency facilities.
163 Defense contract financing regulations.
165 Payments on incentive-type and price redetermination-type contracts.
167 Uniform negotiation for reimbursement of independent research and development costs.

SUBCHAPTER F—TRANSPORTATION

171 Policy governing transportation and accommodations of military personnel and their dependents, civilian employees and their dependents, when traveling via commercial, government or private transportation.
175 Transportation by Military Air Transport Service.
180 Transportation by aircraft other than Military Air Transport Service.
184 Movement of personnel via commercial contract and charter air transportation.
190 Transportation of household goods of military and civilian personnel.
200 Ocean transportation service.
210 Reimbursable and nonreimbursable travel.

SUBCHAPTERS G THROUGH L—[RESERVED]

SUBCHAPTER M—MISCELLANEOUS

251 Procurement inspection stamping.
253 Procurement inspection policies and procedures for items covered by military and Federal specifications.
255 Department of Defense policies and procedures for assuring the quality of production of complex supplies and equipment.
257 Department of Defense origin procurement inspection of subsistence.
260 Preference to blind persons in operating vending stands.
262 Contributions of Federal funds to the States under the National Defense Facilities Act of 1950, as amended.
264 International interchange of patent rights and technical information.
266 National Industrial Reserve regulations.
268 Use of standardization documents issued by industry groups.
271 Correspondents accompanying the armed forces.

SUBCHAPTER N—COMMERCIAL INSURANCE

276 Solicitation of commercial life insurance on military installations.
277 Solicitation of commercial life insurance on military installations in oversea areas.

SUBCHAPTER O—MILITARY POSTAL SERVICE

280 Use of the Military Postal Service.

SUBCHAPTER P—RECORDS

285 Release and authentication of copies of official records.
288 Schedule of fees and charges for copying, certification and search of records.

SUBCHAPTER A—ARMED SERVICES PROCUREMENT REGULATIONS

PART 1—GENERAL PROVISIONS

Subpart A—Introduction

Sec.
1.100 Scope of subpart.
1.101 Purpose of subchapter.
1.102 Applicability of subchapter.
1.103 Arrangement of subchapter.
1.103–1 General plan.
1.103–5 Dating contract clauses.
1.104 Content of subchapter.
1.105 Amendment of subchapter.
1.106 Other Department of Defense publications.
1.106–1 Department of Defense directives and instructions.
1.106–2 Memorandums addressed to the Secretaries.
1.107 Dissemination and effective date of the subchapter and revisions.
1.108 Publications of the Military Departments.
1.109 Deviations from this subchapter and Department of Defense publications governing procurement.
1.109–1 Applicability.
1.109–2 Deviations affecting one contract or transaction.
1.109–3 Deviations affecting more than one contract or contractor.
1.109–4 Conflicts between Government-to-Government agreements and this subchapter.
1.110 Reports of purchases and contracts.
1.111 Reports of suspected criminal conduct and non-competitive practices.
1.111–1 Suspected criminal conduct.
1.111–2 Non-competitive practices.
1.112 Federal procurement regulations and General Services Administration regulations relating to procurement of supplies and services.
1.113 Code of conduct.

Subpart B—Definitions of Terms

1.201 Definitions.
1.201–1 Change order.
1.201–2 Contract modification.
1.201–3 Contracting officer.
1.201–4 Contracts.
1.201–5 Department and Military Department.
1.201–6 Department of Defense.
1.201–7 Head of a procuring activity.
1.201–8 Includes.
1.201–9 Labor surplus area concern.
1.201–10 May.
1.201–11 Negotiate and negotiation.
1.201–12 Possessions.
1.201–13 Procurement.
1.201–14 Procuring activity.
1.201–15 Secretary.
1.201–16 Shall.
1.201–17 Small business concerns.
1.201–18 Sources of supplies.
1.201–19 Amendment and supplemental agreement.
1.201–20 Supplies.
1.201–21 United States.

Subpart C—General Policies

1.300 Methods of procurement.
1.300–1 Competition.
1.300–2 Formal advertising.
1.300–3 Negotiation.
1.301 Interdepartmental and coordinated procurement.
1.302 Sources of supplies.
1.302–1 Government agencies.
1.302–2 Sources outside the Government.
1.302–3 Production and reasearch and development pools.
1.302–4 Foreign purchases.
1.302–5 Planned emergency producer.
1.303 Exchange of purchase information.
1.304 Selection of items involving proprietary data or other restrictive factors.
1.305 Time of delivery or performance.
1.305–1 Scope.
1.305–2 General.
1.305–3 Terms.
1.304–4 Time of delivery clauses.
1.306 Approval signatures.
1.307 Priorities, allocations and allotments.
1.307–1 General.
1.307–2 Required use of priorities, allocations and allotment clause.
1.308 Records of contract actions.
1.309 Solicitations for informational or planning purposes.
1.310 Liquidated damages.
1.311 Construction contracts, disclosure of Government estimate.
1.312 Voluntary refunds.
1.313 Procurement of parts.
1.314 Contracting officer's decision under the Disputes clause.

Subpart D—Procurement Responsibility and Authority

1.400 Scope of subpart.
1.401 Responsibility of each procuring activity.
1.402 General authority of contracting officers.
1.403 Requirements to be met before entering into contracts.
1.404 Special requirements to be met before entering into negotiated contracts.

Subpart E—Contingent or Other Fees

1.500 Scope of subpart.
1.502 Applicability.
1.503 Covenant against contingent fees clause.
1.504 Improper influence.
1.505 General principles and standards applicable to the covenant.
1.505–1 Contingent character of the fee.
1.505–2 Exceptions to the prohibition of the covenant.
1.505–3 Bona fide employee.
1.505–4 Bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.
1.505–5 Fees for information.
1.506 Representation and agreement required from prospective contractors.

UNIVERSITY OF MICHIGAN LIBRARIES

Sec.
1.506-1 Interpretation of the representation.
1.507 Use of Standard Form 119.
1.507-1 Statement in lieu of form.
1.507-2 Exceptions.
1.508 Enforcement.
1.508-1 Failure or refusal to furnish Standard Form 119.
1.508-2 Misrepresentations or violations of the covenant against contingent fees.
1.509 Preservation of records.

Subpart F—Debarred, Ineligible, and Suspended Bidders

1.600 Scope of subpart.
1.601 Establishment and maintenance of a list of firms or individuals debarred or ineligible.
1.601-1 General.
1.601-2 Information contained in departmental lists.
1.601-3 Joint consolidated list.
1.601-4 Protection of lists.
1.602 Limitation.
1.603 Grounds for listing and treatment to be accorded listed concerns.
1.604 Causes and conditions under which departments may debar contractors.
1.604-1 Causes for debarment.
1.604-2 Period of debarment.
1.604-3 Notice of debarment.
1.605 Suspension of bidders.
1.605-1 Causes and conditions under which departments may suspend contractors.
1.605-2 Period of suspension.
1.605-3 Restrictions during period of suspension.
1.605-4 Notice of suspension.
1.606 Limited debarment or suspension.
1.607 Interchange of debarment information.
1.608 [Reserved]
1.609 Procurement outside the United States.
1.609-1 Responsibilities and area coverage.
1.609-2 Information contained on overseas lists.
1.609-3 Protection of lists.
1.609-4 Maintenance and distribution of lists.
1.609-5 [Reserved]
1.609-6 Basis of addition of firms and individuals on lists.
1.609-7 Treatment to be accorded firms or individuals in debarred or ineligible status.
1.609-8 Causes and conditions under which unified commanders may place names on the consolidated list.
1.609-9 Liaison with United States diplomatic missions.
1.610 Use of overseas lists within United States.

Subpart G—Small Business Concerns

Sec.
1.700 Scope of subpart.
1.701 Definitions.
1.701-1 Small business concern.
1.701-2 Established supplier.
1.701-3 Potential supplier.
1.701-4 Regular dealer (non-manufacturer) as small business concern.
1.702 General policy.
1.703 Determination of status as small business concern.
1.704 Small business officials.
1.704-1 Director for small business.
1.704-2 Departmental small business advisors.
1.704-3 Small business specialists.
1.705 Cooperation with the Small Business Administration.
1.705-1 General.
1.705-2 SBA representatives.
1.705-3 Screening of procurements.
1.705-4 Access to bidders' lists and other information.
1.705-5 Joint SBA-Defense small business set-aside program.
1.705-6 Certificates of competency.
1.705-7 Performances of contract by SBA.
1.706 Set-asides for small business.
1.706-1 General.
1.706-2 Review of SBA set-aside proposals.
1.706-3 Withdrawal or modification of set-asides.
1.706-4 Reporting for Department of Commerce procurement synopsis.
1.706-5 Total set-asides.
1.706-6 Partial set-asides.
1.706-7 Automatic dissolution of set-asides.
1.706-8 Contract authority.
1.706-9 Maintenance of records.
1.707 Subcontracting.
1.707-1 General policy.
1.707-2 Required clauses.
1.707-3 Defense subcontracting in small business programs.
1.707-4 Responsibility for reviewing subcontracting program.
1.707-5 Reports on DD Form 1140.
1.708 Mobilization planning.

Subpart H—Labor Surplus Area Concerns

1.800 Scope of subpart.
1.801 Definitions.
1.801-1 Labor surplus area concern.
1.801-2 Labor surplus area.
1.801-3 Small business concern.
1.802 General policy.
1.803 Application of policy.
1.804 Partial set-asides for labor surplus area concerns.
1.804-1 General.
1.804-2 Set-aside procedures.
1.804-3 Withdrawal of set-asides.
1.804-4 Contract authority.
1.805 Subcontracting.
1.805-1 General policy.
1.805-2 Required clause.

Sec.
1.806 Depressed industries.
1.806-1 General.
1.806-2 Apparel industry (Notification No. 53).
1.806-3 Petroleum and petroleum products industry (Notification No. 58).
1.806-4 Shipbuilding industry (Notification No. 57).
1.806-5 Textile industry (Notification No. 38).

Subpart I—Responsible Prospective Contractors

1.900 Scope of subpart.
1.901 Applicability.
1.902 General policy.
1.903 Minimum standards for responsible prospective contractors.
1.903-1 General standards.
1.903-2 Additional standards for production, construction, and research and development contracts.
1.903-3 Ability to meet certain minimum standards.
1.903-4 Affiliated concerns.
1.904 Determinations of responsibility and nonresponsibility.
1.904-1 Requirement.
1.904-2 Exceptions.
1.905 Procedures for determining responsibility of prospective contractors.
1.905-1 General.
1.905-2 When information will be obtained.
1.905-3 Sources of information.
1.905-4 Pre-award surveys.
1.906 Subcontractor responsibility.
1.907 Disclosure of pre-award data.

Subpart J—Publicizing Procurement Actions

1.1001 General policy.
1.1002 Availability of invitations for bids and requests for proposals.
1.1003 Synopses of proposed procurements.
1.1003-1 General.
1.1003-2 Research and development.
1.1003-3 Synopses of subcontract opportunities.
1.1003-4 Responsibility of small business specialists.
1.1003-5 Publication of procurements of less than $10,000.
1.1003-6 Pre-invitation notices.
1.1003-7 Availability of specifications, plans, and drawings.
1.1003-8 Time of publicizing.
1.1003-9 Preparation and transmittal.
1.1004 Synopsis of contract awards.
1.1004-1 Preparation and transmittal.
1.1005 Paid advertisement in newspapers and trade journals.
1.1005-1 Scope.
1.1005-2 Definitions.
1.1005-3 General.
1.1005-4 Limitation.

Sec.
1.1005-5 Authority and delegation.
1.1005-6 Requests for authority to place advertisement.
1.1005-7 Preparation of advertisement.
1.1005-8 Insertions.
1.1005-9 Rates.
1.1005-10 Proof of publication.
1.1005-11 Forms.
1.1005-12 Payment.
1.1006 Publicizing award information.
1.1006-1 Awards after formal advertising.
1.1006-2 Awards after procurement by negotiation.

Subpart K—Qualified Products

1.1101 General.
1.1102 Justification for establishment of a qualified products list.
1.1103 Qualification of products.
1.1103-1 Opportunity to qualify.
1.1103-2 Testing of product.
1.1103-3 Notification to manufacturer.
1.1104 Qualified products lists.
1.1104-1 General.
1.1104-2 Military lists.
1.1104-3 Department lists.
1.1104-4 Distribution of list, notice of qualification, and other information.
1.1104-5 Publicity purposes.
1.1104-6 Requirement that lists be kept open.
1.1104-7 Withdrawal of qualification and removal from list.
1.1104-8 Effect of debarment or suspension.
1.1105 Procurement of qualified products.
1.1105-1 General.
1.1105-2 Notice.

Subpart L—Specifications, Plans, and Drawings

1.1201 General.
1.1202 Mandatory specifications.
1.1203 Availability of specifications, plans, and drawings.
1.1204 Packaging requirements.
1.1205 Offshore procurement.
1.1206 Purchase descriptions.
1.1207 Alternate articles or qualities.

Subpart M—Transportation

1.1301 General.
1.1302 Place of delivery.
1.1302-1 Shipments within the United States.
1.1302-2 Shipments from the United States for oversea delivery.
1.1302-3 Shipments originating outside the United States.
1.1303 Quantity analysis.
1.1304 Commodity description.
1.1305 Delivery terms.
1.1305-1 F.o.b. origin or destination.
1.1305-2 F.o.b. destination.
1.1305-3 F.o.b. origin.
1.1305-4 Destination unknown.

Sec.
1.1306 Consignment and marking instructions.
1.1307 Scheduling of deliveries to permit consolidation of shipments.
1.1308 Transit arrangements.
1.1309 Rates and volume shipments.
1.1310 Crosshauling and backhauling.
1.1311 Unusually large or heavy shipments.
1.1312 Mode of transportation.

Subpart N—Preference for United States-Flag Privately Owned Ocean Carriers

1.1401 Definitions.
1.1402 General.
1.1405 Applicability.
1.1404 Procedures.
1.1405 Responsibilities.
1.1405-1 Military departments.
1.1405-2 Office of the Secretary of Defense.

AUTHORITY: §§ 1.100 to 1.1405-2 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

Subpart A—Introduction

§ 1.100 Scope of subpart.

This subpart sets forth (a) introductory information pertaining to the subchapter (its purpose, applicability, content, and arrangement), and (b) instructions for amending, implementing, disseminating, and deviating from the subchapter.

§ 1.101 Purpose of subchapter.

This subchapter, issued by the Assistant Secretary of Defense (Supply and Logistics) by direction of the Secretary of Defense, and in coordination with the Secretaries of the Army, Navy, and Air Force, establishes for the Department of Defense, uniform policies and procedures, relating to the procurement of supplies and services under the authority of chapter 137, Title 10 of the United States Code, or under other statutory authority.

§ 1.102 Applicability of subchapter.

This subchapter shall apply to all purchases and contracts made by the Department of Defense, within or outside the United States, for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations), unless otherwise specified herein (but see § 1.109-4).

§ 1.103 Arrangement of subchapter.

§ 1.103-1 General plan.

The subchapter is divided into parts, each one of which deals with a separate aspect of procurement, and each part is further subdivided into subparts and sections.

§ 1.103-5 Dating contract clauses.

Contract clauses in this subchapter are identified by showing the month and year of issuance of the clause, as most recently revised, in parentheses immediately after the title, e.g. Incentive Price Revision (Jul. 1958). Where an alternative paragraph is provided for insertion in a clause, the identifying date is shown in parentheses immediately following the text of the paragraph. In contract forms using ASPR clauses, each clause should be shown with its identifying date in the manner prescribed above, except that (a) standard forms are not subject to this requirement and (b) Department of Defense forms and Departmental forms that were issued prior to October 1, 1960 should not be revised solely to meet this requirement. Where a clause to be used in a contract represents a deviation from this subchapter, a date will not be shown.

§ 1.104 Content of subchapter.

This subchapter will contain policies and procedures relating to the procurement of supplies and services and is designed to achieve maximum uniformity throughout the Department of Defense. Hence, implementation of this subchapter by the Military Departments should be kept to a minimum. This subchapter will be amended, from time to time, to set forth improved procedures which reduce contract preparation time, simplify and standardize contract forms within the Department of Defense, and improve the contracting process by standardizing procedures and instructions. In this connection, personnel at all levels, particularly the contracting level, are encouraged to submit through appropriate channels suggestions, based on operating experience, to reduce administrative burden, simplify contract forms and procedures, and otherwise accomplish the foregoing objectives.

§ 1.105 Amendment of subchapter.

This subchapter may be amended from time to time by the issuance of "Revisions", by the Assistant Secretary of Defense (Supply and Logistics) after coordination with the Secretaries of the Army, Navy, and Air Force. Unless otherwise directed in a particular case by the Assistant Secretary of Defense (Supply and Logistics), proposed amendments shall be submitted to the Armed Services Procurement Regulation Committee. Proposals for amendments originating within the military departments shall be submitted to the Chairman of the Armed Services Procurement Regulation Committee by the departmental members of the Committee. However, where unusual circumstances warrant, the Secretaries may submit proposals for amendments to the Assistant Secretary of Defense (Supply and Logistics).

§ 1.106 Other Department of Defense publications.

§ 1.106-1 Department of Defense directives and instructions.

Policies and procedures concerned primarily with procurement may be published in Department of Defense directives or instructions under any of the following circumstances:

(a) When the subject matter is classified.

(b) When the subject matter is not suitable for inclusion in this subchapter.

(c) As an interim measure, pending subsequent incorporation in the subchapter.

(d) When the policy or procedure is expected to be effective for a period of less than 6 months.

§ 1.106-2 Memorandums addressed to the Secretaries.

When the subject matter relates to one-time requests for information or instructions on a particular or individual matter, memorandums may be addressed to the Secretaries of the military departments.

§ 1.107 Dissemination and effective date of the subchapter and revisions.

This subchapter, and revisions thereof, will be distributed by the Departments to all interested activities and individuals. The military departments shall obtain from the Government Printing Office the number of copies of this subchapter, and revisions thereof, as are required to make distribution to all interested activities and individuals in each respective department. Revisions of this subchapter shall be effective at all applicable echelons 90 days after date of issuance, unless otherwise prescribed in any such revision.

§ 1.108 Publications of the Military Departments.

The Military Departments and procuring activities may issue directives and other publications to implement the Armed Services Procurement Regulation and other Department of Defense publications mentioned in § 1.106. Such implementation shall consist of providing for such delegations of authority and assignment of responsibilities and only such other implementing actions as are essential to the respective procurement operations of the Departments. Duplication of this subchapter shall be avoided to the extent feasible. In areas which are not fully covered by this subchapter, each Military Department may, consistent with the provisions of this subchapter, and other Department of Defense publications mentioned in § 1.106, maintain and issue such policies and procedures as are necessary for the efficient performance of procurement operations: *Provided, however,* That no Department shall adopt any policy or procedure (including methods, systems, instructions, practices, and contract clauses) which involves a major policy question without first coordinating with the other Military Departments through the ASPR Committee and obtaining the approval of the Assistant Secretary of Defense (Supply and Logistics) or, alternatively at the option of the Materiel Secretary through use of the Materiel Secretaries' Weekly Conference. Such approval involving Departmental publications shall be secured in advance unless exigency of the situation requires immediate action. Secretaries will determine whether a major policy question is involved. One copy of Departmental publications and directives (including those of procuring activities) will be furnished to the other Military Departments and to the Assistant Secretary of Defense (Supply and Logistics).

§ 1.109 Deviations from this subchapter and Department of Defense publications governing procurement.

§ 1.109-1 Applicability.

For the purposes of this section, a deviation shall be considered to be any of the following:

UNIVERSITY OF MICHIGAN LIBRARIES

(a) When a prescribed contract clause is set forth verbatim in this subchapter or a Department of Defense Directive, use of a contract clause covering the same subject matter which varies from the subchapter coverage or a Directive constitutes a deviation.

(b) When a Standard, DD, or other form is prescribed by subchapter or a Department of Defense Directive, use of any other form for the same purpose constitutes a deviation.

(c) Alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by subchapter or a Department of Defense Directive constitutes a deviation.

(d) When limitations are imposed in subchapter or a Department of Defense Directive upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations constitutes a deviation.

(e) When a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by this subchapter, any policy, procedure, method, or practice which is inconsistent with that set forth constitutes a deviation.

§ 1.109–2 Deviations affecting one contract or transaction.

Deviations from this subchapter or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures: *Providing*, (a) Special circumstances justify a deviation and (b) written notice of such deviations is furnished to the Assistant Secretary of Defense (Supply and Logistics) and to the other Military Departments. Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

§ 1.109–3 Deviations affecting more than one contract or contractor.

Except as authorized in § 1.109–2, deviations from this subchapter or a Department of Defense Directive will not be effected unless approved in advance by the Assistant Secretary of Defense (Supply and Logistics): *Provided however*, That unanimous approval by the members of the ASPR Committee will constitute approval of the Assistant Secretary of Defense (Supply and Logistics) of all matters except those involving major policy. Written requests for such approval will be submitted to the Assistant Secretary of Defense (Supply and Logistics) through the ASPR Committee as far in advance as exigencies of the situation will permit, or alternatively, at the option of the Materiel Secretary concerned, through use of the Materiel Secretaries' Weekly Conference.

§ 1.109–4 Conflicts between Government-to-Government agreements and this subchapter.

In the event of any specific conflict between the provisions of this subchapter and any treaty or executive agreement to which the United States is a party, such treaty or agreement will govern: *Provided, however*, If such conflict affects a provision of this subchapter which is based on the requirements of law, such conflict shall, in accordance with Departmental procedures, be referred to the ASPR Committee for consideration. Any procurement action which constitutes a deviation from a provision of this subchapter based on a requirement of law shall be held in abeyance pending consideration by the ASPR Committee.

§ 1.110 Reports of purchases and contracts.

Periodic and special reports on purchases and contracts are prescribed by the Department of Defense. These reports are designed to meet statutory and other Congressional requirements, requirements of Federal agencies, and provide all levels of management with data on which to formulate procurement policy as well as to determine the extent of adherence to prescribed policy. Basic to the preparation of all these regular and special reports, so far as they affect individual contracting officers, is DD Form 350 (Individual Procurement Action Report) (§ 16.807). Each item of this form enters into the preparation of reports furnished the President, the Congress, and other Federal agencies, and is used for management purposes within the Department of Defense. The accuracy, completeness, and timeliness of these reports are fully dependent on the careful preparation and prompt submission of DD Form 350.

§ 1.111 Reports of suspected criminal conduct and non-competitive practices.

§ 1.111–1 Suspected criminal conduct.

Reports of possible violations of Federal criminal statutes relating to procurement shall be made by each respective Department in accordance with procedures prescribed by that Department. Department of Defense policies and procedures with respect to the debarment, ineligibility, and suspension of bidders are set forth in Subpart F of this Part 1.

§ 1.111–2 Non-competitive practices.

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Secretary concerned or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General for appropriate action. Similarly, evidence of such violations in negotiated procurements should be referred to the Attorney General. Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, etc.

(b) Contracting officers will report such practices in accordance with Departmental procedures. Reports of identical or equal bids or proposals should not be submitted automatically, but only where there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports should be accompanied by conformed copies of bid or proposal and contract documents and by other supporting data. The report should set forth:

(1) The non-competitive pattern or situation under consideration;

(2) Purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstracts of bids;

(3) Community of financial interest among bidders, insofar as is known;

(4) The extent, if any, to which specification requirements or patents restrict competition;

(5) Information which may be available with respect to the pricing system employed in bids or proposals believed to reflect non-competitive practices; and

(6) Any other information deemed pertinent.

(c) Evidence of non-competitive bid practices which, in the opinion of the Secretary concerned or his representative, may violate the antitrust laws shall be forwarded to the Attorney General.

§1.112 Federal procurement regulations and General Services Administration regulations relating to procurement of supplies and services.

All policy and procedural matter of Federal Procurement Regulations (See Chapter I of Title 41) and General Services Administration regulations which are to be made applicable to the Department of Defense and are within the scope of this subchapter will be codified herein prior to compliance therewith by the Military Departments. The applicable Department of Defense Directives covering the assignments of responsibility for the purchasing of specific supplies under Interagency Purchase Assignment will be incorporated by reference in this subchapter. For Department of Defense implementation of Federal Supply Schedules, see § 5.103.

§ 1.113 Code of conduct.

All governmental personnel engaged in procurement and related activities shall conduct business dealings with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of Governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof.

Subpart B—Definitions of Terms

§ 1.201 Definitions.

As used throughout this subchapter, the following terms shall have the meanings set forth below:

§ 1.201–1 Change order.

"Change order" means a written order, signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract (§§ 7.103–2 and 7.203–2 of this subchapter) authorizes the contracting officer to order without the consent of the contractor.

§ 1.201–2 Contract modification.

Contract modification means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (a) bilateral actions such as supplemental agreements, and (b) unilateral actions such as change orders, administrative notices of the exercise of a contract changes, notices of termination, and option.

§ 1.201–3 Contracting officer.

"Contracting officer" means any officer or civilian employee of any military department who, in accordance with departmental procedures, has been or shall be designated a contracting officer (and whose designation has not been terminated or revoked) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or any part of such authority, as hereinafter provided.

§ 1.201–4 Contracts.

"Contracts" means all types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders or task letters thereunder; letter contracts, letters of intent, and purchase orders. It also includes amendments and supplemental agreements with respect to any of the foregoing.

§ 1.201–5 Department and Military Department.

"Department and Military Department" include the Department of the Army, the Department of the Navy, and the Department of the Air Force.

§ 1.201–6 Department of Defense.

"Department of Defense" comprises the Office of the Secretary of Defense and the military departments.

§ 1.201–7 Head of a procuring activity.

"Head of a procuring activity" includes, for the Army, the chiefs of the technical services, the Zone of Interior Army commanders, the Chief of the National Guard Bureau, the Commanding General of the Military District of Washington, U. S. Army and the commanding generals of the major oversea commands; for the Navy, the Chief of each Bureau, the Chief of Naval Research, the Aviation Supply Officer, the Commander, Military Sea Transportation Service, and the Commandant of the United States Marine Corps; for the Air Force, the Commander, Air Materiel Command. It also includes the Executive Director of the Military Medical Supply Agency, the Executive Director of the Military Petroleum Supply Agency, and the head of any other procuring activity hereafter established. The number and designation of Heads of Procuring Activities within any military department may be changed by directive of the Secretary.

§ 1.201–8 Includes.

"Includes" means "includes but is not limited to."

§ 1.201–9 Labor surplus area concern.

See § 1.801–1.

§ 1.201–10 May.

"May" is used in a permissive sense. The words "no person may * * *" mean that no person is required, authorized, or permitted to do the act prescribed.

§ 1.201–11 Negotiate and negotiation.

"Negotiate and negotiation," when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

§ 1.201–12 Possessions.

"Possessions" includes the Virgin Islands, the Canal Zone, Guam, American Samoa, Midway Island, and the guano islands, but does not include any territory or Puerto Rico.

§ 1.201–13 Procurement.

"Procurement" includes purchasing, renting, leasing, or otherwise obtaining supplies or services.

§ 1.201–14 Procuring activity.

"Procuring activity" includes, for the Army, the technical services, the continental armies, the National Guard Bureau, the Military District of Washington, and the major oversea commands; for the Navy, each Bureau of the Navy Department, the Office of Naval Research, the Aviation Supply Office, the Military Sea Transportation Service and the United States Marine Corps; for the Air Force, the Air Matériel Command. It also includes the Military Medical Supply Agency, the Military Petroleum Supply Agency, and any other procuring activity hereafter established. The number and designation of particular procuring activities of any military department may be changed by directive of the Secretary.

§ 1.201–15 Secretary.

"Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military department.

§ 1.201–16 Shall.

"Shall" is used in an imperative sense.

§ 1.201–17 Small business concerns.

See § 1.701–1.

§ 1.201–18 Sources of supplies.

(a) Sources of supplies shall include only (1) manufacturers, (2) construction contractors, and (3) regular dealers.

(b) As used in paragraph (a) of this section:

(1) A manufacturer is a person or firm—

(i) Who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract or of the general character described by the specifications; or

(ii) Who, if newly entering into a manufacturing activity of the type described in subdivision (i) of this subparagraph, has made all necessary prior arrangements for manufacturing space, equipment, and personnel, to perform the manufacturing operations required for contract performance;

And who, prior to being awarded a contract, satisfies the contracting officer that it qualifies under subdivision (i) or (ii) of this subparagraph;

(2) A regular dealer is any one of the following:

(i) A person or firm who owns, operates, or maintains a store, warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business; or

(ii) In the case of supplies of particular kinds (lumber and timber products, coal, machine tools, raw cotton, petroleum, green coffee, tea, agricultural liming materials, or hay, grain, feed, or straw), a person or firm satisfying the requirements of the Regulations of the Secretary of Labor (41 CFR 50–201.101 (b) and 50–201.603 (f)) under the Walsh-Healey Public Contracts Act (41 U. S. C. 35), as amended from time to time;

who, prior to being awarded a contract, satisfies the contracting officer that it is engaged in an established regular business meeting all of the criteria of subdivision (i) or (ii) of this subparagraph. (It is not enough in the case of a regular dealer to show only that arrangements have been made to set up such a business; before an award can be made, the dealer must show that it is an established going business regularly dealing in the particular supplies, or supplies of the general character, sought by the Government.)

(3) While 41 U. S. C. 35 covers only transactions exceeding $10,000 the Department of Defense policy is to apply the above standards in transactions of $10,000 or less. The above definitions shall not apply to contracts for supplies no part of which will be manufactured or furnished within the United States, its Territories, Puerto Rico, or the Virgin Islands.

(c) A manufacturer, construction contractor, or regular dealer may bid, negotiate, and contract through an authorized agent: *Provided*, That the agency is disclosed, and the agent acts and contracts in the name of his principal. In this connection, see the clause entitled, "Covenant Against Contingent Fees" set forth in § 7.103–20 of this chapter and the procedures prescribed for obtaining information concerning contingent or other fees, as set forth in Subpart E of this part.

UNIVERSITY OF MICHIGAN LIBRARIES

§ 1.201–19 Amendment and supplemental agreement.

"Amendment and supplemental agreement" are synonymous, and mean any contract modification which is accomplished by the mutual action of the parties.

§ 1.201–20 Supplies.

"Supplies" means all property except land or interests in land. It includes public works, buildings, facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this subchapter is synonymous with "property" as described in 10 U.S.C. 2303(b).

§ 1.201–21 United States.

"United States," when used in a geographic sense, means the States and the District of Columbia.

Subpart C—General Policies

§ 1.300 Methods of procurement.

§ 1.300–1 Competition.

All procurements, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

§ 1.300–2 Formal advertising.

Purchases and contracts for supplies and services shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Procurement by formal advertising shall be in accordance with detailed requirements and procedures set forth in Part 2 of this subchapter.

§ 1.300–3 Negotiation.

If the use of formal advertising is not feasible and practicable, purchases and contracts for supplies and services may be negotiated in accordance with the detailed requirements and procedures set forth in Part 3 of this subchapter.

§ 1.301 Interdepartmental and coordinated procurement.

Supplies and services may be obtained in appropriate circumstances as provided in Part 5 of this subchapter by such means as interdepartmental and coordinated procurement.

§ 1.302 Sources of supplies.

§ 1.302–1 Government agencies.

To the extent possible, supplies shall be obtained from surplus property in the hands of disposal agencies, or from surplus or excess stocks in the hands of any Government agency. Interdepartmental purchases shall be made in accordance with the provisions of part 5 of this subchapter.

§ 1.302–2 Sources outside the Government.

Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "quotations" in the case of procurement by negotiation) shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the Contracting Officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the Department concerned, and thereby to obtain for the Government the most advantageous contract—price, quality, and other factors considered.

§ 1.302–3 Production and research and development pools.

(a) *Description.* A production or research and development pool is a group of concerns (1) who have associated together for the purpose of obtaining and performing jointly, or in conjunction with each other, contracts for supplies or services, or for research and development, for Defense use, (2) who have entered into a pool agreement governing their organization, relationship, and procedure, and (3) whose agreement has been approved either in accordance with section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool), or in accordance with sections 9(d) or 11 of the Small Business Act, Pub. Law 85–536 (Small Business Pools). Pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act and of § 1.201–18.

(b) *General rule.* Except as provided in this section, a pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a pool. In ascertaining the status of a group representing that it is a pool, contracting officers may rely on a copy of the SBA or OCDM notification of approval of the pool. Each Department will expeditiously disseminate to contracting officers information received from SBA or OCDM concerning the approval of pools.

(d) *Contracting with pools.* (1) A bid or proposal of a pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except as to contracts to be awarded to incorporated pools, the contracting officer shall prior to award to a pool require to be deposited with him a certified copy of a power of attorney from each member of the pool who is to participate in the performance of the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of pool member.* Where a member of a production pool has submitted a bid or proposal in its own name and not on behalf of a pool, the pool agreement shall be a factor to be considered in determining its responsibility, pursuant to Subpart I of this part.

§ 1.302–4 Foreign purchases.

Foreign purchases shall be made in accordance with the provisions of Part 6 of this title and upon compliance with any other applicable provisions of the subchapter.

§ 1.302–5 Planned emergency producer.

A "Planned Emergency Producer" is a concern with which one or more Government procuring activities have negotiated an emergency production assignment and which holds a valid planned emergency production schedule signed by the responsible Armed Services Procurement Planning Officer (ASPPO). In procurements of items for which there are planned emergency producers, such producers shall be solicited.

§ 1.303 Exchange of purchase information.

(a) Where the same item or class of items is being purchased by more than one Military Department, or by more than one procuring activity within a Department, the exchange and coordination of pertinent information between these Departments or procuring activities is desirable to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. Generally, for a substantial purchase of a major item, the purchasing activity should request appropriate information from other purchasing activities responsible for buying similar items. Each activity receiving such requests shall furnish the information requested, if available. Such exchange and coordination of information is particularly beneficial during the procurement planning or pre-solicitation period.

(b) In negotiated procurement where available information from Government sources is inadequate, and in order to obtain basic information for the development of further data, the contracting officer, only in the negotiation with a prospective supplier, should inquire into previous contracts between that supplier and the Government for the same or similar items. In appropriate cases the request for proposals may contain a requirement that the offeror furnish information as to whether or not it has previously furnished the same item to any Government agency, and if so, identify recent contracts under which such items were furnished by contract numbers, dates, and purchasing activities.

§ 1.304 Selection of items involving proprietary data or other restrictive factors.

In some cases, the procurement of an item would involve proprietary data (see § 9.201(b) of this chapter) or other factors which would restrict sources of procurement or limit competition, but alternative items can be procured which would meet the military needs involved. In such cases, consideration should be given in selecting the item to be procured, to the relative advantages for national defense purposes of the item which involves such proprietary data or other factors as against the disadvantages of a restricted source of supply and possible increased cost to the Government because of lack of competition. However, where a particular item best meets military needs, the contracting activity should not refrain from procuring the item solely because it would involve such restrictions or limitations.

§ 1.305 Time of delivery or performance.

§ 1.305–1 Scope.

Sections 1.305—1.305–4 prescribe policy and procedure regarding requirements as to time of delivery or performance of contracts for supplies or services, excluding construction.

§ 1.305–2 General.

(a) The time of delivery or performance is an essential element for inclusion in a contract and must be clearly set forth in invitations for bids and requests for proposals. Delivery and performance schedules shall be designed to meet the requirements of the particular procurement, with due regard to all relevant factors, and must be realistic. Delivery and performance schedules which are unreasonably tight or difficult of attainment are inimical to full competition, inconsistent with small business policies (see § 1.702(b)(3)), and may result in higher contract prices. Therefore, prior to issuing an invitation for bids or request for proposals, the contracting officer shall question any delivery requirement which appears unrealistic, and, if necessary, initiate action to make appropriate adjustments, with due attention to relevant factors such as applicable transportation factors (see Subpart M of this part, and those listed below:

(1) Urgency of need for the supplies or services;

(2) Production time (quantity, complexity of design, etc.);

(3) Market conditions;

(4) Transportation time;

(5) Industry practices;

(6) Capabilities of small business concerns;

(7) Time for obtaining and evaluating bids or offers, and awarding contracts.

(8) Time for contractors to comply with any conditions precedent to contract performance; and

(9) Time for Government to perform its obligations under the contract (e.g., furnishing Government property to the contractor, approval of preproduction samples, and inspection).

(b) Where timely delivery or performance is unusually important to the Government, liquidated damages provisions may be used as provided in § 1.310.

(c) Invitations for bids and requests for proposals shall, except where clearly unnecessary, inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

§ 1.305–3 Terms.

(a) Delivery schedules may be expressed in terms of:

(1) Specific calendar dates (e.g., on or before July 1, 1960);

(2) Specified periods from date of contract (i.e., date of award or acceptance by the Government, or date shown on contract document as effective date of contract); or

(3) Specified periods from date of receipt by contractor of notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government).

The full period which the Government holds out as being available for contract performance should not be curtailed to the prejudice of the contractor by delay in giving notice of award. Accordingly, one of the provisions in paragraph (b) or (c) of this section shall be used in advertised procurements and may be suitability modified and used in appropriate negotiated procurements (other than small purchases).

(b) Where the delivery schedule is in terms of specific calendar dates, invitations for bids will include one of the following provisions:

(1) The foregoing delivery requirements are based on the assumption that the Government will make award by [purchasing activity insert calendar date]. Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 8(d) of the Terms and Conditions of the Invitation for Bids, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails.

(2) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by [purchasing activity insert calendar date]. The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the contractor receives notice of award: provided, that the contractor promptly acknowledges such receipt.

(c) Where the delivery schedule is based on the date of contract (see paragraph (a)(2) of this section), the invitations for bids will include the following provision:

Attention is directed to paragraph 8(d) of the Terms and Conditions of the Invitation for Bids which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected.

(d) Where the delivery schedule is based on the date of the contract (see paragraphs (a)(2) and (c) of this section), the contract, notice of award, acceptance of proposal, or other contract document executed by the Government shall be mailed or otherwise furnished the contractor on the day it is dated.

(e) Where the delivery schedule is based on date of receipt by the contractor of notice of award (see paragraph (a)(3) of this section), or where it is expressed in terms of specific calendar dates on the assumption that notice of award will be received by a specified date (see paragraph (b)(2) of this section), the notice of award, acceptance of proposal, or other contract document executed by the Government shall be sent by certified mail, return receipt requested, or shall be accompanied by a date of receipt acknowledgement card in accordance with Departmental procedures.

(f) When the required delivery schedule in the invitation for bids is based on the date of the contract (see paragraph (a)(2) of this section), a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (see paragraph (a)(3) of this section):

(1) Shall be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails; and

(2) If the delivery date offered by the bid (computed in accordance with subparagraph (1) of this paragraph is later than the delivery date required in the invitation for bids, the bid shall be considered nonresponsive and rejected; but

(3) If award is made under subparagraph (1) of this paragraph, under the terms of the contract the delivery date will be the number of days, after actual receipt by the contractor of the notice of award, which were specified in the bid.

§ 1.305–4 Time of delivery clauses.

(a) Examples of time of delivery clauses for invitations for bids are set forth below. They may be modified or other clauses may be used to state particular delivery requirements or any special procedures to be used in the evaluation, rejection or award process as regards time of delivery. These clauses also may be suitably modified for use in negotiated procurements where appropriate.

(b) The following clause may be used where delivery by a particular time is necessary to meet the Government's requirements:

UNIVERSITY OF MICHIGAN LIBRARIES

TIME OF DELIVERY

Delivery is REQUIRED to be made in accordance with the following schedule:

Item No.*	Quantity	Time [*]

Bids offering delivery of each quantity within the applicable delivery period specified above will be evaluated equally as regards time of delivery. Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected. Where a bidder offers an earlier delivery schedule than that called for above, the Government reserves the right to award either in accordance with the REQUIRED schedule or in accordance with the schedule offered by the bidder. If the bidder offers no other delivery schedule, the delivery schedule stated above shall apply.

BIDDER'S PROPOSED DELIVERY SCHEDULE

(To be completed by bidder)

Item No.	Quantity	Time [*]

*Contracting officer shall insert the appropriate one of the following phrases, in both of the indicated spaces:

1. "[On] (on or before) the date(s) specified below."
2. "Within the number of days stated below after date of contract."
3. "Within the number of days stated below after the date of receipt of a written notice of award."
4. "Within the periods specified below." (NOTE: When this phrase is inserted, the wording "during month(s) of _____" or "not sooner than _____ and not later than _____" should be used to specify the periods.

(c) The following clause may be used where delivery by a certain time is desired, but not essential, and delivery by a specified later time is necessary to meet the Government's requirements.

TIME OF DELIVERY

Delivery is DESIRED by the Government in accordance with the following schedule:

Item No.	Quantity	Time [*]

If the bidder is unable to meet the above delivery schedule, he may, without prejudice to the evaluation of his bid, set forth his Proposed Delivery Schedule below; but such delivery schedule must not extend the delivery period beyond the time for delivery called for in the following REQUIRED delivery schedule set forth below:

REQUIRED DELIVERY SCHEDULE

Item No.	Quantity	Time [*]

Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable REQUIRED delivery period specified above will be considered nonresponsive and will be rejected.

If the bidder does not propose a different delivery schedule, the Government's DESIRED delivery schedule shall apply.

BIDDER'S PROPOSED DELIVERY SCHEDULE

(To be completed by bidder)

Item No.	Quantity	Time [*]

*Phrases for insertion as indicated above:

1. "[On] (on or before) the date(s) specified below."
2. "Within the number of days stated below after date of contract."
3. "Within the number of days stated below after the date of receipt of a written notice of award."
4. "Within the periods specified below." (NOTE: When this phrase is inserted, the wording "during the month(s) of _____" or "not sooner than _____ and not later than _____" should be used to specify the periods.)

§ 1.306 Approval signatures.

Approval signatures on contracts or purchase authorizations shall be minimized to the greatest practical extent and, in the event that multiple approval signatures are required, they shall, where possible, be obtained concurrently.

§ 1.307 Priorities, allocations and allotments.

§ 1.307–1 General.

In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, it is national policy to require contractors to use rating and allotment authority to support military procurement, to the extent required by the Business and Defense Services Administration.

(a) *DOD Priorities and Allocations Manual.* Department of Defense implementation of all rules and regulations published by the Business and Defense Services Administration, with respect to which the Department of Defense is delegated administrative responsibility, will be published in the Priorities and Allocations Manual promulgated by Department of Defense Instruction 4410.1. Authorized deviations to the priorities and allocations rules and regulations will likewise be published in the Manual.

(b) *Operating responsibility.* In accordance with 1.403 (a), the Departments shall comply with the priorities and allocations program, including the Defense Materials System, as set forth in the Priorities and Allocations Manual and in the rules and regulations published by the Business and Defense Services Administration.

§ 1.307–2 Required use of priorities, allocations and allotment clause.

The contract clause set forth in § 7.104–18 of this subchapter shall be inserted in all rateable contracts whether entered into by formal advertising or negotiation, except that no such clause need be included in purchase orders of less than $5,000. The clause shall be added wherever practicable to existing rateable contracts whenever such contracts are amended for any other purpose and if additional purchases of materials for the contract are contemplated. Rateable contracts are those contracts for supplies which are required to be supported with rating and allotment authority (see Priorities and Allocations Manual, section 2–1).

§ 1.308 Records of contract actions.

(a) Each contract file shall contain documentation of actions taken with respect to the contract, including final disposition, sufficient to constitute a full history of the transaction, to permit ready reconstruction of all of the stages of the transaction to (1) support actions taken by various personnel in the procurement cycle, (2) provide information for reviews conducted by the Department concerned, the Department of Defense, the General Accounting Office, or others, (3) supply data for use in preparing replies to Congressional inquiries, and (4) furnish essential facts in the event of litigation. To the extent that retained copies of documents do not represent all actions taken, suitable memoranda or summary statements of undocumented actions should be prepared promptly and be retained in the contract file in chronological order.

(b) Each contract file shall include the following data, if applicable:

(1) A copy of the procurement directive or request;

(2) On negotiated procurement, a copy of the Determination and Findings statement and Request for Authority to Negotiate (see Subpart C, Part 3 of this chapter);

(3) The list of sources solicited or justification for limiting such sources;

(4) Any small business or labor surplus set-aside determinations (see §§ 1.706 and 1.804);

(5) A copy of the Invitation for Bids or the Request for Proposals, including the drawings and specifications or an identifiable reference thereto;

(6) The Security Requirements Check List (DD Form 254) (see § 16.811 of this chapter);

(7) All bids or proposals received, together with an abstract thereof;

(8) The bidders' Statements of Contingent Fees (see § 16.802 of this chapter);

(9) All pre-award surveys (see § 1.905–4);

(10) Selection of the successful contractor, including:

(i) The reasons for selection,

(ii) The contracting officer's determination of the contractor's responsibility (see § 1.904–1);

(iii) Any Small Business Administration Certificate of Competency (see § 1.705–6);

(11) All price and cost data submitted or used;

(12) A full record of negotiations, including but not limited to: participants; dates of meetings or phone calls; Government-furnished materials or facilities provided; subcontracting; terms and conditions agreed to; deviations, if any, from prescribed contract clauses; technical recommendations; and justification for final price;

(13) Justification for type of contract used (see § 3.304 of this chapter);

(14) Any exceptions or exemptions from the Buy American Act or appropriations act restrictions (see Part 6 of this chapter);

(15) A copy of contract or award;

(16) Required approvals of award;

(17) A copy of Individual Procurement Action Report (DD Form 350) (see § 16.807 of this chapter);

(18) A copy of Statement and Certificate of Award (SF 1036) (see § 16.801 of this chapter);

(19) All pertinent correspondence;

(20) Copies of all change orders, and supplements, with supporting documents;

(21) Comprehensive termination data;

(22) Copies of royalty reports received (see § 16.806 of this chapter);

(23) Final release upon completion of the contract; and

(24) Any additional documents reflecting actions peculiar to a specific activity or service.

(c) This section does not apply in the case of small purchases (see § 3.609 of this chapter).

§ 1.309 Solicitations for informational or planning purposes.

It is the general policy of the Department of Defense to solicit bids, proposals or quotations only where there is a definite intention to award a contract or purchase order. However, in some cases solicitation for informational or planning purposes may be justified. Invitations for bids and requests for proposals will not be used for this purpose. Requests for quotations may be issued for informational or planning purposes only with prior approval of an individual at a level higher than the Contracting Officer. In such cases, the request for quotation shall clearly state its purpose and, in addition, the following statement in capital letters shall be placed on the face of the request: "THE GOVERNMENT DOES NOT INTEND TO AWARD A CONTRACT ON THE BASIS OF THIS REQUEST FOR QUOTATION, OR OTHERWISE PAY FOR THE INFORMATION SOLICITED."

§ 1.310 Liquidated damages.

(a) This section applies to procurement by formal advertising and procurement by negotiation. Liquidated damages provisions normally will not be utilized but may be used where both: (1) The time of delivery or performance is such an important factor in the award of the contract that the Government may reasonably expect to suffer damages if the delivery or performance is delinquent, and (2) the extent or amount of such damages would be difficult or impossible of ascertainment or proof. Where a liquidated damages provision is to be used in a supply or service contract, insert the provision set forth in § 7.105–5 in accordance with the instructions thereof. Liquidated damages provisions for construction contracts are covered by the language in the Termination for Default-Damages for Delay-Time Extension Clause in § 8.709.

(b) The rate of assessment of liquidated damages must be reasonable, considered in the light of procurement requirements on a case-by-case basis, since liquidated damages fixed without reference to probable actual damages may be held to be a penalty and therefore unenforceable.

(c) The law imposes the duty upon a party injured by another to mitigate the damages which result from such wrongful action. Therefore, where a liquidated damages provision is included in a contract and a basis for termination for default exists, appropriate action should be taken expeditiously by the Government to obtain performance by the contractor or to terminate the contract. If delivery or performance is desired after termination for default, efforts must be made to obtain either delivery or performance elsewhere within a reasonable time. For these reasons, particularly close administration over contracts containing liquidated damages provisions is imperative.

(d) Whenever any contract includes a provision for liquidated damages for delay, the Comptroller General on the recommendation of the Secretary concerned is authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable. Accordingly, recommendations concerning such remissions may be transmitted to the Secretary concerned in accordance with Departmental procedures.

§ 1.311 Construction contracts; disclosure of Government estimate.

(a) Except as provided in paragraph (c) of this section, in contracting for construction, access to or disclosure of information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate.

(b) The Government estimate shall be initially designated "For Official Use Only," unless the nature of the information contained therein requires security classification, in which event it shall be handled in accordance with applicable security regulations. Such "Official Use" designation shall be removed only when the estimate is made public in accordance with paragraph (c) of this section.

(c) If the procurement is to be made by means of formal advertising, a copy of the Government estimate shall be sealed and kept locked with the bids until bid opening. Immediately after the bids have been opened, read, and recorded, the estimate shall be opened, the "For Official Use Only" designation removed and the estimate read and recorded in the same detail as the bids. In the case of a negotiated procurement, the "For Official Use Only" designation shall be removed immediately after award, and the estimate may then be released to an individual or firm upon request.

§ 1.312 Voluntary refunds.

A voluntary refund is an unconditional payment or credit, not required by any contract or other obligation, made to the Government by a contractor or subcontractor either as a voluntary payment, or as an adjustment under one or more contracts or subcontracts. In accordance with Departmental procedures, contracting officers and other authorized officials shall accept any voluntary refund which is proffered. Prime contractors should be encouraged to make voluntary refunds and to facilitate the making of such refunds by subcontractors.

§ 1.313 Procurement of parts.

(a) Parts for replenishment of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable, and effective operation of the equipment. Where it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis, as in the kind of cases described in paragraph (b) of this section. However, where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly, as in the kind of cases described in paragraph (c) of this section.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available (or can be made available in keeping with the policies in Subpart B, Part 9 of this title), are to be procured on a competitive basis. In general, such parts are of a standard design configuration or have commercial equivalents. They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark plugs, or electron tubes.

(c) Parts not within the scope of paragraph (b) of this section generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary proprietary data), test results, and quality assurance procedures, are available (or can reasonably be made availabe in keeping with the policies in Subpart B, Part 9 of this title) to assure the requisite reliability and interchangeability of the parts, and procurement on a competitive basis would be consistent with the assurance described in paragraph (a) of this section. In assessing this assurance, the nature and function of the equipment for which the part is needed should be considered. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive procurement of the former but not of the latter. The exacting performance requirements of specially designed military equipment generally demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

§ 1.314 Contracting officer's decision under the Disputes clause.

Where a final decision of the contracting officer involves a dispute that is subject to the procedure of a Disputes clause, or where there is doubt as to whether the decision is subject to such procedure, a paragraph substantially as follows shall be included in such decision:

UNIVERSITY OF MICHIGAN LIBRARIES

This is the final decision of the Contracting Officer. Decisions on disputed questions of fact and on other questions that are subject to the procedure of the Disputes clause may be appealed in accordance with the provisions of the Disputes clause. If you decide to make such an appeal from this decision, written notice thereof (in triplicate) must be mailed or otherwise furnished to the Contracting Officer within thirty days from the date you receive this decision. Such notice should indicate that an appeal is intended and should reference this decision and identify the contract by number. The Armed Services Board of Contract Appeals is the authorized representative of the Secretary for hearing and determining such disputes. The Rules of the Armed Services Board of Contract Appeals are set forth in the Armed Services Procurement Regulation, Appendix A, Part 2.

Rule 4 of the Armed Services Board of Contract Appeals (Appendix A, Part 2) requires the contracting officer to advise the contractor of the Optional Accelerated Procedure of the Board (Rule 31) in appeals involving $5,000 or less.

Subpart D—Procurement Responsibility and Authority

§ 1.400 Scope of subpart.

This subpart deals with the procurement responsibility and authority of (a) the head of each procuring activity, and (b) Contracting Officers; and imposes limitations upon the authority to enter into contracts.

§ 1.401 Responsibility of each procuring activity.

Except as otherwise prescribed by procedures of each respective Department, the head of each procuring activity, as now or hereafter established, is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his activity. The head of each procuring activity is authorized, within limits imposed by his Department, to designate such person or persons as he may select as Contracting Officers, within the meaning of that term as used throughout this subchapter.

§ 1.402 General authority of contracting officers.

In accordance with the provisions of § 1.401 and subject to the requirements prescribed in §§ 1.403 and 1.404, any Contracting Officer is hereby authorized to enter into contracts for supplies or services, in accordance with procedures prescribed by the Department concerned, on behalf of the Government and in the name of the United States of America, whether by formal advertising or by negotiation or by coordinated or interdepartmental procurement as provided in this subchapter.

§ 1.403 Requirements to be met before entering into contracts.

Irrespective of whether procurement is to be effected by formal advertising or by negotiation, no contract shall be entered into unless:

(a) All applicable requirements of law, of this subchapter, and of procedures prescribed by each respective Department have been met; and

(b) Such business clearance or approval as is prescribed by applicable Department procedures has been obtained.

§ 1.404 Special requirements to be met before entering into negotiated contracts.

In addition to the requirements set forth in § 1.403, no contract shall be entered into as a result of negotiation until such determinations and findings as may be required with respect to the circumstances justifying negotiation and with respect to the use of a special method of contracting have been made by the persons and in the manner prescribed in Subparts C and D of Part 3 of this subchapter.

Subpart E—Contingent or Other Fees

§ 1.500 Scope of subpart.

This subpart sets forth the procedures to be followed and prescribes the form to be used for obtaining information concerning contingent or other fees paid by Contractors for soliciting or securing contracts from the Department of Defense, including the Departments of the Army, the Navy, and the Air Force.

§ 1.502 Applicability.

This subpart applies to all contracts.

§ 1.503 Covenant against contingent fees clause.

Every contract shall contain the clause entitled "Covenant Against Contingent Fees", as set forth in § 7.103–20 of this subchapter, except as provided in § 16.401–4(g) of this subchapter.

§ 1.504 Improper influence.

The term "improper influence" means influence, direct or indirect, which induces or tends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

§ 1.505 General principles and standards applicable to the covenant.

The principles and standards set forth in this subpart are intended to be used as a guide in the negotiation, awarding, administration or enforcement, of all contracts.

§ 1.505–1 Contingent character of the fee.

Any fee whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

§ 1.505–2 Exceptions to the prohibition of the covenant.

Excepted from the prohibition of the covenant are "bona fide employees" and "bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

§ 1.505–3 Bona fide employee.

The term "bona fide employee", for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small-business concern, may employ an individual who represents other concerns. The factors set forth in § 1.505–4, except paragraph (d) of § 1.505–4, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.

(a) A person may be a bona fide employee whether his compensation is on a fixed salary basis, or when customary in the trade, on a percentage, commission or other contingent basis or a combination of the foregoing.

(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.

(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.

§ 1.505–4 Bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

In determining whether an agency is a "bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business," the factors set forth in paragraphs (a) through (e) of this section shall be considered. They are necessarily incapable of exact measurement or precise definition and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

(a) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation, as for example, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or subcontractors for performance of the contract.

(b) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary

to sell the products or services on their merits.

(c) There should ordinarily be a continuity of relationship between the Contractor and the agency. The fact that the agency has represented the Contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established Contractor-agent relationships where a continuing relationship is contemplated by the parties.

(d) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.

(e) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized.

However, any agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.

§ 1.505–5 Fees for information.

Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the Contractor for the purpose of securing business.

§ 1.506 Representation and agreement required from prospective contractors.

Except as provided in § 1.507–2, each Department shall inquire of and secure a written representation from prospective Contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective Contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the Contracting Officer. Where an invitation for bids is issued, this inquiry shall be made (and written representation and agreement secured) by requiring the bidder (or Contractor) to check the appropriate box in the following statement to be included in the invitation or bid form:

Bidder represents: (a) That he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (b) that he ☐ has, ☐ has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.)

§ 1.506–1 Interpretation of the representation.

For the purpose of the representation and agreement required from the prospective Contractor, as described in § 1.506, the definition of "bona fide employee" is as specified in § 1.505–3.

(a) The fact that the prospective Contractor retains a person who does not devote his full time solely to the prospective Contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the Contractor-agent relationship. It does mean, however, that the prospective Contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment, or retainer.

(b) If the representation would otherwise be answered in the affirmative the fact that the person employed or retained by the bidder or Contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answering in the negative.

§ 1.507 Use of Standard Form 119.

Except as provided in § 1.507–2, Standard Form 119 (December 1952 ed.) shall be used without deviation whenever either part of the inquiry provided for by § 1.506 is answered in the affirmative. The form shall also be used without deviation in any other case where a department desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Submission of the form shall be required, normally, only of successful bidders and Contractors.

§ 1.507–1 Statement in lieu of form.

Any bidder or proposed Contractor who has previously furnished a Standard Form 119 (December 1952 ed.) to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid, or submit in connection with the proposed contract, a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous invitation or contract in connection with which such form was submitted, and (c) representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required.

§ 1.507–2 Exceptions.

The inquiry and agreement specified in § 1.506 need not be made and submission of Standard Form 119 (December 1952 ed.) need not be requested in connection with the following:

(a) Any advertised contract in which the aggregate amount involved does not exceed $25,000;

(b) Any negotiated contract in which the aggregate amount involved does not exceed $5,000;

(c) Any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed $25,000;

(d) Any contract for services which are required to be performed by an individual Contractor in person under Government supervision and paid for on a time basis;

(e) Any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply;

(f) Contracts to be made in foreign countries;

(g) Any other contracts, individually or by class, designated by the Secretary. Reports of any such exceptions shall be filed promptly with the Administrator of General Services.

§ 1.508 Enforcement.

Each department shall take the necessary steps to assure that the indicated successful bidder or proposed Contractor has furnished a representation (negative or affirmative) and agreement as described in § 1.506.

(a) If the indicated successful bidder or proposed Contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted in accordance with procedures of the Department concerned.

(b) If the indicated successful bidder or proposed Contractor makes such representation in the affirmative, a completed Standard Form 119 (December 1952 ed.) shall be requested from the bidder or proposed Contractor. In the case of formal advertising, the making of an award in accordance with established procedure of the Department concerned need not be delayed pending receipt of the form. In the case of negotiation, if the proposed Contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 (December 1952 ed.) prior to acceptance of the offer or execution of the contract unless the Secretary, or his authorized representa-

UNIVERSITY OF MICHIGAN LIBRARIES

tive, considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119 (December 1952 ed.).

(c) If the indicated successful bidder or proposed Contractor fails to furnish the representation and agreement as set forth in § 1.506, such failure shall be considered a minor informality and, prior to award, such bidder or proposed Contractor shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement after such opportunity has been afforded shall require rejection of the bid or offer.

§ 1.508–1 Failure or refusal to furnish Standard Form 119.

If the successful bidder or Contractor, upon request, refuses or fails to furnish a completed Standard Form 119 (December 1952 ed.), or a statement in lieu thereof as provided in § 1.507–1, the Department concerned shall take one or more of the following actions, or other action, as may be appropriate:

(a) If an award has not been made or offer accepted, determine whether the bid or offer should be rejected.

(b) If the contract has been awarded or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the Contractor as a future Contractor in accordance with established procedure of the Department concerned.

§ 1.508–2 Misrepresentations or violations of the covenant against contingent fees.

In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, the Department concerned shall take one or more of the following actions, or other action, as may be appropriate:

(a) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected.

(b) If an award has been made or offer has been accepted, take action to enforce the covenant in accordance with its terms; that is, as the best interests of the Government may appear, annul the contract without liability or recover the amount of the fee involved.

(c) Consider the future eligibility as a Contractor of the bidder or Contractor in accordance with established procedure of the Department concerned.

(d) Determine whether the case should be referred to the Department of Justice in accordance with § 1.111.

§ 1.509 Preservation of records.

Departments shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed Standard Form 119 (December 1952 ed.) (or statement in lieu of form) together with a record of any other pertinent data, including data as to action taken.

Subpart F—Debarred, Ineligible, and Suspended Bidders

§ 1.600 Scope of subpart.

This subpart prescribes policies and procedures relating to the debarment of bidders for any cause, ineligibility of bidders under section 1a of the Walsh-Healey Public Contracts Act (41 U.S. Code 35a), and the suspension of bidders for alleged fraud or other criminal conduct.

§ 1.601 Establishment and maintenance of a list of firms or individuals debarred or ineligible.

§ 1.601–1 General.

Each Department shall maintain a list of firms and individuals which it has debarred or suspended, to whom contract awards of any character, including sales, will not be made, and from whom bids or proposals will not be solicited as provided in this Subpart F.

§ 1.601–2 Information contained in departmental lists.

Each Departmental list shall show as a minimum the following information:

(a) The names of those firms or individuals debarred, ineligible, or suspended (names will be set forth in alphabetical order with appropriate cross-reference where more than one name is involved in a single action);

(b) The basis of authority for each action;

(c) The extent of restrictions imposed; and

(d) The termination date for each debarred listing.

§ 1.601–3 Joint consolidated list.

By agreement among the Military Departments, the Department of the Army is responsible for the issuance of a Joint Consolidated List of firms and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The Joint Consolidated List shall be kept current by notices of additions or deletions and periodic reprinting. Each Military Department shall furnish, not later than the 5th of each month, to the Office of the Assistant Secretary of the Army (Logistics) (Assistant Judge Advocate General), an alphabetical list of the additions, deletions, or modifications to the Joint Consolidated List, containing the information set forth in § 1.601–2. Each Military Department shall be responsible for determining the number of copies of the Joint Consolidated List required and for distributing the list within the Department. The Department of the Army will furnish copies to the Assistant Secretary of Defense (Supply & Logistics).

§ 1.601–4 Protection of lists.

The Joint Consolidated and Departmental Lists, and all correspondence relating thereto, shall be protected to prevent inspection of the contents by anyone other than Government personnel required to have access thereto.

§ 1.602 Limitation.

No firm or individual will be listed on a consolidated list for causes or under conditions other than those set forth in this subpart F.

§ 1.603 Grounds for listing and treatment to be accorded listed concerns.

(a) A firm or individual may be listed for any of several reasons. The particular reason for listing determines the consequences thereof. The various types of listing and the treatment to be accorded each type are set forth below:

Type A includes debarments in any of the following categories:

(1) Those listed by the Comptroller General pursuant to section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) for violating the requirements of that Act;

(2) Those listed by the Comptroller General pursuant to section 3 of the Davis-Bacon Act (40 U.S.C. 376a–2(a)) for violating the requirements of that Act; and

(3) Those which the Secretary concerned or his representatives has determined to debar for any of the causes and under all of the conditions set forth in § 1.604.

Contracts shall not be awarded to, nor bids or proposals solicited from, nor invitations for bids nor requests for proposals furnished to, concerns which are listed as Type A and which are debarred because of Walsh-Healey or Davis-Bacon violations (categories (1) and (2) above). The same rules apply with respect to Type A listings within category (3) above, unless the Secretary concerned or his representative determines it to be in the interest of the Government to make an exception for a particular procurement action, or unless the listing indicates that the debarment is not to apply to sales contracts or to procurement contracts (see § 1–606).

Type B includes concerns which the Secretary of Labor has determined to be ineligible because they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)). Under that Act, procurement contracts in excess of $10,000 shall not be awarded to concerns under Type B listings for those materials, articles, or equipment with respect to which the concern has been found to be ineligible. The Department of Defense, as a matter of policy, applies the same rule to contracts of $10,000 or less. However, contracts in any amount may be awarded, and bids or proposals may be solicited, for commodities with respect to which the concern has not been declared ineligible. In connection with ineligibility under the Walsh-Healey Act (Type B listing only), the name of an individual may be listed as affiliated with an ineligible firm. This listing is intended only to prevent such individuals from evading ineligibility merely by changing their business names and addresses. It does not prohibit other firms in which such individuals have an interest, and which are qualified manufacturers or regular dealers from receiving contracts subject to the Walsh-Healey Public Contracts Act.

Type C includes concerns which the appropriate Secretary, pursuant to section 3(b) of the Buy American Act (41 U.S.C. 10b(b)), has found to have failed to comply with the "Buy American Act" clause required for construction contracts (see § 6.205). Contracts for the construction, alteration, or repair of public buildings or public works in the United States or elsewhere shall not be awarded to concerns under Type C listings; nor shall bids or proposals for such work be solicited from such concerns. However, concerns under Type C listings may be awarded contracts and may be solicited for bids or proposals for other than the construction, alteration, or repair of public buildings or public works.

Type D includes concerns which the appropriate Secretary or his representative has determined to suspend under the conditions set forth in § 1.605. Concerns under Type D listings shall not be awarded contracts, nor solicited for bids or proposals, except where the Secretary concerned or his representative determines it to be in the best interest of the Government to make an exception for a particular procurement, or where the listing indicates that the suspension does not apply to sales contracts or procurement contracts (see § 1.606). Authority to permit exceptions in keeping with the foregoing has been given to the Assistant Judge Advocate General for the Army, the Chief of Naval Material for the Navy, and the Deputy Chief of Staff, Materiel, for the Air Force.

Type E includes concerns which have been reported by the Secretary of Labor to have violated labor standards provisions of any of the following statutes: Anti-Kickback Act (48 Stat. 948) as amended (40 U.S.C. 276c). Eight Hour Law (27 Stat. 340) as amended (40 U.S.C. 321–326), National Housing Act (53 Stat. 804) as amended (12 U.S.C. 1703), Hospital Survey and Construction Act (60 Stat. 1040), Federal Airport Act (60 Stat. 170) as amended (49 U.S.C. 1101), Housing Act of 1949 (63 Stat. 413) (42 U.S.C. 1441), School Survey and Construction Act of 1950 (64 Stat. 967) (20 U.S.C. 251), and Defense Housing and Community Facilities and Services Act of 1951 (65 Stat. 293) as amended (42 U.S.C. 1591). Concerns under Type E listings shall not be awarded contracts which are subject to any of the foregoing statutes.

(b) Administration of current contracts in all phases may be continued, notwithstanding the listing of a contractor, unless otherwise directed by the Secretary concerned or his representative. However, payment of all or part of funds due or to become due may be withheld when such action is determined to be in the best interest of the Government by the Secretary concerned or his representative.

(c) Where a listed concern is proposed as a subcontractor, the contracting officer should, where appropriate, decline to consent to subcontracting with such concern.

§ 1.604 Causes and conditions under which departments may debar contractors.

The Secretary of each Department, or his authorized representative except as limited below, is authorized to debar in the public interest a firm or an individual for any of the causes and under all the conditions set forth below. Debarment of a firm or individual under this Subpart F shall operate to debar such firm or individual throughout the Department of Defense. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the interest of the Government and not for punishment.

§ 1.604–1 Causes for debarment.

(a) Conviction by or a judgment obtained in a court of competent jurisdiction for (1) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract; (2) violation of the Federal antitrust statutes arising out of the submission of bids or proposals; or (3) commission of embezzlement, theft, forgery, bridery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor. If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense, and all mitigating factors should be considered in making the decision to debar.

(b) Clear and convincing evidence of violation of contract provisions, as set forth below, when the violation is of a character so serious as to justify debarment action:

(1) Willful failure to perform in accordance with the specifications or delivery requirements in a contract;

(2) A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts: *Provided*, That such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment;

(3) Violation of the contractual provision against contingent fees; or

(4) Violation of the "Gratuities" clause, as determined by the Secretary in accordance with the provisions of the clause.

(c) For other cause of such serious and compelling nature as may be determined by the Secretary of the Department concerned to justify debarment.

(d) Debarment for any of the above causes by some other executive agency of the Government. Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts of the original debarring agency.

§ 1.604–2 Period of debarment.

All debarments shall be for a reasonable, definitely stated period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment should not exceed 5 years following the date of conviction for fraud or other criminal offense, or 3 years following the date of debarment for any other cause. However, with respect to debarment for violation of the nondiscrimination clause, the debarment shall be removed prior to the expiration of the debarment period by the Secretary who imposed the debarment upon receipt of satisfactory evidence that corrective action has been taken. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment.

§ 1.604–3 Notice of debarment.

(a) The firm or individual concerned shall be furnished with a written notice of the proposed debarment stating as a minimum (1) the fact that debarment is being considered, (2) the reasons for the proposed debarment, and (3) the period of time to be afforded to present information for consideration. If debarment is effected, the firm or individual shall be notified in writing within 10 days after determination of debarment has been made. This notice shall (i) reference the earlier notice of proposed debarment, (ii) specify the reasons for debarment, (iii) state the period of debarment, including effective dates, and (iv) advise that the debarment is effective throughout the Department of Defense. If, following the notice of proposed debarment, a determination is made that debarment will not be effected, the firm or individual shall be notified in writing accordingly.

(b) Copies of the notice of debarment and of any removals from such debarment shall be furnished to the General Services Administration.

§ 1.605 Suspension of bidders.

Suspension of a contractor or bidder is a drastic action which must be based upon adequate evidence rather than mere accusation. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the interest of the Government and not for punishment. The suspension of a bidder is an administrative determination which may be modified when determined to be in the interest of the Government.

§ 1.605–1 Causes and conditions under which departments may suspend contractors.

(a) The Secretary of a Department or his authorized representative may, in the interest of the Government, suspend a firm or individual:

(1) Suspected of:

(i) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;

(ii) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; or

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor; or

(2) For other cause of such serious and compelling nature as may be determined by the Secretary of the Department concerned to justify suspension.

(b) Suspension of a firm or individual by the Secretary of a Department, or his authorized representative, shall operate to suspend such firm or individual throughout the Department of Defense.

§ 1.605–2 Period of suspension.

All suspensions shall be for a temporary period pending the completion of investigation and such legal proceedings as may ensue. Upon the completion of such investigation or proceedings, the suspension shall be removed and, if appropriate, changed to a debarment in accordance with § 1.604–1(a).

§ 1.605–3 Restrictions during period of suspension.

During a period of suspension of a firm or individual, the following policies

UNIVERSITY OF MICHIGAN LIBRARIES

and procedures shall be applicable:

(a) Bids and proposals will not be solicited from suspended contractors. If received, bids and proposals will not be considered and award for contracts may not be made to suspended contractors unless it is determined to be in the best interest of the Government by the Secretary of a Department or his authorized representative.

(b) Suspended contractors will be subject to the provisions of § 1.603 (b) and (c).

§ 1.605–4 Notice of suspension.

(a) The firm or individual concerned shall be furnished a written notice by the Secretary of the Department concerned, or his authorized representative, of the suspension within 10 days after the effective date of the suspension. The notice of suspension shall state—

(1) That the suspension is based on information that the firm or individual has committed irregularities of a serious nature in business dealings with the Government or that the suspension is based on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) That bids and proposals will not be solicited from the firm or individual and if received will not be considered, and awards of contracts may not be made unless it is determined to be in the best interest of the Government by the Secretary of the Department or his authorized representative to do so; and

(4) That the suspension is effective throughout the Department of Defense.

(b) All inquiries concerning suspended contractors shall be referred to the Secretary of the Department concerned or his authorized representative for appropriate action. The Department shall not give further information to the contractor or his representatives concerning the reasons for suspension beyond that stated in the notice of suspension set forth above until the Department of Justice has been advised of the inquiry.

§ 1.606 Limited debarment or suspension.

Where it is determined to debar or suspend a concern pursuant to § 1.604–1 or § 1.605–1, the responsible official shall decide whether the debarment or suspension should extend to procurement contracts or to sales contracts or to both. If the debarment or suspension is limited either to procurement contracts or to sales contracts the listing should so indicate.

§ 1.607 Interchange of debarment information.

(a) The General Services Administration is charged by GSA Regulation 1–II–207.07 with compiling from the notifications of debarments furnished them by the Military Departments and executive agencies, a combined list of such debarments, including the basis of action, and distributing a copy of such lists to all executive agencies including the Military Departments. In general application, this listing will be for information purposes only and it is not intended to take the place of, or be in addition to, the lists maintained by the various agencies.

(b) Each Department will notify the General Services Administration of the name and address of its central office where debarment information should be sent.

(c) Each Department will check the list of debarred bidders furnished by the General Services Administration and consider firms or individuals listed thereon for inclusion upon their own lists, in accordance with the provisions of this Subpart F.

(d) On specific request, the General Services Administration has agreed to furnish to the Military Departments a copy of the notice reflecting the basis for debarment action taken by another agency for causes contained in § 1.604–1 (subsection 207.05a of GSA Regulation 1–II) or under the Buy American Act. If desired, direct inquiry concerning any debarment case may be made to the agency which originated the action.

§ 1.608 [Reserved]

§ 1.609 Procurement outside the United States.

In regard to procurement outside the United States, its Territories and possessions, the principles and procedures set forth in the foregoing provisions of subpart F of this Part 1 will be applied by overseas commanders whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries in which such lists are to be applicable.

§ 1.609–1 Responsibilities and area coverage.

The Commander-in-Chief, United States European Command, the Commander-in-Chief, Pacific, and the Commander-in-Chief, Caribbean, or the Commanders of a component command which each of the these unified commanders may designate, will establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas including all of Europe, North Africa and the Middle East. The CINCPAC consolidated list will include names in the Far East and Pacific Ocean areas excluding United States Territories and possessions. The CINCARIB consolidated list will include names in Central and South America excluding Territories and possessions. All other overseas commanders will utilize and contribute to such list as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

§ 1.609–2 Information contained on overseas lists.

The lists shall show as a minimum the following information:

(a) The names and addresses of those firms or individuals to whom contracts shall not be awarded and from whom bids or proposals will not be solicited. (Names will be set forth in alphabetical order with appropriate cross reference where more than one name is involved in a single action and where a parent firm or individual in one country is known to control subisidiaries, branches, or agencies in the same or other countries.)

(b) The basis or authority for each action;

(c) The extent of restrictions imposed;

(d) The termination date for each debarred listing; and

(e) The originating activity, component or agency.

§ 1.609–3 Protection of lists.

The lists and all correspondence relative thereto shall be protected to prevent inspection of contents by personnel who are not required to have access to such information. The lists shall be marked "For Official Use Only."

§ 1.609–4 Maintenance and distribution of lists.

The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the list shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCARIB will exchange lists directly. Copies will also be furnished to the Assistant Secretary of Defense (Supply and Logistics), the Assistant Secretary of Defense (International Security Affairs), the Assistant Secretary of the Army (Logistics) (Assistant Judge Advocate General), the Chief of Naval Material (Code M22), and the Commander, Air Material Command (MCPI).

§ 1.609–5 [Reserved]

§ 1.609–6 Basis of addition of firms and individuals on lists.

In addition to the names of offshore firms or individuals which may be included on the lists as falling into the categories outlined in § 1.603, the names of firms or individuals abroad shall be included on the list in the following additional categories:

(a) Those who are "designated nationals" under the Foreign Assets Control Regulations;

(b) Those found by the Assistant Secretary of Defense (ISA) or his authorized representative to have engaged in improper East-West trade activity;

(c) Those found by the Assistant Secretary of Defense (ISA) or his authorized representative to be ineligible because they do not meet the political or security criteria;

(d) Those found by a United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the firms or individuals are located) to be ineligible because they do not meet the labor-political criteria; and

(e) Those who for other causes of a serious and compelling nature are so designated by the unified commander.

§ 1.609–7 Treatment to be accorded firms or individuals in debarred or ineligible status.

The provisions of § 1.603 will be complied with, if applicable. In addition, contracts will not be awarded to, nor shall bids or proposals be solicited from, or furnished to firms or individuals abroad which come into the categories (a) through (e) of § 1.609–6. With respect to (a) of § 1.609–6, an exception may be made by the Secretary of the Treasury only. With respect to (b), (c), and (d) of § 1.609–6, an exception may be made by the Assistant Secretary of Defense (ISA) or his authorized representative.

§ 1.609–8 Causes and conditions under which unified commanders may place names on the consolidated list.

CINCEUR, CINCPAC, and CINCARIB, or their designated component commanders are respectively authorized to place on the list names of firms or individuals doing business within the areas for which they are responsible, for any of the causes and under the conditions set forth in §§ 1.609–6 and 1.609–7. Overseas commanders or unified commanders overseas other than CINCEUR, CINCPAC, and CINCARIB are similarly authorized to designate firms or individuals in their command areas and will promptly notify either CINCEUR, CINCPAC, or CINCARIB, who will add the names to their consolidated lists. In these cases the information contained in § 1.609–2 will be furnished. The listing shall operate to deny contracts to such firms or individuals throughout the Department of Defense.

§ 1.609–9 Liaison with United States diplomatic missions.

The Chief of the United States Diplomatic Mission, or such attaché or other officer as he directs, in the country where the firm or individual concerned is located, will be notified of actions contemplated under the foregoing sections which may have important political significance. In such cases of contemplated action against a branch or subsidiary firm or agency in one or more countries, the Chief of the United States Diplomatic Mission in each country, including that in which the parent or principal is located, will be notified.

§ 1.610 Use of overseas lists within United States.

(a) Due to the length of the lists, the numerous revisions and distances involved, as well as the infrequent contracting by offices in the United States with offshore supplies, the CINCEUR, CINCPAC, and CINCARIB consolidated lists of ineligible, debarred and suspended bidders will not be distributed to contracting officers in the United States. However, no contracts will be awarded by contracting officers in the United States, and its possessions, to offshore suppliers without ascertaining that the names of the firms or individuals involved do not appear on the overseas consolidated lists. These lists will be held for reference in each of the Military Departments and will be utilized in accordance with procedures established by each of the Departments.

(b) Where a contracting officer becomes aware that a prospective contractor proposes to furnish products of a concern that has been placed on an overseas list in accordance with § 1.609–b (a), (b), (c), or (d), the matter shall, in accordance with Departmental procedures, be referred to the Assistant Secretary of Defense (ISA) for advice. In the Army, referral will be through the Assistant Secretary of the Army (Logistics) (Assistant Judge Advocate General) with an information copy to the Deputy Chief of Staff for Logistics, Attn: Chief, Contracts Branch; in the Navy, through the Office of Naval Material—Code M–30; in the Air Force, through Headquarters USAF, AFMPP–PR.

Subpart G—Small Business Concerns

§ 1.700 Scope of subpart.

To implement the Small Business Act, Pub. Law 85–536, and the Armed Services Procurement Act, as amended, this subpart sets forth (a) policy with reference to small business concerns, (b) policy governing relationship with the Small Business Administration, (c) small business set-aside procedures, and (d) the Defense Small Business Subcontracting Program. This subpart applies only in the United States, its Territories, its possessions, and Puerto Rico.

§ 1.701 Definitions.

As used throughout this subpart, the following terms shall have the meanings set forth below.

§ 1.701–1 Small business concern.

(a) (1) *General definitions.* Except as provided in subparagraph (2) of this paragraph, a small business concern is a concern that is (i) independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or (ii) is certified as a small business concern by SBA.

(2) *Special industry definitions.* Unless certified as a small business concern by SBA, in addition to being independently owned and operated, and not dominant in its field of operation, a small business concern in order to qualify as such must meet special criteria in the following industries:

(i) *Construction industry.* In the construction industry, the average annual receipts of the concern and its affiliates for the preceding three years must have been $5,000,000 or less; except that if the concern is located in Alaska, such receipts must have been $6,250,000 or less.

(ii) *Aircraft equipment and parts industry.* In the aircraft equipment and parts industry, the number of employees of the concern and its affiliates must not exceed 1,000 employees. This special definition for the aircraft equipment and parts industry applies only in the procurement of the following items:

Airframes and structural components.
Aircraft propellers and hubs.
Wheel and brake systems.
Jet engines.
Fuel tanks.
Aircraft hydraulic systems.
Aircraft vacuum systems.
Aircraft air-conditioning.
Heating and pressurizing equipment.
Fire control systems.
Flight instruments.
Flight simulators (except small cockpit trainers).
Aircraft de-icing systems.

(iii) *Petroleum refining industry.* In the petroleum refining industry, the concern and its affiliates must employ not more than 1,000 employees and not have more than 30,000 barrels per day crude oil capacity from owned or leased facilities.

(iv) *Food, canning, and preserving industry.* In the food, canning and preserving industry, the concern and its affiliates must employ fewer than 500 employees exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

(v) *Air transportation industry.* In the air transportation industry the number of employees of the concern and its affiliates must not exceed 1,000 employees.

(b) *Dominance in field of operations.* A concern "is not dominant in its field of operations" when it does not exercise a controlling or major influence in an area of business activity. In determining whether dominance exists, consideration is given to all appropriate factors including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents and license agreements, sales territory, and business activity.

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships.

(d) *Number of employees.* In connection with the determination of small business status, except as SBA otherwise determines in a particular industry or part thereof, "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the 15th of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the 15th of each month.

(e) *Small business certificate.* A small business certificate is a certificate issued by SBA pursuant to the authority contained in sections 3 and 8(b)(6) of the Small Business Act certifying that the holder of the certificate is a small

business concern for the purpose of Government procurement and in accordance with the terms of the certificate.

§ 1.701–2 Established supplier.

An "established supplier" of an item is a concern which is a "source of supplies," within the meaning of § 1.201–18, and which has supplied the items satisfactorily to one or more military departments, or a concern with which mobilization planning is in effect.

§ 1.701–3 Potential supplier.

A "potential supplier" of an item is a concern which is a "source of supplies," within the meaning of § 1.201–18, but which is not an established supplier.

§ 1.701–4 Regular dealer (nonmanufacturer) as small business concern.

One who submits bids or offers in his own name, but who proposes to furnish a product not manufactured by himself, shall be deemed to be a small business concern only if (a) he is a small business concern within the meaning of § 1.701–1; (b) he is a regular dealer (nonmanufacturer) (see § 1.201–18); and (c) in the case of a procurement set aside for small business (see § 1.706) or involving equal low bids (see § 2.407–6 of this subchapter) or otherwise involving the preferential treatment of small business, he agrees to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided, that this section does not apply to construction or service contractors.

§ 1.702 General policy.

(a) It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies and services (including, but not limited to, contracts for maintenance, repair, and construction) with small business concerns.

(b) Each military department shall implement this policy by affording small business concerns an equitable opportunity to compete for prime contracts in accordance with the following:

(1) bidders' mailing lists (see § 2.205 of this subchapter) shall be maintained and shall include all established and potential small business suppliers who have made acceptable application for inclusion or who appear from other information (including recommendation by the SBA representative), to be qualified for inclusion therein.

(2) Invitations for Bids or Requests for Proposals shall be sent to all firms on the appropriate list, except that where less than the complete list is to be used pursuant to § 2.205–4 of this subchapter a pro-rata number of established or potential small business suppliers shall be solicited;

(3) procurement of supplies and services shall be divided into reasonably small lots (not less than economic production runs) in order to permit bidding on quantities less than the total requirements; the maximum amount of time practicable shall be allowed for preparation and submission of bids and proposals; and delivery schedules shall be suitable for small business participation; and

(4) for specification requirements, see § 1.1203 (d) of this subchapter.

As to subcontracting, see § 1.707.

(c) Records of the total value of all contracts placed with small business concerns during each fiscal year, and reports based thereon, are maintained by each military department through the Department of Defense Procurement Reporting System described in § 1.110 and § 16.807 of this subchapter. Accordingly, each military department shall, in soliciting bids or proposals, request from any bidder or offeror, or other source, any information needed to determine whether the bidder or offeror is a small business concern.

§ 1.703 Determination of status as small business concern.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall accept at face value (1) a small business certificate (see § 1.701–1 (e)) that a bidder or offeror is a small business concern or (2) a statement by the bidder or offeror that it is a small business concern (see §§ 1.701–1 and 1.701–4) and that it has not previously been denied small business status by SBA.

(b) Small business certificates and statements that a bidder or offeror is a small business concern shall be effective, even though questioned in accordance with the terms of this paragraph, unless the SBA, in response to such question and within the period specified in subparagraph (3) of this paragraph, determines that the bidder or offeror in question is not a small business concern.

(1) Any bidder or offeror may, prior to award, question the small business status of the apparently successful bidder or offeror by sending a written protest to the contracting officer and to the SBA Regional Office for the region in which the questioned bidder or offeror has its principal place of business. SBA will promptly notify the contracting officer of the date of its receipt of any such protest and will advise the questioned bidder or offeror that its small business status is under review.

(2) A contracting officer may, prior to award, question the small business status of the apparently successful bidder or offeror by sending a written notice to the SBA Regional Office for the region in which the bidder or offeror has its principal place of business. Such notice shall contain a statement of the basis for questioning and of available supporting facts. SBA will promptly notify the contracting officer of the date such notice was received and will advise the bidder or offeror in question that its small business status is under review.

(3) SBA will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of its decision. If the SBA determination is not received by the contracting officer within ten working days after SBA's receipt of the protest or notice questioning small business status, it shall be presumed that the questioned bidder or offeror is a small business concern. Pending SBA determination or expiration of the ten day period, whichever is earlier, procurement action shall be suspended.

§ 1.704 Small business officials.

§ 1.704–1 Director for small business.

The Director for Small Business for the Department of Defense advises the Assistant Secretary of Defense (Supply and Logistics) in matters relating to the establishment, implementation, and execution of an appropriate Small Business Program within the Department of Defense. Negotiations with SBA or other Government agencies or departments outside the Department of Defense concerning small business policy and programs shall be conducted through the Director for Small Business or with his authorization.

§ 1.704–2 Departmental small business advisors.

Each military department shall maintain an Office of Small Business for the Department. The Chief of each Office of Small Business shall devote his efforts exclusively to small business matters. He advises the Secretary on small business matters and is responsible for implementing the Department of Defense Small Business Program within his Department and for representing his Department in negotiations with other military departments or governmental agencies on small business matters.

§ 1.704–3 Small business specialists.

Small business specialists shall be appointed in each principal procurement office and such other offices as the military departments may consider appropriate. They will perform such functions as are prescribed for them in furtherance of the Small Business Program.

§ 1.705 Cooperation with the Small Business Administration.

§ 1.705–1 General.

The Assistant Secretary of Defense (Supply and Logistics) and the Administrator, SBA, are responsible for consulting, and cooperating in establishing policies and programs for small business participation in Defense procurement. All Department of Defense purchasing activities are responsible for working with SBA in carrying out these policies and programs, in accordance with the provisions of § 1.705.

§ 1.705–2 SBA representatives.

SBA may assign one or more representatives on a full- or part-time basis to any purchasing activity of the military departments to act in its behalf in carrying out SBA policies and programs.

§ 1.705–3 Screening of procurements.

(a) *Individual set-asides.* (1) SBA representatives, when properly authorized and cleared for security, shall, upon request, be afforded an opportunity at the purchasing activity to review all proposed classified and unclassified Invitations for Bids and Requests for Proposals unless both (i) it is anticipated that the resulting contract or contracts will not exceed $10,000 and (ii) the Head of the Purchasing Activity determines that such review would unduly delay the procurement process. Where it is anticipated that the resulting contract or contracts will exceed $10,000, such SBA representative shall, upon request, be afforded an opportunity to make recommendations concerning Invitations for Bids and Requests for Proposals, including that they be exclusively or partially set aside for small business concerns. Where the Invitations for Bids or Requests for Proposals are reviewed by an SBA representative and it is anticipated that the resulting contract or contracts will not exceed $10,000, and if the Head of the Purchasing Activity approves, a similar opportunity to make recommendations will be afforded to the SBA representative.

(2) In any case, the contracting officer shall afford the SBA representative an opportunity to recommend, within a reasonable time, appropriate names of small business concerns for inclusion in the list of bidders or firms to be solicited in connection with a particular procurement.

(b) *Class set-asides.* (1) SBA representatives shall also be afforded an opportunity to make recommendations that current and future procurements, or portions thereof, of selected items or services or groups of like items or services shall be set aside, as provided in § 1.706, for exclusive small business participation. Such set-asides, when approved by the contracting officer, shall be known as class set-asides.

(2) SBA representatives, upon request, shall be furnished such available or reasonably obtainable information as may be required for the SBA to determine whether or not to recommend a class set-aside.

§ 1.705–4 Access to bidders' lists and other information.

SBA representatives, upon request, shall be permitted to review, inspect, study, and transcribe information from bidders' mailing lists (see § 1.702 (b)) and will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program or for determination of whether small business concerns are proportionately represented on one or more particular bidders' mailing lists.

§ 1.705–5 Joint SBA-Defense small business set-aside program.

The Joint SBA-Defense Small Business Set-Aside Program, set forth in § 1.706, was developed by SBA and the Department of Defense to increase small business participation in Defense procurement. All press releases, reports, or other references to this program or to set-asides thereunder should refer to it as a Joint SBA-Defense Program and should avoid drawing any distinction between set-asides based on proposals of SBA representatives and those made independently of such proposals.

§ 1.705–6 Certificates of competency.

(a) SBA has statutory authority to certify the competency of any small business concern as to capacity and credit. "Capacity" means the overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills, "know-how," technical equipment, and facilities. Contracting officers shall accept SBA certificates of competency as conclusive of a prospective contractor's responsibility as to capacity (see §§ 1.903–1 and 1.903–2) and credit (see § 1.903–1(b)): *Provided*, That if the contracting officer has substantial doubts as to the firm's ability to perform he shall, prior to award, refer the matter to higher authority in accordance with procedures of the Department concerned. In such cases SBA may be requested to consider withdrawal of the certificate and, in any event, the contracting officer will be informed of the final decision of SBA which shall be conclusive.

(b) If a small business concern has submitted an otherwise acceptable bid or proposal but has been found by the contracting officer to be nonresponsible as to capacity or credit, and if the bid or proposal is to be rejected for this reason alone, (i) SBA shall be notified of the circumstances so as to permit it to issue a certificate of competency, and (ii) award shall be withheld pending either SBA issuance of a certificate of competency or the expiration of ten working days after SBA is so notified, whichever is earlier, subject to the following:

(1) This procedure is not mandatory where the contracting officer certifies in writing that award must be made without delay and includes in the contract file a statement signed by him which justifies the certificate.

(2) This procedure does not apply to proposed awards of not more than $2,500.

(3) This procedure is optional, within the discretion of the contracting officer, as to proposed awards of more than $2,500, but less than $10,000.

(4) This procedure does not apply where the contracting officer has found a small business concern nonresponsible for a reason other than lack of capacity or credit. Thus, it does not apply where a concern does not satisfy the criteria of responsibility in § 1.903–1 (a), (e), (f), and (g). Where the contracting officer determines that a concern does not meet the requirements of §1.903–1(d) as to a satisfactory record of performance, the procedure is mandatory only if the unsatisfactory record of performance was due solely to inadequate capacity or credit. However, if the contracting officer has any doubt as to whether the unsatisfactory record of performance can reasonably be attributed solely to lack of capacity or credit, the matter shall be discussed with the local SBA representative. If the local SBA representative is of the opinion that the unsatisfactory record of performance is attributable solely to a lack of capacity or credit, and the contracting officer disagrees, the contracting officer shall, in accordance with Departmental procedures, forward the matter to higher authority within his Department for resolution. The decision of such higher authority shall be final. To assist SBA in determining the capacity and credit of small business concerns involved in a particular procurement, the purchasing activity shall make available to SBA all pertinent data, including technical and financial information, with respect to the small business concern involved.

(c) In procurements where the highest competence obtainable or the best scientific approach is needed, such as in certain negotiated procurements of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or the best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure in paragraph (b) of this section is applicable.

§ 1.705–7 Performance of contract by SBA.

In accordance with section 8a of the Small Business Act, in any case in which the Administrator of SBA certifies to the Secretary concerned that SBA is competent to perform any specific contracts, the contracting officer is authorized, in his discretion, to award the contract to SBA upon such terms and conditions, consistent with this Regulation, as may be agreed upon between SBA and the contracting officer.

§ 1.706 Set-Asides for small business.

§ 1.706–1 General.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 1.803(a)(2) of this part, any individual procurement or class of procurements or an appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is (1) jointly determined by an SBA representative and the contracting officer, or (2) if no SBA representative is available, is unilaterally determined by the contracting officer to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Insofar as practical, joint determinations shall be used as a basis for set-asides rather than unilateral determinations; but the impracticability of obtaining a joint determination should not be treated as an obstacle to making a set-aside based on a unilateral determination in an otherwise appropriate case.

(b) Procurements involving supplies of mutual interest to the United States and Canada which have been developed and financed by the Government of Canada shall not be set aside for small business.

§ 1.706–2 Review of SBA set-aside proposals.

(a) (1) Upon a recommendation of an SBA representative that an individual procurement or class of procurements, or portion thereof, be set aside for small business, the contracting officer shall promptly either (i) concur in the recommendation, or (ii) disapprove, stating in writing his reasons for disapproval. The SBA representative shall be allowed two working days to appeal any such disapproval to the head of the purchasing activity or his designee for decision. During consideration of such appeal there shall be full and free interchange of all pertinent facts between the SBA representative and the purchasing activity concerned. Within one working day after receipt of a decision of the head of the purchasing activity or his designee disapproving a recommended set-aside, the SBA representative may request the contracting officer to suspend any procurement actions affected by the recommended set-aside pending a further appeal by the Administrator of SBA to the Secretary of the Military Department concerned for determination. SBA shall be allowed seven working days after making any such request within which (*a*) the Administrator of SBA may appeal the decision of the head of the purchasing activity or his designee to the Secretary concerned, and (*b*) to notify the contracting officer whether such appeal has in fact been taken. If such notification is not received by the contracting officer within the seven-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that no appeal to the Secretary was taken. Where an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the seven-day period, the head of the purchasing activity shall, in accordance with Departmental procedures, forward to the Secretary concerned a full justification of his decision.

(2) Any procurement action affected by a set-aside recommendation which has been disapproved by the contracting officer and appealed by the SBA representative shall be suspended pending the decision of the head of the purchasing activity or his designee. If the decision sustains the disapproval and if the SBA representative requests further suspension in accordance with subparagraph (1) of this paragraph the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in subparagraph (1) of this paragraph) or (ii) the matter is determined by the Secretary of the Military Department concerned: *Provided*, That such suspension shall not apply to any particular procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be initiated without delay and as to which he inserts in the contract file a statement signed by him justifying the determination. The contracting officer shall promptly notify the SBA representative of any procurement action initiated pursuant to the proviso of the preceding sentence.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item in question has been placed with small business concerns;

(2) The item to be purchased is on an established planning list under the Industrial Readiness Planning Program; except that a total set-aside shall not be authorized when one or more large business Planned Emergency Producers of the item desire to participate in the procurement;

(3) The item to be purchased is on a Qualified Products List; except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List unless it has been confirmed that none of such large businesses desires to participate in the procurement;

(4) A period of less than thirty days from date of issuance of invitations for bids or requests for proposals is prescribed for the submission of the bids or proposals;

(5) The procurement is classified;

(6) Small business concerns are receiving a fair proportion of the total tracts for supplies or services; or

(7) A class set-aside of the item or service concerned has been made at some other purchasing activity.

(c) In approving a proposed class set-aside, the contracting officer shall make sure that the set-aside determination (1) specifically identifies the items or services subject thereto, (2) provides that it will, at least once each year, be reviewed jointly by an SBA representative and the contracting officer to determine whether it should be withdrawn (see § 1.706–3 for withdrawal procedure), (3) provides that it does not apply to any individual procurement for which small purchase procedures are to be used, and (4) provides that such class set-aside applies only to the purchasing activity making or participating in the set-aside determination. Any class of procurements proposed to be totally set aside shall satisfy the requirements of § 1.706–5(a). With respect to any class of procurements proposed to be partially set aside, the set-aside determination shall specify that it is not applicable to any individual procurement which is not severable into two or more economic production runs or reasonable lots.

§ 1.706–3 Withdrawal or modification of set-asides.

(a) Each individual procurement governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications for the items or services, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside, are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability.

(b) (1) If, prior to the award of a contract involving an individual or class set-aside for small business, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), the contracting officer may withdraw a unilateral set-aside determination or initiate the withdrawal of a joint set-aside determination. Similarly, a class set-aside may be modified so as to withdraw one or more individual procurements therefrom. In the case of a joint set-aside determination, if the SBA representative does not agree to a withdrawal or modification, the SBA representative shall be allowed two working days to appeal the matter to the head of the purchasing activity or his designee for decision. Within one working day after receipt of a decision of the head of the purchasing activity or his designee approving such a withdrawal or modification, the SBA representative may request the contracting officer to suspend any procurement actions which would be affected by the withdrawal or modification pending a further appeal by the Administrator of SBA to the Secretary of the Military Department concerned for determination. SBA shall be allowed seven working days after making any such request within which (i) the Administrator of SBA may appeal the decision of the head of the purchasing activity or his designee to the Secretary concerned, and (ii) to notify the contracting officer whether such an appeal has in fact been taken. If such notification is not received by the contracting officer within the seven-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that no appeal to the Secretary was taken. Where an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the seven-day period, the head of the purchasing activity shall, in accordance with Departmental procedures, forward to the Secretary concerned a full justification of his decision.

(2) Any procurement action affected by a proposed withdrawal or modification which has been appealed by the SBA representative shall be suspended pending the decision of the head of the purchasing activity or his designee. If the decision sustains the withdrawal or modification, and if the SBA representative requests further suspension in accordance with subparagraph (1) of this paragraph, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in subparagraph (1) of this paragraph) or (ii) the matter is determined by the Secretary of the Military Department concerned: *Provided*, That such suspension shall not apply to any particular procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be initiated without delay and as to which he inserts in the contract file a statement signed by him justifying the determination. The contracting officer shall promptly notify the SBA representative of any procurement action initiated pursuant to the proviso of the preceding sentence.

(3) A signed memorandum of any withdrawal or modification shall be made and retained.

§ 1.706–4 Reporting for Department of Commerce procurement synopsis.

See § 1.1003–4.

§ 1.706–5 Total set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 1.803(a)(2), the entire amount of an individual procurement or class of procurements (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 1.706–1) where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists; however, see § 1.706–6 as to partial set-asides.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used wherever possible. Invitations for Bids and Requests for Proposals shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 2 of this subchapter, except that bids and awards shall be restricted to small business concerns.

(c) In procurements involving total set-asides for small business, each Invitation for Bids or Request for Proposals shall contain substantially the following notice:

NOTICE OF SMALL BUSINESS SET-ASIDE

Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of government procurement is placed with small business concerns. A small business concern is a concern that:

(i) Is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or

(ii) Is certified as a small business concern by the Small Business Administration. In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided, that this additional requirement does not apply in connection with construction or service contracts. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice above, the notice shall be appropriately modified to reflect such definition. For construction contracts, (i) and (ii) of the foregoing notice and the first sentence following (ii) of the notice should be deleted and the following substituted therefor:

(i) Is independently owned and operated;

(ii) Is not dominant in its field of operation; and

(iii) The average annual receipts of the concern and its affiliates for the preceding three years are $5,000,000 or less.

§ 1.706–6 Partial set-asides.

(a) Subject to any applicable performance for labor surplus area set-asides as provided in § 1.803(a)(2), a portion of a procurement (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 1.706–1) where:

(1) The procurement is not appropriate for total set-aside pursuant to § 1.706–5;

(2) The procurement is severable into two or more economic production runs or reasonable lots; and

(3) Two or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

Similarly, a class of procurements (including but not limited to contracts for maintenance, repair, and construction) may be partially set aside in accordance with § 1.706–2(c).

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c) In advertised procurements involving partial set-asides for small business, Invitations for Bids shall contain either substantially the following notice or the notice set forth in paragraph (d) of this section. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals.

NOTICE OF SMALL BUSINESS SET-ASIDE

A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the order of their bids on the non-set-aside portion beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns. A small business concern is a concern that:

(i) Is certified as a small business concern by the Small Business Administration, or

(ii) Is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees.

In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided that, this additional requirement does not apply in connection with construction or service contracts.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice in this paragraph, the notice shall be appropriately modified to reflect such definition.

(d) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of that in paragraph (c) of this section.

NOTICE OF SMALL BUSINESS SET-ASIDE

(a) *General.* This procurement has been divided into two parts. All concerns, whether small business or not, may participate in accordance with customary procedures in that portion of this procurement herein called the "non-set-aside" portion. The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the items to be procured has been set aside for participation by small business concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this Notice. This apportionment is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full production capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. "Small business concern" is defined in paragraph (d) of this Notice.

(b) *Non-set-aside portion and award procedure.*

(1) A bidder which is not a small business concern shall submit a bid only for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a small business concern and is interested in receiving an award for a quantity of an Item not exceeding the quantity set forth in the non-set-aside portion of the procurement, should submit a

bid in the same manner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an Item in addition to the quantity set forth in the non-set-aside portion, it must bid the entire quantity of the non-set-aside portion of the Item, and indicate such additional quantity of the Item as it desires by so specifying on the Addendum to this Notice. Thus, the Notice Addendum is not to be used unless the bidder has bid the entire quantity of an Item under the non-set-aside portion.

However, a small business concern which receives no award, or receives an award for less than the total quantity of an Item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion.

(c) *Set-aside portion and award procedure.* Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. It will be made only to small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3) below; and at prices determined in accordance with (4) below.

(1) *Eligibility.* To be eligible for consideration for the set-aside portion of an Item, the small business concern must have submitted a responsive bid on such Item in accordance with the requirements of (b)(2) above at a unit price no greater than 120 percent of the highest unit price for such Item awarded under the non-set-aside portion. However, see (5) below when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(2) *Priorities.* Negotiations for the set-aside portion will be made to eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. However, see (5) below for the method of determining the bid when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(3) *Quantity.* The quantity of the set-aside portion of an Item which may be awarded to an eligible concern shall be as follows:

(A) As to an eligible concern which has not specified on the Notice Addendum a quantity of the set-aside portion of the Item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that Item, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(B) As to an eligible concern which has submitted a bid for the entire non-set-aside portion of the item and has specified on the Notice Addendum a quantity of the set-aside portion of that Item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the total of the entire non-set-aside portion of the Item and the quantity thereof specified on the Notice Addendum, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(4) *Price.* The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, see (6) below for the highest unit price when the highest award is made on separate quantities at tie-in prices.

(5) *Separate quantities at different prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent acceptance of another quantity of the Item, each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120 percent limit prescribed in (c)(1) above, and for the purpose of determining under (c)(2) above the standing of that bid in the order of negotiations for the set-aside portion of that Item.

(6) *Separate quantities at tie-in prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the Item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c)(1) above, (ii) the priority status of the firm under (c)(2) above, and (iii) the highest unit price for awards under (c)(4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(d) *Definitions.* A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees.

In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided that, this additional requirement does not apply in connection with construction or service contracts.

(e) *Token bids.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(f) *Instruction for Use, and Explanation of, Notice Addendum.* The quantity of each item which has been set aside is set forth on the attached Notice Addendum. As provided in (b)(2), the Notice Addendum is to be filled in only by small business concerns. Furthermore, it is to be used by such a concern only when (i) it has submitted a bid for the entire non-set-aside quantity of an Item, and (ii) it desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with paragraph (c) above. It should be noted, however, that to be eligible for the set-aside portion it need not have filled in the Notice Addendum. The latter should only be filled in where the concern desires a quantity in excess of the quantity set forth in the Schedule.

NOTICE ADDENDUM FOR SET-ASIDE

The quantity of each Item which has been set aside is as follows:

1 Item No.	2 Quantity set-aside	3 Quantity desired

[The issuing office will identify by line item number the supplies being procured as to which a portion is set aside and will designate the quantity set aside for each such item. The quantity desired column will be left blank for the bidder or offerer to fill in. Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice above, the notice shall be appropriately modified to reflect such definition.]

(e) After all awards have been made on the non-set-aside portion, procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with such small business concerns in the order of their bids or proposals on the non-set-aside portion, beginning with the lowest responsive bid or proposal as indicated in the foregoing notice. Where equal low bids are received on the non-set-aside portion from concerns which are eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 2.407–6 of this subchapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded for the non-set-aside portion.

§ 1.706–7 Automatic dissolution of set-asides.

If the entire set-aside portion is not procured by the method set forth in § 1.706–5, as to total set-asides, or in § 1.706–6, as to partial set-asides, the determination referred to in § 1.706–1, is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see § 3.201–2(b)(2) of this chapter as to negotiation).

§ 1.706–8 Contract authority.

Contracts for total or partial set-asides whether entered into by conventional negotiation (see §§ 1.706–5(b) and 1.706–6(e)) or by "Small Business Restricted Advertising" (see § 1.706–5(b)), shall cite as authority 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination, or 10 U.S.C. 2304(a)(1), in the case of a unilateral determination (see § 3.201–2(b)(2) of this chapter).

§ 1.706–9 Maintenance of records.

Records pertaining to the initiation of individual procurements under each class set-aside shall be maintained by individual purchasing activities. Such records shall include: IFB or RFP Number and Date: Item or Service; Unilateral or Joint Class Set-Aside and Number; Estimated Amount of Procurement; and Estimated Amount of Set-Aside. A copy of each such record shall be made available by each purchasing activity to SBA, upon request.

§ 1.707 Subcontracting.

§ 1.707–1 General policy.

It is the policy of the Department of Defense that small business concerns be afforded an equitable opportunity to compete for Defense subcontracts within their capabilities.

§ 1.707–2 Required clauses.

(a) The clause, "Utilization of Small Business Concerns," set forth in § 7.104–14, shall be included in all contracts in amounts exceeding $5,000 except—

(1) Contracts for services which are personal in nature; and

(2) Contracts which, including all subcontracts thereunder, are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

(b) The clause set forth in § 7.104–22, "Defense Subcontracting Small Business Program," shall be included in all contracts (except negotiated contracts with foreign concerns) in excess of $1,000,000 which contain the clause required by § 1.707–2(a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities; except that this clause shall not be included in contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. Prime contractors to be awarded contracts not in excess of $1,000,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, should be urged to establish and conduct a "Defense Subcontracting Small Business Program," to accept the clause contained in § 7.104–22, and to follow the program described in § 1.707–3.

§ 1.707–3 Defense subcontracting in small business programs.

Each contractor having a prime contract which contains the clause set forth in § 7.104–22 shall be required to establish and conduct a "Defense Subcontracting Small Business Program" to include the following:

(a) Designate a small business liaison officer who will (1) maintain liaison with the purchasing activity and SBA in small business matters; (2) supervise compliance with the "Utilization of Small Business Concerns" clause; and (3) administer contractor's "Defense Subcontracting Small Business Program";

(b) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(c) Maintain records showing (1) whether each prospective subcontractor is a small business concern, and (2) procedures which have been adopted to comply with the policies set forth in this paragraph;

(d) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities;

(e) Require subcontractors having subcontracts in excess of $1,000,000 which contain the clause entitled "Utilization of Small Business Concerns" to establish and conduct a "Defense Subcontracting Small Business Program;" and

(f) Submit such information on subcontracting to small business as is called for on DD Form 1140.

§ 1.707–5 Reports on DD Form 1140.

(a) In connection with the submission of DD Form 1140 Reports under the "Defense Subcontracting Small Business Program" clause, a subcontractor may contact the nearest military purchasing or contract administration activity and request advice as to the military department to which he should submit reports. The military purchasing or contract administration activity shall, through channels, submit such a request to the Small Business Advisor of the department concerned. The Small Business Advisor shall submit it to the Director for Small Business Policy of the Department of Defense for his determination in coordination with the Small Business Advisors of the military departments.

(b) Each military department shall forward to the Assistant Secretary of Defense (Comptroller), by March 15 and September 15, a copy of each DD Form 1140 received for the semiannual periods ending December 31 and June 30, respectively.

§ 1.707–4 Responsibility for reviewing subcontracting program.

Only one Military Department shall be responsible for reviewing a contractor's Defense Subcontracting Small Business Program. Such review shall be the responsibility of:

(a) The Military Department having industrial readiness planning responsibility at the plant where the contract is being performed; or

(b) If paragraph (a) of this section is inapplicable, the Military Department having "plant cognizance procurement" (see § 5.1100–2(b) of this chapter); or

(c) If neither paragraph (a) nor (b) of this section is applicable, the Military Department assigned the responsibility through coordinated action of the Director for Small Business Policy of the Department of Defense and the Small Business Advisors of the Military Departments.

The responsible Military Department will determine the adequacy of the contractor's "Defense Subcontracting Small Business Program," and bring any deficiencies to the attention of the contractor's Small Business Liaison Officer with an appropriate request for corrective action.

§ 1.708 Mobilization planning.

The policy of placing a fair proportion of purchases and contracts with small business concerns (see § 1.702 of this part) applies in the field of mobilization planning and each Military Department shall continually study its industrial readiness planning procedures to include the Small Business Program to the maximum practical extent.

Subpart H—Labor Surplus Area Concerns

§ 1.800 Scope of subpart.

This subpart sets forth Department of Defense procurement policy and procedures with respect to aiding areas of persistent or substantial labor surplus, hereinafter referred to as labor surplus areas, in the United States, its possessions, and Puerto Rico. This subpart implements Defense Manpower Policy No. 4 (Revised) 6 June 1960 (32 ACFR Chapter I).

§ 1.801 Definitions.

§ 1.801–1 Labor surplus area concern.

Labor surplus area concern includes:

(a) Persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus;" and

(b) Substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

§ 1.801–2 Labor surplus area.

Labor surplus area means a geographical area which at the time of award is:

(a) Classified by the Department of Labor as an "Area of Substantial Labor Surplus" or as an "Area of Substantial and Persistent Labor Surplus" (herein referred to as an area of persistent labor surplus) and listed as such by that Department in conjunction with its bimonthly pubilcation "Area Labor Market Trends", or

(b) Not classified as in paragraph (a) of this section, but which is individually certified as an area of persistent or substantial labor surplus by the Department of Labor at the request of any prospective contractor.

§ 1.801–3 Small business concern.

Small business concern is defined in § 1.701.

§ 1.802 General policy.

Except as provided in § 1.806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurment objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns, and by encouraging prime contractors to place subcontracts with concerns which will perform substantially in labor surplus areas. In carrying out this policy, to accomodate the small business policies of Subpart G of this part, preference shall be given in the following order of priority to (a) persistent labor surplus area concerns which are also small business concerns, (b) other persistent labor surplus area concerns, (c) substantial labor surplus area concerns which are also small business concerns, (d) other substantial labor surplus area concerns and (e) small business concerns which are not labor surplus area concerns. But in no case will price differentials be paid for the purpose of carrying out this policy.

§ 1.803 Application of policy.

(a) Within the policy set forth in § 1.802, the following shall be applied to procurements which are estimated to exceed $10,000:

(1) Negotiated procurements shall, where procurement objectives permit, be awarded to labor surplus area concerns: *Provided*, That in no case shall price differentials be paid for the purpose of carrying out this policy;

(2) Where appropriate, procurements shall be made from labor surplus area concerns by partial set-aside procedures, in accordance with § 1.804, and such set-asides shall be given preference over any small business set-aside (but no total set-aside shall be made for labor surplus area concerns);

(3) Each Department shall assure that information identifying labor surplus areas is disseminated promptly to procurement personnel;

(4) Department of Labor certification (see § 1.801–2(b) shall be considered conclusive with respect to the particular procurement concerned.

* * * * *

(5) Where less than a complete bidder's mailing list is to be used pursuant to § 2.205–4, a pro rata number of prospective contractors in labor surplus areas shall be solicited; and

(6) Subcontracting with concerns in labor surplus areas shall be encouraged in accordance with § 1.805.

(b) Records of the total value of all contracts in excess of $10,000 placed with labor surplus area concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in §§ 1.110 and 16.807. Accordingly, each Department, in soliciting bids and proposals for any procurement estimated to exceed $10,000 shall request from any bidder or offeror, or other source, any information needed to determine whether the bidder or offeror is a labor surplus area concern. Contract files shall be documented to indicate the extent to which labor surplus area concerns were considered and the action taken with respect thereto.

§ 1.804 Partial set-asides for labor surplus area concerns.

§ 1.804–1 General.

(a)(1) In accordance with the policy set forth in §§ 1.802 and 1.803, a portion of each procurement shall be set aside for labor surplus area concerns if:

(i) The procurement is severable into two or more economic production runs or reasonable lots; and

(ii) Two or more labor surplus area concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

(2) In furtherance of the policy to assure that a fair proportion of procurements is placed with small business concerns, each labor surplus area set-aside shall provide that, in addition to labor surplus area concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to labor surplus area concerns. (In this respect, see applicable provisions of § 1.804–2 (b) and (c), for notices to bidders or offerors, and § 1.804–2(d) for conduct of set-aside negotiations.)

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large part of previous procurements of the item in question has been placed with labor surplus area concerns;

(2) The item to be purchased is on an established planning list under the Industrial Readiness Planning Program;

(3) The item to be purchased is on a Qualified Products List;

(4) A period of less than thirty days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of bids or proposals;

(5) The procurement is classified; or

(6) Labor surplus area concerns are receiving a fair proportion of contracts.

(c) Procurements involving supplies of mutual interest to the United States and Canada which have been developed and financed by the Government of Canada shall not be set aside for labor surplus areas.

§ 1.804–2 Set-aside procedures.

(a) Where a portion of a procurement is to be set aside pursuant to § 1.804–1, the procurement shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(b) In advertised procurements involving set-asides pursuant to this subpart, each invitation for bids shall contain either substantially the following notice or the notice set forth in paragraph (c) of this section. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE
(OCT. 1960)

A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Persistent labor surplus area concerns which are also small business concerns.

Group 2. Other persistent labor surplus area concerns.

Group 3. Substantial labor surplus area concerns which are also small business concerns.

Group 4. Other substantial labor surplus area concerns.

Group 5. Small Business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

Definitions

(1) A "labor surplus area" is a geographical area which at the time of award is:

(i) classified by the Department of Labor as an "Area of Substantial Labor Surplus" or as an "Area of Substantial and Persistent Labor Surplus" and listed as such by that Department in conjunction with its bi-monthly publication "Area Labor Market Trends"; or

(ii) not classified as in (i) above, but which is individually certified as an area of persistent or substantial labor surplus by the Department of Labor at the request of any prospective contractor.

(2) Labor surplus area concern includes:

(i) persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus"; and

(ii) substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided that this additional requirement does not apply in connection with construction of service contracts. Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice above the notice shall be appropriately modified to reflect such definition.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated by the Departments, differs from that set forth in the notice in this paragraph, the notice shall be appropriately modified to reflect such definition.

(c) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of that in paragraph (b) of this section.

NOTICE OF LABOR SURPLUS AREA SET-ASIDE
(OCT. 1960)

(a) *General.* This procurement has been divided into two parts. All concerns, whether labor surplus area concerns or not, may participate in accordance with customary procedures in that portion of this procurement herein called the "non-set-aside" portion. The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the items to be procured has been set aside for participation (i) by labor surplus area concerns, and (ii) to a limited extent, by small business concerns which do not qualify as labor surplus area concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this Notice. Definitions of the following terms are set forth in paragraph (d) of this Notice:

(1) Labor Surplus Area
(2) Labor Surplus Area Concern
(3) Small Business Concern

(b) *Non-set-aside portion and award procedure.*

(1) A bidder which is not a labor surplus area concern or a small business concern shall submit a bid only for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a labor surplus area concern or a small business concern and is interested in receiving an award for a quantity of an Item not exceeding the quantity set forth in the non-set-aside portion of the procurement, should submit a bid in the same maner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an Item in addition to the quantity set forth in the non-set-aside portion, it must bid the entire quantity of the non-set-aside portion of the Item, and indicate such additional quantity of the Item as it desires by so specifying on the Addendum to this Notice. Thus, the Notice Addendum is not to be used unless the bidder has bid the entire quantity of an Item under the non-set-aside portion.

However, a labor surplus area or small business concern which receives no award, or receives an award for less than the total quantity of an Item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion.

(c) *Set-aside portion and award procedure.* Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. It will be made only to labor surplus area or small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3 below; and at prices determined in accordance with (4) below.

(1) *Eligibility.* To be eligible for consideration for the set-aside portion of an Item, the labor surplus area or small business concern must have submitted a responsive bid on such Item in accordance with the requirements of (b)(2) above at a unit price no greater than 120 percent of the highest unit price for such Item awarded under the non-set-aside portion. However, see (5) below when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(2) *Priorities.* Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Persistent labor surplus area concerns which are also small business concerns.

Group 2. Other persistent labor surplus area concerns.

Group 3. Substantial labor surplus area concerns which are also small business concerns.

Group 4. Other substantial labor surplus area concerns.

Group 5. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations for each Item will be conducted with eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bids. However, see (5) below for the method of determining the bid when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(3) *Quantity.* The quantity of the set-aside portion of an Item which may be awarded to an eligible concern shall be as follows:

(A) As to an eligible concern which has not specified on the Notice Addendum a quantity of the sea-aside portion of the Item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that Item, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(B) As to an eligible concern which has submitted a bid for the entire non-set-aside portion of the Item and has specified on the Notice Addendum a quantity of the set-aside portion of that Item which it desires in addition to the entire non-set-aside portion thereof, the quantity shall be no greater than the total of the entire non-set-aside portion of the Item and the quantity thereof specified on the Notice Addendum, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(4) *Price.* The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, see (6) below for the highest unit price when the highest award is made on separate quantities at tie-in prices.

(5) *Separate Quantities at Different Prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent acceptance of another quantity of the Item each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120 percent limit prescribed in (c)(1) above, and for the purpose of determining under (c)(2) above the standing of that bid in the order of negotiations for the set-aside portion of that Item.

(6) *Separate Quantities at Tie-in-Prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the Item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c)(1) above, (ii) the priority status of the firm under (c)(2) above, and (iii) the highest unit price for awards under (c)(4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(d) *Definitions.* (1) A "labor surplus area" is a geographical area which at the time of award is:

(i) classified by the Department of Labor as an "Area of Substantial Labor Surplus" or as an "Area of Substantial and Persistent Labor Surplus" and listed as such by that Department in conjunction with its bi-monthly publication "Area Labor Market Trends"; or

(ii) not classified as in (i) above, but which is individually certified as an area of persistent or substantial labor surplus by the Department of Labor at the request of any prospective contractor.

(2) Labor surplus area concern includes:

(i) persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus"; and

(ii) substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns; provided, that this additional requirement does not apply in connection with construction of service contracts.

(e) *Token bids.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(f) *Instruction for use, and explanation of, notice addendum.* The quantity of each Item which has been set aside is set forth on the attached Notice Addendum. As provided in (b)(2), the Notice Addendum is to be filled in only by labor surplus area and small business concerns. Furthermore, it is to be used by such a concern only when (1) it has submitted a bid for the entire non-set-aside quantity of an Item, and (ii) it desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a labor surplus area or small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with paragraph (c) above. It should be noted, however, that to be eligible for the set-aside portion it need not have filled in the Notice Addendum. The latter should only be filled in where the concern desires a quantity in excess of the quantity set forth in the schedule.

NOTICE ADDENDUM FOR SET-ASIDE

The quantity of each item which has been set aside is as follows:

1	2	3
Item No.	Quantity set-aside	Quantity desired

(The issuing office will identify by line item number the supplies being procured as to which a portion is set aside and will designate the quantity set aside for each such item. The quantity desired column will be left blank for the bidder or offeror to fill in.)

(d) After all awards have been made on the non-set-aside portion, procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiation shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside

portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notices. Where equal low bids are received on the non-set-aside portion from concerns which are eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 2.407–6 of this chapter) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded for the non-set-aside portion. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see § 3.201–2(b)(1) of this chapter).

§ 1.804–3 Withdrawal of set-asides.

If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

§ 1.804–4 Contract authority.

Contracts for set-asides made under this Subpart H shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see § 3.201–2(b)(1) of this chapter for contracts awarded to labor surplus area concerns and § 3.201–2(b)(2) for contracts awarded to small business concerns which are not labor surplus area concerns.

§ 1.805 Subcontracting.

§ 1.805–1 General policy.

It is the policy of the Government to encourage placement of subcontractors with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus, in the order of priority described in § 1.802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

§ 1.805–2 Required clause.

The clause "Utilization of Concerns in Labor Surplus Areas" as set forth in § 7.104–20 of this chapter, shall be inserted in contracts as required by § 7.104 of this chapter.

§ 1.806 Depressed industries.

§ 1.806–1 General.

When an entire industry is depressed, the Director of Civil and Defense Mobilization may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by Office of Civil and Defense Mobilization Notifications, and such industries will be given special treatment as specified therein, §§ 1.806–2 through 1.806–5 reflect pertinent requirements of such Notifications with respect to the industries indicated. No price differentials will be paid to carry out policies of these Notifications.

§ 1.806–2 Apparel industry (Notification No. 53).

(a) As used in this section the "apparel industry" means all of the industry identified in the "Standard Industrial Classification Manual," under Major Group 23, except Group No. 239.

(b) There shall be no labor surplus area set-asides in this industry. Where feasible, under the same invitation, bids should be requested for jackets or coats and trousers as separate items so that bidders may bid in combinations of units, and if requirements warrant, at least an equal amount of trousers should be included.

§ 1.806–3 Petroleum and petroleum products industry (Notification No. 58).

There shall be no labor surplus area set-asides in this industry.

§ 1.806–4 Shipbuilding industry (Notification No. 57).

(a) As used in this section, the "shipbuilding industry" includes establishments primarily engaged in building all types of ships, barges, canal boats and lighters of five gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabricating structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included.

(b) There shall be no labor surplus area set-asides in this industry. In placing shipbuilding contracts, preferences shall be given, where practicable, to contractors which can perform the contracts without substantial use of overtime labor and without constructing new facilities. So as to spread work among a large number of private yards, bids or proposals shall be invited, and contracts awarded, on a small-lot basis rather than on a large-lot basis, to the extent practicable.

§ 1.806–5 Textile industry (Notification No. 38).

(a) As used in this section, the "textile industry" means all of the industry identified in the "Standard Industrial Classification Manual" under Major Group 22 (Textile Mill Products) and Industry Nos. 2391 and 2392 (Curtains and draperies, and house-furnishings), except that it does not include Industry No. 2274 (Linoleum, asphalt-felt base, and other hard-surface floor covering, not elsewhere classified), and Industry No. 2298 (Cordage and twine).

(b) No preference shall be given to any area or city in placing contracts in this industry. For the purpose of maintaining the effective functioning of the textile industry as a whole, purchasing activities shall try to place contracts with manufacturers whose weaving operations (in the case of weaving or integrated mills) or whose spinning operations (in the case of spinning mills) during the period of performance of such contracts will not exceed 80 hours per week (not including other supporting activities).

(c) In all procurements from the textile industry which are estimated to exceed $10,000, partial set-asides, exclusively for textile industry concerns whose "weaving" or "spinning" operations (as described in (b) above) will not exceed 80 hours per week, shall be made substantially in accordance with the procedures set forth in § 1.804, except that all "textile industry concerns whose weaving or spinning operations will not exceed 80 hours per week" will be treated as "labor surplus area concerns." The notice set forth in § 1.804–2(b) shall be designated "Notice of 80-Hour Week Set-Aside" and appropriately modified for use in accordance with this subparagraph.

Subpart I—Responsible Prospective Contractors

§ 1.900 Scope of subpart.

This subpart sets forth (a) general policy with respect to responsibility of prospective contractors, (b) minimum standards for responsible prospective contractors, (c) requirements and procedures for determination of responsibility, and (d) policy with regard to determination of subcontractor responsibility.

§ 1.901 Applicability.

This subpart applies to procurements from contractors located in the United States, its Territories, its possessions, or Puerto Rico; and will be applied in other places except where inconsistent with the laws and customs of the place where the prospective contractor is located. It is not applicable to procurements from (a) other governments,' including state and local governments; (b) Canadian Commercial Corporation; (c) other United States Government departments and agencies, or their instrumentalities (such as Federal Prison Industries, Inc.); or (d) National Industries for the Blind.

§ 1.902 General policy.

Purchases shall be made from, and contracts shall be awarded only to, responsible prospective contractors. A responsible prospective contractor is one which meets the minimum standards set forth in § 1.903, and such additional standards as may be prescribed by overseas commanders and for specific procurements by purchasing activities.

§ 1.903 Minimum standards for responsible prospective contractors.

§ 1.903–1 General standards.

Except as otherwise provided in § 1.903, a prospective contractor must—

(a) Be a manufacturer, construction contractor, or regular dealer, as defined in § 1.201–8 (this standard is not applicable to procurements of personal or professional services, or nonpersonal services in which the primary purpose is the rendering of the service rather than the manufacture or supply of material or equipment, or the construction of public works, facilities, or vessels);

(b) Have adequate financial resources, or the ability to obtain such resources as required during performance of the contract (see Defense Contract Financing Regulations, Part 163, Subpart B and any amendments thereto. See also §§ 1.903–3 and 1.905–2, and, for SBA certificates of competency, § 1.705–6);

(c) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental (for SBA certificates of competency, see § 1.705–6);

(d) Have a satisfactory record of performance (Contractors who are seriously delinquent in current contract performance, when the number of contracts and the extent of delinquencies of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to fulfill this requirement (d). See §§ 1.905–2 and 1.905–4(d);

(e) Have a satisfactory record of integrity;

(f) Appear to be able to conform to the requirements of the standard nondiscrimination clause (see § 12.802); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

§ 1.903–2 Additional standards for production, construction, and research and development contracts.

In addition to the standards in § 1.903–1, in procurements involving production, construction, and research and development work (and in other procurements as appropriate), a prospective contractor must—

(a) Have the necessary organization, experience, operational controls, and technical skills, or the ability to obtain them (this standard includes, where appropriate, such elements as adequacy of production control procedures; quality assurance measures, including materials produced by subcontractors; etc. See § 1.903–3); and

(b) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (where a prospective contractor proposes to use the facilities or equipment of another concern (not a subcontractor) or an affiliate of the prospective contractor (see § 2.201(a)(23), all existing business arrangements, firm or contingent, for the use of such facilities or equipment shall be considered in determining the ability of the prospective contractor to perform the contract. See § 1.903–3).

§ 1.903–3 Ability to meet certain minimum standards.

Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see § 1.906), acceptable evidence of his "ability to obtain" resources, equipment, facilities, personnel, etc., (see §§ 1.903–1(b) and 1.903–2) shall generally be a commitment or explicit arrangement, which will be in existence at the time the contract is to be awarded, for the rental, purchase or other acquisition of such resources, equipment, facilities, or personnel.

§ 1.903–4 Affiliated concerns.

Affiliated concerns (see § 2.201(a)(23)) shall be considered as separate entities in determining whether the one of them which is to perform the contract meets the applicable standards for a responsible prospective contractor (but see § 1.701–1 with respect to status as a small business concern).

§ 1.904 Determinations of responsibility and nonresponsibility.

§ 1.904–1 Requirement.

Except as otherwise provided in § 1.904–2, no purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes, signs, and places in the contract file, an affirmative determination that the prospective contractor is responsible within the meaning of §§ 1.902 and 1.903. Where a certificate of competency has been issued the affirmative determination need not be made as to the factors covered by the certificate of competency. Where a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a determination of nonresponsibility shall be made, signed, and placed in the file. The determination of responsibility or nonresponsibility shall contain a statement justifying the determination. Any supporting documents or reports, including any pre-award survey reports (see § 1.905–4) and SBA certificates of competency (see § 1.705–6), shall be attached to the determination.

§ 1.904–2 Exceptions.

Written determinations of responsibility need not be made in the case of—

(a) Purchases and contracts estimated to amount to less than $10,000; or

(b) Orders under existing Government contracts.

However, contracting officers shall not knowingly make any purchases from, or award contracts to, persons or firms other than responsible prospective contractors, notwithstanding the exceptions in this section.

§ 1.905 Procedures for determining responsibility of prospective contractors.

§ 1.905–1 General.

(a) Before making determinations of responsibility (see § 1.904), the contracting officer shall have in his possession or obtain information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in § 1.903, to the extent that such standards are applicable to a specific procurement.

(b) Maximum practicable use will be made of information on file or within the knowledge of personnel in the Department of Defense to the extent that such information is currently valid. Each Department shall maintain such records and experience data as may be useful for the guidance of contracting officers in the placement of new procurements in the manner and at such level as the Department deems appropriate, and shall inform its contracting officers and the other Departments of the means of access to such records and data. Upon request of any contracting officer in the Department of Defense, information in such records and data shall be expeditiously furnished in the form developed by the providing Department (see § 1.303).

(c) Each purchasing activity shall provide for the maintenance of appropriate records to insure the availability of contractor performance history. Special attention shall be paid to, and more detailed records maintained on, contractors whose past performance is questionable and new contractors whose reliability is yet unestablished

(d) Generally, information necessary to make determinations of responsibility shall be obtained only concerning prospective contractors within range for an award, except where prequalification procedures are authorized by this Subchapter or by Departmental procedures.

§ 1.905–2 When information will be obtained.

Generally, information regarding the responsibility of a prospective contractor (including Pre-Award Surveys (see § 1.905–4) when deemed necessary) shall be obtained promptly after bid opening or receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources (see § 1.903–1(b)) and performance capability (see § 1.903–1(c)) shall be obtained on as current a basis as feasible with relation to the date of contract award.

§ 1.905–3 Sources of information.

Information regarding the responsibility of prospective contractors shall be sought among the following sources before considering performance of a Pre-Award Survey (see § 1.905–4):

(a) *From the prospective contractor.* Including representations and other information contained in or attached to bids and proposals; replies to questionnaires; financial data, such as balance sheets, profit and loss statements, cash forecasts, financial history of the contractor and affiliated concerns; current and past production records; personnel records; and lists of tools, equipment, and facilities; written statements or commitments concerning financial assistance and subcontracting arrangements; and analyses of operational control procedures. Where it is considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition or for other reasons, prospective contractors may be required to submit affidavits concerning their ability to meet any of the minimum standards set forth in § 1.903, and company ownership and control (but see § 2.201(a)(23)).

(b) *Existing information within the Department of Defense.* Including rec-

ords on file and personal knowledge of personnel (including the contracting officer) within the purchasing activity making the procurement and other purchasing and related activities; military audit agencies; offices concerned with contract financing; the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (see § 1.601); and, records and experience data (see § 1.905–1).

(c) *Publications.* Including credit ratings; trade and financial journals; business directories and registers; and Synopses of U.S. Government Proposed Procurements, Sales and Contract Awards (see § §1.1003).

(d) *Other sources.* Including suppliers, subcontractors, and customers of the prospective contractor; banks and financial companies; commercial credit agencies; Government departments and agencies; purchasing and trade associations; better business bureaus and chambers of commerce.

§ 1.905–4 Pre-award surveys.

(a) *General.* A pre-award survey consists of an inspection of the plants and facilities with which the prospective contractor proposes to perform a contract, including personal interviews with contractor personnel.

(b) *Circumstances under which performed.* Generally, pre-award surveys will be performed when the sources mentioned in § 1.905–3 do not yield sufficient information to enable a contracting officer to make a determination regarding the responsibility of a prospective contractor. (But see paragraph (d) of this section.) Pre-award surveys shall not be performed for procurements listed in § 1.904–2 except (1) where the procurement involves the handling of classified matter or research and development work, (2) for the purpose of checking information tending to indicate that a prospective contractor is not responsible, or (3) as may be deemed essential by the contracting officer to obtain information which cannot be otherwise acquired.

(c) *Matters to be covered.* Pre-award surveys shall cover matters upon which—

(1) Current information is not available from the sources listed in § 1.905–3;

(2) Information available from such sources is insufficient, in the opinion of the contracting officer, to support a determination of responsibility; or

(3) Circumstances indicate the desirability of verification of information received from such sources.

(d) *Workload and financial capacity.* Regardless of the apparent sufficiency of information obtained from sources listed in § 1.905–3 indicating responsibility with respect to the standards set forth in § 1.903–1 (b) and (c), and in procurements which are significant either in dollar value or in the critical nature of the requirement, consideration shall be given to verification of information regarding workload and financial capacity by means of a pre-award survey with regard to such standards.

(e) *Interdepartmental coordination.* Pre-award surveys by one Department for another, or by any procuring or finance activity for another within a Department, may be made on a non-reimbursable basis. Such surveys shall be authorized to the extent practicable whenever such interchange will result in economy or increased efficiency, or will eliminate duplication of effort.

§ 1.906 Subcontractor responsibility.

To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. Determinations concerning prospective subcontractors' responsibility shall generally be a function performed by prospective prime contractors. (But see §§ 1.603(c) and 1.605–3(b) relating to approval of subcontractors listed on the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors.) Prospective prime contractors may be required to (a) indicate the responsibility of proposed subcontractors in writing, or (b) show evidence of an acceptable and effective purchasing and subcontracting system encompassing a method for determining subcontractor capability.

§ 1.907 Disclosure of pre-award data.

Data, including information obtained from a pre-award survey, leading to a determination of the responsibility of prospective contractors shall not be released outside the Government and shall not be made available for inspection by individuals, firms or trade organizations: *Provided*, That such data may be disclosed to, or summarized for other elements within the Government on their request. Such information shall be made available to Department of Defense procurement personnel upon request in accordance with § 1.905–1. In making a determination of responsibility, information disclosed by such data may be discussed with the prospective contractor as necessary.

Subpart J—Publicizing Procurement Actions

§ 1.1001 General policy.

It is Department of Defense policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in Defense procurement programs.

§ 1.1002 Availability of invitations for bids and requests for proposals.

A reasonable number of copies of invitations for bids and requests for proposals publicized in the Department of Commerce Synopsis, including specifications and other pertinent information, shall be maintained by the issuing office. To the extent that unclassified invitations for bids and requests for proposals are available, they shall be provided at the purchasing office to manufacturers, construction contractors, and regular dealers and to others having a legitimate interest therein, such as publishers, trade associations, procurement information services and others who disseminate information concerning invitations for bids and requests for proposals; otherwise the purchasing office may limit the availability of invitations for bids and requests for proposals to perusal at such office.

§ 1.1003 Synopses of proposed procurements.

§ 1.1003–1 General.

Every proposed advertised or negotiated procurement made in the United States, except in Hawaii and Alaska, which may result in an award in excess of $10,000 shall be publicized promptly in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards," except that the following need not be publicized in the Synopsis:

(a) Procurement to be made by an order placed under an existing contract.

(b) Procurement which must be made too quickly to permit prospective contractors, dependent on the Synopsis for information, to obtain the necessary solicitation document and to prepare and submit their bids, proposals, or quotations on time: i.e., proposed procurements with less than 15 calendar days from the date of transmittal of the Synopsis or the date of issuance of the solicitation, whichever is earlier, to the date scheduled for receipt of bids, proposals, or quotations.

(c) Procurement to be made from or through another Government department or agency, or a mandatory source of supply such as National Industries for the Blind. (See Part 5 of this subchapter.)

(d) Procurement of personal or professional services to be negotiated under § 3.204 of this subchapter.

(e) Procurement from educational institutions to be negotiated under § 3.205 of this subchapter.

(f) Procurement in which only foreign sources are to be solicited.

(g) Procurement of electric power or energy, gas (natural or manufactured), water, or other utility services.

(h) Procurement of scientific or technical studies or surveys.

(i) Procurement of perishable subsistence.

(j) Procurement where competition is precluded by reason of patent rights, copyrights, or secret processes which are limited to a single producer.

(k) Procurement of research and development for which specific background knowledge or unusual scientific or technical equipment is a prerequisite to performance.

(l) Procurement of a classified nature where the information necessary to be included or referenced in the solicitation is in itself of a classified nature and the public disclosure of this information would violate security requirements. All other classified procurements shall be published in the Synopsis, if sufficient information, of an unclassified nature, can be provided in the solicitation to enable a prospective contractor to submit a bid or proposal.

(m) Procurement of technical equipment requiring standardization and interchangeability of parts to be negotiated under § 3.213 of this subchapter.

(n) Procurement of technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture, to be negotiated under § 3.214 of this subchapter.

(o) Procurement of technical, nonpersonal services in connection with assembly, installation, service, or repair (or instruction of personnel therein) of equipment of such a highly technical or specialized nature that they can only be performed by the original manufacturer or his authorized representative.

(p) Procurement in the interest of national defense or industrial mobilization, to be negotiated under § 3.216 of this subchapter.

(q) Procurement of parts for military equipment to be used for replenishment of stock, repair, or replacement, which are not to be procured from sources that have satisfactorily manufactured or furnished such parts in the past, pursuant to § 1.313 of this Part.

§ 1.1003–2 Research and development.

In order that potential sources may learn of research and development programs, advance notices of the Government's interest in a specific research and development field shall be published in the Department of Commerce Synopsis in accordance with § 1.1003–9(d) so as to give such sources adequate opportunity to submit information for evaluation of their research and development capabilities, except where security considerations prohibit such publication.

§ 1.1003–3 Synopses of subcontract opportunities.

Prime contractors and subcontractors should be encouraged to use the Department of Commerce Synopsis to publicize opportunities in the field of subcontracting stemming from their defense business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, Room 1300, 433 W. Van Buren Street, Chicago 7, Ill., under the heading "Subcontracting Assistance Wanted" and in the form of the following example:

XYZ CO., ATTN JOHN A. SMITH, TELE. NO. RANDOLPH 6–1111, 102 FIRST AVE., CHICAGO 7, ILL., seeks Subcontractor on items to be used in connection with Contract No. _____ awarded 5–1–60.

COILS, INDUCTION, DWG.
NO. 10–742.....10,000 ea.
(Name, description and quantity of other items or services may be included as long as contract assistance is desired under the same contract number.) If interested, make inquiry before 5–16–50 to above Contractor.

§ 1.1003–4 Responsibility of small business specialists.

Small business specialists in each purchasing office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of § 1.1003–1 through 1.1003–9. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

§ 1.1003–5 Publication of procurements of less than $10,000.

When recommended by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurements of less than $10,000 may be publicized in the Department of Commerce Synopsis.

§ 1.1003–6 Pre-invitation notices.

Where pre-invitation notices (§ 2.205–4 of this subchapter) are used, the pre-invitation information shall be included in the Synopsis. This information need not be re-published in the Synopsis when the invitation for bids is issued.

§ 1.1003–7 Availability of specifications, plans, and drawings.

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the Synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained. (See § 1.1203 of this part.)

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement the Synopsis shall contain notice of this fact.

(c) Notices of the situations in paragraph (a) and (b) of this section shall be prepared in accordance with § 1.1003–9(f).

§ 1.1003–8 Time of publicizing.

To allow concerns which are not on current bidders lists ample time to prepare bids, proposals or quotations, purchasing offices should, when feasible, synopsize proposed procurements at least ten days before the issuance of solicitations, in accordance with § 1.1003–9(b)(8).

§ 1.1003–9 Preparation and transmittal.

(a) Each purchasing office shall transmit a synopsis of proposed procurements as follows:

(1) When teletypewriter service is available, all synopses shall be forwarded via teletypewriter at the end of each day, for invitations for bids, requests for proposals or quotations issued on that day, or at the earliest practicable time prior to issuance of the invitation for bids, requests for proposals or quotations, as is deemed appropriate, to the following address:

Synopsis, Commerce Department, Field Service, Chicago, Ill.

(2) When teletypewriter service is not available, synopses shall be dispatched by airmail or ordinary mail, whichever is considered most expeditious, addressed as follows: Administrative Officer, U.S. Department of Commerce, 433 West Van Buren Street, Chicago 7, Illinois.

(b) Each synopsis shall be prepared as described below:

(1) Lines in the text commencing flush with left margin will not exceed 69 typewritten spaces. Double spaced lines will be used to describe each procurement action. Descriptions of different procurement actions will be separated by 4 lines.

(2) The first line of the text of the message will state the number of the synopsis being sent. Synopses will be numbered consecutively by the purchasing office during the calendar year. New numerical series beginning with number one will start as of the first working day of January of each year. Double space between this line and the next line.

(3) The second line of the text of the message will state name and location of the purchasing office straight across the page, not to exceed 69 typewritten spaces. No abbreviations are to be used except for name of State. If more than one line is required for name and location of purchasing office, double space and continue on subsequent line or lines if necessary, double spacing between each line. The address may include an attention phrase directed to an official by name or title.

(4) Four spaces below the preceding line entry (name and address of purchasing office), the description of the supplies or services being procured will begin in narrative paragraph form, double spaced, with each line commencing flush with the left margin. If the synopsis contains a number of items having the same purchase reference number and the same bid opening date or advance notice date, the description should be preceded by a blanket statement such as, "The following described items are to be procured under IFB ENG (number of Invitation for Bid) Opening Date, 31 August 1955." The length of the lines in the description will not exceed 69 typewritten spaces. The description will be clear, concise, and with a minimum number of words but sufficient for understanding by interested parties. It will include, as appropriate, commonly used names of supply items, basic materials from which fabricated, general size or dimensions, citations of specification or drawing numbers, or other data. If the material being procured is covered by one or more specifications requiring qualification testing and approval and such requirement has not been waived by competent authority, the notation "(QPL)" shall be inserted immediately following the specification number. The Federal stock number will also be included where one has been assigned. In the absence of a Federal stock number, the service stock number will be included where one has been assigned. Stock numbers will not be required for items controlled by a single manager agency or when more than six items are listed on the synopsis. In the latter case, however, stock numbers will be listed for the six items of highest value. No abbreviations will be used in describing supplies or services, although standard abbreviations may be used in listing the quantity purchase reference numbers, specifications and bid opening date. Punctuation symbols will be used as in normal correspondence. Fractions on typewriter keys will not be used but fractions may be expressed by (number)/(number) e.g., 11/16, 1/4, 1/2. The symbols # or @ or * may not be used since they are not used in teletypewriter operation.

(5) Following the complete description of the supplies and services which will end with a period, two hyphens will

be used to set off the quantity to be procured. The quantity usually will be stated in numerals followed by the unit, (abbreviations of units are permissible, e.g., lbs., ea., doz.). Whenever it is necessary to use "Indefinite Quantity," the description should include a statement as to the duration of the contract or period covered.

(6) The quantity will be followed by two hyphens before indicating the place of delivery as follows: "Deliveries to ----------." Places of delivery should be stated specifically when there are not more than three destinations. When delivery points are more numerous, they will be grouped, if practicable, to show the general geographic area, e.g., "West Coast," "East Coast," or other appropriate regional description. Otherwise, the places of delivery will be stated as "Various Destinations" or "Destination(s) to be furnished."

(7) The places of delivery will be followed by two hyphens before commencing with the invitation for bids number or other purchase reference number, which may consist of letters, numerals, or abbreviations separated by hyphens or spaces. Invitation for bids numbers shall be identified and followed by the letter "B"; request for proposals and request for quotations numbers shall be followed by the letter "Q". Purchase reference numbers should not be broken or appear on one line carried over on the subsequent line, as the insertion of a hyphen for the carry-over would change the reference number.

(8) Two hyphens will be used following the invitation for bids number or purchase reference number to set off the bid opening date or the advance notification date. The date should be stated in military style (date, month and year, e.g., 1 Aug 58). If the synopsis is published prior to issuance of the invitation for bids or request for proposals or quotations, the synopsis shall include a statement to the effect that requests for such invitations, proposals, or quotations should be received not later than 10 days from the date of publication of such synopsis in order to enable the purchasing office to mail such invitation for bids, request for proposals, or request for quotations directly to the inquirer at the time of issuance thereof.

(c) In addition to the foregoing, where the proposed procurement is to be effected in accordance with a small business set-aside (see § 1.706 of this part) or labor surplus area set-aside (see § 1.804 of this part), the synopsis shall (1) where there is a 100 percent small business set-aside, state that "The proposed procurement(s) listed herein is (are) under 100 percent small business set-aside," or (2) where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of ------ is being reserved for ---------- (insert "small business" or "labor surplus area" as appropriate) under a partial determination."

NOTE: To avoid confusion, separate messages should be sent covering proposed procurements which are under 100 percent small business set-aside so that they will be placed in the Department of Commerce's Notice to Small Firm Section.

(d) Notices which invite the submission of information as to research and development capabilities in specific fields of interest shall be headed "Research and Development Sources Sought." This shall be followed by a statement similar to the following: "Firms having research and development capabilities in the field of—(Be specific)—and whose facilities and personnel include—(Describe in substantial detail minimum facilities and personnel required)—are invited to submit complete information to the purchasing office listed above. Information furnished should include the total number of employees and professional qualifications of scientists, engineers, and technical personnel; a description of general and special facilities; an outline of previous projects; a statement regarding industrial security clearance, if previously granted; and other available descriptive literature. This is not a request for a proposal.

(e) Synopses of proposed procurements of a classified nature released in an unclassified form shall contain the following statement: "Security Clearance Will Be Required of Successful Bidder or Offerer."

(f) Procurements on which it is impracticable to distribute plans, drawings or specifications, or where adequate plans, drawings or specifications to describe a requirement are not available, shall be so identified in the Synopsis. Suggested headings and statements for these two situations are:

(1) Availability of Specifications, Plans or Drawings.

It will be impracticable to distribute the applicable ----------
----
(Insert "specifications," "plans," "drawings" or other appropriate words)

with the solicitation. This data may be examined or obtained at ----------
----
(Be specific)

(2) Complete Data Not Available.

Notice is given that available specifications, plans, or drawings, relating to the procurement described below do not fully provide all necessary manufacturing and construction details.

(g) Each reporting office will discuss the instructions contained in this section with its communications office so that the manner in which the message is to be transmitted is understood by the office preparing the message and the communications office.

§ 1.1004 Synopsis of contract awards.

Awards of all unclassified contracts to be performed in whole or in part within the United States, exceeding $25,000 in amount, shall be published in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards."

§ 1.1004–1 Preparation and transmittal.

(a) Purchasing offices shall prepare and forward single copies of synopses of contract awards, using the same format as prescribed for synopses of proposed procurements in § 1.1003–9, to the address below, by air mail or ordinary mail whichever is considered most expeditious, before the close of business at the end of each week:

U.S. Department of Commerce, 433 W. Van Buren Street, Room 1300, Chicago 7, Ill.

(b) The synopsis of contract awards shall contain the following information:

(1) The name and address of purchasing office;

(2) A clear and concise description of the supplies or services being procured, such description to be followed by the contract number and date and, in parentheses, by the applicable number of the invitation for bids or request for proposals;

(3) The quantity of each item;

(4) The dollar amount of the award;

(5) The name and full address of the contractor; and

(6) When requested by the prime contractor, a statement of the industries, crafts, processes, or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

§ 1.1005 Paid advertisement in newspapers and trade journals.

§ 1.1005–1 Scope.

Sections 1.1005 through 1.1005–12 implement 5 U.S.C. 22a; 44 U.S.C. 321, 322 and 324; and Title 7, Chapter 5200, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

§ 1.1005–2 Definition.

As used in §§ 1.1005 through 1.1005–12, "newspaper" means a publication printed and distributed at stated intervals to convey news, and includes trade journals which carry news in addition to technical matter.

§ 1.1005–3 General.

Generally, paid advertisements in newspapers shall not be used. However, when time will permit, the publication of essential details of invitations for bids in newspapers as paid advertisement may be authorized as indicated below, when necessary to secure effective competition, provided written authority to advertise has been obtained in advance.

§ 1.1005–4 Limitation.

No advertisement of a proposed procurement shall be published in any newspaper published and printed in the District of Columbia unless the supplies are to be furnished for use, or the labor is to be performed, in the District of Columbia or in the adjoining counties of Maryland or Virginia.

§ 1.1005–5 Authority and delegation.

Authority to approve the publication of paid advertisements in newspapers is vested by statute in the Secretary of each Department. This authority may be delegated by the Secretary in writing, by position designation, to subordinates within his Department. The delegation shall specify the limitations, if any, of the authority granted. Administrative duties involved in accomplishing the advertising may be assigned by the delegate to subordinates, by name or position, by

suitable instruments in writing, personally signed by the delegate, setting forth the extent of the administrative duties involved. A copy of the instrument delegating authority to advertise and a copy of the instrument assigning administrative duties thereunder will either be attached to the first voucher submitted for payment or shall be forwarded immediately upon issuance to the General Accounting Office address to which records of the Department are submitted for audit purposes. Copies of such instruments shall also be attached to the duplicate voucher submitted to the paying office pursuant to § 1.1005–12.

§ 1.1005–6 Requests for authority to place advertisement.

(a) Special or general authority to place advertisements in newspapers must be secured in advance and as prescribed by each Department. Special authority authorizes the publication of a given advertisement a specified number of times in a designated newspaper or newspapers. General authority authorizes the publication during a fiscal year, as designated, of such advertisements for bids as may be required by the duties of officers engaged in making frequent purchases or contracts.

(b) Requests for authority to advertise shall specify the newspapers in which it is deemed advantageous to advertise.

§ 1.1005–7 Preparation of advertisement.

(a) Except as provided in paragraph (b) of this section, all advertisements will be set solid, without paragraphing, in accordance with usual Government requirements, a sample of which is shown on Standard Form 1143 (Advertising Order).

(b) When advertising to be set other than solid is purchased, the specifications for such advertising must be definite, clear, and specific. No allowance shall be made for paragraphing, for display leaded or prominent headings, unless specifically ordered, or for additional space required by the use of type other than that specified. Specifications for advertising other than solid will accompany the advertisement copy submitted to the published with the advertising order, and copies of both documents will be transmitted to the General Accounting Office with the voucher.

§ 1.1005–8 Insertions.

(a) *Number of insertions.* No greater number of newspapers or insertions shall be used in any case than is necessary to give proper and sufficient public notice. Ordinarily, advertisements will be given six insertions in daily or four insertions in weekly papers. Such insertions shall be placed in sufficient time prior to the date of opening of bids to allow interested bidders to obtain plans and specifications and prepare bids. In case of emergency, advertisements may be inserted one or more times, as time and circumstances permit.

(b) *Limitations on time of publications.* No authorization will be given for the publication of an advertisement beyond the morning of the day on which the opening of bids is to occur, and no payments will be made for continuing such publication beyond the period authorized.

§ 1.1005–9 Rates.

Advertising may be paid for at rates not to exceed the commercial rates charged to private individuals, with the usual discounts.

§ 1.1005–10 Proof of publication.

(a) Every voucher rendered for official advertising should be accompanied by a copy of each issue (or tear sheet) of the publication in which the advertisement appeared. However, if copies of the publications (or tear sheets) are not available, an affidavit of publication may be furnished in lieu thereof.

(b) Copies of publications (or tear sheets), or affidavits in lieu thereof, submitted as proof of publication shall be retained in the paying officer's files until settlement of his account by the General Accounting Office, after which they may be disposed of.

§ 1.1005–11 Forms.

(a) Standard Form 1143 (Advertising Order) shall be signed by the person to whom authority to advertise has been delegated, or by the person to whom administrative authority to place the advertising has been assigned (see § 1.1005–5). In the latter case, the date and number of such instrument of assignment shall be put in the box on the standard form to the left of the signature. The date and number of the instrument delegating authority to advertise shall be put in the box in the upper right hand corner of the form. See § 1.1005–7, with reference to the composition of the advertising copy, in connection with the preparation of this form.

(b) The public voucher will be prepared by publishers to bill their charges against the Department for advertising published in accordance with the advertising order (Standard Form 1143). The Public Voucher for Advertising (original) is printed on the reverse of the original advertising order (Standard Form 1143). The Public Voucher for Advertising (memorandum) is printed on the reverse of the memorandum advertising order (Standard Form 1143a). Separate instruments shall not be used for ordering advertising and the payment therefor. The instructions in § 1.1005–10 apply when this form is used.

§ 1.1005–12 Payment.

Upon receipt of the public voucher, supported by proof of publication, from a publisher, the officer placing the advertisement will assemble and attach appropriate supporting documents (see § 1.1005–5), sign the second certificate on the reverse of Standard Form 1143, and submit the account in duplicate to the proper paying office for payment.

§ 1.1006 Publicizing award information.

§ 1.1006–1 Awards after formal advertising.

Except with respect to procurements not in excess of $10,000, press releases or public announcements of awards after formal advertising shall state that the contract was awarded after competition by formal advertising and shall include the number of bids solicited and the number received.

§ 1.1006–2 Awards after procurement by negotiation.

Except with respect to those procurements not in excess of $10,000 and those further excepted by § 3.106 of this subchapter, the information contained in the notice to unsuccessful offerors prescribed by § 3.106(a)(1) shall:

(a) Be posted in a public place at the purchasing activity for at least seven days; and

(b) Be included in all press releases or public announcements of negotiated awards. Where the award was made after competitive negotiation (either price or design competition), press releases or public announcements shall include a statement to this effect.

Subpart K—Qualified Products

§ 1.1101 General.

(a) Where it is necessary to test products in advance of their procurement in order to obtain products of requisite quality, each Department may subject such products to qualification tests to determine if they are qualified for use. The results of such testing and approval may be set forth in a qualified products list. To establish a qualified products list, a specification must exist which requires qualification and specifies qualification testing. (Each Department publishes a "Military Index of Specifications and Standards," indicating those military specifications which require qualification. These indexes may be obtained by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C.) Once established, a qualified products list shall be used for the purpose and in the manner set forth in this subpart.

(b) The entire process by which products are solicited from manufacturers, examined and tested, and then identified on a qualified products list is known as qualification. Qualification testing is performed independently of any specific procurement action. Qualification of specific products is required prior to opening bids or award of negotiated contracts. Further information regarding qualified products lists may be found in the "Military Manual for Qualified Products Lists" (Standardization Manual M204) copies of which may be obtained from the Superintendent of Documents, Washington 25, D. C.

§ 1.1102 Justification for establishment of a qualified products list.

(a) A qualified products list may be established for a product only when one or more of the following conditions exists:

(1) The time required for testing after award would unduly delay delivery of the supplies being purchased;

(2) The cost of repetitive testing would be excessive;

(3) The tests would require expensive or complicated testing apparatus not commonly available; or

(4) The interest of the Government requires assurance, prior to award, that the product is satisfactory for its intended use.

(b) Qualified products lists may be established under paragraph (a)(2) or (3) of this section only after approval by: in the case of the Army, the Office of the Deputy Chief of Staff, Logistics; in the Navy, the Office of Naval Material (Code M30); and in the Air Force, the Directorate of Procurement and Production, Hq., Air Materiel Command.

§ 1.1103 Qualification of products.

§ 1.1103–1 Opportunity to qualify.

(a) Upon determination that a product is to be covered by a qualified products list, manufacturers shall be urged to submit their products for qualification and generally shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the product as a qualified product. Appropriate notice of such determination shall be furnished to the U.S. Department of Commerce, 433 West Van Buren Street, Chicago 7, Illinois, for publication in the daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards." The publicity given to the requirement for qualification testing shall include the following:

(1) An intention to establish a qualified products list for a product;

(2) The specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and

(3) Notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a qualified products list.

(b) Contact shall be made with companies known to be interested in submitting products for qualification testing under the applicable specifications. Where appropriate, trade associations in a particular industry shall be notified.

(c) Where practicable, notices in the following form should be sent to commercial journals and trade magazines of the industry concerned through established channels for news releases:

The (bureau, service or command), Department of the (Army, Navy or Air Force), has announced the intention to establish a Qualified Products List for (item) under specification (symbol). Companies which have a product meeting the requirements of this specification are urged to contact (name and address of activity) for an opportunity to have their products tested, since in making future awards, consideration may be given only to such products as have been tested and accepted for inclusion in the Qualified Products List.

The above notice may also be sent to all firms or individuals on the appropriate bidders' mailing list.

§ 1.1103–2 Testing of product.

The manner and extent of testing shall be in accordance with the applicable specification. Whether a product should be placed on a qualified products list will be determined by the results of the tests made to determine conformance to the specification requirements.

§ 1.1103–3 Notification to manufacturer.

The Department responsible for qualification shall notify the manufacturer of the results of the testing and whether the product has met the qualification requirements of the applicable specification. When the product qualifies for inclusion on the qualified products list, notification thereof shall be given to the manufacturer together with the following statements in regard thereto: (a) That such listing does not guarantee acceptance of the product in any purchase; (b) that such listing does not constitute a waiver of the requirements of the specification as to acceptance, inspection, testing, or other provisions of any contract involving such product; (c) that such listing, the letter Notification of Qualification, the results of tests or other information relating to qualification shall not be circulated, referred to, or otherwise used for publicity or advertising purposes, or for sales other than those leading to ultimate use of the product by an agency of the Federal Government, and that if so used, such qualification is subject to cancellation by the Department concerned. If the product does not qualify for inclusion on the qualified products list, notice thereof shall be given to the manufacturer with a report covering the results obtained by the test. Whether or not a product qualifies, it will be returned after testing to the manufacturer "as is," unless destroyed or consumed in testing, or disposed of as authorized by the manufacturer.

§ 1.1104 Qualified products lists.

§ 1.1104–1 General.

Products qualified by qualification tests, as described by § 1.1103, shall be listed for reference by the Departments. Lists of qualified products are for the convenience of the Departments, their contractors, and subcontractors in the performance of procurement functions. The reproduction of lists or any reference to lists, in whole or in part, for advertising or publicity purposes is prohibited. A list may be made available to prospective bidders or suppliers who require the list in furnishing supplies or services to the Government or its contractors.

§ 1.1104–2 Military lists.

Where qualification is in accordance with tests prescribed by specifications, the compilation, preparation, form, maintenance, and administration of qualified products lists shall be in accordance with the procedures prescribed by the Assistant Secretary of Defense (Supply & Logistics). See "Military Manual for Qualified Products Lists" (Standardization Manual M204).

§ 1.1104–3 Department lists.

Where qualification is in accordance with tests prescribed by a Department, qualified products lists shall be compiled, prepared, maintained, and administered in accordance with procedures prescribed by that Department.

§ 1.1104–4 Distribution of list, notice of qualification, and other information.

(a) Each Department shall furnish copies of its list (including changes thereto) to each of the other Departments. Except as provided in § 1.1104–1 and paragraph (b) of this section, qualified products lists, letter notices of qualification, or other qualification information shall not be distributed outside the Departments.

(b) The Department responsible for qualification after appropriate determination that such action is in the best interest of the Government and in accordance with current security policy may:

(1) Release qualified products lists and other qualification information to other activities of the Federal Government;

(2) Release such lists and information to friendly foreign governments purchasing, operating or maintaining supplies, which involve products covered by specifications requiring qualification, on the condition that the information shall be used only in connection with furnishing supplies or services to that government; and

(3) Authorize the supplier or prospective supplier to furnish qualification information applicable to military specifications in the case of sales to friendly foreign governments which are purchasing, operating or maintaining supplies that involve products covered by specifications requiring qualification, after clearance with appropriate intelligence authority in each instance of procurement.

§ 1.1104–5 Publicity purposes.

No Department shall authorize the reproduction of lists or any reference to lists, in whole or in part, for advertising or publicity purposes.

§ 1.1104–6 Requirement that lists be kept open.

The lists shall always be open for inclusion of products from additional manufacturers as their products are submitted for qualification and become qualified.

§ 1.1104–7 Withdrawal of qualification and removal from list.

The qualification of a product may be withdrawn by the Department concerned if it is determined that the product does not meet requirements. Before such withdrawal the manufacturer shall be notified that its product is being considered for withdrawal from the qualified products list, and the reasons therefor, and shall be given an opportunity to comment. If it is determined that the product no longer qualifies, the product shall be withdrawn from the qualified products list and the Department concerned shall notify the manufacturer of the withdrawal. A product may be removed from a list at the request of its manufacturer.

§ 1.1104–8 Effect of debarment or suspension.

Notwithstanding any other provision of this subpart, the inclusion of a product on the qualified products lists may be denied, and the qualification of a listed product may be withdrawn, by the Department concerned, without notification to the manufacturer, if the name of the manufacturer appears on the lists of debarred or ineligible bidders which are maintained pursuant to Subpart F of this part. With reference to Type B listings, the provisions of this section shall be applicable only if the qualified product is in the category prescribed by the Secretary of Labor (see § 1.603).

§ 1.1105 Procurement of qualified products.

§ 1.1105–1 General.

(a) Whenever procurement of qualified products is made, only bids or proposals offering products which have been qualified prior to the opening of bids or the award of negotiated contracts shall be considered in making an award. Manufacturers having products not listed but which have been qualified should be given consideration and an opportunity to offer evidence of such qualifications in the time interval before final award must be made.

(b) To encourage manufacturers to make timely arrangements for qualification tests of their products, contracting officers shall be governed by subparagraphs (1) through (3) of this paragraph.

(1) *Synopsis of proposed procurement.* The purchasing activity shall publicize the proposed procurement in the Synopsis, in accordance with § 1.1003 of this part, promptly upon receipt of the purchase requisition.

(2) *Solicitation period.* To the extent consistent with timely accomplishment of the procurement the period between issuance of the invitation for bids, or the request for proposals, and the opening of bids or the award of negotiated contracts should be the maximum time feasible. However, contracting officers shall insure that the solicitation period allows at least a minimum of 30 calendar days between the issuance and opening dates. Openings of less than 30 days may be set in cases of urgency: *Provided,* The justification for a shorter opening be in writing and made part of the procurement file. In appropriate cases, advance notice of procurements of qualified products may be given suppliers through the use of pre-invitation notices. Such notices shall identify specification requiring qualification and shall specify the time within which such qualification must be accomplished.

(3) *Distribution.* In procuring qualified products through formal advertisement, invitations for bid will not be restricted to manufacturers whose product has been qualified but will be invited from bidders in the same manner as if a qualified product were not involved.

§ 1.1105–2 Notice.

In procurements involving qualified products, the following provision shall be inserted in invitation for bids:

With respect to products requiring qualification, awards will be made only for such products that have, prior to time set for opening of bids, been tested and qualify for inclusion in the qualified products list identified below, whether or not such products have actually been included in the list by that date. Manufacturers are urged to communicate with the office designated below and arrange to have the products that they propose to offer tested for qualification. Manufacturers having products not yet listed, but which have been qualified, are requested to submit evidence of such qualification with their bids or offers, so that they may be given consideration.

(Identify the Qualified Products List involved and give the name and address of the office with which manufacturers should communicate.)

The above provision shall be appropriately modified and used in negotiated procurements. Contracting officer shall forward requests for qualification tests received from prospective contractors to the activity listed in the specification as being responsible for qualification. An interim reply shall be made to such prospective contractors advising them of the disposition of their request.

Subpart L—Specifications, Plans, and Drawings

§ 1.1201 General.

(a) Plans, drawings, specifications or purchase descriptions for procurements shall state only the actual minimum needs of the Government and describe the supplies and services in a manner which will encourage maximum competition and eliminate, insofar as is possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers. Items to be procured shall be described by reference to the applicable specifications or by a description containing the necessary requirements.

(b) Many specifications cover several grades or types, and provide for several options in methods of inspection, etc. When such specifications are used, the invitation for bids or request for proposals shall state specifically the grade, type, or method of inspection, etc., on which bids or offers are to be based.

§ 1.1202 Mandatory specifications.

(a) Except as provided in paragraph (b) of this section the following specifications are mandatory for use by the Department of Defense in the procurement of supplies and services covered by such specifications:

(1) Federal specifications, unless determined by the Department of Defense to be inapplicable for its use; and

(2) Coordinated Military specifications approved by the Department of Defense for its use.

(b) Federal and Military specifications need not be used for the following unless required by Departmental instructions:

(1) Purchase incident to research and development;

(2) Purchase of items for test or evaluation;

(3) Purchase of laboratory test equipment for use by Government laboratories;

(4) Purchase of items for authorized resale except military clothing;

(5) Purchase of items in an amount not to exceed $2,500 (multiple small purchases of less than $2,500 of the same item shall not be made for the purpose of avoiding the use of Federal or Military specifications);

(6) Purchase of one-time procurement items; or

(7) Purchase of items for which it is impracticable or uneconomical to prepare a specification (repetitive use of a purchase description containing the essential characteristics of a specification will be construed as evidence of improper use of this exception).

(c) If it is determined, in accordance with the procedures established under the Defense Standardization Program by the Assistant Secretary of Defense (Supply and Logistics), that the specifications listed in paragraph (a) of this section do not meet the particular or essential needs of a bureau, service, or command, then (except as provided in paragraph (b) of this section) applicable interim Federal specifications or limited coordinated Military specifications should be used.

(d) Whenever a specification is found to be inadequate, immediate action shall be taken to effect the issuance of an amendment or revision in accordance with established procedures to obviate the necessity for repeated departures from the specification.

§ 1.1203 Availability of specifications, plans, and drawings.

Invitations for bids and requests for proposals will:

(a) So far as practicable, be accompanied by all applicable specifications, plans, and drawings, and shall so state that fact;

(b) State the exact locations where all applicable specifications, plans, and drawings may be obtained by prospective contractors and that such specifications, plans, and drawings were not furnished with the invitation for bids or request for proposal; or

(c) If distribution of applicable specifications, plans, or drawings is impracticable, state a reasonable number of locations at which they may be examined.

§ 1.1204 Packaging requirements.

Appropriate preservation, packaging, packing, and marking requirements will be included in contracts as applicable.

§ 1.1205 Offshore procurement.

Contracting officers accomplishing offshore procurement are authorized to use, where necessary, such specifications, standards, and purchase descriptions of foreign governments, or groups thereof, foreign trade associations, or purchase descriptions developed locally which will be readily understood by foreign vendors, provided, adequate measures are taken to insure satisfactory and acceptable products, including standard and interchangeable items, where required.

§ 1.1206 Purchase descriptions.

(a) A purchase description may be used in lieu of a specification when authorized by § 1.1202(b) and, subject to the restriction on repetitive use in § 1.1202(b)(7), where no applicable specification exists. A purchase description

should set forth the essential characteristics and functions of the items or materials required. Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby preclude consideration of a product manufactured by another company, unless it is determined that the particular feature is essential to the Government's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item. Purchase descriptions of services to be procured should outline to the greatest degree practicable the specific services the contractor is expected to perform.

(b) Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." This technique should be used only as a last resort when an adequate specification or more detailed description cannot feasibly be made available in time for the procurement under consideration. Where feasible, more than one brand name should be indicated. However, the words "or equal" should not be added when it has been determined in accordance with paragraph (a) of this section that only a particular product meets the essential requirements of the Government, as, for example, (1) where the required supplies can be obtained only from one source; (2) procurements negotiated under § 3.207 of this subchapter for specified medicines or medical supplies where it has been determined that only a particular brand name will meet the essential requirements of the Government; or (3) procurements negotiated under § 3.208 of this subchapter for supplies for resale where it has been determined by a selling activity that only a particular brand name will meet the desires or preferences of its patrons.

(c) (1) Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer supplies other than those specifically named by brand if such other supplies will meet the needs of the Government in essentially the same manner as those specified by brand. The "brand name or equal" description should specifically set forth those salient characteristics of the named supplies which are essential to the needs of the Government. For example, where interchangeability of parts is required, such requirement should be specified. Where a "brand name or equal" description refers to items, names, and numbers published in manufacturers' catalogs, the invitation for bids or request for proposal shall clearly identify the supplies called for. Such identification should include, for example, complete item names, identification of catalogs, and applicable catalog numbers with the corresponding catalog descriptions. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(2) When a brand name or equal purchase description is included in an invitation for bids:

(i) The following shall be inserted after each item so described in the invitation for completion by the bidder.

Bidding on:
Manufacturer's Name ___ Brand ___ No. ___

(ii) In addition, the following clause shall be included in the invitation:

BRAND NAME OR EQUAL (JAN. 1960)

As used in this clause, the term "brand name" includes identification of supplies by make and model.

Certain supplies called for by this Invitation for Bids are identified in the schedule by a brand name "or equal" description. This identification is descriptive rather than restrictive. Bids offering "or equal" supplies will be considered for award if such supplies are clearly identified in the bids and are determined by the Government to be equal to the brand named supplies in all material respects.

Bidders must clearly indicate whether their bids are based on a brand name item or on an "equal" item by furnishing the information required below. IF THE BIDDER DOES NOT IDENTIFY THE BRAND NAME OR DESCRIBE IN FULL THE "OR EQUAL" ITEM WHICH IS OFFERED, AS PROVIDED IN (1) AND (2) BELOW, THE BID WILL BE REJECTED.

(1) If the bidder proposes to furnish a brand name item specified in this Invitation for Bids, such brand name shall be inserted in the space provided after each item so described.

(2) If the bidder proposes to furnish an "or equal" item, the brand name of the item proposed to be furnished, if any, shall be inserted in the space provided after each item so described, and in addition, the following descriptive data must be furnished:

A full description thereof, including pertinent physical, mechanical, electrical, and chemical details and a statement explaining the differences between the items being offered and any one of the corresponding brand name items called for by this Invitation for Bids. (This information may be supplied by separate attachments to the bid.)

In negotiated procurements the foregoing provisions may be suitably modified for use in the requests for proposals. If such provisions are not used, prospective contractors shall be informed that proposals offering supplies differing from those identified by brand name will be considered if the contracting officer determines that such offered supplies are equal in all material respects to the supplies identified by brand name. But the requirements of this subparagraph are not mandatory for small purchases made pursuant to Subpart F, Part 3, of this subchapter.

(3) Bids or proposals offering supplies which differ from the brand name supplies shall be considered for award where the contracting officer determines that the offered supplies conform to all characteristics specified in the invitation for bids or request for proposals and otherwise meet the needs of the Government in essentially the same manner as the brand name supplies. Bids or proposals shall not be rejected because of minor differances in design, construction, or features which do not affect the suitability of the supplies.

(4) Award documents shall identify, or incorporate by reference an identification of, the specific supplies (including any brand name and descriptive data specified in the bid) which the contractor is to furnish.

§ 1.1207 Alternate articles or qualities.

Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or qualities of material, e.g., where two or more articles will be equally acceptable to the Government depending upon relative price. However, the alternate articles or qualities must be precisely described to assure that the same degree of competition is obtainable on the alternate bids or offers as is obtainable on the basic articles described.

Subpart M—Transportation

§ 1.1301 General.

(a) The transportation factors discussed in this subpart are important in awarding and administering contracts to insure that procurements are on the basis most advantageous to the Government, all factors considered, and that supplies arrive at the right place at the right time and in good condition. Traffic management advice and assistance shall be sought by and given to contracting officers and contract administrators, including property administrators who are concerned with the movement of Government property to, from, and between plants of contractors and subcontractors. Requiring activities should consider transportation factors before submitting purchase requests and should give purchasing activities instructions so that they are able to evaluate all applicable traffic management factors.

(b) As used in this subpart the term "United States" does not include Alaska or Hawaii.

§ 1.1302 Place of delivery.

§ 1.1302–1 Shipments within the United States.

Unless there are valid reasons to the contrary, the procurement of supplies from sources within the United States for ultimate delivery to destinations within the United States shall be in accordance with the following policy:

(a) When it is estimated that a contract will require no shipment to a single destination which will equal a minimum carload or truckload lot, delivery shall be on the basis of all transportation charges paid to destination;

(b) When it is estimated that a contract will require a shipment of a minimum carload or truckload lot, delivery shall be on the basis of whichever of the following is more advantageous to the Government:

(1) At the Government's option, f.o.b. carrier's equipment, wharf, or freight station at a specified city or shipping point at or near contractor's plant; or

(2) All transportation charges paid to destination. Solicitations shall provide that bidders or offerors may make bids or proposals on either or both of these bases. In the absence of specific information to the contrary, a minimum carload or truckload lot shall be deemed to be approximately 20,000 pounds.

§ 1.1302–2 Shipments from the United States for oversea delivery.

Unless there are valid reasons to the contrary, purchases of supplies originating within the United States for ultimate delivery to destinations outside the United States, regardless of the quantity of the shipment, shall be made on the basis of delivery at the Government's option, f.o.b. carrier's equipment, wharf, or freight station at a specified city or shipping point at or near contractor's plant. This policy applies to supplies shipped either directly to a port area for export or to storage areas for subsequent reshipment to a port area for export.

§ 1.1302–3 Shipments originating outside the United States.

Selection of place of delivery for shipments originating outside the United States shall be in accordance with procedures prescribed by the Department concerned.

§ 1.1303 Quantity analysis.

When additional quantities of the item being purchased can be transported at no increase in transportation cost or when purchase of carload or truckload quantities will result in lower unit transportation costs, the purchasing activity should find out from the requiring activity whether there is a known requirement for additional quantities.

§ 1.1304 Commodity description.

A complete description of the commodity being purchased, including packing and packaging instructions, is necessary not only to enable the supplier to bid or quote properly on the requirement, but also for determination of proper transportation charges. In no case shall the manufacturer's part number only be shown without the appropriate descriptive nomenclature.

§ 1.1305 Delivery terms.

§ 1.1305–1 F.o.b. origin or destination.

Solicitations for supplies to be purchased either f.o.b. origin or f.o.b. destination in accordance with § 1.1302–1 (b) shall provide that bids or proposals may be submitted on either or both bases and that they will be evaluated on the basis of the lowest overall cost to the Government. Invitations for bids and requests for proposals shall include so much of the following information as is pertinent to the particular procurement and shall require prospective suppliers to furnish the Government such of the following as may be appropriate:

(a) Method of shipment, such as rail, water, air, or truck;

(b) Minimum quantities or lots, such as carloads, truckloads, less than carloads, or less than truckloads (Where appropriate, the solicitation should elicit information of the minimum size of the shipment which the prospective supplier will make, so that the evaluation of transportation most may be on a realistic basis. The prospective supplier should be cautioned that, if he tenders shipments in lesser quantities, he may be charged with any resulting excess cost.);

(c) Guaranteed shipping weight (If shipping weight and cube of items to be procured are not shown in the solicitation, prospective suppliers should be required to furnish this information so that proper transportation costs can be computed. The prospective supplier should be cautioned that, if actual shipping weights or cubes vary from the guarantees, he may be charged with any resulting excess cost.);

(d) Packing, crating and other preparations;

(e) Transit privileges (§ 1.1308); and

(f) Any other shipping information required for evaluation.

§ 1.1305–2 F.o.b. destination.

Generally, solicitations for supplies to be purchased f.o.b. destination shall provide that supplies shall be delivered, all transportation charges paid by the contractor, to the specified destination. The solicitation shall inform prospective suppliers of any known shortage of transportation facilities at destination or other factors which may affect the supplier's transportation costs. When f.o.b. destination bids only are desired, the invitation for bids shall specify that bids submitted on a basis other than f.o.b. destination will be rejected as nonresponsive.

§ 1.1305–3 F.o.b. origin.

Generally, solicitations for supplies to be purchased f.o.b. origin shall provide for delivery, at the Government's option, f.o.b. carrier's equipment, wharf, or freight station at a city or shipping point to be specified by the bidder or offeror at or near the contractor's plant. This will enable the military traffic management offices, in issuing routing instructions, to select the mode of transportation which will provide the required service at the lowest cost. The solicitation shall state that bids or proposals will be evaluated on the basis of the lowest overall cost to the Government, taking account of transportation costs to the Government from point of origin to the designated destinations. Thus, when material is to be purchased f.o.b. origin in accordance with § 1.1302–2 for ultimate delivery to known destinations outside the United States, the solicitation will state that bids or proposals will be evaluated so as to take into account the cost to the Government of shipment from the point of origin to the overseas destinations. Contracting officers shall request the appropriate transportation officer to furnish any transportation rates and port handling charges required for use in evaluating bids or proposals. When f.o.b. origin bids only are desired, the invitations for bids will specify that bids submitted on a basis other than f.o.b. carrier's equipment, wharf, or freight stations at a specified city or shipping point at or near the contractor's plant will be rejected as nonresponsive.

§ 1.1305–4 Destination unknown.

When the exact destinations of the supplies being purchased are not known at the time bids or proposals are solicited, but the general location of the destination, such as East Coast, Middle West, or West Coast, is known, a definite place or places shall be designated as the point to which transportation costs will be computed—but only for the purpose of evaluating bids or proposals. The solicitation shall specify that bids or proposals should be submitted f.o.b. origin and that shipments will be made on Government bills of lading. The solicitation shall state:

For the purpose of evaluating (bids) (proposals), and for no other purpose, the final destination for the supplies will be considered to be as follows: [Name destinations].

Invitations for bids shall contain a statement that bids submitted on a basis other than f.o.b. origin will be rejected as nonresponsive.

§ 1.1306 Consignment and marking instructions.

Complete consignment and marking instructions, to the extent that they are known at the time the contract is awarded, shall be included in contracts to assist in insuring that supplies will be delivered to proper destinations without delay. "Military Standard Marking of Shipments (MIL–STD–129B)" shall be consulted for proper marking instructions. In those cases where complete consignment information is not initially known, additional instructions to the contractor shall be furnished as soon as such information becomes known. In contracts which provide for delivery f.o.b. origin and shipment on Government bills of lading, consignment instructions may be limited to the mail address of the consignee, provided the contract instructions state that "Shipments other than mail shall be consigned as indicated on the Government bill of lading furnished to the Contractor." It should be noted that receiving activities may have different consignment points for the various transportation media, or even for particular carriers within a medium depending on the weight, shape, size or nature of the shipment involved.

§ 1.1307 Scheduling of deliveries to permit consolidation of shipments.

The accumulation of small shipments into carload or truckload lots will result in lower transportation costs. Also, the accumulation of small shipments into less than load shipments may result in lower transportation costs. Upon review of the purchase request, and in conjunction with the requiring or requisitioning activity, consideration shall be given to revising delivery schedules to provide for deliveries in larger quantities. In some cases, delivery schedules for supplies to be delivered to multiple destinations can be consolidated and the stop-off in transit privilege used for partial unloading at one or more points directly en route between the point of origin and the last destination.

§ 1.1308 Transit arrangements.

Transit arrangements afford an opportunity to stop carload or truckload shipments at specific intermediate points en route to the final destination in order to store, process, or fabricate, or for other purposes as specified in carriers' applicable tariffs. A single through rate from origin to final destination, plus a transit or other related charge if applicable, is charged in lieu of a combination of rates to and from the transit point which would result in higher costs. Consideration should be given to possible benefits

to the Government, through the use of such transit arrangements. Traffic management personnel can furnish necessary information and analyses of situations where such transit arrangements may be beneficial.

§ 1.1309 Rates and volume shipments.

Procurements involving planned volume movements, as defined in the Military Traffic Management Regulation (AR 55–355 c.s.; OPNAVINST 4600.8; AFM 75–2, as amended; and NAVMC 1175) shall be referred at the earliest practicable time to the appropriate military traffic management office for a determination of the reasonableness of applicable current rates and when appropriate, for negotiation of adjusted or modified rates. Generally, carriers are required by both Federal and State laws to charge all shippers equally for like transportation and associated services. However, when Government traffic possesses more favorable transportation characteristics (greater volume, heavier loading, less likelihood of damage, etc.) than commercial traffic between the same origins and destinations, freight rates are often lower for the Government traffic, as in the case of quotations under section 22 of the Interstate Commerce Act (49 U.S.C. 22) and similar tenders. Rate information necessary to properly evaluate offers shall be obtained from the appropriate military traffic office.

§ 1.1310 Crosshauling and backhauling.

Crosshauling is the shipment of material of the same kind in reverse directions. Backhauling is the shipment of material from a geographical area to or through another geographical area from which the material previously had been shipped. Crosshauling and backhauling waste transportation funds, facilities and equipment. To reduce crosshauling and backhauling, purchase requests or authorizations should contain as complete and accurate transportation (including destination) data as possible.

§ 1.1311 Unusually large or heavy shipments.

Before purchasing unusually large, heavy, high, wide, or long items, the appropriate transportation office shall be consulted in order that any transportability difficulties may be considered. Additional costs, such as the use of special equipment, excess blocking and bracing material, circuitous routing, etc., incident to these shipments shall also be considered, in conjunction with the freight rate, in determining total transportation costs.

§ 1.1312 Mode of transportation.

Generally, the military traffic management office is the proper authority to specify the mode and routing of shipments. If urgency in delivery is a factor, the appropriate military traffic management office shall be so informed in order that routing authorities may select the appropriate means of transportation.

Subpart N—Preference for United States-Flag Privately Owned Ocean Carriers

§ 1.1401 Definitions.

As used in this subpart:

(a) "Dry bulk carriers" are ships for the carriage of shipload lots of homogeneous unmarked cargoes such as grain, coal, cement and lumber;

(b) "Dry cargo liners" are ships for the carriage of heterogeneous marked cargoes in parcel lots. However, any cargo can be carried in such ships, including part cargoes of bulk items such as those mentioned above, or, when carried in deep tanks, bulk liquids such as petroleum and vegetable oils;

(c) "Tankers" are ships used for carriage of bulk liquid cargoes such as liquid petroleum products, vegetable oils and molasses;

(d) "Government vessel" means a vessel owned by the United States Government and operated directly by the Government or for the Government by an agent or contractor, including privately owned United States-flag vessels under bareboat charter to the Government;

(e) "Private United States vessels" means privately owned United States-flag commercial vessels, including such vessels when under voyage or time charter to the United States Government, and including Government-owned vessels under bareboat charter to private operators; and

(f) "United States-flag vessels" when used independently means both Government vessels and private United States vessels.

§ 1.1402 General.

It is the policy of the Department of Defense, in furtherance of the Cargo Preference Act (68 Stat. 832; 46 U.S.C. 1241(b)) and 10 U.S.C. 2631 to encourage and foster the American merchant marine. When transportation of supplies by ocean vessel is required:

(a) Private United States vessels shall be employed for the transportation of at least 50 percent of the aggregate gross tonnage per annum of the following categories of supplies:

(1) Supplies owned by the Government and in the possession of a Military Department, or of a contractor, or subcontractor of any tier, of a Military Department;

(2) Supplies for the use of the United States which are contracted for and require subsequent delivery to a Military Department but are not owned by the Government at the time of shipment; and

(3) Supplies procured, contracted for or otherwise obtained for non-reimbursable contribution to foreign assistance programs, but which are not owned by the Government at the time of shipment; provided, that this requirement shall not extend to the ocean transportation between foreign countries of supplies procured with local currency funds made available, or derived from funds made available, under the Mutual Security Act. Provided, that the allocation of gross tonnage will be computed separately for dry bulk carriers, dry cargo liners, and tankers and in such a manner as to assure fair and reasonable participation by geographic areas; and provided, that private United States vessels are available at fair and reasonable rates for such vessels;

(b) Only United States-flag vessels will be employed for the transportation of the supplies defined in paragraph (a)(1) of this section when such supplies are for the use of the Military Departments unless such vessels are not available at fair and reasonable United States-flag rates.

§ 1.1403 Applicability.

(a) For the purposes of this subpart the following geographical areas are established:

(1) *North Atlantic.* Includes Eastern Canada from the United States border to Goose Bay, Labrador; and Narsarssuak, Greenland.

(2) *U.S. East Coast.* Includes the eastern United States from the Canadian border to (and including) Key West, Florida.

(3) *U.S. Gulf.* Extends from (but excluding) Key West, Florida, to the Mexican border.

(4) *Caribbean.* Includes Bermuda; Bahamas; Cuba; Puerto Rico; Haiti; Dominican Republic; Jamaica; Windward and Leeward Islands; Trinidad; the eastern coast of Mexico; the eastern coast of Central America; and the northern coast of South America up to (and including) French Guiana.

(5) *Eastern South America.* Includes the eastern coast of South America from (but excluding) French Guiana to Cape Horn.

(6) *North Europe.* From the northern boundary of Portugal includes northern Atlantic and Biscay ports of Spain; Bordeaux/Hamburg range; Scandinavian and Baltic Sea ports; England, Wales, Scotland and Ireland; Iceland.

(7) *Mediterranean.* Azores; Canary Islands; Morocco; Spanish Morocco; Mediterranean ports extending from Gibraltar to Suez Canal; ports on Adriatic and Aegean Sea, Sea of Marmora and Black Sea; and Atlantic ports of Portugal and Spain from Gibraltar to the northern boundary of Portugal.

(8) *West Africa.* Includes the western coast of Africa from northern boundary of Rio de Oro to southern boundary of Angola and includes the Cape Verde Islands, Ascension Island and St. Helena.

(9) *South and East Africa.* Includes the southern and eastern coast of Africa and Madagascar from southern boundary of Angola on the west coast and around the south and east coast to Cape Guardafui between the Gulf of Aden and the Indian Ocean.

(10) *South Asia.* Extends from Suez to but excluding New Guinea. Includes the shores of the Red Sea; shore of the Gulf of Aden; the northern shores of the Indian Ocean including extensions such as the Persian Gulf; the East Indies including Borneo, the Celebes, etc., but excluding the Philippines and New Guinea; and the Malay Peninsula excluding Thailand.

(11) *New Guinea-Australia.* Includes Australia; New Guinea; Tasmania; New Zealand and Melanesia (comprising generally the Admiralty Islands, New Ireland, New Britain, the Solomons, New Hebrides and New Caledonia).

(12) *East Asia.* Includes the ports of the mainland and islands of East Asia from and including Thailand to and including Japan; includes the Philippines, Formosa, the Ryukyu Islands and the Bonins.

(13) *Hawaii-Central Pacific.* Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu Archipelago, etc., but excluding oceanic island possessions of South American countries).

(14) *Alaska and Aleutian Islands.* Includes the western coast of Canada and Alaska (including the Aleutian Islands) south of Cape Prince of Wales.

(15) *U.S. Northwest.* Includes all Oregon and Washington ports.

(16) *U.S. West Coast.* Includes all California.

(17) *Western Mexico and Central America.* Includes the western coast of Mexico and the western coast of Central America.

(18) *Western South America.* Includes the western coast of South America from (and including) the Republic of Colombia to Cape Horn, and the Pacific Islands possessions of South American countries.

(19) *Exempt areas.* (i) Alaska north of Cape Prince of Wales.

(ii) Greenland, except Narsarssuak.

(iii) Northern and eastern Canada from Goose Bay, Labrador, to Alaska.

(iv) Ports and facilities under security restrictions in otherwise nonexempt areas.

(v) Antarctica.

(b) The procedures set forth below are applicable to all ocean shipments of supplies except:

(1) Shipments in vessels assigned to United States Navy fleets other than the Military Sea Transportation Service;

(2) Shipments which originate or terminate in "exempt areas" as established in paragraph (a)(19) of this section;

(3) Shipments which originate and terminate in the same geographic area; provided, however, that supplies of the type described in § 1.1402(a)(1) shall be transported in United States-flag vessels to the extent such vessels are available at fair and reasonable United States-flag rates;

(4) Shipments aboard vessels of the Panama Canal Company; and

(5) Shipments of classified supplies where the classification prohibits the use of non-Government vessels.

§ 1.1404 Procedures.

(a) Except for those supplies obtained for non-reimbursable contributions to foreign assistance programs for which the ocean transportation is to be provided by and at the expense of the recipient government, ocean transportation of supplies owned by the Government and in the possession of either a Military Department, or a contractor, or subcontractor of any tier, of a Military Department, will be provided by the Military Sea Transportation Service. Accordingly, any contract which may involve ocean transportation of property owned by the Government and in the possession of the contractor or any of his subcontractors (including any contract under which title to property may pass to the Government prior to shipment) shall include a provision requiring the shipment of such property only as directed by the contracting officer, who shall be guided by this subchapter and applicable Departmental procedures. The Military Sea Transportation Service shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with this subpart, and applicable regulations. The Commander of the Military Sea Transportation Service, or his designated representative is authorized to make any determination as to availability of United States-flag vessels required to assure such proper utilization.

(b)(1) Except as provided in subparagraph (2) of this paragraph, procuring activities shall include the following clause in any contract which may involve the ocean transportation of supplies of the type described in § 1.1402(a) (2) and (3):

PREFERENCE FOR UNITED STATES-FLAG VESSELS (DEC. 1955)

(a) After the date of award of this contract, the Contractor shall employ privately owned United States-flag commercial vessels, and no others, in the transportation by sea of any supplies to be furnished hereunder; provided, however, that if such vessels are not available for timely shipment at fair and reasonable rates for such vessels, the Contractor shall so notify the Contracting Officer and request authorization to ship in foreign-flag vessels or designation of available United States flag-vessels. If the Contractor is authorized in writing by the Contracting Officer to ship such supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping such supplies on privately owned United States-flag commercial vessels and foreign-flag vessels.

(b) Promptly after each shipment the Contractor shall furnish the Contracting Officer one copy of the applicable shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (40 cubic feet) of dry cargo, or long tons (2,240 pounds) of bulk liquid cargo, shipped on such vessels.

(2) The contract shall include the following clause in lieu of the clause set forth in subparagraph (1) of this paragraph when determined by the Head of a Procuring Activity to be necessary to assure proper implementation of the policy expressed in this section or when the procuring activity has been instructed, pursuant to § 1.1405–2, that particular supplies of the type described in § 1.1402(a) (2) and (3) are to be carried exclusively in private United States vessels:

PREFERENCE FOR UNITED STATES-FLAG VESSELS (DEC. 1955)

(a) After the date of award of this contract, the Contractor shall employ privately owned United States-flag commercial vessels, and no others, in the transportation by sea of any supplies to be furnished hereunder; provided, however, that if such vessels are not available for timely shipment at fair and reasonable rates for such vessels, the Contractor shall so notify the Contracting Officer and request authorization to ship in foreign-flag vessels or designation of available United States flag-vessels. If the Contractor is authorized in writing by the Contracting Officer to ship such supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping such supplies on privately owned United States-flag commercial vessels and foreign-flag vessels.

(b) Promptly after each shipment the Contractor shall furnish the Contracting Officer one copy of the applicable shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (40 cubic feet) of dry cargo, or long tons (2,240 pounds) of bulk liquid cargo, shipped on such vessel; provided, that the Contractor need not furnish such a document for any shipment of less than 120 measurement tons of dry cargo or less than 35 long tons of bulk liquid cargo; provided further, if this contract is an indefinite quantity contract or a requirement contract, the Contractor need furnish such documents only in connection with shipments made after the date of any delivery order requiring ocean transportation in delivering supplies thereunder. Additional provisions concerning the vessels to be used may be inserted in accordance with Departmental procedures.

EMPLOYMENT OF OCEAN-GOING VESSELS (JAN. 1958)

If ocean transportation is required after the date of award of this contract in delivering any of the supplies to be furnished hereunder, the Contractor, promptly after each shipment, shall furnish to the Contracting Officer one copy of the applicable ocean shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (40 cubic feet) of dry cargo, or long tons (2,240 pounds) of bulk liquid cargo, shipped on such vessels.

§ 1.1405 Responsibilities.

§ 1.1405–1 Military departments.

(a) Each Military department will furnish quarterly reports to the Office of the Secretary of Defense, showing the gross tonnage of all supplies owned, procured, contracted for or otherwise obtained (computed separately for dry bulk carriers, dry cargo liners, and tankers) which have been transported by ocean carrier, during the report period. Such report will consist of two parts. Part I shall include all tonnage subject to this section except Military Assistance Program tonnage and shall also show the geographic area of origin and of destination and shall separately reflect all such information for:

(1) Private United States vessels;

(2) Government vessels (showing separately where Government vessels were used due to nonavailability of private United States vessels); and

(3) Foreign-flag vessels (showing separately where foreign vessels were used due to nonavailability of United States-flag vessels).

Part II shall show all Military Assistance Program tonnage shipped showing the geographic areas of origin and of destination and shall separately identify any shipments in other than foreign-flag vessels. Cargoes transported under arrangements made by the Military departments. Until a Department of Defense report form is announced in Part 16 of this subchapter, the Military departments will maintain records of required information and prepare reports in accordance with departmental procedures. After promulgation, the appropriate Department of Defense form will be used by the Military departments in furnishing the required reports, except that if a Military department develops, for its own use, reports which meet the requirements of this section, and which are acceptable to the Assistant Secretary of Defense (Supply and Logistics), such reports may be forwarded in lieu of the Department of Defense form.

(b) The Department of Navy will also furnish quarterly reports in two parts to the Office of the Secretary of Defense showing the gross tonnage of all supplies (computed separately for dry bulk carriers, dry cargo liners and tankers) for which transportation has been arranged by the Military Sea Transportation Service by geographic areas of origin and destination for:

(1) Private United States vessels;

(2) Government vessels (showing separately where Government vessels were

used due to nonavailability of private United States vessels); and

(3) Foreign-flag vessels (showing separately where foreign vessels were used due to nonavailability of United States flag vessels).

Part I shall include all tonnage subject to this section except Military Assistance Program tonnage, and Part II shall show Military Assistance Program tonnage.

§ 1.1405–2 Office of the Secretary of Defense.

The Office of the Secretary of Defense will evaluate the reports submitted under § 1.1405–1. In the event the evaluation of the reports indicates the need for increased utilization of private United States vessels, the Office of the Secretary of Defense shall issue appropriate instructions to the Military departments.

PART 2—PROCUREMENT BY FORMAL ADVERTISING

Sec.
2.000 Scope of part.

Subpart A—Use of Formal Advertising

Sec.
2.101 Meaning of formal advertising.
2.102 Policy.
2.102–1 General.
2.102–2 Classified procurements.
2.103 General requirements for formal advertising.
2.104 Types of contracts.
2.104–1 General.
2.104–2 Firm fixed-price contracts.
2.104–3 Fixed-price contracts with escalation.
2.104–4 Indefinite delivery type contracts.
2.105 Solicitation for informational or planning purposes.

Subpart B—Solicitation of Bids

2.201 Preparation of invitation for bids.
2.202 Miscellaneous rules for solicitation of bids.
2.202–1 Bidding time.
2.202–2 Telegraphic bids.
2.202–4 Bid samples.
2.202–5 Descriptive literature.
2.203 Methods of soliciting bids.
2.203–1 Mailing or delivery to prospective bidders.
2.203–2 Displaying in public place.
2.203–3 Publicity in newspapers and trade journals.
2.203–4 Synopses of invitation for bids.
2.204 Office of permanent record.
2.205 Bidders mailing lists.
2.205–1 Establishment of lists.
2.205–2 Removal of names from bidders mailing lists.
2.205–3 Reinstatement on bidders mailing lists.
2.205–4 Excessively long bidders mailing lists.
2.205–5 Release of bidders mailing lists.
2.206 Small business and labor surplus area set-asides.
2.207 Amendment of invitations for bids.
2.208 Cancellation of invitations before opening.
2.209 Qualified products.

Subpart C—Submission of Bids

2.301 Responsiveness of bids.
2.302 Time of bid submission.
2.303 Late bids.
2.303–1 General.
2.303–2 Consideration for award.
2.303–3 Mailed bids.
2.303–4 Telegraphic bids.
2.303–5 Hand-carried bids.
2.303–6 Notification for late bidders.
2.303–7 Disposition of late bids.
2.303–8 Records.
2.304 Modification or withdrawal of bids.
2.305 Late modifications and withdrawals.

Subpart D—Opening of Bids and Award of Contract

Sec.
2.401 Receipt and safeguarding of bids.
2.402 Opening of bids.
2.402–1 Unclassified bids.
2.402–2 Classified bids.
2.403 Recording of bids.
2.404 Rejection of bids.
2.404–1 Cancellation of invitation after opening.
2.404–2 Rejection of individual bids.
2.404–3 Notice to bidders of rejection of all bids.
2.404–4 Restrictions on disclosure of descriptive literature.
2.404–5 All or none qualifications.
2.405 Minor informalities or irregularities in bids.
2.406 Mistakes in bids.
2.406–1 General.
2.406–2 Apparent clerical mistakes.
2.406–3 Other mistakes.
2.406–4 Disclosure of mistakes after award.
2.407 Award.
2.407–1 General.
2.407–2 Responsible bidder.
2.407–3 Discounts.
2.407–4 Price escalation.
2.407–5 Other factors to be considered.
2.407–6 Equal low bids.
2.407–7 Statement and certificate of award.
2.407–8 Purchase of patented items when a patent indemnity clause is to be included in the contract.
2.407–9 Protests against award.
2.408 Information to bidders.
2.408–1 Unclassified awards.
2.408–2 Classified awards.
2.409 Synopsis of contract awards.

Subpart E—Two-Step Formal Advertising

2.501 General.
2.502 Conditions for use.
2.503 Procedures.
2.503–1 Step one.
2.503–2 Step two.

AUTHORITY: §§ 2.000 to 2.503–2 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 2.000 Scope of part.

This part sets forth (a) the basic requirements for procurement of supplies (including construction) and services by formal advertising, (b) the information to be contained in solicitations of bids, (c) methods of soliciting bids, (d) policies with respect to the submission of bids, and (e) requirements with respect to the opening and evaluation of bids and the awarding of contracts.

Subpart A—Use of Formal Advertising

§ 2.101 Meaning of formal advertising.

Formal advertising means procurement by competitive bids and awards as prescribed in this section, and involves the following basic steps:

(a) Preparation of the invitation for bids, describing the requirements of the Government clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding;

(b) Publicizing the invitation for bids, through distribution to prospective bidders, posting in public places, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening;

(c) Submission of bids by prospective contractors, and

(d) Awarding the contract, after the bids are publicly opened to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered.

§ 2.102 Policy.

§ 2.102–1 General.

10 U.S.C. 2304(a) provides that all contracts for supplies or services, with certain stated exceptions, shall be made by formal advertising. (See Subpart B, Part 3 of this subchapter, for discussion of the exceptions.) In accordance with this requirement, procurements shall generally be made by soliciting bids from all qualified sources of supplies and services deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services. Current lists of bidders shall be maintained by each purchasing office in accordance with § 2.205.

§ 2.102–2 Classified procurements.

Formal advertising may be used for classified procurements provided due consideration is given to security requirements in accordance with Departmental procedures. Otherwise, classified procurements will be negotiated pursuant to 10 U.S.C. 2304(a)(12) (see § 3.212 of this subchapter) or other appropriate exception set forth in 10 U.S.C. 2304(a) (see Subpart B, Part 3 of this subchapter).

§ 2.103 General requirements for formal advertising.

No award shall be made as a result of formal advertising unless:

(a) Bids have been solicited as required by Subpart B of this part;

(b) Bids have been submitted as required by Subpart C of this part;

(c) Such business clearances and approvals as are required by Departmental procedures have been obtained; and

(d) The award is to the responsible bidder (see § 1.902 of this subchapter) whose bid is responsive to the invitation for bids and is most advantageous to the Government, price and other factors considered, as prescribed in Subpart D of this part.

§ 2.104 Types of contracts.

§ 2.104–1 General.

Contracts awarded after formal advertising shall be of the firm fixed-price type, except that fixed-price contracts with escalation may be used where some flexibility is necessary and feasible.

§ 2.104–2 Firm fixed-price contracts.

See § 3.403–1 of this subchapter.

§ 2.104–3 Fixed-price contracts with escalation.

Escalation clauses are not normally desirable, but in appropriate cases clauses providing for upward and downward revision of prices may be used, in accordance with § 3.403–2 of this subchapter, in order to protect the interest of both the Government and supplier. In addition, where the contracting officer on the basis of his knowledge of the market or previous advertisements for like items, except that a requirement for firm fixed-price bids will unnecessarily restrict competition, or unreasonably increase bid prices, invitations for bids may include an escalation clause. The clause set forth in § 7.106–1 or that in § 7.106–2 of this subchapter shall be used if applicable. If neither of these clauses is applicable, an escalation clause approved by the Department concerned may be included. Any escalation clause shall provide an escalation ceiling identical for all bidders so that each bidder is afforded an equal opportunity to bid on the escalation basis. In evaluating bids, see § 2.407–4.

§ 2.104–4 Indefinite delivery type contracts.

(a) *Definite quantity contracts.* See § 3.405–5(a) of this subchapter.

(b) *Requirements contracts.* See § 3.405–5(b) of this subchapter.

(c) *Indefinite quantity contracts.* See § 3.405–5(c) of this subchapter.

§ 2.105 Solicitation for informational or planning purposes.

See § 1.309 of this subchapter.

Subpart B—Solicitation of Bids

§ 2.201 Preparation of invitation for bids.

Forms used in inviting bids are prescribed in Subparts A and D, Part 16 of this subchapter. Invitation for bids shall contain the applicable information described in paragraphs (a) and (b) of this section and any other information required for a particular procurement.

(a) For supply and service contracts, including construction, invitation for bids shall contain the following information if applicable to the procurement involved.

(1) Invitation number.

(2) Name and address of issuing activity.

(3) Date of issuance.

(4) Date, hour, and place of opening. See § 2.202–1 concerning bidding time. Prevailing local time shall be used. Timing by the 24-hour clock shall not be used except where customary in the industry.

(5) Number of pages.

(6) Requisition or other purchase authority and appropriation and accounting data.

(7) A description of supplies or services to be furnished under each item, in sufficient detail to permit full and free competition. Such description shall comply with Subpart L, Part 1 of this subchapter, relating to specifications.

(8) The time of delivery or performance (see § 1.305 of this subchapter).

(9) Permission, if any, to submit telegraphic bids (see § 2.202–2).

(10) Permission, if any, to submit alternate bids, including alternate materials or designs (see § 1.1207 of this subchapter).

(11) A statement on the face of the invitation that "Bids must set forth full, accurate, and complete information as required by this invitation for bids (including attachments). The Penalty for making false statements in bids is prescribed in 18 U.S.C. 1001." (See §§ 2.405 and 2.406.)

(12) Bond and other guarantee requirement, if any (see Subpart A, Part 10 of this subchapter). If a bid guarantee is required, the invitation shall state that failure to submit the guarantee on time is cause for a rejection of the bid (see § 2.404–2(h)).

(13) Any authorized special provisions relating to Government-furnished property proposed to be furnished for the performance of the contract.

(14) A provision that if the bidder plans to use, in performing the work bid upon, any items of Government property in the bidder's possession under a facilities contract or other agreement independent of the invitation for bids, the bidder shall so state in the bid and, upon request of the contracting officer, submit evidence that a facilities contract or other separate agreement authorizes the bidder to use each item of such Government property for performing the work bid upon.

(15) When considered necessary by the contracting officer, a requirement that all bids must allow a period for acceptance by the Government of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated acceptance period will be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other preaward processing. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the Invitation for Bids:

BID ACCEPTANCE PERIOD

Bids offering less than _____ days for acceptance by the Government from the date set for opening of bids will be considered nonresponsive and will be rejected.

(16) In unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being purchased or for some other special reason, a statement of such qualifications.

(17) Any authorized special provisions, necessary for the particular procurement, relating to such matters as progress payments (see §§ 163.73 through 163.73–6 of Subchapter E of this chapter), patent licenses, liquidated damages, profit limitations, escalation (see § 2.104–3), Buy American Act (see §§ 6.104–3 and 6.204–4 of this subchapter), etc.

(18) Such general contract provisions or conditions as are required by law or by this subchapter.

(19) Any applicable wage determinations of the Secretary of Labor (for construction, alteration, or repair contracts).

(20) If Government costs or expenditures other than bid prices are to be considered in the evaluation of bids, such factors must be identified and included.

(21) If the schedule contains a price escalation clause, the following provision:

Evaluation of bids subject to escalation: Notwithstanding the provisions of the clause entitled "Price Escalation", bids shall be evaluated on the basis of quoted prices without the allowable escalation being added. Bids which provide for a ceiling lower than that stipulated in the clause will also be evaluated on this basis. Bids which provide for escalation that may exceed the maximum escalation stipulated in the clause, or which limit or delete the downward escalation stipulated in the clause shall be rejected as nonresponsive.

(22) Unless contained elsewhere in the invitation, a statement as follows:

In the event of an inconsistency between provisions of this invitation for bids, the inconsistency shall be resolved by giving precedence in the following order: (1) The Schedule; (2) Terms and Conditions of the Invitation for Bids; (3) General Provisions; (4) other provisions of the contract, whether incorporated by reference or otherwise; (5) the Specifications.

(23) When considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, a requirement that each bidder submit with its bid an affidavit concerning its affiliation with other concerns. To accomplish the foregoing, a paragraph substantially as follows may be included in the Schedule or other appropriate place in the invitation for bids:

AFFILIATED BIDDERS

(a) Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit containing information as follows:

(i) Whether the bid has any affiliates;

(ii) The names and addresses of all affiliates of the bidder; and

(iii) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

Any bid which fails to include such an affidavit will be considered nonresponsive and will be rejected. (End of Notice)

(24) Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference (see § 1.1203–3 of this subchapter).

(25) Pending revisions of paragraphs 3 and 4 of the Terms and Conditions of the Invitation for Bids on the back of Standard Forms 30 (October 1957 edition) and 33 (October 1957 edition) and paragraph 7 of Standard Form 22 (March 1953 edition), include the following provision:

Late bids and modifications or withdrawals. Bids and modifications or withdrawals thereof received at the office designated in the invitation for bids after the exact time set for opening of the bids will not be considered, unless they are received before award is made and (i) are submitted by mail (or by telegraph if authorized), and (ii) it is determined by the Government that late receipt was due solely to either (A) delay in the mails (or by the telegraph company if telegraphic bids are authorized) for which the bidder was not responsible or (B) mishandling by the Government after receipt at the Government installation. However, a modification which is received from an otherwise successful bidder and which makes the terms of the bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(b) For supply and service contracts, excluding construction, the invitation for bids shall contain the following in addition to the information required by paragraph (a) of this section if applicable to the procurement involved.

(1) Discount provisions (see § 2.407–3).

(2) The quantity of supplies or services to be furnished under each item, and any provision for quantity variation.

(3) Any requirement for prior testing and qualification of a product, when the item to be purchased is on a qualified products list (see Subpart K, Part 1, of this subchapter).

(4) Where needed for the purpose of bid evaluation, pre-award surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. Where it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or where the Government requires the information, bidders will be required to state (i) the full address of principal producing facilities (if designation of such address is not feasible, a full explanation will be required), and (ii) names and addresses of owner and operator if other than bidder.

(5) Place and method of delivery (see Subpart M, Part 1, of this subchapter).

(6) Preservation, packaging, packing, and marking requirements, if any.

(7) Place, method, and conditions of inspection.

(8) If no award will be made for less than the full quantities advertised, a statement to that effect.

(9) If award is to be made by specified groups of items or in the aggregate, a statement to that effect.

(10) If the invitation gives the Government an option to increase the quantities specified, a statement of the maximum percentage of such increase.

(11) Any applicable requirements for samples or descriptive literature (see §§ 2.202–4 and 2.202–5)

§ 2.202 Miscellaneous rules for solicitation of bids.

§ 2.202–1 Bidding time.

Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids. Bids shall be solicited sufficiently in advance of the opening of bids to allow bidders an adequate opportunity to prepare and submit bids As a general rule, bidding time shall be not less than 15 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services. This rule need not be observed in special circumstances, or where the urgency for the supplies or services does not permit such delay. For items on Qualified Products Lists, see § 1.1105–1 of this subchapter.

§ 2.202–2 Telegraphic bids.

As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will require the bidder to include in the telegraphic bid specific reference to the invitation, the items or sub-items, quantities, and unit prices for which the bid is submitted, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the invitation. In order that that the contract may be executed on the proper forms the invitation for bids will also provide that telegraphic bids shall be confirmed on the prescribed form and submitted promptly to the contracting officer.

§ 2.202–4 Bid samples.

(a) *Definition.* The term "bid sample" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. The term does not include any type of sample submitted after bid opening such as one submitted to evidence a manufacturer's ability to produce.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure procurement of an acceptable product. It may be appropriate to require bid samples, for example, where the procurement is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable specifications. However,

where more than a minor portion of the characteristics of the product cannot be adequately described in the specification, the product should be procured by negotiation.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of bid samples shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military or other) applicable to the procurement.

(d) *Requirements of invitation for bids.* When bid samples are required, the invitation for bids shall (1) state the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required, (2) state clearly the purpose for which the samples are needed and the criteria against which they will be tested or evaluated, and (3) include a provision in accordance with paragraph (e) of this section. Where samples are not considered necessary and a waiver of the sample requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, samples will not be required.

(e) *Invitation for bids provision.* When bid samples are required, a provision substantially as follows (modified, if appropriate, in accordance with paragraph (f) of this section) shall be included in the invitation for bids:

BID SAMPLES (OCT. 1960)

(a) Bid samples, in the quantities, sizes, etc. required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be evaluated to determine compliance with the specifications or other requirements of this Invitation for Bids.

(b) Failure of samples to conform to the requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except that a late sample transmitted by mail may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.

(c) Products delivered under any resulting contract shall conform to the approved sample as to the characteristics for which the sample was required and shall conform to the specifications as to all other characteristics.

(f) *Waiver of requirement for bid samples.* (1) The provision prescribed in paragraph (e) of this section may be modified to provide that the requirement for furnishing samples may be waived as to a bidder who offers a product previously or currently being procured or tested by the purchasing activity and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids so that further evaluation or testing would not add to the Government's knowledge of the acceptability of the product. When provision is to be made for such a waiver, the invitation for bids provision in paragraph (e) of this section shall be modified by adding substantially the following at the end of paragraph (b) thereof: However, the requirement for furnishing samples may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to the purchasing activity on a previous procurement and (ii) the Contracting Officer determines that such product was previously procured or tested by the purchasing activity and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids. (Oct. 1960)

(2) Where considered necessary because of the nature of the product the provision in subparagraph (1) of this paragraph may be limited to provide for waiving the requirement only if the product offered is produced at the same plant at which the product previously procured or tested was produced.

(g) *Unsolicited samples.* If bid samples are not required by the invitation for bids, but samples are furnished with a bid, they will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(h) *Disposition of samples.* Samples, if not destroyed in testing, shall be returned to bidders at their request and expense, unless otherwise specified in the invitation for bids. See paragraph 2(b) of the Terms and Conditions of the Invitation for Bids of Standard Forms 30 and 33.

§ 2.202–5 Descriptive literature.

(a) *Definition.* As used in this section, the term "descriptive literature" means information, such as cuts, illustrations, drawings, and brochures, which show the characteristics or construction of a product or explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information required to determine acceptability of the product, and excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(b) *Policy.* Bidders shall not be required to furnish descriptive literature as a part of their bids unless the purchasing activity deems that such literature is needed to enable it to determine before award whether the products offered meet the specification requirements of the invitation for bids and to establish exactly what the bidder proposes to furnish. It may be appropriate to require descriptive literature in the procurement of highly technical or specialized equipment, or where considerations such as design or style are important in determining acceptability of the product.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of descriptive literature shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military, or other) applicable to the procurement.

(d) *Requirements of invitation for bids.* (1) When descriptive literature is required, the invitation for bids shall clearly state what descriptive literature is to be furnished, the purpose for which it is required, the extent to which it will be considered in the evaluation of bids, and the rules which will apply if a bidder fails to furnish it before bid opening or if the literature furnished does not comply with the requirements of the invitation for bids. Where descriptive literature is not considered necessary and a waiver of the literature requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, descriptive literature will not be required.

(2) Except as provided in subparagraph (3) of this paragraph, if bidders are to furnish descriptive literature as a part of their bids, a provision substantially as follows (modified, if appropriate, in accordance with paragraph (e) of this section) shall be included in the invitation for bids:

REQUIREMENT FOR DESCRIPTIVE LITERATURE (OCT. 1960)

(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to [* --------].

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.

*The contracting officer shall insert significant elements such as design, materials, components, or performance characteristics; or methods of manufacture, construction, assembly, or operation, as appropriate.

(3) When brand name or equal purchase descriptions are used, the requirements of this section are met by inserting in the invitation for bids the brand names provision set forth in § 1.1206 of this subchapter.

(e) *Waiver of requirements for descriptive literature.* (1) The provision prescribed in paragraph (d)(1) of this section may be modified to provide that the requirements for furnishing descriptive literature may be waived as to a particular bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product previously or currently being furnished to the purchasing activity and (ii) it is determined by the contracting officer that such product complies with the specification requirements of the current invitation for bids. When provision is to be made for such waiver, the invitation for bids provision in paragraph (d)(2) of this section shall be modified by adding substantially the following at the end of paragraph (b) thereof: However, the requirements for furnishing

descriptive literature may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to the purchasing activity under a prior contract and the bidder identifies the contract, and (ii) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids (Oct. 1960).

(2) If the invitation for bids contains a provision for waiver in accordance with subparagraph (1) of this paragraph, a bidder may submit his bid either on the basis of the descriptive literature to be furnished or on the basis of a previously procured product. If he elects to submit his bid on one basis, he is precluded from having his bid considered on the alternative basis after bids are opened.

(f) *Unsolicited descriptive literature.* If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(g) *Public disclosure.* See § 2.404–4 of this part for requirements with respect to restrictions on the public disclosure of descriptive literature submitted by a bidder.

§ 2.203 Methods of soliciting bids.

§ 2.203–1 Mailing or delivery to prospective bidders.

Invitations for bids (or pre-invitation notices, see § 2.205–4(c)) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition. Invitations for bids shall not be mailed to persons or firms other than bona fide prospective bidders, but may be mailed for informational purposes to Government agencies, including procurement information offices. The instructions in the Joint Consolidated List of Debarred, Ineligible and Suspended Contractors and Subpart F, Part 1 of this subchapter shall be followed in soliciting bids.

§ 2.203–2 Displaying in public place.

Copies of unclassified invitations for bids shall be displayed at the purchasing office or at some other appropriate public place. (See § 1.1002 of this subchapter for availability of such copies to interested persons.)

§ 2.203–3 Publicity in newspapers and trade journals.

(a) *Free publicity.* A brief announcement of the proposed purchase may be made available for free publication to newspapers and to trade journals and magazines. Copies of unclassified invitations for bids for construction projects may be furnished to trade journals for the construction field, except that drawings, specifications, general and special provisions will not be so furnished.

(b) *Paid advertisements.* See § 1.1005 of this subchapter.

§ 2.203–4 Synopses of invitation for bids.

Synopses of Invitations for Bids shall be prepared and publicized in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards," in accordance with § 1.1003 of this subchapter.

§ 2.204 Office of permanent record.

Each purchasing activity is the office of permanent record for every invitation for bids issued and distributed by it and for each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

§ 2.205 Bidders mailing lists.

§ 2.205–1 Establishment of lists.

(a) Bidders mailing lists shall be established by purchasing activities to insure access to adequate sources of supplies and services except where the requirements of the purchasing office can be obtained within the local trade area through utilization of the simplified small purchases procedures (Subpart F, Part 3 of this subchapter), or are nonrecurring.

(b) All eligible and qualified suppliers who have submitted bidders mailing list applications, or whom the purchasing activity considers capable of filling the requirements of a particular procurement shall be placed on the appropriate bidders mailing list. Planned producers under the Industrial Readiness Planning Program shall be included on the bidders mailing list for their planned items.

(c) Bidders Mailing Lists Application (Standard Form 129) shall be used for obtaining information needed, as prescribed in § 16.810 of this subchapter, in the establishment and maintenance of bidders mailing lists. Supplemental information, where required, may be obtained by using DD Form 558–1 (Bidders Mailing List Application Supplement).

§ 2.205–2 Removal of names from bidders mailing lists.

(a) The name of each concern failing to respond to an invitation for bids, or pre-invitation notice (see § 2.205–4(c)) may be removed from the bidders mailing list without notice to the concern, but only for the item or items involved in such invitation or notice. Where a concern fails to respond to two consecutive invitations for bids or pre-invitation notices, its name shall be removed from the bidders mailing list to the extent indicated above, except that, in individual cases, concerns thus failing to respond may be retained on a bidders mailing list if such retention is considered to be in the best interest of the Government. Both actual bids and written requests for retention on the bidders mailing lists are "responses" to invitation for bids or pre-invitation notices.

(b) The names of concerns which have been (1) debarred from entering into Government contracts or (2) otherwise determined to be ineligible to receive an award of a Government contract, including ineligibility because of suspension or other disqualifications, shall be removed from the bidders mailing lists to the extent required by such debarment or other determination of ineligibility.

§ 2.205–3 Reinstatement on bidders mailing lists.

Concerns which have been removed from bidders mailing lists may be reinstated upon request or new application on Standard Form 129. No concern which is debarred or ineligible shall be reinstated during the period of debarment or ineligibility.

§ 2.205–4 Excessively long bidders mailing lists.

(a) *General.* To prevent excessive administrative costs of a procurement, mailing lists should be used in a way which will promote competition commensurate with the dollar value of the purchase to be made. As much of the mailing list will be used as is compatible with efficiency and economy in securing adequate competition as required by law. Where the number of bidders on a mailing list is considered excessive in relation to a specific procurement, the list may be reduced by any method consistent with the foregoing, including those described in paragraphs (b) and (c) of this section. The fact that less than an entire mailing list is used shall not in itself preclude furnishing of bid sets upon request made by concerns not invited to bid.

(b) *Rotation of lists.* Mailing lists may be rotated, but to do so will require considerable judgment as to whether the size of the transaction justifies rotation. In rotating a list, the interests of small business (see § 1.702(b)(2) of this subchapter) and the existence of labor surplus areas (§ 1.803(a)(5) of this subchapter) shall be considered.

(c) *Pre-invitation notices.* In lieu of initially forwarding complete bid sets, the purchasing activity may send pre-invitation notices to concerns on the mailing list. The notice shall:

(1) Specify the date by which bidders should return the notice in order to receive a complete bid set;

(2) Describe the requirement, or include the schedule of the invitation for bids, so as to furnish an item description and a condensation of other essential information providing concerns with an intelligible basis for judging whether they have an interest in the procurement; and

(3) Expressly notify concerns that if no bid is to be submitted, they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved. Drawings, plans, and specifications normally will not be furnished with the pre-invitation notice. The return date in the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets will be sent to concerns which request them. This procedure is particularly suitable to major purchasing activities where lengthy invitations for bids and long bidders mailing lists are common.

§ 2.205–5 Release of bidders mailing lists.

(a) Except as provided in paragraph (b) of this section, the list of prospective bidders to whom invitations for bids have been furnished will not be released outside the Department of Defense and will not be made available for inspection to individuals, firms, or trade organizations. However, such lists may be made available to other Government agencies, at their specific written request, and upon the condition that the list will not be available for inspection to anyone outside the Government.

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, and others having a bona fide interest in such information, will be supplied upon request with a list of all prospective bidders furnished copies of the plans and specifications.

§ 2.206 Small business and labor surplus area set-asides.

See Subparts G and H, Part 1 of this subchapter.

§ 2.207 Amendment of invitation for bids.

(a) If after issuance of an invitation for bids but before the time for bid opening it becomes necessary to make changes in the quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of a amendment to the invitation for bids, using DD Form 1260 (see § 16.101 of this subchapter).

(b) Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening and the need for extending this period by postponing the time set for opening must be considered. Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

§ 2.208 Cancellation of invitations before opening.

Cancellation of an invitation for bids usually involves the loss of time, effort, and money, spent by Government and bidders in carrying the procurement process up to the point of cancellation. Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the supplies or services or where amendments to the invitation would be of such magnitude that a new invitation is desirable. Where an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued. The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of material or services involved. The cancellation shall be recorded in accordance with § 2.403.

§ 2.209 Qualified products.

See Subpart K, Part 1 of this subchapter.

Subpart C—Submission of Bids

§ 2.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

(b) Telegraphic bids shall not be considered unless permitted by the invitation for bids.

(c) Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the invitation for bids. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation, and (2) award on the bid would result in a binding contract the terms and conditions of which do not vary from the terms and conditions of the invitation.

§ 2.302 Time of bid submission.

Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time set for opening.

§ 2.303 Late bids.

§ 2.303–1 General.

Bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late bids," even though received only one or two minutes late. Late bids shall not be considered for award except as authorized in §§ 2.303 through 2.303–8.

§ 2.303–2 Consideration for award.

The contracting officer or his authorized representative shall determine whether late bids may be considered for award, in accordance with §§ 2.303 through 2.303–8. A late bid shall be considered for award only if received before award; and either:

(a) It is determined that its lateness was due solely to:

(1) Delay in the mails for which the bidder was not responsible, or

(2) Delay by the telegraph company for which the bidder was not responsible, where the invitation specifically authorizes telegraphic bids; or

(b) It is determined that the bid, if submitted by mail or telegram (where authorized) was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time set for opening, and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated.

§ 2.303–3 Mailed bids.

(a) The time of mailing of late bids shall be determined as follows:

(1) The date and hour shown in a post office cancellation stamp or in a stamp affixed by an approved metering device shall be considered as the time of mailing;

(2) In the event of conflict between a post office cancellation stamp and a stamp of a metering device, the date and hour shown by the cancellation stamp shall govern;

(3) Except as stated in subparagraphs (5) and (6) of this paragraph, if the envelope or other outer covering shows the date but not the hour of mailing, the time of mailing shall be considered to be the last minute of the date shown;

(4) Except as stated in subparagraphs (5) and (6) of this paragraph, if the envelope or other covering does not show the date of mailing, the bid shall be presumed to have been mailed too late to be received in time;

(5) Information regarding the date and hour of mailing of registered mail, when not ascertainable from the post office cancellation stamp, shall be obtained from the postal authorities indicated in paragraph (b) of this section;

(6) Notwithstanding subparagraph (1) through (5) of this paragraph, if the bidder demonstrates the date and hour of mailing by clear and convincing evidence which includes substantiation by the post office of mailing, the date or hour thus demonstrated shall be considered the time of mailing.

(b) Information concerning the normal time for mail delivery, and concerning registered mail, shall be obtained by the purchasing activity from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office serving that activity. When time permits, such information shall be obtained in writing.

§ 2.303–4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, except where the bidder demonstrates by clear and convincing evidence which includes substantiation by an authorized official of the telegraph company that the bid, as received in the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late.

§ 2.303–5 Hand-carried bids.

A late hand-carried bid, or any other late bid not submitted by mail or telegram, shall not be considered for award.

§ 2.303–6 Notification to late bidders.

Upon receipt of any late bid which is received before award, but which, on the basis of available information, cannot be considered for award under § 2.303–2(a),

the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late. Such notification shall include substantially the following information:

Your bid in response to Invitation for Bids No. ------, dated ------, was received after the time for opening specified in the Invitation. Accordingly, your bid will not be considered for award unless clear and convincing evidence is submitted promptly (and in any event before award) showing that late receipt was due solely to delay in the mails for which you were not responsible.

The foregoing notification shall be appropriately modified in the case of late telegraphic bids.

§ 2.303–7 Disposition of late bids.

Late bids which are not considered for award shall be held unopened until after award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder, except that an unidentified bid may be opened solely for purposes of identification as provided in § 2.401.

§ 2.303–8 Records.

The following shall, if available, be included in the purchasing office files with respect to each late bid:

(a) A statement of the date and hour of mailing, filing, or delivery, as the case may be;

(b) A statement of the date and hour of receipt;

(c) The determination of whether or not the late bid was considered for award, with supporting facts;

(d) A statement of the disposition of the late bid; and

(e) The envelope, or other covering, if the late bid was considered for award.

§ 2.304 Modification or withdrawal of bids.

Bids may be modified or withdrawn by written or telegraphic notice received prior to the exact time set for opening. In addition, a bid may be withdrawn in person by a bidder or his authorized representative, providing his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for bid opening.

§ 2.305 Late modifications and withdrawals.

(a) Modifications of bids and requests for withdrawal of bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal shall be subject to the rules applicable to late bids set forth in §§ 2.303–3 through 2.303–5 and shall be considered as being effective only if it is received before award; and either:

(1) It is determined that its lateness was due solely to:

(i) Delay in the mails for which the bidder was not responsible, or

(ii) Delay in telegraphic transmission for which the bidder was not responsible; or

(2) It is determined that the modification or withdrawal, if submitted by mail or telegram, was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time set for opening and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated: *Provided, however:* A modification received from an otherwise successful bidder which is favorable to the Government and which would not be prejudicial to other bidders shall be considered at any time that such modification is received.

(b) Upon receipt of any late modification or late withdrawal which is received before award, but which, on the basis of available information, cannot be considered effective under paragraph (a) of this section, the contracting officer or his duly authorized representative shall promptly notify the bidder that his modification or request for withdrawal was received late. Such notification shall include substantially the following information:

The (modification) (request for withdrawal) of your bid dated ----------, in response to Invitation for Bids No. -------, dated ----------, was received after the time for opening specified in the Invitation. Accordingly, your (modification) (request for withdrawal) will not be considered effective unless clear and convincing evidence is submitted promptly (and in any event before award) showing that late receipt was due solely to delay in the mails for which you were not responsible.

The foregoing notification shall be appropriately modified in the case of late modifications or late withdrawals received by telegraph.

(c) Late modifications or late withdrawals, which are not considered as being effective, shall be held unopened until after award and then returned to the bidder, unless other disposition is requested or agreed to by the bidder, except that:

(1) An unidentified modification or request for withdrawal may be opened solely for purposes of identification, as provided in § 2.401; and

(2) Any modification received from an otherwise successful bidder shall be opened, so as to determine whether it should be considered as stated in the proviso in paragraph (a) of this section.

(d) Records of late modifications and late withdrawals shall be maintained in accordance with the record requirements for late bids set forth in § 2.303–8.

Subpart D—Opening of Bids and Award of Contract

§ 2.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received prior to the time of opening shall be kept secure, and, except as provided in paragraph (b) of this section, unopened, in a locked bid box or safe. If an invitation for bids is canceled, or if a bidder effectively withdraws his bid in accordance with § 2.304, bids shall be returned to the bidders. Necessary precautions shall be taken to insure the security of the bid box or safe. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to Government employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the head of the purchasing activity. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids number, and his signature, and shall then immediately reseal the envelope.

§ 2.402 Opening of bids.

§ 2.402–1 Unclassified bids.

(a) The official designated as the bid opening officer shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally and publicly open all bids received prior to that time, and when practicable read them aloud to the persons present, and have the bids recorded. The original of each bid shall be carefully safeguarded until the abstract of bids required by § 2.403 has been made and its accuracy verified.

(b) Performance of the procedure in paragraph (a) of this section may be delegated to an assistant, but the bid opening officer remains fully responsible for the actions of such assistant.

(c) Examinations of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. However, original bids shall not be allowed to pass out of the hands of a Government official unless a duplicate bid is not available for public inspection. In such case, the original bid may be examined by the public only under the immediate supervision of a Government official and under conditions which preclude possibility of a substitution, addition, deletion, or alteration in the bid. However, see § 2.404–4 with respect to public disclosure of descriptive literature or material submitted by a bidder on a restrictive basis.

§ 2.402–2 Classified bids.

The opening of classified bids shall not be accessible to the general public. Such opening may be witnessed and the results recorded by those bidder representatives (a) who have been previously cleared from a security standpoint and (b) who represent bidders which were invited to bid on the procurement. Bids shall be made available only to those persons authorized to attend the opening of bids. The procedures set forth in § 2.402–1 for safeguarding unclassified bids are also applicable to classified bids. No public record shall be made of bids or bid prices received on classified invitations for bids.

§ 2.403 Recording of bids.

The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for

bid evaluation, shall be entered in an abstract or record which, except in the case of a classified procurement, shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry should be made of the opening date, invitation number, general description of the material, lot number, and the price bid. The record or abstract shall be completed as soon as practicable after the bids have been opened, and, as soon as all bids have been opened and read, the bid opening officer shall so certify in the record or abstract. If the invitation for bids is canceled before the time set for bid opening, this shall be recorded, together with a statement of the number of bids invited and the number of bids received.

§ 2.404 Rejection of bids.

§ 2.404–1 Cancellation of invitation after opening.

(a) The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsible bid, unless there is a compelling reason to reject all bids and cancel the invitation. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule, after opening, an invitation for bids should not be canceled and readvertised due solely to increased requirements for the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.

(b) Where it is determined prior to award but after opening that the requirements of § 1.1203 of this subchapter (relating to the availability and identification of specifications) have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening but prior to award where such action is consistent with paragraph (a) of this section, and the contracting officer determines in writing that:

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies or services being procured are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that on which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see § 1.111 of this subchapter for reports to be made to Department of Justice); or

(8) For other reasons, cancellation is clearly in the best interest of the Government.

Determinations to cancel invitations for bids shall state the reasons therefor.

(c) Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties if any) in order to avoid the need for readvertisement.

§ 2.404–2 Rejection of individual bids.

(a) Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) Any bid which does not conform to the specifications contained or referenced in the invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Any bid which fails to conform to the delivery schedule or permissible alternates thereto stated in the invitation for bids shall be rejected as nonresponsive.

(d) Ordinarily, a bid should be rejected where the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder:

(1) Attempts to protect himself against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined.

(2) Fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery";

(3) States a price but qualifies such price as being subject to "price in effect at time of delivery";

(4) Where not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;

(5) Requires that Government is to determine that bidder's product meets Government specification; or

(6) Limits rights of Government under any contract clause.

A low bidder may be requested to delete objectionable conditions from his bid provided these conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(e) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price.

(f) Bids received from any person or concern whose name is included in the current "Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors" shall be rejected if required by Subpart F, Part 1 of this subchapter.

(g) Low bids received from concerns determined to be not responsible, pursuant to § 1.904 of this subchapter, shall be rejected. (But see § 1.705–6 of this subchapter if the bidder is a small business concern.)

(h) Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected unless failure of the bid guarantee to arrive on time was due solely to a delay in the mails for which the bidder was not responsible.

(i) The originals of all rejected bids, and any written findings with respect to such rejection, shall be preserved with the papers relating to the procurement.

§ 2.404–3 Notice to bidders of rejection of all bids.

When he determines to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected, stating the reason for such action.

§ 2.404–4 Restrictions on disclosure of descriptive literature.

(a) When a bid is accompanied by descriptive literature (as defined in § 2.202–5(a)), and the bidder imposes a restriction that such literature may not be publicly disclosed, such restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see § 2.202–5(f)).

(b) Descriptive literature restricted by a bidder against public disclosure shall not be disclosed in a manner which would contravene the restriction without permission of the bidder.

§ 2.404–5 All or none qualifications.

Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualification is substantive and affects the rights of other bidders.

§ 2.405 Minor informalities or irregularities in bids.

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, not affecting the price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not be prejudicial to other bidders. The contracting officer shall either give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or, waive any such deficiency where

it is to the advantage of the Government. Examples of minor informalities or irregularities include:

(a) Failure of the bidder to return the number of copies of signed bids required by the invitation;

(b) Failure to furnish required information concerning the number of the bidders' employees;

(c) Failure of a bidder to sign his bid, but only if:

(1) The firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization and the bid carries such a signature, or

(2) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document such as the submission of a bid guarantee with bid, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself; and

(d) Failure of a bidder to acknowledge receipt of an amendment to an invitation for bids but only if:

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bid and the bidder submitted a bid thereon, or

(2) The amendment clearly would have no effect on price, quality, quantity, or delivery, such as an amendment correcting a typographical mistake in the name of the Government purchasing activity.

§ 2.406 Mistakes in bids.

§ 2.406–1 General.

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes, and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in the manner set forth below. Such actions shall be taken prior to award.

§ 2.406–2 Apparent clerical mistakes.

Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder verification of the bid actually intended. Examples of such apparent mistakes are: obvious error in placing decimal point; obvious discount errors (for example—1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. factory; obvious error in designation of unit. Correction shall be reflected in the award document.

§ 2.406–3 Other mistakes.

(a) The Departments are authorized to make the following administrative determinations in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award.

(1) Where the bidder requests permission to withdraw a bid and clear and convincing evidence establishes the existence of a mistake, a determination permitting the bidder to withdraw his bid may be made.

(2) However, if the evidence is clear and convincing both as to the existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal.

(3) Where the bidder requests permission to correct a mistake in his bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; provided that, in the event such correction would result in displacing one or more lower bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(4) Where the evidence is not clear and convincing that the bid as submitted was not the bid intended, a determination may be made requiring that the bid be considered for award in the form submitted.

(b) Authority for making the determinations described in paragraph (a)(1) of this section may be delegated, without power of redelegation, to any purchasing activity having legal counsel available. Authority for making the determinations described in paragraph (a)(2), (3) and (4) of this section may be delegated, without power of redelegation as set forth below:

(1) Department of the Army: To the Chief, Contracts Branch, Deputy Chief of Staff for Logistics; Chief of Engineers; Chief of Ordnance; The Quartermaster General.

(2) Department of the Navy: To the Director, Contracts Division, Bureau of Yards and Docks; the Assistant Chief for Purchasing, Bureau of Supplies and Accounts.

(3) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Materiel Command.

(c) Each proposed determination shall have the concurrence of legal counsel within the Department concerned prior to issuance.

(d) To support correction of an allegedly erroneous bid subsequent to opening, the records submitted by the contracting officer in accordance with Departmental procedures shall contain the best available evidence conclusively establishing not only the existence of the error, but its nature, how it occurred, and what the bidder actually intended to bid. A mere statement that the administrative officials themselves are satisfied that an error was made is insufficient.

(e) In order to assure compliance with paragraph (d) of this section, suspected or alleged mistakes in bids will be processed as follows:

(1) In the case of any suspected mistake in bid, the contracting officer will immediately contact the bidder in question calling attention to the suspected mistake, and request verification of his bid. If the bid is verified, the contracting officer will consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not grant such extension of time, the bid shall be considered as originally submitted. If a bidder alleges a mistake, the contracting officer will advise the bidder to make a written request indicating his desire to withdraw or modify the bid. The request must be supported by statements (sworn statements if possible) concerning the alleged mistake and shall include all pertinent evidence such as bidder's file copy of the bid, the original work sheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence which conclusively establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(2) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(3) Where the bidder furnishes evidence in support of an alleged mistake, the contracting officer shall refer the case to the appropriate authority, together with the following data:

(i) A signed copy of the bid involved;

(ii) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake;

(iii) An abstract or record of the bids received;

(iv) A written request by the bidder to withdraw, or modify the bid, together with the bidder's written statement and supporting evidence (such as work sheets, or other data used in preparing the bid) of the existence of the mistake and manner in which it occurred, and supporting evidence of the bid actually intended;

(v) A written statement by the contracting officer setting forth (*a*) a description of the supplies or services involved, (*b*) the expiration date of the bid in question and of the other bids submitted, (*c*) specific information as to how and when the mistake was alleged, (*d*) a summary of the evidence submitted by the bidder, (*e*) in the event only one bid was received, a quotation of the most recent contract price for the supplies involved, or, in the absence of a recent contract for the item, the contracting officer's estimate of a fair price for the item, and (*f*) any additional evidence considered pertinent. The statement shall recommend that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw the bid, or the bidder be authorized to modify the bid.

When time is of the essence because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the designated authority. Ordinarily, contracting officers will not refer mistake in bid cases by telegraph or telephone to the designated authority, when the determinations set forth in paragraph (a) (2) and (3) of this section are applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing.

(f) Nothing contained in this section prevents a Department from submitting doubtful cases to the Comptroller General for advance decision.

(g) A signed copy of the administrative determination authorizing withdrawal or modification of the bid made in accordance with paragraph (a) of this section shall accompany the General Accounting Office copy of the contract awarded. Each Department shall maintain records of all administrative determinations made in accordance with paragraph (a) of this section, together with a complete statement of the facts involved and the action taken in each case. Copies of all administrative determinations will be included in the contract file.

§ 2.406–4 Disclosure of mistake after award.

When a mistake in a contractor's bid is not discovered until after award, the mistake may be corrected by supplemental agreement if correcting the mistake would make the contract more favorable to the Government without changing the essential requirements of the specifications. In all other cases, where other authority within the Department concerned is lacking or inadequate, the case shall be processed in accordance with Part 17 of this subchapter or, where that part is inadequate, in accordance with Departmental procedures.

§ 2.407 Award.

§ 2.407–1 General.

Unless all bids are rejected, award shall be made by the contracting officer, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. If a proposed award requires approval of higher authority, such award shall not be made until approval has been obtained. Awards shall be made by mailing or otherwise furnishing to the bidder a properly executed award document (see Subpart A, Part 16 of this subchapter) or notice of award on such form as may be prescribed by the procuring activity. When a notice of award is issued, it shall be followed as soon as possible by the formal award. When more than one award results from any single invitation for bids, separate award documents shall be executed, each suitably numbered. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. When two or more awards are made to a single bidder on an invitation, the copy of the successful bid marked "original" will be attached to the General Accounting Office copy and a copy marked "duplicate" will be attached to the retained office copy of the first award issued, and succeeding awards will be inscribed to indicate the number of the award to which the original and duplicate bids are attached. This is necessary for legal review and auditing in the General Accounting Office. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

§ 2.407–2 Responsible bidder.

Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible (see Subpart I, Part 1 of this subchapter).

§ 2.407–3 Discounts.

(a) Prior to issuing an invitation for bids (except for construction), a determination shall be made as to what minimum period for prompt payment discounts will be considered in the evaluation of bids, and such minimum periods shall be stated in the invitation for bids. In determining the minimum period for a particular procurement, consideration shall be given to:

(1) The place of delivery, inspection, and acceptance in relation to the place of payment of invoices or vouchers;

(2) The number of days required to process invoices or vouchers from receipt through payment in the normal course of business; and

(3) The need for prolonged acceptance testing or other unusual circumstances tending to retard the normal processing of invoices or vouchers.

Generally, the minimum period will be expressed in multiples of ten days; e.g., "ten calendar days," "twenty calendar days," or "thirty calendar days," since these time intervals coincide with the discount terms generally offered by industry.

(b) In determining which of several bids received is the lowest, any discount offered shall be deducted from the bid price on the assumption that the discount will be taken, unless the discount offered is for a lesser period than the minimum number of days specified in the invitation for bids (see paragraph (a) of this section). Where bids otherwise equal offer the same discount rate, the bid offering the longer discount period shall be considered as being the most advantageous to the Government. If a bid offers a prompt payment discount, but fails to specify the period in which the discount may be taken, the discount may be considered since award to the bidder gives the Government the right to deduct the discount from any payments made with reasonable promptness.

(c) If a bid offers a prompt discount for a period less than that specified in the schedule, the discount shall not be considered in the evaluation of bids. If a bid would have been the lowest bid received if the discount offered were considered, but award is not made thereon because the offered discount cannot be considered, a notation to that effect shall be made upon the abstract or record of bids and on Standard Form 1036 (Statement and Certificate of Award) (see § 2.407–7).

(d) In any case, the offered discount of the successful bidder shall form a part of the award, whether or not such discount was considered in the evaluation of his bid, and such discount shall be taken if payment is made within the discount period.

§ 2.407–4 Price escalation.

(a) Where an invitation for bids does not contain a price escalation clause, bids received which quote a price and contain a price escalation provision, with a ceiling (usually expressed in terms of a maximum percentage increase) above which the price will not escalate, will be evaluated on the maximum possible escalation of the quoted base price. Bids which contain escalation with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) Where an invitation for bids contains a price escalation clause and no bidder takes exception to the escalation provisions, bids shall be evaluated on the basis of the quoted prices without the allowable escalation being added. Where a bidder increases the maximum percentage of escalation stipulated in the invitation for bids or limits the downward escalation provisions of the invitation, the bid will be rejected as nonresponsive. Where a bidder deletes the escalation clause from his bid, the bid will be rejected as nonresponsive since the downward escalation provisions are thereby limited. Where a bidder decreases the maximum percentage of escalation stipulated in the invitation for bids, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, if after evaluation, the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

§ 2.407–5 Other factors to be considered.

The factors set forth in paragraphs (a) through (f) of this section, among

UNIVERSITY OF MICHIGAN LIBRARIES

others, may be considered in evaluating bids.

(a) Foreseeable costs or delays to the Government resulting from differences in inspection, location of supplies, transportation, etc. If pursuant to Subpart M, Part 1 of this subchapter, bids are on an f.o.b. origin basis, transportation costs to the designated destination points shall be considered in determining the lowest cost to the Government.

(b) Changes made or requested in any of the provisions of the solicitation to the extent that any such change does not constitute ground for rejection of the bid under the provisions of § 2.404 of this subpart.

(c) Advantages or disadvantages to the Government that might result from making multiple awards.

(d) Qualified products (see Subpart K, Part 1 of this subchapter).

(e) Local, State, and Federal taxes (see Part 11 of this subchapter).

(f) Origin of supplies, whether domestic or foreign, and if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Part 6 of this subchapter).

§ 2.407–6 Equal low bids.

(a) Except as provided in subparagraphs (1) and (2) of this paragraph, when two or more low bids are equal in all respects, all factors considered, award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives.

(1) Where two or more equal low bids are received from labor surplus area concerns, or small business concerns, award shall be made in accordance with the priorities set forth in § 1.802 of this subchapter.

(2) In the case of equal low bids two or more of which have been submitted by concerns of the same priority as set forth in § 1.802 of this subchapter, award shall be made by a drawing by lot limited to such concerns.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

(c) When an award is determined by drawing by lot, the names and addresses of the three witnesses and the person supervising the drawing shall be placed on all copies of the abstract of bids or otherwise recorded.

§ 2.407–7 Statement and certificate of award.

In connection with each contract made by formal advertising, the contracting officer shall prepare and execute a statement and certificate of award on Standard Form 1036, in accordance with § 16.801 of this subchapter. Such certificate shall either state that the accepted bid was the lowest bid received, or list all lower bids and set forth reasons for their rejection. These reasons shall be set forth in such detail as is necessary to justify the award. For the purpose of this certificate, the lowest bid received is considered to be that bid which is lowest after a consideration of price factors only. The cost of transportation to the destination indicated in the invitation for bids, and any acceptable discount offered by a bidder, and if the invitation so specifies, any other Government cost factors, shall be considered price factors in determining the lowest bidder for purposes of this certificate. It is unnecessary to evaluate nonresponsive bids. In each case of equal low bids where an award is made pursuant to § 2.407–6(a) of this subpart, such certificate shall briefly recite the circumstances under which award was made. Where such award is to a small business or a labor surplus area concern the certificate shall state that it has been administratively determined that the award will further the Congressional policy with respect to small business expressed in 10 U.S.C. 2301 or will further the policy with respect to labor surplus areas, or both, as the case may be. Where an award involves a mistake in bid and the matter has been resolved by administrative action, the Standard Form 1036 will be accompanied by (a) a copy of the bidder's verification in the case of an apparent or obvious mistake or (b) the written administrative determination concerning a mistake of the type described in § 2.406–3 of this subpart. Where an award involves a mistake in bid on which the Comptroller General has rendered a decision, the certificate will contain a citation by number and date of the decision or will have a copy attached.

§ 2.407–8 Purchase of patented items when a patent indemnity clause is to be included in the contract.

When a patent indemnity clause is to be included in a contract, in accordance with the provisions of § 9.103 of this chapter, award of the contract shall not be refused to the low bidder merely because he is not the owner of or a licensee under any of the patent rights which may be involved. (See Decision B–136916, dated October 6, 1958, of the Comptroller General.) See § 10.106 of this chapter for policy concerning requirement for patent infringement bond.

§ 2.407–9 Protests against award.

(a) *General.* Contracting officers shall consider all protests or objections to the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest.

(b) *Protests before award.* If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation finds that remedial action is required, in which event such action shall be taken.

(1) In appropriate cases, notice of protest will be given to bidders affected thereby. For example, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, the bidders whose bids might become eligible for award should be informed of the protest and requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) in order to avoid the need for readvertisement. In the event of failure to obtain such extension of bids, then consideration should be given to proceeding with award under subparagraph (3) of this paragraph.

(2) Where a protest has been lodged with the procuring agency, the views of the Office of the Comptroller General regarding the protest should be obtained before award whenever such action is considered to be desirable. Where it is known that a protest against the making of an award has been lodged directly with the Comptroller General, a determination to make award under subparagraph (3) of this paragraph must be approved at an appropriate level above that of the contracting officer, in accordance with Departmental procedures. While award need not be withheld pending final disposition by the Comptroller General of a protest, a notice of intent to make award in such circumstances shall be furnished the Comptroller General, and formal or informal advice should be obtained concerning the current status of the case prior to making the award.

(3) Where a written protest against the making of an award is received, award shall not be made until the matter is resolved unless the contracting officer determines that:

(i) The items to be procured are urgently required; or

(ii) Delivery or performance will be unduly delayed by the failure to make award promptly; or

(iii) A prompt award will otherwise be advantageous to the Government.

If award is made under subdivision (i), (ii) or (iii) of this subparagraph, the contracting officer shall document the file to explain the need for an immediate award, and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

(c) *Protests after award.* A protest received after award shall be handled in accordance with Departmental procedures.

§ 2.408 Information to bidders.

§ 2.408–1 Unclassified awards.

In the case of all unclassified formally advertised contracts, the purchasing office shall as a minimum (subject to any restrictions in Subpart F, Part 1 of this subchapter) (a) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (b) extend the appreciation of the purchasing office for the interest the unsuccessful bidder has shown in submitting a bid. Notification to unsuccessful bidders may be either orally or in writing through the use of a form postal card or other appropriate means. Should additional information be requested, the purchasing office shall either provide the unsuccessful bidders with the name and address of the successful bidder, together with the contract price, or when workload does not permit, inform the inquirers as to the location where a copy of the abstract of bids is available for inspection. In addition, when an inquiry is made by an unsuccessful bidder who is lower in price than the successful bidder, sufficient information shall be furnished in the reply to the unsuccessful bidder to fully explain the basis for award. Where request is received concerning an unclassified invitation for bids from an inquirer who is neither a bidder nor the representative of a bidder, the purchasing office may furnish the names of successful bidders and, if requested, the prices at which awards were made. However, where such requests require so large amount of work as to interfere with the normal operations of the purchasing office, the inquirer will be advised where a copy of the abstract of bids may be seen.

§ 2.408–2 Classified awards.

In the case of all classified formally advertised contracts, the purchasing office shall (a) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (b) extend the appreciation of the purchasing office for the interest the unsuccessful bidder has shown in submitting a bid. Information with respect to the name of the successful bidder and the contract price will be furnished only to unsuccessful bidders or their properly cleared representatives and then only upon request. No information regarding a classified award may be furnished by telephone.

§ 2.409 Synopsis of contract awards.

See § 1.1004 of this subchapter.

Subpart E—Two-Step Formal Advertising

§ 2.501 General.

Two-step formal advertising is a method of procurement conducted in two phases. The first step consists of the request, submission, evaluation, and, if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered. The second step consists of a formally advertised procurement, confined to those offerors who submitted an acceptable technical proposal in step one. This method of procurement requires that the contracting officer work closely with technical personnel and rely on their specialized knowledge in determining the technical requirements of the procurement and the criteria to be used in evaluating technical proposals, and in making such evaluation. An objective of the two-step procedure is to permit the development of a sufficiently descriptive statement of the Government's requirement so that subsequent procurements may be made by straight formal advertising.

§ 2.502 Conditions for use.

The two-step formal advertising method of procurement may be used when its use has been approved at a level higher than the contracting officer and when all of the following conditions are present:

(a) Available specifications or purchase descriptions are not sufficiently definite or complete to permit full and free competition without engineering evaluation and any necessary discussion of the technical aspects of the requirement to insure mutual understanding between each source and the Government;

(b) Definite criteria exist for evaluating technical proposals, such as (1) applicable design and performance requirements, (2) special requirements for operational suitability and ease of maintenance, (3) necessary background experience in development and production engineering in the general scientific and engineering areas involved, and (4) need for special skills or facilities;

(c) More than one technically qualified source is expected to be available both initially and after technical evaluation; and

(d) A firm fixed-price contract or a fixed-price contract with escalation will be used.

§ 2.503 Procedures.

§ 2.503–1 Step one.

(a) *Requests for technical proposals.* A request for technical proposals shall be distributed to qualified sources in accordance with § 1.302–2 of this chapter. In addition, the request shall be synopsized in accordance with Subpart J, Part 1 of this chapter. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(1) The best practicable description of the supplies or services required;

(2) Notification of the intent to conduct the procurement in two steps and the actions involved;

(3) The requirements of the technical proposal, i.e., the necessary details such as drawings, data, presentations, etc., to be submitted;

(4) The criteria for evaluating the technical proposal (§ 2.502(b));

(5) A statement that the technical proposals shall not include prices or pricing information;

(6) The date by which the proposal must be received and a statement substantially as follows:

Late Technical Proposals. The Government reserves the right to consider technical proposals or modifications thereof received after the date specified for receipt.

(7) A statement that the Government may discuss the technical aspects of the proposal with the concern submitting the proposal;

(8) A statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for award; and

(9) A statement that sources submitting unacceptable technical proposals will be so notified upon completion of the technical evaluation.

(b) *Receipt and evaluation of technical proposals.* The following actions will be taken with respect to receipt and evaluation of technical proposals:

(1) Every precaution shall be taken to safeguard technical proposals against disclosure to unauthorized persons.

(2) Technical proposals submitting date marked in accordance with § 3.100 of this chapter will be accepted and handled in accordance with § 3.109(a) of this chapter.

(3) Any references to price or cost will be removed.

(4) Technical evaluation of the proposals will be based upon the criteria contained in the request for technical proposals.

(5) Technical proposals will be categorized as acceptable or unacceptable. Proposals should not be categorized as unacceptable when a reasonable effort on the part of the Government could bring the proposals to an acceptable status and increase competition. The contracting officer shall arrange for any necessary discussions with sources submitting technical proposals for the purpose of obtaining additional information or clarification which may be required. When, after discussion and submission of necessary information and clarification, technical proposals are determined to be acceptable, they will be so categorized. If, however, it is determined at any time that a technical proposal is not reasonably susceptible to being made acceptable, it should be classified as unacceptable and no discussions of it need thereafter be initiated.

(6) Upon final determination that a technical proposal is unacceptable, the contracting officer shall notify the source submitting the proposal of that fact. Upon request, the source will be given the reasons why his technical proposal is not acceptable, including a statement of whether rejection was based on failure to furnish sufficient information or on an unacceptable engineering approach.

(c) *Discontinuance.* If, as a result of the evaluation of technical proposals, it appears necessary to discontinue the two-step advertising method of procurement, the full facts and circumstances will be set forth in writing and submitted to the office which originally approved the method of procurement. If that office approves the discontinuance, each source will be notified in writing of the discontinuance and the reasons therefor.

§ 2.503–2 Step two.

Upon completion of Step One, a formally advertised procurement in accordance with Subparts B, C, and D of this part will be conducted, except that invitations for bids:

(a) Will be issued only to those sources whose technical proposals have been evaluated and determined to be acceptable under Step One;

UNIVERSITY OF MICHIGAN LIBRARIES

(b) Will include the following statement:

This invitation for bids is issued pursuant to two-step formal advertising in Part 5 of Section II of the Armed Services Procurement Regulation. Bids will be accepted and considered only from those firms who have submitted acceptable technical proposals pursuant to the first step of such procedures, as initiated by _____. (Identify the Request for Technical Proposals) (Jul. 1960)

(c) Will prominently state that the supplies or services to be procured will be in accordance with the specifications and the bidder's technical proposal, as finally accepted, under the request for technical proposals. This may be accomplished in the Schedule item description by a provisions substantially in the form of the following example:

Radio Antenna, in accordance with Exhibit No. ____ dated _____ (use other description of specifications as appropriate) and your Technical Proposal _____, (insert specific identification of the bidder's proposal including any revision thereof as finally accepted) incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

(d) Will not be synopsized (see Subpart J, Part 1 of this chapter) or publicly posted (see § 2.203-2).

PART 3—PROCUREMENT BY NEGOTIATION

Sec.
3.000 Scope of part.

Subpart A—Use of Negotiation

3.100 Scope of subpart.
3.101 Negotiation as distinguished from formal advertising.
3.102 General requirements for negotiation.
3.103 Records and reports of negotiated contracts.
3.104 Aids to small business in negotiated procurement.
3.105 Aids to labor surplus area concerns in negotiated procurement.
3.106 Award information to unsuccessful offerors.
3.107 Selection of research and development contractors.
3.107-1 General.
3.107-2 Small business sources.
3.107-3 Selection of sources for solicitation.
3.107-4 Solicitation.
3.107-5 Conduct of negotiations.
3.107-6 Evaluation for award.
3.107-7 Cost and price estimates.
3.107-8 Documentation.
3.108 Negotiation of initial production contracts for technical or specialized military supplies.
3.109 Restrictions on disclosure of data in proposals.
3.110 Solicitations for informational or planning purposes.

Subpart B—Circumstances Permitting Negotiation

3.200 Scope of subpart.
3.201 National emergency.
3.201-1 Authority.
3.201-2 Application.
3.201-3 Limitation.
3.202 Public exigency.
3.202-1 Authority.
3.202-2 Application.
3.202-3 Limitation.
3.203 Purchases not more than $2,500.
3.203-1 Authority.
3.203-2 Application.
3.203-3 Limitation.
3.204 Personal or professional services.
3.204-1 Authority.
3.204-2 Application.
3.204-3 Limitation.
3.205 Services of educational institutions.
3.205-1 Authority.
3.205-2 Application.
3.205-3 Limitation.
3.206 Purchases outside the United States.
3.206-1 Authority.
3.206-2 Application.
3.207 Medicines or medical supplies.
3.207-1 Authority.
3.207-2 Application.
3.207-3 Limitation.
3.208 Supplies purchased for authorized resale.
3.208-1 Authority.
3.208-2 Application.
3.208-3 Limitation.
3.209 Perishable or nonperishable subsistence supplies.
3.209-1 Authority.
3.209-2 Application.
3.209-3 Limitation.
3.210 Supplies or services for which it is impracticable to secure competition by formal advertising.
3.210-1 Authority.
3.210-2 Application.
3.210-3 Limitation.
3.211 Experimental, developmental, or research work.
3.211-1 Authority.
3.211-2 Application.
3.211-3 Limitation.
3.211-4 Records and reports.
3.212 Classified purchases.
3.212-1 Authority.
3.212-2 Application.
3.212-3 Limitation.
3.213 Technical equipment requiring standardization and interchangeability of parts.
3.213-1 Authority.
3.213-2 Application.
3.213-3 Limitation.
3.213-4 Records and reports.
3.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.
3.214-1 Authority.
3.214-2 Application.
3.214-3 Limitation.
3.215 Negotiation after advertising.
3.215-1 Authority.
3.215-2 Limitation.
3.216 Purchases in the interest of national defense or industrial mobilization.
3.216-1 Authority.
3.216-2 Application.
3.216-3 Limitation.
3.216-4 Records and reports.
3.217 Otherwise authorized by law.
3.217-1 Authority.
3.217-2 Application.
3.218 Construction work.
3.218-1 Application.
3.218-2 Limitation on authority to negotiate contracts.

Subpart C—Determinations and Findings

3.300 Scope of subpart.
3.301 Nature of determinations and findings.
3.302 Determinations and findings by the Secretary of a Department.

Sec.
3.303 Determinations and findings by the head of a procuring activity signing as "a chief officer responsible for procurement."
3.304 Determinations and findings by a Contracting Officer.
3.305 Forms of determinations and findings.
3.306 Procedure with respect to determinations and findings.
3.307 Distribution of copies of determinations and findings.
3.308 Retention of copies of determinations and findings, and of other records.

Subpart D—Types of Contracts

Sec.
3.400 Scope of subpart.
3.401 Types of contracts.
3.402 Selection of contract type.
3.403 Fixed-price-type contracts.
3.403-1 Firm fixed-price contract.
3.403-2 Fixed-price contract with escalation.
3.403-3 Fixed-price contract providing for the redetermination of price.
3.403-4 Fixed-price incentive contract.
3.404 Cost-reimbursement type contract.
3.404-1 Cost contract.
3.404-2 Cost-sharing contract.
3.404-3 Cost-plus-a-fixed-fee contract.
3.404-4 Cost-plus-incentive-fee contract.
3.405 Other types of contracts.
3.405-1 Time and materials contract.
3.405-2 Labor-hour contract.
3.405-3 Letter contract.
3.405-4 Basic agreement.
3.405-5 Indefinite delivery type contracts.
3.405-6 Open end contract.
3.406 Additional incentives.
3.406-1 General.
3.406-2 Performance-incentive contracts.
3.406-3 Contracts with value engineering incentives.

Subpart E—[Reserved]

Subpart F—Small Purchases

3.600 Scope of subpart.
3.601 Purpose.
3.602 Policy.
3.603 Competition.
3.604 Imprest funds (petty cash) method.
3.604-1 Conditions for use.
3.604-2 Documentation.
3.604-3 Cash discounts.
3.604-4 Delivery of cash purchases by suppliers.
3.605 Order-invoice-voucher method.
3.605-1 Limitations on use.
3.605-2 Examples of use.
3.606 Blanket purchase agreement method.
3.606-1 General.
3.606-2 Establishment of blanket purchase agreement.
3.606-3 Conditions for use.
3.606-4 Fiscal control.
3.607 Use of Department of Defense or departmental procurement forms.
3.608 Delegation of purchase authority.
3.609 Purchase data.

Subpart G—Negotiated Overhead Rates

3.700 Scope of subpart.
3.701 Definitions.
3.701-1 Negotiated final overhead rates.
3.701-2 Provisional overhead rates.
3.701-3 Overhead (indirect costs).
3.702 Purpose.
3.703 Applicability.
3.704 Contract clauses.
3.704-1 Contracts with commercial concerns.
3.704-2 Contracts with nonprofit and educational institutions.
3.704-3 Instructions for completing contract clauses.
3.705 Procedure.
3.706 Coordination.
3.707 Cost-sharing rates.

Subpart H—Price Negotiation Policies and Techniques

Sec.
3.800 Scope of subpart.
3.801 Basic policy.
3.801-1 General.
3.801-2 Responsibility of Contracting Officers.
3.801-3 Responsibility of other personnel.
3.802 Preparation for negotiation.
3.802-1 Product or service.
3.802-2 Selection of prospective sources.
3.802-3 Requests for proposals.
3.803 Type of contract.
3.804 Conduct of negotiations.
3.804-1 General.
3.804-2 Late proposals.
3.805 Selection of offerors for negotiation and award.
3.805-1 General.
3.805-2 Cost-reimbursement type contracts.
3.806 Cost, profit and price relationships.
3.807 Pricing techniques.
3.807-1 General.
3.807-2 Pricing individual contracts.
3.807-3 Price analysis.
3.807-4 Cost analysis.
3.807-5 Subcontracting.
3.807-6 Sole source items.
3.807-7 Certificate of current pricing data.
3.807-8 Unacceptable substitutes for pricing negotiations.
3.807-9 Specified contingencies.
3.808 Profit or fee.
3.808-1 General.
3.808-2 Factors for determining fee or profit.
3.808-3 Incentive profit or fee.
3.808-4 Minimal fees or cost sharing arrangements.
3.808-5 Fee limitation for experimental, developmental, or research work.
3.809 Audit as a pricing aid.
3.810 Exchange of information.
3.811 Record of price negotiation.

Subpart I—Subcontracting Policies and Procedures

3.900 Scope of subpart.
3.901 General.
3.902 Review of "Make or Buy" program.
3.903 Review of subcontracting and contractors' purchasing systems.
3.903-1 Contract clauses.
3.903-2 Consent to subcontracts.
3.903-3 Approval of purchasing system.
3.903-4 Review of individual subcontracts.
3.904 Additional contract clauses.

AUTHORITY: §§ 3.000 to 3.904 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 3.000 Scope of part.

This part sets forth, on the basis of the provisions of and authority contained in the Armed Services Procurement Act, (a) the basic requirements for the procurement of supplies and services by means of negotiation, (b) the different circumstances under which negotiation is permitted, (c) determinations and findings that may be required before a contract is entered into by negotiation, (d) approved types of negotiated contracts and their use, (e) the authority for making advance payments under negotiated contracts, (f) procedures for effecting purchases of not more than $2,500, (g) procedures for negotiating overhead rates, and (h) price negotiation policies and techniques.

Subpart A—Use of Negotiation

§ 3.100 Scope of subpart.

This subpart deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

§ 3.101 Negotiation as distinguished from formal advertising.

Whenever supplies or services are to be procured by negotiation, price quotations (Part 16, Subpart B), supported by statements and analyses of estimated costs or other evidence of reasonable prices and other vital matters deemed necessary by the contracting officer, shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services, in accordance with the basic policies set forth in Subpart C of Part 1, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Negotiation shall thereupon be conducted, by contracting officers and their negotiators, with due attention being given to the following and any other appropriate factors:

(a) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multishift and overtime costs, and any other factor relating to price, such as profits, cost of transportation, and cash discounts;

(b) Comparison of the business reputations, capabilities, and responsibilities of the respective persons or firms who submit quotations. (See § 1.903);

(c) Consideration of the quality of the supplies or services offered, or of the same or similar supplies or services previously furnished, with due regard to the satisfaction of technical requirements;

(d) Consideration of delivery requirements (see Subpart M, Part 1 and § 1.305 of this chapter).

(e) Discriminating use of price and cost analyses (see § 16.206 of this subchapter);

(f) Investigation of price aspects of any important subcontract;

(g) Individual bargaining, by mail or by conference;

(h) Consideration of cost sharing;

(i) Effective utilization in general of the most desirable type of contract, and in particular of contract provisions relating to price redetermination (see Subpart D of this part);

(j) Consideration of the size of the business concern (see Part 1, Subpart G);

(k) Consideration as to whether the prospective supplier is a Planned Emergency Producer of the required supplies or services under the Industrial Readiness Planning Program and consideration of the extent to which industrial readiness planning has progressed, including the investment by the Government and the firm in such planning;

(l) Consideration to to whether the prospective supplier requires expansion or conversion of plant facilities;

(m) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

(n) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

(o) Consideration of the extent of subcontracting;

(p) Consideration of the existing and potential workload of the prospective supplier;

(q) Consideration of broadening the industrial base by the development of additional suppliers;

(r) Consideration of whether the contractor requires Government furnished property, machine tools, or facilities; or Government-operated test facilities; and

(s) Consideration of contract performance in facilities located in dispersed sites.

(t) Advantages or disadvantages to the Government that might result from making multiple awards.

§ 3.102 General requirements for negotiation.

(a) Procurement shall be made by formal advertising whenever such method is feasible and practicable under the existing conditions and circumstances even though negotiation may be authorized under Subpart B of this part.

(b) No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(1) The contemplated procurement comes within one of the circumstances permitting negotiation enumerated in Subpart B of this part;

(2) Any necessary determinations and findings prescribed in Subpart C of this part, have been made;

(3) Such business clearance or approval as is prescribed by applicable Departmental procedures has been obtained; and

(4) The prospective contractor has been determined to be responsible in accordance with Subpart I, Part 1 of this subchapter.

§ 3.103 Records and reports of negotiated contracts.

In addition to the records and reports described in § 1.302–3 of this subchapter and §§ 3.211–4 and 3.216–4, each Department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in Subpart B of this part. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in §§ 1.110 and 16.807 of this subchapter.

§ 3.104 Aids to small business in negotiated procurement.

See Part 1, Subpart G, of this subchapter.

§ 3.105 Aids to labor surplus area concerns in negotiated procurement.

See Part 1, Subpart H of this chapter.

§ 3.106 Award information to unsuccessful offerors.

(a) *Notice to unsuccessful offerors.* (1) Promptly after making all awards in any procurement in excess of $10,000, the contracting officer shall give written notice to the unsuccessful offerors that their proposals were not accepted, except that such notice need not be given where the contract is exclusively for experimental, development, or research work, or for subsistence, or is negotiated pursuant to 10 U.S.C. 2304(a) (4), (5), or (6) (see § 3.204, 3.205 or 3.206); or is negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited. Such notice shall also include:

(i) The number of prospective contractors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and unit prices of each award; provided that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and

(v) A Statement that additional information may be requested from the contracting officer.

(2) In procurements of $10,000 or less and subject to the exceptions in subparagraph (1) of this paragraph, the information described in subparagraph (1) of this paragraph shall be furnished to unsuccessful offerors upon request.

(b) *Additional information.* Upon request, unsuccessful offerors whose offered prices were lower than those of the contractor which received the award shall be furnished the reasons why their proposals were not accepted; but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(c) *Classified information.* Classified information shall be furnished only in accordance with regulations governing classified information.

§ 3.107 Selection of research and development contractors.

§ 3.107–1 General.

Through its research and development programs, the Department of Defense must seek the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources. Second, it means unremitting efforts to increase the number of sources, and to encourage participation by small business concerns, as well as others, in Defense research and development. For the most part, the general principles and procedures which are set forth elsewhere in this subchapter apply to research and development procurement. But the objectives of research and development require a different emphasis on certain aspects of the procurement process. Some of these aspects are covered in §§ 3.107 through 3.107–8.

§ 3.107–2 Small business sources.

(a) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the purchasing activity is interested.

(b) In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's needs concerning research and development programs under consideration for specific future procurement actions. The SBA may provide pertinent information concerning potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by the programs. Full evaluation shall be given to any such information in selecting qualified sources.

§ 3.107–3 Selection of sources for solicitation.

(a) Recommendations as to which potential sources are technically qualified shall be made by cognizant technical personnel after review of the data obtained in accordance with paragraph (b) of this section and, as appropriate, on the basis of discussion with potential sources (either singly or in a group), correspondence, or suitable surveys.

(b) The Departments shall continually search for and develop information on sources (including small business concerns) competent to perform research and development. Advance publicity, including use of Department of Commerce Synopsis (see § 1.1003–2 of this chapter) to the fullest extent practicable, shall be given for this purpose. The search should include (1) a review of relevant data or brochures furnished by sources seeking research and development work and (2) a cooperative effort by technical personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking additional sources by advance publication of proposed procurements.

§ 3.107–4 Solicitation.

(a) In order to minimize the preparation of technical proposals, which can be both costly and wasteful of scientific or engineering manpower, contracting officers should request proposals only from sources which have been technically evaluated and found qualified to perform research and development in the specific field of science or technology involved. Where there is no substantial question as to the choice of the source, as where only one source is found fully qualified as a result of thorough technical evaluation, solicitation may be limited to a single source. Where several sources are found fully qualified technically, proposals generally shall be solicited from each such source.

(b) In addition to paragraph (a) of this section, exploratory requests may be used to determine the existence of ideas or prior work in specific fields of research. However, the request for such information should clearly state that it does not impose any obligation on the Government or signify a firm intention of the Government to enter into a contract.

§ 3.107–5 Conduct of negotiations.

See § 3.804. The contracting officer should make certain that each prospective contractor fully understands the details of the various phases of the Government's requirement, especially the statement of work. This may be best accomplished by conferences between a prospective contractor, the contracting officer, and appropriate technical personnel particularly where there is doubt that a work statement is understood or will be interpreted correctly by prospective contractors.

§ 3.107–6 Evaluation for award.

(a) Generally, research and development contracts should be awarded to those organizations, including educational organizations, which have the highest competence in the specific field of science or technology involved. However, awards should not be made for research and development capabilities that exceed those needed for the successful performance of the work.

(b) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider the following:

(1) The contractor's understanding of the scope of the work as shown by the scientific or technical approach proposed;

(2) Availability and competence of experienced engineering, scientific, or other technical personnel;

(3) Availability, from any source, of necessary research, test, and production facilities;

(4) Experience or pertinent novel ideas in the specific branch of science or technology involved; and

(5) The contractor's willingness to devote his resources to the proposed work with appropriate diligence.

(c) In determining to whom the contract shall be awarded, the contracting officer shall consider not only technical competence, but also all other factors including management capabilities, weighing each factor in accordance with the requirements of the particular procurement.

§ 3.107–7 Cost and price estimates.

While cost or price should not be the controlling factor in choosing a contractor for a research or development contract (see § 3.805–1(d)), cost or price should not be disregarded in the choice of the contractor. It is important to determine the soundness of a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable, but also to determine his understanding of the project and ability to organize and perform the contract. (See also § 3.805–2.)

§ 3.107–8 Documentation.

Contract files for research and development procurement shall be fully documented to include the basis and reasons for the selection of the sources solicited and for the award. Such documentation should be adequate to justify the selection of the contractor over others whose proposals, from the standpoint of some single factor (such as lower estimated costs or shorter performance time), might appear more advantageous to the Government.

§ 3.108 Negotiation of initial production contracts for technical or specialized military supplies.

(a) The production of important new technical or specialized military supplies—tanks, radar, guided missiles, aircraft, rockets, and equipment of similar complexity—generally involves development, evaluation, and initial production phases. Contracting Officers shall avoid, wherever practicable, awarding initial production contracts for supplies until completion of the development and evaluation phases. At the time of placing the initial production contract, it is essential that the Government be completely free to select the contractor as the best interests of the Government may dictate. In the placement and administration of research or development contracts, no commitments shall be made to contractors with respect to obtaining subsequent production contracts.

(b) In connection with the foregoing it may be in the best interest of the Government that the initial production contract for technical and specialized supplies be placed with the contractor responsible for the development of the design for such supplies. Accordingly, it is essential that, in placing such initial production contracts, an analysis be made of the importance to be attached to the following considerations:

(1) Extensive preliminary research and development work which can be put to most effective use in production by the research and development contractor for any of the following reasons:

(i) A need for adaptation of the newly developed equipments for quantity manufacture, and for introduction of advanced production methods, together with a significant interrelationship between the design engineering and production engineering, which will yield best results from the standpoint of performance, reliability and producibility;

(ii) The substantial time and money which would be required for another contractor to indoctrinate and train his engineering staff in the specialized techniques or novel design concepts which have been employed, thereby adding to production lead time.

(2) Continuing improvement of the equipment, concurrent with production, which can be most effectively accomplished by a single contractor because of the advantages of unified responsibility and close coordination of improved design features with production processes and equipment.

(3) Substantial time and effort which have been already expended by the development contractor in developing a prototype.

(c) Where it is in the Government's interest to award the initial production contract to the development contractor, price alone should not be allowed to dictate an award elsewhere unless a fair and reasonable price cannot be negotiated with the development contractor or unless the price advantage in award to another supplier is so substantial as to outweigh the other factors involved. This section is not to be construed to require or to prevent competitive pricing. Initial production contracts shall not be awarded to development contractors who do not have fully adequate and available financial, technical and production resources.

(d) To the extent practicable, the initial production contract should also provide for the furnishing of an initial supply of special testing equipment, special tools, demonstration sets, and manuals required for operation, maintenance and training.

(e) Contracts negotiated pursuant to (b) above shall normally cite 10 U. S. C. 2304 (a) (14) (see § 3.214) or, where more appropriate, 10 U. S. C. 2304 (a) (16) (see § 3.216).

§ 3.109 Restrictions on disclosure of data in proposals.

(a) Requests for proposals may require the offeror to submit data with its proposal which may include a design or plan for accomplishing the objectives of the procurement. Such data may include information which the offeror does not want disclosed to the public or used by the Government for any purpose other than evaluation of the proposals. Offerors shall mark each sheet of data which they so wish to restrict with the legend set forth below:

> This data furnished in response to RFP No. ------, shall not be disclosed outside the Government or be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the proposal: *Provided*, That if a contract is awarded to this offeror as a result of or in connection with the submission of such data, the Government shall have the right to duplicate, use, or disclose this data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in such data if it is obtained from another source.

Contracting officers shall not refuse to consider any proposal merely because data submitted with that proposal is so marked. Data so marked shall be used only to evaluate proposals and shall not be disclosed outside the Government without the written permission of the offeror except under the conditions provided in the legend. If it is desired to duplicate, use, or disclose the data of the offeror to which the contract is awarded, for purposes other than to evaluate the proposal, the contract should so provide in accordance with § 9.202–6 of this chapter. See § 9.201 for a description of "data" and Part 9, Subpart B in general.

for the policy, instructions and contract clauses with respect to the acquisition and use of data.

(b) The provisions of paragraph (a) of this section do not apply to procurements by formal advertising. However, see § 2.404–4 of this chapter with respect to public disclosure of descriptive literature or material submitted by a bidder on a restrictive basis.

§ 3.110 Solicitations for informational or planning purposes.

See § 1.309 of this subchapter.

Subpart B—Circumstances Permitting Negotiation

§ 3.200 Scope of subpart.

Subject to the limitations prescribed in Subpart A of this part, and pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions ((1) through (17) of 10 U.S.C. 2304(a)) set forth in this subpart.

§ 3.201 National emergency.

§ 3.201–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(1), purchases and contracts may be negotiated if—

It is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President.

§ 3.201–2 Application.

(a) The authority of this § 3.201 shall be used only to the extent determined by the Assistant Secretary of Defense (Supply and Logistics) to be necessary in the public interest, and then only in accordance with Departmental procedures consistent with this § 3.201.

(b) For the duration of the national emergency declared pursuant to Presidential Proclamation 2914, dated December 16, 1950, the Assistant Secretary of Defense (Supply and Logistics) has determined that only the following procurements may be made pursuant to the authority of 10 U.S.C. 2304(a)(1):

(1) Procurements made in keeping with (A) labor surplus set-aside programs, including, where no other negotiating authority is appropriate, the placement of contracts for any part of the total requirements set-aside which are not filled by awards made in accordance with the provisions of the Notice of Labor Surplus Set-Aside (see § 1.804–2 (c) of this chapter), or (B) disaster area programs;

(2) Procurements made in keeping with the small business programs (A) after unilateral determinations for set-asides, or (B) to place any part of the total requirements set-aside which are not filled by awards to small business concerns, where no other negotiating authority is appropriate (see § 1.706–7 of this chapter); and

(3) Procurements of property or services for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research involving more than $2,500 but not more than $100,000 from contractors other than educational institutions.

(c) Except as authorized in (b) above, procurements may be negotiated only when authorized by 10 U.S.C. 2304(a)(2) through 10 U.S.C. 2304(a) (17) (§§ 3.202 through 3.217), and 10 U.S.C. 2304(c) (§ 3.218); determinations and findings shall be made in accordance with 10 U.S.C. 2310 and 10 U.S.C. 2311 (subpart C of this part); and the appropriate authority shall be cited in each contract.

§ 3.201–3 Limitation.

The authority of § 3.201 shall not be used when negotiation is authorized by the provisions of § 3.206.

§ 3.202 Public exigency.

§ 3.202–1 Authority.

Pursuant to the authority of 10 U.S.C. 2304(a)(2), purchases and contracts may be negotiated if—

The public exigency will not permit the delay incident to advertising.

§ 3.202–2 Application.

In order for the authority of § 3.202 to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of formal advertising. The following are illustrative of circumstances with respect to which this authority may be used:

(a) Supplies or services needed at once because of a fire, flood, explosion, or other disaster;

(b) Essential equipment for or repair to a ship when such equipment or repair is needed at once for compliance with the orders of the ship;

(c) Essential equipment for or repair to aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft.

§ 3.202–3 Limitation.

Every contract negotiated under the authority of § 3.202 shall be accompanied by a signed statement of the contracting officer justifying its use, and a copy of such statement shall be sent to the General Accounting Office with a copy of the contract negotiated and executed hereunder. The authority of § 3.202 shall not be used when negotiation is authorized by the provisions of § 3.203 or § 3.206.

§ 3.203 Purchases not more than $2,500.

§ 3.203–1 Authority.

Pursuant to 10 U. S. C. 2304 (a) (3), purchases and contracts may be negotiated if—

the aggregate amount involved is not more than $2,500.

§ 3.203–2 Application.

Purchases or contracts aggregating not more than $2,500 shall be made in accordance with subpart F of this part.

§ 3.203–3 Limitation.

The authority of § 3.203 shall not be used when negotiation is authorized by the provisions of § 3.206.

§ 3.204 Personal or professional services.

§ 3.204–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(4), purchases and contracts may be negotiated if—

For personal or professional services.

§ 3.204–2 Application.

The authority of § 3.204 shall be used only when all of the following conditions have been satisfied:

(a) If personal services, they are required to be performed by an individual contractor in person (not by a firm), or if professional services, they may be performed either by an individual contractor in person or a firm or organization;

(b) The services (1) are of a professional nature, or (2) are to be performed under Government supervision and paid for on a time basis; and

(c) Procurement of the services is authorized by law, and is effected in accordance with the requirements of any such law and in accordance with Departmental procedures.

§ 3.204–3 Limitation.

The authority of § 3.204, and the above conditions imposed upon its use, shall not apply to the procurement by negotiation of any type of services authorized under any other provision of this part.

§ 3.205 Services of educational institutions.

§ 3.205–1 Authority.

Pursuant to the authority of 10 U.S.C. 2304(a)(5), purchases and contracts may be negotiated if—

For any service to be rendered by any university, college, or other educational institution.

§ 3.205–2 Application.

The following are illustrative of circumstances with respect to which the authority of § 3.205 may be used:

(a) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith;

(b) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith;

(c) Analyses, studies, or reports (statistical or otherwise) to be conducted by any university, college, or other educational institution.

§ 3.205–3 Limitation.

The authority of § 3.205 shall not be used when negotiation is authorized by the provisions of § 3.203 or § 3.206.

§ 3.206 Purchases outside the United States.

§ 3.206–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(6), purchases and contracts may be negotiated

if "for property or services to be procured and used outside the United States, and its Territories, possessions and Puerto Rico."

§ 3.206–2 Application.

The authority of this section shall be be used only for the procurement of:

(a) Supplies to be (1) shipped from, (2) delivered, and (3) used, or

(b) Services to be performed

outside the United States, its possessions and Puerto Rico, irrespective of the place of negotiation or execution of the contract. When the authority of this paragraph is available for the negotiation of a contract, no other negotiating authority shall be used, nor shall formal advertising be used.

§ 3.207 Medicines or medical supplies.

§ 3.207–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(7), purchases and contracts may be negotiated if—

For medicine or medical supplies.

§ 3.207–2 Application.

The authority of § 3.207 shall be used only when the following two requirements have been satisfied:

(a) Such supplies are peculiar to the field of medicine, including technical equipment such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like, but not including prosthetic equipment; and

(b) Whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for supplies or services, under this authority of § 3.207, for more than $10,000.

§ 3.207–3 Limitation.

The authority of § 3.207 shall not be used when negotiation is authorized by the provisions of § 3.203 or § 3.206.

§ 3.208 Supplies purchased for authorized resale.

§ 3.208–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(8), purchases and contracts may be negotiated if—

For property for authorized resale.

§ 3.208–2 Application.

(a) The authority of § 3.208 shall be used only for purchases for resale, where appropriated funds are involved, and ordinarily only for purchases of articles with brand names or of a proprietary nature which a selling activity believes or finds to be desired or preferred by its patrons.

(b) Whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for supplies or services, under the authority of § 3.208, for more than $10,000.

§ 3.208–3 Limitation.

The authority of § 3.208 shall not be used when negotiation is authorized by the provisions of § 3.203 or § 3.206.

§ 3.209 Perishable or nonperishable subsistence supplies.

§ 3.209–1 Authority.

Pursuant to 10 U. S. C. 2304 (a) (9), purchases and contracts may be negotiated if—

for perishable or nonperishable subsistence supplies.

§ 3.209–2 Application.

The authority of this § 3.209 may be used for the purchase of any and all kinds of perishable or nonperishable subsistence supplies.

§ 3.209–3 Limitation.

The authority of this § 3.209 shall not be used when negotiation is authorized by the provisions of § 3.203 or § 3.206.

§ 3.210 Supplies or services for which it is impracticable to secure competition by formal advertising.

§ 3.210–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(10), purchases and contracts may be negotiated if—

For property or services for which it is impracticable to obtain competition.

§ 3.210–2 Application.

The following are illustrative of circumstances with respect to which the authority of §§ 3.210—3.210–3 may be used:

(a) When supplies or services can be obtained from only one person or firm ("sole source of supply");

(b) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances. However, the mere existence of such rights or circumstances does not in and of itself justify the use of the authority of §§ 3.210—3.210–3);

(c) When bids have been solicited pursuant to the requirements of Part 2 of this chapter, and no responsive bid (a responsive bid is any bid which conforms to the essential requirements of the solicitation of bids) has been received from a responsible bidder;

(d) When bids have been solicited pursuant to the requirements of Part 2 of this chapter, and the responsive bid or bids do not cover the quantitative requirements of the solicitation of bids, in which case negotiation is permitted for the remaining requirements of the solicitation of bids;

(e) When the contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services;

(f) When the contemplated procurement is for training film, motion picture productions, or manuscripts;

(g) When the contemplated procurement is for technical, nonpersonal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature;

(h) When the contemplated procurement is for studies or surveys other than those which may be negotiated under § 3.205 or § 3.211;

(i) When the contemplated procurement involves maintenance, repair, alterations or inspection, in connection with any one of which types of services the exact nature or amount of the work to be done is not known;

(j) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation, or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal solicitation of bids;

(k) When the contemplated procurement is for commercial ocean or air transportation, including time charters, space charters and voyage charters over trade routes not covered by common carriers (as to which, negotiation is authorized under the provisions of § 3.217 and section 321 of the Interstate Commerce Act of September 18, 1940, 49 U. S. C. 65). and including services for the operation of Government-owned vessels or aircraft;

(l) When the contract is for services related to the procurement of perishable subsistence such as protective storage, icing, processing, packaging, handling, and transportation, whenever it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence;

(m) When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services;

(n) When, under the procedures set forth in joint regulation DOD 4145.16–R, AR 743–455, NAVSANDA PUB 297, AFR 67–61, and NAVMC 1133, the contract is for storage (and related services) of household goods; or

(o) When the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

§ 3.210–3 Limitation.

The authority of § 3.210 shall not be used when negotiation is authorized by any other authority set forth in §§ 3.201 through 3.217, except that this authority shall be used in preference to § 3.212. The authority contained in § 3.210–2(m) shall not be used in procurements in excess of $50,000 unless its use is approved in advance at a level higher than the contracting officer. Every contract that is negotiated under the authority of § 3.210 shall be accompanied by a signed statement of the contracting officer justifying its use, and indicating, in addition, whether the price, rate, or charge is fixed by law or regulation; and a copy of such statement shall be sent to the General Accounting Office with a copy of the contract negotiated and executed hereunder.

§ 3.211 Experimental, developmental, or research work.

§ 3.211–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(11), purchases and contracts may be negotiated if—

For property or services that he [the Secretary] determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research.

§ 3.211–2 Application.

The following are illustrative of circumstances with respect to which the authority of § 3.211 may be used:

(a) Contracts relating to theoretical analysis, exploratory studies, and experiment in any field of science or technology;

(b) Developmental contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(c) Contracts for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experiment, deevlopment, research, or test; or

(d) Contracts for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

§ 3.211–3 Limitation.

The authority of § 3.211 shall not be used for negotiated contracts with educational institutions or for quantity production, except that such quantities may be purchased hereunder as are necessary to permit complete and adequate experiment, development, research or test; accordingly, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production. Negotiated contracts with educational institutions shall be negotiated in accordance with § 3.205. During the current national emergeny, negotiation of contracts involving more than $2,500 but not more than $100,000 with other than educational institutions for experimental, developmental, or research work shall be conducted under the authority of § 3.201–2 (b) (3). The authority of § 3.211 shall not be used when negotiation is authorized by the provisions of § 3.203 or § 3.206. In order for this authority to be used, the required determination must be made in accordance with the requirements of Subpart C of this part.

§ 3.211–4 Records and reports.

Each Military Department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of § 3.211, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in §§ 1.110 and 16.807 of this chapter.

§ 3.212 Classified purchases.

§ 3.212–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(12), purchases and contracts may be negotiated if—

For property or services whose procurement he [the Secretary] determines should not be publicly disclosed because of their character, ingredients, or components.

§ 3.212–2 Application.

The authority of this § 3.212 may be used for purchases or contracts classified "Confidential" or higher, or where because of other considerations, the contract should not be publicly disclosed.

§ 3.212–3 Limitation.

In order for the authority of § 3.212 to be used, the required determination must be made in accordance with the requirements of Subpart C of this part. The authority of this § 3.212 shall not be used when negotiation is authorized by any other authority set forth in §§ 3.201 through 3.218, except as otherwise provided in § 3.204–3.

§ 3.213 Technical equipment requiring standardization and interchangeability of parts.

§ 3.213–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(13), purchases and contracts may be negotiated if—

For equipment that he [the Secretary] determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability.

§ 3.213–2 Application.

(a) The authority of §§ 3.213–1 to 3.213–3 may be used for procuring additional units and replacement items of specified makes and models of technical equipment and parts, which are for tactical use or for use either in Alaska, Hawaii or outside the remainder of the United States, in theaters of operations, on board naval vessels, or at advanced or detached bases; and which have been adopted as standard items of supply in accordance with procedures prescribed by each respective Department. A current or recurring procurement requirement for the item shall be present. This authority would apply, for example, whenever it is necessary:

(1) To limit the variety and quantity of parts that must be carried in stock;

(2) To make possible, by standardization, the availability of parts that may be interchanged among items of damaged equipment during combat or other emergency; or

(3) To procure from selected suppliers technical equipment which is available from a number of suppliers but which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts.

(b) Before making a determination to procure specified makes and models under the authority of § 3.213, consideration shall be given to:

(1) The feasibility of economical and timely deployment on a selected geographic basis of makes and models already in supply systems;

(2) The feasibility of timely standardization of components and parts under the Defense Standardization Program;

(3) The effect upon the capability of industry to produce mobilization requirements of all Departments;

(4) The practicability of interchanging parts and cannibalizing equipment;

(5) The probability that future procurement of the selected item of equipment can be effected at reasonable prices;

(6) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock;

(7) The value of similar equipment and its supporting parts on hand;

(8) The contribution of the standardization to combat support;

(9) Possible savings in training personnel and publishing technical literature;

(10) Whether the standardization will adversely affect existing coordinated military specifications and standards; and

(11) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model now in the supply system.

(c) In arriving at determinations to standardize under the authority of § 3.213, the originating Department shall consult with the other Departments in order to assure the full benefit of the standardization.

(d) Actions taken under the authority of § 3.213 shall be reviewed by the originating Department at least once every two years to determine whether the standardization should be continued, revised, or cancelled.

§ 3.213–3 Limitation.

The authority of § 3.213 shall not be used for initial procurements of equipment and parts, or for the purpose of selecting arbitrarily the equipment of certain suppliers; nor shall it be used unless the Secretary of a Department has determined, in accordance with the requirements of Subpart C of this part, that:

(a) The equipment constitutes technical equipment;

(b) Standardization of such equipment and interchangeability of its parts are necessary in the public interest; and

(c) Procurement of such equipment or of its parts by negotiation is necessary to assure that standardization and interchangeability.

§ 3.213–4 Records and reports.

Each Military Department shall maintain on a current basis a master list of items for which determinations and findings have been made under the authority of § 3.213. A copy of each such determination and finding shall be furnished to the Assistant Secretary of Defense (Supply and Logistics) within five days after the date thereof.

§ 3.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.

§ 3.214–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(14), purchases and contracts may be negotiated if—

For technical or special property that he [the Secretary] determines to require a substantial initial investment or an extended period of preparation for manufacture and for which he determines that formal advertising and competitive bidding might require duplication of investment or preparation already made, or would unduly delay the procurement of that property.

§ 3.214–2 Application.

The authority of § 3.214 may be used for procurement of technical or specialized supplies—for example: aircraft, tanks, radar, guided missiles, rockets, and similar items of equipment; major components of any of the foregoing; and any supplies of a technical or specialized nature which may be necessary for the use or operation of any of the foregoing. Such procurement generally involves:

(a) High starting costs which already have been paid for by the Government or by the supplier;

(b) Preliminary engineering and development work that would not be useful to or usable by any other supplier;

(c) Elaborate special tooling already acquired;

(d) Substantial time and effort already expended in developing a prototype or an initial production model; and

(e) Important design changes which will continue to be developed by the supplier.

The authority of § 3.214 will in general be used in situations where it is preferable to place a production contract with the supplier who had developed the equipment, and thereby either assure to the Government the benefit of the techniques, tooling, and equipment already acquired by that supplier, or avoid undue delay arising from a new supplier having to acquire such techniques, tooling and equipment.

§ 3.214–3 Limitation.

The authority of § 3.214 shall not be used unless and until the Secretary has determined, in accordance with the requirements of Subpart C of this part, that:

(a) The supplies are of a technical or specialized nature requiring a substantial investment or an extended period of preparation for manufacture; and

(b) Procurement by formal advertising and competitive bidding either—

(1) May require duplication of investment or preparation already made, or

(2) Will unduly delay procurement.

§ 3.215 Negotiation after advertising.

§ 3.215–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(15), purchases and contracts may be negotiated if—

For property or services for which he (the Secretary) determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 3.215–2 Limitation.

The authority of § 3.215 shall not be used unless the Secretary has determined, in accordance with the requirements of Subpart C of this part, that the bid prices, after formal advertising for such supplies or services, are unreasonable or were not independently reached in open competition. Also, after such determination by the Secretary, and after rejection of all bids, no contract shall be negotiated under this authority unless:

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by a contracting officer to each responsible bidder which submitted a bid in response to the invitation for bids;

(b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Secretary; and

(c) The negotiated price is the lowest negotiated price offered by any responsible supplier.

Moreover any evidence of bids not independently reached shall be forwarded to the Department of Justice, as provided in § 1.111 of this chapter.

§ 3.216 Purchases in the interest of national defense or industrial mobilization.

§ 3.216–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(16), purchases and contracts may be negotiated if—

He [the Secretary] determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved.

§ 3.216–2 Application.

The authority of § 3.216 may be used to effectuate such plans and programs as may be evolved under the direction of the Secretary to provide incentives to manufacturers to maintain, and keep active, engineering and design staffs and manufacturing facilities available for mass production. The following are illustrative of circumstances with respect to which this authority may be used:

(a) When procurement by negotiation is necessary to keep vital facilities or suppliers in business; or to make them available in the event of a national emergency;

(b) When procurement by negotiation with selected suppliers is necessary in order to train them in the furnishing of critical supplies to prevent the loss of their ability and employee skills, or to maintain active engineering, research, and development work; or

(c) When procurement by negotiation is necessary to maintain properly balanced sources of supply for meeting the requirements of procurement programs in the interest of industrial mobilization.

§ 3.216–3 Limitation.

The authority of § 3.216 shall not be used unless and until the Secretary has determined, in accordance with the requirements of Subpart C of this part, that:

(a) It is in the interest of national defense to have a particular plant, mine, or other facility or a particular producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, and negotiation is necessary to that end;

(b) The interest of industrial mobilization, in case of a national emergency, would be subserved by negotiation with a particular supplier; or

(c) The interest of national defense in maintaining active engineering, research, and development, would be subserved by negotiation with a particular supplier.

§ 3.216–4 Records and reports.

Each Department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of § 3.216, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in §§ 1.110 and 16.807 of this chapter.

§ 3.217 Otherwise authorized by law.

§ 3.217–1 Authority.

Pursuant to 10 U.S.C. 2304(a)(17), purchases and contracts may be negotiated if—

otherwise authorized by law.

§ 3.217–2 Application.

The authority of § 3.217 shall be used only if, and to the extent, approved for any Military Department and in accordance with Departmental procedures.

§ 3.218 Construction work.

§ 3.218–1 Application.

Contracts to construct or repair any building, road, sidewalk, sewer, main, or similar item, are subject to 10 U.S.C. 2304(c) and § 3.218.

§ 3.218–2 Limitation on authority to negotiate contracts.

(a) *Work in the United States.* Contracts for construction work to be performed within the United States shall be formally advertised and may not be negotiated unless authorized pursuant to the following subsections of 10 U.S.C. 2304(a): (1), (2), (3), (10), (11), (12), or (15), (see respectively, §§ 3.201, 3.202, 3.203, 3.210, 3.211, 3.212 and 3.215).

(b) *Work outside of the United States.* Contracts for construction work to be performed outside of the United States shall be formally advertised and may not

be negotiated unless authorized pursuant to subsections (1) through (17) of 10 U. S. C. 2304 (a) (§§ 3.201 through 3.217), as appropriate (note that such contracts to be performed in the Territories or possessions of the United States, and Puerto Rico, may not be negotiated pursuant to 10 U. S. C. 2304 (a) (6), (§ 3.206)).

§ 3.218–3 Citation of authority to negotiate.

Negotiated contracts for construction work shall cite as authority for their negotiation the applicable subsection (1) through (17) of 10 U.S.C. 2304(a).

Subpart C—Determinations and Findings

§ 3.300 Scope of subpart.

This subpart (a) enumerates the particular determinations and findings to be made (1) by the Secretary of any Department, (2) by the head of any procuring activity signing as "a chief officer responsible for procurement," and (3) by a Contracting Officer; and (b) sets forth the requirements to be followed with respect to such determinations and findings.

§ 3.301 Nature of determinations and findings.

The determinations and supporting findings that are referred to throughout this subchapter, usually as prerequisites to the authority of a procuring activity to enter into contracts by negotiation or to make advance payments under negotiated contracts, will in most instances be made by the Secretary of a Department. Such determinations and findings shall ordinarily be made only with respect to individual purchases or contracts, but may be made with respect to classes of purchases or contracts in special cases and then only for a specified period and in accordance with procedures prescribed by each respective Department. Certain determinations, as hereinafter provided, may be made by the head of a procuring activity signing as "a chief officer responsible for procurement" or by a Contracting Officer, but in either of these two cases only with respect to individual purchases or contracts.

§ 3.302 Determinations and findings by the Secretary of a Department.

(a) The following determinations, and written findings in support thereof, may be made only by the Secretary of a Department, and are not delegated hereunder except to the extent provided in § 3.303:

(1) The determination required by §§ 3.211 to 3.211–4, inclusive, with respect to any negotiated contract for experimental, developmental, or research work or for the manufacture or furnishing of supplies for experimentation, development, research, or test;

(2) The determination required by §§ 3.212 to 3.212–3, inclusive, with respect to any negotiated contract that should not be publicly disclosed;

(3) The determination required by §§ 3.213 to 3.213–3, inclusive, with respect to any negotiated contract for technical equipment requiring standardization and interchangeability of parts;

(4) The determination required by §§ 3.214 to 3.214–3, inclusive, with respect to any negotiated contract for technical or specialized supplies requiring a substantial initial investment or an extended period of preparation for manufacture;

(5) The determination required by §§ 3.215 to 3.215–2, inclusive, with respect to any negotiated contract entered into after advertising has proved unsatisfactory;

(6) The determination required by §§ 3.216 to 3.216–4, inclusive, with respect to any negotiated contract entered into in the interest of national defense or industrial mobilization;

(7) the determination required with respect to advance payments under any negotiated contract. (See Part 163 Subpart D of this title, Defense Contract Financing Regulations, AR 715–6, NAVEXOS P–1006 (see NPL 31–001), AFR 173–133, 17 December 1956.)

(b) In addition to the determinations in paragraph (a) of this section, the Secretary of any Department may also make any of the determinations, and written findings in support thereof, that may be made by the head of any procuring activity signing as "a chief officer responsible for procurement" or by a Contracting Officer.

§ 3.303 Determinations and findings by the head of a procuring activity signing as "a chief officer responsible for procurement."

The following determinations, and written findings in support thereof, may be made by the head of a procuring activity signing as "a chief officer responsible for procurement":

(a) The determination required by §§ 3.211 to 3.211–4, inclusive, with respect to any negotiated contract for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test: *Provided*, That such contract does not obligate the Government to pay more than $25,000; and

(b) The determinations required by §§ 3.403–4, 3.404, 3.404–3 and 3.404–4 with respect to the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract.

§ 3.304 Determinations and findings by a contracting officer.

To the extent that the authority has been or may be granted by procedures prescribed by each respective Department, the determinations required by §§ 3.403–4, 3.404, 3.404–3, and 3.404–4 with respect to the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract may be made by a contracting officer: *Provided*, That any such determination shall be based upon written findings made by the Contracting Officer. Any other determinations or findings called for by this subchapter, but not required by this subchapter to be made by higher authority, may be made by a Contracting Officer in accordance with procedures prescribed by each respective Department.

§ 3.305 Forms of determinations and findings.

Each Determination and Findings—whether for (a) "Authority to Negotiate an Individual Contract," or (b) "Authority to Negotiate a Class of Contracts," or (c) "Advance Payments," or (d) "Method of Contracting," or (e) any other purpose—shall be prepared in accordance with procedures prescribed by each respective Department.

§ 3.306 Procedure with respect to determinations and findings.

Each Determination and Findings shall be approved and processed in accordance with procedures prescribed by each respective Department, except that Determinations and Findings for procurement by negotiation with respect to coordinated procurement (§ 5.1100–1 of this subchapter) shall be made in accordance with § 5.1106–2 of this subchapter.

§ 3.307 Distribution of copies of determinations and findings.

Copies of each Determination and Findings shall be distributed in accordance with procedures prescribed by each respective Department: *Provided*, That one copy thereof with respect to (a) negotiated contracts (whether by individual contract or by class of contracts), (b) advance payments, and (c) the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract, shall be sent to the General Accounting Office with the copy of the contract negotiated and executed thereunder.

§ 3.308 Retention of copies of determinations and findings, and of other records.

Executed originals of all determinations and findings, and copies of all supporting documents, shall be preserved in the cognizant procuring activity or in the Department concerned for six years following the date of each respective determination. Complete records with respect to all negotiated contracts shall be preserved in the cognizant procuring activity or in the Department concerned for a period of six years following final payment on each such respective contract.

Subpart D—Types of Contracts

§ 3.400 Scope of subpart.

This subpart (a) describes and defines approved types of contracts for procurement by negotiation, (b) defines the areas of applicability in which each type of contract may be used appropriately and sets forth considerations and policies governing the choice of type of contract, and (c) imposes conditions on the use of certain of the available types of contracts.

§ 3.401 Types of contracts.

Pursuant to the authority of 10 U.S.C. 2306, contracts negotiated under this Part may be of any of the types or combination of types described herein, which will promote the best interests of the

Government subject to the restrictions described below. The cost-plus-a-percentage-of-cost system of contracting shall not be used. In furtherance of this policy all prime contracts and letter contracts, on other than a firm fixed-price basis, shall by an appropriate clause prohibit cost-plus-a-percentage-of-cost subcontracts.

§ 3.402 Selection of contract type.

(a) *General.* The firm fixed-price contract shall be used unless, under the applications and limitations contained in this Subpart, the use of another type of contract is more appropriate. However, the selection of contract type is generally a matter for negotiation. The proper selection of an appropriate type of contract is of primary importance in obtaining fair and reasonable prices under all of the circumstances. The type of contract therefore has a direct effect upon the resulting price or cost to the Government. Type of contract and pricing are interrelated and should be so considered together in negotiation, in accordance with the provisions of § 3.803. In determining the type of contract to be utilized, consideration should be given to such factors as:

(1) Type and complexity of the item;

(2) Urgency of the requirement;

(3) The period of contract performance and the length of the production run;

(4) Degree of competition present;

(5) Difficulty of estimating performance costs due to such factors as the lack of firm specifications, the lack of production experience, or the instability of design;

(6) Availability of comparative price data, or lack of firm market prices or wage levels;

(7) Prior experience with the contractor;

(8) Extent and nature of subcontracting contemplated;

(9) Assumption of business risk;

(10 Technical capability and financial responsibility of the contractor; and

(11) Administrative costs of both parties.

Early agreement should be reached between the Government and the contractor on the type of contract best suited to the procurement. Except in the case of a firm fixed-price contract, contract files shall include documentation to show the reasons why the particular contract type was utilized.

(b) *Research and development.* A fixed-price contract normally should not be used to contract for research and development work unless the work to be performed can be described with a reasonable degree of definiteness, sufficient pricing information is available to assure that the contract price will be fair and reasonable, a definite period of performance can be specified, and successful performance of the contract is not dependent upon a breakthrough in the state of the art.

§ 3.403 Fixed-price type contracts.

The fixed-price type contract generally provides for a firm price, or under appropriate circumstances may provide for an adjustable price, for the supplies or services which are being procured. In providing for an adjustable price, the contract may fix a ceiling price, target price (including target cost), or minimum price. However, unless otherwise provided in the contract, any such ceiling, target, or minimum price is subject to adjustment resulting solely from the operation of any contract clause which provides for equitable adjustment, escalation, or other revision of the contract price upon the occurrence of an event or a contingency. Fixed-price contracts are of several types so designed as to facilitate proper pricing under varying circumstances.

§ 3.403–1 Firm fixed-price contract.

(a) *Description.* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract, when appropriately applied as set forth in paragraph (b) of this section, places the maximum risk and responsibility upon the contractor and affords him the greatest incentive for efficient performance with the resultant benefits in earnings. Utilization of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Applicability.* The firm fixed-price contract is suitable for use in procurements when stable and reasonably definite specifications are available and when fair and reasonable pricing can be achieved, such as where (1) adequate competition has made initial quotations effective; (2) prior purchases of the same or similar supplies or services provide reasonable price comparison; (3) experienced cost information or sound estimates of the probable cost of performance are available in the negotiation of contract prices; or (4) any other reliable basis for proper pricing can be utilized consistent with the purpose of this type of contract. The firm fixed-price contract is particularly suitable in the purchase of standard commercial items, modified commercial items, or military items for which adequate information on production and cost is available.

(c) *Limitation.* The firm fixed-price contract shall not be used when contingencies proposed in the contract price are considered unreasonable.

§ 3.403–2 Fixed-price contract with escalation.

(a) *Description.* The fixed-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. These contingencies should be limited to those beyond the normal control of the contractor. The business risk of the contractor in a fixed-price contract is reduced by the inclusion of escalation provisions in which the Government agrees to revise the stated price upon the happening of the prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited by the establishment of a reasonable ceiling, and provisions will be included for downward adjustments in those instances where the prices or rates fall below the base levels provided in the contract. In the establishment of the base levels from which escalation will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that escalation is provided for any particular contingency. Generally, escalation provisions are of two broad types:

(1) Price escalation provides for adjustment of the contract price on the basis of increases or decreases from an agreed upon level in published or established prices of specific items or in price levels of the contract end items.

(2) Labor and material escalation provides for adjustment of the contract price on the basis of increases or decreases from agreed standards or indices in wage rates, specific material costs, or both.

(b) *Applicability.* Use of this type of contract is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. Its usefulness is limited by the difficulties inherent in its administration.

(1) Price escalation may be used under the conditions stated above when the items to which escalation will be applied are standard materials or articles normally sold at "established" or "published" prices in a competitive commercial market or are modifications thereof the prices of which can be reasonably related to the prices of such standard materials or articles.

(2) Labor and material escalation generally is suitable for use when the types and kinds of labor and material that the contractor intends to use in the performance of a contract that covers an extended period of time prevents him from accepting the full risk of possible cost increases and the Government is unwilling to accept the proposed contingency factors.

(c) *Limitation.* Escalation shall not be used to provide protection against contingencies arising from the lack of accurate estimates of the quantities of labor or material required for performance of the contract.

§ 3.403–3 Fixed-price contract providing for the redetermination of price.

(a) *General*—(1) *Description.* The fixed-price contract providing for the redetermination of price calls for the subsequent negotiated adjustment, in whole or in part, of the initially negotiated (base) price. Consistent with the particular form of price redetermination clause selected, the contract price should be adjusted upward or downward at times prescribed in the contract or at the demand of either party either during or after the period of contract performance and such adjusted price may be prospective, retroactive, or both. Price redetermination clauses provide a contractual method for shifting certain risks from the contractor to the Government in order to eliminate or mini-

mize the inclusion of contingency allowances in the price. Five types of redetermination clauses are available in accordance with the criteria for their use set forth in paragraph (b) of this section.

(2) *Applicability.* These price redetermination clauses are suitable for use in varying degrees in negotiated contracts where (i) adequate estimates of quantities of material and labor are not initially available; (ii) specifications adequate for a firm fixed-price are not initially available; (iii) sound initial estimates of total cost of performance cannot be made; (iv) effective competition or other reasonable justification of price is not available; or (v) where the use of price redetermination would otherwise materially assist in effecting fair and reasonable pricing.

(3) *Limitations.* This type of contract should not be used unless—

(i) It has been determined through negotiation that the particular type price redetermination contract fulfills more completely than any other type of contract the requirements established by the conditions surrounding the procurement.

(ii) There is at the outset, or will be available at a point early in contract performance, sufficient pricing information available to negotiate a prospective fixed or target price.

(iii) The initial price is substantially free of contingency allowances.

(iv) A firm fixed price can be established at a point substantially in advance of contract completion, except as to retroactive adjustment as provided in paragraph (b) (5) of this section.

(v) Reasonable assurance exists that contract price redetermination can be accomplished on a timely basis.

(vi) The contractor's accounting system is adequate for contract price redetermination purposes.

(vii) Cost of administration is not prohibitive.

(b) *Types of price redetermination clauses*—(1) *Prospective periodic price redeterminations at stated intervals*—(i) *Description.* This clause provides for a firm fixed price for an initial period of contract deliveries or performance and for prospective price redeterminations either upward or downward at stated intervals during the performance of the contract.

(ii) *Applicability.* This clause is appropriate for use in procurements calling for quantity production or services where it is possible to negotiate fair and reasonable firm fixed prices for the initial period but not for subsequent stated periods of contract performance. This initial period should be reasonably long so as to include the maximum deliveries and cover the longest period of contract performance for which it is possible to establish fair and reasonable prices at the time of original negotiation. The length of the prospective pricing periods should depend on the circumstances of each case and should generally range from 6 to 12 months each.

(iii) *Limitations.* This clause should be used only when the prospective pricing periods can be made to conform with the operation of the contractor's accounting system. A price ceiling may be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section when appropriate.

(2) *Prospective price redeterminations on request*—(i) *Description.* This clause provides for a fixed price for the entire contract subject to limited demands by either party for prospective price redetermination either upward or downward.

(ii) *Applicability.* This clause is appropriate for use in procurements calling for quantity production or service where it is possible to negotiate fair and reasonable firm fixed prices for the entire contract but the length of contract performance makes it desirable for the parties to reserve the option to adjust price prospectively due to unforeseen causes beyond the normal risks inherent in a firm fixed-price contract.

(iii) *Limitations.* This clause should be used only when (*a*) the procurement is susceptible of being firm fixed priced for the entire contract except for contingencies due to the length of contract performance; (*b*) the initially negotiated price shall remain in effect without change for a substantial period of performance, but only in exceptional cases shall this period be less than 6 months; and (*c*) the first redetermined price and any subsequent redetermined prices shall remain in effect for a substantial portion of the remaining period of contract performance but only in exceptional cases shall price redetermination requests be provided for more frequently than every 6 months after the initial price redetermination. A price ceiling may be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section when appropriate.

(3) *Retroactive and prospective price redetermination at a stated time prior to completion*—(i) *Description.* This clause provides for retroactive and prospective redetermination of prices either (*a*) upward or downward, or (*b*) downward only, at a designated time prior to completion of the contract, expressed in terms of deliveries, shop completion, a percentage of total contract performance on a cost incurred basis or any other reasonable basis. Generally, the time designated as the cutoff point for price redetermination purposes should be the earliest practicable and generally should not exceed 20 percent of deliveries, 20 percent of shop completion, or 40 percent of cost of performance on a cost incurred basis, as compared with the initial estimates. The redetermined price may apply to all supplies or services delivered under the contract.

(ii) *Applicability.* This clause is appropriate for use in contracts when it is impracticable to establish firm fixed prices at the time of contract negotiation but the contracting parties are reasonably certain that firm fixed prices can be negotiated prior to the performance of 60 percent of the contract on a cost incurred basis.

(iii) *Limitations.* This clause should be used only when (*a*) the initial negotiated price is a reasonable estimate sufficient to establish a billing price; (*b*) there is sufficient time of contract performance to accomplish the price redetermination prior to completion of 60 percent of the contract on a cost incurred basis, and (*c*) the estimated value of the procurement is in excess of $100,000. A price ceiling shall be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section.

(4) *Retroactive and prospective price redetermination including further prospective redetermination on request*—(i) *Description.* This clause provides all the features and is subject to the same repricing limitations of the clause described in subparagraph (3) of this paragraph with the additional provision for limited further prospective price redetermination upon written demand by either contractual party. Such further price redetermination is applicable only to supplies or services furnished after the effective date as specified in the request or the date of receipt of the request which ever is later. This clause also provides a limitation on the frequency of these additional requests.

(ii) *Applicability.* This clause is appropriate for use when it is impracticable to establish firm fixed prices at the time of contract negotiation, but when the contracting parties are reasonably certain that fair and reasonable firm fixed prices can be negotiated for the entire contract prior to the performance of 60 percent of the contract on a cost incurred basis.

(iii) *Limitations.* Subject to the same limitations contained in subparagraph (3) (iii) of this paragraph this clause should be used only when subsequent prospective price redeterminations may occur no more frequently than every 6 months after the initial price redetermination. Under this type of contract a price ceiling shall be provided for the period covered by the initial (i. e., retroactive and prospective) repricing action. After the initial repricing action the use of a price ceiling is optional. Any price ceiling shall be in accordance with the policy set forth in paragraph (c) of this section.

(5) *Retroactive price redetermination after completion*—(i) *Description.* This clause provides for a ceiling price and retroactive price redetermination after completion of the contract.

(ii) *Applicability.* This clause is designed for use in contracts where, but for special or unusual circumstances, a cost reimbursement type contract would normally be used. This clause should ordinarily be used only where the amount involved is relatively small or the time for performance is relatively short and then only after negotiation of an initial price as fair and reasonable as circumstances of the particular procurement will then permit.

(iii) *Limitation.* This clause shall only be used upon the written approval of (*a*) Office of the Deputy Chief of Staff for Logistics or Offices of Heads of the Technical Services, for the Army; (*b*) Office of Naval Material, for the Navy; and (*c*) Headquarters, Air Materiel Command, for the Air Force. The criteria for the use and submitting of requests for approval within each respective Department shall be the responsibility of the aforementioned offices. A price ceiling shall be established for this type of contract in accordance with the policy set forth in paragraph (c) of this section.

(6) *Modified retroactive and prospective price redetermination for follow-on contracts*—(i) *Description.* This clause provides for gearing price redetermination under a follow-on contract to repricing under a preceding contract where both contracts together cover continuing production of similar supplies.

(ii) *Applicability.* This clause is suitable in the case of a follow-on contract which is otherwise suitable for retroactive and prospective price redetermination (with or without further optional prospective price redeterminations) where contract performance is to overlap performance of a preceding contract. It may be used where the preceding contract provides for (*a*) retroactive and prospective price redetermination at a stated time prior to completion, (*b*) retroactive and prospective price redetermination including further price redetermination on request, (*c*) retroactive price redetermination after completion, or (*d*) fixed-price incentive price revision.

(iii) *Limitation.* This clause shall be used only if the follow-on contract meets the criteria of subparagraph (3) or (4) of this paragraph.

(c) *Ceiling price provision.* (1) Ceiling prices should be established at levels which provide reasonable risk assumption by the contractor. The ceiling to individual contract after giving conbe used should be determined for each sideration to such factors as the state of the art of the item being contracted for and the ability or inability to estimate accurately the labor or material costs involved in performance.

(2) Ceiling prices may be subject to adjustment by reason of the operation of other contract clauses. (See § 3.403.)

§ 3.403–4 Fixed-price incentive contracts.

(a) *Description*—(1) *General.* The fixed-price incentive contract is a fixed-price type contract with provision for adjustment of total target profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost bears to total target cost.

(2) *Initial target.* Under this type of incentive contract there is negotiated at the outset a target cost, a target profit, a price ceiling and a final profit and price adjustment formula. The formula may also provide, within the price ceiling, for a ceiling, a floor, or both on final profit. The formula should reflect the risks involved. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula. Where the final cost is less than the target cost, the formula provides for a final profit above the target profit; conversely, where the final cost is more than the target cost, the formula provides for a final profit below the target profit. Thus, the formula provides for sharing cost savings or, within the price ceiling, excesses, as revealed by a comparison of final cost with target cost. The increase or decrease in the actual profit included in the final price is thus designed to provide in advance a calculable incentive to the contractor for efficiency in performance.

(3) *Successive targets.* Under this type of incentive contract there is negotiated at the outset an initial target cost, an initial target profit, a price ceiling, a formula for fixing the firm target profit, and a production point at which the formula will be applied. Generally, the production point will be prior to delivery or shop completion of the first item. This formula does not apply to the life of the contract but simply fixes the firm target profit for the contract. The formula for fixing the firm target profit may also provide for a ceiling and floor on the firm target profit, but not one without the other. When the production point for applying the formula is reached, the firm target cost is then negotiated, giving consideration to experienced cost and all other pertinent factors, and the firm target profit is automatically determined in accordance with the formula which then passes out of existence. At this point, two alternatives are possible. First, if the remaining performance of the contract provides opportunity for application of an incentive arrangement for additional and substantial reductions in cost, a final profit and price adjustment formula may be negotiated, using the firm target profit and the firm target cost. As in the initial target type of contract described in (a) (2) above, the final cost is negotiated at the completion of the contract and the final contract price is then established in accordance with the final profit and price adjustment formula. Second, if the firm target cost plus the firm target profit present a price which is reasonable and provides normal business risks to the contractor for the performance of the contract, the price may be established as a firm fixed price.

(4) *Billing price.* In either of the above types of contract, a billing price will be established as an interim basis for payment. This billing price may be adjusted within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated costs will be substantially different from the target cost.

(b) *Applicability.* (1) The initial target type of incentive contract, described in paragraph (a) (2) of this section, is appropriate for use where targets which are reasonably free of contingencies and which provide a fair and reasonable incentive can be established at the outset.

(2) The successive targets type of incentive contract, described in paragraph (a) (3) of this section, is appropriate for use where the contractor's and the Government's knowledge of probable cost of performance, though substantial, is so indefinite that fair, firm targets cannot be established at the outset, but will become sufficiently definite at an early point in the performance of the contract to permit negotiation of targets which are reasonably free of contingencies and which provide a fair and reasonable incentive.

(3) Neither type of incentive contract should be used unless there is a sufficiently long period of performance to permit achievement of substantial cost reductions.

(c) *Limitations.* Fixed-price incentive contracts shall not be used unless the contractor's accounting system is adequate for price revision purposes and permits satisfactory application of the profit and price adjustment formulas. In no case should such contracts be used where (i) reliable cost estimates are not available at the time of initial contract negotiation or at a very early point in performance, or (ii) the sole or principal purpose is to shift substantially all of the risk of performance to the Government. In no case shall the firm target profit or the final profit and price adjustment formula be established prior to the establishment of the firm target cost. Neither type of incentive contract shall be used unless a determination has been made, in accordance with the requirements of Subpart C of this part, that—

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract. The successive targets type of contract, described in paragraph (a) (3) of this section, shall be used only after written approval by (i) Office of the Deputy Chief of Staff for Logistics or Offices of Heads of the Technical Services, for the Army, (ii) Office of Naval Material, for the Navy, and (iii) Headquarters, Air Material Command, for the Air Force.

§ 3.404 Cost-reimbursement type contract.

(a) *Description.* The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of (i) obligation of funds, and (ii) establishing a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer. A cost-reimbursement type contract may, to the extent authorized by Subpart G of this part, provide for negotiated fixed overhead rates.

(b) *Applicability.* The cost-reimbursement type contract is suitable for use when the nature and complexity of the procurement is such that costs of performance cannot be estimated with reasonable accuracy. In addition, it is essential that (1) the contractor's cost accounting system is adequate for the determination of costs applicable to the contract and (2) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used. While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, i. e., estimated cost of $25,000 or more, the Contracting Officer may determine in a given case to

utilize this type of contract to cover transactions in which the estimated costs are less than $25,000.

(c) *Limitations.* The cost-reimbursement type contract may be used only after a determination, in accordance with the requirements of Subpart C of this part, that:

(1) Such method of contracting is likely to be less costly than other methods, or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 3.404–1 Cost contract.

(a) *Description.* The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Applicability.* The following are illustrative situations in which the use of this type of contract may be appropriate.

(1) Research and development work particularly with nonprofit educational institutions or other nonprofit organizations.

(2) Facilities contracts.

(3) Initial small quantity procurements of new items with anticipated subsequent large production runs.

§ 3.404–2 Cost-sharing contract.

(a) *Description.* A cost-sharing contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed only for an agreed portion of its allowable costs.

(b) *Applicability.* A cost-sharing contract is suitable for use for those procurements which cover production or research projects which are jointly sponsored by the Government and the contractor with benefit to the contractor in lieu of full monetary reimbursement of costs. In consideration of this benefit, the contractor agrees to absorb a portion of the costs of performance. The following are illustrative situations in which this type of contract is generally desirable.

(1) Jointly sponsored research and development work with nonprofit educational institutions or other nonprofit organizations.

(2) Other research and development work where the results of the contract may have commercial benefit to the contractor.

§ 3.404–3 Cost-plus-a-fixed-fee contract.

(a) *Description.* The cost-plus-a-fixed-fee contract is a cost reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract.

(b) *Applicability.* The cost-plus-a-fixed-fee contract is suitable for use when a cost-reimbursement type of contract is appropriate, as provided in § 3.404 (b), and when the parties agree that the procurement should be profit bearing in the form of a fixed fee. The following are illustrative situations in which this type of contract may be appropriate:

(1) Research and development work where the scope and nature thereof cannot be definitely specified.

(2) Definite specifications exist but the contractor lacks a valid basis for estimating costs because the supplies called for are not items regularly manufactured, or the services called for have not been previously performed, or partial experience will not reveal a proper pricing level for the remainder of the production.

(3) Production or construction contracts where the specifications are not complete or where major changes substantially affecting the scope of the work are expected.

(4) Work to be performed in a Government-owned plant with the use of Government-owned facilities.

(c) *Limitations.* 10 U. S. C. 2306 (d) provides that in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 per centum of the estimated cost of the contract, exclusive of the fee, as determined by the Secretary of the Department concerned at the time of entering into such contract (except that a fee not in excess of 15 per centum of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's cost and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the Secretary of the Department concerned at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility projects). The Head of a procuring activity in the Departments of the Army and Navy and the Director of Procurement and Production of a Major Command in the Department of the Air Force or their duly authorized representatives are authorized to approve fixed fees not in excess of (1) ten per centum (10) of the estimated costs, exclusive of fee, of any contract for experimental, developmental, or research work or (2) seven per centum (7) of the estimated cost, exclusive of fee, of any other contract except that in contracts for architectural or engineering services the fixed fee shall not exceed that authorized by the terms of the law as set forth above. In appropriate cases, fees above the prescribed limits in the authorizations granted herein but within the limitations of the law may be authorized by the Secretary of the Department concerned or his designees.

(d) *Contractors' investment in work-in-process.* (1) It is the policy of the Department of Defense that contractors having cost-reimbursement type contracts should maintain a reasonable investment in the supplies and facilities acquired and in the services rendered in the performance of such contracts. This investment provides a strong incentive for the contractor to strive for greater efficiency and economy and better management, with resultant lower costs to the Government.

(2) In keeping with this policy, cost-reimbursement type contracts other than those set forth below shall provide for interim payment of not to exceed 80 percent of the costs incurred by the contractor in the performance of the contract:

(i) Contracts under which the contractors receive no fee or profit;

(ii) Contracts with educational institutions or nonprofit organizations;

(iii) Contracts solely for the operation of Government-owned plants or vessels;

(iv) Contracts with small business concerns;

(v) Contracts for research and development which do not provide for quantity production;

(vi) Contracts for performance outside the United States, its Territories, its possessions, and Puerto Rico;

(vii) Contracts having an estimated cost not in excess of $250,000;

(viii) Contracts for construction and architect-engineer services;

(ix) Contracts for scientific, technical, or engineering services (including systems design and testing and evaluation services);

(x) Contracts calling for maintenance, repair, and overhaul services in which the normal or anticipated time between the furnishing of items by the Government to the contractors for performance of the services and the delivery of the items to the Government after performance is less than three months; or

(xi) As determined by the Secretary concerned, contracts in which the application of the policy set forth in (1) above would impose undue hardship on the contractor or adversely affect the interests of the Government.

The appropriate one of the clauses set forth in § 7.203–4 shall be inserted in all cost-reimbursement type supply contracts. In all other cost-reimbursement type contracts to which the policy set forth in this § 3.404–3(d) applies, insert the clause set forth in § 7.203–4 (a) or (b), appropriately modified.

§ 3.404–4 Cost-plus-incentive-fee contract.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement-type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed as an incentive to the contractor to increase the efficiency of performance.

(b) *Applicability.* The cost-plus-incentive-fee contract is suitable for use where a cost-reimbursement-type of contract is found necessary and where there is a probability that its use will result in lower costs to the Government than other forms of cost-reimbursement-type contracts through cost reduction incentive to the contractor.

(c) *Limitation.* The target and the maximum fee shall be subject to the administrative limitations stated in paragraph (c) of § 3.404–3.

(d) *Contractors' investment in work-in-process.* See § 3.404–3 (d).

§ 3.405 Other types of contracts.

§ 3.405–1 Time and materials contract.

(a) *Description.* The time and materials type of contract provides for the procurement of supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead, and profit) and (2) material at cost. Material handling costs may be included in the charge for "material at cost," to the extent they are clearly excluded from any factor of the charge computed against direct labor hours. This type of contract may establish either a price ceiling, or a ceiling amount which the contractor may not exceed (except at his own risk).

(b) *Applicability.* The time and materials contract is used only in those situations where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any substantial accuracy. Particular care should be exercised in the use of this type of contract since its nature does not encourage efficiency. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of supplies; (2) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools; (3) repair, maintenance or overhaul work, and (4) work to be performed in emergency situations.

(c) *Limitation.* This type of contract may be used only after determination that no other type of contract will suitably serve.

§ 3.405–2 Labor-hour contract.

(a) *Description.* The labor-hour type of contract is a variant of the time and materials type contract differing only in that materials are not involved in the contract or are not supplied by the contractor.

(b) *Applicability.* The labor-hour type of contract is applicable in those procurements described for the time and materials type contract, but in situations in which contractor-furnished materials are not involved.

(c) *Limitations.* This type of contract may be used only after determination that no other type of contract will suitably serve.

§ 3.405–3 Letter contract.

(a) *Description.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of manufacture of supplies, or performance of services, including, but not limited to, preproduction planning and the procurement of necessary materials.

(b) *Applicability.* A letter contract may be entered into when (1) the interests of national defense demand that the contractor be given a binding commitment so that work can be commenced immediately, and (2) negotiation of a definitive contract in sufficient time to meet the procurement need is not possible, as, for example, when the nature of the work involved prevents the preparation of definitive requirements, specifications, or cost data.

(c) *Limitations.* (1) A letter contract shall be used only after a determination in accordance with Departmental procedures that no other type of contract is suitable.

(2) A letter contract shall not be entered into without competition when competition is practicable.

(3) A letter contract shall be superseded by a definitive contract at the earliest practicable date. This date shall be prior to:

(i) the expiration of 180 days from the date of the letter contract; or

(ii) 40 percent of the production of the supplies, or the performance of the work, called for under the contract; whichever occurs first. In extreme cases, an additional period may be authorized in accordance with Departmental procedures.

(4) The maximum liability of the Government stated in the letter contract generally shall not exceed 50 percent of the total estimated cost of the procurement, but this liability may be increased in accordance with Departmental procedures.

(d) *Content.* Letter contracts shall be specifically negotiated and shall, as a minimum requirement, include agreement as to the following:

(1) That the contractor will proceed immediately with performance of the contract, including procurement of necessary materials;

(2) The extent and method of payments in the event of termination either for the convenience of the Government or for default;

(3) That the contractor is not authorized to expend moneys or incur obligations in excess of the maximum liability of the Government as stated in the letter contract;

(4) The type of definitive contract;

(5) As many definitive contract provisions as possible;

(6) That the contractor shall provide such price and cost information as may reasonably be required by the Contracting Officer;

(7) That the contractor and the Government shall promptly enter into negotiations in good faith to reach agreement upon and execute a definitive contract.

§ 3.405–4 Basic agreement.

(a) *Description.* A basic agreement is a written instrument of understanding executed between a Department or procuring activity and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement. The use of the basic agreement contemplates the coverage of a particular procurement by the execution of a formal contractual document which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement, as required or applicable.

(b) *Applicability.* (1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement, and (ii) substantial recurring negotiating problems exist with a particular contractor.

(2) *Amendment or supersession.* A basic agreement shall be amended only by an amendment of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement. To minimize amendments, revisions to this subchapter involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required amendments of basic agreements and to the extent possible, amendments will be required only in matters resulting from changes in statutes, or executive orders. As a minimum, basic agreements will be reviewed annually on the anniversary of their effective date and revised at that time to conform with the current requirements of this subchapter. Amendments shall not have retroactive effect.

(3) *Discontinuance of basic agreement.* Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

(c) *Limitations.* (1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved. Basic agreements shall not be used in any manner to restrict competition.

(3) Basic agreements shall be utilized only in connection with negotiated contracts.

§ 3.405–5 Indefinite delivery type contracts.

One of the following indefinite delivery type contracts may be used for procurements where the exact time of delivery is not known at time of contracting.

(a) *Definite quantity contracts*—(1) *Description.* This type of contract provides for a definite quantity of specified supplies or for the performance of speci-

fied services for a fixed period, with deliveries or performance at designated locations upon order. Depending on the situation, the contract may provide for: (i) Firm fixed-prices, (ii) price escalation, or (iii) price redetermination.

(2) *Applicability.* This type of contract is particularly suitable for use where it is known in advance that a definite quantity of supplies or services will be required during a specific period and are regularly available or will be available after a short lead time. Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user.

(b) *Requirements contract*—(1) *Description.* This type of contract provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for: (i) Firm fixed-prices, (ii) price escalation, or (iii) price redetermination. An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* A requirements contract may be used for procurements where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Supplies or services need be ordered only after actual needs have materialized;

(iii) Where production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(iv) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(v) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Generally, the requirements contract is appropriate for use when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

(c) *Indefinite quantity contract*—(1) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific supplies or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for: (i) Firm fixed-prices; (ii) price escalation, or (iii) price redetermination. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the supplies or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Applicability.* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Supplies or services need be ordered only after actual needs have materialized;

(iii) The obligation of the Government is limited; and

(iv) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

§ 3.406 Additional incentives.

§ 3.406–1 General.

In addition to the incentive features inherent in many of the contract types, and combinations thereof, described in §§ 3.403 through 3.405, there are other means of increasing incentives to contractors, which are described below.

§ 3.406–2 Performance-incentive contracts.

(a) *Description.* A performance-incentive contract is a contract which incorporates an incentive to the contractor to surpass stated targets by providing for increases in the fee or profit to the extent that such targets are surpassed and for decreases to the extent that such targets are not met. Salient features and considerations in the use of this type of contract are as follows:

(1) "Performance," as used in this § 3.406–2, refers not only to the performance of the article being procured, but to the performance of the contractor as well. It includes timeliness of delivery, capability and serviceability of the product, ease and simplicity of operation, economy of maintenance, etc. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the contract and shall receive the minimum profit or fee. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive feature (when applied to the product) should relate to specific performance characteristics, such as, speed of an aircraft or ship, thrust of an engine, maneuverability of a vehicle, fuel economy, etc. However, higher overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance, so that no one characteristic will be exaggerated to the detriment of the end item as a whole.

(3) Since performance tests are essential in order to determine the degree of attainment of performance targets, the contract must be as specific as possible in establishing test criteria; such as, conditions of testing, precision of instrumentation, and interpretation of test data.

(4) It is essential that there be explicit agreement between the Government and the contractor as to the effect on performance of contract changes (e.g., pursuant to the Changes clause).

(5) Care must be exercised, in establishing performance criteria, to give recognition to the fact that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

(6) In establishing incentives in connection with delivery schedules, it is important to determine the Government's primary objectives in a given contract. In some instances, earliest possible delivery is of paramount importance. In others, early quantity production is essential. On the other hand, it may be that maintaining an established delivery schedule is all that is desired, and that a bettering of such schedule may disrupt continuity of production or run counter to funding limitations.

(b) *Applicability.* The performance-incentive contract is suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counterbalanced by a penalty in the form of decreased profit or fee for failure to achieve such targets. Such targets may be established as delivery schedules, performance of the end item, or, in the case of research and development contracts, as milestones of accomplishment. This type of contract is perhaps most suitable for use in procurements of major weapon systems wherein there are either substantial development goals or potentialities for improved performance which are of great importance to the Government. This type of contract poses complex problems in contract administration and should be used only after thorough evaluation of all the factors involved in each case by the contracting officer in conjunction with personnel fully qualified in contract pricing.

(c) *Limitations.* (1) Since the performance-incentive feature may result in increased costs, this feature should generally be used with fixed-price incentive (§ 3.403–4) or cost-plus-incentive-fee provisions (§ 3.404–4).

(2) In the case of contracts involving a fee, the maximum fee shall be subject to the administrative limitations stated in § 3.404–3(c).

(3) The performance-incentive contract shall be used only upon the written approval of (i) Office of the Deputy Chief of Staff for Logistics, for the Army; (ii) Office of Naval Material, for the Navy; and (iii) Headquarters, Air Materiel Command, for the Air Force. Submission of requests for approval shall be in accordance with Departmental procedures.

§ 3.406–3 Contracts with value engineering incentives.

(a) *Description.* Value engineering incentive provisions may either require or encourage the contractor to maintain a staff devoting time and effort to "value engineering studies" to reduce costs under the contract in return for which the contractor receives a stated percentage of the resulting savings. A "value engineering study" is an intensive appraisal of all the elements of the design, manufacture or construction, procurement, inspection, installation, and maintenance of an item and its components, including the applicable specifications and operational requirements, in order to achieve the necessary performance, maintainability, and reliability of the item at minimum cost. The purpose of value engineering is to make certain that every element of cost (e.g., labor, material, supplies, styling, and services) contributes proportionately to the function of the item. The Government shall make reasonable efforts to expedite the analysis of each study submitted by the contractor. Where a change recommended by a study is adopted, a change order is issued under the Changes clause, together with a reduction in the contract price corresponding to the agreed percentage of the cost reduction. The Government does not have to adopt any study and failure to do so is not subject to the Disputes clause of the contract.

(b) *Applicability.* Value engineering incentive provisions are suitable primarily where the items being procured are covered by firm Government specifications.

(c) *Limitations.* Value engineering incentive provisions shall be used only upon the written approval of the Head of a Procuring Activity.

Subpart E—[Reserved]

Subpart F—Small Purchases

§ 3.600 Scope of Subpart.

This subpart deals with the purchase of supplies and services (other than personal) when the aggregate amount involved in any one transaction does not exceed $2,500. Such purchases shall be termed "small purchases." This subpart is not applicable to supplies or services required to be procured in accordance with Part 5 of this subchapter (except as specifically provided therein), nor to any procurement initially estimated to exceed $2,500 even though awards under such procurements do not exceed $2,500.

§ 3.601 Purpose.

The objective of the simplified purchase methods prescribed in this subpart is to reduce the administrative costs in accomplishing small purchases and to eliminate costly and time-consuming paper processes. This objective can be accomplished only by effective application of these simplified purchase methods at operating levels and through continued study of small purchase practices at all procurement levels.

§ 3.602 Policy.

(a) All small purchases shall be accomplished by negotiation.

(b) Any one of the purchase methods set forth in this subpart, which is determined to be most suitable to the immediate requirement and which will accomplish the procurement in the most efficient and economical manner shall be utilized.

(c) In arriving at the aggregate amount involved in any one transaction, there must be included all supplies and services which would properly be grouped together in a single transaction, and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Requirements aggregating more than $2,500 shall not be broken down into several purchases which are less than $2,500 merely for the purpose of permitting negotiation or utilizing the small purchase methods authorized under this subpart.

(d) In soliciting quotations, related items (such as small hardware items, spare parts for vehicles, or office supplies, etc.) may be included on one purchase order and the lowest aggregate quotation rather than the lowest quotation on each item may be accepted. Suppliers shall be advised of this award procedure when quotations are requested.

§ 3.603 Competition.

Reasonable solicitation of quotations from qualified sources of supply shall be secured in order to assure that the procurement is made to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers or the number of suppliers in the local trade area, whichever is less. Where the prices are considered to be reasonable, small purchases not exceeding $250 may be accomplished without securing competitive quotations, but such purchases shall be distributed equitably over a period of time among qualified suppliers. Reasonableness of proposed prices may be established by comparison with previous purchases, current price lists, catalogues, advertisements, or by any other appropriate method. Solicitation of quotations will generally be effected orally. Written solicitation should be used only in such circumstances as where (a) the suppliers are located outside the local area, (b) special specifications are involved, (c) a large number of items are included in a single proposed procurement, or (d) obtaining oral quotations is not considered economical. Notifications to unsuccessful suppliers is not required.

§ 3.604 Imprest funds (petty cash) method.

Imprest funds are funds not exceeding $5,000 advanced by a disbursing officer to a duly authorized agent for the "spot-cash" or c.o.d. payment for small quantities of supplies or services (other than personal).

§ 3.604–1 Conditions for use.

Imprest funds shall be used in accomplishing small purchases whenever all of the following conditions are present:

(a) The transaction is not in excess of $100;

(b) The supplies or services are immediately available, with cash payment to be made immediately upon pickup or delivery, whether at the supplier's place of business or at destination;

(c) The purchase does not require detailed technical specifications or technical inspection; and

(d) The use of imprest funds is administratively more economical and efficient than other small purchase methods.

§ 3.604–2 Documentation.

Except as hereinafter provided, no purchase order shall be issued where cash payment is to be made from imprest funds. However, all such purchases shall be supported either (a) by a sales document of the vendor, such as an original bill, sales slip, cash register ticket, or invoice, or (b) by Standard Form 1165 (Receipt for Cash-Subvoucher), or equivalent authorized form, any of which shall itemize the supplies or services purchased and the amount paid, and must be signed by the vendor or his agent so as to acknowledge receipt of payment. Where the purchase amount is less than $3 and it is impossible to secure a sales document of the vendor, the Government employee making the purchase shall execute a Standard Form 1165 (or equivalent authorized form). In those instances where a purchase document is required by the vendor to obtain Government discounts or tax exemption or for other

purposes, any authorized appropriate form may be used and shall be endorsed "Payment to be made in cash", if the vendor is to make delivery, or "Ship c. o. d.", if shipment is by parcel post or carrier.

§ 3.604–3 Cash discounts.

When effecting cash purchases, purchasing offices shall secure cash discounts to the extent obtainable.

§ 3.604–4 Delivery of cash purchases by suppliers.

Cash purchases on a delivered basis are preferable to pickups effected by Government vehicle and personnel, unless such pickups can be made as an incident to other operations or are otherwise advantageous. Imprest Funds payments for such purchases may include the cost of c.o.d., parcel post, or other delivery charges.

§ 3.605 Order-invoice-voucher method.

Standard Form 44 (Purchase Order-Invoice-Voucher) consists of four copies, i.e., a seller's invoice, seller's copy of invoice, receiving report, and memorandum copy. The use of an additional copy is authorized when essential to operating procedures.

§ 3.605–1 Limitations on use.

Standard Form 44 is authorized for accomplishing small purchases only when all of the following conditions are satisfied:

(a) The transaction is not in excess of $2,500;

(b) The supplies or services are immediately available from the local trade area;

(c) One delivery and one payment will be made; and

(d) The use is determined to be more economical and efficient than other small purchase methods.

§ 3.605–2 Examples of use.

Examples as to the appropriate use of Standard Form 44 are as follows: (a) Over-the-counter purchases, (b) purchases made by authorized individuals while away from the purchasing office; and (c) purchases at isolated stations.

§ 3.606 Blanket purchase agreement method.

§ 3.606–1 General.

The blanket purchase agreement method provides a means—of establishing "charge accounts" with qualified sources of supply to cover anticipated small purchases, as required, of readily available items of the same general category, and obviates the need for the issuance of a multiplicity of individual purchase instruments for small quantities of supplies. To the extent practicable, blanket purchase agreements for like items should be placed concurrently with more than one supplier. Requests against such agreements shall be placed only after compliance with § 3.603.

§ 3.606–2 Establishment of blanket purchase agreement.

Blanket purchase agreements may be established by the issuance of a purchase order which shall provide that:

(a) The supplier shall furnish supplies or services, described therein in general terms, if and when requested by the contracting officer or his authorized representative during a specified period and within a stipulated aggregate amount, *Provided, however*, That no individual request shall exceed $2,500;

(b) The Government is obligated only to the extent of such requests as are actually made against the blanket purchase agreement;

(c) The supplier's established price lists and discounts shall apply to all requests issued against the blanket purchase agreement;

(d) Requests shall generally be made orally, except that informal correspondence may be used where more convenient;

(e) All delivery tickets issued by the supplier shall fully identify the blanket purchase agreement, the date the request was made, the items, the prices, and other relevant data, and be signed by the Government employee who receives the items; and

(f) The supplier shall submit an itemized invoice not less frequently than once each month, or upon expiration of the blanket purchase agreement, whichever first occurs, covering all deliveries made under the blanket purchase agreement not previously invoiced and paid for, with payment to be made on the basis of this invoice.

§ 3.606–3 Conditions for use.

Blanket purchase agreements are authorized when—

(a) There is a repetitive need for small quantities of supplies or services of closely related types, such as electrical supplies, plumbing supplies, repair parts or services, or miscellaneous items of hardware;

(b) The maximum aggregate amount of all requests to be issued against one blanket purchase agreement shall not exceed the amount, if any specified in departmental procedures and the maximum period of time covered by the blanket purchase agreement shall not exceed the period, if any, specified in departmental procedures;

(c) No individual request issued against one blanket purchase agreement shall exceed $2,500; and

(d) The use of individual purchase instruments is deemed more costly administratively to the Government.

§ 3.606–4 Fiscal control.

The contracting officer shall maintain informal records of the requests made against each blanket purchase agreement, so as to insure that the value of requests made does not exceed available funds and that the designated monetary limitations are not exceeded.

§ 3.607 Use of Department of Defense or departmental procurement forms.

This subpart does not preclude the use for small purchases of such other Department of Defense or departmental purchase order forms as are authorized by Part 16 of this subchapter. The procurement form or method to be utilized shall be such as will accomplish the small purchase in the most efficient and economical manner. Where necessary, small purchases may also be effected by the use of a negotiated (two-party) formal contract, as, for example, where the procurement is (a) classified, or (b) requires specific contract provision relating to technical inspection or test, specifications changes, Government-furnished property, insurance, patents, price adjustment, or the like.

§ 3.608 Delegation of purchase authority.

Subject to the policies and procedures set forth in this subpart, the authority to make small purchases, particularly with respect to the imprest fund and order-invoice-voucher methods, shall be delegated to using activities or stations to the maximum extent practicable. In each case, however, the scope and limitations applicable to such delegations shall be clearly defined in writing.

§ 3.609 Purchase data.

In addition to records required by departmental procedures, Contracting Officers may deem it necessary to maintain, for their own use, administrative data pertaining to purchase transactions, such as notations of bid solicitations, etc. Such records shall be held to an absolute minimum.

Subpart G—Negotiated Overhead Rates

§ 3.700 Scope of subpart.

This subpart sets forth the policy and procedure governing the negotiation of overhead rates for use in cost-reimbursement type contracts.

§ 3.701 Definitions.

§ 3.701–1 Negotiated final overhead rates.

The term negotiated final overhead rate, as used in this subpart, means a percentage or dollar factor which expresses the ratio(s) mutually agreed upon by the Government and the contractor, at the close of a regularly stated period (preferably the contractor's fiscal year), of indirect expense incurred in the period to direct labor, manufacturing cost, cost of sales, or other appropriate base of the same period. Such rate is used as a means of determining the amount of reimbursement under a contract for the applicable indirect costs.

§ 3.701–2 Provisional overhead rates.

The term provisional overhead rate, as used in this part, means a tentative overhead rate established for interim billing purposes pending a negotiation of the final overhead rate.

§ 3.701–3 Overhead (indirect costs).

The term overhead (indirect costs) as used in this part, includes, but is not limited to, the general groups of indirect expenses such as those generated in manufacturing departments, engineering departments, tooling departments, general and administrative departments and, if applicable, indirect costs accumulated by cost centers within these general groups. In the case of contractors using fund accounting systems, the

term includes, but is not limited to, the general groups of expenses such as general administration and general expense, maintenance and operation of physical plant, library expenses, and use charges for building and equipment.

§ 3.702 Purpose.

The major purposes of negotiated final overhead rates are: (a) to effect uniformity of approach in cases where more than one contract or more than one Military Department is involved; (b) to effect economy in administrative effort; and (c) to promote timely settlement of reimbursement claims.

§ 3.703 Applicability.

Negotiated final overhead rates are authorized for use primarily in cost-reimbursement type contracts for research and development with commercial organizations and nonprofit or educational institutions. They may also be used in other cost-reimbursement type contracts, after a determination is made by the contracting officer that their use is advantageous to the Government. Where it is not apparent that any one of the major purposes enumerated in § 3.702 results or will result by the use of negotiated final overhead rates, the contracting officer will provide for settlement of overhead by audit determination.

§ 3.704 Contract clauses.

§ 3.704–1 Contracts with commercial concerns.

Insert the following clause in contracts with commercial concerns where negotiated overhead rates are to be used pursuant to this subpart.

NEGOTIATED OVERHEAD RATES

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the Schedule, shall submit to the Contracting Officer (See Instruction No. 1, § 3.704–3) a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15, Subpart B, as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to (See Instruction No. 2, § 3.704–3), subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

§ 3.704–2 Contracts with nonprofit and educational institutions.

Insert the following clause in contracts with educational and nonprofit institutions where negotiated overhead rates are to be used pursuant to this subpart.

NEGOTIATED OVERHEAD RATES

(a) Notwithstanding the provisions of the clause of this contract entitled (See Instruction No. 3 § 3.704.3), the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than six (6) months after the expiration of each period specified in the Schedule shall submit to the Contracting Officer (See Instruction No. 1, § 3.704–3), a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Part 15 (See Instruction No. 4, § 3.704–3), as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to (See Instruction No. 2, § 3.704–3), subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

§ 3.704–3 Instructions for completing contract clauses.

1. (a) In contracts of the Departments of the Army and Air Force insert "or his authorized representative, with a copy to the cognizant audit activity."

(b) In contracts of the Department of the Navy insert "via the cognizant audit activity and the Office of the Comptroller of the Navy (Contract Audit Division)."

2. (a) In contracts of the Departments of the Army and Air Force insert "The Contracting Officer or his authorized representative."

(b) In contracts of the Department of the Navy insert "The Office of the Comptroller of the Navy (Contract Audit Division)."

3. Insert title of the "Allowable Cost" clause used in the particular contract.

4. Insert "Part 2" or "Part 3", as appropriate.

§ 3.705 Procedure.

The procedure for use of negotiated final overhead rates generally consists of submission by the contractor of an overhead rate proposal, submission of an advisory audit report, review of the contractor's proposal and the advisory audit report, conduct of negotiation, preparation of a negotiation report or summary, and execution of contract amendments or supplemental agreements.

(a) Where only one procurement activity is concerned the proposal shall be submitted to the contracting officer or his authorized representative, with a copy to the cognizant audit activity. Where coordinated negotiations as described under § 3.706 are involved, contractors' overhead rate proposals may be submitted to the cognizant negotiating activity of the Department sponsoring the negotiation, with a copy to the cognizant audit activity.

(b) The determination as to the necessity of an advisory audit report for overhead rate negotiation purposes and the extent of the use of such report is the sole responsibility of the contracting officer. Unless advised to the contrary by the contracting officer, the cognizant audit activity shall submit an audit advisory report to the contracting officer or his authorized representative. Such report shall set forth the findings of the audit activity including the results of discussion of such findings with the contractor. The audit or accounting review will be governed by the provisions of Part 15 of this subchapter.

(c) Where there is a significant difference of opinion between the auditor and the contractor concerning the allowability of indirect costs or the acceptability of the bases used in developing the overhead rates, representatives of the audit activity and the negotiating activity will discuss the areas of disagreement prior to the negotiation conference with the contractor. As a further aid to the negotiating activity, a representative of the audit activity will, upon request, attend the negotiation conference.

(d) The negotiation conference will be conducted by the contracting officer or his authorized representative. Where coordinated negotiation is involved (§ 3.706), the sponsoring negotiating activity will be the authorized representative of those procuring activities not represented. The negotiation shall be governed by Part 15 of this subchapter and shall encompass an agreement on final overhead rates, the specific items to be treated as direct charges, and the provisional overhead rates if such rates are to be specified in the contract.

(e) At the completion of the negotiation, the contracting officer or his authorized representative shall prepare a negotiation report or summary, setting forth the rates negotiated, the reasons for variation from the audit report, if any, the period of rate applicability, the

basis for the determination of such rates and, where applicable, the provisional rates agreed upon for application in the succeeding period. Such report or summary shall be the basis for amending the affected contracts; it shall become a part of the contract file; and copies shall be distributed to any interested procurement activities and the audit activity.

(f) Supplemental agreements or contract amendments will incorporate the negotiated final overhead rates, the bases to which they apply, the period of rate applicability, and the agreement with respect to the specific items of direct charges referred to in paragraph (d) of this section.

§ 3.706 Coordination.

When more than one Military Department contemplates the use of negotiated final overhead rates with the same contractor, the service having the preponderance of cost-reimbursement type work will, generally, sponsor and conduct the negotiation. Each Department having an interest will be notified of the pending negotiation and will be invited to participate in the negotiation. If a Department does not have a representative at the negotiation, the sponsoring Department will represent the absentee Department. The results of the negotiation will be binding upon all Departments. At the completion of the negotiation, the sponsoring Department will prepare and distribute to the other Departments a Negotiation Report or Summary as provided for in § 3.705(e). Each Military Department shall thereupon amend or supplement the affected contracts in accordance with the rates and other data set forth in the negotiation report or summary.

§ 3.707 Cost-sharing rates.

Cost-sharing arrangements are frequently made wherein the cost participation by the contractor is evidenced by an agreement to accept overhead rates which are lower than the anticipated actual overhead rates. In such cases, a negotiated fixed-ceiling overhead rate may be used for application prospectively, provided that in the event overhead rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the negotiated rates, the negotiated rates will be reduced. Where reductions are necessary, they will be accomplished in accordance with § 3.705. The Government will not be obligated to pay any additional amounts on account of overhead above the negotiated fixed-ceiling rates.

Subpart H—Price Negotiation Policies and Techniques

§ 3.800 Scope of subpart.

This subpart sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to approval or review within a Department. The principles in this subpart apply to negotiation of prices on all types of contracts and to revised prices as well as initial prices.

§ 3.801 Basic policy.

§ 3.801–1 General.

It is the policy of the Department of Defense to procure supplies and services from reasonable sources at fair and reasonable prices calculated to result in the lowest ultimate over-all cost to the Government. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

§ 3.801–2 Responsibility of Contracting Officers.

(a) Contracting officers, acting within the scope of their appointments (and in some cases acting through their authorized representatives) are the exclusive agents of their respective Departments to enter into and administer contracts on behalf of the Government in accordance with this subchapter and Departmental procedures. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall exercise reasonable care, skill and judgment and shall avail himself of all of the organizational tools (such as the advice of specialists in the fields of contracting, finance, law, contract audit, mobilization planning, engineering, traffic management and cost analysis) necessary to accomplish the purpose as, in his discretion, will best serve the interests of the Government.

(b) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts, requesting advice from them, evaluating their counsel, and availing himself of their skills as much as possible. The contracting officer shall obtain simultaneous coordination of the specialist efforts to the greatest practical extent. He shall not, however, transfer his own responsibilities to them. Thus, the final negotiation of price, including price redetermination and evaluation of cost estimates, remains the responsibility of the contracting officer.

§ 3.801–3 Responsibility of other personnel.

Personnel, other than the contracting officer, who determine industrial mobilization plans and type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable as well as have a material effect upon prices. Failure to finalize requirements in sufficient time to allow—

(a) A reasonable period for preparation of request for proposals;

(b) Preparation of quotations by offerors;

(c) Contract negotiation and preparation; and

(d) Adequate manufacturing lead time;

causes delinquency in delivery and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase price or restrict desired competition. Personnel determining requirements, specifications, mobilization plans, adequacy of sources of supply, and like matters have responsibility in such areas, equal to that of the contracting officer, for timely, sound, and economical procurement.

§ 3.802 Preparation for negotiation.

§ 3.802–1 Product or service.

Knowledge of the product or service, and its use, is essential to sound pricing. Before soliciting quotations, every contracting officer should develop, where feasible, an estimate of the proper price level or value of the product or service to be purchased. Such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data. When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

§ 3.802–2 Selection of prospective sources.

Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be solicited from a sufficient number of competent potential sources to insure adequate competition. (See §§ 1.302, 1.902, 3.101, 3.104, 3.105, and 12.102 of this subchapter.) The bidders mailing lists prescribed by § 2.205 of this subchapter should be used where appropriate.

§ 3.802–3 Requests for proposals.

Requests for proposals shall contain the information necessary to enable a prospective offeror to prepare a proposal properly. The request for proposals shall be as complete as possible with respect to (a) item description or statement of work; (b) specifications; (c) Government-furnished property, if any; (d) required delivery schedule; and (e) contract clauses. If a price breakdown is required, the request for proposals shall so state. Requests for proposals, including requests for revised proposals, shall specify a date for their submission. Any extension of time granted to one prospective offeror shall be granted uniformly to all. Each request for proposals shall be issued to prospective offerors at the same time and no prospective offeror shall be given the advantage of advance knowledge that proposals are to be requested. Generally, requests for proposals shall be in writing. However, in appropriate cases, such as the procurement of perishable subsistence, proposals may be solicited orally.

§ 3.803 Type of contract.

(a) The selection of an appropriate contract type and the negotiation of prices are related and should be considered together. § 3.402 lists some of the factors for this joint consideration. The objective is to negotiate a contract type and price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When negotiations indicate the need for using other than a firm fixed price contract, there should be compatibility between the type of contract selected and the contractor's accounting system.

(b) In the course of a procurement program, a series of contracts, or a single contract running for a lengthy term, the circumstances which make for selection of a given type of contract at the outset will frequently change so as to make a different type more appropriate during later periods. In particular, the repetitive or unduly protracted use of cost-reimbursement type or time and materials contracts is to be avoided where experience has provided a basis for firmer pricing which will promote efficient performance and will place a more reasonable degree of risk on the contractor. Thus, in the case of a time and materials contract, continuing consideration should be given to converting to another type of contract as early in the performance period as practicable.

§ 3.804 Conduct of negotiations.

§ 3.804–1 General.

Evaluation of offerors' or contractors' proposals, including price revision proposals, by all personnel concerned with the procurement, as well as subsequent negotiations with the offeror or contractor, shall be completed expeditiously. Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations. Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or the price to be paid. Basic questions should not be left for later agreement during price revisions or other supplemental proceedings. Cost and profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

§ 3.804–2 Late proposals.

(a) Written requests for proposals shall contain a provision substantially as follows:

Late proposals. **The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, but before award is made, should such action be in the interest of the Government.**

(b) While it is important and desirable that the Government should not be precluded from gaining the benefit of late proposals, careful consideration of such situations is required to prevent excessive resolicitations and other abuses. Where failure of any proposal to arrive on time is due solely to a delay for which the offeror was not responsible, or where only one proposal is received, the contracting officer may consider the proposal without utilizing the resolicitation procedure prescribed below. Proposals, or modifications thereof, received after the latest date specified for receipt by the contracting officer should be considered if there is a probability of a significant reduction in price or cost to the Government, or technical improvement, as compared with proposals previously received. The following procedure shall apply, except that it need not be followed for small purchases:

(1) Where a late low proposal, or a late proposal otherwise worthy of consideration, is received from a qualified firm, the contracting officer shall document a recommendation that the proposal, either should or should not be considered, and send it for decision to such other authority as may be prescribed by the Department concerned.

(2) When it is determined by such other authority that it is in the best interest of the Government to consider the late proposal, the contracting officer shall, consistent with § 3.805–1(a)(2), resolicit all firms (including the late offeror) which have submitted proposals and have been determined to be capable of meeting requirements. Such resolicitation shall specify a date for submission of new or revised proposals. In appropriate cases, such as where further delay in making award will jeopardize meeting the Government's requirement, a resolicitation may provide that late proposals shall not be considered, notwithstanding the Government's reservation of a right to consider such proposals (as stated in the Late Proposals provision required by § 3.804–2(a)).

§ 3.805 Selection of offerors for negotiation and award.

§ 3.805–1 General.

(a) The normal procedure in negotiated procurements, after receipt of initial proposals, is to conduct such written or oral discussions as may be required to obtain agreements most advantageous to the Government. Negotiations shall be conducted as follows:

(1) Where a responsible offeror submits a responsive proposal which, in the contracting officer's opinion, is clearly and substantially more advantageous to the Government than any other proposal, negotiations may be conducted with that offeror only; or

(2) Where several responsible offerors submit offers which are grouped so that a moderate change in either the price or the technical proposal would make any one of the group the most advantageous offer to the Government, further negotiations should be conducted with all offerors in that group.

Whenever negotiations are conducted with more than one offeror, no indication shall be made to any offeror of a price which must be met to obtain further consideration, since such practice constitutes an auction technique which must be avoided. No information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to anyone whose official duties do not require such knowledge. Whenever negotiations are being conducted with several offerors, while such negotiations may be conducted successively, all offerors participating in such negotiations shall be offered an equitable opportunity to submit such pricing, technical, or other revisions in their proposals as may result from the negotiations. All offerors shall be informed that after the submission of final revisions, no information will be furnished to any offeror until award has been made. Modifications of proposals received after the submission of final prices shall be considered only under the circumstances set forth in § 3.804–2(b) (relating to late proposals).

(b) There are certain circumstances where formal advertising is not possible and negotiation is necessary. In the conduct of such negotiations, where a substantial number of clearly competitive proposals have been obtained and where the contracting officer is satisfied that the most favorable proposal is fair and reasonably priced, award may be made on the basis of the initial proposals without oral or written discussion: *Provided*, That the request for proposals notifies all offerors of the possibility that award may be made without discussion of proposals received and, hence, that proposals should be submitted initially on the most favorable terms from a price and technical standpoint, which the offeror can submit to the Government. In any case where there is uncertainty as to the pricing or technical aspects of any proposal, the contracting officer shall not make an award without further exploration and discussion prior to award. Also, when the proposal most advantageous to the Government involves a material departure from the stated requirements, consideration shall be given to offering the other firms which submitted proposals an opportunity to submit new proposals on a technical basis which is comparable to that of the most advantageous proposal: *Provided*, That this can be done without revealing to the other firms any information which is entitled to protection under § 3.109.

(c) Except where cost-reimbursement type contracts are to be used (see § 3.805–2), a request for proposals may provide that after receipt of initial technical proposals, such proposals will be evaluated to determine those which are acceptable to the Government or which, after discussion, can be made acceptable, and upon submission of prices thereafter, award shall be made to that offeror of an acceptable proposal who is the low responsible offeror.

(d) The procedures set forth in paragraphs (a), (b), and (c) of this section may not be applicable in appropriate cases when procuring research and development, or special services (such as architect-engineer services) or when cost-reimbursement type contracting is anticipated. Award of a contract may be properly influenced by the proposal which promises the greatest value to the Government in terms of possible performance, ultimate productibility, growth potential and other factors rather than the proposal offering the lowest price or probable cost and fixed fee.

(e) Whenever in the course of negotiation a substantial change is made in the Government's requirements (for example, increases or decreases in quantities or material changes in the delivery schedules), all offerors shall be given an equitable opportunity to submit revised proposals under the changed requirements.

§ 3.805–2 Cost-reimbursement type contracts.

In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. There is no requirement that cost-reimbursement type contracts be awarded on the basis of either (a) the lowest proposed cost, (b) the lowest proposed fee, or (c) the lowest total estimated cost plus proposed fee. The award of cost-reimbursement type contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. The agreed fee must be within the limits prescribed by law and regulation and appropriate to the work to be performed (see § 3.808 of this subpart). Beyond this, however, the primary consideration in determining to whom the award shall be made is: which contractor can perform the contract in a manner most advantageous to the Government.

§ 3.806 Cost profit and price relationships.

(a) Where products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition as set forth in § 3.805–1(a). The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors, including those in §3.101.

(b) Profit or fee is only one element of price and normally represents a smaller proportion of the total price than do such other estimated elements as labor and material. While the public interest requires that excessive profits be avoided, the contracting officer should not become so preoccupied with particular elements of a contractor's estimate of cost and profits that the most important consideration, the total price itself, is distorted or diminished in its significance. Government procurement is concerned primarily with the reasonableness of the price which the Government ultimately pays, and only secondarily with the eventual cost and profit to the contractor.

§ 3.807 Pricing techniques.

§ 3.807–1 General.

Policies set forth in this subpart may be applied in a variety of ways in the evaluation of offerors' or contractors' proposals and in the negotiation of contract prices. The extent to which any particular method, or combination of methods, should be used will depend upon the judgment of the contracting officer. The following sections describe several of the principal price negotiation techniques and the circumstances under which each may be used. They are equally applicable to initial and subsequent price negotiations.

§ 3.807–2 Pricing individual contracts.

Each contract shall be priced separately and independently, and no consideration shall be given to losses or profits realized or anticipated in the performance of other contracts. This prohibition neither prevents the negotiation of fixed overhead and other rates applicable to several contracts during annual or other specific periods nor prohibits forward pricing agreements applicable to several contracts.

§ 3.807–3 Price analysis.

(a) Some form of price analysis should be made in every procurement, even when competitive proposals have been submitted. The presence of effective competition, however, may make it possible to limit considerably the degree of price analysis required. In the absence of effective price competition, the negotiating team must make a thorough analysis of contractors' proposals and must be in possession of current, complete, and correct cost or pricing data before decisions are made on contract prices. Accordingly, the contractor should be required to furnish such data promptly as it becomes available throughout the negotiation process. To assure that the negotiating team is in possession of such data, the certificate set forth in § 3.807–7 shall be obtained for each separate negotiation when the amount of the procurement action exceeds $100,000, and the price negotiated is based more on the contractor's actual or estimated cost than on effective competition, established catalog or market prices, or prices set by law or regulation. The certificate may be required when lesser amounts are involved in particular cases where the contracting officer considers that the circumstances warrant such action. The certificate shall be obtained from the prime contractor immediately prior to agreement on negotiated prices, targets, or price revisions. However, the requirement for a contractor's certificate of pricing is not to be considered a substitute for a thorough examination and analysis of the contractor's proposal by the negotiating team.

(b) One form of price analysis is the comparison of prior quotations and contracts prices with current quotations for the same or similar end items. To provide a suitable basis for comparison, appropriate allowances may have to be made for differences in such factors as specifications, quantities ordered, time for delivery, Government-furnished materials, and the general level of business and prices.

(c) Rough yardsticks may often be developed (in such terms as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to additional pricing techniques, including cost analysis. Such yardsticks should be considered as an indispensable adjunct to cost analysis, since a study of a single offeror's estimated costs in sole source situations will not indicate whether the proposed price is fair and reasonable because it affords no opportunity for comparison with other products of the same kind.

§ 3.807–4 Cost analysis.

(a) The need for cost analysis depends on the effectiveness of the methods of price analysis outlined in § 3.807–3, the amount of the proposed contract and the cost and time needed to accumulate the information necessary for analysis. When cost analysis is undertaken, the contracting officer must exercise judgment in determining the extent of the analysis. Cost analysis is desirable whenever:

(1) Effective competition has not been obtained;

(2) A valid basis for price comparison has not been established, because of the lack of definite specifications, the novelty of the product, or for other reasons;

(3) Price comparisons have revealed apparent inconsistencies which cannot be satisfactorily explained or otherwise reasonably accounted for;

(4) The prices quoted appear to be excessive on the basis of information available;

(5) The proposed contract is a significant amount and is to be awarded to a sole source;

(6) The proposed contract will probably represent a substantial percentage of the contractor's total volume of business; or

(7) A cost-reimbursement, incentive, price redeterminable, or time and material contract is negotiated.

(b) Cost analysis involves the evaluation of specific elements of cost and the effect on prices of such factors as:

(1) Allowances for contingencies;

(2) The necessity for certain costs;

(3) The reasonableness of amounts estimated for the necessary costs;

(4) The basis used for allocation of overhead costs; and

(5) The appropriateness of allocations of particular overhead costs to the proposed contract.

(c) Among the several types of cost comparisons that should be made, where the necessary data are available, are comparisons of a contractor's or offeror's current estimated costs with:

(1) Actual costs previously incurred by the contractor or offeror; and with its last prior estimate for the same or similar item or with a series of prior estimates;

(2) Current estimates from other possible sources; and

(3) Prior estimates or historical costs of other contractors manufacturing the same or similar items.

(d) Forecasting future trends in costs from historical cost experience is of primary importance in pricing. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends. Even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken in cases involving production of recently developed, complex equipment. In some cases, probable increases in labor efficiency, and reductions in material spoilage as a contractor's work force gains in experience with such new products can be predicted statistically. Efficiency curves may be devised to predict the reduction in the spoilage rate; learning curves may be devised to evaluate reductions in labor hours. Effective use of learning curves depends on the presence of the following elements:

(1) Direct labor should represent a substantial element of the total price;

(2) The contract price should be large enough to warrant the time spent in collecting the statistical data necessary to construct valid curves;

(3) The proposed contract should cover production over a relatively long period;

(4) A substantial body of historical labor cost data must be available; and

(5) The product must be a complex, non-standard item requiring a substantial amount of assembly labor (where relatively large amounts of automatic machinery are to be employed, or the product is a relatively standard item, learning curves may be of little value.

§ 3.807–5 Subcontracting.

(a) The amount and quality of subcontracting may be a major factor influencing price. Since a large proportion of the procurement dollar is spent by prime contractors in subcontracting for work, raw materials, parts, and components, efficient purchasing practices by a contractor will contribute heavily toward efficient and economic production. While basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, and for subcontract prices and subcontract performance, the contracting officer must have adequate knowledge of these elements and their effect on prime contract prices. Therefore, contractors' "make or buy" programs and proposed subcontracts should be reviewed in accordance with Subpart I of this Part and the information from such review should be used in negotiating prime contract prices. Even though not specifically required by Subpart I, the contracting officer should, where appropriate, elicit from the offeror or contractor information concerning:

(1) The purchasing practices of the prime contractor;

(2) The principal components to be subcontracted and the contemplated subcontractors, including (i) the degree of competition obtained, (ii) cost or price analyses or price comparisons accomplished, including current, complete and correct cost or pricing data, and (iii) the extent of subcontract supervision;

(3) The types of subcontracts; i.e., firm fixed-price or other (see § 3.401); and

(4) The estimated total extent of subcontracting, including procurement of purchased parts and materials.

In connection with subparagraph (2) (ii) of this paragraph, the contracting officer shall, in the case of subcontracts which meet the criteria of § 3.807–3(a), require the prime contractor to obtain from first-tier subcontractors a certificate as set forth in § 3.807–7, modified to reflect that it is a certification to the prime contractor rather than to the Government. The prime contractor shall be required to furnish such certificate to the contracting officer.

(b) In the review of subcontracting there should be assurance that the contractors obtain competition, if available, from qualified sources in their award of subcontracts to the extent consistent with the procurement of the required services or supplies. Contractors shall be required to undertake appropriate price analysis (see § 3.807–3) in all significant subcontract transactions, and to undertake cost analysis (see § 3.807–4) if competition is not available or does not yield reasonable subcontract prices. Where the contracting officer's consent to subcontracts is required (see § 3.903), price or cost analysis shall be required as a condition to such consent.

(c) Where subcontracts are placed on a price redetermination or fixed-price incentive basis, it is particularly important in negotiating revisions of prime contract prices that there be substantial assurance that there was initial close pricing of subcontracts. Also, contracting officers should be alert to the risk of establishing firm redetermined prime contract prices while a major subcontract is still subject to price redetermination and may eventually be redetermined at a price far lower than that ascribed to it in redetermining the prime contract price, with consequent profits to the contractor far in excess of those contemplated in the prime contract price negotiation. However, in some cases, it may be appropriate to negotiate firm prime contract prices even though the contractor has not yet established final subcontract prices, if the contracting officer can justify as reasonable the amount included for subcontracting, e.g., where fairly definite cost data on subcontract prices are available. In other cases, where certain subcontracts are subject to redetermination and available cost data on these subcontracts are highly indefinite but other circumstances require prompt negotiation of revised prime contract prices, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of specified subcontracts. This may be done by including in the contract modification a provision substantially as follows:

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

[List Subcontracts]

(d) In negotiating prime contracts where the award is not determined by price competition and in consenting to cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees under such subcontracts never exceed—

(1) Ten percent (10%) of the estimated cost, exclusive of fee, in the case of any subcontract for experimental, developmental, or research work; or

(2) Seven percent (7%) of the estimated cost, exclusive of fee, in the case of any other subcontract;

unless the payment of higher fees is approved by the Secretary concerned or his designees. These limits should not be inserted in the prime contract because such action might tend to inflate fees customarily negotiated at lower rates.

§ 3.807–6 Sole source items.

When purchases of standard commercial or modified standard commercial items are to be made from sole source suppliers' use of the techniques of price and cost analysis may not always be possible. In such instances and consistent with the volume of procurement normally consummated with the contractor, the contractor's price lists and discount or rebate arrangements should be examined and negotiations conducted on the basis of the "best user," "most favored customer" or similar practice customarily followed by the contractor. Such price negotiations should consider the volume of business anticipated for a fixed period, such as a fiscal year, rather than the size of the individual procurement being negotiated. When a contractor whose product is required because of its proprietary character or whose technical assistance is essential declines to negotiate a profit or fee in accordance with the considerations and factors set forth in § 3.808–1 or § 3.808–2, or demands a profit or fee which the contracting officer considers to be unreasonable in relation to the supplies to be furnished or services or work to be performed, the procuring activity concerned should attempt to develop an alternate source of supply.

§ 3.807–7 Certificate of current pricing data.

Where a certificate of current cost or pricing data is required in accordance with § 3.807–3(a), it shall be in the form set forth below and shall be included in the contract file along with the memorandum of the contract negotiation.

This is to certify, to the best of my knowledge and belief, that in the preparation of the proposal for _____ being (to be) produced under the terms of (contract, proposal, quotation, etc.) No. _____: (i) all available actual or estimated costs or pricing data have been considered in preparing the price estimate, and made known to the Contracting Officer for his use in evaluating the estimate, and (ii) any significant changes in the above data which have occurred since the preparation of the

above proposal through the _____ of _____, _____ also have been made
(Date) (Month) (Year)
known in the price negotiations to the Government negotiator.

Name _____
Title _____
Firm _____
Date _____

Note that 18 U.S.C. 1001 prescribes criminal penalties for making false representations to the Government.

§ 3.807–8 Unacceptable substitutes for pricing negotiations.

Contracting officers shall not rely primarily (i) on the contractor's certificate as to the reliability of current data used in negotiations where effective competition is not obtained, nor (ii) on profit limiting statutes as remedies for ineffective pricing. Such statutes generally provide for the recapture of excessive profits.

§ 3.807–9 Specified contingencies.

Where a contract is to include a provision for adjustment of price upon the happening of a specified contingency (e.g., escalation clauses, Government-furnished property clauses, tax clauses), the contract price should not include any amount on account of such contingency.

§ 3.808 Profit or fee.

§ 3.808–1 General.

A fair and reasonable provision for profit or fee cannot be made by simply applying a certain predetermined percentage to the cost estimate or selling price of a product. Rather, the profit or fee should be first established as a dollar amount, after considering the factors set forth in this section. Therefore, where a fee is involved and it is necessary to determine the percentage relationship between the fee and the estimated cost of the contract in order to comply with administrative and statutory limitations on fees for cost-reimbursement type contracts, the percentage shall be determined only after the dollar amount of the fee has been established for negotiation purposes.

§ 3.808–2 Factors for determining fee or profit.

The factors set forth in subparagraphs (a) through (i) below should be considered in determining profit or fee in all contracts, whether for supplies or services; for construction work; or for experimental, developmental, or research work; and whether of the fixed-price type or of the cost-reimbursement type unless otherwise specified in the particular factor. All of the following factors, as set forth in paragraphs (a) through (i) of this section should be evaluated in the light of the basic policy set forth in § 3.801–1 which provides that supplies and services shall be procured from responsible sources at fair and reasonable prices calculated to result in the lowest overall cost to the Government:

(a) *Effect of competition.* Where competition is adequate and effective and proposals are on a firm fixed-price basis, the contracting officer normally need not consider in detail the amount of estimated profit included in a price. Where effective competition is lacking, the estimate for profit for the proposed fixed fee should be analyzed in the same manner as all other elements of price, applying the factors set forth in this section.

(b) *Degree of risk.* (1) The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than where the contractor assumes all risk.

(2) Some cost-plus-a-fixed-fee contracts and task orders for research and development call for the delivery of prototypes of other "hardware." Other such contracts or task orders require only that the contractor exert its "best efforts" to deliver the required end item. Frequently this is because the contractor is not willing to assume the additional burden of incurring substantial cost overruns without additional fee in order to complete performance. When the contract calls for delivery of developed models in accordance with well-defined performance or design characteristics or a predetermined delivery schedule, or both, in contrast to an obligation only to exert its "best efforts" to develop and deliver such models, payment of the fee should be conditioned on performance in accordance with the contractor's obligation to deliver, and in such cases the contractor may be entitled to a larger fee both because of the risk inherent in its commitment and because of the successful completion of the work.

(c) *Nature of work to be performed.* A major consideration in the determination of the amount of profit or fee, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed and any unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements on existing equipment, whether the caliber or class of engineer involved is that of an "idea-man," or whether the contractor is to be required by the contract to assign to the work unusually skilled talent.

(d) *Extent of government assistance.* The Department of Defense encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. Where extraordinary financial, facilities, or other assistance must be furnished to a contractor by the Government, such extraordinary assistance should have a modifying effect in determining what constitutes a fair and reasonable profit or fee. (See also § 3.404–3(d).)

(e) *Extent of the contractor's investment.* The extent of a contractor's total investment (i.e., both equity and borrowed capital) in the performance of the contract will be taken into consideration in determining the amount of the fee or profit.

(f) *Character of contractor's business.* Recognition must be given to the type of business normally carried on by the contractor, the complexity of manufacturing techniques, the rate of capital turnover, and the effect of each individual procurement upon such business. For example, where a contractor is engaged in an industry where the turnover of working capital is low, generally the profit objective on individual contracts is higher than in those industries where the turnover is more rapid.

(g) *Contractor's performance.* In addition to the factors set forth in § 3.101, the contractor's past and present performance should be evaluated in such areas as quality of product, quality control, scrap and spoilage, efficiency in cost control (including need for and reasonableness of cost incurred), meeting delivery schedules, timely compliance with contractual provisions, creative ability in product development (giving consideration to commercial potential of product), engineering (including inventive, design simplification, and development contributions), management of subcontract programs, and any unusual services furnished by the contractor. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(h) *Subcontracting.* In negotiating the profit or fee, the nature and extent of any subcontracting should be considered, particularly as it bears on the contractor's performance, administrative responsibility, financial investment, and degree of risk as outlined above. The degree and nature of subcontract programs vary on a broad spectrum. While it is not possible to define precisely the exact profit or fee treatment to be accorded each situation, the general guidelines which follow will be taken into consideration. The evaluation of a contractor's subcontracting program should not consist merely of applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price. A relatively large amount of subcontracting need not make for negotiation of a lesser profit or fee—the character and circumstances of the subcontracting and the effect on the prime contractor's costs must be taken into account. Although purchased material and subcontracted work are usually properly included in the base upon which profit is computed, instances may arise in which a significant portion or portions of a contract are subcontracted in such a way that only a minimum amount of responsibility or risk remains with the prime contractor. In such a case, the amount of fee or profit should be less than where the contractor assumes substantial risk. Of primary importance is the degree to which the subcontracting provides a better product and lower costs, with timely delivery,

and in which the contractor assumes heavy managerial effort, responsibility and risk. In this connection, consideration should be given to the contractor's past and present effectiveness in offering to qualified small business concerns and to firms in labor surplus areas an opportunity to compete for subcontracts (see for example, § 1.707–3) and to the contractor's furnishing assistance to such concerns as they require or as the Government may specifically request. A contractor's effectiveness in furnishing such opportunity or assistance to an unusual or exceptional degree, should be given favorable consideration in determining the amount of fee or profit.

(i) *Unrealistic estimates.* If records reveal that a contractor's actual costs are consistently lower than his estimated costs (indicating a practice of excessive estimates), and if the contractor refuses to provide what seems to be reasonable estimate of costs, a lower profit or fee should be considered.

§ 3.808–3 Incentive profit or fee.

See §§ 3.403–4, 3.404–4 and 3.406.

§ 3.808–4 Minimal fees or cost sharing arrangements.

In certain circumstances, as where experimental, developmental, or research work is attractive because of direct or potential commercial applications, consideration should be given to using a contract providing for only a nominal or token fee, or no fee, or on a cost-sharing basis.

§ 3.808–5 Fee limitation for experimental, developmental, or research work.

In connection with the administrative and statutory limitations on fees set forth in § 3.404–3(c), the existence of the administrative limitation of 10 percent for research and development work should not prevent the negotiation of fees, either fixed or incentive, up to the level of the statutory limitation of 15 percent in the appropriate circumstance. Such cases, however, shall be fully documented through factual support including specific details of prior experience with the contractor, the complexity of the work to be performed, and the details in connection with all of the above factors. Contractors proposing such fees should be required to support their proposals in a similar manner. These requirements apply not only to fixed fees but to incentive fees as well which in their final evaluation can exceed the administrative limitation.

§ 3.809 Audit as a pricing aid.

(a) *General.* The audit services within the Military Departments should be utilized as a pricing aid by the contracting officer to the fullest extent appropriate when the dollar amount involved is sufficiently large to, or special circumstances exist which warrant the time and expense required for the particular type of advisory audit, special survey, or audit analysis of price or cost desired. Judicious use of audit services will expedite proper pricing. The determination as to the necessity of an audit report for pricing purposes is the responsibility of the contracting officer. When requesting audit services, the contracting officer shall state the purpose for which the report is to be used and define any specific areas of audit examination which should be given special attention.

(b) *Application.* Except for contracts containing retroactive price revision clauses, pricing techniques are concerned mainly with estimates of future costs. Therefore, audit reports for either retroactive or prospective pricing should not only establish costs accrued to a specific cut-off point for price proposal purposes but also should include cost trends and other available information which would be of assistance to the contracting officer in price negotiation. Such audit reports will serve a useful purpose in:

(1) The evaluation of contingency allowances, overhead allocations, purchasing management efficiency, and similar cost elements;

(2) Both the initial and subsequent pricing of contracts containing price revision clauses;

(3) Establishing limitations on costs and price revision adjustments; and

(4) Establishing negotiated overhead rates for cost-reimbursement type contracts.

(c) *Conditions for use.* Close coordination between the audit agency and procurement personnel will assist in determining the necessity of audit of price or cost proposals or the necessity of special surveys relating to contractor's accounting or purchasing systems. Some of the conditions under which the contracting officer should consider the use of audit services include:

(1) Inadequate knowledge concerning the contractor's accounting policies, cost systems, or substantially changed methods or levels of operation;

(2) Previous unfavorable experience indicating doubtful reliability of the contractor's estimating, accounting, or purchasing methods;

(3) Procurement of a new product for which cost experience is lacking; and

(4) Contract performance requiring a substantial period of time.

§ 3.810 Exchange of information.

In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between Military Departments, bureaus, technicial services and other procuring activities since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

§ 3.811 Record of price negotiation.

At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared a memorandum, setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price.

Subpart I—Subcontracting Policies and Procedures

§ 3.900 Scope of subpart.

This subpart sets forth policies and procedures for the evaluation, review, and approval of contractors' "make or buy" programs, purchasing systems, and proposed subcontracts.

§ 3.901 General.

(a) Information as to the contractor's "make or buy" program, purchasing system, and proposed subcontracts may be important to (1) negotiation of reasonable contract prices (see §§ 3.807–5 and 3.808–2(h)), (2) assurance of satisfactory contract performance, or (3) carrying out Government policies regarding small business (§ 1.707–1), labor surplus areas (§ 1.805–1), use of Government facilities, maintenance of mobilization base, or other policies which may be appropriate to the particular procurement. Therefore, Government review of contractors' "make or buy" programs and proposed subcontracts is required as set forth in this subpart. Where make or buy decisions and subcontracting will have a substantial impact on price negotiation or contract performance or administration, the contractor's "make or buy" program and subcontracting should be evaluated and agreed on during negotiations, to the extent practicable.

(b) Review of the contractor's purchasing system, principal proposed subcontracts and "make or buy" program should generally be made where (1) the item, system, or work is complex, the dollar value is substantial, or competition is restricted; and (2) cost reimbursement, price redetermination, or incentive-type contracts are to be used.

§ 3.902 Review of "make or buy" program.

(a) A "make or buy" program is that part of a contractor's written plan for the production of an end item which outlines the major components, assemblies, subassemblies, and parts to be manufactured (including testing, treating, and assembling) in his own facilities and those which will be obtained elsewhere by subcontract. A "make" item is any item produced, or work performed, by the contractor or his affiliate, subsidiary, or division.

(b) Where the nature of the procurement is such that, in view of the factors in § 3.901(b) above, review of the "make or buy" program is appropriate or is otherwise considered essential, the prospective contractor shall be required to submit its proposed "make or buy" program, together with sufficient data to permit the contracting officer to evaluate such factors in paragraph (c) of this section as are pertinent.

(c) In reviewing the "make or buy" program during negotiation, consideration shall be given to the following factors in the light of how they affect the interests of the Government:

(1) The effect of the contractor's plan to make or buy, as the case may be, on price, quality, delivery, and performance;

(2) Whether the contractor plans to broaden its base of subcontractors through competitive means;

(3) Whether the contractor has given consideration to competence, abilities, experience, and capacities available within other firms;

(4) Whether small business concerns are given an equitable opportunity to compete for subcontracts;

(5) Whether the contractor or major subcontractors propose to do work in plant, the nature of which differs significantly from their normal in-plant operations or for which they are not historically suited;

(6) Whether production of the item or performance of the work will create a requirement, either directly or indirectly, for additional facilities to be furnished by the Government, by the contractor, or by subcontractors;

(7) whether the contractor proposes to ask the Government to furnish additional facilities to do the work in-plant for which there is capacity elsewhere which is competitive in quality, delivery, and overall cost, and is acceptable as a source to the contractor; and

(8) Other factors, such as the nature of the item, experience with similar items, future requirements, engineering, tooling, starting load costs, market conditions, and the availability of personnel and material.

After agreement on the program is reached, the contracting officer shall notify the contractor as to the Government's approval of the program and shall inform the contractor as to any requirement for further review during performance of the contract.

(d) In contracts resulting from negotiation in which a "make or buy" review has been made and agreement reached thereon pursuant to paragraph (c) of this section, there generally should be included a requirement for notification to the Government in advance of any proposed change to the "make or buy" program together with justification therefor. Where notification is required, the following clause shall be used:

CHANGES TO MAKE OR BUY PROGRAM

The contractor agrees to perform this contract in accordance with the "make or buy" program attached to this contract except as hereinafter provided. If the Contractor desires to change the "make or buy" program, he shall notify the Contracting Officer in writing of the proposed change reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the proposed change. With respect to items deferred at the time of negotiation of this contract for later additions to the "make or buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. The Contractor shall not, without the written consent of the Contracting Officer, make changes or additions to the programs: *Provided*, That in his discretion, the Contracting Officer may ratify in writing any changes or additions and such ratification shall constitute the consent of the Contracting Officer required by this clause. The "make or buy" program attached to this contract shall be deemed to be modified in accordance with the written consent or ratification by the Contracting Officer.

(e) Approval of the contractor's purchasing system (§ 3.903) shall not be construed as approval of the "make or buy" program where such is required.

§ 3.903 Review of subcontracting and contractors' purchasing systems.

Examination of the contractor's purchasing system and plans for subcontracting, review of proposed subcontract sources and prices in the light of the factors indicated in § 3.901, and discussions with contractor to bring about any adjustments which may be needed to clear the way for formal subcontract approval, should generally be accomplished as part of the negotiation of the prime contract. Any resulting purchasing system approvals may be granted before the contract is executed.

§ 3.903–1 Contract clauses.

(a) The prescribed clauses, covering Government consent to subcontracts, for cost-reimbursement type contracts are set out in §§ 7.203–8 and 7.402–8. Except where definite and final evaluation of the contractor's subcontracting is accomplished during negotiations, the following clause (unless modified in accordance with paragraphs (b), (c), or (d) of this section) shall be included in all fixed-price incentive and fixed-price redeterminable contracts where—

(1) It is anticipated that one or more subcontracts may each exceed $100,000 or such other figure as is to be included in (b)(ii) and (iii) of the following clause in accordance with paragraph (c) of this section;

(2) The work of the prime contractor, or of the plant or division of the prime contractor which will perform the contract, is predominantly for the Government; or

(3) The estimated contract price is $1,000,000 or more.

SUBCONTRACTS

(a) As used in this clause, the term "subcontract" includes purchase orders.

(b) Except as provided in paragraph (d) below, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract which—

(i) Is on a cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of $10,000, including any fee; or

(ii) Is proposed to exceed $100,000; or

(iii) Is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed $100,000.

(c) The advance notification required by paragraph (b) above shall include:

(i) A description of the supplies or services to be called for by the subcontract;

(ii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(iii) The proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete, and correct cost or pricing data, accompanied by a certificate from the subcontractor, in such form as the Contracting Officer may prescribe, to the effect that all cost or pricing data has been considered by the subcontractor in preparing its proposal and that such data is current, and has been provided the Contractor; and

(iv) Identification of the type of contract proposed to be used.

(d) Advance notifications of subcontracts, as required by paragraph (b) above, are not required for any subcontract (i) not on a cost-plus-a-fee, time and material, or labor-hour basis, if the Contracting Officer has in writing approved the Contractor's purchasing system and the subcontract is within the limitations of such approval, or (ii) consented to in writing by the Contracting Officer as a proposed subcontract prior to the execution of this contract.

(e) The Contractor shall not, without the prior written consent of the Contracting Officer, enter into any subcontract for which advance notification to the Contracting Officer is required by this clause; *provided* that, in his discretion, the Contracting Officer may ratify in writing any subcontract and such ratification shall constitute the consent of the Contracting Officer required by this paragraph.

(f) No consent by the Contracting Officer to any subcontract or any provisions thereof or approval of the contractor's purchasing system shall be construed to be a determination of the acceptability of any subcontract price or of any amount paid under any subcontract or to relieve the contractor of any responsibility for performing this contract, unless such approval or consent specifically provides otherwise.

(g) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(b) The clause set forth in paragraph (a) of this section may be appropriately modified so as not to require advance notification of, or consent to, any subcontracts which have been definitely and finally evaluated during negotiations. In this respect, the clause may limit advance notifications thereunder to one or more particular subcontracts or classes of subcontracts, or may, in individual cases, be tailored to unusual or particular circumstances.

(c) In paragraph (b) (ii) and (iii) of the clause set forth in paragraph (a) of this section, a lower dollar amount may be inserted in lieu of $100,000 where it is determined that closer surveillance of subcontracting is desirable because of the character of the industry involved, the critical nature of work which will probably be subcontracted, the absence of competition in placing the prime contract, uncertainties as to the adequacy of the contractor's purchasing system, or the novelty of the supplies or services being procured. A higher dollar amount than $100,000 may be inserted in paragraph (b) (ii) and (iii) of the clause when the insertion of the higher amount is approved at a level higher than that of the contracting officer, as prescribed by the Department concerned.

(d) The certificate prescribed by paragraph (c)(iii) of the clause shall be in the form set forth in § 3.807–7 appropriately modified to reflect that it is a certificate to the prime contractor, rather than to the Government.

§ 3.903–2 Consent to subcontracts.

(a) The contracting officer's consent to subcontracts required by the clause set forth in § 3.903–1 (for fixed-price redeterminable or fixed-price incentive contracts) or the clause set forth in §§ 7.203–8 or 7.402–8 (for cost-reimbursement type contracts) shall be accorded by individual consent on subcontract-by-subcontract basis. However,

where the contracting officer has approved the contractor's purchasing system, in whole or in part, such consent is not required for subcontracts within the scope of such approval, except as to cost-reimbursement type, time and materials, or labor-hour subcontracts, and in the case of cost-reimbursement type prime contracts, subcontracts, which provide for the fabrication, purchase, rental, installation, or other acquisition of any item of industrial facilities.

(b) The purposes of subcontract consent requirements are usually best served if review and analysis of the contractor's purchasing system and of its proposed subcontracts are carried out in conjunction with negotiation of the prime contract and concurrently with any review of the contractor's "make or buy" program as required by § 3.902). Although consent to subcontracts cannot always be formally accomplished prior to execution of the prime contract (since definitive subcontracts are not generally entered into until after execution of the prime), the review, analysis, and discussion leading up to such formal consents should, where feasible, be conducted during the negotiation process.

§ 3.903–3 Approval of purchasing system.

(a) Approval of a contractor's purchasing system should be granted only after a survey which includes review of such factors as:

(1) The degree of competition obtained by the contractor's purchasing methods;

(2) The contractor's pricing policies and techniques, when necessary, including its methods of obtaining current, complete and accurate cost and pricing data;

(3) The contractor's method of evaluating subcontractors' responsibility (§ 1.906);

(4) The extent to which the purchasing system is consistent with any contract requirements covering small business and labor surplus area concerns; and

(5) The treatment accorded affiliates of the contractor or other concerns having close working arrangements with the contractor.

(b) Approval of a contractor's purchasing system may be unqualified or may be limited. For example, the purchasing system may be approved except for subcontracts in excess of a stated amount or except for subcontracts for stated work which is of such critical nature that extraordinary Government surveillance is called for. Where the approval is limited by reason of deficiencies in the purchasing system, the contractor shall be notified of such deficiencies and requested to correct them. In no case shall approval of the contractor's purchasing system waive the requirement for individual consent to cost-reimbursement, time and materials, or labor-hour subcontracts. In the case of cost-reimbursement type prime contracts, in addition to the foregoing, approval of the contractor's purchasing system shall not waive the requirements for individual consent to subcontracts which provide for the fabrication, purchase, rental, installation, or other acquisition of any item of industrial facilities.

(c) Upon approval of the contractor's purchasing system (whether unqualified or limited), the contracting officer shall give the contractor written notice thereof. The notice shall set forth any limitations on the approval and shall state that the approval does not (1) relieve the prime contractor of any of its obligations under any contract, (2) restrict the Government from subsequently withdrawing the approval in whole or in part, or (3) cover any unapproved material changes which the contractor may make in its purchasing system.

(d) After approval of the contractor's purchasing system, periodic examination of the contractor's operations under such system shall be made to determine whether any substantial changes in procedures, initiated by the contractor or as a result of recommendations by the Government, have occurred, as well as to evaluate the contractor's performance under the purchasing system.

(e) Prior to conduct of a survey of the contractor's purchasing system, the contracting officer or responsible activity shall ascertain in accordance with Departmental procedures whether other Department of Defense activities have conducted surveys of the purchasing system. In this connection, pertinent information relating to the most recent survey and the results thereof (including any updating accomplished) shall be requested and shall be furnished expeditiously by the activity performing such review. Maximum use will be made of the past evaluation in order to prevent needless multiplicity of surveys.

§ 3.903–4 Review of individual subcontracts.

(a) In reviewing or consenting to individual subcontracts, the contracting officer should give appropriate consideration to the following:

(1) Whether the decision to enter into the proposed subcontract is consistent with the contractor's approved "make or buy" program, if any (see § 3.902);

(2) Whether the proposed subcontract will require the use of Government furnished facilities;

(3) The responsibility of the proposed subcontractor (§ 1.906);

(4) Basis for selecting proposed subcontractor, including the degree of competition obtained;

(5) Cost or price analysis or price comparisons accomplished, with particular attention to whether cost or pricing data are current, complete, and correct (see § 3.903–1(d));

(6) Extent of subcontract supervision;

(7) Types of contracts used (Subpart D of this part); and

(8) Estimated total extent of subcontracting, including procurement of parts and materials.

(b) In reviewing subcontracts, careful and thorough evaluation is particularly necessary when:

(1) The prime contractor's purchasing system or performance thereunder are considered inadequate;

(2) Subcontracts are for items for which there is no competition or for which the proposed prices appear unreasonable (see § 3.807–5(b) of this part).

(3) Close working arrangements or business or ownership affiliations exist between the prime and the subcontractor which may preclude the free use of competition or result in higher subcontract prices than would otherwise be obtained;

(4) A subcontract is being proposed at a price less favorable than that which has been given by the subcontractor to the Government, all other factors such as manufacturing period and quantity being comparable; or

(5) A subcontract is to be placed on a cost-reimbursement, time and material, labor-hour, fixed-price incentive, or fixed-price redeterminable basis.

Where subcontracts have been placed on a cost-reimbursement, time and materials, or labor-hour basis, contracting officers should be skeptical of approving the repetitive or unduly protracted use of such types of subcontracts and should follow the principles of § 3.803(b).

§ 3.904 Additional contract clauses.

Additional contract clauses with respect to subcontracting with Small Business and Labor Surplus Area concerns are set forth in Part 7 of this subchapter.

PART 4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Procurement by Barter—Commodity Credit Corporation

Sec.
4.501 General.
4.502 Procurement effected within the United States.
4.503 Procurement effected outside the United States.

AUTHORITY: §§ 4.501 to 4.503 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Procurement by Barter—Commodity Credit Corporation

§ 4.501 General.

The purpose of this subpart is to establish procedures which will assist the Commodity Credit Corporation to arrange and to make, through private trade channels, barters and exchanges of United States surplus agricultural commodities.

§ 4.502 Procurement effected within the United States.

(a) On requirements of $100,000 or more for:

(1) Materials or equipment required in connection with foreign economic and military aid and assistance programs;

(2) Materials or equipment required for offshore construction programs; or

(3) Other supplies not subject to the Buy American Act or the limitations contained in the Annual Appropriations Act (Berry Amendment), or which have been previously excepted therefrom pursuant to Subpart F, Part 1 of this subchapter; the purchasing office shall send a copy of the invitation for bids or request for proposals to the Commodity Credit Corporation, Barter and Stockpiling Division, U.S. Department of Agriculture, Washington 25, D.C.

(b) Such invitations for bids or requests for proposals shall contain appropriate space for indicating alternate prices, one clearly labeled for barter prices and the other clearly labeled for non-barter prices. In addition, such invitations for bids and request for proposals shall include the following clause:

NOTE—PAYMENT BY BARTER (JUN. 1957)

Attention is directed to section 303 of the Agricultural Trade Development and Assistance Act of 1954 (Pub. Law 480, 83d Cong.) which authorizes the disposal by barter or exchange of surplus agricultural commodities for use outside of the United States, its possessions and Puerto Rico. BIDDERS OR OFFERORS INTERESTED IN A BARTER ARRANGEMENT (accepting payment in agricultural commodities for use outside of the United States, its possessions, and Puerto Rico rather than in dollars) SHOULD CONSULT AND MAKE APPROPRIATE ARRANGEMENTS WITH THE COMMODITY CREDIT CORPORATION, Barter and Stockpiling Division, United States Department of Agriculture, Washington 25, D.C., prior to submitting a bid.

Simultaneously with the issuance of this invitation for bids or request for proposals, a copy thereof is being furnished to the Commodity Credit Corporation.

Bids or proposals may be made on a barter basis, or on a non-barter basis, or on both bases in the alternative. Bids or proposals on either basis shall be stated in terms of dollars, not in terms of the desired commodity. Arrangements for converting dollar receipts under the contract into commodities must be made by separate agreement with the Commodity Credit Corporation.

Any bid or proposal based on a barter arrangement must be submitted directly to the purchasing office issuing this invitation for bids or request for proposals. In addition, a copy of the official bid or proposal must be forwarded to the Commodity Credit Corporation, by the time specified for submitting bids or proposals, in a sealed envelope marked with the invitation for bids or request for proposals number, and the date and time of opening by the purchasing office.

The Commodity Credit Corporation will consider the barter aspects of all such bids or proposals and will then advise the purchasing office issuing this Invitation for Bids or Request for Proposals which bids or proposals, if any, based on a barter arrangement are acceptable to the Commodity Credit Corporation. Any such bids or proposals which are acceptable to the Commodity Credit Corporation will be considered and evaluated by the purchasing office in connection with the evaluation of the non-barter bids or proposals received hereunder. If the lowest acceptable barter type bid or proposal is equal to or less than the price of the lowest responsive non-barter bid or proposal, preference will be given to the barter type bid or proposal.

No award will be made on a barter basis unless the bidder or offeror has entered into a suitable agreement with the Commodity Credit Corporation and the Commodity Credit Corporation has informed the purchasing office that the barter bid or proposal is acceptable. If the award is made on the basis of a barter type bid or proposal, the bidder or offeror, pursuant to the clause of the contract entitled Assignment of Claims and notwithstanding any language to the contrary contained therein, hereby irrevocably assigns all the moneys due or to become due under the resultant contract to the Commodity Credit Corporation. The bidder or offeror will be entitled to acquire commodities on the basis of its agreement with the Commodity Credit Corporation.

(c) The Commodity Credit Corporation will retain the barter bids or proposals which it receives in a locked container or until at least 24 hours after the specified opening time for bids or proposals. The bids or proposals based on a barter arrangement will then be opened and analyzed by the Commodity Credit Corporation, which will advise the contracting officer as to which such bids or proposals are acceptable to the Commodity Credit Corporation.

(d) The contracting officer shall make an award on the basis of the lowest responsive bid or proposal, and shall advise the Commodity Credit Corporation in the event the award is made on the basis of a barter type bid or proposal. No award will be made until the Commodity Credit Corporation advises the procuring office as to which barter type bids or proposals, if any, are acceptable, or until ten days after the date set for the opening of bids or receipt of proposals. If the lowest acceptable bid or proposal is on a barter basis, the contracting officer, prior to making the award, shall require such bidder or offeror to furnish evidence of an agreement with the Commodity Credit Corporation covering the payment and assignment arrangements. Where no barter type bids are received by the Commodity Credit Corporation, the Commodity Credit Corporation will promptly advise the contracting officer.

(e) Where the award is made on the basis of a barter type bid or proposal, payment will be made in accordance with the terms of the contract, but to the Commodity Credit Corporation rather than directly to the contractor.

(f) Negotiated contracts based on a barter type proposal shall contain a provision reciting the irrevocable assignment of the contractor's claim for payment to the Commodity Credit Corporation.

§ 4.503 Procurement effected outside the United States.

On procurements of $100,000 or more for supplies or services, except those procurements to be funded and denominated in local currencies or funded in dollars and denominated in local currencies, major overseas commands shall utilize the procedures outlined below:

(a) Major overseas commands shall make available to designated representatives of the Commodity Credit Corporation a copy of all new contracts resulting from procurements described above.

(b) Contracting officers shall distribute to prospective contractors, with the Invitation for Bids or Request for Proposals, or during the course of negotiations, a Commodity Credit Corporation information sheet describing the procurement by barter program.

(c) Designated representatives of the Commodity Credit Corporation are authorized direct contact with contracting officers for the purpose of obtaining information with respect to pertinent clauses in specific existing contracts which may affect barter negotiations.

(d) Commodity Credit Corporation may obtain from a contractor an assignment of moneys due or to become due to the contractor and must, in accordance with the provisions of the Assignment of Claims clause, forward a Notice of Assignment of Claims to the contracting officer, to the disbursing officer, and to any sureties on the contract. The contracting officer shall insure that the Notice of Assignment of Claims is signed by an authorized representative of the Commodity Credit Corporation and that a true copy of the instrument of assignment between the contractor and the Commodity Credit Corporation is attached to the notice. The contracting officer shall acknowledge receipt of the Notice of Assignment of Claims from the Commodity Credit Corporation.

(e) Upon presentation of invoices by the contractor, the contracting officer shall insure that each invoice contains a statement by the contractor that he recognizes the assignment to the Commodity Credit Corporation, its validity, and the right of the Commodity Credit Corporation to receive payment. Disbursing officers shall effect appropriate payments to the Commodity Credit Corporation for the amount of the invoice, less any authorized deductions.

PART 5—INTERDEPARTMENTAL PROCUREMENT

Sec.
5.000 Scope of part.

Subpart A—Procurement Under Federal Supply Schedule Contracts

5.100 Applicability.
5.101 Federal Supply Schedule contracts.
5.102 Distribution of Federal Supply Schedules and related publications.
5.103 Mandatory use of Federal Supply Schedules.
5.103–1 General.
5.103–2 Exceptions to mandatory use.
5.103–3 List of Federal Supply Schedule contracts which are mandatory upon the Department of Defense.
5.103–4 Establishment or revision of Federal Supply Schedules mandatory upon Department of Defense.
5.104 Federal Supply Schedules the mandatory use provisions of which do not apply to the Department of Defense.
5.105 Completely optional Federal Supply Schedules.
5.106 Federal Supply Schedules with multiple award provisions.

Subpart B—Procurement From General Services Administration Stores Depots

5.200 Applicability.
5.201 General.
5.202 Stores Stock Catalog.
5.203 Procedure for procurement from General Services Administration Stores Depots.
5.204 General Services Administration Stores Depots and regional offices.

Subpart C—Procurement Through Federal Supply Service Consolidated Purchasing Programs

5.300 Applicability.
5.301 Federal Supply Service consolidated purchasing programs.
5.302 Mandatory use of consolidated purchasing programs.
5.303 Optional use of consolidated purchasing programs.

Subpart D—Procurement of Prison-Made Supplies

5.400 Applicability.
5.401 General.
5.402 Preference as between prison-made and blind-made supplies.
5.403 Schedule of supplies which are prison-made.
5.404 Mandatory procurement of prison-made supplies.
5.404–1 Mandatory procurement from Federal Prison Industries, Inc.
5.404–2 Mandatory procurement of prison-made supplies from General Services Administration Stores Depots.
5.405 Nonmandatory procurement of prison-made supplies.
5.406 Procurement procedure.
5.406–1 Procurement from Federal Prison Industries, Inc.
5.406–2 Procurement from General Services Administration Stores Depots.
5.407 Exceptions.
5.408 Clearances.

Subpart E—Procurement of Blind-Made Supplies

5.500 Applicability.
5.501 General.
5.502 Schedule of supplies which are blind-made.
5.503 Mandatory procurement of blind-made supplies.
5.504 Procurement procedure.
5.504–1 From General Services Administration Stores Depots.
5.504–2 Through National Industries for the Blind.
5.505 Clearances.
5.505–1 Emergency requirements.
5.505–2 Supplies not available from agencies for the blind.
5.506 Optional procurement of blind-made supplies.

Subpart F—Procurement of Printing and Related Supplies

5.601 Printing and related supplies.

Subpart G—Procurement Under the Economy Act From or Through Another Federal Agency

5.700 Scope of subpart.
5.701 Authorization and policy relating to placing and filling orders.
5.702 Determination of amount and method of payment.

Subpart H—Procurement of Certain Utility Services by Use of General Services Administration Area Contracts

5.800 Applicability.
5.801 General.
5.802 Distribution of GSA Public Utility Schedules and related publications.
5.803 Department of Defense use of GSA area contracts.
5.804 Ordering under area contracts.

Subpart I Through J—[Reserved]

Subpart K—Coordinated Procurement

5.1100 Definitions.
5.1100–1 Coordinated procurement.
5.1100–2 Single procurement.
5.1100–3 Requiring department.
5.1100–4 Procuring department.
5.1100–5 Military interdepartmental purchase request (MIPR).
5.1101 Application of procurement assignment.
5.1102 Responsibilities under single procurement.

Sec.
5.1102-1 Single department procurement.
5.1102-2 Joint procurement.
5.1102-3 Plant Cognizance Procurement.
5.1103 General principles governing implementation of procurement assignments.
5.1103-1 Standard format—development and promulgation of implementing procedures.
5.1103-2 Relationship between research and development and single procurement.
5.1103-3 Small dollar value purchases.
5.1103-4 Emergency.
5.1103-5 Department of Defense Manufacturing Establishment.
5.1103-6 Local purchase as normal means of supply.
5.1104 Items in short supply.
5.1105 Transfer of uncompleted contracts.
5.1105-1 Effect of assignment of procurement responsibility.
5.1105-2 Disputes under transferred contracts.
5.1105-3 Contracting officers under transferred contracts.
5.1106 Purchase authorization.
5.1106-1 MIPR's or other authorized procurement requests.
5.1106-2 Determinations and findings.
5.1107 Components of end items.
5.1107-1 Contractor-furnished components.
5.1107-2 Government-furnished components.
5.1107-3 Purchase of components over and above those initially purchased with the end item.
5.1108 Funds and payments.
5.1108-1 Citation of appropriation and funds of Requiring Department.
5.1108-2 Citation of funds of Procuring Department.
5.1109 [Reserved]
5.1110 Administrative costs.
5.1111 Inspection.
5.1112 Execution and administration of contracts.
5.1113 Status reporting.
5.1114 Specifications.
5.1115 Transportation of supplies.
5.1116 Procurement agreements.

Subpart L—Commodity Assignments

5.1201 Commodity assignments to Military Departments.
5.1201-1 Department of the Army.
5.1201-2 Department of the Navy.
5.1201-3 Department of the Air Force.

AUTHORITY: §§ 5.000 to 5.1201-3 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301-2324, 70A Stat. 127-133; 10 U.S.C. 2301-2314.

§ 5.000 Scope of part.

This part deals with the procurement of supplies and services by the Military Departments from or through any other Government department or agency, with the exception of the procurement of supplies and services under the authority of Part 4, Coordinated Procurement. This subpart is not applicable to procurement effected outside the United States except as otherwise provided by Departmental procedures.

Subpart A—Procurement Under Federal Supply Schedule Contracts

§ 5.100 Applicability.

This subpart applies only to procurements of supplies to be delivered, or services to be performed, in the United States, its Territories, possessions, or Puerto Rico, as indicated in the Federal Supply Schedule check list current at the time of the procurement.

§ 5.101 Federal Supply Schedule contracts.

The Federal Supply Service, General Services Administration, enters into open end contracts for many classes of supplies and services which, although in common use by Federal agencies, normally do not lend themselves to definite quantity consolidated buying or to distribution from GSA warehouse stock. Federal Supply Schedules are General Services Administration publications which list under commodity classifications the supplies or services to be purchased from the contractors named therein. Military purchasing activities are required (see § 5.103) or authorized (see §§ 5.104 and 5.105) to order supplies and services under Federal Supply Schedule contracts. The ordering of such supplies and services under Federal Supply Schedule contracts shall be effected by placing delivery orders on DD Form 1155 (Order for Supplies or Services) (see § 16.303) in accordance with the provisions of the applicable Federal Supply Schedule and §§ 5.103, 5.104, and 5.105, or, when agreed to by the contractor, by one of the methods set forth in §§ 3.604, 3.605, or 3.606 of this chapter.

§ 5.102 Distribution of Federal Supply Schedules and related publications.

To obtain copies of Federal Supply Schedules, contractors' catalogs (including price lists) except those catalogs which by special agreement may be furnished directly by contractors, and Federal Supply Schedule check lists, purchasing activities and installations shall process requests on GSA Form 457 to the General Services Administration regional office serving the area in which the purchasing activity or installation is located. The check lists are issued periodically to show the status of all Federal Supply Schedules in effect, amendments thereto as to the dates specified, and information as to other pertinent matters. Purchasing activities and installations shall also request from the GSA regional office distribution of copies of general provisions for Federal Supply Schedule contracts. The General Services Administration regional or district offices are listed in § 5.204.

§ 5.103 Mandatory use of Federal Supply Schedules.

§ 5.103-1 General.

Section 5.103-3 lists the classes of supplies and services, the procurement of which under Federal Supply Schedules is mandatory on the Department of Defense. These Federal Supply Schedule contracts provide that for a definite period the contractor is obligated to deliver all supplies and services that may be ordered thereunder by Government agencies, subject to stated minimum and maximum amounts of any order (see paragraph (b) of § 5.103-2).

§ 5.103-2 Exceptions to mandatory use.

(a) *Emergency procurement.* When an emergency requires immediate delivery of supplies or services designated as mandatory on the Department of Defense which cannot be effected by ordering under Federal Supply Schedule contracts, authority is granted to make open market procurements of such supplies and services after the contracting officer has determined in writing that an emergency exists.

(b) *Abnormal requirements.* Federal Supply Schedule contracts generally provide that the mandatory use of provisions do not apply to abnormal requirements; that is, (1) any order of less than a stated minimum amount, (2) any order for an item or combination of items in excess of a stated maximum amount, and (3) a series of orders from the same ordering office in quick succession and aggregating in excess of the maximum amount.

(c) *Similar items.* Where specific articles or services listed in a mandatory Federal Supply Schedule will not meet a special requirement, open-market purchase of articles or services to meet such a special requirement is authorized. When articles or services having the same general characteristics and intended use are so procured, a written statement, citing the articles or services together with the reasons why items listed in the applicable Federal Supply Schedule would not serve the purpose, shall be prepared, signed by an authorized official of the using agency, and furnished the General Services Administration office which issued the Schedule within 15 days after date of purchase.

§ 5.103-3 List of Federal Supply Schedule contracts which are mandatory upon the Department of Defense.

(a) *Mandatory nationally.*

Class	Title of schedule
7, 14	Gasoline and Lubricating Oil—Service Station Deliveries.
8	Tires and Tubes (Other Than Aircraft), Part II (Commercial tires and tubes only).
8, 45, 60	Brake Lining, Clutch Facings, Oil Filter Elements, and Tire Chains, Etc., Part IV. (Selected items only are mandatory upon DOD.)
17	Spark Plugs, Part II.
17	Electric Lamps, Part VI.
17	Household and Quarters Lamps, Part VII.
18	Purchase, Maintenance, Repair, and Rental of Micro-Photographic Equipment, and Supplies, Part IV.
26	Household and Quarters Furniture, Part I.
26	Household and Quarters Furniture, Part II.
26	Household and Quarters Furniture, Part III.
26	Household and Quarters Furniture, Part IV.
26	Office Furniture, Wood and Steel, Including Steel Insulated Filing Cabinets, Part V.
27	Floor Coverings, Part I.
35	Books, Part I, Sections A and B. (Section A only is mandatory upon DOD.)
35	Periodicals and Law Books, Part II. (Law Books Section only is mandatory upon DOD.)

Class	Title of schedule
53	Drafting-Room and Office Supplies, Part I.
53	Envelopes, Printed and Plain, Part V.
54, 104	Typewriters (Manual and Electric); Purchase, Exchange Allowances, and Repair Parts; Maintenance and Reconditioning of Electric Typewriters, Part I.
54	Office Equipment, Part III, Sections A and B.
54	Offset Duplicating Blankets and Plates, Direct Image and Photographic (Metal and Paper Type), Part IV.
66	Vacuum Cleaners and Repair Parts, Accessories and Attachments, Part II.
83	Aircraft Tires (Casings and tubes).
103	Recordings and Transcription Service, Part I.

(b) *Mandatory in Washington, D.C., and contiguous area.*

Class	Title of schedule
16, 17	Dry Batteries.
18, 51, 53	Photographic Paper and Film, and Other Sensitized Materials and Photographic Chemicals, Classes 18 and 51, Part II, and Class 53, Part III. (Class 51 and 53 items only are mandatory upon DOD.)
26	Executive Type Furniture, Class 26, Part VI. Also Class 25, Smoking Stands, Class 53, Desk Trays, and Class 54, Baskets, Wastepaper.
27	Window Coverings, Part III.
42	Abrasives, Casters, Door Closers, Padlocks, Steel Strapping, etc.
51	Gases, Industrial, Medicinal, and Refrigeration; Part III.
53	Rubber Stamps, Part IV.
57	Laboratories and Special Apparatus and Supplies, Section C.
58	Fire Extinguishers, Repair Parts, and Accessories.
67	Feed and Forage, Part I.
67	Seed, Part II.
70	Agricultural Materials (Fertilizers, peat, and soil conditioners).
89 [1]	Subsistence Items.
89 [1]	Ice.
103	Correct Time Service.
103	Regraining of Offset Duplicating Plates, Part II.
103	Wiping Cloth Service, Part IV.

[1] FSC group.

§ 5.103-4 Establishment or revision of Federal Supply Schedules mandatory upon Department of Defense.

(a) *Policy.* The Administrator of General Services has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense or making any other changes in such schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year except where—

(1) The item is a part or accessory incidental to a basic item;

(2) The item is a component of a unit assembly;

(3) The item has a demonstrated need to fill out a range of colors, sizes or other characteristics; or

(4) The item involves a contract for services.

(b) *Procedures.* Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded through channels to the Office of the Assistant Secretary of Defense (Supply and Logistics). Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of thiry-five days for consideration should be anticipated. These proposals will be distributed to the representatives of the Military Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Department of Defense and General Services Administration representatives cannot reach agreement on a question raised regarding proposals involving Federal Supply Schedules mandatory upon the Department of Defense, the question will be forwarded to the Assistant Secretary of Defense (Supply and Logistics) for consideration, and, if appropriate, for a statement of the Department of Defense position to the Administrator of General Services.

§ 5.104 Federal Supply Schedules the mandatory use provisions of which do not apply to the Department of Defense.

In addition to the Federal Supply Schedule contracts listed in § 5.103, there are other Schedules containing mandatory use provisions which do not apply to the Department of Defense and under which the Federal Supply Schedule contractors are not required to accept orders from the Military Departments. However, such Federal Supply Schedule contracts may be considered as available sources of supply against which military purchasing activities may place orders on an optional basis. Such schedules shall not be used for the procurement of nonmandatory items when (a) changes in specifications are anticipated, (b) technical inspection is required, or (c) special packaging, packing, preservation, or marking is necessary. When an order of $2,500 or more is contemplated from such schedules the purchasing activity shall assure itself prior to ordering that the order is reasonably justifiable, based on considerations such as time of delivery, service, and administrative expense, as being more advantageous to the Government than a purchase from other sources.

§ 5.105 Completely optional Federal Supply Schedules.

In addition to the Federal Supply Schedule contracts described in §§ 5.103 and 5.104 there are Federal Supply Schedules in the following areas which are completely optional; Government purchasing activities are not required to order under such contracts and the contractors are not required to accept orders:

Class	Title
8-10-60-66	Motor-Vehicle Parts and Accessories; Gasoline and Diesel Engine Parts, and Construction and Road-Building Machinery Parts.
54	Rental, Repair, Maintenance, and Reconditioning of Office Machines.

Military purchasing activities may place orders under such schedules subject to the limitations and procedures prescribed in § 5.104.

§ 5.106 Federal Supply Schedules with multiple award provisions.

There are also multiple award Federal Supply Schedules which list several contractors as possible sources for certain requirements. When orders in excess of $2,500 are placed at other than the lowest price available for the type of services or supplies required, the purchasing activity shall include in the contract file a memorandum for record setting forth the facts and conclusions justifying the order. The justification may be based on considerations such as time of delivery, service, and administrative expense. Where the Federal Supply Schedule indicates that the multiple awards were made in order to make available a selection of services or supplies to meet a specific requirement, the justification may, in addition to the considerations stated above, be based on differences in performance characteristics, and compatibility with existing equipment or systems.

Subpart B—Procurement From General Services Administration Stores Depots

§ 5.200 Applicability.

This subpart applies only to procurements of supplies to be delivered in the United States, its Territories, its possessions, or Puerto Rico, as indicated in the General Services Administration Stores Stock Catalog current at the time of the procurement.

§ 5.201 General.

It is the general policy of the Department of Defense, when consistent with military necessity, to place maximum re-

liance on producer or commercial distributive systems for supplying requirements of the military departments. However, items and classes of material which have been designated for supply through local purchase and which normally are stocked by General Services Administration Stores Depots will be procured through the appropriate General Services Administration Stores Depot: *Provided*, That—

(a) The delivered price from the General Services Administration Stores Depot is not greater than the delivered price of the item from commercial sources;

(b) The service rendered by the General Services Administration Stores Depot, in terms of availability and procurement lead time, is equal to or better than that of commercial sources; and

(c) Such procurement is consistent with Subparts D and E of this part. The procurement of items stocked by General Services Administration Stores Depots which are under DOD–GSA interagency purchase assignments will be in accordance with the implementing procedures relating to such assignments.

§ 5.202 Stores Stock Catalog.

The General Services Administration periodically publishes an illustrated "Stores Stock Catalog" which sets forth, among other things (a) all standard supplies carried in stock for issue by the Stores Depots listed in § 5.204, (b) special supplies carried in stock for issue only by certain of the depots, and (c) price information on a portion of the supplies listed. Copies of the "Stores Stock Catalog," and additional price lists may be obtained, upon request, from any of the regional offices or depots listed in § 5.204.

§ 5.203 Procedure for procurement from General Services Administration Stores Depots.

Procurement from General Services Administration Stores Depots of supplies listed in the "Stores Stock Catalog" shall be made by submitting a delivery order on DD Form 1155 (Order for Supplies or Services), (see § 16.303 of this subchapter) to that General Services Administration Stores Depot which can best serve the procuring activity or installation, taking into consideration transportation costs, shipping time, and the regional boundaries of the Stores Depots. The delivery order shall contain the information required by the ordering instructions in the catalog.

§ 5.204 General Services Administration Stores Depots and regional offices.

The General Services Administration operates stores depots and regional offices located in or near the cities listed below, serving the areas indicated on the back cover page of the "Stores Stock Catalog." The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region	*Address*
1. Boston, Mass	620 Post Office and Court House Building, Boston 9, Mass.
2. New York, N. Y	250 Hudson Street, New York 13, N. Y.
3. Washington, D. C	Room 5450, Seventh and D Streets SW., Washington 25, D. C.
4. Atlanta, Ga	Peachtree-Seventh Building, 50 Seventh Street NE., Atlanta 23, Ga.
5. Chicago, Ill	7200 South Leamington Avenue, Chicago 38, Ill.
Cleveland, Ohio	Room 212, Federal Building, Public Square, Cleveland 14, Ohio.
6. Kansas City, Mo	2306 East Bannister Road, Kansas City, Mo.
7. Dallas, Tex	P. O. Box 1315, Fort Worth, Tex.
8. Denver, Colo	Denver Federal Center, Denver, Colo.
9. San Francisco, Calif	49 Fourth Street, San Francisco 3, Calif.
Los Angeles, Calif	Orders for shipment by this depot should be directed to the San Francisco address.
10. Seattle, Wash	C/o Naval Air Station, Seattle 15, Wash.

Subpart C—Procurement Through Federal Supply Service Consolidated Purchasing Programs

§ 5.300 Applicability.

This subpart is not applicable to the procurement of supplies and services outside the United States.

§ 5.301 Federal Supply Service consolidated purchasing programs.

The Federal Supply Service conducts consolidated purchasing programs for the delivery of definite quantities of selected supplies directly from vendors to depots of various Government agencies for storage and subsequent issue, or for delivery to use points or transshipping points for oversea use. In this connection, purchase responsibility for certain common administrative supplies or services, as it affects the Department of Defense, is assigned in accordance with § 1.112 of this subchapter.

§ 5.302 Mandatory use of consolidated purchasing programs.

Mandatory use by the Departments of the consolidated purchasing programs of the Federal Supply Service, covering selected common administrative supplies and services, will be prescribed by Department of Defense Directives. Requirements of the Military Departments, to the extent practicable, shall be determined and furnished sufficiently in advance to the Federal Supply Service in order that planned procurement may be accomplished.

§ 5.303 Optional use of consolidated purchasing programs.

Optional use by the Military Departments of consolidated purchasing programs conducted by the Federal Supply Service is permitted for common administrative supplies and services which are not covered by the mandatory purchasing programs required by Department of Defense directives.

Subpart D—Procurement of Prison-Made Supplies

§ 5.400 Applicability.

This subpart is not applicable to supplies both procured and used outside the United States.

§ 5.401 General.

Supplies of the classes listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions" shall be purchased in accordance with the policies and procedures set forth in this subpart.

§ 5.402 Preference as between prison-made and blind-made supplies.

In any case where similar supplies are manufactured or offered for sale both by Federal penal and correctional institutions and by agencies for the blind, the supplies must be purchased from Federal Prison Industries, Inc., to the extent available.

§ 5.403 Schedule of supplies which are prison-made.

Supplies which are manufactured by Federal penal and correctional institutions are in strict conformity with Federal Specifications. These supplies are listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions" (referred to in this subpart as the "Schedule"). Copies of the Schedule are available from Federal Prison Industries, Inc., care of Department of Justice, Washington 25, D.C.

§ 5.404 Mandatory procurement of prison-made supplies.

§ 5.404–1 Mandatory procurement from Federal Prison Industries, Inc.

Supplies listed in the Schedule shall be procured directly from Federal Prison Industries, Inc., when—

(a) Supplies require oversea packaging or packing;

(b) Supplies are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned; or

(c) Supplies are required in less than carload lots, but are not stocked by General Services Administration Stores Depots.

§ 5.404–2 Mandatory procurement of prison-made supplies from General Services Administration Stores Depots.

Supplies listed in the Schedule which are required in less than carload lots and which are stocked by General Services Administration Stores Depots shall be procured from such Depots, except that procurement shall be made directly from Federal Prison Industries, Inc., when (a) the procuring activity or installation is so located that it is more practical and economical to procure directly from Federal Prison Industries, Inc., rather than from or through the General Services Administration, or (b) the General Services Administration Stores Depot is temporarily unable to furnish the required supplies, in which instance the Depot will so advise the procuring activity or installation so that the procurement may be made directly from Federal Prison Industries, Inc.

§ 5.405 Nonmandatory procurement of prison-made supplies.

Contracting Officers are encouraged to utilize the facilities of Federal Prison Industries, Inc., to the maximum extent practicable in the procurement of supplies which are not listed in the Schedule, but which are nevertheless of a type manufactured in Federal penal and correctional institutions.

§ 5.406 Procurement procedure.

§ 5.406–1 Procurement from Federal Prison Industries, Inc.

Procurement directly from Federal Prison Industries, Inc., will be made by placing a delivery order, using DD Form 1155 (Order for Supplies or Services), (see § 16.303 of this subchapter) with Federal Prison Industries, Inc., c/o Department of Justice, Washington 25, D.C.

§ 5.406–2 Procurement from General Services Administration Stores Depots.

Procurement from General Services Administration Stores Depots of prison-made supplies listed in the Schedule shall be made by submitting a delivery order, using DD Form 1155 (see § 16.303 of this subchapter), to the General Services Administration Regional Office which normally serves the procuring activity or installation.

§ 5.407 Exceptions.

Supplies listed in the Schedule may be procured through National Industries for the Blind or from commercial sources without securing clearance from Federal Prison Industries, Inc., under any of the following conditions:

(a) Immediate delivery or performance is required by public exigency;

(b) Suitable used supplies can be obtained;

(c) Supplies are both procured and used outside the United States and Alaska; or

(d) The total cost of the order is $25 or less.

§ 5.408 Clearances.

In addition to the exceptions provided in § 5.407, the Military Departments may procure through National Industries for the Blind or from commercial sources, supplies of the types listed in the Schedule to the extent only that such procurement is specifically authorized in clearances issued by Federal Prison Industries, Inc., as set forth in paragraphs (a) and (b) of this section:

(a) General clearances are issued by Federal Prison Industries, Inc., when classes of supplies are not available from Federal penal and correctional institutions, or when it is otherwise in the best interest of the Government to allow procurement of those classes of supplies from agencies for the blind or from commercial sources. A copy of each general clearance is forwarded to the Department of Defense for dissemination to the Military Departments. Purchase orders or contracts written pursuant to a general clearance need not be supported by a copy of the clearance, but the clearance number must be cited on the purchase order or contract as well as on the initial voucher.

(b) Formal clearances are issued in response to requests initiated by procuring activities or installations desiring to procure from agencies for the blind or from commercial sources supplies of the type listed in the Schedule when such supplies are not covered by a general clearance. Requests for formal clearances shall be addressed to Federal Prison Industries, Inc., % Department of Justice, Washington 25, D. C. Actual purchase of the required supplies shall not be consummated prior to the issuance of the formal clearance. A copy of the clearance certificate must be attached to the initial voucher.

Subpart E—Procurement of Blind-Made Supplies

§ 5.500 Applicability.

This subpart is not applicable to supplies both procured and used outside the United States.

§ 5.501 General.

Supplies listed in the Schedule of Blind-Made Products shall be procured in accordance with the policies and procedures set forth in this subpart.

§ 5.502 Schedule of supplies which are blind-made.

Supplies manufactured by agencies for the blind are listed in the Schedule of Blind-Made Products (referred to in this Subpart E as the Schedule), now printed in separate loose-leaf form, copies of which may be obtained from any of the General Services Administration Regional Offices or Depots listed in § 5.204. Items available from stocks at General Services Administration Stores Depots are so identified in the Schedule.

§ 5.503 Mandatory procurement of blind-made supplies.

(a) Except as provided in § 5.402, supplies listed in the Schedule shall be procured from agencies for the blind. Orders for such supplies shall be submitted to the General Services Administration Stores Depot which can best serve the procuring activity or installation, except that when one of the conditions set forth below is present, procurement shall be through the National Industries for the Blind:

(1) Supplies require overseas packaging or packing;

(2) Supplies are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned;

(3) Supplies are stocked by General Services Administration Stores Depots, but the procuring activity or installation is so located that it is more practical and economical to purchase directly from the agency for the blind which manufactures the supplies, rather than from the stores depot; or

(4) The schedule indicates that the supplies are not stocked by General Services Administration Stores Depots.

(b) Supplies listed in the Schedule may be procured from commercial sources under any of the conditions set forth below without securing clearance:

(1) military necessity requires delivery within two weeks;

(2) the procurement is less than a single unit as listed in the Schedule or is for $25 or less; or

(3) supplies are both procured and used outside the United States and Alaska.

§ 5.504 Procurement procedure.

§ 5.504–1 From General Services Administration Stores Depots.

When procurement of blind-made supplies is to be effected from a General Services Administration Stores Depot, such procurement shall be made by submitting a delivery order on DD Form 1155 (see § 16.303 of this subchapter) to the General Services Administration Stores Depot which can best serve the procuring activity or installation.

§ 5.504–2 Through National Industries for the Blind.

When procurement of blind-made supplies is to be effected through the National Industries for the Blind, such procurement shall be made by submitting directly to the National Industries for the Blind, 15 West 16th Street, New York 11, New York, a request, in letter form, for an allocation. Upon receipt of the request, requirements will be allocated by the National Industries for the Blind, and the procuring activity will be notified of the name and location of the agency designated to manufacture the requirements. Upon receipt of such notification, a delivery order (DD Form 1155) shall be issued to the designated agency for the blind. Such orders may be issued without limitation as to dollar amount and shall be recorded as obligations upon issuance.

§ 5.505 Clearances.

In addition to the exceptions listed in § 5.503(b) the Military Departments may procure from commercial sources, supplies of the types listed in the Schedule only to the extent that such procurement is specifically authorized in clearances issued by National Industries for the Blind or General Services Administration as provided below.

§ 5.505–1 Emergency requirements.

In an emergency when the required delivery date is in excess of two weeks, procurement of supplies of the classes listed in the Schedule may be made from a commercial source: *Provided, however*, That a clearance shall be obtained, prior to the purchase, from the General Services Administration regional office which normally serves the procuring activity or installation.

§ 5.505–2 Supplies not available from agencies for the blind.

When a request for supplies is submitted to National Industries for the Blind and notification is received that none of the agencies for the blind can furnish the supplies within the period specified, an open-market purchase of the items listed in such notification may be effected: *Provided*, That purchase action is instituted within 30 days from the date of notification.

§ 5.506 Optional procurement of blind-made supplies.

Supplies of any type or classification may be procured from agencies for the blind in any quantity, including less than carload lots, when such agency is the low bidder or offeror in response to an invitation for bids or request for proposals.

Subpart F—Procurement of Printing and Related Supplies

§ 5.601 Printing and related supplies.

Printing, binding, and blank-book work, and envelopes, paper, and related supplies, shall be procured in accordance and with (a) regulations of the Congressional Joint Committee on Printing, and (b) procedures prescribed by each respective Department.

Subpart G—Procurement Under the Economy Act From or Through Another Federal Agency

§ 5.700 Scope of subpart.

This subpart deals with orders for supplies or services placed with another Government department or agency pursuant to the authority of the Economy Act of June 30, 1932, as amended (31 U.S. Code 686), except that it does not apply to any procurement covered by other subparts of this part. Orders for supplies and services placed *within* a Military Department shall be in accordance with procedures prescribed by that Department.

§ 5.701 Authorization and policy relating to placing and filling orders.

(a) It is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources. Accordingly, prior to soliciting bids or proposals from commercial sources, it shall be decided whether to obtain supplies or services from Government agencies. Invitations for bids and requests for proposals shall not be sent to Government agencies. Current market prices, recent procurement prices, or prices obtained by informational bids as provided in § 1.309 of this chapter may be used to ascertain whether procurement can be effected more cheaply from commercial sources.

(b) Each procuring activity, when it is in the interest of the Government to do so, may place delivery orders, on DD Form 1155 (see § 16.303 of this chapter), with any other Government department or agency for supplies or services that any such requisitioned department or agency may be in a position to furnish or perform or to obtain by contract. Generally, an order for supplies or services will not be placed with a department or agency which is not in a position to furnish the supplies or is not equipped to perform the services, except that an order may be filled by means of an outside contract with a commercial source of supply if the order is placed by any one of the following: Department of the Army, Department of the Navy, Department of the Air Force, Department of the Treasury, Civil Aeronautics Administration, or Maritime Commission. An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more cheaply by private contractors.

§ 5.702 Determination of amount and method of payment.

Upon the written request of the requisitioned department or agency, an advance by check shall be made of all or part of the estimated cost of furnishing the supplies or services as specified by such requisitioned department or agency: *Provided*, That, where an advance is made, proper adjustments of the basis of the actual cost of the supplies or services shall be made as may be agreed upon by the departments or agencies concerned. Subject to approval by the requisitioned department or agency, payment by check may be made after the furnishing of the supplies or services. The amount to be paid shall be based on the actual cost of the supplies or services as may be agreed upon by the departments or agencies concerned.

Subpart H—Procurement of Certain Utility Services by Use of General Services Administration Area Contracts

§ 5.800 Applicability.

This subpart is not applicable to the procurement of utility services outside the United States.

§ 5.801 General.

The General Services Administration enters into indefinite delivery type area contracts with various utility companies for the furnishing of electricity, natural and manufactured gas distributed by pipes, steam, sewerage, or water to all, or substantially all, Government agencies located within specified areas. GSA area contracts provide that the contractor will, upon receipt of an order in the form prescribed by the contract, furnish, without further negotiation as to rates and charges, the services involved in accordance with such of its established and filed rate schedules as are applicable to the service.

§ 5.802 Distribution of GSA Public Utility Schedules and related publications.

A list of the utility services obtainable under GSA area contracts, including the area served and the name of the contractor involved, is contained in GSA Circular No. 61, Revised. GSA also has available for use with each area contract a Public Utility Schedule which includes the required order form. Copies of GSA Circular No. 61 and GSA Public Utility Schedules may be obtained, upon request, from Public Utilities Division, Transportation and Public Utilities Service, General Services Administration, Washington 25, D. C.

§ 5.803 Department of Defense use of GSA area contracts.

(a) Where GSA area contracts are adequate to meet the requirements of Department of Defense activities for utility services, such services shall be procured thereunder. In determining whether a GSA area contract is adequate to meet the requirements of the using activity, consideration should be given to (1) the area contract rates viewed in light of the magnitude of the service required, (2) any unusual characteristics of the service required, (3) any special equipment or facility requirements, (4) any special technical contract provisions required, and (5) any other special circumstances.

(b) Where it is determined by the Department concerned that GSA area contracts do not meet the requirements of the using activity, the utility services shall be procured in accordance with § 16.501 of this subchapter.

§ 5.804 Ordering under area contracts.

When utility services are procured under GSA area contracts, the method of ordering prescribed in the appropriate GSA Public Utility Schedule shall be used. The form prescribed for ordering may be modified to satisfy fiscal and administrative requirements of the Military Department concerned, and to contain such additional contract provisions as may be necessary, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034. Where GSA area contracts do not contain the Gratuities clause (§ 7.104–16 of this chapter) the clause shall be included in the order form.

Subparts I Through J—[Reserved]

Subpart K—Coordinated Procurement

§ 5.1100 Definitions.

As used in this subchapter, the following terms have the meanings set forth below:

§ 5.1100–1 Coordinated procurement.

Coordinated procurement refers to procurement (a) of supplies and services pursuant to § 5.1116 and (b) of supplies under single procurement as defined in § 5.1100–2.

§ 5.1100–2 Single procurement.

Single procurement refers to procurement of supplies pursuant to assignments of procurement responsibility made by the Secretary of Defense. The following are approved types of single procurement.

(a) Single department procurement, whereby one Military Department procures certain supplies to satisfy the requirements of all the Military Departments.

(b) Plant cognizance procurement, whereby one Military Department procures certain supplies from a particular plant to satisfy the requirements of all the Military Departments. This type of procurement is limited presently to airframes, aircraft engines, and propellers.

(c) Joint procurement, whereby a jointly staffed and financed agency within the Department of Defense procures certain supplies to satisfy the requirements of all the Military Departments.

§ 5.1100–3 Requiring department.

Requiring department refers to the Military Department originating a requisition or purchase request for supplies.

§ 5.1100–4 Procuring department.

Procuring department refers to the Military Department or agency which is assigned the procurement responsibility for the supplies.

§ 5.1100–5 Military interdepartmental purchase request (MIPR).

Military interdepartmental purchase request (MIPR) refers to DD Form 448 (Military Interdepartmental Purchase Request) (see § 16.601 of this subchapter) executed by a Requiring Department, as a request for supplies to be procured or furnished by the Procuring Department, or to be manufactured in its own facilities.

§ 5.1101 Application of procurement assignment.

Single procurement in the form of single department, joint agency, or plant cognizance procurement shall be effected whenever it will result in net advantages to the Department of Defense as a whole, except so far as it can be demonstrated that the use of such a procurement method will adversely affect military operations. Single department procurement assignments in Alaska, Hawaii, and outside the remainder of the United States, regardless of funds utilized, will be determined by the respective Unified Commanders. Implementation of such assignments will be effected within the unified commands under the direction of the Unified Commander.

§ 5.1102 Responsibilities under single procurement.

§ 5.1102–1 Single department procurement.

The Procuring Department is generally responsible for the following, under single department procurement (for specific assignment of procurement responsibilities, see Department of Defense Instruction Number 4115.1, dated March 18, 1957, Subject: Department of Defense Single Procurement Assignments, and any amendments thereto):

(a) Operational phases of procurement planning (phasing the submission of requirements, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders in such a manner as to assure meeting the needs of the Military Departments at the lowest possible price to the Government, and at the same time avoiding unnecessary peaks and valleys of production);

(b) Purchasing;

(c) Contract administration, including arrangements for followup and expediting;

(d) Acquisition of licenses under patents or other proprietary rights covering the subject matter of the procurement and the settlement of patent infringement claims arising out of the procurement. Approval of the Military Department or Departments whose funds are to be charged for the acquisition of licenses or settlement of claims will be obtained;

(e) Arrangement for inspection; and

(f) Arrangement for transportation.

§ 5.1102–2 Joint procurement.

Responsibilities for procurement by a Joint agency are as set forth in the individual agency charter.

§ 5.1102–3 Plant Cognizance Procurement.

Responsibilities for procurement and mobilization planning are as set forth in Department of Defense Instruction Number 4115.1, dated March 18, 1957, Subject: Department of Defense Single Procurement Assignments, and any amendments thereto.

§ 5.1103 General principles governing implementation of procurement assignments.

§ 5.1103–1 Standard format — development and promulgation of implementing procedures.

Implementation of a procurement assignment shall be accomplished in accordance with Section V (Implementation) Department of Defense Instruction 4115.1, dated March 18, 1957, Subject: Department of Defense Procurement Assignments, and any amendments thereto.

§ 5.1103–2 Relationship between research and development and single procurement.

Items are not subject to procurement assignment until they have reached the production stage.

§ 5.1103–3 Small dollar value purchases.

Requirements of small dollar value will be procured in accordance with the provisions of the approved implementing procedures covering the particular assignment. Such implementing procedures will normally provide a small dollar value limitation of $1,000 per line item; however, in special situations the limitation may vary depending upon the commodity area and may be expressed either in a higher or lower dollar value, by tonnage, less-than-carload lot quantities, or other units, as appropriate. Such implementing procedures will clearly state that requirements of a value or quantity less than the prescribed limitations will, wherever feasible, be procured by the Requiring Department. A MIPR for nonmilitary type items of a value or quantity less than the prescribed limitations will contain a notation that procurement by the Requiring Department was not considered to be feasible. A MIPR for a military type item need not contain such a notation. The Procuring Department will not return a MIPR submitted in accordance with the foregoing but will procure such items.

§ 5.1103–4 Emergency.

In case of emergency, where the exigencies of the situation will not permit of the delay incident to following the normal channels of single procurement, purchases may be made without the prior authorization of the Procuring Department. When such emergency purchases are made, one copy of the contractual instrument, bearing or accompanied by a statement of the emergency, shall be transmitted promptly to the purchasing activity of the Procuring Department.

§ 5.1103–5 Department of Defense Manufacturing Establishment.

When procurement assignments have been made for items required by manufacturing establishments of the Military Departments, these items shall be obtained through the facilities of the Procuring Department unless such action will unduly hinder or delay production. When procurements are made other than through the Procuring Department, one copy of the contractual instrument bearing or accompanied by a statement of the circumstances necessitating such procurement shall be transmitted promptly to the purchasing activity of the Procuring Department. This section is not applicable when purchases are made pursuant to § 5.1103–3.

§ 5.1103–6 Local purchase as normal means of supply.

When local purchase of any nonmilitary type item has been authorized by a Requiring Department as the normal means of supply, such item may be obtained by that Department without regard to limitations prescribed in the procurement assignment implementing procedures. This authority will apply only while such item remains in "local purchase" status. For purposes of procurement and administrative planning, a Requiring Department will submit to the Procuring Department a list of the assigned items which have been authorized for local purchase, identified by the commodity area in which such items are classified and the dates on which such authorization for local purchase will be effective. Similar lists will be so submitted covering items being converted from a local purchase to a central procurement status.

§ 5.1104 Items in short supply.

In cases where shortages develop in supplies being purchased, the normal procedure will be to resolve the problem on a Departmental level. If mutual agreement cannot be reached, the subject shall be referred to the Assistant Secretary of Defense (Supply and Logistics) for decision.

§ 5.1105 Transfer of uncompleted contracts.

§ 5.1105–1 Effect of assignment of procurement responsibility.

As a general rule, when the procurement responsibility for a commodity or class of commodities is assigned to one Department, uncompleted contracts of any other Department for any such commodity or class of commodities will not be transferred but will continue to be administered for all purposes by such other Department.

§ 5.1105–2 Disputes under transferred contracts.

In the case of any contract transferred, or to be transferred, from one Department to another Department, which contract refers to either the Navy Department Board of Contract Appeals or the Army Board of Contract Appeals, the contract should be amended to provide that the Armed Services Board of Contract Appeals will hear and decide all

disputes concerning questions of fact which are appealed pursuant to the "Disputes" clause of such transferred contract.

§ 5.1105–3 Contracting officers under transferred contracts.

In the case of any contract transferred, or to be transferred, to any Department, the successor to the contracting officer for each such contract shall be the Head of the Procuring Activity (or any contracting officer thereof) to which the administration of any such contract is assigned, and any such successor shall have all of the rights and responsibilities of a contracting officer under such transferred contract.

§5.1106 Purchase authorization.

§ 5.1106–1 MIPR's or other authorized procurement requests.

Military Interdepartmental Purchase Requests or other authorized procurement requests (see Subpart F, Part 16 of this subchapter), when received by the Procuring Department, shall be the authority to procure the supplies listed thereon in accordance with agreements between the Departments concerned. The Procuring Department has no responsibility to determine the validity of a stated requirement in an approved procurement request; however, it should bring to the attention of the Requiring Department apparent errors in the requirement. In coordinated procurement, the Procuring Department is authorized without referral to the Requiring Department, to deviate by 3 percent of the amount stated for each accounting classification, provided, that the sum of such deviation does not exceed 3 percent of the total amount cited in the MIPR. The Procuring Department is authorized to deviate by more than 3 percent in specific assigned commodity areas where mutual agreement has been reached and so indicated in the implementing procedures in accordance with DOD Directive 4115.28. This authorization will remain available to the Procuring Department until acceptance is completed, at which time any excess funds on the MIPR will be rescinded by the Requiring Department without the issuance of a formal amendment to the MIPR. The Requiring Department will authorize the percent variation on each MIPR, and will reserve a net amount sufficient to provide for such variation. If the deviation exceeds this percentage, referral to the Requiring Department will be necessary.

§ 5.1106–2 Determinations and findings.

(a) When procurement is by negotiation, the Procuring Department, except as provided in paragraphs (b) and (c) of this section, shall make the determinations and findings in accordance with Subpart C, Part 3 of this subchapter with respect to coordinated procurement. The Requiring Department shall furnish with the procurement request the information required by the Procuring Department to develop the determinations and findings.

(b) With respect to 10 U.S.C. 2304 (a)(13), the Requiring Department shall make the determinations and findings in accordance with Subpart C, Part 3 of this subchapter. Two copies of the determinations and findings shall be attached to the procurement request and shall be utilized by the Procuring Department as authority for negotiation, and the Procuring Department need not make further determinations and findings.

(c) With respect to 10 U.S.C. 2304 (a)(16) and when the procurement agreements under § 5.1116 (as distinguished from single procurement) do not include mobilization planning responsibility, the Requiring Department shall make the determinations and findings in accordance with Subpart C, Part 3 of this subchapter. Two copies of the determinations and findings shall be attached to the procurement request and shall be utilized by the Procuring Department as authority for negotiation, and the Procuring Department need not make further determinations and findings. With respect to single procurement (§ 5.1100–2), the Procuring Department shall make the determinations and findings.

§ 5.1107 Components of end items.

§ 5.1107–1 Contractor-furnished components.

In the procurement of end items where the contractor normally secures all components thereof from his own source (not Government-furnished), the procurement assignment does not apply to the component items required by such contractor.

§ 5.1107–2 Government-furnished components.

In the procurement of end items where the Government furnishes components which are covered by a procurement assignment, such components shall be procured in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department.

§ 5.1107–3 Purchase of components over and above those initially purchased with the end item.

The Procurement of components covered by a procurement assignment, and above those initially purchased with the end item, shall be effected in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department.

§ 5.1108 Funds and payments.

§ 5.1108–1 Citation of appropriation and funds of Requiring Department.

Contracts and orders shall cite the appropriations or funds of the Requiring Department unless it is not considered feasible and economical to relate payments directly to the end item and ultimate use of the material under procurement. The Procuring Department will, for each commodity, determine which type of funding (direct citation or consolidated-reimbursable procurement) will generally be used. The conditions under which it is considered not feasible to cite the funds of the Requiring Department are:

(a) Procurement of the end item involves separate procurement of components to be assembled by the Procuring Department.

(b) At the time of acceptance of the purchase request (MIPR), it is not considered feasible to identify specific quantities of the end item with respective Requiring Department because of the possibility of allocation of the material upon a different basis as completed items are delivered.

(c) Payments will be made without reference to deliveries of end items; for example, cost-plus-fixed-fee contracts, and fixed-price contracts with progress payment clauses.

§ 5.1108–2 Citation of funds of Procuring Department.

In cases where citation of the funds of the Requiring Department is not feasible, funds of the Procuring Department will be cited subject to reimbursement upon delivery to the Requiring Department. In those cases, contracts and orders will provide for payment by the Procuring Department.

§ 5.1109 [Reserved]

§ 5.1110 Administrative costs.

The Procuring Department shall bear, without reimbursement therefor, the administrative costs incidental to its procurement of supplies for another Department. However, when a procurement responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such procurement responsibility shall be made available to the successor Procuring Department which shall assume budget cognizance at the earliest possible date.

§ 5.1111 Inspection.

Policies and procedures concerning inspection and acceptance for use in conjunction with this Part are set forth in Part 14 of this subchapter.

§ 5.1112 Execution and administration of contracts.

Generally, the Procuring Department will execute a single contract where an award embodying the requirements of more than one Department is made to a single contractor. Administration of contracts shall be in accordance with the procedures developed by the Procuring Department in accordance with § 5.1103–1.

§ 5.1113 Status reporting.

Appropriate systems of followup shall be maintained by the Procuring Department in order that contracting personnel may be currently informed as to the performance by a contractor and to further insure that Requiring Departments are apprised of the status of contracts.

§ 5.1114 Specifications.

The Requiring Department shall be responsible for providing the Procuring Department a list of (or copies of) specifications required for purchase. Under no circumstances will the Procuring Department direct or authorize deviations or waivers from the specifications cited in the MIPR without express authority of the Requiring Department.

§ 5.1115 Transportation of supplies.

Subject to the provisions of Subpart M, Part 1 of this subchapter, every requisition or procurement request shall show the appropriation or fund and accounting classification chargeable for such transportation costs as may be incurred in effecting delivery at Government expense. Government bills of lading, when required, will generally be issued by the Procuring Department. In every instance, the Government bill of lading shall show (a) the Requiring Department as the Department to be billed, and (b) the appropriation or fund designated by that Department as the appropriation chargeable. Where Government bills of lading of the Procuring Department are used to cover shipment of supplies consigned to the Requiring Department, the bill of lading number shall be prefixed by the name of the Requiring Department.

§ 5.1116 Procurement agreements.

10 U.S.C. 2308 provides that Military Department heads by agreement may make such assignments and delegations of procurement responsibilities from one Military Department to another or may create such joint or combined procuring activities or agencies as they deem necessary or desirable. Nothing set forth in this Subchapter shall preclude the Military Departments from making agreements under 10 U.S.C. 2308 which do not violate the single procurement policies and procedures set forth in this subpart or in applicable Department of Defense Directives, Instructions, and regulations.

Subpart L—Commodity Assignments

§ 5.1201 Commodity assignments to Military Departments.

The commodity assignments set forth below have been made by the Assistant Secretary of Defense (Supply and Logistics) to the Military Departments based upon studies made by the Armed Forces Supply Center. General exclusions are:

(a) Emergency procurements;

(b) Procurements not in excess of $2,500 or where only one of an item is to be procured;

(c) Authorized local purchase items;

(d) Research and development items;

(e) Items which require continuous redesign or modification during the production phase; and

(f) Items excluded from coordinated procurement in accordance with DOD Directives.

Specific exclusions are set forth in the lists.

§ 5.1201–1 Department of the Army.

Federal supply class code	Commodity	Content
	ANTI-FREEZE	
6850 P	Miscellaneous chemical specialties	Includes: Anti-freeze compounds which contain ethylene glycol, only.
	BATTERIES, DRY CELL	
6135 P	Batteries, primary	Includes: JAN type, dry cell batteries, only.
	MILITARY CHEMICAL WARFARE EQUIPMENT AND SUPPLIES [1]	
4230 P	Decontaminating and impregnating equipment.	Includes: Items peculiar to chemical warfare only.
4240 P	Safety and rescue equipment	Includes: Military respiratory protective equipment for chemical warfare only.
6630 P	Chemical analysis instruments	Includes: Instruments peculiar to chemical warfare only.
6640 P	Laboratory equipment and supplies	Includes: Chemical laboratories (assembled outfits) only.
6665 P	Hazard-detecting instruments and apparatus.	Includes: Items peculiar to chemical warfare only.
6810 P	Chemicals	Includes: Calcium hypochlorite only.
6820 P	Dyes	Includes: Items peculiar to chemical warfare only.
6850 P	Miscellaneous chemical specialties	Includes: Agents decontaminating; and impregnites for military protective clothing for chemical warfare only.
6910 P	Training aids	Includes: Items peculiar to chemical warfare only.

See footnotes at end of § 5.1201–3.

Federal supply class code	Commodity	Content
	CONSTRUCTION AND AGRICULTURAL EQUIPMENT AND TRACTORS	
2410	Tractors, full track, low speed	
2420	Tractors, wheeled	
2520 P	Vehicular power transmission components.	Includes: Components peculiar to construction, excavating, highway maintenance, agricultural machinery and equipment, and tractors only.
2530 P	Vehicular brake, steering, axle, wheel, and track components.	Includes: Components peculiar to construction, excavating, highway maintenance, agricultural machinery and equipment, and tractors only.
2540 P	Vehicular furniture and accessories	Includes: Furniture, and accessories peculiar to construction, excavating, highway maintenance, agricultural machinery and equipment, and tractors only.
2590 P	Miscellaneous vehicular components	Includes: Misc. components peculiar to construction, excavating, highway maintenance, agricultural machinery and equipment only.
3210	Sawmill and planning machinery	
3695 P	Miscellaneous special industry machinery.	Includes: Specialized logging equipment only.
3710	Soil preparation equipment	
3720	Harvesting equipment	
3740	Pest, disease, and frost control equipment.	
3750 P	Gardening implements and tools	Includes: Garden tractors, walking type only.
3805	Earth moving and excavating equipment.	
3810	Cranes and crane-shovels	
3815	Crane and crane-shovel attachments	
3820	Mining, rock drilling, earth boring, and related equipment.	
3825	Road clearing and cleaning equipment	
3830	Truck and tractor attachments	
3895	Miscellaneous construction equipment.	
5420	Bridges, fixed and floating	
5440 P	Scaffolding equipment and concrete forms.	Includes: Concrete forms only.
5680 P	Miscellaneous construction materials	Includes: Landing mats, landing mat sets, and parts peculiar.
	DRUMS AND CANS	
7240 P	Household and commercial utility containers.	Includes: 5 gal. metal containers only.
8110 P	Drums and cans	Includes: 55 gal. 16 gage; and 5 gal. metal drums and cans only.
	ELECTRONIC EQUIPMENT FIRE FIGHTING, WATER PURIFICATION, AND SEWAGE TREATMENT EQUIPMENT [2]	
4210 P	Fire fighting equipment	Excludes: Airport crash fire fighting vehicles under DOD procurement assignment to the Air Force.
4610 P	Water purification equipment	Excludes: Kits, desalter; and stills, water, solar heated, lifesaving which are under DOD procurement assignment to the Navy.
4620 P	Water distillation equipment, marine and industrial.	Excludes: Distilling plants when purchased for use aboard those vessels under DOD procurement assignment to the Navy.
4630	Sewage treatment equipment	
	FOOD PREPARATION AND SERVING EQUIPMENT [3]	
7310 P	Food cooking, baking, and warming equipment.	Includes: Covers, steam table inset; covers, steam table pans, insets, steam tables; and pans, steam table.
7330 P	Kitchen hand tools and utensils	Excludes: Blades, bakers' peel; bottles, insulated; bottles, vacuum; boxes, spice; cases, insulated food container; covers, insulated food container; fillers, vacuum bottle; food containers, insulated; food containers, vacuum, handles, bakers' peel, wood; inserts, insulated food containers; jugs, insulated; jugs, vacuum; liners, baking cup; openers, can, electric; spice boxes; stands, heating, canteen cup; and tubs, dough mixing.
7340 P	Cutlery and flatware	Excludes: Plastic and wood cutlery and flatware; knives, Boy Scout; knives, hunting; knives, pocket; scissors, embroidery; scissors, ladies'; shears, pinking; and all items of silverware not specifically named among these exclusions.

Federal supply class code	Commodity	Content
	FOOD PREPARATION AND SERVING EQUIPMENT [2]—continued	
7350 P	Tableware	Excludes: Brackets, bulkhead, vacuum pitchers; breakers, bread; breakers, bread, metal; breakers, water, metal; breakers, water, wood; caps, breaker, water; carafes, vacuum; coffee servers, vacuum; dispensers, drinking water, portable; fillers, vacuum pitcher; pitchers, vacuum; toothpicks; tubes, drinking; and all items of silverware not specifically named among these exclusions.
7360 P	Sets, kits, and outfits, food preparation and serving.	Includes: Sets, kits, and outfits consisting of food preparation and serving equipment in the FSC Class 7310(P), 7330(P), 7340(P), and 7350(P) under DOD procurement assignment to the Department of the Army.
	LUMBER, MILLWORK, PLYWOOD, AND VENEER	
5430 P	Storage tanks	Includes: Tanks, wood, storage only.
5450 P	Miscellaneous prefabricated structures	Includes: Cooling towers, wood; and silos, wood; only.
5510	Lumber and related basic wood materials.	
5520	Millwork	
5530	Plywood and veneer.	
5630 P	Pipe and conduit, nonmetallic	Includes: Pipe, wood only.
5650 P	Roofing and siding materials	Includes: Shingles, wood only.
5660 P	Fencing, fences, and gates	Includes: Fence sections and gates, wood only.
8110 P	Drums and cans	Includes: Cooperage stock and vats wood (containers); only.
8115 P [4]	Boxes, cartons, and crates	Includes: Box, crate, and package shook only.
	MORTUARY EQUIPMENT AND SUPPLIES	
4110 P	Self-contained refrigration units and accessories.	Includes: Mortuary refrigerators only.
5340 P	Miscellaneous hardware	Includes: Casket hardware only.
9930	Memorials; cemeterial and mortuary equipment and supplies.	
	MOTOR VEHICLES, TRAILERS, AND CYCLES	
2310	Passenger motor vehicles	
2320 P	Trucks and truck tractors	Excludes: Tracked landing vehicles, which are not under DOD procurement assignment; and airport crash rescue vehicles, which are under DOD procurement assignment to the Department of the Air Force.
2330 P	Trailers	Excludes: Two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers, which are not under DOD procurement assignment; and airport crash rescue trailer units, which are under DOD procurement assigoment to the Department of the Air Force.
2340 P	Motorcycles, motor scooters, bicycles	Excluded: Bicycles and tricycles.
2430	Tractors, track laying high speed	
2510 P	Vehicular cab, body, and frame structural components.	Includes: Components peculiar to military motor vehicles only.
2520 P	Vehicular power transmission components.	Includes: Components peculiar to military motor vehicles only.
2530 P	Vehicular brake, steering axles, wheel, and track components.	Includes: Components peculiar to military motor vehicles only.
2540 P	Vehicular furniture and accessories	Includes: Furniture and accessories peculiar to military motor vehicles only.
2590 P	Miscellaneous vehicular components	Includes: Components peculiar to military motor vehicles only.
2910 P	Engine fuel system components, nonaircraft.	Includes: Components peculiar to military motor vehicles only.
2930 P	Engine cooling system components, nonaircraft.	Includes: Components peculiar to military motor vehicles only.
2940 P	Engine air and oil filters, strainers, and cleaners, nonaircraft.	Includes: Filters, strainers, and cleaners peculiar to military motor vehicles only.
2990 P	Miscellaneous engine accessories, nonaircraft.	Includes: Accessories peculiar to military motor vehicles only.
	PAPER AND PAPER PRODUCTS	
5970 P	Electrical insulators and insulating materials.	Includes: Insulating paper, electrical only.
8105 P	Bags and sacks	Includes: Bags, paper, coffee; bags, paper, flour; bags, paper, garment; bags, paper, kraft; bags, paper, shipping multiwall; bags, paper, waterproof; envelopes, packaging; paper; envelopes, packing list, paper; fiberboard packing list protectors; liners, bag, crepe paper; sacks, paper, shipping, multiwall; only.
8110 P	Drums and cans	Includes: Chipboard mailing tubes; drums, fiber; drums, fiberboard, overseas type; drum sets, fiber, nested; filing tubes, fiber; tubes, mailing and filing, fiber, only.
8115 P	Boxes, cartons, and crates	Includes: Baskets, fiber, shipping; boxes, chipboard, folding; boxes, set-up, paperboard; cartons, folding, paperboard; only.
8130 P	Reels and spools	Includes: Reels, paperboard; and spools, paperboard only.
8135 P	Packaging and packing bulk materials.	Excludes: Paper stocks controlled by the Congressional Joint Committee on Printing.
8540	Toiletry paper articles	
9310 P	Paper and paperboard	Excludes: Paper stocks controlled by the Congressional Joint Committee on Printing.
9920 P	Smokers' articles and matches	Includes: Cigarette paper packaged only.
	RAILWAY EQUIPMENT	
2110	Locomotives	
2220	Rail cars	
2230 P	Right-of-way construction and maintenance equipment	Excludes: Locomotives cranes which are under DOD procurement assignment to the Department of the Navy, and specialized types of locomotive cranes used in overseas areas with other than U.S. standard gauges and standard clearances which are not under DOD procurement assignment.
2240	Locomotive and rail car accessories and components.	
2250	Track materials, railroad	
	TELEPHONE AND TELEGRAPH EQUIPMENT AND COMPONENTS, MILITARY	
5805 P	Telephone and telegraph equipment	Includes: Military (wire) equipment, field type, only.
5815 P	Teletype and fascimile equipment	Includes: Military (wire) equipment, field type, only.
5830 P	Intercommunication and public address systems, except airborne.	Includes: Military (wire) equipment, field type, only.
5915 P	Filters and networks	Includes: Components of military (wire) equipment, field type, only.
5950 P	Coils and transformers	Includes: Components of military (wire) equipment, field type, only.
5965 P	Headsets, handsets, microphones, and speakers.	Includes: Components of military (wire) equipment, field type, only.
5985 P	Antennae, waveguides, and related equipment.	Includes: Cases, wire dispenser for military (wire) equipment, field type, only.
5995 P	Cable, cord, and wire assemblies: Communication equipment.	Includes: Components of military (wire) equipment, field type, only.
6145 P	Wire and cable, electrical	Includes: Wire and cable for military (wire) equipment, field type, only.
6625 P	Electrical and electronic properties measuring and testing instruments.	Includes: Instruments for testing military (wire) equipment, field type, only.
6940	Communication training devices	Includes: Code training sets, code practice equipment, and other telephone and telegraph training devices, only.
8130 P	Reels and spools	Includes: Reels and spools for military (wire) equipment, field type, only.
	TIME MEASURING INSTRUMENTS	
6645 P [4]	Time measuring instruments	Includes: All watches; aircraft instrument panel clocks; and spare parts thereof, as follows: aircraft clocks; aircraft panel clocks; athletic timers; cases, carrying, navigational watch; cases, watch, pocket; clocks, aircraft, mechanical; holders, watch; navigation watches, master; pocket watches; stop watches; watches, wrist, second, setting; watch case assemblies; watch movements; wrist watches.
6695 P	Combination and miscellaneous instruments.	Includes: Jewel bearings, only.
	TIRES AND TUBES [7]	
2610	Tires and tubes, pneumatic, except aircraft.	
2630	Tires, solid and cushion	

See footnotes at end of § 5.1201–3.

Federal supply class code	Commodity	Content
	WEAPONS, FIRE CONTROL EQUIPMENT, AMMUNITION AND EXPLOSIVES [5]	
1005 P [6]	Guns, through 30-mm	Includes: Guns, through 30-mm, and parts equipment therefor, as listed in Army Supply Manuals SM 9–5–1005, 10, 15; SM 9–1005, 10, 15. Excludes: Naval Ordnance type; Mk–12, 20-mm gun; aircraft gun mounts; and all other types not included above.
1010 P [6]	Guns, over 30-mm up to 75-mm	Includes: Guns, over 30-mm up to 75-mm, and parts and equipment therefor; as listed in Army Supply Manuals SM 9–5–1005, 10, 15; SM 9–1–1005, 10, 15. Excludes: Naval Ordnance type; aircraft guu mounts, and all other types not included above.
1015 P [6]	Guns, 75-mm through 125-mm	Includes: Guns, 75-mm through 125-mm, and parts and equipment therefor; as listed in Army Supply Manuals SM 9–5–1005, 10, 15; SM 9–1–1055, 10, 15. [6] Excludes: Naval Ordnance type; aircraft gun mounts; and all other types not included above.
1020 P [6] 1025 P [6] 1030 P [6] 1035 P [6]	Guns, over 125-mm	Includes: Guns, over 125-mm, and parts and equipment therefor; as listed in Army Supply Manuals SM 9–5–1025, 30; SM 9–1–1025, 30 Excludes: Naval Ordnance type and all other types not included above.
1040 [6]	Chemical weapons and equipment.	
1055 P [6]	Launchers, rocket and pyrotechnic	Includes: Launchers, rocket and pyrotechnic, as listed in Army Supply Manuals SM 9–5–1055; SM 9–1–1050, 55. Excludes: Naval Ordnance type; airborne type; and all others not included above.
1095 P [6]	Miscellaneous weapons	Includes: Miscellaneous weapons, and parts and equipment therefor, as listed in Army Supply Manuals SM 9–5–1090, 95; SM 9–1–1090, 95. Excludes: Naval Ordnance type; guns, line throwing (which are under DOD procurement assignment to the Navy); aircraft type misc. weapons; and all others not included above.
1210 P [6]	Fire control directors	Includes: Fire control equipment, as listed in Army Supply Manuals SM 9–1–1210, 20, 30, 40; SM 9–1–1210, 20, 30, 40, 50, 60, 90; SM 9–5–1290. Excludes: Naval Ordnance type and aircraft type.
1220 P [6]	Fire control computing sights and devices.	
1230 P [6]	Fire control systems, complete	
1240 P [6]	Optical sighting and ranging equipment.	
1250 P [6]	Fire control stabilizing mechanisms	Includes: Fire control equipment, as listed in Army Supply Manuals SM 9–5–1210, 20, 30, 40; SM 9–1–1210, 20, 30, 40, 50, 60, 90; SM 9–5–1290. Excludes: Naval Ordnance type and aircraft type.
1260 P [6]	Fire control designating and indicating equipment.	
1265 P [6]	Fire control transmitting and receiving equipment, except airborne.	
1285 P [6]	Fire control radar equipment, except airborne.	
1290 P [6]	Miscellaneous fire control equipment	
1305 P [6]	Ammunition, through 30-mm	Includes: Ammunition, through 30-mm, as listed in Army Supply Manual SM 9–5–1305. Excludes: Naval Ordnance type; ammunition for the Mk–12, 20-mm gun; and all other types not included above.
1310 P [6 16]	Ammunition, over 30-mm up to 75-mm.	Includes: Ammunition, over 30-mm up to 75-mm, as listed in Army Supply Manual SM 9–5–1310. Excludes: Naval Ordnance type; 40-mm ammunition (which is under DOD procurement assignment to the Navy); and all other types not included above.
1315 P [6 16]	Ammunition, 75-mm through 125-mm.	Includes: Ammunition, 75-mm through 125-mm, as liste in Army Supply Manual SM 9–5–1315; Army Supply Catalog CML 5–1–1. Excludes: Naval Ordnance type; and all other types not included above.
1320 P [6 16]	Ammunition, over 125-mm	Includes: Ammunition, over 125-mm, as listed in Army Supply Manual SM 9–5–1320; Army Supply Catalog CML 5–1–1. Excludes: Naval Ordnance type; and all other types not included above.
1325 P	Bombs	Includes: Bombs as listed in Army Supply Manuals SM 9–5–1325; SM 3–5–1325, 30, 40, 45, 65, 70, 75. Excludes: Those bombs herein assigned to the Navy; and all others not included above.
1330	Grenades	
1340 P	Rockets and rocket ammunition	Includes: HE, AT, 3.5 In., M35; Practice, 3.5 In., M36; Smoke, WP, 3.5 In., M30; Drill, 4.5 In., M24; HE, 4.5 In., M32; Practice, 4.5 In., M33; Incendiary and toxicological rockets, as listed in Army Supply Bulletin SB 3–33. Excludes: Rockets herein assigned to the Navy; and all others not included above.
1345	Land mines	
1365	Military chemical agents	
1370 P	Pyrotechnics	Excludes: Shipboard and aircraft pyrotechnics.
1375 P	Explosives, bulk propellants and explosive devices. Blasting Agents and Supplies.	Includes: Blasting agents and supplies such as: blocks, demolition; caps, blasting, electric and nonelectric; charge, cratering; charges, shaped and demolition; cord, detonating; detonators, all types; dynamite; firing devices; fuse, safety; Bangalore torpedo; kit demolition; lighter, fuse; primer, percussion cap; demolition equipment sets with ancillary items; chests, demolition platoon and squad; machine, blasting. Excludes: Navy underwater demolition requirements.
	Explosives	Includes: The following items only: Ammonium picrate (explosive D) JAN–A–166A; trinitrotoluene (TNT) JAN–T–248; tetryl JAN–T–339; pantaerythrite tetranitrate (PETN) JAN–P–387; RDX; composition B; composition B-3; pentolite, 50/50 JAN–P–408; composition C–3; composition A–3; composition A–4; nitroguanidine (picrite). Excludes: Production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Md.; and all other explosives not included above.
	Propellants	Includes: Propellants for small arms ammunition, calibers, .30- to 30-mm, inclusive, except blank and cal. .45; propellant (for small arms ammunition, caliber .45 MIL–P–3207; propellant, increment, M8 MIL–P–10557; propellant, M9; powder, rocket propellant, type N–4 MIL–P–16401; propellant cannon, M1, M6, M14, JAN–P–309; propellant cannon, M2, M5, JAN–P–323; propellant, 4.2 In. chemical mortar; propellant, M7, M15 and M17 MIL–P–668A; propellant, M10; rocket propellant powder NAVORD OS 3383. Excludes: Production capacity for any of the above listed propellants at the U.S. Naval Propellant Plant, Indian Head, Maryland; and all other propellants not included above.
1380	Military biological agents	
1390 P [6]	Fuzes and primers	Includes: Fuzes and primers for Army assigned ammunition and V.T. fuses, non-rotating types. Excludes: Naval Ordnance type; V.T. fuses, rotating type, under DOD procurement assignment to the Navy; guided missile fuzes; and all other fuzes and primers not included above.
2350	Tanks and self-propelled weapons	
6910 P	Training aids	Includes: Training Aids as listed in Army Supply Manuals SM 9–1–6910, 20; SM 9–5–6910, 20; SM 3–1–6900. Excludes: All other training aids not included above.
6920 P	Armament training devices	Includes: Armament training devices as listed in Army Supply Manuals SM 9–1–6910, 20; SM 9–5–6910, 20. Excludes: Clay pigeons; all other training devices not included above.
8140 P	Ammunition boxes, packages, and special containers.	Includes: Boxes, packages and containers for ammunition herein assigned to the Army, as listed in Army Supply Manuals SM 9–1–8140. Excludes: All other boxes, packages, and containers not assigned herein.

See footnotes at end of § 5.1201–3.

§ 5.1201–2 Department of the Navy.

Federal supply class code	Commodity	Content
	ECCLESIASTICAL EQUIPMENT, FURNISHINGS AND SUPPLIES	
6910 P	Training aids	Includes: Visual aids, chaplain, nonprojected; only.
7195 P	Miscellaneous furniture and fixtures	Includes: Board, bulletin, chapel; only.
7710 P	Musical instruments	Includes: Organs, musical only.
9925	Ecclesiastical equipment, furnishings, and supplies.	
	ELECTRONIC EQUIPMENT [1]	
	FIBERS, FIBER ROPE, CORDAGE, AND TWINE	
4020	Fiber rope, cordage, and twine.	
9420	Fibers, vegetable, animal, and synthetic.	
	FUELS, SOLID	
9110 P	Fuels, solid	Includes: Coal or coal products only.
	HAND TOOLS	
3439 P	Miscellaneous welding, soldering, and brazing supplies and accessories.	Includes: Only soldering irons, and soldering guns, and related parts and accessories only.
3750 P	Gardening implements and tools	Excludes: All powered gardening implements and tools.
5110	Hand tools, edged, nonpowered	
5120	Hand tools, nonedged, nonpowered.	
5133 P	Drill bits, counterbores, and countersinks: Hand and machine.	Includes: Bits, counterbores, and countersinks, hand only.
5136 P	Taps, dies, and collets: Hand and machine.	Includes: Taps, dies, and collets, hand only.
5140	Tool and hardware boxes	
5180 P	Sets, kits, and outfits of hand tools	Includes: Sets, kits, and outfits of nonpowered hand tools only.
5210	Measuring tools, craftmans'	
5280 P	Sets, kits, and outfits of measuring tools.	Excludes: Sets, kits, and outfits of inspection gages, and precision layout tools.
	LIFESAVING EQUIPMENT, MARINE [11]	
2040 P	Marine hardware and hull items	Includes: Anchor, sea; oars, sectional, aluminum; paddles; and paddles, telescoping, hand only.
4220 P	Marine lifesaving and diving equipment.	Includes: The following items only: Basket, search and rescue. Buoy, breeches. Cases, carrying, deflated raft. Containers, emergency equipment life raft. Containers, pararaft kit. CO_2 cylinders for inflatable life preservers and life rafts. Cushions, buoyant. Equipment, containers, coated nylon. Harness, for lifting personnel aboard ship. Inflation gear, complete and parts therefor (life raft). Kits, accessory, life raft. Kits, canvas repairing, for lifeboats, rafts and jackets. Life buoys, ring. Life floats (platform net rigging). Life preservers. Life preservers, pneumatic. Life rafts, pneumatic, airborne and shipborne. Life suits, waterproof. Life vest, shark chaser. Reflectors, corner, life raft. Water lifesaving nets and ladders.
4320 P	Power and hand pumps	Includes: Pump, hand only.
4610 P	Water purification equipment	Includes: Kits, desalter; and water stills, solar heated, lifesaving, only.
6230 P	Electric portable and hand lighting equipment.	Includes: Lantern, electric, automatic, floating; and lights, life preserver, only.
6350 P	Miscellaneous alarm and signal systems.	Includes: Mirrors, signalling only.
6605 P	Navigational instruments	Includes: Compasses, lifeboat and raft, only.
6850 P	Miscellaneous chemical specialties	Includes: Dye, sea marker, only.
2230 P	MATERIALS HANDLING EQUIPMENT Right-of-way construction and maintenance equipment, railroad.	Includes: Diesel, electric; diesel, mechanical; gasoline, mechanical; and steam locomotive cranes; together with their peculiar parts, attachments and accessories; only. Excludes: Specialized types of locomotive cranes used in overseas areas with other than U.S. standard gauges and standard clearances which are not under DOD procurement assignment, and all other right-of-way construction and maintenance equipment, railroad, which is under DOD procurement assignment to the Department of the Army.
2520 P	Vehicular power transmission components.	Includes: Peculiar parts, attachments, and accessories for the materials handling equipment herein assigned to the Navy, only.
2530 P	Vehicular brake, steering, axle, wheel, and track components.	Includes: Peculiar parts, attachments, and accessories for the materials handling equipment herein assigned to the Navy, only.
2540 P	Vehicular furniture	Includes: Peculiar parts, attachments, and accessories for the materials handling equipment herein assigned to the Navy, only.
2590 P	Miscellaneous vehicular components	Includes: Peculiar parts, attachments and accessories for the materials handling equipment herein assigned to the Navy, only.
3910 P	Conveyors	Includes: Portable conveyor units (commercial warehouse type), only.
3920 P	Materials handling equipment, nonself-propelled.	Excludes: Parts, attachments, and accessories for push-carts, handcarts and wheelbarrows.
3930	Warehouse trucks and tractors, self-propelled.	
3940 P	Blocks, tackle, rigging and slings	Excludes: Aircraft blocks, tackle, rigging and slings.
3990	Miscellaneous materials handling equipment.	
6140 P	Batteries, secondary	Includes: Industrial batteries for electrically operated materials handling equipment, only.
	PAINTS AND SEALERS	
8010 P	Paints, dopes, varnishes, and related products.	Excludes: Dope thinners; enamel thinners; lacquer thinners; paint thinners (except turpentine and dispentene); thinners, dope and lacquer; thinners, synthetic resin enamel; thinners, paint, mineral spirits; these thinners are under DOD procurement assignment to MPSA.
8030 P	Preservative and sealing compounds	Includes: Caulking compounds, glazing compounds, and putties, only.
	PEST CONTROL AGENTS	
6840	Pest control agents and disinfectants	
	PREFABRICATED AND PORTABLE BUILDINGS	
5410 P	Prefabricated and portable buildings	Includes: The following prefabricated buildings covered by the designated military specifications, only: Building, arch rib 20' x 48', MIL–B–12568; Building, arch rib 40' x 100' MIL–B–16806; Building, (CAS) complete assembly structure, MIL–B–17579 (DOCKS); Building, rigid frame 40' x 100', MIL–B–16071A; Magazine, MIL–B–15404B; Magazine, MIL–B–16041A.
	SEXTANTS, AIRCRAFT	
6605 P	Navigational instruments	Includes: Sextants, aircraft, only.
	SHIPS, SMALL CRAFT, AND RELATED MARINE EQUIPMENT	
1905 P	Combat ships and landing vessels	Includes: Landing vessels only.
1910 P	Transport vessels, passenger and troop.	Includes: Ferryboats, only.
1920	Fishing vessels	
1925	Special service vessels	
1930	Barges and lighters, cargo	
1935 P	Barges and lighters, special purpose	Excludes: Derrick, piledriver, rock cutter, concrete mixing plant, mechanical bank grader barges, other bank revetment barges; and powerplant, barges, only.
1940 [12]	Small Craft	
1945 P	Pontoons and floating docks	Includes: BuDock type pontoons only.
1950	Floating dry docks	
1990 P	Miscellaneous vessels	Includes: Commercial sailing vessels only.

See footnotes at end of § 5.1201–3.

Federal supply class code	Commodity	Content
	SHIPS, SMALL CRAFT, AND RELATED MARINE EQUIPMENT	
2010	Ship and boat propulsion components.	
2020	Rigging and rigging gear	
2030	Deck machinery	
2040	Marine hardware and hull items	
2060	Commercial fishing equipment	
2090	Miscellaneous ship and marine equipment.	
2805 P	Gasoline reciprocating engines, except aircraft, and components.	Includes: Gasoline engines for use aboard ships herein assigned, only. Excludes: Outboard, motors, gasoline.
2815 P	Diesel engines and components	Includes: Engines and components for use aboard ships herein assigned only.
2820 P	Steam engines, reciprocating, and components.	Includes: Marine main propulsion steam engines only.
2825 P	Steam turbines and components	Includes: Marine steam turbines only.
3950 P	Winches, hoists, cranes, and derricks	Includes: Equipment for use aboard ships herein assigned only:
4010 P	Chain and wire rope	Includes: Anchor chain; and anchor chains (shots, no attachments) for use aboard ships herein assigned only.
4110 P	Self-contained refrigeration units and accessories.	Includes: Units and accessories for use aboard ships only.
4120 P	Self-contained air conditioning units and accessories.	Includes: Units and accessories for use aboard ships herein assigned only.
4130 P	Refrigeration and air conditioning plants and components.	Includes: Plants and components for use aboard ships herein assigned only.
4140 P	Fans and air circulators, non-industrial.	Includes: Fans and air circulators for use aboard ships herein assigned only.
4220 P	Marine lifesaving and diving equipment.	Includes: Diving equipment only.
4310 P	Compressors and vacuum pumps	Includes: Reciprocating air compressors; and rotary air compressors for use aboard ships herein assigned only.
4320 P	Power and hand pumps	Includes: Power driven pumps; and air ejector assemblies for use aboard ships herein assigned only.
4330 P	Centrifugals, separators, and pressure and vacuum filters.	Includes: Oil purifiers; and oil filters, for use aboard ships herein assigned only.
4410 P	Industrial boilers	Includes: Boilers for use aboard ships herein assigned only.
4420 P	Heat exchangers and steam condensers.	Includes: Heat exchangers for use aboard ships herein assigned only.
4450 P	Industrial fan and blower equipment	Includes: Equipment for use aboard ships herein assigned only.
4510 P	Plumbing fixtures and accessories	Includes: Troughs, wash (personnel); troughs, water closet; and troughs, urinal; for use aboard ships herein assigned only.
4620 P	Water distillation equipment, marine and industrial.	Includes: Distilling plants for use aboard ships herein assigned only.
5430 P	Storage tanks	Includes: Tanks, metal (enclosure only, not part of ship's structure), for use aboard ships herein assigned only.
5670 P	Architectural and related metal products.	Includes: Gratings and floors, metal (does not include deck structure) for use aboard ships herein assigned only.
5985 P	Antennae, waveguides, and related equipment.	Includes: Antenna poles; and masts, antenna for use aboard ships herein assigned only.
6105 P	Motors, electrical	Includes: Motors for use aboard ships herein assigned only.
6115 P	Generators and generator sets	Includes: Gasoline, diesel and steam engine-generator sets; generators, electric; and steam turbine-generator sets for use aboard ships herein assigned only.
6125 P	Converters, electrical	Includes: Motor-generator sets for use aboard ships herein assigned only.
6220 P	Electric vehicular lights and fixtures	Includes: Fixed lights for use aboard ships herein assigned only.
6320 P	Shipboard alarm and signal systems	Includes: Alarm systems: fire alarm systems; indicating systems; telegraph systems (signals and signaling) (less electronic type); for use aboard ships herein assigned only.
6605 P	Navigational instruments	Includes: Hand leads (soundings); lead reels; sounding machines; stands, pelorus, for use aboard ships herein assigned only.
6650 P	Optical instruments	Includes: Stands, telescope, for use aboard ships herein assigned only.
6665 P	Hazard-detecting instruments and apparatus.	Includes: Hazard-determining safety devices, for use aboard ships herein assigned only.
8140 P	Ammunition boxes, packages, and special containers.	Includes: Boxes, ammunition, for use aboard ships herein assigned only.
8345 P	Flags and pennants	Includes: Boxes, signal flag, for use aboard ships herein assigned only.
	SHIPS, SMALL CRAFT, AND RELATED MARINE EQUIPMENT—Continued	
6645 P [8]	Time measuring instruments	Includes: All clocks, chronometers, and spare parts thereof, as follows: alarm clocks; boat clocks; cans, chronometer shipping and storage; carrying cases, chronometer; carrying cases, make-break circuit, chronometer; cases, chronometer, gimbal; cases, chronometer, padded; chronometers; chronometers, make-break-circuit; clocks, direct reading; clocks, electric; clocks, floor; clocks, interval timer; clocks, marine, mechanical; clocks, master control clocks, master program; clocks, master regulating; clocks, mechanical; clocks, message center; clocks, nurses'; clocks, program; clocks, shelf; clocks, wall; clocks, watchmen's; clock motors; clock movements, electric; deck clocks; dials, clock; hour-meters; interval timers; keys, clock, mariner clocks; meters engine running time; meters, hour recording; meters, time totalizing, electric; program control instruments; program timers; stop clocks; time period counters; timers, bombing; timers, engine hour; timers, sequential; timers, stop.
	WEAPONS, FIRE CONTROL EQUIPMENT, AMMUNITION AND EXPLOSIVES [9]	
1095 P	Miscellaneous weapons	Includes: Guns, line throwing only.
1310 P	Ammunition, over 30-mm up to 75mm	Includes: 40-mm ammunition only.
1325 P [13]	Bombs	Includes: Armor-piercing; depth bombs, externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlet 1280 and OP 988.
1340 P [14]	Rockets and rocket ammunition	Includes: 2.25 in. Rocket SCAR, Practice; Heads Mk 3 and Mods; Motors Mk 15 and Mods; Mk 16 and Mods. 2.75 Inc. Rocket FFAR, service and practice; Heads Mk 1 and Mods (General Purpose); Mk 5 and Mods (HEAT); Motors Mk 1 and Mods; Mk 2 and Mods; Mk 3 and Mods. 5 In. Rocket HVAR, service and practice; Heads Mk 2 and Mods (Common) Mk 6 and Mods (GP); Mk 4 and Mods (smoke) Mk 25 and Mods (ATAR); Motors Mk 10 and Mods. 5 In. Rocket FFAR service and practice; Heads Mk 24 and Mods (General Purpose); Mk 32 and Mods (Shaped Charged); Mk 26 and Mods (illum); Motors Mk 16 and Mods. Excludes: Rockets included under above assignment to the Army.
1390 P	Fuzes and primers	Includes: Fuzes and Primers for Navy assigned ammunition and V.T. fuzes, rotating type, only.
4925 P [7]	Ammunition maintenance and repair shop specialized equipment.	Includes: Sets, kits, and outfits of explosive Ordnance tools and equipment as defined in OPNAV 8027.1B, AR 755–1300–6; AFR 136–8 and further, as described in Ord Pamphlet 1851(C) and other similar documents of other services. Excludes: All others not included above.
8140 P	Ammunition boxes, packages, and special containers.	Includes: Boxes, packages and containers for 40-mm ammunition, only.

§ 5.1201–3 Department of the Air Force.

Federal supply class code	Commodity	Content
	ELECTRICAL AND ELECTRONIC COMPONENTS	
5960 P	Electron tubes, transistors, and rectifying crystals.	Includes: Only gas filled or evacuated electronic tubes which a common coordinated specification as set forth in MIL–E/1D and which are common to two or more Military Departments.
	ELECTRONIC EQUIPMENT [1] FIRE FIGHTING, RESCUE AND SAFETY EQUIPMENT (AIRPORT)	
2320 P	Trucks and truck-tractors	Includes: Airport crash rescue vehicles only.
2330 P	Trailers	Includes: Airport crash rescue trailer units only.
4210 P	Fire fighting equipment	Includes: Airport crash fire fighting vehicles only.

Federal supply class code	Commodity	Content
	LIGHTING FIXTURES, AIRPORT	
6210 P	Indoor and outdoor electric lighting fixtures.	Includes: Fixtures for airport lighting, alarm and signal systems only.
	PHOTOGRAPHIC EQUIPMENT [15]	
6710 P	Cameras, motion picture	Excludes: Submarine periscope and underwater cameras.
6720 P	Cameras, still picture	Excludes: Submarine periscope and underwater cameras.
6730 P	Photographic projection equipment	Excludes: 35 mm theatre projectors.
6740	Photographic developing and finishing equipment.	
6750 P	Photographic supplies	Excludes: Photoflash lamps, which are mandatory for purchase under the provisions of Federal Supply Schedule Class 62, Part II, Electric Lamps.
6760	Photographic equipment and accessories.	
6780	Photographic sets, kits, and outfits	

[1] The implementing procedure for this DOD Procurement Assignment also covers selected mechanical smoke generators, which are classified under FSC Class 1040 Chemical Weapons and Equipment. The entire FSC Class 1040 is under DOD Procurement Assignment to the Department of the Army.

[2] Each Department is assigned procurement responsibility for those items which the Department either designed or sponsored development, as listed in JANAP 140 and Supplemental Departmental Listings.

[3] This listing has been modified to reflect the addition of selected paper cutlery and flatware and paper tableware formerly included in the Paper and Paper Products assignment.

[4] Navy and Marine Corps requirements for Box, Crate, and Package Shook are excluded from this assignment.

[5] The following items in FSC 6645 are not assigned: chronographs; clocks, job recorder; job recording devices, racks, timecard; recorders, payroll time; recorders, time; recorders, watch movement; stamps, time; stations, watchmen's clock; time recorders; and time stamps.

[6] For purposes of procurement, Naval Ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance procured from the Army).

[7] Requirements of commercial tires and tubes, when the item to be procured is less than $10,000 per line item (for tires costing less than $1,000 per tire) or when the item to be procured is less than $25,000 per line item (for tires costing $1,000 or more per tire), shall be purchased in accordance with the mandatory provisions of Federal Supply Class 26 Part II, Tires and Tubes, Pneumatic (except aircraft). These mandatory provisions do not apply to Military tires and tubes over the above specified dollar amounts in accordance with the procedures implementing this DOD procurement assignment. This DOD procurement assignment does not include FSC Class 2620, Tires and Tubes, Pneumatic, Aircraft. These items are mandatory for purchase in accordance with the provisions of Federal Supply Class 26—Part I, Tires and Tubes, Pneumatic, Aircraft.

[8] The Department of the Army portion of this DOD procurement assignment is covered by two sets of implementing procedures. One set covers items under the cognizance of the Army Ordnance Corps and the other covers items under the cognizance of the Army Chemical Corps.

[9] Mechanical smoke generators included in this FSC Class are covered in the implementing procedures for Chemical Warfare Equipment and Supplies.

[10] Army responsible for loading, assembling and packing toxicological smoke and incendiary shells.

[11] The implementing procedures for this DOD Procurement Assignment also cover airborne and shipborne pneumatic lifeboats, which are classified under FSC Class 1940—Small Craft. The entire FSC Class 1940 is under DOD Procurement Assignment to the Department of the Navy.

[12] Airborne and shipborne pneumatic lifeboats included in this FSC Class are covered in the implementing procedures for Lifesaving Equipment, Marine.

[13] Army responsible for loading, assembling and packing toxicological, smoke, and incendiary shells. Loading, assembling, and packing in excess of Navy owned capacity to be done by Army.

[14] Filler and filling of all smoke and toxicological rockets are assigned to the Army.

[15] Excludes photographic equipment controlled by the Congressional Joint Committee on Printing and Micro-Film Equipment and Supplies.

PART 6—FOREIGN PURCHASES

Sec.
6.000 Scope of part.

Subpart A—Buy American Act—Supply and Service Contracts

6.100 Scope of subpart.
6.101 Definitions.
6.102 Statutory requirements.
6.103 Exceptions.
6.103–1 Use outside the United States.
6.103–2 Nonavailability in the United States.
6.103–3 Unreasonable cost or inconsistency with the public interest.
6.103–4 Scrap.
6.103–5 Canadian supplies.
6.103–6 Panamanian supplies for use in the Canal Zone.
6.104 Procedures.
6.104–1 Applicability.
6.104–2 Solicitation of bids and proposals.
6.104–3 Certificate.
6.104–4 Evaluation of bids and proposals.
6.104–5 Contract clause.
6.104–6 Contract administration.
6.105 List of excepted articles, materials, and supplies.

Subpart B—Buy American Act—Construction Contracts

6.200 Scope of subpart.
6.201 Definitions.
6.201–1 Construction.
6.201–2 Construction materials.
6.201–3 Components.
6.201–4 United States.
6.201–5 Domestic construction material.
6.201–6 Nondomestic construction material.
6.202 Statutory requirements.
6.203 Exceptions.
6.203–1 Nonavailability in the United States.
6.203–2 Unreasonable costs or impracticability.
6.203–3 Panamanian materials for use in the Canal Zone.
6.204 Procedures.
6.204–1 Applicability.
6.204–2 Solicitation of bids and proposals.
6.204–3 Evaluation of bids and proposals.
6.204–4 Contract listing of excepted nondomestic construction materials.
6.204–5 Contract clause.
6.204–6 Canal Zone contracts.
6.205 Penalty for violation.
6.206 List of excepted articles, materials, and supplies.

Subpart C—Appropriation Act Restrictions on Procurement of Foreign Supplies

6.300 Scope of subpart.
6.301 Definition.
6.302 Restriction.
6.303 Exceptions.
6.304 Procedures.
6.304–1 Procurement of food, clothing, spun silk yarn for cartridge cloth, or items containing mohair or cotton.
6.304–2 Procurement of items containing wool (except mohair).
6.305 Contract clause.

Subpart D—Purchases From Soviet-Controlled Areas

6.401 Restrictions.
6.401–1 General policy.
6.401–2 Soviet-controlled areas.
6.401–3 Certain supplies of foreign origin.
6.401–4 Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.
6.401–5 Supplies from North Korea or China.
6.402 Exceptions.
6.403 Contract clause.

Subpart E—Canadian Purchases

6.501 Purchases from Canadian suppliers.
6.502 Guarantee by Canadian Government.
6.503 Agreement with Department of Defence Production (Canada).
6.504 Mutual Canadian-American interests.

Subpart F—Duty and Customs

6.601 Customs duties on foreign purchases.
6.602 Emergency purchases of war material abroad.
6.602–1 General.
6.602–2 War materials.
6.602–3 Emergency purchases.
6.602–4 Use of duty-free entry certificates.
6.602–5 Limitations.
6.602–6 Duty-free entry certificate.
6.603 Supplies for vessels or aircraft operated by the United States.
6.604 Customs duties and drawbacks.
6.605 Duty-free entry of listed Canadian supplies.
6.605–1 Policy.
6.605–2 Contract clause.
6.605–3 Listed supplies for unlisted end items.
6.605–4 Amending existing contracts.

Subpart G—Mutual Security Act Procurements

6.701 Exemption from examination of records requirement.
6.701–1 General.
6.701–2 Contracts with foreign governments.
6.701–3 Contracts with other foreign contractors.

AUTHORITY: §§ 6.000 to 6.701–3 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 6.000 Scope of part.

This part deals with (a) restrictions upon the procurement, or the use in construction, of supplies originating in foreign countries, (b) purchases from Soviet-controlled countries or areas, (c) purchases from Canadian sources, (d) duty and customs, and (e) certain Mutual Security Act procurements.

Subpart A—Buy American Act—Supply and Service Contracts

§ 6.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply and service contracts.

§ 6.101 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

(a) "End products" means articles, materials, and supplies, which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts.

(b) "Components" means those articles, materials, and supplies, which are directly incorporated in end products.

(c) "United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any other areas subject to the complete sovereignty of the United States.

(d) "Domestic source end product" means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (1) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (2) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the act.

(e) "Canadian end product" means an unmanufactured end product mined or produced in Canada, or an end product manufactured in Canada if the cost of its components which are mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components.

(f) "Foreign end product" means an end product other than a domestic source end product.

(g) "Domestic bid" means a bid or offered price for a domestic source end product, including transportation to destination.

(h) "Foreign bid" means a bid or offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

§ 6.102 Statutory requirements.

Except as provided in § 6.103, the Buy American Act requires that in the procurement of supplies and services, only domestic source end products shall be acquired for public use. In determining whether an end product is a domestic source end product, only the end product and its components shall be considered.

§ 6.103 Exceptions.

§ 6.103–1 Use outside the United States.

The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States.

§ 6.103–2 Nonavailability in the United States.

The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. See § 6.105.

§ 6.103–3 Unreasonable cost or inconsistency with the public interest.

The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the cost of a domestic source end product would be unreasonable or that its acquisition would be inconsistent with the public interest. Such determinations shall be made in accordance with § 6.104–4.

§ 6.103–4 Scrap.

Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

§ 6.103–5 Canadian supplies.

(a) *Listed.* The Secretaries of the Departments have determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act with respect to certain supplies, which have been determined to be of a military character or involved in programs of mutual interest to the United States and Canada, where such supplies are mined, produced, or manufactured in Canada and either (1) are Canadian end products or (2) are incorporated in end products manufactured in the United States. Each Department maintains a list of these supplies, which is approved by the Secretary concerned. (The Departmental lists provide that end equipment parts for listed supplies are considered to be included in the lists, even though not separately listed, when they are procured under a contract that also calls for listed supplies.)

(b) *Not listed.* The Secretaries of the Departments have also determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (1) to the acquisition of any unlisted Canadian end product that is offered by a bid or proposal which is the lowest acceptable bid or proposal after any applicable duty (whether or not a duty-free entry certificate may be issued) is included for evaluation purposes, and (2) with respect to any supplies mined, produced, or manufactured in Canada that are incorporated in end products manufactured in the United States.

(c) *Application of Canadian exception.* The effect of paragraphs (a) and (b) of this section may be summarized as follows:

(1) As to any end product that is manufactured in the United States, all Canadian components are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(2) Listed Canadian end products are treated as domestic source end products and neither duty nor the evaluation factors prescribed by § 6.104–4 shall be used for evaluation.

(3) Unlisted Canadian end products are evaluated by including any applicable duty, whether or not a duty-free entry certificate may be issued.

(d) *Limitations.* The above exceptions from the provisions of the Buy American Act which are applicable solely with respect to Canadian supplies, and the special procedures relating thereto which are set forth in this subpart, do not apply to, or affect determinations made with respect to (1) items contained in the list set forth in § 6.105 or (2) the purchase of supplies for civil works acquired with funds appropriated for Civil Functions, Department of the Army.

§ 6.103–6 Panamanian supplies for use in the Canal Zone.

In accordance with the Memorandum of Understandings ancillary to the Treaty with the Republic of Panama signed January 25, 1955, the Secretaries have determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to articles, materials, or supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone.

§ 6.104 Procedures.

§ 6.104–1 Applicability.

The following procedures apply to all contracts involving the procurement of supplies except contracts exclusively for articles, materials, or supplies, for use outside the United States (but see § 6.103–5(a)).

§ 6.104–2 Solicitation of bids and proposals.

Invitations for Bids and Requests for Proposals shall state that specific information as to articles, materials, and supplies excepted from the Buy American Act (see § 6.105) is available to prospective contractors upon request.

§ 6.104–3 Certificate.

Invitations for Bids and Requests for Proposals shall require that each bid or proposal include a certificate substantially as follows:

BUY AMERICAN CERTIFICATE

The bidder or offeror hereby certifies that each end product, except the end products

excluded below, is a domestic source end product (as defined in the contract clause entitled Buy American Act); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

Excluded items: ----------

§ 6.104–4 Evaluation of bids and proposals.

(a) In accordance with the Buy American Act, the Secretaries of the Departments have determined that where the following procedures result in the acquisition of foreign end products, the acquisition of domestic source end products would be (1) unreasonable in cost or (2) inconsistent with the public interest (see §§ 6.103–3 and 6.103–5).

(b) Except as provided in paragraph (d) of this section, bids and proposals shall be evaluated so as to give preference to domestic bids. For the purpose of evaluation, a factor of 6 percent of each foreign bid (which does not offer a Canadian end product) shall be added to that foreign bid, except that where the firm submitting the low acceptable domestic bid is a small business concern, or a labor surplus area concern, or both—

(1) The proposed award shall be submitted to the Secretary if required pursuant to paragraph (c) of this section, or

(2) If not required to be submitted under paragraph (c) of this section then a factor of 12 percent (in lieu of the 6 percent factor) of each such foreign bid shall be added to that foreign bid, except that where small purchase procedures (see Part 3, Subpart F of this Subchapter) are used the 6 percent factor shall apply.

Except for those cases forwarded to the Secretary pursuant to paragraph (c) of this section, award shall be made to the low acceptable bidder. When more than one line item is offered in response to an invitation for bids or request for proposals, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the invitation for bids or request for proposals specifically provides that award may be made on a particular group of items.

(c)(1) Notwithstanding that the low acceptable bid or proposal as to any item or group of items under paragraph (b) of this section may be a foreign bid, proposed awards shall be submitted, in accordance with Departmental procedures, to the Secretary concerned for decision where all acceptable domestic bids exceed the low acceptable foreign bid plus 6 percent (determined in accordance with paragraph (b) of this section) and the sum of any low acceptable domestic bid from any single (i) small business concern or (ii) labor surplus area concerned, exceeds $100,000: *Provided,* That this subparagraph shall not apply where the low foreign bid offers a Canadian end product.

(2) Proposed awards shall be submitted, in accordance with Departmental procedures, to the Secretary concerned for decision where:

(i) Rejection of an acceptable low foreign bid is considered necessary to protect essential national security interests, such as maintenance of a mobilization base; or

(ii) Rejection of any bid or proposal for other reasons of the national interest is considered necessary.

Prior to final action, cases within this subparagraph (2) shall be referred by the Secretary concerned to the Assistant Secretary of Defense (Supply and Logistics).

(d)(1) Bids offering Canadian end products on the lists described in § 6.103–5(a) shall be evaluated on a parity with domestic bids, i.e., neither a price differential nor duty shall be added.

(2) Bids offering Canadian end products of the type described in § 6.103–5(b) shall be evaluated on a parity with domestic bids (whether or not a duty-free entry certificate may be issued) except that any applicable duty shall be added.

§ 6.104–5 Contract clause.

The clause set forth below shall be inserted in all contracts for supplies and, when applicable, in contracts for services; except that it need not be inserted in contracts exclusively for articles, materials, or supplies for use outside the United States.

BUY AMERICAN ACT (JULY 1960)

(a) In acquiring end products, the Buy American Act (41 U.S.C. 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

In contracts for civil works acquired with funds appropriated for Civil Functions, Department of the Army, delete the words "or Canada" in paragraph (a)(iii)(B) of the clause in this section.

§ 6.104–6 Contract administration.

In appropriate cases, the contracting officer should advise the contractor of the effect of exceptions to the Buy American Act on the contractor's obligations under the clause required by § 6.104–5. For example, in furtherance of mutual Canadian-American interests as described in § 6.504, the contracting officer may advise the contractor that all components of Canadian manufacture will be treated as manufactured in the United States for purposes of the Buy American Act clause.

§ 6.105 List of excepted articles, materials, and supplies.

Pursuant to the Buy American Act and §§ 6.103–2 and 6.103–3, the Secretaries have determined that the articles, materials, and supplies listed below may be acquired for public use without regard to country of origin, except as provided in Subpart D of this part. Additional determinations pursuant to 6.103–2 covering individual procurements may be made in accordance with Departmental procedures.

List of Excepted Articles, Materials, and Supplies

Acetylene, black.
Agar, bulk.
Antimony, as metal or oxide.
Asbestos, amosite.
Bananas.
Beef extract.
Bismuth.
Books, trade, text, technical or scientific; newspapers; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.
Brazil nuts.
Cadmium, ores and flue dust.
Calcium cyanamide.
Capers.
Cashew nuts.
Castor beans.
Chalk, English.
Chicle.
Chrome ore or chromite.
Cinchona bark.
Cobalt, in cathodes, rondelles, or other primary forms.
Cocoa beans.
Coconut and coconut meat in shredded, desiccated or similarly prepared form.
Coffee, raw or green bean.
Copra.
Cork, wood or bark and waste.
Damar gum.
Diamonds, industrial.
Emetine, bulk.
Ergot, crude.
Fiber, coir, abaca, and agave.
Goat and kid skins.
Graphite, natural, crystalline, crucible grade.
Hog bristles for brushes.
Hyoscine, bulk.
Iodine, crude.
Ipecac, root.
Jute and jute burlaps.
Kaurigum.
Lac.
Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Menthol, natural, bulk.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Nitroguanidine (also known as picrite).
Nux vomica, crude.
Oiticica oil.
Olive oil.
Olives, green; plain (unpitted) and stuffed, bulk.
Opium, crude.
*Petroleum, crude oil; petroleum, finished products; and petroleum, unfinished oils.
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars.
Pyrethrum flowers.
Quartz crystals.
Quebracho.
Quinidine.
Radium salts.
Rubber, crude and latex.
Rutile.
Santonin, crude.
Shellac.
Silk, unmanufactured.
Sperm oil.
Spices and herbs.
Talc, block, steatite.
Tapioca, tapioca flour and cassava.
Tartar, crude, tartaric acid and cream of tartar.
Tea.
Tin, in bars, blocks, and pigs.
Vanilla beans.
Wax, carnauba.

Subpart B—Buy American Act—Construction Contracts

§ 6.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S. Code 10 a–d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to construction contracts.

§ 6.201 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

§ 6.201–1 Construction.

"Construction" means construction, alteration, or repair of any public building or public work in the United States.

§ 6.201–2 Construction materials.

"Construction materials" means articles, materials, and supplies, which are brought to the construction site for incorporation in the building or work.

§ 6.201–3 Components.

"Components" means those articles, materials, and supplies, which are directly incorporated in construction materials.

§ 6.201–4 United States.

United States means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any other areas subject to the complete sovereignty of the United States.

§ 6.201–5 Domestic construction material.

"Domestic construction material" means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the construction material in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Department concerned to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

§ 6.201–6 Nondomestic construction material.

"Nondomestic construction material" means a construction material other than a domestic construction material.

§ 6.202 Statutory requirements.

Except as provided in § 6.203, the Buy American Act requires that in the performance of contracts for construction, only domestic construction materials shall be used. In determining whether a construction material is a domestic construction material, only the construction material and its components shall be considered.

§ 6.203 Exceptions.

§ 6.203–1 Nonavailability in the United States.

The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Department concerned has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. See § 6.206.

§ 6.203–2 Unreasonable costs or impracticability.

The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the use of a particular domestic construction material would (a) unreasonably increase the cost, or (b) be impracticable. Such determinations shall be made in accordance with § 6.204–3.

§ 6.203–3 Panamanian materials for use in the Canal Zone.

In accordance with the Memorandum of Understandings ancillary to the Treaty with the Republic of Panama signed January 25, 1955, articles, materials, and supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone are excepted from the Buy American Act.

§ 6.204 Procedures.

§ 6.204–1 Applicability.

The following procedures apply to all contracts for construction in the United States only.

§ 6.204–2 Solicitation of bids and proposals.

Invitations for Bids and Requests for Proposals for construction shall include the following provision:

INFORMATION REGARDING BUY AMERICAN ACT

(a) Pursuant to the Buy American Act (41 U.S. Code 10 a–d), it is generally required that only domestic construction materials will be used in the performance of the contract. See clause ---- of the General Provisions, entitled Buy American Act. This requirement does not apply to construction materials, or their components, included either in the list set forth in 6.206 of this Regulation or set forth below:

(Insert list here.)

(b) Additional exceptions are permitted if the Government determines as to particular construction materials that the requirement would be impracticable or would unreasonably increase the cost. Therefore, bids or proposals proposing the use of nondomestic construction materials (other than those referred to in paragraph (a) above) may be eligible for award if such nondomestic construction materials are specifically designated in the bid or proposal and if accompanied by data demonstrating that, as to each such designated nondomestic construction material, use of any corresponding domestic construction material would be impracticable or would unreasonably increase the cost. If the Government determines that an exception from the Buy American Act should be made, an exception for the particular construction materials designated will be noted in the contract and the findings which justified the exception may be inspected upon request.

(c) To show that the use of a particular domestic construction material would unreasonably increase the cost, accompanying data must show that the cost of any available acceptable domestic construction material, delivered at the construction site, would exceed by more than six percent (6 percent) the cost of the designated nondomestic construction material delivered at the construction site (including any applicable duty). The accompanying data shall reflect a thorough canvass of dealers and suppliers handling the construction materials involved.

§ 6.204–3 Evaluation of bids and proposals.

(a) *Determinations.* In accordance with the Buy American Act, the Secre-

*Petroleum definitions, as used in this Subpart. (a) Crude oil means crude petroleum as it is produced at the wellhead;

(b) Finished products means any one or more of the following petroleum oils, or a mixture or combination of such oils, which are to be used without further processing except blending by mechanical means:

(i) Liquefied gases—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures;

(ii) Gasoline—a refined petroleum distillate which by its composition, is suitable for use as a carburant in internal combustion engines;

(iii) Jet fuel—a refined petroleum distillate used to fuel jet propulsion engines;

(iv) Naphtha—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes;

(v) Fuel oil—a liquid or liquefied petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, residues;

(vi) Lubricating oil—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces;

(vii) Residual fuel oil—a topped crude oil or viscous residuum which, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil–F–859 for Navy Special Fuel Oil and any other more viscous fuel oil, such as No. 5 or Bunker C;

(viii) Asphalt—a solid or semi-solid cementitious material which gradually liquefies when heated, in which the predominating constituents are bitumins, and which is obtained in refining crude oil.

(c) Unfinished oils means one or more of the petroleum oils listed in (b) above, or a mixture or combination of such oils, which are to be further processed other than by blending by mechanical means.

taries have determined that where the procedures set forth in paragraph (b) of this section result in the use of nondomestic construction materials, the use of domestic construction materials would unreasonably increase the cost. (See § 6.203–2.)

(b) *Unreasonable cost.* If a bid or proposal is submitted in accordance with paragraph (b) of the provision set forth in § 6.204–2 and if such bid or proposal would be the low acceptable bid or proposal but for the Buy American Act, award will be made on such bid or proposal if all the following conditions are satisfied:

(1) The bid or proposal specifically designates the nondomestic construction materials (not listed as exceptions in the Invitation for Bids or Request for Proposals) proposed for use;

(2) As to each such nondomestic construction material, accompanying data show that the cost of any available acceptable domestic construction material, delivered at the construction site, would exceed by more than 6 percent the cost of the designated nondomestic construction material delivered at the construction site (including any applicable duty);

(3) As to each such nondomestic construction material, the contracting officer is satisfied that the showing required by subparagraph (2) of this paragraph is correct as of the date of the opening of bids or proposals; and

(4) The lowest acceptable bid or proposal using only domestic construction materials and construction materials excepted in § 6.206 or in the Invitation for Bids or Request for Proposals exceeds the bid or proposal designating nondomestic construction materials by more than 6 percent of the aggregate cost of the designated nondomestic construction materials delivered at the construction site (including any applicable duty).

(c) *Impracticability.* If a bid or proposal is submitted in accordance with paragraph (b) of the provisions set forth in § 6.204–2 and if such bid or proposal would be the low acceptable bid or proposal but for the Buy American Act, the proposed award shall be submitted, in accordance with Departmental procedures, to the Secretary concerned for decision, if the following conditions obtain:

(1) The bid or proposal specifically designates the nondomestic construction materials (not listed as exceptions in the Invitation for Bids or Request for Proposals) proposed for use; and

(2) As to each such nondomestic construction material, accompanying data show that it would be impracticable to use domestic construction materials.

§ 6.204–4 Contract listing of excepted nondomestic construction materials.

(a) The clause set forth below shall be included in all contracts for construction, and any articles, materials, and supplies which have been the subject of additional determinations pursuant to § 6.206 shall be listed thereunder.

NONDOMESTIC CONSTRUCTION MATERIALS

The requirements of the clause of this contract entitled Buy American Act do not apply to construction materials or their components either included in the list set forth in § 6.206 of 32 CFR or as set forth below:

(Insert list here.)

* * * * *

(b) If a contract is for award under § 6.204–3 and the use of designated nondomestic construction materials is to be permitted, the designated nondomestic construction materials shall be listed under the clause required by paragraph (a) of this section. As to each such nondomestic construction material, the contracting officer shall place in the contract file (1) a copy of the data and justification in the case of an exception under § 6.204–3 (b), or (2) a copy of the Secretarial finding of impracticability in the case of an exception under § 6.204–3 (c), and copies thereof will be available for public inspection.

§ 6.204–5 Contract clause.

The clause set forth below shall be inserted in all contracts for construction.

BUY AMERICAN ACT

(a) The Buy American Act (41 U. S. Code 10 a–d) provides that the Government give preference to construction materials which have been mined, produced, or manufactured in the United States. For the purpose of this clause:

(i) the term "construction materials" means articles, materials, and supplies, which are brought to the construction site for incorporation in the building or work;

(ii) the term "components" means those articles, materials, and supplies, which are directly incorporated in construction materials; and

(iii) the term "domestic construction material" means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the construction material in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(b) The Contractor agrees that there will be used in the performance of this contract only domestic construction materials, except as to particular construction materials which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or which are noted in the clause of this contract entitled Nondomestic Construction Materials as being excepted from the Buy American Act.

§ 6.204–6 Canal Zone contracts.

In accordance with § 6.203–3, with respect to contracts for construction in the Canal Zone, the following will be inserted in (a) the space providing for listing excepted supplies following paragraph (a) of the provision in § 6.204–2 and (b) the space following the clause in § 6.204–4:

Panamanian Materials. Any construction material or component that is mined, produced, or manufactured in the Republic of Panama. (Any such component shall be considered to be a United States component for the purpose of the "Buy American Act" clause.) (JUL. 1960)

§ 6.205 Penalty for violation.

If the Secretary concerned finds that in the performance of a construction contract there has been a failure to comply with the clause required by § 6.204–5, he shall make public his findings, including therein the name of the contractor obligated under the contract, and no other contract for construction in the United States or elsewhere shall be awarded to such contractor, or to subcontractors, materialmen, or suppliers with which such contractor is associated or affiliated, within a period of three years after such finding is made public. (See Part 1, subpart F of this chapter.)

§ 6.206 List of excepted articles, materials, and supplies.

Pursuant to the Buy American Act and § 6.203–1, the Secretaries have determined that the articles, materials, and supplies listed below may be used in construction without regard to country of origin, except as provided in Subpart D of this part. Additional determinations pursuant to § 6.203 covering individual contracts for construction may be made in accordance with Departmental procedures.

Antimony, as metal or oxide.
Asbestos, amosite.
Bismuth.
Cadmium, ores and flue dust.
Chalk, English.
Chrome ore or chromite.
Cobalt, in cathodes, rondelles, or other primary forms.
Cork, wood or bark and waste.
Damar gum.
Graphite, natural, crystalline, crucible grade.
Jute and jute burlaps.
Kaurigum.
Lac.
Logs, veneer, and lumber from Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
Mica.
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts.
Rubber, crude and latex.
Shellac.
Tin, in bars, blocks, and pigs.

Subpart C—Appropriation Act Restrictions on Procurement of Foreign Supplies

§ 6.300 Scope of subpart.

This subpart implements the customary Defense Appropriation Act restriction on the availability of appropriated funds for the procurement of any article of food, clothing, cotton, wool, or spun silk yarn for cartridge cloth, as it has recurred in Defense Appropriation Acts for several years. However, reference should be made to the current Department of Defense Appropriation Act as a check on the current applicability of this Part. Nothing herein shall affect the applicability of the Buy American Act (see Subparts A and B of this part).

§ 6.301 Definition.

For the purpose of this part, the term "possessions", as used in the phrase "United States or its possessions", includes Puerto Rico.

§ 6.302 Restriction.

Except as provided in § 6.303, there shall not be procured supplies consisting in whole or in part of any food, clothing, cotton, wool, or spun silk yarn for cartridge cloth, which have not been grown or produced in the United States or its possessions; but this does not restrict the procurement of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

§ 6.303 Exceptions.

The restriction of § 6.302 does not apply to the following:

(a) Procurements outside the United States in support of combat operations.

(b) Procurements by vessels in foreign waters.

(c) Emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto.

(d) Procurements of supplies listed in § 6.105.

(e) Small purchases of items containing wool or cotton in amounts not exceeding $5,000. For the purposes of this exception, a small purchase in an amount not exceeding $5,000 shall mean a procurement action involving a total dollar amount not in excess of $5,000, as distinguished from a single line item.

(f) Procurements of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 percent of the total price of the end item, provided that the estimated value does not exceed $10,000 or 3 percent of the total price of the end item, whichever is greater.

(g) Any articles of food or clothing or any form of cotton, spun silk yarn for cartridge cloth, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States, or its possessions cannot be procured as and when needed at United States market prices.

§ 6.304 Procedures.

§ 6.304–1 Procurement of food, clothing, spun silk yarn for cartridge cloth, or items containing mohair or cotton.

In general, food, clothing (not covered by § 6.304–2), spun silk yarn for cartridge cloth, or any form of mohair or cotton, will be procured only if grown, reprocessed, reused, or produced in the United States or its possessions. However, if the contracting officer finds that prices for such domestic supplies are unreasonable, he may refer the matter to the Secretary concerned for determination with respect to § 6.303(g) in accordance with Departmental procedures.

§ 6.304–2 Procurement of items containing wool (except mohair).

(a) The Secretaries have determined that to the extent that application of the procedures in this section results in the procurement of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices.

(b) Bids and proposals for supplies of which wool is a part will be solicited on the following alternative bases:

(1) Manufactured in the United States or its possessions from domestic wool;

(2) Manufactured in the United States or its possessions from foreign wool; and

(3) Manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(c) Each Invitation for Bids and Requests for Proposals for supplies of which wool is a component part will contain the following additional clause:

Domestic Wool Preference

(a) It is Congressional policy that, in Department of Defense procurements, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its Territories, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is not more than 10 percent above the average of the prices (for usable grades and types) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is 100 percent domestic wool, provided that such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is more than 10 per cent above the average of the prices (for usable grades and types) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) hereof, there will be added to each bid or proposal offering articles of which the wool component is 100 per cent foreign wool an evaluation factor of $_____ per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For the purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative types and grades set forth in § 6.304–2 (f) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in § 6.304–2 (f) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its Territories, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i. e., garnetting or combing) and ensuing manufacture is performed in the United States, its Territories, possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) hereof, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

The evaluation factor will be computed in accordance with paragraph (f) of this section, and the amount of the factor will be inserted in place of the blank in paragraph (c) of the above clause.

(d) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades is not more than 10 percent above the average of the prices of representative types and grades of domestic wools in the wool category which includes the wool required by the specifications (see paragraph (f) of this section), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable bids or proposals have been received for the advertised quantity offering 100 percent domestic wools, the contract will be awarded for domestically produced articles using 100 percent domestic wools and the procedure set forth in paragraphs (e) and (f) of this section will be disregarded.

(e) In the evaluation of bids and proposals under this subpart, an evaluation factor computed in accordance with paragraph (f) of this section will be added to that portion of the offered price which represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie bids or proposals result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(f) The evaluation factor to be used under paragraph (e) of this section will be 10 percent of the average of the following prices of representative types and grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price of 62 cents per pound grease basis converted to grade and type clean basis.)

Representative Type and Grade	Price, clean basis (per pound)
GROUP 1—GRADES 60'S AND FINER	
Category 1—Staple, Average and Good French Combing (worsted type)	
The average of the following grades:	
Territory original bag wool, average and good French combing, 64's and finer	$1.7748
Graded territory and Texas wool, staple and good French combing, one-half blood, 60's/62's	1.6946
Graded Fleece Wool:	
Staple and good French combing, 64's and finer	1.7862
Staple and good French combing, one-half blood, 60's/62's	1.6259
Category 2—Short, Average and Good French Combing and Clothing (woolen type)	
The average of the following grades:	
Territory original bag wool, short, French combing and clothing, fine (64's, not to exceed 15 percent of 60's/62's)	1.5801
Graded territory and Texas wool, average and good French combing, one-half blood, 60's/62's	1.6145
Graded Fleece Wool:	
Average and good French combing, 64's and finer	$1.7061
Average and good French combing, one-half blood, 60's/62's	1.5343
GROUP 2—GRADES 50'S–60'S	
Category 3—Staple and Good French Combing (worsted)	
The average of the following grades:	
Graded territory and Texas wools:	
Staple and good French combing, three-eighths blood, 56's/58's	1.4656
Staple and good French combing, 50's/48's, one-quarter blood	1.3397
The average of the following grades:	
Graded Fleece Wool:	
Staple and good French combing, three-eighths blood, 56's/58's	1.3626
Staple and good French combing, 50's/48's, one-quarter blood	1.2710
Category 4—Average French Combing (woolen type)	
The average of the following grades:	
Graded Territory and Texas Wool:	
Average French combing, three-eighths blood, 56's/58's	1.3053
Average French combing, 50's/48's, one-quarter blood	1.2023
Graded Fleece Wool:	
Average French combing, three-eighths blood, 56's/58's	1.2137
Average French combing, 50's/48's, one-quarter blood	1.0878
GROUP 3—GRADES BELOW 50'S	
Category 5—Staple and Good French	
The average of the following grades:	
Graded Fleece Wool:	
Low one-quarter blood, 46's, 4 inches or more in length	1.1565
Common and braid, 44's/36's, 5 inches or more in length	1.0763

§ 6.305 Contract clause.

In accordance with the requirements of § 6.302, the clause set forth below shall be inserted in all contracts for supplies and when applicable, in contracts for services.

Preference for Certain Domestic Commodities

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, spun silk yarn for cartridge cloth, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused or produced in the United States, its Territories, its possessions, or Puerto Rico: *Provided*, That this clause shall have no effect to the extent that the Secretary has determined as to any such articles that a satisfactory quality and sufficient quantity cannot be procured as and when needed at United States market prices: *Provided further*, That nothing herein shall preclude the delivery of foods under this contract which have been manufactured or processed in the United States, its Territories, its possessions, or Puerto Rico.

Subpart D—Purchases From Soviet-Controlled Areas

§ 6.401 Restrictions.

§ 6.401–1 General policy.

It is the general policy of the Department of Defense that supplies originating from sources within Soviet-controlled areas shall not be acquired for public use, notwithstanding the provisions of any other subpart of this part, and that Government contractors and subcontractors shall not acquire for use in the performance of any Government contract or subcontract thereunder any supplies or services originating from Soviet-controlled areas.

§ 6.401–2 Soviet-controlled areas.

For the purpose of this subpart, Soviet-controlled areas are the following:

Albania.
Bulgaria.
China, excluding Taiwan (Formosa), but including Manchuria, Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, the former Kwantung Leased Territory, the present Port Arthur Naval Base Area, and Liaoning Province.
Communist-controlled area of Viet Nam and Communist-controlled area of Laos.
Czechoslovakia.
East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin).
Estonia.
Hungary.
Latvia.
Lithuania.
North Korea.
Outer Mongolia.
Poland and Danzig.
Rumania.
Union of Soviet Socialist Republics.

§ 6.401–3 Certain supplies of foreign origin.

The following supplies, if of foreign origin and however processed, shall be presumed to have originated from Soviet-controlled (Chinese) sources and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico, or (b) the supplies are acquired directly from the countries indicated:

Bamboo, split	None.
Braids, straw	Italy, Japan.
Bristles, hog, including such bristles in knots or other processed condition.	None.
Brushes, paint (including parts thereof), containing hog bristles, if any such bristle is more than 1½ inches in total length or more than 1¼ inches in length out of the ferrule.	None.
Eggs, poultry:	
Whole in the shell, other than chicken	None.
Whole, dried	None.
Albumen, dried	None.
Yolks, dried	None.
Floor coverings, grass and straw, including seagrass mats and squares.	Japan.
Fur skins:	
Goat and kid	Argentina, Ethiopia (including Eritrea), Iran, Iraq.
Kolinsky	Republic of Korea.
Weasel	Canada.
Garments, Chinese type	None.
Jade, stones, cut but not set and suitable for use in jewelry	None.
Menthol, natural and synthetic (other than racemic)	Brazil.
Silk, piece goods, tussah and muga	None.
Silk, tussah and muga	None.
Tea, Chinese type	Formosa.
Tung oil	Argentina, Brazil, Paraguay.
Walnuts	France, Iran, Italy, Turkey.

§ 6.401–4 Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.

The following supplies, however processed, which are or were located in or transported from or through Hong Kong, Macao, or any Soviet-controlled area (see § 6.401–2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico:

Agar-agar.
Bamboo:
Bags, baskets and other manufactures, excluding furniture.
Poles and sticks.
Brocades and brocade articles.
Camphor, natural and synthetic.
Camphor oil, natural and synthetic.
Carpets.
Castor bean.
Castor oil.
Chinaware, other than Dresdenware and Meissenware.
Citronella oil.
Cotton manufactures.
Cotton waste.
Earthenware.
Edible marine products.
Embroideries and embroidered articles.
Feather manufactures.
Glass, sheet (window).
Graphite.
Hair nets, regardless of the material from which made.
Handkerchiefs.
Hardwood manufactures, including furniture other than bentwood furniture.
Hats, paper.
Honey.
Ivory manufactures.
Lace and lace articles.
Linen manufactures, excluding wearing apparel other than wearing apparel made in whole or in part of brocade, embroidery or lace.
Ores and metals:
Antimony.
Bismuth.
Quicksilver.
Molybdenum.
Tin.
Tungsten.
Peanuts and peanut products.
Poultry, including pigeons, frozen or otherwise prepared or preserved.
Ramie.
Rugs.
Seagrass and straw manufactures, excluding floor covering.
Sesame, oil and seed.
Shoes, leather-soled with non-leather uppers, except ladies' high-heel shoes.
Silk:
Raw and manufactures other than Western style suits and Indian saris.
Waste.
Skins, deer and goat.
Stones, semiprecious, and manufacture thereof, including jewelry.
Tapestries, including needlework tapestries.
Tapioca, including tapioca flour.

§ 6.401–5 Supplies from North Korea or China.

All supplies, however processed, which are or were located in or transported from or through North Korea or China (as described in § 6.401–2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico.

§ 6.402 Exceptions.

(a) Exceptions from the general policy will be made only pursuant to paragraphs (b) and (c) of this section. Such exceptions shall be made only in unusual situations, for example, in cases of emergency or where supplies are not available from any other source and a substitute supply is not acceptable.

(b) Supplies, other than those whose procurement is prohibited by § 6.401–3, § 6.401–4 or § 6.401–5, originating from sources within Soviet-controlled areas (see § 6.401–2) may be procured only when:

(1) The purchase is for $2,500 or less and the contracting officer determines there is need for an exception in accordance with Departmental procedures; or

(2) The purchase is for more than $2,500 and an exception is approved by the Secretary of the Department concerned.

Before granting an exception under (2) above, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs): *Provided*, That such advice is not required in the case of emergency purchases or where supplies are not available from any other source and substitute supplies are not acceptable.

(c) Supplies whose procurement is prohibited by §§ 6.401–3, 6.401–4, or § 6.401–5, may be acquired if the acquisition is approved by an authorized Treasury Department representative. Where a request for such approval has been denied by the Treasury Department representative, an appeal may be made to the Secretary of the Treasury. Such appeals, with all pertinent information, shall be submitted through Departmental channels to the Assistant Secretary of Defense (International Security Affairs), for further transmission to the Secretary of the Treasury.

§ 6.403 Contract clause.

(a) Except as provided in paragraph (b) of this section, in contracts for supplies, services, or construction, where acceptance is to take place outside the United States, its Territories, its possessions, or Puerto Rico, the Soviet-controlled areas listed in § 6.401–2 shall be set forth in the contract schedule, and the following clause shall be included in the contract:

SOVIET-CONTROLLED AREAS

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or from Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including the Soviet-controlled areas listed in the Schedule and this subparagraph (b), in all subcontracts hereunder.

(b) The requirements of paragraph (a) of this section do not apply to purchase orders for small purchases (see Part 3, Subpart F of this chapter) where there is other reasonable assurance of compliance with the policy set forth in this subpart.

Subpart E—Canadian Purchases

§ 6.501 Purchases from Canadian suppliers.

Any contract with a supplier or contractor located in the Dominion of Canada may be made with and administered through the Canadian Commercial Corporation (a corporation owned and controlled by the Government of Canada), which has offices at 2450 Massachusetts Avenue NW., Washington, D.C. and 56 Lyon Street, Ottawa, Canada. Under any such contract made with the Canadian Commercial Corporation, direct communication with the Canadian supplier or contractor is authorized only in connection with problems of inspection and technical matters: *Provided*, That, if any such problem would affect the contract price, approval of the Canadian Commercial Corporation shall be obtained. All payments under any such contract made with the Canadian Commercial Corporation shall be made to that Corporation at its Washington office.

§ 6.502 Guarantee by Canadian Government.

The Canadian Government guarantees to the United States Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any procuring activity of the United States Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

§ 6.503 Agreement with Department of Defence Production (Canada).

(a) An agreement, dated 27 July 1956, as amended 17 December 1956, between the Department of Defence Production (Canada) and the Departments of the Army, Navy, and Air Force, sets forth policies and provides procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation on or after October 1, 1956.

(b) The Agreement provides, in pertinent part, that the Canadian Commercial Corporation may, in submitting proposals for negotiated contracts, provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency and that the resulting contract will provide for payment to be made in such currency. In evaluating proposals submitted by the Canadian Commercial Corporation in terms of Canadian currency, the rate of exchange in effect on the date of evaluation of all proposals, submitted in response to a given Request for Proposals, shall be used. When required, the precise rate of exchange of Canadian currency may be obtained from a financial paper of general circulation which reflects the rate as fixed and published by the Federal Reserve Bank of New York, such as the Wall Street Journal or the Journal of Commerce.

§ 6.504 Mutual Canadian-American interests.

Because of the close geographical proximity of the United States and Canada and of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(a) Greater integration of military production,

(b) Greater standardization of military equipment,

(c) Wider dispersal of production facilities,

(d) Establishment of supplemental sources of supply, and

(e) Greater flow of defense supplies and equipment between the two countries.

Accordingly, it is Department of Defense policy to seek the best possible coordination of the materiel programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes required the allevation of the restrictions of the Buy American Act with respect to procurements for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in Subpart A of this part.

Subpart F—Duty and Customs

§ 6.601 Customs duties on foreign purchases.

Duty must ordinarily be paid in connection with the importation of supplies purchased outside of the United States, except that the importation (a) of "emergency purchases of war material abroad" by a Military Department is exempt from duty (10 U.S.C. 2383), and (b) of certain supplies (not including equipment) for vessels or aircraft operated by the United States is also exempt from duty (19 U.S.C. 1309). Where the importation of supplies is subject to customs duties, a Military Department is exempt from any requirements of a customs bond.

§ 6.602 Emergency purchases of war material abroad.

§ 6.602–1 General.

This section furnishes guidance as to what constitutes "emergency purchases of war material abroad," prescribes the conditions under which duty-free entry certificates may be issued in connection with the importation of such purchases and sets forth the form of certificate to be utilized. The procedures to be followed in the issuance of such certificates shall be as prescribed by the respective Departments.

§ 6.602–2 War materials.

As used in this section the term "war material" includes the following:

(a) Weapons, munitions, aircraft, vessels, or boats;

(b) Agricultural, industrial, or other supplies used in the prosecution of war or for the national defense;

(c) Supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of the supplies set forth in paragraphs (a) and (b) of this section above.

§ 6.602–3 Emergency purchases.

As used in this section, the term "emergency purchases" includes the following:

(a) War material purchased by any Department in time of war or a national emergency, including any war material received in exchange for anything of value obtained under reciprocal aid or other statutory authority;

(b) War material purchased because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(c) Captured enemy war material;

(d) Materials requisitioned by United States Forces abroad;

(e) Materials rebuilt from other materials owned by, captured by, or turned over to United States Forces; and

(f) War materials procured for the use of United States Forces abroad or United States vessels in foreign waters.

§ 6.602–4 Use of duty-free entry certificates.

The issuance of duty-free entry certificates in appropriate situations will result in important savings for military appropriations. At the same time, any procedure established for the issuance of such certificates must recognize that anything other than a careful selection of the proper situations where such certificates are to be issued may fail to save funds and may result in unanticipated advantages to contractors, especially in situations involving fixed-price contracts. Considerations which are pertinent to the selection of those cases where such certificates should be issued include (a) the savings to be accomplished by the issuance of the certificate; (b) the administrative burden and cost of processing the certificate; and (c) the degree of supervision which can be exercised by the Government over the supplies or materials to be imported to verify that the full benefit of the certificate inures to the Government. The latter consideration is particularly significant in the case of fixed-price contracts since title to the importation does not generally vest in the Government until delivery of the end product.

§ 6.602–5 Limitations.

Subject to the considerations set forth in §§ 6.602–4 and 6.605, a duty-free entry certificate may be issued in accordance with Departmental procedures when an "emergency purchase of war material" is made under the following circumstances:

(a) Direct purchases abroad regardless of whether title passes at point of origin or at destination in the United States: *Providing*, The contract states that the final price is exclusive of duty;

(b) Purchases abroad by a Government prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in paragraph (c) of this section should be followed; and

(c) Purchases abroad by a fixed-price contractor, fixed-price subcontractor, or cost-type subcontractor where a fixed-price prime or fixed-price subcontract intervenes: *Provided*, (1) The fixed-price prime and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (2) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (3) such procurement abroad is authorized by the terms of the prime contract, the applicable subcontract, or by the contracting officer.

§ 6.602–6 Duty-free entry certificate.

The duty-free entry certificate referred to in this section will be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto, and will be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (indicate Army, Navy, or Air Force) and it is accordingly requested that such material be admitted free of duty pursuant to 10 U.S.C. 2383.

(Name)

(Title), who has been designated to execute free entry certificates for the above-named Department

---
(Grade)

(Organization)

§ 6.603 Supplies for vessels or aircraft operated by the United States.

(a) Subject to the considerations set forth in § 6.602–4, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this section, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation and maintenance of the vessel or aircraft, such as fuel oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment". The procedures to be followed in the issuance of such certificates shall be as prescribed by the respective Departments.

(b) The duty-free entry certificate referred to in this section will be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and will be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

I certify that the procurement of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)

(Title)

(Organization)

§ 6.604 Customs duties and drawbacks.

Whenever any Department purchases supplies with respect to which there might arise a claim to a refund or drawback of customs duties paid thereon (to the extent such drawback is authorized pursuant to the Tariff Act of 1930, 19 U.S. Code, Chapter 4), the price to be paid shall ordinarily include the customs duties, and accordingly the supplier will have no claim to a drawback. On the other hand, when the price to be paid for any such purpose does not include the cusoms duties, then the supplier will have the right to claim any drawback with respect to duties paid by the supplier: *Provided*, (a) He has reserved such right in connection with such sale or consignment and (b) he produces evidence that such reservation was made with the knowledge and consent of the exporter.

§ 6.605 Duty-free entry of listed Canadian supplies.

§ 6.605–1 Policy.

(a) In keeping with the policy to enhance economic cooperation with Canada in the interests of continental defense (§ 6.504), duty-free entry should generally be accorded Canadian supplies that constitute, or that are directly or indirectly incorporated in, end items included in the Departmental lists of supplies maintained pursuant to § 6.103–5(a). (These Departmental lists include supplies of a military character or which are involved in programs of mutual interest to the United States and Canada. Parts and equipment for listed supplies, even though not separately listed, are considered to be included in the lists when they are procured under a contract that also calls for listed supplies.) Duty-free entry should be accorded such supplies by the issuance of duty-free entry certificates in accordance with §§ 6.605 through 6.605–3 and, in particular, as provided in the contract clause prescribed in § 6.605–2.

(b) In connection with contracts with United States prime contractors for the procurement of end items that are not included in the Departmental lists maintained pursuant to § 6.103–5(a) of this part, Canadian supplies that are themselves listed and are specifically identified in the contract as supplies that will be directly or indirectly incorporated in such unlisted end items, should be accorded duty-free entry as provided in § 6.605–3.

§ 6.605–2 Contract clause.

Every contract in excess of $10,000, except construction contracts, that includes the procurement of end items contained in the list maintained by the Department concerned pursuant to § 6.103–5(a) of this part shall include the following clause unless it is reasonably certain that no supplies will be imported from Canada by the contractor or any first- or lower-tier subcontractor in connection with the performance of the contract. The clause will be included in invitations for bids or requests for proposals that are expected to lead to such a contract.

DUTY-FREE ENTRY—CANADIAN SUPPLIES (JULY 1960)

(a) Except as otherwise approved by the Contracting Officer and except with respect to individual shipments on which the duty is $50 or less, no amount is or will be included in the contract price on account of duty with respect to—

(i) all end items which constitute "Canadian end products" (as defined in paragraph 6–101 of the Armed Services Procurement Regulation) to be delivered under this contract; and

(ii) all supplies (including, without limitation, raw materials, components and intermediate assemblies) produced or made in Canada which are to be incorporated in the end items to be delivered under this contract; provided, that such end items are made in the United States or Canada; except supplies imported into the United States prior to the date of this contract, or, in the case of supplies imported by a first- or lower-tier subcontractor hereunder, prior to the date of its subcontract.

(b) All shipping documents submitted to Customs, covering such Canadian end products or supplies for which duty-free entry is to be claimed, shall bear the notation "UNITED STATES (insert name of Military Department)—DUTY FREE ENTRY TO BE CLAIMED under 10 U.S.C. 2383. Collector of Customs kindly notify (insert name and address of Government official and office) upon arrival of shipment at port of entry." The notation will also identify this contract by its contract number.

(c) The Contractor warrants that all such Canadian supplies, for which such duty-free entry is to be claimed, are to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof, are not delivered to the Government or incorporated in such end items or disposed of pursuant to the provisions of this contract.

(d) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of Canadian end products or supplies as to which the shipping documents bear the notation specified in paragraph (b) above, except as the Contractor may otherwise agree and except with respect to individual shipments on which the duty is $50 or less.

(e) The Contractor agrees to insert the substance of this clause, including this paragraph (e), in all subcontracts for supplies hereunder that exceed $5,000. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. If the procurement covers both listed and unlisted end items, the foregoing clause should be modified so as to limit its application to the listed end items.

§ 6.605–3 Listed supplies for unlisted end items.

In connection with negotiated contracts in excess of $10,000 with United States prime contractors for the procurement of end items that are not included in the Departmental lists maintained pursuant to § 6.103–5(a), if the prospective contractor specifically identifies listed Canadian supplies that will be directly or indirectly incorporated in such unlisted end items and if the contract price does not include any amount on account of duty with respect to such supplies, the contract should provide for the duty-free entry of such supplies by including provisions substantially as follows. The Schedule should identify the particular listed Canadian supplies that are to be accorded duty-free entry. The contract should include a clause like that in § 6.605–2, but modified so as to cover only the particular Canadian supplies that are specifically identified in the Schedule. Thus, the clause may be modified by:

(a) In paragraph (a), deleting (i) and (ii) and substituting the words "those supplies that are specifically identified in the Schedule as Canadian supplies to be accorded duty-free entry."

(b) In paragraph (b) of the clause, deleting the words "end products or,"

(c) In paragraph (d) of the clause, deleting the words "Canadian end products or supplies" and substituting a reference to the particular Canadian listed supplies, as in paragraph (a) of this section, and

(d) As to paragraph (e) of the clause, limiting the "flowdown" provision to subcontracts for supplies specifically identified in the Schedule, or, if appropriate, deleting the provision.

§ 6.605–4 Amending existing contracts.

Any existing contract may be amended so as to be made consistent with § 6.605–2 or § 6.605–3; provided that, in the case of a fixed-price type contract, the contract price is reduced by the amount of the applicable duty. Under any cost-reimbursement type contract that has not been so amended, duty-free entry shall be accorded Canadian supplies to the extent permitted by § 6.602 except with respect to individual shipments on which the duty is $50 or less.

Subpart G—Mutual Security Act Procurements

§ 6.701 Exemption from examination of records requirement.

§ 6.701–1 General.

With respect to purchases authorized to be made outside the United States under the Mutual Security Act of 1954, as amended, Executive Order No. 10784, dated October 1, 1958, as amended by Executive Order No. 10845, dated October 12, 1959, exempts:

(a) Contracts with foreign contractors to be performed outside the United States from the examination of records requirements of 10 U.S.C. 2313(b); and

(b) Contracts, and amendments and modifications thereof, entered into pursuant to Public Law 85–804 (§ 17.501 of this chapter), from the examination of records requirements of section 3(b) of that law: *Provided*, That, with respect to such contracts and amendments and modifications thereof, inclusion of the "Examination of Records" clause or compliance therewith is determined by the Department concerned to be impracticable. Such determinations may

be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to § 17.201 of this chapter.

§ 6.701–2 Contracts with foreign governments.

(a) *Fixed-price contracts.* The Examination of Records clause set forth in § 7.104–15 of this chapter shall be omitted from government-to-government contracts within the scope of § 6.701–1(a).

(b) *Cost-reimbursement type contracts.* In government-to-government contracts within the scope of § 6.701–1(a), the Records clause set forth in § 7.203–7(a) of this chapter shall be modified as follows. Subparagraph (3) of the clause shall be deleted; the references in subparagraphs (4) and (5) to "documentary evidence delivered pursuant to subparagraph (3)" shall be deleted; the references to "the Comptroller General" and "his authorized representatives" shall be deleted from subparagraphs (2), (4), (5), and paragraph (b), and the word "Department" shall be inserted in lieu of the reference to Comptroller General in the proviso in subparagraph (4). In such cases, where the Records clause required by § 7.203–7 of this chapter is to be modified as provided in § 7.203–7(b) of this chapter, subparagraph (4) as set forth therein shall be modified to correspond with the modifications prescribed above.

§ 6.701–3 Contracts with other foreign contractors.

In any particular contract within the scope of § 6.701–1(a) which is made with a foreign contractor other than a foreign government, the Examination of Records clause set forth in § 7.104–15 of this chapter may be omitted (in the case of a fixed-price contract) and the Records clause set forth in § 7.203–7 of this chapter may be modified as indicated in § 6.701–2(b) (in the case of a cost-reimbursement type contract) if such omission or modification is approved by the contracting activity concerned in accordance with Departmental procedures, following a determination that such omission or modification will further the purposes of the Mutual Security Act of 1954.

PART 7—CONTRACT CLAUSES

Sec.
7.000 Scope of part.

Subpart A—Clauses for Fixed-Price Supply Contracts

7.100 Scope of subpart.
7.102 Applicability.
7.103 Required clauses.
7.103–1 Definitions.
7.103–2 Changes.
7.103–3 Extras.
7.103–4 Variation in quantity.
7.103–5 Inspection.
7.103–6 Responsibility for supplies.
7.103–7 Payments.
7.103–8 Assignment of claims.
7.103–9 Additional bond security.
7.103–10 Federal, State and local taxes.
7.103–11 Default.
7.103–12 Disputes.
7.103–13 Renegotiation.
7.103–14 [Reserved]
7.103–15 Soviet-controlled areas.
7.103–16 Eight-hour law of 1912.
7.103–17 Walsh-Healy Public Contracts Act.
7.103–18 Nondiscrimination in employment.
7.103–19 Officials not to benefit.
7.103–20 Covenant against contingent fees.
7.103–21 Termination for convenience of the Government.
7.103–22 Authorization and consent.
7.103–23 Notice and assistance regarding patent infringement.
7.104 Clauses to be used when applicable.
7.104–1 Davis-Bacon Act.
7.104–2 Copeland Act.
7.104–3 Buy American Act.
7.104–4 Notice to the Government of labor disputes.
7.104–5 Patent indemnity.
7.104–6 Filing of patent applications.
7.104–7 Patent rights.
7.104–8 Reporting of royalties.
7.104–9 Rights in data.
7.104–10 Ground and flight risk.
7.104–11 Excess profit.
7.104–12 Military security requirements.
7.104–13 Preference for certain domestic commodities.
7.104–14 Utilization of small business concerns.
7.104–15 Examination of records.
7.104–16 Gratuities.
7.104–17 Convict labor.
7.104–18 Priorities, allocations and allotments.
7.104–19 Cargo preference act.
7.104–20 Utilization of concerns in labor surplus areas.
7.104–21 Limitation on withholding of payments.
7.104–22 Defense subcontracting small business program.
7.104–23 Subcontracts.
7.104–24 Government-furnished property.
7.104–25 Special tooling.
7.104–26 Changes to make or buy program.
7.104–27 Payment for overtime and shift premiums.
7.104–28 Quality Control System.
7.105 Additional clauses.
7.105–1 Alterations in contract.
7.105–2 Approval of contract.
7.105–4 Notice of shipments.
7.105–5 Liquidated damages.
7.105–6 Bill of Materials.
7.105–7 Material inspection and receiving report.
7.105–8 Stop work orders.
7.106 Price escalation clauses (established prices).
7.106–1 Escalation clause for basic steel, aluminum, brass, bronze or copper mill products.
7.106–2 Escalation clause for non-standard steel items.
7.106–3 Escalation clause for standard supplies.
7.106–4 Escalation clause for semi-standard supplies.
7.107 Price escalation clause (labor and material).
7.108 Incentive price revision clause.
7.109 Price redetermination clauses.
7.109–1 General.
7.109–2 Prospective periodic price redetermination at stated intervals.
7.109–3 Prospective price redeterminations on request.
7.109–4 Retroactive and prospective price redetermination at a stated time prior to completion.
7.109–5 Retroactive and prospective price redetermination including further prospective redetermination on request.
7.109–6 Retroactive price redetermination after completion.
7.109–7 Modified retroactive and prospective price redetermination for follow-on contracts.

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

7.200 Scope of subpart.
7.202 Applicability.
7.203 Required clauses.
7.203–1 Definitions.
7.203–2 Changes.
7.203–3 Limitation of cost.
7.203–4 Allowable Cost, Fee, and Payment.
7.203–5 Inspection of supplies and correction of defects.
7.203–6 Assignment of claims.
7.203–7 Records.
7.203–8 Subcontracts.
7.203–9 Utilization of small business concerns.
7.203–10 Termination.
7.203–11 Excusable delays.
7.203–12 Disputes.
7.203–13 Renegotiation.
7.203–14 [Reserved]
7.203–15 Convict labor.
7.203–16 Eight-Hour Law of 1912—Overtime compensation.
7.203–17 Walsh-Healey Public Contracts Act.
7.203–18 Nondiscrimination in employment.
7.203–19 Officials not to benefit.
7.203–20 Covenant against contingent fees.
7.203–21 Government property.
7.203–22 Insurance; liability to third persons.
7.203–23 Authorization and consent.
7.203–24 Notice and assistance regarding patent infringement.
7.203–25 Soviet-controlled areas.
7.203–26 Utilization of concerns in labor surplus areas.
7.203–27 Payment for overtime and shift premiums.
7.204 Clauses to be used when applicable.
7.204–1 Davis-Bacon Act.
7.204–2 Copeland Act.
7.204–3 Buy American Act.
7.204–4 Notice to the Government of labor disputes.
7.204–5 Patent indemnity.
7.204–6 Filing of patent applications.
7.204–7 Patent rights.
7.204–8 Reporting of royalties.
7.204–9 Rights in data.
7.204–10 Quality Control System.
7.204–11 Excess profit.
7.204–12 Military security requirements.
7.204–13 Preference for certain domestic commodities.
7.204–14 Gratuities.
7.204–15 Priorities, allocations and allotments.
7.204–16 Negotiated overhead rates.
7.204–17 Cargo preference act.
7.204–18 Limitation on withholding of payments.
7.204–19 Defense subcontracting small business program.
7.204–20 Changes to make or buy program.
7.205 Additional clauses.
7.205–1 Alteration in contract.
7.205–2 Approval of contract.
7.205–4 Bill of materials.
7.205–6 Materiel inspection and receiving report.
7.205–7 Stop work orders.

Subpart C—Clauses for Fixed-Price Research and Development Contracts

7.301 Applicability.
7.302 Required clauses.
7.302–1 Definitions.
7.302–2 Payments.
7.302–3 Standards of work.
7.302–4 Inspection.
7.302–5 Assignment of claims.
7.302–6 Examination of records.
7.302–7 Federal, State, and local taxes.
7.302–8 Utilization of small business concerns.
7.302–9 Default.
7.302–10 Termination for convenience of the government.
7.302–11 Disputes.
7.302–12 Renegotiation.
7.302–13 Buy American Act.
7.302–14 Convict labor.
7.302–15 Walsh-Healey Public Contracts Act.
7.302–16 Eight-Hour Law of 1912—overtime compensation.
7.302–17 Nondiscrimination in employment.
7.302–18 Officials not to benefit.
7.302–19 Covenant against contingent fees.
7.302–20 Gratuities.
7.302–21 Authorization and consent.
7.302–22 Notice and assistance regarding patent infringement.
7.302–23 Patent rights:
7.302–24 Basic data clause.
7.302–25 Military security requirements.
7.302–26 Utilization of labor surplus area concerns.
7.303 Clauses to be used when applicable.
7.303–1 Clauses for contracts involving construction work.
7.303–2 Filing of patent applications.
7.303–3 Reporting of royalties.
7.303–4 Excess profit.
7.303–5 Preference for certain domestic commodities.
7.303–6 Priorities, allocations, and allotments.
7.303–7 Government-furnished property.
7.303–8 Soviet-controlled areas.
7.303–9 Notice to the government of labor disputes.
7.303–10 Limitation on withholding of payments.
7.303–11 Defense subcontracting small business program.
7.303–12 Subcontracts.
7.303–13 Changes to make or buy program.
7.303–14 Payment for overtime and shift premiums.
7.303–15 Quality Control System.
7.304 Additional clauses.
7.304–1 Changes.
7.304–2 Alterations in contract.
7.304–3 Approval of contract.
7.304–4 Bill of materials.
7.304–5 Notice of shipments.
7.304–6 Stop work orders.
7.304–7 Reports of work.

Subpart D—Clauses for Cost-Reimbursement Type Research and Development Contracts

7.400 Scope of subpart.
7.401 Applicability.
7.402 Required clauses.
7.402–1 Definitions.
7.402–2 Limitation of cost.
7.402–3 Allowable cost, fixed fee, and payment.
7.402–4 Standards of work.
7.402–5 Inspection and correction of defects.
7.402–6 Assignment of claims.
7.402–7 Records
7.402–8 Subcontracts.
7.402–9 Utilization of small business concerns.
7.402–10 Termination.
7.402–11 Disputes.
7.402–12 Renegotiation.
7.402–13 Buy American Act.
7.402–14 Convict labor.
7.402–15 Walsh-Healey Public Contracts Act.
7.402–16 Eight-Hour Law of 1912—overtime compensation.
7.402–17 Nondiscrimination in employment.
7.402–18 Officials not to benefit.
7.402–19 Covenant against contingent fees.
7.402–20 Authorization and consent.
7.402–21 Notice and assistance regarding patent infringement.
7.402–22 Patent rights.
7.402–23 Basic data clause.
7.402–24 Military security requirements.
7.402–25 Government property.
7.402–26 Insurance—liability to third persons.
7.402–27 Utilization of labor-surplus area concerns.
7.402–28 Payment for overtime and shift premiums.
7.403 Clauses to be used when applicable.
7.403–1 Clauses for contracts involving construction work.
7.403–2 Filing of patent applications.
7.403–3 Reporting of royalties.
7.403–4 Excess profit.
7.403–5 Excusable delays.
7.403–6 Preference for certain domestic commodities.
7.403–7 Priorities, allocations, and allotments.
7.403–8 Soviet-controlled areas.
7.403–9 Negotiated overhead rate.
7.403–10 Notice to the Government of labor disputes.
7.403–11 Gratuities.
7.403–12 Limitation on withholding of payments.
7.403–13 Defense subcontracting small business program.
7.403–14 Changes to make or buy program.
7.403–15 Quality control system.
7.404 Additional clauses.
7.404–1 Changes.
7.404–2 Alterations in contract.
7.404–3 Approval of contract.
7.404–4 Bill of materials.
7.404–5 Stop work orders.
7.404–6 Reports of work.

Subpart E—Clauses for Personal Services Contracts

7.500 Scope of subpart.
7.502 Applicability.
7.503 Required clauses.
7.503–1 Definitions.
7.503–2 Payments.
7.503–3 Assignment of claims.
7.503–4 Disputes.
7.503–5 Officials not to benefit.
7.503–6 Covenant against contingent fees.
7.503–7 Termination.
7.503–8 Approval of contract.
7.503–9 Patents.
7.504 Clauses to be used when applicable.
7.504–1 Military security requirements.
7.504–2 Data and copyrights.
7.505 Additional clause.
7.505–1 Alterations in contract.

AUTHORITY: §§ 7.000 to 7.505–1 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 7.000 Scope of part.

This part sets forth uniform contract clauses for use in connection with the procurement of supplies and services.

Subpart A—Clauses for Fixed-Price Supply Contracts

§ 7.100 Scope of subpart.

This subpart sets forth uniform contract clauses for use in fixed-price supply contracts as defined in § 7.102.

§ 7.102 Applicability.

As used throughout this subpart, the term "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation, other than (1) purchase orders (but see §§ 7.104–15 and 7.104–16), (2) short form negotiated supply contracts (see § 16.202 of this chapter), (3) letter contracts, (4) notices of award, and (5) amendments or supplemental agreements to contracts or purchase orders, which do not effect new procurement; (b) at a fixed price (with or without provision for price redetermination, escalation or other form of price revision as covered in § 3.403); and (c) for supplies other than (1) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (2) experimental, developmental, or research work, or (3) facilities to be provided by the Government under a "Facilities Contract" as defined in Part 13 of this subchapter.

§ 7.103 Required clauses.

The following clauses shall be inserted in all fixed-price supply contracts:

§ 7.103–1 Definitions.

DEFINITIONS (JAN. 1958)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of the Department, and the head or any assistant head of the Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

Additional definitions may be included: *Provided,* They are not inconsistent with the foregoing clause of the provisions of this subchapter.

§ 7.103–2 Changes.

CHANGES (JAN. 1958)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Department procedures.

§ 7.103–3 Extras.

EXTRAS (JULY 1949)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

§ 7.103–4 Variation in quantity.

VARIATION IN QUANTITY (JULY 1949)

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

§ 7.103–5 Inspection.

INSPECTION (MAY 1958)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirments of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: *Provided,* That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

§ 7.103–6 Responsibility for supplies.

RESPONSIBILITY FOR SUPPLIES (JAN. 1958)

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

§ 7.103–7 Payments.

PAYMENTS (JAN. 1958)

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

In contracts for the furnishing of transportation and accessorial services there will be substituted for the word "proper" above, the words "properly certified."

§ 7.103–8 Assignment of claims.

ASSIGNMENT OF CLAIMS (JAN. 1958)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940 as amended (31 U. S. Code 203, 41 U. S. Code 15), if this contract provides for payments aggregating $1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provisions of this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same: *Provided,* That a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

The last sentence of paragraph (a) of the foregoing clause shall be included in contracts only in time of war, or national emergency proclaimed by the President (including the National Emergency Proclamation of December 16, 1950) or by Act or Joint Resolution of the Congress and shall not be included in contracts entered into after such war or national emergency has been terminated: *Provided,* That in cases where special circumstances make it advisable in the best interests of the Government, and in accordance with Departmental procedures, such sentence may be omitted. In any event the sentence will be deleted from negotiated contracts entered into with foreign contractors.

Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended by Public Law 30, 82d Congress, the effect of the last sentence of paragraph (a) of the foregoing clause is that payments to be made to an assignee after 15 May 1951 of any monies due or to become due under the contract shall not be subject to reduction or set-off for any liability of any nature of the contractor to the Government which arises independently of the contract, or for any liability of the contractor on account of (i) renegotiation under any renegotiation statute or under any statutory renegotiation clause in the contract, (ii) fines, (iii) penalties (which term does not include amounts which may be collected or withheld from the contractor in accordance with or for failure to comply with the terms of the contract), or (iv) taxes, Social Security contributions, or the withholding or nonwithholding of taxes or Social Security contributions, whether arising from or independently of the contract.

The assignee is required by said act, as amended, to "File written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment."

§ 7.103–9 Additional bond security.

ADDITIONAL BOND SECURITY (JULY 1949)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

§ 7.103–10 Federal, State and local taxes.

Insert the clause set forth in § 11.401–1 or § 11.401–2 of this chapter, as the case may be.

§ 7.103–11 Default.

Insert the clause set forth in § 8.707 of this chapter.

§ 7.103–12 Disputes.

(a) Except as provided in paragraph (b) of this section, insert the following clause:

DISPUTES (JAN. 1958)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) of this section: *Provided,* That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law. In accordance with Departmental procedures, the foregoing clause may be modified to provide for intermediate appeal to the Head of the Procuring Activity concerned. The decision of the contracting officer referred to in the above clause shall, if mailed, be sent by certified mail, return receipt requested.

(b) In procurements to be performed outside the United States, its possessions and Puerto Rico, where it is anticipated that the contractor will be a foreign firm, either the clause in (a) above will be used after modifying it to insert "United States" before "court of competent jurisdiction" or the following clause will be inserted:

DISPUTES (JAN. 1960)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive to the extent permitted by United States law. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided,* That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

In accordance with Departmental procedures, the foregoing clause may be modified to provide for intermediate appeal.

(c) The form in which the contracting officer shall notify the contractor of his decision under the Disputes clause is set forth in § 1.314 of this subchapter.

§ 7.103–13 Renegotiation.

(a) Except as provided in paragraph (b) of this section, insert the following clause:

RENEGOTIATION (OCT. 1959)

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of Contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

(b) A Renegotiation clause is not required in contracts with foreign governments or agencies thereof. Except in such contracts, the clause set forth below should be inserted, in lieu of the clause in paragraph (a) of this section, in contracts which are to be wholly performed outside the United States by a contractor which is not engaged in a trade or business in the United States and is:

(1) An individual who is not a national of the United States;

(2) A partnership or joint venture in which individuals who are not nationals of the United States or corporations which are not domestic corporations are entitled to more than 50 percent of the profits; or

(3) A corporation (other than a domestic corporation) more than 50 percent of the voting stock of which is owned directly or indirectly by persons described in subparagraph (1) and (2) of this paragraph:

RENEGOTIATION (OCT. 1959)

(a) This contract has been determined to be exempt from the provisions of the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, since it is intended to be wholly performed outside the United States and the Contractor is not engaged in a trade or business in the United States and is—

(i) An individual who is not a national of the United States;

(ii) A partnership or joint venture in which individuals who are not nationals of the United States or corporations which are not domestic corporations are entitled to more than 50 percent of the profits; or

(iii) A corporation (other than a domestic corporation) more than 50 percent of the voting stock of which is owned directly or indirectly by persons described in (i) and (ii) above.

(b) This contract shall cease to be exempt from the Renegotiation Act of 1951, as amended, if all of the requirements for exemption set forth in paragraph (a) above are not met at all times during the performance of this contract. If the Contractor does not meet all of these requirements during the entire performance of this contract, this contract shall be subjected to the Renegotiation Act of 1951, as amended, and to any subsequent act of the United States Congress providing for the renegotiation of contracts, *Provided, however,* That nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the United States Congress heretofore or hereafter enacted. In the event this contract becomes subject to the Renegotiation Act of 1951, it shall be deemed to contain all the provisions required by Section 104 of that Act, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended, which meet the requirements for exemption from the Renegotiation Act of 1951 set forth in paragraph (a) hereof. The Contractor agrees to insert the following clause in all subcontracts which do not meet the requirements set forth in paragraph (a):

RENEGOTIATION

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of the United States Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of the United States Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

§ 7.103–14 [Reserved]

§ 7.103–15 Soviet-controlled areas.

In accordance with the requirements of § 6.403 of this subchapter, insert the contract clause set forth therein.

§ 7.103–16 Eight-hour law of 1912—overtime compensation.

Insert the contract clause set forth in § 12.303–1 of this subchapter. Note the introductory provision required by § 12.303–2 of this subchapter in the case of contracts with a State or political subdivision thereof.

§ 7.103–17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 12.604 of this subchapter.

§ 7.103–18 Nondiscrimination in employment.

Insert the clause set forth in § 12.802 of this subchapter.

§ 7.103–19 Officials not to benefit.

OFFICIALS NOT TO BENEFIT (JULY 1949)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 7.103–20 Covenant against contingent fees.

COVENANT AGAINST CONTINGENT FEES (JAN. 1958)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

§ 7.103–21 Termination for convenience of the Government.

Insert the contract clause appropriate for use in fixed-price supply contracts as set forth in Part 8, Subpart G, of this subchapter, §§ 8.701 and 8.705.

§ 7.103–22 Authorization and consent.

Insert the contract clause set forth in § 9.102–1 of this subchapter.

§ 7.103–23 Notice and assistance regarding patent infringement.

Insert the contract clause set forth in § 9.104 of this subchapter.

§ 7.104 Clauses to be used when applicable.

§ 7.104–1 Davis-Bacon Act.

In accordance with the requirements of Subpart D of Part 12 of this subchapter, insert the applicable contract clauses set forth in § 12.403–1 or § 12.403–4 of this subchapter, as the case may be.

§ 7.104–2 Copeland Act.

In accordance with the requirements of Subpart D of Part 12 of this subchapter, insert the applicable contract clauses set forth in §§ 12.403–1 or 12.403–4, as the case may be.

§ 7.104–3 Buy American Act.

In accordance with the requirements of § 6.104–5 of this chapter, insert the clause set forth therein.

§ 7.104–4 Notice to the Government of labor disputes.

Insert the clause set forth below in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (SEPT. 1958)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify its next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

§ 7.104–5 Patent indemnity.

In accordance with the requirements of § 9.103 of this chapter, insert the appropriate contract clause, with additional provisions as prescribed, set forth in said section.

§ 7.104–6 Filing of patent applications.

In accordance with the requirements of § 9.106 or § 9.106–1 of this subchapter, insert either of the contract clauses set forth therein, as appropriate.

§ 7.104–7 Patent rights.

In accordance with the requirements of § 9.107 of this chapter, insert the appropriate clause with additional provisions as prescribed, set forth in said section.

§ 7.104–8 Reporting of royalties.

In accordance with the requirements of § 9.110 of this chapter, insert the contract clause set forth therein.

§ 7.104–9 Rights in data.

In accordance with the requirements of Subpart B of Part 9 of this chapter, insert one of the contract clauses set forth in § 9.203 or § 9.204 of this chapter, as appropriate.

§ 7.104–10 Ground and flight risk.

In all negotiated fixed-price typed contracts for production or modification of aircraft (or missiles having the general characteristics of aircraft), insert the clause set forth in § 10.404 of this subchapter.

§ 7.104–11 Excess profit.

(a) Pursuant to 10 U.S.C. 2382 and 7300 and except as provided in (b) and (c) below, any contract in an amount which exceeds or may exceed $10,000 known to be for the construction or manufacture of all or part of any complete aircraft or naval vessel, shall contain the following clause, except that the words "if this contract is in an amount which exceeds $10,000" may be inserted at the beginning of the clause in formally advertised contracts:

EXCESS PROFITS (JUNE 1957)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U. S. C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections: *Provided, however,* That this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(b) In any contract where only certain items or lots totaling more than $10,000 are subject to 10 U. S. C. 2382 or 7300, the foregoing clause should be modified to make the agreement of the contractor applicable only to such items or lots. In any contract where only certain items or lots totaling $10,000 or less would otherwise be subject to 10 U. S. C. 2382 or 7300, the foregoing clause should not be included in the contract even though the total amount of the entire contract exceeds $10,000.

(c) In any contract, otherwise subject to 10 U. S. C. 2382 or 7300, for scientific equipment used for communication, target detection, navigation or fire control, as designated by the Secretary, the clause prescribed in (a) above shall not be included, and the following clause shall be inserted in lieu thereof:

EXCESS PROFIT (JUNE 1957)

The Secretary having designated the supplies called for by this contract to be scientific equipment used for communication, target detection, navigation or fire control, the provisions of 10 U. S. C. 2382 and 7300, are not applicable to this contract.

§ 7.104–12 Military security requirements.

Insert the following clause in all contracts which are classified by a Department as "Confidential," including "Confidential—Modified Handling Authorized," or higher and in any other contracts the performance of which will require access to such classified information or material, except that this clause shall not be used in contracts performed outside the United States, its Territories, its possessions, and Puerto Rico. In those cases where the situation so warrants because of the nature of the item, or conditions under which it is to be produced, the contract shall provide and establish by a separate contract provision such additional security safeguards as may be required for the protection of that item. When the "Military Security Requirements" clause is inserted in any contract, the contracting officer or his authorized representative shall prepare and transmit to the contractor, material inspector, security office of the cognizant Military Department of the facility receiving the prime contract, and such other agencies as may be determined by the Departments, a Security Requirements Check List (DD Form 254) in accordance with § 16.811 of this subchapter. The Security Requirements Check List will also be furnished by the contracting Military Department to the cognizant security office when a classified subcontract is placed under a prime contract which contains the "Military Security Requirements" clause. However, if the procurement is for a research contract, consultant service, or graphic arts service, in which there is no requirement for a breakdown by classification of the various elements of the contract, or subcontract, a letter or other written notice of classification for the entire contract may be used in lieu of the Security Requirements Check List.

MILITARY SECURITY REQUIREMENTS (JUNE 1958)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" including "Confidential—Modified Handling Authorized" or higher.

(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract or thereafter indicates security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(1) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(2) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 7.104–13 Preference for certain domestic commodities.

In accordance with the requirements of § 6.305 of this chapter, insert the clause set forth therein.

§ 7.104–14 Utilization of small business concerns.

Insert the clause set forth below in all fixed-price supply contracts, in amounts exceeding $5,000, except those contracts entered into with foreign contractors which are to be performed outside of the United States, its Territories, its possessions, and Puerto Rico.

UTILIZATION OF SMALL BUSINESS CONCERNS (JAN. 1958)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

§ 7.104–15 Examination of records.

Pursuant to 10 U.S.C. 2313(b), the following clause will be inserted in all negotiated fixed-price supply contracts in excess of $2,500, except as provided in § 6.701 of this subchapter.

EXAMINATION OF RECORDS (JAN. 1959)

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

§ 7.104–16 Gratuities.

Insert the clause set forth below in all fixed price supply contracts and purchase orders, except contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

GRATUITIES (MAR. 1952)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing,

by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such contract: *Provided*, That the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 7.104–17 Convict labor.

In accordance with the requirements of Subpart B of Part 12 of this subchapter, insert the contract clause set forth in § 12.203 of this subchapter.

§ 7.104–18 Priorities, allocations and allotments.

In accordance with the requirements of § 1.307–2 of this subchapter insert the following clause:

PRIORITIES, ALLOCATIONS AND ALLOTMENTS (JAN. 1955)

The Contractor agrees, in the procurement and use of materials required for the performance of this contract, to comply with the provisions of all applicable rules and regulations of the Business and Defense Services Administration, including Defense Materials System regulations.

§ 7.104–19 Cargo preference act.

In accordance with the requirements of § 1.1404 of this subchapter, insert one of the contract clauses set forth therein as appropriate.

§ 7.104–20 Utilization of concerns in labor surplus areas.

Insert the clause set forth below in all fixed-price supply contracts, in amounts exceeding $5,000, except those contracts entered into with foreign contractors which are to be performed outside of the United States, its possessions, and Puerto Rico.

UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (OCT. 1960)

It is the policy of the Government to place supply contracts with suppliers who will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use the best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

§ 7.104–21 Limitation on withholding of payments.

(a) Except as provided in paragraph (b) of this section, the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (SEPT. 1958)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time: *Provided*, That this limitation shall not apply to:

(1) Withholdings pursuant to any clause relating to wages or hours of employees;

(2) Withholdings not specifically provided for by this contract; and

(3) The recovery of overpayments.

(b) The clause set forth in paragraph (a) of this section is not required where:

(1) The contracting officer or the procuring activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or

(2) All of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (i) are exempt from the limitations in the clause set forth in paragraph (a) of this section under the proviso thereof, or (ii) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them is being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in paragraph (a) of this section is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

§ 7.104–22 Defense Subcontracting Small Business Program.

In accordance with § 1.707–2(b) of this subchapter insert the following clause:

DEFENSE SUBCONTRACTING SMALL BUSINESS PROGRAM (OCT. 1960)

(a) The Contractor agrees to establish and conduct a program to afford small business concerns an equitable opportunity to compete for Defense subcontracts within their capabilities. In this connection, the Contractor shall:

(i) designate a small business liaison officer, who will (A) maintain liaison with duly authorized representatives of the Government on small business matters, (B) supervise compliance with the clause of this contract entitled Utilization of Small Business Concerns, and (C) administer the Contractor's Small Business Program;

(ii) assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(iii) maintain records showing (A) whether each prospective subcontractor is a small business concern; and (B) procedures which have been adopted to comply with the policies set forth in this clause;

(iv) include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities; and

(v) submit DD Form 1140 reports, in triplicate, to the Military Department that reviews his subcontracting program, except that where the Contractor elects to report on a corporate rather than a plant basis, he may submit his reports to the Military Department having industrial readiness planning responsibility at the corporate headquarters.

(b) A "Small business concern" is a concern that:

(i) is independently owned and operated, is not dominant in its field of operations and with its affiliates, employs fewer than 500 employees; or

(ii) is certified as a small business concern by the Small Business Administration.

(c) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of $1,000,000 and which contains the clause entitled "Utilization of Small Business Concerns," provisions which shall conform substantially to the language of this clause, including this paragraph (c); except that a subcontractor will submit the DD Form 1140 reports to the Military Department having industrial readiness planning responsibility or plant cognizance. (A subcontractor may request advice from the nearest military purchasing or contract administration activity as to the Military Department to which he should submit his reports.)

§ 7.104–23 Subcontracts.

In accordance with the requirements of § 3.903–1 of this chapter, insert an appropriate Subcontracts clause.

§ 7.104–24 Government-furnished property.

In accordance with the requirements of § 13.502 of this subchapter, insert the appropriate Government-furnished Property clause.

§ 7.104–25 Special tooling.

In accordance with the requirements of § 13.504 of this subchapter, insert the appropriate Special tooling clause.

§ 7.104–26 Changes to make or buy program.

In accordance with the requirements of § 3.902(d) of this subchapter, insert the clause set forth therein.

§ 7.104–27 Payment for overtime and shift premiums.

In accordance with the requirements of § 12.102 of this chapter, insert the contract clause set forth in §12.102–3(c) of this chapter.

§ 7.104–28 Quality Control System.

In all contracts for complex supplies other than (a) standard commercial items and (b) items being purchased under specifications which in themselves contain adequate inspection and quality control provisions, insert the following clause:

QUALITY CONTROL SYSTEM (JULY 1960)

The Contractor shall provide and maintain a quality control system acceptable to the Government for the supplies covered by this contract. The system of quality control shall be in accordance with Military Specification MIL–Q–9858.

The last sentence of the foregoing clause may be omitted if the application of Military Specification MIL–Q–9858 would be incompatible with the technical objective of the contract, required procurement, management flexibility, or military urgency: *Provided*, That when it is so omitted, the control shall provide by specification, exhibit, or otherwise, that the contractor shall maintain quality control measures for all manufacturing processes and documentation pertinent to quality, testing and inspection, fabrication, and delivery.

§ 7.105 Additional clauses.

The following clauses shall be inserted in fixed-price supply contracts in accordance with Department procedures when it is desired to cover the subject matter thereof in such contracts.

§ 7.105–1 Alterations in contract.

ALTERATIONS IN CONTRACT (JULY 1949)

The following alterations have been made in the provisions of this contract:

§ 7.105–2 Approval of contract.

APPROVAL OF CONTRACT (JULY 1949)

This contract shall be subject to the written approval of ---------- or his duly authorized representative and shall not be binding until so approved.

§ 7.105–4 Notice of shipments.

NOTICE OF SHIPMENTS (JULY 1949)

At the time of delivery of any shipment of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, in accordance with instructions of the Contracting Officer. If such instructions have not been received by the Contractor at least 24 hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given.

§ 7.105–5 Liquidated damages.

In accordance with § 1.310, where a liquidated damages provision is to be used in a supply contract, the following provision shall be inserted as paragraph (f) of the Default clause (§ 8.707 of this subchapter) and the present paragraph (f) of that clause shall be redesignated "(g)":

(f) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore in lieu of actual damages the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay the amount set forth elsewhere in this contract. Alternatively, the Government may terminate this contract in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (b) above, for such liquidated damages accruing until such time as the Government may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (c) above, and in such event, subject to the "Disputes" clause, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.

§ 7.105–6 Bill of Materials.

A Bill of Materials consists of a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind. A Bill of Materials, with respect to all or part of the supplies to be furnished pursuant to a contract, shall be required only if the Contracting Officer, in accordance with the procedures of the Department concerned, shall determine that such bill is necessary to develop materials or components requirements for production and maintenance programs, for industrial mobilization purposes, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(a) The supplies or parts thereof to be covered by the Bill of Materials;

(b) The type of bill or bills (Detailed, Modified, Expanded Summary, or Abbreviated Summary) to be furnished, with applicable instructions;

(c) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(d) The number and kind of copies of such bill to be furnished; and,

(e) Delivery dates.

In such event, the contract shall also include the following clause:

BILL OF MATERIALS (APR. 1955)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346, and 347 if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The Contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes," in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

Where a Bill of Materials is procured by contract separate from the supplies to which such Bill of Materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the Bill of Materials shall be furnished on DD Forms 346, and 347 if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the Bill of Materials in greater detail from a subcontractor than he is to furnish under the terms of the above clause.

§ 7.105–7 Material inspection and receiving report.

The following clause may be inserted to the extent authorized by Departmental procedures.

MATERIAL INSPECTION AND RECEIVING REPORT (JULY 1958)

At the time of each delivery under this contract the Contractor shall prepare and furnish to the Government, in the manner and to the extent required by the Contracting Officer, a Material Inspection and Receiving Report (DD Form 250 or comparable form). The Government shall furnish the required forms to the Contractor upon request.

§ 7.105–8 Stop work orders.

(a) *Use of clause.* The clause set forth in paragraph (c) of this section is authorized for use in any negotiated fixed-price type contract under which work stoppage may be required for reasons such as advancements in the state of the art, production or engineering break-throughs, or realignment of programs.

(b) *Use of orders.* (1) Inasmuch as stop work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only with prior approval at a level above the contracting officer. Generally, use of a stop work order will be limited to those situations where it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for such suspension is not feasible. Although a stop work order may be used pending a decision to terminate for convenience, it will not be used pending a decision to terminate for default, nor will it be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

(2) Stop work orders should include (i) a clear description of the work to be suspended, (ii) instructions as to the issuance of further orders by the contractor for material or services, (iii) guidance as to action to be taken on subcontracts, and (iv) other suggestions to the contractor for minimizing costs. Promptly, after issuance, stop work orders should be discussed with the contractor and should be modified, if necessary, in the light of such discussions.

(3) As soon as feasible after a stop work order is issued, (i) the contract will be terminated; or (ii) the stop work order will either be canceled or—if necessary and if the contractor agrees—be extended beyond the period specified in the order. In any event, this must be done before the specified stop work period expires. Where an extension of the stop work order is necessary, it shall

be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(c) *Clause.*

STOP WORK ORDER (JULY 1960)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) * days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) * days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) cancel the stop work order, or

(ii) terminate the work covered by such order as provided in the "Termination for Convenience" clause of this contract.

(b) If a stop work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if—

(i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

(ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

*The clause may provide for less than ninety days.

§ 7.106 Price escalation clauses (established prices).

This section sets forth uniform clauses for use when it is desired to provide for price escalation in the event of changes in the contractor's established prices. Each clause is preceded by a statement of the conditions under which it may be used.

§ 7.106–1 Escalation clause for basic steel, aluminum, brass, bronze or copper mill products.

The following price escalation clause is authorized for use in advertised or negotiated fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established price exists for the particular supply being procured. The percentage figure to be used in paragraph (d)(3) of the clause shall not exceed 10 percent.

PRICE ESCALATION (FEB. 1958)

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging and packing, beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising) for like quantities of the supplies covered by this contract.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any established price, and each applicable unit price shall be decreased by the amount of the decrease in the applicable established price. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by formal advertising), or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising).

(2) No unit price shall be increased by an amount greater than the amount of the increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed _____ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, but if the Contractor's request for adjustment is received by the Contracting Officer more than ten days after the effective date of the increase in the Contractor's applicable rate, no adjusted unit price shall be effective earlier than the date of receipt by the Contracting Officer of such request.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation. In such event the Government shall pay for all supplies so delivered at the applicable unit price contained in the Contractor's request, and the contract shall be amended accordingly; provided, that such certification is made within 10 days after receipt of notice of such cancellation, and provided further that such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (d). In the event this contract is for standard steel supplies, they shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 7.106–2 Escalation clause for nonstandard steel items.

The following price escalation clause is authorized for use in advertised or in negotiated fixed-price supply contracts when:

(a) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(b) The items being procured are nonstandard steel items made wholly or in major part of standard steel mill items. When this clause is included in invitations for bids, Note (8) is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors, as appropriate, to complete all blanks in accordance with the applicable notes.

PRICE ESCALATION (MAR. 1958)

(a) The Contractor represents that the unit prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (i) the Contractor's rates of pay for labor employed by it, or (ii) the prices which the Contractor charges its manufacturing shops for the steel required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. [See Note (1).]

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant [see Note (2)] for any particular month. The word "month" as used herein means "calendar month"; *provided*, however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of _____, 19__, [see Note (3)] the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established or published price to the public [see Note (8)] including all applicable extras of $_____ per _____ [see Note (4)] for _____ [see Note (5)] on _____, 19__ [see Note (6)] and the "current steel index," which shall be the Contractor's established or published price to the public [see Note (8)] of said item including all applicable extras in effect _____ days [see Note (7)] prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (i) the amount (representing the adjusted cost of labor) obtained by multiplying _____ percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (ii) the amount (representing the adjusted cost of steel) obtained by multiplying _____ percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (iii) the amount equal to _____ percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision); [see Note (1)]: *Provided, however*, That any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within thirty days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (i) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index," and (ii) the Contractor's established or published prices to the public [see Note (8)] including all applicable extras, for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer or his duly authorized representative, the Contractor shall make available its records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with the provisions of this clause, and this contract shall be amended accordingly.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and materials indices under paragraphs (c) and (d) hereof: *Provided, however*, That as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any item for default on the part of the Contractor, any price revision shall be limited to the quantity of each item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered: *Provided, however*, That in case the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

(i) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

Notes

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and in (e) (i) and (ii). In paragraph (e) (iii), bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted its proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit of measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of nonstandard steel items, when there is no established or published price to the public, or when it is not desirable to use such price, this paragraph may refer to another appropriate price basis, such as an established interplant price.

§ 7.106–3 Escalation clause for standard supplies.

The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for standard supplies for which established prices exist. The clause may be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date. The percentage figure to be used in subparagraph (d)(3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against its list or catalog price are taken into account in negotiating the contract unit price, the Contracting Officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts.

PRICE ESCALATION (MAY 1957)

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging, and packing beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the contract date for like quantities of the supplies covered by this contract. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from its list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective

date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date; or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ------ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 7.106–4 Escalation clause for semistandard supplies.

The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for semistandard supplies, the prices of which can be reasonably related to the prices of nearly equivalent standard supplies for which established prices exist. The clause may be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date. A clear understanding should be set forth in writing prior to making the contract as to the identity of the standard supply items which are applicable. The percentage figure to be used in subparagraph (d)(3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the Contractor against its list or catalog price are taken into account in negotiating the contract unit price, the Contracting Officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts. When the supplies being purchased are standard supplies in all respects except for preservation, packaging, and packing requirements, the following clause should not be used; in such cases the Escalation Clause for Standard Supplies, in § 7.106–3, is the appropriate clause.

PRICE ESCALATION (MAY 1957)

(a) The Contractor warrants that the supplies covered by this contract are supplies which the Contractor customarily offers for sale commercially, except for modifications in accordance with the specifications of this contract, and that as of the contract date any differences between the unit prices stated herein and the Contractor's established prices for like quantities of the supplies which are the nearest commercial equivalents of the supplies covered by this contract (herein referred to as "the established prices") are due to compliance with such specifications, and to compliance with any requirements which this contract may contain for preservation, packaging, and packing beyond standard commercial practice. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from its list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date, or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ---- percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (b) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, pursuant to the clause of the contract entitled "Termination for Convenience of the Government," terminate the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such termination.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or termination of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer either reaches an agreement with the Contractor on the requested adjustment, nor terminates the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as re-

quested, provided that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

§ 7.107 Price escalation clause (labor and material).

(a) The following price escalation clause is authorized for use in negotiated fixed-price supply contracts where (1) the price exceeds $50,000, (2) the period of performance exceeds six months, (3) there is no major element of design engineering or developmental work involved in producing the items being procured, and (4) one or more identifiable labor or material cost factors are subject to change.

(b) The Schedule shall describe in detail the types of labor and materials subject to escalation, the labor rates (including fringe benefits, if any), and unit prices of materials, which may be increased or decreased, and the quantities of labor and specified materials allocable to each unit of supplies to be delivered under the contract. The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price escalation pursuant to clause ---- of this contract.

CONTRACT ITEM NO. 1

Types of labor and materials	*Rates of pay and material prices*	*Quantities and direct costs per unit of procurement*
Drill Press Operator.	$3.00/hour, no fringe benefits included.	20 min—$1.00.
Welder	$2.75/hour .05/hour—vacation pay .20/hour—pension plan	
	$3.00	10 min.—$0.50.
Copper Sheet	$0.40/lb.	2 lb.—$0.80.
Purchased parts:		
(1) ABC tube X5721.	$1.00 each	3 ea.—$3.00.
(2) XYZ part No. 9348.	$0.50 each	10 ea.—$5.00.

The percentage figure to be used in subparagraph (d) (vi) of the clause shall not exceed 10 percent.

(c) In negotiating adjustments under the clause, the contracting officer shall consider work in process and materials on hand at the time of changes in labor rates or materials prices since these elements may have a significant impact on equitable price adjustments.

PRICE ESCALATION (JAN. 1958)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs of performance resulting from increases (i) the Contractor's rates of pay for labor or (ii) the unit prices for materials, set forth in the Schedule.

(b) If at any time during the performance of this contract there is an increase or decrease in the rates of pay for labor or unit prices for materials set forth in the Schedule, the Contractor shall notify the Contracting Officer thereof within 60 days of such increase or decrease or within such further period as may be approved in writing by the Contracting Officer, but in any event not later than final payment under the contract. Such notice shall include the Contractor's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph (c) below and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount, both of the increase or decrease and of the Contractor's proposal for an equitable adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an equitable adjustment, and the effective date thereof, in the contract unit prices to reflect any change in the cost of performance of this contract due to the increase or decrease in rates of pay for labor or unit prices for materials set forth in the Schedule: *Provided, however,* That such negotiations may be postponed by the Contracting Officer until an accumulation of such increases and decreases results in an adjustment allowable under (d) (v). The equitable adjustment and the effective date thereof, shall be set forth in an amendment or supplemental agreement to this contract. Such amendment or supplemental agreement shall also revise the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increase or decrease therein. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Notwithstanding any other provision of this clause, any price adjustment under this clause shall be subject to the following limitations:

(i) There shall be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(ii) There shall be no adjustment other than for increases or decreases in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(iii) There shall be no adjustment for any increase or decrease in the quantities of labor or materials set forth in the Schedule for each item to be delivered hereunder;

(iv) No upward adjustment shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the adjustment, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule;

(v) Except as provided in (e) below, there shall be no adjustment for any change in rates of pay for labor or unit prices for materials which would not result in a net change of at least three percent of the then current total contract price; and

(vi) There shall be no adjustment upward which would cause any adjusted contract unit price to exceed ------ percent of the corresponding original contract unit price.

(e) If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to (c) above, the limitations of (d) (v) shall not apply.

(f) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that it has given notice of all such decreases in compliance with (b) above.

(g) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the costs of labor and materials during all reasonable times until three years after final payment under this contract.

§ 7.108 Incentive price revision clause.

When in accordance with the provisions of Part 3, Subpart D of this title, the fixed-price incentive contract described in § 3.403–4 (a) (2) is to be used, the following clause shall be made a part of the contract. As to each item, which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, and target price. Subparagraph (d) (2) of the following clause may be modified to provide, within the price ceiling, for a ceiling, a floor, or both on the final profit.

INCENTIVE PRICE REVISION (JULY 1960)

(a) *Definitions.* As used in this clause, the following terms shall have the meanings set forth below:

(1) The term "target price" means the unit price of any supplies or services under this contract, which is subject to adjustment in accordance with this clause, and is composed of "target cost" and "target profit".

(2) The term "target cost" means that part of the target price which, at the time of its negotiation, was agreed to as the estimate of the unit cost of the supplies or services being procured.

(3) The term "target profit" means that part of the target price which, at the time of its negotiation, was agreed to as the unit profit for furnishing the supplies or services at a cost equal to the target cost.

(4) The term "total target price" means the sum of the target prices.

(5) The term "total target cost" means the sum of the target costs.

(6) The term "total target profit" means the sum of the target profits.

(7) The term "total adjusted cost" means the final negotiated cost of all supplies or services which are subject to price revision under this clause.

(8) The term "total adjusted price" means the final contract price, as computed in accordance with this clause, for all supplies or services which are subject to price revision under this clause.

(b) *General.* The supplies or services identified in the Schedule as Items ------ are subject to price revision in accordance with the provisions of this clause: *Provided,* That in no event shall the total adjusted price of such Items exceed ------ percent (------ percent) of the total target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(c) *Submission of data.* Within ------ (------) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those Items listed in paragraph (b) above, the Contractor shall submit in such form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such Items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such Items.

(d) *Price revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total ad-

justed cost reasonably incurred or to be incurred for and properly allocable to the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total adjusted price shall be established by adding to the total adjusted cost an allowance for profit determined as follows:

When the total adjusted cost is—	*The allowance for profit is—*
Equal to the total target cost.....	Total target profit.
Greater than the total target cost..	Total target profit less .. percent (..%) of the amount by which the total adjusted cost exceeds the total target cost.
Less than the total target cost....	Total target profit plus .. percent (..%) of the amount by which the total adjusted cost is less than the total target cost.

(e) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The Contractor shall segregate the costs of any supplies or services for which the price is fixed and not subject to revision under this clause. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis in connection with the furnishing of the supplies or services identified in paragraph (b) above as being subject to price revision (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract.

(f) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs to complete is considered reasonable.

(g) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(h) *Contract modifications.* The total adjusted price, as determined in accordance with paragraph (d) above, shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer and shall apply to supplies delivered and to services performed under this contract.

(i) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (h) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract: *Provided*, That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (j) (3) below, the parties may agree to revised billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of the total adjusted price under paragraph (d) above. After execution of the contract modification referred to in paragraph (h) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total adjusted price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(j) *Limitation on payments.* (1) This paragraph (j) shall not apply after final price revision to the full extent permitted by this contract.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to_____* a cumulative statement setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d) (2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4) modified as outlined in (i) above.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total adjusted price within 60 days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder.

(l) *Termination.* If this contract is terminated prior to establishment of the total adjusted price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

In the foregoing clause, in the space designated by an asterisk (_____*), insert, in contracts of the Department of the Army and the Department of the Air Force, the words "the Contracting Officer," and insert, in contracts of the Department of the Navy, the office or offices prescribed by Departmental procedures.

In the event the contract calls for spare parts or other supplies or services, which are to be ordered under a provisioning document or Government option, and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (m) shall be included in such clause:

(m) *Spare parts.* Spare parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such spare parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit covering such spare parts, other supplies, or services may be established

either separately, in the aggregate, or in any combination thereof, as the parties may agree.

§ 7.109 Price redetermination clauses.

§ 7.109–1 General.

When it is determined, in accordance with § 3.402, to use a fixed-price contract providing for redetermination of price as described in § 3.403–3, the applicable clause of those set forth below shall be used.

§ 7.109–2 Prospective periodic price redetermination at stated intervals.

(a) *Description; applicability, and limitations.* See § 3.403–3(b)(1).

(b) *Clause.*

PRICE REDETERMINATION (TYPE A)
(JULY 1960)

(a) *General.* The unit prices and the total price set forth in this contract shall be periodically redetermined in accordance with the provisions of this clause.[1] The prices for supplies delivered and services performed prior to the first effective date of price redetermination shall remain fixed.

(b) *Price redetermination periods.* For the purpose of price redetermination the performance of this contract is divided into successive periods. The first period shall extend from the date of this contract to _____,[2] and the second and each succeeding period shall extend for _____ (_____) months from the end of the last preceding period, except that the final period may be varied by agreement of the parties. The first day of the second and each succeeding period shall be the effective date of price redetermination for the period.

(c) *Price redetermination.* Not more than ____[3] days nor less than ____[3] days before the end of each redetermination period, except the last, and as otherwise provided in (iii) below, the Contractor shall submit:

(i) Proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract, together with—

(A) An estimate and breakdown of the costs of such supplies or services on DD Form 784 or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of such estimate; and

(C) An explanation of the differences between such estimate and the original (or last preceding) estimate for the same supplies or services;

(ii) A statement of all costs incurred in the performance of this contract through the end of the _____[4] month prior to the date of the submission of proposed prices, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) Supplemental statements of costs incurred subsequent to the date set forth in (ii) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iv) Any other relevant data which may reasonably be required by the Contracting Officer.

Upon receipt of the data required by this subparagraph (c), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies which may be delivered and services which may be performed in the period following the effective date of price redetermination. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(d) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (c) above are readily ascertainable therefrom. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times until the expiration of three years after final payment under this contract make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract, for any period.

(e) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs is considered reasonable.

(f) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times until the expiration of three years after final payment under such subcontract make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(g) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and services performed hereunder during the applicable price redetermination period.

(h) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (g) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided*, That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (i)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (g) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(i) *Limitation on payments.* (1) This paragraph (i) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer[5] a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i), Limitation on Payments), which is in direct proporton to the supplies delivered (or services performed) and ac-

[1] Where a ceiling is applicable, the following proviso shall be added: "*Provided*, That in no event shall the total amount paid under this contract exceed _____ Dollars ($_____)." Alternatively, the contract may provide ceiling amounts for each or any of the price redeterminations under the contract.

[2] This point may be expressed in terms of units delivered, or as a calendar date, but in either case the period shall generally end on the last day of a month.

[3] Insert in the blanks numbers of days so that the Contractor's submission will be late enough to reflect recent cost experience (having in mind the Contractor's accounting system), but early enough to permit review, audit if necessary, and negotiation prior to the start of the prospective period.

[4] Insert the word "first," except the word "second" may be inserted if necessary to achieve compatibility with the contractor's accounting system.

[5] Insert, in contracts of the Department of the Navy, the words "with a copy thereof to the office or officer designated in this contract to make payments thereunder.

cepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments); *Provided*, That such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (h) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4) modified as outlined in (i) above.

(j) ***Disagreements.*** If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60)[6] days after the date on which the data required by (c) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of (g), (h), and (i) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(k) *Termination.* If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

[6] This period may be varied by the parties at the time of negotiating the contract.

§ 7.109–3 Prospective price redetermination on request.

(a) *Description applicability, and limitations.* See § 3.404–3(b)(2).

(b) *Clause.*

PRICE REDETERMINATION (TYPE B) (JULY 1960)

(a) *General.* The unit prices and the total price set forth in this contract may be periodically redetermined in accordance with the provisions of this clause: *Provided*, That in no event shall the total amount paid under this contract exceed _____ dollars ($_____).[1] The prices for supplies delivered and services performed prior to the first effective date of price redetermination shall remain fixed.

(b) *Price redetermination.* Upon delivery of a written request by the Government to the Contractor or by the Contractor to the Government, and upon receipt of proposed prices and the supporting data required by (c)(2) below, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for the supplies to be delivered and services to be performed by the Contractor after the effective date of price redetermination. The written request shall specify the effective date of price redetermination, which shall be the first date of a month and which in no event shall be prior to delivery of the request or later than _____ (_____) days after the delivery of the request. No such request shall be made before _____.[2] Neither party shall request another price redetermination having an effective date within _____ (_____) days of the effective date of the last preceding price redetermination. The period of each price redetermination shall be from the effective date of that redetermination until the effective date of the next redetermination.

(c) *Submission of data.* (1) Within _____ (_____)[3] days after the date of this contract or within such further time as may be specified or approved by the Contracting Officer and periodically thereafter every _____ (_____) months, the Contractor shall submit a statement of all costs incurred in the performance of this contract through the end of the _____[4] month prior to the date of the submission, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for:

(i) Supplies delivered and services performed; and

(ii) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) Upon any written request by the Contractor for price redetermination, or within _____ (_____) days after receipt by the Contractor of any written request by the Government for price redetermination, the Contractor shall submit:

(i) Proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract, together with—

(A) An estimate and breakdown of the costs of such supplies or services on DD Form 784 or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of such estimate; and

(C) An explanation of the differences between such estimate and the original (or last preceding) estimate for the same supplies or services;

(ii) Supplemental statements of costs incurred subsequent to the closing date of the last preceding statement of incurred costs provided under (1) above, for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iii) Any other relevant data which may reasonably be required by the Contracting Officer.

(3) Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(d) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (c) above are readily ascertainable therefrom. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times until the expiration of three years after final payment under this contract make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract, for any period.

(e) *Certification.* An authorized responsible official of the Contractor, shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs is considered reasonable.

(f) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may, at all reasonable times until the expiration of three years after final payments under such subcontract make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(g) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and services performed hereunder during the applicable price redetermination period.

(h) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (g) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided* That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (i)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (g) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(i) *Limitation on payments.*

(1) This paragraph (i) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer[5] a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments); *Provided*, That such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (h) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60)[6] days after the date on which the data required by (c) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of (g), (h), and (i) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(k) *Termination.* If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of this termination shall be resolved pursuant to other applicable provisions of this contract.

§ 7.109–4 Retroactive and prospective price redetermination at a stated time prior to completion.

(a) *Description, applicability and limitations.* See § 3.403–3(b)(3).

(b) *Clause.*

PRICE REDETERMINATION (TYPE C) (JULY 1960)

(a) *General.* The unit prices and the total price set forth in this contract shall be redetermined in accordance with the provisions of this clause; *provided* that in no event shall the total amount paid under this contract exceed _____ dollars ($_____).

(b) *Price redetermination.* Within _____ (_____) days after the end of the month in which there is completion of _____,[1] the Contractor shall submit:

(i) Proposed prices for supplies delivered and to be delivered and services performed and to be performed under this contract;

(ii) A statement of all costs incurred in the performance of this contract through the end of the month specified above, on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on DD Form 784 or in any other form on which the parties may agree, together with—

(A) Sufficient data to support the accuracy and reliability of such estimate; and

(B) An explanation of the differences between such estimate and the original estimate used in establishing the unit prices set forth in this contract for the same supplies or services;

(iv) Supplemental statements of costs incurred subsequent to the end of the month specified in (ii) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(v) Any other relevant data which may reasonably be required by the Contracting Officer.

Upon receipt of data required by this subparagraph (b), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and to be delivered and services performed and to be performed under this contract. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(c) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever

[1] This proviso shall be deleted where ceilings are not applicable.

[2] The end of the first period may be expressed in terms of units delivered, or as a calendar date, but in either case the period shall end on the last day of a month.

[3] The specified number of days should be such that the end of the period for which the Contractor submits data shall coincide with the end of a month and should accommodate the objective that the periods for which the Contractor submits data should end at dates which are compatible with the contractor's accounting system.

[4] Insert the word "first," except the word "second" may be inserted if necessary to achieve compatibility with the contractor's accounting system.

[5] Insert, in contracts of the Department of the Navy, the words: "with a copy thereof to the office or offices designated in this contract to make payments thereunder."

[6] This period may be varied by the parties at the time of negotiating the contract.

[1] The degree of completion may be based on units delivered to the Government, percentage of contract performance, or any other reasonable basis.

nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (b) above are readily ascertainable therefrom. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times until the expiration of three years after final payment under this contract make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract, for any period.

(d) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (b) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs is considered reasonable.

(e) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times until the expiration of three years after final payment under such subcontract make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(f) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and to be delivered and services performed and to be performed hereunder.

(g) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (f) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (h)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (f) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(h) *Limitation on payments.* (1) This paragraph (h) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer [2] a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments);

Provided, That such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (h) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within sixty (60) [2] days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (f), (g), and (h) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated prior to price redetermination, prices shall be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

§ 7.109–5 Retroactive and prospective price redetermination including further prospective redetermination on request.

(a) *Description, applicability and limitation.* See § 3.403–3(b)(4).

(b) *Clause.*

PRICE REDETERMINATION (TYPE D)
(JULY 1960)

(a) *General.* The unit prices and the total price set forth in this contract shall be redetermined in accordance with the provisions of this clause: *Provided,* That in no event shall the total amount paid under this contract exceed _____ dollars ($ _____).

(b) *Price redetermination.* (1) *Mandatory.* Within _____ (_____) days after the end of the month in which there is completion of _____,[3] the Contractor shall submit:

(i) Proposed prices for supplies delivered and to be delivered and services performed and to be performed under this contract;

(ii) A statement of all costs incurred in the performance of this contract through the end of the month specified above on DD Form 784 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on DD Form 784 or in any other form on which the parties may agree, together with—

(A) Sufficient data to support the accuracy and reliability of such estimate; and

(B) An explanation of the differences between such estimate and the original estimate used in establishing the unit prices set forth in this contract for the same supplies or services;

(iv) Supplemental statements of costs incurred subsequent to the end of the month specified in (ii) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(v) Any other relevant data which may reasonably be required by the Contracting Officer.

Upon receipt of data required by this subparagraph (b)(1), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and to be delivered and services performed and to be performed under this contract. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(2) *Optional.* *a.* Upon delivery of a written request by the Government to the Contractor or by the Contractor to the Government, and upon receipt of proposed prices and the supporting data required by *b.2.* below, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for the supplies to be delivered and services to be performed by the Contractor after the effective date of price redetermination. The written request shall specify the effective date of the requested price redetermination, which shall be the first day of a month and which in no event shall be prior to delivery of the request or later than _____ (____) days after the delivery of the request. No such request shall be made before _____ (____) days after the price redetermination required by subparagraph (1) above has been effected either by agreement or by decision of the Contracting Officer under paragraph (i) below. Neither party shall request another price redetermination having an effective date within _____ (____) days of the effective date of the last preceding price redetermination. The period of each price redetermination shall be from the effective date of that redetermination until the effective date of the next redetermination.

b.1. Within _____ (_____)[2] days after the price redetermination required by subparagraph (1) above has been effected either by agreement or by decision of the Contracting Officer under paragraph (i) below, or within such further time as may be specified or approved by the Contracting Officer and periodically thereafter every _____ (_____) months, the Contractor shall submit a statement of all costs incurred in the performance of this contract through the end of the month prior to the date of the submission, on DD Form 784 or in any other form on which the parties may agree, together with sufficient data to disclose unit costs and cost trends for:

(i) Supplies delivered and services performed; and

(ii) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

2. Upon any written request by the Contractor for price redetermination or within _____ (_____) days after receipt by the Contractor of any written request by the Government for price redetermination, the Contractor shall submit:

(i) Proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract, together with—

(A) An estimate and breakdown of the costs of such supplies or services, on DD Form 784 or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of such estimate; and

(C) An explanation of the differences between such estimate and the original (or last preceding estimate) for the same supplies or services;

(ii) Supplemental statements of costs incurred subsequent to the closing date of the last preceding statement of incurred costs provided under *b.1.* above, for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iii) Any other relevant data which may reasonably be required by the Contracting Officer.

3. Where the Contractor fails to submit the required data within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

(c) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (b) above are readily ascertainable therefrom. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times until the expiration of three years after final payment under this contract make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence pertinent to the performance of this contract, for any period.

(d) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs is considered reasonable.

(e) *Subcontracts.* (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times until the expiration of three years after final payment under such subcontract make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(f) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and services performed hereunder during the applicable price redetermination period.

(g) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (f) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (h)(3) below, the parties may agree to revised billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (f) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(h) *Limitation on payments.* (1) This paragraph (h) shall apply only during a period for which firm prices have not been established.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract and as of the end of each quarter, the Contractor shall submit to the Contracting Officer [2] a statement cumulative from the inception of the contract, setting forth:

(i) The total contract price of all supplies

[2] This period may be varied by the parties at the time of negotiating the contract.

[3] The degree of completion may be based on units delivered to the Government, percentage of contract performance, or any other reasonable basis.

[2] The specified number of days should be such that the end of the period for which the contractor submits data shall coincide with the end of the month.

[2] Insert, in contracts of the Department of the Navy, the words: "with a copy thereof to the office or officer designated in the contract to make payments thereunder."

delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments);

Provided, That such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (h) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(l) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60)[4] days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (f), (g), and (h) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(j) *Termination.* If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

§ 7.109–6 Retroactive price redetermination after completion.

(a) *Description, applicability, and limitations.* See § 3.403–3(b)(5).

(b) *Clause.*

PRICE REDETERMINATION (TYPE E) (JULY 1960)

(a) *General.* The unit prices and the total price set forth in this contract shall be redetermined in accordance with the provisions of this clause: *Provided,* That in no event shall the total amount paid under this contract exceed _____ dollars ($_____).

(b) *Price redetermination.* Within _____ (_____) days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit (i) proposed prices, (ii) a statement of all costs incurred in the performance of this contract, on DD Form 784 or any other form on which the parties may agree, and (iii) any other relevant data which may reasonably be required by the Contracting Officer. Upon receipt of the required data, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and services performed by the Contractor under this contract. Where the Contractor fails to submit the required data within the time specified, payment of all invoices may be suspended by the Contracting Officer until the data are furnished.

(c) *Records.* (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (b) above are readily ascertainable therefrom. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all its subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times until the expiration of three years after final payment under this contract make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract.

(d) *Certification.* An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs is considered reasonable.

(e) *Subcontracts.* (1) No subcontract under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve an estimated amount in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times until the expiration of three years after final payment under such subcontract make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii) in all its subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(f) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices which shall apply to supplies delivered and to services performed by the Contractor hereunder.

(g) *Adjustment of payments.* Pending execution of the contract modification referred to in paragraph (f) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract: *Provided,* That if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (h)(3) below, the parties may agree to greater or lesser billing prices, which shall be reflected in an amendment or supplemental agreement to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (f) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(h) *Limitation on payments.* (1) This paragraph (h) shall apply until final price redetermination to the full extent permitted by this contract.

(2) Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer[1] a statement cumulative from the inception of the contract, setting forth:

[4] This period may be varied by the parties at the time of negotiating the contract.

[1] Insert, in contracts of the Department of the Navy, the words: "With a copy thereof to the office or offices designated in the contract to make payments thereunder."

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2) (iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified as outlined in (i) above.

(l) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within sixty (60)[2] days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (f), (g), and (h) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated prior to price redetermination, prices shall be established pursuant to this clause (i) for completed supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

§ 7.109–7 Modified retroactive and prospective price redetermination for follow-on contracts.

(a) *Descriptions, applicability, and limitations.* See § 3.403–3(b)(6) of this chapter.

(b) *Clause.* Where a follow-on contract is to be geared to a preceding contract for pricing purposes and is to provide for retroactive and prospective price redetermination at a stated time prior to completion, the clause in § 7.109–4 shall be used except that the caption will read "Price Redetermination (Modified Type C)" and the paragraph set forth below will be substituted for the text of paragraph (b) of the clause in § 7.109–4. Where such a follow-on contract is to provide for retroactive and prospective price redetermination including further prospective redetermination upon request, the clause in § 7.109–5 shall be used except that the caption will read "Price Redetermination (Modified Type D)" and the paragraph set forth below will be substituted for the text of subparagraph (b)(1) of the clause in § 7.109–5.

Upon completion of deliveries under Contract No. _____, herein called the preceding contract, or at such other time as the Contracting Officer may fix after negotiation of a mandatory price redetermination is to begin under the preceding contract, and as otherwise provided in (ii) below, the Contractor shall submit:

(i) Proposed prices for supplies delivered and to be delivered and services performed and to be performed under this contract;

(ii) Statements of incurred costs and cost estimates, on DD Form 748 or in any other form on which the parties may agree, to be submitted separately both for this contract and for the preceding contract until its completion, covering each of the following:

(A) All costs incurred in the performance of such contracts through the end of the _____[1] month before the submission, together with sufficient supporting data to disclose unit costs and cost trends for:

(I) Supplies delivered and services performed; and

(II) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(B) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under such contracts, using the statement of costs incurred plus an estimate of costs to complete performance, together with:

(I) Sufficient data to support the accuracy and reliability of such estimate; and

(II) An explanation of the differences between such estimate and the original estimate used in establishing the unit prices set forth in this contract for the same supplies or services; and

(C) Supplemental statements of costs incurred subsequent to the end of the month specified in (A) above for:

(I) Supplies delivered and services performed; and

(II) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(III) Any other relevant data which may reasonably be required by the Contracting Officer.

Upon the receipt of the data required above, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and to be delivered and services performed and to be performed under this contract. Where the Contractor fails to submit data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished.

[2] This period may be varied by the parties at the time of negotiating the contract.

[1] Insert the word "first," except the word "second" may be inserted if necessary to achieve compatibility with the contractor's accounting system.

Subpart B—Clauses for Cost-Reimbursement Type Supply Contracts

§ 7.200 Scope of subpart.

This subpart sets forth uniform contract clauses for use in cost-reimbursement type supply contracts as defined in § 7.202.

§ 7.202 Applicability.

As used throughout this subpart, the term "cost-reimbursement type supply contract" shall mean any contract (other than a letter contract, letter of intent, preliminary notice of award; or amendment or a supplemental agreement to a contract which does not effect new procurement) entered into on a cost or cost-plus-a-fixed-fee basis as covered in § 3.404 of this subchapter for supplies other than (a) the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property, (b) experimental, developmental, or research work, or (c) facilities to be provided by the Government under a "facilities contract" as defined in Part 13 of this subchapter.

§ 7.203 Required clauses.

The following clauses shall be inserted in all cost-reimbursement type supply contracts.

§ 7.203–1 Definitions.

Insert the contract clause set forth in § 7.103–1. Additional definitions may be included in such clause provided they are not inconsistent with such clause or the provisions of this subchapter.

§ 7.203–2 Changes.

CHANGES (JAN. 1958)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery

schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the day of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures.

In the interest of economy, the Government has a basic responsibility fully to utilize its property. Consistent therewith the Government has reserved the right in the above clause to make changes in the amount of Government-furnished property, including the right to increase the amount of Government-furnished property. Prior to exercising the right to increase the amount of Government-furnished property, contracting officers will consider fully any inequities which may result to the contractor as against the net benefits which may accrue to the Government.

§ 7.203–3 Limitation of cost.

LIMITATION OF COST (OCT. 1953)

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving its revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

§ 7.203–4 Allowable Cost, Fee, and Payment.

(a) Except as provided in paragraphs (b) and (c)(5) of this section, the following clause shall be inserted in all cost-reimbursement type supply contracts. Additional instructions for use are in paragraph (c) of this section.

ALLOWABLE COST, FIXED FEE, AND PAYMENT (APR. 1959)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by ----------* to be allowable in accordance with—

(A) Subpart B as in effect on the date of this contract; and of Part 15 of this Subchapter.

(B) The terms of this contract; and

(ii) Such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by ----------*) the Contractor may submit to an authorized representative of ----------*, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c)(1) As promptly as may be practicable after the receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, and subject to the provisions of paragraph (d) below, make payment thereon, as approved by ----------,* to the extent of:

(i) 100 percent of such approved costs representing progress payments to subcontractors under fixed price type subcontracts: *Provided,* That such payments by the Government to the Contractor shall not exceed 70 percent of the costs incurred by such subcontractors,

(ii) 100 percent of such approval costs representing cost reimbursement to subcontractors under cost reimbursement type subcontracts: *Provided,* That for cost reimbursement type subcontracts not covered by the exceptions listed in § 3.404–3(d)(2) of this subchapter, as in effect on the date of this contract, such payments by the Government shall not exceed 80 percent of the costs incurred by such subcontractors, and

(iii) 80 percent of all other such approved costs.

The cumulative amount of such invoices or vouchers from time to time approved but not paid pursuant to the foregoing provisions (regardless of whether they are paid under the next sentence hereof) shall constitute a gross withheld payments amount. Upon acceptance and delivery of articles called for by item ------** of this contract, the Government shall pay to the Contractor an amount which, when added to any amounts previously paid under this sentence, shall be the same percentage of the gross withheld payments amount as the cumulative number of articles accepted and delivered under item ------** of this contract is of the total number of articles called for by such item.

(2) Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(3) The total of the amounts which may be withheld at any one time under both (c)(1) and (c)(2) above shall not exceed the greatest amount which may then be withheld under either (c)(1) or (c)(2), whichever permits the greater withholding at that time.

(4) In the event of complete termination of the work remaining to be performed under this contract or in the event of cessation of performance pursuant to the clause of this contract entitled "Limitation of Cost," the Government shall, subject to the provisions of paragraph (d) below, pay the balance of the gross withheld payments amount to the Contractor within sixty (60) days from the effective date of termination or date of written notice to the Government that performance has been discontinued pursuant to the clause entitled "Limitation of Cost," as the case may be.

(d) At any time or times prior to final payment under this contract ----------* may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by ----------,* on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of the execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

(b) When, pursuant to § 3.404–4 of this subchapter, incentive revision of the fee in a cost-reimbursement type supply contract is to be provided, the clause set forth below shall, except as provided in paragraph (c)(5) of this section, be included in the contract. Additional instructions for use of the clause are in paragraph (c) of this section.

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT (APR. 1959)

(a)(1) For the performance of this contract, the Government shall pay to the Contractor:

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by ----------* to be allowable in accordance with—

(A) Subpart B of Part 15 of this subchapter as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) A fee determined as provided in this contract.

(2) The target cost and target fee of this contract are set forth in the Schedule and shall be subject to adjustment in accordance with (h) and (i) below. As used throughout this contract the term:

(i) "Target cost" means the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below; and

(ii) "Target fee" means the fee which was initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost of this contract initially negotiated, adjusted in accordance with (h) below.

(b) Once each month (or at more frequent intervals, if approved by ----------*) the Contractor may submit to an authorized representative of ----------,* in such form and reasonable detail as such representative may require an invoice or voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c)(1) As promptly as may be practicable after the receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, and subject to the provisions of paragraph (d) below, make payment thereon, as approved by ----------,* to the extent of:

(i) 100 percent of such approved costs representing progress payments to subcontractors under fixed price type subcontracts: *Provided,* That such payments by the Government to the Contractor shall not exceed 70 percent of the costs incurred by such subcontractors,

(ii) 100 percent of such approval costs representing cost reimbursement to subcontractors under cost reimbursement type subcontracts: *Provided,* That for cost reimbursement type subcontracts not covered by the exceptions listed in § 3.404–3(d)(2) of this subchapter, as in effect on the date of this contract, such payments by the Government shall not exceed 80 percent of the costs incurred by such subcontractors, and

(iii) 80 percent of all other such approved costs.

The cumulative amount of such invoices or vouchers from time to time approved but not paid pursuant to the foregoing provisions (regardless of whether they are paid under the next sentence hereof) shall constitute a gross withheld payments amount. Upon acceptance and delivery of articles called for by item ------** of this contract, the Government shall pay to the Contractor an amount which, when added to any amounts previously paid under this sentence, shall be the same percentage of the gross withheld payments amount as the cumulative number of articles accepted and delivered under item ------** of this contract is of the total number of articles called for by such item.

(2) Payment of fee shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of ninety-five percent (95%) of the minimum fee provided for in (i) below, further payment, on account of the fee shall be withheld until a reserve of either fifteen percent (15%) of the target fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(3) The total of the amounts which may be withheld at any one time under both (c)(1) and (c)(2) above shall not exceed the greatest amount which may then be withheld under either (c)(1) or (c)(2), whichever permits the greater withholding at that time.

(4) In the event of complete termination of the work remaining to be performed under this contract or in the event of cessation of performance pursuant to the clause of this contract entitled "Limitation of Cost," the Government shall, subject to the provisions of paragraph (d) below, pay the balance of the gross withheld payments amount to the Contractor within sixty (60) days from the effective date of termination or date of written notice to the Government that performance has been discontinued pursuant to the clause entitled "Limitation of Cost," as the case may be.

(d) At any time or times prior to final payment under this contract, ----------* may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by ----------*, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of the execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

Payments under the assignment and the claims excepted from the release shall be subject to adjustment by reason of the adjustment of fee in accordance with (i) below.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

(h) When the work under this contract (including any supplies or services which are ordered separately under, or otherwise added to, this contract) is increased or decreased by contract modification, appropriate adjustments in the target cost and target fee shall be set forth in an amendment

or supplemental agreement to this contract.

(i) The fee payable hereunder shall be the target fee increased by (insert contractor's participation) cents for every dollar by which the total allowable cost is less than the target cost or decreased by (insert contractor's participation) cents for every dollar by which the total allowable cost exceeds the target cost. In no event shall the fee be greater than ------%, nor less than ------%, of the target cost; and within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (f)(i) above, and claims excepted from the release required by (f)(ii) above.

In the event the contracts call for spare parts or other supplies and services which are to be ordered under a provisioning document or Government option, the following provision (j) shall be included:

(j) Compensation for supplies (including spare parts) and services which are to be furnished under this contract pursuant to a provisioning document or Government option shall be determined in accordance with the provisions of this clause notwithstanding any inconsistent provision in such provisioning document or Government option.

(c)(1) In the foregoing clauses, insert, in contracts of the Department of the Army and the Department of the Air Force, the words, "the Contracting Officer," and insert, in contracts of the Department of the Navy the words "the Comptroller of the Navy (Contract Audit Division)" in the spaces designated by an asterisk (----------*). For approvals with regard to fixed-price type subcontracts, pursuant to paragraph (c)(1)(i) of the foregoing clauses, the standards shall be the same as those governing progress payments on fixed-price type prime contracts. For approvals with regard to cost-reimbursement type subcontracts, pursuant to paragraph (c)(1)(ii) of the foregoing clauses, the standards shall be the same as those contained in § 3.404–3(d) of this subchapter for prime contracts.

(2) In subparagraph (c)(1) of the foregoing clauses, insert the item number of the principal end item being procured under the contract in the space designated by a double asterisk (------**).

(3) In accordance with Departmental procedures, the following sentence may be substituted for the third sentence of subparagraph (c)(1) of the foregoing clauses: "Upon the completion of increments of work as specified in the Schedule, the Government shall pay to the Contractor an amount which, when added to any amounts previously paid under this sentence, shall be the same percentage of the gross withheld payments amount as the total of the completed increments is of the total increments of the work called for by this contract." Increments of work specified in the Schedule pursuant to the above provision may be stated in units, percentages of completion, stages of work, or in any other appropriate manner.

(4) In paragraph (f)(ii)(B) of the foregoing clauses, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided*, That a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the clause set forth in § 7.203–7.

(5) In all cost-reimbursement type supply contracts covered by any one of the exceptions listed in § 3.404–3(d)(2) of this subchapter, insert the appropriate one of the foregoing clauses modified as follows:

(i) If the clause set forth in paragraph (a) of this section is used, delete paragraph (c) thereof and substitute the following:

(c) Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by ----------*. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however*, That after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(ii) If the clause set forth in paragraph (b) of this section is used, delete paragraph (c) thereof and substitute the following:

(c) Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of (d) below, make payment thereon as approved by ----------*. Payment of fee shall be made to the Contractor as specified in the Schedule: *Provided, however*, That after payment of ninety-five percent (95%) of the minimum fee provided for in (i) below, further payment on account of the fee shall be withheld until a reserve of either fifteen percent (15%) of the target fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(6) In subparagraph (c)(2) of the clauses set forth in paragraphs (a) and (b) of this section and in the (c) paragraphs set forth in subparagraph (5) of this paragraph, the percentages and amounts set forth therein may be varied in accordance with Departmental procedures, except that the percentage of minimum fee in the incentive fee clause shall not exceed 95 percent.

(7) The measure of the increase and the decrease in the fee, representing "the contractor's participation" as set forth in paragraph (i) of the incentive fee clause, shall normally be the same. Under some circumstances the use of a sliding scale may be appropriate (for example, $0.01 for the first $100, $0.02 for the next $100, etc.) in which case necessary changes in the wording of paragraph (i) of the incentive fee clause are authorized. The maximum and minimum fee shall normally be equidistant from the target fee.

(8) In the case of cost-reimbursement type supply contracts without fee:

(i) Insert the following sentence in lieu of the second sentence of paragraph (c) of the clause set forth in subparagraph (5)(i) of this paragraph: "After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside"; and

(ii) Delete the words "and any part of the fixed fee" from paragraph (e) of the clause set forth in paragraph (a) of this section.

§ 7.203–5 Inspection of supplies and correction of defects.

INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS (MAY 1960)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) of this section, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (1) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (2) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (3) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require correction or replacement by the Contractor, without cost to the Government, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall make its records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

§ 7.203–6 Assignment of claims.

In accordance with the instructions set forth in § 7.103–8, insert the contract clause set forth in § 7.103–8.

§ 7.203–7 Records.

(a) Except as provided in (b) of this section and in § 6.701, insert the following clause:

RECORDS (JAN. 1960)

(a) (1) The Contractor agrees to maintain books, records, documents and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of ------*; *Provided, however*, That no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Department or of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through ------* such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date or any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4)(B) above, the Contractor may in fulfillment of its obligation to retain its records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a)(6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Department, or any of their duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding $2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

In the foregoing clause, insert, in contracts of the Department of the Army, and the Department of the Air Force, the words "the Contracting Officer," and insert, in contracts of the Department of the Navy, the words "the Comptroller of the Navy (Contract Audit Division)," in the space designated by an asterisk (----------*).

(b) In the case of contracts which establish separate periods of performance, the following alternate subparagraph (a)(4) may be substituted for the corresponding subparagraph of the clause prescribed by paragraph (a) of this section.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of payment of the voucher or invoice submitted by the Contractor after the completion of the work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A), (B), or (C) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(C) If the Contractor plans to destroy any records sooner than three years after the date of the voucher or invoice to be submitted after the completion of the work performed during the total of the periods of performance established by this contract and all amendments and supplemental agreements thereto, which voucher or invoice shall be designated "completion voucher" or "completion invoice," it shall give written notice to the Contracting Officer and to the Comptroller General of the United States, specifying any records which it plans to destroy after the expiration of 90 days from the receipt of such notice, and shall retain any records which either the Contracting Officer or the Comptroller General, by written notice within 90 days after receipt of the Contractor's notice, requires to be retained for a further specified period of time.

In the case of such contracts which do not contain the foregoing alternate subparagraph (a)(4), that subparagraph may be inserted by amendment, or in the alternative, the retention of records may be administered in accordance with the procedures set forth in the foregoing alternate subparagraph (a)(4).

§ 7.203–8 Subcontracts.

SUBCONTRACTS (JULY 1960)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (iv) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(f) Notwithstanding (b) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (b) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(g) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7–108 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (b) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and in (i) and (iv) thereof dollar amounts not in excess of $10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures.

§ 7.203–9 Utilization of small business concerns.

Insert the contract clause set forth in § 7.104–14, except in those contracts entered into with foreign contractors which are to be performed outside of the United States, its Territories, its posessions, and Puerto Rico.

§ 7.203–10 Termination.

Insert the contract clause set forth in § 8.702.

§ 7.203–11 Excusable delays.

Insert the clause set forth in § 8.708.

§ 7.203–12 Disputes.

Insert the contract clause set forth in § 7.103–12. In accordance with Department procedures, the foregoing clause may be modified to provide for (a) decision by the activity within a Department performing audit functions of any dispute concerning a question as to allowability of cost, and (b) intermediate appeal to the Head of the Procuring Activity concerned. The decision of the Contracting Officer or of the Activity performing the audit function shall, if mailed, be sent by certified mail, return receipt requested.

§ 7.203–13 Renegotiation.

In accordance with the requirements of § 7.103–13, insert the appropriate contract clause set forth therein.

§ 7.203–14 [Reserved]

§ 7.203–15 Convict labor.

Insert the contract clause set forth in § 12.203 of this subchapter.

§ 7.203–16 Eight-Hour Law of 1912—Overtime compensation.

Insert the contract clause set forth in § 12.303–1 of this chapter. Note the introductory provision required by § 12.303–2 of this chapter in the case of contracts with a State or political subdivision thereof.

§ 7.203–17 Walsh-Healey Public Contracts Act.

Insert the contract clause set forth in § 12.604 of this subchapter.

§ 7.203–18 Nondiscrimination in employment.

Insert the contract clause set forth in § 12.802.

§ 7.203–19 Officials not to benefit.

Insert the contract clause set forth in § 7.103–19.

§ 7.203–20 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103–20.

§ 7.203–21 Government property.

Insert the contract clause set forth in § 13.503 of this subchapter.

§ 7.203–22 Insurance; liability to third persons.

INSURANCE—LIABILITY TO THIRD PERSONS (JAN. 1960)

(a) The Contractor shall procure and thereafter maintain workmen's compensation employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as ---------- [1] may from time to time require with respect to performance under this contract: *Provided*, That the Contractor may with the approval of ---------- [1] maintain a self-insurance program: *And provided further*, That with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as ---------- [1] may from time to time require or approve, and with insurers approved by ---------- [1].

(b) The Contractor agrees, to the extent and in the manner required by ------*, to submit for the approval of ------* any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) For the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss or damage to property (other than property (A) owned, occupied or used by the Contractor or rented to the Contractor or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, its agents, servants or employees, provided such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (i) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (ii) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by ------* or (iii) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause, provided such cost would constitute Allowable Cost under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment."

[1] In the foregoing clause, insert, in contracts of the Department of the Army the words "the Contracting Officer," and insert, in contracts of the Department of the Navy and the Department of the Air Force, the activity designated in accordance with Departmental procedures.

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith: *Provided, however*, That the Contractor may, at its own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

In the foregoing clause, insert, in the contracts of the Department of the Army and the Department of the Air Force, the words "the Contracting Officer," and insert, in the contracts of the Department of the Navy, the words "the Department," in the space designated by an asterisk (------*).

§ 7.203–23 Authorization and consent.

Insert the contract clause set forth in § 9.102–1 of this subchapter.

§ 7.203–24 Notice and assistance regarding patent infringement.

Insert the contract clause set forth in § 9.104 of this subchapter.

§ 7.203–25 Soviet-controlled areas.

In accordance with the requirements of § 6.403 of this subchapter, insert the contract clause set forth therein.

§ 7.203–26 Utilization of concerns in labor surplus areas.

Insert the contract clause set forth in § 7.104–20 of this part, except in contracts of which the estimated cost does not exceed $5,000 and in contracts with foreign contractors which are to be performed outside the United States, its possessions, and Puerto Rico.

§ 7.203–27 Payment for overtime and shift premiums.

In accordance with the requirements of § 12.102 of this chapter, insert the contract clause set forth in § 12.102–3(c) of this chapter.

§ 7.204 Clauses to be used when applicable.

§ 7.204–1 Davis-Bacon Act.

In accordance with the requirements of Subpart D of Part 12 of this subchapter insert the applicable contract clauses set forth in § 12.403–1 or § 12.403–4 of this subchapter, as the case may be.

§ 7.204–2 Copeland Act.

In accordance with the requirements of Subpart D of Part 12 of this subchapter, insert the applicable contract clauses set forth in § 12.403–1 or § 12.403–4 of this subchapter, as the case may be.

§ 7.204–3 Buy American Act.

In accordance with the requirements of § 6.104–5 of this chapter, insert the clause set forth therein.

§ 7.204–4 Notice to the Government of labor disputes.

Insert the clause set forth in § 7.104–4 in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

§ 7.204–5 Patent indemnity.

In accordance with the requirements of § 9.103 of this chapter, insert the appropriate contract clause with additional provisions as prescribed, set forth in said section.

§ 7.204–6 Filing of patent applications.

In accordance with the requirements of § 9.106 or § 9.106–1, insert either of the contract clauses set forth therein, as appropriate.

§ 7.204–7 Patent rights.

In accordance with the requirements of § 9.107 of this chapter, insert the appropriate clause with additional provisions as prescribed, set forth in said section.

§ 7.204–8 Reporting of royalties.

In accordance with the requirements of § 9.110 of this chapter, insert the contract clause set forth therein.

§ 7.204–9 Rights in data.

In accordance with the requirements of Subpart B of Part 9 of this Subchapter, insert one of the contract clauses set forth in § 9.203–1, § 9.204–2, or § 9.206 of this chapter, as appropriate. When the contract clause in § 9.203–1 of this chapter, is used, the appropriate additional provisions shall be added in accordance with the requirements of § 9.203, § 9.203–2, § 9.203–3, or § 9.203–4 of this chapter; and the additional provision in § 9.204–1 of this chapter may be added under the circumstances set forth in § 9.204–1 of this chapter.

§ 7.204–10 Quality Control System.

In accordance with the instructions in § 7.104–28 of this part, insert the contract clause set forth therein.

§ 7.204–11 Excess profit.

In accordance with the instructions set forth in § 7.104–11, insert the appropriate contract clause set forth in said section.

§ 7.204–12 Military security requirements.

In accordance with the requirements of § 7.104–12, insert the contract clause set forth in said section, deleting paragraphs (e) and (f) therefrom and substituting therefor the following paragraphs (e) and (f):

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost and fixed fee shall, to the extent appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding paragraph (e) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into thereunder may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved.

§ 7.204–13 Preference for certain domestic commodities.

In accordance with the requirements of § 6.305 of this chapter, insert the clause set forth therein.

§ 7.204–14 Gratuities.

In accordance with the requirements of § 7.104–16, insert the contract clause set forth in said section.

§ 7.204–15 Priorities, allocations and allotments.

In accordance with the requirements of § 1.307–2 of this subchapter, insert the contract clause set forth in § 7.104–18.

§ 7.204–16 Negotiated overhead rates.

Insert the contract clause set forth in § 3.704–1 of this subchapter in all contracts with commercial concerns where negotiated overhead rates pursuant to Part 3, subpart G, are to be used.

§ 7.204–17 Cargo preference act.

In accordance with the requirements of § 1.1404(b) of this subchapter, insert one of the contract clauses set forth therein as appropriate.

§ 7.204–18 Limitation on withholding of payments.

In accordance with the instructions in § 7.104–21, insert the contract clause set forth therein.

§ 7.204–19 Defense subcontracting small business program.

In accordance with § 1.707–2(b), insert the contract clause set forth in § 7.104–22.

§ 7.204–20 Changes to make or buy program.

In accordance with the requirements of § 3.902(d) of this subchapter, insert the clause set forth therein.

§ 7.205 Additional clauses.

The following clauses shall be inserted in cost-reimbursement type supply contracts in accordance with Department procedures when it is desired to cover the subject matter thereof in such contracts.

§ 7.205–1 Alteration in contract.

The contract clause set forth in § 7.105–1 may be inserted.

§ 7.205–2 Approval of contract.

The contract clause set forth in § 7.105–2 may be inserted.

§ 7.205–4 Bill of materials.

The contract clause set forth in § 7.105–6 of this regulation may be inserted pursuant to the provisions of that section.

§ 7.205–6 Materiel inspection and receiving report.

The contract clause set forth in § 7.105–7 may be inserted to the extent authorized by Departmental procedures.

§ 7.205–7 Stop work orders.

The clause set forth in § 7.105–8 of this part, if modified by changing (a) the words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of this contract" and (b) the words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected," is authorized for use in any cost-reimbursement type contract under the criteria and in accordance with the instructions in § 7.105–8.

Subpart C—Clauses for Fixed-Price Research and Development Contracts

§ 7.301 Applicability.

As used throughout this subpart, the term "fixed-price research and development contract" means any contract (other than a letter contract, a notice of award, or a modification not affecting new procurement) which (i) is entered into at a fixed price in an amount exceeding $2,500 (with or without any provision for price redetermination, escalation, or other form of price revision as covered in § 3.403, of this chapter), and (ii) is for experimental, developmental, or research work. See § 3.402(b) of this chapter limiting use of fixed-price contracts for research and development work.

§ 7.302 Required clauses.

The following clause shall be inserted, as required, in all fixed-price research and development contracts, except as may otherwise be indicated in this subpart.

§ 7.302–1 Definitions.

Insert the contract clause set forth in § 7.103–1. Additional definitions may be included in such clause provided they are not inconsistent with such clause or the provisions of this subchapter.

§ 7.302–2 Payments.

PAYMENTS (JUNE 1959)

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

§ 7.302–3 Standards of work.

STANDARDS OF WORK (JUNE 1959)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

§ 7.302–4 Inspection.

(a) The following clause shall be used where the primary contract objective is delivery of end items other than designs, drawings or reports, except where the contracting officer determines that the use of such clause is impracticable. Where this clause is not used, the clause provided in paragraph (b) of this section shall be used.

INSPECTION (JUNE 1959)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

(b) The following clause shall be inserted in all contracts subject to this part where the clause in paragraph (a) of this section is not used.

INSPECTION (JUNE 1959)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

§ 7.302–5 Assignment of claims.

In accordance with the instructions set forth in § 7.103–8, insert the contract clause set forth therein.

§ 7.302–6 Examination of records.

In negotiated fixed-price research and development contracts, insert the clause set forth in § 7.104–15 in accordance with the requirements set forth therein.

§ 7.302–7 Federal, State, and local taxes.

In accordance with the requirements of § 11.401 of this chapter, insert the contract clause set forth in §§ 11.401–1 or 11.401–2 of this chapter as appropriate.

§ 7.302–8 Utilization of small business concerns.

Insert the contract clause set forth in § 7.104–14 in all contracts in amounts exceeding $5,000, except contracts with foreign contractors which are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

§ 7.302–9 Default.

In accordance with the requirements of § 8.710 of this chapter, insert the clause set forth therein.

§ 7.302–10 Termination for convenience of the government.

In accordance with the requirements of §§ 8.701 and 8.704 of this chapter, insert the appropriate contract clause.

§ 7.302–11 Disputes.

In accordance with the instructions in § 7.103–12, insert the contract clause set forth in § 7.103–12.

§ 7.302–12 Renegotiation.

In accordance with the requirements of § 7.103–13, insert the appropriate contract clause set forth therein.

§ 7.302–13 Buy American Act.

In accordance with the requirements of § 6.104–5 of this chapter, insert the contract clause set forth therein.

§ 7.302–14 Convict labor.

In accordance with the requirements of § 12–202, insert the contract clause set forth in ASPR 12–203.

§ 7.302–15 Walsh-Healey Public Contracts Act.

In accordance with the requirements of Part 12, subpart F of this chapter, insert the contract clause set forth in § 12.604 of this chapter.

§ 7.302–16 Eight-hour law of 1912—overtime compensation.

In accordance with the instructions of § 12.303 of this chapter, insert the clause set forth therein.

§ 7.302–17 Nondiscrimination in employment.

In accordance with the requirements of § 12.802 of this chapter, insert the contract clause set forth therein.

§ 7.302–18 Officials not to benefit.

Insert the contract clause set forth in § 7.103–19.

§ 7.302–19 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103–20.

§ 7.302–20 Gratuities.

In accordance with the requirements of § 7.104–16, insert the contract clause set forth therein.

§ 7.302–21 Authorization and consent.

In accordance with the requirements of § 9.102 of this chapter, insert the appropriate contract clause set forth therein.

§ 7.302–22 Notice and assistance regarding patent infringement.

In accordance with the requirements of § 9.104 of this chapter, insert the contract clause set forth therein.

§ 7.302–23 Patent rights.

In accordance with the requirements of § 9.107 of this chapter, insert the appropriate contract clause set forth therein with additional or alternate paragraphs as prescribed therein. However, in the case of contracts awarded on the basis of no profit, the percentage amount specified to be withheld under paragraph (*f*) of the clause set forth in § 9.107–2 of this chapter, or paragraphs (c) and (*d*) of the clause set forth in § 9.107–3 of this chapter, may be changed from "ten percent (10%)" to "one percent (1%)."

§ 7.302–24 Basic data clause.

In accordance with the requirements of § 9.202 of this chapter, insert the clause set forth in § 9.203–1 of this chapter with appropriate additional or alternate paragraphs as prescribed by the instructions in §§ 9.203 and 9.204–1 of this chapter.

§ 7.302–25 Military security requirements.

(a) Except as provided in paragraph (b) of this section, insert the contract clause prescribed by § 7.104–12: *Provided*, That the clause may be modified in accordance with § 7.104–12 with respect to contracts outside the United States, its Territories, its possessions, and Puerto Rico, with respect to additional security safeguards.

(b) In any research and development contract with an educational institution when the contract is awarded on the basis of no profit, insert the clause set forth in § 7.402–24(b), except that such clause may be appropriately modified for contracts to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

(c) The contracting officer or his authorized representative shall prepare and transmit to the contractor and the Government representative having security cognizance over the contract involved a Security Requirements Check List (DD Form 254) or other written notification, in accordance with § 16.811 of this chapter.

§ 7.302–26 Utilization of labor surplus area concerns.

Insert the contract clause set forth in § 7.104–20, except in contracts of which the contract price does not exceed $5,000 and in contracts with foreign contractors which are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

§ 7.303 Clauses to be used when applicable.

§ 7.303–1 Clauses for contracts involving construction work.

In accordance with the requirements of § 12.403 of this chapter, insert the clauses entitled:

Davis-Bacon Act.
Eight-Hours Laws—Overtime Compensation.
Apprentices.
Payroll Records and Payrolls.
Copeland ("Anti-Kickback") Act.
Withholding of Funds To Assure Wage Payment.
Subcontracts—Termination.

§ 7.303–2 Filing of patent applications.

In accordance with the requirements of § 9.106 of this chapter, insert the contract clause set forth in § 9.106 or § 9.106–1 of this chapter, as appropriate.

§ 7.303–3 Reporting of royalties.

In accordance with the requirements of § 9.110 of this chapter, insert the contract clause set forth therein.

§ 7.303–4 Excess profit.

In accordance with the requirements of § 7.104–11, insert the appropriate contract clause set forth therein.

§ 7.303–5 Preference for certain domestic commodities.

In accordance with the requirements of § 6.305 of this chapter, insert the contract clause set forth therein.

§ 7.303–6 Priorities, allocations, and allotments.

In accordance with the requirements of § 1.307–2 of this chapter, insert the contract clause set forth in § 7.104–18.

§ 7.303–7 Government-furnished property.

In accordance with the requirements set forth in §§ 13.502 and 13.505 of this chapter, insert the appropriate contract clause.

§ 7.303–8 Soviet-controlled areas.

In accordance with the requirements of § 6.403 of this chapter, insert the contract clause set forth therein.

§ 7.303–9 Notice to the Government of labor disputes.

Insert the clause set forth in § 7.104–4 in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

§ 7.303–10 Limitation on withholding of payments.

Insert the clause in § 7.104–21(a) when required by § 7.104–21.

§ 7.303–11 Defense subcontracting small business program.

In accordance with § 1.707–2(b), insert the contract clause set forth in § 7.104–22.

§ 7.303–12 Subcontracts.

In accordance with the requirements of § 3.903–1 of this chapter, insert an appropriate Subcontracts clause.

§ 7.303–13 Changes to make or buy program.

In accordance with the requirements of § 3.902(d) of this subchapter, insert the clause set forth therein.

§ 7.303–14 Payment for overtime and shift premiums.

In accordance with the requirements of § 12.102 of this chapter, insert the contract clause set forth in § 12.102–3(c) of this chapter.

§ 7.303–15 Quality Control System.

In accordance with the instructions in § 7.104–28 of this part, insert the contract clause set forth therein.

§ 7.304 Additional clauses.

The following clauses shall be inserted in accordance with Departmental procedures where it is desired to cover the subject matter thereof in such contracts.

§ 7.304–1 Changes.

CHANGES (JUNE 1959)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the

clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures.

§ 7.304–2 Alterations in contract.

The contract clause set forth in § 7.105–1 may be inserted.

§ 7.304–3 Approval of contract.

The contract clause set forth in § 7.105–2 may be inserted.

§ 7.304–4 Bill of materials.

The contract clause set forth in § 7.105–6 may be inserted pursuant to the provisions of said paragraph.

§ 7.304–5 Notice of shipments.

The contract clause set forth in § 7.105.4 may be inserted.

§ 7.304–6 Stop work orders.

The clause set forth in § 7.105–8 of this part is authorized for use under the criteria and in accordance with the instructions in § 7.105–8.

§ 7.304–7 Reports of work.

In accordance with the instructions in § 7.404–6, the contract clause set forth therein may be inserted.

Subpart D—Clauses for Cost-Reimbursement Type Research and Development Contracts

§ 7.400 Scope of subpart.

This subpart sets forth uniform contract clauses for use in cost-reimbursement type research and development contracts as defined in § 7.401.

§ 7.401 Applicability.

As used throughout this subpart, the term "cost-reimbursement type research and development contract" shall mean any contract (other than a letter contract, notice of award, or modification not effecting new procurement) which (i) is entered into on a cost, cost-sharing, or cost-plus-a-fee basis as covered in § 3.404, and (ii) is for experimental, developmental, or research work.

§ 7.402 Required clauses.

The following clauses shall be inserted, as required, in all cost-reimbursement type research and development contracts.

§ 7.402–1 Definitions.

Insert the contract clause set forth in § 7.103–1. Additional definitions may be included in such clause: *Provided,* They are not inconsistent with such clause or the provisions of this subchapter.

§ 7.402–2 Limitation of cost.

LIMITATION OF COST

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule, and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

The words "exclusive of any fixed fee," occurring twice in paragraph (a) of the foregoing clause, may be deleted in any contract not providing for the payment of a fixed fee. The words "Task Order" or other appropriate designation may be substituted, as appropriate, for the word "Schedule," occurring twice in each of paragraphs (a) and (b) of the foregoing clause.

Where the contract is of the installment type, the above clause may be appropriately modified in accordance with Departmental procedures.

§ 7.402–3 Allowable cost, fixed fee, and payment. (Feb. 1959).

(a) Subject to the instructions set forth in (b) below, insert the following clause in those contracts covered by any of the exceptions listed in § 3.404–3 (d) (2)

ALLOWABLE COST, FIXED FEE, AND PAYMENT

(a) For the performance of this contract, the Government shall pay to the Contractor:

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by _____* to be allowable in accordance with—

(A) Subpart B of Part 15 of this Subchapter as in effect on the date of this contract; and

(B) the terms of this contract; and

(ii) Such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by _____*) the Contractor may submit to an authorized representative of _____*, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by _____*. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract_____* may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by_____*, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below, the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided* that such claims are not known to the Contractor on the date of the execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

(b) (1) In the foregoing clause, insert, in contracts of the Department of the Army and the Department of the Air Force, the words, "the Contracting Officer," and insert, in contracts of the Department of the Navy the words "the Comptroller of the Navy (Contract Audit Division)" in the spaces designated by an asterisk (_____*).

(2) In subparagraph (f) (ii) (B) of the foregoing clause, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor: *Provided,* That a corresponding increase is made in the period for retention of records required in subparagraph (a) (4) of the clause prescribed by § 7.402–7.

(3) In paragraph (c) of the foregoing clause, the percentages and amounts set forth therein may be varied in accordance with Departmental procedures.

(4) In the case of contracts without fee:

(i) Insert the following sentence in lieu of the second sentence of paragraph (c) of the foregoing clause—"After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside";

(ii) Change the title of the clause set forth in (a) above to "Allowable Cost and Payment";

(iii) Change paragraph (a) of the clause set forth in (a) above, as follows: "(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as 'allowable cost') determined by _____* to be allowable in accordance with:

(i) Subpart B of Part 15 of this subchapter as in effect on the date of this contract; and

(ii) The terms of this contract."; and

(iv) Delete, from paragraph (e) of the clause set forth in (a) above, the words "and any part of the fixed fee" and the comma immediately before such words.

(5) In the case of contracts without fee with nonprofit institutions, the words "ten thousand dollars ($10,000)" may be substituted for the words "one hundred thousand dollars ($100,000)" as they appear in the sentence set forth in (4) (i) above.

(6) In the case of contracts with educational institutions, the reference in the alternate paragraph (a) of the foregoing clause, set forth in (4) (iii) above, to "Part 2 of Section XV" shall be deleted, and, in lieu thereof, reference shall be made to "Part 3 of Section XV".

(7) In the foregoing clause, the words "Task Order" or other appropriate designation may be substituted for the word "Schedule" as appropriate.

(c) Subject to the instructions set forth, or referred to, in (d) below, insert the following clause except in those contracts covered by any of the exceptions listed in § 3.404–3 (d) (2).

ALLOWABLE COST, FIXED FEE, AND PAYMENT
(JULY 1960)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by _____* to be allowable in accordance with—

(A) Subpart B of Part 15 of this Subchapter as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) Such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by _____*) the Contractor may submit to an authorized representative of _____*, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) (1) As promptly as may be practicable after the receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, and subject to the provisions of paragraph (d) below, make payment thereon, as approved by _____*, to the extent of:

(i) 100 percent of such approved costs representing progress payments to subcontractors under fixed price type subcontracts, *provided* that such payments by the Government to the Contractor shall not exceed 70 percent of the costs incurred by such subcontractors,

(ii) 100 percent of such approved costs representing cost reimbursement to subcontractors under cost reimbursement type subcontracts, *provided* that for cost reimbursement type subcontracts not covered by the exceptions listed in § 3.404–3(d)(2) of this Subchapter, as in effect on the date of this contract, such payments by the Government shall not exceed 80 percent of the costs incurred by such subcontractors, and

(iii) 80 percent of all other such approved costs.

The cumulative amount of such invoices or vouchers from time to time approved but not paid pursuant to the foregoing provisions (regardless of whether they are paid under the next sentence hereof) shall constitute a gross withheld payments amount. Upon acceptance and delivery of articles called for by item _____** of this contract, the Government shall pay to the Contractor an amount which, when added to any amounts previously paid under this sentence, shall be the same percentage of the gross withheld payments amount as the cumulative number of articles accepted and delivered under item _____** of this contract is of the total number of articles called for by such item.

(2) Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(3) The total of the amounts which may be withheld at any one time under both (c)(1) and (c)(2) above shall not exceed the greatest amount which may then be withheld under either (c)(1) or (c)(2), whichever permits the greater withholding at that time.

(4) In the event of complete termination of the work remaining to be performed under this contract or in the event of cessation of performance pursuant to the clause of this contract entitled "Limitation of Cost," the Government shall, subject to the provisions of paragraph (d) below, pay the balance of the gross withheld payments amount to the Contractor within sixty (60) days from the effective date of termination or date of written notice to the Government that performance has been discontinued pursuant to the clause entitled "Limitation of Cost," as the case may be.

(d) At any time or times prior to final payment under this contract _____* may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by _____*, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided* that such claims are not known to the Contractor on the date of the execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

(d)(1) In the clause in (c) above, insert, in contracts of the Department of the Army and the Department of the Air Force, the words, "the Contracting Officer," and insert, in contracts of the Department of the Navy, the words, "the Comptroller of the Navy (Contract Audit Division)" in the spaces designated by an asterisk (*). In subparagraph (c)(1) of the clause in (c) above, insert the item number of the principal end item being procured under the contract in the space designated by a double asterisk (**).

(2) In accordance with Departmental procedures, the following sentence may be substituted for the third sentence of subparagraph (c)(1) of the clause in (c) above:

Upon the completion of increments of work as specified in the Schedule, the Government shall pay to the Contractor an amount which, when added to any amounts previously paid under this sentence, shall be the same percentage of the gross withheld payments amount as the total of the completed increments is of the total increments of the work called for by this contract.

Increments of work specified in the Schedule pursuant to the above provision may be stated in units, percentages of completion, stages of work, or in any other appropriate manner.

(3) In subparagraph (c)(2) of the clause set forth in (c) above, the percentages and amounts may be varied in accordance with Departmental procedures.

(4) The instructions set forth in paragraph (b) (1), (2) and (7) of this section, relating to the clause set forth in (a) of this section, apply with equal force to the clause set forth in paragraph (c) of this section.

§ 7.402–4 Standards of work.

STANDARDS OF WORK (FEB. 1959)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

§ 7.402–5 Inspection and correction of defects.

(a)(1) The following clause shall be used where the primary contract objective is the delivery of end items other than designs, drawings, or reports, except where the contracting officer determines that the use of such clause is impracticable.

INSPECTION AND CORRECTION OF DEFECTS (MAY 1960)

(a) All work under this contract shall be subject to inspection and test by the Government (to the extent practicable) at all times (including the period of performance) and places, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, final inspection, and acceptance shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than ninety (90) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (d) below. Except as otherwise provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of paragraph (b) above shall apply to any corrected or replacement end item or component until six months after its acceptance.

(e) The Contractor shall make its records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace articles which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

(2) In the foregoing clause, the words "Task Order" or other appropriate designation may be substituted for the word "Schedule", as appropriate.

(3) In contracts not providing for payment of a fee, insert the following in lieu of paragraph (b) of the clause set forth in (1) above.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence except as provided in (d) below. Except as provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be as provided in the clause of this contract entitled "Allowable Cost and Payment". Corrected articles shall not be tendered again for acceptance unless the former tender and

the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or (ii) in the case of articles not delivered, may require the delivery of such articles, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(b) The following clause shall be inserted in all contracts subject to this Subpart where the clause set forth in (a)(1) above is not used.

INSPECTION (FEB. 1959)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

§ 7.402–6 Assignment of claims.

In accordance with the instructions in § 7.103–8, insert the contract clause set forth therein.

§ 7.402–7 Records.

(a) In accordance with the instructions in § 7.203–7, insert the contract clause set forth therein. In the case of contracts which establish separate periods of performance but which do not contain the alternate subparagraph (a)(4) authorized by § 7.203–7(b), such subparagraphs may be inserted by amendment or, in the alternative, the retention of records may be administered in accordance with the procedure set forth in the alternate subparagraph (a)(4) of the clause prescribed by § 7.203–7(a).

(b) In the case of research and development contracts with nonprofit institutions and subcontracts thereunder, and pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to paragraph (a)(3) of said clause.

§ 7.402–8 Subcontracts.

(a) Subject to the instructions set forth in paragraph (b) of this section, and except as provided in paragraph (c) of this section with respect to contracts without fee with educational and nonprofit institutions, insert the following clause.

SUBCONTRACTS (JULY 1960)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of $1,000, or (iv) is on a time-material or labor-hour basis, or (v) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(f) Notwithstanding (b) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (b) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(g) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provision set forth in paragraph (j) of the clause prescribed by paragraph 7–108 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(b) In paragraph (a) of the foregoing clause, the percentage and amount set forth therein may be revised downward only in accordance with Departmental procedures. In paragraph (b) of the foregoing clause, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount set forth in (iii) may be increased, and, in (i), (iv), and (v) thereof, dollar amounts not in excess of $10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures.

(c) In contracts without fee with educational institutions, insert the following paragraph in lieu of paragraph (b) of the clause set forth in paragraph (a) of this section, and change (iii) in paragraph (f) to (iv).

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost-plus-a-fixed-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the construction, purchase, rental, installation, or other acquisition of nonseverable industrial facilities, or (iv) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of either (A) severable industrial facilities having a value in excess of $1,000 or the amount, if any, specified in the Schedule or Task Order, whichever is the lesser, or (B) special tooling having a value in excess of $1,000, or (v) is on a time-material or labor-hour basis, or (vi) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer required by this paragraph (b). (Oct. 1959).

In the foregoing paragraph (b), the percentage and amount set forth in (ii) thereof may be varied and, in (i), (v), and (vi) thereof, dollar amounts not in excess of $10,000 may be established below which the prior written consent of the contracting officer need not be obtained, in accordance with Departmental procedures. In (iv) thereof, the $1,000 limit may, in the discretion of the contracting officer, be decreased where it is determined to be in the interest of the Government, in view of such circumstances of each particular contract, as, for example, the nature of the contractor's operations, previous experience with the contractor on comparable procurements, the accounting and purchasing systems of the contractor, accounting and supply systems of the procurement activity, and the capability of the procuring activity to effect close surveillance of the contractor's purchasing and accounting practices. Also, in the discretion of the contracting officer, the cumulative total of such acquisitions of severable industrial facilities may be limited to a stated dollar amount or an amount equal to a stated percentage of the estimated cost beyond which the contractor will be required to obtain written consent of the contracting officer for any additional acquisitions of such facilities. With respect to special tooling, the $1,000 limit may be increased.

§ 7.402–9 Utilization of small business concerns.

Insert the contract clause set forth in § 7.104–14, except in contracts of which the estimated cost does not exceed $5,000 and in contracts with foreign contractors which are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

§ 7.402–10 Termination.

In accordance with the requirements of §§ 8.702 and 8.704, insert the appropriate contract clause.

§ 7.402–11 Disputes.

In accordance with the instructions in § 7.203–12, insert the clause set forth in § 7.103–12.

§ 7.402–12 Renegotiation.

In accordance with the requirements of § 7.103–13, insert the appropriate contract clause set forth therein.

§ 7.402–13 Buy American Act.

In accordance with the requirements of § 6.104–5, insert the contract clause set forth therein.

§ 7.402–14 Convict labor.

In accordance with the requirements of § 12.202, insert the contract clause set forth in § 12.203.

§ 7.402–15 Walsh-Healey Public Contracts Act.

In accordance with the requirements of Part 12, Subpart F of this Subchapter, insert the contract clause set forth in § 12.604.

§ 7.402–16 Eight-Hour Law of 1912—Overtime compensation.

In accordance with the instructions of § 12.303, insert the clause set forth therein.

§ 7.402–17 Nondiscrimination in employment.

In accordance with the requirements of § 12.802, insert the contract clause set forth therein.

§ 7.402–18 Officials not to benefit.

Insert the contract clause set forth in § 7.103–19.

§ 7.402–19 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103–20.

§ 7.402–20 Authorization and consent.

In accordance with the requirements of § 9.102, insert the appropriate contract clause set forth therein

§ 7.402–21 Notice and assistance regarding patent infringement.

In accordance with the requirements of § 9.104, insert the contract clause set forth therein.

§ 7.402–22 Patent rights.

In accordance with the requirements of § 9.107, insert the appropriate contract clause set forth therein with additional or alternate paragraphs as prescribed therein. However, in the case of contracts without fee, the percentage amount specified to be withheld under paragraph (f) of the clause set forth in § 9.107–2, or paragraph (c) and (d) of the clause set forth in § 9.107–3, may be changed from "ten percent (10%)" to "one percent (1%)."

§ 7.402–23 Basic data clause.

In accordance with the requirements of § 9.202, insert the clause set forth in § 9.203–1 with appropriate additional or alternate paragraphs as prescribed by the instructions set forth in §§ 9.203 and 9.204–1.

§ 7.402–24 Military security requirements.

(a) Except in contracts without fee with educational institutions, insert the clause set forth in § 7.104–12, modified in accordance with § 7.104–12: *Provided,* That the reference to "fixed fee" may be deleted in any contract not providing for the payment of a fixed fee: *Provided further,* That the clause may be modified in accordance with § 7.104–12 with respect to contracts outside the United States, its Territories, its possessions, and Puerto Rico, and with respect to additional security safeguards.

(b) The following clause shall be used in all contracts without fee with educational institutions, except that this clause may be appropriately modified for contracts to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

MILITARY SECURITY REQUIREMENTS (FEB. 1959)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential", including "Confidential—Modified Handling Authorized", or higher.

(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities, utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) In the event a change in security requirements, as provided in paragraphs (b) and (c), results (i) in a change in the security classification of this contract or any element thereof from a nonclassified status to a classified status or from a lower classification to a higher classification, or (ii) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with its established policies to continue the performance of work under the contract in compliance with such change in security classification or requirements. If, despite such reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of such change in security classification or requirements it shall so notify the Contracting Officer in writing.

(f) After receiving such written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, upon the expiration of fifteen (15) days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (i) the application to this contract of such change in security classification or requirements has not been withdrawn, or (ii) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. Thereupon, the Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and such termination shall be deemed a termination under the provisions of the clause of this contract entitled, "Termination for the Convenience of the Government."

(h) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (h) but excluding paragraphs (e), (f), and (g) of this clause. In addition, the Contractor may insert in any subcontract, not involving fee or profit, with an educational institution, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions extending to such subcontracts relief consistent with that provided for in those paragraphs, on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. With respect to subcontracts other than those covered by the preceding sentence, "the mutually satisfactory method" provided for in paragraph (f) above may include a provision amending this contract to provide for an equitable adjustment on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved; and the Contractor may insert in any such subcontract, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions with respect to such equitable adjustment. Failure of the Contractor and Contracting Officer to agree to any adjustment pursuant to the preceding sentence shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(i) The Contractor also agrees that it shall determine that any subcontractor proposed by it for the performance of a subcontract hereunder which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance which is still in effect, prior to being accorded access to such classified information.

(c) The Contracting Officer or his authorized representative shall prepare and transmit to the contractor and the Government representative having security cognizance over the contract involved a Security Requirements Check List (DD Form 254), or other written notification, in accordance with § 16.811.

§ 7.402–25 Government property.

Insert the contract clause set forth in §§ 13.503 or 13.506, as appropriate.

§ 7.402–26 Insurance—liability to third persons.

(a) Except as provided in paragraph (b) of this section, in accordance with the instructions set forth in § 7.203–22, insert the contract clause set forth therein. If the contractor claims partial immunity from tort liability as a state agency or as a charitable institution (as where work may be performed under the contract in a place or under conditions where the contractor is not immune from tort liability), the following may be added to the clause in § 7.203–22:

(e) Notwithstanding paragraphs (a) and (c) of this clause, (i) the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder; and (ii) the Contractor need not procure or maintain insurance coverage as provided in paragraph (a) of this clause; provided, the Contractor may obtain any insurance coverage he deems necessary subject to approval by _____* as to form, amount, and duration, in which event the Contractor shall be reimbursed (A) for the cost of such insurance and (B) to the extent provided in paragraph (c) above, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount (OCT. 1960)

In the foregoing clause, insert, in contracts of the Department of the Army and the Department of the Air Force, the words "the Contracting Officer," and insert in contracts of the Department of the Navy, the words "the Department," in the space designated by an asterisk (_____*).

(b) If the contractor claims total immunity from tort liability as a State agency or as a charitable institution, the following clause may be used in lieu of the clause in § 7.203–22:

LIABILITY TO THIRD PERSONS (OCT. 1960)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

§ 7.402–27 Utilization of labor-surplus area concerns.

Insert the contract clause set forth in § 7.104–20, except in contracts of which the estimated cost does not exceed $5,000 and in contracts with foreign contractors which are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

§ 7.402–28 Payment for overtime and shift premiums.

In accordance with the requirements of § 12.102 of this chapter, insert the contract clause set forth in § 12.102–3(c) of this chapter.

§ 7.403 Clauses to be used when applicable.

§ 7.403–1 Clauses for contracts involving construction work.

In accordance with the requirements of § 12.403, insert, as appropriate, the clauses entitled:

Davis-Bacon Act.
Eight-Hour Laws—Overtime Compensation.
Apprentices.
Payroll Records and Payrolls.
Copeland ("Anti-Kick-back") Act-Nonrebate of Wages.
Withholding of Funds to Assure Wage Payment.
Subcontracts-Termination.

§ 7.403–2 Filing of patent applications.

In accordance with the requirements of § 9.106, insert the contract clause set forth in § 9.106 or § 9.106–1, as appropriate.

§ 7.403–3 Reporting of royalties.

In accordance with the requirements of § 9.110, insert the contract clause set forth therein.

§ 7.403–4 Excess profit.

In accordance with the requirements of § 7.104–11, insert the appropriate contract clause set forth therein.

§ 7.403–5 Excusable delays.

In all contracts containing the Termination clause set forth in § 8.702 of this chapter, insert the contract clause set forth in § 8.708 of this chapter. In contracts containing the Termination clause set forth in § 8.704 of this chapter, the contract clause set forth in § 8.708 of this chapter may be inserted.

§ 7.403–6 Preference for certain domestic commodities.

In accordance with the requirements of § 6.305, insert the contract clause set forth therein.

§ 7.403–7 Priorities, allocations, and allotments.

In accordance with the requirements of § 1.307–2, insert the contract clause set forth in § 7.104–18.

§ 7.403–8 Soviet-controlled areas.

In accordance with the requirements of § 6.403, insert the contract clause set forth therein.

§ 7.403–9 Negotiated overhead rates.

Where negotiated overhead rates are to be used in contracts with commercial concerns pursuant to Part 3, Subpart G, insert the contract clause set forth in § 3.704–1. Where negotiated overhead rates are to be used in contracts with nonprofit institutions, pursuant to that subpart, insert the contract clause set forth in § 3.704–2.

§ 7.403–10 Notice to the Government of labor disputes.

Insert the clause set forth in § 7.104–4 in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

§ 7.403–11 Gratuities.

Insert the clause set forth in § 7.104–16, except in contracts with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

§ 7.403–12 Limitation on withholding of payments.

(a) Except as provided in (b) below, the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *Provided,* That this limitation shall not apply to:

(i) Withholdings pursuant to any clause relating to wages or hours of employees;

(ii) Withholdings not specifically provided for by this contract; and

(iii) The recovery of overpayments.

(b) The clause set forth in (a) above is not required where:

(i) The contracting officer or the procuring activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or

(ii) All of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them is being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

§ 7.403–13 Defense subcontracting small business program.

In accordance with § 1.707–2(b), insert the contract clause set forth in § 7.104–22.

§ 7.403–14 Changes to make or buy program.

In accordance with the requirements of § 3.902(d) of this subchapter, insert the clause set forth therein.

§ 7.403–15 Quality control system.

In accordance with the instructions in § 7.104–28, insert the contract clause set forth therein.

§ 7.404 Additional clauses.

The following clauses shall be inserted in accordance with Departmental procedures where it is desired to cover the subject matter thereof in such contracts.

§ 7.404–1 Changes.

CHANGES (FEB. 1959)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing; (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures.

§ 7.404–2 Alterations in contract.

The contract clause set forth in § 7.105–1 may be inserted.

§ 7.404–3 Approval of contract.

The contract clause set forth in § 7.105–2 may be inserted.

§ 7.404–4 Bill of materials.

The contract clause set forth in § 7.105–6 may be inserted pursuant to the provisions of said paragraph.

§ 7.404–5 Stop work orders.

The clause set forth in § 7.105–8, if modified as prescribed in § 7.205–7, is authorized for use under the criteria and in accordance with the instructions in § 7.105–8.

§ 7.404–6 Reports of work.

REPORTS OF WORK (JULY 1960)

(a) The contractor shall submit reports making full disclosure of all work done and the results thereof, in the manner, at the times, and to the extent set forth in the Schedule; provided that, unless otherwise specified in the Schedule, the Contractor shall submit such reports in triplicate from time to time as requested and upon completion (or earlier termination) of the work. Except as may be otherwise specified in the Schedule, or unless the Contractor is otherwise instructed, the Contractor shall, upon completion (or earlier termination) of the work, deliver any working drawings and specifications of any prototypes as may have been developed.

(b) If the Contractor becomes unable to complete the contract work and to deliver at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in performance of the work, he shall give the Contracting Officer written notice of the anticipated delays with reasons therefor, not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

In the above clause, the words "Task Order" or other appropriate designation may be substituted for the word "Schedule," as appropriate. Paragraph (a) may be used without paragraph (b). The last sentence of paragraph (b) may be omitted.

Subpart E—Clauses for Personal Services Contracts

§ 7.500 Scope of subpart.

This subpart sets forth uniform contract clauses for use in personal services contracts referred to in § 7.502.

§ 7.502 Applicability.

As used throughout this subpart, the term "personal services contract" applies only to a contract entered into with an individual, other than an alien scientist, for personal services to be performed by that individual under Government supervision and paid for on a time basis. It does not apply to contracts with firms or organizations.

§ 7.503 Required clauses.

The following clauses shall be inserted in all personal services contracts, except as indicated:

§ 7.503–1 Definitions.

Insert the contract clause set forth in § 7.103–1, omitting paragraph (c).

§ 7.503–2 Payments.

PAYMENTS (JAN. 1958)

Payment for the services performed by the Contractor, as set forth in the Schedule of this contract, shall be made at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements to the office or officer designated herein and at the time provided for herein. In addition to the foregoing the Contractor shall be paid (i) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from his home or regular place of employment in accordance with Standardized Government Travel Regulations as authorized in appropriate Travel Orders; and (ii) such other transportation expenses as may be provided for in the Schedule.

§ 7.503–3 Assignment of claims.

ASSIGNMENT OF CLAIMS (JAN. 1953)

No claim arising under this contract shall be transferred or assigned by the Contractor.

§ 7.503–4 Disputes.

Insert the contract clause set forth in § 7.103–12. In accordance with Department procedures, the foregoing clause may be modified to provide for intermediate appeal to the Head of the Procuring Activity concerned. The decision of the Contracting Officer referred to in the above clause shall, if mailed, be sent by certified mail, return receipt requested.

§ 7.503–5 Officials not to benefit.

Insert the contract clause set forth in § 7.103–19, omitting the final clause which begins, "but this provision * * *."

§ 7.503–6 Covenant against contingent fees.

Insert the contract clause set forth in § 7.103–20.

§ 7.503–7 Termination.

TERMINATION (JAN. 1953)

This contract may be terminated by the Government at any time within the period of its duration upon not less than 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon not less than 15 days' written notice to the Contracting Officer, and the consent of the Contracting Officer shall not unreasonably be withheld.

§ 7.503–8 Approval of contract.

APPROVAL OF CONTRACT (JAN. 1953)

This contract shall be subject to the written approval of the Secretary or his duly authorized representative and shall not be binding until so approved.

§ 7.503–9 Patents.

Insert the clause set forth in § 9.108 of this subchapter, which is based on Executive Order 10096, provided, however, that upon written request by the prospective contractor and approval by the head of the procuring activity or his authorized representative, the clause may be modified or omitted, as the case may be, where (a) the period of employment is to be not more than 90 days in any one calendar year, or (b) both the following conditions are present: (1) the period of employment called for in the contract, or in any renewal thereof, is more than 90 days but not more than one year of full-time service, and (2) the prospective contractor is bound by an obligation which existed prior to entering into the proposed contract with the Government and which was not entered into in contemplation thereof, the discharge of which would be inconsistent with the discharge of any obligation arising under Executive Order 10096.

§ 7.504 Clauses to be used when applicable.

§ 7.504–1 Military security requirements.

Insert the clause set forth below in all contracts involving security information which are classified "Top Secret," "Secret," or "Confidential," by a military department, and in any other contract, the performance of which will require access to classified matter, except that this clause is not required to be used in contracts performed outside the United States, its Territories, its possessions, and Puerto Rico.

MILITARY SECURITY REQUIREMENTS (MAR. 1954)

(a) The provisions of the following paragraphs of this clause shall apply only if and to the extent that this contract involves access to security information classified "Top Secret," "Secret," or "Confidential."

(b) The Contractor (i) shall be responsible for safeguarding all classified security information in accordance with instructions furnished by the Contracting Officer and shall not supply, disclose or otherwise permit access to classified security information to any unauthorized person, (ii) shall not make or permit to be made any reproductions of matter classified "Top Secret" except with the prior written authorization of the Contracting Officer, (iii) shall not make or permit to be made any reproductions of security information classified "Secret" or "Confidential," except as may be essential to performance of the contract, (iv) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of security information classified "Top Secret," "Secret," or "Confidential," and (v) shall not incorporate in any other project any matter which will disclose classified security information except with the prior written authorization of the Contracting Officer.

(c) Except with the prior written consent of the Secretary or his duly authorized representative, the Contractor (i) shall not permit any alien to have access to classified security information, and (ii) shall not permit any individual to have access to security information classified "Top Secret" or "Secret." Access to security information classified "Confidential" will be granted only in accordance with governing regulations of the Department of Defense.

(d) The Contractor agrees to submit immediately to the Contracting Officer a complete confidential report of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(e) The Government agrees that when necessary it shall indicate by security classification ("Top Secret," "Secret," or "Confidential"), the degree of importance to the national defense of information to be furnished by the Contractor to the Government or by the Government to the Contractor, and the Government shall give written notice of such security classification to the Contractor and of any subsequent changes thereof. The Contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing the security classification of matter.

(f) Any disagreement concerning a question of fact arising under this clause shall be considered a dispute within the meaning of the clause of this contract entitled "Disputes."

§ 7.504–2 Data and copyrights.

If it is probable that the contractor will prepare and deliver to the Government in the performance of the contract writings, sound recordings, pictorial reproductions, drawings or other graphical representations and works of any similar nature (whether or not copyrighted), insert an appropriate clause in accordance with departmental procedures.

§ 7.505 Additional clause.

The following clause shall be inserted in personal services contracts in accordance with Department procedures when it is desired to cover the subject matter thereof in such contracts.

§ 7.505–1 Alterations in contract.

Insert the contract clause set forth in § 7.105–1.

PART 8—TERMINATION OF CONTRACTS

Sec.
8.000 Scope and applicability of part.

Subpart A—Definitions of Terms

8.101 Definitions.
8.101–1 Amount of claim or settlement.
8.101–2 Common items.
8.101–3 Continued portion of the contract.
8.101–4 Contractor-acquired property.
8.101–5 Contractor inventory.
8.101–6 Disbursing officer.
8.101–7 Effective date of termination.
8.101–8 Government-furnished property.
8.101–9 Material.
8.101–10 Other work.
8.101–11 Partial termination.
8.101–12 Plant clearance period.
8.101–13 Plant equipment.
8.101–14 Prime contract.
8.101–15 Production equipment.
8.101–16 Salvage.
8.101–17 Scrap.
8.101–18 Serviceable or usable property.
8.101–19 Settlement agreement.
8.101–20 Settlement proposal.
8.101–21 Special machinery and equipment.
8.101–22 Special tooling.
8.101–23 Subcontract.
8.101–24 Termination claim.
8.101–25 Termination inventory.
8.101–26 Terminated portion of the contract.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

8.200 Scope of subpart.
8.201 Authority of contracting officers.
8.202 Notice of termination.
8.203 Methods of settlement.
8.204 Duties of prime contractor after receipt of notice of termination.
8.205 Duties of contracting officer after issuance of notice of termination.
8.206 Fraud or other criminal conduct.
8.207 Audit of settlement proposals and of subcontract settlements.
8.208 Settlement of subcontract claims.
8.208–1 Subcontractor's rights.
8.208–2 Prime contractor's rights and obligations.
8.208–3 Settlement procedure.
8.208–4 Authorization for subcontract settlements of $10,000 or less without approval or ratification.
8.208–5 Recognition of judgments and arbitration awards.
8.208–6 Delay in settlement of subcontractor claims.
8.208–7 Government assistance in settlement of subcontracts.
8.208–8 Assignment of rights under subcontracts.
8.209 Settlement agreements.
8.209–1 General.
8.209–2 Excepted items.
8.209–3 Government property.
8.209–4 No-cost settlement.
8.209–5 Partial settlements.
8.209–6 Joint settlement of two or more claims.
8.209–7 Settlement by determination.
8.210 Contracting officer's negotiation memorandum.
8.211 Review and approval of proposed settlements.
8.211–1 Settlement review boards.
8.211–2 Required review and approval.
8.211–3 Scope of review.
8.211–4 Action by board.
8.212 Payment.
8.212–1 Partial payments upon termination.
8.212–2 Final payment.
8.213 Cost principles applicable to the settlement of research and development contracts with educational institutions.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Type Contracts

8.300 Scope of subpart.
8.301 General.
8.302 Cost principles.
8.303 Allowance for profit.
8.304 Adjustment for loss.
8.305 Deductions.
8.306 Completed end items.
8.307 Settlement proposals.
8.307–1 Submission of settlement proposals.
8.307–2 Bases for settlement proposals.
8.308 Limitation on settlements.

Subpart D—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

8.401 General considerations.
8.402 Election to discontinue vouchers.
8.403 Notice to the General Accounting Office.
8.404 Procedure where contractor continues to submit vouchers.
8.404–1 Submission of settlement proposal.
8.404–2 Submission of cost vouchers.
8.405 Procedure where contractor discontinues use of vouchers.
8.405–1 Submission of settlement proposal.
8.405–2 Interim negotiations.
8.405–3 Information concerning previous cost vouchers.
8.405–4 Notice to General Accounting Office of audit status date.
8.405–5 Exceptions by the General Accounting Office.
8.405–6 Final settlement.
8.406 Partial termination.
8.407 Termination for default.

Subpart E—Disposition of Termination Inventory

Sec.
8.501 General.
8.501–1 Methods of disposal.
8.501–2 General restrictions on contractor's authority.
8.502 Contractor-acquired property; purchase or retention at cost, or return to suppliers.
8.502–1 Purchase or retention at cost.
8.502–2 Return of property to suppliers.
8.502–3 Cost-reimbursement type contracts.
8.503 Inventory schedules.
8.503–1 Submission of inventory schedules.
8.503–2 Separate schedules.
8.503–3 Inventory descriptions.
8.503–4 Inventory schedule certificate.
8.503–5 Common items.
8.503–6 Withdrawals from inventory schedules.
8.503–7 Rejection and correction of inadequate schedules.
8.504 Scrap and salvage.
8.504–1 General.
8.504–2 Scrap warranty.
8.505 Screening of serviceable and usable property.
8.505–1 Scope of screening.
8.505–2 Screening period.
8.505–3 Acquisition by government.
8.506 Government-furnished property.
8.507 Sale or other disposition of termination inventory.
8.507–1 General.
8.507–2 Competitive sales.
8.507–3 Other sales.
8.507–4 Proceeds of sale.
8.507–5 Applicability of antitrust laws.
8.507–6 Foreign contractor inventory.
8.508 Donations.
8.509 Destruction or abandonment.
8.510 Special machinery, tooling and equipment.
8.511 Removal and storage.
8.511–1 Special storage at the expense and risk of the contractor.
8.511–2 Storage at the expense and risk of the Government.
8.512 Review of property disposal.
8.512–1 Property disposal review boards.
8.512–2 Required review.
8.513 Subcontractor termination inventory.
8.513–1 General policy.
8.513–2 Inventory schedules.
8.513–3 Scrap and salvage.
8.513–4 Serviceable and usable property.
8.514 Adjustment prior to final settlement.
8.514–1 Duty of contractors to inform government.
8.514–2 Right of government to review inventory schedules.
8.515 Accounting for termination inventory.

Subpart F—Termination for Default

Sec.
8.600 Scope of subpart.
8.601 General.
8.602 Termination of fixed-price supply contracts for default.
8.602–1 The Government's right to terminate for default.
8.602–2 Effect of termination for default.
8.602–3 Procedure for default.
8.602–4 Procedure in lieu of termination for default.
8.602–5 Memorandum by the contracting officer.
8.602–6 Repurchase against contractor's account.
8.602–7 Other damages.
8.603 Termination of fixed-price construction contracts for default.
8.603–1 Termination of the contractor's right to proceed.
8.603–2 Effect of termination for default.
8.603–3 Procedure for default.
8.603–4 Procedure in lieu of termination for default.
8.603–5 Memorandum by the contracting officer.
8.603–6 Other damages.

Subpart G—Clauses

8.700 Scope of subpart.
8.701 Termination clause for fixed-price contracts.
8.702 Termination clause for cost-reimbursement type contracts.
8.703 Termination clause for fixed-price construction contracts.
8.704 Research and development contracts with educational and other nonprofit institutions.
8.704–1 Termination clause.
8.704–2 Suggested clause for subcontracts.
8.705 Short form termination clauses for fixed-price type contracts.
8.705–1 Supply and service contracts.
8.705–2 Construction contracts.
8.706 Subcontract termination clause.
8.707 Default clause for fixed-price supply contracts.
8.708 Excusable delays clause for cost-reimbursement type supply contracts.
8.709 Default clause for fixed-price construction contracts.
8.710 Default clause for fixed-price research and development contracts.

Subpart H—Forms

8.800 Scope of subpart.
8.801 Notice of termination.
8.801–1 Telegraphic notice of termination.
8.801–2 Letter notice of termination.
8.802 Forms for settlement of fixed-price contracts.
8.802–1 DD Form 540—Settlement Proposal—Inventory Basis.
8.802–2 DD Form 541—Settlement Proposal—Total Cost Basis.
8.802–3 DD Form 881—Settlement Proposal—Short Form.
8.802–4 DD Form 542—Inventory Schedule A—Metals in Mill Product Form.
DD Form 542c—Inventory Schedule A—Continuation Sheet.
8.082–5 DD Form 543—Inventory Schedule B—Raw Materials.
DD Form 543c—Inventory Schedule B—Continuation Sheet.
8.802–6 DD Form 544—Inventory Schedule C—Work in Process.
DD Form 544c—Inventory Schedule C—Continuation Sheet.
8.802–7 DD Form 545—Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools.
DD Form 545c—Inventory Schedule D—Continuation Sheet.
8.802–8 DD Form 882—Inventory Schedule E-Short Form for Use with DD Form 881 Only.
8.802–9 DD Form 546—Schedule of Accounting Information.
8.802–10 DD Form 548—Application for Partial Payment.
8.803 DD Form 547—Settlement Proposal for Cost-Reimbursement Type Contracts.
8.804 DD Form 547s—Notice of Audit Status Date.
8.805 Scrap Warranty.
8.806 Forms of Settlement Agreement.
8.806–1 Settlement Agreement for Use in Settling Fixed-Price Prime Contracts after Complete Termination.
8.806–2 Settlement Agreement for Use in Settling Fixed-Price Prime Contracts after Partial Termination.
8.806–3 Partial Settlement Agreement, for Use in Settling Fixed-Price Prime Contracts after Complete or Partial Termination where Settlement Pertains Only to Settlements with Subcontractors.
8.806–4 Settlement Agreement for Use in Settling Cost-Reimbursement Type Prime Contracts after Complete Termination where Settlement Includes Costs.
8.806–5 Settlement Agreement for Use in Settling Cost-Reimbursement Type Prime Contracts after Complete Termination where Settlement Is Limited to Fee.
8.806–6 No Cost Settlement Agreement—Partial Termination.
8.806–7 No Cost Settlement Agreement—Complete Termination.
8.807 DD Form 1114—Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.

(NOTE: A facsimile of each of the forms listed above in §§ 8.802 to 8.807 has been filed with the Federal Register Division; copies of forms may be obtained through the contracting officer in any of the military departments.)

AUTHORITY: §§ 8.000 to 8.807 issued under R. S. 161, sec 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 8.000 Scope and applicability of part.

(a) This part establishes uniform policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It includes uniform contract clauses with respect to termination and excusable delay, and approved termination and settlement forms.

(b) This part applies to contracts which by their terms provide for termination for the convenience of the Government or for the default of the contractor, whether or not the clauses in the contract with respect to termination and excusable delay are those set forth in Subpart G of this part. In the event the clauses actually used in the contract are inconsistent with the provisions of this part, the clauses actually used shall control to the extent of the inconsistency. Contracts which do not contain the applicable clauses may, where it is in the best interest of the Government, be amended by agreement prior to or after termination of the contract, to include or substitute such a clause.

(c) This part also applies to the disposal of contractor inventory arising out of any modification of a cost-reimbursement type contract pursuant to the Changes clause.

(d) When the Head of a Procuring Activity so authorizes, the provisions of this part may be utilized—

(1) In determining any equitable adjustment as a result of modification of any contract other than a cost-reimbursement type contract pursuant to the Changes clause;

(2) In the disposal of any property which has become obsolete or excess for any reason under a contract whenever the cost of such property is made the basis of a claim by the contractor against the Government; or

(3) In the disposal of contractor inventory generally.

Subpart A—Definitions of Terms

§ 8.101 Definitions.

As used in this part, the following terms have the meaning stated below:

§ 8.101–1 Amount of claim or settlement.

When the action to be taken under this part depends upon the amount of a termination claim or settlement, then, in determining such amount, (a) credits for retention or other disposal of termination inventory allocated to the claim and for advance or partial payments shall not be deducted from the gross claim or settlement; but (b) amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors, shall be deducted.

§ 8.101–2 Common items.

"Common items" means material which is common in nature to both the terminated contract and the contractor's other work.

§ 8.101–3 Continued portion of the contract.

"Continued portion of the contract" means that portion of a partially terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor must continue to perform.

§ 8.101–4 Contractor-acquired property.

"Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

§ 8.101–5 Contractor inventory.

"Contractor inventory" means (a) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and (b) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

§ 8.101–6 Disbursing officer.

"Disbursing officer" means the officer or agent of the office designated as the paying office under the contract, including as appropriate, Army finance and accounting officers, Air Force accounting and disbursing officers, and Navy regional accounts officers.

§ 8.101–7 Effective date of termination.

"Effective date of termination" means the date upon which the notice of termination first requires the contractor to stop performance, in whole or in part, under the contract. If, however, the termination notice is received subsequent to the date fixed for termination, then the effective date of termination means the date on which the notice is received.

§ 8.101–8 Government-furnished property.

"Government-furnished property" is property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the contractor.

§ 8.101–9 Material.

"Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

§ 8.101–10 Other work.

"Other work" means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

§ 8.101–11 Partial termination.

"Partial termination" means the termination of a part, but not all, of the work which has not been completed and accepted under a contract.

§ 8.101–12 Plant clearance period.

"Plant clearance period" means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 90 days after receipt by the contracting officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the contracting officer and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

§ 8.101–13 Plant equipment.

"Plant equipment" means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

§ 8.101–14 Prime contract.

"Prime contract" means any contract as defined in § 1.201–4 of this chapter entered into by any Department or procuring activity.

§ 8.101–15 Production equipment.

"Production equipment" means those items of plant equipment located within a manufacturing, processing, assembly, or service establishment, and used for cutting, abrading, grinding, shaping, forming, joining, measuring, testing, heating, or treating production materials or work in process.

§ 8.101–16 Salvage.

"Salvage" means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

§ 8.101–17 Scrap.

"Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

§ 8.101–18 Serviceable or usable property.

"Serviceable or usable property" means property that has reasonable prospect of sale or use either in its existing form or after minor repairs or alterations.

§ 8.101–19 Settlement agreement.

"Settlement agreement" means a written agreement, in the form of an amendment to the contract, between the contractor and the Government settling all or a severable portion of a settlement proposal.

§ 8.101–20 Settlement proposal.

"Settlement proposal" means a termination claim submitted by a contractor or subcontractor in the form, and supported by the data, required by this part.

§ 8.101–21 Special machinery and equipment.

"Special machinery and equipment" means that part of plant equipment which was acquired or constructed solely for the performance of the terminated contract or the terminated contract and other Government contracts, and as to which the contractor claims loss of useful value.

§ 8.101–22 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (a) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (b) consumable small tools, or (c) general or special machine tools, or similar capital items.

§ 8.101–23 Subcontract.

"Subcontract" means any contract as defined in § 1.201–4 of this chapter other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

§ 8.101–24 Termination claim.

"Termination claim" means any claim by a contractor or subcontractor, permitted by the terms of a prime contract, for compensation for the termination, in whole or in part, of the prime contract or a subcontract thereunder, and any other claim which this Section authorizes to be asserted and settled in connection with a termination settlement.

§ 8.101–25 Termination inventory.

"Termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, material, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined in § 8.101–4 and § 8.101–8.

§ 8.101–26 Terminated portion of the contract.

"Terminated portion of the contract" means that portion of a terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor is not to continue to perform.

Subpart B—General Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience and to the Settlement of All Terminated Cost-Reimbursement Type Contracts

§ 8.200 Scope of subpart.

This subpart deals with:

(a) The authority of contracting officers to terminate contracts in whole or in part (1) for the convenience of the Government; and (2) in the case of cost-reimbursement type contracts for default;

(b) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(c) General procedures for the settlement of terminated contracts; and

(d) Settlement agreements.

Subpart C sets forth additional principles applicable only to fixed-price type contracts. Subpart D sets forth additional principles applicable only to cost-reimbursement type contracts. Subpart F sets forth the principles applicable to the termination of fixed-price type contracts for default.

§ 8.201 Authority of contracting officers.

The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this subchapter is usually found in the termination clause or other provisions of the contract. Contracts shall be terminated for the convenience of the Government or for default only when such action is in the best interest of the Government, as determined in accordance with Departmental procedures.

§ 8.202 Notice of termination.

Contracts shall be terminated for convenience, or for default in the case of cost-reimbursement type contracts, only by a written notice to the contractor (see 8.801), stating:

(a) That the contract is being terminated for the convenience of the Government (or for default) pursuant to the contract provisions authorizing such termination;

(b) The effective date of termination;

(c) The extent of termination and, if a partial termination, the portion of the contract to be continued; and

(d) Any special instructions.

A copy of the notice of termination shall be sent to any known assignee, guarantor, or surety of the contractor.

§ 8.203 Methods of settlement.

Settlement of terminated cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (a) negotiated agreement, (b) determination by the contracting officer, (c) in the case of cost-reimbursement type contracts, costing-out under vouchers using Standard Form 1034, or (d) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

§ 8.204 Duties of prime contractor after receipt of notice of termination.

The contractor, after receipt of the notice of termination and except as otherwise directed by the contracting officer, must comply with the termination clause of the contract and the notice of termination which generally require, among other things, that the contractor:

(a) Stop work immediately on the terminated portion of the contract and discontinue placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the contracting officer of any special circumstances precluding the stoppage of work;

(d) If the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in the cost thereof;

(e) Take such action as may be necessary, or as the contracting officer may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the contracting officer, deliver such property to the Government;

(f) Promptly notify the contracting officer in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle all outstanding liabilities and all claims arising out of termination of subcontracts, obtaining any approvals or ratifications required by the contracting officer;

(h) Promptly submit its own settlement proposal, supported by appropriate schedules; and

(i) Dispose of any termination inventory, as directed or authorized by the contracting officer.

§ 8.205 Duties of contracting officer after issuance of notice of termination.

(a) In accordance with the termination clause in the contract and with the notice of termination, the contracting officer shall, among other things:

(1) Direct the action required of the prime contractor;

(2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(3) Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(4) To the extent that he is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination.

(b) To expedite settlement, the contracting officer shall seek assistance from specially qualified personnel (such as negotiating, legal, accounting, inspecting, engineering, and property disposal personnel) to:

(1) Assist the contracting officer in dealings with the contractor;

(2) Render advice on legal and contractual matters;

(3) Conduct accounting reviews and render advice and assistance on accounting matters; and

(4) Perform the following functions with respect to the termination inventory—

(i) Verify its existence;

(ii) Determine qualitative and quantitative allocability;

(iii) make recommendations concerning serviceability and unserviceability.

(iv) Undertake necessary screening and redistribution; and

(v) Assist the contractor in accomplishing other disposition.

(c) An initial conference shall be held with the contractor as promptly as possible to develop a definite program for effecting the settlement. Where appropriate in the judgment of the contracting officer, principal subcontractors should be present. Topics discussed at the conference should include:

(1) General principles relating to the settlement of any termination claim, including obligations of the contractor under the termination clause of the contract;

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settlement of subcontractor claims;

(5) Names of subcontractors involved and the respective dates termination notices were issued to them;

(6) Contractor personnel handling, and methods for, review and settlement of subcontractor claims;

(7) Arrangements for transfer of title and delivery to the Government of any materials required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractor's termination inventory, including the preparation of termination inventory schedules;

(9) Contractor accounting practices and preparation of DD Form 546 (Schedule of Accounting Information) (§ 8.802–9);

(10) Form in which settlement proposals shall be submitted;

(11) Accounting review of settlement proposals;

(12) Any requirement for interim financing in the nature of partial payments; and

(13) Tentative time schedule for negotiation of the settlement, including submission of settlement proposals, termination inventory schedules, and accounting information schedules by the contractor and subcontractors.

§ 8.206 Fraud or other criminal conduct.

Whenever the contracting officer has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts in accordance with § 1.111, of this chapter.

§ 8.207 Audit of settlement proposals and of subcontract settlements.

(a) Each settlement proposal of $2,500 or over submitted by a prime contractor shall be referred by the contracting officer to the cognizant audit agency for appropriate examination and recommendation. The contracting officer may, in his discretion, refer for audit settlement proposals of less than $2,500. The contracting officer's referral shall be in writing and shall recommend the scope of the audit, but the auditor may expand the scope of the audit if deemed advisable. The audit agency shall submit a written report and recommendations to the contracting officer, in accordance with Departmental procedures.

(b) Subcontract settlements submitted by the prime contractor to the contracting officer for approval or ratification in accordance with § 8.208 shall be referred to the cognizant audit agency for review and recommendations if (1) the settlement involves $25,000 or more; or (2) the contracting officer considers an audit, in whole or in part, desirable. The audit agency shall submit a written report and recommendations to the contracting officer, in accordance with Departmental procedures.

§ 8.208 Settlement of subcontract claims.

§ 8.208–1 Subcontractor's rights.

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. The rights of a subcontractor are against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the termination claims of immediate subcontractors.

§ 8.208–2 Prime contractor's rights and obligations.

Each termination clause provides that, after receipt of a notice of termination and except as otherwise directed by the contracting officer, the prime contractor shall terminate all subcontracts to the extent that they relate to the performance of any work terminated by notice of termination. Prime contractors should therefore, for their own protection, include a termination clause in their subcontracts. A suggested subcontract termination clause is set forth in § 8.706. The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise its rights thereunder, shall not (a) affect the right of the Government to require the termination of the subcontract, or (b) increase the obligation of the Government beyond that which would have arisen if the subcontract had contained an appropriate termination clause. In any such case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount which would be due under subparagraphs (1), (2), and (3) of paragraph (e) of the suggested subcontract termination clause. Reimbursement in excess of that amount shall be allowed only in unusual cases, and then only when the contracting officer is satisfied that the terms of the subcontract were negotiated in good faith and did not unreasonably increase the rights of the subtractor.

§ 8.208–3 Settlement procedure.

(a) Settlements with subcontractors shall be made in general conformity with the policies and principles relating to settlement of prime contracts as set forth in this subpart and in subpart C or D of this part as applicable. However, the basis and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each such settlement shall be supported by accounting and other data sufficient for adequate review by the Government. In no event shall the Government pay to the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see § 8.208–5).

(b) Except as provided in § 8.208–4 (1) all subcontractor termination inventory shall be disposed of and accounted for in accordance with Subpart E of this part, and (2) the contracting officer shall require the prime contractor to submit to him for approval or ratification all termination settlements with subcontractors. In submitting each settlement, the prime contractor shall certify that it has examined the subcontractor's claims included therein, that they are allocable to the terminated portion of the prime contract, and that the settlement is fair and reasonable, was negotiated in good faith, and is not more favorable to the subcontractor than if the Government were not involved. The contractor shall also certify that it has received from all its immediate subcontractors certifications substantially in the form of its own certification. With respect to settlements with more remote subcontractors, the contractor shall certify that it has no information leading it to doubt their reasonableness or their allocability to the terminated portion of the prime contract.

(c) The contracting officer shall promptly examine such subcontract settlement required to be submitted to him (including the basis and form of the proposal upon which the settlement was based) to satisfy himself that the subcontract termination was made necessary by the termination of the prime contract, and that the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the contracting officer shall be guided generally by the provisions of this part relating to the settlement of prime contracts, and shall comply with any applicable requirements of §§ 8.207 and 8.211 relating to audit and review. Upon completion of the examination, the contracting officer shall notify the contractor in writing of (1) his approval or ratification, or (2) his reasons for disapproval.

§ 8.208–4 Authorization for subcontract settlements of $10,000 or less without approval or ratification.

(a)(1) The contracting officer may, upon the written request of the prime contractor, authorize it in writing to conclude settlement of $10,000 or less (see § 8.101–1) of its terminated subcontracts, without approval or ratification by the contracting officer, if:

(i) The contracting officer is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inventory) of its immediate and lower tier subcontractors.

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of in accordance with § 8.513, except that the dis-

position of such inventory shall not (a) be subject to review by the contracting officer under §§ 8.513–1 or 8.513–3, or (b) be subject to § 8.513–4; and

(iii) The settlement will be accompanied by a certificate substantially similar to the certificate set forth in the settlement proposal forms in § 8.802;

Provided, That the contracting officer shall not grant to the contractor any authority hereunder for settlements between $2,500 and $10,000 without the written approval as to that contractor of the Head of the Procuring Activity concerned, or of a deputy or principal assistant responsible for contract matters. Except as provided in subparagraph (3) of this paragraph authority granted to a prime contractor pursuant to this subparagraph (a) (1) by any contracting officer within the Department of Defense shall be applicable to all terminated prime contracts of all procuring activities within the Department of Defense.

(2) Except as provided in subparagraph (3) of this paragraph, the contracting officer without further approval or ratification shall accept, as part of the prime contractor's termination claim, any settlement of terminated lower tier subcontracts concluded by any of its immediate or lower tier subcontractors who, pursuant to subparagraph (1) of this paragraph, have been granted, by any contracting officer within the Department of Defense, authority as prime contractors to settle subcontracts: *Provided,* that the settlement of such lower tier subcontracts is within the limit of such authority.

(3) The provisions of subparagraphs (1) and (2) of this paragraph shall not apply to any contracts under the administration of any contracting officer within the Department of Defense if such contracting officer so notifies the prime contractor concerned. Such notice (i) shall be in writing, (ii) shall be issued only after written approval thereof by the Head of the Procuring Activity concerned or of a deputy or principal assistant responsible for contract matters, and (iii) if subparagraph (2) of this paragraph is involved shall specify any subcontractor affected.

(b) § 8.513 shall apply to any disposal of completed end items allocable to the terminated subcontract, except that completed end items allocable to the terminated subcontract may be disposed of without review by the contracting officer under §§ 8.513–1 or 8.513–3, and without screening under § 8.513–4, if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under paragraph (a)(1) of this section.

(c) A contracting officer granting the above authorization to a contractor shall be responsible for periodically making a selective review of settlements to determine whether the contractor is making adequate reviews and fair settlements, and whether such authorization shall remain in effect. Whenever the contracting officer determines that the contractor's procedures are not adequate or that improper settlements are being made, he shall revoke the authorization by written notice to the contractor. The revocation shall take effect only from the date of receipt.

(d) Any number of separate settlements of $10,000 or less may be made with a single subcontractor. However, claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible, and shall not be divided in order to bring them within the authorization.

§ 8.208–5 Recognition of judgments and arbitration awards.

(a) In the event a subcontractor obtains a final judgement against a prime contractor, the contracting officer shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the subcontractor, to the extent such judgment is properly allocable to the terminated portion of the prime contract if:

(1) The prime contractor has made reasonable efforts to include in its subcontract the termination clause in § 8.706 or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination, in whole or in part, are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor has made reasonable efforts to settle the claim of the subcontractor;

(4) The contractor has given prompt notice to the contracting officer of the initiation of the proceedings in which the judgment was rendered and has not refused to give the Government control of the defense of the proceedings; and

(5) The contractor has diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, has rendered such reasonable assistance as has been requested by the Government.

If the foregoing conditions are not all met, the contracting officer may allow the contractor such part of the judgment as he considers a fair amount for settling the termination claim under the subcontract, giving due regard to the policies set forth in this part for settlement of such claims.

(b) Where a contractor and his subcontractor submit a subcontractor termination claim to arbitration under any applicable law or contract provision, the contracting officer shall recognize the amount of the arbitration award as the cost of settling the claim of the subcontractor to the same extent and under the same conditions as specified in paragraph (a) of this section.

§ 8.208–6 Delay in settlement of subcontractor claims.

Where a prime contractor is unable to settle with a subcontractor and such inability is delaying the settlement of the prime contract, the contracting officer may settle with the prime contractor, excepting from the settlement the whole or any part of the claim of such subcontractor and reserving the rights of the Government and of the prime contractor with respect thereto.

§ 8.208–7 Government assistance in settlement of subcontracts.

In unusual cases the contracting officer may determine that it is in the best interests of the Government to offer assistance to the prime contractor in the settlement of a particular subcontract. Such a situation may exist when the prime contractor has made all reasonable efforts to negotiate the settlement without success and the contracting officer believes that with the assistance of the Government a settlement can be reached. Such assistance shall be furnished only with the consent of the prime contractor. In such cases, an agreement may be entered into by the Government, the prime contractor, and a subcontractor, covering the settlement of one or more subcontracts. In any such case, payment to the subcontractor shall be effected through the prime contractor as part of the overall settlement with the latter.

§ 8.208–8 Assignment of rights under subcontracts.

(a) The termination clauses set forth in Subpart G of this part obligate the prime contractor to assign to the Government, in the manner, at the times, and to the extent directed by the contracting officer, all its right, title, and interest under any subcontracts terminated by reason of termination of the prime contract. The contracting officer shall not require such assignment unless he determines that it is in the best interest of the Government.

(b) In giving the Government the right to require the assignment of the prime contractor's interest in terminated subcontracts, the termination clauses set forth in Subpart G of this part also provide that the Government shall have the right, in its discretion, to settle and pay any or all claims arising out of the termination of such subcontracts. This right does not obligate the Government to settle and pay termination claims of subcontractors. As a general rule, the prime contractor is obligated to settle and pay such claims. Where, however, the contracting officer determines that it is in the best interest of the Government to settle and pay directly a subcontractor's termination claim, he shall first obtain approval in accordance with Departmental procedures. An example of a situation in which the best interest of the Government would be served by effecting a direct settlement would be where a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's claim will jeopardize the financial position of the subcontractor. Direct settlements with subcontractors are not encouraged.

§ 8.209 Settlement agreements.

§ 8.209–1 General.

When a settlement has been negotiated with respect to the terminated portion of a contract, and all required reviews have been obtained, the contractor and the contracting officer shall enter into a settlement agreement, substantially in the form set forth in the appropriate subparagraph of § 8.806. The settlement shall cover (a) any setoffs and counterclaims which the Government may have against the contractor and which may be applied against the terminated contract, and (b) all claims of subcontractors, except claims which are specifically excepted from the agreement and reserved for separate settlement.

§ 8.209–2 Excepted items.

Where any rights or claims of the Government or of the contractor are to be excepted from the settlement, the settlement agreement shall specify the nature and extent of the excepted items. However, care shall be taken so that the wording of the exception does not create any new rights in the parties beyond those in existence prior to the execution of the settlement agreement. The separate settlement of excepted items shall be in accordance with the provisions of this Section and shall be set forth in settlement agreements.

§ 8.209–3 Government property.

Before any settlement agreement is executed, the contracting officer shall determine the status of the Government property account for the terminated contract. If the audit of such property required by § 30.2, Appendix B, paragraph 404, or § 30.3, Appendix C, paragraph 215, discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property, or make an appropriate deduction from the amount otherwise due the contractor.

§ 8.209–4 No-cost settlement.

(a) If no costs have been incurred by the contractor with respect to the terminated portion of the contract or if the contractor is willing to waive the costs incurred by it and if no amounts are due to the Government under the contract, a no-cost settlement agreement shall be executed substantially in the form set forth in § 8.806–6 or § 8.806–7, as applicable.

(b) Under a terminated cost-reimbursement type contract, if the contractor elects to obtain reimbursement of costs by the submission of Standard Form 1034 vouchers (costing-out), the settlement agreement shall cover only the fee, if any.

§ 8.209–5 Partial settlements.

Every effort should be made by the contracting officer to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, contracting officers shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a contracting officer cannot promptly effect a complete settlement under the terminated contract, a partial settlement may be entered into: *Provided* (a), The issues on which agreement has been reached are clearly severable from other issues, and (b) the partial settlement will not prejudice the interests of the Government or the contractor in disposing of the unsettled part of the claim.

§ 8.209–6 Joint settlement of two or more claims.

With the consent of the contractor, the contracting officer or officers concerned may negotiate jointly two or more termination claims of the same contractor under different contracts, even though such contracts are with different Military Departments. In such cases, accounting work shall be consolidated to the greatest extent practical. The settlement resulting from such joint negotiation may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved. Where the settlement agreement covers more than one contract, it shall (a) clearly identify the contracts involved; (b) apportion the total amount of the settlement among the several contracts on some reasonable basis; (c) have attached or incorporated therein a schedule showing the apportionment; and (d) be distributed and attached to each contract involved in the same manner as other contract amendments.

§ 8.209–7 Settlement by determination.

(a) *General.* To the extent that the contractor and contracting officer are unable to agree upon the settlement of a terminated contract or if a termination claim is not submitted within the period required by the termination clause in the contract, the contracting officer shall issue a determination of the amount due in accordance with the termination clause in the contract, including any cost principles incorporated therein by reference. The contracting officer shall comply with the provisions of §§ 8.209–1 through 8.209–6 in making any such determination.

(b) *Notice to contractor.* The contracting officer shall give the contractor not less than 15 days' notice by certified mail (return receipt requested) to submit, on or before a stated date, written evidence substantiating the amount claimed to be due.

(c) *Submission of evidence.* (1) The contractor has the burden of establishing by proof satisfactory to the contracting officer the amount claimed.

(2) The contractor may submit such vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as it may wish. The contracting officer may request the contractor to submit such additional documents and data, and may cause such accounting, investigations, and audits to be made, as he deems appropriate.

(3) The contracting officer may accept photostatic or other copies of documents and records, and shall not require original documents, unless there is a question of authenticity.

(4) If the contractor wishes to confer with the contracting officer, or if the contracting officer wishes additional information from Government personnel or from independent experts, or wishes to consult persons whose affidavits or reports have been submitted, the contracting officer, in his discretion, may hold such conferences as he deems appropriate.

(d) *Determinations.* After reviewing the information submitted or otherwise available to him, the contracting officer shall determine the amount due and shall transmit a copy of his determination to the contractor by certified mail (return receipt requested). The letter of transmittal shall advise the contractor that the determination is a final decision from which an appeal may be taken under the Disputes clause. The determination shall set forth the amount due the contractor and shall be supported by detailed schedules conforming generally to the forms for settlement proposals set forth in Subpart H of this part, and by additional information, schedules, and analyses, as appropriate. An adequate explanation shall be given for each major item of disallowance. The contracting officer need not reconsider (1) any settlement with a subcontractor, (2) any disposition of property, or (3) any other action relating to the terminated portion of the contract, where such settlement, disposition, or other action has been previously ratified or approved by him or another duly authorized contracting officer.

(e) *Preservation of evidence.* The contracting officer shall retain in appropriate files of the contracting agency all written evidence and other data or copies thereof, relied upon by him in making his determination, except that copies of original books of account, need not be made. Books of account together with other original papers and documents, shall be returned to the contractor within a reasonable time.

(f) *Appeals.* The contractor has a right of appeal, under the Disputes clause of the contract, from any settlement by determination, except that the contractor has no such right of appeal where it has failed to submit its settlement proposal within the time provided in the contract and has failed to request extension of such time. The pendency of an appeal shall not affect the authority of the contracting officer to settle the termination claim or any part thereof by a negotiated agreement with the contractor at any time before the appeal is decided.

§ 8.210 Contracting officer's negotiation memorandum.

The contracting officer shall, at the conclusion of the settlement negotiations, prepare a memorandum setting forth the principal elements of the settlement for inclusion in the contract file and for the use of reviewing authorities. If the settlement was negotiated on the basis of individual items, the contracting officer shall specify the factors considered with respect to each item. If the settlement was negotiated on an over-all lump-sum basis, the contracting officer need not evaluate each item or group of items individually, but the total amount of the recommended settlement shall be supported in reasonable detail. The memorandum shall include explana-

tions of matters as to which differences and doubtful questions were settled by agreement, and the factors taken into consideration in connection therewith, and any other matters which, in the opinion of the contracting officer, will assist reviewing authorities in understanding the basis for the settlement.

§ 8.211 Review and approval of proposed settlements.

§ 8.211–1 Settlement review boards.

The Head of each Procuring Activity shall establish Settlement Review Boards to review proposed settlements as required by § 8.211–2 (a). Such boards shall be established in the office of the Head of the Procuring Activity and may also be established in field or regional procurement offices, as appropriate. Each Settlement Review Board should be composed of at least three qualified officers or civilian employees of the Department concerned, who shall be persons with broad business and contracting experience. The membership of each Board should include at least one lawyer, one accountant and, in appropriate cases, an engineer or industrial specialist. No person shall serve as a member of a Settlement Review Board in reviewing a settlement in which he has participated.

§ 8.211–2 Required review and approval.

(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a Settlement Review Board if:

(1) The settlement or determination involves $25,000 or more (see § 8.101–1);

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is $25,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $25,000 or more;

(3) The Head of the Procuring Activity concerned determines that a review is desirable; or

(4) The contracting officer, in his discretion, desires review by the Settlement Review Board.

The review and approval of each settlement or determination in excess of $1,000,000 shall be by a Board at the Head of the Procuring Activity level.

(b) *Submission of information.* The contracting officer shall, in accordance with Departmental procedures, submit to the Settlement Review Board a statement of the settlement, supported by such detailed information as is required for an adequate review. This information should normally include copies of (1) the contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, (4) the contracting officer's memorandum explaining the settlement (§ 8.210), and (5) when appropriate, the opinion of any other Settlement Review Board which has previously reviewed the settlement. The Board may, in its discretion, require the submission of additional information.

§ 8.211–3 Scope of review.

The function of a Settlement Review Board is to determine the overall reasonableness of the proposed settlement agreement or determination from the standpoint of protecting the Government's interest. The Board may vary the scope and intensity of the review according to the size and complexity of the proposed settlement agreement or determination and any other relevant factors. It is not intended that the Board examine in detail every element entering into the proposed settlement agreement or determination, but the Board may inquire into selected elements of the proposed settlement agreement or determination to assure that it has been conducted competently and is based on adequate information.

§ 8.211–4 Action by board.

The Settlement Review Board shall submit to the contracting officer a written opinion with respect to the proposed settlement agreement or determination and any other matter considered by the Board setting forth its approval or disapproval thereof, or other decision thereon. Failure of the Board to submit a written opinion as to any proposed settlement agreement or determination within 30 days after submission to the Board of all the information required pursuant to § 8.211–2(b) shall operate as an approval by the Board.

§ 8.212 Payment.

§ 8.212–1 Partial payments upon termination.

(a) *General.* If the contract authorizes partial payments on termination claims prior to settlement, a fixed-price prime contractor, or a cost-reimbursement prime contractor whose settlement proposal includes costs, may request such partial payments in the form set forth in § 8.802–10 at any time after submission of interim or final settlement proposals. Applications for partial payments shall be processed promptly. Partial payments to a subcontractor shall be made only through the prime contractor.

(b) *Amount of partial payment.* Before approving any partial payment requested by the contractor, the contracting officer shall have made such accounting, engineering, or other specialized reviews as he deems proper of the data required by this part to be submitted in support of the contractor's settlement proposals. If such reviews and the contracting officer's examination of the data indicate that the requested partial payment is proper, the contracting officer may, in his discretion, authorize payments as follows:

(1) An amount up to 100 percent of the contract price, adjusted in accordance with § 8.306 for undelivered acceptable items completed prior to the termination date, or completed thereafter with the approval of the contracting officer, which are included in the contractor's settlement proposals pursuant to § 8.306;

(2) An amount up to 100 percent of the amount of any subcontract settlement effected and paid by the prime contractor: *Provided,* The settlement has been approved or ratified by the contracting officer pursuant to § 8.208–3 (c) or has been authorized pursuant to § 8.208–4;

(3) An amount up to 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) A reasonable amount, not to exceed 90 percent, of other allowable costs (including manufacturing and administrative overhead) allocable to the terminated portion of the contract and not included in subparagraph (1), (2), or (3) of this paragraph; and

(5) An amount up to 100 percent of partial payments made to subcontractors in conformance with this subparagraph. No partial payments shall be made on account of profit or fee which may be claimed with respect to the terminated portion of the contract. In exercising his discretion as to the extent to which partial payments shall be made, the contracting officer shall consider the diligence of the contractor in settling with its subcontractors and in preparing its own claim.

(c) *Recognition of assignments.* Where an assignment of claims has been made under the contract, partial payments shall not be made to other than the assignee unless the parties to the assignment consent to the payments.

(d) *Security for partial payments.* To the extent that any partial payment is made with respect to completed end items or for direct or indirect costs of termination inventory, the interests of the Government shall be protected by transfer of title to the Government of the completed end items or termination inventory concerned, or by the creation of a lien in favor of the Government, paramount to all other liens, on such completed end items or termination inventory, or by other means authorized by Departmental procedures.

(e) *Deductions in computing amount of partial payments.* There shall be deducted from the gross amount of any partial payment otherwise payable under § 8.212–1(b):

(1) All unliquidated balances of progress payments and advance payments (including interest thereon) theretofore made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property the costs of which are included in the application for partial payment.

(f) *Limitation on total amount: effect of overpayment.* The total amount of all partial payments shall not exceed the amount which will, in the opinion of the contracting officer, become due to the contractor by reason of the termination. If the total of partial payments made to the contractor should exceed the amount finally determined to be due to the contractor on its termination claim, the excess shall be repayable to the Government on demand, together

with interest computed at the rate of 6 percent per annum from the date such excess payment was received by the contractor to the date of repayment: *Provided,* That (1) no interest shall be charged for any such excess payment attributable to a reduction in the contract termination claim by reason of retention or other disposition of termination inventory, until 10 days after the date of such retention or disposition, or such later date as determined by the contracting officer by reason of the circumstances, and (2) no interest shall be charged for overpayment under cost-reimbursement type research and development contracts (without profit or fee to the contractor) if the overpayments are repaid to the Government within 30 days after demand.

(g) *Certification and approval of partial payments.* Partial payments in a specific amount shall be made on the basis of vouchers or invoices certified by the contractor. The certification shall include, in addition to any other provisions ordinarily required to be included in such certificate, the following:

> The payment covered by this voucher is a partial payment on account of the Contractor's termination claim under contract No. ------, made pursuant to 32 CFR Part 8.

The invoice or voucher, if proper, shall be approved by the contracting officer by noting thereon the following:

> Payment in the amount of $------ approved.

§ 8.212–2 Final payment.

(a) *Negotiated settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by determination.* In the event of a settlement by determination:

(1) If the contractor has not appealed the determination, a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment; or

(2) If the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and certified in the usual form and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to subparagraph (1) of this paragraph may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination.

§ 8.213 Cost principles applicable to the settlement of research and development contracts with educational institutions.

The cost principles and procedures set forth in Subpart C, Part 15, of this chapter shall, subject to the general policies set forth in § 8.301, be a guide for the negotiation of settlements under fixed price or cost-reimbursement type contracts for experimental, developmental or research work with educational institutions, in accordance with § 15.103 and Subpart F, Part 15 of this chapter.

Subpart C—Additional Principles Applicable to the Settlement of Terminated Fixed-Price Type Contracts

§ 8.300 Scope of subpart.

This subpart establishes the guiding principles and policies in connection with arriving at fair compensation for the settlement of terminated fixed-price contracts.

§ 8.301 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including an allowance for profit thereon which is reasonable under the circumstances. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The application of standards of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of record keeping, reporting and accounting, in connection with the settlement of termination claims, shall be kept to the minimum compatible with the reasonable protection of the public interest.

§ 8.302 Cost principles.

The principles set forth in the applicable subpart of Part 15 of this chapter shall be used as a guide for the evaluation of cost information in the negotiation of a termination settlement.

§ 8.303 Allowance for profit.

(a) *General.* Profit shall be allowed only on preparations made and work done by the contractor for the terminated portion of the contract but may not be allowed on the contractor's settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see § 8.208–5). Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

(b) *Factors to be considered.* In negotiating profit, factors to be considered include:

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract; engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered;

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to (i) attainment of quantity and quality production, (ii) reduction of costs, and (iii) economy in the use of materials, facilities, and manpower;

(4) Amount and source of capital employed, and extent of risk assumed, but profit may not be allowed on interest on borrowings allowed as a cost;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit which the contractor would have earned had the contract been completed;

(8) Character, extent, and difficulty of subcontracting, including selection, placement, and management of subcontracts, settlement of terminated subcontracts, and engineering, technical assistance, and other services rendered but the profit shall not be measured by the amount of the contractor's payments to subcontractors for settlement of their termination claims; and

(9) The rate of profit both parties contemplated at the time the contract was negotiated.

(c) *Profit in settlements by determination.* The formula for determining profit, set forth in subparagraph (e) (2) (C) of the termination clause for fixed-price contracts (§ 8.701) and subparagraph (e) (1) (C) of the clause for fixed-price construction contracts (§ 8.703), is applicable only to a settlement by determination (see § 8.209–7), and shall not be used in establishing the profit allowed in a settlement by negotiation.

§ 8.304 Adjustment for loss.

(a) In the negotiation or determination of any settlement, no profit shall be allowed if it appears that the contractor would have incurred a loss had the entire contract been completed. The amount of loss shall be negotiated or determined and an adjustment in the amount of settlement shall be made as specified in paragraph (b) or (c) of this section. In estimating the cost to complete, consideration shall be given to expected production efficiencies and to other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses;

(2) The contract price, as adjusted, for acceptable completed end items (see § 8.306); and

(3) The remainder of the settlement amount otherwise agreed or determined (not excluding the allocable portion of initial costs (see § 15.205–42(c) of this chapter)), reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) the total cost incurred prior to termination plus the estimated cost to complete the entire contract;

less all disposal credits and all unliquidated advance and progress payments previously made to the contractor under the contract.

(c) If the settlement is on a total cost basis, the contractor shall not be paid more than:

(1) The amount negotiated or determined for settlement expenses; and

(2) The remainder of the total settlement amount otherwise agreed or determined, reduced by multiplying that remainder by the ratio of (i) the total contract price, to (ii) that remainder plus the estimated cost to complete the entire contract;

less all disposal and other credits, all advance and progress payments, and all other amounts previously paid to the contractor under the contract.

§ 8.305 Deductions.

From the amount payable to the contractor under a settlement, there shall be deducted (a) the agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds of sale of any materials sold by it, which have not otherwise been paid or credited to the Government; (b) the fair value, as determined by the contracting officer, of any part of the termination inventory which, prior to transfer of title to the Government or to a buyer pursuant to Subpart E of this part, is destroyed, lost, stolen, or so damaged as to become undeliverable, except for normal spoilage or to the extent the Government has expressly assumed the risk of loss; and (c) such other amounts as appropriate in the particular case.

§ 8.306 Completed end items.

Promptly after the effective date of termination, the contracting officer shall have all undelivered completed end items inspected and accepted if they comply with the prime contract requirements, and shall determine which accepted end items shall be delivered under the contract. The contractor shall be paid for completed end items so accepted and delivered by invoicing them at the contract price in the usual manner and shall not include such end items in its termination claim. Where completed end items, though accepted, are not to be delivered under the contract, the contractor shall include such end items in its settlement proposal at the contract price, appropriately adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

§ 8.307 Settlement proposals.

§ 8.307–1 Submission of settlement proposals.

(a) Subject to the provisions of the termination clause in the contract, the contractor shall promptly submit to the contracting officer a settlement proposal setting forth the amount claimed to be due by reason of the termination. The proposal shall be submitted within one year from the effective date of the termination, unless the period has been extended in accordance with the terms of the contract.

(b) The settlement proposal shall cover all elements of the contractor's claim, including settlements with subcontractors. With the consent of the contracting officer, proposals may be filed in successive steps covering separate portions of a claim. Such interim proposals shall include all costs of a particular type, except as the contracting officer may authorize otherwise.

(c) Settlement proposals shall be in the form specified in the appropriate subparagraph of § 8.802. Where none of those forms are adequate for a particular contract, the Head of the Procuring Activity concerned may authorize appropriate modifications. Settlement proposals shall be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs, may be used in preparing settlement proposals: *Provided*, That such costs are determined in accordance with generally recognized accounting principles consistently followed by the contractor. Where actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the contracting officer. A contractor shall not be required to maintain unduly elaborate cost accounting systems merely because its contracts may subsequently be terminated.

(d) DD Form 831 (§ 8.802–3) may be used when the total claim is less than $2,500, unless otherwise instructed by the contracting officer. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible and shall not be divided in such a way as to bring them below $2,500.

§ 8.307–2 Bases for settlement proposals.

(a) *Inventory basis.* Use of the inventory basis for settlement proposals is preferred. Under this basis the contractor shall claim only costs chargeable or allocable to the terminated portion of the contract, and the settlement proposal shall itemize separately:

(1) At purchase or manufacturing cost, each of the following—metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling;

(2) Charges such as engineering costs, initial costs, and general and administrative costs;

(3) Costs of settlements with subcontractors;

(4) Settlement expenses; and

(5) Other proper charges.

An allowance for profit (see § 8.303) or adjustment for loss (see § 8.304 (b)) shall be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, shall then be deducted.

(b) *Total cost basis.* (1) When use of the inventory basis is not practicable or will unduly delay settlement, the total cost basis may be used if approved in advance by the contracting officer.

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination shall be itemized and the costs of settlements with subcontractors and applicable settlement expenses shall be added. An allowance for profit (see § 8.303) or adjustment for loss (see § 8.304 (c)) shall be made. The contract price for all end items which have been or are to be delivered and accepted shall be deducted. All unliquidated advance and progress payments, disposal and other credits known when the proposal is submitted, shall also be deducted.

(3) When the total cost basis is used under a partial termination, the settlement proposal shall not be submitted until completion of the continued portion of the contract. The settlement proposal shall be prepared in accordance with subparagraph (2) of this paragraph except that all costs incurred to the date of completion of the continued portion of the contract shall be included.

(c) *Other bases.* Termination claims shall not be submitted on any basis other than paragraph (a) or (b) of this section without the prior approval of the Secretary concerned or his duly designated representative.

§ 8.308 Limitation on settlements.

The total amount payable to the contractor on account of a settlement, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, shall not exceed the contract price less payments otherwise made or to be made under the contract.

Subpart D—Additional Principles Applicable to the Settlement of Terminated Cost-Reimbursement Type Contracts

§ 8.401 General considerations.

The termination clauses for cost-reimbursement type contracts (see §§ 8.702 and 8.704) provide for the settlement of costs and of fee, if any. The provisions of the particular contract governing costs shall determine what costs are allowable.

§ 8.402 Election to discontinue vouchers.

(a) After the effective date of termination, the contractor may elect to discontinue the use of Standard Form 1034 (Public Voucher). Such election shall be made in the manner required by the contracting officer (in the case of the Navy, the Comptroller of the Navy (Contract Audit Division)). Upon such election, the contractor shall not be permitted to resume the use of Standard Form 1034, and shall submit unvouchered costs on the settlement proposal form prescribed in § 8.803. On the basis of such settlement proposals, partial settlements may be made from time to time as appropriate.

(b) A contractor which continues to use Standard Form 1034 may at any time thereafter elect to discontinue the use of such vouchers. A contractor shall not, however, be permitted to recover costs by the use, during the same period of time, of both Standard Form 1034 and settlement proposals, except as provided in § 8.406.

§ 8.403 Notice to the General Accounting Office.

The contracting officer shall promptly send a copy of the notice of termination to the General Accounting Office, and shall promptly advise that office of any election by the contractor pursuant to § 8.402 to discontinue the use of Standard Form 1034.

§ 8.404 Procedure where contractor continues to submit vouchers.

§ 8.404–1 Submission of settlement proposal.

If the contractor elects to continue to submit reimbursable costs on Standard Form 1034, the contractor shall submit a settlement proposal which shall be limited as to amount to its claim, if any, for a fee. The proposal shall be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. The proposal shall be submitted in the form prescribed in § 8.803. The fee to be paid, if any, shall be established in the manner provided by the contract. Percentage of completion of the contract is generally the basis used. Where this basis is used, factors such as the extent and difficulty of the work done by the contractor (including but not limited to planning, scheduling, technical study, engineering work, production and supervision, placing and supervising subcontracts to the extent reasonably required, and work done by the contractor in (a) stopping performance, (b) settling claims of subcontractors, and (c) disposing of termination inventory) shall be compared with the total work required by the contract. The ratio of costs incurred to the total estimated cost of performing the contract is only one factor in computing the percentage of completion of the contract. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the contracting officer of the above factors and other relevant considerations.

§ 8.404–2 Submission of cost vouchers.

The contractor shall submit on Standard Form 1034 all costs reimbursable under the contract, including (a) its own costs allocable to the terminated portion of the contract, (b) costs of settlements with subcontractors, and (c) applicable settlement expenses. The contractor shall not be reimbursed for the costs of settlements with subcontractors unless the approvals or ratifications required pursuant to the contract have been obtained (see § 8.208).

§ 8.405 Procedure where contractor discontinues use of vouchers.

§ 8.405–1 Submission of settlement proposal.

If the contractor discontinues the use of Standard Form 1034, it shall submit a settlement proposal covering both its costs and its claim, if any, for a fee. The proposal shall be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. The proposal shall be submitted in the form prescribed in § 8.803, unless the Head of the Procuring Activity concerned authorizes modification thereof. The proposal shall contain only unvouchered costs and the contractor may not include in its settlement proposal those costs which have been finally disallowed or are the subject of a reclaim voucher.

§ 8.405–2 Interim negotiations.

The contracting officer and the contractor shall proceed immediately to take all action required by the termination clause of the contract and by this part (including negotiation of settlements with fixed-price subcontractors), but no final settlement agreement shall be executed until there has been full compliance with § 8.405–3 through § 8.405–5.

§ 8.405–3 Information concerning previous cost vouchers.

(a) The contracting officer (in the case of the Navy, the Comptroller of the Navy (Contract Audit Division)) shall notify the appropriate disbursing officer in writing of the number of the last Standard Form 1034 cost voucher submitted to him for payment.

(b) Within 10 days from the date of payment of the last Standard Form 1034 voucher or from the date of receipt of the notice referred to in paragraph (a) of this section, whichever is later, the disbursing officer shall prepare and transmit to the contracting officer a list of all Standard Form 1043 vouchers paid under the contract, showing (1) Disbursing Office voucher number, (2) amount of voucher, (3) date of payment, (4) disbursing officer's name, symbol, and address, and (5) total amount of vouchers paid. The contracting officer shall verify the number and amounts of the vouchers listed against the records of the procuring activity, and if any discrepancies exist, shall request the disbursing officer to reconcile them. After reconciliation, the verified list shall be returned to the disbursing officer. (In the case of the Navy, the disbursing officer shall, in lieu of transmitting the list of vouchers to the contracting officer, transmit it to the Comptroller of the Navy (Contract Audit Division), for verification.)

§ 8.405–4 Notice to General Accounting Office of audit status date.

Upon receipt of the verified list of vouchers, the disbursing officer shall immediately transmit a Notice of Audit Status Date (DD Form 547s) by certified mail (return receipt requested) to the Regional Office of the General Accounting Office zone in which the work on the terminated contract was being performed. Such notice fixes as the "Audit Status Date" (a) the day 60 days from the date of the receipt of the notice by the General Accounting Office, or (b) the date of the receipt by the procuring activity of the final General Accounting Office audit status letter, whichever is earlier. The disbursing officer shall send a copy of the notice to the contracting officer (in the case of the Navy, also to the Comptroller of the Navy (Contract Audit Division)), and shall state when the notice was received by the General Accounting Office.

§ 8.405–5 Exceptions by the General Accounting Office.

(a) During the first 30 days after receipt by it of the audit status notice, the General Accounting Office will continue to issue informal inquiries before issuing exceptions; thereafter, and until the audit status date, it will issue exceptions without issuing informal inquiries. Only those exceptions listed in the General Accounting Office final audit status letter will be considered as outstanding at that time; all informal inquiries will either be converted by the General Accounting Office to exceptions at the time of issuance of that letter or be deemed to have been cleared. Upon receipt of replies to exceptions, the General Accounting Office will promptly furnish notice that the reply is satisfactory or will promptly issue a revised exception. No exceptions (other than pro forma exceptions) will be issued after the audit status date.

(b) All replies to exceptions and informal inquiries shall advise the General Accounting Office of the disposition to be made of the particular item in the final settlement and shall contain complete information justifying the payments in question. Replies shall be submitted promptly in accordance with Departmental procedures. After the audit status date, a final attempt shall be made by the contracting officer to clear with the General Accounting Office all outstanding exceptions and reclaim vouchers prior to final settlement.

§ 8.405–6 Final settlement.

(a) The contracting officer may proceed with completion of the settlement and execution of an appropriate settlement agreement at any time after receipt of the final audit status letter. If no such letter has been received on or before the 15th day following the audit status date, the contracting officer may proceed on the basis that there are no outstanding exceptions.

(b) The fee shall be adjusted as provided in § 8.404–1.

(c) The final settlement agreement may include all claims of the Government and of the contractor under the terminated contract, except that no amount may be allowed for any item of cost which is the subject of a General

Accounting Office exception, either cleared by deduction or uncleared, or for any other item of cost of the same nature, unless a reclaim voucher covering such cost has been presented by the contractor and authorized by the General Accounting Office for payment.

(d) The provisions of the contract governing the types of reimbursable costs shall constitute the basis of negotiation; however, if an overall settlement of costs is agreed upon, agreement on each separate element of cost is not necessary. In appropriate cases, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not, under any circumstances, be made the means of reimbursing contractors for costs which under the provisions of the contract are clearly not allowable.

§ 8.406 Partial termination.

In the event of a partial termination of a cost-reimbursement type contract, the settlement shall be limited to adjustment of the fee, if any, unless the contracting officer determines that:

(a) The terminated portion is clearly severable from the balance of the contract; or

(b) Performance of the contract is virtually complete, or that performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

Subject to the foregoing exceptions, all costs under the contract, including those arising out of the partial termination, will continue to be presented in the same manner as prior to the notice of termination.

§ 8.407 Termination for default.

The right to terminate a cost-reimbursement type contract for default is provided for in the Termination clause set forth in § 8.702. In the event of termination, the contractor shall be reimbursed its allowable costs in accordance with the clause, and an appropriate reduction shall be made in the total fee, if any, computed in accordance with the default provisions of the contract (see paragraph (e)(1)(D)(II) of the clause in § 8.702). The costs of preparing the contractor's settlement proposal are not allowable. A cost-reimbursement type contract does not contain any provision for recovery of excess costs of reprocurement after termination for default, but see paragraph (b) of the clause set forth in § 7.203–5 of this chapter with respect to failure of the contractor to replace or correct defective supplies. The procedures set forth in §§ 8.602 and 8.603 shall be used to the extent appropriate in considering the termination for default of a cost-reimbursement type contract. A ten-day notice to the contractor prior to termination for default is required in every case by the Termination clause in § 8.702.

Subpart E—Disposition of Termination Inventory

§ 8.501 General.

§ 8.501–1 Methods of disposal.

Subject to the Government exercising its right under the termination clause in a contract to acquire title to, and require delivery of, any items of termination inventory, the contractor shall dispose of all termination inventory in the manner most favorable to the Government by the following methods, in the order of priority indicated:

(a) Purchase or retention by the prime contractor or subcontractor at cost;

(b) Return to suppliers;

(c) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor); or

(d) Other disposition as hereinafter provided.

§ 8.501–2 General restrictions on contractor's authority.

(a) The following general restrictions are in addition to specific restrictions set forth in this Subpart E.

(b) The authority of a contractor to purchase, retain, or dispose of termination inventory or to authorize or approve a purchase, retention, or disposition by a subcontractor is subject to (1) any applicable Government restrictions on the disposition of property which is either classified by reason of military security or is dangerous to public health, safety or welfare, and (2) any contract provisions regarding the disposition of material subject to a lien.

(c) Contractors shall not sell termination inventory to persons known by them to be officers, enlisted personnel, or civilian employees of the Department of Defense.

(d) The authority of a contractor to approve a sale or a purchase or retention at less than cost, by a subcontractor and the authority of a subcontractor to sell, or to purchase or retain at less than cost, termination inventory with the approval of the next higher-tier contractor does not include (1) a sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor, or (2) a sale, or a purchase or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor. Each such excluded sale, purchase, or retention requires the written approval of the contracting officer. A firm shall be considered to be affiliated with another firm if they are under common control or if there is any common interest between them, by reason of stock ownership or otherwise, which is sufficient to create a reasonable doubt that the bargaining between them is completely at arm's length.

§ 8.502 Contractor-acquired property; purchase or retention at cost, or return to suppliers.

§ 8.502–1 Purchase or retention at cost.

Contractors shall be encouraged to purchase or retain contractor-acquired property at cost. No part of the cost of property so purchased or retained shall be included in settlement proposals. In any instance in which a contractor purchases or retains any allocable contractor-acquired property for use in other continuing Government contracts or commercial operations, handling and transportation charges necessitated by the purchase or retention of such property may be included in the contractor's settlement proposal as "other costs"; *Provided*, That such costs are reasonable. Where property purchased or retained is for use on a continuing Government contract and is not in excess of the quantitative requirements for completion of that contract, that property shall be considered properly allocable to the continuing contract if that contract is subsequently terminated, even though its procurement would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on a continuing Government contract, the contractor terminates subcontracts under the continuing Government contract, the charges incurred by reason of the termination of such subcontracts may be included in the termination claim under the terminated contract.

§ 8.502–2 Return of property to suppliers.

Contractors are authorized and shall be encouraged to return allocable quantities of contractor-acquired property to suppliers for full credit less the supplier's normal restocking charge, or 15 percent of cost, whichever is less. Contractors shall not include in their settlement proposals the cost of such property returned to suppliers in accordance with this section. Contractors may include in their settlement proposals as "other costs" the transportation, handling, and restocking charges with respect to the property so returned.

§ 8.502–3 Cost-reimbursement type contracts.

Under cost-reimbursement type contracts, the contractor's right to purchase or retain contractor-acquired property at cost (§ 8.502–1) or return such property to suppliers (§ 8.502–2) shall be subject to the approval of the contracting officer after adjustment of previously reimbursed costs for such property.

§ 8.503 Inventory schedules.

§ 8.503–1 Submission of inventory schedules.

As promptly as possible after receipt of a Notice of Termination, the prime contractor is required to submit inventory schedules to the contracting officer covering all items of termination inventory, including Government-furnished property: *Provided*, That termination inventory purchased or retained at cost, or returned to suppliers, pursuant to § 8.502 shall not be listed. Inventory schedules may be submitted prior to submission of the settlement proposal. Submission shall not be delayed in order to supply complete cost data on items of work in process where such data is not readily available. Partial schedules may be submitted from time to time when they cover substantial portions of a particular property classification in the termination inventory. Each schedule submitted shall be designated by the contractor as "partial" or "final."

§ 8.503–2 Separate schedules.

Separate sets of schedules shall be submitted on the forms prescribed in §§ 8.802–4 through 8.802–8, for contractor-acquired property and for Government-furnished property, and, within each of those categories, for each of the following classifications:

(a) Production equipment;

(b) Serviceable aircraft or aircraft components;

(c) Other serviceable or usable materials; and

(d) Scrap or salvage.

Classification of property by the contractor in the schedules shall be subject to the approval of the contracting officer.

§ 8.503–3 Inventory descriptions.

A commercial description, adequate for disposal and screening purposes, of all items having commercial value shall be included in the inventory schedules. Where any items of termination inventory bear a Government identification number, such number shall be listed on the inventory schedules. In the case of other items, the contractor shall furnish a description sufficient to enable the contracting officer to determine the proper disposition thereof. The contractor shall consult the contracting officer when in doubt as to the extent of description required. The contractor need not itemize material believed to be scrap or salvage if (a) such material is physically segregated in the contractor's plant; and (b) the contractor submits a statement describing the material generally, setting forth its approximate cost, and giving such other information as may be necessary for the contracting officer to determine whether the material is scrap or salvage. If the material is determined by the contracting officer to be scrap or salvage (see § 8.504), the contractor may make a single descriptive entry on an inventory schedule covering such material and indicating its approximate total cost.

§ 8.503–4 Inventory schedule certificate.

The certificate on the inventory schedules prescribed in § 8.802–4 through § 8.802–8 shall be executed by the contractor on each schedule submitted. The certificate, among other things, tenders title to the Government of the property listed therein, unless the Government already has title thereto.

§ 8.503–5 Common items.

Under no circumstances shall the contractor's inventory schedules include any items (except for property delivery of which has been required by the Government and except for Government-furnished property) reasonably usable on other work of the contractor without loss to it. (See § 15.205–42.)

§ 8.503–6 Withdrawals from inventory schedules.

If at any time prior to final disposition any items of contractor-acquired property listed in the contractor's inventory schedules become reasonably usable on other work of the contractor without loss to it and this fact is known to the contractor, the contractor is required to purchase or retain such items at cost in accordance with §§ 8.502–1 or 8.502–3, whichever is applicable, and shall amend its inventory schedules and its settlement proposal accordingly. Upon notification to the contracting officer, the contractor may similarly purchase or retain at cost any other items of property included in its inventory schedules. Withdrawal of Government-furnished property included in inventory schedules is subject to approval by the contracting officer.

§ 8.503–7 Rejection and correction of inadequate schedules.

(a) *General.* Contracting officers shall cause to be verified, to the extent practicable, the physical count and condition of inventories, including Government-furnished property, listed on the contractor's inventory schedules. If any inventory schedule submitted by a contractor is found to be inadequate, the contractor shall be promptly notified and required to correct or supplement the schedule as to the items which are deficient. Inventory schedules shall not be rejected if the information contained therein is adequate for disposal purposes, even if complete cost data on work in process are not available. Rejection of an inventory schedule shall be limited where possible to specific items thereon and shall not necessarily render the entire schedule unacceptable.

(b) ***Effect on plant clearance period.*** (1) Where only individual items on the inventory schedules covering all items of a particular property classification are in need of correction or amplification, the inventory schedules as submitted shall be considered acceptable for purposes of starting the final phase of a plant clearance period (see § 8.101–12). However, where the inadequacy of an inventory schedule requires the return of the entire schedule to the contractor for correction or revision, the final phase of the plant clearance period as to the property classification covered thereby shall not begin until acceptable final schedules covering that property classification have been submitted.

(2) The contracting officer shall advise the contractor of any deficiencies apparent in the inventory schedule within 15 days after receipt of the final schedule, or the schedules shall be deemed acceptable for purposes of starting the final phase of a plant clearance period. However, should substantial errors develop which were not apparent from the inventory schedules previously deemed acceptable, the final phase of a plant clearance period shall not be deemed to have commenced until corrected schedules have been submitted unless the contracting officer determines that no unwarranted delay in disposal operations was occasioned thereby.

§ 8.504 Scrap and salvage.

§ 8.504–1 General.

Promptly after the submission of inventory schedules by the contractor, the contracting officer shall review, or cause to be reviewed, the contractor's treatment of any items of termination inventory as scrap or salvage (see § 8.503–3). The review shall include a careful examination of the inventory schedules and in appropriate cases physical inspection of the property involved. Prior to determining that such items are scrap or salvage, the contracting officer shall obtain such approvals as may be required by Departmental procedures. If the contracting officer determines that any of the materials listed by the contractor as scrap or salvage are serviceable or usable materials, the contractor shall, in accordance with such determination, submit revised inventory schedules (see § 8.503–7). Property determined to be scrap and which, by other Government regulations, is required to be segregated by alloy or otherwise, shall be so segregated by the contractor. Property determined to be scrap or salvage may, with the approval of the contracting officer, be sold or otherwise disposed of by the contractor in accordance with the provisions of §§ 8.505–3, 8.507, or 8.509. In appropriate cases, when approved by the contracting officer, such sales may be consolidated with the contractor's sales of scrap and salvage generated from its other work and, in such cases, the scrap warranty required by § 8.504–2 may be waived in the discretion of the contracting officer.

§ 8.504–2 Scrap warranty.

(a) If any termination inventory is sold as scrap, a scrap warranty, substantially as set forth in § 8.805 shall be obtained.

(b) The scrap warranty may be released on behalf of the Government by the contracting officer if, as consideration for the release, the Government is paid the difference between (1) the price for which the material was sold as scrap and (2) an amount, approved by the contracting officer, not less than that which the material would bring if it were sold at a fair and reasonable price as set forth in § 8.507–2 (a), for purposes other than use as scrap. The release of the scrap warranty shall be given by the Government and the consideration paid to the Government, even though the contract containing the warranty was not made directly with the Government.

(c) In the event of resale of any material subject to a scrap warranty, the seller is required to obtain an appropriate scrap warranty from the purchaser thereof. Upon tender of this warranty to the Government, the seller shall be released by the Government from liability under his own warranty.

§ 8.505 Screening of serviceable and usable property.

§ 8.505–1 Scope of screening.

(a) Subject to (c), (d), (e), and (f) below, serviceable and usable property, other than production equipment, included in the contractor's inventory schedules shall be screened as follows:

(1) Inventories of aircraft and aircraft components shall be screened for possible redistribution within the Departments of the Air Force and Navy;

(2) Items, such as reserved materials, strategic and critical materials, and narcotics, shall be reported for any special screening as required by Departmental procedures; and

(3) Inventories of other items shall be

screened to the extent required by the procuring activity, which may include reporting to the Utilization Division, Armed Forces Supply Support Center.

(b) Production equipment inventories shall be reviewed by the procuring activity for utilization purposes. Items of production equipment in the Federal Supply Classification Codes (FSCC) listed below which are excess to the needs of the procuring activity shall be reported to the Utilization Division, Armed Forces Supply Support Center, Washington 25, D.C. for Department of Defense utilization screening when the acquisition value of the item is $500 or more, and the condition of the item is N3, E3, O3, R2 or better, except as otherwise indicated by asterisks. See §§ 8.802–4 through 8.802–8 for condition codes listed on Inventory Schedules.

PRODUCTION EQUIPMENT

Present Standard Commodity Classification Code	Area title	Federal Supply Classification Code	Area title
3411 through 3419	Metalworking Machinery	3411	Boring Machines.
		3412	Broaching Machines.
		3413	Drilling Machines.
		3414	Gear Cutting and Finishing Machines.
		3415	Grinding Machines.
		3416	Lathes.
		3417	Milling Machines.
		3418	Planers.
		3419	Miscellaneous Machine Tools.
3440 through 3449	Secondary Metal Forming and Cutting Machinery.	3441	Bending and Forming Hydraulic and Pneumatic Presses, Power Driven.
		3442	Mechanical Presses, Power Driven.
		3443	Manual Presses.
		3444	Punching and Shearing Machines.
		3445	Forging Machinery and Hammers.
		3446	Wire and Metal Ribbon Forming Machines.
		3447	Riveting Machines.
		3448	Miscellaneous Secondary Metal Forming and Cutting Machines.
		3449	Welding, Flame Cutting and Metalizing Equipment and Supplies.
3450 through 3459	Welding and Cutting Machinery	3432	Textile Industries Machinery.
3520	Textile Industries Machinery.	3625*	Rubber Working Machinery.
3550	Rubber Working Machinery.	3620*	Metal Heat Treating Equipment.
3572	Metal Heat Treating Furnaces and Ovens.	3424	Wrapping and Packaging Machinery.
3920 through 3929	Wrapping and Packaging Machinery.	3540*	Centrifugals.
3991	Centrifugals, Industrial Types	4330 Pt.	Separators.
3992	Separators, Industrial Types	4330 Pt.	Air Purification Equipment Includes Electronic Precipitrons Dust Collection Equipment.
3996	Dust Collection and Air Purification Equipment.	4460**	Conveyors Includes: Aerial Tramways and Cableways, Pneumatic Tube Systems, Stationary Conveyors, Powered and Nonpowered.
5500 through 5590 (*less* 5520, 5528, 5541, 5552, 5553, 5554, 5562, 5564, 5565, 5568, and mobile cranes and derricks).	Industrial Type Conveying Elevating and Materials Handling Equipment (except locomotive cranes, winches, windlasses, capstans and mobile cranes and derricks of all types).	3910* Pt.	Warehouse Trucks and Tractors Self Propelled Includes: Tug Jockeys. Fork Lifts. Platform Trucks. Straddle Trucks. Cab. Body. Frame and Structural. Components and Springs.
		3930*	Hoists, Cranes and Derricks Includes: Ore Bridges. Warehouse Cranes. Wharf Cranes. Fixed. Overhead Traveling. Cranes.
		3950* Pt.	Physical Properties Testing Equipment Includes: Hardness Testers.
5650 through 5659	Physical Properties Testing and Inspection Equipment Industrial Production Type Less X-ray.	6635* Pt.	Industrial X-ray Machines.
6814	Complete Industrial X-ray Equipment.	6635* Pt.	

NOTE. Pt—as used in conjunction with the FSCC above indicates that a part of a class is applicable to industrial production equipment.
*Minimum reportable acquisition value—$300.
**Minimum reportable condition—N3, E3, O3.

(c) If the contractor has been directed by the Notice of Termination to deliver any items of termination inventory to the Government no further screening of those items shall be required.

(d) If the total serviceable and usable property, other than production equipment, included in the contractor's inventory schedules has an original cost of $2,500 or less, such property need not be screened within the procuring activity unless the contracting officer determines that screening is desirable.

(e) Line items included in the contractor's inventory, having an original cost of $300 or less, need not be screened if such items are listed by the contractor on a separate schedule or schedules unless the contracting officer determines that screening is desirable. The term "line item" means all substantially similar articles under any one contract at any one location and which should be listed as a single entry in an inventory schedule.

(f) Termination inventory to which § 8.208–4 is applicable does not require screening.

§ 8.505–2 Screening period.

Production equipment, and other property voluntarily reported by the procuring activity to the Utilization Division, Armed Forces Supply Support Center, in accordance with Departmental procedures, shall be screened within the Department of Defense for a period not to exceed 30 calendar days after the issue date of the Excess Listing covering that property prepared by the Utilization Division. Upon expiration of the screening period the contracting officer shall notify the contractor promptly that the listed inventory, except that portion for which the contracting officer has received instructions from the Utilization Division, may be sold or otherwise disposed of as hereinafter set forth.

§ 8.505–3 Acquisition by Government.

If any item of serviceable or usable property is desired by any activity of the Department of Defense, or other agency of the Government, for stock, diversion to other contracts, or other purposes, the contractor shall deliver such property as directed by the contracting officer. The order of priority of such acquisition shall be: the procuring activity, other activities of the Department of Defense, and other Government agencies.

§ 8.506 Government-furnished property.

Government-furnished property included in termination inventory, return of which has not been required by the Government, may be disposed of in the same manner as other termination inventory after screening in accordance with the requirements of § 8.505. The contracting officer is required to approve all such dispositions and may specify methods for preparing and routing inventory schedules covering such property.

§ 8.507 Sale or other disposition of termination inventory.

§ 8.507–1 General.

Under the standard termination clauses, the contractor is required to use its best efforts to sell termination inventory, in the manner, at the times, to the extent, and at the prices directed or authorized by the contracting officer, except that the contractor (a) is not required to extend credit to any purchaser, and (b) may purchase or retain at less than cost any items of termination inventory not retained by it at cost. Any property which is included in the contractor's inventory schedules, which has not been acquired by the Government under § 8.505–3, may be purchased or retained at less than cost by the contractor or sold by the contractor to a third party as provided in § 8.507–2 or § 8.507–3 at any time after notification by the contracting officer that screening has been accomplished or will not be required. Any such purchase, retention or sale shall be subject to the approval of the contracting officer, as part of or prior to the final settlement (see § 8.512 as to review by Property Disposal Review Boards).

§ 8.507–2 Competitive sales.

(a) Except as provided in § 8.507–3, termination inventory shall be offered for sale on a competitive basis. Generally, 3 bids shall be obtained, one of which may be submitted by the contractor. However, solicitations shall not be restricted to three bids, unless the circumstances clearly justify such a restriction. The property shall be sold to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered, or purchased or retained by the contractor if his bid is most advantageous to the Government; provided, that the price shall be fair and reasonable in the light of reasonable knowledge or test of the market, due regard being had for current prices for any raw materials or products for which quotations are published, and to the circumstances, nature, condition, quantity, and location of property. Any bid by the contractor shall be submitted in the same manner as and concurrently with other bids. The contractor shall not be entitled to preference in any sale.

(b) Bids shall be solicited sufficiently in advance of the opening of bids to allow bidders an adequate opportunity to prepare and submit their bids. The contracting officer shall furnish the contractor from available records and bidders lists the names of prospective purchasers. Bids shall be solicited from the original suppliers and those prospective bidders designated by the contracting officer. Bids shall be solicited by any one of the methods set forth below; provided, that when deemed necessary by the contractor to assure full and free competition, more than one method may be used; and provided further that where the original acquisition cost of serviceable material available for sale at any one time and location is $25,000 or more, in addition to any other method of solicitation used, the sale shall also be advertised in a newspaper of general circulation as provided in subparagraph (4) of this paragraph.

(1) A notice of the proposed sale may be mailed or delivered to all prospective bidders; if this method is used, the bidders list shall include all responsible prospective purchasers known to the contractor and located in the general area in which the property is located;

(2) A notice of the proposed sale may be displayed at appropriate public places;

(3) A notice of the proposed sale may be published in appropriate trade journals or magazines;

(4) A notice of the proposed sale may be published in a newspaper of general circulation in the locality in which the property is located; or

(5) Where the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale, or other special circumstances are present, invitations to bid may, with the contracting officer's approval, be issued orally, by telephone, or by other informal media, so long as the element of competition is maintained, and each such sale is fully documented.

(c) Any notice of a proposed sale under paragraph (b) of this section shall indicate in general terms the types of material for sale, shall give the date on or after which such material will be available for sale, and shall reserve the right to reject any or all bids submitted. So far as feasible, lots shall be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms.

§ 8.507–3 Other sales.

(a) Sales, or purchases or retentions at less than cost by the contractor, may, if the Government's interests are adequately protected, be authorized by the contracting officer without competitive bids when essential in the interest of making a fair and prompt settlement (including the expeditious clearance of the contractor's plant).

(b) After such screening as may be required by Departmental procedures, scientific equipment allocated to terminated research and development contracts with educational institutions may be sold to or retained by the contractor for use in educational or research pursuits without obtaining competitive bids. Prices under which such equipment is transferred shall be negotiated between the contractor and the contracting officer.

(c) Sales, purchases, and retentions under paragraph (a) or (b) of this section shall be at prices which are fair and reasonable, and not less than the proceeds that could reasonably be expected to be obtained if the property were offered for competitive sale.

§ 8.507–4 Proceeds of sale.

Unless otherwise provided in the contract, the proceeds of any sale, purchase or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or paid in such manner as the contracting officer may direct.

§ 8.507–5 Applicability of antitrust laws.

Whenever any termination inventory which has or may cost the Government $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interests, the Department concerned shall promptly notify the Attorney General and the Administrator of General Services of the proposed disposal and the probable terms or conditions thereof; and shall await advice from the Attorney General as to whether, so far as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made.

§ 8.507–6 Foreign contractor inventory.

(a) To prevent diversion, transshipment or reexport of contractor inventory located in foreign countries to Sino-Soviet bloc countries and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory shall be made in accordance with property disposal regulations in oversea commands including security trade control regulations over foreign excess sales and regulations dealing with integrity and reliability checks. Such regulations apply to the sale of contractor inventory located in foreign countries except (1) sales to friendly foreign governments and (2) inventory located in Canada.

(b) Sales contracts or other documents for passing title to foreign contractor inventory shall include a special warranty appropriately providing that (1) the property will be used in the country in which sold or will be exported only for use and to a destination acceptable to the United States, and (2) the buyer will notify in writing subsequent purchasers or receivers of the property of export destination restrictions.

(c) Before authorizing or approving sales or other disposition of foreign contractor inventory, contracting officers shall communicate with the United States diplomatic mission in the country concerned to initiate integrity and reliability checks and to obtain the necessary suggestions, recommendations, and approvals relative to the disposition and use of foreign contractor inventory.

§ 8.508 Donations.

(a) Termination inventory which is to be sold or otherwise disposed of in accordance with § 8.507 may be donated for educational public health, or civil defense purposes, including research, upon allocation by the Department of Health, Education, and Welfare, subject to approval by the General Services Administration, as authorized by the Federal Property and Administrative Services Act of 1949, as amended. To assist the Department of Health, Education, and Welfare in locating property which is available for donation, each Military Department shall furnish that Department with a directory of activities where donable property files are maintained and may be examined.

(b) Schedules of termination inventory available for donation shall be maintained in a donable property file for a period of 15 days from the date of the decision to dispose of the property in accordance with § 8.507. Within that time the Department of Health, Education, and Welfare has the responsibility (1) to notify the contracting officer of the items selected for donation and (2) to initiate a request to the appropriate General Services Administration regional office for approval of the donation. Disposition of the property selected shall be postponed pending action by the General Services Administration; otherwise, the property shall be disposed of in accordance with § 8.507. Notification to the contracting officer by the General Services Administration of the action on the request shall constitute authority for the contracting officer to hold the property for a period not to exceed 40 days from the date of the notification required by subparagraph (1) of this

paragraph or to take such action as the General Services Administration may direct. If shipping instructions are not received for the property within the 40-day period, together with provision for payment of costs of care, handling, and transportation, incurred incident to donation, the contracting officer shall dispose of the property in accordance with § 8.507.

(c) Property required for use by the Department of Defense may be withdrawn from the items available for donation at any time prior to shipment or delivery to the donee.

§ 8.509 Destruction or abandonment.

(a) Termination inventory which is Government-furnished property or contractor-acquired property and which is not otherwise disposed of under this part, may, in accordance with General Services Administration and Departmental regulations, be destroyed or abandoned: *Provided*, That the contracting officer has determined that it has no commercial value and no value to the Government, or that the estimated cost of its care and handling is greater than the probable sale price, or that because of its nature it constitutes a danger to public health, safety, or welfare. Any such determination shall be subject to review in accordance with § 8.512.

(b) Termination inventory which has been classified by reason of military security, and which is not required for the Government's needs, shall, unless such classification is removed or changed by proper authority, be disposed of in accordance with applicable security regulations.

(c) No termination inventory shall be abandoned on the contractor's premises without the contractor's consent.

§ 8.510 Special machinery, tooling and equipment.

Except as otherwise provided in the contract, if the settlement is to include any item of cost on account of special machinery and equipment, or special tooling, the contracting officer shall take appropriate steps to protect the Government's interest by:

(a) Requiring transfer of title to such property to the Government;

(b) Requiring the inclusion of such property in the contractor's inventory schedules, to be treated in the same manner as termination inventory; or

(c) In the event of purchase or retention by the contractor, making an equitable adjustment of the costs to be included in the settlement for such property, which adjustment shall take into account the rate of amortization thereon, the possible use thereof on other work of the contractor, the ultimate disposal value thereof, and any rights to be retained by the Government.

§ 8.511 Removal and storage.

§ 8.511–1 Special storage at the expense and risk of the contractor.

The contractor may, at any time during the plant clearance period, upon written notice to the contracting officer, store any items of termination inventory, not previously disposed of, in a warehouse or other storage location, on or off its own premises, unless otherwise directed by the contracting officer within 10 days of the receipt by the contracting officer of such notice. Such storage shall in no way modify the responsibility of the contractor with respect to such property. The expense of such storage, including any removal incident thereto, shall be borne by the contractor, unless the contracting officer determines that such removal or storage is for the convenience of the Government.

§ 8.511–2 Storage at the expense and risk of the Government.

At any time after expiration of the plant clearance period, the contractor may submit to the contracting officer, a list certified as to quantity and quality, of any items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the contracting officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government shall accept title to such items and remove them or enter into a written storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the contracting officer upon removal of the items (or if the items are stored, within 45 days from the date of submission of the list). Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

§ 8.512 Review of property disposal.

§ 8.512–1 Property disposal review boards.

The head of each procuring activity shall establish one or more Property Disposal Review Boards. Each such Board shall be composed of at least three qualified officers or civilian employees. No person shall serve as a member of a Property Disposal Review Board in reviewing any property action in which he has participated.

§ 8.512–2 Required review.

The following property disposal matters shall be reviewed by a Property Disposal Review Board which shall sumit its recommendations to the contracting officer prior to approval or ratification by the contracting officer:

(a) A determination that material is scrap or salvage, if the original acquisition cost of the material is $25,000 or more;

(b) A release from a scrap warranty, if the original acquisition cost of the material is $10,000 or more;

(c) Any sales, purchases or retentions at less than cost made without competitive bids (see § 8.507–3) where the original acquisition cost of the materials involved exceeds $25,000;

(d) A determination to destroy or abandon material (see § 8.509) if the original acquisition cost of the material exceeds $1,000;

(e) Any property disposal matter when requested by the contracting officer; and

(f) Any property disposal matter when required by Departmental procedures.

§ 8.513 Subcontractor termination inventory.

§ 8.513–1 General policy.

(a) The prime contractor and each subcontractor are primarily responsible for the disposition of the termination inventory of their respective next lower-tier subcontractors, but all such disposals shall be subject to review by the contracting officer as provided in § 8.208–3 (c) (but see § 8.208–4). The policies and provisions set forth in §§ 8.501, 8.502, 8.506, 8.508, 8.509 and 8.512, shall be applicable in the case of subcontractors. Any rights which the prime contractor has or acquires in the termination inventory of its first-tier or lower-tier subcontractors shall, to the extent directed by the contracting officer, be exercised for the benefit of the Government, in accordance with the provisions of the contract between the Government and the prime contractor.

(b) Subcontractors in all tiers will prepare inventory schedules in accordance with the requirements of this part. Normally disposition instructions for termination inventory, except serviceable and usable property, will be furnished by the next higher-tier subcontractor or the prime contractor, as the case may be. Each subcontractor may submit its next lower-tier subcontractors' inventory schedules of serviceable and usable property directly to the contracting officer for review and disposition instructions, unless otherwise directed by the contracting officer. In the interest of expediting disposition of termination inventory, the cognizant contracting officer will permit such direct submission, unless he determines that the submission of inventory schedules through all intermediate tiers of subcontractors is necessary in the best interest of the Government. When such a determination is made, it must be in writing and a copy submitted to the Head of the Procuring Activity concerned for review.

§ 8.513–2 Inventory schedules.

The prime contractor and each higher-tier subcontractor shall obtain adequate information concerning the termination inventory for which its subcontractors claim reimbursement. For this purpose, the forms of inventory schedules set forth in §§ 8.802–4 through 8.802–8 may be used, but their use is not required if substantially equivalent information is obtained, as called for by § 8.503. In any event, full information on the condition and usability of such inventory shall be furnished, and certificates similar to those set forth in such schedules shall be obtained from the subcontractor.

§ 8.513–3 Scrap and salvage.

The prime contractor and each higher-tier subcontractor shall review any recomendations of their respective subcontractors concerning scrap and salvage. If the prime contractor or the higher-tier subcontractor determines that any of the materials are serviceable and

usable materials, it shall require the subcontractor to submit revised inventory data in accordance with such determination. The Government shall not be bound by any determination that material is scrap or salvage unless the determination, and any sale of the material as scrap or salvage, have the prior approval of the contracting officer. A scrap warranty running to the Government shall be obtained wherever such material is sold as scrap.

§ 8.513–4 Serviceable and usable property.

Subcontractor termination inventory, which is not purchased or retained at cost, and which is determined to be serviceable and usable property shall be disposed of by:

(a) Submission for screening and possible redistribution within the Government pursuant to § 8.505; and

(b) Sales to third parties (including purchases or retentions at less than cost by the subcontractor, a higher-tier subcontractor, or the prime contractor) made in general conformity with § 8.507.

§ 8.514 Adjustment prior to final settlement.

§ 8.514–1 Duty of contractors to inform Government.

By the terms of the Inventory Schedule Certificate set forth in Inventory Schedules A, B, C, D, and E (see §'8.802–4 through 8.802–8) the contractor or subcontractor is required to inform the Government of any substantial change in the status of its termination inventory arising between the date of submission of its termination inventory schedules and final disposition of such inventory.

§ 8.514–2 Right of government to review inventory schedules.

(a) Regardless of any disposition of termination inventory pursuant to this subpart, the Government shall continue to have the right, prior to final settlement, to require additional information concerning such inventory, to contest its allocability to the terminated portion of the contract, or to exclude such inventory from the settlement on any proper grounds.

(b) If, prior to final settlement, the Government determines that any portion of the termination inventory is not allocable to the terminated contract or should be excluded from the settlement on any other grounds, the cost thereof, and any credits related thereto, shall be excluded from the settlement. If the contractor has actually paid to the Government the proceeds realized from the disposition of such inventory, the Government shall repay such proceeds to the contractor. If such inventory has been delivered to the Government, normally it should be returned to the contractor at the contractor's expense and risk.

§ 8.515 Accounting for termination inventory.

(a) Prior to final settlement with the prime contractor, all termination inventory of the prime contractor and its subcontractors must be accounted for as follows:

(1) By purchase or retention at cost by the contractor or subcontractor, or by return to suppliers, and omission or withdrawal of such inventory from the contractor's inventory schedules (see § 8.502);

(2) By transfer to the Government (see § 8.505–3);

(3) By sale (including purchase or retention at less than cost by the contractor or subcontractor) and application of the proceeds or agreed value in reduction of the contractor's claim, or otherwise to the credit of the Government (see § 8.507);

(4) By destruction or abandonment (see § 8.509);

(5) By donation (see § 8.508); or

(6) By other disposition in accordance with the terms of the contract and of this part.

(b) In the event that any termination inventory not disposed of is lost, destroyed, damaged, or for any reason cannot be delivered by the contractor at the time of settlement of its termination claim, such termination inventory, unless the Government has expressly assumed the risk involved, or unless the contract provides otherwise, shall be accounted for as inventory purchased or retained by the Contractor, and the fair value of the inventory, as determined by the contracting officer, shall be deducted from the termination claim.

Subpart F—Termination for Default

§ 8.600 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and application of the Default clause set forth in § 8.707 for fixed-price supply contracts, and the "Termination for Default—Damages for Delay—Time Extensions" clause set forth in § 8.709 for fixed-price construction contracts. (For cost-reimbursement type contracts, see § 8.407.)

§ 8.601 General.

(a) Termination for default is generally the exercise of a contractual right of the Government to terminate the contract in whole or in part by reason of the contractor's failure, actual or anticipatory, to perform its obligations under the contract.

(b) If the contractor can establish that its failure to perform arose out of causes beyond its control and without its fault or negligence, the contract clauses in §§ 8.707 and 8.709 provide that a termination for default shall be deemed to have been a termination for the convenience of the Government, and the rights and obligations of the parties shall be governed accordingly.

(c) The Government may also in appropriate cases exercise termination or cancellation rights in addition to those set forth in the contract clauses (see for example, paragraph (f) of the Default clause in § 8.707).

§ 8.602 Termination of fixed-price supply contracts for default.

§ 8.602–1 The Government's right to terminate for default.

Under contracts containing the Default clause in § 8.707 the Government has the right, subject to the notice requirements of the clause, to terminate the whole or any part of the contract for default if the contractor (a) fails to make delivery of the supplies or to perform the services within the time specified in the contract, (b) fails to perform any other provision of the contract, or (c) fails to make progress so as to endanger performance of the contract.

§ 8.602–2 Effect of termination for default.

Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of any advance payments and of any progress payments applicable to such work. The Government may elect to take all or any part of the completed supplies and manufacturing materials (see paragraph (d) of the clause set forth in § 8.707). The Government shall pay to the contractor the contract price for such completed supplies delivered and accepted, and the amount agreed upon by the contractor and the contracting officer for such manufacturing materials delivered and accepted and for the protection and preservation of such property. The contractor shall be liable to the Government for any excess costs for supplies and services procured similar to those terminated (see § 8.602–6), and for any other damages, whether or not repurchase is effected (see § 8.602–7).

§ 8.602–3 Procedure for default.

(a) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract, and applicable laws and regulations;

(2) The specific failure of the contractor and, unless time does not permit, the excuses, if any, for such failure;

(3) The availability of the supplies or services from other sources;

(4) The urgency of the need for the supplies or services and the period of time which would be required to obtain the supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(5) The degree of essentiality of the contractor in the Government procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(7) Any other pertinent facts and circumstances.

(b) If the foregoing consideration indicates that termination for default is appropriate, the contracting officer should, if practicable, notify the contractor by letter of the possibility of such termination. This letter shall call the contractor's attention to its contractual liabilities in the event the contract is terminated for default and request an explanation of the contractor's failure to perform the contract. The letter may further state that failure of the con-

tractor to present such explanation may be taken as an admission that no valid explanation exists. When appropriate, the letter may invite the contractor to discuss the matter at a conference.

(c) If, after compliance with the foregoing procedures, the contracting officer determines that termination for default is proper, he shall, where the termination is predicated upon the contractor's failure to make timely deliveries, issue a notice of termination at once. If the termination is predicated upon any other failure of the contractor, the contractor shall be given written notice specifying such failure and providing a period of 10 days (or such longer period as the contracting officer may authorize) in which to cure such failure. Where appropriate, this notice may be made a part of the letter described in paragraph (b) of this section. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless he determines that the failure to perform has been cured.

(d) The notice of termination for default shall:

(1) Set forth the contract number and date;

(2) Describe the acts or omissions constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or a specified portion of the contract) is terminated;

(4) State that the supplies or services terminated may be procured against the contractor's account, and that the contractor will be held liable for any excess costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(6) State that the notice constitutes a decision that the contractor is in default as specified, and that the contractor has the right to appeal as specified in the Disputes clause.

If the contracting officer has investigated the contractor's excuses for the failure to perform, the notice of termination shall also state that it constitutes a decision that the failure to perform was not due to causes beyond the control and without the fault or negligence of the contractor, and that the contractor has the right to appeal as specified in the Disputes clause.

(e) The same distribution shall be made of the termination notice as was made of the contract. In addition, a copy shall be furnished to the disbursing officer who shall be advised to withhold further payments under the terminated contract pending additional instructions, which shall be given when sufficient information is available.

(f) If the contracting officer determines that the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, the contracting officer shall not terminate the contract for default. Under such circumstances, if it is in the best interests of the Government to do so, the contracting officer may terminate the contract for the convenience of the Government.

(g) If the contracting officer has not been able to determine, prior to issuance of the notice of termination, whether the contractor's failure to perform arose from causes beyond its control and without its fault or negligence, he shall make a written decision on that point as soon as practicable after issuance of the notice of termination. Such decision shall be delivered promptly to the contractor with a notification that it has the right to appeal as specified in the Disputes clause.

§ 8.602–4 Procedure in lieu of termination for default.

The following courses of action, among others, are available to the contracting officer in lieu of termination for default, when in the best interest of the Government:

(a) Permit the contractor, its surety, or its guarantor, to continue performance of the contract under a revised delivery schedule;

(b) Permit the contractor to continue performance of the contract by means of a subcontract, or other business arrangement with an acceptable third party: *Provided,* The rights of the Government are adequately preserved; or

(c) If the requirement for the supplies and services specified in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in § 8.602–7, execute a no-cost termination settlement agreement utilizing the form set forth in §§ 8.806–6 and 8.806–7 as a guide.

§ 8.602–5 Memorandum by the contracting officer.

In all cases where a contract is terminated for default or where a procedure authorized by § 8.602–4 is followed, the contracting officer shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

§ 8.602–6 Repurchase against contractors account.

(a) Where the supplies or services are still required after termination, repurchase of supplies or services which are the same as or similiar to those called for in the contract, shall be made against the contractor's account as soon as practicable after termination. Such repurchase shall be at as reasonable a price as practicable considering the quality required by the Government and the time within which the supplies or services are required. The contract of repurchase may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed, but excess costs may be charged against the defaulting contractor for no more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract).

(b) If the repurchase is for a quantity not in excess of the undelivered quantity terminated for default, the requirements of 10 U.S.C. 2304(a), with respect to formal advertising, are inapplicable. However, the contracting officer may use formal advertising procedures. If the contracting officer decides to negotiate the repurchase contract, he may either (1) use any authority listed in §§ 3.201 through 3.217 of this subchapter (10 U.S.C. 2304(a)(1)–(17)), as appropriate, or (2) if none of those authorities to negotiate are used, the contract shall identify the procurement as a repurchase in accordance with the provisions of the Default clause in the defaulted contract. If the repurchase is for a quantity in excess of the undelivered quantity terminated for default, the entire quantity shall be treated as new procurement.

(c) If repurchase is effected at a price in excess of the price of the supplies terminated, the contracting officer shall make a written demand on the contractor for the total amount of such excess and if the contractor fails to make payment, the contracting officer shall follow Departmental procedures for collecting claims in favor of the Government.

§ 8.602–7 Other damages.

(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see § 8.602–4), the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the Government may be entitled under the contract. Pursuant to the contract provisions for liquidated damages in § 7.105–5, such damages are in addition to any excess cost of reprocurement.

(b) If the Government has suffered any other ascertainable damages as a result of the contractor's default, the contracting officer, on the basis of legal advice, shall take appropriate action to assert the Government's claim for such damages.

§ 8.603 Termination of fixed-price construction contracts for default.

§ 8.603–1 Termination of the contractor's right to proceed.

Under contracts containing the Termination for Default—Damages for Delay—Time Extensions clause set forth in § 8.709, the Government has the right to terminate the contractor's right to proceed with the work if the contractor (a) fails to prosecute the work required by the contract, or any separable part thereof, with such diligence as will insure its completion within the time specified in the contract or any extension thereof, or (b) fails to complete the work required under the contract within such time.

§ 8.603–2 Effect of termination for default.

If a contractor's right to proceed is terminated for default, the Government may take over and complete or cause to be completed the work, taking possession of and utilizing such materials, appliances and plant as may be on the site and necessary therefor, and the contractor and its sureties shall be liable to the Government for any excess costs caused thereby. If after taking over the work the Government is not reasonably able to complete it, or have it completed, within the time specified for completion in the defaulted contract, the contractor shall, in addition to any excess costs, be liable for liquidated damages for the delay as specified in the contract, or for actual damages caused by the delay if liquidated damages are not so specified.

§ 8.603–3 Procedure for default.

(a) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract, and applicable laws and regulations;

(2) The specific failure of the contractor and excuses, if any, for such failure;

(3) The period of time which would be required for the Government or another contractor to complete the work as compared to the time required for completion by the delinquent contractor;

(4) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and

(5) Any other pertinent facts and circumstances.

(b) If the contracting officer determines that the contractor's failure to perform arises from causes beyond its control and without its fault or negligence, the contracting officer shall not terminate the contractor's right to proceed, nor shall the contractor be charged with liquidated or actual damages because of any delays occasioned by such causes.

(c) If the contracting officer determines that it is in the best interests of the Government to terminate for default the contractor's right to proceed, the contracting officer shall promptly send a written notice to the contractor terminating its right to proceed. The notice shall:

(1) Set forth the contract number and date;

(2) Describe the act or omissions, and the extent of the resultant delay, constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or of a specified portion of the contract) is terminated;

(4) State that the Government may cause the contract to be completed and that the contractor will be held liable for any excess costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs;

(6) State that the notice constitutes a decision, pursuant to the Disputes clause, that the contractor is in default as specified and that the delay is not excusable; and

(7) State that the contractor has the right to appeal as specified in the Disputes clause.

(d) The same distribution shall be made of the termination notice as was made of the contract, including a copy to the surety. In addition, a copy shall be furnished to the disbursing officer who shall be advised to withhold further payments under the terminated contract pending additional instructions which shall be given when sufficient information is available.

(e) Promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant which are on the site will be needed.

§ 8.603–4 Procedure in lieu of termination for default.

If, after due consideration, the contracting officer determines that termination is not in the best interests of the Government although the contractor is in default, he may permit the contractor to continue the work, and the contractor and its sureties shall be liable to the Government for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, to any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

§ 8.603–5 Memorandum by the contracting officer.

In all cases where a contractor's right to proceed is terminated for default or where the procedure authorized by § 8.603–4 is followed, the contracting officer shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

§ 8.603–6 Other damages.

In addition to any excess costs occasioned the Government in connection with the completion of the work, the contractor and its surety are liable for liquidated damages, if specified in the contract, or if liquidated damages are not specified, for any actual damages occasioned by such delay. All retained percentages of progress payments previously made to the contractor and any progress payments due for work completed prior to the termination of the right to proceed shall be used for the purpose of liquidating the liability of the contractor and its surety to the Government for such excess costs and liquidated or actual damages.

Subpart G—Clauses

§ 8.700 Scope of subpart.

This subpart contains certain contract clauses related to the termination of contracts for the convenience of the Government and for default. Special purpose clauses when authorized by Departmental procedures and consistent with the policies set forth in this subchapter may be used in appropriate cases.

§ 8.701 Termination clause for fixed-price contracts.

Except as otherwise permitted by § 8.705, the following clause shall be used in any fixed-price contract in excess of $1,000 for supplies or experimental, developmental, or research work other than (a) construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property, or (b) experimental, developmental, or research work with educational or nonprofit institutions, where no profit is contemplated.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (OCT. 1959)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which

the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in 32 CFR Part 8, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided*, That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b) (7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) The total of—

(A) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (1) hereof;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above; and

(C) A sum, as a profit, equal to 2 percent of that part of the amount determined under (A) above which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for the purpose of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however*, That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e) (1) and (2) (A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (7).

(f) Any determination of costs under paragraph (c) or (e) thereof shall be governed by the principles for consideration of costs set forth in 32 CFR 8.302, as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contractting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the determination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the Office of the Contractor but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

§ 8.702 Termination clause for cost-reimbursement type contracts.

The following clause shall be used in any cost-reimbursement type contract, as defined in § 3.404, of this chapter, for supplies and experimental, developmental, or research work other than (a) construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property, or (b) experimental, developmental, or research work with educational or nonprofit institutions, where no fee is contemplated.

TERMINATION (OCT. 1959)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(1) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(2) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(6) Transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(7) Use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however*, That the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in 32 CFR Part 8, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided*, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fee—

(A) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however*, That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) There shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract;

(C) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however*, That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) There shall be included therein a portion of the fee payable under the contract determined as follows—

(I) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as

the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract;

If the amount determined under this subparagraph (1) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(2) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (D) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

§ 8.703 Termination clause for fixed-price construction contracts.

The following clause shall be inserted in all fixed-price type construction contracts in excess of $10,000.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (OCT. 1959)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the Government;

(7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor, (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in 32 CFR Part 8, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board Approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the Termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) The cost of such work;

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as a profit, equal to 2 percent of the part of the amount determined under (A) above which represents the cost of articles or materials delivered to the site but not incorporated in the work in place on the effective date of the Notice of Termination, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for purposes of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate or loss; and

(2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (9); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (7).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in 32 CFR 8.302 as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, micro-photographs, or other authentic reproductions thereof.

§ 8.704 Research and development contracts with educational and other nonprofit institutions.

§ 8.704–1 Termination clause.

The following clause shall be used in any contract for experimental, developmental, or research work (whether fixed-price or cost-reimbursement type) with an educational or nonprofit institution: *Provided* such contract is placed on a no-fee or no-profit basis.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (SEPT. 1958)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel its outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such cancelled commitments the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit its termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in 32 CFR 8.213, as in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, and subject to any Settlement Review Board approvals required by 32 CFR Part 8 in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which it is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to its other activities and operations. Any such agreement shall be embodied in an

amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided*, That if such excess is not so paid upon demand, interest thereon shall be payable by the contractor to the Government at the rate of 6 percent per annum, beginning 30 days from the date of such demand.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(1) Completed or partially completed plans, drawings and information; and

(2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

§ 8.704–2 Suggested clause for subcontracts.

The above clause, suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with educational or nonprofit institutions: *Provided*, Such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Part 15, Subpart C of this chapter; and *Provided further*, such subcontracts are placed on the no-fee or no-profit basis.

§ 8.705 Short form termination clauses for fixed-price type contracts.

§ 8.705–1 Supply and service contracts.

In order to facilitate:

(a) The handling of purchases under fixed-price supply contracts not to exceed $10,000; and

(b) The obtaining of services where it is intended that a termination claim will not be made in the event of termination for the convenience of the Government, such as contracts for, but not limited to, rental of unreserved garage space, meals for inductees, laundry, and dry-cleaning services;

the short form termination clause set forth below is authorized for use in lieu of any other clause providing for termination for the convenience of the Government; provided, such contracts obligate the Government to order or otherwise to be liable for a minimum quantity:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (JAN. 1960)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with ASPR Section VIII, in effect on this contract's date. To the extent that this contract is for services and is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

§ 8.705–2 Construction contracts.

Generally, there is no need for a termination clause in construction contracts not in excess of $10,000. However, where the contracting officer determines that a termination clause should be included in such a contract, the following clause shall be used.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (OCT. 1960)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of the Government. If this contract is terminated, the Contractor shall be compensated in accordance with Section VIII of the Armed Services Procurement Regulation, in effect on this contract's date.

§ 8.706 Subcontract termination clause.

The following termination clause is suggested for use in fixed-price subcontracts:

TERMINATION (OCT. 1959)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the contract as may not be terminated.

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;

(4) Assign to the buyer, in the manner, and to the extent directed by the buyer, all of the right, title and interest of its seller under the orders of subcontracts so terminated;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the buyer in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(7) Use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (6) above: *Provided, however*, That the seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer: *And provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary or as the buyer may direct for protection and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer its termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination. Upon failure of the seller to submit its termination claim within the time allowed, the buyer may determine, on the basis of information available to it, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, it shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided*, That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer,

but without duplication of any amounts agreed upon in accordance with paragraph (d), shall pay to the seller the following amounts:

(1) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b) (7) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) In respect of the work terminated as permitted by this clause, the total (without duplication of any items) of—

(A) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid or to be paid for under (1) above; and

(B) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) A sum, as a profit, equal to 2 percent of the part of the amount determined under (A) above which represents the cost of articles and materials not processed by the seller, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sum shall not exceed 6 percent of the whole of the amount determined under (A) above, which amount for the purpose of this subdivision (C) shall exclude any charges for interest on borrowings: *Provided, however*, That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (1) and (2) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (1) and (2) (A) above the fair value as determined by the buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b) (7).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

(h) The buyer may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the seller in respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the seller to the date on which such excess is repaid: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in Section VIII of the Armed Services Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of three years after final settlement under the contract shall make available to the buyer and the Government at all reasonable times at the office of the seller all its books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

§ 8.707 Default clause for fixed-price supply contracts.

The following clause shall be used in all fixed-price supply contracts as defined in § 7.102.

DEFAULT (JUNE 1958)

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute".

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract is due to causes beyond the control and without the fault or negligence of the Contractor or subcontractor pursuant to the provisions of paragraph (c) of this clause, such notice of default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause. (Except as otherwise provided in this contract, this paragraph (e) applies only if this contract contains such clause.)

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 8.708 Excusable delays clause for cost-reimbursement type supply contracts.

The following clause shall be used in all cost-reimbursement type supply contracts as defined in § 7.202 of this chapter and in all cost-reimbursement type research and development contracts that contain the Termination clause in § 8.702. It may be used in contracts that contain the Termination clause in § 8.704.

EXCUSABLE DELAYS (JULY 1958)

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination."

§ 8.709 Default clause for fixed-price construction contracts.

(a) The following clause shall be used in all fixed-price construction contracts.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (SEPT. 1958)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate its right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the Contractor and its sureties shall be liable to the Government for any excess cost occasioned the Government thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying papers, until such reasonable time as may be required for the final completion of the work, or if liquidated damages are not so fixed, any actual damages occasioned by such delay. If the Contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor.

(b) If the Government does not terminate the right of the Contractor to proceed, as provided in paragraph (a) hereof, the Contractor shall continue the work, in which event the Contractor and its sureties shall be liable to the Government, in the amount set forth in the specifications or accompanying papers, for fixed, agreed and liquidated damages for each calendar day of delay until the work is completed or accepted, or if liquidated damages are not so fixed, any actual damages occasioned by such delay.

(c) The right of the Contractor to proceed shall not be terminated, as provided in paragraph (a) hereof, nor the Contractor charged with liquidated or actual damages, as provided in paragraph (b) hereof because of any delays in the completion of the work due to unforseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to such causes: *Provided*, That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal as provided by the Disputes clause of this contract.

(d) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause, it is determined that the failure to perform this contract was due to causes beyond the control and without the fault or negligence of the Contractor pursuant to paragraph (c) of this clause, such notice of termination shall be deemed to have been issued pursuant to the Termination for Convenience of the Government clause of this contract, and the rights and obligations of the parties hereto shall in such event be governed by such clause.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(b) During a period of national emergency, paragraph (c) of the above clause may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather," after the word "causes" where it first appears in the first sentence.

(c) Standard Form 23a is prescribed for use in all formally advertised construction contracts. That Form contains, as clause 5, paragraphs (a) through (c) of the above clause. When that Form is used, paragraphs (d) and (e) of the above clause shall be added to the Form by means of an Alterations in Contract clause (see § 7.105–1 of this chapter).

§ 8.710 Default clause for fixed-price research and development contracts.

The following clause shall be used in all fixed-price research and development contracts as defined in § 7.301 of this chapter except contracts with educational or nonprofit institutions which are awarded on the basis of no profit:

DEFAULT (JUNE 1959)

(a) The Government may, subject to the provisions of paragraph (b) of this clause, by written Notice of Default to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(c) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government and, (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) If, after notice of termination of this contract under the provisions of paragraph (a) of this clause it is determined that the failure to perform this contract or to prosecute the work so as to endanger performance of the contract is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of paragraph (b) of this clause, such Notice of Default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination for Convenience of the Government," and the rights and obligations of the parties hereto shall in such event be governed by such clause.

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Subpart H—Forms

§ 8.800 Scope of subpart.

This subpart contains certain forms related to the termination and settlement of contracts.

§ 8.801 Notice of termination.

§ 8.801–1 Telegraphic notice of termination.

(a) The following form of telegraphic notice is approved for use where a contract is being completely terminated:

TELEGRAPHIC NOTICE—COMPLETE TERMINATION (JAN. 1952)

Date _____

XYZ Corporation
New York, New York

Your contract No. _____ is hereby terminated in its entirety pursuant to clause _____ of the contract effective [Here insert "immediately" or "On _____, 19__." (Inserting the date) or "As soon as you have delivered thereunder including previous deliveries the following items" (listing items)]. Immediately stop all work, terminate subcontracts and place no further orders except to extent (Insert if applicable—Necessary to perform any portion thereof not terminated hereby or) that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instruction follow.

_____
(Name and Rank)
Contracting Officer

(b) The following form of telegraphic notice is approved where a contract is being partially terminated:

TELEGRAPHIC NOTICE OF PARTIAL TERMINATION (JAN. 1952)

Date _____

XYZ Corporation
New York, New York

Your contract No. _____ is hereby partially terminated pursuant to clause _____ of the contract effective on _____ 19__, on which date you will reduce its total number of items to be delivered as follows (inserting instructions as to reduced deliveries). Immediately stop all work, terminate subcontracts and place no further orders except to extent necessary to perform any portion thereof not terminated hereby or that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

_____
(Name and Rank)
Contracting Officer

§ 8.801–2 Letter notice of termination.

(a) The following form of Notice of Termination of prime contract is approved for use. With appropriate modifications it is suitable for use in terminating subcontracts.

LETTER NOTICE OF TERMINATION TO PRIME CONTRACTORS (SEPT. 1958)

[At the top of the Notice set out all special details relating to the particular termination: e. g., name and address of company, number of prime contract terminated, service involved, appropriation or allotment, etc.

Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.]

1. *Effective date of termination.* This letter will confirm the Government's telegram to you dated _____, 19__, terminating [in part] your Contract No. _____ (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with the clause thereof entitled "Termination for the Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination"]. Such termination is effective on the date and in the manner stated in such telegram, reference to which is hereby made [or copy of which is attached hereto].

(or)

1. *Effective date of termination.* You are notified that your Contract No. _____ (hereinafter referred to as "the contract") is hereby terminated [in part] for the convenience of the Government, in accordance with the clause hereof entitled "Termination for the Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination"]. Such termination will be effective: _____ [Here insert either "immediately upon your receipt of this Notice" or "on _____, 19__," (inserting the date) or "as soon as you have delivered under the contract the following number of each of the items listed below, including those heretofore delivered, to wit: ____" or, "on _____, 19__, on which date you are hereby directed to reduce the total number of items to be delivered under the contract as follows": (here insert instructions as to reduced deliveries.)]

2. *Cessation of work and notification to your immediate subcontractors.* (a) You shall stop all work, make no further shipments, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear [or avoid damage to] equipment or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. [If you believe the authorization referred to in subparagraph (3) above is necessary or advisable, you shall immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.] You shall keep adequate records of your compliance with this paragraph 2 (a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination, and (iii) the extent of completion of performance on such effective date.

(b) You shall give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government, (2) state that it has been terminated (or terminated in part, if that is the case) for the convenience of the Government, (3) give him the name and address of the Contracting Officer, (4) instruct him to stop all work, to make no further shipments, to place no more orders, and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in paragraph 2 (a)), (5) direct him to submit his settlement proposal promptly in order to expedite settlement, and (6) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of the number of articles completed under the contract and still on hand, and arrange with him for their delivery or other disposal.

(d) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes: [insert proper identification or "none".]

(e) You shall notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated contract or which have resulted in or which are intended to result in a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain, or dispose of. (The Contracting Officer shall also be promptly notified of any such proceedings brought after receipt of this Notice.)

(f) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

(3) *Termination inventory.* In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see 32 CFR Part 8, Subpart F.

4. *Completed end items.* Subject to 32 CFR 8.306, you will invoice acceptable completed end items under the contract in the usual way and not include them in your settlement proposal.

5. *Submission of settlement proposal.* To assist you in prompt submission of your settlement proposal, there is enclosed one set of the standard forms.

6. *Patents.* Your attention is called to any provisions of the contract which may require you to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting all inventions, discoveries, and patent applications made by you in the performance of the contract. You are urged to forward such disclosures and instruments of license or assignment to the Contracting Officer promptly, inasmuch as these contractual obligations must be complied with before execution of the final settlement agreement. This paragraph may be disregarded if the contract contains no such patent provisions.

7. *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For

purposes of reimbursement by the Government, such settlements will be governed by the provisions of 32 CFR Part 8.

6. The Office named below will be in charge of the settlement of your claim. As to any matters not covered by this Notice, you should consult the Office named below.

9. Please acknowledge receipt of this Notice as shown below.

(Contracting officer)

(Name of office)

(Address)

Enclosures.

Acknowledgment of Notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on ----------, 19--. Two copies of this Notice, both signed, are herewith returned.

(Name of contractor)

By ----------

(Title)

§ 8.802 Forms [1] for settlement of fixed-price contracts.

The forms set forth below are prescribed for use in settling terminated fixed-price contracts.

§ 8.802–1 DD Form 540—Settlement Proposal—Inventory Basis.

§ 8.802–2 DD Form 541—Settlement Proposal—Total Cost Basis.

§ 8.802–3 DD Form 831—Settlement Proposal—Short Form.

NOTE: In order to facilitate more expeditious settlement of small termination claims, the short form settlement proposal (DD Form 831) was revised, increasing the limitation on its use from $1,000 to $2,500, 25 F. R. 1786, Mar. 1, 1960.

§ 8.802–4 DD Form 542—Inventory Schedule A—Metals in Mill Product Form. DD Form 542c—Inventory Schedule A—Continuation Sheet.

§ 8.802–5 DD Form 543—Inventory Schedule B—Raw Materials. DD Form 543c—Inventory Schedule B—Continuation Sheet.

§ 8.802–6 DD Form 544—Inventory Schedule C—Work in Process. DD Form 544c—Inventory Schedule C—Continuation Sheet.

§ 8.802–7 DD Form 545—Inventory Schedule D—Dies, Jigs, Fixtures, etc. and Special Tools. DD Form 545c—Inventory Schedule D—Continuation Sheet.

§ 8.802–8 DD Form 832—Inventory Schedule E—Short Form for Use with DD Form 831 only.

§ 8.802–9 DD Form 546—Schedule of Accounting Information.

§ 8.802–10 DD Form 548—Application for Partial Payment.

§ 8.803 DD Form 547—Settlement Proposal for Cost-Reimbursement Type Contracts.

§ 8.804 DD Form 547s—Notice of Audit Status Date.

§ 8.805 Scrap warranty.

A warranty in the general format set forth below shall be executed by a purchaser of material as scrap (on direct purchase from the Government or on subsequent resale) in accordance with the requirements of § 8.504.

SCRAP WARRANTY (JAN. 1952)

In consideration of the transfer to the undersigned of the property covered by this Agreement at a value based upon its being used as scrap, the undersigned represents and warrants to the United States as follows:

(1) The property covered by this Agreement will be used only as scrap, either in its existing condition or after further preparation, unless and until the undersigned is released from this warranty.

(2) In the event the undersigned is released from this warranty, any payment agreed on as consideration for such release shall be made to the United States, regardless of whether this warranty shall have been executed at the request of the United States.

(3) In the event the undersigned sells the property covered by this Agreement prior to release of this warranty, the undersigned will obtain from the purchaser and tender to the United States a warranty identical to this executed by the purchaser, and upon receipt of such other warranty, this warranty will be released by the United States.

(4) All obligations of the undersigned under this warranty shall expire five years from the date hereof.

(Name)

(Address)

(Date)

§ 8.806 Forms of settlement agreement.

(See § 8.209.)

§ 8.806–1 Settlement agreement for use in settling fixed-price prime contracts after complete termination. (Sept. 1958)

This Supplemental Agreement of Settlement, entered into this------day of---------, 19-- between the United States of America (hereinafter called "The Government") represented by the Contracting Officer executing this contract, and ----------

(i) A corporation organized and existing under the Laws of the State of ----------;

(ii) A partnership consisting of----------;

(iii) An individual doing business as ----------

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No.------ under date of ----------, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated ---------- the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201–4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ART. 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim for a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contractor Officer of any substantial

[1] A facsimile of each of the forms listed below have been filed with the Federal Register Division; copies of forms may be obtained through the Contracting Officer in any of the military departments.

change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 5. a. The Contractor has received the sum of $------ on account of work and services performed, or articles delivered, under the completed portion of the contract. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the Contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $------ [insert net amount of settlement], arrived at by deducting from the sum of $------ [for claim submitted on inventory basis, insert gross amount of settlement; for claim submitted on total cost basis, insert gross amount of settlement less amount set forth in 5a above], (1) the amount of $------ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon), and (2) the amount of $------ representing all applicable property disposal credits [and (3) the amount of $------ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].* Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ART. 6. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19-- [insert reference to applicable Renegotiation Act].

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in its custody.

(6) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(7) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to the Contractor for the performance of this contract.

(8) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(9) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

In witness whereof, etc.

§ 8.806–2 Settlement agreement for use in settling fixed-price prime contracts after partial termination. (Sept. 1958)

This Supplemental Agreement of Settlement, entered into this ------ day of ---------, 19-- between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and --------

(i) A corporation organized and existing under the Laws of the State of ----------;

(ii) A partnership consisting of ----------;

(iii) An individual doing business as ----------;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. ------ under date of ----------, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated ---------- the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as the "terminated portion of the contract"; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201–4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (specify the terminated portion clearly as to items, including (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

ART. 2. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ART. 3. a. The Contractor certifies that, prior to the execution of this agreement, each of the contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory,

*To be inserted where appropriate.

if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 4. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 5. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 6. Upon execution of this agreement, the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount of settlement], arrived at by deducting from the sum of $_____ [insert gross amount of settlement], (1) the amount of $_____ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the contract and (2) the amount of $_____ representing all applicable property disposal credits. Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the contract, except as hereinafter provided in Article 7.

ART. 7. Upon payment of said sum of $_____ [insert net amount of settlement], all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease: *Provided, however,* That nothing herein contained shall impair or affect in any way any covenants, terms or conditions of the contract relating to the completed or continued portion thereof: *And provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved.

[The following list of reserved or excepted rights and liabilities relating to the terminated portion of the contract is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__ [insert reference to applicable Renegotiation Act].

(2) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(3) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

(4) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(5) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(6) All rights and liabilities of the parties with respect to any contract termination inventory stored for the Government pursuant to Article 2 hereof.

In witness whereof, etc.

§ 8.806–3 Partial settlement agreement, for use in settling fixed-price prime contracts after complete or partial termination where settlement pertains only to settlements with subcontractors. (Sept. 1958)

This supplemental agreement of settlement, entered into this _____ day of _____, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and_____

(i) A corporation organized and existing under the Laws of the State of_____;

(ii) A partnership consisting of_____;

(iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the [complete termination of the contract for the convenience of the Government;] * [partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract";] * and

Whereas, the Contractor, in connection with the performance of the contract, has entered into the following subcontracts [among others]: ** [insert here a list of the terminated subcontracts included in this settlement], which subcontracts were terminated by the Contractor in accordance with the termination for convenience clause of the contract and in accordance with the Notice of Termination received by it from the Government; and

Whereas, the parties desire to settle that portion of the termination claim of the Contractor which is based upon the termination of the subcontracts listed herein; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tool—which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201–4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all its subcontract termination inventory (including scrap), has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to such subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such terms do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 5. a. The Contractor has received the sum of $_____ on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount of settlement], arrived at by deducting from the sum of $_____ [insert net amount of settlement less amount set forth in Article 5a above], (1) the amount of $_____ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount of $_____ representing all applicable property disposal credits [and (3) the amount of $_____ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].* Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ART. 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be

* To be inserted where appropriate.

§ 8.806–4 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement includes costs. (Sept. 1958)

This Supplemental Agreement of Settlement, entered into this _____ day of _____, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "subcontract" means any contract as defined in 32 CFR 1.201–4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

Now therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ART. 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of its subcontract termination inventory (including scrap) has been retained or otherwise acquired by it, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to such subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of its rights relating thereto.

ART. 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on its other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of its termination inventory schedules and the date of this agreement.

ART. 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ART. 5. a. The Contractor has received the sum of $_____ on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount of settlement], arrived at by deducting from the sum of $_____ [insert net amount of settlement less amount set forth in Article 5a above], (1) the amount of $_____ representing all unliquidated partial or progress payments previously made on account to the Contractor or its assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount of $_____ representing all applicable property disposal credits [and (3) the amount of $_____ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].* Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ART. 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

[Insert here a list of the reserved or excepted rights and liabilities of the Government and the Contractor (see 32 CFR 8.209–2). Reference is made to instructions set forth in Article 6 of the agreement set forth in 32 CFR 8.806–1 and Article 7 of the agreement set forth in 32 CFR 8.806–2, and to the reserved or excepted rights and liabilities set forth in those articles, which may be used as appropriately modified to meet the requirements of any given settlement hereunder.]

In witness whereof, etc.

* Insert appropriate phrase.

** Insert where appropriate.

* Insert appropriate phrase.

scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following rights which are not applicable and add any additional exceptions or reservations required.]

(1) Claims by the Contractor against the Government for items of cost which are the subject of General Accounting Office exceptions (or other items of cost of the same nature), which are excluded from the settlement without prejudice to the rights of either party, as follows: [Insert the amounts and describe the claims not waived by Contractor.]

(2) Claims by the Contractor against the Government, as to which his right of reimbursement is disputed, which are excluded without prejudice to the rights of either party as follows: [Insert the amounts and describe the claims with respect to which findings have been made by the Contracting Officer disallowing the item and with respect to which the Contractor has taken, or intends to take, timely appeal.]

(3) Claims by the Contractor against the Government which are unknown in amount and which involve costs claimed to be reimbursable under the contract, as follows: [Insert the estimated amounts and describe the claims.]

(4) Claims by the Contractor against the Government whose existence is unknown, based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the contract.

(5) Claims by the Government against the Contractor which are based upon refunds, rebates, credits, or other accounts not now known to the Government, together with interest thereon, now due or which may become due the Contractor from third parties to the extent that such amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. Any such amounts which may hereafter become due to the Contractor from any third party or other source shall be paid to the Government within 30 days after receipt by the Contractor. Interest at 6 percent per annum shall accrue and shall be paid to the Government on any such accounts as remain unpaid after the 30-day period.

(6) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__. [Insert reference to applicable Renegotiation Act.]

(7) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(8) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(9) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(10) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in its custody.

(11) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(12) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(13) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(14) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

In witness whereof, etc.

§ 8.806–5 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement is limited to fee. (Sept. 1958)

This Supplemental Agreement of Settlement, entered into this ____ day, of _____, 19__ between the United States of America (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and _____

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

Whereas, by notice of termination dated _____ the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

Whereas, settlement of said terminated contract has been limited to adjustment of the fee.

Now, therefore, the parties hereto do mutually agree as follows:

ARTICLE 1. a. The Contractor has received the sum of $_____ on account of its fee under the contract prior to the effective date of termination.

b. In addition, upon execution of this agreement, the Government agrees to pay to the Contractor or its assignee, upon presentation of properly certified invoices or vouchers, the sum of $_____ [insert net amount to be paid on account of fee]. Said sum, together with all other sums heretofore paid on account of fee, constitutes payment in full and complete settlement of the amount due the Contractor on account of its fee under the contract.

ART. 2. The Contractor's allowable costs under the contract will continue to be reimbursed on Standard Form 1034 cost vouchers in accordance with the applicable provisions of the contract and of 32 CFR Part 8.

ART. 3. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved.

[The following list of reserved or excepted rights and liabilities is intended to cover those which most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 32 CFR 8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__ [insert reference to applicable Renegotiation Act].

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringement, inventions, applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(3) All rights of the Government to take the benefit of any adjustments of royalties under the Royalty Adjustment Act of 1942 (35 U. S. C. 89–96) and to take the benefit of agreements reducing or otherwise affecting royalties paid or payable in connection with performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), convenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in its custody.

(6) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(7) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guaranties or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(8) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.]

In witness whereof, etc.

§ 8.806–6 No cost settlement agreement partial termination. (Sept. 1958)

This Supplemental Agreement of Settlement, entered into this _____ day of _____, 19__, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the convenience of option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by the Notice of Termination dated _____, 19__, the Government advised the Contractor of the partial termination of the contract for the convenience or at the option of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract"; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (Specify the terminated portion clearly as to items including (i) item numbers, (ii) descriptions, (iii) quantity terminated, (iv) unit price of items, (v) total price of terminated items, and (vi) any other explanation necessary to avoid uncertainty or misunderstanding.)

ART. 2. The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the contract or by reason of its termination including, without limitation, all obligation of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the contract: *Provided, however,* That nothing herein contained shall impair or affect in any way any other covenants, terms or conditions of the contract. And *Provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved:

(List reserved or excepted rights and liabilities; see 32 CFR § 8.209–2 and Article 7 of the agreement set forth in 32 CFR § 8.806–2.)

In witness whereof, etc.

§ 8.806–7 No cost settlement agreement—complete termination.

This supplemental agreement of settlement, entered into this _____ day of _____, 19__, between the United States of America (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____

(i) A corporation organized and existing under the Laws of the State of _____;

(ii) A partnership consisting of _____;

(iii) An individual doing business as _____;

(hereinafter called "the Contractor").

Witnesseth that:

Whereas, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__, which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

Whereas, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

Whereas, by the Notice of Termination dated _____, 19__, the Government advised the Contractor of the termination of the contract for the convenience or at the option of the Government; and

Whereas, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination;

Now, therefore, the parties hereto agree as follows:

ARTICLE 1. The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the contract and, except as set forth below, releases it from any and all obligations arising under the contract or by reason of its termination, and the Government agrees that all obligations arising under the contract or by reason of its termination, shall be deemed to be concluded; except as follows:

(List reserved or excepted rights and liabilities; see 32 CFR 8.209–2 and Article 6 of the agreement set forth in 32 CFR 8.806–1.)

In witness whereof, etc.

§ 8.807 DD Form 1114—Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms.[1]

NOTE: In order to facilitate more expeditious settlement of contract terminations and inventory schedules, DD Form 1114 was revised, increasing the limitation on its use from $1,100 to $2,500, 25 F.R. 1786, Mar. 1, 1960.

[1] A facsimile of this form has been filed with the Federal Register Division; copies of the form may be obtained through the contracting officer in any of the military departments.

PART 9—PATENTS, DATA, AND COPYRIGHTS

Sec.

9.000 Scope of part.

Subpart A—Patents

9.100 Scope of subpart.
9.101 [Reserved]
9.102 Authorization and consent.
9.102-1 Authorization and consent in contracts for supplies.
9.102-2 Authorization and consent in contracts for research or development.
9.103 Patent indemnification of Government by contractor.
9.103-1 Patent indemnification in formally advertised contracts; commercial status predetermined.
9.103-2 Patent indemnification in formally advertised contracts—commercial status not predetermined.
9.103-3 Patent indemnification in negotiated contracts.
9.103-4 Waiver of indemnity by the Government.
9.104 Notice and assistance.
9.105 Processing of infringement claims.
9.106 Classified contracts.
9.106-1 Classified contracts to be performed outside the United States.
9.107 Patent rights.
9.107-1 General.
9.107-2 License rights; domestic contracts.
9.107-3 License rights—foreign contracts.
9.107-4 Contracts relating to atomic energy.
9.107-5 Contracts relating to civil defense.
9.107-6 Patent license rights under product improvement programs or independent research programs.
9.107-7 Contracts placed for NASA.[1]
9.108 Patent rights under contracts for personal services.
9.109 Followup of patent rights.
9.110 Reporting of royalties.
9.111 Adjustment of royalties.
9.112 [Reserved]

Subpart B—Data and Copyrights

9.200 Scope of subpart.
9.201 Definitions.
9.202 Acquisition and use of data.
9.202-1 Acquisition of data.
9.202-2 Use of data.
9.202-3 Multiple sources of supplies.
9.202-4 Delivery of data for use in foreign countries.
9.202-5 Copyrights.
9.202-6 Data furnished on a restricted basis in support of a proposal.
9.203 Contract clauses; general.
9.203-1 Basic data clause.
9.203-2 Provision for addition to basic data clause for use in supply contracts.
9.203-3 Limited rights provision for addition to basic data clause.
9.203-4 Provision for addition to basic data clause for use in contracts for experimental, developmental, or research work.
9.204 Contract clauses; special.
9.204-1 Limitation on Government's right of publication for sale to the general public.
9.204-2 Production of motion pictures.
9.204-3 Histories and other works.
9.205 Contracts for acquisition of existing works.
9.205-1 Off-the-shelf purchase of books and similar items.
9.205-2 Contracts for existing motion pictures.
9.206 Contracts to be performed outside the United States.

Subpart C—Foreign License and Technical Assistance Agreements

9.301 General.
9.301-1 Background.
9.301-2 Policy.
9.302 Foreign license and technical assistance contracts between the Government and domestic concerns.
9.303 Supply contracts between the Government and second sources.
9.304 Foreign license and technical assistance agreements between domestic concern and foreign government or concern.
9.304-1 International traffic in arms regulations.
9.304-2 Review agreements.

AUTHORITY: §§ 9.000 to 9.304-2 issued under sec. 201, 55 Stat. 839, as amended, sec. 2202, 70A Stat. 120; 50 U. S. C. App. 611, 10 U. S. C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314, E. O. 9001, 6 F. R. 6787, as amended by E. O. 9296, 8 F. R. 1429, 3 CFR, 1943 Cum. Supp.

§ 9.000 Scope of part.

This part sets forth policies, instructions and contract clauses pertaining to patents and copyrights in connection with the procurement of supplies and services.

Subpart A—Patents

§ 9.100 Scope of subpart.

This subpart prescribes contract clauses and instructions which define and implement the policy of the Department of Defense with respect to—

(a) Inventions relating to experimental, developmental, or research work performed under Government contracts.

(b) Patent infringement liability resulting from work performed under Government contracts.

(c) Patent royalties payable in connection with the performance of Government contracts.

(d) Security requirements covering patent applications containing classified subject matter filed by contractors.

§ 9.101 [Reserved]

§ 9.102 Authorization and consent.

(a) Under 28 U.S. Code 1498, any suit for infringement of a patent based on the manufacture or use of a patented invention for the Government by a contractor or by a subcontractor (including lower-tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, in order that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent may be given as herein provided. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

§ 9.102-1 Authorization and consent in contracts for supplies.

The contract clause set forth below may be included in all contracts for supplies (including construction work), except that it shall not be used:

(a) When prohibited by § 9.104; or

(b) In contracts exclusively for experimental, developmental, or research work which are subject to the provisions of § 9.102-2.

AUTHORIZATION AND CONSENT (JAN. 1955)

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for patent infringement shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

§ 9.102-2 Authorization and consent in contracts for research or development.

Greater latitude in the use of patented inventions is to be allowed in a contract for experimental, developmental, or research work than in a contract for supplies. Unless prohibited by § 9.104, the clause set forth below shall be included in all contracts calling exclusively for experimental, developmental, or research work, and may be included in contracts calling for both supplies and experimental, developmental, or research work. If the clause set forth below is included in a contract, the clause in § 9.102-1 shall not be included.

AUTHORIZATION AND CONSENT (JAN. 1955)

The Government hereby gives its authorization and consent for all use and manufacture of any patented invention in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

§ 9.103 Patent indemnification of Government by contractor.

In order that the Government may be reimbursed for liability for patent infringement arising out of or resulting from the performance of construction contracts or contracts for supplies which normally are or have been sold or offered for sale to the public in the commercial open market, or which are the same as such supplies with a relatively minor modification thereof, clauses providing for indemnification of the Government are to be included in such contracts in accordance with the instructions preceding the clauses set forth below. A patent indemnity clause shall not be used in contracts under the following circumstances:

(a) Where the contract is for supplies which clearly are not or have not been sold or offered for sale to the public in the commercial open market. However, even in the foregoing instance, a patent indemnity clause may be included where (1) in the case of contracts to be awarded by formal advertising it is desired to obtain an indemnity as to components and spare parts so sold or offered for sale, in which case the clause in § 9.103-2 may be used; or (2) in the case of contracts to be awarded either by formal advertising or negotiation, a patent owner contends that the prospective procurement would infringe his patent and the low bidder or offeror is willing to indemnify the Government as to such patent without increase in price on the basis that the patent is invalid or not infringed, or for other good reasons (see § 2.407-8 of this chapter); or

(b) Where both performance and delivery are to be outside the United States, its Territories, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its Territories, its possessions, or Puerto Rico, in which case the instructions of §§ 9.103-1, 9.103-2, or 9.103-3 are applicable; or

(c) Where the contract is for an amount of $5,000 or less, except that, as a matter of administrative convenience, the clause need not be deleted where it is a part of a standard form being used for contracts of $5,000 or less, since it is self-deleting as to such contracts.

§ 9.103-1 Patent indemnification in formally advertised contracts; commercial status predetermined.

(a) Except as prohibited by § 9.103, the clause set forth below is appropriate in formally advertised construction contracts and shall be included in formally advertised contracts for supplies when it has been determined in advance of issuing the invitation for bids that the supplies (or such supplies apart from relatively minor modifications to be made thereto) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market.

PATENT INDEMNITY (PREDETERMINED) (JAN. 1955)

If the amount of this contract is in excess of $5,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from the addition to, or change in, the supplies furnished or construction work performed, which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(b) Certain supply contracts call only in part for items which normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, or such items with relatively minor modifications. For the purpose of excluding from patent indemnification such specific items as normally are not or have not been sold or offered for sale by any supplier to the public in the commercial open market, the following sentence may be added to the end of the clause set forth in paragraph (a) of this section:

The foregoing shall not apply to the following contract items:
(List the items to be excluded)

§ 9.103-2 Patent indemnification in formally advertised contracts—commercial status not predetermined.

Except as prohibited by § 9.103, the clause set forth below is appropriate in (a) formally advertised construction contracts and (b) formally advertised contracts for supplies or component parts thereof when it is not determined in advance of issuing the invitation for bids that such supplies or component parts (or such supplies or component parts apart from relatively minor modifications to be made thereto) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market:

PATENT INDEMNITY (NOT PREDETERMINED)

If the amount of this contract is in excess of $5,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patents issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or component parts thereof, or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government, of such supplies, construction work, or component parts thereof, which supplies or component parts either normally are or have been sold or offered for sale to, and which construction work normally is of a type performed for, the public in the commercial open market by any supplier on or before the date set for opening of bids, or are such supplies, construction work, or component parts thereof, with relatively minor modifications made thereto. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

§ 9.103-3 Patent indemnification in negotiated contracts.

A patent indemnity clause is not required to be included in negotiated contracts, but may be included in negotiated construction contracts and, except as otherwise authorized in § 9.103(a)(2), may be included in negotiated contracts for supplies only where such supplies normally are or have been sold or offered for sale by the contractor to the public in the commercial open market, or are such supplies with relatively minor modifications made thereto. Ordinarily, it should be quite feasible for the contracting officer to determine, in consultation with the contractor, whether the supplies being purchased normally are on sale or have been sold or offered for sale by the contractor to the public in the commercial open market.

(a) Subject to the foregoing and to the prohibitions in § 9.103, the clause set forth in § 9.103-1 (a) is approved for use in negotiated contracts for construction work or supplies.

(b) Certain supply contracts call only in part for items which normally are or have been sold or offered for sale by the contractor to the public in the commercial open market, or such items with relatively minor modifications. For the purpose of excluding from patent indemnification such specific items as normally are not or have not been sold or offered for sale by the contractor to the public in the commerical open market, the following sentence may be added to the end of the clause approved for use in paragraph (a) of this section.

The foregoing shall not apply to the following contract items:
(List the items to be excluded)

§ 9.103-4 Waiver of indemnity by the Government.

In the event that it is desired to exempt one or more specified United States patents from the indemnification provisions of the preceding clauses, authority shall first be obtained from the Secretary concerned or his authorized representative, and the following clause shall be included in the contract, in addition to the patent indemnity clause:

WAIVER OF INDEMNITY (JAN. 1955)

Any provision of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in the performance

of this contract, of any invention covered by the United States patents identified and listed below, and waives indemnification by the Contractor with respect to such patents: (Identify the patents by number or by other means if more appropriate)

§ 9.104 Notice and assistance.

The Government should be notified by the contractor of all claims of infringement in connection with the performance of a Government contract which come to the contractor's attention. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor in connection with any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of or resulting from the performance of the contract. Accordingly, the clause set forth below shall be included in all contracts in excess of $10,000 for supplies, construction, or experimental, developmental, or research work; except where Standard Form 32 is prescribed for use (in which case the clause may in the discretion of the contracting officer be used in lieu of that included in Standard Form 32): *Provided*, That the clause set forth below shall not be included in contracts—

(a) Where both performance and delivery are to be outside the United States, its Territories, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its Territories, its possessions, or Puerto Rico; or,

(b) Of $10,000 or less, except that as a matter of administrative convenience, the clause need not be deleted when it is a part of a standard form being used for such contracts, since it is self-deleting:

NOTICE AND ASSISTANCE REGARDING PATENT INFRINGEMENT (OCT. 1958)

The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

§ 9.105 Processing of infringement claims.

The Military Departments shall process claims for alleged unauthorized use of inventions in accordance with instructions of each respective Military Department.

§ 9.106 Classified contracts.

Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S. Code 791 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interests of national security. Accordingly, except as otherwise provided in § 9.106–1, the following clause shall be included in every classified contract and in every unclassified contract which covers or is likely to cover classified subject matter:

FILING OF PATENT APPLICATIONS (JAN. 1955)

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U. S. Code 181–188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U. S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

§ 9.106–1 Classified contracts to be performed outside the United States.

The following clause shall be included in classified contracts and in every unclassified contract which covers or is likely to cover classified subject matter where the work is to be performed outside the United States, its Territories, its possessions, or Puerto Rico, regardless of the place of delivery:

FILING OF PATENT APPLICATIONS (FOREIGN) (JAN. 1958)

While and so long as any subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country, an application or registration for a patent containing any of said subject matter without first obtaining written approval of the Contracting Officer.

§ 9.107 Patent rights.

§ 9.107–1 General.

(a) Under any contract or modification thereof having experimental, developmental, or research work as one of its purposes, the Government should receive a royalty-free, nonexclusive license to practice or have practiced any inventions conceived or first actually reduced to practice in the course of performing such work or in the course of performing any prior experimental developmental, or research work done upon the understanding in writing that a contract would be awarded. The contract cost or price should in no event be increased merely by reason of the inclusion of a patent rights clause.

(b) Except as expressly provided in § 9.107, and except with respect to contracts to be performed outside the United States, its Territories, its possessions, or Puerto Rico, patent license rights shall not be requested in the negotiation of contracts (other than contracts where the primary item of procurement is a license under or an assignment of a patent). It is the policy of the Department of Defense, except as otherwise provided in paragraph (a) of this section, to pay a reasonable compensation for the use of a valid patent enforceable against the Government, but the questions of infringement, validity, and enforceability of the patent shall be determined by personnel having cognizance of patent matters for the Department concerned.

§ 9.107–2 License rights; domestic contracts.

(a) *Exclusion of inventions from the license grant.* Upon request of the contractor, the contracting officer shall carefully consider and may exclude from the grant in the Patent Rights clause any invention which has not been actually reduced to practice, if it is covered by a United States patent issued or application for patent filed by or on behalf of the contractor prior to the award of a contract when he finds one or more of the following circumstances to be established:

(1) The contractor has expended sums in developing the invention (as represented by research and development costs and expenses for preparing and prosecuting the patent application) which are relatively large in comparison to the amount of the proposed contract or such portion of the proposed contract amount as can be allocated in advance for the development of such an invention (in determining the sums expended by the contractor there shall be included only amounts which can be allocated to the invention which is to be excluded; such sums shall not include the entire cost of a research department or program which cannot be allocated as above provided);

(2) The practicability of such an invention has been established as by engineering design;

(3) The invention covers a basic material and it is not the purpose of the contract to develop such material; or

(4) The invention is useful only for military purposes and the contractor does not have facilities for furnishing the item to the Government in production quantities.

Any inventions to be excluded from the license grant by reason of the foregoing circumstances shall be specifically identified and listed in the contract Schedule.

(b) *Contract clause.* The clause set forth below shall be included in every contract having as one of its purposes experimental, developmental, or research work which is to be performed within the United States, its Territories, its possessions, or Puerto Rico, except as provided in § 9.107–7 with respect to contracts on behalf of the National Aeronautics and Space Administration. See § 16.809 of this chapter for an approved form for optional use by contractors in reporting information required by paragraphs (c)(ii), (c)(iii), and (h) of the clause. In the administration of paragraph (e) of the clause, a request for conveyance of foreign rights to the Government is not required when the contractor does not file an application for patent in a foreign country under the conditions provided in that paragraph, unless the Government intends to apply for such patent.

PATENT RIGHTS (MAR. 1960)

(a) As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "Subject Invention" means any invention, improvement, or discovery (whether or not patentable) conceived or first actually reduced to practice either—

(A) In the performance of the experimental, developmental, or research work called for or required under this contract; or

(B) In the performance of any experimental, developmental, or research work relating to the subject matter of this contract which was done upon an understanding in writing that a contract would be awarded: *Provided*, That the term "Subject Invention" shall not include any invention which is specifically identified and listed in the Schedule for the purpose of excluding it from the license granted by this clause.

(ii) The term "Technical Personnel" means any person employed by or working under contract with the Contractor (other than a subcontractor whose responsibilities with respect to rights accruing to the Government in inventions arising under subcontracts set forth in (g), (h), and (i) below) who, by reason of the nature of his duties in connection with the performance of this contract, would reasonably be expected to make inventions.

(iii) The terms "subcontract" and "subcontractor" mean any subcontract or subcontractor of the Contractor, and any lower-tier subcontract or subcontractor under this contract.

(b)(1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition according to law, of any article or material, and in the use of any method. Such license includes the practice of Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through Mutual Security Program of the Government or otherwise through the Government. No license granted herein shall convey any right to the Government to manufacture, have manufactured, or use any Subject Invention for the purpose of providing services or supplies to the general public in competition with the Contractor or the Contractor's commercial licensees in the licensed fields.

(2) With respect to:

(i) Any Subject Invention made by other than Technical Personnel;

(ii) Any Subject Invention conceived prior to, but first actually reduced to practice in the course of, any of the experimental, developmental, or research work specified in (a)(1) above; and

(iii) The practice of any Subject Invention in foreign countries; the obligation of the Contractor to grant a license as provided in (b)(1) above, to convey title as provided in (d)(ii)(B) or (d)(iv) below, and to convey foreign rights as provided in (e) below, shall be limited to the extent of the Contractor's right to grant the same without incurring any obligation to pay royalties or other compensation to others solely on account of said grant. Nothing contained in this Patent Rights clause shall be deemed to grant any license under any invention other than a Subject Invention.

(c) The Contractor shall furnish to the Contracting Officer the following information and reports concerning Subject Inventions which reasonably appear to be patentable:

(i) A written disclosure promptly after conception or first actual reduction to practice of each such Invention together with a written statement specifying whether or not a United States patent application claiming the Invention has been or will be filed by or on behalf of the Contractor;

(ii) Interim reports at least every twelve months, commencing with the date of this contract, each listing all such Inventions conceived or first actually reduced to practice more than three months prior to the date of the report, and not listed on a prior interim report, or certifying that there are no such unreported Inventions; and

(iii) Prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports.

(d) In connection with each Subject Invention referred to in (c)(i) above, the Contractor shall do the following:

(i) If the Contractor specifies that a United States patent application claiming such Invention will be filed, the Contractor shall file or cause to be filed such application in due form and time; however, if the Contractor, after having specified that such an application would be filed, decides not to file or cause to be filed said application, the Contractor shall so notify the Contracting Officer at the earliest practicable date and in any event not later than eight months after first publication, public use or sale.

(ii) If the Contractor specifies that a United States patent application claiming such Invention has not been filed and will not be filed (or having specified that such an application will be filed thereafter notifies the Contracting Officer to the contrary), the Contractor shall:

(A) Inform the Contracting Officer in writing at the earliest practicable date of any publication of such Invention made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication; and

(B) Convey to the Government the Contractor's entire right, title, and interest in of any contemplated publication by the Contractor, stating the date and identity of such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the Contractor's right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such Invention throughout the world, subject, however, to the rights of the Contractor in foreign applications as provided in (e) below, and subject further to the reservation of a nonexclusive and royalty-free license to the Contractor (and to its existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such Invention pertains;

(iii) The Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such Invention;

(iv) In the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the Contractor's entire right, title, and interest in such Invention and the application, subject to the reservation as specified in (d)(ii) above; and

(v) The Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of any license rights herein agreed to be granted to the Government.

(e) The Contractor, or those other than the Government deriving rights from the Contractor, shall, as between the parties hereto, have the exclusive right to file applications on Subject Inventions in each foreign country within:

(i) Nine months from the date a corresponding United States application is filed;

(ii) Six months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) Such longer period as may be approved by the Contracting Officer.

The Contractor shall, upon written request of the Contracting Officer convey to the Government the Contractor's entire right, title, and interest in each Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation of a nonexclusive and royalty-free license to the Contractor together with the right of the Contractor to grant sublicenses, which license and right shall be assignable to the successor of that part of the Contractor's business to which the Subject Invention pertains.

(f) If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c)(ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c)(i) above shown to be due in accordance with any interim report delivered under (c)(ii) or otherwise known to be unreported, there shall be withheld from payment until the Contractor shall have corrected such failures either ten percent (10%) of the amount of this contract, as from time to time amended, or five thousand dollars ($5,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of such amount, or five thousand dollars ($5,000), whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) The final report required by (c)(iii) above;

(ii) Written disclosures for all Subject Inventions required by (c)(i) above which are shown to be due in accordance with interim reports delivered under (c)(ii) above, or in accordance with such final reports, or are otherwise known to be unreported; and

(iii) The information as to any subcontractor required by (h) below.

The maximum amount which may be withheld under this paragraph (f) shall not exceed ten percent (10%) of the amount of this contract or five thousand dollars ($5,000), whichever is less, and no amount shall be withheld under this paragraph (f) when the amount specified by this paragraph (f) is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph (f) shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provisions of a subcontract.

(g) The Contractor shall exert all reasonable effort in negotiating for the inclusion of a patent rights clause containing all the provisions of this Patent Rights clause except provisions (f) and (i) in any subcontract hereunder of three thousand dollars ($3,000) or more having experimental, developmental, or research work as one of its purposes. In the event of refusal by a subcontractor to accept such a patent rights clause, the Contractor shall not proceed with the subcontract without written authorization of the Contracting Officer or unless there has been a waiver of the requirement as hereinafter provided. The Contractor, if unable to comply with the requirement that such a patent rights clause be included in a subcontract after exerting all reasonable effort to do so, may submit to the Contracting Officer a written request for waiver or modification of such requirement. If, within thirty-five (35) days after the receipt of such request, the Contracting Officer does not mail or otherwise furnish the Contractor written denial of such request or notification that the Government requests the Contractor's cooperation with the Government, which the Contractor agrees to provide, in negotiating with the subcontractor for the acceptance of a suitable patent rights clause, the requirement shall be deemed to have been waived by the Contracting Officer as to all patent rights provisions with respect to Subject Inventions, except such provisions, if any, relating to the production or utilization of special nuclear material or atomic energy. Such request shall specifically state that the Contractor has used all reasonable effort to comply with said requirement and shall cite the waiver provision hereinabove set forth. The Contractor is not required, when negotiating with a subcontractor, to obtain in behalf of the Government any rights in Subject Inventions other than as provided herein. However, the Contractor is not precluded from separately negotiating with a subcontractor for rights in Subject Inventions for the Contractor's own behalf, but any costs so incurred shall not be considered as an allowable charge or cost under this contract. Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(h) The Contractor shall, at the earliest practicable date, notify the Contracting Officer in writing of any subcontract containing one or more patent rights clauses; furnish the Contracting Officer a copy of each of such clauses; and notify the Contracting Officer when such subcontract is completed. It is understood that with respect to any subcontract clause granting rights to the Government in Subject Inventions, the Government is a third party beneficiary; and the Contractor hereby assigns to the Government all the rights that the Contractor would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(i) When the Contractor shows that it has been delayed in the performance of this contract by reason of the Contractor's inability to obtain, in accordance with the requirements of (g) above, the prescribed or other authorized suitable patent rights clause from a qualified subcontractor for any item or service required under this contract for which the Contractor itself does not have available facilities or qualified personnel, the Contractor's delivery dates shall be extended for a period of time equal to the duration of such delay. Upon request of the Contractor, the Contracting Officer shall determine to what extent, if any, an additional extension of the delivery dates and increase in contract prices based upon additional costs incurred by such delay are proper under the circumstances; and the contract shall be modified accordingly.

(j) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

§ 9.107–3 License rights—foreign contracts.

A patent rights clause shall be included in every contract having as one of its purposes experimental, developmental, or research work which is to be performed outside the United States, its Territories, its possessions, or Puerto Rico. The clause set forth below may be used except as provided in § 9.107–7 with respect to contracts on behalf of the National Aeronautics and Space Administration; however, any other clause tailored to meet requirements peculiar to foreign procurement may be used in lieu thereof: *Provided,* It incorporates the principles of the clause below, except that principles of paragraphs (c) and (d) thereof may be omitted if, in the opinion of the contracting officer (on a case-by-case basis), the inclusion of withholding or other enforcement provisions is neither desirable nor necessary.

PATENT RIGHTS (OCT. 1958)

(a) The Contractor agrees to and does hereby grant to the United States Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice and cause to be practiced, by or for the United States Government, throughout the world, in the manufacture, use and disposition of any article or material, and in the use of any method, each invention (whether or not patentable) conceived or made in the performance of the experimental, developmental or research work called for or required under this contract.

(b) With respect to inventions referred to in (a) above, the Contractor:

(i) Shall submit to the Contracting Officer, promptly after the conception or making of each such invention, a descriptive written disclosure thereof, and shall specify concurrently with the submission of each disclosure whether or not a patent application has been filed or will be filed by or on behalf of the Contractor and in which countries such application has been or will be filed;

(ii) Shall upon request deliver to the Contracting Officer duly executed instruments fully confirmatory of the license rights granted in (a) above; but failure to execute such an instrument shall in no way detract from the license granted in (a) above;

(iii) Shall inform the Contracting Officer in writing at the earliest practicable date of any publication thereof made by or known to the Contractor or, where applicable, of any contemplated publication by the Contractor, stating the date and identity of such publication or contemplated publication;

(iv) Has, as between the parties hereto, the exclusive right except as hereinafter provided, to file a patent application thereon not later than nine (9) months after the date of submission to the Contracting Officer of the disclosure required in (i) above, or the date of first publication or public use or sale by or for the Contractor, whichever of such dates is earlier. Upon request of the Contractor, the nine-months period may be extended by the Contracting Officer. No patent application shall be filed by other than the United States Government, without the prior consent of the Contracting Officer, in any country and on any invention with respect to which the Contractor has either specified that it will not file an application or has not filed within the period set forth in this paragraph after having specified that it will file;

(v) Shall inform the Contracting Officer immediately of the filing of a patent application in any country, identifying the country or countries in which such filing occurs and the date and serial number of the application, and shall furnish a copy of each such application;

(vi) Shall notify the Contracting Officer promptly of an election to abandon any patent application filed thereon, whether by discontinuing the prosecution of the application or otherwise, and shall not proceed with such abandonment for a period of sixty (60) days after the date of such notice unless otherwise authorized in writing by the Contracting Officer;

(vii) Shall, upon written request of the Contracting Officer, execute and deliver an instrument conveying to the United States Government all right, title, and interest in each such invention in each country in which an application for patent either has not been filed within the time period specified in (iv) above or, if filed, is the subject of the notification referred to in (vi) above: *Provided,* That such conveyance shall be subject to the reservation of a nonexclusive and royalty-free license to the Contractor in countries other than the Contractor's own country and the United States together with the right of the Contractor to grant sublicenses in such other countries;

(viii) Shall enter into such arrangements, by contract or otherwise, with its employees and subcontractors as may be necessary to insure that the Contractor will be able to comply with this Patent Rights clause; and

(ix) shall, prior to final settlement of this contract, notify the Contracting Officer in writing in the event that no inventions are conceived or made in the performance of the experimental, developmental or research work called for or required under this contract.

(c) If the Contractor fails to deliver to the Contracting Officer the disclosures required by (b) (i) above, there shall be withheld from payment, until the Contractor shall have corrected such failure, either ten percent (10%) of the amount of this contract as from time to time amended or five thousand dollars ($5,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of the amount of this contract or five thousand dollars ($5,000), whichever is less, shall have been set aside; such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officers the written disclosures, information, notices, and instruments required by (b) (ii), (b) (iii), (b) (v), (b) (vi), (b) (vii), and (b) (ix), above.

(d) The maximum amount which may be withheld under (c) above shall not exceed ten percent (10%) of the amount of this contract or five thousand dollars ($5,000), whichever is less, and no amount shall be withheld under the provision of (c) above when the amount specified therein is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the United States Government under this contract.

§ 9.107–4 Contracts relating to atomic energy.

(a) Except as provided in (b) below, the following paragraph shall be inserted as a part of the Patent Rights clause set forth in § 9.107–2 in all research or development contracts relating to atomic energy.

(j) With respect to any Subject Invention made by employees of the Contractor (except clerical and manual labor personnel who do not have access to technical data), and relating to the production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Acts of 1946 (42 U. S. Code 1801–1819) and of 1954 (42 U. S. Code 2011–2296), the Contractor agrees:

(i) To furnish to the United States Atomic Energy Commission (hereinafter in this paragraph (j) referred to as "the Commission") through the Contracting Officer complete information regarding such Subject Invention, the Commission to have the sole and conclusive power to determine whether and where a patent application shall be filed, and to determine the disposition of the title to and rights under any such application or any patent that may issue thereon;

(ii) To obtain the execution of and deliver to the Commission, all documents relating to each such Subject Invention and to do all things necessary or proper to carry out any determination of the Commission, made under (j) (i) above;

(iii) Unless otherwise authorized in writing by the Commission to obtain patent agreements from all such employees to effectuate the purposes of this paragraph (j); and

(iv) Unless otherwise authorized in writing by the Commission, to insert this paragraph (j) in all subcontracts.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Acts of 1946 and 1954 shall be asserted by the Contractor or its employees with respect to any Subject Invention covered by this paragraph. (Dec. 1955)

(b) Where the work to be performed or the material or equipment to be furnished by the contractor is of such character that any such Subject Inventions that may be made will probably (1) relate only incidentally (and not directly) to some phase of the basic research or development work which the Atomic Energy Commission conducts or sponsors, (2) relate to a field or work in which the contractor has an established industrial and patent position, or (3) result from routine development or production work by the contractor, a provision authorizing the contractor to retain license rights may be incorporated in the paragraph set forth in paragraph (a) of this section. Any such provision or any deviation from the paragraph set forth in paragraph (a) of this section, which the Military Department concerned proposes to authorize, shall be forwarded in accordance with Departmental procedures to the Atomic Energy Commission for recommendation and shall not be authorized except with the concurrence of the Atomic Energy Commission.

§ 9.107–5 Contracts relating to civil defense.

In all contracts for experimental, developmental, or research work relating primarily to supplies or services intended for the general public for civil defense purposes, in lieu of paragraph (b) (1) of the Patent Rights clause prescribed in § 9.107–2(b), the paragraph set forth below—

(a) Shall be inserted in all such contracts entered into on behalf of and funded in whole by the Office of Defense and Civil Mobilization, unless such Office agrees to its exclusion; and

(b) May be inserted in all such contracts other than those in (a) above.

(b) (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, nontransferable, and royalty-free license to practice, and cause to be practiced by or for the United States Government, throughout the world, each Subject Invention in the manufacture, use, and disposition of any article or material, and in the use of any method; with the right in the Government to sublicense others to practice each Subject Invention in the manufacture, use and sale of any article or in the use of any method for the purpose of providing supplies or services to the general public in the furtherance of the nation's civil defense. (Jan. 1958)

§ 9.107–6 Patent license rights under product improvement programs or independent research programs.

Where a Military Department, under its established procedures, provides substantial financial support to a contractor's—

(a) Specific product improvement program; or

(b) Specific projects within its independent research program;

the Military Department may obtain for the Government patent license rights to inventions, improvements, or discoveries conceived or first actually reduced to practice during or as a result of such support: *Provided,* The obtaining of such rights and the contractual arrangements for such rights are approved in the Army and the Navy by the Head of the Procuring Activity concerned, and in the Air Force by the Deputy Director/Procurement, Headquarters, Air Materiel Command or by the Director of Procurement, Headquarters, Air Research and Development Command.

§ 9.107–7 Contracts placed for NASA.

(a) *"Property rights in inventions" clause.* (1) The National Aeronautics and Space Administration (NASA) will from time to time request the Departments to perform work on behalf of NASA. Such requests will state whether or not the NASA "Property Rights in Inventions" clause is required in any contract let by the Departments on behalf of NASA for the performance of the work. The following rules explain the use of patent rights clauses in such contracts.

(i) If the request states that the NASA "Property Rights in Inventions" clause is required in any resulting contract and the work to be performed is not severable and is funded wholly or in part by NASA, then the NASA "Property Rights in Inventions" clause and no other patent rights clause shall be included in the contract.

(ii) If the request states that the NASA "Property Rights in Inventions" clause is required in any resulting contract and the work to be performed under the contract is severable and is only in part for NASA, then the work which is on behalf of NASA shall be identified in the contract and the NASA "Property Rights in Inventions" clause shall be made applicable thereto. That portion of the work for a Department shall likewise be identified and the clause contained in § 9.107–2(b), or that in § 9.107–3, as appropriate, shall be made applicable to such portion if a patent rights clause is required by this part.

(iii) If the request states that the NASA "Property Rights in Inventions" clause is not required in any resulting contract and the work to be performed under the contract is not wholly on behalf of NASA, then the clause contained in § 9.107–2(b) or that in § 9.107–3, as appropriate, shall be used if a patent rights clause is required by this regulation.

(iv) If the request states that the NASA "Property Rights in Inventions" clause is not required in any resulting contract and such contract is wholly on behalf of NASA, then no patent rights clause shall be included in such contract.

(v) If the NASA "Property Rights in Inventions" clause is stated as a requirement in any such contract, the then current "Property Rights in Inventions" clause will be furnished with the request for work and, if not furnished, it must be obtained from NASA and included in the contract.

(2) The price of any contract described in subparagraph (1) of this paragraph shall in no event be increased by reason of the inclusion of any patent rights clause in the contract.

(b) *Deviations.* No deviations shall be made under § 1.109 in any NASA "Property Rights in Inventions" clause except in paragraph (g), (h), (ii), (i), (j), and (k) thereof. Deviations from these paragraphs are hereby authorized if they parallel either variations authorized by the Regulation from the corre-

sponding provisions of the Patent Rights clause of § 9.107–2(b), or deviations from such corresponding provisions which have been approved under § 1.109–3 of this chapter. Deviations other than those indicated above shall not be made without prior approval of NASA. Requests for such deviations, whether individual or blanket, shall be processed in accordance with § 1.109–3 of this chapter.

§ 9.108 Patent rights under contracts for personal services.

The following clause shall, except as otherwise provided in § 7.503–9 of this subchapter, be inserted in all personal services contracts for services to be performed by an individual as set forth in § 7.502 of this subchapter.

PATENTS (DEC. 1953)

(a) For the purpose of determining the rights of the Government and the Contractor in and to inventions, the Contractor agrees to be bound by all provisions of Executive Order 10096, dated 23 January 1950, and any orders, rules, regulations, or the like issued thereunder.

(b) The Contractor shall: (i) make written disclosure promptly to the Contracting Officer of all inventions of the Contractor which are conceived or first reduced to practice during the term of this contract, and sign and execute all papers necessary for conveying to the Government the rights to which the Government is entitled in accordance with the determination made under the provisions of Executive Order 10096, or (ii) certify to the Contracting Officer that, to the best of the Contractor's knowledge and belief, no inventions have been conceived or first reduced to practice during the term of this contract.

§ 9.109 Followup of patent rights.

Appropriate systems of followup in connection with contracts for experimental, developmental, or research work shall be maintained by the Military Departments in order that inventions in which the Government may have an interest may be properly identified and formal agreements evidencing the Government's rights therein shall be obtained.

§ 9.110 Reporting of royalties.

(a) (1) The Government has acquired license and other rights under a large number of inventions as the result of Government-sponsored research and development and in other ways. In order that the Government may determine whether the charging of royalties to the Government is inconsistent with the rights which the Government has acquired or is otherwise improper, and in order that negotiation for the reduction of excessive royalties may be undertaken, the Departments should be informed of royalties charged or to be charged in connection with the performance of Government contracts. DD Form 633, Cost and Price Analysis (see § 16.206), and DD Form 784, Cost Analysis for Contract Price Redetermination (see § 16.207), provide for reporting royalty information as required in (2) below. Royalty information generally should not be required in formally advertised procurements.

(2) (i) Where it is expected that the work may be performed in the United States, its Territories, its possessions, or Puerto Rico, any solicitation which may result in a negotiated contract estimated to exceed $10,000 shall contain a special provision substantially as follows:

ROYALTY INFORMATION (APR. 1959)

When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:

(i) Name and address of licensor;

(ii) Date of license agreement;

(iii) Patent numbers, patent application serial numbers or other basis on which the royalty is payable;

(iv) Brief description, including any part or model numbers of each contract item or component or which the royalty is payable;

(v) Percentage or dollar rate of royalty per unit;

(vi) Unit price of contract item;

(vii) Number of units; and

(viii) Total dollar amount of royalties.

In addition, if specifically requested by the contracting officer prior to execution of the contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

(ii) Where the work is to be performed in the United States, its Territories, its possessions, or Puerto Rico, the contracting officer, upon receipt of an offer, proposal, or quotation, which includes a charge for royalties, shall, prior to award of the contract, forward the information called for by subdivision (i) of this subparagraph to the office having cognizance of patent matters for the procuring activity concerned. The cognizant office shall promptly advise the contracting officer as to appropriate action. The contracting officer shall then take action in respect to such royalties, having due regard to all pertinent factors relating to the proposed procurement.

(iii) Where subcontract work is to be performed in the United States, its Territories, its possessions, or Puerto Rico, the contracting officer, when considering approval of a subcontract, shall require the same information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under subdivision (ii) of this subparagraph.

(b) A reporting of royalties clause is not required in contracts where the work is to be performed in the United States, its Territories, its possessions, or Puerto Rico. In negotiated contracts to be performed outside the United States, its Territories, its possessions or Puerto Rico, regardless of the place of delivery, the clause set forth below shall be included. See § 16.806 for an approved form for optional use by contractors in submitting the required report.

REPORTING OF ROYALTIES (FOREIGN) (JAN. 1958)

If this contract is in an amount which exceeds $50,000, the Contractor shall report in writing to the Contracting Officer during the performance of this contract the amount of royalties paid or to be paid by the Contractor directly to others in the performance of this contract. The Contractor shall also (i) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer and (ii) insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of fifty thousand United States dollars.

§ 9.111 Adjustment of royalties.

If the contracting officer believes that any royalties paid, or to be paid, under a contract or prospective contract are unreasonable or otherwise improper, he should promptly report the matter to personnel having cognizance of patent matters for the procuring activity concerned. Such personnel shall review the royalties thus reported and such royalties as are reported under § 9.110. In coordination with the contracting officer, such personnel shall:

(a) Take prompt action to protect the Government against payment of royalties on supplies or services (1) with respect to which the Government has a royalty-free license, or (2) at a rate in excess of the rate at which the Government is licensed, or (3) where the royalties in whole or in part constitute an improper charge;

(b) In appropriate cases enter into negotiation for a voluntary reduction of royalties.

§ 9.112 [Reserved]

Subpart B—Data and Copyrights

§ 9.200 Scope of subpart.

This subpart sets forth the Department of Defense policy, implementing instructions, and contract clauses with respect to acquisition and use of data and copyrights. The policy and procedures set forth in this subpart apply to all data required to be delivered to the Government under a contract whether such data originates with the contractor or a subcontractor.

§ 9.201 Definitions.

For the purpose of this subpart, the following terms have the meanings set forth below:

(a) "Data" means writings, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of any similar nature whether or not copyrighted. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) "Proprietary data" means data providing information concerning the details of a contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the contractor has protected such information from unrestricted use by others.

(c) "Other data" means all data other than "proprietary data" and includes:

(1) Operational data which provides information suitable among other things for instruction, operation, maintenance, evaluation or testing; and

(2) Descriptive data which provides descriptive or design drawings or descriptive material in the nature of design specifications which, although not including any "proprietary data," may nevertheless be adequate to permit manufacture by other competent firms.

(d) "Standard commercial items" means supplies or services which normally are or have been sold or offered to the public commercially by any supplier.

§ 9.202 Acquisition and use of data.

§ 9.202–1 Acquisition of data.

(a) *General.* It is the policy of the Department of Defense to encourage inventiveness and to provide incentive therefor by honoring the "proprietary data" resulting from private developments and hence to limit demands for data to that which is essential for Government purposes. The activity responsible for initiating a purchase request, after consultation with the procurement activity whenever feasible, will carefully determine the use contemplated for the data to be acquired and will specify only such data as is determined to be necessary to satisfy such use. All data received by the Government under a contract shall be identified with the number of the contract under which it is furnished. This may be accomplished by any appropriate means. Generally it should not be necessary to obtain "proprietary data" to satisfy Government requirements. The acquisition of data from a subcontractor shall be governed by the nature and circumstances of the subcontract, it being the intent of the Department of Defense that in obtaining data originating with subcontractors, the contractor shall, insofar as carrying out his obligations under a prime contract is concerned, be guided by the same policies and procedures as if the subcontractor were contracting directly with the Government and should not request unlimited rights in "proprietary data" where such rights are not required by the Government under the prime contract.

(b) *Supply contracts and subcontracts thereunder.* In advertised contracts and in contracts and subcontracts for standard commercial items, "proprietary data" shall not be requested. "Proprietary data" will be obtained for the Government under other supply contracts and subcontracts thereunder only when a clear Government need for such data is established and in such event the requirement for "proprietary data" will be specified in the contract Schedule (see the clause in § 9.203–2). When "proprietary data" is obtained under supply contracts, there shall be a specific negotiation for such data and the contractual requirement shall be listed as a separate contract item.

(c) *Contracts for experimental, developmental, or research work and subcontracts thereunder.* In a contract which has as one of its principal purposes experimental, developmental, or research work and also calls for models of equipment or practical processes, the contractor shall be required to furnish to the Government for the price of the work all data resulting directly from performance of the contract, whether or not it would otherwise be "proprietary data." In addition, the contractor shall be required to furnish all data necessary to enable reproduction or, where appropriate, manufacture of the equipment or performance of the process which is developed, and the Schedule of the contract shall set forth the data required, subject to the exceptions set forth below:

(1) Such data shall not be required for standard commercial items to be furnished under the contract and to be incorporated as component parts in or to be used with the product or process being developed if in lieu thereof the contractor shall furnish identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to practice the process or to procure the part or an adequate substitute; and

(2) "Proprietary data" shall not be required for other items, including minor modifications thereof, which were developed at private expense and previously sold or offered for sale and which are to be incorporated as component parts in or to be used with the product or process being developed, if in lieu thereof the contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process.

Where the contractor asserts and it is determined in the negotiation preceding the execution of the contract that the contractor has previously developed "proprietary data," other than that described in subparagraph (2) of paragraph (c) of this section, that such data will be used in the product or process developed under the contract, and that such product cannot readily be manufactured or the process practiced without the use of such previously developed "proprietary data," a suitable price (or provision therefor) may be negotiated: *Provided*, That the contractor requests payment for such data, and the Government does not have rights to such data (other than the "Limited Rights" provided for by the paragraph of § 9.203–3).

§ 9.202–2 Use of data.

(a) *Other data.* When data other than "proprietary data" is obtained, it shall be obtained without any limitation on its use by the Government.

(b) *"Proprietary data"*—(1) *Supply contracts.* When "proprietary data" is obtained by negotiation under a supply contract, in accordance with § 9.202–1 (b), the purposes for obtaining it will govern its use. If it is obtained for the purpose of enabling the Government to establish additional sources of supply, it shall be obtained without limitation as to its use; in such case the contract clause in §§ 9.203–1 and 9.203–2 shall be included in the contract and the requirement for the "proprietary data" will be specified in the contract Schedule. However, where it has been determined to be necessary to obtain "proprietary data" for some limited purpose, such as emergency manufacture by the Government, such data may be obtained subject to limitation as to its use; in such case the contract clause in §§ 9.203–1, 9.203–2 and 9.203–3 shall be included in the contract and the contract Schedule shall suitably identify the data which shall be subject to limited use.

(2) *Contracts for experimental, developmental, or research work.* When "proprietary data" is obtained under a contract having as one of its principal purposes experimental, developmental, or research work, in accordance with § 9.202–1 (c), it shall be obtained without limitation as to its use; in such case the contract clause in §§ 9.203–1 and 9.203–4 shall be included in the contract.

§ 9.202–3 Multiple sources of supplies.

The Government's interest in establishing multiple sources for supplies and services arises when it is necessary to (i) insure fulfillment of its current and mobilization requirements or (ii) permit competition for defense procurement to avoid unreasonable prices. The policies in this subpart provide one means for accomplishing this objective and are particularly effective where data, other than "proprietary data," acquired by the Government, is useable, without more, to obtain multiple sources. Where the use of "proprietary data" is necessary for the production of an item developed at private expense, it is the policy of the Department of Defense to honor the proprietary nature of such data since it is recognized that it is in the Government's interest to foster private development of items having military usefulness. Accordingly, "proprietary data," not otherwise obtained pursuant to the policy set out in § 9.202–1 (c), will be obtained by the Government for the purpose of establishing multiple sources only where such sources cannot otherwise be established. This should occur only in isolated cases as necessary to achieve the objectives in (i) and (ii). In preference to having the Government obtain "proprietary data" for the purpose of creating multiple sources, it is the policy to achieve these objectives to the extent possible through one of the following procedures:

(a) The acquisition by the Government of "proprietary data" developed at private expense may be unnecessary where the primary source is willing to establish other sources by direct contractor licensing arrangements without Government participation. Where complex technical equipment is involved and the establishment of a satisfactory second source will require, in addition to data, technical assistance from the primary source or Government facilities or other unusual assistance, Government participation in any licensing and technical assistance arrangements between contractors may be necessary to protect the Government's interest with respect to such factors, among others, as (1) investment in facilities, (2) competency of source, (3) timing of establishment of second sources, and (4) allocation of orders among sources.

(b) The acquisition of "proprietary data" developed at private expense may be avoided in many cases by providing for the development of suitable substitutes for such sole source items through the use of performance specifications.

No single method can be prescribed for meeting the second source problem; each situation must be handled on its own merits.

§ 9.202–4 Delivery of data for use in foreign countries.

Where the Department of Defense proposes to make available any data in its possession for use in a foreign country, it shall, to the maximum extent practicable, give reasonable notice thereof to the contractor who furnished the data: *Provided*, That the contractor has previously requested such notice in order to protect its foreign patent position.

§ 9.202–5 Copyrights.

It is the policy of the Department of Defense generally to reserve only a license under copyright on any copyrighted data, leaving the contractor free to copyright the material. With respect to certain data produced, written, or compiled for the Department of Defense, such as (a) motion pictures and works relating thereto, and (b) histories and other works relating to operation of the Department of Defense, the Government may desire that no adverse claim of copyright be established in such data, and that the Government's right to reproduce and use such data shall be unlimited.

§ 9.202–6 Data furnished on a restricted basis in support of a proposal.

When an offeror has submitted data on a restricted basis in accordance with § 3.109 of this chapter in response to a request for a proposal, and it is proposed to award the contract to such offeror, the contracting officer shall ascertain whether it is desired to acquire rights to use all or part of the data furnished with the proposal. If it is desired to acquire such rights, the contracting officer shall determine in accordance with § 9.201 whether such data is proprietary in nature, and shall negotiate with the offeror in accordance with the policy prescribed in § 9.202 for the acquisition and use of such data. If the offeror agrees to furnish such data under the contract, the appropriate clause of § 9.203 shall be inserted in the contract, and the Schedule shall identify the data to be covered by such clause.

§ 9.203 Contract clauses; general.

In every contract in which data is specified to be delivered, insert the clause of § 9.203–1, except that this clause shall not be used in contracts (a) for the acquisition of existing works, in accordance with § 9.205, (b) wherein the clause of § 9.204 is used in accordance with the provisions of §§ 9.204–2 and 9.204–3, (c) utilizing DD Forms 1261 and 1270 or DD Form 1155, unless the contract is solely for the procurement of data, or (d) to be performed outside the United States, its Territories, or possessions, or Puerto Rico where the clause of § 9.206 applies. The additional sections of §§ 9.203–2, 9.203–3, and 9.203–4 will be added to the clause of § 9.203–1, in accordance with § 9.202 and the instructions contained in §§ 9.203–2, 9.203–3, and 9.203–4.

§ 9.203–1 Basic data clause.

DATA (MAR. 1960)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright; *provided*, that with respect to the Subject Data now or hereafter covered by copyright and not originated in the performance of this contract, such license shall be only to the extent that the Contractor, its employees, or any individual or concern specifically employed or assigned by the Contractor to originate and prepare such Data under this contract, now has, or prior to completion or final settlement of this contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(c) The Contractor shall exert all reasonable effort to advise the Contracting Officer, at the time of delivery of the Subject Data furnished under this contract, (i) of all invasions of the right of privacy contained therein and (ii) of all portions of such Data copied from work not composed or produced in the performance of this contract and not licensed under this clause.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or otherwise granted to the Government under any patent.

(f) Subject to the proviso of (b) above and unless otherwise limited below, the Government may duplicate, use, and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

§ 9.203–2 Provision for addition to basic data clause for use in supply contracts.

The paragraph set forth below shall be added to the clause of § 9.203–1 in all supply contracts in which data is specified to be delivered. This paragraph shall not, however, be included in a contract having as one of its principal purposes experimental, developmental, or research work.

(i) Notwithstanding any Tables or Specifications included or incorporated in the contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

When "proprietary data" is to be obtained in accordance with § 9.202–1 (b) and the above paragraph is included in the contract, the Schedule of the contract will state the extent of the proprietary data to be furnished.

§ 9.203–3 Limited rights provision for addition to basic data clause.

The paragraph set forth below shall be added to the clause set forth in §§ 9.203–1 and 9.203–2 in negotiated contracts for supplies calling for "proprietary data" which is to be obtained subject to limitations on its use as provided for in § 9.202–2(b)(1) and the Schedule of the contract will state the extent of the "proprietary data" to be furnished subject to such limitations. This paragraph shall not be included in a contract having as one of its principal purposes experimental, developmental, or research work.

(j) That portion of the Subject Data delivered under this contract which is identified in the Schedule as being subject to limitations shall not be released outside the Government, nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes (other than for manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work; *Provided*, When Data is released by the Government to a Contractor for such purposes, the release shall be made subject to the limitation of this clause; *Provided further*, Such Data shall not be used for manufacture or procurement of spare parts for stocks), without permission of the Contractor, if the following legend is marked on each piece of Data so limited either in its entirety or only partially as to its content:

Furnished under United States Government Contract No. ------ and only those portions hereof which are marked (for example, by circling, underscoring or otherwise) and indicated as being subject to this legend shall not be released outside the Government (except to foreign governments, subject to these same limitations), nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of ---------- This legend shall be marked on any reproduction hereof in whole or in part.

Provided, That such Data may be delivered to foreign governments as the national interest of the United States may require, subject to the limitations specified in this paragraph. The Contractor shall not impose limitations on the use of any piece of Data, or any portion thereof which the Contractor has previously delivered to the Government without limitation. (June 1959)

§ 9.203–4 Provision for addition to basic data clause for use in contracts for experimental, developmental, or research work.

The paragraph set forth below shall be added to the clause of § 9.203–1 in every contract having as one of its principal purposes experimental, developmental, or research work and the Schedule of the contract will specify the data to be required in accordance with § 9.202–1 (c).

(i) Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, proprietary data need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed, if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others. (Oct. 1958)

§ 9.204 Contract clauses; special.

§ 9.204–1 Limitation on Government's right of publication for sale to the general public.

The paragraph set forth below may be added to the clause of § 9.203–1 when, in contracts for research, the contracting officer determines in accordance with Departmental procedures that public dissemination of the work or certain designated parts of the work specified to be delivered under contract is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish for sale or to have others publish for sale for it. This paragraph shall not be used otherwise.

(--) If, after final settlement of this contract, and within the period designated in the Schedule* for the purpose of this paragraph (--) or otherwise approved by the Contracting Officer, but in any event within a period no greater than 24 months, the Contractor publishes for sale any Subject Data which are (i) designated in the Schedule* as being subject to this paragraph (--) and (ii) delivered under this contract, the Government agrees not to publish such Data for sale or authorize others so to do. This limitation on the Government's right to publish for sale any such Data so published by the Contractor shall continue as long as the Data are protected by copyright. As to all such Data not so published by the Contractor, this paragraph shall be of no force or effect. (Oct. 1958)

§ 9.204–2 Production of motion pictures.

The clause set forth below is approved for use in contracts for the production of motion pictures with or without accompanying sound, and in all contracts for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like:

RIGHTS IN DATA (JAN. 1958)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All Subject Data first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole or in part or in any manner or form, nor authorize others so to do, without the written consent of the Government until such time as the Government may have released such Data to the public.

(c) The Contractor agrees to grant and does hereby grant to the Government and to its officers, agents, and employees, acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world (i) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all Data not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract; and (ii) to authorize others so to do.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyright or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any Data furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in such Data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract: *Provided*, Such incorporated material is identified by the Contractor at the time of delivery of such work.

§ 9.204–3 Histories and other works.

The contract clause set forth in § 9.204–2 is suggested for use in contracts for—

(a) Histories of the respective Departments or services or units thereof;

(b) Works pertaining to recruiting, morale, training or career guidance;

(c) Surveys of Government establishments; and

(d) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties.

§ 9.205 Contracts for acquisition of existing works.

§ 9.205–1 Off-the-shelf purchase of books and similar items.

Notwithstanding the instructions of any other sections in this subpart, no contract clause contained in this subpart need be included in contracts for the separate, sole procurement of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such data is an objective of the contract.

§ 9.205–2 Contracts for existing motion pictures.

Contracts for the procurement of existing motion pictures or for the modification of existing motion pictures shall be made in accordance with Departmental procedures.

§ 9.206 Contracts to be performed outside the United States.

(a) Except as otherwise provided in § 9.204–2, § 9.204–3, or § 9.205, the clause set forth below shall be included in all contracts under which (1) technical information including reports, drawings, blueprints or other data is specified to be delivered to the Government, and (2) the work is to be performed outside the United States, its Territories, its possessions, or Puerto Rico, regardless of the place of delivery.

TECHNICAL INFORMATION (OCT. 1958)

The Government may duplicate, use, and disclose in any manner for its Government purposes, including delivery to other governments for the furtherance of mutual defense of the United States Government and such other governments, all or any part of the technical information including reports, drawings, blueprints, and other data specified to be delivered by the Contractor to the Government under this contract.

(b) The above clause may be modified by substituting "the United States Government" for "Government"; however, when the contractor is a foreign government, the above clause shall be modified by substituting "the United States Government" for "Government" and by substituting the name of the foreign government for "Contractor."

*The word "Schedule" may be replaced by the words "Task Order," or other appropriate reference, in accordance with Departmental procedures.

Subpart C—Foreign License and Technical Assistance Agreements

§ 9.301 General.

§ 9.301–1 Background.

In furtherance of the Mutual Security Program, or for other national defense purposes, the Government may undertake to develop or encourage the development of, foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this part as a "primary source", agrees to furnish to a foreign concern or government, herein referred to as a "second source," foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids; and such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign licenses and technical assistance may be in the form of a lump sum payment, or payments for each item manufactured by the second source, or both, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual cost, charges for the use of patents, data, or know-how reflecting the primary source's investment in development and engineering and production techniques, and the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

§ 9.301–2 Policy.

It is Government policy not to pay in connection with its contracts, and not to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy applies to foreign license and technical assistance agreements, first, in negotiating contract prices for foreign license and technical assistance contracts (§ 9.302) or supply contracts with second sources (§ 9.303), and second, in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 and the International Traffic in Arms Regulations (§ 9.304).

§ 9.302 Foreign license and technical assistance contracts between the government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services will, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide in effect that, in connection with any separate agreement between the primary source (or any of its subcontractors) and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that:

(1) the primary source (and its subcontractors) will not make, on account of any purchases by the Government or by others with funds derived through the Mutual Security Program or otherwise through the Government, any charge to the second source (i) for royalties or amortization for patents or inventions in which the Government holds a royalty-free license, or (ii) for data which the Government has a right to possess, use, and disclose to others, or (iii) for any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) such separate agreement between the primary and second sources will conform to the requirements of the International Traffic in Arms Regulations (§ 9.304).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within paragraph (a) of this section,

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, etc.;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

§ 9.303 Supply contracts between the government and second sources.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement type contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement of royalties, license fees, or other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are (1) for royalties or amortization for patents or inventions in which the Government holds a royalty-free license, or (2) for data which the Government has a right to possess, use, and disclose to others, or (3) for any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

§ 9.304 Foreign license and technical assistance agreements between domestic concern and foreign government or concern.

§ 9.304–1 International traffic in arms regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, 121 et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. Each Military Department will, on request of the Office of the Assistant Secretary of Defense (International Security Affairs), submit comments thereon as the basis for a Department of Defense reply to the Department of State. Such comments will be prepared in the light of the following excerpt from the International Traffic in Arm Regulations:

§ 124.3 *Required provisions in agreements.* (a) Proposed technical assistance or manufacturing license agreements which may involve the transfer or interchange of technical data (see §§ 121.8 and 121.9 of this chapter) should set out in detail the terms and conditions of such transfer or interchange and define in precise terms the following:

(1) The equipment and technology involved.

(2) The scope of the information to be furnished.

(3) The period of duration of the agreement.

(4) Statement of ownership.

(b) It is the general policy of the United States Government not to pay in connection with its purchases, or allow to be paid in connection with purchases made with Mutual Security Program funds, a charge for patent rights in which it holds a royalty-free license, or for technical data which it has a right to use and disclose to others for purposes of the Mutual Security Program, or which is in the public domain, or with respect to which it has been placed in possession without restriction upon its use and disclosure to others. Reasonable charges for reproduction, handling, mailing, and other similar administrative costs do not fall within this policy.

Pursuant to the above policy, agreements generally will not be approved unless written in such a way that (1) purchases of items by or for the United States Government or with funds derived through the Mutual Security Program, will not include a charge (a) for technical data in the possession of the United States Government, or in which the United States Government has a right to possession, and regarding which there is no prohibition against use by the United States Government and disclosure to others and (b) for royalties or amortization for patents or inventions in which the United States Government holds a royalty-free license; and (2) the license rights transferred by such agreements will be subject to existing rights of the United States Government.

§ 9.304–2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between domestic concerns and foreign governments or concerns, the Military Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of § 124.3 of the International Traffic in Arms Regulations (22 CFR 124.3) (§ 9.304–1) or in what respects it is deficient. Paragraphs (b) through (g) of this section provide general guidance for such review.

(b) Where it is reasonably anticipated that the Government will purchase from the second source the supplies and services involved in the agreement or that Mutual Security Program funds will be provided for the purchase of the supplies or services:

(1) It may suffice to fulfill the requirements of § 124.3(b) (22 CFR 124.3), quoted in § 9.304–1, so far as the Department of Defense is concerned, if:

(i) The agreement is so written that:

(*a*) The second source is required to advise the primary source when it has knowledge of any purchase made by or to be made from it by or for the Government or with funds derived through the Mutual Security Program or otherwise through the Government; and

(*b*) The second source agrees in the event of any such purchase to reflect in the purchase price of the article or service any reduction in the charges specified in the agreement, which is made by the primary source in respect to such purchase; and

(ii) The primary source agrees with the Government that upon advice to him from the second source, or from the Government or otherwise, as to any such purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data.

(2) If the agreement provides that no charge is being made to the second source for data or patent rights in which the Government has rights, or that no charge is being made to the extent of the Government's rights, the Department should:

(i) Before indicating its approval, evaluate the acceptability of such provision, or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of such provision at a later appropriate time.

(c) Where it is reasonably anticipated that the Department will procure from the second source supplies or services involved in the agreement, or that Mutual Security Program funds will be provided for the procurement of the supplies or services:

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Mutual Security Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department should, before indicating its approval, evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances.

(2) If the agreement does not specify any such reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, a recommendation should be made, as a condition to approval, that the agreement be amended to reflect a reduction acceptable to the Government in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Mutual Security Program or otherwise through the Government, in accordance with § 124.3(b) (22 CFR 124.3), quoted in § 9.304–1.

(3) If the agreement provides that no charge is being made to the second source for data or patent rights in which the Government has rights, or that no charge is being made to the extent of the United States rights, the Department should, before indicating its approval, evaluate the acceptability of such provision.

(4) If time or circumstances do not permit the evaluation of the reduction in charges provided for in the agreement as called for in subparagraph (1) of this paragraph, or the specifying of such a reduction as called for in subparagraph (2) of this paragraph, or the evaluation of the provision that no charge is made as called for in subparagraph (3) of this paragraph, the guidance in paragraph (b) of this section may be followed.

(d) Where there is a technical assistance contract between the primary source and the Government related to the separate agreement between the primary and second sources that is under review, such separate agreement should reflect the arrangements contemplated with respect thereto by the Government's technical assistance contract.

(e) Every agreement should provide that any license rights transferred by the agreement are subject to existing rights of the Government.

(f) In connection with every agreement within paragraph (c) of this section, a request should be made to the primary source to identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors; to identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights; and to segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance. Reviewing personnel will verify or obtain such information from Governmental sources so far as practicable.

(g) The Department concerned should make clear that its approval of any agreement does not necessarily recognize the propriety of the charge or the amount thereof or constitute approval of any of the business arrangements in the agreement, unless the Department intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, such a disclaimer should be made to charges or business terms not affecting either the Government or any purchase made with funds derived through the Mutual Security Program or otherwise through the Government.

PART 10—BONDS AND INSURANCE

Subpart A—Bonds

Sec.
10.101 Definitions.
10.101–1 Bid bond.
10.101–2 Performance bond.
10.101–3 Payment bond.
10.101–4 Advance payment bond.
10.101–5 Patent infringement bond.
10.101–6 Construction contract.
10.101–7 Annual bid bond.
10.101–8 Annual performance bond.
10.101–9 Consent of surety.
10.101–10 Penal sum or amount.
10.102 Bid bonds.
10.103 Performance bonds.
10.103–1 Performance bonds for contracts other than construction contracts.
10.103–2 Performance bonds in connection with construction contracts.
10.103–3 Annual performance bonds.
10.104 Payment bonds.
10.104–1 Payment bonds in connection with contracts other than construction contracts.
10.104–2 Payment bonds in connection with construction contracts.
10.104–3 Furnishing information to subcontractors and suppliers.
10.105 Advance payment bonds.
10.106 Patent infringement bonds.
10.107 Other types of bonds.
10.108 Execution and administration of bonds.

Subpart B—Sureties on Bonds

10.201 General requirements of sureties.
10.202 Options in lieu of sureties.
10.202–1 United States bonds or notes.
10.202–2 Certified or cashier's checks, bank drafts, money orders, or currency.
10.203 Consent of surety.

Subpart C—Insurance; General

10.300 Scope of subpart.
10.301 General.
10.302 Notice of cancellation or change.
10.303 Responsibility for loss of or damage to Government property.
10.304 Insurance against loss of or damage to Government property.
10.305 Procedures to be followed in the event of loss of or damage to Government property.

Subpart D—Insurance Under Fixed-Price Contracts

10.400 Scope of subpart.
10.401 Policy.
10.402 Government-furnished property.
10.403 Workmen's compensation insurance overseas.
10.404 Aircraft—Ground and Flight Risk.
10.404–1 Negotiated fixed-price type contracts.
10.404–2 Cost-reimbursement type contracts.

Subpart E—Insurance Under Cost-Reimbursement Type Contracts

Sec.
10.500 Scope of subpart.
10.501 Policy.
10.501–1 Workmen's compensation and employers' liability insurance.
10.501–2 General liability insurance.
10.501–3 Automobile liability insurance.
10.501–4 Aircraft public and passenger liability insurance.
10.501–5 Vessel collision liability and protection and indemnity liability insurance.
10.502 Self-insurance.
10.503 Government property.

Subpart F—Insurance of Industrial Facilities Under Leases or Facilities Contracts

10.600 Scope of subpart.
10.601 Responsibility for liabilities to third persons.
10.602 Responsibility for loss or damage to facilities.
10.602–1 Facilities contracts.
10.602–2 Leases.

Subpart G—Special Casualty Insurance Rating Plans

10.700 Scope of subpart.
10.701 Purpose of plans.
10.702 Description of plans.
10.703 Use and eligibility for plans.

AUTHORITY: §§ 10.001 to 10.703 issued under sec. 201, 55 Stat. 839, as amended, sec. 2202, 70A Stat. 120; 50 U. S. C. App. 611, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314, E. O. 9001, 6 F. R. 6787, as amended by E. O. 9296, 8 F. R. 1429, 3 CFR, 1943 Cum. Supp.

Subpart A—Bonds

§ 10.101 Definitions.

As used in this subpart, the terms in §§ 10.101–1 to 10.101–6 shall have the meanings set forth therein.

§ 10.101–1 Bid bond.

A bid bond is a bond accompanying a bid in which the obligor obligates himself in an amount stated (the penal sum), which obligation, it is stated, is to be void if:

(a) The bid is not withdrawn after the opening within the period specified in the bid, or, if no shorter period is specified, within sixty days; and

(b) A written contract, with such bond or bonds as may be required, is executed within ten days after the prescribed forms are presented for signature.

§ 10.101–2 Performance bond.

A performance bond is a bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions and agreements contained in the contract.

§ 10.101–3 Payment bond.

A payment bond is a bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.

§ 10.101–4 Advance payment bond.

An advance payment bond is a bond which secures the performance and the fulfillment of a contractual provision for the making of advance payments.

§ 10.101–5 Patent infringement bond.

A patent infringement bond is a bond which secures the performance and fulfillment of the undertakings contained in a patent clause.

§ 10.101–6 Construction contract.

The term "construction contract" means any contract for the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It does not include any contract for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property, regardless of the terms of any such contract as to payment or title.

§ 10.101–7 Annual bid bond.

An annual bid bond is a single bond (in lieu of separate bid bonds), without limitation as to penal amount, which secures all bids (on other than construction contracts) requiring bonds submitted by a contractor during a specific fiscal year of the Government in response to formal advertising.

§ 10.101–8 Annual performance bond.

An annual performance bond is a single bond (in lieu of separate performance bonds for each contract) which secures the performance of contracts (other than construction contracts) which require bonds and are entered into by a contractor during a specific fiscal year of the Government.

§ 10.101–9 Consent of surety.

A consent of surety is an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

§ 10.101–10 Penal sum or amount.

Penal sum or amount means the dollar amount shown in a bond and represents the maximum payment for which the surety is obligated.

§ 10.102 Bid bonds.

Bid bonds may be required when, and only when, the solicitation of bids for a contract to be entered into as a result of formal advertising specifies that the contract is to be supported by a performance bond or by performance and payment bonds. Whenever a bid bond is required, the penal sum thereof shall be not less than 20 percent of the bid price except that the maximum amount required shall be $3,000,000.

§ 10.103 Performance bonds.

§ 10.103–1 Performance bonds for contracts other than construction contracts.

(a) Generally performance bonds will not be required in connection with contracts other than construction contracts. Performance bonds will not be used as a substitute for determinations of contractor responsibility as required by Part 1, Subpart I of this subchapter.

(b) Subject to the general policy stated in paragraph (a) of this section, performance bonds may be required in individual procurements when, consistent with the following criteria, the contracting officer determines the need therefor. Justification for any such requirement must be fully documented.

(1) Where the terms of the contract provide for the contractor to have the use of Government material, property or funds and further provide for the handling thereof by the contractor in a specified manner so as to protect the Government's interests therein, a performance bond may be required.

(2) Where the circumstances applicable to a particular procurement are such that, for financial reasons, a performance bond is necessary to protect the interests of the Government. See for example, § 16.505–2(b)(3) of this chapter.

(c) Subject to the general policy stated in paragraph (a) of this section, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services), may be made (1) for the Army, by the Deputy Chief of Staff for Logistics, (2) for the Navy, by the Chief of Naval Material, and (3) for the Air Force, by the Deputy Chief of Staff, Materiel. A copy of each such determination covering a class of cases shall be forwarded to the Office of Assistant Secretary of Defense (Supply and Logistics) for information.

(d) Performance bonds shall not be required unless the invitation for bids or request for proposals requires such a bond, or the requirement of such a bond is in the interest of the Government, and not prejudicial to other bidders. The requirement for a performance bond shall not be waived when the invitation for bids requires such bond.

(e) When the requirement for a performance bond is made by the terms of a contract, but the bond is not furnished by the contractor within the time specified, the contracting officer shall notify the contractor that the contract will be terminated for default if the bond is not furnished within the time specified in the contract clause providing for such termination (e.g., § 8.707(a)(2) of this chapter).

(f) Where a performance bond is required as a condition precedent to the formation of the contract, but is not furnished within the time specified, if the making of the award can be delayed without prejudice to other bidders and to the public interest, the contracting officer shall notify the bidder that if the bond is not furnished within 10 days (or such other period as the contracting officer may specify) after receipt of the notice, his bid will not be considered for award.

§ 10.103–2 Performance bonds in connection with construction contracts.

(a) Pursuant to the Miller Act, as amended (40 U. S. C. 270a.–270e.), in connection with any construction contract exceeding $2,000 in amount, except as provided in paragraph (c) of this section, a performance bond shall be required in a penal amount deemed adequate by the contracting officer for the protection of the Government. Generally, the penal amount of each performance bond shall be 100 percent of the contract price at the time of award. But where the contracting officer finds that to require a 100 percent performance bond would be disadvantageous to the Government, he may prescribe a lesser penal amount.

(b) Additional performance bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to paragraph (a) of this section if—

(1) The modification is for new or additional work which is beyond the scope of the existing contract; or

(2) The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the bond protection should generally be increased so that the total performance bond protection is 100 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications: *Provided*, That lesser penal amounts may be authorized by the contracting officer as indicated in paragraph (a) of this section. The increased penal amount may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional performance bond from a new surety; but see § 10.203 with respect to requiring consent of surety.

(c) The Secretaries may waive for their respective Departments the requirement of a performance bond with respect to any or all cost-reimbursement type construction contracts. In addition, the contracting officer may waive the requirement for a performance bond for so much of the work under the contract as is to be performed in a foreign country: *Provided*, He finds that it is impracticable for the contractor to furnish such bond.

§ 10.103–3 Annual performance bonds.

Annual performance bonds may be used only in connection with contracts other than construction contracts. When such a bond is used and has been completely obligated in an amount equal to the penal sum thereof, an additional bond shall be obtained to cover additional contracts.

§ 10.104 Payment bonds.

§ 10.104–1 Payment bonds in connection with contracts other than construction contracts.

The extent to which payment bonds will be required in connection with contracts other than construction contracts shall be in accordance with procedures prescribed by each respective Department, except that the requirement of such a bond shall not be waived when an invitation for bids requires a payment bond. Conversely, a payment bond shall not be required unless (a) the solicitation of bids requires such a bond, or (b) requirement of such a bond is in the interest of the Government and not prejudicial to the other bidders. Whenever a payment bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 10.104–2 Payment bonds in connection with construction contracts.

(a) Pursuant to the Miller Act, as amended (40 U. S. C. 270a–270e), in connection with any construction contract exceeding $2,000 in amount, except as provided in paragraph (c) of this section, a payment bond shall be required in a penal amount as follows:

(1) When the contract price is not more than $1,000,000, the penal sum shall be 50 percent of the contract price;

(2) When the contract price is more than $1,000,000 but not more than $5,000,000, the penal sum shall be 40 percent of the contract price; and

(3) When the contract price is more than $5,000,000, the penal sum shall be $2,500,000.

(b) Additional payment bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to paragraph (a) of this section if—

(1) The modification is for new or additional work which is beyond the scope of the existing contract; or

(2) The modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the additional bond protection should generally be such that the total payment bond protection is 50 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications: *Provided*, That when the contract price as so revised is more than $1,000,000 but not more than $5,000,000, the total payment bond protection shall be in a penal amount of 40 percent of the revised contract price: *Provided further*, That when the contract price as so revised is more than $5,000,000, the total payment bond protection shall be in the penal amount of $2,500,000. The additional protection may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional payment bond from a new surety; but see § 10.203 with respect to requiring consent of surety.

(c) The Secretaries may waive for their respective Departments the requirement of a payment bond with respect to any or all cost-reimbursement type construction contracts. In addition, the contracting officer may waive the requirement for a payment bond for so much of the work under the contract as is to be performed in a foreign country: *Provided*, He finds that it is impracticable for the contractor to furnish such bonds.

§ 10.104–3 Furnishing information to subcontractors and suppliers.

It is Department of Defense policy to furnish subcontractors or suppliers only general information with respect to the status of work and of payments made to prime contractors. Where a payment bond has been required, a subcontractor or supplier, after satisfying the contracting officer that he is a bona fide subcontractor or supplier and stating that he has not been paid for work performed or supplies delivered, may be furnished the name and address of the surety furnishing the required bonds on the contract in question. In addition, subcontractors and suppliers may be furnished general information on such matters as the progress of the work, the accomplishment of payments as of certain dates, and the estimated percentage of completion.

§ 10.105 Advance payment bonds.

The extent to which advance payment bonds will be required shall be in accordance with procedures prescribed by each respective Department. Whenever such a bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 10.106 Patent infringement bonds.

Patent infringement bonds shall be required only in connection with contracts containing provision for patent indemnity, and then only if a performance bond has not been executed and if the financial responsibility of the contractor is unknown or doubtful. Whenever such a bond is required, the penal sum thereof shall be in an amount deemed adequate by the Contracting Officer for the protection of the Government.

§ 10.107 Other types of bonds.

Other types of bonds may be used only when, in the opinion of the head of the procuring activity concerned, such bonds are necessary or desirable in connection with the procurement of particular supplies or services.

§ 10.108 Execution and administration of bonds.

The forms and provisions of bonds, and their preparation, execution and administration, shall be in accordance with the provisions of this subchapter and with procedures prescribed by each respective Department.

Subpart B—Sureties on Bonds

§ 10.201 General requirements of sureties.

Every bond required or used in connection with the procurement of supplies or services shall be supported by good and sufficient surety (corporate or individual) in accordance with procedures prescribed by each respective Department.

§ 10.202 Options in lieu of sureties.

Any one or more of the following types of security listed below may be deposited by the contractor in lieu of furnishing corporate or individual sureties on bonds. Any such security accepted by the contracting officer shall be promptly turned over to the disbursing officer concerned for Army and Navy contracts, and to the accounting and finance officer concerned for Air Force contracts, or when United States bonds or notes are involved they shall be deposited as provided in § 10.202–1. Any such security or its equivalent shall be returned to the contractor when the obligation of the bond has by its terms ceased.

§ 10.202–1 United States bonds or notes.

In accordance with the provisions of the Act of February 24, 1919, as amended (6 U.S.C. 15) and Treasury Department Circular No. 154 (February 6, 1935), any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing United States bonds or notes in an amount equal at their par value to the penal sum of the bond, together with an agreement authorizing the collection or sale of such United States bonds or notes in the event of default on the penal bond. The contracting officer may turn these securities over to the disbursing officer or accounting and finance officer as provided in § 10.202, or deposit them with the Treasurer of the United States, a Federal Reserve Bank, branch Federal Reserve Bank having the requisite facilities, or other depositary duly designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the Department concerned and Treasury Department Circular No. 154. However, the contracting officer shall deposit with the Treasurer of the United States all such bonds and notes received by him in the District of Columbia.

§ 10.202–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing a certified or cashier's check, a bank draft, a Post Office money order, or currence, in an amount equal to the penal sum of the bond: *Provided*, That the penal sum of the bond is not in excess of $50,000 Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the Treasurer of the United States.

§ 10. 203 Consent of surety.

In connection with any amendment, modification or supplemental agreement which would otherwise effect the release of a surety, or in any other situation as prescribed by each respective Department, the Contracting Officer shall obtain the written consent thereto of the surety or sureties on the existing bond or bonds notwithstanding the fact that there may be an additional bond supported by a new surety: *Provided*, That no such consent need be obtained if there is an increased or additional bond supported by the same surety or sureties.

Subpart C—Insurance; General

§ 10.300 Scope of subpart.

This subpart sets forth the general principles and policy applicable to insurance under contracts of the Departments for supplies or services.

§ 10.301 General.

Insurance will be required where (a) it is mandatory by law, (b) it is considered desirable to utilize the facilities and services of the insurance industry, or (c) in special instances it is deemed necessary or desirable in connection with the performance of a contract. The respective Departments may also authorize or require the purchase of insurance where commingling of property or the conditions of the contract make the carrying of insurance reasonably necessary for the protection of the several interests concerned.

§ 10.302 Notice of cancellation or change.

Where insurance is required by contract provision or in writing by the approving authority, the policies evidencing such insurance shall contain an endorsement to the effect that cancellation or material change in the policies, adversely affecting the interest of the Government in such insurance, shall not be effective unless the written notice as required by the approving authority is given.

§ 10.303 Responsibility for loss of or damage to Government property.

The responsibility of the Contractor for loss of or damage to Government property in the possession or control of Contractors is set forth in the clause in §§ 13.411, 13.502, and 13.503 of this subchapter.

§ 10.304 Insurance against loss of or damage to Government property.

In instances where insurance is required or approved to cover loss of or damage to Government property, such insurance may be provided either by specific insurance policies or by inclusion of such risks in the Contractor's existing insurance policies. In either event, the insurance policies shall make formal disclosure of the Government's interest in the property.

§ 10.305 Procedures to be followed in the event of loss of or damage to Government property.

Upon the happening of loss of or damage to any Government property, concerning which the Contractor is relieved of responsibility by contract provision, the procedure shall be as prescribed in subparagraph (f)(3) of the clause in § 13.502 or § 13.503 of this subchapter.

Subpart D—Insurance Under Fixed-Price Contracts

§ 10.400 Scope of subpart.

This subpart sets forth the policy of the Departments with respect to insurance under fixed-price contracts for supplies or services.

§ 10.401 Policy.

Ordinarily the Departments are not concerned with the insurance programs of fixed-price Contractors. However, the Departments may be concerned with a Contractor's insurance program when special circumstances exist. Examples of special circumstances are (a) where the Contractor is engaged principally in Government work, (b) where the Contractor has a segregated operation which is engaged principally in Government work, (c) where Government-furnished property is involved, (d) where the work is performed within a Government establishment, and (e) where the Government may desire to assume risks for which the Contractor ordinarily obtains commercial insurance.

§ 10.402 Government-furnished property.

The Contractor's responsibilities for loss of or damage to Government-furnished property under fixed-price contracts are set forth in the clause in § 13.502 of this subchapter.

§ 10.403 Workmen's compensation insurance overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees engaged in work outside the United States, including any employee engaged (1) in the performance of a public work contract or (2) in the performance of any contract approved or financed pursuant to the Mutual Security Act as amended (22 U.S.C. 1871 et seq.) other than (i) contracts approved or financed by the Development Loan Fund, or (ii) contracts exclusively for the furnishing of materials or supplies. As used in this paragraph, a "public work" contract includes any contract for a fixed improvement or any project whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. The following clause shall be included in all public work contracts to be performed outside the United States:

WORKMEN'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (JAN. 1960)

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable, a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(b) Upon the recommendation of the secretary concerned, the Secretary of Labor may waive the applicability of the Defense Base Act with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees.

§ 10.404 Aircraft—Ground and Flight Risk.

§ 10.404–1 Negotiated fixed-price type contracts.

(a) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in paragraph (b) of this section include the following clause.

GROUND AND FLIGHT RISK (MAY 1960)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open," during "operation," and in "flight," as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) Aircraft (including (I) complete aircraft, and (II) aircraft in the course of being manufactured, disassembled, or reassembled: *Provided*, That an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) Aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract;

including all property installed therein, or in the process of installation, or temporarily removed from such aircraft: *Provided, however*, That such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the _____.[1] With respect to land based aircraft, "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises: *Provided, however*, That aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landings, other landings made in the performance of this contract, or landings approved by _____[1] in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the _____,[1] and any other place to which aircraft are moved for the purpose of safeguarding the aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew members" means those persons in the aircraft who have been designated by the Contractor to conduct any flight as defined in subparagraph (iii) above on behalf of the Contractor.

(c) (1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the _____[1] finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the Contractor shall act promptly to correct such conditions, regardless of whether it agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs it incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes."

(3) If the _____[1] finds that the Contractor has failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 a.m. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (f) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government-Furnished Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the _____[1] shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions, the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment

[1] In the foregoing clause, insert, in contracts of the Department of the Army and the Department of the Air Force, the words "the Contracting Officer," and insert, in contracts of the Department of the Navy, the activity designated in accordance with Departmental procedures.

for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) Resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) sustained during flight if the flight crew members conducting such flight have not been approved in writing by the _____;[2]

(iii) While in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(iv) To the extent that such damage, loss or destruction is in fact covered by insurance;

(v) Consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause; *provided*, however, in the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply;

(vi) Sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause; or

(vii) Under this clause, where the total loss resulting from each event separately occurring is less than $500.

[2] Insert, in contracts of the Department of the Army, the words "the Contracting Officer," and insert, in contracts of the Department of Navy or the Department of the Air Force, the activity designated in accordance with Departmental procedures.

(e) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in its possession or control, except to the extent that the subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(f) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(g) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and, further, except in cases covered by (d) (vii) above, the Contractor should furnish to the _____[1] a statement of:

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering any part of the interest in such commingled property.

Except in cases covered by (d) (vii) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (g) and this contract shall be modified in writing accordingly.

[1] In the foregoing clause, insert, in contracts of the Department of the Army and the Department of the Air Force, the words "the Contracting Officer," and insert, in contracts of the Department of the Navy, the activity designated in accordance with Departmental procedures.

(h) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss, or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any remaining parts thereof; and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract.

(i) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the _____,[1] shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(b) (1) In paragraph (b) of the foregoing clause, certain of the defined terms may be modified by insertion of appropriate additional definitions in the Schedule in accordance with the following. The purpose of the clause is to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the foregoing clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the Schedule as set forth below.

(i) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other non-conventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(ii) The definition of "in the open" may be modified to include "hush houses," test hangars, and comparable structures, and other designated areas;

(iii) "Contractor's premises" shall be expressly defined in the Schedule and shall be limited to those locations where aircraft, as defined in the above clause, may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(2) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the foregoing clause, if the best estimate of premium costs to be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. If it is determined not to assume such risks, the foregoing clause shall not be made a part of the contract.

(3) Subparagraph (d) (iii) of the above clause may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

§ 10.404–2 Cost-reimbursement type contracts.

(a) Cost-reimbursement type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (b) of this section, include the following clause.

FLIGHT RISKS (MAY 1960)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (f) (1) of the Government Property clause, and paragraph (c) of the Insurance-Liability to Third Persons clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by _____.[1]

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the _____.[2] As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(iii) The term "flight crew members" means those persons in the aircraft who have been designated by the Contractor to conduct any flight, as defined in subparagraph (ii) above, on behalf of the Contractor.

(b) In the foregoing clause, the definition of "aircraft" may be appropriately modified in the Schedule if the contract covers helicopter, vertical takeoff aircraft, lighter-than-air airships, or other nonconventional types of aircraft. If the contract includes the Government Property clause in § 13.506 of this chapter, the reference in paragraph (a) of the foregoing clause to paragraph (f) (1) of the Government Property clause should be changed to (i) (1).

[1] Insert, in contracts of the Department of the Army, the words "the Contracting Officer," and insert, in contracts of the Department of Navy or the Department of the Air Force, the activity designated in accordance with Departmental procedures.

[2] Insert, in contracts of the Department of the Army or the Department of the Air Force, the words "the Contracting Officer," and insert, in contracts of the Department of the Navy, the activity designated in accordance with Departmental procedures.

Subpart E—Insurance Under Cost-Reimbursement Type Contracts

§ 10.500 Scope of subpart.

This subpart sets forth the policy of the Departments with respect to insurance under cost-reimbursement type contracts for supplies or services.

§ 10.501 Policy.

The kinds of insurance listed in this subpart, with limits of liability as prescribed by each respective Department, shall ordinarily be required under cost-reimbursement type contracts and under those subcontracts where the provisions of the prime contract are extended to the subcontract. A program of self-insurance approved by the Department concerned, as provided in § 10.502, may be substituted for any of the kinds of insurance ordinarily required.

§ 10.501–1 Workman's compensation and employers' liability insurance.

Compliance with applicable workmen's compensation and occupational disease statutes will be required, and the insurance policy will also include employers' liability coverage, where available. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational diseases will be required under the employers' liability section of the insurance policy; however, such additional insurance will not be required where contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. The clause set forth in § 10.403 shall be included in all construction contracts, as defined in § 10.101–6, to be performed outside the United States.

§ 10.501–2 General liability insurance.

Bodily injury liability insurance will be required on the compresensive form of policy. Property damage liability insurance will be required only in special circumstances as determined by the Departments concerned. Property damage liability insurance may be approved when the nature of the contract operations warrant its purchase or where they are not separable from the Contractor's commercial operations.

§ 10.501–3 Automobile liability insurance.

This insurance will be required on the comprehensive form of policy and will provide for bodily injury liability and property damage laibility covering the operation of all automobiles used in connection with the performance of the contract.

§ 10.501–4 Aircraft public and passenger liability insurance.

Where aircraft are used in connection with the performance of the contract, such insurance ordinarily will be considered required coverage.

§ 10.501–5 Vessel collision liability and protection and indemnity liability insurance.

Where vessels are used in connection with the performance of the contract, such insurance will be required whenever deemed necessary by the Department concerned.

§ 10.502 Self-insurance.

Qualified programs of self-insurance covering any kind of risk may be approved where an examination of the program indicates that its application to the cost-reimbursement type contract is in the best interests of the Government. However, a program of self-insurance for workmen's compensation in any jurisdiction where workmen's compensation does not completely cover employers' liability to employees may be approved only if:

(a) The contractor also maintains an approved program of self-insurance for any employers' liability which is not so covered, or

(b) The contractor shows that the combined cost to the Government of self-insurance for workmen's compensation and commercial insurance for employers' liability will not exceed the cost of covering both kinds of risks by commercial insurance.

§ 10.503 Government property.

The Contractor's responsibilities for loss of or damage to Government property under cost-reimbursement-type contracts are set forth in the clause in § 13.503 of this subchapter.

Subpart F—Insurance of Industrial Facilities Under Leases or Facilities Contracts

§ 10.600 Scope of subpart.

This subpart sets forth the policy with respect to insurance of industrial facilities under a facilities contract or under a lease made pursuant to 10 U.S.C. 2667.

§ 10.601 Responsibility for liabilities to third persons.

Where industrial facilities are provided by the Government under a facilities contract or a lease, the contract or lease shall require that during the period of construction, installation, alteration, repair, or use, and at any other time as directed by the Department concerned, the contractor or lessee shall insure or otherwise provide approved security for liabilities to third persons (including employees of the contractor or lessee) in the same manner and to the same extent as required in § 10.501.

§ 10.602 Responsibility for loss or damage to facilities.

§ 10.602–1 Facilities contracts.

Section 13.411 of this chapter defines the responsibilities of the contractor for loss or damage to Government facilities. Therefore, facilities contracts shall provide that the contractor shall not include the cost of insurance in any contract except to the extent of insurance required or approved by the Department

concerned. If a facilities contract does not restrict the use of the facilities to work performed for the Government, provision shall be made that the contractor shall procure and maintain insurance as the Department concerned may require against loss or damage to the industrial facilities.

§ 10.602–2 Leases.

(a) Where facilities are leased pursuant to 10 U.S.C. 2667, the Government may, consistent with the policies of § 13.411 of this chapter, require the lessee to provide and maintain insurance against loss or damage to the facilities. In any event the lease shall provide that:

(1) The lessee shall provide, maintain, change, or discontinue such insurance, as the Government may from time to time require: *Provided,* That the lessee's liability for loss or damage to the facilities is modified accordingly;

(2) If any insurance requirement is changed pursuant to (1) above, an equitable adjustment in the rent shall be made so as to reflect any resulting savings or increased costs to the lessee; and

(3) The lessee shall notify the Department concerned whenever the use of the facilities in the performance of Government contracts changes so as to become 75 percent or more of the total productive capacity thereof, and conversely whenever such use changes so as to become less than 75 percent of such capacity.

(b) Generally, whenever more than 75 percent of the total productive capacity of the facilities will be used for a substantial period of time in the performance of Government contracts and the insurance costs are significant, or whenever it is deemed to be in the best interest of the Government, the Department concerned will, consistent with the policies of § 13.411, relieve the lessee from liability for loss or damage to the facilities and eliminate any requirement for insurance relating thereto. Conversely, whenever less than 75 percent of such capacity will be so used, or whenever it is deemed to be in the best interest of the Government, the Department concerned will require the lessee to be responsible for loss or damage to the facilities and provide and maintain appropriate insurance. In such cases an equitable adjustment shall be made in the rent. In determining when the Government shall so modify the responsibilities of the lessee, the percentage of use shall not be regarded as an absolute standard, but rather as an important factor to be considered.

Subpart G—Special Casualty Insurance Rating Plans

§ 10.700 Scope of subpart.

This subpart sets forth principles and requirements for use of the National Defense Projects Rating Plan, which is available for application on both domestic and foreign contracts which meet the eligibility requirements set forth herein. This part likewise applies to the World War II War Department Insurance Rating Plan, also known as the War Projects Insurance Rating Plan, which is currently available for application only outside the United States. These plans provide a special rating formula for the purchase of the casualty insurance coverages listed in §§ 10.501–1 through 10.501–3, and are mandatory as to contracts which meet the use and eligibility standards set forth in § 10.703. Inclusion under the prime contractor's Rating Plan policies of similar coverages for subcontractors, whose contracts with the prime contractor provide that the insurance shall be furnished by the prime contractor, shall be automatic if the subcontract operations are at the project site, unless the military departments specifically direct otherwise. Subcontractors whose operations are away from the projects site will not be covered under the prime contractor's Rating Plan policies unless the prime contractor is specifically directed by the military departments to request inclusion of such subcontractors.

§ 10.701 Purpose of plans.

These plans are designed to utilize the services and organizations of the insurance industry for safety engineering and the handling of claims arising under eligible contracts at a minimum cost to the Government.

§ 10.702 Description of plans.

These plans are effected by endorsements attached to standard insurance policy forms for workmen's compensation, employer's liability, general liability, and automobile liability. The Rating Plans provide for a fixed deposit premium, for a reduced rate of current premium payments, for yearly adjustments of the premium depending upon loss experience during the period, and for final adjustment of the premium based upon the experience of the entire period covered by the policies. The final adjustment may be deferred for a maximum of 68 months after expiration of the policies. The total adjusted premium is the sum of the following:

(a) A fixed charge which is a percentage of the standard premium and is to compensate the insurance company for general expenses other than those referred to hereafter;

(b) Modified losses, which are the losses paid or incurred, multiplied by a conversion factor of 1.12 to compensate the insurance company for the claim department expense;

(c) Allocated claims expenses, which are expenses for claims services not of the type ordinarily rendered by the insurer's claim department, such as actual expenditures for attorney's fees and other trial or hearing expenses in connection with litigated cases;

(d) Special assessments imposed by the applicable jurisdiction for purposes such as second injury funds, rehabilitation funds, maintenance of workmen's compensation commissions, etc.; and

(e) Actual premium taxes.

Each of the above adjustments are subject to review by authorized representatives of the Department concerned, and the total adjusted premium derived therefrom cannot exceed a maximum premium which is a percentage of the standard premium developed by use of manual rates issued or approved by the appropriate rating organization. In general, the plans are variations of commercially available insurance rating plans, but have been specially developed to meet the requirements of the Departments.

§ 10.703 Use and eligibility for plans.

The Rating Plans described in this subpart shall be applied to all eligible defense projects where such application is determined by the Department concerned to be in the best interests of the Government. The Rating Plans may be applied to cost-reimbursement type contracts and also, in appropriate cases, to fixed-price contracts with price redetermination provisions. A defense project is eligible for application of a plan when (a) eligible Government contracts represent, at inception of the plan, at least 90 percent of the payroll for total operations at the specific locations of the project, and (b) the annual premium for insurance is estimated to be at least $10,000. A defense project may include contracts awarded by more than one Department to the same Contractor.

PART 11—FEDERAL, STATE AND LOCAL TAXES

Sec.

11.000 Scope of part.

Subpart A—Federal Excise Taxes

11.101 Retailers excise taxes.
11.101–1 General.
11.101–2 Jewelry and related items.
11.101–3 Furs.
11.101–4 Toilet preparations.
11.101–5 Luggage and handbags.
11.101–6 Special fuels.
11.102 Manufacturers excise taxes.
11.102–1 General.
11.102–2 Motor vehicles.
11.102–3 Tires and tubes.
11.102–4 Gasoline.
11.102–5 Lubricating oils.
11.102–6 Household type equipment.
11.102–7 Radio and television receiving sets, phonographs and records.
11.102–8 Musical instruments.
11.102–9 Sporting goods.
11.102–10 Photographic equipment.
11.102–11 Firearms, shells, and cartridges.
11.102–12 Business machines.
11.102–13 Pens, mechanical pencils, and lighters.
11.102–14 Matches.
11.103 Excise taxes on facilities and services.
11.104 Use tax on highway motor vehicles.

Subpart B—Exemptions From Federal Excise Taxes

11.201 Retailers excise taxes.
11.202 Manufacturers excise taxes.
11.203 Supplies and services for the exclusive use of the United States.
11.204 Exemptions from other Federal taxes.
11.205 Tax exemption forms.

Subpart C—State and Local Taxes

11.301 Applicability.
11.302 Tax exemption forms.

Subpart D—Contract Clauses

11.401 Fixed-price type contracts.
11.401–1 Clause for advertised and certain negotiated contracts.
11.401–2 Alternate clause for certain negotiated contracts.
11.402 Cost-reimbursement type contracts.
11.403 Foreign tax exemption clauses.
11.403–1 General.
11.403–2 Contract clauses.
11.404 Clause for use where foreign tax agreements do not apply.

AUTHORITY: §§ 11.000 to 11.402 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 11.000 Scope of part.

This part deals with Federal taxes imposed by the Internal Revenue Code upon certain supplies and services procured by any Department; exemptions from such Federal taxes; policy for obtaining exemption from State and local taxes; and contract clauses required or authorized for insertion in contracts. Except as otherwise indicated references are to the Internal Revenue Code of 1954 (26 U.S.C.). Subparts A and B of this part are only for general information of Government personnel. Reference should be made to the Internal Revenue Code and the applicable tax regulations, which may be amended from time to time, for guidance before taking action on any question involving taxes.

Subpart A—Federal Excise Taxes

§ 11.101 Retailers excise taxes.

§ 11.101–1 General.

Chapter 31 of the Internal Revenue Code imposes retailers excise taxes upon various types of articles, sold at retail. The tax is not imposed on sales for resale. The sale of taxable articles to the Government for use or consumption is a taxable retail sale. A lease of supplies is treated as a sale for the purpose of these taxes. In general, the tax attaches when title passes from the seller. The amount of tax is based on the sale price or the amount of rental payment. The sale price or rental payment for the purpose of computing the tax excludes:

(a) Whether or not separately stated, the retailers excise tax;

(b) If separately stated, any retail sales tax imposed by any State, Territory, or political subdivision thereof, or the District of Columbia, whether liability for such tax is imposed on the vendor or vendee; and

(c) All other service charges such as for transportation, delivery, insurance, and installation;

But includes any charges for packaging or packaging materials. If, after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also shall be adjusted by credit or refund. The retailer, in turn, is entitled to a refund or credit from the Internal Revenue Service for such tax adjustment.

§ 11.101–2 Jewelry and related items.

A tax of 10 percent of the sales price is imposed upon the following articles sold at retail: all articles commonly or commercially known as jewelry, whether real or imitation; certain specifically listed stones, whether real or synthetic; articles made of, ornamented, mounted, or fitted with precious metals or imitations thereof; watches, clocks, cases and movements therefor; gold, goldplated, silver, or sterling flatware or hollowware and silver-plate hollowware (which excludes silver-plated flatware); opera glasses, lorgnettes; and marine glasses, field glasses, and binoculars except those which, because of their size or weight, are ordinarily mounted on tripods or other bases. This tax does not apply to (a) articles used for religious purposes; (b) surgical and dental instruments; (c) frames or mountings for eyeglasses; (d) fountain pens, mechanical pencils, or smokers' pipes if the only parts of such articles which consist of precious metals are essential parts not used for ornamentation; (e) watches designed especially for the blind; (f) watches, clocks, cases and movements previously subjected to manufacturers tax or constituting a part of a nontaxable control or regulatory device; (g) or to buttons, insignia, and any other devices prescribed for use with the uniforms of the Armed Forces. Where the manufacturers excise tax has been imposed on a pen, mechanical pencil, or cigarette lighter, which is further processed so as to make it subject to the retailers excise tax on jewelry, the retailer, in computing the retailers excise tax due on the sale, is entitled to a credit or refund in the amount of the manufacturers excise tax paid on the article.

§ 11.101–3 Furs.

A tax of 10 percent of the sales price is imposed upon the following articles sold at retail: articles made of fur on the hide or pelt, and articles of which such fur is the component of chief value, i.e., its value is more than three times that of the next most valuable component material. The tax is not imposed upon the sale of raw fur. If the fur on the hide or pelt is supplied to a dresser or dyer of fur skins or a manufacturer or repairer of fur articles, who produces a taxable article for the use of the supplier of the fur, the transaction is deemed to be a sale at retail and is subject to the tax.

§ 11.101–4 Toilet preparations.

A tax of 10 percent of the sales price is imposed upon toilet preparations sold at retail and any other similar substance, article, or preparation by whatsoever name known which is used or applied, or intended to be used or applied for toilet purposes, but not including any article intended to be used or applied only in the care of babies, or to sales for use in barber shops and beauty parlors.

§ 11.101–5 Luggage and handbags.

A tax of 10 percent of the sales price is imposed upon certain specifically listed articles (including fittings or accessories sold therewith) sold at retail such as: luggage, handbags, cases, kits and similar items for use in carrying toilet articles or wearing apparel.

§ 11.101–6 Special fuels.

(a) *Diesel fuel.* A tax at the indicated rates is imposed upon diesel fuel, other than that taxable as gasoline under section 4081 of the Internal Revenue Code (see § 11.102–4), which is (*a*) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle, or (*b*) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid pursuant to (*a*) above, as follows:

(1) At 3 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle:

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway; or

(2) At 2 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle:

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 1 cent per gal-

lon, if fuel on which a tax of 2 cents was paid pursuant to (2) above, is used as fuel in a diesel-powered highway vehicle:

(i) Which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway.

No tax is imposed on diesel fuel sold for use or used as fuel in a nonhighway vehicle, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms.

(b) *Special motor fuels.* A tax at the rates indicated below is imposed upon benzol, benzene, naphtha, liquefied petroleum gas, or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel under paragraph (a) of this section, or as gasoline under section 4081 of the Internal Revenue Code (see § 11.102–4)), which is (*a*) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion thereof, or (*b*) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane, unless there was a taxable sale of such liquid pursuant to (*a*) above, as follows:

(1) At 3 cents per gallon, if such liquid is sold for use or is used as a fuel for a highway vehicle:

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway, or

(2) At 2 cents per gallon, if such liquid is sold for use or is used as a fuel for the propulsion of a motorboat or airplane, or a motor vehicle:

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 1 cent per gallon, if a liquid on which a tax of 2 cents was paid pursuant to (2) above, is used as fuel in a highway vehicle:

(i) Which, at the time of such use, is registered, or required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States is used on the highway.

(c) *Refunds and credits.* (1) A retailer, who has paid a tax on diesel fuel or special motor fuel, is entitled to a refund or credit of the tax paid, if such retailer has not included the tax in the sales price or otherwise collected the tax from the purchaser, has repaid the tax to the purchaser, or has the purchaser's written consent to take the refund or credit, as follows:

(i) A refund or credit of 3 cents or 2 cents per gallon, as appropriate, if a liquid upon which a tax of either 3 cents or 2 cents per gallon has been paid, is not used as fuel in a diesel-powered highway vehicle or to propel a motor vehicle, motorboat, or airplane;

(ii) A refund or credit of 1 cent per gallon, if diesel fuel, upon which a tax of 3 cents per gallon has been paid pursuant to paragraph (a)(1) of this section, is used as a fuel for a diesel-powered highway vehicle:

(*a*) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(*b*) Which, if owned by the United States, is not used on the highway; or

(iii) A refund of 1 cent per gallon, if special motor fuel, upon which a tax of 3 cents per gallon has been paid pursuant to paragraph (b)(1) of this section, is used to propel a motorboat or airplane, or motor vehicle:

(*a*) Which, at the time of such use is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(*b*) Which, if owned by the United States, is not used on the highway.

These refunds or credits shall be utilized, in accordance with Departmental procedures, by adjustment of the contract price whenever it is economically advantageous to do so.

(2) If the manufacturers excise tax on gasoline (see § 11.102–4) has been paid on any material used in the production of a special motor fuel taxable under paragraph (b) of this section, the manufacturer of the gasoline is entitled to a refund or credit of such tax, subject to the conditions similar to those stated in the opening lines of subparagraph (1) of this paragraph. The contract price for special motor fuels purchased by any Department shall not include an amount for manufacturers excise tax on gasoline used in the production of such special motor fuel.

§ 11.102 Manufacturers excise taxes.

§ 11.102–1 General.

Chapter 32 of the Internal Revenue Code imposes manufacturers excise taxes upon various types of supplies sold by a manufacturer, producer, or importer. In general, the tax attaches when title passes from the manufacturer. The amount of the tax is based on the amount of the sale price. A lease of supplies is treated as a sale for the purpose of these taxes, in which event the tax is measured by the rental payments until such payments equal the price or fair value of the article (but see § 11.102–12 with respect to lease of business machines by the Government). The sale price or rental payment excludes the tax itself and all service charges connected with the sale, such as transportation, delivery, insurance, or installation charges. However, charges for packaging materials are included. If, after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also should be adjusted. The manufacturer, in turn, is entitled to a refund or credit from the Internal Revenue Service for such tax adjustment. Articles subject to the retailers excise tax on jewelry (see § 11.101–2) are not subject to manufacturers excise taxes, except any clock or watch, or any case or movement for a clock or watch, sold as a part or accessory, or sold on or in connection with or with the sale of any article. Supplies of native Indian handicraft manufactured or produced by Indians on Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the United States Government in Alaska are not subject to manufacturers excise taxes.

§ 11.102–2 Motor vehicles.

A tax at the rates indicated below is imposed upon the following articles (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Chassis and bodies of trucks, buses, truck and bus trailers and semitrailers, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer—10 percent; except that this tax does not apply to equipment designed for off-the-road use, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms;

(b) Chassis and bodies of automobiles, and of trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—10 percent through June 30, 1960, and 7 percent thereafter; and

(c) Parts or accessories—when sold separately from an automobile, truck, or other item taxable as indicated in paragraphs (a) and (b) of this section—8 percent through June 30, 1960 and 5 percent thereafter. Parts or accessories are defined to include any article—

(1) The primary use of which is to improve, repair, replace or serve as a component part of a motor vehicle;

(2) Designed to be attached to or used in connection with a motor vehicle or to add to its utility or ornamentation; or

(3) The primary use of which is in connection with a motor vehicle whether or not essential to its operation or use.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, a taxable motor vehicle are treated as parts or accessories whether or not primarily adapted for such use. However, the term "parts or accessories" does not include tires, inner tubes, or automobile radio and television receivers. The tax on parts or accessories does not apply to any article sold for use (or for a single resale for use) as material in the manufacture of, or as a component part of any article whether or not such article is subject to a manufacturers excise tax. The contract price of supplies purchased by any Department shall not include an amount for the manufacturers excise tax on automotive parts or accessories purchased for use in the manufacture of any article.

§ 11.102–3 Tires and tubes.

(a) A tax at the rates indicated below is imposed on the following supplies, made wholly or in part of rubber, including synthetic and substitute rubber, sold by a manufacturer, producer, or importer:

(1) Tires of the type used on highway vehicles, which includes motor vehicles which are highway vehicles, and vehicles of the type used with motor vehicles which are highway vehicles—8 cents per pound;

(2) Other tires, which include pneumatic and solid tires, casings, hoops, strips, and bands of all kinds which are designed to fit the wheel of any type of vehicle that is capable of transporting a person or burden—5 cents per pound;

(3) Inner tubes, which include any type of air container for pneumatic tires—9 cents per pound on total weight, including air valves and stem; and

(4) Tread rubber, which includes any material commonly or commercially known as tread rubber or camelback of a type used in retreading or recapping tires—3 cents per pound. An exemption exists for the sale of tread rubber or camelback by a manufacturer to a purchaser for use by that purchaser other than for recapping or retreading tires of the type used on highway vehicles. In addition, if tread rubber, upon which the tax has been paid, is sold for use or is used other than for recapping or retreading tires of the type used on highway vehicles, the manufacturer is entitled to a refund or credit of the tax: *Provided*, That the credit under (b) below is not available. The contract price for supplies purchased by any Department will not include an amount for the manufacturers excise tax on tread rubber to the extent that this exemption or refund or credit is available to the manufacturer. In determining weight of taxable tires under subparagraphs (1) and (2) of this paragraph, metal rims or rim bases are excluded, but any other material or fastening device that forms a part of the tire is included. The tax imposed under subparagraph (1) and (2) of this paragraph, does not apply to tires which are not more than 20 inches in diameter, and not more than 1¾ inches in cross section, if such tires are of all-rubber construction without fabric or metal reinforcement, nor does it apply to tires of extruded tiring with an internal wire fastening agent.

(b) The exemption for sales for further manufacture does not apply to taxable tires and tubes (see § 11.203). However, if tax-paid tires and tubes normally sold in connection with the sale by a manufacturer of a taxable motor vehicle are sold therewith, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturers purchase price on the tires and tubes. The contract price for supplies purchased by any Department should not include an amount for manufacturers excise tax on tires and tubes to the extent that this credit is available to the manufacturer.

§ 11.102–4 Gasoline.

(a) A tax of 3 cents per gallon is imposed on gasoline sold by a producer or importer. Gasoline means all products commonly or commercially known as gasoline, including casinghead and natural gasoline, but excluding kerosene, gas oil, or fuel oil, and also excluding any product taxable as a special motor fuel under section 4041 of the Internal Revenue Code (see § 11.101–6). The tax does not apply to the sale of gasoline to a producer, which is defined to include a refiner, compounder, blender, or dealer who sells gasoline exclusively to producers of gasoline.

(b) The ultimate purchaser of gasoline is entitled to a refund of 1 cent per gallon for gasoline used otherwise than as fuel in a highway vehicle; for example, gasoline used in stationary engines, in cleaning tools, in motorboats, aircraft, fork lift trucks, bulldozers and earth movers. Refunds will also be made on gasoline used as fuel in a highway vehicle:

(1) Which, at the time of such use is not registered, nor required to be registered, for highway use under the laws of any State or foreign country; or

(2) Which, if owned by the United States is not used on the highway. In accordance with Departmental procedures, necessary data shall be compiled, to the extent economically advantageous, to support a direct application to the Internal Revenue Service for refund. Such application shall be in accord with pertinent requirements of the Internal Revenue Service.

§ 11.102–5 Lubricating oils.

(a) A tax at the indicated rates is imposed upon the following classes of lubricating oils sold, other than to another manufacturer or producer for resale, by a manufacturer or producer (but not upon oil sold by an importer):

(1) Cutting oils, which means oils sold for use in cutting and machining operations, including forging, drawings, rolling, shearing, punching, and stamping on metals—3 cents per gallon; and

(2) Other lubricating oils, which means all oils, regardless of origin, which are sold as lubricating oil or are suitable for use as a lubricant, not including products commonly known as grease—6 cents per gallon. Certain products, other than those commonly known as grease, are not considered to be lubricating oils, and accordingly are not subject to the tax. These include petrolatum, and fatty oils of vegetable, animal, fish, and marine origin which in their natural state are not sold as lubricating oils.

(b) An exemption is available for lubricating oils sold by a manufacturer directly to a purchaser who uses the oil for nonlubricating purposes. In applying this exemption, oils can be grouped into two classes:

(1) Oils which are exempted if the manufacturer obtains an exemption certificate from the purchaser in the form prescribed by the Treasury Regulations; and

(2) Oils which are exempted without an exemption certificate. Oils of the second class include crude neatsfoot oil; electrical transformer insulating oil; white oil; and lubricating oils which are packaged in sealed containers of one gallon or less, labeled and sold for nonlubricating purposes.

With the exception of oils which are packaged in sealed containers of one gallon or less, labeled and sold for nonlubricating purposes, oils of neither class may be sold tax-free to dealers for resale even though it is known that the oil will be used for nonlubricating purposes. If, however, oil upon which a tax has been paid is used for nonlubricating purposes, the manufacturer is entitled to a refund or credit, irrespective of whether the oil was sold directly to the consumer by the manufacturer or was sold through a dealer. A refund or credit is also allowed when lubricating oil, upon which the 6 cent per gallon tax has been paid, is used as a cutting oil taxable at 3 cents per gallon. When it is economically advantageous to do so, the exemption or refund or credit for oil sold for use or used for nonlubricating purposes, and the refund or credit for lubricating oil used as a cutting oil, shall be utilized in accordance with Departmental procedures by a tax exclusive purchase or by adjustment of the contract price.

§ 11.102–6 Household type equipment.

A tax at the rates indicated below is imposed upon the following supplies (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Household type refrigerators, which include units not exceeding 14 cubic feet net storage space for single or multiple cabinet installations having, or designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; household type units for the quick freezing or frozen storage of foods operated by electricity, gas, kerosene, or gasoline—5 percent.

(b) Self-contained air-conditioning units—10 percent.

(c) Electric, gas and oil appliances—5 percent.

(d) Electric light bulbs and tubes, not subject to any other manufacturers tax—10 percent.

§ 11.102–7 Radio and television receiving sets, phonographs and records.

A tax of 10 percent is imposed upon the following articles (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Radio and television receiving sets, automobile radio and television receiving sets, phonographs, and combinations of any of the foregoing, unless such articles are communication, detection or navigation equipment of the type used in commercial, military or marine installations. The contract price of any of these articles to be used for communication, detection or navigational purposes delivered to any Department shall not include any amount for the manufacturers excise tax, irrespective of the date of the contract, if the contract price is subject to adjustment for changes in the contractor's Federal excise tax burden. The exemption of sales for further manufacture does not apply to automobile radio and television receivers (see § 11.203); however, if tax-paid receivers are sold in connection with the sale by a manufacturer of a taxable motor vehicle, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the

manufacturer's purchase price on the receiver; and

(b) Radio and television components, which means chassis, cabinets, tubes, speakers, amplifiers, power supply units, antennae of the built-in-type, phonograph mechanism and phonograph record players unless such articles are suitable for use only on or in connection with, or as a component part of, any communication, detection or navigation equipment. Exemption from the tax is available as to taxable components—which are sold for use, or are actually used as material in the manufacture of, or as a component part of, any article, whether or not such article is subject to a manufacturer's excise tax. The contract price for articles purchased by any Department shall not include an amount for the manufacturers excise tax on radio and television components if this exemption is available to the manufacturer.

§ 11.102–8 Musical instruments.

A tax of 10 percent is imposed upon musical instruments sold by a manufacturer, producer, or importer. The tax does not apply to musical instruments sold to a religious institution for exclusively religious purposes.

§ 11.102–9 Sporting goods.

A tax of 10 percent is imposed upon certain types of sporting equipment (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer.

§ 11.102–10 Photographic equipment.

A tax at the rates indicated below is imposed upon the following articles (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Cameras, not including X-ray cameras or cameras weighing more than four pounds exclusive of lens and accessories—10 percent;

(b) Camera lenses, not including still camera lenses having a focal length of more than 120 millimeters or motion picture lenses having a focal length of more than 30 millimeters—10 percent. Exemption from the tax is available as to camera lenses which are sold for use or are actually used as material in the manufacture of, or as a component part of any article, whether or not such article is subject to a manufacturers excise tax. The contract price for supplies purchased by any Military Department shall not include an amount for the manufacturers excise tax on camera lenses if this exemption is available to the manufacturer;

(c) Unexposed photographic film in rolls, including motion picture film—10 percent. This tax does not apply to X-ray film; unperforated microfilm; film more than 150 feet in length; or film more than 25 feet in length and more than 30 millimeters in width. A person who acquires unexposed film in a form not subject to tax and thereafter sells such unexposed film in form and dimensions subject to tax is treated as a manufacturer of the film so sold by him. The manufacturer of unexposed motion picture films is entitled to a credit or refund (but not an exemption) for film used or resold for use in making newsreel motion picture films covering current news events for immediate release for public exhibition; and

(d) Electric motion or still picture projectors of the household type—5 percent.

§ 11.102–11 Firearms, shells, and cartridges.

Although a tax is imposed upon pistols and revolvers at the rate of 10 percent, and other firearms, shells, and cartridges at the rate of 11 percent, sold by a manufacturer, producer, or importer, it does not attach to the sale or transfer of such articles purchased with funds appropriated for the Military Departments. In addition to this manufacturers excise tax, Chapter 53A of the Internal Revenue Code imposes a transfer tax and a tax on the manufacture of machine guns and certain other firearms, except that transfer to, or manufacture for, the United States is specifically exempted from these taxes.

§ 11.102–12 Business machines.

A tax of 10 percent is imposed upon a wide variety of business machines (including parts or accessories sold therewith), not including cash registers of the type used in registering over-the-counter retail sales or stencil cutting machines of the type used in shipping departments in making cutout stencils for marking freight shipments, sold by a manufacturer, producer, or importer. However, the Secretary of the Treasury has authorized an exemption effective 1 January 1959 on any payment made under leases of business machines directly to the United States for its exclusive use: *Provided*, That there is included in the lease agreement a statement to the effect that this "agreement is a lease of business machines directly to the United States for its exclusive use and qualifies for exemption under the order of the Secretary of the Treasury dated April 20, 1959, authorized by section 4293 of the Internal Revenue Code of 1954." To qualify for the exemption the lease agreement must be entered into by an officer or employee of the United States who is authorized to execute contracts for and on behalf of the United States.

§ 11.102–13 Pens, mechanical pencils, and lighters.

A tax of 10 percent is imposed upon fountain and ball point pens, mechanical pencils, and mechanical lighters for cigarettes, cigars, and pipes, sold by a manufacturer, producer, or importer; except that this tax does not apply if the article also is subject to the retailers excise tax on jewelry imposed by section 4001 of the Internal Revenue Code. If the manufacturers excise tax has been paid, but the article is further processed so as to subject it to the retailers excise tax, the retailer (but not the manufacturer who originally paid the tax) is entitled to a credit to the extent of the manufacturers excise tax paid on the article (see § 11.101–2).

§ 11.102–14 Matches.

A tax of 2 cents per 1,000, not to exceed 10 percent of the price for which sold, is imposed upon matches sold by a manufacturer, producer, or importer, except that the rate is 5½ cents per 1,000 for fancy wooden matches or matches having a stained, dyed, or colored stick or stem, whether packed in boxes or in bulk.

§ 11.103 Excise taxes on facilities and services.

Chapter 33 of the Internal Revenue Code imposes excise taxes on certain facilities and service, including admissions, dues, communications, transportation and safe deposit boxes. In general, the tax is based on the amount paid for the service, and is imposed upon the person paying for the service.

§ 11.104 Use tax on highway motor vehicles.

(a) A tax of $1.50 a year for each 1,000 pounds of taxable gross weight, or fraction thereof, is imposed upon the use of any highway motor vehicle which, together with semitrailers and trailers customarily used in connection with a vehicle of this type, has a taxable gross weight in excess of 26,000 pounds. The full tax is due for any vehicle which is used on the public highways of the United States at any time during the month of July, irrespective whether the vehicle is later removed from highway use. If the first use of a taxable vehicle occurs after the end of July, the tax is computed proportionately from the first day of the month in which the vehicle is first used, through the end of the following June. For example, if a vehicle is placed in use during August, 11/12 of the total tax is payable. No tax applies to vehicles, even though of a highway type, which are never used on the public highways during the taxable year.

(b) Taxable gross weight is the sum of:

(1) The actual unloaded weight of the vehicle and any semitrailers and trailers customarily used with such a vehicle, all units fully equipped for service; and

(2) The weight of the maximum load customarily carried by all units of a vehicle of this type.

(c) The tax is payable by the person in whose name the vehicle is, or is required to be, registered under the law of any State, or if owned by the United States, by the agency or instrumentality of the United States operating such vehicle. If a tax has been paid for a particular vehicle, no further liability can be incurred in the same taxable year, even though there is a change of ownership of the vehicle.

(d) The Secretary of the Treasury has authorized an exemption for vehicles used by the United States whether or not they are Government owned.

Subpart B—Exemptions From Federal Excise Taxes

§ 11.201 Retailers excise taxes.

No retailers excise tax is imposed on the sale of any article:

(a) For the exclusive use of any State, Territory of the United States, of any political subdivision of the foregoing, or the District of Columbia, or

(b) For export, or for shipment to a possession of the United States, and in due course so exported or shipped. This exemption shall be utilized, in accordance with Departmental procedures, by purchasing on a tax-exclusive basis and furnishing the required proof of exportation or shipment to a possession (which includes the Panama Canal Zone, the Virgin Islands, Guam, Puerto Rico, American Samoa, Wake and the Midway Islands) if:

(1) The purchase is substantial; and

(2) Exportation or shipment to a possession is intended to follow not more than 6 months after title passes to the Government.

(c) Upon sale to retailers for resale. Sales by the United States, or any agency or instrumentality thereof, are not exempt unless specifically made exempt by statute. However, the tax on special motor fuels imposed by section 4041(b) of the Internal Revenue Code (see § 11.101–6) does not apply to sales of supplies for use as sea stores, fuel supplies, ships' stores, or legitimate equipment necessary for the navigation, propulsion, and upkeep of vessels of war or military aircraft, including guided missiles and pilotless aircraft, owned or chartered by the United States. If supplies upon which a tax has been paid are sold for any of the exempt uses enumerated above, a credit or refund of the tax paid is due. When it is economically advantageous to do so, this exemption, credit, or refund shall be utilized, by purchase on a tax-exclusive basis and execution of the required exemption certificate, in accordance with Departmental procedures.

§ 11.202 Manufacturers excise taxes.

No manufacturers excise tax is imposed on the sale of any article:

(a) For use by the purchaser for further manufacture or for resale to a second purchaser for use by such second purchaser in further manufacture. (An article shall be treated as sold for use in further manufacture if sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another taxable article to be manufactured or produced. In the case of automobile parts and accessories, radio or television components, or camera lens, it is not necessary that the produced article be a taxable article. This exemption does not apply to tires, inner tubes, or automobile radio or television receiving sets.);

(b) For export, or for resale to a second purchaser for export. This exemption shall be obtained only when the purchase is substantial and exportation or shipment to a possession is intended to follow not more than 6 months after title passes to the Government. (This exemption is limited to sales by a manufacturer, and is not applicable to sales for export or shipment to a possession from the stock of a dealer who was not the manufacturer, producer, or importer.);

(c) For use by the purchaser as supplies for vessels or aircraft, that is, on sales of supplies for use as sea stores, fuel supplies, ships' stores, or legitimate equipment necessary for the navigation, propulsion, or upkeep of vessels of war or military aircraft, including guided missiles and pilotless aircraft, owned or chartered by the United States. (If supplies upon which a tax has been paid are sold for any of the exempt uses enumerated above, the manufacturer is entitled to a credit or refund of the tax paid, irrespective of whether the supplies are sold directly to the consumer by the manufacturer or are sold through a dealer. When it is economically advantageous to do so, this exemption, credit, or refund shall be utilized, by purchase on a tax-exclusive basis and execution of the required exemption certificate, in accordance with Departmental procedures.);

(d) Or the Exclusive use of a State or local government; or

(e) To a nonprofit educational organization.

§ 11.203 Supplies and services for the exclusive use of the United States.

By virtue of action taken by the Secretary of the Treasury, pursuant to section 4293 of the Internal Revenue Code, exemption is available, and shall be obtained, to the extent indicated, from the following Federal excise taxes:

(a) Tax on communication services and facilities furnished directly to the United States (as distinguished from being furnished to a Government contractor) and paid for directly by the Government (Such exemption is obtained without any exemption certificate.);

(b) Tax on transportation of persons for transportation furnished the United States upon a Government transportation request (Such exemption is obtainable by use of such transportation request.); and

(c) Tax on rental of business machines (see § 11.102–12).

§ 11.204 Exemptions from other Federal taxes.

Any department that purchases supplies or services subject to a Federal excise tax, other than those outlined in Subpart A of this part, shall prescribe rules to govern the utilization of any exemptions from such tax.

§ 11.205 Tax exemption forms.

Standard Government exemption forms acceptable to the Internal Revenue Service shall be used in accordance with Departmental procedures (see §16.804 of this subchapter).

Subpart C—State and Local Taxes

§ 11.301 Applicability.

As a general rule, Government purchases are exempt from state and local taxes. This exemption shall be made use of to the fullest extent available, by means of purchase on a tax-exclusive basis and execution of an approved tax exemption certificate. Whenever there is any doubt as to the availability of such exemption, the matter shall be referred to the appropriate office of the Department concerned.

§ 11.302 Tax exemption forms.

Standard Form 1094 (U.S. Government Tax Exemption Certificate) Revised, shall be used to the extent prescribed in § 16.804 of this subchapter.

Subpart D—Contract Clauses

§ 11.401 Fixed-price type contracts.

§ 11.401–1 Clause for advertised and certain negotiated contracts.

Except in contracts to be performed entirely outside the United States, its possessions, and Puerto Rico, the following clause shall be inserted in (a) all formally advertised contracts (other than construction contracts not in excess of $10,000), and (b) negotiated fixed-price type contracts in excess of $10,000 where the contracting officer is satisfied that the contract price, by virtue of competition or otherwise, excludes contingencies for State and local taxes. In negotiated fixed-price type contracts in excess of $2,500 but not in excess of $10,000, the clause may, in the discretion of the contracting officer, be inserted.

FEDERAL, STATE, AND LOCAL TAXES (JAN. 1958)

(a) As used throughout this clause, the term "tax inclusive date" means the date of negotiated contracts and the date set for the opening of bids for contracts entered into through formal advertising. As to additional supplies or services procured by modification to this contract, the term "tax inclusive date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes all Federal, State, and local taxes and duties in effect and applicable to this contract on the tax inclusive date, except taxes (other than Federal transportation taxes) from which the Government, the Contractor, or the transactions or property covered by this contract are then exempt. Unless specifically excluded, duties are included in the contract price, and, if freight is included in the contract price, Federal transportation taxes are likewise included.

(c) (1) If the Contractor is required to pay or bear the burden—

(i) Of any tax or duty, which either was not to be included in the contract price pursuant to the requirements of paragraph (b), or was specifically excluded from the contract price by a provision of this contract, or

(ii) Of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price;

or of any interest or penalty thereon, the contract price shall be correspondingly increased: *Provided*, That the Contractor warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise: *And provided further*, That liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or its failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (b), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be correspondingly decreased if the Contractor, through its fault or negligence or its failure to follow instructions of the Contracting Officer, is required to pay or bear the burden,

or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (c) shall set forth the amount thereof as a separate item and shall identify the particular tax involved.

(4) Nothing in this paragraph (c) shall be applicable to social security taxes; net income taxes; excess profit taxes; capital stock taxes; Federal transportation taxes, except changes in the rate thereof, including repeal, pertaining to shipments from the Contractor to the Government; unemployment compensation taxes; or any State and local taxes, except those levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract, including gross income taxes, gross receipts taxes, sales and use taxes, excise taxes, or franchise or occupation taxes measured by sales or receipts from sales.

(5) No adjustment of less than $100 shall be made in the contract price pursuant to this paragraph.

(d) Unless there does not exist any reasonable basis to sustain an exemption, the Government agrees upon request of the Contractor, without further liability except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from (i) any Federal tax, which the Contractor warrants in writing was excluded from the contract price, or (ii) any State or local tax: *Provided*, That evidence appropriate to establish exemption from duties will be furnished, and Government bills of lading will be issued, only at the discretion of the Contracting Officer. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price.

(e) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes and duties that reasonably may result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorney's fees.

of property, title to which is in the Government.

(5) No adjustment of less than $100 is required to be made in the contract price pursuant to this paragraph (d).

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.

(f) (1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may be expected to result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorneys' fees.

§ 11.402 Cost-reimbursement type contracts.

No specific tax clause is required in any cost-reimbursement type contract. In all such contracts the problem of Federal, State, and local taxes (which presents solely a question of allowability of costs in connection with the performance of cost-reimbursement type contracts) is covered in the contract clause set forth in § 7.203–4 of this subchapter and is treated in Part 15 of this subchapter.

§ 11.403 Foreign tax exemption clauses.

§ 11.403–1 General.

(a) *Use of clauses.* Tax agreements have been made with Belgium, Denmark, France, Federal Republic of Germany (including West Berlin), Greece, Iceland, Italy, Japan, Luxembourg, the Netherlands, Norway, the Philippines, Portugal, Spain, Turkey, the United Kingdom, and Yugoslavia, under which the United States expenditures for the common defense are exempt from certain specified taxes of the countries in which these expenditures are made. The clauses in § 11.403–2 shall be included in all contracts to be performed by contractors or by foreign governments in those foreign countries with which such tax agreements have been made. However, such clauses need not be included in contracts under $1,000 if the contracting officer determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained; provided, that such clauses shall be included in all contracts in support of NATO infrastructure programs involving the expenditure of funds under section 104 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1814).

(b) *Exclusion of specific taxes from the contract price.* The contracting officer, at the time of negotiation of a contract that is to contain one of the clauses in § 11.403–2, shall obtain and make a part of the contract file detailed information concerning the specific taxes and amounts, normally applicable to the transaction, from which the Government of the United States is exempt under the provisions of applicable tax agreements.

§ 11.403–2 Contract clauses.

In accordance with § 11.403–1 and except as provided therein, the appropriate one of the clauses in paragraphs (a) through (d) of this section shall be included in each contract to which a tax agreement is relevant.

(a) *Fixed-price type contracts with foreign contractors other than foreign governments.*

TAXES (JULY 1960)

(a) The contract price, including the prices in any subcontracts hereunder, does not include any tax or duty which the Government of the United States and the Government of _____ have agreed shall not be applicable to expenditures made by the United States in _____, or any tax or duty from which the Contractor, or any subcontractor hereunder, is exempt under the laws of _____. If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(b) If for any reason after the contract date, the Contractor is relieved in whole or in part from the payment or the burden of any

§ 11.401–2 Alternate clause for certain negotiated contracts.

(a) *Use of clause.* (1) Except in contracts to be performed entirely outside the United States, its possessions, and Puerto Rico, the clause set forth in paragraph (b) of this section shall be inserted in all negotiated fixed-price type contracts in excess of $10,000 where the contracting officer is not satisfied that the contract price, by virtue of competition or otherwise, excludes contingencies for State and local taxes. Guidelines for using the clause are set forth below.

(2) Subparagraphs (d) (1) and (d) (2) of the clause, respectively, provide for upward and downward escalation for certain taxes. Subparagraph (d) (4) prohibits upward and downward escalation for social security, income, franchise, excess profit, capital stock, unemployment compensation and property taxes, except:

(i) Income and franchise taxes levied on or measured by (*a*) sales or receipts from sales, or (*b*) the contractor's possession of, interest in, or use of Government-owned property; and

(ii) Property taxes allocable to the contract which are assessed on completed supplies covered by the contract, or on the contractor's possession of, interest in, or use of property title to which is in the Government.

(3) Paragraph (e) of the clause provides for the furnishing by the Government of evidence of exemption from taxes which the contractor warrants were excluded from the contract price. Evidence of exemption shall be issued only where there is a reasonable basis therefor.

(4) Paragraph (f) (1) of the clause obligates the contractor to notify the contracting officer of any tax matters (e.g., unexpected tax assessments or new legislation) which reasonably may be expected to result in an increase or decrease in the contract price. Paragraph (f) (2) obligates the contractor to follow instructions of the contracting officer when an adjustment in the contract price may be required, and provides for adjustment of the contract price to cover the costs of such action.

(5) Paragraph (b) of the clause furnishes criteria for determining the taxes included in the contract price. However, the contract may provide for the exclusion of a specific tax from the contract price. Where the contracting officer has doubt as to the applicability or allocability of any tax, language appropriate to the particular circumstances should be included in the contract after obtaining any approval required by the Department concerned. Special consideration should be accorded taxes assessed on the contractor's possession of, interest in, or use of Government-owned real and personal property. In accordance with Departmental procedures, the following provision may be inserted in any contract under which the contractor has possession of property to which the Government has title on the tax assessment date, pursuant to progress payment clauses or otherwise:

All property taxes assessed on the Contractor's possession of, interest in, or use of property title to which is in the Government are excluded from the contract price.

(6) Where Government property is furnished under a facilities contract, the contracting officer shall review the facilities contract when negotiating a subsequent supply contract to assure that the contractor is not reimbursed twice for the same taxes.

(b) *Clause.*

FEDERAL, STATE, AND LOCAL TAXES (JULY 1960)

(a) As used throughout this clause, the term "contract date" means the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes, to the extent allocable to this contract, all Federal, State, and local taxes which, on the contract date:

(i) by Constitution, statute, or ordinance, are applicable to this contract, or to the transactions covered by this contract, or to property or interests in property; or

(ii) pursuant to written ruling or regulation, the authority charged with administering any such tax is assessing or applying to, and is not granting or honoring an exemption for, a contractor under this kind of contract, or the transactions covered by this contract, or property or interests in property.

(c) Except as may be otherwise provided in this contract, duties in effect on the contract date are included in the contract price, to the extent allocable to this contract.

(d) (1) If the Contractor is required to pay or bear the burden—

(i) of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraphs (b) and (c), or of a tax or duty specifically excluded from the contract price by a provision of this contract; or

(ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) of any interest or penalty on any tax or duty referred to in (i) or (ii) above; the contract price shall be increased by the amount of such tax, duty, interest, or penalty allocable to this contract; provided, that the Contractor warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise; and provided further, that liability for such tax, duty, rate increase, interest or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which:

(i) was to be included in the contract price pursuant to the requirements of paragraphs (b) and (c);

(ii) was included in the contract price; or

(iii) was the basis of an increase in the contract price; the contract price shall be decreased by the amount of such relief, refund, or drawback allocable to this contract, or the allocable amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) This paragraph (d) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government; excess profits taxes; capital stock taxes; unemployment compensation taxes; or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use

TAXES (JULY 1960)

Any tax or duty from which the United States Government is exempt by agreement with the Government of _____, or from which the Contractor or any subcontractor hereunder is exempt under the laws of _____, shall not constitute an allowable cost under this contract.

(d) *Cost-reimbursement type contracts with foreign governments.*

TAXES (JULY 1960)

Any tax or duty from which the United States Government is exempt by agreement with the Government of _____, or from which any subcontractor hereunder is exempt under the laws of _____, shall not constitute an allowable cost under this contract.

§ 11.404 Clause for use where foreign tax agreements do not apply.

The following clause may be used in lieu of the clauses in § 11.401 where contract performance will be entirely in a foreign country with which the United States does have a tax agreement.

TAXES (JULY 1960)

The contract price includes any and all applicable taxes.

PART 12—LABOR

Sec.
12.000 Scope of part.

Subpart A—Basic Labor Policies

12.101 Labor relations.
12.102 Overtime, extra-pay shift, and multi-shift work.
12.102–1 Definitions.
12.102–2 Policy.
12.102–3 Procedures.
12.102–4 Approvals.
12.102–5 Exceptions.
12.102–6 Construction contracts.
12.103 Federal and State labor requirements.
12.104 Meeting manpower requirements.

Subpart B—Convict Labor

12.201 Basic requirement.
12.202 Applicability.
12.203 Contract clause.

Subpart C—Eight-Hour Law of 1912 (Other Than Construction Contracts)

12.300 Scope of Subpart.
12.301 Statutory requirement.
12.302 Applicability.
12.303 Contract clauses.
12.303–1 Clause for general use.
12.303–2 Clause for contracts with a State or political subdivision.

Subpart D—Labor Standards in Construction Contracts

12.400 Scope of subpart.
12.401 Statutes and regulations.
12.402 Applicability.
12.403 Contract clauses.
12.403–1 Clauses for general use.
12.403–2 Contracts for $2,000 or less.
12.403–3 Overseas contracts.
12.403–4 Contracts with a State or political subdivision.
12.404 Administration and enforcement.
12.404–1 General.
12.404–2 Wage determinations.
12.404–3 Additional classifications.
12.404–4 Apprentices.
12.404–5 Subcontracts.
12.404–6 Payrolls and statements.
12.404–7 Investigations.
12.404–8 Reports of violations.
12.404–9 Suspensions and deductions of contract payments.
12.404–10 Restitution.
12.404–11 Contract terminations.
12.404–12 Cooperation with Department of Labor.

Subpart E—[Reserved]

Subpart F—Walsh-Healey Public Contracts Act

12.601 Statutory requirement.
12.602 Applicability.
12.602–1 General.
12.602–2 Department of Labor regulations and interpretations.
12.603 Responsibilities of contracting officers.
12.604 Contract clause.

Subpart G—Fair Labor Standards Act of 1938

12.701 Basic statute.
12.702 Suits against Government contractors.
12.703 Rulings on applicability or interpretation.

Subpart H—Nondiscrimination in Employment

12.801 Policy.
12.802 Basic requirement.
12.803 Applicability.
12.804 Special requirements or emergencies.
12.805 Interpretations.
12.806 Administration.
12.806–1 General.
12.806–2 Educational responsibility.
12.806–3 Posting of notices.
12.806–4 Compliance reviews.
12.806–5 Complaints.
12.806–6 Incomplete complaints.
12.806–7 Processing of complaints.
12.806–8 Reporting channels.
12.807 Contact with the President's Committee.

Subpart I—Employment Restrictions for Security Purposes

12.901 Restrictions on hiring of aliens and other individuals.
12.902 Responsibilities of contractors to employees.
12.903 Contracts classified "Atomic Energy Restricted."

AUTHORITY: §§ 12.000 to 12.903 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 12.000 Scope of part.

This part (a) deals with general policies regarding labor, so far as they relate to procurement, (b) sets forth certain pertinent labor laws and requirements, indicating in connection with each its applicability and any procedures thereunder, and (c) prescribes the contract clauses with respect to each labor law or requirement.

Subpart A—Basic Labor Policies

§ 12.101 Labor relations.

Each Department shall maintain and encourage the best possible relations with industry and labor in order that the Government may procure needed supplies and services without delay. All problems arising out of the labor relations of private contractors, and all communications with labor organizations or Federal agencies relative thereto, shall be handled in accordance with procedures prescribed by each respective Department and consistently with the following general policy:

(a) The Departments shall exchange information with respect to labor matters for the purpose of maintaining a uniform labor policy throughout the Department of Defense.

(b) With respect to labor relations matters in general, each Department shall not take any independent action, the result of which would have the effect of establishing major policy, unless each such action falls within an established policy of the Department of Defense, or unless prior approval of the Office of the Assistant Secretary of Defense (Manpower and Personnel) has been obtained. Each Department must determine for itself what actions involve major policy. Recommendations for plant seizure or for injunctive action against labor or management would be examples of actions establishing major policy.

(c) Where any labor dispute significantly affects, or so threatens to affect, important procurement, the Department concerned shall notify the Office of the Assistant Secretary of Defense (Manpower, Personnel, and Reserve) and any other interested Department of all information relevant thereto, in accordance with Department of Defense Directive Number 1135.3, dated 8 January 1953, Subject: Participation in Industrial Relations Matters Affecting Procurement.

(d) Each Department shall remain impartial in, and shall refrain from taking a position on the merits of, a dispute between labor and private management. No Department shall undertake the conciliation, mediation, or arbitration of a labor dispute.

(e) Each Department shall take other action in connection with labor relations problems which is consistent with its procurement responsibilities, as for example:

(1) Giving notice of the existence of a labor dispute, which affects, or threatens to affect, procurement of supplies or services, to the Government agency which has responsibility for conciliation, mediation, arbitration, or other action with respect thereto.

(2) Advising the Government agency, responsible for action with respect to labor disputes, or the parties to a labor dispute, of factual information pertaining to procurement of the supplies or services involved, to the extent consistent with security regulations.

(3) Seeking to obtain such voluntary agreement between management and labor as will permit, notwithstanding the general continuance of the dispute, uninterrupted procurement of military supplies and services, provided such activity does not involve the Department in the merits of a labor difference or dispute.

§ 12.102 Overtime, extra-pay shift, and multi-shift work.

§ 12.102–1 Definitions.

As used throughout this section, the following terms shall have the meanings set forth below:

(a) "Normal work week" and "normal work day" mean, generally, a work week of 40 hours and a work day of 8 hours, respectively: *Provided*, That, in any area outside the United States, its Territories, its possessions, and Puerto Rico, a work week longer than 40 hours, or a work day longer than 8 hours will be considered normal (1) if such work week or work day does not exceed that which is normal for such area, as determined by local custom, tradition, or law, and (2) if hours worked in excess of 40 in such work week, or 8 in such work day, are not compensated at a premium rate of pay.

(b) "Overtime" means time worked by a contractor's employee in excess of the employee's normal work week or normal work day.

(c) "Shift premium" means the difference between the compensation paid to an employee at the contractor's regular rate of pay for the base shift and that paid at the regular rate of pay for extra-pay-shift work.

(d) "Overtime premium" means the difference between the compensation paid to an employee at the contractor's regular rate of pay for the shift involved and that paid for hours worked overtime.

§ 12.102–2 Policy.

It is the policy of the Department of Defense that contracts will be performed, so far as practicable, without the use of overtime, extra-pay shifts, or multi-shifts, and, in particular, without the use of overtime as a regular employment practice. Overtime, extra-pay shifts, and multi-shifts, when required, shall, to the extent practicable, be limited to, and be the minimum needed for, the accomplishment of specific work.

§ 12.102–3 Procedures.

(a) Except as provided in § 12.102–4, invitations for bids and requests for proposals shall not specify delivery or performance schedules which may be reasonably anticipated to necessitate overtime.

(b) In the negotiation of contracts in excess of $10,000, the contracting officer, consistent with the nature and size of the procurement, shall use his best efforts (1) to ascertain the extent to which proposals and quotations are based on the payment of overtime premiums and shift premiums, and (2) to negotiate contract prices or estimated costs which are not based on the payment of overtime premiums or shift premiums, taking into consideration the practicability of procurement from other sources of all or a part of the requirement.

(c) Excepting (1) firm fixed-price contracts, (2) fixed-price contracts with escalation not providing for labor escalation, and (3) fixed-price contracts providing for price redetermination prospectively only, all contracts in excess of $10,000 shall contain the following clause:

PAYMENT FOR OVERTIME AND SHIFT PREMIUMS (MAY 1960)

The contract price shall not include any amount on account of overtime premiums or shift premiums, except to the extent that they either (i) have been approved in writing on behalf of the Government or (ii) are paid for work—

(A) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(B) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby, plant protection, operation of utilities, or accounting;

(C) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(D) Which will result in lower overall cost to the Government. In cost-reimbursement type contracts, the words "Allowable cost" should be substituted for "The contract price" at the start of the foregoing clause, and the foregoing clause shall be designated (a) and the following subparagraph (b) may be added:

(b) The cost of overtime premiums or shift premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this contract.

(d) Overtime for which overtime premiums will be at Government expense shall not be approved under a contract where the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(e) Where overtime premiums or shift premiums are being paid in connection with the performance of Government contracts, the continued need therefor shall be subject to periodic review, in accordance with Departmental procedures.

(f) Where two or more military contracting activities have concurrent contracts at a single facility, and the approval of payments of overtime premiums or shift premiums by one such activity is likely to affect the performance of, or payments in connection with, contracts of another such activity, the activities concerned will agree as to which will represent them in (1) determining whether such payment shall be approved, pursuant to § 12.102–4, and (2) scheduling of periodic reviews. Decisions of such representative shall be binding upon all contracting activities concerned. Ordinarily, in the absence of evidence to the contrary, a contracting activity may rely on the contractor's statement that such approval will not affect the performance of, or payments in connection with, any contract of another activity. If the contracting activities do not agree within a reasonable time on which one will represent them, the Secretary concerned (or, in the case where two or more military departments are involved, the Assistant Secretary of Defense (Supply and Logistics)) shall be requested to appoint the representative.

§ 12.102–4 Approvals.

(a) Overtime premiums and shift premiums at Government expense may be approved by the Secretary concerned, or his designee, when any such official determines in writing that such approval:

(1) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential military objectives;

(2) Is necessary to make up for delays beyond the control and without the fault or negligence of the contractor; or

(3) Is necessary to eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way.

(b) The designee referred to in paragraph (a) of this section may be one or more officers or civilian officials designated personally by a Secretary for the purpose of approving overtime premiums and shift premiums at Government expense.

(c) Such approvals shall ordinarily be prospective, but may be retroactive where justified by the circumstances.

(d) Such approvals may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable.

§ 12.102–5 Exceptions.

Section 12.102–4 does not apply to overtime premiums or shift premiums which are paid for work:

(a) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, or breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) Which will result in lower over-all cost to the Government.

However, the cost of such overtime premiums or shift premiums may be allowed, or considered in pricing (on the same basis as other indirect costs) only to the extent the amount thereof is reasonable and properly allocable to the work involved.

§ 12.102–6 Construction contracts.

In addition to the foregoing requirements of § 12.102, no expediting action involving additional costs under a construction contract shall be taken without the prior approval of the Assistant Secretary of Defense (Properties and Installations), pursuant to Public Law 85–170 or any substantially identical law.

§ 12.103 Federal and State labor requirements.

It shall be the policy of each Department to cooperate and to require Contractors to cooperate, to the fullest extent possible, with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor.

§ 12.104 Meeting manpower requirements.

It shall be the policy of each Department to cooperate with and to encourage contractors to utilize, to the fullest extent practicable, the United States Employment Service (USES) and its affiliated Local State Employment Service Offices in matters pertaining to meeting contractors' manpower (labor supply) requirements, including the recruitment of workers in all occupations and skills both from local labor market areas and through the Federal-State manpower clearance system to staff new or expanding plant facilities. Local State Employment Service Offices are operated in every State, in the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors who need and desire it, cooperation with the Local State Employment Service Offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

Subpart B—Convict Labor

§ 12.201 Basic requirement.

Pursuant to the policy set forth in the Act of February 23, 1887 (18 U.S. Code 436), and in accordance with the requirements of Executive Order No. 325A

of May 18, 1905, all contracts entered into by any Department involving the employment of labor within the United States, shall, unless otherwise provided by law, contain a clause prohibiting the employment of persons, undergoing sentences of imprisonment at hard labor imposed by State or municipal criminal courts.

§ 12.202 Applicability.

The requirement set forth in § 12.201 applies, except as stated below, to all contracts involving the employment of labor within the United States. The requirement does not prohibit the employment of persons on parole or probation, or of persons who have been pardoned or who have served their terms. Furthermore, the requirement does not apply to the following kinds of contracts:

(a) Any contracts subject to the provisions of the Walsh-Healey Public Contracts Act, (see Subpart F of this part), which contains its own requirement that "no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract";

(b) Any contract (1) for the purchase of supplies or services from Federal Prison Industries, Inc., or (2) for the purchase from any State prison of finished supplies which may be secured in the open market or from existing stocks as distinguished from supplies requiring special fabrication.

§ 12.203 Contract clause.

The contract clause required by this subpart shall be as follows:

CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

Subpart C—Eight-Hour Law of 1912 (Other Than Construction Contracts)

§ 12.300 Scope of subpart.

This subpart deals with the requirements of the Eight-Hour Law of 1912, as amended (40 U.S.C. 324–326), applicable to contracts other than construction contracts as defined and covered in Subpart D of this part.

§ 12.301 Statutory requirement.

In accordance with the requirement of the Eight-Hour Law of 1912, as amended (40 U.S.C. 324–326), certain contracts entered into by any Department shall contain a clause to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day upon such work, unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day at not less than one and one-half times the basic rate of pay.

§ 12.302 Applicability.

The requirement set forth in § 12.301 applies, except as stated in paragraphs (a) to (e) of this section, to all contracts which may require or involve the employment of laborers or mechanics either by a contractor or by any subcontractor. The requirement does not apply to the following kinds of contracts:

(a) Contracts (or portions thereof) to be performed in a foreign country over which the United States has no direct legislative control, to the extent that such contracts (or portions thereof) may require or involve the employment of laborers or mechanics there;

(b) Contracts with a State or political subdivision thereof (although the requirement does apply, and the contract must so provide, to a subcontract thereunder with a private person or firm);

(c) Contracts (or portions thereof) for supplies in connection with which any required services are merely incidental to the sale and do not require substantial employment of laborers or mechanics;

(d) Contracts (or portions thereof) for materials or articles (other than armor or armor plate) usually bought in the open market (although the requirement does apply, and the contract must so provide, with respect to any contract involving the performance of any class of work which is ordinarily, and not merely occasionally or to a limited extent, performed by the Government);

(e) Contracts (or portions thereof) subject to the provisions of the Walsh-Healey Public Contracts Act (see Subpart F of this part).

§ 12.303 Contract clause.

§ 12.303–1 Clause for general use.

Except for those kinds of contracts referred to in § 12.303–2, the contract clause required by this subpart shall be as follows:

EIGHT-HOUR LAW OF 1912—OVERTIME (JAN. 1958)

This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912 as amended (40 U. S. Code 324–326) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. Code 35–45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said Law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of the said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause, and all penalties thus imposed shall be withheld for the use and benefit of the Government.

§ 12.303–2 Clause for contracts with a State or political subdivision.

In the case of contracts with a State or political subdivision thereof (see § 12.302 (b)), the contract clause required by this subpart shall be the clause set forth in § 12.303–1 except that it shall be prefaced by the following provision:

The Contractor agrees to insert the following clause in all subcontracts hereunder with private persons or firms.

Subpart D—Labor Standards in Construction Contracts

§ 12.400 Scope of subpart.

This subpart deals with labor standards for construction contracts as prescribed by the statutes and regulations set forth in § 12.401.

§ 12.401 Statutes and regulations.

(a) *Davis-Bacon Act.* The Davis-Bacon Act (Act of March 3, 1931, as amended; 40 U. S. Code 276a), provides that certain contracts over $2,000 entered into by any Department for the construction, alteration, or repair (including painting and decorating) of public buildings or public works shall contain a provision (see § 12.403) to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wages as determined by the Secretary of Labor.

(b) *Copeland Act.* The Copeland ("Anti-Kickback") Act (18 U. S. Code 874 and 40 U. S. Code 276c) makes it unlawful to induce, by force or otherwise, any person employed in the construction or repair of public buildings or public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which he is entitled under his contract of employment. In accordance with regulations of the Secretary of Labor issued pursuant to the Copeland Act, certain contracts entered into by any Department shall contain a provision (see § 12.403) to the effect that the Contractor and any subcontractor shall comply with the regulations of the Secretary of Labor under the Act.

(c) *Eight-Hour Laws.* See § 12.301. (However, with respect to construction contracts, the applicable statutes are 40 U. S. Code 321–326.)

(d) *Department of Labor regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (15 F. R. 3176), the Secretary of Labor has issued Regulations Part 3, Title 29, Subtitle A, Code of Federal Regulations (7 F. R. 686 as amended) and Regulations Part 5, Title 29, Subtitle A, Code of Federal Regulations (16 F. R. 4430 as amended), providing for the administration and enforcement of these statutes in construction contracts. The requirements under the Davis-Bacon Act and the Copeland Act apply only to the United States and its Territories while the Eight-Hour Laws apply also to other areas over which the United States has direct legislative control.

§ 12.402 Applicability.

These requirements apply to construction contracts. The term "construction contract" as used in this subpart means any contract providing for the actual construction, alteration or repair, including painting and decorating, of a public building or public work, or of a building or work financed in whole or in part from Federal funds. It generally includes construction activity as distinguished from manufacturing, furnishing of materials, or servicing or maintenance work. It does not apply to the following kinds of contracts:

(a) Contracts for supplies (including installations or maintenance work which is only incidental to the furnishing of such supplies); although the requirement does apply (1) where installation involves a substantial amount of construction at the site, such as for heavy generators and large refrigerators, (2) to the transportation of supplies to or from the site of the work by employees of the construction contractor or of a construction subcontractor, and (3) to the manufacturing or furnishing of supplies such as window frames and other millwork, on the site of the work by the contractor or sub-contractor on a construction, alteration, or repair contract otherwise subject to the act, or to the manufacturing or furnishing of supplies under a contract based upon the specifications, and at the site of the work, of a construction, alteration, or repair contract otherwise subject to the act;

(b) Contracts for servicing or maintenance work (including installation or movement of machinery or other equipment, and incidental plant rearrangement) which involve only an incidental amount of construction, alteration, or repair; although the requirement does apply (1) to installation, movement, or rearrangement of machinery or other equipment involving a substantial amount of construction or repair, and (2) to servicing or maintenance work based upon the specifications of a construction contract otherwise subject to the act and which is performed at the site of the construction work involved;

(c) Contracts for the construction or repair of vessels, aircraft, or other kinds of personal property;

(d) Contracts to be performed at a place not known or not reasonably ascertainable at the time the contract is entered into.

§ 12.403 Contract clauses.

§ 12.403–1 Clauses for general use.

Except as provided in § 12.403–4 every construction contract in excess of $2,000 for work within the United States or its Territories shall include the following clauses:

(1) *Davis-Bacon Act (40 U. S. C. 276a–276a–7).*

DAVIS-BACON ACT (40 U. S. C. 276a–276a–7) (AUG. 1953)

(a) All mechanics and laborers employed or working directly upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Act ("Anti-Kickback") Regulations (29 CFR, Part 3)) the full amounts due at time of payment, computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and a copy of the wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) In the event it is found by the contracting officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(c) Paragraphs (a) and (b) of this clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act or (2) a subcontract under such prime contract.

(2) *Eight-Hour Laws — overtime compensation.*

EIGHT-HOUR LAWS—OVERTIME COMPENSATION (AUG. 1953)

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, that this stipulation shall be subject in all respects to the exceptions and provisions of the Eight-Hour Laws, as set forth in U. S. C. 321, 324, 325, 325a, and 326, which relate to hours of labor and compensation for overtime.

(3) *Apprentices.*

APPRENTICES (AUG. 1953)

Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor.

(4) *Payroll records and payrolls.*

PAYROLL RECORDS AND PAYROLLS (AUG. 1953)

(a) Payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor will make his employment records available for inspection by authorized representatives of the Contracting Officer and the U. S. Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(b) A certified copy of all payrolls will be submitted weekly to the Contracting Officer. The Government prime Contractor will be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Secretary of Labor attached to this contract and that the classifications set forth for each laborer or mechanic conform with the work he performed.

(5) *Copeland ("Anti-Kickback") Act—Nonrebate of Wages.*

COPELAND ("ANTI-KICKBACK") ACT—NONREBATE OF WAGES (OCT. 1959)

The regulations of the Secretary of Labor applicable to Contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland Act, as amended (40 U.S.C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U.S.C. 874) are made a part of this contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the Government prime Contractor will be responsible for the submission of statements required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions.

(6) *Withholding of funds to assure wage payment.*

WITHHOLDING OF FUNDS TO ASSURE WAGE PAYMENT (AUG. 1953)

There may be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanic all or part of the wages required by this contract, the Contracting Officer may take such action as may be necessary to cause the suspension, until such violations have ceased, of any further payment, advance, or guarantee of funds to or for the Government prime Contractor.

(7) *Subcontracts—termination.*

SUBCONTRACTS—TERMINATION (AUG. 1953)

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Eight-Hour Laws—Overtime Compensation," "Apprentices," "Payroll Records and Payrolls," "Copeland ('Anti-Kickback') Act—Nonrebate

of Wages," "Withholding of Funds to Assure Wage Payment," and "Subcontracts—Termination" in all subcontracts, and the Contractor further agrees that a breach of any of the requirements of these clauses may be grounds for termination of this contract. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government prime Contractor."

When using U. S. Standard Form 23, the "Subcontracts—Termination" clause therein shall be used in lieu of the above clause.

§ 12.403–2 Contracts for $2,000 or less.

Except as provided in § 12.403–4, every construction contract for $2,000 or less for work within the United States or its Territories, shall include the following clauses:

(1) *Eight-hour laws—overtime compensation.*

EIGHT-HOUR LAWS—OVERTIME COMPENSATION (AUG. 1959)

The Eight-Hour Laws (40 U.S.C. 321–326) are applicable to this contract. (In substance they provide that laborers and mechanics employed by the Contractor or his subcontractors shall be paid not less than time and a half for work in excess of 8 hours a day. Contractors or subcontractors violating these laws are punishable under the provisions of 40 U.S.C. 322–324.)

(2) *Nonrebate of wages.*

NONREBATE OF WAGES (AUG. 1959)

The Regulations issued by the Secretary of Labor (29 CFR, Part 3) pursuant to the Anti-Kickback Act, as amended (40 U.S.C. 276(c), 18 U.S.C. 874), are applicable to this contract. (In substance they provide that contractors and subcontractors shall (i) make no deductions from wages except those required by law or permitted by the Regulations; (ii) preserve, for 3 years after completion of the work, payrolls which contain the following data for each employee: name, address, correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid; and (iii) submit weekly a statement of compliance, in the form set out in the Regulation.)

(3) *Subcontractors—termination.*

SUBCONTRACTORS—TERMINATION (AUG. 1959)

The Contractor agrees to insert the clauses hereof entitled "Eight-Hour Laws—Overtime Compensation" and "Nonrebate of Wages" in all subcontracts under this contract. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor. Breach of the requirements of these clauses may be grounds for the termination of this contract.

§ 12.403–3 Overseas contracts.

Every construction contract for work outside the continental United States and its territories of Alaska and Hawaii but within any other territory or possession or foreign area over which the United States has direct legislative control shall include (a) the Eight-Hour Laws—Overtime Compensation Clause set forth in § 12.403–1 Clause (2), and (b) the Subcontracts—Termination Clause set forth in § 12.403–1 Clause (7), except that the first sentence thereof shall be modified to refer only to the clauses entitled "Eight-Hour Laws—Overtime Compensation", and "Subcontracts—Termination."

§ 12.403–4 Contracts with a State or political subdivision.

In the case of construction contracts with a state or political subdivision thereof, the contract clauses required by §§ 12.403–1 and 12.403–2 whichever is applicable, shall be inserted therein and each clause shall be prefaced by the following provision:

The Contractor agrees to insert the following in all subcontracts hereunder with private persons or firms.

§ 12.404 Administration and enforcement.

§ 12.404–1 General.

The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract and of his responsibilities thereunder. Unless it is clear that the contractor is otherwise fully informed, the contractor shall be so informed either by conference or by letter as soon as possible after award of the contract. Whenever the clauses under § 12.403–1 are applicable, the following action shall be taken or required in accordance with procedures prescribed by each respective Department. Whenever the clauses under §§ 12.403–2, 12.403–3, and 13.403–4 are applicable, the following action shall be taken or required, in accordance with procedures prescribed by each respective Department, to the extent pertinent to the applicable clauses.

§ 12.404–2 Wage determinations.

(a) *Requests for.* Requests for the determination of wage rates by the Secretary of Labor shall be submitted on Department of Labor Form DB–11 at least 30 calendar days before required for the advertisement of negotiation of the contract for which the determination is sought. In exceptional cases, the Secretary of Labor may be requested to make a wage determination in less than 30 calendar days upon a proper showing of unusual circumstances justifying the need therefor.

(b) *Limitations.* If the proposed contract for which a wage determination has been secured has not been awarded within 90 calendar days from the date of such wage determination, a new wage determination shall be obtained and made a part of the proposed contract.

(c) *Modifications.* Modifications by the Secretary of Labor of an original wage determination shall be made part of the proposed contract if received prior to the award of the contract, provided that, in a formally advertised procurement, any modification received by the Department concerned less than 5 calendar days before the opening of bids may be disregarded if award is made within 30 calendar days after the opening of bids or within 90 calendar days from the date of the original wage determination, whichever is the earlier.

(d) *Posting.* The Contracting Officer shall ascertain that a copy of the wage determination is kept posted at the site of the work in a prominent place where it can be easily seen by the workers.

§ 12.404–3 Additional classifications.

If any laborers or mechanics not listed in the wage determination attached to the contract are to be employed, their classifications and minimum wage rates shall be established by the contractor or subcontractor, with the approval of the Contracting Officer, conformably to the attached wage determination. A report of any such determination shall be transmitted to the Secretary of Labor. If the interested parties cannot agree upon any such additional classification and wage rate, the matter, accompanied by the recommendation of the Contracting Officer, shall be referred to the Secretary of Labor for final determination.

§ 12.404–4 Apprentices.

The contractor or subcontractors shall be required to furnish certification or other evidence that each apprentice employed is registered in an approved apprenticeship program. (For certification form, see paragraph (c) of § 16.803–1 of this subchapter.)

§ 12.404–5 Subcontracts.

The Contracting Officer shall obtain a list of all subcontracts, together with a description of the work to be performed thereunder.

§ 12.404–6 Payrolls and statements.

(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the contractor is required to submit, or cause to be submitted for himself and his subcontractors, (1) copies of certified weekly payrolls in compliance with Clause (4) of § 12.403–1 and (2) weekly payroll statements in compliance with Clause (5) of § 12.403–1. (See § 16.803–1(c) of this subchapter.)

(b) *Examination.* The Department concerned shall make such examination of the certified payrolls and statements as may be necessary to assure compliance with contract, statutory and regulatory requirements. Particular attention should be given to the correctness of classifications and any disproportionate employment of laborers, helpers or apprentices.

(c) *Preservation.* Certified payrolls and statements shall be preserved by the Department concerned for a period of 3 years from completion of the contract and shall be produced at the request of the Secretary of Labor at any time during such period.

§ 12.404–7 Investigations.

(a) The Department concerned shall make such investigations as may be necessary to assure compliance with contract, statutory and regulatory requirements. Contracts of 6 months or less duration shall be investigated before final payment is made, if feasible. Longer contracts shall be investigated with such frequency as may be necessary. Such investigations shall include interviews of employees on a sampling basis.

(b) Special investigations in detail shall be made when required by complaints or other evidence of violations. Complaints of violations shall be given priority.

(c) Statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to the employer without the consent of the employee.

§ 12.404–8 Reports of violations.

(a) A report of violations shall be made by the Department concerned to the Secretary of Labor except in cases of nonwillful violations where less than $200 is involved, restitution is made, and assurance is given of future compliance by the contractor or subcontractor concerned. Such reports shall include a statement of the findings as to the violations and information as to restitution made, payment deductions, contract terminations, and the names and addresses of the workers, contractors and subcontractors concerned.

(b) Where there is substantial evidence that violations are willful and in breach of the False Affidavits Act (18 U. S. C. 1001) or other criminal statute, the matter shall be forwarded to the Attorney General for prosecution and the Secretary of Labor shall be informed of such action.

§ 12.404–9 Suspensions and deductions of contract payments.

In the event of failure or refusal to pay all or any part of the wages due workers, the Contracting Officer may suspend further contract payments to the contractor in amounts equal to such unpaid wages until either restitution has been made directly by the contractor or subcontractor concerned or deductions against payment vouchers are made as provided below. If such failure or refusal appears continuing and willful, or in the event of any other failure or refusal to comply with contract, statutory, and regulatory requirements, the Contracting Officer may suspend all future contract payments to the contractor until such violations have ceased. If restitution is not made directly by the contractor or subcontractor within a reasonable time, or, in any event, prior to final payment under the contract, the Contracting Officer shall submit with the contractor's payment voucher or vouchers a "Schedule of Deductions from Payments to Contractors (Act of August 30, 1935)" on Standard Form 1093, and the amount so shown to be due workers shall be deducted from the payments made to the contractor and shall be deposited in the Treasury in accordance with Department procedures.

§ 12.404–10 Restitution.

Restitution of amounts due workers may be permitted at any time at the volition of the contractor or subcontractor and may be ordered by the Department concerned whenever wage underpayments are found to be nonwillful.

§ 12.404–11 Contract terminations.

Whenever a contract is terminated for violation of the labor standards provisions, a report shall be submitted by the Department concerned to the Secretary of Labor and the Comptroller General. The report shall include the name and address of the terminated contractor or subcontractor, the name and address of the contractor or subcontractor who is to complete the work, the amount and number of the latter's contract, and a description of the work thereunder.

§ 12.404–12 Cooperation with Department of Labor.

The Department concerned shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers and all other aspects of investigations undertaken by the Department of Labor. When requested, the Departments shall furnish to the Secretary of Labor any available information with respect to contractors, subcontractors, their contracts and the nature of the contract work.

Subpart E—[Reserved]

Subpart F—Walsh-Healey Public Contracts Act

§ 12.601 Statutory requirement.

In accordance with the requirement of the Walsh-Healey Public Contracts Act (Act of June 30, 1936, as amended; 41 U.S. Code 35–45), all contracts entered into by any Department for the manufacture or furnishing of supplies in any amount exceeding $10,000 (a) will be with manufacturers or regular dealers, and (b) shall incorporate by reference the representations and stipulations required by said Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

§ 12.602 Applicability.

§ 12.602–1 General.

The requirement set forth in the preceding paragraph applies to contracts for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed $10,000 in amount.

§ 12.602–2 Department of Labor regulations and interpretations.

Pursuant to the Walsh-Healey Act, the Secretary of Labor has issued detailed regulations and interpretations as to the coverage of said Act, and exemptions and procedures thereunder. These regulations and interpretations are compiled in a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations." In addition to the interpretations stated in that domument, attention is directed to an opinion of the Department of Labor that contracts which are originally $10,000 or less, but are subsequently modified to increase the price to an amount in excess of $10,000, are subject to the Walsh-Healey Act; and that contracts in an amount exceeding $10,000 which are subsequently modified to a figure of $10,000 or less, are not subject to said Act with respect to work performed after such modification if modification is effected by mutual agreement.

§ 12.603 Responsibilities of contracting officers.

Whenever the Walsh-Healey Public Contracts Act is applicable, the contracting officer shall, pursuant to regulations or instructions issued by the Secretary of Labor and in accordance with procedures prescribed by each respective military department—

(a) Inform prospective contractors of the possible applicability of minimum wage determinations;

(b) Furnish to the contractor a poster (Form PC–13);

(c) Furnish to the contractor a form letter (Form PC–12) explaining the Walsh-Healey Act;

(d) Prepare and transmit three copies of DD Form 350 (top portion); (see § 16.803–2 (c) of this subchapter);

(e) Report to the Department of Labor any violation of the representations or stipulations required by the Walsh-Healey Act.

§ 12.604 Contract clause.

The contract clause required by this Subpart F shall be as follows:

WALSH-HEALEY PUBLIC CONTRACTS ACT (JAN. 1958)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U. S. Code 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

Subpart G—Fair Labor Standards Act of 1938

§ 12.701 Basic statute.

The Fair Labor Standards Act of 1938 (Act of June 30, 1938; 29 U.S. Code 201–219), as amended, provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigations and inspections of Government contractors), and prohibits oppressive child labor. Said act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or foreign commerce or (b) the production of goods for such commerce or (c) any closely related process or occupation essential to such production.

§ 12.702 Suits against Government contractors.

Payments made pursuant to the provisions of the Fair Labor Standards Act are usually reimbursable under cost or cost-plus-a-fixed-fee contracts. Consequently, each military department has a direct interest in claims and suits under said Act which are made or brought in connection with such contracts. In this connection, procedures have been established, by agreement between the Department of Justice on the one hand and the military departments on the other hand, governing the defense of such Fair Labor Standards Act suits. These procedures in general contemplate the defense of Fair Labor Standards Act suits by private

counsel employed by the contractor, the employment of whom is approved by the military department concerned. These procedures must be followed if contractors are to be reimbursed for the amount of any judgment under said Act, or for any litigation expenses (including the reasonable fees of such private counsel).

§ 12.703 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor, and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Subpart H—Nondiscrimination in Employment

§ 12.801 Policy.

The President has stated that the policy of the Government is to promote equal employment opportunity for all qualified persons employed or seeking employment on Government contracts because such persons are entitled to fair and equitable treatment in all aspects of employment on work paid for from public funds, and that contracting agencies and Government contractors are obligated to insure compliance with, and successful execution of, the equal employment opportunity program of the Government. In stating this policy, the President has directed that the head of each contracting agency shall be primarily responsible for obtaining compliance by any contractor or subcontractor and shall take the appropriate measures to bring about compliance. The President's Committee on Government Contracts provides guidance to contracting agencies concerning the program. The Committee has announced that the objectives of the program can best be achieved through the processes of education, persuasion, mediation, and conciliation. (Executive Orders 8802 of June 25, 1941, 9346 of May 27, 1943, 10479 of August 13, 1953, and 10557 of September 3, 1954.) However, when those methods do not bring the proper results, a firmer approach should be adopted. Additional measures should include consideration, prior to an award, of whether a prospective contractor appears to be able to conform to the requirements of the standard nondiscrimination clause. (See §§ 1.903–1(f) and 1.604–2.)

§ 12.802 Basic requirement.

Contracts entered into by the Departments, except as set forth in § 12.804, shall contain the following clause:

NONDISCRIMINATION IN EMPLOYMENT (SEPT. 1954)

(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion/or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause.

(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

§ 12.803 Applicability.

The nondiscrimination requirements are applicable to contracts and first-tier subcontracts as herein provided.

(a) The clause set forth in § 12.802 shall be included in all contracts involving the employment of labor, except:

(1) The clause shall not be included in—

(i) Contracts to be performed outside the United States where no recruitment of workers within the United States is involved;

(ii) Contracts to meet special requirements or emergencies, if recommended by the President's Committee on Government Contracts (see § 12.804); and

(iii) Purchase orders on Standard Form 44.

(2) The clause shall be modified in—

(i) Purchase orders for $2,500 or less which are not within the above exceptions, by deleting the last sentence of paragraph (a) and all of paragraph (b).

(ii) Contracts for $5,000 or less, other than purchase orders for $2,500 or less, by deleting the last sentence of paragraph (a) when in the judgment of the contracting officer administration of the posting requirement of a clause is impracticable. For example, contracts for off-the-shelf items and contracts requiring delivery of supplies or performance of services within 60 days from the date of the contract.

(b) Notwithstanding paragraph (b) of the clause, a contractor is not required to insert any nondiscrimination clause in subcontracts of the kind described in paragraph (a) (1) (i) and (ii) of this section.

§ 12.804 Special requirements or emergencies.

Where special requirements or emergencies are such that use of the clause set forth in § 12.802 in a contract or subcontract is impracticable, the contracting officer may request authority to omit or modify the clause. Such requests shall be submitted in accordance with Departmental procedures, together with all pertinent facts, to the Assistant Secretary of Defense (Supply and Logistics), for coordination with the President's Committee on Government Contracts. Prior to the submission of requests for exemption, the Secretary or a designee for the purpose, will in appropriate cases personally discuss with the president of the company concerned the inclusion of the clause in the pending contract.

§ 12.805 Interpretations.

The President's Committee on Government Contracts has published the interpretations set forth below of Executive Orders 10479 and 10557.

(a) "Standard commercial supplies" means an article:

(1) Which in the normal course of business is customarily manufactured for stock and is customarily maintained in stock by the manufacturer or by any distributor or other commercial dealer for the marketing of such article; or

(ii) Which is manufactured and sold by two or more persons for general commercial or industrial use or which is identical in every material respect with an article so manufactured and sold.

(b) The obligation to include the nondiscrimination clause does not depend on the amount of money or other consideration involved in the performance of the contract.

(c) Inclusion of the nondiscrimination clause is not required in contracts the performance of which does not involve the employment of persons.

(d) The nondiscrimination clause does not refer to, extend to, or cover the activities or business of the contractor which are not related to, or involved in, the performance of the contract entered into.

(e) The obligation to include the nondiscrimination clause exists even though the contract is required to be awarded to the lowest responsible bidder.

(f) The obligation to include the nondiscrimination clause exists even though the contract is between the Federal Government and a State agency or subdivision of a State.

§ 12.806 Administration.

§ 12.806–1 General.

The President's Committee on Government Contracts has published "A Manual for the Guidance of Personnel Engaged in Obtaining Compliance with the National Equal Job Opportunity Program" which contains information for all who are engaged in obtaining compliance with the Federal nondiscrimination clause. This publication is to be employed as additional guidance in the overall administration of the nondiscrimination program.

§ 12.806–2 Educational responsibility.

(a) Contracting officers and other personnel concerned with procurement shall, in accordance with Departmental procedures, be apprised of their responsibility in obtaining compliance with the nondiscrimination clause.

(b) The Departments shall publicize the nondiscrimination policy to prospective contractors and shall make available to contractors information concerning their responsibilities under the nondiscrimination clause.

§ 12.806–3 Posting of notices.

In all instances, except where the nondiscrimination clause may have been modified as authorized by § 12.803(a)(2), contracting officers shall furnish to contractors copies of the notice entitled "Equal Economic Opportunity" (U. S. Government Printing Office: 1954 O–300378 or 1955 O–364036), which shall be obtained by contracting officers in accordance with Departmental procedures. Contractors shall obtain from the contracting officer copies for first-tier subcontractors.

§ 12.806–4 Compliance reviews.

(a) Both routine and special compliance reviews shall be conducted in accordance with Departmental procedures to ascertain the extent to which contractors are complying with the provisions of the nondiscrimination clause and to furnish educational data in connection with the program.

(b) A routine compliance review consists of a brief review of the practices of the contractor to ascertain compliance with the requirements of the clause. This type of review shall include a verification that the notice is appropriately posted and that the clause is included in subcontracts where required. A routine compliance review shall be considered a normal part of contract administration.

(c) A special compliance review consists of a comprehensive review of the employment practices of the contractor with respect to the requirements of the nondiscrimination clause. In addition to discussions with management, personnel conducting special compliance reviews should, when appropriate, discuss the contractor's employment practices with employment sources, minority groups, and interested civic groups. Special compliance reviews shall be conducted (1) from time to time, (2) when special circumstances warrant, and (3) when requested by proper authority.

§ 12.806–5 Complaints.

The Departments will promptly investigate complaints based upon alleged noncompliance with the provisions of the nondiscrimination clause, provided such complaints contain the following identifying information:

(a) The name and address of the contractor or subcontractor alleged to have violated the provisions of the nondiscrimination clause;

(b) A description of the acts believed to be in violation of the nondiscrimination clause, including, where known, names of contractor's personnel involved, and dates of alleged incidents;

(c) The name and address of each person who believes himself aggrieved by the alleged violation of the clause; and

(d) Other pertinent information which will assist investigation and resolution of the complaint.

§ 12.806–6 Incomplete complaints.

To avoid unwarranted investigation of allegations which do not provide the essential information set forth in § 12.806–5, Departments may return such allegations to the originating source, specifying the additional information required.

§ 12.806–7 Processing of complaints.

Complaints may be submitted to the President's Committee on Government Contracts, the Secretary of Defense, or the Military Departments. Complaints submitted to the Military Departments in accordance with § 12.806–5, and determined to involve a Government contract or subcontract, shall be processed in accordance with Departmental procedure which will assure:

(a) Prompt investigation of statements and allegations contained in the complaint. Such investigations should include, where necessary, (1) a review of the pertinent personnel practice of the contractor or subcontractor concerned, (2) the circumstance under which the discriminatory action is alleged to have taken place, and (3) such other factors which may determine whether the contractor or subcontractor in the particular case complied with the provisions of the nondiscrimination clause set forth in the contract concerned.

(b) Resolution of complaints by conciliatory means whenever possible.

(c) The preparation and submission, through prescribed channels, of a report to the President's Committee on Government Contracts setting forth (1) a copy of the complaint together with a summary of the investigative action performed by the Department concerned, (2) corrective action taken or recommended by the Department where investigation discloses a need for such action, (3) recommendations or comments in connection with the complaints which investigation disclosed as unfounded, and (4) information that the Department considers should be brought to the attention of the President's Committee.

§ 12.806–8 Reporting channels.

Reports in connection with complaints shall be forwarded, in duplicate, through Departmental channels to the Assistant Secretary of Defense (Supply and Logistics) for transmittal to the President's Committee on Government Contracts.

§ 12.807 Contact with the President's Committee.

After receiving a complaint of discriminatory employment practices against a contractor it may be appropriate for investigative personnel to contact the Regional Office of the President's Committee on Government Contracts, if there is one in the area, to ascertain if that office has additional information concerning the complaint or contractor. The Regional Office may be used as a point of information. However, contact concerning the conduct of or any other matters pertaining to the investigation shall not be made except after coordination with Departmental headquarters.

Subpart I—Employment Restrictions for Security Purposes

§ 12.901 Restrictions on hiring of aliens and other individuals.

It shall be the policy of each Department, in the interest of safeguarding the national security, to require written consent of the Secretary of the Department concerned (in accordance with procedures prescribed by that Department) prior to (a) the employment of any alien on any contract classified "Top Secret," "Secret," or "Confidential," and (b) the employment of any individual on any Top Secret or Secret contract.

§ 12.902 Responsibilities of contractors to employees.

In connection with all classified contracts, it shall be the policy of each Department to require that a contractor will be responsible for furnishing to the Contracting Officer (a) any requested information with respect to his employees, and (b) information and reports regarding any subversive activities of his employees.

§ 12.903 Contracts classified "Atomic Energy Restricted."

Employment restrictions with respect to any contract classified "Atomic Energy Restricted" shall be in accordance with regulations of the Atomic Energy Commission and procedures prescribed by each respective Department.

PART 13—GOVERNMENT PROPERTY

Sec.
13.000 Scope of part.

Subpart A—General

13.100 Scope of subpart.
13.101 Definitions.
13.101–1 Property.
13.101–2 Government property.
13.101–3 Contractor-furnished property.
13.101–4 Material.
13.101–5 Special tooling.
13.101–6 Industrial facility.
13.101–7 Industrial property.
13.101–8 Non-severable industrial facility.
13.101–9 Plant equipment.
13.101–10 Production equipment.
13.101–11 Machine tools.
13.101–12 Accessory item.
13.101–13 Auxiliary item.
13.101–14 Salvage.
13.101–15 Scrap.
13.101–16 Facilities contract.
13.101–17 Educational or other nonprofit organization.
13.102 General policy.
13.102–1 Materials.
13.102–2 Special tooling.
13.102–3 Facilities.
13.103 Control of Government property.
13.104 Responsibility and liability for Government property.
13.104–1 Responsibility of prime contractors for Government property.
13.104–2 Liability of subcontractors for Government property.

Subpart B—Material

13.200 Scope of subpart.
13.201 Fixed-price contracts.
13.202 Cost-reimbursement type contracts.
13.203 Disposal.

Subpart C—Special Tooling

13.300 Scope of subpart.
13.301 Fixed-price procurement; Government-furnished special tooling.
13.302 Fixed-price procurement—contractor-furnished or acquired special tooling.
13.303 Fixed-priced procurement—General policy on acquiring special tooling.
13.304 Fixed-price procurement; special tooling furnished or acquired by subcontractors.
13.305 Cost-reimbursement type (Government-furnished special tooling).
13.306 Fixed-price and cost-reimbursement type—special consideration for tooling with commercial use.

Subpart D—Industrial Facilities

Sec.
13.400 Scope of subpart.
13.401 Award of supply contracts.
13.402 Separate facilities contract.
13.403 Single facilities contract.
13.404 [Reserved]
13.405 Title.
13.406 Nonseverable industrial facilities.
13.406–1 Nondisposable nonseverable facilities.
13.406–2 Abandonment of facilities and restoration of premises.
13.407 Right of contractor to use.
13.408 Maintenance.
13.409 Identification and records.
13.410 Late delivery, diversion and substitution.
13.411 Risk of loss or damage and liability.
14.412 Unusable or unneeded facilities.
13.413 Termination of facilities contracts.
13.413–1 Termination by the Government.
13.413–2 Termination by the contractor.
13.414 Standby provisions.
13.415 Disposition.

Subpart E—Contract Clauses

13.500 Scope of subpart.
13.501 Applicability.
13.502 Government-furnished property clause for fixed-price contracts.
13.503 Government property clause for cost-reimbursement type contracts.
13.504 Special tooling clause for fixed-price contracts.
13.505 Government-furnished property clause for fixed-price type contracts with non-profit institutions.
13.506 Government property clauses for cost-reimbursement type research and development contracts with non-profit institutions.

Subpart F—Use of Government Owned Industrial Facilities on Work Other Than for a Military Department

13.600 Scope of subpart.
13.601 Rental.
13.601–1 General.
13.601–2 Rental rates.
13.601–3 Exceptions.
13.602 Term of use.
13.603 Production equipment.

Subpart G—Use of Government-Owned Industrial Facilities and Special Tooling on Work for Foreign Governments

13.700 Scope of subpart.
13.701 Use without charge.

Subpart H—Transfer of Title to Equipment to Nonprofit Education or Research Institution

Sec.
13.800 Scope of subpart.
13.801 Purpose of the legislation.
13.802 Transfer of title.
13.803 Contract clauses.

AUTHORITY: §§ 13.000 to 13.803 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 13.000 Scope of part.

This part sets forth the general policies of the Departments with respect to providing property for use by contractors in connection with procurement by the Military Departments and sets forth applicable contract clauses.

Subpart A—General

§ 13.100 Scope of subpart.

This subpart contains definitions of terms used in this part and a statement of general policy.

§ 13.101 Definitions.

As used in this part, the following terms have the meaning stated below:

§ 13.101–1 Property.

Property includes all physical property, both real and personal. For the purpose of this part, it consists of and is treated under three separate categories—material, special tooling, and industrial facilities.

§ 13.101–2 Government property.

"Government property" means all property owned by or leased to the Government, or acquired by the Government under the terms of a contract; except that property to which the Government has acquired a lien or title solely as a result of partial, advance or progress payments shall not for the purpose of this Section be classified as Government property. With this exception, Government property includes both Government-furnished property and contractor-acquired property as defined below:

(a) *Government-furnished property.* "Government-furnished property" is property in the possession of or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and

(b) *Contractor-acquired property* "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, pursuant to the terms of which title is vested in the Government.

The term "provide," as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," is intended to include both Government-furnished property and contractor-acquired property.

§ 13.101–3 Contractor-furnished property.

"Contractor-furnished property" means all property used by the contractor in the performance of a contract, other than Government property.

§ 13.101–4 Material.

"Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

§ 13.101–5 Special tooling.

"Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (a) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (b) consumable small tools, or (c) general or special machine tools, or similar capital items.

§ 13.101–6 Industrial facility.

"Industrial facility" means property, other than material and special tooling, of use for the performance of a contract or subcontract, including real property and rights therein, building, structures, improvements, and plant equipment.

§ 13.101–7 Industrial property.

"Industrial property," as distinguished from military property, means any contractor-acquired or Government-furnished property, including materials, special tooling, and industrial facilities furnished or acquired in the performance of a contract or subcontract.

§ 13.101–8 Non-severable industrial facility.

"Non-severable industrial facility" means an industrial facility which, after erection or installation, cannot be removed without substantial loss of value or damage thereto, or to the premises where installed.

§ 13.101–9 Plant equipment.

"Plant equipment" means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

§ 13.101–10 Production equipment.

"Production equipment" means those items of plant equipment located within a manufacturing, processing, assembly or service establishment and used for cutting, abrading, grinding, shaping, forming, joining, measuring, testing, heating or treating production materials or work in process.

§ 13.101–11 Machine tools.

"Machine tools" mean those items of production equipment which are power-driven, non-portable machines used for cutting, abrading, grinding, shaping or forming metal.

§ 13.101–12 Accessory item.

"Accessory item" means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

§ 13.101–13 Auxiliary item.

"Auxiliary item" means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

§ 13.101–14 Salvage.

"Salvage" means property recoverable for further use or which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

§ 13.101–15 Scrap.

"Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

§ 13.101–16 Facilities contract.

"Facilities contract" means a contract under which industrial facilities are provided by the Government for use in connection with the performance of a separate contract or contracts for supplies or services.

§ 13.101–17 Educational or other nonprofit organization.

"Educational or other nonprofit organization" means any corporation, foundation, trust, or institution operated for scientific or educational purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

§ 13.102 General policy.

§ 13.102–1 Materials.

It is the general policy of the Armed Services that contractors will furnish all materials required for the performance of Government contracts. Exceptions to this policy may be made by a procuring activity when it is determined that it will be in the best interest of the Government to furnish materials in a particular case, or with respect to a particular type of procurement, by reason of economy, standardization, expediting production, or other circumstances.

§ 13.102–2 Special tooling.

It is the general policy of the Armed Services that a Department shall furnish special tooling under its control and determined by it to be available, when such furnishing does not interfere with essential production or program schedules and the cost of such furnishing is less than the cost to the Government of the contractor acquiring or furnishing new special tooling. In determining the cost to the Government of furnishing special tooling to a contractor, consideration shall be given to:

(a) The cost of the preparation of such special tooling and the shipment thereof to the plant of the contractor;

(b) The cost of adapting such special tooling to meet the requirements of the contract;

(c) The cost incident to any delays which may be occasioned; and

(d) The cost of new special tooling.

§ 13.102–3 Facilities.

(a) It is the general policy of the Department of Defense that contractors will furnish all facilities required for the performance of Government contracts. However, subject to and within the limitations of existing authority, facilities may be provided by the Government for use by contractors when such providing is considered necessary to meet essential production or program schedules, or when otherwise considered by the Secretary concerned to be in the best interest of the Government. Before any Government facilities are furnished to a contractor, careful consideration must be given to the full utilization of subcontractors possessing adequate and available capacity to meet military production requirements.

(b) Each contract, lease, or other agreement which provides Government-owned industrial facilities (1) shall require periodic payment or credit of rent or use charge, or (2) where such facilities are provided by the Government without charge, (i) shall provide that no charge for the use of such facilities shall be included in the price or prices of Government supply or service contracts for which such facilities are used and, (ii) shall be documented to show the supply and service contracts for which such facilities are used on the basis of no charge being made in the supply or service contract price or prices. The agreement shall specify rental or use charge as a periodic dollar amount or, where this is inappropriate under the circumstances, it shall set forth the method of computing the amount due. In any case where transportation or installation costs are borne by the Government, such costs shall, for purpose of determining the rental payment, be added to the "acquisition cost" of the facilities in accordance with § 13.601–2. In pricing supply and service contracts for which the use of such facilities is authorized on a no-charge basis, care must be taken to screen out any element of cost—whether direct or indirect—on account of rentals charged for such facilities under other supply or service contracts.

§ 13.103 Control of Government property.

The "Manual for Control of Government Property in Possession of Contractors", § 30.2 of this subchapter, and the "Manual for Control of Government Property in Possession of non-Profit Research and Development Contractors", § 30.3 of this subchapter, are incorporated into this subchapter and made a part thereof.

§ 13.104 Responsibility and liability for Government property.

§ 13.104–1 Responsibility of prime contractors for Government property.

Except with respect to advertised fixed-price contracts, it is the basic policy of the Government not to hold the prime contractor responsible for loss of or damage to Government property caused by certain perils. This policy, as applied in facilities contracts, is set forth in § 13.411, and as implemented for use in other types of contracts, is contained in contract clauses set forth in Subpart E, of this part.

§ 13.104–2 Liability of subcontractors for Government property.

The prime contractor shall be required to hold a subcontractor liable for loss or destruction of or damage to Government property in the possession or control of such subcontractor (the prime contractor, nevertheless, remaining responsible to the Government to maintain the records required by Appendix B or Appendix C of Part 30 of this subchapter: *Provided, however,* That—

(a) A prime contractor on a negotiated fixed-price basis may, with the prior approval of the Contracting Officer, include in any subcontracts thereunder provisions similar to those contained in § 13.502 (f) and designated for use in negotiated fixed-price contracts, with respect to Government property previously furnished to the prime contractor but in the possession or control of the subcontractor, and

(b) A prime contractor on a cost-reimbursement basis may, with the prior

approval of the Contracting Officer, (1) include in any cost-reimbursement type subcontract thereunder provisions similar to those contained in § 13.503 (f), with respect to Government property in the possession or control of such subcontractor, and (2) include in any fixed-price subcontract thereunder provisions similar to those contained in § 13.502 (f) and designated for use in negotiated fixed-price contracts, with respect to Government property in the possession or control of such subcontractor: *Provided, however,* That whenever a fixed-price subcontract intervenes between the prime contractor and a subcontractor on a cost-reimbursement basis, the provisions so included shall be those referred to in subparagraph (2) of this paragraph.

Contracting Officers shall, prior to approving the inclusion in any subcontract of the provisions referred to in this section, satisfy themselves that the degree of protection and care to be afforded Government property in the possession or control of any such subcontractor is sufficient at all times to protect the interests of the Government.

Subpart B—Material

§ 13.200 Scope of subpart.

This subpart sets forth policies governing material furnished by a Military Department in connection with the performance of contracts for supplies or services.

§ 13.201 Fixed-price contracts.

Where supplies or services are contracted for on a fixed-price basis, material may be furnished to the contractor by a Military Department in accordance with the policy stated in §§ 13.102 to 13.102–3. Where a contract is to be entered into as a result of formal advertising, material to be furnished by the Government shall be set forth in the Invitation for Bids. At any time after a fixed-price contract has been entered into, whether as a result of formal advertising or negotiation, the contract may be amended by the parties to provide for the furnishing of Government material or to increase the amount to be furnished, provided the Government receives adequate consideration for such amendment. Pursuant to the clause set forth in § 13.502, the Government may decrease the material furnished or to be furnished under the contract, with equitable adjustment, if appropriate, in the delivery terms, price, or other contractual provisions affected thereby. When a Contracting Officer determines that a contemplated decrease in material would render it inequitable to require performance of the contract, in lieu of issuance of a notice in writing providing for such a decrease, he may, in accordance with departmental procedures, terminate the contract, in whole or in part, pursuant to the clause entitled "Termination for the Convenience of the Government."

§ 13.202 Cost-reimbursement type contracts.

Where supplies or services are contracted for on a cost-reimbursement basis, material may be furnished to the contractor by a Military Department in accordance with the policy stated in § 13.102. At any time after a cost-reimbursement type contract has been entered into, the contract may be amended by the parties to provide for the furnishing of Government material, or to increase or decrease the amount to be furnished under the contract, with equitable adjustment, if appropriate, in delivery terms, fixed-fee, or other contractual provisions affected thereby.

§ 13.203 Disposal.

Disposal of residual Government material shall be in accordance with applicable regulations issued by the Military Departments pursuant to the Federal Property and Administrative Services Act of 1949.

Subpart C—Special Tooling

§ 13.300 Scope of subpart.

This subpart sets forth policies governing the acquisition, furnishing and disposition of special tooling required for the performance of contracts for supplies or services.

§ 13.301 Fixed-price procurement; Government-furnished special tooling.

Where supplies or services are contracted for on a fixed-price basis special tooling required for performance of the contract may be furnished to the contractor by a Military Department in accordance with the policy stated in § 13.102–2. Where a contract is to be entered into as a result of formal advertising, special tooling to be furnished by the Government shall be stated in the Invitation for Bids. At any time after a fixed-price contract has been entered into, whether as a result of formal advertising or negotiation, the contract may be amended by the parties to provide for the furnishing by the Government of special tooling, or to increase the Government-furnished special tooling, provided such furnishing or increase is for the benefit of the Government and the Government receives adequate consideration for such amendment. Pursuant to the clause set forth in § 13.502, the Government may decrease the special tooling furnished or to be furnished under the contract, with equitable adjustment, if appropriate, in the delivery terms, price, or other contractual provisions affected thereby. When a Contracting Officer determines that a contemplated decrease in special tooling would render it inequitable to require performance of the contract, in lieu of issuance of a notice in writing providing for such a decrease, he may, in accordance with departmental procedures, terminate the contract, in whole or in part, pursuant to the clause entitled "Termination for the Convenience of the Government."

§ 13.302 Fixed-price procurement—contractor-furnished or acquired special tooling.

Where special tooling required for the performance of a fixed-price contract for supplies or services is not furnished by the Government, newly made or acquired special tooling may be furnished or acquired by the contractor under one of the following arrangements:

(a) The contract may provide for the acquisition of such special tooling by the contractor and the delivery thereof to the Government as an end item under the contract. In any such case, the rights of the parties in special tooling shall be governed by the provisions of the contract and the Schedule; or

(b) Where the contract does not provide for delivery of such special tooling as an end item under the contract, the clause set forth in § 13.504 shall be used.

§ 13.303 Fixed-price procurement—general policy on acquiring special tooling.

In deciding whether special tooling should be acquired by the Government as a separate end item under the contract or Schedule, or in exercising the Government's rights under the special tooling clause set forth in § 13.504, the contracting officer shall take into consideration the following factors:

(a) The current or probable future need of the Government for the items of special tooling involved;

(b) The residual value of such items;

(c) Administrative and other expense incident to preparation, handling and storage of such items;

(d) The probable cost of reproduction of such items in event of future procurement;

(e) The probable cost of making such items available in the event of future procurement, and the probable reduction in price of such future procurement; and

(f) The amount offered by the contractor for the right to retain such items.

§ 13.304 Fixed-price procurement; special tooling furnished or acquired by subcontractors.

(a) In the event the prime contractor enters into subcontracts or issues any purchase orders, the performance of which involves the use of special tooling to be furnished or acquired by the subcontractor or vendor, there will be included in such subcontracts or purchase orders appropriate provisions to the extent required by paragraph (k) (or by alternate paragraph (k)) of the special tooling clause set forth in § 13.504 giving the prime contractor rights comparable to those granted to the Government by such clause.

(b) The prime contractor shall exercise his rights in such special tooling for the benefit of the Government in accordance with any directions issued by the Contracting Officer, who shall be guided by the policies set forth in § 13.303.

§ 13.305 Cost-reimbursement type (Government-furnished special tooling.)

Where supplies or services are contracted for on a cost-reimbursement basis, special tooling may be furnished to the contractor by a Military Department in accordance with the policy stated in § 13.102–2. At any time after a cost-reimbursement type contract has been entered into, the contract may be amended by the parties to provide for the furnishing by the Government of special tooling, or to increase or decrease the amount to be furnished under the contract, with equitable adjustment, if appropriate, in delivery terms, fixed-fee, or other contractual provisions affected thereby. Special tooling furnished by the Government or acquired by the Contractor shall be subject to the provisions of the Government Property Clause set forth in § 13.503.

§ 13.306 Fixed-price and cost-reimbursement type—special consideration for tooling with commercial use.

When performance of a fixed-price or cost-reimbursement type contract requires a contractor to acquire tooling which would be special tooling as defined in § 13.101–5, except that it has commercial use, the contract may appropriately provide therefor, giving due consideration to the best interests of the Government and the equities of the contractor.

Subpart D—Industrial Facilities

§ 13.400 Scope of subpart.

This subpart sets forth policies with respect to providing industrial facilities for use by contractors in connection with procurement by the Military Departments and for other incidental uses. Nothing in this Subpart D shall be construed as affecting any authority granted under Departmental procedures to employ a lease as a means of making property available to a contractor for performing Government work.

§ 13.401 Award of supply contracts.

Contracts for supplies or services based upon the use of industrial facilities to be provided by the Government should not be awarded until the scope and magnitude of the facilities required have been determined and authorized by the Department concerned.

§ 13.402 Separate facilities contract.

Industrial facilities shall be provided only under a facilities contract separate from any related contract for supplies or services, except that industrial facilities may be provided under suitable clauses in a supply or service contract which incorporates the applicable provisions of this Subpart D.

(a) When the cumulative total acquisition cost (actual or estimated) of the industrial facilities provided to a contractor at one plant or general location does not exceed $50,000;

(b) When the contract is for the performance of construction work;

(c) When the contract is for the performance of work within establishments or installations operated by the Government; or

(d) When the contract is for the performance of services, involving the operation of a Government-owned plant or installation, for a specified period of time, and the facilities provided are to be used only in connection with such contract.

§ 13.403 Single facilities contract.

Except as otherwise provided under § 13.402, or unless in accordance with departmental procedures the Contracting Officer determines it to be impracticable, all industrial facilities provided by a procuring activity for use by a Contractor at any one plant or general location shall be governed by a single facilities contract, amended from time to time as necessary, covering only the facilities at that plant or general location, except that the Contracting Officer may authorize the temporary use of a portion of the facilities at a location other than that covered by the contract. Except as provided in this section and except for facilities for the performance of subcontracts under construction contracts or under contracts for work within establishments or installations operated by the Government, industrial facilities provided to a subcontractor shall be provided pursuant to a separate contract or lease between the Government and the subcontractor.

§ 13.404 [Reserved]

§ 13.405 Title.

Each facilities contract shall provide that title to all industrial facilities furnished to the contractor shall remain in the Government, and that title to industrial facilities acquired by a contractor the cost of which is reimbursable to the contractor shall vest in the Government at the earliest practicable time.

§ 13.406 Nonseverable industrial facilities.

It is the policy of the Department of Defense that nonseverable industrial facilities shall be located on land owned or controlled by the Government, unless the head of a procuring activity determines that such location is not feasible. If the head of a procuring activity determines that location on land not owned or controlled by the Government is necessary he may authorize such location, subject to the limitations set forth in § 13.406–1. In determining whether to authorize such location, consideration shall be given to any nonrecoverable costs involved.

§ 13.406–1 Nondisposable nonseverable facilities.

Nonseverable industrial facilities which are of such a nature as not to be disposable to third parties (other than the contractor) for commercial or industrial operations, after the Government's need therefor has ceased, may be located on other than Government owned or controlled land only under the following circumstances:

(a) The contractor agrees (to the extent authorized by law) that he will purchase the facilities upon the expiration of the facilities contract, or at any time prior thereto, at a price equal to the acquisition cost of the facilities less depreciation at the rate or rates specified in the facilities contract (which rate or rates shall take into consideration the estimated useful life of the facilities), or credit an amount equal to such price against any amounts due the contractor under the facilities contract; or

(b) The estimated useful life of the facilities will not extend beyond the expiration of the facilities contract or the completion of the work for which the facilities were provided; or

(c) The Secretary concerned specifically approves other provisions as being in the interest of national defense.

§ 13.406–2 Abandonment of facilities and restoration of premises.

The Government shall have the right to abandon in place all such nonseverable industrial facilities located on land not owned or controlled by it, and in such event shall not be subject to any obligation to restore or rehabilitate the premises of the contractor, unless otherwise provided in the contract with the prior approval of the head of a procuring activity. The authority of the head of a procuring activity to grant such approval shall not be delegated.

§ 13.407 Right of contractor to use.

(a)(1) Each facilities contract shall limit the right of the contractor to use the industrial facilities to the performance of the contracts and subcontracts specified or otherwise identified in the facilities contract, added thereto by amendment, or approved in writing by the Contracting Officer cognizant of the facilities contract. In the latter event, a record of approved contracts and subcontracts shall be included in the facilities contract file. Where a facilities contract authorizes the use of industrial facilities in the performance of contracts entered into by formal advertising, the facilities contract shall specify a cash rental to be paid in such cases. Facilities contracts may authorize the use of industrial facilities without charge in the performance of contracts other than those entered into by formal advertising if—

(i) The user is not thereby placed in a favored competitive position; and

(ii) The Government receives adequate consideration through reduced cost for supplies or services or otherwise (see § 13.601–1). Such reduced cost may be established in the initial negotiation of new contracts, or by the readjustment of prices (including fixed-fees and allowable costs) of existing contracts, or by price redetermination in the case of negotiated fixed-price contracts where the saving to the contractor cannot be accurately forecast.

(2) Where a facilities contract authorizes the use of industrial facilities without charge to perform subcontracts, it is likewise important to assure that the waiver of a use charge is consistent with the requirements that (i) the subcontractor is not thereby placed in a favored competitive position and (ii) the Government receives adequate consideration through reduced cost for the supplies or services or otherwise (see § 13.601–1); therefore, the use of industrial facilities without charge to perform a particular subcontract shall not be authorized unless the contracting officer determines that these requirements are met.

(3) In order to insure that a concern possessing Government facilities without charge is not thereby placed in a favored position in competing for Government business, either as a prime contractor or a subcontractor, with relation to concerns possessing either a lesser amount of Government facilities or their own facilities, a suitable method for eliminat-

ing any competitive pricing advantage shall be employed. This may be accomplished (i) by charging a rental in a manner prescribed in this Part 13, or (ii) in the price evaluation of competitive proposals, by adding to the proposed contract price of a concern possessing Government facilities without charge an evaluation factor consisting of an amount which it is estimated would equal such rental charge, or (iii) by any other available method which will give effect to the basic policy set forth in this § 13.407 under the facts of the particular case. It is recognized that there may be situations in which there is no need for charging rental or applying equalization factors to assure that the user possessing Government facilities is not thereby placed in a favored competitive position, as, for example, where the only competing concerns possess substantially the same amount of Government facilities on a no-charge basis for use in the performance of a proposed contract, or where the procurement is to be made from a sole source, or where the award is to be made on a basis in which the rental cost of Government-owned facilities is not a controlling factor. Where one of the methods authorized by this section is used to eliminate competitive advantage in the award of a contract for supplies or services, the contract file shall be documented to show the method employed.

(4) Varying methods or techniques may be required to achieve equalization of competitive advantage in different industries or commodity areas, or by reason of the complexity of the facility pattern in contractors' plants, or other considerations. Whatever method or technique is used, it should conform to the basic policy of eliminating competitive advantage in pricing, and should do so in a manner consistent with the rental policy and considerations applicable to the use by contractors of Government facilities. Each Department shall adopt such procedures of administration and review as will accomplish the foregoing objectives.

(b) When use without charge to the contractor is not authorized by (a) above or is not advisable because of the competitive aspect, administrative difficulties, or other considerations, the contract shall require the contractor to pay a fair and reasonable use charge. Such fair and reasonable use charge shall be established on the basis of sound commercial practice, including any prevailing commercial rates, and shall be such as to prevent the contractor from obtaining an unfair competitive advantage by reason thereof. The use charge for production equipment and for other personal property and equipment constituting industrial facilities shall conform to the rates prescribed in § 13.601.

(c) A facilities contract may also provide that the contractor may be authorized by the contracting officer to make incidental use of all or part of the facilities covered by the contract for work other than for an agency of the Department of Defense. However, where a facilities contract is no longer required in connection with the performance of a Government contract or contracts, it shall not be continued solely for the purpose of authorizing commercial use of all or any part of the facilities covered by the facilities contract. The rental rates applicable to Government facilities as provided in § 13.601, shall apply to facilities furnished under a facilities contract for the period that such facilities are authorized for use for commercial purposes.

§ 13.408 Maintenance.

Each facilities contract shall require the contractor, without cost to the Government thereunder, to protect, preserve, maintain, and repair the facilities provided thereunder, in accordance with sound industrial practice, until relieved of responsibility therefor. However, when authorized by the Department concerned, such contract may provide for:

(a) A specified degree of protection, preservation, maintenance and repair that is less than sound industrial practice as to any part or parts of the facilities as are determined by the Department concerned to be nonessential to future utilization of the facilities as a whole;

(b) Reimbursement by the Government for the cost of protecting, maintaining, preserving and repairing facilities not authorized for use by the contractor; and

(c) Reimbursement by the Government for repairs, replacements, and restoration performed by the contractor when such repairs, replacements and restoration are in excess of normal maintenance and are directed or approved by the contracting officer.

The facilities contract shall contain no warranty, express or implied, regarding the condition or fitness for use of any item of industrial facilities. Nothing in this section shall limit a contractor's rights with respect to costs properly allowable under other contracts.

§ 13.409 Identification and records.

Each facilities contract under which industrial facilities are provided by the Government shall require the contractor, without cost to the Government thereunder, to maintain adequate property control records and a system of identification of such industrial facilities in accordance with the provisions of the "Manual for Control of Government Property in Possession of Contractors," (§ 30.2 of this subchapter) as in effect on the date of the contract, and in the case of facilities furnished to non-profit research and development contractors, in accordance with the provisions of the "Manual for Control of Government Property in Possession of Non-Profit Research and Development Contractors", (§ 30.3 of this subchapter) as in effect on the date of the contract. Nothing in this paragraph shall limit a contractor's rights with respect to costs properly allocable under other contracts.

§ 13.410 Late delivery, diversion and substitution.

Each facilities contract shall provide that:

(a) The Government shall not be liable to the contractor for damages or loss of profit by reason of non-delivery or of any delay in the delivery of industrial facilities to be provided by the Government. Provisions for appropriate equitable adjustment should be made in supply or service contracts which may be affected by any such non-delivery or delay.

(b) The Government shall have the right, when it is determined by the Department concerned to be in the best interest of the Government, to direct:

(1) Delivery of any industrial facility or facilities acquired by or furnished to the contractor under the contract to locations other than those specified in the contract; and

(2) Assignment, to the Government or to third parties, of purchase orders or subcontracts of the contractor for any industrial facility or facilities covered by the contract.

Provisions for appropriate equitable adjustment should be made in supply or service contracts which may be affected by such changes or modifications.

(c) The Government shall have the right to furnish any of the industrial facilities, in lieu of acquisition thereof by the contractor. Provisions will be made for reimbursement to the contractor, in such event, of proper costs incurred by it in connection with acquiring such facilities, including the cost of terminating purchase orders of subcontracts therefor.

§ 13.411 Risk of loss or damage and liability.

Each facilities contract—

(a) Shall provide that the Contractor shall not be liable for any loss or damage to the industrial facilities, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(1) Which results from a risk expressly required to be insured under the facilities contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater;

(2) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of said insurance or reimbursement;

(3) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at the industrial facility if such facility is a complete plant or unit, or (iii) all or substantially all of the Contractor's operations at any one plant or separate location in which such industrial facilities are installed or located, or (iv) any separate or complete major industrial operation in connection with which the facilities are used; or

(4) Which results from a failure on the part of any of the Contractor's directors, officers, or other representatives mentioned in subparagraph (3) (iii) of this paragraph, (i) to maintain and administer, in accordance with sound industrial practices, a program for the maintenance, repair, protection and preservation of the industrial facilities, so as to insure their full availability and usefulness at all times, or (ii) to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the industrial facilities; provided, that, with respect to any such loss or damage caused by an excepted peril, the Contractor shall be liable under this subparagraph only where such failure of the Contractor's representative, as set forth herein, results from his willful misconduct or lack of good faith. As used in this section, the term "excepted peril" shall mean any peril set forth in paragraph (f) (i) (B) of the clause in § 13,502; and may also include additional provisions for liability in specific cases, in which case such additional provisions shall be included, or specifically referred to, in the general liability clause.

(b) Shall require the Contractor to hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the industrial facilities, provided, however, that so long as there is in effect one or more contracts for supplies or services which require the use of such facilities, the provisions of such contracts shall govern the assumption of liability for such claims arising out of or related to the performance of each such contract and involving the possession or use of Government provided industrial facilities.

(c) Shall require the Contractor to carry insurance in accordance with Part 10 of this subchapter.

Where justified by the circumstances of any particular contract, the Department concerned may require the Contractor to assume greater risks than those enumerated in paragraph (a) of this section.

§ 13.412 Unusable or unneeded facilities.

Each facilities contract shall provide that within 30 days after any industrial facility is determined by the contractor to be lost, damaged, destroyed, no longer usable, or no longer needed for the performance of Government contracts, the contractor shall notify the Contracting Officer thereof. Disposition of such damaged, destroyed, no longer usable or no longer needed facilities will be made in accordance with § 13.415.

§ 13.413 Termination of facilities contracts.

§ 13.413–1 Termination by the Government.

(a) Each facilities contract shall provide that the Government shall have the right, upon notice, to terminate such contract with respect to all or any part of the facilities covered thereby, or to terminate or limit the contractor's right to use any or all of such facilities. Provisions for equitable adjustment should be made in supply or service contracts which may be affected by such termination or limitation of right to use.

(b) A facilities contract shall be terminated by the Department concerned when the facilities covered thereby are no longer required for the performance of Government contracts, unless such termination is detrimental to the Government's interest. The contractor shall not be granted the unilateral right, at its election, to extend the time during which the contractor is entitled to use the equipment provided under the facilities contract.

§ 13.413–2 Termination by the contractor.

(a) Each facilities contract covering Government-furnished facilities shall provide that the contractor shall have the right to terminate the contract at any time, upon reasonable notice, with respect to all such facilities covered thereby, or, by agreement with the Contracting Officer, with respect to a substantial portion of such facilities.

(b) Termination at the option of the contractor shall not relieve the contractor of any of its obligations or liabilities under any supply or service contract affected thereby.

§ 13.414 Standby provisions.

A facilities contract may include appropriate provisions for maintenance or storage of the industrial facilities, or other suitable standby provisions, upon completion or termination in whole or in part of such contract or of the contractor's right to use any or all of the facilities covered thereby.

§ 13.415 Disposition.

Except as to those non-disposable, non-severable industrial facilities, for which specific provision is made in § 13.406, the disposition of industrial facilities shall be in accordance with applicable regulations issued by the Departments pursuant to statutory authority. Each facilities contract shall provide that within the period specified in the contract following the effective date of partial or complete termination, the contractor will account for all facilities with respect to which the contract is terminated. Within ninety (90) days after the contractor accounts for the facilities, the Contracting Officer will notify the contractor as to disposition thereof. The contractor will be required to prepare, protect, remove or ship the facilities as directed by the Contracting Officer. Provision may be made for equitable reimbursement to the contractor for expenses so incurred. If the Contracting Officer fails to notify the contractor as to disposition of the facilities within the ninety (90) day period, herein provided, the contractor may, upon reasonable notice to the Government, remove and store elsewhere at Government risk and expense those facilities located within the plant of the contractor.

Subpart E—Contract Clauses

§ 13.500 Scope of subpart.

This subpart sets forth uniform contract clauses pertaining to Government Property provided for use in connection with the performance of contracts for supplies or services.

§ 13.501 Applicability.

(a) As used in this subpart, the term "fixed-price contract for supplies or services" shall mean any contract (1) entered into either by formal advertising or by negotiation, but excluding purchase orders for $5,000 or less, letter contracts, letters of intent, notices of award and amendments or modifications to contracts or purchase orders; (2) at a fixed-price (with or without provisions for price redetermination, escalation, or other form of price adjustment) as covered in § 3.403 of this subchapter; and (3) for supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property.

(b) As used in this subpart, the term "cost-reimbursement type contract for supplies or services" shall mean any contract (other than a letter contract, letter of intent, notice of award, or amendment or modification of a contract) entered into by negotiation on a cost or cost-plus-a-fixed-fee basis as covered in § 3.404, for supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property.

§ 13.502 Government-furnished property clause for fixed-price contracts.

The following clause shall be used in fixed-price contracts for supplies or services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor, material, special tooling, or such industrial facilities as may be furnished under § 13.402 (a).

GOVERNMENT-FURNISHED PROPERTY
(MAY 1958)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event the Government-

furnished Property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon the written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) Title to the Government-furnished Property shall remain in the Government. Title to Government-furnished Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished Property, or any part thereof, be or become a fixture or lose its identity or personality by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (§ 30.2, Armed Services Procurement Regulation) as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government-furnished Property shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

The following provision (f) is for use in advertised fixed price contracts:

(f) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished Property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

The following provision (f) is for use in negotiated fixed-price contracts except those contracts involving Government-furnished Property relating to labor surplus area or small business partial set-asides for which the provision (f) for advertised contracts shall be used:

(f) (i) Except for loss, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of the Government-furnished Property, as required by paragraph (e) hereof, and except as specifically provided in the clause or clauses of this contract designated in the Schedule, the Contractor shall not be liable for loss or destruction of or damage to the Government-furnished Property (A) caused by any peril while the property is in transit off the Contractor's premises, or (B) caused by any of the following perils while the property is on the Contractor's or subcontractor's premises, or on any other premises where such property may properly be located, or by removal therefrom because of any of the following perils:

(I) Fire; lighting; windstorm, cyclone, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of a body of water; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces, or by an agent of any such government, power, authority, or forces; or

(II) Other peril, of a type not listed above, if such other peril is customarily covered by insurance (or by a reserve for self-insurance) in accordance with the normal practice of the Contractor, or the prevailing practice in the industry in which the Contractor is engaged with respect to similar property in the same general locale.

The perils as set forth in (A) and (B) above are hereinafter called "excepted perils."

This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to the Government-furnished Property while in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government-furnished Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (I) all or substantially all of the Contractor's business; (II) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; (III) a separate and complete major industrial operation in connection with the performance of this contract.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserve) covering loss or destruction of or damage to the Government-furnished Property caused by any excepted peril.

(iii) Upon the happening of loss or destruction of or damage to any Government-furnished Property caused by an excepted peril, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of: (A) the lost, destroyed and damaged Government-furnished Property (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government-furnished Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement.

(iv) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Govenment-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, caused by an excepted peril, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government-furnished Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government-furnished Property for the benefit of the Government.

(vii) [Where applicable] In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government-furnished Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises wherein any Government-furnished Property is located.

(h) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(i) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this Clause shall be in writing.

§ 13.503 Government property clause for cost-reimbursement type contracts.

The following clause shall be used in cost-reimbursement type contracts for supplies and services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor, or the contractor is to acquire for the account of the Government, material, special tooling, or industrial facilities within the policy set forth in § 13.402 (a).

GOVERNMENT PROPERTY (MAY 1960)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, in whole or in the percentage prevailing by reason of the clause of the contract entitled "Allowable Cost, Fixed Fee and Payment," whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Part 30.2, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer in accordance with sound industrial practice, a program, for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f) (i) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents; or other equivalent representatives, who have supervision or direction of (I) all or substantially all of the Contractor's business, or (II) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government Property as required by paragraph (e) hereof, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or (D) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or (E) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in commingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall

make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

(v) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.[1]

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

NOTE: As provided in paragraph (i) of the above clause, the contracting officer may, subject to Departmental procedures, authorize or approve use of the contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from the Government property are relatively minor and the contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery through a reduction of overhead or other cost factor affecting reimbursement under the contract.

§ 13.504 Special tooling clause for fixed-price contracts.

The following clause shall be used in fixed-price contracts for supplies or services (except contracts for experimental, developmental, or research work) for the performance of which the contractor furnishes special tooling, under the conditions set forth in § 13.302 (b), but is not for use in contracts in which special tooling is called for as a separate item in the Schedule (see § 13.302(a)).

SPECIAL TOOLING (SEPT. 1958)

(a) The term "special tooling", as used in this clause, means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the Contractor for use in the performance of this contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (i) Items of tooling or equipment heretofore acquired by the Contractor, or replacements thereof, whether or not altered or adapted for use in the performance of this contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

(b) The Contractor agrees not to use any items of special tooling except in the performance of this contract, or except as otherwise provided by this clause, without prior written approval of the Contracting Officer. The Contractor may, with the approval of the Contracting Officer, use the special tooling in the performance of other contracts with the Government, or subcontracts under Government contracts, provided that the Contractor agrees not to include in the price or prices for any such contracts or subcontracts, involving the use of such special tooling, the cost of such tooling or any allowance or charge to cover depreciation or amortization which has previously been charged against this contract.

(c) As and when any substantial portion of usable special tooling is no longer needed by the Contractor for the performance of this contract, and of other Government contracts and subcontracts as to which approval has been obtained under paragraph (b) above, the Contractor shall promptly notify the Contracting Officer thereof, and shall furnish to the Contracting Officer a list of the products, parts or services for the manufacture or performance of which such special tooling was used or designed. Upon completion or termination of all work under this contract, or of this contract and other Government contracts and subcontracts as to which approval has been obtained under paragraph (b) above, the Contractor shall furnish a final list in the same form covering all items not previously reported under this paragraph. Special tooling which has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph (d).

(d) In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i), pending disposition under paragraph (f).

(e) At the time it furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which it desires to retain, together with a written offer: (i) to retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items (which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by it); or (ii) to retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) Within 90 days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor: (i) a list specifying the particular products, parts, or services for which the Government may require special tooling, together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased; or (ii) an acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto; or (iii) subject to the provisions of paragraph (j) hereof, a direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list; or (iv) a statement with respect to any or all of the special tooling covered by such list that the Government has no further interest therein and waives its rights therein; or (v) any combination of the foregoing, as the circumstances warrant. The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall, subject to the provisions of paragraph (j) hereof, (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government, as directed by the Contracting Officer, or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that it will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph.

(g) If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the Contracting Officer may direct.

(h) The Contractor agrees that it will follow its normal industrial practice in maintaining property control records on all the special tooling, and that it will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable, it will identify by appropriate stamp, tag or other mark all special tooling subject to this clause.

(i) The Contractor agrees that between the date any usable items of special tooling are no longer needed by it, within the meaning of this clause, and the date of final disposition of such items under this clause, it will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f) (iii). The Contractor shall not be required to keep any such items in place.

(j) Any preparation of items for shipment required of the Contractor under paragraph (f) of this clause, or any disposal as scrap under paragraph (f) (iii), or any action required of the Contractor under paragraph (i), shall be taken pursuant to written instructions of the Contracting Officer, which shall (i) provide for an equitable adjustment of the contract price to cover any additional cost, to the Contractor, not taken into account in the negotiation of this contract, of complying with such instructions, which adjustment shall be made in accordance with the procedure set forth in the clause of this contract entitled "Changes," or (ii) otherwise provide for payment to the Contractor of any such additional cost. Any failure of the Contracting Officer to issue the Contractor specific disposition instructions shall be construed as an instruction to the Contractor to take the action required under paragraph (i) with provision for equitable adjustment or payment as provided for above.

[1] This subparagraph may be omitted where it is clearly inapplicable.

The following paragraph relating to subcontracts shall be used in cases where the Contracting Officer deems the use of such paragraph to be necessary in order to protect the Government's interest in special tooling which may be acquired under such subcontracts:

(k) The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, it will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, and agrees that it will exercise such rights for the benefit of the Government, as the Contracting Officer may direct.

In appropriate cases, the following alternative clause, relating to subcontracts may be used:

(k) The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, it will to the extent consistent with its normal business practice include appropriate provisions therein to obtain rights comparable to those granted to the Government by this clause, and agrees that it will exercise such rights for the benefit of the Government, as the Contracting Officer may direct.

§ 13.505 Government-furnished property clause for fixed-price type contracts with non-profit institutions.

The following clause shall be used in fixed-price research and development contracts with non-profit institutions (provided such contracts are executed on a non-profit basis) under which a Department is to furnish property to the contractor:

GOVERNMENT-FURNISHED PROPERTY (OCT. 1959)

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the delay. In the event that Government-furnished Property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) By notice in writing the Contracting Officer may decrease the property furnished or to be furnished by the Government under this contract. In any such case, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provisions affected by the decrease.

(c) Title to the Government-furnished property shall remain in the Government. Title to Government-furnished property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

In accordance with § 13.802, the following alternative paragraph (c) may be used in contracts for basic or applied research:

(c) Title to Government-furnished property shall remain in the Government, except for that equipment the title to which is transferred to the Contractor pursuant to this paragraph. The Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided*, That, the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government-furnished property. Title to Government-furnished property, not otherwise transferred to the Contractor, shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government-furnished property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) The Government-furnished Property shall, unless otherwise provided herein, and except as may be otherwise approved by the Contracting Officer, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection and preservation of Government-furnished Property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government-furnished Property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in the contract price for any such repair or replacement of Government-furnished Property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at its own expense.

(f) The provisions of Part III, Appendix C, Armed Services Procurement Regulation, Manual for Control of Government Property in possession of Non-Profit Research and Development Contractors, as in effect on the date of this contract are hereby incorporated by reference and made a part of the contract, insofar as they relate to Government-furnished Property. The Contractor agrees to comply with the provisions thereof relating to the keeping of property control records, identification and marking, segregation and commingling, taking of inventories, and control of salvage and scrap, and the Contractor also accepts the responsibilities set forth in said Part III with respect to Government-furnished Property.

(g) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government-furnished Property is located.

(h) (i) The Contractor shall not be liable for any loss of or damage to the Government-furnished Property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto):

(A) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed; or

(B) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government-furnished Property as required by subparagraph (e) above; or

(C) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or

(D) Which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(E) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

Provided, That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(ii) The Contractor represents that it is not including in the price hereunder, and agrees that it will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government-furnished Property, except to the extent that the risk of loss is imposed on the Contractor under (i) (C) above, or insurance has been required under (i) (D) above.

(iii) Upon the happening of loss or destruction of or damage to any Government-furnished Property, the Contractor shall notify the Contracting Officer thereof and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed) shall take all reasonable steps to protect the Government-furnished Property from further damage, separate the damaged and undamaged Government-furnished Property, put all the Government-furnished Property in the best possible order, and furnish to the Contracting Officer a statement of:

(A) The lost, destroyed and damaged Government-furnished Property;

(B) The time and origin of the loss, destruction or damage;

(C) All known interests in commingled property of which the Government-furnished Property is a part; and

(D) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be reimbursed for the expenditures made by it in performing its obligations under this subparagraph (iii) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), to the extent approved by the Contracting Officer and set forth in a Supplemental Agreement or amendment to this contract.

(iv) With the approval of the Contracting Officer after loss or destruction of or damage to Government-furnished Property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government-furnished Property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(v) Except to the extent of any loss or destruction of or damage to Government-furnished Property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government-furnished Property in accordance with the provisions of this Contract, the Government-furnished Property (other than property permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (e) above.

(vi) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government-furnished Property, it shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(vii) (Where applicable). In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government-furnished Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms applicable.

(i) Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as hereinafter provided in subparagraph (i) of this article, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in subparagraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) If the Contracting Officer determines that the interests of the Government require removal of any Government-furnished Property, or if the Contractor determines any Government-furnished Property to be in excess of its needs under this contract, such Government-furnished Property shall be disposed of in the same manner as covered by paragraph (i) above. In the event that the Contracting Officer requires the removal of any Government-furnished Property under this subparagraph (j) or subparagraph (i) above, upon timely written request of the Contractor, an equitable adjustment shall be made in the contract price to cover the direct cost to the Contractor of such removal and of any property damage occasioned thereby.

§ 13.506 Government property clauses for cost-reimbursement type research and development contracts with non-profit institutions.

The following clause shall be used in cost-reimbursement type research and development contracts with non-profit institutions (provided such contracts are executed on a no-fee basis) under which a Department is to furnish Government property to the contractor, or the contractor is to acquire property for the account of the Government:

GOVERNMENT PROPERTY (OCT. 1959)

(a) The Government shall deliver to the Contractor, for use, in connection with and under the terms of this contract, the property described in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule of this contract or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provisions affected by such delay. In the event that the Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provision affected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) The Government may deliver to the Contractor Government-furnished Property in addition to that set forth in this contract. Upon such delivery this contract may be amended, if appropriate, to accomplish an equitable adjustment in its terms and provisions.

(c) Title to all property furnished by the Government shall remain in the Government.

Title to all property purchased by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is to be reimbursed to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property."

In accordance with § 13.802, the following additional language may be added to paragraph (c) in contracts for basic or applied research :

Notwithstanding the provisions of this paragraph (c) relative to title, the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon: *Provided,* That the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property.

(d) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(e) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein and except as may be otherwise approved by the Contracting Officer, be used only for the performance of this contract.

(f) The Contractor shall maintain and administer in accordance with sound business practice a program for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government Property.

(g) The provisions of Part III, Appendix C, Armed Services Procurement Regulation, Manual for Control of Government Property in Possession of Non-Profit Research and Development Contractors, as in effect on the date of this contract, are herein incorporated by reference and made a part of this contract. The Contractor agrees to comply with the provisions thereof relating to the keeping of property control records, identification and marking, segregation and commingling, taking of inventories, and control of salvage and scrap, and the Contractor also accepts the responsibilities set forth in said Part III with respect to Government Property.

(h) The Contractor agrees to make available to authorized representatives of the Contracting Officer at all reasonable times at the office of the Contractor all of its property records under this contract, and access to any premises where any of the Government Property is located.

(i) (1) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for maintenance, repair, protection and preservation of Government Property as required by (f) above, or (B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under (f) above;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the schedule;

(iv) Which results from a risk expressly required to be insured under some other provision of this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement: *Provided,* That, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government Property from further damage, separate the damaged and undamaged Government Property, put all the Government Property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) The lost, destroyed and damaged Government Property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in commingled property of which the Government Property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government Property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, it shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(5) (Where applicable.) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(j) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, this contract may be amended to accomplish an equitable adjustment in its terms and provisions.

(k) Upon completion or expiration of this contract, any Government Property which has not been consumed in the performance of this contract, or which has not been disposed of as hereinafter provided in subparagraph (i) of this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in subparagraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the cost of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(l) If the Contracting Officer determines that the interests of the Government require removal of any Government Property, or if the Contractor determines any Government Property to be in excess of its needs under this contract, such Government Property shall be disposed of in the same manner as provided by subparagraph (k) above. In the event that the Contracting Officer requires the removal of any Government Property under this subparagraph (l) or subparagraph (k) above, the direct cost to the Contractor of such removal and of any property damage occasioned thereby shall constitute an allowable cost thereunder.

(m) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(n) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

Subpart F—Use of Government Owned Industrial Facilities on Work Other Than for a Military Department

§ 13.600 Scope of subpart.

The preceding subparts of this part are intended to be applicable only to those situations in which Government property is provided to contractors or subcontractors of any tier, for use in connection with procurement by the military departments. This subpart relates to making available to contractors, former contractors, or other parties, Government-owned industrial facilities under the control of a military department for use solely or principally on work other than for a military department. (As to making industrial facilities available principally for use in connection with procurement by the military departments, and incidentally for use on work other than for a military department, see § 13.407.) The question of making industrial facilities available for use on work other than for a military department may arise with respect to such property in the possession of the Government (e.g., machine tools in reserve storage) or in the possession of the potential user (e.g., where a contractor has completed the contract under which the property was originally provided). Basic authority to permit the use of Government property on work other than for a military department is found in statutes authorizing the Secretaries to lease property under their control (see 10 U.S.C. 2667 and 50 U.S.C. App. 1173).

§ 13.601 Rental.

§ 13.601–1 General.

Whenever industrial facilities are made available for use on work other than for an agency of the Department of Defense, the user shall be charged a fair and reasonable rental: *Provided*, That under Departmental procedures consistent with § 13.407 (a) rental may be waived with regard to such property furnished solely for use in performing work for Government agencies. Such rental, unless otherwise specified herein, shall be established on the basis of sound commercial practice, including any prevailing commercial rates. Except as otherwise provided in § 13.601–2, such rental may, where permitted by the law under which the contract or agreement is executed, take into consideration obligations assumed by the user to protect and maintain the property as well as to perform other services as all or part of the consideration for the contract or agreement. The rental shall, in any event, be such as to prevent the user from obtaining an unfair competitive advantage by reason thereof over competitors who own their facilities or obtain them from private sources. The rental shall be charged on the basis of the time during which the property is available for use rather than on the basis of the time during which the property is actually used, except in the case of facilities, other than those covered by § 13.601–2, where it is determined by the Secretary concerned, or his representative duly authorized to approve the contract or agreement by which the property is made available, to be impracticable or contrary to the best interest of the Government. The Government shall make no warranty, express or implied, regarding the conditions or fitness for use of any item of property.

§ 13.601–2 Rental rates.

Except as provided in § 13.601–3, rental charged for industrial facilities shall conform to the following rates.

(a) As to production equipment of the types listed in § 13.603, rent shall be at the appropriate rate set forth below regardless of the extent and value of any obligations undertaken by the user to provide maintenance or other services.

Age of equipment	*Monthly rental rate*
0 to 2 years	1¾% of acquisition cost.
Over 2 to 6 years	1½% of acquisition cost.
Over 6 to 10 years	1% of acquisition cost.
Over 10 years	¾% of acquisition cost.

The acquisition cost to be used in determining rental shall be the purchase price of the equipment charged the Government plus costs of transportation to, and installation in, the place where the equipment will be used under the contract or agreement, if such costs are borne by the Government. Transportation and installation costs may be estimated by the contracting officer where the actual costs are not known. When special tooling or accessories are rented with the equipment, equipment acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When equipment is modernized by substantial rebuilding at Government expense so as to enhance the original capability of the tool, the acquisition cost of the equipment shall be adjusted upward properly to take account of the increased value that such rebuilding and modernization represents. If the purchase price is not available or cannot be obtained from the manufacturer of the equipment, the Department concerned shall obtain an estimated purchase price from the Office of the Assistant Secretary of Defense (Supply and Logistics). On January 1 following the date of manufacture of each item of equipment, such item shall be considered one year old, and on each succeeding January 1 it shall become one year older; and contracts or agreements shall so provide. For example, if an item of equipment is manufactured on July 15, 1958, it will be considered to be one year old on January 1, 1959, two years old on January 1, 1960, three years old on January 1, 1961, etc. The item of equipment will be considered "over two years" old on and after January 1, 1960, "over six years" old on and after January 1, 1964, and "over ten years" old on and after January 1, 1968.

(b) As to personal property and equipment constituting industrial facilities other than production equipment covered in paragraph (a) of this section, and with respect to which there are not prevailing commercial rates, a rent at the rate of not less than 1 percent per month of the original acquisition cost of such property or equipment shall be charged.

(c) Charges to be made under the provisions of paragraphs (a) and (b) of this section shall conform to the following. For any period in which use of personal property and equipment constituting industrial facilities is authorized, the contractor, regardless of the character and extent of his use of the facilities, shall be charged a full month's rental for each month or fraction thereof, computed in accordance with the above rates, reduced by the amount of rental which would be properly allocable to Government contracts and subcontracts on which use of the facilities without charge has been authorized. The portion of the rental charge properly allocable to such Government contracts and subcontracts may be determined either prospectively or retroactively, as provided in the facilities contract, and shall be computed by multiplying the full rental for the period by a fraction whose numerator is the amount of use of the facilities by the contractor on a no charge basis and whose denominator is the total amount of use of the facilities both on a rental and no charge basis. For purposes of the above formula, amounts of use may be determined on the basis of direct labor hours, sales, hours of use, or any other method which the contracting officer determines will result in an equitable apportionment of the rental charge.

(d) As to real property constituting industrial facilities a fair and reasonable rent shall be charged.

Except to the extent otherwise permitted by Departmental procedures in the case of property covered by paragraph (b) of this section, the contract or agreement under which property covered by this section is made available shall require the user to protect, preserve, maintain, and repair the property in accordance with sound industrial practice without cost to the Government under such contract or agreement.

§ 13.601–3 Exceptions.

The requirements of § 13.601–2 shall not be applicable:

(a) In the case of industrial facilities involved in leases of wholly-owned Government facilities operated by private contractors on a fee basis;

(b) To non-defense leases of complete industrial facilities (including land, buildings, and equipment) which have been approved by the Congressional Committees on Armed Services in accordance with 10 U. S. C. 2662 where the total acquisition costs of the included production equipment of the classes listed in § 13.603 is less than 10 percent of acquisition costs of the entire facility. In each such instance, however, a report giving pertinent details shall be submitted to the Assistant Secretary of Defense (Supply and Logistics). It will include the names of the facility and the lessor, the total amount of rental or other fees paid to the Government, the planned use of the facility, a list of the production equipment (of the types covered by § 13.603) including the date of manufacture and acquisition cost of each item, the period of non-defense use, and such other data as is considered significant.

(c) To items of production equipment which are such that the size, complexity, or performance characteristics present unusual problems reflected in the time required in connection with preparing for shipment, shipping from storage or supply point, installing, and making ready for operation: *Provided*, The Office of Defense and Civilian Mobilization has approved the over-all program involving such equipment.

(d) To personal property and equipment which is a part of industrial facilities left in place or installed in a contractor's plant for mobilization, emergency, or future production purposes of the Government: *Provided*, That the requirements of § 13.601–2 shall apply to so much of such personal property of equipment, or of its capacity, as is used or authorized for use at any one time.

(e) As otherwise excepted by the Office of Defense and Civilian Mobilization.

§ 13.602 Term of use.

(a) Leases of industrial facilities shall be for a specific term which shall not exceed the period of time expected to be required to fulfill the purpose for which the facilities are made available.

(b) With respect to equipment leases, the lessee shall not be granted, by an option or otherwise, the unilateral right to extend the period of use.

§ 13.603 Production equipment.

The production equipment to which the provisions of § 13.601–2 shall be applicable are:

Production equipment code No.	*Description*
3411–341999	Machine tools.
3441–34490	Secondary metal forming and cutting machines.
34510–34519	Electric arc welding machines.
34520–3452129 345220–34529	Electric resistance welding machines.
345330–345339	Gas (flame) cutting machines—excluding hand torches.
357211–357219	Metal heat treating furnaces—Box type.
357221–3572249	Metal heat treating furnaces—Bath type.
357231–357239	Metal heat treating furnaces—Basket type.
357241–3572439	Metal heat treating furnaces—Bell type.
357261–357269	Metal heat treating furnaces—Pit type.
357271–357279	Metal heat treating furnaces—Pot type.
3572841–3572849	Induction heating devices.
54160000	Transformers, power, uninstalled, 501 kva and above, 50 and 60 cycle only.
5561–556159	Powered trucks, industrial.
5563–5563994	Tractors, industrial.
5564–556420162	Trailers for industrial tractors.
563908	Profilometers.
563914	Magnetic particle inspection machines.
5651–56519	Hardness testing machines.
5653–56539	Pressure testing machines.
5656–5656323	Balancing machines.
56572–565729	Gear measuring and treating machines.
56573–565739	Hob, worn and cutter measuring machines.
565742	Surface finish measuring machines.

Subpart G—Use of Government-Owned Industrial Facilities and Special Tooling on Work for Foreign Governments

§ 13.700 Scope of subpart.

This subpart covers use by contractors of Government-owned industrial facilities and special tooling on work for a foreign government.

§ 13.701 Use without charge.

Upon the request of a foreign government, industrial facilities and special tooling located within the United States, its Territories, its possessions, or Puerto Rico, may be authorized for use, without charge, on contracts of the foreign government or subcontracts thereunder, if:

(a) Such use is approved by the Secretary or his designee;

(b) The foreign government would be authorized to place the contract with the Department concerned under the Mutual Security Act of 1954 as amended, or such use is legally authorized by an agreement with the foreign government;

(c) The foreign government's placing of the contract directly with the contractor is consistent with the best interests of the United States;

(d) Such use will not interfere with foreseeable United States requirements;

(e) Such use does not place the user in a favored competitive position; and

(f) The contractor agrees that no charge for the use of the facilities or tooling shall be included in the price charged the foreign government under the contract.

Subpart H—Transfer of Title to Equipment to Nonprofit Education or Research Institutions

§ 13.800 Scope of subpart.

This subpart implements P.L. 85–934, section 2 which gives the Department of Defense discretionary authority to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research.

§ 13.801 Purpose of the legislation.

The general purpose of the legislation implemented by this subpart is to facilitate the scientific research performed under contract for the Government by the nonprofit institutions and organizations described in § 13.800. It is intended to permit the elimination of the record-keeping required when the Government retains title to equipment furnished or purchased under a research contract, in those cases where the cost of such record-keeping to the contractor or to the Government is out of proportion to the value of the equipment. It is further intended to reduce where desirable the time and labor involved in formally circulating through the Government long lists of highly specialized or minor items of equipment or in relocating major equipment when such relocation is impracticable or uneconomical and not required for other research programs of the Government. Finally, it is intended to provide a measure of administrative flexibility when, from the standpoint of increased research effectiveness and in the absence of other Departmental or Governmental requirements, it is desirable to transfer title to equipment to such research contractors.

§ 13.802 Transfer of title.

(a) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research may provide, or may be amended to provide, that the contracting officer may transfer title to equipment to the contractor. In connection with any such contract which so provides, the contracting officer may vest in the contractor title to any equipment purchased at any time with funds which were available for grants or contracts for the conduct of basic or applied research, if not prohibited by controls governing the equipment involved, and if it is determined that such vesting is in furtherance of the objectives of the Department or agency concerned, and either—

(1) As to each item of equipment having an acquisition cost of $1,000 or less, that—

(i) Retention of title in the Government would create an administrative burden not warranted by the value of the equipment, or

(ii) The keeping of inventory and records by the contractor would become prohibitively complicated or expensive; or

(2) As to any item of equipment—

(i) That the item is of such nature that it would be impracticable or uneconomical to remove it from the contractor's possession, or

(ii) After a reasonable check by the contracting officer, commensurate with the value of the item involved, that there is no requirement within the Department of Defense for the item: *Provided*, That, if the acquisition cost of the item exceeds $25,000, the item shall be further screened in accordance with Departmental procedures.

(b) The vesting of title as provided in paragraph (a) of this section shall be accomplished following a written determination by the contracting officer that

the applicable criteria in paragraph (a) of this section have been met. With respect to items of equipment having an acquisition cost in excess of $1,000, such determination shall be subject to prior approval in accordance with Departmental procedures.

(c) Where title to equipment is vested pursuant to paragraph (a) of this section, the contractor shall be without further obligation to the Government with respect to such equipment, except that the contractor must agree, as a condition to taking title, that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract.

§ 13.803 Contract clauses.

Where it is anticipated that title to equipment may be vested in the contractor in accordance with this Part, the alternate clause in § 13.505(c) shall be included in fixed-price research and development contracts and the alternate clauses in § 13.506 (c) and (d) will be inserted in cost-reimbursement research and development contracts.

PART 14—INSPECTION AND ACCEPTANCE

Sec.
14.000 Scope of part.

Subpart A—Inspection

14.100 Definitions.
14.100–1 Inspection.
14.100–2 Testing.
14.101 General.
14.102 Activities responsible for inspection.
14.103 Inspection interchange agreements.
14.104 Contractor responsibility.
14.105 Places of inspection.
14.105–1 General.
14.105–2 Inspection at source.
14.105–3 Inspection at destination.
14.106 Inspection of small purchases ($2,500 or less).
14.107 Rejection of nonconforming supplies or services.
14.108 Government inspection under subcontracts.
14.109 Inspection for foreign governments.

Subpart B—Acceptance

14.201 General.
14.202 Delivery under F.O.B. origin contracts.
14.203 Point of acceptance.
14.204 Responsibility for acceptance.
14.205 Acceptance of supplies or services not conforming with contract requirements.

AUTHORITY: §§ 14.000 to 14.205 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 14.000 Scope of part.

This part deals with inspection and acceptance under contracts for supplies (other than construction contracts or services).

Subpart A—Inspection

§ 14.100 Definitions.

§ 14.100–1 Inspection.

Inspection means the examination (including testing) of supplies and services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the supplies and services conform to contract requirements, including all applicable drawings, specifications, and purchase descriptions.

§ 14.100–2 Testing.

Testing is an element of inspection and generally denotes the determination by technical means of the physical and chemical properties or elements of materials, supplies, or components thereof, involving not so much the element of personal judgment as the application of established scientific principles and procedures.

§ 14.101 General.

(a) Inspection on behalf of the Government shall be conducted in all cases prior to acceptance, except as permitted by § 14.204. Inspection shall be accomplished by or under the supervision of Government personnel. Except as otherwise provided in the contract, test requirements may be performed in the contractor's or subcontractor's laboratory or any other commercial laboratory acceptable to the Government. The contractor may be required under the terms of the contract to establish and maintain an acceptable inspection or quality control system to assure compliance with contract specifications with a minimum of Government inspection supervision. A manufacturer's certificate or other statement of quality or quantity may be considered in determining whether supplies or services are in conformity with the contract; but no provision of the contract shall preclude the Government from performing inspection.

(b) The type and extent of inspection needed depend on the particular procurement. For example, on items which would involve small losses in the event of defects and which would probably be replaced by suppliers without contest, inspection may consist only of checks for identity, quantity, and shipping damage.

§ 14.102 Activities responsible for inspection.

Inspection, or the arrangement therefor, is the responsibility of the contracting activity. Where a department or activity uses the inspection services of another department or activity, the department or activity performing such inspection has primary inspection cognizance and its inspection determinations are binding on the department or activity for which the inspection services are performed. In coordinated or interdepartmental procurements, where Government inspection is to be made at the source, it generally will be made by inspectors of the contracting agency; but this general rule does not alter inspection interchange agreements or preclude the use of inspections of another department or activity located at or servicing the contractor's plant. Where Government inspection at destination is required in coordinated or interdepartmental procurements, the requiring agency or activity may be requested to arrange for the inspection.

§ 14.103 Inspection interchange agreements.

By appropriate inspection interchange agreements, departments and activities shall provide for the use of inspection services of other departments or Government agencies to assure the most economical and effective inspection consistent with the best interest of the Government. Wherever there are multiple Government inspection assignments in a supplier's plant, each of the activities involved shall arrange for the interchange of inspection services, except that contracts involving special requirements may be exempted in accordance with policies established by the Department of Defense. Inspection interchange agreements should be designed to eliminate duplication, overlapping, or multiple assignments of Government inspection activities in any one plant. Departmental procedures generally should permit detailed inspection interchange agreements to be initiated and completed at the operating level. Inspection interchange agreements shall be in accordance with the following:

(a) When inspection is to be made by other military procuring activities or military departments, such inspection shall be performed without reimbursement except to the extent that reimbursement in kind is practicable;

(b) When inspection is to be made by or for other Government agencies, such inspection will be on a mutually acceptable basis; and

(c) All agreements shall include specific provisions for: (1) Use of the practices, records, and forms of the activity performing inspection, unless the use of others is mutually agreeable; (2) channels of communication; and (3) designation of source and delivery date of any Government inspection equipment to be supplied.

§ 14.104 Contractor responsibility.

The standard inspection clauses in Part 7 of this chapter require the contractor to maintain an inspection system acceptable to the Government and records of all inspection work performed by the contractor. The contractor's inspection system should be such as to provide reasonable assurance that the supplies subject to inspection will conform to contract requirements and should include any quality control procedures necessary to this end. Contracts for complex supplies shall include the Quality Control System clause in § 7.104–28 of this chapter. This clause specifically requires contractors to maintain a quality control system acceptable to the Government. In this regard the Contracting Officer, or his representatives, shall assure that the contractor maintains quality control measures for all manufacturing processes and documentation pertinent to quality, testing and inspection, fabrication, and delivery. Government inspection activities shall plan and conduct systematic evaluation and verification of suppliers' inspection systems, quality control systems, and supplies, for the purpose of obtaining the maximum assurance of quality consistent with efficient use of Government and contractor manpower and facilities. In any case, when Military or Federal specifications are used to establish requirements in the contract, the supplier shall be required to perform all examinations and tests called for by the specifications except those which the Government is expressly required to make.

§ 14.105 Places of inspection.

§ 14.105–1 General.

Each contract shall designate the place or places of inspection. Inspection of supplies and services shall be made at such times and places (including any stage at the period of manufacture, and including subcontractors' plants) as are necessary to determine that the supplies and services conform to contract requirements. Where the contract provides for inspection at source, shipment prior to inspection may be authorized if it is determined to be in the best interest of the Government. In such cases, to the extent appropriate, the contract should be modified prior to shipment with respect to (a) risk of loss in transit and (b) shipping and other expenses incurred in the event of rejection at destination.

§ 14.105–2 Inspection at source.

Supplies and services shall be inspected at source where:

(a) Inspection at any other point would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary corrections;

(c) Special instruments, gauges, or facilities required for inspection are available only at source;

(d) Inspection at any other point would destroy or require the replacement of costly special packing and packaging;

(e) Quality control and inspection are closely related to production methods;

(f) Supplies requiring technical inspection are destined for points of embarkation for oversea shipment; or

(g) Otherwise determined to be in the best interest of the Government.

§ 14.105–3 Inspection at destination.

Supplies and services shall be inspected at destination where:

(a) Deliveries of supplies purchased "off the shelf" are made from a point other than that of manufacture;

(b) Necessary testing equipment is located only at destination;

(c) Biologicals being purchased are processed under direct control of the National Institutes of Health or the Federal Food and Drug Administration;

(d) Perishable subsistence supplies are purchased within the United States, except that perishable subsistence supplies destined for oversea shipment will normally be inspected for condition and quantity at points of embarkation;

(e) Brand name items are purchased for authorized resale, except that where supplies are destined for direct overseas shipment, inspection (and acceptance) will be made by the contracting officer or the official charged with such responsibility on the basis of a tally sheet evidencing receipt of shipment signed by the port transportation officer or other designated official at the transshipment point; or

(f) Otherwise determined to be in the best interest of the Government.

§ 14.106 Inspection of small purchases ($2,500 or less).

(a) This section applies to all small purchases, including items described in Federal and Military specifications, and qualified products. In determining the type and extent of Government inspection to be required on small purchases, the smallness of possible losses and the likelihood of uncontested replacement of defective articles shall be considered.

(b) Generally, inspection of small purchases shall be at destination. Purchasers, users, and installers may be considered inspectors for small purchase inspection purposes.

(c) Unless detailed technical inspection is necessary, inspection shall consist of examination of (1) type and kind, (2) quantity, (3) damage, (4) operability, if readily determinable, and (5) packaging and marking, if applicable.

(d) Detailed technical inspection shall be performed if special specifications are involved or if defective supplies can harm personnel or equipment.

(e) Detailed technical inspection may be limited to a check of characteristics that require separate specifications and of those likely to cause harm. Such inspection may be limited to inspection of occasional purchases of the same item from the same manufacturing source when there is good reason to rely upon the integrity of the manufacturer because of known safeguards and a significant history of defect-free purchases.

(f) Adjustments for short shipments or defective supplies shall be requested from suppliers when recovery will benefit the Government.

§ 14.107 Rejection of nonconforming supplies or services.

Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services if this can be done within the required delivery schedule. Unless the contract provides otherwise, such correction or replacement shall be without additional cost to the Government. Notices of rejection of nonconforming supplies or services need not be in writing unless (a) the supplies have been delivered to a point other than the contractor's plant, (b) the contractor persists in offering nonconforming supplies or services for acceptance, or (c) delivery or performance is overdue without excusable cause. The reasons for

rejection normally shall be stated, and the contractor may be given any suggestions that might help in eliminating the cause of rejection. If timely notice of rejection is not furnished to the contractor, acceptance may in certain cases be implied as a matter of law from such omission. Therefore, notices of rejection should be furnished promptly to contractors whenever rejection is intended.

§ 14.108 Government inspection under subcontracts.

Government inspection of subcontracted supplies shall be made only when required in the interest of the Government. The primary purpose of subcontract inspection is to assist the Government inspector at the prime contractor's plant in determining the conformance of supplies with contract requirements. It does not relieve the prime contractor of any of his responsibilities under the contract. Supplies that do not qualify under the criteria in § 14.105–2 for Government inspection at source shall not be inspected by the Government at the subcontractor's plant. Supplies for which certificates, records, reports, and similar evidence of quality are available at the prime contractor's plant shall not be Government inspected at the subcontractor's plant except occasionally to verify such evidence. However, Government inspection shall be performed at a subcontractor's plant whenever the Government contract requires. All oral and written statements and contract provisions relating to the inspection of subcontracted supplies shall be worded as not to (a) affect the contractual relationship between the prime contractor and the Government or between the prime contractor and the subcontractor, (b) establish a contractual relationship between the Government and the subcontractor or (c) constitute a waiver of the Government's right to inspect or reject supplies.

§ 14.109 Inspection for foreign governments.

Inspection will be performed only for friendly foreign governments or international agencies and shall be administered in accordance with the foreign policy and security objectives of the United States. Such inspection will be provided only where consistent with or required by legislation, executive orders, or Department of Defense or Departmental policies concerning mutual security programs, setting forth foreign policy and security objectives. When inspection is performed outside the United States, the levels of technical capability and the administrative procedures not already prescribed in existing laws, Executive Orders, or Department of Defense policies will be in accordance with arrangements suitable and acceptable to United States country teams or commanders of unified and special commands, as appropriate.

Subpart B—Acceptance

§ 14.201 General.

As used in Department of Defense contracts, "acceptance" generally means the act of an authorized representative of the Government by which the Government assents to ownership by it of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract. Except as provided in § 14.205, and subject to other terms and conditions of the contract, the Government thereby acknowledges that the supplies or services are in conformity with contract requirements, including those of quality, quantity, packaging, and marking. Depending upon the provisions of the contract, acceptance may be effected prior to, at the time of, or after delivery. However, supplies and services shall not be accepted prior to inspection, except as permitted in § 14.204. Acceptance shall ordinarily be accomplished by execution of an acceptance certificate on the applicable inspection and receiving report form (for example, DD Form 250, DD Form 1155, or Standard Form 44). Where acceptance is accomplished at a point other than destination, supplies shall not be reinspected at destination for acceptance purposes.

§ 14.202 Delivery under F.O.B. origin contracts.

(a) Satisfactory evidence of delivery is required before payment other than progress or advance payments may be made under fixed-price supply contracts. Under contracts calling for deliveries F.O.B. origin, the contracting officer or his authorized representative, in certifying that delivery has been made, may in his discretion rely on the contractor's signed statement on his invoice that delivery has been made on a specified date to a named carrier or to a representative of the Government. When necessary to protect the Government's interest, the contracting officer may require either that the contractor furnish a receipted copy of the bill of lading or postal receipt, or that a representative of the Government certify as to actual delivery on the applicable inspection and receiving report form. Invoicing instructions to F.O.B. origin contractors shall require that the contractor state on all invoices (1) the date of shipment, name of carrier, and bill of lading number, or (2) the name and title of the Government representative to whom delivery was made and date of such delivery.

(b) Where payment has been made on the basis of a certificate, and the supplies have not been received at destination, prompt follow-up and remedial action will be initiated.

§ 14.203 Point of acceptance.

Each contract shall specify the point of acceptance. Contracts which provide for delivery F.O.B. destination shall provide for acceptance at destination whether inspection is to occur at destination or at origin. Contracts which provide for delivery F.O.B. origin shall ordinarily provide for acceptance (and inspection) at origin.

§ 14.204 Responsibility for acceptance.

(a) Acceptance is the responsibility of the contracting officer, or his authorized representative. Where an activity uses services of another activity or Department for the purpose of acceptance, acceptance by the other activity or Department is binding on the activity for which the services are performed.

(b) A supplier's certificate of conformance with requirements may be considered a proper element incident to acceptance of supplies or services. A contractor's certificate may be used for Government acceptance prior to inspection. At the discretion of the contracting officer, a clause may be inserted in contracts requiring the contractor to certify that supplies comply with contract requirements. Where acceptance precedes inspection, however, a clause will be used to reserve the Governments' right after acceptance to inspect the supplies within a reasonable time after delivery and to reject defective items. Certificates of conformance shall be required by the contract when the value of supplies or the condition of purchase, delivery, receipt, or use thereof make it desirable to have additional assurance that supplies conform to contract requirements.

§ 14.205 Acceptance of supplies or services not conforming with contract requirements.

When supplies or services tendered for acceptance do not conform with contract requirements, the applicable contract provisions shall govern the action to be taken. See § 14.107. For reasons of economy or the urgency of the requirement, acceptance of supplies or services which do not meet all contract requirements may occasionally be desirable. Prior to such acceptance, the contracting officer shall obtain the approval of the requiring activity where the nonconformity with contract requirements (a) affects matters such as safety, durability, performance, or interchangeability of parts or assemblies, (b) results in material increases in weight, where weight is a significant consideration, or (c) affects the basic objectives of the specifications. Acceptance of these types of nonconforming supplies or services shall be covered by an appropriate modification of the contract. Acceptance of other types of nonconforming supplies and services shall be covered by contract modification if determined necessary by the contracting officer.

PART 15—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

15.000 Scope of part.

Subpart A—Applicability

15.101 Scope of subpart.
15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.
15.103 Cost-reimbursement research contracts with educational institutions.
15.104 Cost-reimbursement construction contracts.
15.105 Cost-reimbursement facilities contracts.
15.106 Use of cost principles for fixed-price contracts.
15.107 Advance understandings on particular cost items.

Subpart B—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

15.201 Basic considerations.
15.201–1 Composition of total cost.
15.201–2 Factors affecting allowability of costs.
15.201–3 Definition of reasonableness.
15.201–4 Definition of allocability.
15.201–5 Credits.
15.202 Direct costs.
15.203 Indirect costs.
15.204 Application of principles and procedures.
15.205 Selected costs.
15.205–1 Advertising costs.
15.205–2 Bad debts.
15.205–3 Bidding costs.
15.205–4 Bonding costs.
15.205–5 Civil defense costs.
15.205–6 Compensation for personal services.
15.205–7 Contingencies.
15.205–8 Contributions and donations.
15.205–9 Depreciation.
15.205–10 Employee morale, health, and welfare costs and credits.
15.205–11 Entertainment costs.
15.205–12 Excess facility costs.
15.205–13 Fines and penalties.
15.205–14 Food service and dormitory costs and credits.
15.205–15 Fringe benefits.
15.205–16 Insurance and indemnification.
15.205–17 Interest and other financial costs.
15.205–18 Labor relations costs.
15.205–19 Losses on other contracts.
15.205–20 Maintenance and repair costs.
15.205–21 Manufacturing and production engineering costs.
15.205–22 Material costs.
15.205–23 Organization costs.
15.205–24 Other business expenses.
15.205–25 Overtime, extra-pay shift and multi-shift premiums.
15.205–26 Patent costs.
15.205–27 Pension plans.
15.205–28 Plant protection costs.
15.205–29 Plant reconversion costs.
15.205–30 Precontract costs.
15.205–31 Professional service costs; legal, accounting, engineering, and other.
15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets.
15.205–33 Recruiting costs.
15.205–34 Rental costs (including sale and leaseback of facilities).
15.205–35 Research and development costs.
15.205–36 Royalties and other costs for use of patents.
15.205–37 Selling costs.
15.205–38 Service and warranty costs.
15.205–39 Severance pay.
15.205–40 Special tooling costs.
15.205–41 Taxes.
15.205–42 Termination costs.
15.205–43 Trade, business, technical and professional activity costs.
15.205–44 Training and educational costs.
15.205–45 Transportation costs.
15.205–46 Travel costs.

Subpart C—Research Contracts With Educational Institutions

15.301 General.
15.302 Definitions.
15.302–1 Research agreements.
15.302–2 Apportionment.
15.302–3 Allocation.
15.302–4 Sponsoring agency.
15.302–5 Original complement.
15.302–6 Other institutional activities.
15.303 Direct costs.
15.304 Indirect costs.
15.305 Applicable costs.
15.306 Determination of indirect costs.
15.306–1 General.
15.306–2 Apportionment.
15.306–3 Allocation.
15.306–4 Overhead determinations acceptable under special circumstances.
15.307 General standards for selected items of cost.
15.307–1 Purpose and applicability.
15.307–2 Costs applicable to instruction.
15.307–3 Allowable and unallowable costs.

Subpart D—Construction Contracts

15.401 Definition of construction contract.
15.402 General basis for determination of costs.
15.403 Examples of items of allowable costs.
15.404 Examples of items of unallowable costs.
15.405 Examples of subjects requiring special considerations.
15.406 Cost interpretation of pension and retirement plans.

Subpart E—[Reserved]

Subpart F—Guidelines for Application in the Negotiation and Administration of Fixed-Price Type Contracts and in the Negotiation of Termination Settlements

15.600 Scope of subpart.
15.601 Definition of fixed-price type contracts.
15.602 Basic considerations.
15.603 Cost principles and their use.

AUTHORITY: §§ 15.600 to 15.603 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 15.000 Scope of part.

This part contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost-reimbursement type contracts and contains guidelines for use, where appropriate, in the evaluation of costs in connection with certain negotiated fixed-price type contracts and contracts terminated for the convenience of the Government.

Subpart A—Applicability

§ 15.101 Scope of subpart.

This subpart describes the applicability of succeeding subparts of this part to the various types of contracts in connection with which cost principles and procedures are used.

§ 15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.

This category includes all cost-reimbursement type contracts (§ 3.404 of this chapter) for supplies, services, or experimental, developmental, or research work (other than with educational institutions, as to which § 15.103 applies), except that it does not include facilities contracts (see § 15.105) or construction contracts (see § 15.104). The cost principles and procedures set forth in Subpart B of this part shall be incorporated by reference in cost-reimbursement supply and research contracts with other than educational institutions as the basis—

(a) For determination of reimbursable costs under such contracts, including cost-reimbursement type subcontracts thereunder, and the cost-reimbursement portion of time-and-materials contracts (§ 3.405–1 of this chapter);

(b) For the negotiation of overhead rates (Subpart G, Part 3 of this chapter); and

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart D, Part 8, of this chapter), and for settlement of such contracts by determination (§ 8.209–7 of this chapter).

§ 15.103 Cost-reimbursement research contracts with educational institutions.

This category includes all cost-reimbursement type contracts (§ 3.404 of this chapter) for experimental, developmental, or research work with educational institutions. The cost principles and procedures set forth in Subpart C of this part shall be incorporated by reference in cost-reimbursement research contracts with educational institutions as the basis—

(a) For determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(b) For the negotiation of overhead rates (Subpart G, Part 3 of this chapter); and

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart D, Part 8, of this chapter), and for settlement of such contracts by determination (§ 8.209–7 of this chapter).

In addition, Subpart C of this part is to be used in determining the allowable costs of research and development performed by educational institutions under grants.

§ 15.104 Cost-reimbursement construction contracts.

This category includes all cost-reimbursement type contracts (§ 3.404 of this chapter) for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It also includes cost-reimbursement type contracts for architect-engineer services related to such construction. It does not include contracts for vessels, aircraft, or other kinds of personal property. The cost principles and procedures set forth in Subpart D of this part, shall be incor-

porated by reference in cost-reimbursement construction contracts as the basis—

(a) For determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(b) For the negotiation of overhead rates (Subpart G, Part 3, of this chapter); and

(c) For the determination of costs of terminated cost-reimbursement type contracts where the contractor elects to "voucher out" its costs (Subpart D, Part 8, of this chapter), and for settlement of such contracts by determination (§ 8.209–7 of this chapter).

§ 15.105 Cost-reimbursement facilities contracts.

[Reserved]

§ 15.106 Use of cost principles for fixed-price contracts.

Subpart F of this part provides guidance for the use of Subparts B, C and D of this part where appropriate, in the evaluation of costs in connection with the negotiation of certain fixed-price type contracts and termination settlements.

§ 15.107 Advance understandings on particular cost items.

The extent of allowability of the selected items of cost covered in Subparts B to E of this part has been stated to apply broadly to many accounting systems in varying contract situations. Thus, as to any given contract, the reasonableness and allocability of certain items of cost may be difficult to determine, particularly in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective contractors, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by contracting officers individually, or jointly, for all defense work of the contractor, as appropriate. Any such agreement should be incorporated in cost-reimbursement type contracts, or made a part of the contract file in the case of negotiated fixed-price type contracts, and should govern the cost treatment covered thereby throughout the performance of the contract. But the absence of such an advance agreement on any element of cost will not, in itself, serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important:

(a) Compensation for personal services;

(b) Use charge for fully depreciated assets;

(c) Deferred maintenance costs;

(d) Pre-contract costs;

(e) Research and development costs;

(f) Royalties;

(g) Selling and distribution costs; and

(h) Travel costs, as related to special or mass personnel movement.

Subpart B—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

§ 15.201 Basic considerations.

§ 15.201–1 Composition of total cost.

The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is equitable under the circumstances may be used, including standard costs properly adjusted for applicable variances.

§ 15.201–2 Factors affecting allowability of costs.

Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this subpart, or otherwise included in the contract as to types or amounts of cost items.

§ 15.201–3 Definition of reasonableness.

A cost is reasonable if, in its nature or amount, it does not exceed that which would be incured by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(c) The action that a prudent business man would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government and the public at large; and

(d) Significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

§ 15.201–4 Definition of allocability.

A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a contract, product, product line, process, or class of customer or activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, or both Government work and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

§ 15.201–5 Credits.

The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the contractor, shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

§ 15.202 Direct costs.

(a) A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other work of the contractor are direct costs of that work and are not to be charged to the contract directly or indirectly. When items ordinarily chargeable as indirect costs are charged to Government work as direct costs, the cost of like items applicable to other work of the contractor must be eliminated from indirect costs allocated to Government work.

(b) This definition shall be applied to all items of cost of significant amount unless the contractor demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in § 15.203.

§ 15.203 Indirect costs.

(a) An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative expenses are separately grouped. Similarly, the particular case may require subdivisions of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(c) Each cost grouping shall be distributed to the appropriate cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. This principle for selection is not to be applied so rigidly as to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(d) The method of allocation of indirect costs must be based on the particular circumstances involved. The method shall be in accord with those generally accepted accounting principles which are applicable in the circumstances. The contractor's established practices, if in accord with such accounting principles, shall generally be acceptable. However, the methods used by the contractor may require re-examination when:

(1) Any substantial difference occurs between the cost patterns of work under the contract and other work of the contractor; or

(2) Any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, the inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(e) A base period for allocation of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period will be the contractor's fiscal year; however, use of a shorter period may be appropriate in case of (1) contracts whose performance involves only a minor portion of the fiscal year, or (2) where it is general practice in the industry to use a shorter period. In any event the base period or periods shall be so selected as to avoid inequities in the allocation of costs. When the contract is performed over an extended period of time, as many such base periods will be used as will be required to represent the period of contract performance.

§ 15.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent that they are reasonable (see § 15.201–3), allocable (see § 15.201–4), and determined to be allowable in view of the other factors set forth in §§ 15.201–2 and 15.205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(b) Costs incurred as reimbursements to a subcontractor under a cost-reimbursement type subcontract of any tier above the first fixed-price subcontract are allowable to the extent that allowance is consistent with the subpart of this part which is appropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this subpart were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if Subpart D of this part were incorporated in the subcontract.

(c) Selected items of cost are treated in § 15.205. However, § 15.205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in § 15.205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this subpart and, where appropriate, the treatment of similar or related selected items.

§ 15.205 Selected costs.

§ 15.205–1 Advertising costs.

(a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, trade papers, outdoor advertising, dealer cards and window displays, conventions, exhibits, free goods and samples, and the like. The following advertising costs are allowable:

(1) Advertising in trade and technical journals: *Provided,* Such advertising does not offer specific products or services for sale but is placed in journals which are valuable for dissemination of technical information within the contractor's industry;

(2) Help-wanted advertising, as set forth in § 15.205–33, when considered in conjunction with all other recruitment costs;

(3) Costs of participation in exhibits—

(i) Upon invitation of the Government, or

(ii) Which exhibits are for the purpose of disseminating technical information within the contractor's industry; however, such costs are not allowable under this subdivision if the exhibit offers specific products or services for sale;

(4) Advertising for the exclusive purpose of obtaining scarce materials, plant, or equipment, or disposing of scrap or surplus materials, in connection with the contract.

(b) Except as provided above, all other advertising costs are unallowable.

§ 15.205–2 Bad debts.

Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related collection costs, and related legal costs, are unallowable.

§ 15.205–3 Bidding costs.

Bidding costs are the costs of preparing bids or proposals on potential Government and non-Government contracts or projects, including the development of engineering data and cost data necessary to support the contractor's bids or proposals. Bidding costs of the current accounting period of both successful and unsuccessful bids and proposals normally will be treated as allowable indirect costs, in which event no bidding costs of past accounting periods shall be allowable in the current period to the Government contract. However, if the contractor's established practice is to treat bidding costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

§ 15.205–4 Bonding costs.

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of his business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 15.205–5 Civil defense costs.

(a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the contractor's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the contractor.

(b) Costs of capital assets under paragraph (a) of this section are allowable through depreciation in accordance with § 15.205–9.

(c) Contributions to local civil defense funds and projects are unallowable.

§ 15.205–6 Compensation for personal services.

(a) *General.* (1) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee

incentive compensation plans. Except as otherwise specifically provided in this § 15.205–6, such costs are allowable to the extent that the total compensation of individual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(2) Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services. In the administration of this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. Such tests need be applied only to those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line. However, certain conditions give rise to the need for special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(i) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits.

(ii) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(iii) The contractor's business is such that his compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(3) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(4) In addition to the general requirements set forth in subparagraphs (1) through (3) of this paragraph, certain forms of compensation are subject to further requirements as specified in paragraphs (b) through (i) of this section.

(b) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, premiums for overtime, extra-pay shifts, and multi-shift work are allowable to the extent approved pursuant to § 12.102–4 of this chapter or permitted pursuant to § 12.102–5 of this chapter.

(c) *Cash bonuses and incentive compensation.* Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance, are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment. (But see § 15.107.) Bonuses, awards, and incentive compensation when any of them are deferred are allowable to the extent provided in (f) below.

(d) *Bonuses and incentive compensation paid in stock.* Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are allowable to the extent set forth in paragraph (c) of this section (including the incorporation of the principles of paragraph (f) of this section for deferred bonuses and incentive compensation), subject to the following additional requirements:

(1) Valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(2) Accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

Such costs otherwise allowable are subject to adjustment according to the principles set forth in paragraph (f) (3) of this section. (But see § 15.107.)

(e) *Stock options.* The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred compensation.* (1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension, annuity, stock bonus, and profit sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (iv) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service. (But see § 15.107.)

(3) In determining the cost of deferred compensation allowable under the contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the contractor; forfeitures which inure to the benefit of other employees covered by a deferred compensation plan with no reduction in the contractor's costs will not normally give rise to adjustment in contract costs. Adjustments for normal employee turnover shall be based on the contractor's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the contractor can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the contractor either as to an equitable adjustment or a method of determining such adjustment.

(4) In determining whether deferred compensation is for services rendered during the contract period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as, requirements of continued employment, consultation after retirement, and covenants not to compete.

(g) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental employment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance pay.* See § 15.205–39.

(i) *Training and education expenses.* See § 15.205–44.

§ 15.205–7 Contingencies.

(a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at a present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the contractor's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work; in such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, §§ 15.205–16, 15.205–20, and 15.205–39).

§ 15.205–8 Contributions and donations.

Contributions and donations are unallowable.

§ 15.205–9 Depreciation.

(a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular contractor's operations as distinguished from physical life.

(b) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable element of contract cost: *Provided*, That the amount thereof is computed:

(1) Upon the property cost basis used by the contractor for Federal income tax purposes (see section 167 of the Internal Revenue Code of 1954); or

(2) In the case of nonprofit or tax-exempt organizations, upon a property cost basis which could have been used by the contractor for Federal income tax purposes, had such organizations been subject to the payment of income tax; and in either case

(3) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954, as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in subdivision (i) of this paragraph;

(iii) The sum of the years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in subdivision (ii) of this subparagraph.

(c) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives set forth in paragraph (a) of this section, vary with volume of production or use of multi-shift operations.

(d) In the case of emergency facilities covered by certificates of necessity a contractor may elect to use normal depreciation without requesting a determination of "true depreciation" or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board. The method elected must be followed consistently throughout the life of the emergency facility. Where an election is made to use normal depreciation, the amount thereof for both the emergency period and the post-emergency period shall be computed in accordance with paragraph (b) of this section. Where an election is made to use "true depreciation," the amount allowable as depreciation:

(1) With respect to the emergency period (5 years), shall be computed in accordance with the determination of the Emergency Facilities Depreciation Board and allocated rateably over the full five year emergency period; provided no other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and

(2) After the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life (but see paragraph (e) of this section); provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."

(e) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

(f) No depreciation, rental, or use charge shall be allowed on the contractor's assets which have been fully depreciated when a substantial portion of such depreciation was on a basis that represented, in effect, a recovery thereof as a charge against Government contracts or subcontracts. Otherwise, a reasonable use charge may be agreed upon and allowed. (But see § 15.107.) In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, and effect of any increased maintenance charges or decreased efficiency due to age.

§ 15.205–10 Employee morale, health, and welfare costs and credits.

Reasonable costs of health and welfare activities, such as house publications, health or first-aid clinics, recreational activities, and employee counseling services, incurred, in accordance with the contractor's established practice or custom in the industry or area, for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities shall be credited to the costs thereof unless such income has been irrevocably set over to employee welfare organizations.

§ 15.205–11 Entertainment costs.

Costs of amusement, diversion, social activities and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see §§ 15.205–10 and 15.205–43).

§ 15.205–12 Excess facility costs.

Costs of maintaining, repairing, and housing idle and excess contractor-owned facilities, except those reasonably necessary for standby purposes, are unallowable. Any costs of excess plant capacity reserved for defense mobilization production which are to be paid for by the Government should be the subject of a separate contract.

§ 15.205–13 Fines and penalties.

Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the contract, or instructions in writing from the contracting officer.

§ 15.205–14 Food service and dormitory costs and credits.

Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the contractor's employees at or near the contractor's facilities. Reasonable losses from the operation of such services are allowable if they are allocated to all activities served. Profits (except profits irrevocably set over to an employee welfare organization of the contractor in amounts reasonably useful for the benefit of the employees at the site or sites of contract performance) accruing to the contractor from the operation of these services, whether operated by the contractor or by a concessionaire, shall be treated as a credit, and allocated to all activities served.

§ 15.205–15 Fringe benefits.

(See § 15.205–6(g).)

§ 15.205–16 Insurance and indemnification.

(a) Insurance includes insurance which the contractor is required to carry, or which is approved, under the terms of

the contract, and any other insurance which the contractor maintains in connection with the general conduct of his business.

(1) Costs of insurance required or approved, and maintained, pursuant to the contract, are allowable.

(2) Costs of other insurance maintained by the contractor in connection with the general conduct of his business are allowable subject to the following limitations:

(i) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(iii) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives, who has supervision or direction of (*a*) all or substantially all of the contractor's business, or (*b*) all or substantially all of the contractor's operations at any one plant or separate location in which the contract is being performed, or (*c*) a separate and complete industrial operation in connection with the performance of the contract;

(iv) Provisions for a reserve under an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(v) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see § 15.205–6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the contract, except:

(i) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(ii) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(b) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent expressly provided for in the contract, except as provided in paragraph (a)(3) of this section.

§ 15.205–17 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing operations, legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in § 15.205–41. (But see § 15.205–24.)

§ 15.205–18 Labor relations costs.

Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

§ 15.205–19 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research and development, or other nature, is unallowable.

§ 15.205–20 Maintenance and repair costs.

(a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see § 15.205–9):

(1) Normal maintenance and repair costs are allowable;

(2) Extraordinary maintenance and repair costs are allowable, provided such are allocated to the periods to which applicable for purposes of determining contract costs. (But see § 15.107.)

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

§ 15.205–21 Manufacturing and production engineering costs.

Costs of manufacturing and production engineering, including engineering activities in connection with the following, are allowable:

(a) Current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(b) Current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

§ 15.205–22 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs consideration will be given to reasonable overruns, spoilage, or defective work (concerning correction of defective work, see the provisions of the contract relating to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of paragraphs (b) through (e) of this section.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Charges for materials, services, and supplies sold or transferred between plants, divisions or organizations, under a common control, ordinarily shall be allowable to the extent of the lower of cost to the transferor or current market price. However, a departure from this basis is permissible where (1) the item is regularly manufactured and sold by the contractor through commercial channels, and (2) it is the contractor's long-established practice to price interorganization transfers at other than cost for commercial work: *Provided*, That the charge to the contract is not in excess of the transferor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 15.205–23 Organization costs.

Expenditures, such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable.

§ 15.205–24 Other business expenses.

Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the contractor, cost of shareholders' meetings, normal proxy solicitations, preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

§ 15.205–25 Overtime, extra-pay shift and multi-shift premiums.

Premiums for overtime, extra-pay shifts, and multi-shift work are allowable to the extent approved pursuant to § 12.102–4 of this chapter, or permitted pursuant to § 12.102–5 of this chapter.

§ 15.205–26 Patent costs.

Costs of preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the contract relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See § 15.205–36.)

§ 15.205–27 Pension plans.

See § 15.205–6.

§ 15.205–28 Plant protection costs.

Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with military security requirements, are allowable.

§ 15.205–29 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the military contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other contracts.

§ 15.205–30 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (but see § 15.107).

§ 15.205–31 Professional service costs; legal, accounting, engineering, and other.

(a) Costs of professional services rendered by the members of a particular profession who are not employees of the contractor are allowable, subject to paragraphs (b) and (c) of this section, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see § 15.205–23).

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The past pattern of such costs, particularly in the years prior to the award of Government contracts;

(2) The impact of Government contracts on the contractor's business (i.e., what new problems have arisen);

(3) The nature and scope of managerial services expected of the contractor's own organizations; and

(4) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(c) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract.

§ 15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets.

Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short or long term investments, shall be excluded in computing contract costs (but see § 15.205–9(b) as to basis for depreciation).

§ 15.205–33 Recruiting costs.

Costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment are allowable. Where the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are also allowable. Costs of special benefits or emoluments offered to prospective employees beyond the standard practices in the industry are unallowable.

§ 15.205–34 Rental costs (including sale and leaseback of facilities).

(a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the contractor would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: *Provided*, That no part of such costs shall duplicate any other allowed cost.

(c) Unless otherwise specifically provided in the contract, rental costs specified in sale and leaseback agreements, incurred by contractors through selling plant facilities to investment organizations, such as insurance companies, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the contractor would have received had it retained legal title to the facilities.

(d) The allowability of rental costs under unexpired leases in connection with terminations is treated in § 15.205–42(e).

§ 15.205–35 Research and development costs.

(a) Basic research, for the purpose of this subpart, is that type of research which is directed toward increase of knowledge in science. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this subpart, consists of that type of effort which (1) normally follows basic research, but may not be severable from the related basic research (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as hereinafter provided.

(b) Development is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(c) A contractor's independent research and development is that research and development which is not sponsored by a contract, grant, or other arrangement.

(d) A contractor's costs of independent research as defined in paragraphs (a) and (c) of this section shall be allowable as indirect costs (subject to paragraph (h) of this section), provided they are allocated to all work of the contractor.

(e) Costs of contractor's independent development, as defined in paragraphs (b) and (c) of this section (subject to

paragraph (h) of this section), are allowable to the extent that such development is related to the product lines for which the Government has contracts, provided the costs are reasonable in amount and are allocated as indirect costs to all work of the contractor on such product lines. In cases where a contractor's normal course of business does not involve production work, the cost of independent development is allowable to the extent that such development is related and allocated as an indirect cost to the field of effort of Government research and development contracts.

(f) Independent research and development costs shall include an amount for the absorption of their appropriate share of indirect and administrative costs, unless the contractor, in accordance with its accounting practices consistently applied, treats such costs otherwise.

(g) Research and development costs (including amounts capitalized), regardless of their nature, which were incurred in accounting periods prior to the award of a particular contract, are unallowable except where allowable as precontract costs (see § 15.205–30).

(h) The reasonableness of expenditures for independent research and development should be determined in light of all pertinent considerations such as previous contractor research and development activity, cost of past programs and changes in science and technology. Such expenditures should be pursuant to a broad planned program, which is reasonable in scope and well managed. Such expenditures (especially for development) should be scrutinized with great care in connection with contractors whose work is predominantly or substantially with the Government. Advance agreements as described in § 15.107 are particularly important in this situation. In recognition that cost sharing of the contractor's independent research and development program may provide motivation for more efficient accomplishment of such program, it is desirable in some cases that the Government bear less than an allocable share of the total cost of the program. Under these circumstances, the following are among the approaches which may be used as the basis for agreement: (1) review of the contractor's proposed independent research and development program and agreement to accept the allocable costs of specific projects; (2) agreement on a maximum dollar limitation of costs, an allocable portion of which will be accepted by the Government; (3) an agreement to accept the allocable share of a percentage of the contractor's planned research and development program.

§ 15.205–36 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of acquiring by purchase a patent or rights thereto, necessary for the proper performance of the contract and applicable to contract products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the contractor;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the contract.

(c) In any case involving a patent formerly owned by the contractor, the amount of royalty allowed should not exceed the cost which would have been allowed had the contractor retained title thereto.

(d) See § 15.107, regarding advance understandings.

§ 15.205–37 Selling costs.

(a) Selling costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

(b) Selling costs are allowable to the extent they are reasonable and are allocable to Government business (but see §§ 15.107 and 15.205–1). Allocability of selling costs will be determined in the light of reasonable benefit to the Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to Government use.

(c) Notwithstanding paragraph (b) of this section, salesmen's or agents' compensation, fees, commissions, percentages, or brokerage fees, which are contingent upon the award of contracts, are allowable only when paid to bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

§ 15.205–38 Service and warranty costs.

Such costs include those arising from fulfillment of any contractual obligation of a contractor to provide services, such as installation, training, correcting defects in the products, replacing defective parts, making refunds in the case of inadequate performance, etc. When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

§ 15.205–39 Severance pay.

(a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by contractors to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant; or, where the contractor provides for accrual of pay for normal severances such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the contractor's plant; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

§ 15.205–40 Special tooling costs.

The term "special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (1) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (2) consumable small tools, or (3) general or special machine tools, or similar capital items. The cost of special tooling, when acquired for and its usefulness is limited to one or more Government contracts, is allowable and shall be allocated to the specific Government contract or contracts for which acquired.

§ 15.205–41 Taxes.

(a) Taxes are charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes (including State and local income taxes) which the contractor is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, are allowable, except for:

(1) Federal income and excess profits taxes;

(2) Taxes in connection with financing, refinancing or refunding operations (see § 15.205–17);

(3) Taxes from which exemptions are available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government; and

(4) Special assessments on land which represent capital improvements.

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable: *Provided*, That the contractor prior to payment of such taxes:

(1) Promptly requests instructions from the contracting officer concerning such taxes; and

(2) Takes all action directed by the contracting officer arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment or, (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to assure timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to a contractor incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest or penalties.

§ 15.205–42 Termination costs.

Contract terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the contract not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this subpart in termination situations.

(a) Common items: The cost of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the contractor, the contracting officer should consider the contractor's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) Costs continuing after termination: If, in a particular case, despite all reasonable efforts by the contractor, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this subpart, except that any such costs continuing after termination due to the negligent or willful failure of the contractor to discontinue such costs shall be considered unallowable.

(c) Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a non-recurring nature arising in the early stages of production and not fully absorbed because of the termination. Such costs may include the cost of labor and material, and related overhead attributable to such factors as—

(i) Excessive spoilage resulting from inexperienced labor,

(ii) Idle time and subnormal production occasioned by testing and changing methods of processing,

(iii) Employee training, and

(iv) Unfamiliarity or lack of experience with the product, materials, manufacturing processes and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated contract, including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the contractor's books, segregation for settlement purposes shall be made from costs reports and schedules which reflect the high unit cost incurred during the early stages of the contract.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one contract shall not be allocated to other contracts.

(d) Loss of useful value of special tooling, special machinery and equipment is generally allowable, provided—

(1) Such special tooling, machinery or equipment is not reasonably capable of use in the other work of the contractor;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery and equipment was acquired.

(e) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if—

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided, such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(f) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(i) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract, and

(ii) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(g) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

§ 15.205–43 Trade, business, technical and professional activity costs.

(a) *Memberships.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.* This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and conferences.* This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

§ 15.205–44 Training and educational costs.

(a) Costs of preparation and maintenance of a program of instruction at non-college level, designed to increase

the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and

(1) Salaries of the director of training and staff when the training program is conducted by the contractor; or

(2) Tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) Costs of part-time education, at an under-graduate or post-graduate college level, related to the job requirements of bona fide employees, including only:

(1) Training materials;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours;

are allowable.

(c) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with fulltime scientific and engineering education at a post-graduate (but not under-graduate) college level related to the job requirements of bona fide employees for a total period not to exceed one school year for each employee so trained, are allowable. In unusual cases where required by military technology, the period may be extended.

(d) Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the contractor for training purposes are allowable to the extent set forth in §§ 15.205–20, 15.205–9, and 15.205–34, respectively.

(e) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships or fellowships, are considered contributions and are unallowable.

§ 15.205–45 Transportation costs.

Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see § 15.205–22). Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

§ 15.205–46 Travel costs.

(a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by contractor personnel in a travel status while on official company business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge.

(c) Travel costs incurred in the normal course of over-all administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract in accordance with the principle of direct costing (see § 15.202).

(e) Necessary, reasonable costs of family movements and personnel movements of a special or mass nature are allowable, subject to allocation on the basis of work or time period benefited when appropriate. (But see § 15.107.)

Subpart C—Research Contracts With Educational Institutions

§ 15.301 General.

(a) It is the intent of these principles to provide Department of Defense agencies and educational institutions with a common basis for determining the allowable costs of research sponsored by the Federal Government. Application of these principles should enable such agencies and institutions to identify the allowable direct costs of such research, plus the allocable portion of the allowable indirect costs, less applicable credits. The tests of allowability of costs applied in these principles are reasonableness and allocability under consistently applied generally accepted cost accounting principles and practices; however, these provisions are subject to any limitations as to types or amounts of costs set forth in the research agreement.

(b) These principles do not attempt to identify the circumstances or dictate the extent of agency and institution participation in the financing of a particular research and development project, but rather are confined to the subject of cost determination. Arrangements concerning financial participation are properly the subject of negotiation between the contracting officer and the educational institution concerned.

(c) These principles should be applied to all Department of Defense sponsored research at an educational institution, including research conducted at locations other than the main campus of the institution.

(d) A negotiated fixed amount in lieu of indirect costs may be appropriate in certain instances for off-campus or segregated research projects where (1) research agreements are charged directly for the cost of many of their administrative or housekeeping services, or (2) the cost of benefits derived from an institution's indirect services cannot be readily determined by use of apportionment or allocation bases normally employed, or (3) the costs of apportioning and allocating expenses to research agreements are excessive. The negotiated amount should not exceed a conservative estimate of anticipated indirect costs.

§ 15.302 Definitions.

As used in this subpart, the following terms have the meanings stated in §§ 15.302–1 to 15.302–6.

§ 15.302–1 Research agreements.

"Research agreements" are agreements to perform Federally sponsored research through grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

§ 15.302–2 Apportionment.

"Apportionment" is the process by which the indirect costs of the institution are assigned to (a) instruction and research, and (b) other institutional activities.

§ 15.302–3 Allocation.

"Allocation" is the process by which the indirect costs apportioned to instruction and research are distributed to research agreements.

§ 15.302–4 Sponsoring agency.

"Sponsoring agency" means the Federal agency for which the institution is performing research. Its use in this document does not imply a change in concept or intent for those agencies that have traditionally used a grant rather than a contractual instrument.

§ 15.302–5 Original complement.

"Original complement" means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings. If a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement.

§ 15.302–6 Other institutional activities.

"Other institutional activities" means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, book stores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, financial campaigns, and other similar activities or auxiliary enterprises. Also included under this definition is any category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's general overhead expenses are properly allocable.

§ 15.303 Direct costs.

Direct costs are those identified as having been specifically incurred to perform a particular research agreement. The general types of direct costs are:

(a) "Direct salaries and wages", including employee benefit expenses and pension plan costs (see § 15.307) to the extent that they are consistently treated by the educational institution as a direct rather than an indirect cost, are those applicable directly to the performance of a research agreement. Such salaries and wages should be charged at the actual rates paid by the institution. Where professional staff paid on a salary basis work directly part time on a research agreement, current and reasonable estimates of time spent may be used in the absence of actual time records;

(b) "Direct material costs" include raw materials, purchased or supplied from stock, which are directly consumed or expended in the performance of a research agreement, or are otherwise applicable directly to a research agreement; and

(c) "Other direct costs" include other expenses related directly to a particular research agreement or project, including abnormal utility consumption. This may include services purchased from institution service operations, provided such are consistently treated as direct rather than indirect costs and are priced under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution. Purchases of equipment will be included under this heading only to the extent expressly provided for in the research agreement or approved pursuant to such agreement.

§ 15.304 Indirect costs.

Indirect costs are those which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs of research agreements or other activities. The general types of indirect costs are:

(a) "General administration and general expenses" are those incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any specific division of the institution. Employee benefit expenses and pension plan costs may be included in this category to the extent that they are consistently treated by the educational institution as an indirect rather than a direct cost;

(b) "Research administration expenses" are those which apply to research administered in whole or in part by a separate organization or an identifiable administrative unit. Examples of work relating to research which is sometimes performed under such organizational arrangement are: contract administration, security, purchasing, personnel administration, and editing and publishing of research data;

(c) "Operation and maintenance expenses" are those incurred for operating and maintaining the institution's physical plant. They include expenses normally incurred by the institution for administration or supervision of the physical plant; janitorial service; repairs and ordinary or normal alterations of buildings, furniture and equipment; care and maintenance of grounds; utilities; and other expenses customarily associated with the operation, maintenance, preservation and protection of the physical plant;

(d) "Library expenses" are those incurred for direct operation of the library plus a use allowance for library books. The use allowance shall not exceed eight cents per volume per year;

(e) "Use allowance" is a means of compensation for the use of buildings, capital improvements, and equipment over and above the expenses for operation and maintenance when depreciation or other equivalent costs are not considered. The use allowance for buildings and improvements shall be computed at an annual rate not to exceed two percent (2%) of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent (6⅔%) of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance shall be computed at an annual rate not exceeding ten percent (10%) of such cost. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent (6⅔%) of such estimate. Computation of the use allowance shall exclude the portion of the cost of buildings and equipment paid for out of Federal funds and the cost of grounds; and

(f) "Indirect department expenses" are those incurred for departmental administration, such as salaries of deans or heads of colleges, schools, departments or divisions, and related secretarial and other administrative expenses.

§ 15.305 Applicable costs.

(a) The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits.

(b) When any types of expense ordinarily treated as indirect costs are charged to a research agreement as direct costs, the costs of similar items applicable to other activities of the institution must be eliminated from indirect costs allocable to the research agreement.

(c) Where a particular understanding has been reached regarding specific items of cost to be reimbursed, the research agreement should clearly state such understanding.

(d) Section 15.307 provides standards to be applied in determining the allowability of certain items of cost and also identifies certain types of expenditures which relate solely to instruction and therefore do not enter into the costs of research agreements, either as direct costs or indirect costs; such costs of instruction shall be excluded from the computations provided herein.

§ 15.306 Determination of indirect costs.

§ 15.306–1 General.

(a) In determining the indirect costs applicable to Federally sponsored research agreements, the allowable indirect costs should first be apportioned equitably between (1) instruction and research activity and (2) other institutional activities, as provided in § 15.306–2.

(b) The amounts of indirect costs apportioned to instruction and research should then be allocated in an equitable manner to research agreements, as provided in § 15.306–3.

(c) Actual conditions must be taken into account in determining the most suitable method or methods to be used in the apportionment and allocation of indirect costs. The objective should be the selection of a method or methods which will distribute the indirect costs in a fair and equitable manner to the Government research and development work and other work of the institution, giving due consideration to the nature and extent of the use of the institution's facilities by research personnel, academic staff, students and other personnel or activities, and to the materiality of the amounts involved. The methods used should conform with generally accepted cost accounting practices, provide uniformity of treatment for like cost elements, be applied consistently, and produce equitable results. Any significant change, such as in the nature or extent of Government work or other activities sponsored or conducted by the institution, may require reconsideration of the methods previously in use to determine whether they continue to be equitable.

§ 15.306–2 Apportionment.

Where indirect costs relate to research, instruction, and other activities, such indirect costs shall be apportioned as between instruction and research activities, and other institutional activities as defined in § 15.302–6. The apportionment shall be made as follows:

(a) General administration and general expenses, on the basis of total expenditures: if more appropriate in the circumstances, however, other bases may be used;

(b) Operation and maintenance of the physical plant, if not separately costed, on the basis of total square or cubic footage of the buildings; and

(c) Other types of indirect costs normally do not require apportionment, where they do, an equitable basis for making the apportionment should be selected.

§ 15.306–3 Allocation.

(a) After determination of the total amount of indirect costs applicable to instruction and research activities, such indirect costs shall in turn be allocated between instruction activities and research agreements as described in paragraphs (b), (c), (d), and (e) of this section.

(b) The following criteria should be used with such appropriate modifications as will under the circumstances produce reasonably equitable allocation of the indirect costs associated with research agreements:

(1) "General administration and general expenses" should normally be allocated on the basis of total expenditures (exclusive of capital expenditures and use allowances) if equitable, direct sal-

aries and wages, or other bases appropriate in the circumstances;

(2) "Research administration expenses" should be allocated to (i) applicable research agreements and (ii) other research benefiting therefrom on the basis of records reflecting the proportion fairly applicable to each or, in the absence of such records, on the basis of a reasonable estimate;

(3) "Operation and maintenance expenses" should be allocated on a basis that gives primary emphasis to space utilization. The amount allocated may be developed as follows:

(i) Where actual space and related cost records are or can readily be maintained without significant change in the accounting practices, the amount allocated to research agreements should be based on such data;

(ii) Where the space and related cost records maintained are not sufficient for purposes of subdivision (i) of this subparagraph, a reasonable estimate of the proportion of total space assigned to research agreements normally will suffice, and this proportion of operation and maintenance expense should be allocated to research agreements. Where it can be established that the cost of maintaining space assigned to research varies significantly from the cost of maintaining other space, appropriate weighting factors may be used to give effect to such variations;

(iii) Where more definitive information is not available, either of the following simplified techniques for determining space may be used, as most appropriate—

(*a*) Reduce the total space identified with instruction and research by the amount of space occupied by undergraduate students, including appropriate portions of classrooms and access and related space. Reduce by the same proportion the amount of maintenance and operation expense that has been apportioned to instruction and research, and then allocate to research agreements on the basis of the relationship that direct salaries and wages of research agreements bears to direct salaries and wages of instruction and research; or

(*b*) Prepare a reasonable estimate of the average gross space assigned per research worker, and extend to the equivalent annual number of research workers under research agreements. The resulting product should then be related to total space assigned to instruction and research in order to obtain the proportion of space utilized for research agreements. The resulting proportion should then be applied to operation and maintenance expense to obtain the amount allocable to research agreements; or

(c) Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students;

(4) "Library expenses" should normally be allocated to research agreements on the basis of population including students and other users. Where appropriate, consideration may be given to weighting segments of the population figures as necessary to produce equitable results;

(5) "Use allowance for buildings and equipment" should, if depreciation or other equivalent costs are not considered, be computed in accordance with § 15.304(e). The cost of buildings and equipment used by "other institutional activities" (as defined in § 15.302–6) should be excluded from any computation of use allowances. If available records permit, use allowances may be specifically allocated in whole or in part to research agreements. In the absence of such usable records, use allowance may be allocated to research agreements on the same basis as that used for allocating operation and maintenance expenses; and

(6) "Indirect departmental expenses:" the salaries and wages of departmental heads and their offices, including the allocated portion of deans of schools and their offices, which jointly benefit both research agreements and other activities should be allocated between research agreements administered or supervised by the department and other work of the department on any equitable basis, possibly direct salaries and wages, total direct expenditures, or approximate time so devoted. Where equitable results would be obtained, the distribution may be made on a composite base which would include all schools and departments.

(c) Indirect costs allocated to research agreements normally should be treated as a common pool. The costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis. This rate will be the percentage which the indirect cost pool is of direct salaries and wages of the applicable research agreements. If appropriate, total direct expenditures may be used rather than salaries and wages.

(d) It is recognized that in certain cases, due to the nature of the work, the facilities or personnel involved, or other considerations, the application of a single indirect expense rate on research agreements may produce inequitable results to the institution or to the Government. In such cases, it may be necessary to develop two or more indirect expense rates by means of: (1) Appropriate adjustment to the basic indirect expense rate developed through use of the common pool, or (2) segregation of the indirect expenses allocated to research agreements into two or more indirect expense pools. In the latter case, the costs in each such pool will be distributed to the specific research agreements benefiting therefrom on the basis of direct wages and salaries or total direct expenditures, as appropriate. Examples of conditions which may justify the development of two or more pools of indirect expense are:

(i) Where the nature of a particular type of overhead cost requires a different basis of allocation to produce equitable results;

(ii) Where a research agreement or group of agreements or the facility in which such agreement(s) is performed provides its own services to a significant degree, as may be in the case of a hospital or a segregated or off-campus facility;

(iii) Where a research agreement requires significantly different degrees of indirect services from the institution. For example, such conditions may exist where: (*a*) Significant amounts of Government-owned facilities or equipment are provided in lieu of that normally furnished by the institution, (*b*) a research agreement requires an unusual amount of power or other utilities, (c) the cost of a special library provided in lieu of regular library services is reimbursed by the Government, or (*d*) construction constitutes a significant portion of the work; and

(iv) Where it is appropriate to associate certain costs more directly with the activities benefited, such as where the research work is performed on one campus of a multicampus university.

(e) Where research is separately administered, in whole or in part, or separate services are provided in lieu of those services normally provided by the institution, the cost of the normal institutional administration or other services replaced thereby shall be excluded from allocation to such research.

§ 15.306–4 Overhead determinations acceptable under special circumstances.

(a) Indirect costs may be claimed at a rate which is anticipated to be less than that which would otherwise be allowable with provisions made in the research agreement for adjustment if actual costs subsequently proved to be less than the claimed rate.

(b) The degree of preciseness required in the computation of indirect costs will be influenced by considerations such as the materiality of the amounts involved, the size of the educational institution, and the aggregate dollar volume of Government-sponsored research at the institution. Generally, where the total direct cost of Government-sponsored research and development work at an institution does not exceed $250,000 in a year, the use of abbreviated procedures in the determination of allowable indirect costs may be acceptable when the results obtained are equitable. For example, educational institutions which have a relatively small dollar volume of Government-sponsored research may compute allowable indirect expenses on the basis of data available in the institution's financial reports. One permissible method in such cases would contemplate the use of a single indirect expense pool composed of:

(1) General and administrative expenses, exclusive of unallowable costs (§ 15.307), but inclusive of allocable salaries and expenses of deans of schools and department heads:

(2) Operation and maintenance expenses; and

(3) Library expenses.

The indirect expense pool should then be allocated to research agreements and other activities of the institution on any equitable basis, possibly total expenditures (exclusive of capital expenditures).

§ 15.307 General standards for selected items of cost.

§ 15.307–1 Purpose and applicability.

(a) Section 15.307 provides standards to be applied to the extent deemed practicable in determining the allowability of certain items of cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards should not imply that it is either allowable or unallowable; rather determination as to allowability in such case should be based on the treatment or standards provided for similar or related items of cost.

(b) In case of discrepancy between the provisions of a specific research agreement and the applicable standards, the provisions of the research agreement should govern.

§ 15.307–2 Costs applicable to instruction.

Except as specifically noted, the following types of costs apply only to instruction and therefore do not enter into the costs of research agreements, either as direct costs or indirect costs, unless specific provision is made therefor in the research agreement:

(a) Commencement and convocation costs;

(b) Sabbatical leave costs, including leave of absence to employees for performance of graduate work or sabbatical study, travel, or research;

(c) Scholarships, fellowships, tuition and other forms of student aid costs. However, in certain cases such costs may be allocable in part to research agreements under the conditions set forth in § 15.307–3; and

(d) Student services costs, including such activities as deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services. However, in the case of students actually engaged in work under research agreements, a proportion of student service costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

§ 15.307–3 Allowable and unallowable costs.

(a) Advertising costs include the cost of advertising media and related technical and administrative costs. Only the following advertising costs are allowable: (1) Help wanted advertising, (2) other advertising necessary for the performance of the research agreement to the extent authorized.

(b) Bad debts including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs are unallowable.

(c) Capital expenditures are unallowable except as provided for in the research agreement. This includes costs of books, equipment and buildings, as well as repairs which materially increase the value or useful life of such equipment or buildings.

(d) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when apportioned to all activities of the institution. Capital expenditures for civil defense purposes shall not be allowed, but a use allowance may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

(e) Communication costs including telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like are allowable.

(f) Compensation for personal services: Each institution shall maintain control over its salary and wage rates according to its established policy consistently applied: *Provided, however,* That the excess of salary and wage rates paid to personnel working on Government research agreements over salary and wage rates paid to personnel working on the institution's departmental research or other research will not be allowed unless specifically provided in the agreement or approved by the contracting officer. This principle does not prohibit the charging of the full salary of any temporary employee in whose favor a salary differential exists solely by virtue of the nature of his employment in accordance with the regular practice of the institution concerned. Faculty members shall be considered as employed for the period represented by the sum of all semesters and other periods during which they are required to work under the practice of the institution concerned. (Example: Professor of X institution is required to work two semesters of 4½ months each, or a total of nine months out of the academic year. His compensation is $5,400.00. During the summer months, July, August, and September, he works full time on Government research projects in the institution laboratory. Unless the established practice of the institution relating to summer compensation, not based on Government contract experience, would result in a different computation, his compensation for that period, chargeable by the institution to the Government research agreement, will be $1,800.00, computed as follows: ($5,400.00÷9=$600.00; $600.00 multiplied by 3=$1,800.00)).

(g) Contingency provisions to provide for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

(h) Deans of faculty and graduate schools, or their equivalents, including their staffs and related expenses are allowable.

(i) Employee morale, health, and welfare costs and credits, such as house publications, health or first aid clinics and/or infirmaries, recreational activities, and employees' counseling services, incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs shall be equitably apportioned to all activities of the institution. Income generated from any of these activities shall be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organization.

(j) Entertainment costs including costs of amusement, social activities, entertainment, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

(k) Equipment and other facilities: The cost of equipment or other facilities, including books purchased specifically for use on the project, are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

(l) Fines and penalties: Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the contracting officer.

(m) Insurance and indemnification:

(1) Insurance includes those types of insurance which the institution is required to carry, or which is approved, under the terms of the research agreement, and any other insurance which the institution maintains in the general conduct of its activities. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise.

(2) Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

(3) Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations:

(i) Types and extent and cost of coverage shall be in accordance with sound institutional practice;

(ii) Costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government shall have required or approved such costs;

(iii) Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks;

(iv) Costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted; and

(v) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except: (*a*) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable; and (*b*) minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(n) Interest costs for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(o) Investment counsel and staff costs are unallowable.

(p) Labor relations costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

(q) Losses on other research agreements or contracts. Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for overhead.

(r) Maintenance and repair costs necessary for the upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

(s) Material costs of purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

(t) Memberships, subscriptions, and professional activity costs: (1) Membership costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

(2) Subscription costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable, excepting those obtained for the library for which a use allowance is made.

(3) Meetings and conferences. This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information. Such costs are allowable.

(u) Patent costs: Costs of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also paragraph (ff) of this section.)

(v) Pension plan costs are allowable if in accordance with the established policies of the institution, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

(w) Plant security costs including wages, uniforms and equipment of personnel engaged in plant protection, and necessary expenses to comply with Government security requirements, are allowable.

(x) Preresearch agreement costs are those which are incurred prior to the effective date of the research agreement whether or not they would have been allowable thereunder if incurred after such date. Such costs are unallowable unless specifically set forth and identified in the research agreement.

(y) Professional service costs; legal, accounting, engineering and other.

(1) Costs of professional services rendered by the members of a particular profession who are not employees of the intitution are allowable, subject to subparagraphs (2) and (3) of this paragraph, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(2) Factors to be considered in determining the allowability of costs in a particular case include:

(i) The past pattern of such costs, particularly in the years prior to the award of Government research agreements;

(ii) The impact of Government research agreements on the institution's total activity;

(iii) The nature and scope of managerial services expected of the institution's own organization; and

(iv) Whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

(3) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

(z) Profits and losses on disposition of plant, equipment, or capital assets. Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

(aa) Proposed costs are the costs of preparing bids or proposals on potential Government and non-Government research agreement or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods shall be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

(bb) Public information services costs such as news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

(cc) Rearrangement and alteration costs: Ordinary or normal rearrangement and alteration costs are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

(dd) Reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted. Reconversion costs are allowable, only to the extent of the cost of removing Government property and the restoration or rehabilitation costs caused by such removal.

(ee) Recruiting costs such as "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment, are allowable. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are also allowable. Costs of special benefits or emoluments offered to prospective employees beyond recognized practices for recruiting such personnel are unallowable.

(ff) Royalties and other costs for use of patents. Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent has been adjudicated to be invalid or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent has expired.

(gg) Severance pay is a payment, in addition to regular salaries and wages, by institutions to employees whose services have been terminated. Severance pay is allowable as a cost only to the extent that it is required by law, employer-employee agreement, established policy that constitutes in effect an implied agreement on the institution's part, or circumstances of the particular employment. Severance payments are divided into two categories as follows:

(1) Those due to normal, recurring turnover. The actual costs of such severance payments shall be regarded as expense applicable to the current fiscal year and equitably apportioned to the institution's activities during that period; and

(2) Those due to abnormal or mass terminations. Abnormal or mass severance pay is of such a conjectural nature that measurement of cost by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(hh) Special services costs, such as general public relations activities, catalogs, and alumni activities, are unallowable.

(ii) Staff benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of such staff benefits are allowable and include vacations, holidays, sick leave, military leave, employee insurance, social security taxes and workmen's compensation insurance. The payment of tuition or remission of tuition for employees and their families are allowable to the extent that such payments or remissions are made under established policies consistently applied.

(jj) Taxes: In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(1) Taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and

(2) Special assessments on land which represent capital improvements.

Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, shall be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

(kk) Transportation costs: Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be direct costed as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

(ll) Travel costs: (1) Travel costs consist of transportation, lodging subsistence, and incidental expenses.

(2) Travel costs incurred by institution personnel in a travel status while on specific research business are allowable.

(3) Travel costs incurred in the normal course of over-all administration of the institution and applicable to the entire institution are allowable. Such costs shall be equitably apportioned to all work of the institution.

(4) Subsistence and lodging, including tips or similar incidental costs, are allowable either on an actual or per diem basis. The basis selected shall apply to an entire trip and not selected days of the trip.

(5) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

(mm) Termination costs: (1) Contract termination generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this subpart in the case of contract termination.

(2) The cost of common items of material reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(3) If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this subpart, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unacceptable.

(4) Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided:

(i) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(ii) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(iii) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery, and equipment was acquired.

(5) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated cost, less the residual value of such leases, if:

(i) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable, and

(ii) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(6) Settlement expenses including the following are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for:

(*a*) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract; and

(b) The termination and settlement of subcontracts; and

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(7) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

Subpart D—Construction Contracts

§ 15.401 Definition of construction contract.

The term "construction contract" as used in this subpart means any contract for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It does not include a contract for the manufacturing, producing, furnishing, construction, alteration, repair, processing or assembling of vessels, aircraft, or other kinds of personal property, regardless of the terms of any such contract as to payment or title.

§ 15.402 General basis for determination of costs.

The total cost of a cost-reimbursement type contract for construction or for architect-engineer services related to construction is the sum of the allowable costs incident to the performance of the contract, less applicable income and other credits. The tests used in determining the allowability of costs also include (a) reasonableness and (b) any limitations as to types or amounts of cost items set forth in this subpart or otherwise included in the contract. Failure to mention any item of cost in this subpart is not intended to imply that it is either allowable or not allowable. Income and other credits arising out of operations under the contract, where the related cost was reimbursed or accepted as an allowable cost, will be credited to the Government.

§ 15.403 Examples of items of allowable costs.

Subject to the requirements of § 15.402 with respect to the general basis for determining allowability of costs, the following items of cost are considered allowable within the limitations indicated:

(a) Bonds and insurance, including self-insurance, to the extent authorized by the contracting officer;

(b) Camp operations (but see § 15.404 (h));

(c) Freight, transportation, and material handling;

(d) Land and structures, temporary use thereof;

(e) Materials and supplies, including inspection, storage, salvage, and other usual expenses incident to the procurement and use thereof;

(f) Patents, purchased designs, and royalty payments, to the extent authorized by the contracting officer;

(g) Plant and equipment, purchase or rental thereof;

(h) Recruiting of personnel (including "help wanted" advertising);

(i) Restoration and cleanup of site and facilities, as directed by the contracting officer;

(j) Structures and facilities of a temporary nature;

(k) Subcontracts;

(l) Taxes, fees or charges, except those imposed upon, by reason of, or measured by the contractor's fee;

(m) Traveling expenses, to the extent authorized by the contracting officer;

(n) Utility services, such as communication, power, gas, and water;

(o) Vacation, holiday and severance pay, sick leave and military leave, to the extent required by law or specifically provided for elsewhere in the contract;

(p) Wages and salaries; and

(q) Pension and retirement plans in accordance with the interpretation set forth in § 15.406 and group health, accident and life insurance plans (but see § 15.404 (b), (d), and (m)).

§ 15.404 Examples of items of unallowable costs.

The following items of costs are considered unallowable, except as indicated and then only subject to the requirements of § 15.402:

(a) Advertising (including advertising in trade or technical journals), except "help wanted" advertising;

(b) Central office expenses of the contractor, such as supplies, equipment, rent, or any other expenses incident to its maintenance and operation, except to the extent authorized by the contracting officer;

(c) Commissions and bonuses (under whatever name) in connection with obtaining or negotiating for a Government contract;

(d) Compensation and traveling expenses of any officer or employee in the central office organization of the contractor, except to the extent authorized by the contracting officer;

(e) Contingency reserves;

(f) Contributions and donations;

(g) Dividend payments;

(h) Entertainment, except for on-site recreational activities for the contractor's employees as authorized by the contracting officer;

(i) Interest on borrowings (however represented), bond discount and expense, and financial charges;

(j) Legal, accounting and consulting fees and related expenses, except to the extent authorized by the contracting officer;

(k) Losses on other contracts;

(l) Memberships in trade, business, and professional organizations;

(m) Premiums for insurance on the lives of directors, officers, proprietors, or other persons, where the contractor is the beneficiary directly or indirectly;

(n) Storage of contract records after completion of contract operations, irrespective of contractual or statutory requirements regarding the preservation of records; and

(o) Taxes, fees, or charges imposed upon, by reason of, or measured by the contractor's fee.

§ 15.405 Examples of subjects requiring special considerations.

The following examples are illustrative of subjects affecting cost which may require special consideration:

(a) Costs incurred incidental to work covered by the contract but prior to the execution of the contract, with specific identification of the types thereof and the period involved;

(b) Government-furnished property, general nature and extent;

(c) Indirect cost basis (1) actual, (2) negotiated rate or amount, or (3) other;

(d) Insurance;

(e) Intracompany and intercompany transactions;

(f) Liability to third persons;

(g) Operation of restaurants and cafeterias;

(h) Overtime compensation (see § 12.102 of this chapter);

(i) Patents, purchased designs, and royalty payments;

(j) Personnel movement of a special or mass nature;

(k) Plant facilities fully depreciated or amortized on the contractor's books of account or acquired without cost (possible compensation for utilization in the form of a use or rental charge);

(l) Rearrangement or relocation of facilities or plant sites;

(m) Research programs of a general nature;

(n) Security measures of a special nature;

(o) Sharing of cost of research projects of the type which an educational or other nonprofit institution might undertake as a part of its own educational or research program;

(p) Subcontracting, nature and extent thereof and relation to fee or profit;

(q) Subsistence and housing of employees;

(r) Termination expenses;

(s) Tooling and equipment;

(t) Traveling expenses of a special or unusual nature; and

(u) Wages or salaries of partners or sole proprietors.

§ 15.406 Cost interpretation of pension and retirement plans.

(See § 15.403(q).)

(a) Costs of pension and retirement plans, including reasonable incidental benefits, such as disability, withdrawal, insurance or survivorship allowances which are deductible from taxable income in accordance with the Internal Revenue Code and the regulations of the Bureau of Internal Revenue, are allowable except to the extent they are determined to be unreasonable or unallowable under any other provision of this cost interpretation. Costs of such plans established by nonprofit or other organizations not subject to payment of Federal income taxes are also allowable except to the extent they are determined to be unreasonable or unallowable under any other provision of this cost interpretation.

(b) Pension or retirement plans of a contractor which are subject to approval of the Bureau of Internal Revenue must have been so approved before costs under the plans may be accepted as charges to Government contracts. Many plans of nonprofit or other tax exempt organizations are also reviewed and approved by the Bureau of Internal Revenue—when not so reviewed and approved, each such plan will be reviewed, and approved or disapproved, by the Department to which audit cognizance is assigned, using, insofar as applicable, the criteria and standards of the Internal Revenue Code and the regulations of the Bureau of Internal Revenue. In any case where the Bureau of Internal Revenue withdraws approval of a plan, approval of amounts allocated to contract costs will be withdrawn accordingly.

(c) The approval of a pension or retirement plan by the Bureau of Internal Revenue will, as a general rule, be the only approval required by the Departments; however, the right is reserved to require submission of any plan for consideration by a Department and to disapprove such plan in its entirety or any feature thereof whenever the circumstances in a particular case are deemed to warrant such action. Such consideration will be the responsibility of the Department to which audit cognizance is assigned, and the subsequent action taken by that Department will generally be accepted by the other Departments.

(d) Approval of a pension or retirement plan by the Bureau of Internal Revenue or by the Departments does not imply that the cost thereof for any particular year will be allowable for apportionment to contract costs, except to the extent costs for that year meet all other requirements of the Bureau of Internal Revenue as a deduction for income tax purposes, and are acceptable under the provisions of this cost interpretation and other provisions of this Section.

(e) Pension and retirement costs constitute a part of the total compensation by a contractor to any individual covered by the plan, and accordingly, are subject to the provisions of this Section with respect to reasonableness of the total compensation paid to the individual for the services rendered.

(f) Where contributions to pension or retirement plans are based on profits: *Providing*, That provisions of the Internal Revenue Code and regulations of the Bureau of Internal Revenue have been met, the amount allowable for apportionment to contracts in any one year shall be the amount contributed to the pension trust(s) for that year, but not to exceed 15 percent of the total compensation otherwise paid or accrued in that year to the individuals covered under the plan(s).

(g) The allowability of costs of lump sum purchases of annuities or of periodic cash payments made to provide pension or retirement benefits for retiring or retired employees, other than incurred under approved pension or retirement plans, will be subject to consideration on an individual case basis.

(h) Credits which became available or are foreseeable must be taken into account in an equitable manner in determining pension and retirement costs subject to apportionment to a military contract. In some instances, this may require adjustments to costs in anticipation of the realization of credits. For example, such action would normally be appropriate where contractors' organizations are substantially expanded for the performance of military contracts and there is a reasonable expectation that, upon completion of the contracts, the services of practically all or a large number of the additional employees will be terminated with the result that contractors will benefit from contributions made on behalf of these employees, because such personnel will not acquire vested rights under the terms of the plans.

(i) In any current or future contract no cost allowance will be made which would duplicate, in whole or in part, an allowance previously made under a prior contract.

Subpart E—[Reserved]

Subpart F—Guidelines for Application in the Negotiation and Administration of Fixed-Price Type Contracts and in the Negotiation of Termination Settlements

§ 15.600 Scope of subpart.

This subpart provides guidance for the use of Subparts B, C, and D of this part (a) in the evaluation of costs in pricing of negotiated fixed-price type contracts and subcontracts in those instances where such evaluation is required to establish prices for such contracts and (b) in the negotiation of termination settlements.

§ 15.601 Definition of fixed-price type contracts.

"Fixed-price type" contracts include, for purpose of this chapter, the following:

(a) Firm fixed-price contracts (§ 3.403–1 of this chapter)

(b) Fixed-price contracts with escalation (§ 3.403–2 of this chapter)

(c) Fixed-price contracts providing for the redetermination of price (§ 3.403–3 of this chapter)

(d) Fixed-price incentive contracts (§ 3.403–4 of this chapter)

(e) Non-cost-reimbursable portion of time and materials contracts (§ 3.405–1 of this chapter)

(f) Labor-hour contracts (§ 3.405–2 of this chapter)

§ 15.602 Basic considerations.

(a) Under fixed-price type contracts, the negotiated price is the basis for payment to a contractor whereas allowable costs are the basis for reimbursement under cost-reimbursement type contracts. Accordingly, the policies and procedures of Subpart H, Part 3, of this chapter, are governing and shall be followed in the negotiation of fixed-price type contracts. Cost and accounting data may provide guides for ascertaining fair compensation but are not rigid measures of it. Other types of data, criteria, or standards may furnish reliable guides to fair compensation. The ability to apply standards of business judgment as distinct from strict accounting principles is at the heart of a negotiated price or settlement.

(b) Among the different types of fixed-price type contracts, the need for consideration of costs varies considerably as indicated below:

(1) *Retrospective pricing and settlements.* In negotiating firm fixed prices or settlements for work which has been completed at the time of negotiation (e.g., final negotiations under fixed-price incentive contracts, redetermination of price after completion of the work, or negotiation of a settlement agreement under a contract terminated for the convenience of the Government), the treatment of costs is a major factor in arriving at the amount of the price or settlement. However, even in these situations, the finally agreed price or settlement may represent something other than the sum total of acceptable costs plus profit, since the final price accepted by each party does not necessarily reflect agreement on the evaluation of each element of cost, but rather a final resolution of all issues in the negotiation process.

(2) *Forward pricing.* The extent to which costs influence forward pricing varies greatly from case to case. In negotiations covering future work, actual costs cannot be known and the importance of cost estimates depends on the circumstances. The contracting officer must consider all the factors affecting the reasonableness of the total proposed price, such as the technical, production or financial risk assumed, the complexity of work, the extent of competitive pricing, and the contractor's record for efficiency, economy and ingenuity, as well as available cost estimates. He must be free to bargain for a total price which equitably distributes the risks between the contractor and the Government and provides incentives for efficiency and cost reduction. In negotiating such a price, it is not possible to identify the treatment of specific cost elements since the bargaining is on a total price basis. Thus, while cost data is often a valuable aid, it will not control negotiation of prices for work to be performed, or a target price under an incentive contract.

§ 15.603 Cost principles and their use.

(a) When, pursuant to § 15.602, costs are to be considered in the negotiation of fixed-price type contracts, the appropriate subpart of this part shall be used as a guide in the evaluation of cost data required to establish a fair and reasonable price in conjunction with other pertinent considerations as set forth more fully in Subpart H, Part 3, of this chapter, and—in the case of negotiated termination settlements—Subpart C, Part 3 of this chapter.

(b) In retrospective pricing, whenever an occasion arises in which acceptability of a specific item of cost becomes an issue, the appropriate part of this Part 15 will serve as a guide for the contracting officer in his conduct of negotiations.

(c) In applying this part to fixed-price contracts, contracting officers will: (1) Not be expected to negotiate agreement on every individual element of cost; and (2) be expected to use their judgment as

to the degree of detail in which they consider the individual elements of cost in arriving at their evaluation of total cost, where such evaluation is appropriate. However, the negotiation record should fully substantiate and justify the reasoning leading to any negotiated price.

(d) In order to permit the proper evaluation of cost data submitted by contractors for use in negotiating prices, it may be necessary to obtain breakdowns or account analyses in respect to some cost items particularly those whose treatment may be dependent upon special circumstances as stated in the principles. Contractors will be expected to be responsive to reasonable requests for data of this kind.

PART 16—PROCUREMENT FORMS

Sec.
16.000 Scope of part.

Subpart A—Forms for Advertised Supply Contracts

16.100 Scope of subpart.
16.101 Separate award type (Standard Forms 30, 31, 32, 26, and 36, and DD Form 1260).
16.101-1 General.
16.101-2 Conditions for use.
16.102 Combination type (Standard Form 33).
16.102-1 General.
16.102-2 Conditions for use.

Subpart B—Forms for Negotiated Procurement

16.200 Scope of subpart.
16.201 Request for quotation (Standard Form 18).
16.201-1 General.
16.201-2 Conditions for use.
16.202 Negotiated contract forms (DD Forms 1261 and 1270).
16.203 Request for Proposals, Proposal and Acceptance (DD Forms 746, 746-1, 746-2).
16.203-1 General.
16.203-2 Conditions for use.
16.204 General Provisions; Cost-Reimbursement Supply Contract (DD Form 748).
16.205 General Provisions; Fixed-Price Supply Contracts (Standard Form 32).
16.206 Cost and Price Analysis Forms (DD Forms 633, 633-1, 633-2, and 633-3).
16.206-1 General.
16.206-2 DD Form 633 (Cost and Price Analysis).
16.206-3 DD Forms 633-1, 633-2, and 633-3.
16.207 Cost Analysis for Contract Price Redetermination (DD Form 784).
16.207-1 General.
16.207-2 Conditions for use.
16.207-3 Forms superseded.

Subpart C—Purchase and Delivery Order Forms

16.300 Scope of subpart.
16.301 Receipt for cash—subvoucher (Standard Form 1165).
16.302 Purchase Order-Invoice-Voucher (Standard Form 44).
16.303 Order for supplies or services (DD Forms 1155, 1155r, 1155c, 1155c-1, and 1155s).
16.303-1 General.
16.303-2 Conditions for use.
16.303-3 Forms superseded.
16.304 Blanket purchase order.

Subpart D—Construction Contract Forms

16.400 Scope of subpart.
16.401 Standard Forms 19, 19A, 20, 21, 22, 23 and 23A, and DD Form 1260.
16.401-1 General.
16.401-2 Use of forms for negotiated construction contracts.
16.401-3 Conditions for use.
16.401-4 Terms, conditions and provisions.

Subpart E—Special Contract and Order Forms

16.500 Scope of subpart.
16.501 Negotiated utility service contract forms.
16.501-1 Estimated annual cost $2,400 or less (DD Form 671).
16.501-2 Estimated annual cost over $2,400.
16.502 Negotiated contract form for stevedoring services (DD Form 674).
16.502-1 General.
16.502-2 Conditions for use.
16.502-3 Single job stevedoring services.
16.503 Master Contract for Repair and Alteration of Vessels (DD Forms 731 and 731-1).
16.503-1 General.
16.503-2 Inviting bids or quotations for job orders.
16.503-3 Issuance of job order (DD Form 731-1).
16.503-4 Emergency work required prior to issuance of a job order.
16.503-5 Repair costs not readily ascertainable.
16.503-6 Modification of master contracts.
16.504 Order for Paid Advertisements (Standard Forms 1143 and 1144).
16.505 Novation agreements.
16.505-1 Scope of section.
16.505-2 Agreement to recognize a successor in interest.
16.505-3 Agreement to recognize change of name of contractor.
16.506 Communication Service Authorization (DD Form 428).

Subpart F—Forms for Coordinated Procurement

16.600 Scope of subpart.
16.601 Military Interdepartmental Purchase Request (DD Form 448, 448-1).
16.602 Requisition for Coal, Coke, or Briquettes (DD Form 416).

Subpart G—Contract Termination Forms

16.700 Scope of subpart.
16.701 Notices of termination.
16.702 Settlement proposal forms.
16.702-1 Settlement proposal; inventory basis (DD Form 540).
16.702-2 Settlement proposal; total cost basis (DD Form 541).
16.702-3 Settlement proposal for cost-reimbursement type contracts (DD Form 547).
16.702-4 Settlement proposal; short form (DD Form 831).
16.702-5 Inventory schedules (DD Forms 542, 543, 544, 545, and 832).
16.702-6 Schedule of accounting information (DD Form 546).
16.703 Application for partial payment (DD Form 548).
16.704 Notice of audit status date (DD Form 547s).
16.705 Forms of settlement agreement.
16.706 Instructions for use of termination forms.

Subpart H—Miscellaneous Forms

16.800 Scope of subpart.
16.801 Statement and Certificate of Award (Standard Form 1036).
16.802 Statement on Contingent Fees (Standard Form 119).
16.803 Compliance with labor laws, regulations and clauses.
16.803-1 Construction contracts.
16.803-2 Supply contracts.
16.804 U. S. Government Tax Exemption Certificate (Standard Form 1094—Revised).
16.804-1 Conditions for use.
16.804-2 Supply of forms.
16.805 Bond forms.
16.806 Royalty Report Form (DD Form 783).
16.807 Individual Procurement Action Report (DD Form 350).
16.808 Duty Free Entry Certificate (Customs Form 7501). [Reserved]
16.809 Report of Inventions and Subcontracts (DD Form 882).
16.810 Bidders Mailing List Application (Standard Form 129) and Bidders Mailing List Application Supplement (DD Form 558-1).
16.810-1 General.
16.810-2 Conditions for use.
16.810-3 Item listings for information of bidders.
16.811 Security Requirements Check List (DD Form 254).
16.812 Release and assignment forms.
16.813 Change order price analysis (DD Form 1107).
16.813-1 General.
16.813-2 Conditions for use.
16.813-3 Forms superseded.
16.814 Experience data forms.
16.814-1 Architect-engineer experience data (DD Form 1071).
16.814-2 Construction contractor experience data (DD Form 1072).
16.815 Contract modification forms.
16.815-1 Change Order (DD Form 1319).
16.815-2 Supplemental Agreement (DD Form 1320).

AUTHORITY: §§ 16.000 to 16.815-2 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U. S. C. 2301-2314.

§ 16.000 Scope of part.

This part prescribes forms for use in connection with the procurement of supplies and services. In using these forms for procurement outside the United States, its Territories, its possessions, and Puerto Rico, contract provisions which are made inapplicable to such procurement by this subchapter or by departmental procedures may be deleted.

Subpart A—Forms for Advertised Supply Contracts

§ 16.100 Scope of subpart.

This subpart prescribes forms for use in procuring supplies by formal advertising; it is not applicable to specialized procurements for which other instructions are given by this subchapter or departmental procedures.

§ 16.101 Separate award type (Standard Forms 30, 31, 32, 26 and 36, and DD Form 1260).[1]

§ 16.101-1 General.

Except as provided in § 16.102, the following supply contract forms shall be used in effecting procurements by formal advertising:

(a) Invitation and Bid (Standard Form 30);

(b) Schedule (Standard Form 31);

(c) General Provisions (Supply Contract) (Standard Form 32);

(d) Any other special terms for the invitation for bids or additional contract provisions which are prescribed by this subchapter or Departmental procedures;

(e) Award (Standard Form 26);

(f) Continuation Sheet (Standard Form 36) (when needed with Standard Forms 31 or 26 or DD Form 1260[1]); and

(g) Amendments to Invitation for Bids (DD Form 1260[1]) when needed.

§ 16.101-2 Conditions for use.

(a) The Invitation for Bids (Standard Form 30), and the Schedule (Standard Form 31) shall be prepared in accordance with § 2.201.

(b) Standard Form 32 and any additional general provisions may be attached to each copy of the Invitation for Bids. Alternatively, one copy only of Standard Form 32 and any additional general provisions need be furnished to each bidder, for retention, if such provisions are specifically incorporated by reference, including each form name, number and date, in Standard Form 30 or 31. Provisions which are inapplicable to a particular procurement, or to military procurements generally may be deleted by appropriate reference in an "Alterations in Contract" clause.

(c) Award of contracts shall be accomplished by furnishing a completed Standard Form 26 to each successful bidder. Papers previously forwarded to bidders need not accompany the successful bidder's copy of Standard Form 26. The required use of Standard Form 26 does not preclude the additional use of informal documents, including telegrams, as notices of award.

(d) DD Form 1260[1] (Amendment to Invitation for Bids) shall be used when it is necessary to issue an amendment.

[1] Filed as part of the original document.

§ 16.102 Combination type (Standard Form 33).

§ 16.102-1 General.

Standard Form 33, which is a combination Invitation for Bids, Bid, Schedule, and Award, may be used to effect procurement by formal advertising, in lieu of Standard Forms 30, 31 and 26, whenever the space available on Standard Form 33 for the Schedule and the Award is sufficient. The following forms are prescribed for use with Standard Form 33:

(a) General Provisions (Supply Contract) (Standard Form 32);

(b) Any other special terms for the invitation for bids or additional contract provisions, which are prescribed by this subchapter or Departmental procedures;

(c) Continuation Sheet (Standard Form 36) (when needed with Standard Form 33 or DD Form 1260[1]); and

(d) Amendment to Invitation for Bids (DD Form 1260), when needed.

§ 16.102-2 Conditions for use.

(a) The Invitation for Bids and Schedule portions of Standard Form 33 shall be prepared in accordance with § 2.201.

(b) Standard Form 32 and any additional general provisions shall be utilized in accordance with the conditions specified in § 16.101-2(b).

(c) Award of contracts shall be accomplished by completing the Award portion of Standard Form 33 and furnishing a copy of the form, so completed, to each successful bidder. The required use of the Award portion of Standard Form 33 does not preclude the additional use of informal documents, including telegrams, as notices of award.

(d) DD Form 1260[1] (Amendment to Invitation for Bids) shall be used when it is necessary to issue an amendment.

Subpart B—Forms for Negotiated Procurement

§ 16.200 Scope of subpart.

This subpart prescribes forms for use in procuring supplies or services by negotiation (see also Subpart C of this part, Purchase and Delivery Order Forms); it is not applicable to specialized procurements for which other instructions are given by this subchapter or departmental procedures.

§ 16.201 Request for quotation (Standard Form 18).

§ 16.201-1 General.

Standard Form 18 is prescribed to obtain price, cost, delivery, and related information from suppliers.

§ 16.201-2 Conditions for use.

Standard Form 18 is authorized for use when it appears reasonably certain that the procurement will be consummated by (a) a fixed-price type contract involving extensive negotiation or, (b) a cost-reimbursement type contract. Standard Form 36 (Continuation Sheet), or DD Form 1155c (Continuation Sheet) may be used as required. Standard Form 18 may be used for negotiated procurements in excess of $2,500 and shall be used for negotiated procurements of $2,500 or less (including purchase orders) when written solicitations (other than by telegram) of quotations are used (see § 3.603 of this chapter). A quotation submitted on this form is not to be construed as an offer which can be accepted by the Government to form a binding contract. Therefore, issuance by the Government of a purchase order pursuant to a supplier's quotation does not constitute a contract, but the purchase order is an offer by the Government to the supplier to buy certain goods or services upon specified terms and conditions.

§ 16.202 Negotiated contract forms (DD Forms 1261 and 1270).

(a) *General.* (1) DD Form 1261 [1] (Negotiated Contract) is designed for use in entering into negotiated contracts where the signature of both parties on a single document is appropriate.

(2) DD Form 1270 (General Provisions (Short Form Negotiated Contract)) is designed for use with DD Form 1261 as set forth in (b) below, but need not be used in contracts to be performed outside the United States, its Territories, its possessions or Puerto Rico.

(3) DD Form 1261 (Negotiated Contract), in conjunction with appropriate General Provisions (as provided in paragraphs (b), (c), and (d) of this section), is prescribed for use in entering into negotiated contracts except:

(i) Contracts for which DD Forms 746, 746–1, and 746–2 are used in accordance with § 16.203;

(ii) Contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property;

(iii) Procurements for which special contract forms are prescribed by this subchapter (for example, §§ 16.501, 16.503, 16.504, 16.505, and 16.506); and

(iv) Procurements for which purchase order and related forms are authorized by Subpart C of this part.

(b) *Short form negotiated supply and services contracts.*

(1) Except as provided in paragraph (a) (2) and (3) of this section, DD Form 1261 (Negotiated Contract), and DD Form 1270 (General Provisions (Short Form Negotiated Contract)), shall be used for negotiated fixed-price type supply contracts which do not exceed $10,000 and which are for standard or commercial items not involving special inspection due to complicated specifications. These forms may be used also for nonpersonal services contracts which do not exceed $10,000. Standard Form 36 (Continuation Sheet) shall be used for the Schedule and Continuation Sheet.

(2) No clause on DD Form 1270 may be deleted or altered, and no other clause covering the subject matter of any clause set forth in this subchapter may be used, except:

(i) Deletions and additions of clauses authorized for use by overseas activities may be made in accordance with Departmental procedures;

(ii) The "Variation in Quantity" clause (§ 7.103–4 of this subchapter) and implementing provisions may be inserted in the Schedule where appropriate;

(iii) The "Preference for Certain Domestic Commodities" clause (§ 6.305 of this subchapter) may be inserted in the Schedule, where required by Subpart C, Part 6 of this subchapter.

(iv) Where the contract is solely for the procurement of data, one of the clauses set forth in §§ 9.203 through 9.206 of this subchapter may be added as required by the instructions in Subpart B, Part 9 of this subchapter.

(v) The "Soviet-Controlled Areas" clause (§ 6.403 of this subchapter) shall be inserted in the Schedule where appropriate;

(vi) Where the contract is for services, the Termination for Convenience of the Government clause set forth in § 8.705 of this subchapter shall be inserted in the Schedule, and Paragraph 7 of the General Provisions deleted;

(vii) The "Priorities, Allocations and Allotments" clause (§ 7.104–18 of this subchapter) may be inserted in the Schedule where required; and

(viii) The "Federal, State and Local Taxes" clause (§ 11.401–1 of this subchapter) may, in the discretion of the contracting officer, be inserted in the Schedule.

(c) *Long form negotiated supply contracts.* (1) Except as provided in paragraphs (a) (3) and (b) of this section, DD Form 1261 [1] (Negotiated Contract) shall be used with Standard Form 32 (General Provisions (Supply Contract)), any other forms containing contract provisions which are prescribed by this subchapter or Departmental procedures, and Standard Form 36 (Continuation Sheet) for entering into negotiated fixed-price type supply contracts to which Part 7, Subpart A of this subchapter, is applicable.

(2) Except as provided in paragraph (a) (3) of this section, DD Form 1261 [1] (Negotiated Contract) shall be used with DD Form 748 (General Provisions-Cost-Reimbursement Supply Contracts), any other forms containing contract provisions which are prescribed by this subchapter or Departmental procedures, and Standard Form 36 (Continuation Sheet) for entering into negotiated cost-reimbursement type contracts to which Part 7, subpart B of this subchapter, is applicable.

(d) *Special negotiated contracts.* DD Form 1261 [1] (Negotiated Contracts) may be used for special procurements, where clauses other than those on DD Form 1270,[1] Standard Form 32, or DD Form 748 have been authorized. For example, cost-reimbursement type research and development contracts with clauses prescribed by Part 7, subpart D of this subchapter; contracts for stevedoring services (DD Form 674); time and materials contracts; personal and professional services contracts; and contracts for instruction of military personnel at educational institutions.

(e) *Corporate certificate.* Where a corporate certificate is considered necessary or desirable, it may be executed on a typed sheet, identified by contract number, and attached to DD Form 1261.[1]

(f) *Schedule and continuation sheet.* Standard Form 36 (Continuation Sheet) shall be used for the Schedule and Continuation Sheets; however, where the columns thereon are not required, a blank sheet may be used in lieu thereof, *provided* the contract number, page number, and name of contractor are shown thereon.

(g) Amendment to Request for Proposals (DD Form 746s), when needed.

§ 16.203 Request for Proposals, Proposal and Acceptance (DD Forms 746, 746–1, 746–2).

§ 16.203–1 General.

The following forms are prescribed for use under the conditions set forth in § 16.203–2 in effecting negotiated fixed-price procurement of supplies or services (other than personnel);

(a) Request for Proposals and Proposal (Negotiated Fixed-Price Contract) (DD Form 746);

(b) Schedule, Request for Proposals and Proposal (DD Form 746–1);

(c) General Provisions (Supply Contract) (Standard Form 32) (only when procuring supplies);

(d) Any other forms containing contract provisions which are prescribed by this subchapter or departmental procedures;

(e) Acceptance of Proposal (Negotiated Fixed-Price Contract) (DD Form 746–2); and

(f) Continuation Sheet (Standard Form 36) (when needed with DD Form 746–1 or DD Form 746–2).

§ 16.203–2 Conditions for use.

(a) DD Forms 746 and 746–1 (together with authorized contract provisions) shall be used in connection with the negotiation of fixed-price contracts for supplies or services (other than personal) when it appears desirable to commence negotiations by soliciting written offers which, if there is written acceptance by the Government, would create a binding contract without further action.

(b) When proposals have been submitted on DD Forms 746 and 746–1 and it is in the interest of the Government and is in accordance with § 3.805–1(b) of this chapter to accept a prospective contractor's proposal without further negotiation, price and other factors considered, DD Form 746–2 shall be used. In such instances, the contract will consist of the appropriate documents listed in § 16.203–1.

(c) When a proposal submitted by a prospective contractor leads to further negotiation, the resulting contract shall be prepared in accordance with § 16.202, except that: (1) If the circumstances are such that the prospective contractor can amend its proposal in writing to reflect any necessary changes, the amended proposal may be accepted on DD Form 746–2; or (2) if all the terms and conditions agreed to as a result of such further negotiation are specifically and clearly set forth in identifiable writings, but such writings are unsuitable or too voluminous to permit acceptance of the amended proposal on DD Form 746–2 and if the circumstances of the procurement require prompt acceptance of the modified proposal, the proposal as thus modified by such further negotiation may be accepted by the issuance of a notice of award in substantially the format set forth below. In cases within subparagraph (1) of this paragraph, the use of DD Form 746–2 does not preclude the additional use of informal documents, including telegrams, as notices of award. In cases within subparagraph (2) of this paragraph, all of the terms and conditions of the contract thereby created shall be, without change or modification, promptly consolidated into a contract using the forms authorized by § 16.202, and a signed copy thereof, shall be submitted to the General Accounting Office.

(Name and Address of Purchasing Office)

Date _____

(Name and Address of Contractor)

Contract No. _____

Gentlemen:

Your proposal dated _____, (in response to Request for Proposals No. _____, dated _____) as amended by [list and identify all documents or portions thereof, such as letters, telegrams, and printed matter, from the prospective contractor and the Government, which together set forth the terms and conditions of the contract] for the furnishing of _____, at a total price of $_____, is accepted and award is hereby made.

A contract in the usual form, dated and numbered as set forth above, incorporating all the terms and conditions of the contract hereby created is being prepared and will be forwarded to you in the near future.

This contract is authorized by and has been negotiated pursuant to 10 U.S.C. 2304 (a)( ).

UNITED STATES OF AMERICA

By _____

(Name) Contracting Officer

(d) Standard Form 32, if applicable, and any other general provisions may be attached to each copy of the Request for Proposals. Alternatively, one copy only of Standard Form 32 and any other general provisions need be furnished to each supplier, for retention, if such provisions are specifically incorporated by reference, including each form name, number and date, in DD Form 746–1. Provisions which are inapplicable to a particular procurement, or to military procurements generally, may be deleted by appropriate reference in an "Alterations in Contract" clause.

(e) When a cost breakdown is required in connection with a proposal, DD Form 633 shall be used to the extent provided in § 16.206.

(f) This section does not preclude the use of the purchase order forms prescribed in Part 16, Subpart C of this subchapter.

(g) When it is necessary to issue an amendment to a request for proposals, DD Form 746s (Amendment to Request for Proposals) shall be used.

§ 16.204 General provisions; Cost-Reimbursement Supply Contract (DD Form 748).

DD Form 748 shall be attached to any negotiated contract to which Subpart B of this part is applicable. It contains all of the clauses required by § 7.203 of this subchapter and some of the clauses set forth in §§ 7.204 and 7.205 of this subchapter. The addition of other clauses set forth in Part 7, Subpart B, of this subchapter, or of other clauses not inconsistent with this subchapter, shall be accomplished by appending such clauses as "Additional General Provisions," numbered consecutively. The deletion or modification of clauses contained in the form or in the "Additional General Provisions" shall be accomplished by appropriate reference or provision in an "Alterations in Contract" clause. These instructions must be read in conjunction with Part 7, Subpart B, of this subchapter, to make certain that current clauses are in use at all times.

§ 16.205 General provisions; Fixed-Price Supply Contracts (Standard Form 32).

Any negotiated contract to which Part 7, Subpart A, of this subchapter is applicable will include Standard Form 32. The addition of other clauses set forth in Part 7, Subpart A, of this subchapter, or of other clauses not inconsistent with ASPR, shall be accomplished by including such clauses as "Additional General Provisions" numbered consecutively. The deletion or modification of clauses contained in the form or in the "Additional General Provisions" shall be accomplished by appropriate reference or provision in an "Alterations in Contract" clause. These instructions must be read in conjunction with Part 7, Subpart A, of this subchapter, to make certain that current clauses are in use at all times.

§ 16.206 Cost and Price Analysis Forms (DD Forms 633, 633–1, 633–2, and 633–3).

§ 16.206–1 General.

DD Forms 633, 633–1, 633–2 and 633–3 are designed for submission of cost data by contractors. Contractor reproduction of these forms is authorized.

§ 16.206–2 DD Form 633 (Cost and Price Analysis).

This form ordinarily shall be used whenever price analysis is required, except:

(a) The contractor may submit necessary data in a format acceptable to the contracting officer where the contractor's accounting system makes the use of this form impracticable;

(b) Other forms authorized by the Department concerned if approved by the Office of the Assistant Secretary of Defense (Comptroller) (See DOD Instruction No. 7760.1, dated September 30, 1955) may be used; or

(c) The Special Cost and Price Analysis Forms referenced in § 16.206–3 may be used.

§ 16.206–3 DD Forms 633–1, 633–2, and 633–3.

The following forms may be used as appropriate:

(a) DD Form 633–1 (Cost and Price Analysis—Technical Personnel Services Procurement);

(b) DD Form 633–2 (Cost and Price Analysis—Contract Negotiations for Technical Publications Preparation); or

(c) DD Form 633–3 (Cost and Price Analysis—Motion Picture Procurement).

§ 16.207 Cost Analysis for Contract Price Redetermination (DD Form 784).

§ 16.207–1 General.

DD Form 784 (Cost Analysis for Contract Price Redetermination) is designed to assure, to the fullest extent practicable, the uniform submission of cost data by contractors when such data are required for contract price redetermination. Contractor reproduction of the form is authorized.

§ 16.207–2 Conditions for use.

DD Form 784 shall be prepared by the contractor for the submission of cost data required for contract price redetermination except in those instances where the contractor and the appropriate departmental official have agreed upon an alternative method of cost analysis presentation.

§ 16.207–3 Forms superseded.

This form replaces existing departmental forms currently used solely for this purpose.

Subpart C—Purchase and Delivery Order Forms

§ 16.300 Scope of subpart.

This subpart prescribes forms for use (a) when purchases are authorized or required to be made by the purchase order or imprest fund method, and (b) as delivery orders.

§ 16.301 Receipt for cash—subvoucher (Standard Form 1165).

Standard Form 1165 may be used in connection with procurements by the imprest fund (petty cash) method in accordance with § 3.604 of this subchapter.

§ 16.302 Purchase Order-Invoice Voucher (Standard Form 44).

Standard Form 44 is authorized for use to accomplish small purchases in accordance with § 3.605 of this subchapter.

§ 16.303 Order for Supplies or Services (DD Form 1155, 1155r, 1155c, 1155c–1, and 1155s).

§ 16.303–1 General.

(a) The following forms are prescribed for use in accordance with the conditions set forth in §§ 16.303 to 16.303–2:

(1) DD Form 1155 (including its reverse side, 1155r), Order for Supplies or Services, provides in one document:

(i) A purchase order, delivery order under a contract, or delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher; and

(iv) A public voucher.

(2) DD Form 1155c, Continuation Sheet, provides additional Schedule space.

(3) DD Form 1155c–1, Commissary Continuation Sheet, provides columns suited for commissary procurements.

(4) DD Form 1155s, Additional General Provisions, Modification, and Acceptance, used with the DD Form 1155 in negotiated procurements of not more than $2,500, provides:

(i) Additional general provisions;

(ii) A block for the contracting officer to mark if the contractor's written acceptance is requested; and

(iii) A space for the contractor's signature when a written acceptance is requested.

(b) The foregoing forms may be used as snap-out manifold forms, as cut sheets, or as reproducible masters, as prescribed by Departmental procedures. DD Form 1155 is designed for mailing in window envelopes, and the use of such envelopes is encouraged.

[1] Filed as part of the original document.

§ 16.303–2 Conditions for use.

(a) *General.* The foregoing forms shall be used, as appropriate, regardless of the number of deliveries or payments contemplated, except where utility services are procured under GSA area contracts as provided in Part 5, Subpart H, of this subchapter. When used as purchase orders these forms shall be used only for the purchase of supplies as defined in § 7.102, or for services other than personal services.

(b) *Use as a purchase order of not more than $2,500:* DD Form 1155 is authorized for negotiated purchases of not more than $2,500: *Provided:*

(1) The procurement is unclassified;

(2) No clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth on the back of DD Form 1155, and clauses referred to in subparagraphs (3), (4), (5) of this paragraph, and in paragraph (c) of this section, are to be used;

(3) Where the contract is solely for the procurement of data, one of the clauses set forth in §§ 9.203 through 9.206 of this chapter shall be added as appropriate in accordance with the instructions contained in Subpart B, Part 9 of this chapter;

(4) Where DD Form 1155s is not used and the procurement is for more than $1,000, the following clause shall be added:

RENEGOTIATION (NOV. 1958)

This contract, and any subcontract hereunder, is subject to the Renegotiation Act of 1951, as amended (50 U. S. C. App. 1211 et seq.), and shall be deemed to contain all the provisions required by Section 104 thereof, and is subject to any subsequent act of Congress providing for the renegotiation of contracts.

(5) When required by Part 6, subpart D, the contract clause set forth in § 6.403 of this chapter shall be added; and

(6) The DD Form 1155 shall not be used as a public voucher in a procurement of more than $1,000.

(c) *Use of DD Form 1155s.* DD Form 1155s is authorized for use in conjunction with DD Form 1155 if it is deemed to be in the best interest of the Government to consummate a binding contract between the parties before the contractor undertakes performance. No additional clauses are authorized except as provided in paragraph (b) (2) of this section.

(d) *Use as a delivery order.* Except as to specialized procurements for which other instructions are given by this subchapter or military department procedures, DD Form 1155 shall be used without monetary limitation as a delivery order for ordering supplies and services:

(1) under indefinite delivery type contracts (see § 3.405–5), including such contracts made by Government agencies outside of the Department of Defense: *Provided,* (i) The order is issued in accordance with, and subject to the terms and conditions of, such contract, and (ii) the order refers to the particular contract involved; and

(2) from Government agencies outside the Department of Defense.

(e) DD Form 1155c (Continuation Sheet) or Standard Form 36 (Continuation Sheet) shall be used if additional space is required, as provided by Departmental procedures.

§ 16.304 Blanket purchase order.

See Part 3, Subpart F, of this subchapter, and particularly § 3.606.

Subpart D—Construction Contract Forms

§ 16.400 Scope of subpart.

This subpart prescribes forms for use in connection with construction contracts, which are defined for the purposes of this subpart as contracts for the construction, alteration or repair (including painting and decorating) of buildings, bridges, roads, or other kinds of real property.

§ 16.401 Standard Forms 19, 19A, 20, 21, 22, 23, 23A, and DD Form 1260.

§ 16.401–1 General.

The following forms are prescribed for use in formally advertised construction contracts where the work is to be performed in the United States and its possessions:

(1) Standard Form 19—Invitation, Bid and Award (Construction, Alteration, or Repair).

(2) Standard Form 19A—Labor Standards Provisions—Applicable to Contracts in excess of $2,000.

(3) Standard Form 20—Invitation for Bids (Construction Contract).

(4) Standard Form 21—Bid Form (Construction Contract).

(5) Standard Form 22—Instructions to Bidders (Construction Contract).

(6) Standard Form 23—Construction Contract.

(7) Standard Form 23A—General Provisions (Construction Contract).

(8) DD Form 1260—Amendment to Invitation for Bids, on an optional basis.

(9) Continuation Sheet.—There is no prescribed form of Continuation Sheet for construction contracts. A blank sheet, incorporating (i) the contract or invitation number, as appropriate, (ii) page number and number of pages, and (iii) name of bidder or contractor may be used for this purpose. Standard Form 36, Continuation Sheet (Supply Contract) shall not be used for construction contracts.

§ 16.401–2 Use of forms for negotiated construction contracts.

Use of the forms prescribed in § 16.401–1 is optional for negotiated construction contracts. When used for negotiated contracts, the forms shall be adapted by lining out or obliterating the words "sealed" and "publicly opened" and adding language to (1) indicate the authority for negotiation, and (2) provide that wherever the words "invitation" and "bid" occur they shall be deemed to refer to "solicitation" and "offer," respectively.

§ 16.401–3 Conditions for use.

(a) *Contracts estimated not to exceed $2,000.* Standard Form 19 shall be used for construction contracts not in excess of $2,000 executed as a result of formal advertising. Standard Form 22 also may be used. When the contract may exceed $2,000, the following language shall be inserted in the space provided in the bid portion of Standard Form 19 prior to the issuance of the invitation:

If this bid exceeds $2,000, the bidder shall furnish with its bid a bid bond in an amount equal to ------ % of its bid; failure to submit the bond on time is cause for rejection of the bid. The undersigned further agrees, if this bid exceeds $2,000 (i) to comply with the Labor Standards Provisions Applicable to Contracts in Excess of $2,000 (Standard Form 19A) in lieu of Provision 10 hereof; (ii) to pay not less than the minimum hourly rates of wages set forth in the specifications; and (iii) to furnish a performance bond in an amount equal to ------ % and a payment bond in an amount equal to 50% of the contract price with surety or sureties acceptable to the Government.

(b) *Contracts estimated to exceed $2,000 but not to exceed $10,000.* Standard Forms 19 and 19A shall be used for these construction contracts executed as a result of formal advertising. Standard Form 22 also may be used. The additional language set forth in paragraph (a) of this section shall be inserted in the bid portion of Standard Form 19 prior to issuance of the invitation.

(c) *Contracts estimated to exceed $10,000.* Standard Forms 20, 21, 22, 23, and 23A shall be used for these construction contracts executed as a result of formal advertising.

§ 16.401–4 Terms, conditions and provisions.

(a) The use of additional contract provisions consistent with those contained in the above forms is authorized, and, where required elsewhere in this subchapter, the use of such additional provisions is mandatory.

(b) Changes or additional provisions inconsistent with those contained in the standard forms shall be incorporated when required by this subchapter, and may be incorporated when authorized by this subchapter, or when approved pursuant to § 1.109 of this subchapter. A copy of any such approval pursuant to § 1.109–2 shall be forwarded by the approving authority to the General Services Administration.

(c) The provisions of paragraphs (a) and (b) of this section shall not be construed to authorize the reinstatement in Standard Form 19 of clauses which appear in Standard Form 23A and which have either been condensed or omitted in the development of Standard Form 19 in the interests of simplification and uniformity. Where such reinstatement is deemed essential, the matter shall be handled as a deviation as provided in § 1.109–3 of this subchapter.

(d) Clause 3 of Standard Form 19 entitled "Disputes" may be altered by inserting in the schedule or in the specifications, the following:

Alterations. As used in Clause 3 of the general provisions "head of the Federal agency" means the "Secretary" of the (insert name of Military Department).

(e) During a period of national emergency, Clause 5(c) of Standard Form 23A may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather" after the word "causes" where it first appears in the first sentence.

(f) Deletion or modification of provisions in the above forms shall be accomplished in the "Alterations" paragraph of Standard Form 23, or in an "Alterations" paragraph added in the schedule of Standard Form 19, or in the specifications, as may be appropriate.

(g) Whenever Standard Forms 19 and 19A are used for formally advertised contracts the Covenant Against Contingent Fees need not be included.

(h) Pending revision of Standard Form 23A, in order to reflect the amendment of the Copeland (Anti-Kickback) Act, the word "statements" shall be substituted for the word "affidavits" in Clause 24, line 9, of that form.

Subpart E—Special Contract and Order Forms

§ 16.500 Scope of subpart.

This subpart prescribes special forms for procuring certain supplies and services.

§ 16.501 Negotiated utility service contract forms.

This paragraph prescribes forms for the negotiated procurement of utility services which, as used herein, includes only electric, gas, water, sewage, and steam services, except where such services are procured under GSA area contracts as provided in Part 5, Subpart H, of this subchapter.

§ 16.501–1 Estimated annual cost $2,400 or less (DD Form 671).

(a) Utility services shall be procured without a written contract when the supplier's rates are regulated by a Federal, State, or other public regulatory body and when the annual cost of the services to be procured is estimated at the time of initiation of the service to be $2,400 or less: *Provided,* That, such services shall be procured by a written contract whenever—

(1) The supplier requires the execution of a contract or application form;

(2) A connection charge is involved; or

(3) The negotiation and execution of a contract is deemed to be advantageous to the Government.

(b) When utility services are purchased without written contract the citation of procurement authority, and the certification of receipt of service as billed by the supplier, will be accomplished in a simplified manner in accordance with departmental procedures. Rate schedules will not be required with each monthly billing when—

(1) The applicable rate schedule is in the possession of the procuring activity; or

(2) The invoice or billing indicates the total units of service rendered, the rate charged per unit, and the total charge.

(c) When the annual cost of the procurement is $2,400 or less and no connection charge is involved, but a written contract is required pursuant to paragraph (a) of this section, DD Form 671 (Negotiated Utility Service Contract) (Short Form) shall be used. Additional clauses, not inconsistent with those on the form, may be included in accordance with departmental procedures. Deviations from the provisions of the form are authorized when necessary in order to comply with State or local laws and regulations.

(d) Procurement of utility services where a connection charge is involved shall be in accordance with departmental procedures.

§ 16.501–2 Estimated annual cost over $2,400.

When the estimated annual cost of the services to be procured is over $2,400, the procurement shall be in accordance with departmental procedures.

§ 16.502 Negotiated Contract Form for Stevedoring Services (DD Form 674).

§ 16.502–1 General.

DD Form 674 is a Schedule prescribed for use in the procurement of stevedoring services within the United States. In negotiated contracts for stevedoring services, DD Form 674 (Schedule Page) shall be used in conjunction with the appropriate forms described in § 16.202. When contracting for stevedoring services outside the United States, the provisions of the Schedule will be used as a guide only.

§ 16.502–2 Conditions for use.

(a) Since conditions vary at different ports and sometimes within the same port, standard provisions covering all phases of stevedoring operations are impractical. While DD Form 674 will cover most situations adequately, the various provisions of Clause 1 of the Schedule may be deleted, added to, or modified as necessary to meet local conditions. Similarly, the various rate or price schedules in Clause 2 of the Schedule are included merely by way of illustration and may be modified as required. An index may be added if desired.

(b) DD Form 674 covers the loading and discharging of vessels only. If car loading and unloading or other dock and terminal work is to be performed under a stevedoring contract, specifications appropriate for such dock and terminal work should be added as separate items to Clauses 1 and 2 of the Form.

§ 16.502–3 Single job stevedoring services.

DD Form 674 is designed to cover stevedoring services for a period of time, usually a year, and is not required for use with respect to single job stevedoring services, such as the loading or discharging of a single vessel. In such cases, the form should be used as a guide in drafting a contract to meet the requirements of the particular procurement.

§ 16.503 Master Contract for Repair and Alternation of Vessels (DD Forms 731 and 731–1).

§ 16.503–1 General.

DD Form 731 is prescribed to establish in advance the terms upon which a contractor will effect repairs, alterations and additions to vessels under the provisions of job orders issued by contracting activities from time to time. The Master Contract (DD Form 731) shall be entered into with all prospective contractors located within the United States who request ship repair work and who possess the organization and facilities to perform such work satisfactorily. When using Master Contracts in work with prospective contractors located outside of the United States, DD Form 731 shall be used as a guide.

§ 16.503–2 Inviting bids or quotations for job orders.

When a requirement arises for the type of work covered by the Master Contract within the United States, bids or quotations will be solicited from prospective contractors who have previously executed a Master Contract, and also from prospective contractors, who possess the necessary qualifications and agree to execute a Master Contract before issuance of a Job Order. Whenever a prospective contractor is invited to submit a bid or quotation, the contracting officer shall notify the prospective contractor in reasonable detail of (a) the nature of the work to be performed, (b) the date the vessel will be available, and (c) the date the work is to be completed. In the event the prospective contractor is willing and able to perform the work, he shall be afforded an opportunity to inspect the work to be accomplished, and then he shall submit a bid or quotation for the performance of the work in accordance with the invitation for bids or request for quotations. If the contracting officer requests prospective contractors to negotiate, he shall also request a breakdown of the price quoted indicating the estimated cost of (1) direct labor, (2) material, (3) overhead, (4) any amount included for contingencies and profit, and (5) such other information as the contracting officer may consider necessary.

§ 16.503–3 Issuance of Job Order (DD Form 731–1).

After the receipt and evaluation of bids or quotations and selection of the contractor, the price for the work and other pertinent data shall be set forth in a Job Order (DD Form 731–1). The Job Order, by its terms, is subject to the provisions of the Master Contract. When the procurement has been formally advertised, issuance of a Job Order, signed by the Contracting Officer only, constitutes an award. When the procurement of the services has been negotiated the Job Order must also be signed by the contractor, and returned to the Contracting Officer.

§ 16.503–4 Emergency work required prior to issuance of a job order.

In the following circumstances, the Contracting Officer, without inviting bids or requesting quotations, may issue a written order for work to a contractor who has executed a Master Ship Repair contract: (a) when a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or (b) when military necessity requires immediate work on a vessel. Contractors who sign the Master Contract

agree to perform the work required by such written orders within their capabilities. As soon as practical after the issuance of such written orders, the parties are required by the Master Contract to negotiate a price for the work. When agreement is reached upon a price, the Contracting Officer will issue a Job Order covering the work. The Master Contract provides for a procedure to resolve disputed questions with respect to price. However, the contractor is required to proceed diligently with the work pending a decision upon such disputes.

§ 16.503–5 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable cost are not readily ascertainable, the Contracting Officer may issue a Job Order, on a negotiated or formally advertised basis, to determine the nature and extent of required repairs. The Job Order shall also provide that upon such determination, the contractor, if requested by the Contracting Officer, shall negotiate prices for the performance of such work as the Contracting Officer may deem necessary to accomplish the repairs. The prices so agreed upon shall be set forth in an amendment to the Job Order.

§ 16.503–6 Modification of master contracts.

(a) Since master contracts prescribe the terms and conditions under which contractors submit bids and competitive quotations for vessel repair work, it is essential that the provisions of all outstanding master contracts be kept uniform. It is also necessary that master contracts be kept up to date and reflect changes in statutes, executive orders, and procurement regulations applicable to vessel repair work. The DD Form 731 will be revised periodically, not more frequently than annually, to incorporate all changes made necessary by this subchapter revisions unless revision is required by statute or executive order. All outstanding master contracts shall be replaced using the latest revised form, effective as to all job orders issued on or after 60 days after the promulgation of such revision.

(b) To minimize interim amendments to Master Contracts, revisions to this subchapter changing clauses in the Master Contract form will provide appropriate direction with respect to any required amendments to Master Contracts. To the extent possible, amendments will be required only in matters resulting from changes in statutes or executive orders.

§ 16.504 Order for Paid Advertisements (Standard Forms 1143 and 1143a).

The following forms will be used to order and effect payment for advertisements in newspapers (see § 1.1005):

(a) Standard Form 1143, Advertising Order (original) (face) Public Voucher for Advertising (original) (reverse); and

(b) Standard Form 1143a, Advertising Order (memorandum) (face) Public Voucher for Advertising (memorandum) (reverse).

§ 16.505 Novation agreements.

§ 16.505–1 *Scope of section.* This section prescribes the policy and procedures for recognition of (a) a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or such part of its assets as is involved in the performance of the contracts or (b) a change of name of a contractor.

§ 16.505–2 Agreements to recognize a successor in interest.

(a) The transfer of a Government contract is prohibited by law (41 U.S.C. 15). However, the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest is incidental to the transfer of all the assets of the contractor, or all that part of the contractor's assets involved in the performance of the contract. Examples include, but are not limited to:

(1) Sale of such assets;

(2) Transfer of such assets pursuant to merger or consolidation of corporations; and

(3) Incorporation of a proprietorship or partnership.

(b) Where it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the Department concerned shall execute an agreement with the transferor and the transferee, which shall ordinarily provide in part that:

(1) The transferee assumes all the transferor's obligations under the contract;

(2) The transferor waives all rights under the contract as against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted in lieu of such guarantee); and

(4) Nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal law. A form for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth below. This form may be adapted to fit specific cases, and may be used as a guide in preparing similar agreements for use in other situations.

AGREEMENT (FEB. 1959)

This Agreement, entered into as of ----------, 19--, by and between the ABC Corporation, a corporation duly organized and existing under the laws of the State of ---------- with its principal office in the City of ---------- (hereinafter referred to as the "Transferor"); the XYZ Corporation [formerly known as the LMN Corporation], a corporation duly organized and existing under the laws of the State of ---------- with its principal office in the City of ---------- (hereinafter referred to as the "Transferee") and the United States of America (hereinafter referred to as the "Government").

WITNESSETH:

Whereas, the Government, represented by various Contracting Officers of the Department of the ----------, has entered into certain contracts, letter contracts and purchase orders with the Transferor, [namely: ----------] or [as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference;] and the term "the contracts" as hereinafter used means the above contracts, letter contracts, and purchase orders, and all other contracts, letter contracts and purchase orders, including amendments and change orders thereto, heretofore made between the Government, represented by various Contracting Officers of the Department of the ----------, and the Transferor (whether or not performance and payment have been completed and releases executed, if the Government or the Transferor has any remaining rights, duties or obligations thereunder), and including amendments and change orders thereto hereafter made between the Government and the Transferee;

Whereas, as of ----------, 19--, the Transferor assigned, conveyed and transferred to the Transferee all the assets of the Transferor by virtue of a [term descriptive of the legal transaction involved] between the Transferor and the Transferee;

Whereas, the Transferee, by virtue of said assignment, conveyance and transfer, has acquired all the assets of the Transferor;

Whereas, by virtue of said assignment, conveyance and transfer, the Transferee has assumed all the duties, obligations and liabilities of the Transferor under the Contracts;

Whereas, the Transferee is in a position fully to perform the Contracts, and such duties and obligations as may exist under the Contracts;

Whereas, it is consistent with the Government's interest to recognize the Transferee as the successor party to the Contracts;

Whereas, there has been filed with the Government evidence of said assignment, conveyance or transfer [add if desired, "in the form of a certified copy of the list of the documents required by § 16.505–2 (c), below"];

[Where a change of name is also involved, such as a prior or concurrent change of name of the transferee, an appropriate recital shall be used; for example:

Whereas there has been filed with the Government a certificate dated ----------, 19--, signed by the Secretary of State of the State of ----------, to the effect that the corporate name of LMN Corporation was changed to XYZ Corporation on ----------, 19--];

Now therefore, in consideration of the premises, the parties hereto agree as follows:

1. The Transferor hereby confirms said assignment, conveyance and transfer to the Transferee, and does hereby release and discharge the Government from, and does hereby waive, any and all claims, demands, and rights against the Government which it now has or may hereafter have in connection with the Contracts.

2. The Transferee hereby assumes, agrees to be bound by, and undertakes to perform each and every one of the terms, covenants, and conditions contained in the Contracts. The Transferee further assumes all obligations and liabilities of, and all claims and demands against, the Transferor under the Contracts, in all respects as if the Transferee were the original party to the Contracts.

3. The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the Contracts with the same force and effect as if the action had been taken by the Transferee.

4. The Government hereby recognizes the Transferee as the Transferor's successor in interest in and to the Contracts. The Transferee hereby becomes entitled to all right, title, and interest of the Transferor in and to the Contracts in all respects as if the Transferee were the original party to the Contracts. The term "Contractor" as used in the Contracts shall be deemed to refer to the Transferee rather than to the Transferor.

5. Except as expressly provided herein, nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

6. Notwithstanding the foregoing provisions, all payments and reimbursements heretofore made by the Government to the Transferor and all other action heretofore taken by the Government, pursuant to its obligations under any of the Contracts, shall be deemed to have discharged pro tanto the Government's obligations under the Contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete discharge of the Government's obligations under the Contracts, to the extent of the amounts so paid or reimbursed.

7. The Transferor and the Transferee hereby agree that the Government shall not be obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes or other expenses, or any increases therein, directly or indirectly arising out of or resulting from (i) said assignment, conveyance and transfer, or (ii) this Agreement, other than those which the Government, in the absence of said assignment, conveyance and transfer, or this Agreement, would have been obligated to pay or reimburse under the terms of the Contracts.

8. The Transferor hereby guarantees payment of all liabilities and the performance of all obligations which the Transferee (i) assumes under this Agreement, or (ii) may hereafter undertake under the Contracts as they may hereafter be amended or modified; and the Transferor hereby waives notice of and consent to any such amendment or modification.

9. Except as herein modified, the Contracts shall remain in full force and effect.

In Witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By ----------
Title ----------
(Corporate Seal)

ABC CORPORATION
By ----------
Title ----------
(Corporate Seal)

XYZ CORPORATION
By ----------
Title ----------

CERTIFICATE

I, ----------, certify that I am the Secretary of ABC Corporation, named above; that ----------, who signed this Agreement on behalf of said corporation, was then ---------- of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and seal of said corporation this ---------- day of ----------, 19--.

By ----------
(Corporate Seal)

CERTIFICATE

I, ----------, certify that I am the Secretary of XYZ Corporation, named above; that ----------, who signed this Agreement on behalf of said corporation, was then ---------- of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of said corporation this ---------- day of ----------, 19--.

By ----------
(Corporate Seal)

(c) Prior to the execution of such agreement one copy of each of the following, as applicable, shall be deposited by the contractor with the Department concerned:

(1) A properly authenticated copy of the instrument by which the transfer of assets was effected, as for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;

(2) A list of all contracts, letter contracts, and purchase orders, which have not been finally settled between the Department concerned and the transferor, showing the contract number, the name and address of the respective procuring activities involved; and, if determined necessary, the total dollar value of each contract as amended, the type of contract involved, and the balance remaining unpaid;

(3) A certified copy of the resolutions of the Boards of Directors of the corporate parties authorizing the transfer of assets;

(4) A certified copy of the minutes of any stockholders meetings of the corporate parties necessary to approve the transfer of assets;

(5) A properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(6) An opinion of counsel for the contractor parties that the transfer was properly effected in accordance with applicable law; and to the extent necessary;

(7) Evidence of the capability of the transferee to perform the contracts;

(8) Balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets; and

(9) Evidence of security clearance requirements.

(10) Consent of sureties on all contracts listed under subparagraph (2) of this paragraph where bonds were required.

§ 16.505–3 Agreement to recognize change of name of contractor.

(a) Where only a change of name is involved, so that the rights and obligations of the parties remain unaffected, an agreement between the Department concerned and the contractor shall be executed effecting the amendment of all existing contracts between the parties so as to reflect the contractor's change of name. A form for such an agreement, which shall be adapted for specific cases, is set forth below.

AGREEMENT (MAR. 1956)

This agreement, entered into as of ----------, 19--, by and between the ABC Corporation [formerly the XYZ Corporation and hereinafter sometimes referred to as the "Contractor"], a corporation duly organized and existing under the laws of the State of ----------, and the United States of America, represented by the Department of the ----------, (hereinafter referred to as the "Government").

WITNESSETH:

Whereas the Government, represented by various Contracting Officers of the Department of the ----------, has entered into certain contracts, letter contracts and purchase orders with the XYZ Corporation, [namely: ----------] or [as set forth in the attached list marked "Exhibit A" to this Agreement and herein incorporated by reference;] and the term "the Contracts" as hereinafter used means the above contracts, letter contracts, and purchase orders, and all other contracts, letter contracts, and purchase orders, including amendments and change orders thereto, entered into between the Government, represented by various Contracting Officers of the Department of the ----------, and the Contractor (whether or not performance and payment have been completed and releases executed, if the Government or the Contractor has any remaining rights, duties, or obligations thereunder);

Whereas the XYZ Corporation, by an amendment to its certificate of incorporation, dated ----------, 19--, has changed its corporate name to the ABC Corporation;

Whereas a change of corporate name only is accomplished by said amendment, so that rights and obligations of the Government and of the Contractor under the Contracts are unaffected by said change; and

Whereas there has been filed with the Government documentary evidence of said change in corporate name;

Now therefore, in consideration of the premises, the parties hereto agree that the Contracts covered by this Agreement are hereby amended by deleting therefrom the name "XYZ Corporation" wherever it appears in the Contracts and substituting therefor the name "ABC Corporation."

In witness whereof, each of the parties hereto has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA
By ----------
Title ----------
(Corporate Seal)

ABC CORPORATION
By ----------
Title ----------

CERTIFICATE

I, ----------, certify that I am the Secretary of ABC Corporation, named above; that ----------, who signed this Agreement on behalf of said corporation, was then ---------- of said corporation; and that this Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Witness my hand and the seal of said corporation this ------ day of ----------, 19--.

By ----------
(Corporate Seal)

(b) Prior to the execution of such agreement, one copy of each of the following shall be deposited by the contractor with the Department concerned:

(1) A copy of the instrument by which the change of name was effected, authenticated by a proper official of the State having jurisdiction;

(2) An opinion of counsel for the contractor that the change of name was properly effected in accordance with applicable law; and

(3) A list of all contracts, letter contracts, and purchase orders, which have not been finally settled between the Department concerned and the contractor, showing contract number, and the name and address of the respective procuring activities involved.

§ 16.506 Communication Service Authorization (DD Form 428).

DD Form 428 shall be used in accordance with Departmental procedures as an order for facilities and services under contracts for telephone and telegraph communications facilities and services.

Subpart F—Forms for Coordinated Procurement

§ 16.600 Scope of subpart.

This subpart prescribes forms to be used by a requiring Military Department to request that supplies be furnished by another Military Department or Agency in accordance with the provisions of Subpart K, Part 5 of this subchapter.

§ 16.601 Military Interdepartmental Purchase Request (DD Form 448, 448–1).

When an assignment of procurement responsibility has been made by the Secretary of Defense, DD Form 448, Military Interdepartmental Purchase Request (MIPR), shall be used by the requiring Military Departments to—

(a) Request the procurement of supplies by the procuring Department or agency; and

(b) Permit the procuring Department or Agency to authorize manufacture of the necessary supplies.

DD Form 448 is authorized for use in effecting other types of coordinated procurement pursuant to Subpart K, Part 5 of this subchapter. When a continuation sheet is necessary, DD Form 448–1 (MIPR Continuation Sheet) shall be used.

§ 16.602 Requisition for Coal, Coke, or Briquettes (DD Form 416).

DD Form 416 shall be used in lieu of DD Form 448 by the requiring Departments to request coal, coke, or fuel briquettes from the Procuring Department.

Subpart G—Contract Termination Forms

§ 16.700 Scope of subpart.

This subpart prescribes forms for use in connection with terminated contracts (see Part 8 of this chapter).

§ 16.701 Notices of termination.

There are no Department of Defense forms prescribed for use in issuing termination notices. However, § 8.801 sets forth texts of telegraphic and letter notices of termination which may be used.

§ 16.702 Settlement proposal forms.

Although the forms prescribed below are deisgned for use by prime contractors, they are equally suitable for use by subcontractors.

§ 16.702–1 Settlement proposal; inventory basis (DD Form 540).

DD Form 540 is prescribed for use by contractors in presenting claims resulting from the termination of fixed-price contracts when such claims are computed on the inventory basis. See § 8.802–1 of this chapter.

§ 16.702–2 Settlement proposal; total cost basis (DD Form 541).

DD Form 541 is prescribed for use by contractors in presenting claims resulting from the termination of either fixed-price or cost-reimbursement type contracts when such claims are computed on the total cost basis. See § 8.802–2 of this chapter.

§ 16.702–3 Settlement proposal for cost-reimbursement type contracts (DD Form 547).

DD Form 547 is prescribed for use by contractors in submitting claims resulting from the termination of cost-reimbursement type contracts. (See § 8.803 of this chapter.)

§ 16.702–4 Settlement proposal; short form (DD Form 831).

DD Form 831 is prescribed for use by contractors in submitting claims resulting from the termination of fixed-price contracts when the total claim is less than $1,000. (See § 8.802–3 of this chapter.)

§ 16.702–5 Inventory schedules (DD Forms 542, 543, 544, 545, and 832).

(a) The following forms are prescribed for use by contractors to support settlement proposals submitted on DD Forms 540, 541, or 547:

(1) DD Form 542 (Inventory Schedule A—Metals in Mill Product Form) and DD Form 542c (Continuation Sheet). See § 8.802–4 of this chapter.

(2) DD Form 543 (Inventory Schedule B—Raw Materials) and DD Form 543c (Continuation Sheet). See § 8.802–5 of this chapter.

(3) DD Form 544 (Inventory Schedule C—Work in Process) and DD Form 544c (Continuation Sheet). See § 8.802–6 of this chapter; and

(4) DD Form 545 (Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools) and DD Form 545c (Continuation Sheet). See § 8.802–7 of this chapter.

In addition, the inventory schedule forms may be used for reporting inventory in connection with adjustments under the Changes clause and inventory excess to completed contracts.

(b) DD Form 832 (Termination Inventory Schedule E—Short Form) is prescribed for use by contractors to support settlement proposals submitted on DD Form 831. See § 8.802–8 of this chapter.

§ 16.702–6 Schedule of accounting information (DD Form 546).

DD Form 546 is prescribed for use by contractors in connection with settlement proposals (see § 8.307–1 of this chapter). See § 8.802–9 of this chapter.

§ 16.703 Application for partial payment (DD Form 548).

DD Form 548 is prescribed for use by contractors when applying for partial payments (see § 8.212–1(a) of this chapter). See § 8.802–10 of this chapter.

§ 16.704 Notice of audit status date (DD Form 547s).

DD Form 547s is prescribed for use by disbursing officers to fix the audit status date in accordance with § 8.405–4 of this chapter. See § 8.804 of this chapter.

§ 16.705 Forms of settlement agreement.

There are no Department of Defense forms prescribed for settlement agreements. However, appropriate approved texts for settlement agreements are set forth in § 8.806 of this chapter.

§ 16.706 Instructions for use of termination forms.

DD Form 1114 consists of instructions for the use of contract termination settlement and inventory schedule forms. See § 8.807 of this chapter.

Subpart H—Miscellaneous Forms

§ 16.800 Scope of subpart.

This subpart prescribes miscellaneous forms other than contract forms, for use in connection with the procurement of supplies and services.

§ 16.801 Statement and Certificate of Award (Standard Form 1036).

Standard Form 1036 (Statement and Certificate of Award), which briefly recites the circumstances relating to contract awards, shall be prepared and executed by the Contracting Officer in connection with every contract entered into after formal advertising, as required by § 2.407–7 of this subchapter, and shall be attached to the copy of the contract which is forwarded to the General Accounting Office.

§ 16.802 Statement on Contingent Fees (Standard Form 119).

Standard Form 119 is prescribed for use in accordance with §§ 1.506 through 1.509 of this subchapter.

§ 16.803 Compliance with labor laws, regulations and clauses.

§ 16.803–1 Construction contracts.

(a) Department of Labor Form DB–11 (Request for Determination) shall be used in accordance with the provisions of § 12.404–2 of this subchapter, for the submission of requests for the determination of wage rates by the Secretary of Labor.

(b) Standard Form 1093 (Schedule of Deductions from Payments to Contractors) shall be used in accordance with the provisions of § 12.404–9 of this subchapter, to report deductions against payment vouchers of contractors on account of failure to comply with labor laws, regulations and clauses.

(c)(1) The weekly payroll statement required by the contract clauses prescribed by § 12.403–1 or § 12.403–4 of this subchapter, should be in one of the following forms:

(i) "Payroll (For Contractor's Optional Use)," Form Sol. 184 (4–30–59) U.S. Department of Labor.

(ii) "Contractor's Weekly Payroll Statement," DD Form 879.

(iii) The contractor's own combined payroll-statement form, provided the statement is reproduced in exactly the language of Form Sol. 184 or DD Form 879 and the signer certifies on the statement: "The language of this statement is exactly the language of ----------."

(2) When the contract clauses prescribed by § 12.403–2 of this subchapter are applicable, contractors shall submit the weekly payroll statement but should omit or delete paragraphs (2) and (3).

(3) A supply of DD Forms 879 may be furnished to the contractors for their use. Forms Sol. 184 may be purchased from the Government Printing Office.

§ 16.803–2 Supply contracts.

(a) Department of Labor Form PC–12 (Rev. 3/49), a form letter explaining the Walsh-Healey Act, shall be furnished to the contractor in accordance with the provisions of § 12.603 of this subchapter.

(b) Department of Labor Form PC–13 (Rev. 1/50), is a poster required to be furnished to the contractor in accordance with the provisions of § 12.603 of this subchapter.

(c) DD Form 350 shall be used in accordance with the provisions of § 12.603 of this subchapter to furnish the Department of Labor with certain information in lieu of utilizing the Department of Labor Form PC–1 as required by administrative regulations of the Secretary of Labor.

§ 16.804 U.S. Government Tax Exemption Certificate (Standard Form 1094—Revised).

§ 16.804–1 Conditions for use.

Except when a different form is required by a cognizant state or local tax jurisdiction, Standard For 1094—Revised is prescribed for use as a certificate of exemption from State and local taxes when exemption is authorized by contract provisions and Departmental procedures. The form shall not be used as a certificate of exemption from Federal taxes.

§ 16.804–2 Supply of forms.

Supplies of Standard Form 1094—Revised will be obtained in accordance with Departmental procedures.

§ 16.805 Bond forms.

The bond forms listed below are available for use in accordance with departmental procedures. (See Part 10, Subparts A and B, of this subchapter.)

(a) Bid Bond (Standard Form 24).

(b) Annual Bid Bond (Standard Form 34).

(c) Performance Bond (Standard Form 25).

(d) Payment Bond (Standard Form 25A).

(e) Performance Bond (Corporate Co-Surety) (Standard Form 27).

(f) Payment Bond (Corporate Co-Surety) (Standard Form 27A).

(g) Continuation Sheet (Corporate Co-Surety) (Standard Form 27B).

(h) Affidavit of Individual Surety (Standard Form 28).

(i) Annual Performance Bond (Standard Form 35).

§ 16.806 Royalty report form (DD Form 783).

DD Form 783 is approved for use by contractors in making reports as required by the Reporting of Royalties (Foreign) clause of § 9.110 of this chapter. While it is preferred that contractors use DD Form 783 (and contractor reproduction of the form is authorized), the contractor may submit the royalty information in such other form as is considered desirable by the contractor: *Provided*, Such other form contains all of the information required by the reporting of royalties clause of the contract.

§ 16.807 Individual procurement action report (DD Form 350).

DD Form 350 is designed to provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to the President, the Congress, the Office of Civil and Defense Mobilization, the General Accounting Office, the Renegotiation Board, the Small Business Administration, and other Federal agencies. Some of these requirements are referred to in §§ 1.302–2, 3.103, 3.211–4 and 3.216–4 of this subchapter. It also provides the Departments with a wide variety of significant data for procurement policy and management control purposes, and provides the Department of Labor with data required in connection with the administration of the Walsh-Healey Public Contracts Act.

§ 16.808 Duty Free Entry Certificate (Customs Form 7501).

[Reserved]

§ 16.809 Report of Inventions and Subcontracts (DD Form 882).

Form 882 is approved for optional use by contractors in reporting information required by paragraph (c)(ii), (c)(iii), and (h) of the Patent Rights clause set forth in § 9.107–2 of this subchapter.

§ 16.810 Bidders Mailing List Application (Standard Form 129) and Bidders Mailing List Application Supplement (DD Form 558–1)

§ 16.810–1 General.

Standard Form 129 shall be used in connection with the establishment and maintenance of bidders' lists as prescribed in § 2.205 of this subchapter. Supplemental information, where required, may be obtained by using DD Form 558–1 (Bidders' Mailing List Application Supplement).

§ 16.810–2 Conditions for use.

Additions to the bidders mailing list of a purchasing activity shall be made only after considering a properly completed application on Standard Form 129. The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive Invitations for Bids and Requests for Proposals.

§ 16.810–3 Item listings for information of bidders.

In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids or proposals, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, procured by the purchasing activity maintaining the list, which are considered applicable to the supplier's type of business.

§ 16.811 Security requirements check list (DD Form 254).

The "Military Security Requirements" clause (§§ 7.104–12 and 7.204–12 of this subchapter) is included in all contracts which are classified "Confidential" including "Confidential—Modified Handling Authorized" or higher and in any other contracts the performance of which will require access to such classified information or material. Except where a letter or other written notice of classification is authorized by § 7.104–12, contracting officers shall inform contractors of the security classifications assigned to the various documents, materials, tasks, subcontracts, and components of classified contracts by using DD Form 254. Instructions for preparation are included in the form. The contracting officer is responsible for preparation of the form and shall insure that it is physically attached to the copies of the contract forwarded to the contractor, the material inspector, the security office of the cognizant Military Department of the facility receiving the prime contract or a subcontract thereunder, and such other interested agencies as may be determined by the Military Departments.

§ 16.812 Release and assignment forms.

(a) The forms set forth below are approved for use in complying with the assignment and release provisions of paragraph (f) of the compensation clauses for cost-plus-fixed-fee and cost-plus-incentive-fee contracts set forth in § 7.203–4 (a) and (b) of this subchapter. Forms differing from the approved forms may be used if the contracting officer determines that such forms meet the applicable requirements of the clause. Checks received by Army and Air Force contracting officers pursuant to paragraph 2 of the assignments in paragraphs (d) and (e) of this section shall be forwarded to the finance officer named in the contract.

(b) Set forth below is an approved form for the contractor's release required by paragraph (f) of the clauses in § 7.203–4 (a) and (b) of this subchapter.

CONTRACTOR'S RELEASE (JULY 1956)

Contract No. ------

Pursuant to the terms of Contract No. ------ and in consideration of the sum of -------- Dollars ($------) which has been or is to be paid under the said contract to ------ ---------- (herein-
(Contractor's name and address)
after called the Contractor) or its assignees, if any, the Contractor, upon payment of the said sum by the United States of America (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

---

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract.

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that it will comply with all of the provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

In witness whereof, this release has been executed this ------ day of ---------- 19 ---.

(Contractor)

By ----------

Title ----------

Witnesses:

NOTE: In the case of a corporation, witnesses are not required, but the certificate below must be completed.

CERTIFICATE

I, ----------, certify that I am the ------

(Official title)

of the corporation named as Contractor in the foregoing release; that ---------- who signed said release on behalf of the Contractor was then ---------- of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

[CORPORATE SEAL]

The following sentence shall be added to the final paragraph of the above release form when the related contract provides for reimbursement on a cost-plus-incentive-fee basis:

The Contractor further agrees that payments on account of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract entitled "Allowable Cost, Incentive Fee, and Payment."

(c) Set forth below is an approved form for the assignee's release required by paragraph (f) of the clauses in § 7.203–4 (a) and (b) of this subchapter.

ASSIGNEE'S RELEASE (MAY 1958)

Contract No. ------

Pursuant to the terms of Contract No. ------ and in consideration of the sum of ------ Dollars ($------) which has been or is to be paid under the said contract by the United States of America (hereinafter called the Government) to the Contractor or its assignees, the ----------

(Assignee's name and address)

(i) A corporation organized and existing under the laws of the State of ----------,

(ii) A partnership consisting of ----------,

(iii) An individual trading as ----------,

(hereinafter called the Assignee), upon receipt of that part of the said sum due under its assignment, does remise, release and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract and assignment, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor or Assignee on the date of the execution of this release and of which the Contractor or Assignee gives notice in writing to the Contracting Officer within the period specified in the said contract.

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

The Assignee agrees, in connection with claims which are not released as set forth above, that final payment under the said contract does not modify the requirements and limitations imposed on the Contractor or Assignee by the contract or the assignment, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

In witness whereof, this release has been executed this ------ day of ---------- 19---.

(Assignee)

By ----------

Title ----------

Witnesses:

NOTE: In the case of a corporation, witnesses are not required, but the certificate below must be completed.

CERTIFICATE

I, ----------, certify that I am the ------

(Official title)

as Assignee in the foregoing release; that ---------- who signed said release on behalf of the Assignee was then ----------

(Official title)

of said corporation; that said release was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

[CORPORATE SEAL]

The following sentence shall be added to the final paragraph of the above release form when the related contract provides for reimbursement on a cost-plus-incentive-fee basis:

The Assignee further agrees that payments on account of claims not released as set forth above shall be subject to adjustment in accordance with paragraph (i) of the clause of the contract entitled "Allowable Cost, Incentive Fee and Payment."

(d) Set forth below is an approved form for the contractor's assignment of refunds, rebates, credits, and other amounts, required by paragraph (f) of the clauses in § 7.203–4 (a) and (b) of this subchapter.

CONTRACTOR'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS (MAY 1958)

Contract No. ------

Pursuant to the terms of Contract No. ------ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and any assignment thereunder, the ----------

---
(Contractor's name and address)

(hereinafter called the Contractor) does hereby:

1. Assign, transfer, set over and release to the United States of America (hereinafter called the Government), all right, title and interest to all refunds, rebates, credits, and other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafte. accrue thereunder.

2. Agree to take whatever action may be necessary to effect prompt collection of all refunds, rebates, credits, and other amounts (including any interest thereon) due or which may become due, and to promptly forward to the (------*) checks (made payable to the Treasurer of the United States) for any proceeds so collected. The reasonable costs of any such action to effect collection shall constitute allowable costs when approved by the Contracting Officer as stated in the said contract and may be applied to reduce any amounts otherwise payable to the Government under the terms hereof.

3. Agree to cooperate fully with the Government as to any claim or suit in connection with refunds, rebates, credits, or other amounts due (including any interest thereon); to execute any protest, pleading, application, power of attorney, or other papers in connection therewith; and to permit the Government to represent it at any hearing, trial, or other proceeding, arising out of such claim or suit.

In witness whereof, this assignment has been executed this ------ day of ---------- 19---.

(Contractor)

By ----------

Title ----------

Witnesses:

NOTE: In the case of a corporation, witnesses are not required, but the following certificate must be completed.

CERTIFICATE

I, ----------, certify that

(Official title)

I am the ---------- of the corporation named as Contractor in the foregoing assignment; ---------- who signed said assignment on behalf of the Contractor was then ---------- of said corporation;

(Official title)

that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

[CORPORATE SEAL]

In the blank space designated by an asterisk (------*) in the foregoing form, insert in contracts of the Departments of the Army and Air Force the words "Contracting Officer"; in contracts of the Department of the Navy, insert "Navy Department, U. S. Navy Regional Accounts Office, Washington 25, D. C."; in contracts of the Marine Corps, insert "Disbursing Officer, Special Accounts Section (Code CDG) Hqs. Marine Corps, Washington 25, D. C."

(e) Set forth below is an approved form for the assignee's assignment of refunds, rebates, credits, and other amounts required by paragraph (f) of the clauses in § 7.203–4 (a) and (b) of this subchapter.

ASSIGNEE'S ASSIGNMENT OF REFUNDS, REBATES, CREDITS, AND OTHER AMOUNTS (MAY 1958)

Contract No. ------

Pursuant to the terms of Contract No. ------ and in consideration of the reimbursement of costs and payment of fee, as provided in the said contract and assignment thereunder, the ----------

---
(Assignee's name and address)

(i) A corporation organized and existing under the laws of the State of ----------,

(ii) A partnership consisting of ----------,

(iii) An individual trading as ----------,

(hereinafter called the Assignee), does hereby assign, transfer, set over, and release to the United States of America, all right, title, and interest to all refunds, rebates, credits, and other amounts (including any interest thereon) arising out of the performance of the said contract, together with all the rights of action accrued or which may hereafter accrue thereunder.

In witness whereof, this assignment has been executed this ------ day of ---------- 19---.

(Assignee)

By ----------

Title ----------

Witnesses:

NOTE: In the case of a corporation, witnesses are not required, but the following certificate must be completed.

CERTIFICATE

I, ----------, certify that I am

(Official title)

the ---------- of the corporation named as Assignee in the foregoing assignment; that ---------- who signed said assignment on behalf of the Assignee was then ----------

(Official title)

that said assignment was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

[CORPORATE SEAL]

§ 16.813 Change order price analysis (DD Form 1107).

§ 16.813–1 General.

DD Form 1107 (Change Order Price Analysis) provides a standard format for the submission of cost data by contractors when such data are required for the pricing of change orders under fixed-price or for cost-reimbursement type contracts. Contractor reproduction of the form is authorized.

§ 16.813–2 Conditions for use.

The contracting officer shall request the contractor to submit data required for the pricing of change orders on DD Form 1107, except where the contractor and the contracting officer have agreed otherwise.

§ 16.813–3 Forms superseded.

This Form supersedes Departmental forms currently used solely for this purpose effective when existing stocks of Departmental forms are exhausted or 1 January 1958, whichever is earlier.

§ 16.814 Experience data forms.

§ 16.814–1 Architect-engineer experience data (DD Form 1071).

This form is designed to assure the uniform submission of experience and organizational data by architect-engineer firms and shall be used in lieu of any corresponding Departmental form.

§ 16.814–2 Construction contractor experience data (DD Form 1072).

This form is designed to assure the uniform submission of experience and organizational data by construction contractors and shall be used in lieu of any corresponding Departmental form.

§ 16.815 Contract modification forms.

Sections 16.815—16.815–2 prescribe forms for the modification of contracts for the procurement of supplies or services.

§ 16.815–1 Change Order (DD Form 1319).

This form shall be used for any change order issued pursuant to the Changes clause of a contract and for any other contract modification for which the contractor's agreement is clearly not required. Examples of the latter include the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data.

§ 16.815–2 Supplemental Agreement (DD Form 1320).

This form shall be used for supplemental agreements, as defined in § 1.201–19 of this chapter.

PART 17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Sec.
17.000 Scope of part.
17.001 Approval of regulations and deviations.

Subpart A—General

17.101 Previous authority.
17.102 General policy.
17.103 Types of actions.
17.104 Definitions.

Subpart B—Requests for Contractual Adjustment

17.200 Scope.
17.201 Authority of the Secretaries.
17.202 Contract Adjustment Boards.
17.202–1 Organization.
17.202–2 Authority.
17.203 Authority of other officers and officials.
17.204 Standards for deciding cases.
17.204–1 General.
17.204–2 Amendments without consideration.
17.204–3 Mistakes.
17.204–4 Informal commitments.
17.205 Limitations upon exercise of authority.
17.205–1 General limitations.
17.205–2 Additional limitations upon authority below Secretarial level.
17.206 Contractual requirements.
17.207 Submission of requests by contractors.
17.207–1 Filing requests.
17.207–2 Form of requests by contractors.
17.207–3 Records.
17.207–4 Facts and evidence.
17.208 Processing cases.
17.208–1 Investigation.
17.208–2 Disposition below secretarial level.
17.208–3 Submission of cases to the Contract Adjustment Board.
17.208–4 Processing by Contract Adjustment Boards.
17.208–5 Maintenance of records.
17.208–6 Interdepartmental coordination.

Subpart C—Residual Powers

17.300 Scope.
17.301 Delegations of authority.
17.302 Standards for using residual powers.
17.303 Procedures.
17.304 Maintenance of records.

Subpart D—Records of Requests and Dispositions

17.400 Scope of subpart.
17.401 Preliminary records.
17.402 Final records.
17.403 Sample format for preliminary and final records.

Subpart E—Act and Executive Order

17.500 Scope of subpart.
17.501 Act of August 28, 1958 (Public Law 85–804, 50 U.S.C. 1431–1435).
17.502 Executive Order No. 10789 of November 14, 1958 (23 F.R. 8897).

AUTHORITY: §§ 17.000 to 17.502 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 17.000 Scope of Part.

As distinguished from the normal principles and procedures set forth in the other parts of this subchapter, this part establishes uniform regulations for entering into and amending or modifying contracts to facilitate the national defense under the extraordinary emergency authority granted by the Act of August 28, 1958 (Public Law 85–804); 72 Stat. 972; 50 U.S.C. 1431–1435, set forth in § 17.501, referred to in this part as "the Act," and Executive Order No. 10789, dated November 14, 1958 (23 F.R. 8897), set forth in § 17.502, referred to in this part as "the Executive Order." The Act empowers the President to authorize departments and agencies exercising functions in connection with the national defense, to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. This extraordinary authority may be exercised only in the unusual circumstances described in this part. This part does not cover advance payments (see Defense Contract Financing Regulations, AR 715–6; NAVEXOS P–1006; AFR 173–133, Part 163, Subchapter E, of this title).

§ 17.001 Approval of regulations and deviations.

The Executive Order authorizes the Secretaries of Defense, the Army, the Navy and the Air Force, respectively, under regulations prescribed or approved by the Secretary of Defense, to exercise this authority. This part has been concurred in by the Secretaries of the Army, the Navy, and the Air Force in accordance with §§ 1.101 and 1.105 of this chapter and has been approved by the Secretary of Defense. Notwithstanding § 1.105 of this chapter, any amendments to this part developed in accordance with the procedure specified in § 1.105 of this chapter and any deviations proposed to be made under the procedure specified in § 1.109 of this chapter shall be concurred in by the Secretaries of the Army, the Navy, and the Air Force, and approved by the Secretary of Defense.

Subpart A—General

§ 17.101 Previous authority.

Title II of the First War Powers Act, as amended and extended, expired June 30, 1958. Executive Order No. 10210, dated February 2, 1951; and the following joint regulations are thus no longer applicable:

(a) "Regulations Governing the Exercise of Certain Authority Granted by Title II of the First War Powers Act, as Amended, and Executive Order No. 10210, Issued Thereunder", dated February 21, 1951; and the amendment thereto dated January 12, 1954;

(b) "Coordinated Procedures to be Applied by the Army, Navy and Air Force for the Disposition of Requests by Contractors under Title II of the First War Powers Act, as Amended by Public Law 921, 81st Congress", dated June 23, 1951; and

(c) "Regulations Governing the Authority To Contract Under Title II of the First War Powers Act, as Amended, and Executive Order No. 10210, Issued Thereunder", dated July 17, 1951.

§ 17.102 General policy.

(a) The authority conferred by the Act shall be delegated by the Secretaries of the Military Departments in a manner which will best serve the logistic functions of the Departments and, at the same time, retain control over the exercise of the authority at a level high enough to insure uniformity of action.

(b) The authority conferred by the Act shall not be utilized so as to encourage carelessness and laxity on the part of persons engaged in the defense effort nor be relied upon by a Military Department where other adequate legal authority exists in the Department.

(c) The actions authorized under the Act shall be processed as expeditiously as practicable consistent with the care, restraint, and exercise of sound judgment, appropriate to such extraordinary authority. The interests of other departments and agencies of the Government shall be considered.

§ 17.103 Types of actions.

Three types of actions may be taken by or pursuant to the direction of an approving authority under the Act. These are—(a) contractual adjustments such as amendments without consideration, correction of mistakes, and formalization of informal commitments (see Subpart B of this part); (b) making advance payments (not covered by this part); and (c) exercise of "residual powers," which refers to all other authority, under the Act (see Subpart C of this part).

§ 17.104 Definitions.

(a) The term "approving authority" as used in this part means a Contract Adjustment Board, or an officer or official having authority to approve actions under the Act. This authority is distinguished from authority to take appropriate contractual action pursuant to such approval.

(b) The term "Secretarial level" as used in this part means an official at or above the level of an Assistant Secretary or his Deputy, and a Contract Adjustment Board established by the Secretary concerned.

Subpart B—Requests for Contractual Adjustment

§ 17.200 Scope.

This subpart provides for the establishment of a Contract Adjustment Board within each Military Department and describes certain delegations of authority. It also sets forth standards and the procedures for disposition of requests for contractual adjustment under the Act.

§ 17.201 Authority of the Secretaries.

The Secretary of each Department may delegate in writing his authority under the Act and the Executive Order, subject to the following limitations:

(a) Authority to approve actions under the Act obligating the United States in an amount in excess of $50,000 shall not be delegated below the Secretarial level; and

(b) Authority to approve any amendment without consideration which increases the stated contract price or unit price may not be delegated below the Secretarial level except in extraordinary cases or classes of cases as to which the Secretary involved finds that there are special circumstances clearly justifying delegation to a lower level.

The delegations described in §§ 17.202 and 17.203 shall not be construed as limiting the authority of the Secretaries to modify or make other delegations. Copies of all delegations and successive redelegations shall be transmitted to the Assistant Secretary of Defense for Supply and Logistics at the time of issuance.

§ 17.202 Contract Adjustment Boards.

§ 17.202–1 Organization.

A Contract Adjustment Board has been established within each Military Department by the Secretary thereof. Such Boards consist of a Chairman and not less than two or more than six other members, one of whom may be designated the Vice-Chairman. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total Board membership constitutes an action of the Board. Alternates may be appointed to act in the absence of members.

§ 17.202–2 Authority.

The Contract Adjustment Board in each Department has been given authority to approve, authorize and direct appropriate action under the standards set forth in § 17.204 in any case submitted to it by an officer or official listed in § 17.203 or otherwise designated by the Secretary concerned, and to make all determinations and findings which are necessary or appropriate. Where deemed necessary to the exercise of the foregoing authority, such Boards may authorize any appropriate action not precluded by § 17.205, including the modification or release of any obligations. The decisions of such Boards shall be final, but each Board may reconsider and modify, correct, or reverse any of its previous decisions. Such Boards shall determine and adopt their own procedures and have authority to do all acts and things necessary or appropriate for the conduct of their functions.

§ 17.203 Authority of other officers and officials.

(a) The following authority has been delegated to the officers and officials listed in paragraph (b) of this section:

(1) Authority to deny any request for contractual adjustment under this subpart;

(2) Subject to the limitations set forth in § 17.205, authority to approve, authorize and direct appropriate action, and to make all determinations and findings which are necessary or appropriate, in the examples of mistake and informal commitment described in §§ 17.204–3 and 17.204–4, including, where necessary thereto, authority to modify or release unaccrued obligations of any sort and to extend delivery and performance dates; and

(3) Authority to submit to the cognizant Contract Adjustment Board for its determination, together with his recommendation—

(i) Any case where the officer or official recommends a specific adjustment which he does not have authority to approve under subparagraph (2) of this paragraph; and

(ii) Any doubtful or unusual case.

The foregoing authority may be redelegated only with the written approval of the Secretary concerned.

(b) The delegations of authority which have been made are as follows:

(1) The Army:

Deputy Chief of Staff for Logistics;
Chief, Contracts Branch, Procurement Division, Office of the Deputy Chief of Staff for Logistics;
Z.I. Army Commanders;
Commanding General, Military District of Washington, U.S. Army;
Commander in Chief, United States Army Europe;
Commanding General, United States Army Alaska;
Commanding General, United States Army Caribbean;
Commanding General, United States Army Japan;
Commanding General, Hawaii/25th Infantry Division;
Chiefs of Technical Services; and
Chief, National Guard Bureau.

(2) The Navy:

Chief of each Bureau;
Chief of Naval Research;
Aviation Supply Officer, Philadelphia;
Commander, Military Sea Transportation Service;
Commandant of the United States Marine Corps;
Executive Director, Military Medical Supply Agency, New York; and
Executive Director, Military Petroleum Supply Agency.

(3) The Air Force:

Chief of Staff; Vice Chief of Staff; and Deputy Chief of Staff, Materiel;
Commander, Air Materiel Command;
Commander, United States Air Force, Europe;
Commander, Pacific Air Force;
Commander, Alaska Air Command;
Commander, Caribbean Air Command;
Commander, Air Materiel Force, European Area; and
Commander, Air Materiel Force, Pacific Area.

§ 17.204 Standards for deciding cases.

§ 17.204–1 General.

The mere fact that losses occur under a Government contract is not, by itself, a sufficient basis for the exercise of the authority conferred by the Act. Whether, in a particular case, appropriate action such as amendment without consideration, correction of a mistake or ambiguity in a contract, or formalization of an informal commitment, will facilitate the national defense is a matter of sound judgment to be made on the basis of all of the facts of such case. Although it is obviously impossible to predict or enumerate all the types of cases with respect to which action may be appropriate, examples of certain cases or types of cases where action may be proper are set forth in §§ 17.204–2 to 17.204–4. Even if all of the factors contained in any of the examples are present, other factors or considerations in a particular case may result in a denial of the request. These examples are not intended to exclude other cases where a Contract Adjustment Board determines that the circumstances warrant action.

§ 17.204–2 Amendments without consideration.

(a) Where an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contracts or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be adjusted but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) Where a contractor suffers a loss (not merely a diminution of anticipated profits) on a defense contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent. Where the Government action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the contract may be adjusted if fairness so requires; thus, where such Government action, although not creating any liability on its part, increases the cost of performance, considerations of fairness may make appropriate some adjustment in the contract.

§ 17.204–3 Mistakes.

A contract may be amended or modified to correct or mitigate the effect of a mistake, including the following examples:

(a) A mistake or ambiguity which consists of the failure to express or to express clearly in a written contract the agreement as both understood it;

(b) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and

(c) A mutual mistake as to a material fact.

Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

§ 17.204–4 Informal commitments.

Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal contract; for example, where any person, pursuant to written or oral instructions from an officer or official of a Military Department and relying in good faith upon the apparent authority of the officer or official to issue such instructions, has arranged to furnish or has furnished property or services to a Military Department or to a defense contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

§ 17.205 Limitations upon exercise of authority.

§ 17.205–1 General limitations.

(a) The Act is not authority for:

(1) The use of the cost-plus-a-percentage-of-cost system of contracting;

(2) The making of any contract in violation of existing law relating to limitation of profit or fees;

(3) The negotiation or purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding; or

(4) The waiver of any bid, payment, performance or other bond required by law.

(b) No contracts, amendments, or modifications shall be entered into under the authority of the Act:

(1) Unless a finding is made that the action will facilitate the national defense;

(2) Unless other legal authority in the Department concerned is deemed to be lacking or inadequate; and

(3) Except within the limits of the amounts appropriated and the statutory contract authorization.

(c) No contract shall be amended or modified:

(1) Unless the request therefor has been filed before all obligations have been discharged and final payment made thereunder; and

(2) If the contract was negotiated under 10 U.S.C. 2304(a)(15), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

(d) No informal commitment shall be formalized (1) unless a request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment and (2) unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

§ 17.205–2 Additional limitations upon authority below Secretarial level.

The exercise of authority by officers and officials below the Secretarial level pursuant to § 17.203(a)(2) shall be subject to the following additional limitations:

(a) The action shall not deal with or directly affect any matter which has been submitted to the General Accounting Office;

(b) The action shall not obligate the Government in an amount in excess of $50,000;

(c) The action shall not release a contractor from performance of an obligation—

(1) Priced in excess of $50,000; or

(2) Where reprocurement is contemplated, unless the approving authority finds that the estimated actual or potential increase in cost to the Government will not exceed $50,000;

(d) The action shall not involve the disposal of Government surplus property;

(e) Mistakes shall not be corrected by action obligating the Government in an amount in excess of $500 unless notice of the mistake was given to the contracting officer before completion of the contractor's work or the effective date of contract termination; and

(f) The correction of a contract because of a mistake in its making shall not result in increasing the original contract price above the next lowest responsive bid of a responsible bidder in the case of a formally advertised procurement, or the amount of the next lowest responsible proposal of a responsible offeror considered in the case of a negotiated procurement.

§ 17.206 Contractual requirements.

Every contract entered into or amended or modified pursuant to this part shall contain:

(a) A citation of the Act and Executive Order;

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding that the action will facilitate the national defense;

(d) The contract clause, entitled "Covenant Against Contingent Fees," as set forth in § 7.103–20 of this chapter;

(e) The contract clause, entitled "Examination of Records," as set forth in § 7.104–15 of this chapter except as provided in § 6.701 of this chapter as to purchases made under the Mutual Security Act;

(f) The contract clause entitled "Nondiscrimination in Employment," as set forth in § 12.802 of this chapter, wherever required under Subpart H, Part 12 of this chapter;

(g) The contract clause, entitled "Assignment of Claims" as set forth in § 7.103–8 of this chapter;

(h) If otherwise applicable, the contract clauses entitled "Walsh-Healey Public Contracts Act," "Davis-Bacon Act," "Copeland ('Anti-Kickback') Act—Nonrebate of Wages," and "Eight-Hour Laws—Overtime Compensation," as set forth respectively in §§ 12.604, and 12.403 of this chapter; and

(i) Any other clauses set forth in this subchapter which are appropriate to the particular procurement.

§ 17.207 Submission of requests by contractors.

§ 17.207–1 Filing requests.

Any person seeking an adjustment under the standards set forth in § 17.204 called the "contractor" in this part) may file a request in duplicate with the cognizant contracting officer or his duly authorized representative. If such filing is impracticable, requests will be deemed to be properly filed if filed with the following addressees for forwarding to the cognizant contracting officer:

(a) In the Army,

Deputy Chief of Staff for Logistics
Attn: Chief, Contracts Branch
Department of the Army
Washington 25, D.C.;

(b) In the Navy,

The Navy officer or official listed in § 17.203

(b)(2) appearing to be cognizant of the contract or commitment involved; and

(c) In the Air Force,

Commander, Air Materiel Command
Attn: Readjustment Division, MCPR
Wright-Patterson Air Force Base, Ohio

§ 17.207–2 Form of requests by contractors.

The contractor's request shall normally consist of a letter to the contracting officer stating:

(a) The precise adjustment requested;

(b) The essential facts summarized in chronological narrative form;

(c) The contractor's conclusions based on such facts and showing, in terms of the standards set forth in § 17.204, why the contractor considers itself entitled to the adjustment requested;

(d) Whether all obligations have been discharged under the contracts involved;

(e) Whether final payment has been made under the contracts involved;

(f) Whether any proceeds from the request will be subject to any assignment or other transfer, and to whom; and

(g) Whether the contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipates doing so.

§ 17.207–3 Records.

At the time the request is filed, a preliminary record as described in this subpart shall be prepared by the activity responsible for the case under § 17.203. A copy of each such record prepared during each month shall be forwarded within 30 days after the close of the month as follows:

(a) Army activities, to DCSLOG, Attn: Procurement Division;

(b) Navy activities, to the Office of Naval Material. (Navy Contract Adjustment Board); and

(c) Air Force activities, to the Air Force Contract Adjustment Board, Office of the Assistant Secretary of the Air Force (Materiel).

§ 17.207–4 Facts and evidence.

(a) The contracting officer, or any officer, official, or Contract Adjustment Board, having authority to act upon the contractor's request, may, where considered pertinent, request the contractor to furnish additional facts, and evidence, as described in this paragraph, and, in addition, where applicable, as described in paragraph (b), (c), (d), or (e) of this section (in complying with such requests, the contractor may also submit other statements and evidence which he may consider helpful to the case):

(1) If written contracts are involved, a brief description of the contracts, indicating the dates of execution and amendments thereto, the items being procured, the price or prices and delivery schedule and revisions thereof, and such other special contractual provisions as may be relevant to the request;

(2) A history of performance indicating when work under the contracts or commitments was begun, the progress made to the present, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion thereof;

(3) A statement of payments received, payments due, and payments yet to be received or to become due, including advance and progress payments, and amounts withheld by the Government, and information as to other obligations of the Government; if any, which are yet to be performed under the contract;

(4) A statement giving a detailed analysis of the monetary elements of the request including precisely how the actual or estimated dollar amount of the request was arrived at, the effect of approval or denial on the contractor's profits before Federal income taxes, and whether the costs for which reimbursement is requested have been included as a part of its gross costs in statutory renegotiation proceedings, together with the contractor's renegotiation status for the relevant years;

(5) If a written contract is involved, a statement of the contractor's understanding of why the subject matter of the request cannot now be and could not at the time it arose be disposed of under the terms of the contract itself;

(6) The best evidence available to the contractor in support of any facts alleged by the contractor, including contemporaneous memoranda, correspondence, affidavits, and any other material tending to establish matters of fact;

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, including such additional financial data as is necessary to explain fully and to support the monetary elements of the request for adjustment;

(8) A list of persons (within the Department of Defense, in the employ of the contractor, or otherwise connected with the contract) who have some factual knowledge of the subject matter, including where possible the name, office or title, address and telephone number of each such person;

(9) A statement and evidence of steps taken to mitigate loss and reduce claims to a minimum; and

(10) Such other statements or evidence as may be requested by the contracting officer.

(b) Amendments without consideration under § 17.204–2(a): In addition to the facts and evidence listed in paragraph (a) of this section, where a request involves possible amendment without consideration, and essentiality to the national defense is a factor, the contractor may be asked to furnish:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if enabled to complete, broken down between costs accrued to date of request, and run-out costs, and as between costs for which the contractor has made payment and those for which it is indebted at the time of the request;

(3) A statement and evidence of the contractor's estimate of the final price of the contracts involved giving effect to all escalation, changes, extras and the like, known or contemplated by the contractor;

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts in question, other than those stated in response to subparagraph (3) of this paragraph;

(5) An estimate of the total profit or loss under the contracts involved if enabled to complete at the final contract price (see (3) above) broken down between profit or loss to date, and runout profit or loss;

(6) An estimate of the total profits from other Government business, and all other sources, during the period from the date of the first contract involved to the estimated date of completion of all the contracts involved;

(7) A statement of the amount of any tax refunds and an estimate of those anticipated during or for the period from the date of the first contract involved through the estimated completion date of all the contracts involved;

(8) A statement in detail as to efforts the contractor has made to obtain funds from commercial sources to enable it to complete performance of the contracts involved;

(9) A statement of the minimum amount necessary as an amendment without consideration to enable the contractor to complete performance of the contracts involved, and the detailed basis for that amount;

(10) An estimate of the time required to complete each contract, if the request is granted;

(11) A statement of the factors which have caused the loss under the contracts involved;

(12) A statement as to the course of events anticipated if the request is denied;

(13) Balance sheets, preferably certified by a certified public accountant, as of the end of the contractor's fiscal year first preceding the date of the first contract, as of the end of each subsequent fiscal year, as of the date of request, and projected as of the date of completion of all the contracts assuming the contractor is enabled to complete the contracts at the final prices estimated pursuant to subparagraph (3) of this paragraph, together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated, and by affiliates, and should show all transactions between the contractor and its affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner; and

(14) A list of all salaries, bonuses and all other forms of compensation of the principal officers or partners and of all dividends and other withdrawals, and all payments to stockholders in any form since the date of the first contract involved.

(c) Amendments without consideration under § 17.204–2(b). In addition to the facts and evidence listed in paragraph (a) of this section, where a request involves possible amendment without consideration because of Government action, and essentiality to the national defense is not a factor, the contractor may be asked to furnish:

(1) A clear statement of the precise Government action which the contractor considers caused a loss under the contract with evidence to support each essential fact;

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit;

(3) The estimated total loss suffered under the contract, with detailed supporting analysis; and

(4) The estimated loss resulting from the Government action, with detailed supporting analysis.

(d) Correction of mistakes: In addition to the facts and evidence listed in paragraph (a) of this section, where a request involves possible correction of a mistake, the contractor may be asked to furnish:

(1) A statement and evidence of the precise mistake or error that was made, the ambiguity that exists, or the misunderstanding that arose, showing of what it consisted and how it occurred, and the intention of the parties;

(2) A statement explaining when the mistake was discovered, when notice of mistake was given to the contracting officer, and whether given before completion of work under, or the effective date of termination of, the contract;

(3) An estimate of loss or profit under the contract with detailed supporting analysis; and

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested with detailed supporting analysis.

(e) Formalization of informal commitments: In addition to the facts and evidence listed in paragraph (a) above, where a request involves possible formalization of an informal commitment, the contractor may be asked to furnish:

(1) Copies of any written instructions or assurances, or a statement under oath of any oral instructions or assurances made to the contractor, with identification of the Government officer or official making such statement;

(2) A statement as to when the property or services were furnished or arranged to be furnished, and to whom;

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances which led it so to rely, and that the contractor intended; at the time of performing the work, to be compensated directly for it by the Government and did not anticipate recovery of the costs in some other way;

(4) A cost breakdown supporting the amount claimed as a fair compensation for the work performed; and

(5) A statement and evidence of why it was impracticable to provide for the work performed in an appropriate contractual instrument.

§ 17.208 Processing cases.

§ 17.208–1 Investigation.

Officers and officials listed in § 17.203 (b) shall be responsible in all cases for making a thorough investigation of all facts and issues relevant to a request. Facts and evidence shall be obtained

from contractor and Government personnel, and shall include signed statements of material facts within the knowledge of individuals where documentary evidence is lacking, and audits where considered necessary to establish financial or cost facts. The investigation shall establish (a) the facts essential to meeting the standards for deciding the particular case and (b) the essential facts as to who has authority to approve the request.

§ 17.208–2 Disposition below Secretarial level.

(a) *Disposition.* In each case where the request for relief is denied or approved finally below Secretarial level (see § 17.203), the approving authority shall sign a Memorandum of Decision, whether approving or denying the request, which memorandum shall be dated and shall contain the following:

(1) The name and address of the contractor, the contract identification, and the nature of the request;

(2) The decision reached and the actual cost or estimated potential cost, if any, of the decision;

(3) A concise description of the property or services involved;

(4) A statement of the circumstances justifying the decision;

(5) If some adjustment action is approved, a statement in substantially the following form, "I find that the action authorized herein will facilitate the national defense"; and

(6) Identification of any of the foregoing information which is classified "Confidential," including "Confidential—Modified Handling Authorized," or higher.

(b) *Records.* Each of the following documents shall be submitted to the addressees set forth in § 17.207–3 within 30 days after the close of the month during which it is executed:

(1) Two copies of the Memorandum of Decision;

(2) One copy of the contractual document implementing any decision, approving contractual action; and

(3) One copy of a final record, as prescribed in Subpart D of this part, prepared by the activity responsible for the case under § 17.203. The item in subparagraph (2) of this paragraph will not be submitted in the case of the Army.

§ 17.208–3 Submission of cases to the Contract Adjustment Board.

(a) *Statement to Board.* Cases to be submitted for consideration of the cognizant Contract Adjustment Board shall be forwarded by means of a letter signed by the officer or official responsible for the case under § 17.203. The letter shall state:

(1) The nature of the case;

(2) The basis for the Board's authority to act under §§ 17.202 and 17.203;

(3) The findings of fact essential to the case (see § 17.207–4) arranged chronologically with cross-references to supporting enclosures;

(4) The conclusions drawn from applying the standards for deciding cases, as set forth in § 17.204, to the findings of fact; and

(5) The disposition recommended, and, if contract action is recommended, the opinion of the signer that such action will facilitate the national defense; and

(6) Where the case involves a Mutual Security Act purchase within the scope of § 6.701–1(b) of this chapter, a recommendation as to the impracticability of inclusion of the Examination of Records clause set forth in § 7.104–15 of this chapter (see §§ 17.206(e) and 6.701).

The letter shall inclose copies of the contractor's request, the evidentiary materials, and all indorsements, reports and comments of cognizant Government officials. The letter and enclosure shall be in duplicate.

(b) *Amendments without consideration under § 17.204–2(a).* A letter to the Board recommending an amendment without consideration under the standards of § 17.204–2(a), should, in addition to the requirements of paragraph (a) of this section, ordinarily cover, with supporting data as appropriate, the findings and conclusions with respect to all of the items set forth in § 17.207–4(b) and, in addition, findings as to:

(1) The contractor's performance record, including the quality of product, rate of production and promptness of deliveries;

(2) The importance to the Government, particularly to the operating forces, of the performance of the contract by contractor and the importance of the contractor to the national defense;

(3) Forecast of future contracts with the contractor; and

(4) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

(c) *Forwarding to Boards.* Cases to be submitted to the Boards shall be forwarded through the following channels:

(1) In the Army and the Navy, normally, each case shall be sent from the Head of a Procuring Activity directly to the Board;

(2) In the Air Force, normally, each case shall be sent from Air Materiel Command, through the Deputy Chief of Staff, Materiel, Headquarters USAF, and after review there, to the Board; or if the case comes from an overseas command, it shall be sent through the Commander, Air Materiel Command, ATTN: Readjustment Division, MCPR, and after review there, to the Board through the Deputy Chief of Staff Materiel, Headquarters, USAF.

§ 17.208–4 Processing by Contract Adjustment Boards.

(a) *Disposition.* Upon receipt of cases, the Contract Adjustment Boards, each in accord with its own procedures, shall render decisions as expeditiously as practicable. The chairman shall sign a Memorandum of Decision disposing of the case, which shall be dated and shall contain the information required by § 17.208–2(a) 1 to (5). The Memorandum of Decision shall omit any information classified "Confidential," including "Confidential—Modified Handling Authorized," or higher. The Board's decision will be communicated to the appropriate officer or official for implementing action.

(b) *Records.* When the Board decisions are implemented, the documents listed in § 17.208–2(b) (2) and (3) shall be prepared and submitted to the cognizant Board, except that, in the case of the Army, the record required by § 17.208–2(b)(3) shall be forwarded to the Programs and Budget Branch, Procurement Division, DCSLOG. The activity which forwarded the case to the Board shall be responsible for the preparation and submission of these documents.

§ 17.208–5 Maintenance of records.

The records required by §§ 17.207–3, 17.208–2(b) and 17.208–4(a) and (b) shall be maintained in the Army by DCSLOG and in the Navy and Air Force, by the respective Boards.

§ 17.208–6 Interdepartmental coordination.

(a) *General.* Where a case involves matters of interest to more than one department or agency, any interested Military Department shall maintain liaison with other Military Departments and other departments and agencies of the Government and may take such joint action as may be proper under the circumstances, including holding joint meetings or hearings.

(b) *Cases involving funds of other Military Departments.* Requests for adjustment within any category, where the funds of other than the procuring Department may be required, shall not be approved by the procuring Department until advice is requested and received from the requiring Department that additional funds will be made available. The request for such advice shall disclose the following data:

(1) Contractor's name;

(2) MIPR number;

(3) Contract number;

(4) Amount of proposed relief;

(5) Brief description of the procurement; and

(6) Accounting classification—fund citation.

If such additional funds are made available, the action to be taken on a particular request, however, shall be solely the responsibility of the Department considering such request.

(c) *Amendments without consideration involving other Military Departments.* Requests for amendments without consideration, where essentiality to the national defense is an issue and involves another Military Department, shall not be finally determined by one Department until advice on such issue is requested and received from the other Department. When such advice is received, the responsibility for taking the appropriate action, if any, shall be with the Department considering the request.

Subpart C—Residual Powers

§ 17.300 Scope.

This subpart describes the delegations of authority, and the standards and procedures for the exercise of residual powers under the Act. The term "residual powers" as used in this subpart includes all the authority under the Act except that which is covered by Subpart B of this part and the authority to make advance payments.

§ 17.301 Delegations of authority.

Authority to take actions under the residual powers of the Act is vested in the Secretary of each Department and may be defined and delegated in writing by him within his Department: *Provided, however,* That authority to approve actions obligating the United States in an amount in excess of $50,000 shall not be delegated below the Secretarial level, and authority to approve actions obligating $50,000 or less shall not be delegated below the Head of a Procuring Activity in the Army and the Navy, and in the Air Force, the Director of Procurement and Production, Headquarters, AMC. Copies of all delegations and successive redelegations shall be transmitted to the Assistant Secretary of Defense for Supply and Logistics at the time of issuance.

§ 17.302 Standards for using residual powers.

Subject to the limitations contained in § 17.205–1, the residual powers may be used in accordance with the policies set forth in § 17.102 where such use is deemed necessary and appropriate under all the circumstances.

§ 17.303 Procedures.

(a) All proposals for the exercise of residual powers shall be forwarded except as Departmental regulations may otherwise provide through normal channels within the Military Departments to the Assistant Secretary or other approving authority.

(b) The approving authority shall sign a Memorandum of Approval containing the information set forth in § 17.208–2(a).

(c) Every contract entered into or amended or modified under the residual powers shall comply with the provisions of § 17.206.

§ 17.304 Maintenance of records.

DCSLOG in the Army, and the respective Contract Adjustment Boards in the Navy and the Air Force, shall be responsible for maintaining two copies of each Memorandum of Approval required by § 17.303(b).

Subpart D—Records of Requests and Dispositions

§ 17.400 Scope of subpart.

In order that adequate records of actions by each Department pursuant to the Act may be maintained, § 17.207–3 requires the preparation of a preliminary record when each request is filed for an adjustment under the standards set forth in § 17.204, and §§ 17.208–2(b)(3) and 17.208–4(b) require the preparation of a final record indicating the disposition of the request. This subpart describes in detail the information which should be included in these records.

§ 17.401 Preliminary records.

Each preliminary record prepared pursuant to § 17.207–3 should contain the following information:

(a) *Type of record.* The fact that the record is a preliminary record should be indicated;

(b) *Date of contractor's request.* The date on the face of the contractor's request for adjustment should be inserted;

(c) *Date received by Government.* The date the request for adjustment is received in any Government office to which the contractor may properly submit his request should be inserted;

(d) *Name and address of contractor.* The full and correct name and address of the contractor filing the request should be inserted. If the contractor is a small business, this fact should be indicated;

(e) *Name and address of the contractor's representative, if any.* If a particular named person (employee, attorney, etc.) is the point of contact with the contractor, his full name and address should be inserted;

(f) *Cognizant contracting officer or office.* The contracting officer administering the contract for which an adjustment was requested or, if none, the contracting officer or office cognizant of the request should be inserted;

(g) *Procuring activity.* The name of the procuring activity with jurisdiction over the contracting officer or office referred to in paragraph (f) of this section, should be inserted;

(h) *Property or service involved.* A brief description of the item being procured or services being rendered should be inserted;

(i) *Extent of performance as of date of request.* A brief indication, as of the date of request, of the degree of completion of the contract should be inserted; whether the work is completed but final payment is yet to be made or, for example, 50 percent completed, or performance not yet begun, should be indicated;

(j) *Contract number and date.* The identifying numbers and dates of the contracts for which an adjustment is requested should be inserted. If there is no contract, then the word "None" should be inserted. If the question arises under a letter of intent, then that fact and the date of such letter should be inserted;

(k) *Advertised or negotiated.* Whether the contract was entered into pursuant to advertising or negotiation should be indicated. If negotiated, the specific authority should be indicated. Example: "Neg.—10 USC 2304(a)(14)";

(l) *Firm FP, FP Redet, or Cost.* The basic pricing characteristic of the contract or the procurement should be inserted as follows: "Firm FP" or "FP Redet" or "Cost";

(m) *Category of case.* Whether the request involves an amendment without consideration, a mistake, or an informal commitment should be inserted. If the elements of the case are mixed, then two or more categories should be indicated; however, the primary theory of the request should be indicated by the first category inserted;

(n) *Amount or description of request.* If the request is expressed in dollars, as a change in price, then that fact should be inserted as follows: "$5,250 increase" or "$5,250 decrease." If the request seeks an adjustment which cannot be expressed in monetary terms, then some brief description of it should be inserted, such as "Cancellation" or "Modification of Terms." The fact that an adjustment is not easily expressed in dollar terms should not deter an estimate if such an estimate is made by the contractor in his request;

(o) *Date of this record.* The date on which the record is signed and forwarded should be inserted; and

(p) *Signature.* The record should be signed by an authorized representative of the reporting authority.

§ 17.402 Final records.

Each final record prepared pursuant to §§ 17.208–2(b)(3) or 17.208–4(b) should contain the information listed in § 17.401 (b) to (p) and, in addition, should contain the following information:

(a) *Type of record.* The fact that the record is a final record should be indicated;

(b) *Action below Secretarial level.* The disposition of the case, the office which took action, and the date thereof should be inserted. The disposition should be indicated as: "withdrawn," "denied," "approved," or "forwarded." If the request was approved in whole or in part, the dollar amount or nature of the action should be indicated in a manner similar to that described in § 17.401 (n). The date should correspond with the date of the Memorandum of Decision or of the letter forwarding the request to the Board.

(c) *Action by Contract Adjustment Board and date.* The disposition of the case by the Contract Adjustment Board and the date thereof should be indicated in a manner similar to that described in paragraph (b) of this section; and

(d) *Implementation and date.* The contractual action or correspondence which implements the decision of the approving authority or of the Board, should be inserted as follows: "amendment," "new contract," or "letter of denial."

§ 17.403 Sample format for preliminary and final records.

The preliminary and final records described in §§ 17.401 and 17.402 may be prepared in a format substantially as follows:

☐ Preliminary		Final ☐
Date of Request	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85-804	Date Received by Government
Contractor's Name and Address		☐ Small Business
Name and Address of Contractor's Representative, if Any		
Cognizant Contracting Officer or Office	Procuring Agency	
Property or Service Involved	Extent of Performance as of Date Request Received	
Contract Number / Date	Advertised or Negotiated	Firm FP, FP Redet, or Cost
Category of Case	Amount or Description of Request	
Action Below Secretarial Level		Date
Action by CAB		Date
Implementation		Date
Additional Data or Remarks		
Date of This Record	Signature	

Subpart E—Act and Executive Order

§ 17.500 Scope of subpart.

This subpart sets forth in full the Act and Executive Order.

§ 17.501 Act of August 28, 1958 (Public Law 85-804, 50 U.S.C. 1431-1435).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein.

SEC. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) The use of the cost-plus-a-percentage-of-cost system of contracting;

(b) Any contract in violation of existing law relating to limitation of profits;

(c) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) The waiver of any bid, payment, performance, or other bond required by law;

(e) The amendment of a contract negotiated under section 2304(a)(15), title 10, United States Code, or under section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) The formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

SEC. 3. (a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

SEC. 4. (a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) Name the contractor;

(2) State the actual cost or estimated potential cost involved;

(3) Describe the property or services involved; and

(4) State further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

SEC. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate."

§ 17.502 Executive Order No. 10789 of November 14, 1958 (23 F.R. 8897).

AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL-DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

PART I—DEPARTMENT OF DEFENSE

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefore, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, That the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) name the contractor;

(b) state the actual cost or estimated potential cost involved;

(c) describe the property or services involved; and

(d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. All contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) The use of the cost-plus-a-percentage-of-cost system of contracting;

(b) Any contract in violation of existing law relating to limitation of profits or fees;

(c) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) The waiver of any bid, payment, performance, or other bond required by law;

(e) The amendment of a contract negotiated under section 2304(a)(15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) The formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healy Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1011), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1–14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury.
Department of the Interior.
Department of Agriculture.
Department of Commerce.
Atomic Energy Commission.
General Services Administration.
Office of Civil and Defense Mobilization.
National Aeronautics and Space Administration.
Federal Aviation Agency.
Tennessee Valley Authority.
Government Printing Office.

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

Sec.

30.1 Appendix A—Armed Services Board of Contract Appeals.
30.2 Appendix B—Manual for control of Government property in possession of contractors.
30.3 Appendix C—Manual for control of Government property in possession of non-profit research and development contractors.
30.4 Appendix D—Rules for notice and hearing under gratuities clause in Armed Services Procurement Regulation 7.104–16.
30.5 Appendix E—Defense Contract Financing Regulations.

AUTHORITY: §§ 30.1 to 30.5 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U.S.C. 2301–2314.

§ 30.1 Appendix A — Armed Services Board of Contract Appeals.

PART I—CHARTER

1. There is hereby created, as a joint board of the Departments of the Army, Navy, and Air Force, the Armed Services Board of Contract Appeals, which shall be responsible directly to the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, jointly, for the proper performance of the delegated authority hereinafter conferred. The Board shall operate under general policies established or approved by the Assistant Secretary of Defense (Supply and Logistics).

2. The Board shall consist of persons trained in the law. There shall be a president of the Board. The chairmen of the Army, Navy, and Air Force panels of the Board (as hereinafter described) shall each in that order serve as the president of the Board on a yearly rotational basis. In the absence of the president the panel chairman next in order of succession shall act as president. If it shall be determined at any time that additional members of the Board are necessary in order to process appeals with reasonable dispatch, the president of the Board, with the advice of the panel chairmen, shall recommend to the pertinent Assistant and Under Secretaries of the three Departments for appointment such additional members of the Board as are deemed necessary, and shall similarly make recommendations for the filling of any vacancy on the Board. Appointments will be made by joint action of the pertinent Assistant and Under Secretaries of the three Departments.

3. There shall be three panels of the Board. One of the panels shall be known as the Army contract appeals panel, and shall consist of such members of the Armed Services Board of Contract Appeals as shall be assigned to the panel by the Under Secretary or the Assistant Secretary of the Army, whichever is appropriate, who shall also designate the chairman of said panel; one of the panels shall be known as the Navy contract appeals panel, and shall consist of such members of the Armed Services Board of Contract Appeals as shall be assigned to the panel by the Under Secretary or the Assistant Secretary of the Navy, whichever is appropriate, who shall also designate the chairman of said panel; and one of the panels shall be known as the Air Force contract appeals panel, and shall consist of such members of the Armed Services Board of Contract Appeals as shall be assigned to the panel by the Under Secretary or the Assistant Secretary of the Air Force, whichever is appropriate, who shall also designate the chairman of said panel. The president of the Board may assign members (other than the chairman) from one panel to duty with another panel on a temporary basis as the workload of the particular panels may require. Each of the departmental panels shall function under the supervision of its panel chairman.

4. The Armed Services Board of Contract Appeals is hereby designated and shall act as the authorized representative of the respective Secretaries of the Army, Navy, and Air Force in hearing, considering and determining as fully and finally as might each of the Secretaries (a) appeals by contractors from decisions on disputed questions by contracting officers or their authorized representatives or by other authorities pursuant to the provisions of armed services contracts requiring the decision of appeals by the head of a Department of the armed services or his duly authorized representative or board, or pursuant to the provisions of any directive whereby the Secretary of a Department of the armed services has granted a right of appeal not contained in the contract; (b) appeals by armed services contractors pursuant to section 13(c)(1)(i) and section 17(c) of the Contract Settlement Act of 1944. When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may nevertheless in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. Unless the contract provides otherwise, when in the consideration of an appeal it appears that a claim for unliquidated damages is involved therein, the Board shall, insofar as the evidence permits, make findings of fact with respect to such claims without expressing opinion on questions of liability.

5. When a contract requires the Secretary of a Department of the armed services, personally, to render a decision on the matter in dispute, the Armed Services Board of Contract Appeals, in accordance with the procedure set forth in paragraph 6, shall make findings and recommendations to the Secretary of the Department with respect thereto.

6. The president of the Board shall be responsible for assigning appeals to the departmental panels for decision. In general, appeals shall be assigned to the panel of the Department whose contract or procurement is directly involved. Each of the three panels of the Board shall act in divisions which shall normally consist of three or more members of the panel, to be selected by the chairman of the panel. A majority of the members of a division shall constitute a quorum for the transaction of the business of the division and the decision of a majority of the division shall constitute the decision of the panel and of the Board, provided that all three panel chairmen signify that in their opinion a review by the three panel chairman is not required; if a majority of the members of a division are unable to agree on a decision, or if one or more panel chairmen do not waive review, determination of the appeal shall be made by a majority of the three panel chairmen: *Provided*, That on request of the appellant, and subject to the concurrence of the Department concerned, an appeal involving $5,000 in amount or less shall be decided under an accelerated procedure by a single member of the Board subject to such concurrence by a division or panel as the Department may direct.

7. It shall be the bounden duty and obligation of the members of the Armed Services Board of Contract Appeals to decide appeals to the best of their knowledge and ability in accordance with applicable contract provisions, and in accordance with the law pertinent thereto.

8. The Board shall have all powers necessary and incident to the proper performance of its duties, and with the approval of the pertinent Assistant and Under Secretaries of the Army, Navy, and Air Force shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Board is authorized to communicate directly with any person whomsoever in regard to any matter which relates to the business of the Board. The Departments shall jointly or severally maintain an adequate staff of military and/or civilian legal and clerical personnel who shall prepare and present the contentions of the Departments in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the three Departments concerning the preparation and presentation of appeals and the procurement of all Department records deemed by the Board to be pertinent thereto.

9. Any member of the Board or any examiner, designated by the president of the Board with the concurrence of the chairman of the pertinent panel, shall be authorized to hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument to the designated division of the panel for consideration and determination of the appeal.

10. A vacancy in the Board or any panel or division thereof shall not impair the powers nor affect the duties of the Board, panel, or division, nor of the remaining members of the Board, panel, or division, respectively. In the absence of a panel chairman, the member of the panel designated by him to act in his absence shall serve as acting chairman of the panel. Should no such designation be made, the member present on the panel having seniority of service as a member shall serve as acting chairman of the panel.

11. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals". This seal shall be affixed to all authentications of copies of records, and to such other instruments as the Board may determine.

12. There shall be a recorder of the Board, who shall be a person trained in the law. He shall be appointed by the president of the Board. Each Department will provide such materials, facilities, and nonmember clerical and professional personnel to its respective panel as may be required by the panel in the performance of its duties as a panel of the Armed Services Board of Contract Appeals. The salaries of the members and of the nonmember personnel as originally assigned to the Board shall be borne by the respective Departments upon the basis of an original agreement between the three Departments. The apportionment may be reconsidered from time to time but not more often than once per year. In each case heard the expense of transcripts, travel, and per diem of members, and the expense of witnesses required by the Government shall be absorbed by the Department which executed the contract under which the appeal was taken.

13. The Board will submit to the respective Secretaries of the three Departments and the Assistant Secretary of Defense (Supply and Logistics), during the month of July of each year, a report containing an account of its transactions and proceedings for the preceding fiscal year. During each calendar month the Board shall forward a report of its proceedings for the preceding calendar month to the pertinent Assistant and Under Secretaries of the Departments and the Assistant Secretary of Defense (Supply and Logistics). Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as shall be deemed pertinent by the president of the Board or requested by the Assistant or Under Secretaries.

14. All appeals pending before the Board under the "Charter for the Armed Services Board of Contract Appeals" which became effective on May 1, 1949 shall continue to be subject to the jurisdiction of the Board under this revised Charter.

15. This revised Charter will become effective February 1, 1959.

PART II—RULES OF THE ARMED SERVICES BOARD OF CONTRACT APPEALS

PREFACE TO RULES

The Armed Services Board of Contract Appeals is the authorized representative of the Secretaries of the Army, Navy, and Air Force in hearing, considering and determining as fully and finally as might each of the Secretaries:

(a) Appeals by contractors from decisions on disputed questions by contracting officers or their authorized representatives or by other authorities pursuant to the provisions of Armed Services contracts requiring the determination of appeals by the head of a Department of the Armed Services or by his duly authorized representative or board, or pursuant to the provisions of any directive whereby the Secretary of a Department of the armed services has granted a right of appeal not contained in the contract;

(b) Appeals by armed services contractors pursuant to section 13(c)(1)(i) and section 17(c) of the Contract Settlement Act of 1944.

When an appeal is taken pursuant to a dispute clause in a contract which provides only for appeals from decisions on questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. Unless the contract provides otherwise, when in the consideration of an appeal it appears that a claim for unliquidated damages is involved therein, the Board, insofar as the evidence permits, makes findings of fact with respect to such claims without expressing opinion on questions of liability.

When a contract requires the Secretary of a Department of the armed services personally to render a decision on the matter in dispute, the Board submits its findings and recommendations to the Secretary of the Department.

There are three panels of the Board: The Army, Navy, and Air Force panels. In general, appeals are assigned for decision to the panel of the Department whose contract or procurement is directly involved. Each of the panels acts in divisions, which normally consist of three or more members of the panel. Hearings may be held by a division, by a designated member, or by a duly authorized examiner. The decision of a majority of a division constitutes the decision of the panel and of the Board, provided that all three panel chairmen signify that in their opinion a review by the three panel chairmen is not required. If a majority of the members of a division do not agree upon a decision, or if one or more of the panel chairmen do not waive review, determination of the appeal is made by a majority of the three panel chairmen. However, on request of the appellant and subject to the concurrence of the Department concerned, an appeal involving $5,000 in amount or less may be decided by a single member of the Board subject to such concurrence by a division or panel of the Board as the Department concerned may direct.

SCOPE OF RULES

1. *General.* Except to the extent otherwise provided pursuant to Rule 31 (Optional Accelerated Procedure for Cases Involving $5,000 in Amount or Less), Rules 2 through 30 govern the procedure in all cases before the Board. They shall be construed for the purpose of securing just and inexpensive determination of appeals without unnecessary delay. All pleadings provided for hereunder shall be so construed as to do substantial justice.

PROCEEDINGS PRELIMINARY TO HEARINGS

2. *Appeals, how taken.* Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

3. *Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in Rule 5 may be filed with the notice of appeal.

4. *Duties of contracting officer.* When a notice of appeal in any form has been received by the contracting officer he shall endorse thereon the date of mailing or the date of receipt if otherwise filed and within 10 days shall forward the notice of appeal, and the complaint if filed therewith, to the Board. The contracting officer shall promptly thereafter compile and transmit to counsel for the Government copies of all documents pertinent to the appeal, including the following:

(1) The findings of fact and the decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(2) The contract and pertinent plans, specifications, amendments, and change orders;

(3) Correspondence between the parties and other data pertinent to the appeal;

(4) Transcripts of any testimony taken during the course of the proceedings on the matter in dispute prior to the filing of the notice of appeal with the Board;

(5) Such additional information as the contracting officer may consider material.

When the Board has received the original notice of appeal the Board will promptly so advise the contractor and the contracting officer, and will forward to the contractor a copy of these rules.

NOTE: Attention is invited to Rule 31, below, providing an Optional Accelerated Procedure for cases involving $5,000 in amount or less. It is the duty of the contracting officer to advise the contractor of the Optional Accelerated Procedure in connection with an appeal involving $5,000 in amount or less.

5. *Complaint.* Within 30 days after receipt of notice of docketing by the Board of the appeal, or within such longer period of time as may be allowed by the Board, the appellant shall file with the Board, if not previously filed with the notice of appeal, a complaint setting forth simple, concise and direct statements of each of his claims showing that he is entitled to relief including the dollar amount claimed. If the amount claimed involves $5,000 or less, he may, in his complaint, request that the appeal be handled under the Optional Accelerated Procedure (Rule 31). Each claim shall be stated with as much particularity as is practical. No technical form is required, but each claim should be separately identified. Documentary evidence in support of claims may be filed as exhibits to the complaint. All documents filed as exhibits to the complaint shall be plainly listed and identified in the complaint. An original and three copies of the complaint shall be filed. Upon receipt thereof the recorder of the Board shall serve a copy of the complaint on counsel for the Government.

6. *Answer.* Within 60 days after service of the complaint, or within such longer period of time as may be allowed by the Board, counsel for the Government shall prepare and file with the Board an answer thereto. The answer shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant. Each defense shall be stated with as much particularity as is practical. Defenses which go to the jurisdiction of the Board may be included in the answer, or may be raised by motion pursuant to the provisions of Rule 10. If the appellant requests recourse to the Optional Accelerated Procedure (Rule 31), the answer shall contain a statement as to whether such request is concurred in by the Department concerned. Counsel for the Government shall at the same time file with the Board the following documents, which shall be plainly listed and identified:

(1) The findings of fact if any and the decision from which the appeal is taken, and the letter or letters or documents of claim in response to which the decision was issued by the contracting officer;

(2) The contract and pertinent plans, specifications, amendments, and change orders.

Documentary evidence in support of the Government's defenses may be filed as exhibits to the answer. All documents filed as exhibits to the answer shall be plainly listed and identified in the answer. An original and three copies of the answer shall be filed with the Board. Upon receipt thereof the Recorder shall serve a copy of the answer on appellant or his attorney.

7. *Appeal file; inspection of file.* The notice of appeal, the complaint and exhibits attached thereto, the answer and exhibits attached thereto, and the documents required to be filed therewith pursuant to Rule 6, all papers filed by the parties with the Board pursuant to these rules, and all correspondence exchanged between the Board and the parties or their attorneys shall constitute the appeal file, which shall be available for inspection by appellant and Government counsel at the offices of the Board. Prior arrangements for inspection of the file should be made with the recorder of the Board.

8. *Amendments of pleadings.* At any time before oral hearing or before submission of a case by the parties without an oral hearing the Board in its discretion may permit a party, within the proper scope of the appeal, to amend its complaint or answer, upon conditions just to both parties. The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of its complaint or answer, or to reply to an answer. When issues within the proper scope of the appeal but not raised by the complaint and answer are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised therein. Such amendment of the complaint and answer as may be necessary to cause them to conform to the evidence may be made upon motion at any time, even after decision, but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the complaint and answer, the hearing member or examiner may allow the pleadings to be amended within the proper scope of the appeal and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the hearing member or examiner that the admission of such evidence would prejudice him in maintaining his case or defense upon the merits. The hearing member or examiner may, however, grant

a continuance to enable the objecting party to meet such evidence.

9. *Trial briefs.* The Board in its discretion may order the submission of trial briefs prior to assignment of a case for oral hearing.

10. *Motions to dismiss.* Defenses which go to the jurisdiction of the Board may be raised by motion. Filing of motions to dismiss for lack of jurisdiction shall not be unreasonably delayed. The Board, however, has the right at any time to recognize its lack of authority to proceed in a particular case. Motions to dismiss for lack of jurisdiction shall, on application of either party, be heard and determined before oral hearing on the merits unless the Board orders that determination of the motion be deferred pending oral hearing on both the merits and the motion.

11. *Failure to state a case.* In the event, after completion of the pleadings, the Board finds that appellant has failed to state a case on which any relief could be granted by the Board, the Board may give notice to appellant to show cause why the appeal should not be dismissed on the ground that no useful purpose would be served by setting the case for oral hearing on the merits. Appellant, in such event, will be afforded the opportunity to be heard orally for the purpose of showing cause why the appeal should not be dismissed on that ground, and if appellant so desires to move to amend the complaint, within the proper scope of the appeal. If the Board thereafter finds appellant has failed to show cause, and finds that the complaint, with such amendments as may be offered by appellant, fails to state a case on which the Board could grant relief, the appeal shall be dismissed.

12. *Depositions.* Depositions which a party desires to take for the purpose of offering in evidence shall be taken in accordance with the procedure set forth in Appendix to Rules.

13. *Interrogatories to parties; inspection of documents; admission of facts.* Under appropriate circumstances, but not as a matter of course, the Board will entertain applications for permission to serve written interrogatories upon the opposing party, applications for an order to produce and permit the inspection of designated documents, and applications for permission to serve upon the opposing party a request for the admission of specified facts. Such applications shall be received and approved only to the extent and upon such terms as the Board in its discretion considers to be consistent with the objective of securing just and inexpensive determination of appeals without unnecessary delay, and essential to the proper pursuit of that objective in the particular case.

14. *Prehearing conferences.* In any case the Board in its discretion, upon its own initiative or upon the application of one of the parties, may call upon the parties or their attorneys or representatives to appear before a member or examiner of the Board for a conference to consider:

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) Such other matters as may aid in the disposition of the appeal.

The presiding member or examiner, at the conclusion of such a conference, shall make such order as in his discretion is found to be appropriate with reference to action taken at the conference, amendments allowed or to be made to the pleadings, agreements made by the parties as to any of the matters considered, and limitation of issues for trial.

15. *Service of papers.* Service of papers in all proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope, registered, return receipt requested, with postage prepaid, addressed to the party upon whom service shall be made, and the date of the registry receipt shall be the date of service. Waiver of the service of any papers may be noted thereon or on a copy thereof, or on a separate paper, signed by the parties or their attorneys and filed with the Board. When any party has appeared by attorney, service upon the attorney will be deemed proper service upon such party.

HEARINGS

16. *Where and when held.* (a) Hearings will be held at the office of the Board in Washington, D.C., unless it is otherwise ordered by the Board. Hearings will not ordinarily be held elsewhere, but if a request therefor is seasonably made and good cause therefor appears, the Board may order a hearing to be held at another location. (For hearings under the Optional Accelerated Procedure, see Rule 31.)

(b) Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other factors. However, on request or motion of either party the Board, in its discretion, may advance the hearing for good cause shown.

17. *Notice of hearings.* Appellant and Government counsel shall be given at least 15 days' notice of the time and place of hearing.

18. *Submission without a hearing.* If either party does not wish to appear or be represented at a hearing, the Board shall be so advised. A party who so advises the Board may submit a brief within 20 days after the date assigned for the hearing, or within such other period of time as may be allowed by the Board. If both parties advise the Board that an oral hearing is not desired, briefs may be submitted by the parties within such period of time as may be allowed by the Board. (For submission on the record under the Optional Accelerated Procedure, see Rule 31.)

19. *Absence of parties or counsel.* The unexcused absence of a party or his authorized representative at the time and place set for the hearing will not be the occasion for delay. In such event the hearing will proceed and the case will be regarded as submitted by the absent party.

20. *Nature of hearings.* Hearings shall be as informal as may be reasonably allowable and appropriate under all the circumstances. Appellant and Government counsel may offer at a hearing on the merits such relevant evidence [1] as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the exercise of reasonable discretion by the presiding member or examiner in supervising the extent and manner of presentation of such evidence. Letters or copies thereof, affidavits, or other evidence, not ordinarily admissible under the generally accepted rules of evidence, may be received in evidence at the discretion of the presiding member or examiner. The weight to be attached to evidence presented in any particular form will be determined by the Board in the exercise of reasonable discretion under all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used in evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may, however, in any case, require additional evidence.

21. *Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated or the Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath the Board may, if it seems expedient, warn the witness that his statements may be subject to the provisions of Title 18, United States Code, sections 287, 1001; section 19 of the Contract Settlement Act of 1944 (41 U.S.C. 119), and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

22. *Copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

23. *Briefs.* All briefs shall be filed within 20 days after conclusion of the hearing, or within such other period of time as may be allowed by the Board.

[1] For procedure to be followed in taking depositions, see "Appendix to Rules."

24. *Transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders except that under the Optional Accelerated Procedure the stenographic record will not be transcribed unless requested by either of the parties. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Board and the reporter. If the proceedings are reported by an employee of the Government, the appellant may receive transcripts upon payment to the Government at the same rates as those set by contract between the Board and the independent reporter.

25. *Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

26. *The contractor.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or by an attorney at law duly licensed in any State, Commonwealth, Territory, or in the District of Columbia. The Board may authorize a contractor to appear by a duly authorized representative other than those mentioned in a special case, but for the purposes of that case only.

27. *Status of Government counsel.* Government counsel designated by the various departments to represent the departments, agencies, and bureaus cognizant of the disputes brought before the Board may in accordance with their authority represent the interests of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Government counsel may, when it appears to them that there are questions of fact as to which there is no substantial controversy, agree with appellant or his attorney as to such facts by written stipulation or otherwise. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal in order to permit reconsideration by the contracting officer: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement the case shall be restored to the Board's calendar for hearing without loss of position.

DECISIONS

28. (a) Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be available to public inspection at the offices of the Board in Washington, D.C.

(b) Under the Optional Accelerated Procedure the decision shall be as brief as the circumstances permit and will ordinarily state only a summary of the facts and issues and the conclusions of the Board member. Such decision will not be published or distributed except to the parties and will not be regarded or cited as precedent for future cases. The Board member will also prepare a written memorandum of the basis for his decision which will not be published or distributed. Such memorandum will be available for examination by the parties.

MOTIONS FOR RECONSIDERATION

29. A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

DEFINITIONS

30. (a) As used in these rules the term "contracting officer" includes any officer or other authority whose decision may be reviewed by the Board pursuant to the Board's charter.

(b) As used in these rules the term "Board" means the full Board, president of the Board, panel, chairman of a panel, member, or examiner, as may be appropriate, except that in Rule 11 the term "Board" refers to action of the Board by written decision in accordance with the procedures set forth in the Board's charter.

31. *Optional accelerated procedure for cases involving $5,000 in amount or less.* An appeal involving $5,000 in amount or less shall be processed under this rule at the request of the appellant, subject to the concurrence of the Department concerned. Under this rule:

(a) The appeal will be decided by a single member of the Board, designated by the chairman of the panel concerned, who shall have for this purpose all the authority and power of the full Board to hear, consider, determine and reconsider the matter, subject to such concurrence by a division or panel as the Department concerned may direct.

(b) The appeal shall be deemed submitted for decision on the record unless the appellant or the Government, within 10 days after receipt of the Government's answer by the appellant, requests the Board to schedule an oral hearing.

(c) Such oral hearing shall be fixed at such time and place as shall be agreeable to the parties and to the chairman of the panel concerned, taking into consideration any request therefor of the appellant.

(d) For the purpose of this rule, the amount involved in an appeal shall be the difference between the amount of the appellant's claim as stated in his complaint and the amount, if any, determined by the decision from which the appeal is taken.

(e) If the Board member assigned to the case under this rule determines that the amount involved exceeds or may exceed $5,000, the parties shall be so informed, and the appeal shall be disposed of in accordance with Rules 2–30, inclusive. The determination so made shall be final and conclusive.

EFFECTIVE DATE AND APPLICABILITY

32. These revised rules shall take effect on the first day of the second month following the month in which they are approved by the cognizant Assistant Secretaries of the Department of the Army, Department of the Navy, and the Department of the Air Force. Except as otherwise directed by the Board, these rules shall not apply to appeals which have been docketed prior to their effective date.

APPENDIX TO RULES

DEPOSITIONS

1. *When depositions may be taken.* After an appeal has been docketed by the Board either party may take the testimony of any person by deposition upon oral examination or written interrogatories for use as evidence in the appeal proceedings.

2. *Before whom taken.* Depositions to be offered in evidence before the Board may be taken before and authenticated by any person authorized by the laws of the United States, or by the laws of the place where the deposition is taken, to administer oaths.

3. *Written interrogatories.* (a) A party desiring to take the deposition of any person upon written interrogatories shall serve them upon the opposite party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the person before whom the deposition is to be taken. Within 15 days thereafter the party so served may serve cross interrogatories upon the party proposing to take the deposition.

(b) A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the person designated in the notice who should proceed promptly to take the testimony of the witness in response to the interrogatories.

4. *Oral interrogatories.* When either party desires to take the testimony of any person by deposition upon oral examination, unless the parties stipulate as to the time and place where the deposition is to be taken and the name of the person before whom it is to be taken and the name and address of the witness, such party shall give the opposite party at least 15 days written notice of the time and place where such deposition will be taken and the name and address and official title of the person before whom it is proposed to take the deposition, and the name and address of the witness.

5. *Form and return of deposition.* Each deposition should show the docket number and the caption of the proceedings, the place and date of taking, the name of the witness, and the names of all persons present. The persons taking the deposition shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and shall enclose the original deposition and exhibits in a sealed packet with postage and other transportation prepaid and forward same to the Recorder, Armed Services Board of Contract Appeals.

6. *Introduction in evidence.* Either party to the appeal may offer depositions in evidence. The entire deposition must be offered unless otherwise stipulated by the parties or directed by the Board.

§ 30.2 Appendix B—Manual for control of Government property in possession of contractors.

PART I—INTRODUCTION

101. *Scope of manual.* This manual sets forth basic requirements to be observed by the Departments of the Army, Navy and Air Force, for establishing and maintaining control over Government property furnished to or acquired by contractors pursuant to the terms of their contracts.

102. *Applicability of Manual.* This Manual applies to all types of contracts, leases and bailments pursuant to which Government property is furnished to or acquired by a contractor.

103 *Definitions.* As used in this Manual, the following terms have the meanings shown:

103.1 "Contract administrator" means the individual duly designated by appropriate authority in the Military Departments to administer the contract. In the case of the Army and Air Force, usually this is a contracting officer, and in the Navy, usually this is the authorized representative of the contracting officer having administrative cognizance over the contract.

103.2 "Property administrator" means the Government representative responsible to the contract administrator for:

(i) Reviewing and approving the contractor's property control procedures;

(ii) Examining the records maintained by the contractor of Government property;

(iii) Making usage analyses of Government property; and

(iv) The maintenance of such Government property records as are required by this Manual.

103.3 "Government property" means all property owned by or leased to the Government, or acquired by the Government under the terms of a contract; except that property to which the Government has acquired a lien or title solely as a result of partial, advance or progress payments shall not for the purpose of this Manual be classified as Government property. With this exception, Government property includes both Government-furnished property and contract-acquired property, as defined below:

(i) Government-furnished "property" is property in the possession of or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and

(ii) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, pursuant to the terms of which title is vested in the Government.

The term "provide," as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," is intended to include both Government-furnished property and contractor-acquired property.

103.4 "Industrial facility" means property, other than material and special tooling, of use for the performance of a contract or subcontract, including real property and rights therein, buildings, structures, improvements, and plant equipment.

103.5 "Industrial property," as distinguished from military property, means any contractor-acquired or Government-furnished property, including materials, special tooling, and industrial facilities furnished or acquired in the performance of a contract or subcontract.

103.6 "Real property," for purposes of accounting classification means (i) land and rights therein, (ii) utility distribution systems, and (iii) buildings, structures, and improvements thereto, excluding plant equipment.

103.7 "Utility distribution system" means a system (including distribution and transmission lines, substations, and installed equipment forming an integral part of the system), by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between (i) the outside of the building or structure in which the services are used, and (ii) the point of origin or disposal, or the connection with some other system. For the purpose of this Manual it does not include communication services.

103.8 "Plant equipment" means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling used or

capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

103.9 Minor plant equipment means an item of plant equipment having a unit value of less than $200 and other plant equipment, regardless of cost, when so designated by the Government.

103.9 "Minor plant equipment" means an item of plant equipment having a unit value of less than $100 and other plant equipment, regardless of cost, when so designated by the Government.

103.10 "Production equipment" means those items of plant equipment located within a manufacturing, processing, assembly or service establishment and used for cutting, abrading, grinding, shaping, forming, joining, measuring, testing, heating or treating production materials or work in process.

103.11 "Machine tools" mean those items of production equipment which are power-driven, non-portable machines used for cutting, abrading, grinding, shaping or forming metal.

103.12 "Accessory item" means an item which facilitates or enhances the operation of plant equipment but which is not essential for its operation, such as remote control devices.

103.13 "Auxiliary item" means an item without which the basic unit of plant equipment cannot operate, such as motors for pumps and machine tools.

103.14 Special tooling means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (i) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

103.15 "Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

103.16 "Salvage" means property recoverable for further use or which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

103.17 "Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

103.18 "Property account" means the official records of the Government property provided to a contractor by a Department, which are established and maintained under the provisions of this Manual. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

103.19 "Stock record" means a perpetual inventory form of record which shows, by nomenclature, the quantities received and issued, and the balances on hand.

PART II—GENERAL PROVISIONS

200. *Scope of part.* This part sets forth (i) the duties and responsibilities of Government representatives and contractors charged with the control of Government Property, (ii) the sources from which Government Property may be received or acquired, and (iii) the manner in which Government Property will be controlled, both physically and administratively.

201. *Duties and responsibilities of the Contract Administrator with respect to the control of Government Property.* (a) The function of the Contract Administrator with respect to the control of Government Property is to insure that the Contractor complies with the provisions of the contract and this manual pertaining to Government Property and that the Government's interests therein are fully protected at all times. He shall require the Contractor to (i) exercise reasonable care and proper usage of all Government Property, (ii) establish and maintain adequate records therefor and (iii) maintain controls that will assure the recording of all debits and credits to the property record as hereinafter defined.

(b) It is incumbent upon the Contract Administrator to familiarize himself with the provisions of this manual and the contract involved.

(c) He shall require the Contractor to correct all deficiencies in complying with the provisions of the contract and this manual pertaining to Government Property.

(d) He shall take proper action with respect to recommendations of the Property Administrator relating to usage or control of Government Property.

(e) He shall make appropriate written findings with respect to the Contractor's liability for Government Property lost, damaged, destroyed, or unreasonably consumed in production, as may be required by this manual.

202 *Designation of property administrator.*

(a) A property administrator shall be designated for each Government contract involving Government property. In appropriate cases the contract administrator may be assigned the additional duty of property administrator. An assistant property administrator may be appointed for specific contracts. The property administrator will not be required to post a bond by virtue of the duty as property administrator.

(b) It is the policy of the Department of Defense that a single property administrator shall be designated for all Department of Defense contracts performed at one location by a contractor. Within each Military Department, responsibility for the direction, administration, and review of the property administration interchange program shall be assigned to a single office at the Department level. This office, designated to direct and administer the program, shall have the following responsibilities:

(1) Implementation of pertinent Department of Defense directives, instructions, and regulations.

(2) Review of field contract administration activities for compliance with Department of Defense and Departmental directives pertinent to the property administration interchange program.

(3) Resolution of intra-departmental interchange problems.

(4) Resolution of inter-departmental interchange problems.

(c) Property administration interchange agreements shall be negotiated only by those offices administering current contracts or orders with the contractors. Property administration interchange agreements shall be effected at the field level between representatives of the procuring activities having contract administration responsibility. In formulating such agreements, the following factors, among others, shall be considered:

(1) Comparative value and types of Government property in the possession of the contractor and the Government property yet to be provided under Government contracts.

(2) Existence of a resident property administrator or accessibility of an itinerant property administrator.

(3) Other contract administration functions which may have a bearing on property administration such as quality control, industrial mobilization planning and audit cognizance.

(d) Based on the above factors, when two or more offices are equally concerned with property administration at a contractor's location, that office which has contracts or orders that indicate the greatest continuous duration of future interest in Government property shall be given primary consideration for property administration cognizance. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location, that Department shall cease to have cognizance at that location unless all military contracts providing for Government property are scheduled to expire within a succeeding three-month period. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location where other Departments continue to perform contracts or orders which are not scheduled to expire within a succeeding three-month period, property administration cognizance shall be determined by negotiation between those Departments which continue to perform contracts or orders providing for Government property with the suppliers. When a Department that previously had no contracts at a contractor's location at the time the existing property administration interchange agreement was made acquires a contract providing for Government property of greater continuous duration of future interest than those involved in the existing agreement, the cognizance agreement shall be reviewed and either confirmed or revised by a new agreement.

(e) When the Departments are unable to reach property administration interchange agreements, those unresolved property administration assignments shall be referred to the Assistant Secretary of Defense (Supply and Logistics) for resolution.

(f) Property administration functions required by the Armed Services Procurement Regulation will be performed by the designated property administrator who will generally follow his current operating procedures in performing property administration. Each Department will provide the designated property administrator with manuals, instructions, and directives pertaining to reports and documentation required by contractual provisions. Documents and records required by this Appendix B for property administration of current contracts, subcontracts, and purchase orders involving Government property will be provided to the designated property administrator prior to the effective date of an agreement. Copies of such contracts, subcontracts, and purchase orders and amendments thereto or extracts of property provisions thereof will accompany the transmittal. The name of the individual designated as property administrator for such contracts will be furnished to the procuring activity performing contract administration. New contracts, subcontracts, purchase orders and amendments thereto or extracts of property provisions thereof where Government property is involved will be transmitted to the designated property administrator. Contracts containing the Special Tooling clause (§ 13.504) will likewise be transmitted to the designated property administrator for necessary surveillance.

(g) The designated property administrator may correspond directly with the contractor and appropriate Department of Defense personnel on matters pertaining to Government property. The contract administrator will keep the property administrator informed as to all communications, correspondence, and actions affecting property matters under the assigned contract.

(h) Property administration interchange agreements shall be in the general format shown below. Where required, appendices shall be added thereto.

1. Purpose: This is a local interchange agreement providing for property administration at the designated contractor's location by (Department-procurement office) in accordance with ASPR B–202.

2. Effective date: This agreement becomes effective on ----------.

3. Contractor's location:

(Identify specific location covered by this agreement)

(Signatures of authorized representatives of Departments concerned)

203 *Duties and responsibilities of the property administrator.*

(a) The property administrator shall familiarize himself with the provisions of this Manual and the contract provisions pertaining to Government property.

(b) He shall, as the authorized representative of the contract administrator or administrators, insure compliance with the contract requirements relative to Government property and insure fulfillment of all obligations imposed by this Manual. He shall at the inception of the contract review and approve in writing the contractor's property control records and procedures.

(c) He shall be responsible for property management data required by contractual provisions and, when acting as property administrator under a property administration interchange agreement, shall also provide the procuring activities concerned with such management data and with information, documents, records, and assistance required by the latter for conformance with the provisions of this Appendix B and/or Departmental procedures, including, but not limited to, those for the following purposes:

(1) Public vouchers.

(2) Fulfilling managerial and financial requirements for property report cards.

(3) Marking and identification of property under Departmental procedures.

(4) Disposition of excess.

(5) Approval of the contractor's property control procedures and records.

(6) Relief from responsibility for property loss, damage, unauthorized use, or unreasonable consumption.

(7) Final property clearance.

(d) He shall examine the documents, including but not limited to consumption or usage reports, adjustment reports, reports of spoilage or shrinkage, sales, shipments, transfers, etc., recorded by the contractor in the property account, to the extent necessary to establish the correctness and completeness of such records.

(e) It shall be his responsibility to determine whether the contractor is using Government property for the purposes authorized by the contract, and whether the contractor is exercising the degree of care in the handling of Government property prescribed in the contract.

(f) He shall make usage analyses to determine the reasonableness of the consumption and expenditure of Government property. Control records shall be utilized in the performance of the usage survey and, to the extent necessary, selective physical inspections of Government property shall be made in the appropriate states of production.

(g) He shall periodically examine all property records to determine whether such records reflect the status of Government property and indicate compliance with the provisions of the contract and applicable directives. He shall report promptly in writing to the contract administrator any noncompliance by the contractor with the contract provisions and applicable directives.

(h) He shall advise the contract administrator on all property matters.

204. *Duties and responsibilities of the Contractor.* The Contractor shall be directly responsible for and accountable for all Government Property in accordance with the provisions of the contract. The Contractor shall maintain and make available such records as are required by Part III of this manual and must account for all Government Property until relieved of responsibility therefor in accordance with the procedures as set forth in Part IV of this manual. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all the circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The Contractor shall furnish all necessary data substantiating any request for discharge from responsibility.

205. *Sources from which Government property may be furnished or acquired.*

205.1 *Military installations or other Contractors' plants.* Government Property may be shipped to a Contractor from military installations or plants of department contractors.

205.2 *Direct purchase by the Contractor.* Direct purchases shall be subject to a determination by the Contract Administrator that the items are allocable to the contract involved and are reasonably necessary therefor. For purposes of property control within the scope of this manual, it shall be considered that property purchased by a Contractor, for which reimbursement is to be requested, becomes Government Property upon its receipt by the Contractor. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

205.3 *Withdrawal from Contractor-owned stores.* For purposes of property control, within the scope of this manual, property withdrawn from Contractor-owned stores, for direct charge to the contract, shall be considered Government Property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier.

205.4 *Contract provisions, termination, contract changes.* Pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property.

205.5 *Advance, progress, or partial payments.* Pursuant to the terms of a contract the Government may acquire title to property upon the making of advance, progress, or partial payments to the Contractor. Property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments shall not be subject to the provisions of this manual.

206. *Segregation or commingling of Government property and contractor's property.* Ordinarily Government property, particularly material, will be segregated and kept physically separate from contractor-owned property at all times. There will be occasions, however, where commingling of property would be advantageous to the Government. Commingling may be allowed in the following types of cases:

(a) Where a production line is engaged solely in Government work, contractor and Government special tooling and plant equipment may be commingled. Normally no approval is required for commingling in this category, but the property administrator may prohibit it at his discretion if it is considered not to be in the best interest of the Government.

(b) Where Government-furnished special tooling or plant equipment is held by a contractor in storage, pending its use under a production contract, the property administrator may give permission in writing for commingling with contractor property.

(c) Where approved by the property administrator in connection with research and development contracts.

(d) Any commingling, other than that set forth herein, may be permitted by the property administrator upon the approval of the cognizant Department in accordance with Departmental procedures.

207 *Physical inventories.*

207.1 *Before termination or completion.* It shall be the responsibility of the property administrator to review and approve the type and frequency of physical inventories to be taken. In this respect, he may accept and approve in writing the contractor's established procedures if he determines that they adequately protect the interests of the Government and are in conformity with applicable regulations.

207.2 *Upon termination or completion.* Upon termination or completion of a contract, a physical inventory adequate for disposal purposes shall be required of all Government property applicable to the contract in the custody, control or possession of the contractor.

207.3 *Joint physical inventories or selective examinations under 207.1 and 207.2.* (a) The property administrator may, at his discretion, require physical inventories to be taken jointly by his designated representatives and the contractor.

(b) In lieu of a joint physical inventory, selective examinations of the inventory being taken by the contractor may be made when the property administrator determines that such procedure is more economical and will adequately protect the interests of the Government. When selective examinations are made they must embrace a representative number of items in the account and must adequately cover, by class and price range, all Government property involved.

207.4 *Quantitative and monetary control.* As directed or required by proper authority, the contractor's physical inventories shall be prepared on both a quantitative and monetary basis and classified by categories such as material, special tooling, plant equipment, etc.

207.5 *Discrepancies.* Any discrepancies disclosed as a result of inventorying will be adjusted in accordance with the provisions of Part III and Part IV of this § 30.2.

PART III—RECORDS TO BE MAINTAINED

301. *General.* (a) In order satisfactorily to perform work under a Government contract, a contractor must maintain some form of control records for all Government property, whether furnished to or acquired by a contractor for the account of the Government. It is the Government's policy to designate and use such records as the official contract records, and not to maintain duplicate property control records, other than those required by paragraph 303, and other than industrial facility records. With respect to industrial facilities, additional records shall be maintained by the property administrator or higher headquarters, as may be required by the respective Departments pursuant to paragraph 303.1 (c). Exceptions to the above policy may be authorized by the respective Departments in special circumstances, such as where the administrative expense of maintaining Government personnel at the contractor's plant or providing frequent official visits to the plant would exceed the cost of maintaining Gov-

ernment records or otherwise not be in the best interest of the Government.

(b) The contractor's property control records and procedures shall be reviewed and approved in writing by the property administrator at the inception of the contract. Any necessary corrective action will be required of the contractor prior to approval. Such corrective action will normally be effected by the property administrator through mediation with the contractor. Where corrective action would involve substantial increased costs or where agreement as to the corrective action is not reached through mediation, the differences will be referred to the contract administrator.

(c) The contractors' property control system will provide financial accounts for Government-owned industrial facilities in the contractors' possession or control. The system will be subject to internal control standards and be supported by property records for such facilities; in the manner described in paragraph 304.

(d) The official records shall be kept in such condition that at any stage of completion of the work under a contract the status of Government property may be readily ascertained.

(e) Separate property records for each contract are desirable but a consolidated property record may be maintained provided that the consolidated record provides the information set forth in paragraph 304.

(f) Property records shall be established for any usable components which are permanently removed from items of Government property, as a result of modification, or otherwise.

(g) Special tooling and equipment fabricated from materials which are the property of the Government will be appropriately recorded immediately upon fabrication. Special tooling and equipment fabricated from materials which are the property of the contractor will be appropriately recorded at the time title passes to the Government.

(h) Departmental policies will govern the establishment of monetary levels below which individual item records of plant equipment will not be required.

302. *Pricing.* Property records shall show a unit price for each item.

(a) The unit price of Contractor-acquired property shall be determined in accordance with the system established by the Contractor in conformance with sound accounting principles and consistently applied.

(b) The unit price of Government furnished property shall be determined by the Government and furnished to the Contractor.

303. *Records to be maintained by Government personnel.*

303.1 *Records of specific contracts where property is involved.* (a) Where a contract provides for the use of Government Property a copy of the contract shall be made available or furnished to the Property Administrator.

(b) The property administrator shall maintain a record of each contract assigned to him for property administration. That record shall contain the following minimum information:

(i) Contract number and name of Contractor.

(ii) Type of contract (CPFF, fixed price, research and development, etc.)

(iii) End item to be produced or services to be performed, and the points of inspection and acceptance.

(iv) Record of amendments and changes pertaining to Government Property.

(v) Listing and type of all subcontracts which involve Government Property.

(vi) Provisions of contract pertaining to liability of the Contractor for loss, damage or improper use of Government Property.

(vii) Record of Contract Administrators and dates of tenure.

(viii) Record of Property Administrators and dates of tenure.

(ix) Record of Plant Representatives (or Officers-in-Charge) and dates of tenure.

(x) Record of written approval of Contractor's property control procedures.

(xi) Record of deviations granted in property procedures. (The deviations granted shall be in accordance with procedural regulations issued by each department.)

(xii) Record of property audits and inspections performed by the responsible agencies in each department.

(xiii) Records of property inspections during production and usage analyses performed.

(xiv) Record of any deficiencies found in property control and the corrective action taken.

(xv) Interim and final clearance data for Government property.

(c) The contractor shall be required to furnish written receipts for all, or specific classes of Government provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. In these instances the property administrator shall maintain for each contract a file of such documents or property record cards. Where such evidence of receipt is required, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher). Otherwise, the property administrator shall utilize the contractor's file of documents evidencing receipt and not establish a duplicate file.

(d) The Property Administrator shall maintain for each contract a file containing copies of all instruments affecting relief from responsibility for Government Property.

303.2 *Control records to be maintained.* The Property Administrator shall maintain a system of file control that will permit the ready location of any document that he is required by this section to maintain.

303.3 *Record of completed products.* The Property Administrator shall maintain a record of all completed products produced under the contract, based upon authenticated receiving reports or processed vendors' shipping documents, as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summarization of quantities accepted and shipped. When end items are accepted by the Government and stored with the Contractor the record shall show the quantities stored and location.

(b) Some contracts provide that completed products are to be retained by the Contractor for further use under the contract. Upon acceptance of such items they shall be considered to be "Government-furnished property" and shall be recorded as prescribed in paragraph 304.

304 *Records to be maintained by the contractor.* It is the contractor's responsibility (i) to maintain adequate control records in accordance with the requirements of this Manual of all Government property provided under a contract, including property provided under such contract as may be in the possession or control of a subcontractor, and to establish separate property accounts to be located at the subcontractor's plant and at the contractor's secondary site when so requested by the property administrator.

304.1 *Records of material.* All Government material furnished to the contractor, as well as all other material, title to which has passed to the Government, by reason of allocation from contractor-owned stores, or by reason of purchase by the contractor for direct charge to a Government contract, or otherwise, shall be recorded in accordance with the contractor's property control system, as follows:

(a) *Contractor's property control system.* Except as provided in (d) below, the contractor's property control system shall be such as to provide the following information:

(1) Contract number.
(2) Nomenclature or description of item.
(3) Quantity received.
(4) Quantity issued.
(5) Balance on hand.
(6) Posting reference.
(7) Date received or issued.
(8) Unit price.
(9) Location.
(10) Disposition action taken.

(b) *Consolidated stock record.* Where a contractor has more than one Government contract, under which Government property is provided, a consolidated record for materials may be authorized, provided the total quantity of any item is allocated to each contract by contract number and each requisition of property from contractor-owned stores is charged to the contract on which the property is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

(c) *Custodial records.* Custodial records shall be maintained for tool crib items, guard force items, protective clothing and other items issued for the use of individuals in the performance of their work under the contract.

(d) *Use of receipt and issue documents.* Based on a determination of the property administrator in accordance with paragraph 301(b), the contractor may maintain in lieu of "stock records" a file of appropriately cross-referenced documents representing receipt, issue, and adjustments of Government-provided material in performance of a Government contract. Such determination shall be consistent with generally accepted accounting practices and a low frequency of receipt and issue of the items of material specified (i.e. usually issued directly upon receipt). Accordingly:

(i) The property administrator may authorize this method of property control for Government-provided material, including but not limited to items used in manufacturing or maintenance, office supplies, etc.; and

(ii) This method of property control may be used for research and development contracts.

304.2 *Records of special tooling.* The Contractor's property control system shall be such as to provide the following minimum information regarding each item of Government owned special tooling:

(a) Contract number or equivalent code designation.
(b) Nomenclature or description of item.
(c) Identification number and item on which used.
(d) Quantity received or fabricated.
(e) Voucher reference.
(f) Location.
(g) Disposition action taken.
(h) Unit price or group price.

304.3 *Records of plant equipment.* Plant equipment shall be accounted for by individual item except as provided in subparagraphs (a), (b), (c), and (d) below. The form of property records to be maintained for plant equipment will include as a minimum the information prescribed by Exhibit A.

(a) *Record of accessory and auxiliary equipment.* Individual records for accessory and auxiliary equipment which is attached to or otherwise a part of an item of plant equipment and which is required for its normal operation need not be maintained, but the description of such accessory and auxiliary equipment shall be entered on the respective plant equipment records.

(b) *Record of manufacturing systems.* Where plant equipment and accessory type items are assembled and interconnected to form a single operating unit designed to perform continuously the same manufacturing process, such equipment may, for property and inventory control purposes, be grouped and reported as a single item of plant equipment on one plant equipment record in lieu of an individual record for each component comprising the item of plant equipment. This does not preclude the requirement for completely describing the component items nor does it preclude the use of more than one plant equipment record when additional space is required.

(c) *Record of minor plant equipment.* Summary stock records, rather than individual item records, shall be maintained for minor plant equipment, except in cases where individual item records are necessary for effective control.

(d) *Record of plant equipment costing between $200 and $500.* Summary stock records, rather than individual item records, shall be maintained for plant and production equipment costing between $200 and $500, except in cases where individual item records are necessary for effective control.

304.4 *Records of real property.* Records of real property shall consist of maps, drawings, plans and specifications supplemented, where necessary, to reflect building installations such as heating, electrical, sanitary, ventilating, drainage, sprinkler systems, etc. Appropriate changes will be made to the records to reflect alterations, additions, or extensions to real property. Where the maps, drawings, plans, and specifications do not adequately reflect descriptive data as to building installations, supplemental records will be maintained. The foregoing records (a) will be complete, (b) will show the original cost of the property and improvements, and the cost of changes and additions thereto, and (c) will be appropriately indexed.

304.5 *Records of scrap.* The contractor shall maintain separate or consolidated records of all scrap or salvage generated. These records may be in accordance with the contractor's system of scrap or salvage control, if approved in writing by the property administrator, who shall take into consideration the need for protecting the Government's interest in the proration, disposition and allocation of proceeds resulting therefrom.

304.6 *Records of related data and information.* Except as provided in this subparagraph, the requirements of this § 30.2 are not applicable to manufacturing or assembly drawings, installation, operation, repair or maintenance instructions, or other similar data and information furnished by the Government to the contractor. The contractor shall maintain property control and accountability with respect to such Government-furnished Property in accordance with sound industrial practice.

304.7 *Financial control accounts.* The contractors' property control system should be such as to provide annually, or not more often than quarterly if required in accordance with Departmental procedures, the dollar amounts of Government-owned industrial facilities in the following classifications.

(i) Land and rights therein,
(ii) Utility distribution systems,
(iii) Buildings, structures and improvements thereto, excluding plant equipment,
(iv) Plant equipment, excluding production equipment and minor plant equipment, and
(v) Production equipment.

The contractor's accounts will be susceptible to local reconciliation in total and subtotals as to whether contractor-acquired or Government-furnished.

305. *Numbering property accounts.* A property account, consisting of records maintained either by a Contractor or Government personnel, shall be assigned a property account number.

PART IV—MISCELLANEOUS PROVISIONS

401. *Identification.* All Government property shall be recorded and identified as such by the contractor promptly upon receipt, and it shall remain so identified so long as it remains in the custody, control or possession of the contractor.

(a) *Extent of Identification.*

(i) As a general rule, all Government material and minor plant equipment shall be identified as Government property except in those cases where:

(A) No materials or minor plant equipment of the same type at the same location are owned by the contractor, its employees, or other contracting agencies;

(B) Adequate physical control is maintained over tool-crib items, guard force items, protective clothing and other items issued for use by individuals in the performance of their work under the contract;

(C) Property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; and

(D) Where property is commingled, as authorized by paragraph 206 hereof.

(ii) Government-owned special tooling shall be marked with the designation of the Military Department responsible for funding and control of such tooling, as follows: Army—"USA", Navy—"USN", and Air Force—"USAF", unless it is determined that such marking will damage the special tooling or is otherwise impracticable. Marking and identification procedures may be expanded by the Department having cognizance over the tooling to include end item reference, drawing number, and such other information as may be desired in a given case.

(iii) Unless already marked in accordance with these instructions, all Government-owned plant equipment, including industrial reserve plant equipment, shall be marked by the contractor with an identification number, except minor plant equipment; or when the size of the equipment or nature of the material for which it is made makes it impracticable, and in which case such item will be assigned an identification number for record purposes, which number shall be shown in the plant equipment property record; or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation (see 30.2, 304.3(a)), in which case such item shall be entered and described on the record of the equipment to which it is attached or of which it is otherwise a part. Once an identification number has been affixed to an item of plant equipment, the identification will be permanent and will not be changed so long as the equipment remains under the control of the same Military Department (but see (iv) below). Identification shall be effected by affixing a metal, fibre, plastic or other plate directly to the equipment; by using indelible ink, acid or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamperproof method. Identification shall consist of the following markings:

(A) An indication of Government-ownership and of the Military Department responsible for funding and control of the plant equipment, as follows: Army—"USA", Navy—"USN", and Air Force—"USAF"; however, the identification "U. S." property shall not be changed solely to conform to the provisions of this paragraph;

(B) A two-part identification number, furnished by the Government, consisting solely of numerals except as provided in (C) below. The first part shall be the property account number, and the second part shall be a serial number. In case plant equipment furnished by the Government is already identified as property of a Military Department, no change shall be made in the markings, except as provided in (iv) below; and

(C) In the case of items included within a standard Departmental registration system, for example, automotive, construction, or weight-handling equipment, application for a proper registration number will be made to the cognizant Department, which number shall be used in lieu of any other identification number.

(iv) Government identification markings shall be removed prior to sale or scrapping. The markings so removed shall be shown on the appropriate documents involved. In the case of a transfer of funding and control responsibilities to other Military Departments, new identification markings, in accordance with the requirements of (ii) or (iii) above, may be affixed upon receipt of the equipment by the receiving Military Department.

(b) *Recording identification numbers.* Assigned property identification numbers will be recorded on all applicable receiving documents, shipping documents, and other documents pertaining to the property accounts.

402. *Contractor's responsibility and liability.*

402.1 *Contractor's responsibility.* A Contractor shall be responsible for all Government Property in his custody or control in accordance with the terms of the contract. The Contractor may be relieved of responsibility for Government Property by any of the following methods, subject in any case to specific contract provisions or specific instructions of the Contract Administrator within the scope of the contract:

(a) *Consumption of property in the performance of the contract.* To the extent that the Property Administrator determines that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract, the Contractor shall be relieved of responsibility for such property.

(b) *Retention by the Contractor.* This may occur when the contract is completed, terminated or otherwise amended during the performance of the contract. The Contractor shall be relieved of responsibility for all property which has been retained by the Contractor, provided that the Government shall have approved the retention and shall have been reimbursed therefor in accordance with the terms of the contract or applicable regulations.

(c) *Sale of property.* The Contractor shall be relieved of responsibility for Government Property sold pursuant to the instructions of the Contract Administrator, in accordance with applicable regulations, provided, however, that the proceeds from such sale shall have been received by or credited to the Government.

(d) *Shipment of Government Property from a Contractor's plant.* The Contractor shall be relieved of responsibility when Government Property is shipped from the Contractor's plant pursuant to the instructions of the Contract Administrator.

(e) *Written advice of Contract Administrator.* The Contractor shall be relieved of responsibility for Government Property lost, damaged, destroyed, or consumed, in excess of that normally anticipated in the manufacturing or processing operation, as the result of appropriate action by the Contract Administrator to determine the liability of the Contractor, provided such determination is furnished to the Contractor in writing and the Government shall have been adequately reimbursed when appropriate.

402.2 *Contractor's liability.* Subject to the terms of the contract, the contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowances provided for by the terms of the contract or the appropriate bill of materials.

(a) The property administrator will require the contractor to report to him in all cases of loss, damage, or destruction of Government property in his possession, as soon as such fact becomes known. The property administrator will forward such report to the contract administrator, together with his own report of the facts of the case and his recommendations thereon. If the contract administrator is the contracting officer, or a designated representative of the contracting officer for that purpose, he will thereupon determine the contractor's liability in accordance with the terms of the contract; otherwise he will forward the papers to the contracting officer, who will make such determination. In making any such determination, consideration will be given to the reports and recommendations submitted and to any additional facts which the contractor may submit. The contractor and the property administrator shall be furnished with a written copy of such determination. A copy shall be held in the files of the contract administrator.

(b) When inventory adjustments or usage analyses disclose consumption of property which is considered unreasonable by the property administrator, or when instances of losses, damages to, or destruction of Government property, which have not been reported by the contractor, are discovered by the property administrator, he shall prepare a statement of the items and amount of loss involved. This statement shall be furnished the contractor for investigation and written justification. Further procedure shall be in accordance with that prescribed in subparagraph (a) above.

(c) When completed products or end items are lost, destroyed, or damaged beyond repair while such property is in the physical possession or control of the Contractor, the action prescribed in subparagraph (a) above will be required.

(d) Where it has been determined that the Contractor is liable to the Government by reason of the loss, damage or destruction of Government Property, a letter of advice from the Contract Administrator shall be considered a valid credit to the official Government Property records, provided:

(i) When the Contractor pays by check, the letter of advice will identify the check received by number, date and amount.

(ii) When settlement is made by offset against amounts due the Contractor on a public voucher, the letter of advice will cite the actual voucher (Form 1034) on which the deduction is made.

(iii) When collection of the claim against the Contractor is to be made by the fiscal office designated for the contract, the letter of advice will have attached thereto a copy of the document used by the Contract Administrator to notify the fiscal office to effect collection.

(e) When property is rendered unserviceable by damages thereto, the letter of advice from the Contract Administrator will be considered a valid credit to the Government Property account when supported by or appropriately cross-referenced to shipping documents or listing covering proper disposition of the unserviceable items.

402.3 *Shipment and receipt of Government-furnished property.* In the case of Government property shipped to a contractor's plant from a military installation or from another contractor's plant, the contractor becomes responsible therefor upon delivery of the property to his plant. The shipping activity shall furnish the property administrator, who is responsible for the receiving contractor's property account, with copies of the documents necessary to permit the property account to reflect the transaction. On receipt of the property the contractor, where required, shall furnish the property administrator with documented evidence of such receipt. The property administrator shall take the action necessary to insure that his records of these transactions are complete. (See pars. 203 and 204.)

403. *Control of scrap and salvage.*

403.1 *Sources.* Scrap originating from Government Property includes, but is not limited to, the following:

(a) Cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants.

(b) Spoiled partially manufactured materials, parts and assemblies, including parts and assemblies damaged in handling or installation.

(c) Materials and supplies and small tools and special equipment, when worn out or damaged beyond repair, used packaging materials, and nonreusable containers.

(d) Unusable materials generated in the performance of overhaul or conversion contracts.

403.2 *Salvage.* A salvage procedure shall be established by the Contractor whereby all Government Property that can be salvaged shall be recovered and returned to Government stock.

403.3 *Approval of scrap procedure by the property administrator.* The property administrator shall review and approve the contractor's procedures relating to the physical control of scrap and records relating thereto. The property administrator shall periodically assure by actual inspection and selective examinations that the approved procedures are effectively carried out. If the property administrator determines that corrective measures are necessary to protect the Government's interests, he shall so advise the contractor and the contractor shall take necessary corrective action. Where corrective action would involve substantial increased costs or where agreement as to the corrective action is not reached through mediation, the differences will be referred to the contractor administrator.

Plant Equipment Record Card			ANAF Serial No.			ANAF Stock or Classification No.	
Contractor's Name and Address							
Contractor's Accounting No.			Date of Card			Contract No.	
Type of Equipment							
Capacity							
(Name)			Manufacturer's				(Address)
Model No.			Year Built		Mfr. Serial No.		FOB Cost
Motor Data	AC/DC	Cycls	Volt	HP	Phase	RPM	Disposition
Main Drive							
Aux.							
Aux.							

EXHIBIT A

403.4 *Minimum essential requirements of Contractor's scrap procedures.* The Contractor's scrap procedures must include the following:

(a) Appropriate inspection and study to determine the possibility of reworking or converting for use the scrap resulting from operations under the contract.

(b) Prompt accumulation of all scrap generated and storage thereof under adequate protection.

(c) Recording the scrap data on appropriate records to provide the basis for control by weight or other unit of measure.

(d) Sorting of scrap, including the segregation of the various metals to prevent contamination.

(e) Recording of scrap shipments out of the plant.

403.5 *Segregation of scrap and salvage.* Where the Contractor is engaged in work involving both Government-owned and Contractor-owned materials from which scrap of a uniform nature is produced, the physical segregation of Government-owned and Contractor-owned scrap and salvage may be impracticable. In such cases, the Contract Administrator shall require proration of such basis as will result in equitable recovery by the Government.

404. *Auditing property accounts.* Records of Government property shall be audited by the Departments as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. These audits will include records maintained by the contractor and such records as may be maintained by Government personnel in connection with such property. The property administrator and the contractor shall make all property records, including correspondence related thereto, available to the auditors.

§ 30.3 Appendix C—Manual for control of Government property in possession of nonprofit research and development contractors.

PART I—INTRODUCTION

100 *Scope of manual.* This Manual sets forth basic requirements to be observed by the Departments of the Army, Navy and Air Force, for establishing and maintaining control over Government property furnished to or acquired by contractors in the case of research and development contracts with educational or other nonprofit organizations, provided such contracts are executed on a nonprofit basis.

101 *Reserved.*

102 *Applicability of manual.* Subject to paragraph 100 above, this Manual applies to all types of contracts, leases, and bailments, pursuant to which Government property is furnished to or acquired by a contractor.

103 *Definitions.* As used in this Manual, the following terms have the meanings shown:

103.1 "Educational or other nonprofit organization" means any corporation, foundation, trust, or institution operated for scientific or educational purposes, not organized for profit, no part of the net earnings of which inures to the profit of any private shareholder or individual.

103.2 "Contract administrator" means the individual duly designated by appropriate authority in the Military Departments to administer the contract. In the case of the Army and Air Force, this is a contracting officer, and in the Navy, the authorized representative of the contracting officer having administrative cognizance over the contract.

103.3 "Government property" means all property owned by or leased to the Government, or acquired by the Government under the terms of a contract, except that property to which the Government has acquired a lien or title solely as a result of partial, advance or progress payments shall not for the purpose of this Manual be classified as Government property. With this exception, Government property includes both Government-furnished property and contractor-acquired property, as defined below:

(a) "Government-furnished property" is property in the possession of or acquired directly by the Government and subsequently delivered or otherwise made available to the contractor; and

(b) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, pursuant to the terms of which title is vested in the Government.

The term "provide" as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property" is intended to include both Government-furnished property and contractor-acquired property.

103.4 *Classification of Government property.* The terms "classify" and "classification" as used herein with reference to Government property refer to the grouping of property into different categories having different incidents. For purposes of this Manual, Government property shall be classified in five categories, defined as follows:

(a) "Real property" means lands, buildings, structures, improvements and appurtenances thereto. It does not include plant equipment as defined in subparagraph (b) below.

(b) "Plant equipment" means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

(c) Minor plant equipment means an item of plant equipment having a unit value of less than $200.00 and other plant equipment, regardless of cost, when so designated by the Government.

(d) "Material" means property which may be incorporated into or attached to, an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

(e) "Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include (i) items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (ii) consumable small tools, or (iii) general or special machine tools, or similar capital items.

103.5 "Property administrator" means the Government representative responsible to the contract administrator for reviewing and approving the contractor's property control procedures, for examining the records maintained by the contractor of Government property, for making usage analyses of Government property, and for the maintenance of such Government property records as are required by this Manual.

103.6 "Property account" means the official records of the Government property provided to a contractor by a Department, which are established and maintained under the provisions of this Manual. Separate property accounts will be maintained either on an individual contract basis or contractor basis.

103.7 "Stock record" means a perpetual inventory form of record which shows by nomenclature the quantities received and issued, and the balances on hand.

103.8 "Salvage" means property which is recovered for further use or which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations, but which has some value in excess of its scrap value.

103.9 "Scrap" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

PART II—GOVERNMENT ADMINISTRATIVE PROVISIONS

200. *Scope of part.* This part sets forth (i) the duties and responsibilities of Government representatives charged with the control of Government property (ii) the sources from which Government property may be received or acquired, and (iii) the instructions to Government representatives for the control of Government property, both physically and administratively.

201. *Duties and responsibilities of the Contract Administrator with respect to the control of Government property.* (a) The function of the Contract Administrator with respect to the control of Government property is to insure that the Contractor complies with the provisions of the contract and this manual pertaining to Government property and that the Government's interests therein are fully protected at all times. He shall require the Contractor to (i) exercise reasonable care and proper usage of all Government property, (ii) establish and maintain adequate records therefor, and (iii) maintain controls that will assure the recording of all debits and credits to the property record as hereinafter defined.

(b) It is incumbent upon the Contract Administrator to familiarize himself with the provisions of this manual and the contract involved.

(c) He shall require the Contractor to correct all deficiencies in complying with the provisions of the contract and this manual pertaining to Government property.

(d) He shall take proper action with respect to recommendations of the Property Administrator relating to usage or control of Government property.

(e) He shall make appropriate written findings with respect to the Contractor's liability for Government property lost, damaged, destroyed, or unreasonably consumed, as may be required by this manual.

202. *Designation of property administrator.* (a) A property administrator shall be designated for each Government contract involving Government property. In appropriate cases the contract administrator may be assigned the additional duty of property administrator. An assistant property administrator may be appointed for specific contracts. The property administrator will not be required to post a bond by virtue of the duty as property administrator.

(b) It is the policy of the Department of Defense that a single property administrator shall be designated for all Department of Defense contracts performed at one location by a contractor. Within each Military Department, responsibility for the direction, administration and review of the property administration interchange program shall be assigned to a single office at the Department level. This office, designated to direct and administer the program, shall have the following responsibilities:

(1) Implementation of pertinent Department of Defense directives, instructions and regulations.

(2) Review of field contract administration activities for compliance with Department of Defense and Departmental directives pertinent to the property administration interchange program.

(3) Resolution of intra-departmental interchange problems.

(4) Resolution of inter-departmental interchange problems.

(c) Property administration interchange agreements shall be negotiated only by those offices administering current contracts or orders with the contractors. Property administration interchange agreements shall be effected at the field level between representatives of the procuring activities having contract administration responsibility. In formulating such agreements, the following factors, among others, shall be considered.

(1) Comparative value and types of Government property in the possession of the contractor and the Government property yet to be provided under Government contracts.

(2) Existence of a resident property administrator or accessibility of an itinerant property administrator.

(3) Other contract administration functions which may have a bearing on property administration such as quality control, industrial mobilization planning and audit cognizance.

(d) Based on the above factors, when two or more offices are equally concerned, with property administration at a contractor's location, that office which has contracts or orders that indicate the greatest continuous duration of future interest in Government property shall be given primary consideration for property administration cognizance. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location, that Department shall cease to have cognizance at that location unless all military contracts providing for Government property are scheduled to expire within a succeeding three-month period. When all contracts or orders of the Department designated to perform property administration have been completed at a contractor's location where other Departments continue to perform contracts or orders which are not scheduled to expire within a succeeding three-month period, property administration cognizance shall be determined by negotiation between those Departments which continue to perform contracts or orders providing for Government property with the suppliers. When a Department that previously had no contracts at a contractor's location at the time the existing property administration interchange agreement was made acquires a contract providing for Government property of greater continuous duration of future interest than those involved in the existing agreement, the cognizance agreement shall be reviewed and either confirmed or revised by a new agreement.

(e) When the Departments are unable to reach property administration interchange agreements, those unresolved property ad-

ministration assignments shall be referred to the Assistant Secretary of Defense (Supply and Logistics) for resolution.

(f) Property administration functions required by the Armed Services Procurement Regulation will be performed by the designated property administrator who will generally follow his current operating procedures in performing property administration. Each Department will provide the designated property administrator with manuals, instructions, and directives pertaining to reports and documentation required by contractural provisions. Documents and records required by this Appendix C for property administration of current contracts, subcontracts, and purchase orders involving Government property will be provided to the designated property administrator prior to the effective date of an agreement. Copies of such contracts, subcontracts, and purchase orders and amendments thereto or extracts of property provisions thereof will accompany the transmittal. The name of the individual designated as property administrator for such contracts will be furnished to the procuring activity performing contract administration. New contracts, subcontracts, purchase orders and amendments thereto or extracts of property provisions thereof where Government property is involved will be transmitted to the designated property administrator.

(g) The designated property administrator may correspond directly with the contractor and appropriate Department of Defense personnel on matters pertaining to Government property. The contract administrator will keep the property administrator informed as to all communications, correspondence, and actions affecting property matters under the assigned contract.

(h) Property administration interchange agreements shall be in the general format shown below. Where required, appendices shall be added thereto.

1. Purpose. This is a local interchange agreement providing for property administration at the designated contractor's location by (Department-procurement office) in accordance with ASPR C–202. _____

2. Effective date. This agreement becomes effective on _____.

3. Contractor's location (Identify specific location covered by this agreement)

_____
_____
(Signature of authorized representatives of Departments concerned)

203 *Duties and responsibilities of the property administrator.*

(a) The property administrator shall familiarize himself with the provisions of this Manual and the contract provisions pertaining to Government property.

(b) He shall, as the authorized representative of the contract administrator or administrators, insure compliance with the contract requirements relative to Government property and insure fulfillment of all obligations imposed by this Manual. He shall at the inception of the contract review and approve in writing the contractor's property control records and procedures.

(c) He shall examine any documents, including but not limited to consumption or spoilage or shrinkage, sales, shipments, transfers, etc., recorded by the Contractor in the property accounts, to the extent necessary to establish the correctness and completeness of such records.

(d) It shall be his responsibility to report to the Contracting Officer any instances of what he deems to be improper usage of Government property. To the extent necessary to fulfill this function selective physical inspections of Government property shall be made.

(e) He shall periodically examine property records to determine whether such records usage reports, adjustment reports, reports of reflect the status of Government property and indicate compliance with the provisions of the contract and applicable directives. He shall report promptly in writing to the Contract Administrator any non-compliance by the Contractor with the contract provisions and applicable directives.

(f) He will observe the following procedure in connection with loss, damage, and destruction of Government property in the possession of the contractor:

(i) He will require the contractor to report to him all cases of loss, damage, or destruction of Government property in his possession, as soon as such fact becomes known. He will forward such report to the contract administrator, together with his own report of the facts of the case and his recommendation thereon. If the contract administrator is the contracting officer, or a designated representative of the contracting officer for that purpose, he will thereupon determine the contractor's liability, in accordance with the terms of the contract; otherwise he will forward the papers to the contracting office, who will make such determination. In making any such determination, consideration will be given to the reports and recommendations submitted and to any additional facts which the contractor may submit. The contractor and the property administrator shall be furnished with a written copy of such determination. A copy shall be held in the files of the contract administrator.

(ii) When inventory adjustments or usage analyses disclose consumption of property which is considered unreasonable by the property administrator, or when instances of losses, damages to, or destruction of Government property which have not been reported by the contractor, are discovered by the property administrator, he shall prepare a statement of the items and amount of loss involved. This statement shall be furnished the contractor for investigation and written justification. Further procedure shall be in accordance with that prescribed in (i) above.

(iii) When end items are lost, destroyed, or damaged beyond repair while such items are in the physical possession or control of the Contractor, the action prescribed in subparagraph (i) above will be required.

(iv) Where it has been determined that the Contractor is liable to the Government by reason of the loss, damage, or destruction of Government property, a letter of advice from the Contract Administrator shall be considered a valid credit to the official Government property records, provided:

(A) When the Contractor pays by check, the letter of advice will identify the check received by number, date, and amount.

(B) When a settlement is made by offset against amounts due the Contractor on a public voucher, the letter of advice will cite the actual voucher (Form 1034) on which the deduction is made.

(C) When collection of the claim against the Contractor is to be made by the fiscal office designated for the contract, the letter of advice will have attached thereto a copy of the document used by the Contract Administrator to notify the fiscal office to effect collection.

(v) When property is rendered unserviceable by damage thereto, the letter of advice from the Contract Administrator will be considered a valid credit to the Government property account when supported by or appropriately cross-referenced to shipping documents or listing covering proper disposition of the unserviceable items.

(g) He shall take the action necessary to insure that his records of the transactions discussed in paragraph 204 below are complete.

(h) He shall review and approve the contractor's scrap procedures and records as provided in paragraph 212 of this manual.

(i) He shall advise the Contract Administrator on all property matters.

204 *Shipment and receipt of government-furnished property.* In the case of Government property shipped to a contractor's plant from a military installation or from another contractor's plant, the contractor becomes responsible therefor upon delivery of the property to his plant. The shipping activity shall furnish the property administrator, who is responsible for the receiving contractor's property account, with copies of the documents necessary to permit the property account to reflect the transaction. On receipt of the property the contractor, where required, shall furnish the property administrator with documented evidence of such receipt. The property administrator shall take the action necessary to insure that his records of these transactions are complete. (See par. 203.)

205. *Sources from which Government property may be furnished or acquired.*

205.1 *Military installations or other Contractor's plants.* Government property may be shipped to a Contractor from military installations or plants or department contractors.

205.2 *Direct purchase by the Contractor.* Direct purchases shall be subject to a determination by the Contract Administrator that the items are allocable to the contract involved and are reasonably necessary therefor. For purposes of property control within the scope of this manual, it shall be considered that property purchased by a Contractor, for which direct reimbursement is to be requested, becomes Government property upon its receipt by the Contractor. This is "Contractor-acquired" property. This provision shall not be deemed to alter or modify contractual provisions relating to passage of title.

205.3 *Withdrawal from Contractor-owned stores.* For purposes of property control, within the scope of this manual, property withdrawn from Contractor-owned stores, for direct charge to the contract, shall be considered Government property at the time of approval of the claim for reimbursement, or at the time of issuance for use of such property for the performance of the contract, whichever is earlier. This also is "Contractor-acquired" property.

205.4 *Contract provisions, termination, contract changes.* Pursuant to specific contractual provisions, or as a result of termination of a contract, or change orders issued under a contract, the Government may acquire title to property.

205.5 *Advance, progress, or partial payments.* Pursuant to the terms of a contract the Government may acquire title to property upon the making of advance, progress, or partial payments to the Contractor. Property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments shall not be subject to the provisions of this manual.

206. [Reserved]

207. *Contractor's records.*

207.1 *General policy.* In order to satisfactorily perform work under a Government contract, a contractor must maintain adequate control records for all Government property, whether furnished to or acquired by a contractor for the account of the Government. It is the Government's policy to designate and use such records as the official contract records, and not to maintain duplicate property control records, other than those required by paragraph 213, and other than such real property and plant equipment records as may be required by the respective departments. Exceptions to this policy may be authorized by the respective departments in special circumstances, such as where the administrative expense of maintaining Government personnel at the Contractor's plant or providing frequent official visits to the plant would exceed the cost of maintaining Government records or otherwise not to be in the best interest of the Government.

207.2 *The Contractor's property control system.* The contractor's property control system shall be reviewed and approved in writing by the property administrator. If any corrective action is necessary, it will be required of the contractor prior to approval. Such corrective action will normally be effected through mediation with the contractor. Where corrective action would involve substantial increased costs or where agreement as to the corrective action is not reached through mediation, the differences will be referred to the contract administrator. Consistent with the provisions of the contract, the principles and requirements stated in the subparagraphs below shall be observed by the property administrator in approving the contractor's property control system.

207.3 *Records for material in stores.* For material maintained by the Contractor in stocks or stores, the Contractor's property control system shall be such as to provide the following information:

(i) Contract number, or equivalent code designation.
(ii) Nomenclature or description of item.
(iii) Quantity received.
(iv) Quantity issued.
(v) Balance on hand.
(vi) Posting reference.
(vii) Date received or issued.
(viii) Price.
(ix) Disposition action taken.

207.4 *Records for material issued directly upon receipt, for minor plant equipment, and for special tooling.* For material, whether Government-furnished or contractor-acquired, issued by the contractor directly so as to be considered expended under the contract, for minor plant equipment, and for special tooling, the Government invoices, contractor's purchase documents, or other documentary evidence of acquisition and issue, will be accepted as adequate property control records.

207.5 *Records of plant equipment.* (a) Individual records of each item of plant equipment shall be maintained unless summary stock records are maintained as provided in (b) below. The following information shall be available from such records.

(i) Name and address of contractor.
(ii) Name and address of manufacturer of the plant equipment item.
(iii) Model number of the plant equipment item.
(iv) Year built or acquired.
(v) Serial number.
(vi) U. S. Government identification number.
(vii) Description and classification of the item.
(viii) Acquisition reference and date.
(ix) Disposition reference and date.
(x) Contract number under which acquired.
(xi) Cost (F. O. B. Manufacturer).

(b) Summary stock records may be maintained in lieu of individual property records for those items of plant equipment having a value of less than $500 each when designated by the contract administrator in accordance with departmental procedures. Full consideration should be made of the contractor's existing property control system. The following information shall be available from such records:

(i) Name and address of contractor.
(ii) Description and classification of the item.
(iii) Acquisition reference and date.
(iv) Disposition reference and date.
(v) Contract number under which acquired.
(vi) Cost (F. O. B. Manufacturer).
(vii) Quantity received.
(viii) Quantity transferred or disposed of as authorized in par. 203 (f) above.
(ix) Balance on hand.

In addition, where appropriate as determined by the contract administrator, the serial number or the U. S. Government identification number for each item shall be recorded in a permanent manner on the summary stock record and upon disposition a line drawn through the appropriate number.

207.6 *Records of real property.* Records of real property shall be as provided in paragraph 306 (d).

207.7 *Separated components.* Property records shall be required for any usable components which are permanently removed from items of Government property, as a result of modification, or otherwise, to the same extent as would be the case if such components had been provided separately by the Government; provided that the Contractor shall not be required to augment his property control system for the purpose of recording minor plant equipment, special tooling or materials, except upon return to stocks or stores.

207.8 *Custodial records.* Custodial records normally should be maintained for items issued from tool cribs or the like, guard force items, protective clothing and other items issued for the use of individuals in the performance of their work under the contract. However, it is the general policy of the Government to accept for the control of Government property of the above character the same system as employed by the Contractor for his own similar property.

207.9 *Consolidated stock record.* Where a Contractor has more than one Government contract, under which Government property is provided, a consolidated record for materials may be authorized, provided the total quantity of any item is allocated to each contract by contract number and each requisition of property from the Contractor's stores is charged to the contract on which the property is to be used. The supporting document or issue slip shall show the contract number or equivalent code designation to which the issue is charged.

207.10 *Pricing.* Property records shall show a unit price for each item except for items constructed for research or development purposes by the Contractor. In the case of Contract-acquired property the price shall be determined in accordance with the system established by the Contractor in conformance with sound accounting principles and consistently applied. The unit price of Government-furnished property shall be as determined by the Government and furnished to the Contractor.

208. [Reserved]

209. *Identification.* Government property shall be recorded and identified by the contractor as provided in paragraph 307.

210. *Segregation or commingling of Government property and contractor's property.* Ordinarily Government property, particularly material, should be segregated and kept physically separate from contractor-owned property at all times. There will be occasions, however, where commingling of property would be advantageous to the Government. The property administrator should consider and arrange with the contractor plans for segregation and commingling of property. This agreement reached with respect to commingling shall be reduced to writing by the property administrator. Commingling may be allowed in the following types of cases:

(i) Where each commingling is approved by the property administrator; and

(ii) Where the Government property involved is plant equipment, special tooling or minor plant equipment which is clearly identified or marked as Government property and is supported by appropriate control records.

211. *Physical inventories.*

211.1 *Before termination or completion.* It shall be the responsibility of the property administrator to review and approve the type and frequency of physical inventories to be taken. In this respect, he may accept and approve in writing the contractor's established procedures if he determines that they adequately protect the interests of the Government and are in conformity with applicable regulations.

211.2 *Upon termination or completion.* Upon termination or completion of a contract, a physical inventory adequate for disposal purposes shall be required of all Government property applicable to the contract in the custody, control or possession of the Contractor. Standard items that have been modified may be described as standard items, with a general description of the modification. Items that have been constructed, such as test equipment, should be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

211.3 *Inventories and selective examinations by the property administrator.* (a) The property administrator may, at his discretion, join with the contractor in taking of any inventory required to be made by the contractor.

(b) The property administrator should make selective examinations of the inventory being taken by the contractor when he determines that such procedure is necessary to protect the interests of the Government. When selective examinations are made they must embrace a representative number of items in the account and must adequately cover, by class and price range, all Government property involved.

211.4 *Quantitative and monetary controls.* As directed or required by proper authority, the property administrator shall require the contractor's physical inventories to be prepared on both a quantitative and monetary basis and be classified by categories such as material, special tooling, and minor equipment, plant equipment, etc.

211.5 *Discrepancies.* The property administrator shall proceed to adjust any discrepancies disclosed as a result of inventorying in accordance with the provisions of the contract and this Manual.

212 *Control of scrap and salvage.* Procedures for the control of scrap and salvage shall not be applicable to nonprofit research and development contracts unless the property administrator determines that the scrap or salvage is substantial in amount and that the Government is not receiving sufficient benefits from the use or disposal thereof, in which event the procedures set forth in paragraph 403 of § 30.2, shall be applied.

213. *Records to be maintained by Government personnel.*

213.1 *Records of specific contracts where property is involved.* (a) Where a contract provides for the use of Government property a copy of the contract shall be made available or furnished to the Property Administrator.

(b) The property administrator shall maintain a record of each contract assigned to him for property administration. That record shall contain the following minimum information:

(i) Contract number and name of Contractor.
(ii) Type of contract (CPFF, fixed price, research and development, etc.)
(iii) End item to be produced or services to be performed, and the points of inspection and acceptance.
(iv) Record of amendments and changes pertaining to Government property.
(v) Listing and type of all subcontracts which involve Government property.

(vi) Provisions of contract pertaining to liability of the Contractor for loss, damage or improper use of Government property.

(vii) Record of Contract Administrators and dates of tenure.

(viii) Record of Property Administrators and dates of tenure.

(ix) Record of Plant Representatives (or Officers-in-Charge) and dates of tenure.

(x) Record of written approval of Contractor's property control procedures.

(xi) Record of deviations granted in property procedures. (The deviations granted shall be in accordance with procedural regulations issued by each department.)

(xii) Record of property audits and inspections performed by the responsible agencies in each department.

(xiii) Records of property inspections during production and usage analyses performed;

(xiv) Record of any deficiencies found in property control and the corrective action taken.

(xv) Interim and final clearance data for Government property.

(xvi) A file of all documents evidencing receipt of Government-furnished property by the contractor where required in accordance with C–305; and

(xvii) A file containing copies of all instruments affecting relief from responsibility for Government property.

213.2 *Control records to be maintained.* The Property Administrator shall maintain a system of file control that will permit the ready location of any document that he is required by this manual to maintain.

213.3 *Record of end items.* The Property Administrator shall maintain a record of all end items produced under the contract, based upon authenticated receiving reports or processed vendors' shipping documents, as follows:

(a) When there is no lapse of time between Government inspection and acceptance of the end items and shipment from the Contractor, the records shall, as a minimum, consist of a summarization of quantities accepted and shipped. When end items are accepted by the Government and stored with the Contractor, the record shall show the quantities stored and location.

(b) Some contracts provide that end items are to be retained by the Contractor for further use under the contract. Upon acceptance of such items, they shall be considered to be "Government-furnished property" and shall be recorded by the Contractor as required by the terms of the contract.

214. *Numbering property accounts.* A property account, consisting of records maintained either by a Contractor or Government personnel, shall be assigned a property account number.

215. *Auditing property accounts.* Records of Government property shall be audited by the Departments as frequently as conditions warrant. Any such audit or audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. These audits will include records maintained by the contractor and such records as may be maintained by Government personnel in connection with such property. The property administrator and the contractor shall make all property records, including correspondence related thereto, available for inspection by the auditors.

PART III—CONTRACTOR'S OBLIGATIONS

300. *Scope of part.* This part covers (i) the duties and responsibilities of the Contractor with respect to Government property, (ii) the liability of the Contractor for Government property lost, damaged, or for which the Contractor is otherwise unable to account, and (iii) the obligations of the Contractor with respect to the control of Government property, both physically and administratively. This Part III of this manual is designed so that it may be incorporated by reference in the contract, as desired.

301. *General.* The contractor shall be directly responsible for and accountable for all Government property in accordance with the provisions of the contract. The contractor shall maintain and make available such records as are required by Part III of this Manual and must account for all Government property until relieved of responsibility therefor in accordance with the procedures as set forth hereinafter. Liability for loss, damage, or excessive use of property in a given instance will necessarily depend upon all circumstances surrounding the particular case and must be considered and determined in accordance with the provisions of the contract. The contractor shall furnish all necessary data substantiating any request for discharge from responsibility.

302. *Definitions.* The definitions used in Part I of this manual apply to those terms defined therein when used in this Part III of this manual or in the contract.

302.1 *Contracting Officer.* As used in this Part III, the term "Contracting Officer" shall include any authorized representative of the Contracting Officer acting within the limits of his authority, including the Contract Administrator and the Property Administrator, as those terms are defined in paragraphs 103.2 and 103.5 of Part I.

303. *Contractor's responsibility.* A Contractor shall be responsible for all Government property in his custody or control in accordance with the terms of the contract. The Contractor may be relieved of responsibility for Government property by any of the following methods, subject in any case to specific contract provisions or specific instructions of the Contracting Officer within the scope of the contract:

(a) *Consumption of property in the performance of the contract.* To the extent that property has been consumed or expended for proper purposes and in reasonable amounts in the performance of the contract, the Contractor shall be relieved of responsibility for such property.

(b) *Retention by the contractor.* This may occur when the contract is completed or terminated, or otherwise in accordance with the provisions of the contract. The Contractor shall be relieved of responsibility for all property which has been retained by the Contractor, provided that the Government shall have approved the retention and shall have been reimbursed therefor in accordance with the terms of the contract or applicable regulations.

(c) *Sale of property.* The Contractor shall be relieved of responsibility for Government property sold with the approval of the Contracting Officer, in accordance with applicable regulations, provided, however, that the proceeds from such sale shall have been received by or credited to the Government.

(d) *Shipment of Government property from a contractor's plant.* The Contractor shall be relieved of responsibility when Government property is shipped from the Contractor's plant pursuant to the instructions of the Contracting Officer.

(e) *Written advice of contracting officer.* The contractor shall be relieved of responsibility for Government property lost, damaged, destroyed, or consumed, in excess of that normally anticipated in the manufacturing or processing operation, as the result of appropriate action by the contracting officer to determine the liability of the contractor: *Provided,* Such determination is furnished to the contractor in writing and the Government shall have been adequately reimbursed when appropriate. If the contract administrator is the contracting officer or a designated representative of the contracting officer for that purpose, he will thereupon determine the contractor's liability.

304. *Contractor's liability.* Subject to the terms of the contract, the Contractor may be liable when shortages of Government property are disclosed or when Government property is lost, damaged, or destroyed, or when there is evidence of unreasonable use or consumption of Government property as measured by the allowances provided for by the terms of the contract or the appropriate bill of materials.

305. *Receipting for Government property.* The contractor shall be required to furnish a written receipt for all, or specific classes of Government provided property only in those instances where such action is determined by the property administrator to be essential for maintenance of minimum acceptable property controls. In these instances the property administrator shall maintain for each contract a file of such documents or property record cards. Where such evidence of receipt is required, it shall be provided by the contractor not later than the time he submits his application for payment (public voucher).

306. *Property control records.* The Contractor shall maintain proper control over all Government property in accordance with methods which have been established by the contractor and approved by the property administrator consistent with the following:

(a) *Material issued directly upon receipt, minor plant equipment and special tooling*—

(i) *Fixed price contracts.* In the case of Government-furnished material which is issued directly by the contractor upon receipt so as to be considered expended under the contract, and in the case of minor plant equipment, and special tooling, the documents evidencing receipt and issue maintained by the contractor will be accepted as property control records; and

(ii) *Cost type contracts.* For material, whether Government-furnished or contractor-acquired, issued by the contractor directly so as to be considered expended under the contract, for minor plant equipment, and for special tooling, the Government invoices, contractor's purchase documents or other documentary evidence of acquisition and issue, will be accepted as adequate property control records.

(b) *Material maintained in stocks.* In the case of material furnished by the Government under fixed price contracts, and in the case of material furnished by the Government or procured by the Contractor, title to which vests in the Government, under cost-type contracts, which material is maintained by the Contractor in stock or stores, the Contractor shall compile and maintain appropriate records covering the description, cost when known, acquisition and disposition, and such other information as may be required to identify the property. Records of consumption on a unit or accumulated basis shall also be maintained. The Contractor shall be prepared to locate such property within a reasonable time after request therefor.

(c) *Plant equipment.* In the case of plant equipment furnished by the Government under fixed price contracts, or in the case of plant equipment furnished by the Government or procured by the Contractor, title to which vests in the Government under, cost-type contracts, the Contractor shall compile and maintain individual property records covering the description, cost, acquisition, and disposition of each item of plant equipment and such other information as may be required to identify the property. The Contractor shall be prepared to locate any item of such property within a reasonable time after request therefor.

(d) *Real property.* In the case of real property furnished by the Government under fixed price contracts, and in the case of real property furnished by the Government or acquired by the Contractor, title to which vests in the Government, under cost-type contracts, the Contractor shall maintain a continuous itemized record of the description, location, acquisition cost, and disposition of all Government real property, including unimproved real property, all alterations and all construction work, and any site connected with such alteration or construction, acquired by purchase, lease or otherwise. This itemized record may be in the form of a cross-reference to maps, drawings, plans and specifications.

(e) *Records of related data and information.* Except as provided in this subparagraph, the requirements of this § 30.3 are not applicable to manufacturing or assembly drawings, installation, operation, repair or maintenance instructions, or other similar data and information furnished by the Government to the contractor. The contractor shall maintain property control and accountability with respect to such Government-furnished property in accordance with sound industrial practice.

307. *Identification.* All Government property shall be recorded and identified as such by the contractor promptly upon receipt, and it shall remain so identified so long as it remains in the custody, control or possession of the contractor.

(a) *Extent of identification:*

(i) As a general rule, all Government material shall be identified as Government property except in those cases where—

(A) no materials of the same type at the same location are owned by the contractor, his employees, or other contracting agencies;

(B) adequate physical control is maintained over tool-crib items, guard force items, protective clothing and other items issued for use by individuals in the performance of their work under the contract;

(C) property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the property administrator; or

(D) property is commingled, as authorized by paragraph 210 hereof;

(ii) Government-owned special tooling shall be marked with the designation of the Military Department responsible for funding and control of such tooling, as follows: Army—"USA", Navy—"USN", and Air Force—"USAF", unless it is determined that such marking will damage the special tooling or is otherwise impracticable. Marking and identification procedures may be expanded by the Department having cognizance over the tooling to include end item reference, drawing number, and such other information as may be desired in a given case. The identification "U. S." property shall not be changed solely to conform to the provisions of this paragraph;

(iii) Unless already marked in accordance with these instructions, all Government-owned plant equipment, including industrial reserve plant equipment, shall be marked by the contractor with an identification number, except minor plant equipment; or when the size of the equipment or the nature of the material from which it is made makes it impracticable, in which case such item will be assigned an identification number for record purposes, which number shall be shown in the plant equipment property record; or the equipment is accessory or auxiliary and attached to or otherwise a part of an item of plant equipment and is required for its normal operation, in which case such item shall be entered and described on the record of the equipment to which it is attached or of which it is otherwise a part. Once an identification number has been affixed to an item of plant equipment, the identification will be permanent and will not be changed so long as the equipment remains under the control of the same Military Department (but see (iv) below). Identification shall be effected by affixing a metal, fibre, plastic or other plate directly to the equipment; by using indelible ink, acid or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamper-proof method. Identification shall consist of the following markings:

(A) An indication of Government ownership of the Military Department responsible for funding and control of the plant equipment, as follows: Army—"USA", Navy—"USN", and Air Force—"USAF"; however, the identification "U. S." property shall not be changed solely to conform to the provisions of this paragraph;

(B) A two-part identification number, furnished by the Government, consisting solely of numerals except as provided in (C) below. The first part shall be the property account number and the second part shall be a serial number. In case plant equipment furnished by the Government is already identified as property of a Military Department, no change shall be made in the markings, except as provided in (iv) below; and

(C) In the case of items included within a standard Departmental registration system, for example, automotive, construction, or weight-handling equipment, application for a proper registration number will be made to the cognizant Department, which number shall be used in lieu of any other identification number.

(iv) Government identification markings shall be removed prior to sale or scrapping. The markings so removed shall be shown on the appropriate documents involved. In the case of a transfer of funding and control responsibilities to other Military Departments new identification markings, in accordance with the requirements of (ii) or (iii) above, may be affixed upon receipt of the equipment by the receiving Military Department.

(b) *Recording Identification Numbers.* Assigned property identification numbers will be recorded on all applicable receiving documents, shipping documents, and other documents pertaining to the property accounts.

(c) *Components.* Components which are permanently removed from items of Government property as a result of modification, or otherwise, shall be marked or identified by the Contractor according as to whether the component is classified as material, plant equipment, minor equipment or special tooling. Material, minor equipment and special tooling permanently removed from Government property need not be marked or identified except when returned to stock or stores.

(d) *Method of identification.* Identification shall be effected by affixing a metal, fibre, plastic or other plate directly to the equipment; by using indelible ink, acid or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamperproof method. Identification shall consist of the following markings:

(i) An identification of Government ownership, viz., the letters "U. S."

(ii) The Contractor shall affix to each item of plant equipment the identification number furnished by the Government. In case the plant equipment furnished by the Government is already identified as property of the U. S. Government, the markings shall not be removed. In addition to the markings prescribed by the Government, the Contractor may use a severable marking of its own, for its own records, provided that the Contractor shall remove such marking upon return of the equipment to the Government, or upon making any other disposition.

308. *Segregation and commingling.* The contractor shall keep Government property segregated, except where commingling is approved by the property administrator as being to the mutual benefit of the Government and the contractor, or where the Government property involved is plant equipment, special tooling or minor plant equipment which is clearly identified or marked as Government property and is supported by appropriate control records.

309. *Inventories.* (a) *Interim physical inventory.* The contractor shall take a physical inventory of Government property whenever required by the property administrator, but such inventory shall not normally be required of the cnotractor more often than once a year. The inventory shall show the quantity and monetary value of each item of property inventories, and shall normally be limited to materials and minor equipment held in stocks and stores, and plant equipment. It shall be classified by categories of whatever items are inventories, such as material, special tooling, minor equipment, plant equipment, etc.

(b) *Joint physical inventory and selective examinations.* The property administrator, if he desires, may join with the contractor in taking the inventory required to be taken by the contractor. The property administrator shall have the right to take an inventory or make selective examinations, whenever he deems it necessary to protect the Government's interest.

(c) *Terminal physical inventory.* The contractor shall take upon completion or termination of the contract, a physical inventory adequate for disposal purposes of all Government property applicable to the contract in the custody, control, or possession of the contractor. The inventory shall be prepared on both a quantitative and monetary basis and be classified by categories, such as material, special tooling, minor equipment, plant equipment, etc. Standard items that have been modified may be described as standard items, with a general description of the modification. Items that have been constructed, such as test equipment, should be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

310. *Control of scrap and salvage.* Procedures for the control of scrap and salvage shall not be required unless the property administrator determines that the scrap or salvage is substantial in amount and the Government is not receiving sufficient benefits from the use or disposal thereof in which event the following procedures shall be applicable:

(a) The contractor shall establish a procedure whereby all Government property that can be salvaged shall be returned to Government stock, which procedure shall be subject to the approval of the property administrator; and

(b) If the property administrator determines that the contractor's scrap procedures and records are adequate to protect the Government's interest, he shall approve same in writing and furnish the contractor a copy thereof. If the property administrator determines that corrective measures are necessary to protect the Government's interests, he shall so advise the contractor. Where corrective action would involve substantial increased costs or where agreement as to corrective action is not reached through mediation, the difference will be referred to the contract administrator.

§ 30.4 Appendix D—Rules for notice and hearing under gratuities clause in Armed Services Procurement Regulation 7.104–16.

1. *Introduction.* Section 631 of the Department of Defense Appropriation Act, 1952, Public Law 179, 82d Congress,* and similar statutory requirements in subsequent Department of Defense appropriation acts, require all contracts, other than contracts for personal services, which call for the expenditure of funds appropriated for the military departments under the Act to contain a clause permitting the termination of the contractor's right to proceed under any such contract and permitting the Government to pursue the remedies that it could pursue in the event of breach of contract if it is found after notice and hearing by the Secretary of the department with which the contract was made, or by his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the contractor or by his agent or representative to any officer or employee of the Government with a view toward securing a Government contract or favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performing of such contract. The military departments have prescribed the use of such clause, as set forth in the Armed Services Procurement Regulation, paragraph 7.104–16, in contracts as required by the above Act and in other procurement contracts. It is the purpose of these rules to make provision for the giving of the notice of hearing, for the conduct of the hearing, and for other procedural matters incident to the exercise of the rights and special remedies provided by the prescribed clause, wherever it is now or may hereafter be used in contracts of the military departments. In the interest of uniformity in proceedings before the three military departments, these rules are hereby adopted. Nothing herein shall be construed to affect or impair (1) the pursuit of other remedies available to the Government in any instance, or (2) the right of termination of any contract for any reason available to the Government under the terms of such contract.

2. *Definitions. Department.* The term "department" means the Department of the Army, the Department of the Navy, or the Department of the Air Force.

Secretary. The term "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of any military department.

Designee. The term "designee" means the person or board to whom authority has been delegated by the Secretary under Rule 3. The designee is the Secretary's authorized representative.

3. *Delegation of authority.* The Secretary may delegate to any person, military or civilian, or board of such persons within his Department all the authority of the Secretary conferred by statute or the prescribed contract clause to give notice of hearings, to conduct hearings and to make findings of fact with respect to (i) whether a gratuity was offered or given by a contractor or any agent or representative of such contractor to a Government officer or employee with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such contract; and (ii) where appropriate, the amount of the costs incurred by the contractor in providing such gratuity. If the Secretary delegates his authority to a board, one of the members thereof shall be a person trained in the law, and the Secretary shall designate one member to be the presiding officer of the board.

4. *Notice and contents.* Whenever information coming to the attention of the Department indicates that the procedures provided herein may be properly invoked, the Department may cause a written notice to be served upon the contractor in the manner hereinafter provided. The notice shall be signed by the Secretary or his designee and dated and shall include the following items:

(a) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contract or contracts involved, and the ultimate facts to be determined. The time of the hearing shall not be less than 10 days after service of the notice.

(b) Brief allegations setting forth the circumstances surrounding the offering or giving of the gratuity, including a description of the alleged gratuity itself and its estimated cost to the contractor; an identification of the offeree or donee and of the offerer or donor and the latter's relationship to the contractor; and the approximate date and place of the alleged offer or gift. Such allegations need be only sufficient to apprise the contractor reasonably of the issues involved in the hearing.

(c) A request that the contractor answer in writing the allegations of the notice, including in his answer such facts or argument as he may wish, and that he attend the hearing to adduce such evidence with respect to the alleged offer or gift as he may desire.

A suggested form of notice is set out as an appendix to these rules.

5. *Service of notice.* Service shall be made by mailing or delivering a copy of the notice to the contractor. Delivery of a copy means handing it to the party to be served, or, if the party is a corporation, partnership, or unincorporated association, handing it to an officer, partner, managing or general agent, or any other agent authorized by appointment or by law to receive service of process, or by leaving the copy at the contractor's office with the person in charge thereof. Service by mail shall be made only by certified mail and service shall be complete upon mailing. The manner of service shall be evidenced by the signed endorsement of the person making the service upon a copy of the notice to be included in the record of the proceeding. Service of notice may be accepted or waived by the contractor by written endorsement on a copy of the notice.

6. *Continuances and delays.* The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.

7. *Parties.* The parties to the hearing will be the contractor concerned and the Government. No intervention by other persons shall be permitted.

8. *Representation and hearing assistants.* The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The Department will make available such technical assistants, including a reporter, secretary or notary, as may be required.

9. *Transcript.* Testimony and arguments shall be reported verbatim. The reporter or secretary shall make available to the contractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof as the Department may by order fix.

10. *Hearings.* Hearings shall be conducted by the Secretary or his designee. Hearings will be as informal as may be reasonably appropriate under all the circumstances. Evidence and testimony, although not ordinarily admissible under legal rules of evidence, may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrelevant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross-examination. The hearing officer shall make such rulings with respect to the conduct of hearings as circumstances may require to ensure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with these Rules and requirements of due process of law.

11. *Depositions.* Following service of the notice of hearing, a deposition may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.

(a) *Notice to take.* When either party desires to take a deposition, unless the parties stipulate as to the time when, and place where, the deposition is to be taken, the name of the officer before whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least ten days' notice of the time when and the place where such deposition will be taken, the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross-interrogatories, written cross interrogatories should be served upon the party giving the notice within 5 days from the receipt of the notice to take the deposition. Notices may be served upon the contractor as provided by Rule 4 or upon his legal counsel of record. Service upon the Government may be made upon the person signing the notice of hearing or the Government representative of record. If service is made by mail, the mail shall be registered and service will be complete upon mailing.

(b) *Taking depositions.* Depositions may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be subject to cross-examination as at the hearing. Objections will be reserved for determination at the hearing; provided, however, objections as to the form of questions shall be made and noted in the deposition. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the Secretary or his designee.

(c) *Use of deposition.* Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.

12. *Submissions without appearance: absence of parties.* If the contractor fails or refuses to appear or to make a written submission without appearing at the hearing, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be occasion for delay of the hearing. Notwithstanding the nonappearance of the contractor at the hearing, proposed findings, conclusions, and argument may be submitted in writing on the contractor's behalf as provided in Rule 13.

13. *Argument and request for findings.* Within the discretion of the person presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing. Within ten days after the hearing is completed, both parties may file in writing with the person or board conducting the hearing proposed findings and conclusions with reasons and argument in support thereof. Copies will be provided to the opposite party.

14. *Findings and decision.* As soon as practicable after completion of the hearing and the timely submission of proposed findings and conclusions, the person or board that conducted the hearing shall make written findings and conclusions with respect to all material issues; reasons for the findings will be included at such length as may be appropriate. The findings where adverse to the contractor will include, in addition to other appropriate items, the following: (i) a description of the gratuity that was offered or given; (ii) a statement of the costs incurred by the contractor in providing the gratuity; (iii) the name and relationship to the contractor of the person by whom the gratuity was offered or given on the contractor's behalf; (iv) the name and position of the officer or employee of the Government to whom the gratuity was offered or given; (v) a description of the contract which the Contractor sought to secure by the offering or giving of the gratuity, or a statement as to the nature of the favorable treatment so sought with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract. When the findings are made by a designee they shall be forwarded to the Secretary with recommendations as to whether the right of the contractor to proceed under any contract mentioned in the notice of hearing shall be terminated, and as to the exemplary damages to be imposed against the contractor, which shall be in an amount which shall not be less than three nor more than ten times the costs incurred in providing the gratuity.

Approved this 5th day of July 1952 by: Earl D. Johnson, Assistant Secretary of the Army; H. R. Askins, Assistant Secretary of the Navy; Roswell L. Gilpatric, Under Secretary of the Air Force.

APPENDIX TO RULES

Form of Notice

Before the _____ of the _____.

File No. _____

In the Matter of the XYZ Corporation, Contract _____: Proceedings Pursuant to Clause _____ of Contract No. _____.

To: XYZ Corporation,
Rockefeller Plaza,
New York City, New York.

1. You are hereby notified that at ___ M. on _____ 1952, at room ____ of the _____ Building, _____, a hearing will be held before _____ to determine whether or not under the provisions of clause _____ of Government contract _____ a gratuity has been offered or given on behalf of the XYZ Corporation to an officer or employee of the Government of the United States with a view toward securing (a contract) (favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of a contract). If it is found that a gratuity was so offered or given, your right to proceed under the contract may be terminated, and a penalty imposed in accordance with the contract clause mentioned above. In the event of such termination the Government will be entitled to pursue the remedies available for breach of contract.

2. The hearing at the time and place aforesaid will be held under the authority of (cite applicable Public Law and clause of contract(s)). Enclosed is a copy of the Rules promulgated by the Secretary of the _____ pursuant to which the hearing will be conducted. Papers pertaining to the proceedings may be captioned as above.

3. The contract(s) involved in the hearing, and which is (are) subject to termination if a gratuity is found to have been given or offered to secure favorable action as aforesaid, is (are) identified as follows:

Contract number _____ dated _____ under the cognizance of _____ and executed by _____ on behalf of the Government as the Contracting Officer.

4. The gratuity offered or given and the circumstances relating thereto are alleged to be as follows: (Include in a concise statement the nature of the alleged gratuity; a fair estimate of the costs incurred by the contractor in providing the gratuity; the identity of the offeree or donee and his position with the government; the identity of the offerer or donor and his relationship to the contractor; and the approximate date, time, and place of the alleged offer or gift. Also allege as appropriate, that the gratuity was (offered) (given) with a view toward securing a Government contract or favorable treatment with respect to awarding or amending, or the making of a determination with respect to the performing of a Government contract. Identify or describe the contracts involved). On proof of the facts alleged as aforesaid, the Government, in accordance with the applicable statutory and contract provisions mentioned in paragraph 2, may terminate your right to proceed under the contract identified in paragraph 3 and to pursue the remedies available for breach of contract; also to impose exemplary damages as provided in such law and contract provision.

5. If you desire to be heard in this matter, you are requested to file with the Department on or before the time of the hearing a written answer and to appear at the hearing.

Dated: _____

By direction of the _____ of the _____.

NOTE: Portions set apart by parentheses should be stricken or modified as appropriate to conform to the facts.

§ 30.5 Appendix E—Defense Contract Financing Regulations.

The regulations with respect to Defense Contract Financing Regulations are contained in Part 163, Subchapter E, of this chapter.

*The provisions of § 631 of Public Law 179, 82d Congress have been enacted as permanent law (5 U.S.C. 174).

SUBCHAPTER B—PERSONNEL; MILITARY AND CIVILIAN

PART 41—ADMINISTRATIVE DISCHARGES

Sec.
41.1 Purpose and cancellations.
41.2 Applicability.
41.3 Administration.
41.4 Definitions.
41.5 Pre-service activities.
41.6 Standards for discharge.
41.7 Reasons for discharge.
41.8 Procedures for discharge.

AUTHORITY: §§ 41.1 to 41.8 issued under sec. 161 of the Revised Statutes (5 U.S.C. 22); sec. 1162 and Chapters 361, 569, and 861 of Title 10, United States Code.

§ 41.1 Purpose and cancellations.

This part revises the standards and procedures governing the administrative discharge of enlisted persons from the Armed Forces. Former Part 44 (13 F.R. 5879) and any other existing regulations in conflict with the provisions of this part are superseded and cancelled ninety days after date of issue of this part.

§ 41.2 Applicability.

The policies and regulations set forth herein are applicable to the Army, the Navy, the Air Force, the Marine Corps, and by agreement with the Secretary of the Treasury, to the Coast Guard, and to all Reserve components thereof.

§ 41.3 Administration.

Each of the Armed Forces to which these policies and the regulations in this part are applicable will, prior to the cancellation date of former Part 44 (13 F.R. 5879) issue appropriate regulations under this part.

§ 41.4 Definitions.

(a) *Military behavior.* "Military behavior" as used herein refers to the conduct of the individual while a member of an Armed Service.

(b) *Military record.* "Military record" as used herein includes an individual's military behavior and performance of duty, and reflects the character of the service he has rendered while a member of an Armed Service.

(c) *Honorable Discharge.* An "Honorable Discharge" is a separation from an Armed Service with honor.

(d) *General Discharge.* A "General Discharge" is a separation from an Armed Service under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an Honorable Discharge.

§ 41.5 Pre-service activities.

Except for misrepresentations (including omissions) made in connection with his enlistment or induction, activities that a member of the Armed Forces engaged in before he acquired status in the Armed Forces may not be considered in determining the type and character of discharge or separation to be issued. The type and character of the discharge will be determined solely by the member's military record.

§ 41.6 Standards for discharge.

The type and character of discharge or separation and the reasons therefor will be determined in accordance with the following standards:

(a) *Honorable Discharge.* Issuance of an Honorable Discharge is conditioned upon:

(1) Proper military behavior: Ordinarily, an Honorable Discharge will not be issued if an individual has been convicted of an offense by General Court-Martial or has been convicted by more than one Special Court-Martial in the current enlistment, period of obligated service, or any extensions thereof.

(2) Proficient and industrious performance of duty having due regard to the rate, rank or grade held and the capabilities of the individual concerned.

(3) Eligibility for discharge by virtue of one of the following reasons:

(i) Expiration of enlistment or fulfillment of service obligation, as applicable.

(ii) Convenience of the Government.

(iii) Hardship or dependency.

(iv) Minority.

(v) Disability.

(vi) Unsuitability.

(vii) Security.

(viii) When directed by the Secretary of the Department concerned.

(ix) Resignation—own convenience.

Special considerations: An individual may, where otherwise ineligible, receive an Honorable Discharge if he has, during his current enlistment, period of obligated service, or any extensions thereof, received a personal decoration as defined by the respective services, or is discharged as a result of a disability incurred in line of duty. In each of the above situations, the individual's military record should form the basis for the action taken.

(b) *General Discharge.* Issuance of a General Discharge is conditioned upon:

(1) Military record not sufficiently meritorious to warrant an Honorable Discharge.

(2) Eligibility for discharge by virtue of one of the reasons listed in paragraph (a)(3) of this section.

(c) *Undesirable Discharge.* An Undesirable Discharge is an administrative separation from the service "Under Conditions Other than Honorable." It is issued for unfitness, misconduct or for security reasons. It will not be issued in lieu of trial by court-martial except upon the determination by an officer exercising General Court-Martial jurisdiction or by higher authority that the interests of the service as well as the individual will best be served by administrative discharge.

Special considerations: Notwithstanding the foregoing, whenver the particular circumstances in a given case so warrant, an administrative discharge other than an Undesirable Discharge may be issued.

§ 41.7 Reasons for discharge.

(a) *Expiration of enlistment or fulfillment of service obligation (as applicable).* Discharge with an Honorable or a General Discharge as warranted by the individual's military record (§ 41.6 (a) or (b), as applicable).

(b) *Convenience of the Government.* Discharge with an Honorable or a General Discharge as warranted by the individual's military record, for the following reasons:

(1) General demobilization, reduction in authorized strength or by an order applicable to all members of a class of personnel specified in the order.

(2) Acceptance of a commission or appointment in any branch of the Armed Services, for active duty only.

(3) National health, safety or interest.

(4) To permit immediate enlistment or reenlistment.

(5) Erroneous induction or enlistment.

(6) To provide for the discharge of individuals serving in unspecified enlistment.

(7) In the case of women, marriage, pregnancy, parenthood, or custody of children under age 18.

(8) For other good and sufficient reasons when determined by the Secretary of the Department concerned.

(c) *Resignation — own convenience.* Discharge with an Honorable or a General Discharge as warranted by the individual's military record, on an individual basis, in accordance with regulations of the Service concerned. Such discharge may be effected as early release for the convenience of the Government.

(d) *Dependency or hardship.* (1) Discharge or separation or release by reason of dependency or hardship with an Honorable or a General Discharge, as warranted by the individual's military record. Discharge may be directed when it is considered that undue and genuine dependency or hardship exists, that the hardship or dependency is not of a temporary nature, and that conditions have arisen or been aggravated to an excessive degree since entry into the Service and the member has made every reasonable effort by means of application for Family Allowance and voluntary contributions which have proven inadequate; that the discharge of the individual will result in the elimination of, or will materially alleviate the condition and that there are no means of alleviation readily available other than by such discharge.

(2) Undue hardship does not necessarily exist solely because of altered present or expected income or because the individual is separated from his family or must suffer the inconveniences normally incident to military service.

(e) *Minority.* Discharge by reason of minority with an Honorable or General Discharge as warranted by the individual's military record, or release by voidance of enlistment upon determination that the individual's age was misrepresented upon enlistment or induction as follows:

(1) Males, if enlisted and under 17 years of age, or inducted and under 18 years and six months of age, when verified, release from military control by discharge, release or voidance of enlistment.

(2) If an enlisted man, enlisted without proper consent and having passed his 17th birthday, but not his 18th birthday, discharge upon application of parent or legal guardian as prescribed by law.

(3) If an enlisted man having passed his 18th birthday when verified—retain if otherwise qualified.

(4) Females, if enlisted and under 18 years of age, or inducted and under the age prescribed by law for such induction, release from military control by discharge, release or voidance of enlistment.

(5) If an enlisted woman enlisted without proper consent, having passed her 18th birthday, but not her 21st birthday, when verified—discharge upon application of parent or legal guardian as prescribed by law.

NOTE: The enlistment of a minor with false representation as to age without proper consent will not in itself be considered as fraudulent enlistment.

(f) *Disability.* Discharge by reason of physical disability, with an Honorable or General Discharge as warranted by the individual's military record, when it has been determined as a result of medical findings that the individual is physically unfit to perform the duties of his office, rank, grade or rating.

(g) *Unsuitability.* Discharge by reason of unsuitability, with an Honorable or General Discharge as warranted by the individual's military record. Such discharge will be effected when it has been determined that an individual is unsuitable for further military service because of:

(1) Inaptitude: Applicable to those persons who are best described as inapt, due to lack of general adaptability, want or readiness of skill, unhandiness, or inability to learn.

(2) Character and behavior disorders: Character and behavior disorders, disorders of intelligence, and transient personality disorders due to acute or special stress as defined in "Joint Armed Forces Nomenclature and Method of Recording Psychiatric Conditions—1949" (SR 40–1025–2; NavMed P–1303; AFR 160–13A).

(3) Apathy, defective attitudes and inability to expend effort constructively: As significant observable defect, apparently beyond the control of the individual, elsewhere not readily describable.

(4) Enuresis.

(5) Alcoholism: Chronic, or addiction to alcohol.

(6) Homosexual tendencies.

(7) Special considerations: For other good and sufficient reasons when determined by the Secretary of the Department concerned.

(h) *Security.* Discharge with the character of discharge and under conditions stipulated by the Secretary of Defense in directives which deal explicitly with this matter when retention is not clearly consistent with the interest of national security.

(i) *Unfitness.* Discharge by reason of unfitness, with an Undesirable Discharge, unless the particular circumstances in a given case warrant a general or honorable discharge, when it has been determined that an individual's military record is characterized by one or more of the following:

(1) Frequent involvement of a discreditable nature with civil or military authorities.

(2) Sexual perversion including but not limited to (i) lewd and lascivious acts, (ii) homosexual acts, (iii) sodomy, (iv) indecent exposure, (v) indecent acts with or assault upon a child, or (vi) other indecent acts or offenses.

(3) Drug addiction or the unauthorized use or possession of habit-forming narcotic drugs or marijuana.

(4) An established pattern for shirking.

(5) An established pattern showing dishonorable failure to pay just debts.

(6) For other good and sufficient reasons when determined by the Secretary concerned.

(j) *Misconduct.* Discharge by reason of misconduct, with an Undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge, when one or more of the following conditions have been determined:

(1) Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of one year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender as a result of an offense involving moral turpitude. If the offense is not listed in the MCM Table of Maximum Punishments or is not closely related to an offense listed therein, the maximum punishments authorized by the U.S. Code or the District of Columbia Code, whichever is lesser, applies. For the purpose of this subparagraph only, an individual shall be considered as having been convicted even though an appeal is pending or is subsequently filed.

(2) Procurement of a fraudulent enlistment, induction or period of obligated service through any deliberate material misrepresentation or concealment which, except for such misrepresentation or concealment, may have resulted in rejection.

(3) Prolonged unauthorized absence: When unauthorized continuous absence of one year or more has been established, but punitive discharge has not been authorized by competent authority.

§ 41.8 Procedures for discharge.

In accordance with the standards outlined in this part, the following procedures will be adhered to in effecting administrative discharges:

(a) *Honorable Discharge.* A separation with an Honorable Discharge may be effected by the individual's commanding officer or higher authority when the individual is eligible for or subject to discharge and it has been determined that he merits an Honorable Discharge under the prescribed standards.

(b) *General Discharge.* A separation with a General Discharge may be effected by the individual's commanding officer or higher authority when the individual is eligible for or is subject to discharge and it has been determined under the prescribed standards and in accordance with any prescribed administrative procedures that a General Discharge is warranted.

(c) *Discharge for unsuitability.* An individual recommended for an honorable or general discharge for reason of unsuitability shall be afforded the opportunity to make a statement in his own behalf.

(d) *Undesirable Discharge.* An Undesirable Discharge will be effected only by authority of a properly approved administrative action conforming to the prescribed standards, during which the following procedures and safeguards have been observed:

(1) The individual if subject to such discharge will, if his whereabouts is known, be properly advised of the basis for the contemplated action and afforded an opportunity to request or waive, in writing, the following privileges:

(i) To have his case heard by a Board of not less than three officers. In the case of non-regular component members, all boards so convened shall include appropriate numbers from the Reserve components. In the case of female members, all boards so convened shall include at least one female officer.

(ii) To appear in person before such board, subject to his availability, e.g., not in civil confinement.

(iii) To be represented by counsel, who, if reasonably available, should be a lawyer.

(iv) To submit statements in his own behalf.

(2) Separation with an Undesirable Discharge may be effected by an officer exercising general court-martial jurisdiction or by higher authority (including departmental headquarters) after review of the findings and recommendations made by any board which was convened to consider the case.

(3) Except for Reservists, Departmental Secretaries are authorized to waive the requirements set forth in subparagraph (1) of this paragraph (except subdivision (iv)), when such action is deemed in the best interest of the military service. Departmental Secretaries will advise the Assistant Secretary of Defense (Manpower, Personnel and Reserve) by memorandum not later than 15 July each year of any such actions taken during the preceding fiscal year, and the reasons therefor. The reporting requirement of this paragraph has been assigned Report Control Symbol DD–MP&R(A) 370.

PART II
Section 2

FEDERAL REGISTER

VOLUME 25 Number 254

Washington, Saturday, December 31, 1960

THE UNIVERSITY OF MICHIGAN
JAN 9 1961
MAIN READING ROOM

Regulations of the Secretary of Defense

(Continued)

PART 44—ENLISTMENT AND DISCHARGE OF INDIVIDUALS WITH JUVENILE AND YOUTHFUL OFFENDER RECORDS

Sec.
44.1 Purpose.
44.2 Policy.

AUTHORITY: §§ 44.1 and 44.2 issued under R.S. 161, 5 U.S.C. 22.

§ 44.1 Purpose.

The purpose of this part is to establish uniform policies in the enlistment and separation regulations and procedures of the armed services concerning individuals with juvenile and youthful offender records.

§ 44.2 Policy.

(a) Enlistment of applicants with juvenile and youthful offender records. (1) The fact of adjudication as a youthful offender or juvenile delinquent by a State or disposition by Federal juvenile authorities is not in itself a bar to enlistment if the applicant is otherwise eligible. An applicant is to be judged as to his fitness for the armed services by his character as of the time of his application for enlistment.

(2) During enlistment processing each applicant will be specifically questioned concerning juvenile and youthful offender records; the policies of the services in this regard and the necessity for complete and accurate statements will be thoroughly explained to the applicant; and he will be required to sign a written statement as to whether or not he has any type of record of juvenile delinquency or of being a youthful offender. If he admits such record, or if he does not admit one and the enlisting agency has reason to believe such a record does exist, enlistment action will be held in abeyance pending a complete investigation of the facts in the case. Contact will be made with the civil authorities for information as to the applicant's character and rehabilitation, the actual offenses committed, circumstances in the case, disposition by the courts, actual confinement served and whether any form of civil restraint still exists. The evaluation of the civil court and its probation officers will be an important consideration. Any other information deemed relevant to an evaluation of the case may also be requested. Where civil authorities refuse to furnish information, the enlistment will be held in abeyance and the applicant advised that the burden of obtaining and furnishing the information is upon him.

(3) If civil restraint no longer exists and if the applicant's over-all rehabilitation appears to be satisfactory and if otherwise qualified for service he may be accepted for enlistment. If the applicant's over-all rehabilitation has not been satisfactory or if the investigation discloses him to be morally unacceptable for military service and unfit to associate with members of the military service, he shall be rejected for enlistment. Such rejection will be on the above grounds and not due to the fact that the applicant was adjudged a youthful offender or juvenile delinquent.

(4) Recruiting personnel will be thoroughly trained in and familiar with all aspects of the interrogation procedure.

(b) Disposition of enlistees who denied upon enlistment that they had juvenile and youthful offender records. (1) Upon discovery subsequent to enlistment that an enlistee denied a juvenile or youthful offender record, action will be taken to ascertain all the facts in the case. Contact will be made with the civil authorities for information as to the actual offenses committed, circumstances in the case, disposition by the juvenile or youthful offender courts, actual confinement served and whether any form of civil restraint still exists. Any other information deemed relevant to an evaluation of the case may also be requested. In addition, the man will be afforded the privilege of making a statement after being advised of his rights under Article 31, MCM, 1951.

(2) In the interest of conservation of manpower, the concealment of such records should not automatically preclude the retention of the individual unless investigation shows the individual morally unsuited for military service and association with other members of the military service.

(3) The facts in the case, the man's statement, the determination of the court and its officers, and the military service rendered by the enlistee since enlistment will be evaluated in order to determine whether subject should be discharged or retained in the service.

(4) If discharge is determined to be

proper, it will be for unsuitability under honorable conditions unless circumstances are such as to warrant a lower type discharge, in which case a discharge by reason of misconduct (fraudulent enlistment) may be effected. If retention in the service is deemed appropriate, subject will be granted a waiver and notation thereof made in his service record.

(5) In the event investigation reveals that civil restraint exists and the man's retention is desired, the civil authorities will be requested to terminate or suspend such restraint for the duration of the enlistment.

PART 48—OPTIONAL RETIREMENT

Subpart A—General Information

Sec.
48.101 Purposes.
48.102 Definitions.

Subpart B—Election of Options

48.201 Options.
48.202 Limitation on number of annuities.
48.203 Election of options.
48.204 Modification or revocation of election.
48.205 Requirement for statement from member who does not desire coverage.
48.206 Election form.
48.207 Information regarding elections.

Subpart C—Designation of Dependents

48.301 Designation.
48.302 Substantiating evidence regarding dependency and age of dependents.
48.303 Condition affecting entitlement of widow or widower.

Subpart D—Reduction of Retired Pay

48.401 Computation of reduction.
48.402 Effective date of deduction.
48.403 Payment of non-withheld reduction of retired pay.
48.404 Age to be used.
48.405 Refund of reduction.

Subpart E—Annuity

48.501 General information.
48.502 Effective date of annuity.
48.503 Claims for annuity payments.
48.504 Payment to children.
48.505 Establishing eligibility of annuitants.
48.506 Determination that designated annuitant is ineligible.
48.507 Reconsideration of determination of eligibility for the benefits of the act.

Subpart F—Miscellaneous

48.601 Annual report.
48.602 Organization.
Appendix I—Uniform Tables of Actuarial Equivalents.
Appendix II—Information Required for Annual Report.

AUTHORITY: §§ 48.101 to 48.602 issued under sec. 1444, 70A Stat. 111; 10 U. S. C. 1444. Interpret or apply E. O. 10499, 18 F. R. 7003, 3 CFR, 1953 Supp.

Subpart A—General Information

§ 48.101 Purpose.

The purpose of the Uniformed Services Contingency Option Act of 1953 is to permit each member of the uniformed services to elect to receive a reduced amount of any retired pay which may be awarded him as a result of service in his uniformed service in order to provide one or more of the annuities specified in section 4 of the act, payable after his death in a retired status to his widow, child, or children, subject to certain limitations specified in the act and elaborated in this part.

§ 48.102 Definitions.

(a) The term "uniformed services" means the Army of the United States, Navy, United States Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service, including all components and members thereof.

(b) The term "member" means a commissioned officer, commissioned warrant officer, warrant officer, nurse, flight officer, or a person in an enlisted grade (including an aviation cadet), of any of the uniformed services and a person entitled to retainer pay in the Fleet Reserve or Fleet Marine Corps Reserve with credit for sixteen or more years of naval service.

(c) The term "active member" means a member on the active list of a regular or reserve component of a uniformed service, or a member of a reserve component of a uniformed service who has completed 20 or more years of satisfactory Federal service, as defined in section 302 of the Army & Air Force Vitalization and Retirement Equalization Act of 1948.

(d) The term "retired member" means a member or former member of a uniformed service, who is or has been awarded retired, retirement, or retainer pay or equivalent pay as a result of service in one of the uniformed services.

(e) The term "widow or widower" refers only to the lawful spouse at the date of retirement of an active member or, in the case of a retired member on the effective date of the act, to the lawful spouse on the effective date of the act.

(f) The term "child" means:

(1) A legitimate child under 18 years of age and unmarried.

(2) A stepchild, under 18 years of age and unmarried, who is in fact dependent on the member for support.

(3) A legally adopted child, under 18 years of age and unmarried.

(4) A child, as defined in subparagraphs (1), (2) and (3) of this paragraph, who is over 18 years of age and unmarried, and who is incapable of self-support because of being mentally defective or physically incapacitated if that condition existed prior to reaching age eighteen.

(5) In all cases, the term "child" refers only to an active member's child, as heretofore defined, who was born and is living and meets the requirements of this paragraph at the date of retirement of the active member, or to a retired member's child who was born and is living and meets the requirements of this paragraph on November 1, 1953.

(g) The term "stepchild" means a child of a spouse by a former marriage. The stepchild relationship will terminate upon the divorce of the parent spouse but not upon the death of the parent spouse.

(h) The term "in fact dependent" means that the stepchild must be dependent on the member for over half of his or her support.

(i) The term "retired pay" includes retirement pay, equivalent pay, and retainer pay.

(j) The term "department concerned" means (1) The Department of the Army with respect to the Army, (2) the Department of the Navy with respect to the Navy and Marine Corps, (3) the Department of the Air Force with respect to the Air Force, (4) the Treasury Department with respect to the Coast Guard, (5) the Department of Commerce with respect to the Coast and Geodetic Survey, and (6) the Department of Health, Education, and Welfare with respect to Public Health Service.

(k) The term "dependents" as used in this part means the prospective annuitants described in paragraphs (e) and (f) of this section.

Subpart B—Election of Options

§ 48.201 Options.

(a) As provided in § 46.203, an active member, former member, or a retired member may elect any one or more of the following annuities in amounts equal to one-half, one-quarter, or one-eighth of the reduced amount of his retired pay. Such amounts must be specified at the time of election.

(1) An annuity payable to or on behalf of his widow, the annuity to terminate upon her death or remarriage, whichever first occurs.

(2) An annuity payable to or on behalf of his surviving child or children, the annuity to terminate when there ceases to be at least one such surviving child, unmarried and under eighteen years of age, except that if there is a child unmarried and over eighteen years of age incapable of self-support because of being mentally defective or physically incapacitated and that condition existed prior to his reaching eighteen years of age, the annuity to terminate upon his marriage, death, or recovery from the disability, whichever first occurs. Each payment under such annuity shall be paid in equal shares to or on behalf of of the surviving children remaining eligible at the time the payment is due.

(3) An annuity payable to or on behalf of his widow and surviving child or children, the annuity to terminate upon: The death or remarriage of the widow; or, if later, the first day of the month in which there is no surviving child of the member who is under eighteen years of age and unmarried, except that if there is a child, unmarried and over eighteen years of age incapable of self-support because of being mentally defective or physically incapacitated and that condition existed prior to his reaching eighteen years of age, the annuity to terminate upon his marriage, death or recovery from the disability, whichever first occurs. Such annuity shall be paid to the widow until death or remarriage, and thereafter each payment under such annuity shall be paid in equal shares to or on behalf of the surviving children remaining eligible at the time the payment is due.

(4) An annuity payable under the same terms and conditions as specified in subparagraphs (1), (2), and (3) of this paragraph, with the additional provision that no further deductions shall be made from the retired pay of the member commencing with the first day of the month following that in which there was no beneficiary who would have been eligible to receive, upon the death of the member, an annuity payable under the election made by him.

§ 48.202 Limitation on number of annuities.

Where an active or retired member desires to provide more than one annuity, he may elect § 48.201(a) (1) and (2), with or without the provisions of subparagraph (4) thereof, but in no case may the combined amounts of the annuities exceed 50 per centum of the amount of his reduced retired pay. It is pointed out that in the case of families in which the dependent widow and dependent child or children are living in separate households the options under § 48.201(a) (1) and (2) might prove more desirable.

§ 48.203 Election of options.

(a) An active member who on November 1, 1953, has completed over 18 years' service which is creditable in the computation of basic pay may elect to receive a reduced amount of any retired pay which may be awarded him as the result of service in his uniformed service in order to provide one or more of the annuities as specified in §§ 48.201 and 48.202 payable after his death in a retired status to or on behalf of his surviving widow, child, or children. To be effective the election by such member on active duty must be signed, witnessed, and delivered to appropriate service officials or postmarked not later than November 1, 1954. For such members not on active duty, the election must be signed and postmarked not later than November 1, 1954, or signed by the member and delivered to appropriate service officials not later than November 1, 1954. The appropriate service official receiving the election will record the date and time of delivery by stamping the election letter or envelope accompanying the election, or by issuing an indorsement or other form of receipt as evidence of the date and time of delivery of such election.

(b) An active member who on November 1, 1953, has not completed over 18 years' service which is creditable in the computation of basic pay may elect to receive a reduced amount of any retired pay which may be awarded him as the result of service in his uniformed service in order to provide one or more of the annuities as specified in §§ 48.201 and 48.202 payable after his death in a retired status to or on behalf of his surviving widow, child, or children. The election by such member on active duty must be signed, witnessed, and delivered to appropriate service officials or postmarked not later than the day preceding the date of completion of 18 years' service or November 1, 1954, whichever is later. For such members not on active duty the election must be signed and postmarked or signed and delivered to appropriate service officials not later than the day preceding the date of completion of 18 years' service or November 1, 1954, whichever is later. In cases of elections not postmarked, the appropriate service official receiving the election will record the date and time of delivery by stamping the election letter or envelope accompanying the election, or by issuing an indorsement or other form of receipt as evidence of the date and time of delivery of such election. A member who fails to make an election prior to the completion of 18 years' service on November 1, 1954, whichever is later, may not thereafter be covered by any provision of the act.

(c) An active member retired for physical disability who is awarded retired pay after November 1, 1953, and prior to the completion of eighteen years service may make an election to receive a reduced amount of any retired pay which may be awarded him by his uniformed service in order to provide one or more of the annuities as specified in §§ 48.201 and 48.202 payable after his death in a retired status to or on behalf of his surviving widow, child, or children. The election of contingency options by such member shall be submitted not later than the time he selects the method of computation of retired pay.

(d) Missing member: An active member who, as a result of or in connection with military or naval operations, is in a status of missing, missing in action, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and because of that status is unable to make the election prior to the completion of the eighteen years of service, or an active member who is in that status on November 1, 1953, and has theretofore completed the eighteen years of service, may make the election. In order to be effective, the election must be made within six months of his return to the jurisdiction of his uniformed service.

(e) A person who is a former member on November 1, 1953, and who is thereafter awarded retired pay by a uniformed service may make such election. In order to be effective, the election must be made at the time he is awarded re-

tired pay. Any former member who is thereafter reenlisted or reappointed is governed by paragraphs (a) and (b) of this section.

(f) A member or former member who was awarded retired pay before November 1, 1953 has until April 30, 1954 to make such election. Notwithstanding any other provision of this section, a member, including those with less than 18 years' service, retired during the period November 1, 1953 and April 30, 1954, shall have until April 30, 1954 to make such election. A member retired during the period May 1, 1954 and November 1, 1954, shall have until November 1, 1954, to make such election.

(g) Incompetent member: Whenever an active member, former member, or retired member is determined to be mentally incompetent by medical officers of the service concerned or of the Veterans' Administration, or is adjudged mentally incompetent by a court of competent jurisdiction, and because of such mental incompetency is incapable of making any election within the time limitations prescribed by the act, the head of the department concerned may make the appropriate election on behalf of such member if so requested by the spouse or if there be no spouse by or on behalf of the child or children of such member. If such member is subsequently determined to be mentally competent by medical officers of the Veterans' Administration, or where appropriate is subsequently adjudged mentally competent by a court of competent jurisdiction, he may within one hundred and eighty (180) days of such determination or judgment, modify, or terminate the election made on his behalf. In such a case, the modification or revocation will be effective the date of the member's request for such modification or revocation. Deductions theretofore made shall not be refunded.

(h) Any election made and not cancelled prior to November 1, 1953, will be considered as having been made on November 1, 1953.

(i) A member who declines or fails to make an election within the time limits specified in this section may not thereafter be covered by any provision of the act. A member who has declined to select any option may thereafter elect the option or options provided each election is made within the time prescribed in this section.

§ 48.204 Modification or revocation of election.

(a) A modification of election is a change in the percentage of the reduced amount of retired pay under any option or a change in any option or options selected. A revocation is a cancellation of a previous election and constitutes a withdrawal from coverage under the act.

(b) An active member may modify the terms of his election as often as he may desire prior to his retirement. Such modification shall become effective five years after the date of execution unless the member is retired in the interim period. If the member is retired prior to a date five years from the date of modification the terms of the original election as modified over five years prior to the date of retirement will be effective.

(c) Any active member may revoke an election at any time but he shall not thereafter be permitted to withdraw or modify his revocation and after it becomes effective he shall not be permitted to be covered in any way by this act. If the member retires within five years after a revocation, such revocation shall have no effect.

(d) A retired member may not modify or revoke his election.

(e) In cases where an election has been made by the head of the department concerned on behalf of an incompetent member and the member is subsequently adjudged competent and desires to modify or revoke the election, such modification or revocation is effective the date of the request notwithstanding paragraphs (a) and (b) of this section, provided such modification or revocation is made within one-hundred and eighty days following determination that member is competent.

(f) Notification of a change of dependent is not a modification of election.

§ 48.205 Requirement for statement from member who does not desire coverage.

It is desirable that all members make a positive statement of desire to be covered by the act or not to be covered. For active duty members this may consist of return of the form stating that no election is desired, or a statement forwarded by the Commanding Office during the individual's 18th year of service for basic pay purposes or at the completion of the six months period as the case may be, stating that the benefits of the act have been explained to the individual concerned. For retired members and inactive reserve members a return of a post card acknowledging receipt of a letter of information will suffice. A member who has declined to select any option may thereafter elect an option or options provided such election is made within the time prescribed under the act.

§ 48.206 Election form.

The form for making elections will be submitted as indicated by the department concerned. All copies forwarded will be signed and any signed copy may be used to substantiate the fact of election.

§ 48.207 Information regarding elections.

(a) All retired members and members of the reserve components on inactive duty who have completed seventeen years service for basic pay purposes will be provided an individual letter of instructions and an option election form.

(b) It is the responsibility of the command or unit to which the member is assigned to promulgate information concerning the benefits of the act to all members on active duty. Such commands or units will also provide election forms to the members assigned.

(c) Former members and active members retired for physical disability prior to the completion of eighteen years service will be provided the forms for submission at the time of retirement.

Subpart C—Designation of Dependents

§ 48.301 Designation.

(a) An active member without dependents may make an election. If a member has dependents they should be named at the time of election or when they are acquired. The named dependents within an elected option may be changed until the date of retirement provided such changes are limited to the same option. In any case such spouse and all children must be named at the date of retirement.

(b) It is emphasized that if a member without dependents does not make an election at the appropriate time, he may not thereafter be covered by the act regardless of whether he subsequently acquires dependents.

(c) On the date of retirement the names of eligible dependents under the elected option(s) and the date of birth of each will be indicated to the agency responsible for paying retired pay and to the member concerned. If the widow, child, or children therein named are not eligible dependents under the elected option(s), it is the responsibility of the member concerned to establish eligible dependents under the elected option(s).

§ 48.302 Substantiating evidence regarding dependency and age of dependents.

At the time of submitting election or at the time of retirement as the case may be, the member must indicate the date and place of his marriage, the full name of his wife, prior to their marriage, and if requested by the Department concerned submit proof of dissolution of prior marriages, if any, of either spouse. The age of the dependent will be indicated by date of birth and must be substantiated by a birth certificate or other corroborative evidence. The birthdate of the member must be shown for verification with information in the service record.

§ 48.303 Condition affecting entitlement of widow or widower.

A member may have a different lawful spouse at time of retirement than the lawful spouse he had at the time of election. Consequently, once an election is made for a widow, the eligible widow will be the spouse to whom the member was lawfully married at the time of retirement.

Subpart D—Reduction of Retired Pay

§ 48.401 Computation of reduction.

(a) The reduction to be made in the retired pay of an active or retired member who has made an election shall be computed by the uniformed service concerned in each individual case based upon tables showing percentage reduction in retired pay. These tables [1] show-

[1] These tables have been filed with Federal Register Division as part of the original document. Copies are available for reference through administrative channels of each of the uniformed services.

ing the percentage reduction of retired pay are set forth in Appendix I. The computation of reduction shall be made based upon the tables in effect on the date of retirement in the case of an active member and the date of election in the case of a retired member.

(b) If the active member has no dependents on the effective date of retirement no reduction in retired pay shall be made.

(c) An adjustment may be made in the reduction of retired pay upon the finding of an administrative error or a mistake of fact.

§ 48.402 Effective date of deduction.

(a) The effective date of deduction in retired pay will be the effective date of retirement in the case of an active member and the first day of the month in which election is effective in the case of a retired member. The deduction in retired pay will be terminated on the effective date of termination of retired pay of the member.

(b) In the event the member has elected the option under § 48.201(a)(4), the reduction in retired pay shall be terminated the first day of the month following that in which there was no dependent who would have been eligible to receive, upon the death of the member, an annuity payable under the election made by him.

§ 48.403 Payment of non-withheld reduction of retired pay.

(a) A retired member of a uniformed service who has made an election shall, during any period including periods on active duty in which he is not receiving retired pay, deposit the amount which would have been withheld from his retired pay had he been receiving that pay.

(b) Such deposit will be payable to the Treasurer of the United States and shall be forwarded monthly to the agency which would normally pay the member concerned retired pay.

(c) The aforementioned agency will in all cases inform the members concerned of the amount to be deposited and when such deposits are to be made.

(d) The aforementioned agency will, after 30 days have elapsed since due date of a deposit, inform the member concerned that he is delinquent from such due date and thereafter his widow, child, or children will not be eligible for the annuity provided under the act until the arrears have been paid. The notification of delinquency will advise the member that 15 additional days have been granted to him in which to remit his deposit, and that if the amount required to be deposited is not remitted within that period the member will be charged interest to include the first day of delinquency. In no case will the expiration date of the 15 days exceed a date later than 45 days from the date the deposit was due. The interest will be compounded annually and the rate will be that in effect at the time the reduction in retired pay commenced or should have commenced. If such member becomes in receipt of retired pay, any arrears with compound interest will be withheld from the retired pay.

§ 48.404 Age to be used.

Ages to be used for calculating reduction of retired pay will be the ages of the member and his named dependents on their nearest birthday as of the date of retirement in the case of an active member and as of the date of election in the case of a retired member.

§ 48.405 Refund of reduction.

(a) Any member or former member on the temporary disability retired list established pursuant to Title IV of the Career Compensation Act of 1949, Public Law 351, 81st Congress, who has elected to receive reduced retired pay in order to provide one or more of the annuities specified in the act, and who is subsequently removed from the list due to any reason other than permanent retirement shall have refunded to him a sum which represents the difference between the amount by which his retired pay has been reduced and the cost of an amount of term insurance which is equal to the protection provided his dependents during the period he was on the temporary disability retired list.

(b) If the member concerned is returned to active duty, he may continue the election as previously made or he may modify or revoke the election as provided in § 48.204.

Subpart E—Annuity

§ 48.501 General information.

No annuity payable under the act shall be assignable, either in law or equity, or be subject to execution, levy, or attachment, garnishment, or other legal process. Annuities payable under this act shall be in addition to any pensions or other payments to which the beneficiaries may now or hereafter be entitled under other provisions of law and shall not be considered income under any law administered by the Veterans Administration.

§ 48.502 Effective date of annuity.

All annuities payable under this act shall accrue from the first day of the month in which the retired member dies and shall be due and payable not later than the fifteenth day of each month following that month and in equal monthly installments thereafter, except that no annuity shall accrue or be paid for the month in which entitlement to that annuity terminates.

§ 48.503 Claims for annuity payments.

Upon official notification of death of a retired member who has elected to receive reduced retired pay, the Department concerned shall forward to the eligible surviving dependents necessary information and forms for making application for annuity payments; such information shall include the place to which the application should be forwarded and to which questions regarding annuity payments should be addressed.

§ 48.504 Payment to children.

Annuities for child or children will be paid to the child or guardian, or will be payable on behalf of the child to the person who has care, custody, and control of the child.

§ 48.505 Establishing eligibility of annuitants.

Eligibility for the annuity will be established by such supporting evidence as may be required by the Department concerned.

§ 48.506 Determination that designated annuitant is ineligible.

(a) The Head of the Department concerned is empowered to use any means provided by law to recover amounts of annuities erroneously paid to any individual under this act. The Head of the Department concerned may authorize such recovery by adjustments in subsequent payments to which the individual is entitled.

(b) There need be no recovery as provided in paragraph (a) of this section when, in the judgment of the Head of the Department concerned, and the Comptroller General of the United States, the individual to whom the erroneous payment has been made is without fault and recovery would be contrary to the purpose of the act or would be against equity and good conscience.

§ 48.507 Reconsideration of determination of eligibility for the benefits of the act.

Determinations regarding eligibility to the benefits of the act may be reconsidered by the Head of the Department concerned or his designee upon application of the applicant.

Subpart F—Miscellaneous

§ 48.601 Annual report.

A report will be prepared annually by the Department concerned. Such report will be submitted to the Joint Committee for the preparation of the consolidated report required of the Secretary of Defense. The information required is shown in Appendix II. The format will be as directed by the Board of Actuaries.

§ 48.602 Organization.

(a) A joint committee composed of representatives of the Departments concerned will meet annually or as often as required prior to the time of meeting of the Board of Actuaries.

(b) The duties of the committee will include but not be limited to the following:

(1) Prepare the joint report required in § 46.601

(2) Make recommendations for changes to this part.

(3) Make recommendations for legislative changes in the act.

(4) Make recommendations to insure uniform operating policies insofar as practicable.

(5) As directed by the Board of Actuaries prepare tables of percentage reduction of retired pay.

(6) As directed by the Board of Actuaries determine a cost of term insurance as required in § 48.405 which will be used by all Departments.

(c) The position of Chairman of the joint committee will be rotated annually

on a fiscal year basis between the Military Departments.

(d) The coordinating and executive agency of the Committee shall be the Department which the Chairman is representing.

APPENDIX I—UNIFORM TABLES OF ACTUARIAL EQUIVALENTS [1]

APPENDIX II—FOR EACH INDIVIDUAL PARTICIPANT THE FOLLOWING DATA WILL BE REQUIRED FROM THE UNIFORMED SERVICES BY THE BOARD OF ACTUARIES FOR THE ANNUAL REPORT

I. *Elections made by persons not yet retired.* Information requested herein concerning elections made by persons not yet retired shall come from transaction records showing the elections and modifications made over the last year (or since the last report). It is not necessary for the purposes of this annual report that current records be maintained showing the effective elections or modifications in force for all members who have made elections in prior years.

(a) *Original elections.*

(1) Status of member (active or inactive).

(2) Sex of member.

(3) Completed years service (for pay purposes) at time of election.

(4) Month and year of election.

(5) Option elected: a, a-d, b, b-d, c-d.

(6) Amount of survivor annuity elected: ½, ¼, ⅛.

(b) *Modifications of previous elections.*

(1) Status of member (active or inactive).

(2) Sex of member.

(3) Completed years service at time of election.

(4) Month and year of this modification.

(5) Last previous election made: a, a-d, b, b-d, c, c-d.

(6) Amount of survivor annuity of last previous election: ½, ¼, ⅛.

(7) Option elected under this modification: a, a-d, b, b-d, c, c-d.

(8) Amount of survivor annuity elected under this modification: ½, ¼, ⅛.

II. *Members drawing or entitled to draw reduced retired pay.*

(1) Sex of member.

(2) Option in effect: a, a-d, b, b-d, c, c-d.

(3) Amount of option: ½, ¼, ⅛.

(4) Applicable table:

Disability.

Non-disability prior to May 1, 1954.

Non-disability after May 1, 1954.

(5) Age of member at election or retirement whichever is later.

(6) Age of spouse at election or retirement whichever is later.

(7) Age of youngest child at election or retirement whichever is later, if applicable.

(8) Full monthly retired pay—before any deductions.[2]

(9) Reduced monthly retired pay—full pay less cost of option only.[1]

(10) Amount of monthly benefit payable to survivors.[2]

(11) Month and year of retirement or of election if later.

(12) Years of service completed at retirement.

(13) Sex of youngest child, if applicable.

(14) Total number of eligible children, if applicable.

Termination data:

(15) Month and year reduced retired pay terminated.

(16) Cause of termination:

Death of member.

No eligible beneficiary where Option 4 has been elected.

Removal of member from temporary disability list without being entered on permanent disability list.

(17) Type of beneficiaries:

Widow only.

Child or children only.

Both spouse and child or children.

(18) Number of eligible children, if applicable.

(19) Identification Code for the election of multiple options.

Where a combination of options has been elected (such as a and b; or a–d and b–d) two cards will be maintained, one for each survivor annuity and each carrying the appropriate proportion of the retired member's pay. In these cases each of the two cards will carry an "identification code" of "05" showing that the card was in reality "half" of the retired member. All elections other than these combination elections (a and b, a–d and b, a and b–d, a–d and b–d) shall be coded "10" to indicate that the card is in reality a "whole" retired member.

III. *Beneficiaries receiving survivor annuities.*

(1) Option under which claim arose: a, a–d, b, b–d, c, c–d.

(2) Amount of survivor annuity under which claim arose: ½, ¼, ⅛.

(3) Month and year survivor benefits began.

(4) Age of spouse when survivor benefits began (if applicable).

(5) Age of youngest child when survivor benefits began (if applicable).

(6) Sex of spouse.

(7) Sex of youngest child.

(8) Number of eligible children when survivor benefits began.

(9) Monthly amount of survivor benefit payable.

Termination data:

(10) Month and year of termination.

(11) Cause of termination:

Death of spouse.

Remarriage of spouse.

Death of child under 18.

Marriage of child under 18.

Attainment of age 18.

(12) Age of last beneficiary, if a child.

IV. A special file should be maintained for cases where the survivor benefit is payable solely because of there being a child beyond age 18 who is mentally incapacitated or physically disabled. Such file should merely identify these cases so that desired information may be obtained by reference to the supporting records.

[1] Filed as part of the original document.

[2] Where options a and b have been elected separate cards are maintained for each option. Each card shall carry the proper proportion (as determined according to instructions for using the tables) of gross retired, reduced retired pay, and benefit payable to survivors.

PART 50—FULFILLING THE MILITARY SERVICE OBLIGATION

Sec.

50.1 Purpose.

50.2 Cancellation.

50.3 Applicability.

50.4 The military service obligation.

AUTHORITY: §§ 50.1 to 50.4 issued under secs. 4, 6, 62 Stat. 605, as amended, 609, as amended, sec. 651, 70A Stat. 27, as amended, sec. 516, 72 Stat. 1439; 50 U.S.C. App. 454, 456, 10 U.S.C. 651, 516. Interpret or apply sec. 262, 69 Stat. 600, as amended, secs. 1, 2, 70 Stat. 333; 50 U.S.C. 1013, 1411, 1412.

§ 50.1 Purpose.

The purpose of this part is to prescribe uniform policy with respect to fulfilling the statutory military service obligation.

§ 50.2 Cancellation.

DoD Directive 1200.3, "Reserve Obligations Under section 4(d), Universal Military Training and Service Act, as amended," dated March 2, 1953, and DoD Directive 1300.4, "Discharge of Reservists for the Purpose of Immediate Entry into the U.S. Military Academy, the U.S. Naval Academy, the U.S. Air Force Academy, or the U.S. Coast Guard Academy, to Prevent Such Individuals from Having Dual Military Status While Enrolled Therein," dated May 3, 1954, are hereby superseded and cancelled.

§ 50.3 Applicability.

This part applies to all military departments in the administration of the regular and reserve components.

§ 50.4 The military service obligation.

(a) *Subsections 4(d) (1) and (2) of the Universal Military Training and Service Act, as amended, hereinafter referred to as the UMT&S Act, as amended.* Members of the Armed Forces, including the reserve components thereof, who possess a statutory reserve obligation as a result of the operation of subsections 4 (d) (1) and (2) of this act are relieved of that obligation by being discharged from military status at the discretion of the Secretary concerned.

(b) *Subsection 4 (d) (3) of the UMT&S Act, as amended*—(1) *Statutory provisions*—(i) *The eight year obligation.* "Each person who * * * [between June 20, 1951 and August 9, 1955, inclusive] * * * is inducted, enlisted, or appointed, under any provision of law, in the Armed Forces, including the reserve components thereof * * * prior to attaining the twenty-sixth anniversary of his birth, shall be required to serve on active training and service in the Armed Forces * * * and in a reserve component, for a total period of eight years, unless sooner discharged on the grounds of personal hardship, in accordance with regulations and standards prescribed by the Secretary of Defense * * *. Each such person, on release from active training and service in the Armed Forces * * * shall * * * be transferred to a reserve component of the Armed Forces, and shall serve therein for the remainder of the period which he is required to serve * * *."

(ii) *The six year obligation.* "Each person who, subsequent to * * * [August 9, 1955] * * * is inducted, enlisted, or appointed, under any provision of law, in the Armed Forces, including the reserve components thereof, except a person enlisting pursuant to the provisions of section 262 of the Armed Forces Reserve Act of 1952, or a person deferred under the next to the last sentence of section 6 (d) (1) of this act, as amended, prior to attaining the twenty-sixth anniversary of his birth, shall be required to serve on active training and service in the Armed Forces and in a reserve component, for a total period of six years, unless sooner discharged on the grounds of personal hardship, in accordance with regulations and standards prescribed by the Secretary of Defense * * *. Each such person on release from active training and service in the Armed Forces * * * shall * * * be transferred to a reserve component of the Armed Forces, and shall serve therein for the remainder of the period which he is required to serve * * *."

(2) *Implementation.* (i) For the purpose of administering subsection 4 (d) (3) of the UMT&S Act, as amended:

(*a*) The terms "inducted," "enlisted," and "appointed" refer to initial entry into any of the Armed Forces, including a reserve component thereof.

(*b*) Except as provided in (*d*) of this subparagraph, its provisions apply to male persons who were inducted, enlisted, or appointed as described in (*a*) of this subparagraph, prior to attaining the 26th anniversary of their birth.

(*c*) Its provisions do not apply to persons who had previously acquired a military service obligation under any other provision of law.

(*d*) The six-year requirement set forth in subparagraph (1) (ii) of this paragraph, does not apply to individuals who enlist in the Reserve under the provisions of section 262 of the Armed Forces Reserve Act of 1952, as amended hereinafter referred to as AFRA, as amended, which requires performance of an initial period of three to six months of active duty for training or to graduates of ROTC or other officers' training programs who perfom six months of active duty for training as authorized by subsection 6 (d) (1) of the UMT&S Act, as amended. Such individuals incur an eight-year military service obligation.

(ii) Subject to the considerations set forth in subdivision (i) of this subparagraph, qualified individuals affected by the provisions of subsection 4 (d) (3) of the UMT&S Act, as amended are required to serve a total period of eight or six years, as the case may be, from the date of their induction, enlistment, or appointment. For personnel accounting purposes, they shall not be considered as Reservists until transferred to a reserve component, unless originally entering on their obligated period of service in that status. Transfer to a reserve component of the Armed Force concerned of persons who have a portion of their obligation remaining upon release from active training and service, and who are determined by the appropriate Secretary to be physically and mentally qualified for enlistment or appointment therein, shall be accomplished without discharge from military status.

(3) *Fulfillment of the military service obligation.* (i) Upon completion of the military service obligation, the individual shall be discharged or otherwise separated unless his enlistment or obligated period of service is extended under any provision of law.

(ii) The military service obligation acquired under provisions of subsection 4 (d) (3) of the UMT&S Act, as amended is considered terminated upon a discharge for the purpose of complete separation from military status, or upon revocation or termination of commission or appointment, acceptance of resignation, dropping from the rolls or dismissal.

(iii) An individual subject to the provisions of subsection 4 (d) (3) of the UMT&S Act, as amended may upon his written application be discharged from the Reserve, irrespective of having performed the total required period of service, for the purpose of taking final vows in a religious order. Such application should be accompanied by a statement or certificate signed by the appropriate official of the religious order showing that to proceed further with his acceptance into the order it is necessary that he be separated from military status.

(iv) The military service obligation acquired under provisions of subsection 4 (d) (3) of the UMT&S Act, as amended is not considered terminated upon discharge or other type of separation for the purpose of immediate entry or reentry in the same or any other component of the Armed Forces in the same or any other status or for the purpose of entry into an officers' training program in which the individual has military status. Additional service performed after such discharge or other type of separation will be counted toward fulfillment of such obligation.

(v) An enlisted member of the Armed Forces who accepts appointment as a cadet or midshipman at a service academy or as a midshipman in the United States Naval Reserve shall not be separated from his enlisted status by reason of such appointment, and the period of time served as cadet or midshipman at a service academy or as a midshipman, United States Naval Reserve shall be counted toward fulfillment of his military service obligation under subsection 4 (d) (3) of the UMT&S Act, as amended.

(vi) A service academy cadet or midshipman, or a midshipman, United States Naval Reserve, who initially entered the Armed Forces in such status shall be transferred, in order to complete his military service obligation under subsection 4 (d) (3) of the UMT&S Act, as amended, to a reserve component in a grade deemed appropriate by the Secretary concerned in the event the appointment of such cadet or midshipman is terminated prior to graduation.

(vii) A person whose enlistment or appointment is terminated as being void on the grounds of minority shall not, as a result of such enlistment or appointment, be considered to have acquired

the military service obligation described in subsection 4 (d) (3) of the UMT&S Act, as amended, nor is service under any enlistment or appointment which was so terminated creditable toward the fulfillment of any subsequently acquired obligation.

(viii) The discharge or other separation of a person from an Armed Force prior to the date he has completed his military service obligation under subsection 4 (d) (3) of the UMT&S Act, as amended, will be effected by the appropriate Secretary in accordance with standards prescribed by the Secretary of Defense. A member of the Armed Forces normally shall not be discharged by reason of personal or community hardship prior to the date he has completed his military service obligation; the provisions of Part 125 of this subchapter shall apply in such cases.

(ix) Interservice transfers of Reservists who are subject to the provisions of subsection 4 (d) (3) of the UMT&S Act, as amended, shall be accomplished as prescribed in DoD Directive 1205.5 "Transfer of Persons between Reserve Components of the Armed Forces under Section 209, Armed Forces Reserve Act of 1952".

(x) Apart from any military service obligation that an individual may possess under subsection 4 (d) (3) of the UMT&S Act, as amended, certain persons are entitled to deferment or exemption from induction. Liability for induction terminates upon attainment of age 26 except when, by reason of deferment, liability for induction has been extended to age 28 or, in other instances, to age 35.

(*a*) *Subsection 4 (c) (2) of the UMT &S Act, as amended.* A person who was an enlisted member of a reserve component on June 25, 1950 and whose application for two years of active duty has been denied is deferred so long as he serves satisfactorily in such reserve component in accordance with provisions of Part 45 of this subchapter.

(*b*) *Subsection 6 (c) (1) of the UMT &S Act, as amended.* A person who was a member of an organized unit of a reserve component on February 1, 1951 is exempt so long as he participates satisfactorily in accordance with provisions of Part 45 of this subchapter.

(*c*) *Subsection 6 (c) (2) (A) of the UMT&S Act, as amended.* An individual who enlists prior to age 18½ in an organized unit of the Army National Guard or Air National Guard is deferred so long as he serves satisfactorily as a member of such organized unit.

(*d*) *Subsection 6 (c) (2) (C) of the UMT&S Act, as amended.* An individual who enlists prior to age 18½ in an organized unit of the Reserve is deferred so long as he serves satisfactorily as a member of such organized unit in accordance with provisions of Part 45 of this subchapter.

(*e*) *Subsection 6 (d) (1) of the UMT &S Act, as amended.* A graduate of ROTC or related officers' training program who has not performed active military service is deferred from induction so long as he continues in Regular or Reserve status pursuant to the terms of his enrollment contract.

(*f*) *Subsection 6 (d) (2) of the UMT &S Act, as amended.* A member of the Reserve commissioned upon graduation from officers' candidate school and not ordered to active duty in commissioned status is deferred so long as he performs satisfactory service in accordance with provisions of Part 45 of this subchapter.

(*g*) *Section 262 of AFRA, as amended.* A person who enlists in the Ready Reserve for eight years and undergoes three to six months of initial active duty for training is deferred so long as he serves satisfactorily in accordance with provisions of Part 45 of this subchapter.

(*h*) *Subparagraph 2 (b), Executive Order No. 10714 (22 F. R. 4273).* An individual without prior military service who enlisted in a reserve component and who is deferred under the provisions of subparagraph 2 (b), Executive Order No. 10714, dated June 13, 1957 incurred a six or eight year military service obligation as indicated in subparagraph (1) of this paragraph.

(xi) An individual who is enlisted or appointed in the Ready Reserve of any of the Armed Forces pursuant to the provisions of section 262 of AFRA, as amended or subsection 6 (c) of the UMT&S Act, as amended and who subsequently fails to participate satisfactorily in Reserve training will not be discharged by reason thereof. The provisions of Part 45 of this subchapter will apply in such cases. An individual who is inducted under the provisions of subsection 6 (c) (2) (E) of the UMT&S Act, as amended and who completes the required period of active training and service, continues, despite his induction, to hold his appointment or enlistment contract to serve as a Reserve, and shall be required to fulfill the term thereof unless discharged therefrom by the Secretary concerned.

This part is effective immediately. Copies of Service Directives implementing its provisions will be furnished the Assistant Secretary of Defense (Manpower, Personnel and Reserve), within 90 days.

PART 53—OCCASIONS UPON WHICH THE UNIFORM OF ANY OF THE ARMED FORCES MAY BE WORN BY PERSONS HONORABLY DISCHARGED THEREFROM

Sec.
53.1 Purpose.
53.2 Policy.

AUTHORITY: §§ 53.1 and 53.2 issued under sec. 772, 70A Stat. 35; 10 U.S.C. 772.

§ 53.1 Purpose.

The purpose of this part is to prescribe the occasions upon which the uniform of any of the Armed Forces may be worn by persons honorably discharged therefrom.

§ 53.2 Policy.

(a) *Eligibility.* Any person who has served honorably in the Army, Navy, Air Force, or Marine Corps, of the United States during war, and whose most recent service was terminated under honorable conditions, shall, although not in the active military service of the United States, be entitled to wear the uniform of the highest grade held during his or her war service upon the following occasions of ceremony:

(1) Military funerals, memorial services, and inaugurals.

(2) Patriotic parades on national holidays; or other military parades or ceremonies in which any active or reserve United States military unit is taking part.

Nothing in the foregoing shall prevent the wearing of uniforms when otherwise authorized by law.

(b) *Persons awarded the Medal of Honor.* Persons awarded the Medal of Honor are authorized to wear the uniform at any time except as prohibited below.

(c) *Occasions upon which prohibited.* Wearing of the uniform is prohibited:

(1) At any meeting or demonstration which is a function of, or sponsored by, any organization, association, movement, group, or combination of persons which the Attorney General of the United States has designated as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

(2) In connection with non-military activities of a business or commercial nature.

(3) Under any circumstances which would tend to bring discredit or reproach upon the uniform.

(d) *Travel.* Authority to wear the uniform includes periods while traveling to and from the ceremony, provided such travel in uniform is performed within 24 hours of the time of the ceremony. When the uniform is worn under the provisions of this instruction by honorably discharged personnel who served during World War II, the Honorable Discharge Emblem shall be worn.

PART 55—PHYSICAL EXAMINATIONS AND ANNUAL CERTIFICATES OF PHYSICAL CONDITION

Sec.
55.1 Purpose.
55.2 Applicability.
55.3 Policy.

AUTHORITY: §§ 55.1 to 55.3 issued under section 1004(a), Title 10, U.S. Code.

§ 55.1 Purpose.

To establish a uniform policy relating to physical examinations and certificates of physical condition for reservists (other than retired reservists) when not on active duty.

§ 55.2 Applicability.

This part applies to all Military Departments in the administration of members of reserve components.

§ 55.3 Policy.

(a) Each member of the Ready Reserve who is not on active duty shall be examined as to his physical fitness at least once every four years, or more often as the Secretary concerned considers necessary, and shall execute and submit annually a certificate of physical condition.

(b) Each member of the Standby Reserve in an active status, or on an inactive status list, shall execute and submit annually a certificate of physical condition.

(c) Members of the Standby Reserve may be examined as to their physical condition if the Secretary concerned considers such action necessary.

(d) Physical examinations will be reported on Standard Form 88, "Report of Physical Examination" and Standard Form 89, "Report of Medical History." To accomplish physical examinations, the Military Departments are authorized to use jointly all available medical facilities and to award points creditable toward retirement to medical reservists not on active duty for administering physical examinations or to use civilian physicians on a reimbursable basis where governmental medical facilities are not available.

(e) The following action may be taken in regard to those reservists failing to submit such information as may be requested by the appropriate Secretary after every reasonable effort has been made to obtain such information:

(1) Reservists having obligation under the Universal Military Training and Service Act, as amended, may be ordered to active duty or active duty for training, as deemed appropriate under the provisions of section 672(b), Title 10, U.S. Code, for the purpose of securing the necessary information.

(2) All other reservists may be considered for discharge pursuant to section 1162(a) of Title 10, U.S. Code.

PART 56—INTER-SERVICE TRANSFER OF OFFICERS (REGULAR)

Sec.
56.1 Purpose.
56.2 Applicability.
56.3 Policy.
56.4 Procedure.

AUTHORITY: §§ 56.1 to 56.4 issued under sec. 716, Title 10, United States Code.

§ 56.1 Purpose.

The purpose of this part is to establish the policies which will govern implementation of section 716, Title 10, United States Code, with respect to the transfer of commissioned officers between the Regular components of the Army, Navy, Air Force and Marine Corps.

§ 56.2 Applicability.

(a) This part is applicable to officers holding Regular commissions in the armed services, except officers of the medical services. The inter-service transfer of officers holding commissions in the medical services will continue to be accomplished under existing regulations (DoD Instruction 1205.1, "Implementation of the Universal Military Training and Service Act with Respect to Medical, Dental, and Allied Specialist Registrants", Section XI).

(b) Policy and procedure for the transfer of Reserve officers on extended active duty is contained in DOD Directive 1300.5, Part 120 of this subchapter.

(c) Transfer of officers of the Reserve components not on active duty (except officers of the medical services) will continue to be accomplished under applicable Service regulations for conditional resignation and appointment.

(d) No officer of a Reserve component will be transferred to a Regular component under this authority.

§ 56.3 Policy.

(a) It is the policy of the Department of Defense that an officer of any military service who is especially qualified to contribute to the success of an activity of another service will be given an opportunity to do so without interruption of his service career, by being transferred from one service and appointed in another.

(b) No officer will be so transferred without his consent, nor will an officer transferred from one service be appointed in another service with a higher rank or precedence than that he held on the date prior to his transfer.

(c) Transfers will be made only within authorized strength limitations.

(d) While intended for use primarily in the technical fields to permit the full utilization of specialists, this authority to transfer between services is not restricted to technical specialists.

§ 56.4 Procedure.

(a) Request for transfer will normally be initiated by an appropriate agency of the military department desiring the services of an officer serving in another department, or by the officer himself.

(1) (i) If initiated by the officer himself, the request will be forwarded through military channels to the Secretary of the military department in which he is presently commissioned, and will be accompanied by a justification of the requested transfer as being in the interest of national defense and the individual officer.

(ii) The Secretary of the losing Department will forward the request to the Secretary of Defense through the Secretary of the gaining Department. Both Departmental Secretaries will indicate their concurrence or non-concurrence in the requested transfer.

(2) If initiated by other than the officer himself, request for transfer will be routed to the Secretary of Defense through the Secretaries of the gaining and losing Departments and will be accompanied by a statement that the officer concerned consents to the proposed transfer.

(b) The Secretary of Defense will recommend to the President such requested transfers as he considers in the best interests of the Department of Defense.

(c) Termination of presently held commissions and reappointment in another service will be accomplished by the two Services affected without interruption of the continuity of the officer's total military service.

(d) An officer transferred under provisions of this part will be placed on the applicable promotion list or lineal list of the armed force to which he is transferred in an appropriate position as determined by the amount of promotion-list service with which he was credited in his parent service on the day prior to his transfer. His permanent grade and date of rank will be determined by applying that amount of promotion-list service to the appointment laws in effect for the service to which he is being transferred. His temporary grade and date of rank will remain the same as that he held in his parent service on the day prior to his transfer.

(e) An officer transferred under provisions of this part will be credited with the unused leave with which he was credited at the time of transfer, and with the total military service with which he was credited on the date prior to his transfer.

PART 60—EARLY RELEASE OF MILITARY ENLISTED PERSONNEL FOR COLLEGE ENROLLMENT [ADDED]

Sec.
60.1 Purpose.
60.2 Policy.
60.3 Release criteria.
60.4 Exceptions.
60.5 Applicability.
60.6 Action required.

AUTHORITY: §§ 60.1 to 60.6 issued under R.S. 161, sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 22, 171a.

§ 60.1 Purpose.

The purpose of this part is to establish a uniform policy among the Services with respect to discharge or release of enlisted personnel from active service prior to expiration of service period for the purpose of entering or returning to a college, university, or equivalent educational institution.

§ 60.2 Policy.

(a) In the interest of contributing to a high educational level in the United States, it is the policy of the Department of Defense that the maximum assistance practicable will be given to enlisted personnel who are qualified and demonstrate a desire to further their education. Personnel who would be unduly penalized in the pursuit of their education if required to remain in service until expiration of their term of enlistment or induction may be released early subject to meeting all of the requirements shown in §§ 60.3 and 60.6. Separation will be for the convenience of the Government.

(b) The effective date of release from service under this policy will not be earlier than ten days prior to the date of registration prescribed by the educational institution.

(c) Aliens seeking to qualify for citizenship by completion of three years active military service will be excluded from release under this policy prior to performance of such qualifying service.

§ 60.3 Release criteria.

(a) Latest acceptable registration date of school must fall within the last three months of remaining service. In general, personnel who will have a reserve obligation upon separation will not be released under this program until they have completed a minimum of 21 months' active duty on their current term of service.

(b) The individual's services must not be essential to the mission of his assigned organization.

(c) Applicants must furnish documentary evidence that they have been accepted for enrollment without qualification commencing with a specific school term in a recognized institution of higher education in a full-time course of instruction leading to a baccalaureate or higher degree. A "recognized institution" is one listed in Part III of the Educational Directory published by the United States Department of Health, Education, and Welfare whose credits are accepted by accredited institutions.

(d) An applicant must demonstrate his ability and willingness to make the required payment of an entrance fee if he has not already done so.

(e) It must be established clearly by applicant that the specific school term for which he seeks release is academically the most opportune time for him to begin or resume his education and that delay of enrollment until normal expiration of service would cause undue handicap.

§ 60.4 Exceptions.

On an individual basis the Secretaries of the Departments may authorize the release of persons not fully meeting the criteria as exceptions to policy (e.g., personnel who desire to enter and are accepted by theological schools not listed in Part III of the Educational Directory).

§ 60.5 Applicability.

This policy is applicable to all enlisted personnel world-wide, other than reservists ordered to 6 months' active duty for training.

§ 60.6 Action required.

(a) Each military department will establish procedures to guard against abuse of this policy by personnel seeking to utilize it as a means of evading completion of their full term of military service.

(b) Requests for early release from applicants who meet established criteria will be approved unless cogent military circumstances prevent.

PART 63—RECRUITING POLICY FOR SECONDARY SCHOOLS

Sec.
63.1 Purpose.
63.2 Policy.

AUTHORITY: §§ 63.1 and 63.2 issued under R.S. 161, sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 22, 171a.

§ 63.1 Purpose.

The purpose of this part is to provide the Military Departments with policy guidance for both active and reserve recruiting elements in dealing with secondary school authorities.

§ 63.2 Policy.

(a) Students in secondary schools will be encouraged by recruiters to stay in school and graduate.

(b) Students enrolled in secondary schools will not be accepted for active duty enlistment without prior notice to the school and without parents' consent.

(c) When desired by local school authorities, joint arrangements with school authorities for in-school student time will be made by one representative selected by the military recruiting elements of the Military Departments in each community.

(d) Secondary schools are to be encouraged and given every assistance in teaching the vocational-career opportunities of the Armed Forces at the same time other occupational opportunities are taught in schools.

(e) All contacts with school authorities soliciting their cooperation on military career programs will be jointly arranged by the recruiting services to the greatest practical extent.

(f) The National Guard, Air National Guard and Coast Guard, as appropriate, will be encouraged to participate in this secondary school program.

PART 66—RELEASE OF INFORMATION FROM MEDICAL RECORDS

Sec.
66.1 General.
66.2 Individuals and. agencies to whom medical records may be released.

AUTHORITY: §§ 66.1 and 66.2 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 66.1 General.

This policy governs the release of information from the medical records of members and former members of the Armed Forces by those bureaus and offices designated by the Secretaries of the Army, Navy and Air Force, to the individuals and agencies hereinafter named. Those bureaus and offices will determine the extent of and the form in which medical information will be furnished. The information will be treated as confidential. Only that information will be furnished which is necessary to the accomplishment of the legitimate purpose for which the information is required.

§ 66.2 Individuals and agencies to whom medical records may be released.

(a) Department of the Treasury.
(b) Department of the Army.
(c) Department of Justice.
(d) The Post Office Department.
(e) Department of the Navy.
(f) Department of Commerce (Coast and Geodetic Survey).
(g) Department of Labor (Bureau of Employees' Compensation).
(h) Department of the Air Force.
(i) Department of State and Central Intelligence Agency (for use in considering prospective employees).
(j) Civil Service Commission (to consider claims under section 2, Act of June 27, 1944, Chapter 287, as amended (5 U.S.C. 851)). In addition, for personnel security investigations conducted under pertinent acts and Executive Orders, accredited agents of the Civil Service Commission may have access, for review purposes, to material designated as records of medical treatment included in official personnel folders of former civilian or military personnel of the military departments, subject to the following conditions:

(1) Access to these records shall be only for investigations required by law or Executive order, or pursuant to special agreement between the Civil Service Commission and the Military Department concerned.

(2) Information contained in the medical treatment records shall be considered confidential in nature and will be used only as a basis for determining security risk.

(3) Such medical information or any other information which may be contained in any reports or other communications contained therein from any agency or source other than the Department of Defense may not be extracted or otherwise used without the prior permission of the originating agency.

(4) Except for the restrictions set forth in subparagraph (3) of this paragraph, the information extracted under the policies set forth herein may be furnished to the employing agency to be used only as a basis for determining security risk.

(k) Department of Health, Education, and Welfare (Public Health Service).
(l) Selective Service.
(m) Veterans' Administration.
(n) Federal Aviation Agency (for use in connection with airman certificates under section 602, Federal Aviation Act of 1958 (49 U.S.C. 1422)).
(o) Duly accredited representatives of the National Academy of Sciences-National Research Council, when engaged in cooperative studies undertaken at the specific request or with the consent of the Surgeon General, U. S. Army; the Surgeon General, U. S. Navy; or the Surgeon General, U. S. Air Force.
(p) Federal or State mental hospitals or penal institutions when the member or former member is a patient or inmate therein.
(q) Registered civilian physicians, upon request of the individual or his legal representative, when required in connection with the treatment of the member or former member of the above services.
(r) The member or former member upon request, except information contained in the medical record which would prove injurious to his physical or mental health. In the latter case the medical information may be furnished to the next of kin, upon request of the individual, or to his legal representative upon his furnishing a certified copy of the court order of appointment (see section 3, act of August 27, 1940 (54 Stat. 859), as amended (50 U. S. C. App. 403 (a)) and subsection 9 (a) Universal Military Training and Service Act (62 Stat. 614; 50 U. S. C. App. 459 (a)).
(s) Directly to the next of kin or legal representative (upon submission by the latter of a certified copy of the court order of appointment), when the member or former member has been adjudged insane or is dead. Next of kin or legal representative will be required to furnish the releasing office with a copy of the court order adjudging the member or former member to be insane, or to furnish adequate proof of death of the member or former member in cases where proof of death is not on file in the office concerned.
(t) A representative, other than a physician or legal representative, specifically authorized in writing by the individual whose records are involved, who is to perform a service for such individual. The next of kin may likewise authorize a representative, where the member or former member is insane or dead. The purpose for which the information is to be used and the nature of the service to be performed must be furnished.
(u) Under procedures established by the Surgeon General of the service concerned, access to individual medical records may be granted to qualified individuals for the purposes of medical research and study.

NOTE: Nothing in this part is intended to preclude the release of appropriate information concerning the current health and welfare of the individuals in the Armed Services, or vital statistical data, including proof of death, concerning such personnel, nor to preclude compliance with court orders calling for the production of medical records in connection with litigation or criminal prosecutions, nor to preclude release of information from medical records when required by law.

PART 70—MEDICAL CARE FOR DEPENDENTS OF MEMBERS OF THE UNIFORMED SERVICES

Sec.
70.1 General information.
70.1–1 Purpose.
70.1–2 Scope.
70.1–3 Definition of terms used in this part.
70.1–4 Administration.
70.2 Determination of eligibility and identification of dependents.
70.2–1 Determination of dependents' eligibility.
70.2–2 Identification of dependents.
70.3 Determination of sources from which eligibile dependents receive medical care.
70.3–1 Among uniformed services facilities.
70.3–2 Between civilian medical facilities and uniformed services facilities within United States and Puerto Rico.
70.3–3 Exceptions; emergency care and other circumstances.
70.3–4 Between civilian medical facilities and uniformed services facilities outside the United States and Puerto Rico.
70.4 Medical care for dependents at medical facilities of the uniformed services.
70.4–1 Authority for providing medical care to dependents.
70.4–2 Facilities available.
70.4–3 Medical care authorized.
70.4–4 Medical care not authorized.
70.4–5 Dental care.
70.4–6 Admission of dependents for medical care.
70.4–7 Cross-utilization of service medical facilities.
70.4–8 Charges for dependent medical care.
70.4–9 Transportation of patients.
70.5 Medical care in civilian facilities.
70.5–1 Eligibility for civilian medical care.
70.5–2 Medical and hospital care authorized from civilian sources.
70.5–3 Terms of reference and rules for the provision of authorized medical care from civilian sources.
70.5–4 Medical care not authorized.
70.5–5 Admission of dependents for medical care to civilian sources.
70.5–6 Charges.
70.5–7 Administration.
70.5–8 Hospitalization beyond period of 365 days.
70.5–9 Government liability for payment of civilian medical care costs.
70.5–10 Administration of changes to this part effective 1 January 1960.
70.6 Medical care in medical facilities not otherwise provided for.
70.7 Medical care for members of the uniformed services.
70.8 Medical care for retired members of the uniformed services.
70.8–1 Retired members eligible for care.
70.8–2 Ration allowance for retired enlisted members.
70.8–3 Charges for officers' subsistence.
70.9 Budgeting and accounting for medical and dental care furnished in facilities of the uniformed services.
70.10 Implementation.
70.11 Effective date.

AUTHORITY: §§ 70.1 to 70.11 issued under 10 U.S.C. 1071–1085.

§ 70.1 General information.

§ 70.1–1 Purpose.

The purpose of this part is to prescribe policy for administering the Dependents' Medical Care Act.

§ 70.1–2 Scope.

This part is applicable to the uniformed services.

§ 70.1–3 Definition of terms used in this part.

(a) "Uniformed services" means the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the Coast and Geodetic Survey, and the Commissioned Corps of the Public Health Service.

(b) "Member of a uniformed service" means a person appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service who is serving on active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less.

(c) "Retired member of a uniformed service" means a member or former member of a uniformed service who is entitled to retired, retirement, or retainer or equivalent pay as a result of service in a uniformed service, other than a member or former member entitled to retired or retirement pay under Title III of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 who has served less than eight years on full time duty in active military service other than active duty for training.

(d) "Dependent" means any person who bears to a member or retired member of a uniformed service, or to a person who died while a member or retired member of a uniformed service, any of the following relationships:

(1) The lawful wife;
(2) The unremarried widow;
(3) The lawful husband, if he is in fact dependent on the member or retired member for over one-half of his support;
(4) The unremarried widower, if he was in fact dependent upon the member or retired member at the time of her death for over one-half of his support because of a mental or physical incapacity;
(5) An unmarried legitimate child (including an adopted child or stepchild), if such child has not passed his twenty-first birthday;
(6) A parent or parent-in-law, if the said parent or parent-in-law is, or was at the time of the member's or retired member's death, in fact dependent on said member or retired member for over one-half of his support and is, or was at the time of the member's or retired member's death, actually residing in the household of said member or retired member. For the purposes of this directive, the requirement of actually residing in the household shall be fulfilled when the parent or parent-in-law actually resides or was residing at the time of death of a member or retired member, in a dwelling place provided or maintained by said member or retired member; or
(7) An unmarried legitimate child (including an adopted child or stepchild) who (i) has passed his twenty-first birthday, if the child is incapable of self-support because of a mental or physical incapacity that existed prior to his reaching the age of twenty-one and is, or was at the time of the member's or retired member's death, in fact dependent on him for over one-half of his support, or (ii) has not passed his twenty-third birthday and is enrolled in a full-time course of study in an institution of higher learning as approved by the Secretary of Defense or Secretary of Health, Education, and Welfare and is, or was at the time of the member's or the retired member's death, in fact dependent on him for over one-half of his support.

(e) "Dependents eligible for civilian medical care" means the lawful wife or the dependent lawful husband (spouses) and children who are dependents of members of the uniformed services.

(f) "Secretary of a uniformed service" means the Secretary of the Army, Navy (for the Navy and Marine Corps), or Air Force, or for the other uniformed services (Coast Guard, Public Health Service, Coast and Geodetic Survey), the Secretary of Health, Education, and Welfare. The latter may delegate his duties and responsibilities in relation to dependent medical care to The Surgeon General of the Public Health Service.

(g) "The United States" means all of the States and the District of Columbia.

(h) "Executive agent" means the party who acts for the uniformed services in negotiating and administering contracts for medical (physicians) and hospital services under the policy guidance of the Department of Defense.

(i) "Contractor" means the legal entity with which the Government enters into a contract for the purpose of implementing the Dependents' Medical Care Act, such as a state medical society, an insurance company, Blue Shield or Blue Cross.

(j) Miscellaneous medical and technical terminology:

(1) "Diagnosis": A determination of the existence and nature, or absence, of disease or injury by history with physical and mental findings, including physical examinations and the utilization of medically accepted diagnostic procedures, e. g., laboratory tests and pathology and X-ray examinations.

(2) "Outpatient care": The medical services which are normally performed in locations such as the home, a physician's office, or the outpatient department of a hospital, clinic, or dispensary.

(3) *Maternity and infant care.* Medical and surgical care for the mother incident to pregnancy including prenatal care, delivery, post-natal care, including care of the infant, and treatment of complications of pregnancy.

(4) "Domiciliary care": Care which is normally given in a nursing home, convalescent home, or similar institution to a patient who requires personal care rather than active and definitive treatment in a hospital for an acute medical or surgical condition. It includes but is not limited to nursing care required as a result of old age or chronic disease.

(5) "Chronic disease": This term shall be construed to include non-acute conditions and disabilities in which the prognosis indicates long continued duration of the ailment.

(6) "Nervous and mental disorders": This term means those conditions classi-

fied as neuroses, psychoneuroses, psychopathies, or psychoses.

(7) "Dental care as a necessary adjunct to medical or surgical treatment": Dental care determined by the cognizant physician and dentist to be required for the proper treatment of a medical or surgical condition.

(8) *Adjuncts to medical care.* Prosthetic devices such as artificial limbs, artificial eyes, hearing aids, orthopedic footwear, spectacles, and similar medical supports or aids.

(9) "Adjuncts to dental care": Removable or fixed prosthetic or fixed prosthodontic restorations and similar dental supports or aids.

§ 70.1–4 Administration.

(a) The Secretary of Defense has jurisdiction over the Army, Navy, Air Force, Marine Corps, and the Coast Guard when operating as a service with the Navy.

(b) The Secretary of Health, Education, and Welfare has jurisdiction over the Public Health Service and for medical care purposes over the Coast and Geodetic Survey, and the Coast Guard when not in service with the Navy.

§ 70.2 Determination of eligibility and identification of dependents.

§ 70.2–1 Determination of dependents' eligibility.

(a) The uniformed services will require dependents (or their sponsors) who request medical care to furnish proof of their eligibility for such care. In order to develop uniformity in the criteria utilized by the uniformed services to determine dependents eligible for medical care, the uniformed services will utilize, as soon as practicable, DD Form 1172,[1] "Application for Uniformed Services Identification and Privilege Card." Implementation and use of this form shall be completed not later than December 31, 1957. Pending use of this DD Form, existing procedures for determining dependents' eligibility for medical care, employed by the respective services, will be continued. Modifications of DD Forms 1172 and 1173 may be made, subject to the approval of the Office, Secretary of Defense.

(b) The Secretaries of the uniformed services and their designees are hereby authorized to make determinations of dependency for purposes of this part.

§ 70.2–2 Identification of dependents.

(a) Upon an affirmative determination by the Secretary of a uniformed service or his designee that a dependent is eligible for medical care, such dependent will be issued a "Uniformed Services Identification and Privilege Card", DD Form 1173.[1] The DD Form 1173 will serve as the primary means of identifying dependents eligible for medical care.

(b) The administrative provisions governing the application for the DD Form 1173 and its issuance to dependents of members and dependents of retired members of the uniformed services and dependents of persons who died while a member or a retired member of a uniformed service will be as prescribed by the Secretary of the uniformed service concerned. However, such regulations for active duty members with dependents will include but not be limited to provisions for the following:

(1) *Issuance.* Application for, and issuance of, DD Form 1173 will be accomplished at the following times:

(i) Upon entry on active duty for a period in excess of 30 days.

(ii) Upon re-enlistment.

(iii) Upon change in dependency status stated on current authorization card.

(iv) Upon certification of loss.

(v) Upon retirement or death.

(2) *Surrender.* The DD Form 1173 shall be surrendered:

(i) Whenever a new card is issued except to replace loss.

(ii) Upon expiration date.

(iii) Whenever the cardholder becomes ineligible.

(iv) Upon death, retirement or release of member to inactive duty.

(3) *Expiration date.* The DD Form 1173 shall be effective for the contracted period of service of the sponsor upon whom the entitlement is based in the case of dependents of the uniformed services, or in the case of minors the 21st birthday if it occurs prior to the termination of the service of the sponsor, except that for entitlement to medical care, the provisions of paragraph (d) (7) of § 70.1–3 will apply. The departments will insure that sponsors are directed to notify the appropriate authority immediately upon any change in status that would terminate or modify the right to any of the benefits for which the card may be used.

(4) *Dependents listed.* Each dependent, ten years or over, entitled to medical care, will be issued DD Form 1173. Certification of minor dependents, under ten years of age, for eligibility for medical care will be the responsibility of the dependent, accompanying parent, member or acting guardian.

(5) *Entitlement to care in civilian facilities.* All DD Forms 1173 will contain an appropriate notation as to those dependents who have entitlement to medical care at both medical facilities of the uniformed services and civilian medical facilities. Thus, each card covering a dependent eligible for civilian medical care (see § 70.1–3(e)) will have a notation thereon showing that care in civilian facilities is authorized even though the situations in which such care may be obtained at Government expense are limited. For example, such a dependent residing with the sponsor, or living in an area to which the sponsor is assigned, and whose freedom of choice has been restricted pursuant to § 70.3–2 shall not be entitled generally to receive medical care in civilian facilities at Government expense, but shall be so entitled only in the case of an emergency and under other circumstances outlined in this part or in the joint regulations.

(c) The original issuance and use of the DD Form 1173 will be accomplished by all the uniformed services as soon as practicable, but in no event later than 31 December 1957.

§ 70.3 Determination of sources from which eligible dependents receive medical care.

§ 70.3–1 Among uniformed services facilities.

Normally, a dependent requesting care at a uniformed services facility will be expected to use the facilities servicing the area in which the dependent resides.

§ 70.3–2 Between civilian medical facilities and uniformed services facilities within United States and Puerto Rico.

(a) Dependents eligible for civilian medical care who are not residing with their sponsors, or in an area to which their sponsor is assigned, shall have free choice between uniformed services medical facilities and civilian medical facilities.

(b) Outpatient medical care at Government expense for dependents eligible for civilian medical care is not authorized from civilian sources, except that certain specified treatment for such dependents who are not hospitalized, will be authorized when in accordance with § 70.5–2(f); § 70.5–3(d) (1), (2), and (3); or § 70.5–6(i).

(c) Dependents eligible for civilian medical care who reside with their sponsors, or in an area to which their sponsor is assigned, shall have free choice between uniformed services medical facilities and civilian medical facilities except that the Secretary of a uniformed service with the approval of the Secretary of Defense or the Secretary of Health, Education, and Welfare, as appropriate, may require such dependents in a prescribed area to seek medical care in a uniformed services medical facility if he finds that:

(d) When necessary restrictions on freedom of choice for a particular medical facility are imposed, the Secretary of a uniformed service may prescribe a local geographic area which the medical facility concerned shall serve normally. In determining the boundaries of the geographic area, consideration shall be given to normal commuting time, distance, and unusual geographic and transportation factors such as toll bridges or ferries which would increase unreasonably the time and expense of travel. It shall be the responsibility of the Secretary of a uniformed service, when imposing necessary restrictions upon the freedom of choice of a dependent, to ensure liaison and coordination among all uniformed services and civilian medical facilities in and adjacent to the geographical area in which restrictions have been imposed. When any restrictions on freedom of choice have been imposed or removed, the Executive Agent shall be so advised.

(e) In lieu of the restrictions described in paragraphs (c) and (d) of this section, the Secretary of Defense may specify a date as of which the restrictions described below will be effective. On and after the specified date, a restriction on freedom of choice shall be effective as to dependents in the United States and Puerto Rico, who are eligible for civilian medical care, who reside with

[1] Filed as part of the original document.

their sponsors, or in an area to which their sponsor is assigned, who require care authorized under this Part 70 from civilian sources but have not commenced receiving such care from civilian sources on the aforesaid specified date (or, in the case of a maternity patient, whose care by her civilian physician on that date has not reached the second trimester), and who reside in an area where adequate medical facilities of a uniformed service are available for such dependents. No restriction on freedom of choice will be imposed on such dependents residing in areas where adequate medical facilities of a uniformed service are not available. However, in order that the restriction may be appropriately administered, each dependent who resides with the sponsor, or in an area to which the sponsor is assigned, and who requires care authorized under this Part 70 from civilian sources but has not commenced receiving such care from civilian sources on the specified date (or, in the case of a maternity patient, whose care by her civilian physician on that date has not reached the second trimester), will be required to contact a uniformed services installation. For those residing in areas where an adequate medical facility of a uniformed service is not available, DD Form 1251, "Nonavailability Statement", authorizing care from civilian sources at Government expense will be issued. Such a statement may also be issued to a dependent residing with the sponsor, or residing in an area to which the sponsor is assigned, when the capability does not exist in the medical facility (or facilities) of the uniformed services in the area to provide the required care because of lack of necessary staff, facilities, or space. The DD Form 1251, issued in the manner described above, shall be evidence of entitlement of the dependent to care authorized under this Part 70 from civilian sources at Government expense. In determining whether a dependent covered under this paragraph (e) is residing in an area where adequate medical facilities of a uniformed service are available, the criteria outlined in paragraphs (c) and (d) of this section shall apply. Detailed procedures concerning the format of the DD Form 1251 and the manner in which it is to be issued may be set forth in the Joint Regulations. Spouses and children are considered to be residing with their sponsor if they reside in the area to which the sponsor is assigned, in the area of his permanent duty station, or the home port or home yard of a ship, even though the sponsor may be temporarily away, by reason of temporary duty with his unit or ship, from the area to which he is assigned, the permanent duty station or his home port or home yard respectively, or by reason of the sponsor's absence on individual temporary duty or temporary additional duty order.

§ 70.3–3 Exceptions: emergency care and other circumstances.

(a) Any restrictions on freedom of choice and the requirement for the DD Form 1251[1] described in § 70.3–2(e) shall be waived:

(1) When circumstances indicate that it was necessary for the eligible dependent to obtain authorized medical care from civilian facilities due to a bona fide emergency, e.g. serious injury following an accident or illness or sudden onset requiring immediate treatment authorized to be obtained from civilian sources at the nearest available medical facility to preserve life, health, or to prevent undue suffering; or

(2) During the period of absence on a trip of the eligible dependent from the area to which the sponsor is assigned. This exception is not to be used to circumvent the restrictions imposed on freedom of choice.

(3) When an eligible dependent wife, whose husband dies while on active duty, is pregnant at the time of his death. (See § 70.5–5(e)).

(b) Additionally, the restrictions initially imposed by the Secretary of Defense on a specified date pursuant to § 70.3–2(e) and the requirement for a DD Form 1251[1] described therein shall be waived with regard to any eligible dependent who has commenced receiving care authorized under this Part 70 from civilian sources prior to that specified date (except that, for maternity patients, care in the second trimester by her civilian physician on that date must have commenced prior thereto). The dependent involved will be entitled to complete any care which was authorized under this Part 70 prior to the date specified by the Secretary of Defense and which has been commenced in accordance with the preceding sentence.

§ 70.3–4 Between civilian medical facilities and uniformed services facilities outside the United States and Puerto Rico.

Dependents eligible for civilian medical care who are not residing with their sponsors, or in an area to which their sponsor is assigned, shall have free choice between uniformed services medical facilities and professionally acceptable local civilian sources. Where medical facilities of the uniformed services are available within the area and are capable of providing the required care, spouses and children outside the United States and Puerto Rico who are residing with their sponsors, or in an area to which their sponsor is assigned, will utilize these facilities for such care. In areas where medical facilities of the uniformed services are nonexistent or incapable of providing adequate medical care, spouses and children who are residing with their sponsors, or in an area to which their sponsor is assigned, may be authorized civilian medical care from professionally acceptable local sources in accordance with this Part 70.

§ 70.4 Medical care for dependents at medical facilities of the uniformed services.

§ 70.4–1 *Authority for providing medical care to dependents.* Whenever requested, medical care shall be given dependents of members and dependents of retired members of the uniformed services, and dependents of persons who died while a member or a retired member of a uniformed service, in medical facilities of the uniformed services subject to the availability of space and facilities, and the capabilities of the professional staff. Determinations made by the medical officer in charge of the medical facility, or by his designee, as to availability of space, facilities, and the capabilities of the professional staff, shall be conclusive. The furnishing of medical care to dependents shall not interfere with the primary mission of those facilities.

§ 70.4–2 Facilities available.

In making the determination of the availability of medical facilities at a specific location, the following criteria shall be applied:

(a) Mission of the uniformed services medical facility.

(b) Adequacy of professional care available for diagnosis and treatment.

(c) Maximum number of patients who can be treated without sacrificing high professional medical standards.

(d) Optimum utilization of facilities of the uniformed services.

§ 70.4–3 Medical care authorized.

(a) Medical care of dependents in the facilities of the uniformed services shall be limited to the following:

(1) Diagnosis.

(2) Treatment of acute medical conditions, including acute exacerbations or acute complications of chronic diseases.

(3) Treatment of surgical conditions.

(4) Treatment of contagious diseases.

(5) Immunization.

(6) Obstetrical and infant care.

(b) Treatment may be provided for acute emergencies of any nature which are a threat to the life, health, or well-being of the patient including acute emotional disorders. Hospitalization is authorized at Government expense for such emergencies only pending completion of arrangements for care elsewhere unless the illness or condition also qualifies for care under paragraph (a) (1), (2), (3), (4) or (6) of § 70.4–3. With special exceptions as authorized by the Surgeon General of a uniformed service, additional care in a hospital of the uniformed services on a space available basis may be provided in accordance with paragraph (b) of § 70.4–4.

(c) When a hospitalized dependent patient requires care beyond the capabilities of the medical facility, the commanding officer or officer-in-charge of the facility is authorized to:

(1) Transfer the patient to the nearest medical facility of the uniformed services where the required treatment is available. Government transportation may be utilized to effect such transfer; or

(2) Procure from civilian sources the necessary supplemental material and professional and personal services required for the proper care and treatment of the patient in his facility.

The authorization provided by this paragraph (c) is applicable after admission of the patient when the patient's condition so requires.

[1] Filed as part of the original document.

§ 70.4–4 Medical care not authorized.

Dependents shall not be provided:

(a) Hospitalization at medical facilities of the uniformed services for the following:

(1) Chronic diseases. (See paragraph (j)(6) of § 70.1–3 and paragraph (a)(2) of § 70.4–3.)

(2) Nervous and mental disorders. (See paragraph (j)(7) of § 70.1–3.)

(3) Medical or surgical care that is desired or requested by the patient which, in the opinion of cognizant medical authority is not medically indicated; e. g., surgery solely for cosmetic purposes.

(4) Domiciliary Care. (See paragraph (j)(4) of § 70.1–3.)

(b) However, in special and unusual cases, exceptions may be made by a Surgeon General of the uniformed services and hospitalization may be provided for such disorders or diseases as set forth in paragraph (a) (1) and (2) of this section. In no instance, may the period of hospitalization exceed 12 months.

(c) Artificial limbs, artificial eyes, hearing aids, orthopedic footwear and spectacles, except that outside of the United States and at remote stations within the United States, as designated by the Secretary of the uniformed service concerned and approved by the Secretary of Defense where adequate civilian facilities are not available, those items, if available from Government stocks, may be provided to dependents at invoice cost to the Government.

(d) Ambulance service, except in acute emergency as determined by the medical officer in charge.

(e) Home calls, except in special cases where it is determined by the cognizant medical authority to be medically necessary.

§ 70.4–5 Dental care.

(a) Dental care for dependents is not authorized except:

(1) Emergency dental care to relieve pain and suffering, but not to include any permanent restorative dentistry or dental prosthesis;

(2) Dental care as a necessary adjunct to medical or surgical treatment. (See paragraph (j)(8) of § 70.1–3; and

(3) Outside the United States, and in remote areas within the United States as designated by the Secretary of the Army, Navy, or Air Force and approved by the Secretary of Defense where adequate civilian dental facilities are not available to personnel at or near military installations; or as designated by the Surgeon General, U.S. Public Health Service, and approved by the Secretary of Health, Education, and Welfare for those facilities over which jurisdiction is provided in § 70.1–4(b).

§ 70.4–6 Admission of dependents for medical care.

(a) As indicated in § 70.2–2, the DD Form 1173 will serve as the primary means of identifying dependents eligible for medical care. However, pending use of DD Form 1173, existing methods and procedures for identifying dependents eligible for medical care may be continued within each of the respective services with such immediate modifications of established procedures as are required to permit all eligible dependents access to medical care.

(b) Procedures for admission of dependents requesting medical care at uniformed services medical facilities prior to 1 January 1958 will be as currently established by the admitting facility.

(c) Procedures for admission of dependents requesting medical care at uniformed services medical facilities after 31 December 1957 will be as follows:

(1) Identification will be by means of a DD Form 1173. Uniformed services medical facilities may prescribe such additional local procedures as necessary. However, these procedures should not complicate, delay or preclude treatment of an eligible dependent nor discriminate against the dependent of members of other services.

(2) Under emergency conditions and similar circumstances, the admitting authority may waive the requirement of producing DD Form 1173. However, in each such instance at uniformed services medical facilities certification will be required attesting to the dependent's eligibility for medical care. This certification will be executed by either the dependent, the member, retired member, parent or guardian as appropriate.

§ 70.4–7 Cross-utilization of service medical facilities.

To provide effective cross-utilization of medical facilities of the uinformed services, eligible dependents, regardless of service affiliation, shall be given equal opportuinty for medical care. Such dependents may request and be furnished medical care at the medical facility of the uinformed service serving the area in which they reside or in the medical facility of the sponsor's own uniformed service depending upon the capability of the medical facilities concerned. In areas where medical facilities of two or more uniformed services are available, the appropriate officials of each service, with due consideration for the relative size and capabilities of the medical facilities, shall participate jointly in determining the capabilities and establishing areas of medical responsibility. Delineation of such areas shall be published jointly and will include zones in which dependents are permitted to use either the facilities of the sponsor's own service or the facilities which have medical responsibility for the area in which the dependent resides. In addition, commanders of uniformed services hospitals will establish necessary liaison and coordination with the representatives of the local medical society and the civilian hospital facilities as appropriate, to ensure to the maximum extent possible, the smooth referral of excess dependent patient loads to civilian medical facilities when such referrals appear desirable.

§ 70.4–8 Charges for dependent medical care.

When medical care is provided dependents in facilities of the uniformed services, the patient shall pay the following charges:

(a) *Inpatient care.* The per diem rate of charge for inpatient care provided dependents is $1.75 which includes cost of subsistence.

(b) *Outpatient care.* As a restraint on excessive demands for medical care, uniform minimal charges may be imposed for outpatient care only after a special finding by the Secretary of Defense after consultation with the Secretary of Health, Education and Welfare that such charges are necessary. The Secretaries of the uniformed services shall have continuing responsibility for determining the nature and extent of possible abuses of outpatient care in uniformed services medical facilities and shall so advise the Secretary of Defense when their findings are in the affirmative.

§ 70.4–9 Transportation of patients.

Commercial or civilian transportation to move dependent patients to medical facilities of the uniformed services, between medical facilities of the uniformed services, or from a civilian medical facility to a medical facility of the uniformed services is not authorized at Government expense.

§ 70.5 Medical care in civilian facilities.

§ 70.5–1 Eligibility for civilian medical care.

Under the provisions of this section, wives, dependent husbands and children who are dependents of members of the uniformed services are eligible to receive at Government expense specified medical or dental care from civilian sources.

§ 70.5–2 Medical and hospital care authorized from civilian sources.

Medical and surgical care from civilian sources is authorized for spouses and children who are dependents of members of the uniformed services for the following:

(a) Treatment of acute medical conditions, including acute exacerbations or acute complications of chronic diseases only during hospitalization except as otherwise provided in this part.

(b) Treatment of surgical conditions only during hospitalization except as otherwise provided in this part. (See § 70.5–4(c)).

(c) Treatment of contagious diseases during hospitalization.

(d) Complete obstetrical and maternity care.

(e) Three hundred sixty-five days' hospitalization in semi-private accommodations for each admission, including all necessary services and supplies furnished by the hospital during hospitalization.

(f) Services required of a physician or surgeon prior to and following hospitalization for a bodily injury or surgical operation.

(g) Treatment in a hospital for an acute emotional disorder is authorized provided that such disorder is considered to constitute an emergency which is a threat to the life or health of a patient. In general, care will be provided for an acute emotional disorder under this section only until the disorder subsides, until arrangements are made for care elsewhere, or until the end of 21 days of hospitalization, whichever occurs earliest. Under procedures to be established by the Executive Agent, or his representative, within the United States and Puerto Rico, and by the Secretaries of the uniformed services, or their representatives, outside the United States and Puerto Rico, extension beyond 21 days may be granted on a case-by-case basis where the member or the dependent, or the representative of either, shows that, due to absence (e.g. overseas assignment when dependent is in the United States), the member was unable to make arrangements for care elsewhere within the 21-day period. With special exceptions, as authorized by the Surgeon General of a uniformed service, additional care for an acute emotional disorder in a hospital of the uniformed services on a space available basis may be provided in accordance with § 70.4–4(b). The commanding officer of a uniformed services hospital, or the Surgeon General of a uniformed service having jurisdiction over a hospital, may authorize transfer of any patient, hospitalized in a civilian hospital under any of the above subparagraphs, to that uniformed services medical facility on the basis of space, facility, and personnel availability. (See §§ 70.4–2 and 70.4–3.) In cases covered by the two preceding sentences, Government transportation may be utilized to effect transfer to a uniformed services hospital.

(h) Diagnostic tests and procedures including laboratory tests and pathology and X-ray examinations, when ordered by the attending physician, only during hospitalization, except as otherwise provided in this part.

(i) Dental care which is a necessary adjunct to medical or surgical treatment rendered in a hospital to a dependent who is a hospital inpatient. Such dental care shall not include removable or fixed prosthodontic restorations, orthodontia, restorative dentistry, and prolonged periodontal treatment.

§ 70.5–3 Terms of reference and rules for the provision of authorized medical care from civilian sources.

(a) *Applicable terms.* (NOTE: These terms are primarily for use in the United States and Puerto Rico and may be modified in other areas.)

(1) *Hospital.* The word "hospital" shall mean only an institution which is operated in accordance with the laws of the jurisdiction in which it is located pertaining to institutions identified as hospitals, is primarily engaged in providing diagnostic and therapeutic facilities for surgical and medical diagnosis, treatment and care of injured and sick persons by or under the supervision of staff physicians or surgeons, and continuously provides 24-hour nursing service by registered graduate nurses. It shall specifically exclude any institution which is primarily a place of rest, a place for the aged, a place for the treatment of drug addiction or alcoholism, a nursing home, a convalescent home, or a facility operated by the Federal Government or any agency thereof, except Freedmen's Hospital, Washington, D. C. If the experience of the Executive Agent indicates that the care provided in a hospital is substandard, or charges of a hospital are excessive, Government approval of its use in the future may be withdrawn and payment of charges by the Government denied for patients admitted subsequent to the withdrawal of approval unless the case is certified as an emergency by the attending physician or surgeon.

(2) *Semi-private accommodations.* The term "semi-private accommodations" signifies the presence of 2, 3, or 4 beds in a room in which a patient is hospitalized. Private accommodations means one bed in a room.

(3) *Ward accommodations.* The term "ward accommodations" signifies the presence of 5 or more beds in a room in which the patient is hospitalized. Where ward accommodations are furnished under the circumstances described herein, a portion of the cost will be borne by the Government in accordance with paragraph (a) of § 70.5–6. Ward facilities may be used for pediatric cases whenever this is the normal medical practice. Further, when the attending physician admits his patient to a hospital in which all semi-private accommodations are occupied, care furnished therein shall be considered authorized care, but the patient should be transferred to a semi-private accommodation as soon as possible. Finally, when the patient is admitted to an otherwise eligible institution which furnishes only ward accommodations, care furnished therein shall be considered authorized care.

(4) *Necessary services and supplies.* Those services and supplies ordered by the attending physician which are customarily provided and charged for by the hospital.

(5) *Physician or surgeon.* A person who is legally qualified to prescribe and administer all drugs and to perform all surgical procedures.

(6) *Dentist.* A person who is legally qualified to prescribe and administer all drugs and perform all procedures related to the teeth, jaws, and to structure contiguous to one or the other.

(7) *Local schedule of allowances.* Professional fees for payment of physician's services applicable to a local area negotiated with the physicians' representatives and approved by the Executive Agent for the Department of Defense and Department of Health, Education, and Welfare.

(b) *Hospital care.* (1) Hospital care under this section is defined as inpatient care for 18 consecutive hours or more, except for shorter periods of hospitalization for surgical procedures, treatment of fractures or other bodily injuries, or in instances in which death occurs in a lesser period of time.

(2) Hospital care shall include board and room and necessary services and supplies up to a maximum of 365 days for each admission.

(c) *Nursing care.* If, while receiving authorized hospital care, private-duty nursing care is required for proper care and treatment, and if the patient's attending physician certifies to such a requirement, a portion of the cost will be borne by the Government in accordance with § 70.5–6 (d).

(d) *Professional services—(1) Professional services related to hospitalization.*

(i) The payment of physicians' fees according to the local schedules of allowances, including those of necessary consultants, for treatment of medical and surgical conditions during a period of hospitalization is authorized.

(ii) All diagnostic and therapeutic tests and procedures authorized by the attending physician and accomplished during a period of hospitalization are authorized for payment by the Government. In those instances during the period of hospitalization when treatment by the use of X-ray, radium or radioisotopes is prescribed, such treatment may be continued or carried out on an outpatient status.

(iii) The approved local schedules of allowances payable to a physician or surgeon for treatment in a hospital of a bodily injury or for a surgical procedure shall include pre-hospitalization care and normal after-care following a period of hospitalization.

(iv) Those surgical procedures that are legitimately cared for by a dentist (e. g., cleft lip, cleft palate, etc.) may be treated by a dentist who is a member of the staff of a hospital and normally performs these surgical procedures in that hospital. The removal of teeth, gingivectomies, and alveolectomies are not authorized surgical procedures under the Program unless they meet the criteria of adjunctive dental care as defined in this part. When authorized surgical treatment is performed by a dentist, other procedures, diagnostic tests, services, and supplies authorized or ordered by him may be paid to the same extent as if a physician or surgeon authorized or ordered them under this part.

(v) Although the Dependents' Medical Care Act provides primarily for professional services during hospitalization and does not permit medical care normally considered to be outpatient care at Government expense, certain limited benefits are authorized as indicated elsewhere in this section and below:

(*a*) Payment is authorized in an amount not to exceed $75.00 at Government expense for necessary diagnostic tests and procedures performed or authorized by the attending physician prior to hospitalization for the same bodily injury or surgical procedure for which hospitalized.

(*b*) Payment is authorized in an amount not to exceed $50.00 at Government expense for necessary tests and procedures performed or authorized by the attending physician for proper aftercare of the same bodily injury or surgical procedure for which hospitalized.

(*c*) The monetary limitations in (*a*) and (*b*) of this subdivision are intended only to define the liability of the Government under the stated conditions and in no way modify, alter, or affect the fees for individual procedures contained in the local schedules of allowances; and also, they do not restrict the physician

in the performance or authorization of necessary tests or procedures.

(*d*) The monetary limitations in (*a*) and (*b*) of this subdivision may be exceeded only in special and extraordinary cases provided that the physician authorizing the tests and procedures, for which charges exceed the amounts specified above, submits a special report which shall be reviewed by a contractor's physician review board. This board will make appropriate recommendations to the Executive Agent who may authorize such additional payments.

(2) *Obstetrical and maternity services.* (i) Complete obstetrical and maternity services shall include prenatal care, delivery, and postnatal care in a hospital, office, or home. Payments for prenatal care, delivery, and post-partum care shall be made to the physician performing the respective service in accordance with the local schedule of allowances.

Allowances are authorized for laboratory tests, pathology or radiology examinations, and other procedures performed or authorized by the attending physician in the management of the pregnancy. In instances of home or office confinements, payments are not authorized for the purchase or rental of beds, bassinets, or similar equipment, nor for services of private duty nurses. (See paragraph (f) of § 70.5–6.)

(ii) Where a consultant's services are required for proper care and treatment of the patient, such care is authorized.

(iii) Necessary or required infant care shall be provided during the period of hospitalization following delivery. If the infant require. further hospitalization following delivery, such care is authorized as a continuation of the original admission. Also, in the case of a home or office delivery, necessary or required infant care may be provided on an outpatient basis for a period not to exceed 10 days following the date of delivery.

(iv) Under procedures established by the Executive Agent, or his representative, within the United States and Puerto Rico, and by the Secretaries of the uniformed services, or their representatives, outside the United States and Puerto Rico, required in-hospital care can be furnished to obstetrical and maternity patients who develop acute emotional disorders complicating pregnancy or constituting postpartum psychosis occurring within the six weeks postpartum period authorized for maternity care.

(3) *Other professional services.* The authorized payments for the treatment of bodily injuries when a patient is not hospitalized, including diagnostic and therapeutic tests and procedures authorized by the attending physician, are limited to treatment of fractures, dislocations, lacerations, and other wounds as prescribed in the local schedules of allowances. Treatment of fractures, dislocations, lacerations, and other wounds that are legitimately cared for by dentists, including related diagnostic and therapeutic tests and procedures authorized by the attending dentist, may also be paid for hereunder. (See § 70.5–6 (i)).

(e) *Supporting services.* Wherever the attending physician authorizes the services of a physical therapist or of an anesthetist who is other than a physician in rendering authorized care to an eligible dependent, and certifies as to the necessity therefor, the services may be paid for hereunder.

§ 70.5–4 Medical care not authorized.

Medical care specified in this section shall not be authorized for any of the following:

(a) Chronic diseases. (See paragraph (j)(6) of § 70.1–3 and paragraph (a) of § 70.5–2.)

(b) Nervous and mental disorders (see § 70.1–3(j)(6), including acute emotional disorders except that (1) care of this type may be furnished to a dependent requiring same during the period of hospitalization of that dependent for a condition that does qualify as authorized care under § 70.5–2 (a) through (f); (2) care for acute emotional disorders may be furnished in connection with obstetrical and maternity services in accordance with § 70.5–3 (d)(2)(iv); and (3) care for acute emotional disorders may be furnished in accordance with § 70.5–2(g).

(c) Services of a surgical nature desired or requested by the patient which are not medically indicated. The opinion of the cognizant medical authority (charge physician) will determine whether the services are medically indicated and therefore payable under this part, except that the types of surgery described in subparagraph (1) of this section are not authorized for payment under this part under any circumstances; and the types of surgery described in subparagraph (2) of this section are authorized only under the conditions stipulated therein.

(1) *Examples of types of surgical care not authorized.* (i) Cosmetic surgery—any surgery for improvement or change of appearance or for psychological reasons.

(ii) Ears—reconstruction and/or revision of the external ear; surgery based on psychological reasons.

(iii) Congenital defects of skeletal and/or central nervous system which are readily identifiable as representing chronic long-term conditions and characteristically respond poorly to surgical intervention.

(iv) Sterilization procedures for multiparity, socioeconomic and/or psychological reasons.

(v) Procedures designed to correct a state of infertility or sterility.

(vi) Removal of tatoos.

(2) *Examples of types of inpatient surgical care authorized for payment only if certain conditions prevail.* (i) Ears—surgery for restoration or improvement of hearing is allowable.

(ii) Eyes—surgery for glaucoma, cataracts, strabismus (squint) or other conditions to aid or improve vision of the affected eye(s) is allowable.

(iii) Harelip and/or cleft palate—surgery for initial repairs, including surgery for subsequent repair known and established as a requirement at the time of original surgery is authorized. Subsequent revisions are not authorized.

(iv) Rhinoplasties—authorized only for improvement of nasal respiratory physiology.

(v) Skeletal defects (e.g. club foot, congenital dislocated hip)—surgical treatment is authorized only when treatment is required as an "in-hospital" patient to improve function. Care normally provided on an out-patient basis and not requiring hospitalization is not authorized.

(vi) Surgical treatment for removal of supernumerary digits or for correction of syndactylism is authorized only for improvement of function.

(vii) Scars—surgical treatment is authorized only when a scar is ulcerated, shows clinical evidence of malignancy, or when a contracture impairing anatomical function is present.

(viii) Surgical treatment for removal of nevi, hemangiomas and/or telangiectatic lesions is authorized only if they are bleeding, ulcerated, painful, or show clinical evidence of malignancy, or if size and location produce functional impairment.

(ix) Surgical treatment for removal of planter warts, verrucae, sebaceous cysts, condylomata or moles is authorized only if they are bleeding, ulcerated, painful, or show clinical evidence of malignancy, or if size and location produce functional impairment.

(x) Mammaplasty is authorized only when severe pain or marked disability is present.

(xi) Tubal ligation or other sterilization procedures—surgical procedure is authorized only when, in the opinion of the charge physician and consulting physician(s), the procedure is a necessary requirement in the proper medical management of an otherwise unrelated medical or surgical condition for which treatment is authorized under this part.

(d) Non-acute medical conditions (see § 70.5–2(a)). Examples of types of care not authorized are set forth below:

(1) Procedures designed to determine state of infertility or sterility.

(2) Pseudocyesis (false pregnancy) or pregnancy suspected but not proven.

(3) Tests to determine pregnancy, except when patient is in fact pregnant and when tests are required for proper conduct of maternity or postpartum care (hydatid mole).

(4) Diagnostic evaluation and hospital admissions in connection therewith when patients are not acutely ill or when diagnostic surveys are not followed by surgery.

(5) Rehabilitation procedures for persons with congenital defects, cerebral palsy, or poliomyelitis (except when related to "in-hospital" care of surgical procedure performed for improvement or restoration of function).

(6) Treatment for tuberculosis—inactive (non-acute) when determined by clinical tests. Treatment is authorized only for the active (acute) phase as determined by acceptable medical standards (positive sputa; positive gastric washings; or positive chest or other X-rays).

(7) Tests and procedures such as the following:

(i) Psychological, psychometric, or intelligence measuring tests.

(ii) Speech and/or hearing therapy, remedial reading, or orthoptic training.

(iii) Child guidance therapy.

(e) Domiciliary care. (See paragraph (j)(4) of § 70.1–3.)

(f) Treatments or procedures normally considered to be outpatient care.

(g) Ambulance service, or other civilian transportation used for movement of spouses or children to or between civilian medical facilities or from a civilian medical facility to a medical facility of the uniformed services.

(h) Adjuncts to medical care (See § 70.1–3(j)(8)).

§ 70.5–5 Admission of dependents for medical care to civilian sources.

Dependents requesting medical care from civilian sources will be required to observe the following procedures:

Prior to 1 January 1958, identification will be established by the best available means, including the DD Form 720, "Dependent's Identification Card," or DD Forms 1173 which have been issued, and such other means of identification currently provided by the uniformed services. In addition, dependents or or their parent, sponsor or guardian, as appropriate, will be required to execute a certification form to be prescribed by the Executive Agent and made available to the source of medical care. This form will serve the purpose of assisting both in the identification of dependents and the ultimate billing made by civilian physicians, surgeons, and civilian medical facilities. In developing this form, the Executive Agent will insure that it will include appropriate provision for:

(1) Identification of the patient.

(2) Identification of sponsor member or uniformed service on active duty.

(3) Certification of the dependent, accompanying parent, member or acting guardian as to the eligibility of the dependent for care under P. L. 569—84th Congress.

(4) Diagnoses, medical services furnished and charges.

(5) Certification by the source of medical care that services were provided in accordance with P. L. 569—84th Congress.

(b) *After 31 December 1958.* (1) Identification will be by means of the DD Form 1173 and, in addition, execution of the form described in paragraph (a) of this section will also be required.

(2) Under emergency conditions and similar circumstances, the admitting authority may waive the requirement of producing a DD Form 1173. However, in each instance of this nature, the form prescribed by the Executive Agent and referred to in paragraph (a) of this section will be executed.

(c) On and after the effective date specified by the Secretary of Defense pursuant to § 70.3–2(e), an eligible dependent who is residing with the sponsor, or in the area to which the sponsor is assigned, and who has not commenced receiving care from civilian sources prior to that date (or, in the case of a maternity patient, whose care from her civilian physician on that date has not reached the second trimester), in addition to complying with paragraphs (a) and (b) of this section, will be required to present a DD Form 1251, "Nonavailability Statement", to the attending physician and the hospital, when both are involved, and to the appropriate party when only one is involved, for attachment to the claim form. Sources of civilian care other than the hospital or the attending physician may, in lieu of attaching a DD Form 1251 to the claim form, accept a statement from the person signing the certification in accordance with paragraph (a) of this section that a DD Form 1251 has been furnished to the attending physician (identifying him by name) or to the hospital (identifying it by name). The DD Form 1251 shall be obtained from uniformed services installations and shall cover only care authorized to be obtained from civilian sources under this Part 70. A statement by the person signing the certification in accordance with paragraph (a) of this section that the patient is not residing with the sponsor, or in the area to which the sponsor is assigned, may be accepted by the source of care unless that source has actual knowledge to the contrary. The requirement for the DD Form 1251 shall be waived in the case of an emergency, and in other circumstances outlined in § 70.3–3. A statement from the attending physician on the claim form that the case is an emergency (see § 70.3–3(a)(1)) will be away on a trip from the area to which the sponsor is assigned will be sufficient to justify an exception, unless the source of care has actual knowledge to the contrary. Where representations are made by the source of civilian medical care that it was not aware of the requirements contained in this paragraph (c) and that it furnished care authorized under this Part 70 to a person claiming to be a spouse or child eligible for civilian medical care, and possessing a valid DD Form 1173, then the matter will be brought to the attention of the uniformed service concerned for determination whether a Nonavailability Statement can be issued. If it is determined by the uniformed service concerned that the DD Form 1251 cannot be furnished, then the matter will be brought to the attention of the member concerned as an unpaid debt. In special circumstances, and where the source of civilian care shows that collection has not been possible, then the Executive Agent or his designee may authorize payment to be made to that source, provided the claim covers care authorized under this Part 70 and was otherwise executed in accordance with all requirements except those set forth above concerning the Nonavailability Statement.

(d) In cases of spouses and children receiving treatment in a civilian medical facility at Government expense at the time entitlement to receive medical care from civilian sources ceases (by reason of release from active duty, or otherwise), the Government's responsibility ceases, insofar as the source of civilian care is concerned, as of the date of receipt of knowledge by the source of care that the dependent's entitlement to medical care from civilian sources has terminated or the normal expiration date on the DD Form 1173, whichever is earlier. In any case, the Government's responsibility ceases, insofar as the dependent or member is concerned, as of the date the dependent ceases to be entitled to receive care (by reason of release of the member from active duty, or otherwise) from civilian sources at Government expense. (See § 70.2–2(b)(5.) Notwithstanding the foregoing, the Government will be responsible for paying for care rendered to patients covered by paragraph (c) of this section, only if the conditions set forth in that paragraph are met.

(e) Exceptions to the policy in § 70.5–5(d) are authorized under the following circumstances:

(1) Spouses and children of members of the uniformed services receiving treatment in a civilian medical facility at Government expense at the time of death of the member, or such spouses and children requiring care in a civilian facility as a result of being in the same accident or the same episode which proved fatal to the member, if continued hospitalization is required, shall be transferred to a uniformed services medical facility as soon as the physical condition of the patient permits, subject to space, facilities, and personnel availability. Government transportation may be utilized to effect transfer to a uniformed services hospital. The cost of medical and hospital care authorized from civilian sources (see § 70.5–2) which was furnished to the dependent during the period of hospitalization in the civilian facility shall be borne by the Government subject to the charges provided in § 70.5–6, but not after the date on which feasible arrangements for transfer have been made.

(2) Additionally, a dependent wife who is eligible for civilian medical care (see § 70.1–3(e)), whose husband dies while on active duty, who is pregnant at the time of his death and is delivered on or after July 28, 1959, may be provided from civilian sources at Government expense the obstetrical and maternity care authorized under this part to include, where applicable, prenatal care, delivery, and postpartum care. Neonatal care authorized elsewhere in this part is authorized for a child born under these circumstances. Care authorized in this subparagraph includes authorized prenatal care obtained before, on, or after July 28, 1959 and authorized postpartum care for the child. The restrictions on freedom of choice described in § 70.3–2 shall not apply to dependents covered in this § 70.5–5(e)(2).

§ 70.5–6 Charges.

(a) When the entire period of hospitalization has been in other than private accommodations, the patient shall pay to the hospital the greater of subparagraph (1) or (2) of this paragraph.

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the per diem rate established in paragraph (a) of § 70.4–8.

(b) If hospital care in a private room is obtained by the patient because it is required for the proper care and treatment, and if the patient's attending physician so certifies, the amount of private room charges less the patient's payment set forth below will be paid by the Government. The patient will be required to pay to the hospital the greater of subparagraph (1) or (2) in addition to subparagraph (3) of this paragraph.

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the per diem rate established in paragraph (a) of § 70.4–8.

(3) Twenty-five percent (25%) of the difference between private room charges and weighted average cost of semi-private room charges, when private room charges are more costly.

NOTE: For hospitals having only private rooms, the term "weighted average cost of semi-private room charges" is defined as 90 percent of the daily hospital charges for the room furnished the dependent or $15.00 per day, whichever is lesser.

(c) If hospital care in a private room is provided at the specific request or desire of the patient or of the sponsor, the patient will be required to pay to the hospital the greater of subparagraph (1) or (2), and in addition subparagraph (3) of this paragraph.

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the established per diem rate. (See paragraph (a) of § 70.4–8.)

(3) The difference between private room charges and weighted average cost of semi-private room charges, when private room charges are more costly.

(d) Except as provided in paragraph (b)(3) of this section, if hospital care in a private room is provided in a hospital which has only private rooms, the Government will pay 90 percent of the daily hospital charges for the room provided the dependent, or $15.00 per day, whichever is the lesser. The patient will be required to pay the hospital the greater of subparagraph (1) or (2), and in addition subparagraph (3) of this paragraph:

(1) The first twenty-five dollars ($25.00) of the expense incurred.

(2) An amount determined by multiplying the number of days of hospitalization by the established per diem rate. (See paragraph (a) of § 70.4–8.)

(3) Ten percent (10%) of the daily hospital charges for the private room provided the dependent or the total daily hospital charges for such room, less $15.00 per day, whichever is the greater.

(e) If while receiving authorized hospital care, private-duty nursing care is required for proper care and treatment, and if the patient's attending physician so certifies, 75 per cent of the charges in excess of $100.00 for such private-duty nursing care will be paid by the Government.

(f) All admissions to a hospital of an obstetrical patient as an inpatient for care required in direct connection with the pregnancy, including direct complications thereof, rendered during the period of pregnancy up to and including delivery and postpartum inpatient care following delivery, or immediate postpartum inpatient care for patients delivered outside the hospital, shall be considered as one admission for the purpose of determining charges to the dependent. Admission for a non-obstetrical diagnosis in the course of a pregnancy would require the patient to pay the charges for a separate admission. Patients who are delivered in a home or office shall pay the first $15.00 of charges in connection with the delivery, if not subsequently hospitalized.

(g) Patients who previously were admitted to a hospital for authorized care, who paid at least $25.00 of the hospital charges for that admission and who are readmitted to a civilian hospital within 14 days following discharge from the previous admission for authorized treatment of the original condition for which initially hospitallized, or direct complications thereof, will not be required to pay the first twenty-five dollars ($25.00) of subsequent hospitalizations, but will be required to pay an amount determined by multiplying the number of days of the current hospitalization by the established per diem rate (See paragraph (a) of § 70.4–8), plus any additional charges that might be specified elsewhere herein. Hospitals will be responsible for obtaining from the patient, physician, sponsor, or other hospital(s) satisfactory evidence that the patient is entitled to the lesser charge.

(h) When a patient who is in an inpatient status is transferred to another hospital to obtain as an inpatient necessary treatment not available in the first hospital and no break in hospitalization occurs except for time in transit, it shall be considered one admission for the purpose of payment of charges by the patient in accordance with this section.

(i) When a patient is treated for injury other than as an inpatient in a hospital in occordance with § 70.5–3(d)(3), the payments made shall be in accordance with the local schedules of allowances. Payments not to exceed a maximum of $75.00, except as provided for under § 70.5–3(d)(1)(v)(*d*), are also authorized for laboratory tests, pathology and radiology examinations provided they are procedures performed by or authorized by the attending physician or surgeon. Payment of charges is also authorized for use of hospital outpatient facilities required for the treatment of the injury, e.g., a cast room. The patient shall pay the first $15.00 of the physician's charges for each different cause or accident for which treatment and services are rendered, except that multiple injuries to the same person resulting from a single accident shall be considered as one injury for payment of the maximum required fee ($15.00) by the patient. The Government shall pay for all costs in excess of $15.00 as authorized in the local schedules of allowances. However, payment by the Government for laboratory tests and pathology and radiology examinations shall not exceed the $75.00 maximum except as provided for under § 70.5–3(d)(1)(v)(*d*).

§ 70.5–7 Administration.

(a) The Secretary of the Army, acting as Executive Agent for the Secretary of Defense, shall contract for medical care within the United States and Puerto Rico in accordance with the Armed Services Procurement Regulations with authority to redelegate such responsibilities within the Department of the Army. The Department of the Army personnel authorization and funds will be increased by the Office of the Secretary of Defense, upon justification, to provide for the personnel required for the dependent medical care program and to carry out the responsibilities of the Executive Agent. The Secretary of the Army shall be responsible for the provision of personnel, space, equipment, facilities and supplies, including related budgeting, funding, administrative control of funds, facility control, training, manpower control and utilization, personnel administration, security administration and other administrative provisions and services necessary to carry out assigned missions as Executive Agent. The Executive Agent's authority does not extend to the conduct of the medical care program in medical facilities of the uniformed services.

(b) The Executive Agent shall be responsible within the United States and Puerto Rico for the following:

(1) Preparation of the terms and placement of the contract or contracts to be established to include but not limited to:

(i) Local schedules of allowances to be used in full payment of bills presented by physicians and surgeons.

(ii) A provision for review and, if necessary, an adjustment of administrative payments not later than 120 days after the first year the plan or plans have been in effect and each year thereafter.

(iii) Determination of administrative responsibilities of the contractors and methods of determining administrative costs.

(iv) Adequate procedures for paying claims for authorized care provided to eligible dependents by physicians, treatment facilities, dentists, private-duty nurses, physical therapists and anesthetists.

NOTE: Claims may be paid under a contract or by appropriate arrangements such as direct billings between the Government and claimants. Detailed procedures may be covered in the Joint Regulations or in contracts.

(2) Administration of the contract:

(i) Liaison activities with the contractor.

(ii) Payment of bills.

(iii) The development of any budgetary information required by the uniformed services as prescribed by the Joint Regulations.

(iv) Audit.

(v) Preparation of such statistical information as may be necessary including that for the annual report of the Secretary of Defense to Congress.

(vi) The Executive Agent's responsibility shall not include as a matter of routine a detailed supervision of civilian medical procedures or a detailed inspection of civilian medical facilities.

(vii) The Executive Agent shall be responsible for the processing of complaints with reference to civilian medical care and hospitalization.

(viii) Contractors shall have detailed responsibility for resolving medical disputes through local grievance committees composed of civilian physicians.

(c) *Care in civilian facilities outside the United States and Puerto Rico.* The Secretary of a uniformed service is authorized, with authority to redelegate such responsibilities as appropriate, to contract or provide for payment for authorized civilian medical care for spouses and children outside the United States and Puerto Rico. (See § 70.3–4.) The responsibilities of the uniformed services, where appropriate, shall be the same as those listed for the Executive Agent in § 70.5–7(b).

(d) A Secretary of a uniformed service shall be responsible for the following:

(1) Initial eligiblty determinations and means of identification of the dependent for medical care as prescribed in §§ 70.2–1—70.2–2.

(2) Budgeting and funding for that portion of the total cost including administrative expenses which is properly attributable to his service.

(3) Reimbursement in accordance with cross-servicing agreements for care contracted by one service for dependents of another service. Any amounts received through such reimbursement shall be deposited to the credit of the appropriation supporting such contracts for medical care.

(4) Furnishing such information as required by the Executive Agent for the performance of his duties, including such data as the Executive Agent may require on dependent medical care from sources overseas other than uniformed services facilities.

§ 70.5–8 Hospitalization beyond period of 365 days.

When a spouse or child, who is a dependent, requires a period of hospitalization in excess of 365 days, the hospital shall notify the contractor who shall forward a copy of this notification to the Executive Agent or his representative. This notification normally will be submitted not later than 300 days after admission of the patient. Advance notice will permit arrangements to be made for proper transfer of the patient to a hospital of the uniformed service if this is determined to be feasible. Government transportation may be utilized to effect transfer to a uniformed services hospital. When transfer is not feasible, continuation of care in the civilian hospital at the expense of the Government may be authorized subject to the Joint Regulations.

§ 70.5–9 Government liability for payment of civilian medical care costs.

As prescribed in § 70.2, the uniformed services shall provide dependents with means of identification. When spouses and children of members of the uniformed services are provided civilian medical care, it is expected that the attending physician and medical facility will use reasonable care and precaution in identifying them. When medical care has been provided in good faith by the attending physician and medical facility and it is subsequently determined that the persons concerned were not in fact entitled to medical care at Government expense under Public Law 569, collection and other legal action shall be taken only against the sponsor or individual who was not entitled to the medical care. Where fraud is involved, the matter may be referred to the Attorney General of the United States with recommendation for prosecution. Notwithstanding the foregoing, the Government will be responsible for paying for care rendered to patients covered by § 70.5–5(c), only if the conditions set forth in that paragraph are met.

§ 70.5–10 Administration of changes to this part effective 1 January 1960.

(a) The changes to this part made effective on January 1, 1960 (referred to in this § 70.5–10 as the "effective date") restored certain types of care to the Medicare Program. On and after that date certain additional treatment specified in those changes constitutes authorized care which was not authorized on the preceding day. That additional treatment is referred to generally in this § 70.5–10 as care of a type restored to the Program. The following rules are promulgated governing administration of treatment of certain patients who commenced receiving that type of care before the effective date.

(1) *Hospitalized patients.* Where a patient is admitted to a hospital before the effective date for a type of care restored to the Program and is still in the hospital on that date receiving that care, payment may be made to the sources furnishing that care for the current uninterrupted period of hospitalization. Where a period of hospitalization commencing prior to that day is payable, then payment for pre- and post-hospitalization diagnostic tests and procedures which were considered necessary by the attending physician or dentist and were performed by or authorized by him are payable in accordance with § 70.5–3(d)(1)(v).

(2) *Outpatient injury cases.* Section 70.5–3(d)(3) covers care of this type that has been restored to the Program. Payment is authorized for care covered by that section furnished to a patient by an authorized civilian source only in those cases where the injury occurred prior to the effective date but subsequent to December 1, 1959 and where the patient is still under the care of a physician on or after the effective date, for the same injury, from the date of commencement of care. Payment is also authorized, in cases covered by the preceding sentence, for necessary laboratory tests, pathology and radiology examinations if the procedures are performed by or authorized by the attending physician or dentist (see §§ 70.5–3(d)(3) and 70.5–6(i)).

(b) Nothing in this § 70.5–10 shall waive the restrictions on freedom of choice set forth in § 70.3–2(e) nor the requirement for payment by the patient of the charges specified in § 70.5–6.

§ 70.6 Medical care in medical facilities not otherwise provided for.

(a) When dependents eligible for civilian medical care receive medical care authorized by this part, on an emergency basis, in a medical facility which is not included in the definition of a hospital as provided for in paragraph (a) (1) of § 70.5–3 or is not a uniformed services medical facility, the dependent will pay the charges listed in § 70.5–6 and the Government will pay the difference between the amount payable by the dependent and the reimbursable cost. Payments by the Government for such care rendered in Federal medical facilities other than those of a uniformed service will be on a reimbursable basis between the Executive Agent and the Department or agency concerned. This paragraph does not apply to paragraph (c) of this section.

(b) When dependents receive medical care authorized by this part in the governmental facilities of a foreign government (not civilian), the dependent will pay the charges listed in § 70.5–6 and the difference between the total cost and the amount paid by the dependent will be paid by the United States Government. In instances where a reciprocal agreement between a foreign government and the United States is in effect, which provides for no charge or a lesser charge to the dependent than those listed in § 70.5–6, such charges, if any, under the reciprocal agreement shall prevail.

(c) This part does not affect dependents' medical care furnished under the provisions of section 105 of Public Law 153, 83rd Congress, as amended by section 107 of Public Law 453, 83rd Congress, which authorizes medical and dental care for eligible dependents of military personnel in Canal Zone Government medical facilities.

§ 70.7 Medical care for members of the uniformed services.

Persons in the uniformed services on active duty or active duty for training are entitled to and shall be provided medical and dental care and adjuncts thereto. Under ordinary circumstances such members will receive medical care at the medical facility of the uniformed service which serves the organization to which the member is assigned. A member who is away from his duty station or is on duty where there is no medical facility of his own service available, may receive care at the nearest available medical facility of the uniformed services. Commissioned officers and warrant officers on active duty or active duty for training shall pay an amount equal to the portion of the charge established under paragraph (a) of § 70.4–8 that is attributable to subsistence when hospitalized in a medical facility of the uniformed

services. Nothing in this part shall affect the existing provision for providing medical care to members of the uniformed services through civilian or other sources.

§ 70.8 Medical care for retired members of the uniformed services.

§ 70.8–1 Retired members eligible for care.

Retired members shall be furnished required medical and dental care and adjuncts thereto to the same extent as provided for active duty members in any medical facility of a uniformed service, subject to mission requirements and the availability of space, facilities and capabilities of the medical staff as determined by the cognizant medical authority in charge of the medical facility. Nothing in this part is intended to change or modify the provisions of Executive Order 10122, 14 April 1950, as amended by Executive Order 10400, 27 September 1952.

§ 70.8–2 Ration allowance for retired enlisted members.

Retired enlisted personnel, including members of the Fleet Reserve, and the Fleet Marine Corps Reserve, shall not be charged for subsistence when hospitalized in a medical facility of a uniformed service.

§ 70.8–3 Charges for officers' subsistence.

Retired commissioned officers and retired warrant officers shall pay an amount equal to the portion of the charge established under paragraph (a) of § 70.4–8 that is attributable to subsistence when hospitalized in a medical facility of the uniformed services.

§ 70.9 Budgeting and accounting for medical and dental care furnished in facilities of the uniformed services.

The Secretaries of the uniformed services shall budget for supporting the maintenance and operation and/or subsistence of their service medical facilities for the medical and dental care of their members, retired members and dependents furnished in the medical facilities of their respective service. The Secretaries of the uniformed services shall also budget for reimbursement for the medical and dental care of their members, retired members and dependents receiving inpatient care in facilities of another uniformed service. Reimbursement shall be made between departments (Army, Navy, Air Force, and United States Public Health Service) for inpatient care furnished by one service for members, retired members, and dependents of another service at rates to be prescribed by the Bureau of the Budget to reflect the average cost of providing such care. Any amounts received through reimbursements or through local collection for subsistence and/or medical care in facilities of the uniformed services shall be deposited to the credit of the appropriation(s) supporting the operation and maintenance of the service medical facility furnishing care.

§ 70.10 Implementation.

Joint implementation in accordance with this part, covering care of dependents, shall be accomplished as appropriate by the uniformed services.

§ 70.11 Effective date.

This part is effective for planning purposes immediately and for implementation on 7 December 1956.

PART 74—APPOINTMENT OF DOCTORS OF OSTEOPATHY AS MEDICAL OFFICERS

Sec.
74.1 Purpose.
74.2 Policy.

AUTHORITY: §§ 74.1 and 74.2 issued under 10 U.S.C. 3294, 5574, 8294.

§ 74.1 Purpose.

The purpose of this part is to implement the provisions of Public Law 763, 84th Congress (70 Stat. 608), relating to the appointment of doctors of osteopathy as medical officers.

§ 74.2 Policy.

In the interest of obtaining maximum uniformity, the following criteria are established for the appointment of doctors of osteopathy as medical officers:

(a) To be eligible for appointment as Medical Corps officers in the Army and Navy or designated as medical officers in the Air Force, a doctor of osteopathy must:

(1) Be a citizen of the United States;

(2) Be a graduate of a college of osteopathy whose graduates are eligible for licensure to practice medicine or surgery in a majority of the States, and be licensed to practice medicine, surgery, or osteopathy in one of the States or Territories of the United States or in the District of Columbia;

(3) Possess such qualifications as the Secretary concerned may prescribe for his service, after considering the recommendations for such appointment by the Surgeon General of the Army or the Air Force or the Chief of the Bureau of Medicine and Surgery of the Navy;

(4) Have completed a minimum of (3) years college work prior to entrance into a college of osteopathy;

(5) Have completed a four-year course with a degree of Doctor of Osteopathy from a school of osteopathy approved by the American Osteopathic Association; and

(6) Have had subsequent to graduation from an approved school of osteopathy 12 months or more of intern or residency training approved by the American Osteopathic Association.

PART 77—MORTGAGE INSURANCE FOR SERVICEMEN TO AID IN CONSTRUCTION OR PURCHASE OF HOMES

Sec.
77.1 Purpose.
77.2 Definitions.
77.3 Policy.
77.4 Forms.

AUTHORITY: §§ 77.1 to 77.4 issued under sec. 222, 68 Stat. 603; 12 U.S.C. 1715m.

§ 77.1 Purpose.

This part sets forth policy guidance to the military departments in implementation of section 124, 68 Stat. 590; to provide for the delegation of authority conferred upon the Secretary of Defense by said law to issue certificates of eligibility and to prescribe other necessary instructions.

§ 77.2 Definitions.

The following definitions are applicable:

(a) "Serviceman" means a person to whom the Secretary of Defense or his designee has issued a certificate of eligibility indicating that such person is serving on active duty in the Armed Forces of the United States and has so served for a period of more than two years and requires housing. A person ordered to active duty for training purposes only is not an eligible serviceman.

(b) "Period of ownership by serviceman" as defined by the FHA means that period of eligibility during which the military service concerned is required to pay the mortgage insurance premiums to the Federal Housing Administration. For purposes of administration by the Department of Defense this period shall commence with the date the FHA endorses a loan for mortgage insurance hereunder and shall terminate when the Secretary of Defense or his designee furnishes the Commissioner of the FHA with certification that the service concerned will no longer be liable for the mortgage insurance premiums by reason of the death, discharge or separation from active duty (except when reenlisted the next day), termination of ownership of the property covered by such loan or other termination of eligibility by the serviceman, or at the request of the serviceman.

(c) "Housing" as used herein means a dwelling unit designed for a one family residence for occupancy by the serviceman as his home.

(d) "FHA" as used herein means the Federal Housing Administration.

§ 77.3 Policy.

(a) It is the policy of the Department of Defense that the servicemen's home loan provisions of 68 Stat. 590 shall be made available to members of the armed forces eligible therefor.

(b) The respective military services will issue a certificate of eligibility to any member of the armed forces currently serving on active duty who has served for more than two years, and who certifies that he requires housing. No certificate may be issued to an individual called to active duty for training purposes only. A further certificate may be issued when the period of ownership has terminated, a serviceman surrenders an expired certificate of eligibility or when he certifies an unused or expired certificate has been lost or destroyed.

(c) Where mortgage insurance premiums are currently being paid by a military service on a serviceman's loan, an additional certificate will not be issued.

(d) If a serviceman has acquired a loan under the terms of this part, he may be issued, subject to paragraph (c) of this section, an additional certificate of eligibility only in those instances where, as a result of military orders or situations of an emergent nature, the denial of such certificate would cause hardship or an inequity to the serviceman as determined by the Secretary of the military department concerned.

(e) Payments for all mortgage insurance premiums on loans will be made by a designated activity of the military departments following receipt of vouchers forwarded directly to it by the Federal Housing Administration.

(f) The purchase of property by a serviceman receiving a certificate of eligibility under this part will be governed by applicable FHA regulations.

(g) The authority vested in the Secretary of Defense under section 124, 68 Stat. 590 to issue certificates of eligibility and termination of eligibility is hereby delegated to the Secretaries of the Army, Navy and Air Force for their respective departments and to Commanders of echelons within each of the services where personnel records are maintained.

§ 77.4 Forms.

(a) DD Form 802,[1] Request for and Certificate of Eligibility, will be used to make a request for Certificate of Eligibility, Certification by the Military Service and recording of the FHA action as to indorsement or rejection.

(b) DD Form 803, Certificate of Termination, will be used by the military services for the purpose of notifying FHA of termination of ownership.

[1] This form has been filed with the Federal Register Division. Copies are available through administrative channels of each of the military services.

PART 85—ADVANCE PAY FOR MILITARY PERSONNEL

Sec.
85.1 Purpose.
85.2 Policy.

AUTHORITY: §§ 85.1 and 85.2 issued under Act of October 5, 1949, ch. 600, 63 Stat. 703–704; 37 U.S.C. 310c, 310d.

§ 85.1 Purpose.

The purpose of this part is to provide for uniform implementation of 63 Stat. 703–704; 37 U.S.C. 310c, 310d within the Department of Defense. That law permits payment of up to three months' advance pay upon permanent change of station when needed to furnish temporary relief from extraordinary expenses incident to the move. It also permits payment of advance pay and allowances under those circumstances where pay and allowances cannot be disbursed regularly.

§ 85.2 Policy.

(a) Advance pay for permanent change of station:

(1) *Personnel eligible.* Upon permanent change of station if such change is not incident to separation from the service or trial by court-martial, commissioned and warrant officers and enlisted personnel may be paid, under existing law, an advance of pay, not to exceed three months' basic pay (less income tax withholdings, Soldiers Home and FICA tax deduction and scheduled liquidation of an indebtedness, including any unliquidated amount resulting from an advance made on a different set of permanent change of station orders. All known indebtedness that has not been scheduled for collection will be scheduled or taken into account prior to effecting an advance of pay.)

(i) Normally the amount of an advance shall be limited to one month's basic pay less the deductions set forth in this subparagraph.

(ii) All advances of pay to enlisted members shall be approved by the Commanding Officer, and this approval shall be indicated on the pay order. The pay order will also include a certificate stating that the enlisted member will have at least enough time left to serve on his current enlistment to completely repay the advance (i.e., if six months are allowed for repayment, the certificate will state that the enlisted member has at least six months to serve on his current enlistment beginning with the first of the month following the month in which the advance is made). Advances of pay should not be made to officers where it is apparent that the officer's tour of duty (obligated service) will terminate prior to completion of the scheduled repayment of the advance. Commanding Officer's approval is not required on advances of pay to commissioned or warrant officers

(2) *Temporary duty.* The fact that there may be temporary duty enroute to permanent change of station will not preclude the payment of an advance of pay if the person is otherwise eligible.

(3) *Time of payment.* The advance of pay may be made at any time after receipt of orders involving a permanent change of station, but may not be made later than thirty days after reporting to the new duty station. It may be made in one, two or three installments, and is in addition to any amount otherwise due on the day the advance is made.

(4) *Liquidation of advance.* (i) Normally the amount of each advance of pay shall be fully liquidated within a period of six months (starting on the first of the month following the month in which the advance was made). Liquidation of the second or third installment, if any, will start on the first of the month following the month in which the installment is received.

(ii) In certain exceptional cases, such as assignments to MAAG or Military Mission duty in foreign countries, which involve unusually large expenditures of funds, the Secretary of the Department concerned or his designated representative, may authorize liquidation of the advance in pay over a period of not to exceed 12 months. Such cases must be fully justified by compelling reasons of hardship which would be caused if the repayment period were shorter.

(iii) An advance of pay will not be made in an amount which will require the stoppage of insurance allotments or class Q allotments. No allotment, other than a class Q allotment, will be established after the advance is made if it will prevent liquidation within the allowed period.

(iv) In the event a member is to be separated from the service prior to the expiration of the liquidation period, the liquidation of the advance will be accelerated by stopping payment of all allotments (except class Q allotments) to the extent necessary to liquidate the advance. However, class Q allotments shall be modified to the extent necessary, but not to an amount less than the basic allowance for quarters, to permit liquidation of the advance prior to discharge.

(b) Advance pay and allowances for duty at a distant station:

(1) *Personnel eligible.* Any member of the Armed Services, when ordered to duty at a distant station where pay and allowances cannot be disbursed regularly, may be paid an advance of basic pay and allowances normally not to exceed three months' basic pay and allowances (less income tax withholdings, Soldiers Home and FICA tax deductions, scheduled liquidation of indebtedness to the Government, and the total of all allotments in force.)

(2) *Procedure.* (i) Requests for such advance payments of pay and allowances for both officers and enlisted members shall be approved by the Commanding Officer. The Commanding Officer will take into consideration the lack of regularity of disbursements, and will approve only such payments as may be necessary to alleviate hardship caused by lack of regular disbursements.

(ii) Requests for authority to make payments in excess of three months' basic pay and allowances for duty at distant stations will be submitted by the Commanding Officer to the officer designated in the regulations of the Service concerned for approval.

(3) *Liquidation of advance pay and allowances.* The amount of pay and allowances advanced to members under the provisions of this paragraph shall be liquidated in full before any subsequent payment is made. (However, as an exception, liquidation on installment in accordance with an approved schedule is authorized when the distant duty is terminated earlier than anticipated, and the Secretary of the Department concerned, or his authorized representative, determines that installment liquidation is justified to prevent hardship. The approved schedule will take into consideration the end of enlistment or separation date of the member concerned.)

(c) Recording payment and liquidation of advances: Payments and liquidation of advances of pay or pay and allowances shall be recorded in members' pay accounts in accordance with the procedures prescribed by the Service concerned.

(d) Death or separation: In the event the member dies or is separated from the service before expiration of the allowed liquidation period, any unpaid pay and allowances which the member may have been entitled to on the date of death or separation will be used in the liquidation of the advance.

(e) A member will not be entitled to both an advance of pay for permanent change of station and an advance of pay and allowances for duty at a distant station when both advances are based on the same set of orders.

PART 87—DROPPING RETIRED MILITARY PERSONNEL FROM THE ROLLS OF THE ARMED FORCES

Sec.
87.1 Purpose.
87.2 Scope.
87.3 Policy.
87.4 Action.

AUTHORITY: §§ 87.1 to 87.4 issued under sec. 161, R.S., 5 U.S.C. 22; sec. 8, 68 Stat. 1145, 5 U.S.C. 2287. Interpret or apply secs. 1161(b), 1163(b), 6408(b) of 10 U.S.C.

§ 87.1 Purpose.

To prescribe a uniform policy governing the dropping from the rolls of the armed forces of members who are entitled to receive retired pay and who have been convicted by civil authorities.

§ 87.2 Scope.

This part applies only to members of the armed forces who are not on active duty and who are entitled to receive retired pay.

§ 87.3 Policy.

In view of the Act of August 25, 1958, Public Law 85–754 (72 Stat. 847; 10 U.S.C. 1161, note), by which Congress restored the retired pay of certain members who were dropped from the rolls of the armed forces for conviction by civil authorities, it is the policy of the Department of Defense that members of the armed forces who are entitled to receive retired pay may be dropped from the rolls of the armed forces for conviction by civil authorities only under section 8 of the Act of September 1, 1954, ch. 1214 (68 Stat. 1142; 5 U.S.C. 2281–2288); that is, when they are deprived of retired pay under that Act. This is in furtherance of the Department of Defense view that retired pay is earned and should be withheld only under extremely limited circumstances. In carrying out this policy, members shall be treated uniformly under substantially identical circumstances, regardless of their components.

§ 87.4 Action.

Recommendations for dropping members from the rolls of the armed forces in accordance with this Part shall be forwarded to the Secretary of Defense for transmission to the President in accordance with Department of Defense Instruction 1320.4, "Military Officer Actions Requiring Presidential or Congressional Approval".

PART 88—RECOUPMENT OF REENLISTMENT BONUS (MILITARY)

Sec.
88.1 Purpose
88.2 Policy.

AUTHORITY: §§ 88.1 and 88.2 issued under Pub. Law 217, 82d Congress (37 U.S.C. 238); Pub. Law 506, 83d Congress (37 U.S.C. 239)

§ 88.1 Purpose.

The purpose of this part is to furnish policy guidance to the Military Departments for conforming to the provisions of Public Law 217, 82d Congress, approved October 26, 1951, and Public Law 506, 83d Congress, approved July 16, 1954, as they relate to the recovery by the Government of portions of reenlistment bonuses in cases where the individual does not complete the term of enlistment for which the bonus was paid.

§ 88.2 Policy.

For the purpose of complying with the provisions of Public Law 217, 82d Congress and Public Law 506, 83d Congress, the following is submitted for guidance: (a) No individual shall be retained in the service beyond the date he would otherwise be discharged solely for the purpose of recoupment of reenlistment bonus, and (b) in applying the term "who voluntarily or as a result of his own misconduct" a pro rata portion of the reenlistment bonus shall be, upon the determination of the Secretary concerned, recovered for:

(1) *Separation by reason of transfer to the Fleet Reserve, Fleet Marine Corps Reserve, or Army or Air Force Reserve.* This item deals with only those cases where an individual is transferred to the Fleet Reserve, Fleet Marine Corps Reserve, or to the Army or Air Force Reserve and placed on the retired list of the Regular Army or Air Force. In the case of personnel so retired or transferred and retained on continuous active duty, such active duty shall be considered as a part of the enlistment being served in at the time of transfer and shall not be used in computing the pro rata share of the reenlistment bonus to be recouped. Retirement by reason of disability is not included under this section.

(2) *Separation for the purpose of reenlistment.* This entry concerns the following:

(i) Individuals granted discharges for the purpose of reenlistment for an unspecified period, and

(ii) Individuals granted discharges for the purpose of reenlistment for a specific reason, i.e., to attend a service school, to complete a tour of duty or for filling own vacancy.

(3) *Separation by reason of marriage.* This item concerns those enlisted women given discharges by reason of marriage.

(4) *Separation by reason of resignation.* This item concerns those individuals who are discharged by reason of acceptance of their resignations.

(5) *Separation as a result of Writ of Habeas Corpus.* This entry concerns those individuals who are discharged from the service as a result of their application, or an application submitted in their behalf, to the civil courts for a Writ of Habeas Corpus.

(6) *Separation by reason of reduction to permanent grade.* This entry concerns those individuals who are erroneously reenlisted in a higher temporary grade rather than in their permanent grade, and who elect discharge, or transfer to a reserve component if required by law, after being reduced to the lower grade and subsequently promoted to a temporary grade.

(7) *Separation by reason of disability resulting from misconduct, wilful neglect, or incurred during a period of unauthorized absence.* Included herein are those individuals discharged for disability as a result of the individual's intentional misconduct or wilful negligence or incurred during a period of unauthorized absence.

(8) *Separation by reason of a sentence of a court-martial.* This entry concerns those individuals discharged as a result of the approved sentences of courts-martial.

(9) *Separation by reason of unfitness or misconduct.* This provision concerns those individuals who are discharged administratively by reason of unfitness or misconduct as defined in section VII, Paragraphs I. and J. of DoD Directive 1332.14 (24 F.R. 1707, Part 41 of this Subchapter).

(10) *Separation by reason of disloyalty or subversive activities.* This provision concerns those individuals who are discharged administratively for disloyalty or subversive activities of the types set forth in section VIII, Para-

graphs C., 2 a through i, of DoD Directive 5210.9, "Military Personnel Security Program".

(11) *Separation directed by the Secretary of the Service concerned in individual cases.* This entry concerns those individuals whose discharge, or transfer to a reserve component, if required by law, is directed for the convenience of the Government by authority of the Secretary of the Service concerned, upon the application and in the interest of the individual, because of special or unusual circumstances, including discharges on account of erroneous enlistment for various reasons; to permit attendance at a civilian school; to permit enlistment in another service; and to permit enlistment of aliens in the armed forces of their native country.

PART 90—NATURALIZATION OF ALIEN SPOUSES AND/OR ALIEN ADOPTED CHILDREN OF MILITARY AND CIVILIAN PERSONNEL ORDERED OVERSEAS

Sec.
90.1 Purpose.
90.2 Applicability.
90.3 Policy.
90.4 Procedure.

AUTHORITY: §§ 90.2 to 90.4 issued under R.S. 161; 5 U.S.C. 22.

§ 90.1 Purpose.

The purpose of this part is to establish uniform procedure, acceptable to the Immigration and Naturalization Service of the Department of Justice, for military certification of alien dependents seeking naturalization under the Immigration and Nationality Act of 1952, sections 319(b), 320, 321, 323 (a), (b) and (c) (8 U.S.C. 1430(b), 1431, 1432, 1434).

§ 90.2 Applicability.

The provisions of this part are applicable to alien spouses and/or alien adopted children of military and civilian personnel of the Department of Defense who are authorized to accompany or join their sponsors overseas and who wish to obtain United States citizenship prior to departure.

§ 90.3 Policy.

(a) It is the policy of the Department of Defense that maximum assistance will be given by military installation commanders to alien dependents of personnel ordered overseas, to expedite their naturalization in order to accompany or join their sponsors when authorized to do so by regulation and approval of the oversea commander.

(b) It is further the policy of the Department of Defense that the certification as to dependents' authority to accompany or join their sponsors abroad, essential to the naturalization proceedings under the statutes cited in § 90.1, will be uniform for all Services and will be issued only at the times and in the manner described herein.

§ 90.4 Procedure.

The following procedure has been developed in conjunction with the Immigration and Naturalization Service, Department of Justice, to effect the timely and orderly processing of alien dependents eligible for naturalization under the statutes cited in § 90.1. Deviation from prescribed procedure, use of non-standard forms of certification, or failure to submit required documentation may result in delay in the attainment of citizenship prerequisite to the issuance of passport, which will in turn delay the dependents' overseas movement.

(a) Application for petition for naturalization will be made by the alien dependent on Immigration and Naturalization Form N–400 (adult) or N–402 (child), as applicable. These forms may be obtained from any office of the Immigration and Naturalization Service, or from any court having naturalization jurisdiction. The application may be filed when it is definitely established that the sponsor is being assigned overseas, or may be deferred until date of scheduled departure of the dependent is certified by the appropriate military commander (see paragraph (b) of this section).

(1) Application for petition for naturalization will be submitted to the nearest Immigration and Naturalization Service office and must be accompanied by:

(i) Three identical photographs.

(ii) Form FD 258, Fingerprint Card, bearing fingerprints of the applicant.

(2) No further action in naturalization proceedings can be taken until certification of the dependents' scheduled departure for overseas is made by the appropriate military commander.

(b) Certification of Dependents' authorization to Proceed Overseas: DD Form 1278,[1] "Certificate of Oversea Assignment to Support Application to File Petition for Naturalization", will be issued to alien dependents by military commanders at the times indicated below in order that the alien may file such certificate with the nearest Immigration and Naturalization Service office to initiate naturalization proceedings. Only DD Form 1278 will be accepted by the Immigration and Naturalization Service and military commanders will not issue memoranda or letters of any kind in lieu thereof.

(1) When dependents are authorized automatic concurrent travel, DD Form 1278 will be issued not earlier than 90 days prior to the scheduled date of travel of the individual.

[1] Filed as part of the original document.

(2) When advance application for concurrent travel is required, DD Form 1278 will be issued after approval is received and not earlier than 90 days prior to the scheduled date of departure of the individual.

(3) When concurrent travel is not authorized, DD Form 1278 will be issued after authorization for dependents' movement is received, and not earlier than 60 days prior to scheduled date of dependents' travel.

(c) Filing with Immigration and Naturalization Service: Upon receipt of DD Form 1278, the alien will file this form, together with the application for petition for naturalization, if not previously filed, with the nearest office of the Immigration and Naturalization Service. Further processing of the application for citizenship is as prescribed by the Immigration and Naturalization Service. Upon completion of the naturalization process, immediate application for passport should be made, in order that it can be issued prior to scheduled departure of the dependent for overseas.

PART 95—EXEMPTION OF CERTAIN PERSONNEL FROM OPERATION OF SECTIONS 281, 283, 284, 434 AND 1914 OF TITLE 18, UNITED STATES CODE

§ 95.1 Exemption of certain personnel from operation of sections 281, 283, 284, 434, and 1914 of Title 18, United States Code, and section 190 of the Revised Statutes.

Any person employed under the authority of section 704 of the Second Supplemental Appropriation Act, 1951, Public Law 911, 81st Congress, is hereby exempted, with respect to such employment, from the operation of sections 281, 283, 284, 434 and 1914 of Title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99), except as specified in the following paragraphs:

(a) Exemption hereunder shall not extend to the negotiation or execution, by an appointee under section 704, aforesaid, of Government contracts with the private employer of such appointee or with any corporation, joint stock company, association, firm, partnership or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest.

(b) Exemption hereunder shall not extend to making any recommendation or taking any action with respect to individual applications to the Government for relief or assistance, on appeal or otherwise, made by the private employer of the appointee or by any corporation, joint stock company, association, firm, partnership, or other entity in the pecuniary profits or contracts of which the appointee has any direct or indirect interest.

(c) Exemption hereunder shall not extend to the prosecution by the appointee, or participation by the appointee in any fashion in the prosecution, of any claims against the Government involving any matter concerning which the appointee had any responsibility during his employment under section 704, aforesaid, during the period of such employment and the further period of two years after the termination of such employment.

(d) Exemption hereunder shall not extend to the receipt or payment of salary in connection with the appointee's Government service under section 704 from any source other than the private employer of the appointee at the time of his appointment under section 704, aforesaid.

(e) Exemption from section 434 of Title 18, United States Code, shall not extend to persons appointed as experts or consultants under section 704 aforesaid.

(Sec. 704, 64 Stat. 1236; 5 U.S.C. 171v)

PART 101—PARTICIPATION IN RESERVE TRAINING PROGRAMS

Sec.
101.1 Purpose.
101.2 Applicability.
101.3 Reserve participation.
101.4 Compliance measure.
101.5 Cancellation of draft deferment.
101.6 Revocation of commission.

AUTHORITY: §§ 101.1 to 101.6 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply secs. 4, 6, 16, 62 Stat. 605, as amended, 609, as amended, 624, as amended, sec. 207, 72 Stat. 1428; 50 U.S.C. App. 454, 456, 466, 10 U.S.C. 270.

§ 101.1 Purpose.

The purpose of this part is to:

(a) Prescribe regulations providing specific exceptions to training requirements established by sec. 270 of 72 Stat. 1438, 10 U.S.C. 270.

(b) Prescribe regulations governing determination by the Secretaries of the military departments of:

(1) Failure to perform training duty satisfactorily, in connection with employment of the 45-day compliance measure under sec. 270 of 72 Stat. 1438, 10 U.S.C. 270.

(2) Satisfactory service required for deferment from induction for active training and service, under provisions of paragraph (2), subsection 4 (c) of 62 Stat. 606, 50 U. S. C. App. 454, of individuals who were reserve component members on June 25, 1950, and whose applications for two years of active duty have been denied.

(3) Satisfactory participation required for exemption from induction for active training and service, under provisions of paragraph (1) of subsection 6 (c) of 62 Stat. 610, 50 U. S. C. App. 456, of individuals who were members of organized units of the Reserve Forces on February 1, 1951.

(4) Satisfactory service required for deferment from induction for active training and service, under provisions of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456, of individuals who enlist in organized units of the Reserve prior to attaining age 18½ years.

(5) Satisfactory performance of service for deferment from induction for active training and service, under provisions for paragraph (1), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, of graduates of ROTC or other officers' training programs who have undergone six months of active duty for training.

(6) Failure to perform satisfactory service, in connection with revocation of commissions of graduates of ROTC or other officers' training programs who have undergone six months of active duty for training, under provisions of paragraph (1), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456.

(7) Satisfactory participation with respect to the identification of an "organized unit" as defined in subsection 16 (h) of 62 Stat. 625, 50 U. S. C. App. 466.

(c) Provide guidance to the Secretaries of the military departments in their determination of:

(1) Satisfactory service for deferment from induction for active training and service, under provisions of section 262 of 69 Stat. 600, 50 U. S. C. 1013, of individuals who enlist for eight years in the Reserve.

(2) Satisfactory service for deferment from induction for active training and service, under provisions of paragraph (2) of subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, of individuals enlisted in the Reserve who thereafter are commissioned upon graduation from an Officers' Candidate School.

(3) Failure to perform satisfactory service, in connection with the revocation of commissions of Officers' Candidate School graduates, under provisions of paragraph (2) of subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456.

(d) Standardize procedures for the employment of compliance measures.

§ 101.2 Applicability.

The provisions of this part are applicable to all military departments in their implementation of the provisions of law cited in § 101.1.

§ 101.3 Reserve participation.

(a) Each individual inducted, enlisted or appointed in any armed force of the United States on and after August 10, 1955, who becomes a member of the Ready Reserve, other than by virtue of becoming a member of the National Guard of the United States or the Air National Guard of the United States, is required by sec. 270 of 72 Stat. 1438, 10 U.S.C. 270, during his statutory period in the Ready Reserve, to participate in "not less than 48 scheduled drills or training periods * * * and not more than 17 days of active duty for training during each year, or * * * annually not more than 30 days of active duty for training," except as specifically provided by regulations prescribed by the Secretary of Defense. Failure to perform such training duty satisfactorily in any year renders such an individual liable to be ordered without his consent to perform additional active duty for training for not more than 45 days. For the purpose of administering section 270 of 72 Stat. 1438, 10 U.S.C. 270, the terms "enlisted" or "appointed" refer to initial entry into an armed force through enlistment or appointment.

(b) Within the general policy that the number of drills and amount of annual training prescribed will be the minimum required to maintain the proficiency of the unit and the skill of the individual, the following exceptions are authorized for individuals subject to the training requirements of section 270 of 72 Stat. 1438, 10 U.S.C. 270:

(1) An individual who has performed active training and service may be placed in Training Category G (no training), as defined in DoD Directive 1215.6, subject: Uniform Training Categories and Pay Groups Within the Reserve Forces, dated 5 March 1956, when the Secretary of the military department concerned determines that, because of the mobilization requirements of the service concerned, the degree of skill acquired by the individual, or the civilian occupation of the individual, no training requirement exists.

(2) An individual in any training category other than Category G, as defined in Department of Defense Directive No. 1215.6, subject: Uniform Training Categories and Pay Groups Within the Reserve Forces, dated March 5, 1956, by reason of assignment to a unit, need not be required to participate in training additional to that prescribed for such training category. In assigning an individual to a particular training category, consideration may be given to personal circumstances to the degree that it is consistent with military requirements.

(3) An individual while participating in any officers' training program under provisions of paragraphs (1) and (2) of subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, will not be required to participate in training additional to such officers' training program.

(4) Commissioned officer students of medicine or dentistry and practicing physicians or dentists may be permitted to participate to whatever lesser extent is considered by the military department concerned to be necessary to maintain military proficiency.

(c) Criteria established by the Secretaries of the military departments for determining satisfactory performance of training duty by individuals subject to the provisions of section 270 of 72 Stat. 1438, 10 U.S.C. 270, may include consideration of manner of performance of such training duty, but may not permit more than 10 per cent unexcused absence from scheduled drills or training periods. Failure to attend scheduled drills or training periods or annual active duty for training as the result of sickness, injury or emergency or other circumstances beyond the control of the individual, may be excused. For individuals subject to revocation of commission under provisions of paragraph (1), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, criteria for performance of satisfactory service shall be the same as that prescribed above for those subject to provisions of section 270 of 72 Stat. 1438, 10 U.S.C. 270. In the interest of uniformity, the same criteria should apply to individuals subject to revocation of commission under paragraph (2), subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456.

(d) Individuals exempt under provisions of paragraph (1), subsection 6 (c) of 62 Stat. 610, 50 U. S. C. App. 456, may continue to be so exempt by participation in the training program of an organized unit, as defined in subsection 16 (h) of 62 Stat. 625, 50 U. S. C. App. 466, in Training Categories A, B, C, or E, as defined in Department of Defense Directive 1215.6, subject: Uniform Training Categories and Pay Groups Within the Reserve Forces, dated March 5, 1956 in the degree of participation stated in paragraph (c) of this section.

(e) Individuals in order to continue in a draft-deferred status under the provisions of paragraph (2), subsection 4 (c) and paragraph (1), subsection 6 (d) of 62 Stat. 606, 611, 50 U. S. C. App. 454, 456, shall be required to meet the standards of satisfactory performance of training duty set forth in paragraph (c) of this section, or, as appropriate, participate satisfactorily in an officers' training program as provided in paragraph (b) (3) of this section. However, membership of such individuals in the Standby Reserve as a result of the screening process prescribed in Part 53 of this subchapter will constitute satisfactory performance of service for continued deferment. In the interest of uniformity, standards for continued deferment under section 262 of 69 Stat. 600, 50 U. S. C. 1013, and paragraph (2) subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, should be the same as those prescribed in this paragraph.

(f) Individuals in order to continue in a draft-deferred status under provisions of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456, shall be required to meet the standards of satisfactory performance of training duty set forth in paragraph (c) of this section, or participate satisfactorily in an officers' training program as provided in paragraph (b) (3) of this section.

§ 101.4 Compliance measure.

Individuals subject to the participation requirements of section 270 of 72 Stat. 1438, 10 U.S.C. 270, except those enlisted in the Reserve under provisions of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456, may for failure to perform training duty satisfactorily as defined above, be ordered to active duty for training for not more than 45 days. A member who fails to comply with orders to perform such active duty for training becomes liable to disciplinary action under the Uniform Code of Military Justice.

§ 101.5 Cancellation of draft deferment.

(a) Except for an individual enlisted under the provisions of clause (C), paragraph (2), of subsection 6(c) of 62 Stat. 610, as amended, 50 U.S.C. App. 456, no individual enlisted in the Reserve in a draft-deferred status should be certified to the Selective Service System for induction for two years active training and service unless application of the 45-day compliance measure has failed to induce satisfactory performance of training duty. No such individual will be so certified, however, until he has registered with Selective Service.

(b) The following individuals shall be reported to the local Selective Service Board for induction:

(1) Subject to considerations set forth in paragraph (a) of this section, persons enlisted in the Reserve under provisions of clause (C), paragraph (2), subsection 6 (c), of 62 Stat. 610, as amended, 50 U. S. C. App. 456, and section 262 of 69 Stat. 600, 50 U. S. C. 1013, who fail to serve satisfactorily.

(2) Individuals, who have been appointed as Reserve officers under subsection 6 (d) of 62 Stat. 611, 50 U. S. C. App. 456, and have not been required to perform active training and service, who fail to perform satisfactory service.

§ 101.6 Revocation of commission.

Revocation of commission under the provisions of subsection 6(d) of 62 Stat. 611, 50 U.S.C. App. 456, will be effected only after the individual concerned has been certified to Selective Service as provided in § 101.5(b)(2).

PART 105—RESERVE OFFICERS' TRAINING CORPS AND RELATED OFFICERS' TRAINING PROGRAMS

Sec.
105.1 Purpose.
105.2 Applicability.
105.3 General.
105.4 Commissioning of graduates.
105.5 Assignment of graduates.
105.6 Participation in Reserve training programs.

AUTHORITY: §§ 105.1 to 105.6 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 6, 62 Stat. 609, as amended; secs. 591, 593, 70A Stat. 24, 25; 50 U. S. C. App. 456, 10 U. S. C. 591, 593.

§ 105.1 Purpose.

The purpose of this part is to prescribe policies relating to the subject programs with respect to:

(a) Physical examination of enrollees.
(b) Commissioning of graduates.
(c) Assignment of graduates.

§ 105.2 Applicability.

This part applies to all military departments in the operation and administration of officers' training and procurement programs, within the purview of subsection 6(d)(1) of 62 Stat. 611, 50 U.S.C. App. 456.

§ 105.3 General.

(a) To reduce to an absolute minimum the loss at graduation of persons found physically disqualified for appointment as commissioned officers, thorough and complete physical examinations will be conducted at the time of, or immediately prior to:

(1) Enrollment in the Advanced Courses of Army and Air Force Reserve Officers' Training Corps programs. In addition, the military departments are urged to conduct physical examinations of enrollees in the Basic Courses of Army and Air Force Reserve Officers' Training Corps programs where entrants therein evidence an intention to pursue the Senior Division curricula to completion.

(2) Initial enrollment in all other applicable officers' training and procurement programs.

Such examinations will, in all respects, be equal to the examinations conducted to determine physical qualifications for appointment as commissioned officers. The physical standards applicable at the time of enrollment shall obtain at the time of graduation.

(b) Enrollees who acquire exemption or deferment from induction by virtue of their enrollment in subject programs shall be required to execute agreements as provided in subsection 6 (d) (1) of 62 Stat. 611, 50 U. S. C. App. 456. Enrollees other than those described above may be required to execute such agreements as may be prescribed by the Secretary of the military department concerned.

§ 105.4 Commissioning of graduates.

Upon the successful completion of the required course of instruction, a graduate of a program referred to in this part shall, if otherwise qualified, be appointed a Regular or Reserve Officer in the appropriate Armed Force. Such appointments shall be for an indefinite term.

§ 105.5 Assignment of graduates.

(a) Subject programs shall be operated with the greatest possible stability to produce officers to meet the approved mobilization requirements of the military departments.

(b) A graduate who has executed an agreement pursuant to § 105.3(b) shall:

(1) If his services are required at the time of his appointment, serve on active duty with the Armed Force in which appointed under the terms of his agreement.

(2) If not needed on active duty at the time of his appointment, be ordered to active duty for training for a period of six months with the Armed Force in which appointed.

(c) Graduates shall be called to active duty or active duty for training as soon as possible within a twelve-month period following their appointment as commissioned officers in accordance with the ability of the military departments to absorb them into units and training programs of the appropriate military services. Schedules for the calling of such graduates to active duty or active duty for training shall be prepared, and each graduate shall be advised at the time of his graduation as to the approximate date he will be required to report for such duty. During the period between appointment and the date of reporting for active duty or active duty for training, graduates shall be given appropriate Ready Reserve assignments.

(d) Graduates who have fulfilled their active military training and service obligation, or who have enlisted Reserve status and have performed six months active duty for training under the provisions of section 262, 69 Stat. 600, 50 U. S. C. 1013, or subsection 672 (d), 70A Stat. 28, 10 U. S. C. 672 (d), following their appointment as commissioned officers and in accordance with Service requirements, may:

(1) Be ordered to active duty or active duty for training per paragraph (c) of this section, pursuant to the terms of any agreements they have have entered into with the military departments concerned, or

(2) Be given appropriate Reserve assignments.

(e) Selection among graduates for assignment to active duty or active duty for training shall be made impartially by the Secretary of the military department concerned in accordance with the requirements of the respective military services. Maximum consideration shall be given to the preference of each individual. However, if it becomes necessary to select graduates for active duty from among those who preferred active duty for training, those with major academic specialties appearing below may be selected for active duty only if specific assignments utilizing such specialties exist, or if total active duty requirements cannot otherwise be met. The major academic specialties for which the special procedures described above are applicable are:

Chemistry.
Engineering (all branches).
Geology.
Geophysics.
Mathematics.
Microbiology.
Parasitology.
Pharmacology.
Physics.
Physiology (Medical).

(f) A graduate may be delayed from being ordered to active duty or active duty for training under regulations promulgated by the appropriate Secretary if he is the recipient of a scholarship, has been accepted by a recognized institution of higher education for graduate studies, would suffer undue personal hardship, or is otherwise precluded from reporting as ordered for cogent and acceptable reasons. If delayed, he shall remain subject to the assignment criteria prescribed above and shall be assigned to active duty or active duty for training, as appropriate, at such time as the cause of his delay ceases to exist.

§ 105.6 Participation in Reserve training programs.

Regulations governing participation in Reserve training programs and employment of compliance measures are prescribed in Part 101 of this subchapter.

PART 110—MILITARY COLLEGES IN THE RESERVE OFFICERS' TRAINING CORPS PROGRAMS; SUBSISTENCE AND UNIFORM COMMUTATION RATES FOR ENROLLED MEMBERS OF THE ROTC

Sec.
110.1 Purpose.
110.2 Applicability.
110.3 Policy.
110.4 Commutation rates.
110.5 Inspection.

AUTHORITY: §§ 110.1 to 110.5 issued under 10 U.S.C. 4386, 4387, 6901, 9386, 9387.

§ 110.1 Purpose.

The purpose of this part is to: (a) Define the classification of ROTC institutions; and (b) establish uniform rates for commutation in lieu of subsistence and uniforms for enrolled members of the Reserve Officers' Training Corps under the appropriate provisions of law (10 U.S.C. 4386, 4387, 6901, 9386, and 9387).

§ 110.2 Applicability.

The provisions of this part are applicable to the enrolled members of the Reserve Officers' Training Corps programs of all the military departments.

§ 110.3 Policy.

(a) *Classification of ROTC Units.* Senior division, military schools division, and junior division units are classified according to the type of institutions at which such units are established.

(1) *Senior Division.* The senior division units are classified as follows:

(i) *Class MC* (Military Colleges). For the purpose of qualifying as a military college within the meaning of subsection 6(a), Universal Military Training and Service Act, as amended: Units established in essentially military colleges or universities which confer baccalaureate or graduate degrees at which the average age of the students at the time of graduation is not less than 21 years; which require a course in military training throughout the undergraduate course for all qualified undergraduate students; which organize their military students as a Corps of Cadets under constantly maintained military discipline; which require all members of the Corps including those members enrolled in the ROTC to be habitually in uniform when on campus; which have as their objectives the development of the military students' character by means of military training and the regulation of their conduct in accordance with disciplinary principles; and which in general meet military standards similar to those maintained at the Service academies.

(ii) In the application of the above definition and criteria for the qualification of an institution as Class MC (Military College) the designation "all qualified undergraduate students" is defined as all physically fit male students except:

(*a*) Foreign nationals.

(*b*) Individuals who are not liable for induction by virtue of having honorably completed active training and service.

(*c*) Students who are pursuing special undergraduate courses in excess of four years after completion of the required military training.

(*d*) Certain categories of students who are specifically excused by (Board of Trustees) administrative decisions.

(iii) *Class CC.* ROTC units established at civilian colleges and universities which are not operated on an essentially military basis; which confer baccalaureate or graduate degrees; and at which the average age of the student at graduation is not less than 21 years.

(2) *Military Schools Division.* The military schools division is composed of units at designated schools which have been specifically authorized one of the following type units:

(i) *Class MJC.* Units established at essentially military schools which provide high school and junior college instruction but do not confer baccalaureate degrees. These units meet all other requirements of Class MC and accept and maintain the specially designated program of instruction prescribed by the appropriate Secretary for this class of institution.

(ii) *Class MI.* Units established at essentially military schools of secondary level of instruction which meet the military training requirements of Class MC or Class MJC and accept and maintain the specially designed program of instruction prescribed by the appropriate Secretary for this class of institution.

(3) *Junior Division.* The junior division units classified as Class HS are units established at high schools and other educational institutions of comparable academic level which do not meet the requirements prescribed by any of the preceding classes.

(b) *Qualifying for Class MC special rate of commutation.* In order to qualify for the Class MC special rate of commutation in lieu of uniforms a designated military college must meet the following requirements in addition to those contained in paragraph (a)(1)(i) of this section.

(1) Organize and maintain within their undergraduate student bodies a self-contained Corps of Cadets in which not less than 300 male students are enrolled as members at all times throughout the academic year.

(2) Require all members of the Corps of Cadets to be in appropriate uniform at all times while on the campus.

(3) House all members of the Corps of Cadets in barracks separate from nonmembers of the Corps of Cadets.

(4) Require all members of the Corps of Cadets to be under constantly maintained military discipline on a 24-hour-per-day, 7-days-a-week basis.

(5) Require all physically qualified members of the above Corps of Cadets except foreign nationals, individuals who are not liable for induction by virtue of having honorably completed active training and service, or other individuals whose enrollment is precluded by provisions of appropriate regulations of the military departments to be enrolled in the basic course of ROTC. Further, to require such members of the Corps of Cadets upon completion of the basic course to apply, and if qualified and selected, to be enrolled in the advanced course at the proper time.

(6) Only those members of the Corps of Cadets meeting the requirements set forth in subparagraphs (1), (2), (3), (4), and (5) of this paragraph, who are enrolled in the basic and advanced course of the ROTC will be entitled to the special MC rate of commutation. Institutions designated as military colleges may enroll in the ROTC of the appropriate services those students who for various reasons are not required to be members of the Corps of Cadets. These institutions will receive, for such students, only the standard commutation rate prescribed annually for students in Class CC institutions.

§ 110.4 Commutation rates.

The commutation rates established below became effective July 1, 1956:

(a) *Subsistence.* A rate of 90 cents per day is established as the rate of commutation in lieu of subsistence for enrolled members of the:

(1) Advanced course, senior division, Army and Air Force ROTC or of the MST 5 and 6 course of the military schools division, Army ROTC.

(2) Contract Naval Reserve Officers' Training Corps program during their junior and senior years.

(b) *Uniforms.* The rates of commutation in lieu of uniforms are established as follows:

(1) $7 per year for a period not to exceed 3 years for each enrolled member of the junior division or of the MST 1 and 2 course of the military schools division, Army ROTC.

(2) $25 per year for a period not to exceed 2 years for each enrolled member of the basic course, senior division at Class CC institutions, Army and Air Force ROTC, or of the MST 3 and 4 course of the military schools division, Army ROTC.

(3) $50 per year for a period not to exceed 2 years for each enrolled member of the basic course, senior division, Army and Air Force ROTC at Class MC institutions.

(4) $100 covering a 2-year period for each enrolled member of the advanced course, senior division at Class CC institutions Army and Air Force ROTC or of the MST 5 and 6 course of the military schools division, Army ROTC.

(5) $200 covering a 2-year period for each enrolled member of the advanced course, senior division, Army and Air Force ROTC at Class MC institutions.

§ 110.5 Inspection.

An inspection system will be established to insure that ROTC units meet the prescribed standards for the award or retention of the Class MC classification and the special rate of commutation in lieu of uniforms. At institutions having both Army and Air Force units, a joint inspection will be held. Membership on the inspection team will be composed of equal ranks and numbers of Army and Air Force personnel, in addition to which each service will on alternate years provide a team chief. Inspections will be held within 30 days of the opening of the fall term of school. While final on-the-spot approval authority is vested in the team, disapprovals will be subject to review and resolution or confirmation by the services. The team may advise the institutional authorities of its findings at the conclusion of the inspection. In instances of disapproval the service review and final notification of the institution will be accomplished within the next 30 days.

PART 115—ASSIGNMENT TO AND TRANSFER BETWEEN RESERVE CATEGORIES, AND DISCHARGE FROM RESERVE STATUS

Sec.
115.1 Purpose.
115.2 Applicability.
115.3 Original assignment to Reserve status.
115.4 Transfer to the Standby Reserve.
115.5 Transfer from the Standby Reserve.
115.6 Discharge.

AUTHORITY: §§ 115.1 to 115.6 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply secs. 4, 6, 16, 62 Stat. 605, as amended, 609, as amended, 624, as amended, secs. 269, 1003, 1162, 1163, 70A Stat. 12, 79, 89; 50 U. S. C. App. 454, 456, 466, 10 U. S. C. 269, 1003, 1162, 1163.

§ 115.1 Purpose.

The purpose of this part is to establish policy guidance for assignment to and transfer between reserve categories, and discharge from reserve status.

§ 115.2 Applicability.

This part is applicable to all military departments

§ 115.3 Original assignment to Reserve status.

(a) *Ready Reserve.* Original membership in the Ready Reserve may be attained by:

(1) Transfer thereto under the provisions of paragraph (3), subsection 4 (d) of 62 Stat. 607, 50 U. S. C. App. 454, and sec. 269 (a), 70A Stat. 12, 10 U. S. C. 269 (a), upon release from active duty;

(2) Appointment as a Reserve Officer and assignment to the Ready Reserve under provisions of subsection 6 (d), 62 Stat. 611, 50 U. S. C. App. 456, and sec. 269 (a), 70A Stat. 12, 10 U. S. C. 269 (a);

(3) Entry (appointment or enlistment) into the National Guard of the United States or Air National Guard of the United States in accordance with provisions of sec. 269 (b), 70A Stat. 12, 10 U. S. C. 269 (b), as affected by secs. 101, 3077 and 8077 thereof;

(4) Direct entry under the provisions of sections 261 and 262 of 69 Stat. 600, 50 U. S. C. 1012, 1013, or of clause (C), paragraph (2), subsection 6 (c) of 62 Stat. 610, as amended, 50 U. S. C. App. 456; or

(5) Direct voluntary entry (appointment or enlistment) of an individual into the Ready Reserve, other than as provided above.

(b) *Standby Reserve.* Direct assignment to the Standby Reserve without prior membership in the Ready Reserve may be attained:

(1) In accordance with the provisions of paragraph (3), subsection 4 (d) of 62 Stat. 607, as amended, 50 U. S. C. App. 454, and paragraph (1) of subsection 269 (e), 70A Stat. 12, 10 U. S. C. 269, upon release from five or more years of active training and service; or

(2) By direct voluntary entry of an individual not serving under a statutory obligation and not otherwise subject to military service.

(c) *Retired Reserve.* Direct assignment and transfer to the Retired Reserve may be accomplished under the provisions of Department of Defense Directive No. 1200.4, subject: The Retired Reserve of the Reserve Forces, dated December 20, 1957.

§ 115.4 Transfer to the Standby Reserve.

(a) Each individual who has served five or more years on active training and service in the Armed Forces of the United States but who has an unfulfilled portion of his total military obligation remaining upon release therefrom, shall, if otherwise qualified therefor and a suitable vacancy exists, be afforded the opportunity to execute a written request to be assigned to the Ready Reserve for a period of at least one year. If such opportunity is declined, the individual shall be placed in the Standby Reserve.

(b) Individuals enumerated below shall, if otherwise qualified therefor and a suitable vacancy exists, be afforded the opportunity to remain in the Ready Reserve for a period of at least one year. If such opportunity is declined, they shall be transferred to the Standby Reserve.

(1) Those who have served on active duty and participated satisfactorily in accredited training programs of the Ready Reserve for a combined total of five or more years;

(2) Those who have completed the periods of active duty and Ready Reserve participation prescribed in section 263 of 69 Stat. 602, 50 U. S. C. 1014;

(3) Those who qualify for such transfer under provisions of paragraphs (3) and (4) of subsection 269 (e), 70A Stat. 12, 10 U. S. C. 269, unless such transfer would render them liable to induction for active training and service.

(c) All voluntary agreements to be assigned to or remain in the Ready Reserve will provide that:

(1) The Reservist may be transferred to the Standby Reserve by the appropriate Secretary at any time for cogent reasons;

(2) Under provisions of subsection 269 (e), 70A Stat. 12, 10 U. S. C. 269, the individual waives his right to transfer to the Standby Reserve while serving under such agreement;

(3) The period of voluntary membership shall be of not less than one year's duration.

(d) Transfer to the Standby Reserve under the screening process prescribed in Part 125 of this subchapter of individuals otherwise subject to continued membership in the Ready Reserve will be accomplished under the authority of subsection 269 (f), 70A Stat. 13, 10 U. S. C. 269.

(e) Transfer to the Standby Reserve of members of the National Guard of the United States or Air National Guard of the United States will be subject to the provisions of subsection 269 (g), 70A Stat. 13, 10 U. S. C. 269.

(f) Assignment to the Inactive Status List of the Standby Reserve is governed by Department of Defense Directive No. 1200.2, subject: Inactive Status List of the Standby Reserve, dated June 25, 1959, and retention thereon by Department of Defense Directive No. 1235.1, subject: Policy on Direct Appointments and on Adjustments, at Time of Entry into Active Military Service, of Grades of Civilian Specialists in the Reserve Forces Who Are Not Otherwise Expressly Provided for by Law, dated July 11, 1955.

(g) Individuals may be voluntarily retained in or transferred to the Standby Reserve for periods beyond expiration of statutory obligation, under such directives as may be issued by the Secretaries of the military departments.

§ 115.5 Transfer from the Standby Reserve.

(a) Any member of the Standby Reserve who has not completed his obligated period of military service in the Ready Reserve may be transferred to the Ready Reserve whenever the reasons for his transfer to the Standby Reserve no longer exist, provided he is otherwise qualified and a requirement exists.

(b) Whenever persons with critical skills who performed active duty for training for six months pursuant to Executive Order No. 10650, Regulations Governing the Selection of Certain Persons who have Critical Skills for Enlistment in Units of the Ready Reserve of the Armed Forces, dated January 6, 1956, published at 21 F. R. 167 (3 CFR, 1956 Supp.), and were subsequently transferred to the Standby Reserve in accordance with the screening process prescribed in Part 125 of this subchapter, are no longer engaged in critical skills in critical defense supporting industries or research, the Selective Service System will notify the appropriate military department. Upon receipt of such notification, the military department shall transfer such person to the Ready Reserve if he is otherwise qualified and a requirement exists.

(c) A member of either the Standby Reserve or the Retired Reserve may upon his own request be transferred to the Ready Reserve if qualified and a requirement exists for him. Such voluntary transfer will be accomplished under authority of sec. 269 (d), 70A Stat. 12, 10 U. S. C. 269 (d), subject to provisions of § 115.4(c).

(d) In any case, where an individual is transferred from the Standby Reserve to the Ready Reserve or the Retired Reserve, notification thereof to the Selective Service System will be made by the military department concerned.

§ 115.6 Discharge.

(a) Enlisted members of the Ready Reserve or the Standby Reserve who have completed their statutory obligation or who are not subject to a military obligation will be discharged unless they voluntarily remain under conditions specified in paragraph (c) or (g) of § 115.4.

(b) Any person who while a member of a reserve component becomes a regular or duly ordained minister of religion shall be discharged from such reserve component upon request under authority of subsection 233 (h), 69 Stat. 599, 50 U. S. C. 961. The definition of regular or duly ordained minister of religion provided in subsection 16 (g) of 62 Stat. 624, 50 U. S. C. App. 466, shall be used in connection with this part.

(c) Those commissioned officers of the Reserve who have accepted indefinite appointments will not be subject to mandatory discharge upon completion of the statutory obligation.

(d) Discharge from the service obligation for hardship or other causes will be governed by pertinent provisions of Department of Defense Directive No. 1200.3, subject: Fulfilling the Military Service Obligation, dated May 23, 1958 (Part 50 of this subchapter).

(e) Discharge from the reserve components is governed by provisions of sections 1003, 1162, 1163, 70A Stat. 79, 89, 10 U. S. C. 1003, 1162, 1163.

(f) Upon the discharge of members of the Standby Reserve, due notification thereof will be made to the Selective Service System by the military department concerned.

PART 120—INTER-SERVICE TRANSFER OF RESERVE OFFICERS ON EXTENDED ACTIVE DUTY

Sec.
120.1 Purpose.
120.2 Applicability.
120.3 Policy.
120.4 Procedure.

AUTHORITY: §§ 120.1 to 120.4 issued under sec. 716, Title 10, United States Code.

§ 120.1 Purpose.

The purpose of this part is to establish the policies which will govern implementation of section 716, Title 10, United States Code, with respect to the transfer of Reserve commissioned officers on extended active duty between the Reserve components of the Army, Navy, Air Force and Marine Corps.

§ 120.2 Applicability.

(a) This part is applicable to officers on extended active duty holding Reserve commissions in the armed services, except officers of the medical services. The inter-service transfer of officers holding commissions in the medical services will continue to be accomplished under existing regulations, DoD Instruction 1205.1, "Implementation of the Universal Military Training and Service Act with Respect to Medical and Dental Registrants", Section XI.

(b) Policy and procedure for the transfer of Regular officers on extended active duty is contained in Part 56 of this subchapter.

(c) Transfer of officers of the Reserve components not on active duty (except officers of the medical services) will continue to be accomplished under applicable Service regulations for conditional resignation and appointment.

§ 120.3 Policy.

(a) It is the policy of the Department of Defense that an officer of any military service who is especially qualified to contribute to the success of an activity of another service will be given an opportunity to do so without interruption of his service career, by being transferred from one service and appointed in another.

(b) No officer will be so transferred without his consent, nor will an officer transferred from one service be appointed in another service with a higher rank or precedence than that he held on the date prior to his transfer.

(c) Transfers will be made only within authorized strength limitations for the active duty forces.

(d) While intended for use primarily in the technical fields to permit the full utilization of specialists, this authority to transfer between services is not restricted to technical specialists.

§ 120.4 Procedure.

(a) Request for transfer will normally be initiated by an appropriate agency of the military department desiring the services of an officer serving in another department, or by the officer himself.

(1) (i) If initiated by the officer himself, the requests will be forwarded through military channels to the Secretary of the military department in which he is presently commissioned, and will be accompanied by a justification of the requested transfer as being in the interest of national defense and the individual officer.

(ii) The Secretary of the losing Department will forward the request to the Secretary of Defense through the Secretary of the gaining Department. Both Departmental Secretaries will indicate their concurrence or non-concurrence in the requested transfer.

(2) If initiated by other than the officer himself, request for transfer will be routed to the Secretary of Defense through the Secretaries of the gaining and losing Departments and will be accompanied by a statement that the officer concerned consents to the proposed transfer.

(b) The Secretary of Defense will approve such requested transfers as he considers in the best interests of the Department of Defense.

(c) Termination of presently held commissions and reappointment in another service will be accomplished by the two Services affected without interruption of the continuity of the officer's active duty.

(d) An officer transferred under the provisions of this part will be awarded a permanent reserve grade and date of rank as determined by applying the

amount of his promotion service to the appointment laws in effect for the Service to which he is being transferred. His temporary grade and date of rank will remain the same as that he held in his present Service on the day prior to his transfer.

(e) An officer transferred under provisions of this part will be credited with the unused leave with which he was credited at the time of transfer, and with the total military service with which he was credited on the date prior to his transfer.

PART 123—TRANSFER OF PERSONS BETWEEN RESERVE COMPONENTS OF THE ARMED FORCES

Sec.
123.1 Purpose.
123.2 Applicability.
123.3 Policy.

AUTHORITY: §§ 123.1 to 123.3 issued under sec. 512, 70A Stat. 18; 10 U.S.C. 512 and sec. 595, 70A Stat. 25; 10 U.S.C. 595.

§ 123.1 Purpose.

The purpose of this part is to establish a uniform policy governing interservice transfers of persons not on active duty who have an obligation for service under the provisions of the Universal Military Training and Service Act, as amended or the Armed Forces Reserve Act of 1952, as amended, between reserve components of the Armed Forces.

§ 123.2 Applicability.

This part is applicable to all military departments in the implementation of sections 512 and 595 of Title 10, U.S. Code.

§ 123.3 Policy.

(a) Interservice transfers of persons not on active duty who have an obligation for service under the provisions of the Universal Military Training and Service Act, as amended or the Armed Forces Reserve Act of 1952, as amended between reserve components of the Armed Forces may be accomplished only in cases wherein the reservist requests or consents to such transfer and wherein it is mutually agreed by the two Secretaries concerned that such transfers are in the best interest of the Armed Forces, except as provided in paragraph (b) of this section. An Armed Force may request the transfer of a particular reservist from a reserve component of another Armed Force. Such request will normally be made only when the initiating Armed Force has a specific vacancy for the individual concerned in an organized unit within a reasonable distance of the individual's domicile or place of business. It may be approved only when:

(1) The losing Armed Force has no organized unit within a reasonable distance of the domicile or place of business of the individual to which the reservist may be usefully assigned, or

(2) The reservist has special experience or professional, educational or technical background which is clearly of greater use to the gaining Armed Force and which use outweighs the value of his previous training in the losing Armed Force.

(b) At the time of enrollment in an officer candidate program of another service, an enlisted reservist will be transferred to the reserve component of the service conducting such program, provided that it is mutually agreed by the Secretaries concerned that such transfer is in the best interest of the Armed Forces.

(c) Interservice transfers between reserve components of the Armed Forces will be accomplished by discharge from the reserve component in which serving for the purpose of immediate enlistment or appointment in the reserve component of the Armed Force concerned. Where membership in the officer training program does not confer military status, discharge will be for the purpose of immediate enlistment in the reserve component of the gaining Armed Force. Discharge for this purpose shall not constitute a fulfillment of the military obligation. Additional service performed after such discharge will be counted toward fulfillment of such obligation.

PART 125—SCREENING THE READY RESERVE UNDER PROVISIONS OF THE ARMED FORCES RESERVE ACT OF 1952, AS AMENDED

Sec.
125.1 Purpose.
125.2 Policy.
125.3 Regulations for screening the Ready Reserve.
125.4 Ministerial students.
125.5 Persons who become liable for induction if screened into the Standby Reserve.
125.6 Reservists transferred to Standby Reserve.
125.7 Reports to the Secretary of Defense.
Appendix A—Standards and requirements applicable to Ready Reservists who are apprentices.
Appendix B—Standards and requirements applicable to Ready Reservists who are students.

AUTHORITY: §§ 125.1 to 125.7 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 208, 69 Stat. 598, 599; secs. 269, 273, 70A Stat. 12, 13; 50 U. S. C. 928, 10 U. S. C. 269, 273.

§ 125.1 Purpose.

The purpose of this part is to provide the Services with policy and regulations for screening the Ready Reserve.

§ 125.2 Policy.

(a) Each Service shall continuously screen its Ready Reserve in peacetime in order to provide a Ready Reserve composed of individuals (1) who meet Service standards of mental, moral, professional and physical fitness, and possess the required military qualifications in the various ranks, grades, ratings and specialties and (2) who are immediately available for military service during a national emergency without seriously impairing production and research vital to the national military effort, or activities necessary to the maintenance of the national health, safety or interest, or without creating extreme personal or community hardship.

(b) In selecting members of the Ready Reserve to be transferred to the Standby Reserve who are otherwise equally eligible for transfer under the criteria established in this part, the Service concerned shall accord preference for transfer in the following order: (1) Those who have participated in combat; and (2) those with the least remaining obligated service in the Ready Reserve.

§ 125.3 Regulations for screening the Ready Reserve.

Screening of the Ready Reserve shall be in accordance with the provisions of Executive Order 10651 (3 CFR, 1956 Supp.) and the following implementing instructions. Citations refer to specific paragraphs in the Executive Order. Persons who enter the Ready Reserve under the provisions of section 263(a) and 263(b) of the Armed Forces Reserve Act of 1952, as amended, shall not be eligible for transfer to the Standby Reserve under the provisions of paragraphs 4, 5, and 6 of the Executive Order.

(a) *Reference paragraph 2 (a) of Executive Order 10651; fulfilled Ready Reserve obligation.* Members of the Ready Reserve who have completed their ready reserve obligation will be transferred to the Standby Reserve as provided for by Department of Defense Directive 1205.6, (Part 115 of this subchapter) "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status."

(b) *Reference paragraph 3 of Executive Order 10615; extreme hardship.* Positive action shall be taken to insure that all Ready Reservists are informed of the provisions of paragraph 3 of the Executive Order and the following implementing instructions relative to hardship:

(1) *Extreme personal hardship.* An individual desiring transfer from the Ready Reserve to the Standby Reserve must establish by documentary evidence that his dependents would, by his call to active duty in an emergency, suffer extreme hardship greater than that which dependents of other Reservists can be expected to experience from the Reservist's order to active duty. In order to insure a uniform standard, the criteria established by the Services should conform generally with current Selective Service regulations on extreme hardship deferment (see § 1622.30 (b) and (c) (1) of this title). In those cases where the reservist is registered with Selective Service, documentary evidence may include a recommendation by the State Director of Selective Service of the State in which the registrant's Local Board is located. Requests for consideration under this paragraph must be initiated by the Reservist or by his dependents.

(2) *Extreme community hardship.* An individual desiring transfer from the Ready Reserve to the Standby Reserve must establish by documentary evidence that his withdrawal from the community in a national emergency would have a substantial adverse effect on the health, safety or welfare of the community. In those cases where the reservist is registered with Selective Service, documentary evidence may include a recommendation by the State Director of Selective Service of the State in which the registrant's Local Board is located. Requests for consideration under this paragraph must be initiated by the Reservist.

(c) *Reference paragraph 4 of Executive Order 10651; critical military skills and critical civilian occupations*—(1) *Critical military skills.* (i) A critical military skill is one appearing on the List of Critical Military Skills for Use in Screening the Ready Reserve published by the Department of Defense. This list is subject to periodic revision.

(ii) The criteria used in establishing the List of Critical Military Skills are as follows:

(*a*) The military skill must be indispensable to the success of the Ready Reserve mobilization mission.

(*b*) A long period of mobilization-accelerated training in the Reservist's individual military specialty to include prerequisite specialty training (totalling at least 6 months) must be needed to develop the degree of skill required.

(*c*) An appreciable shortage (at least 10 percent of Ready Reserve requirements) of available personnel with the skill exists or is anticipated.

(iii) The Department of Defense list will be revised from time to time by the Assistant Secretary of Defense (Manpower, Personnel and Reserve), as necessitated by changes in the military missions and manpower requirements of the Services.

(iv) The Military Departments may furnish special justification for those skills which in their judgment should be included on the List of Critical Military Skills where manning circumstances justify a deviation from the above criteria.

(v) To the maximum extent possible, Services will utilize overages in critical military skills in one geographical area to meet the requirements for such skills in other areas.

[Subparagraph (1) amended, 23 F.R. 1725, Mar. 13, 1958]

(2) *Critical civilian occupations.* (i) The Department of Labor has issued a List of Critical Civilian Occupations for Screening the Ready Reserve. This list was developed by an Interagency Committee on which the Department of Defense is represented, and is subject to periodic revision.

(ii) To the extent that such assistance may be needed, authority is granted the Services to request the technical advice of the Department of Labor's affiliated State Employment Service Offices in classifying the civilian occupations of particular individual Reservists, other than Farm Operators and Assistants. There are some 1,700 full-time and 2,100 part-time Employment Service Offices located in communities throughout the country. The County Agricultural Stabilization and Conservation Committees of the Department of Agriculture may be used in a similar manner with respect to Farm Operators and Assistants. These committees, which exist in all agricultural counties in the country, generally have their headquarters in the county seats.

(3) *Utilization of volunteers with critical civilian occupations.* A Ready Reservist with a critical civilian occupation in excess of requirements in the Ready Reserve who has been selected for transfer to the Standby Reserve in accordance with paragraphs 4 and 7 of the Executive Order, and who then volunteers to remain in the Ready Reserve, under the provisions of Department of Defense Directive 1205.6 (Part 115 of this subchapter) dated January 16, 1956, "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status", shall be given a military assignment utilizing his critical civilian occupation. If no military requirement exists for his critical civilian occupation and he possesses another critical military skill, he shall be utilized in that skill. If no requirement exists for him in a critical civilian occupation or in a critical military skill, he shall be utilized, insofar as possible, in a related military assignment.

(d) *Reference paragraph 5 of Executive Order 10651, apprentices and students.* Ready Reservists who are apprentices or students shall be transferred to the Standby Reserve in accordance with the following regulations except

that no person shall be transferred under this part who (1) has not had active training and service, (2) possesses a critical military skill, or (3) volunteers to remain in the Ready Reserve and executes a written agreement to remain in such Reserve for a minimum period of one year, as provided in Department of Defense Directive 1205.6, dated January 16, 1956, "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status." (Part 115 of this subchapter.)

(1) *Apprentices.* Ready Reservists who are undergoing apprenticeship training in critical civilian occupations appearing in Department of Labor List of Critical Occupations for Screening the Ready Reserve, in such numbers as are in excess for such occupations, and who meet the standards and requirements described in Appendix A below shall be transferred to the Standby Reserve. At such time as the Reservist ceases to qualify for consideration as an apprentice under the regulations in this part, he should be considered for transfer to the Ready Reserve.

(2) *Students.* Ready Reservists who are students in colleges or universities pursuing studies that will qualify them for critical civilian occupations appearing in Department of Labor List of Critical Occupations for Screening the Ready Reserve and who meet the standards and requirements described in Appendix B below shall be transferred to the Standby Reserve. Excluded from consideration are those students enrolled or enlisted in programs leading to appointment to commissioned rank. At such time as the Reservist ceases to qualify for consideration as a student under the regulations in this part, he should be considered for transfer to the Ready Reserve.

§ 125.4 Ministerial students.

Any Ready Reservist who is preparing for the ministry in a recognized theological or divinity school shall be transferred to the Standby Reserve unless he executes a written agreement to remain in the Ready Reserve for a minimum of one year, as provided in Department of Defense Directive 1205.6, dated January 16, 1956, "Assignment to and Transfer between Reserve Categories, and Discharge from Reserve Status."

§ 125.5 Persons who become liable for induction if screened into the Standby Reserve.

Certain individuals covered by section 6(b)(2) and individuals covered by section 6(c)(1) of the Universal Military Training and Service Act are exempt from induction so long as they serve satisfactorily as members of organized units of the reserve. Similarly, persons covered by section 6 (c) (2) are deferred so long as they continue to serve satisfactorily as members of organized units of the reserve. Therefore, persons in these groups within the ages of Selective Service liability cannot be screened into the Standby Reserve without losing such exempt or deferred classification. Such persons who meet the criteria for transfer into the Standby Reserve shall be informed of the above facts and given ample opportunity to volunteer to remain in the Ready Reserve, if they are qualified.

§ 125.6 Reservists transferred to Standby Reserve.

Separate instructions govern the administrative actions involved in the transfer of individuals to the Standby Reserve. These instructions include the procedures which Selective Service and the Military Departments follow when Ready Reservists are transferred to the Standby Reserve. They also describe the type of information which will have to be forwarded by the Military Departments to Selective Service upon such transfer.

§ 125.7 Reports to the Secretary of Defense.

(a) In order that the Secretary of Defense may review progress of the screening of the Ready Reserve, and report to the President as required by paragraph 10 of Executive Order 10651 quarterly reports of the status of the initial screening operations will be required of each Service. The first quarterly report will be submitted on or before July 31, 1956, covering the period ending June 30, 1956. Annual status reports on the continuing screening operation will be required after January 1, 1958.

(b) In these reports, the following data will be provided for each critical civilian occupation:

(1) Service requirements for occupation.

(2) Current Service strength in occupation.

(3) If there are excesses in strength over requirements:

(i) The number actually transferred to the Standby Reserve.

(ii) The number not transferred because the possessors have other critical military skills.

(iii) The number of volunteers not transferred who are being used in noncritical military skills.

A Department of Defense Directive, to be published, will govern submission of such reports to the Secretary of Defense under assigned Report Control Symbol.

APPENDIX A—STANDARDS AND REQUIREMENTS APPLICABLE TO READY RESERVISTS WHO ARE APPRENTICES

I. The Reservist must have completed not less than 2,000 hours of apprenticeship training, exclusive of any training while in the military service, in an occupation appearing on the List of Critical Occupations for Screening the Ready Reserve.

II. The apprentice program must meet the following standards and requirements:

A. The apprentice training program must be an organized plan, written or implied, embodying the terms and conditions of employment, training and supervision of one or more apprentices in one or more apprenticeable occupations as defined in paragraph 1 below, and subscribed to by a sponsor who has undertaken to carry out the apprentice training program. The sponsor may be an employer of labor, a joint apprenticeship committee, a trade union, a group of employers of labor, or an association of journeymen.

1. The apprentice training programs must offer apprentice training in an occupation which:

a. Customarily has been learned in a practical way through training on-the-job;

b. Requires 4,000 or more hours of work experience to learn;

c. Is clearly identified and commonly recognized throughout the industry;

d. Requires during each year of apprenticeship the completion of 144 hours or more of organized and systematic related trade instruction designed to provide the apprentice with learning in theoretical and technical subjects related to the occupations;

e. Is not merely a part of an occupation normally learned through apprenticeship;

f. Involves a development of skill sufficiently broad to be applicable in like occupations throughout an industry rather than of restricted application to the products of one employer;

g. Does not fall within any of the following categories:

(i) Selling, retailing or similar occupations in the distributive field;

(ii) Managerial occupations;

(iii) Clerical occupations;

(iv) Professional or semi-professional occupations including occupations for which entrance requirements customarily include education of college level; or

(v) Agricultural occupations which include occupations such as the growing of crops, fruits or nuts, and the raising of livestock or poultry.

2. The apprentice training program must have been in operation with apprentices actually being trained therein for a period of at least one year.

III. Certification as to the apprenticeship status of the Reservist as well as the sufficiency of the program to meet the standards described above should be obtained by the Reservist from the sponsor of the program.

APPENDIX B—STANDARDS AND REQUIREMENTS APPLICABLE TO READY RESERVISTS WHO ARE STUDENTS

I. The following criteria and standards will be applicable to those Ready Reservists pursuing academic studies that will qualify them for occupations appearing on the List of Critical Occupations for Screening the Ready Reserve:[1]

a. *Undergraduate students.* Students who are satisfactorily pursuing studies in their final year of undergraduate work at a college, university or similar school of learning and who are majoring in a field of study preparatory to entering a professional occupation appearing on the List of Critical Occupations for Screening the Ready Reserve, provided that during their last completed year of undergraduate work they achieved a scholastic standing which ranked them for that year within the upper three-fourths of the full-time male students for that year or have attained a score of 70 or more on the Selective Service College Qualification Test.

b. *First year graduate students.* Students who have been accepted for admission by a graduate school for the first class commencing after they have been accepted for a full-time course of instruction as a candidate for a graduate degree in a professional occupation appearing on the List of Critical Occupations for Screening the Ready Reserve, other than those covered under c. and e. below, and, if such class has commenced, have entered upon such course, provided that during their last full-time undergraduate year at a college, university or similar institution of learning, they achieved a scholastic standing on that year's work which ranked them for that year within the upper one-fourth of the full-time male students in their class or else attained a score of 80 or more on the Selective Service College Qualification Test, and provided that the graduate school has certified that they are currently meeting degree requirements and are expected to attain their degrees.

c. *First year students in professional schools of medicine, dentistry and allied health specialties.* Students who have been accepted for admission by a professional school of medicine, dentistry or allied health specialties appearing on the List of Critical Occupations for Screening the Ready Reserve for the first class commencing after they have been accepted and, if such class has commenced, have entered such school, provided that during their last full-time under-graduate year at a college, university or similar school of learning they achieved a scholastic standing on that year's work which ranked them for that year within the upper one-half of the full-time male students in their class or else attained a score of 70 or more on the Selective Service College Qualification Test, and provided that the school has certified that they are satisfactorily pursuing a full-time course of instruction leading to their graduation.

d. *Graduate students who have completed their first year of graduate school.* Students who have satisfactorily completed their first year in graduate schools and are satisfactorily pursuing full-time courses as a candidate for a graduate degree in a professional occupation appearing on the List of Critical Occupations for Screening the Ready Reserve, other than those covered under c. and e. herein. In general, requirements for the Master's degree should be completed in not more than two calendar years and for the Doctoral degree in not more than five calendar years of graduate study.

e. *Students who have completed their first year of study in professional schools of medicine, dentistry and allied health specialties.* Students who have satisfactorily completed their first year in a professional school of medicine, dentistry or allied health specialties appearing on the List of Critical Occupations for Screening the Ready Reserve and are satisfactorily pursuing full-time courses leading to their graduation.

II. Certification as to the student status of the Reservist, including his class standing as specified herein, should be obtained by the Reservist from appropriate college or university officials. Information on scores attained on the Selective Service College Qualification Test should be furnished by affidavit of the Reservist. It should be noted that only those Reservists who took the test prior to entering the Armed Forces will be eligible for transfer to the Standby Reserve on the basis of test scores. Persons are not eligible to take the test after they have completed their active military service obligation.

[1] Except those enrolled or enlisted in programs leading to appointment to commissioned rank and those possessing critical military skills.

PART 127—ORDERING THE READY RESERVE TO ACTIVE DUTY IN A NATIONAL EMERGENCY DECLARED BY THE PRESIDENT

Sec.
127.1 Purpose.
127.2 Applicability.
127.3 Statutory provisions.
127.4 Policy.

AUTHORITY: §§ 127.1 to 127.4 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply sec. 2, 69 Stat. 599, sec. 673, 70A Stat. 28; 50 U. S. C. 961, 10 U. S. C. 673.

§ 127.1 Purpose.

The purpose of this part is to prescribe uniform policy governing the ordering to active duty of units and individuals in the Ready Reserve in a national emergency declared by the President.

§ 127.2 Applicability.

This part is applicable to all military departments in the employment of authority, contained in subsection 673(a), 70A Stat. as amended by subsection 2(f), 69 Stat. 599, to order to active duty in a national emergency declared by the President, units and individuals in the Ready Reserve.

§ 127.3 Statutory provisions.

(a) In time of national emergency declared by the President subsequent to January 1, 1953, or when otherwise authorized by law, subsection 673(a), 70A Stat. as amended by subsection 2(f), 69 Stat. 599, provides that any unit or any member not assigned to a unit organized to serve as such in the Ready Reserve may by authority designated by the Secretary concerned, be ordered to active duty for a period not to exceed 24 consecutive months, without the consent of the persons affected, except that numbers in excess of 1,000,000 may not be required to perform active duty involuntarily at any time unless authorized by the Congress.

(b) When the authority cited in paragraph (a) of this section is employed, subsection 673 (b), 70A Stat. requires that in the interest of fair treatment as between members in the Ready Reserve being considered for involuntary recall to duty, attention shall be given to the duration and nature of previous service with the objective of assuring such sharing of hazardous exposure as the national security and the military requirement will reasonably permit, to family responsibilities, and to employment found to be necessary to the maintenance of the national health, safety, or interest. At such time as the screening of the Ready Reserve under provisions of Part 125 of this chapter, becomes current, the requirements of cited subsection 673 (b), 70A Stat. will be considered as having been satisfied.

(c) In any expansion of the active Armed Forces of the United States which requires that units and members of the reserve components be ordered into the active military service of the United States, subsection 672 (c), 70A Stat. provides that, insofar as practicable, members of units organized and trained for the purpose of serving as such shall be ordered involuntarily to active duty only with their units, but does not prohibit the reassignment of personnel of such units after being ordered into the active military service of the United States. Policy governing application of this provision is contained in Department of Defense Directive Number 1235.6, subject: Integrity of Units, dated June 25, 1959.

§ 127.4 Policy.

(a) The authority contained in subsection 673(a), 70A Stat. to order units or members of the Ready Reserve involuntarily to active duty shall be exercised only on direction of the President.

(b) Where the nature of the emergency permits, the Secretary of Defense, with the advice of the Joint Chiefs of Staff, will determine the numbers and composition of forces to be ordered involuntarily to active duty from the Ready Reserve by each Service, subject to the conditions of paragraph (a) of this section within the 1,000,000 authorized by law or within whatever larger number may have been authorized by the Congress.

(c) Where the nature of the emergency precludes procedures contemplated in paragraph (b) of this section, the 1,000,000 members of the Ready Reserve authorized by law to be ordered involuntarily to active duty may be so ordered by authorities designated by the Secretaries concerned, subject to the conditions of paragraph (a) of this section, in numbers previously allocated to the military services by the Secretary of Defense.

(1) The Joint Chiefs of Staff shall be responsible for providing to the Secretary of Defense on a current basis the recommended numbers which each Service will be authorized to order involuntarily to active duty under such circumstances, based on appropriate war or mobilization plans.

(2) The Joint Chiefs of Staff shall periodically review the allocation made by the Secretary of Defense, for the purpose of recommending such changes as new conditions may dictate.

(d) Where the nature of the emergency indicates imminent attack upon the continental United States, those authorities having been designated by the Secretaries concerned may order to active duty, subject to the conditions of paragraph (a) of this section, those Ready Reserve forces previously determined by the Secretary of Defense, on the recommendation of the Joint Chiefs of Staff, as required for the immediate defense of the continental United States.

(e) The designation of individuals and units of the Ready Reserve to comprise the forces to be ordered involuntarily to active duty by each Service, within numbers determined by the Secretary of Defense in accordance with paragraphs (b), (c), or (d) of this section, shall be the responsibility of the Secretary of the military department concerned.

PART 132—RESERVE FORCES ACTIVE DUTY FOR TRAINING FOR BASIC TRAINING

Sec.
132.1 Purpose.
132.2 Applicability.
132.3 Policy.

AUTHORITY: §§ 132.1 to 132.3 issued under 62 Stat. 604, 50 app. U.S.C. 451, and 66 Stat. 431, 10 U.S.C 1a.

§ 132.1 Purpose.

The purpose of this part is to prescribe uniform policy:

(a) Governing active-duty-for-training programs established to provide basic training for persons enlisting directly into the Reserve Forces in draft-deferred status.

(b) Pertaining to certain aspects of programs for direct enlistment into the Reserve Forces.

§ 132.2 Applicability.

This Part is applicable to all military departments offering active duty for training for basic training to individuals without prior military service who enlist directly into the Reserve Forces under provisions of subsection 6(c)(2) of the Universal Military Training and Service Act, as amended, section 262 of the Armed Forces Reserve Act of 1952, as amended or Title 10, Title 32, and Title 50, United States Code. Active duty for training for basic training may include, in addition to recruit or basic individual training, basic unit training and various types of specialist training.

§ 132.3 Policy.

(a) The primary objective of the active-duty-for-training programs dealt with herein is to provide the Reserve Forces with trained young men.

(b) Except for the Alaskan Scouts and as provided in paragraph (c) of this section, the period of active duty for training for basic training shall be of six consecutive months duration.

(c) As approved by the Secretary of Defense, special programs of active duty for training for basic training of less than six months may be established to provide recruit training alone for individuals entering the Reserve Forces under provisions of subsection 6(c), paragraph (2), clause (A) of the Universal Military Training and Service Act, as amended. The period of active duty for training for basic training under such special programs, however, in addition to being less than six months shall also be of less than three consecutive months duration, including travel time.

(d) In the case of a military service accepting enlistments under authority of section 262 of the Armed Forces Reserve Act of 1952, as amended, or subsection 6(c), paragraph (2), clause (C) of the Universal Military Training and Service Act, as amended, the Department concerned shall submit its proposed annual enlistment quotas therefor with its annual manpower programs to the Secretary of Defense for approval.

(1) Approval by the Secretary of Defense will be on the advice of the Joint Chiefs of Staff, taking into consideration the need to maintain a military manpower pool of such size as to provide an adequate source of long-term volunteers for the Active Forces.

(2) Approved quotas for enlistments under section 262 of the Armed Forces Reserve Act of 1952, as amended, and for entry into active duty for training for basic training of persons enlisted under subsection 6(c), paragraph (2), clause (C) of the Universal Military Training and Service Act, as amended, shall be within the 250,000 annual maximum imposed by law.

(e) Irrespective of quotas allocated in accordance with paragraph (d) of this section, no enlistment shall be accepted under section 262 of the Armed Forces Reserve Act of 1952, as amended, if such enlistment would cause the strength of the Ready Reserve authorized for the component concerned to be exceeded. Subject to this limitation and to related Department of Defense policies and programs, such as Qualitative Distribution, enlistment of qualified individuals within quotas allocated shall be on a first-come-first-accepted basis.

(f) (1) Individuals entering the reserve components under programs requiring entry on active duty or active duty for training shall enter on either active duty or active duty for training with minimum practicable delay after enlistment. The delay shall not exceed 120 days, except those in the following category:

Individuals pursuing a course in high school may be delayed until they cease to pursue that course satisfactorily, graduate, or become 20 years of age, whichever occurs first. However, no individual may be enlisted in any program requiring entry on active duty or active-duty-for-training if it appears that his entry on that duty will have to be delayed for more than one year because he is pursuing a course in high school.

Whether or not an individual shall or shall not participate and, if participating, whether he shall be in a paid or nonpaid status during the delay period will be as determined by the Departmental Secretary concerned.

(2) Individuals enlisted in the reserve components to pursue officers' training programs are exempt from this prescribed policy.

(g) In order to assure uniformity of training and discipline, all members of the Army National Guard or Air National Guard who volunteer for active duty for training for the purpose of basic training shall enter upon such training in Federal status.

(h) It is in the best interest of all the Services that a degree of uniformity and equity in reserve enlistment programs be maintained. Accordingly, proposed changes in existing reserve enlistment programs as well as proposed new programs will be submitted for approval prior to implementation. Proposals will include the division of the total obligation to be served on active duty or active duty for training in the Ready Reserve and in the Standby Reserve.

PART 136—MANAGEMENT AND MOBILIZATION OF THE STANDBY RESERVE

Sec.
136.1 Purpose.
136.2 Applicability.
136.3 Responsibilities for Management of the Standby Reserve.
136.4 Mobilization.
136.5 Addresses of State Directors, Selective Service System.

AUTHORITY: §§ 136.1 to 136.5 issued under RS 161; 5 U.S.C. 22. Interpret or apply sec. 672 of Title 10, U.S.C.

§ 136.1 Purpose.

The purpose of this part is to prescribe uniform policies with respect to management and mobilization of the Standby Reserve.

§ 136.2 Applicability.

This part is applicable to all military departments in exercising military control over persons transferred to the Standby Reserve and in calling members of the Standby Reserve to active duty pursuant to subsection 672(a) of Title 10, United States Code.

§ 136.3 Responsibilities for Management of the Standby Reserve.

(a) *Military departments.* The Secretaries of the military departments are responsible for:

(1) Exercising military control over members of the Standby Reserve.

(2) Maintaining such personnel records for members of the Standby Reserve as may be required by law and determined by the military departments to be necessary.

(3) Advising individuals who are transferred to the Standby Reserve of their duty to furnish local boards with information as prescribed by § 1690.10 of this title (Selective Service Regulations).

(4) Discharging members of the Standby Reserve in accordance with the provisions of § 115.6 of this chapter.

(5) Furnishing information promptly to the Selective Service System upon the assignment or transfer of a Reservist to or from the Standby Reserve and upon any change in military status of a member of the Standby Reserve.

(i) Upon the assignment or transfer of a Reservist to the Standby Reserve pursuant to the provisions of Part 125 or 115 of this chapter, the military department will complete DD Form 889[1] in accordance with the instructions printed thereon. If the Reservist concerned is a Selective Service registrant, the DD Form 889 will be sent to the State Director of the State in which the Reservist is registered. The appropriate State Director can be determined from the Selective Service number. The number is composed of four elements, the first of which is the State code. The key to State codes and the addresses of the various State Directors are shown in § 136.5. If the Reservist is not a registrant, the completed form will be sent to the State Director of the State in which the Reservist maintains his current mailing address.

(ii) Upon the transfer, discharge, or removal for any other reason of a Reservist from the Standby Reserve, the military department will promptly complete the left side of DD Form 889 and forward it to the same State Director to whom notification of the Reservist's entry into or membership in the Standby Reserve was previously addressed in accordance with subdivision (i) of this subparagraph.

(b) *Selective Service.* The Director of Selective Service is responsible by law for determining the availability of members of the Standby Reserve for involuntary order to active duty in time of war or national emergency declared by the Congress. To fulfill this statutory responsibility, the Director of Selective Service has prescribed that the Selective Service System will:

(1) Maintain current information pertaining to the civilian status of each member of the Standby Reserve.

(2) Determine, through local boards and appeals procedures of the Selective Service System, the availability of Standby Reservists for involuntary active duty. In making such determinations, local boards will be guided by Selective Service System policies which provide that:

(i) Consideration will be given to the military need for members of the

[1] Filed as part of original document.

Standby Reserve who have critical military occupations as well as to the need for critical civilian occupations in the supporting economy.

(ii) A Standby Reservist shall be declared nonavailable if continuance in his civil employment, occupation, activity, or other endeavors in time of war or national emergency declared by the Congress is found to be more essential to the maintenance of the national health, safety, welfare, or interest than the performance by him of active duty in the Armed Forces, or if it is determined that his performance of duty in the Armed Forces in time of war or national emergency declared by the Congress would result in extreme hardship or privation to his bona fide dependents.

(iii) The availability designation of a Standby Reservist is subject to periodic reevaluation and may be changed at any time such action would better serve the national interest.

(3) Furnish the military departments periodically with information concerning the Selective Service determination of availability of individual members of the Standby Reserve.

§ 136.4 Mobilization.

(a) *Availability of Standby Reservists for active duty.* In time of war or national emergency declared by Congress, or when otherwise authorized by law, Standby Reservists who have been found available by the Director of Selective Service may be involuntarily ordered to active duty by the military departments, provided it has been determined that there are not enough qualified members of the required category in the Ready Reserve.

(b) *Inactive Status List.* A Standby Reservist on the Inactive Status List who has been certified by the Director of Selective Service as being available for active duty will not be called into active military service without his consent unless the Secretary of the appropriate military department determines that adequate numbers of qualified members of the reserve components in an active status or in the inactive National Guard in the required category are not readily available. The provisions of DOD Directive No. 1235.1, Policy on Direct Appointments and on Adjustments, at Time of Entry into Active Military Service, of Grades of Civilian Specialists in the Reserve Forces Who Are Not Otherwise Expressly Provided for by Law, dated July 11, 1955, shall apply when Standby Reservists on the Inactive Status List are ordered to active duty.

(c) *Volunteers for active duty.* A member of the Standby Reserve who volunteers in writing for active duty shall be considered available for active duty and may be ordered into active military service by the appropriate military department pursuant to subsection 672(d), Title 10, United States Code. A determination of availability by the Director of Selective Service is not required and shall not apply in such cases. The appropriate State Director will be notified in such cases.

(d) *Nonavailable members of the Standby Reserve.* The Director of Selective Service has prescribed that members of the Standby Reserve who have been certified as not available for active duty shall be considered periodically to determine their availability to meet future requirements. Eighteen months after the initiation of general mobilization, the military departments shall review the cases of those Standby Reservists who have not been certified by the Director of Selective Service as available for active duty and, in the absence of cogent considerations to the contrary, shall separate such members from the Reserve.

§ 136.5 Addresses of State Directors, Selective Service System.

State Code No.	State	Region	Address
1	Alabama	III	149 Lee Street, Montgomery, Ala.
51	Alaska	VI	Post Office Box No. 2691, Juneau, Alaska.
2	Arizona	VI	Post Office Box No. 2831, Phoenix, Ariz.
3	Arkansas	IV	Third Floor, Old Post Office Building, Second and Center Streets, Little Rock, Ark.
4	California	VI	Old Post Office Building, 7th and K Streets, Sacramento 14, Calif.
56	Canal Zone	IV	Post Office Box No. 2014, Balboa Heights, Canal Zone.
5	Colorado	V	Double A Building, 1300 Glenarm Place, Denver, Colo.
6	Connecticut	I	Post Office Box No. 1558, Hartford, Conn.
7	Delaware	II	Post Office Box No. 1928, Wilmington, Del.
49	District of Columbia	II	451 Indiana Avenue NW., Washington 25, D.C.
8	Florida	III	310 Charlotte Street, St. Augustine, Fla.
9	Georgia	III	901 West Peachtree Street NE., Atlanta, Ga.
55	Guam	VI	Post Office Box No. 326, Agana, Guam.
52	Hawaii	VI	Post Office Box No. 4006, Honolulu 12, Hawaii.
10	Idaho	VI	Post Office Box No. 1997, Boise, Idaho.
11	Illinois	V	405 East Washington Street, Springfield, Ill.
12	Indiana	V	36 South Pennsylvania Street, Indianapolis 9, Ind.
13	Iowa	V	Building 68, Fort Des Moines, Iowa.
14	Kansas	V	Masonic Temple Building, 10th and Van Buren Streets, Topeka, Kans.
15	Kentucky	II	220 Steele Street, Frankfort, Ky.
16	Louisiana	IV	Building TB 309, Jackson Barracks, New Orleans 12, La.
17	Maine	I	4 Union Street, Augusta, Maine.
18	Maryland	II	Fifth Regiment Armory, Hoffman and Bolton Streets, Baltimore 1, Md.
19	Massachusetts	I	55 Tremont Street, Boston, Mass.
20	Michigan	V	Post Office Box No. 626, Lansing 3, Mich.
21	Minnesota	V	100 East 10th Street, St. Paul 2, Minn.
22	Mississippi	III	Cor. South State and Silas Brown Streets, Jackson, Miss.
23	Missouri	V	411 Madison Street, Jefferson City, Mo.
24	Montana	VI	Post Office Box No. 1183, Helena, Mont.
25	Nebraska	V	State Capitol, Lincoln 9, Nebr.
26	Nevada	VI	P.O. Box No. 644, Carson City, Nev.
27	New Hampshire	I	Post Office Box No. 427, Concord, N.H.
28	New Jersey	I	1006 Broad Street, Newark 2, N.J.
29	New Mexico	IV	Post Office Box No. 1018, Santa Fe, N. Mex.
30	New York	I	Old Post Office Building, Albany 1, N.Y.
50	New York City	I	11th Floor, 205 East 42d Street, New York 17, N.Y.
31	North Carolina	III	Post Office Box No. 9513, Morgan Street Station, Raleigh, N.C.
32	North Dakota	V	Post Office Box No. 628, Bismarck, N. Dak.
33	Ohio	II	110 West Long Street, Columbus 15, Ohio.
34	Oklahoma	IV	Bankers Security Life Building, 114 North Broadway, Oklahoma City 2, Okla.
35	Oregon	VI	Post Office Box No. 4288, Portland 8, Oreg.
36	Pennsylvania	II	Post Office Box No. 92, Harrisburg, Pa.
53	Puerto Rico	III	Post Office Box No. 4031, San Juan, Puerto Rico.
37	Rhode Island	I	1 Washington Avenue, Providence, R.I.
38	South Carolina	III	Post Office Box No. 869, Columbia, S.C.
39	South Dakota	V	Post Office Box No. 1872, Rapid City, S. Dak.
40	Tennessee	III	1317 Church Street, Nashville, Tenn.
41	Texas	IV	304 East 5th Street, Austin 14, Tex.
42	Utah	VI	Building No. 102, Fort Douglas, Utah.
43	Vermont	I	151 Main Street, Montpelier, Vt.
44	Virginia	II	900 North Lombardy Street, Richmond 20, Va.
54	Virgin Islands	III	Post Office Box No. 360, St. Thomas, Virgin Islands.
45	Washington	VI	State Armory, Tacoma 5, Wash.
46	West Virginia	II	Embleton Building, 922 Quarrier Street, Charleston 1, W. Va.
47	Wisconsin	V	1220 Capitol Court, Madison 5, Wis.
48	Wyoming	V	Post Office Box No. 498, Cheyenne, Wyo.

SUBCHAPTER C—REGULATIONS PERTAINING TO MILITARY JUSTICE

PART 150—UNIFORM RULES OF PROCEDURE FOR PROCEEDINGS IN AND BEFORE BOARDS OF REVIEW

DEFINITIONS

Sec.
150.0 Definitions.

RULES

150.1 Quorum.
150.2 Place for filing papers.
150.3 Signing of papers.
150.4 Computation of time.
150.5 Counsel.
150.6 Records of trial.
150.7 Assignment of errors.
150.8 Briefs.
150.9 Hearings.
150.10 Decisions of a board of review.
150.11 Continuances and interlocutory matters.
150.12 Reconsiderations.

APPENDIXES

150.21 Appendix 1—Form for assignment of errors.
150.22 Appendix 2—Form for cover page of brief.
150.23 Appendix 3—Form for contents of brief on behalf of accused.

AUTHORITY: §§ 150.0 to 150.23 issued under sec. 866, 70A Stat. 59; 10 U.S.C. 866.

DEFINITIONS

§ 150.0 Definitions.

So far as the terms defined in Article 1 of the Uniform Code of Military Justice are used in this part they are used in the sense of their respective definitions therein unless the context indicates otherwise. As used in this part:

(a) "Appellate counsel" shall mean any counsel representing any party before a board of review.

(b) "Appellate defense counsel" shall mean any officer appointed by the Judge Advocate General to represent an accused before a board of review pursuant to Article 70, Uniform Code of Military Justice.

(c) "Appellate Government counsel" shall mean any officer appointed by the Judge Advocate General to represent the Government before a board of review pursuant to Article 70, Uniform Code of Military Justice.

(d) "Civilian counsel" shall mean civilian counsel provided by the accused to represent him before a board of review.

(e) "Appellate counsel for the accused" shall be construed to include appellate defense counsel and civilian counsel.

(f) "Defense counsel" shall mean any person who represented an accused at the trial by court-martial or who served as his counsel in the field.

RULES

§ 150.1 Quorum.

A majority of the members of a board of review will constitute a quorum for the purpose of hearing and determining any matter referred to the board. The determination of any matter referred to a board of review will be according to the opinion of a majority of its members. In the absence of a quorum the senior member present may make all necessary orders touching any proceedings pending in the board preparatory to hearing or decision thereof.

§ 150.2 Place for filing papers.

When the filing of a notice of appearance, brief, or other paper in the Office of a Judge Advocate General is required by this part, such papers will be filed in the Office of the Judge Advocate General of the appropriate armed force. If transmitted by mail or other means, they are not filed until received in such office.

§ 150.3 Signing of papers.

All formal papers must be signed and must show, typewritten or printed, the name and address of the person signing same, together with his military rank, if any, and the capacity in which he signs the paper. Such signature constitutes a certificate that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person signing the paper, and that the paper is filed in good faith and not for purposes of unnecessary delay. Papers will be filed only by the duly authorized counsel for the parties in interest and proof of such authorization may be required.

§ 150.4 Computation of time.

Times referred to in this part are calendar days. If the last day falls on a Saturday, Sunday, or holiday compliance may be made on the next working day.

§ 150.5 Counsel.

(a) *Qualifications.* In any proceeding before a board of review the accused may be represented by civilian counsel provided by him or by assigned appellate defense counsel. Civilian counsel must be a member in good standing of the bar of a Federal court or of a court of record of any State of the United States, and may be required to file a certificate setting forth such qualifications. Appellate defense and Government counsel will be qualified in accordance with Article 70(a) and 27(b)(1) of the Uniform Code of Military Justice.

(b) *Conduct of counsel.* The conduct of counsel appearing before a board of review will be in accordance with the rules of conduct prescribed by paragraph 42*b*, Manual for Courts-Martial, United States, 1951 (16 F. R. 1303).

(c) *Request for appellate defense counsel.* A request for representation by appellate defense counsel will be forwarded to the convening authority for attachment to the record or dispatched to the Office of the Judge Advocate General within ten days from the date of sentence. In cases referred to a board under Article 69, Uniform Code of Military Justice, the accused will have two days from the time he receives notice of such reference to forward a request for appellate defense counsel to the Office of the Judge Advocate General unless he has already forwarded such request. Any request for appellate defense counsel should be accompanied by a statement as to the errors or other matters urged as grounds for relief. Such statement need not be in technical form and the assistance of counsel in the field will be available for its preparation. In the event defense counsel files a brief as provided in Article 38 (c), Uniform Code of Military Justice, such brief may be submitted in lieu of this statement.

(d) *Civilian counsel provided by accused.* (1) Notice that an accused has retained or has taken action to retain civilian counsel to represent him before a board of review will be forwarded to the convening authority for attachment to the record or dispatched to the Judge Advocate General within ten days from the date of sentence. In cases referred to a board of review under Article 69, Uniform Code of Military Justice, the accused will forward such notice within two days after receipt of notice by him of such referral unless he has already forwarded such notice. The notice of representation by civilian counsel will be signed by the accused or his representative and will state the name and address of such civilian counsel. When the accused has forwarded a timely notice of intention to retain civilian counsel, a notice of retainer stating the name and address of such counsel must be received in the Office of the Judge Advocate General within ten days of receipt of the notice of intention. Such civilian counsel will thereafter be notified of the receipt of the record of trial in the Office of the Judge Advocate General, the number of the case, the board to which the case has been referred, and the arrangements made, or to be made, for a hearing.

(2) If the accused has forwarded a timely notice of intention to retain civilian counsel, appellate defense counsel shall be assigned to represent the interests of the accused pending appearance of civilian counsel.

(e) *Failure to request or give notice of appellate counsel.* Failure of an accused to request appellate defense counsel or to give notice of retainer of civilian counsel or of intention to retain civilian counsel within the times prescribed may be regarded as a waiver of such right and a board may take final action in the case. Upon application made to the Judge Advocate General at any time before the board of review has taken final action in a case, and for good cause shown, the times prescribed herein may be extended.

(f) *Mandatory assignment of appellate defense counsel.* In all cases in which the United States is represented by counsel before a board of review, the accused will be assigned appellate defense counsel if not already represented by counsel.

(g) *Direct communication.* Civilian counsel may communicate directly with appellate defense or Government counsel. Appellate defense counsel may render such appropriate assistance in connection with the appellate review of the case as may be requested by civilian counsel.

(h) *Notice of appearance of counsel.* Appellate defense and Government counsel in a case before a board of review will file a written notice of appearance in the Office of the Judge Advocate General within five days of assignment to the case. Civilian counsel will file such notice within ten days from the

date of receipt of the notice of retainer. Unless separate notice of appearance is filed, an assignment of errors, brief, or other formal paper will constitute a notice of appearance.

§ 150.6 Records of trial.

Civilian counsel who do not have a copy of the record of trial may make arrangements with appellate defense counsel to examine a copy of the record of trial in the Office of the Judge Advocate General and to make a copy of the whole or any part thereof without expense to the Government.

§ 150.7 Assignment of errors.

Within fifteen days after appellate defense counsel for the accused has been notified of the receipt of the record in the Office of the Judge Advocate General, appellate counsel for the accused shall file an assignment of errors setting forth separately and particularly each error asserted and intended to be urged (§ 150.21). An original and five clear copies, prepared in accordance with the provisions of § 150.8(a), will be submitted. It will contain the information prescribed in § 150.8(d)(1). A reply to this assignment may be filed within fifteen days. For good cause shown the Judge Advocate General may extend these times.

§ 150.8 Briefs.

(a) *General provisions.* The assignment of errors prescribed in § 150.7 may be included in, or filed in lieu of, a brief for the accused. An original and five clear copies of all briefs will be submitted. Briefs will be typewritten, double-spaced on 8" x 12½" (legal cap) white paper, securely fastened at the top. All references to matters contained in the record will show record page numbers and any exhibit designations.

(b) *Number of briefs.* Appellate counsel will be limited to the filing of one brief for each side unless the board otherwise permits or directs.

(c) *Time for filing.* Any brief for an accused will be filed within fifteen days after his appellate counsel has been notified of the receipt of the record in the Office of the Judge Advocate General. If the Judge Advocate General has directed appellate Government counsel to represent the United States, such counsel may file a brief on behalf of the Government within fifteen days after any brief or an assignment of errors has been filed on behalf of an accused. If no brief is filed on behalf of an accused, a brief on behalf of the Government may be filed within fifteen days after expiration of the time allowed for the filing of a brief on behalf of the accused. For good cause shown the Judge Advocate General may extend the times prescribed herein, giving due notice of such extension to the opposing party.

(d) *General contents.* (1) Each brief will indicate on the cover page (§ 150.22):

(i) The designation of the board of review to which the case has been referred,

(ii) The number of the case, if known, and the caption with designation of parties,

(iii) Title of the document,

(iv) Names and addresses of all counsel submitting the document.

(2) An index containing:

(i) Divisions of the brief, including a summary of the argument,

(ii) Table of authorities cited with references to the page of the brief where cited.

If the brief is less than ten pages long this index may be omitted.

(e) *Contents (Accused)* (§ 150.23). The brief for an accused will contain the following arranged in the order indicated:

(1) A summary of the proceedings showing the findings and sentence as approved and the action of the convening authority thereon;

(2) A concise statement of the facts of the case containing all that is material to the consideration of the questions presented with appropriate page references to the record;

(3) The substance of the errors or points intended to be urged, prepared in accordance with § 150.7:

(4) The argument exhibiting clearly the points of fact and law being presented, citing the authorities and statutes relied upon, and quoting the relevant parts of such authorities and statutes as are deemed to have an important bearing;

(5) A conclusion stating concisely why the case should be decided as urged.

(f) *Contents (Government).* (1) A brief on behalf of the Government will be of like character as that prescribed for the accused except that the matters prescribed in paragraph (e) (1), (2), and (3) of this section need not be given unless deemed necessary in correcting any inaccuracy or omission in the brief of the accused.

(2) Appropriate proof of service of a copy of the brief will appear on the cover sheet when the accused is represented by civilian counsel.

§ 150.9 Hearings.

(a) *Oral arguments.* Cases where the parties are not represented by counsel will be considered as submitted without oral argument. All other cases will be set for argument unless, upon request of counsel, a board permits a case to be submitted without argument. The accused does not have a right to be present at the hearing before the board of review.

(b) *Notice of setting of arguments.* A board of review will give appellate counsel at least ten days notice of the time and place of oral argument, unless waived.

(c) *Time limits.* The length of oral arguments will be within the discretion of a board of review and ordinarily will not exceed thirty minutes for each side.

(d) *Number of counsel; opening and closing.* A board in its discretion may limit the number of counsel making an oral argument. The defense will have the right to make opening and closing arguments.

(e) *Failure to appear.* Failure of appellate counsel to appear at the time and place set for oral argument may be regarded as a waiver thereof and the board may proceed to act on the case as submitted without argument or, in its discretion, may continue the case for argument at a later date, giving due notice thereof.

(f) *Matters outside record.* Matters outside the record of trial will not be presented to or argued before a board of review except with respect to:

(1) A petition for new trial referred to a board under Article 73, Uniform Code of Military Justice,

(2) A question of jurisdiction,

(3) Matters affecting the sanity of an accused tending to show that further inquiry as to his mental condition is warranted in the interest of justice,

(4) Matters as to which judicial notice may be taken in military law.

When requested by the Judge Advocate General, a board of review may hear and report to him on any matter outside the record in mitigation of the sentence, or otherwise in the interest of justice.

§ 150.10 Decisions of a board of review.

(a) *Notice of decisions.* Notice of the decision of a board of review will be accomplished as prescribed in paragraph 100, Manual for Courts Martial, 1951 (16 F. R. 1303). In any case where a board affirms a sentence without opinion, notice upon the accused and appellate counsel for the accused, in accordance with paragraph 100c (1) (*a*), Manual for Courts Martial, 1951, may be accomplished by any equally expeditious means of communication.

(b) *Copies of decisions.* A copy of the decision of a board of review will be furnished appellate counsel for the accused.

§ 150.11 Continuances and interlocutory matters.

Except as otherwise provided in this part a board, in its discretion, may extend any time limits prescribed, may grant continuances for such time and as often as may appear to be just, and may dispose of any interlocutory or other matters, not specifically covered by these rules, in such manner as may appear to be required for a full, fair, and expeditious consideration of the case.

§ 150.12 Reconsiderations.

(a) *General provisions.* A board of review, in its discretion, may on its own motion or upon petition by appellate counsel reconsider its decision in any case within ten days from the time an accused is notified of the decision of the board, provided, a petition for Grant of Review or a Certificate for Review has not been filed with the Court of Military Appeals, or a record of trial for review under Article 67(b)(1) of the Code has not been received by the court.

(b) *Petition for reconsideration.* A petition for reconsideration shall be supported by a certificate of appellate counsel to the effect that the petition is presented in good faith and not for delay, and shall briefly and directly state the grounds for reconsideration including a statement of facts showing jurisdiction in the board. No reply or oral argument will be received on a petition for reconsideration unless ordered by the board. Consecutive petitions, and petitions that are out of time under this rule, will not be received. A petition that is received will delay the inception of the thirty day appeal period prescribed by Article 67 (c) of the Code until the time the accused is notified of the final disposition of his petition by the board.

APPENDIXES

§ 150.21 Appendix 1.

Form for assignment of errors. (§ 150.7.)

IN THE OFFICE OF THE
JUDGE ADVOCATE GENERAL OF THE AIR FORCE[1]

Before Board of Review No. ------

UNITED STATES
v.
Private JOHN RICHARD ROE, U. S. Air Force, AF00000000, 3000th Training Squadron, 4000th Technical Training Group.

Case No. ------. Tried at ----------, on ---------- 19----, before a G. C. M. appointed by CG ---------- Air Force.

ASSIGNMENT OF ERRORS

SUMMARY OF PROCEEDINGS

Upon trial by general court-martial the accused pleaded not guilty to, and was found guilty of, absence without leave from 2 June 1951 until 1 July 1951 in violation of U. C. M. J. Art. 86, and of the larceny of a watch of a value of $75.00 the property of Private Schmidt, in violation of U. C. M. J. Art. 121. On ----------, 19---- he was sentenced to dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for 4 years. The convening authority approved the sentence, forwarded the record of trial to the Judge Advocate General of the ---------- and directed that pending completion of appellate review the accused be transferred to the command of ----------, where he is presently confined in the base stockade, ---------- Air Base, ----------.

ERRORS

The following errors are assigned:

1. The law officer erred in admitting in evidence as Prosecution's Exhibit No. 1, an alleged extract copy of the morning report of the 3000th Training Squadron dated 2 June 1951 (R. 17).

The exhibit shows that the alleged morning report was signed, and indicates that the entry as to the accused's alleged unauthorized absence was made, by Sergeant William Q. Johns, 3000th Training Squadron. Under pertinent regulations in effect at the time the alleged entry was made, a noncommissioned officer was not the proper person to sign the morning report and had no official duty to record the fact of unauthorized absence.

2. The court erred in its findings of guilty of absence without leave (R. 29), as there was no competent evidence of the alleged unauthorized absence.

3. ----------

4. ----------

(a) ---------- ----------,
JOHN J. DOE,
Major, USAF, Office of the Judge Advocate General, U. S. Air Force, Appellate Defense Counsel.

§ 150.22 Appendix 2.

Form for cover page of brief. (§ 150.8.)

IN THE OFFICE OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE[1]

Before Board of Review No. ------

UNITED STATES
v.
Private JOHN RICHARD ROE, U. S. Air Force, AF00000000, 3000th Training Squadron, 4000th Technical Training Group
Case No. ------. Tried at ----------, on ---------- 19----, before a G. C. M. appointed by CG ---------- Air Force.

BRIEF ON BEHALF OF ACCUSED

(BRIEF ON BEHALF OF THE GOVERNMENT)

(REPLY BRIEF ON BEHALF OF ACCUSED)

ROGER Q. SMITH,
Attorney-at-Law, Crow Building, Muscatine, Iowa, Civilian Counsel for Accused.

WILLIAM R. QUEEN,
Major, USAF, Office of the Judge Advocate General, U. S. Air Force, Appellate Defense Counsel.

§ 150.23 Appendix 3.

Form for contents of brief on behalf of accused. (§ 150.8.) (For form of cover page, see § 150.22.)

INDEX OF BRIEF

(Omit if brief is less than 10 pages long)

Summary of proceedings.
Statement of facts.
Assignment of errors.
Argument:
I. An extract copy of a morning report entry, which entry was made by a noncommissioned officer who had no official duty to make the entry, is not admissible in evidence as an exception to the hearsay rule.
a. Such an entry is not an official record.
b. The local practice of permitting unauthorized persons to sign morning reports in violation of Departmental regulations cannot create a custom having the force of law so as to impose upon the maker of the writing a duty to record the facts contained therein.
c. An extract copy of an alleged morning report is not a business entry.
II. The improper cross-examination of an accused, who has testified only as to the circumstances under which an alleged confession had been obtained, concerning the issue of guilt or innocence constitutes fatal error.
Conclusion.

TABLE OF AUTHORITIES

MANUAL FOR COURTS-MARTIAL

MCM, 1951, par. 140*a*.
MCM, 1951, par. 144*b*.
• • • • •

CASES

----------, v. United States, -- F. 2d ---.
• • • • •

STATUTES

18 U. S. C. ------.
• • • • •

REGULATIONS

AFR ------, 10 August 1950.
• • • • •

MISCELLANEOUS

Fifth Amendment of the Constitution.
Winthrop, Military Law and Precedents, 2d Ed. 1920 Reprint, pp. -------.

UNITED STATES v. Private JOHN RICHARD ROE, U. S. Air Force, AF00000000, 3000th Training Squadron, 4000th Technical Training Group

Case No. ------. Tried at ----------, on ---------- 19----, before a G. C. M. appointed by CG ---------- Air Force.

BRIEF ON BEHALF OF ACCUSED

SUMMARY OF THE PROCEEDING

(See first paragraph of Appendix 1)

• • • • •

STATEMENT OF FACTS

Briefly summarized the record of trial shows ------ (State all the facts material to the consideration of errors assigned).

ASSIGNMENT OF ERRORS

The following errors are assigned:
(See Appendix 1)

• • • • •

ARGUMENT

(Discuss the points presented separately and in detail under the headings listed in the index, citing and quoting applicable authority deemed to have an important bearing).

• • • • •

CONCLUSION

For the reasons atated, the findings of guilty and the sentence should be set aside and the charges should be dismissed.

(S) ---------- ----------
ROGER Q. SMITH,
Attorney-at-Law, Crow Building, Muscatine, Iowa, Civilian Counsel for Accused.

(S) ---------- ----------
WILLIAM R. QUEEN,
Major, USAF, Office of the Judge Advocate General, U. S. Air Force, Appellate Defense Counsel.

[1] Use Judge Advocate General of the Army, Judge Advocate General of the Navy, or General Counsel of the Treasury Department, respectively, for Army, Navy, or Coast Guard accused, and modify title accordingly.

SUBCHAPTER D—SECURITY

PART 155—INDUSTRIAL PERSONNEL ACCESS AUTHORIZATION REVIEW REGULATION

Sec.

155.1 General.
155.1–1 Authority.
155.1–2 Purpose.
155.1–3 Definitions.
155.1–4 Policy.
155.1–5 Program.
155.1–6 Scope of program.
155.2 Organization.
155.2–1 Office of Industrial Personnel Access Authorization Review.
155.2–2 Industrial Personnel Access Authorization Screening Board.
155.2–3 Industrial Personnel Access Authorization Field Boards.
155.2–4 Responsibilities of military departments for administrative support.
155.2–5 Central Industrial Personnel Access Authorization Board.
155.2–6 Composition of boards in agency cases.
155.2–7 Access authorization of nominees.
155.3 Standard and criteria.
155.3–1 Standard for issuing an access authorization.
155.3–2 Criteria for application of standard in cases involving individuals.
155.3–3 Guidance for the application of the standard and criteria.
155.4 Processing of cases.
155.4–1 Emergency action.
155.4–2 Forwarding cases.
155.4–3 Initial adjudication procedures (Screening Board action).
155.4–4 Personal appearance.
155.4–5 Procedures for personal appearance proceedings.
155.4–6 Field Board's report.
155.4–7 Action by the Central Industrial Personnel Access Authorization Board.
155.4–8 Action by the Secretary of Defense or the Administrators.
155.4–9 Procedure after final determinations.
155.4–10 Authority of the Secretary of Defense, and the Administrators, Federal Aviation Agency and the National Aeronautics and Space Administration.
155.5 Miscellaneous.
155.5–1 Pending cases.
155.5–2 Reconsideration of prior decisions.
155.5–3 Monetary restitution.

AUTHORITY: §§ 155.1 to 155.5–3 issued under R.S. 161, sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 22, 171a. E.O. 10501, Nov. 5, 1953, 18 F.R. 7049; 3 CFR (1953 Supp.) 115; E.O. 10865, Feb. 20, 1960, 25 F.R. 1583.

§ 155.1 General.

§ 155.1–1 Authority.

Part 155 is issued pursuant to the authority vested by law, including Executive Order 10865 (reproduced as Appendix A), in the Secretary of Defense. By an exchange of letters between the Secretary of Defense and the Administrators of the Federal Aviation Agency and the National Aeronautics and Space Administration, and as provided for in section 1(b), Executive Order 10865, the Department of Defense has been authorized to act for and in behalf of the Federal Aviation Agency and the National Aeronautics and Space Administration in the performance of the administrative and personnel services set forth in this Part 155.

§ 155.1–2 Purpose.

(a) The Secretary of Defense and the Administrators of the Federal Aviation Agency, and the National Aeronautics and Space Administration have prescribed specific requirements, restrictions, and other safeguards which they consider necessary to protect (1) releases of classified information to or within United States industry that relate to bids, negotiations, awards, or the performance or termination of contracts with their department or agency, and (2) other releases of classified information to or within industry which their department or agency has responsibility for safeguarding. In this connection, this Part 155 prescribes uniform standards, criteria, and procedures for processing to final determination all cases which come within the scope of the Industrial Personnel Access Authorization Review Program.

(b) Pursuant to the agreement made between the Department of Defense, and the Federal Aviation Agency, and the National Aeronautics and Space Administration (provided for in section 1(b), Executive Order 10865), this Part 155 has been extended to apply to protect the releases of classified information specified in paragraph (a) of this section. The boards and instrumentalities provided for in this Part 155 are hereby authorized to assume jurisdiction over, and as hereinafter provided, to process and make determinations in cases arising out of such releases of classified information.

(c) This Part 155 is issued to conform the Industrial Personnel Access Authorization Review Program to the requirements of Executive Order 10865.

§ 155.1–3 Definitions.

(a) Whenever the words "Department of Defense", or "Department of Defense agency or activity", or "military department" are used in this Part 155, they shall be deemed to include where applicable the Federal Aviation Agency, or the National Aeronautics and Space Administration.

(b) *Access authorization.* An authorization to have access to one or more categories of information classified in accordance with Executive Order 10501. (NOTE: Actual access, when authorized, requires both an access authorization and a "need to know.") In the case of a contractor, an "access authorization" is an authorization for the contractor involved to have access to specific categories of classified information provided such access is (1) required in connection with the bidding, negotiation, award, performance, or termination of contracts with a Department of Defense agency or activity or (2) required in connection with other releases of classified information to or within industry. In the case of a contractor employee, an "access authorization" is an authorization for the employee to have access to specific categories of classified information provided such access is (i) required for the performance of his work with a particular contractor on contracts with a Department of Defense agency or activity or (ii) required in connection with the release of classified information to or within industry.

(c) *Administrator.* The Administrator of the Federal Aviation Agency, or the National Aeronautics and Space Administration.

(d) *Agency case.* A case arising out of the release of classified information to or within industry directly by the Federal Aviation Agency or the National Aeronautics and Space Administration in connection with the bidding, negotiation, award, or performance or termination of a contract by one of those agencies.

(e) *Applicant.* Any person who is eligible to have the matter of granting, revoking, or denying him an access authorization determined or reconsidered under the Industrial Personnel Access Authorization Review Program (Part 155) as provided for in §§ 155.1–6 and 155.5–2.

(f) *Contractor.* An industrial, educational, commercial, or other entity which has executed a contract or a Department of Defense Security Agreement (DD Form 441) with a Department of Defense agency or activity.

(g) *Personal appearance proceeding.* A proceeding before the New York, Washington, or Los Angeles Industrial Personnel Access Authorization Field Board convened and conducted in accordance with this Part 155. The use of the terms "personal appearance proceeding" or "proceeding" in this Part 155 does not imply, and shall not be construed to mean, that such procedures are subject to the provisions of the Administrative Procedure Act, or that the rules of evidence customary in the courts of the United States shall be applied.

§ 155.1–4 Policy.

(a) The responsibilities of the Department of Defense, including those imposed by the President in Executive Order 10865, necessitate application of policies designed to minimize the possibility of compromise incident to placing classified information in the hands of industry. Adequate measures will be taken to insure that no person is granted, or is allowed to retain, an authorization for access to classified information unless the available information justifies a finding that such access authorization, at the specific classification category granted, is clearly consistent with the national interest.

(b) A determination that granting or retaining authorization for access to information of a specific classification category is not clearly consistent with the national interest shall result in denying or revoking authorization for such access. Any determination under this Part 155 adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned. A determination under this Part 67 favorable to an applicant is not, in and of itself, an access authorization; nor is it in any sense a determination that the applicant concerned actually requires access to classified information. Since an access authorization relates only to access to classified information, denying or revoking such an authorization does not preclude participation in unclassified work.

(c) In the absence of the power to subpoena witnesses, the Secretary of Defense, through the Director, Office of Industrial Personnel Access Authorization Review, may issue in appropriate cases invitations and requests to appear and testify, and may defray reasonable and necessary expenses incurred by such witnesses, in order that the applicant may have the opportunity for cross-examination provided by this Part 155. So far as the national security permits, investigative agencies under the control of the Department of Defense shall cooperate by identifying to the Office of Industrial Personnel Access Authorization Review, persons who have made statements adverse to the applicant and by assisting in making such persons available for cross-examination.

(d) All personnel involved in the processing of cases under the Industrial Personnel Access Authorization Review Program shall comply with the applicable directives pertaining to the safeguarding of classified information and the handling of investigative reports. No classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants, shall be disclosed to any applicant, or to his counsel or representatives, or to any other person not authorized to have access to such information. In cases involving individual applicants, the employer concerned may be advised only of the final determination in the case and of any interim decision to suspend an access authorization previously granted. Except at the written request of the applicant, the Department of Defense shall not release copies of the Statement of Reasons or findings relative thereto outside of the Executive Branch of the Government.

§ 155.1–5 Program.

The Industrial Personnel Access Authorization Review Program is hereby revised, modified, and continued in accordance with this Part 155. The Program shall be administered by the Director, Office of Industrial Personnel Access Authorization Review, who shall have a staff for that purpose. The Office of Industrial Personnel Access Authorization Review shall consist of the following elements:

(a) The Office of the Director.

(b) The Industrial Personnel Access Authorization Screening Board (hereinafter called the Screening Board).

(c) The Industrial Personnel Access Authorization Field Boards (hereinafter called the Field Boards).

(d) The Central Industrial Personnel Access Authorization Board (hereinafter called the Central Board).

§ 155.1–6 Scope of program.

(a) Except as provided in subparagraph (4) of this paragraph the procedures established in this Part 67 shall be applicable to cases in which the applicant is eligible under the Armed Forces Industrial Security Regulation for consideration as to the granting or continuing of an access authorization and in addition thereto:

(1) A Department of Defense agency or activity has recommended that an access authorization of a contractor or contractor employee be denied or revoked;

(2) A Department of Defense agency or activity has suspended an access authorization of a contractor or contractor employee;

(3) A Department of Defense agency or activity has denied or withdrawn a temporary access authorization from an individual, other than a foreign national, who falls within such categories as may be established under this subparagraph (3); or

(4) Action is requested by the Secretary of Defense, or the Secretary of any military department or the Administrator concerned.

(b) Once access authorization has been suspended, or a Statement of Reasons has been issued, or a temporary authorization for access has been withdrawn or denied in the case of applicants included in categories established under paragraph (a) of this section, these procedures may be invoked by an applicant even though his employment has been terminated.

§ 155.2 Organization.

§ 155.2–1 Office of Industrial Personnel Access Authorization Review.

(a) *Organization.* (1) The Office of Industrial Personnel Access Authorization Review shall be established in the Office of the Secretary of Defense and will function under the administrative jurisdiction of the Assistant Secretary of Defense (MP&R). The Office shall be headed by a civilian Director appointed by the Secretary of Defense after consultation with the Assistant Secretary of Defense (MP&R) and the Secretaries of the Army, Navy and Air Force. Policy guidance for the operation of the program including manpower and personnel requirements shall be provided by the Assistant Secretary of Defense (MP&R). The Director shall be responsible for administering the Industrial Personnel Access Authorization Review Program, including its constituent boards; he shall advise and consult with the Secretaries of the Army, Navy and Air Force in carrying out this responsibility. He shall be responsible for ensuring that the Screening, Field and Central Boards are provided with such advice, assistance and personnel, including legal and security advice, as he considers necessary to enable these elements properly to carry out their functions under this Program. He shall have such professional, technical, and clerical staff as he may require to carry out his responsibilities, as set out herein, and such other related responsibilities as may be prescribed. The Director is authorized to obtain information, assistance, and advice directly from any agency or activity of the Department of Defense, and, in accordance with established policies, from other agencies of the Government. He shall prepare monthly reports showing caseloads and the status of pending cases. The Director may issue such supplemental instructions, not inconsistent with this Part 155, as may be desirable for the administration and efficient operation of this Program, including rules for the processing of cases, the conduct of screenings, personal appearance proceedings, determinations and reviews, and for guidance in the application of the standard and criteria set forth in § 155.3. In any particular case, the Director may request additional investigation to be made subject to the provisions of any agreements with investigative agencies outside the Department of Defense.

(2) The Office of Industrial Personnel Access Authorization Review shall be located in the Pentagon and shall be supported administratively by the Office of the Secretary of Defense. The military departments shall make appropriate allocations of funds, military and civilian personnel, and personnel spaces.

(3) Communications shall be addressed to the Director, Office of Industrial Personnel Access Authorization Review, The Pentagon, Washington 25, D.C.

(b) *Department counsel.* The Office of Industrial Personnel Access Authorization Review shall include within its staff a sufficient number of qualified attorneys, who may be stationed in Washington, D.C. or at such other locations as the Director may select, to act as counsel for the Department of Defense in each case in which a personal appearance proceeding is held under this Part 155. When designated by the Director to serve in this capacity, department counsel shall perform the functions normally and customarily associated with said position. Department counsel shall also advise and assist the Screening Board as required, and shall represent the Department of Defense before the Central Board when appropriate.

(c) *Files.* The complete files of all review cases pertaining to industrial personnel shall be maintained by the Department of the Army.

§ 155.2–2 Industrial Personnel Access Authorization Screening Board.

(a) The Screening Board shall be located in the Office of Industrial Personnel Access Authorization Review and shall be responsible for the performance of the duties and functions hereinafter prescribed.

(b) The Secretary of each military department shall appoint one or more members, military or civilian, to the Screening Board as the caseload requires. Appropriate official designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. Except as provided in § 155.2–6, any three members so appointed, one from each military department, shall constitute a quorum-panel so that more than one panel may be convened at the same time. The Director shall designate one member to serve as Chairman of the Screening Board.

(c) The Screening Board shall have jurisdiction over all cases which are re-

ferred to it in accordance with this Part 155.

§ 155.2–3 Industrial Personnel Access Authorization Field Boards.

(a) There shall be three field boards, which shall be known as the New York, the Washington and the Los Angeles Industrial Personnel Access Authorization Field Boards and which shall be located in said cities. Additional field boards may be established by the Director with the approval of the Secretaries of the Army, Navy and Air Force. Panels of existing field boards may be convened at other locations to provide prompt and convenient personal appearance proceedings. Each field board shall be responsible for the performance of the duties and functions hereinafter prescribed.

(b) The Secretary of each military department shall appoint one or more members, military or civilian, to each field board as the caseload requires. Appropriate officials designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. The Director shall designate either one member of the board or a staff member to serve as administrative director of each board who will be responsible for the immediate operations of the board. A quorum-panel may consist of any one civilian member who is a qualified attorney, or of any three members, one from each military department, of whom at least one shall be a civilian and at least one shall be a qualified attorney. When a panel of three members is convened, the administrative director shall designate one member to act as Chairman. A quorum-panel may exercise all of the authority conferred on the board or Chairman by this Part 155.

(c) Each field board will have jurisdiction over all cases referred to it in accordance with this Part 155.

§ 155.2–4 Responsibilities of military departments for Administrative support.

(a) Except as provided in paragraph (b) of this section, the field boards shall be supported administratively by the following military departments, which shall appoint such other personnel as may be required by the Director to assist each field board:

New York Industrial Personnel Access Authorization Field Board Department of the Army.

Washington Industrial Personnel Access Authorization Field Board Department of the Air Force.

Los Angeles Industrial Personnel Access Authorization Field Board Department of the Navy.

(b) Whenever, pursuant to direction of the Director, a panel of a field board established under § 67.2–3(a), is convened at any of the following named locations, the commanders named, respectively, shall arrange or provide for the administrative support needed by such board panel in order to discharge its official business at such locations:

Alaska: Commander, Alaskan Air Command.

Virgin Islands, Canal Zone, and Puerto Rico: Commanding General, USA, Carribean.

Guam, American Samoa, Wake, Midway, Guano Island and Hawaii: Commandant, 14th Naval District.

(c) Where a panel of a field board is convened at a location other than its principal office or at a location outside the jurisdiction of the commanders named in paragraph (b) of this section, the military department requested by the Director shall provide space, facilities and clerical personnel for each personal appearance proceeding and for the prompt making of a verbatim transcript thereof.

(d) As a verbatim transcript will be required of each personal appearance proceeding before a field board, it is the responsibility of each of the above mentioned commanders to provide the necessary personnel and facilities for the prompt making of such transcripts.

§ 155.2–5 Central Industrial Personnel Access Authorization Board.

(a) There is hereby established a Central Board, which shall be located in the Office of Industrial Personnel Access Authorization Review, and shall be responsible for the performance of the duties and functions hereinafter prescribed.

(b) The Secretary of each military department shall appoint one or more members, military or civilian, to the Central Board as the caseload requires. Appropriate officials designated by each Secretary will submit nominations through the Director, who will review the qualifications of each nominee and make an appropriate recommendation to the Secretary concerned. The Director shall designate one member to serve as Chairman of the Central Board. Except as provided in § 155.2–6, any three members so appointed, one from each military department, shall constitute a quorum-panel so that more than one panel may be convened at the same time. One of the members of each quorum-panel must be a qualified lawyer and each quorum-panel shall include at least one civilian.

(c) The Central Board shall have jurisdiction over all cases referred to it in accordance with this Part 155.

§ 155.2–6 Composition of boards in agency cases.

(a) Whenever an agency case is referred for consideration and determination under the Program the Administrator concerned shall be entitled to appoint one member to the Screening Board and two members to the Central Board. Such appointments shall conform to the requirements of § 155.2–7.

(b) Whenever an agency case is referred to the Screening or Central Boards, the Director shall notify the Administrator concerned thereof. The Administrator, or his designee, shall, in their absolute discretion, exercise or waive the right of his agency to be represented on the board involved and shall notify the Director thereof in writing, which notification shall be made a permanent part of the record in the case. If the right is exercised, the Screening Board panel to which the case is referred shall consist of four members and the Central Board panel of five members, instead of the usual three members; if it is waived the board shall be constituted as provided in § 155.2–2, or § 155.2–5.

§ 155.2–7 Access authorization of nominees.

No person shall be appointed Director, board member, or staff member under this Program until such person has been granted an authorization for access to Top Secret information, or its equivalent, based on a background investigation.

§ 155.3 Standard and criteria.

§ 155.3–1 Standard for issuing an access authorization.

Authorization for access to classified information of a specific classification category shall be granted or continued only if it is determined that such access by the applicant is clearly consistent with the national interest.

§ 155.3–2 Criteria for application of standard in cases involving individuals.

(a) Commission of any act of sabotage, espionage, treason, or sedition or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason or sedition.

(b) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, revolutionist, or with an espionage agent or other secret representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

(c) Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of Government of the United States by unconstitutional means.

(d) Membership in, or affiliation or sympathetic association with, or participation in the activities of any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, fascist, communist, or subversive, or which has adopted or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means.

(e) Intentional, unauthorized disclosure to any person of classified information, or of other information, disclosure of which is prohibited by law.

(f) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(g) Participation in the activities of an organization established as a front for an organization referred to in paragraph (d) of this section, under circumstances indicating that his personal views were sympathetic to the subversive purposes of such organization.

(h) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of, or sympathetic to, the infiltrating element or sympathetic to its purposes.

(i) Sympathetic interest in totalitarian, fascist, communist, or similar subversive movements.

(j) Sympathetic association with a member, or members, or an organization referred to in paragraph (d) of this section. (Ordinarily, this will not include chance or occasional meetings, nor contacts limited to normal business or official relations.)

(k) Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to in paragraph (a) through (i) of this section. A close continuing association may be deemed to exist if the individual lives at the same premises as, frequently visits, or frequently communicates with such person.

(l) Close continuing association of the type described in paragraph (k) of this section, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(m) Willful violation or disregard of security regulations.

(n) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(o) Any deliberate misrepresentations, falsifications or omission of material facts from a Personnel Security Questionnaire, Personal History Statement, or similar document.

(p) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(q) Acts of a reckless, irresponsible or wanton nature which indicate such poor judgment and instability as to suggest that the individual might disclose classified information to unauthorized persons, or otherwise assist such persons, whether deliberately or inadvertently, in activities inimical to the national interest.

(r) Any illness, including any mental condition, of a nature which, in the opinion of competent medical authority, may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(s) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may be likely to cause action contrary to the national interest.

(t) The presence of a spouse, parent, brother, sister, or offspring in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas of such a nation, under circumstances permitting coercion or pressure to be brought on the individual through such relatives which may be likely to cause action contrary to the national interest.

(u) Refusal by the individual, without satisfactory subsequent explanation, to answer questions before a Congressional or legislative committee, or Federal or State court or other tribunal, regarding charges of his alleged disloyalty or other misconduct.

§ 155.3–3 Guidance for the application of the standard and criteria.

(a) The activities and associations listed in § 155.3–2, describe conduct which may, in the light of all the surrounding circumstances, be the basis for denying or revoking an access authorization. The conduct varies in implication, degree of seriousness and significance depending upon all the factors in a particular case. Therefore, the ultimate determination of whether an authorization should be granted or continued must be an over-all common-sense one on the basis of all the information which may properly be considered under this Part 155 including but not restricted to such factors, when appropriate, as the following: the seriousness of the conduct, its implications, its recency, the motivations for it, the extent to which it was voluntary and undertaken with knowledge of the circumstances involved and, to the extent that it can be estimated and is appropriate in a particular case, the probability that it will continue in the future.

(b) Legitimate labor activities shall not be considered in determining whether access authorization should be granted or continued.

(c) It is essential to the efficient, economical, and equitable operation not only of the Industrial Personnel Access Authorization Review Program, but of the total procedures whereby the Department of Defense authorizes access to classified information, that applicants provide full, frank and truthful answers when they complete official questionnaires or other similar documents, or respond to official inquiries. Accordingly, the deliberate giving of false or misleading testimony or information on relevant matters, may be sufficient standing alone to justify denying or revoking access authorization and shall be weighed carefully before a determination is reached under this Program.

(d) The granting or continuing of an authorization for access to a contractor is not clearly consistent with the national interest if the access authorization of an owner, officer, director, or any executive of the contractor who is required to have such an access authorization, has not been, or would not be, granted under the standard and criteria set forth in §§ 155.3–1 and 155.3–2.

§ 155.4 Processing of cases.

§ 155.4–1 Emergency action.

Department of Defense activities or agencies may not make a final determination denying or revoking an authorization for access. In exceptional cases officials authorized by the military department concerned may suspend an authorization previously granted to an individual (but not to a facility) when, in the opinion of the authorized official, the individual's continued access to classified information, pending action by the Screening Board, would constitute an immediate threat to the national interest. Any such suspension action shall be reviewed by the Screening Board to determine its propriety.

§ 155.4–2 Forwarding cases.

Department of Defense activities or agencies shall forward to the Director all cases prescribed in § 155.1–6(a), together with the complete file, including the recommendation in the case, the reasons therefor, and all other available information and material relevant to a determination. After ensuring that the file has been properly prepared and transmitted, the Director shall forward it to the Screening Board for appropriate action.

§ 155.4–3 Initial adjudication procedures (Screening Board action).

(a) The Screening Board shall review each case referred to it by the Director and shall determine in accordance with the standard and criteria set forth in § 155.3 of this Part 155 whether the reported information warrants (1) authorizing or continuing to authorize access at the specific classification category requested or (2) further processing as set forth below.

(b) With respect to any case pending before it, the Screening Board may request the Director to:

(1) Request further investigation, specifying the particular points on which the Board feels its information is not adequate.

(2) Issue to the applicant such written interrogatories as the Board may deem desirable.

(3) Arrange for an interview with the applicant.

(4) Arrange for an interview with any witness who has given information relevant to a decision in the case.

(c) The Screening Board may, with respect to any case pending before it, determine at any time that an existing authorization shall be suspended. Upon any such determination, the Director shall notify the applicant, the contractor, the office of the cognizant military department and the agency or activity which forwarded the case to him.

(d) If the Screening Board determines that access at the specific classification category requested should be granted or continued in effect, it shall prepare its determination in accordance with the instructions set out in paragraph (i) of this section. The Director shall notify the agency or activity which forwarded the case to him of the determination and instruct it to effect the authorization where appropriate. The Screening Board shall reconsider its determination at the request of the Secretary of Defense, the Secretary of a military department, or the Administrator concerned.

(e) If the Screening Board concludes on the basis of the information available

to it and in accordance with the standard and criteria set forth in § 155.3 that the case does not warrant a determination favorable to the applicant, it shall prepare a Statement of Reasons informing the applicant of the grounds upon which his access authorization may be defined or revoked. This Statement of Reasons shall be as comprehensive and detailed as the national security permits. At the time a Statement of Reasons is issued, any access authorization previously granted for Secret or Top Secret shall be suspended or limited to Confidential unless such access authorization was granted pursuant to board action under any industrial personnel review program in which case the Screening Board shall determine whether the access authorization should be suspended or limited. The Screening Board shall also determine whether any access authorization previously granted for Confidential should be suspended or limited.

(f) The Director shall forward the Statement of Reasons and a copy of this Part 155 to the applicant and shall inform him of the status of his access authorization pending a final determination. An applicant who has been served with a Statement of Reasons and who has filed under oath or affirmation a written reply thereto which complies with the requirements of paragraph (g) of this paragraph shall be afforded:

(1) An opportunity to appear personally before a field board for the purpose of supporting his eligibility for access authorization and of presenting evidence in his own behalf.

(2) A reasonable time to prepare for that appearance.

(3) An opportunity to be represented by counsel without cost to the Government.

(4) The opportunity to cross-examine adverse witnesses prescribed in § 155.4–5 (b).

(g) Before an applicant is afforded an opportunity to make a personal appearance before a field board he must submit a detailed written answer under oath or affirmation specifically admitting, denying or disclaiming knowledge of each allegation and each supporting fact alleged in the Statement of Reasons. The applicant's answer must either admit or deny each allegation or supporting fact, giving such explanation as may be available to him, or disclaim knowledge thereof. A general denial or other similar answer is not sufficient. The applicant must set out his position with sufficient particularity to disclose the basis thereof, in order that the Department of Defense may determine in advance of the personal appearance proceeding whether the allegations and supporting facts are wholly denied, denied in part, or wholly admitted and make arrangements to produce such information in support as may be required. The Director may decline to accept answers which do not meet the above requirements and, upon notice to the applicant, may refuse to continue to process his application. In that event, the Director shall suspend any access authorization then in effect and give appropriate notice. In the alternative, the Director may forward the case to a field board which may treat allegations or supporting facts with respect to which the Director finds the answer is insufficient as established for the purpose of making a determination under this Program.

(h) Where the applicant:

(1) Files an answer which complies with paragraph (g) of this section, and requests a personal appearance proceeding, or where, although the answer is insufficient, the Director elects to proceed as provided for in said paragraph (g) of this section, the Director shall assign the case to a field board for a proceeding.

(2) Files an answer which complies with paragraph (g) of this section, but elects not to request a personal appearance proceeding, the Director shall assign the case to the Central Board for determination on the basis of all available information including the answer and all documents in support thereof.

(3) Does not answer, the Director shall instruct the department which forwarded the case to deny or revoke access authorization, as appropriate, and shall advise the applicant.

(i) All determinations by the Screening Board shall be made in executive session. A determination to grant or continue access authorization shall be by unanimous vote. No person other than members of the Board shall be present when the Board deliberates and reaches its determination.

(j) Decisions adverse to the applicant announced by the Director in accordance with paragraph (h)(3) of this section, may be reconsidered by the Screening Board at the request of the Director, or at the request of the applicant addressed through the Director, after a finding by the Screening Board that there is newly discovered evidence or that other good cause has been shown.

§ 155.4–4 Personal appearance.

(a) Promptly after being notified by the Director that a case has been referred for a personal appearance proceeding, the Chairman of the field board shall set a time and place for the proceeding and inform the applicant thereof. Personal appearance proceedings shall be held as soon as practicable, allowing the applicant and the Department of Defense a reasonable time to prepare. Postponements may be granted by the Chairman in his sound discretion upon application by either party with notice to the other.

(b) Normally, a personal appearance proceeding shall be held at the home office of the field board concerned. When the applicant so requests and when in the discretion of the Chairman equity to him requires that the proceeding be held in a different place, or when the interests of the government would be served thereby, field boards, subject to the overall authority of the Director, may arrange to convene at such times and places as will best meet the above objectives.

(c) It is to the advantage of both the applicant and the Department to shorten and simplify the proceedings before the field board by stating the issues and arriving at an agreed-upon version of the facts in the case when it is possible to do so. Department counsel is authorized to consult directly with the applicant, or if he has counsel or representative, with them, for purposes of reaching mutual agreement upon arrangements for an expeditious proceeding in the case. Such arrangements may include clarification of issues, and stipulations with respect to testimony and the contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the applicant and the Department of Defense for the purpose of these proceedings.

(d) The applicant is responsible for producing witnesses in his own behalf or presenting other evidence before the field board to support his reply to the Statement of Reasons. When specific assistance is requested, however, the department counsel and the Chairman of the field board may provide such assistance, upon a showing that it is practicable and necessary. In the Chairman's sound discretion, invitations to attend the proceeding as witnesses in the applicant's behalf, or requests for specific documents or other physical evidence, may be tendered upon application, provided a showing of the necessity for such assistance has been made.

(e) Department counsel is responsible for producing at the proceeding witnesses and information relied upon by the Department to establish these facts alleged in the Statement of Reasons which have been controverted. Every reasonable and practicable effort shall be made to obtain witnesses and to facilitate their appearance in accordance with the policy set out in § 155.1–4(c). When requested all Department of Defense agencies and activities shall cooperate in carrying out this policy.

(f) Where an applicant who has requested an opportunity to appear fails without sufficient reason therefor to appear at the time and place set for the proceeding, or at any postponement thereof, and has not requested that his case be determined on the basis of all available information including any written material he may have submitted, the field board shall return the case to the Director without further action. The Director shall then take action under § 155.4–3(b)(3).

§ 155.4–5 Procedures for personal appearance proceedings.

(a) *General provisions.* (1) Personal appearance proceedings are designed to ascertain all the relevant facts in a case to aid in reaching fair and impartial determinations. Such proceedings are not to be conducted with the formality of a court proceeding or of an administrative hearing conducted under the Administrative Procedure Act, but rather as administrative inquiries held for the purpose of affording the person concerned an opportunity to appear for the purpose of supporting his eligibility for an access authorization and to permit the Department of Defense to inquire fully into the matters related to the particular case. As provided in paragraph (b)(1) of this section, the customary rules of evidence shall not be controlling.

(2) Personal appearance proceedings conducted under this Part 155 are not adversary in nature. Nevertheless, a careful and searching inquiry into the facts is necessary if the objectives of this Part 155 are to be effectuated. Field Boards shall be alert to the necessity for identifying and resolving disputed issues of fact whenever possible and shall make their rulings with these considerations in mind.

(3) Personal appearance proceedings shall be conducted in an orderly manner and in an atmosphere of dignity and decorum. They may be attended only by the members of the field board, the applicant and his counsel or representatives, authorized personnel of the Department of Defense and necessary clerical personnel. Unless the Chairman of the field board rules otherwise, a witness may be present only when he is testifying.

(4) The Director shall designate a qualified attorney to represent the Department of Defense and to act as department counsel in each case. He shall represent the Department, and shall be responsible for making a complete record and for placing before the field board all material which may properly be incorporated therein. He shall question Department of Defense witnesses and cross-examine witnesses produced by the applicant, although the field board may also question any witness.

(5) After the proceeding has been convened, and the Statement of Reasons and the applicant's answer thereto have been entered into the record, normally the applicant shall have the right to make a general opening statement either in person or by counsel, and to present his case. He may call witnesses, testify in his own behalf if he so desires and present documents, or other information, in support of his application for access authorization and cross-examine witnesses produced by the Department of Defense.

(6) Witnesses before the field board shall testify subject to the provisions of sec. 1001, Title 18, U.S. Code. Before testifying they shall be informed that said section makes it a criminal offense punishable by a maximum of five years imprisonment, $10,000 fine, or both, knowingly and willfully to make a false statement or representation to any department or agency of the United States as to any matter within the jurisdiction of any department or agency of the United States. Written interrogatories must be sworn to before a notary public or other official authorized to administer oaths.

(7) When appropriate the field board shall amend the Statement of Reasons to conform it with the information available and enter the amendment into the record. When such amendments are made, the Chairman of the field board shall grant the applicant such additional time as, in his sound discretion, he deems appropriate to answer such amendments and to secure and present evidence pertaining thereto.

(8) The field board may recess the proceeding at any time at the request of the applicant or his counsel, department counsel, or upon its own motion.

(9) Before the Chairman of the field board adjourns the proceeding, he shall ask the applicant whether he desires additional time to secure and present additional evidence or to submit a brief. If the applicant desires to present such additional material, the field board shall determine the time within which it must be presented and the form in which it will be received. The Chairman shall also advise the applicant that announcement of the determination in his case will be made by the Director, Office of Industrial Personnel Access Authorization Review.

(10) A verbatim transcript (in triplicate) shall be made of the proceedings and such transcript shall become a permanent part of the record. The transcript shall not include information introduced in accordance with the provisions of paragraph (b)(5) and (6) of this section. The applicant or his designated representative shall be furnished without cost one copy of the transcript, less the exhibits, upon his request. The transcript shall be reviewed by the board prior to release to ensure that it contains no classified information, nor any information which might compromise investigative sources or methods or the identity of confidential informants.

(11) If the applicant or his counsel desires to submit corrections in the transcript to the field board, he shall note the corrections on a separate statement designating the page and line. The statement of corrections must be filed within the time set by the field board which shall determine what corrections are allowable, shall enter on the transcript by marginal notation the corrections which are allowed, and shall enter on the statement filed by the applicant the corrections which are rejected. This statement shall be made a permanent part of the record. The Chairman of the field board in his discretion may call upon the applicant or his counsel for a discussion of the corrections. Corrections shall be allowed solely for the purpose of conforming the transcript to the actual testimony.

(12) Whenever the field board concludes with respect to an issue of fact that the investigation is inadequate or that all of the information has not been fully developed or explored, it may request that further investigation be conducted and in appropriate cases may recess the proceeding pending such investigation. Such requests shall be addressed to the Director through the department counsel. Information developed through supplemental investigation shall be made available to the board in the same manner as information developed in the original investigation.

(b) *Introduction of information.* (1) The record shall consist exclusively of all information presented by the Department of Defense in accordance with this Part 155, together with all information submitted by the applicant. The record shall not be limited to evidence admissible in the courts of the United States. Any oral or documentary evidence may be received if otherwise admissible under this Part 155 and accorded the weight deemed appropriate, but irrelevant, immaterial or unduly repetitious material may be excluded, in the sound discretion of the Chairman of the field board. Efforts shall be made to obtain the best evidence available.

(2) Unless permitted by subparagraphs (5) and (6) of this paragraph, the record may contain no information adverse to the applicant on any controverted issue unless (i) the information or its substance has been made available to the applicant and he offers no objection to its presentation; or (ii) the information or its substance is made available to him and the applicant is afforded an opportunity to cross-examine the person providing the information either orally or by written interrogatories. The foregoing shall not apply to information bearing upon the characterization in the Statement of Reasons of any organization or individual other than the applicant. Information the admission of which is not prohibited by this subparagraph (2), or by any other provision of this Part 155, may be received and made part of the record and may be considered by any board or official charged with making determinations under this Part 155.

(3) Prior to the referral of a case to a field board for a personal appearance proceeding, the Director, Office of Industrial Personnel Access Authorization Review, upon application by either the applicant or the department counsel, shall rule whether, in the light of all the circumstances, testimony shall be taken personally, by deposition, or through cross-interrogatories. In making this ruling, the Director shall exercise his sound discretion and shall state his reasons therefor. He may direct the applicant or his counsel, and department counsel to frame written interrogatories and upon application by either party shall rule upon the relevancy and materiality of any question to be incorporated therein. Once the case has been referred to the field board, the Chairman of the field board shall perform this function. Any action taken by the Director under this subparagraph (3) shall be reflected in the record where appropriate.

(4) Notwithstanding any other provision of this Part 155, records compiled in the regular course of business, or other physical evidence other than investigative reports as such, may be received and considered subject to rebuttal without authenticating witnesses, provided such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense or the Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration to safeguard classified information within industry pursuant to Executive Order 10865. Such documents shall be exhibited to the applicant and when received by the field board shall be made a part of the record in the case.

(5) Records compiled in the regular course of business, or other physical evidence other than investigative reports as

such, relating to a controverted issue, which, because they are classified, may not be inspected by the applicant, may be received and considered provided that (i) the Secretary of Defense or when appropriate, the Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration, or the Director, Office of Industrial Personnel Access Authorization Review, who has been designated as their special designee for that purpose pursuant to section 5b, Executive Order 10865, has made a preliminary determination that said physical evidence appears to be material, and that failure to receive and consider it would, in view of the level of access sought, be substantially harmful to the national security, and (ii) to the extent that the national security permits, a summary or description of said physical evidence shall be made available to the applicant. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency involved shall be considered.

(6) A written or oral statement by a person adverse to the applicant on a controverted issue, and not relating to the characterization in the Statement of Reasons of any organization or individual other than the applicant, may be received and considered without affording an opportunity to cross-examine the person making the statement only in circumstances described in either of the following subdivisions (i) and (ii), provided however that a summary of the statement as comprehensive and detailed as the national security permits shall be made available to the applicant:

(i) The head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest.

(ii) The Secretary of Defense or when appropriate, the Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration, or the Director, Office of Industrial Personnel Access Authorization Review, who has been designated as their special designee for that particular purpose pursuant to paragraph 4a(2) of Executive Order 10865, has preliminarily determined, after considering information furnished by the investigative agency involved as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and has determined that failure to receive and consider such statement would, in view of the level of access sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (*a*) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant, or (*b*) due to some other cause determined by the Secretary or the Deputy Secretary of Defense, or when appropriate, by the Administrator or Deputy Administrator of the Federal Aviation Agency or the National Aeronautics and Space Administration to be good and sufficient.

(7) A written or oral statement of a person relating to the characterization in the Statement of Reasons or any organization or individual other than the applicant may be received and considered without affording the applicant an opportunity to cross-examine the person making the statement, irrespective of whether the statement is adverse to the applicant or relates to a controverted issue, provided the applicant is given notice that it has been received and may be considered by the board, and is informed of its contents to the extent permitted by § 155.1–4 of this part 155.

(8) Whenever information is made a part of the record under the exceptions authorized by subparagraph (5) or (6) (i) or (ii) of this paragraph, the record shall contain certificates evidencing that the determinations required therein have been made. Such certificates shall include the reasons therefor and shall be made available to the applicant unless their disclosure is prohibited by § 155.1–4 of this Part 155.

(9) In any case where information is received by the field board pursuant to subparagraph (5) or (6) (i) or (ii) of this paragraph, a final determination adverse to the applicant in a Department of Defense case shall be made only by the Secretary of Defense, and in an agency case by the Administrator of the Federal Aviation Agency or of the National Aeronautics and Space Administration, as appropriate, based upon their personal review of the case.

§ 155.4–6 Field Board's report.

(a) As promptly as possible after the proceeding and after full consideration of the record and of any arguments made or briefs submitted, the field board shall prepare a report which shall include a recommended decision in the case, prepared in accordance with the standard and criteria set forth in § 155.3. The field board's report shall contain a recitation of the questions presented, a summary of the evidence received, findings of fact with respect to each allegation made, and its conclusion on each question presented for consideration. The field board's report shall be forwarded through the Director to the Central Industrial Personnel Access Authorization Board. The report shall not be made available to the applicant.

(b) Whenever an applicant has made a personal appearance before a field board, a decision adverse to him may be made only on grounds stated in the Statement of Reasons and any amendments thereto and must be based upon a record that is in conformity with Executive Order 10865 and this Part 155. A field board or the Central Board may not receive or consider any information with respect to any fact in issue, unless such information is made available to such board in accordance with this Part 155.

(c) In every case where applicable, the field board shall give appropriate consideration to the fact that the applicant did not have the opportunity to inspect classified information or to identify or cross-examine persons constituting sources of information. It shall also give appropriate consideration to whether information was given under oath or affirmation, and whether or not the person concerned has had an opportunity to rebut it. In every case where classified physical evidence is involved, information as to the authenticity and accuracy of said physical evidence furnished by the investigative agency shall be considered.

§ 155.4–7 Action by the Central Industrial Personnel Access Authorization Board.

(a) Whenever a case is referred to the Central Board, it shall make a final determination subject to the provisions of § 155.4–9(c) of this Part 155, in cases which do not fall within the provisions of § 155.4–5(b) (5) or (6) (i) or (ii), specifying the specific category of classified information to which access shall be granted or continued where appropriate.

(b) In cases where the provisions of § 155.4–5(b) (5) or (6) (i) or (ii) apply, the Central Board shall (1) prepare a final determination where the decision is to grant or continue access at the specific classification category requested, or (2) where it concludes that access at that specific classification category is not warranted, it shall so notify the Director.

(c) Before the Central Board makes a final decision, it shall take the following action, as applicable:

(1) If the board reaches a tentative decision adverse to the applicant, it shall, through the Director, give notice thereof to the applicant together with notice of its proposed findings for or against him with respect to each allegation in the Statement of Reasons, and shall provide him with an opportunity to make an appearance before it, in person or by counsel, or to file a written brief. Within ten (10) calendar days after his receipt of such notice, the applicant may file with the board a written notice of intention to appear or to file a written brief. If the applicant files such written notice of intention, the board shall fix as early a date as practicable for filing a written brief or making a personal appearance before it, and, through the Director, shall give notice thereof to both the applicant and department counsel and at the same time shall furnish department counsel with copies of the tentative decision and proposed findings as previously furnished to the applicant.

(2) If the board reaches a tentative decision favorable to the applicant, it shall, through the Director, give notice thereof to the department counsel together with notice of its proposed findings for or against the applicant with respect to each allegation in the Statement of Reasons, and shall provide department counsel with an opportunity to make an appearance before it, or to file a written brief. Within ten (10) calendar days after receipt of this notice, department counsel may file with the board a written notice of intention to appear or to file a written brief. If department counsel files such written notice of intention, the board shall fix as early a date as practicable for filing written brief or making personal appearance before it, and, through the Director, shall give notice thereof to both department counsel and the applicant and at the same time shall furnish the applicant with copies of the tentative decision and proposed findings as previously furnished to department counsel.

(3) Personal appearances before the Central Board and written briefs filed with the Central Board are intended to permit the applicant and department counsel to present their positions based exclusively upon the record made before the field board, and shall not be used as a substitute for proceedings before such a board. Argument may be made, but witnesses shall not be heard and testimony shall not be taken.

(4) Under subparagraphs (1) and (2) of this paragraph, when the applicant or department counsel, as the case may be, has filed a written notice of intention, the other shall be entitled at the designated time to appear personally or file a written brief as he may prefer. Failure by him to utilize this opportunity shall be deemed a waiver thereof.

(5) After the applicant and department counsel have submitted written briefs or appeared before the Central Board, as provided in subparagraphs (1) and (2) of this paragraph, the board shall reach a final determination in all cases in which it is authorized to do so, and shall refer all other cases to the Director for action by him in accordance with § 155.4–8 of this Part 155. If the applicant under subparagraph (1) of this paragraph, or department counsel under subparagraph (2) of this paragraph, fails to file written notice of intention, or fails, after filing such notice, to appear or file a written brief in a timely manner, the tentative decision of the board shall automatically become final in all cases in which the board is authorized to make a final determination and notice thereof shall be given in accordance with § 155.4–9; in all other cases the tentative decision shall be referred to the Director for action by him in accordance with § 155.4–8.

(d) In reaching a determination or conclusion as hereinabove provided, the Central Board may adopt, modify or reverse the findings, conclusion, or recommendation of the field board, or may request further investigation or may return the case through the Director to the field board with instructions to take further testimony or conduct other proceedings. In each case it shall consider the matters set out in § 155.4–6(c).

(e) In cases in which it is authorized to reach a final determination, the Central Board shall prepare an opinion which shall include an analysis of the evidence, findings of fact and the reasoning on which the determination is based. The determination shall be reached by majority vote, shall be signed by the members, and made a permanent part of the record in the case. If a determination is not unanimous, a minority opinion shall be filed.

§ 155.4–8 Action by the Secretary of Defense or the Administrators.

Whenever a case falls within the provisions of §§ 155.4–5(b) (5) or (6) (i) or (ii), and the Central Board concludes that access at the specific classification category requested is not warranted, the Director shall forward the case to the Secretary of Defense or the Administrator of the Federal Aviation Agency, or the National Aeronautics and Space Administration as appropriate for determination. The determination shall include a review of any determinations made pursuant to § 155.4–5(b) (6) (ii) (*b*) by any official other than the Secretary or the Administrator.

§ 155.4–9 Procedure after final determinations.

(a) Final determinations reached by the Central Board shall be announced by the Director who shall notify the applicant of the determination in his case. Where the determination is favorable to the applicant he shall be notified only of the final conclusion reached. Where the determination is adverse to the applicant, he shall be notified only of (1) the final conclusion reached, and (2) whether a finding was for or against him with respect to each allegation in the Statement of Reasons. The Director shall also give appropriate notice to the other parties concerned.

(b) Final determinations reached by the Secretary of Defense or the Administrator concerned shall be announced by the Director. Where the determination is favorable to the applicant he shall be notified only of the final conclusion reached. Where the determination is adverse to the applicant, he shall be notified only of (1) the final conclusion reached and (2) whether a finding was for or against him with respect to each allegation in the Statement of Reasons. The Director shall also give appropriate notice to the other parties concerned.

(c) Determinations of the Central Board shall be final subject only to:

(1) Reconsideration on its own motion, or at the request of the applicant, addressed through the Director, after it has made a finding that there is newly discovered evidence or that other good cause has been shown.

(2) Reconsideration by the Central Board at the request of the Secretary of Defense, the Secretary of any military department, the Director, or when appropriate, the Administrator concerned.

(3) Reversal by the Secretary of Defense or in agency cases reversal by the Administrator concerned after consultation with the Secretary of Defense.

§ 155.4–10 Authority of the Secretary of Defense, and the Administrators, Federal Aviation Agency and the National Aeronautics and Space Administration.

Nothing contained in this Part 155 shall be deemed to limit or affect the responsibility and powers of the Secretary of Defense or of any Administrator personally, and without respect to this Part 155, to deny or revoke an access authorization in a case affecting his department or agency when he personally determines that the provisions of this Part 155 cannot be invoked consistent with the national security and that the security of the nation requires such denial or revocation of access authorization. Such determination shall be conclusive.

§ 155.5 Miscellaneous.

§ 155.5–1 Pending cases.

All cases presently pending in the Office of Industrial Personnel Access Authorization Review or before any board constituted under any industrial personnel review program shall be processed under this Part 155 unless a Statement of Reasons has been issued in the case and the applicant has been afforded a personal appearance proceeding substantially in accordance with the provisions of this Part 155.

§ 155.5–2 Reconsideration of prior decisions.

(a) Decisions rendered under any industrial personnel review program prior to the effective date of this Part 155 which denied or revoked an access authorization may be reconsidered by such boards as the Director deems appropriate at the request of the applicant, addressed through the Director, after a finding by the appropriate board that there is newly discovered evidence or that other good cause has been shown. Whenever a final determination of denial or revocation based upon a personal appearance proceeding is found to have been unauthorized at the time it was made, authority is hereby delegated to the Director, Office of Industrial Personnel Access Authorization Review, to vacate such final determination and all subsequent administrative action predicated thereon and to take such other steps as may be deemed necessary to complete reconsideration of the case.

(b) In cases where an access authorization has been previously granted and a Department of Defense agency or activity receives additional derogatory information which was not considered by a board at the time it decided the case, such agency or activity, when it is of the opinion, after reviewing the complete file including the record of any prior proceedings, that revocation of said authorization is warranted, shall forward the case to the Director through appropriate channels for referral to the Screening Board in accordance with § 155.4–2.

§ 155.5–3 Monetary restitution.

If an applicant suffers a loss of earnings resulting directly from a suspension, revocation, or denial of his access authorization, and at a later time a final administrative determination is made that the granting to him of an access authorization at least equivalent to that which was suspended, revoked or denied, would be clearly consistent with the national interest and it is determined by the board making a final favorable determinaiton that the administrative determination which resulted in the loss of earnings was unjustified, reimbursement of such loss of earnings may be allowed in an amount which shall not exceed the difference between the amount the applicant would have earned at the

rate he was receiving on the date of suspension, revocation, or denial of his access authorization and the amount of his interim net earnings. The filing and processing of any such claim shall be in accordance with such regulations as the Secretary of Defense may prescribe after consultation with the Administrators. As used herein, earnings shall not include profits. Payment shall be limited to claims administratively determined to be just and equitable. No applicant shall be compensated for any increase in his loss of earnings caused by his voluntary action in unduly delaying the processing of his case under any industrial personnel review program. Payments under this provision shall be in full satisfaction of any and all claims, of whatever nature they may be, which the applicant has or may assert against the United States, or the Department of Defense or any of its agencies or activities, or the Federal Aviation Agency, or the National Aeronautics and Space Administration, or any of them, by reason of or arising out of the suspension, revocation or denial of access authorization.

SUBCHAPTER E—DEFENSE CONTRACT FINANCING

PART 160—STATEMENT OF POLICY FOR TREATMENT OF DEPRECIATION ON EMERGENCY FACILITIES

Sec.
160.1 Purpose.
160.2 Applicability.
160.3 Basic principles.
160.4 Procedures.

AUTHORITY: §§ 160.1 to 160.4 issued under sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154.

§ 160.1 Purpose.

The purpose of this part is to restate and amend Department of Defense implementation of Defense Mobilization Order No. III–1 (former DMO–11), Amendment 1, issued by the Acting Director of Defense Mobilization, effective July 21, 1952, as amended by Amendment 2, issued by the Director of Defense Mobilization, effective May 10, 1954, with respect to the extent to which accelerated amortization may be allowed as a cost in negotiated contract pricing. The pertinent paragraphs of this amended order read as follows:

6. For the purpose of cost computations in negotiated contract pricing, true depreciation, which includes any extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of depreciation which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing.

7. It is recognized that cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to facilities to be used in the performance of negotiated contracts for which certificates have been or will be issued, the procurement agencies concerned will, to the extent required for the purpose of cost computations in connection with the negotiation of contract prices, have the responsibility for determining true depreciation. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation.

§ 160.2 Applicability.

(a) The principles and procedures set forth in this part shall be applicable in the consideration of costs for purposes of pricing or repricing of all negotiated contracts of the Departments of the Army, Navy, and Air Force, the performance of which requires the use of emergency facilities. The term "negotiated contracts", as used in this part, means all contracts, other than those awarded pursuant to formal advertising, in which costs are a factor in contract pricing; it includes cost-reimbursement-type contracts, contracts containing price redetermination clauses, incentive-type contracts, and fixed-price contracts where estimated costs are used in negotiating firm prices. The term "negotiated contracts", as used in this part, also covers subcontracts of the same types as prime contracts to the extent that the policies of the respective military departments make their representatives responsible for the approval or disapproval of prices or costs of such subcontracts. With respect to subcontracts under negotiated prime contracts the procurement agency concerned shall have no greater responsibility than heretofore.

(b) These principles and procedures shall be applicable to all negotiated contracts placed after the effective date hereof and to all existing negotiated contracts (including letters of intent) at that date where firm prices have not been finally determined or redetermined and to all existing cost-reimbursement-type contracts not completed at that date except as to predetermined overhead rates or fixed amounts of overhead which have finally been agreed upon for particular periods.

§ 160.3 Basic principles.

(a) As indicated by DMO–11, Amendment 1, "for the purpose of cost computations in negotiated contract pricing, true depreciation which includes extraordinary obsolescence reasonably assignable to the emergency period, is allowable. Any accelerated amortization of emergency facilities which is in excess of true depreciation, regardless of whether such excess is included in tax amortization certificates, is not allowable as an element of cost in negotiated contract pricing."

(b) The meaning of the term "true depreciation" shall conform to the generally accepted concept of depreciation accounting which may be defined as follows: A system of accounting which aims to distribute to the cost of operations, the cost of capital assets calculated to have expired for any accounting period due to such causes as wear and tear, action of the elements, and prospective inadequacy or obsolescence. Obsolescence of facilities may be brought about by reduced economic utility of facilities without loss of productive utility, such as by technological changes affecting the demand for the products of an industry, as well as by changes affecting the economic use of individual machines. Special requirements for relocation of facilities may also result in obsolescence.

(c) Obsolescence of emergency facilities due to prospective loss of economic utility after the emergency period is a special hazard in some industries. However, in some cases possible overcapacity in an industry is really represented in pre-existing facilities which are in fact obsolete; in such cases the new facilities may be expected to displace the old facilities after the emergency, and it may not be said necessarily that there is extraordinary obsolescence applicable to the new facilities during the emergency period. In cases where the introduction of emergency facilities may cause prospective obsolescence of existing facilities after the emergency period (when such existing facilities are not already obsolete, in fact), true depreciation for emergency facilities should not include allowances for prospective extraordinary obsolescence of the existing facilities; however, in such cases extraordinary obsolescence applicable to the existing facilities, when used in military production, should be considered separately to the extent appropriate in the circumstances.

(d) In the case of emergency facilities covered by Certificates of Necessity, for the purpose of depreciation computations in contract pricing, an arbitrary assignment of five years from date of completion of construction or acquisition of the respective facilities shall be made as representing the period of the emergency. The entire cost of such facilities first shall be fairly apportioned as between the emergency period and the post-emergency period; secondly, the portion of the cost of such facilities assigned to the emergency period shall be prorated over the fiscal periods thereof for purposes of determining overhead costs in any fiscal period to be allocated to the cost of performance of defense or other contracts.

(e) The allocation of the cost of facilities as between the emergency period and post-emergency period shall be made with consideration of the following:

(1) The estimated prospective post-emergency usefulness of the facilities in number of years of useful productive life. Consideration should be given to the post-emergency use (both civilian and military) which it is expected the facilities will have. In this connection, the character of the expected post-emergency use may be different than the emergency-period use.

(2) The additional costs of special-construction features of the facilities fairly assignable exclusively to defense requirements.

(3) Subject to the application of the principles outlined herein, consideration shall be given to the portion of the cost of emergency facilities certified for amortization plus so-called normal depreciation for tax purposes during the emergency period on the uncertified portion of the cost of such facilities. (See particularly paragraphs (f) and (g) of this section.)

(4) (i) The normal peacetime life of facilities having a normal peacetime utility. If Bulletin F of the Bureau of Internal Revenue is used in connection herewith, care must be exercised in its use, as its data may not be typical of any specific contractor or industry, especially in the emergency period.

(ii) It must be emphasized that this is a process of cost allocation which does not contemplate an appraisal of the resale value (other than residual salvage value) or replacement cost of emergency facilities at the end of the emergency period. Potential "use value" to the particular contractor concerned after the emergency period should be the primary basis on which loss of economic usefulness, and therefore true depreciation, is determined.

(f) Certificates of Necessity have been issued in some cases providing for the amortization of emergency facilities for tax purposes during the emergency period in amounts in excess of true depreciation. It is also possible that Certificates of Necessity may have been issued in isolated cases providing for the amortization of emergency facilities for tax purposes in amounts less than true depreciation. Such variances may be attributable to the granting of other incentives than true depreciation, or to the practice of following industry-wide patterns of certification without reference to true depreciation in specific cases. The excess of tax amortization over estimated true depreciation shall not be allowable as a cost for the purpose of pricing negotiated contracts, either directly or indirectly as a factor of "contingencies" or profit allowance.

(g) It is the intent of this part to give contractors a reasonable and properly allocable allowance to cover the estimated loss of economic usefulness of their emergency facilities in production under defense contracts. The procedures for determining such allowances must be such as will expedite determination; this requires avoidance of an impossible perfectionism. There is no intent to limit the cost allowance to depreciation that would be allowable for income tax purposes if there were no Certificates of Necessity, nor to necessarily require that the allowance be below tax amortization covered by certificates. Each case must be judged on its merits in the light of these principles. If the result obtained by the application of the principles outlined herein indicates substantial justification of the total amount of amortization and depreciation allowable for tax purposes during the emergency period, as a reasonable measure of true depreciation, such amount shall be accepted, without adjustment, as true depreciation. In those isolated cases where substantial justification can be shown for a larger amount of true depreciation than the total amount of amortization and depreciation allowable for tax purposes during the emergency period, the larger amount shall be allowable as a cost for purposes of contract pricing.

(h) Contractors may use normal depreciation without requesting a determination of true depreciation, or may elect to use either normal or true depreciation after a determination of true depreciation has been made. Once either method is elected, it must be followed consistently throughout the life of the emergency facility. Where an election is made to use normal depreciation, § 15.205–9(f) of this chapter is not intended to apply to assets fully amortized on the contractor's books of account under Certificates of Necessity. Where an election is made to use true depreciation, it shall be prorated over the full five year emergency period, and proportionate amounts shall be allocated to contracts only for those fiscal periods during which the contracts are performed during the five year period. Care must be exercised to assure that no other allowance is made under the contract which would duplicate the factors, such as extraordinary obsolescence, considered in the determination of true depreciation. In addition, where an election is made to use true depreciation, contract pricing for the post-emergency period will be based on depreciation computed by allocating the undepreciated cost of the emergency facility at the end of the emergency period (cost less true depreciation for that period) over the estimated remaining life of the facility, provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered true depreciation.

§ 160.4 Procedures.

(a) Cost determination in negotiated contract pricing is a function of the procurement agency concerned. With respect to emergency facilities used in the performance of negotiated contracts for which Certificates of Necessity have been or will be issued, the procurement agency concerned shall be solely responsible for estimates of such depreciation for contract pricing purposes in the light of the principles set forth in this part. The Office of Defense Mobilization will, on request, furnish the procurement agency concerned with such information as it has or is readily available to it which is pertinent to the determination of true depreciation—such requests should be held to a minimum.

(b) In order to expedite administration of the determination of true depreciation for the emergency period for a specific contractor, it will be appropriate to make over-all determinations of true depreciation of emergency facilities covered by Certificates of Necessity on a plant-wide or product-wide basis of classification of such facilities by such groupings as may be appropriate in consideration of general similarity of the facilities from the standpoint of length of useful productive life.

(c) In the case of contracts to which this part is applicable which are in force at the effective date of this part, price redeterminations, cost-incentive adjustments, and cost reimbursements may

continue to be made in accordance with the pricing formula established in the initial pricing negotiations, provided the contractors are agreeable, and provided there is no evidence that the contractor has been allowed more than true depreciation in pricing, either directly or indirectly. When costs of such contracts are redetermined in the light of the principles set forth herein, consideration shall be given to possible redetermination of the entire allowable costs and profit (or fees), as pricing factors, to the extent required to avoid excessive or duplicate allowances in costs or profits for such true depreciation. Allowances for contingencies and profits in initial price negotiations in some cases may have included indirect allowances for the excess of true depreciation or tax amortization over normal depreciation; in such cases no more should be allowed in total pricing for this factor than true depreciation.

(d) Contractors shall be required to set forth to the authorized representatives of the procurement agencies, all the pertinent facts having a bearing on estimates of true depreciation together with their evalaution thereof. Such authorized representatives of the procurement agencies will be expected to exercise reasonable judgment in their review and evaluation of the facts in arriving at estimates of true depreciation, in the light of the basic principles set forth in this part, recognizing the impossibility of having absolutely demonstrable proof of the conclusions reached.

(e) Where the emergency facilities of any contractor at one plant or at one general location are used in the performance of contracts for more than one of the military departments, one of these departments shall make determinations of true depreciation binding upon each other department. The responsible department shall be the one, if any, having plant cognizance procurement assignment; in the absence of such assignment the responsible department shall be the one, if any, having single-service audit responsibility; otherwise the responsible department shall be the one having the largest interest in effecting current procurement at the time of the determination. Similarly, each military department shall be responsible for delegating responsibility therein in a manner to avoid duplications in determinations of true depreciation within that department.

(f) The following additional procedure is appilcable to Emergency Facilities covered by Certificates of Necessity issued after July 1, 1954:

Whenever a major portion of the cost of facilities in substantial amount is to be reimbursed to a contractor as an element of product prices during a relatively short period, it will be expected in appropriate cases that consideration will be given in negotiation to protecting, by appropriate agreement, the Government's interest in the continued availability of the facilities for Defense use.

PART 163—DEFENSE CONTRACT FINANCING REGULATIONS

Sec.
163.1 Scope; financing defined.
163.2 Purposes.
163.3 Application.
163.4 Implementation.

Subpart A—Introduction

163.5 Scope of subpart.
163.6 Guaranteed loans; authority.
163.7 Guaranteed loans; description.
163.8 Advance payments; authority.
163.9 Advance payments; description.
163.10 Progress payments; authority.
163.11 Progress payments; description.
163.12 Responsibilities.
163.12–1 Organization.
163.12–2 Resolution of disagreements.
163.12–3 Responsibility; administration; contract finance committee.

Subpart B—Basic Policies

163.13 Scope of subpart.
163.14 Acceleration of payments.
163.15 Timely action.
163.16 Uniformity.
163.17 Small business.
163.18 Purpose of contract financing.
163.19 Support of procurement; minimizing monetary loss.
163.20 Reasonable need.
163.21 Working capital purposes.
163.22 Order of preference.
163.23 Financing not a handicap.
163.23–1 Non-indication of contract financing need.
163.24 Financial responsibility of contractors.
163.24–1 Small volume of work.
163.24–2 Large volume of work.
163.24–3 Unrealistic cost estimates.
163.24–4 Technical and engineering evaluation.
163.24–5 Importance of type of contract; development.
163.24–6 Engineering, production, and purchase plans.
163.26 Coordination before contract award.
163.27 Financial information and analysis.
163.28 Appropriate information; purposes.
163.28–1 Cash flow forecast, and estimated financial statements.
163.28–2 Realistic assumptions.
163.28–3 Estimated profit and loss statements and balance sheets.
163.29 Termination financing.
163.30 Report of adverse developments; prompt decisions.
163.31 Reports.
163.32 Deviations; amendments.
163.33 Interpretations.
163.33a Foreign procurement.
163.33a–1 Progress payments on contracts for foreign performance.
163.33a–2 Advance payments on contracts for foreign performance.
163.33a–3 Guaranteed loans for foreign contract performance.

Subpart C—Guaranteed Loans

163.34 Scope of subpart.
163.35 Federal Reserve banks.
163.36 Board of Governors of the Federal Reserve System.
163.37 Procedure on application of a private financing institution.
163.38 Loan guarantees to Federal Reserve banks.
163.38–1 Other government agencies.
163.39 Loan guarantees for terminated contracts.
163.40 Guaranteeing agency.
163.40–1 Effect on preponderance of progress payments or denial of certificate of eligibility.
163.40–2 Shifting of preponderance.
163.41 100 percent guarantees.
163.42 Asset formula.
163.43 Amount and maturity of guaranteed loans.
163.44 Assignments of claims under contracts.
163.45 Other collateral security.
163.46 Contract surety bonds in relation to loan guarantees.
163.47 Other borrowings.
163.48 Eligibility certifications.
163.49 Procedure for certificate of eligibility.

Subpart D—Advance Payments

163.50 Scope of subpart; references.
163.50–1 Advance payments on subcontracts.
163.51 Types of contracts that may have advance payments.
163.52 Advance payments in addition to progress payments.
163.53 Interest.
163.54 Standards; amounts; need.
163.55 Statutory requirements.
163.56 Responsibility; delegation of authority.
163.56–1 Delegation of authority.
163.57 Public Law 85–804; formally advertised contracts.
163.57–1 Special contract provisions.
163.57–2 Data.
163.58 Uses of advance payments.
163.59 Standards for advance payment determinations; all contracts.
163.60 Findings, determinations and authorization.
163.61 Application for advance payment.
163.62 Action by contracting officer; approval.
163.62–1 Action by contracting officer; disapproval.
163.63 Security; supervision; covenants.
163.64 Forms of contract provisions and supplemental agreements.
163.64–1 Forms of agreement for special bank account.
163.64–2 Advance payment provisions.
163.65 Pooled advance payments; general.
163.65–1 Distinction between pool contracts and designated pool contracts.
163.66 Advance payment pool agreements; special features.
163.67 Liquidation; designated pool contracts; administering office.
163.68 Pooled advance payments; understandings.
163.68a Excluded advance payments.

Subpart E—Progress Payments Based on Costs

163.69 Scope.
163.69–1 References.
163.69–2 Exclusions.
163.69–3 Contract coverage.
163.70 Percentage or stage of completion.
163.71 General.
163.71–1 Requests for proposals.
163.72 Customary progress payments; standards.
163.72–1 Applicability of percentages.
163.72–2 Amendment to reduce percentages.
163.72–3 Indefinite quantity contracts.
163.72–4 Administration.
163.73 Formal advertising; small business restricted advertising.
163.73–1 Progress payment provision in invitations for bids.
163.73–2 Small business restricted advertising.
163.73–3 Progress payments exclusively for small business.
163.73–4 Notice to bidders.
163.73–5 Total costs clause preferable.
163.73–6 Non-responsive bids; uninvited progress payment condition.
163.74 Unusual progress payments; standards; procedure.
163.75 Accounting system and controls.
173.76 Information required.
163.77 Advance payments.
163.78 Definitions.
163.78–1 Progress payments.
163.78–2 Customary progress payments.
163.78–3 Unusual progress payments.
163.78–4 Costs.
163.78–5 Incurred costs.
163.73–6 Unliquidated progress payments.
163.78–7 Contract price.
163.78–8 Amendments, supplements, and modifications.
163.78–9 Deviation.
163.79 Contract clauses.
163.79–1 Total costs clause.
163.79–2 Direct labor and materials cost clause.
163.79–3 Schedule provision for progress payments to subcontractors.
163.80 General instructions for progress payment clauses.
163.80–1 Contracting officer.
163.80–2 Variation in percentages.
163.80–3 Total cost basis; percentage other than 70 percent.
163.80–4 Limited cost basis; other percentages.
163.80–5 Cost basis less than direct labor and material costs.
163.80–6 Other protective provisions.
163.81 Progress payment liquidation.
163.81–1 Ordinary method.
163.81–2 Alternate method.
163.81–3 Liquidation percentages.
163.82 Subcontracts.
163.82–1 Subcontractor progress payments.
163.82–2 Adaption of uniform clause for subcontracts.
163.82–3 Substitution of new clause for old clause.
163.83 Progress payments on subcontracts under cost-reimbursement types of prime contracts.
163.84 Letter contracts.
163.85 Transition.
163.85–1 Separate contracts.
163.85–2 Existing indefinite quantity contracts.
163.85–3 Supplements, amendments, and modifications; when new clause not required.
163.85–4 Supplements, amendments, and modifications; gradual operation of new clause.
163.85–5 Supplements, amendments, and modifications; concerning progress payments.
163.85–6 Amendments reducing the rate of progress payments.
163.86 Contract financing office clearance.
163.87 Coordination.
163.87–1 Control lists.
163.87–2 Hold-up list.
163.88 Contractor's request.
163.89 Audit.
163.90 Administration; general.
163.90–1 Extent of supervision.
163.90–2 Use of progress payments by contractors.
163.91 Adjustments; retroactive price reduction; refunds.
163.92 Maximum unliquidated amount.
163.92–1 Quarterly statements on price revision contracts.
163.93 Suspension or reduction of payments; general.
163.93–1 Failure to comply with contract.
163.93–2 Unsatisfactory financial condition.
163.93–3 Excessive inventory.
163.93–4 Delinquency in payment of costs of performance.
163.93–5 Fair value of undelivered work.
163.93–6 Erroneous cost estimates.
163.94 Government title.
163.94–1 Loss, theft, destruction, or damage.
163.94–2 Government-furnished property.
163.94–3 Special tooling.
163.94–4 Termination for convenience of the Government.
163.94–5 Scrap; excess property.
163.95 Consideration for progress payments; awards.
163.96 Amendments to provide progress payments.
163.97 Consideration for amendments providing for progress payments.

AUTHORITY: §§ 163.1 to 163.97 issued under R. S. 161, sec. 2202, 70 Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202. Interpret or apply sec. 301, 702(d), 64 Stat. 800, 816, as amended, secs. 2307, 7364, 70A Stat. 131, 455, as amended, sec. 1, 72 Stat. 972; 50 U.S.C. App. 2091, 2152(d), 10 U.S.C. 2307, 7364, 50 U.S.C. 1431, E.O. 10480, 18 F.R. 4939, 3 CFR, 1953 Supp., E.O. 10789, 23 F.R. 8897.

§ 163.1 Scope; financing defined.

This part covers the financing of contracts and subcontracts for the national defense. It is applicable to contract financing for all types of contracts for all kinds of work, supplies and services, except as provided in § 163.69–2 or as otherwise indicated herein. The term "financing" as used in this part covers Government guaranteed loans, advance payments and progress payments (not including partial payments for delivery of one or more completed units called for under a contract) necessary for both performance and termination purposes, to the extent authorized by law.

§ 163.2 Purposes.

This part is intended to (a) state basic contract financing policy, (b) assure proper uniformity in policies procedures and forms, (c) provide for application of the fundamental management principle of internal check and balance, (d) insure that the need for advance or progress payments by contractors will not be treated as a handicap in awarding contracts, (e) facilitate and accelerate the making of progress payments requested by small business concerns under Government contracts, and (f) emphasize the usefulness and desirability of providing proper contract financing assistance to small business concerns.

§ 163.3 Application.

This part supersedes all regulations, directives, procedures and instructions inconsistent herewith, including the joint regulations dated December 17, 1956, issued as AR 715–6, NAVEXOS P–1006 (NPD 31–001) and AFR 173–133.

§ 163.4 Implementation.

The content of this part shall be distributed promptly to all personnel concerned with procurement and with contract financing, including contracting officers, for information and compliance. Copies of all implementing regulations, directives, procedures, and instructions, as issued from time to time within the Military Departments, at all levels, shall be furnished promptly through channels to the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management) in the Department of the Air Force, with an additional copy to be forwarded by those contract financing offices, respectively, to the Assistant Secretary of Defense (Comptroller). Changes and additions for this part will be developed within the Contract Finance Committee, in the manner contemplated by §§ 163.12–3 and 163.32.

Subpart A—Introduction

§ 163.5 Scope of subpart.

This subpart describes the methods of contract financing by guaranteed loans, advance payments and progress payments, and states basic authority and responsibilities.

§ 163.6 Guaranteed loans; authority.

(a) Under section 301(a) of the Defense Production Act of 1950, as amended, and section 301 of Executive Order No. 10480, the Department of the Army, the Department of the Navy, and the Department of the Air Force, among others, are designated as "guaranteeing agencies," and authorized by section 302 (a) of Executive Order No. 10480 "to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan • • • which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government

contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense."

(b) As defined in section 702(d) of the Defense Production Act of 1950, as amended, "the term 'national defense' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity."

§ 163.7 Guaranteed loans: description.

Guaranteed loans, usually called "V-loans," are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Guaranteed loans afford an especially convenient medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses.

§ 163.8 Advance payments: authority.

Advance payments on all contracts are authorized in accordance with the provisions of 10 U.S.C. 2307. When appropriate, advance payments are also authorized pursuant to the Act of August 28, 1958 "to authorized the making, amendment and modification of contracts to facilitate the national defense" (Pub. Law 85–804, 72 Stat. 972), Executive Order No. 10789, and Department of Defense Directive No. 7830.1. Navy advance payments for salvage operations are also authorized by 10 U.S.C. 7364.

§ 163.9 Advance payments; description.

Advance payments are advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Advance payments are made only to prime contractors. They are expected to be liquidated from payments due to the contractor incident to performance of contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract. Advance payments may be made to prime contractors for the purpose of making sub-advances to subcontractors.

§ 163.10 Progress payments: authority.

Progress payments are authorized in accordance with the provisions of 10 U.S.C. 2307.

§ 163.11 Progress payments: description.

The term "progress payments," as used herein, signifies payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. As used in this part this term does not include payments for partial dellveries accepted by the Government under a contract, or partial payments on contract termination claims.

§ 163.12 Responsibilities.

Sections 163.12–1 to 163.12–3 set forth organization and responsibilities.

§ 163.12–1 Organization.

In terms of organization, the financing function should be separated from the procurement function, but close cooperation between the procurement and financing functions should be preserved at all times. Insofar as progress payments are concerned, it is contemplated that contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, but will otherwise participate only in specific cases involving policy questions or unusual financial arrangements and conditions.

§ 163.12–2 Resolution of disagreements.

If a disagreement arises between the financing office and the interested procuring activity in any Department as to whether, to what extent, or in what form, financing should be furnished, the matter will be referred immediately to and resolved in the higher echelons of authority responsible respectively for financing and procurement functions, subject to any issue being resolved ultimately by the Secretary of the Department concerned.

§ 163.12–3 Responsibility; administration: Contract Finance Committee.

(a) The responsibility for insuring uniform administration of financing in accordance with directions shall be in the Assistant Secretary of Defense (Comptroller). Specific cases need not be referred to the Office of the Assistant Secretary (Comptroller), unless policy or important procedural problems are involved, and the day-to-day financing operations shall be the responsibility of the Military Departments.

(b) Responsibility for financing in each Department shall be in the Under or Assistant Secretary responsible for the comptroller function, with the focal point of such activities at Departmental headquarters although contract financing offices may be established at the operational level determined by that Department.

(c) There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of Defense (Comptroller) as Chairman, a representative of the Assistant Secretary of Defense (Supply and Logistics) and two representatives of each Military Department (one representing procurement and one representing the contract finance office), which Committee shall meet upon call by the Chairman, upon his own initiative or when requested by a member of the Committee. This Committee shall advise and assist the Assistant Secretary of Defense (Comptroller) in assuring proper and uniform application of policies and the development of procedures and forms, and may from time to time recommend to the Secretary of Defense through the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Supply and Logistics) such further policy directives on the subject of financing as may appear desirable. This Committee shall be responsible also for the formulation, revision and promulgation of uniform regulations on contract financing (§ 163.32). For matters involving guaranteed loans, a representative of the Board of Governors of the Federal Reserve System may be invited to meet with the Committee. The Committee also may from time to time secure the advice of representatives of other branches of the Government and other persons and may invite such representatives and persons to its meetings.

Subpart B—Basic Policies

§ 163.13 Scope of subpart.

This subpart sets forth basic policies applicable to guaranteed loans, advance payments, and progress payments. Policies and procedures more particularly pertaining to the specific methods of contract financing are contained in the sections of this part relating to each method of financing.

§ 163.14 Acceleration of payments.

Payments must be made promptly on all contracts when due. It is of continuing importance that there be acceleration of all proper payments earned by contractors, including progress payments.

§ 163.15 Timely action.

In connection with requests for provision of progress payments, advance payments, or loan guarantees, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions.

§ 163.16 Uniformity.

Uniform financing policies and, so far as practicable, uniform procedures and standard forms are to be used by the Military Departments and, to the extent mutually agreed upon by the Military Departments, facilities and personnel are to be used in common.

§ 163.17 Small business.

Immediate and continuing attention must be given at all levels to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small business concerns. Every reasonable effort must be made to assist small business concerns in the resolution of their problems relative to the financing of contract performance, including any cases in which it may be reasonably necessary to increase the rate for progress payments and to assist them in understanding and complying with the requirements of performance as to payment forms, inspection and cost accounting. However, the issuance of a certificate of competency by the Small Business Administration shall not be considered as a requirement that contract financing must be provided by a Military Department.

§ 163.18 Purpose of contract financing.

The providing of funds for payment of expenses of performance of contracts is an essential element of defense production. Contract financing is to be regarded as a useful working tool that may be used to the benefit of the Government, for aiding procurement by expediting performance of defense contracts and subcontracts. The contract financing system makes possible production in volume that could not be accomplished otherwise. Prudent contract financing supports procurement and production and fosters the small business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

§ 163.19 Support of procurement: minimizing monetary loss.

Financing must support procurement and should be designed to aid, not impede, essential procurement, but should be so administered as to avoid the risk of monetary loss to the Government to the extent compatible with aiding essential procurement.

§ 163.20 Reasonable need.

Government financing for production or services should be provided only if, and to the extent, reasonably required for prompt and efficient performance of Government contracts and subcontracts.

§ 163.21 Working capital purposes.

(a) Guaranteed loans under section 301 of the Defense Production Act of 1950, as amended, will be used primarily for working capital purposes. Such guarantee authority will not be used for loans for facilities expansion.

(b) It is not the intent of these regulations, however, to preclude guarantees in cases in which a relatively small part of the loan might be used for facilities expansion of a minor or incidental nature: *Provided*, That the borrower's financial condition is such that the facilities expansion will not delay or impair repayment of a guaranteed loan which would be granted on a commercial banking basis.

(c) Since advance payments and progress payments should be self-liquidating from contract performance, they also will not be used to finance fixed asset acquisitions for contractor ownership.

(d) These limitations are not intended to apply to contracts under which facilities are being acquired for Government ownership.

§ 163.22 Order of preference.

In determining what form of financing shall be recommended or made available to suppliers, the following order of preference generally should be observed, recognizing that there may be valid exceptions in specific cases or classes of cases:

(a) Private financing on reasonable terms (without governmental guarantee)—supplemented when reasonably necessary by Government financing to the extent reasonably required;

(b) Customary progress payments, as described herein (§163.72) including progress payments incident to "Small Business Restricted Advertising" or incident to procurement by formal advertising, as authorized herein (§ 163.73) except that guaranteed loans may be preferable in customary progress payments when so indicated by a contractor and financing institution; or progress payments based on a percentage or stage of completion, confined to contracts for construction (§ 10.101–6 of this chapter), shipbuilding and ship conversion, alteration or repair;

(c) Guaranteed loans (with financing institutions participating to an extent appropriate to the risk involved);

(d) Unusual progress payments, as described herein (§ 163.74), not including contracts involving advance payments;

(e) Advance payments (§ 163.58).

§ 163.23 Financing not a handicap.

The need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (§§ 1.903–1 and 2.407 of this chapter and §§ 163.24 and 163.26). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed by a Military Department. Responsible personnel must endeavor to assure that full, proper and prudent use is made of contract financing, in such ways that financial difficulties will not bring about delay or failure in performance or result in monetary losses to the Government. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit (a) at excessive interest rates or other exorbitant charges, or (b) from agencies of the Government outside the Department of Defense.

§ 163.23–1 Non-indication of contract financing need.

Before contract awards, contractors sometimes indicate that contract financing by guaranteed loan, progress payments or advance payments will not be required. In some of those cases, the need for such contract financing later arises, usually from changed circumstances differing from those projected at the time of the award. The fact that a contractor did not indicate before award that he would require contract financing, or that he stated that he would not require such financing, does not disqualify the contractor for proper contract financing conforming to these regulations and should not be permitted to deter such financing. Each such case should be dealt with and decided on its merits, without giving weight to the contractor's earlier error with regard to the need for contract financing.

§ 163.24 Financial responsibility of contractors.

Procuring activities in placing contracts must give due regard to the financial capabilities of the supplier. Financial difficulties encountered by contractors and subcontractors may (a) disrupt production schedules, (b) cause wastage of manpower and materials, and (c) if connected with guaranteed loans, advance payments, or progress payments, result in monetary loss to the Government. Also, if financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continuance of such production, even though monetary losses may be likely under the circumstances. In order to reduce these hazards so far as possible, contracts should be entered into only with those potential contractors who meet the requirements of § 1.903–1, or § 2.407 of this chapter, and who have the financial capacity or credit (giving due regard to the availability of progress payments, guaranteed loans, and advance payments), technical skill, management competence, and plant capacity and facilities (including subcontracting capacity) reasonably to assure their ability to perform their contracts in accordance with their terms. Care should be taken also to the extent practicable to avoid the placement of additional contracts or subcontracts with contractors in situations where additional contracts will overload the contractor's production capacity, overextend his financial resources and credit, and thus tend to interfere with timely performance of contracts on hand, and create need for additional contract financing arrangements, which may be impossible to establish on a prudent basis. In all cases, whether involving formal advertising or negotiation, it must be determined that the contractor is financially and otherwise able to perform the contract. In addition, consideration must be given to the judgment, skill, and integrity of the potential contractor, and to his reputation and experience, including prior work of a similar nature done by him, and the other factors set forth in § 1.903–1, § 2.407 or § 3.101 of this chapter, as appropriate. Persons placing subcontracts, at all levels of subcontracting, should be encouraged to apply these standards in placing subcontracts. Some practical examples of important points which should be kept in mind are set out below.

§ 163.24–1 Small volume of work.

Unduly small volume of work, in relation to amount of overhead expense, may result in losses to such extent as

to interfere with or prevent performance of contracts. The order backlog on hand and reasonably foreseeable should be sufficient to enable operations to continue at least through the contemplated term of the contracts for which contract financing is being considered.

§ 163.24–2 Large volume of work.

Unduly large volume of work to be performed concurrently with a contract may result in insufficiency of cash or credit to support the work, or in delays or collapse on account of inadequacy of plant space, production equipment, engineering or production personnel, or unavailability of materials, parts or components. An apparently unduly large backlog may or may not be a deterrent, depending upon the relationship of the scheduling of all the work to the available credit, facilities, personnel, suppliers and subcontractors.

§ 163.24–3 Unrealistic cost estimates.

Incompetence, carelessness, or over-optimism of management may cause or permit the making of bids or proposals for work involving techniques, processes or "know-how" on which the contractor has no sufficient experience. Such work may be for the end items under a Government contract or for end items under other contracts (whether existing or prospective). In either case, unforeseen difficulties of performance and unanticipated excess of costs over contract prices may prove ruinous. In such cases, the proposed price, or cost estimates, whether or not based on past performance and experience of qualified competent contractors for the same or similar kinds of end items, may be unrealistic for the inexperienced contractor and may make the company's financial projections completely unrealistic. Comparative bids or proposals by others are important and useful factors in evaluation of the adequacy or inadequacy of proposed prices. However, a proposed price that seems unduly low may in fact be founded solidly on superior efficiency or on the discovery of new and improved techniques or processes that will enable the contractor to perform at costs substantially less than those of other contractors.

§ 163.24–4 Technical and engineering evaluation.

While management and technical competence must be evaluated largely on the basis of past performance of management and technical personnel, in doubtful cases financial forecasts cannot be analyzed adequately without the benefit of technical and engineering judgments based upon detailed scrutiny of the contractor's production plans and contemplated processes in relation to the quantity and quality of available facilities and personnel. However, while inexperience of the contractor in production of a contemplated end item or similar kinds of end items is a danger signal requiring close collaboration of all personnel concerned with the various elements of contract awards and contract financing, close analysis of the facts may provide sound reasons for belief that the prospective contractor, with proper and prudent contract financing assistance, will be able to perform on terms and conditions, including price, beneficial to the Government.

§ 163.24–5 Importance of type contract development.

The type of contract may constitute the dividing line for decision as to ability or inability to perform and the related question of the prudence or imprudence of providing contract financing. If the contemplated end items are essentially development items—whether or not the contract is labeled a development contract—a fixed-price type of contract, whether firm fixed-price, fixed-price with escalation or fixed-price subject to price revision with a ceiling, may prove impossible of performance within the contract price and may result in non-delivery of acceptable end items and in disaster to the contractor. Except for those contractors who are exceptionally strong financially, it is imperative in these cases that financial analysis and evaluation be based upon the closest possible scrutiny by, and stated judgments of, qualified engineering and technical personnel with regard to the details and difficulties of performance and their relation to projected costs of the work.

§ 163.24–6 Engineering, production, and purchase plans.

Company plans may contemplate engineering costs, tooling costs, direct labor costs, or prices of materials, parts or components that are unduly low. Financial forecasts cannot be made intelligently or usefully without the benefit of careful and competent analysis of all significant elements of the engineering, production and purchasing aspects—by qualified technical personnel. Such analysis would need to evaluate the company's estimated costs for each significant performance element against the probable costs to be encountered for all elements necessary for actual performance. It may, for example, be foreseeable upon analysis that the company has materially underestimated the amount of engineering and testing necessary for completion of a satisfactory preproduction model, or the quantity and quality of special tooling or other manufacturing aids that may be required for production of the end items, or the amount of direct labor that will be required, or the purchase prices of necessary materials, parts or components. The company may also have been in error as to the probable technical ability of contemplated subcontractors to provide acceptable parts or components. The company may even—in some cases—be expecting to have significant portions of the work done by technically or financially irresponsible subcontractors, some of whom may be affiliated with the contractor or related financially to the contractor's ownership or management. All these elements, in appropriate cases, require analysis and evaluation by competent engineering and technical personnel and bear upon the soundness or lack of soundness of the evaluations of financial capability and of the risks of monetary losses that would be involved in contract financing.

§ 163.26 Coordination before contract award.

For effective application of the principles stated in § 163.26, each purchasing office should be staffed with and use the services of persons qualified and competent to evaluate credit and financial problems, or each contracting officer should have available within his procuring activity, and should use the services of persons so qualified and competent to evaluate credit and financial problems. Among other things, the duties of such persons would be to arrange, prior to contract awards, and so far as practicable, prior to subcontract arrangements, that financing for performance of contemplated contracts and subcontracts is reasonably assured prior to or contemporaneously with the making of contracts. In those exceptional cases where there is substantial doubt that a prospective contractor has the financial capacity or credit resources essential to the performance of the contemplated contract, the interested procuring activity, after having determined that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should, prior to placement of the contract, consult with the appropriate contract financing office of the interested Department, to determine whether financing can prudently be arranged. These contract financing offices are the Army Comptroller, in the Department of the Army, the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and the Deputy for Contract Financing to the Assistant Secretary (Financial Management), of the Air Force. In such consultation it should be resolved, if placement of the contract is deemed beneficial to the interests of the Government, whether and by what means financing should be provided.

§ 163.27 Financial information and analysis.

(a) The necessity for financial information and analysis, and the scope, depth and detail of analysis of the financial capability of contractors, for contract financing purposes, must vary reasonably with the circumstances of particular cases. The extent of accumulation of data, and the evaluation thereof, must necessarily be determined by the informed judgment of competent, responsible personnel. Essentially, this process must be neither over-done nor under-done. For example, financial analysis would serve no useful purpose in connection with provision of customary progress payments (1) for contractors who are known from experience to be so strong and so competently managed as to be fairly relied upon to perform their contracts satisfactorily, or (2) for contractors who are known to be in satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are well within the normal sales volume of the contractor. In such cases, the financial evaluation might well consist of no more than scrutiny of readily available published balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as broad, and as meticulously and painstakingly detailed, as is necessary to fit the circumstances of the case. The obtaining of information relevant to financial capability, and the analysis and proper evaluation of that data, are of particular importance where (1) the contractor is a new supplier to the procuring activity, or (2) the contractor has not supplied the item or a substantially similar item to the procuring activity within the preceding twelve months, or (3) the contractor is a newly organized concern, or (4) the contractor is on a list requiring pre-award clearances or special clearance prior to awards, or (5) the contractor is on any current list indicating current or past contract defaults or delinquencies, or (6) the contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on either Government or commercial work, or (7) the contractor is listed on the consolidated list of contractors indebted to the Government (Hold-Up List), or (8) there are any known facts or circumstances which support reasonable doubts as to the contractor's financial capability of performance.

(b) When only minimum information is reasonably necessary, such as a current balance sheet and operating statement and similar financial statements for the next preceding fiscal year, these may be either published statements, audited statements, certified statements, or any combination of those, from any convenient source.

§ 163.28 Appropriate information: purposes.

The kinds of information and data that may be appropriate under the circumstances of particular cases (§ 163.27) for adequate disclosure of the contractor's financial condition, for full understanding of the propriety and reasonable necessity for contract financing, for evaluation of the contractor's ability to perform its contracts without loss to the Government, and for informed judgment with regard to the terms, conditions and protective provisions that may be appropriate and prudent for the protection of the Government, are outlined below. It is emphasized that only those items which are appropriate to the particular case will be required.

(a) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; also latest available interim balance sheet and profit and loss statement of the current fiscal year; also a separate statement of amounts of defense and commercial sales. If audit reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; also, if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of its products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors, and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or its affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with paragraph (a) of this section;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see §§ 163.28–1 and 163.28–2);

(g) Estimated profit and loss statements and estimated balance sheets (see § 163.28–3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including (1) loans and credits, (2) advances and progress payments, (3) projected equity capital increases, (4) deferred trade credit, if any, (5) creditor subordinations or standbys, and (6) mortgages, liens, pledges, assignments, conditional sales, lease-purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (1) leases, deferred purchase arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (2) insurance maintained and to be maintained, (3) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (4) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (5) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (6) anticipated losses on contracts, (7) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (8) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (9) obsolescence of inventory and method of valuing inventory, (10) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (11) adequacy of reserves for depreciation, ventory to annual sales, (2) inventory (12) analysis of surplus;

(m) Significant ratios such as (1) inventory to sales, (2) inventory to current assets, (3) liquid assets to current assets, (4) liquid assets to current liabilities, (5) current assets to current liabilities, and (6) net worth to debt:

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this section. See §§ 163.24–1 to 163.26.

§ 163.28–1 Cash flow forecast, and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated Profit and Loss Statements and estimated Balance Sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgment as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess of projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor.

Many contractors will have such projections readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

§ 163.28–2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the:

(a) Estimated amounts and timing of purchases of materials, parts, components, sub-assemblies, services, and payments therefor;

(b) Estimated amounts and timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefor;

(c) Schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;

(d) Projected manufacturing and production schedules;

(e) Projected shipments, or delivery acceptances;

(f) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(g) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(h) Estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

§ 163.28–3 Estimated profit and loss statements and balance sheets.

(a) The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated profit and loss statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated profit and loss statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

(b) The inter-relationship between the cash budget, estimated profit and loss statement and estimated balance sheet, covering a given period, is illustrated in charts 1 and 2:

CHART NO. 1

PROJECTION OF FINANCIAL STATEMENTS

Profits and Loss Projection	1st mo.	2d mo.	3d mo.	Totals
Net Sales	123			
Materials used	42			
Direct labor	31			
Manufacturing exp	32			
Cost of goods sold	105			
Gross profit	18			
G & A exp	10			
Operating profit	8			
Income tax provision	4			
Net profit	4			
• • •	•	•	•	•

CHART NO. 1—continued

PROJECTION OF FINANCIAL STATEMENTS—Continued

Cash Projection	1st mo.	2d mo.	3d mo.	Totals
Cash balance (opening)	78			
Receivable collections	112			
Progress payments received	30			
Bank loan proceeds	100			
Total proceeds	320			
Trade payables paid	76			
Direct labor paid	31			
Manufacturing exp. paid	35			
G & A exp. paid	9			
Payment on long term debt	2			
Fixed asset addition	4			
Income taxes paid	11			
Progress payments repaid	24			
Bank loan repayment	66			
Total disbursements	258			
Cash balance (closing)	62			
• •	•	•	•	•
Balance Sheet Projection	Beginning			
Assets:				
Cash	78	62		
Receivables	188	199		
Inventory	306	308		
Current assets	572	569		
Fixed assets (net)	53	56		
Deferred charges	27	25		
Total assets	652	650		
Liabilities:				
Notes payable—banks	150	184		
Progress payments outstanding	56	62		
Trade payables	102	71		
Income tax	45	38		
Accruals	30	24		
Current liabilities	383	379		
Long term debt	62	60		
Capital stock	153	153		
Surplus	54	58		
Total liabilities and net worth	652	650		
Working capital	189	190		

CHART NO. 2

INTER-RELATIONSHIP OF PROJECTION OF FINANCIAL STATEMENTS

	Bal sheet (beginning)	Cash flow DR	Cash flow CR	Profit and loss DR	Profit and loss CR	Bal sheet (ending)	Net changes
Assets:							
Cash	78		16			62	(16)
Receivables	188		112	Purchases 123		199	11
Inventory	306			Purchases 45; Dir. labor and mfg. exp. incurred 62	42 Mat. used; 31 Dir. labor; 32 Mfg. exp. (Applied)	308	2
Current assets	572		128	230	105	569	(3)
Fixed assets	53	4			1 Depr. (G & A)	56	3
Deferred charges	27				2 G & A exp.	25	(2)
Total assets	652	4	128	230	108	650	(2)

CHART NO. 2—continued

INTER-RELATIONSHIP OF PROJECTION OF FINANCIAL STATEMENTS—continued

	Bal sheet (beginning	Cash flow DR	Cash flow CR	Profit and loss DR	Profit and loss CR	Bal sheet (ending)	Net changes
Liabilities:							
Notes payable—banks	150	66	100			184	34
Progress payments	56	24	30			62	6
Trade payables	102	76			45 Purchases	71	(31)
Income tax	45	11			4	38	(7)
Accruals	30	Paid: Dir. labor 31; Mfg. exp. 35; G & A exp. 9			62 Dir. labor and mfg exp. incurred; 7 G & A exp.	24	(6)
Current liabilities	383	252	130		118	379	(4)
Long term debt	62	2				60	(2)
Capital stock	153					153	
Surplus	54				4	58	4
Total liabilities and net worth	652	254	130		122	650	(2)

§ 163.29 Termination financing.

It is recognized that adequate protection against the financial impact of termination of Government contracts and subcontracts should encourage suppliers to invest their own funds in performance under such contracts and that financing for termination purposes will be an important aid to ultimate reconversion of industry to peacetime activities. Accordingly, termination financing may be made available, with appropriate protection of the Government's interest, either in connection with or independently of performance financing.

§ 163.30 Report of adverse developments; prompt decisions.

When materially adverse developments concerning a borrower having a guaranteed loan, or concerning a contractor having advance payments or progress payments, become known to a procuring activity, pertinent facts, including report of remedial or protective action taken or proposed, should be reported by the procuring activity to the contract financing office of the Department principally concerned with the contract financing, so that timely appropriate protective or remedial action may be taken by coordinated action of all concerned. However, the filing of such reports shall not relieve the personnel responsible for administration of the contract from taking such action as is deemed proper, prudent, and beneficial to the Government. When there are reasons to doubt the prudence of continuing progress payments or advance payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

§ 163.31 Reports.

Each Department shall submit reports of financing activities at such times and in such form as may be prescribed or approved by the Assistant Secretary of Defense (Comptroller).

§ 163.32 Deviations; amendments.

Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with or varying from these regulations would be deviations. Deviations will be permitted only when necessary in exceptional circumstances, after (a) the proposed deviation has been presented to the Contract Finance Committee, (b) the recommendations of that Committee have been obtained, and (c) the approval of the Assistant Secretary of Defense (Comptroller) or his designated representative has been given. The above procedure will be followed also for amendments to these regulations. (See § 163.4.) The provisions of Subchapter A pertaining to deviations (§§ 1.109–2 and 1.109–3 of this chapter) and to amendments (§ 1.105 of this chapter) do not apply to these contract financing regulations.

§ 163.33 Interpretations.

It is important that this part and the clauses set forth herein be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of this part arises within a procuring activity, and is regarded as being of general importance, if the circumstances reasonably permit the obtaining of an advance opinion on the question from Departmental headquarters, the question should be presented, through procurement channels, to the procurement policy office of the Department primarily interested, namely, the Deputy Chief of Staff for Logistics, Office of Naval Material, or Deputy Chief of Staff/Materiel. If the circumstances do not reasonably permit request for advance opinion, report of an interpretation made (if regarded as important and of general interest for uniform application or interpretation of these regulations) should be made to the appropriate one of the procurement policy offices mentioned. Those are expected to take appropriate and timely action to obtain the views of interested offices of the other Departments, including the contract financing offices (§ 163.26). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of this part, appropriate revision of this part, will be considered in the manner outlined in § 163.4. In periods between any amendments of this part, it is contemplated that information on important interpretations of general interest, reported to or made at Departmental headquarters, will be made available to procuring activities for dissemination to interested purchasing offices.

§ 163.33a Foreign procurement.

The regulations in this part apply equally to domestic and foreign procurement, with the exceptions and qualifications stated in this section and in §§ 163.33a–1 to 163.33a–3. The enforceability of a contract provision in a foreign jurisdiction is dependent on local law and procedure. It may sometimes become necessary to take action in foreign countries to enforce collateral security or other contract financing protective provisions, or to recover property pursuant to a progress payment clause, and to collect contract financing indebtedness. In such cases, the nature and extent of remedies available for enforcement of contract provisions is necessarily determined by the laws, rules and procedures of the country in which the relief is sought.

§ 163.33a–1 Progress payments on contracts for foreign performance.

When progress payments (Subpart E of this part) are contemplated for contracts to be performed wholly or partly in a foreign country, appropriate legal advice should be obtained with respect to the validity, enforceability and effectiveness of the contemplated progress payment clause (§§ 163.79–1, 163.79–2 and 163.80) and of any proposed guarantees, pledges or other special protective arrangements, within the foreign country involved. Such legal advice should also cover the need, if any, for additional protective provisions (§ 163.80–6) or for deviations (§ 163.78–9) from the uniform clauses, that may be required to comply with the applicable foreign law and to provide for the most effective protection and enforcement of the interests of the United States. Section 163.86 requires that proposed deviations (§ 163.78–9) must have prior approval of the contract financing office (§ 163.26) after the coordination mentioned in § 163.87.

§ 163.33a–2 Advance payments on contracts for foreign performance.

When advance payments are proposed (Subpart D of this part) for contracts to be performed wholly or partly in a foreign country, the recommendation (§ 163.62) for advance payments should include appropriate legal advice along the lines of that outlined in § 163.33a–1. When advance payments are proposed to be made on contracts with foreign governments, it is expected that the advance payment arrangement, if approved (§ 163.56), would not include provisions generally unsuitable for government-to-government agreements, such as those for special bank accounts, unilateral withdrawal of funds, liens, insurance, additional security, or representations, warranties and covenants of the kinds set forth in § 163.64–2 (p) and (r). It is recognized that advance payments to foreign governments, when authorized, will

need to be adapted to the special circumstances of each case to provide appropriate protection in the light of the relationship of the United States to each affected foreign government and with due recognition of the sovereign status of the contracting parties.

§ 163.33a–3 Guaranteed loans for foreign contract performance.

When contracts or subcontracts are to be performed in a foreign country, financing by means of loans guaranteed by the military departments seldom will be practicable because of difficulties of loan administration and enforcement. When loans are to be utilized for financing of such contracts or subcontracts, it is considered generally preferable that the loans be provided within the internal financial system of the foreign country concerned, without military department guarantee.

Subpart C—Guaranteed Loans

§ 163.34 Scope of subpart.

This subpart covers the policies, organization, and procedure particularly applicable to guaranteed loans.

§ 163.35 Federal Reserve banks.

Under section 302(b) of Executive Order No. 10480, pursuant to section 301(b) of the Defense Production Act of 1950, as amended, each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of section 301 of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit. This application is in substantially standard form, as approved by the Board of Governors of the Federal Reserve System, after consultation with the guaranteeing agencies. Forms of application, and information and guidance concerning applications, are available at all Federal Reserve Banks.

§ 163.36 Board of Governors of the Federal Reserve System.

Under section 302(c) of Executive Order No. 10480, all actions and operations of Federal Reserve Banks, as fiscal agents, are subject to the supervision of the Board of Governors of the Federal Reserve System (hereinafter referred to as "Federal Reserve Board"). The Federal Reserve Board is authorized, after consultation with the heads of the guaranteeing agencies, (a) to prescribe such regulations governing the actions and operations of fiscal agents as it may deem necessary, (b) to prescribe, either specifically or by maximum limits or otherwise, rates of interest, guarantee and commitment fees, and other charges which may be made in connection with loans, discounts, advances, or commitments guaranteed by the guaranteeing agencies through such fiscal agents, and (c) to prescribe regulations governing the forms and procedures (which shall be uniform to the extent practicable) to be utilized in connection with such guarantees.

§ 163.37 Procedure on application of a private financing institution.

A defense contractor or subcontractor (at any level) or supplier, who requires operating funds may apply to the private financing institution selected by him, for the necessary loan or revolving credit, and furnish necessary information to the financing institution. If the financing institution is willing to extend credit, but considers Government guarantee necessary, it may file application for guarantee with the Federal Reserve Bank of its district. The Federal Reserve Bank promptly submits copy of the application to the Federal Reserve Board listing defense contracts, for transmittal to the interested guaranteeing agency, so that determination may be made as to eligibility of the prospective borrower. For the purpose of expediting, the Federal Reserve Bank may also, pursuant to general instructions of the guaranteeing agencies, submit schedules of defense contracts to the interested contracting officers, who are expected at once to take appropriate steps for determination of eligibility, and to submit their findings and report, including certificate of eligibility where appropriate, to the designated central procurement office, or contract financing office as the case may be, within the guaranteeing agency. Concurrently with the process for determination of eligibility, the Federal Reserve Bank makes any necessary credit investigation, to the extent and in the manner that it considers investigation or verification appropriate to supplement information furnished by the applicant financing institution, all with a view to expediting necessary defense financing in such a way as to afford the best reasonable protection against monetary loss. The report and recommendation of the Federal Reserve Bank are sent to the Federal Reserve Board, which transmits them to the interested guaranteeing agency, in Washington. If the application is approved on such terms and conditions as may be deemed appropriate by the responsible officer or official within the guaranteeing agency, the guaranteeing agency then authorizes the Federal Reserve Bank, by standard form of authorization transmitted through the Federal Reserve Board, to execute and deliver to the financing institution a standard form of guarantee agreement, with the terms and conditions approved for the particular case. The Federal Reserve Bank, as fiscal agent for the guaranteeing agency, then issues the guarantee to the financing institution which makes the loan. Substantially the same procedure may be followed on application for guarantee of loans to be made to a potential defense contractor who is actively negotiating or bidding for defense business, except that the guarantee is not authorized until the prospective defense contract has been executed.

§ 163.38 Loan guarantees to Federal Reserve Banks.

The Defense Production Act of 1950, as amended, and Executive Order No. 10480 also authorize guarantees for loans made or participated in by Federal Reserve Banks. The procedure outlined in § 163.37 applies also to loan guarantees where a Federal Reserve Bank is making or participating in the loan, except that in such cases the interested Federal Reserve Bank, as a financing institution, does not act as fiscal agent, and when approved, the guarantee agreement is executed by an official of the guaranteeing agency.

§ 163.38–1 Other Government agencies.

Loan guarantees are not issued to other departments or agencies of the Government.

§ 163.39 Loan guarantees for terminated contracts.

(a) Guaranteed loans ordinarily provide for financing based on the borrower's recoverable investment in defense production contracts, including those contracts which have been terminated for the convenience of the Government. Guaranteed loans also may be established after total or partial termination of contracts for the convenience of the Government, or before such termination when it is known that termination of particular contracts for the convenience of the Government is about to occur. Such guaranteed loans are expected to provide necessary financing pending termination settlements and payments, and also to provide any funds necessary for continuing performance of defense production contracts that are eligible for financing under the guaranteed loan.

(b) The procedure on applications for such guarantees will be substantially the same as that outlined in § 163.37, except that certificates of eligibility (§§ 163.48 to 163.49(k) will not be required for contracts which have been wholly terminated, nor for the terminated portion of contracts which have been partially terminated. It is of course expected that necessary precautions, appropriate to the circumstances of individual cases, will be taken, as in other cases, to avoid losses and to cause such loans to be self-liquidating from the proceeds of defense production contracts. This type of loan guarantee, intended primarily for contract termination financing, is not provided before the imminence of particular contract terminations, for the reasons outlined in § 163.47(b). Further reasons include the difficulty of determining whether contract terminations will occur in the future and will require guaranteed loan financing, and the expense and administrative burden that would be involved in establishing commitments which may in fact never be used.

§ 163.40 Guaranteeing agency.

The guaranteeing agencies which have been designated under section 301 of the Defense Production Act of 1950, as amended, are the Departments of the Army, Navy, Air Force, Agriculture, Commerce and Interior, General Services Administration, and Atomic Energy Commission. All of the guaranteeing agencies have concurred in the following policy:

> Where a prospective borrower under a V-loan has defense contracts or subcontracts in which more than one of the guaranteeing agencies are interested, the guaranteeing agency in such case will be in general that agency which, as of the time of the application for the guarantee, has the preponderance of interest in such contracts and subcontracts on the basis of the dollar amount of the prospective borrower's unfilled and unpaid balances of such contracts and subcontracts and estimated claims under terminated contracts (exclusive of contracts with advance payments, if such advance payments are not to be liquidated by the proposed guaranteed loan). If the application is approved and a guarantee agreement is executed on behalf of such agency having the preponderance of interest, that agency will bear all losses and expenses and receive all revenues under such guarantee without allocation to other agencies of the Government. In this connection, among the Military Departments, single service procurement contracts are deemed those of the purchasing department.

§ 163.40–1 Effect on preponderance of progress payments or denial of certificate of eligibility.

Among the Military Departments, the determination of preponderance of interest, under § 163.40, is made without regard to the existence of progress payments on particular contracts, and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts.

§ 163.40–2 Shifting of preponderance.

During the course of a guaranteed loan, preponderance of interest in the borrower's defense production contracts may shift from one of the Military Departments, as guaranteeing agency, to another Military Department. When such preponderance has shifted materially so that substantial preponderance is in one of the Military Departments other than the guaranteeing agency, action on requests for increases in the amount of guaranteed loans, and on requests for extensions of maturity for a period of more than six months, ordinarily will be taken by the Military Department then having such preponderance of interest. However, in the above situation, action will be taken by the Military Department which has guaranteed the loan, if the loan is in distress, with fairly foreseeable losses, and the requested extension or increase is for the purpose of orderly liquidation of the loan in a manner designed to reduce the amount of the loss. If such a loan is not in distress, and losses are not fairly foreseeable, and the greater part of the borrower's defense production contracts are determined to be eligible for a continuing guaranteed loan, and the circumstances of the case are such that favorable action would have been taken by the then guaranteeing agency if it had remained preponderantly interested in the borrower's defense production contracts, similar favorable action will be taken by the Military Department then having such preponderance of interest. In these cases, while new application for guarantee is required, the file of the contract financing office which has authorized the existing guarantee will be transferred to the contract financing office of the Military Department then having preponderant interest in the case, and the information to be submitted with the application need be only current financial information, data concerning the borrower's defense production contracts, and other pertinent facts concerning the borrower and its operations, to the extent necessary to supplement and bring up to date the information previously furnished to the guarantor. In order not to disturb or impair any security for the existing loan, and for the convenience of all concerned, it is preferable that the new guarantee merely replace the former guarantee, with appropriate recitals as to cancellation of the former guarantee, and with appropriate revision of the existing loan agreement and of such collateral security instruments as may require revision.

§ 163.41 100 percent guarantees.

It is the policy of the guaranteeing agencies that 100 percent guarantees shall be limited to the greatest extent compatible with the requirements of the national defense. Applications for 100 percent guarantees will be approved only in cases in which the guaranteeing agency determines that the circumstances are exceptional, that the operations of the borrower are vital to the national defense, and that no other suitable means of financing are available.

§ 163.42 Asset formula.

It is the policy of the guaranteeing agencies that borrowings under guaranteed loans made primarily for working capital purposes should be limited, in accordance with an asset formula, to amounts which do not exceed specified percentages (90 percent or less) of the borrower's investment in defense production contracts. The formula may include all items for which the borrower would be entitled to payment on performance or termination of defense contracts, but would not include any amounts (for which no work has been done nor expenditures made by the borrower) to become due as the result of later performance under the borrower's contracts. However, any such asset formula would be subject to relaxation in appropriate cases to the extent and for the time actually necessary for contract performance where the contractor's working capital and credit are inadequate. This "asset formula" does not include "cash collateral" or bank deposit balances.

§ 163.43 Amount and maturity of guaranteed loans.

(a) Subject to the limitations of the asset formula (§ 82.42), the maximum amount of guaranteed credit in individual cases, and the maturity date of guaranteed loans or credits, are fixed to conform reasonably to the borrower's financing requirements for defense production contracts on hand at the time of application for guarantee. If additional defense production contracts are entered into after the application and before authorization of a guarantee, to such extent as to require increase in the maximum amount, or longer maturity for the requested guaranteed loan, adjustments may be made to provide for the borrower's additional financing requirements. Also, guarantee agreements for existing guaranteed loans may be amended, on submission of pertinent information and Federal Reserve Bank report to the guaranteeing agency concerned, to provide financing for defense production contracts entered into by the borrower during the term of the guaranteed loan.

(b) Also, within the limits of the applicable loan formula and ceiling amount, there is generally no objection to inclusion in the borrowing base, of assets under defense production contracts entered into after the date of the guarantee agreement. However, in exceptionally weak cases, and in the cases of guaranteed loans established for financing only one or a small number of contracts, it is the practice to require that financing of relatively substantial additional defense contracts under existing guaranteed loans be done only with the consent of the guarantor.

§ 163.44 Assignments of claims under contracts.

(a) Assignments of claims under the borrower's defense production contracts are generally required, including assignment of proceeds of such contracts entered into after issuance of the guarantee if after acquired contracts are eligible for financing under the guaranteed loan in a given case. However, assignments need not be required in particular cases, (1) where the borrower's financial condition is so strong as to cause assignments of any contracts to be considered not necessary for the protection of the loan, or (2) where incident to assignment of major contracts it is considered not necessary for the protection of the loan to require initial assignment of relatively small contracts, or (3) where the large number of contracts of the borrower for small dollar amounts, would cause the making and administration of contract assignments to be unduly burdensome and inconvenient so long as not deemed essential for the protection of the loan.

(b) It is required, as standard practice, that defense production contracts, not theretofore assigned, will be assigned whenever requested by the guarantor or the financing institution.

(c) Subcontracts and purchase orders issued to subcontractors are not considered acceptable for financing under guaranteed loans if and so long as the issuer of the subcontracts or purchase orders (1) reserves the privilege of making payments directly to the assignor or to the assignor and assignee jointly after notice of the assignment, or (2) reserves the right to reduce or set off assigned proceeds under defense production contracts by reason of claims against the borrower arising after notice of assignment and independently of defense pro-

duction contracts under which the borrower is the seller.

§ 163.45 Other collateral security.

Ordinarily, mortgages on fixed assets are not required, but they are required where considered essential to protect the Government. Liens or other security arrangements pertaining to inventories are also seldom required, except when desired by financing institutions or in exceptional circumstances when deemed necessary to protect the Government. Depending upon the circumstances of individual cases, endorsements, guarantees, subordinations, and stand-bys of other indebtedness, and other special security devices are required when deemed necessary for the protection of the Government.

§ 163.46 Contract surety bonds in relation to loan guarantees.

In most jurisdictions, upon default by a contractor and performance of the surety's obligations, the surety's right of subrogation gives to the surety, ahead of a financing institution which had made a loan for contract performance, prior claim to payments made on the bonded contract after default, and in performance of its obligations the surety also has the benefit of materials on hand that have been paid for by the contractor, even though progress on the contract before default has been financed by loans from the financing institution.

(a) Because of the foregoing, on loan guarantees in connection with prime contracts, the guarantor's loss on the loan, payable to the financing institution, may serve to take away from the Government the benefit of performance of the surety's obligations on its bond; and in subcontract cases the loan may serve to benefit the surety at the expense of the financing institution and guarantor.

(b) Except to the extent that surety bonds are required by law, bonds are generally not required. Yet it sometimes may be necessary to rely upon a contractor whose capacity to perform is so doubtful that a bond is required for the protection of the Government. The guarantee of a loan to a contractor of such doubtful capacity to perform necessarily involves unusual risks of monetary loss. Contract surety bonds, and guaranteed loans for financing bonded contracts are regarded as fundamentally incompatible unless the interests of the surety are subordinated in favor of the guaranteed loan.

(c) In order to maintain the advantages of performance bonds existing in favor of the Government on prime contracts, in cases where the Government contract or contracts covered by surety bonds are substantial in relation to the contractor's total backlog of defense production contracts or where the amount of the bond is substantial in relation to the contractor's net worth, applications for loan guarantees are approved only if the surety or sureties on the bonds involved will subordinate their rights and claims in favor of the guaranteed loan.

(d) In cases involving relatively substantial subcontracts covered by surety bonds, approval of an application for loan guarantee will also be contingent upon the establishment of a reasonable allocation agreement between the surety or sureties and the financing institution, which would have the effect of giving the financing institution the benefit, with regard to payments to be made on the contract, of that portion of its loans fairly attributable to expenditures made under the bonded subcontracts prior to notice of default.

§ 163.47 Other borrowings.

Since V-loans are generally measured, and limited by, stated percentages of the borrower's investment in defense production operations and terminated defense contracts, it is evident that borrowings outside the guarantee may be necessary in some cases to support the borrower's nondefense activities. It has been recognized in practice, that while prohibition of borrowings outside the guaranteed loan is preferable where practicable in a given V-loan case, such other borrowings should be permitted when necessary.

(a) However, in cases where borrowings outside the V-loan are not prohibited, some restrictions on unguaranteed borrowings appear necessary for protection of the Government interest. These include reasonable limitations on the amount of, and collateral security for, such unguaranteed borrowings, and usually a provision that collateral security, if any, for such unguaranteed loans made by the same financing institutions should also be secondary collateral for the V-loan.

(b) If a credit is to be guaranteed under section 301 of the Defense Production Act, in circumstances where there may be borrowings either under or outside the guarantee, the guaranteed credit, having been established, and being susceptible to use at any time, should be utilized first and fully, and not reserved as free insurance pending such time and circumstances as may make its use convenient to the financing institution. It has therefore been determined, in line with the practice developed toward the end of the past war, that for those cases in which borrowings outside the V-loan are not prohibited, it should be required uniformly that other borrowings outside the V-loan may be incurred and remain outstanding without the consent of the financing institution and the guarantor only when the V-loan is being used to the full extent permitted by the V-loan agreement. Appropriate certificates of the borrower, in the same form as those used to measure the amount that may be outstanding under the V-loan, but submitted at intervals not longer than 30 days, could be used to determine when there may be borrowings outstanding outside the V-loan.

(c) It is of course recognized that appropriate exceptions will have to be made in individual cases to permit the continuation of outstanding term loans, to permit future unguaranteed term loans for expansion of facilities, and to permit continuance of such financing as may be necessary to supplement a V-loan.

§ 163.48 Eligibility certifications.

(a) Financing through guaranteed loans may be made available to a supplier in cases where (1) the production or service is essential and (2) no alternative source is readily available without prejudice to the national defense. However, in connection with applications for guarantees or loans to be made to small business concerns, and in connection with increases or extensions of maturities of guaranteed loans made to small business concerns, and if they otherwise qualify, the factor of ready availability of alternative sources will not be considered, and the statement that the contracts or subcontracts involved cover materials or services which cannot be procured readily from an alternative source without prejudice to the national defense will be omitted from the certificate of eligibility. When financing through loan guarantees is requested, the interested procuring activity shall certify that the case meets the requirements set forth in this section, and shall accompany such certification with adequate supporting data pertinent to the case.

(b)(1). The certificates of eligibility and supporting data furnished by principally interested procuring activities, are the basis for the ultimate findings, incident to authorization or approval of loan guarantees, that the case meets the requirements of section 301 of the Defense Production Act of 1950, as amended, and of section 302 of Executive Order No. 10480.

(2) In its present form this certificate includes findings that the materials or services involved are deemed essential to the national defense, that (except for small business concerns) these cannot be procured readily from an alternative source without prejudice to the national defense, and that the contractor has the technical ability and the required facilities to perform. It is required that supporting data be contained in or accompany the certificate. It has been provided on the approved form of certificate, as the standard for guidance in considering issuance of certificates of eligibility, that:

> This is not intended as a statement that there is absolutely no alternative source other than this contractor. The certification is founded on practical considerations. These considerations include the urgency of supply schedules, technical and plant capacity and unwillingness of other suppliers, time and expense involved in reletting all or parts of contracts (including expense of termination for convenience, and delays incident to future determinations of default), comparative prices, effect of interruptions of established subcontracting arrangements, and other pertinent practical factors.

§ 163.49 Procedure for certificate of eligibility.

It is important that the processing of certificates of eligibility be accomplished expeditiously. It is necessary that there be application of uniform and consistent standards in determining eligibility.

(a) As indicated in § 163.48(b), the determination in the certificate of eligibility is based upon giving full weight to practical considerations. It is also intended that in determining whether the materials or services can be procured readily from an alternative source without prejudice to the national defense, due consideration will be given to the effect of the use of alternative sources on the established major policies affecting procurement, such as those relating to the mobilization base, and industrial dispersal. If the reletting of contracts with other sources would involve conflict with any of such policies, such reletting in conflict with any such policy should be deemed prejudicial to the national defense. Also, in considering the practicability of alternative sources, in addition to the considerations outlined above, regard should be given to the question whether such potential alternate sources would require Government financing by progress payments, or advance payments, or Government supported financing by means of a guaranteed loan. If such financing would be required for alternative sources, such alternate sources may be fairly considered not "readily available" within the meaning of the certificate of eligibility.

(b) Ordinarily, if the certificate of eligibility is not issued by the interested procuring activity, it does not follow that the contract involved will be terminated unless the contractor is in default to the extent that termination for default is considered desirable, or unless it has been determined that the contractor will be unable to perform his contract. Thus, in determining whether alternate sources are readily available without prejudice to the national defense, consideration should be given to the effect on supply schedules, and costs to the Government, if the contractor should default at a later date and be unable to perform by reason of inadequate financing.

(c) In determining eligibility of small business concerns, the factor of ready availability of alternative sources will not be considered, and the paragraph of the form of certificate of eligibility pertaining to alternative sources will be deleted in cases of small business concerns. In such cases the fact that the particular items or services involved are being procured under or pursuant to a contract of a Military Department is considered adequate to support and require the finding that the materials or services involved are deemed essential to the national defense. However, this does not mean that the certificate of eligibility should be provided automatically for small business concerns, or that any less care and diligence should be exercised for determining eligibility for small business cases than for other cases. See paragraph (d).

(d) It is necessary in all cases, whether or not involving a small business concern, that, in considering issuance of a certificate of eligibility, emphasis be placed on the factors of the contractor's technical ability management competence and reliability, plant capacity and facilities, and generally on his ability to perform satisfactorily if adequate financing is provided. If these factors are not favorable, the certificate of eligibility should not be issued. See §§ 163.23 and 163.24.

(e) With regard to contracts existing at the time of request for the certificate of eligibility, the percentage of guarantee requested by a financing institution is not a factor to be considered in connection with issuance of the certificate.

(f) In all cases, the supporting data furnished to the contract financing office should be sufficient to support the findings made in the certificate of eligibility. This data should contain available information pertinent to the matter of ability to perform satisfactorily, including known information as to past performance and available information on the relation of the contractor's operations to supply schedules, and available pertinent information on other practical factors such as comparative prices and the time and expense that would be involved if reletting the contracts should become necessary (§ 163.28 does not apply). All of this information, including particularly an indication as to whether or not the contractor is considered an important source for materials or services, is necessary and important for consideration by the contract financing offices in determining the ultimate question whether, on their evaluation of all the circumstances of particular cases (including the contractor's financial condition and financial record), the authorization of a guarantee would be prudent and in the best interests of the Government. When the certificate of eligibility is not furnished, the facts and reasons leading to declination of the certificate should be furnished.

(g) In those cases of subcontracts, where the prospective borrower is financially weak in relation to the financial condition of his defense contract customer, and the interests of the Government would be fostered by the making of progress payments to the subcontractor by his customer, it is appropriate that steps be taken, by coordinated effort of the procuring activity and the contract financing office, to arrange to the extent practicable for such progress payments to the subcontractor by his customer. By such means, in appropriate cases, the guaranteed loan may become unnecessary, or necessary in lesser amount, and the risks of loss are borne wholly or partly by the prime contractor or subcontractor responsible for selection of the prospective borrower as his subcontractor.

(h) If materially adverse information of any character concerning the prospective borrower is known to a procuring activity, such materially adverse information should be fully reported to the interested contract financing office. However, procuring activities are not expected to make any special investigation of the prospective borrower's financial condition in connection with applications for loan guarantees, as reports concerning financial condition of prospective borrowers are made by the Federal Reserve Banks.

(i) When certificates of eligibility are requested within a Department, or by one Department from another Department, reply will be made as promptly as possible, on a priority basis, as delays in financing may retard contract performance. Ordinarily, requests for certificates of eligibility, and pertinent data, will be made only with respect to those contracts deemed of material consequence under the circumstances of particular cases.

(j) In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of certificates of eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the certificate of eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of substantial preponderance of his contracts, it usually should be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

(k) When a contracting officer or other person within a procuring activty responsible for processing requests for certificates of eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for a certificate of eligibility or request for information bearing on issuance of a certificate of eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

Subpart D—Advance Payments

§ 163.50 Scope of subpart; references.

This subpart covers policy and procedure for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation or other authority, except as provided in § 163.68a. It is to be applied in conformity to the policies stated in Subpart B of this part. Sections 163.1, 163.2, 163.3, 163.4, 163.5, 163.8, 163.9, 163.12–2 and 163.12–3 are also applicable to advance payments.

§ 163.50–1 Advance payments on subcontracts.

The policies, standards and procedures of Subpart D of this part are applicable to advance payment to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances for or to be reimbursed for such advance payments, it is required that the prime contract make provision for advance payments conforming to this Part, with appropriate provision for advance

payments by the prime contractor to subcontractors or suppliers. See § 163.64–2(q).

§ 163.51 Types of contracts that may have advance payments.

Advance payments may be made on any approved type of contract, as defined in § 1.201–4.

§ 163.52 Advance payments in addition to progress payments.

Where necessary and in accordance with these regulations, advance payments may be authorized in addition to progress payments on the same contract. See § 163.77.

§ 163.53 Interest.

(a) Interest will be charged on all advance payments hereafter authorized, at the rate of five percent per annum on the unliquidated balance: *Provided, however,* Advance payments may be approved without interest when in connection with nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, or on nonprofit contracts in the dependents' medical care program, or on contracts solely for the management and operation of Government-owned plants, or, in unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the Comptroller function. In this connection, contracts for acquisition of facilities at cost, for Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

(b) Contracts with interest-free advance payments, hereafter authorized, should provide that the contractor will charge interest at the rate of five percent per annum on sub-advances or down payments to subcontractors, and that interest charged on such sub-advances or down payments will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research, or development work.

(c) Interest on advance payments will not be allowed as a cost under any cost-reimbursement type contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide or be amended to provide for allowance of such interest as an item of cost.

§ 163.54 Standards; amounts; need.

(a) Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

(b) Generally, except for (1) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, and (2) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

§ 163.55 Statutory requirements.

The authorizing statutes (§ 163.8) apply equally to negotiated contracts and to contracts awarded or to be awarded by formal advertising. It is required for all advance payments, that—

(a) The contractor give adequate security; (§ 163.63)

(b) The advance payments shall not exceed the unpaid contract price;

(c) The making of advance payments is in the public interest, as determined by the authorized official concerned (§§ 163.56 and 163.56–1), when the action is pursuant to the authority of Title 10, U.S. Code, Section 2307;

(d) The making of advance payments will facilitate the national defense, as determined by the authorized official concerned (§§ 163.56 and 163.56–1), when the action is pursuant to Pub. Law 85–804, and Executive Order No. 10789.

§ 163.56 Responsibility; delegation of authority.

Except as provided in § 163.56–1 the responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each Military Department, or the authorized deputy of either of them. The Government may not be committed, in any manner, directly or indirectly to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function, or the authorized deputy of either of them (or in appropriate cases, of a person to whom advance payment approval authority has been delegated in accordance with § 163.56–1), and no procurement involving advance payments may become final until such approval is obtained.

§ 163.56–1 Delegation of authority.

The authority in each case to make findings and determinations with respect to advance payments and to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each Department no further than, to the Comptroller of the Army (and an alternate within his office) in the Department of the Army, to the Assistant Comptroller, Accounting and Finance (and an alternate within his office) in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force (and an alternate responsible to such Deputy for Contract Financing). However, to the extent deemed necessary or prudent and efficient under exceptional circumstances, further delegations of this advance payment authority may be made with the approval of the Assistant Secretary of Defense (Comptroller).

§ 163.57 Public Law 85–804: formally advertised contracts.

(a) Pursuant to Public Law 85–804, and Executive Order No. 10789, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments.

(b) Pursuant to the above statute and executive order (as well as 10 U.S.C. 2307) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids will be rejected if they are conditioned, qualified, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition, qualification or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (1) the award may be made with provision for advance payments, in conformity with these regulations, or (2) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (3) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with these regulations.

§ 163.57–1 Special contract provisions.

All contracts providing for advance payments under the authority of the above-cited Act (P.L. 85–804) and Executive Order shall—

(a) Make reference to the Act and Executive Order; and

(b) Include appropriate clauses required by the Act and Executive Order (§ 17.102 of this chapter), or by other applicable regulations. (See §§ 7.203–7, 7.402–7 of this chapter).

§ 163.57–2 Data.

Complete data shall be maintained by each Department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act (Pub. Law 85–804) and Executive Order.

§ 163.58 Uses of advance payments.

Advance payments are last in the general order of preferences stated in § 163.22. Subject to the provisions of this part, advance payments are considered useful and appropriate for (a) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work (§ 163.54), (b) contracts solely for the management and operation of Government-owned plants (§ 163.54), (c) contracts for acquisition of facilities at cost, for Government ownership, (d) contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan, (e) contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract, (f) rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned, (g) contracts for the financing of which a financing institution will not (1) assume a reasonable portion of the risks under a guaranteed loan, or (2) provide funds except at excessive interest rates or other exorbitant charges, and (h) exceptional cases in which the utilization of advance payments will be more beneficial to the interests of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small-business concerns, in which advance payments will be more beneficial to the interests of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

§ 163.59 Standards for advance payment determinations; all contracts.

It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply schedules, and the time and expense involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this section and §§ 163.15 through 163.26, 163.54, 163.55, 163.57 and 163.58. Affirmative recommendations should be made in favor of granting advance payments when (a) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (b) the contractor or prospective contractor is otherwise qualified as a responsible contractor (§§ 1.903–1 and 2.407 of this chapter and § 163.24); (c) there will be a benefit to the Government from performance prospects or other practical advantages, and (d) the case is within one or more of the categories described in § 163.58. These recommendations should be approved unless the responsible contract financing office (§ 163.26), or the Under or Assistant Secretary or other official concerned (§ 163.56), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to this part.

§ 163.60 Findings, determinations, and authorization.

The following is the standard text of findings, determinations, and authorization (§ 163.62(f)) for use in establishing advance payments.

FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

1. I hereby find that:

a. The _____ (Procuring Activity) and _____ (Contractor) have entered (propose to enter) into negotiated (formally advertised) Contract No. _____, (dated _____).

[Summary of significant facts concerning contract]

b. Advance payments (in an amount not to exceed $_____ at any time outstanding) (in aggregate amount not exceeding $_____, less the aggregate amounts repaid, or withdrawn by the Government) are required by the contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the contractor, and the amount designated above is predicated upon the use of the contractor's own working capital to the extent possible in performing the contract.

f. The contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the contractor.

g. The contract is solely for the management and operation of a Government-owned plant.

h. The following unusual facts and circumstances favor the making of advance payments to the contractor without interest:

[Recitation of pertinent facts and circumstances]

DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest of five per cent per annum on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

3. Such advance payments, of which (the amount at any one time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed $_____, are hereby authorized pursuant to 10 U.S.C. 2307 (The Act of August 28, 1958, Pub. Law 85–804, 72 Stat. 972, and Executive Order No. 10789), upon (terms and conditions substantially as contained in the proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

(All prior advance payment authorizations with respect to Contract No. _____ are hereby superseded.)

_____
[Name typed]

_____
[Title of authorized official]

INSTRUCTIONS

1. On requests for advance payment provisions, this document will be prepared, in final form for signature of an authorized official (§ 163.56), by such office as may be designated by the procedures of each Military Department. It will include such of the paragraphs set out above as are appropriate. (See below.)

2. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Forms will not be prepared in advance which include all of the above paragraphs and all of the alternate language. Each "Findings, Determinations, and Authorization" will be prepared separately to include only those paragraphs and those words (including statutory references) which are pertinent to the particular request.

3. Each such "Findings, Determinations, and Authorization" must include paragraphs 1.a., 1.b., 1.c., 1.d., 2 and 3. Paragraph 1.e. will not be included in the case of nonprofit contracts with a nonprofit educational or research institution for experimental, research and development work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1.f., 1.g. or 1.h., as appropriate, will be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 will be included if any advance payments have previously been authorized for the contract. The numbering and lettering of the paragraphs in the completed "Findings and Determinations" will then run consecutively, based on the paragraphs actually used.

4. Modifications to adapt to special facts and circumstances are permitted.

5. 10 U.S.C. 2307 normally will be the statutory authority cited for the advance payment. The Act of August 28, 1958, and Executive Order No. 10789 are reserved for extraordinary situations not falling within the purview of 10 U.S.C. 2307.

§ 163.61 Application for advance payment.

The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by:

(a) Cash flow forecast (§§ 163.28(f), 163.28–1 and 163.28–2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in § 163.58(a) or § 163.58(b));

(b) Proposed amount of advance payments;

(c) Name and address of bank suggested as depository for the advance payment special account;

(d) Except for contracts mentioned in § 163.58 (a) and (b) and description of efforts made to obtain private financing, including guaranteed loan; and

(e) Such other information and data (§ 163.28) as may be appropriate under the circumstances of the case for the purposes outlined in § 163.28 (of which, ordinarily, information concerning reliability, technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in § 163.58 (a) and (b).

§ 163.62 Action by contracting officer; approval.

After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the contracting officer should transmit to the appropriate office within his Department, with such number of copies as may be required within the Department:

(a) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any, contemplated profit or fee, and (unless excepted by instructions of the Department concerned) copy of contract, if available.

(b) The request and information furnished by the contractor;

(c) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

(d) Comment on (1) the need for the advance payments for performance of the contract, and (2) the benefits to the Government from the contemplated contract performance;

(e) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office or other office;

(f) The appropriate findings, determination and authorization (§ 163.60) (for signature by the approving authority), unless those are to be provided by the contract financing office or other office;

(g) Recommendation that the advance payment be approved; and

(h) Justification of proposal, if any, for waiver of interest charge (§ 163.53).

§ 163.62–1 Action by contracting officer, disapproval.

If the contracting officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward immediately to the Army Comptroller, in the Department of the Army, to the Assistant Comptroller, Accounting and Finance, in the Department of the Navy, and to the Deputy for Contract Financing to the Assistant Secretary (Financial Management) of the Air Force. This information may be useful in connection with existing or prospective arrangements for other financing, and for such further action as may be appropriate to enhance uniform application of this part.

§ 163.63 Security; supervision; covenants.

(a) The advance payment agreement, under any applicable statute, should provide for deposit of all payments into special bank accounts and should include suitable covenants to protect the Government's interest. Advance payments under such authorizations should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto.

(b) Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or stand-by of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

§ 163.64 Forms of contract provisions and supplemental agreements.

The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved. With regard to variations, it is recognized, for example, that there may be exceptional circumstances in which it will be beneficial to the Government to modify § 163.64–1(b) and the second sentence of § 163.64–2.

§ 163.64–1 Forms of agreement for special bank account.

For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

AGREEMENT FOR SPECIAL BANK ACCOUNT

Agreement entered into this ------ day of ----------, 19--, between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, ----------, a corporation under the laws of the State of ----------, hereinafter called the Contractor, and ----------, a banking corporation under the laws of ----------, located at ----------, hereinafter called the Bank.

RECITALS

(a) Under date of ----------, 19--, the Government and the Contractor entered into Contract(s) No. ------, or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "----------,
(Name of Contractor)
---------- Special Bank
(Department)
Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the ---------- stationery and purporting to be signed by, or by the direction of ---------- or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the ----------.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify----------
----
(Administering Office)

In witness whereof the parties hereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and Official Titles)

§ 163.64–2 Advance payment provisions.

Approved contract provisions for advance payments, with directions for use where appropriate, follow:

(a) *Amount of advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (n)(4) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (n)(1) below; (iii) without a properly certified invoice or invoices.

(b) *Special bank account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (n)(2) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (b)]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Part 15 of Subchapter A), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[In the case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (c) above.]

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article ------ of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in (n)(1). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (------ percent) of the stated contract price of $------, or such lesser amount to which the contract price may have been reduced, plus (i) increases, if any (not resulting from any provisions for price redetermination or escalation), in the above stated contract price not exceeding, in the aggregate $----------,
(Insert here not more than 10 percent of stated contract price above)
and (ii) all increases in contract price resulting from any provision for price redetermination or escalation, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (e), with appropriate percentages specified]:

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of ----- percent from any and all payments made by the Government under the contracts involved.

[In case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (e) above.]

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of $------ for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, $----------,
(Insert not more than 10 percent of estimated costs stated above)
(including, without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Interest charge.* If required in paragraph (n)(3) below and at the rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the rate specified in paragraph (n)(3) shall be computed at the end of each calendar month in the manner herein specified on the average daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365 or 366 day year as the case may be. In determining such balance, (1) charges on account of the advance pay-

ments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [For cost-reimbursement contracts, use, instead of (2) above: (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence: As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the Contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (k) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(g) *Bank agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(h) *Lien on special bank account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(i) *Lien on property under contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on its books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(j) *Insurance.* The Contractor represents and warrants that it is now maintaining with responsible insurance carriers, (i) insurance upon its own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, it will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to its insurance as the Administering Office may from time to time require.

(k) *Default provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (1) has failed to observe any of the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (2) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (3) has allocated inventory to this contract substantially exceeding reasonable requirements, or (4) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (v) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances; (*a*) withdraw all or any part of the balance in the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the contractor; (*b*) charge interest on advance payments outstanding during the period of any such default at the rate of six percent (6%) per annum; (*c*) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (*d*) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(l) *Prohibition against assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(m) *Information—access to records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records and accounts.

(n) *Designations and determinations*—

(1) *Amount.* The aggregate amount of the ments at any time outstanding hereunder shall not exceed $_____. [or, alternatively:]

(1) *Amount.* The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (d) shall not exceed $_____.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be _____.

(3) *Interest charge.* Interest shall be charged in the manner provided herein at the rate of five percent per annum. [In the case of advance payments made without interest, insert the following:] No interest shall be charged for advance payments made hereunder, except as provided for in paragraph (k)(*b*). The Contractor shall charge interest at the rate of five percent per annum on sub-advances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on sub-advances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research or development work.

(4) *Administering Office.* The office administering advance payments is designated as _____.

(o) *Other security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(p) *Representations and warrantics.* To induce the making of the advance payments, the Contractor represents and warrants that:

(1) The balance sheet, the profit and loss statement and any other supporting financial statements, hereto furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(3) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(4) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(6) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(7) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments.

(q) *Subadvances.* Substantially the following provision should be included in the contract when subadvances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed _____ percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such subadvance.

(r) *Covenants.* The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office—

(1) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by it, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(7) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(8) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of $_____ per annum;

(9) Make any substantial change in management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of its business or engage in any transaction outside the ordinary course of its business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(12) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(13) Make or covenant itself to make capital expenditures exceeding in the aggregate $_____;

(14) Permit its net current assets, calculated in accordance with generally accepted accounting principles, to become less than $_____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

§ 163.65 Pooled advance payment; general.

Advance payments are sometimes useful and convenient for financing the performance of more than one contract, under a single advance payment agreement. Such an agreement is called an advance payment pool agreement. An advance payment pool agreement may be entered into as a separate agreement for advance payments, or may be incorporated initially in a contract for supplies or services, or added to such a contract by amendment or supplement. Advance payment pool agreements are especially convenient for the financing of nonprofit contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one purchasing office, procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more procuring activities respectively. Advance payment pool agreements may be established under either or both of the statutes mentioned in paragraph § 163.8.

§ 163.65–1 Distinction between pool contracts and designated pool contracts.

An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool arrangement is based upon the contractor's financing requirements for a group of Government contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are not made on each separate contract, but can be made on and charged against one or more large, long term contracts, so as to supply the monetary requirements for smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a designated pool contract. All other contracts linked to the pool agreement are called the pool contracts.

§ 163.66 Advance payment pool agreements; special features.

The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are:

(a) The advance payment pool agreement specifies a "designated pool contract" or two or more "designated pool contracts," and provides for substitution from time to time of new or different contracts as the "designated pool contract(s);"

(b) When there is only one designated pool contract, all advance payments are charged against that designated pool contract. When there is more than one designated pool contract, each advance payment made is charged against one of the designated pool contracts, except that when the foregoing is not possible, the advance must be allocated specifically by amounts to two or more designated pool contracts;

(c) Liquidation of advance payments is geared to the stated contract price, or total estimated cost, if applicable, of the "designated pool contract(s);"

(d) The advance payment pool agreement either lists other contracts as "pool contracts," or provides for inclusion of other contracts as "pool contracts" by reference to the advance payment pool agreement in such contracts, and provides for the subsequent inclusion of other contracts as "pool contracts;"

(e) All payments under all of the pool contracts, including designated pool contracts, are made into the advance payment Special Bank Account;

(f) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

§ 163.67 Liquidation; designated pool contracts; administering office.

It is imperative for each advance payment pool that effective arrangements be made to insure that there will not be overpayments, and that timely liquidation is accomplished against each designated pool contract. For each pool agreement, there must be a single administering office, and to the greatest extent possible there should be only one finance office or disbursing office for all of the contracts affected by the pool, especially those contracts which are designated pool contracts.

§ 163.68 Pooled advance payments; understandings.

Pooled advance payments affecting contracts of more than one Military Department necessarily require agreement by those concerned with a given case. There has not been sufficient experience with pooled advance payments to permit full coverage by these regulations. However, certain understandings which have been reached on some of the problems involved are set out below, for the guidance of all concerned.

(a) There should be no single exclusive procedure for establishing an advance payment pool agreement. Requests for pooled advance payments may be initiated at the level of the contracting officer, or chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool is to affect contracts of more than one Military Department, the authorizing Department ordinarily would be the one having preponderant interest in the contractor's backlog of unfinished contracts, along the lines of § 163.40. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long term contract of a non-preponderant Department as the "designated pool contract," or where it is fairly expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Inclusion of contracts of another Military Department in an advance payment pool arrangement, either as "pool contracts" or as a "designated pool contract," requires approval of the contract financing office of each Department concerned. This may be accomplished by concurrence in provisions of the pool agreement permitting inclusion of contracts of another Department, or by separate approvals in connection with the addition of such contracts to the advance payment pool.

(d) Situations may occur in which the remaining payments available on all pool contracts are not sufficient to liquidate outstanding advance payments. These circumstances will not affect the normal practice by which the net amount payable by or to the Government on each separate contract is determined by offsetting mutual debits and credits of the Government and the contractor respectively arising under each separate contract. For advance payments that remain outstanding after adjustment for debits and credits under each separate contract, amounts realized from the special pool bank account, from property covered by the advance payment lien, and from any other recoveries available for liquidation of advance payments should be applied first to liquidation of the remaining outstanding advance payments, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively.

(e) Records will not be maintained to show separately the amount of advance payments invested in each one of the separate pool contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of pooled advance payments to provide necessary contract financing in such way as to minimize administrative effort and inconvenience of contractors and the Government.

§ 163.68a Excluded advance payments.

The regulations of this part do not apply to advance payments for:

(a) Extension or connection of public utilities for military installations, as authorized by Military Construction Authorization Acts;

(b) Insurance of official motor vehicles in foreign countries, and expenses of investigations in foreign countries, as authorized by section 603 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by other legislation authorizing payments for such expenses;

(c) Rentals, as authorized by section 606 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by 31 U.S.C. 529i (69 Stat. 314) or by other legislation specifically authorizing advance payment of rent;

(d) Tuition, as authorized by 31 U.S.C. 529i (69 Stat. 314);

(e) Subscriptions to publications, as authorized by 31 U.S.C. 530;

(f) Small purchases of goods or services in foreign countries, when the purchase price does not exceed $2,500 or equivalent amount of applicable foreign currency and advance payment of the purchase price or of a part thereof is required by and made in compliance with the laws or ministerial, i.e., governmental, regulations of the foreign country concerned, as authorized by 31 U.S.C. 529i (69 Stat. 314).

Subpart E—Progress Payments Based on Costs

§ 163.69 Scope.

This subpart provides uniform policies, procedures, and forms for progress payments based on costs.

§ 163.69–1 References.

Sections 163.1, 163. 2, 163.3, 163.4, 163.5, 163.10, 163.11, 163.12, and all of Subpart B apply to all progress payments, whether based on costs or on a percentage or stage of completion.

§ 163.69–2 Exclusions.

This subpart does not apply to (a) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (§ 163.83), or (b) contracts for construction (as defined in § 10.101–6 of this chapter), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

§ 163.69–3 Contract coverage.

Except as provided in § 163.69–2, this subpart applies to all contracts (§ 1.201–4 of this chapter) providing for progress payments. This subpart applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith.

§ 163.70 Percentage or stage of completion.

Progress payments based on a percentage or stage of completion will be confined to contracts for construction (§ 10.101–6 of this chapter), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable. See § 163.85–1.

§ 163.71 General.

It is not and has not been the policy of the Department of Defense that the proper use of progress payments should be stopped or unreasonably curtailed. Progress payments are sometimes necessary and useful to supplement the working funds available to defense contractors of all sizes. It seldom should be necessary for progress payments based on costs to exceed 85 percent of direct labor and material costs, or 70 percent of total costs, of the work done under the undelivered portion of the contract.

§ 163.71–1 Requests for proposals.

Requests for proposals shall state that contract provision for progress payments will be made in conformity with regulations, and that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts.

§ 163.72 Customary progress payments; standards.

(a) Certain types of production contracts involve a long "lead time" or preparatory period, normally approximating six months or more between the beginning of work and the first delivery, and may require contractor's predelivery expenditures that will have a material impact on the contractor's working funds. Familiar examples include, among others, contracts for aircraft, engines, complex items of electrical or electronics equipment, heavy handling equipment, production machines and equipment, tanks and other items of heavy ordnance.

(b) Progress payments have been traditional and customary on this class of contracts, on the basis of a percentage of total costs or of direct labor and material costs.

(c) Percentages for customary progress payments shall be not more than 70 percent of total costs or 85 percent of direct labor and material costs of the work done under the undelivered portion of the contract, except that for negotiated contracts with small business concerns and for procurement by "Small Business Restricted Advertising" or pursuant to § 163.73–3, these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs whenever deemed reasonably necessary. Higher percentages will be regarded as unusual, and not within the category of customary progress payments.

(d) The long lead time or preparatory period in these cases, and the accompanying pre-delivery expenditures that may have a material impact on the contractor's working funds, are regarded as making these customary progress payments reasonably necessary, and as making the general preference for private financing not applicable to this class of cases. Provision for customary progress payments will be made as a matter of course when requested by contractors who are known (from experience or adequate pre-award investigation) to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. In such cases, it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. However, in order to minimize administrative effort and expense, progress payments will be discouraged on relatively small contracts of the stronger and larger contractors who are not small business concerns, e.g., contracts for less than $1,000,000. If a small business concern, and the contract involved, meet the above standards for customary progress payments, the smallness of the contract shall not deter the making of provision for customary progress payments to such small business concerns.

§ 163.72–1 Applicability of percentages.

The standard percentages authorized by §§ 163.72 and 163.73 shall apply to new contracts, new procurement effected by supplements, amendments or modifications of existing contracts, definitive contracts superseding letter contracts, instruments effecting new procurement under basic or master agreements, and to all supplements, amendments or modifications which affect or provide for progress payments, as well as to any outstanding contracts which contain optional provision as to progress payment percentages, after due notice by the contracting officer. See § 163.93.

§ 163.72–2 Amendment to reduce percentages.

Contracting officers are authorized and encouraged to negotiate amendments of existing contracts so as to reduce the progress payment percentages therein stated to the standard percentages mentioned in §§ 163.72 and 163.73.

§ 163.72–3 Indefinite quantity contracts.

For indefinite quantity contracts, contemplating requisitions, delivery orders, work orders, task orders, job orders or their equivalent, if the contractor meets all other requirements for customary progress payments, the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production lead time expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract may be deemed customary if the amounts involved, and the production lead time, will result in the substantial equivalent of the customary progress payments. The standards for unusual progress payments govern when progress payments are not of the customary type.

§ 163.72–4 Administration.

When progress payments are provided in the cases mentioned in § 163.72–3, such as indefinite quantity contracts for overhaul or maintenance, (a) the contract price is deemed to be the total of the amount of requisitions, delivery orders, work orders, task orders or their equivalent issued under the basic contract, (b) costs for progress payment purposes are the cost allocable to all such requisitions, etc., and (c) payments and liquidations will be handled in the same way as if all such requisitions, etc., constituted work under a single fixed-price type contract.

§ 163.73 Formal advertising; small business restricted advertising.

Incident to formal advertising, invitations for bids shall provide for progress payments in the manner and under the circumstances stated below.

§ 163.73–1 Progress payment provision in invitations for bids.

(a) When progress payments are contemplated, the invitations for bids shall state that upon written request by the prospective contractor a progress payment clause (to be included in the invitations for bids or identified by appropriate reference therein, and to be the appropriate one of the contract clauses at 70 percent of total costs or 85 percent of costs of direct labor and material) will be included in the contract at the time of award. These invitations for bids providing for progress payments shall also state that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts, and that bids including requests for progress payments will be evaluated on an equal basis with bids not including requests for progress payments.

(b) Provision for progress payments shall be made in invitations for bids whenever the contracting officer considers (1) that the period between the beginning of work and the required first production delivery will exceed six months, or (2) that progress payments will be useful or necessary by reason of circumstances that will involve substantial accumulation of pre-delivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts or components).

(c) Provision for progress payments shall also be made in invitations for bids whenever it is estimated that the procurement will involve approximately $100,000 or more and that bids are likely to be submitted by one or more small business concerns, unless the procurement is within one or more of the excepted categories set out below. Provision for progress payments ordinarily will not be made in invitations for bids when the procurement is for quick turnover items of kinds for which predelivery financing by progress payments is not the custom or practice on sales by members of the industry to private commercial customers, such as (1) subsistence, (2) clothing and apparel, (3) "off-the-shelf" items, and (4) standard commercial items or equivalent items (including

medical and dental supplies), not requiring substantial accumulation of predelivery expenditures.

(d) Reasonable doubts should be resolved in favor of inclusion of progress payment provisions in invitations for bids, in order to (1) facilitate necessary contract financing assistance to small suppliers and (2) avoid the necessity for rejecting, as nonresponsive, bids conditioned on progress payments when the invitations for bids do not provide for progress payments.

§ 163.73–2 Small business restricted advertising.

The above policy and standards also apply to procurement by "Small Business Restricted Advertising," except that in "Small Business Retricted Advertising" (and also for procurement pursuant to § 163.73–3), when deemed reasonably necessary, provision may be made for progress payment percentages up to 75 percent of total costs or 90 percent of costs of direct labor and material.

§ 163.73–3 Progress payments exclusively for small business.

A stated purpose of Public Law 85–800, 72 Stat. 966, is "to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts." One of the sections of this statute amended 10 U.S.C. 2307 by providing that contracting agencies "may—insert in bid solicitations—a provision limiting to small business concerns—progress payments." In furtherance of the purposes of this statute, whenever provision for progress payments is to be made in invitations for bids (as provided by §§ 163.73–1 and 163.73–4), careful consideration shall be given as to whether or not the contemplated availability of progress payments shall be restricted to small busines concerns only. If it is considered by the contracting officer that progress payments should not be reasonably necessary for prospective bidders other than small business concerns, the provision for progress payments (§ 163.73–1) and the notice to bidders (§ 163.73–4) will be supplemented by a limitation to the effect that "The progress payments clause will be available to small business concerns only, and will not be included for contractors who are not small business concerns." (For percentages, see §§ 163.72 and 163.73–2.)

§ 163.73–4 Notice to bidders.

Those invitations for bids that make provision for progress payments (§ 163.73–1) should contain substantially the following notice to biders:

PROGRESS PAYMENTS

The need for progress payments conforming to regulations (Part 163, Subchapter G) will not be considered as a handicap or adverse factor in the award of contracts. Bidders desiring progress payments in accordance with the Progress Payment clause attached hereto, shall include a written request therefor in their bids, and bids including requests for progress payments will be evaluated on an equal basis with bids not including a request for progress payments. Blanks, if any, in the attached Progress Payment clause, will be filled in by the Contracting Officer, before award, in conformity with regulations.[1] If a bid does not contain a request for progress payment provision, the Progress Payment clause will not be included in the contract as awarded.

§ 163.73–5 Total costs clause preferable.

The Total Costs clause (§ 163.79–1) is preferable to the Direct Labor and Materials Cost clause (§ 163.79–2) in procurement by formal advertising and in Small Business Restricted Advertising. When the Total Costs clause (§ 163.79–1) is used, it is not necessary to make the cost estimates and computations that are required before the appropriate percentages can be determined for (a)(3)(ii), (a)(4) and (b) of the Direct Labor and Materials Cost clause (§ 163.79–2). Generally, the principles of §§ 163.92 and 163.93–6 should be simpler to apply to the Total Costs clause (§ 163.79–1) than to the Direct Labor and Materials Cost clause (§ 163.79–2).

§ 163.73–6 Non-responsive bids; uninvited progress payment condition.

To minimize the possibility of misunderstandings, the recipients of invitations for bids, or those included on bidders lists, should be informed and kept aware that when invitations for bids do not provide for progress payments, progress payment clauses cannot be included in the contract at time of award, and that bids conditioned upon provision for progress payments will have to be rejected as nonresponsive. This precautionary warning notice may be included in invitations for bids, or may accompany invitations for bids, or may be otherwise circulated or made known to prospective bidders by such means as are considered appropriate. Also, prospective bidders who are not small business concerns should be given appropriate precautionary warning notice that when invitations for bids provide for progress payments for small business concerns only (§ 163.73–3), progress payment provision cannot be made for contractors who are not small business concerns, and that bids of those who are not small business concerns, if conditioned upon provision for progress payments, will have to be rejected as nonresponsive.

[1] Omit the third sentence, above, when the Total Costs clause (§ 163.79–1) is used.

§ 163.74 Unusual progress payments: standards; procedure.

(a) Progress payments based on costs, other than progress payments of the class and within the limits set forth in §§ 163.72 and 163.73, will be regarded as unusual, and will require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the Military Departments. Any contractor seeking provision for progress payments that is "unusual," within the meaning of these regulations, will be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments shall be approved only under exceptional circumstances and must have the specific approval of the Head of a Procuring Activity (§ 1.201–7) or of a general or flag officer designated for that purpose.

(b) Such cases must involve a preparatory period requiring contractor's predelivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates and cost bases for progress payments on new procurement in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources and their planned application.

(c) All requests involving progress payments at rates exceeding 85 percent (or 90 percent for small business concerns) of direct labor and material costs or exceeding 70 percent (or 75 percent for small business concerns) of total costs, if regarded favorably by the Head of a Procuring Activity (§ 1.201–7) or by a specially designated general or flag officer within a procuring activity, will be forwarded, with supporting information, for approval of a designated office or person at departmental headquarters of the Military Department directly concerned. Such office or person may be the contract financing office at departmental headquarters or such person or persons, located at departmental headquarters and responsible to the Under or Assistant Secretary responsible for the comptroller function, as may be designated for this purpose by such Under or Assistant Secretary. Such requests, before approval, will be coordinated speedily with representatives of the other Military Departments and of the Assistant Secretary of Defense (Comptroller). When approval is given by the contract financing office, or other designated representative of the Under or Assistant Secretary abovementioned, such approval will ordinarily extend to future contracts with the same contractor, so that resubmission of future similar requests for unusual progress payments to that contractor need not be required unless so indicated on the initial approval or thereafter required by the approving authority after review of the contractor's current condition and circumstances.

§ 163.75 Accounting system and controls.

The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by one of the Military audit agencies) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are maintained. In all doubtful cases, including contracts with contractors with whom a military audit agency has had no experience within the next preceding twelve months, the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes accomplished, before inclusion of a progress payment clause in a contract. For this purpose, the services of the military audit agencies should be utilized to the greatest extent practicable.

§ 163.76 Information required.

The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with Subparts B and E of this part. For guidance as to necessity for financial information and analysis, and the scope, depth and detail of analysis, see particularly §§ 163.27 and 163.28.

§ 163.77 Advance payments.

When advance payments and progress payments are authorized in the same contract, progress payment percentages will not exceed 85 percent of direct labor and material costs or 70 percent of total costs, whichever may be applicable.

§ 163.78 Definitions.

As used in this subpart, the terms in §§ 163.78–1 to 163.78–9 have the meanings set forth.

§ 163.78–1 Progress payments.

See § 163.11. The term "progress payments" must be distinguished from "partial payments." The term "partial payments" describes only (a) payments for partial deliveries accepted by the Government under a contract, or (b) partial payments on contract termination claims.

§ 163.78–2 Customary progress payments.

See §§ 163.72 and 163.73.

§ 163.78–3 Unusual progress payments.

See § 163.74.

§ 163.78–4 Costs.

Costs include all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and not excluded by the contract. The term "costs" includes "incurred costs" when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business. It may also include incurred costs, after such delinquency, to the extent provided in § 163.93–4.

§ 163.78–5 Incurred costs.

Incurred costs are those costs identified through the use of the accrual method of accounting and reporting. As to invoices, incurred costs include only invoices for (a) completed work to which the prime contractor has acquired title, (b) materials delivered (to which the prime contractor has acquired title), (c) services rendered, (d) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title, and (e) invoices for progress payments to subcontractors which have been paid or approved for current payment in the ordinary course of business (as specified in the prime contract), all properly recorded on the books of the contractor and identified with the contract. Costs incurred include costs of direct labor, direct material, and direct services identified with and necessary for the performance of the contract, and also all properly allocated and allowable overhead (indirect) cost as shown by the books of the contractor.

§ 163.78–6 Unliquidated progress payments.

Unliquidated progress payments are the aggregate sum of all progress payments made, less the aggregate sum of amounts applied to reduce progress payments.

§ 163.78–7 Contract price.

The term "contract price" means the total amount fixed by the contract (other than any portion of the contract specifically providing for cost reimbursement only), as amended, to be paid for complete performance of the contract. If the contract provides for escalation or for redetermination of price, this term means the initial price until changed and not the ceiling price. If the contract is of the incentive type, this term means the initial or target price until changed, and not the ceiling or maximum price. For letter contracts and similar preliminary contractual instruments, this term means the maximum expenditure authorized by the contract, as amended.

§ 163.78–8 Amendments, supplements, and modifications.

The terms "amendment," "supplement," and "modification" are used interchangeably, and whenever one of these terms is used it includes the others. The terms "separate new contracts," and "separate contracts," as used herein, do not include "amendments."

§ 163.78–9 Deviation.

The term "deviation" means (a) any change, addition to, or deletion from the contract clauses and certificate forms required by this subpart, (b) any contract provision, outside the progress payment clause, which would have the effect of altering or changing the effect of the progress payment clauses provided herein, and (c) any variation from these regulations. Actions pursuant to § 163.80–6 are not deviations.

§ 163.79 Contract clauses.

Except as otherwise provided in § 163.85, one of the following progress payments clauses shall be used whenever progress payments are to be made to a contractor based upon a percentage of costs, whether or not the contract schedule provides for reimbursement of progress payments to subcontractors. See § 163.79–3.

§ 163.79–1 Total costs clause.

PROGRESS PAYMENTS (APR. 1960)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller count is requested, each progress payment shall be (i) 70 percent of the amount of the Contractor's total costs incurred under this contract plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments.

(2) The Contractor's total costs ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 70 percent of the costs mentioned in (a)(1)(i), above, plus any unliquidated progress payments mentioned in item (a)(1)(ii), above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) 70 percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed 70 percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 70 percent[1] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establish-

[1] For lower percentage for this paragraph, see § 163.81–2.

ing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

(d) *Title.* When any progress payment is made under this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling;" nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not included within the definition of special tooling in such "Special Tooling" clause; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) *Risk of loss.* Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports; access to records.* Insofar as pertinent to the administration of this clause, the Contractor will (1) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (2) give the Government reasonable opportunity to examine and verify its books, records and accounts.

(h) *Special provisions regarding default.* If this contract is terminated pursuant to the clause entitled "Default," (1) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (2) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) *Reservations of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of its obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) *Progress payments to subcontractors.* (1) The amount mentioned in item (a)(1)(ii) above shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," approximating six months or more between the beginning of work and the first delivery, containing subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the contractor and on a basis of not more than 70 percent of total costs or 85 percent of direct labor and material costs (except that these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs for those subcontractors which are small business concerns), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) The billings described in (j)(1)(ii) above shall be paid promptly by the Contractor in the ordinary course of business not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor.

(5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to those subcontractors which are small business concerns in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

§ 163.79–2 Direct labor and materials cost clause.

PROGRESS PAYMENTS (OCTOBER 1960)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 85 percent of the amount of the Contractor's costs incurred of direct labor and material[1] only under this contract plus (ii) the amount of progress payments to his subcontractors as provided in (j) below and remaining unliquidated; all less the sum of previous progress payments.

(2) The Contractor's costs above-mentioned ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title, and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 85 percent of the costs mentioned in (a)(1)(i), above, plus any unliquidated progress payments mentioned in (a)(1)(ii), above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii)—percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments. [For percentage here and in (a)(4), see the first bracketed instruction in (b) below.]

(4) The aggregate amount of progress payments made shall not exceed _____ percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination For Convenience of The Government," all progress payments shall be liquidated by deducting from any payment under the contract, other than advance or progress, the amount of unliquidated progress payments, or ____ percent [insert a percentage which is to 85 percent as the amount of estimated costs forming the basis for progress payments is to the amount of the estimated total costs] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. [For percentage for this paragraph, lower than the percentage computed pursuant to the above instruction and § 163.81–1(b), see § 163.81–2.]

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (1) has failed to comply with any material requirement of this contract, (2) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (3) has allocated inventory to this contract substantially exceeding reasonable requirements, (4) is incurring costs, whether or not of the kinds eligible for progress payments under paragraph (a)(1) above, which are higher than the respective estimated costs used for establishing the liquidation percentage in paragraph (b) above, (5) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, or (6) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(d) *Title.* (Same as paragraph (d) or "Total Costs" clause.)

(e) *Risk of loss.* (Same as paragraph (e) of "Total Costs" clause.)

(f) *Control of costs and property.* (Same as paragraph (f) of "Total Costs" clause.)

(g) *Reports; access to records.* (Same as paragraph (g) of "Total Costs" clause.)

(h) *Special provisions regarding default.* (Same as paragraph (h) of "Total Costs" clause.)

(i) *Reservations of rights.* (Same as paragraph (i) of "Total Costs" clause.)

(j) *Progress payments to subcontractors.* [Same as paragraph (j) of "Total Costs" clause.]

[1] Strike out "labor and" or "and material" if progress payments are limited to single direct cost.

§ 163.80 General instructions for progress payment clauses.

The instructions below apply to the clauses required by § 163.79 and set forth in §§ 163.79–1 and 163.79–2.

§ 163.80–1 Contracting officer.

The term "contracting officer" as used in this subpart means the contracting officer as defined in § 1.201–3 of this chapter.

§ 163.80–2 Variation in percentages.

The percentages stated in (a)(1)(i) of the clauses in §§ 163.79–1 and 163.79–2 are the normal percentages for the customary progress payments authorized by § 163.72. Higher percentages may be provided in the manner and to the extent authorized by § 163.74. Lower percentages may be used in (a)(1)(i) of §§ 163.79–1 and 163.79–2 when agreed, and will be used for unusual progress payments when found adequate in accordance with the standards set forth in § 163.74. Such lower percentages shall not be utilized for progress payments pursuant to § 163.73.

§ 163.80–3 Total cost basis: percentage other than 70 percent.

If a percentage other than 70 percent is specified in (a)(1)(i) of the total costs clause set forth in § 163.79–1, the percentage actually specified in (a)(1)(i) of the Progress Payment clause of the contract shall also be specified in (a)(3)(i), (a)(3)(ii), (a)(4) and (b) of the Progress Payment clause. (As to (b), see § 163.81.)

§ 163.80–4 Limited cost basis; other percentages.

When the Progress Payment clause set forth in § 163.79–2 is used, the percentage actually specified in (a)(1)(i) of the Progress Payment clause of the contract will also be specified in (a)(3)(i). The percentage to be specified in (a)(3)(ii), (a)(4), and (b) of that clause will be computed in the manner provided in § 163.81–1, except that a percentage higher than the percentage so computed may be specified in paragraph (b) if agreed. Subject to this exception permitting use of a higher percentage in (b) (or a lower percentage in (b) established pursuant to § 163.81–2), the percentage to be specified in (a)(3)(ii), (a)(4), and (b) will thus be a percentage which is to the percentage in (a)(1) as the amount of estimated costs forming the basis for progress payments is to the amount of estimated total costs of performance of the undelivered portion of the contract. This same principle will apply if a narrower cost basis, more limited than the cost basis stated in § 163.79–2, is utilized for progress payments. (See § 163.80–5.)

§ 163.80–5 Cost basis less than direct labor and material costs.

Instead of the direct labor and material cost basis provided in § 163.79–2, a narrower and more limited cost basis for progress payments may be utilized for that clause, such as direct labor only, direct material only, or direct labor or material costs applicable only to certain specified items, or specified direct costs other than direct labor or material costs. Appropriate changes will be made in (a)(1)(i) of the clause set forth in § 163.79–2 when such a narrower and more limited cost basis is to be used. For example, if eligible costs are to be limited to direct material costs, the words "labor and" should be deleted from (a)(1)(i); or, if eligible costs are to be limited to direct labor costs, the words "and material" should be deleted from (a)(1)(i).

§ 163.80–6 Other protective provisions.

When deemed reasonably necessary for the protection of the Government, the clauses set forth in §§ 163.79–1 and 163.79–2 may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or stand-bys of indebtedness, special bank accounts, and other protective covenants of the kinds outlined in item (r) of § 163.64–2.

§ 163.81 Progress payment liquidation.

Controlling principles for liquidation of progress payments based on costs are set out below.

§ 163.81–1 Ordinary method.

Except as authorized by § 163.81–2, the required method for liquidation and the applicable liquidation percentages are:

(a) when costs other than for direct labor and material are in the base for progress payments, the percentage of the contract price of delivered items to be applied for liquidation of progress payments will be not less than the percentage of costs upon which progress payments are based, e.g., when progress payments are based on 75 percent of all costs, liquidation will be at a rate not less than 75 percent of the contract price of separate items as they are delivered, or when progress payments are based on 70 percent of all costs, liquidation will be at a rate not less than 70 percent of the contract price of separate items as they are delivered;

(b) when progress payments are based on 90 percent (or specified lesser percentage) of the costs of direct labor and material, the rate of liquidation of progress payments will be not less than 90 percent (or the specified lesser percentage) of the percentage of estimated total costs represented by the estimated costs of direct labor and material. Thus, for example, if the base for progress payments is 90 percent of the costs of direct labor and material, and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation will be at a rate not less than 63 percent (90 x 70) of the contract price of separate items as they are delivered. See § 163.81–3.

§ 163.81–2 Alternate method.

(a) The above method for liquidation of progress payments (§ 163.81–1) will not apply if, at the inception of a contract (on the basis of satisfactory cost estimates) or thereafter by amendment (based on satisfactory data on cost experience and estimated future costs) the parties shall agree on a percentage rate of liquidation which will (1) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (i.e., recovery of the portion of costs for which progress payments have been made), (2) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (3) insure that unliquidated progress payments will not exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to that portion of the contract which has not been delivered, accepted and invoiced.

(b) However, when progress payments are made at 75 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by § 163.81–1, to the extent appropriate, shall not be fixed at a rate less than 70 percent except as provided in paragraph (c) of this section. If the progress payment percentage of total costs is less than 75 percent, comparable

relationship between the progress payment percentage and the above minimum liquidation percentage shall be maintained. Similar principles as to minimum liquidation percentages shall be applied when progress payments are to be made at 90 percent of the costs of direct labor and material, or on a more limited cost base, or at lesser percentages of limited costs. For example, when progress payments are made at 70 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by § 163.81–1, to the extent appropriate, shall not be fixed at a rate less than 65.3 percent except as provided in paragraph (c) of this section.

(c) With regard only to items for which final prices have been established under contracts, progress payment liquidation percentages conforming to the standards stated in paragraph (a) of this section, but less than the minimum liquidation percentages stated and outlined in paragraph (b) of this section, (e.g., less than 70 percent when progress payments are based on 75 percent of total cost or less than 65.3 percent when progress payments are based on 70 percent of total costs) may be established by amendment of contracts upon submission of satisfactory information by the contractor showing separately (1) the cost of items that have been delivered, accepted and invoiced, (2) the cost of work not delivered, accepted and invoiced, (3) the estimated costs of completion, and (4) an applicable profit on the items for which final prices have been established that is higher than the amount of profit permitted to be released by application of the progress payment liquidation percentage then specified in the contract.

(d) Liquidation percentage rates as described herein, less than those prescribed by § 163.81–1 will not be established initially or by amendment except on the basis of satisfactory cost data and estimates furnished by the contractor. Contracts may be amended to reduce the liquidation rate not more frequently than once in each period of twelve months. See § 163.81–3.

§ 163.81–3 Liquidation percentages.

(a) Liquidation percentages shall conform to § 163.81–1, except as authorized by § 163.81–2.

(b) In the application of paragraphs (a) and (b) of § 163.81–2, when progress payments are at the rate of 75 percent of all costs, the minimum liquidation percentage of 70 percent would not apply if the estimated profit rate is less than 7.3 percent of total costs. If, for example, the estimated profit rate is 5 percent of total costs, the minimum liquidation percentage permitted by (a) and (b) of § 163.81–2 would be approximately 71.5 percent. At this 5 percent profit rate, assuming (1) price $105, (2) costs $100, and (3) progress payments $75, this minimum liquidation rate of 71.5 percent would be necessary for recovery of the $75 of progress payments from the $105 delivery billing (75÷105=71.5 percent, and 0.715×$105=$75.07). The same principles are applicable when, pursuant to paragraph (c) of § 163.81–2, a liquidation rate lower than the 70 percent minimum is to be established. For example, assuming an established profit rate of 8 percent of total costs of items for which final prices have been established, the minimum liquidation rate for those items would be 69.5 percent when progress payments are at the rate of 75 percent of total costs. Assuming, (i) fixed price $108, (ii) costs $100, and (iii) progress payments $75, the calculation would be: 75÷108=0.6944, and (rounding this upward to 0.695), 0.695×$108=$75.06.

(c) Paragraph (b) of § 163.81–1 provides the standards, and gives an example for establishing the minimum liquidation percentage when progress payments are to be at 90 percent of costs of direct labor and material (or lesser percentages of more limited costs). In the application of paragraphs (a) and (b) of § 163.81–2, when progress payments are at the rate of 90 percent of costs of direct labor and material, examples of the minimum liquidation rates are:

(1) When costs of direct labor and material are 70 percent of total costs, and the profit rate is 5 percent of total costs, the minimum liquidation percentage would be 60 percent. Assuming price $105, costs $100, costs of direct labor and material $70, and progress payments $63, then 63÷105=60 percent. Application of the 60 percent liquidation percentage to the delivery price of $105 recovers the $63 of progress payments.

(2) On assumptions the same as example (1), above, except that costs of direct labor and material are computed at 80 percent of total costs ($80 of the total costs of $100), so that progress payments on the item are $72 (90 percent of $80), the minimum liquidation percentage would be 68.6 percent (72÷105=68.6 percent, i.e., 68.57 percent rounded upward to 68.6 percent). Application of this 68.6 percent liquidation percentage to the delivery price of $105 recovers $72.03 against the $72 of progress payments.

(d) In line with the standards set for progress payments based on 75 percent of all costs, calculation of minimum liquidation rates pursuant to (a) and (b) of § 163.81–2, when progress payments are at 90 percent (or lesser percentage) of costs of direct labor and material (or costs more limited), will not take into account any amount of profit that exceeds 7.3 percent of total costs. Thus, on example (1) next above (assuming profit rate of 7.3 percent of costs or any greater rate), the minimum liquidation percentage would be 58.72 percent (63÷107.3=58.72 percent).

(e) The above principles (paragraphs (a), (b), (c), (d) of this section) apply when progress payments are at the rate of 70 percent of all costs or 85 percent of costs of direct labor and material, or at other percentages. In conformity to the above pattern, liquidation rates would be lower than those set out in (b), (c), and (d), to harmonize with percentages for progress payments that are lower than those mentioned in (b), (c), and (d). Thus, for instance, with regard to (a) above, if progress payments are at the rate of 70 percent of all costs (instead of 75 percent), the minimum liquidation rate comparable to the 70 percent liquidation rate mentioned in paragraph (b) of § 163.81–2, would be 65.3 percent (or a higher percentage if the estimated profit rate is less than 7.3 percent of all costs). In the first example given in paragraph (b) of this section with progress payments at 70 percent of total costs, assuming (1) price $105, (2) costs $100, and (3) progress payments $70, a minimum liquidation percentage of 66.7 percent would be necessary for recovery of the $70 of progress payments from the $105 delivery billing (70÷105=66.7 percent, and 0.667×$105=70.03). In the second example given in paragraph (b) of this section, for application of paragraph (c) of § 163.81–2, assuming (i) fixed price $108, (ii) costs $100, and (iii) progress payments $70, the minimum liquidation rate for the finally priced items would be 64.9 percent (70÷108=64.815, and rounding this upward to 64.9, 0.649×$108=$70.09).

§ 163.82 Subcontracts.

(a) Subcontractors ought to be able to get progress payments from their customers on standards which are the same as those applicable to prime contracts. Contractors should be encouraged to extend progress payments to subcontractors on subcontracts which meet the standards for customary progress payments outlined in § 163.72.

(b) The policies and standards for "unusual" progress payments set forth in § 163.74 are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on "unusual" progress payments made by a prime contractor to a subcontractor. In such cases, when the inclusion of such unusual progress payments on the subcontracts has been approved in the manner set forth in § 163.74, appropriate revision will be made in paragraph (j)(2) of the progress payment clause (See §§ 163.79–1 and 163.79–2) so as to permit inclusion of the unusual progress payments on the subcontract as part of the base for progress payments on the prime contract. Such revisions are deemed not to be deviations, and do not require the clearance called for by § 163.86(b). Sections 163.79–1(a)(2) and 163.79–2(a)(2) apply only to the "contractor's" costs mentioned in § 163.79–1(a)(1)(i) and 163.79–2(a)(1)(i) respectively. Sections 163.79–(a)(2) and 163.79–2(a)(2) do not apply to the progress payments to subcontractors mentioned in §§ 163.79–1(a)(1)(ii) and 163.79–2(a)(1)(ii) respectively. This interpretation governs evisting §§ 163.79–1 and 163.79–2 clauses in contracts as well as new contracts in which a new clarifying reference to "(a)(1)(i)," as set out above, will be included in paragraph (a)(2) of the Progress Payment clause.

§ 163.82–1 Subcontractor progress payments.

When progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime contractor to reimburse him for such progress payment to the subcontractor shall include the full amount of his progress payment made to the subcontractor. When a percentage less than 100 percent has been specified on existing contracts, this lesser percentage will control the amount of progress payments to be made pursuant to paragraph (a)(1)(ii) of §§ 163.79–1 and 163.79–2 and the maximum limit on unliquidated progress payments on account of unliquidated progress payments to subcontractors under paragraph (a)(3)(i) of §§ 163.79–1 and 163.79–2.

§ 163.82–2 Adaption of uniform clause for subcontracts.

(a) Contracting officers are not required to review or approve subcontracts merely because they provide for progress payments. However, they shall check and review subcontracts providing for progress payments to the extent appropriate in the ordinary course of administration of the progress payment clause of prime contracts. The duty rests on the prime contractor to see to it that its subcontracts providing for progress payments, to be included in the base for progress payments pursuant to the provisions of §§ 163.79–1(j) and 163.79–2(j) conform to those provisions of the contract. In adapting the clauses set forth in §§ 163.79–1 and 163.79–2 for use in subcontracts, to conform to §§ 163.79–1(j) or 163.79–2(j), the subcontract progress payment clause should have appropriate changes to reflect the position of the prime contractor as purchaser and of the subcontractor as vendor, and to indicate that the progress payments under the subcontract are being made and administered by the prime contractor. However, the title provision of the progress payments clause of the subcontract shall provide for the vesting of title directly in the Government, as set forth in §§ 163.79–1(d) and 163.79–2(d), and the subcontract will not substitute the prime contractor for the Government as the holder of title under that paragraph of the subcontract. In that title paragraph of the subcontract, reference to the prime contractor should, however, be substituted for the word "Government" in the parenthetical expression concerning drawings and technical data, and also in the second sentence of the paragraph. In the subcontract counterpart of §§ 163.78–1(g) and 163.79–2(g) entitled "Reports—Access to Records" the references to "Contracting Officer" and "Government" should not be deleted, but may in each case be expanded so as to refer to the "Contracting Officer or the prime contractor," (§§ 163.79–1(g)(1), 163.79–2(g)(1), and to the "Government or the prime contractor" (§§ 163.79–1(g)(2), 163.79–2(g)(2)).

(b) With regard to the subcontract counterpart of the "Special Provisions Regarding Default" (§§ 163.79–1(h), 163.79–2(h)) only the substance of the first 26 words of that paragraph (with reference to the prime contractor substituted for "Government"), is required for conformity to the provisions of § 163.79–3.

§ 163.82–3 Substitution of new clause for old clause.

In furtherance of the policy of encouraging the making of proper progress payments to subcontractors (§ 163.82), those contracts which contain a progress payment clause conforming to former §§ 163.79–1 or 163.79–2 as issued 25 May 1959, whether with or without the Schedule provisions authorized by former § 163.79–3, may be amended, for nominal consideration only, so as to substitute one of the §§ 163.79–1—163.79–2 clauses for the existing progress payment clause.

§ 163.83 Progress payments on subcontracts under cost-reimbursement types of prime contracts.

The policies, standards and procedures of this subpart and its references are applicable to progress payments to subcontractors and suppliers on fixed-price types of subcontracts under cost-reimbursement types of prime contracts. For the prime contractor to be reimbursed for such progress payments, it is required that the subcontracts involving progress payments conform to this part. Specifically, the case must meet the standards for customary progress payments (§ 163.72) and progress payment percentages must not exceed those authorized by § 163.72 (unless unusual progress payments to the subcontractor are approved by the procedure described in § 163.74), liquidation must conform to § 163.81, and one of the uniform clauses (§ 163.79) adapted for subcontract use (§ 163.82–2) must be utilized.

§ 163.84 Letter contracts.

When progress payments are to be made under letter contracts or similar preliminary contractual instruments, incorporation of one of the clauses set forth in §§ 163.79–1 and 163.79–2 is required except as follows:

(a) §§ 163.79–1(a)(4) or 163.79–2(a)(4) will be replaced by a provision limiting the aggregate amount of progress payments made under the letter contract to a stated amount, not exceeding 70 percent of the maximum liability of the Government under the letter contract (or such lesser percentage as may be applicable in accordance with the last two sentences of § 163.80–4 if the clause set out in § 163.79–2 is to be used). Separate limits may be prescribed for separate specified parts of the work.

(b) Until unit delivery billing prices are specified, §§ 163.79–1(b) or 163.79–2(b) concerning liquidation will not be operative, and will be supplemented by the additional provision set out below:

> Progress payments made hereunder shall be liquidated in the following manner, unless previously liquidated pursuant to paragraph (b):
>
> (1) If this letter contract shall be superseded by a fixed-price type contract (Subpart D, Part 3 of this chapter), unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the first progress or other payments which shall be made under such contract.
>
> (2) If this letter contract shall be superseded by a cost-reimbursement type contract, progress payments made hereunder shall be liquidated by deducting the unliquidated amount thereof from the first payments which shall be made under such cost-reimbursement contract.
>
> (3) If this letter contract shall not be superseded by a contract calling for the furnishing of all or part of the articles or services covered hereby, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the amount payable under the provisions of the Termination clause for this letter contract.
>
> (4) If this letter contract shall in part be terminated and shall in part be superseded by a contract, the unliquidated progress payments made hereunder shall be allocated by the Government for the purpose of liquidation to the terminated portion of the letter contract and to the superseding contract in such proportions as the Government shall deem to be equitable, and the part of such progress payments allocated to each shall be liquidated in accordance with the applicable provisions of subdivisions (1), (2), and (3) of this paragraph.
>
> (5) If the method of liquidating progress payments provided above shall not result in the full liquidation thereof, the Contractor shall forthwith pay the unliquidated balance to the Government upon demand.

(c) Any superseding definitive contract will contain appropriate provisions, carried forward from the letter contract, for liquidation of progress payments made under the preliminary instrument. When the superseding contract provides for progress payments, the progress payment clause will be supplemented by further provision as follows:

> The costs, previous progress payments, aggregate progress payments, and unliquidated progress payments, mentioned in paragraph (a) of this progress payments clause, include the costs incurred and progress payments made under the letter contract which has been superseded by this contract.

§ 163.85 Transition.

Contracts in existence on the effective date of this subpart will continue to be administered in accordance with their provisions and this part. The transition to uniform use of a progress payment clause set out in this part (§ 163.79) will be accomplished in an orderly and reasonable manner and as promptly as practicable, as set forth below.

§ 163.85–1 Separate contracts.

To the greatest extent feasible, procurement effected after the effective date of this part, and involving the establishment or continuation of progress payments, will be accomplished by separate new contracts rather than by amendments of existing contracts.

§ 163.85–2 Existing indefinite quantity contracts.

During the specified term of existing indefinite quantity contracts (not including any extension of such term) existing progress payment provisions conforming to § 163.72 with regard to progress payment percentage and conforming to § 163.81 with regard to rate of liquidation do not need to be replaced, incident to new procurement under such contracts, by a clause set forth in § 163.79.

§ 163.85–3 Supplements, amendments, and modifications; when new clause not required.

When it is found necessary to effect new procurement by amendment of a

contract (see § 163.85–1) already providing for progress payments based on costs, rather than by a separate contract, it is not required that the amendment include a clause set forth in § 163.79 if the progress payment clause already in the contract provides for progress payments not exceeding 70 percent of total costs or 85 percent of direct labor and material costs and also provides for liquidation conforming to § 163.81. However, in these cases, a clause set out in § 163.79 should be substituted for the existing progress payment clause whenever feasible.

§ 163.85–4 Supplements, amendments, and modifications; gradual operation of new clause.

(a) When a contract provides for progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, and it is found necessary to accomplish additional procurement by an amendment rather than by a separate new contract (see § 163.85–1), the amendment should, whenever reasonable and practicable, substitute a clause set forth in § 163.79 for the progress payment clause of the contract, so as to limit all future progress payments on the entire contract to 70 percent of future total costs or 85 percent of future costs of direct labor and materials. When such substitution is made, substantially the following provision should be added:

For the purposes of paragraph (a)(1) of this clause, (i) progress payments made or to be made to the contractor on progress billings submitted to the Government on or before the date of this amendment (in the total amount of $_____), shall be excluded in computing the "sum of previous progress payments" and (ii) costs (and progress payments to subcontractors) (in the total amount of $_____), relating to the progress payments so excluded shall also be excluded in computing costs (and progress payments to subcontractors) eligible for progress payments under this amendment. The amount of progress payments unliquidated at the date of this amendment ($_____), and the amount of progress payments included in progress billings pending at the date of this amendment ($_____), aggregating ($_____), shall be liquidated at the rate of _____ percent instead of the percentage stated in paragraph (b) of this clause. Paragraphs (a)(3) and (b) of this clause shall not apply until liquidation of the aggregate amount of progress payments made or billed at the date of this amendment. Paragraph (a)(4) does not apply.

The expression "(and progress payments to subcontractors)" will be deleted if not applicable. Billings for progress payments pending at the date of the amendment will be paid in accordance with the Progress Payment clause in effect before the amendment. The rate for liquidation of unliquidated progress payments outstanding and to be outstanding pursuant to progress billings pending at the date of the amendment will be specified in accordance with the principles stated in § 163.81.

(b) When, in the circumstances described in paragraph (a) of this section, it is not reasonable and practicable to substitute a clause set forth in § 163.79 so as to limit all future progress payments on the entire contract to 70 percent of costs or 85 percent of costs of direct labor and material as the case may be, the amendment (incorporating a clause set forth in § 163.79, with percentages as specified in § 163.72) ordinarily will provide for segregation of costs attributable to work under the amendment, segregation of payments under the amendment, and administration of progress payments under the amendment on the same basis as if the amendment were a separate new contract. However, when it is found that it will be expensive or otherwise impracticable to separate costs of deliveries attributable to the amendment from those attributable to the other portion of the contract, the amendment will provide for one or the other of the arrangements described in paragraphs (c) and (d) of this section.

(c) When the last sentence of paragraph (b) of this section is applicable (and paragraph (d) of this section is not applied), the amendment will include a clause set forth in § 163.79 (with percentages conforming to § 163.72), with provision that it will become operative as herein provided. The amendment will provide for continuation of progress payments pursuant to the existing progress payment clause and for their liquidation pursuant to § 163.81, until (1) the aggregate amount of progress payments made under the contract, including progress payments previously made, equals (2) the aggregate amount of progress payments that would have been made at the previously established rates if the contract had continued without this amendment (less reductions from time to time to reflect decreases in anticipated total progress payments, resulting from any partial termination of the contract); and (3) when the amount described in subparagraph (1) of this paragraph equals the amount described in subparagraph (2) of this paragraph future progress payments will be governed by the progress payment clause included in the amendment, except that liquidation of the amount of unliquidated progress payments then outstanding will continue at the higher rate required to conform to § 163.81 until liquidation of such amount, and §§ 163.79–1(a)(4) and 163.79–2(a)(4) will not apply.

(d) When the last sentence of paragraph (b) of this section is applicable (and paragraph (c) of this section is not applied) the amendment will substitute a clause set forth in § 163.79 instead of the existing progress payment provision, but with the percentage specified for future progress payments being a weighted average percentage arrived at by dividing the amount described in subparagraph (1) of this paragraph into the amount described in subparagraph (2) of this paragraph (and with the special liquidation provision described in subparagraph (3) of this paragraph):

(1) The total of all future costs, eligible for progress payments, expected to be incurred for performance of the contract and this amendment.

(2) The sum of (i) the total of all future costs, eligible for progress payments, that would have been incurred for performance of the contract without this amendment (not including costs expected to be incurred on account of this amendment) multiplied by the percentage for progress payments theretofore specified in the contract, and (ii) the total of all future costs, eligible for progress payments, expected to be incurred solely on account of this amendment, multiplied by not more than 70 percent (or by not more than 85 percent if eligible costs are limited to direct labor and material).

(3) When such substitution is made, special provision will be added to require that (i) the unliquidated progress payments outstanding at the date of the amendment (and any progress payments made thereafter on progress billings pending at the date of the amendment) will be liquidated in the manner outlined in § 163.81, e.g., at 90 percent of delivery billings if those progress payments had been made at 90 percent of costs, or at percentages authorized by § 163.81–2, and (ii) that liquidation at the percentage specified in the progress payment clause substituted by the amendment will begin when liquidation at the higher rate mentioned in subdivision (i) of this subparagraph has been accomplished.

§ 163.85–5 Supplements, amendments, and modifications concerning progress payments.

Supplements, amendments, and modifications of existing contracts which increase the rate or percentage of progress payments, or enlarge the base for progress payments, or reduce the rate of liquidation of progress payments, or make new provision for progress payments shall conform to this part and in particular to § 163.79.

§ 163.85–6 Amendments reducing the rate of progress payments.

When contracts are amended to reduce the percentage for progress payments (§ 163.72–2), the principles set forth in § 163.85–4 are applicable, even though additional procurement is not involved.

§ 163.86 Contract financing office clearance.

The following types of provisions for progress payments require submission through channels and prior approval by the contract financing office (§ 163.26):

(a) Those involving progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, except as authorized by §§ 163.72, 163.73 and 163.85–4;

(b) Those involving deviations, as defined in § 163.78–9;

(c) Those exceptional cases, involving unusual risks, described in § 163.26;

(d) Those involving contractors as to whom it is known that within the preceding 12 months (1) request for advance payments has been denied for financial reasons by the contract financing office, or (2) application for guarantee of a loan to the contractor or for increase or extension of maturity of a guaranteed loan, has been disapproved for financial reasons, or (3) an approved application for guarantee of a loan or for advance payment to the contractor has lapsed or has been withdrawn; and

(e) Those involving contractors named on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List."

§ 163.87 Coordination.

The coordination described in the paragraph (c) § 163.74 is required for all cases mentioned in paragraphs (a) and (b) of § 163.86.

§ 163.87–1 Control lists.

To give effect to § 163.86(d), pertinent information will be exchanged between the several contract financing offices, and distributed through normal channels to contracting officers.

§ 163.87–2 Hold-up list.

To give effect to § 163.86(e), and for other proper purposes, the "Hold-Up List" there mentioned will be distributed through normal channels to contracting officers.

§ 163.88 Contractor's request.

All invoices for progress payments on contracts containing the Progress Payment clause set out in § 163.79 (with or without the modifications authorized by § 163.85–4), and on contracts containing any deviation from that clause approved pursuant to §§ 163.86 and 163.87, will be supported by the Contractor's Request for Progress Payment (DD Form 1195) with any supporting information that may be reasonably required. This form of request also will be utilized as soon as practicable (unless incompatible with contract provisions) in connection with progress payments based on costs under existing contracts and other contracts (§§ 163.85–1, 163.85–2, 163.85–3) not containing one of the Progress Payment clauses set out in § 163.79. The use of this form is subject to the instructions set forth on the reverse thereof.

§ 163.89 Audit.

For the making of progress payments, principal reliance will be placed on the adequacy of the contractor's accounting system and controls (§ 163.75) and on the reliability of the contractor's certificates. To conserve administrative effort, hold down expense, and promote prompt payment of proper progress billings, audit before the making of progress payments will be kept to the minimum necessary for the protection of the interests of the Government. Preaudit, that is, audit before the making of a progress payment, will be limited to those situations in which there is reason to question the reliability or accuracy of the contractor's certificate, or reason to believe that the contract will involve a loss. Post-review or post-audit will be made when considered desirable by the contracting officer to determine the validity of any progress payment made on the contractor's certifications.

§ 163.90 Administration; general.

Progress payment clauses cannot be self-executing, and require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract. It is necessary for adequate supervision of progress payments that the administering office keep itself informed concerning the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payment contract may affect adversely the performance of that contract and the liquidation of the progress payments. For contracts with those contractors whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, or whose management is of doubtful capacity or whose accounting controls are found by experience to be weak, or who are encountering substantial difficulties in performance, full information concerning both the progress under the contracts involved (including the status of subcontracts), and concerning the contractor's other operations and financial condition, should be obtained and analyzed at frequent intervals, with a view to the better protection of the interest of the Government and the taking of such action as may be proper to make contract performance more certain. If there is reason to doubt only minor elements of the costs involved in a progress billing, only the doubtful amounts should be withheld, subject to later adjustment, and the amount clearly due should be paid without awaiting resolution of the differences. So far as practicable in each case, all cost problems, particularly those involving indirect costs, of a kind likely to create disagreements in future administration of the contract, should be identified and resolved at the inception of the contract.

§ 163.90–1 Extent of supervision.

The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

§ 163.90–2 Use of progress payments by contractors.

It is expected that the contractor will use the progress payments made by the Government, or equivalent amounts of money, to pay the costs incurred in the performance of the contract under which progress payments are made.

§ 163.91 Adjustments; retroactive price reduction; refunds.

When a retroactive price reduction has been made effective, i.e., by supplemental agreement or by unilateral determination pursuant to the price redetermination provision of the contract, the last sentence of §§ 163.79–1(b) and 163.79–2(b) requires adjustments so that the amount of unliquidated progress payments and the amounts paid or payable for supplies or services accepted will give effect to the price reduction. In this situation, the retroactive price reduction means that too much has been paid or billed for deliveries, and that from those delivery billings too much has been applied as a reduction of the unliquidated progress payment balance. The necessary adjustments would be (a) recomputation of total cash delivery payments on the basis of the reduced billing price resulting from the retroactive price reduction, and repayment by the contractor of the difference between the total recomputed payments and the total cash delivery payments that had been made, and (b) increase of the unliquidated progress payment balance by the excess of the total amounts previously applied to reduce the unliquidated progress payment balance over the amounts that would have been applied to reduce the unliquidated progress payment balance if the reduced delivery prices had been in effect from the date from which the redetermination is applicable. This same principle of upward adjustment of the unliquidated progress payment balance is also applicable in connection with interim refunds made by contractors pursuant to the provisions of incentive and price redetermination contracts, and in connection with voluntary refunds on such contracts.

§ 163.92 Maximum unliquidated amount.

In all cases where the contract price is sufficient to cover all costs of complete performance, and liquidation of progress payments is effected in accordance with §§ 163.79–1(b) or 163.79–2(b), the amount of unliquidated progress payments will never exceed the maximum limit provided by §§ 163.79–1(a)(3)(i) or 163.79–2(a)(3)(i), unless liquidation percentages have been based on cost estimates that are less than actual costs. In such cases, if the contract involves a profit to the contractor, the actual unliquidated progress payment amount will always be less than the maximum limit stated in §§ 163.79(a)(3)(i) and 163.79–2(a)(3)(i) after the first delivery payment unless liquidation percentages have been based on cost estimates that are less than actual costs. So long as performance is satisfactory and there is no reason to believe that the contract

will involve a loss to the contractor or that a liquidation rate fixed pursuant to §§ 163.81–2 or 163.79–2(b) is too low, there will be no need or reason to verify the relationship of the amount of unliquidated progress payments to the maximum limit prescribed by §§ 163.79–1(a)(3)(i) and 163.79–2(a)(3)(i). However, when the rate or quality of performance is unsatisfactory, or the rate of rejections is unduly high, or there is excessive wastage or spoilage, or it appears that unduly low costs have been attributed by the contractor to delivered items, or a loss to the contractor is otherwise indicated, or that the liquidation rate is too low, careful examination should be made to determine whether or not the unliquidated progress payments exceed the maximum amount permitted by §§ 163.79–1(a)(3)(i) or 163.79–2(a)(3)(i). The services of the cognizant audit agency should be utilized to the fullest extent available, together with the services of qualified cost analysis and engineering personnel as required. See § 163.88, Section III, General Instructions, DD Form 1195; and § 163.93–6.

§ 163.92–1 Quarterly statements on price revision contracts.

Many price revision contracts now contain the payment limitation provisions required by Department of Defense Directive No. 4105.7 and substantially as set forth in §§ 7.108 and 7.109 of this chapter. Quarterly statements submitted by contractors pursuant to those contract provisions should be compared from time to time with the Contractor's Request for Progress Payments in order to assure so far as reasonably possible that costs attributed to delivered items on the quarterly statements are excluded from the costs set forth as the basis for unliquidated progress payments on the DD Form 1195 (or on other request forms so long as other forms are in use). If there is apparent disparity, request for completion of Section III of the DD Form 1195 (§ 163.88) would be appropriate.

§ 163.93 Suspension or reduction of payments; general.

In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than normal liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment nor anticipated loss, proper progress payments, adequately verified, will be paid promptly when earned and billed in accordance with contract provisions, even though the terms of the particular contract may make the payment discretionary rather than mandatory, and such proper payments will not be held up or denied because of the contractor's lack of need for the payment. §§ 163.79–1(c) and 163.79–2(c) provide that progress payments may be suspended or their rate of liquidation may be increased, whenever any of the circumstances there described are found to exist. The rights reserved to the Government by those paragraphs are for the purpose of protecting the interests of the Government, fostering satisfactory contract performance, and guarding against overpayments and losses. Those paragraphs will be administered with these purposes in mind. Action taken pursuant to those paragraphs will be fair and reasonable under the circumstances of particular cases, and supported by substantial evidence. Findings made under those paragraphs will be in writing.

§ 163.93–1 Failure to comply with contract.

Except for the purpose of correcting overpayments or obtaining amounts due from the contractor, action will not be taken pursuant to §§ 163.79–1(c)(i) or 163.79–2(c)(i) for failure to comply with a requirement of the contract, if such failure has resulted solely from causes beyond the control and without the fault or negligence of the contractor. For examples of such causes, see paragraph (c) of the Default clause in § 8.707(c) of this chapter. Compliance with the material requirements of the contract, within the meaning of §§ 163.79–1(c)(i) and 163.79–2(c)(i) includes compliance with all provisions of the Progress Payment clause.

§ 163.93–2 Unsatisfactory financial condition.

If unsatisfactory financial condition, or failure to make progress, endangering contract performance, as described in §§ 163.79–1(c)(ii) or 163.79–2(2), is found to exist, arrangements reasonably assuring contract completion without loss to the Government will be required in connection with the making of further progress payments and the making of other payments so long as progress payments are unliquidated. Within the meaning of §§ 163.79–1(c)(ii) and 163.79–2(c)(2), performance of the contract includes full liquidation of progress payments. Further payments will be withheld so long as any progress payments remain unliquidated, only upon full consideration of all pertinent facts, and upon concluding that further payments will serve to increase the probable loss to the Government.

§ 163.93–3 Excessive inventory.

When inventory allocated to the contract is found substantially to exceed reasonable requirements (§§ 163.79–1(c)(iii) and 163.79–2(c)(3)), the simplest form of adjustment to correct or avoid overpayment will be to eliminate the costs of such excess inventory from the costs shown in item 7 of the contractor's request set out in § 163.88. If that is not regarded as sufficient in a particular case, or if the adjustment in item 7 of the request will not accomplish full correction, additional deductions, to the extent necessary for the correction, should be made, to liquidate progress payments, incident to billings for payments other than progress payments. Transfer of such excess inventory from the contract should also be required. The expression "reasonable requirements" includes a reasonable accumulation of inventory for future use to assure continuity of operations.

§ 163.93–4 Delinquency in payment of costs of performance.

The contractor's delinquency in payment of costs of contract performance in the ordinary course of business (§§ 163.79–1(c)(iv) or 163.79–2(c)(5)) may be an indication of unsatisfactory financial condition or other circumstances endangering contract performance and involving probability of loss to the Government. If such delinquency is not connected with poor financial condition that is so unsatisfactory as to endanger contract performance or to involve reasonably foreseeable loss to the Government, further progress payments and other payments will not necessarily be denied to protect the unliquidated progress payments and minimize risks of additional losses, and payments may be continued at the contract rate, or in reduced amounts, in connection with appropriate arrangements to (a) cure the contractor's delinquencies in payment of his costs of contract performance, (b) avoid further delinquencies, and (c) reasonably assure completion of the contract without loss to the Government. (See also, § 163.93–3.) Amounts claimed by subcontractors, suppliers and others, but disputed in good faith by the contractor, should not be considered delinquent until determined due by a court (or by arbitration if applicable). However, any such disputed amounts shall be excluded from costs of performances so long as they are disputed.

§ 163.93–5 Fair value of undelivered work.

In connection with determining the relation of the amount of unliquidated progress payments to the fair value of the work accomplished on the undelivered portion of the contract (§ 163.79–1(c)(v) or § 163.79–2(c)(vi)) the principles stated in § 163.92 are applicable. In determining action, if any, to be taken, the contracting officer (utilizing available audit, engineering, inspection, and cost analyst services) will give full consideration to the degree of completion of contract performance, the quality and amount of work performed on the undelivered portion of the contract, the amount of work remaining to be done and the estimated costs of completion of performance, and the amount remaining unpaid under the contract. If the contracting officer finds that the fair value of the work done under the undelivered portion of the contract, in relation to the contract price, is less than the unliquidated progress payments, his actions will be governed by the principles stated in §§ 163.93–2 and 163.93–4. This

fair value could not exceed the contract price of undelivered work under the contract, less the estimated total future costs of completion of the contract. When this fair value is found to be less than the amount of the unliquidated progress payments, all further payments on the contract will be controlled in such a manner as to hold the unliquidated progress payments within the fair value of the work done on the undelivered portion of the contract. See also § 163.94–1.

§ 163.93–6 Erroneous cost estimates.

When liquidation percentages (§§ 163.79–1(b) and 163.79–2(b)) lower than those called for by § 163.81–1 are established pursuant to § 163.81–2, it may occur that actual costs and future costs of performance are higher than the estimated costs used to establish liquidation rates. In such cases (§§ 163.79–1(c)(vi) and 163.79–2(c)(4)) appropriate increase of the liquidation percentage will be necessary to adjust for any under-liquidation that may have occurred, to bring the amount of unliquidated progress payments within the limits of §§ 163.79–1(a)(3) or 163.79–2(a)(3), and to assure the adequacy of future liquidations. Increase of the liquidation percentage will also become necessary even though § 163.81–2 has not been applied in fixing the liquidation percentage, when progress payments are based on costs of direct labor and material only (§ 163.79–2) or any limited cost base (§ 163.80–5), and actual costs forming the base for progress payments are higher than the estimated eligible costs used in establishing the liquidation percentage.

§ 163.94 Government titles.

Since the clauses in § 163.79 give the Government title to all of the materials, work in process, and finished goods under contracts after the making of progress payments thereon, care should be taken to assure, to the extent reasonably necessary, that the title to the Government will be free of all encumbrances. The procedure in this respect will necessarily vary with the particular circumstances of individual cases. Ordinarily, in the absence of reason to believe that the Government title may be subject to encumbrance, the contractor's certificate will be relied on. If any arrangements or conditions are found that would impair the contractor's right of disposition of the property affected by the progress payments, appropriate arrangements should be made to establish and protect the Government title. The existence of any such encumbrance is a violation of the contractor's obligations under the contract.

§ 163.94–1 Loss, theft, destruction, or damage.

Sections 163.79–1(e) and 163.79–2(e) are not intended to apply to normal spoilage. The risk of loss as to property affected by the progress payment clause is on the contractor, except to the extent that by some special provision of the contract (such as that relating to aircraft in the open) the Government shall have expressly assumed the risk of loss. Such express assumption of risk by the Government is not made in the Progress Payment clause, the Default clause, or the Termination clause. Because of problems of administering the contract, especially those connected with property responsibility and inventory control, the risk of loss on property to which the Government holds title because of progress payments must be on the contractor to the same extent that it would be if the contractor held title to the property. This risk of loss carries with it the accompanying duty to repay to the Government the amount of unliquidated progress payments based on cost allocable to lost, stolen or destroyed property or to the damaged portion of the property. If the Government has expressly assumed particular risks of loss, then, to the extent of such express assumption of risk by the Government, the contractor would not be obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to such lost, stolen, destroyed, or damaged property. See, however, §§ 163.79–1(c)(v) and 163.79–2(c)(6), as to future payments on the contract after such loss, damage, theft, or destruction.

§ 163.94–2 Government-furnished property.

Contract provisions referring to or defining liability for Government-furnished property do not apply to property to which the Government shall have acquired title solely pursuant to the provisions of the Progress Payment clause (§§ 163.79–1(d) or 163.79–2(d). Property to which the Government has acquired title solely pursuant to the Progress Payment clause is not subject to appendixes B and C (§§ 30.2 and 30.3 of this chapter).

§ 163.94–3 Special tooling.

When the contractor furnishes special tooling, as defined in § 13.101–5, pursuant to a special tooling clause (e.g., § 13.504 of this chapter), and such special tooling is not to be delivered to the Government as an end item under the contract, the handling and disposition of such special tooling will be governed by the special tooling clause of the contract, even though title to such special tooling is held by the Government pursuant to the progress payment clause of the contract.

§ 163.94–4 Termination for convenience of the Government.

After the giving of notice of termination under contract provision for Termination for the Convenience of the Government, the property to which the Government has title pursuant to the Progress Payment clause and which is a part of termination inventory will be acquired or disposed of in accordance with the provisions of the termination clause of the contract and of applicable laws and regulations. The acquisition or disposition of such termination inventory shall be governed by the termination clause, even though title to all or a portion of such inventory is in the Government pursuant to the progress payment clause of the contract.

§ 163.94–5 Scrap; excess property.

(a) In the course of proper performance of contracts, contractors are permitted to sell or otherwise dispose of current production scrap in the ordinary course of business, notwithstanding the Government's title under the progress payment clause. Permission of the contracting officer for such disposal of scrap is not required. With the permission of the contracting officer and on terms approved by him, contractors may also acquire or dispose of materials, inventories, or work in process to which the Government has acquired title pursuant to the progress payment clause of the contract, including transfer of such property to other work of the contractor. Proceeds of scrap disposal will be credited against the costs of contract performance. Costs allocable to property, other than scrap, so transferred from the contract will be eliminated from the costs of contract performance, and the contractor shall be required to repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred from the contract.

(b) When (1) the contractor has completed all work called for by the contract, and (2) such work has been delivered to and accepted by the Government, and (3) progress payments made under the contract have been fully liquidated, and (4) the contractor has fully performed all its obligations under the contract (including the making of any payments to which the Government may be entitled under the contract, and including compliance with any other provisions of the contract, such as the termination clause or the special tooling clause or the Government-furnished property clause), any excess property remaining is to be regarded as having not been allocated or properly chargeable to the contract under sound and generally accepted accounting principles and practices, and thus outside the scope of the progress payment clause which would have vested title in the Government. Accordingly, the contractor holds title to such excess property and may deal with it as he desires.

§ 163.95 Consideration for progress payments, awards.

When a progress payment clause is included at the inception of a contract, no separate consideration is charged for the Progress Payment clause, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments (other than any agreed discount for prompt payment) by reason of the making of progress payments. The worth of the Progress Payment clause to the contractor is expected to be reflected in one or both of (a) a bid or negotiated price that will be lower than such price would have been if provision had not been made for progress payments, or (b) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been if provision had not been made for progress payments.

§ 163.96 Amendments to provide progress payments.

There should be ordinarily no occasion to amend contracts to provide for progress payments unless there has been material change from the circumstances contemplated by the parties when invitations for bids were issued or the contract was entered into without progress payment provision. However, cases do occur (a) in which the actual lead time or preparatory period between the beginning of work and the first delivery substantially exceeds the estimated lead time and in fact runs or will run over six months (§ 163.72), or (b) in which unusual circumstances bring about unexpected substantial accumulation of predelivery costs having material impact on the contractor's working funds (§ 163.74). These cases may arise from occurrences such as (1) uncertainties or errors in specifications, (2) contract change notices, (3) Government delays in testing, inspection, furnishing of material or equipment, furnishing of stock numbers, packaging or shipping instructions or shipping documents, or completion of contract supplements, (4) stretch-outs or stop-work orders, (5) performance difficulties of subcontractors or suppliers, and (6) causes beyond the control and without the fault or negligence of the contractor, of the kinds mentioned in § 8.707(c) of this chapter. In these kinds of cases, requests of contractors for amendments to provide progress payments should be considered promptly, in the light of the circumstances then existing. If the circumstances then existing approximate conditions under which progress payments would have been properly provided in conformity with this part at contract inception, if the new circumstances had been foreseen, progress payments should be provided by amendment. In this connection, see particularly §§ 163.15, 163.17, 163.18, 163.19, 163.20, 163.23, 163.23–1, and 163.97.

§ 163.97 Consideration for amendments providing for progress payments.

Contracts may not be modified except in the interest of the Government. Contracts which do not provide for progress payments may be amended (§ 82.85–5) to provide for progress payments only when the amendment provides new and valuable consideration moving to the Government. Appropriate price reduction may provide this consideration. In the varying circumstances of individual cases, the consideration for progress payments need not necessarily be monetary. Agreements by the contractor, incorporated in such an amendment, for the benefit of and substantially advantageous to the Government, may constitute sufficient consideration for an amendment providing for progress payments. When estimated financing costs have been included as an element (whether or not identified) in the contract price of a contract not providing for progress payments, it is fair to expect elimination of the applicable portion of that element of the price when progress payments are provided by amendment. The fair and reasonable consideration for the progress payment amendment should approximate in value as nearly as practically ascertainable the amount by which the contract price would have been smaller if a Progress Payment clause had been contained in the contract in the first instance. In the absence of definite information on this point, pertinent factors for estimating the fair and reasonable amount of consideration would include (a) the amounts of progress payments expected to be outstanding for estimated periods of time, (b) the cost of equivalent working funds to the contractor, and (c) the estimated profit rate expected to be earned by contract performance. If not accomplished by a contract price reduction, other concessions or agreements by the contractor, advantageous to the Government and incorporated in the amendment, may be fairly evaluated and accepted as being of value reasonably equivalent to a price reduction. This consideration should be such as is fair, equitable and reasonable in the light of the circumstances of each case. See § 163.96. This consideration should be for the progress payment amendment, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments after the progress payment amendment (other than any agreed discount for prompt payment) by reason of the making of progress payments.

PART 165—PAYMENTS ON INCENTIVE-TYPE AND PRICE REDETERMINATION-TYPE CONTRACTS

165.1 Purpose.
165.2 Policy and action.
165.3 Refunds and adjustments.
165.4 Contract administration.

AUTHORITY: §§ 165.1 to 165.4 issued under sec. 202, 61 Stat. 500, as amended, sec. 2202, 70A Stat. 120; 5 U.S.C. 171a, 10 U.S.C. 2202. Interpret or apply secs. 2301–2314, 2381, 2383, 70A Stat. 127–133, 136, 137; 10 U. S. C. 2301–2314, 2381, 2383.

§ 165.1 Purpose.

It is the purpose of this part to assure payment of amounts fairly due for items delivered and accepted under incentive-type and price redetermination-type contracts, to reduce the need for refunds, by contractors under such contracts, to facilitate timely adjustment of provisional billing prices and prompt completion of final pricing under these types of contracts, and to reaffirm the policy on progress payments.

§ 165.2 Policy and action.

(a) To accomplish the purpose of this part, all new contracts of the incentive-type and price redetermination-type, all definitive contracts of the incentive- or price redetermination-type replacing or superseding letter contracts, all amendments providing an incentive- or price redetermination-clause in contracts not previously containing such a clause, and all amendments to contracts of the incentive- or price redetermination-type providing for new or additional procurement, entered into on or after July 1, 1956, shall contain one or the other of the provisions set out in subparagraphs 1 or 2 of this paragraph.

(1) Incentive-type contracts:

Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) until final price revision has been made shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of the established target profit allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established—increased or decreased in accordance with the incentive profit formula of this contract when the amount of costs stated in (2), above, differs from the applicable target costs. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess less any applicable tax credit under Section 1481 of the Internal Revenue Code of 1954 shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof.

(2) In price revision—or redetermination-type contracts, not of the incentive type:

Notwithstanding any provision of this contract authorizing greater payment, adjustments and refunds shall be made if the total of all amounts billed and paid or payable under this contract for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments), until final price revision has been made to the full extent permitted by this contract, shall exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided; (1) the total contract price of all items delivered to (or services performed for) and accepted by the Government for which final prices have been established, and (2) the total amount of costs (estimated to the extent necessary) that have been reasonably incurred for and are properly allocable solely to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established, and (3) the total amount of interim profit used in establishing the initial contract price and allocable by direct proportion to items delivered to (or services performed for) and accepted by the Government for which final prices have not been established. Within 45 days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed for and accepted by the Government) under this contract, and as of the end of each quarter, the Contractor shall submit a statement setting forth the respective amounts of each of the three numbered items next above, together with the total amount of all billings for items delivered to (or services performed for) and accepted by the Government (including amounts applied to liquidate progress payments) under this contract as of the end of each quarter. If on any quarterly statement these total billings exceed the sum of the three numbered items above, this gross excess (less any applicable tax credit under Section 1481 of the Internal Revenue Code of 1954) shall, after deduction of the total refunds (cash or credit memoranda not including any tax credits under the Internal Revenue Code) theretofore made, be paid immediately by the Contractor to the Government or credited against existing unpaid billings covered by such statement; provided that if any portion of such gross excess (less all tax credits under the Internal Revenue Code) has been applied to the liquidation of progress payments, such amount may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payment clause of this contract, instead of making direct refund thereof. When, after submission by the Contractor of cost data and price-redetermination offer, the Contractor and the Contracting Officer (a) have agreed in writing upon revised billing prices in the light of the cost experience and anticipated future trend (and provided that such revised prices are not higher than the smallest of (i) the existing contract price, (ii) the Contractor's price-redetermination offer and (iii) a price based upon the most recent quarterly statement), and (b) the contractor agrees to promptly make the necessary adjustments to bring payments for past deliveries of items into alignment with the revised billing prices, and (c) so long as the Contractor bills at the agreed revised billing prices (or lower prices thereafter negotiated as final prices preliminary to confirmation by formal contract supplement), the prices so agreed upon or negotiated shall be deemed to be final prices for the purpose of this paragraph until final prices are established by supplement. For any quarter in which only the numbered (1), above, is applicable, the Contractor may furnish a written statement to that effect instead of the quarterly statement above required.

(b) In connection with amendments providing for new procurement, and amendments providing an incentive- or price redetermination-clause in contracts not previously containing such a clause, the above provisions shall be made applicable to the entire contract.

(c) Where the contracting officer has discretion to control payments through withholding provisions under an existing contract of the incentive- or price redetermination-type not containing the above provisions, the contract shall be administered hereafter, to the maximum extent permitted by such withholding provisions, so that on and after January 1, 1956, the total aggregate payments will be limited in the manner provided in paragraph (a) of this section.

(d) In the case of outstanding contracts of the incentive-type or price redetermination-type, where payments cannot be limited within a reasonable time as provided above, the contracting officer shall take prompt action to obtain by mutual agreement amendments of such contract incorporating the above provisions.

(e) Ordinarily, unless the contracting officer has good cause to doubt or question the accuracy of statements furnished in accordance with paragraph (a) of this section, such statements will be relied upon and prompt payments under the contract will continue to be made pending any post-audit or post-review that may be necessary to protect the interests of the Government.

§ 165.3 Refunds and adjustments.

(a) (1) It is essential in all cases that the amount of any indebtedness of contractors to the Government be ascertained promptly, and that the amount of each contractor's indebtedness to the Government be collected expeditiously.

(2) Government personnel will take prompt action so that amendments and supplemental agreements, where appropriate, will be prepared expeditiously and executed without delay.

(b) For use in expediting and controlling adjustments and refunds, current inventory and control lists shall be established and maintained with regard to all incentive-type and price redetermination-type contracts. Aggressive and continuing efforts shall be made to eliminate any unnecessary delays.

(c) All incentive-type and price redetermination-type contracts shall be reviewed systematically and periodically to obtain voluntary interim billing price adjustments and prompt refunds as appropriate. The making of voluntary refunds in anticipation of retroactive price reductions shall be systematically encouraged. No proposed voluntary refund shall be refused or delayed, and all such refunds shall be tendered and accepted without prejudice to final pricing. In connection with voluntary refunds, minimum refunds proposed by contractors in connection with final pricing proposals, and refunds incident to quarterly statements, contractors shall not be required to furnish concurrent itemization of adjustments to be made on past billings, nor to furnish adjusted bills concurrently. Such adjustments as may be essential in connection with refunds will be accomplished by appropriate Government personnel, with such information as may be essential from contractors after refunds are made, and the making, acceptance and deposit of refunds will not be delayed pending the making of any necessary accounting adjustments. When reductions in billing prices are proposed by contractors, they will be made effective immediately without prejudice to further adjustment, and billings voluntarily reduced by contractors shall if otherwise proper be paid at the reduced amounts without awaiting contract amendments.

§ 165.4 Contract administration.

(a) The contracting officer will exercise every effort to bring about prompt redetermination of prices and setting of firm target prices by vigilant and timely attention to the contract administration aspects of each contract, and nothing contained herein will diminish his responsibilities.

(b) Section 1481 of the Internal Revenue Code of 1954 and Section 3806 of the Internal Revenue Code of 1939 provide for certain tax credits in connection with contract price refunds. The contract provisions set out in this part and in superseded Part 84 (32 CFR, 1955 Supp.) do not alter the effect of those statutory provisions. Contracts containing either one of the provisions set out in § 84.3 (a) of superseded Part 84 (32 CFR, 1955 Supp.) shall be administered in such manner as to allow this statutory tax credit whenever applicable under the circumstances. Whenever there is a "gross excess" under those contract provisions, the amount of such tax credit shall be allowed in partial settlement of the gross excess determined without reference to such tax credit, and only the remainder of the excess after such tax credit allowance shall be subject to refund by the Contractor. Also, applicable previous tax credits shall be excluded in computing refunds previously made, and the amount of tax credits shall be deducted from the "gross excess" in computing the amount that may be added or restored to the unliquidated progress payment amount.

(c) It was intended by superseded Part 84 (32 CFR, 1955 Supp.) that subject to the quarterly adjustment required by the contract provisions set out therein, payments at contract billing prices would be made before submission of the first required quarterly statement, and thereafter during the intervals between quarterly statements. Hence, contracts containing the provisions required by superseded Part 84 (32 CFR, 1955 Supp.) will be administered in the same manner as if they contained the first sentence of the contract provisions set out above.

PART 167—UNIFORM NEGOTIATION FOR REIMBURSEMENT OF INDEPENDENT RESEARCH AND DEVELOPMENT COSTS

Sec.
167.1 Purpose.
167.2 Background.
167.3 Establishment of the Armed Services Research Specialists Committee.
167.4 Single assignment for joint negotiation of research and development costs.
167.5 Procedures.

AUTHORITY: §§ 167.1 to 167.5 issued under R.S. 161, sec. 2202, 70A Stat. 120; 5 U.S.C. 22, 10 U.S.C. 2202.

§ 167.1 Purpose.

The purpose of this Part 167 is to (a) provide a method for the joint negotiation of reasonable and uniform cost allowance of independent research and development expense of certain contractors performing work for more than one military department; (b) establish the Armed Services Research Specialists Committee which will, when requested by the sponsoring military department, review and assure that contractors have made a proper segregation between their independent research and their independent development programs and which will report to the sponsoring military department the determinations of the Committee concerning the scientific and technical factors which influence the extent to which such programs should be supported; and (c) provide for the assignment of responsibility to a single military department to act as the sponsoring department in the conduct of joint negotiations on the allowability of such contractor's independent research and development costs.

§ 167.2 Background.

(a) Section 15.107 of Subchapter A of this Title 32 (Rev. 2 November 1959) provides for "advance understandings on particular cost items," including "research and development," particularly those aspects relating to "reasonableness and allocability." Specifically, it provides in pertinent part:

In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective contractors, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by contracting officers individually, or jointly, for all defense work of the contractor, as appropriate.

(b) Section 15.205–35 of Subchapter A of this Title 32 (Rev. 2 November 1959) covers allowability of "Research and Development" Costs, and includes:

(h) The reasonableness of expenditures for independent research and development should be determined in light of all pertinent considerations such as previous contractor research and development activity, cost of past programs and changes in science and technology. Such expenditures should be pursuant to a broad planned program, which is reasonable in scope and well managed. Such expenditures (especially for development) should be scrutinized with great care in connection with contractors whose work is predominantly or substantially with the Government. Advance agreements as described in § 15.107 of Subchapter A, Title 32 are particularly important in this situation. In recognition that cost sharing of the contractor's independent research and development program may provide motivation for more efficient accomplishment of such program, it is desirable in some cases that the Government bear less than an allocable share of the total cost of the program. Under these circumstances, the following are among the approaches which may be used as the basis for agreement: (i) review of the contractor's proposed independent research and development program and agreement to accept the allocable costs of specific projects; (ii) agreement on a maximum dollar limitation of costs, an allocable portion of which will be accepted by the Government; (iii) an agreement to accept the allocable share of a percentage of the contractor's planned research and development program.

§ 167.3 Establishment of the Armed Services Research Specialists Committee.

(a) An Armed Services Research Specialists Committee is hereby established to review, when requested by the negotiator representing the sponsoring department, the independent research and development programs of defense contractors and to determine whether there has been an adequate segregation between the independent research and independent development programs of such contractors who are doing business with more than one department and who seek to recover the costs of such research and development programs in procurements of the Department of Defense. In carrying out its responsibilities, the Committee will utilize, where appropriate, the services of other research specialists. The Committee shall report and make recommendations directly to the sponsoring department on the scientific and technical factors affecting the basis or extent to which such programs should be supported.

(b) The Committee shall consist of the following:

Office of Secretary of Defense: A designee of the Director of Defense Research and Engineering.

Department of the Army: A designee of the Chief of Research and Development.

Department of the Navy: A designee of the Chief of Naval Research.

Department of the Air Force: A designee of the Commander, Air Research and Development Command.

(c) The designee of the Director of Defense Research and Engineering shall serve as the Chairman of the Committee. The Committee shall be responsible to the Director of Defense Research and Engineering through its Chairman.

(d) When the negotiator has determined that independent research and development program of a contractor warrants review, the Committee shall review such programs to assure that development work is not classified as "research". The Committee shall report to the sponsoring department its findings and recommendations concerning the scientific factors considered to affect the basis or extent to which such research and such independent development relating to procurement within the product line of the contractor, should be supported by the Department of Defense. Where a contractor's normal course of business does not involve production work, the recommendation shall relate to the development work falling within the contractor's field of effort of Government research and development contracts.

§ 167.4 Single assignment for joint negotiation of research and development costs.

(a) The military departments shall agree to and designate a single department (herein called the sponsoring department) to conduct negotiations with the contractor on the allowability of independent research and development costs in all cases where such costs are substantial in amount, a substantial portion of the contractor's business is with the Department of Defense, and the contractor's defense work involves contracts with more than one military department.

(b) The criteria for selection of the sponsoring department shall generally be the service having the preponderant work; cognizant plant assignments; or any other existing relationships which may have bearing on such selection. However, an equitable division of the work among the departments is the desired goal.

§ 167.5 Procedures.

(a) Contractors doing business with more than one department and seeking reimbursement for independent research and development expense may be required to submit copies of a brochure describing each research and development project and indicating the amount of money budgeted for each project. Normally, the brochure will be submitted to the sponsoring department before the beginning of the contractor's fiscal year in which the cost is to be incurred, or at least within the first 90 days of such fiscal year.

(b) The Armed Services Research Specialists Committee will, when requested, review the brochures to assure that there is adequate segregation between research and development. The Committee will then recommend to the negotiator of the sponsoring department the extent to which it is reasonable to support such programs.

(c) The sponsoring department will establish a time and place, if necessary, for the conduct of the negotiations with the contractor. Other procuring activities having contracts with the contractor will be advised of the pending negotiations and invited to participate. If such procuring activities do not have representatives at the negotiation, they will be deemed to have waived participation. The results of the negotiation will, in any event, be binding upon each department having contracts with the contractor.

(d) In the event that the above procedures have not been effectuated prior to the incurring of costs by the contractor for an independent research and development program, such procedures are available and are to be used in a later review.

SUBCHAPTER F—TRANSPORTATION

PART 171—POLICY GOVERNING TRANSPORTATION AND ACCOMMODATIONS OF MILITARY PERSONNEL AND THEIR DEPENDENTS, CIVILIAN EMPLOYEES AND THEIR DEPENDENTS, WHEN TRAVELING VIA COMMERCIAL, GOVERNMENT OR PRIVATE TRANSPORTATION

Sec.
171.1 Purpose.
171.2 Scope and applicability.
171.3 Air transportation.
171.4 Land transportation.
171.5 Sea transportation.

AUTHORITY: § § 171.1 to 171.5 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 171.1 Purpose.

To establish a uniform Department of Defense policy governing transportation and accommodations, as set forth in §§ 171.3 to 171.5, for military personnel, their dependents, civilian employees and their dependents when traveling via commercial, government or private transportation within, to, from, or outside the continental United States at Government expense. Basic authority for the movement of military personnel and their dependents is contained in the Career Compensation Act of 1949 as amended (63 Stat. 813), implemented by the Joint Travel Regulations. Basic authority for movement of civilian employees and their dependents is contained in section 1 of the Administrative Expenses Act of 1946, as amended (60 Stat. 806), implemented by Standardized Government Travel Regulations promulgated by the Bureau of the Budget.

§ 171.2 Scope and applicability.

(a) *Commercial transportation.* (1) Commercial transportation service will be employed for the movement (within, to, from, or outside the United States) of personnel when such service is available or readily obtainable and satisfactorily capable of meeting military requirements, except as provided in paragraph (b) of this section.

(2) When it is determined that commercial transportation will be provided for travel to, from or outside the United States, aircraft and ships registered under the laws of the United States will be used unless the nonavailability of such aircraft or ships, or the exigencies of the mission, require the use of aircraft or ships registered under foreign flag (aircraft registered under laws of the United States and operated under certificates or permits held by foreign air carriers will be considered foreign flag carriers).

(b) *Government transportation.* Consistent with the chartered responsibilities of Military Sea Transportation Service and Military Air Transport Service to provide transportation service for all military agencies, the employment of commercial transportation to, from, between and within areas outside the United States shall not take precedence over the efficient and economic utilization of the military-owned transportation resources of Military Sea Transportation Service and Military Air Transport Service which have been approved by the Secretary of Defense as essential to national security.

(c) *Private transportation.* (1) Private transportation may be used for travel to be performed at personal expense on a reimbursable basis, by military personnel and their dependents within the continental United States or between the United States and Alaska, Canada (including the Province of Newfoundland), and Mexico, or

(2) When travel is authorized to be performed by privately owned conveyance by civilian employees and their dependents on a reimbursable basis.

(d) *Minimum standards.* Nothing herein will be construed as preventing passengers from accepting accommodations with less than stated minimum standards as shown in § § 171.3 to 171.5 when they meet the requirements of the Services and/or the traveler. Also, nothing in this part will be construed as preventing the Government from furnishing accommodations with less than stated minimum standards for military and civilian personnel when it has been determined by the Service concerned that exigencies of the service require use of such accommodations.

(e) *Civilian employees traveling at government expense.* Civilian employees will not be required to travel via any particular mode of transportation, commercial or military, when the travel order includes a specific statement excluding such mode of transportation. The official requesting the order shall be responsible for this statement after consideration of justification presented by the employee.

(f) *Selection of mode of transportation to be used.* All orders or other travel instructions which authorize a choice or determination between more than one mode of travel will be interpreted by the transportation officers in accordance with these instructions. In cases where two or more modes are available, the service (or transportation officers thereof) sponsoring the travel will determine the mode to be used, giving due consideration to all the facts in the case, including the desires of the traveler.

§ 171.3 Air transportation.

(a) *Commercial air transportation—*(1) *Use of scheduled air carrier within the continental United States.* (i) Individuals will be provided first-class air transportation, which is offered to the general public as first-class.

(ii) Persons traveling in a group travel status of 3-to-14 will be provided coach class or tourist air accommodations when available and the service and schedule meets the requirements. If coach class or tourist air accommodations are not available first-class accommodations will be provided.

(iii) Persons traveling in groups of 15 or more will be provided transportation via scheduled air carriers meeting the standards of service required in Part 184 of this subchapter. Arrangements for the movement of 15 or more persons will be made by the appropriate headquarters designated by the military service concerned.

(2) *Use of scheduled air carriers to and from and outside the continental United States.* (i) Military and civilian personnel traveling in an individual status or in groups of 14 or less will normally be provided first-class air transportation.

(ii) Persons traveling in groups of 15 or more will be provided accommodations in accordance with the standards of service set forth in Part 184 of this subchapter. Arrangements for the movement of 15 or more persons will be made by the appropriate headquarters designated by the military service concerned.

(3) *Use of sleeper-type aircraft, within, to and from and outside the continental United States.* (i) When the use of sleeping accommodations are necessary for the successful accomplishment of the mission, the travel orders will include such authorizations.

(ii) When sleeping accommodations are authorized, sleeping accommodations of the lowest rate in effect on the aircraft to be utilized will be furnished. If, at the time reservations are made, sleeping accommodations of the lowest rate are not available, sleeping accommodations of the lowest rates which are available will be furnished.

(4) *Use of supplemental carriers.* (i) Services provided by Supplemental Air Carriers are considered coach-type air transportation and do not constitute first-class accommodations. Supplemental Air Carriers may be considered for individual or group travel of 14 or less persons subject to the following conditions:

(*a*) The schedule of the proposed flight is satisfactory and will assure arrival to meet requirements of the travel orders.

(*b*) Accommodations on the aircraft to be used are considered comparable to recognized standards of coach-type service with respect to comfort and sanitation, and

(c) Use of such supplemental air carriers otherwise meets military requirements and is acceptable to personnel in an individual travel status.

(ii) Person traveling in groups of 15 or more within the Continental United States will be provided accommodations meeting as near as possible the standards of the Joint Military Passenger Agreements with the Air Carrier Associations.

(iii) Persons traveling in groups of 15 or more to, from, and outside the Continental United States will be provided accommodations in accordance with the standards set forth in Part 209 of this subchapter.

(5) *Use of Supplemental Air Carriers, to, from, and outside the United States.* The services of Supplemental Air Carriers may be considered for group travel of 15 or more. The accommodations provided will be in accordance with the standards set forth in Part 209 of this subchapter.

(b) *Government air transportation within, to and from, and outside the United States—*(1) *Use of Government air transportation.* Government air

transportation includes all government-owned, leased, contract or charter aircraft operated by or for one or more of the Military Services.

(i) *Government-owned aircraft.* An aircraft owned by the United States government and operated by the Department of Defense.

(ii) *Government-chartered or Government-contract aircraft.* An aircraft hired from a commercial source for the exclusive use of the Government for one or more flights.

(2) *Accommodations.* (i) As a general rule, transport type aircraft operating on scheduled or semi-scheduled service with troop seats and safety devices is considered adequate, with the following exceptions:

(*a*) When military or civilian personnel are accompanied by dependents.

(*b*) When individuals are of General or Flag rank, or equivalent civilian status.

(ii) Female passengers and dependents with or without accompanying sponsor will be provided air transportation on scheduled aircraft equipped with upholstered seats and enclosed toilet facilities. Should dependents refuse this accommodation, surface transportation will be provided for such persons. Under such conditions a refusal by the dependent to travel by air, when the exigencies of the service dictate that the principal travel by air, may also be considered as waiving the provisions for nonseparation of families.

(iii) Officers of General or Flag rank or civilians of equivalent status, as shown in table of military-civilian relationships contained in Department of Defense Instruction on "Issuance of Identity Cards Required by the Geneva Convention," will be provided air transportation on aircraft equipped with upholstered seats.

(3) *Minimum standards.* On aircraft equipped to carry General or Flag officers or civilians of equivalent status and/or female passengers, dependents and accompanying sponsor, the following minimum standards are established:

(i) Suitable meals will be available for all passengers.

(ii) A reasonable supply of wash water and potable water shall be aboard the aircraft.

(iii) The configuration of seating arrangements shall be similar to that provided aboard flights of the commercial, passengers, scheduled type operations and the seat spacing shall not be less than the average aircoach space provided by scheduled commercial service.

(iv) Suitable facilities for heating food (formulae) for infants will be available.

(v) Seating arrangements shall be provided on a basis of one seat for each individual, including infants.

(vi) Pressurized cabin aircraft will normally be provided for trans-ocean travel.

§ 171.4 Land transportation.

(a) *Definitions.* For the purpose of this section the following definitions are applicable:

(1) *Individual travel.* Travel of all persons under orders which are not specifically designated "group travel order."

(2) *Group travel.* Three (3) or more military personnel traveling in a group from the same point of origin to the same destination under one order which is specifically designated "group travel order."

(3) *First-class transportation.* Transportation, exclusive of extra fare trains, which is offered to the general public as first-class.

(4) *Lowest first-class accommodations.* Except as hereinafter specifically provided, a lower standard berth shall be considered the lowest first-class rail accommodation for night travel in CONUS.

(5) *Coach-class.* A type of transportation, not affording sleeping facilities, offered by the rail carriers in the CONUS to the general public at a lesser rate and which is normally used for short journeys or day-time travel.

(6) *Bus transportation.* A transportation service, offered to the general public by commercial bus carriers, which is normally used for daytime travel when an entire journey can be completed between the hours of 0600 and 2400 of the same day.

(7) *Night travel.* Any journey which involves travel of four (4) or more hours between the hours of 10:00 p. m. and 6:00 a. m. This definition does not preclude the use of sleeping car service operated between points involving actual running time of less than four (4) hours between the hours specified but allowing occupancy privileges of more than four (4) hours.

(8) *Day travel.* Normally a journey completed from origin to destination between the hours of approximately 6:00 a. m. and 12:00 midnight, including any other journeys not specifically defined as "night travel."

(9) *Member.* Wherever the words "member" or "members" are used in this part, they mean member of the Armed Forces.

(b) *Accommodations.* (1) Members and civilian employees (other than those persons listed in subparagraphs (2), (3), (4) and (5) of this paragraph, including cadets, midshipmen, newly enlisted members traveling from place of enlistment or induction to first duty station, members on temporary disability retired list required to submit to periodic physical examination, members of reserve components upon call to active duty for training and upon relief therefrom, members of Reserve Officers Training Corps when authorized to be furnished transportation to a training camp, and aviation cadets are entitled to:

(i) *For individual travel*—(a) *Day travel by rail.* First-class transportation with one seat in a parlor-car, or sleeping car or lounge car, if available, otherwise to coach-class except as limited by Standardized Government Travel Regulations in the case of civilian employees.

(*b*) *Day travel by bus.* Commercial bus transportation which normally can be completed between the hours of 6:00 a. m. and 12:00 midnight.

(*c*) *Night travel by rail in CONUS, Canada and Mexico.* For journeys, involving one or more nights enroute, first-class transportation and one lower standard berth will be furnished for that portion of the journey where sleeping accommodations are available.

(*d*) *Night travel by rail outside CONUS, Canada and Mexico.* Persons traveling as individuals will be transported in accordance with directives of the oversea commander of the area in which travel is performed.

(ii) *For group travel*—(*a*) *Day travel by rail or bus.* Either rail coach-class transportation or commercial bus transportation, whichever is more advantageous to the Government by reason of the nature of the travel, or service, economy, and sound traffic judgment.

(*b*) *Night travel by rail in CONUS, Canada and Mexico.* For journeys, involving one or more nights enroute; first-class rail transportation, and sleeping accommodations in standard sleeping-cars of the regular section type for the entire journey unless only coach-class accommodations are operated at the beginning or end of the journey. Berth accommodations will be furnished on the basis of sections, two (2) members to a section, that is, equal number of lower and upper berths, but lower berths in sections to extent upper berths are not available in sections, plus lower berth for odd number members, if any. When movement is in special cars containing drawing rooms, the drawing room will be used as a section (one lower and one upper berth), except that the sofa in the drawing room will be used if the use thereof will obviate the operation of an additional sleeping car, the sofa to be used on the basis of one additional lower berth. Whenever special standard sleeping car(s) cannot be made available by the carriers within a reasonable time, accommodations will be furnished, on the same basis as above, in special tourist sleeping car(s).

(*c*) *Night travel by rail outside CONUS, Canada and Mexico.* Persons traveling as groups will be transported in accordance with directives of the oversea commander of the area in which travel is performed.

(2) Members discharged on account of fraudulent enlistment, applicants and rejected applicants for enlistment, registrants and rejected registrants, applicants for flying training, members discharged under other than honorable conditions, and discharged and/or paroled prisoners are entitled to:

(i) *Day travel.* Rail coach-class accommodations or bus transportation, whichever is more advantageous by reason of service and/or economy and sound traffic judgment.

(ii) *Night travel by rail in CONUS, Canada and Mexico.* First-class transportation with one upper standard berth, lower standard berth in sections to be furnished to extent upper berths in sections are not available.

(iii) *Night travel by rail outside CONUS, Canada and Mexico.* Will be furnished transportation as prescribed by the appropriate area commander.

(3) Military prisoners with guards.

(i) *Scope.* When it is determined that commercial transportation be utilized for the movement of prisoners under guard, it is considered desirable that such movement be accomplished in a manner which will permit the least possible contact with the general public. Considering appearance and safety, preventing other passengers from becoming apprehensive, or because of the physical condition of the prisoners, movements will be made in enclosed accommodations, when available, or in special car or chartered equipment. Appropriate certification will be contained in the travel orders for the use of enclosed accommodations.

(ii) *Groups of fourteen or less persons*—(*a*) *General.* Groups of fourteen or less persons will normally be moved in regular equipment of the commercial rail carriers. When rail transportation is not available or circumstances preclude its use, regular equipment of the other commercial modes of transportation may be used provided advance arrangements are made with the carrier concerned to accept prisoners.

(*b*) *Day travel.* First class rail transportation and enclosed accommodations in parlor car or standard sleeping car will be furnished the entire journey or for that portion of the journey over which enclosed accommodations are available. When enclosed accommodations are not available, the use of coach-class rail transportation is authorized.

(*c*) *Night travel.* Through first-class rail transportation and enclosed standard sleeping car accommodations, when available, for journeys involving one or more nights enroute. When enclosed accommodations are not available, open accommodations in standard sleeping cars of the section type are authorized.

(iii) *Groups of fifteen or more persons*—(*a*) *General.* Groups of fifteen or more persons will normally be moved in special car or chartered equipment. Arrangements for such movements will be in accordance with the special regulations of the several military agencies.

(*b*) *Day travel.* For rail movements, special coaches insuring exclusive occupancy will be provided under the provisions of the Joint Military Passenger Agreement with the rail carriers. Movements by other commercial carriers will be made in chartered equipment.

(*c*) *Night travel.* For rail movements, first-class transportation and special standard sleeping cars of the regular section type insuring exclusive occupancy will be provided for journeys of one or more nights enroute. Movements by other commercial carriers will be made in chartered equipment.

(iv) *Government-owned prison cars.* The provisions of subdivisions (ii) and (iii) of this subparagraph do not preclude the use of Government-owned prison cars, when available.

(4) Absentees, stragglers, deserters, members on authorized leave without funds, and any member who loses his transportation while in travel status or who becomes separated from remainder of his party who are in travel status will be furnished the same class of transportation and accommodations as furnished members under subparagraph (1) (i) of this paragraph, except that, when not traveling under guard, they may, if they so desire, be furnished a cheaper class of transportation.

(5) Patients.

(i) *Individual travel*—(*a*) *Day travel, rail.* Will be furnished the same class of transportation and accommodations as furnished under subparagraph (1) (i) (*a*) of this paragraph, except that when the physical condition of a patient requires berth accommodations the responsible medical officer may authorize furnishing a lower standard berth for day travel by certification on the travel orders. (See (*c*) of this subdivision.)

(*b*) *Night travel, rail.* Will be furnished the same class of transportation and accommodations as furnished under subparagraph (1) (i) (*b*) of this paragraph. (See (*c*) of this subdivision.)

(*c*) *Special accommodations.* Whenever it is determined that the type of accommodations provided in (*a*) and (*b*) of this subdivision are not satisfactory due to the condition of the patient, the medical officer may authorize the use of room accommodations for the patient and attendants, if any, by appropriate certification on the travel orders.

(ii) *Group travel*—(*a*) *Day travel, rail.* When the physical condition of the patients warrants the use of seats and daylight schedules are available and adequate, first-class rail transportation and a seat for each patient and attendant will be furnished in a parlor car or standard sleeping car. Where the condition of a patient(s) requires berth accommodations the responsible medical officer, by certification on travel orders, may authorize furnishing a lower berth for each such patient for day travel (See (*c*) of this subdivision.)

(*b*) *Night travel.* Patients will be furnished one lower berth or one upper berth each, whichever may be determined by the responsible medical officer, in standard sleeping cars of the regular section type. Attendants will be furnished berth accommodation in the same car with patients. (See (*c*) of this subdivision.)

(*c*) *Exclusive accommodations.* Whenever the responsible medical officer determines that a patient or a group of patients require exclusive accommodations, the provisions of subdivision (i) (*b*) of this subparagraph will apply.

(*c*) *Use of enclosed accommodations for purposes of security.* Whenever it is determined that enclosed accommodations are required for the purposes of security, the head of the military department concerned or such subordinates as he may designate, may authorize or approve the use of a compartment or other enclosed accommodations including any additional transportation required under the tariffs of the carriers for the exclusive occupancy of such accommodations.

(d) *Utilization of extra-fare trains.* An extra fare train will not be utilized for travel unless the authority directing the travel has determined that its use is in the best interest of the Government and the use thereof is authorized in travel orders.

(e) *Dependent travel.* Dependents of members and civilian employees whose transportation is authorized are entitled to:

(1) *For day travel.* First-class rail transportation when available, with a seat in a parlor car or sleeping car on the basis of one individual seat for each dependent, except as limited by Standardized Government Travel Regulations in the case of dependents of civilian employees.

(2) *For Night Travel in CONUS, Canada and Mexico.* First-class rail transportation with sleeping accommodations in a standard sleeping-car on the following basis:

(i) Authorized dependents will be classified into the maximum number of "pairs" and the minimum number of "individuals" and furnished accommodations at the lowest possible cost to the Government. Pairs are defined as follows:

(*a*) Two dependents under 5 years of age, regardless of sex.

(*b*) Two dependents, same sex, under 12 years of age.

(*c*) Wife and one child, either sex, if child is less than 5 years of age.

(ii) *Individuals.* "Individuals" are defined as dependents (other than a dependent father or mother) who cannot be paired because one of them is 12 years of age or over, except for the wife as indicated in subdivision (i) (*c*) of this subparagraph, or the individuals are of opposite sex and one or both are 5 years of age or over.

(iii) *Dependent wife, father or mother.* Authorized accommodations for a dependent wife, except as indicated in subdivision (i) (*c*) of this subparagraph, or a dependent father or mother, are one lower berth each.

(iv) Except as indicated in subdivision (iii) of this subparagraph, authorized accommodations for dependents shall be determined in accordance with the following table. For this purpose, an upper berth shall never be considered adequate for occupancy by two persons regardless of age: [1]

Dependent	Lower berth	Upper berth
1 individual (no other dependents)	1	-------
2 individuals not capable of being paired	1	1
3 individuals not capable of being paired	2	1
4 individuals not capable of being paired	2	2
1 pair	1	-------
1 pair and 1 other individual	1	1
1 pair and 2 other individuals	2	1
1 pair and 3 other individuals	2	2
1 pair and 4 other individuals	3	2
2 pairs	2	-------
2 pairs and 1 other individual	2	1
2 pairs and 2 other individuals	2	2
2 pairs and 3 other individuals	3	2
2 pairs and 4 other individuals	3	3
3 pairs	3	-------
Each additional individual not scheduled above	-------	1
Each additional pair not scheduled above	1	-------

[1] As a bedroom can be obtained on one adult railroad ticket, such accommodations will be furnished when available in lieu of berth space when otherwise it would be necessary to furnish a half-fare railroad ticket for a child under 5 years of age to obtain an upper berth.

(3) *For night travel outside continental United States, Canada and Mexico.* Dependents will be transported in accordance with directives of the oversea commander of the area in which the travel is performed.

§ 171.5 Sea transportation.

(a) *Commercial water transportation (not procured en-bloc)*—(1) *Selection of steamship line.* When travel at Government expense is authorized in commercial ships, it is mandatory that such travel be performed on ships registered under the laws of the United States unless the nonavailability of such ships or the necessity of the mission requires the use of a ship registered under foreign flag. Any determination of the need for utilizing a foreign flag ship is under the express provision of section 901 of the Merchant Marine Act of 1936 (49 Stat. 2015, Ch. 858, Title IX). When the time permits, a description of the circumstances should be submitted to the Comptroller General for advance decision prior to procuring transportation in a foreign flag ship. When two or more steamship lines operate ships registered under the laws of the United States between competitive points, consideration will be given to the possibility of dividing passenger business among such competing lines, taking into consideration the proximity and accessibility of ports of embarkation and debarkation to the original starting point and destination, with a view to selecting the steamship line which will meet requirements and provide satisfactory service at the least cost to the Government.

(i) *Classes of accommodations.* Passenger ships provide various classes of accommodations designated first-class, cabin-class, second-class, tourist-class, and third-class. On ships providing only one class of accommodations, such accommodations are normally referred to as first-class or cabin-class. On ships providing two or more classes of accommodations, the class next below first-class whether designated second-class, cabin-class, or tourist-class will be considered as second-class accommodations. Accommodations next below second-class are usually designated third-class or tourist-class accommodations.

(2) *Authorized accommodations for individuals*—(i) *Individual defined.* For the purpose of this part, an individual, excluding categories shown in the Joint Travel Regulations, Chapter 5, Parts B, C, and G, but including those shown in Parts A and F, is defined as a member or civilian employee traveling under one order, or dependents without regard to the number.

(ii) *Authorized accommodations.* (a) Members, including categories shown in the Joint Travel Regulations, Chapter 5, Parts A and F, and civilian employees, are entitled to lowest first-class rate accommodations when traveling as individuals. When lowest first-class rate accommodations are not available at the time reservations are made, such persons will be entitled to the lowest first-class rate accommodations available by the facility authorized to be used. When no first-class rate accommodations are available, such persons will be provided the next lowest class accommodations, if available.

(*b*) Dependents are entitled to lowest first-class rate accommodations. When dependents accompany the sponsor or for administrative but not personal reasons they travel at a later date, they are entitled to the lowest first-class rate accommodations available by the facility authorized to be used at the time reservations are made. If delay in travel is for personal reasons, the cost of accommodations in excess of the lowest first-class rate accommodations will not be authorized at Government expense.

(iii) *Authorized accommodations for groups*—(*a*) *Group defined.* For the purpose of this part, a group is defined as a movement of three or more military personnel from the same point of origin to the same destination under one order which is specifically designated as "group travel order." The accommodations authorized for group travel will be equally applicable for categories shown in the Joint Travel Regulations, Chapter 5, Parts B, C, and G, without regard to the number traveling.

(*b*) *Authorized accommodations.* (*1*) Officers and Warrant Officers or civilian employees of equivalent status traveling in a group travel status are entitled to the lowest first-class accommodations available.

(2) Enlisted members or civilian employees of equivalent status traveling in a group travel status are entitled to lowest second-class rate accommodations available at the time reservations are made. When second-class rate accommodations are not available at the time reservations are made, such persons are entitled to the lowest first-class rate accommodations available by the facility authorized to be used. When neither first or second-class accommodations are available, accommodations in third-class or tourist-class (when designated as a class below second-class) will not be used without the specific approval of the appropriate authority in the headquarters of the Military Department concerned.

(iv) *Exclusive use of stateroom for security purposes.* The exclusive occupancy of a stateroom is authorized for security purposes in the transportation of classified documents or Government property, provided specific authority for the exclusive use of a stateroom is contained in the travel orders. The lowest first-class rate stateroom available, which meets the military requirements, will be furnished.

(b) *Commercial water transportation (procured en-bloc by a military agency).* First-class accommodations in commercial ships procured en-bloc on a lease or charter basis are considered to be Government transportation. Second-class, cabin-class, or tourist-class accommodations, when so designated to indicate the class of accommodations next below first-class, similarly procured, are also considered to be Government transportation.

(c) *Military Sea Transportation Service*—(1) *Classes of accommodations.* Ships of the Military Sea Transportation Service provide two classes of accommodations designated cabin-class and troop-class. Cabin-class accommodations in ships of the Military Sea Transportation Service will be considered the equivalent of first-class accommodations in commercial ships. Troop-class accommodations in ships of the Military Sea Transportation Service are primarily designated for military purposes and have no comparable class in commercial ships.

(2) *Authorized accommodations*—(i) *Members and civilian employees.* Male officers, male civilian employees of equivalent status, as shown in table of military-civilian relationships contained in Department of Defense Instruction 1000.1, "Issuance of Identity Cards Required by the Geneva Conventions", female officer members, female enlisted members and female civilian employees are entitled to cabin-class accommodations. Male enlisted members entitled to transportation of dependents at Government expense and male civilian employees of equivalent status when traveling with dependents are entitled to cabin-class accommodations and when traveling without dependents are entitled to troop-class accommodations except that cabin-class accommodations may be furnished provided such assignments can be made without displacing other persons entitled to cabin-class accommodations. Male enlisted members not entitled to transportation of dependents at Government expense and male civilian employees of equivalent status are entitled to troop-class accommodations except that when traveling with dependents cabin-class accommodations may be furnished provided such assignments can be made without displacing other persons entitled to cabin-class accommodations.

(ii) *Dependents.* Dependents of members and civilian employees are entitled to cabin-class accommodations in dependent-carrying troopships.

(iii) *Special categories of Uniformed Personnel.* Midshipmen and cadets of the Service academies are entitled to cabin-class accommodations in dependent-carrying troopships and in austerity troopships.

PART 175—TRANSPORTATION BY MILITARY AIR TRANSPORT SERVICE

Sec.

175.1 Purpose and scope.
175.2 Definitions.
175.3 Uniform.
175.4 Responsibilities.
175.5 Policy.
175.6 Categories.
175.7 Additional authorization.
175.8 Revenue traffic charges.
175.9 Air movement designator requirements.
175.10 Special requirements.
175.11 Baggage allowances.
175.12 Diversion to commercial carriers.

AUTHORITY: §§ 175.1 to 175.12 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 175.1 Purpose and scope.

This part prescribes the responsibilities and policies for the movement of traffic on scheduled Military Air Transport Service aircraft. It applies to all agencies utilizing or controlling space on Military Air Transport Service aircraft.

§ 175.2 Definitions.

(a) *Traffic.* Cargo, mail, passengers, and passengers' baggage.

(b) *Revenue traffic.* Traffic for which reimbursement to, or accounting by, the Department of Defense is required.

(c) *Nonrevenue traffic.* Traffic transported in the primary or official interest of the Department of Defense.

(d) *Baggage.* All equipment, clothing, except one overcoat or raincoat, and items of any other kind carried by or accompanying a passenger and not documented as cargo.

(e) *Air movement designator.* A combination of code letters and numbers assigned by the issuing agency as a medium of identification and for the establishment of precedence of movement of traffic.

(f) *Military Air Transport Service aircraft.* As used in this part, only those aircraft of the Military Air Transport Service organization operated for the purpose of performing transport functions (excludes subordinate nontransport services of Military Air Transport Service, such as Air Weather Service, Air Rescue Service, and so forth).

§ 175.3 Uniform.

Military personnel of the armed services will be in uniform when traveling on military aircraft unless civilian clothing is specifically authorized in competent orders.

§ 175.4 Responsibilities.

The Military Air Transport Service, under the command and direction of the Chief of Staff, United States Air Force, is responsible for air transportation for the Department of Defense as directed by the Secretary of Defense. The Director of Transportation, Headquarters, United States Air Force is responsible for monitoring traffic management aspects of the Military Air Transport Service.

§ 175.5 Policy.

In addition to the competent authorities of the Army, Navy, Air Force, Marine Corps, and Coast Guard listed in paragraph (a) of this section, certain orders issued by Canadian authorities will be honored for the purpose of providing military air transportation in accordance with specific directives governing reciprocal transportation between Canada and the United States. This eligibility listing is not to be construed as indicating the relative order of movement. The following is the only traffic authorized to be carried on transport aircraft operated by the Military Air Transport Service:

(a) That traffic which is directed or authorized by written orders issued by competent authorities of the Departments of the Army, the Navy, and the Air Force authorizing air transportation without reimbursement therefor when the traffic is primarily of official concern to the Department of Defense. The determination of whether traffic is primarily of official concern to the Department of Defense is a responsibility of the Secretaries of Defense, Army, Navy, or Air Force, or by delegation of authority to those agencies authorized to establish priority of movement via military air by current Departments of the Army, Navy, and Air Force directives. The priority of traffic movement shall be determined by the Department concerned in accordance with the classification of military necessity established by the individual Departments. Assigned air movement designator will be included in all orders, movement directives, or shipping documents for all traffic to or from the continental United States or between areas outside the continental United States.

(b) That traffic which is directed or authorized by competent authorities of the Departments of the Army, the Navy, or the Air Force, with reimbursement therefor, in accordance with the provisions of applicable law, when the traffic is of official concern to the executive departments or agencies, or to the legislative or judicial branches of the Government. Requests for transportation in this category should be directed to the Chief of Staff, United States Air Force, with procurement authority chargeable or a clear indication of the method by which reimbursement is to be accomplished.

(c) That traffic which is certified by the interested Department or agency as being in the national interest may be furnished air transportation to or from places outside the continental United States with reimbursement therefor. In cases covered by this section, it will be within the purview of the Secretaries of the Army, Navy, or Air Force to refuse to authorize the transportation if deemed advisable. As a matter of general policy, the aviation organizations of the armed services will not be placed in a position of competing with United States commercial air transportation.

§ 175.6 Categories.

Categories of traffic eligible for transportation via aircraft of the Military Air Transport Service will be limited to traffic moving under competent Army, Navy, or Air Force orders, or movement authorities directing or authorizing air transportation subject to the conditions set forth in paragraphs (a) through (e) of this section:

(a) *Personnel, space requirement, nonrevenue*—(1) *Category 1.* Military personnel of the Department of Defense, including United States Coast Guard, on active duty when traveling under competent permanent change of station, temporary duty, or emergency leave orders, including all foreign military personnel, sponsored by the Secretaries of Defense, Army, Navy, or Air Force.

(2) *Category 2.* Civilian employees of the Department of Defense when traveling under competent permanent change of station orders or properly executed transportation agreements, temporary duty, or emergency leave orders including all civilians specifically sponsored by the Secretaries of Defense, Army, Navy, or Air Force.

(3) *Category 3.* Civilian personnel of Government contractors and technical advisors to military authorities, when engaged in activities of the Department of Defense which require such air travel. Such transportation may be furnished when specified in the contract or determined to be in the best interest of the Department of Defense.

(4) *Category 4.* Members of Congress and other Federal officials when the travel is in the primary interest of the Department of Defense and when authorized by the Secretary of Defense or one of the military departments.

(5) *Category 5.* Military personnel of the National Guard and Reserve Components when traveling on matters of official concern to the Department of Defense.

(6) *Category 6.* Dependents of military and civilian personnel of the Department of Defense traveling pursuant to competent permanent change of station orders or other competent travel authorizations, including such dependents when traveling to and from the continental United States or between oversea areas for medical reasons.

(7) *Category 7.* American Red Cross personnel when serving with the Department of Defense in oversea areas, provided that they are in uniform and such travel is in the performance of Red Cross duties incident to change of station or temporary duty. Emergency leave travel is authorized between oversea areas and zone of interior aerial ports. Military air travel will not be authorized within the zone of interior.

(8) *Category 8.* Dependents of military and civilian personnel of the Department of Defense stationed overseas when traveling to or from the United States for the purpose of attending school (limited to one roundtrip each school year).

(9) *Category 9.* Commissioned officers of the Public Health Service detailed for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard, or when traveling in connection with matters primarily of official concern to the Department of Defense.

(10) *Category 10.* British, Canadian, and Australian exchange officers on duty with the Army, Navy, Air Force, or Marine Corps while in a duty status, upon presentation of orders issued by competent authority.

(11) *Category 11.* Dependents of officials of the other executive departments or agencies, of the judicial branch, or of the legislative branch when accompanied by their principals when authorized by the Secretary of Defense.

(12) *Category 12.* Military personnel dependents in a patient status in the continental United States whose movement from one military hospital to another within the continental United States has been authorized, or who are initially admitted to a military hospital. When so determined by the hospital commander originating the movement of minor dependents (patients), an adult dependent member of the immediate family may be designated as an attendant and is authorized transportation.

(13) *Category 13.* Any person in case of an emergency involving catastrophe or possible loss of life when other means of suitable transportation are not available, feasible, or adequate.

(14) *Category 14.* Any other individual not listed in this paragraph when traveling on competent orders authorizing military air transportation in connection with matters primarily of official concern to the Department of Defense.

NOTE: The following are limiting conditions governing travel of certain categories of personnel:

(a) Dependents who are beyond the 188th day of pregnancy will not be accepted for air transportation.

(b) Infants under six weeks of age will not be accepted for air transportation.

(c) Children under 12 years of age will not be accepted for air transportation unless accompanied by parent or other responsible adult designated by the parent.

(b) *Personnel, space requirement, revenue*—(1) *Category 15.* Persons traveling in the interest of other governmental departments or agencies, with reimbursement by the department or agency concerned.

(2) *Category 16.* Civilian employees of the Department of Defense in areas outside the continental United States who are recruited from outside the duty area on the basis of a signed employment agreement providing for return transportation and who are separated at an oversea area under circumstances that do not convey eligibility for return transportation at Government expense for the purpose of repatriation to the aerial port which is within the country from which originally recruited and which is most conveniently situated to the oversea command location when military sea transportation service is not available. The direct cost of such travel is to be paid for by the individual or withheld from the money due the individual by the Government. Traffic in this category will be granted the lowest class of priority.

(3) *Category 17.* Civilian personnel or Government contractors and technical advisors to military authorities when engaged in activities of the Department of Defense in areas outside the continental United States who default in their contracts and whose tour of duty is terminated for the convenience of the Government, for the purpose of repatriation to the continental United States when Military Sea Transport Service is not available.

(4) *Category 18.* Nongovernmental passengers upon certification of the head of the interested Executive department or agency that the furnishing of such transportation is in the national interest, and that transportation by commercial means is not available or adequate.

(5) *Category 19.* Officials of the other executive departments or agencies, of the judicial branch, or of the legislative branch, and their dependents, on a nonsponsored trip when authorized by the Secretary of Defense.

(6) *Category 20.* Civilian personnel of Department of Defense agencies operating on nonappropriated funds.

(c) *Personnel, space available, nonrevenue.* The term "space available basis," means space that is surplus after all space requirement traffic has been accommodated and which would otherwise be unused.

(1) *Category 21.* Military personnel of the Department of Defense, U. S. Coast Guard, and foreign exchange officers, including British, Canadian, and Australian, on duty with the Department of Defense when traveling in connection with sick or ordinary leave.

(2) *Category 22.* Persons holding the Congressional Medal of Honor, on space available basis within the continental United States, upon presentation of proper identification. These persons will sign a certificate that the travel is not for personal gain, in accordance with Part 180 of this chapter.

NOTE: Whenever travel is performed in one direction on a permissive basis, that is military personnel on leave, military and civilian personnel under emergency leave or accompanied travel of dependents, there is no guarantee of space on any return flight and the Government will be under no obligation to return the individual to point of origin or to any other destination.

(d) *Cargo-nonrevenue.* (1) Cargo of the Department of Defense.

(2) Mail of the Department of Defense and of military personnel and personal mail of those civilians authorized to use military postal facilities.

(3) Cargo carried as a matter primarily of official concern to the Department of Defense.

(4) Cargo of the American Red Cross for use of the Department of Defense.

(5) Any cargo in case of catastrophe, the lack of which would cause loss of life, when other means of transportation are not available, feasible, or adequate.

(e) *Cargo-revenue.* (1) Cargo moving in the interest of other governmental departments or agencies, with reimbursement from the department or agency concerned.

(2) Nongovernmental cargo upon certification of the head of the interested executive department or agency that the furnishing of such transportation is in the national interest, and that transportation by commercial means is not available or adequate.

(3) Cargo of Department of Defense agencies operating on nonappropriated funds.

§ 175.7 Additional authorization.

(a) Requests for transportation of traffic not covered by this part will be referred to the Chief of Staff United States Army; Chief of Naval Operations, or the Director of Transportation, Headquarters United States Air Force, depending upon the department involved.

(b) All requests for Military Air Transport Service special missions not involving aircraft of the United States Air Force Special Air Mission Fleet will be submitted through appropriate channels to the Director of Transportation, Headquarters United States Air Force.

(c) The general policy of the Department of Defense is to prohibit travel of dependents on other than competent orders when the transportation is in connection with permanent change of station assignment of the principal. However, under extenuating circumstances in individual cases, certain exceptions may be authorized by the Secretary of Defense; Secretaries of the Departments; chairman of the Joint Chiefs of Staff; Chief of Staff, United States Army; Chief of Naval Operations; Chief of Staff, United States Air Force, and Commandant of the Marine Corps, to allow travel on a space-available basis.

§ 175.8 Revenue traffic charges.

(a) Charges will be assessed for the transportation of traffic qualifying under § 175.6(b) and (e). Rates to be charged will be determined by the Chief of Staff, United States Air Force. Such charges will be reasonable and, except as provided in paragraph (b) of this section, not less than the current commercial rates, including taxes. Responsibility for collection of such charges will rest with the Chief of Staff, United States Air Force.

(b) Reimbursement by the Government agency concerned for traffic authorized under § 175.5 will be on the basis of the cost thereof as determined by the Chief of Staff, United States Air Force, in accordance with section 601 of the Economy Act of 30 June 1932, as amended (47 Stat. 417, as amended; 31 U. S. C. 686).

§ 175.9 Air movement designator requirements.

All traffic (passengers and cargo) authorized in this part is subject to the establishment of an air movement designator in accordance with established procedures.

(a) Traffic scheduled for movement to an aerial port of embarkation for shipment to points outside the continental United States will not be forwarded to the aerial port of embarkation unless the traffic has been assigned an air movement designator and appropriately cleared.

(b) Limitation: In the establishment of air movement designators, traffic referred to in § 175.6(a) and (d) will, at all times, be accorded primary consideration. Traffic, the transportation of which is authorized under § 175.6(b) and (e), will not be carried if it can reasonably be handled by United States civil air carriers, nor will such traffic be carried on any given route if in the opinion of the Departments of the Army, Navy, or Air Force, United States civil air carriers are adequate to handle such traffic.

§ 175.10 Special requirements.

(a) All traffic to be moved on Military Air Transport Service aircraft must meet carrier acceptability requirements with respect to packing, marking, and documentation. Appropriate records will be maintained to provide essential information concerning diversions, intransit data, and receipt and delivery of traffic.

(b) Military Air Transport Service will be responsible but not accountable for all traffic carried, with responsibility beginning at the station where traffic is accepted and ending upon delivery at the carrier destination airport.

(c) The Chief of Staff, United States Air Force or the Commander, Military Air Transport Service may effect emergency changes in the transport operations and the diversion of traffic already en route, with notice to the shipping agency as to alternate means of transportation utilized, when such becomes necessary. Any diversion of traffic at aerial ports of embarkation will be the responsibility of the appropriate air traffic coordinating officer.

§ 175.11 Baggage allowances.

(a) *Normal baggage allowance.* The normal baggage allowance for all passengers, except those covered by paragraph (c) of this section, traveling on Military Air Transport Service aircraft will be limited to 65 pounds of baggage.

(b) ***Excess baggage allowance.*** An excess baggage allowance may be granted by agencies authorized to establish air movement designators. Excess allowances, when authorized, will be included in individual's orders.

(c) ***Baggage allowance exceptions.*** (1) A baggage allowance of 100 pounds may be authorized for dependent females and dependent children (male and female) who are traveling to oversea destinations. Any authorized excess baggage will be indicated in the individual's orders.

(2) Military, naval, and air attaches and mission personnel are authorized a baggage allowance of 100 pounds while traveling to oversea destination. Any authorized excess baggage will be indicated in the individual's orders.

(3) Personnel evacuated as patients by air from an oversea area or within the continental United States are authorized 100 pounds of baggage.

(d) ***Baggage not covered by this part.*** This part limits only the baggage which may be carried by passengers on Military Air Transport Service aircraft, as provided in this section, and does not limit or increase the baggage which may be transported by other means of transportation on change of station, as prescribed by existing directives.

§ 175.12 Diversion to commercial carriers.

Diversion of cargo from Military Air Transport Service aircraft and forwarding by commercial carrier to consignee will be in accordance with existing directives.

PART 180—TRANSPORTATION BY AIRCRAFT OTHER THAN MILITARY AIR TRANSPORT SERVICE

Sec.

180.1 Purpose and scope.
180.2 Definitions.
180.3 Uniform.
180.4 Authorization.
180.5 Transportation of dependents.
180.6 Service attachés and mission chiefs (including MDAP and other specialized military missions).
180.7 Additional authorizations.
180.8 Travel with reimbursement.
180.9 Authority for certain nongovernmental transportation.
180.10 General policy on nongovernmental transportation.
180.11 Delegation of authority.
180.12 Certification.
180.13 Release from claim for injury or death.

AUTHORITY: §§ 180.1 to 180.13 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 180.1 Purpose and scope.

This part establishes the policy for the authorization of traffic on aircraft of the Department of Defense other than scheduled aircraft operated by the Military Air Transport Service under the provisions of Part 175 of this chapter.

§ 180.2 Definitions.

(a) *Traffic.* Cargo, mail, passengers, and passengers' baggage.

(b) *Revenue traffic.* Traffic for which reimbursement to, or accounting by, the Department of Defense is required.

(c) *Nonrevenue traffic.* Traffic transported in the primary official interest of the Department of Defense.

(d) *Competent authority.* An official bearing the title of commanding officer or higher authority in the chain of command of the Army, Navy, Air Force, Marine Corps, Coast Guard (when assigned to the operational control of the Navy), the Reserve components of the aforementioned organizations and the National Guard.

§ 180.3 Uniform.

Proper uniform will be worn under all normal conditions. Civilian clothes may be worn in exceptional circumstances when authorized by competent authority.

§ 180.4 Authorization.

Competent authorities listed in § 180.2 (d) may authorize traffic of the following categories transported on military aircraft without reimbursement. Any traffic transported under the provisions of this part will be properly identified.

(a) Military personnel of the United States (including midshipmen or cadets of the Army, Navy, Air Force, and Coast Guard) in active Federal Service, while in a duty status on a requirement basis, or while in a leave status on a space available basis. Orders directing permanent change of station or temporary duty travel, or authorizing leave, will constitute authority.

(b) Military personnel of the National Guard and members of the Reserve components and retired military personnel whose names appear on the published retired list of the Army, Navy, Air Force, Marine Corps, or Coast Guard: Upon presentation of orders issued by competent authority or presentation of proper identification on a space-available basis within the zone of the interior after all priority requirements have been satisfied. The certificate required by § 180.12 must be executed. Proper identification for the services is as follows:

Service	Reserve	Retired
Army	NME 2A (Reserve) Form DD2A (Reserve)	Form DD2A (Retired).
Navy	Form DD2N (Inactive).	Form DD2N (Inactive).
Marines	NavMc 178-PD	Form DD2MC.
Coast Guard	Form DD2CG (Inactive).	Form DD2CG (Retired).
Air Force	Form DD2AF (Reserve).	Form DD2AF (Retired).

(c) State National Guard officials, including State governors, Lieutenant governors, and adjutants general when the travel within the zone of interior is connected directly with the National Guard activities. Other persons as specified by the above when prior approval has been obtained from the Chief of Staff, Army; Chief of Naval Operations; or Chief of Staff, United States Air Force.

NOTE: Provisions governing passengers in National Guard aircraft will be promulgated by the Chief, National Guard Bureau.

(d) Reserve Officers' Training Corps students of the Army, Navy, and Air Force, as follows:

(1) Summer camps: Reserve Officers' Training Corps students of the Army, Navy, and Air Force at summer camps or on active training duty on authorized flights upon approval of Reserve Officers' Training Corps camp commander or upon presentation of orders from competent authority.

(2) During school year, provided that:

(i) Aircraft is on an authorized local flight.

(ii) Students are undergoing formal Reserve Officers' Training Corps and academic training during a regular school term and the flight is in connection with this training.

(iii) Students are in proper uniform.

(e) Civil Air Patrol personnel, as follows:

(1) Civil Air Patrol senior members are authorized to be carried as passengers in military aircraft when engaged in the performance of official Civil Air Patrol duties, upon presentation of orders authorized by the National Commander, Civil Air Patrol, and provided that such transportation does not interfere with normal military activities.

(2) Civil Air Patrol cadets participating in Civil Air Patrol activities when authorized by the National Commander, Civil Air Patrol. Normally, flights will be of local orientation type not involving special hazard, and will be accomplished to permit Civil Air Patrol cadets to travel as passengers on routine training flights without additional expense to the Government.

(f) Properly registered (senior) explorers of the Boy Scouts of America participating in scout activities on local orientation flights, provided that:

(1) Multiengine aircraft is used.

(2) Each explorer presents, through his local scout executive, a completed Boy Scouts of America Form O–1518, Recognition and Approval for Senior Explorers Orientation Flights, which includes a statement of parents' or guardian's consent.

(3) Prior approval is obtained from the Chief of Naval Operations for Navy aircraft.

(g) Persons holding the Congressional Medal of Honor, on space-available basis within the zone of interior upon presentation of proper identification and valid authorization card issued by either the Departments of the Army, Navy, or Air Force. (The certificate required by § 180.12 must be executed.)

(h) Red Cross personnel and personnel of other nationally recognized welfare agencies when serving with the armed services in the field, provided that they are in uniform and when such flights are in the performance of their official duties.

(i) Commissioned officers of the Public Health Service detailed for duty with the Army, Navy, Air Force, or Coast Guard, while in a duty status.

(j) Any person in case of an emergency involving catastrophe or possible loss of life, or in an emergency when other means of suitable transportation are not available, feasible, or adequate.

(k) Any person deputized to participate in fighting forest fires or engaged in disaster relief activities upon request of the responsible Federal or State agency.

(l) Any person when the travel is necessary for the preservation of peace, order, and safety of the Nation when such travel is requested by the responsible Federal or State officials.

(m) Civilian employees of the Department of Defense, of other Government agencies, of Government contractors, and technical advisers to military authorities when engaged in activities for the Department of Defense and traveling on orders issued by competent authority.

(n) Certain Canadian military personnel and civilian employees of the Canadian Defense establishment when traveling on official Canadian orders in accordance with Joint Canadian-United States Reciprocal Agreement on air transportation.

(o) British, Canadian, and Australian exchange officers on duty with the Army, Navy, or Air Force while in a duty status, upon presentation of orders issued by competent authority. These officers may be authorized space-available transportation while in a leave status, upon presentation of proper identification.

(p) Cargo and mail:

(1) Cargo and mail of the Department of Defense.

(2) Cargo of the American Red Cross for use by the Department of Defense.

(3) Any cargo in case of catastrophe, lack of which would cause loss of life when other means of transportation are not available, feasible, or adequate.

§ 180.5 Transportation of dependents.

The general policy of the Department of Defense is to prohibit travel of dependents in military aircraft unless the travel is performed in connection with permanent change of station assignment of the principal. However, under extenuating circumstances in individual cases certain exceptions may be authorized by the Secretary of Defense, Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Chief of Staff, United States Army; Chief of Naval Operations; Chief of Staff, United States Air Force; and the Commandant of the Marine Corps to allow accompanying travel of dependents on a space-available basis.

§ 180.6 Service attachés and mission chiefs (including MDAP and other specialized military missions).

Attachés and military mission chiefs are authorized to permit personnel of the following categories to ride as passengers in attaché or mission aircraft on a space-available nonreimbursable basis within their sphere of accreditation:

(a) Individuals listed in, and under the conditions of, § 180.4.

(b) United States ambassadors and ministers, or in their absence charge d'affaires, and members of their staffs designated by the ambassador, minister, or chargé d'affaires for the conduct of urgent Government business, except for normal permanent change of stations of such personnel.

(c) Distinguished nationals and members of the armed forces of foreign countries.

(d) Accompanying travel of dependents of attaché, mission, or military commission personnel.

(e) Use of attaché aircraft by Members of the Congress: In those instances where Congressional committees or members thereof find it necessary while abroad to request travel in Air Force or Navy aircraft allocated to the attachés or military missions, such trips may be authorized if commercial facilities are not available, if such use of the attaché or mission aircraft will not interfere in any way with the normally assigned mission of the aircraft, and provided that the purpose of the trip is specifically indicated by the chairman of the committee or subcommittee or member as being essential to the mission of the committee, subcommittee, or member. Immediately after such flights the attaché will report to the Chief of Naval Operations or the Chief of Staff, United States Air Force, as appropriate, the following information:

(1) Explanation of circumstances which made the flight desirable.

(2) Dates of departure and return.

(3) List of passengers, with justification for presence of each.

(4) Destination of passengers.

(5) Stops en route and reasons therefor.

(f) Prior approval for travel outside the sphere of accreditation for all passengers not included in § 180.4 must be obtained from the Chief of Staff, United States Army; Chief of Naval Operations; or Chief of Staff, United States Air Force.

§ 180.7 Additional authorizations.

(a) Within the limitations imposed by public law and joint regulations, the Chief of Staff, United States Army; Chief of Naval Operations; Chief of Staff, United States Air Force, or the commander of any oversea echelon reporting direct to the Departments of the Army, Navy, or Air Force may authorize the following transportation without reimbursement: Any traffic, when the transportation is primarily of official concern to the Department of Defense. While nothing contained herein is intended to infringe upon the prerogatives of theater commanders, no such transportation will be authorized unless it is of direct concern to the Department of Defense and is required for the accomplishment of a military mission.

(b) The Secretary of Defense will act on all requests for nonreimbursable transportation received from the following Federal officials: (Requests received by subordinate commands for transportation of officials or accompanying travel of dependents will be forwarded to the appropriate military department for action.)

(1) Officials of other executive departments or agencies or the judicial branch.

(2) Officials of the legislative branch, except as provided in § 180.6(e) of this chapter.

NOTE: Members of Congress who hold valid Reserve status in the Army, Navy, Air Force, Marine Corps, or Coast Guard may continue to utilize air transportation in accordance with the provisions of § 180.4.

(c) Commands listed in § 180.11 may authorize nonreimbursable travel for:

(1) Representatives of information media (that is, press, radio, news, and so forth) on assignments to cover military events. (In addition, these representatives may be furnished transportation in the event of spot news stories of transcendent National interest for which commercial or charter facilities cannot be obtained.)

(2) Inspection personnel of the Civil Aeronautics Administration when engaged in the examination of rated pilot personnel of the armed services for civil pilot certificates or ratings.

(d) Cases arising at Army, Navy, or Air Force installations not covered by this part will be referred to the Chief of Staff, United States Army; Chief of Naval Operations; or Director of Transportation, Headquarters United States Air Force, Washington 25, D. C., depending on the installation involved, with complete information for decision.

§ 180.8 Travel with reimbursement.

In cases not covered by other authority in this part, the Departments of the Army, the Navy, and the Air Force may provide air transportation with reimbursement therefor, and subject to other restrictions, in accordance with the provisions of applicable law, when the traffic is of official concern to the executive departments or agencies, or to the legislative or judicial branches of the Government. Requests for transportation in this category should be directed to the departments concerned with procurement authority chargeable or a clear indication of the method by which reimbursement is to be accomplished.

§ 180.9 Authority for certain nongovernmental transportation.

To facilitate Department of Defense operations at home and abroad, non-Governmental passengers and cargo not within the scope of the foregoing provisions may be furnished air transportation by the Departments of the Army, the Navy, or the Air Force to or from places outside the continental United States, with reimbursement therefor, at not less than current commercial rates (including taxes) on certification by the head of the interested executive department or agency that the furnishing of such transportation is in the National interest. In cases covered in this section it will be within the purview of the Secretary of the Army, the Navy, or the Air Force to refuse to authorize the transportation, if considered advisable.

§ 180.10 General policy on nongovernmental transportation.

As a general policy, the aviation organizations of the armed forces shall not be placed in a position of competing with United States commercial transportation. Therefore, in no case will air transportation under the provisions of §§ 180.8 and 180.9 be provided on any given route, if, in the opinion of the Departments of the Army, Navy, or Air Force, United States civil air carriers adequate to handle the traffic are in operation on the route.

§ 180.11 Delegation of authority.

The following commands may authorize nonreimbursable travel for the individuals listed in § 180.7(c):

Department of the Army: Chief of Staff, United States Army; Commanding Generals, Oversea Commands; Commanding Generals, Continental Armies and Military District of Washington; Chief, Army Field Forces.

Department of the Navy: Chief of Naval Operations; Commanders-in-Chief of Fleets; Commandant, U. S. Marine Corps; Commanding Generals, Fleet Marine Forces; Commanding Generals, Air Fleet Marine Forces; Commander, Air Force, Atlantic Fleet; Commander, Air Force, Pacific Fleet; Chief of Naval Air Training; Commanders, Sea Frontiers; Commandants, Naval Districts and River Commands; Commandant, Coast Guard (when assigned Navy for operational control); Naval Force Commanders.

Department of the Air Force: Chief of Staff, United States Air Force; Commanders, Major Air Commands, Zone of Interior and Overseas; Commander Civil Air Patrol, USAF; Commanders, Numbered Air Forces and their equivalents.

Delegation of this authority below the commands listed above is not authorized.

§ 180.12 Certification.

In all cases when transportation is authorized in accordance with § 180.4 (b), (g), and (h), the following certificate will be accomplished for each individual.

I, _____, hereby certify that my request for, and acceptance of, transportation via military aircraft is not for personal gain nor will the business conducted in connection with this trip result in any form of remuneration to the undersigned.

_____

_____

Witnessed:

_____

_____

§ 180.13 Release from claim for injury or death.

Personnel specified in §§ 180.4 (j), (k), (l), 180.6(c) and 180.7(c)(1) will be required to sign the release form specified below, unless otherwise exempt when physically or mentally unable or in an emergency under the provisions of this part.

RELEASE

_____

(Place)

_____

(Date)

Know All Men By These Presents: Whereby, I _____ am about to take a flight or flights as a passenger in certain Army, Navy, and/or Air Force aircraft on _____; and whereas I am doing so entirely upon my own initiative, risk, and responsibility; now, therefore, in consideration of the permission extended to me by the United States, through its officers and agents to take said flight or flights, I do hereby, for myself, my heirs, executors, and administrators, remiss, release and forever discharge the Government of the United States and all its officers, agents, and employees, acting officially or otherwise, from any and all claims, demands, actions, or causes of action, on account of my death or on account of any injury to me or my property which may occur from any cause during said flight or flights or continuances thereof, as well as all ground and flight operations incident thereto.

_____

(Signature)

_____

(Witness)

_____

(Witness)

_____

(Name of person to be notified in emergency)

_____

(Address of person to be notified in emergency)

PART 184—MOVEMENT OF PERSONNEL VIA COMMERCIAL CONTRACT AND CHARTER AIR TRANSPORTATION

Sec.
184.1 Authority and scope.
184.2 Background.
184.3 Policy.

AUTHORITY: §§ 184.1 to 184.3 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 184.1 Authority and scope.

This part prescribes policies for the movement of personnel for the Department of Defense via commercial contract and charter air transportation within the continental United States and to, from and outside the continental United States.

§ 184.2 Background.

Regulations of civil air regulatory agencies govern such matters as the safety of air transportation, airworthiness of aircraft, proficiency of flight and maintenance crews, minimum performance limitations, minimum operating limitations, maximum weight limitations, and requirements for first aid and emergency equipment.

§ 184.3 Policy.

(a) The military departments will not knowingly take any action which will contribute to or result in a carrier violation of any requirement of civil air regulatory agencies.

(b) Pressurized aircraft:

(1) Except as provided in this section, all passenger or convertible aircraft used in service between points in the United States and overseas areas will be pressurized. This requirement may be waived by the procuring agency for certain traffic over specific routes when required by exigencies of the mission.

(2) All other factors being equal, preference will be given to the use of pressurized aircraft when tendered by the carriers for travel between points within the continental United States.

(c) Uniform minimum standards of service for the movement of personnel for the Department of Defense via commercial contract and charter air transportation shall be developed by the Single Manager for Traffic Management and the Single Manager for Airlift Service (in coordination with the military departments) in implementation of this part, as they apply within the continental United States and to, from, and outside the continental United States, respectively. Such standards will provide for comfort of travel and service which will be comparable to that available to and used by the general public. The standards established may be changed or waived by the procuring agency only when such action is required to meet exigencies of the mission.

PART 190—TRANSPORTATION OF HOUSEHOLD GOODS OF MILITARY AND CIVILIAN PERSONNEL

Sec.
190.1 Purpose, applicability and objective.
190.2 Definitions.
190.3 Policies.
190.4 Implementation.
190.5 Required action.

AUTHORITY: §§ 190.1 to 190.5 issued under sec. 202, 61 Stat. 500; 5 U.S.C. 171a.

§ 190.1 Purpose, applicability and objective.

(a) This part assigns authority and responsibilities and establishes policies relative to the transportation of household goods of military and civilian personnel of the Department of Defense (1) between points within the United States and (2) between the United States and other areas in through bill of lading service when the transportation is procured and arranged by an agency of the Department of Defense.

(b) The objective of this part is to assure high quality service to military and civilian personnel of the Department of Defense in the transportation of their household goods at the lowest over-all cost to the Government.

§ 190.2 Definitions.

As used herein:

(a) "Lowest over-all cost" means the aggregate of all costs which are known or can reasonably be estimated in connection with a shipment (including accessorial charges and amounts paid by the Government for loss and damage).

(b) "United States" means the forty-eight contiguous states and the District of Columbia.

§ 190.3 Policies.

(a) *Comparative costs among modes of transportation.* Section 303(c) of the Career Compensation Act of 1949, as amended (63 Stat. 802), provides in part that "* * * members of the uniformed services * * * in connection with a change of station (whether temporary or permanent) [shall be entitled] to transportation (including packing, crating, drayage, temporary storage and unpacking) of baggage and household effects, or reimbursement therefor * * * without regard to the comparative costs of the various modes of transportation." However, comparative costs of the various modes of transportation may be disregarded only when all carriers within the mode(s) which would produce the lowest over-all cost to the Government cannot provide the required services satisfactorily. In such instances the next lowest cost mode in which carriers can provide satisfactory service shall be used. The same principle shall apply in shipping household goods of civilian personnel when the transportation is procured and arranged by an agency of the Department of Defense.

(b) *Quality of service.* The quality of service provided by carriers shall be evaluated, in comparison with uniform standards prescribed by the Single Manager for Traffic Management, on the basis of all available information, including, but not limited to, the following:

(1) Reports of inspections of carrier facilities, transportation equipment, and service practices.

(2) Carrier performance reports by military and civilian personnel in connection with the transportation of their household goods.

(3) Official reports and actions by regulatory bodies which serve as factual indicators of carrier performance.

(4) Claims for loss and damage filed against carriers and the Government, and settlements thereof.

(c) *Qualified carriers.* Only those carriers shall be qualified which:

(1) Are authorized according to law to provide the required services;

(2) Provide adequate evidence of satisfactory transportation equipment and financial responsibility and reliability;

(3) Have made specific arrangements for the use of a satisfactory terminal facility consisting of a warehouse, loading and unloading area, and office sufficiently near the shipping activity or point of origin of the shipment to assure satisfactory service and permit ready inspection of the facility and the household goods stored or serviced therein;

(4) When required, have executed and filed with the appropriate office a household goods service tender or other document authorized in lieu thereof;

(5) Assume full responsibility for arranging for placing in a satisfactory terminal facility those shipments which require storage in transit at destination; and

(6) Provide high quality service.

(d) *Selection of carrier and distribution of traffic.* (1) Only those carriers shall be used which satisfy the requirements of paragraph (c) of this section at the lowest over-all cost to the Government. Connecting carriers on a joint carriage arrangement must meet all of the requirements for a qualified carrier except paragraph (c) (3) and (5) of this section when they are not terminating carriers.

(2) To the extent practicable, traffic shall be distributed by destination state or other area outside the United States among these carriers in equitable proportions, subject to the following:

(i) Carrier's ability to respond to requirements of the traffic offered for movement. When a carrier is offered a shipment and cannot perform, the carrier shall be charged with the offer in the same manner as if it had performed.

(ii) At each shipping activity, additional shipments shall be offered to a carrier or carriers when it has been determined that it or they provide an exceptionally high quality of service as compared with other carriers serving the activity. Such shipments shall not be charged to normal distribution.

(3) For traffic distribution purposes, carriers under effective common financial or administrative control shall be treated as a single carrier. The service tender, or document in lieu thereof, filed by each carrier shall include: (i) Name(s) of any other carrier(s) serving the same shipping activity which are under effective common financial or administrative control with the filing carrier, or (ii) a statement that the filing carrier is independent in finance and administration from all other carriers serving the same shipping activity.

(4) When consistent with other provisions of this paragraph (d):

(i) A request by the property owner for non-use of a carrier because of specific prior unsatisfactory service shall be honored if another carrier is available to move the shipment at the same over-all cost to the Government.

(ii) A preference for a carrier expressed by the property owner shall be honored.

(5) Traffic shall be distributed according to the originating carrier rather than according to agent. When a joint carriage arrangement is utilized, shipments transported thereunder shall be considered as having been received by each participating carrier qualified to serve the origin point.

(6) Records of traffic distribution shall be maintained by destination state or other area outside the United States.

(e) *Non-use of carriers.* (1) Carriers which have indicated in writing a desire to participate in Department of Defense traffic and are not considered to be qualified shall be notified in writing of their deficiencies. Such carriers shall be provided an opportunity to (i) appeal the decision, or to (ii) receive further consideration after correcting the deficiencies causing the refusal.

(2) Carriers which have been qualified, but which subsequently fail to provide high quality service, fail to meet the other requirements of paragraph (c) of this section, or commit unethical acts, shall be suspended in accordance with criteria and procedures established by the Single Manager for Traffic Management. Such carriers shall be provided an opportunity to (i) appeal the decision, or (ii) request requalification after correcting the deficiencies causing the suspension.

(f) *Use of storage in transit.* When commercial temporary storage is required in connection with transportation, storage-in-transit, as defined in carriers' tariffs, shall be used except when it is clearly evident, after considering such factors as over-all cost, and liability of the carrier versus that of the warehouseman, that the best interests of the Government and the property owner can be served only by the use of contract storage.

(g) *Use of United States carriers.* (1) The contracting carrier shall be a United States organization owned and controlled by citizens of the United States except when the Single Manager for Traffic Management has determined that a United States carrier cannot provide timely movement.

(2) When commercial ocean or air carriers or operators are to be used as a part of through bill of lading service between the United States and other areas, only ships of United States registry engaged in regular berth service or United States flag aircraft shall be used except when the Single Manager for Ocean Transportation or the Single Manager for Airlift Service, respectively, has determined they are not available for timely movement.

§ 190.4 Implementation.

(a) The Single Manager for Traffic Management is assigned authority and responsibility for:

(1) Implementing this part by prescribing, in agreement with the heads of the other military services, uniform joint regulations which will include but not be limited to: (i) Service tenders or other documents authorized in lieu thereof; (ii) standards for quality of service; (iii) procedures for measuring and comparing the quality of service provided by carriers; (iv) criteria and procedures for offering additional shipments and for qualifying, selecting, and suspending carriers; and (v) standards, formulae, and procedures for determining the lowest over-all cost.

(2) Assuring compliance with the above-mentioned regulations. Compliance will be accomplished through command channels of the military services, by appropriate means, including action based on recommendations by representatives of the Military Traffic Management Agency resulting from staff visits to all activities of the military services within the United States which ship household goods.

(3) Negotiating with commercial carriers and operators on all matters incident to the transportation of household goods within the United States and between the United States and other areas in through bill of lading service. Negotiations with commercial air or ocean operators for transportation as a part of through bill of lading service between the United States and other areas, or with air carriers for service within the United States under long term contracts, shall be conducted by the Single Manager for Airlift Service or the Single Manager for Ocean Transportation. The agreement of the Single Manager for Traffic Management shall be secured prior to the initiation of such negotiations.

(b) The service tenders or other documents authorized in lieu thereof referred to in paragraph (a)(1) of this section shall require carriers providing through bill of lading service between the United States and other areas to furnish after the fact reports of shipments to the Single Manager for Traffic Management, the Single Manager for Ocean Transportation, and the Single Manager for Airlift Service, as prescribed by uniform joint regulations.

(c) The Single Manager for Traffic Management shall consult with the Small Business Administration and appropriate representatives of the transportation industry on those portions of joint procedures, standards, criteria and regulations directly affecting the transportation industry prior to their publication.

(d) The Single Manager for Traffic Management shall develop, with the joint participation of the heads of the other military services, all standards, programs and procedures relative to the transportation of household goods. He shall also keep the Single Manager for Ocean Transportation and the Single Manager for Airlift Service informed on plans and other matters involving through bill of lading service between the United States and other areas.

(e) The implementation of this part shall not abrogate the functions and responsibilities of the Single Manager for Airlift Service or the Single Manager for Ocean Transportation, nor, in overseas areas, of the military services or the unified or specified commands.

§ 190.5 Required action.

(a) Joint regulations implementing this part shall be issued and action taken to assure uniformity of application in accordance with the schedule in paragraph (c) of this section. Such regulations, amendments thereto, and reissues thereof shall be coordinated with the Assistant Secretary of Defense (Supply and Logistics) prior to publication, and two copies of such documents shall be forwarded to him within thirty days after publication.

(b) Provisions of all regulations of the Military Departments implementing Parts 206 and 208, 32 CFR 1960 Cum. Supp., shall remain in effect until super-

seded by the joint regulations implementing this part.

(c) The schedule for implementation of this part is:

(1) September 1, 1960—Completion of printing and distribution of Implementing Regulations.

(2) September 7–December 1, 1960—Conduct conferences with Transportation Officers throughout the United States and overseas areas. Carriers will be invited to similar conferences.

(3) December 1, 1960—Effective date of Implementing Regulations.

PART 200—OCEAN TRANSPORTATION SERVICE

200.1 Authority and responsibility.
200.2 Background.
200.3 Organization.
200.4 Relationships.
200.5 Fiscal.

AUTHORITY: §§ 200.1 to 200.5 issued under R. S. 161, sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 22, 171a. Interpret or apply secs. 2201, 2202, 70A Stat. 119, 120; 10 U. S. C. 2201, 2202.

§ 200.1 Authority and responsibility.

(a) The Secretary of Defense has designated the Secretary of the Navy as the "Single Manager for Ocean Transportation" with authorities and responsibilities as assigned in Department of Defense notice of May 28, 1956 (21 F. R. 4022).

(b) The Single Manager Operating Agency for Ocean Transportation is titled the "Military Sea Transportation Service (MSTS)."

(c) The Single Manager has designated the Commander Military Sea Transportation Service as the Executive Director for Ocean Transportation.

(d) As a part of the Operating Forces of the Navy, the Military Sea Transportation Service is responsible, through the Commander Military Sea Transportation Service, to the Chief of Naval Operations. As a procuring activity, the Military Sea Transportation Service is responsible, through its Commander, to the Assistant Secretary of the Navy (Material).

(e) The Executive Director for Ocean Transportation is assigned the responsibility for the control, operation and administration of ocean transportation (by government-owned or commercial vessels) for personnel, cargo and mail for all agencies of the Department of Defense (excluding personnel and cargo transported by units of the fleet) and as authorized or directed, for other agencies or departments of the United States, subject to the policies of the Secretary of Defense.

§ 200.2 Background.

The Military Sea Transportation Service was originally established by directive of the Secretary of Defense dated August 2, 1949 (14 F.R. 5203). Pursuant to this directive, terms of reference, preliminary agreements and procedures were determined by designated representatives of the Chief of Staff, U.S. Army, the Chief of Naval Operations and the Chief of Staff, U.S. Air Force. These were promulgated by the Deputy Chief of Naval Operations (Logistics) under Serial 1825P421 of September 2, 1949 and concerned those matters incident to the formation of MSTS, including the transfer of ships, the assignment of personnel and pertinent details of support and operational procedures. All of the actions required by these terms of reference have been accomplished.

§ 200.3 Organization.

(a) The organization of the Military Sea Transportation Service is patterned to provide prompt and efficient means for the ocean transportation requirements of the military services and to afford sufficient flexibility to permit ready transition from peacetime to war or other emergency operations.

(b) Under the Commander Military Sea Transportation Service with headquarters at Washington, D. C., Area Commands, headed by Flag Officers, have been established as follows:

Eastern Atlantic and Mediterranean Area (ELMAREA), London.
Atlantic Area (LANTAREA), New York.
Pacific Area (PACAREA), San Francisco.
Western Pacific Area (WESTPACAREA), Yokosuka.

Sub-area Commands and Port Offices have been established at locations within Area Commands. Such Port Offices are subject to inactivation or relocation as circumstances warrant to meet the sea transportation needs of military personnel and cargo.

§ 200.4 Relationships.

(a) *Seller/customer relationship.* The Military Sea Transportation Service maintains a seller/customer relationship with the Army, Air Force, Navy and Marine Corps as shippers, charging for services rendered on the basis of predetermined tariffs approved by the Assistant Secretary of Defense (Comptroller).

(b) *Departmental headquarters.* The following departmental headquarters' offices are the points of contact with the Military Sea Transportation Service for the ocean transportation requirements of their respective departments:

(1) Department of the Army, Office of the Chief of Transportation.

(2) Department of the Air Force, Office of the Director of Transportation.

(3) Department of the Navy:

(i) Navy (Cargo) Bureau of Supplies and Accounts, (Personnel) Bureau of Naval Personnel.

(ii) Marine Corps (Cargo) Bureau of Supplies and Accounts, (Personnel) Bureau of Naval Personnel.

(c) *Space Assignment Committees.* Space Assignment Committees (or Joint Military Transportation Boards) have been established at headquarters and at each of the Area and Sub-area Commands. These Committees, for both cargo and passenger space allocations, are composed of representatives of each of the shipper services and are chairmanned by a representative of MSTS.

(d) *Joint policies.* Policies governing the transportation of cargo and passengers by the Military Sea Transportation Service have been jointly determined by the Departments of the Army, Navy and Air Force and promulgated by the Chief of Naval Operations.

(e) *Reporting shipping requirements and capabilities.* Procedures for reporting shipping requirements and capabilities and for the utilization of MSTS controlled shipping, berth space availability and reefer (i. e., refrigerated) shipping space have been agreed upon between the Commander, Military Sea Transportation Service and the Chief of Transportation, U. S. Army, on behalf of the Departments of the Army and Air Force. A similar agreement has been concluded with the Chief, Bureau of Supplies and Accounts on behalf of the Department of the Navy.

(f) *Accessorial and miscellaneous services.* The responsibilities of the Military Sea Transportation Service, the shipper services, and vessel operators for the performance of accessorial and other miscellaneous services, for the costs of such services, and for payment for such services have been determined in joint conferences and promulgated by the Secretary of the Navy in conjunction with the Departments of the Army and Air Force.

(g) *Unutilized traffic reservations (dry cargo.)* Agreement on the procedure for determining unutilized traffic reservations (dry cargo) on MSTS controlled ships has been reached between the Military Sea Transportation Service and the Departments of the Army, Navy and Air Force.

(h) *Ship and/or terminal demurrage (dry cargo).* Agreement on procedures for determining ship and/or terminal demurrage (dry cargo) under the MSTS Billing Regulations has been reached between the Military Sea Transportation Service and the Departments of the Army, Navy and Air Force.

(i) *Tanker/terminal demurrage.* Agreement on tanker/terminal demurrage procedure has been reached between the Military Sea Transportation Service and the Departments of the Army, Navy and Air Force.

(j) *Coastwise and intercoastal lift capacity.* Procedures have been developed by the Military Sea Transportation Service to keep the Executive Director of the Military Traffic Management Agency (see 21 F. R. 4355) informed as to the availability of opportune MSTS-operated coastwise and intercoastal lift capacity.

(k) *Technical and material matters concerning ships assigned to MSTS.* The responsibilities of the Commander Military Sea Transportation Service and the Chief, Bureau of Ships, Department of the Navy, for technical and material matters concerning ships assigned or to be assigned to the Military Sea Transportation Service have been promulgated by the Chief of Naval Operations.

(l) *Inspection and certification of ships by U. S. Coast Guard.* An agreement with the U. S. Coast Guard for the periodic inspection and certification of MSTS vessels of commercial types in accordance with the Coast Guard's Merchant Marine Safety Manual, has been promulgated by COMSTS (Commander Military Sea Transportation Service).

(m) In accordance with the policies of the Department of Defense for implementation of Single Manager Assignments, the Secretary of the Navy provides for direct coordination with the other Military Services and the Office of the Secretary of Defense on matters connected with the operation of the Ocean Transportation Service.

§ 200.5 Fiscal.

(a) The operations of the Military Sea Transportation Service are financed under the Navy Industrial Fund (Charter for Operation issued by the Assistant Secretary of Defense (Comptroller).

(b) The Military Sea Transportation Service follows a double-entry commercial type accounting system, maintained on an accrual basis and observes fiscal procedures in accordance with the directives of the Assistant Secretary of Defense (Comptroller) and the Comptroller of the Navy.

(c) Bills are submitted monthly by the Military Sea Transportation Service to each agency to whom services are rendered. Charges are computed on the basis of predetermined tariff rates and other factors calculated to recover the over-all cost of operations.

(d) To keep the customer services apprised of the results of its operations, the Military Sea Transportation Service prepares and distributes quarterly statistical and financial reports. These reports are reviewed and fully discussed with the MSTS staff by representatives of the shipper services at meetings held in conjunction with the monthly meetings of the Administrative Committee (see 21 F. R. 4023) scheduled in pursuance of paragraph III. C. 1 of Department of Defense Directive 5160.12 of January 31, 1956 (Policies for Implementation of Single Manager Assignments).

PART 210—REIMBURSABLE AND NONREIMBURSABLE TRAVEL

Sec.
210.1 Travel without reimbursement.
210.2 Travel with reimbursement.
210.3 Authority for certain nongovernmental travel.
210.4 General policy on nongovernmental travel.

AUTHORITY: §§ 210.1 to 210.4 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 210.1 Travel without reimbursement.

(a) *Sponsored travel.* Sponsored travel is defined as and confined to military air transportation furnished by a military department to its own officials or to Members of Congress and other Government officials or other persons to whom an invitation to travel has been extended by the Office of the Secretary of Defense or by one of the military departments. The military departments (Army, Navy and Air Force) are granted the authority to extend such invitations unilaterally to congressional committees and staff members, individual Members of Congress, and other Government officials, when the purpose of the travel is of primary concern to the military department extending the invitation.

(1) *Officials of the Department of Defense, Military Departments, etc.* Travel without reimbursement by officials and by military and civilian personnel of the Department of Defense, the three military departments and the boards and other agencies of the Department of Defense shall be governed by such regulations as the Secretary of Defense may from time to time prescribe.

(b) *Nonsponsored travel.* Nonsponsored travel is defined as and confined to military air transportation furnished pursuant to an official request upon the Secretary of Defense or to a military department from a department, agency or official of the Government outside of the Department of Defense.

(1) *Officials of other Executive Departments or agencies or Judicial Branch.* Requests for travel without reimbursement by Government officials of the other Executive Departments or agencies or Judicial Branch, whose travel is of primary interest to the Department of Defense, will be screened and approved in writing by the head of the agency to which the official is attached and the approved request then forwarded to the Secretary of Defense for disposition.

(2) *Officials of the Legislative Branch.* (i) Requests for travel without reimbursement by members of Congress and committee staff members, whose travel is of primary interest to the Department of Defense, should be submitted in writing to the Secretary of Defense by the Chairman of the Congressional committee upon which the member of Congress is serving. The committee chairman should state in his request whether or not he believes the travel to be of primary interest to the Department of Defense.

(ii) Members of Congress who hold valid reserve status in the Army, Navy, Air Force or Marine Corps may continue to utilize air transportation in accordance with existing policies of the respective military departments (Army, Navy and Air Force) applicable to the reserve officer and enlisted personnel of those departments.

(3) *Nonofficial passengers (sponsored and/or nonreimbursable trips).* Exceptions to the general policy of prohibiting accompanying travel of dependents on Department of Defense sponsored nonreimbursable trips are as follows:

(i) To permit travel of dependents of attaché mission or military commission personnel as may be designated by the respective Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations and the Commandant of the Marine Corps in overseas areas on attaché or mission aircraft.

(ii) To permit travel of dependents of other military or civilian personnel of the Department of Defense when authorized by the Secretary of Defense, or by the respective Secretaries of the Military Departments, the Chiefs of Staff of the Army and Air Force, the Chief of Naval Operations or the Commandant of the Marine Corps, as being in the national interest, essential to the proper accomplishment of the mission, desirable because of diplomatic or public relations, or as necessary for the health or morale of the principals concerned.

(iii) To permit the accompanying travel without reimbursement of dependents of officials of the other Executive Departments or agencies, of the Judicial Branch, or of the Legislative Branch, when accompanying their principals on a sponsored trip, and when authorized in each instance by the Secretary of Defense as being in the national interest, essential to the proper accomplishment of the mission, desirable because of diplomatic or public relations, or as necessary for the health and morale of the individuals concerned.

Requests for the accompanying travel without reimbursement on military aircraft by dependents of officials of the other Executive Departments or agencies, of the Judicial Branch, or of the Legislative Branch should be referred to the Secretary of Defense.

(4) *Nonofficial passengers (nonsponsored and/or reimbursable trips).* The rule generally prohibiting passage of dependents on Department of Defense sponsored nonreimbursable trips is also applicable to nonsponsored and/or reimbursable trips. However, exceptions to the rule may be authorized under certain circumstances. Current exceptions to the rule would be: To permit accompanying travel on nonsponsored and/or reimbursable trips of dependents of officials of other Executive Departments or agencies, of the Judicial Branch, or of the Legislative Branch when accompanying their principals and when authorized in each instance by the Secretary of Defense as being essential to the proper accomplishment of the mission, desirable because of diplomatic or public relations, or as necessary for the health or morale of the individuals concerned.

(5) *Use of attaché aircraft by Members of the Congress.* (i) In those instances where Congressional committees or members thereof find it necessary while abroad to request travel in Air Force or Navy aircraft allocated to the attachés or military missions, such trips may be authorized if commercial facilities are not available, if such use of the attaché or mission aircraft will not interfere in any way with its normally assigned mission, if the purpose of the trip is specifically indicated by the chairman of the committee or subcommittee or member as essential to the mission of the committee, subcommittee or member.

(ii) A report of each trip so flown will be made to the appropriate military department by the attaché concerned, which report will indicate the names and numbers of passengers carried, the duration, destinations and purpose of the trip.

§ 210.2 Travel with reimbursement.

In cases not covered by the preceding section, the Department of the Navy and the Department of the Air Force may provide air transportation with reimbursement therefor, and subject to other restrictions thereon, in accordance with the provisions of applicable law, when the traffic is of official concern to the Executive Departments or agencies, or to the Legislative or Judicial Branches of the Government. Requests for transportation in this category should be directed to the Secretary of the Air Force with procurement authority chargeable or a clear indication of the method by which reimbursement is to be accomplished.

§ 210.3 Authority for certain nongovernmental travel.

In order to facilitate Department of Defense operations at home and abroad, nongovernmental passengers and cargo not within the scope of the foregoing provisions may be furnished air transportation by the Department of the Navy or the Department of the Air Force to or from places outside of the Continental United States, with reimbursement therefor, at not less than current commercial rates (including taxes) upon certification by the head of the interested Executive Department or agency that the furnishing of such transportation is in the national interest. In cases covered in this paragraph it will be within the purview of the Secretary of the Navy or the Secretary of the Air Force to refuse to authorize the transportation if deemed advisable.

§ 210.4 General policy on nongovernmental travel.

As a general policy, the aviation organizations of the Armed Forces shall not be placed in a position of competing with United States commercial transportation. Therefore, in no case will air transportation under the provisions of the two paragraphs immediately above be provided on any given route if, in the opinion of the Departments of the Army, Navy or Air Force, United States civil air carriers adequate to handle the traffic are in operation on the route.

SUBCHAPTERS G THROUGH L—[RESERVED]

SUBCHAPTER M—MISCELLANEOUS

PART 251—PROCUREMENT INSPECTION STAMPING

§ 251.1 Procurement inspection stamping.

(a) Materiel which is government inspected at origin or place of manufacture shall be stamped with the appropriate DOD procurement inspection approval stamp. Such stamping will indicate to government personnel that the materiel has been government inspected and approved for further processing, shipping or subsequent acceptance

(b) The stamping of each individual item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, shipping documents or lot routing tickets adequately serves to provide the necessary indication of inspection status and to control or facilitate the movement of materiel.

(c) The only two authorized forms of DOD procurement inspection approval stamping are:

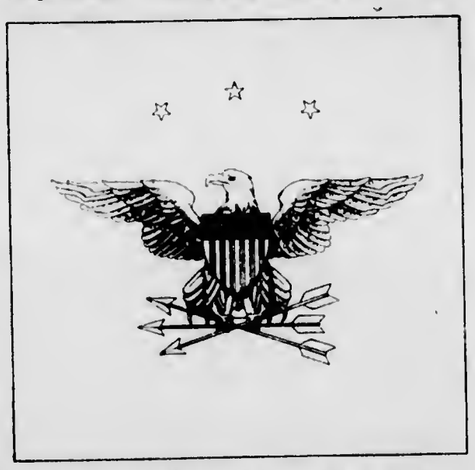
(1) Stamping to indicate complete compliance with inspection requirements (The square stamp)

(2) Stamping to indicate partial compliance with inspection requirements. (The circle stamp)

(d) When a DOD procurement inspection approval stamp is affixed to any materiel, it shall not be construed to mean that the materiel has or has not been accepted by the government.[1]

(e) The use of the DOD Procurement Inspection Approval Stamps will be governed by the following procedures:

(1) *Complete (Square) Inspection Approval Stamp.* This stamp shall be used by or at the direction of the government inspector to identify prime or sub-contract materiel which has successfully passed complete inspection. Complete inspection approval stamping shall identify for government personnel materiel which is in complete conformance with all inspection requirements applicable to the materiel at the time and place of inspection. Complete inspection approval stamping involving any items, parts or components identified previously for partial inspection approval shall establish that the materiel which was once partially approved has subsequently received complete inspection approval. One imprint of the square stamp will serve to void multiple partial approvals.



(2) *Partial (Circle) Inspection Approval Stamp.* This stamp shall be used by or at the direction of the government inspector to identify prime or sub-contract materiel which has successfully met only some portion of the inspection requirements applicable to the materiel at the time and place of inspection. Partial inspection approval stamping shall identify for government personnel materiel which complies with all inspection requirements applicable at the time and place of inspection, excepting those listed as uninspected on the Materiel Inspection Receiving Report (DD Form 250 series), packing list or comparable document.



(f) The designs of the DOD Procurement Inspection Approval Stamps are shown in this section. Unauthorized use of these stamps is prohibited.

(Sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 171a)

[1] When materiel has been determined to be in conformance with the contract requirements, acceptance on behalf of the government shall ordinarily be accomplished by the execution, and delivery to the contractor, of the acceptance certificate on the applicable inspection and receiving report form, i. e. DD Form 250, DD Form 1155, or Standard Form 44. Refer to Armed Services Procurement Regulation, Section XIV, Part II, Acceptance, for full details regarding government acceptance.

PART 253—PROCUREMENT INSPECTION POLICIES AND PROCEDURES FOR ITEMS COVERED BY MILITARY AND FEDERAL SPECIFICATIONS

Sec.

253.1 Purpose.
253.2 Definitions.
253.3 Policies.
253.4 Situations warranting the execution of particular examinations and tests by the Government.
253.5 Factors influencing extent of Government inspection.
253.6 Standard procedures for Government verification inspection.
253.7 Implementation.
253.8 Review and evaluation of the supplier's inspection procedures.
253.9 Inspection and calibration of the supplier's gages, measuring and test equipment.
253.10 Examination of the supplier's inspection records.
253.11 Performance of product verification inspection by the Government.

AUTHORITY: §§ 253.1 to 253.11 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 253.1 Purpose.

In furtherance of the quality assurance concept and policy specified in Department of Defense Instruction 4155.6, "Department of Defense Quality Assurance Concept and Policy," this part establishes uniform Department of Defense policies and procedures for procurement inspection for items covered by military and Federal specifications.

§ 253.2 Definitions.

Terms used in this part are defined in MIL–STD–109, "Inspection Terms and Definitions."

§ 253.3 Policies.

(a) *Supplier responsibilities for inspection.* (1) Except as provided in subparagraph (2), of this paragraph, the supplier shall be required to perform the examinations and tests set forth in the specifications to substantiate conformance of supplies to specification requirements.

(2) Certain inspection requirements may be executed by the Government when it is not advisable to specify that the particular examinations and tests be performed by the supplier. In such cases, these examinations and tests to be performed by the Government shall be explicitly identified in the specification or contract. (Section 253.4 identifies some of the specific situations for which it is advisable that examinations and tests be performed by the Government.)

(3) Suppliers shall either (i) have available adequate test facilities for executing specific prescribed tests, or (ii) make arrangements for the utilization of suitable test facilities.

(4) Records of examinations and tests performed by the supplier shall be maintained by the supplier and made available for use by the Government for the duration of time specified in the contract.

(5) The supplier shall be responsible for compliance with all requirements of the specification and all other technical requirements of the contract.

(b) *Government responsibilities for inspection.* (1) The Government inspector shall make optimum use of the inspection records of examinations and tests performed by or for the supplier in accordance with the quality assurance provisions of commodity specifications, and other pertinent inspection records, in determining acceptability of supplies.

(2) Procurement inspection by the Government to verify the supplier's compliance with specification requirements and other technical requirements of the contract, shall be so planned as to promote adequate assurance of quality by the most efficient utilization of the inspection resources of the military departments. (Section 253.5 identifies specific factors influencing the extent of Government inspection.)

(3) Where the specification or contract requires the supplier to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests or other factors contributing to high testing costs, etc., these tests shall be coordinated for simultaneous supplier and Government accomplishment to the maximum extent practicable to preclude the need for subsequent independent Government verification testing.

(4) Government inspection to determine compliance with any requirements of the specification not covered under the quality assurance provisions and other technical requirements of the contract shall be conducted to the extent deemed necessary by the military inspecting activity having cognizance at the supplier's plant.

§ 253.4 Situations warranting the execution of particular examinations and tests by the Government.

While the execution of inspection requirements prior to submission of supplies to the Government normally will be the responsibility of the supplier (see paragraph (a)(1) § 253.3), under certain conditions, it is advisable to state in the specification or contract the particular examinations and tests to be performed by the Government. The following are specific situations for which it may be desirable to designate explicitly in the specification or contract, examination and testing solely by the Government:

(a) Test requirements which necessitate the use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories, e. g. ballistic testing of ammunition, environmental tests, simulated service tests;

(b) Inspection to determine qualification of a supplier's product for inclusion on a Qualified Products List;

(c) Pre-production, pilot-lot or pilot model examination and testing, either at a Government installation or at the supplier's plant.

§ 253.5 Factors influencing extent of Government inspection.

The extent of Government inspection to verify the supplier's compliance with the quality assurance provisions of the commodity specification and with other technical requirements of the contract shall be adjusted to reflect the following factors:

(a) The possible effect of failure of the item on the safety of personnel;

(b) The tactical or strategic importance of the item;

(c) The complexity of the item and the need for high reliability of the item and its components;

(d) The pertinency, completeness and reliability of the supplier's inspection records;

(e) The previous quality history of the supplier's product;

(f) The quantity and technical specialties of available Government inspection manpower;

(g) Technical importance of the item; and

(h) The unit cost of the item.

§ 253.6 Standard procedures for Government verification inspection.

To promote uniformity in Government verification inspection of suppliers' compliance with the quality assurance provisions of specifications and other technical requirements of the contract, the following aspects of verification inspection shall be treated in accordance with the standard procedures contained in §§ 253.8, 253.9, 253.10 and 253.11:

(a) Review and evaluation of the supplier's inspection procedures;

(b) Inspection and calibration of the supplier's gages, measuring and test equipment;

(c) Examination of the supplier's inspection records; and

(d) Performance of product verification inspection by the Government.

§ 253.7 Implementation.

Within ninety (90) days after date of this part, each of the military departments shall submit two copies of the proposed implementing instructions to the Assistant Secretary of Defense (Supply and Logistics) for approval. The policies specified under § 253.3(a), relating to supplier responsibilities for inspection shall be implemented as follows:

(a) *New, revised and amended specifications.* For new specifications and those requiring revision or amendment for other reasons, a statement of supplier responsibilities shall be included in section 4 of the specification.

(b) *Existing specifications in military and Federal series.* When new procurement is initiated for items covered by existing specifications that do not contain a statement of supplier responsibilities, such a statement shall be included in invitations for bids and in subsequent contracts.

After the proposed implementing instructions are approved, the military departments will be advised by memorandum of the date for publication of the approved instructions.

§ 253.8 Review and evaluation of the supplier's inspection procedures.

In reviewing and evaluating the supplier's inspection procedures for determination of his conformance to the detailed sampling, examination and testing procedures prescribed in the specification and contract, the elements specified below shall be included in the review and evaluation by the Government inspector:

(a) *Examination procedures.* (1) Observation of the supplier's procedures concerning lot formation and segregation requirements when specified:

(2) Observation of the supplier's sampling procedures or unit-by-unit examination (see Supply and Logistics Handbook H–105, dated April 27, 1954, "Administration of Sampling Procedures for Acceptance Inspection," for established basic principles of sampling inspection);

(3) Determination that the supplier's examination includes all of the various characteristics or defects listed in the specification or contract and that examination procedures comply with any special gaging and instrumentation requirements;

(4) Review to determine that the acceptability criteria (e. g. acceptance numbers from appropriate sampling plans of MIL–STD–105 corresponding with the specified Acceptable Quality Levels (AQL) are as specified; and

(5) Review of supplier's screening procedures when acceptability criteria for sampling inspection are not satisfied.

(b) *Test procedures.* (1) Observation of the supplier's procedures concerning lot formation and segregation requirements when specified;

(2) Observation of the supplier's sampling procedures or unit-by-unit testing (see Supply and Logistics Handbook H–105);

(3) Review of supplier's schedule and procedures to determine that all required tests are included and to determine that testing methods, analyses and apparatus conform to specification or contract requirements;

(4) Review to determine that acceptability criteria for sampling for testing are in conformance with specification or contract requirements; and

(5) Review of supplier's 100 percent re-test procedures when acceptability criteria for sampling are not satisfied and 100 percent retest is appropriate.

§ 253.9 Inspection and calibration of the supplier's gages, measuring and test equipment.

In inspecting the supplier's inspection equipment, the Government inspector will determine that the supplier has available and utilizes correctly gaging, measuring and test equipment of required accuracy and that the instruments are of proper type and range to make measurements of the required accuracy. The supplier will have available a set of master gages, standards and appropriate instruments for regularly scheduled calibration of his inspection equipment. Records of such regularly scheduled calibration will be maintained by the supplier and made available for review by the Government. Periodically, the calibration of gages, standards and instruments will be checked.

§ 253.10 Examination of the supplier's inspection records.

The Government inspector will examine the supplier's records of examinations and tests in order to determine that these records are pertinent and complete regarding the detailed requirements of the specification and contract. The inspection record form should include provision for entering information on appropriate item identification, lot size, acceptability criteria, results of examination or tests expressed as attributes or variables data and disposition of the materiel as in conformance or nonconformance to acceptability criteria established in the specification or contract.

§ 253.11 Performance of product verification inspection by the Government.

Product inspection by the Government inspector to verify the supplier's compliance with the quality assurance provisions of the specification and other technical contract requirements, shall be conducted to establish that:

(a) *The supplier's inspection records are reliable.* The Government inspector will perform complete or partial re-inspection on either all of the supplier's sample units represented on the records or a sample of these units to establish the reliability of the supplier's inspection records.

(b) *The supplier's inspection records represent true product quality.* The Government inspector will select, independently of the supplier, samples from submitted lots for examination and tests to substantiate that the supplier's inspection records represent the true quality of the product.

PART 255—DEPARTMENT OF DEFENSE POLICIES AND PROCEDURES FOR ASSURING THE QUALITY OF PRODUCTION OF COMPLEX SUPPLIES AND EQUIPMENT

Sec.

255.1 Purpose.
255.2 Applicability.
255.3 Background.
255.4 Policy.
255.5 Minimum requirements for contractors' regulation of quality.
255.6 Documentation.
255.7 Special requirements.
255.8 Minimum requirements for military agencies' inspection practices.

AUTHORITY: §§ 255.1 to 255.8 issued under Chapter 145, 10 U.S.C.

§ 255.1 Purpose.

The purpose of the policies and procedures set forth in this part is to establish uniform and economical practices for determining the acceptability of complex supplies and equipment.

§ 255.2 Applicability.

(a) This part is applicable to the Departments of the Army, Navy and Air Force in the performance of procurement inspection of all supplies and equipment, except (1) standard commercial items, and (2) items for which the policies and procedure included in Part 253 of this chapter (22 F.R. 4254), (DoD Inst. 4155.8, "DoD Procurement Inspection Policies and Procedures for Items Covered by Military and Federal Specifications," May 7, 1957), provide adequate and economical assurance of product acceptability. Ordinarily, the following types of items are included within the scope of this part:

(1) Equipment of complex design, such as aircraft, ships, tanks and guided missiles;

(2) Major components of equipment, such as fire control or navigating systems, engines, turbines and rocket motors;

(3) Parts of these components, such as assemblies, accessories or pieces, when application of this policy is technically or economically desirable.

(b) Departmental Secretaries are authorized to exempt specific contracts from the provisions of this part when this policy is incompatible with the technical objective of the contract, required project management flexibility, or military urgency. Appropriate arrangements shall be made to assure that exceptions to the provisions of this Instruction are subject to effective administrative control at the Secretarial level.

§ 255.3 Background.

Because of configuration, innumerable design characteristics, and life and reliability requirements, complex supplies and equipment are not amenable to adequate evaluation by inspection and testing only. Complex supplies and equipment must be produced under regulated conditions if adequate assurance of quality is to be realized. Systematic control of manufacturing processes by the producer is an essential prerequisite for assuring the quality of such items. Likewise, it is essential that the Government verify systematically that such control is, in fact, established and exercised by contractors.

§ 255.4 Policy.

(a) Contracting officers shall require by contract that suppliers establish and maintain quality control over manufacturing processes of complex equipment.

(b) Contracting officers shall indicate by contract clause, exhibit, or specification reference, the essential prerequisites necessary for the control of the quality of manufacturing and shall include in such contract clause, exhibit or specification, as a minimum, the requirements listed in §§ 255.5 and 255.6.

(c) Military inspection agencies shall verify the adequacy of contractors' quality control and shall incorporate into inspection management the procedures outlined in § 255.8.

§ 255.5 Minimum requirements for contractors' regulation of quality.

Contracting officers shall require that contractors establish and maintain quality control measures appropriate for the product involved. These quality control measures shall be applicable to:

(a) Manufacturing processes for the purpose of assuring that the product is continuously produced in accordance with technical requirements (e.g., pertinent design, proprietary and operational instructions).

(b) Drawings and changes so that manufacturing methods and operations reflect current technical requirements.

(c) Testing and inspection so that practices and equipment provide the

means for optimum evaluation of characteristics subjected to inspection or test.

(d) Fabrication and delivery of products so that nonconforming products are not inadvertently tendered to the Government.

§ 255.6 Documentation.

Contracting officers shall require that contractors establish and maintain quality control measures for documentation. The contractors' measures shall effectively control the preparation, authorization, use and disposition of instructions and records pertinent to quality.

§ 255.7 Special requirements.

Contracting officers' requirements for contractors' regulation of quality need not be limited only to the provisions of §§ 255.5 and 255.6.

§ 255.8 Minimum requirements for military agencies' inspection practices.

Each military agency's program for evaluation of a contractor's control of quality shall encompass:

(a) Systematic planning of the military agency's inspection operations, including:

(1) Identification of the specific products, processes and procedures listed in §§ 255.5 and 255.6 to be subjected to Government examination, as well as identification of the specific characteristics of such products, processes or procedures to be observed;

(2) Provisions for appropriate distribution of the agency's efforts between inspection of products and inspection of the contractor's methods regulating quality.

(b) Maintenance of suitable inspection records by the military agency that reflect:

(1) The nature of all surveillance and inspection actions, together with the number of observations made and the number and type of deficiencies found;

(2) Decisions regarding the acceptability of the products, the processes and the procedures, together with action taken to correct deficiencies found;

(3) Distribution of inspection effort by the military agency.

(c) Management action which:

(1) Is based on analysis of contractor and Government (i) product inspection data and (ii) methods inspection data;

(2) Assures that inspection manpower and facilities are used as effectively as possible;

(3) Assures that in-service product deficiency and failure information received from the using military agencies is effectively analyzed and that necessary corrective action is initiated expeditiously and reviewed for effectiveness.

The inspection practices for military agencies need not be limited to practices required by this section.

PART 257—DEPARTMENT OF DEFENSE ORIGIN PROCUREMENT INSPECTION OF SUBSISTENCE

Sec.
257.1 Purpose.
257.2 Applicability.
257.3 Objectives.
257.4 Assignment.
257.5 Inspection costs.
257.6 Inspection administration.

AUTHORITY: §§ 257.1 to 257.6 issued under sec. 2202, 70A Stat. 120; 10 U. S. C. 2202. Interpret or apply secs. 2451–2456, 70A Stat. 138–140; 10 U. S. C. 2451–2456.

§ 257.1 Purpose.

This part establishes the Department of Defense policy concerning the utilization of the subsistence inspection and grading services and facilities of the Department of Agriculture in origin inspection incident to subsistence procurements.

§ 257.2 Applicability.

The provisions of this part are applicable to the Departments of the Army, Navy (including the Marine Corps), and Air Force. The Department of Agriculture has agreed to carry out the intent of this part.

§ 257.3 Objectives.

Maximum utilization of existing subsistence inspection and grading services of the Department of Agriculture by the Department of Defense is desired to eliminate overlapping and duplication of such services in processing plants, and to effect economies and efficiencies in carrying out the functions of the Government.

§ 257.4 Assignment.

(a) The Single Manager for subsistence is responsible for determining that wholesale stocks of subsistence originating in processing plants comply with the sanitary standards prescribed by the Department of Defense and, in accordance with the provisions of this part, for arranging for the inspection, grading and acceptance of wholesale stocks of subsistence procured for the military departments. Such inspection and grading shall be performed to the satisfaction of the Single Manager.

(b) To accomplish the objectives outlined in § 257.3 within the continental limits of the United States, the Single Manager for subsistence shall:

(1) Make maximum practical use of the Department of Agriculture subject, however, to prior requirements for retention of an adequate food inspection workload to train Veterinary Services personnel and to provide a base for rotation between CONUS and overseas.

(2) Utilize the Veterinary Services to establish an adequate verification inspection program to protect the interest of the Department of Defense.

(3) Adjust plant assignments whenever the interest of economy or efficiency will be served.

(c) The provisions of § 257.4(b) apply to the following categories:

(1) Fresh fruits and vegetables.

(2) Processed fruits and vegetables and related items, including frozen fruits and vegetables.

(3) Grain products.

(4) Meats, meat products and dairy products.

(5) Miscellaneous subsistence not enumerated above or included in paragraph (e) of this section.

(d) The Single Manager for subsistence will continue to utilize the poultry inspection and grading services of the Department of Agriculture in accordance with the terms of the currently existing agreement between them. This agreement provides that in all instances where, at the time of a Single Manager contract award for poultry and poultry products, the Department of Agriculture maintains continuous inspection and grading of poultry and poultry products by Government employees qualified to perform all inspection and grading necessary to assure compliance with contract requirements, such inspection and grading will be performed by the Department of Agriculture.

(e) The Single Manager for subsistence shall perform or arrange for performance of origin procurement inspection of subsistence in those instances where the Department of Agriculture does not provide this service under the provisions of paragraphs (b), (c) and (d) of this section, in accordance with paragraph VI. D. of DoD Directive 5160.11, "Single Manager Assignment for Subsistence."

(f) The following subsistence items shall be inspected by the Single Manager for subsistence or by his designees:

(1) Water foods.

(2) Assembly, unit packaging and shipping of combat, operational and survival rations.

(3) Coffee and tea.

§ 257.5 Inspection costs.

With the exception of the ante-mortem, post-mortem and sanitary inspection incident to red-meat vendors which are performed in accordance with federal statutes and funded by appropriated funds, the Department of Agriculture shall be reimbursed by the Single Manager for all costs of inspection and grading services performed on Single Manager subsistence procurements.

§ 257.6 Inspection administration.

Inspection and grading services performed by the Department of Agriculture for the military departments shall be reported in accordance with prescribed military inspection procedures with a minimum of paperwork. Inspection and acceptance stamps of the Department of Agriculture shall be accepted by all military departments. The Single Manager for subsistence shall fully cooperate in familiarizing Department of Agriculture inspection personnel with military inspection administrative details.

PART 260—PREFERENCE TO BLIND PERSONS IN OPERATING VENDING STANDS

Sec.
260.1 Purpose.
260.2 Background.
260.3 Definitions.
260.4 Policy.

AUTHORITY: §§ 260.1 to 260.4 issued under sec. 1, 49 Stat. 1559, as amended; 20 U. S. C. 107.

§ 260.1 Purpose.

To establish uniform policies for assuring preference to blind persons in operating vending stands on Federal property under the jurisdiction of the Department of Defense.

§ 260.2 Background.

It is the purpose of the Randolph-Sheppard Vending Stand Act to provide blind persons with remunerative employment so as to stimulate efforts by them to make themselves self-supporting. To achieve this purpose, the head of each department or agency of the Government is required after consultation with the Secretary of Health, Education, and Welfare and with the approval of the President to prescribe regulations which would assure preference to certain licensed blind persons to operate vending stands on Federal property, subject to the qualifications prescribed by that Act.

§ 260.3 Definitions.

The following definitions are applicable to this part:

(a) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department or agency of the United States or any instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any Territory or possession of the United States.

(b) "Installation" means land and improvements thereon, under the control of the Departments of the Army, Navy or Air Force, which have been established by order of any such department, and at which functions of these departments are administered.

(c) "Jurisdiction" includes control of the maintenance, operation and protection of Federal property.

(d) "Vending machine" is any coin-operated machine which automatically vends or delivers tangible personal property.

(e) "Vending stand" includes such shelters, counters, shelving, display, and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment as are necessary for the vending of merchandise.

§ 260.4 Policy.

(a) The Secretaries of the Army, Navy and Air Force are authorized to permit the construction, establishment or operation of vending stands on military or naval installations or other Federal property under their jurisdiction. Such permission may be granted under a revocable license in which the conditions for occupancy are set forth clearly.

(b) Where a vending stand may be properly and satisfactorily operated by a blind person, the Secretaries of the Army, Navy and Air Force shall give preference as to the operation of such a vending stand to a blind person licensed by a state agency as provided in the Randolph-Sheppard Vending Stand Act. The Secretaries shall provide for cooperation with the appropriate state licensing agency in selecting the type, locations or relocation of vending stands to be operated by licensed blind persons. The foregoing preference may be denied or revoked if it is determined by the local Commanding Officer:

(1) That existing security measures relative to location of the vending stand or to the clearance of the blind operator thereof cannot be followed;

(2) That vending stand standards relating to appearance, safety, sanitation, and efficient operation cannot be met;

(3) That for any other reasons the interests of the United States would be adversely affected or the Department of Defense would be unduly inconvenienced thereby.

(i) Loss of revenue by reason of granting a rent-free permit for operation of a vending stand by a licensed blind person shall not be the basis for denying such permit. However, the permit will not be granted if to do so would seriously affect the primary mission of the Department of Defense by reducing revenue below the point which is necessary for the maintenance of a reasonably adequate morale and welfare program.

Certain types of nonappropriated fund operations such as post exchanges, motion pictures, and restaurants have traditionally been used by the Department of Defense to foster morale and welfare of those engaged in the defense effort. Revenue from these activities is used to supplement appropriated funds in conducting a well rounded morale and welfare program. No permits should be granted that will place the morale and welfare program in jeopardy.

(c) The preference established in paragraph (b) of this section shall be protected from the unfair or unreasonable competition of vending machines. No vending machine shall be located within reasonable proximity to a vending stand operated by a licensed blind person if the vending machine vends articles of a type sold at such stand except that where local needs require the placement of such a vending machine, operation of and the income from such vending machine shall be assumed by the blind vending stand operator.

(d) So far as feasible, items sold at vending stands operated by the blind will consist of newspapers, periodicals, confections, tobacco products, articles dispensed automatically or in containers or wrappings in which they are placed before receipt by the vending stand, and such other suitable articles as may be approved for each vending stand location.

PART 262—CONTRIBUTIONS OF FEDERAL FUNDS TO THE STATES UNDER THE NATIONAL DEFENSE FACILITIES ACT OF 1950, AS AMENDED

Sec.
262.1 Background.
262.2 Policies and procedures.
262.3 Authority of DOD agencies.

AUTHORITY: §§ 262.1 to 262.3 issued under secs. 2231–2238, 70A Stat. 120–123; 10 U. S. C. 2231–2238.

§ 262.1 Background.

(a) The enactment into law of the National Defense Facilities Act of 1950, 64 Stat. 829, established enabling legislation to provide facilities for the training of all Reserve Components of the Armed Forces. 69 Stat. 593 amended certain of the provisions of 64 Stat. 829. The policies promulgated herein are concerned with section 3(b) and 3(c) of the act, as amended, which authorize contributions of Federal funds to the several States and Territories of the United States, Puerto Rico and the District of Columbia (referred to in this part as the State).

(b) The act, as amended, provides for contributions of Federal funds to the State as the Secretary of Defense shall determine to be necessary:

(1) To expand, rehabilitate, or convert facilities owned by such State to the extent required for the joint utilization of such facilities;

(2) To expand, rehabilitate, or convert facilities owned by such State to the extent made necessary or to acquire, construct, expand, rehabilitate, or convert such additional facilities as he shall determine to have been made essential, by any conversion, redesignation, or reorganization of a unit or units of the National Guard of the United States or the Air National Guard of the United States, requested or authorized by the Secretary of the Army or the Secretary of the Air Force, respectively;

(3) For the acquisition, construction, expansion, rehabilitation or conversion by such State of such additional facilities that have been made essential by any increase in the strength of the National Guard of the United States or the Air National Guard of the United States.

(c) It is recognized that many existing State-owned or controlled facilities contain certain types of space, such as drill halls, which were not being fully utilized because of limited support space, such as administrative offices, storage space, locker rooms, etc. Contributions of Federal funds to the State for the expansion of these facilities to provide this additional space will insure the maximum fiscal economy through the full and joint utilization of common space to the maximum extent practicable.

(d) It is also recognized that many existing State-owned or controlled facilities cannot physically accommodate certain equipment involved upon conversion, redesignation or reorganization of the organizational units previously assigned to those facilities. A provision of 69 Stat. 593 (see paragraph (b) (2) of this section) will relieve the States of the inequitable burden of financing the cost of physical changes in existing facilities made necessary by such organizational changes requested or authorized by the Federal Government.

(e) An additional purpose of the act is to authorize contributions to the State for the construction or acquisition of additional facilities. This will relieve, in some measure, the inequitable burden placed upon the several States through the increase in the number of units and the strength of units of the National Guard over that which existed prior to World War II.

§ 262.2 Policies and procedures.

(a) Each project toward which a contribution is granted by the Federal Government under the authority of the act, as amended, shall be covered by an agreement between the United States and the State. The purpose of such agreement is to delineate the equities and obligations involved and thereby assure not only a clear understanding of these obligations but definitely to establish these equities.

(b) The following policies are to be used as a guide in negotiating and executing agreements with States in the implementation of sections 3 (b) and 3 (c) of the act, as amended:

(1) All work authorized pursuant to section 3 (b) or 3 (c) of the act, as amended, shall be done in accordance with the laws of the State in which the project is located, and under the supervision of officials of such State, subject to inspection and approval by the Secretary of Defense, or his delegate. Provisions definitive of such inspection and approval shall be included in said agreement, to accomplish the purpose of assuring that the work performed toward which the Federal contribution is made complies with the plans, specifications, criteria and standards approved for the project by the Secretary of Defense, or his delegate. Except for supervision of a project, which function is reserved by law to State officials, the services of the Chief of Engineers or the Chief of the Bureau of Yards and Docks may be utilized to the extent mutually agreed by the State and the Military Department concerned.

(2) A separate agreement shall be entered into between the State and the Federal Government for each project covering the terms, conditions, equities and obligations of the parties.

(3) The State, as defined in section 7 (c) of the act, as amended, shall certify that it has the legal authority and the necessary funds to accomplish its share of the project, that it will furnish evidence satisfactory to the Department of Defense of a perfected title to, or other adequate property interest in, acceptable and suitable real estate, and that such real estate is located in an area appropriate, under local laws and ordinances relating to location and construction, to the use for which the facilities are intended.

(4) Plans, specifications and cost estimates shall be approved by the Federal Government.

(5) The agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility.

(6) When a facility is to be jointly utilized:

(i) The agreement shall identify the space, both within and outside the building or buildings, which is to be maintained and reserved for the exclusive use of those Reserve Components that are designated by the Federal Government;

(ii) The agreement shall identify the space, both within and outside the building or buildings, which is to be utilized in common by all Reserve Components assigned to the facility;

(iii) The agreement shall prescribe the extent of collaboration between the State and the Federal Government in the selection of the site location and the orientation of the facilities to be jointly and exclusively utilized by those Reserve Components which are designated by the Federal Government;

(iv) The agreement shall prescribe the costs to be borne by the Federal Government and by the State in maintaining the common use space, both within and outside the building or buildings, and in general administrative expense for janitorial and similar service. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 4 (e) of the act, as amended;

(v) The agreement shall prescribe generally for the time and extent of the use by the various components, and prescribe the method of resolving conflicts in schedules for use of the facilities.

(7) Insofar as it is determined at the time the Federal contribution is made that it is impracticable for the State and the Federal Government to delineate the extent of the spaces to be jointly and exclusively utilized by those Reserve Components designated by the Federal Government, the agreement shall contain a covenant on the part of the State substantially as follows:

> To make such facility available for joint utilization to the extent that the State shall hereafter deem it to be practicable.

In the event it is necessary to apply the concept of a "Master Agreement" contemplating future individual agreements with respect to specific projects, such "Master Agreement" shall contain an affirmative covenant on the part of the State in substantially the following form:

> At the time each contribution is made by the Government, to negotiate concerning the extent to which the facility covered thereby will be made available for joint utilization as the term is defined in section 7 (e) of the National Defense Facilities Act of 1950, as amended.

(8) At no time during the term of the agreement shall such State permit any disposition or use to be made of such facility which will interfere with its use for the administration and training of units of the Reserve Components of the Armed Forces of the United States, or in time of war or national emergency of other units of the Armed Forces of the United States or any other use by the Federal Government.

(9) The State shall take necessary action, to the extent of its power or authority, to prohibit utilization by outside interests (such as adjacent land owners, public utility corporations, etc.) that would interfere with the use of the facility for its intended purpose.

(10) The State shall be required to maintain and preserve the facility in a state of good repair except that the Federal Government may contribute to the cost of maintenance to an extent commensurate with the joint utilization of the facility by those Reserve Components which are designated by the Federal Government. The agreement shall specify the basis for determining the extent of such contribution by the Federal Government. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 4 (e) of the act, as amended. (See subparagraph (6) of this paragraph.)

(11) Where the State accomplishes the project by contract, the State shall let such contract in accordance with the laws of such State, and under regulations in current use by the Federal Government insofar as the application of such regulations by supervisory officials of the State is not precluded by nor inconsistent with the State laws. All contracts, subcontracts and change orders shall be subject to prior approval by the Federal Government.

(12) The Federal Government shall determine what costs incurred or to be incurred by the State are allowable under the terms and conditions of the agreement. When so requested by the State, such determination shall be made prior to the execution of any contract by the State, and the State shall be advised thereof in writing, subject to conformance with applicable Department of Defense policies, criteria, and standards.

(13) The State shall be required to maintain an accounting system which is acceptable to the Federal Government with respect to the construction work, as well as to the subsequent maintenance and operation of those facilities toward which the Federal Government contributes or will contribute funds for such maintenance and operation including those facilities to be jointly utilized by other Reserve Components.

(14) The contribution of funds by the Federal Government to the State shall be in accordance with a system whereby the Federal Government maintains adequate control of the expenditure of such funds until payment is due the contractor for work already completed. Payments, however, may be made periodically as work progresses, and the Federal share of the funds will be obligated upon the approval of the construction contract by the Federal Government, and will be made available in accordance with established fiscal procedures.

(15) The appropriate legal authority of the State shall certify that in his opinion the agreement is legal and binding and that its execution is duly authorized, and, upon request of the Federal Government, the State shall furnish evidence of its authority to enter into the agreement.

(16) The agreement shall contain other clauses which, in the opinion of the cognizant Military Department and the State, are required to more specifically delineate the equities and obligations of both the State and Federal Government and which are not in conflict with the policies enumerated herein.

§ 262.3 Authority of DOD agencies.

Certain authority vested in the Secretary of Defense by the act, as amended, and as referred to in this part, has been delegated to certain officials in the Department of Defense. See 21 F.R. 1749, Mar. 21, 1956.

PART 264—INTERNATIONAL INTERCHANGE OF PATENT RIGHTS AND TECHNICAL INFORMATION

Sec.
264.1 Purpose and cancellation.
264.2 Scope.
264.3 Background.
264.4 Policy.
264.5 Claims for compensation.

AUTHORITY: §§ 264.1 to 264.5 issued under the Mutual Security Act of 1954, as amended (22 U.S.C. 1750 et seq).

§ 264.1 Purpose and cancellation.

The purpose of this part is to restate Department of Defense policy concerning the international interchange for defense purposes of patent rights and technical information. DOD Directive 2000.3, "Technical Property Interchange Agreements", dated April 15, 1954, is hereby superseded and cancelled. Delegation published at 19 F.R. 2523 is cancelled.

§ 264.2 Scope.

This part applies to the activities of all Department of Defense personnel involved in the international interchange for defense purposes of patent rights and technical information. The policy prescribed herein applies to unclassified as well as classified information, owned by the United States Government or privately owned, but does not apply to patents, patent applications, and technical information in the field of atomic energy.

§ 264.3 Background.

(a) Pursuant to the provisions of the Mutual Security Act of 1954, as amended, and of predecessor legislation superseded by that Act, the United States has entered into agreements for the Interchange of Patent Rights and Technical Information for Defense Purposes with Australia, Belgium, France, the Federal Republic of Germany, Greece, Italy, Japan, The Netherlands, Norway, Turkey, and the United Kingdom. The agreements, which are published in the Treaties and Other International Act Series, are basically similar in substance but are not identical. Under the agreements:

(1) Each government undertakes to facilitate the interchange of privately owned patent rights and of technical information through the medium of commercial relationships, to the extent permitted by the laws and security requirements of the contracting governments.

(2) When technical information is supplied by one government to the other for information only, the recipient government undertakes to treat the information as disclosed in confidence and to use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the owner to obtain patent or similar statutory protection.

(3) When technical information supplied by one government to the other discloses an invention which is the subject of a patent or patent application held in secrecy in the country of origin, the recipient government undertakes to accord similar treatment to a corresponding patent application filed in that country.

(4) When privately owned technical information is released by one government to the other and the recipient government uses or discloses the information, the owner shall, subject to the extent that the owner may be entitled thereto under the applicable law and subject to arrangements between the contracting governments regarding the assumption as between them of liability for compensation, receive prompt, just and effective compensation for such use and for any damages resulting from such use or disclosure.

(5) Each government is entitled to use for defense purposes without cost any invention which the other government (including government corporations) owns or to which it has the right to grant a license to use, except to the extent that there may be liability to any private owner of an interest in the invention.

(b) Each of these agreements establishes a Technical Property Committee, consisting of a representative of each contracting government, whose function it is to consider and make recommendations to the contracting governments on all matters relating to the subject of the agreement and to assist where appropriate in the negotiation of commercial or other agreements for the use of patent rights and technical information in the military assistance program.

(1) The Patent Advisor assigned to the Defense Staff of the U.S. Mission to the North Atlantic Treaty Organization and European Regional Organizations (USRO), Paris, France, is the United States representative to the Technical Property Committees in Europe. The J–4, Hq, United States Forces Japan, Tokyo, Japan is the United States representative to the United States-Japanese Technical Property Committee. A member of the Office of Assistant General Counsel, International Affairs, Office of the Secretary of Defense, is the United States representative to the United States-Australian Technical Property Committee. The appropriate representative should be consulted on all problems dealing with patent rights, technical information and related matters under the agreements.

(2) These representatives receive policy guidance from the Department of Defense. The Assistant Secretary of Defense for International Security Affairs is responsible within the Department of Defense for transmitting such policy guidance through appropriate channels. Guidance transmitted for the United States representative in Europe shall be forwarded to the Defense Advisor, USRO; guidance transmitted for the United States representative in Japan shall be transmitted to the Commanding General, United States Forces Japan. Such guidance is formulated, where appropriate, in the Interagency Technical Property Committee for Defense. The Interagency Technical Property Committee comprises representatives of the Departments of Defense, State, Commerce and Justice, the Government Patents Board, and the International Cooperation Administration. A representative of the Assistant Secretary of Defense for International Security Affairs is the Chairman of this Committee. An Industry Advisory Committee established by the Department of Commerce furnishes advice upon request to the Interagency Technical Property Committee, and assists in the dissemination of information with respect to the interchange of patent rights and technical information for defense purposes.

(c) Department of Defense problems arising in the United States in connection with the interchange of patent rights and privately owned technical information should be referred to the patent activity of the appropriate Military Department.

§ 264.4 Policy.

It is the policy of the Department of Defense to encourage and facilitate international interchanges of patent rights and technical information to further the common defense of the United States and friendly nations. In achieving this purpose, the following principles shall be observed.

(a) Classified military information shall be released only through Government channels and only when consistent with the National Disclosure Policy, or when approved as an exception to that policy.

(b) In accordance with the Congressional policy prescribed by section 413(a) of the Mutual Security Act of 1954, as amended (22 U.S.C. 1933(a)), and pursuant to the bilateral agreements referred to in § 264.3, commercial relationships shall be utilized whenever appropriate and to the maximum extent feasible in order to encourage the participation of private enterprise in the Mutual Security Program, to relieve the Department of Defense of administrative burdens, and to reduce the costs to the United States of such interchanges.

(c) In accordance with section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the utilization of commercial channels for the exportation of unclassified privately owned technical information relating to articles designated as arms, ammunition, and implements of war in the United States Munitions List shall be subject to the regulations issued by the Secretary of State pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934) (Title 22, Code of Federal Regulations, Chapter I, Subchapter M). (The term "technical data" is used in those regulations to describe technical information relating to such articles).

(d) Technical information which might be privately owned may be released under paragraph (e) (1) or (2) of this section by Department of Defense Agencies to foreign governments if any one of the following conditions are met:

(1) The owner expressly consents to the proposed release;

(2) The United States, by contract or otherwise, has acquired or is entitled to acquire, the information under circumstances which permit the proposed release; or

(3) The Secretary of the Military Department concerned, or his designee, determines, under the authority of the Mutual Security Act of 1954, as amended, that:

(i) The exigencies of the requirement for release to further the common defense do not allow sufficient time to obtain the consent of the owner; or

(ii) The owner refuses consent and the best interests of the United States would be served by the release.

(e) In accordance with the provisions of the agreements referred to in § 153.3, the release to foreign governments by Department of Defense agencies of technical information which might be privately owned shall normally be in accord with the following two step procedure:

(1) Release for information only.

(2) Permission for manufacture, or use, for defense purposes.

(f) (1) All technical information, whether privately owned or government owned, released to a foreign government by Department of Defense Agencies shall be marked with the following restrictions:

1. This information is accepted for defense purposes only.

2. This information shall be accorded substantially the same degree of security protection as such information has in the United States.

3. This information shall not be disclosed to another country without the consent of the United States.

(2) When technical information which might be privately owned is released for information only, the restrictive marking shall also contain these additional notations:

4. This information is accepted upon the understanding that it might be privately owned.

5. This information is accepted solely for the purpose of information and shall accordingly be treated as disclosed in confidence. The recipient Government shall use its best endeavors to ensure that the information is not dealt with in any manner likely to prejudice the rights of the private owner thereof to obtain patent or other like statutory protection therefor.

6. The recipient Government shall obtain the consent of the United States if it desires that this information be made available for manufacture, or use, for defense purposes.

(g) When technical information which might be privately owned is released under the procedures set forth herein, the owner, if known, shall be furnished:

(1) Notice of the release;

(2) The identity of the recipient, if not contrary to security regulations;

(3) Notice that the recipient has been advised that the information might be privately owned; and

(4) Notice of the restrictions to which the release is subject.

§ 264.5 Claims for compensation.

(a) With respect to interchanges in furtherance of the purposes of the Mutual Security Act of 1954, as amended, section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) provides the exclusive remedy for compensation for infringement within the United States of a patent issued by the United States and for damage resulting from the disclosure by the United States of privately owned technical information.

(b) The Secretaries of the Military Departments are hereby authorized to exercise the power and authority conferred by section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758) to enter into agreements with claimants in full settlement and compromise of any claim against the United States thereunder, subject to such rules and regulations, if any, as the Secretary of Defense may promulgate from time to time. The Secretaries of the Military Departments are authorized to make successive redelegations in writing of this power and authority to any officer, employee, board or agent of their respective departments.

(c) Funds appropriated for military assistance pursuant to the Mutual Security Act of 1954, as amended, which have been made available to a Military Department may be used to settle claims under section 506 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1758). In addition, in those cases where the provisions of 10 U.S.C. 2386 are applicable, funds appropriated for a Military Department available for making or procuring supplies may be used to settle such claims.

PART 266—NATIONAL INDUSTRIAL RESERVE REGULATIONS

Sec.

Subpart A—General

INTRODUCTION

266.100 Scope of §§ 266.100 to 266.107.
266.101 Purpose of regulations in this part.
266.102 Applicability of regulations in this part.
266.103 Effective date of regulations in this part.
266.104 Amendment of regulations in this part.
266.105 Procedures for implementing the regulations in this part.
266.106 Delegations of authority.
266.107 Periodic reports to the Secretary of Defense.

DEFINITIONS OF TERMS

266.201 Definitions.
266.201–1 Act.
266.201–2 National Industrial Reserve.
266.201–3 Excess industrial property.
266.201–4 Machine tool.
266.201–5 Industrial manufacturing equipment.
266.201–6 Industrial plant.
266.201–7 Nonprofit educational institution or training school.
266.201–8 National Security Clause.
266.201–9 Transfer.
266.201–10 Disposal.
266.201–11 Transferee.
266.201–12 Disposal agency.

DELEGATIONS OF AUTHORITY

266.300 Scope of §§ 266.300 to 266.304.
266.301 Delegation of authority by the Secretary of Defense.
266.302 Action by the Assistant Secretaries of Defense; subdelegation.
266.303 Redelegation to Secretaries of military departments.
266.304 Delegation of authority by the Administrator of General Services.

Subpart B—Procedures for Designation and Maintenance of Properties in the National Industrial Reserve

DESIGNATION

266.350 Scope of §§ 266.350 to 266.354.
266.351 Designation of excess industrial properties under the control of disposal agencies.
266.351–1 Reports.
266.351–2 Notice of designation.
266.351–3 Effective date of designation.
266.351–4 Recommendation of property to be designated for National Industrial Reserve.
266.352 Designation of excess industrial properties under the control of transferees.
266.352–1 Property subject to the National Security Clause.
266.352–2 Effective date.
266.352–3 Continuation of property in the Reserve upon termination of lease.
266.353 Property not subject to National Security Clause, designation of, for future inclusion in the Reserve.
266.354 Records.

MAINTENANCE

266.400 Scope of §§ 266.400 to 266.404–2.
266.401 Engineering surveys.
266.402 Periodic inspections.
266.403 Special reports.
266.404 Maintenance standards.
266.404–1 Plants.
266.404–2 Machine tools and industrial manufacturing equipment.

Subpart C—The National Security Clause and Procedures for Transfers of Property

THE NATIONAL SECURITY CLAUSE

266.450 Scope of §§ 266.450 to 266.454.
266.451 Short title.
266.452 Use of the National Security Clause in instruments of transfer.
266.453 Text of the National Security Clause.
266.453–1 National Security Clause for deeds of real property.
266.453–2 National Security Clause for leases of real property.
266.453–3 National Security Clause for sales of personal property.
266.454 Modifications in National Security Clause.

DISPOSALS OF PROPERTY SUBJECT TO THE NATIONAL SECURITY CLAUSE

266.500 Scope of §§ 266.500 to 266.506.
266.501 Specification of National Security Clause.
266.502 Modification of National Security Clause.
266.503 Qualifications of transferees.
266.504 Negotiation of terms of disposition.
266.504–1 Responsibility of head of disposal agency.
266.504–2 Negotiations by General Services Administration.
266.505 Disposal procedures.
266.506 Documentation.

TRANSFERS OF PROPERTY TO GENERAL SERVICES ADMINISTRATION

266.550 Scope of §§ 266.550 to 266.554.
266.551 Certification of unsalability and transfer directive.

Sec.
266.551–1 Determination by head of disposal agency.
266.551–2 Disposition or transfer by Secretary of Defense directive.
266.551–3 Limitation on necessity for modification of conditions.
266.552 Transfer of possession, accountability and responsibility.
266.553 Documentation.
266.554 Transfer of machine tools and industrial manufacturing equipment.

TRANSFERS OF PROPERTY FOR USE OF, OR OPERATION BY, OTHER GOVERNMENTAL DEPARTMENTS AND AGENCIES

266.600 Scope of §§ 266.600 to 266.606.
266.601 Request for transfer.
266.602 Terms of transfer.
266.603 Direction to transfer.
266.604 Accountability and responsibility.
266.605 Inspection and reports.
266.606 Return of property.

LOAN OF PROPERTY IN THE NATIONAL INDUSTRIAL RESERVE TO NONPROFIT EDUCATIONAL INSTITUTIONS AND TRAINING SCHOOLS

266.650 Scope of §§ 266.650 to 266.654.
266.651 Application for loan of property.
266.652 Investigation and report by General Services Administration.
266.653 Action by Secretary of Defense, conditions of loan.
266.654 Authorization to General Services Administration.

DISPOSITION OF EXCESS INDUSTRIAL PROPERTY FREE OF NATIONAL SECURITY CLAUSE WHEN NO LONGER REQUIRED FOR NATIONAL INDUSTRIAL RESERVE

266.700 Scope of §§ 266.700 to 266.701–2.
266.701 Relinquishment or waiver of National Security Clause.
266.701–1 Property under control of disposal agency.
266.701–2 Property under control of a transferee.

AUTHORITY: §§ 266.100 to 266.701–2 issued under sec. 213, 61 Stat. 505, as amended; 5 U. S. C. 171h.

Subpart A—General

INTRODUCTION

§ 266.100 Scope of §§ 266.100 to 266.107.

Sections 266.100 to 266.107 set forth (a) introductory information pertaining to this part (its purpose, applicability, effective date, and arrangement), and (b) instructions for implementing and amending this part.

§ 266.101 Purpose of regulations in this part.

The regulations in this part, issued by the Secretary of Defense, establish for the Department of Defense, the General Services Administration, and disposal agencies of the Government, policies and procedures relating to the establishment and administration of the National Industrial Reserve under the authority of the National Industrial Reserve Act of 1948, Public Law No. 883, 80th Congress (referred to in this subpart as the "act").

§ 266.102 Applicability of regulations in this part.

The regulations in this part shall apply to the administration of all property in the National Industrial Reserve, and to all transfers and dispositions of property into and out of the National Industrial Reserve which may be effected on or after the effective date of the regulations in this part. It shall also apply, to such extent as is practicable, to transfers and dispositions of property effected prior to the effective date of the regulations in this part but shall not be construed to invalidate any action taken or any transfer, disposition, or other transaction effected prior to such effective date. Rules, regulations and directives of the Department of Defense, the General Services Administration, and disposal agencies of the Government or of any department or subdivision of any of them, affecting property in the National Industrial Reserve not in conflict with the regulations in this part, as from time to time amended, shall remain in full force and effect. Anything in this subpart to the contrary notwithstanding, the regulations in this part shall have no application to property of the Army, Navy, or the Air Force which has not heretofore, or is not hereafter, determined to be surplus to its needs and responsibilities by the Department having jurisdiction thereover.

§ 266.103 Effective date of regulations in this part.

The regulations in this part shall be effective on and after April 1, 1949.

§ 266.104 Amendment of regulations in this part.

The regulations in this part may be amended from time to time by the Secretary of Defense. Unless otherwise specifically provided in any amendment, compliance therewith shall not be mandatory until thirty days after the date of its issuance, although compliance shall be authorized from such date.

§ 266.105 Procedures for implementing the regulations in this part.

The Administrator of General Services, and the head of any disposal agency may implement the regulations in this part by prescribing for their respective departments or agencies detailed procedures which are not inconsistent with the regulations in this part. Copies of such procedures shall in each instance be forwarded to all other interested departments or agencies. Questions of interpretation of the regulations in this part shall be resolved by the Secretary of Defense.

§ 266.106 Delegations of authority.

The Secretary of Defense, the Administrator of General Services, and the head of any disposal agency may to the extent permitted by law, delegate, and provide for the sub-delegation of, the authority and administrative functions imposed upon each of them respectively by the act or by the regulations in this part.

§ 266.107 Periodic reports to the Secretary of Defense.

For the purposes of the report required to be submitted by the Secretary of Defense to the Congress on April 1 of each year under section 12 of the act, the Administrator of General Services and the head of each disposal agency having control of properties in the National Industrial Reserve shall, on or before February 1 of each year, submit to the Secretary of Defense a report of: (a) All of the property under his control in the National Industrial Reserve as of January 1 of such year; (b) the properties which have been received by him or certified for transfer to him during the preceding twelve months to become a part of the National Industrial Reserve; (c) the physical condition of each of the properties in the National Industrial Reserve; (d) the probability of disposal of each of such properties under the terms of the National Security Clause; (e) the approximate dates when determination as to disposability of each of such properties will be made; and (f) such recommendations as he may wish to make with respect to the administration of the properties under his control, or with respect to the need for amendment of the act or related legislation.

DEFINITIONS OF TERMS

§ 266.201 Definitions.

When used in the regulations in this part terms shall be defined as set forth in §§ 266.201–1 to 266.201–12.

§ 266.201–1 Act.

The term "act" shall mean the National Industrial Reserve Act of 1948 (Public Law 883, 80th Congress, Ch. 811, Second Session, act of July 2, 1948).

§ 266.201–2 National Industrial Reserve.

The term "National Industrial Reserve" shall mean (a) that excess industrial property which has been or shall be sold, leased, or otherwise disposed of by the United States subject to a National Security Clause, (b) that excess industrial property of the United States which, not having been sold, leased or otherwise disposed of subject to a National Security Clause, shall be transferred to the General Services Administration to be held or disposed of under the provisions of the act, and (c) that excess industrial property under the control of any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation, which is not required for its immediate needs and responsibilities as determined by the head of such department or establishment and which shall be designated by the Secretary of Defense pursuant to section 4 of the act as a part of the National Industrial Reserve.

§ 266.201–3 Excess industrial property.

The term "excess industrial property" shall mean (a) any machine tool, (b) any industrial manufacturing equipment, and (c) any industrial plant, which tool, equipment, or plant is under the control of any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation, and which is not required for its immediate needs and responsibilities, as determined by the head thereof.

§ 266.201–4 Machine tool.

The term "machine tool" shall mean any tool which is operated by power and is partly or wholly automatic.

§ 266.201–5 Industrial manufacturing equipment.

The term "industrial manufacturing equipment" shall mean any equipment which is used in the production of an article or product, including all tools and equipment connected with a production line or assembly line, but excluding equipment used solely for nonproductive or administrative purposes. (For example, a dolly used for moving parts from one operation to another on the factory floor would be included within this definition, whereas a general-purpose truck used for collections and deliveries outside of the plant would be excluded.)

§ 266.201–6 Industrial plant.

The term "industrial plant" shall mean any plant (including structures on land owned or leased to the United States substantially equipped with machinery, tools, and equipment) which is capable of economic operation as a separate and independent industrial unit and which is not an integral part of an installation of a private contractor. For purposes of this definition the following factors shall be taken into consideration:

(a) Special structural design establishing special purpose—for example, vaulted ceilings for aircraft assembly plants, establishing purpose, regardless of tooling or other equipment.

(b) The removal of tools and equipment for safe storage shall not be considered to change the character of a structure as an industrial plant, if otherwise meeting the requirements of this definition.

(c) The presence of assembly lines, machine bases, casting pots, special furnaces, or similar installations, shall be given consideration in determining whether a structure is substantially equipped, within this definition.

(d) A plant designed and equipped for one or more, but not all, of the manufacturing processes in the production of a particular material or product, may be an "independent industrial unit," within this definition.

(e) The lease, sale, or transfer of a portion or division of an industrial plant need not be considered to change the character of such industrial plant within this definition, if such portion or division can be restored to its former status by exercise of rights reserved to the Government.

(f) The lease or sale, subject to a National Security Clause, of the land (including protection areas) or underground improvements of an ordnance plant shall not be considered to change the character of such ordnance plant as an industrial plant within this definition.

§ 266.201–7 Nonprofit educational institution or training school.

The term "nonprofit educational institution or training school" means any school, training school, school system, library, college, university, research foundation, or other similar institution, organization, or association which is organized for the primary purpose of carrying on instruction or research in the public interest, and which is not organized or operated for profit.

§ 266.201–8 National Security Clause.

The terms "National Security Clause" and "the Clause", shall mean (a) those terms, conditions, restrictions, and reservations which are presently contained in instruments of transfer or lease of property to assure that such property will be available for purposes of national defense; and (b) those terms, conditions, restrictions and reservations formulated pursuant to the act, to be included in instruments of transfer of property in the National Industrial Reserve, in order to assure that such property will be available for purposes of national defense.

§ 266.201–9 Transfer.

The term "transfer" shall mean transfer or other disposition of property in the National Industrial Reserve made to another department or agency of the Government, pursuant to the provisions of the act.

§ 266.201–10 Disposal.

The term "disposal" shall mean any sale, lease, loan, or other disposition of property in the National Industrial Reserve made to a person other than a department or agency of the Government, pursuant to the provisions of the act.

§ 266.201–11 Transferee.

The term "transferee" shall mean any person, department, or agency to whom property in the National Industrial Reserve shall be transferred or disposed of either by sale, lease, loan or otherwise pursuant to the act.

§ 266.201–12 Disposal agency.

The term "disposal agency" shall mean any Governmental department, agency, or corporation having the authority to dispose of property which is excess to its needs, as well as any agency which has been created for the purpose of disposing of any excess Government property.

DELEGATIONS OF AUTHORITY

§ 266.300 Scope of §§ 266.300 to 266.304.

Sections 266.300 to 266.304 deal with the delegations of the authority of (a) the Secretary of Defense and (b) the Administrator of General Services, under the act.

§ 266.301 Delegation of authority by the Secretary of Defense.

(a) Under date of August 13, 1953, the Secretary of Defense by DOD Directive Number 5131.1, paragraph 17b, made the following delegation to the Assistant Secretary of Defense (Properties and Installations): Administering the responsibilities of the Secretary of Defense with respect to the reserve of plants provided for in the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.).

(b) Under date of August 13, 1953, the Secretary of Defense by DOD Directive Number 5126.1 Paragraph 16 made the following delegation to the Assistant Secretary of Defense (Supply and Logistics):

* * * and administering the responsibilities of the Secretary of Defense in relation to machine tool and production equipment reserves provided for in the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.).

§ 266.302 Action by the Assistant Secretaries of Defense; subdelegation.

The authority delegated to the Assistant Secretaries of Defense in § 266.301 may be subdelegated to such subdivisions and agents of the offices of Assistant Secretaries of Defense as the Assistant Secretary concerned may determine.

§ 266.303 Redelegation to Secretaries of military departments.

The Assistant Secretaries may, under the authority delegated to them by the Secretary of Defense, designate the Secretary of any one of the military departments of the Department of Defense to administer the provisions of the National Security Clause applicable to a particular excess industrial property in the National Industrial Reserve in the control of a transferee and may redelegate such authority as may be required to enable such Secretary to carry out such responsibility including, without limitation, authority to consent to alterations in the premises and disposition or removal of production equipment: *Provided, however*, That the provisions of the National Security Clause applicable to the property shall not be modified or waived, nor shall any dormant estate be activated or terminated (other than by its own terms) except pursuant to a determination by the Secretary of Defense.

§ 266.304 Delegation of authority by the Administrator of General Services.

By Transmittal Letter (Manual GS–1, Volume GS 1–2) No. 26 dated January 26, 1954, the Administrator of General Services delegated (GS 1–2 203.07) to the National Industrial Reserve Division, Public Buildings Service, Central Office as follows:

(a) To prescribe policies and procedures covering the maintenance of plants in standby and preparation for layaway, and the storage of NIR tools and equipment.

(b) To transfer, lease, dispose of, or lend property in the NIR in accordance with the direction or authorizations of the Secretary of Defense under section 7 of the NIR Act.

(c) To exercise the authority contained in section 210 (a) (11) of the act.

Subpart B—Procedures for Designation and Maintenance of Properties in the National Industrial Reserve

DESIGNATION

§ 266.350 Scope of §§ 266.350 to 266.354.

Sections 266.350 to 266.354 set forth the procedures applicable to the designation by the Secretary of Defense

of excess industrial properties which are to become a part of the National Industrial Reserve under the provisions of the act. It applies to two general categories of property—Those properties which are under the control of disposal agencies, and those properties which have been disposed of by the United States to private individuals, firms, corporations or other persons, subject to a National Security Clause. It also applies to excess industrial properties which have been disposed of without National Security Clause restrictions and which at a future time may revert to the Government. Sections 266.350 to 266.354 also set forth the procedures by which the latter type of properties may be designated for future inclusion in the National Industrial Reserve.

§ 266.351 Designation of excess industrial properties under the control of disposal agencies.

§ 266.351–1 Reports.

Each disposal agency created for the purpose of disposing of excess Government property generally, shall within 90 days after the effective date of the regulations in this part, furnish the Secretary of Defense with a statement of the industrial plants held by it for disposal, and shall on the 1st days of February and August of each year submit a report to the Secretary of Defense of additional industrial plants received by it for disposal during the six months' period ending the preceding January 1 and July 1, respectively, and of all industrial plants previously designated for the reserve which shall have been disposed of by it, during the said six months. The head of every other disposal agency shall (a) within 90 days after the effective date of the regulations in this part, furnish the Secretary of Defense with a statement of all of the industrial plants under its control which have been determined not to be required for the immediate needs and responsibilities of such agency, and (b) notify the Secretary of Defense immediately upon a determination in the future that an industrial plant under its control is no longer required for the immediate needs and responsibilities of such agency. The Secretary of Defense will specify the inventories and lists of property to be furnished to it by the heads of disposal agencies having machine tools, industrial manufacturing equipment or other personal property under their control as a part of the National Industrial Reserve.

§ 266.351–2 Notice of designation.

In the case of property under the control of a disposal agency and to be designated for the National Industrial Reserve by imposition of National Security Clause restrictions upon its transfer, the Secretary of Defense will designate such property by a written notice to the head of the disposal agency having control of the property of its determination that such property is to become a part of the Reserve, and shall prescribe the provisions of the National Security Clause which shall be applicable to it.

§ 266.351–3 Effective date of designation.

From and after the date of notice of designation, the property specified in such notice shall be deemed to become a part of the National Industrial Reserve.

§ 266.351–4 Recommendation of property to be designated for National Industrial Reserve.

The Secretaries of the military departments of the Department of Defense, the Director of the Office of Defense Mobilization, the Chairman of the Atomic Energy Commission, and the head of any other governmental department or agency having functions involving the national defense, may on behalf of his respective department, board, commission, or agency recommend the designation of specific excess industrial property, whether or not under his control, for inclusion in the National Industrial Reserve. Such recommendation should include a statement of the reasons that are believed to justify the proposed designation and should be forwarded to the Secretary of Defense.

§ 266.352 Designation of excess industrial properties under the control of transferees.

§ 266.352–1 Property subject to the National Security Clause.

The properties heretofore disposed of which may be included in the National Industrial Reserve under section 3(a) of the act by virtue of having been disposed of by the United States subject to a National Security Clause will be designated by the Secretary of Defense. Such designation will be contained in a notice to the transferee to whom such property has been disposed of and to the head of the department or agency which has authority to administer the clause. The notice shall state that the terms and conditions contained in the instrument of transfer for the protection of the Government have been determined to constitute a National Security Clause within the meaning of the act, and that the property has been designated to become a part of the National Industrial Reserve.

§ 266.352–2 Effective date.

From and after the date of notice of designation, the property specified in the notice shall be deemed to have become a part of the National Industrial Reserve.

§ 266.352–3 Continuation of property in the Reserve upon termination of lease.

Upon termination of a lease of property subject to a National Security Clause, the property shall continue to be a part of the National Industrial Reserve unless and until the Secretary of Defense determines that such property is no longer needed therefor, and it shall not be offered for further lease, sale, or other disposition except subject to the conditions of the National Security Clause as prescribed by the Secretary of Defense. The head of the agency responsible for disposition of such property shall, on or before the expiration of the lease, notify the Secretary of Defense of the expiration date thereof and shall in such notice recommend the modifications, if any, that in his opinion should be included in the provisions of the National Security Clause applicable to the property for purposes of further disposition.

§ 266.353 Property not subject to National Security Clause, designation of, for future inclusion in the Reserve.

With respect to property under the control of a transferee by virtue of a lease or other instrument reserving an interest in the Government, but not containing a National Security Clause, the Secretary of Defense may designate such property to be included in the National Industrial Reserve at the expiration of the lease or vesting in possession of such interest in the Government. Such designation shall be in writing addressed to the head of the agency responsible for disposition of the property, and shall include a statement of the terms and conditions of the National Security Clause which shall be included in any future sale, lease, or other disposition of property.

§ 266.354 Records.

The Secretary of Defense will cause a list of the properties constituting the National Industrial Reserve to be maintained in sufficient detail and appropriately classified so as to indicate the nature, number, costs, and condition of the properties in the National Industrial Reserve, together with a statement of justification for their retention. Such records need not, however, include detailed or itemized inventories of small tools and equipment or other numerous articles although such information will be kept available to the extent that it is in existence. The Secretary of Defense will also maintain copies of the pertinent provisions of all instruments of transfer of properties in the National Industrial Reserve, including particularly the provisions of the National Security Clauses applicable thereto.

MAINTENANCE

§ 266.400 Scope of §§ 266.400 to 266.404–2.

Sections 266.400 to 266.404–2 deal with the subject of surveys and inspections of properties in the National Industrial Reserve, standards of maintenance of such properties, and provisions for the enforcement of such standards.

§ 266.401 Engineering surveys.

The General Services Administration shall, when requested by the Secretary of Defense, make an engineering survey of any industrial manufacturing plant that has been designated by the Secretary of Defense for transfer to the General Services Administration as a part of the reserve. Such survey may include a determination of (a) the present maintenance condition and status of the principal components of the plant, (b) the estimated cost of putting it in standby status and annual cost of maintenance in such status, (c) the cost of such rehabilitation and conversion as may be necessary to put the plant into full wartime operating status, (d) the estimated length of time that such rehabilitation and conversion would require, and (e) any other related information that may be requested by the Secretary of Defense. Such survey should also include recommendations of the General Services Administration as to the standards of maintenance to be applied, recommended maintenance standards to be presented in successive steps so as to be readily adaptable to the amount of funds available for purposes of maintenance and rehabilitation of properties in the National Industrial Reserve. The General Services Administration shall submit four copies of each such engineering survey to the Secretary of Defense upon its completion.

§ 266.402 Periodic inspections.

The Secretary of Defense shall cause periodic inspections to be made of properties in the National Industrial Reserve, and such inspections shall be made not less often than annually for each such property. These inspections shall be conducted in such a manner and in such detail as to indicate whether or not the properties are being properly maintained in accordance with the prescribed standards, and whether the covenants of the National Security Clause are being performed.

§ 266.403 Special reports.

In the event that a survey or inspection reveals the existence of a breach of one or more of the covenants of the National Security Clause, or conditions which if permitted to continue would adversely affect the availability of a particular property for national defense, a special report of such breach or condition shall be given by the department, agency, or other person making such survey or inspection to the Secretary of Defense immediately upon the discovery thereof, and notice shall also be given to the transferee in control of the property.

§ 266.404 Maintenance standards.

§ 266.404–1 Plants.

The maintenance responsibilities of disposal agencies with respect to properties in the National Industrial Reserve which are under their control are as follows:

(a) Police protection against theft of property, destruction, and vandalism;

(b) Weather protection, with special emphasis on roofage, windows, water seepage, and drainage problems;

(c) Additional maintenance functions and standards for specific plants to be prescribed by the Secretary of Defense after consideration of the engineering surveys of such plant and other relevant factors.

§ 266.404–2 Machine tools and industrial manufacturing equipment.

Except as noted below, maintenance standards of machine tools and industrial manufacturing equipment which has not been disposed of shall be in accordance with the MIL–STD–107 as it may be amended from time to time. These standards may be modified in their application to specific properties by directive of the Secretary of Defense or, with the approval of the Secretary of Defense, by the agency in control of the property. Except as otherwise provided in the applicable National Security Clause, maintenance of such tools and equipment disposed of for use and operation by the transferee shall be in accordance with standards commensurate with sound business practice, having due regard for the Government's interest in preserving the productive capacity of such property.

Subpart C—The National Security Clause and Procedures for Transfers of Property

THE NATIONAL SECURITY CLAUSE

§ 266.450 Scope of §§ 266.450 to 266.454.

Sections 266.450 to 266.454 deal with the text of the National Security Clause, its incorporation in instruments of transfer, and procedures for its modifications, amendment, revocation, or termination.

§ 266.451 Short title.

The material set forth in § 266.453 shall be known and referred to as the "Standard National Security Clause, revised".

§ 266.452 Use of the National Security Clause in instruments of transfer.

(a) A National Security Clause shall be incorporated in all deeds, bills of sales, leases or other instruments transferring property in the National Industrial Reserve. Contracts of sale or letters of intent, executed in contemplation of such transfers, shall be made on the express condition that the instrument of transfer contain a National Security Clause. In incorporating the National Security Clause in instruments of transfer, the substance of the appropriate clause set forth in § 266.453 shall be used, but may be modified as necessary to conform to the context of the rest of the instrument. For leases of personal property, the real estate lease clause (§ 266.453–2) may be converted.

(b) Nothing in the National Security Clause shall be construed to preclude Government disposal agencies from including whatever terms they deem necessary or desirable in instruments of transfer so long as these other terms do not vitiate the Government's rights and benefits under the National Security Clause. In the case of leases, especially, provisions will have to be included for the purpose of protecting the Government's ownership generally, as distinguished from provisions aimed merely at preserving its national security interests. It is assumed these would include, without limitation, provisions with respect to payment of rent, taxes and charges, etc., insurance, subleasing and assigning, maintenance, nuisances, indemnity against liability, surrender upon expiration of the lease in the same or equivalent condition etc., and a right of entry in the Government to terminate the lease upon the lessee's breach of condition, bankruptcy or insolvency, etc.

§ 266.453 Text of the National Security Clause.

§ 266.453–1 National Security Clause for deeds of real property.

NATIONAL SECURITY CLAUSE

Whereas, the Secretary of Defense pursuant to section 4 (1) of the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.) has designated the premises hereby conveyed a part of the National Industrial Reserve for the production of [insert designation of end item or basic material as the case may be] at an annual capacity of [insert quantity] and, whereas, pursuant to section 4 (4) of that act, it has authorized their disposal subject to a National Security Clause formulated in accordance with that Act; now therefore, in consideration of their respective obligations under this instrument, the parties hereto, for themselves, their heirs, successors, and assigns, do hereby enter into the terms, covenants, and conditions hereinafter set forth which shall, together with this paragraph, be collectively known and referred to as the National Security Clause.

ARTICLE I. *Definitions.* For purposes of this Clause the following definitions will apply:

(a) The term "premises" means the property transferred by this instrument.

(b) The term "assigned function" means the function for which the premises have been designated a part of the National Industrial Reserve or for which they may be hereafter redesignated under Article IX hereof.

(c) The term "production equipment" means all property other than property transferred by this instrument, at any time in or appurtenant to the premises which is necessary to their assigned function or to their current operations.

(d) The term "facilities" means the sum total of the premises and the production equipment.

ART. II. *Maintenance.* The Grantee hereby covenants and agrees that it will maintain the facilities in such a manner that they can be placed, within a period of 120 days, in a condition adequate to perform the assigned function of the premises.

In addition, the Grantee covenants and agrees,

(a) That it will maintain in accordance with sound practice in the industry, normal wear and tear excepted, that part of the facilities necessary for the assigned function of the premises which is actively being used in its current operations;

(b) That it will not make any alterations to the facilities which would impair performance of the assigned function of the premises, unless each such alteration can be restored in a period of 60 days or less and the sum total thereof restored in 120 days or less; and

(c) That it will not dispose of any production equipment, or any machinery and equipment transferred as a part of the premises by this instrument, the disposal of which would impair performance of the assigned function of the premises, unless the items so disposed of are immediately replaced with equivalent items.

Provided, however, That the provisions of this Article shall not apply to timber structures and their appurtenances for more than 15 years from the date hereof, or to machinery and equipment for more than 10 years from the date hereof; and provided further, that nothing herein contained shall prevent the Grantee from relocating any machinery or equipment within the premises for the purpose of improving operating efficiency or increasing productive capacity so long as the standards of care set forth above are continually observed.

ART. III. *Defaults*—(a) *Inspections.* The Grantee and the Government mutually covenant and agree that the latter may, after reasonable prior written notice to the Grantee, inspect the facilities for the purpose of determining whether the Grantee is in default on its obligations under this Clause.

(b) *Determinations of default.* If, as a result of such inspections, the Government adjudges the Grantee in default, it shall furnish the latter a written statement setting forth in detail the grounds on which the allegations are based, following which the Grantee shall have thirty days to submit evidence to the contrary. If in the light of the evidence so presented, the Government still holds that the Grantee is in default, it shall then advise the latter of the specific defaults to be corrected and the periods of time in which each correction must be completed, such periods to be as reasonable as possible.

(c) *Repairs by the Government.* In the event the Grantee fails to correct its defaults in the times stated, the Government shall then have the right to enter the premises for the purpose of correcting the defaults; and the Grantee, or its sureties, will reimburse the Government for all costs incurred by the Government in making such corrections. The Government, or any contractor employed by the Government for the purpose, shall have such right of access to the premises or any part thereof as may be necessary to permit such repairs or replacements.

ART. IV. *Government utilization* — (a) *Negotiation of contract.* The Grantee and the Government mutually covenant and agree that, whenever the Government considers the productive capacity of the facilities necessary for national security purposes, they will jointly undertake to negotiate a contract for the Grantee to furnish from the facilities the materials or services for which the premises are designated a part of the National Industrial Reserve.

(b) *Repossession.* The Grantee hereby covenants and agrees that, in the event the Government determines such a contract is not feasible, or that the Grantee is not qualified to furnish the materials or services required, or that a mutually satisfactory contract cannot be negotiated, the Grantee will turn over to the Government full possession of the premises together with all structures, improvements, easements, rights-of-way, and other interests appurtenant thereto (including all rights-of-way over and across other property of the Grantee necessary or convenient to the operation or use of the facilities) for such time as the Government deems necessary for national security purposes. The Grantee further agrees that it will lease to the Government, upon the latter's request and for a period co-extensive with the Government's repossession of the premises, any or all of the production equipment owned or controlled by the Grantee. The Government's rights to such possession and usage, together with its right to lease properties of the Grantee hereunder, shall vest on the date set by it in written notice to the Grantee, which date shall be not less than 15 days from the date of notice thereof, and shall expire on the termination date of this National Security Clause as provided for in Article XI below.

(c) *Withdrawal by the Grantee.* The Grantee hereby covenants and agrees that, upon the date set for transfer of the premises to the Government, it will immediately undertake to restore such alterations made by it and to remove such improvements, fixtures, machinery and other equipment installed by it as the Government may direct, such undertakings to be completed in the shortest possible time, but in no event to exceed 120 days from the date of repossession unless otherwise agreed upon between the Grantee and the Government. Thereafter, the Grantee shall have no further right to enter the premises during the period of Government possession except with the prior consent of the latter. During any period of Government possession, the premises may be used, occupied, or operated for or on behalf of the Government by any government department, agency, agent, or by any tenant, contractor, or subcontractor of the Government.

ART. V. *Compensation.* The Government hereby covenants and agrees that, upon any repossession under IV (b) above, it will pay the Grantee:

(a) *At the time of repossession.* (i) Fair and reasonable compensation for all losses, not including loss of profits, incurred by the Grantee or its assignees in respect of work in process in the premises which cannot be completed because of repossession by the Government.

(ii) Fair and reasonable costs incurred by the Grantee or its assignees in complying with Article IV (c).

(b) *During each period of possession.* (i) Fair and reasonable compensation for the use of the premises as agreed on by the parties hereto at a rate not in excess of prevailing rental for similar properties.

(ii) Fair and reasonable compensation for the use of any production equipment as agreed on by the parties hereto at a rate not in excess of prevailing rental for similar properties.

(c) *Upon termination of each period of possession.* Fair and reasonable costs incident to reinstallation of machinery and equipment removed from the premises and restoration of the premises to their condition on the date of repossession by the Government, reasonable depreciation excepted.

Any failure of the parties to reach agreement as to what amounts are fair and reasonable under this Article shall be deemed a dispute of fact within the meaning of Article XIII hereof.

ART. VI. *Insurance.* The Grantee hereby covenants and agrees that the proceeds of any insurance which is required of the Grantee by the terms of this instrument, or by any other agreement between it and the Government, to be placed on the premises or any part thereof will be applied, upon damage to or destruction of the premises by fire or other insurable casualty, to a restoration of the property, unless the Grantee is expressly released from such obligation by the Government.

ART. VII. *Subsequent Transfers.* The Grantee hereby covenants and agrees not to sell, lease, mortgage, or otherwise encumber the facilities without expressly making such sale, lease, mortgage, or encumbrance subject to the provisions of this National Security Clause for the remainder of its term.

ART. VIII. *Parties.* The Grantee and the Government mutually agree that the latter, in exercising its rights and carrying out its obligations under this National Security Clause, shall act through the Secretary of Defense or such departments, agencies, or individuals as he may designate, which may include, without limitation, the Assistant Secretaries of Defense (S and L) and (P and I), Board, the Departments of the Army, Navy, or Air Force, or the General Services Administration. References in this National Security Clause to the Government shall be deemed to refer as appropriate to the Secretary of Defense or such departments, agencies, or individuals as he may designate.

ART. IX. *Redesignation of purpose and use of premises.* The Government hereby covenants and agrees that, upon a petition by the Grantee for a change in the assigned function of the premises, it will re-evaluate the defense potential of the premises, both for the purposes for which they are designated for inclusion in the National Industrial Reserve and those for which it is requested they be redesignated, and will, if it deems the interests of national security are best served thereby, and upon tender by the Grantee of whatever consideration may be requested, change their designation to that requested by the Grantee. Conversely, the Government may, on its own initiative, recommend a redesignation to the Grantee which, if acceptable to the latter, shall be put into effect. Redesignations under this paragraph may be made only by written instrument and may not be requested by the Grantee more often than once in 6 months.

ART. X. *Modification or amendment of the National Security Clause.* The Government hereby covenants and agrees that, upon a petition by the Grantee for a reconsideration of the particular applicability of any of the terms, conditions, reservations or restrictions of the National Security Clause, the Government will, if it deems the interests of national security are best served thereby, modify or amend the Clause to the degree it sees fit upon tender by the Grantee of whatever consideration may be requested. Conversely, the Government may, on its own initiative, recommend modifications or amendments to the Grantee, which, if acceptable to the latter, shall be put into effect.

ART. XI. *Termination or revocation of the National Security Clause.* The Government and the Grantee mutually covenant and agree that their respective obligations under this National Security Clause, except those of the Grantee to reimburse the Government under Article III, or of the Government to furnish compensation under Article V, and except as may be otherwise specified herein, shall terminate 20 years following the date of this instrument or, in the event the Government is in possession at that time in accordance with Article IV (b), upon release of possession by the Government to the Grantee: *Provided, however,* That the Government, at its own election, or upon a petition by the Grantee, may reconsider the necessity for continuing all or any part of the Clause in effect and shall, in the event it determines such necessity no longer exists, and upon tender by the Grantee or whatever consideration may be requested, revoke the Clause, in whole or in part, by executing and delivering to the Grantee a release, quitclaim deed, or whatever instrument is necessary to remove the encumbrance of the Clause, or of a part thereof, from the facilities.

ART. XII. *Covenants.* It is the intention of both the Grantee and the Government that these covenants shall run with the land and bind subsequent purchasers of the premises hereby conveyed: *Provided, however,* That the Grantee shall not be liable for any violation of said covenants by subsequent owners of the premises.

ART. XIII. *Disputes.* Disputes on questions of fact which cannot be resolved by agreement of the parties shall be decided by the Secretary of Defense or the instrumentality duly and expressly designated by him, whose decision shall be final and conclusive. In connection with any proceeding under this Article, the Grantee shall be afforded an opportunity to be heard and to offer evidence in support of its own case. Pending final decision of a dispute hereunder, the Grantee shall proceed diligently with the performance of its obligations under the Clause.

ART. XIV. *Recordation.* The Grantee shall forthwith cause this instrument to be duly recorded and shall furnish satisfactory evidence of such to the Government.

ART. XV. *Saving provision.* The Grantee and the Government mutually covenant and agree that nothing in this Clause shall be construed as affecting obligations of the Grantee under any other provisions of this instrument, except that, in any cases of inconsistency or ambiguity, the provisions of this National Security Clause shall, to the extent that they impose greater obligations on the Grantee, be deemed controlling.

§ 266.453–2 National Security Clause for leases of real property.

NATIONAL SECURITY CLAUSE

Whereas, the Secretary of Defense pursuant to section 4 (1) of the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.) has designated the premises leased hereunder a part of the National Industrial Reserve for the production of [insert designation of end items or basic material as the case may be] at an annual capacity of [insert quantity] and, whereas, pursuant to section 4 (4) of that act, it has authorized their disposal subject to a National Security clause formulated in accordance with that act; now therefore, in consideration of their respective obligations under this instrument, the parties hereto, for themselves, their heirs, successors, and assigns, do hereby enter into the terms, covenants, and conditions hereinafter set forth which shall, together with this paragraph, be collectively known and referred to as the National Security Clause.

ARTICLE I. *Definitions.* For purposes of this Clause the following definitions will apply:

(a) The term "premises" means the property leased by this instrument.

(b) The term "assigned function" means the function for which the premises have been designated a part of the National Industrial Reserve or for which they may be hereafter redesignated under Article VIII hereof.

(c) The term "production equipment" means all property, other than property leased by this instrument, at any time in or appurtenant to the premises which is necessary to their assigned function or to their current operations.

(d) The term "facilities" means the sum total of the premises and the production equipment.

ART. II. *Maintenance.* The Lessee hereby covenants and agrees that it will maintain the facilities in such a manner that they can be placed, within a period of 120 days, in a condition adequate to perform the assigned function of the premises.

In addition, the Lessee covenants and agrees,

(a) That it will maintain in accordance with sound practice in the industry, normal wear and tear excepted, that part of the facilities necessary for the assigned function of the premises which is actively being used in its current operations;

(b) That it will not make any alterations to the facilities which would impair performance of the assigned function of the premises, unless each such alteration can be restored in a period of 60 days or less and the sum total thereof restored in 120 days or less; and

(c) That it will not dispose of any of its own production equipment, the disposal of which would impair performance of the assigned function of the premises, unless the items so disposed of are immediately replaced with equivalent items.

Provided, however, That the provisions of this Article shall not apply to timber structures and their appurtenances for more than 15 years from the date hereof, or to machinery and equipment for more than 10 years from the date hereof: *And provided further,* That nothing herein contained shall prevent the Lessee from relocating any machinery or equipment within the premises for the purpose of improving operating efficiency or increasing productive capacity so long as the standards of care set forth above are continually observed.

ART. III. *Defaults*—(a) *Inspections.* The Lessee and the Government mutually covenant and agree that the latter may, after reasonable prior written notice to the Lessee, inspect the facilities for the purpose of determining whether the Lessee is in default on its obligations under this Clause.

(b) *Determinations of default.* If, as a result of such inspections, the Government adjudges the Lessee in default, it shall furnish the latter a written statement setting forth in detail the grounds on which the allegations are based, following which the Lessee shall have thirty days to submit evidence to the contrary. If in the light of the evidence so presented, the Government still holds that the Lessee is in default, it shall then advise the latter of the specific defaults to be corrected and the periods of time in which each correction must be completed, such periods to be as reasonable as possible.

(c) *Repairs by the Government.* In the event the Lessee fails to correct its defaults in the time stated, the Government shall then have the right to enter the premises for the purpose of correcting the defaults; and the Lessee, or its sureties, will reimburse the Government for all costs incurred by the Government in making such corrections. The Government, or any contractor employed by the Government for the purpose, shall have such right of access to the premises or any part thereof as may be necessary to permit such repairs or replacements. Where the defaults are such that they jeopardize the Government's interest in the facilities, the Government may take and maintain full possession thereof, without terminating the Lessee's interest or estate therein, for the period necessary to remedy such defaults and until reimbursement therefor has been made by the Lessee.

ART. IV. *Government utilization*—(a) *Negotiation of Contract.* The Lessee and the Government mutually covenant and agree that, whenever the Government considers the productive capacity of the facilities necessary for national security purposes, they will jointly undertake to negotiate a contract for the Lessee to furnish from the facilities the materials or services for which the premises are designated a part of the National Industrial Reserve.

(b) *Repossession.* The Lessee hereby covenants and agrees that, in the event the Government determines such a contract is not feasible, or that the Lessee is not qualified to furnish the materials or services required, or that a mutually satisfactory contract cannot be negotiated, the Lessee will turn over to the Government full possession of the premises together with all structures, improvements, easements, rights-of-way, and other interests appurtenant thereto (including all rights-of-way over and across other property of the Lessee necessary or convenient to the operation or use of the facilities) for such time as the Government deems necessary for national security purposes, on the condition, however, that the Lessee's obligations to pay rent for the premises shall be suspended for the period of Government possession. The Lessee further agrees that it will lease to the Government, upon the latter's request and for a period co-extensive with the Government's repossession of the premises, any or all of the production equipment owned or controlled by the Lessee. The Government's rights to such possession and usage, together with its right to lease properties of the Lessee hereunder, shall vest on the date set by it in written notice to the Lessee, which date shall be not less than 15 days from the date of notice thereof, and shall expire on the termination date of this National Security Clause as provided for in Article X below.

(c) *Withdrawal by the Lessee.* The Lessee hereby covenants and agrees that, upon the date set for transfer of the premises to the Government, it will immediately undertake to restore such alterations made by it and to remove such improvements, fixtures, machinery and other equipment installed by it as the Government may direct, such undertakings to be completed in the shortest possible time, but in no event to exceed 120 days from the date of repossession unless otherwise agreed upon between the Lessee and the Government. Thereafter, the Lessee shall have no further right to enter the premises during the period of Government possession except with the prior consent of the latter. During any period of Government possession, the premises may be used, occupied, or operated for or on behalf of the Government by any Government department, agency, agent, or by any tenant, contractor, or subcontractor of the Government.

ART. V. *Compensation.* The Government hereby covenants and agrees that, upon any repossession under IV (b) above, it will pay the Lessee:

(a) At the time of repossession. (i) Fair and reasonable compensation for all losses, not including loss of profits, incurred by the Lessee or its assignees, in respect of work in process in the premises which could have been completed prior to normal expiration of the lease but which cannot be completed because of repossession by the Government.

(ii) Fair and reasonable costs incurred by the Lessee, or its assignees, in complying with Article IV (c), less a reasonable set-off for those that would ordinarily be incurred on normal expiration of the lease. If, however, the period of Government possession expires prior to the expiration of the lease, and the Lessee, or its assignees, resumes possession for the balance of the term, the Government will compensate the Lessee for the full amount of any set-off previously deducted.

(b) During each period of possession, fair and reasonable compensation for the use of any production equipment as agreed on by the parties hereto at a rate not in excess of prevailing rental for similar properties.

(c) Upon termination of each period of possession, fair and reasonable costs incident to reinstallation of machinery and equipment removed from the premises and restoration of the premises to their condition on the date of repossession by the Government, reasonable depreciation excepted.

Any failure of the parties to reach agreement as to what amounts are fair and reasonable under this Article shall be deemed a dispute of fact within the meaning of Article XIII hereof.

ART. VI. *Subsequent transfers.* The Lessee hereby covenants and agrees not to sub-lease, assign, mortgage, pledge, or otherwise encumber the facilities without the prior written consent of the Government and without expressly making such sub-lease, assignment, mortgage, pledge, or encumbrance subject to the provisions of this National Security Clause for the remainder of its term.

ART. VII. *Parties.* The Lessee and the Government mutually agree that the latter, in exercising its rights and carrying out its obligations under this National Security Clause, shall act through the Secretary of Defense or such departments, agencies, or individuals as he may designate, which may include, without limitation, the Assistant Secretaries of Defense (S and L) and (P and I), the Departments of the Army, Navy, or Air Force, or the General Services Administration. References in this National Security Clause to the Government shall be deemed to refer as appropriate to the Secretary of Defense or such departments, agencies, or individuals as he may designate.

ART. VIII. *Redesignation of purpose and use of premises.* The Government hereby covenants and agrees that, upon a petition by the Lessee for a change in the assigned function of the premises, it will re-evaluate the defense potential of the premises, both for the purposes for which they are designated for inclusion in the National Industrial Reserve and those for which it is requested they be redesignated, and will, if it deems the interests of national security are best served thereby, and upon tender by the Lessee of whatever consideration may be requested, change their designation to that requested by the Lessee. Conversely, the Government may, on its own initiative, recommend a redesignation to the Lessee which, if acceptable to the latter, shall be put into effect. Redesignations under this paragraph may be made only by written instrument and may not be requested by the lessee more often than once in 6 months.

ART. IX. *Modification or amendment of the National Security Clause.* The Government hereby covenants and agrees that, upon a petition by the Lessee for a reconsideration of the particular applicability of any of the terms, conditions, reservations, or restrictions of the National Security Clause, the Government will, if it deems the interests of national security are best served thereby, modify or amend the Clause to the degree it sees fit upon tender by the Lessee of whatever consideration may be requested. Conversely, the Government may, on its own initiative, recommend modifications or amendments to the Lessee which, if acceptable to the latter, shall be put into effect.

ART. X. *Termination or revocation of the National Security Clause.* The Government and the Lessee mutually covenant and agree that their respective obligations under this National Security Clause, except those of the Lessee to reimburse the Government under Article III, or of the Government to furnish compensation under Article V, and except as may be otherwise specified herein, shall terminate upon the normal expiration of the lease or 20 years following the date of this instrument, whichever is sooner: *Provided however,* That in the event the Government is in possession at that time in accordance with Article IV (b), such termination shall occur upon release of possession by the Government to the Lessee; and provided further that the Government, at its own election, or upon a petition by the Lessee, may reconsider the necessity for continuing all or any part of the Clause in effect and shall, in the event it determines such necessity no longer exists, and upon tender by the Lessee of whatever consideration may be requested, revoke the Clause, in whole or in part, by executing and delivering to the Lessee a release or whatever instrument is necessary to remove the encumbrance of the Clause, or of a part thereof, from the facilities.

ART. XI. *Disputes.* Disputes on questions of fact which cannot be resolved by agreement of the parties shall be decided by the Secretary of Defense or the instrumentality duly and expressly designated by him, whose decision shall be final and conclusive. In connection with any proceeding under this Article, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its own case. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of its obligations under the Clause.

ART. XII. *Recordation.* The Lessee shall forthwith cause this instrument to be duly recorded and shall furnish satisfactory evidence of such to the Government.

ART. XIII. *Saving provision.* The Lessee and the Government mutually covenant and agree that nothing in this Clause shall be construed as affecting obligations of the Lessee under any other provisions of this instrument, except that, in any cases of inconsistency or ambiguity, the provisions of this National Security Clause shall, to the extent that they impose greater obligations on the Lessee, be deemed controlling.

§ 266.453–3 National Security Clause for sales of personal property.

NATIONAL SECURITY CLAUSE

Whereas, the Secretary of Defense pursuant to section 4 (1) of the National Industrial Reserve Act of 1948 (Pub. Law 883, 80th Cong.) has designated the properties hereby transferred a part of the National Industrial Reserve for the production of [insert designation of end item or basic material as the case may be] at an annual capacity of [insert quantity] and, whereas, pursuant to section 4 (4) of that Act, it has authorized their disposal subject to a National Security Clause formulated in accordance with that act; now therefore, in consideration of their respective obligations under this instrument, the parties hereto, for themselves, their heirs, successors, and assigns do hereby enter into the terms, covenants, and conditions hereinafter set forth which shall, together with this paragraph, be collectively known and referred to as the National Security Clause.

ARTICLE I. *Definitions.* For purposes of this Clause the following definitions will apply:

(a) The term "properties" as used herein means those properties (personal property) transferred by this instrument or any other properties subsequently substituted therefor by agreement of the parties and expressly made subject, by a separate written instrument, to the terms and conditions of this National Security Clause.

(b) The term "assigned function" means the function for which the properties have been designated a part of the National Industrial Reserve or for which they may be hereafter redesignated under Article IX hereof.

ART. II. *Maintenance.* The Purchaser hereby covenants and agrees that it will maintain the properties in such a manner that they can be placed, within a period of 120 days, in a condition adequate to perform their assigned function.

In addition, the Purchaser covenants and agrees,

(a) That it will maintain in accordance with sound practice in the industry, normal wear and tear excepted, such part of the properties as is necessary for their assigned function which is actively being used in its current operations; and

(b) That it will not make any alterations to the properties which would impair performance of their assigned function unless each such alteration can be restored in a period of 60 days or less and the sum total thereof restored in 120 days or less.

ART. III. *Defaults*—(a) *Inspections.* The Purchaser and the Government mutually covenant and agree that the latter may, after reasonable prior written notice to the Purchaser, inspect the properties to determine whether the Purchaser is in default on its obligations under this Clause.

(b) *Determination of default.* If, as a result of such inspections, the Government adjudges the Purchaser in default, it shall furnish a written statement to the Purchaser setting forth in detail the grounds on which it bases its allegations, following which the Purchaser shall have 30 days to submit evidence to the contrary. If in the light of the evidence so presented, the Government still holds that the Purchaser is in default, it shall then advise the latter of the specific defaults to be corrected and the periods of time in which each correction must be completed, such periods to be as reasonable as possible.

(c) *Repairs by the Government.* In the event the Purchaser fails to correct its defaults in the times stated, the Government shall then have the right to correct such defaults; and the Purchaser, or its sureties, shall reimburse the Government for all costs incurred by the Government in making such corrections. The Government, or any contractor employed by the Government for the purpose, shall have such right of access to the properties as may be necessary to permit making such repairs.

ART. IV. *Government utilization*—(a) *Negotiation of Contract.* The Purchaser and the Government mutually covenant and agree that, whenever the Government considers the productive capacity of the properties necessary for national security purposes, they will jointly undertake to negotiate a contract for the Purchaser to use the properties in furnishing the materials or services for which the properties are designated a part of the National Industrial Reserve.

(b) *Repossession.* The Purchaser hereby covenants and agrees that, in the event the Government determines such a contract is not feasible, or that the Purchaser is not qualified to furnish the materials or services required, or that a mutually satisfactory contract cannot be negotiated, the Purchaser will turn over to the Government full possession of the properties and all rights of use incident thereto (including a right of entry for removal of such properties) for such time as the latter deems necessary for national security purposes. The Government's rights to such possession and usage shall vest on the date set by it in written notice to the Purchaser, which date shall be not less than 15 days from the date of notice thereof, and shall expire on the termination date of this National Security Clause as provided for in Article XI below.

(c) *Relinquishment by the purchaser.* Upon repossession by the Government, the Purchaser shall have no further right to use the properties during the period of Government possession except with the prior consent of the latter. During any such period of Government possession the properties may be used or operated for or on behalf of the Government by any government department, agency, agent, or by any tenant, contractor, or subcontractor of the Government.

ART. V. *Compensation.* The Government hereby covenants and agrees that, upon any repossession under IV (b) above, it will pay the Purchaser:

(a) At the time of repossession, fair compensation for all losses, not including loss of profits, incurred by the Purchaser or its assignees in respect of work in process which cannot be completed because of repossession by the Government.

(b) During each period of possession, fair and reasonable compensation for the use of the properties as agreed upon by the parties hereto at a rate not in excess of prevailing rental for similar property.

(c) Upon termination of each period of possession, fair and reasonable costs incident to restoration of the properties to their condition on the date of repossession by the Government, reasonable depreciation excepted, and fair and reasonable costs for their reinstallation, if required.

Any failure of the parties to reach agreement as to what amounts are fair and reasonable under this Article shall be deemed a dispute of fact within the meaning of Article XII hereof.

ART. VI. *Insurance.* The Purchaser hereby covenants and agrees that the proceeds of any insurance which is required of the Purchaser by the terms of this instrument, or by any other agreement between it and the Government, to be placed on the properties hereby conveyed or any part thereof will be applied, upon damage to or destruction of the properties by fire or other insurable casualty, to a restoration thereof, unless the Purchaser is expressly released from such obligation by the Government.

ART. VII. *Subsequent transfers.* The Purchaser hereby covenants and agrees not to sell, lease, mortgage, pledge, or otherwise encumber the properties without expressly making such sale, lease, mortgage, pledge, or encumbrance subject to the provisions of this National Security Clause for the remainder of its term, with the right to enforce such provisions expressly stated as vested in the Government.

ART. VIII. *Parties.* The Purchaser and the Government mutually agree that the latter, in exercising its rights and carrying out its obligations under this National Security Clause shall act through the Secretary of Defense or such departments, agencies, or individuals as he may designate, which may include, without limitation, the Assistant Secretaries of Defense (S and L) and (P and I), the Departments of the Army, Navy, or Air Force, or the General Services Administration. References in this National Security Clause to the Government shall be deemed to refer as appropriate to the Secretary of Defense or such departments, agencies, or individuals, as he may designate.

ART. IX. *Redesignation of purpose and use of properties.* The Government hereby covenants and agrees that, upon a petition by the Purchaser for a change in the assigned function of the properties, it will re-evaluate the defense potential of the properties, both for the purposes for which they are designated for inclusion in the National Industrial Reserve and those for which it is requested they be redesignated, and will, if it deems the interests of national security are best served thereby, and upon tender by the Purchaser of whatever consideration may be requested, change their designation to that requested by the Purchaser. Conversely, the Government may, on its own initiative, recommend a redesignation to the Purchaser which, if acceptable to the latter, shall be put into effect. Redesignations under this paragraph may be made by written instrument only and may not be requested by the Purchaser more often than once in 6 months.

ART. X. *Modification or amendment of the National Security Clause.* The Government hereby covenants and agrees that, upon a petition by the Purchaser for a reconsideration of the particular applicability of any of the terms, conditions, reservations or restrictions of the National Security Clause, the Government will, if it deems the interests of national security are best served thereby, modify or amend the Clause to the degree it sees fit upon tender by the Purchaser of whatever consideration may be requested. Conversely, the Government may, on its own initiative, recommend modifications or amendments to the Purchaser which, if acceptable to the latter, shall be put into effect.

ART. XI. *Termination or revocation of the National Security Clause.* The Government and the Purchaser mutually covenant and agree that their respective obligations under this National Security Clause, except those of the Purchaser to reimburse the Government under Article III, or of the Government to furnish compensation under Article V, and except as may be otherwise specified herein, shall terminate 10 years following the date of this instrument or, in the event the Government is in possession at that time in accordance with Article IV (b), upon release of possession by the Government to the Grantee: *Provided, however,* That the Government, at its own election, or upon a petition by the Purchaser, may reconsider the necessity for continuing all or any part of the Clause in effect and shall, in the event it determines such necessity no longer exists, and upon tender by the Purchaser of whatever consideration may be requested, revoke the Clause, in whole or in part, by executing and delivering to the Purchaser a release or whatever instrument is necessary to remove the encumbrance of the Clause, or of a part thereof, from the properties.

ART. XII. *Disputes.* Disputes on questions of fact which cannot be resolved by agreement of the parties shall be decided by the Secretary of Defense or the instrumentality duly and expressly designated by him, whose decision shall be final and conclusive. In connection with any proceeding under this Article, the Purchaser shall be afforded an opportunity to be heard and to offer evidence in support of its own case. Pending final decision of a dispute hereunder, the Purchaser shall proceed diligently with the performance of its obligations under the Clause.

ART. XIII. *Recordation.* The Purchaser shall forthwith cause this instrument to be duly recorded and shall furnish satisfactory evidence of such to the Government.

ART. XIV. *Saving provision.* The Purchaser and the Government mutually convenant and agree that nothing in this Clause shall be contrued as affecting obligations of the Purchaser under any other provisions of this instrument, except that, in any cases of inconsistency or ambiguity, the provisions of this National Security Clause shall, to the extent that they impose any greater obligations on the Purchaser, be deemed controlling.

§ 266.454 Modifications in National Security Clause.

The National Security Clause prescribed in this subpart may be modified or deviated from and specific provisions may be omitted for purposes of specific properties and transactions provided such modifications, deviations, or omissions or substance are approved by the Secretary of Defense before becoming binding upon the Government.

DISPOSALS OF PROPERTY SUBJECT TO THE NATIONAL SECURITY CLAUSE

§ 266.500 Scope of §§ 266.500 to 266.506.

Sections 251.500 to 251.506 deal with the procedures for disposing of property in the National Industrial Reserve to private individuals, firms, corporations, or other persons, subject to the National Security Clause.

§ 266.501 Specification of National Security Clause.

The Secretary of Defense may authorize disposition of specific properties, and will specify the National Security Clause and will notify the head of the disposal agency having control of each such property. If not otherwise specified, the National Security Clause formulated in this part shall be considered to be applicable.

§ 266.502 Modification of National Security Clause.

In the event that any agency charged with the disposal of excess property in the National Industrial Reserve is unable to dispose of such property because the terms of the National Security Clause imposed upon it are unacceptable without modifications and substance, the head of such agency shall promptly notify the Secretary of Defense thereof, indicating the modifications in the disposal of the property. Upon receipt of such notification, the Secretary of Defense may, in his discretion, direct what, if any, modifications shall be made in the provisions of the National Security Clause applicable to the property, which modifications may, but need not, conform to the recommendations of the head of the disposal agency.

§ 266.503 Qualifications of transferees.

In addition to any other requirements, disposals of property in the National Industrial Reserve shall be made only upon proof, satisfactory to the head of the disposal agency having control of such property, of the financial responsibility and integrity of the transferee, and of his or its ability to operate the property and knowledge of the technical problems involved.

§ 266.504 Negotiation of terms of disposition.

§ 266.504–1 Responsibility of head of disposal agency.

Except as provided in § 266.504–2, negotiations for the sale, lease, or other disposition of a property in the National Industrial Reserve shall be the responsibility of the head of the disposal agency having control of the property. The terms of such disposition shall in all cases include the provisions of the National Security Clause as specified by the Secretary of Defense for the property, with such modifications as may be approved, but in other respects may be upon such terms and conditions as shall be mutually agreed upon by the head of the disposal agency and the transferee.

§ 266.504–2 Negotiations by General Services Administration.

In the case of negotiations for the sale, lease or other disposition of a property in the National Industrial Reserve by the General Services Administration, terms and conditions negotiated by the General Services Administration, shall not become effective until they have either been approved by the Secretary of Defense or the Secretary of Defense has indicated that his approval of the particular transaction or type of transaction is not required.

§ 266.505 Disposal procedures.

Subject to the regulations in this subchapter and to the extent not inconsistent with it, disposals of property in the National Industrial Reserve subject to the National Security Clause shall be governed by the rules, regulations, and procedures established by the disposal agency having control of such property.

§ 266.506 Documentation.

Each disposal of property shall be documented in accordance with the rules, regulations and procedures of the disposal agency having control of the property, and, in addition, the Secretary of Defense shall be furnished with at least three conformed copies of all documents of transfer including any letters of intent agreements and other documents containing the commitments of the parties to enter into the transaction.

TRANSFERS OF PROPERTY TO GENERAL SERVICES ADMINISTRATION

§ 266.550 Scope of §§ 266.550 to 266.554.

Sections 266.550 to 266.554 deal with the procedures for transfers of property to the General Services Administration to be held by it as a part of the National Industrial Reserve. Such property will ordinarily come to the General Services Administration as a result of the failure of other disposal agencies to dispose of it subject to the National Security Clause or authorized modifications thereof. It may be held by General Services Administration as custodian for an indefinite period of time, or it may be transferred or disposed of by the General Services Administration in accordance with directives of the Secretary of Defense.

§ 266.551 Certification of unsuitability and transfer directive.

§ 266.551–1 Determination by head of disposal agency.

Upon a determination by the head of a disposal agency that a particular excess industrial property in the National Industrial Reserve which is under its control cannot be disposed of subject to the National Security Clause, or a National Security Clause as modified in accordance with the provisions of § 266.502, after every practicable effort has been made, he shall give written notice to the Secretary of Defense certifying that such property is not salable subject to a National Security Clause.

§ 266.551–2 Disposition or transfer by Secretary of Defense directive.

Upon receipt of a certification that a property is unsalable under the provisions of a National Security Clause, the Secretary of Defense may, in his discretion: (a) Direct the disposition of such plant in accordance with the provisions of §§ 266.600 to 266.606 or; (b) direct the certifying agency to transfer such property to the General Services Administration in accordance with the provisions of this subpart.

§ 266.551–3 Limitation on necessity for modification of conditions.

It shall not be necessary, as a condition precedent to certification, transfer or disposal under §§ 266.551–1 and 266.551–2, to seek to dispose of any property under a modified National Security Clause, or to attempt to dispose of any property for a use other than the use for which it was designated for the National Industrial Reserve.

§ 266.552 Transfer of possession, accountability and responsibility.

Transfer of possession, accountability and responsibility pursuant to directive of the Secretary of Defense in accordance with the provisions of § 266.551–2 shall be in accordance with such procedures as may be prescribed by the General Services Administration. Unless otherwise prescribed by the Secretary of Defense, transfers shall include the entire interest of the Government at the location of the property being transferred including the assignment of responsibility for administration of all agreements relating to such property; other than agreements secured by mortgage, lien, or other interests; the General Services Administration to assume the obligation of all such agreements as of the date of transfer. All such transfers shall be without reimbursement or transfer of funds and the property transferred shall continue to be held as a part of the National Industrial Reserve unless other instructions shall be received from the Secretary of Defense.

§ 266.553 Documentation.

Each transfer of property to the General Services Administration shall be documented according to procedures specified by the General Services Administration, and the Secretary of Defense shall be furnished with at least three conformed copies of all documents of transfer.

§ 266.554 Transfer of machine tools and industrial manufacturing equipment.

Machine tools and industrial manufacturing equipment which may be designated as a part of the National Industrial Reserve shall not be offered for disposal except as part of a plant which is to be disposed of, but shall be transferred to the General Services Administration in accordance with the provisions of this subpart. Transfers of such machine tools and equipment shall be accomplished without reimbursement or transfer of funds.

TRANSFERS OF PROPERTY FOR USE OF, OR OPERATION BY, OTHER GOVERNMENTAL DEPARTMENTS AND AGENCIES

§ 266.600 Scope of §§ 266.600 to 266.606.

Sections 266.600 to 266.606 deal with the procedures for transfers of property in the National Industrial Reserve in the custody of the General Services Administration to other governmental departments and agencies, to be used or operated by such other departments or agencies while the property in question continues to constitute a part of the National Industrial Reserve.

§ 266.601 Request for transfer.

The head of any governmental department or agency may present a written request to the Secretary of Defense for the transfer to his department or agency of any property in the National Industrial Reserve which is being held by the General Services Administration for the use of, or operation by, the department or agency on behalf of which the request is made. Such request shall be in writing, and shall set forth in detail the uses that are intended to be made of the property, the standard of maintenance that is contemplated, the effect of such use or operation upon the availability of the property for the purpose of national defense, and other contemplated terms and conditions of the proposed transfer. The department or agency so making a request shall furnish the Secretary of Defense with such additional information relating to the proposed use and operation of the property as the Secretary of Defense may request.

§ 266.602 Terms of transfer.

The Secretary of Defense may deny any such request, or may offer to transfer the property requested upon terms other than those contained in the request.

§ 266.603 Direction to transfer.

The Secretary of Defense may, in his discretion and without request, direct that property in the National Industrial Reserve under the control of the General Services Administration be transferred to any one of the military departments of the Department of Defense or any other department or agency, with his consent for the use of, or operation by, such department or agency, without reimbursement.

§ 266.604 Accountability and responsibility.

Upon completion of the transfer of the property, in accordance with the terms of transfer prescribed by the Secretary of Defense, and pursuant to the regulations and procedures of the disposal agency having control of the property prior to the transfer, the department or agency to which the property has been transferred shall be responsible for the the proper maintenance of the property and for its availability for purposes of national defense, as prescribed by the Secretary of Defense in the terms of transfer.

§ 266.605 Inspection and reports.

While subject to the use of, or operation by, such other governmental department or agency, the property shall be available for the engineering surveys and inspections provided for in §§ 266.400 to 266.404–2, and such department or agency shall adhere to the maintenance requirements specified in said § 266.400 and shall make such reports to the Secretary of Defense from time to time concerning the property's condition and availability, together with accounts of its operation, as may be requested by the Secretary of Defense.

§ 266.606 Return of property.

Whenever such governmental department or agency has no further need for the use or operation of property transferred to it under this §§ 266.600 to 266.606 it shall promptly notify the Secretary of Defense. Upon receipt of such notice, the Secretary of Defense shall cause a review to be made of the justification for the retention of such property in the National Industrial Reserve, and if such retention is determined to be justified, the Secretary of Defense may (a) cause it to be transferred to another department or agency for its use in accordance with terms and conditions to be prescribed, or (b) direct it to be transferred to the General Services Administration to be held by it in the National Industrial Reserve.

LOAN OF PROPERTY IN THE NATIONAL INDUSTRIAL RESERVE TO NONPROFIT EDUCATIONAL INSTITUTIONS AND TRAINING SCHOOLS

§ 266.650 Scope of §§ 266.650 to 266.654.

Sections 266.650 to 266.654 deal with the rules and procedures governing loans of property in the National Industrial Reserve by the General Services Administration to nonprofit educational institutions and training schools, as provided in the act. Such loans will be limited to certain machine tools and industrial manufacturing and laboratory equipment under the control of the General Services Administration.

§ 266.651 Application for loan of property.

The head of any nonprofit educational institution or training school as defined in § 266.201–7 may make a written application to the General Services Administration for the loan of specific machine tools or industrial manufacturing equipment for the use of such institution or school in connection with a program of instruction. The application shall specify in detail the property requested, the nature of the program, and the number, age, and qualifications of the persons expected to participate in the program.

§ 266.652 Investigation and report by General Services Administration.

Upon receipt of an application for a loan of property in the National Industrial Reserve the General Services Administration will cause an investigation to be made to determine (a) whether the applicant conforms to the definition contained in § 266.201–7, (b) the accuracy of the statements contained in the application, (c) the ability of the applicant properly to care for and maintain the property, (d) the importance of the property in question to the program of instruction, (e) the relative importance of the program as a means of training critically-needed skills, compared to the importance of preserving the productive capacity of the property for future use, and (f) such other facts as may be material. The results of such investigation will be reported by the General Services Administration to the Secretary of Defense together with its recommendation with respect to the granting or denying of the application.

§ 266.653 Action by Secretary of Defense, conditions of loan.

The Secretary of Defense may in his discretion authorize or refuse to authorize such loan. In the event that it is authorized, the loan of the property applied for will be upon terms (a) requiring the property to be fully cared for and maintained by the applicant according to such standards as the Secretary of Defense may prescribe, (b) requiring the property to be kept available for immediate return upon request to the General Services Administration or such other Governmental department or agency, or other person as the Secretary of Defense may designate, and (c) requiring the applicant to assume all costs of transportation, maintenance, and insurance of the property while subject to the loan, so that the loan will be without expense to the Government.

§ 266.654 Authorization to General Services Administration.

In the event that the Secretary of Defense approves the loan, the General Services Administration will be notified of such approval, and will be authorized to make the loan upon the conditions prescribed in § 266.653, and such other terms as the General Services Administration may prescribe.

DISPOSITION OF EXCESS INDUSTRIAL PROPERTY FREE OF NATIONAL SECURITY CLAUSE WHEN NO LONGER REQUIRED FOR NATIONAL INDUSTRIAL RESERVE

§ 266.700 Scope of §§ 266.700 to 266.701–2.

Sections 266.700 to 266.701–2 deal with procedures for disposition of property in the National Industrial Reserve when it is no longer needed for such reserve.

§ 266.701 Relinquishment or waiver of National Security Clause.

Whenever the Secretary of Defense shall determine that the retention of the productive capacity of an excess industrial property in the National Industrial Reserve (including a lesser part or interest than the entire property) is no longer essential to the national security, it will authorize the relinquishment or waiver of a part or all of the provisions of the National Security Clause applicable to such property.

§ 266.701–1 Property under control of disposal agency.

If the property is under the control of a disposal agency, the Secretary of Defense will notify the head of such disposal agency of the relinquishment or waiver of the National Security Clause, and the property shall thereafter be offered for disposition free from the provisions so relinquished or waived.

§ 266.701–2 Property under control of a transferee.

If the property has been disposed of to a transferee subject to a National Security Clause, the Secretary of Defense will relinquish or waive the National Security Clause.

PART 268—USE OF STANDARDIZATION DOCUMENTS ISSUED BY INDUSTRY GROUPS

Sec.
268.1 Purpose.
268.2 Authority.
268.3 Policy.
268.4 Definitions.
268.5 DoD participation and representation.
268.6 DoD control of DoD requirements.
268.7 Identification of approved industry documents.

AUTHORITY: §§ 268.1 to 268.7 issued under Chapter 145, Title 10, United States Code.

§ 268.1 Purpose.

This part prescribes a uniform policy for implementation of that portion of DoD Directive 4120.3 Defense Standardization Program, documents to assure the most economic employment of standardization resources.

§ 268.2 Authority.

The Defense Standardization Program is conducted under the authority of Chapter 145, Title 10, U.S.C. Responsibility for this program is assigned to the Assistant Secretary of Defense (Supply and Logistics) by DoD Directive 5126.1, (24 F.R. 6098). Administration of the Program is delegated to the Armed Forces Supply Support Center by DoD Directive 5154.14.

§ 268.3 Policy.

In furtherance of the Defense Standardization Program, it is the policy of the Department of Defense to make maximum utilization of industry effort expended in the development of standardization documents. Industry standardization documents shall be used whenever considered feasible by the cognizant technical activity in the fields of research, design, development, and acquisition of material. DoD activities are encouraged to make optimum use of the facilities of industry groups in the development of industry standardization documents having a present or potential DoD use. An industry document which has received that degree of DoD approval presently required for issuance of a coordinated Federal or military specification or standard shall be approved for use within the Department of Defense. An industry document, coordinated and approved by a military service in the same manner as that service coordinates and approves military specifications and standards for limited coordination status, shall have the equivalent status. Only complete industry standardization documents of a specified issue will be selected by DoD for either coordinated status or limited coordination status equivalent. The referencing of industry standardization documents in their entirety, or in part, in military and Federal specifications and standards is authorized.

§ 268.4 Definitions.

For purposes of this part, the following terms shall have the meanings described below:

(a) *Industry group.* A nongovernmental organization conducting professional standardization activities. (An individual or a concern organized for profit is not an industry group within the sense of this instruction.)

(b) *Industry document.* Any standardization document issued by an industry group, as herein defined, with the intent to establish common technical requirements (including requirements for a physical item, technical process, engineering practice, etc.)

§ 268.5 DoD participation and representation.

The following principles shall govern DoD participation and representation in industry groups:

(a) *Participation.* (1) Military services shall participate to the extent practicable in the work of industry groups to further the objectives of the Defense Standardization Program. Participation shall be consistent with DoD Directive 5500.2, "Policies Governing Participation of DoD Liaison Representatives in Activities of Technical Societies, Associations and Groups".

(2) Each assignee shall provide or arrange for active DoD participation in those industry group projects in which DoD has a real interest based upon a current or anticipated military requirement. An assignee shall insure that DoD participation so provided or arranged for represents the interests of all the services and is in fact a DoD representation.

(3) Each assignee will ascertain prior to providing or encouraging DoD participation, that the industry project will result in a timely document. If it is determined that the efforts of the in-

dustry group will not have a timely result, then DoD efforts should be directed toward drafting an appropriate military document.

(b) *Representation.* While adequate DoD representation in the work of industry groups is essential to the attainment of DoD standardization objectives, excessive DoD representation in terms of numbers of official DoD participants is to be discouraged. The number of persons officially representing DoD as participants in projects of an industry group shall be consistent with the importance of the project to DoD and shall be limited to that minimum needed for effective representation of DoD interests.

(c) *Coordination of DoD effort.* (1) Each assignee will avoid unnecessary duplication of effort in standardization projects, whether military or industry.

(2) It is the responsibility of an assignee to keep other interested DoD activities and the Armed Forces Supply Support Center informed of industry standardization action pertinent to the Defense Standardization Program.

(3) In partial fulfillment of this responsibility to coordinate DoD standardization effort, each assignee shall, within the area of its assignments, provide for establishment and maintenance of DoD representation on committees of industry groups for matters pertaining to standardization and the development of specifications and standards to the extent that common interest exists and actual benefit to DoD results. A copy of a list of liaison representation identifying the industry groups will be furnished the Standardization Division, AFSSC, semiannually on 30 December and 30 June.

§ 268.6 DoD control of DoD requirements.

Approval of an industry document for use in DoD procurement shall be granted only for a specified issue (see § 268.7(a)) which meets the requirements of the Department of Defense.

(a) *Approved industry documents having coordinated status.* An industry document which has received that degree of DoD approval precently required for issuance of a coordinated Federal or military specification or standard shall be approved for use within the Department of Defense. In order for an industry document to be approved for use, it must be subjected to the identical DoD administrative processes required for approval of a coordinated Federal or military specification or standard.

(1) *Existing industry documents.* With respect to existing industry documents, an assignee has the following standardization responsibilities within areas of its assignment:

(i) Select those having a potential for DoD use.

(ii) Establish projects for:

(*a*) Obtaining the requisite coordination within DoD on the documents selected;

(*b*) Obtaining such additional industry coordination as is necessary on these documents;

(*c*) Arranging for their final DoD approval; and

(*d*) Identifying them as approved industry documents in the index prescribed by § 268.7.

(2) *Proposed industry documents.* With respect to proposed industry documents, an assignee has the following standardization responsibilities within the area of its assignment:

(i) Maintain a continuing awareness of existing projects intended to result in an industry document.

(ii) Encourage industry groups to initiate new projects for documents which will satisfy a current or potential DoD requirement.

(iii) Insure active DoD participation (see § 268.5) in all projects in which DoD has a real interest based upon a current or anticipated DoD requirement.

(iv) Establish projects for:

(*a*) Obtaining formal coordination within the DoD on proposed industry documents resulting from these industry groups' projects;

(*b*) Submitting to the industry group concerned the official DoD comments on such a proposed document;

(*c*) Encouraging the industry group to make that circulation of the proposed industry document to industry which would be made were it a proposed DoD document;

(*d*) Ascertaining that the industry document finally promulgated is consistent with all essential DoD comments;

(*e*) Obtaining such additional industry coordination as is necessary;

(*f*) Arranging for final DoD approval; and

(*g*) Identifying the approved industry document in the index prescribed in § 268.7.

(b) *Approved industry documents having limited coordination status.* An industry document coordinated and approved by a military service in the same manner as that service coordinates and approves military specifications and standards for limited coordination status shall have the equivalent status.

(c) *Criteria for approval.* The primary criteria for determining whether an industry document will be approved for use by the Department of Defense are: The technical sufficiency of the document in terms of DoD requirements; the extent and degree to which an industry document is circulated for comment among, and is acceptable to, interested industry elements; and the assurance that sufficient copies of the document will be available to satisfy demands generated by DoD.

(1) When, in the judgment of the assignee, coordination of the industry document by the industry group has been effected to at least the minimum extent and degree required for a DoD-conducted industry coordination of a military specification or standard, the industry coordination process need not be repeated. If, however, the industry coordination by the industry group does not meet the foregoing coordination criterion, technical requirements of the document may be incorporated into a military document and processed within the military series, after securing the required industry coordination.

(2) An industry document will not be approved for either coordinated-status equivalent or limited coordinated-status equivalent unless it has first been ascertained that:

(i) Sufficient copies are available from the industry source to handle the total estimated DoD demands at no more than a nominal charge for each copy, and

(ii) If the document is copyrighted, that the Government has been granted a royalty-free license for reproduction for its own use and for future reproduction on the contingency that the industry source may cease to make sufficient copies available at some future date.

§ 268.7 Identification of approved industry documents.

Each industry document approved for use within the Department of Defense in accordance with the procedures herein prescribed shall be identified in a separate section of each existing departmental index entitled "Index of Military Specifications and Standards" and shall be bound integrally therewith. The departmental indexes are also referred to as "Military Indexes for Specifications and Standards (Vols. II, III, and IV).

(a) *Identification data for industry documents.* A military series of numbers shall not be assigned to DoD-approved industry documents. The index will identify each such document by industry group, symbol, number, title, date of the most recent DoD-approved issue and Assignee Activity within DoD. (E.g., ASA C7.1–1953, 2d edition, Soft or Annealed Copper Wire, Specifications for.) Each listed industry document shall be identified in the index as either coordinated-status equivalent or limited coordinated-status equivalent. This identification of status will be in the same form as that now being used in the Index for identifying military specifications and standards as either coordinated or limited coordinated.

(b) *Identification of industry source.* Whenever the distribution requirements for an indexed industry document are to be met wholly or partially by the industry source, an appendix to the Index will list the name and mailing address of the industry distribution point for each indexed document except for any document generally available in technical or public libraries (e.g., Pharmacopoeia of the United States).

PART 271—CORRESPONDENTS ACCOMPANYING THE ARMED FORCES

Sec.

271.1 General.
271.2 Definitions.
271.3 Status and privileges.
271.4 Application.
271.5 Limit on number.
271.6 Agreement.
271.7 Credentials.
271.8 Termination of accreditation to a theater of operations.
271.9 Uniform.
271.10 Transportation.
271.11 Reporting upon arrival.
271.12 Change in assignment.
271.13 Discipline.
271.14 Communication with sponsoring agency.
271.15 Filing of material.
271.16 Censorship.
271.17 Pictorial coverage.
271.18 Still picture pools.
271.19 Exclusive still pictures.
271.20 Release dates.
271.21 Still picture censorship, developing, and shipping.
271.22 Copies of stills for Department of Defense.
271.23 Theater newsreel or television news film pools.
271.24 Exclusive motion pictures.
271.25 Motion picture censorship, developing, and shipping.
271.26 Duplicating copy for Department of Defense.

AUTHORITY: §§ 271.1 to 271.26 issued under R.S. 161; 5 U.S.C. 22.

§ 271.1 General.

(a) *Purpose.* Sections 271.1 to 271.26 acquaint correspondents with their responsibilities while under the jurisdiction of the Armed Forces in area commands as designated by the Secretary of Defense and serve as a directive to Armed Forces personnel in their relationship with correspondents under jurisdiction of the Armed Forces.

(b) *Policy.* The policy of the Department of Defense is to give the public timely and, so far as it is compatible with national defense, complete information of Army, Navy, Air Force, Marine Corps, and Coast Guard activities and to afford opportunities to correspondents of recognized public information agencies to gather and transmit such news.

§ 271.2 Definitions.

For the purpose of simplification and understanding, certain terms used in this part are defined below:

(a) "Public information agencies" shall mean a press, radio, or pictorial organization regularly engaged in the collection and dissemination of news to the public, including press associations, news and pictorial feature services, newspapers, periodicals, radio and television broadcasting organizations, and newsreel companies.

(b) "Correspondents" shall mean journalists, press reporters, photographers, columnists, editors and publishers, radio and television reporters, commentators and cameramen, and newsreel and other documentary picture production personnel who are duly accredited to the Department of Defense and regularly engaged in the collection and dissemination of news to the public.

(c) "News material" shall mean all news material, whether of information or opinion and whether visual or auditory, for dissemination to the public.

(d) "Press traffic" shall mean news material transmitted in writing or by means of telecommunications (in form customarily employed by news media agencies in transmitting such news material before publication) to newspapers, news periodicals, and broadcasting organizations.

(e) "Official photographs" shall mean those stills made by military photographers or civilian photographers employed by the Department of Defense, as distinguished from photographs made by war correspondent photographers. Unclassified official and unclassified captured photographs will be made available to all interested news photo agencies and media when practicable.

(f) "Official motion pictures" shall be those motion pictures made by military photographers or civilian photographers employed by the Department of Defense, as distinguished from motion pictures made by war correspondent photographers. Unclassified official motion pictures as well as unclassified captured motion pictures will be made available to all interested theater newsreel and television news film companies and other media if practicable.

§ 271.3 Status and privileges.

All possible assistance within the limits dictated by military necessity will be given correspondents to assist them in performing efficiently and intelligently their work of keeping the public informed of the activities of the Armed Forces of the United States.

(a) Correspondents accompanying the Armed Forces of the United States are subject to the orders of the military commander of the unit to which attached. They are subject to military law in accordance with the Uniform Code of Military Justice, Article 2, (10), (11), and (12). They must wear the prescribed uniform and be prepared to identify themselves when called upon to do so by proper authority. They shall at all times observe the same military security regulations as service personnel, including censorship of personal correspondence.

(b) Correspondents are not, in general, entitled to the benefits provided by law for persons in the Armed Forces.

(c) In the event of capture by enemy forces, correspondents are entitled to treatment as prisoners of war, provided they are in possession of an identity card issued by the Department of Defense establishing their status. (Article 4, Geneva Convention Relative to the Treatment of Prisoners of War, of August 12, 1949.) (§ 271.7 (a) and (b).)

(d) Correspondents will not exercise command, will not be placed in a position of authority over military personnel, nor will they be armed. They will have the same obligations as military personnel in regard to personal conduct, the settlement of accounts, and compliance with standing orders.

(e) A correspondent becomes subject to military law, as indicated above, upon physically entering a theater of operation in an accredited status, or upon boarding Government transportation en route thereto.

(f) As far as facilities permit, correspondents will be treated as commissioned officers, with the assimilated rank of major or comparable grade, in such matters as messing, living accommodations, and transportation. They will be accorded the same privileges and have the same obligations as officers in the use of post exchanges, ship stores, clothing sales stores, and recreational facilities. Use of such facilities must be without cost to the Government.

(g) Correspondents may converse freely with Armed Forces personnel, unless such conversation interferes with the discharge of military duties. They are expected, however, to refrain from conversing with Armed Forces personnel at work or on guard, or from discussing or soliciting information known to be classified.

§ 271.4 Application.

Application for the accreditation of any individual correspondent will be submitted by the sponsoring employer to the Office of Public Information, Department of Defense, Washington 25, D.C.

§ 271.5 Limit on number.

The following considerations shall govern the number of correspondents accredited to any theater of operations:

(a) The number of correspondents accredited to a theater will be within quotas established by the theater commander after coordination with the military department concerned and the Department of Defense. Quotas will be determined by the size of the command and the availability of facilities and logistical support.

(b) When limitation of quotas is necessary, the Department of Defense will give preference in the consideration of application to agencies reaching broad segments of the American public and to selections which maintain a balanced representation of the various informational media.

§ 271.6 Agreement.

Before final acceptance, a correspondent will be required to sign an agreement in quadruplicate as follows:

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF PUBLIC INFORMATION
Washington 25, D. C.

(Date)

AGREEMENT

As a correspondent accredited to and authorized by the Department of Defense to join ---
(Name of unit)
for the purpose of obtaining new material for public dissemination, I subscribe to the following conditions:

1. As a correspondent, I understand that I am subject to military law in accordance with the provisions of Article 2 (10), (11), and (12) of the Uniform Code of Military Justice, and to all regulations for the Government of the Armed Forces.

2. My movements and actions shall be in accordance with the regulations of the Department of Defense and the instructions of

the commanding officer of the headquarters to which I am attached.

3. I agree to submit for censorship all news material obtained during the period of this accreditation, whether for release while with the armed forces or thereafter as long as security is a consideration.

4. I agree to comply with all currency control regulations in effect in the places visited under this authorization.

5. I guarantee to meet all financial obligations incurred by me while accompanying the armed forces under this authorization.

6. I waive all claims against the United States for loss or damage to my property or for personal injury, sustained in connection with my activities as a war correspondent, during the period covered by this authorization.

7. This authorization is for the period ---------- to ---------- and subject to revocation at any time, for cause, by the Department of Defense.

Signed ----------
Representing ----------
(Company, syndicate, or agency)
Witnessing officer ----------
(Name)

1 copy—Office of Public Information, Department of Defense.
1 copy—Military Department concerned.
1 copy—Commanding officer, headquarters concerned.
1 copy—Correspondent.

§ 271.7 Credentials.

The issuance and use of credentials shall be as outlined below:

(a) When an application for accreditation as a correspondent is approved, the applicant will be furnished credentials, including a correspondent's identification card (SD Form 36), by the Office of Public Information, Department of Defense. Possession of this identification card establishes the physical identity of the correspondent, his connection with a recognized public information agency, and the completion of a file check by appropriate Federal security agencies.

(b) The correspondent shall be furnished an identity card by the Department of Defense (DD Form 489), stating that he is an accredited correspondent serving with the Armed Forces of the United States and entitled to treatment as a prisoner of war in accordance with Article 4, Geneva Convention Relative to Prisoners of War, of August 12, 1949. For the purpose of insuring proper treatment in the event of capture, the identity card will provide the assimilated rank of major or comparable grade.

(c) A correspondent's accreditation card does not authorize the bearer to have access to classified military information.

(d) Correspondents will produce identification cards upon request of an officer, warrant officer, or enlisted man in the execution of his duty.

(e) Where conditions warrant, in addition to Department of Defense credentials, major headquarters commanders may issue passes or credentials with regulations governing their use.

§ 271.8 Termination of accreditation to a theater of operation.

An accredited correspondent may leave a theater of operations at any time upon military orders issued by the commander concerned.

(a) If accompanying the Armed Forces beyond the territorial limits of the United States, and the return journey is made by Government transportation, relief does not become effective until arrival in the United States. If the journey is made by other than Government transportation, relief becomes effective at the time of departure from the theater of operation or base command.

(b) Accreditation as a war correspondent to a theater of operation will be terminated upon:

(1) Severance of employment with the sponsoring agency.

(2) Revocation of accreditation.

(c) Revocation of accreditation is a responsibility solely of the Secretary of Defense. In general, disaccreditation will result from:

(1) Personal misconduct of a criminal or moral nature.

(2) Violation of security regulations.

(3) Membership in, close relationship to, or adherence to subversive organizations.

(d) Upon termination of accreditation, the correspondent will leave the theater of operations or base command upon instructions of the commander concerned. Correspondents whose accreditation has been terminated will surrender their credentials to the theater or base commander before departure for the continental United States, at which time they will be issued temporary credentials covering the return journey. The theater or base commander will forward the expired credentials to the Office of Public Information, Department of Defense.

§ 271.9 Uniform.

(a) Accredited correspondents accompanying the Armed Forces of the United States in a theater of operation will wear the following officer-type service uniforms:

(1) *Winter.* Jacket and/or shirt and trousers, wool, shade 33; or fatigue clothing; necktie, shade 51, trench coat, shade 79; garrison cap, wool, shade 33.

(2) *Summer.* Cotton khaki shirt, trousers and cotton khaki garrison cap, shade 1; or fatigue clothing; necktie, shade 51.

(b) Correspondents accompanying the Armed Forces of the United States will wear civilian insignia conforming to the following specifications: On a khaki-colored cloth background 2½ inches in height and 3 inches in width, a dark blue equilateral triangle of 1¼ inches, bearing the letters U. S. in khaki color ¼ inch in width and ½ inch in height. The word WAR will appear above the blue triangle and the word CORRESPONDENT below it in dark blue letters ¼ inch in height. This insignia will be worn on the left breast pocket of outer garments or in a comparable position on outer garments having no pockets. It will also be worn on the left front of the garrison cap.

(c) Correspondents may wear military decorations awarded to them as civilians accompanying the Armed Forces. They may also wear decorations or service ribbons awarded them for previous active military service.

(d) Correspondents may not wear military insignia or divisional or unit insignia. Civilians accompanying the Armed Forces are not eligible for the award of service medals.

(e) Articles of special clothing and equipment may be issued to correspondents on memorandum receipt where required.

(f) Accredited correspondents will not wear civilian clothing while accompanying the Armed Forces in a theater of operation. Exceptions may be made for special groups under escort visiting military areas for limited periods.

§ 271.10 Transportation.

(a) When commercial facilities are inadequate, Government transportation may be furnished to accredited correspondents, for travel to and from the command to which attached, whenever such transportation is available and essential military personnel are not displaced.

(b) Within the theater, or other command of attachment, correspondents may request Government transportation required for the accomplishment of their missions.

(c) The baggage of correspondents normally will be moved with that of the headquarters to which attached. Its weight and content will be within the limits prescribed by the commander concerned.

§ 271.11 Reporting upon arrival.

Upon arrival at the headquarters to which attached, correspondents will report to the Public Information officer, who will provide the assistance and guidance required for the accomplishment of their missions.

§ 271.12 Change in assignment.

Changes in assignment will be effected as follows:

(a) Correspondents officially assigned to the headquarters of a senior commander may, at their request, be attached to a subordinate headquarters. Such changes of assignment will be subject to the approval of the commanding officers concerned.

(b) A correspondent's movement to a theater other than that to which currently assigned will be accomplished only with the approval of the commanders concerned and the Department of Defense.

§ 271.13 Discipline.

Disciplinary action may be taken as follows for violation of §§ 271.1–271.26 or other regulations:

(a) The privileges accorded an accredited correspondent may be suspended for the use of words or expressions in a news dispatch intended to mislead or deceive a censor and cause approval of otherwise objectionable dispatches.

(b) In extreme cases of offense, the correspondent may be placed in arrest to await evacuation or disciplinary action.

(c) Information of the conduct of a correspondent warranting disciplinary action together with that of any action taken or contemplated, will be forwarded through appropriate channels to the Office of Public Information, Department of Defense.

§ 271.14 Communication with sponsoring agency.

When the behavior or activities of a correspondent are of such nature, commendable or otherwise, as to warrant calling the facts to the attention of the sponsoring agency, commanders will forward all pertinent information to the military department concerned. Recommendations relative to the case will be sent by the department to the Office of Public Information, Department of Defense, for action.

§ 271.15 Filing of material.

(a) Prior to transmittal, all news material will be submitted for review to the appropriate censorship authority, as directed by the commander of the force to which the correspondent is attached (§ 271.16).

(b) Correspondents will employ only those communications facilities designated by the commander of the force or unit to which attached.

(c) When commercial communications facilities are not available, the use of Armed Forces facilities by correspondents is authorized subject to the following conditions:

(1) Press traffic will not interfere with operational military traffic.

(2) When military necessity requires that priority of transmission of news material be established, procedures (pooling, priorities, word limit restrictions, etc.) will be prescribed by the commander concerned.

(3) Press traffic originating on military facilities will be refiled commercially at the commercial refile point for the area concerned.

(4) Press traffic will be refiled Collect when transferred to a commercial facility.

(5) Press traffic will be prepared and filed in the manner prescribed for the type of communications facility over which it is to be transmitted.

(6) The provisions of section 327, Communication Act of 1934, as amended (48 Stat. 1091; 47 U. S. C. 327) will be applicable to all press traffic and related service messages accepted for transmission via the Naval Communications Service.

§ 271.16 Censorship.

Censorship in time of war or national emergency is a measure vital to the security of the people of the United States and to the military forces thereof. The following regulations will apply:

(a) All communications, by whatever means, will be subject to established censorship regulations. Material intended for publication may not be sent as personal mail but must be submitted for press censorship.

(b) In general, news material may be released for dissemination to the public provided it does not supply information of value to the enemy.

(c) News material prepared by correspondents after their return to the United States from a theater of operation which contains information that might be of value to the enemy, such as tactical doctrine, classified equipment, future plans, combat efficiency or state of training, etc., will be submitted for review to the Office of Public Information, Department of Defense, prior to publication.

§ 271.17 Pictorial coverage.

Accredited news cameramen will be afforded every reasonable opportunity to photograph the activities of the Armed Forces but the Armed Forces are not responsible for the quantity or quality of their output. It is recognized that:

(a) Still and motion pictures are essential in keeping the public informed of the war effort and in the official documentation of the war.

(b) News events must be photographed as they occur.

(c) Control should be exercised over the release of photographs rather than the taking of them. Photographers are expected, however, to refrain from taking pictures that violate security or hamper the Armed Forces or their allies in the discharge of military duties.

§ 271.18 Still picture pools.

Military necessity, such as lack of space, transportation, or other facilities, or diverse and extensive military operations, may require that still picture photographic coverage of the activities of the Armed Forces of the United States be undertaken by recognized still picture photographic agencies in a pool operation. When pooling is required, all pictures taken by any representative of any participating agency will be distributed to all other agencies in the pool.

§ 271.19 Exclusive still pictures.

At the discretion of the Department of Defense and the military department concerned, a special war correspondent photographer may be accredited to a theater of operation to undertake an exclusive assignment. All pictures secured by a temporarily accredited cameraman, other than those specified in advance, whether taken by himself or secured from another source, are subject to pooling if a pool is in operation.

§ 271.20 Release dates.

Except under unusual circumstances, the Department of Defense will not establish release dates for still picture pool photographs. All pool photographs will be released simultaneously on a date established by, and agreeable to, the majority of pool members.

§ 271.21 Still picture censorship, developing, and shipping.

All still pictures made in a theater of operation will be subject to current censorship directives. When laboratory facilities are available, photographs and accompanying captions will be censored prior to shipment or radio transmission from the theater. When laboratory facilities are not available, negatives, clearly marked as such, and captions to accompany them will be shipped through such Armed Forces or other channels as are specified by the theater commander concerned to accomplish transmittal to the United States in the shortest possible time. They will be directed to the Office of Public Information, Department of Defense, Washington 25, D. C. Photographs, after being developed and censored, will be delivered by the Department of Defense to the agency employing the photographer who made the picture. This agency will then make prints or copy negatives available to other pool companies if it is a pool photograph. The original negative is the property of the agency whose photographer made it. Negatives and prints not released by the censor wil be held by the Department of Defense until releasable.

§ 271.22 Copies of stills for Department of Defense.

Three prints of all photographs made by war correspondents in theaters of operations will be turned over free of charge, to the Office of Public Information, Department of Defense, for its archives. The Department of Defense does not have the right to sell, reproduce, or distribute these pictures in any way without permission of the company owning the negative.

§ 271.23 Theater newsreel or television news film pools.

Military necessity such as lack of space, transportation, or other facilities, or diverse and extensive military operations, may require that motion picture coverage of the activities of the Armed Forces of the United States be undertaken by recognized photographic agencies in a pool operation which will require that all film taken by any representative of any participating agency be distributed to all other agencies in the pool. When pooling is necessary, separate pools will be established for theater newsreel and television news film companies.

§ 271.24 Exclusive motion pictures.

At the discretion of the Department of Defense and the military department concerned, a special war correspondent motion picture cameraman may be accredited to a theater of operation to undertake an exclusive assignment. All film secured by a temporarily accredited movie cameraman, other than that specified in advance, whether taken by himself or secured from another source, is subject to pooling if a pool is in operation.

§ 271.25 Motion picture censorship, developing, and shipping.

All motion pictures made in a theater of operation will be subject to current censorship directives. Underdeveloped motion picture negatives, clearly marked as such, will be shipped from the theater of operations through Armed Forces channels by fastest practicable means to the Office of Public Information, Department of Defense, Washington 25, D.C. Films will be developed at a laboratory specified by or acceptable to the Department of Defense. The Office of Public Information, Department of De-

fense, will determine the final release of classified as well as unclassified motion pictures so that there will be no censorship or delay at the source in forwarding the undeveloped negatives or in permitting motion pictures to be taken. After censorship, the negatives will be delivered to the company employing the photographer who made the pictures. This company will then make duplicating prints or negatives available to other pool members when such action is indicated. The original negative is the property of the agency whose photographers made it. Film not released by the censor will be held by the Department of Defense until releasable.

§ 271.26 Duplicating copy for Department of Defense.

A duplicating print or negative will be furnished the Department of Defense by the theater newsreel or television news film company owning the negative. The Department of Defense does not have the right to sell, reproduce, or distribute these films, in any way without permission of the company owning the negative.

SUBCHAPTER N—COMMERCIAL INSURANCE

PART 276—SOLICITATION OF COMMERCIAL LIFE INSURANCE ON MILITARY INSTALLATIONS

Sec.
276.1 Purpose and scope.
276.2 Policy.
276.3 Minimum requirements for companies.
276.4 Supervision of solicitation.
276.5 Use of the allotment system.
276.6 Withdrawal of solicitation privilege.
276.7 Reports.

AUTHORITY: §§ 276.1 to 276.7 issued under sec. 202, 61 Stat. 500, as amended; 5 U.S.C. 171a.

§ 276.1 Purpose and scope.

The purpose of this part is to establish Department of Defense policy with respect to the solicitation of members of the Armed Forces for the purchase of life insurance on U.S. military installations.

§ 276.2 Policy.

(a) *General.* The conduct of a private business, including the sale of life insurance, on a military installation is a privilege the control of which is a responsibility vested in the installation commander subject to such regulations as may be prescribed by the Secretary of the military department concerned.

(b) *Withdrawal of privilege.* The privilege to solicit on military installations may be withdrawn for cause.

(c) *Solicitation on military installations in the United States, a territory or possession.* Commanders of installations over which exclusive jurisdiction has been ceded to the United States will not permit solicitation by the representative of any commercial company, unless both the company and its agents are properly licensed by any one of the states, the territory or the District of Columbia. Where the state has retained exclusive or concurrent jurisdiction over any part of the installation, the company and its agents must qualify under the laws of that particular state to be eligible to solicit on the installation.

(d) *Solicitation on U.S. military installations in foreign areas; companies.* The Department of Defense will grant permission to companies to solicit on military installations in foreign oversea areas under this part. Applications will be submitted to the Department of Defense during the month of April each year. Accreditation will be valid for one year unless sooner withdrawn.

(e) *Solicitation on U.S. military installations in foreign areas; agents.* An agent may solicit business on military installations in foreign areas if:

(1) The company he represents has been granted permission to solicit under this part;

(2) His name appears on the list maintained by the Chairman of the DOD Life Insurance Board; and

(3) He has been granted permission by the commanding officer of the military installation on which he desires to solicit.

(f) *Counseling.* Commanders will provide counseling for the personnel under their command concerning the purchase of life insurance. It should be thoroughly explained that the insurance contract is intended to continue over a period of years, and that, if the insurance policy is allowed to lapse, the individual may not recover more than the cash value at the time the policy lapsed. Commanders should ensure that such transactions are entered into in good faith and only after a full understanding of the agreement by the military member. Counseling is mandatory for personnel of pay grades E–1, E–2, and E–3. It is encouraged for all others.

(g) *Department of Defense Life Insurance Board.* The Department of Defense Life Insurance Board has been established by DoD Instruction 5120.23 (see also § 277.3 of this subchapter) as the principal advisor to the Secretary of Defense in all matters pertaining to the sale of commercial life insurance to members of the Armed Forces. It is a function of this Board to recommend final action on applications received from insurance companies to solicit commercial life insurance on installations in foreign areas. The functions of the Board also include the recommendation of final action against companies for cause, including the withdrawal of soliciting privileges. In this connection the Board receives and reviews reports of violations of regulations.

§ 276.3 Minimum requirements for companies.

(a) *Qualification statements by companies.* Before a company may be authorized to solicit on a military installation, the commanding officer will require the company to submit a notarized statement by its president or vice president: (1) Listing all policies, together with their form numbers, to be offered on the military installation; (2) assuring that only the policies listed are to be so offered and that such policies comply with paragraph (b) of this section; and (3) indicating the name(s) of the agent(s) authorized to solicit and that the company assumes full responsibility for the actions of the agent(s) named with respect to such solicitation.

(b) *Minimum policy requirements.* The minimum requirements for insurance policies offered on military installations are as follows:

(1) Reserves at least equal to those produced by the Commissioners Reserve Valuation Method as defined in the Standard Valuation Law when calculated according to the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not in excess of 3½ percent per annum;

(2) Policies must comply with the Standard Non-Forfeiture and Valuation Law as interpreted by the "Working Committee of the Life Insurance Committee, National Association of Insurance Commissioners" (commonly known as the Hooker Committee). Attention is particularly directed to the need for complying with at least the minimum values provided by the Standard Non-Forfeiture and Valuation Law.

(3) The existence of exclusion or restrictive clauses or provisions, including War Clauses, Geographic Limitations, Aviation Exclusion Provisions, Demolition, etc., must be plainly indicated on the face of the policy.

(4) Statements referring to dividends must indicate that the dividends are estimates and are not guaranteed.

§ 276.4 Supervision of solicitation.

(a) *Command supervision.* (1) The Secretary of each military department will issue regulations to ensure that solicitation on military installations is properly supervised and controlled. These regulations will include a prohibition against:

(i) The soliciation of recruits or trainees and "mass" or "captive" audiences;

(ii) Practices involving rebates or elimination of competition; and

(iii) Military personnel on active duty representing any insurance company.

(2) An official identification card may not be used to gain entrance to a military installation to solicit the sale of life insurance.

(b) *Information to be required of agents.* For each proposed sale to enlisted personnel in the grades of E–1, E–2, and E–3, the agent must provide the applicant and the commander the following information:

(1) Name and address of the company;
(2) Name and address of the agent;
(3) Type of policy;
(4) Amount of life insurance;
(5) Premium;
(6) Full name of person insured;
(7) Death benefit, guaranteed cash value, extended insurance, pure endowment (if any), at the end of the first to the fifth years inclusive and the tenth, fifteenth, and twentieth years; and
(8) List of all exclusion provisions which are incorporated in the policy, such as War Clauses, Geographic Limitations, Aviation Exclusion Provisions, Demolition, etc.

Commanders will use the foregoing information in connection with counseling.

(c) *Limitations.* Solicitation will be on an individual basis, preferably by appointment, in a specific appropriate location(s), and at specified times designated by the installation commander.

(d) *Installation regulations.* Commanders may issue regulations governing solicitation on their installations. When a commander desires to prescribe additional safeguards which require companies to meet more restrictive requirements than contained in regulations of the military departments, such additional requirements or restrictions must first be reviewed and confirmed by the appropriate military department. Additional regulatory controls with regard to individual agents are not required to be so reviewed and confirmed.

(e) *Statement by agent.* Before being permitted to solicit, the agent will be furnished a copy of the applicable insurance regulations and required to indicate in writing that he understands them and that any violation of the regulations may result in the withdrawal of the privilege of solicitation.

§ 276.5 Use of the allotment system.

(a) Allotments of military pay will be made in accordance with DOD Directive 7330.1, "Voluntary Military Pay Allotments."

(b) *Allotment forms may not be issued to agents.* The possession of allotment forms by agents is cause for withdrawal of the privilege of solicitation.

(c) At least seven days must elapse between the signing of an insurance application and the certification of an allotment for personnel in pay grades E–1, E–2, and E–3. Allotment forms will be completed before signature.

(d) When the enlisted member in grade E–1, E–2, or E–3 purchases insurance on a military installation and pays at least the first full monthly premium in cash, the 7-day waiting period will not be made applicable but the prescribed counselling will be accomplished.

§ 276.6 Withdrawal of solicitation privilege.

(a) The Secretary of Defense may withdraw the privilege of solicitation from companies and agents upon receipt of information evidencing the utilization of any manipulative, deceptive, or fraudulent device, scheme, or artifice, including misleading advertising or other misleading sales literature.

(b) The military departments may permit installation commanders to suspend an agent for cause for a reasonable period. When such suspension occurs, the agent, the company he represents, the military department concerned, and the insurance commissioners of the States in which he is licensed will be promptly notified. The department concerned will ensure that complete investigation is made and that a report of such investigation is submitted to that department.

(c) The withdrawal of the soliciting privilege should be resorted to only for good and sufficient reasons. Final action to withdraw from an agent the privilege of soliciting on all installations within the command rests with the military department or, as to installations in foreign areas, with the theater commander. When such action is taken, the agent, the company he represents, the insurance commissioners of the States in which the agent is licensed, the other military departments, and the Assistant Secretary of Defense (Manpower, Personnel and Reserve) will be notified. When the privilege of solicitation is withdrawn by one military department, such withdrawal will be effective in the other military departments.

(d) For serious or repeated violations, a commander may suspend a company temporarily. Where such action is instituted, the military department concerned will be promptly notified. The military department will then forward detailed information to the Office of the Secretary of Defense. Companies may be permanently prohibited from soliciting on military installations only by action of the Secretary of Defense.

§ 276.7 Reports.

The military departments will report to the Assistant Secretary of Defense (Manpower, Personnel and Reserve) the following violations or actions in duplicate immediately after such violations or actions occur. As a minimum the agent's name, the company's name and a description of the violation will be reported.

(a) Violations by agents resulting in suspension of the solicitation privilege on a limited basis. Notifications will be made as indicated in § 276.6(b).

(b) Violations by agents resulting in suspension of the solicitation privilege throughout the military departments. Additional notifications will be made as indicated in § 276.6(c).

(c) Action taken to suspend the privilege of solicitation in the case of any life insurance company.

PART 277—SOLICITATION OF COMMERCIAL LIFE INSURANCE ON MILITARY INSTALLATIONS IN OVERSEA AREAS

Sec.
277.1 General.
277.2 Application.
277.3 Department of Defense Life Insurance Board.
277.4 Minimum requirements for companies.
277.5 Announcement of findings.
277.6 Change in status.

AUTHORITY: §§ 277.1 to 277.6 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 277.1 General.

Pursuant to § 276.3 of this subchapter, companies desiring to sell commercial life insurance to members of the Armed Forces on military installations under United States jurisdiction in oversea areas may, on application, be authorized to do so in accordance with DOD Instruction 1344.1, dated December 15, 1955, subject: "Solicitation of Commercial Life Insurance on Military Installations." (Part 276 of this subchapter.)

§ 277.2 Applications.

(a) Applications will be submitted to the Department of Defense during April of each year. They will not be accepted or considered at any other time. Applications will be in letter form and appropriately documented. They must be signed by the President or Vice President of the company and attested to. Formats A[1] (Selected Financial Information); B[1] (Lapse Ratio and Military Business Statement); and C[1] (Operations Statement) to be used in submitting technical information may be obtained upon request by companies requesting accreditation for the first time. Companies currently accredited will be supplied Formats A, B, and C without making a request. (The information required on the formats has been approved in accordance with the Federal Reports Act by the Bureau of the Budget under approval number 22–R188.) The application must furnish the following information:

(1) Foreign countries and commands (e.g.: Army, Europe; Air Force, Europe; Navy, Far East; Air Force, Northeast; etc.) where it is desired to solicit on military bases or installations.

(2) Plans for control of and supervision to be exercised by the company over its agents.

(3) List of States and jurisdictions in which the company is licensed and dates of such licensing.

(4) Use Format A, cited above, to submit information from each of the last five annual statements to include:

(i) Admitted assets.

(ii) Net reserve.

(iii) Combined paid up capital and surplus, or surplus.

(iv) Insurance in force, reported by classes.

(5) A statement that the company has complied with or will comply with the applicable laws of the country or countries wherein it proposes to solicit (by "laws of the country" is meant all national, provincial, city or country laws or ordinances of any country, as applicable), and upon being authorized to do business in such country or countries, a statement to that effect.

(6) An authenticated copy of the current annual statement, notarized and sworn to by authorized company officials in the space provided at the bottom of page 1 of the annual statement, as filed with the insurance department of the state of domicile.

(7) An authenticated copy of a current convention or "association type" report of examination if the company is licensed by more than one state, otherwise, a current report of one insurance department.

(8) A sworn statement covering the following items:

(i) That the policies to be offered adhere to the standards prescribed by § 276.4 of this subchapter (Paragraph IV B, DOD Instruction 1344.1).

(ii) The amount of unassigned surplus and paid up capital or only surplus if a non-stock company. In computing the amount of unassigned surplus, include as liabilities all debts due or to become due, contingent or otherwise, as provided in the Life Insurance Act of the District of Columbia Act of June 19, 1934; C 672, 48 Stat. 1125, as amended, and a statement that the amount of unassigned surplus and paid up capital has been computed by the method prescribed in the aforesaid act.

(iii) That the policies to be offered for sale (*a*) do not contain other than standard provisions such as those prescribed by the Life Insurance Act of the District of Columbia (cited in subdivision (ii) of this subparagraph), and (*b*) do not provide for a variation in the amount of death benefit depending upon the length of time the policy has been in force.

(iv) That none of its officers, directors, or principal stockholders, or any members of his immediate family, receives or has any contract to receive commissions, directly or indirectly, from military business currently transacted by the company, or if the company cannot so attest, a disclosure and justification for such contracts.

(v) That the company has not made any loan (except policy loans) to any director, officer, or principal stockholder or any member of his immediate family within the last year, and there is not currently outstanding any loan to such person made prior to that period.

(vi) That the company will be responsible for the acts of its agents actually connected with the sale of insurance to military personnel.

(9) Use Format B, cited above, to report the rate of lapse of policies sold to military personnel (including only life insurance, but excluding group life insurance) for each of the last five years and an explanation of the methods or formulae used in computing the ratio of military business to total business (including only life insurance, but excluding group life insurance) annually for the last five years computed on the basis of the following:

(i) Number of policyholders.

(ii) Insurance in force.

(iii) Premium income.

(10) Name, age, legal residence, citizenship and present address of each agent who will solicit overseas, the state or states in which such agents are licensed; the date of licensing, expiration dates, and the area in which each agent will solicit.

(b) Any explanatory remarks that will assist the Department of Defense in evaluating applications are invited.

(c) Applications and any correspondence relating thereto should be addressed to:

Chairman, Life Insurance Board, Department of Defense, The Pentagon, Washington 25, D.C.

§ 277.3 Department of Defense Life Insurance Board.

(a) The Department of Defense Life Insurance Board is established to act as principal advisor to the Secretary of Defense on all matters pertaining to the sale of commercial life insurance to servicemen.

(b) Duties and functions: In addition it is the duty and function of the Board to:

(1) Recommend final action on applications received from insurance companies to solicit commercial life insurance on overseas bases and installations under U.S. jurisdiction.

(2) Maintain a current list of agents representing life insurance companies authorized to solicit on military installations overseas.

(3) Receive and review reports of violations of regulations governing solicitation on bases and installations.

(4) Recommend final penalty action against companies for cause to include the withdrawal of soliciting privileges.

(5) Perform such other related functions as may be directed.

§ 277.4 Minimum requirements for companies.

(a) The Department of Defense will require, among other things, that the following minimum standards be met by companies authorized to solicit on overseas bases and installations.

(1) The company must have demonstrated continuous successful operation in the life insurance business within the continental limits of the United States or a territory or possession for a period of five years, immediately preceding the date of application (for this purpose, use Format C, cited above) except that a company or a division of an existing company organized to write life insurance and affiliated or connected with a company already writing other lines of insurance may be granted a waiver of the otherwise mandatory five-year requirement, if the company to which it is connected has been in business twenty years and has a record of financial stability and sound management.

(2) The company affirms its intentions and ability to comply with the applicable laws of the country or countries wherein it proposes to engage in business.

(3) The company must be licensed to do business by any twelve (or more) of the states, a territory, or the District of Columbia; or must comply with the following:

(i) Be licensed to do business in at least one of the states, territories, or the District of Columbia.

(ii) Meet minimum standards for initial licensing under current laws where domiciled even though presently doing business under statutes previously enacted.

(iii) Have unassigned surplus and paid up capital (or surplus, if a non-stock company) at least equal to the amounts currently required by the state of domicile or the District of Columbia, whichever is larger.

(b) In making its recommendation the Board will also consider the integrity and stability of the company's management as evidenced by the information submitted in § 277.2 and such other relevant information as may be officially brought to its attention.

§ 277.5 Announcement of findings.

(a) Final action upon applications for authorization will be forwarded by registered mail. Approvals shall not be construed or interpreted as Department of Defense indorsement of any company.

(b) In the event the finding is unfavorable, specific reasons for such finding shall be included.

(c) Upon receipt of notification of an unfavorable finding, the company shall have 30 days in which to file an appeal for reconsideration. Such appeals will be accompanied by substantiating evidence.

§ 277.6 Change in status.

(a) It is incumbent on companies to maintain with the Department of Defense a current list of agents, together with areas in which doing business. Changes must be promptly reported. Failure to report such change will result in non-acceptance of the agents credentials by overseas commanders.

(b) Material changes affecting the company's status as certified to in accordance with § 277.2 must be reported promptly. The Department of Defense reserves the right to withdraw authorization for failure to report such changes when such change is material to the original authorization.

[1] Filed as part of original document.

SUBCHAPTER O—MILITARY POSTAL SERVICE

PART 280—USE OF THE MILITARY POSTAL SERVICE

Sec.
280.1 Purpose
280.2 Scope
280.3 Background
280.4 Policy
280.5 Implementation

AUTHORITY: §§ 280.1 to 280.5 issued under sec. 201, 61 Stat. 499, as amended; 5 U. S. C. 171 note.

§ 280.1 Purpose.

The purpose of this part is to establish a single policy defining the organizations, agencies and personnel entitled to use the facilities of the Military Postal Service; and to establish procedures to coordinate the uniform implementation of this policy and related postal matters.

§ 280.2 Scope.

The Military Postal Service represents the postal facilities of the Army, the Navy and the Air Force which are maintained and operated for the purpose of providing complete postal services for the U.S. Armed Forces. The Military Postal Service is maintained in areas where the U.S. Civil Postal Service does not operate or in any other place where the military situation requires. It is an extension of the U.S. domestic postal system and operates in conformity with the Postal Manual, U.S. Post Office Department, Title 39, Code of Federal Regulations, and other Post Office Department instructions, as well as military regulations and directives. Mail to, from and between oversea military post offices is subject to the U. S. domestic rate of postage.

§ 280.3 Background.

(a) The establishment, operation and use of the U.S. Military Postal Service in sovereign foreign countries is contingent upon agreement with the host government, since it is customary among nations to preserve a monopoly of postal service, including postage revenue and control of customs. International agreements permitting establishment of military postal facilities usually contemplate limiting the use of such facilities to the Armed Forces and certain civilian agencies and organizations serving with or related to the Armed Forces. In time of hostilities or occupation, however, use of military postal facilities may be extended more liberally to U.S. civilian organizations, since reliable international postal service usually is not available then.

(b) The cost of operating military postal facilities overseas is borne by the Military Departments. Currently, that cost includes the transportation of military mail between the United States and oversea areas, exclusive of territories and possessions, both by air and surface transport, commercial as well as military.

§ 280.4 Policy.

(a) The following personnel and organizations are entitled to use the facilities of the Military Postal Service:

(1) Members and units of the Armed Forces of the United States, including the U. S. Coast Guard, on active duty.

(2) U. S. citizen employees of the Department of Defense including the Military Departments of the United States who are serving at military activities in foreign countries.

(3) Accredited technicians on duty with and accompanying the Armed Forces of the United States.

(4) Representatives of the American Red Cross who are citizens of the United States attached to and accompanying the Armed Forces of the United States.

(5) Dependents of the above personnel.

(6) International military commands and agencies of the North Atlantic Treaty Organization (NATO).

(7) Masters and civilian crews of ships under the operational control of the Military Sea Transportation Service, under conditions prescribed by the Military Departments.

(b) The following are entitled to use the facilities of the Military Postal Service to the extent that the Military Postal facilities of the command permit; or, in the case of an occupied area where the military Commander-in-Chief deems the local civil postal service to be inadequate or insecure:

(1) Members of the Armed Forces of allies or contingents thereof assigned or attached to the U. S. Armed Forces.

(2) U. S. Governmental Departments and independent agencies, U. S. citizen employees thereof, and their dependents when accompanying the principal.

(3) Retired personnel of the Armed Forces of the United States who are U.S.

citizens, and their dependents, when accompanying the principal.

(c) When foreign military units are serving with U. S. Armed Forces, including foreign naval vessels operating in the waters of the United States or U. S. territories or possessions, closed mails may be transmitted through U. S. military channels when requested by the foreign country concerned, in places where adequate international postal facilities are not available.

(d) Requests for authority for persons and organizations not enumerated above to use the Military Postal Service in time of peace may be submitted to the Adjutant General in the case of the Army, the Chief of Naval Operations in the case of the Navy, or the Air Adjutant General in the case of the Air Force. Requests which warrant consideration will include the comments and recommendations of the cognizant military area or theater commander when forwarded to the Department. This comment will include a statement concerning eligibility under any existing agreement between the United States and the host country.

(e) In the event of national emergency, hostilities or occupation, when international postal service is not available, cognizant military commanders may grant to citizens of the United States in affected areas overseas the privilege of using the facilities of the Military Postal Service.

(f) Organizations, agencies and individuals not authorized military postal service under the provisions of this part, but who are currently authorized to use such service, will discontinue the use of the Military Postal Service not later than 60 days subsequent to the date of this part.

(g) The use of the Military Postal Service in a sovereign foreign country shall be in compliance with any existing agreement between the United States and the host country.

§ 280.5 Implementation.

The Military Departments will take action necessary to insure:

(a) That Title 39, Code of Federal Regulations, and local restrictions are enforced to preclude the acceptance of prohibited items of mail by military post offices.

(b) That the provisions of any existing agreement with sovereign governments are enforced.

(c) That all persons and organizations using the Military Postal Service comply with local customs requirements.

(d) That persons or organizations authorized to use the Military Postal Service do not act as intermediaries for persons or organizations not authorized use of the Service.

(e) That postal privileges are withdrawn from retired military personnel and civilians when there is evidence of abuse of the privilege.

(f) That the provisions of § 280.4(d) are uniformly implemented. To this end, the Military Departments will, through mutual coordination and agreement, specifically approve or disapprove all requests made upon the Department of Defense or any of its agencies for authorization to use facilities of the Military Postal Service which are not provided for under this part.

(g) That problems pertaining to these matters which cannot readily be solved by the Military Departments will be referred to the Assistant Secretary of Defense (Manpower and Personnel) for consideration.

(h) That the Military Postal Service is not used by individuals or agencies for commercial or business purposes or to transmit items intended for resale.

SUBCHAPTER P—RECORDS

PART 285—RELEASE AND AUTHENTICATION OF COPIES OF OFFICIAL RECORDS

Sec.
285.1 Purpose and authority.
285.2 Definition.
285.3 Applicability.
285.4 Exemptions and conditions.
285.5 Terms and conditions.
285.6 Responsibilities.
285.7 Authentication.

AUTHORITY: §§ 285.1 to 285.7 issued under R.S. 161; 5 U.S.C. 22.

§ 285.1 Purpose and authority.

The purpose of this part is to provide the policies and procedures within the Department of Defense, exclusive of the three military departments, governing (a) the release of copies of official records which may be made available to persons properly concerned, and (b) the authentication under the seal of the Department of Defense of copies of official records, as required. These instructions are consistent with section 506 (a) of the Federal Records Act of 1950, the Administrative Procedures Act, 60 Stat. 238, 5 U. S. C. 1002, and section 1733 of Title 28 of the United States Code.

§ 285.2 Definition.

The term "official records", as used in this part, includes all papers, books, maps, photographs, and other documentary material regardless of physical form or characteristics made or received in the Department of Defense, exclusive of the three military departments in pursuance of Federal law or in connection with the transaction of business as evidence of the organization, functions, policies, decisions, procedures or other activities because of the informational value of the data contained therein.

§ 285.3 Applicability.

The provisions of this part apply to requests or orders directed to the Secretary of Defense for the release and/or authentication of copies of official records of the Department of Defense, exclusive of the three military departments for the purposes stated in this section. Requests for the release and/or authentication of official records from the military departments should be addressed to the department concerned.

(a) Official use of other departments, agencies or bureaus of the Federal Government.

(b) Use in courts of record in cases of private litigation.

(c) Use in courts of record in criminal prosecutions in which the United States of America is not a party.

(d) Use of other party or parties submitting the request.

Nothing contained in this section shall be construed to require authentication of Department of Defense directives, orders, or other similar documents required in the day-to-day internal operation and management of the Department of Defense including the three military departments.

§ 285.4 Exemptions and conditions.

(a) *Original copies.* Requests for original copies of official records shall not be honored.

(b) *Confidential material.* Confidential material, as defined in the Administrative Procedure Act, section 3 S, 60 Stat. 238, 5 U. S. C. 1002, and other appropriate statutes, shall not be released.

(c) *Personnel records.* Individual personnel records may be released only in accordance with the provisions of Federal Personnel Regulations.

(d) *Classified security information.* Classified security information shall be released only when permitted under the provisions of Executive Order 10501 and appropriate agency security regulations or when approved by the head of the agency or his designated representative.

§ 285.5 Terms and conditions.

(a) *General.* Requests or orders for the release of and/or authentication of copies of official records must be addressed to the Secretary of Defense and must describe the records in sufficient detail to identify the particular record desired without question.

(b) *Government requests.* (1) Requests from departments, agencies and bureaus of the Federal Government must be made over the signature of the head of the agency.

(2) Requests from committees or subcommittees of Congress must be made over the signature of the chairman of the main committee unless power of issuing subpoenas is conferred on the chairman of the subcommittee in the resolution establishing the subcommittee.

(3) Requests by individual members of the Congress must be made over the signature of the member making the request.

(c) *Orders from a court of record*—(1) *Criminal cases.* The court order or certificate must recite that the information requested is essential to the issues of the case and to the proper administration of justice. The order or certificate must bear the seal of the court in which the case is to be tried.

(2) *Private litigation.* The court order or certificate must recite that the information requested is essential to the issues of the case and to the proper administration of justice. When personnel records are involved the order or certificate must recite that the person whose records are requested or his attorney has been given notice of the application for such order of the court and an opportunity to be heard thereon. Personnel records when received by the court will be impounded with the Clerk of the Court and will not be opened or subject to inspection prior to the trial except with the consent of the individual whose records are involved, or his attorney. Furthermore, the order or certificate must bear the seal of the court in which the case is to be tried.

(3) *A request of an individual.* A request for official records by an individual must be subscribed and sworn to before a Notary Public or other official authorized by law to administer oaths or affirmations. The request must specifically state the need for the copy or copies of authenticated records, and the purpose or purposes for which the record or records are to be used.

§ 285.6 Responsibilities.

The Administrative Assistant, Office of the Secretary of Defense, is responsible for controlling the release of and releasing, when appropriate, copies of official records pursuant to the provisions of this part. He is also responsible for authenticating copies of official records, when necessary.

§ 285.7 Authentication.

The Administrative Assistant, Office of the Secretary of Defense, is hereby designated as the custodian of the Department of Defense seal. Only the Administrative Assistant, Office of the Secretary of Defense, or his designee acting in his behalf, are authorized to attest to the authenticity of official records under the Department of Defense seal.

PART 288—SCHEDULE OF FEES AND CHARGES FOR COPYING, CERTIFICATION AND SEARCH OF RECORDS

Sec.
288.1 Purpose.
288.2 Authority and applicability.
288.3 Definitions.
288.4 Fees.
288.5 Disposition of collections.
288.6 Changes in existing law.
288.7 Review of schedule of fees.
288.8 Implementation.
Exhibit A—Schedule of Fees.

AUTHORITY: §§ 288.1 to 288.8 issued under sec. 501, 65 Stat. 290; 5 U. S. C. 140. Interpret or apply 70 Stat. 297; 5 U. S. C. 140a.

§ 288.1 Purpose.

(a) To designate the type of services relating to copying, certification and search of records that are rendered to the public by the Department of Defense for which a fee shall be collected.

(b) To establish an amended schedule of fees that shall be collected for specified services.

§ 288.2 Authority and applicability.

Title V of the Independent Offices Appropriation Act of 1952 (5 U. S. C. 140) provides that it is the sense of Congress that fees shall be charged for services rendered the public by Federal Agencies in order that such services may be performed on a self-sustaining basis to the fullest extent possible. This act further provides that the President shall prescribe policies to insure uniform application of fees within the Executive Branch. The general policy and implementing instructions for the Executive Branch are prescribed in Bureau of the Budget Circular No. A-26, dated January 23, 1954, subject: "Fees for Copying, Certification, and Search of Records". The provisions of this part and of Exhibit A set forth below are applicable to all components of the Department of Defense.

§ 288.3 Definitions.

(a) *Public.* As used in this part, the public shall include any person or group of persons, including associations, organizations, partnerships, corporations, businesses, municipalities, counties, state or territorial governments. Public does not include agencies or branches of the Federal Government.

(b) *Armed Forces.* As used in this part the term Armed Forces include the Army, Navy, Air Force and Marine Corps and their civilian components.

(c) *Services.* As used in this part, services shall refer to the furnishing of information or documentation, certification or search of records as listed or described under Exhibit A.

§ 288.4 Fees.

(a) *Services and fees.* The types of services rendered the public by the Department of Defense and its component agencies for which a fee shall be collected, subject to the exemptions indicated in paragraph (b) of this section, are contained in Exhibit A. The specific charges for such services are also indicated in Exhibit A. If fees can be determined in advance, such fees shall be collected in advance prior to rendering the services.

(b) *Exemptions.* No fee shall be imposed for the following types of services when requests are received from the sources specified, provided the furnishing of such services is consistent with established policy, does not interfere with the mission of the furnishing agency, and the cost of the services can be provided with available funds:

(1) Any services requested by members of the Armed Forces when the document or information requested is required by such personnel in their capacity as members of the Armed Forces of the United States.

(2) Any services requested by members of the Armed Forces, who are in a casualty status, or by their next of kin or legal representative; and requests for information from any source relating to a casualty.

(3) The address of record of an active duty member or former member of the Armed Forces when it can be furnished informally through local directory (locator) reference, when requested by a member of the Armed Forces or a relative or legal representative of a member of the Armed Forces or the address of record requested by any source when the address is required for the purpose of paying monies or forwarding property to a member or former member of the Armed Forces.

(4) Any services requested by or on behalf of a member or former member of the Armed Forces pertaining to requests for:

(i) Information required to obtain financial benefits.

(ii) Document showing membership and military record in the Armed Forces if discharge or release was under honorable conditions.

(iii) Information relating to a decoration or award or information required for memorialization purposes.

(iv) Review or change in type of discharge or correction of records.

(v) Personal documents, e. g. birth certificates, when such documents were required to be furnished by the individual.

(5) Those services which are furnished free in accordance with statutes or Executive Orders.

(6) Information from or copies of medical and dental records and/or X-ray films of patients or former patients of military medical or dental facilities when such information is required for further medical or dental care and requests for such data are (i) submitted by an accredited medical facility, physician or dentist or (ii) requested by the patient, his next of kin or legal representative.

(7) Any services furnished the general public relating to or in furtherance of the Armed Forces recruiting programs and any services furnished representatives of public information media or the general public in the interest of public understanding of the Armed Forces.

(8) Any services involving confirmation of employment, disciplinary or other records or salaries of active or separated civilian or military personnel when requested by prospective employers or recognized sources of inquiry for credit or financial purposes.

(9) Any services requested by and furnished to a Member of Congress for official use.

(10) Any services requested by a State, territorial, county, or municipal government or an agency thereof which is carrying on a function related to or in furtherance of an objective of the Department of Defense.

(11) Any services requested by a court when the furnishing of such will serve as a substitute for personal court appearance of a military or civilian employee of the Department of Defense.

(12) Any services requested by a nonprofit organization which is carrying on a function related to or in furtherance of an objective of the Federal Government or in the interest of public health and welfare.

(13) Any services requested when the cost of such services ultimately would be charged to the Federal Government.

(14) Any services requested by donors with respect to their gifts.

(15) Any request which results in an unsuccessful search of records other than requests to determine the existence or non-existence of a record.

(16) Requests for services which are occasional and incidental (including any request from a resident of a foreign country), not of a type that is requested often, if it is administratively determined that a fee would be inappropriate in such an occasional case.

(c) *Existing fees.* Services to the public (other than those services indicated in Exhibit A) for which fees are currently being collected in accordance with charges established prior to date of Part 288, published at 19 F.R. 7295 shall be continued in effect provided that such services are not exempted from charge by the provisions of paragraph (b) of this section. The charge for such services shall be in conformity with the cost standards established by Bureau of the Budget Circular No. A-28.

§ 288.5 Disposition of collections.

Funds received from the public in payment of the prescribed fees for services financed by working capital funds shall be credited to the appropriate working capital fund. In all other cases, such funds shall be credited to the appropriate General Fund Miscellaneous Receipt Account. No refunds of fees shall be made by reason of change in regulations, directive or fee schedule, or overpayments of one dollar ($1.00) or less.

§ 288.6 Changes in existing law.

In any case when the collection of a fee for service of the type contained in Exhibit A is prohibited by statute or Executive Order, proposed drafts of such legislation or change in Executive Order as may be necessary to permit the fixing of fees as required by this part shall be submitted by the military department concerned under applicable legislative procedures.

§ 288.7 Review of schedule of fees.

The schedule of fees shall be reviewed whenever significant changes in costs occur and at least once every two years to determine whether a fee should be collected for any additional services rendered the public or whether any of the fees prescribed in the schedule should be changed or discontinued. Appropriate recommendations for change in the schedule of fees shall be submitted to the Assistant Secretary of Defense (Comptroller). The cost standards contained in Bureau of the Budget Circular No. A-28 shall be applied in establishing fees for additional services and for changing existing fees.

§ 288.8 Implementation.

The amended schedule of fees shall be placed into operation as soon as practicable but in no event later than ninety (90) days after February 14, 1956.

EXHIBIT A—SCHEDULE OF FEES

Applicable to authorized services of copying, certifications, and search of records rendered to the public by components of the Department of Defense. Requests involving:

	Fee
1. Training and education, each (Including requests for transcripts, certificates, and verification of attendance, course completion, and graduation from service schools and other facilities.)	$1.00
2. Medical and dental records of civilians and dependents of military personnel, each (Includes requests for information from or copies of medical records including clinical records, outpatient records, dental records, and loan of X-rays.)	2.00
3. Military membership and record:	
a. Address of record, each	1.00
b. Certificate in lieu, statement or verification of service, or report of separation, each	1.50
c. Copy or extract of order or other record (excluding medical, dental, and X-ray records), each	1.00
4. Photography:	
a. Still pictorial or Documentary Photographic Prints 8 x 10 black and white and not more than three prints may be sold from any individual negative on each order. Larger standard sizes of black and white prints will be furnished, if available, at proportionately higher fees.	
Single-weight glossy finish, each	.55
Double-weight matte finish, each	.60
4 x 5 color transparencies or color negative, each	5.00
8 x 10 color transparencies or color negative, each (In quantities not to exceed three copies any one view.)	10.00
Color prints will not be furnished for public use.	
b. Aerial Photographic Prints, contact prints, or exact negative sizes, single-weight glossy or double-weight semi-matte.	
Size 7 x 9" or 9 x 9", in quantities:	
1-100, each	.70
101-1000, each	.55
Over 1000, each	.50
Size 9 x 18", in quantities:	
1-100, each	1.40
101-1000, each	1.10
Over 1000, each	1.00
c. Aerial Photographic Indexes and Mosaic Copies in any number, size 20 x 24, each	1.20
d. Reproduction of Cover Overlays:	
Transparent Foil Film Overlays, each	1.50
Transparent Paper Overlays, each	.60
Transparent Paper Plot Maps, per square foot	.10
Photostat Plot Maps (maximum size 17½ x 23), each	.65
e. Motion Picture:	
16 mm or 35 mm black and white unedited footage and/or optical sound track, per foot	.10
Color unedited footage:	
16 mm, per foot	.20
16 mm inter-negative	.25
35 mm, per foot:	
Viewing or release print, each	.25
Separation master positive (3 required)	.75
Color inter-positive, each	.55
Color inter-negative, each	.55
Magnetic Tape (per foot):	
16 mm (Direct Dubb), each	.05
35 mm (Direct Dubb), each	.05
Searching (including overhead):	
Each hour or fraction thereof (per hour)	5.00
All film used in duplication to furnish a requested end product shall be charged for on a per foot basis.	
Minimum charge (including stock search per order)	10.00
5. Construction and engineering information.	
Copies of aerial photographic maps, specifications, permits, charts, blueprints, and other technical engineering documents.	
Searching per hour (includes overhead costs)	2.00
First print	.50
Each additional print of same document	.25
6. Copies of medical articles and illustrations	[1]
7. Claims and litigations	
a. Requests from litigants pertaining to private litigation. (If not covered in 2 above.)	
Searching per hour (includes overhead costs)	2.00
Each photocopy	.20
Certification and validation with seal, each	.50
Certification and validation without seal, each	.25
b. Requests pertaining to cases in which the U.S. is a party and where court rules provide for reproduction of records without cost to the Government.	
Searching per hour (includes overhead costs)	2.00
Each photocopy	.20
Certification and validation with seal, each	.50
Certification and validation without seal, each	.25
c. Furnishing information from Investigative Reports, e.g., automobile collision investigations, safety reports.	
Searches, overhead, analysis and preparation of report (per hour)	2.00
8. General:	
Furnishing any additional services not specifically provided for above as determined to be appropriate and in consonance with BOB Circular A-28 by respective agencies.	

MAURICE W. ROCHE,
Administrative Secretary,
Office of the Secretary of Defense.

[F.R. Doc. 60-12068; Filed, Dec. 30, 1960; 8:45 a.m.]

[1] Standards contained in BOB Circular A-28 will be utilized in computing costs.